

City of Santa Fe, New Mexico

memo

DATE: June 30, 2015, 2015 for the July 7, 2015 Meeting

TO: Board of Adjustment

VIA: Lisa Martinez, Director, Land Use Department 
Greg Smith, AICP, Director, Current Planning Division 

FROM: Noah Berke, CFM, Senior Planner 

Case #2015-62. 802 Canyon Road Special Use Permit. Neema Sadeghi, requests approval of a Special Use Permit to use an existing building as an restaurant within the RAC (Residential Arts and Crafts) zoning district. The property is located at 802 Canyon Road. (Noah Berke, Case Manager)

I. RECOMMENDATION

After conducting the public hearing, if the Board determines that the application complies with applicable parking requirements, the Board should **APPROVE** the use permit if applicable findings are made..

II. SUMMARY & ANALYSIS

The application is for a Special Use Permit to use an existing building as a restaurant. The property is zoned RAC (Residential Arts and Crafts – 21 units per acre). The Residential Arts and Crafts allows for a variety of non-residential uses, including a restaurant with a Special Use Permit granted by the Board of Adjustment. The Special Use Permit is required to resume the restaurant use, which was discontinued for more than one year.

Prior to 2007, 802 Canyon Road was used to house restaurants such as Trixie's Café, Sole Café, San Miguel Restaurant and most recently Mateo's Bistro. Then starting in 2010, and continuing until 2014, the space was used as an art gallery for Michael Hennington Fine Art. The City issued Certificates of Occupancy and Business Licenses for those uses.

When the City issues Certificates of Occupancy and Business Licenses, staff checks for the appropriate amount of parking. It is unclear if a Special Use Permit was granted for the previous restaurants, or if there has been an existing non-conformity that was continuously

honored on the property. If a Special Use Permit was granted in the past, it expires when a different use occupies the space for three hundred and sixty-five days or longer, as provided in Article 14-3.6(E)(2). The applicant is requesting a Special Use Permit to use 802 Canyon Road as a restaurant, which will include beer and wine sales.

The existing 6,071 square foot lot is currently developed with a 1,780 square foot building and two patios comprising a total of 880 square feet that would be used for outdoor seating. The proposed restaurant will be used by the Milad Persian Bistro, LLC operated by Neema Sadeghi. No changes are proposed to the existing building other than adding a 48 square foot walk-in cooler in the rear portal and those necessary to comply with all building codes (including Americans with Disability Act (ADA)) associated with commercial structures.

Parking and Loading

Parking for the proposed restaurant will be provided by 8 existing off-street parking spaces located on the southern portion of 802 Canyon Road, which is accessible from Camino Del Monte Sol.

Appendix A of the Land Use Development Code provides two possible parking ratios for restaurant types of use:

- The category of “Restaurants” requires 1 space per 200 square feet of net leasable area, the same rate that applies to art galleries. The net leasable area, as defined in the City’s Land Use Development Code is “*Present or potentially habitable space designed for owner or tenant occupancy and exclusive use.*” The net leasable area, including outdoor seating areas, would comprise 2,660 square feet, requiring 14 spaces.
- The category of Eating and drinking establishments” requires one space per each 50 square feet of serving area. Serving area is not specifically defined, but is interpreted to include indoor and outdoor customer seating and standing areas. Using that rate would yield a requirement of approximately 11 spaces for indoor seating areas and 26 spaces for outdoor seating areas, for a total of 37 spaces.

Subsection 14-8.6(B)(3) regulates the parking requirements for changes of use:

(3) Changes in Use

(a) When the type or *intensity* of use of any *building, structure* or *premises* is increased by any means, including through addition of *dwelling units, gross floor area* or seating capacity, *off-street parking* shall be supplemented to accommodate the intensified use.

(b) For a use that is *legally nonconforming* with regard to the number of parking spaces provided, the number of spaces that are lacking may be subtracted from the number of required *off-street parking* spaces for a new use at the same location so that the degree of nonconformity is maintained but is not increased.

