

**PLANNING AND ZONING COMMISSION
OCTOBER 11, 2017
CITY HALL'S COUNCIL CHAMBERS @ 5:00 P.M.**

P&Z PRESENT

Ned Sheats
John Guerra
Jaime Gutierrez
Carlos Lopez

P&Z ABSENT

Marisela Marin
Diana Izaguirre
Julio Cerda

STAFF PRESENT

Jaime Acevedo
Virgil Gonzalez
Kristin J. Warshak

GUESTS PRESENT

Alejandro Espinosa
Francisco Martinez, Jr.
Carmen Martinez
Lupe Gonzalez
Laura Gonzalez
Laura Brussolo
Joe O. Espinosa
Agueda P. Aguiñaga

CALL TO ORDER

Chairman Ned Sheats called the meeting to order at 5:00 p.m.

CITIZENS PARTICIPATION

Chairman Sheats asked if there was any citizen's participation.

There was none.

APPROVAL OF MINUTES FOR SEPTEMBER 27, 2017

Chairman Sheats asked if there were any corrections to the minutes for September 27, 2017. Mr. Carlos Lopez moved to approve the minutes as presented. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:01 p.m.

Ended: 5:05 p.m.

Item #1.1

Conditional Use Permit:

**Drive-Thru Service Window –
Tacomonchis El Bebe
1500 W. Griffin Parkway
Lot 1, Block B, Cinco de Mayo Ranch
C-3
Ayde Moreno Peña**

REVIEW DATA

The site is located on the NW corner of Wednesday and Griffin Parkway. There is a 60' X 43.8' (2,628 sq. ft.) building which includes a drive-thru service window. The location of the service window provides enough stacking for at least three vehicles. Access to the site is provided off of both Griffin Parkway (26' driveway) and Wednesday (24' driveway). Over the past 10 years, various different CUP's have been awarded at this location for the use

of the drive-thru window. However, since the CUP for a drive-thru window is not transferable to others and a new operator is evident, the Drive-thru CUP needs to be re-considered.

- **Days / Hours of operation:** Everyday from 6 a.m. to 3 p.m.
- **Staff:** 3 employees
- **Parking:** There are a total of 52 seating spaces which require 17 parking spaces (52 / 3 = 17.3). The site currently has 21 parking spaces, thus meeting code.
- Must comply with the City's sign, landscaping, & fence buffer codes.
- Must comply with all Building, Fire, & Health codes
- A new business license is required prior to occupancy

RECOMMENDATION: Approval subject to:

1. 1 yr. re-evaluation in order to assess this new operation;
2. Comply with all Building, Fire, & Health codes;
3. Comply with the City's sign, landscaping, and fence buffer codes;
4. Acquire a new business license prior to occupancy. (NOTE: All items must be met prior to receiving the business license.)

Chairman Sheats asked if there were any comments in favor or against the request from the Commission to Staff.

There were no comments.

There being no discussion, Chairman Sheats entertained a motion. Mr. Jaime Gutierrez moved to approve the rezoning as presented. Dr. John Guerra seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:05 p.m.

Ended: 5:07 p.m.

Item #1.2

Conditional Use Permit:

**Place a Portable Building—Tutoring Services
(Citizenship & GED Preparation)**

511 W. 11th Street

The East fraction of Lots 1 & 2, Block 178,

Mission Original Townsite Subdivision

C-4

Agueda Pena Aguiñaga

Mr. Acevedo stated that no action was needed for this item.

Started: 5:07 p.m.

Ended: 5:14 p.m.

Item #1.3

Conditional Use Permit:

**Sale and On-Site Consumption of Alcoholic
Beverages – Buffalo Wings and Rings**

**907 S. Shary Road
Lot 2A, Colorado Subdivision
C-3
MS & PS, LLC c/o Alejandro Espinosa**

REVIEW DATA

SITE: The 5,171 sq. ft. restaurant site is located on the NE corner of Shary Rd. and Colorado St. This CUP was most recently approved by P&Z for a period of eight months on 02-22-17. Access to the restaurant is from both Shary and Colorado St.

Prior concerns have been on the number of incidents with Mission PD. Staff has requested from PD a report of the incidents in relation to the sale of alcohol which we should have by the meeting date.

