CASE NUMBER: SPC-2019-0590A  
PC DATE: 4/28/20

PROJECT NAME: 76 Rainey CUP

ADDRESS: 76 Rainey St.

APPLICANT: Regalado Joe Martin
7712 Kiva Dr.
Austin, TX 78749

AGENT: WGI (Cliff Kendall)
2021 E. 5th St. Suite 200
Austin, TX 78702
(512) 669-5560

CASE MANAGER: Renee Johns, (512) 974-2711 or at Renee.Johns@austintexas.gov

WATERSHED: Waller Creek/Lady Bird Lake
PROPOSED USE: Cocktail Lounge
EXISTING ZONING: CBD
NEIGHBORHOOD PLAN: N/A

PROPOSED DEVELOPMENT: The applicant is requesting a conditional use permit for a cocktail lounge in one existing building located in the historic Rainey Street District, totaling 2,000 sf of indoor space and 3,500 sf of outdoor covered and uncovered areas, for a grand total of 5,500 sf of CUP Cocktail Lounge space. The hours of operation will be Monday – Wednesday 5pm to 2am, Thursday 4pm to 2am, and Saturday and Sunday 11am to 2am. No construction will occur with this permit but will be permitted either as a B-plan (construction site plan) or as a site plan exemption.

SUMMARY STAFF RECOMMENDATION: Staff recommends approval of the conditional use permit. Cocktail lounge is a use allowed in a CBD zoning district, the Waterfront Overlay Rainey sub district triggers the conditional use for the cocktail lounge. Several cocktail lounge uses are already located within this sub district. The site plan will comply with all requirements of the Land Development Code prior to its release.

CONDITIONAL USE PERMIT REVIEW AND EVALUATION CRITERIA
The following evaluation is included to provide staff evaluation 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: This application complies with the objectives and purposes of the zoning district. The CBD zoning district allows cocktail lounge use. The Waterfront Overlay Rainey sub district triggers the conditional use for the cocktail lounge. Several cocktail lounge uses are already located within this sub 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: Yes, there are no SF-5 or more restrictive zoning districts or permitted land uses abutting the site.

4. **Provide adequate and convenient off-street parking and loading facilities;** Staff response: Proposed use complies with code.

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 the listed adverse effects.

**A Conditional Use Site Plan May Not:**

1. **More adversely affect an adjoining site than would a permitted use;** Staff response: The proposed site plan does not appear to 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: The cocktail lounge land use will be located on an already developed site and is not anticipated to affect pedestrian or vehicular circulation.

3. **Adversely affects an adjacent property or traffic control through the location, lighting, or type of signs;** Staff response: The site will comply with all applicable sign regulations in the Land Development Code.

**COMMISSION ACTION:**

The Commission may either; approve, approve with conditions or deny the conditional use site plan permit.

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 and 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.
PROJECT INFORMATION

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<tbody>
<tr>
<td><strong>Gross Site Area</strong></td>
<td>5,500 sf (cocktail lounge) / 7,203 sf (gross site area)</td>
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<tr>
<td><strong>Existing Zoning</strong></td>
<td>CBD</td>
</tr>
<tr>
<td><strong>Watershed</strong></td>
<td>Waller Creek / Lady Bird Lake</td>
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<tr>
<td><strong>Watershed Ordinance</strong></td>
<td>Current Code</td>
</tr>
<tr>
<td><strong>Traffic Impact Analysis</strong></td>
<td>N/A, not required</td>
</tr>
<tr>
<td><strong>Capitol View Corridor</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Proposed Access</strong></td>
<td>N/A (all parking provided off-site)</td>
</tr>
<tr>
<td><strong>Proposed Impervious Cover</strong></td>
<td>3518.67 sf / 48.9%</td>
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<tr>
<td><strong>Proposed Building Coverage</strong></td>
<td>1,484 sf / 20.6%</td>
</tr>
<tr>
<td><strong>Height</strong></td>
<td>1 story</td>
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<tr>
<td><strong>Parking required:</strong></td>
<td>None/ CBD</td>
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<tr>
<td><strong>Parking proposed:</strong></td>
<td>None/ CBD</td>
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EXISTING ZONING AND LAND USES

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<thead>
<tr>
<th></th>
<th>ZONING</th>
<th>LAND USES</th>
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<tbody>
<tr>
<td><strong>Site</strong></td>
<td>CBD</td>
<td>Cocktail Lounge (proposed)</td>
</tr>
<tr>
<td><strong>North</strong></td>
<td>CBD</td>
<td>Cocktail Lounge</td>
</tr>
<tr>
<td><strong>South</strong></td>
<td>CBD</td>
<td>Multi-family / Mixed Use</td>
</tr>
<tr>
<td><strong>East</strong></td>
<td>Rainey St then CBD</td>
<td>Cocktail Lounge (Lucille)</td>
</tr>
<tr>
<td><strong>West</strong></td>
<td>Alley then CBD</td>
<td>Civic (Mexican American Cultural Center)</td>
</tr>
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SUMMARY COMMENTS ON SITE PLAN:

**Land Use:** The applicant is requesting a Conditional Use Permit for a Cocktail Lounge land use. The existing building is within the historic Rainey Street District. There are no parking requirements for this site because the zoning district CBD does not require any parking.

