

**Item(s) to Set Public Hearing(s)**  
**RECOMMENDATION FOR COUNCIL ACTION**

**ITEM No. 100**

**Subject:** Set a public hearing on an appeal by Ian Inglis, President, Austin City Lofts Homeowners Association, of the Planning Commission's decision to approve a Conditional Use Site Plan Permit, to allow a cocktail lounge within the DMU, Downtown Mixed Use zoning district, SPC-06-0104A, located at 817 W. 5th Street. (Suggested date and time: August 10, 2006, at 6:00 p.m., City Hall Council Chambers, 301 West 2nd Street, Austin, Texas)

**Fiscal Note:** There is no anticipated fiscal impact. A fiscal note is not required.

**Additional Backup  
Material**

(click to open)

 [backup information](#)

**For More Information:** George Zapalac, 974-2725; Nikki Hoelter, 974-2863; Joan Esquivel, 974-3371

**Boards and Commission Action:** Planning Commission approved staff recommendation to allow the cocktail lounge use with the DMU, Downtown Mixed Use zoning district, and limit the hours of operations from 7am to 12 midnight.

The request is for a Conditional Use Permit (CUP) Site Plan, to allow for a change of use from automotive sales to a cocktail lounge. The site is currently zoned DMU, Downtown Mixed Use, which allows for a cocktail lounge with a conditional use permit. Current site conditions consist of a 317 square foot building and 4,579 square feet of asphalt area. The asphalt area will be utilized as outdoor seating. No other modifications to the site are proposed with this change of use.

The project complies with all site plan requirements. Staff recommended approval of the Conditional Use Permit because the site is surrounded by compatible zoning districts: CBD (Central Business District) and DMU (Downtown Mixed Use). The DMU zoning district allows for a variety of uses, including office, retail, and residential. This location is on the periphery of the Central Business District, and by definition the DMU district is suitable for an area to which the Central Business District may expand. The proposed use would be appropriate for an arterial roadway such as West 5th Street. Additionally, the project does not require variances nor is a late hours permit required. This site is not required to provide off-street parking because it occupies less than 6,000 square feet of floor space in a structure that existed in 1997.

On May 23, 2006, the Planning Commission concurred with staff, approving the Conditional Use Site Plan with the addition of a limitation of the hours of operation from 7am to 12 midnight.

Mr. Ian Inglis, President of the Austin City Lofts Homeowner's Association, is appealing the Planning Commission's decision to approve the CUP, on the basis that a noise limitation (decibel level) was not placed on the project. Other concerns stated in the appeal are the addition of another bar within a mixed use area, the behavior of patrons of the existing bars, and lack of parking. Austin City Lofts is located at 800 West 5th Street, approximately 200 feet from the subject project on the north side of West 5th Street.

Staff recommends denial of the appeal because the site plan complies with all applicable requirements.

# **Patio Bar, 817 West 5<sup>th</sup> Street**

## **Conditional Use Site Plan Appeal**

### **Overview**

#### **Proposed Development**

- The applicant proposes to change the use from automotive sales to cocktail lounge. The existing building is 317 square feet, which will be utilized for the bar and restrooms. The remaining outside area will be for outdoor seating. The total site area is .112 acres.
- No modifications are planned for the site. All improvements are existing.
- The site is located within the boundaries of the proposed Downtown Neighborhood Plan.
- The applicant proposed that the hours of operation for the cocktail lounge be from Tuesday through Saturday, 2pm – 12am.

#### **Development Issues**

- The site is zoned DMU, Downtown Mixed Use, which allows for a variety of uses including office, retail, and residential. Cocktail lounge is a conditional use, requiring the Planning Commission's approval. Adjacent zoning districts include DMU and CBD (Central Business District).
- The project does not require variances nor is a late hours permit required.
- This site is not required to provide off-street parking because it occupies less than 6,000 square feet of floor space in a structure that existed in 1997. (Land Development Code Section 25-6-591)
- The current noise ordinance states "a person may not operate sound equipment at a business that produces sound in excess of 85 decibels between 10am and 2pm." A permit would be required to operate sound equipment at an outdoor music venue.

