

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

Santa Fe, New Mexico

May 26, 2016

I. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Nancy Long on the above-cited date at approximately 3:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

**Staff Present:**

Vicki Lucero, Building & Services Manager  
Wayne Dalton, Building & Services Supervisor  
Andrea Salazar, Assistant County Attorney  
John Lovato, Case Manager  
Mathew Martinez, Case Manager

II. **APPROVAL OF AGENDA**

Hearing Officer Long noted there were no tabled or withdrawn items to be considered.

III. **PUBLIC HEARING**

- A. **Case # V 16-5070. Diane and Garry Osan, Applicants, James Horn, Agent request three variances from the Santa Fe County Sustainable Land Development Code, Ordinance No. 2015-11 (SLDC) Chapter 7, Section 7.17.9.2.2, Setbacks from ridges; Chapter 7, Section 7.17.9.2.3, Construction on 30% slopes; and Chapter 7, Section 7.17.9.2.3.2, Height of a Structure to exceed 14' on a ridge, to allow a proposed 3,858 square foot residence with an attached garage to be located on a ridge, disturb slopes in excess of 30%, and to exceed 14' in height on a ridge. The property is located at 21 Calle Cielo within the Los Caminitos Subdivision, in the vicinity of Chupadero, within, Section 18, Township 18 North, Range 10 East, Commission District 1**

SFC CLERK RECORDED 06/16/2016

HEARING OFFICER LONG: So we'll go to our first public hearing and that's Case V 16-5070, Osan Variances, and you'll correct me if I'm saying your last name wrong, I hope. Diane and Garry Osan are the applicants. James Horn is the agent. They're requesting three variances of Chapter 7: setbacks, construction, and a variance for the height of a structure to exceed 14 feet on a ridge. The property is located at 21 Calle Cielo within the Los Caminitos Subdivision, in the vicinity of Chupadero.

All right. Mr. Lovato.

JOHN LOVATO (Case Manager): Thank you, Hearing Officer Long. The property consists of 7.72 acres and is within the Residential Fringe Zoning District as defined by the SLDC.

The first variance sought by the Applicants is regarding Chapter 7, Section 7.17.9.2.2 the requirement for a 50-foot setback. Building and Development Services, Fire Prevention, and the Los Caminitos Home Owners Association, met with the applicants and are in agreement that the only feasible building site on the property is located on the ridgetop. However, due to the topography, a 50-foot setback is not possible.

The second variance sought by the applicants is of Chapter 7, Section 7.17.9.3.2 Height Requirements, in order to exceed 14 feet in height for the construction of a garage and a family room which will be two stories and located on the southwestern portion of the residence. The rest of the residence will be on one level.

The agent states, "To reduce the impact and prominence of the exposed walk-in living room and garage on the southwestern corner of the house we stepped the dining room back at the southwestern corner with a small terrace on top of the garage, integrating the house more into the landscape in a terraced manner."

The proposed height of the residence to exceed the 14 foot requirement is 21 feet in height and 22 feet in length for a total of 462 square feet to be exposed on the southwestern portion of the residence.

The third variance the applicants seek is of Chapter 7, Section 7.17.9.2.3 to build two retaining walls located on 30 percent slope to allow for natural light to enter the family room area and to allow for ventilation. This is a previously graded lot, graded during creation of subdivision in 1979, with the northern portion of the property sunk into the terrain to reduce the visual impacts of the residence. The total disturbance of 30 percent slope for the structure is 283 square feet. The proposed height on the northern portion of the property is a total of 25 feet-3 inches in height and 25 feet in length. The total exposure of house where the retaining walls are located to provide ventilation and natural daylight is 125 square feet. The rest of the house meets height requirements and is 14 feet and 8 feet 14 inches in height.

The agent states they respectfully request these three variances to allow the Osans to develop the property they invested in over 14 years ago under different building codes, and keep the design in the spirit of Los Caminitos, and the spectacular natural beauty and terrain of Santa Fe County that we all live in.

Staff Response: Although it is not feasible for the Applicants to meet setback requirements of 50 feet from a ridgetop, staff believes that the structure can meet the height requirements of 14 feet with a single-story design with a smaller footprint and avoid 30 percent slope disturbance, if the structure is built on the existing cut grade.

Recommendation: Staff acknowledges there are no other buildable areas on the lot and the 50-foot setback is not possible. However, staff recommends denial of the applicants' request for a variance to allow the proposed residence to be constructed on slopes greater than 30 percent, and for the residence to exceed height requirements of 14 feet. Staff believes that the structure can meet the height requirement of 14 feet with a single story design and can avoid 30 percent slope disturbance with a smaller footprint if the structure is built on the existing cut grade.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written recommendation. The Santa Fe County Planning Commission will be holding a public hearing on this matter. And Hearing Officer Long, the date on this is wrong so I'd like to strike that, and the date would be July 21, 2016 that the Planning Commission will be hearing this.

