

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

Santa Fe, New Mexico

November 10, 2021

1. Opening Business

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 3:10 p.m.

The meeting was conducted in a hybrid format incorporating both Webex and in-person participation.

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

HEARING OFFICER VIRTUE: Good afternoon. This is the monthly meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer. My name is Richard Virtue. I'm the Hearing Officer.

Staff Present:

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

2. Approval of Agenda

HEARING OFFICER VIRTUE: We have three items on the published agenda for today. Are there any changes to the published agenda?

VICKI LUCERO (Building and Development Service Manager): Hearing Officer Virtue, there are no changes as stated on the agenda. The only case that will be

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heard is the Byrd variance. The two cases under New Business, High Desert Self Storage and Sierra Vista Subdivision Variance have been tabled.

HEARING OFFICER VIRTUE: Okay, thank you. So we will then hear today Old Business, which is the Byrd Variance, which is case number 21-5180.

3. **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 2.5-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.]

HEARING OFFICER VIRTUE: This matter was heard at the last meeting. We had a notice issue with respect to the time of the hearing and in addition there were some technical difficulties toward the end of the hearing. So, as a result of that, we are going to conduct the hearing in full again today. I will incorporate the transcript of the last hearing into the record of this case so it will be part of the record. But I am requesting and requiring that we have a full presentation by all parties here today. With that we will turn to the staff report.

GABRIEL BUSTOS (Case Manager): On October 14, 2021, the Hearing Officer heard this case. The Hearing Officer conducted the meeting virtually. County staff and the meeting recorder were present at the County Commission Chambers during the meeting. Towards the end of that meeting, the internet service in the Commission Chambers went down, and therefore, staff and the recorder were unable to hear or participate in two or three minutes of the meeting.

After the October 14th Hearing Officer meeting, it was also brought to the County's attention that there was an error on the public notice board that was posted on the Byrd's property, as required by the SLDC. The public notice board stated that the Hearing Officer meeting was at 4 p.m., when in fact, it was at 3 p.m., and there were members of the public who did not get the opportunity to speak because of this. For these reasons, the Hearing Officer has decided to continue the case and allow those members of the public who have not been heard, to speak at the November 10th meeting.

On September 8, 2021, the Applicants 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 is 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 Applicants state, the flagpole sits at a base elevation of 6,999 feet and the home is at a base elevation of 7,008 feet. The flagpole 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 Applicants also state there are many mature juniper and pinon

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trees roughly 12 feet in height that provide a buffer between the bottom of Palentine Road and the flagpole. The property is zoned Residential Estate.

If the variance is not granted, the Applicants have said they would relocate the flagpole closer to the residence, where it would be sitting higher on the lot. Placing the flagpole 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 Applicants have addressed the variance criteria as follows and staff has responded. Staff recommendation: The request for a 19 foot 6 inch flagpole does not meet the requirements of the SLDC; however, due to the topography of the subject lot, staff believes that the current location of the flagpole at the height of 19 feet 6 inches would be less of an obstruction and less visible from neighboring properties and from Palentine Road than if the flag were to be relocated to a higher point on the lot at the height of 14 feet as required by the SLDC

If the Hearing Officer finds that the variance criteria has been met and recommends approval of the variance, staff recommends the following condition be imposed. Mr. Hearing Officer, 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.

MR. BUSTOS: Thank you. I now stand for any questions.

HEARING OFFICER VIRTUE: I have no questions at this time. We will turn to the Applicant's testimony and I would ask that the Applicant and any representatives of the Applicant to testify on behalf of the Applicant, please identify yourself for the record by name and address and then we'll swear you in.

TRISH BYRD: Trish Byrd.

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

TRISH BYRD: Patricia Byrd, 16 Palentine Road, Santa Fe, New Mexico, 87506. I have a question for you, Your Honor Mr. Virtue. Number one is, do I repeat everything that I said before or is that in the record? And secondly, what is the criteria about the 500 rules radius? I know that several of the people that have written things are beyond 500 and if that is the case, I would like to know that, if it doesn't apply. And then if I need to state everything that was stated before, then I will start as soon as that is answered.

