

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Planning & Zoning Commission
Minutes of Regular Meeting
September 12, 2013 at 6:00 p.m.

Meeting called to order at 6:00 p.m. by Chair Tom Haley. Present were Commissioners Tracey Dean, Charles Lancaster, Steve Klepfer, Lance Cawley, and Rick Burleson. Commissioner Beth Mitchell was absent.

Staff Present: City Administrator Don Ferguson, City Secretary Cara McPartland, and City Attorney Brad Young

Citizen Communications:

No citizen comments were heard.

1. Consent Agenda

Approval of minutes of the Regular Planning & Zoning Commission meeting on July 25, 2013.

Commissioner Dean moved to approve the minutes, as presented. Commissioner Klepfer seconded. Motion carried on a vote of 5-0. Commissioner Lancaster abstained.

2. Public Hearings and Possible Action

Hold a public hearing and consider making a recommendation to City Council regarding Case No. CUP-13-010, an application for a conditional use permit to allow for a secondary residential building on a 2.05 acre tract of land zoned Rural Residential 1 (R-1), located at 411 Mill Race Lane, Wimberley, Hays County, Texas. *(Alison Courtney Campbell, Applicant; this item was continued from the August 22, 2013 meeting of the Planning & Zoning Commission due to lack of a quorum)*

City Administrator Ferguson reviewed the subject property’s location, current/proposed zoning, existing structures (main residence and pole barn), and intended use of the pole barn as a secondary residential building to house a family member. It was noted that the pole barn is not currently connected to a septic system; however, the structure is equipped with a composting toilet, along with a shower and sink connected to an unauthorized grey water system. He advised that the City has been notified by the applicant that the grey water system has been disconnected and there is no water service to the pole barn structure, which is currently unoccupied.

He stated that access to both the main residence and pole barn is gained from Mill Race Lane via a shared access easement that is currently the subject of litigation between the applicant and an adjacent property owner. City Administrator Ferguson emphasized that the easement is a separate issue and that the requested conditional use permit (CUP) shall not be construed to alter, interfere with, abrogate, or annul any easements, covenants, or other agreements between parties.

City Administrator Ferguson advised that one (1) adjacent property owner, Bill Appleman of Creekhaven LLC, has submitted written opposition based on concerns regarding negative impact on surrounding property values. It was noted that correspondence in support of the CUP request has been received from property owners Scott Johnson of Cedar Stump, LP and Shellye Arnold (both within the 200-foot notification area), as well as from a previous property owner, Robert Ireland.

City Administrator Ferguson recommended the following conditions be made part of the requested CUP, should the Commission desire to recommend approval:

- Prior to use of the pole barn as a secondary residence, the applicant shall secure the required variance(s) for any setback encroachments relating to the structure
- Prior to use of the pole barn as a secondary residence, water service to the structure shall be disconnected so as to avoid future use of the existing unauthorized grey water system serving the structure.
- The existing shower and sink in the pole barn shall not be used unless the structure is connected to a properly permitted septic system.
- The pole barn shall be connected to a properly permitted septic system if at any time the existing composting toilet in the structure is removed or becomes dysfunctional.
- The pole barn shall never be made available for rent.
- Occupants of the main residence shall allow pole barn occupants to utilize the shower, bath and sink facilities in the main residence when needed.

City Administrator Ferguson explained that the subject CUP request is one of several actions being taken by the applicant to resolve Code compliance issues relating to the construction and occupancy of the pole barn. These Code compliance issues include the lack of a valid building permit for the structure, the encroachment of the structure into an interior setback on the property and evidence that the structure was being used as a residence. To resolve these concerns, the applicant is seeking the subject CUP, along with a Board of Adjustment variance for the setback encroachment, and has provided the City with a sealed letter from an engineer relating to the safety and stability of the structure. He reminded the Commission members that they may consider any or all of the following in making CUP recommendations, pursuant to City Code §155.105 Conditional Use Permits (B)(1)(a-g):

B) Conditional use permit regulations.

(1) In recommending that a conditional use permit for the premises under consideration be granted, the city shall determine that the uses are harmonious and

adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration, and shall make recommendations as to requirements for the paving of streets, alleys, and sidewalks, means of ingress and egress to public streets, provisions for drainage, adequate off-street parking, screening, and open space, heights of structures, and compatibility of buildings. In approving a requested CUP, the Planning and Zoning Commission and the City Council may consider any or all of the following:

(a) The use is harmonious and compatible with surrounding existing uses or proposed uses, and does not more adversely affect an adjoining site than would a permitted use;

(b) The architecture, facade, and signage designs of the use are traditional hill country designs and are harmonious with those of adjacent uses. In the case of chain establishments, they shall not include or simulate the signature designs of those establishments beyond the absolute minimum necessary to identify the establishment;

(c) The use requested by the applicant is set forth as a conditional use in the base district;

(d) The nature of the use is reasonable;

(e) The conditional use does not adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;

(f) The conditional use does not adversely affect an adjacent property by its resulting traffic through the location, or its lighting, or its type of sign; and

(g) Any additional conditions specified, if any, ensure that the intent and purposes of the base district are being upheld.

