

Legislation Text

File #: 19-566, **Version:** 1

Presenter

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SUBJECT:

Approval of the second and final reading of an ordinance regarding the proposed rezoning to amend an existing Special Use Permit to allow a commercial tuber entrance and takeout in the "C-4" Commercial Resort District on property presently addressed as 444 East San Antonio Street.

BACKGROUND / RATIONALE:

Case No.: SUP19-106

Council District: 5

Owner/Applicant: IAKOBO Four LP (Monique Weston)
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New Braunfels, TX 78130
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Staff Contact: Matt Greene
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City Council held a public hearing for the first reading of this requested rezoning ordinance on July 22, 2019, and unanimously approved the request (7-0-0).

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 zoned "C-4" Resort Commercial District, with a Special Use Permit (SUP) for a commercial tuber entrance and takeout. C-4 allows various recreational and resort uses, but an SUP is required for commercial tuber river access.

There is a 12,000 square-foot building on the property that the applicant indicates is currently vacant. It previously housed a restaurant and other uses at various times in the past. There is also a 921 square-foot outbuilding on the site that has been utilized for tube rental and shuttle base of operations.

In 2016, the property owner applied for an SUP to utilize existing stairs on the property for commercial tuber river access. The applicant stated "it 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 SUP request with the following 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 ADA (Americans with Disabilities Act) requirements for a 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 by the subject business, 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 200 off-street parking spaces required for this SUP.
4. The owner/operator of the subject use shall cooperate and comply with City 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 the 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.

Regarding requirement number 2 above, ADA compliance is required by Federal law and administered by the State. The owner intended to install a marine incline elevator to satisfy the accessibility requirement. Per the owner, the estimated cost of the equipment was approximately \$130,000 plus an additional \$120,000 in construction costs.

The owner applied to the Texas Department of Licensing and Regulation (TDLR) for a variance from the requirement to provide a compliant accessible route. TDLR did not approve the variance, **but granted a postponement of the installation of the ADA accessible route to the river until future alterations or renovations are initiated, or until a complaint is filed, whichever comes first.**

In 2017, the owner submitted a request to City Council for an amendment to the SUP condition number 2 (see above) to allow postponement of the city-imposed ADA compliance for river access for a period of two years. Considering TDLR's provision, City Council approved the amendment on September 11, 2017, with an expiration date of December 31, 2018, or until the postponement is revoked by TDLR, whichever occurs first (see Attachment 3).

No ADA improvements have been installed and the SUP condition's expiration date imposed by City Council has passed. The applicant is now seeking approval of a new amendment to the SUP to allow a commercial tuber entrance and takeout without a city-imposed condition to comply with ADA requirements for a commercial access point to the river. The business currently utilizes ADA accessible vans to transport physically challenged patrons to and from the City's public input and takeout locations. The applicant's explanation is attached to their application (see Attachment 2).

If City Council amends as requested by the applicant, the TDLR postponement and its conditions

remain in place, meaning when future alterations or renovations are initiated, or a complaint is filed, the applicant will need to comply with Federal ADA law. If City Council denies the applicant's request and retains the City-imposed ADA requirement, the applicant will need to comply with ADA (as well as all other conditions in the SUP) immediately in order to have an on-site commercial river access point.

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

Floodplain:

A portion of the property is within the 1% annual chance flood zone (100-year floodplain) and the floodway.

Determination Factors:

In making a decision on zoning, 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 proposed use is appropriate as the property is located on the Comal River in a highly used recreational river activity area.*)
- Whether the change is in accord with any existing or proposed public schools, streets, water supply, sanitary sewers, and other utilities to the area (*The proposed SUP should not conflict with the existing and proposed water supply, sanitary sewer and other utilities or schools or streets in the area. The adequacy of public facilities and utilities to serve any additional demand is evaluated by each utility provider.*)
- How other areas designated for similar development will be affected (*The proposed SUP should not negatively affect other areas designated for similar development and would provide for increased marketplace competition.*);
- Any other factors that will substantially affect the public health, safety, morals, or general welfare (*Use of the existing river steps will allow an alternate location for recreational tubers to enter the water before the tube chute and falls, or to exit earlier, which will be beneficial for safety and crowd control. The SUP request has been reviewed by the River Operations Manager.*) and
- Whether the request is consistent with the Comprehensive Plan (*The subject property is Downtown and situated within a Recreational River Corridor within the New Braunfels Sub Area.*)

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

City Plan/Council Priority: Envision New Braunfels	Action 3.6: Proactively provide a regulatory environment that remains business and resident friendly.
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FISCAL IMPACT:

N/A

COMMITTEE RECOMMENDATION:

The Planning Commission held a public hearing on July 2, 2019 and recommended approval with staff recommendations (7-2-0) with Vice Chair Reaves and Commissioner Meyer in opposition.

STAFF RECOMMENDATION:

Staff recommends approval with the following conditions:

1. The property owner shall utilize ADA compliant shuttles to transport people with disabilities or special needs to and from the City's accessible river entrances/exits;
2. The owner/operator shall cooperate and comply with City 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.
3. The subject use shall provide a minimum of 200 offstreet parking spaces, based on utilizing 800 tubes; if more than 800 tubes are utilized by the subject business, 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 200 off-street parking spaces required for this SUP.
4. Any vehicular/shuttle transport used by the 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.
5. The subject business will not allow any personal tubes. Customers must rent a tube(s) from the business in order to use the entrance.
6. The business will not allow customers to unduly or excessively congregate in the river fronting the business. Customers may only use the entrance to commence their float.
7. Should ownership of the subject property change, the City will initiate a rezoning case to allow for a new review of the SUP.

As with all SUPs, failure to comply with these conditions will be reported to City Council who may consider revocation of the SUP.

Notification:

Public hearing notices were sent to 10 owners of property within 200 feet; the City has received two responses in favor from numbers 2 and 8, and 1 opposed from number 4.

Attachments:

1. Aerial Maps
2. Application
3. Previously Approved SUP ordinance (No. 2017-65)
4. TDLR Variance Results
5. Land Use Maps (Zoning, Existing Land Use and Future Land Use Plan)
6. Notification List, Notification Map and Response
7. Photographs
8. Sec. 3.3-10 "C-4" Resort Commercial District
- 8 Draft Minutes from July 2, 2019 Regular Planning Commission Meeting
- 9 Ordinance