HEARING OFFICER LONG: All right. Thank you.

MR. LOVATO: I stand for any questions.

HEARING OFFICER LONG: So staff's recommendation that the height variance not be granted is based on your assessment that a single story could be built, and I think you said cover a smaller footprint? What does that mean?

MR. LOVATO: Currently the house is pretty large in size. I believe with a smaller footprint it can fit into the saddle which is lays in, and currently the house is 3,850 square feet and I think reducing that size can get it within the requirements.

HEARING OFFICER LONG: Okay. Oh, I see. You're saying the additional square footage in the second story could be reduced?

MR. LOVATO: Hearing Officer Long, that would be on both stories.

HEARING OFFICER LONG: On both stories. Okay. And the second story, is it just a height of the roof of the rooms, the ceiling of the room or there actually are rooms upstairs planned?

MR. LOVATO: Hearing Officer Long, there is a room up above. The way the house is situated is you have what would be a living room and then you have the garage right next to it and then the upper level starts off. So when you look at it dead straight on you're going to get a total distance that's exceeding the 14-foot height requirement.

HEARING OFFICER LONG: Right. And the retaining walls. Would it be necessary then to cut into the hill? There would be additional grading to put those retaining walls in?

MR. LOVATO: Hearing Officer Long, the way the proposal is right now, yes. However, if it was located all on one level, it would be just the 14-foot height requirement that they could meet with that smaller footprint.

HEARING OFFICER LONG: And is the proposed wall 25 feet? I saw a reference to 25 feet.

MR. LOVATO: Hearing Officer Long, that is correct. That is on the portion where you're going to have the retaining walls to get to daylight for those rooms.

HEARING OFFICER LONG: So that would be the height of the wall that's proposed. And the length is 25 feet as well?

MR. LOVATO: That is correct.

HEARING OFFICER LONG: All right. Thank you. All right, for the applicant, if I could have anyone who thinks they may be speaking on this case to be

sworn in by our stenographer. Just stand there and raise your right hand and she'll swear you in.

[Duly sworn, James Horn testified as follows:]

JAMES HORN: James Horn, principal of Spears Horn Architects.

HEARING OFFICER LONG: Okay, Mr. Horn.

MR. HORN: Thank you for having us today, Counselor Long. I wanted to explain some of the issues of the project. We – it's a very difficult site. We've met with the homeowners association a number of times to make the project work for them visually, aesthetically, in the development. We've worked with the Fire and EMS a number of times also to address the issues of access to the house and they have put in a letter of support in the packet, and also HOA.

Essentially, we've got a site that has water to it, has a well, there is a driveway that was put in when the Osans purchased the property. It's pretty clear the buildable site. And we've looked around at other parts of the site and there's water flows that – there's areas too close to the entry. So this became the natural place to build. Up on the saddle – it's being called the ridge because there's two higher ridges that we're building within, we've worked with the Fire Department to get access from the main road up to the garage that's in the basement level, to work for them and get a turnaround space. If we did not have that we'd be coming up a lot higher onto the ridge. So one, that helps a lot with the development of the house, and then also the couple will be aging in place so they want to have a garage up at the top and be able to access the house easily and not from a different part down the hill.

And I can start to show you some of the elements of the project and then continue.

HEARING OFFICER LONG: Yes, please do. You can take it with you.

MR. HORN: Okay. Can you hear me?

HEARING OFFICER LONG: Yes.

MR. HORN: Okay. So this is the existing roadway that comes up to the site, very steep. This is the new driveway. We worked very hard on all aspects of this project to curve this into the natural grade, put screening here with trees, provide a backup space for the Fire Department and this is the access up to the house. This is the basement level which is right below here, and the house is sunken into the site pretty intently to make all this work. Nothing is 14 feet above natural grade, so everything is stepping down. So this is at 11 feet. Then we come upstairs, this is 23, and then we terrace up another four feet up here to 27. So the building is stepping up. I think the elevations might help.

So this is the higher ridge up here, Officer Long. These are the natural grades. So everything is sitting down. This is carved out into the site. We've got terrace walls that come into this whole space here. So from the front of the site you're not going to see the broadness of this wall. And what we've done is everything is less than 14 feet. We have 12-foot breakup of these walls here, and then six feet. So every wall has a step or a break in it instead of having the full 25 feet on that wall. Plus we have these terrace walls that will have plantings that are around that.

