

ZONING CHANGE REVIEW SHEET

CASE: C14-2009-0156 / Los Comales

P.C. DATE: February 9, 2010

ADDRESS: 2136 East 7th Street

OWNER: Merced and Graciela Benitez, 512-480-9358

AGENT: Evergreen Global Group, LLC (Roger Chan) 512-585-8946

ZONING FROM: CS-MU-CO-NP

TO: CS-1-MU-CO-NP

SITE AREA: 0.27 acres (11,950 square feet)

SUMMARY STAFF RECOMMENDATION: The staff recommendation is to deny the requested rezoning from CS-MU-CO-NP (General Commercial Services – Mixed Use – Conditional Overlay – Neighborhood Plan) combining district zoning to CS-1-MU-CO-NP (Commercial Liquor Sales – Mixed Use – Conditional Overlay – Neighborhood Plan) combining district zoning. The existing Conditional Overlay prohibits Campground, Drop-off recycling collection facility, Equipment repair services, Equipment sales, Laundry service and Vehicle storage. Automotive sales, Automotive rentals, Building maintenance service, Commercial off-street parking, Communication service facilities, Convenience storage, Construction sales and services, Kennels, and Limited warehousing and distribution are conditional uses.

SUMMARY PLANNING COMMISSION RECOMMENDATION: On February 9, 2010: Planning Commission approved staff's recommendation to DENY the request for CS-1-MU-CO-NP district zoning; was approved by Commissioner Danette Chimenti's motion, Commissioner Kathryne Tovo second the motion on a vote of 5-3; Commissioners Mandy Dealey, Benjamin DeLeon and Dave Anderson voted against the motion (nay); Commissioner Jay Reddy was absent.

ISSUES: The applicant would like to discuss the staff recommendation.

DEPARTMENT COMMENTS: The 0.27-acre site is currently zoned CS-MU-CO-NP (General Commercial Services – Mixed Use – Conditional Overlay- Neighborhood Plan) combining district zoning. The subject tract fronts East 7th Street and is currently developed with a single story restaurant occupied by Los Comales. The property lies within the Central East Austin Neighborhood plan and is surrounded by single-family to the north, financial services to the south, food sales to the east, and a pawn shop to the west.

The applicant wishes to rezone the property to CS-1-MU-CO-NP (Commercial Liquor Sales – Mixed Use – Conditional Overlay – Neighborhood Plan) in order to ensure the property stays in compliance with City Code. The Land Development Code, Chapter 25-2-808(B)(1) (Restaurant and Cocktail Lounges), states that a restaurant (general) use that serves alcoholic beverages must have at least 51 percent of its gross income derived from the sale of prepared food. According to the agent, Los Comales has been in the same location for decades, and there is no intention of changing the restaurant use into a club or vacating the site, but due to economic conditions, the restaurant is currently close to having 51 percent of its total sales from alcohol sales. The agent states that this rezoning request is only to keep this long running restaurant open, running successfully and to ensure it meets City Code.

After evaluation, it was determined that the current zoning is appropriate due to the proximity to the residential area. Staff believes that an increase in zoning would be incompatible with the character of the residential neighborhood located to the rear of the tract. Additionally, the Central East Austin Neighborhood Plan adopted in 2001 specifically addresses prohibiting additional CS-1 and LI to portions of 7th Street and Webberville Road to address the over supply of intensive CS-1 and LI zoning. The adopted Central East Austin Neighborhood Plan does not support increasing the zoning to CS-1 and the proximity of this site to an established residential neighborhood suggests that an increase in zoning is inappropriate.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-CO-MU-NP	Restaurant
<i>North</i>	SF-3-NP	Single-family
<i>East</i>	CS-CO-MU-NP	Vacant Building; Food Sales
<i>South</i>	CS-CO-MU-NP	Financial Services; Retail
<i>West</i>	CS-CO-MU-NP	Pawn Shop

