

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

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

PROJECT NAME: 76 Rainey CUP

ADDRESS: 76 Rainey St.

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

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

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

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

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

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

CONDITIONAL USE PERMIT REVIEW AND EVALUATION CRITERIA

The following evaluation is included to provide staff evaluation on each point of the conditional use permit criteria. Section 25-5-145 of the Land Development Code states: “The Commission shall determine whether the proposed development or use of a conditional use site plan complies with the requirements of this section.”

A conditional use site plan must:

1. **Comply with the requirements of this title;** Staff response: This application complies with the requirements of this title.

2. **Comply with the objectives and purposes of the zoning district;** Staff response: This application complies with the objectives and purposes of the zoning district. The CBD zoning district allows cocktail lounge use. The Waterfront Overlay Rainey sub district triggers the conditional use for the cocktail lounge. Several cocktail lounge uses are already located within this sub district
3. **Have building height, bulk, scale, setback, open space, landscaping, drainage, access, traffic circulation, and use that are compatible with the use of an abutting site;** Staff response: Yes, there are no SF-5 or more restrictive zoning districts or permitted land uses abutting the site.
4. **Provide adequate and convenient off-street parking and loading facilities;** Staff response: Proposed use complies with code.
5. **Reasonably protect persons and property from erosion, flood, fire, noises, glare, and similar adverse effects;** Staff response: The proposed project does not contribute to any of the listed adverse effects.

A Conditional Use Site Plan May Not:

1. **More adversely affect an adjoining site than would a permitted use;** Staff response: The proposed site plan does not appear to more adversely affect an adjoining site than would a permitted use.
2. **Adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;** Staff response: The cocktail lounge land use will be located on an already developed site and is not anticipated to affect pedestrian or vehicular circulation.
3. **Adversely affects an adjacent property or traffic control through the location, lighting, or type of signs;** Staff response: The site will comply with all applicable sign regulations in the Land Development Code.

COMMISSION ACTION:

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

To make a determination required for approval under [Section 25-5-145](#) (Evaluation of Conditional Use Site Plan), the Land Use Commission may require that a conditional use site plan comply with a condition of approval that includes a requirement for:

- 1) **A special yard, open space, buffer, fence, wall, or screen;**
- 2) **Landscaping or erosion;**
- 3) **A street improvement or dedication, vehicular ingress and egress, or traffic circulation;**
- 4) **Signs;**
- 5) **Characteristics of operation, including hours;**
- 6) **A development schedule; or**
- 7) **Other measures that the Land Use Commission determines are required for compatibility with surrounding uses or the preservation of public health, safety, or welfare.**

PROJECT INFORMATION

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

EXISTING ZONING AND LAND USES

	ZONING	LAND USES
<i>Site</i>	CBD	Cocktail Lounge (proposed)
<i>North</i>	CBD	Cocktail Lounge
<i>South</i>	CBD	Multi-family / Mixed Use
<i>East</i>	Rainey St then CBD	Cocktail Lounge (Lucille)
<i>West</i>	Alley then CBD	Civic (Mexican American Cultural Center)

SUMMARY COMMENTS ON SITE PLAN:

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

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

NEIGHBORHOOD ORGANIZATIONS:

Austin Independent School District
 Austin Neighborhoods Council
 Bike Austin
 City of Austin Downtown Commission
 Downtown Neighborhood Association
 El Concilio Mexican-American
 Neighborhoods
 Friends of Austin Neighborhoods
 Friends of the Emma Barrientos MACC
 Greater East Austin Neighborhood
 Association

Homeless Neighborhood Association
 Lower Waller Creek
 Neighborhood Empowerment Foundation
 Preservation Austin
 Rainey Neighbors Association, INC.
 SEL Texas
 The Shore Condominium Association, Inc.
 Sierra Club, Austin Regional Group
 Tejano Town
 Town Lake Neighborhood Association
 Waterloo Greenway



December 19, 2019

30195042.00

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

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

Dear Ms. Lucas:

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

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

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

Sincerely,

WGI

Texas Engineering Firm No. F-15085

A blue ink handwritten signature of Nicholas O. Corbett, consisting of several loops and a long horizontal stroke.

