





# City of Santa Fe, New Mexico

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*Javier M. Gonzales, Mayor*

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## Memorandum

To: Members of the Governing Body

From: Zachary Shandler *ZS*  
Assistant City Attorney

Via: Kelley Brennan *KAB*  
City Attorney

Re: Appeal of Mr. Bob Walsh from the September 3, 2015, Decision of the Planning Commission to Approve the Christus St. Vincent Regional Medical Center's request for a Special Use Permit at 455 St. Michael's Drive.  
Case No. 2015-89

Appeal of Mr. Bob Walsh from the September 3, 2015, Decision of the Planning Commission to Approve the Christus St. Vincent Regional Medical Center's request for a Development Plan at 455 St. Michael's Drive.  
Case No. 2015-96

Date: October 21, 2015 for the October 28, 2015 Meeting of the Governing Body

### The Appeal

On September 15, 2015, Mr. Bob Walsh, (Appellant) filed a Verified Appeal Petition (the September Petition) appealing the September 3, 2015 Decision of the Planning Commission to approve the Christus St. Vincent's request for a Special Use Permit. (September Petition attached as **Exhibit A**). On October 5, 2015, Appellant filed a Verified Appeal Petition (the October Petition) appealing the September 3, 2015 Decision of the Planning Commission to approve the Christus St. Vincent's request for a Development Plan (October Petition attached as **Exhibit B**).

## The Property

The property is located at 455 St. Michael's Drive and is known as Christus St. Vincent Regional Medical Center (Christus St. Vincent or St. Vincent Hospital). It is bounded on the north by a residential neighborhood (the neighborhood association is called the San Mateo Area Society of Homeowners with the acronym "SMASH"), vacant land on the east, St. Michael's Drive on the south and Hospital Drive/doctor/medical offices on the west.

## History of the Case

St. Vincent Hospital was relocated to St. Michael's Drive in 1977. In 1985, the City Council adopted a "Master Plan" for the property. Code Section 14-3.9(A)(1) explains that a master plan is a "comprehensive plan that must be followed during the subsequent review and approval of development plans...for the area." According to Code Section 14-3.8(A), a development plan is a specific plan for "construction operations...." There is a direct linkage between a master plan and development plan as Code Section 14-3.8(C)(3) states any development plan "must be consistent with applicable provisions of the approved master plans...."

In 2006, the City Council adopted several amendments to the St. Vincent Hospital's Master Plan. Subsequently, Christus St. Vincent became the owner of the property. In 2015, Christus St. Vincent (Applicant) requested: (1) the Planning Commission's recommendation of approval to the City Council of additional amendments to the Master Plan and (2) the Planning Commission's approval of a Development Plan, which primarily includes the construction of a new 65,500 square foot two story addition on the southern side (St. Michael's Drive) of the property. The Applicant explained that its 2015 request was an effort to resolve many long-standing issues with the Master Plan and with neighborhood concerns.

Since the property is in a C-1 zoning district, and (partially) in the South Central Highway Corridor Protection District, the Applicant also requested: (3) the Planning Commission's approval of a special use permit in order to use/have a hospital in a commercial district; (4) the Planning Commission's approval of two building height variances for the two story addition (a) under Table 14-7.3-1 to allow 41 feet where 36 feet is the maximum structure height in a C-1 district; and (b) under Code Section 14-5.5(A)(4) to allow 41 feet where 25 feet is the maximum structure height in the South Central Highway Corridor Protection District. The Applicant initially applied for Planning Commission's approval of two sign variances (i.e. placing large logo signs high up on buildings), but the Applicant reached an agreement with the Land Use Department and withdrew this request and the Commission did not vote on the sign request.

On July 2, 2015 and August 6, 2015, the Planning Commission held public hearings and voted to approve all items, subject to the conditions recommended by staff and Commission conditions.<sup>1</sup> On September 3, 2015, the Planning Commission adopted written Findings of Fact and Conclusions of Law embodying its decisions (attached as **Exhibit C**). On September 15, 2015,

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<sup>1</sup> Minutes and numerous other master plan and development plan documents are attached as part of the City Council's agenda item on the Master Plan.

Appellant timely filed the September Petition appealing the Special Use Permit<sup>2</sup>. The September Petition also referred to the sign height variance issue. On October 5, 2015, Appellant filed the October Petition appealing the Development Plan<sup>3</sup>. The October Petition also referred to building height variances issues, which should have been appealed within 15 days of the date the Findings/Conclusions were adopted and with respect to the building height variance, the appeal is not timely.

### Master Plan's Relationship to the Two Appeals

The City Council's review of the Master Plan is listed on the October 28, 2015 agenda as a separate action item. This is because Code Section 14-3.9(C)(4) provides that the Planning Commission is a recommending board to the City Council regarding master plans. (This means the Appellant did not need to file an appeal of Commission's actions on the Master Plan because he could provide comment during the public hearing on the Master Plan agenda item). In contrast, the Planning Commission, under Code Section 14-2.1, has final approval on development plans and special use permits. Code Section 14-3.17(C) provides that a citizen, like Appellant, can file an appeal to the City Council on development plans and special use permits.

The City Clerk's Office, for purposes of efficiency, has scheduled the City Council's review of the Planning Commission's recommendation on the Master Plan on the same date as the City Council's hearing on Appellant's appeals on the development plan and special use permit. There is a logical connection in having a shared discussion at the same meeting because the Master Plan and the Development Plan must remain consistent with each other. Therefore, if the City Council wants to rule in favor of the Appellant regarding a specific appeal issue, the Council must make sure the provisions of the Master Plan and Development Plan are consistent.

The Land Use Department staff has prepared a memorandum recommending approval of the Master Plan and it is included in the meeting packet. City staff anticipates that the Applicant will discuss the Master Plan during the Applicant's presentation, as there are several major areas for Council consideration:

- (1) the new 41 foot tall, two story addition on the south side of the facility to create new main entrance (on the first floor) and private hospital rooms (on the second floor) connected to the existing facility;
- (2) the landscaping buffer between the property and the residential neighborhood on the north side of the facility;
- (3) the new circulation pattern for traffic onto and within the campus; and
- (4) the change to make the southern-most entrance on Hospital Drive an entrance only point.

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<sup>2</sup> Appeals of Special Use Permits must be filed within 15 days of the date the Findings/Conclusions are adopted (Code Section 14-3.17(C)(1)(b)).

<sup>3</sup> Appeals from development plan approvals must be filed within 30 days of the date the Findings/Conclusions are adopted (Code Section 14-3.17(C)(1)(a)).

In addition, Land Use Department staff recommends that the Council impose as a condition on the Master Plan a limitation on hours of construction. The Applicant does not accept the condition, stating that the condition should attach only to the Development Plan, which regulates the addition project. The Planning Commission's intent with respect to the condition is unclear, as in the Findings/Conclusions it explicitly imposed the condition only on the Development Plan, while approving the Master Plan with an exhibit attached that included the condition. The Council will specifically decide this question.

### Basis of the Two Appeals

The Appellant cites the following specific bases for appeal:

1. September Petition--Special Use Permit – the construction of private rooms (which are allegedly more expensive than building a mix of private and semi-private rooms) does not meet the criteria for a special use permit under Code Section 14-3.6(D)(1)(b) because it will allocate resources away from other needs and thus “adversely affect the public interest.” (Claim 1)
2. September Petition- Special Use Permit— the increase in noise intensity does not meet the criteria for a special use permit under Code Section 14-3.6(D)(1)(c) because it is not compatible with the residential uses of the abutting neighborhood properties. (Claim 2)
3. September Petition-- Sign Variance—the Land Use Department cannot evaluate the sign variance requests because this process must occur during a public hearing under Code Section 14-3.16(B)(1). (Claim 3)
4. October Petition-- Development Plan—the two story addition's rectangular box design (as opposed to existing stepped massing) and the stone access walls (as opposed to the existing plain walls) is inconsistent with the 1985 Master Plan. (Claim 4)
5. October Petition – Height Variance—the height variance request does not meet the criteria for a variance under Code Section 14-3.16(C)(2) because a shorter structure is feasible. (Claim 5)
6. October Petition – Height Variance—the height variance request does not meet the criteria for a variance under Code Section 14-3.16(C)(3) because the added noise will create an improper “intensity of development.” (Claim 6)
7. October Petition – Height Variance—the height variance request does not meet the criteria for a variance under Code Section 14-3.16(C)(4) because there is already a “reasonable use of the land”. (Claim 7)

### Discussion

Code §14-3.17(A)(2) provides that an appeal can only be filed if: (1) the final action appealed from does not comply with Code Chapter 14 or §§3-21-1 through 3-21-14 NMSA<sup>4</sup> (the Statute); (2) Code Chapter 14 has not been applied properly; or (3) the decision appealed from is not supported by substantial evidence.

