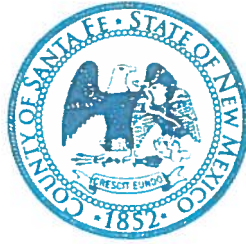


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CDRC CASE # APP 13-5062
ROBERT AND BERNADETTE ANAYA APPEAL
ROBERT AND BERNADETTE ANAYA, APPLICANTS

ORDER

THIS MATTER came before the County Development Review Committee (CDRC) for hearing on May 21, 2015, on the Application of Robert and Bernadette Anaya (Applicants), appealing the Land Use Administrator's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as it was deemed untimely. The CDRC, having reviewed the Application, supplemental materials, Staff report and having conducted a public hearing on the request, finds that the Application is not well-taken and should be denied and makes the following findings of fact and conclusions of law:

1. This matter commenced as a result of a neighbor's complaint about a towing business operating without proper zoning or a business license in a residential area. The complaint arose as a result of the Applicants causing damage to the neighbor's property with their large tow trucks knocking down a masonry wall between the neighbor's property and the Applicants' property.
2. The Applicants were issued a notice of violation of Ordinance No. 1992-3 (Business Registration and Licensing Ordinance), on February 9, 2012, for operating a business without a County Business Registration.

3. The Applicants acquired the Property by Quitclaim deed recorded as Instrument # 1543429 in the Santa Fe County Clerk's records on November 6, 2008.
4. The property is located at 2253 Ben Lane, within Sections 31, Township 17 North, Range 9 East in a densely developed neighborhood.
5. On February 12, 2013, the Board of County Commissioners (BCC) conditionally approved Applicants' application for a variance of Ordinance 1996-10, the Santa Fe County Land Development Code (the Code), as amended by Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District, to allow a towing business as a Special Use under Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the BCC. The approval of the variance was conditioned on the Applicants presenting a Master Plan, and Preliminary and Final Development Plan approval to the BCC by July 9, 2013.
6. The Applicants submitted an Application for Master Plan, Preliminary and Final Development Plan on February 8, 2013. On April 18, 2013, the CDRC met and acted on the Application. Staff recommended only approval of the Master Plan because the request for Preliminary Development Plan approval was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j (Development Plan Requirements) and Article III, § 4.4 (Development and Design Standards). The decision of the CDRC was to recommend approval of the Applicants' request for Master Plan approval and denial of the Applicants' request for Preliminary Development Plan.

7. On June 11, 2013, the BCC granted a request made by the Applicants for Master Plan Zoning to conditionally approve operation of a towing business on 0.33 acres \pm . The request was granted subject to the following conditions precedent:

- a. The Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;
- b. A Preliminary and Final Development Plan shall be submitted within ninety days, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
- c. The Applicants shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards);
- d. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
- e. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.

8. On September 26, 2013, the Applicants submitted a request for an extension of time to submit the Preliminary and Final Development Plan, an amendment to the approved Master Plan and for reconsideration of certain conditions contained in the BCC's August 20, 2013 Final Order. The Applicants submitted a letter of request, a copy of the Master Plan Report, Master Plan drawings, fees, deed and recorded plat.

9. On March 11, 2014, the BCC held a public hearing on the request by the Applicants to reconsider the conditions imposed on the Master Plan Zoning approved on June 11, 2013.

The BCC then deliberated over the matter in closed executive session on March 25, 2014 and again on May 13, 2014. The conditions that the Applicants sought to have removed from the Final Order were b and e of paragraph 7 above, as well as two additional items:

- a. The implementation of a landscape buffer on the east side of the site alongside the platted easement; and
- d. The listing of personal vehicles that will be stored on the site.

10. On June 11, 2014, the BCC, at a properly noticed, televised open meeting, approved a Final Order which denied the request to reconsider the conditions, however allowing an extension of the deadline for submitting a Preliminary and Final Development Plan to the CDRC, to thirty days after recording the order denying the request for reconsideration. All other requests were denied.

