

## Legislation Details (With Text)

<b>File #:</b>	17-568	<b>Name:</b>	
<b>Type:</b>	Ordinance	<b>Status:</b>	Consent Item Ready
<b>File created:</b>	8/23/2017	<b>In control:</b>	City Council
<b>On agenda:</b>	9/11/2017	<b>Final action:</b>	
<b>Title:</b>	Approval of the second and final reading of an ordinance regarding a proposed amendment to Section 2.2 of Ordinance No. 2016-77, a Type 1 Special Use Permit allowing a commercial tuber entrance and takeout in the "C-4" Resort Commercial District, being 0.2289 acres addressed at 444 East San Antonio Street, to allow the business a postponement of the requirement to comply with the Americans with Disabilities Act for its public/commercial river access point, until December 31, 2018, or until postponement is revoked by the Texas Department of Licensing and Regulation based on a formal complaint being filed, whichever occurs first.		
<b>Sponsors:</b>			
<b>Indexes:</b>			
<b>Code sections:</b>			
<b>Attachments:</b>	1. Aerial Maps, 2. Application, 3. Zoning and Land Use Maps, 4. Notification List, Notification Map and Responses, 5. Photographs of Subject Property, 6. Ordinance No. 2016-77, 7. TDLR Variance Results, 8. Sections 3.3-10 (C-4) and 3.6 (SUP), 9. Planning Commission Meeting Draft Minutes, 10. Ordinance		

Date	Ver.	Action By	Action	Result
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Presenter

*Christopher J. Looney, Planning and Community Development Director  
clooney@nbtexas.org*

**SUBJECT:**

Approval of the second and final reading of an ordinance regarding a proposed amendment to Section 2.2 of Ordinance No. 2016-77, a Type 1 Special Use Permit allowing a commercial tuber entrance and takeout in the "C-4" Resort Commercial District, being 0.2289 acres addressed at 444 East San Antonio Street, to allow the business a postponement of the requirement to comply with the Americans with Disabilities Act for its public/commercial river access point, until December 31, 2018, or until postponement is revoked by the Texas Department of Licensing and Regulation based on a formal complaint being filed, whichever occurs first.

**BACKGROUND / RATIONALE:**

**Case No.:** PZ-17-029  
**Council District:** 5  
**Owner/Applicant:** IAKOBO Four LP (Gregg Weston)  
690 Laurel Lane  
New Braunfels, TX 78130  
(210) 223-9141

**Staff Contact:** Matt Greene Planner  
(830) 221-4053  
mgreene@nbtexas.org

City Council held a public hearing on August 28, 2017 and approved the first reading of the requested rezoning ordinance (7-0-0) with a condition that the postponement to the requirement for the business to comply with Federal Law ADA requirements for the public/commercial river access point is granted until December 31, 2018, or until the postponement is revoked by the Texas Department of Licensing and Regulation (TDLR) based on a formal complaint being filed, whichever comes first.

The subject property is located on the northeast corner of the intersection of East San Antonio Street and South Gilbert Avenue adjacent to the Comal River and San Antonio Street Bridge. It is currently addressed as 444 East San Antonio Street. The property is zoned "C-4" Resort Commercial District, which allows various recreational and resort uses.

There is a 12,000 square-foot building on the property that is currently vacant, but housed a restaurant and other uses at various times in the past as well as a 921 square-foot outbuilding that has been utilized for tube rental and shuttling. Currently, customers of the tube rental business walk to or are shuttled to Prince Solms Park to enter the Comal River.

In 2016, the owner applied for a rezoning for a Special Use Permit (SUP) to utilize existing stairs on the property that go down into the Comal River as a commercial tuber entrance and takeout. The applicant stated he believed a commercial tuber entrance/takeout at 444 East San Antonio Street would relieve congestion from the entrance to the Comal River in Prince Solms Park and would provide tubers an opportunity to enter or exit the Comal River below the tube chute and Weir Dam (a.k.a. Stinky Falls); areas that tend to become congested and can be potentially unsafe.

