

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

July 21, 2016

I. This meeting of the Santa Fe County Planning Commission convened on the above-cited date at approximately 4:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

II. Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Frank Katz, Chair
Susan Martin, Vice Chair
Phil Anaya
Bette Booth
Louie Gonzales
Rena Gray
Leroy Lopez

Member(s) Excused:

None

Staff Present:

Penny Ellis-Green, Growth Management Director
Vicki Lucero, Building & Services Manager
John Lovato, Development Review Specialist
Jose Larrañaga, Development Review Team Leader
Andrea Salazar, Assistant County Attorney
Mathew Martinez, Development Review Specialist, Subdivisions

IV. APPROVAL OF AGENDA

Vicki Lucero noted there were no changes, Commissioner Martin moved approval as published and Commissioner Lopez seconded. The motion carried by unanimous voice vote. [Commissioner Gray was not present for this action and arrived immediately thereafter.]

V. APPROVAL OF MINUTES: June 16, 2016

Commissioner Booth moved to approve the June minutes as submitted.
Commissioner Martin seconded and the motion passed by unanimous [7-0] voice vote.

VI. OLD BUSINESS

- A. Case # V 16-5100 Ramon Polanco & Isabel Olivas. Ramon Polanco and Maria Olivas, Applicants, Ralph Jaramillo, Agent, Request a Variance of Chapter 9, Section 9.8.3.6.5.C.ii Dimensional Standards of the Sustainable Land Development Code To Allow a Residence To Be Within the Required Side and Rear 50-Foot Setback. The Property Consists of 1.25 Acres and is Located At 4 Estrellas Road South, within the La Cienega Overlay District, Within Section 28, Township 16 North, Range 8 East (Commission District 3) [Exhibit 1: Revised Staff Memo]**

MATHEW MARTINEZ (Case Manager): Thank you, Mr. Chair. Since this case has already been heard would you like me just to address the questions and concerns you guys had?

CHAIRMAN KATZ: Yes, please.

MR. MARTINEZ: Ramon Polanco and Maria Olivas, applicants, Ralph Jaramillo, agent, request a variance of Chapter 9, Section 9.8.3.6.5.C.ii Dimensional Standards of the Sustainable Land Development Code to allow a residence to be within the required side and rear 50-foot setback. The property consists of 1.25 acres and is located at 4 Estrellas Road South, within the La Cienega Overlay District, within Section 28, Township 16 North, Range 8 East, Commission District 3.

On June 16, 2016 the Planning Commission tabled this request and asked the following questions of staff: 1) Whether there was a holding period. 2) Whether the Small Lot Family Transfer was allowed to be sold.

Staff Response: 1) The division was reviewed under the Land Development Code Ordinance 1996-10, which states that there is no holding period for a Small Lot Family Transfer. There was a five-year holding period prior to the division which was met as the owner who divided the property had owned the land for 22 years, since April 1993. A holding period is only required for offsite road improvements if the roads are not built out. No offsite road improvements were required to be constructed due to access directly off of Santa Fe County Road 52. The onsite driveway is not required to be built until a building permit is issued. The plat states that there is no holding period.

And number 2, yes, the lot could be sold due to the fact that there was no holding period.

Recommendation: The lot is a legal lot of record, there was no holding period required for the previous owner before sale as indicated by the plat. The application is not in strict compliance with the SLDC but this application meets the criteria necessary for granting a variance. Due to the size and configuration of the lot, the applicant is unable to build a home on their lot. The inability to build on the property due to the setback requirements in Chapter 9, Section 9.8.3.6.5.c.ii, demonstrates that they have met the second prong of the variance criteria.

The spirit of the SLDC is to allow individuals to build on legal lots of record and the setback requirements prevent the applicants from doing this, so a variance would meet the requirement of the third prong. Under the setback requirements Chapter 7, Table 7-A, which apply to all Residential Estate Zoning outside of this community district overlay, the minimum setback is 25 feet. Therefore, staff's position is as long as the Applicant keeps the 25-foot setback requirement they have met the first prong of the variance criteria.

This matter came before the Hearing Officer for a hearing on May 26, 2016. The Hearing Officer recommended approval of the Application.

If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's finding of fact and conclusion of law in the written recommendation.

I stand for any questions.

CHAIRMAN KATZ: Thank you. Any questions of staff from the Commission?

COMMISSIONER BOOTH: I just want to thank staff for doing the extra work on this. With this transition to the new plan we just want to make sure I think that we're dotting the i's and crossing the t's so thank you for the extra work on it.

CHAIRMAN KATZ: Any other questions? This is a public hearing? Anybody wishing to discuss this case? Seeing no one we come back to the board for perhaps either discussion or a motion. Yes.

COMMISSIONER MARTIN: Mr. Chair, I make a motion in Case #V 16-5100, Roman Polanco and Isabel Olivas to approve the application for a variance.

COMMISSIONER GRAY: And I'll second it. I also want to make a motion [sic] that I'm Renae Gray; I'm here. Just arrived a little late.

CHAIRMAN KATZ: Welcome. We're glad you made it. Okay, it's been moved and seconded to approve the application and accept the basis for the variance.

The motion passed by unanimous [7-0] voice vote.

VI. B. Possible Action on the Findings of Fact and Conclusion of Law for Case #V 16-5100 Ramon Polanco & Isabel Olivas Variance.

CHAIRMAN KATZ: Yes, Ms. Martin.

COMMISSIONER MARTIN: I'll make a motion to adopt the Hearing Officer's findings of fact and conclusions of law in Case #V 16-5100.

CHAIRMAN KATZ: Okay. Is there a second to that?

COMMISSIONER GRAY: I second.

CHAIRMAN KATZ: Okay. We have a motion and a second to approve the order and to incorporate the findings and conclusions of the Hearing Officer.

The motion passed by unanimous [7-0] voice vote.

VII. New Business

- A. **Case #V 16-5070 Osan Variances. Diane and Garry Osan, Applicants, James Horn, Agent Request Three Variances of Chapter 7, Section 7.17.9.2.2 Setbacks From Ridges, Chapter 7, Section 7.17.9.2.3 Construction on 30% Slopes and a Variance of Chapter 7, Section 7.17.9.2.3.2 Height of a Structure to Exceed 14 Feet on a Ridge. The Property is Located at 21 Calle Cielo Within the Los Caminitos Subdivision, in the Vicinity of Chupadero, Within, Section 18, Township 18 North, Range 10 East (Commission District 1)**

JOHN LOVATO (Case Manager): Thank you, Mr. Chair. Diane and Garry Osan, applicants, James Horn, agent, request three variances of Chapter 7, Section 7.17.9.2.2 Setbacks from Ridges, Chapter 7, Section 7.17.9.2.3 Construction on 30 percent slopes and a variance of Chapter 7, Section 7.17.9.2.3.2 Height of a structure to exceed 14 feet on a ridge to allow a proposed 3,858 square foot residence with an attached garage to be located on a ridge, to disturb slopes in excess of 30 percent, and exceed 14 feet in height on a ridge. The Property is Located at 21 Calle Cielo within the Los Caminitos Subdivision, in the vicinity of Chupadero, within, Section 18, Township 18 North, Range 10 East, Commission District 1.

On May 26, 2016, the application for a variance of height was presented to the Hearing Officer for consideration. The Hearing Officer supported the application as memorialized in the findings of fact and conclusions of law, written order, Exhibit 10.

The property consists of 7.72 acres and is within the Residential Fringe Zoning District as defined by the SLDC.

The first variance sought by the applicants is regarding Chapter 7, Section 7.17.9.2.2 the requirement for a 50-foot setback. Building and Development Services, Fire Prevention, and the Los Caminitos Homeowners Association, met with the applicants and are in agreement that the only feasible building site on the property is located on the ridgetop. However, due to the topography, there will be no setback on any portion of the ridge, shoulders or crest. Therefore the applicants are seeking a variance to allow the residence to be within the 50-foot setback.

The second variance sought by the applicants is of Chapter 7, Section 7.17.9.3.2 Height Requirements, in order to exceed 14 feet in height for the construction of a garage and a family room, with a living room above the second story. The two-story area is located on the southwestern portion of the residence. The rest of the residence, which consists of three bedrooms, a dining room, living room and office will be on one level.

The agent states, "To reduce the impact and prominence of the exposed walk-in living room and garage on the southwestern corner of the house, we stepped the dining room back at the southwestern corner with a small terrace on top of the garage, integrating the house more into the landscape in a terraced manner."

The proposed height of the residence to exceed the 14-foot requirement is 21 feet in height and 22 feet in length for a total of 462 square feet to be exposed on the southwestern portion of the residence.

The third variance the applicants seek is of Chapter 7, Section 7.17.9.2.3 to build two retaining walls located on 30 percent slope to allow for natural light to enter the

family room area and to allow for ventilation. This is a previously graded lot with the northern portion of the property sunk into the terrain to reduce the visual impacts of the residence. The total disturbance of 30 percent slope for the structure is 283 square feet. The proposed height on the northern portion of the property is a total of 25'3" in height and 25 feet in length. The total exposure of house where the retaining walls are located to provide ventilation and natural daylight is 125 square feet. The retaining walls are eight feet in height with the living room above the family room. The rest of the house meets height requirements and is 14 feet in height.

The agent states they respectfully request these three variances to allow the Osans to develop the property they invested in over 14 years ago under different building codes, and keep the design in the spirit of Los Caminitos, and the spectacular natural beauty and terrain of Santa Fe County that we all live in.

Staff Response: Although it is not feasible for the applicants to meet setback requirements of 50 feet from a ridge, staff believes that the structure can meet the height requirements of 14 feet with a single-story design, smaller footprint and avoidance of 30 percent slope disturbance if the structure is built on the existing cut grade.

Recommendation: Staff acknowledges there are no other buildable areas on the lot and the 50-foot setback is not possible. However, staff recommends denial of the applicants' request for a variance to allow the proposed residence to be constructed on slopes greater than 30 percent, and for the residence to exceed height requirements of 14 feet. Staff believes that the structure can meet the height requirement of 14 feet with a single-story design and can avoid 30 percent slope disturbance with a smaller footprint if the structure is built on the existing cut grade.

On May 26, 2016 the application for a variance of height was presented to the Hearing Officer for consideration. The Hearing Officer supported the application as memorialized in findings of fact and conclusions of law in a written order. If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's findings of fact and conclusions of law in the written recommendation.

Thank you, Mr. Chair, and I stand for any questions.

CHAIRMAN KATZ: Are there any questions of staff? I have a question. The owners bought this property 14 years ago when the rules were different, I gather. Would it have been – this proposed structure – allowed under the older rules, or were there problems there also?

MR. LOVATO: Mr. Chair, they would have problems – well, 24, years, let's say. Where did that take us? They would have had problems. They would have had to meet the 50-foot setback as well.

CHAIRMAN KATZ: That's the one that's pretty impossible. How about the other two?

MR. LOVATO: Setbacks is a dimensional standard that is provided – well, the 50-foot setback was a requirement under our current code. It's a dimensional standard. Our previous code allowed for a 150 – if a ridgetop was 150 foot across you could design it within that as long as there was no other buildable area. In this case it would have been the same.

CHAIRMAN KATZ: How about the two-story, the height issue?

MR. LOVATO: Mr. Chair, that would be correct. It would still require the 14-foot height requirement.

CHAIRMAN KATZ: Okay. One other question. As far as the road is concerned, if they were to have essentially a one-story building, which I am sort of envisioning the top part without the garage and the family room underneath, would the road be able to get up to that height or is it too steep? It looks like it's too steep on the topographical.

MR. LOVATO: Mr. Chair, they would have required a variance of 30 percent slope disturbance and it would have been a greater impact, I believe, with the cut.

CHAIRMAN KATZ: Okay. Thank you. Any other questions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN KATZ: Yes.

COMMISSIONER ANAYA: I have one question for staff. Did I hear you correctly that there was already a footprint in the property when they bought it?

MR. LOVATO: Mr. Chair, Mr. Anaya, there was a footprint. It's a rough grade, rough cut.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN KATZ: Okay. Would the applicant –

COMMISSIONER GONZALES: Mr. Chair.

CHAIRMAN KATZ: Go ahead.

COMMISSIONER GONZALES: Mr. Lovato, the lot was created 14 years ago? Approximately? Is that correct or not?

MR. LOVATO: Mr. Chair, Commissioner, it was done in 1974 during the subdivision.

COMMISSIONER GONZALES: So the lot was created in 74.

MR. LOVATO: Right.

COMMISSIONER GONZALES: So did anybody – you said that there is some grading already done on the property? And did they do that, I would assume since 74 until now somebody did that?

MR. LOVATO: Mr. Chair, Mr. Gonzales, that is correct. In between that frame.

COMMISSIONER GONZALES: Were the plans that are submitted that's a 3,400 square foot house, was that done recently and they found out about the height and the – I guess it's the 50-foot setback? Is that when all this came about because of the new ordinance? Or could they have met it back then? Is it more stringent now than it was back then or what?

MR. LOVATO: Mr. Chair, Mr. Gonzales, it is a little more stringent. However, it was still required under the previous code for a setback. It was a little more lenient.

COMMISSIONER GONZALES: So with the amount – they were asking for three variances. If it was under the old code would it still have been three variances or would it have been less?

MR. LOVATO: Mr. Chair, Mr. Gonzales, that's correct. It would have been the same three variance requests.

COMMISSIONER GONZALES: Variances anyway. Thank you.

CHAIRMAN KATZ: Any other questions from the Commissioners?

COMMISSIONER ANAYA: Mr. Chair, one more question.

CHAIRMAN KATZ: Yes, Mr. Anaya.

COMMISSIONER ANAYA: On the variance setback on the drawings that we have, on A-2, which is their page; it would ours which is NBA-20, it shows that the height of the building on the south elevation is only eight – nine feet from the top of the patio. It doesn't show what the patio dimensions are, assuming that it's maybe two feet. So nine – you're talking about 11, 9, 10, 11, roughly? I don't see an issue there. Thanks.

CHAIRMAN KATZ: Okay, would the applicant come forward, be sworn and advise us on this?

[Duly sworn, Diane Osan testified as follows:]

DIANE OSAN: I'm Diane Osan. I'm the homeowner.

[Duly sworn, James Horn testified as follows:]

JAMES HORN: And I'm James Horn with Spears Horn Architects.

CHAIRMAN KATZ: What can you tell us about your application?

MR. HORN: Well, we have some large-scale boards here of the drawings. It might be easier for us to come up there and we can demonstrate the complexities that we've been working with on this project.

CHAIRMAN KATZ: Okay.

MR. HORN: First off, the property. There were questions about the property. The driveway, when they purchased it, came up to the property in a leveled area which is somewhat of a saddle between two higher ridges, and then there is also a well that is drilled down at the bottom. So everything was set up for this to be the building site as they purchased it. We've looked at other sites but if we move up to the front of the site then we're right at the entry and the homeowners association is not behind that at all.

We've met continuously with the homeowners association, County Fire Department, on getting all this to work. A big part of it was getting the roadway to work. We have it at 11.5 percent slope. If we were to bring that up to the top of the ridge we would have – it would have been a very steep drive up there. So part of having that garage down lower is that you have a much more even slope to come up through here. And we worked very meticulously to get this to fit in here and disturb as little as possible.

They're going to be aging in place so having this garage up here is very important to be able to access the house, so they can come into the house from the garage. So those are very important issues. If you look at the back of it, we worked really hard to get this below the top ridge so if you look at this top ridge here – the ridge here, here, everything is below that top ridge and steps down. We terraced it from the top level down.

And everything is very sunken into the earth. We even opened up this corner to reduce the impacts and we've done it so that none of these walls are more than 14 feet. It steps these terrace walls and then if you look at it from the main drive –

COMMISSIONER GONZALES: Based on what you have, the ridge, if the house was constructed today and you were looking at that northern view towards the north, you could still see that ridge?

MS. OSAN: You're talking about this ridge?

COMMISSIONER GONZALES: The one there.

MS. OSAN: Right there?

COMMISSIONER GONZALES: This one.

MS. OSAN: Right there. Yes.

MR. HORN: Yes. We're not touching the ridge at all.

MS. OSAN: We're not touching that ridge.

COMMISSIONER GONZALES: You can still see it?

MS. OSAN: Yes.

MR. HORN: Yes.

COMMISSIONER GONZALES: So if you're on the other side you couldn't see the house, basically.

MS. OSAN: You can't see the [inaudible] house from the other side.

MR. HORN: No.

MS. OSAN: The neighbors were all clear about whether they had objections to the house because that's important to the neighborhood. And our nearest neighbor cannot see because of the ridge.

MR. HORN: So then we did some computer images here. This is looking from the roadway, so everything is fairly nestled in and there's piñons that are going to be there.

CHAIRMAN KATZ: Which roadway is that?

MR. HORN: That's from the driveway going up.

CHAIRMAN KATZ: Yes.

MR. HORN: And there will be terraces here and you're not going to see much of this high area. And this is the back area with the walls for natural light. There's no property owners back there. Their property goes very far back.

CHAIRMAN KATZ: Could you turn that over again? This road – can you see the property at all from that road?

MS. OSAN: You can see – we actually put up story poles. There is one very brief point along that road where you can see the top of the house.

CHAIRMAN KATZ: Okay. Thank you.

MS. OSAN: It's a very short window as you drive past.

MR. HORN: And then we have a material palette on the back side. We're working with the soils and the colors up there so it blends real well with what's up there.

COMMISSIONER GONZALES: Up on the road, the view disturbance is minimal?

MS. OSAN: Very minimal.

MR. HORN: Very minimal.

MS. OSAN: You have to be – you almost have to stop to go, oh, that's where it is. And we put up the story poles very purposefully so that Planning Commission and neighborhood could look at that.

COMMISSIONER GONZALES: You also stated that you – did you talk with the HOA, the homeowners association and they're okay with the plan that you have now?

MS. OSAN: There was actually a letter of support from the HOA in your packet. They have very stringent guidelines that are in the same spirit as the Sustainable Development Code, to blend in, not be obtrusive or objectionable.

COMMISSIONER GONZALES: How many members do you have?

MS. OSAN: There are 35 out of the 76 properties that are developed.

COMMISSIONER GONZALES: Thank you.

MR. HORN: So does that help explain that project, Mr. Chair.

CHAIRMAN KATZ: Yes. That's a great help. Thank you. Does anybody on the Commission have any further questions for the applicant? This is a public hearing so all of you folks from the public sitting out there, now is your chance. Okay. Coming back to the Commission, are there questions, discussion or perhaps motions?

COMMISSIONER GONZALES: Chair Katz.

CHAIRMAN KATZ: Yes.

COMMISSIONER GONZALES: I'd like to make a motion.

CHAIRMAN KATZ: Thank you, Mr. Gonzales.

COMMISSIONER GONZALES: To approve the variance on Case V 16-5070, Diane and Gary Osan Variance, with the findings – regarding the findings of the Hearing Officer.

CHAIRMAN KATZ: Okay. Thank you. Is there a second?

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [7-0] voice vote.

VII. B. Possible Action on the Findings of Fact and Conclusions of Law For Case #V 16-5070 Osan Variance

CHAIRMAN KATZ: The motion is approved. Can I have a motion approving the form of order?

COMMISSIONER MARTIN: So moved.

CHAIRMAN KATZ: Okay. Thank you. Second?

COMMISSIONER ANAYA: Second.

CHAIRMAN KATZ: And I presume that's with the findings of the Hearing Officer. Okay. So there's been a motion to approve the decision and order to approve the order as submitted.

The motion passed by unanimous [7-0] voice vote.

C. Petitions From the Floor

None were offered.

D. Communications From the Commission Members

None were presented.

E. Communications From the Attorney

None were presented.

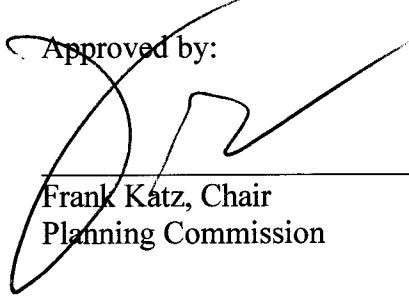
F. Matters From the Land Use Staff

None were presented.

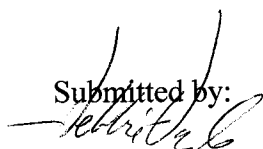
G. Next Planning Commission Regular Meeting: August 18, 2016

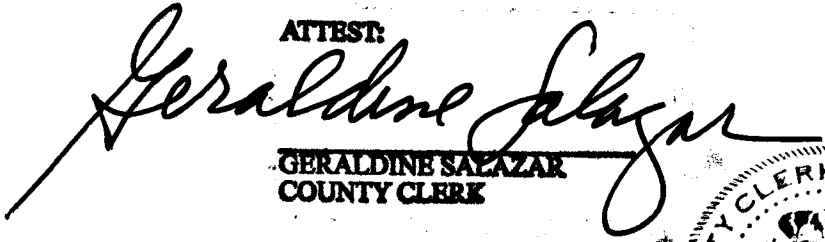
H. Adjournment

Having completed the agenda and with no further business to come before this Committee, Chair Katz declared this meeting adjourned at approximately 4:30 p.m.

Approved by:


Frank Katz, Chair
Planning Commission

Submitted by:

Debbie Doyle, Wordswork

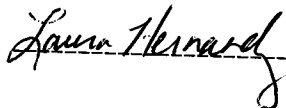
ATTEST:


GERALDINE SALAZAR
COUNTY CLERK



COUNTY OF SANTA FE) PLANNING COMMISSION MI
STATE OF NEW MEXICO) ss PAGES: 15

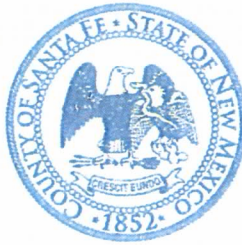
I Hereby Certify That This Instrument Was Filed for
Record On The 29TH Day Of August, 2016 at 10:13:48 AM
And Was Duly Recorded as Instrument # 1802827
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy  County Clerk, Santa Fe, NM

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Roman
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

SEC CLERK RECORDED 08/29/2016

DATE: July 21, 2016
TO: Planning Commission
FROM: Mathew Martinez, Development Review Specialist
VIA: Penny Ellis-Green, Growth Management Director
Vicki Lucero, Building and Development Services Manager
Wayne Dalton, Building and Development Services Supervisor
FILE REF.: CASE # V 16-5100 Ramon Polanco and Maria Olivas Variance

ISSUE:

Ramon Polanco and Maria Olivas, Applicants, Ralph Jaramillo, Agent, request a variance of Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks of the Sustainable Land Development Code, Ordinance No. 2015-11 (SLDC) to allow a residence to be within the required minimum 50' setback. The property consists of 1.25 acres and is located at 4 Estrellas Road South, within the La Cienega and La Cieneguilla Community District Overlay, within Section 28, Township 16 North, Range 8 East (Commission District 3).

Vicinity Map:



Site Location

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:
505-995-2740 www.santafecountynm.gov

OBA-1

SUMMARY:

On June 16, 2016 the Planning Commission tabled this request and asked the following questions of staff:

- i. Whether there was a holding period.
- ii. Whether the Small Lot Family Transfer was allowed to be sold.

Staff Response:

i. The division was reviewed under the Land Development Code (Ordinance 1996-10) which states that there is no holding period for a Small Lot Family Transfer. There was a 5 year holding period prior to the division which was met as the owner who divided the property had owned the land for 22 years (since April 1993) Exhibit 1. A holding period is only required for offsite road improvements if the roads are not built out. No off site road improvements were required to be constructed due to access directly off of Santa Fe County Road 52. The onsite driveway is not required to be built until a building permit is issued. The plat states that there is no holding period (Exhibit 4).

ii. Yes, the lot could be sold due to the fact that there was no holding period.

The Applicants are the owners of the property as evidenced by the Real Estate Contract recorded in the records of the Santa Fe County Clerk on March 1, 2016, as Instrument # 1787743. The Applicants are represented by Ralph Jaramillo, Agent, to pursue the variance.

The property consists of 1.25 acres and is within the Residential Estate Zoning District in the La Cienega and La Cieneguilla Community District Overlay. Under Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks, of the SLDC in that community district overlay the rear and sides of the building shall be setback a minimum of 50' from the property line. The property is an L shape lot (Exhibit 2) where the horizontal leg is approximately 105 feet wide and the vertical leg is approximately 86 feet wide. Incorporating a 50' setback from all side and rear property lines would leave nowhere for the Applicants to to construct a residence. Therefore, the Applicants are requesting a variance.

