



Planning and Zoning Commission Minutes
Tuesday, February 13, 2018 | 4:00 PM
City Hall, 200 Rusk Street, Gainesville TX, Council Chambers

Chairperson Present:	Bill Williams
Commissioners Present:	Nathan Dempsey, Cal Koontz, Teresa McElreath, and Phil Neelley
Commissioners Absent:	Lynn Monden
Staff Present:	Fire Marshal Jason Botcher, Community Development Director Julie Smith, Planning and Permit Technician Nathan Payeur and Administrative Assistant Claire Barnes
Visitors Present:	Ruthanna Bustamante Partin, Charles V. Partin, Jeff Wilson, Scott Dougherty, and Trey Schalk

Item 1 – Call to order.

Chair Williams called the hearing to order at 4:00 PM.

Item 2 – Consider approval of January 9, 2018, minutes.

Commissioner McElreath moved to approve the minutes from the January 9, 2018, hearing. Commissioner Koontz seconded. All present voted AYE, and the motion passed unanimously.

Item 3 – Consider approval and adoption of Popal Addition, No. 1 Final Plat for the Grand Ave Express. (SPF5905536)

CDD Julie Smith showed a visual map of the area the plat encompassed. She explained how the applicants planned to extend utilities off site. Commissioner McElreath asked about the water line. CDD Smith stated that the water line had to be extended, and that is why the plat cannot be executed by the City Manager as a minor plat. Commissioner McElreath pointed out several spelling errors that would need to be corrected as well as the missing right-of-way widths of the adjacent roads. Other than these items, she saw no other issues. CDD Smith agreed and stated that the City had no objections to the proposed plat.

Commissioner Koontz moved that the plat be accepted with corrections to account for grammatical and spelling errors on the plat. Commissioner Dempsey seconded. All present voted AYE, and the motion carried unanimously.

Item 4 – Hold a public hearing to receive comments regarding a request from Charles Vernon Partin, Jr. and Ruthanna Bustamante Partin for a Special Use Permit (SUP) to operate a tattoo, permanent make-up, and tattoo removal studio at 5026 East Highway 82 and make a recommendation to City Council. (SUP7225938)

Chair Williams opened the public hearing at 4:04 PM.

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CDD Smith explained that Mr. and Mrs. Partin planned to occupy two suites in the building located at 5026 East Highway 82. CDD Smith provided context for the property by showing that it is in a C3 zoned area and surrounded primarily by commercial businesses. The location fits the requirements for the tattoo/permanent make-up SUP per City ordinance.

During the public hearing, Ruthanna Bustamante Partin spoke about her and her husband's plans for the space. She explained that they are both fine artists who want to do tattoo work in the Gainesville area. She described how the vicinity of the location to family, clientele, and the University of North Texas (where she is currently working on her Masters of Fine Arts) make Gainesville an ideal place to conduct their business. She stated that her husband is also a student at UNT. In addition, Gainesville is close enough to Oklahoma that they will be able to attend art events in Oklahoma City. Mrs. Partin stated that past experiences working with other people in the tattoo business have not gone well, and she and her husband want to operate a clean, upscale, and professional establishment.

Chair Williams closed the public hearing at 4:08 PM.

Item 5- Consider and make a recommendation to City Council regarding a request from Charles Vernon Partin, Jr. and Ruthanna Bustamante Partin for a Special Use Permit (SUP) to operate a tattoo, permanent make-up, and tattoo removal studio at 5026 East Highway 82 and make a recommendation to City Council. (SUP7225938)

CDD Smith stated that since the location is zoned C3 (outdoor commercial), the use of the venue complies with the City's SUP ordinance. The SUP proposal was publically noticed, and no objections or comments were received. There are no adjacency issues with the property as it is not near a neighborhood or school. The applicants searched long and hard to find an appropriate location for their business. Staff had no objections.

Commissioner Neelley moved to recommend to the City Council that the SUP be granted. Commissioner McElreath seconded. All present voted AYE, and the motion carried unanimously.

Item 6- Hold a public hearing to receive comments regarding a proposed ordinance for the operation of Short-Term Rentals (also commonly referred to as Air Bed and Bath, Vacation Rental by Owner, Home Away, etc.). (SI7892120)

Chair Williams opened the public hearing at 4:10 PM.

Mr. Scott Dougherty, a citizen who had previously operated an AirBnB in town, spoke. He requested clarification about the 14 days or less category versus the 30 days minimum requirement for obtaining and keeping an SUP.

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Chair Williams closed the public hearing at 4:12 PM.

