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CITY OF SANTA FÉ
BOARD OF ADJUSTMENT
October 4, 2016**

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BOARD OF ADJUSTMENT
Tuesday, October 4, 2016 at 6:00 P.M.
201 W. Marcy St. Santa Fe, NM
Peralta/Lamy Rooms

CALL TO ORDER

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Gary Friedman, Chair, at approximately 6:14 p.m., on Tuesday, September 6, 2016, in the City Convention Center, Peralta and Lamy Rooms, 201 W. Marcy Street, Santa Fe, New Mexico.

A. ROLL CALL

Members Present

Gary Friedman, Chair
Coleen Dearing
Douglas Maahs
Donna Reynolds
Daniel H. Werwath

Members Excused

Rachel L. Winston, Vice-Chair
Patricia Hawkins

Others Present

Dan Esquibel, Staff Liaison
Zachary Shandler, Assistant City Attorney
Carl Boaz, Stenographer for Melessia Helberg

B. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

C. APPROVAL OF AGENDA

Member Werwath moved to approve the agenda as published. Member Maahs seconded the motion and it passed by unanimous voice vote.

D. APPROVAL OF MINUTES: Minutes of September 6, 2016

Member Dearing moved to approve the minutes of September 6, 2016 as presented. Member Werwath seconded the motion and it passed by unanimous voice vote.

E. FINDINGS/CONCLUSIONS: Case #2016-53. 1549 S. St. Francis Drive Special Use Permit.

[A copy of the Findings/Conclusions for Case #2016-53 are attached to these minutes as Exhibit 1.]

Member Maahs moved to approve the Findings of Fact and Conclusions of Law for Case #2016-53 as presented. Member Reynolds seconded the motion and it passed by unanimous voice vote.

F. NEW BUSINESS

1. **Case #2016-92. Appeal** by Ms. Françoise Garcia from the August 11, 2016 Decision of the Land Use Department to Issue Building Permit #16-1776 to Ms. Patricia Sherrin to build a fence at 1618 Brae Street (Zachary Shandler, Assistant City Attorney, Case Manager).

Mr. Shandler explained the appeal process. In the packet was a summary of the case and both parties were present. [The case summary is attached to these minutes as Exhibit 2.]

The parties have documents and testimony. The basis of her appeal is that corrugated metal is not an approved material. It may not be, but she will make statements. She also claimed the fence is built on her property so there is a civil case between the two parties that will be heard on Thursday before Judge Sena at the Magistrate Court. He would allow the appealing case to go further with testimony from the parties. He asked Ms. Garcia to give her testimony first.

Ms. Françoise Garcia, 1616 Brae Street, Santa Fe, New Mexico, was sworn. She said, "First of all, I appreciate the time because I know it is a small case but is very important to me. I have some pictures here and I will try to be brief. On June 25, Ms. Sherrin called me to see if we could meet about the fence between the two properties. I agreed to meet with her on Tuesday, the 28th. It is my day off. And I saw that she had moved the fence without talking to me - the one full [unintelligible] of the fence. She had cut two of the beautiful trees that were on my property. And she says she was going to build a fence with metal or whatever. And I just told her and I said, 'You know what? I have a partner. You need to talk to me and my partner together.' And she was basically going to get some pricing from Home Depot and I said, 'Well, get your pricing together; get all your plan together. And then when you have all these together, then maybe we can sit down. We can have a little meeting. And we can talk about it.'"

"On the weekend of July 4th there's a fence was built 2½ feet on my property side, which was corrugated metal. And I have little packages here for all of you so you can look at it and see if it is alright. Thank you."

[Ms. Garcia handed out her pictures to the Board. A copy of the pictures packet is attached to these minutes as Exhibit 3.]

"This bottom page is of the fence that is 2½ feet in from my property line. So when my husband confronted Ms. Sherrin and say, 'You know what? You build a fence. First, you don't have a permit. You

built it 2½ feet on our property. And she said she built it there because she needed to do like a drainage pond. And my husband told her, 'You know, you do it on your own property, not on my property.' So, at this point, she told my husband that I gave her permission to do what she wanted to do. So I leave it there. And she is the lady that you cannot talk to because she changes her mind every five minutes; she says things that are not true."

So I called the City and I asked them, you know, do they need to have the permit in order to get a fence built. And they told me yes. You need a permit. So I talked to Mike Purdy. And he told me, 'We're going to go red tag her for the fence. So she [sic] red-tagged her fence. And when you look on page 2, after she was red-tagged, however, she has a red tag that is placed [unintelligible] on the fence, she built a wood fence right next to the fence - she built another fence. I don't know what the rush was; what she was, but she built another fence. When I talked to Mike Purdy, when I got him on the phone, because nobody answered the phone at the City. They didn't do anything. After she kind of [to do?] the driveway, as shown on page 4, she was building... she was putting holes... on page three, way before she had the permit; way before the corrugated fence metal was moved.