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<sup>4</sup> Section 3-21-8 B. NMSA 1978 provides in pertinent part: “Any aggrieved person...affected by a decision of an administrative...commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. ...”

**General Claims.** With respect to Appellant general claims, the Planning Commission properly applied Chapter 14 and relied on substantial evidence in the record and thus Appellant's appeal should be denied.

**Claim 1.** The construction of private rooms (which are allegedly more expensive than building a mix of private and semi-private rooms) does not meet the criteria for a special use permit.

Code Section 14-3.6(D)(1)(b) provides that one criterion that needs to be established prior to approving a special use permit is "granting the special use permit does not adversely affect the public interest." Appellant wrote in its September Petition: "testimony from the [neighborhood] association showed that the criterion in 14-3.6(D)(1)(b) was not met because peer-reviewed research supports a mix of private and semi-private rooms, so that the project would allocate resources away from other needs, contrary to the public interest." Appellant concluded: "The decision to approve the Special Use Permit lacks substantial evidence to support it."

The term "substantial evidence" means "relevant evidence that a reasonable mind could accept as adequate to support a conclusion." *Sims v. Sims*, 1996-NMSC-098, ¶ 65, 122 N.M. 618, 930 P.2d 153. Substantial evidence is not a "beyond a reasonable doubt" evidential standard; it only has to be evidence of some weight and reasonableness. For example, Mr. Jason Adams, Chief Operations Officer for the Applicant, referred to research which supports that private rooms are more advantageous:

"Also the studies including this one from Dr. Roger Ulrich at Texas A&M University, that demonstrate that private rooms will reduce infection rates in hospitals and also lower stress for patients. It will provide higher quality of care." (Planning Commission minutes, July 2, 2015, p. 13)

"Roommates are a source of stress 85 to 90% of the time. In addition it provides increased staff and patient safety when they do transfers. Every time a patient is moved there is potential risk for a fall. So having private rooms will reduce injuries." (Planning Commission minutes, July 2, 2015, p. 13)

"The connection of private rooms and quality health care is direct connection. There are no new semi-private rooms in hospitals today." (Planning Commission minutes, July 2, 2015, p. 32)

Mr. Earl Potter, Hospital Board Member, told the Planning Commission that there was specific, dedicated funding for the project and thus the addition was not allocating resources away from other parts of the hospital.

It will cost \$40 million to make these rooms state of the art...we raised the \$40 million. No entity gave it to the hospital. We put together the financing so we

could have a first class facility. (Planning Commission minutes, July 2, 2015, p. 32).

The Commission agreed with the Applicant regarding the special use permit criteria. It adopted Finding of Fact #43, which stated: "The special use permit does not adversely affect the public interest in that the building addition will provide a benefit to the health, safety and privacy of the hospital's patients." Based on the above, the record establishes that the Applicant did provide substantial evidence showing that the special use permit will not adversely affect the public interest under Code Section 14-3.16(D)(1)(b).

Therefore, Claim 1 does not fall within any of the three bases for appeal cited above and should be denied.

**Claim 2.** The increase in noise does not meet the criteria for a special use permit.

Code Section 14-3.6(D)(1)(c) provides that another criterion for approving a special use permit is "the use and associated buildings are compatible with ... uses of the abutting property and other properties in the vicinity of the premises under consideration." Appellant wrote in its September Petition: "testimony from the neighborhood association showed that the criterion in 14-3.6(D)(1)(c) would not be compatible with the health of residents in the vicinity." Appellant concluded: "The decision to approve the Special Use Permit lacks substantial evidence to support it."

The Applicant, again, provided substantial evidence to defend its actions. The Applicant stated that the two story addition would generate noise, but it was being built toward the southern end of the property (near St. Michael's Drive) as opposed toward the northern end to mitigate the noise issues. The Applicant stated that they considered:

"Putting it on the north but that is much closer to residential neighbors...."  
(Planning Commission minutes, July 2, 2015, p. 14).

The Applicant did not believe the noise level would be greater than the existing status quo. This was because once the mixed rooms in the existing facility were converted into private rooms and the brand new private rooms in the addition came on line, there would only be room for six more patients. The Commission entered Finding of Fact #73, which stated: "the intensity of development will not exceed that which is allowed on other properties in the vicinity that are subject to the same regulations, in that as a result of the renovation only six new medical surgical beds will be added."

The Applicant acknowledged that some neighbors were specifically concerned about the ongoing noise from several generators spread throughout entire hospital facility.<sup>5</sup> The Applicant

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<sup>5</sup> While Appellant may have concerns about the noise generated by overhead helicopter travel, the Applicant did not propose any changes to the helicopter travel issue and this issue was not part of this matter.

stated: "Generator noise is being addressed." (Planning Commission minutes, July 2, 2015, p. 16). At the August 2015 meeting, the Applicant provided follow-up:

"[W]e have a letter from the owners of the Physicians Plaza Building [on the northwest side]...they...will be removing the generator [from that location]." (Planning Commission minutes, Aug. 6, 2015, p. 46)

"We are building a building around it [generator on the northeast side]. Correct. And it will be approved with sound attenuation in the interior of the building as far as the wall structure goes." (Planning Commission minutes, Aug. 6, 2015, p. 46)

The Commission noted the Applicant's pro-active steps. It entered Findings of Fact #55-57.

55. The Applicant stated it will enclose the generator on the northeast side of the property with a manufactured enclosure during the early phases of the upcoming construction project. The generator in the central part of the property is already enclosed. The Applicant presented a letter from the current owner of the Physicians Plaza Building stating that the generator would be removed.

56. The Applicant stated it could limit the noise levels to 50dBA throughout the day and night.

57. The Land Use Department Current Planning's Condition #2 shall be amended to read: "Noise from generators and or mechanical equipment within the Hospital Master Plan campus at the residential property shall not exceed 50 dBA twenty-four hours a day.

The Commission added Finding of Fact #44: "City Code establishes a hospital as an Institutional use, which is permissible within a C-1 District with a special use permit. The building addition is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project in that the building addition has been sited on the south side of the property to minimize adverse visual, traffic and noise and other impacts to the neighborhood on the north side of the property."

Some neighbors were more concerned about the noise during the construction period. The Applicant stated that the work staging area will be "818 feet away from our nearest neighbor." (Planning Commission minutes, Aug. 6, 2015, p. 65). The placement of the two story addition on the southern end (with the existing hospital facility in the middle of the campus) would mitigate noise issues because:

"Buildings are good at reducing the spread of noise and sound [from construction]. I think it's a barrier just from a contact standpoint." (Planning Commission minutes, Aug. 6, 2015, p. 65)



The Commission and the Applicant also had a discussion about limiting the construction hours. The Commission has imposed construction time limitations on prior construction projects. The Applicant, after some debate, stated:

“I have a suggestion as a potential compromise, if it would be helpful. We would be in agreement with 7[AM]-7[PM] Monday through Friday, and 8-5 on Saturday. So no late evenings.... (Planning Commission minutes, Aug. 6, p. 70)

Based on the above, the Applicant provided substantial evidence that it had taken and will be taking steps during the construction period and on an on-going basis to make the project compatible with the uses of the abutting residential property.

Therefore, Claim 2 does not fall within any of the three bases for appeal cited above and should be denied.

**Claim 3.** Sign Variance-- the Land Use Department cannot evaluate the sign variance requests because this process must occur during a public hearing.

Appellant has pointed out that the Commission's Findings of Fact allow the Land Use Department to administratively approve sign issues. Appellant argues this process is inconsistent with Code Section 14-3.16(B)(1). This provision states that the Planning Commission, after a public hearing, has the power to review variance requests.

The Land Use Department informed the Planning Commission that the 1985 Master Plan has a section titled: "Signing" and it states a "separate study should be conducted on the sign treatment for the Hospital. The preparation of signage for any large institutional facility is a specialized field that requires a specialized expertise." It does not appear that this study was ever completed. Land Use Department staff told the Planning Commission:

“[T]he Applicant, instead of going to the variance criteria...with regard to the signage and both the Applicant's attorney and I both agreed...they included the existing language within the 1985 Master Plan that identified the sign portion...[it] was requested as staff's review to work with the Applicant to meet that goal which will fall under the Land Use Director's authority within Chapter 14.”

