

City of Kerrville Planning & Zoning Commission Agenda

Thursday, December 20, 2007, 4:30 p.m.*

City Hall City Council Chambers, 800 Junction Highway, Kerrville, TX

The meeting place has wheelchair accessibility and available accessible parking spaces. Please call the City of Kerrville Planning Division at (830) 792-8354 forty-eight hours (72) before the meeting to request accommodations.

1. *4:15 p.m. Pre-Meeting Session, City Council Chambers

Review of today's agenda items between Staff and the Commission. No action will be taken and there is to be no discussion between the Commission and the applicant(s) or other audience.

2. 4:30 p.m. Call to Order

Chairperson calls the meeting to order; roll call.

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3. Visitor/Citizens' Forum

Any person with business not scheduled on the agenda is encouraged to briefly speak their ideas to the Commission. Please fill out the SPEAKER REQUEST FORM and give it to the Commission's Secretary prior to the meeting. (No formal action can be taken on these items as the Open Meetings Act requires formal action items be posted on an agenda no later than 72 hours before the meeting. If formal action is required, the items will be placed on an agenda for a future meeting.)

4. Consent Agenda

All items listed below in the consent agenda are considered routine or ministerial in nature and will be enacted with one motion. There will be no separate discussion of items unless a Commissioner or citizen so requests; in which case the item(s) will be removed from the consent agenda and considered separately.

4A. Approve the minutes from the meetings of November 29 and December 6, 2007.

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4B. Final Plat: Comanche Trace Phase 11 – A seventy-two (72) lot single family subdivision on 45.52 acres located generally along the southern extension of Comanche Trace Drive. Zoned: PDD. Applicant: Grogan Surveying. (File No. 2007-16)

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5. Public Hearing/Consideration

5A. Sign Variance Request – A variance to the Sign Regulations of the City of Kerrville to allow an off-premise sign to exceed the maximum allowable sign area of one-hundred (100) square feet by fifteen-hundred and sixty-six (1566) square feet, located on Thompson Drive west of Sheppard Rees Road. Zoned: ETJ. Applicant: Greg Richards. (File No. 2007-50)

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5B. Zoning Change Request – Consider a recommendation to the City Council of a request to change the zoning on an approximately 6.0 acre tract from R1A to R3, located along the south side of Guadalupe Street, east of the Guadalupe Street and Lewis Street intersection. Zoned: R1A. Applicant: Brent Bates. (File No. 2007-57)

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- 6. Worksession** 29
- 6A. **Building Code Amendments** – The Commission will discuss the applicability of the building and fire codes on existing buildings as they relate to the adoption of the 2006 Edition of the International Building Code.
- 7. Staff Reports** 30
- 7A. Future Agenda Items. Applicant: Senior Planner.
- 7B. Director’s Report. Applicant: Director of Development Services.
- 8. Adjourn** - The next scheduled meeting is Thursday, January 3, 2008.

**BUSINESS OF THE PLANNING AND ZONING COMMISSION
CITY OF KERRVILLE, TEXAS**

AGENDA ITEM: 4A **FOR AGENDA OF:** December 20, 2007
DESCRIPTION: Approval of the minutes from November 29, 2007
APPLICANT(S): Planning and Zoning Commission Secretary
ATTACHMENT(S): Minutes

The Commission Secretary recommends approval of the proposed minutes

MEMBERS PRESENT:

Bruce Motheral, Chairperson
Jim Kessler, Vice Chairperson
Harold Buell, Commissioner
Mack Hamilton, Ex-Officio City Councilperson
George Hager, Commissioner
T. Justin MacDonald, Vice- Chairperson
Charles W. "Walt" Roetter, Chairperson
John Mosty, Committee Member
William Morgan, Committee Member
Wesley Dorman, Committee Member
Lisa Nye-Salladin, Committee Member (arrived at 6:09 p.m.)

MEMBERS ABSENT

Ward Wueste, Committee Member
Andy Phillips, Commissioner
Paul Hofmann, Ex-Officio City Manager

STAFF PRESENT:

Kevin Coleman, Director of Development Services
Gordon Browning, Senior Planner
Trina Ramirez, Planning and Zoning Commission Secretary

1. CALL TO ORDER:

On November 29, 2007, the Kerrville Planning and Zoning Commission regular meeting was called to order at 5:35 p.m. in the City Hall Council Chambers, 800 Junction Highway.

2. Introduction of Committee Members

**3. Review of City Council's Charge to the Comprehensive Plan Committee
(Director of Development Services)**

Kevin Coleman explained to the Committee's the role that City Council had

given the Comprehensive Update Committee.

4. Presentation by the CPUC Chairman of the proposed revisions to Link 7-Central City element of the Comprehensive Plan

Walt Roetter, Chairman of the CPUC, gave his presentation of the revisions to Link 7, Central City elements of the Comprehensive Plan.

Mack Hamilton, Gave his opinion that the last three vision statements do not describe a vision statement they state facts. He also stated that the majority of the parking downtown is privately owned.

The Committee's discussed issues concerning the downtown parking and traffic flow.

Jim Kessler, P&Z committee member, gave his concern for making Central City one way because of the big trucks that come through their. He suggested closing the road but making it available in the morning time for the shops to get there supplies.

The Committee's discussed the design template for Central City.

5. Discuss the process of review of Link 3, Land Use and Link 2, Community profile (demographics)

6. Adjourn – The next scheduled meeting is Thursday, December 6, 2007.

The meeting adjourned at 7:00 p.m.