The applicant has provided a signed affidavit that states that the previous occupants of 802 Canyon Road continuously used both patios for showing art, and that they were previously used for restaurant seating. The continued use of the property identifies a non-conformity to

the required parking standards for use as either a restaurant and gallery – the proposed net leasable area would require 14 off-street parking spaces, although the existing lot only provides 8 spaces.

The application proposes the following interpretation of the parking requirements:

1. The appropriate parking requirement for the restaurant is one space per 200 square feet of net leasable floor area.
2. Because the restaurant parking ratio, and the net area occupied by the restaurant, are both the same as the previous gallery use, the conversion back to restaurant use does not increase the parking requirement.
3. The property continues to be legally nonconforming with regard to parking as allowed by Subsection 14-8.6(B)(3).
4. The applicant also notes in support of the application that there is a city-operated parking lot nearby, and that restaurant use occurred at the property for many years prior to 2010.

Although that interpretation can be supported by the language in the code, staff would note the following concerns:

- Staff more often applies the higher parking requirement for restaurant uses, since experience shows that serving area is a more accurate predictor of parking demand than net leasable area in most cases.
- Practically speaking, it seems likely that the restaurant use will increase the actual parking demand compared to the immediately previous gallery use.
- Proximity of the city parking lot is balanced by an overall shortage of parking on Canyon Road.

The Early Neighborhood Notification (ENN) meeting was held on June 11, 2015 at the Downtown Main Library. Two members of the public attended in addition to one person associated with the applicant. The only questions that were raised had to do with live entertainment, to which the applicant assured them that there would not be any live entertainment. No objections specifically related to the proposed use of the restaurant were raised.

SFCC § 14-3.15 allows land use boards the authority to approve minor quantitative deviations from the standards in the Development Code, including standards for the number of required off-street parking spaces. That subsection does not appear to encompass the reduction of 14 required spaces to 8 spaces, however.

III. SPECIAL USE PERMIT APPROVAL CRITERIA

Section 14-3.7(C) Approval Criteria

14-3.6(D) lists the following approval criteria and conditions for Special Use Permits:

- (1) Necessary Findings

To grant a Special Use Permit, a land use board shall make the following findings:

- (a) That the land use board has the authority under the section of Chapter 14 described in the application to grant a special use permit
- (b) That granting the special use permit does not adversely affect the public interest, and
- (c) That the use and any associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity of the premises under consideration.

Applicant Response to Criterion (b): *The impact of having the space be used as a restaurant does not adversely affect the public or neighbors. The space has previously been used as a restaurant for numerous businesses. There is adequate off-street parking as well as a large publicly available parking lot across the street. Adequate infrastructure exists for the use. Remodeling work will mostly be on the interior.*

Staff Response to Criterion (b): *The use of the building as a restaurant would not create impacts that would adversely affect the public. As the code does not clearly define the public interest, staff concurs with the applicant's response.*

Applicant Response to Criterion (c): *The adjacent business, which is housed in the other half of the building, is Santa Fe's oldest restaurant still in operation. There is also a restaurant immediately across the street. This portion of Canyon Road is populated with galleries, shops, and restaurants in virtually every other building.*

Staff Response to Criterion (c): *The proposed restaurant use is compatible with and adaptable to buildings, structures and uses of the immediate adjacent buildings and properties in the vicinity. 802 Canyon Road provides onsite parking, which many other restaurants, galleries and shops do not, therefore the impact would be minimal at best.*

IV. CONCLUSION

The proposed request is consistent with Chapter 14 for allowed uses in the Residential Arts and Crafts Overlay District. The proposed use is allowed subject to approval granted by The Board of Adjustment. While current parking requirements for this use are much higher than that of what is provided on-site, the applicant maintains that there has been a non-conformity that has been continuously passed on.

Staff has fully reviewed the application and determined that it complies with the necessary findings and recommends approval of the Special Use Permit.

V. ATTACHMENTS:

EXHIBIT A: City Staff Memoranda

1. Traffic Engineering Memorandum, Sandra Kassens
2. Water Division Memorandum, Dee Beingessner
3. Historic Preservation Division Memorandum, David Rasch
4. Waste Water Division Memorandum, Stan Holland, PE

EXHIBIT B: Photos

1. Google Street View Photos
2. Zoning Map Aerial Photo

EXHIBIT C: Applicant Submittals

1. Application Letter
2. Previous Tenant Affidavit
3. Letter from Architect Regarding Parking Requirements
4. Site Plan
5. Architectural Plans

City of Santa Fe, New Mexico

Board of Adjustment

Exhibit A

City Staff Memoranda

GURULE, GERALDINE A.

From: BERKE, NOAH L.
Sent: Tuesday, June 30, 2015 2:25 PM
To: GURULE, GERALDINE A.
Subject: Fwd: Need Comments for this BOA Case 2015-62

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "KASSENS, SANDRA M." <smkassens@ci.santa-fe.nm.us>
Date: 06/22/2015 1:44 PM (GMT-07:00)
To: "BERKE, NOAH L." <nlberke@ci.santa-fe.nm.us>
Cc: "ROMERO, JOHN J" <jjromero1@ci.santa-fe.nm.us>
Subject: RE: Need Comments for this BOA Case 2015-62

Noah,
RE: case 2015-62

The Traffic Engineering Division has no comments on the Special Use Permit request to allow a restaurant use at 802 Canyon Road. A quick review of trip generation rates for the size (~1600 sf.) indicated in the application demonstrates a negligible difference in traffic generation between a quality sit-down restaurant and an art gallery. The proposed change in use for this building should have minimal impacts on the surrounding roadway network.

Sandy Kassens
505-955-6697

From: BERKE, NOAH L.
Sent: Monday, June 22, 2015 10:47 AM
To: KASSENS, SANDRA M.
Subject: FW: Need Comments for this BOA Case 2015-62

Noah Berke, CFM
Planner Senior
City of Santa Fe
Land Use Department
200 Lincoln Ave.
Santa Fe, NM 87504
Work: (505) 955-6647
Cell: (505) 490-5930
Fax: (505) 955-6829

GURULE, GERALDINE A.

From: BERKE, NOAH L.
Sent: Tuesday, June 30, 2015 2:24 PM
To: GURULE, GERALDINE A.
Subject: Fwd: Need Comments for this BOA Case 2015-62

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "BEINGESSNER, DEE" <dabeingessner@ci.santa-fe.nm.us>
Date: 06/23/2015 2:08 PM (GMT-07:00)
To: "BERKE, NOAH L." <nlberke@ci.santa-fe.nm.us>
Subject: RE: Need Comments for this BOA Case 2015-62

Noah,

Because this building has an existing service, the Water Division does not have any objections to allowing a restaurant to operate there again.

Dee

From: BERKE, NOAH L.
Sent: Monday, June 22, 2015 10:18 AM
To: RASCH, DAVID A.; BEINGESSNER, DEE; HOLLAND, TOWNSEND S.; GONZALES, REYNALDO D.
Subject: Need Comments for this BOA Case 2015-62

Good Morning,

Sorry for late case, can you please review the attached case. This is for a Special Use Permit at 802 Canyon Road, which has operated multiple times over the past as a restaurant, but its last occupant was a Gallery, therefore they must now go to BOA for a Special Use permit as a restaurant. There are no planned exterior improvements.

Noah Berke, CFM

Planner Senior

City of Santa Fe

Land Use Department

200 Lincoln Ave.

Santa Fe, NM 87504

Work: (505) 955-6647

Cell: (505) 490-5930

Fax: (505) 955-6829

GURULE, GERALDINE A.

From: BERKE, NOAH L.
Sent: Tuesday, June 30, 2015 2:25 PM
To: GURULE, GERALDINE A.
Subject: Fwd: Need Comments for this BOA Case 2015-62

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "RASCH, DAVID A." <darasch@ci.santa-fe.nm.us>
Date: 06/22/2015 11:37 AM (GMT-07:00)
To: "BERKE, NOAH L." <nlberke@ci.santa-fe.nm.us>
Subject: RE: Need Comments for this BOA Case 2015-62

Noah,

The Historic Preservation Division has no concerns regarding this BOA application.
Both restaurant and gallery use are found within this area of Canyon Road.