NEIGHBORHOOD PLAN AREA: Central East Austin Neighborhood Plan

TIA: Is not required

WATERSHED: Town Lake

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

SCENIC ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

- Home Builders Association of Greater Austin
- Blackshear Prospect Hills
- Austin Neighborhood Council
- Homeless Neighborhood Organization
- Sentral Plus East Austin Koalition (SPEAK)
- Friends of Las Manitas and Escuelita del Alma
- Austin Parks Foundation
- PODER People Organized in Defense of Earth and Her Resources
- Austin Street Futbol Collaborative
- League of Bicycling Voters
- Cristo Rey Neighborhood Association
- El Concilio, Coalition of Mexican American Neigh. Assn.
- United East Austin Coalition
- Organization of Central East Austin Neighborhoods (OCEAN)
- East Side Business Alliance (ESBA)
- Austin Monorail Project
- Sierra Club, Austin Regional Group
- Super Duper Neighborhood Objectors and Appealers Organization
- The Real Estate Council of Austin, Inc.

CASE HISTORIES: There are no relevant case histories on or surrounding the subject tract.

RELATED CASES: The Central East Austin Neighborhood Plan rezonings were approved by Council on December 13, 2001 (C14-01-0148).

ABUTTING STREETS:

Name	ROW	Pavement	Classification	Daily Traffic
East 7 th Street	80'	50'	Arterial (MAU4)	21038 (COA, 02/19/09)

- There are existing sidewalks along East 7th Street.
- Capital Metro bus service (route no. 4 & 482) is available along East 7th Street.
- According to the Austin 2009 Bicycle Plan Update approved by Austin City Council in June, 2009, bicycle facilities are existing and/or proposed along the adjoining street as follows:

Street Name	Existing Bicycle Facility	Proposed Bicycle Facility
East 7 th Street	Shared Lane	Bike Lane

CITY COUNCIL DATE:

March 11, 2010

ACTION:

This item was postponed on consent to April 29, 2010 at the applicant's request on Council Member Spelman's motion, Council Member Cole's second on a 7-0 vote.