The site plan complies with all requirements of the Land Development Code.

NEIGHBORHOOD ORGANIZATIONS:

- Austin Independent School District
- Austin Neighborhoods Council
- Bike Austin
- City of Austin Downtown Commission
- Downtown Neighborhood Association
- El Concilio Mexican-American
- Neighborhoods
- Friends of Austin Neighborhoods
- Friends of the Emma Barrientos MACC
- Greater East Austin Neighborhood Association
- Homeless Neighborhood Association
- Lower Waller Creek
- Neighborhood Empowerment Foundation
- Preservation Austin
- Rainey Neighbors Association, INC.
- SEL Texas
- The Shore Condominium Association, Inc.
- Sierra Club, Austin Regional Group
- Tejano Town
- Town Lake Neighborhood Association
- Waterloo Greenway
December 19, 2019

Ms. Denise Lucas
Development Services Department
505 Barton Springs Road
Austin, Texas 78704

RE: Engineer’s Summary Letter
76 Rainey Street, C.U.P.
76 Rainey Street, Austin, Travis County, Texas

Dear Ms. Lucas:

Please accept this Engineer’s Summary Letter along with the accompanying conditional use site plan application package for the proposed 76 Rainey Street C.U.P. project. The proposed project is located at 76 Rainey Street, located entirely within the Full Purpose limits of the City of Austin, in Travis County, Texas. The subject site is approximately ±0.165 acres. The proposed project will consist of a conditional use permit that changes the use of the site from restaurant to cocktail lounge.

The property is located within the Lady Bird Lake and Waller Creek Watersheds, which are classified as Urban Watersheds. No portion of the subject site is located within the Edwards Aquifer Recharge or Contributing Zone as defined by the Texas Commission on Environmental Quality (TCEQ). Additionally, no portion of the subject tract is located within a 100-year FEMA designated flood plain as shown on FEMA Map Panel No. 48453C0465J, effective on 01/06/2016. Additionally, all development will be regulated under the applicable City of Austin zoning ordinances.

To our knowledge, the enclosed application materials are complete, correct, and in full compliance with the Land Development Code and Technical Criteria Manuals of the City of Austin. Should you have any questions regarding this project or application, please do not hesitate to contact our office.

Sincerely,
WGI
Texas Engineering Firm No. F-15085

Nicholas O. Corbett, P.E.
Project Engineer

[Signature]

STATE OF TEXAS
NICHOLAS O. CORBETT
PROFESSIONAL ENGINEER
125373
12-19-19
RESUBDIVISION OF
PART OF BLOCK 6,
DRISKILLS AND RAINEYS
SUBDIVISION
VOL. 60, PG. 78, P.R.T.C.T.

SITE BOUNDARY
EXISTING DECKING
OVERHANG
EXISTING CONCRETE
WALL
EXISTING SIDEWALK
EXISTING DRIVE
FUTURE LARGE
DIAMETER CLEANOUT TO BE
INSTALLED BY OTHERS
REFERENCE DETAIL 520-AW-01C
ON SHEET C003
EXISTING GREASE
INTERCEPTOR
Hello, the following are my comments for consideration at the April 28th meeting, Item #5,

I would have registered to speak prior to today, but we as next-door neighbors were not made aware that 76 Rainey Street owner had applied for this conditional use permit, until this morning. Please accept these comments from the owner of an adjacent property.

While it is true that other cocktail bars operate within this district, the business operating at 76 Rainey Street, “UNBARLIEVABLE”, is a special case. They are a notoriously bad neighbor and routinely abuse the limitations of the permit under which they’re operating. They causes abnormally high number of calls for police service, and are not operating under their existing permitted use as a Restaurant; they are already operating as a Cocktail Bar, which is one of the reasons this CUP should not be granted.

A conditional use site plan must:

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 the listed adverse effects.

This conditional use site plan does not protect nearby persons and property from noises and other adverse effects, as required.
A Conditional Use Site Plan May Not:

1. **More adversely affect an adjoining site than would a permitted use;** Staff response: The proposed site plan does not appear to more adversely affect an adjoining site than would a permitted use.

   The proposed site plan **would** adversely affect the adjoining sites (including my residence), and the operator at 76 Rainey Street has shown a disregard for the neighborhood and should not be allowed additional leeway with a less restrictive conditional use permit.

   - 2. **Adversely affects an adjacent property or traffic control through the location, lighting, or type of signs;** Staff response: The site will comply with all applicable sign regulations in the Land Development Code.

   While the staff have considered sign regulations, the last part of this restriction, they have not addressed the more important aspects, which include how the CUP would adversely affect adjacent properties.

