



# Agenda

CITY CLERK'S OFFICE

DATE 8/2/13 TIME 9:05am

SERVED BY [Signature]

RECEIVED BY [Signature]

## AMENDED

### BOARD OF ADJUSTMENT

Tuesday, August 6, 2013 at 6:00 12:00 P.M.

200 Lincoln Ave. Santa Fe NM

City Council Chambers Conference Room

(Addition of Item F1)

- A. ROLL CALL
- B. PLEDGE OF ALLEGIANCE
- C. APPROVAL OF AGENDA
- D. ELECTIONS OF OFFICERS
- E. APPROVAL OF MINUTES: July 16, 2013 minutes
- F. FINDINGS/CONCLUSIONS:
  - 1. Case #2013-34. 242 West San Mateo Road Special Use Permit.
  - 2. Case #2013-36. Capilla de Luz Special Use Permit
- G. NEW BUSINESS
- 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.



# Agenda

CITY CLERK'S OFFICE

DATE 7/23/13 TIME 2:55 pm

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## AMENDED

### BOARD OF ADJUSTMENT

Tuesday, August 6, 2013 at ~~6:00~~ 12:00 P.M.

200 Lincoln Ave. Santa Fe NM

City Council ~~Chambers~~ Conference Room

- A. ROLL CALL
- B. PLEDGE OF ALLEGIANCE
- C. APPROVAL OF AGENDA
- D. ELECTIONS OF OFFICERS
- E. APPROVAL OF MINUTES: July 16, 2013 minutes
- F. FINDINGS/CONCLUSIONS:
  - 1. Case #2013-36. Capilla de Luz Special Use Permit OLD BUSINESS
- G. NEW BUSINESS
- H. STAFF COMMUNICATIONS
- I. MATTERS FROM THE COMMISSION
- J. ADJOURNMENT

## NOTES:

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# Agenda

CITY CLERK'S OFFICE

DATE 7/11/13 TIME 8:29 AM

SERVED BY [Signature]

RECEIVED BY P. Ortiz

**BOARD OF ADJUSTMENT**  
**Tuesday, August 6, 2013 at 6:00 P.M.**  
**200 Lincoln Ave. Santa Fe NM**  
**City Council Chambers**

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. ELECTIONS OF OFFICERS**
- E. APPROVAL OF MINUTES: July 16, 2013 minutes**
- F. FINDINGS/CONCLUSIONS:**
  - 1. Case #2013-36. Capilla de Luz Special Use Permit OLD BUSINESS**
- G. NEW BUSINESS**
- 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.

**SUMMARY INDEX  
OF THE BOARD OF ADJUSTMENT MEETING  
Tuesday, August 6, 2013**

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**MINUTES OF THE MEETING OF THE  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
SANTA FE, NEW MEXICO  
Tuesday, August 6, 2013**

**A. CALL TO ORDER AND ROLL CALL**

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Rachel Winston, Vice-Chair, at approximately 12:00 noon, on Tuesday, August 6, 2013, in the Council Chambers, City Hall, Santa Fe, New Mexico.

Rachel L. Winston, Vice-Chair  
Patricia Hawkins  
Daniel H. Werwath  
Donna Reynolds

**MEMBERS EXCUSED:**

Gary Friedman, Chair  
Coleen Dearing  
Douglas Maahs

**OTHERS PRESENT:**

Tamara Baer, Planning Manager, Current Planning Division  
Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division  
Don L. Helberg [for Melessia Helberg, Stenographer]

There was a quorum of the membership in attendance for conducting official business.

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AMENDED AGENDA**

**MOTION:** Daniel Werwath moved, seconded by Patricia Hawkins, to approve the Amended Agenda as presented.

**VOTE:** The motion was approved unanimously on a voice vote.

**D. APPROVAL OF MINUTES – JULY 16, 2013**

The following correction was made to the minutes:

Under "Others Present," Tamara Baer said she was not present at the meeting.

**MOTION:** Donna Reynolds moved, Seconded by Patricia Hawkins, to approve the minutes of the meeting of July 16, 2013, as amended.

**VOTE:** The motion was approved on a voice vote, with Rachel Winston, Patricia Hawkins, and Donna Reynolds voting in favor of the motion, no one voting against, and Daniel Werwath abstaining.

**E. ELECTION OF OFFICERS.**

**MOTION:** Rachel Winston moved, seconded by Patricia Hawkins, to re-elect Gary Friedman, as the Chair of the Board of Adjustment.

**VOTE:** The motion was approved unanimously on a voice vote.

Mr. Esquibel said, responding to a question from Vice-Chair Winston, under City Rules, the Vice-Chair can vote, and make motions, even while acting as the Chair.

