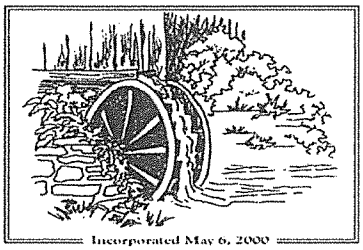

City of Wimberley

221 Stillwater, P.O. Box 2027, Wimberley, Texas 78676

CITY OF WIMBERLEY BOARD OF ADJUSTMENT MEETING
WIMBERLEY CITY HALL-CITY COUNCIL CHAMBERS
221 STILLWATER, WIMBERLEY, TEXAS
SEPTEMBER 6, 2016- 6:00 P.M.

AGENDA

CALL TO ORDER: SEPTEMBER 6, 2016 @ 6:00 P.M.

CALL OF ROLL

1. **CONSENT AGENDA**

   APPROVAL OF MINUTES OF THE JULY 18, 2016 MEETING OF THE BOARD OF ADJUSTMENT.

2. **DISCUSSION AND ACTION**

   DISCUSS AND CONSIDER POSSIBLE ACTION REGARDING AN APPEAL OF THE CITY ADMINISTRATOR'S DECISION TO ELIMINATE THE GRANDFATHER STATUS FOR A SHORT-TERM RENTAL PROPERTY LOCATED AT 310 SUMMIT LOOP ROAD, WIMBERLEY, TEXAS. *(CITY ADMINISTRATOR)*

3. **BOARD MEMBER REPORTS**

   - ANNOUNCEMENTS
   - FUTURE AGENDA ITEMS

ADJOURNMENT

THE BOARD MAY RETIRE INTO EXECUTIVE SESSION AT ANY TIME BETWEEN THE MEETING'S OPENING AND ADJOURNMENT FOR THE PURPOSE OF DISCUSSING ANY MATTERS LISTED ON THE AGENDA AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE INCLUDING, BUT NOT LIMITED TO, HOMELAND SECURITY PURSUANT TO CHAPTER 418.183 OF THE TEXAS LOCAL GOVERNMENT CODE; CONSULTATION WITH LEGAL COUNSEL PURSUANT TO CHAPTER 551.071 OF THE TEXAS GOVERNMENT CODE; DISCUSSION ABOUT REAL ESTATE ACQUISITION PURSUANT TO CHAPTER 551.072 OF

THE TEXAS GOVERNMENT CODE; DISCUSSION OF PERSONNEL MATTERS PURSUANT TO CHAPTER 551.074 OF THE TEXAS GOVERNMENT CODE; DELIBERATIONS ABOUT GIFTS AND DONATIONS PURSUANT TO CHAPTER 551.076 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF ECONOMIC DEVELOPMENT PURSUANT TO CHAPTER 551.087 OF THE TEXAS GOVERNMENT CODE; ACTION, IF ANY, WILL BE TAKEN IN OPEN SESSION.

CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the Wimberley City Hall on September 2, 2016 at 6:30 p.m.

Cara McPartland

Cara McPartland, Assistant City Administrator/City Secretary

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact Don Ferguson, City Administrator, at (512) 847-0025 for information. Hearing-impaired or speech-disabled persons equipped with telecommunication devices for the deaf may call (512) 272-9116 or may utilize the stateside Relay Texas Program at 1-800-735-2988.

Board of Adjustment Agenda Item Form

Date Submitted: September 2, 2016

Agenda Date Requested: September 6, 2016

Project/Proposal Title: APPROVAL OF JULY 18, 2016 MINUTES OF BOARD OF ADJUSTMENT MEETING

Funds Required:
Funds Available:

Council Action Requested:
☐ Ordinance
☐ Resolution
☒ Motion
☐ Discussion

Project/Proposal Summary:

Attached are the minutes for the July 18, 2016 Board of Adjustment meeting for review and consideration.

City of Wimberley
City Hall, 221 Stillwater, Wimberley, Texas
Minutes of Board of Adjustment Meeting
Monday, July 18, 2016 at 6:00 p.m.

The meeting was called to order at 6:00 p.m. by Acting Chair Barry Tyler. Board members present were Dick Larson, Rebecca Minnick, and Bill Cline. Chairman P. Jason Aldridge was absent.

Mayor Mac McCullough administered the Oath of Office to newly appointed Board member Rebecca Minnick.

