

Town of Mesilla, New Mexico

THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION
(PZHAC) WILL HOLD A REGULAR MEETING AT THE MESILLA TOWN HALL,
2231 AVENIDA DE MESILLA.
MONDAY- JULY 3, 2023, AT 6:00 PM

MINUTES

Madam Chairperson: Okay folks welcome, today is Monday, July 3, 2023, 6pm. We hare here for Planning and Zoning Historical Appropriateness Commission for our regular meeting. First item I ask to please stand for the pledge of allegiance.

Members: I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible with liberty and justice for all.

Madam Chairperson: Welcome, everyone. Next order of business is roll call and determination of a quorum. Mr. Salazar

Mr. Salazar: Commissioner Jones.

Commissioner Jones: Present.

Mr. Salazar: Commissioner Walkinshaw.

Commissioner Walkinshaw: Present.

Mr. Salazar: Chairperson Lucero?

Madam Chairperson: Present.

Mr. Salazar: Commissioner Salas.

Commissioner Salas: Present.

Mr. Salazar: Commissioner Rockstraw.

Commissioner Rockstrawl: Present.

Mr. Salazar: Madam Chair, you have quorum.

Madam Chairperson: Thank you very much. Next item are changes and approval of agenda. Are there any changes? None, I will ask them for a motion to approve.

Commissioner Walkinshaw: I will motion to approve.

Commissioner Jones: Second

Madam Chairperson: Ok, motion by Commissioner Walkinshaw and seconded by Commissioner Jones. If you will call for the vote, please.

Commissioner Jones: Yes

Commissioner Walkinshaw: Yes

Madam Chairperson:

Commissioner Salas: Yes

Commissioner Rockstraw: Yes

Mr. Salazar: Madam Chair 5 to 0

Madam Chairperson: Thank you Mr. Salazar, the next item is public input. The public is invited to address the commission regarding items on the agenda. You will have 3 minutes. When you come up to speak, I ask that you state your name and address.

Susan Krueger: I want to urge the commission to follow the town code in making their decisions and considerations here. So, section 18.85.109 a. Outlines the next step for the planning commission to adopt a resolution approving or denying the application for the special use permit. Then 18.85.190 B directs the planning commission to adopt written findings which specify all the facts relied upon by you as the P & Z to make that decision. My next comment has to do with the agenda under 6A, PZHAC minutes. (laughter) June, the second one, June 20th, 2023, its called a regulatory meeting. The town of Mesilla code does not have that kind of meeting. We don't have a regulatory meeting. And if P & Z wants to change that, there is a process to go through to amend the ordinance. But at current status, mmm, we don't have a regulatory meeting. We can't make things up and put them down on paper and make hope they pass. Thanks

Trina Witter: I was just going to follow up with what Susan had said at one of the trustees' meetings that they did not have a written report. They didn't have copies of minutes to make a determination about the special use permit. So, I was just going to echo Susan in following the ordinance.

Madam Chairperson: Anybody else? Ok, I see none and hear none. Are next item is approval of the consent agenda. The consent agenda does say on June 20, 2023 it does state as a regulatory minutes. Is that how we like to vote on it or do we (audible not recognized loud child in background). Mr. Salazar

Mr. Salazar: If you notice, the regulatory meeting. The comment is on top of every agenda that we post. I just followed what was on the top of the agenda. Other than that, I did received some comments from Commissioner Walkinshaw to make some adjustments. He did point out some discrepancies that he needed adjusted on his parts. Other than that, I did not hear anyone else comment on the minutes, so I am assuming everyone is happy with them.

Madam Chairperson: Alright, at this time, I will accept a motion to approve June 20, 2023 regulatory minutes and June 20, 2023 special use minutes.

Commissioner Walkinshaw: So moved

Commissioner Salas: Second

Madam Chairperson: Ok, motioned to approve by Commissioner Walkinshaw and seconded by Commissioner Salas. Can you call for the vote Mr. Salazar.

