

**PLANNING COMMISSION SITE PLAN  
CONDITIONAL USE PERMIT APPEAL TO COUNCIL  
REVIEW SHEET**

**CASE NUMBER:** SPC-2016-0160A                      **COUNCIL HEARING DATE:** March 2, 2017

**PROJECT NAME:** Tamale House Conditional Use Permit

**PROPOSED USE:** Cocktail Lounge

**ADDRESS OF APPLICATION:** 1706 E. 5<sup>th</sup> Street

**AREA:** 19,318 sq. ft. site area, 2499 sq. ft. cocktail lounge area

**APPLICANT:** Diane Valera & Juan Verela-Lena  
1707 E. 6<sup>th</sup> Street  
Austin, TX 78702  
(512) 964-4982

**AGENT:** A. Ron Thrower  
Thrower Design  
P.O. Box 41957  
Austin, TX 78704  
(512) 476-4456

**CASE MANAGER:** Rosemary Avila, (512) 974-2784  
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**APPEAL:**

Interested party members Gavino Fernandez Jr., Gloria Moreno, and Leon Hernandez are appealing the Planning Commission's approval due to violation of nuisance and noise ordinance (Title 9-2-4 Restriction on Decibel Level). Title 9-2-4 states: A person may not operate sound equipment at a business that produces sound: (1) in excess of 85 decibels between 10:00 a.m. and 2:00 a.m., as measured at the property line of the business; or (2) is audible at the property line of the business between 2:00 a.m. and 10:00 a.m.

**EXISTING ZONING:**

This site is zoned TOD-NP (Transit Oriented Development in a Neighborhood Plan) and located within the Plaza Saltillo Regulating Plan.

**PROPOSED DEVELOPMENT:**

The applicant is requesting a conditional use permit to allow extended hours for cocktail lounge use within an existing restaurant. The applicant is also requesting a variance to allow a parking area for a cocktail lounge permit that is less than 200 feet from a single family use [LDC 25-5-146(B)].

**DESCRIPTION OF VARIANCE:**

Variance request is as follows: LDC Section 25-5-146(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.

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends approval of the conditional use permit and variance request. The site plan will comply with all requirements of the Land Development Code prior to its release.

**PREVIOUS PLANNING COMMISSION ACTION:**

On November 8, 2016, the Planning Commission voted 12-0 to postpone the public hearing of the Conditional Use Permit to the December 13, 2016 meeting. At the December 13, 2016 meeting, the Planning Commission voted 10-0 for a neighborhood requested postponement to January 10, 2017. At the January 10, 2017 meeting, the Planning Commission voted 12-0 to approve a motion to approve the conditional use permit and parking variance; no conditions were placed on the approval.

**AREA STUDY:** East Cesar Chavez Neighborhood Plan

**WATERSHED:** Lady Bird Lake (Urban)

**APPLICABLE WATERSHED ORDINANCE:** Current/Watershed Protection Ordinance

**CAPITOL VIEW:** Not in View Corridor

**T.I.A.:** Not Required

**PROJECT INFORMATION:**

**ZONING:** TOD-NP

**MAX. BLDG. COVERAGE:** 95%

**MAX. IMPERV. CVRG.:** 95%

**MAX HEIGHT:** 60'

**REQUIRED PARKING:** 25

**EXIST. USE:** Restaurant

**PROPOSED BLDG. CVRG:** 23.6% - existing

**PROPOSED IMP. CVRG:** 81.7% - existing

**EXISTING HEIGHT:** 25' (two stories)

**PROVIDED PARKING:** 33

**PROPOSED USE:** Restaurant/Cocktail lounge

**SUMMARY COMMENTS ON SITE PLAN:**

**Land Use:** The applicant is requesting a conditional use permit to allow alcohol sales with a late hours permit at an existing restaurant building and parking within 200' of residential uses. The property is currently developed as an existing restaurant and parking. The site is located in the Plaza Saltillo TOD, in the TOD Mixed Use area. Subsection 2.3.8 of Article 2, Section 2.3 states Cocktail Lounge use is a Conditional use in the TOD Mixed Use area. There are no schools, churches, or hospitals within 300 feet of the subject site.

