



CITY CLERK'S OFFICE  
**Agenda** DATE 5/15/18 TIME 2:37  
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**BOARD OF ADJUSTMENT**  
**Tuesday, June 5, 2018 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. APPROVAL OF MINUTES AND FINDINGS/CONCLUSION:**

**MINUTES:** May 1, 2018

**FINDINGS/CONCLUSIONS:**

**Case #2018-01.** Appeal of Ellen Kleiner from the December 19, 2017 Final Decision of the Land Use Director to Issue Building Permit No. 17-3415 to William Herrmann to construct a fence at 130 E. Lupita Road.

**E. OLD BUSINESS**

**F. NEW BUSINESS**

1. **Case #2018-47. 4470 Cerrillos Road Self-Storage.** James W. Siebert, Agent, for Lithia Real Estate, LLC, Owner, requests a Special Use Permit approval for self-storage units with some units accessed from the existing exterior overhead doors. The property is approximately 3.99 acres in size and zoned C-2-PUD (General Commercial/Planned Unit Development) and is located at 4470 Cerrillos Road in the Santa Fe Auto Park. (Donna Wynant, AICP, Case Manager)

**G. STAFF COMMUNICATIONS**

**H. MATTERS FROM THE COMMISSION**

**I. 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.

Board of Adjustment Meeting Index  
June 5, 2018

Item		Page
Call to Order	Gary Friedman, Chair of the Board of Adjustment called the meeting to order at 6:02 p.m. held at the City Council Chambers.	1
Roll Call	A quorum was established with roll call.	1
Pledge of Allegiance		1
Approval of Agenda	Mr. Werwath moved to approve the agenda as presented with a second from Ms. Reynolds which passed by voice vote.	1
Approval of Minutes from the May 1, 2018	Mr. Werwath moved to approve the minutes of May 1, 2018 as amended, with a second from Ms. Dearing which passed by voice vote.	2
Findings/Conclusions: Case #2018-01. Appeal from Ellen Kleiner from the December 19, 2017 Final Decision of the Land Use Director to Issue Building Permit No. 17-3415 to William Hermann to construct a fence at 130 E. Lupita	<p>Conclusions: Ms. Winston moved to approve the amended language in Conclusion #2 with a second from Ms. Dearing which passed by voice vote.</p> <p>Findings: Mr. Werwath moved approve the Findings of Fact and Conclusions of Law as amended with a second from Ms. Reynolds which passed by voice vote.</p>	2-3
Old Business		3
<p>New Business</p> <p>1. Case #2018-47. 4470 Cerrillos Road Self Storage. James W. Siebert, Agent, for Lithia Real Estate, LLC. Owner, requests Special Use Permit approval for self-storage units with some units accessed from the existing exterior overhead doors. The property is approximately 3.99 acres in size and zoned C-2-PUD (Commercial/Planned Unit Development) and is located at 4470 Cerrillos Road in the Santa Fe Auto Park.</p>	Mr. Werwath moved to approve a request for a Special Use Permit for 4470 Cerrillos Road subject to conditions and technical corrections, with the stipulation that the historic use for vehicle storage, with vehicle defined as car, motorcycle, recreational vehicle, trucks, terrestrial vehicles generally, be allowed to continue, and that any substantive addition or change would have to be revisited by the Board, and further that this does not apply to any other C-2 Zoning areas. This does not approve any other outdoor storage buildings, but just to the existing building, with a second from Ms. Winston which passed by voice vote.	3-8
Staff Communications	Discussion Only	8
Matters from the Commission	Discussion Only	9
ADJOURNMENT	There being no further business to come before the Board of Adjustment the meeting was adjourned at 7:05 p.m.	9
SIGNATURES		9

**MINUTES OF THE MEETING OF THE  
BOARD OF ADJUSTMENT**

200 Lincoln Ave. Santa Fe, NM

June 5, 2018

6:00 p.m.

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

Gary Friedman, Chair of the Board of Adjustment called the meeting to order at 6:02 p.m. held at the City Council Chambers. A quorum was established with roll call.

**PRESENT:**

Gary Friedman, Chair

Rachel L. Winston, Vice Chair

Daniel H. Werwath

Donna Reynolds

Coleen Dearing

**NOT PRESENT/EXCUSED:**

Douglas Maahs

Patricia Hawkins

**OTHERS PRESENT:**

Noah Berke, City Land Use

Rick Word, City Attorney's Office

Greg Smith, City Land Use

Wayne Dalton, James W. Siebert and Associates

Victoria Dalton, James W. Siebert and Associates

Jeff Seres, Architect

Linda Vigil, Stenographer

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA**

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

**D. APPROVAL OF MINUTES OF MAY 1, 2018 and FINDINGS/CONCLUSIONS**

## **MINUTES:**

### *Corrections/Clarifications:*

Ms. Winston would like to clarify the intention of her first motion to make sure the Board did not rule on the interpretation of a private covenant.

