

City of Santa Fe
Board of Adjustment
Findings of Fact and Conclusions of Law

Case # 2015-114—233 Canyon Road Special Use Permit
Owner/Applicant’s Name—Rita and Michael Linder

THIS MATTER came before the Board of Adjustment (Board) for hearing on December 17, 2015 (Hearing) upon the application (Application) of Rita and Michael Linder (Applicant). The Applicant seeks a special use permit to convert an existing retail use at 233 Canyon Road Suite A and consolidate it with an existing restaurant use at 233 Canyon Road Suite B (Property). The Property is zoned RC-8-AC (Residential Arts & Crafts).

After conducting a public hearing and having heard from staff and all interested persons, the Board hereby FINDS, as follows:

FINDINGS OF FACT

1. The Board heard reports from staff and received testimony and evidence from the Applicant. Six members of the public interested in the matter spoke at the hearing.
2. Pursuant to Code Section 14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Code Sections 14-3.6 (Special Use Permits) and 14-6 (Permitted Uses).
3. Pursuant to Code Section 14-3.6(B) the Board has the authority to hear and decide applications for special use permits in accordance with applicable provisions of Chapter 14; to decide questions that are involved in determining whether special use permits should be granted; and to grant special use permits with such conditions and safeguards as appropriate under Chapter 14; or to deny special use permits when not in harmony with the intent and purpose of Code Chapter 14.
4. The Property is located in an RC-8-AC district.
5. Pursuant to Code Section 14-6.1(C) Table 14-6.1-1, entitled “Table of Permitted Uses”, “restaurant” is a permitted use in an RC-8-AC district with a special use permit.
6. Approval of a special use permit is required for all restaurant use in the RC-8-AC zone.
7. Code Section 14-3.6(C) sets out the procedures to be followed prior to the grant by the Board of a special use permit, including:
 - (a) Approval of a site plan and other site development drawings necessary to demonstrate that the Project can be accomplished in conformance with applicable Code standards [Section 14-3.6(C)(1)];
 - (b) Submittal of an application indicating the Code section under which the special use permit is sought and stating the grounds on which it is requested [Section 14-3.6(C)(2)]; and
 - (c) That a special use permit is limited to the specific use and intensity granted, requiring a new or amended special use permit if the use is changed or intensified [Section 14-3.6(C)(3)].

8. Code Section 14-3.1(F)(2)(a)(viii) requires an ENN for special use permits and Code Section 14-3.1(F)(4)-(6) establishes procedures for the ENN, including:
 - (a) Compliance with the notice requirements of Code Section 14-3.1(H) [Section 14-3.1(F)(4)];
 - (b) Timing for the ENN meeting and the principles underlying its conduct [Section 14-3.1(F)(5)]; and
 - (c) Guidelines for the conduct of the ENN meeting [Section 14-3.1(F)(6)].
9. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
10. An ENN meeting was held on November 19, 2015 at Santa Fe Main Branch Library.
11. The ENN meeting was attended by the Applicant, City staff, and approximately fourteen other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).
12. Code Section 14-3.6(D)(1) sets out certain findings that the Board must make to grant a special use permit, including:
 - (a) That the Board has the authority to grant a special use permit for the Project [Section 14-3.6(D)(1)(a)]. *The change in the legal nonconforming use at 233 Canyon Road Suite A and converting it to a restaurant use is allowed subject to the Special Permit process.*
 - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(b)]. *Granting the special use permit for the Project will not adversely affect the public interest because with the recommended conditions, the proposed Special Use Permit application complies with minimum standards of Chapter 14 SFCC.*
 - (c) That the Project is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project [Section 14-3.6(D)(1)(c)]. *The change from retail to restaurant use is a compatible use for the Canyon Road area, especially considering this is a consolidation with an existing restaurant. Parking for the property is currently legally nonconforming. There is no change in nonconformity with the replacement of the retail use to the restaurant use because the parking standards for both uses are identical.*
13. Code Section 14-3.6(D)(2) authorizes the Board to specify conditions of approval for a special use permit to accomplish the proper development of the area and to implement the policies of the general plan.
14. The Applicant submitted a site plan and an application indicating the Code section under which the special use permit was being sought and stating the grounds for the request.
15. Board staff provided the Board with a report dated December 9, 2015 (Staff Report) evaluating the factors relevant to the proposed special use permit and recommending approval by the Board of such special use permit, subject to the conditions set out in the Staff Report (the Conditions).
16. Code Section 14-3.6(D)(2) includes among the conditions of approval that the Board may specify for a special use permit the provision for and arrangement of parking and vehicular and pedestrian circulation.
17. The parking on the property shall not be restricted to any business and shall be open to all patrons for any business on the property.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the Hearing, the Board CONCLUDES as follows:

1. The Board has the power and authority under Code §§14-2.4(C)(2) and 14-3.6(B) and Code §14-6.1(C) Table 14-6.1-1 to grant the special use permit applied for.
2. The special use permit was properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
3. The ENN meeting complied with the requirements established under the Code.
4. The granting of the special use permit will not adversely affect the public interest.
5. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
6. The special use permit granted herewith is granted for the specific use of the Property and intensity applied for and no change of use or more intense use shall be allowed unless approved by the Board under a new or amended special use permit or as otherwise permitted by applicable Code.

WHEREFORE, IT IS ORDERED ON THE ____ DAY OF _____, 2016 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE:

1. That the special use permit is approved as applied for, subject to the Conditions presented in Staff's report.
2. Parking on the property shall not be restricted to any business and shall be open to all patrons for any business on the property.
3. The special use permit granted herewith shall expire if (a) it is not exercised within three (3) years of the date these Findings of Fact and Conclusions of Law are adopted by vote of the Board, subject to any right of the Applicant under applicable Code to request an extension of such time or (b) it ceases for any reason for a period of three hundred and sixty five (365) days.

Gary Friedman
Chair

Date:

FILED WITH THE CITY CLERK:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Zachary Shandler
Assistant City Attorney

Date: