



# Agenda

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**BOARD OF ADJUSTMENT**  
**Tuesday, March 13, 2018 at 6:00 P.M.**  
**200 Lincoln Ave. Santa Fe NM**  
**City Councilors Conference Room**

**A. ROLL CALL**

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA**

**D. APPROVAL OF MINUTES: Minutes of October 3, 2017**

**E. FINDINGS/CONCLUSIONS: None**

**F. OLD BUSINESS**

**G. NEW BUSINESS**

1. **Case #2017-90. 504 Jose Street Variances.** Sibylle Mueller, agent for Mark and Martha Alexander request a variance from 14-7.4(A)-1 "Table of Dimensional Requirements for Townscape Districts" and from 14-10.3 "Legal Nonconforming" to allow the intensification of a legal nonconforming structure by increasing the structure height at the property line from 8 feet to 14 feet. The property is zoned BCDWES (Community Commercial).

**H. STAFF COMMUNICATIONS**

**I. MATTERS FROM THE COMMISSION**

**J. ADJOURNMENT**

**NOTES:**

New Mexico law requires the following administrative procedures be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearing before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to cross-examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

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March 13, 2018

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Pledge of Allegiance		1
Approval of Agenda	Ms. Dearing moved to approve the agenda as amended with a second from Mr. Werwath which passed by voice vote.	1
Approval of Minutes from the October 3, 2017	Mr. Werwath moved to approve the minutes of October 3, 2017 as presented with a second from Ms. Dearing which passed by voice vote.	2
Findings/Conclusions: None		2
Old Business		2
New Business  1. Case #2017-90. 504 Jose Street Variances.	Ms. Dearing moved to approve Case #2017-90 504 Jose Street application for a variance, incorporating the findings that approve of criteria (1, 2, 3, 4 a, b, and 5) and show they have all been met, with a second from Mr. Werwath which passed by voice vote.	2-7
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ADJOURNMENT	There being no further business to come before the Board of Adjustment, the meeting was adjourned at 7:38 p.m.	7
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**MINUTES OF THE MEETING OF THE  
BOARD OF ADJUSTMENT**

200 Lincoln Ave. Santa Fe, NM

March 13, 2018

6:00 p.m.

**A. CALL TO ORDER & ROLL CALL**

Rachel Winston, Vice Chair of the Board of Adjustment called the meeting to order at 6:02 p.m. at the City Councilors Conference Room. A quorum was established with roll call.

**PRESENT:**

Rachel L. Winston, Vice Chair  
Patricia Hawkins  
Coleen Dearing  
Daniel H. Werwath

**NOT PRESENT/EXCUSED:**

Gary Friedman, Chair  
Donna Reynolds  
Douglas Maahs

**OTHERS PRESENT:**

David Esquibel, City Land Use  
Noah Berke, City Land Use  
Linda Vigil, Stenographer  
Sibylle Mueller  
Mark and Martha Alexander  
Frank Herdman, Counsel for the Alexanders

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA**

Correction on the header of the agenda, shows as February 6, 2018. *It should be today's date March 13, 2018.*

**MOTION:** Ms. Dearing moved to approve the agenda as amended with a second from Mr. Werwath which passed by voice vote.

**D. APPROVAL OF MINUTES: Minutes of October 3, 2017**

**MOTION:** Mr. Werwath moved to approve the minutes of October 3, 2017 as presented with a second from Ms. Dearing which passed by voice vote.

**E. FINDINGS/CONCLUSIONS: None**

**F. OLD BUSINESS**

**G. NEW BUSINESS**

**1. Case #2017-90. 504 Jose Street Variances.** Sibylle Mueller, agent for Mark and Martha Alexander request a variance from 14-7.4(A)-1 "Table of Dimensional Requirements for Townscape Districts" and from 14-10.3 "Legal Nonconforming" to allow the intensification of a legal nonconforming structure by increasing the structure height at the property line from 8 feet to 14 feet. The property is zoned BCDWES (Community Commercial). (See Exhibit A)

Ms. Winston explained the procedures of how the board will hear the case.

**STAFF:**

Mr. Esquibel explained the application and how it was filed. Through its review of the application it was found the applicant has failed to meet the criteria. The Department recommends denial.

Ms. Winston asked if there was at least one criteria met? Mr. Esquibel explained that all criteria must be met.

**APPLICANT:**

Mr. Mark Alexander introduced himself, his wife Martha and son Jackson. Mr. Alexander explained the history of the Peyote Bird Designs business they own and that has been in that building for many years. The building was purchased 21 years ago as a studio. They were able to consolidate elsewhere. They continued to use it as a studio. It was rented out to artisans. Although it has been vacant for a few years.

The Alexander kids left to college and have returned to become part of the family business. They would like to keep it in the family. The concept is to open is a retail gallery.

Before the Alexanders bought it, it was used as a grocery store over 50 years ago. It was decided to hire Ms. Mueller to design it. There is a shallow ceiling inside and it is not functional. The renovation will be an undertaking and it will need to be gutted inside. There is an area upstairs where an area is unusable. The solution is to improve the building's facade and meet the City Code. It would revive the neighborhood. It will bring back to the Guadalupe District. If it cannot be done, it won't make any money on the return and they may have to sell it.

Ms. Mueller explained the location, when looking at the area it is changing. The building will be forming a small bed of commercial businesses. (See Exhibit B) They realize there is several issues with the building. They will need to retrofit the restroom the entrances will need to be met for ADA. They would like to repair the roof with one slope. They will need to repair 60% of the building.

Ms. Mueller wanted to note on the department's summary that on the floor plan the storage room should have been labeled as a work room. The ceiling claims to be 7 feet. They would like to change it to 14 feet. The code can be as high as 24 feet. Ms. Mueller showed the west side facade will be wall dominated. The existing lot and parking to the rear the basement would need to be remodeled.

Ms. Mueller discussed the district layout, there are other properties that have the same issues and were done. The zoning has disregarded the character of that neighborhood. Ms. Mueller showed a photo from Daniels Street where the lower portion of the roof is. A letter was sent from a neighbor encouraging the screening and the work to the roof.

There are some neighbors here tonight. The summary states that the alterations are more than 50%. The level 2 alterations have to comply the building code. The building is not insulated. The exterior is 8 feet but has no parapet, their plan is to make it near 11ft. They are hoping to retrofit the existing HVAC system. If not they may need a unit on top of the roof and then screen it somehow.

Ms. Mueller stated the owner wants to restore and renovate the building rather than leave it abandoned or demolished. If the building was sitting 5 feet further the variance would not be necessary. Ms. Mueller explained that it is in the public interest to grant this variance.

Mr. Herdman (*counsel for the applicant*) discussed the case. They are not increasing the height and foot print. All that is being proposed is to increase the roof in the rear. It is a unique case. The set back is not being increased. There are special circumstances in the code. The district has imposed requirements for 15 feet where the building would set back. It would undermine the character of the District. There is also a conflict to the international building code. This will fall under alteration level 3, both 2 and 3 require up to 7 feet. There is very little that can be done that would not trigger the other levels. The architectural style is for wall dominated structures not roofs. Mr. Herdman discussed the photos on the packet showing the wall dominated area they would like to have. From the rear view it is roof dominated. It is an eye sore and the neighborhood supports this renovation.

Mr. Herdman discussed the variety of code compliance and public interest in having the area up to code. There is not any intensity in this proposed project.

Ms. Mueller explained the last page has a letter from a neighbor.

#### **PUBLIC HEARING/COMMENT:**

Sandra Green (611 Campana Place) lives close by to the property, she walks passed it often. She believes it will bring safety and beauty to the neighborhood.

Adrienne Ewing (147 Daniels Street) is the one most affected as she is the next door neighbor. It would be nice to look at a wall rather than what is there.

#### **QUESTIONS/REBUTTAL:**

Mr. Esquibel wanted to clarify the setback, height, character other structures on other lots. There are conflicts in the Ordinance.

Mr. Esquibel for the first section he would like to clarify the building permit zoning analyses for the capital district, there is a sub district. It has its own unique standard. When they adopted setbacks, the building had those already. That makes this structure legal non-conforming. The records do not go back far enough.

The department's interpretation will show that it will encroach. They would be required to go pp and out. The height and expansion violates the setback rule.

When they are looking at the character, those are dealt with at the Historical Review Board. The five criterion were not all met. It sets forth the board's ability to issue or deny and find in favor of all the criteria. Or waive the rules. The criteria allows the applicant to meet the standards.

Ms. Winston asked if the level increases a level in the standards. Mr. Esquibel states that is after the zoning criteria is met. Mr. Esquibel discussed the need and want for the variance. There are construction standards and zoning standards.

Mr. Berke explained the trigger is not 14 feet. That is not the case. They are not requiring them to go 14 feet. Mr. Berke explained the interior roof is 7 feet, they can go up to 24 feet.

Bennett Lopez is the plans examiner discussed the alterations in the plans. It is an existing structure.

Mr. Werwath asked if the roof was being done in combination with the other renovations how that affects the levels.

Mr. Lopez explained looking at the highlighted work area, they are not showing that. Only the storefront shows the alteration levels. In this case they don't have the scope set of work. They are vague. The rest of the building is at an alteration level 3.

Mr. Herdman clarified they are not building out. The footprint would remain the same. The rear wall is not being demolished. There is no increase of the intensity. The conflict is that it would not require it to meet it the ceiling at 7 feet. Mr. Herdman discussed a previous variance case that allowed the variance to be passed. This project shows the best use of the property. Looking at this the applicant has met all requirements. Mr. Herdman discussed the up side and no down side to this project.

Mr. Esquibel explained with respect to the applicant's attorney, the construction code is not the issue. It is the zoning. How would they replace parking with a buffer? The variance would exceed the standards. Is that reasonable use?

Mr. Word (City Attorney's Office) urged the board to make sure all of the findings are aligned with the criteria.

Ms. Winston asked about the infeasibility criterion (C-2). Mr. Herdman explained the special circumstance is the non-conforming structure, the setback requirements were

imposed after the structure was built. It would be economically inviable if followed the code. The vast majority of structures in the area have not followed the setback rules.

Mr. Herdman discussed the roof where the lower portion exists it is an eye sore. If you want to improve it the ceiling it must be raised. The rear part of the building is unusable. These special circumstances make it infeasible.

Mr. Herdman stated the structure needs to be wall dominated, and so does the neighborhood, to shield the rooftop.

Ms. Winston asked a procedural question. Will a statement of findings of fact and conclusions of law be filed? Mr. Word states as long as it is shown to point out each criteria has been met.

#### **BOARD QUESTIONS:**

Ms. Hawkins asked why it is necessary to keep the back part of the building.

Mr. Alexander explained the economics of it and if it were not there they would not be able to make it work. Ms. Mueller explained the stairwell goes into the basement.

Mr. Esquibel states that is a conflict with criterion 2. Ms. Winston asked if the portion that mentions the cost or if it doesn't make it economically viable?

Mr. Esquibel explained the variance criteria for special circumstances. There is a conflict with 1 and 2. Only one needs to fail.

Ms. Winston asked if the financial costs were a factor. Mr. Herdman explains his client is willing to pay for the renovations, however the variance must pass.

Mr. Werwath asked about criterion 1. Will it have met criterion B? Which is the non-conforming designation.