Mr. Word would also like to check the vote on the first motion, it seems Ms. Winston made the motion but then abstained. (See below)

Page 5, sentence 1 ~~Mr. Werath~~ Mr. Werwath

Page 5, paragraph 7, add ; to: Cases like this are common; they did get a notice and were not denied the opportunity to appeal so it is moot.

Page 6, paragraph 4 add to paragraph: The Hermann's contractor began construction without a permit the City red-tagged the project until the permit was obtained.

### Page 7 **ROLL CALL VOTE:**

Opposed: Mr. Maahs, Ms. Reynolds, Mr. Werwath

Abstain: Chair Friedman

In Favor: Ms. Dearing, Ms. Winston

*The motion did not pass due to majority of opposition.*

Page 7, paragraph 9 *change:* which is the agreement. Which references the agreement.

**MOTION:** Mr. Werwath moved to approve the minutes of May 1, 2018 as amended, with a second from Ms. Dearing which passed by voice vote.

## **FINDINGS/CONCLUSIONS:**

Case #2018-01. Appeal of Ellen Kleiner from the December 19, 2017 Final Decision of the Land Use Director to Issue Building Permit No. 17-3415 to William Hermann to construct a fence at 130 E. Lupita Road.

*(See Exhibit A-Packet Materials)*

## **DISCUSSION:**

Ms. Winston asked about the second conclusion stating the department did not act in accordance with the law and was not supported by substantial evidence. She doesn't believe that determination was ever made.

Mr. Word states he cited a section of the code in the findings that the board could have found that action was not complied with by the department. Regarding the requirement that the permit complies with Chapter 14. He was trying to find support for the board's decision. He can strike it and show the absence of substantial evidence.

Ms. Winston suggests Mr. Word amend the Conclusion #2 to state: the Department did not act in accordance with all applicable provisions of Chapter 14.

**MOTION:** Ms. Winston moved to approve the amended language in Conclusion #2 with a second from Ms. Dearing which passed by voice vote.

#### ***FURTHER DISCUSSION:***

Mr. Word would like to clarify if the motion to have the language changed in the conclusion #2 and also include mention of support of substantial evidence. Ms. Winston states it will be to change the language and remove the support of lack of substantial evidence.

**MOTION:** Mr. Werwath moved approve the Findings of Fact and Conclusions of Law as amended with a second from Ms. Reynolds which passed by voice vote.

#### **E. OLD BUSINESS**

#### **F. NEW BUSINESS**

**1. Case #2018-47. 4470 Cerillos Road Self Storage. James W. Siebert, Agent, for Lithia Real Estate, LLC. Owner, requests Special Use Permit approval for self-storage units with some units accessed from the existing exterior overhead doors. The property is approximately 3.99 acres in size and zoned C-2-PUD (Commercial/Planned Unit Development) and is located at 4470 Cerrillos Road in the Santa Fe Auto Park. (See Exhibit A-Packet Materials)**

#### ***Staff Report:***

Ms. Wynant described the location of the property. The permit approval is for the storage units that would be in the current building, it is zoned C-2 PUD. They would like to use existing overhead doors.

The permit states they will not exceed the threshold to kick start the requirements for a development plan. The overall auto park site is large and can accommodate this business.

Ms. Wynant explained the units are to be indoor, climate controlled units. They are proposing to convert the existing building to have 227 storage units. Some will be accessed by the overhead doors.

Ms. Wynant explained the property is not within the 100 year floodplain. There are not any major design changes to the building. The mini storage they proposed cannot exceed 200 sq. feet. There is plenty of parking and utilities are available.

Ms. Wynant explained they have proposed outdoor storage on page 4, there may be discussion on that. On page 5 they are proposing to build an 8 foot wall and landscape around it.

Ms. Wynant states the special use permit has been evaluated and they believe all criteria is met.

***Questions:***

Ms. Winston asked if the technical corrections will be completed or if they will be labeled to be determined. Ms. Wynant states they should be completed by building permit application and the Fire Marshall.

Chair Friedman asked how many units will be accessed from the overhead doors? Ms. Wynant explained the 227 individual self-storage units housed in the building.

Ms. Wynant states that they have not shown outdoor storage in the floor plan as of yet. They would like consideration for some mini storage outside the building. Once they exceed 30,000 square feet they will need a development plan.

Mr. Smith explained because of the PUD overlay, any expansion that exceeds it will have to be approved by the Planning Commission and the Governing Body.

***Applicant:***

Mr. Wayne Dalton of James Siebert and Associates (918 Mercer Street Santa Fe) along with Victoria Dalton and Mr. Jeff Seres, the architect on the project.

