

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Planning & Zoning Commission
Minutes of Regular Meeting
March 22, 2012 at 6:00 p.m.

Meeting called to order by Acting Chair Tom Haley. Present were Commissioners Jean Ross, Charles Lancaster, Steve Klepfer, and Rick Burleson. Chairman Tracey Dean and Commissioner Beth Mitchell were absent.

Staff Present: City Administrator Don Ferguson and City Secretary Cara McPartland

Citizen Communications:

No citizen comments were heard.

1. Consent Agenda

Approval of minutes of the Regular Planning & Zoning Commission meeting on February 23, 2012.

Commissioner Ross moved to approve the minutes as presented. Commissioner Lancaster seconded. Motion carried on a vote of 4-0. Commissioner Klepfer abstained.

2. Public Hearing and Possible Action

- A. Hold a public hearing and consider making a recommendation to City Council regarding Case #CUP-12-003, an application for a conditional use permit to allow for the operation of a vacation rental on a 10.53 acre tract of land zoned Residential Acreage (RA) and located at 3100 FM 3237, Wimberley, Hays County, Texas. (*Gregory Dunham, Applicant*)

This item was heard after Agenda Item 2B.

City Administrator Ferguson reviewed the subject property's current/proposed zoning and uses, and location within Planning Area VII and the Protected Water Overlay District (PWOD). He provided details on the two (2) existing residential units, including access, parking, and on-site septic system. He noted that the applicant resides in one of the residential units and desires to operate a vacation rental with a maximum occupancy of two (2) guests in the other unit, which is a single-room cabin with one (1) bathroom. As with Agenda Item 2B, he suggested that a recommendation for approval should be conditioned on the City's receipt of an inspection report showing the septic system is functioning properly. No comments for or against the requested conditional use permit (CUP) have been received, and City staff recommended approval.

Discussion addressed locations of specific structures on the subject property.

Acting Chair Haley opened the public hearing. Hearing no comments, Acting Chair Haley closed the public hearing.

Commissioner Ross moved to recommend approval, with the following conditions:

- Amendment of No. 16 (from City staff's list of recommended conditions) to allow for signage in accordance with Sign Ordinance regulations for vacation rentals
- Deletion of No. 19 (from City staff's list of recommended conditions) in its entirety
- Receipt by the City of a current inspection report verifying that the septic system is functioning properly

Commissioner Klepfer seconded. Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider making a recommendation to City Council regarding Case #CUP-12-004, an application for a conditional use permit to allow for the operation of a vacation rental on a 1.52 acre tract of land zoned Rural Residential 1 (R-1) and located at 3150 FM 3237, Wimberley, Hays County, Texas. (*Gregory Dunham, Applicant*)

This item was heard after Agenda Item 1 (Consent Agenda).

City Administrator Ferguson reviewed the subject property's current/proposed zoning and uses, and location within Planning Area VII and the Protected Water Overlay District (PWOD). He provided details on existing structures, on-site septic system, parking, and management of the rental facility, including house rules submitted by the applicant, as well as those recommended by City staff. Should the Commission recommend approval, City Administrator Ferguson suggested that such recommendation be conditioned upon the City's receipt of a current inspection report verifying that the septic system is functioning properly. It was noted that the applicant did not request any signage for the vacation rental. No comments were received for or against the requested CUP and City staff recommended approval.

Acting Chair Haley opened the public hearing.

Since speaking with the applicant, neighboring property owner Malcolm Browne expressed no opposition to the proposed CUP, but noted that he did not receive his two-hundred foot (200') notification letter until today, which City Administrator Ferguson advised was sent via regular mail on March 12, 2012.

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

Discussion addressed location of the subject property and existing structures; possible amendment of No. 16 in staff's recommended conditions ("16. There shall be no signage for the vacation rental on FM 3237."); staff's suggestion to condition any

recommendation for approval on the City's receipt of an inspection report showing the septic system is functioning properly; possible deletion of No. 19 in staff's recommended conditions ("19. The property owner shall provide recycling containers and notices encouraging guests to conserve water and energy.").

Commissioner Ross moved to recommend approval, with the following conditions:

- Amendment of No. 16 (from staff's list of recommended conditions) to allow for signage in accordance with Sign Ordinance regulations for vacation rentals
- Deletion of No. 19 (from staff's list of recommended conditions) in its entirety
- Receipt by the City of a current inspection report verifying that the septic system is functioning properly

Commissioner Klepfer seconded. Motion carried on a vote of 5-0.

