



# Board of Supervisors Memorandum

P17CU00005

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## FOR BOARD OF SUPERVISORS SEPTEMBER 19, 2017 PUBLIC HEARING

**TO:** HONORABLE BOARD OF SUPERVISORS

**FROM:** Jim Portner, Hearing Administrator

**DATE:** July 17, 2017

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**DOCUMENT:** P17CU00005

### CONDITIONAL USE PERMIT REQUEST FOR PUBLIC HEARING:

Request of Charles Smiley and Murray Roberts on a site located at 6029 N. Sandario Road, in the **RH (Rural Homestead) Zone**, for a conditional use permit for a restaurant, in accordance with Section 18.13.030 of the Pima County Zoning Code as a Type II conditional use.  
(District 3)

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### CASE BACKGROUND AND PARTICULARS

The applicant's request is for a restaurant, as technically defined by the Pima County Zoning. In specific, the intent here is to operate a mobile food cart on the property to sell hot dogs and refreshments during daylight hours. Supporting improvements would also be made on the site to provide gravel entry/exit drives, designated parking spaces, trash receptacles, etc. The property has direct frontage on Sandario Road, the main north-south artery in the Picture Rocks area, and borders the northern property boundary of Saguaro National Park West.

### SUMMARY OF THE HEARING ADMINISTRATOR MEETING

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on July 12, 2017. The applicant presented the case to the satisfaction of the hearing administrator and answered his questions.

Nine (9) members of the public attended the public hearing, all of whom elected to speak on the matter. Each of the speakers expressed their opposition to the request, with the following being the primary themes, concerns, and issues expressed: 1) the proposed use and its aesthetics were

viewed as inappropriate given the predominant residential character of the area; 2) perceived concerns with respect to potential vandalism, the presence of strangers, and security of the adjacent residences; 3) traffic congestion and accident potential due to the high-speed traffic on Sandario Road; 4) a private well agreement that includes the subject property and which, in the estimation of the speakers, allows residential uses only; and 5) the potential for undesirable sights, sounds and smells associated with the proposed use.

After hearing the above, the applicant was allowed the opportunity to respond to the public testimony and to answer a few follow-up questions from the Hearing Administrator.

Staff indicated that, prior to the public hearing, two (2) phone calls from residents who expressed concerns about a full-size restaurant being located on the property; staff clarified the specifics of the request. In addition, one (1) written protest letter had been received and provided to the Hearing Administrator.

After hearing all of the above, the Hearing Administrator closed the public hearing.

#### HEARING ADMINISTRATOR'S COMMENTS

The following comments are offered by the Hearing Administrator so that all concerned have an understanding as to the rationale and basis of the formal recommendation presented below. The following observations are offered in response to the various concerns and objections presented by members of the public at the July 12, 2017 public hearing:

***Inappropriateness of the Proposed Use and Harm to Residential Character.*** The public testimony strongly asserted the established residential character and feel of the surrounding area, the need to preserve same, and the belief that the proposed food cart would severely damage this character. This Hearing Administrator conducted a second site following the July 12, 2017 public hearing to specifically assess this issue. While a purely residential feel does characterize those areas lying farther from Sandario Road, I would respectfully state that the immediate Sandario Road corridor itself – as the main north-south artery of the Picture Rocks community -- does not possess any overwhelming sense of pure residential character. The proposed use would be an element of this corridor and is not found to be inappropriate nor damaging to its established makeup or personality.

While site-built and manufactured homes do front upon Sandario Road, metal accessory buildings with marginal “residential feel” are not uncommon with same. A Pima County Sheriff's sub-station lies just 1500' to the north of Rudasill Road and the Picture Rocks Hardware store lies 500' north of that. Continuing north, of course, is the main Picture Rocks business district. The factors in force here produce a corridor whose character is more mixed-use than exclusively residential. The proposed food-cart would be physically located immediately adjacent to this corridor and be separated substantially from any nearby residence. This Hearing Administrator finds it to be an acceptable corridor use and one which will not unduly impact any individual residence nor undermine the established character of Sandario Road.

***Security and Safety of Nearby Residential Properties.*** The Hearing Administrator respectfully does not share the expressed belief that the presence of a business inherently brings unwanted and potentially harmful strangers into an otherwise safe and secure area and, therefore, represents a significant safety and security risk to surrounding property owners. The proposed use here is a hot dog stand. Given the significant physical distance between it and any nearby residence, the Hearing Administrator finds it to not be a threat to surrounding property owners and does not agree that some form or twenty-four security is necessary to ensure their safety.