Mr. Esquibel states it is not a non-legal conforming lot, it is a non-conforming structure.

Mr. Werwath asked if the building is within the setback. It was imposed after its creation?



Mr. Esquibel gave an example when the council reduced the rounding. That standard gave people a chance to build 2 on 1 lot.

Mr. Berke explained the setback remains, say there is a building there they would ask them to still set back but on the next second floor.

Mr. Esquibel states the reason there was to be a single family residence and a commercial lot. There is an ability to do so with that district.

Mr. Werwath states it seems to have to be consistent to make it a viable business.

Mr. Esquibel explained how there is no precedent to establish.

**MOTION:** Ms. Dearing moved to approve Case #2017-90 504 Jose Street application for a variance, incorporating the findings that approve of criteria (1, 2, 3, 4 a, b, and 5) and prove they have all been met, with a second from Mr. Werwath which passed by voice vote.

#### **H. STAFF COMMUNICATIONS**

Mr. Berke stated the next meeting will be April 3<sup>rd</sup>. There will be 2 new cases. One appealed and the other case is a senior planners request for a parking variance.

Mr. Berke reminded the board that with the new Mayor in, anyone interested in still serving in the board should send their letter if interest.

#### **I. MATTERS FROM THE COMMISSION**

There were no matters from the Commission.

#### **J. ADJOURNMENT**

There being no further business to come before the Board of Adjustment, the meeting was adjourned at 7:38 p.m.

#### **SIGNATURES**



Vice-Chair of Board of Adjustment

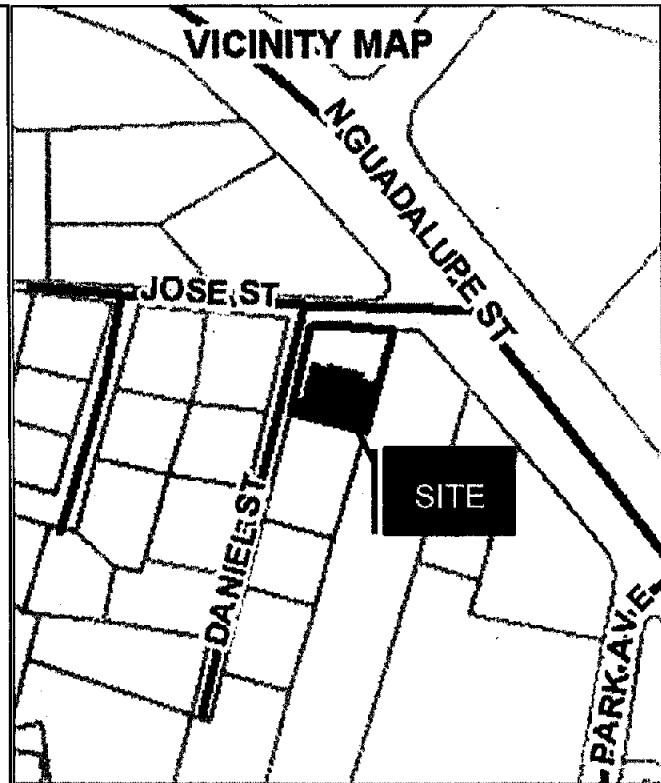


Linda Vigil, Stenographer



# Land Use Department Board of Adjustment Staff Report

Case No: 2017-90  
Hearing Date: March 13, 2018  
Applicant: Mark and Martha Alexander  
Request: Variance  
Location: 504 Jose Street  
Case Mgr.: Dan Esquibel  
Zoning: BCDWES  
Overlay: Westside Guadalupe Historic District  
Pre-app. Mtg.: August 14, 2017  
ENN Mtg.: November 30, 2017  
Proposal:  
Variance from 14-7.4(A)-1 "Table of Dimensional Requirements for Townscape Districts" and from 14-10.3 "Legal Nonconforming" to allow the intensification of a legal nonconforming structure by increasing the structure height at the property line from 8 feet to 14 feet.



**Case #2017-90. 504 Jose Street Variances.** Sibyl le Mueller, agent for Mark and Martha Alexander requests a variance from 14-7.4(A)-1 "Table of Dimensional Requirements for Townscape Districts" and from 14-10.3 "Legal Nonconforming" to allow the intensification of a legal nonconforming structure by increasing the structure height at the property line from 8 feet to 14 feet. The property is zoned BCDWES (Business Capitol District – Westside Subdistrict), and is within the Westside-Guadalupe Historic Overlay District.

## RECOMMENDATION

The applicant has failed to demonstrate that all the variance approval criteria are met, as outlined in this Memorandum. The variance application should be denied.

*One motion will be required in this case:*

- *APPROVE OR DENY a variance from SFCC 14-7.3(16) (C) Approval Criteria and 14-10.3 Legal Nonconforming Structures.*

Exhibit A

## I. EXECUTIVE SUMMARY

The property is located at the southeast corner of Jose Street and Daniel Street. The property has direct access from Jose Street, which is public right-of-way. The property consists of one 1,842 square foot structure with a 1,358 square foot basement. The structure is located to the rear of the 3,990 +/- square foot lot and constructed along the south and east property lines.

Approximately ten feet of the building is used for storage. The existing roof height of the storage area is eight feet and includes a seven-foot ceiling height. The applicants are proposing to increase the roof height to 13 feet for a unified building roof height and to make this area available for human occupancy, as opposed to only storage.

The building and site improvements are nonconforming in two significant respects:

- a. The existing parking spaces back directly into the street; Subsection 14-8.6(B)(1)(a) require cars to exit to the right-of-way in a forward maneuver.
- b. The existing building is nonconforming with regard to setbacks:
  - Ten-foot setbacks are required at street frontages; the Daniel Street building frontage includes an approximate five-foot setback.
  - Five and ten-foot setbacks are required at the side and rear yards, respectively; existing setbacks on the side (south) and rear (east) property lines are zero existing and proposed.

The Business Capital District (BCD) does not include provisions where setbacks from property lines allow for a reduced side or rear setback through a zero lot line affidavit, or for a second street frontage, as are allowed in residentially zoned districts. Because of the setback nonconformity, the applicant requested a variance pursuant to Subsections 14-3.16 Variance Criteria for the proposed construction. The variance criteria is not intended to exceed zoning regulations or grant more than what is allowed under the code to other properties in the same district. Rather, it is intended to provide relief where compliance to the regulation cannot be achieved because of unique circumstances prohibiting compliance. There are many nonconforming anomalies with the development of the property as described above. These nonconformities are not permitted in this BCD District and therefore, not considered unique circumstances.

## II. VARIANCE EVALUATION

Several provisions of Section 14-10 Nonconformities apply:

### 14-10.1 GENERAL PROVISIONS

#### (A) Purpose and Intent

It is the intent of this article to allow *legal nonconforming uses* to continue until they are ceased and to allow *legal nonconforming structures* to be maintained until they are removed, but not to encourage their survival. *Nonconforming uses* are deemed incompatible with permitted uses. It is further the intent of this article to limit *nonconforming structures* so they are not allowed to be enlarged, expanded, extended or reconstructed after major damage or used as grounds for adding other *structures* or uses prohibited elsewhere in the same district, unless otherwise allowed by Chapter 14.

### **14-10.3 LEGAL NONCONFORMING STRUCTURES**

*Legal nonconforming structures* may be maintained subject to the following provisions:

**(A) No Increase in Nonconformity**

A *legal nonconforming structure* shall not be enlarged or altered in a way that increases the degree or extent of its nonconformity. This Section 14-10.3 is not intended prohibit additions or alterations that do not increase the nonconformity.

**(B) Reduction in Nonconformity**

A *legal nonconforming structure* that is modified in such a way as to eliminate or to reduce the degree or extent of nonconformity, including the demolition or removal of a *nonconforming* feature for any reason, shall not be reconstructed except in conformance with Chapter 14.

**(C) Substantial Destruction of Legal Nonconforming Structure**

If a *legal nonconforming structure* is destroyed by any means to an extent of more than sixty-six and two-thirds percent of the existing *building structure* and shell (exterior skin and framing, excluding window assemblies and *exterior wall and roof coverings*), it shall not be reconstructed except in conformity with the provisions of Chapter 14 and if any *structure* containing a *legal nonconforming use* is similarly destroyed, the *legal nonconforming use* shall not be resumed.

**(D) Relocation of Legal Nonconforming Structure**

If a *legal nonconforming structure* is moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

**(E) Repairs and Alterations**

(1) Ordinary repairs and maintenance are allowed, including replacement of *exterior wall and roof coverings*.

(2) Repair, maintenance or replacement of *interior nonstructural elements*, fixtures, wiring or plumbing, is allowed.

(3) *Alterations* to the legally nonconforming portions of the *building structure* are not allowed except to bring the *structure* into conformance with the provisions of Chapter 14.

(4) Nothing in Section 14-10 prevents *alteration* or repairs necessary to ensure the safety of a *structure* that has been declared to be unsafe by an official charged with protecting public safety, on order of such official.

The modification proposed by the applicant would not comply with several provisions of Section 14-10, since it would:

- Encourage the survival of the nonconformity;
- Enlarge and extend the nonconformity;
- Alter the nonconforming portion of the building structure without bringing it into conformance.

The variance process balances reasonable use of the applicant's property against compliance with the letter and intent of adopted regulations. The property must be consistent with at least one of the circumstances listed in Criteria 14-3.16(C)(1)(a) through (1)(d), and must be consistent with all of the Criteria in 14-3.16(C)(2) through (5). The existing building is classified as "noncontributing" pursuant to 14-5.2 Historic Districts, so its location within a historic district is not relevant to conformance to variance approval criteria.

**Approval Criteria– Subsection 14-3.16(C)**

<p><b>Criterion (C)(1)(c):</b> there is an inherent conflict in applicable regulations that cannot be resolved by compliance with the more restrictive provisions as provided in Section 14-1.7; <i>[NOTE: The applicant does not assert that Criteria a, b, or d apply, so those are not addressed in this table.]</i></p>	<p><b>Criterion Met:</b> (Yes/No/Conditional/N/A) <b>NO</b></p>
<p>The application makes a case that <i>"there is a fundamental conflict between the applicable building codes IEBC-2015, IBC-2015, IECC-2009 and Chapter 14."</i> Staff analysis has determined that the applicant's rationale for compliance with variance approval criterion relies on an improper interpretation of the relevant provisions of the International Building Code (IBC). The applicant cites IBC regulations based on rules for "Alteration Level 3", but staff analysis has determined that less-restrictive provisions for "Alteration Level 2" apply.</p>	
<p><b>Criterion (C)2:</b> The special circumstances make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14.</p>	<p><b>Criterion Met:</b> (Yes/No/Conditional/N/A) <b>NO</b></p>
<p>The applicant makes a case that the <i>"deferred maintenance requires a remodel and triggers Alteration Level 3 as defined in the building codes where building codes IEBC-2015, IBC-2015 and IECC-2009 have jurisdictions"</i> As explained in Criterion C2 above, the construction codes are not in conflict. The staff does not believe the applicant has satisfied criterion C2 above.</p>	
<p><b>Criterion (C)3:</b> The intensity of development shall not exceed that which is allowed on other properties in the vicinity that are subject to the same relevant provisions of Chapter 14.</p>	<p><b>Criterion Met:</b> (Yes/No/Conditional/N/A) <b>YES</b></p>
<p>Chapter 14 defines intensity as <i>"The extent of development per unit of area; or the level of use as determined by the number of employees and customers and degree of impact on surrounding properties such as noise and traffic."</i></p> <p>The applicant states that total square footage of the building and the number of employees is not intensified by the requested increase in height. The applicant's proposal to convert the existing storage area to retail sales area represents a slight increase in the proposed intensity of use, although the overall intensity of use remains within the range of what is allowed on other properties in the vicinity.</p>	
<p><b>The variance is the minimum variance that will make possible the reasonable use of the land or structure. The following factors shall be considered:</b></p> <p>(a) whether the property has been or could be used without variances for a different category or lesser intensity of use;</p>	<p><b>Criterion Met:</b> (Yes/No/Conditional/N/A) <b>NO</b></p>
<p>The applicant's argument identifies that "A lesser intensity such as storage or open space would</p>	

interrupt the continuity of small commercial businesses along the street corridor.”

