

# City of Seguin

Planning/Codes Department

## Memorandum

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**Date:** January 12, 2016  
**To:** Mayor Keil and the Seguin City Council  
**From:** John Foreman, AICP, CNU-A  
Assistant Director of Planning and Codes  
**RE:** Appeal of Specific Use Permit denial for Charter School at 113 S. Camp St.

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### **Background**

At the December 8<sup>th</sup> meeting of the Planning and Zoning Commission (P&Z), the Commission held a public hearing and considered a request for a Specific Use Permit (SUP) for a proposed charter school for up to 250 students at 113 S. Camp St. Based on staff's recommendation and the comments in the public hearing, the Commission voted (8-0) to deny the request. On December 18<sup>th</sup>, Bradley Clark, attorney for the applicant, filed an appeal of the decision.

### **Code Requirements**

City Council is charged with deciding appeals of SUPs. The Unified Development Code (UDC) section 2.5 requires the applicant to provide evidence that "such decision made by the Planning and Zoning Commission is unjust, in whole or in part, specifying the ground of injustice." To overturn the P&Z denial, a simple majority vote of Council is required (no super majority is required).

### **Analysis of Applicant's Claims**

Staff has reviewed the statement provided by the applicant. An analysis of each of the "Arguments and Authorities" is provided below. While reviewing the statements from the applicant, it is important to remember that the criteria in section 2.5 of the UDC for approving an SUP require that the Planning and Zoning Commission find that the proposed use meets certain standards, i.e. "will be compatible" and "will not impede the normal and orderly development" of surrounding properties. Therefore, the burden of proof is on the applicant to show that the use **will** meet the criteria, not on the Commission to find that it will not.

- A. The applicant has not adequately demonstrated compatibility with the County facility or safety of the students. A school at the proposed location with up to 250 students would put the students within 100 feet of the point at which the county transports prisoners to court. Inside the facility, courts hear a variety of cases, criminal and civil, including contested divorces and proceedings involving children, in volatile, emotionally charged environments. Victims, family members, and others attend these proceedings. A citywide crime rate analysis is not relevant to the immediate safety concern at this location. The applicant provides no evidence that the location of a school in such close proximity to the county facility is safe such as examples and best practices from other communities, statements from public safety officers, etc. Staff provided to the Commission the email from County Judge Kyle Kutcher stating that the level of control the county maintains within the county premises is not matched in the surrounding area.

Moreover, safety is not the only determining factor in deciding what uses are “incompatible” under zoning. In addition to safety, zoning decision makers may consider public health, morals, or general welfare as long as the decision is not arbitrary or unreasonable. From this perspective, the appropriateness of “the presence of shackled prisoners” near a school, concerns about the additional traffic as expressed by citizens during the public hearing, and the impact of the school on County operations may all be considered in determining compatibility.

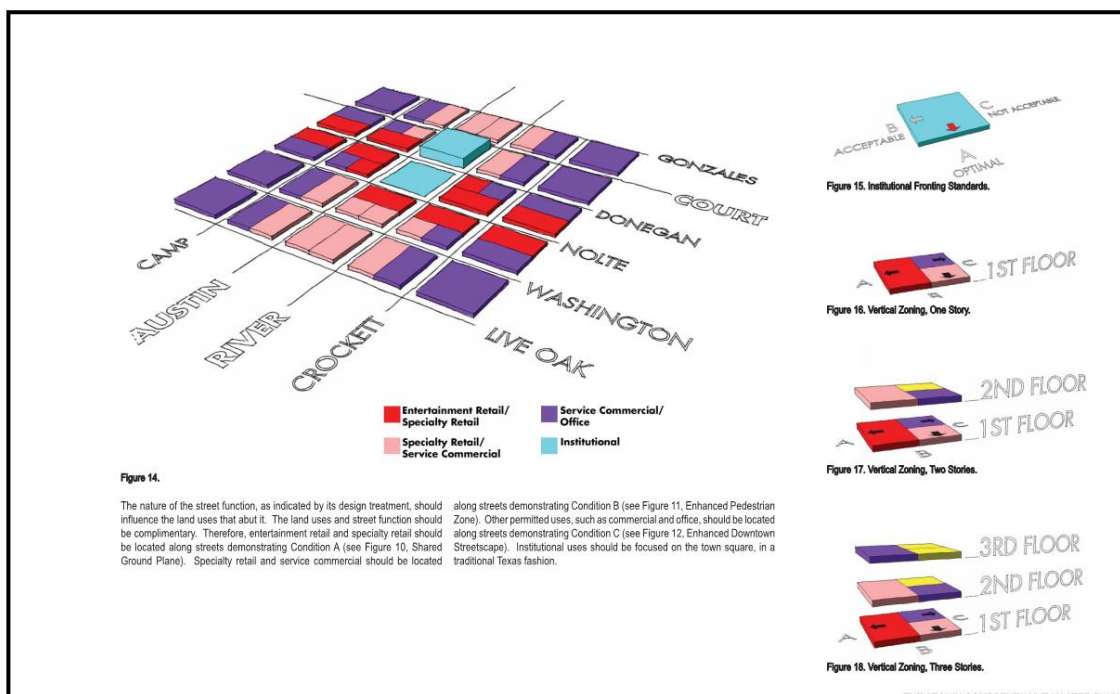
- B. The property located at 200 S. Camp Street has a Certificate of Occupancy to operate as a food bank and an upstairs residence (apartments), not a church. The building is classified under the building code as business occupancy and not as an assembly, as a church would be. Furthermore, prior to the adoption of the Unified Development Code in 2014, places of religious assembly required an SUP in the Downtown Historic District. Staff has found no record of an SUP for a church at 200 S. Camp Street. Staff concludes that the structure located at 200 S. Camp Street may legally operate as a food bank and residence, but use as a place of religious assembly would require improvements to the building and an updated Certificate of Occupancy as well as a Limited Use Permit (LUP) as required by the UDC.