Chair Harris said: “So that Sign Plan would address all existing, campus wide, all existing and proposed signs, is that correct.”

Mr. Esquibel said: “We would evaluate the entire campus under a Sign Plan, that is correct, both on and off site, to meet goals of the Master Plan as specified within the 1985 Master Plan.”

Chair Harris said: "The way you stated it, then there's no variance to consider, it's just simply a condition to the Development Plan." (Planning Commission minutes, Aug, 6, 2015, p. 72)

Based on this information, the Commission wrote Findings of Fact #64-65:

"64. The Land Use Department, at the hearing, stated it would evaluate the entire campus under a sign plan, including all existing and proposed signs, to ensure the signs meet the goals of the 1985 Master Plan.

65. The Land Use Department Current Planning conditions shall include an additional condition: "The Land Use Department shall have the authority to administratively approve such signage as is consistent with the goals of the 1985 Master Plan and may do so without the need for a variance if such signage exceeds the standards in the Land Development Code."

Appellant's argument fails on two grounds. First, the Applicant voluntarily withdrew its request for the Commission to review the sign variance issue. As Chairperson Harris stated "there's no variance to consider" and there was no vote on the sign variance issue. There was no final action taken.

Second, the Land Use Department has agreed to go back to the 1985 Master Plan and make a comprehensive review of the sign issue. The Land Use Department may have to study whether the Master Plan pre-dates certain variance requirements and whether certain items are grandfathered in, but the Land Use Department staff at the Planning Commission meeting was not ready to make that determination. The outcome of the Land Use Department's work is unknown at this time. Therefore, it is premature for Appellant to try to appeal the sign issue at this time.

Therefore, Claim 3 does not fall within any of the three bases for appeal cited above and should be denied.

**Claim 4.** The two story addition's rectangular box design (as opposed to existing stepped massing) and the stone access walls (as opposed to the existing plain walls) is inconsistent with the 1985 Master Plan.

Appellant wrote in its October petition: "one of the standards on page 33 of the 1985 Master Plan is, 'The architectural style for additions or buildings ... shall be compatible with the architectural style of St. Vincent Hospital.'" Appellant asserted that the hearing "showed that the development plan fails to meet that standard in two respects: 1. The stone accent walls are inconsistent with the plain walls of the existing hospital. 2. The rectangular box design is different from the stepped massing that characterizes the existing hospital."

The Land Use Department staff stated:

We did take a look at the architectural with the Applicant. It ... should be noted the Applicant is in line with meeting the architectural point standards. We actually sat with Director Martinez in a long meeting to discuss the architectural requirements.” (Planning Commission minutes, Aug. 6, 2015, p. 55).

Director Martinez told the Planning Commission that the two story addition was compatible, if not very similar, to existing hospital buildings:

Just a couple of comments I would like to make with regard to the architectural materials and the discussion we had about the stone and the steel. If I'm not mistaken...but in other parts of the Hospital that have been renovated, like the surgical area, I believe it's the same stonework that is being proposed on the addition. It is the same material that was used in that particular area. (Planning Commission minutes, Aug. 6, 2015, p. 69).

Code Section 14-3.8(C)(3) states any development plan must be “consistent” with a master plan and the Hospital Master Plan states that any additions must be “compatible” with existing buildings. The terms “consistent” and “compatible” do not mean “identical” in this context. Therefore, the Applicant and the Land Use Department provided substantial evidence that the addition was consistent and compatible with existing structures.

Therefore, Claim 4 does not fall within any of the three bases for appeal cited above and should be denied.

**Claim 5.** Height Variance—the height variance request does not meet the Section 14-3.16(C)(2) criteria for a variance.

Code Section 14-3.16(C) provides several criteria that need to be established prior to approving a variance request. Code Section 14-3.16(C)(2) states a requestor must show there is “special circumstances [that] make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14.” Appellant wrote that there was testimony that “showed that the criterion in 14-3.16(C)(2) was not met because a one-story wing is feasible.”

It should be noted that Appellant filed this portion of the appeal on October 5, 2015, almost thirty days after the Commission approved the Findings of Fact. The general rule is that an appeal must be filed in fifteen days. The only exception is for appeals of subdivision plats, master plans, and development plans. Apparently, Appellant believed these height variances were such a part and parcel of the development plan that they should be shoe-horned in with the development plan appeal and its later deadline (i.e. October 5th vs. September 15th). One, however, could interpret the Code to mean that an appeal on a variance issue is an appeal on a variance issue (and not part of an appeal of a development plan). In fact, the Appellant filed the September Petition within the required 15 days, and could have appealed the variance at that

time. Therefore, this portion of appeal should have been filed within fifteen days and was untimely.

Even if the Council does not want to dismiss this claim on procedural timeliness grounds, the Applicant provided more than enough substantial evidence to establish that a one story building will not work. This was because the medical units—where the patients would be sent for care—are already on the second floor of the existing hospital. The Applicant stated:

“A critical element of the application is that it has to connect with the existing med[ical]/sur[gery] unit for staff proximity on the second floor. They can't have ramps or stairways for patient safety.” (Planning Commission minutes, July 2, 2015, p. 13)

The Applicant's goal was to connect the existing two story facility with a new two story addition.

“[We've] reiterated that ...[we] are proposing a 2-story building to accomplish connectivity for patient and staffing that has to connect with the existing patient area.” (Planning Commission minutes, July 2, 2015, p. 14)

“It is important to add that on the second story because they will create a two-story connector between the old hospital and the new addition....” (Planning Commission minutes, July 2, 2015, p. 13)

The Commission agreed with the Applicant regarding the variance criteria. It entered Finding of Fact #73, which stated: “special circumstances exist as the location of the Building on the Property, including the connection height of the new addition is necessary to provide for a level floor-to-floor connection to the existing floors of the hospital and the hospital is subject to state and federal regulations that require a ducted return air system that adds to the structural height of the facility.” Based on the above, the Applicant did provide substantial evidence to satisfy Code Section 14-3.16(C)(2).

Therefore, Claim 5 could be dismissed as untimely. Claim 5 also does not fall within any of the three bases for appeal cited above and should be denied.

**Claim 6.** – Height Variance—The request does not meet the Section 14-3.16(C)(3) criteria for a variance.

Code Section 14-3.16(C)(3) states a requestor must show the “intensity of development shall not exceed that which is allowed on other properties in the vicinity....” Appellant wrote in its October Petition that there was testimony that “showed that the criterion in 14-3.16(C)(3) was not met because the increased intensity of noise will have a negative impact on the neighboring residents.”

The analysis of noise issues was covered in Claim 2 above.

Therefore, Claim 6 should be dismissed as untimely. Claim 6 also does not fall within any of the three bases for appeal cited above and should be denied.

**Claim 7.** – Height Variance—The request does not meet the Section 14-3.16(C)(4) criteria for a variance.

Code Section 14-3.16(C)(4) states a requestor must show the “variance is the minimum variance that will make possible the reasonable use of the land or structure....” Appellant stated the testimony “showed that the criterion in 14-3.16(C)(4) was not met because the current hospital is already a reasonable use of the land or structure.”

As stated in Claim 5, the Applicant provided its rationale for having a two story addition. Code Table 14-7.3-1 sets 36 feet as the maximum structure height in a C-1 district. Code Section 14-5.5(A)(4) sets 25 feet as the maximum structure height in the South Central Highway Corridor Protection District. The Applicant stated it was seeking a minor deviation from these standards due to regulatory requirements that require taller floor spaces for hospitals:

The maximum allowable height they are requesting is 41’ so in looking at the difference from 36’ that is the 5’ variance. Hospitals have unique structural needs from floor to floor and 14’ is really the industry standard for the mechanical equipment and needs in patient rooms. They have 14’ floor to floor in the existing part of the hospital now.” (Planning Commission minutes, July 2, 2015, p. 30).

The Master Plan calls for a maximum height of 65’ in some places of the facility. The Commission, however, agreed that the Applicant had taken steps to minimize the height on the addition and limit it to 41’ and entered Finding of Fact #73, which reads: “the variance is the minimum variance that will make possible the reasonable use of the structure, in that the request is the minimum height that would make it possible to construct the new addition.” Based on the above, the Applicant did provide substantial evidence to satisfy Code Section 14-3.16(C)(4).

Therefore, Claim 7 should be dismissed as untimely. Claim 7 also does not fall within any of the three bases for appeal cited above and should be denied.

### **Conclusion**

Based upon the foregoing, Appellant has not effectively alleged that the approval of the development plan, special use permit and variances do not comply with applicable Code or the Statute; that the Code has been improperly applied; or is not supported by substantial evidence. As a result, the Appellant has failed to state a valid basis for appeal under Code §14-3.17(A)(2).