Maps of the subject property and surrounding properties were displayed.

Applicant Alison Campbell distributed photos of the pole barn and reviewed the history of the subject structure's construction and uses as a storage facility and residence for her daughter. She hoped that the Commission would not be influenced by litigation involving an adjacent property owner. She informed the Commission that the pole barn is currently unoccupied, the shower and sink are now disconnected from the grey water system, and that the composting toilet has been shut off. She also distributed copies of an inspection report from Blakley Electric, a copy of a 2003 building permit, and a receipt from April 2000 for purchase of cedar poles. She provided details on the now-disconnected grey water system, and building materials/aesthetic features used in the pole barn's construction.

Chairman Haley opened the public hearing.

Adjacent property owner Bill Appleman of 400 Mill Race Lane corrected an earlier statement relating to the letter or support from Robert Ireland. He stated that Mr. Ireland is not the previous owner of 400 Mill Race Lane, but is the executor of the estate of the previous owner. He questioned the statement made by Mr. Ireland in his letter of support indicating that the original intended use for the Campell's pole barn was as housing for the applicant's daughter, while the initial stated use was as a storage facility.

Mr. Appleman stated the parameters of the access easement ending at his property and felt the applicant's CUP application was submitted with inadequate information. Mr. Appleman advised he owns the easement referenced earlier by City Administrator Ferguson and cited regulations concerning building and parking within the subject easement. Mr. Appleman said his rights have been violated and that he is currently engaged in litigation with the applicant to regain those rights. He wished to negotiate a fair settlement with the Campbells.

Chairman Haley requested that Mr. Appleman refrain from discussing the status of litigation with the applicant.

Mr. Appleman stated that his property is severely impacted by the occupancy of the pole barn as a secondary residence. He spoke on the original use of the pole barn as a storage facility and parking issues at the Campbell's property. He questioned which residence is considered the main residence, since the secondary structure is much larger than the main residential structure. Mr. Appleman noted that a lot of activity and vehicle parking has moved close to his property and cited problems with blocked access for emergency vehicles. He noted incidents indicating his willingness to work with the Campbells to address concerns. Mr. Appleman closed his remarks by stating he would like to work things out with the Campbells to allow for the continued use of the pole barn as a storage facility.

City Administrator Ferguson advised that another letter of support for the requested CUP was just received via email from Malcolm Harris of 210 Mill Race Lane.

Merry Gibson of 310 Mill Race Lane spoke of the Campbells' ownership history of the subject property, their love for Wimberley, and their preservation of the cabin that was characterized as an "architectural gem" and an asset to the community. She stated that the pole barn is "truly a work of art" that is charming and enhances the Campbells' property. She voiced her support for the CUP application to try to bring the structure into compliance and appreciated the Commission's assistance.

Mill Race Lane resident Jerre Cope spoke on his relationship with the Campbells as good neighbors.

Mill Race Lane resident Jeanne Ann Cope described the Campbells as "neighborly," felt the pole barn is charming, and disagreed with Mr. Appleman's actions, which she characterized as "trying to use the City to bully his neighbors."

Hearing no further comments, Chairman Haley closed the public hearing.

Discussion among the Commission, staff, and the applicant included:

- Staff's recommended CUP conditions
- Recognizing the easement issues and litigation as separate from consideration of the CUP application

- Applicant's indication of intent to comply with staff-recommended CUP conditions
- Applicant will not be issued a Certificate of Occupancy (CO) until compliance is demonstrated for all CUP conditions
- Location of the pole barn in the floodplain and associated concerns
- Determining when construction was started on the pole barn
- Lack of a valid building permit for construction of the pole barn over the twelve-year long construction period
- Stop work orders issued and requests for building plans from the applicant
- On-site septic system (OSSF) regulations relating to composting toilets, which are not specifically prohibited per the City Sanitarian
- Protected Water Overlay District (PWOD) requirements, particularly regarding setbacks and elevation
- Applicant's accounts of conversation(s) with Hays County officials prior to construction of pole barn
- Pole barn's status as an illegal structure, as opposed to a pre-existing, non-conforming structure
- Past stop work order(s) placed on the pole barn's construction
- Estimation of the amount of the pole barn's encroachment into the setback and request for survey data from applicant
- Possibility that the pole barn can be connected to the main residence's OSSF under certain conditions
- Concerns regarding early records on the applicant's efforts to construct the pole barn
- Ability of the Commission to recommend connection to water/wastewater service as part of CUP conditions
- Need for variance for setback encroachment
- Opposition expressed by Mr. Appleman regarding the change in use of the pole barn from a storage facility to use as a residence, and resulting issues with access and parking
- Applicant's communications with prior City administrations on the pole barn's construction
- Possible additional conditions suggested by Commissioner Klepfer, including limiting maximum occupancy to no more than two (2) persons for the secondary residence, connection of the secondary residence to water/wastewater service, and prohibition on parking within setbacks facing Mr. Appleman's property