This is an existing building in the auto park. They plan to remodel and have 227 climate controlled self-storage units. They would like to include special use permit the mini storage units outside and they understand development plan will need to be approved if it exceeds 10,000 sq. feet.

Mr. Dalton wants to include the outdoor storage of motor vehicles which includes RV storage. They feel that it is allowed as part of the original PUD zoning and the 1983 annexation agreement. It has been used for outdoor storage for many years. All of the dealerships have used it before.

Mr. Dalton would like to express they are in agreement with all of staff's conditions and would like to state that they are not introducing storage units on raw land they are refurbishing existing building they feel they are improving the look of the area as well.

**Questions:**

Ms. Winston asked if they are asking that the board make a finding that the outdoor storage on the site is superseded by the annexation agreement.

Mr. Dalton states it is their determination the 1983 agreement allows for outdoor storage. They want to make sure it is included in the special use permit. Mr. Dalton states they are asking for vehicle storage and mini storage units.

Ms. Reynolds asked about the RV storage, is it limited to just RV's. Mr. Dalton states it would cover all motor vehicles including boats and RV's. They want it to apply to the entire site.

Mr. Berke referred the board to the top of the staff report, on Page 5. Staff is asking the Board to make the interpretation of their standing, they believe the vehicle storage is for principal use and is not in agreement. That is an interpretation of the 1983 annexation where it states what outdoor storage is.

Ms. Dearing asked if it covers the entire building and lot, in front of the building and the sides as well. Mr. Dalton states it would cover the entire lot.

Chair Friedman asked if the plans show the area where they would like to put the outdoor vehicle storage area or additional units. Mr. Dalton states it does not.

Ms. Winston asked if they are constrained by the plans. Mr. Berke explained the plans are conceptual. They are being asked to make an interpretation of what the annexation agreement was intended to be, was it to be for vehicle and RV storage. The applicants argue that it is and the existing car lots use it for vehicle storage now. On page 3 the special use permit would include aside from the existing self-storage building, outside storage would be determined at the time of permit or development that will have to go before the Planning Commission and the Governing Body.

Ms. Winston asked if the annexation agreement contemplated outdoor storage generally in addition to outdoor vehicle storage. Mr. Berke states yes.

Ms. Reynolds asked if they agree, would it set a precedence for others following this case. Mr. Berke states it would set a precedence if it was in the auto park. There is a third parcel to the north that the applicant intends to develop as well.

Mr. Smith explained the board is voting on an interpretation applying to this permit, it is likely staff would apply the interpretation to both properties. The staff is clear that it is based on the PUD language. If the board accepts, it may be subject to both parcels. The reference is for vehicles under repair and it is not supported, it is not clear that it applies to all vehicles.

Chair Friedman asked if they agree with staff and if the applicant was going for a PUD they can address that in the Planning Commission. Mr. Smith states yes in the future they can raise those plans that do not include the C2 underlying district.

Chair Friedman states it is limited. If they allowed the outdoor storage it only states cars.

Mr. Smith there has been confusion, did he intend that to the entirety of the fenced area.

Mr. Dalton states the annexation agreement that is should be screened, the entire property will be screened by a wall.

Ms. Winston asked about the height of the wall, in order to cover a wall it would have to be over 6 feet. Mr. Dalton states it will be 8 feet.

Mr. Jeff Seres (PO Box 9308 Santa Fe) wanted to clarify where the outside storage would be. (*Demonstrated on the board*) Mr. Seres showed the board where the wall would be, and any potential outdoor storage. There would be large slots for the larger RV's. They are 10 x 25 spaces for the vehicles, they will lay them out on the inside walls.

**Chair Friedman opened the PUBLIC HEARING at 6:40 p.m.**

There were not any members of the public to speak in favor or in opposition of the application.

**Chair Friedman closed the PUBLIC HEARING at 6:40 p.m.**

Ms. Dearing understands storing vehicles is part of the business. Her concern is there are some businesses in the property that are not storage business. By giving a blanket approval, then interpretation it would pertain to one unit and others. It could be creating a completely different development. Not sure if they have the ability to partially allow it or say it will only be on the backside of the property.

Mr. Smith explained that the interpretation of vehicle storage under the terms of the PUD. They intend to use a portion of the site.

Ms. Winston states they are being asked to interpret the annexation agreement. The only reference she sees is #6, which states the damaged storage car area should be screened. She doesn't see how they get from that to what is being proposed tonight. Ms. Winston asked staff if the board agrees with the interpretation what other avenues are available thereafter?

Mr. Smith explained a decision by the land use board may be appealed to the Governing Body. They can ask that property be rezoned if they intend to buy more land.

The Governing Body can amend the existing code to include the provisions and special use permits for vehicle storage.

