

**BOARD OF ADJUSTMENT
May 2, 2023**

Item	Motion/Description	Page
Call to Order	Gary Friedman, Chair of the Board of Adjustment called the meeting to order at 6:00 p.m.	1
Roll Call	A quorum was established with roll call.	1
Pledge of Allegiance	Recited	1
Approval of the Agenda	Approved	1
Approval of the Minutes from January 3, 2023	Approved	2
Approval of Findings/Conclusions	Approved	2
Old Business	None	2
New Business Case #2023-6588. 1330 Rufina Circle Variance.	Withdrawn by Staff	3
Matters from the Board	Comments	3-4
Staff Communications	Comments	4
Adjourn	With all business conducted for the Board of Adjustment, the meeting was adjourned at 6:22 p.m.	4

**Board of Adjustment
Tuesday, May 2, 2023
City Council Chambers, City Hall
200 Lincoln Avenue, Santa Fe, NM**

A. CALL TO ORDER

Gary Friedman, Chair of the Board of Adjustment, called the meeting to order at approximately 6:00 p.m. at an in-person meeting at the above location.

B. ROLL CALL

A quorum of the Board was established with a roll call vote.

Present:

Gary Friedman, Chair
Coleen Dearing (arrived at 6:03)
Doug Maahs
Daniel Painter
Donna Reynolds

Absent (Excused):

Rachel Winston, Vice Chair
Grant Alexander

Staff and Others Present:

Jason Kluck, Land Use Director (Via Zoom)
Heather Lamboy, Assistant Land Use Director
Maggie Moore, Planner Manager
Patricia Feghali, Assistant City Attorney (Via Zoom)
Melissa Byers, Stenographer

NOTE: All items in the packet for all agenda items were incorporated herewith by reference. The original packet is on file with the City Land Use Staff. Any additional attachments will be labeled as exhibits.

B. PLEDGE OF ALLEGIANCE

Member Reynolds led the pledge of allegiance.

C. APPROVAL OF AGENDA

MOTION: Member Maahs moved, seconded by Member Dearing to approve the agenda.

VOTE: The motion passed by voice vote.

D. APPROVAL OF MINUTES

January 3, 2023

MOTION: Member Painter moved, seconded by Member Maahs to approve the minutes of January 3, 2023.

VOTE: The motion passed by voice vote.

E. APPROVAL OF FINDINGS/CONCLUSIONS:

1. Case 2022-6044. 57 Old Santa Fe Trail Variance.

MOTION: Member Painter moved, seconded by Member Dearing to approve the Findings of Fact and Conclusions of Law for Case 2022-6044.

VOTE: The motion passed by voice vote.

2. Case 2022-6052. 2820 West Zia Road Special Use Permit.

MOTION: Member Maahs moved, seconded by Member Painter to approve the Findings of Fact and Conclusions of Law for Case #2022-6052.

VOTE: The motion passed by voice vote.

3. Case #2022-6010. 50 Mount Carmel Special Use Permit.

MOTION: Member Dearing moved, seconded by Member Maahs to approve the Findings of Fact and Conclusions of Law for Case 2022-6010.

VOTE: The motion passed by voice vote.

4. Case #2022-6016. 50 Mount Carmel Special Use Permit (SF Prep)

MOTION: Member Dearing moved, seconded by Member Reynolds to approve the Findings of Fact and Conclusions of Law for Case 2022-6016.

VOTE: The motion passed by voice vote.

F. OLD BUSINESS

None.

G. NEW BUSINESS

1. **Case #2023-6588. 1330 Rufina Circle Variance.** Gyana Basse of Gaia Traders LLC, Owner of Love for Life Dispensary, requests approval for a variance to SFCC 14-6.2(l)(5)(a)(i) to operate a retail cannabis business within 400 feet of another licensed cannabis retail business. The property is zoned I-1 (Light Industrial District) and is in the Suburban Archaeological Review District.

(WITHDRAWN BY STAFF)

Director Kluck said the Applicant's route through the BOA is through the appeal process. They are out of compliance for the criteria for variance so staff could not allow it to come to the Board because they would have had to recommend denial and the Board would have had not option except to recommend denial. He issued them a formal notice of action from the land use director, and they are permitted to appeal that to the Board of Adjustment. If the Board overturns the decision of the land use director, the Board can hear the case.

H. MATTERS FROM THE BOARD

Chair Friedman thanked Ms. Beninato for her submittal regarding 57 Old Santa Fe Trail (Lucchese sign). The submittal is attached as Exhibit 1. He said if she wishes to appeal that to the City Council, she has the right to do so.

Stefanie Beninato, PO Box 1601, Santa Fe, was sworn. She said this went to the Historic Districts Review Board (HDRB) a few weeks ago. She wasn't sure if those Findings of Fact (FOF) had been adopted; but those FOFs are in opposition to the BOA Findings. She's not sure which FOFs she's supposed to appeal from.

Director Kluck said that an appeal from the BOA regarding the height variance would be allowed to go to the Governing Body. If Ms. Beninato wants to appeal more than that they would need to talk about whether it's more than one appeal.

Ms. Beninato said there were two votes by the HDRB that went in opposite directions. The most recent one denied the exceptions. She wants to appeal both because there are grounds to appeal both.

Ms. Lamboy said with reference to the HDRB, the FOF have been approved, there was no appeal. The appeal period for that particular case has expired. The HDRB denied both exceptions: one for letter height and one for sign area. The BOA has jurisdiction over the height of the sign. The HDRB denied the case so there's nothing to appeal there. They still have the approval of the BOA for the increase in the height of the sign.

Attorney Feghali clarified that the appeal period is 35 days after the vote or when the FOF are adopted, but its whichever one of those is first. Since this case was heard in January, the appeal time period has passed.

Member Dearing asked Director Kluck what the appeal period is for the case he denied that was on this agenda (Case #2023-6588. 1330 Rufina Circle Variance).

Director Kluck said they have 15 days to appeal.

I. STAFF COMMUNICATONS

Ms. Moore updated the Board on the Chapter 14 rewrite. In August there will be a working document to share with the public. Also, the resolution on long range planning was adopted by the Governing Body for an RFP for the General Plan update.

Member Dearing asked if the goal of the plans is just a cleanup rather than major revisions and restructuring of the plans.

Ms. Moore said the longer term is a real rewrite and update of the Code and the General Plan. The first phase, which is about 12-18 months with the Code update, is the cleanup. After that there will be discussions about substantive policy changes to the Code. At the end, the General Plan and Code update merge together. Both projects will take three to four years.

Member Dearing asked if there was a plan to make it publicly accessible and searchable.

Ms. Moore said they are hoping to see an approachable and accessible document that is available online that is searchable and organized better.

Director Kluck said the goal is to be able to cross reference the Code because that is a challenge. The bigger goal is to have everything in one place so there will be less cross referencing.

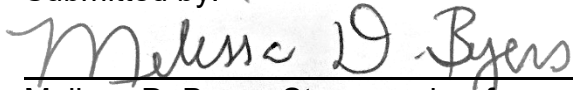
Ms. Moore said staff is working on appointments to the Land Use Boards and Commissions. They have a candidate for the BOA to replace soon to retire Member Maahs.

Chair Friedman said if this is Member Maahs' last meeting, he wanted to thank him on behalf of the Board for all his years of dedicated and helpful service as a member of the BOA.

J. ADJOURN

With all business conducted for the Board of Adjustment, Chair Friedman adjourned the meeting at 6:22 p.m.

Submitted by:



Melissa D. Byers, Stenographer for
Byers Organizational Support Services

Approved by:



Gary Friedman, Chair

Exhibit 1
Board of Adjustment
5/2/2023

POINTS OF ORDER with FOF and COL 57 Old Santa Fe Trail (Luchesse)
PLEASE READ BEFORE VOTING FOR ADOPTION

Your discussion was primarily about how the proposed sign was less nonconforming and how there weren't many other second story locations that would support a sign

You did not consider that you were discussing the wrong standard re: less non conforming only applies to buildings (14-5.2A6-the ordinance the city attorney did not want to read) and that nonconforming signs shall not be altered or repaired.

Your facts are incorrect. It is not a nonconforming lot. The sign that was removed in 1978 and the current Luchesse logo sign for which exception were required were/are nonconforming. The company may leave the current sign in place until it needs repair. (14-5-2.A6)

The Historic Board has never determined its status so it cannot be said to be contributing, significant or a landmark structure.

The Historic Board about 3 meetings ago again considered the sign/logo and REVERSED itself. It found that the application did not merit an exception for size of sign or letters-that it was not a hardship not to have a second story sign and that it was not in the public interest to replace one such sign with another nonconforming sign. The Board found the building was not statused. It is a second story as are most of the other buildings (Palace of the Governors being the exception) and is used as a commercial retail space as are most others buildings.

It was the sign that was nonconforming. Not statused means even though it is older than 50 years, the Board has not been asked to consider its historic designation (contributing, significant or a landmark). The city's policy is to bring nonconforming structures and buildings into compliance

It is clear that it is the Board did not consider whether the variance is the minimum variance that will make possible the reasonable use of the land or structure and that means considering whether the property has been or could be used without variances for a different category or lesser intensity of use; consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the general plan. The BOA only considered the outer facade rather than the whole structure where a successful retail business exists. Businesses that occupied that space did not find a second floor sign necessary from approximately 1978 until 2011 when Luchesse applied for the first exception. And all businesses on the block, including Lucchesse, have first story signage under the portal and on their respective stores. The purpose of Chapter 14 is to have signs of certain dimensions and to exclude second story signs in commercial areas by keeping the highest point of the sign no higher than 15 ft. Luchesse's application does not conform to these 2001 policies as evidenced by seeking exceptions/variances. Consideration of other potential or past variances or exceptions is not part of the BOA's list of factors.

Having a second story sign on a block with no other current businesses having such signs increases intensity of development. Having a second story that was initially designed for signage but whose signage was removed is not a special circumstance since there was no sign there for over 30 years and it is not a special circumstance that prevents development in compliance with Chapter 14. In fact as acknowledged by seeking variances and exceptions it is to avoid compliance with Chapter 14. Stefanie Beninato PO Box 1601 Santa Fe NM 87504