Nicholas O. Corbett, P.E.
Project Engineer



From: T.J.Kniveton [REDACTED]
Sent: Tuesday, April 28, 2020 1:47 PM
To: Johns, Renee <Renee.Johns@austintexas.gov>; greg.anderson@austintexas.gov; awais.azhar@austintexas.gov; yvette.flores@austintexas.gov; claire.hempel@austintexas.gov; patrick.howard@austintexas.gov; fayez.kazi@austintexas.gov; conor.kenny@austintexas.gov; carmen.llanes@austintexas.gov; robert.schneider@austintexas.gov; patricia.seeger@austintexas.gov; todd.shaw@austintexas.gov; james.shieh@austintexas.gov; jeffrey.thompson@austintexas.gov; don.leighton-burwell@austintexas.gov; richard.mendoza@austintexas.gov; ann.teich@austintexas.gov; Azhar, Awais - BC <BC-Awais.Azhar@austintexas.gov>; Flores, Yvette - BC <bc-Yvette.Flores@austintexas.gov>; Hempel, Claire - BC <BC-Claire.Hempel@austintexas.gov>; Howard, Patrick - BC <BC-Patrick.Howard@austintexas.gov>; Kazi, Fayez - BC <bc-Fayez.Kazi@austintexas.gov>; Kenny, Conor - BC <BC-Conor.Kenny@austintexas.gov>; Llanes, Carmen - BC <bc-Carmen.Llanes@austintexas.gov>; Schneider, Robert - BC <BC-Robert.Schneider@austintexas.gov>; Seeger, Patricia - BC <bc-Patricia.Seeger@austintexas.gov>; Shaw, Todd - BC <BC-Todd.Shaw@austintexas.gov>; Shieh, James - BC <bc-James.Shieh@austintexas.gov>; Thompson, Jeffrey - BC <bc-Jeffrey.Thompson@austintexas.gov>; Leighton-Burwell, Don - BC <bc-Don.Leighton-Burwell@austintexas.gov>
Cc: Rivera, Andrew <Andrew.Rivera@austintexas.gov>; Lopez, Erika Law <Erika.Lopez.Law@austintexas.gov>
Subject: CITIZEN COMMENTS FOR APRIL 28, 2020 PLANNING COMMISSION MEETING

*** External Email - Exercise Caution ***

RE: **SPC-2019-0590A - 76 Rainey CUP; District 9**

Hello, the following are my comments for consideration at the April 28th meeting, Item #5,

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

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

A conditional use site plan must:

5. Reasonably protect persons and property from erosion, flood, fire, noises, glare, and similar adverse effects; Staff response: The proposed project does not contribute to any of the listed adverse effects.

This conditional use site plan does not protect nearby persons and property from noises and other adverse effects, as required.

A Conditional Use Site Plan May Not:

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

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

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

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

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

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

Sincerely,

Timothy Kniveton



PUBLIC HEARING INFORMATION

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

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

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

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

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

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact listed on a notice*); or
 - appearing and speaking for the record at the public hearing;
- and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
 - is the record owner of property within 500 feet of the subject property or proposed development; or
 - is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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

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

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

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

NOREEN FAHEY
 Your Name (please print) I am in favor
 I object

603 DAVIS ST
 Your address(es) affected by this application

Noreen Johns 4/24/2020
 Signature Date

Daytime Telephone: 650-283-5322

Comments: By allowing a stage it will
increase the volume of the
music or DJ. The music
is already loud enough that
we can't sit outside & talk.
When they have a DJ now.
With a stage it will just increase
& be directed towards our bldg.