David Rasch
Historic Preservation Division
City of Santa Fe

City of Santa Fe



New Mexico

MEMO

Wastewater Management Division DEVELOPMENT REVIEW COMMENTS

E-MAIL DELIVERY

Date: June 22, 2015

To: Noah Berke, Case Manager

From: Stan Holland, P.E.
Wastewater Management Division

Subject: Special use Permit 802 Canyon Road

The subject property is accessible to the City public sewer system.

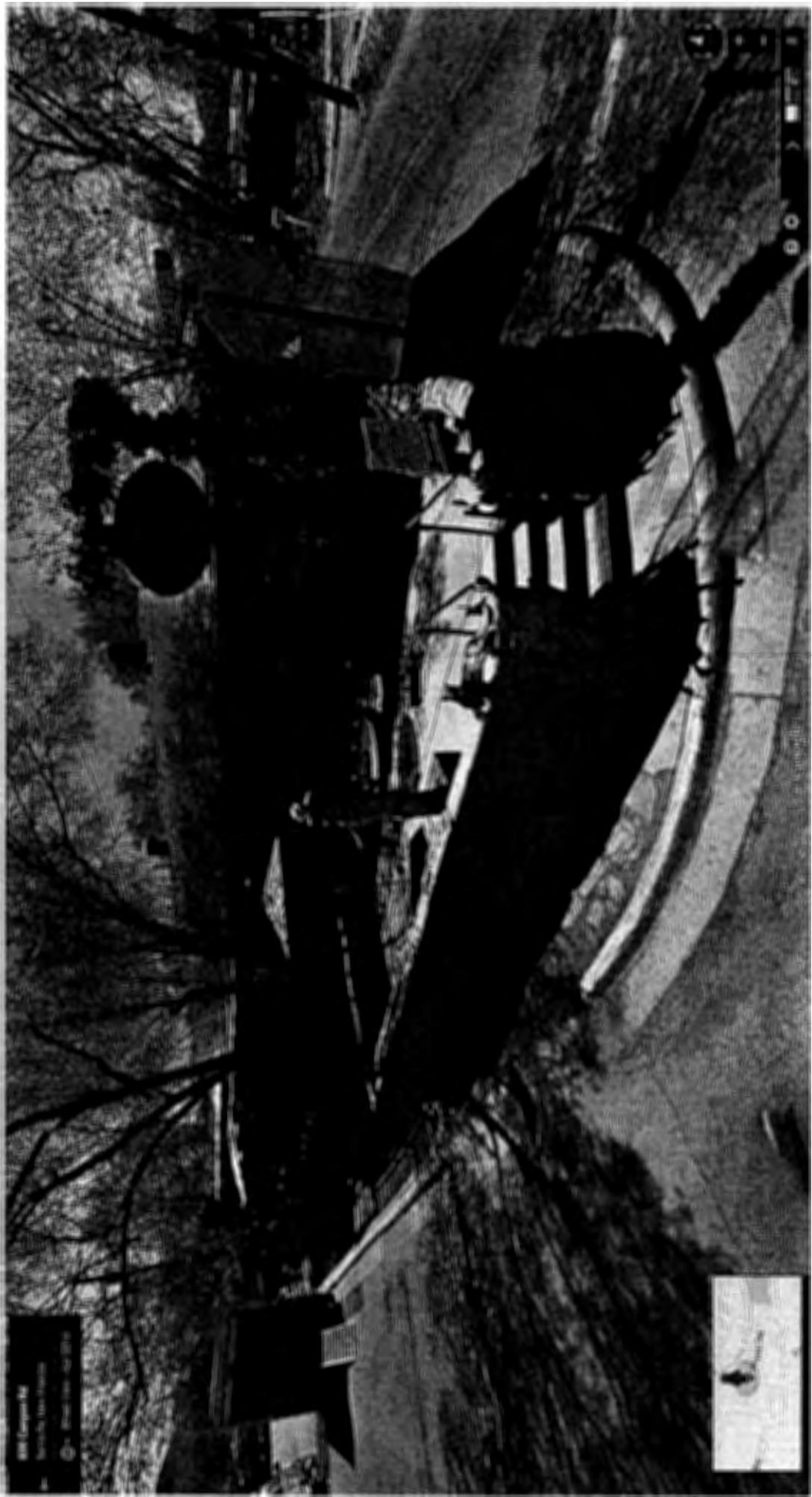
The Wastewater Division has no objection to the granting of a Special Use Permit