City Administrator Ferguson noted language amendments to staff's previously recommended CUP conditions necessary to reflect the addition of Commissioner Klepfer's aforementioned suggested CUP conditions. Applicant Alison Campbell stated that the secondary residence (pole barn structure) does not have kitchen facilities and said that residents would use the composting toilet in the pole barn and would use the sink and shower in the main residence's bathroom.

Chairman Haley felt that the secondary residential structure is structurally sound and questioned whether the overhang on Mr. Appleman's building encroaches on the

easement. Chairman Haley referred to the building permit signed by a former city administrator, which he believed was valid and said he was never aware of any problems at the subject property being brought to his attention during his tenure as mayor.

Commissioner Cawley moved to recommend approval of the CUP application, provided the applicant complies with all Code requirements and CUP conditions. Commissioner Dean seconded.

City Administrator Ferguson requested clarification on Commissioner Cawley's motion as to the CUP conditions and whether those conditions were to include Commissioner Klepfer's suggested additional conditions.

After brief discussion of Code requirements, Commissioner Cawley clarified that his motion includes Commissioner Klepfer's suggested additions. City Administrator Ferguson restated the modified CUP conditions to reflect Commissioner Cawley's motion, as follows:

- Prior to use of the pole barn as a secondary residence, the applicant shall secure the required variance for any setback encroachments relating to the structure.
- ~~Prior to use of the pole barn as a secondary residence, water service to the structure shall be disconnected so as to avoid future use of the existing unauthorized grey water system serving the structure.~~
- ~~The existing shower and sink in the pole barn shall not be used unless the structure is connected to a properly permitted septic system.~~
- ~~The pole barn shall be connected to a properly permitted septic system if at any time the existing composting toilet in the structure is removed or becomes dysfunctional.~~
- The pole barn shall never be made available for rent.
- ~~Occupants of the main residence shall allow pole barn occupants to utilize the shower, bath and sink facilities in the main residence when needed.~~
- Prior to use of the pole barn as a secondary residence, the applicant shall connect the pole barn to properly a permitted water supply/wastewater service.
- Occupancy of the secondary residence shall not exceed two (2) persons.
- No parking shall occur within setbacks on the property.

Chairman Haley called for a vote as follows: Commissioner Dean, aye; Commissioner Lancaster, aye; Chairman Haley, aye; Commissioner Klepfer, nay; Commissioner Cawley, aye; Commissioner Burleson, aye. Motion carried on a vote of 5-1.

3. Discussion and Possible Action

- A. Discuss and consider possible action regarding the proposed development of an ordinance regulating chickens within the City of Wimberley. (*City Administrator*)

City Administrator Ferguson reviewed current regulations which prohibit chickens on residentially zoned properties zoned less than two (2) acres in size. Due to recent complaints and ensuing enforcement actions, some chicken owners have asked the City to consider allowing residents to keep chickens in their backyards. He presented a draft ordinance (*attached to these minutes*) in accordance with prior Commission direction.

Discussion addressed the growing trend of keeping chickens in residential areas, need to ensure public health, safety, and welfare, and prior disposition of a municipal court case involving a noise complaint.

M.F. Johnson respectfully requested that the City keep the minimum 2-acre lot size requirement.

Discussion included possible noise complaints, protections for smaller tracts, limitation on number of chickens to four (4) per single property, prohibition on commercial operations in residentially zoned properties, and possible registration requirements for properties less than two acres in size.

Commissioner Klepfer moved to recommend approval of the ordinance, with removal of the reference in the proposed ordinance to the number of chickens allowed to be kept on a single property [§98.02(A)], as well as deletion of the registration requirement [§98.01(B)]. Commissioner Lancaster seconded. Motion carried on a vote of 5-1. Commissioner Cawley voted against.