This is the backside for the variance three. It's very important to have natural light in the basement so this area projects out into the land and this is a portion of the property that they own that doesn't have views from other parts of the development. So it's very hunkered in, quite low into the site.

HEARING OFFICER LONG: So those are the walls that are at an angle? So at their highest point they're 25 feet?

MR. HORN: This would be 25 feet here.

HEARING OFFICER LONG: Oh.

MR. HORN: These are only I believe ten feet.

HEARING OFFICER LONG: Okay.

MR. HORN: Then they angle in. These are montage perspectives that we did. This is the backside with these angled walls. It's sunken into the earth to bring natural light in. And then this is the view from the existing driveway and the driveway – this is the row of trees that we'll be adding in. The driveway essentially curves around and comes out to the house here. But everything is pretty well screened from view and gives you the perspective of a fairly small building, a 14-foot building.

And then we've been working very hard on all the materials. All the materials are adobe, natural rusted metal, moss rock – really working with the existing soils out there to complement the look of the building. The color in the building in this is a little bit yellow but it's –

HEARING OFFICER LONG: Where's the road in position to the house? The driveway, the access road?

MR. HORN: So it is here, and then we come up, and then that's the garage in this area.

HEARING OFFICER LONG: And can you see – will you be able to see the second story from Calle Cielo?

MR. HORN: The top story you'll be able to see. Down below, it's all screened by the curving of the driveway and the trees. That's the view there. And we could have just come in and developed this road but that would have been very steep and you'd pretty much see right up into the house, so we made a very concerted effort to bring this in and not disturb more than – I think it was 1900 square feet of 30 percent. And then if you add this back here, that only gets us in I think 2400 square feet of disturbed.

HEARING OFFICER LONG: The retaining walls are to the back of the residence, it looks like from here?

MR. HORN: These walls?

HEARING OFFICER LONG: Yes.

MR. HORN: Yes. And this is kind of a hidden valley back here. It's not really seen by the development. Rancho Encantado is a couple ridges over so that's a further away area.

HEARING OFFICER LONG: Okay.

MR. HORN: And maybe I can clarify the height of the light wall, Counselor Long. This one here is – this is at 12 ½ feet and then this goes down about nine feet here. So this is about – approximately 20 feet across here, but it's broken up by these walls.

HEARING OFFICER LONG: Twenty feet total height?

MR. HORN: Yes. Not 19. It's a little less. The floor is down here too. We made every effort to burrow that in. We get natural light but that's up higher. But I hope you can see we've been working pretty hard to make some of these things have a compliance level to them and work with the different steppings and make it less visible at every turn. We've been working diligently to get this to work.

HEARING OFFICER LONG: And if you had to abide by the 14-foot height requirement then what would that do to the design?

MR. HORN: Then I think we'd have trouble with the access up to the house. The road becomes very steep. I think it would not be a good thing for fire access, and then also if they're aging in place they don't have access to the house as easily, to be able to park the car in inclement weather.

HEARING OFFICER LONG: So the garage would be detached from the house in that instance, are you saying?

MR. HORN: If that were to be – yes, there's not room up there to put a garage. And then they'd have to climb up from the bottom of the site.

HEARING OFFICER LONG: And why would the access change?

MR. HORN: Because we're coming in at 11 feet here and if we were to be sitting up here we'd be another 12 feet up, so that percentage of slope would highly increase. So we've been – it's a balancing act of getting everything to work for the client and the property and the County. So I hope you can see the efforts of trying to make this work.

HEARING OFFICER LONG: Well, thank you.

MR. HORN: Is there anything else you need to hear?

HEARING OFFICER LONG: You can speak as well. You need to be sworn in though.

[Duly sworn, Diane Osan testified as follows:]

DIANE OSAN: I'm Diane Osan. I'm the homeowner.

HEARING OFFICER LONG: And you can head back to the podium.

MS. OSAN: Thank you. I appreciate you letting us speak, Commissioner Long. I just wanted to make sure it was really clear that having the garage and the stair and the family room down below the house is imperative to being able to access the house during the winter. To be able to bring a car up and get to the house. The idea, if you don't drop it down below the natural grade, then the grade's so steep you can't get a car up and there's nowhere to park a car. And there's no way to get a fire truck up or an ambulance. So it's about safety in my mind. About why it's important that we put the space below. It's not about the size of the house; it's really about the access to the house, and the access to the hilltop.

And so the spirit of the house is staying no more than 14 feet above the natural grade. What we really are needing the variance for the taller house is because we're dropping below the natural grade and essentially digging the house into the side of the hill, which from a passive solar design is really very effective because you're using the earth berm around you to help keep the house temperature more in line with the geothermal around it. So I just wanted to make sure it was really clear about why. From my perspective it's safety. We can't get to the house otherwise, to the buildable area. Thank you.

HEARING OFFICER LONG: Thank you. Is there anyone here that would like to speak to this case other than the applicant? There is no one else that would like to speak regarding this case. Well, there's no question as to the setback. You couldn't build and staff agrees with you, unless that setback variance were granted and I think the retaining walls are placed in a way that minimizes the appearance, certainly to those traveling on the road and the way that they're in the hill, they don't seem like they will be

terribly visible from the depictions that I've seen. And the only question in my mind is the height variance, but I see what you've done to reduce the visual impact of the house and I understand what you're saying about the garage, and you're dealing with a challenging site, even though it's a very large site. It's obviously very steep and so that unique characteristic of the land is making these variances necessary in my mind.

So I try to give people an idea of where I'm going to go. The decision is not due for two weeks but sometimes I get them done earlier, and of course you know it's just a recommendation to the Planning Commission. So I think I'd be inclined to grant the variances, based upon the evidence that you've presented, and I'll be taking a closer look at it as well. Thank you.

**III. B. CASE # V 16-5100. Ramon Polanco and Maria Olivas, Applicants, Ralph Jaramillo, Agent, request a variance of Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks of the Sustainable Land Development Code, Ordinance No. 2015-11 (SLDC) to allow a residence to be within the required minimum 50' setback. The property consists of 1.25 acres and is located at 4 Estrellas Road South, within the La Cienega and La Cieneguilla Community District Overlay, within Section 28, Township 16 North, Range 8 East (Commission District 3)**

HEARING OFFICER LONG: Our second case is V 16-5100. Ramon Polanco and Maria Olivas are the applicants. Ralph Jaramillo is the agent, requesting a variance of Chapter 9 of the Dimensional Standards of the Sustainable Land Development Code to allow a residence to be within the required side and rear 50-foot setback. The property consists of 1.25 acres and is located at 4 Estrellas Road South, within the La Cieneguilla Overlay District. Mathew Martinez is the manager on this case.

MATHEW MARTINEZ (Case Manager): Thank you, Hearing Officer Long. The property consists of 1.25 acres and is within the Residential Estate Zoning District in the La Cienega and La Cieneguilla Community District Overlay. Under Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks, of the SLDC in that community district overlay, the rear and sides of the building shall be set back a minimum of 50 feet from the property line. The property is an L shape lot where the horizontal leg is approximately 105 feet wide and the vertical leg is approximately 86 feet wide. Incorporating a 50-foot setback from all side and rear property lines would leave nowhere for the applicants to construct a residence. Therefore, the applicants are requesting a variance.

The agent states that a Small Lot Family Transfer was approved for Gabriel Orozco, which was recorded on December 15, 2015, prior to the implementation of the SLDC. At that time, neither Mr. Orozco, nor the agent, nor the applicants were aware that the SLDC would require the 50-foot setback. The agent states that if the parties would have known that these setbacks would be implemented, the lot lines would have been created differently. The applicants further state they have paid a good down payment, which they have saved for years, and they have hired a contractor to put a foundation along with utilities for a 28'x78' manufactured home to place on the property. The applicants further state that with the current setback requirements, there is no way they will be able to pursue building on their dream property.

Staff Response: The subject lot was approved by the Land Use Administrator in December of 2015, in accordance with the Land Development Code, Ordinance #1996-10. Although, Chapter 9, Section 9.8.3.6.5.c.ii, Dimensional Standards Residential Estate Setbacks states that both the rear and sides of the building shall be set back a minimum of 50 feet from the property line; the standard setback in the remainder of the county is 25 feet. Under Table 7-A, setbacks in the Residential Estate Zoning District outside of this community district overlay are required to be a minimum of 25 feet for both the rear and side setback from property lines. The 50-foot setbacks leave the applicant with nowhere to build on the property.

Recommendation: The application is not in strict compliance with the SLDC but this application meets the criteria necessary for granting a variance. Due to the size and configuration of the lot, the applicant is unable to build a home on their lot. The inability to build on the property due to the setback requirements in Chapter 9, Section 9.8.3.6.5.c.ii, demonstrates that they have met the second prong of the variance criteria. The spirit of the SLDC is to allow individuals to build on legal lots or record and the setback requirements prevent the applicants from doing this, so a variance would meet the requirements of the third prong. Under the setback requirements Chapter 7, Table 7-A, which apply to all Residential Estate Zoning outside of this community district overlay, the minimum setback is 25 feet. Therefore, staff's position is as long as the applicant keeps the 25-foot setback requirement they have met the first prong of the variance criteria.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written recommendation. The Santa Fe County Planning Commission will be holding a public hearing on this matter on June 16, 2016. Thank you. I stand for any questions.