#### **Appellant Issues**

- A noise limitation (decibel level) was not placed on the project.
- Other concerns are the addition of another bar within a mixed use area, the behavior of patrons of the existing bars, and lack of parking.
- The appellant's residence, Austin City Lofts, is located at 800 West 5<sup>th</sup> Street, approximately 200 feet from the subject tract on the north side of West 5<sup>th</sup> Street.

**Staff Recommendation**

- Staff recommends denial of the appeal because the project complies with all site plan requirements. Conditional Use Permit criteria have been evaluated and all measures have been met. (Land Development Code Section 25-5-145)

**Planning Commission Action**

- On May 23, 2006, Planning Commission concurred with staff and approved the conditional use permit to allow the cocktail lounge and to limit the hours of operation from 7am – 12am (8-0).



City of Austin Watershed Protection and Development Review Department  
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

**SITE PLAN APPEAL**

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Planning Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SPL-06-0104A  
PROJECT NAME PATIO BAR  
PROJECT ADDRESS 817 W. 5TH ST.  
APPLICANT'S NAME HARVEY BELL  
CITY CONTACT NIKKI HOELTER

DATE APPEAL FILED JUNE 5, 2006  
YOUR NAME IAN INGLIS  
SIGNATURE Ian Inglis  
YOUR ADDRESS 800 W. 5TH ST. #805  
AUSTIN, TX 78703  
YOUR PHONE NO. (512) 472-1950 WORK  
(512) 656-2936 HOME

**INTERESTED PARTY STATUS:** Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☐ I am the applicant or agent representing the applicant
- ☒ I communicated my interest by speaking at the Planning Commission public hearing on (date) MAY 23, 2006
- ☐ I communicated my interest in writing to the Director or Planning Commission prior to the decision (attach copy of dated correspondence).

**In addition to the above criteria,** I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☒ I am the record owner of property within 500 feet of the subject site.
- ☒ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site. PRESIDENT AUSTIN CITY LEFTS HOMEOWNERS ASSOCIATION

**DECISION TO BE APPEALED\*:** (Check one)

- ☐ Administrative Disapproval/Interpretation of a Site Plan Date of Decision: \_\_\_\_\_
- ☐ Replacement site plan Date of Decision: \_\_\_\_\_
- ☐ Planning Commission Approval/Disapproval of a Site Plan Date of Decision: \_\_\_\_\_
- ☐ Waiver or Extension Date of Decision: \_\_\_\_\_
- ☐ Planned Unit Development (PUD) Revision USE PERMIT Date of Decision: \_\_\_\_\_
- ☒ Other: PLANNING COMMISSION APPROVAL CONDITIONAL Date of Decision: MAY 23, 2006

\*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

**STATEMENT:** Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

SEE ATTACHMENT

(Attach additional page if necessary.)

Applicable Code Section: CODE SECTION 10-5-12, 25-5-145

Attachment

Appeal – Case No. SPC-06-0104A

The Austin City Lofts Home Owners Association opposed the application for a Conditional Use Permit for a patio bar at the Planning Commission hearing on May 23, 2006.

Two concerns were presented: the proliferation of bars in a mixed-use area and problems created by bars for residents in the area. Specific problems discussed were noise, rowdy late-hours behavior, and parking.

In an effort to reduce the impact of another bar on residents, the Commission considered specifying conditions, which are permissible in a Conditional Use Permit. The Commission decided to add a condition that the bar close at 12:00 midnight, which is more restrictive than 2:00 a.m. To help reduce noise problems, the Commission discussed prohibiting amplified sound and limiting any sound equipment to 70 or 75 or 80 decibels instead of the 85 permitted by Code Section 10-5-12. After several Commissioners said they did not know how loud the different decibel levels were, and since it was 1:00 a.m. and too late to research the question, they did not include a decibel level condition in their decision.