- **Hours of Operation:** Sunday – Thursday from 11a.m. to 12a.m. and Friday & Saturday from 11a.m. to 2a.m. Alcoholic beverages are only served during allowable State selling hours.
- **Parking & Landscaping:** The 5,171 sq.ft. restaurant requires 69 parking spaces. There are 94 existing spaces, exceeding code by 25. They are also in compliance with the landscaping code.
- **Sale of Alcohol:** This restaurant does have a bar component which requires that there be no churches, schools, or residences within 300’ of the restaurant. There are no such uses within 300’. Staff has also requested a report from Mission P.D. in regards to any incidents which may have occurred in relation to the sale and on-site consumption of alcohol.

RECOMMENDATION:

Staff recommends approval of this CUP for a period of two years at which time the applicant will have to renew their TABC license and Conditional Use Permit.

Chairman Sheats asked if there were any questions from the commissioners.

There were none.

Chairman Sheats asked if there were any incidents on the police report involving the “over serving” of alcohol to the applicant’s patrons.

Mr. Acevedo explained the one incident was not clear to it being alcohol related.

Mr. Alejandro Espinosa, applicant, was available to answer any questions the board might have.

Dr. John Guerra asked the applicant if he still employed an officer on site.

Mr. Espinosa stated that he does.

Dr. Guerra commended Mr. Espinosa on his keeping the establishment in order as far as parking and incidents.

There being no discussion, Chairman Sheats entertained a motion. Dr. John Guerra moved to approve the rezoning as presented by Staff. Mr. Carlos Lopez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:14 p.m.

Ended: 6:15 p.m.

Item #1.4

Conditional Use Permit:

**Sale & On-Site Consumption of Alcoholic Beverages—The Loretto at Mission
1233 E. Griffin Parkway
Lot 1 & the S. 25' of Lot 2, Block 1,
Bel-Aire Heights Subdivision
C-2
LAG Associates, LLC**

REVIEW DATA

SITE: The subject site is located on the NW corner of Orange Dr. and Griffin Parkway. A CUP for a restaurant in a property zoned C-2 was approved by the PNZ on September 14, 2016 for a period of 13 months to be in line with their TABC license.

- **Hours of Operation:** Tuesday – Saturday from 7a.m. to 9p.m., Sunday 9a.m. to 3p.m., Closed Mondays.
- **Staff:** 8
- **Parking:** The restaurant, which also includes a patio, requires 37 parking spaces for both patrons and staff. The applicant has 30 on-site parking spaces for patrons and the remaining 7 parking spaces are on the adjacent property and are used by staff.
- **Landscaping:** Landscaping meets code.

In viewing the location map, there are single family residences located within three-hundred feet (300') to the south of the business. The City's Alcohol Beverage and Zoning Code states the following:

The property line of the lot of any of the above-mentioned businesses, especially those businesses which have late hours must be at least 300 feet from the nearest residence, church, school or publicly owned property, or must provide sufficient buffering and sound insulation of the building such that the business is visible and cannot be heard from such structure or areas, and must be designed to prevent disruption of the character of adjacent residential areas.

The planning and zoning commission may, under extenuating or special circumstances unique to the site or event, recommend waiver of the 300 foot requirement on a temporary or permanent basis to the city council who shall have the ultimate decision on the matter.

Fifteen (15) notices were mailed to property owners within a 200' radius of the site. As of the date of this write-up, the Planning Department had not received any comments in favor or against from the mailing; however, there is public opposition this afternoon.

RECOMMENDATION: Staff recommends approval of the CUP subject to:

1. Continued compliance with all Health and Fire Department requirements.
2. Continued compliance with Texas Alcoholics Beverage Commission (TABC) requirements.
3. Waiver of 300' separation requirement to City Council.
4. CUP be granted for a period of now until December 5, 2018, when the applicant needs to renew their TABC license.

Chairman Sheats asked if there were any questions from the commissioners.

There being none Chairman Sheats stated that he did not have any questions since they applicant has been at this location for about two to three years now without incident.

Chairman Sheats invited the applicant to approach the board for any questions.

Mrs. Laura Gonzalez appeared before the board.

Chairman Sheats asked if the applicant was okay with the staff's recommendations for the Conditional Use Permit including hours and everything.

Mrs. Gonzalez asked if the hours could be shown again for clarification. She stated that the location is closed on Monday's (she asked for assistance from Mr. Acevedo).

Mr. Acevedo stated the restaurant is open Tuesday – Saturday from 7:00 o'clock a.m. to 9:00 o'clock p.m., and Sunday from 9:00 o'clock a.m. to 3:00 o'clock p.m.