   I would urge your staff to table this proposal and do further research, including an inquiry with the 911 and 311 dispatch centers as to the volume and type of calls for this property (operating as a “restaurant”), and conduct discussions with neighbors to gather their input on the history of this property and its operator. Unbarlievable has exhibited such poor treatment of customers, neighbors and the community, that it has garnered local press coverage for the same. The current evaluation and staff recommendation before you tonight does not reflect the entirety of the situation that should be considered in evaluating this request.

   Therefore, I ask that you please deny this proposed CUP.

Sincerely,

Timothy Kniveton
70 Rainey St.
Austin, TX 78701
PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application’s hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission’s decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

A zoning ordinance amendment may include a conditional overlay which would include conditions approved by the Land Use Commission or the City Council. If final approval is by a City Council’s action, there is no appeal of the Land Use Commission’s action.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (it may be delivered to the contact listed on a notice); or
- appearing and speaking for the record at the public hearing;

and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 14 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin’s land development process, visit our web site: www.austintexas.gov/devservices.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: SPC-2019-0590A
Contact: Renee Johns, (512)974-2711 or Ramon Rezvanipour, (512) 974-3124
Public Hearing: April 28, 2020, Planning Commission

Your Name (please print)
Noreen Fahey

Your address(es) affected by this application
603 Davis St

Signature

Date
4/24/2020

Daytime Telephone: 512-283-5322

Comments: By allowing a stage it will increase the volume of the music or DJ, the music is already loud enough that we can’t sit outside at all. When they have a DJ now with a stage it will just increase to be heard towards our bldg.

If you use this form to comment, it may be returned to:
City of Austin
Development Services Department – 4th floor
Renee Johns
P. O. Box 1088
Austin, TX 78767-8810
INFORMACION DE AUDIENCIA PÚBLICA

Aunque solicitantes y/o su(s) agente(s) se les requiere atender la audiencia pública, usted no está bajo requisito de atender. De todos modos, si usted atiende la audiencia pública, tendrá la oportunidad de hablar a FAVOR o EN CONTRA al propuesto desarrollo o cambio. Usted también puede contactar a una organización de protección al medio ambiente o organización de vecinos que ha expresado interés en la aplicación teniendo implicaciones a su propiedad.

Durante la audiencia pública, la comisión podría postergar o continuar audiencia del caso en una fecha futura, o recomendar aprobar o negar la aplicación. Si la comisión anuncia fecha y hora específica para postergar o continuar discusión, y no se extiende más de 60 días, no tendrá obligación de otra notificación pública.

La decisión de la Comisión puede ser apelada por una persona con pie de recurso o por una persona que ha sido identificado como una parte interesada. El organismo obteniendo la audiencia pública determinará si una persona está legitimada para apelar una decisión.

Una enmienda de la ordenanza de zonificación puede incluir una superposición condicional que incluiría las condiciones aprobadas por la Comisión de Uso de la Tierra o el Ayuntamiento. Si la aprobación final es por la acción del Consejo de la Ciudad, no hay apelación de la acción de la Comisión de Uso de la Tierra.

Una parte interesada, se define como una persona que es el solicitante o el titular de registro de la propiedad en cuestión o que se comunica el interés de una junta o comisión por:
- la entrega de una declaración por escrito a la junta o comisión, antes o durante la audiencia pública que generalmente se identifica los temas de interés (que puede ser entregado al contacto que aparece en un anuncio), o
- que aparecen y hablan por el registro en la audiencia pública, y
- ocupa una residencia principal que se encuentra dentro de 500 pies de la propiedad en cuestión o el desarrollo propuesto,
- es el registro dueño de la propiedad dentro de 500 pies de la propiedad en cuestión o desarrollo propuesto,
- es un funcionario de medio ambiente o la organización de la vecindad que tiene un interés o cuyos límites declarados son de 500 pies de la propiedad en cuestión o el desarrollo propuesto.

Un aviso de apelación debe ser presentada con el director del departamento responsable, a más tardar 14 días después de la decisión. Un formulario de apelación puede estar disponible en el departamento responsable.

Para obtener información adicional sobre el proceso de desarrollo de la ciudad de Austin, visite nuestro sitio Web: www.austintexas.gov/devservices.

Comentarios escritos deberán ser sometidos a la comisión (o a la persona designada en la noticia oficial) antes o durante la audiencia pública. Sus comentarios deben incluir el nombre de la comisión, la fecha de la audiencia pública, el número de caso, y el nombre de la persona designada en la noticia oficial.

Número de caso: SPC-2019-0590A
Persona designada: Renee Johns, (512)974-2711, o Ramon RezvaniPouri, (512) 974-3124
Audiencia Pública: April 28, 2020, Planning Commission

Su Nombre (en letra de molde)

Su domicilio(s) afectado(s) por esta solicitud

Firma
Fecha

Comentarios:

Si usted usa esta forma para proveer comentarios, puede retomarlo a: City of Austin / Development Services Department, 4th Fl
Renee Johns
P. O. Box 1088
Austin, TX 78767-8810
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.

This product has been produced by the Planning and Development Review Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.