11. The extension of the deadline for submitting the Preliminary and Final Development Plan to the CDRC was only for thirty days after recordation of the final order granting that extension. The Final Order was recorded on June 13, 2014. Applicants failed to submit the Preliminary and Final Development Plan within the thirty day extension period. Applicants also failed to timely submit an appeal of the BCC Order denying the application yet granting an extension of the deadline to submit the Preliminary and Final Development Plan.

12. A copy of the recorded Final Order was mailed to the Applicants on June 16, 2014, via certified mail along with a letter stating the following:

“This letter is to inform you that the Board of County Commissioners met and acted on your request for reconsideration of conditions which were imposed by the BCC for Master Plan Zoning approval to allow a towing

business on .33 acres. The decision of the BCC was to deny your Application, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended thirty (30) days after recording of the Final Order. The Final Order was recorded on June 13, 2014. The enclosed order is a final order of the Board of County Commissioners, which, pursuant to Section 39-3-1.1 of the New Mexico Statutes Annotated 1978, you may appeal by filing a timely Notice of Appeal in the appropriate district court. Any such district court appeal must be filed within 30 days of the recording of this Order. The Order was recorded today, which is a matter of public record.”

13. On June 17, 2014, the United States Postal Service left notice of the certified letter at the Applicants’ mailing address. The Applicants did not contact staff nor did they file an appeal with the District Court during the 30 day period. The Applicants did contact staff after the thirty day deadline and inquired on how to proceed with their Application. Staff advised the Applicants that the deadline for submitting the Preliminary and Final Development Plan and for filing an appeal to District Court had lapsed.

14. On August 13, 2014, approximately twenty-nine days after the deadline for their submission, or approximately fifty-nine days after the Final Order was recorded, Counsel for applicants submitted an Application for Master Plan Zoning, Preliminary and Final Development Plan. The plan set that was submitted was identical to the original submittal from February 7, 2013, which had already been determined to fall short of the Code requirements and conditions imposed by the BCC. The submittal had the following deficiencies:

- a. The proposed Master Plan, Preliminary and Final Development Plan drawings do not demonstrate the easement required to create the 28 foot inside radius, at the intersection of Agua Fria and Ben Lane, which is required by the County Fire Marshal;
- b. The proposed plan set illustrates 8 parking spaces for trucks, where the condition of approval by the BCC was to limit the tow trucks to 5 (three small tow trucks and two large tow trucks);
- c. A Master Plan Report and Development Plan Report were not submitted as per Article V, Section 5.2.2 Master Plan Submittals and Article V, Section 7.2.1 Final Development Plan Submittals;
- d. A survey to create a .33 acre parcel to be zoned as a Special Use, under the Village of Agua Fria Zoning District Ordinance Use Table, was not submitted.

15. On November 13, 2014, the Land Use Administrator issued a letter to Applicants' attorney stating the following: "The submission of the Robert & Bernadette Anaya Master Plan, Preliminary and Final Development Plan is rejected as untimely and not constituting a complete Application."

16. Pursuant to Article II, § 2.3.4b of the Code:

"2.3.4b Appeal of Code Administrator Decision under Section 2.3.1 to the County Development Review Committee

i. Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County Development Review Committee shall make and file its decision approving or disapproving the Application or approving the Application with conditions or modifications.

ii. A decision of the County Development Review Committee on an appeal shall become final thirty (30) calendar days after the decision is filed, unless within that month an appeal of the decision has been filed by an interested person including the Code Administrator, pursuant to Section 2.3.4c of this Article or the Board on its own initiative has decided to review the decision.”

17. The Applicants authorized Sommer, Karnes & Associates, LLP to pursue the request for an appeal of the Land Use Administrator’s decision as evidenced by a copy of the written authorization contained in the record.

18. The Applicants complied with all noticing requirements of Article II § 2.4.2, of the Code. In advance of a hearing on the Application, the Applicants provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty one days on the property, beginning on April 30, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on April 30, 2015, as evidence by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners.

19. The Applicants’ agent spoke in favor of the Appeal. He acknowledged that the Applicants missed the deadlines for filing established by the BCC. He also advised the CDRC that a fire recently struck the Applicants’ home, which was located on the subject property.