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



INFORMACION DE AUDIENCIA PÚBLICA

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

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

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

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

Una parte interesada, se define como una persona que es el solicitante o el titular de registro de la propiedad en cuestión o que se comunica el interés de una junta o comisión por:

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

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

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

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

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

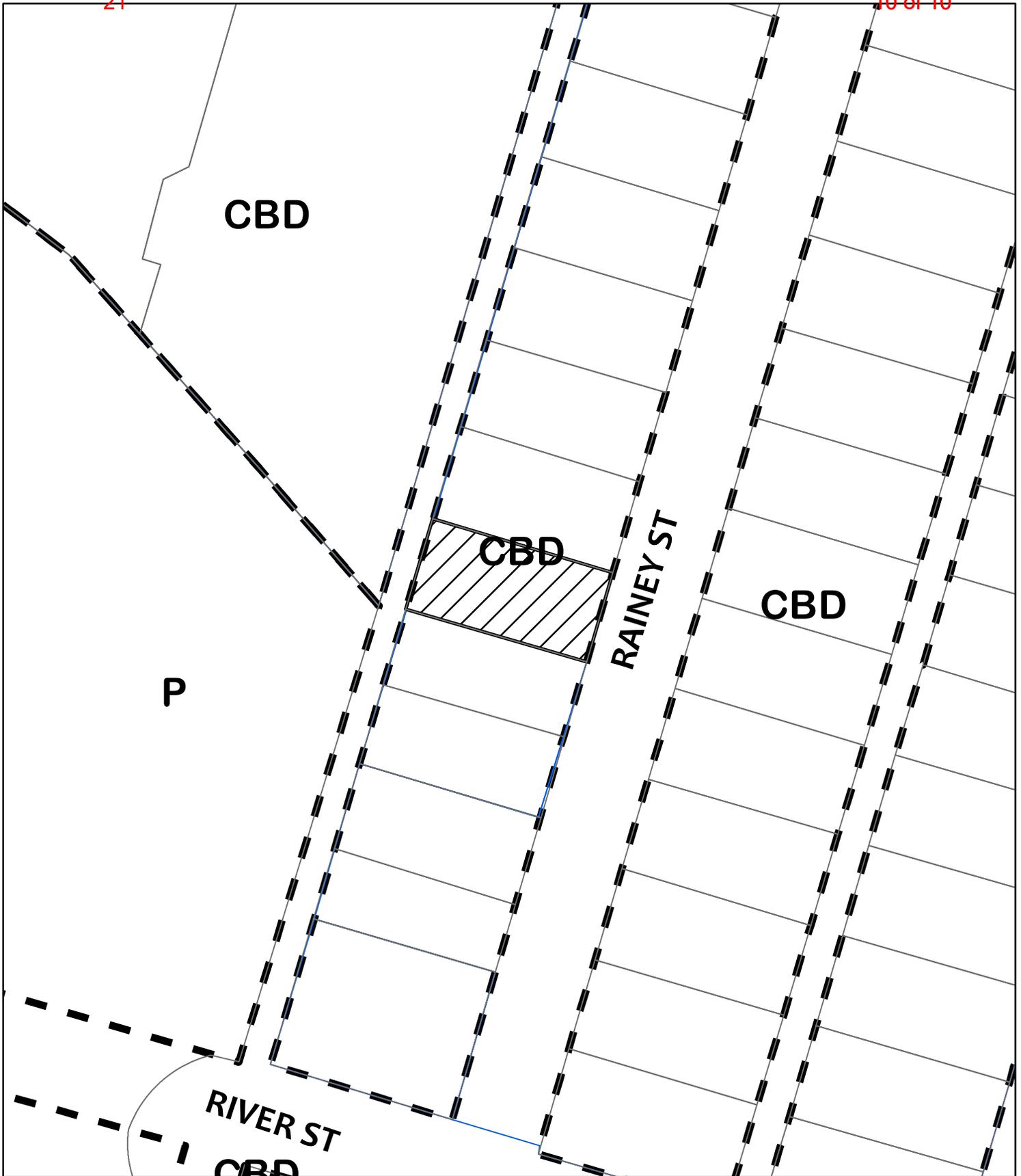
Su Nombre (en letra de molde)

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

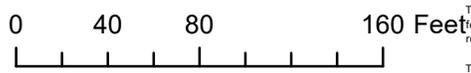
_____ Firma	_____ Fecha
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Comentarios: _____

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



-  SUBJECT TRACT
-  ZONING BOUNDARY



CASE#: SPC-2019-0590A
 ADDRESS: 76 Rainey St.
 CASE NAME: 76 Rainey CUP
 MANAGER: Renee Johns



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

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