Option #1: The CAO recommends that the Governing Body vote to dismiss the Appellant's appeal in Case No. 2015-89 and Case No. 2015-96. First, the Governing Body should adopt the Master Plan. Then, the Governing should move to dismiss each appeal.

*[MOTION: I move that we adopt the Planning Commission's recommendation of approval of the Master Plan, with all conditions, and adopt the Planning Commission's Findings of Fact and Conclusions of Law as our own.]*

*[MOTION: I move that the Planning Commission acted in accordance with law and reliance on substantive evidence and to dismiss the appeal in Case No. 2015-89.]*

*[MOTION: I move that the Planning Commission acted in accordance with law and reliance on substantive evidence and to dismiss the appeal in Case No. 2015-96.]*

Option #2: If, however, the Governing Board concludes that the Planning Commission's approval of development plan or special use permit or variances do not meet the criteria of City Code, it should grant the appeal.

*[MOTION: I move to grant the appeal in Case No. 2015-89 and Case No. 2015-96 on grounds the Planning Commission did not act in accordance with law and did not rely on substantive evidence and to deny the special use permit, development plan and variances and to direct staff to prepare for the Governing Body's approval findings of fact and conclusions of law reflecting this decision].*



LUD Use Only  
 Time Filed: 1:38 PM  
 Fee paid: \$100.00  
 Receipt attached:

(date stamp)  
 RECEIVED  
 SEP 15 2015  
 Land Use Dept.

Case # 2015-89  
**VERIFIED APPEAL**  
**PETITION**

**\*\*Two originals of this form must be filed. The Land Use Department Director or his/her designee will enter the date and time of receipt and initial both originals. See Section 14-3.17(D) SFCC 2001 for the procedure.\*\***

**Appellant Information**

Name: WALSH BOB (ROBERT C.)  
Last First M.I.  
 Address: 1553 CAMINO AMADO  
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SANTA FE NM 87505  
City State ZIP Code  
 Phone: (505) 470-1254 E-mail Address: WALSHB@CYBERMESA.COM  
 Additional Appellant Names: \_\_\_\_\_

Correspondence Directed to:  Appellant  Agent  Both

**Agent Authorization (if applicable)**

I/We: \_\_\_\_\_  
 authorize \_\_\_\_\_ to act as my/our agent to execute this application.  
 Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Subject of Appeal**

Project Name: INPATIENT BED WING  
 Applicant or Owner Name: CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER  
 Location of Subject Site: 455 ST. MICHAELS DR., SANTA FE  
 Case Number: 2015-75 Permit Number (if applicable): \_\_\_\_\_

**Final Action Appealed:**

Issuance of Building Permit  Other Final Determination of LUD Director

Final Action of Board or Commission (specify):  Planning Commission  Board of Adjustment  BCD-DRC  HDRB

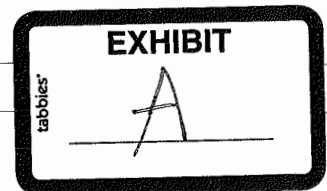
Basis of Standing (see Section 14-3.17(B) SFCC 2001):

Person alleging injury to environmental interest & potential injury to aesthetic interest.  
 Basis for Appeal:  The facts were incorrectly determined  Ordinances/laws were violated and/or misrepresented

Description of the final action appealed from, and date on which final action was taken:

APPROVAL OF SPECIAL USE PERMIT SUBJECT TO CONDITIONS,  
3 SEPTEMBER 2015

Check here if you have attached a copy of the final action that is being appealed.



**Description of Harm**

Describe the harm that would result to you from the action appealed from (attach additional pages if necessary):

SEE ATTACHED PAGE.

**Explain the Basis for Appeal**

Please detail the basis for Appeal here (be specific):

SEE ATTACHED PAGE.

**Signature and Verification**

I hereby certify that the documents submitted for review and consideration by the City of Santa Fe have been prepared to meet the minimum standards outlined in the Land Development Code, Chapter 14 SFCC 2001. Failure to meet these standards may result in the rejection or postponement of my application. I also certify that I have met with the City's Current Planning staff to verify that the attached proposal is in compliance with the City's zoning requirements.

Appellant Signature: Bob Walsh Date: 9/15/15

Agent Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of New Mexico )  
) ss.  
County of Santa Fe )

I/We Bob Walsh, being first duly sworn, depose and say: I/We have read the foregoing appeal petition and know the contents thereof and that the same are true to my/our own knowledge.

Petitioner/s:

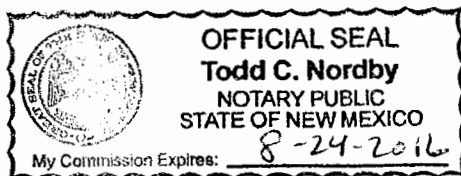
Bob Walsh  
Signature

~~\_\_\_\_\_  
Signature~~

Robert C. Walsh  
Print Name

~~\_\_\_\_\_  
Print Name~~

Subscribed and sworn to before me this 15<sup>th</sup> day of September, 20 15.



Todd C. Nordby  
NOTARY PUBLIC  
My commission expires: 8-24-2016



Additional Page for Appeal of Case # 2015-75 (Special Use Permit)

Project Name: Inpatient Bed Wing Project

Owner Name: Christus St. Vincent Regional Medical Center

Location of Subject Site: 455 St. Michaels Dr., Santa Fe

Case Number: 2015-75

Final Action Appealed: Planning Commission

Basis of Standing: Person alleging injury to environmental interest  
and potential injury to aesthetic interest.

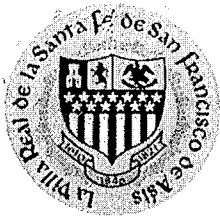
Basis for Appeal: The facts were incorrectly determined.  
Ordinances were violated.

Description of final action and date: Approval of special use permit subject to conditions, 3 September 2015

Description of harm: The increased intensity will increase the noise impact at my nearby residence, thereby increasing the detrimental effect on my health and that of my family. A sign variance might impact the clear sense of visual openness and continuity of development, as seen from this major highway entrance to Santa Fe.

Explain the Basis for Appeal

The decision to approve the Special Use Permit lacks substantial evidence to support it. Specifically, testimony from the neighborhood association showed that the criterion in 14-3.6(D)(1)(c) was not met because the increased noise intensity would not be compatible with the health of residents in the vicinity. Also, testimony from the association showed that the criterion in 14-3.6(D)(1)(b) was not met because peer-reviewed research supports a mix of private and semi-private rooms, so that the project would allocate resources away from other needs, contrary to the public interest. Condition m) is not in compliance with 14-3.16(B)(1) and 14-2.11(C)(3), which require a public hearing for a variance, except for minor deviations of 12 inches or less.



LUD Use Only  
 Time Filed: 10:57 AM  
 Fee paid: \$100.00  
 Receipt attached:

(date stamp)  
**RECEIVED**  
 OCT 05 2015  
 Land Use Dept.

Case # 2015-96  
**VERIFIED APPEAL**  
**PETITION**

**\*\*Two originals of this form must be filed. The Land Use Department Director or his/her designee will enter the date and time of receipt and initial both originals. See Section 14-3.17(D) SFCC 2001 for the procedure.\*\***

**Appellant Information**

Name: WALSH BOB (ROBERT C.)  
Last First M.I.  
 Address: 1553 CAMINO AMADO  
Street Address Suite/Unit #  
SANTA FE NM 87505  
City State ZIP Code  
 Phone: (505) 470-1254 E-mail Address: WALSHB@CYBERMESA.COM  
 Additional Appellant Names: \_\_\_\_\_

Correspondence Directed to:  Appellant  Agent  Both

**Agent Authorization (if applicable)**

I/We: \_\_\_\_\_  
 authorize \_\_\_\_\_ to act as my/our agent to execute this application.  
 Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Subject of Appeal**

Project Name: INPATIENT BED WING  
 Applicant or Owner Name: CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER  
 Location of Subject Site: 455 ST. MICHAELS DR., SANTA FE  
 Case Number: 2015-74 Permit Number (if applicable): \_\_\_\_\_

**Final Action Appealed:**  
 Issuance of Building Permit  Other Final Determination of LUD Director

Final Action of Board or Commission (specify):  Planning Commission  Board of Adjustment  BCD-DRC  HDRB

Basis of Standing (see Section 14-3.17(B) SFCC 2001):  
Person alleging injury to aesthetic interest  
 Basis for Appeal:  The facts were incorrectly determined  Ordinances/laws were violated and/or misrepresented

Description of the final action appealed from, and date on which final action was taken:  
APPROVAL OF DEVELOPMENT PLAN AND VARIANCES SUBJECT TO CONDITIONS, 3 SEPTEMBER 2015

Check here if you have attached a copy of the final action that is being appealed.