The proposed hours of operation are as follows: Tuesday-Saturday 8am-2am and Sunday 8am-5pm. (Current hours of operation are Tuesday and Wednesday 8am-3pm, Thursday and Friday 8am-12am, Saturday 8am-1am, and Sunday 8am-5pm.)

A parking area for a cocktail lounge 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 the Land Use Commission grants a variance from this requirement when the Land Use Commission approves the site plan [25-5-146(B)(2)]. The parking area for this cocktail lounge is less than 200 feet from the nearest single-family use; a variance is requested with approval of this Conditional Use Permit.

The site plan will comply with all requirements of the Land Development Code and neighborhood agreement prior to its release. Staff recommends approval of the conditional use permit and variance request.

**Environmental:** This site is located in the Lady Bird Lake Watershed, which is within the Desired Development Zone, and subject to Urban Watershed regulations. There is no increase in impervious coverage and there is no construction proposed with this land use application. All Environmental comments are cleared.

**Transportation:** Access to the proposed cocktail lounge with late hours will be from E. 6<sup>th</sup> Street. All parking spaces are located on-site. All transportation comments are cleared.

**SURROUNDING CONDITIONS: Zoning/ Land use**

North: East 6th Street, then TOD-NP / single family use

East: TOD-NP / single family use

South: East 5th Street, then TOD-NP / manufacturing

West: TOD-NP / Commercial

<b>Street</b>	<b>R.O.W.</b>	<b>Surfacing</b>	<b>Classification</b>
E. 6 <sup>th</sup> Street	60'	approx. 20'	Collector
E. 5 <sup>th</sup> Street	*80'	approx. 38'	Arterial

*\*right-of-way for 5th street encompasses the railroad/capmetro light rail line*

**NEIGHBORHOOD ORGANIZATIONS:**

- |  |   |
|--|---|
| Guadalupe Neighborhood Development Corporation | East Cesar Chavez Neighborhood Planning Team      |
| Bike Austin                                    | United East Austin Coalition                      |
| East Austin Conservancy                        | Claim Your Destiny Foundation                     |
| Austin Heritage Tree Foundation                | Austin Neighborhoods Council                      |
| Tejano Town                                    | Austin Independent School District                |
| Barrio Unido Neighborhood Association          | East Cesar Chavez Neighborhood Association        |
| Friends of Austin Neighborhoods                | Preservation Austin                               |
| Capital Metro                                  | Homeless Neighborhood Association                 |
| Sierra Club, Austin Regional Group             | Holly Neighborhood Coalition                      |
| SEL Texas                                      | Organization of Central East Austin Neighborhoods |
| A.N.T. Artist and Neighbors Together           | African American Cultural Heritage District       |
| El Concilio Mexican-American Neighborhoods     | Blackshear- Prospect Hill                         |
| Cristo Rey Neighborhood Association            |   |

**CONDITIONAL USE PERMIT REVIEW AND EVALUATION CRITERIA:**

**LDC 25-5-145:** 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.

**§ 25-5-146 CONDITIONS OF APPROVAL**

(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.

**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:** “The Commission shall determine whether the proposed development or use of a conditional use site plan complies with the requirements of this section.

**A conditional use site plan must:**

- 1. Comply with the requirements of this title;** Staff response: This application complies with the requirements of this title.
- 2. Comply with the objectives and purposes of the zoning district;** Staff response: The restaurant/cocktail lounge with late hours use is a conditional use in the Plaza Saltillo TOD Mixed Use district.
- 3. Have building height, bulk, scale, setback, open space, landscaping, drainage, access, traffic circulation, and use that are compatible with the use of an abutting site;** Staff response: The site plan complies with all requirements of the Land Development Code.
- 4. Provide adequate and convenient off-street parking and loading facilities;** Staff response: Adequate parking and loading facilities have been provided. The required parking spaces are located onsite.
- 5. Reasonably protect persons and property from erosion, flood, fire, noises, glare, and similar adverse effects;** Staff response: The proposed project does not contribute to any of these adverse effects.
- 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 district.

**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 comply 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.
- 2. Adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;** Staff response: Access is limited into the site, and surrounding vehicular circulation in the area of the project is not anticipated to have any detriment to safety or convenience.
- 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.