City of Santa Fe, New Mexico

Board of Adjustment

Exhibit B

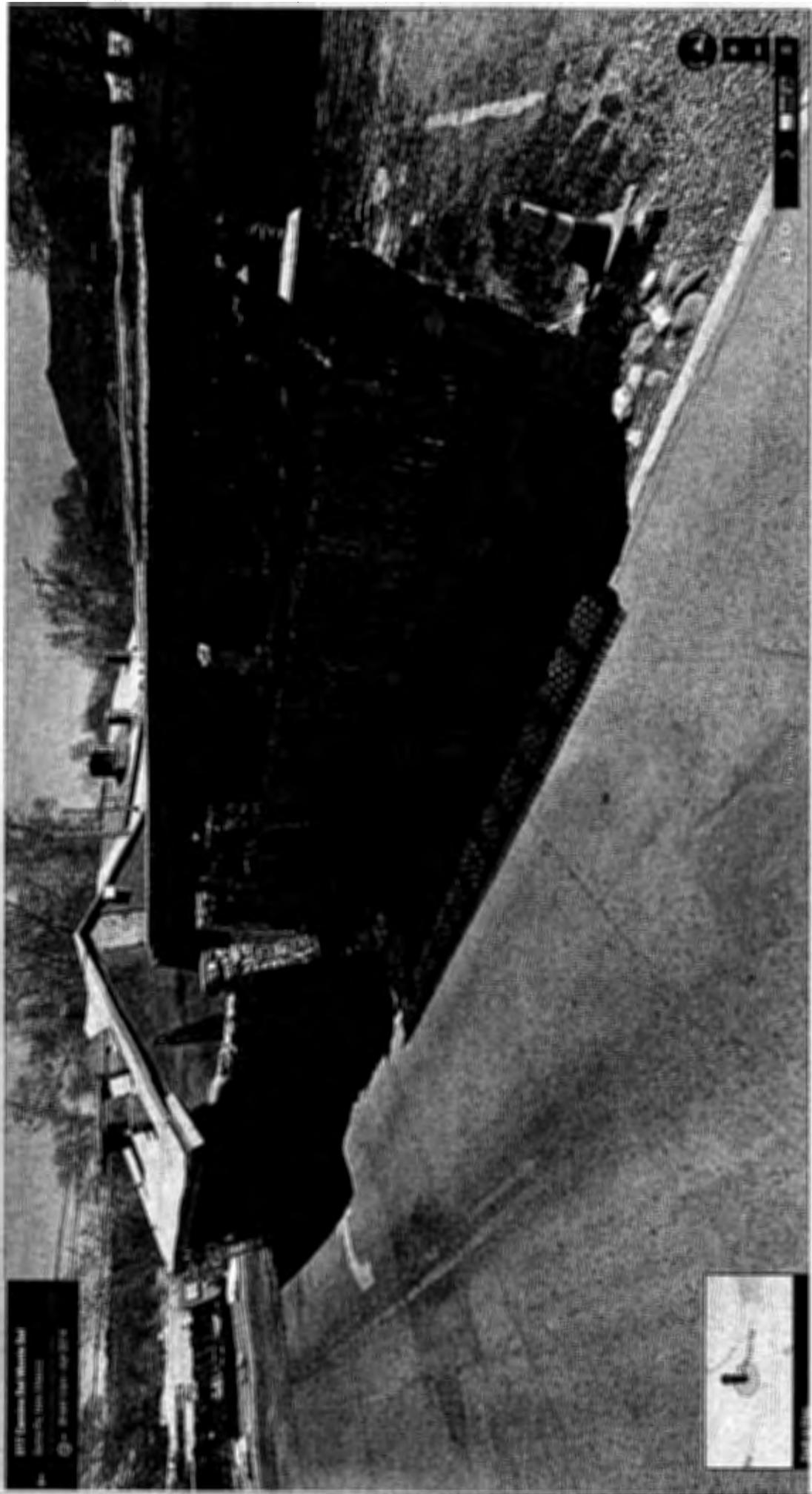
Photos



1000 Thompson Ave
Springfield, Illinois 62761
www.museumofart.org



1000 Thompson Ave
Springfield, Illinois 62761
www.museumofart.org



1000 Eastman Blvd
Baltimore, MD 21201
© 2014 Google



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802 Canyon Road



City of Santa Fe, New Mexico

Board of Adjustment

Exhibit C

Applicant Submittals

Mr. Noah Berke
Land Use Senior Planner
City of Santa Fe
P.O. Box 909
Santa Fe, NM 87505

June 19, 2015

Re: Request for Special Use Permit
802 Canyon Road

Dear Noah,

Enclosed is our application for a Special Use Permit for 802 Canyon Road. The zoning is RAC.

The intent of the Special Use Permit is to allow the use of the existing space as restaurant. Restaurant is listed in the City Code as a permitted use with a Special Use Permit.

The existing lot is approximately 6071 sf. The existing building is a portion of a building extending across the adjacent lot. The portion of the building on the adjacent lot houses El Farol Restaurant. The portion of the building that is on this lot is approximately 1780 sf. gross square feet, of which approximately 1592 sf is the net leasable area.

The property and lease space has been the location of several restaurant businesses in the recent past, including Sol Café, San Miguel Restaurant and Trixie's Café. Most recently the space housed Michael Hennington Fine Art. As a result of the space having interrupted use as a restaurant for more than 365 days, it is necessary to apply for a new Special Use Permit for restaurant use.

