

MINUTES OF THE
SANTA FE COUNTY
DEVELOPMENT REVIEW COMMITTEE

Santa Fe, New Mexico

November 15, 2012

This meeting of the Santa Fe County Development Review Committee (CDRC) was called to order by Juan José Gonzales, on the above-cited date at approximately 4:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

Members Present:

- Juan José Gonzales, Chair
- Susan Martin, Vice Chair
- Phil Anaya
- Maria DeAnda
- Dan Drobnis
- Frank Katz
- Sef Valdez

Member(s) Excused:

None

Staff Present:

- Rachel Brown, Deputy County Attorney
- Vicki Lucero, Building & Development Supervisor
- Jose Larrañaga, Development Review Specialist
- Buster Patty, Fire Captain
- Miguel Romero, Building & Development Services

IV. APPROVAL OF THE AGENDA

Vicki Lucero reviewed the amended agenda highlighting the two tabled items, New Business cases #Z/S 08-5430, Spirit Wind West Subdivision, and #Z/S 08-5440, Tierra Bello Subdivision. She noted a change to a case number.

Member Martin moved to approve the agenda as amended. Her motion was seconded by Member Katz and passed by unanimous [7-0] voice vote.

V. APPROVAL OF THE MINUTES: October 18, 2012

The following corrections were offered: Page 3, first line: Member Martin not Martinez; Page 24, second line: choice not chose

Member Martin moved to approve the minutes as corrected. Her motion was seconded by Member Katz and passed by unanimous [7-0] voice vote.

VI. OLD BUSINESS

- A. CDRC CASE # V 12-5280 Kimberley Moseley Variance Kimberly Moseley, Applicant, (Rubin Katz, Ahern, Herdman & MacGillivray, P.A.) Frank Herdman, Agent, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 11 acres. The property is located at 24 South Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, Commission District 4 [Deliberation and Vote Only]**

Chair Gonzales recited the case caption and said this item is before the CDRC to break the tie from last month's meeting.

Member Katz moved to deny the application based on the reasons he outlined at the October 18 meeting – that it was the seller who misled the buyers. Member Drobnis seconded.

Member Anaya tendered a motion to approve the variance.

Deputy County Attorney Brown advised the Committee that they would need to dispose of the first motion before considering Member Anaya's motion.

Member Anaya said he understood that the term "deliberation" in the agenda allowed the Committee to consider both approval and denial at the same time.

Deputy County Attorney Brown said only one motion can be considered at a time; however, the Committee members can voice their concerns.

A voice vote on the motion was taken and Chair Gonzales announced the motion to deny the variance passed by majority [4-3] vote as follows: Voting for the motion were Members Katz, Martin, DeAnda and Drobnis; voting against were Members Valdez, Anaya and Chair Gonzales.

Member Valdez said he had wanted to second Mr. Anaya's motion to approve the variance. Chair Gonzales said only one motion can be considered at a time and the motion to deny passed.

Member Anaya requested a revote by a show of hands. The revote revealed the results noted above.

Chair Gonzales advised the applicant that the CDRC is a recommending body and the BCC will make the final decision.

VII. NEW BUSINESS

- A. CDRC CASE # V 12-5320 Jytte Lokvig Variance Jytte Lokvig, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 10.25 acres into two lots; one lot consisting of 7 acres and one lot consisting of 3.25 acres. The property is located at 213 and 228 Ojo de la Vaca Rd., within Section 24, Township 15, North, Range 10 East, Commission District 3**

Miguel Romero, Case Manager, presented his staff report as follows:

“The Applicant requests a variance of Article III, Section 10, Lot Size Requirements, of the Land Development Code to allow a Land Division of 10.25 acres into two lots; one lot consisting of 7 acres and one lot consisting of 3.25 acres. The subject lot was created in 1976, and is recognized as a legal non-conforming lot. There are two dwelling units and a shed on the property. One residence is currently occupied by the applicant and the other residence is currently being rented.

“The residence that is currently being rented was permitted in July 2002, Permit 02-1012. At the time the permit was issued a site plan was submitted showing only the proposed structure and did not indicate any other structures located on the property. No permits have been found by staff for the other existing residence on the property.

“The Applicant states that when she first purchased the property, Ojo de la Vaca Road, which is County Road 51 was no more than a bumpy trail with minimal traffic, which didn’t impede the use of their property. As population grew in the area so did the traffic. When Santa Fe County improved Ojo de la Vaca Road it included paving and widening of the road approximately twice the size of what it was. Due to the expansion of Ojo de la Vaca Road it has made the division of the land more pronounced and essentially split the lot into two unconnected entities.”

Mr. Romero confirmed for Member Katz that the documentation submitted for the building permit for the rented residence did not show the existing structure the applicant lives in. The hydrological zone the property is located within has a minimum 160 acres per dwelling unit with a possible reduction to minimum 40 acres. Mr. Romero said according to the applicant the first dwelling was semi-complete when the applicant purchased the property.

