

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Planning & Zoning Commission
Minutes of Regular Meeting
July 12, 2012 at 6:00 p.m.

Meeting called to order by Chair Tracey Dean. Present were Commissioners Beth Mitchell, Jean Ross, Charles Lancaster, Steve Klepfer, and Lance Cawley. Commissioner Rick Burleson was 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 June 28, 2012.

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

2. Public Hearing and Possible Action

- A. Hold a public hearing and consider making a recommendation to City Council regarding Case No. CUP-12-009, an application for a conditional use permit to allow for the operation of a Personal Care Home on a tract of land zoned Single Family Residential 2 (R-2), located at 39 La Toya Trail, Wimberley, Hays County, Texas. (*Monta & James Lane, Applicants*)

City Administrator Ferguson reviewed the subject property's current/proposed zoning and uses, location, planning area, septic system, and parking. He read a list of minimum requirements, as set forth in City Code that must be included in the conditional use permit (CUP), if the Commission recommends approval. Various maps were displayed reflecting the subject and surrounding properties' zoning, the notification area, and responses received from specific property owners on the requested zoning.

Chairman Dean opened the public hearing.

Notified property owner Mary Mitchell expressed her opposition to the zoning request.

Dr. Cecil Chandler, 134 Champion Circle, spoke very highly of the Lanes as caregivers for his wife and stated that he never observed any parking problems. He felt that such

personal care services are greatly needed in this area and asked that the Commission recommend approval.

Richard Sullivan, 24 Indian Princess Lane (outside of the notification area), spoke of his past experience as the property owner's association board member and clarified past actions taken by his co-chair on the board, which resulted in non-prosecution of the subject property's deed restriction violation. He clarified that such actions were taken out of fear of possible litigation and associated costs, and were never meant to infer that the subject property's commercial use was allowed under deed restrictions. Mr. Sullivan stated that in the future the POA board may choose to enforce its deed restrictions, despite threats of legal action by property owners. While the CUP (if approved) would remain in place for the subject property, City Administrator Ferguson clarified that the POA may enforce its more stringent deed restrictions and not allow the conditional use as a Personal Care Home.

Clint Frankmann, 18 La Toya Trail (outside of the notification area), expressed opposition to the Lanes' use of their property as a personal care home/adult day care facility and cited updated deed restrictions, which only allow for single family residential use. He did not object to the type of facility operated by the Lanes, but objected to its residential location.

Mary Mitchell, 8 Palo Pinto Path (within the notification area), spoke of her neighborhood's privacy and convenience and expressed concerns over increased traffic, reported past septic problems at the subject property, and people who do not follow laws at the expense of their neighbors. She did not oppose the type of facility operated by the Lanes, but did not feel that such use should be allowed in a residential neighborhood. There was brief discussion between City Administrator Ferguson and Mary Mitchell regarding questions about the proposed CUP's effect on surrounding properties' taxes. Ms. Mitchell was advised that such questions should be directed to the Hays Central Appraisal District. Brief discussion between Mary Mitchell and Commissioner Beth Mitchell addressed the differences between commercial uses and road conditions in the area of Flite Acres Road and the subject property.

Lynda Lackner, 5 Palo Pinto Path (outside of the notification area), spoke of past problems with traffic and her observation of more recent increased traffic, which she attributed to the personal care home operations at the subject property. She expressed opposition to the requested CUP and cited concerns regarding road conditions and increased traffic.

Wray Walker, 5 Palo Pinto Path (outside of the notification area), did not object to personal care homes in general, but opposed locating such facilities in residential areas. He cited a proposed senior care development at Ranch Road 12 and Cypress Creek Lane as a more appropriate location for such services.

Clarification was provided on specific properties' locations and whether such locations were inside or outside of the notification area.

City Administrator Ferguson read correspondence (attached to these minutes) from Jackie Mattice, Toni Cook, and Charles and Louise Bakofsky, dated July 10, 2012, in opposition to the CUP request and from Libby Allison, dated July 9, 2012, in support of the requested CUP.