ATTEST:

Bruce Motheral, Chairperson

Trina Ramirez, Recording Secretary

Charles "Walt" Roetter, Chairperson

**BUSINESS OF THE PLANNING AND ZONING COMMISSION
CITY OF KERRVILLE, TEXAS**

AGENDA ITEM: 4A **FOR AGENDA OF:** December 20, 2007
DESCRIPTION: Approval of the minutes from December 6, 2007
APPLICANT(S): Planning and Zoning Commission Secretary
ATTACHMENT(S): Minutes

The Commission Secretary recommends approval of the proposed minutes

MEMBERS PRESENT:

Bruce Motheral, Chairperson
Jim Kessler, Vice Chairperson
Harold Buell, Commissioner
Andy Phillips, Commissioner (arrived at 4:35 p.m.)
Mack Hamilton, Ex-Officio City Councilperson
Paul Hofmann, Ex-Officio City Manager

MEMBERS ABSENT

George Hager, Commissioner

STAFF PRESENT:

Kevin Coleman, Director of Development Services
Gordon Browning, Senior Planner
Trina Ramirez, Planning and Zoning Commission Secretary

1. CALL TO ORDER:

On December 6, 2007, the Kerrville Planning and Zoning Commission regular meeting was called to order at 4:32 p.m. in the City Hall Council Chambers, 800 Junction Highway.

2. VISITOR/CITIZENS FORUM:

3. CONSENT AGENDA:

3A. Approval of the minutes from the meeting of November 15, 2007

Cmr. Buell moved for approval of the consent agenda; motion was seconded by Cmr. Kessler and passed 3-0.

4. ACTION ITEM

4A. Minor Plat: Integrity Team Addition – A one (1) lot 0.97 acre tract located at 1312 Bandera Highway. Zoned: S 33. Applicant: Voelkel Engineering & Surveying. (File No. 2007-53)

Mr. Browning presented the finding of fact to the Commission

Cmr. Kessler moved for approval of the minor plat; subject to conditions stated by City Staff; motion was seconded by Cmr. Buell and passed 3-0.

5. Public Hearings

5A. Residential Replat: Westland Place – A replat of part of Lot 19 and Lot 20, Block 23, Westland Place Addition located at 501 Lucile Street. Zoned: R1A. Applicant: Voelkel Engineering & Surveying. (File No. 2007-51)

Cmr. Motheral opened the public hearing at 4:36 p.m. No person spoke. Cmr. Motheral closed the public hearing at 4:37 p.m.

Cmr. Kessler moved for approval of the re-plat as submitted; motion was seconded by Cmr. Buell and passed 4-0.

5B. Variance Request: Sign Regulations – A variance request to the Sign Regulations of the City of Kerrville to allow an existing sign to exceed the maximum allowable sign area of 150-square feet by 10-square feet located at 1107 Junction Highway. Zoned: GR. Applicant: Family Sports Center. (File No. 2007-54)

Mr. Browning presented the finding of fact to the Commission

Cmr. Motheral opened the public hearing at 4:38 p.m.

Stephanie Pena, General Manager, stated that they want to replace the existing “reader board” with a high quality digital “reader board” of a similar size. The City Sign Ordinance allows 150 square feet of advertising space. The current square footage of signage is 166 square feet. The proposed new advertising square footage is 160 square feet which exceeds the maximum 150 square feet .

Mr. Browning stated that this was one of the signs on the remaining list of non conforming signs that was to be amortized and brought into compliance. The sign has been modified over the years but it is still out of compliance.. The amortization date was 1993.

Kevin Coleman, Director of Development Services, discussed with the commission the non – conforming signage and the process.

Cmr. Motheral closed the public hearing at 4:48 p.m.

Cmr. Phillips stated that one of the primary motivations in our sign ordinance is to improve the looks of our community. Sign visibility and quality construction characteristics are critical to the signage in our community. The sign that The Family Sport’s Center is proposing is a significant improvement over what is there now.

Cmr. Kessler questioned if they were going to paint the supporting post because it looks rather bad and whether the wire beneath the digital sign could be removed.

Stephanie Pena agreed to repaint the supporting post and to remove the wire beneath the digital sign.

Cmr. Phillips moved for approval of the Sign Variance as submitted; in accordance with City regulatory authority and the specifications as outlined here in that the entire sign and the support poles be repainted at the time that the sign is upgraded to bring the entire sign into compliance and the cross bar beneath the reader sign be removed; motion was seconded by Cmr. Buell and passed 4-0.

5C. Thoroughfare Plan Amendment – Consider an amendment to the Thoroughfare Plan (Link 4, Kerrville Comprehensive Plan) to create a new east-west connection between SH 173 and Sh 27, south of Loop 534. Applicant: City of Kerrville. (File No. 2007-55)

Mr. Browning presented the finding of fact to the Commission

Cmr. Motheral opened the public hearing at 4:56 p.m.

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Charlie Hastings, Director of Public Works, gave a brief reasoning on the four options and why they recommended option 2 reasons presented included that it would only affect two property owners, does not affect any homes, it passes through large tracts of land open to development, it follows property lines, and there are no “super steep” grades.

Cmr. Kessler stated that he would prefer to have option 1.

Mack Hamilton, City Council representative, discussed with the commission the traffic flow diagram presented in the package.

Cmr. Motheral closed the public hearing at 5:12 p.m.

The Committee and staff discussed the connection points on option 2.

Paul Hoffman explained to the Committee the purpose of the thoroughfare plan in new development.

Charlie Hastings explained that reason the line was drawn where it is, is so that the line does not go in between properties.

