



## Legislation Text

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**File #:** ID#15-347, **Version:** 1

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**AGENDA CAPTION:**

**7:00PM** Receive a Staff presentation and hold a public hearing to receive comments for or against a request by Robert H. Jett on behalf of 19 households, located within the Sunset Acres Neighborhood, to appeal a decision made at the May 26, 2015 Planning and Zoning Commission, in which the Planning and Zoning Commission granted a Conditional Use Permit (CUP 15-09) for the sale of mixed beverages for onsite consumption to Hooters, located at 1305 S IH 35.

**Meeting date:** July 7, 2015

**Department:** Planning and Development Services

**Funds Required:** NA

**Account Number:** NA

**Funds Available:** NA

**Account Name:** NA

**CITY COUNCIL GOAL:** Community Wellness/Strengthen the Middleclass

**COMPREHENSIVE PLAN ELEMENT(s):**

Land Use: Goal 1

Neighborhoods and Housing: Goal 1

**BACKGROUND:**

*This matter is an appeal of the Planning and Zoning Commission's approval of a request by TW Restaurant Holder LLC (Hooters restaurant and bar) for a conditional use permit (CUP) to allow the sale of mixed alcoholic beverages for on-premise consumption.*

On May 26, 2015, the Planning and Zoning Commission considered Case No. CUP-15-09 and approved, by a vote of 4-3, the request of TW Restaurant Holder LLC for a CUP to allow the sale of mixed alcoholic beverages for on-premise consumption. The business that would operate under the CUP is generally known to the public as "Hooters."

Mr. Robert H. Jett, property owner at 219 Parker Drive, filed an appeal of CUP-15-09 on behalf of 19 residents of the Sunset Acres Neighborhood on June 9, 2015.

The Commission placed four conditions on the CUP approval. These conditions were based on the

recommendations from the Planning and Development Services Staff Report presented at the May 26, 2015 Planning and Zoning Commission Meeting.

On March 31, 2015, Mr. Marcus Schwartz, on behalf of TW Restaurant Holder LLC (trade name of business Hooters), applied for the CUP. Prior to this application, a CUP application for the sale of mixed beverages for on-premise consumption had been approved for the 54<sup>th</sup> Street Restaurant and Draffhouse, located on the neighboring property to the North, 1303 S IH 35. This application was approved by the Planning and Zoning Commission on January 27, 2015. The 54<sup>th</sup> Street Restaurant and Draffhouse has approved site and building plans and site work is underway. No development has occurred at 1305 S IH 35 for the Hooters establishment as site and building plans are still under review.

During the process of reviewing the CUP application, Staff recognized the potential for a conflict with the neighboring single family properties. Staff recommendations included increasing the required buffer zone from 10 feet to 40 feet, a 400% increase, and flipping the building plan so that the restaurant's patio, which had the greatest potential to be a detriment to the neighborhood to the South, faced the neighboring commercial property to the North, where a previous CUP application for the sale of mixed beverages had recently been approved for the 54<sup>th</sup> Street Restaurant and Draffhouse.

The motion is below:

MOTION: A motion was proposed by Commissioner Ehlers, seconded by Commissioner DuPont to allow the sale and on-premise consumption of mixed beverages at 1305 S IH 35 with the following conditions:

1. The permit shall be valid for one (1) year, provided standards are met, subject to the point system;
2. The building is constructed in a manner consistent with the provided site plan, where the building acts as a sound barrier between the patio and the nearest neighborhood;
3. The building is constructed no closer than 40 feet to the nearest residential property;
4. The permit shall be posted in the same area and manner as the Certificate of Occupancy.

The motion was approved 4-3.

According to Section 1.5.7.7, an applicant or other interested person may appeal the decision of the Planning and Zoning Commission to grant or deny a permit to the City Council. The Council shall apply the criteria in Section 1.5.7.5 in deciding whether the Commission's action should be upheld, modified or reversed. **Mr. Jett is requesting Council "nullify" the Planning and Zoning Commission decision and that the CUP-15-09 permit request be denied for this address, 1305 S IH 35.**

Mr. Jett's application for this appeal focuses on three primary issues: noise, traffic impacts, and distance between single family residential property and businesses operating under a CUP for alcohol sales. Staff worked with the applicant to flip the building layout in order to face the patio side of the building toward the commercial properties to the North, rather than toward the Sunset Acres Neighborhood to the South, so that the building itself would act as a sound buffer. Additionally, nothing in the approved CUP for Hooters waives the requirements of the City's noise ordinance.