HEARING OFFICER VIRTUE: With regard to your – I'm still getting some feedback – so what I heard in your first question was that you presented a concession is that correct? Is that part of the record?

MS. BYRD: It will be, yes. It will be because I believe – there's three things, sir. One is, I believe that at the end of last hearing, you asked us to try and find a concession between us. So we did that immediately. The next morning I reached out to the County and said if that was your request how do we go about doing that. And that is in the record now.

But I have a question about the 500 feet property rule that people have to complain or oppose I guess is a better word, because a good number that are on this list or have sent letters are beyond 500 feet and if that's the case, if they are beyond 500 and that's still okay, then I think that there are people who may want to get on this call that also beyond 500 feet that feel that the flag is something that they do not object to. I'm just asking if that can be clarified and if not, then, yes, we will go over the concession unless you also want me to repeat my testimony from before.

HEARING OFFICER VIRTUE: Okay, the 500-foot requirement only applies to the persons who are required to get notice of the hearing. It does not address who has the right to testify at the hearing. So you don't have to live within 500 feet of your residence to be able to testify. This is a public hearing and any member of the public can testify.

MS. BYRD: All right. And thank you. And then my second question was, do I repeat everything from before or is that in the record?

HEARING OFFICER VIRTUE: That will be in the record so if you prefer, Ms. Byrd, just reference the testimony you gave before and adopt it by reference, I see no reason why you couldn't do that. The purpose of conducting the hearing was to allow you the opportunity to present that testimony to the people who maybe weren't here last time but are attending this time. So it's your choice whether you want to just adopt what you said at the prior hearing by reference or state it again or summarize it.

MS. BYRD: You can adopt what I said before what we also put in writing and then I'll go for new data which is to the concession that we offered which is what I believe you asked at the end of the last hearing.

HEARING OFFICER VIRTUE: Okay.

MS. BYRD: Is that correct, sir?

HEARING OFFICER VIRTUE: Yes.

MS. BYRD: Okay. And the reason for the references is that I did hear, and Vicki was gracious enough to send me peoples' letters that I had not had prior to it and just like some of the people that wrote in, our home was built as a refuge for my husband and me. For five years continuing to this day I had been under treatment and doing chemo and we decided to build a home that would be a home that we could age in-place and have it as a refuge as many do. We also recognize the fact that our home blocks views of people, not just the flag, and I think that is where some of the anger comes from. But the lot was for sale twice and just as my husband and I bought lots in front of us to protect our view and some of our neighbors' views, this lot could have been bought at any time before my husband and I bought it in 2017 and then build on it eventually.

So in taking into consideration what some people wrote, what people said, we felt that we would compromise by leaving the flag in place where it is if granted the variance. And we can still decide that if the variance isn't granted we will still leave the flag where it is at 14 feet and yet put another flag on the property which we have already had approved by the County, can be done, at the higher elevation but keep it at 14 feet so that we are within the code. Therefore, we can see it from our kitchen and we can see it as we come up our drive and when we are out walking in the neighborhood as well.

There's my testimony besides that and the concession that we made about 180 days a year is what you already have in the record and I believe that everyone has already read it because I've seen other communications going back and forth. So I don't think we need to read the concession. I think that everyone who is on this call has heard it and seen it. So for time purposes, I will stick by my original testimony and originally what we wrote and the concession that we have offered thus far.

HEARING OFFICER VIRTUE: Okay, thank you very much, Ms. Byrd. Does that conclude the Applicant's testimony?

MS. BYRD: Yes, I guess. Yes.

HEARING OFFICER VIRTUE: Okay, thank you. At this time I would like to ask for any member of the public that are in favor of this application please identify yourself for the record by name and address and be sworn in. I'll ask again if there is anyone present who wishes to testify in favor of this application, please identify yourself for the record and we will swear you in. Okay, hearing none, I will turn to those persons opposed to the application. I would similarly ask you to identify yourself for the record; your name and address and we will swear you in and then we will allow you to testify in the order in which you are identified and sworn.