Mrs. Gonzalez indicated those hours were incorrect. She then proceeded to state the correct hours as such:

Monday's the restaurant is closed.
Tuesday's open 8-3.
Wednesday open 8-10.
Thursday – Sunday open from 9-3.

Chairman Sheats said he understood that on most days from 9-3 with the exception of Wednesday.

Mrs. Gonzalez reiterated that the restaurant is closed on Monday's and open on Wednesday's until 10:00 o'clock p.m.

Chairman Sheats asked if there had been any incidents reported to Mission Police Department with respect to the site location.

Mr. Acevedo stated a call was made to P.D., and there were no incidents reported for this site location.

Chairman Sheats thanked the applicant, and asked if there were any persons who would like to speak against the Conditional Use Permit.

Mr. Francisco Martinez approached the commission stating that he lives next door to the business, and this will be his third time before the commission. He has lived at this location for over forty years. Mr. Martinez began to explain that when Mrs. Gonzalez first wanted to open the business, he and Mrs. Gonzalez agreed to certain conditions. He stated from day one the problems have been traffic, parking, and people being disrespectful to the neighborhood. Last year around the same time, Mr. Martinez requested that Mrs. Gonzalez place a wall between her property and his to which she agreed. It has been over a year and nothing has been done except for the placement of a wooden fence.

Chairman Sheats indicated that he recalled a wall being one of the conditions for the Conditional Use Permit.

Mr. Martinez went on to say that he and Mrs. Gonzalez spoke about eliminating two parking spaces in the alley for the purpose of people turning around rather than backing up onto 495. To date, this still has not been done. Mr. Martinez indicated he brought some pictures showing cars parked in front and back of his property, or even turn around on his property. Cars drive in the residential neighborhood looking for parking spaces and turn around. His concern is that if the sale of alcohol is to continue there will be an increase of patron traffic and delivery service trucks. The delivery trucks go thru the alley for deliveries, and the alley is not big enough to handle this type of traffic. In fact, the City was there trying to fix it. Mr. Martinez stated that he did not know of the City's intention for the alley as to it being widened. All he knows is there are big pot holes every time it rains now.

Mr. Martinez continued to complain about the wall that is between his property and the applicant's property due to the music on the patio. The wall does not hold the noise down.

Chairman Sheats confirmed Mr. Martinez' property is just north of the applicant's property line.

Mr. Martinez stated that he did not think there was 300' from the applicant to his house for the selling of beer.

Chairman Sheats replied he was surprised to hear what he is hearing because he does recall the considerations stated at the last hearing. Chairman Sheats wanted to know why

somebody would need to “back into” 495. If there is any parking on the tail-end of the west side there is plenty of room to pull straight back out and head front ways on 495.

Mr. Martinez replied that some people turn the wrong way because it is too narrow to turn around in his twenty foot drive way so they just turn there and go.

Chairman Sheats agreed to the concerns as stated. In addition, he stated it was his understanding the owners of the restaurant have obtained additional parking from the lawyer office to the east of the site location. The owners have made attempts to provide additional parking. If the commission cannot solve the problem with the neighbors next door we are going to have to eliminate the parking on that alley. We have promises made that were not kept. We are trying to make this work for all parties.

Mr. Jaime Acevedo asked Mr. Martinez if there was thru traffic in the alley.

Mr. Martinez replied, “You can’t go out the other side of the alley. At the end of my property the pavement ends and it is ditch all the way to the end.”

Dr. John Guerra asked Mr. Acevedo if the City was supposed to look at that alley to see if the alley would go all the way around Rosemarie so that it would go all the way around. What happened to that?

Mr. Acevedo replied, “even if that is the case, and even if the City were to pave it, the alley should not be used as circulation for people going into the restaurant. At night you do not want lights shining into the back yard.

Mr. Martinez added that the City did put up signage, but the people do not respect the signs.

Mr. Acevedo reiterated signage was placed.

Chairman Sheats said, “Well what can we do? We are not the enforcers here. All we are ... we don’t have the badges that can go out there and stand there and say you can’t go thru here.”

Mr. Martinez stated that he didn’t expect you to go there and do something. He explained that he wanted the commission to know that there is an increase in the business is an increase of cars and people, and already they don’t have enough space to supply parking.

Chairman Sheats stated we are not increased the number of tables, chairs, and occupancy.