This lot fronts on the unidirectional northbound frontage road of IH 35, and is located on the North side of the neighborhood. When this lot was platted in 1983, Patricia Drive was not extended through the site. Currently, Patricia Drive dead ends into a chain link fence which separates the road from the commercial property. The proposed site plan will continue the separation from Patricia Drive and will add an opaque 6-foot privacy fence so there will be no direct access from this property into the neighborhood on Patricia Drive. Landscaping

elements are also required along the majority of the privacy fence.

The proposed site plan for the Hooters restaurant proposes that the site share access with the neighboring General Commercial lot to the North, which fronts on IH 35, as well as the General Commercial lot to the East that fronts on Hays Street. The General Commercial lot that fronts on Hays Street is currently associated with the existing car dealership, contains two metal buildings and a large parking lot. Currently, no site or building plans have been submitted for the redevelopment of this site. There is a potential that patrons of Hooters could access the neighborhood by traveling through the General Commercial lot that fronts Hays Street, and turn right, into the neighborhood, rather than left, which would send them to Hwy 123. CIP Staff reviewed the Traffic Impact Analysis (TIA) worksheet and determined that no improvements are necessary.

In addition, Mr. Jett points to the Land Development Code Section 4.3.4.2(b)2(a)1 relating to the location of proposed Conditional Use Permits for the sale of alcoholic beverages for on-premise consumption in relation to existing land uses. This section of code states that:

*“The place of business covered by the permit shall not be located within 300 feet of a residence within a zoning district that limits density to six units per acre or less.”*

Further, Mr. Jett points out that the zoning classification for the houses located on Patricia and Parker drive, is Single-Family Six (SF-6), a zoning category which puts a limit of 5.5 units per acre.

However, Section 4.3.4.2(b)2(a)3(a) of the Land Development Code states the way in which the distances required by this section of code shall be measured. The code states that:

*“Between a place of business where alcoholic beverages are sold and the church, public hospital, or residence shall be along the property lines of street fronts and from front door to front door, and in a direct line across street intersections.”*

When measured based on the code requirements, the path is as follows: (1) Out the front door of the proposed Hooters establishment to IH-35 - 70 feet (2) South down IH-35 to Ebony Street - 629 feet (3) Up Ebony Street to Patricia Drive - 120 Feet (4) Down Patricia Drive to the poured concrete path leading to front door of 224 Patricia Drive - 36 feet (5) Up poured Concrete path leading to front door of 224 Patricia Drive - 28 feet. Added together the distance based on the code requirements equals 883 feet. These measurements are based on satellite imagery and are therefore approximate.

Measurement was not taken from the proposed Hooters Establishment directly to Patricia Drive as Patricia dead ends prior to reaching the property line of the proposed establishment, and the existing fence will be replaced with a screening fence as required by code. Therefore, there will be no direct access between Patricia Drive and the proposed establishment.

