

Z-1

MEMORANDUM

TO: Betty Baker, Chair and Members of the Zoning and Platting Commission

FROM: Dora Anguiano, Zoning and Platting Commission Coordinator
Neighborhood Planning and Zoning Department

DATE: February 2, 2005

SUBJECT: Zoning and Platting Commission Summary

Attached is a Zoning and Platting Commission summary, which will be forwarded to the City Council.

CASE # C14-04-0184

3. Rezoning: C14-04-0184 - Giss's Café
Location: 6001 West William Cannon Drive, Williamson Creek - Barton Springs Zone Watershed
Owner/Applicant: Benchmark Plaza, Ltd. (David C. Mahn)
Agent: Giss's Café (Valerie Gibbs)
Request: LR to GR
Staff Rec.: **Alternate recommendation of GR-CO**
Staff: Wendy Walsh, 974-7719, wendy.walsh@ci.austin.tx.us
Neighborhood Planning and Zoning Department

SUMMARY

Wendy Walsh, staff – Made her presentation to the commission. “This is presently operating as Giss’s Café, it is located within an office and commercial center that has frontage on William Cannon, Escarpment and Ridge Oaks. The applicant is proposing to rezone the leased spaced to the community commercial or GR district, this will enable them to be able to sell beer and wine. Right now they are limited restaurant and GR is required in order to sell beer and wine. In speaking with the applicant, they are not proposing to expand the lease space nor to have a late night hour’s permit, which is by way of a site plan process. In consideration of this rezoning, staff examined zoning history in the surrounding area and staff alternate recommendation is GR-CO. It followed that of the car wash that is located at the corner of William Cannon and Escarpment; also within the same shopping center. The conditional overlay prohibits all the same uses with the exception of general restaurant; and it maintains the LR development standards. In addition, staff has also added a prohibition against drive-in services. With these conditions, staff is recommending GR-CO, it is appropriate for the property that has access to two arterial roadways and a collector street; it is also compatible with other uses within the center and is buffered from the single-family residence to the south by 150-feet. I know the applicant is here and there are several neighborhood residents that are in opposition”.

Commissioner Baker – “The neighbors comments and opposition on the dais; has it been reviewed as a petition?”

Ms. Walsh – “No, I have not reviewed that as a petition”.

Commissioner Baker – “You have a flooring use; doesn’t that require CS?”

Ms. Walsh – “I think that is just general retail sales”.

Commissioner Baker – “Not construction sales and service?”

Ms. Walsh – “No, it’s just like for sales of different types of flooring”.

Valerie Gibbs, owner – “I am the owner of Giss’s Café and we just want you to know that we are very sensitive to the neighborhood behind us; we were sensitive enough in

March of 2003 to go directly to the homeowners, door to door and request a meeting with them and during that session, about 9 people showed up in opposition of us even opening a restaurant and it took us over a year to get in that space and we have a lot of customers from the neighborhood; we are a neighborhood restaurant; we are a family-oriented restaurant and we are not interested in liquor sales. The homeowners behind us are very concerned about the liquor sales; that is not our intent. We are open until 9:00 in the evening, we just want to offer beer and wine to customers that come in weekly and have requested and to help our sales". The applicant showed the Commission some pictures of the restaurant.

Commissioner Donisi – "When you opened the restaurant, you had initial discussions with the neighborhood, was there discussion about beer and wine at that time?"

Ms. Gibb – "Yes, we were unable to get into our restaurant because of LR zoning; it did not permit a restaurant that had take-out services. So we spent 6 months with City Council just trying to open the restaurant; and we let the neighborhood know that once we were in there, it was our intent to do beer and wine later on. We weren't going to try to go through two zonings at one time. The remarks that we had from the neighborhood was that they didn't want a restaurant in there period. It went as far as them saying that they were going to do anything they needed to do to see that we didn't put the restaurant there. It took us a very long time and a lot of expense and it really set us back".

FAVOR

Mark Gibbs, co-owner – Spoke in favor.

David Mahn – Spoke in favor.

Commissioner Baker – "What's the assurance that the buffer will remain?"

Mr. Mahn – "It's a water quality zone".

Commissioner Baker – "Thank you".

Robert Rodriguez, patron/friend – Spoke in favor.

Lisa King, patron/friend – Spoke in favor.

Virginia Jackson, patron/friend – Spoke in favor.

Michael Gale, patron – Spoke in favor.

Charlotte Scott, friend – Spoke in favor.

Terri Rodriguez, patron – Spoke in favor.