**MOTION:** Daniel Werwath moved, seconded by Commissioner Patricia Hawkins, to elect Rachel Winston, as the Vice-Chair, of the Board of Adjustment.

**VOTE:** The motion was approved unanimously on a voice vote.

**MOTION:** Vice-Chair Winston moved, seconded by Patricia Hawkins, to elect Daniel Werwath as Secretary of the Board of Adjustment.

**VOTE:** The motion was approved unanimously on a voice vote.

## **F. FINDINGS/CONCLUSIONS**

A copy of the City of Santa Fe Board of Adjustment Findings of Fact and Conclusions of Law, in Case #2013-34, Chabad Jewish Center, 242 W. San Mateo Road, Special Use Permit, is incorporated herewith to these minutes as Exhibit "1."

A copy of the City of Santa Fe Board of Adjustment Findings of Fact and Conclusions of Law, in Case #2013-36, Capilla de Luz Special Use Permit, is incorporated herewith to these minutes as Exhibit "2."

1. **CASE #2013-34. CHABAD JEWISH CENTER, 242 WEST SAN MATEO ROAD SPECIAL USE PERMIT.**

2. **CASE #2013-36. CAPILLA DE LUZ SPECIAL USE PERMIT**

**MOTION:** Patricia Hawkins moved, seconded by Donna Reynolds, to approve the Findings and Conclusions in Case #2013-34, Chabad Jewish Center 242 West San Mateo Road, Special Use Permit, and Case #2013-36, Capilla de Luz Special use permit, as presented by staff.

**VOTE:** The motion was approved on a voice vote, with Rachel Winston, Patricia Hawkins, and Donna Reynolds voting in favor of the motion, no one voting against, and Daniel Werwath abstaining.

Vice-Chair Winston asked how the case numbers are assigned.

Ms. Baer explained that the case numbers are assigned in the order in which cases come into the Land Use Department, and they don't differentiate between different Land Use boards, so the numbers between could be for a lot line adjustment, or lot split, or rezoning.

## **G. NEW BUSINESS**

There was no old business

## H. STAFF COMMUNICATIONS

Ms. Baer said, with regard to the Capilla de Luz case, John Dick made significant changes to the design, and was able to lower the roof by 5½ feet. She said Mr. Dick contacted the two neighbors who were concerned, and he believes they were able to resolve this issue. She said the deadline for appeal is 15 days on a special use permit from the date of the last action which is today, so they still have 15 days from today.

Mr. Esquibel said he had an email from them telling him they will not appeal and they have come to a resolution.

*[Too many people talking here at the same time to transcribe]*

Ms. Baer said because the meeting is short, she brought a brief training she prepared for the Board, or we can do it at another time.

Ms. Hawkins asked if Douglas Maahs was included in the last training, and Mr. Werwath said he wasn't.

Ms. Baer said Kelley Brennan is interested in doing some ing, but wasn't able to do that today, so they will schedule that at a future meeting.

It was the consensus among the Committee for Ms. Baer to present the training to the members today.

Ms. Baer presented information as follows:

- The members of the Board, especially the officers, need to decide who to call if you can't attend the meetings, typically the Chair asks that people notify the Chair. The members of the Board need to call Dan Esquibel and advise him as well, at the City 955-6587 or on his cell 490-6482.
- The duties of this Board primarily are to consider Special Use Permits, Variances and any Appeals of Building Permits. An Appeal will go only to the City Council if someone were appealing a decision of this Board and after that it would go to the District Court.
- The timetable for appeals has been reduced which for appeals considered by this Board is 15 days from the date of the last action, which would be the approval of the Findings of Fact and Conclusions of Law.



- In making your decisions, it would be helpful for the person writing the findings if, when you vote, if you would state the basis for your vote. If you are voting against something, you should say the reason you can't support it, which would be good if it were a reason related to the City Code.
- In making your decision, you should consider the Staff Report and the Staff Recommendation, the provisions of City Code and then public testimony. Public testimony can be through a letter to the Board which is in the Board packet, or delivered at the last minute. The Board should give the most weight to testimony that is given in person, because the person is under oath and also can be cross-examined. Secondly, is the Board's consideration of any written communication. If someone reports that somebody else has an opinion, that would be last, if at all.
- In making your decision, what you should not consider is equally important.
- In making a decision, you should never consider how many people who are in favor or against something. The entire neighborhood may be in attendance in opposition, but that doesn't mean that it is a bad idea or that it doesn't comply with the City Code.
- In making a decision, you should not consider who the applicant is. It may be someone for whom you have personal antipathy, or with whom you have dealt in the past. You should judge your decision on the basis of the application, not the applicant.

