

**MINUTES OF THE**  
**SANTA FE COUNTY**  
**PLANNING COMMISSION**

**Santa Fe, New Mexico**

**December 16, 2021**

1. **A.** This meeting of the Santa Fe County Planning Commission called to order by Chair Charlie Gonzales on the above-cited date at approximately 4:10 p.m. at the County Commission Chambers in the historic John Gaw Meem Building, 102 Grant Avenue, Santa Fe, New Mexico.

The meeting was held as a hybrid with individuals participating in person and via Webex.

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

**Members Present:**

Charlie Gonzales, Chair  
Frank Katz, Vice Chair [Webex]  
J. J. Gonzales  
Steve Krenz [Webex]  
Leroy Lopez  
Susan Martin

**Member(s) Excused:**

Rhea Serna

**Staff Present:**

Vicki Lucero, Building & Services Manager  
Roger Prucino, Assistant County Attorney  
Gabriel Bustos, Case Manager

2. **Approval of Agenda**

Vicki Lucero noted that there were no changes and the agenda was accepted by consensus.

3. **Approval of Minutes: August 19, 2021**

Member Martin moved approval and Member Lopez seconded. The motion carried by unanimous voice vote

SFC CLERK RECORDED 01/26/2022

4. **NEW BUSINESS**

- A. **Case No. 21-5180. 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).**

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 14<sup>th</sup> 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 decided to continue the case and allow those members of the public who have not been heard, to speak at the November 10<sup>th</sup> meeting.

On November 10, 2021, Case 21-5180 was presented before the Santa Fe County Hearing Officer for the second time. Three members from the public spoke in opposition of the variance request and letters of opposition have also been submitted to staff and have been included as an exhibit to the staff report. Neighbors who testified at the hearing felt that the flagpole could have negative impacts on property values and other concerns were the impacts the flag has on viewsheds as well as the noise produced from the flags during windy weather conditions.

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 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 flagpole 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.

On November 10, 2021, this request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer memorialized findings of fact and conclusions of law and a written order on this request. The Hearing Officer, based on the evidence presented, recommended denial of the variance request.

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 flagpole were to be relocated to a higher point on the lot at the height of 14 feet as allowed by the SLDC

If the Planning Commission finds that the variance criteria have been met and recommends approval of the variance, staff recommends the following condition be imposed. Mr. Chair, may I enter the following condition in to the record?

CHAIR GONZALES: 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.

CHAIR GONZALES: Okay, thank you very much, Mr. Bustos. Does the Commission have any questions of staff? Okay, let's go to the Applicant.

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

TRISH BYRD (via Webex): The Commissioner can choose whatever you choose today and my husband and I will abide by the ruling. As Gabe knows we almost called this week and withdrew our application because we know we can fly a second flagpole at 14 feet and allow both flagpoles to be present and fly the state flag on one flagpole and have the American flag to fly on the other at 14 feet leaving it where it is. Either way, we will do that. But to me, that's going to be more obtrusive to our neighbors, their visual, their sound, they'll have two flags, two poles, two clangings, two winds and where we would fly the flag at the higher elevation there is no trees to protect it in anyway shape or form. So I'm appealing to common sense in the sense that raising this flag the 5 feet 6 inches where it is in the long run will be less obtrusive as the trees grow and as we plant more trees in the spring, which we're going to do. And then, if not, we will fly both flagpoles as we've been told that we can do by the County.

And then the last but not least we've made an offer of flying the flag only 180 days out of the year and the Hearing Officer never asked me where I got that idea. And that idea came when I was a court administrator in the State of Florida, we had a very similar case and that is what the judge and hearing officer decided and every party that had complained got a copy of the calendar and if there was a violation made of those 180 days then a fine was attached by the county to the owners of that property, which would be us, and it went to such things as the artist fund that we would have here. Some part of the County that would meet a non-profit and needs help in. I know that was not accepted by two people that had complained, but I wanted to throw it out one last time. And, again, we'll abide by your decision today, whatever it is.

CHAIR GONZALES: Thank you. Does the Commission have any questions of the Applicant today?

MEMBER KRENZ: Mr. Chair, Steve Krenz. I have a question.

CHAIR GONZALES: Yes, please go ahead.

MEMBER KRENZ: I read through some of the letters about this and it's my understanding that American flags are to be flown during daylight hours; is that your plan?