Mack Hamilton, City Council representative stated that option 1 & 2 have potential connector to extend beyond Texas173 and Texas 27, where options 3 & 4 “inherently do not”.

Cmr. Motheral moved for approval of the Thoroughfare Plan Amendment option 2 and that the exact alignment be coordinated with the developers at the time of developments; motion was seconded by Cmr. Kessler and passed 4-0.

6. Worksession

6A. **Building Code Amendments** – The Commission has been directed to examine the applicability of the building and fire codes on existing buildings as they relate to the adoption of the 2006 Edition of the International Building Code.

Kevin Coleman, Director of Development Services, gave an overview of the Building Codes Amendments that have been submitted to the Commission and the motion from council to examine the applicability of building and fire codes on existing buildings as it relates to the adoption of the 2006 Edition of the international Building Code. He also informed the Commission the 2000 Code remains in place at this time.

Cmr. Motheral informed the Commission that the deadline to give recommendation to City Council is January 22, 2008 and made the suggestion for P&Z to meet every Thursday until the dead line. He also went over his goals for the proposed code review process and stated his concerns on how to address existing building issues and have pre- construction conferences.

Kevin Coleman, stated that the pre-construction conferences have always existed.

Paul Hoffman, City Manager, explained the charge that City Council has given the Planning and Zoning regarding the applicability on existing buildings. The main review needs to be on application to existing buildings. Paul stated after reviewing the goals that Cmr. Motheral put together he is opening a bigger charge than what City Council has recommended. He stated that City staff is well qualified and well trained and indicated that he rarely hears concern of the qualification of staff. He believes that the conflict resolution that Cmr. Motheral put in his goals is going beyond what City Council has charged them with.

Mack Hamilton, City Council representative, explained to the Committee the role that City Council has recommended to the P & Z.

5. STAFF REPORTS

5A. Future Agenda Items/Project Update. Applicant: Senior Planner.

5B. Director's Report. Applicant: Director of Development Services.

6. **Adjourn** – The next scheduled meeting is Thursday, December 20, 2007.

The meeting adjourned at 6:04p.m.

ATTEST:

Bruce Motheral, Chairperson

Trina Ramirez, Recording Secretary

**BUSINESS OF THE PLANNING AND ZONING COMMISSION
CITY OF KERRVILLE, TEXAS**

AGENDA ITEM: 4B **FOR AGENDA OF:** December 20, 2007

DESCRIPTION: **Final Plat: Comanche Trace Phase 11** – A seventy-two (72) lot single family subdivision on 45.52 acres located generally along the southern extension of Comanche Trace Drive. Zoned: PDD. (File No. 2007-16)

APPLICANT(S): Grogan Surveying

ATTACHMENT(S): Plat

SUMMARY STATEMENT – FINDING OF FACT

History/Timeline:

- September 2006 – Pursuant to the development agreement between the City and Comanche Trace Ranch and Golf Club, staff begins the annexation and zoning proceedings for the subject tract upon submittal of the preliminary plat.
- October 19, 2006 – Commission approves the preliminary plat for Comanche Trace Phase 11.
- January 9, 2007 – Council passes Ordinance No. 2007-01 annexing and zoning the subject tract.
- March 27, 2007 – Final plat submitted, staff holds processing until engineering plans are approved.
- November 9, 2007 – Civil construction plans for Comanche Trace Phase 11 are approved. These plans also include the 12-inch water main connecting Comanche Trace and the Ridgewood storage tank.
- November 19, 2007 – Final plat for Comanche Trace Phase 11 is accepted for processing.
- December 12, 2007 – Development Review Committee (DRC) process is completed.
- **December 20, 2007 – Consideration of the final plat by the Commission.**

Summary:

The final plat is consistent with the previously approved preliminary plat.

RECOMMENDED ACTION

Staff recommends approval of the final plat.

**BUSINESS OF THE PLANNING AND ZONING COMMISSION
CITY OF KERRVILLE, TEXAS**

AGENDA ITEM: 5A **FOR AGENDA OF:** December 20, 2007

DESCRIPTION: **Variance Request: Sign Regulations** – A variance to the Sign regulations of the City of Kerrville to allow an off-premise sign to exceed the maximum allowable sign area of one-hundred (100) square feet by fifteen-hundred and sixty-six (1566) square feet for a total sign area of sixteen-hundred and sixty-six (1666) square feet located on Thompson Drive west of Sheppard Rees Road. Zoned: ETJ. (File No. 2007-50)

APPLICANT(S): Greg Richards

ATTACHMENT(S): Applicant's Request

Request:

The applicant has submitted a request for a variance to the sign regulations to allow an off-premise sign to exceed the maximum allowable sign area of one-hundred (100) square feet. The applicant's request and justification for the variance is attached in Exhibit A.

Procedure:

The City's Sign Regulations assigns the hearing and disposition of variances under those regulations to the Planning and Zoning Commission (see attached 27.11 Variances from the Sign Regulations, Exhibit C). Following submittal of an application the Commission shall hold a public hearing for the request using the same notice requirements as required for a Zoning Ordinance Amendment. Following the public hearing and review of the application and pertinent information, the Commission may grant the variance as presented, modify the request or approve with conditions or deny the request on the grounds of being incompatible with a neighboring use, traffic safety, the purpose statements as listed herein, or that will give one business an unfair competitive advantage over other businesses.

The Commission shall use the criteria set forth in Article 11-I-23(b) (see attached, Exhibit D) for reviewing and considering variances to the Sign Regulations.

