

MINUTES OF THE
SANTA FE COUNTY
DEVELOPMENT REVIEW COMMITTEE

Santa Fe, New Mexico

May 16, 2013

This meeting of the Santa Fe County Development Review Committee (CDRC) was called to order by Chairman J.J. 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
Phil Anaya
Dan Drobnis
Frank Katz
Manuel Roybal

Member(s) Excused:

Susan Martin, Vice Chair
Maria DeAnda

Staff Present:

Penny Ellis-Green, Growth Management Director
Wayne Dalton, Building & Development Services
Vicente Archuleta, Development Review Team Leader
Vicki Lucero, Building & Development Service Manager
Rachel Brown, Deputy County Attorney
John Lovato, Development Review Specialist
Buster Patty, Fire Marshal

IV. APPROVAL OF AGENDA

Upon motion by Member Anaya and second by Member Katz, the agenda was unanimously [5-0] approved.

V. APPROVAL OF MINUTES: April 18, 2013

Member Katz moved to approve the April minutes as submitted. Member Drobnis seconded and the motion passed by unanimous [5-0] voice vote.

VI. OLD BUSINESS

None.

VII. NEW BUSINESS

- C. CDRC Case #V 13-5100 Maria Espinoza Variance. Maria Espinoza, Applicant, requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two (2) dwelling units on a proposed 1.17-acre lot and a variance of Article III, § 2.4.2b.3(a) (Roads and Access) to allow a twelve (12) foot driveway to access three dwellings on 3.67 acres. The property is located at 4 Espinoza Lane, which is off of Camino del Rincon (SFC Road 84E), within Section 9, Township 19 North, Range 9 East (Commission District 1) [*Exhibit 1: Eight resident letters supporting the variance*]**

Vicente Archuleta, Case Manager, provided the staff report as follows:

“The Applicant requests a variance of Article III, § 10, Lot Size Requirements, of the Land Development Code to allow two dwelling units on a proposed 1.17 acre tract, Tract A-2, and a variance of Article III, § 2.4.2b.3(a), Roads and Access, to allow a 12 foot driveway to access three dwellings on 3.67 acres.

“The subject property consists of two legal non-conforming lots with four dwelling units: Tract A, ±3.39 acres consists of three dwelling units and Tract B, ±0.28 acres more or less consists of one dwelling unit. One dwelling unit was constructed on Tract A and one on Tract B prior to the Applicant acquiring the property. On Tract A, one mobile home was placed in the 1970s and the other was permitted in 1998. Two of the existing dwelling units were constructed 12 feet to sixteen 16 from the east property line adjacent to the driveway, therefore limiting the width of the access easement and driving surface.

“Article III, § 2.4.2b.3(a) states: ‘All lots created under this section shall be provided with adequate access for ingress and egress, utility service, fire protection and emergency services whether by a road meeting county requirements constructed within an easement and utility easement or by direct access to a public right-of-way. All on and off-site roads shall meet the design standards for a local road, 20-foot driving surface, except that the minimum width of any easement created for access purposes shall be no less than 20 feet for access to two lots and no less than 38 feet for access to three or more lots.’

“The Applicant is in the process of a Family Transfer Land Division to create three tracts in order to be able to give real property to her children. The Family Transfer Application also includes a request for a lot line adjustment to increase the size of Tract B. The proposed Tract A-1 is vacant and will consist of 0.92 acres. This tract will be created to sell if the need arises. Tract A-2 will be 1.17 acres and consists of a residence and a mobile home which does not meet the minimum lot size for two dwelling units. The minimum lot size required for two dwellings is 1.50 acres. Tract A-3 will be 1.18 acres and consists of a residence and an accessory structure. Tract B, which consists of an existing dwelling and belongs to the Applicant’s grandson, will be adjusted from 0.28 acres to 0.40 acres in order to incorporate a garage, which is currently on the Applicant’s property.

“The Applicant states: She is requesting the variance of the code to allow the mobile home to remain on the same tract as her residence, Tract A-2. The Applicant is 88 years old, a widow and has medical issues. The Applicant’s daughter, who resides in the mobile home, is the person who sees to her care and daily needs. The Applicant’s medical condition requires someone to be nearby at all times. The Applicant’s daughter, who cares for her daily needs, will be the recipient of Tract A-2.”

Mr. Archuleta reviewed Article II, § 3, Variances, of the Santa Fe County Development Code which states: “Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance.” This section goes on to state, “In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.” He pointed out that the variance criteria does not consider financial or medical reasons as extraordinary hardships.