And then, I called again the City and I said, "Isn't she supposed to have a permit before she builds anything? And they told me yes, she cannot build; she cannot dig holes; she cannot do anything until she has a permit on hand.

And she got a permit on the 8/12, I believe. And those pictures I took on 8/3 and you can see those holes have already been built for anticipation of a new fence.

I had to get a surveyor to come and survey the property because, for some reason, you know, she didn't believe she was on my property. So I got a surveyor. And then, on page 7, you can see all the space and those holes already have been built and some of my stakes were missing. They were removed from my property. And it is my property.

Prior to that, when she got the permit, I talked to Mike Rivera and it was a week after she got red-tagged. And I told Mike Rivera, 'What are you going to do about it because she got red-tagged. And that fence is still on my property. He said, 'Oh well, we will give her another week.'"

Twenty days later, she applied for permits. She applied for a permit on 7/22, or something like that, when she was red-tagged on the 7th of July. So I was a little upset to get this comment from the City. And I said, 'You know, those holes have been built; my stakes have been down and ... I talked to Greg Smith and I talked with Dominique Gonzales because I know she was going to move her forbidden fence where it was supposed to be. I talked to the [unintelligible] on this when he made a recommendation that the corrugated fence... and it's on the back page, I believe. But says that a corrugated fence is not an appropriate material for a fence and because of the visibility because when you go down Brae Street on the south side, there is a big glare. It is six feet high and 47½ feet long, so you can tell, it is not something that is small and it was reflecting, and is an eyesore - really bad. It talked with Dominique and she said that is not something she is going to approve. I went to Greg Smith at the same time and I said, 'Do you know why this lady is building a corrugated fence? It's very bad and it defers from the character of the neighborhood because the neighborhood on Brae Street is an old neighborhood that has wood and fences and chain links. And there

is no such thing as corrugated fence. And he told me that he would not sign on it. So Greg Smith didn't sign on it, Dominique Gonzales said she didn't sign on it. But Greg Smith signed on it.

So that's why I've got my appeal. And then after that before she got a permit on ... I guess it was on August 10th. I asked her how come the fence is done. You know, she doesn't have a permit. And Mike Rivera said, 'Well, I told her she could move the fence' - the one that was on my property. So she got a permit and she built the fence like in, I don't know. I mean it was built overnight."

"And, if you can see on page 11, you know, because she told this - she had to have it all painted like the nonreflective paint. As you see, when I look at the fence, the paint is already coming off. It looks like cardboard; it's already warped and the paint is already coming off."

"And then, when I went to talk with Mike Rivera, she said, 'Oh, she's okay. She's fine. So I finally got to talk to Joe Maestas - when she's a Councilor of and he say he is going to do a comprehensive inquiry in the City because he said, 'You shouldn't have to go to the City every day because nobody returned your phone calls.' And I was there every day. Even people tell me, 'What are you doing here?' And so I was just upset with the City, or some of the employees of the City treat me. They didn't ask me to see Sherrin to provide the survey. Yolanda Cortez told me, because I told her she built the fence into my property. And she said, 'Did you get a survey?' And I said, 'Yeah, I got a survey.' They used my survey to make her build her fence, which she should have done a survey - not me.

"And then, when you see the location of the fence... I think you have the little package right there that was on the package that Mr. Shandler had given you ... she had said that she would give the fence, you know, from the corner of the property and all the way ... I don't know, 52 feet or something like that, she was going to do. She had a drawing. Right now, there is a gap from the corner of the property to the tree - there is about 2½ feet that is empty space and then from the tree to the other side of the property there is like about 5 feet that is nothing - no fence, no nothing. And then the fence is very sharp. And then she went all the way to my fence and then she told Yolanda Cortez she would build a fence with wood. And at this time, all the wood piled up against my fence. And it's on page ... I'm sorry, I get a little nervous. I don't know if I have it here. But right now, all the wood is piled up. It's on page 8. If you see the bottom pictures, that's where the fence ends and that is my property unit. That is where my fence... I mean the original fence was built on my property. So there's about 10 inches there. So her fence right there ... If I remove that fence, then there is nothing. And it is still on my property because she piled up all that wood on my fence.

So, I believe that a corrugated metal fence - that this corrugated fence and corrugated metal looks like cardboard. She wants to do it with cement and she used styrofoam. I don't know if you have a picture there of the styrofoam but I have one here that I can bring. And she was supposed to be on her side of the property.

[Ms. Garcia handed another small photo to the Board to see (not as an exhibit).]

