

CONDITIONAL USE SITE PLAN REVIEW SHEET

Information for Appeal to City Council

CASE NUMBER: SPC-2008-0594A **CC DATE:** June 11, 2009
PC DATE: April 14, 2009
Postponed by PC: March 24, 2009

PROJECT NAME: LaBare Austin

ADDRESS: 6406 N. IH35, Southbound Service Road, Suite 1000

AREA: 7612 sq. ft.

APPLICANT: Lincoln Dunhill Holdings, LLC (William Hutchinson)
3100 Monticello, Suite 300
Dallas, TX 75205
Phone: (214) 373-7500

AGENT: DavCar Engineering (Jim Herbert)
1010 Land Creek Cove, Suite 200
Austin, Texas 78746
Phone: (512) 306-8330

EXISTING ZONING: CS-1-CO-NP

PROPOSED DEVELOPMENT:

The applicant is requesting a conditional use permit for a 7612 square foot adult lounge, in an existing mixed use retail center. No modification to the existing building or impervious cover is associated with this site plan/change of use. Adult Lounge means an adult cabaret that serves alcoholic beverages. (Adult Cabaret means a business that primarily offers live entertainment that emphasizes specified sexual activities or specified anatomical areas.) The conditional overlay limited the traffic generated to 2,000 trips per day. The applicant is complying with this condition.

APPEAL INFORMATION: An appeal of the Planning Commission decision was filed on April 27, 2009, by Damon Howze, who is on the Highland/Skyview Neighborhood Plan Contact Team. Mr. Howze's appeal is based on the contention that the site does not comply with Section 25-5-145 D of the Land Development Code.

A Neighborhood Plan Contact Team is a City-initiated stakeholder group made of property owners, renters, business owners and neighborhood associations that helps implement the neighborhood plan and makes recommendations to the City regarding proposed development projects

NEIGHBORHOOD ORGANIZATION:

- Austin Neighborhood Council
- Austin Parks Foundation
- Austin Independent School District
- Homebuilders Association of Greater Austin
- Homeless Neighborhood Association
- Highland/ Skyview Neighborhood Plan Contact Team
- North Austin Neighborhood Alliance
- League of Bicycling Voters
- St. John's Neighborhood Association

AREA STUDY: St. John's (underway)

WATERSHED: Tannehill Creek (Urban)

APPLICABLE WATERSHED ORDINANCE: Current/ Comprehensive Watershed Ordinance

CAPITOL VIEW: N/A

T.I.A.: Not Required

SUMMARY STAFF RECOMMENDATION ON THE APPEAL:

Staff recommends denial of the appeal and upholding the decision of the Planning Commission.

SUMMARY STAFF RECOMMENDATION ON THE CUP:

Staff recommends approval of the site plan with the condition the Adult Oriented Cabaret is limited to the indoor space only. Outdoor patio is restricted to cocktail lounge only. The site plan complies with all requirements of the Land Development Code.

PLANNING COMMISSION ACTION:

3/24/09 Reopen public hearing and postponed to 4/14/09 meeting. (9-0)

4/14/09 Approved staff's recommendation for a CUP for an adult lounge with conditions:

No adult-oriented entertainment operation before 7:00 pm on weekdays,

No adult-oriented entertainment operation before 4:00 pm on Saturdays,

No signage on the perimeter of the shopping complex; limited to building and directional signs in the parking lot. (7-1)

CASE MANAGER: Lynda Courtney

Telephone: 974-2810

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PROJECT INFORMATION:

ZONING: CS-1-CO-NP (the site is existing)

MAX. BLDG. CVRG: 95%

MAX. HEIGHT: 60'

MAX. IMP. CVRG: 95%

FAR ALLOWED: 1:1

EXIST. USE: Cocktail Lounge
w/outdoor patio area

PROP. BLDG. CVRG: 27%

PROP. HEIGHT: 25'

PROP. IMPERV. CVRG.: 92.5%

PROP. FAR: .256:1

PROPOSED USE: Adult Lounge w/outdoor
patio area

SUMMARY COMMENTS ON SITE PLAN:

Land Use: The site plan proposed an adult lounge, which is a conditional use under Land Development Code Adult-Oriented Businesses, § 25-2-801 (C). The site is located within an existing building in an established development. An adult-oriented business may not be located on a lot: (1) that is within 1,000 feet of a lot on which another adult-oriented business is located; (2) that is within 1,000 feet of a lot on which a school, church, public park or playground, or licensed day-care center is located; or (3) where 50 percent or more of the lots within a 1,000 foot radius are zoned or used for a residential use. § 25-2-801 (E). A radius or distance described in Subsection (E) is measured from the midpoint of a line joining the two most distant points on the boundaries of the lot. These requirements are often difficult to meet; however the site is complies with these requirements.