The applicant further asserts, “A reasonable use for a sensible and practical development is to keep the existing development as a commercial building with the existing use and occupancy load. This would follow the majority of developments along the North Guadalupe Street corridor which create a buffer between Guadalupe Street and the residential neighborhood.”

The criterion requests that the Board of Adjustment “*consider whether the property has been or could be used without variances for a different category or lesser intensity of use*”. It does not mandate that the weight of the lesser use(s) dominate the decision of the Board but that the Board consider less intense use for what qualifies for reasonable use.

Staff’s analysis concludes that the existing structure could continue to be used for retail and storage with the existing floor plan, but with roof repairs; or the structure could be demolished and the property redeveloped for a similar or less intense use, in compliance with all applicable development standards and use regulations.

**(b) consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the general plan.**

**Criterion Met:**  
(Yes/No/Conditional/N/A)  
**NO**

The application states “*Variances may be granted to provisions regulating the size, location and appearance of structures. Nothing presented by the City’s Review indicates that the consistency of the purpose and intent of Chapter 14 is violated by this variance provided, that the Board Of Adjustment agrees that the variance criteria is addressed to grant a variance.*”

Staff’s analysis concludes that the intent of Section 14-10 “not to encourage the survival” of “nonconforming structures” would not be met. Also, the intent of the development standards to provide consistent setbacks within the BCD Westside district is not met as the applicant has addressed this criterion.

**Criterion 5: The variance is not contrary to the public interest.**

**Criterion Met:**  
(Yes/No/Conditional/N/A)  
**UNCLEAR**

The request has been reviewed pursuant Section 14-3.16 “*Variances*”. There is no indication that the variance request is contrary to public interest. The arrangement, character, and extent of safety is not negatively impacted by the requested increase in height of 6 feet at the south and east property lines.

Setbacks and height regulations are deemed public interest as they have been approved by the Governing Body. If the Board agrees with this perspective, then this is contrary to the public interest.

### III. ENN

An ENN was held on November 30, 2017 with seven people in attendance. The applicant's agent presented the variance proposal, which resulted in a question and answer session. No concerns were raised.

#### EXHIBITS:

EXHIBIT A: Code sections

EXHIBIT B: Maps and Photos

1. Vicinity Map
2. Aerial Photo

EXHIBIT C: Applicant Submittals\*

1. Response to Section 14-3.16(C)
2. Site plan

\* Maps and other exhibits are reproduced and archived separately from this staff report. File copies are available for review at the Land Use Department office at 200 Lincoln Avenue, West Wing.

#### APPROVED:

Title	Name	Initials
Current Planning Division Director	Greg Smith, AICP	GS
Land Use Planner Manager	Noah Berke	NB
Land Use Planner Senior	Daniel A. Esquibel	DAE

March 13, 2018  
Board of Adjustment  
Case # 2017-90  
**504 Jose Street Variance**

# **EXHIBIT A**

Code sections
---------------



If the airport manager does not respond to the *application* within fifteen days after receipt, the *land use board* may act on the *application* without the airport manager's response. Any variance granted may be conditioned to require the *owner* of the *structure* in question to install, operate and maintain, at the *owner's* expense, such markings and lights as may be necessary.

**(C) Approval Criteria**

Subsections 14-3.16(C)(1) through (5) and, if applicable, Subsection 14-3.15(C)(6), are required to grant a variance.

- (1) One or more of the following special circumstances applies:
  - (a) unusual physical characteristics exist that distinguish the land or *structure* from others in the vicinity that are subject to the same relevant provisions of Chapter 14, characteristics that existed at the time of the adoption of the regulation from which the variance is sought, or that were created by natural forces or by government action for which no compensation was paid;
  - (b) the *parcel* is a *legal nonconforming lot* created prior to the adoption of the regulation from which the variance is sought, or that was created by government action for which no compensation was paid;
  - (c) there is an inherent conflict in applicable regulations that cannot be resolved by compliance with the more-restrictive provision as provided in Section 14-1.7; or
  - (d) the land or *structure* is *nonconforming* and has been designated as a *landmark, contributing or significant property* pursuant to Section 14-5.2 (Historic Districts).
- (2) The special circumstances make it infeasible, for reasons other than financial cost, to develop the *property* in compliance with the standards of Chapter 14.
- (3) The *intensity of development* shall not exceed that which is allowed on other *properties* in the vicinity that are subject to the same relevant provisions of Chapter 14.
- (4) The variance is the minimum variance that will make possible the reasonable use of the land or *structure*. The following factors shall be considered:
  - (a) whether the *property* has been or could be used without variances for a different category or lesser *intensity* of use;
  - (b) consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the *general plan*.

- (5) The variance is not contrary to the public interest.
- (6) There may be additional requirements and supplemental or special findings required by other provisions of Chapter 14.

**(D) Expiration of Variances**  
(Ord. No. 2013-16 § 17)

Approval of a variance expires if it is not exercised, as provided in Section 14-3.19(B)(5).

**(E) Conditions of Approval**

Variances may be approved with conditions that will assure substantially the objectives of the standards or requirements so varied or modified and that are reasonably related to the approval.

**(F) Approval Limited.**

A variance applies only to the type and extent of *development* shown on the plans approved at the variance hearing. All other *development* on the *property* shall comply with the terms of Chapter 14 or shall require a new or amended variance.

**14-3.17 APPEALS**

**(A) Appealable Actions**

**(1) Final Action**

- (a) Only *final actions* may be appealed.
- (b) *Final actions* of a *land use board* include a decision made after a public hearing, including the final approval or denial of a preliminary *plat* or preliminary *development* plan.
- (c) *Final actions* of the *land use director* include the written issuance or denial of a *permit* or other approval within the *land use director's* jurisdiction.
- (d) *Final action* does not include:
  - (i) a recommendation;
  - (ii) a delay in rendering a decision;
  - (iii) a decision to postpone or remand;
  - (iv) a decision not to take enforcement action;
  - (v) an informational response to an inquiry;
  - (vi) any action for which an appeal is specifically prohibited;

March 13, 2018  
Board of Adjustment  
Case # 2017-90  
**504 Jose Street Variance**

# **EXHIBIT B**

Maps and Photos

# VICINITY MAP



# AERIAL PHOTO

400 N  
GUADALUPE ST

N GUADALUPE ST

JOSE ST

520 JOSE  
ST 1

510  
JOSE ST

SITE

504  
JOSE ST

142  
DANIEL ST

DANIEL ST

147  
DANIEL ST

308 N  
GUADALUPE ST

140  
DANIEL ST

141  
DANIEL ST

136  
DANIEL ST

144 PARK  
AVE

March 13, 2018  
Board of Adjustment  
Case # 2017-90  
**504 Jose Street Variance**

# **EXHIBIT C**

Applicant Submittals

## BOARD OF ADJUSTMENT - VARIANCE APPLICATION

### APPROVAL CRITERIA:

(C) Approval Criteria. Subsections 14-3.16 (C) (1) through (5) and, if applicable, Subsection 14-3.15 (C) (6), are required to grant a variance.

(1) One or more of the following special circumstances applies:

#### Criterion 1c

*(c) there is an inherent conflict in applicable regulations that cannot be resolved by compliance with the more restrictive provisions as provided in Section 14-1.7;*

#### Response 1c

There is a fundamental conflict between the applicable building codes IEBC-2015, IBC-2015, IECC-2009 and Chapter 14.

1. IEBC-2015 – If more than 50% of the building is remodeled the building shall comply with Alteration Levels 1, 2 and 3.
2. IBC-2015 – Alteration Level 3 requires the building to comply with IBC-2015. The minimum room height requirement for a primary space is 7'-6". The existing room height of the building portion against the rear lot line is 6'-8" and does not comply with the regulations.
3. IECC-2009- Alteration Level 3 requires compliance with the energy code. Insulating the exterior walls and roof area will add additional 12" to the height of the structure.

#### Criterion 2

*(2) The special circumstances make it infeasible, for other reason than financial cost, to develop the property in compliance with the standards of Chapter 14:*

#### Response 2

The existing building has not been sufficiently maintained for decades. Addressing deferred maintenance requires a remodel and triggers Alteration Level 3 as defined in the building codes where building codes IEBC-2015, IBC-2015 and IECC-2009 have jurisdictions. Because the applicable building codes prevail, the special circumstances make the remodel infeasible to comply with the standards of Chapter 14.

#### Criterion 3

*(3) The intensity of development shall not exceed that which is allowed on other properties in the vicinity that are subject to the same relevant provision of Chapter 14.*

#### Response 3

The intensity such as the level of use by number of employees and customers will not increase, and does not exceed that which is allowed on adjacent neighboring properties in the same zoning district.

The existing use and the occupancy load remains the same. No additional square footage is added to the existing structure. The proposed height increase remains within the more restricting height requirements of 14'-1" as set forth by Westside-Guadalupe historic district which is based on the average height of existing adjacent buildings.

Criterion 4

*(4) The variance is the minimum variance that will make possible the reasonable use of the land or structure. The following factors shall be considered:*

*(a) whether the property has been or could be used without variances for a different category or lesser intensity of use;*

*(b) consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the general plan.*

Response 4a

A reasonable use for a sensible and practical development is to keep the existing development as a commercial building with the existing use and occupancy load. This would follow the majority of developments along the North Guadalupe Street corridor which create a buffer between Guadalupe Street and the residential neighborhood.

A lesser intensity such as storage or open space would interrupt the continuity of small commercial businesses along the street corridor. It would exempt the development to participate in the order, convenience, and prosperity of the neighborhood and down grade the value of the property and the surrounding neighboring businesses.

Response 4b

The proposed remodel helps implement the purposes of the general plan. It restores the harmonious development for the benefit of Santa Fe's health, safety, order, convenience, prosperity and general welfare. It provides the appropriate distribution of population and traffic as well as efficiency and economic in the process of development.