**Given the Planning Commission's failure to limit noise at the bar, the residents of Austin City Lofts appeal the Commission's granting of the Conditional Use Permit allowing the use of the site as a cocktail lounge. In the alternative, the residents of Austin City Lofts appeal the Planning Commission's action in failing to prohibit amplified sound or place a limitation on the decibels created by sound equipment or other sources at the bar. The Commission's action in approving the Conditional Use Permit without sound limitations directly and adversely affects the quality of life of Austin City Lofts residents, and should be reversed or modified.**

Ideally, the item should have been postponed to permit research and demonstrations of sound levels and discussions between the applicants and homeowners. Austin City Lofts is willing to demonstrate different decibel levels. It should be noted that our residences rise above ground level and are subject to direct and unimpeded sound emanating from the bar site, which is proposed as an outdoor and open venue.

**PLANNING COMMISSION SITE PLAN  
CONDITIONAL USE PERMIT REVIEW SHEET**

**CASE NUMBER:** SPC-06-0104A      **PLANNING COMMISSION DATE:** May 23, 2006

**ADDRESS OF APPLICATION:** 817 W. 5<sup>th</sup> Street

**AREA:** .112 acres

**PROJECT NAME:** The Patio Bar (Cocktail Lounge)

**APPLICANT:** Harvey Bell  
16401 Goldenwood Way  
Austin, TX 78703

**AGENT:** Davcar Engineering (Jim Herbert)  
1010 Land Creek Cove, Suite 200  
Austin, TX 78746

**CASE MANAGER:** Nikki Hoelter      Phone: 974-2863  
[Nikki.hoelter@ci.austin.tx.us](mailto:Nikki.hoelter@ci.austin.tx.us)

**PROPOSED DEVELOPMENT:**

The applicant is requesting a conditional use permit in order to change the use from automotive sales to a 317.3 square foot cocktail lounge, with the remaining asphalt area being utilized as outdoor seating. No modifications to the existing building or impervious cover are associated with this site plan/change of use. On site parking will not be required or provided, in conformance with Section 25-6-591(A)(2) of the Land Development Code, which states: In a central business district (CBD) or downtown mixed use (DMU) zoning district, off-street parking is not required for a use occupying less than 6,000 square feet of floor space in a structure that existed on April 7, 1997.

**EXISTING ZONING:** The existing zoning for the subject site is Downtown Mixed Use (DMU), which allows for the cocktail lounge with the approval of a conditional use permit.

**NEIGHBORHOOD ORGANIZATIONS:**

57 – Old Austin Neighborhood  
402 – Downtown Austin Neighborhood Association  
511 – Austin Neighborhood Council  
623 – City of Austin, Downtown Commission  
742 – Austin Independent School District  
744 – Central Plus East Austin Coalition  
767 – Downtown Austin Neighborhood Coalition  
998 – West Austin Alliance

**T.I.A.:** Waived

**CAPITOL VIEW:** Barton Creek Pedestrian Bridge

**WATERSHED:** Shoal Creek (Urban)

**APPLICABLE WATERSHED ORDINANCE:** Comprehensive Watersheds Ordinance (Urban)

**NEIGHBORHOOD PLAN:** Downtown**SUMMARY STAFF RECOMMENDATION:**

Staff recommends approval of the conditional use permit. The subject site is surrounded by similar zoning districts, such as CBD, DMU and DMU-CURE. Similar uses in the area include office, food sales, off site parking, and retail. The DMU zoning district allows for a variety of uses; this location is on the periphery of the central business district; by definition the DMU district is suitable for an area to which the central business district may expand. The adjoining land use to the south is an administrative office, which is shielding by the proposed use by a wooden privacy fence. Directly to the east is Shoal Creek, then a vacant lot. The owner proposes that the hours of operation for the cocktail lounge be Tuesday through Saturday, 2pm to 12am.

**PLANNING COMMISSION ACTION:** May 23, 2006

**PROJECT INFORMATION**

**TOTAL SITE AREA:** .112 acres (4896 sq. ft.)

**EXIST. ZONING:** DMU, Downtown Mixed Use

**ALLOWED F.A.R.:** 5:1

**MAX. HEIGHT ALLOWED:** 120'

**MAX. BLDG. COVERAGE:** 100%

**MAX. (DMU) IMPERV. CVRG.:** 100%

**REQUIRED PARKING:** 0

**PROPOSED & EXISTING F.A.R.:** .06:1

**PROPOSED & EXISTING HEIGHT:** 12' 6" (1 story)

**PROPOSED & EXISTING BLDG. CVRG:** 6.5%

**PROPOSED & EXIST. IMP. CVRG:** 100%

**PROVIDED PARKING:** 0

**Proposed Access:** Pedestrian access to the site from Bowie and West 5<sup>th</sup>, due to no parking required on site.