She said, "And then she was supposed to put it not on the property line but on the side of her property. So I had the surveyor do another survey of the property. So some of the fence is on the property line and some of the fence is on her property. The fence is not even a straight line; it is so crooked. So I just want it

to have this fence removed. Or built a proper way. But, I don't know. I don't even want that fence. It is so ugly. And I have one of my tenants here that lives on Brae Street that can testify, and she came to give testimony.

Member Reynolds referred to page 1 of her packet that indicates this is the view on your property and it looks like the infrastructure of the fencing faces you.

Ms. Garcia said she took pictures of it from her property and the bottom picture was taken from her property. The top is from Ms. Sherrin's view.

Member Reynolds explained that she saw some flat boards and was asking if that is the view she sees from her property.

Ms. Garcia said it is.

Member Maahs said, if he understood correctly that this current fence is 2½ feet on Ms. Garcia's property.

Ms. Garcia clarified that that fence has been removed and now the fence is the painted one with some of it on the property line and some on Ms. Sherrin's side. The last letter is from the survey they did a few days ago showing that some of the fence is on the property line and some is on Ms. Sherrin's property because it is not a straight line.

Member Maahs said he didn't see the survey. He saw the July survey and he saw the letter that refers to it but no survey was attached to it.

Ms. Garcia said "I'm sorry. I don't know where it is. I did include a letter that I wrote, telling Ms. Sherrin that I was happy she had removed the fence. She was going to remove the fence. But it was very hard to talk to her, because every time, she was ... I don't know... she was ... I don't know. One day I came and talked to her about telling her that she dug the holes inside the property before; she had the holes around the property line and then to show you the character of Ms. Sherrin that you cannot talk to her, is that for the purpose that Ms. Sherrin usually pulled down her fence and showed me her yard, and the worker that was with me. That is not the first time that she needed to talk to ... I mean that you can't talk to her like neighbor to neighbor."

Member Dearing, for clarification, said Member Reynolds' question with that view on the first page, is what you looked at before they oved the fence over. "Are you still looking at the infrastructure on your side?"

Ms. Garcia said no. She handed out another small photo showing the current fence from her property.

Member Dearing reasoned that it was done right.

Ms. Garcia agreed.

Member Dearing said it looks like it is shown on page 12 from Ms. Garcia's side.

Ms. Garcia side that was not the page. She passed around the correct photo. The workmanship was not anything that had to do with it being on her property.

Member Werwath said he was understanding that what is on page 11 of her submittal in the three photographs taken apparently on August 18 that showed paint peeling from the corrugated metal. He asked, "Is that the current condition of the fence from your side?"

Ms. Garcia said, "Yes, sir. That is what it looks like."

Member Reynolds asked if it is now painted on both sides.

Ms. Garcia said, "Yes. I believe it is painted on her side, too."

Chair Friedman invited her witness to testify.

Ms. Priscilla Martínez, 1616A Brae Street, was sworn. She said "I lived there as construction was going on. I actually worked for Sherrin for a few days til it went up in the air. It was very hard to work with... I noticed as soon as she put up the fence that she was 2½ - 3 feet over. And my neighbors across the street said, 'You need to call Françoise Garcia.' And I said, 'It's a holiday.' I know I should have done it but at the time, I didn't. I called Françoise three days later. And I said, "the fence ... there is a fence on your land. So after that ... since that time, Sherrin thought I had reported her to the City. So it was nothing but a nightmare. Every weekend, six of her female friends were gawking at me. They would slow down, looking like in my driveway. One was pretty frightful. She was a big girl - big lady. And they were just listening - they were mocking me. While they were building the fence, they were on Françoise's land they were working til nine-o'clock in the evening, pounding nails and sawing.

"They didn't give ... they didn't get it that I was in there in my home and they were doing it even on Sundays. And as Françoise said, the fence - if it gets blown by the wind, it's going to crash. When they first put up the fence ... They put up the fence; they took it down. And now it is up again. But the first one she put up, it attracted so much heat because it was chrome metal. I put cardboard on all my windows facing the north side because it was giving so much heat off that humongous fence. The harassment stopped because Françoise put in a letter to quit harassing me. Ms. Sherrin wrote me a letter when I was gone. She came into the property and left me a letter that she was sorry and she wanted to have peace and she paid me what she owed me. But the peace goes on when she feels like it. I just want peace in the neighborhood like I used to have. I am a quiet person. The fence goes on Françoise's land and what is up now is just ... it doesn't go with the neighborhood at all.

I went through a lot of stress this summer - miserable."

The Board had no questions for Ms. Martínez.

Ms. Patricia Sherrin, 1618 Brae Street, was sworn. She provided a handout with not enough for each Board member to have a copy.

She thanked the Board for hearing this. She said, "The two issues that I'll address to you guys are the permitting from the City. The first inspection is page 2 signed off, complete. The 2 issues are the corrugated fence and the Styrofoam. It's a new thing that ... the styrofoam is a new thing provided from Home Depot.