**Description of Harm**

Describe the harm that would result to you from the action appealed from (attach additional pages if necessary):

SEE ATTACHED PAGES,

**Explain the Basis for Appeal**

Please detail the basis for Appeal here (be specific):

SEE ATTACHED PAGES.

**Signature and Verification**

I hereby certify that the documents submitted for review and consideration by the City of Santa Fe have been prepared to meet the minimum standards outlined in the Land Development Code, Chapter 14 SFCC 2001. Failure to meet these standards may result in the rejection or postponement of my application. I also certify that I have met with the City's Current Planning staff to verify that the attached proposal is in compliance with the City's zoning requirements.

Appellant Signature: Bob Walsh Date: 10/5/15

Agent Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of New Mexico )  
) ss.  
County of Santa Fe )

I/We Chris F. Gurule, being first duly sworn, depose and say: I/We have read the foregoing appeal petition and know the contents thereof and that the same are true to my/our own knowledge.

**Petitioner/s:**

Bob Walsh  
Signature

\_\_\_\_\_  
Signature

Robert Walsh  
Print Name

\_\_\_\_\_  
Print Name

Subscribed and sworn to before me this 5 day of October, 2015.

Chris F. Gurule



**OFFICIAL SEAL**  
Chris F. Gurule  
NOTARY PUBLIC-State of New Mexico  
My Commission Expires 10-16-2018

**NOTARY PUBLIC**  
My commission expires:  
10-16-2018

Additional Page for Appeal of Case # 2015-74 (Development Plan & Variances)

Project Name: Inpatient Bed Wing Project

Owner Name: Christus St. Vincent Regional Medical Center

Location of Subject Site: 455 St. Michaels Dr., Santa Fe

Case Number: 2015-74

Final Action Appealed: Planning Commission

Basis of Standing: Person alleging injury to aesthetic interest

Description of final action and date: Approval of development plan and variances subject to conditions, 3 September 2015

Description of harm: A) The height variance will impact the clear sense of visual openness and continuity of development, as seen from this major highway entrance to Santa Fe.

B) The development plan for the addition will mix architectural styles in a manner that is not representative of Santa Fe.

C) A sign variance may further impact the clear sense of visual openness and continuity of development, as seen from this major highway entrance to Santa Fe.

Basis for Appeal

A) The decision to approve the height variance lacks substantial evidence to support it. Specifically, testimony from the neighborhood association showed that the criterion in 14-3.16(C)(2) was not met because a one-story wing is feasible. Also, testimony from the neighborhood association showed that the criterion in 14-3.16(C)(3) was not met because the increased intensity of noise will have a negative impact on the neighboring residents. Also, testimony from the neighborhood association showed that the criterion in 14-3.16(C)(4) was not met because the current hospital is already a reasonable use of the land or structure.

B) One of the standards on page 33 of the 1985 Master Plan is, "The architectural style for additions or buildings in Area 1 shall be compatible with the architectural style of St. Vincent Hospital." Testimony from the neighborhood association showed that the development plan fails to meet that standard in two respects:

1. The stone accent walls are inconsistent with the plain walls of the existing hospital.
2. The rectangular box design is different from the stepped massing that characterizes the existing hospital.

C) Condition m), which allows the Land Use Department to approve signage that exceeds the standards in the Land Development Code, is not in compliance with 14-3.16(B)(1) and 14-2.11(C)(3), which require a public hearing for a variance, except for minor deviations of 12 inches or less.

City of Santa Fe  
Planning Commission  
Findings of Fact and Conclusions of Law

Case #2015-47

455 St. Michaels Drive Christus St. Vincent Regional Medical Center Master Plan Amendment

Case #2015-74

455 St. Michaels Drive Christus St. Vincent Regional Medical Center Development Plan & Variances

Case #2015-75

455 St. Michaels Drive Christus St. Vincent Regional Medical Center Special Use Permit

Owner's Name – Christus St. Vincent Regional Medical Center

Applicant's Name – WHR Architects, Inc.

THIS MATTER came before the Planning Commission (Commission) for hearing on July 2, 2015 and August 6, 2015 upon the application (Application) of WHR Architects, Inc., as agent for Christus St. Vincent Regional Medical Center (Applicant).

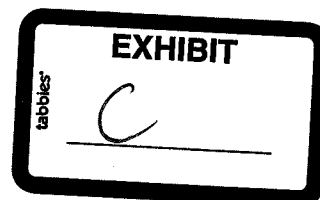
The property is located within the St. Vincent Hospital Campus Master Plan. The original master plan was approved in 1985 and was amended in 2006. The Applicant now: (1) requests recommendation for approval of amendments to the St. Vincent Hospital Campus Master Plan; (2) requests approval of a Development Plan, which includes the construction of a 65,500 square foot addition on Tract A-I-3 containing 20.65± acres and Tract A-2 containing 9.29± acres and two variances (a) under Table 14-7.3-1 to allow 41 feet where 36 feet is the maximum structure height in a C-1 district; (b) under Code Section 14-5.5(A)(4) to allow 41 feet where 25 feet is the maximum structure height in the South Central Highway Corridor Protection District and (3) requests approval of a special use permit, which includes construction of a 65,500 square foot addition of a hospital facility in a C-1 District.

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

FINDINGS OF FACT

General

1. The Commission heard testimony and took evidence from staff, the Applicant, and members of the public interested in the matter.
2. Code § 14-3.9 (C) sets out certain procedures for amendments to master plans including, without limitation, a public hearing by the Commission and recommendation to the Governing Body based upon the criteria set out in Code §14-3.9(D).
3. Code §14-3.6(C) sets out certain procedures for special use permit approval, including, without limitation, a public hearing by the Commission and approval based upon the criteria set out in Code §14-3.6(D).



4. Code § 14-3.8(C) sets out certain procedures for development plan approval, including, without limitation, a public hearing by the Commission and approval based upon the criteria set out in Code §14-3.8(D).
5. Code §14-3.1 sets out certain procedures to be followed on the Application, including, without limitation, (a) a pre-application conference [§14-3.1(E)]; (b) an Early Neighborhood Notification (ENN) meeting [§14-3.1(F) and (c) compliance with Code Section 14-3.1(H) notice and public hearing requirements.
6. Code §14-3.1(F) establishes procedures for the ENN meeting, including (a) scheduling and notice requirements [Code §14-3.1(F)(4) and (5)]; (b) regulating the timing and conduct of the meeting [Code §14-3.1(F)(5)]; and (c) setting out guidelines to be followed at the ENN meeting [§14-3.1(F)(6)].
7. A pre-application conference was held on October 30, 2014 in accordance with the procedures for subdivisions set out in Code § 14-3.1(E).
8. An ENN meeting was held on the Application on March 17, 2015 at the Santa Fe University of Art and Design Forum Lecture Theater.
9. Notice of the ENN meeting was properly given.
10. The ENN meeting was attended by the Applicant and City staff; there were 17 members of the public in attendance and concerns were raised.
11. Commission staff provided the Commission with June 25, 2015 and July 29, 2015 reports (Staff Report) evaluating the factors relevant to the Application.
12. City Land Use Department staff reviewed the Application and related materials and information submitted by the Applicant for conformity with applicable Code requirements and provided the Commission with a written report of its findings in the Staff Report, subject to certain conditions (the Conditions) set out in such report.

#### Master Plan Amendment

13. Under Code Section 14-3.9, an amendment to the Master Plan requires submittal of an application for review and recommendation to the Governing Body by the Planning Commission.
14. The Commission has considered the criteria established by Code Section 14-3.9(D)(1)(a) and finds the following facts: *The master plan is consistent with the general plan.* The St. Vincent Hospital Campus Master Plan complies with the existing density and land use proposed by the City General Plan.
15. The Commission has considered the criteria established by Code Section 14-3.9(D)(1)(b) and finds the following facts: *The master plan is consistent with the purpose and intent of the zoning districts that apply to, or will apply to, the master plan area, and with the applicable use regulations and development standards of those districts.* Consistent with General Plan policies, the Master Plan amendment includes construction at an institutional facility.
16. The Commission has considered the criteria established by Code Section 14-3.9(D)(1)(c) and finds the following facts: *Development of the master plan area will contribute to the coordinated and efficient development of the community.* Consistent with General Plan policies, the amendments to the Master Plan will enhance the provision of medical care and ensure provision of community services for residents.