**SUMMARY COMMENTS ON SITE PLAN:**

**Land Use:** The applicant is requesting a conditional use permit for a 317 square foot cocktail lounge, and the remaining 4578 square feet being outdoor seating. The bar and restrooms will be located within the building. The use is appropriate for an arterial roadway. The use will not require any variances or a late hours permit. The last use for this site was an automotive sales business, which has been vacant. The building is an existing structure, with no plans to expand the square footage. Compatibility standards do not apply. This project complies with all site plan requirements.

**Environmental:** This site is located in the Shoal Creek Watershed and subject to Urban Watershed regulations, however site improvements are not proposed. The site is not located over the Edward's Aquifer Recharge Zone. The site is in the Desired Development Zone. All Environmental comments are cleared.

**Transportation:** Access to the proposed cocktail lounge will be through pedestrian access to the site, since on site parking is not required due to Section 25-6-591 of the Land Development Code. There will be no vehicular access to the site. The site plan complies with all transportation requirements.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	DMU	Proposed Cocktail Lounge
<i>North</i>	DMU	Parking lot, Grocery store
<i>South</i>	DMU	Office, Equipment Rental
<i>East</i>	P, CBD-CO	Shoal Creek, then vacant lot under construction
<i>West</i>	DMU	Retail, Office, Gym

<b><u>Street</u></b>	<b><u>R.O.W.</u></b>	<b><u>Surfacing</u></b>	<b><u>Classification</u></b>
Bowie Street	Varies	40'	Collector
W. 5 <sup>th</sup> Street	Varies	60'	Major Arterial



**CONDITIONAL USE PERMIT REVIEW AND EVALUTATION CRITERA**

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 Planning 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:

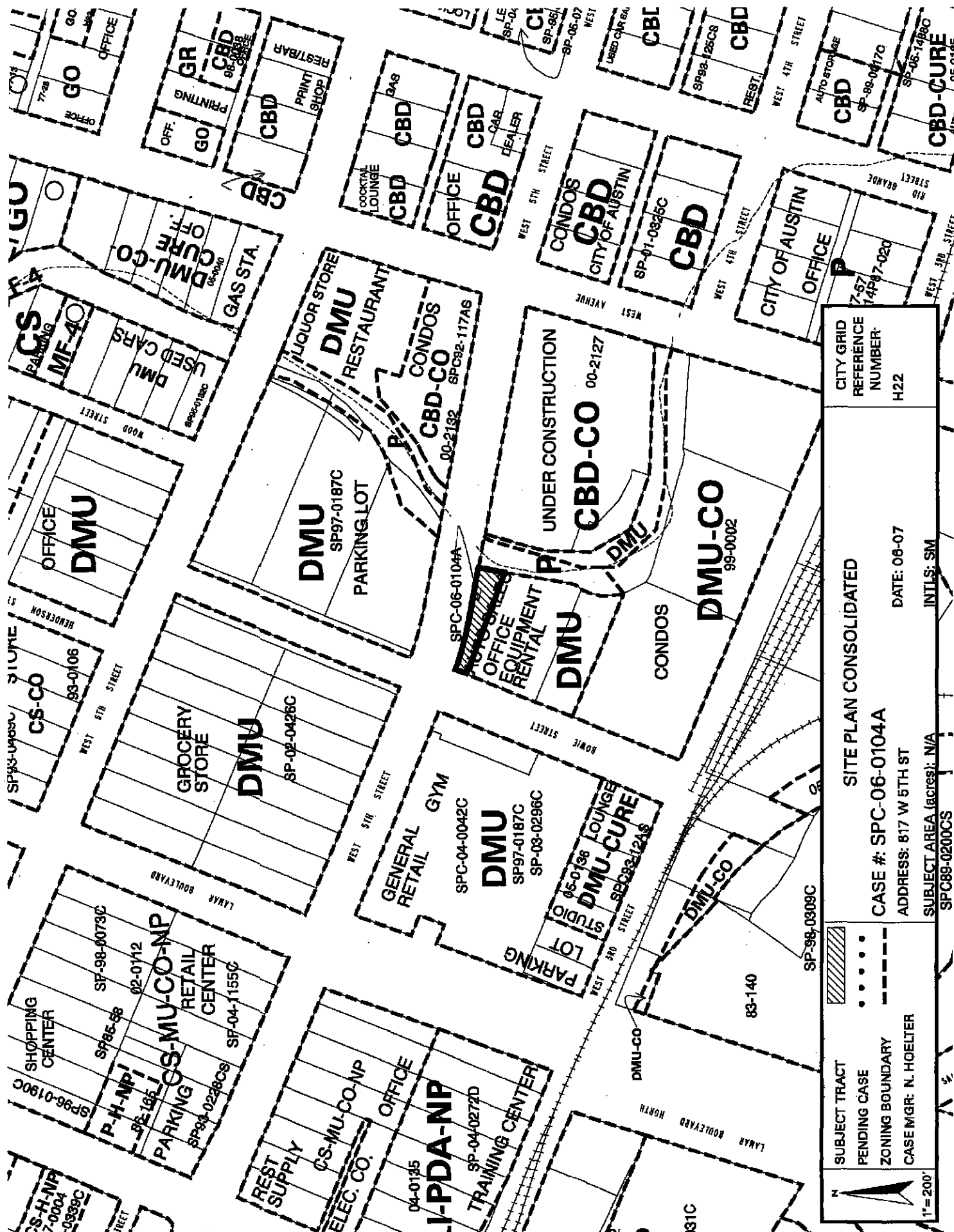
1. **Comply with the requirements of this title;** Staff Response: This site plan complies with all regulations and requirements of the Land Development Code.
2. **Comply with the objectives and purposes of the zoning district;** Staff Response: The proposed Cocktail Lounge use is a permitted use in the CS-1 zoning district.
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 CS-1 zoning district. In addition, the building complies with setback, height, and compatibility screening requirements. The existing joint access driveway is located within 15 ft. of the adjacent undeveloped SF-2 property. The parking area located nearest to the single-family residences is shielded by the joint access driveway with the apartment complex and a thick vegetative buffer.
4. **Provide adequate and convenient off-street parking and loading facilities; and** Staff Response: The site plan complies with off-street parking and loading facility requirements.
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 including Compatibility Standards, and reasonably protects the health, safety, and welfare of persons and property. There is a thick vegetative buffer shielding the undeveloped SF 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 nor an adopted neighborhood plan.

**In addition, A conditional use site plan may not:**

7. **More adversely affect an adjoining site than would a permitted use;** Staff Response: The proposed cocktail lounge is 1300 sq. ft. is in an existing retail center. Cocktail lounge will have no more impact on adjoining properties than other permitted uses in the CS-1 zoning district.
8. **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 does not adversely affect the safety and convenience or vehicular and pedestrian circulation. No construction is proposed. There is no direct access to the SF-2 from the retail center.
9. **Adversely affect an adjacent property or traffic control through the location, lighting, or type of a sign.** Staff Response: The existing center was built prior to the City's

annexation of the property. Compatibility standards did not apply at that time. The building does comply with setback and height restrictions. The building fronts onto Braker Lane and does not have access to the SF-2 neighborhood. The joint access driveway is within the 25 ft. setback, however there is a thick vegetative buffer along the property line.





**3. Conditional Use      SPC-06-0104A - Patio Bar**

**Site Plan:**

Location:                      817 W. 5th Street, Shoal Creek Watershed, Downtown  
Neighborhood NPA

Owner/Applicant: Harvey Bell

Request:                      Approval of a conditional use site plan for a cocktail lounge.