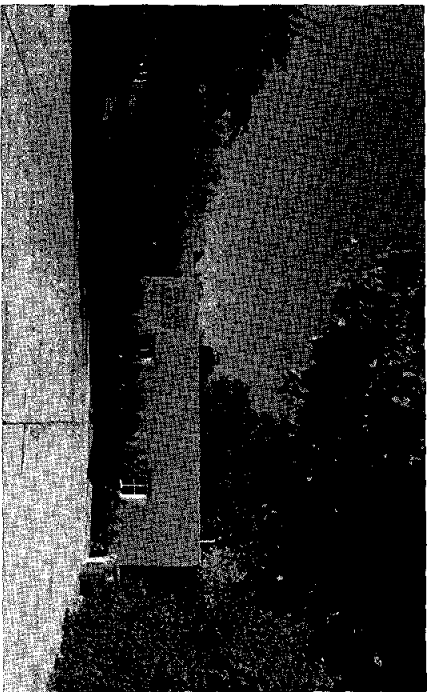
Criterion 5

*(5) The variance is not contrary to the public interest.*

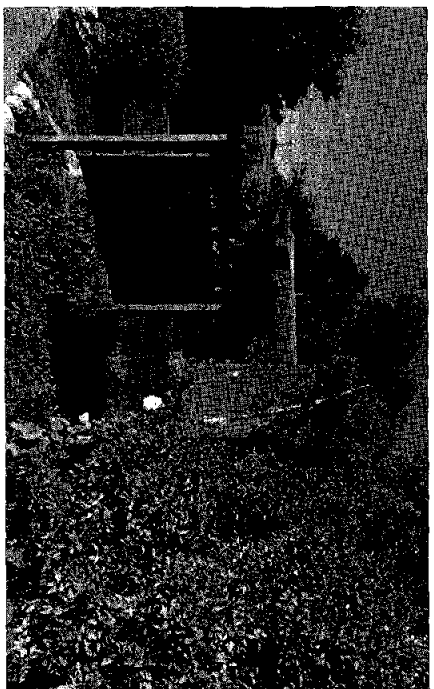
Response 5

The remodel will promote an aesthetically consistent and harmonious urban townscape to maintain Santa Fe's visual character. The proposed remodel allows for building massing, proportion, and materials to conform with the Westside-Guadalupe historic district, and will add to the visual harmony of the district. As stated above, the variance if granted, will not increase the use of the lot.

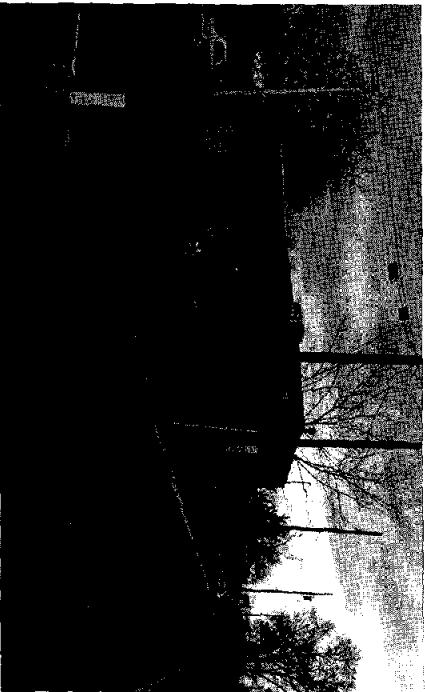




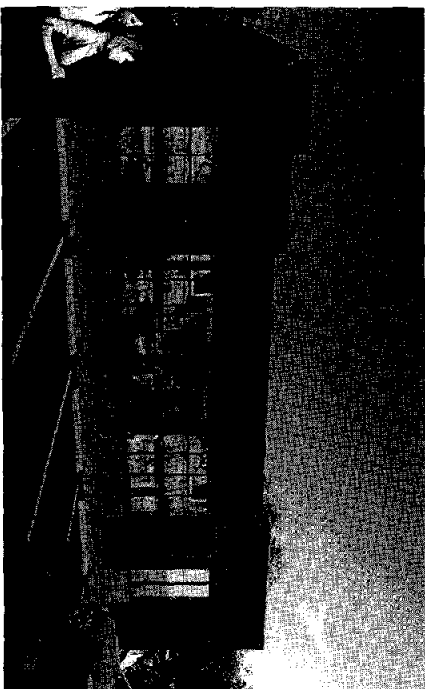
PRECEDENCE 1 - 'CON ALMA HEALTH FOUNDATION'



PRECEDENCE 2 - 'LIGHT & LOVE NATUROPATHIC CENTER'



504 JOSE STREET - EXISTING



504 JOSE STREET - PROPOSED

PRECEDENCE FOR DESIGN APPROACH

REMODEL - PEYOTE BIRD DESIGNS  
 504 JOSE STREET  
 SANTA FE, NM 87501

Revising  
 No. Date Description

Scale  
 Date 02.27.14  
 Drawn by  
 Checked by: jai  
 Drawing Number

ADD-02

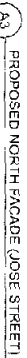
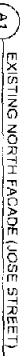
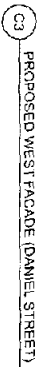
**Silvina Muehlen, MA**  
Y20 Curriculum Specialist  
Savvy Fr. NIN 67801  
Ph: 505.570.7201  
E-mail: [silvina@y20.org](mailto:silvina@y20.org)
























REMODEL - PEYOTE BIRD DESIGNS  
504 JOSE STREET  
SANTA FE, NM 87501

Revisions	Date	Description

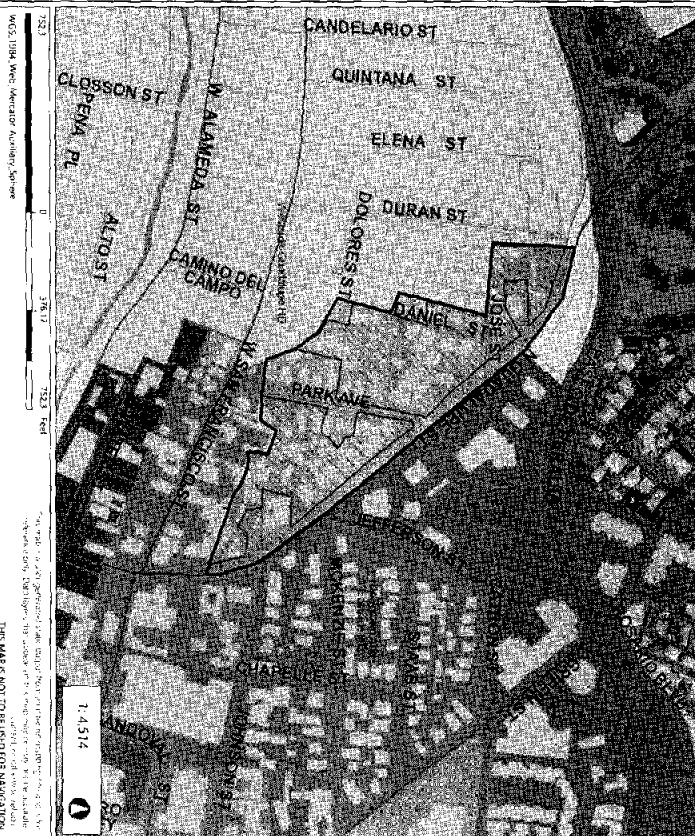
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Date	12/20/2017
Drawn by	
Checked by	SM
Drawing Number	

HA-210



- | Legend  |                        |
|---|------------------------|
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|  | Arkansas State Capitol |
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|  | Arkansas State Capitol |

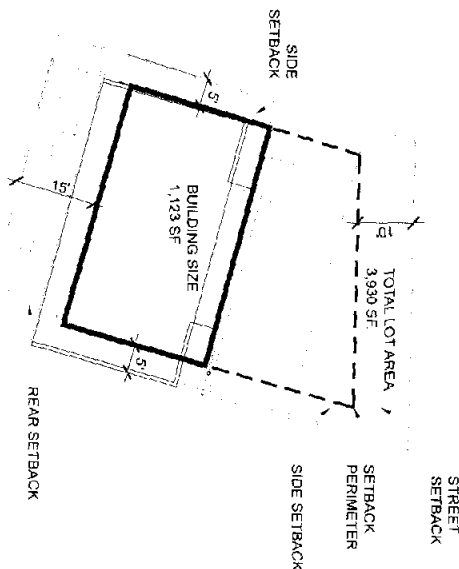
E: latitude Geographic Grid UTM.



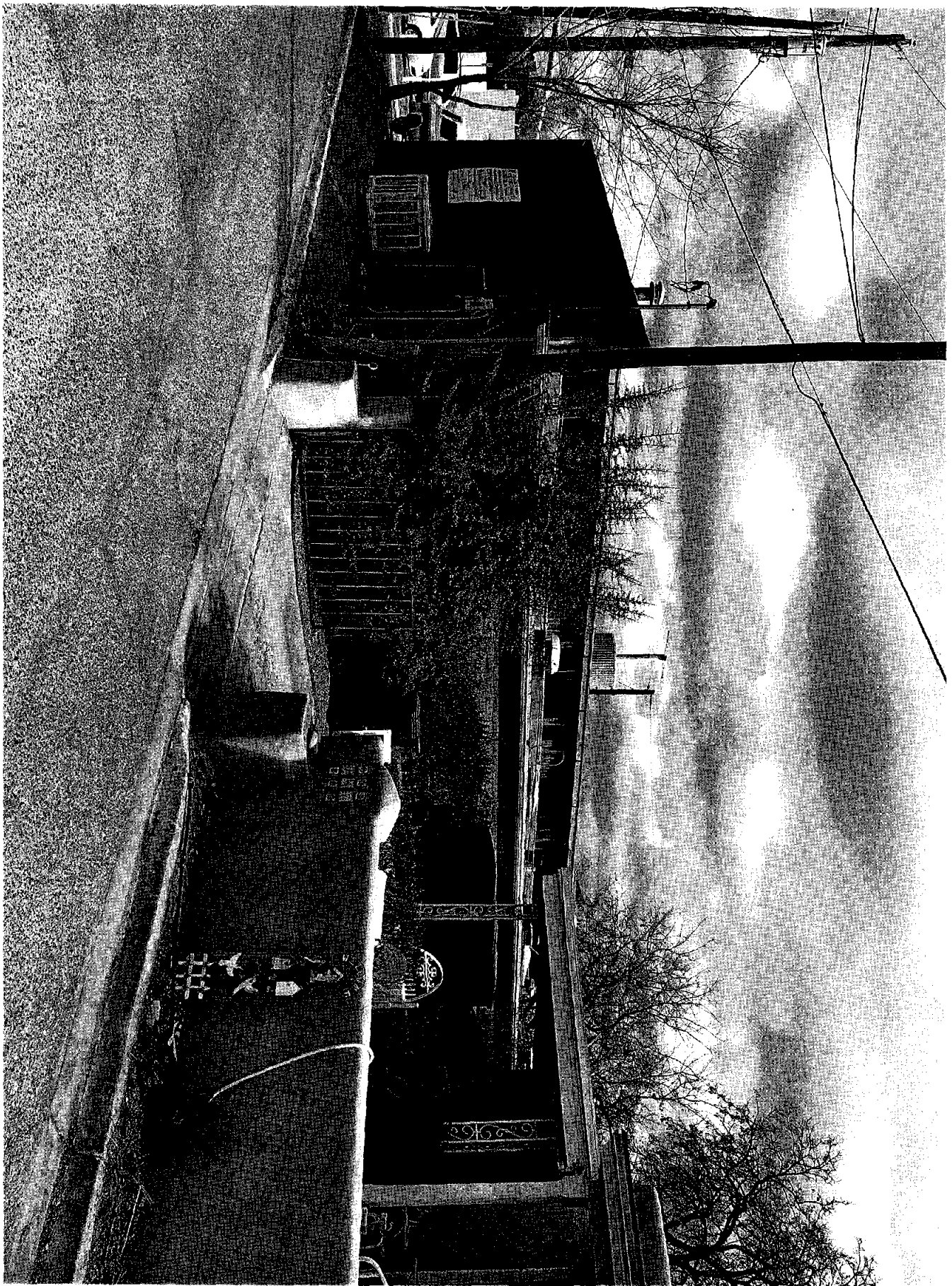
WGS\_15B4\_Web\_Metricor Auxiliary\_Software