Staff members present: City Administrator Don Ferguson and City Secretary Cara McPartland

1. Consent Agenda

Approval of minutes of the June 13, 2016 meeting of the Board of Adjustment.

City Administrator Ferguson requested that Boardmember Tevis Grinstead be added to the names of Board members in attendance at the June 13th meeting. Boardmember Larson moved to approve the minutes, as amended. Boardmember Cline seconded. Motion carried on a vote of 4-0.

2. Public Hearings and Possible Action

Public hearing and consider possible action on Case No. BA-16-004, a request for a variance to the setback requirements of the City of Wimberley Zoning Code to allow for an encroachment into the required front building setback for a property zoned Single Family Residential 2 (R-2) located at 616 Deer Crossing, Wimberley, Hays County, Texas. *(Raymond Dotson, Applicants)*

City Administrator Ferguson reviewed the subject property's location, zoning, and the applicant's plans to construct a new 2,270 square foot single family residence that would encroach just over fifteen (15) feet into the required forty (40) foot front setback. Specifically, plans call for the front of the home to be 25.6-feet from the front property line, instead of forty (40) feet as required by the City Zoning Code. According to the applicant, the encroachment is necessary to due to the topography of the subject property and to minimize tree removal. He advised that City staff has received two calls inquiring about the requested variance, but no comments opposing the requested variance have been received. As with a previous case, City Administrator Ferguson noted that City Code requires a forty (40) foot setback, while the subject property's deed restrictions only require a twenty-five foot setback.

Acting Chair Tyler opened the public hearing.

A River Ledge Estates property owner stated no one in the neighborhood is opposed to the variance request and noted that the applicant conforms to the required twenty-five (25) foot setback listed in the subject property's deed restrictions.

DRAFT

Hearing no further comments, Acting Chair Tyler closed the public hearing.

Boardmember Larson moved to approve the requested variance, as presented, with the inclusion of affirmative findings on all six conditions listed below, required for granting of variance pursuant to City of Wimberley Ordinance No. 2001-010, Section 10:

1. That there are special circumstances or conditions affecting the property involved such that the strict application of the provisions of this ordinance would (a) deprive the applicant of the reasonable use of the property; and (b) create an unnecessary hardship in the development of this property; and
2. That such circumstances or conditions are (a) not self-imposed; (b) not based solely on economic gain or loss; and (c) do not generally affect most properties in the vicinity of the property; and
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
4. The variance if granted will not: (a) adversely affect the public health, safety or welfare; (b) be contrary to the public interest; and (c) be injurious to or adversely affect the orderly use of other property within the area; and
5. The property involved is otherwise in compliance with all other applicable City ordinances, rules, and regulations; and
6. The granting of the variance will be in harmony with the spirit and purpose of this ordinance.

Boardmember Minnick seconded. Motion carried on a vote of 4-0.

4. Board Member Reports

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Acting Chair Tyler called the meeting adjourned.

Adjourned at 6:11 p.m.

Recorded by:

Cara McPartland

These minutes approved on the ____ day of _____, 2016.

APPROVED:

P. Jason Aldridge, Chair

DRAFT

BOA Agenda Form

Date Submitted: September 2, 2016

Agenda Date Requested: September 6, 2016

Project/Proposal Title: CONSIDER POSSIBLE ACTION REGARDING AN APPEAL OF THE CITY ADMINISTRATOR'S DECISION TO ELIMINATE THE GRANDFATHER STATUS FOR A SHORT-TERM RENTAL FACILITY LOCATED AT 310 SUMMIT LOOP ROAD

Commission Action Requested:
- ☐ Ordinance
- ☐ Resolution
- x Motion
- x Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow the Board of Adjustment to hear an appeal of a decision made by the City Administrator to eliminate the grandfather status for an existing short-term rental facility located at 310 Summit Loop Road.

In March 2016, Ms. Lisa Risoli, the owner of property located at 310 Summit Loop Road, submitted an application to the City of Wimberley seeking a Conditional Use Permit ("CUP") to allow for the operation of a pre-existing vacation rental facility in the single family residence located on the subject property. Subsequent to the submission of CUP application, and prior to the presentation of the CUP application to the Planning and Zoning Commission, the City Council adopted modified provisions for pre-existing non-conforming short-term rental properties to obtain grandfather status. Rather than proceed with the CUP application, Ms. Risoli sought and received grandfather status for the subject vacation rental facility under the modified provisions.

