

San Marcos 123 and 35 Partners, LLC  
R.W. McDonald, IV - Manager  
750 E Mulberry Ave. Suite 305  
San Antonio, Texas 78212

City of San Marcos City Council, City Mayor, City Manager, City Attorney, Assistant City Manager, and Economic and Development Projects Coordinator:

6/23/2015

**Re: Appeal of Approved CUP-15-09; 1305 South IH 35**

I am writing today as a very concerned City of San Marcos Property Owner.

I was born and raised in San Marcos. I went to high school in San Marcos and spent my free time at Quail Creek Country Club hitting a golf ball around. I played basketball in the San Marcos Park, I fixed fences on a ranch just outside of the City Limits and I fished the Blanco River. I have spent a significant amount of time in and around the City of San Marcos.

Throughout my time growing up in and around the City of San Marcos, my family made numerous sizable investments within the city limits. My family co-developed Red Oak Village, my family built hundreds of single family homes, my family owned hundreds of apartment units around the University, my family has worked hand in hand with CTMC and has delivered a significant amount of medical space around the Hospital.

I have made numerous investments within the City of San Marcos and have never been the least bit concerned, as I have witnessed first-hand my family undertake investments on numerous occasions over the course of thirty years. I enjoy working with staff members at the City of San Marcos and I enjoy creating projects that enhance the community as a whole. Whether that is retrofitting an old downtown building, adding shovel ready single family lots so more individuals can reside in the City San Marcos, or whether that is adding restaurants to the community amenity base. My projects have undeniably added value in numerous ways to the City of San Marcos as a whole – they have and will continue to add value to the property tax base, they create sales tax via the businesses operating out of the various projects, the projects create hundreds of jobs, and the overall community amenity base strengthens which is incredibly important as it not only assists in recruiting new residents to the area but companies as well.

I thoroughly enjoy being in the real estate development and investment business as it is a very rewarding job. However, the job also sets forth a significant amount of risk and it is my job as a prudent businessman to mitigate risk. I appreciate the value of money as well as the time value of money - I am very diligent on the front end as a mistake in this business can result in a monumental loss.

I am the underlying owner of the above referenced real estate and I have made a significant investment in the Property in an effort to bring a new restaurant to the City of San Marcos. Our front end due diligence on this property was nothing out of the ordinary, thorough and vast. The property currently houses the Griffith Ford

---

Dealership and is commonly referred to as the Simon Tract. My company primarily focuses on retail real estate and we enjoy doing work with restaurants. This property is ideal for a restaurant as it is at the same intersection as Johnny Carino's, Burger King, Whataburger, McDonald's, Red Lobster, 54<sup>th</sup> Street Bar and Grill, Luby's, Chili's, Bush's Chicken, Newk's Eatery, Thundercloud Subs, and Starbucks. We were comfortable with the acquisition of this property because it is zoned general commercial and restaurants are permitted in this zoning district. Since the Property has a commercial land use designation on the Future Land Use Map, we believed that the City had committed to a commercial redevelopment of the Property.

We verified that the Property is not located within 300 feet of a Church, School or Single Family Housing, per the distance requirements set forth in both the TABC and San Marcos Code. The property received a clean bill of health from our environmental consultant. We had lengthy conversations with the Texas Department of Transportation which ended in the overall enhancement of access to the site from the IH 35 Access Road. We further enhanced the property's access via two cross access agreements to get customers back to 123 quicker and safer. The Property does not have access to the adjoining subdivision or Patricia Drive, so restaurant patrons will not be driving through the adjoining subdivision. We were convinced that everything we wanted to do was permitted by City Code.

We are under contract to lease the property to a company that will operate a Hooters brand restaurant. Our prospective tenant has a first class business operation and cares about working with cities and neighbors as they plan to be long term business owners in the City of San Marcos. They worked with City staff to ensure the site plan fully complied with the San Marcos Code, including, verifying that the front door of the restaurant will be more than 300 feet from the front door of the nearest residence. Further, they agreed to flip their building and patio around in an effort to keep noise levels to a minimum and to set their building back from the side lot line eight times in excess of what the code requires – this revision to the original plans cost in excess of fifteen thousand dollars, but Hooters accommodated the request to convey they were willing to work with City Staff and the adjoining neighborhood. There are no variance requests associated with the construction of the restaurant. City staff recommended approval of the Conditional Use Permit.

On May 26, 20015, the San Marcos Planning and Zoning Commission approved the issuance of a Conditional Use Permit for the restaurant to serve alcoholic beverages.

Now we have found out that the Conditional Use Permit has been appealed by the owner of a nearby house. As we understand the appeal process, the purpose of an appeal "is to contest an initial decision on a development application **based upon alleged misapplication of the criteria for approval of the application.**" We are troubled by many of the statements in the appeal and we are concerned that the appeal was not filed in good faith. First, is the allegation that the CUP would authorize a "bar/restaurant" on the Property. There is no application to operate a bar on the Property. As you know, a bar is an entirely different type of use under the zoning code and is subject to very different regulations under state law. A Conditional Use Permit is not required to operate a restaurant on the Property. The requested Conditional Use Permit would authorize the sale of alcoholic beverages at the restaurant.

Second, the allegation that the restaurant violates the 300 foot distance requirement is simply not true. The staff report on CUP-15-09 clearly states that the proposed restaurant complies with the distance requirement. Third, the appeal references a noise regulation that does not even apply to the Property. Fourth, the appeal alleges the proposed restaurant has insufficient parking even though City staff has determined that the on-site parking

---

exceeds the minimum required by City Code. In sum, our prospective tenant and City staff worked very hard to ensure the proposed restaurant meets and exceeds all criteria for approval.

We understand that some neighbors may not want a restaurant to go on the Property, but everyone has to live by the same set of rules. The Property has been zoned General Commercial for years and the neighborhood did nothing to change its zoning.

We bought the Property because it was zoned General Commercial, had existing commercial development and fronted onto IH 35. It is very troubling that we may not be able to utilize the Property in a General Commercial fashion. We are deeply concerned that the proposed restaurant complies with the zoning regulations and development code but still could be denied. We did not zone the Property General Commercial– had the Property been zoned Single Family Residential, we would not have bought it. It was bought as General Commercial and we want to use it as General Commercial. I simply want to use the Property in a manner in which the TABC Code and San Marcos Code allows.

I do not believe it is right for me to be punished as a landowner of general commercial property for attempting to utilize the property in a general commercial fashion. The San Marcos Code accounts for this exact scenario – a general commercial property abutting a single family property. It sets forth what is required in order to comply and proceed with permitting. We have followed those rules and regulations and want to proceed with the development of the subject property in the proposed fashion. If citizens of the City of San Marcos wish to add additional rules and regulations as it pertains to general commercial zoning next to single family zoning, then I believe it is appropriate to attempt to revise the Code, rather than punish the individuals who purchased general commercial property and are in the process of permitting with a site plan and use that meets all Code and zoning requirements. We did not write the Code and we did not change the zoning on this property, we are simply following the Code and building what is permitted by the Code.

I hope you all understand how important this issue is as I have spent a significant amount of time, energy, and capital putting this project together

We request that the appeal be denied and the Planning and Zoning Commission vote remain valid.

Your time is appreciated -



San Marcos 123 and 35 Partners, LLC  
R.W. McDonald, IV – Manager  
750 E Mulberry Avenue, Suite 305  
San Antonio, Texas 78212