Summary:

The City of Kerrville regulates signage both within the city limits and within the ETJ per Section 27, Codes of Ordinances, Sign Regulations. Per those regulations, off-premise signage (see Exhibit B) {The proposed sign is off-premise in that the purpose of the sign is to advertise a service and site at a location other than the property/location for which the sign is located.} is limited to one-hundred (100) square feet of sign area and a height of thirty (30) feet. The applicant seeks a variance from the Commission which would allow an off-premise sign with a sign area of sixteen-hundred and sixty-six (1666) square feet.

City of Kerrville Planning & GIS Division – www.kerrville.org/planning

In the applicant's request for variance several statements are made regarding meetings and conversations with staff relating to signage in the ETJ. To clarify, as stated above the City's sign regulations do regulate signs placed on properties in the ETJ. While the issuance of a 'permit', collection of fees and an inspection of the sign is not part of the regulations in the ETJ, an application for signage is required.

The meeting and conversations stated did take place and regrettably some misinformation was provided by staff. While not making excuses, this is a situation where answering a general question a general response was taken to apply to a specific request. While I regret the out come of that meeting and the misunderstanding that resulted, that should in no way, by inference or other wise be considered as permitting or some how authorizing the sign now before the Commission.

Staff has reviewed the request submitted by the applicant and following the 'Required Finding of Fact' in Article 11-I-23(b), recommends that the variance be denied.

RECOMMENDED ACTION

1. Open the public hearing and receive comments, and
2. Deny the request as submitted.



October 18, 2007

Kerrville Planning and Zoning Commission
C/o Kevin Coleman, Director of Development Services
Via: Hand Delivery

Re: Request for Variance

Dear Gentlemen:

Approximately six weeks ago, Kevin Wegner, of Wegner Media Productions, and Chastan McRae, of McRae Energy Corporation (my client), met with Ed Perry, a code enforcement officer with the City of Kerrville, and Gordon Browning, Senior Planner, to inquire about a sign my client planned to construct on Thompson Drive, outside of the City limits of Kerrville, but within the City's ETJ. Mr. McRae and Mr. Wegner spent over 30 minutes with Mr. Perry and Mr. Browning showing them the location of the project on a city map and describing how the sign was to be constructed. Mr. Browning and Mr. Perry informed my client that the City did not have any jurisdiction over signs that were outside of the City limit, but asked for an opportunity to double check that statement. A few days later, Mr. Perry confirmed to Kevin Weger that the City indeed did not have any jurisdiction over the matter and that the sign could be constructed without compliance with the City sign ordinance.

In reliance on Mr. Perry's and Mr. Browning's position as the code enforcement officer and Senior Planner, respectively, and their statements as described above, my client began the process of clearing land and constructing a billboard sign. On October 17, 2007, Mr. Perry came to the location of the sign construction and delivered a "Stop Work" order signed by Brian Whitton. By this date, the sign was 85% complete and scheduled to be totally complete by week's end, in time to advertise my client's two business, "Las Colinas of Kerrville" subdivision and "Las Colinas Builders", to the tour of homes traffic that is expected to begin this weekend.

As soon as Mr. Perry delivered the notice to stop work, my client immediately stopped construction on the project and brought this matter to my attention. I have been subsequently informed by both Kevin Coleman, Director of Development Services, and the City Attorney, Mike Hayes, that the sign ordinance does apply to signs in the City's ETJ, and that the sign in question would have to comply with the requirements of the ordinance. According to their reading of the ordinance, the sign as originally presented to Mr. Perry and Mr. Browning is NOT allowed at all within the City or the ETJ without a variance. You can imagine my client's shock and surprise at City staff's complete about-face in their position.

Exhibit A

The City's change of position has cost my client significantly in terms of lost advertising opportunity during a key time – the tour of homes. In addition, the City's inconsistency in interpreting the laws that it has adopted further contributes to the City's reputation with my client and others as being arbitrary and capricious in how it deals with its citizen developers and builders.

We ask you to approve the variance to be fair – plain and simple. A variance approving the sign as planned and presented is the most obvious and straightforward means of achieving equity in this case. The City must be accountable to its citizens. One arm of the City has drawn my client out on the branch and then cut it off behind them. We are asking for P & Z, as the other arm, to correct that inequity and put my client back in the position it was originally promised, and that being to construct the sign as planned and presented. Only you gentlemen can hold the City staff accountable to stand by their word.

Please contact me if you have any questions.

Pattillo, Richards & Harpold, P.C.

