



CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT

CITY OF SAN ANTONIO

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COUNTY OF BEXAR

STATE OF TEXAS

TO THE HONORABLE BOARD OF ADJUSTMENT:

Property description (Attach field notes if necessary):

Lot no. E

Block No. 22

NCB 14732 Property Address: 12050 Vance Jackson Road

Per Section 35-481 of the Unified Development Code (UDC), the Zoning Board of Adjustment is empowered to consider appeals of a decision made by an administration official.

The Applicant, David Darr of Bexar County, alleges that

the following administrative official John Osten Director, in his/her capacity as

Senior Planner, made an incorrect decision, or interpretation regarding Section 35- A101

(Title of Official)
of the UDC. This incorrect decision or interpretation was (List the section(s) of the UDC that was applied incorrectly. Provide details why the decision was incorrect or misinterpreted.): See attached letter

The correct decision or interpretation should be as follows (List the section(s) of the UDC that should be applied in this decision. Provide details how the decision should be made.): See attached letter

*Note: Local Government Code § 211.010 (b) and San Antonio City Code § 35-481 (b)(1) require that the applicant give notice of the specific grounds for the appeal. Failure to state the reasons for the alleged error and applicable code sections will result in the return of your application. Please attach additional pages if necessary.

Respectfully submitted:


Applicant's name: David Darr

Status: Owner (✓) Agent ()

Mailing address: 12050 Vance Jackson Road, San Antonio, TX 78230

Telephone: 210-525-0131 Alternate: 210-275-4020

Email: david@theplacesa.com

 9/7/17
Applicant's Signature Date

Property Owner: LCK Family, LP - David Darr

Mailing address: 12050 Vance Jackson Road, San Antonio, TX 78230

Telephone: 210-525-0131 Alternate: 210-275-4020

Email: david@theplacesa.com

I, David Darr the owner of the subject property, authorize
Michele Haussmann and Karl Baker to submit this application and represent me in this
appeal before the Board of Adjustment.

Please include the following items with this appeal

- ☐ Documentation from City of San Antonio representing the decision you are appealing and proof that you are within the mandatory 30 day time limit to file the appeal.
- ☐ Sections of the UDC from which the decision was based, including all support sections which potentially reinforce your assertion that an error was made.
- ☐ Property Ownership documentation, including a copy of the warranty deed and Bexar County Appraisal District.
- ☐ Filing Fee of \$600.

VIA HAND DELIVERY

September 8, 2017

Board of Adjustment
City of San Antonio
PO Box 839966
San Antonio, TX 78283-3966

Subject: Appeal to Board of Adjustment (the “Board”) Regarding Zoning Verification Letter ZV 2017458: Lot 9, Block 22, NCB 14732; 12058 Vance Jackson, San Antonio, Bexar County, Texas (the “Clinic Property”)

To the Honorable Board of Adjustment:

This letter accompanies an Application for Appeal to the Board and constitutes an appeal of the decision of an administrative official of the City pursuant to Section 35-481 of the City’s Unified Development Code (“UDC”) and Section 211.009 of the Texas Local Government Code. The subject of this appeal is the Zoning Verification Letter issued on August 10, 2017 that is attached hereto as Exhibit “A” (the “*Verification Letter*”). This Verification Letter states that “outdoor recreational activities for animals” are permitted on the above-referenced Clinic Property in connection with the use of such property as an Animal Clinic “so long as there are no outdoor runs, pens or paddocks.” As explained below, this interpretation authorizing outdoor recreational activities for animals directly contradicts the spirit, intent and language of the UDC and is in error.