April 29, 2010

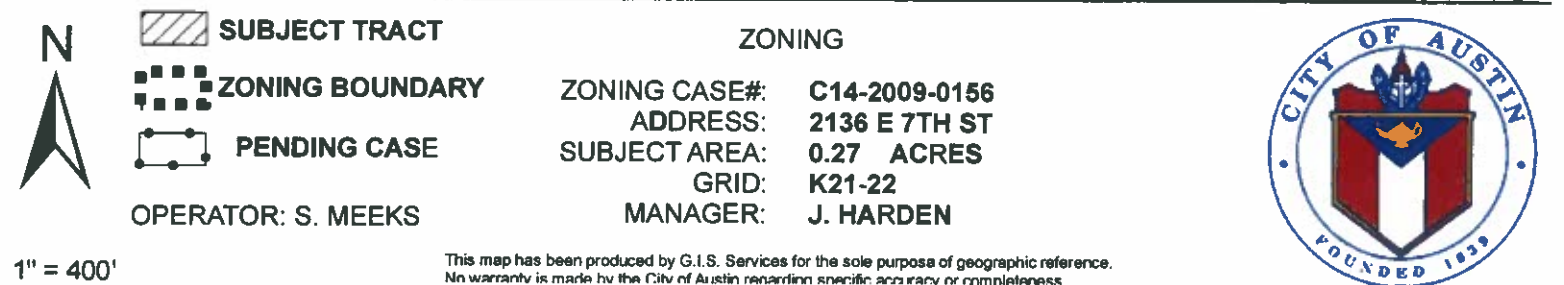
ORDINANCE READINGS: 1st 2nd 3rd

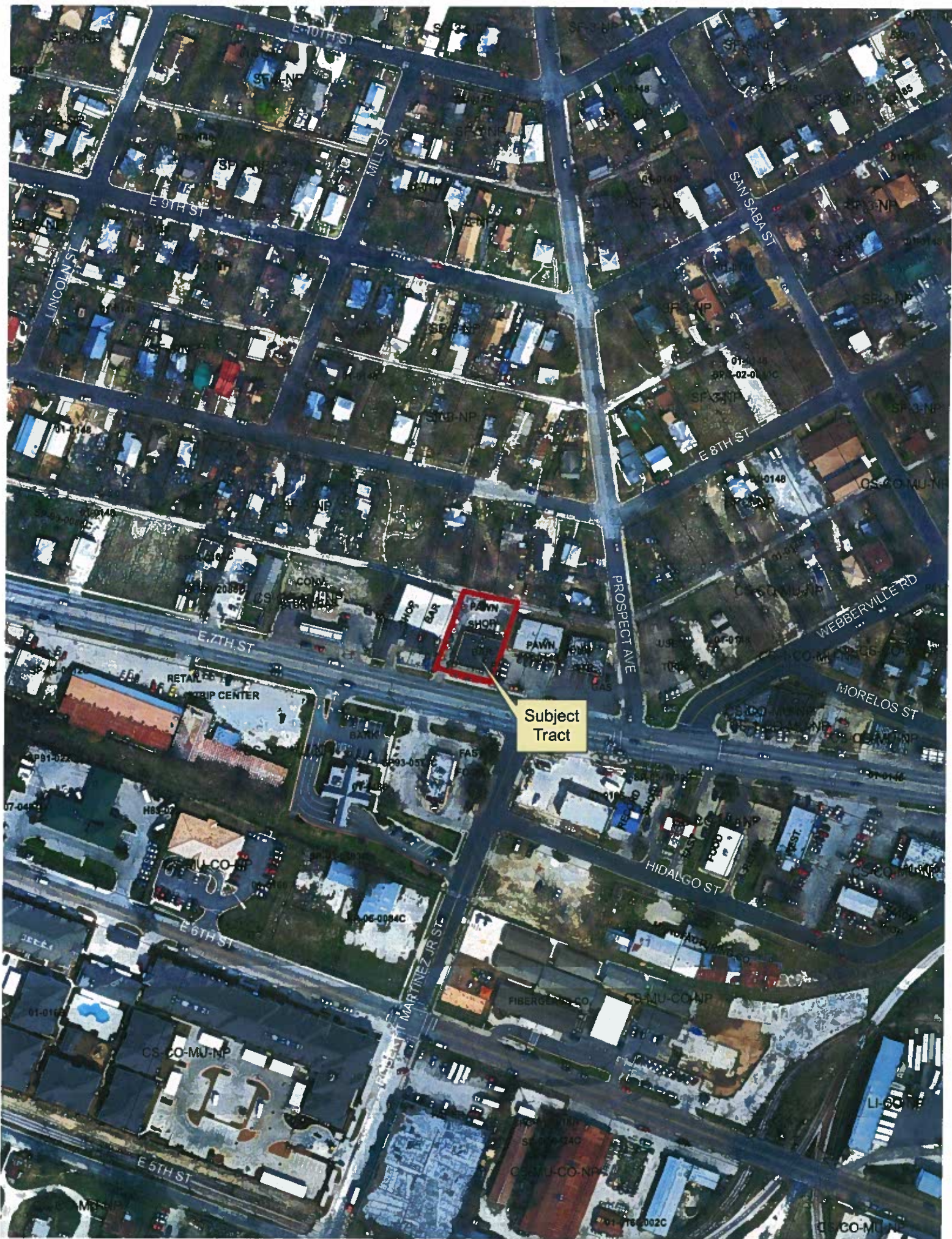
ORDINANCE NUMBER:

CASE MANAGER: Joi Harden

PHONE: 974-2122

E-MAIL: joi.harden@ci.austin.tx.us;





BASIS FOR LAND USE RECOMMENDATION (ZONING PRINCIPLES)

- 1. The proposed zoning should be consistent with the purpose statement of the district sought.*

CS-1-CO-NP – Commercial Liquor Sales (CS-1) district is intended predominately for commercial and industrial activities of a service nature having operating characteristics or traffic service requirements generally incompatible with residential environments, and also includes liquor sales as a permitted use. After evaluation, it was determined that an upzoning of the property is not appropriate due to the proximity to residential areas. Additionally, the Central East Austin Neighborhood Plan specifically states as one of their Neighborhood Planning Priorities to implement zoning changes to portions of 7th Street and Webberville Road to address the over supply of intensive CS-1 and LI zoning.

- 2. Zoning changes should promote an orderly and compatible relationship among land uses.*

The existing zoning allows for reasonable use of the site while maintaining the character of the surrounding area. Staff believes that an increase in zoning would be incompatible with the character of the residential neighborhood located to the rear of the tract.