Mr. Archuleta advised the Committee that Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request. However, if the decision of the CDRC is to recommend approval of the Applicant’s request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 1.0 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water Restrictive Covenants shall be recorded in the County Clerk’s office (as per Article III, §10.2.2 and Ordinance 2002-13).
2. A Plat of Survey meeting all County Code Requirements shall be submitted to the Building and Development Services Department for review and approval (as per Article III, § 2.4.2). Prior to Plat Recordation, 2013 Property Taxes must be paid in full (as per SB 406)

3. Further division of land is prohibited and the placement of additional dwelling units is prohibited on Tract A-2, Tract A-3 and B-1 (as Per Article III, § 10).
4. The Applicant shall comply with all Fire Prevention Division requirements at the time of Plat review (as per 1997 Fire Code and 1997 Life Safety Code).

Appearing for this item and duly sworn was the applicant, Maria Espinoza, and two of her children, Dorelia Lujan and Chris Espinoza.

Ms. Lujan explained her father's desire to leave each of his children a portion of this property. She said it had been her grandfather's land and they have lived on the land for generations. Ms. Lujan said the division would insure that property taxes are paid. She explained her sister who is living in a trailer and assisting their elderly mother is unable to pay taxes. The top portion of the property that she and her brother Chris Espinoza will share will help the family meet the tax obligations. She noted that neither she nor her brother lives on the property. It was important to her mother that each of her children receive a piece of the family land, stated Ms. Lujan.

Ms. Lujan explained that upon her mother's death her sister would move into the mother's home and the trailer would be removed. She said it was her dad's wish that her sister have the house. She repeated that the property has been in the family for generations and her parents wanted the property to stay in the family. She reviewed the plat identifying the tracts and which family member lived where.

Mr. Espinoza said his father wanted the property to stay in the family and to treat all his children equally.

Member Katz pointed out that the property does not have to be divided to be left to the children. If the lots are not to be sold he didn't see any reason for the division. With each family member having a legal lot of record, Ms. Lujan said it will further protect the property as well as her father's wish. She said it was important to her mother that the division of the property be accomplished.

In response to the applicants' assertion that they have no desire to ever sell parcels of the property, Member Anaya suggested that a living estate with a non-revocable trust was all that was needed to address the family desires. Mr. Espinoza said if their mother needed special health care the top property could be sold.

Ms. Lujan said the process to obtain this variance has been costly with a survey and application fees and they wanted to follow through with it.

Member Roybal pointed out that the property was within the traditional community and has been in the family for generations. He recognized the Espinozas as some of the founders of the Pojoaque Valley. It appeared to him that the applicants' request served to better define the tracts of the individuals residing on the property. He further understood that dividing the land keeps peace within the family.

Member Roybal noted that removing the trailer from the tract that Maria Espinoza's home resides on would eliminate the need for the density variance. He mentioned that the driveway referred to by the County as an access road is also traditional and he could support its current width. He suggested creating a 20-foot easement coming in Rincon Road to Tract A1. Mr. Espinoza mentioned that a fire truck can access the property and the vacant lot could serve as a staging area.

In regards to the next generation, Member Drobni asked what provision the family was considering because they too will want their own lot and ask for an exception to the rules just as the current applicants are.

Mr. Espinoza emphasized that the property was not changing hands other than at death.

Chair Gonzales asked the applicant whether they agreed with staff conditions. Ms. Lujan said they were not in agreement with condition one which requires well metering and water restrictions. She said that according to the Aamodt agreement their well is exempt from metering.

Chair Gonzales said the application is before the County which has water conservation regulations which includes well metering and water usage. Although Aamodt does not require their well be metered, this application is before the County. Deputy County Attorney Brown confirmed that the Chair accurately represented the County's authority.

Ms. Lujan said her sister's mobile home will be removed from the property following her mother's death but currently it is important that her sister remain on the property and care for their mother.

Member Katz noted that moving the mobile home to Tract A1 would eliminate the need for the density variance and allow the family to divide the property as they desire. Mr. Espinoza and Ms. Lujan said their sister lacks the resources to move her mobile home.

Member Anaya received confirmation from the applicants that their mother lived in the "big" house alone and the sister residing in the mobile home also lives alone.

There was no public input on this case.

Fire Marshal Patty said the property was accessible but it does not meet the Uniform Fire Code. The fire department was prepared, with a prohibition on additional dwellings, to sign off on the access because it was a legal non-conforming lot. However, the submitted plat failed to locate the mobile home and once the department learned of the mobile home their opinion changed and they are not prepared to waive the access requirements. He noted that Pojoaque fire district has vehicles that will not fit down the road. Because there is a lack of hydrants in the area, the department will automatically send tankers to a fire in that area. The 12-foot road would be blocked thus endangering firefighters down the road. He said the department was willing to work with the applicant.

Member Drobnis pointed out that the issues raised by the Fire Marshal existed today regardless of the variance request.