Mr. Romero presented the development permit application submitted for the building permit showing only the proposed dwelling to the Committee for perusal.

Member DeAnda asked whether the residence existed on the property prior to 1976 when the lot was created. Mr. Romero said he did not have that information nor did he locate a permit for the first home.

Member DeAnda asked whether a property owner has any recourse when a road splits their property and if the traffic was an issue. Mr. Romero said further up the road there are residents that use the road.

In response to Member Drobnis, Mr. Romero said the 1979 recorded deed shows a 35' easement for the County roadway. Member Drobnis observed that the road predated the creation of the lot.

Ms. Lucero said there are many lots throughout the County that have access easement running through them.

Responding to Chair Gonzales, Mr. Romero said the road is a prescriptive right. He said he understood staff conducted a preliminary inspection of the property; however, he was unaware of whether they saw the existing dwelling. He referred to the development permit that may provide additional information.

Ms. Lucero clarified said the property does not meet the density for two dwelling units on the 10 acres. If the variance is denied and the applicant is unable to prove the second dwelling is legal non-conforming or permitted the applicant will need to return and request a density variance to permit two dwellings on the one parcel.

Member Anaya asked how both dwellings could have utilities and assumed that the property owner paid taxes on both properties.

Mr. Archuleta said pre-1998 a utility authorization was not necessary. After 1998 an applicant would need to obtain a utility authorization from the County. The authorization was provided to the applicant at the time of building permit.

Duly sworn, the applicant, Jytte Lokvig, 228 Ojo de la Vaca, Santa Fe thanked the Committee for hearing her case. Ms. Lokvig said she purchased the property in 1989 and since that time the traffic on the road has increased and is substantial. She said hundreds of properties have been developed on the mesa above her property and the road, which is the access to the mesa, is heavily trafficked.

Ms. DeAnda said the 2002 building permit application clearly states there are no existing structures on the property but there was. Ms. Lokvig said the building permit was filled out by her contractor.

Ms. DeAnda said it concerned her that the building permit information was incorrect. She also noted that while the road traffic may have increased, the road dissecting the lot existed before the applicant purchased the property.

Mr. Katz shared Ms. DeAnda's concern that it was not revealed there was a dwelling on the property. He said having property on either side of the road was not justification for a variance and asked the applicant why she thought a variance was appropriate. Ms. Lokvig said the road creates two separate parcels each containing a dwelling with a well and septic system.

Mr. Katz pointed out that the application for the septic system also states that there is no other sewage-creating dwelling on the property. He said that concerned him that there were two parts of the 2002 application that are incorrect and misled the County.

Ms. Lokvig said, "I really apologize for that. I'm sorry. I wasn't aware of that, honestly."

"For the clarification of the record," Mr. Anaya offered that as a contractor/developer himself he would have filled out the building permit stating there was no residence on the property because "as long as there is not a CO (certificate of occupancy), an existing CO on any other dwelling, then, therefore it is only one dwelling...that's the way that the courts have looked at this case..."

Ms. Brown said the County treats the two dwellings as two existing dwellings. Whether it was properly permitted or not, it is a structure that is impacting the land.

Chair Gonzales pointed out that the contractor went to several agencies to obtain permits: building, development, liquid waste permit and a well permits. Each agency would have asked about improvements on the property. The chair asked the applicant whether she had anything to do with obtaining the permits and she responded, "No, nothing." Ms. Lokvig said this was all news to her.

Ms. Lokvig said when she purchased the property the first home was not completed. She lived in a trailer until it was completed.

In response to a question posed by Mr. Katz, Ms. Lokvig said she does not recall a building permit for the first dwelling.

Fire Captain Buster Patty said the road meets County Fire standards.

There were no other speakers on this case.

Ms. DeAnda moved to deny the variance in Case #V 12-5320. Mr. Katz seconded and motion to deny passed by majority [5-2] voice vote with Members Anaya and Valdez voting against

VIII. PETITIONS FROM THE FLOOR

None were offered.

IX. COMMUNICATIONS FROM THE COMMITTEE

None were offered.

X. COMMUNICATIONS FROM THE ATTORNEY

None were presented.

XI. COMMUNICATIONS FROM STAFF

The next CDRC meeting: December 20, 2012 at 4 p.m.

XII. ADJOURNMENT

Having completed the agenda and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at approximately 4:55 p.m.

Approved by:

Juan J. Gonzales 12/20/12
J.J. Gonzales, Chair
CDRC

ATTEST TO:

COUNTY CLERK

Before me, this ____ day of _____, 2012.

My Commission Expires: _____

Notary Public

Submitted by:

Karen Farrell
Karen Farrell, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

CDRC MINUTES
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I Hereby Certify That This Instrument Was Filed for Record On The 26TH Day Of December, 2012 at 02:58:07 PM And Was Duly Recorded as Instrument # 1691826 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Marcella
Deputy Valerie Espinoza
County Clerk, Santa Fe, NM