On December 12, 2016, City Council approved the applicant's requested SUP with six conditions:

1. The SUP shall not become effective until the applicant completely resolves all outstanding City of New Braunfels Municipal Court cases.
2. The business must comply with Federal Law ADA requirements for public/commercial access point at 444 East San Antonio Street.
3. The subject use shall provide parking to accommodate a minimum of 200 offstreet parking spaces, based on utilizing 800 tubes; if more than 800 tubes are utilized, an appropriate number of additional parking spaces will be required per existing City ordinances. Should the adjacent 12,000 square foot building and outdoor decks on the premises become commercially occupied, the 40 off-street parking spaces on the property will not be counted in the required 200 off-street parking spaces required for this SUP.
4. The owner/operator of the subject use shall cooperate and comply with requests, orders and/or ordinances related to crowd control management, including but not limited to queuing, staggered entry, cut-off times, and maximum entry/limits.
5. Any vehicular/shuttle transport used by owner/operator of the subject use from any off-site shared parking areas must be on streets classified as Collectors or higher in the City's Regional Transportation Plan, or be part of an existing approved shuttle route.
6. Should ownership of the subject property change, Staff will initiate a new rezoning case to review the SUP.

In regards to requirement number 2 above concerning ADA compliance, the owner intends to install a marine incline elevator to satisfy the accessibility requirement. Per the owner, the estimated cost of the equipment and construction is \$140,544. The owner is requesting an amendment to requirement number 2 above of the SUP ordinance **to allow postponement** of ADA compliance for river access for a period of **two years**. The owner believes this will give him enough time to cover the financial costs associated with bringing the access into ADA compliance.

The applicant applied to the Texas Department of Licensing and Regulation (TDLR) for a variance from the requirement to provide a compliant accessible route. TDLR disapproved the variance **but granted a postponement** to the installation of the accessible route to the river **until such time that future alterations or renovations are initiated or until a complaint is filed, whichever comes first** (Attachment 7).

**General Information:**

Size: SUP boundaries = 0.2289 acres  
Parent Parcel = 1.608

**Surrounding Zoning and Land Use:**

North - Across the Comal River, R-2 and C-4/Prince Solms Park and Schlitterbahn  
South - Across Gilbert Avenue, C-2/commercial office and single family residential  
East - Across Tolle Street, C-4/parking lot, condominiums and single family residential  
West - Across San Antonio Street, M-1/ADM Mill

*Comprehensive Plan/ Future Land Use Designation:*  
Commercial

***Floodplain:***

A portion of the property is located within the 1% annual chance flood zone and the floodway.

A Special Use Permit may be granted to allow compatible and orderly development which may be suitable only if developed in a specific way or only for a limited period of time. The request should be evaluated on the extent to which the proposed use:

- is consistent with policies of the Comprehensive Plan;
- is consistent with the purpose and intent of zoning district regulations;
- meets all supplemental standards; and
- preserves the character and integrity of adjacent development and neighborhoods.

**ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:**

X	No	City Plan/Council Priority: 2006 Comprehensive Plan <i>Pros and Cons</i> Based on Policies Plan	N/A
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**FISCAL IMPACT:**

N/A

**COMMITTEE RECOMMENDATION:**

The Planning Commission recommended approval of the requested SUP amendment to allow a two year postponement to the requirement for the business to comply with Federal Law ADA requirements for the public/commercial river access point **with the two year term starting on the day of TDLR authorization for postponement, June 23, 2017 (6-1-0).**

**STAFF RECOMMENDATION:**

Staff recommends approval of amending the existing SUP to allow the compliance of providing an ADA accessible route to the river to follow TDLR's postponement authorization, and staff concurs with City Council's vote at the first reading to further limit the time frame. Staff's recommendation is based upon TDLR's authorization, as well as since the property owner has an ADA compliant shuttle to transport any persons with disabilities or special needs to and from the City's accessible river entrances/exits.

***Notifications:***

Pursuant to State Statute, staff mailed notices to 10 owners of property within 200 feet of the subject site. As of August 30, 2017, one response was received in opposition (#3) and zero responses were received in favor.

**ATTACHMENTS:**

1. Aerial Maps
2. Application
3. Zoning and Land Use Maps
4. Notification List and Notification Map
5. Photographs of Subject Property
6. Ordinance No. 2016-77
7. Texas Department of Licensing and Regulation Variance
8. Sec. 3.3-10 "C-4" Resort Commercial District

- 9. Sec. 3.6 Special Use Permits
- 10. Ordinance