By: _____


Gregory A. Richards

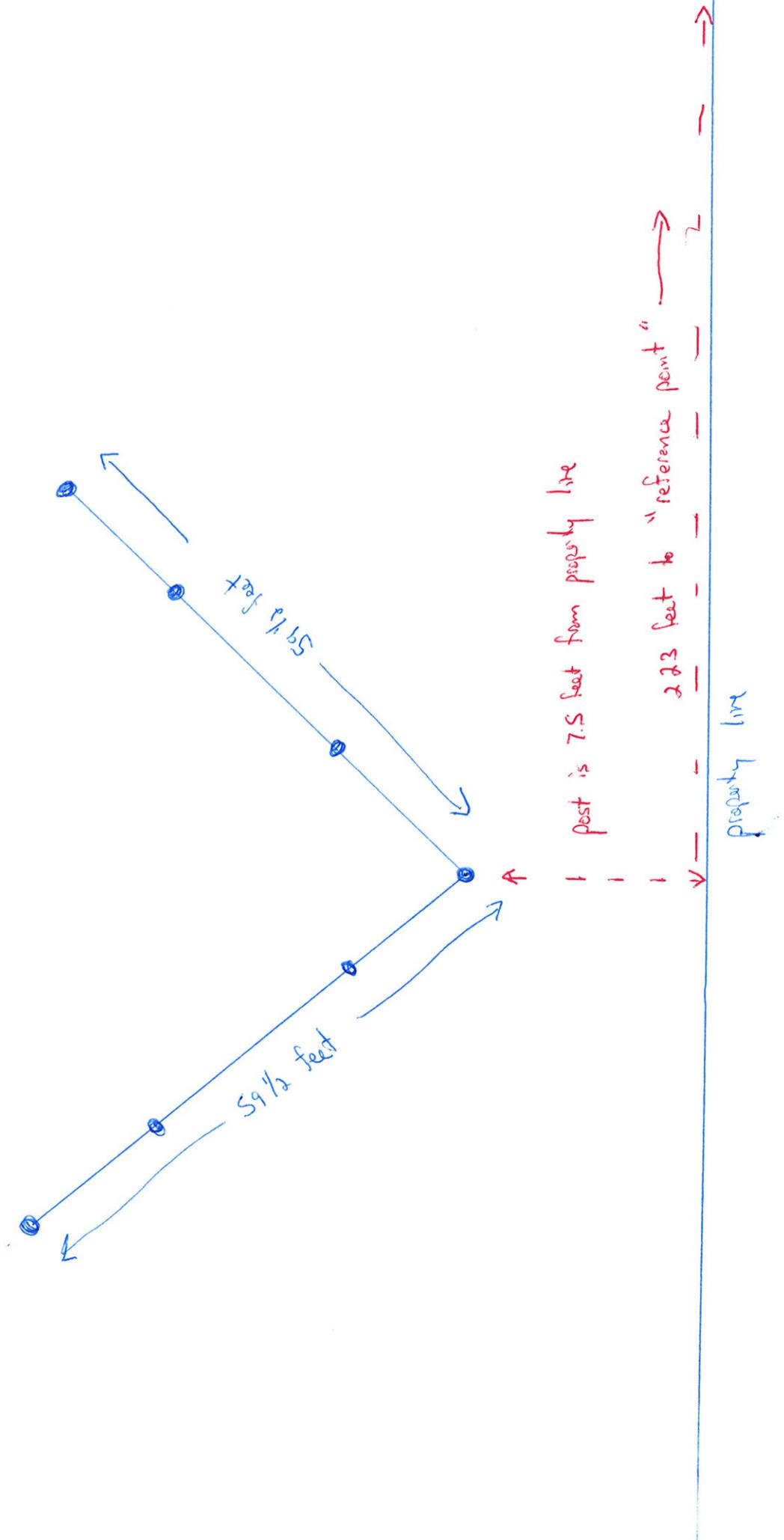
CC: Rick McRae
McRae Energy Corporation
705 Leland Street
Kerrville, Texas 78028

Sign dimensions

- 59 1/2 feet wide (each side)
- 14 feet high sign face height (each side)
- 24 feet total height (each side)
- 833 sq. feet per side of sign face

[not to scale]

Site Plan



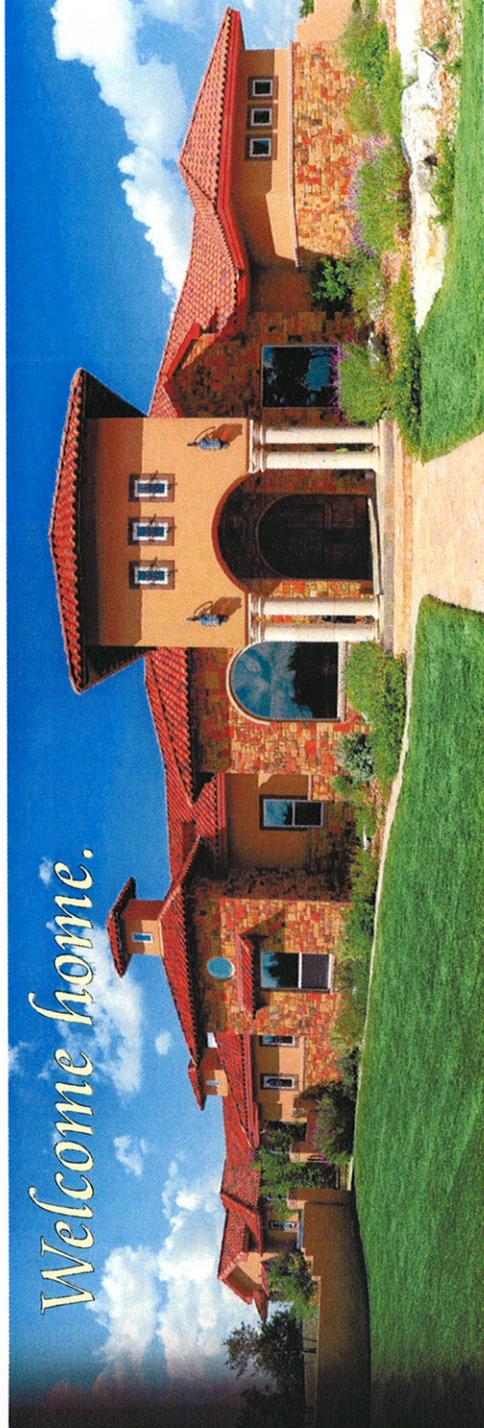


www.lascalinasbuilders.com

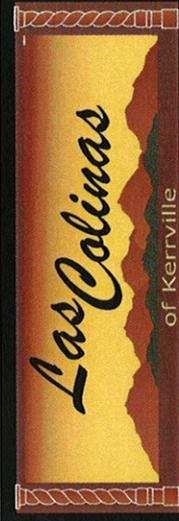
830.377.3710

Award Winning Builder!

