



Legislation Details (With Text)

File #: ID#18-891 **Version:** 1 **Name:**
Type: Action Item **Status:** Passed
File created: 12/12/2018 **In control:** City Council
On agenda: 1/2/2019 **Final action:** 1/2/2019
Title: Receive a Staff presentation and hold a Public Hearing to receive comments for or against an appeal filed by Aquarena Plaza, LLC on behalf of Eskimo Hut regarding the Planning and Zoning Commission's decision to deny the Conditional Use Permit application (CUP-18-29) to allow the sale of beer and wine at 1504 Aquarena Springs Drive Ste. 110, San Marcos, TX 78666; and consider the appeal related to CUP-18-29 filed by Aquarena Plaza, LLC on behalf of Eskimo Hut, by motion.

Sponsors:

Indexes:

Code sections:

Attachments: 1. CUP-18-29(A) Presentation, 2. CUP-18-29(A) Council Cover Memo, 3. CUP-18-29(A) Council Staff Report, 4. CUP-18-29(A) Notification Map, 5. CUP-18-29(A) Notification List, 6. CUP-18-29 Aerial Map, 7. CUP-18-29 Zoning Map, 8. CUP-18-29 Drive-Thru Aerial and Zoning, 9. CUP-18-29 Sealed Container, 10. CUP-18-29 Floor Plan

Date	Ver.	Action By	Action	Result
1/2/2019	1	City Council	approved with conditions	
1/2/2019	1	City Council	postponed	Pass
1/2/2019	1	City Council	amended	Pass
1/2/2019	1	City Council	approved as amended	Pass

AGENDA CAPTION:

Receive a Staff presentation and hold a Public Hearing to receive comments for or against an appeal filed by Aquarena Plaza, LLC on behalf of Eskimo Hut regarding the Planning and Zoning Commission's decision to deny the Conditional Use Permit application (CUP-18-29) to allow the sale of beer and wine at 1504 Aquarena Springs Drive Ste. 110, San Marcos, TX 78666; and consider the appeal related to CUP-18-29 filed by Aquarena Plaza, LLC on behalf of Eskimo Hut, by motion.

Meeting date: January 2, 2019

Department: Planning and Development Services

Amount & Source of Funding

Funds Required: NA

Account Number: NA

Funds Available: NA

Account Name: NA

Fiscal Note:

Prior Council Action: NA

City Council Strategic Initiative: [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]

☐ Economic Development - Choose an item.

☐ Environment & Resource Protection - Choose an item.

☐ Land Use - Choose an item.

☐ Neighborhoods & Housing - Choose an item.

☐ Parks, Public Spaces & Facilities - Choose an item.

☐ Transportation - Choose an item.

☐ Not Applicable

Master Plan: [Please select the corresponding Master Plan from the dropdown menu below (if applicable)]

Choose an item.

Background Information:

The appellant is the property owner of the proposed Eskimo Hut Location which was denied by the Planning and Zoning Commission on November 13, 2018.

The original applicant was requesting a CUP to sell alcohol to go, to walk up and drive thru customers. They proposed to sell the beverages in sealed plastic bags, a method that has been approved by the Texas Alcoholic Beverage Commission (TABC).

The City of San Marcos Police Chief acknowledged that the sealed bag delivery method complies with the Texas Open Container prohibition. However, Chief Stapp has concerns about the sale of "to go" alcoholic beverages in that such beverages sold in the drive through will likely be consumed while the vehicle is in operation.

This property meets the 300 foot door to door requirement from Single Family zoned property, however, the drive-thru exits in very close proximity to two single family homes. The drive-thru exits onto Zunker Street in a manner that may cause the headlights of exiting vehicles to sweep the front façade of the closest home. The applicant was proposing business hours that last until midnight throughout the week, which could be a nuisance to the residences of the single family home.

Eskimo Hut has traditionally served their drinks in foam based cups. As this type of drink has traditionally been popular with river oriented customers, Staff suggested to the applicant that foam based cups be prohibited.

The applicant agreed to serve drinks in paper, plastic, or reusable containers.

Council Committee, Board/Commission Action:

At their regular meeting on November 13, 2018 the Planning and Zoning Commission considered this item during a Public Hearing. The Commission voted to deny the request by a vote of 6 - 2.

Alternatives:

If City Council chooses to approve the request, Staff recommends the following conditions:

- Permit shall be valid for one (1) year, provided standards are met.
- Drinks shall not be served in foam based containers.
- The permit shall become effective upon the issuance of the Certificate of Occupancy.
- The permit shall be posted in the same area and manner as the Certificate of Occupancy.

Recommendation:

Staff reviewed the request recommended **denial** of the request.