***Traffic Congestions and Safety.*** The proposed driveway locations have been sited in conformance with all applicable Department of Transportation (DOT) criteria for the separation of driveways from established public street intersections. The Hearing Administrator recognizes and respects DOT's authority in this regard and accepts their position on the matter.

***Private Well Agreement.*** As mentioned at public hearing, Pima County has no standing in private matters between private parties. Whether the proposed use eventually does, or does not, connect to the private well system will be a matter settled between those private parties having a legal interest in the private well agreement.

***Undesirable Sights, Sounds, Smells.*** The proposed use will be separated by a significant physical distance from any nearby residence. The intervening natural vegetation will screen it almost entirely from view, and the sounds and smells produced by a hot-dog stand are negligible.

#### HEARING ADMINISTRATOR'S RECOMMENDATION

After visiting the subject property, once before the public hearing and a second time after it, and after considering the facts and the testimony presented at the July 12, 2017 public hearing, the Hearing Administrator recommends **APPROVAL** of this request for a Type II conditional use permit for a restaurant (mobile food cart). The applicant is advised that this is a *recommendation* to the Board of Supervisors, who will make the ultimate and final decision on this CUP request.

Should the Board of Supervisors agree with the Hearing Administrator's recommendation for approval, it is suggested that this approval be granted subject to the following standard and special conditions:

#### *Standard Conditions & Requirements per the Pima County Zoning Code*

The Pima County Zoning Code limits any Type II restaurant to a maximum of two thousand (2,000) square feet in floor area. The special conditions below reduce this limit even further.

#### *Special Conditions*

1. This conditional use permit is for the operation of a mobile food cart only, together with those ancillary activities that normally and routinely accompany such a food-vending use. No other or more intensive commercial uses are approved for the site. Any request to expand the proposed food-cart operation or establish any sort of permanent restaurant structure shall require a new conditional use permit application, public hearing, etc.

2. The proposed use shall generally conform with the location and particulars as shown on the conceptual site plan that was submitted by the applicant in conjunction with this conditional use permit application. Minor modifications to the layout are permitted to best minimize the disturbance of existing vegetation and protected plant species.
3. The proposed food-cart shall be positioned a minimum of one hundred feet (100') from the edge of Sandario Road pavement during all operations and food sales.
4. The property shall be operated in neat and tidy fashion and be kept clean of trash and debris at all times. Regular trash pick-up shall be arranged with a private hauler.
5. Hours of operation are limited to daylight hours only; Monday through Saturday.
6. A mobile-mini metal cargo container is allowed in the property, subject to: 1) it being located as shown on the submitted conceptual; 2) it is a minimum of one hundred feet (100') from the shared property line of the residential lot to the adjacent north; and 3) it is painted a desert tan or some other appropriate earth-tone color.
7. The driveway entry points onto Sandario Road and Rudasill Road, respectively, shall be in substantial conformance with the centerline separations from the Sandario/Rudasill intersection as shown on the submitted conceptual plan. Their final placement and compliance with applicable Department of Transportation (DOT) separation criteria shall be confirmed by DOT at the time of final issuance of this conditional use permit.
8. All driveways and parking areas shall be minimally surfaced with gravel so as to control the generation of dust.
9. This conditional use permit approval carries with it no requirement that the property be fenced. The owner/operator can pursue protective security fencing at their discretion.
10. No formal Development Plan is required in conjunction with this conditional use permit application. The Chief Zoning Inspector (CZI) shall review the conceptual site plan submitted with this application to determine its sufficiency and/or to effectuate any modifications necessary to fully comply with all applicable codes. The CZI will also coordinate with the Department of Transportation and the Regional Flood Control District as appropriate.

### **REQUIRED STANDARDS AND FINDINGS**

Following are the Hearing Administrator's findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

- 1. It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.**

The Pima County Comprehensive Plan designates this site and the surrounding private properties as *Resource Sensitive (RS)*, the purpose of which is designate key larger parcels and land holdings with environmentally sensitive characteristics in close proximity to public preserves or other environmentally sensitive areas. Development of such land shall emphasize design that blends with the surrounding natural desert and provides connectivity to environmentally sensitive linkages in developing areas. The *RS* designation in this particular case is derived from the subject property's adjacency to Saguaro National Park West.