17. The Commission has considered the criteria established by Code Section 14-3.9(D)(1)(d) and finds the following facts: *The existing and proposed infrastructure, such as the streets system, sewer and water lines, and public facilities, such as fire stations and parks, will be able to accommodate the impacts of the planned development.* Necessary infrastructure and road alignments were previously determined and approved as part of the master plan. The 2006 Master Plan included fifteen conditions, some of which were to be met for all phases subsequent to the Emergency Room Expansion. The subsequent Outpatient Services project was permitted and built without addressing some of the requirements of the 2006 Master Plan.
18. The Applicant requests to modify or delete conditions #1, 4, 5, 6, 7, 8, 11, 12, 13, 14 as found in Sheet MP-1.
19. The Staff Report supported the modification or deletion of these conditions, provided they are replaced with a series of new conditions found in Staff's Exhibit A and the MPO's written submittal (collectively hereinafter as "Exhibit A").
20. Based on the Staff Report and public testimony, the Commission adopted Exhibit A, contingent on the adoption of several modifications to Exhibit A.
21. There was testimony from the City's Traffic Engineering Division and from the public regarding unresolved traffic issues and the 2006 Master Plan.
22. The Traffic Engineering Division's Condition #2, which relates to the 2006 Master Plan Condition #4, shall be amended to read: "The developer shall limit access at their southernmost access point onto Hospital Drive to an entrance only, right-in/left-in right-in/right-out only. This shall be accomplished by signage constructing a raised median." The third and fourth sentences of the Division's condition shall still apply.
23. The Traffic Engineering Division's Condition #4a, which relates to the 2006 Master Plan Condition #6b, shall be amended to add: "Funds equal to the developer's contribution will be placed and held in an escrow account to be maintained by the City. The developer's contribution shall be used solely for the costs that are necessarily incurred for the design, construction or right-of-way acquisition, with either a traffic signal or a roundabout at the Galisteo/San Mateo intersection ("Improvements") and for no other purpose. Any remaining escrow funds not used for the design, construction or right-of-way acquisition of the Improvements within five years of the recordation of the Development Plan shall be returned to the Developer upon request of the Developer."
24. Traffic Engineering Division's Condition #4b, which relates to the 2006 Master Plan Condition #6d, shall be amended to read: "The TIA projects that during this phase of development, the Hospital's northern most access onto Hospital Drive (across from Harkle Road) will fail. At the time of development, the developer shall evaluate all options, including but not limited to implementation of a roundabout, limit access at this location to right-in/right-out/left-in only, unless a revised TIA with more recent traffic data shows that the access operates at adequate levels of service under its current configuration."
25. The 2006 Master Plan Condition #6d called for traffic improvements/mitigation on Hospital Drive.
26. There shall be an additional condition to the Traffic Engineering Division's conditions which shall read: "Applicant shall provide pro rata participation in traffic calming along



Hospital Drive if and to the extent such traffic calming is determined to be necessary by the Public Works Department.”

27. The 2006 Master Plan Condition #6c called for a review of access points to the property and Condition #7 called for a review of the entrance on St. Michael’s Drive.
28. The Applicant’s testimony provided that its goal is to have St. Michael’s Drive as the primary access point to the property.
29. The City Transit Division’s testimony provided that it could re-route all of its buses to have St. Michael’s Drive as the primary access point to the property (and thus avoid an access point on Hospital Drive) provided the grade of the primary access point was corrected to eliminate damage to the back side of the buses.
30. There shall be an additional condition to the Traffic Engineering Division’s conditions which shall read: “Applicant shall make improvements to provide that St. Michael’s Drive is the primary access point to the property, based on review by the Transit Division and review and approval of the Public Works Department.”
31. There was testimony from Staff and from the public regarding unresolved landscaping issues from the 2006 Master Plan.
32. The Land Use Department Landscaping conditions, which relate to the 2006 Master Plan Condition #1, shall include an additional condition, which shall read: “Landscape improvements associated with Sheet LP-104, LP-105, and L-106 shall be installed in Spring 2016.”
33. There was testimony from the public regarding unresolved internal circulation issues from the 2006 Master Plan Condition #12.
34. The Land Use Department Current Planning conditions shall include an additional condition: “The Applicant shall expand its Internal Site Traffic Circulation Plan to study an Internal Pedestrian Circulation Plan.”
35. There was testimony from the public regarding unresolved completion of the 1985 and 2006 Master Plan conditions.
36. The Land Use Department Current Planning conditions shall include an additional condition: “The Applicant shall return to the Planning Commission within one year to provide a review of progress and compliance with all Master Plan conditions.”
37. The City Engineering Division and the State Department of Transportation did not support a new curb cut on the eastern part of St. Michael’s Drive for a future access driveway for maintenance vehicles.
38. Based on the above, the Commission did not adopt this new curb cut as part of its approval of the Master Plan.
39. The Applicant provided testimony that the structural systems of the two-story 65,500 square foot addition will be designed and constructed in order to accommodate the cost effective construction of two additional stories. The Commission did not address this further addition as part of its approval of the Master Plan.

#### The Special Use Permit

40. Under Code Section 14-3.6(C), a special use permit requires a submittal of an application for review and approval by the Planning Commission.

41. Code Section 14-3.6(C) requires: (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 [§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 [§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 [§14-3.6(C)(3)].
42. The Commission has considered the criteria established by Code Section 14-3.6(D)(1)(a) and finds the following facts: *that the Commission has the authority to grant a special use permit for the Project.* The Planning Commission under Code Section 14-2.3(C)(3) is granted the authority to take action on a special use permit if it is part of a development plan.
43. The Commission has considered the criteria established by Code Section 14-3.6(D)(1)(b) and finds the following facts: *That granting a special use permit for the Project does not adversely affect the public interest.* The special use permit does not adversely affect the public interest in that the building addition will provide a benefit to the health, safety and privacy of the hospital's patients.
44. The Commission has considered the criteria established by Code Section 14-3.6(D)(1)(c) and finds the following facts: *That the Project is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project.* City Code establishes a hospital as an Institutional use, which is permissible within a C-1 District with a special use permit. The building addition is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project in that the building addition has been sited on the south side of the property to minimize adverse visual, traffic and noise and other impacts to the neighborhood on the north side of the property.
45. Pursuant to Code Section 14-3.9(B)(3), the special use permit is consistent with the Master Plan.

#### Development Plan

46. Under Code Section 14-3.8(B)(3), a development plan requires a submittal of an application for review and approval by the Planning Commission.
47. Code Section 14-3.8(C)(1) requires applicants for development plan approval to submit certain plans and other documentation that show compliance with applicable provisions of the Code (the Submittal Requirements).
48. The Applicant has complied with the development plan Submittal Requirements.
49. The Commission has considered the criteria established by Code Section 14-3.8(D)(1)(a) and finds the following facts: *that the Commission has the authority to approve the development plan for the Project.* Pursuant to Code Section 14-3.8(B)(3)(a), approval of a development plan by the Commission is required prior to new development with a likely gross floor area of thirty thousand square feet or more located within any residential district in the City. The building addition will be a 65,500 square foot addition.
50. The Commission has considered the criteria established by Code Section 14-3.8(D)(1)(b) and finds the following facts: *That approving the development plan for the Project does not adversely affect the public interest.* Based upon the analysis contained in the Staff