Our firm represents LCK Family, LP (“*LCK*”), which owns the property located adjacent to the Clinic Property that is commonly known as 12050 Vance Jackson Road and legally described as Lot 7, Block 22, NCB 14732 (the “*Office Property*”). On the Office Property are located two office buildings that are used by LCK’s commercial real estate brokerage and development firm, The Place Commercial Real Estate, and by other tenants. One of these office buildings (“Building A”) is located approximately ten feet (10’) from the boundary of the Clinic Property, as illustrated on the aerial image attached as Exhibit “B” and the photographs attached as Exhibit “C”. Building A also happens to be located directly adjacent to the only portion of the Clinic Property not occupied by a building or parking lot, thereby making it extremely likely that any outdoor animal recreational activities on the Clinic Property would take place in this area directly adjacent to Building A. Given the likelihood that outdoor animal recreational activities would be associated with frequent noise (such as barking dogs) that would cause an obvious interference with LCK’s use and enjoyment of the Office Property, it is clear that LCK is a party aggrieved by the interpretation advanced by the Zoning Verification Letter and entitled to this appeal pursuant to Section 35-481 of the UDC and Section 211.010(a) of the Texas Local Government Code.

Background on Clinic Property and Zoning Verification Request

The Clinic Property is currently zoned C-2 S CC ERZD MLOD-1 with a specific use authorization and special city council approval for a small animal clinic with overnight boarding. The

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Verification Letter was issued in response to the request attached hereto as Exhibit "D" (the "**Verification Request**"). In the Verification Request, the attorney representing the owner of the Clinic Property requested "formal verification that animals are allowed outside for recreational time that is supervised by employees in a designated area."

The Verification Letter issued in response to the Verification Request provided in relevant part as follows:

"The zoning district of the property will allow a facility to be occupied by an Animal Clinic for the prevention, treatment, minor surgery, cure, or alleviation of disease and/or injury in small domestic animals. Further, pursuant to the Ordinance No. 92988, overnight indoor boarding is permitted at this location. No outside kennels, paddocks, runs or pens, nor overnight outside boarding will be permitted in this zoning district. Outdoor kennels, runs, paddocks and pens are defined as unpaved enclosed areas, usually by a fence, for animals. This does not restrict the outdoor recreational activities for animals so long as there are no outdoor runs, paddocks or pens."

Summary of Appeal

LCK is appealing the portion of the Verification Letter stating "[t]his does not restrict the outdoor recreational activities for animals so long as there are no outdoor runs, paddocks or pens." There are several flaws with this statement and reasons why it does not comport with a reasonable interpretation of the UDC. To begin with, the UDC does not provide any authorization for outdoor recreational activities in connection with an Animal Clinic. As such, the only outdoor recreational activities that should be permitted (if any) are those that can be shown to be necessary and directly related to the use of the property for the prevention, treatment, minor surgery, cure, alleviation of disease and/or injury in small domestic animals. Moreover, there is extremely restrictive language under the definition of "Animal Clinic" relating to outdoor uses or potential impacts on nearby property owners that together support as the only reasonable interpretation that no outdoor recreational activities are permitted in connection with the operation of an Animal Clinic. This prohibition against outdoor activities is also consistent with the regulation of all other animal-related business uses allowed in C-2 zoning districts. Lastly, the interpretation offered in the Verification Letter would mandate that either (a) all outdoor animal recreational activities take place in the parking lot on driveways on the Clinic Property, or (b) the fencing enclosing the small unpaved portion of the Clinic Property be removed to allow unenclosed animal recreational activity. Given how unenclosed animal recreational activities would exacerbate negative impacts on adjacent property owners and also create public safety risks, the conclusions reached in the Verification Letter seem patently unreasonable, arbitrary and capricious. For these reasons and others stated herein, LCK requests that the Board of Adjustment modify the Verification Letter to provide that no outdoor recreational activities shall be permitted in connection with the operation of an Animal Clinic.

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Animal Clinics are defined as treatment facilities with no mention of recreation as a part of the use.

An “Animal Clinic” is defined principally as “[a] facility for the prevention, treatment, minor surgery, cure, alleviation of disease and/or injury in small domestic animals.” While overnight boarding of animals is permitted in certain instances, such overnight boarding is allowed only in connection with the prevention, treatment, minor surgery, cure, alleviation of disease and/or injury in small domestic animals.¹ Nowhere in the definition of an Animal Clinic is there any reference to “outdoor recreational activities for animals.” Therefore, if any outdoor recreational activities are to be permitted in connection with the operation of an Animal Clinic, such outdoor recreational activities would need to be directly tied to the use of the facility for “the prevention, treatment, minor surgery, cure, alleviation of disease and/or injury in small domestic animals.” As explained below, additional language in the definition of “Animal Clinic” makes clear that no outdoor animal recreational activities whatsoever should be allowed in connection with an Animal Clinic, even such recreational activities as may be related to treatment.

The definition of an Animal Clinic prohibits all outdoor recreational animal uses.

The definition of an Animal Clinic under the UDC includes three extremely restrictive conditions relating to outdoor activities and their impacts on adjacent properties. Together, these make plain there is no allowance for outdoor animal recreational activities whatsoever in connection with the operation of an Animal Clinic.

The first restrictive condition in the definition of Animal Clinic is the requirement that “*all care [be] conducted in a completely enclosed building*” (emphasis added). As such, any treatment or therapy that would be associated with treatment at an Animal Clinic (including physical therapy) is required to be conducted indoors. Thus, even if there are recreational activities deemed necessary in connection with treatment being provided at the Animal Clinic, the UDC expressly requires that this recreational activity take place indoors and by implication prohibits it from taking place outdoors.

The second restrictive condition in the definition of Animal Clinic is a requirement that “noise or odors created by activities within the building are not *perceptible* beyond the property line” (emphasis added). It is important to appreciate how incredibly restrictive this condition actually is and how it goes far beyond a requirement that noise and activities not cause a nuisance or annoyance on adjoining property. By stating that noise and odors may not be even “perceptible” at the property line, this means that all activities must be strictly controlled within the building with potential additional measures taken to ensure that adjacent property owners do not hear *any* noise or sense *any* odors from operation of the Animal Clinic. Due to the nature of recreational activities for small domestic animals and how it is impossible to fully control or ensure that no barking or other noise results from activities,

¹ The purpose of Overnight Boarding and the need for it to be related to treatment is clearly identified in Section 35-310.08(b)(1)(B) of the UDC which reads as follows “Animal clinics shall provide all care on an out-patient basis only. Overnight boarding of animals is not permitted.”

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this condition is tantamount to a complete prohibition against outdoor animal recreational activities on the Clinic Property.

The third restrictive condition in the definition of Animal Clinic makes such use conditional upon there being “no animals kept outside the building *at any time*” (emphasis added). The Zoning Verification Request partially quotes this condition (omitting key language) but grossly misconstrues its meaning in arguing that “the animal’s supervised outdoor recreation time does not translate to being ‘kept’ outdoors as there will not be any boarding or boarding structures (cages) onsite.” In other words, the Zoning Verification Request argues that “no animals kept outside the building at any time” is the equivalent of “no animals may be boarded outdoors at any time” and, even more remarkably, that this restrictive language somehow creates an authorization for basically any outdoor activity that does not constitute sheltering animals outdoors. This creative reading completely reverses the orientation of the UDC regarding outdoor animal activities, but also misconstrues the meaning of “kept” both generally and as used in this specific context. While the word “keep” does have an antiquated meaning associated with boarding guests, it also has numerous more general meanings that would encompass temporarily placing animals outdoors for recreational activities.² Moreover, as used in the UDC, “kept” clearly means the latter. To begin with, the term “board” (as opposed to “kept”) is used in numerous other places in the UDC when meant to signify keeping guests (human or animal) overnight for hire. For instance, Section 35-310.08 of the UDC states that no “[o]vernight boarding of animals is not permitted” in connection with an Animal Clinic in a NC District. Likewise, the use table in Section 35-311 includes numerous references to “boarding” in relation to this concept. By contrast, nowhere in the UDC is the word “kept” used in the manner suggested in the Verification Request. Furthermore, the addition of the language “at any time” as a modifier to “kept” clearly signals that the creative, antiquated interpretation of “kept” in the Verification Request is incorrect. If the word “kept” was intended as only a prohibition against animals being boarded outdoors, then the addition of the language “at any time” would be superfluous. On the other hand, in the context of reinforcing the prior stated prohibitions against outdoor activities under the definition of Animal Clinic, the addition of “at any time” to modify “kept” makes perfect sense.

Other sections of the UDC confirm that outdoor animal recreational activities are not appropriate in the C-2 zoning district.

Aside from Animal Clinics, the only other animal-related uses permitted in the C-2 zoning district are (1) animal and pet services (no outdoor training, boarding, runs, pens or paddocks) and (2) pet cemeteries for small animals.³ The fact that Animal and Pet Service establishments may not allow “outdoor training” when located in the C-2 zoning district is very instructive and strongly suggestive as to how outdoor recreational uses should be treated with respect to an Animal Clinic. The fact that

² See Merriam-Webster online dictionary at <https://www.merriam-webster.com/dictionary/keep>. Definitions of “keep” include “to lodge or feed for pay” but also include the following more general meanings: “to remain in a given place, situation, or condition,” “to retain in one’s possession or power,” “to have in control,” “to watch over and defend,” and “to restrain from departure or removal.”

³ See UDC Section 35-311.

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every animal-related use that would entail outdoor activities (such as animal pounds or shelters) are not allowed in the C-2 zoning district is further evidence as to how outdoor recreational uses should be treated with respect to an Animal Clinic.

Allowing unenclosed outdoor animal recreational activities on the Clinic Property but prohibiting the use of outdoor runs or pens would create a dangerous situation with greater adverse impacts on adjacent property owners.

The Zoning Verification Request referred to “outdoor recreational time that is supervised by employees” and takes place in a “designated area.” While the Zoning Verification Request makes no attempt to identify this “designated area,” from our understanding of the Clinic Property we assume that this is a reference to the unpaved portion of the Clinic Property that directly abuts the Office Property. This area is currently enclosed by fencing and a building and, thus, would appear to precisely meet the definition of an outdoor run, pen or paddock as “unpaved enclosed areas, usually by a fence, for animals” under the Zoning Verification Letter. Therefore, to comply with the Zoning Verification Letter, it would seem that the owner of the Clinic Property would be required to either (a) remove the fencing enclosing this area, or (b) direct the outdoor animal recreational activities to take place in the parking lot and driveways located on the Clinic Property. Both of these scenarios would create greater adverse impacts on adjoining properties than even an enclosed outdoor run, pen or paddock. As such, the logic of granting permission for outdoor animal recreational activities but only when not within an enclosed outdoor run, pen or paddock is severely flawed and contravenes the intent of the UDC in terms of minimizing adverse impacts on nearby property owners. Given that outdoor runs, pens and paddocks are clearly prohibited and there is no express permission for outdoor recreational activities, the only logical conclusion is that outdoor animal recreational activities are not permitted in connection with an Animal Clinic.