EXISTING CONDITIONS

Site Characteristics

The subject property consists of 0.27-acres and is currently developed with a single story restaurant occupied by Los Comales. This tract has frontage on East 7th Street which is an arterial and designated as a core transit corridor.

Impervious Cover

The maximum impervious cover allowed by the CS-1 zoning district is 95%.

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Town Lake Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

According to flood plain maps, there is no flood plain within the project area.

Trees will likely be impacted with a proposed development associated with this rezoning case. Please be aware that an approved rezoning status does not eliminate a proposed development's requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding other

vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Transportation

No additional right-of-way is needed at this time.

A traffic impact analysis was not required for this case because the traffic generated by the proposed zoning does not exceed the threshold of 2,000 vehicle trips per day [LDC, 25-6-113].

Water and Wastewater

The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing any water and wastewater utility improvements, offsite main extensions, utility relocations and or abandonments required by the land use. The water and wastewater utility plan must be reviewed and approved by the Austin Water Utility for compliance with City criteria. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

Site Plan Review

Any new development is subject to Subchapter E. Design Standards and Mixed Use – E. 7th Street is a Core Transit Corridor. Additional comments will be made when the site plan is submitted.

The site is subject to compatibility standards. Compatibility Standards are applicable to all property adjoining or across the street from a lot zoned or used as a SF-5 or more restrictive or within 540 feet from the lot zoned SF-5 or more restrictive. This lot has SF-3-NP lots located across the alleyway along the northern edge of the property.

Along the northern property line, the following standards apply:

- No structure may be built within 22.5 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 17 feet of the property line.
- A landscape area is required along the property line. In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.
- Additional design regulations will be enforced at the time a site plan is submitted.

Please be aware that a Cocktail Lounge is a Conditional Use in CS-1, and will require Commission approval of a proposed land use change. The following comments are related to a proposed land use change to a Cocktail Lounge:

Please be aware that compliance with the requirements of §25-2-808(D), which is required for a cocktail lounge: all parking must be shown on the site plan that is required for a conditional use

permit or compatibility standards waiver; and compliance with the parking area setback described in Section 25-5-146 (*Conditions Of Approval*) is required.

FYI – Section §25-5-146 of the Land Development Code states that the Planning 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.

As a condition of approval for a conditional use site plan, 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: (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.

Petition to Restore Los Comales to CS-1 Zoning

Petition summary and background

Los Comales has been a full service restaurant operating at 2136 East 7th Street since 1985 with a CS-1 Zoning designation. In 2002 the immediate neighborhood surrounding the restaurant applied for a neighborhood plan and it was accepted by the City of Austin. At that time included in the neighborhood plan was a downscaling of the zoning from CS-1 to CS. At that time it was not made known to the owner how such a change could impact his business in the future. Surviving several down turns in our local economy taught the owners the consequences. Reduced food sales and increasing liquor sales can now place this landmark restaurant out of compliance with the 50% sales rule of the CS zoning. CS-1 has no such consequence should his sales be unbalanced.

Action Petitioned for

We, the undersigned, are concerned citizens who urge our leaders to act now to restore the CS-1 Zoning to Los Comales

Resumen de la Petición y antecedentes






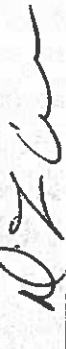



Los Comales ha sido un completo funcionamiento de los restaurantes de servicio en el 2136 East 7th Street desde 1985, con una CS-1 designación de zonificación. En 2002, el vecindario que rodea el restaurante aplicó para un plan de comunidad y que fue aceptado por la Ciudad de Austin. En ese momento incluido en el plan era una reducción de escala de la comunidad de la zonificación de la CS-1 a CS. En ese momento no fue conocido al dueño del restaurant de cómo ese cambio podría afectar su negocio en el futuro. Sobrevivir a abajo varias vueltas en nuestra economía local le enseno al dueño unas consecuencias. Reducción de las ventas de la comida y aumento de las ventas de licor ya puede colocar este restaurante histórico de cumplimiento de la regla del 50% en las ventas de la zonificación CS. CS-1 no tiene ninguna consecuencia si debería ser desequilibrada sus ventas.