The zoning was changed to CS-1 for the Rock City Icehouse, a restaurant/ sports bar, but the site is currently vacant. The adult lounge is conditional because of the sale of alcohol, similar to a cocktail lounge conditional use permit. Because it meets the requirements of the Adult-Oriented Business, if the site plan is denied, the site would still allow an adult cabaret (which is not a conditional use per the code).

Transportation: A traffic impact analysis was not required. The tract has driveway access to IH-35 and Middle Fiskville Road. Parking spaces are adequately provided for this use. (152 spaces required and provided).

Environmental: The site is not located over the Edward's Aquifer Recharge Zone. The site is in the Desired Development Zone. The site is in the Tannehill Creek watershed, which is classified as urban.

SURROUNDING CONDITIONS:

Zoning/ Land use:

North: CS – retail shopping center with mixed uses, restaurant/retail

East: IH-35

South: CS – retail shopping center with parking (office supplies)

West: CS-MU-NP, mall/parking, retail (clothing store); CS-1, pool hall

<u>Street</u>	<u>R.O.W.</u>	<u>Surfacing</u>	<u>Classification</u>
Middle Fiskville Rd.	80'	50-55'	Collector
IH-35	varies	varies	Highway

CONDITIONAL USE PERMIT REVIEW AND EVALUATION CRITERIA

The following evaluation is included to provide staff position on each point of the conditional use permit criteria. Section 25-5-145 of the Land Development Code states:

A. "The Land Use Commission shall determine whether the proposed development or use of a conditional use site plan complies with the requirements of this section."

B. A conditional use site plan must:

1. **Comply with the requirements of this title;** Staff Response: This site plan complies with all regulations and requirements of the Land Development Code.
2. **Comply with the objectives and purposes of the zoning district;** Staff Response: The adult lounge is compatible with the abutting uses. It complies with setbacks required for an adult oriented business.
3. **Have building height, bulk, scale, setback, open space, landscaping, drainage, access, traffic circulation, and use that is compatible with the use of an abutting site;** Staff Response: The site plan will comply with all requirements of the zoning district. The building is existing, and all drainage, access and circulation are compatible. No landscaping was required.
4. **Provide adequate and convenient off-street parking and loading facilities; and** Staff Response: Adequate parking and loading facilities have been provided.
5. **Reasonably protect persons and property from erosion, flood, fire, noise, glare, and similar adverse effects.** Staff Response: The site plan will comply with all requirements of the Land Development Code, and reasonably protects the health, safety, and welfare of persons and property.
6. **For conditional use located within the East Austin Overlay district, comply with the goals and objectives of a Neighborhood Plan adopted by the City Council for the area in which the use is proposed.** Staff response: The proposed project is not in the East Austin Overlay but is in the St. John's Neighborhood Planning Area.

C. A Conditional Use Site Plan May Not:

1. **More adversely affect an adjoining site than would a permitted use;** Staff response: The site plan will conform with all regulations and standards established by the Land Development Code. This proposed site plan does not more adversely affect an adjoining site than would a permitted use. The site would still allow an adult cabaret (which is not a conditional use by code).
2. **Adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;** Staff response: The site plan is not anticipated to have any detriment of vehicular safety or convenience. The proposed development did not require a traffic impact analysis.

3. **Adversely affects an adjacent property or traffic control through the location, lighting, or type of signs;** Staff response: No signage or lighting is proposed that would affect adjacent properties or traffic control. All signs will comply with the Land Development Code.
4. **For a large retail use described in Section 25-2-813 (Large Retail Uses), adversely affect the future redevelopment of the site.** Staff Response: Not a large retail use.
- D. **A site plan may not adversely affect the public health, safety, or welfare, or materially injure property. If the Land Use Commission determines that a site plan has an adverse effect or causes a material injury under this subsection, the Land Use Commission shall identify the adverse effect or material injury.**

Section 25-5-146 of the Land Development Code states:

CONDITIONS OF APPROVAL

- (A) To make a determination required for approval under Section 25-5-145 (evaluation of a Conditional Use Site Plan), the Land Use Commission may require that a conditional use site plan comply with a condition of approval that includes a requirement for:
 - (1) *A special yard, open spaces, buffer, fence, wall or screen;*
 - (2) *Landscaping or erosion;*
 - (3) *A street improvement or dedication, vehicular ingress or egress, or traffic circulation;*
 - (4) *Signs;*
 - (5) *Characteristic of operation, including hours;*
 - (6) *A development schedule; or*
 - (7) *Other measures that the Land Use Commission determines are required for compatibility with surrounding uses or the preservation of public health, safety, or welfare.*
- (B) As a condition of approval for a conditional use site plan, a parking area for a cocktail lounge or a restaurant with a late-hours permit must be separated from a property used or zoned townhouse and condominium residence (SF-6) district or more restrictive by not less than 200 feet unless:
 - (1) *the lounge or restaurant is located within an enclosed shopping center; or*
 - (2) *the Land Use Commission grants a variance from this requirement when the Land Use Commission approves the site plan.*