Mr. Acevedo clarified it is just an increase to the hours of operation. The capacity has stayed the same.

Chairman Sheats asked where is the no traffic zone.

Mr. Martinez stated the signage is on the end of his property in both the front and the back. He went on to add that it is dark back there and on several occasions some people come in who have been drinking will park there and throw their beer bottles in my property. Now, starting from the start she promised things and they haven't complied. My wife and my son stood right there on my property with one of those 99¢ chains. A guys comes in and breaks the chain and drives right in. My son asked for replacement, and that was three months ago. There is a dead tree there that is not their property, and I said to my son, "that thing is going to fall." I can't be running their business, I have my own. I have my own home. If they want to have a business there that is fine with me as long as they stay on that side of the line. People have even gotten violent they want to fight. We have no reason for those things.

Chairman Sheats stated that when we first brought this up with the expectation that what was asked to be done at that time be done. What I am hearing now is: 1) the City has done all they can, 2) you are still experiencing problems. There is a third component here I want to find out about.

Mr. Martinez said, "We are all here right now. We can all talk about this. I want to know why that fence is not up? We can ask her. She is sitting right there."

Chairman Sheats said he will take care of it, sir. We don't want to have a confrontation.

Mrs. Carmen Martinez approached the board requesting to speak. Mrs. Martinez explained that along with her husband and son they live next door to the applicant. Still at 11:00 o'clock the music is going "boom-boom" because they have live music in the garden. She asked the board to "put yourself in my place." Secondly, if it is bad already with parking, and people parking in my driveway. They come and make a u-turn in my driveway they don't think anybody is home so they park. When they park they say, "oh, we are going to park here because nobody is here." This does not belong to the business next door. This is my home. The sad thing about it is if the drinking gets worse, the bottles, and the drunks coming out of that place because I don't know how much they have been drinking. They cannot be controlled by you, the police, or even them because they are not watching what is going on outside. What is going to happen when a drunk decides to comes over and he does something because I told him to get off my property, and he is drunk?

Chairman Sheats replied, "I do not disagree with you at all. I would like to get some more information."

Mr. Joe Espinosa approached the board explaining he lives right across the street from the side door of the business. Mr. Espinosa went on to state that, "you assured me that you had taken care of the traffic and the parking. To this day, it is not true. We have had more of our share of incidents. Almost every-day, twenty-four seven, at all hours, day and night."

Chairman Sheats asked Mr. Espinosa to stop right just because he does not want to get a whole bunch of questions backed up. They are only open until 3:00 o'clock in the afternoon, you say all day and all night?

Mr. Espinosa stated that is not the case. They must be catering or something because there is business happening all day, and all night.

Chairman Sheats said, "okay that is what I want to know."

Mr. Espinosa continued stating from the 5 o'clock setting off alarms by the trucks or deliveries or whatever at all hours. My window is directly besides the street. I can hear door slamming, I can hear cackling, I can hear conversations, I can hear of course music, and not to mention dealing with people. I had the Police Chief standing right beside me when a lady parked right in the middle of the street. I am a stroke victim. I asked her to please move so I could get around her, and she said that she wasn't moving and the Chief was right beside me.

Chairman Sheats asked what her purpose was for being there?

Mr. Espinosa replied, "I have no idea but we have confrontations continuously. I feel personally like you dumped the problem on me. I am not going to try and control everybody but it has been a constant battle. These people the Martinez' and the Espinosas' are affected by most of it. It is not the rest of the neighborhood doesn't agree, they don't have the burden we do. She talked about bottles and cigarette butts and stuff. I don't smoke but I have tons of butts and bottles in my yard. I don't mind the paper cups in my yard, but the beer bottles and stuff do bother me."

Chairman Sheats stated he appreciated the information and thanked Mr. Espinosa for his time. He then asked if the commissioners had any comments from the public input. Mr. Sheats asked for the applicant to come forth again. Chairman Sheats then replied, "You are looking at a very disappointed person, very disappointed; very to the point that you might not get the CUP."

Mrs. Gonzalez replied, "Mr. Sheats I did put up a fence on the other side sir it is another wood fence. That is what was asked of me to put up a fence and I did. Another thing is we did block one of the parking spaces which I did not have to do but I did it for Mr. Martinez. It is blocked off in red and it says no parking."

Chairman Sheats replied, "well the only thing I can say, and I am sure my people up here will tell me that I am wrong, it is not enough. Period."

