

**BOARD OF ADJUSTMENT  
June 6, 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 May 2, 2023	Approved	2
Approval of Findings/Conclusions	Approved	2
Old Business	None	2
New Business Case #2022-6105. 513 Camino de los Marquez Special Use Permit	Approved	3-17
Matters from the Board	Comments	17-18
Staff Communications	Comments	18
Adjourn	With all business conducted for the Board of Adjustment, the meeting was adjourned at 8:26 p.m.	18

**Board of Adjustment  
Tuesday, June 6, 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  
Grant Alexander  
Coleen Dearing  
Daniel Painter  
Rachel Winston, Vice Chair

**Absent (Excused):**

Doug Maahs  
Donna Reynolds

**Staff and Others Present:**

Heather Lamboy, Assistant Land Use Director  
Maggie Moore, Planner Manager  
Patricia Feghali, Assistant City Attorney  
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**

Vice Chair Winston led the pledge of allegiance.

**C. APPROVAL OF AGENDA**

**MOTION:** Member Winston moved, seconded by Member Painter to approve the agenda.

**VOTE:** The motion passed by voice vote.

**D. APPROVAL OF MINUTES**

May 2, 2023

**MOTION:** Member Dearing moved, seconded by Member Alexander to approve the minutes of May 2, 2023.

**VOTE:** The motion passed by voice vote.

**E. APPROVAL OF FINDINGS/CONCLUSIONS:**

None.

**F. OLD BUSINESS**

None.

**G. NEW BUSINESS**

- 1. **Case 2022-6149. 513 Camino de los Marquez Special Use Permit.**  
WAMO Studio Architects, agent for Zoomies Dog Care, applicant, request approval for a Special Use Permit to locate a pet day care within 200 feet of a residential zone. The property is zoned C-2 (General Commercial) and is in the Suburban Archaeological Review District. (Maggie Moore, Planner Manager)

**STAFF REPORT**

Special use permits (SUPs) are intended to allow flexibility in providing for, regulating, or preventing specified uses within districts to ensure they are compatible with existing or desired land use patterns. SUP approval is required for certain uses so that detrimental effects may be reduced or avoided and conflicts in land use may be prevented.

The Applicant’s request to operate a doggy daycare, grooming and overnight boarding facility in a C-2 zone district, within 200 feet of a residential zone, per the City’s *Permitted Table of Uses 14-6.1-1*, exemplifies the need for the review and approval processes outlined in *SFCC 14-3.6 Special Use Permits*. The use The Board of Adjustment is empowered to specify conditions of approval necessary to accomplish proper development and implementation of the policies of the General Plan, per *SFCC 14-3.6(D)(2)*. Conditions of particular importance to this application include:

- A. limiting the type, extent or intensity of development;
- B. walls or landscape screening;
- C. provisions for and arrangement of parking and vehicular and pedestrian circulation;
- D. on-site or off-site street, sidewalk or utility improvements;

- E. noise mitigation;
- F. establishing a date for annual or periodic review at a public hearing; and
- G. plans for solid waste disposal and special hazard reduction measures.

According to the applicant's website, Zoomies provides "Cage-Free" boarding, daycare and grooming in a "convenient" and "socially engaging environment". The current building owner, PDD Apartments, LLC purchased the building in August of 2019. The current business owner, Dogs 24/7 LLC, assumed the lease from the previous business owner on March 13, 2022.

While the exact installation date is unknown, the previous business owner installed an outdoor artificial turf area in the northeast portion of the parking lot sometime between October 5, 2019 and April 17, 2020 as shown on the satellite imagery in Figure 1 below. On June 7, 2022, the City received a noise complaint regarding Zoomies operations. After an inspection of the property, and confirmation that the improvements were not permitted, the city directed the applicant to remove the outdoor turf play area and to apply for a Special Use Permit, per the *Permitted Table of Uses 14-6.1-1*.

The applicant hosted the required Early Neighborhood Notification meeting on November 8, 2022, and submitted their SUP application to the City on November 18th, 2022. Zoomies business license expired on December 16, 2022 and renewal is on hold pending the results of this application. The artificial turf play area was removed by the applicant on February 10, 2023.

The Development Review Team (DRT) has reviewed the Application for compliance with applicable code sections and has provided technical corrections list in Attachment A. Staff's analysis determined the Application has satisfied Special Use Permit Approval Criteria in accordance with *Subsection 14-3.6(D)(1)* and will be required to return to the BOA for additional review and consideration within one year. Should the Board approve the SUP, staff recommends the Board approve subject to conditions of approval in this report and technical corrections listed in Attachment A. This report and conditions of approval, intend to address and mitigate the conflicts between residential uses located immediately north of the property and the environmental impacts, including nuisance noise, odor and traffic congestion resulting from Zoomies operations.

**Summary of Conditions of Approval:**

Approval is for one year – applicant must return to BOA

Approval is only for current operation – no expansion

Applicant must make interior and exterior improvements to mitigate operational impacts to neighbors and adjacent uses

**Amendment to Condition 16:**

Contractor shall ensure ADA compliance for construction of required ADA accessible features and appurtenances. Improvements shall comply with 2015 International Building

Code IBC, Chapter 11, ICCANSI A 117.I-2009 Chapters 1 through 5 and Chapter 7 and MUTCD, DOJ and New Mexico State Statute and Code.

**Timeline:**

2020 – Previous owner installs outdoor artificial turf area  
3/2022 – Current business owner assumes lease  
6/2022 – City receives noise complaint –  
11/2022 – SUP Application recorded  
2/2023 – outdoor area removed

Compatible Uses – Residential, commercial, medical office, retail restaurants

Business license, professional animal permit need to be updated.

Project Analysis

- A. Parking, Accessibility +Circulation
- B. Intensity + Type of Use
- C.

**STAFF RECOMMENDATION**

Staff recommends APPROVAL of the Special Use Permit, to locate a pet day care in a C-2 (General Commercial) zoning district within 200 feet of residentially zoned properties, subject to the conditions of approval and technical corrections recommended by staff.

Member Winston said the average number of dogs was mentioned at around 100, but the Report says 108. She was concerned the eight dog difference might be significant. She confirmed that the ratio was 1 to 20.

Ms. Moore said there were a couple of factors for the ratio. The parking for doggy daycare is not considered in the parking requirements. Staff can assign that to a category that fits. A large part is short and quick parking that peaks for drop-offs in the morning and midday. The applicant provided 108 as a snapshot of a day, at the request of staff. The 100 is only the daycare and boarding overnight, not the grooming and other visits. She wants to track the average number of dogs to determine over the span of a year if the space is appropriate.

Member Painter asked if the other day care facilities had comparable numbers for space and the number of staff per pet.

Ms. Moore said it is hard to compare because many of the others are considerably smaller than Zoomies. There are basic regulations on crating animals etc., but nothing on the amount of room per pet. She heard from different owners a range of 10 to 1 up to 25 to 1, but there was nothing exact.

Member Dearing confirmed the 20 to 1 number was exclusive of grooming.

Ms. Moore said her understanding is this is the assigned staff to care for the animals, not for the front desk or grooming.

Member Alexander said one condition of approval to be completed by June 2024, is sound proofing. He asked if the assumption is those things will not happen for a year or is that the date to be completed.

Ms. Moore said the intention is the item should be completed by June 2024 and the applicant would be required to come back within the year. But they could be called back in six months, if required. Staff will conduct site visits over the next year and report on that when the applicant returns to the Board. The other items to be completed will probably require permits, etc. and must be completed no later than June 2024.

Mr. Alexander asked if 50 decibels is the metric for noticeable improvement on sound proofing required along the party walls.

Ms. Moore said she believed staff can gather information from their site visits over the next year to share with the Board.

Chair Friedman asked to confirm the location of the Backstreet Bistro and if this is part of that space.

Ms. Moore said the Backstreet Bistro is where Zoomies wants to expand into. They currently operate out of one of the three suites in that location.

Chair Friedman asked if there will be any other new tenants after the expansion.

Ms. Moore deferred to the applicant for the answer.

## **APPLICANT PRESENTATION**

Vahid Mojarras, 147 Gonzales Road, #12 was sworn. He said he is also a client of Zoomies and finds them a safe place for their pet. He urged the Board to listen to the clients of Zoomies who care for their loving family members. He carefully reviewed the Staff Report. He felt it painted a concerning bias of Zoomies as a nuisance business that negatively impacts the community. He asked the Board to consider the overwhelming support from hundreds who wrote letters to the City and the numerous Google reviews. They are positive and praise Zoomies as safe and caring. Zoomies has been operating under a valid business license over five years in the same location with the same square footage. They are appealing because of the City's oversight in issuing their business license over five years ago. The applicant never received any complaints from their neighbor before the ENN notice. Prior to that there was no indication of a noise complaint in June, 2022 until September when he inquired about expanding the business. He said his client is committed and has already addressed the removal of the outdoor play area and had arranged more frequent pickups [for garbage]. He asked that the Board consider the historical context and allow ample time to address the concern properly and fairly. He

said the applicant respectfully requests the Board to reconsider: on Condition #1, to extend the time limit from one year to two years for completion. The original date they were to come before the Board was February 7<sup>th</sup> and it is now four months later in June. A one year window does not allow sufficient time to obtain permits and find contractors among other numerous delays that could happen. On Condition #6, they humbly request to reconsider the request to eliminate the expansion. The applicant purchased the facility recognizing the need for improvement to better serve their clients and the neighborhood. That would allow the applicant to improve the property while adhering to all other staff conditions without a prolonged closure and loss of revenue.

Phasing the improvements between the new and the existing facility would have a better outcome and reduce costs and loss of clients. Also, the expansion benefit is the relocation of the main entrance along Marquez Place which would relieve traffic. Condition #10, the Board is asked to reconsider the 100 dog limit per day, which seems to be a number chosen simply because it was the average number of daily dog care. The City is actually reducing the number of dogs by imposing a 100 maximum which becomes challenging when evaluating the improvements, including the sound insulation recommended. His client is complying with the suggestion of 20 dogs per staff member and a limit to 100 dogs a day creates an unnecessary daily hardship for operation. It is crucial to establish a baseline in order to establish intensity. Condition #12, is to consider a no parking zone near the entrance on the northern side of Camino de los Marquez, particularly for elderly clients. The applicant proposes limiting the no parking to within 50 feet of the intersection, making it substantial and safe for vehicles making right and left turns. He noted that the street was originally designed with parking on both sides and might encourage speeding. The applicant feels an evaluation of the speed limit along Camino de los Marquez should be done for a safe environment. At the same time, the City could address the parking safety issues. Zoomies is a growing business which speaks volumes on their quality operations and satisfied clients. They were disheartened by the Staff Report that aims to permanently shut Zoomies down. They ask that all of the conditions of approval be carefully considered. Asking the owner to invest hundreds of thousands of dollars without assurance he can continue his business, is an unreasonable burden. The corrective measure and the improvements should have been addressed when the owner applied for the business license. The applicant recognizes the need for the correction, but also the City needs to support and encourage businesses to thrive and to support the community.

He introduced the Zoomies owner who wanted to speak.

Steven Biles, 4507 South Kolb, Gilbert AZ 85297 was sworn. He said he started in 2009 in the pet care industry when his company was downsizing. He had this concept for doggy daycare that was cage free. His business in rural Arizona frequently brought him west to New Mexico. He has cared for his mother for 22 years and she passed away last year, and he has no children. He had a hard time, as all small businesses did, during the pandemic. There was a puppy boom at that time because of the loneliness and isolation. He knew there would be a growing need for dog services when they came out of the pandemic. He has four locations in Phoenix and established a good business and

after years, he looked at other cities. He focused on Santa Fe because they are a big dog town. Statistics from Forbes say 50% of all households in America have a dog. The State of New Mexico is ranked #2 in the country and 68% of households in New Mexico have a dog. He thought Santa Fe might be even higher than the State average. He discovered Zoomies was for sale and met with the previous owner, Andrew Emery. They have the same business model. Andrew was not able to be present tonight but asked him to read the following statement: *“When looking at buyers he had several options. He selected Steven because of his ownership and shared cage free policy. Steven has continued the policies resulting in Zoomies being the best reviewed dog daycare in Santa Fe, and expanded services and staff to offer a better quality of care. Andrew said he has kept in touch with clients who have all been happy with the services as well.”*

Mr. Biles said after acquiring the business, the industry still did not meet the needs of the dog parents of Santa Fe. He asked to expand his business and extended his loans for 10 years to include the deli space. It was then that he learned about the issue of the improper original permit, and the need to go through the Special Use Permit process. He understands the importance of the process and is working with the City and the neighborhood and hired an architect and a general contractor. This has been about 8 months and they were anxious to come before the Board to discuss this. In an effort to compromise, at the City's request he removed the outside dog area, even though it is important and was there when he bought the business. It is doable but not ideal and puts him at a competitive disadvantage. He noted in four years of existence, Zoomies never had complaints until the City held the ENN. He said Santa Fe has a lack of proper infrastructure in dog services to support its large dog population. Three companies in his industry in Santa Fe probably support as much as 75% of Santa Fe's needs in dog care. Zoomies is rated #1 doggie day care in Santa Fe. The biggest leader in the industry is Paws Plaza. They can average 200 to 300 dogs a day and is owned by a large corporation based in Europe. The Plaza has 200 Google reviews and a 4.7 rating; Zoomies has 512 Google reviews and a 4.9 rating out of 5.0. He said he increased employees from six or seven to the current 19 employees; 12 are full-time with opportunity to advance. He asked the Board to consider in regard to the staff recommendations, the points Mr. Vahid mentioned. He asked on Condition #1 to be allowed adequate time to do proper renovations that they wanted to do when they started. A two-year window would be appreciated. Condition #6 he asked they be allowed an orderly renovation by starting with the unused deli portion. Once renovated the dogs can be transitioned into that space and they can go back to doing proper renovations at Zoomies. They could have business interruptions and a hardship to their staff and clients who count on the service. He said the limit to the daily capacity, he believes is arbitrary and unfair, and none of his competitors have a limit restriction. He said margins are tight in his business, especially in this high inflationary cycle. He reiterated that parking should be restricted in front and there should be a doggy zone equivalent to a school zone. He suggested as a compromise that he make their entryway through the deli. They currently rent the space and it would resolve the parking problem along Camino de los Marquez and allow them to do the renovations. He indicated there were three tenants in the space and the owner of the Thrift Queen contacted him about acquiring the space. He said Zoomies is interested in acquiring the space and would be a good solution. He stood for questions.

Member Painter said it sounds like they would prefer to get approval and it is in the applicant's best interest to renovate the deli first.

Mr. Biles said the deli would become their new lobby and they could immediately check the dogs through the deli and take them to the suite.

Member Painter asked if renovation can be done with dogs there.

Mr. Biles replied ideally, they would renovate the deli completely, making it the lobby. The sitting room off the lobby would be a room for dogs to flow into while work is being done on Zoomies property and the sound mitigation. He thought the noise issue with the party walls and other tenants leaving, may not be an issue going forward.

Member Dearing asked if the 1 per 20 animals number includes the groomers, etc.

Mr. Biles said that is separate. He added there may be two or three dogs being groomed at any one time.

Member Dearing said out of 100 dogs, if three were being groomed, that would mean 9 people. She asked what number he would like since he thought the other number is arbitrary; staff per dogs or using an actual number.

Mr. Biles said at times they have had to limit their capacity based on staffing. That limits his business. The 100 is an average and at times it might be 120 or as low as 50. He would want a daily average at 115 to 120 without the renovations and once renovated, that could be higher.

Member Winston asked if the Board is required to establish a maximum capacity and/or ratio for staff.

Ms. Moore said limits are part of the Special Use Permit approval and if other daycares were required to apply for a Special Use Permit, they could be limited per the condition of approval. She said that is not relevant when operating in a zone that does not require a Special Use Permit.

Ms. Lamboy added that each case is unique. One daycare might not require additional parking and could be different for another. It also depends on the impact to the adjacent property owners.

Chair Friedman asked under the condition of Special Use if there will be no outside area for the dogs.

Ms. Moore said currently there is no outdoor area and there is none in the proposal. She said the dogs could be taken out on a leash.

Chair Friedman asked the applicant if there is an industry standard for the number of dogs in an enclosed area based on square footage.

Mr. Biles said there is no industry standard. A couple of states such as Colorado have standards, but generally there is none. He said from a financial perspective, and in the business for years, a trailing annual revenue is hidden capacity. Zoomies is not there yet and is why he wants more square footage.

Chair Friedman said his question was one of safety and comfort for the dogs. He asked what he perceived was a comfortable and safe number of dogs based on square footage.

Mr. Biles said it is challenging because his dogs are cage free and his competitors stack cages one on top of another. He said between 120 to 125 but it is difficult because it is also the behavior skills of the staff. His staff is extremely skilled in dog behavior and have been doing it a number of years. He said that comes back to the quality ratings of their customers. A business that is not well run has injuries, illnesses, incidents, and things that happen and that flows into the rating. He said today Zoomies has between 5 and 10 new customers applying. There is high turnover in the industry because people move away, or their dog passes, but also Santa Fe has a lack of capacity. His solution is to expand.

Member Painter asked if he was aware of any accidents that have occurred relative to the location.

Mr. Biles said he has personally observed a lot of and that is a concern.

Mr. Painter asked if his operation is going to have parking out front.

Mr. Biles said he said he rated of all his facilities, the best set up for customer drop-off for dogs would be Zoomies. People are in and out in two minutes. Having customers park in the back and walk to the front might only be about 100 yards but would be challenging for customers on their way to work or for the elderly.

Member Painter asked about a door in the back.

Mr. Biles said his suggestion is to renovate the deli, which is in the back, and use that as the entry point.

Chair Friedman asked staff to confirm that they were not asking that there be no parking along Marquez Place.

Ms. Moore said the area directly in front of Zoomies is a curb painted No Parking zone. They are just asking Zoomies to abide by that. There is parallel parking on the opposite side of the street, but the concern is it was not designed as a loading/unloading

zone. She said the speeding is a good point and should not be an area for people who are dropping off their dogs. That should happen in the back.

Member Dearing confirmed that Ms. Moore's reference was to Camino de los Marquez, not Marquez Place.

Chair Friedman confirmed that Marquez Place also has parallel parking.

Member Painter asked to confirm the trash is picked up by the City.

Mr. Biles said yes, twice a week and there is a locked lid, and it is in the back parking lot area.

Chair Friedman asked if there is a way to address the smell.

Mr. Biles said he did not know when those complaints happened. The timing of some things is relatively recent, the [trash] pickup is twice a week. The dumpster has a locked lid and they implemented double bagging. He confirmed they are open 24/7 and dogs are in the facility throughout the night and pick up or drops offs were as late as 8 in the evening.

## **PUBLIC HEARING**

Chair Friedman limited public comments to two minutes. He said he preferred to start with those in favor. He asked that people be respectful to the other speakers.

The speakers were sworn en masse.

Robert Cartey, 2491 Sawmill Road, said it would be reasonable given the nature of the improvements requested and substantial cost, to allow the applicant to expand without having to furlough employees and incur financial issues.

Caroline Fletcher, 211 East Berger Street, said she is a veterinarian and a client of Zoomies. She has never had any concerns about their quality of care and cleanliness and the staff's professional skills. She said a 100 dog limit is difficult for a business trying to maintain and grow. If she had concerns, she would voice that. This is an excellent business and wonderful group of professionals. She fully supports them and is personally glad they are here.

Marcy Butler, 3222 ½ La Avenida de San Marcos, said the puppy she adopted had separation anxiety and she was referred to Zoomies by another day care. She has been their client for three years and her pup can't wait to get there. The staff is wonderful, and she has never had an issue with cleanliness with her dog that is white with black spots. She would hate for any of the staff to have to leave because Zoomies could not expand. She said she is grateful for the service and especially the cage free environment.

Gertrude Herrig, 723 Gomez Road, said she and her dog are regular customers of Zoomies and she supports the application. Her dog is crazy about going to Zoomies. The service is excellent, and the staff is incredible, supportive and responsible. They would miss it terribly if they could not go there.

Randy Coleman, 22 La Fonda Road in Eldorado, said he is the father of Moose the rat terrier, who is noted as the life of the party when at Zoomies. He said it is unfortunate, the original mistake on the part of Planning, is choking Zoomies and they are unable to get their business license with all the accreditations they have. It is ridiculous that they have to tell people they are not licensed right now. The Board should let them have their license and accreditations while the process continues. Secondly, he assumed it was left out that at the time for the second review for the Special Use Permit, the City went to the State to establish the parameters and that was used as the basis for the review, instead of the criteria being done now. Lastly, is his observation of Zoomies staff; he loves them. They are special people. Zoomies hires people with the ability to connect with dogs that might otherwise not find a place in our society. He said Santa Fe is a great place to live, but Zoomies is above and beyond on that.

Emily Minginbock, 815 East Palace Ave, spoke in support of Zoomies. She has a very active dog, and she depends on Zoomies because they work full time. Her dog is well cared for and loves it there and staff are great. The location is great for her since she works downtown. The thought of Zoomies not being around is a concern.

Barbara Griego, 401 Palomino Street, said she is a native Santa Fean with two pups under two years. They have been going to Zoomies about a year and a half. Most important to her is that she got her dogs during the pandemic when she worked from home. Zoomies was important as she went back to work and had to be away from her young pups that were still being trained. She needed someone reliable, and Zoomies was recommended by someone from a local park. It was important to her that they measured her dogs' temperaments to ensure they could be socialized and one of their greatest achievements. They not only provide a service for the community in caring for their pets but help to make the dogs better citizens. She supports them and would hope the application is approved with the changes requested. She said those who work rely on Zoomies and we need their services. She said she appreciated all of the improvements the new owner has made. She cannot live without them.

Robert Kind, 60 La Predera, said he is here for Stella and everyone who came because all of them love the place. He was concerned with three things. He said you can't get anything done in one year in Santa Fe. That should be at least two years. Secondly the 100 dog limit is not reasonable. Zoomies limits their intake of dogs during the holiday seasons and requires a reservation. They do not take more dogs than they can handle. Third, he never heard the reason the expansion was denied and would like to know why.

Evelyn Quintana, 1000 Marquez Place, said she lives in the condos near Zoomies. She is also a dog owner and fur baby lover but is concerned with the number of dogs in

the facility. She wanted to be sure with the expansion that the business would be a good neighbor. She said she is a school teacher, and her neighborhood is quiet and peaceful.

Seth Friedman, 408 Linda Vista Road, said they probably would not be here if not for him as he was the one who "blew the whistle" as the closest neighbor. He said he trusts that what he submitted was read but wanted to provide some history. He thought the conversation had turned to making Zoomies as a victim with the restrictions. He wanted to correct a statement about the number of complaints. Animal Control was called numerous times and people were told they did not have jurisdiction. They were passed around to numerous others, including the Mayor and a City Councilor. Finally, someone in the Planning Department got the ball rolling and sent out an inspector. He was glad to hear that staff has been upgraded and that the owner was not told about those complaints. He said he is a dog owner and dog lover. He said the location, especially the use of the parking lot on Linda Vista, is why this was initiated. His driveway is directly across from that. The dumpster depends on the weather, not the pickups. Many of them feel an investment into a building like this is off mark. It is not amenable to their lifestyle and quiet neighborhood. He noted that the people who testified tonight do not live in his neighborhood.

Robert Millstein, at 1000 Marquez Place, said he wrote a letter that was circulated among those in his condominium about things they want to request. Most are already in the Conditions. The fact that the business provides a service is not at issue. The issue is whether the service is provided without negative externalities to people outside. He thought Mr. Biles was a good citizen and could get all of the externalities handled, but they should be addressed clearly. He said for example, the lack of sound proofing has already impacted others. Two of the condo units run Air B&B's and have received a lot of complaints from rentals. He said that issue should be resolved in less than a year. Condition #8 on the 50 decibals, applies to *noise from a stationary source*, and is not enforceable. They cannot reproduce a dog barking at three in the morning. Sound proofing should be on the north wall that faces the condos and residents. He said the Pet Care Services Association says regarding the 20 to 1 ratio, that a 15-1 is the range and 20 is the extreme. He suggested on the limit to 100 dogs, that they drive along Don Diego, make a right turn onto Linda Vista, and notice how narrow it is. He thought creating an opening in the back would cause problems with that intersection. He also suggested they not allow parking within 75 feet of the corner of Marquez Place to enable those leaving the condominium to see to when making a left turn. He said they should make the other side of the street no parking because of the danger for the customers. Last, he noted there is already a back door to Zoomies without the need to go in through the deli.

Rachel Wood, 1000 Marquez Place, Unit C1 said she has been the board president of the association twice. She said there were not as many barking dogs with the former owners. She was grateful the new owners could not have outside pens, but she wanted to see it in writing. She said she would have to sell her unit if approved, as she works from home and the barking dogs were giving her headaches. She said she has reported that three times and couldn't understand why the owner was not told there were

complaints. Having parking on both sides is a concern. When there was a restaurant, it was crowded, and people parked in the condominiums parking lot.

Stefanie Beninato, said she lives in the 1000 block of Don Diego nearby. She has civil concerns but thought they would be addressed by the conditions of the Special Use Permit. She said the conditions are not arbitrary. Parking is a problem because people park on the sides of Camino de los Marquez. Everyone is in a hurry, and they dart out of parked cars to cross the street, which is dangerous. People do speed on Marquez. She has never seen the business accommodate the neighborhood in anything, other than the garbage. She said the parking needs to be somewhere else; on-site parking is needed. She thought there were not enough staff overnight and she had been disturbed by the nighttime barking. Also on the deli side, all of the drainage comes out onto the sidewalk and into the street. That could be a condition to change the drainage pattern off the roof. She said that they are considering a doggie unloading zone on a public street means they are not looking at how the business impacts the neighborhood. Last, she is concerned about the size of the expansion being considered and where everyone would park in peak hours as they run in and out.

There being no further public comment, Chair Friedman closed the public comment portion of the hearing.

## **BOARD DISCUSSION**

Chair Friedman clarified in a point of order, that there is no relationship between him and Seth Friedman who spoke earlier.

Ms. Moore addressed the comment of the 100 dog limit being arbitrary. She said that was in part because of parking and what the appropriate number of dogs is for the business. The existing thrift shop parking requirement is 1 every 200 square feet in the area. At 2800 square feet, 14 off-street parking spaces would be required. She proposed the doggy day care standard of 100 dogs per day would require 12 off street parking spaces. Her report was incorrect when it stated that would equal 30 spaces, it should have been a total of 26 spaces. She said she will correct her report. In total, there are only 20 off street parking spaces for the entire property. Under 14-8.6(D), Combined Uses and Shared Parking and referencing the Parking Demand Study, she accepted the reduction from 26 to 20 based on uses and peak times and volumes. If the number of dogs were increased that would increase staffing and 20 spaces is all they have. She said all of the requirements are for off street parking, not on street. She said when the applicant returns to the Board, they should consider what the expansion impact will look like regarding the parking requirements, additional staff, and drop-offs, pickups, etc.

Member Winston asked if the parking calculation was made with the denial of the request to expand.

Ms. Moore said the calculation was based on the current operation.

Member Winston asked staff to address why the Board was not asked to consider the expansion.

Ms. Moore said she recommended the expansion not be included at this time based on her review and site visits and analysis of the project. She said the Board could determine whether to adopt her recommendation.

Member Dearing asked if the staff report considered noise mitigation along the north side. She thought if that issue was handled it could solve a lot of problems.

Ms. Moore deferred to the applicant for clarification. She said one condition is a rolled door in the back, which remains closed at all times. She thought mitigation along those walls was a good idea.

Chair Friedman asked if correct that on the expansion issue the Board could also issue a Conditional Use Permit based upon the applicant meeting the requirements. He thought that has been done in the past.

Ms. Lamboy said tonight they are to consider the case on its own merits. If there is an expansion proposed, staff will need to see an updated application to make recommendations to the Board. She confirmed that they couldn't go beyond what is presented in the staff report and tonight is just for the existing use.

Ms. Moore clarified that part of the application is to expand and the applicant proposed a site plan in Attachment E of the packet. The expansion proposed includes expanding to where the Backstreet Bistro was and two additional play areas and a feeding area. She said staff recommended in early conversations with the applicant, relocating the entrance to the back where there is parking. That would address the loading/unloading issues, but the applicant was not interested at the time. Loading and unloading upfront is not accessible and staff discussed improvements there that would make it accessible. The applicant was not interested in that either. The final proposal was improvements to the back parking lot and a path from the parking lot along Marquez Place to the front entrance. The sidewalk currently has drainage issues which need to be resolved.

Chair Friedman confirmed that approval by the Board based on the conditions is the use with the expansion, subject to the applicant meeting all of these conditions.

Ms. Lamboy said one of the limiting issues is the number of parking spaces available to determine occupancy. She said a business with 100 dogs can provide parking is fine. A business with 2000 square feet needs to provide parking and currently parking is deficient.

Member Painter said if the deli is vacant and there is only enough parking for daycare, etc., it sounds like no one would ever be able to move into the deli. He said that is a concern.

Ms. Moore said Condition #6 reads that approval of the Special Use Permit applies only to the existing operation's square footage, not the proposed expansion.

Chair Friedman said the applicant stated in their presentation they would like Condition #6 to be revised to apply to everything.

Ms. Moore said that is correct. The parking study showed a demand for 13 spaces for the entire building. The building was built in the 60s and Code was adopted in 1962 that they should ensure any use for the building has parking for that use.

Member Dearing thought the proposal to put the door in the rear would exacerbate the problem for the neighborhood. She asked the applicant if willing to do noise mitigation along the northern side of the property for the condos off of Marquez Place.

Mr. Biles addressed the parking issue, saying he has been in the industry a long time. Their parking spots are vacant most of the time. It is a quick in and out and conventional parking studies do not apply. He said on the sound mitigation, they have done a lot of decibel checks on the property line and you can rarely hear a dog barking outside from inside the building. He added they are definitely open to doing further sound mitigation on the north wall and proper sound proofing with double walls, if necessary, to come to a compromise.

Mr. Vahid addressed the parking. He said that has been an issue with City staff. The building was built in 1957 and parking demand then and today is not compatible. He said if they take the entire building as a warehouse building, which is the least use of parking for C2. It is not day care. The warehouse requires 1 [space] per 500 square feet and the building at roughly 13,000 square feet requires 26 parking spaces. Without a variance, the City is basically condemning the building because it cannot be fully leased. He said staff has compared Zoomies use to a child day care center. That allows one occupant for every 35 square feet of the building. A 2000 square-foot warehouse would require 4 spaces. A 2000 square-foot *day care center* with 60 occupants would require 13 spaces. It is not a compatible situation with the parking and the in and out of Zoomies.

Chair Friedman asked the parking requirement for a restaurant.

Ms. Moore said food and beverage for restaurants requires one space for each 200 square feet of area; similar to the thrift store. Eating and drinking establishments is one space for each 50 square feet of serving area and is much higher than what staff proposed.

Chair Friedman said there was a lot more parking required for a restaurant than would be in this business.

**MOTION:** Member Winston moved to approve the Special Use Permit subject to conditions of approval and technical corrections recommended by staff with

the following amendments: on Condition #1, move to expand the time completion date to two years and the public hearing to two years; Condition #6, move to include the applicant's proposed expansion plan; Condition #10, move to delete the condition in entirety; Condition #4 move to a requirement for the north wall to also be sound proofed; and move to add a new Condition #17, to prohibit external dog pens under the Special Use Permit. The motion was seconded by Member Dearing.

**DISCUSSION:** Member Alexander said the applicant wants to expand and this is the opportunity to assess what that is now. He said the restriction of 100 was removed. A year is more than enough time to provide sound proofing, the ADA accessibility, dumpster relocation, etc. Then it would be time to assess whether the volume is unacceptable and then to allow expansion because the applicant has addressed the issues. He thought many of the issues had already been fixed but cannot be assessed now because the information is not in front of the Board.

Member Winston said her rationale for completion in two years was because they are including the proposed expansion plan. That gives the applicant time to implement that and to evaluate. She said it wasn't fair to the applicant if the Board tries to evaluate while the applicant is doing the expansion on the north side.

Member Alexander said if there is a problem now, why is the applicant expanding.

Member Winston said her understanding, based on testimony and the reports is that the problems have been addressed. There are no outside pens, and the dumpster is now covered.

Chair Friedman suggested a middle ground of a year and a half.

Member Painter said he also would like a year. A lot of money will be spent to get the property to be effective in reducing the noise. He prefers finding out if it is working in a shorter time.

Member Alexander thought the issue with the expansion should be workable with the number of dogs.

Attorney Feghali said the number of dogs is based on the number of parking spaces. With expansion the allowable number of dogs would require the applicant to return for a variance to the parking requirement.

Member Winston said she would be uncomfortable dictating the number of dogs. She thought the evaluation was not done with the expansion considered and it is outside the Board's purview.

Member Painter thought the major issue is the impact to the neighbors.

Chair Friedman added the Board would have the opportunity to review that again, in a year.

**Member Winston moved to revise her motion on Condition of approval #1 to remove the proposed amendment and have the applicant return for review before the Board at a public hearing and to complete within one year. Member Dearing seconded the motion.**

**VOTE:** The motion passed by roll call vote with Members Alexander, Dearing, and Winston voting in favor and Member Painter voting against because of neighbor concerns..

Chair Friedman thanked staff for their hard work.

Ms. Moore confirmed with Chair Friedman that the expansion had been approved. She said she would look into whether a variance for parking is now needed.

Member Dearing said comparing this to a daycare is not good; it is not really a daycare.

Chair Friedman asked why a variance would be needed if the use is not comparable.

Attorney Feghali said because that was staff's classification of the business. The Land Use Department makes the determination.

## **H. MATTERS FROM THE BOARD**

Chair Friedman thanked the Board members for maneuvering through the case. He asked if another appointment was coming for the new board member.

Ms. Moore said all of the appointments are in the Mayor's office and interviews are being conducted.

## **I. STAFF COMMUNICATIONS**

Attorney Feghali said the new attorney starts next month and will be the lead attorney for the Board. Her name is Rebecca Mnuk-Herrmann.

## **J. ADJOURN**

With all business conducted for the Board of Adjustment, Chair Friedman adjourned the meeting at 8:26 p.m.

Submitted by:

*Melissa D. Byers*

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Melissa D. Byers, Stenographer for  
Byers Organizational Support Services

Approved by:

*Gary Friedman*

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Gary Friedman, Chair