- C. Hold a public hearing and consider making a recommendation to City Council regarding Case #CUP-12-005, an application to amend an existing conditional use permit for 600 FM 2325, Wimberley, Hays County, Texas, to remove the hour limitations for outdoor music included in the conditional use permit which was granted on September 3, 2009, to allow an eating establishment that included the sale of beer, wine and alcohol for on-premise consumption. (*Kate Tilton, Applicant*)

City Administrator Ferguson reviewed the existing CUP conditions, which allow outdoor music only on Friday nights and require that such music cease no later than 11 p.m. He explained the applicant's reasoning for the requested CUP amendment, which contends current restrictions are not consistent with restrictions placed on similar establishment(s) in close proximity to the applicant's business (*Kate's Place*). The applicant believes that the restrictions were included in the existing CUP to calm fears of adjacent residential property owners who had experienced noise issues stemming from the previous use of the subject property by a group of local musicians. The City has not received any complaints since the applicant has been operating *Kate's Place*. One response was received yesterday via fax from notified property owner, David Davila, in opposition to the requested CUP amendment (*attached to these minutes*).

Acting Chair Haley opened the public hearing. Hearing no comments, Acting Chair Haley closed the public hearing.

Discussion addressed:

- Lack of complaints on current operations at the subject property and neighboring property (500 FM 2325)
- Concerns related to the aforementioned faxed response expressing opposition to the CUP amendment request
- Input received from abutting residential property owners during public hearings on the original CUP approved in 2009

- Possible expansion of hours when outdoor music would be allowed
- Location of music venue on subject property and its buffering effect on the adjacent residential area north of the subject property
- Complaint-based enforcement of the City's noise ordinance
- Applicant's current/possible future operating hours
- Various problems with prior uses/owners of the subject property.

To accommodate the arrival of certain audience members, Acting Chair Haley reopened the public hearing.

Notified property owner, Mary Kuricar (also speaking on behalf of neighbors Danny and Jeanette Bello) recalled issues of concerns raised at the original CUP public hearings and problems encountered with prior owners/operations. Ms. Kuricar expressed specific concerns related to amplified music, potential for outdoor music to be played at late hours, and service of alcohol.

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

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

- The applicant's intention to only allow acoustic music (without amplification)
- Enforcement issues with the City's noise ordinance
- CUP revocation procedures in the event of non-compliance with CUP conditions
- Location of the music venue on the subject property
- Possible acceptable range of days/hours for outdoor music

Commissioner Klepfer moved to recommend approval of the following amendments (in italics below) to Article II (7) of the existing CUP:

"All restaurant operations shall cease no later than midnight, and outdoor music shall be allowed only on Friday and Saturday nights, and such outdoor music shall cease no later than 11 p.m., and such outdoor music shall be acoustic with no electrical amplification."

Commissioner Lancaster seconded.

Discussion addressed possible compromises to allow music during a broader time frame; location of the music venue on the subject property and its associated impact on neighboring residential properties; concerns expressed by those in opposition; CUP revocation process for non-compliance; possible acceptable dates/times for music venue.

Commissioner Lancaster withdrew his second to Commissioner Klepfer's motion.

Commissioner Klepfer restated his earlier motion. Motion died for lack of a second.

Various options for certain dates/times were discussed.

Commissioner Burleson moved to recommend approval of the following amendments (in italics below) to Article II (7) of the existing CUP:

"All restaurant operations shall cease no later than midnight, and outdoor music shall be allowed only on Friday and Saturday nights, and such outdoor music shall cease no later than 10 p.m.; on Sundays until 4 p.m.; and on remaining weekdays until 9 p.m., provided that during weekdays, the music venue is located between the subject property's restaurant/bar and FM 2325; and such outdoor music shall be acoustic with no electrical amplification."

Commissioner Klepfer seconded.

Subsequent discussion addressed extending the hours for outdoor music on Friday and Saturday nights until 11 p.m., as well as defining the area where music may be played during weekdays.

Commissioner Burleson amended his prior motion to extend the hours for outdoor music on Friday and Saturday nights until 11 p.m., with the remainder of his motion unchanged, as follows:

"All restaurant operations shall cease no later than midnight, and outdoor music shall be allowed only on Friday and Saturday nights, and such outdoor music shall cease no later than 11 p.m.; on Sundays until 4 p.m.; and on remaining weekdays until 9 p.m., provided that during weekdays, the music venue is located between the subject property's restaurant/bar and FM 2325; and such outdoor music shall be acoustic with no electrical amplification."

Commissioner Klepfer seconded the amended motion.

Acting Chair Haley called for a vote on the amended motion as follows: Commissioner Ross, aye; Commissioner Lancaster, aye; Commissioner Klepfer, aye; Commissioner Burleson, aye; Acting Chair Haley, aye. Motion carried on a vote of 5-0.

- D. Hold a public hearing and consider making a recommendation to City Council regarding a variance request to the parking space dimension requirements relating to a proposed commercial development at 111 River Road, Wimberley, Hays County, Texas. (*Carson Diversified Land 2 LLC, Applicant*)

City Administrator Ferguson explained the planned pedestrian-friendly development and variance request to utilize 9' x 18' stalls, instead of 9.5' x 20', as required by City Code. It was noted that 9' x 18' stalls are commonly allowed by other area cities.

Applicant's representative Chris Carson provided details on the original and revised master plans, including access, sidewalks, design standards, phasing of development, examples of existing 9' x 18' stalls [such as those allowed under certain Wimberley

planned development agreements (WPDDs)], desire to preserve as much green space as possible and to control speed, and compliance with City parking requirements.