"It comes in two different bags and you mix it and it heats up. The inspectors came out and inspected and saw that it said it could withstand up to over 90 mph winds. That has been approved but it was a little bit of a question because it was new material.

"Originally, on the first meeting while Priscilla Martínez and her boyfriend Joe were working on my fence, removing the old fence that was entangled with old dead trees, rocks. There were some wagon wheels and old bike spokes used to hold it up. It was a really awful fence. But that fence metal cattle kind of fence, matches the other side of my house. So that's from talking with the inspectors. It is considered to be my fence because it matches around my house. So, in removing that, I was removing my own fence.

"On the day that we actually met on that Tuesday at 10:00, when Priscilla and Joe were removing that fence, we stood there. Françoise and I stood there and watched them working on the fence. She said to me, 'I have no money to be putting into any new fence.' And I said, I would like to be able to move the fence over two feet because of all the old rocks and dead trees - it is really hard to dig through this. We were really struggling because you can't use chain saws because the fence was intertwined within the trees. And at that point, she said, 'As long as you don't put the fence up against my windows.' And that was that.

"I said, 'I will pay for everything and you are going to be giving me the two feet in return.' Yes, I definitely know I should have put that in writing. And it is a very big lesson to me. So when I got red tagged and not allowed to do anything on it. I had bought the paint scraped there with the primer and paint ready to start working on it. So the metal fence sat there for a month while it was red-tagged. One of these pictures are incomplete. They are not painted - with wood slats that are going to be going on my side of it. When we got red-tagged back then, yes, the fence was half-way done and the metal was moving. I wasn't allowed to do any kind of work on it."

"When I got through the permitting process, which contained a lot of loophole - somebody who cordoned me for every little detail caused the permitting to last over a month to get that done. As soon as I got the new fence going in again - it's not complete. The wood slats still aren't put on. The screws that need to be screwed in. But I was told by I think the [??] supervisor - they've all been involved in it - told me to not do any more work until I come see you guys and get this taken care of.

"They, [unintelligible] forms are like the original inspector, his supervisor, I believe is Bobby and then another supervisor, Mike, have all been there. They've all looked down the line of the property line and stakes and they all agreed my fence is where it is supposed to be.

"And the very last page that I have, the last couple of pages that I have for you guys, is a friend of mine that built on the corner of Jay Street and Española - Espacitas - and her fence is completely unpainted and she has been finalized, permitted. Her permitting is done. There are no questions. Her installer didn't have to go back and paint it. I agreed to paint my fence on both sides, matching her adobe. I flipped the fence around. On the first page from Ms. Garcia, this bottom picture here - that is on my side. I had originally had the boards on her side but she said she didn't like it. So I flipped the whole thing. So now this wood - infrastructure stuff - Donna was asking about - is facing me. What is facing her is just straight, painted metal fencing. On my side, meeting all the codes and permitted."

Questions from the Board

Member Reynolds asked if she could confirm that it is painted on both sides.

Ms. Sherrin said yes. There is a couple on my side where the infrastructure, because of being stopped - when I got stopped from my second red tag here. There are areas that are not painted where the board was or something so there are all those little spots that need touched up. But on Françoise's side should really be painted. It was double painted. I really worked hard to make sure that we matched her adobe.

Member Reynolds asked if it was completed with wood.

Ms. Sherrin said no.

Member Reynolds asked if the gaps are going to be finished.

Ms. Sherrin said it will be finished. The permit says metal.

Member Reynolds asked if it would be corrugated.

Ms. Sherrin said yes. It will be painted but it was just stopped.

Member Dearing said, if she understood correctly, that the current fence is either on the property line or on Ms. Sherrin's property so it is not encroaching at this point.

Ms. Sherrin agreed and said three inspectors came and confirmed it.

There were no further questions of Ms. Sherrin. Chair Friedman asked s. Garcia if she had anything to add.

Ms. Garcia said, "First, when she got the fence moved, there was no agreement because I never allowed her to put the fence on my property. We filed a civil lawsuit at Magistrate Court because if I had agreed to that, we wouldn't be here. Regarding the inspectors, I want to tell you, I've been calling Mike Purdy; I've been calling Mike Rivera; I've been calling Bobby Padilla, which are the three inspectors. Which sometimes, I would get a call back but sometime I don't.

“So I have to go to the City at 8:00 in the morning. I finally got to tell Mr. Maestas when I called him and he said he was going to get an employee but why she didn't get fined again because she was building on the fence, even though they told her she had to stop working.