Staff Rec.:                      **Recommended**

Staff:                          Nikki Hoelter, 974-2863, nikki.hoelter@ci.austin.tx.us  
Watershed Protection and Development Review

**APPROVED STAFF'S RECOMMENDATION.**

**[C.GALINDO, K.JACKSON 2<sup>ND</sup>] (8-0) G.STEGEMAN – ABSENT**

**\*HOURS OF OPERATION FROM 7:00 A.M. TO 12:00 MIDNIGHT.**

**SUMMARY**

*Nikki Hoelter, staff, gave a brief staff presentation.*

*Commissioner Riley – Does a cocktail lounge always require a conditional use permit on a DMU site?*

*Mrs. Hoelter – Yes.*

*Andy Erwin, applicant – Gave the commissioners a handout. The current use right now is a used car lot; we plan to put a place where people can go and relax and enjoy themselves. We want to offer the community is an environment where they can feel relaxed and comfortable. This is not a shot bar; we just want to offer Austin something that it needs, especially in the downtown area. The use right now does not fit the vision of the market district and it lies in the floodplain; so this is inappropriate for cars. The new use, a cocktail lounge, is the best use for the property; city staff has recommended this project. We estimate that this will create at least 15 new jobs. We will be serving products from successful local businesses; such as Good Flow Juices, Texas Coffee Traders, and Sweet Leaf Tea. We will be serving juices in the morning or whenever someone wants to drink something other than alcoholic drinks.*

*Commissioner Sullivan – How do you think your business will affect the environment; and how do you think the environment will affect your business?*

*Mr. Erwin – I think it's positive. When we met with the Austin City Lofts Group, we talked about the hours of operation; we would like to open a little earlier because our goal is to be open for those who use the hike and bike trail. We want to serve the cyclists, the pedestrians, the joggers that are out there in the morning. I would like to be open to offer them juices, teas, or water. I want a nice, clean and friendly environment and I plan to keep it that way. I don't ever want to see the creek bed get bad, I love it and I want more to happen there; and whatever I can do to help get things well and cleaned for that creek, I want to be a part of that.*

## FAVOR

*Jason Subt – Spoke in favor. Mr. Subt feels that a cocktail lounge is the best use for this site.*

*We got a positive response from residences and businesses in the area.*

*Peter Aubrey – Spoke in favor. Mr. Aubrey co-owns a salon in the area and stated that the lounge will be the best use for the site and looks forward to having the cocktail lounge in the area.*

*Jonathan Beall – Spoke in favor.*

*Jason Schnurr – Spoke in favor.*

## OPPOSITION

*Ian Inglis – President of Austin City Lofts Homeowners Association – Spoke against the project on behalf of the association. We did meet with the applicants and we talked, the proposal has been altered to some degree. The applicant is pitching this project as a Café now, instead as a bar; but as far as I'm aware, they are asking for a cocktail lounge conditional use change and to me that is a bar, the name is Patio Bar. Frankly, we have some issues with bars in our neighborhood, we think we have enough, we can use some other types of retail and we are seeing the affects of the expanding numbers of bars in our neighborhood. We have currently 6 existing bars in the area, we have bars, we have Pubs, we have lounges; and we think that's enough for our area. We are not against having a good lively mixed use market district, but this envision that they have is not the one that we really want to have in our area. It runs a risk of having another 6<sup>th</sup> Street because all we're seeing is bars; this creates a lot of noise and problems for the neighbors in the area; this is going to be a heavily residential area in about 5-years. These bars are creating conflicts and this will be just another bar adding to that conflict. We need a neighborhood plan and we're getting that, but we run the danger when we approve things like this before the plan is in. We're looking for a true mixed use, we encourage retail, we encourage mixed use commercial businesses; we just think that we're becoming one sided in our neighborhood, we heading down an unbalanced path and we would urge this commission to that into consideration and not allow this conditional use permit.*

*Commissioner Galindo – Is there a time limitation on how late the bar can stay open?*

*Mrs. Hoelter – Since it is a conditional use, we could require hours of operation. Right now on their site plan the hours that are 2:00 p.m to 12:00 a.m. is what's specified, but it is up to the commission to set certain hours.*