In making a decision you should not considering who a person is. It is important to keep the larger community in mind in making recommendations, although you should consider immediate impact.

- In making a decision, you should not look at who is for or against it, but whether it is a good project and whether it meets the Code.
- In making a decision, you should not consider any information that is not part of the record.
- The members of the Board shouldn't visit the site separately. If the Board would like to visit a site for an upcoming case, and can't make a decision without seeing the site, you should contact the staff and staff will arrange for a site visit so everyone on the Board can visit the site together. During the site visit, there is no discussion on the merits of the case, and it is only to observe. During the site visit, members can ask factual questions.

Vice-Chair Winston asked if the reason for this, is so all of the Board members are working off the same information.

Ms. Baer said that is correct, and you shouldn't consider anything that is not part of the record, and if you happen to see something, you may want to disclose that. For example, "I've lived next door to this property for the past 20 years and that is the reason I'm familiar with it, but I don't think that would influence my decision in a negative way, or in a prejudicial manner."

- Your decisions should be based on the criteria specific to that application and the staff report will go into those criteria.
- You should try to explain your decision, especially if it is not the recommendation that is made by staff, because staff goes on the basis of the Code. If you are making a different decision, in order to get findings that are supportable, you need to explain why you are going against the staff recommendations.
- The Committee follows Robert's Rules of Order. Typically, there is an Assistant City Attorney in attendance, if not staff should be able to figure things out based on our experience.
- The Findings typically are written by Kelley Brennan, Assistant City Attorney, which are approved typically at the very next meeting.
- The Findings are approved automatically if they are not approved within 30 days by the Board. If the Board wants to see the Findings, then a meeting shouldn't be canceled. If the Findings are approved automatically for whatever reason the Board hasn't voted on them within 30 days, staff will bring those findings to the Board at a future meeting, and ask the Board to vote on the findings. The reason for that is in the event of any legal action, the Findings are in the record along with your approval of the Findings. It doesn't keep the project from moving forward, but it does become part of the official record, once the Board has approved the Findings.

Vice-Chair Winston said this is what we did today on the Chabad Jewish Center Special Use Permit.

Ms. Baer said it did happen exactly as you say with that case, where their findings were approved automatically 30 days after the hearing, even there was no vote by this Committee, but now that you have voted on the findings, they are part of the official record.

- The Board should know about *ex parte* communication. The Board shouldn't be speaking to applicants, or anyone who has an interest in a case, before a decision is made. These are quasi judicial matters. If someone should call you, or a neighbor approaches you, about an upcoming case, and asks you to vote for or against it, stop them as soon as possible

and tell them you can't talk about the case because the Board will be voting on the matter. Tell them their participation is welcomed at the public hearing and encourage them to attend and give your opinion. The Board needs to make their decision based on the same information, so you can't have a conversation with someone outside the public hearing.

Conversely, members of the Board always can talk with staff and ask questions about a case, or you need clarification. You also are welcome to call Dan Esquibel, if he is the case manager. Suggestion to talk to the case manager who usually is the most knowledgeable about a case. Members are welcome to call Ms. Baer as well. This is never *ex parte* communication because we work for you. This is true of the City Attorney as well. We are your staff and it isn't *ex parte* to talk to us, so feel free to call with any questions.

Ms. Baer said this ends her presentation.

*The Board asked questions and commented as follows:*

- A member noted that once the decision is made, and action has been taken, we can all talk about it.

Ms. Baer said she failed to mention that members of the Board shouldn't be talking to each other about the case prior to the meeting where action is taken.

- Vice-Chair Winston said what helped her, before the meeting, after reading the packet, so she doesn't lose her train of thought, she prepares a motion for, a motion against and a table, and then there are blanks to fill in, because then there is testimony. She asked if this is reasonable.

Ms. Baer said yes.

- A member said it might be an issue, because if the applicant or anyone else found out about it, and you voted against something, they probably could subpoena her notes.
- Vice-Chair Winston said, "I cover all the bases. I'm not pre-determining anything, for or against."

Ms. Baer said it does bring up another point. A motion to table is to postpone something within the same meeting. If you want to wait another month, for whatever reason, that is a motion to postpone.

When something is postponed, you should postpone to a date certain, and if possible to the next meeting. This way, the applicant does not have to re-notice – mail out letters again, or change the big yellow sign. Staff will let them go out and change the date on the sign, and “do it crossed out,” so it’s clear to people when the actual meeting is to be held. If the case is postponed, and not to be heard at all at that meeting, and not postponed to a date certain, then we will put up new signs at the City hall and let people know.