Mrs. Gonzalez stated she did what was asked of her.

Chairman Sheats stated, "I am not going to start an argument that it is when you have neighbors which are very, very unhappy, and this commission here I believe Mr. Lopez was a part of it, I was a part of it, I am not sure if Dr. Guerra was here at the time. Literally

fought for your restaurant. We had promises from you that in fact you could take care of this and it wasn't improper for us to put a C-3 into a C-2 zone. My feeling is we have been let down. (Inaudible reaction from Mrs. Gonzalez) Excuse me, I am going to finish. We now have unhappy citizens that we shouldn't have. A fence is not a wall. When somebody says, 'are going to put a wall?' And you say, 'yes I am going to put a wall...' A wall is a concrete block wall. From what I am hearing about sound and everything it should have been 8 feet. Now, at the time you also informed us you weren't going to have music and certainly you were not going not have music on the patio. We don't allow music on the patios' in very many places in this City. Do you know how many Jaime we allow?"

Mr. Acevedo stated that you can have music as long as it complies with the City's noise ordinance which is 10:00 o'clock p.m.

Mrs. Gonzalez stated, "We close at 10:00 and I have a guitarist, I have one person that plays the guitar."

Chairman Sheats replied, "Evidently, that is a very loud guitarist."

Mrs. Gonzalez went on to state, "He does not always play outside. Sometimes we don't have live music at all. I wanted to talk about the bottles. Nobody can leave the restaurant with the bottle that is against the TABC code; and so nobody has left my building with bottles because they would take my license away."

"Well, I am not going to try and administer or define the TABC code, what I can tell you is what we requested that you have. If this were the same situation and this was a zoning in a C-3, and we already laid the 200 feet, and which unfortunately there are homes in all directions of the 200 feet there might be some difference. We made several exceptions. There are house literally within 15 feet ... 12 feet. We have an alley problem which is not apparently wide enough. I don't know if I have can find any suggestions to make or solve the problem. I think as far as the residence to the north an 8 foot wall from front to the back of the property would probably alleviate a lot. I think as far as their other compliant of people parking in their drive way the only way to alleviated is for you to pay for a gate system for them; an electric gate to open and close their drive way. As far as the gentleman to the East his complaints are primarily music, cigarette butts, and bottles. If I saw that, I would go out and pick it up" replied Chairman Sheats.

Mr. Espinosa stood and responded, "Mr. Sheats ..."

Chairman Sheats interrupted by saying, "No sir. Please sit down. We are taking care of this with the applicant. If you have something to say I will get back to you." He asked the applicant, "Can you do all this?"

Mrs. Gonzalez replied, "Yes, yes I can."

Chairman Sheats added, "It is a great restaurant. To tell you the truth until I see this I am not going to vote for this. We have had problems and have tried to put them to bed and

everything. This is not going to affect your regular business permit so please fix it. Thank you very much.”

“Yes, sir. Thank you.” Responded Mrs. Gonzalez.

Chairman Sheats indicated to Mr. Espinosa that he had the floor.

Mr. Espinosa stated, “Your signs have done nothing. It is just a reserved parking for the restaurant. They are 24/7 and everywhere. They run to the end of the subdivision at 50 mph hit the gates that belong to the Rodriguez’ or clan or what have you and then start picking driveways to turn around in. In the beginning we couldn’t even get our trash picked up or mail delivered. I mean we had all kinds of problems, major problems. That is all I am saying.”

“Let me ask you a question, where do you get your trash picked up in the alley or in the street?” Asked the Chairman.

Mr. Espinosa replied, “No, right there in the street. So the truck has to come by. Those ‘no parking’ signs that you have on my property and their property don’t work. Basically, they are parking for the owners of the restaurant. That is their private parking. So then you have a truck trying to do what it needs to do.”

Chairman Sheats stated, “That is not the intent. They can’t control that part of it. We put the signs that should be effective. We should have some police presence out there. Now, we don’t have numbers of people in the police department that can sit out there. What does the sign say? Not thru? No thru traffic zone. Okay. How about Jaime, at the corner or slightly in from the corner to 495 we do the either ‘no parking this street’ or ‘resident parking only.’ Do we have signs like that? Most cities do.”

Mr. Acevedo replied, “That is something that needs to be taken up to the traffic committee. The traffic committee is composed of ...”

Chairman Sheats stated, “I know who it is composed of. Is that option available?”