There are eight existing parking spaces, which meet the code requirements for a restaurant with a net leasable area of less than 1600 sf.

There are no plans to expand the space, although a prefabricated portable walk-in cooler will be contained under the rear portal.

Remodeling plans for the space include the addition of a new rear exit door which has already received approval from the Historic Division.

Thank you for your consideration. Please call me with any questions or concerns.

Sincerely,



Neema Sadeghi

June 20, 2015

P.O. Box 615

Santa Fe, NM 87501

Noah Berke, Senior Planner Land Use Department

City of Santa Fe

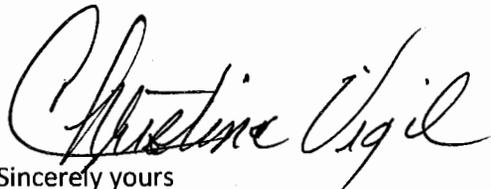
Re: Use of patios at 802 Canyon Rd.

Dear Mr. Burke:

This letter is to attest to the historical use of the building at ~~801~~⁸⁶² Canyon Rd. My father, John L. Vigil, inherited this property from Beatriz Vigil, his father, in 1957. In the early 1960's it was rented to Mrs. Christine Lawler and her husband Daniel. They served Mexican Food. It was subsequently rented as a gallery and restaurants up until today. In 1997, The Apple Hat Bistro altered and repaired both patios under the App. # 00002634. During all of this history, the both patios were utilized for specific uses related to the restaurant. We are pleased to have Neema rent it now and hope that he can make it a success.

If you have any questions, please feel free to write or call me at (505) 913-1178.

Thank you for your assistance in this matter!


Sincerely yours

Christina Vigil, administrator for Juan L. Vigil Trust, LLC

Copies (3)



OFFICIAL SEAL
KEITH NOVAK

NOTARY PUBLIC-State of New Mexico

My Commission Expires

8-7-17

This document was signed before me on
June 23, 2015 by Christina Vigil.



BERKE, NOAH L.