The Agent states that a Small Lot Family Transfer was approved for Gabriel Orozco, which was recorded on December 15, 2015, prior to the implementation of the SLDC. At that time, neither Mr. Orozco, nor the Agent, nor the Applicants were aware that the SLDC would require the 50' setback. The Agent states that if the parties would have known that these setbacks would be implemented, the lot lines would have been created differently. The Applicants further state they have paid a good down payment, which they have saved for years, and they have hired a contractor to put a foundation along with utilities for a 28'x78'(2,184 sq.ft.) manufactured home to place on the property. The Applicants further state that with the current setback requirements, there is no way they will be able to pursue building on their dream property.

Staff Response: The subject lot was approved by the Land Use Administrator in December of 2015, in accordance with the Land Development Code (Ordinance #1996-10). Although, Chapter 9,

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505-995-2740 www.santafecountynm.gov

DBA-2

Section 9.8.3.6.5.c.ii, Dimensional Standards RES –E Setbacks states that both the rear and sides of the building shall be setback a minimum of 50’ from the property line, the standard setback in the remainder of the County is 25’. Under Table 7-A, Setbacks in the Residential Estate Zoning District outside of this community district overlay are required to be a minimum of 25’ for both the rear and side setback from property lines. The 50’ setbacks leave the Applicant with nowhere to build on the property.

The applicable requirements under the Santa Fe County Sustainable Land Development Code, Ordinance No. 2015-11 (SLDC), which govern this Application are the following:

Chapter 9, Section 9.8.3.6.5.c.ii, LCLCCD Residential Estate (LCLCCD RES-E), Setbacks states, “[t]he rear and sides of the building shall be setback a minimum of 50 feet from the property line. (Exhibit 5)

Chapter 7, Table 7-A: Setback Table for Residential Estate (RES-E), states the minimum setback for the side and rear setbacks is 25’.

Chapter 14, Section 14.9.7.1, Variances, Purpose, states:

The purpose of this section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district. (Exhibit 6)

Chapter 14, Section 14.9.7.4, Variance Review criteria:

A variance may be granted only by a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) where authorized by NMSA 1978, Section 3-21-8(C):

1. Where the request is not contrary to public interest;
2. Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant; and
3. So that the spirit of the SLDC is observed and substantial justice is done.

Chapter 14, Section 14.9.7.5 Variance Conditions of approval states:

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.

3. All approved variances automatically expire within one year of the date of approval, unless the applicant takes affirmative action consistent with the approval.

As required by the SLDC, the Applicants presented the Application to the Technical Advisory Committee (TAC) on April 21, 2016, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, TAC Meeting Table 4-1.

Notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the Application, the Applicants provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for fifteen days on the property, beginning on May 11, 2016. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on May 11, 2016, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record.

This Application was submitted on April 25, 2016

RECOMMENDATION:

The lot is a legal lot of record, there was no holding period required for the previous owner before sale as indicated by the plat.

The Application is not in strict compliance with the SLDC but this Application meets the criteria necessary for granting a variance. Due to the size and configuration of the lot, the Applicant is unable to build a home on their lot. The inability to build on the property due to the setback requirements in Chapter 9, Section 9.8.3.6.5.c.ii, demonstrates that they have met the second prong of the variance criteria. The spirit of the SLDC is to allow individuals to build on legal lots or record and the setback requirements prevent the Applicants from doing this, so a variance would meet the requirement of the third prong. Under the setback requirements Chapter 7, Table 7-A, which apply to all Residential Estate Zoning outside of this community district overlay, the minimum setback is 25'. Therefore, staff's position is as long as the Applicant keeps the 25' setback requirement they have met the first prong of the variance criteria.

This matter came before the Hearing Officer for a hearing on May 26, 2016. The Hearing Officer recommended approval of the Application.

If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's finding of fact and conclusion of law in the written recommendation.

EXHIBITS:

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:
505-995-2740 www.santafecountynm.gov

OBA-4

1. Previous owner Warranty deed
2. June 16 2016 Planning Commission Meeting Minutes
3. Applicants Request
4. Site Plan and plat
5. Photos
6. Aerial Photo of Site
7. Chapter 9, Section 9.8.3.6.5.C.ii
8. Chapter 14, Section 14.9.7.1
9. Chapter 7, Table 7-A
10. Notice
11. Hearing Officer Final Order