Mr. Salazar: Commissioner Jones

Commissioner Jones: Yes

Mr. Salazar: Commissioner Walkinshaw

Commissioner Walkinshaw: Yes

Mr. Salazar: Madam Chair Lucero

Madam Chairperson: Yes

Mr. Salazar: Commissioner Salas

Commissioner Salas: Yes

Mr. Salazar: Commissioner Rockstraw

Commissioner Rockstraw: Yes

Mr. Salazar: Madam Chair vote is 5 to 0.

Madam Chairperson: Thank you, Next item is an action and consideration to recommend special use permit 061636. Mr. Salazar

Mr. Salazar: Yes, good evening commissioners. The case we have tonight, 061636 was requested by the board of trustees to come back to the PZHAC and list as an action item. Once it is voted as an action item, they are ready to move forward with the hearing. So again, the purpose why we are here tonight is to list it as an action item, which it is, to officially vote on it to prevent any doubt on the process of approval. I believe there was a misunderstanding on how a special use permit needs to be heard. They are hearings and not legislative meetings. I take some responsibility because the code is not clear on how hearings are held and I elected to do it as I have always thought they were being held by all municipalities based on state statute, right? I am here to answer any questions later on in this meeting to answer any questions regarding this topic. This hearing is the same hearing we had at our last meeting. The only thing is, I did include an email that I did not receive the first time. And I would like to read that out before the commission votes. This email was sent out by Robert Fountain, and it states:

"I am the owner of the retail space currently leased by Nambe. R.E. town hall meeting, June 20th, 2023, I vote no on the Cannabis Tropical lounge under consideration. This kind of business fails to contribute our historical nature of old Mesilla."

Other than that Madam chair, I stand by for any questions.

Madam Chairperson: Ok, I will accept a motion to approve special use permit 061636.

Commissioner Salas: So moved

Commissioner Walkinshaw: I second

Madam Chairperson: Ok, first motion Commissioner Salas and second by Commissioner Walkinshaw. Open it up for discussion. I was also at the Board of Trustees meeting and can say the board did not have a meeting and, as you can see, has not approve it yet. It will not go before the Board of Trustees until it is approved to recommend by the commission. We did have a Quasi-judicial type hearing for the special use permit, and I understand we are also not prepared. We are judges up here and the case that is brought before us that is how we need to view this case. At the time, I thought all the codes were met. We let everybody speak and it was more favorable than not. I for one am neutral, am here to do my job based on the code. I find that the electrical, the AC and ventilation system, I think he has spent a lot of time and money with the engineers, and he has complied. In my opinion, he has met the code. We are here because on the agenda we had the last time on the special use permit which we hardly ever hear these cases, that are normally brought to the Board of Trustees, per ordinance they brought it to us. There was no action item on the agenda and that is the only reason they brought it back. So commissioners, I am asking if you have anything to add when comes time for the vote, you give a reason for the vote.

Commissioner Jones: I have read that before the vote, you get a chance to comment before the vote.

Mr. Salazar: We are in discussion now, if you have any comments now, we are willing to hear them.

Commissioner Jones: I appreciate the fact that I got a chance to listen to everyone's comment and gave me a chance to review everything that was said at that meeting, and it is pretty apparent me that the owner of the property that has his due diligence, with pride work hard with the plans and engineer and all that but personally, that didn't change my mind. I voted no the first time and that is what I am going to do today. I just don't think it's a great idea for the town of Mesilla. There are other places close to Mesilla that are allowed, and they can do that business. I have a question, there are two entrances to it, one going straight into the dispenser and one going into the lounge. So you can go from the dispensary and buy your product and head to the other door to the lounge.

Bader Jouda: The other door, the one, the other entrance the one take you right away for the lounge consumption, that one you gotta be determine. I can not close it, I can not shut it down right now, or close it. But, if we get approved for the lounge consumption, I will start the process for that one just gonna be one entrance and one exit. They don't gotta be like two exits or two entrances.

Commissioner Jones: So, how will you keep people from coming in through that door and going directly to the lounge?

