

**SITE PLAN - CONDITIONAL USE PERMIT REVIEW SHEET
APPEAL TO CITY COUNCIL BY THE APPLICANT**

CASE NUMBER: SPC-2010-0288A **HEARING DATE:** July 28, 2011

PROJECT NAME: Pepper's Bistro

ADDRESS: 1926 E. Riverside Dr.

NEIGHBORHOOD PLAN: Riverside Neighborhood Plan

APPLICANT: Pepper's Bistro (Raul Aguilar 799-6744)
1926 E. Riverside Dr
Austin, TX 78741

Grayco Town Lake Investment (Mickey Scott – 964-3977)
55 Waugh Dr, Suite 500
Houston, TX 77007-5840

AGENT: AEC Inc (Phil Moncada 627-8815)
1301 S. IH 35, Suite 204
Austin, TX 78741

CASE MANAGER: Sarah Graham Phone: 974-2826
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PROPOSED DEVELOPMENT:

The proposed site plan requests approval of a conditional use permit for a change of use from a 4,000 sq ft Restaurant (General) to Cocktail Lounge in a CS-1 zoning district for Pepper's Bistro, located at 1926 E Riverside Dr.

STAFF RECOMMENDATION ON APPEAL:

The agent is appealing Planning Commission's June 14th decision to deny the Conditional Use Site Plan application for a change of use to a Cocktail Lounge. Staff recommends **approval of the appeal** because the CS-1 zoning was approved by Council in 1973, and the site plan meets the conditions for a conditional use site plan.

STAFF RECOMMENDATION ON CONDITIONAL USE SITE PLAN:

Staff recommends approval of this Conditional Use Site Plan application.

PLANNING COMMISSION ACTION:

On June 14, 2011, the Planning Commission denied the Conditional Use Site Plan application for a change of use from a 4,000 sq ft Restaurant (General) to a Cocktail Lounge for Pepper's Bistro. Staff had recommended approval. Planning Commission denied the request due to concerns about safety and an overconcentration of bars in the area. Denied 5-1-1.

PROJECT INFORMATION:

SITE	4,000 square feet	.09 acres
TOTAL TRACT AREA	246,854 square feet	5.667 acres
SITE'S ZONING	CS-1-NP	
WATERSHED	Town Lake (Urban)	
WATERSHED ORDINANCE	Comprehensive Watershed Ordinance	
TRAFFIC IMPACT ANALYSIS	Not required	
CAPITOL VIEW CORRIDOR	None	
PROPOSED ACCESS	E. Riverside Dr., Town Creek Dr., or Arena Dr.	
	Existing	Proposed
FLOOR-AREA RATIO	.216:1	.216:1
BUILDING COVERAGE	53,419 sq ft (21.6%)	53,419 sq ft (21.6%)
IMPERVIOUS COVERAGE	92.1%	92.1%
PARKING	312 spaces existing	297 spaces <i>required</i>

SUMMARY COMMENTS ON SITE PLAN:

Land Use: The applicant is requesting approval of a Conditional Use Permit for a Cocktail Lounge use. Pepper's Bistro, located at 1926 E. Riverside was red-tagged in 2005 by City of Austin's Code Compliance for not having a Certificate of Occupancy for their correct land use. Pepper's Bistro had been permitted as a Restaurant (General). This type of restaurant is able to sell and consume alcoholic beverages on-premises as an accessory use, but Pepper's Bistro was not meeting the 51% food sales requirement to be considered a restaurant. In 2010, the applicant submitted a land use change for the Conditional Use of a Cocktail Lounge in CS-1-NP zoning. No construction is proposed with this site plan application.

1926 E. Riverside, a 4,000 sq ft tract within the existing strip mall, was rezoned to C-2 zoning in 1973. In 1986, the Land Development Code was reformatted and "C-2" was renamed to "CS-1" – Commercial Liquor Sales. A Cocktail Lounge is a Conditional Use within CS-1 zoning.

The Texas Alcoholic Beverage Commission (TABC) has been issuing Pepper's Bistro alcohol sales licenses, food and beverage permits, and a late hour license since at least 2007. In 2009, the owner of the strip mall requested a land use change for 1930 E. Riverside Dr., 2 units down within the strip mall, to Religious Assembly through a Site Plan Exemption. City staff had a conversation with the TABC to see if Pepper's Bistro would have any future licensing issues with this proposed land use change to a Cocktail Lounge. TABC stated that since Pepper's Bistro was in existence prior to the Church's existence, that permitting would not be an issue.

Pepper's Bistro is a 4,000 sq ft unit within a larger strip mall development. The site in its entirety of 5.667 acres contains two zoning categories: GR-NP, and two CS-1-NP footprints. The site includes one large existing 1-story and partially 2-story commercial building with multiple units, as well as three pad site structures. The pad sites are all used as Restaurants, and the large commercial building includes Administrative Office, General Retail Sales, Medical Office, Personal Services, Religious Assembly and Restaurant (General).

Transportation: A traffic impact analysis was not required for this site plan. The site plan has met all Transportation requirements. Sufficient parking for all proposed uses has been demonstrated on the site plan application.