Item 7- Consider and make a recommendation to City Council for a proposed ordinance for the operation of Short-Term Rentals (also commonly referred to as Air Bed and Bath, Vacation Rental by Owner, Home Away, etc.). (SI7892120)

CDD Smith addressed Mr. Dougherty's question. She stated that Staff was attempting to find a middle ground between those hosts who were only interested in renting their home once or twice a year while away on vacation (thus the fourteen days) and those who wanted to operate the business year round as a Short Term Rental (STR). The Commission, at their January 9, 2018, meeting, requested that hosts not operating more often than one or two weeks a year not be regulated. The proposal before the Commission does not require an SUP for Short-Term Rentals (STRs) that would be renting 14 days or less per year. However, the Commission also did want to make sure that those renting thirty days or more a year did follow the SUP process proposed for STRs. It left the difference between 14 and 30 in a "no man's land." Commissioner Neelley said that most people would not rent their homes more than 30 days. He stated that most people would fall into the fourteen to thirty-day categories. CDD Smith suggested exempting hosts from the permitting process renting less than 30 days a year. Those renting thirty days or more would warrant an SUP. The Commission accepted this recommendation.

Commissioner McElreath asked the Fire Marshal what his opinion was. Fire Marshal Botcher said his preference would be to regulate all STRs simply to ensure the safety of the structures, but he understood the Commission's attempt to not overreach. Of course, any fires or accidents that do occur would be the sole responsibility of the property owner. Fire Marshall Botcher stated that for unregulated STRs (thirty days and below) there would be no inspections or CO level fire requirements. Guests would be in an unfamiliar environment without proper knowledge of emergency equipment locations or procedures. This could result in a tragedy. Chair Williams asked if lit exit signs are normally required. Fire Marshal Botcher responded that commercial properties require exit signs. CDD Smith responded that residences that host assemblies also require them. Commissioner Dempsey asked the STR owners in attendance if they show the customers around the house and if there are pictures of emergency exit routes. CDD Smith stated that ordinance requires that the routes be displayed. Commissioner McElreath pointed out that the under thirty day residences would not include the posted routes. Mr. Dougherty stated that if someone is renting out a property for thirty days or more than they can justify the costs for the fire and safety requirements. Mr. Schalk agreed. Chair Williams asked if someone could obtain insurance for rentals. Mr. Daugherty replied that AirBnB offers insurance, but that an insurance agent should be contacted, however some risks are not covered. CDD Smith mentioned that those risks fall on the owner.

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In terms of enforcing how many days a host might be renting a particular STR, CDD Smith described the challenge this poses for staff. How could staff determine whether someone rented more or less than 30 days but under no circumstances more than 180 days? Under SUPs in the Code of Ordinances, the Commission could recommend specific requirements for the STR category. Mr. Lee Russell, a Bed and Breakfast owner, had suggested that the City could require STR owners to annually submit occupancy information from the previous year to the City. Though dependent on the “honor system,” this would make enforcement easier. While some people might misrepresent this information, ultimately the documentation could make it easier for the City to catch those owners who violated the ordinance. Mr. Jeff Wilson, a Bed and Breakfast owner, mentioned that AirBnB provides some documentation. CDD Smith responded that though AirBnB may, not all services provide the needed information. Mr. Trey Schalk, a Bed and Breakfast owner, stated that since not all services provide documentation, some owners could falsify statistics. CDD Smith remarked that the Community Development department does check for illegal rentals via the internet and social media. People who are unaware of the regulations will likely be caught. Commissioner Dempsey clarified that this documentation would be a ledger for the year that would be due at the end of the year. CDD Smith confirmed that this would be a component of the SUP process if the Commission agreed. Mr. Schalk stated that STR owners still have to fill out tax forms. CDD Smith stated that the forms used for taxes do not require owners to break down the number of days a room is rented. There was general agreement that self-reporting may offer staff’s best means of tracking the number of days rented.

CDD Smith stated that the parking requirement for Single-Family Two (SF-2) had been changed in the proposal to allow one guest room to be parked on the street while the remaining rooms had to be parked on site. This was an attempt to address concerns of large historical homes who may struggle to park all guest rooms on site. Commissioner Dempsey stated that the proposed parking regulation was fair.

CDD Smith stated that the assembly regulations had not been altered since the last meeting. The assembly regulations do not apply to Central Area zoning since it would consist of lofts without “public areas.” There would be split occupancy models – residential and assembly - for residential houses. Small gatherings of people could be accommodated in the open areas of the house (not including bedrooms) calculated at fifteen square feet per person net.

Though the Commission had asked staff to remove the restriction that no guest could stay longer than 30 consecutive days at the same STR, CDD Smith explained why staff did not make the change: once a guest stays over thirty days, the residence is classified differently and is considered a long-term stay. This creates zoning problems given that it now mimics a hotel. Fire Marshal Jason Botcher explained that up to thirty days is considered transient occupancy under the IFC, while over thirty days falls under non-transient. CDD Smith mentioned that other cities also include this limitation to differentiate STRs from apartments and hotels due

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to IFC regulations. Commissioner Neelley remarked that some people check into hotels for 30 days and then check out and check back in to stay classified as transient. Commissioner Dempsey mentioned that there are always loopholes. CDD Smith stated that the minimum of thirty days (or about ten to fifteen weekends) is a significant commitment for an STR host. Mr. Dougherty stated that his property would have fallen above the 14 days or less category but under 30 days. (He rented his house for sixteen days one year.) Mr. Wilson stated that he rents his property twenty-five weekends a year. Mr. Daugherty asked for clarification on when an SUP would be required. CDD Smith stated that renting thirty days in a calendar year would require an SUP. Fire Marshal Botcher reminded the Commission that occupancy inspections would not occur for rentals without SUPs. Commissioner Neelley stated that the rental demand was not that high and that less than thirty days was not enough exposure to require safety precautions from the City.