OPPOSITION

Mary Mendoza, President of Legend Oaks Homeowners Association – Spoke in opposition. “I represent approximately 650 people. I have been requested by a number of people who live immediately adjacent to the proposed change, to come here and voice some of the concerns that our neighborhood has”.

Commissioner Jackson – “Based on the applicant, they said that originally the neighborhood opposed the introduction of the café into this shopping center, is that correct?”

Ms. Mendoza – “My understanding is that this has been zoned LR for a significant amount of time, when they originally approached us we had a petition with about 200 people sign and opposed the zoning variance, which would allow liquor sales by businesses on the south side of William Cannon between Ridge Oak Drive and Escarpment Drive. I think there may have been people who didn’t want a restaurant there, but it was zoned for that and that was what people should have expected when they bought their homes. I don’t think people expected there to be liquor sales”.

Commissioner Jackson – “Have there been any issues with the Café today?”

Ms. Mendoza – “I haven’t heard of any particular issues. One neighbor did tell me that they have heard the trash go out there at night”.

Commissioner Whaley – “Ms. Terry, I was curious as to whether we could limit it to beer and wine in some way or format?”

Marty Terry, City Attorney – “I don’t know the answer to that question; let me get with Wendy and I will get back to you with that”.

Commissioner Baker – “Mrs. Whaley, if I may and staff can correct me; GR will allow beer and wine, but it will not allow liquor”.

Commissioner Whaley – “I don’t believe that it true”.

Ms. Walsh – “GR will allow for beer and wine and hard liquor; the sale of it; but it has to be less than 50% or less of the sales”.

Suzanne Gallun – Spoke in opposition.

Commissioner Rabago – “Do you have a Neighborhood Plan in place already?”

Ms. Gallun – “No, I just found out about this Master Plan; I would like to know more about it”.

Commissioner Baker – “Talk to City Staff about it”.

REBUTAL

Valerie Gibbs – “I think that someone might be confused as to whom we are; we never met at anyone’s home. I wanted to make that clear. We put together a flier and walked door to door to 118 homes; we went to our Café and had a meeting on a Sunday afternoon and 9 people came to the meeting at our restaurant door. I do know that the signatures that they got were before we ever even looked at that space. That was in opposition of someone else trying to go in; I have never seen the list, I’ve heard of the list, but no one has ever presented that list and I was never in anyone’s home. I think we’re being confused with someone else”.

Commissioner Baker – “The owner of this shopping center; would that owner be willing to file a restrictive covenant with the neighborhood association, to limit the hours of operation, to limit the sale of alcoholic beverages only to beer and wine; do you think the owner of the shopping center will be willing to do that?”

Mr. Mahn, owner – “Yes”.

Commissioner Baker – “Would you also be willing to agree to a rollback to LR, if this GR use ceases?”

Mr. Mahn – “Yes”.

Commissioner Martinez and Gohil moved to close the public hearing.

Commissioner Jackson – “I make a motion to approve the GR-CO zoning, with staff’s recommendation on the Conditional Overlay, with this motion based on the applicant and the owner’s agreement to enter into a restrictive covenant that restricts the hours of operation...”

Marty Terry, City Attorney – “What you’re saying is that you’re recommending that the restrictive covenant be required”.

Commissioner Jackson – “Yes, thank you...and that part of that restrictive covenant that there be a rollback provision to LR if this specific use ceases to occupy that space”.

Commissioner Martinez – “Second”.

Commissioner Baker – “Can you add to that, that there will not be 3rd reading of the GR approval, until the restrictive covenant has been filed?”

Commissioner Jackson – “Sure”.

Commissioner Martinez – “I agree”.

Mrs. Terry – “This is not a private restrictive covenant; what you are asking for is a City restrictive covenant”.

Commissioner Jackson – “Okay”.

Motion carried.

**COMMISSION ACTION:
MOTION:**

**JACKSON, MARTINEZ
APPROVED STAFF'S
RECOMMENDATION OF GR-CO
ZONING WITH A PUBLIC
RESTRICTIVE COVENANT
EXECUTED PRIOR TO 3RD READING,
LIMITING HOURS OF OPERATION,
ALCOHOL IS LIMITED TO BEER &
WINE; AND A ROLLBACK
PROVISION TO LR IF THE
RESTAURANT GENERAL USE
CEASES.**

AYES:

**GOHIL, MARTINEZ, WHALEY,
RABAGO, JACKSON, PINNELLI,
BAKER, DONISI, HAMMOND**

MOTION CARRIED WITH VOTE: 9-0.