Ms. Risoli was notified of the grandfather status approval in a letter from the City dated April 14, 2016. That same letter also advised Ms. Risoli of the following:

- If the vacation rental facility is expanded, at any point in the future, a CUP will be required.
- The City has the authority to take action up to and including the elimination of the grandfather status to address any concerns relating to the vacation rental facility deemed detrimental or hazardous to the health, safety or welfare of nearby residents.
- The maximum occupancy of the vacation rental facility shall not exceed the maximum occupancy for the subject residence, as established by the previously issued septic permit for the residence.

In the months following the grandfather status determination, the City received several complaints regarding the subject vacation rental facility. These complaints were investigated and the City determined that the facility was expanded with the development of an outdoor hot tub and that the maximum occupancy was exceeded on several occasions.

As a result of the above-mentioned violations, the previously granted grandfather status was eliminated by the City on July 8, 2016, and Ms. Risoli was advised of the need to obtain a CUP for her vacation rental facility to continue operations. Ms. Risoli is appealing the City's decision to eliminate grandfather status.

City of Wimberley

221 Stillwater , P.O. Box 2027, Wimberley, Texas 78676
Phone: (512) 847-0025 - Fax: (512) 847-0422
Steve Thurber, Mayor - Cindy Anderson, Mayor Pro-Tem
Council Members - Bob Dussler, Mac McCullough, , Pam Showalter, John White
Don Ferguson, City Administrator

April 14, 2016

Lisa Risoli
310 Summit Loop
Wimberley, Texas 78676

Dear Ms. Risoli:

I am writing this letter in response to your request for grandfather status for an existing short-term rental facility located at 310 Summit Loop, Wimberley, Texas.

Within the City of Wimberley (the "City"), there are short-term rental facilities that have been in existence and in continuous operation for more than five (5) years. Modified provisions adopted by the Wimberley City Council on March 3, 2016, allow such facilities to be grandfathered and continue operations, if no complaint has been received by the City about the subject facility and the property owner has submitted a sworn affidavit to the City indicating the facility has been operated continuously for the five (5) years preceding the date of the affidavit.

It is your contention that the above-mentioned short-term rental facility has been in operation at the subject location for five (5) years prior to March 10, 2016. The following information was provided to the City to support your claim:

- A sworn affidavit from Lisa Risoli certifying that she owns the property located at 310 Summit Loop, Wimberley, Texas, and the subject property has been operated on a continuous basis for the five (5) years preceding March 10, 2016, as a short-term rental facility.

Upon review of the information provided, and with no documentation of a complaint having been previously received by the City regarding the subject short-term rental facility, the City has determined the requirements have been met for the subject short-term rental facility to be deemed a pre-existing non-conforming use, also known as a grandfathered use.

If the above-referenced short-term rental facility is expanded at any point in the future, a Conditional Use Permit (the "CUP") will be required.

Should the facility in the future be deemed detrimental or hazardous to the health, safety, or welfare of nearby residents or citizens, the City has the authority to take action to address such concerns or even eliminate the grandfather status altogether and require a CUP be obtained for the vacation rental facility to continue to operate.

Also, please be advised, in your operation of the subject short-term rental facility, you are prohibited from exceeding the maximum occupancy for the subject residence, as established by the previously issued septic permit for the residence.

I hope this information helps resolve your concerns. If you have any questions or need further information, please feel free to contact me at 512. 847.0025.

Sincerely,

Don Ferguson
City Administrator

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF HAYS §

BEFORE ME, the undersigned notary public, appeared Lisa M. Risoli, known to me to be the person whose name is subscribed to the following instrument, and who having been duly sworn upon his oath deposed and stated as follows:

1. My name is **Lisa Risoli**. I am over 21 years of age and am a resident of **Harris** County, Texas. I have never been convicted of a felony. I am of sound mind, capable of making this Affidavit, and I have personal knowledge of the facts herein stated, and they are true and correct.

2. I am the owner of the following property:

   310 Summit Loop, Wimberley, TX 78676

3. The property has been operated continuously as a (bed and breakfast lodging / vacation rental) for the five (5) years preceding the date of this affidavit.