It is the Hearing Administrator's finding that the proposed food-cart use can be effectuated on the property with minimal impacts and, if operated in neat and tidy fashion and in accordance with the *Special Conditions* prescribed above, will not be in conflict with the objectives of the *Comprehensive Plan*.

**2. It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.**

It is the Hearing Administrator's position that the proposed conditional use, if conducted in conformance with the submitted conceptual site plan and the *Special Conditions* prescribed above, will satisfactorily safeguard the adjacent properties and their permitted uses of same.

**3. It has adequate accessibility to the County road network.**

The site has direct access to N. Sandario Road, which is a paved, public street and designated "major street" on the Pima County Major Streets & Routes Plan. Access is found to be adequate, as long as the proposed driveways are sited in accordance with DOT criteria.

**4. It has sufficient off-street parking and loading facilities, that will be developed in accordance with County engineering standards.**

Required parking shall be reviewed accordingly by staff at the time of final permitting.

**5. It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.**

It is the Hearing Administrator's finding that the new use poses no significant public threat in any of the above ways, including noise and odors. Special conditions have been crafted to address the use's operation.

**6. Hours of operation will not be detrimental to adjoining residents.**

Hours of operation are covered in the proposed Special Conditions.

**7. Landscaping will be fully in conformance with zoning code regulations.**

Designated landscape buffers, etc. shall be delineated on the required site plan and reviewed by staff at the time of final permitting.

**SONORAN DESERT CONSERVATION CONCEPT PLAN/ENVIRONMENTAL ISSUES**

**Comprehensive Plan Regional Environmental Policies — Conservation Lands System**

In December, 2001 the Board of Supervisors incorporated the Maeveen Marie Behan Conservation Lands System (MMB-CLS) into the Comprehensive Plan 2001 Update as the

Regional Environmental Policies. The MMB-CLS is the heart of the Sonoran Desert Conservation Plan (SDCP). On June 21, 2005, the Board of Supervisors amended the Comprehensive Plan Regional Environmental Policies and the MMB-CLS to reflect recommendations from the SDCP Science Technical Advisory Committee that were based on new scientific and technical data. As adopted, Conservation Guidelines associated with the MMB-CLS establish conservation objectives for a variety of projects (e.g. rezoning actions, comprehensive plan amendments, Type II and Type III conditional use permits, etc.) that require a discretionary decision by the Board of Supervisors. Conservation objectives include:

1. Important Riparian Areas — 95% undisturbed natural open space
2. Biological Core Management Areas — 80% undisturbed natural open space
3. Special Species Management Areas — 80% undisturbed natural open space
4. Multiple Use Management Areas — 66-2/3% undisturbed natural open space

**The very southernmost portion of the subject site is located within the MULTIPLE USE MANAGEMENT AREA of the SDCP's Biologically-Preferred Reserve System.**

#### **Staff Commentary on Biological Impacts**

Staff has reviewed this application and finds that, as long as it is placed on the site in conformance with the submitted conceptual site plan: 1) its approval is not expected to affect any resources essential to Pima County's biological conservation priorities; and 2) it would not be in conflict with the Regional Environmental Policies of the 2001 Comprehensive Plan Update. The proposed use will easily meet the above 66-2/3% preservation threshold of the CLS.

#### **Facts Confirmed by the Pima County Geographic Information System (GIS)**

The following facts are confirmed by the Pima County GIS and the Sonoran Desert Conservation Plan maps with respect to this conditional use permit request:

**Cactus Ferruginous Pygmy Owl.** The subject property is located within an area that was designated as former critical habitat and is part of draft recovery area. It is within Survey Zone 2. This site is located within the Priority Conservation Area (PCA) for this species.

**Western Burrowing Owl.** The subject property is located within Survey Zone 1 for the Western Burrowing Owl. It is within the Priority Conservation Area for this species.

**Pima Pineapple Cactus.** The subject property is located within a general area outside of the known range for the Pima Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

**Needle-Spined Pineapple Cactus.** The subject property is located within an area that is designated as having low potential for the Needle-Spined Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

**DEPT. OF TRANSPORTATION & FLOOD CONTROL RECOMMENDATION:**

The Department of Transportation and the Regional Flood Control District will further review the project during the final permitting process.

attachments

cc: Carla Blackwell, Director, Development Services  
Yves Khawam, Chief Building Official  
Chris Poirier, Planning Official  
Tom Drzazgowski, Chief Zoning Inspector  
Charles Smiley, Owner/Applicant