“The second is, when I talked to Mike Rivera, I asked him to meet with me at the property because I would like to show you some few things that are not right. He told me, 'This is not your permit. This is not your fence. And I don't have to meet with you.' So I got very frustrated. And yes, every time, I called the City. As a taxpayer, I think you know I'm entitled to call the City. I'm the property owner. I think I'm entitled to call the City. So this is not harassment; this is my rights. And this is something I feel like I didn't get from the City what I was hoping for. There were no agreements. When she talks about the fence, this is a civil matter. She is trespassing. The fence is very ugly and is very tacky. It is not even on a straight line. As you say, she removed my stakes that I paid for because I paid for a survey.

“She removed my stakes which she shouldn't have to remove it. Because, they put it there and that's for a reason. My husband offered a unicorn and it is gone. So there's a lot of things. I'm not going to go on and on or we would be here all night. But one thing I would like to ask is that my tenant Priscilla, wants things to be quiet.”

Chair Friedman said that is not something this Board can address.

Action of the Board

Chair Friedman noted that in Mr. Shandler's memo, there are three suggested motions on page four.

Member Maahs wanted to revisit this because he kept hearing different stories He asked if the fence is in the correct place now.

Mr. Shandler clarified his understanding that when the owner comes to the city for a permit, the Staff have to provide the site control and evidently Ms. Sherrin did to get the permits. Ms. Garcia submitted pictures and at the end is a letter from Mr. Armijo. So it is on the property line.

Member Maahs said in looking at the diagram from the original survey, it appeared to be east of the lot line so it sounded like an unresolved issue.

Mr. Shandler pointed out that Judge Sena is holding a hearing in two days and Mr. Armijo will be a witness.

Chair Friedman thought the best way to handle the appeal is based on the testimony.

MOTION: Member Maahs moved in Case #2016-92, to postpone action on both issues until a final resolution is issued at the Magistrate Court. Member Dearing seconded the motion which passed by majority voice vote with all but Member Reynolds voting in favor.

Mr. Shandler said the Board will not take action tonight. He will monitor those proceedings and, depending on what the judge says, will determine whether it comes back to this Board.

Ms. Sherrin and Ms. Garcia retrieved their photos and departed.

- 2. Case #2016-93. 1601 S. St. Francis Drive Special Use Permit.** Victor Johnson Architect, agent for St. Bede's Episcopal church, requests a Special Use Permit to construct a 4,000 square foot addition for use as an auditorium/sanctuary and social hall on 4.41+ acres. The property is zoned R-21 (Residential - 21 dwelling units per acre). (Dan Esquibel, Case Manager).

Mr. Esquibel presented the Staff Report for this case.

A copy of Mr. Esquibel's report is attached to these minutes as Exhibit 4. Please refer to Exhibit 4 for details concerning this report.

Mr. Esquibel concluded that the applicant met all requirements and recommended approved subject to the conditions of approval and stood for questions.

The Board had no questions.

Applicant's Presentation

Present and sworn was Mr. Victor Johnson, P. O. Box 1866, Santa Fe. He introduced himself as the architect for the project. St. Bede's acquired this property in 1957 and built what is there in 1963. A building campaign in 1987 provided an education wing and now, they want to build a new sanctuary. The original structure was designed to be a social hall and children's education space. They now want to have a proper church. We have gone through the application process. They met several times with nearby neighbors and Mr. Johnson met with all DRT members regarding the streets, landscape, land use, and utilities. He stated that all five conditions in the staff report are acceptable to the applicant.

Public Hearing

Chair Friedman opened the public hearing and asked that all speakers be sworn together.

He asked first for those in favor the project to speak. There were none to speak in favor.

Mr. Karl Sommer, P.O. 2476, Santa Fe, New Mexico, spoke on behalf of his clients, Cha Foxhill Mabry and Hampton Mabry, immediate neighbors to the east. He sent a letter to the City and was told that the submittal would be included in the packet.

Chair Friedman confirmed that it was in front of the Board as a supplement to the packet.

Mr. Sommer said the Mabry's are the closest neighbors to the church. They were here at the meeting to make sure the church has a reasonable opportunity to make the best use of the property under the Code while preserving their quality of life so that what was built didn't interfere with their use and enjoyment of their own property. The Board of Adjustment has a broad standard to adjust the interests of the parties so no one is adversely affected by the conditions of the Code. That section is very clear about the conditions that could be imposed and the last criterion says, "You can impose any appropriate condition and safeguard in conformity with Chapter 14 that regulate the development and use of land." So the Board's discretion is broad and you must first ask if you have the authority to do this.

The members of the church had an ENN and he went to that ENN and told Mr. Johnson and members of the church their concerns. One was whether or not this property lies within the corridor district that has a height limit of 25'. At that meeting, Staff said that while the map showed this property inside the corridor, that the map was a mistake and it shouldn't have shown this property in the zoning district. After the meeting, he and Mr. Karnes went and got the official zoning map.