THIS MAP IS NOT TO BE USED FOR NAVIGATION

THIS MAP IS NOT TO BE USED FOR NAVIGATION

[illegible]

A1  
EXISTING SITE PLAN WITH REQUIRED SETBACKS IN RED



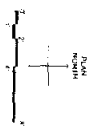
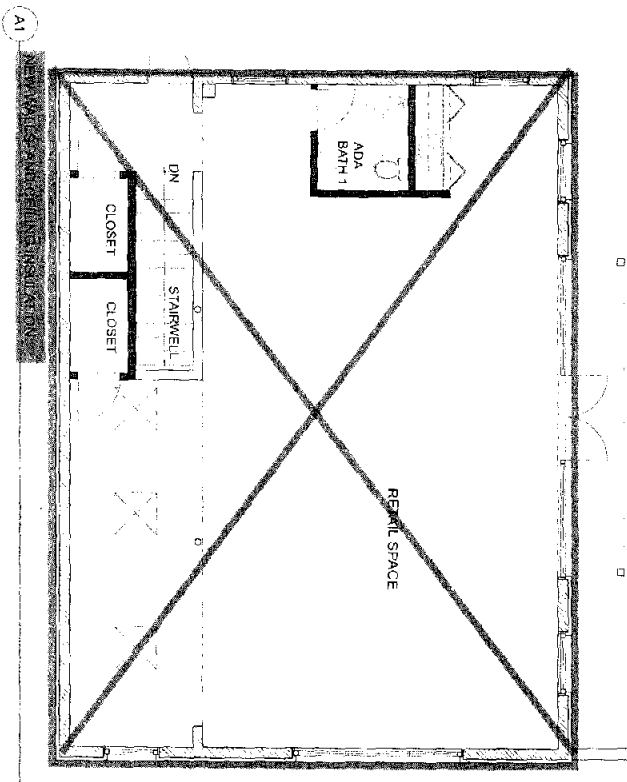
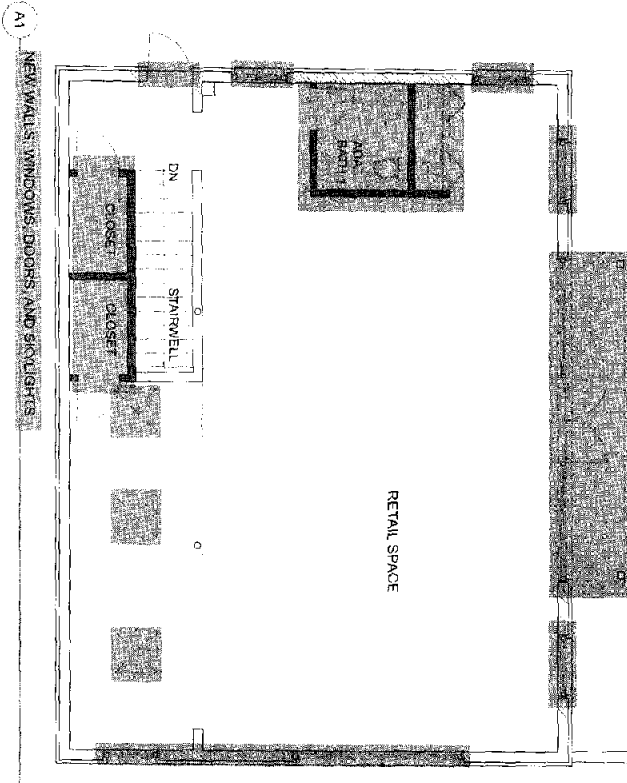
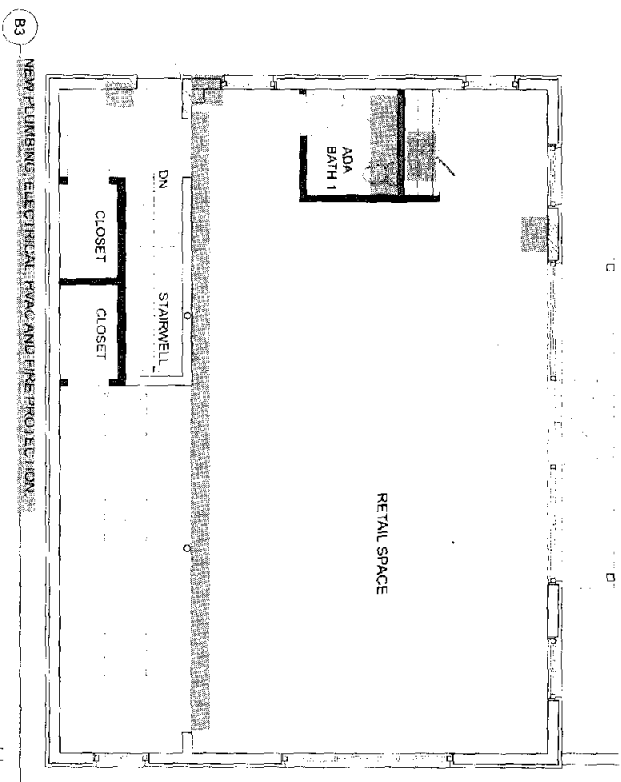
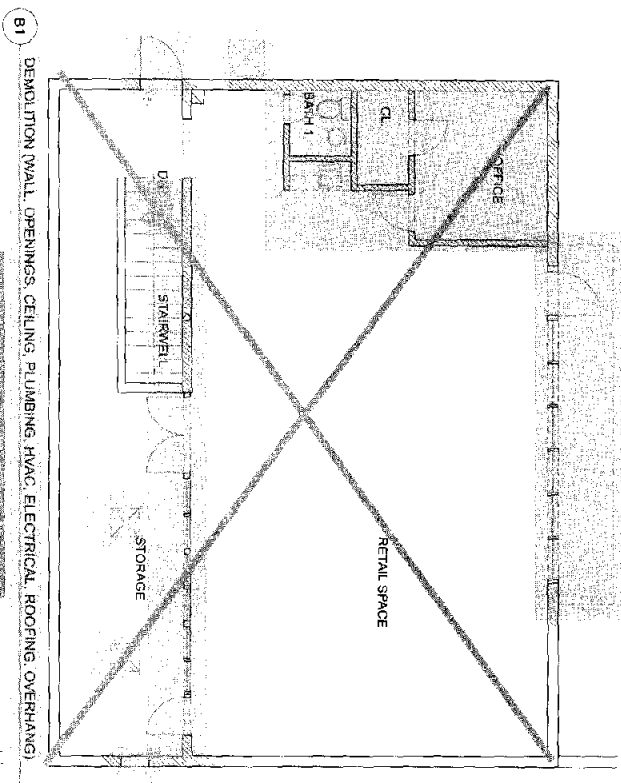
### DETAILED OUTLINE FOR ALTERATION LEVEL 3

REMODEL - PEYOTE BIRD DESIGNS  
 504 JOSE STREET  
 SANTA FE, NM 87501

Reviser's  
 No. Date Description

Scale  
 Date 07/2/18  
 Drawn By  
 Checked By sm  
 Drawing Number

ADD-04



B1  
VICINITY MAP  
NO SCALE

EXISTING BUILDING DATA:  
F15: 2-DOOR HEATED SPACE  
BASEMENT: 1,813 sq ft  
OVERHANG: 1,268 sq ft  
TOTAL ROOFED AREA: 107 sq ft  
TOTAL LOT AREA: 1,915 sq ft  
LOT COVERAGE: 5,600 sq ft  
LOT COVERAGE: 49.5%

**EXISTING SITE PLAN**

KATHLEEN M. LIVING DATA  
 1ST FLOOR HEATED SPACE  
 1246 sq ft  
 1ST FLOOR UNHEATED SPACE  
 88 sq ft  
 2ND FLOOR HEATED SPACE  
 3930 sq ft  
 2ND FLOOR UNHEATED SPACE  
 491 sq ft