From: Lorn Tryk <lorn@ltryk.com>
Sent: Friday, June 19, 2015 2:15 PM
To: BERKE, NOAH L.; Neema Sadeghi
Subject: 802 Canyon Rd

Hi Noah,

In calculating the net leasable area for 802 Canyon Rd. I measured to the inside of the exterior walls. No interior spaces were excluded from my calculation (bathrooms, halls, etc.).

This is in conformance with BOMA standards for the measurement of net leasable area, the industry standard for computing leasable area.

Note that the space is part of a larger building that includes El Farol Restaurant next door.

I did not include the walk-in cooler because that is a movable piece of equipment parked under the portal, not part of the building.

I am happy to sit down with you at my computer and show you how the CAD program calculates the area; suffice it to say that it is quite accurate.

Thank you very much,

--

Lorn Tryk

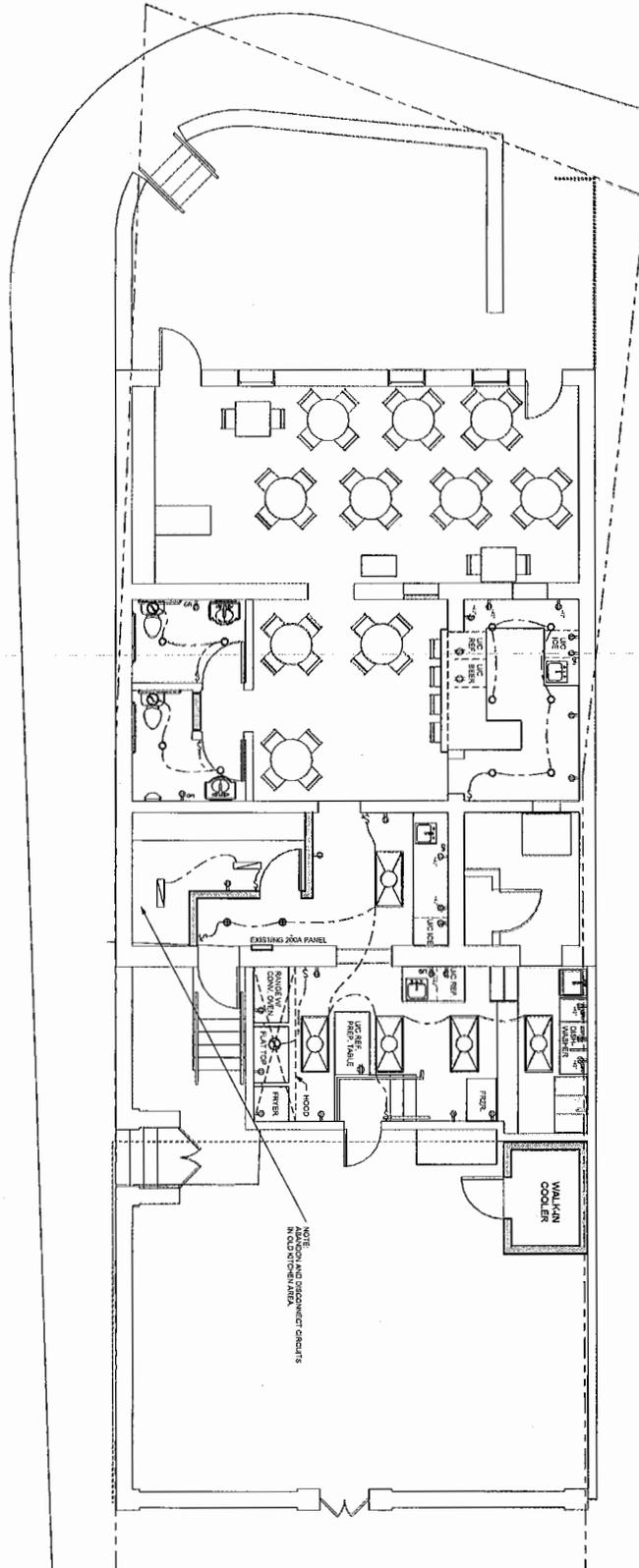
Lorn Tryk Architects, PC

206 McKenzie St., Suite F2

Santa Fe, NM 87501

505-982-5340

○ East Floor Electrical
1/4" = 1'-0"