Robert Tate, 20 La Toya Trail, (outside of the notification area) spoke on neighborhood street maintenance responsibilities and expressed concerns about increased traffic due to Mount Baldy and the Lanes' personal care home operation.

Applicant Monta Lane, 39 La Toya Trail, spoke of her professional background, training, qualifications, ownership history, and past/current resident(s). She spoke of growing need due to an aging "baby boomer" population and cited differences between the proposed senior care facility at Ranch Road 12 and Cypress Creek Lane and her existing personal care home operation. Mrs. Lane stated that she does not want to run a big organization and stressed that she only wants to take care of no more than three (3) residents at any given time. She spoke of her past role as caregiver to family members of certain prominent Alaskans and of specific financial difficulties related to the sale of her Alaskan home and a failed restaurant. Mrs. Lane stated visitors to Mount Baldy as being the source of most vehicle traffic and cited only one nurse visit per week and one doctor visit per month to her home. She noted that her six (6) children and thirty-four (34) grandchildren are allowed to visit her home at any time. Mrs. Lane stated her limited employment options and her husband's medical condition, and advised that her property would have to be sold, should she not be allowed to continue operating her personal care home. Mrs. Lane felt that her operations did not pose problems with traffic or parking and questioned why neighbors expressing opposition did not come and visit her home. She felt that approving her CUP request would be a humanitarian act and thanked the Commission for its consideration.

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

Commissioner Mitchell felt that this is a heartbreaking issue and did not agree that the Lanes' operation increased traffic or impacted property values. Although she felt that the Lanes provided a needed service, Commissioner Mitchell expressed concern that sixty percent (60%) of the neighbors objected to the CUP request and spoke of the Commission's precedent with respect to neighborhood opposition. She regretted any animosity that this issue may have caused among the Lanes and their neighbors. There was a brief exchange among audience members and Commissioner Mitchell about prior knowledge of applicable zoning regulations and the subject property's use as a personal care home.

Commissioner Klepfer received clarification from City Administrator Ferguson and the applicant on the subject property's non-conforming status in 2006 and current number of residents under care in the Lanes' home. Commissioner Klepfer acknowledged the difficult nature of this issue and cited the City's Comprehensive Plan relating to the value of input from individual neighborhoods on commercial activities within their subdivisions. Commissioner Klepfer stated that the issue in this zoning request is

commercialization of the neighborhood, not the quality of the service provided or its need to the community. Based on the amount of opposition expressed, Commissioner Klepfer did not favor recommending approval of the CUP request.

Commissioner Lancaster expressed appreciation to the applicant for the service she provides and to neighborhood residents for their input and concerns. Due to long-term growth and an aging population, he felt that both traffic (from Mount Baldy visitors and other sources) and demand for personal care homes will inevitably increase. Commissioner Lancaster felt torn on this issue and deferred stating his position at this time.

Commissioner Cawley acknowledged the importance of health care services for seniors, but recognized the Commission's precedent of making recommendations aligned with the wishes of individual neighborhoods.

Commissioner Klepfer moved to recommend denial of the CUP request, as presented. Commissioner Ross seconded. Motion carried on a vote of 5-1. Commissioner Lancaster voted against.

In response to applicant Monta Lane's inquiry about the public hearing process and Council procedures, City Administrator Ferguson advised that Council will hold a public hearing on this matter at its meeting on July 19, 2012.

B. Hold a public hearing and consider making a recommendation to City Council regarding a proposed ordinance of the City of Wimberley, Texas amending Chapter 155 (Zoning) of the Code of Ordinances as follows:

1. Amending Subsection (B) of the following sections: §155.035 (Residential Acreage; RA), §155.036 (Rural Residential 1; R-1), to add "one secondary single-family residential building built onsite, provided the secondary residence is not used for short- or long term rental" as a permitted use; and
2. Amending Subsection (C) of the following sections: §155.035 (Residential Acreage; RA), §155.036 (Rural Residential 1; R-1), to delete "one secondary single-family residential building built onsite" as a conditional use;

providing for the following: findings of fact; repealer; severability; effective date; and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson explained the proposed ordinance, which would allow one secondary residential building in R-1 and RA zoning districts, provided the secondary residence is not used for short- or long-term rental, as a permitted use, rather than as a conditional use under current regulations.

