Legislation Text

File #: 21-298, **Version:** 1

Presenter
Christopher J. Looney, AICP, Planning and Development Services Director
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SUBJECT:

Public hearing and first reading of an ordinance regarding a proposed rezoning to apply a Special Use Permit to allow outdoor music in the "C-1" Local Business District adjacent to residential use on approximately 1.2 acres consisting of Lot 5, Block 1, Rio Vista Addition, addressed at 1951 Gruene Road.

BACKGROUND / RATIONALE:

Case No.: SUP20-298

Council District: 4

Applicant: Roger Rocket Real Estate LLC
422 Elmwood Drive
New Braunfels, TX 78130
(713) 446-9793
rfwilkinson@gmail.com
Ross Wilkinson, Managing Member

Owner: 1951 Gruene Road
New Braunfels, TX 78130
Rosemary R.C. Nunez (Phillips)

Staff Contact: Matthew Simmont, AICP
(830) 221-4058
msimmont@nbtexas.org

City Council postponed the first reading of this proposed rezoning (7-0) upon request from the applicant.

The 1.185-acre subject property is located south of Loop 337 on the east side of Gruene Road. The 1,216 square-foot residence on the site was constructed in 1968. The applicant would like to convert the house into a restaurant and is requesting approval of a Special Use Permit (SUP) to allow live outdoor music.

Their plan is to extend a covered outdoor patio from the rear of the building. The conceptual site plan shows a total of 20 tables arranged with six tables within the enclosed dining room and restaurant, nine tables under the covered patio, and five open air tables with space for live music performances.

To protect residential tranquility, Section 5.3-4 of the City's Zoning Ordinance prohibits outdoor

music when adjacent to single-family or duplex residential use or zoning. The subject property is adjacent to single-family residences to the south and east. In addition, the site is adjacent to the 124 -unit Ranch at the Guadalupe apartment complex that was constructed in 2017.

Neighboring C-1 zoned property to the south with frontage on Gruene Road is developed with similar era single-family homes on large lots that were platted as the Rio Vista Addition in 1934. The surrounding neighborhood is well-established and stable. Property to the east is also part of the Rio Vista Addition. This area is zoned R-2 (Single-family and Two-family) and is developed with single-family homes. Property to the north is zoned C-1 and developed with a large apartment complex.

While the Zoning Ordinance includes the aforementioned residential protection provision, the purpose of the SUP process is to provide an opportunity for site-specific consideration of certain uses or activities that might otherwise be incompatible with adjacent uses or existing land use patterns. As SUPs are conditional zoning overlays, they can be approved with conditions to achieve compatibility and protect neighboring properties.

Surrounding Zoning and Land Use:
North - C-1 / Multifamily
South - C-1 / Single-family and two-family dwellings
East - R-2 / Single-family and two-family dwellings
West - Across Gruene Road and Union Pacific Railroad, M-1 / Commercial and agricultural

Determination Factors:
In making a decision on zoning, the following factors are to be considered:

- Whether the permitted use will be appropriate in the immediate area and the relationship of the use to the surrounding area and to the City as a whole. (*The subject property is at the perimeter of an established residential area of single- and multi-family homes. Without sound mitigation measures, allowing outdoor music could introduce an incompatible land use to adjacent residents. The site appears capable of accommodating the required number of parking spaces. Parking, landscaping, and other site development standards will be reviewed for compliance during site plan review of the necessary commercial permit.)*
- Whether the zoning 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. Although, site utility upgrades may be identified during the house conversion and permitting process.)*
- How other areas designated for similar development will be affected. *(Allowing outdoor music would not likely affect nearby areas 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, residential enjoyment, and general welfare of the public in neighboring residential areas.)*
- Whether the request is consistent with the Comprehensive Plan: *see below*

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. **Future Land Use Plan:** The property is situated in the New Braunfels Sub-Area near a Recreational River Corridor.

FISCAL IMPACT:

1. If approved, the City's Code Compliance Team might be frequently called to enforce compliance with the SUP, due to the numerous homes in close proximity.
2. If approved, the City's Police Department might be called to investigate noise complaints and frequently measure decibel levels pursuant to the City's Noise Ordinance (Section 82-9).

COMMITTEE RECOMMENDATION:

The Planning Commission held a public hearing on March 2, 2021 and recommended denial (7-0-1) with Commissioner Gibson absent; Commissioner Mathis abstained.

STAFF RECOMMENDATION:

Outdoor live music appears inappropriate at this location for the following reasons:

1. The property is surrounded on three sides by existing, stable residential uses. The conceptual site plan shows the music stage oriented toward the apartment complex. Given the difficulty of controlling noise trespass, it is anticipated that the use may create a nuisance for surrounding residents.
2. The applicant has not yet provided information regarding noise mitigation, or specific measures to minimize disruptions to neighbors. Per Section 82-9 of the City's Code of Ordinances, the maximum decibel level permissible for any type of sound emitted from a property that is located within 100 feet of a residential district is 85 decibels between 10:00 AM to 10:00 PM and 75 decibels at all other times.

Therefore, staff recommends denial. However, if City Council is inclined to approve, staff recommends the SUP include conditions. Examples of noise mitigation measures that have been suggested for similar projects and appropriate for consideration at this location include:

1. Require an acoustic shell for the stage that directs sound away from residences.
2. Set a size limit for the stage.
3. Limit live music to acoustic performances.
4. Limit performance hours.
5. Limit the days of the week that performances occur.
6. Specify rules for playing recorded music through outdoor speakers.
7. Increase site screening and landscaping requirements.
8. Require onsite monitoring and record keeping of decibel levels by the business owner.

Notification:

Public hearing notices were sent to 10 owners of property within 200 feet. The City has received no responses in favor and seven responses in objection (# 1, 2, 3, 4, 6, 7, 8) to the request. Opposition represents more than 20% of the notification area. Pursuant to state statute, a ¾ majority of City Council (6 votes) will be required for approval of the applicant's request unless that opposition changes. (Staff received an additional 4 written responses from outside the state-mandated 200-foot notification area.)

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RESOURCE LINKS:

- Chapter 82, Section 9. *Noise Regulations* of the City's Code of Ordinances:

  <https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH82OFMIPR_S82-
  Chapter 144, Section 3.3-7. *"C-1" Local Business District* of the City's Code of Ordinances:
  <https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?

- Chapter 144, Section 3.6 (SUP) of the City's Code of Ordinances:
  <https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?

- Chapter 144, Section 5.3-4 *Additional Residential Buffering Requirements* of the City's Code of Ordinances:

  <https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?

ATTACHMENTS:

1. Aerial Map
2. Land Use Maps (Zoning, Existing Land Use, Future Land Use Plan)
3. Request Letter and Conceptual Site Plan
4. Email Correspondence with Applicant
5. Notification List, Map and Responses
6. Draft Planning Commission Meeting Minutes
7. Ordinance

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