Demanda de Acción de

Nosotros, los ciudadanos abajo firmantes, nos preocupa que instar a nuestros líderes a actuar ahora para restaurar el CS-1 de Zonificación de Los Comales

Petition to Restore Los Comales to CS-1 Zoning

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Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to restore the CS-1 Zoning to Los Comales

Printed Name	Signature	Address	Comment	Date
PATRICIA HERNANDEZ		2103 E 8th St.		1/26/10
Greg Enlow		2101 E. 9th St.		1/26/10
Bento Sabido		2015,		1/26/10
Ken Davis		2009 E 8th		1-26-10
Kim Gilbert		2014 E 8th		1-26/10
Donald Carr		2008 E 8th		1/26/10
Lupe Leyva		2010 E 8th St		1/26-10
ARABELL CORREIA		2012 E 8th St		1/26/10
June Nguyen		2106 E. 9th St.		1/26/10

[illegible]

PUBLIC HEARING INFORMATION

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During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

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Case Number: C14-2009-0156

Contact: Joi Harden, 512-974-2122

Public Hearing: Feb. 9, 2010, Planning Commission

March 11, 2010, City Council

Eugene C. Strickland Jr.

Your Name (please print)

2205 E. 9th St. Austin TX 78702

Your address(es) affected by this application

Eugene C. Strickland Jr.

Signature

2-8-10

Date

Daytime Telephone: _____

Comments: _____

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Joi Harden

P. O. Box 1088

Austin, TX 78767-8810

Blackshear Prospect Hill Resolution in Opposition to a Zoning Change for Los Comales Restaurant from CS to CS1

- **Whereas** The 2001 Central East Austin Neighborhood Plan seriously considered all the properties fronting onto East 7th Street, including this one and recommended it be zoned according to its use; and
- **Whereas** Number 7 of the Top Ten Planning Priorities of The Central East Austin Neighborhood Plan calls to “Implement zoning changes to portions of East 7th. Street and Webberville Road to address the over supply of intensive CS-1 and L1 zoning; and
- **Whereas** Numerous meetings and notices gave the current owner ample opportunity to object, yet no objection was voiced ; and
- **Whereas** The owner, even today, claims the business will continue as a restaurant, but wants zoning that permits a bar; and
- **Whereas** Blackshear has experienced constant problems for decades related to the existing bars in the area; and
- **Whereas** These problems are well-known to many of the residents of Central East Austin and that is why the Central East Austin Neighborhood Plan provided for CS-1 only on those properties where it existed at the time the plan was created and adopted; and
- **Whereas** The area immediately across the alley to the north is developed with a century old single-family neighborhood where homes are occupied by families, children, and the elderly; and
- **Whereas** Another bar is not in the best interests of the community. Therefore, be it

Resolved that the Blackshear-Prospect Hill Neighborhood Association Opposes any change in the zoning for Los Comales Restaurant at 2136 East 7th Street. This resolution was passed unanimously.

Rudolph C. Williams President

Blackshear Prospect Hill N.A.

RE: Opposition to Rezoning of Los Comales Restaurant

2136 E 7th St

On July 30th, 2009 the Blackshear Prospect Hill Austin Neighborhood Association voted unanimously in opposition to zoning changes in the Blackshear Neighborhood at 2136 E 7th St Los Comales Restaurant. A vote was held, there were no votes in support of the zoning change and 14 votes in opposition to the zoning change. Blackshear Prospect Hill N.A. respectfully requests that O.C.E.A.N respect the vote of the neighborhood and request that the City of Austin retain the existing zoning for this lot and Business that is in the adopted Neighborhood Plan.

Sincerely,

Rudolph Williams
President, Blackshear Prospect Hill Neighborhood Association



April 22, 2010

Dear Mayor and City Council:

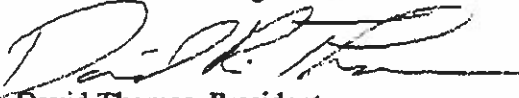
Re: Los Comales Zoning Change Request

Affirmation of Blackshear-Prospect Hill Neighborhood Association Opposition to Zoning Change for Los Comales Restaurant

The Organization of Central East Austin Neighborhoods (OCEAN) affirms the opposition of a zoning change from CS to CS-1 for Los Comales Restaurant by the Blackshear-Prospect Hill Neighborhood Association.