“That option is available,” replied Mr. Acevedo.

Chairman Sheats made a recommendation to send this to the traffic committee and tell them we need a solution. Something that is enforceable, not something that is going to be looked, and say “oh yeah, we will put something up,” then forgot about it. He then asked if there were any other questions or comments from the commission.

Dr. John Guerra asked to the owners what type of alcohol is sold.

Mrs. Gonzalez stated that they only sell beer and wine. That is what our license provides for.

Chairman Sheats asked if this was a license for hard liquor.

Mr. Acevedo clarified it is beer and wine. The applicant does not sell any hard liquor.

The Chairman asked for clarification of the conditional use permit being a renewal.

Mr. Acevedo stated it was a renewal only.

Mrs. Martinez asked Chairman Sheats if she could have a word.

Chairman Sheats invited her to the floor.

Mrs. Martinez reported to the commission that there is no one watching the patrons on the patio when they throw beer cans and bottles over the fence into her yard. She stated the owners are inside the restaurant not watching what is happening.

Chairman Sheats agreed with Mrs. Martinez stating it was never the intent of the commission to allow this to happen.

Mrs. Martinez argued that with this permit there will be more abuse and negligence. She went on to say that the applicant is a business woman and should be checking on her customers and what they are doing. One time there was a baby shower and there were three cars parked on her driving right behind her garage. Mrs. Martinez asked what they were doing parking there; and she received a response of, "there is no parking and she is pregnant." She stated what if she wanted to get out of her garage? She would not have been able to do so. Mrs. Martinez went on to say that before the restaurant moved in her home was happy and it was a quiet neighborhood with no complaints. There have been times when Mr. or Mrs. Martinez calls the applicant to ask them to cut off the music because it is after 11:00 o'clock p.m.

Chairman Sheats reiterated that he understood the issue and the goal is to work these issues out.

Mr. Robbie (sic) Martinez then stood and asked, "I have a question. When was this CP (sic) issued? Because aren't you supposed to let everyone around you get a letter letting everyone know that they are being awarded it?"

Mr. Acevedo replied that the conditional use permit was awarded in February.

Mr. Martinez asked, "Where was the notice of it being awarded? When did anybody get a notice?"

Mr. Acevedo stated, "In February. Your parents were at the meeting."

Mrs. Gonzalez said, "Your parents were there, sir."

Mr. Martinez stated, "Well, I will tell you with your son, we have had many conversations..."

Chairman Sheats asked for everyone to stop. He asked Mr. Acevedo when the CUP was issued.

Mr. Acevedo replied it was September 14, 2016.

Mr. Sheats indicated nothing is going to change as far as their business operation that would affect sound, parking, number of people, and the same alcohol. He asked if there were any changes.

Mr. Acevedo stated there could be more traffic because of the extended hours.

Chairman Sheats asked for clarification because they are only open until 3:00 o'clock.

Mr. Robbie Martinez interrupted stating, "They are not open until 3:00."

Mr. Acevedo clarified before they were only opened until 3:00, now there is one day they are open until 10:00.

Mr. Robbie Martinez asked, "What day is that?"

Mr. Acevedo replied, "Wednesday."

Mr. Robbie Martinez stated, "Wednesday? And what about Saturday Night Jazz Night when they are open till 11:00 or 11:30?"

Mrs. Martinez interjected, "And Friday?"

Chairman Sheats said, "Excuse me sir, be quiet. Now, Jaime where in the write up does it say they are open Friday and Saturday evenings?"

Mr. Acevedo replied, "As she corrected us the hours have changed."

"I heard only Wednesday. I asked three times," replied Chairman Sheats.

Mr. Acevedo said, "That is correct. That is correct. That is what she mentioned."

Chairman Sheats replied, "And now we have everyone running around saying this."

Mr. Acevedo stated, "That is a claim this person is making. The applicant is saying she closed early on Saturday."

Mrs. Martinez interjected, "You have to live there. She can tell you the sky is blue when I know it is black. The fact is we are witnesses. The problem is they are invading our lives ..."

Mr. Robbie Martinez began to speak over Mrs. Martinez.

Chairman Sheats took control of the floor stating, "So the only thing we can do as far as I am concerned is to come up with some kind of mediation for what is required for this CUP to be renewed at this time. So question, are renewing it now because it has expired?"