Bader Jouda: There is two, they are going to be going through two check in buzzards. They an go inside the dispensary, there is a waiting room, then they gotta go inside the dispensary after check in. Now they gotta be separate. The lounge consumption from the dispensary. If they wish to go inside lounge consumption, they gotta go check in and also sign a waiver before they in there. I can show you here in the plans...

Commissioner Jones: thank you, no that's alright, thank you.

Commissioner Walkinshaw: I have another question along those lines. My understanding is that you probably going to need a sign on the exit door that says, exit only.

Bader Jouda: I already have right now as we speak two exits signs but I am still using as an entrance because I know that part is vacant is being crowded for the weekend and "La Posta" and I can not see this, I have it best as a waiting room and people from La Plaza use it as a waiting area. Instead of people standing in the street, they come inside the waiting area. Which is, they go inside the dispensary you need our entrance. But right now it is vacant, I just have chairs inside.

Commissioner Walkinshaw: I have another question as far as your staff. My understanding is who's going to be operating the lounge. Is there going to be one or two staff members.

Bader Jouda: Two, minimum it has to be two. Either the two will be like a bartender, they will be serving. If we get busy we need to hire a third person as a security. Just to keep sure, everything is under control. Security also gotta be trained. Its not gotta be anybody else and give him security.

Commissioner Walkinshaw: To go a little further, what is protecting your staff from going in that lounge from secondary smoke. Is there any.. I know you got ventilation system but my understanding is the air will come in and go back after it has been ventilated the same way. Do you anticipate your staff from inhaling secondhand smoke from being in there.

Bader Jouda: My staff can not smoke when they are there, but they can smoke in there when they are not on duty. They can come out as a customer, sit down and smoke and taste it, whatever is the dosage, and you can leave after that. But also, I was thinking, maybe I will run a 4 hour shift like this and make sure they don't catch contact. Most employees at the dispensary this use cannabis. Some of them have used it since it was CBD. One has been using it since before recreational and have more tolerance and can probably work like 6 hours yes.

Commissioner Walkinshaw: I also understand that based on the regulations, that the staff is in the dispensary, there won't be any smoke in there.

Bader Jouda: No, no smoke. It is completely separated, completely separated. They have required some sort of filter. The plans, the glass door where it separate dispensary and lounge consumption. They go a little extra with the equipment like two purifiers and two vents to make sure the air ventilation is going to go outside. That is specifically at that entrance so, that is what the mechanical engineer do.

Commissioner Salas: This one is for Eddie. Where is he on the lounge process?

Mr. Salazar: He is not able to go any further with NM Cannabis Division until he is approved and the BOT. Right now he did submit the application...

Bader Jouda: I did submit application and got a response from them that say, we have no problem after approval letter from commission, zoning approval letter from Mesilla town. If you obtain approval from them, we will process.

Commissioner Salas: Eddie in your professional opinion, I don't know, do you think we need to place a condition on that.

Mr. Salazar: I think if you feel comfortable, and you vote yes, it should be with the condition that he meets all the agencies requirements from NM Cannabis. I think now, it shouldn't just be cannabis, it should be with any agency he needs approval from for the consumption lounge.

Commissioner Walkinshaw: I have a question for Eddie, Tom has looked at the plans.

Mr. Salazar: Correct

Commissioner Walkinshaw: the frustration I have is, we talked about this before is it have the full prints this time and I know you have been struggling with that as long as Tom reviewed the whole plans.

Mr. Salazar: Correct, what is happening is our printer doesn't print those papers and if you reduce to 11 x 17 and compacts it dramatically. If I try to email them electronically, they get blurry when you open them.

The best way to do it, is to get electronic signatures from the engineers, so they are nice and crisp. But as I was mentioning to you in the office, this gentleman spent close to \$10,000 on an application that doesn't even know if he is going to get approved or not. It is difficult to require that from any resident that wants to seek approval and invest that much money before that happens.