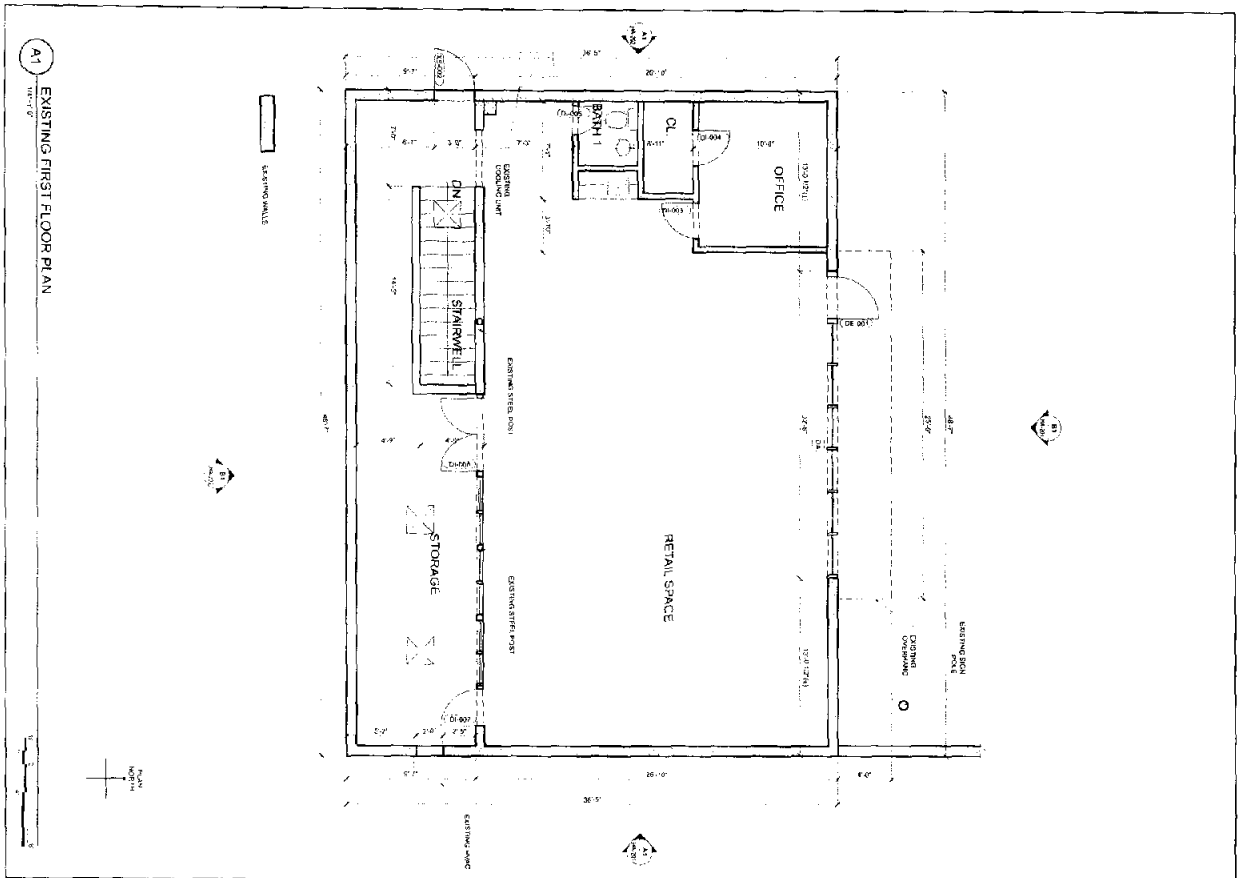
**PROPOSED SITE PLAN**

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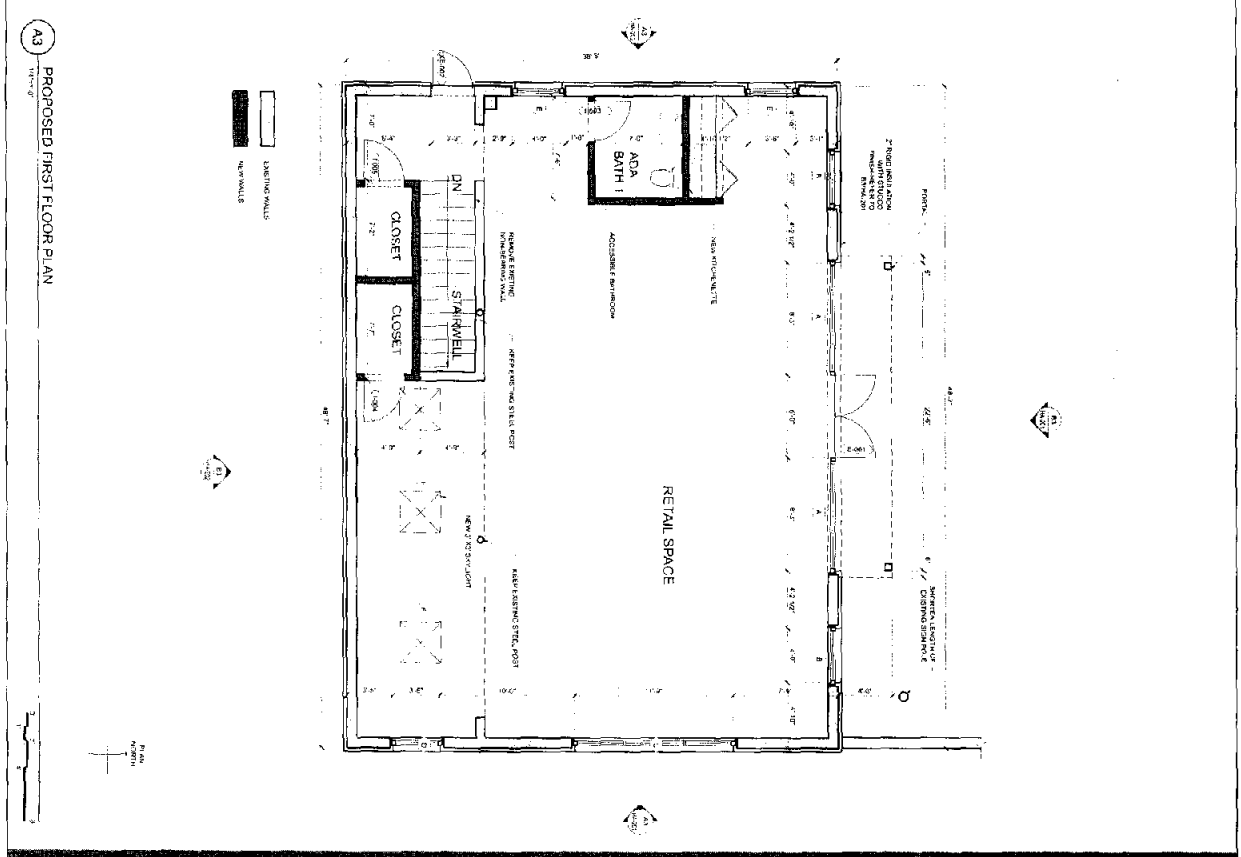
REMODEL - PEYOTE BIRD DESIGNS  
504 JOSE STREET  
SANTA FE, NM 87501

Architect  
Sibylle Mueller, AIA  
130 Cassiano Street  
Santa Fe, NM 87501  
Ph: 505.573.7261  
E-mail: [deby@earthlink.net](mailto:deby@earthlink.net)

HA-100



A1  
EXISTING FIRST FLOOR PLAN



A3  
PROPOSED FIRST FLOOR PLAN

**HA-101**

Scale: 1/8" = 1'-0"

Date: 10/1/17

Drawn By: [Signature]

Checked By: SM

Drawing Number: [Blank]

**EXISTING AND PROPOSED FIRST FLOOR PLAN**

**REMODEL - PEYOTE BIRD DESIGNS**

504 JOSE STREET

SANTA FE, NM 87501

Approved: [Signature]

Stamp: [Blank]

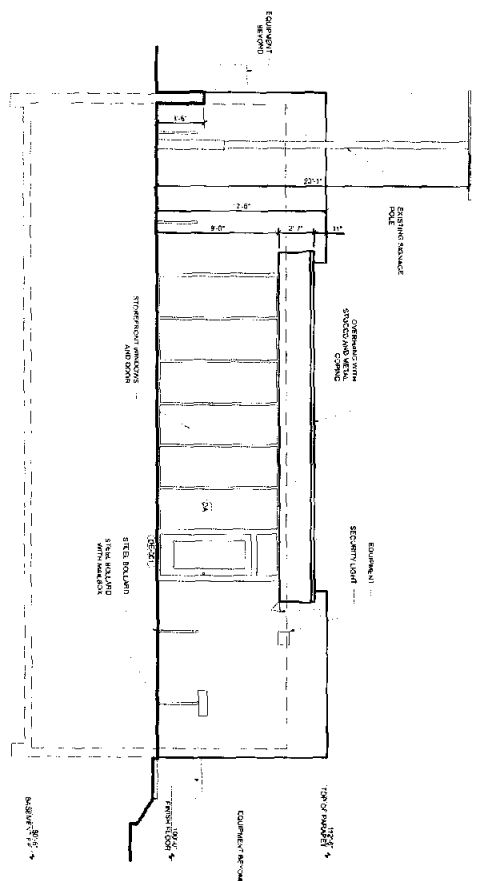
SHANE MARRIS, AIA

SHANE MARRIS ARCHITECTS, P.C.

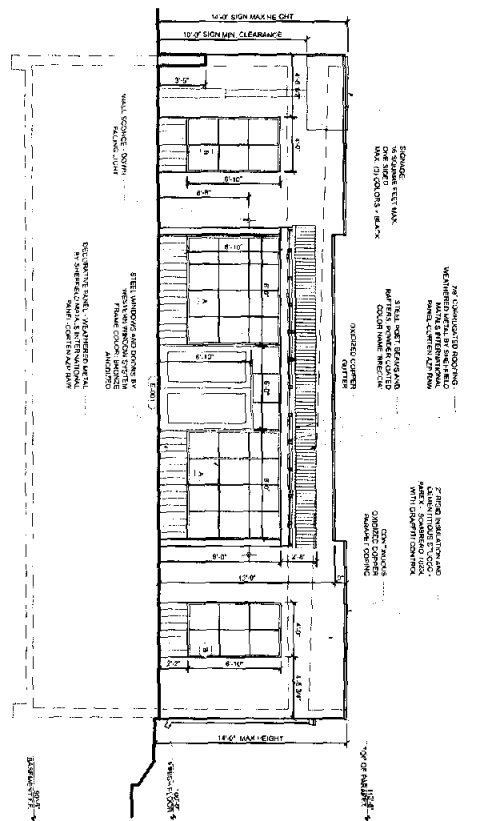
PO BOX 510, 281

PH 505.510.281

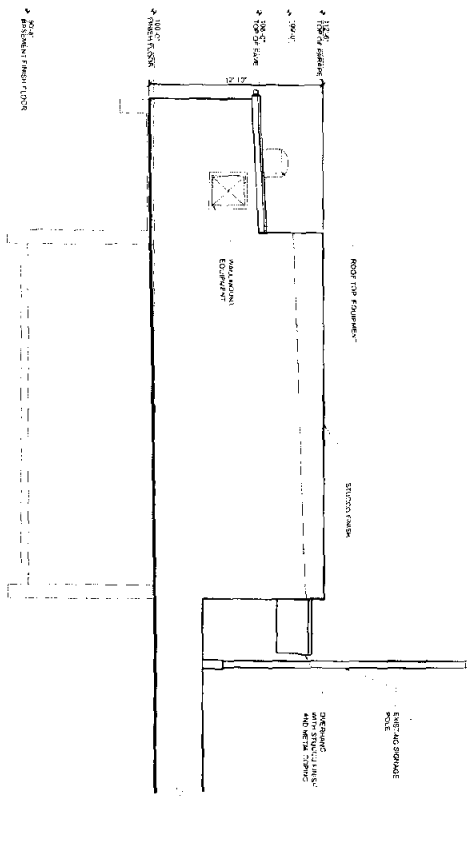
EMAIL: shane@marrisaia.com



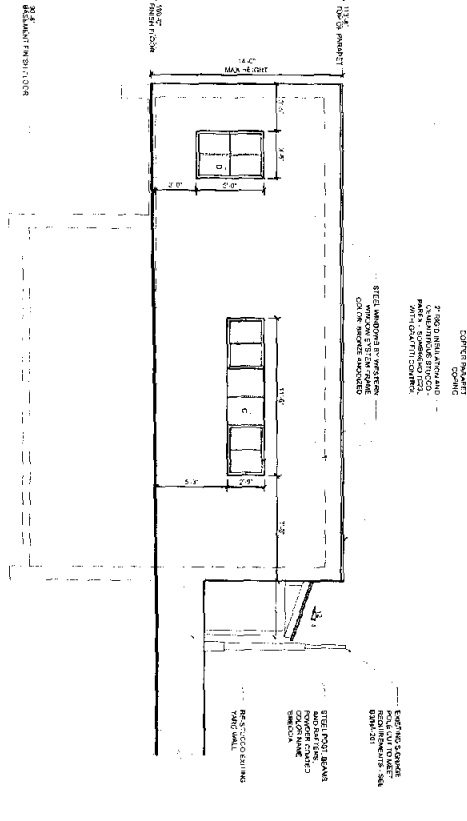
B1 EXISTING NORTH ELEVATION (STREET ELEVATION - JOSE STREET)



B3 PROPOSED NORTH ELEVATION (STREET ELEVATION - JOSE STREET)



A1 EXISTING EAST ELEVATION



A3 PROPOSED EAST ELEVATION

# EXISTING AND PROPOSED NORTH AND EAST ELEVATIONS

REMÔDEL - PEYOTE BIRD DESIGNS  
504 JOSE STREET  
SANTA FE, NM 87501

HA-201

Scale: 1/4" = 1'-0"  
Date: 10/1/2021  
Drawn by: JAV  
Checked by: SV  
Drawing Number: 01