### **Consideration of the Appeal by Council:**

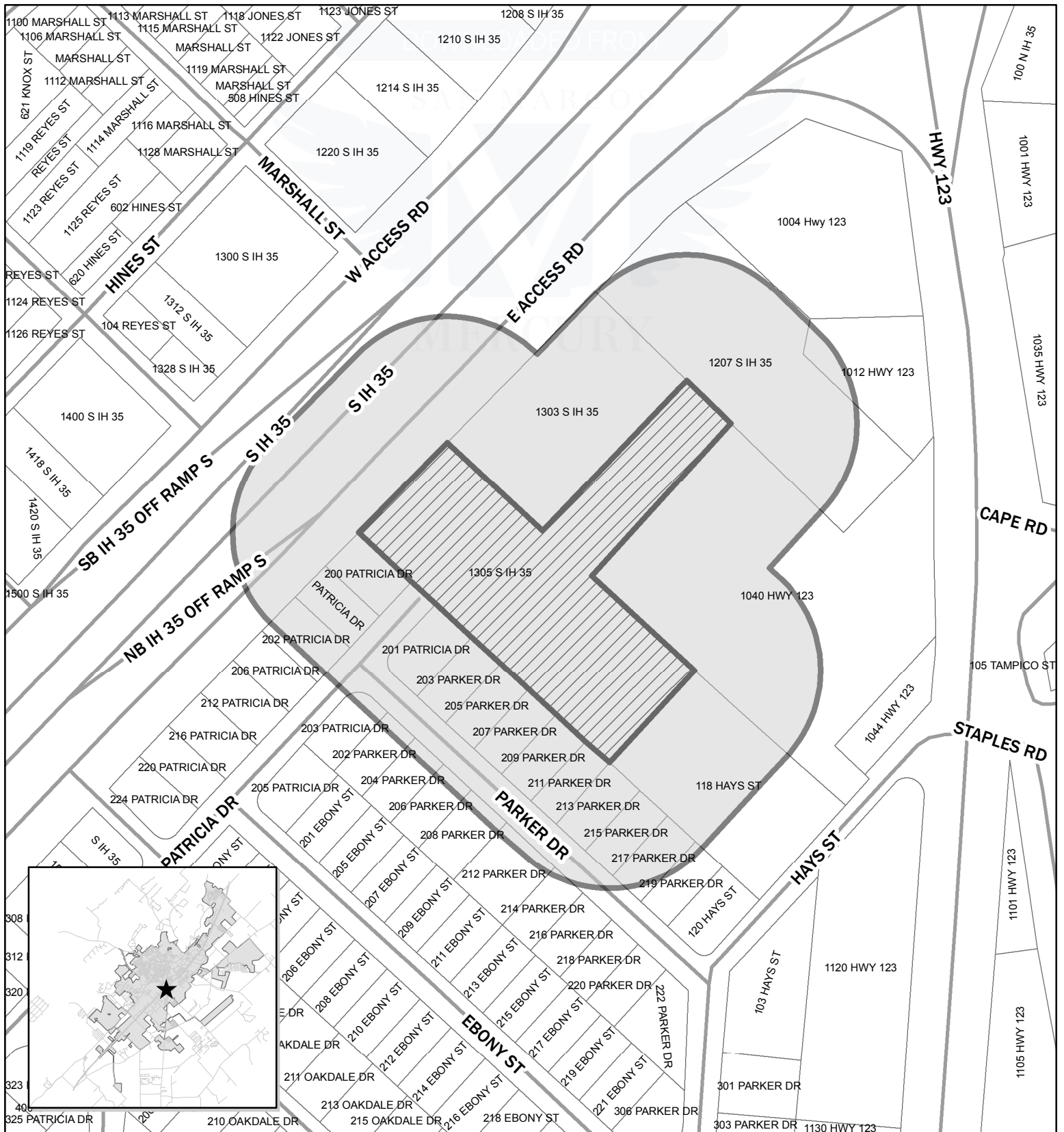
In considering the appeal of the Planning and Zoning Commission’s approval of the CUP, the City Council shall apply the same criteria that govern the initial decision. CUP’s for the sale of alcohol for on-premise consumption are governed not only the by specific criteria related to the sale of alcoholic beverages in Section **4.3.4.2** of the LDC, but also by the general criteria applicable to CUP’s under Section **1.5.7.5** of the LDC. Thus, in this matter, the following criteria shall be applied:

- The City Council shall, first, consider whether the request meets the threshold requirements of Section **4.3.4.2** of the LDC as outlined by staff above.

- If it is determined that the request satisfies the threshold requirements of Section 4.3.4.2, then, pursuant to **Section 1.5.7.5(a)**, the Council shall *a/so* consider the impact of the proposed conditional use on and its compatibility with surrounding properties and residential areas to ensure the appropriateness of the use at the particular location, and shall consider the extent to which:
  - (1) The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan;
  - (2) The proposed use is consistent with the Neighborhood Character Study that has been completed for the area;
  - (3) The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;
  - (4) The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods;
  - (5) The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood;
  - (6) The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets;
  - (7) The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties; and
  - (8) The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.

The City Council shall **affirm, reverse or modify** the decision of the Planning and Zoning Commission.

**If the Council modifies** the decision of the Commission, **it may attach conditions** to the CUP as necessary to mitigate adverse effects of the proposed use. Conditions and modifications may include but are not limited to limitation of building size or height, increased open space, limitations on impervious surfaces, enhanced loading and parking requirements, additional landscaping, curbing, sidewalk, vehicular access and parking improvements, placement or orientation of buildings and entryways, buffer yards, landscaping and screening, signage restrictions and design, maintenance of buildings and outdoor areas, duration of the permit and hours of operation. **(Section 1.5.7.5(B))**



**CUP-15-09**  
**Hooters**  
**1505 S IH 35**  
**Map Date: 5/13/2015**

-  Site Location
-  Notification Buffer (200 feet)

0 100 200 400 Feet



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.