Chair Friedman asked if a variance could be filed in this situation. Mr. Smith explained variances may not be applied to development rights but not to use restrictions. There is use prohibition and staff would decide that.

Mr. Werwath asked if the point of the PUD is to create flexibility to the existing code through a process. Mr. Smith's intent is to create flexibility to the development standards not to the types of uses.

Mr. Werwath asked if in the land use code is there a definition between a parking space, a car dealership and storage. That is what he would like to see. The site is huge and they can utilize the space. He would like the clarity in the code that defines outdoor storage and parking.

Mr. Smith discussed the intent of the regulation is to distinguish between vehicle storage for an accessory use to the permit for principle use and storage as a principle use. Staff is concerned that the interpretation could be construed to affect properties that are of a different character.

Mr. Werwath sees storage in C-2 areas included Siler Road. This is a peculiar application, there is a PUD in place where similar patterns of use are shown. This site has had vehicles stored there before.

Mr. Dalton states the minutes within the of the annexation agreement which states the area has to be screened. They are willing to bring it into compliance. The properties have been out of compliance for years at the auto park. It will be done tastefully and it will be screened.

Mr. Seres added this site has the historical use and isolation from current and potential future residential areas. He asked they take context into consideration. The tract of land is large they are asking for a storage use and they are necessary for RV's when they are not on the road. It is the perfect location for this business.

Ms. Winston personally doesn't object, it will not apply to other properties. There is an avenue for the applicant to get what they need to go through to rezone.

Mr. Werwath states the situation is hinging on the PUD. He asked when the prohibition on outdoor storage was put in to place. Mr. Smith states the language cited is dated from 2004 or 2005.

Ms. Dearing asked if it is possible to approve the storage of vehicles to make a stipulation that only applies to the auto park PUD and not to other properties along

Cerrillos Road. Mr. Smith states this would apply to this permit only, the board can express their judgement to the auto park as a whole through a process with staff.

Chair Friedman asked about the cars or other types of storage, he understands the applicant to build additional enclosed storage outside the building. Mr. Berke states yes they would need a development plan for that.

Mr. Werwath is inclined to approve special use permit with specific language for the allowance of storage of vehicles based on the historical use and the PUD zoning for this site to make clear in the findings that it is not meant to apply to other parcels or sites.

Mr. Berke states "vehicle" is not a defined term in Chapter 14. Ms. Winston states the annexation agreement includes "car storage".

Chair Friedman asked if the approval will limit the storage in the existing building. Mr. Winston states any expansion would require a development plan and possibly another special use permit. Mr. Smith if that were the case they would likely end up in front of the planning commission.

**MOTION:** Mr. Werwath moved to approve a request for a Special Use Permit for 4470 Cerrillos Road subject to conditions and technical corrections, with the stipulation that the historic use for vehicle storage, with vehicle defined as car, motorcycle, recreational vehicle, trucks, terrestrial vehicles generally, be allowed to continue, and that any substantive addition or change would have to be revisited by the Board, and further that this does not apply to any other C-2 Zoning areas. This does not approve any other outdoor storage buildings, but just to the existing building, with a second from Ms. Winston.

#### ***DISCUSSION:***

Ms. Dearing suggested adding inoperable vehicles to the language. It was agreed not to include it.

#### ***VOTE:***

The motion passed by voice vote.

#### **G. STAFF COMMUNICATIONS**

Mr. Smith discussed the replacement of Land Use Director Lisa Martinez, they hope to hire someone soon.

Mr. Smith states he spoke to the Mayor's Office about the reappointments of the Board. If any member is interested in keeping their position they must submit a letter to the Mayor.

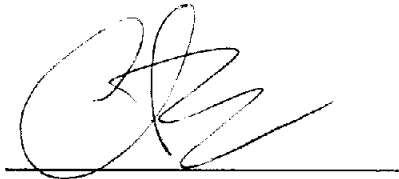
## **H. MATTERS FROM THE COMMISSION**

Chair Friedman thanked the board for their work this evening. A very interesting issue was presented.

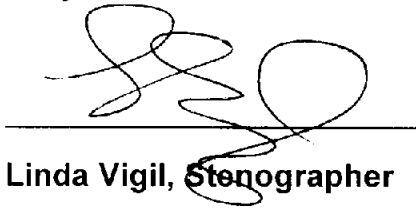
## **I. ADJOURNMENT**

There being no further business to come before the Board of Adjustment the meeting was adjourned at 7:05 p.m.

## **SIGNATURES**

A handwritten signature in black ink, appearing to be 'GF', written over a horizontal line.

**Gary Friedman, Chair**

A handwritten signature in black ink, appearing to be 'LV', written over a horizontal line.

**Linda Vigil, Stenographer**