Revisions:  
No. Date Description

Architect:  
Sylvia Mader, AIA  
Sylvia Mader Architects  
504 JOSE STREET  
SANTA FE, NM 87501  
P: 505.210.2951  
F: 505.210.2952  
E: sylvia@peyotebird.com  
W: www.peyotebird.com



[illegible]

1000 FEET

AERIAL PHOTO

PUBLIC VIEW

AERIAL PHOTO

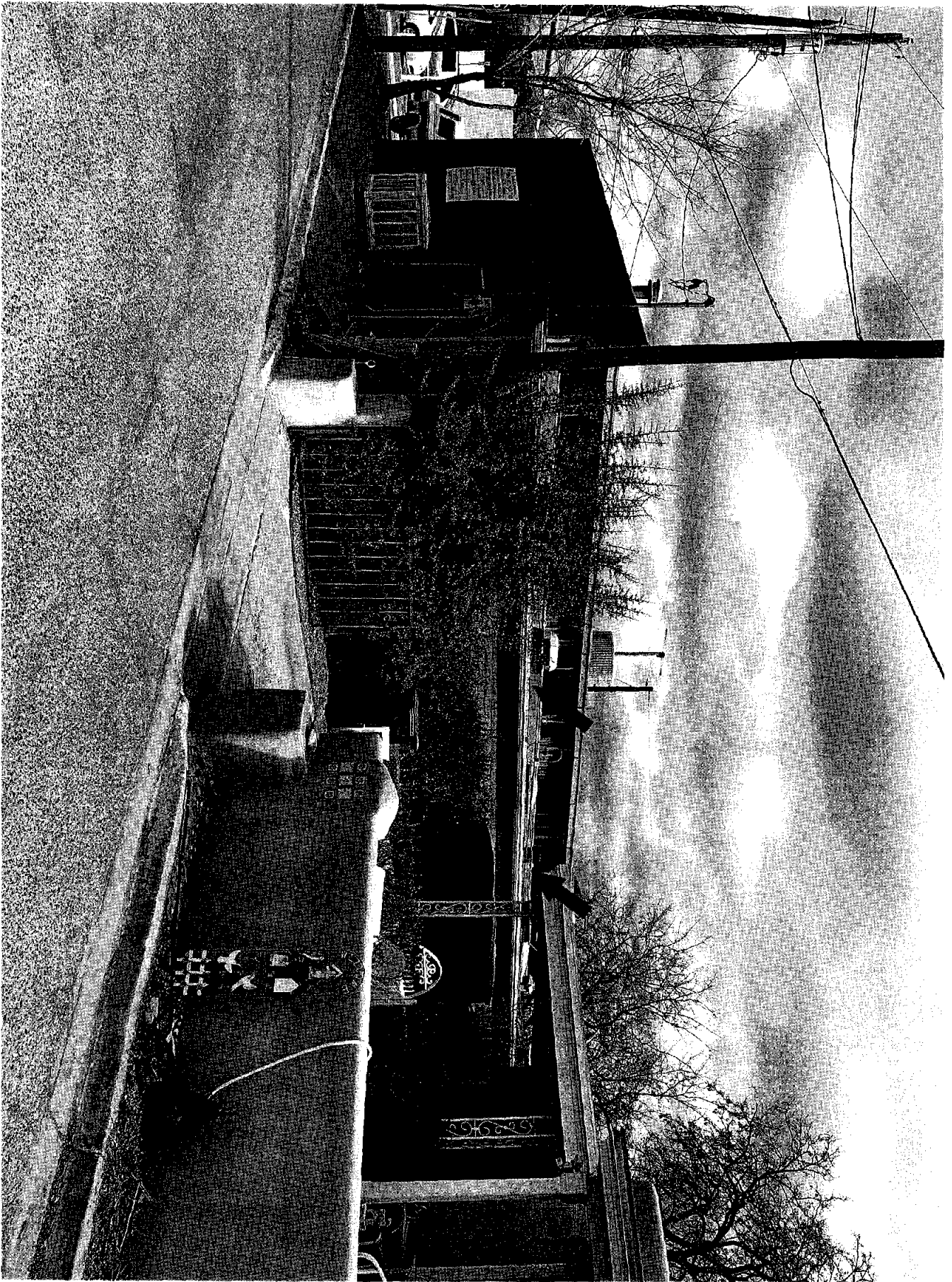
PUBLIC VIEW

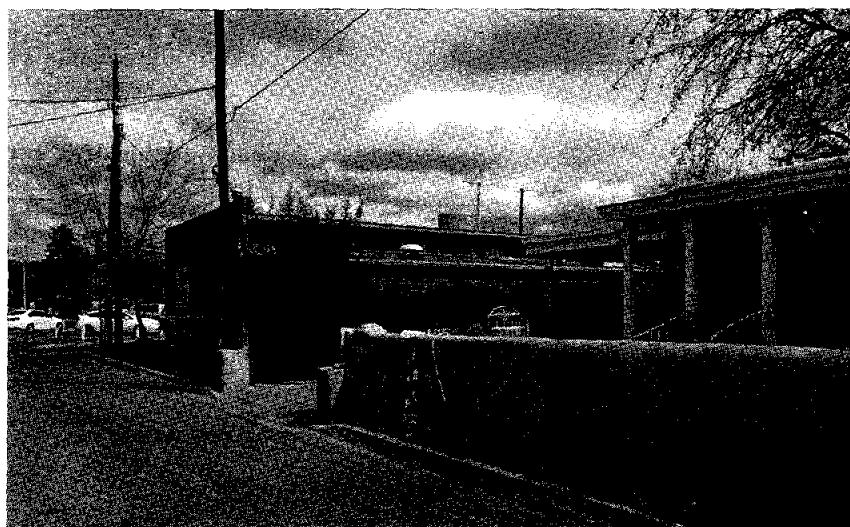
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Sidyllie Mueller, ALM  
130 Conditia Street  
Santa Fe, NM 87501  
Ph: 505 570 7263  
Email: [sidyllie@angelfire.com](mailto:sidyllie@angelfire.com)

Scale	1/8" = 1'
Date	10/17/96
Drawn by	
Checked by	SV
Drawing Number	

HA-202





REAR OF BUILDING FACING RESIDENTIAL NEIGHBOR HOOD ON DANIEL STREET

THE IMAGE SUPPORTS THE POINTS MADE IN THE LETTER TO THE PLANNING DIVISION BY MS. RIVERA WHO IS SPEAKING OUT FOR SIX RESIDENCES LIVING ON DANIEL STREET.

Kathy Rivera

132 Daniel St., Santa Fe, NM 87501

Current Planning Division  
200 Lincoln Avenue, Box 909  
Santa Fe, NM 87504-0909

March 11, 2018

Re: Case # 2017-90: 504 Jose St. Variances

Dear Board of Adjustment Members:

I am currently out of town on a business trip and unable to attend this public meeting in person. I am writing in support of the 504 Jose Street project as it has been presented.

Lifelong residents of the neighborhood, my family currently occupies 6 residences on Daniel Street (which intersects Jose Street) and is very familiar with the site under consideration and its history. I am pleased with the design and believe it will only improve our neighborhood.

I ardently support the project for many reasons and here are a few for your consideration:

- **The neighborhood would benefit from a welcome upgrade:**
  - Proposed changes fit well with the neighborhood style and will preserve and enhance the character and appearance of the area.
  - Proposed changes will greatly improve the visual appearance of the side and rear of the property with no negative impact to the public view front street façade.
- **Supporting redevelopment and revitalization:** The neighborhood would benefit from having the building in use rather than remaining vacant. It will be a welcome refresh.
- **Supporting economic development:** We have a case here where the owners want to bring further economic development to the area. I like that idea and wish to see the City be an enabler in support of economic development.

Thank you for including neighborhood support in your considerations and anticipate your agreement that this is going to be a positive addition to our neighborhood.

I respectfully urge you to approve the request for variance.

Yours sincerely,

*Kathy Rivera*

132 Daniel St.  
Santa Fe, NM 87501

Architect

Sibylle Mueller, AIA  
101 Capobianco Street  
Santa Fe, NM 87501  
PH: 505.376.7201  
Email: sibylle@mueller.com

Stamp

LETTER TO PLANNING DIVISION AND SUPPORTING PHOTOGRAPH

REMODEL - PEYOTE BIRD DESIGNS  
504 JOSE STREET  
SANTA FE, NM 87501

Revisions

No. Date Description

Scale

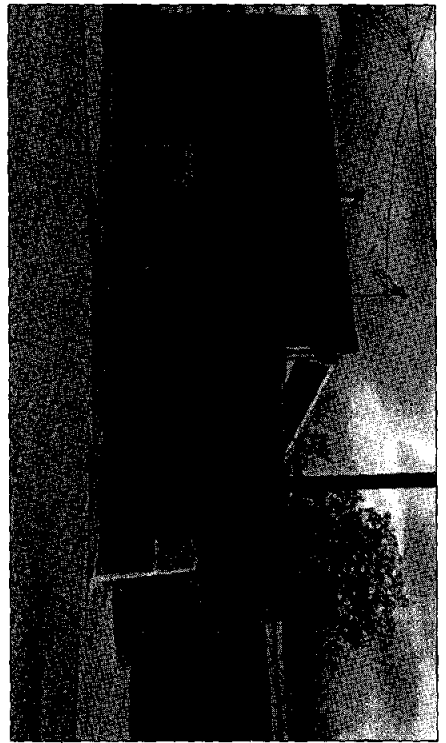
Date 03/11/18

Drawn by

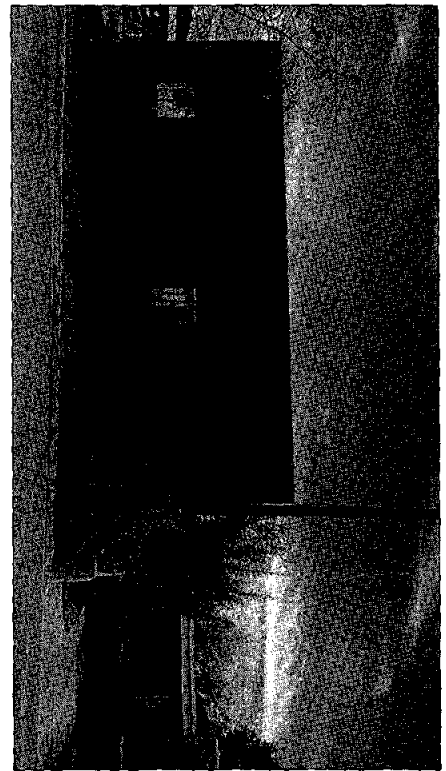
Checked by SK

Drawing Number

ADD-05



C1 EXISTING WEST FACADE (DANIEL STREET)



C3 PROPOSED WEST FACADE (DANIEL STREET)



A1 EXISTING NORTH FACADE (JOSE STREET)



A3 PROPOSED NORTH FACADE (JOSE STREET)