- B. Discuss and consider possible action on issues relating to Planning and Zoning Commission member attendance. (*City Administrator*)

City Administrator Ferguson spoke on the need to address continuation of cases due to cancellation of meetings for lack of a quorum and the inconvenience that such delays cause to the applicant and staff.

Discussion addressed the Commission's duty to serve citizens, current attendance requirements, inconvenience caused by delays, scheduling conflicts, and measures to improve communications between Commission members and staff in order to ensure that a quorum is present. Attendance records were reviewed. Commissioner Cawley apologized for past absences and noted that his new work schedule is now more flexible, which should improve his ability to attend meetings in the future. Chairman Haley stated that Commission members should strive to attend, if at all possible, and to notify staff as early as possible of any absences. No action was taken.

4. Staff and Commission Reports

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Chairman Haley called the meeting adjourned.

Adjourn at 7:45 p.m.

Recorded by:

Cara McPartland
Cara McPartland

These minutes approved the 24th of October, 2013.

APPROVED:

Tom Haley
Tom Haley, Chair



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING TITLE IX (GENERAL REGULATIONS) TO ADD CHAPTER 98 (KEEPING OF CHICKENS); PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, SAVINGS AND SEVERABILITY CLAUSE, AND EFFECTIVE DATE.

WHEREAS, the City Council of the City of Wimberley (Council) seeks to provide for the health, safety, and welfare of its citizens; and

WHEREAS, urban chicken-keeping is growing in popularity throughout the country and the State of Texas; and

WHEREAS, the Council seeks to balance the desires of those citizens who wish to keep chickens in a residential areas against the health, safety, and comfort of their neighbors; and

WHEREAS, the Council finds that the reasonable regulations provided by this ordinance achieve that balance;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, HAYS COUNTY, TEXAS

Section 1. Findings. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Amendment.

THAT the City of Wimberley Code of Ordinances, title IX (General Regulations) is amended to add Chapter 98 (KEEPING OF CHICKENS) to read as follows:

“KEEPING OF CHICKENS

§ 98.01 Keeping of Chickens Allowed in Certain Residential Areas

(A) A person may keep or house chickens on property located in a residentially zoned district if the property encompasses an area of two (2) acres or greater in size.

(B) All persons who wish to keep or house chickens pursuant to this Chapter must first register with the City on a form provided by the City Administrator or his designee.

§ 98.02 Regulations

In addition to the requirements listed in § 98.01, above, a person who keeps or houses chickens pursuant to this Chapter must adhere to the following requirements:

- (A) No person may keep more than four (4) chicken hens on a single property.
- (B) The principal defined use of the person's property must be "single-family," as that term is defined in the City's land use regulations.
- (C) No person shall keep any rooster within the city limits.
- (D) No person shall slaughter any hens.
- (E) A person shall not keep chicken hens in any location on the property other than in a fenced rear yard. For purposes of this ordinance, "rear yard" means that portion of a lot enclosed by the property's rear lot line and the side lot lines to the points where the side lot lines intersect with an imaginary line established by the rear of the single-family structure and extending to the side lot lines.
- (F) No covered enclosure used to keep chicken hens shall be located closer than twenty (20) feet to the property line of any adjacent property and shall not be located closer than thirty (30) feet to any residential structure on the adjacent property. For purposes of this ordinance, "adjacent property" includes any parcel of property that comes into contact with one (1) or more points of the subject property, but does not include parcels that are legally adjacent to but are in fact separated from the property by a public or private street or waterway.
- (G) All enclosures used to keep chicken hens shall be constructed and kept in good repair so as to prevent rats, mice, or other rodents from being harbored underneath, within, or within the walls of the enclosure.
- (H) All feed and other items associated with the keeping of chickens that are likely to attract or to become infested with or infected by rats, mice, or other rodents shall be protected so as to prevent rats, mice, or other rodents from gaining access to or coming into contact with them.

§ 98.03 Exception

The restrictions and regulations provided by this Chapter shall not apply to animal shelters, veterinary establishments, animal hospitals operated by a licensed veterinarian, or commercial animal establishments located on property zoned for such purposes. Such establishments, however, must meet sanitation requirements and keep animals securely caged or penned.

Section 3. Except as expressly amended herein, the Wimberley Code of Ordinances shall remain in full force and effect.

Section 4. All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

Section 5. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinances as a whole.

Section 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

Section 7. Open Meetings. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Capt. 551, Loc. Gov't. Code.

PASSED AND APPROVED this _____ day of _____, 2013, by a vote of _____ (Ayes) to _____ (Nays) _____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY, TEXAS

Bob Flocke, Mayor

ATTEST:

Cara McPartland, City Secretary

APPROVED AS TO FORM:

Catherine B. Fryer, City Attorney