Discussion commended the development's "green" design and commitment to future sidewalk construction on River Road.

Acting Chair Haley opened the public hearing. Hearing no comments, Acting Chair Haley closed the public hearing.

Commissioner Ross moved to recommend approval of the item, as presented. Commissioner Lancaster seconded. Motion carried on a vote of 5-0.

3. Discuss and Consider Action

- A. Discuss and consider issues relating to the platting and planning procedures of Chapter 154 Subdivision Control of the City of Wimberley Code of Ordinances. (*City Administrator*)

City Administrator Ferguson advised that this item will be continued until the Commission's next regular meeting on April 12, 2012. No vote was taken.

- B. Discuss and consider a proposal to modify the City of Wimberley Zoning Code to allow secondary residential buildings as permitted uses rather than conditional uses in certain zoning districts. (*Commissioner Charles Lancaster*)

Citing two recent zoning cases, Commissioner Lancaster provided reasoning for eliminating the requirement for conditional use permits (CUPs) for property owners who wish to build secondary residences and reside in such residences until the primary residence is completed. He noted that any future change in use, such as utilizing the secondary residence as a bed and breakfast/vacation rental would require the property owner to apply for a CUP, subject to public notification/hearing procedures. He felt that for secondary residences, property owners should only be required to comply with the building permit process and not incur the additional burden and expense of a CUP application.

Discussion addressed the need for CUPs for guest houses generally, large-tract properties; potential problems due to variations in lot configurations and possible need for increased setbacks; lot size requirements in certain zoning districts; and long-term versus short-term rentals of secondary residences.

Staff was directed to draft a proposed ordinance to modify the Zoning Code to allow secondary residential buildings as permitted uses, rather than conditional uses in Rural Acreage (RA) and Rural Residential 1 (R-1) zoning districts, subject to certain setback requirements, providing the secondary residence is used by family/friends and not as a paid short- or long-term rental. No vote was taken.

4. Staff and Commission Reports

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Commissioner Klepfer moved to adjourn. Commissioner Ross seconded. Motion carried on a vote of 5-0.

Adjourn at 7:39 p.m.

Recorded by:



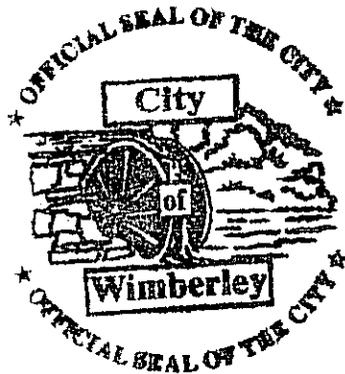
Cara McPartland

These minutes approved the 12th of April, 2012.

APPROVED:



Tracey Dean, Chair



***** IMPORTANT FAXED MESSAGE *****
Faxed Cover PAGE 1 of 2

TO: City Administrator of the City of Wimberley Texas

FROM: David Davila, homeowner at 616 FM 2325, Wimberley Texas 78676.

RE: Notice of Public Hearing –File No. CUP-12-005.
600 FM 2325

A request for an amendment to an existing Conditional Use Permit (CUP) to remove music restrictions at this location.

FAX #: 512-847-0422

DATE OF FAX: March 21, 2012

DOCUMENTS TO BE FAXED: 2 Page Cover Sheet
Copy of the City of Wimberley Notice of Public
Hearing letter dated March 12, 2012

OF PAGES FAXED INCLUDING THIS PAGE: 3

To the City Administrator of Wimberley Texas:

My name is David Davila.

My mother and I own the property at 616 FM 2325 in Wimberley Texas.

We received the above mentioned Notice of Public Hearing Letter.

We oppose to remove the music restrictions at 600 FM 2325 for several reasons:

- 1.) The close proximity to our home.
- 2.) In the past, when music was played in prior commercial establishments in the same location, the music was unbearable. We could not even listen comfortably to the television or even someone that we were talking to on our home telephone.
- 3.) I have two elderly family members that live in the home and they both have lived in that home for over 50 years. I would hope the City would RESPECT them and take care of the elderly first.
- 4.) I also have family members living there that includes two children that are ages 1 and 2 years old. It would be difficult to get them to take naps or go to sleep with the sound of music only 200 feet from the home.
- 5.) Although this Notice Letter does not mention alcohol, the combination of music and alcohol is not good. In the past, we could hear people yelling and arguing, and we would always hear vehicle tires peeling out.

***** IMPORTANT FAXED MESSAGE *****
Faxed Cover PAGE 2 of 2

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Continued.....

6.) I have even seen drunken customers of prior commercial establishments
urinating out in the open and sometimes close to our property.

In the past, ALL of our complaints regarding prior commercial establishments have ALL
fallen on DEAF EARS.

I hope someone finally LISTENS to our wishes.

We wish to keep our home a peaceful place.

If you have any questions, please feel free to contact me at # 512-689-6024.

Thank you for your help in this matter.

David Davila