HOWARD GERSHON: Howard Gershon, 41 Sundance Drive, Santa Fe, 87506.

HEARING OFFICER VIRTUE: Any other persons who want to testify in opposition?

ELLEN ROBLING: Ellen Robling in opposition. I live at 12 Palentine, right next door.

HEARING OFFICER VIRTUE: Okay, anyone else? I see someone talking but I can't hear here.

PHILLIPA KLESSIG: Can you hear me now? Phillipa Klessig, 90 Sundance Drive.

HEARING OFFICER VIRTUE: Okay, we have gotten you, Ms. Klessig.

MS. KLESSIG: Thank you. And I have a letter from somebody who could not attend today and I'm not sure that it is in the packet from Ronni Hill. I could read that also later.

HEARING OFFICER VIRTUE: Okay, please do that.

MS. KLESSIG: Do you want me to read that first?

HEARING OFFICER VIRTUE: No, we'll do that when it's your turn to testify.

MS. KLESSIG: Thank you.

HEARING OFFICER VIRTUE: Do we have anybody else participating in this hearing that wishes to testify in opposition to the application? Okay, hearing nobody else, we will start with the testimony of Mr. Gershon.

[Duly sworn, Mr. Gershon, testified via Webex as follows:]

HOWARD GERSHON: I presented my opposition in the earlier hearing and hopefully that is in the record. I simply want to state that the compromise suggested by the Byrds to me is unworkable. How are we going to monitor whether or not the flag is flying more than 180 days a year? Who is going to keep track of that? How are we going to keep track of whether or not the flag is actually lowered at dusk as she has

proposed to do; who is going to keep track of that? And, if in fact, the flag is not lowered or if it flies more than 180 days, what kind of recourse do we have to ensure that that's being enforced? So I simply think that this alternate proposal is unacceptable and unworkable. Thank you for the opportunity.

HEARING OFFICER VIRTUE: Thank you, Mr. Gershon. Next is Ms. Robling, did I get that right?

MS. ROBLING: Yes, Robling, R-o-b-l-i-n-g.

HEARING OFFICER VIRTUE: Robling, okay, thank you.

[Duly sworn, Ellen Robling, testified via Webex as follows:]

MS. ROBLING: 12 Palentine Road. I would just like to confirm everything that Howard said about the concessions not being manageable. My other objection to the current location of the flagpole at 19 feet 6 inches is that when my partner Daniel and I are in the vegetable garden at the edge of our property, at 19 feet and 6 inches which we have experience because the flags were at that level for a long time, it is a constant distraction when you're in the vegetable garden because at almost 20 feet there is much more air that the flags pick up. I want to thank the Byrds for securing the line so that there isn't noise from the line. That is not an issue. But it is the constant prevalence of wind that creates this snapping and flapping and snapping and flapping and snapping the whole time we're in the garden. And so – and we experienced it at 14 feet where it has been for a couple of months and it's amazing, the sound is half of what it is at 20 feet.

Other than that, we have no objections to the Byrds having flags. We would just like the variance not to be permitted so that the flags stay at 14 feet even if there's an additional flag at another location higher on the lot it will just make our life and our enjoyment of our garden much better is the variance isn't allowed. And I would also state that Penny Ellis-Green provided me with what is required for the variance, the criteria and it says where the request is not contrary to public interest, which I am here as a member of the public to say it is contrary to my interest and the second is, where due to extraordinary and exceptional situations or conditions of the property the strict application of the code would result in peculiar and exceptional and practical difficulties, or exceptional and undue hardship – and so that the spirit of the SLDC is observed and substantial justice is done. And as much as I understand the Byrds' desire to have the flag and see it as much as they can from their house, I don't think not having a 20 foot flag is undue hardship. It may be disappointing but I don't think that it in any way can be considered hardship.

That's all I have to say, thank you.

HEARING OFFICER VIRTUE: Thank you, Ms. Robling. Next is Ms. Klessig.

MS. KLESSIG: Thank you. First I wanted to thank everybody for the continuance of this hearing.

HEARING OFFICER VIRTUE: You'll need to be sworn – is she sworn in?

[Duly sworn, Phillipa Klessig, testified via Webex as follows:]

MS. KLESSIG: 90 Sundance Drive, Santa Fe. Again, thank you for continuing the hearing. First, I wanted to read a letter from Ronni Levine at 10 Bella

Loma, same zip, 87506. She sent this November 7th. I didn't see it in the packet. Dear Mr. Bustos and Ms. Lopez, I have become aware of a situation where a neighbor, Mr. and Mrs. Byrd, have asked for a variance so they can erect a 19-foot flagpole on a ridge line on their property. This situation appears to be a case of the needs of a few impacting the quality of life of many. Too often the County has been bullied into making decisions to satisfy the comfort or vanity needs of a single homeowner. This request is in opposition to the Sustainable Land Development Code, December 8, 2015, which states at 7.9.1, purpose, all signage shall comply with the requirements of this section, 7.9. in order to 1) ensure a visually pleasant place in which to live or to visit. And 7.9.1.4, protect the views of the natural landscape and sky. Thank you for viewing my comment, Ronni Levine."

And for myself, I did write in a possible concession, I did not hear on that, but I'm pretty sure it's in the record so instead of reading all of that, I do find that the current concession as stated by the Byrds does not work for all of the reasons that Mr. Gershon already stated. And I don't understand too when I look at the testimony or the letter of the concession from the Byrds, they say that this is to honor people that they've known. People in 9-11 and it also says that they can see the flag even when they're walking the neighborhood and I would say that that is the objection the rest of us that have ridgeline homes, we'd like to keep that plain/ridgeline view of the trees and their beautiful home, I might add, that I can see clearly from my front portal.

So I want to read a letter that I just sent in: Mr. Virtue, you have heard from many neighbors, some rather eloquently, why they do not want the variance. In summary, the Byrds built a spectacular house in a rural and friendly neighborhood. The type of neighborhood where during one of our notorious power outs and you were out of wood, a neighbor will share some of their own cord – will bring it to your door. If your mom is sick and you need to get to Dallas, no problem, we will watch and care for your dogs. Get on the road. But the Byrds want to put a flagpole where it irritates the neighbors, commands their views just because they think they can. Not only that, they have threatened trespassing lawsuits as we try to get this resolved and moving it upslope to an even more commanding location. The numerous codes in the Santa Fe County Sustainable Land Development Code dated December 13th, show the variance not only should not be granted but the existing 14 foot flagpole should be moved. These are some of the codes that you've heard earlier, but per 7.9.1.3, protect and enhance economic viability by ensuring that Santa Fe County will be a visibly pleasant place in which to live or to visit. 7.9.1.4, protect views of the natural landscape and sky. And under prohibited signs, 7.9.12, the following signs are not allowed in any zoning district and that's 12.1, rooftop signs and signs that extend above the roof of any building. So clearly moving it upslope even at 14 would be above the roofline of the building. And a flag, of course, and its pole are a sign per County code. We respectfully ask the County to decline the variance and require resituating the existing flagpole so it is closer and low to the house for all the reasons stated above. And that's myself and my husband Carl who could not be here today.

Thank you again for your time and the continuance.

HEARING OFFICER VIRTUE: Thank you, Ms. Klessig. Is there anyone present from the public that wishes to testify on the matter in any regard whether for, against or just generally make a comment at this point?

MS. BYRD: Mr. Virtue, this is Trish and just for the record, our house – if we move this flag out our roofline will still be taller than our home – I mean, taller than the flag and within two years as it's stated, and that the County came out and took their own pictures, which is why I didn't want someone on our property taking pictures. The County is very able to do it and from any angle that they would have wanted them. I think anybody on this phone would have had concerns or issues if I had walked on their property to take pictures.