Mr. Acevedo stated that the CUP is renewable on December 5, 2018. He added what they have heard tonight is not necessarily related to the sale of alcohol. There have been a lot of discussion about traffic issues, noise issues, and parking issues. This is just a renewal for the sale of alcohol for something that has already been awarded.

Chairman Sheats stated the only changes that have been specified here are for the extension of a few hours on Wednesday. The Chairman stated that he has a few more questions to ask, and if so, indicated that he would call upon that person formally, as to not talk across the aisle at each other.

Mr. Acevedo reminded the Chairman that the conversations be limited to a maximum of three minutes.

Chairman Sheats once again addressed the commission asking if they had any questions for the applicant, or anyone in opposition to the item.

Dr. John Guerra asked, "My last question was to Mrs. Martinez and to Mr. Espinosa, what would you like to be done exactly? Shut down the business?"

Chairman Sheats asked Mr. Espinosa to sit back down since the question was addressed to Mrs. Martinez.

Mr. Espinosa explained that Dr. Guerra addressed him.

Chairman Sheats asked if Mrs. Martinez had an answer.

Mr. Martinez stated that he did not want to ruin anybody's life he just wants the business to be in compliance.

Mr. Robbie Martinez interjected, "We want them to be in compliance."

Mr. Martinez wants her to keep what she promised. She promised the wall a year ago.

The Chairman suggested that a gate be put on his property which he thought was a good idea but not at his expense. Mr. Martinez suggested the City widen the alley.

Chairman Sheats invited Mr. Espinosa to speak. Mr. Espinosa declined. Chairman Sheats asked when the conditional use permit is due to expire.

Mr. Acevedo responded that the conditional use permit was only good from September 26, 2016 for thirteen months. So action would need to be taken in tonight's meeting.

Chairman Sheats asked why the conditional use permit was originally granted for thirteen months.

Mr. Acevedo pointed out the TABC dates do not align with the conditional use permit.

Chairman Sheats asked Mr. Acevedo if the TABC renewal is due December 2018 then this item should be heard in December 2017.

Mr. Acevedo explained that would put the conditional use permit over two years.

Chairman Sheats asked what the City would say to a 90 day CUP or a six month CUP? I am going to suggest to the board to issue a 90 day CUP, and any further CUP for sale of alcohol will be in contention from the erection of an 8 foot wall. As well as, there being in place an electric fence on the property to the north across their driveway.

Mr. Acevedo replied he did not think that was a good idea in case a patron blocked the electric fence on the property.

"Then they can be towed," replied Chairman Sheats. The options are we can table the item and the applicant runs out of time for the CUP or give them the CUP until December 2018 with additional signage.

Mr. Acevedo we can go with the 90 days for the conditional use permit and assess the situation after that to see if there are continued issues.

Mr. Jaime Gutierrez suggested in order not to impose so many conditions upon the applicant signs be place and enforce the towing.

Chairman Sheats asked the applicant if anywhere posted inside the restaurant is there signage asking people not to park north of the building.

Mrs. Gonzalez stated she did not signage posted.

Chairman Sheats requested: 1) there be signage posted external and internal signage; 2) an 8 foot concrete wall on the north side of the property; and 3) enforcement from the City.

Mr. Martinez asked about his gate.

Mr. Robbie Martinez interjected saying that Chief Dominguez knows they have been attacked many times, and we have already gone through this already. We need people to stop parking there.

Chairman Sheats asked for a formal motion.

Dr. John Guerra added even if the conditional use permit were granted, it still will not stop the flow of traffic. So now, there are other issues versus just giving a license for liquor. We want to do what can be done for both sides. This will be a test to see if this will work. I will go ahead and make a motion.

Mr. Robbie Martinez interjected that in the mornings certain delivery trucks block the alley and it is necessary for him to get out of the allow to attend to personal commitments. He has to wait for the delivery vehicles to pull out of the alley and hold up traffic on 495 in order for Mr. Martinez to leave the area. He cannot wait for delivery trucks to move.

Dr. John Guerra asked the applicant to deal with the delivery people and have them deliver to the front of the property and not the back.

Mrs. Gonzalez stated that they do that.

Dr. Guerra said that if they did, then there would not be any complaints about it.

Mrs. Gonzalez reiterated the delivery trucks do not park in the alley.

There being no further discussion, Vice-Chairman Guerra moved to approve a motion for a 90 day CUP for alcoholic beverages; an 8 foot concrete wall be placed on the northern side of the applicant's property and the neighbors; signage be placed to be determined by the department of traffic. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 6:15 p.m.