Chair Williams asked how the City would enforce the regulations since not everyone with an STR will advertise it online.

CDD Smith responded that the City would be able to catch those who were renting property for significant amounts of time during the year. Citizen complaints and monitoring the internet sites could help with enforcing the regulations.

Commissioner Neelley asked about regulations for parties. CDD Smith stated that there would be no regulations for parties at properties that rent under thirty days a year (beyond the established laws that apply to all properties), because there would be no SUP. If folks were renting out premises for parties unrelated to overnight guests, however, this would be the same as operating a commercial business and could pose zoning violations. The residence would, in essence, be an event venue rather than an STR. Chairman Williams asked how properties are to be protected without regulations. If properties are exempted (as discussed), there would be no regulatory oversight. CDD Smith responded that one advantage of the SUP process is that it allows neighbors an opportunity to voice any concerns and the Commission and City Council the ability to consider applications on a case by case bases. Commissioner McElreath asked how much an SUP costs. Mr. Wilson responded that the SUP (per the current fee schedule) costs \$500. CDD Smith added that bringing the property up to code for the SUP can cost the property owner even more money than just the application fee. Mr. Schalk invested around \$6,000 to install fire protection at his B&B.

Mr. Wilson mentioned that hosts have an incentive to offer a safe, attractive service. His and Mr. Schalk's properties both feature five star ratings online. Owners who wish to have high ratings will spend money on maintenance and improvement of their property.

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Commissioner McElreath stated that they might need to revisit the less than thirty days category. Commissioner Neelley remarked that thirty days or more could impact a neighborhood, but he did not think fewer rental days would.

Commissioner Koontz stated that the Commission is not worried about owners such as Mr. Schalk or Mr. Wilson. The concern originates from potential STRs operated by less meticulous owners. Mr. Wilson stated that poor maintenance would lead to lower ratings. Low ratings affect business. Chair Williams stated that price would also be a factor. A low rating might not hurt a less expensive rental. He agreed that over thirty days per year should be regulated to protect the neighborhoods.

CDD Smith asked Mr. Schalk how many rentals per guest his residence has had in the past year. Mr. Schalk stated 400 nights if counting per guest. Commissioner Dempsey asked if all of the current STRs would require an SUP if done per reservation. Mr. Wilson thought they would. CDD Smith clarified that the SUP requirement would be triggered by rentals of at least thirty days per year. She asked if the Commission wanted to count per reservation or by occupied days. Commissioner Neelley responded that per day should be used.

CDD Smith stated that, as the Commission had requested, the proposed ordinance would not limit the number of STRs per block. Commissioner Neelley stated that he does not think there will be an issue, but the Commission can revisit the topic if problems arise. Commissioner Dempsey stated that with the SUP process, the City would be able to deny SUPs, if needed. In addition, the CO process would require fire code provisions to be met (exit plans, occupancy loads, etc.). Fire precautions would also mean that STR rental space could not be above a second story or in a basement. There could only be 2 people per bedroom, and all fire alarms would be inspected.

Commissioner McElreath asked if there were any comments from the visitors in attendance. Mr. Daugherty stated that by not regulating fewer than 30-days-per-year rentals, many potential STR owners could begin to build their business. They could determine if the investment to meet Fire Code regulations was worth it and build the capital needed to obtain an SUP. He stated that he was excited about the proposed regulations. CDD Smith mentioned that zoning map may need to be revisited. Mr. Daugherty's property, for instance, under current zoning, cannot function as an STR.

Commissioner McElreath thanked everyone for their contributions to the STR discussion.

Mr. Wilson stated that he encourages everyone who wants to open an STR to start. However, he cautioned that STRs require a significant commitment.

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Commissioner Neelley moved to recommend to the City Council the ordinance as proposed and as summarized on Attachment A of the Commission meeting packet with the amendment to exempt STRs renting fewer than 30 days per year. Commissioner Koontz seconded. All present voted AYE, and the motion passed unanimously.

Item 8 – Adjourn.

Commissioner Dempsey moved to adjourn the meeting. Commissioner Koontz seconded. The meeting adjourned at 4:49 PM.

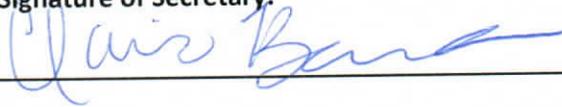
Signature of Chairman:



Date

3/13/18

Signature of Secretary:



Date

3/13/18