That official zoning map was adopted in 2011. There was an earlier version in 2001 that showed this property within the corridor which was adopted in the 1980s. This map did not show this property in the district. There have been two Council actions that show it within the district. But in response to their inquiries and assertion that the official zoning map show this is in the district under two adoptions of the Code, Staff believed that was a mistake.

The Code today says that the Land Use Administrator can, in writing, when determining that there is a mistake in the map, direct that the mistake be corrected. That was done today and the Board got a copy of the memo from Mr. Smith.

The threshold question the Board must ask goes to its question of authority. Can the Board grant this special exception? It is a question for the Board because, if this property is in the district, the height limit is 25'. So the question is critical. Four feet is very different in looking across this property.

Mr. Sommer said he wanted to explore that mistake with the Board. He shared the iterations of the code on the subject. Staff attached the correction to the map and the area being considered is in the upper left hand corner of the district where St. Bede's is - and north of that area. That is the area this map changes.

He provided a hand out [attached to these minutes as Exhibit 5]. It first says pre 2001 and the map looks very similar to the map adopted in 1991. The supposed correction and this one are virtually identical in that corner. But the correction map has differences - there is no bump out. He raised that because he knew this map was done hastily and might not have looked at all of it. But it is different in material respects. He highlighted the area that doesn't include St. Bede's because the 600' stops at St. Michael's Drive. And in the other map, the language is very similar but the map is very different. He highlighted it for the Board. On the northern portion, it looks like a protractor at the end of the off-ramp and drew an arc on the corner of the property. That is what Staff said was a mistake. On all the other off-ramps, it is 600'. In 2001, the Council adopted a map showing it 600' from the end of that off ramp just like all the other off ramps. Staff now says this map in 2001 right here in this portion of the corner was also a mistake that we will correct.

Council adopted this map in 2001 for 600' of the ROW. But not from St. Michael's but ROW of the roadway. Mr. Shandler provided a digital official zoning map that Council adopted in 2011. And it shows the district within 600' of the ROW. And in 2011, when they adopted the Code, it said SCHC district encompasses the land within 600' of the edge of right-of-way of both sides of the following streets. So the mistake was in the original map in 1991. He submitted it was a mistake then and in 2001 and 2011 was corrected. In the last 15 years, it has been the same. That is important because zoning is a legislative matter and when a property owner wants their zoning change, they have to go to City Council and have a public hearing at the Council meeting.

But here, Staff said they are not going to follow the normal process because someone filed an application and would deal with it here. They said they would move the line 600' to the south today. He said that is not something that should be taken lightly. If Staff is wrong and Council intended to do what they did, this application doesn't comply and then it is not subject to the Board's approval at this meeting. He believed the original map was a mistake and the Council corrected that mistake on two occasions over the past fifteen years. So this application is not approvable.

It is incumbent on the neighbors perhaps to appeal that determination of Staff but it is for the Board to decide if that was a mistake - whether or not what was done today by Staff was appropriate. He submitted that it was not.

There are other issues with this application and the neighbors have the right to address the Board specifically on them. The Board saw the photographs regarding the height of the structure. It is 4' higher than the Code allows.

The Mabry's property is directly east. They have a wall and look up over the wall. So what is visible now is a portion of the cross and a street lamp above the wall. The church is between their view of the horizon and their wall. What is proposed will be in their view. The church must build within the height limitations. At the back is Exhibit C and the Board can see the poles Mr. Johnson put up. There are 3 of them and the middle one is the easternmost façade of the proposed sanctuary and he thought it was at 29'. He thought the outside poles are 24' and the middle is 29'. What was not shown in this view in Exhibit C, there will be light poles that are much closer than these to the neighboring property at 25' and will be incredibly visible to them.

So they would like it addressed with some conditions regarding landscaping in the view shown in exhibit C. The Mabry's are not saying it should be invisible but that the Board could impose conditions that would mitigate the view in such a way that the view will be obscured but far enough from them that it will not impinge on them - an effective screen of that area. Just beyond those trees will be a parking lot. They would ask for an offset of that view in a zig zag manner rather than up against the wall.

Mr. Sommer asked Ms. Mabry to explain what is visible from their back yard. Not terribly visible but is visible. Those lights will be incredibly visible. She has some ideas for the Board to consider.

Ms. Mabry, 1530 Calle Redondo, was sworn and said they have thought about how to make it a win-win situation with the lights. The architects proposed four new lights in the parking lot that she would see from their house. She suggested a different type of light - like what they have at Tomasitas where they have them in front at the height of a car. She showed a photo of that style. She believed it would save money rather than a huge light pole.

She stated that there are also motion-activated lights that could be put on the back of their wall. She showed two of them that cost about \$8 - halogen lights. She guessed they would be needed at Easter and Christmas but rarely at other times.

There are other light poles to consider. At Sanbusco are light poles at 12' and actually about 8' from the ground.