HEARING OFFICER LONG: Do you know why the setback requirement is so much greater in this overlay district than the rest of the county?

MR. MARTINEZ: I know that they had community meetings within these overlay districts and it was a distance that they come up with.

VICKI LUCERO (Building & Services Manager): Hearing Officer Long, Mathew is correct, actually. The La Cienega Community Zoning District, when that was coming into effect, they did have several community meetings where members of the community actually gave input as to what they thought these design standards should be, and that was something that was decided upon amongst those members.

HEARING OFFICER LONG: And it's not possible to meet the side yard setback either on this lot?

MR. MARTINEZ: Hearing Officer Long, that's correct.

HEARING OFFICER LONG: So that would be a condition of approval if the variance is granted, that they would have to maintain a 25-foot setback?

MR. MARTINEZ: Hearing Officer Long, that's correct.

HEARING OFFICER LONG: All right. Thank you. And the applicant's agent is here? Would you come forward please?

[Duly sworn, Ralph Jaramillo testified as follows:]

RALPH JARAMILLO: Good afternoon, Hearing Officer Long. I, being the realtor in this, along with the agent, along with assisting and helping with a small family lot split in 2015, just let me reiterate, in no way shape or form, there was nothing



mentioned to us of a 50-foot setback even to come in January 2016 when the new code was going to come into effect. If there was, I think there would have been something within the plat that was mentioned when we did redlines and this and that to get the mylar ready for recordation that were the 50-foot setbacks. If that was the case we would have reconfigured the whole thing.

Since then, the other property, the other 1.25, with the residence on it has been sold. They like their configuration. They don't want to change anything. Therefore, we right now, this piece of property is worthless if we can't get anything done. My clients are paying two mortgages right now because of what's happened here. When they came in we thought everything was fine. They contacted me. They were so irate with me, almost telling me that I deceived them. I don't deceive anybody.

It appalled me to see something like this happen. At that time I came and approached Land Use. We talked and here's where we are today. My clients are working double shifts, husband and wife, just to meet two mortgages. The real estate contract, close to \$700, their lot space, \$650 till we can get this done so they can – they thought it would just be, just move over, roll over, let's get a permit, let's get it in, let's get our home in, and now it's going to be taking them about three months from the time they acquired this probably to get what they need.

I'm asking for approval, Officer Long, for them for this variance. I think 50-foot setbacks are so extreme. Thirty years that I've been practicing real estate I've never seen something like this in a subdivision like this. I feel with the 25 feet, as I spoke with Mr. Martinez and he looked at staff and at the footprint where we're trying to get to this 2,100 square foot home will meet and satisfy this requirement for my clients. Therefore we can probably live with that 25-foot setback.

HEARING OFFICER LONG: You think that – you've looked at it and that will be feasible?

MR. JARAMILLO: I looked at it. It seems like it did. Staff looked at it as well. They've seen the way that it is the way we're going to position it. We forwarded them the footprint and everything where they wanted to put it. And it seems in the L-shape towards the back, it seems like it's going to fit there, yes.

HEARING OFFICER LONG: Right. Well, this case certainly fits I think all the criteria for a variance. Your clients have demonstrated hardship. There are unique characteristics of this piece of property that would make it undevelopable unless a variance were granted. So I will be recommending that the variance be granted. And then you're going to the Planning Commission and hopefully they can move on from there. That's just in a few weeks, so hopefully it will be taken care of.

MR. JARAMILLO: I appreciate it.

HEARING OFFICER LONG: All right. Let me ask if there's anyone here that would like to speak to this case, other than the applicant's agent. And there is no one present that would like to speak. Thank you very much.

**C. Adjournment**

Having completed the agenda and with no further business Hearing Officer Long declared this meeting adjourned at approximately 3:32 p.m.

Approved by:

*Nancy Long*  
Nancy Long, SLDC Hearing Officer  
Santa Fe County

COUNTY OF SANTA FE ) SLDC HEARING OFFICER M  
STATE OF NEW MEXICO ) ss PAGES: 10

I Hereby Certify That This Instrument Was Filed for  
Record On The 16TH Day Of June, 2016 at 09:21:18 AM  
And Was Duly Recorded as Instrument # 1796515  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Deputy *Amber S. Keyba* Geraldine Salazar  
County Clerk, Santa Fe, NM



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