4. During the 5+ years my property has been a vacation rental there has been no complaint made by any neighbor in the Summit Loop Subdivision, to my knowledge, to the City of Wimberley, Rental Agency, Law Enforcement Agency or myself.

4. My neighbors Mr. and Mrs. Bass have rented my property in the past most specifically back in 2010 they rented property referenced in this document the entirety of the time from start to finish of building their home in San Marcos, TX . Furthermore Mr. Bass has a key to the home reference here and shows potential clients through the house to show the quality and craftsmanship of his work in the hopes of gaining new business. In fact Mr. Bass was my contractor and built the house referenced here for me.

5. Other neighbors directly adjacent to my property that have rented the house referenced in this document are: Terry Bresslen and Bill Zink Graf.

6. My neighbor Susan Houchin uses my trash containers (with my knowledge

FURTHER AFFIANT SAYETH NOT.

Printed

Name: Lisa M. Risoli Lisa M. Risoli

SWORN TO AND SUBSCRIBED BEFORE ME on this 10 day of March , 2016, to certify which witness my hand and official seal.

NOTARY PUBLIC, STATE OF TEXAS

Printed Name: Rick Perez

My commission expires: 11-12-18

RICK PEREZ
Notary Public
STATE OF TEXAS
My Comm. Exp. 11-12-18

City of Wimberley

221 Stillwater , P.O. Box 2027, Wimberley, Texas 78676
Phone: (512) 847-0025 - Fax: (512) 847-0422
Mac McCullough, Mayor - John White, Mayor Pro-Tem
Council Members - Bob Dussler, Craig Fore, Sally Trapp, Gary Barchfeld
Don Ferguson, City Administrator

July 8, 2016

Lisa Risoli
310 Summit Loop
Wimberley, Texas 78676

Dear Ms. Risoli:

I am writing this letter regarding your existing short-term rental facility located at 310 Summit Loop, Wimberley, Texas.

On April 14, 2016, you were advised in a letter from the City of Wimberley (the "City") that the above-mentioned short-term rental facility had been deemed a pre-existing non-confirming use, also known as known as a grandfathered use. That same letter informed you that expansion of the facility, at any point in the future, would eliminate the grandfather status and require you to secure a Conditional Use Permit (the "CUP") for the facility to continue to operate. In addition, the referenced letter advised that you are prohibited from exceeding the maximum occupancy for the subject residence, as established by the previously issued septic permit for the residence.

In the months following the grandfather status determination, the City received several complaints regarding your short-term rental facility. These complaints were investigated, and the City has determined that you have expanded the facility with the addition of an outdoor hot tub, and that you have exceeded the maximum occupancy on several occasions.

As a result of the above-mentioned violations, the previously granted grandfather status for your short-term rental facility has been eliminated. As such, you must apply for and be granted a CUP for short-term rental operations to continue on the property.

Please be advised that you have ten (10) days from the date of this letter to cease operation of your short-term rental facility. The short-term rental facility shall remain closed until such time as a CUP authorizing the short-term rental facility has been secured from the City. Failure to comply with this notice will result in the City's instituting legal action to enforce compliance.

In the event that you wish to appeal this decision to the Zoning Board of Adjustment, you must do so within 60 days from the date of this letter. In the event you have any questions regarding this matter, please feel contact me at 512.847.0025.

Sincerely,

Don Ferguson
City Administrator

NOTICE OF
PUBLIC MEETING
(Appeal of Grandfather
Status Elimination)

Notice is hereby given that the City of Wimberley Board of Adjustment will hold a meeting at the Wimberley City Hall on **Tuesday, September 6, 2016, at 6:00 p.m.** to consider the following: An appeal of the City Administrator's decision to eliminate the grandfather status for a short-term rental property located at 310 Summit Loop Road, Wimberley, Texas. Additional information concerning the proposed action is available for review at the Wimberley City Hall, 221 Stillwater, Wimberley, Texas.

Board of Adjustment Agenda Item Form

Date Submitted: September 2, 2016

Agenda Date Requested: September 6, 2016

Project/Proposal Title: BOARD MEMBER REPORTS

Funds Required:
Funds Available:

Council Action Requested:
☐ Ordinance
☐ Resolution
☐ Motion
☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow for reports to be presented by Board members and for future agenda item requests.