MS. BYRD: Yes, sir. We purposely took the light down in the evening because neighbors – the light means a lot out here, stars and things, so we didn't put the light on it after we lowered it to the current, according to code, 14 feet. So, yes, it would be flown day hours.

MEMBER KRENZ: And another question that somebody raised – and I don't think there is much you can do about slapping noise but clanging noise. I have a flag and I know that sometimes that the brass hooks bang against the pole. Have you tried to take any steps to minimize that kind of noise?

MS. BYRD: Yes, sir, and it was acknowledged by our closest neighbor that we had taken steps to take care of the clanking. We did that as soon as we got notification that that was one of their concerns. The flapping again on a windy day, there's not much I can do on that. Except, as I said, more trees will be planted in the spring which will control more of that. Yes, and that should be in the record.

MEMBER KRENZ: Thank you, Mr. Chairman.

CHAIR GONZALES: Okay, any other questions of the Applicant from the Commission? Okay, thank you. This is a public hearing and I will open it up to the public. Anybody have anything to say?

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

ELLEN ROBLING (via Webex): Ellen Robling, 12 Palentine Road. I am the nearest neighbor. I am the person who has a vegetable garden very close to the pole. At 19 feet it is very objectionable, the sound. At 14 feet it's half – it's much less. The second pole, should it be installed, would be closer to their house and further away from our house so that noise would be negligible at 14 feet.

I don't understand unless they plan to plant 20 foot trees, how it would reduce the noise of those flags. So even two flags on two poles is much preferred. And at the last meeting, I read the criteria to allow a variance and one of them was unless it was against public interest and the number of neighbors that spoke against and letters against public interest in allowing this variance. The second criterion is unless it is a physical hardship and I don't feel that either criteria are met in any way, shape or form. So I would like – if the Byrds want to put a second pole, fine, but I do not want a 19 foot 6 inch pole. It's obnoxious when you're trying to be in the vegetable garden.

CHAIR GONZALES: Anything else?

MS. ROBLING: No.

CHAIR GONZALES: Thank you very much. Is there anyone else who wants to speak?

[Duly sworn, Philippa Klessig, testified as follows:]

PHILIPPA KLESSIG (via Webex): 90 Sundance Drive. Just a couple more comments and one in particular that I don't think that has been taken into account during this whole proceeding. It should be noted that the homeowners did not request a variance when planning the installation of the flagpole. They just put it up in the driveway and afterwards asked for this variance. My feeling and husband's, if they done so to begin with, asked for the variance while they were planning it should have been denied even then because it violates our County Ordinance 7.9.1.4 which protects the views of the natural landscaping sky. And I know many of my neighbors have noted that as several of you have seen in the letters that we supplied. So not complying with the ordinance to begin with is no justification for granting the variance.

And number two, just because you can doesn't mean you should. Okay, they can put up two flagpoles but the one flagpole, I think you've seen in many of the pictures that have been sent in, clearly sits above the horizon and both flags are visible. They don't have to raise it to the 19.6 feet.

During this time period between the hearings when we were supposed to be reaching some kind of an agreement and the Byrds did send in their proposal for 180 days of flying but who is going to count that. Who is going to sit there and say when they're in compliance and when they're not? Shouldn't it be something that we all agree is in compliance to begin with? Oh, and I was just wondering, you say you're going to put in a buffer of trees, where is the buffer going to be because you also said, under oath, at one of the hearings that you want to see the flag as you go up your driveway which you can now, clearly, when you walk, when you sit inside, how in the world can you possibly fulfill all of those wants with one American flag. It is just not possible. We need a compromise and one that will work for the whole neighborhood.

Thank you for your attention.

MS. BYRD: Commissioners, may I answer back.

CHAIR GONZALES: Thank you. Wait, hold on. Hold on. I'll give you a chance at the end to respond.

MS. BYRD: All right, thank you.

CHAIR GONZALES: Thank you. Okay, anybody else out there that wants to speak, please come forward?

MS. KLESSIG: Mr. Chair, may I add something at this point or later?

CHAIR GONZALES: Go ahead because I'm going to let Ms. Byrd do her rebuttal right after you.

MS. KLESSIG: Okay, thank you so much. I just wanted to note and I'm not sure that I said it, but in all of this we had 11 letters from people/couples opposed and none for in all three hearings. And by 11 letters I mean people, not multiple letters, as Trish knows. Thank you.