Madam Chairperson: I want to say again, when we vote, our vote should not be based on our personal opinion it should be based on the code. That is what we are here for. My opinion on how I feel about this cannabis or color of things have nothing to do with my job here as a commissioner. That is something I want everybody to take into consideration. Your personal opinion are not to be included in your vote, whether you like it or not. Secondly, our job is to look at the zoning. That is what we are, planning and zoning and historical appropriateness. When it comes down to the plans very technical. He can not get a permit until CID reviews the plans and is ok with that. So, are job is to look at it and ask questions. If you are trying to look at every little thing, it really is going to be up to the engineers and CID. So based on that if there ain't any other questions, I will call for that vote. How should we approve with conditions? Should we do it with the vote?

Mr. Salazar: Correct, with the vote. Just remember, the vote is going to be a recommendation to approve to the BOT and the conditions that the applicant meets all requirements from CID, NM Cannabis or any agency to open this business. If approved here, before he goes to BOT, the conditions will need to be met if the NM state accepts the recommendation to approve from the commission.

I understand our code is subject to interpretation and is not very clear at times. I have done many special use permit hearings as I tried to do the other night. I think it was an education for all of use. We are all learning, right? The way you want to do it is, as Madam Chair mentioned, commission does our homework with our code and base the decision to recommend that you met all the requirements based on our code.

Madam Chairperson: Yes, keep in mind, it is just a recommendation, and it is not an approval. My opinion should not have an influence on my vote.

Mr. Salazar: Exactly, I am the same way. I have to stay non-bias. I personally have never done, don't care much about it but, the gentleman is meeting all the codes and requirements. Once it reaches the BOT, then they will make decisions based on what is best. We did our homework; everything is done within code. But yes, the recommendation is to approve with the condition he meets all requirements from NM Cannabis Division and CID.

Madam Chairperson: Alright then, let's call for the vote please.

Mr. Salazar: Commissioner Jones?

Commissioner Jones: I guess, I'll have to say yes.

Mr. Salazar: Commissioner Walkinshaw?

Commissioner Walkinshaw: Yes

Mr. Salazar: Madam Chair Lucero?

Madam Chairperson: Yes, with the condition he meets all requirements from NM Cannabis Division, CID and any other agency involved.

Mr. Salazar: Commissioner Salas?

Commissioner Salas: Yes, with the conditions

Mr. Salazar: Commissioner Rockstraw?

Commissioner Rockstraw: Yes, with the conditions

Mr. Salazar: Madam chair, the vote is 5 to 0, motion passes.

Madam Chairperson: Thank you commissioners. Ok, next item on the agenda is staff comments Commissioners, if you would like to make comments...

Commissioner Walkinshaw: Yes, coming back this morning from [inaudible 27:03-27:11] I drove by the mural, what's going on?

Mr. Salazar: Ok, madam chair if I may. We spoke about this mural before. It has been used as an example in the past by other petitioners to be approved. We have reviewed the code on murals. I received feedback from the commission, murals are allowed only if the structure has historical significance regarding that particular mural it is displaying. Previously we had a request for a mural from Julianne Jewlers. She had to go back and redo her request and ad signage on the picture because it was just a picture. She modified it and it worked, right?

The mural Commissioner Walkinshaw asked was in front of the commission on Feb 8th, 2022, It is online, in the minutes. If you like, you can pull them up and see. Mr. Rogers submitted that application and it was declined. The gentlemen that painted the mural was cited and went to court. Court did find him guilty and was charged and did some community service for doing so. Therefore, the mural was never legally allowed in the building. I would like to note that the permit was submitted after the mural was painted. So, they tried to backtrack and submit permit after in efforts to save the mural. I sent a letter to Mr. Rogers, at first, he did not understand but he came around. He was very cooperative and asked for an extension of time to be able to remove mural. It took him a little longer than I wanted but, he took care of it and I thanked him for it. I advised, if he wants to submit anything, he has to do it before this happens again.

Commissioner Walkinshaw: I looked in our code and I didn't find anything regarding murals. Especially in the sign section there is nothing. I am curious to see where it is stated in the book.