Chair Gonzales asked the applicants if they were in agreement with the staff-imposed conditions. Ms. Lujan said they were uncomfortable with condition one and wanted to see the regulations that establish that rule. She went on to say that her “dad’s well is exempt from being metered” and wanted written proof that the County’s rule supercedes Aamodt. Mr. Espinoza repeated what he understood about the Aamodt settlement regarding wells drilled prior to 1956. He went on to say their water rights were a freedom.

Deputy County Attorney referred to County Ordinance 2002-13 which requires well metering. She advised the Committee and the applicant that if the case were approved with the imposition of condition one and that was in error it would be addressed by staff prior to presentation to the BCC.

Member Katz remarked that the County has been very responsible in responding to the drought situation. He pointed out to the applicant that they were asking the County to bend the rules and grant them a variance in exchange the County is requiring the applicant to abide by the County’s water conservation rule.

Again, Chair Gonzales asked the applicants if they were in agreement with the staff conditions and read the four conditions aloud. Ms. Lujan said if the County’s rule supercedes Aamodt then she understood they had no choice and they will abide by it.

By moving the trailer the applicants could divide the property and avoid metering their well, stated Member Katz. Based on that and the applicants’ reluctance to metering the well, he moved to deny CDRC Case V 13-5100. Member Anaya seconded.

Under discussion of the motion, Member Roybal said Aamodt affected everyone in the Pojoaque Basin and was basically agreed upon without the community’s consensus. The only winners in the Aamodt case were the pueblos; all others will lose their water rights.

The motion passed by majority [4-1] voice vote with Member Roybal casting the sole “nay” vote.

Mr. Archuleta said the case would be forwarded to the BCC for the July meeting.

D. PETITIONS FROM THE FLOOR

None were presented.

E. COMMUNICATIONS FROM THE COMMITTEE

None were presented.

F. COMMUNICATIONS FROM THE ATTORNEY

None were presented.

G. COMMUNICATIONS FROM STAFF

The next meeting was scheduled for June 20, 2013.

H. ADJOURNMENT

Having completed the agenda and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at 5:25 pm.

Approved by:

Juan Jose Gonzales

Juan Jose Gonzales, Chair
CDRC



WITNESS TO:
Geraldine Salazar

COUNTY CLERK



Before me, this 20th day of June, 2013.

Notary Public

Submitted by:
Karen Farrell

Karen Farrell, Wordswork

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

CDRC MINUTES
PAGES: 15

I Hereby Certify That This Instrument Was Filed for Record On The 24TH Day Of June, 2013 at 03:35:16 PM And Was Duly Recorded as Instrument # 1709952 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Mirella Torres

Deputy County Clerk, Santa Fe, NM

May 1, 2013



County Development Review Committee
Grant and Palace Avenue
Santa Fe, New Mexico 87501

Re: CDRC CASE #V 13- Re 5100
Maria Espinoza

Committee Members:

I have no objection to Maria Espinoza's proposed family transfer of her property to her children which includes leaving her daughter's trailer within the same lot as Maria's house and the width of the driveway to Maria's property to remain unchanged at the present 12 feet .

Sincerely,

A handwritten signature in cursive script that reads "Loyola Trujillo". The signature is written in black ink and is positioned above a horizontal line.

Loyola Trujillo

CLERK RECORDED 05/24/2013

May 1, 2013

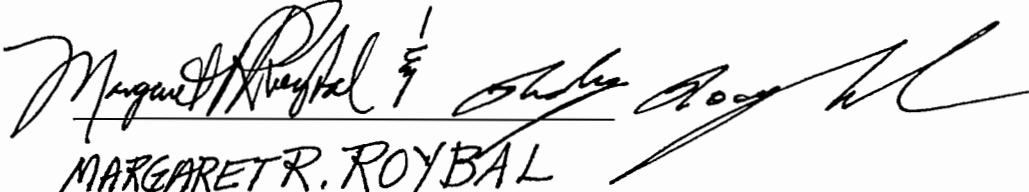
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Sincerely,


MARGARET R. ROYBAL
RUDY ROYBAL

REC CLERK RECORDED 05/24/2013

May 1, 2013

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Sincerely,

Ref Trujillo
Martha E. Trujillo

Alex Trujillo
Martha Trujillo

SEC CLERK RECORDED 05/24/2013

May 1, 2013

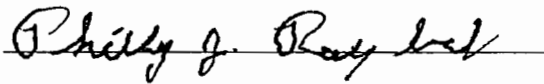
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Philly J. Roybal

May 1, 2013


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Peter Roybal

SFC CLERK RECORDED 05/24/2013

May 1, 2013

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Charlene A. Martinez
Charlene A. Martinez

SEC CLERK RECORDED 05/24/2013

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Gerard Roybal

SFC CLERK RECORDED 05/24/2013

May 1, 2013


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Sincerely,


HARRY Montoya