Ms. Mabry gave the two lights she brought to St. Bede's to try out. They would need electricity at their wall to use them.

Mr. Sommer showed a couple of other photos and explained them. One had a light pole that was 5' tall.

Chair Friedman asked how many light poles were there.

Mr. Sommer said there are two.

Ms. Mabry said that light pole is roughly 250' from their property.

Mr. Mabry was sworn and said he was a hospice chaplain but for 20 years was a parish priest in the Episcopal Church. They had an extensive remodeling and it wasn't the reason he left being a parish priest to be a chaplain but he was sympathetic to their cause. It can be difficult. He rejoiced in the success and growth of St. Bede's church that necessitates this new building. He said they belong at Church of the Holy Faith but attend various events at St. Bede's. They have good friends there so they don't want to be adversarial. But the Board could understand that they do have concerns with the impact of this project on their quality of life and they were concerned to minimize the adverse effects to their neighborhood. So they wanted some protections after the project was completed.

They did follow the rules. He asked the Board to see what can be done to address their concerns. If possible. If it can, they would have a win-win for the neighborhood and the church.

Mr. Sommer said the other conditions of approval are to have some reduced reflectivity and use more earthtone colors rather than metallic colors. He also pointed out that this plan would remove some Juniper trees. They are up against the boundary line and provide some existing screening. He didn't know they would need to be removed. He showed pictures to the Board.

At the bench he made some comments about the photos and clarified which were taken on the property.

In summary, Mr. Sommer believed the Board has the threshold issue. He believed this project is not subject to approval at this height. The letter stated what they would propose as conditions. He stood for questions.

Chair Friedman noted there are other people here to speak to the application.

Ms. Sara Villa Corduin, living right across from St. Bede's since 1981, was sworn. She said, "We have been very good neighbors with the church. We really like the area very much. The activity of the church is very busy and we enjoy that very much. We went to the very first meeting that was canceled. It was supposed to be at the library and it was canceled. We were already there and it was canceled without explanation. The second meeting that we got notification, we were not able to attend because we had a medical trip to Colorado. This one we appreciate the invitation to come. We do have several things that we would like to have but don't have them in writing like this presentation that Mr. Sommer gave. It was excellent. We would like some time because they are not just our concern but some other neighbors which are next to us. They were totally unaware of these meetings as we were - uninformed for those three times. And for that reason, we would like to have time to prepare our concerns.

Ms. Dee Ana, 507 San Mateo was sworn. We spoke to several of our neighbors who had no idea this meeting was taking place today. And they were very distressed to find out that of those changes. So I spoke to several people today that had not been aware of this meeting and we feel that their quality of livelihood would be affected by the proposed changes. One of them actually left a message with the phone number available. I believe she probably didn't reach anybody but she said she was going to leave a message. I also left a message, requesting a rescheduling of this meeting so that these neighbors could attend and be prepared enough to provide written comments as the neighbors were able to do. So at this time, I would request a rescheduling of the opportunity for public comment. Is that something that you are authorized to agree to right now?

Chair Friedman said the Board will take that up as well as the other issues before them. The Board can choose to postpone a decision if they so please.

Ms. Ana said, "There are issues of age and disability, as well. So we would seek accommodations and counsel, having more time to provide written comments in that regard. There are significant health concerns, the increased traffic would impact our health. It would impact our privacy. Apparently, they propose to put in parking spaces directly across from our bedrooms and our kitchen and they would be much closer to our home than previously, angled straight at us. And also, their new entrance or exit creates an intersection with San Mateo right in front of our home. And as people delay to get in or out of the parking lots, the extra exhaust, the noise, the loss of privacy - all of these things are significant. I think it is undeniable that it would affect the traffic. As far as I could tell, there are proposed changes in the future to San Mateo Road, right of way is requested. I don't understand that. I would like some time to understand what that means. If nothing else, I think it's reasonable to have a traffic study done and see how that would impact the neighborhood."

There were no further speakers from the public regarding this case and the public hearing was closed.

Board Discussion

Member Werwath wanted to hear from Staff on the administrative decision to correct the mistake on the map.

Mr. Esquibel said this issue was brought up during our work in progress. We did look at the issues. The review process after that included review of the ordinance by the City Clerk and work by GIS who drafted the original digital maps. We disclosed that to the City Attorney who also reviewed it.

The final decision is in the handout Staff provided on the page after the colored map. That includes the original map they found to be still intact. They could find no reason why it was pushed up. They went into archives. The Staff has the right to correct map errors and they have corrected it to reflect what was approved in that ordinance. In terms of zoning review, he didn't know if the attorney wanted to comment but he provided a detailed analysis.