CHAIR GONZALES: Thank you, Ms. Klessig. Okay, Ms. Byrd please proceed.

MS. BYRD: Three things. Some of those letters are coming from the same household, so that's husbands and wives writing them. There's 173 homes that have visuals of our flag and we've had 11 people with concerns. There's been enough notices and as the County knows we had to repeat this and many people could have added to this other than the original ones that have.

When we submitted our home plans, our CO, the landscape, everything we did, the flagpole was in the design. Never in thought – this is a residential flagpole, a common residential flagpole, at 20 feet buried into the ground and that's why it is 19 something. It was up for months and months. It was up probably 3/4s of a year before anybody complained. We have flagpoles out in front of us, in the ridges in front of us that fly higher and I'm not going to give their names or addresses because I think – they're not disturbing me. It's a beautiful thing to see the American flag.

I offered in good faith to offer some type of compromise. The trees that we will be planting will be on our property in a row and unfortunately to protect the flags, they'll probably block more people's views. And, yes, they are high trees just like we did to block the some of the views on our property to the properties beyond us – 13 to 21 foot trees. It's expensive but that's what we would do to try and minimize the law and be within code.

This has been wear and tear as the County knows. I've been doing chemo for five years and this last six months has been a pretty tough time. Whatever the decision is, again, we know what we need to do to move forward. We tried to do something with our neighbors including as I was asked a little while ago about the clanking noise. The minute we found that out we did something and we will do it on the other pole. And what you all decide, you all decide. And I just want this done one way or another so my husband and I can get on with our lives and we can enjoy the flag and the state flag when we want to.

CHAIR GONZALES: Thank you, Ms. Byrd. Anybody else out there that wants to speak? Do any of the Commissioners have a question?

MEMBER J.J. GONZALES: Yes, I have a question for Mrs. Byrd. You mentioned planting trees to screen the flag at some future date. What type of trees were you going to plant? Did I hear that correctly?

MS. BYRD: Yes, sir. The trees that we've looked at are very similar to the trees that we have on our property. I think they're called spruces and we planted them at 13 and 15 feet to begin with. Some aspens are intermingled with them and it's the north side of our property so the aspens can grow. I know in the winter the leaves will come down on the aspens but they'll be interspersed together. We're hoping because there's a ditch in the area where we want the trees is to do one cottonwood. Those are the ones that we're trying. If I knew that this was a question, I would have sent you the pictures of the trees that we have at 13 and 15 feet.

MEMBER J.J. GONZALES: I'm very concerned about trees that you would be planting that would need to be watered periodically. I think the trees that are there are native pinon trees that are significant and older trees, well established and you don't have to water them. You know, we're in a severe drought in our area and I would oppose having trees planted to screen a flagpole or anything. And if they're not native to that area I would not like to see trees planted for the purpose of screening anything. That's my opinion. So I would not like you to plant any trees to screen any of your flagpoles. Thank you.

MS. BYRD: I understand that, sir. I understand that. The trees, the three pines ones would be native. And if you look carefully at the trees that around there now, as you just said sir, within two years they're going to be covering the flagpole. They have already grown since we've been in our home. And we have two catchments that we purposely put so we could help the trees both native and non-native that are on our property. So that's what we would be using to water them.

CHAIR GONZALES: Thank you, Ms. Byrd. I have a question for staff. I think I read that this lot is not within the homeowners association and there is a homeowner association around it; could you explain that?

MR. BUSTOS: This is not part of any other adjacent homeowners association.

CHAIR GONZALES: So this is a standalone lot and it's not part of a homeowners association; is that correct?

MR. BUSTOS: Mr. Chair, you know, if Ms. Byrd could verify but I believe that's the case.

CHAIR GONZALES: Okay, Ms. Byrd.

MS. BYRD: Yes. Yes, one of the reasons that we bought our lot is that it's not a part of a homeowners association. And there are three other lots on our road that are not part of a homeowners association and yet our property abuts the Sundance Estates that is a homeowners association.

CHAIR GONZALES: Thank you. Anybody else out there that wants to speak?

MS. LUCERO: Mr. Chair, Ms. Klessig has her hand up. She has spoken before.

CHAIR GONZALES: Okay, did you want to say something else?