*Commissioner Galindo – But are they applying for a late hours permit with TABC?*

*Mrs. Hoelter – At this time I do not know if they are applying for a late hours permit. They told me that they would be open until 12:00 a.m.*

*Commissioner Dealey – What about them wanting to open earlier; the conditional overlay says that they open at 2:00 p.m.; do we need to indicate the hours tonight...8:00 a.m to 12:00 midnight?*

*Mrs. Hoelter – Yes, the commission would need to state their hours of operation if the commission chooses to extend or shorten the hours of operation.*

*Commissioner Dealey – Mr. Inglis, is 12:00 midnight more reassuring than 2:00 a.m.?*

*Mr. Inglis – Yes, it's more reassuring, but the way to help, like they said they want to do, is by not selling alcohol. We do not have any objection to a coffee bar, a juice bar; but the liquor is the problem for our area & the later hours.*

*Commissioner Riley – What happens in the future; does this conditional use permit last forever? Whoever occupies this site will be allowed to have a bar there?*

*Mrs. Hoelter – Yes; but they would have to comply with the conditions of the conditional use permit, hours of operation etc. This site is limited because of it being in near proximity to Shoal Creek and floodplain. But yes, it could continue to operate as a bar for another owner.*

*Commissioner Sullivan – I think it's possible to put an expiration date on a conditional use permit. To say that it must be renewed after 1-year or something to that affect.*

*Mrs. Hoelter – I will have to defer that to another staff person.*

*Wendy Walsh – I think that is possible.*

*Commissioner Riley – I'm surprised that we haven't had more bar cases come to us; did ZAP get these cases in the past? I don't remember these kinds of CUP's coming to us. Is this the first one in a while that's coming on a DMU site?*

*Mr. Inglis – It's the first one that we got notice on.*

*Mrs. Hoelter – I assume so; in the CBD zoning district you would not need a conditional use for a cocktail lounge.*

*Commissioner Riley – So bars can go in where it's zoned CBD?*

*Mrs. Hoelter – Yes.*

*Commissioner Riley – What other uses will you picture on this site?*

*Mr. Inglis – A Farmer's Market...It depends on what could be built there. Some people don't mind having it as a car lot, which is what it has been for 30-years, than to have it as a bar. I don't know what imaginative uses can be put to this property, but I do know that we do not want liquor/alcohol sales or amplified noise.*

*There was discussion regarding how loud amplified decibels is; and the noise ordinance.*

*Commissioner Cavazos – Would it be appropriate to put a decibel level when making the motion?*

*Commissioner Sullivan – The noise limit is stated on the site plan; does that also pertain to music levels?*

*Mrs. Hoelter – I would say that it is for the mechanical equipment; but the music level can also be noted on the site plan.*

*Commissioner Riley – Mr. Inglis would 70 decibels be comforting for you, if we limited the noise level to 70 decibels?*

*Mr. Inglis – 70 decibels is not bad.*

*There was further discussion about 70 decibels and how loud 70 decibels is.*

#### **REBUTAL**

*Mr. Erwin – It is mandatory that we close at midnight; so we're okay with that. There is no way that would could succeed with just selling juices when we're right next door to Whole Foods; or a plain coffee shop being next to Starbuck's. Yes, we'll change the hours of operation. We have looked at this and found that this is the best use for this property. We know there is a sound ordinance, but that has not been part of our business plan, we're focusing on bringing the communities together and giving them a place to enjoy themselves.*

*Commissioner Galindo – What are you planning for your amplified sound?*

*Mr. Erwin – To be honest, I haven't really thought about that. We might have some background music, but we do not want a loud and crazy place. We want a place that's mellow and calm.*

*Commissioner Galindo – Then would you be comfortable saying that there will be no live music?*

*Mr. Erwin – I wouldn't be comfortable because I've got to see what the people want; but I'm not saying that we're going to go nuts either. I don't want to make decisions like that until I get an idea of what the people downtown want.*

*Commissioner Galindo – What will you do on rainy days?*



*Mr. Erwin – We will have some shade covers; but I think on rainy days I wouldn't mind closing the shop on rainy days.*