The second part is traffic. He understood that the second speakers were concerned with the driveway. Mr. John Romero looked at the improvements for San Mateo and the applicant worked with Mr. Romero on it. There is an area of church property for a sidewalk and part of it City Staff wanted moved back so we don't have to rebuild the sidewalk when San Mateo is improved. So the sidewalk would be in conjunction with those improvements. There is not enough traffic to warrant a traffic study.

Regarding lighting and landscaping, this Board can make conditions to mitigate some of the issues. The tree locations are not a big impact from the church. They want to really work with all neighbors with places for parking, landscaping as needed. Staff did not include a photometric requirement.

The requests could easily be done by the church and made as requirements by the Board. The reduction of pole lights could also be imposed by this Board.

Member Werwath said that answered some questions he had not asked yet. But the lighting falls within the Code - things like bollard lighting.

Mr. Esquibel agreed. Bollard lights do. That is a lesser issue of glare than with pole-mounted lights. Pole lights are subject to the Night Sky Ordinance that does not want to use lights for security. We can't tell them no if they come in with appropriate lighting in the parking lot and doorways. If they meet the standard City Staff will approve them.

Mr. Johnson clarified that the metal roof is not galvanized but painted. They have done a computer photometric analysis of the parking lot and it shows no spillover of light. The poles are 25' high in the analysis and the closest pole is 65' from the property line. The quartz fixtures go directly outward but they would use shielded lights and they have removed paring from the east boundary line and show currently six pine trees in a zig zag pattern along that boundary.

Member Werwath asked if it would have no light spill to the neighbors.

Mr. Johnson agreed. No light would leave the site.

Member Dearing asked to clarify the roof matte finish and wanted to know what color.

Mr. Johnson said they haven't chosen the color but no one is talking about red or silver.

Member Dearing asked if Mr. Johnson had no objection that is in the memo.

Mr. Johnson said he had Mr. Sommer's letter. There are a number of things he would object to. He would like to be able to choose a roof color. When he was at the neighbor's house, they talked about a tan roof and that is more aggressive than a sky blue color. They have not selected color but it won't be black - it will be a mid-range color.

Member Dearing asked about the parking lot and lights shining directly to their house.

Mr. Johnson explained that the parking lot sits on high ground and have dropped it 4' for existing grade and will put in a sidewalk and plantings and have the berm 3' high and with the parking lot down 4' from the berm and with landscaping, neighbors will see cars less than they do now.

Member Dearing asked Mr. Johnson what his feeling was about a height of 25' instead of 29'.

Mr. Johnson said the special use permit is for a 31' height and no structures will be that high. The cross is 55' feet high. The highest point at the ridge is 30' but it drops down to 24'.

Member Werwath asked what the maximum acceptable height in an R-5 zone is adjacent to this property.

Mr. Esquibel said it is 35'.

Mr. Sommer asked if they could use 20' poles and assure that no light would leave the site so that standing in the back yard of a neighbor that no light would be visible from that location.

Mr. Johnson said the photometric analysis shows a cut off at the property line. It is possible to see the source of the light but we are talking about the amount of light on the ground.

Member Dearing asked about timing the light.

Mr. Johnson said the lights will be on during periods of use and not at other times. It is for safety in walking. It is on a clock timer, not on a motion detector.

Member Dearing asked if the light would be on every night.

Mr. Johnson said that is up to the church but they are not on all night long.

Chair Friedman asked if they intend to keep the lights of when the church is not in use.

Mr. Johnson said it certainly is an option.

Chair Friedman asked that lights be incorporated into the motion.

MOTION: Member Werwath moved in Case #2016-93, 1601 S. St. Francis Drive, to approve the Special Use Permit with staff conditions and additional commitments by the applicant not to use red, black or silver color for the roof; that only the parking lot be lighted and lights be only on during times of active use. Member Maahs seconded the motion and requested a friendly amendment to follow the landscaping screening plan submitted by Mr. Sommer.

Member Werwath didn't know if he agreed to the specificity of the species of the tree.

Mr. Esquibel asked if the motion could incorporate evergreen species for off season that it could be whatever the applicant approves.

Member Maahs noted in item #3, that landscape screening doesn't request a type of evergreen but is evergreen.

Member Werwath agreed

Member Dearing asked for a friendly amendment to finish the berm. Member Werwath accepted it as friendly.

Member Reynolds seconded the amended motion and it passed by unanimous voice vote.

Mr. Sommer provided the photos as exhibits [attached to these minutes as Exhibit 6.]

Ms. Ana was asking to speak again and was denied but her objection was noted for the record.

G. STAFF COMMUNICATIONS

There were no Staff communications.

H. MATTERS FROM THE COMMISSION

There were no matters from the Board.

I. ADJOURNMENT

Having completed the agenda and with no further business to come before the Board, the meeting was adjourned at approximately 8:00 p.m.

Approved by:

Gary Friedman, Chair

Submitted by:



Carl Boaz for Melessia Helberg