Welcome home.



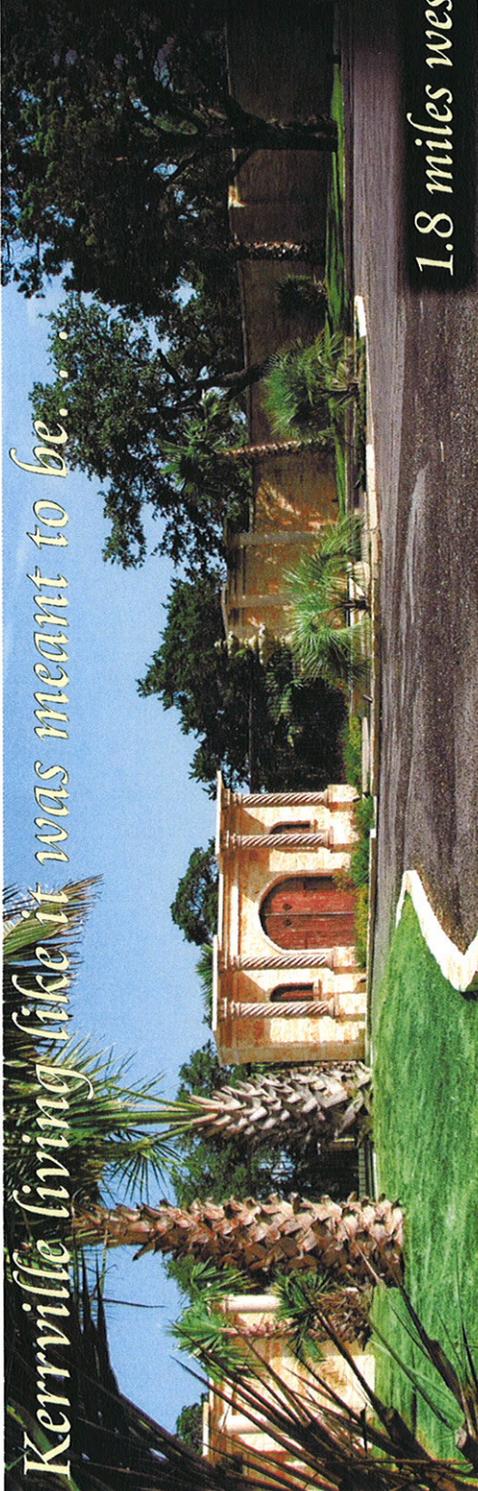
Kerrville living like it was meant to be...



www.kerrvillescolinas.com

830.377.9578

1.8 miles west on Sheppard Rees Rd.



- D. Free-standing signs on building lots four hundred (400) feet or greater in width.

Two free-standing signs are allowed for each building lot or commercial center. The freestanding signs shall meet the following criteria:

(1) Sign Area: The maximum allowable sign area shall equal two hundred (200) square feet for one sign, and one hundred (100) square feet for the other.

(2) Sign Height: The maximum allowable sign height shall equal forty (40) feet for the larger sign, and thirty (30) feet for the smaller sign.

(3) Location of Signs: (a) No sign shall be closer than seventy (70) feet from any other free-standing sign.

- E. Off-Premise Advertising Signs. All off-premise advertising signs, to include billboards, are defined as free-standing signs and shall be required to meet the same standard as any other free-standing sign as follows:

(1) Sign Area: The maximum allowable sign area shall equal one hundred (100) square feet.

(2) Sign Height: The maximum allowable height of any sign shall equal thirty (30) feet.

(3) Number of Signs: No off-premise advertising sign shall be located on any unplatted lot, nor shall it be located on a platted lot less than fifty (50) feet in width. The off-premise advertising sign located on any building lot shall be considered as the one free-standing sign allowed for said building lot. Any existing or future building located on the same building lot shall not be allowed to erect or place another freestanding sign on the same building lot with the off-premise advertising sign.

(4) All off-premise advertising signs, in addition to the above listed requirements, shall not be placed upon the wall or roof of a building.

- F. Banner Signs, if and only if:

1. The entire banner sign covers portions of (1) the outside wall of any building, or (2) a wall or fence which is built along the perimeter of the property, or along the perimeter of a substantial part of such property.

2. Unless provided otherwise by the City Council, for the purpose of these sign regulations, all land in the extraterritorial jurisdiction shall be subject to the regulations set forth in Subsection 27.3, paragraph 3, above.

27.11 Variances

Variances may be granted to these sign regulations provided that the procedures and standards set out below are followed.

1. Procedures.

- A. Application for a variance shall be filed with the Planning Department two weeks prior to the Planning and Zoning Commission meeting. The application shall include the following:

- (1) Name/address of owner/applicant.
- (2) Address/property legal description.
- (3) Statement that the applicant is the owner or authorized agent, or has a contract for sale.
- (4) Site plans, elevations, improvement plans, and other such drawings, all sufficiently dimensioned land oriented to illustrate the following:
 - i. the location and dimensions of lot lines.
 - ii. the location, appearance, and intended use of buildings and signs on the site, and the approximate location of existing buildings and freestanding signs on abutting lots. (Photographs may be used.)
 - iii. the location of site improvements including parking and loading areas, pedestrian and vehicular access, landscaped areas, utility or service areas, fencing and screening, and lighting, where applicable. (Photographs may be used.)

