

MEMORANDUM

DATE: December 17, 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 09-5450 Santa Fe Mountain Center Business
License Appeal

ISSUE:

Norman and Jeanne Boyles, Louisa S. Sarofim, Mary L. Porter, Greig and Helga Porter and Gayther and Susan Gonzales (the "Neighbors"), Applicant's, Joseph M. Karnes (Sommer, Karnes & Associates, LLP), agent, are requesting an appeal of the Land Use Administrators decision to approve a Business License for the Santa Fe Mountain Center and the conditions of approval for the Business License.

The property is within the Traditional Community of Tesuque at 1524 Bishops Lodge Road, within Section 25, Township 18 North, Range 9 East, (Commission District 1).

SUMMARY:

On October 16, 2009, the Land Use Administrator (LUA) approved a business license, with conditions, for the Santa Fe Mountain Center (SFMC). The SFMC is an existing legal non-conforming non-profit business, in existence at the current location, prior to 1981 (Exhibit "A" – Business License & Conditions). Prior to approval of the business license it was determined that the Application met requirements set forth in Ordinance 1992-3 (Business Registration and Licensing); Ordinance 2000-13 (Tesuque Community Zoning District); Article II, Section 2.3.1.a (Administrative Decisions); and Article III, Section 4.2.2.a and 4.2.4.a (Traditional Community Districts).

Ordinance 1992-3, Section 4. (Land Use Administrator) states: "Before a business license is granted, the County Land Use Administrator may review the Application and shall

inform the applicant of any further requirements pursuant to life, health, welfare, and safety considerations. If the Land Use Administrator determines that restrictions or limitations should be placed on the licensed activity in order to protect the health, safety, or welfare of the citizens, he may impose requirements or conditions on the issuance of the registration or license, which shall be reasonably be related to the concerns for health, safety or welfare of the citizens of the County” (Exhibit “B”).

Ordinance 2000-13, Section 3.7.1 (Non-conforming Legal Uses) states “Non-conforming legal land uses and lots shall meet the standards of Article II of the Code” (Exhibit “C”).

Article II, Section 2.3.1.a (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”. The following types of development may be approved administratively; business license (Article II, Section 2.3.1.a, xv.) and; permitted uses in any non-residential district as set forth in Article III, Section 4 (Article II, Section 2.3.1.a, xvii), (Exhibit “D”).

Article III, Section 4.2.2.a (Mixed Uses Permitted) states: “Traditional Community Districts established by the Code are intended to accommodate a mixture of uses such as agriculture, residential, large scale residential, community service, institutional, non-residential or recreational uses anywhere inclusive of the boundaries of the village, provided the performance standards and criteria set forth by the Code are met” (Exhibit “E”).

Article III, Section 4.2.4.a (Non-Conforming Uses) states:” Existing development will be allowed to continue as a non-conforming use, pursuant to Article III, Section 4.5” (Exhibit “F”).

In a letter to the LUA, dated October 23, 2009, Joseph Karnes (Sommer, Karnes, & Associates, LLP) stated: “On behalf of the following owners (Appellant’s) of property in the immediate vicinity of the Santa Fe Mountain Center (SFMC) property: Norman and Jeanne Boyles, Louisa S. Sarofim, Mary L. Porter, Greig and Helga Porter and Gayther and Susan Gonzales (the “Neighbors”), this letter appeals your October 16, 2009 issuance of a business license to the SFMC and the conditions to that business license” (Exhibit “G”).

Article II, Section 2.3.4.b (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 “H”).

The Appellant's State: The SFMC is a commercial business located in a quiet, residential area of Tesuque. Although there are numerous businesses in Tesuque, the SFMC programs are focused on outdoor experiences that can include loud and emotional sessions. The Neighbors recognize the value of the SFMC's work and seek to reconcile the SFMC's mission with the residential nature of the area. Hours of operation (and the accompanying noise), traffic, access, parking, and expansion are issues the County needs to address (Exhibit "I").

Staff Response: The LUA determined the Application submitted for a business license by the SFMC met the requirements set forth in the Land Development Code as well as applicable ordinances. Land Use Staff made every effort possible to mediate conditions that would be amicable to all parties involved. The conditions of approval for the business license address hours of operation (and the accompanying noise), traffic, access, parking, and expansion (Exhibit "A").

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:

The following facts support the Land Use Administrator's decision to approve the business license for the Santa Fe Mountain Center; 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; the non-conforming use on the site have been in existence prior to 1981; existing development shall be allowed to continue as a non-conforming use pursuant to the Code; Traditional Community Districts established by the Code are intended to accommodate a mixture of uses anywhere inclusive of the boundaries of the village; conditions shall be imposed as a component of the business license to protect the health, safety, and welfare of the citizens.

The Land Use Administrator's interpretation of the Land Development Code and applicable ordinances has established findings that the Santa Fe Mountain Center is in compliance with Ordinance 1992-3 (Business Registration and Licensing); Ordinance 2000-13 (Tesuque Community Zoning District); Article II, Section 2.3.1.a (Administrative Decisions); and Article III, Section 4.2.2.a and 4.2.4.a (Traditional Community Districts). In support of the Land Use Administrators decision staff recommends **denial** of the Appellants request and solicits the support of the County Development Review Committee to deny the appeal.

Attachments:

- Exhibit "A" - Business License, Conditions & Attachments
- Exhibit "B" - Ordinance 1992-3, Section 4.
- Exhibit "C" - Ordinance 2000-13, Section 3.7.1
- Exhibit "D" - Article II, Section 2.3.1.a
- Exhibit "E" - Article III, Section 4.2.2.a
- Exhibit "F" - Article III, Section 4.2.4.a
- Exhibit "G" - Letter of Appeal
- Exhibit "H" - Article II, Section 2.3.4.b
- Exhibit "I" - Applicants Criteria for Appeal
- Exhibit "J" - Arial of Site
- Exhibit "K" - Photos of Site