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

3. Discuss and Consider Action

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

Previous revisions recommended at the Commission's last meeting were discussed and it was agreed to incorporate those changes into the draft ordinance. Those recommendations related to allowing for some flexibility in the public hearing requirement for larger subdivisions/replats and/or minor revisions and to simplify the "20% Rule" language.

Commissioner Klepfer moved to incorporate changes per the Commission's direction at its last meeting and to continue the review process for *Chapter 154 Subdivision Control* before proceeding to the review of *Chapter 155 Zoning*. Commissioner Ross seconded. Motion carried on a vote of 6-0.

- B. Discuss and consider action on a proposal to reduce the regular meeting schedule of the City of Wimberley Planning and Zoning Commission. (*City Administrator*)

Discussion addressed various meeting schedule options and preferences, including leaving the existing meeting schedule in place and calling special meetings, if needed.

Commissioner Klepfer moved to reduce the Commission's meeting schedule to one meeting per month held on the second Thursday of the month, for a trial period of ninety (90) days, with the understanding that the Commission may call special meetings on the fourth Thursday of the month, if needed. Commissioner Lancaster seconded. Motion carried on a vote of 6-0.

4. Staff and Commission Reports

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Commissioner Lancaster moved to adjourn. Commissioner Ross seconded. Motion carried on a vote of 6-0.

Adjourn at 7:24 p.m.

Recorded by:



Cara McPartland

These minutes approved the 9th of August, 2012.

APPROVED:



Chair Tracey Dean



July 10, 2012

The City of Wimberley
Planning & Zoning Commission
221 Stillwater
Wimberley, Texas 78676

Commission Members,

We strongly oppose the granting of a conditional use permit to operate a personal care home at 39 La Toya Trail, for the following reasons:

1. A business in a residential neighborhood will result in a reduction of property value and make it harder to sell our homes in the future.
2. Granting the CUP will set a precedent that will encourage other zoning exceptions.
3. This business is in violation of our Home Owner Deed restrictions. Unfortunately our HOA cannot afford the expense of litigation to stop the violation.
4. Patient visitors, delivery vehicles, ambulances, etc., have increased the traffic on our already fragile private roads.
5. The Wimberley Code of Ordinances Chapter 155 does not regulate "Adult Day Care", which is one of the services the Lane's offer.

In conclusion, Eagle Rock was designed to be a RESIDENTIAL neighborhood, and we would like for it to remain that way.

Jackie Mattice lots 17, 18 and 19 (Block 13)
(across the street from 39)

Joni Cook - lots 6 & 7 Block 15

Charles T. Bakofsky & Laurie Bakofsky
38 La Toya (Block 16, Lot 6)

Libby Allison
1 La Toya Trail
Wimberley, TX 78676

July 9, 2012

City Administrator
PO Box 2027
Wimberley, TX 78676

Dear City Administrator,

I am a resident of Eagle Rock Section III, and I live on La Toya Trail. I am writing to support the application by Monta and James Lane for a Conditional Use Permit to operate a Personal Care Home at 39 La Toya Trail. The Lanes are well trained and have years of experience taking care of elderly who are in the most desperate of situations within a home setting. Rather than making their ability to provide this service more difficult, we should be finding ways to support those individuals in our community who are capable, willing, and able to provide such services.

I wholeheartedly support the Lanes continuing to operate their Personal Care Home at 39 La Toya Trail.

Sincerely,

A handwritten signature in cursive script that reads "Libby Allison".

Libby Allison