NOTE: ADVISOR HAS DISCONNECT CIRCUITS IN RESTROOMS

WALK-IN COOLER

EXISTING ZOOA PANEL

HOOD

SINK

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WALK-IN COOLER

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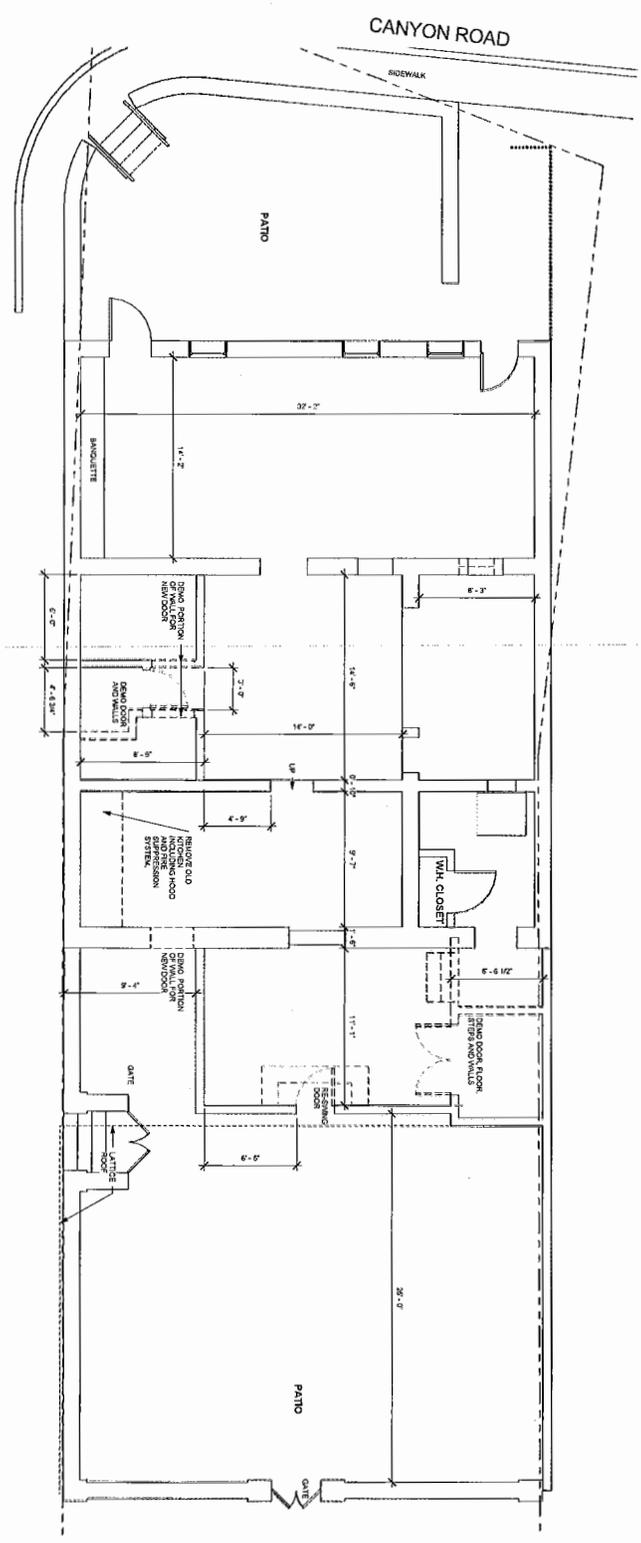
DISHWASHER

SINK

STOVE

1. Base Plan Existing
1/4" = 1'-0"

CAMINO DEL MONTE SOL



A2

Scale 1/4" = 1'-0"

Floor Plan
Existing /
Demo

DATE: 11/20/01 12:15:51

Tenant Improvements
For Milad Persian Bistro
802 Canyon Road, Santa Fe, N.M.

LORN TRYK ARCHITECTS
206 McKenzie, Suite F2
Santa Fe, New Mexico 87501
Telephone: 505-982-5340 Fax: 505-982-5393
E-Mail: mail@ltryk.com