And as far as the roofline, like I said, when we move the flag, if it's not granted, it will still be below our roofline. Leaving the flag where it is, is also our right. Like I said, the trees that are there now are already blocking three-quarters of it which are shown on the County pictures. And on the backside, which a neighbor is not concerned about the flag or he would be on the call today, has had no issue. My concern too is when we move the flag up it's going to be noisier and, Ellen, I'm sorry about that. And last but not least, we also built our home, like I said, to enjoy it. To honor those – the flag honors those. I lost 11 family members on 9-11 and three best friends and watched them die from my office. And I think flying the flag is our right and if it stays at 14 feet, it stays at 14 feet and we keep both flags at 14 feet.

And as far as this being a welcoming neighborhood, what I did not submit in which I could have easily done, were the letters that we received while our home was being built including a 16 point email stating everything that is wrong with our home. So if they're part of a wonderful neighborhood – but we've never been, if you want to say, welcomed in any way shape or form and we've actually had some pretty negative things written to us which I can submit into the record if you'd like.

But other than that we're not trying to get someone angry. We are trying to enjoy the flag on our property, on our home site, and honor those and honor the flag. And if a compromise can't be met, if the County sees no way to enforce it, then we all will abide by what you all decide, which is keep it at 14 and then we fly two flags at 14. And if you give us the variance, then we keep the one, which again, will soon be covered by trees anyway, that will stop more of the sound coming no matter if it is our direct neighbor or the people that are down in Sundance Estates.

And that's it. This is going on long too much and it is getting on to my health so I don't want to keep it going. Whatever it is, it is.

HEARING OFFICER VIRTUE: Okay, thank you, Ms. Byrd. At this time I would ask if there's anybody else who is participating in the hearing who has not testified who would like to testify. Hearing none, I am going to close the public testimony portion of the hearing. And I would ask if staff has any response to any of the testimony that they would like to give at this point?

MS. LUCERO: Hearing Officer Virtue, this is Vicki. I just wanted to make a point of clarification regarding the number of flags. The SLDC allows the maximum of two flags on the property. So if they were going to split the flags and fly the New Mexico flag on one pole and the U.S. flag on another pole, then I think that would be allowed. But we wouldn't allow more than a total of two flags.

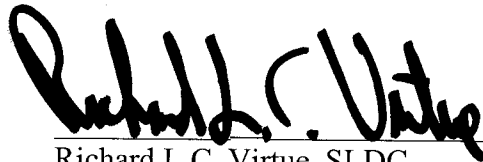
MS. BYRD: Vicki, we understand. We talked to someone in the County so we understand that one will be the New Mexico flag and one will be the United States flag.

MS. LUCERO: Okay, I just wanted to make sure that that was clear.
 HEARING OFFICER VIRTUE: Okay, thank you. Does staff have any other response that they would like to provide at this point?
 MR. LUCERO: Hearing Officer Virtue, I do not but I don't know if any other members of staff in the chambers have anything more to add.
 MR. BUSTOS: Mr. Hearing Officer, I just wanted to add that staff did look into the code section, the 7.9.12, the prohibited signs, specifically 7.9.12.1, it says rooftop signs and signs that extend over the roof of any building – it was determined amongst staff that rooftop signs would be something that is physically mounted to the side of a residence or a building so that was our interpretation of that.
 HEARING OFFICER VIRTUE: All right. Thank you, Mr. Bustos.
 If there are no further comments from the staff at this point, I am going to close this public hearing and I will have a written recommendation distributed within 15 business days of today. Thank you all very much for attending. The hearing is closed.

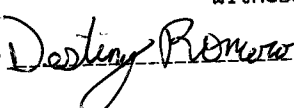
5. Adjournment

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: 9
 I Hereby Certify That This Instrument Was Filed for
 Record On The 10TH Day Of December, 2021 at 10:19:51 AM
 And Was Duly Recorded as Instrument # 1974076
 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
 Katharine E. Clark
 Deputy  County Clerk, Santa Fe, NM



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