Should the building at 200 S. Camp St. make the necessary changes and obtain a Certificate of Occupancy and LUP as a church, the addition of a school at the proposed location would still present additional challenges for businesses (bars, restaurants, or package stores) proposing to sell alcohol.

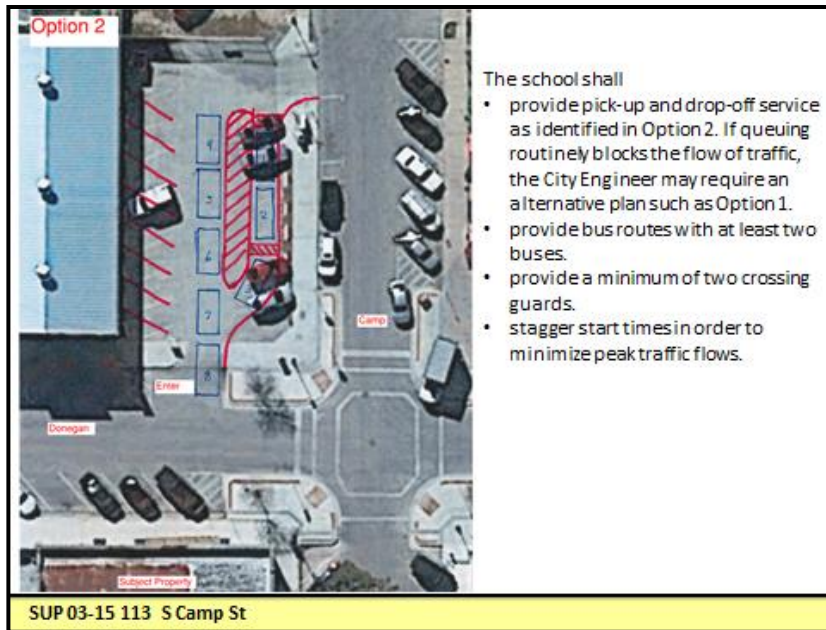
- Because measurements are taken from front door to front door, additional properties, particularly along Austin Street, will be affected.
- Although a variance process from the 300 foot requirement is available, only restaurants are eligible.

- Additionally, to be eligible for the variance, the front door of the restaurant must be more than 200 feet from the front door of the church or school, as the crow flies.
- In order to receive a variance, a restaurant proposing to serve alcohol must receive approval from each church and/or school within 300 feet, meaning that the new school would have to approve any request for a variance.

The Seguin Comprehensive Plan specifically identifies Donegan and Austin Streets for Entertainment/Retail uses. Denying a proposed specific use that would impede this adopted City plan is not unjust nor does it imply support for bars over schools.



- C. The City Engineer did not “admit that Applicant’s plan would not impact the adjacent properties or the public.” The City Engineer and the applicant verbally agreed on several key measures that could potentially accommodate student drop-off and pick-up. However, the City Engineer requested that the applicant have an alternative plan prepared, in case such issues as queuing on public streets appeared after the school began operation. Staff presented the information discussed at the conference call to the Planning and Zoning Commission in the verbal staff presentation and in the PowerPoint slide below.



Staff also noted in the presentation that the accommodation of student pick-up and drop-off was a separate consideration from the amount and timing of trips generated. The applicant provided trip generation calculations showing that a school with 200 students (250 are proposed) would generate half the traffic of a mixture of uses including restaurant, retail and office. This does not account for the fact that these trips are spread through a 12 or more hour period, whereas school trips are concentrated in two peaks, morning and afternoon. This amount of trips concentrated at two times during the day will impact all nearby properties, particularly during afternoon pick-up times as parents wait to pick up their children as observed at other schools in Seguin. Several citizens expressed concern about the impact of the additional traffic during the public hearing.

In reviewing the P&Z's decision, staff finds that the decision is not unjust. The decision is consistent with the Comprehensive Plan's vision for downtown. The property is suitable for use as currently zoned and the decision does not deprive the property owner of all economically viable uses of the land. The decision is based on the protection of public health, safety, and welfare because the request does not meet the criteria for approval of SUPs outlined in 2.5.1 of the UDC. Based on the information the applicant submitted the Commission was unable to determine that the proposed use would be compatible, would not impede nearby development, or would provide for safe and convenient movement of traffic. Finally, notification and public hearing requirements were met and P&Z took action at a posted public meeting.

**Attachments:**

- Criteria for Specific Use Permits and Appeals (UDC Section 2.5)
- Applicant's request for appeal
- P&Z Report including minutes from the P&Z meeting
- Staff Report and PowerPoint presented to P&Z
- Traffic Plan Documents