

## Legislation Text

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File #: 17-677, Version: 1

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Presenter

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

**SUBJECT:**

Public hearing and consideration of the first reading of an ordinance regarding the proposed rezoning request to apply a Special Use Permit to allow a vehicle storage facility in the "C-3" Commercial District on 0.716 acres out of Subdivision No. 101 of the A.M. Esnaurizar Eleven League Grant, Abstract No. 20, Guadalupe County, Texas, addressed at 2635 S. Highway 46.

**BACKGROUND / RATIONALE:**

Case No.: PZ-17-032

Council District: 2

Owner/Applicant: Jeramie Hernandez  
2207 Hazlewood Dr.  
New Braunfels, TX 78130  
(830) 620-6727

Staff Contact: Matt Greene, Planner  
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The subject property is a 0.716 acre parcel out of a larger 2.89 acre tract situated on the east side of State Highway 46 South, between Krause Lane and Center Street along the city limit line. The front portion of the property is currently zoned "C-3" Commercial District, is unplatted and improved with a perimeter metal fence constructed this year. The remainder of the 2.89-acre parent tract is located outside the city limits with frontage on Krause Lane. While many of the nearby properties zoned C-3 are undeveloped, single-family residences occupy properties on either side of the subject parcel, where the one to the northwest is also occupied by a moving business.

There are two types of Special Use Permits (SUPs). A Type 1 SUP regulates land use only and does not require a specific site plan or development schedule. A Type 2 SUP requires a site plan illustrating the arrangement of the development in detail, including parking facilities, locations of buildings, uses to be permitted, landscaping and means of egress and ingress. In this manner the City Council can add conditions and requirements to the site plan as needed to make the proposed use more compatible with surrounding development.

The applicant is requesting a Type 1 SUP to allow a vehicle storage facility (VSF) on the property.

VSFs are permitted by right only in the “C-1B” General Business District or by approval of an SUP. In addition to the proposed use as a VSF, the SUP application includes requests for deviations from Zoning Ordinance development standards; all of which may be considered through the SUP process:

- **Residential buffer** . The applicant is requesting approval to allow the existing metal fence adjacent to the residential properties to remain rather than construct the code-required residential buffer which includes a 6-foot to 8-foot tall masonry wall and 1 shade tree (minimum 1½ inch diameter) per 25 linear feet adjacent to the common property lines of the adjacent residential properties.
- **Parking surface**. The applicant is also proposing to utilize the existing caliche yard for parking and vehicle storage rather than the code-required paving with concrete, asphaltic concrete or asphalt.

Pursuant to Texas Occupations Code Chapter 2308 and 16 Texas Administrative Code, Chapter 85, VSF’s must meet the following facility fencing and storage lot surface requirements, which are enforced by the Texas Department of Licensing and Regulation.

- **Fencing**: No vehicles may be stored or kept at a licensed VSF unless the vehicle is kept inside an enclosed building or fence area where the fence is a minimum of 6 feet in height and constructed of wood, chain-link, metal, concrete, or masonry, placed around the perimeter used to store vehicles and designed to prevent intrusion and escape.
- **Storage Lot Surface**: All VSF’s shall have an all-weather surface such as concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell or caliche, that enables the safe and effective movement of stored vehicles upon all portions of the lot, both under their own power and under tow, at all times, regardless of prevailing weather conditions. The surface shall also be free of overgrown vegetation.

The existing fencing and lot surface comply with the State’s minimum standards, but not with the City’s minimum development standards in the adopted Zoning Ordinance. The City’s standards are not contradictory to the State standards; therefore, they can be required by the City.

***General Information:***

Size: = 0.716 acres (31,188 sq. ft.)

***Surrounding Zoning and Land Use:***

North - C-3 / Single family dwellings and moving business

South - C-3 / Single family dwellings

East - Outside City Limits / Undeveloped

West - Across S. Hwy 46 / Undeveloped

***Comprehensive Plan/ Future Land Use Designation:***

Commercial

***Floodplain:***

No portion of the property is located within the 100-year floodplain.

*Regional Transportation Plan:*

The subject property is in compliance with the City's Regional Transportation Plan as State Highway 46 is identified as a 120-foot wide Principal Arterial and the current right-of-way width of State Highway 46 at the subject property location is 120 feet.

*Improvement(s):*

The subject property is improved with a metal fence. There are no structures on the subject parcel.