*Commissioner Sullivan – What's the process in amending a conditional use permit if the applicant and neighbors agree on a higher noise decuple later?*

*Mrs. Hoelter – If the commission puts a decibel condition on the permit, we would have to come back to this commission to change the conditional use permit.*

*Commissioner Sullivan – So it's reversible in case they decided that they needed more sound; so instead of prohibiting live music, we can put a condition of 70 decibels.*

*There was discussion on how the surrounding businesses conduct their noise levels; and further discussion on how high or low 70 decibels s sounds.*

*Commissioner Dealey – Another option would be to impose that after 10:00 p.m., so that they can have amplified music up to 10:00 p.m., then after that they would have to turn it down.*

*Commissioner Sullivan – The CUP could come back to be changed.*

*Mr. Aubrey – Stated that 70 decibels is not that loud.*

*Commissioner Jackson – Second.*

*Commissioner Riley – Asked for clarification regarding the noise decuples noted on the site plan.*

*Mr. Aubrey – I'm okay with the idea of turning down the noise at 10:00 p.m., I do not want to be getting complaints regarding the music or noise.*

*Commissioner Riley – So a phrase that states from 10:00 p.m. to midnight, you wouldn't exceed 70 decibels measured at the neighborhood's property line.*

*Mrs. Hoelter – I just want to clarify that it would be at the subject's site, not at the neighborhood's property line; the property line closest to the residential uses.*

*Commissioner Reddy and Galindo moved to close the public hearing.*

*Commissioner Galindo – I'll move for staff recommendation with the clarification that the 70 decuple levels would apply not only to mechanical, but also to amplified sound.*

*Commissioner Galindo spoke to his motion.*

*Commissioner Jackson – Second.*

*Commissioner Sullivan – This trail does need improvement, so I hope that development at this site will improve the area and the hike & bike trail.*

*Commissioner Dealey – I have a problem because I do not know how loud 70 decibels, so I hesitate on putting a restriction on a new business. I wish I knew whether 75 decibels would work.*

*Mr. Inglis – 75 decibels is very loud; I think 70 decibels would be loud enough.*

*Commissioner Riley – How would you feel if we stated that up to 10:00 p.m. they could have 75 decibels; then at 10:00 p.m. they would have to turn it down to no more than 70 decuples?*

*Mr. Inglis – I would prefer that they have 70 decibels all the time; otherwise we're telling them that they can crank up the noise up to 10:00 p.m.*

*Mrs. Hoelter – For 70 decibels is the note on the site plan and is very restrictive already.*

*Commissioner Moore – I think the whole project is a great idea; I just have a problem also restricting a noise decuple level. I'd rather not have the noise ordinance as part of the motion. So I'll make an amendment to remove the noise ordinance.*

*Commissioner Dealey – I'll second that amendment.*

*Commissioner Riley – So the motion was to strike the noise ordinance from the original motion, does this motion also include the hours of operation?*

*Commissioner Galindo – No it didn't, but my intent was for it to be 7:00 a.m to midnight.*

*Commissioner Riley – So the motion is staff recommendation with the hours of 7:00 a.m. to midnight; with only a 70 decibels level that's on the plat note now.*

*Commissioner Moore – I just don't have a feel of what 70 decibels is.*

*Mrs. Hoelter – A example of 70 decibels can be a passenger car going 65 mph, freeway sound at 50-feet from pavement edge; 80 decuples can be like a diesel truck, a diesel train, a propeller plane, a car wash, 90 decibels is a power mower, a motorcycle.*

*Commissioner Moore – What about 75 or 76 decibels?*

*Mrs. Hoelter – 76 decibels is like living room music, a radio, t.v or a vacuum.*

*Commissioner Moore – That's the reason why I'm not comfortable setting a decibels level to the motion.*

*Commissioner Galindo – I wouldn't object to removing the decibel level from the motion.*

*Commissioner Riley – So the motion is to approve staff recommendation with hours of operation from 7:00 a.m. to midnight.*

*Motion carried. (8-0)*