At our March 8, 2010 meeting, the OCEAN Board affirmed the position of Blackshear by a vote of 8 to 0, with one abstention. Arguments for this position are as follows:

- The 2001 Central East Austin Neighborhood Plan seriously considered all the properties fronting onto East 7th Street, including this one and recommended it be zoned according to its use. Numerous meetings and notices gave the current owner ample opportunity to object, yet no objection was voiced.
- The owner, even today, claims the business will continue as a restaurant, but wants zoning that permits a cocktail lounge. It makes absolutely no sense to establish zoning that, if the property were to be used as it could be by this or future owners, would be objectionable to the community at large.
- Blackshear has experienced constant problems for decades related to the existing cocktail lounges in the area. These problems are well-known to many of the residents of Central East Austin and that is why the Central East Austin Neighborhood Plan provided for CS-1 only on those properties where it existed at the time the plan was created and adopted.
- The area immediately across the alley to the north is developed with a century old single-family neighborhood where homes are occupied by families and the elderly. Another cocktail lounge is not in the best interests of the community.

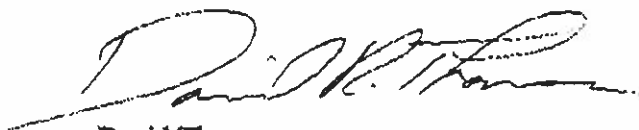


David Thomas, President
OCEAN

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Resolved that the Blackshear-Prospect Hill Neighborhood Association Opposes any change in the zoning for Los Comales Restaurant at 2136 East 7th Street.



David Thomas

President, Organization of Central East Austin Neighborhoods

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Case Number: C14-2009-0156

Contact: Joi Harden, 512-974-2122

Public Hearing: Feb. 9, 2010, Planning Commission
March 11, 2010, City Council

HENRY MALDONADO
Your Name (please print)

☐ I am in favor
☒ I object

2206 HIDALGO ST
Your address(es) affected by this application

Henry Maldonado
Signature

2/3/10
Date

Daytime Telephone: 512-291-9081

Comments: MY ONLY OBJECTION IS THAT THERE
IS A SCHOOL CROSSING THIS INTERSECTION.
SELLING ALCOHOL THAT CLOSE COULD BE VERY
DANGEROUS FOR THE YOUNG CHILDREN, THERE MIGHT
HAVE PROBLEMS, WITH NO ONE THERE TO PROTECT
THE KIDS. THIS SECTION HAS ALWAYS BEEN A
PROBLEM AREA.

If you use this form to comment, it may be returned to:
City of Austin
Planning & Development Review Department
Joi Harden
P.O. Box 1088
Austin, TX 78767-8810

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Contact: Joi Harden, 512-974-2122

Public Hearing: Feb. 9, 2010, Planning Commission

March 11, 2010, City Council

PATRICK W. DUNN

Your Name (please print)

2205 E. 7th ST.

Your address(es) affected by this application

[Signature]

Signature

Date

Daytime Telephone: 281-370-6087

2/2/10

Comments:

I DO NOT SUPPORT ADDITIONAL
ALCOHOL SALES IN THIS AREA.

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Joi Harden

P. O. Box 1088

Austin, TX 78767-8810

<input type="checkbox"/> I am in favor <input checked="" type="checkbox"/> I object
--

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Public Hearing: Feb. 9, 2010, Planning Commission

March 11, 2010, City Council

PEDRA MARTINEZ
Your Name (please print)

2108-E-8th St.

Your address(es) affected by this application

Pedro Martinez
Signature

477-4923
Daytime Telephone:

No Comments
Comments:

☐ I am in favor
☒ I object

2/1/2010
Date

If you use this form to comment, it may be returned to:

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Joi Harden
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PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. 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 its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. 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.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

www.ci.austin.tx.us/development

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 board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2009-0156

Contact: Joi Harden, 512-974-2122

Public Hearing: Feb. 9, 2010, Planning Commission
March 11, 2010, City Council

Luis Qivoga and Florencia Gutierrez

Your Name (please print)

2116 East 8th, Austin, TX 78702

Your address(es) affected by this application

F. H. Y. -

Signature

Date

Daytime Telephone: 512-5357238

Comments:

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Joi Harden

P. O. Box 1088

Austin, TX 78767-8810

☐ I am in favor
☒ I object