Conclusion

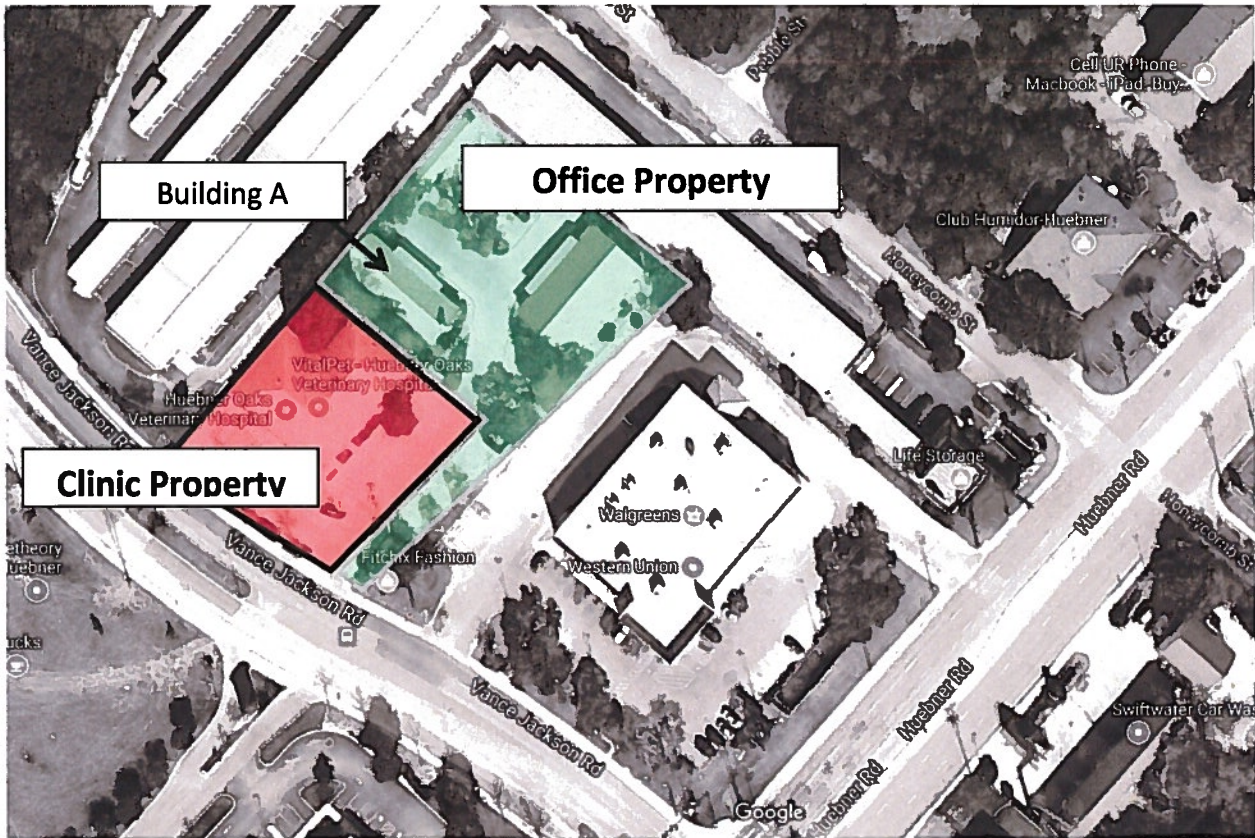
Under the UDC, outdoor animal recreational activities are not permitted in connection with the operation of an Animal Clinic. Therefore, the Zoning Verification Letter should be withdrawn or amended to state that no outdoor animal recreational activities are permitted on the Clinic Property.

Sincerely,



Karl P. Baker

Exhibit "B"





CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
P O BOX 639966 | SAN ANTONIO TEXAS 78263-3966



August 10, 2017

VP Huebner, LLC
12058 Vance Jackson
San Antonio, Texas, 78230

SUBJECT: ZV2017458: Lot 9, Block 22, NCB 14732; 12058 Vance Jackson, San Antonio, TX

To Whom It May Concern:

As of the date of this letter, the property referenced above is zoned **"C-2 S CC ERZD MLOD-1"** **Commercial Edwards Recharge Zone Camp Bullis Military Lighting Overlay District with Specific Use Authorization and Special City Council approval for a small animal clinic with overnight boarding on the property.** The subject property was rezoned from old **"B-2 ERZD"** Business Edwards Recharge Zone District to the current zoning district by Ordinance 92988, dated November 30, 2000.

The zoning district of the property will allow a facility to be occupied by an Animal Clinic for the prevention, treatment, minor surgery, cure, or alleviation of disease and/or injury in small domestic animals. Further, pursuant to the Ordinance No. 92988, overnight indoor boarding is permitted at this location. No outside kennels, paddocks, runs or pens, nor overnight outside boarding will be permitted in this zoning district. Outdoor kennels, runs, paddocks and pens are defined as unpaved enclosed areas, usually by a fence, for animals. This does not restrict the outdoor recreational activities for animals so long as there are no outdoor runs, paddocks or pens.

Please reference Articles III and V of San Antonio's UDC for lot dimension and building criteria, including outside storage and display standards, height limitations, buffer requirements, building setbacks, and minimum and maximum parking requirements. If you wish to ensure compliance with the current building code or with development standards and other regulations in the UDC, which may require the review of building/site plans, please contact a Development Services Department Engineer at (210) 207-8281 to discuss or to schedule a more in-depth preliminary plan review.

For information on the enforcement of building and development code requirements including the issuance of building permits, records of zoning code violations and certificates of occupancy, please contact the Customer Services Section of our Department at (210) 207-1111. If we may be of further assistance, please contact me, at (210) 207-2187 or via email at John.Osten@sanantonio.gov. Thank you.

Cordially,

John Oster, AICP
Senior Planner