*Determination Factors:*

In making a decision on rezoning, the following factors are to be considered:

- Whether the permitted uses will be appropriate in the immediate area and their relationship to the area and to the City as a whole *(The subject property is located on State Highway 46, a Principal Arterial, near the extent of the city limits and is zoned C-3. The C-3 District allows a broad range of residential and commercial uses. Such permitted uses similar to the SUP request include auto body and general repair garages, auto paint shops, auto muffler and tire shops and quick lube and oil change shops. However, these uses are required to comply with the minimum residential buffer masonry wall and landscape requirements as well as paving requirements.);*
- Whether the change is in accord with any existing or proposed public schools, streets, water supply, sanitary sewers, and other utilities to the area *(There do not appear to be any conflicts with these elements.)*
- How other areas designated for similar development will be affected *(There are no other properties near the subject site designated for the same use; nearby properties zoned C-3 can develop with similar uses, but not VSFs without a rezoning. The land use of nearby properties outside the city limits is not required to follow the City's Zoning Ordinance.)*
- Any other factors that will substantially affect the public health, safety, morals, or general welfare *(Should the SUP be approved, Staff recommends development of the site be required to meet all commercial development standards including paving the parking area, and a residential buffer wall and trees adjacent to the residentially used properties, plus any additional conditions required of City Council to ameliorate negative impacts. All other commercial development is required to meet these minimum standards to prevent dust/mud/trackout and screen the commercial business from adjacent residential properties.)* and
- Whether the request is consistent with the Comprehensive Plan. *(The proposed use is consistent with the Future Land Use designation of the subject site as Commercial, but is not consistent with development standards in regards to residential buffering and paving.)*

SUPs 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:**

✓	No	<b>City Plan/Council Priority:</b> 2006 Comprehensive Plan <i>Pros and Cons Based on Policies Plan</i>	<b>Pros:</b> The proposed use is compatible with the Future Land Use Plan designation of the property as Commercial. <b>Cons:</b> <b>Goal 20G:</b> <i>Discourage incompatible land uses from abutting residential areas.</i> Although the subject property is located on State Highway 46, a Principal Arterial, and is zoned C-3, there are residential uses immediately adjacent to the north and south. The residence to the north also has a commercial moving business operating from it. Non-compliance with the City's residential buffer requirements, which includes a masonry wall and trees, can produce noise and light pollution that would occur with the delivery or removal of vehicles from the site. An unpaved storage lot has the potential for producing air borne dust and the tracking of caliche material onto the State Highway.
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**FISCAL IMPACT:**

N/A

**COMMITTEE RECOMMENDATION:**

The Planning Commission held a public hearing at their October 4, 2017 meeting. Commissioner Laskowsky moved to deny the request. There was no second on the motion, therefore that motion failed. There were comments made regarding drainage concerns and the use seemed perfect for C-3; however, no motion to recommend approval was forthcoming. Commissioner Laskowsky moved to forward the rezoning request to City Council without a recommendation from the Planning Commission, seconded by Commissioner Hoyt. The motion was approved (5-0-0).

**STAFF RECOMMENDATION:**

Staff recognizes a VSF is consistent with the Future Land Use Plan designation of the subject property as Commercial and that the subject property fronts a Principal Arterial. However, the subject property is situated between two residential uses which deserve protection. Therefore, Staff recommends denial of the SUP as requested by the applicant.

However, staff could support an SUP for a VSF on the subject property if the applicant complied with all of the Code-required development standards, including the ones from which he is requesting to deviate. These standards are intended to protect abutting residential uses. Additionally, considering the intensity of VSFs, staff recommends that if approved, the residential buffer requirement be increased to a minimum of an 8-foot tall masonry wall and 3-inch diameter shade trees.

If approved, the SUP would only apply to the 0.716 acre area inside the city limits. The remaining 2.174 acres is outside the city limits and not subject to municipal zoning.

**Notification:**

Public hearing notices were sent to 9 owners of property within 200 feet of the request inside the City Limits. The Planning Division has received three responses in favor from #'s 3, 7, and 8 plus three additional responses in favor from outside the 200-foot notification area, and has received three responses opposed from #'s 2, 4, and 5. Opposition represents 39.8% of the notification area. With objection in excess of 20%, a  $\frac{3}{4}$  majority of City Council (6 votes) is required for approval of the rezoning request.

**ATTACHMENTS:**

1. Aerial, Regional Transportation Plan and Floodplain Map
2. Application
3. Survey of Subject Property
4. Zoning and Land Use Maps
5. Notification List, Map and Responses
6. Photograph of Subject Property
7. Sec. 3.3-9 "C-3" Commercial District
8. Sec. 3.6 Special Use Permits
9. Draft Minutes for the October 4, 2017 Planning Commission Meeting
10. Ordinance