MS. KLESSIG: Yes, I had spoken before. But I don't understand they're planting trees and you say you want to see the flag as you drive up and as you're walking so then why are we having this whole hearing about raising it even higher. Why should you raise it and then have to plant trees to hide it. I'm really confused on that and I was also hoping that to move the flag to the upmost area of the hill be disallowed by those in the chamber here.

CHAIR GONZALES: Excuse me, for some reason you're breaking up and we can't hear you.

MS. KLESSIG: Yeah, I don't know why.

CHAIR GONZALES: Staff, can you hear?

MS. KLESSIG: Let me try something. Am I still breaking up?

CHAIR GONZALES: No, that's better. Do you want to repeat what you said?

MS. KLESSIG: Sure. I noticed this happened with Ms. Byrd too and I don't understand why. I was saying I didn't understand why she was planting trees to hide the flagpole so why are we trying to raise the flag and the pole to 19.6 if you're going to hide it. I thought the object for you was to see the flag from almost everywhere in lieu of planting trees, just keep it where it is and don't add another flagpole. Again, adding another flagpole just because you can is not in the interest of the community and I would hate to end up back here again saying, why is this being allowed because it should be disallowed per ordinance 7.9.1.4 on our protective views of the natural landscape. I think one flag is enough in the area.

CHAIR GONZALES: Okay, thank you. Okay, I'm going to close the public hearing. It is closed. Any discussions or motion from the Commission.

MEMBER J.J. GONZALES: I have a question. How many flagpoles are they allowed on their lot? I think 14 feet is something they can legally be within the purview of the flag. Can they legally have more than one flagpole on their 2.6 acres?

MR. BUSTOS: Chair Gonzales, per table 7-5.1 single family residential signs allowed, they would be allowed two signs or two flagpoles.

MEMBER J.J. GONZALES: Thank you.

CHAIR GONZALES: Okay, thank you. Any other questions from the Commission? Any discussion, motions? Susan.

MEMBER MARTIN: In case number 21-5180 Byrd Variance, I move the Commission adopt the recommendation of the Hearing Officer and deny the variance request.

CHAIR GONZALES: Okay, we have a motion for denial. Do I have a second.

MEMBER LOPEZ: Second.

CHAIR GONZALES: Okay, we have a second by Leroy.

**The motion passed by majority [5-1] voice vote with Member Krenz voting against.**

CHAIR GONZALES: Is this appealable to the BCC?

MS. LUCERO: Mr. Chair, yes, anybody aggrieved by the decision can appeal it to the BCC.

CHAIR GONZALES: Okay, both parties keep that in mind that this is appealable to the Board of County Commissioners. Thank you for attending.

- 5. **Petitions from the Floor** - None were offered.
- 6. **Communications from the Commission Members**

Holiday cheers were exchanged.

- 7. **Communications from the Attorney** - None were presented.
- 8. **Matters from Land Use Staff**

MS. LUCERO: Mr. Chair, we did have three members of the Commission whose terms were expiring at the beginning of the year. You, Mr. Chair, were one of those members as well as Commission member Krenz. You two have been reappointed to serve on the Planning Commission for another two-year term, congratulations. I also want to thank Commissioner Susan Martin, her term will be expiring in January and she has served the maximum number of consecutive terms allowed under the SLDC. I just want to thank Commission member Martin for her service. You've been a great asset to the Planning Commission and the CDRC, going way back to then and we appreciate everything you've done and we wish you the best of luck. [Thanks were echoed by all]

MEMBER MARTIN: It's been an honor to serve.

- 9. **Next Planning Commission Meeting: January 20, 2022**
- 10. **Adjournment**

Having completed the agenda and with no further business to come before this Committee, Member Martin moved to adjourn and Member Lopez seconded, Chair Gonzales declared this meeting adjourned at approximately 4:50 p.m.



Approved by:

*Charlie Gonzales*

Charlie Gonzales, Chair  
Planning Commission

ATTEST TO:  
*Katharine Clark*

KATHARINE CLARK  
SANTA FE COUNTY CLERK

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

PLANNING COMMISSION MI  
PAGES: 8

I Hereby Certify That This Instrument Was Filed for  
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Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office

Deputy *Destiny Romero* County Clerk, Santa Fe, NM  
Katharine E. Clark

Respectfully submitted by:

*Karen Farrell*  
Karen Farrell, Wordswork