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 Town Lake watershed, which is classified as an urban watershed. There are no environmental features or critical water quality zones affected by this project. No improvements to the property are included with this site plan. The site plan has met all Environmental requirements.

RELATED CASES: On November 15, 1973, Council passed case #C14-73-204, rezoning 1926 E. Riverside Drive from “GR” – General Retail to “C-2” – Commercial (which allowed a cocktail lounge). In 1984 the Land Development Code was reformatted and “C-2” was renamed to “CS-1” – Commercial Liquor Sales.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
Site	CS-1-NP	Proposed Cocktail Lounge
Entire tract	GR-NP and CS-1-NP	Administrative Office, General Retail Sales, Medical Office, Personal Services, Religious Assembly and Restaurant (General)
Northeast	MF-3-NP	Multifamily, then Arena Drive
Southeast	GR-NP	Town Creek Drive, then Personal Services, Administrative Office and Restaurant (Limited)
Southwest	GR-NP, CS-NP and CS-1-NP	E. Riverside Drive, then Restaurant (General), General Retail Sales, Personal Services, and Cocktail Lounge
Northwest	GR-NP and MF-3-NP	Arena Dr, then Automotive Repair Services and Multifamily

ABUTTING STREETS:

Street	Right-of-Way Width	Pavement Width	Classification
E. Riverside Dr	177 ft	80 ft	MAD 6 Arterial (major arterial divided), Core Transit Corridor
Town Creek Dr	60 ft	35 ft	Collector
Arena Dr	55 ft	35 ft	Local

NEIGHBORHOOD ORGANIZATIONS:

74 – South River City Citizens Association
 299 – Crossing Garden Home Owners Association
 498 – South Central Coalition
 511 – Austin Neighborhoods Council
 739 – East Riverside/Oltorf Neighborhood Plan – COA Liaison
 742 – Austin Independent School District
 763 – East Riverside/Oltorf Neighborhood Plan Contact Team
 781 – Southeast Coalition
 786 – Home Builders Association of Greater Austin
 794 – Waterfront Condominium HOA
 972 – PODER

1004 – Save Town Lake.ORG
1037 – Homeless Neighborhood Assn.
1075 – League of Bicycling Voters
1113 – Austin Parks Foundation
1200 – Super Duper Neighborhood Objectors and Appealers Organization
1224 – Austin Monorail Project
1228 – Sierra Club, Austin Regional Group
1236 – The Real Estate Council of Austin, Inc
1243 – Waterfront Planning Advisory Board
1255 – Pleasant Valley
1258 – Del Valle Community Coalition

CONDITIONAL USE PERMIT REVIEW AND EVALUTATION CRITERA

The following evaluation is included to provide staff's position on each point of the conditional use permit criteria. Section **25-5-145** of the Land Development Code (**EVALUATION OF CONDITIONAL USE SITE PLAN**) 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:

Comply with the requirements of this title;

Staff Response: This site plan complies with all applicable regulations and requirements of the Land Development Code.

Comply with the objectives and purposes of the zoning district;

Staff response: This application complies with the objectives and purposes of the zoning district. Per Land Development Code 25-2-104, a Commercial-liquor sales (CS-1) district is the designation for a commercial or industrial use of a service nature that has operating characteristics or traffic service requirements that are incompatible with residential environments, including liquor sales. The site is located along the E. Riverside Dr. corridor, which includes a multitude of commercial uses. South of E. Riverside are commercial districts and some single-family residential districts; however, there are no single-family residences within 1,000 feet of the proposed cocktail lounge.

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: This site has been in much the same configuration since the original structure was built in the 1960s. The site has received numerous permits for land use changes and minor construction additions through Site Plan Exemptions. Staff is aware that this site is likely to be redeveloped within the next 5 to 10 years. Although the site does not comply with current code (such as landscaping or drainage requirements), it is pre-existing and legally developed. Adjoining the tract to the north are existing multifamily residential units which are proposed to be redeveloped into a mixed-use project.

Provide adequate and convenient off-street parking and loading facilities; and

Staff Response: The existing parking exceeds the parking requirements for the proposed uses.

Reasonably protect persons and property from erosion, flood, fire, noise, glare, and similar adverse effects.

Staff Response: The site plan will comply with all applicable requirements of the Land Development Code. No new construction is proposed.

C. In addition, a conditional use site plan may not:

More adversely affect an adjoining site than would a permitted use;

The proposed site plan will no more adversely affect the health, safety, and welfare of persons and property than existing land uses.

Adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area; or

Staff Response: This proposed site plan does not more adversely affect an adjoining site than would a permitted use. The buildings and parking area are current conditions. There are internal sidewalks along the building fronts, and there are public sidewalks along E. Riverside Dr.

Adversely affect an adjacent property or traffic control through the location, lighting, or type of a sign. Staff Response: All signs and lighting will comply with the Land Development Code.

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.

In addition, Sec. **25-5-146 (CONDITIONS OF APPROVAL)** states:

(A) To make a determination required for approval under Section 25-5-145 (Evaluation Of 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 space, buffer, fence, wall, or screen;
- (2) landscaping or erosion;
- (3) a street improvement or dedication, vehicular ingress & egress, or traffic circulation;
- (4) signs;
- (5) characteristics 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.