- B. Preliminary Conference.

The applicant shall meet with the staff to consider alternatives and the nature of his petition prior to or during the application process.

- C. Public hearing.

The Planning and Zoning Commission shall hold a public hearing on each application for a variance using the same notice requirements as required for

commission hearings conducted for zoning ordinance amendments. At the public hearing, the Commission shall review the application and shall receive pertinent evidence concerning the proposed variance.

D. Report of the Planning Department.

The Planning Department shall review the application or proposal and shall be filed with the Planning and Zoning Commission prior to the public hearing.

E. Action by the Planning and Zoning Commission.

The Commission may grant the variance as presented, or in a modified form, or subject to conditions, or it may deny the application on the grounds of being incompatible with a neighboring use, traffic safety, the purpose statements as listed herein, or that will give one business an unfair competitive advantage over other businesses.

2. Evaluation Criteria

A. The Planning and Zoning Commission shall use the criteria set forth for Article 11-I-23(b.) for the granting of variances to the Zoning Code when considering variances to this ordinance.

B. Notwithstanding a., above, no variance may be granted for signs that are listed as a prohibited sign(s) in Subsection 27.2 of this ordinance.

27.12 Amortization in Event of Invalidity. In the event any provision of state law authorizing the prohibition, removal or alteration of signs after a period of amortization is held invalid; or any provision of the City sign ordinance, or any regulation, action, or decision, thereunder, is held invalid; or, any period of amortization set by the Municipal Board of Sign Control is ever held to be invalid; then the amortization period for any sign invalidly amortized under any such law, ordinance, regulation, action of decision, shall be, and is, June 3, 1994.

Except, however, this ordinance shall not apply to those signs whose amortization period was established as one year or less.

27.13 Definitions.

Sign: Any letters, figures, trademarks, or devices designed to inform people of the identity of an individual, firm, profession, business, product, goods, or service, and which is (are) recognizable from any public right-of-way. Some, but not all, kinds of signs are defined as follows:

1. Sign, "A-Frame": See definition of "Sign, Unattached".

- (2) **Required Vote:** The concurring vote of seventy-five percent (75%) of the members of the Board of Adjustment is required to modify or reverse an order, requirement, decision, or determination of a City administrative official.
- (b) **Variations:** The Board of Adjustment may grant a variance to the Zoning Code as permitted by Article 11-I-22(o.)(2) in accordance with the following procedures:
- (1) **Application:** An application for a variance shall be made in writing on forms provided by the Planning Division and filed with the secretary of the Board of Adjustment. An application for a variance shall be deemed complete when all information on the application form is provided and the application is accompanied by the following:
- (i) all fees established by the City Council for such matters; and
 - (ii) a description of the property to which the variance would apply sufficient to identify the location and the boundaries of the property; and
 - (iii) the reason the person is requesting the variance;
 - (iv) the signature, acknowledged by a notary public of:
 - a the owner of the property; and
 - b if different than the owner, the signature of the person requesting the variance; and
 - (v) when the variance relates to the development of a specific tract of land, eight (8) copies of a site plan drawn to scale showing existing and proposed development of the property in question.
- (2) **Public Hearing; Notice:** Upon filing of an application for a variance, the director of the Planning Division shall set a date for a public hearing thereon as soon as may be practicable; provided, however, the Board of Adjustment shall hold a public hearing on a request for a variance under this Section (b.) only after the filing of a completed application with the secretary of the Board of Adjustment and in no case earlier than ten (10) days after notice of the time and place of the public hearing has been:
- (i) published in the City's official newspaper; and
 - (ii) sent to the applicant and the owners of all property located within 200 feet of the property which is the subject of the variance by depositing a copy of the notice in the United States Mail, postage prepaid, and pre-addressed according to the address indicated on the last approved City tax rolls.
- (3) **Required Findings of Fact:** No variance shall be granted by the Board of Adjustment until it makes the following findings:
- (i) that there are exceptional circumstances or conditions applicable to the property on which the application is made related to size, shape, area,

topography, surrounding condition or location that do not apply generally to other property in the same area and the same zoning district;

- (ii) that the exceptional circumstances or conditions are such that literal enforcement of the provisions of this Chapter would result in an unnecessary hardship inconsistent with the general purpose and intent of this Chapter;
- (iii) that the granting of such variance will not be contrary to the public interest, materially detrimental to the public welfare, or injurious to the property or improvements in the zoning district or area in which the property is located;
- (iv) that the granting of such variance will not be contrary to the objectives and principles contained in the comprehensive plan, as amended;
- (v) that the variance to be granted is the minimum variance that will relieve the proven hardship;
- (vi) that the variance is not being granted to relieve the applicant of conditions or circumstances:
 - a* which are not inherent in the property itself, but are the result of the use or development of the property, or
 - b* which are caused by a division of land on or after June 16, 1997, other than a division of land resulting from the sale of a property interest to a governmental entity, which division of land caused the property to be unusable for any reasonable development under the existing regulations, or
 - c* which were otherwise self-imposed by the present or a previous owner;
- (vii) that the variance is not grounded solely upon the opportunity to make the property more profitable or to reduce expense to the current or any future owner;
- (viii) that the variance would not modify or effectively repeal any development or use regulations set forth in a Conditional Use Permit or an ordinance or resolution adopting a Development Site Plan or establishing a Special Use District or Planned Development District which are in addition to the generally applicable use and development regulations set forth in this Chapter;
- (ix) that the variance would only affect a specific parcel of property and is not of such a general nature as to effectively constitute a change in zoning of said parcel or a larger area without following the procedures set forth in Article 11-I-21.