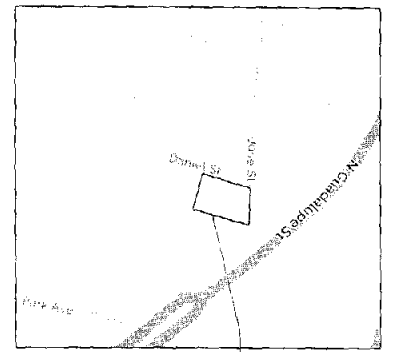
EXISTING AND PROPOSED RENDERINGS/PHOTOGRAPHS

REMODEL - PEYOTE BIRD DESIGNS  
504 JOSE STREET  
SANTA FE, NM 87501

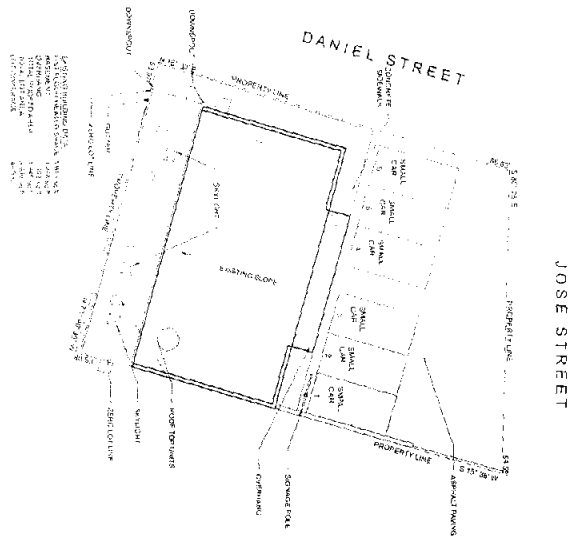
Revisions	By	Date	Description
1	PEYOTE BIRD DESIGNS	10/10/17	Initial Design
2	PEYOTE BIRD DESIGNS	10/10/17	Final Design
3	PEYOTE BIRD DESIGNS	10/10/17	Final Design
4	PEYOTE BIRD DESIGNS	10/10/17	Final Design
5	PEYOTE BIRD DESIGNS	10/10/17	Final Design
6	PEYOTE BIRD DESIGNS	10/10/17	Final Design
7	PEYOTE BIRD DESIGNS	10/10/17	Final Design
8	PEYOTE BIRD DESIGNS	10/10/17	Final Design
9	PEYOTE BIRD DESIGNS	10/10/17	Final Design
10	PEYOTE BIRD DESIGNS	10/10/17	Final Design

HA-210

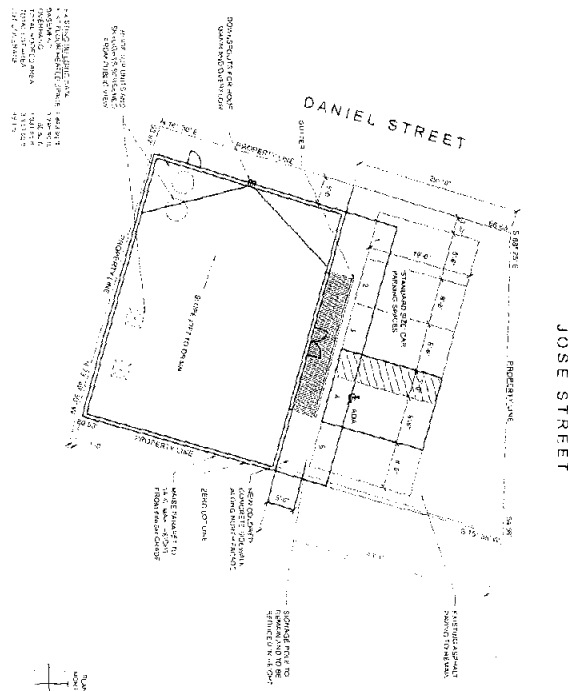
APPROVED  
SIGNED  
DATE  
BY  
FOR  
PROJECT  
DRAWING NUMBER



B1 VICINITY MAP  
NOT SCALE



A1 EXISTING SITE PLAN  
NOT SCALE



A2 PROPOSED SITE PLAN  
NOT SCALE

ZONING DISTRICT BCD WESTSIDE/HD WESTSIDE GUADALUPE			
EXISTING	PROPOSED	REMARKS	REMARKS
<p>USE: COMMERCIAL</p> <p>LOT AREA: 1.00 AC</p> <p>LOT DIMENSIONS: 100' x 100'</p> <p>LOT COVERAGE: 100%</p>	<p>USE: COMMERCIAL</p> <p>LOT AREA: 1.00 AC</p> <p>LOT DIMENSIONS: 100' x 100'</p> <p>LOT COVERAGE: 100%</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>
<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>
<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>
<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>	<p>REMARKS: NO CHANGES TO LOT AREA OR DIMENSIONS</p>

EXISTING AND PROPOSED SITE PLAN AND VICINITY MAP

REMODEL - PEYOTE BIRD DESIGNS  
504 JOSE STREET  
SANTA FE, NM 87501

HA-100

Architect  
Sole Architects, LLC  
1000 Santa Fe Avenue  
Santa Fe, NM 87501  
www.solearchitects.com

EXIS  
A1



PROJ. A3



HA-101

[illegible]

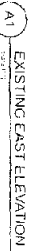
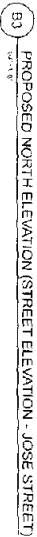
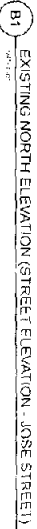
Sibylla Mueller, PhD  
130 Connecticut Street  
South Fg 806 87501  
Ph: 603 570 7261  
Email: [603-570-7261@att.net](mailto:603-570-7261@att.net)

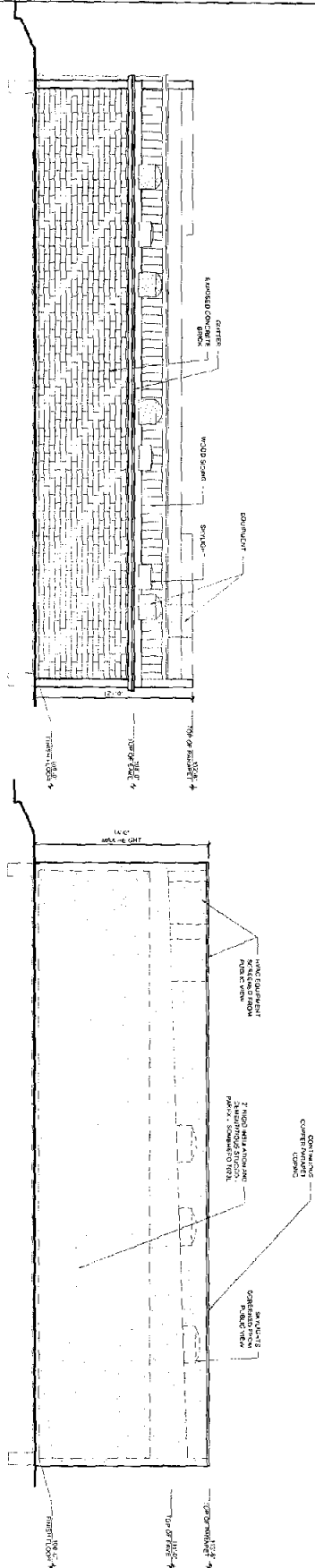
## Summary

REMODEL - PEYOTE BIRD DESIGNS  
504 JOSE STREET  
SANTA FE, NM 87501

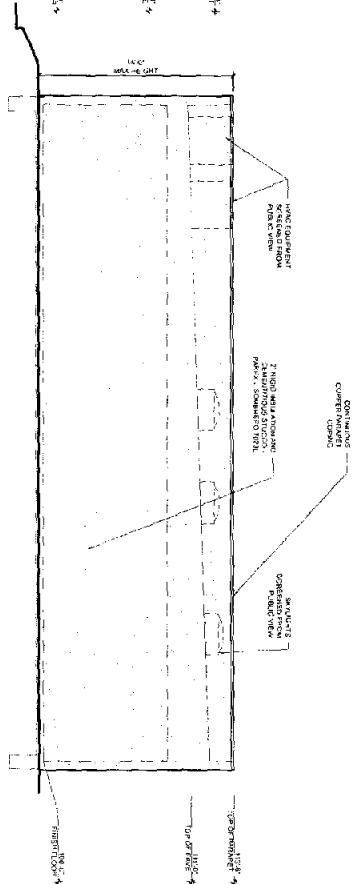
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HA-201

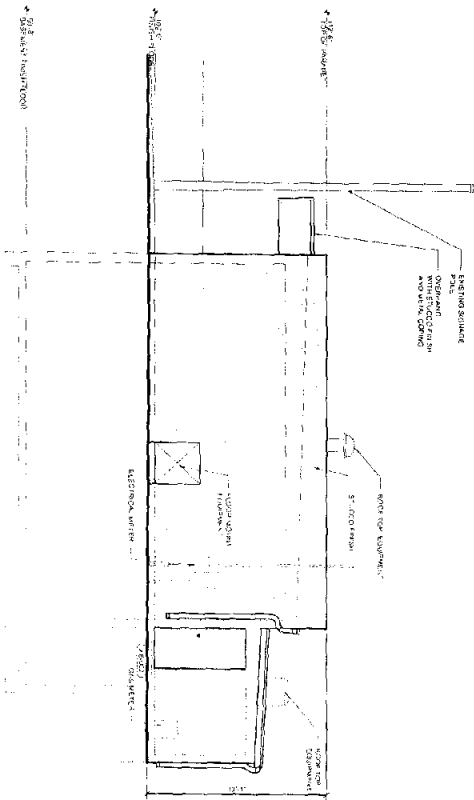




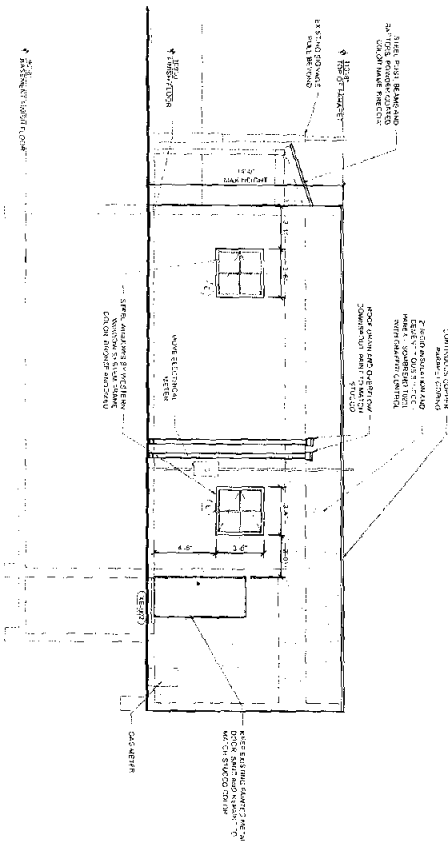
B1 EXISTING SOUTH ELEVATION



B:3 PROPOSED SOUTH ELEVATION  
1/4" = 1'-0"



EXISTING WEST ELEVATION (STREET ELEVATION - DANIEL STREET)



PROPOSED WEST ELEVATION (STREET ELEVATION - DANIEL STREET)



EXISTING AND PROPOSED SOUTH AND WEST ELEVATIONS

REMODEL - PEYOTE BIRD DESIGNS  
504 JOSE STREET  
SANTA FE, NM 87501

[illegible]

HA-202