- Report, the evidence presented at the public hearing and the facts set forth in paragraph 42 above, approving the development plan will not adversely affect the public interest.
51. The Commission has considered the criteria established by Code Section 14-3.8(D)(1)(c) and finds the following facts: *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 Project.* Based upon the analysis contained in the Staff Report, the evidence presented at the public hearing and the facts set forth in paragraph 43 above, the Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
  52. Pursuant to Code Section 14-3.9(B)(3), the development plan is consistent with the Master Plan.
  53. Code Section 14-3.8(D)(2) provides that the Commission may specify conditions of approval that are necessary to accomplish the proper development of the area and to implement the policies of the general plan.
  54. The Staff Report provided a set of conditions as found in Exhibit A.
  55. The Applicant stated it will enclose the generator on the northeast side of the property with a manufactured enclosure during the early phases of the upcoming construction project. The generator in the central part of the property is already enclosed. The Applicant presented a letter from the current owner of the Physicians Plaza Building stating that the generator would be removed.
  56. The Applicant stated it could limit the noise levels to 50dBA throughout the day and night.
  57. The Land Use Department Current Planning's Condition #2 shall be amended to read: "Noise from generators and or mechanical equipment within the Hospital Master Plan campus at the residential property shall not exceed 50 dBA twenty-four hours a day ~~from the hours between 9:00pm to 7:00am and 55dBA from the hours between 7:00am to 9:00pm.~~"
  58. The Land Use Department Current Planning conditions shall include an additional condition: "The construction hours for outside Project improvements shall be: Monday through Friday, 7 a.m. to 7 p.m.; Saturday, 8 a.m. to 5 p.m., with no work on Sunday."
  59. The Applicant provided a sustainability plan, which included such items as low flow toilets and lighting fixtures, within its Application.
  60. The Land Use Department Current Planning conditions shall include an additional condition: "The Applicant shall follow its own sustainability plan as provided in its Application."
  61. The Applicant, at the hearing, stated they would not use stucco stone on the outside of the addition.
  62. The Land Use Department Current Planning conditions shall include an additional condition: "The Applicant shall use true stone and not stucco stone on the outside of the addition."
  63. The 1985 Master Plan had a section titled: "Signing" and states a "separate study should be conducted on the sign treatment for the Hospital."
  64. The Land Use Department, at the hearing, stated it would evaluate the entire campus under a sign plan, including all existing and proposed signs, to ensure the signs meet the goals of the 1985 Master Plan.

65. The Land Use Department Current Planning conditions shall include an additional condition: “The Land Use Department shall have the authority to administratively approve such signage as is consistent with the goals of the 1985 Master Plan and may do so without the need for a variance if such signage exceeds the standards in the Land Development Code.”

Variance

66. Under Code Section 14-2.3(C)(3) a variance request that is part of a development plan requires submittal of the variance request for review and approval by the Planning Commission.
67. The Applicant has applied for development plan and variance requests.
68. Pursuant to Code Section 14-3.1(F)(2)(a)(vii) an separate Early Neighborhood Notification meeting is not required for variances.
69. Code Section 14-3.16(B) authorizes the Commission to approve, approve with conditions or deny the variances based on the Application, input received at the public hearing and the approval criteria set forth in Section 14-3.16(C).
70. City Land Use Department staff reviewed the Application and related materials and information submitted by the Applicant for conformity with applicable Code requirements and provided the Commission with a written report of its findings (Staff Report) together with a recommendation to the Commission that the approval criteria for variances had been met for the building heights.
71. Under Table 14-7.3-1, the maximum structure height in a C-1 district is 36 feet and the Applicant is requesting to build to 41 feet.
72. Under Section 14-5.5(A)(4), the maximum structure height in a South Central Highway Corridor Protection District is 25 feet and the Applicant is requesting to build to 41 feet.
73. The information contained in the Staff Report and the testimony and evidence presented at the hearing is sufficient to establish with respect to the Applicant’s request for variances from the requirements are met in that (a) unusual physical characteristics exist that distinguish the Building from others in the vicinity that are subject to the same regulations, in that the existing structure has unusual existing characteristics in its design and configuration, including the existing triangular medical surgical bed units and their relationship and proximity to existing support services within the existing structure; (b) special circumstances exist as the location of the Building on the Property, including the connection height of the new addition is necessary to provide for a level floor-to-floor connection to the existing floors of the hospital and the hospital is subject to state and federal regulations that require a ducted return air system that adds to the structural height of the facility; (c) the intensity of development will not exceed that which is allowed on other properties in the vicinity that are subject to the same regulations, in that as result of the renovation only six new medical surgical beds will be added; (d) the variance is the minimum variance that will make possible the reasonable use of the structure, in that the request is the minimum height that would make it possible to construct the new addition; (e) the variance is not contrary to the public interest, in that the benefits associated with more private hospital rooms, include reduced infection rates, reduced patient stress,

increased patient safety and increased possibility of overnight stays by a patient's family member.

74. Under Code Section 14-8.10(G)(2), the maximum sign size in a C-1 District is 32 square feet and the Applicant had initially requested a variance and under Section 14-8.10(G)(4) the maximum sign height in a C-1 District is 15 feet and the Applicant had initially requested a variance, but Applicant withdrew these variance requests, pursuant to Findings of Fact #63-65.

#### CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the hearing, the Commission CONCLUDES as follows:

##### General

1. The proposals were properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
2. The ENN meeting complied with the requirements established under the Code.
3. The Commission adopts the written report of its findings Staff Report, subject to certain conditions as set out in such report unless as itemized below.

##### The Master Plan Amendment

4. The Commission has the power and authority at law and under the Code to review the proposed amendment to the Master Plan and to make recommendations to the Governing Body regarding such amendment.
5. The Applicable Requirements have been met.

##### Special Use Permit

6. The Commission has the authority to review and approve the special use permit.
7. The Applicable Requirements have been met.

##### Development Plan & Variances

8. The Commission has the authority to review and approve the development plan.
9. The Commission has the authority to review and approve the variance requests.
10. The Applicable Requirements have been met.

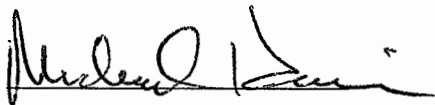
**WHEREFORE, IT IS ORDERED ON THE 3rd DAY OF SEPTEMBER, 2015 BY THE PLANNING COMMISSION OF THE CITY OF SANTA FE:**

That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Commission recommends approval of the master plan amendments to the Governing Body, subject to Staff Conditions and with the conditions:

- a) The Traffic Engineering Division's Condition #2, which relates to the 2006 Master Plan Condition #4, shall be amended to read: "The developer shall limit access at their southernmost access point onto Hospital Drive to an entrance only, right-in/left-in right-in/right-out only. This shall be accomplished by signage constructing a raised median."
- b) The Traffic Engineering Division's Condition #4a, which relates to the 2006 Master Plan Condition #6b, shall be amended to add: "Funds equal to the developer's contribution will be placed and held in an escrow account to be maintained by the City. The developer's contribution shall be used solely for the costs that are necessarily incurred for the design, construction or right-of-way acquisition, with either a traffic signal or a roundabout at the Galisteo/San Mateo intersection ("Improvements") and for no other purpose. Any remaining escrow funds not used for the design, construction or right-of-way acquisition of the Improvements within five years of the recordation of the Development Plan shall be returned to the Developer upon request of the Developer."
- c) Traffic Engineering Division's Condition #4b, which relates to the 2006 Master Plan Condition #6d, shall be amended to read: "The TIA projects that during this phrase of development, the Hospital's northern most access onto Hospital Drive (across from Harkle Road) will fail. At the time of development, the developer shall evaluate all options, including but not limited to implementation of a roundabout, limit access at this location to right-in/right-out/left-in only, unless a revised TIA with more recent traffic data shows that the access operates at adequate levels of service under its current configuration."
- d) There shall be an additional condition to the Traffic Engineering Division's conditions which shall read: "Applicant shall provide pro rata participation in traffic calming along Hospital Drive if and to the extent such traffic calming is determined to be necessary by the Public Works Department."
- e) There shall be an additional condition to the Traffic Engineering Division's conditions which shall read: "Applicant shall make improvements to provide that St. Michael's Drive is the primary access point to the property, based on review by the Transit Division and review and approval of the Public Works Department."
- f) The Land Use Department Landscaping conditions, which relate to the 2006 Master Plan Condition #1, shall include an additional condition, which shall read: "Landscape improvements associated with Sheet LP-104, LP-105, and L-106 shall be installed in Spring 2016."
- g) The Land Use Department Current Planning conditions shall include an additional condition: "The Applicant shall expand its Internal Site Traffic Circulation Plan to study an Internal Pedestrian Circulation Plan."
- h) The Land Use Department Current Planning conditions shall include another condition: "The Applicant shall return to the Planning Commission within one year to provide a review of progress and compliance with all Master Plan conditions."

That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Applicant's request for special use permit and development plan is approved, subject to Staff conditions and **with the conditions:**

- i) The Land Use Department Current Planning's Condition #2 shall be amended to read: "Noise from generators and or mechanical equipment within the Hospital Master Plan campus at the residential property shall not exceed 50 dBA twenty-four hours a day ~~from the hours between 9:00pm to 7:00am and 55dBA from the hours between 7:00am to 9:00pm.~~
- j) The Land Use Department Current Planning conditions shall include an additional condition: "The construction hours for outside Project improvements shall be: Monday through Friday, 7 a.m. to 7 p.m.; Saturday, 8 a.m. to 5 p.m., with no work on Sunday."
- k) The Land Use Department Current Planning conditions shall include an additional condition: "The Applicant shall follow its own sustainability plan as provided in its Application."
- l) The Land Use Department Current Planning conditions shall include an additional condition: "The Applicant shall use true stone and not stucco stone on the outside of the addition."
- m) The Land Use Department Current Planning conditions shall include an additional condition: "The Land Use Department shall have the authority to administratively approve such signage as is consistent with the goals of the 1985 Master Plan and may do so without the need for a variance if such signage exceeds the standards in the Land Development Code."