Madam Chairperson: I want to make some comments. I was present, when this mural thing started. He was asked by the marshals to stop and submit the proper paperwork before you start. He refused and he continued, and they gave him a ticket but, he completed the mural. Mr. Rogers

is the owner of the property. I assume he didn't care one way or the other. Mr. Rogers did act on it because he was present, and I voted no for the very same reason Mr. Salazar said. Now if it is not in the code book, it is more than likely you don't want to vote yes because it is not in our code. I told them that Board of Trustees need to work on these ordinances. Things we interpreted; we have a problem with that. But it is not right for us to vote on something that is not in the book.

Commissioner Walkinshaw: so, what you are saying is it is not right if it is not in our ordinance.

Madam Chairperson: So, if it is not in the codebook you have to vote no because it is not in the code. So, it turns out he had an opportunity to appeal it and he never did. He never came back. So this mural, needs to come down because there was no permit. This gentleman is accusing the mayor of lying in the community meeting. It's not true, it is in the minutes. Mr. Salazar, I believe, stated a date.

Commissioner Salas: Can I add to that? Cause I was in that meeting also. Part of it was that past precedence was that mural had to have something associated with that building that happened. So, that was another reason, is that mural had no significant association with that building. It was already up when we voted on it.

Mr. Salazar: That is what I do. I read and read and read. It does not help if it is not in the ordinance or if it is unclear. That leaves it to interpretation and that is what we do. Those issues have been brought up and it is up to the BOT to get them amended. The murals are only two place in our code that I have found. One is in the checklist for the list you get on historical appropriateness review board. It states about a mural when you walk in the front door of a house it was historically found on the ceiling of the front porch. The other mention of murals is by historical significance and I read that today as I stumbled across it looking for something else. It is listed under the sign ordinance section. Listed under exceptions to the sign requirements if it has historical value to the building.

Commissioner Jones: What are the chances that we come up with an ordinance and or a code that people can read and know what to do.

Mr. Salazar: That's gotta come from the governing board. What I do, once a month, I am required to submit a report to the BOT. I include all concerns to the BOT to include recommendations to amend ordinances. The mayor has commented to me that she is trying to come up some money through maybe grants, to comb through our ordinances, especially chapter 18. My understanding it is quite costly to rid some of these issues we are having.

Madam Chairperson: I understand the frustration, but we will continue to do our job until they find a way to amend some of these ordinances. So, that is where we are at. Anybody else has anything? Ok, if there is nothing else, I will entertain a motion to adjourn.

Commissioner Jones: So moved.

Commissioner Walkinshaw: Second

Madam Chairperson: Ok, motioned by Commissioner Jones and Second by Commissioner Walkinshaw. Mr. Salazar, call for the vote please.

Mr. Salazar: Commissioner Jones?

Commissioner Jones: Yes

Mr. Salazar: Commissioner Walkinshaw?

Commissioner Walkinshaw: Yes

Mr. Salazar: Madam Chair Lucero?

Madam Chairperson: Yes

Mr. Salazar: Commissioner Salas?

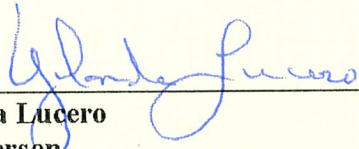
Commissioner Salas: Yes

Mr. Salazar: Commissioner Rockstraw?

Commissioner Rockstraw: Yes

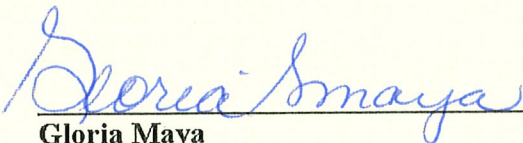
Mr. Salazar: Madam Chair you have 5 to 0

Madam Chairperson: Thank you all very much. Thanks for coming tonight.



Yolanda Lucero
Chairperson

ATTEST:



Gloria Maya
Town Clerk-Treasurer