- (2) **Record of Findings:** In addition to the record of the vote of the members regarding the application, the minutes of the Board of Adjustment shall contain the findings of facts on which its decision was based including, but not limited to, its findings as to the matters set forth in Subsection (3), above, and a description of the extraordinary circumstances found to be affecting the property in question.
- (3) **Decision of the Board:** After receiving all evidence, hearing all argument, and making its findings of fact regarding an application for a variance, the Board of Adjustment may:
- (i) grant the variance as requested;
 - (ii) grant a variance modified in accordance with the findings of the Board of Adjustment; or
 - (iii) deny the variance.
- (4) **Required Vote:** The concurring vote of seventy-five percent (75%) of the members of the Board of Adjustment is required to grant a variance.
- (5) **Effective Date of Variance:** A variance granted by the Board of Adjustment shall become effective after the expiration of ten (10) days from the date of filing its decision with the Planning Division unless the Board specifically establishes a different effective date. The effective date of a variance can be based on the satisfaction of a condition.
- (c) **Filing of Decisions:** Not later than three days, excluding Saturdays, Sundays, and City holidays, after the adjournment of the meeting at which the Board of Adjustment votes pursuant to this Article on an appeal of the act of a City administrative official or on an application for a variance, the secretary of the Board of Adjustment shall file the decision with the Planning Division.
- (d) **Appeals of Board of Adjustment Decisions:** An appeal of a decision of the Board of Adjustment must be prosecuted in accordance with Texas Local Government Code §211.010, as amended.

**BUSINESS OF THE PLANNING AND ZONING COMMISSION
CITY OF KERRVILLE, TEXAS**

AGENDA ITEM: 5B **FOR AGENDA OF:** December 20, 2007

DESCRIPTION: **Public Hearing: Zoning Change Request** – Consideration of a recommendation to the City Council of a request to change the zoning on an approximately 6.0 acre tract from R1A to R3, located along the south side of Guadalupe Street, east of the Guadalupe Street and Lewis Street intersection. Zoned: R1A. (File No. 2007-57)

APPLICANT(S): Brent Bates

ATTACHMENT(S): Applicant's request, Draft Ordinance

SUMMARY STATEMENT – FINDING OF FACT

Project Timeline:

- November 19, 2007 – Application for rezoning submitted to City.
- December 5, 2007 – In accordance with statute and local ordinance, notice of the required public hearing was published in the Kerrville Daily Times and notices mailed to property owners within 200-feet of the subject tract.
- December 12, 2007 – Development Review Committee (DRC) process completed.
- **December 20, 2007 – Public hearing before the Planning and Zoning Commission and consideration of a recommendation to the City Council.**
- January 8, 2008 – Public hearing before the City Council and consideration of an ordinance approving the zoning change .

Proposal/Summary:

- The applicant is requesting a zoning change from R1A (Single Family Residential) to R3 (Multifamily Residential) on an approximately 6.0 acre tract. The proposed use of the property, if rezoned, is condominium development, see attached.
- The requested R3 District is a multifamily residential district primarily designed to allow multifamily housing in addition to other residential uses which are permitted conditionally or as a matter of right. Single family development is a permitted use in the R3 District.
- As shown in the applicant's proposal, the request before the Commission is Phase One of a proposed two phase condominium development along the north side (shore) of the Guadalupe River. As stated, the applicant is requesting a zoning change for Phase One of the project, this phase will consist of two (2) twenty-one unit buildings as described in the applicant's proposal. Replatting of the property and submittal of building and engineering plans for review and approval will be required prior to construction.

RECOMMENDED ACTION

1. Open the public hearing and receive comments, and
2. Recommend to the City Council approval of the zoning change request as stated in the attached Ordinance.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2008-**

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION FOR AN APPROXIMATE 0.6 ACRE TRACT OF LAND OUT OF THE J. YOUNG SURVEY NO. 119, ABSTRACT NO. 375, GENERALLY LOCATED ALONG THE SOUTH SIDE OF GUADALUPE STREET, EAST OF THE GUADALUPE STREET AND LEWIS STREET INTERSECTION, WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS; SAID TRACT CHANGING FROM R1A SINGLE FAMILY RESIDENTIAL TO R3 MULTIFAMILY RESIDENTIAL; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on January 8, 2008, to consider an amendment to the zoning regulations and map changing the zoning classification of the property described in Section One hereof to R3 Multifamily District; as set out in Article 11-I-21 of the Code of Ordinances of the City of Kerrville, Texas; and

WHEREAS, such public hearing was held in the Council Chambers beginning at approximately 6:00 p.m. on January 8, 2008, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after receiving and considering the recommendations of the Planning and Zoning Commission; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Kerrville to amend the zoning regulations accordingly;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. That the zoning classification of the below described property be changed from "R1A" Single Family Residential District to "R3" Multifamily Residential District:

An approximate 6.0 acre tract of land out of the J. Young Survey No. 119, Abstract No. 375, located within the city of Kerrville, Kerr County, Texas, being all of Lots 1-8, 15, 16 and part of 9, Riverside Subdivision, said Lot 8 and part of 9 are further described in Exhibit A, as recorded in Volume 42, Page 584, of the Real Property Records of Kerr County, Texas

SECTION TWO. That the provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Kerrville hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Clerk is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, 2008.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, 2008.

Eugene C. Smith, Mayor

ATTEST:

Brenda G. Craig, City Clerk

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