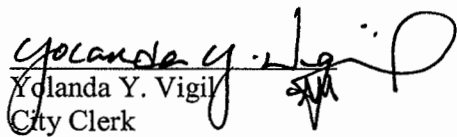


Michael Harris, Chair

Date:

9/3/15

FILED:

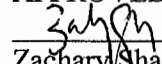


Yolanda Y. Vigil  
City Clerk

Date:

9/8/15

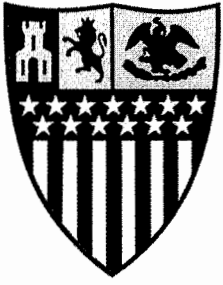
APPROVED AS TO FORM:



Zachary Shandler  
Assistant City Attorney

Date:

9/3/15



# City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909  
www.santafenm.gov

*Javier M. Gonzales, Mayor*

**Councilors:**

Peter N. Ives, Mayor Pro Tem, Dist. 2  
Patti J. Bushee, Dist. 1  
Signe I. Lindell, Dist. 1  
Joseph M. Maestas, Dist. 2  
Carmichael A. Dominguez, Dist. 3  
Christopher M. Rivera, Dist. 3  
Ronald S. Trujillo, Dist. 4  
Bill Dimas, Dist. 4

October 22, 2015

Bob Walsh  
1553 Camino Amado  
Santa Fe, NM 87505

by letter and email [walshb@cybermesa.com](mailto:walshb@cybermesa.com)

Re: Christus St. Vincent--appeals

Dear Mr. Walsh:

On October 20, 2015, the City Attorney's Office received a copy of your October 19, 2015 letter asking for a postponement of your two appeals because you did not send written notice of the hearing to the Applicant, the neighborhood association and the area neighbors.

- However, your letter acknowledges that you knew you had an obligation to send a notice to the Applicant, the neighborhood association and the area neighbors.
- Your letter acknowledges that you had prepared a draft notice "complete, except for the time and place of the appeal hearing."
- Your letter acknowledges that City staff notified you back in September that the date of the hearing was going to be October 28, 2015.
- Absent staff telling you otherwise, it seems logical to conclude that the place would be standard place (the City Council Chambers) and the time would be the standard time (7:00pm).<sup>1</sup>

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<sup>1</sup> It is also logical to conclude that your second appeal would be consolidated with your first appeal (since they deal with some overlapping issues) at the October 28, 2015 meeting.



- Nevertheless, you acknowledge you never filled in the place and time on the notice and you never completed the notice.
- Your letter asserts that this was not your fault because the notice was provided to the Land Use Department and it was “not examined.” Your letter also asserts you never mailed the notice because you requested a copy of the mailing list for the area neighbors and the Land Use Department never provided the list to you.
  - Our office cannot substantiate your assertions because they lack sufficient dates and details of these events.
  - Our office cannot substantiate your assertions because it is unclear whether you made any effort to follow-up with the Land Use Department to obtain the above-stated information.
  - Our office was first informed of your issue by your October 19 letter. Our office never received correspondence from you in September or early October saying things like “my deadline is approaching” or “I need your assistance in obtaining the mailing list because my deadline is approaching.”
- Ironically, the consequence of an Appellant failing to provide the notice is not a postponement of the appeal to a later date, but under City Code, the appeal “shall be deemed withdrawn and may not be refiled.”
- Under City Code, the Land Use Director may waive the Appellant’s notice requirements (and the resulting sanction of withdrawal of the appeal) if the Appellant shows good cause reason why the notice was not mailed. Therefore, we construe your letter as actually a request to waive the notice requirement.
- I believe there is a path forward--the two appeals should continue at the October 28 meeting because:
  - the City Council’s action on the Master Plan will occur anyway on October 28, regardless of whether your appeals are heard at that date (and it makes sense to discuss the Master Plan and appeals at the same public meeting);
  - You had notice of the October 28 hearing date and you have had sufficient time to prepare for the hearing;
  - You, as an officer in the SMASH neighborhood association, had notice of the October 28 hearing date and thus SMASH had constructive notice of the hearing date;
  - The City Attorney’s Office provided verbal notice to Christus St. Vincent of the October 28 hearing date and they have had sufficient time to prepare for the hearing; and

- The City Attorney's Office, in lieu of your failure to provide notice to the area neighbors, has taken multiple and immediate steps to notify the area neighbors.<sup>2</sup>
- You are free to make an oral request for postponement of your appeals during the October 28 hearing date, and we cannot anticipate what the City Council might do. Without sounding unduly harsh, it is possible that:
  - The City Council will deny your request; or
  - Christus St. Vincent will make an argument that you failed to provide notice and your appeals should be "withdrawn" (i.e. automatically dismissed) without the Council hearing any of your substantive arguments; or
  - Our office will make an argument that a postponement is a pyrrhic victory, because if the City Council discusses the neighborhood concerns and adopts the Master Plan on October 28, then we will file a motion to dismiss your appeals (and under City Code, this type of motion does not allow the Appellant to make any oral and written presentation to the City Council on the substance of the appeals).

Thank you for your time and consideration of this matter.

Sincerely,



Zachary Shandler

Assistant City Attorney

Cc: Frank Herdman, legal counsel for Applicant

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<sup>2</sup> The City Attorney's Office wrote a Notice. We emailed a copy to you. On October 21, 2015, we went to the neighborhood and put Notices in the mail boxes of residences within 300 feet of the project. We sent a second copy of the Notice via mail to these same residences. We also sent copies via mail to the listed owners of the commercial establishments within 300 feet of the project.

1553 Camino Amado  
Santa Fe, NM 87505  
October 19, 2015

City of Santa Fe  
ATTN: Lisa D. Martinez, Land Use Director  
200 Lincoln Ave.  
Santa Fe, NM 87504-0909

OCT20'15 9:14AM

Dear Director Martinez:

CAO RECEIVED

I am the appellant for the appeals of Planning Commission final actions on Case Numbers 2015-74 and 2015-75. Regarding Case No. 2015-75, an email from staff on 21 September 2015 read, "We are scheduling the appeal for the 28<sup>th</sup> of October 2015. Will you be able to attend?" I replied in the affirmative, but have received no further information as to the time and place of that hearing, and nothing in writing about Case No. 2015-74.

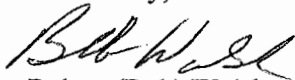
Subsequently I prepared a draft of the required notice, complete except for the time and place of the appeal hearing. I brought the draft to the Land Use Department to obtain the approval required by Land Use Code Section 14-3.1(H)(4)(b)(i). My draft was not examined. Instead, I was told that the City would provide the letter and a list of required recipients. I requested a copy of the administrative procedures per 14-3.1(H)(1), but no copy was available.

I still have not been informed of the time and place for either appeal. I have received neither any letter to be mailed nor a list of recipients. It is now too late to meet the mailing date required in Land Use Code Section 14-3.1(H)(4)(b)(ii). It is therefore necessary to schedule the appeal(s) for another date in order to allow time for participation by interested parties.

I did receive a notice of a public hearing for Case Number 2015-47 on October 28<sup>th</sup> at 7:00 p.m. However, no agenda for such a meeting is available yet at [http://www.santafenm.gov/city\\_council\\_packets](http://www.santafenm.gov/city_council_packets) or [http://www.santafenm.gov/notices\\_of\\_public\\_hearing](http://www.santafenm.gov/notices_of_public_hearing).

Please let me know, by mail, phone, or email, the time, date and place for the public hearings on the appeals. Also, please let me know whether the City indeed will provide the required letter, the list of recipients, and a copy of the administrative procedures.

Yours truly,



Robert (Bob) Walsh  
[walshb@cybermesa.com](mailto:walshb@cybermesa.com), (505) 470-1254

cc: Mayor Javier M. Gonzales  
Joseph Maestas, District 2 Councilor  
Peter Ives, District 2 Councilor  
Brian Snyder, City Manager  
Yoland Y. Vigil, City Clerk  
✓ Zachary Shandler, City Attorney's Office  
Greg Smith, Land Use Department  
Dan Esquibel, Land Use Department