

Legislation Text

File #: 20-211, Version: 1

Presenter/Contact*Applicant/Owner: Bob Rizk**(512) 667-4554 - bobbydianarizk@gmail.com***SUBJECT:**

SUP19-376 Public hearing and recommendation to City Council regarding a proposed rezoning to apply a Special Use Permit to allow outdoor music in the "C-1" Local Business District and adjacent to residential use, on Lot 1A, Grandview Addition, addressed at 1440 N. Walnut Avenue.

BACKGROUND / RATIONALE:

Case No.: SUP19-376

Council District: 3

Applicant/Owner: Bob Rizk
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New Braunfels, TX 78130
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Staff Contact: Matt Greene
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This case was postponed at the request of the applicant at the Planning Commission's February 4, 2020 and March 3, 2020 meetings, to allow the applicant more time to visit with neighbors and address their concerns.

The applicant indicated he hosted a "town hall" style meeting on Saturday, March 7th at Herbert's Restaurant with the neighbors located around his business to have an open dialogue to discuss his Special Use Permit proposal and potential amendments to his application.

The 1.38-acre subject property located at the northeast corner of the intersection of North Walnut and Ohio Avenues, is the location of Herbert's restaurant, which includes outdoor dining on a deck. The applicant is requesting approval of a Special Use Permit (SUP) to allow the restaurant to have outdoor music - live and recorded.

Per Section 5.3-4 of the City's Zoning Ordinance, outdoor music is not a permitted use in C-1, nor is it allowed adjacent to residential uses or zoning. The subject property is zoned C-1 and is adjacent to 4 residential properties: 3 single-family, and one detached two-family (duplex). The property owner has received one notice of violation for having outdoor music on September 30, 2019, and has had one complaint filed in Municipal Court for having outdoor music on October 7, 2019.

The property owner is now seeking authorization of outdoor music on the property. No new improvements or modifications to the property are proposed with the request. There are two existing overhead speakers (see Attachment 3, page 1) and a small stage area on the outdoor deck (see Attachment 3, pages 2 and 3), facing the restaurant and away from the adjacent residential properties. The applicant is proposing the following additional measures to minimize disruption to his neighbors; his proposal is also intended to ensure compliance with the City's noise ordinance (Section 82-9 of the City's Code of Ordinances), which is a separate ordinance in addition to the requirements of the Zoning Ordinance and any approved SUP:

1. Outdoor recorded music would be limited to Sunday through Thursday from 9:00AM to 9:00PM and on Friday through Saturday from 9:00AM to 10:30PM.
2. Outdoor live music would be limited to Thursday and Sunday from 6:00PM to 9:00 PM and on Friday and Saturday from 7:00PM to 10:00PM.
3. The outdoor overhead speaker music volume would be limited to a decibel level no higher than 85 and will be set on the audio equipment and monitored by onsite managers. Live music will be emitted through a PA system and speakers set up on the stage. The live music volumes will be measured by on-site managers at 1-hour intervals from two identified locations along the property lines (see Attachment 3, page 4). If the sound level exceeds 85 decibels, the on-site managers will inform the band immediately and give a first and final warning. The on-site manager must remeasure the decibel level within 5 minutes of the warning to confirm compliance. If the decibel level exceeds the maximum level a second time, the band will immediately be suspended. The on-site manager will utilize the Live Music Decibel Log that is Attachment 3, page 5).

If approved, outdoor music would not only be monitored by on-site managers pursuant to the applicant's proposed condition number 3 above, but additionally:

1. The City's Code Compliance Division may be called to address compliance with the conditions of the SUP, and
2. The City's Police Department may be called to address any noise complaints associated with violations of Section 82-9 (Noise Ordinance) of the City's Code of Ordinances.

Surrounding Zoning and Land Use:

North - C-1 / Single-family dwellings

South - Across N. Walnut Ave., C-1 / Retail and multifamily

East - C-1 / Single-family and two-family dwellings

West - Across Ohio Ave., C-1 and ZH-A / New Braunfels Podiatry Associates and single-family dwellings

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 subject property is in an area of mixed uses along a principal arterial at an intersection with a local residential street. Without mitigation measures, allowing outdoor music could introduce an incompatible land use to adjacent residents.*);
- 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 use does not appear to conflict with any of these elements.*);
- How other areas designated for similar development will be affected (*Allowing outdoor music*

- would not likely affect areas nearby designated for similar development.);
- Any other factors that will substantially affect the public health, safety, morals, or general welfare (*The use of outdoor music could negatively impact the health and general welfare of the public in neighboring residential areas.*);
 - Whether the request is consistent with the Comprehensive Plan (*The subject property lies within the New Braunfels Sub Area, along a Transitional Mixed-Use Corridor (Walnut Avenue/SH 46), and near existing Market Centers.*)

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

City Plan/Council Priority: Envision New Braunfels Comprehensive Plan	Action 3.3 Balance commercial centers with stable neighborhoods. Action 3.6 Proactively provide a regulatory environment that remains business and resident friendly.
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FISCAL IMPACT:

N/A

STAFF RECOMMENDATION:

Denial. However, if Planning Commission is inclined to recommend approval, staff recommends mitigation measures be considered for conditions on the SUP, such as an acoustic shell for the stage that directs sound away from residences, setting a size limit for the stage, limiting live music to acoustic, adopting the applicant's proposed time and decibel limits, additional trees and fencing, etc.

Notification:

Public hearing notices were sent to 23 owners of property within 200 feet of the request. The City has received 6 responses in favor from numbers 6, 7, 8, 15, 16 and 18, and 15 opposed from numbers 2, 3, 4, 5, 6, 10, 11, 12, 13, 17, 19, 20, 21, 22 and 23. Opposition represents more than 20% of the notification area, therefore, a $\frac{3}{4}$ majority of City Council (6 votes) will be required for approval of the zoning change request for the SUP. Staff also received a petition from the applicant with 80 signatures in favor of the proposed SUP request from individuals outside of the 200-foot notification area, and a petition from the neighborhood with 49 signatures of opposition, mostly from residents located outside the 200-foot notification area.

ATTACHMENTS:

1. Aerial Map
2. Land Use Maps (Zoning, Existing Land Use, Future Land Use Plan)
3. Applicant's Proposal
4. Notification List, Map and Responses
5. Sec. 3.3-7 C-1; Sec. 3.6 SUP; Sec. 5.3-4 Additional Residential Buffering Requirements and Sec. 82-9 Noise Regulations
6. Photographs of Subject Property