

**TRANSCRIPT OF THE
SANTA FE COUNTY
SLDC HEARING OFFICER MEETING**

Santa Fe, New Mexico

October 14, 2021

1. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Richard Virtue on the above-cited date at approximately 3:05 p.m.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, and pursuant to the New Mexico Attorney General's Open Government Division Advisory during COVID-19, public entities are authorized to conduct virtual meetings.

[For clarity purposes, repetitive identification and confirmations of those on the phone have been eliminated and/or condensed in this transcript.]

Staff Present:

Vicki Lucero, Building & Development Services Manager
Paul Kavanaugh, Building & Development Services Supervisor
Roger Prucino, Assistant County Attorney
Gabriel Bustos, Case Manager

2. **Approval of Agenda**

HEARING OFFICER VIRTUE: Are there any changes to the agenda from staff?

VICKI LUCERO (Building & Development Services Manager) Hearing Officer Virtue, there are no changes to the agenda.

HEARING OFFICER VIRTUE: Thank you. With that we will turn to the one case on the agenda.

4. **New Business**

- A. **Case No. 21-5180. Chip and Trish Byrd Variance. Chip and Trish Byrd, Applicants, request a variance of Chapter 7.9.10.1 (Single Family Residential Signs), Table 7-5.1, to allow a 19'-6" flagpole with two 3x5 flags on their property. The site is within the Rural Residential Zoning District. The 2.4-acre property is located at 16 Palentine Road, within Township 17 North, Range 9 East, Section 4, (Commission District 1).**

[Hearing Officer Virtue read the case caption as shown above and invited staff to provide their report.]

GABRIEL BUSTOS (Case Manager): On September 8, 2021, the applicant submitted a variance application to allow a flagpole to be 19 feet 6 inches in height. Per the SLDC Table 7-5.1 the maximum allowable height for a residential flag pole is 14 feet. Therefore the request would be for the height of the flagpole to exceed code requirements by 5 feet 6 inches.

The subject property is 2.6 acres and is situated at the end of Palentine Road in a cul-de-sac. The applicant states, the flag pole sits at a base elevation of 6,999 feet and the home is at a base elevation of 7,008 feet. The flag pole currently is located in the center of the driveway turnaround, which sits below the residence, and is not adjacent to any structures on the lot. The applicant also states there are many mature juniper and pinon trees roughly 12 feet in height that provide a buffer between the bottom of Palentine Road and the flag pole. The property is zoned Residential Estate which allows for a height limit of 24 feet.

If the variance is not granted the applicant states, they would relocate the flag pole closer to the residence which would be sitting higher on the lot. Placing the flag pole at 14 feet in the secondary location closer to the residence, would result in the pole being more visible to properties above the proposed location where neighbors have been concerned, as opposed to allowing the pole to be 19 feet 6 inches at its current location due to the difference in elevation.

The applicant has addressed the variance criteria as follows and staff has responded. The variance request does not meet the requirements of the SLDC; however, due to the topography of the subject lot, the current location of the flagpole at the height of 19 feet 6 inches would be less of an obstruction than relocating the flagpole to a higher point on the lot at the height of 14 feet as required by the SLDC. Therefore, staff recommends approval of the variance request as proposed.

If the Hearing Officer is to recommend approval of the variance, staff recommends the following condition be imposed. May I enter the following condition in to the record?

HEARING OFFICER VIRTUE: Yes, you may.

Condition:

1. The height of the flagpole shall not exceed 19 feet 6 inches.

HEARING OFFICER VIRTUE: I have no questions. We will now turn to the applicant's presentation. Will the applicant who intends to testify on behalf of the applicant please identify yourself for the record by name and address and be sworn.

TRISH BYRD: Are you meaning me, Trish Byrd?

HEARING OFFICER VIRTUE: I'm sorry [connectivity issues]

MS. LUCERO: Ms. Byrd, yes, I believe you'll need to be sworn in and then give your presentation.

[Duly sworn, Trish Byrd, testified as follows:]

TRISH BYRD: My legal name is Patricia Byrd, 16 Palentine Road, Santa Fe, New Mexico, 87506. My husband and I are the ones with the case coming before you. And I think basically besides everything that has already been stated is that we purposely put the flag where it is so it is below the elevation of our home and to put it anywhere else on the property so that we can still enjoy the flag as we drive up, sit on two of our portals, would be at a higher elevation where it could definitely be more disturbing in blocking of anyone that might have any concerns. The one other statement that was noted is that when the flag is at half-staff, the way it is right now, the flag drags on the ground and that to me is very disturbing and emotional to see a flag on the ground. So I do hope to get the variance and you can ask me any questions other than the paperwork in front of you.

HEARING OFFICER VIRTUE: Does that complete your presentation, Ms. Byrd?

MS. BYRD: As long as everything else we're already submitted is accepted, I think it is or the department would – yes, everything that is already in writing.

HEARING OFFICER VIRTUE: Yes, your application and the staff report and several exhibits, so it appears to me that your submittals are in order at this point.

MS. BYRD: All right, thank you, sir.

HEARING OFFICER VIRTUE: Is there anyone else that is going to speak on behalf of the applicant? Hearing none, we will then go to other public testimony. And I'm going to ask if there is anybody in opposition to the application or simply make a statement without taking a position; please identify yourself, name and address and be duly sworn.

PHILIPPA KLESSIG: Hi. This is a neighbor, Philippa Klessig. I'd like to speak. Yes, can you hear me. This is Philippa Klessig. I am a neighbor of the applicant at 90 Sundance Drive. I'd like to speak.

[The Hearing Officer was unable to hear and staff reached him by telephone and recommended he call in via telephone rather than use the internet]

HEARING OFFICER VIRTUE: Hello, this is Richard Virtue.

MS. LUCERO: Mr. Virtue, we can hear you better now.

HEARING OFFICER VIRTUE: I'll go off the line here and do the rest of this by phone; if that's acceptable to everybody.

MS. LUCERO: That's fine, Mr. Virtue.

HEARING OFFICER VIRTUE: All right, we will do that. So at the point of which I stopped hearing anything I had asked for testimony in opposition to the

application. I heard someone indicate that they wanted to testify in opposition. I asked them to be sworn in but I did not hear them identify themselves or be sworn, so if we can go back that point, we'll go from there.

PHILIPPA KLESSIG: Yes, I am still here.

[Duly sworn, Philippa Klessig, testified as follows]

MS. KLESSIG: Philippa K-l-e-s-s-i-g, 90 Sundance Drive. I am a neighbor of the Byrds.

HEARING OFFICER VIRTUE: Okay, Ms. Klessig, you can proceed.

MS. KLESSIG: Okay, in regards to the flag site, when the Byrds first put the flagpole up it was at 19.6 feet and then they lowered it to the 14 which according to myself and seven neighbors, that I think you have received letters from, we like it at this lower height. At the higher height, I don't think you realize, it's like on a ridgeline. So you can see it from, clearly from my house at 14 feet and from other properties especially at the higher level.

I enjoy our flag. Our other neighbors have a flag. But at 19.6 feet it kind of ruins the rural atmosphere here. And when Ms. Byrd said she doesn't like when the flag is at half-mast to see it in the dirt, I just find that hard to believe that a 5 foot in length flag would drift back in the dirt. The other thing is that they very seldom take the flag down and if you want to honor the flag you're supposed to take it down at night or during bad weather.

So as a neighborhood and especially as a neighbor, I like seeing her flag at the lower height. I feel the higher height is too overwhelming and kind of makes it look more like a gas station, quite frankly, than the beautiful home it truly is and it is a stunning home that the Byrds built. Thank you.

MS. BYRD: This is Trish and I've already been sworn in. Officer, can I say a comment, or not?

HEARING OFFICER VIRTUE: Yes, please do. Please respond.

MS. BYRD: Okay. I don't think, Philippa, that you understand that if we move the flag it's going to be even seen more at the 14 feet. It will be more visible from all of your sight lines because it will be on a higher elevation on our property. I do believe they have pictures of, that the County took not me, took of the flag when it was at half-staff. So they know that it drags so I'm not making it up in anyway.

The trees that we currently have on the property are going to be blocking the full flag at any height within the next year. No matter if we move it to a higher elevation, it's going to be more disturbing to everyone. And, I guess, that you know, we do take it in and out. We do take it down. And we do fly the New Mexican flag and we took it down in the winds and the rain the other day. We lower it at night, sometimes if my husband is here but he's not, he's in the film business and he's been working evenings and so I don't usually have it in till 2 or 3 in the morning and it's much easier for him to do it than me. But I can actually have it lowered in the evening if that would make people somewhat happier. And I would just find a way of doing it myself.

But my bigger fear and I don't think any of you or anybody else is noticing is if we move it, it's going to be bigger and more dominant. And it's going to be seen from your street more often than where it is now that will eventually be blocked by the few trees that we have put in the landscaping. But that's all I have.

I love flying the flag. It means the world to us for many reasons and we're not part of an HOA. Our street is purposely – and we purposely bought our house and built our house here not to be. And I know that the two neighbors below us have no issue that are on our street with us. But, again, sir, there is not much more I can say than what we've already said and requested. I think there's plenty of photographs at every height where the flag is at from every angle, from trees that will block it to trees that won't, et cetera.

I apologize. I do not want to be a bad neighbor but one of the reasons we did the circular driveway, the fire department said it was requested, and that it would be more money, is that we knew one day we'd want to put a flag in that spot to honor family members, et cetera.

So that's it. No more argument except for I think you're all going to be more sad if we end up moving the flag. It's going to be much more visible and higher because it's from the highest elevation on our property.

MS. KLESSIG: Mr. Virtue, may I make another comment please?

HEARING OFFICER VIRTUE: Yes, you may.

MS. KLESSIG: I don't understand if you want to be neighborly and you want to see it from your portal, which I think you can clearly see it at its position and height now, why you would have to move it, number one. And then number two, the woman at the base of Palentine, your neighbor directly beneath you, is not for having the flag height raised or moved on the property to a more prevalent position.

MS. BYRD: Right, that's very low base, I understand. And just responding as fairly as I can, if we can't see it at the height that it's at or we cannot see from either of our portals when it is flying. I can see it out my front kitchen window and my front door. But we cannot see it from our back or our front portal and that's why we have to move it so at least we can see it from our back portal when we're there and as we come up. So it's – again, I don't know what more I can do, sir. It was up a very, very long time at the 19.6 before there was any complaining, I'm talking probably nine or ten months, and no one had concerns or issues. So I don't know, Officer, I don't know what more to say because I've answered both your request and the County, I've answered from -- and I really, surely don't want to have to put it at a higher elevation but that is the only way for us to see it from at least one of our portals and enjoy what it means to us.

HEARING OFFICER VIRTUE: Okay, thank you. This is the Hearing Officer, I have a question. Have you explored any other locations other than the existing location and the location closer to your house that you referred to that would be acceptable and why is it that the location near the house seems to be the only other place where you think it could go?

MS. BYRD: If we moved the flag to the other locations that's on our property it would be right smack in the middle of two of our neighbors' views looking west which I already know they were upset when we built our house that we blocked it. So we consciously didn't put landscape there allowing them to have from their portal a direct view out.

The other place we could put the flag would be right there in the middle that would allow us to see it from both sides of our house even though we would not longer see it coming up our driveway. So when we walked it around and I know that the gentleman with the County, I think they noticed the same thing that the ability of the least

restrictive thing to happen to others neighbors – in other words, having that flag literally flying in their backyard and then we could see it from our two portals. And we don't want to do that. We consciously didn't put landscape there so that we could maintain part of their view. I won't do that. I won't fly the flag there. That would be more than unneighborly.

HEARING OFFICER VIRTUE: So is it your testimony then that the existing location is the least restrictive location on your property in terms of blocking or interfering with views of your neighbors?

MS. BYRD: Yes. Yes, sir. The views of neighbors and the ability to enjoy it ourselves and to see the flag flying, yes, sir, that is my testimony.

HEARING OFFICER VIRTUE: Okay. I ask if there is anybody else present who wishes to testify with respect to this matter at this point?

HOWARD GERSHON: Yes, my name is Howard Gershon and I'd like to testify in opposition to the proposal.

HEARING OFFICER VIRTUE: Okay, Mr. Gershon. Please identify and spell your last name and give us your address and then we'll have you sworn in.

HOWARD GERSHON: Howard Gershon, it's G-e-r-s-h-o-n. My address is 41 Sundance Drive, Santa Fe, 87506. So I am a neighbor as well.

[Duly sworn, Howard Gershon, testified as follows]

MR. GERSHON: So like Philippa, we are neighbors here of the property in question. We like to walk in our neighborhood. We walk our dog almost every morning. Right now we can see the flag very prominently from probably at least a quarter-mile if not a half-mile away. There are several other properties, residential properties, in our neighborhood that fly flags and to my knowledge none of them have exceeded the 14-foot height requirement. They have all figured out a way to manage within the current regulations and so I don't see why it is appropriate in this case for granting an exception for a higher 19 foot flagpole rather than 14 feet. As I said, the other neighbors have managed to work this out so that they can see the flag. But as it is right now, even at 14 feet in its current location it is pretty hard to miss and at 19 feet it would be – it would just look out of context. So I am opposed for those reasons.

[At this point, the Hearing Officer and any other participants not connected by internet were no longer audible.]

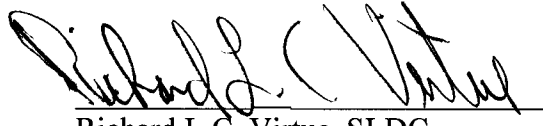
MS. LUCERO: It looks like Mr. Virtue may be having internet connections issues so we'll give him a minute. [Time elapses] Can anyone else still hear us?

Connectivity was lost and when it returned, Hearing Officer Virtue was stating he will issue a written recommendation with respect to the disposition of this matter within 15 business days. He thanked the attendees and adjourned the hearing at 3:45 p.m.

5. Adjournment

Hearing Officer Virtue adjourned the hearing at approximately 3:45 p.m.

Approved by:

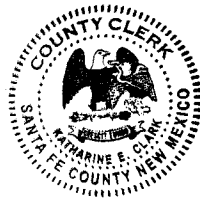


Richard L.C. Virtue, SLDC
Hearing Officer Santa Fe County

COUNTY OF SANTA FE) SLDC HEARING OFFICER M
STATE OF NEW MEXICO) ss PAGES: 7

I Hereby Certify That This Instrument Was Filed for
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Witness My Hand And Seal Of Office
Katharine E. Clark
Deputy *Destiny Romero* County Clerk, Santa Fe, NM



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