Ended: 6:32 p.m.

Item #1.5

**Tabled Conditional Use Permit: Home Occupation – Beauty & Body Spa
2707 Sonora Avenue
Lot 49, Redstone Estates Subdivision
R-1
Laura Brussolo**

Chairman Sheats moved for a motion to remove this item from being tabled. Vice Chairman Guerra moved for the motion. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion passed unanimously.

Mr. Jaime Acevedo went over the write-up stating that the property is located near the Sonora Avenue and Grovewood Avenue intersection along the north side of Sonora

Avenue. The applicant wishes to obtain a Home Occupation CUP for a Beauty & Body Spa Salon from home. A section of the home will be used for the proposed Beauty & Body Spa. The home has a two car driveway off of Sonora Avenue leading to a two car garage for a total of 4 parking spaces. Since all of the business will be by appointment only, no walk-ins, the garage and additional parking on driveway is sufficient for the proposed operation.

- **Hours of operation:** Monday – Sunday from 9:00 a.m. to 9:00 p.m. by appointment only.
- **Staff:** Herself.
- Business license required prior to opening home occupation.
- Must continue to comply with Sec.1.56-1, Zoning Code (home occupations regs.) inclusive of sign requirements.

REVIEW COMMENTS: While the PNZ has issued CUP's in the past for Beauty Salons for hair and nails, a Beauty & Body Spa has never been considered in the past. In preparing the agenda we learned that what the applicant is proposing is heavily regulated by the Texas Department of Licensing and Regulation. Since the applicant was out of town at the time of this writing, Staff could not verify if the applicant has all the proper licenses for her proposed home occupation.

RECOMMENDATION: Staff is recommending denial. If the PNZ is inclined to approve the request, Staff recommends that approval be subject to:

1. A 1 year re-evaluation in order to monitor proposed operation;
2. Must obtain a business license prior to opening the beauty and spa salon;
3. Must have and maintain Texas Department of Licensing & Regulation licenses;
4. Limit the hours of operation from 9:00 a.m. to 6:00 p.m.; and
5. Must continue to comply with the Home Occupation portion of the Zoning Code.

Mr. Acevedo stated that he and Kristin Warshak had an opportunity to do an on-site review of the applicant's proposed site location. We realized of the complexities of the machines that she has and the regulations of the State of Texas that most the machines use infrared or lasers which need to be administered in a clinical setting. Being that this is in a residential setting we are not going to be able to monitor this type of use. The applicant is intending to become licensed in the future to allow her to utilize these machines for body contouring. Due to the fact this is a residential setting; Staff is inclined to deny this request. If the board approves this request she only be allowed to do what she is licensed to do.

Chairman Sheats asked if there were any comments in favor or against the request.

There was no public input or comments.

Dr. Guerra asked if we had to send out a new notice.

Mr. Acevedo stated that a new notice was mailed out. There was only one opposition to the prior meeting.

Chairman Sheats stated the pictures indicate most of the machines are electrical in nature and acknowledged that most of those type of machines should be used in a clinical setting. The City would like to see this type of applicant be in a commercial setting and places in our community.

Mrs. Laura Brussolo was present to answer any questions the board might have. She currently works at a spa in Edinburg. The reason she wants to have her business in her home is to avoid paying rent. She has plenty of room and parking for her appointments. She doesn't see it as people in her house, they are clients.

Chairman Sheats said the board cannot compensate for the fact that paying rent is an issue. The board needs to lookout for what is good for the community.

Mrs. Brussolo doesn't see the reason why she cannot work from her house rather than being in a commercial zone. Whatever the board decides, she will accept their decision.

Dr. Guerra asked if there was anything like this item in the City?

Mr. Acevedo replied that the only comparable would be someone cutting hair in their home; but nothing like this with the complexity of the machines involved. It is up to the board's discretion for the conditional use permit.

There being no further discussion, Chairman Sheats entertained a motion. Dr. John Guerra moved to deny the conditional use permit as recommended by staff. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion passed unanimously.

ADJOURNMENT

There being no further items for discussion, Mr. Jaime Gutierrez moved to adjourn the meeting. Dr. John Guerra seconded the motion. Upon a vote, the motion to adjourn passed unanimously at 6:33 p.m.

Ned Sheats, Chairman
Planning and Zoning Commission