Ms. Baer said typically things get postponed to the next Tuesday when there is a holiday.

- A member asked once a case is decided if she should be shredding the materials she has received.

Ms. Baer said she has never been asked to see copies of any notes taken by any members of the Board – that has never happened. She said on an IPRA request, people have to be very specific about what they’re looking for, which typically is any information generated by staff, any emails which aren’t subject to attorney-client privilege.

*Too many people talking here at the same time to transcribe*

Ms. Baer noted everything generated by staff is a public record.

- Ms. Reynolds said she would like to look at the Finding of Facts for the last 20 cases – to look at special conditions that might be added, where is the flexibility, what is a Board trying to add in thinking about merits.

Ms. Baer said she will be glad to send those to her.

- Vice-Chair Winston would like to schedule a training session for Mr. Maahs and some of the new members.

Ms. Baer said she will speak with Ms. Brennan, noting she has been very busy with the Qwest trial, but is coming off that now and will be more available. She said we could do that in September.

- Vice-Chair Winston asked if that would happen during lunch or after work.

Mr. Esquibel said that is up to the Board.

Ms. Baer said it can be done at a regularly scheduled meeting. She said once there is a quorum in attendance, it is a public meeting, and it is necessary to have a recorder and minutes.

Responding to Ms. Reynolds, Mr. Esquibel said the meetings are on the first Tuesday of every month. He said he is unsure about the next meeting, noting someone said there were some "mess-ups in scheduling," and we have to look at the dates.

**I. MATTERS FROM THE COMMISSION**

There were no matters from the Commission.

**J. ADJOURNMENT**

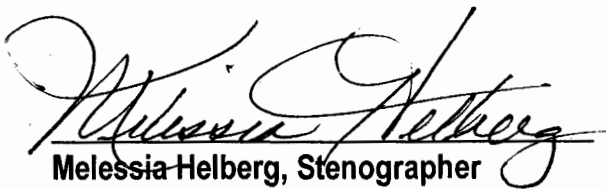
There was no further business to come before the Committee.

**MOTION:** Daniel Werwath moved, seconded by Donna Reynolds, to adjourn the meeting.

**VOTE:** The motion was approved unanimously on a voice vote, and the meeting was adjourned at 12:45 p.m.



Gary Friedman, Chair



Melessia Helberg, Stenographer

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

Case #2013-34 – Chabad Jewish Center Special Use Permit  
Owner – Chabad Jewish Center  
Agent – Sarcon Construction

THIS MATTER came before the Board of Adjustment (Board) for hearing on June 4, 2013 (Hearing) upon the application (Application) of Sarcon Construction as agent for the Chabad Jewish Center (Applicant).

The Applicant is a religious institution which occupies an existing 2,947 square-foot building on 0.71± acres at 242 San Mateo Road (Property). The Property is zoned R-2 (Residential – 2 dwelling units/acre).

Prior to March 1, 2012, when Santa Fe City Code (Code) Chapter 14 (Chapter 14) was amended to require a special use permit for a religious assembly use in a residentially-zoned district, religious institutions were a permitted use in residential districts.

The Applicant is required to obtain a special use permit now because it proposes to intensify its use of the Property by demolishing the existing building and constructing a new 9,995 square-foot building in its place, a net 7,048 square-foot increase, as well as certain related site improvements (the Project).

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 and members of the public interested in the matter.
2. Pursuant to Code §14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Code §§14-3.6 (Special Use Permits) and 14-6 (Permitted Uses).
3. Pursuant to Code §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. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled "Table of Permitted Uses", "Religious Assembly" is a permitted use in an R-2 district with a special use permit.
5. The Property is located in an R-2 district.

*Exhibit "1"*

6. A special use permit is required for the Applicant's religious assembly use on the Property.
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 14-3.6(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)];
  - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(b)]; and
  - (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)].
9. 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.
10. 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)].
11. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
12. An ENN meeting was held at 5:30 p.m. on April 18, 2013 at the Property.
13. The ENN meeting was attended by the Applicant, City staff, and approximately thirteen other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).
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 May 27, 2013 for the June 4, 2013 Meeting (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. Granting the special use permit for the Project will not adversely affect the public interest in that the Applicant is currently using the Property for a religious assembly use, and while the use will intensify as a result of the Project, the Project is generally designed to minimize the impact on adjacent residential uses, including replacing the demolished building with a

building that complies with applicable zoning requirements without variance; utilizing massing and setbacks to address height and scale differences to make the Project compatible to adjacent residential buildings; adding landscape buffering; and increasing on-site parking to comply with applicable Code, mitigating current conditions where parking on San Mateo is necessary due to insufficient on-site parking.

17. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project in that it will be similar in style to buildings on adjacent properties and will address differences in scale through the use of massing and setbacks; and that landscaping will provide sufficient buffering to adjacent residential properties.

### 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 \_\_\_\_\_ OF AUGUST 2013 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.
2. 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 one hundred eighty (180) days.

\_\_\_\_\_  
Gary Friedman  
Chair

\_\_\_\_\_  
Date:



FILED WITH THE CITY CLERK:

\_\_\_\_\_  
Yolanda Y. Vigil  
City Clerk

\_\_\_\_\_  
Date:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kelley Brennan  
Assistant City Attorney

\_\_\_\_\_  
Date:

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

Case #2013-36 – Capilla de Luz Special Use Permit  
Owner – Rivera Family of Santa Fe Funeral Options  
Agent – Archaeo Architects

THIS MATTER came before the Board of Adjustment (Board) for hearing on July 16, 2013 (Hearing) upon the application (Application) of Archeo Architects as agent for the Rivera Family Mortuary of Santa Fe Funeral Options (Applicant).

The Applicant operates a mortuary and cemetery on 6.086± acres at 417 Rodeo Road (Property). The Property is zoned C-1 (Office and Related Commercial).

The Applicant is required to obtain a special use permit because it proposes to intensify its use of the Property by (1) demolishing the existing 858 square-foot chapel and constructing a new 4,515 square-foot chapel in its place and (2) adding 2,550 square feet to the existing 2,639 square feet of office space, a total increase of 7,065 square feet, as well as certain related site improvements (the Project).

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 and members of the public interested in the matter.
2. Pursuant to Santa Fe City Code (Code) §14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Code §§14-3.6 (Special Use Permits) and 14-6 (Permitted Uses).
3. Pursuant to Code §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. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled "Table of Permitted Uses", "Cemeteries, Mausoleums and Columbariums" are permitted uses in a C-1 district with a special use permit. Places of "religious assembly" such as the chapel are permitted in C-1 districts as of right.
5. The Property is located in a C-1 district.
6. A special use permit is required for the Applicant's mortuary and cemetery use on the Property.

EXHIBIT "2"

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 14-3.6(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)];
  - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(b)]; and
  - (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)].
9. 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.
10. 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)].
11. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
12. An ENN meeting was held at on May 13, 2013 at the Genoveva Chavez Community Center.
13. The ENN meeting was attended by the Applicant, City staff, and approximately nine other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).
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 July 8, 2013 for the July 16, 2013 Meeting (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. Granting the special use permit for the Project will not adversely affect the public interest in that the Applicant is currently using the Property for mortuary and cemetery use, and while the use will intensify as a result of the Project, the Project is generally designed to minimize the impact on adjacent residential uses, including replacing the demolished building with a building that complies with applicable zoning requirements without variance; locating the

addition as far to the west from adjacent residential uses as possible within the constraints of the existing cemetery use; increasing on-site parking and locating it to regulate traffic flow and minimize impact on adjacent residential uses, mitigating current conditions of unregulated parking in an open field; and internalizing the mortuary support space to afford privacy to users and to adjacent residential uses.

17. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project in that it will reduce the impact of the existing use on adjacent properties by internalizing the mortuary support space; regulating traffic flow; providing buffering through improved landscaping and fencing; and by removing equipment and stockpiled dirt from 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 \_\_\_\_\_ OF AUGUST 2013 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 and to the following additional conditions:
  - (a) That in coordination with City staff the Applicant adopt dust control measures to address the dust created by heavy equipment digging graves and pushing dirt;
  - (b) That the Applicant not stockpile dirt and debris against property lines and use tarpaulins and other dust-control measures when stockpiling dirt;
  - (c) That the Applicant adopt a drainage plan for adjacent properties;
  - (d) That the Applicant work with the neighbors to identify properties whose owners may want a higher wall between their property and the Property; and
  - (d) That the Applicant work with the neighbors on building height, with the understanding that the height as designed and approved herewith complies with applicable Code.
2. 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 one hundred eighty (180) days.

\_\_\_\_\_  
Gary Friedman  
Chair

\_\_\_\_\_  
Date:

FILED WITH THE CITY CLERK:

\_\_\_\_\_  
Yolanda Y. Vigil  
City Clerk

\_\_\_\_\_  
Date:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kelley Brennan  
Assistant City Attorney

\_\_\_\_\_  
Date: