

## **MEMORANDUM**

**DATE:** October 15, 2009

**TO:** County Development Review Committee

**FROM:** Jose E. Larrañaga, Commercial Development Case Manager

**VIA:** Jack Kolkmeier, Land Use Administrator  
Shelley Cobau, Building and Development Services Manager  
Wayne Dalton, Building and Development Services Supervisor

**FILE REF.:** CDRC CASE # APP 09-5380 Mineshaft Properties,

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**ISSUE:**

Lori Lindsey, Applicant, is requesting an appeal of the Land Use Administrators decision to confine all music events on the property to the interior of the Mineshaft Tavern and not to allow any activity outside of the Mineshaft Tavern.

The property is within the Traditional Community of Madrid at 2846 State Highway 14, within Section 36, Township 14 North, Range 7 East, (Commission District 3).

**SUMMARY:**

In a letter, dated August 19, 2009, the Land Use Administrator (LUA) directed Lori Lindsey and Mineshaft Properties, LLC to confine all music events on the property to the interior of the Mineshaft Tavern. This directive was to take effect immediately upon receipt of the letter. This correspondence also stated that any activity outside of the Mineshaft Tavern will require a Special Use Permit and any further music activities that have not received a Special Use Permit will be issued a Notice of Violation and subject to attendant penalties (Exhibit "A" - Zoning Statement for the Mineshaft Tavern).

The zoning statement specifically mentions outdoor activity and outdoor music events, however, the development that has been made on the property is the main concern of how the re-use of this legal non-conforming site has evolved into non-conformance with the Land Development Code. The improvements made by the property owner have enabled the use of the property to expand and integrate large outdoor music events to the existing business.

Several improvements have been made, by the property owner, to the site which has enabled expansion of the historical use. A porch was built, without a development permit, and is used for outdoor seating, serving of alcohol and music events (Exhibit“B”). Terracing of a portion of the property allowed for outdoor seating and entertainment (Exhibit “C”). The owner has converted what was known as the Photography Studio into a Saloon, where music events are held and alcohol is served.

These alterations have prompted the property owner to engage in a variety of outdoor events on the property. These events were permitted by the LUA with the issuance of Special Use Permits. This type of permit is intended to allow an Applicant to have an occasional special event. The regularity of these events has increased the intensity of use of the property and altered the non-conforming character of the site (Exhibit D”).

Article II, Section 2.3.1a (Administrative Decisions) states: “The Code Administrator may approve or deny development permit applications for the following types of development without referring the application to the County Development Review Committee or the “Board”. Permitted uses in any non-residential district as set forth in Article III, Section 4 (Article II, Section 2.3.1a, xvii) is listed, as a type of development that may be approved or denied administratively, within the Land Development Code (Exhibit “F”).

Article III, Section 4.2.2.b (Traditional Community Districts) states: “Commercial or light industrial zoning may be approved in the traditional community where no qualifying intersection appears to be present provided (Exhibit “G”):

- a) Similar uses have been established as non-conforming on contiguous and adjacent locations in the community;
- b) The re-zoning to be approved is similar in type and scale to those uses suggested for neighborhood or small scale districts by Article III, Section 4.3.2;
- c) The re-zoning is compatible with neighboring uses;
- d) It is the consensus of the local community to allow the proposed re-zoning and use”.

In a letter to the LUA, dated August 20, 2009, Lori Lindsey/Mineshaft Tavern Properties, LLC (Appellant) stated: “I am requesting that this Zoning Statement not be enforced until the CDRC has a public meeting on this issue. I am appealing this letter and maintain that I should be able to operate until there has been a meeting to finalize this issue” (Exhibit “H”).

Article II, Section 2.3.4b (Appeals) states: “Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator’s decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County Development Review

Committee shall make and file its decision approving or disapproving the application or approving the application with conditions or modifications” (Exhibit “I”).

**The Appellant States:** Upon purchasing the property there was several concurrent businesses operating on the site. These businesses consisted of a bar in operation since 1895, the restaurant in operation since the early 1980’s, the Old West Photography had been operating since the 70’s, the Engine House Theatre was established in the early 80’s and the Old Coal Mine Museum was established in the mid to late 50’s.

**Staff Response:** The historic use of the Mineshaft Tavern and adjacent uses including the Wild West Photography Studio, the Old Coal Mine Museum and the Theater were established prior to the adoption of the code and, therefore have been determined by the LUA to be non-conforming uses, subject to requirements set forth in Article II, Section 4.5.2 of the Land Development Code (Exhibit “J”).

Historically, entertainment and music have been ongoing at the Mineshaft Tavern and entertainment has also been a function at the Theater, it is not conclusive that music has been a function at the other venues. The outdoor activity and amplified music, which is encouraged by the expansion on the property, is the core of the land use issue and the numerous complaints brought forward by neighboring residents and businesses.

**The Appellant States:** An existing structure was converted to a deck and the footprint for serving and the consumption of alcohol was expanded by six hundred (600) square feet. The Appellant goes on to state that the intensity of use, the sound ordinance and the LUA’s interpretation of the Land Development Code regarding health, safety, and welfare of the community is very grey.

**Staff Response:** Article II, Administrative Section 4.5.2 (Re-Use or Expansion of Non-conforming Use) does not state what type of expansion can occur or how much in terms of square footage. The following sections of Article II, of the Land Development Code, provided the information for the LUA to arrive at this decision.

Article II, Section 4.5.2b.4 (Re-Use or Expansion of Non-conforming Use) the re-use, expansion or extension is not incompatible with the surrounding uses of land and is deemed to be of interest to the health, welfare and safety of the community;

Article II, Section 4.5.2b.1 (Re-Use or Expansion of Non-conforming Use) the re-use, expansion or extension does not increase the intensity of development or alter the character of the non-conforming use on the site according to any limitations set by the Code relating to development standards for lot coverage, height, waste disposal, water use, setbacks, traffic generation, parking needs, landscaping, buffering, outdoor lighting, access, or signage;

**REQUIRED ACTION:**

The CDRC should review the attached material and consider the recommendation of staff; take action to approve, deny, approve with conditions or modifications or to table for further analysis of this request.

**RECOMMENDATION:**

Staff recommends denial of the Appellants request and solicits the support of the County Development Review Committee to require Lori Lindsey and Mineshaft Properties, LLC to bring the property into compliance with the Land Development Code. Code requires a Master Plan, per Article V, Section 5 (Master Plan Procedures), be submitted and approved by the Board of County Commissioners. An approved Master Plan will determine existing and future uses, current and future expansion and allow for extension of the business to incorporate all existing and/or proposed structures on the property. A Master Plan would allow the property owner to disclose, to the County and the community, the type of activity planned for this property.

Staff has reviewed this application and has found the following facts to support the Land Use Administrator's directive to Lori Lindsey and Mineshaft Properties, LLC, to confine all music events on the property to the interior of the Mineshaft Tavern: The current business license states the nature of business is restaurant, bar and retail. A porch was built and is used for outdoor seating, serving of alcohol and music events. Terracing of a portion of the property allows for outdoor seating and entertainment. The photography studio was converted into a Saloon, where music events are held and alcohol is served. The footprint for serving and consumption of alcohol has expanded. The outdoor activity and amplified music have prompted numerous complaints by the neighboring residents and businesses.

The Land Use Administrator's interpretation of the Land Development Code and zoning statement, dated August 19, 2009, has established findings that the Appellant is non-compliant with Article II, Section 4.5.2b.4 and Article II, Section 4.5.2b.1 (Re-Use or Expansion of Non-conforming Use). These changes increase the intensity of development on the property and are considered incompatible with the Code.

The existing non-conforming use of the Mineshaft Tavern serves to enhance the mixed use scheme of the community of Madrid and the historic pattern of use as a restaurant, lounge and entertainment facility is likely to continue in the future. The legal non-conformities of this property are difficult to prove or disprove and therefore making it difficult to determine the exact amount of post-code growth on this site. A portion of the expansion on this site can be calculated in square footage but an extension or re-use of this property is also evident by the outdoor venues being promoted by the property owner. The development and intensification created by these venues is what is the issue for compliance with the Land Development Code.

Should the County Development Review Committee choose to support the Land Use Administrator's decision and recommendation, staff proposes the following conditions be imposed.

1. The Applicant shall submit a Master Plan for consideration by the County Development Review Committee and Board of County Commissioners within six (6) months of this meeting date.
2. The Applicant, as a component of the Master Plan, shall submit an after the fact permit(s) for any and all development made on the property.
3. The Applicant shall be restricted to three (3) Special Use Permits per year, subject to the Land Use Administrators approval, prior to approval of the Master Plan.
4. The Applicant shall submit in a timely manner, upon approval and recordation of a Master Plan, a Final Development Plan identifying a phasing schedule for the development on the property.

**Attachments:**

- Exhibit "A"- Zoning Statement for the Mineshaft Tavern
- Exhibit "B"- Photo (before & after)
- Exhibit "C"- Photo
- Exhibit "D"- List of Approved Special Use Permits
- Exhibit "E" – Site Photos
- Exhibit "F" – Article II, Section 2.3.1a
- Exhibit "G" – Article III, Section 4.2.2b
- Exhibit "H" – Applicants Letter
- Exhibit "I" – Article II, Section 2.3.4b
- Exhibit "J" – Article II, Section 4.5.2
- Exhibit "K" – Areal
- Exhibit "L" – Documents of support (submitted by the Applicant)
- Exhibit "M" – Letters of Concern
- Exhibit "N" – Business Registration
- Exhibit "O" – Letters supporting music
- Exhibit "P" – Letter from County Fire