20. Henry and Georgia Romero spoke, advising that they represented ten families affected by the Applicants’ towing business, and spoke in opposition to the Appeal. Georgia Romero advised that the towing business limits the activities of the residents on Ben’s Lane.

21. Staff recommended denial of the Applicants' appeal of the Land Use Administrator's decision to reject the incomplete and untimely submittal for Master Plan, Preliminary and Final Development Plan approval, noting that the Land Use Administrator's decision was in compliance with the BCC's Final Order.

WHEREFORE the CDRC hereby upholds the Land Use Administrator's decision to reject Applicant's submittal for Master Plan, Preliminary and Final Development Plan approval as it was deemed untimely. The motion to deny the Appeal passed by a 6-0 vote.

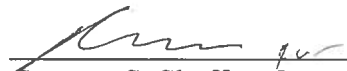
THE SANTA FE COUNTY DEVELOPMENT REVIEW COMMITTEE

By: _____
Frank Katz, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

Upon motion by Member Martin and second by Member Gray the agenda was unanimously approved 6-0 as published.

V. APPROVAL OF MINUTES: April 16, 2015

Member Martin moved to approve the minutes as published. Her motion was seconded by Member Gray and passed without opposition.

VI. NEW BUSINESS

A. CDRC CASE # DP 09-5471 Aces Towing – TABLED

B. CDRC CASE # APP 13-5062 Robert and Bernadette Anaya Appeal: Robert and Bernadette Anaya, Applicants, Joseph Karnes (Sommer, Karnes & Associates, LLP), Agent, are appealing the Land Use Administrator’s decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as it was deemed untimely. The property is located at 2253 Ben Lane, within Sections 31, Township 17 North, Range 9 East, (Commission District 2)

Jose Larrañaga, Development Review Team Leader, read the case caption and staff report as follows:

“The following is an outline in chronological order of past events leading up to the Applicants’ request: On November 13, 2012, the Board of County Commissioners granted a request made by the Applicants for a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the Board of County Commissioners. The approval of the variance was conditioned on the Applicants presenting a Master Plan to the BCC, within eight months of the November 13, 2012 hearing. The Applicants submitted an Application for Master Plan, Preliminary and Final Development Plan on February 8, 2013.

“On April 18, 2013, the County Development Review Committee met and acted on the request by the Applicants for Master Plan Zoning and Preliminary Development Plan approval. Staff recommended Master Plan approval as the request for Preliminary Development Plan approval was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j and Article III, § 4.4. The decision of the CDRC was to recommend approval of the Applicants’ request for Master Plan approval and denial of the Applicants’ request for Preliminary Development Plan.

“On June 11, 2013, the BCC granted a request made by the Applicants for Master Plan Zoning to allow a towing business on 0.33 acres. The request was granted subject to the following conditions:

1. The Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;
2. A Preliminary and Final Development Plan shall be submitted within ninety days of issuance of this Order, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
3. The Applicants shall comply with Ordinance No. 2007-2, § 10. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
4. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;

“On September 26, 2013, the Applicants submitted a request for an extension of time to submit the Preliminary and Final Development Plan, an amendment to the approved Master Plan and for reconsideration of the BCC’s August 20, 2013 Final Order. The Applicants submitted a letter of request, a copy of the Master Plan Report, Master Plan drawings, fees, deed and recorded plat;

“On March 11, 2014, the BCC held a public hearing on the request by the Applicants to reconsider the conditions imposed on the Master Plan Zoning approved on June 11, 2013. The BCC then deliberated over the matter in closed executive session on March 25, 2014 and again on May 13, 2014. The conditions that the Applicants requested the BCC to reconsider are:

1. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order.
2. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.
3. The implementation of a landscape buffer on the east side of the site alongside the platted easement.
4. The listing of personal vehicles that will be stored on the site;

“On June 11, 2014, the BCC approved a Final Order which denied the request to reconsider the conditions and which allowed an extension of the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee, to 30 days after recording the order denying the request for reconsideration. All other requests were denied;

“The approval of the extension of the previously imposed deadline was subject to submitting the Preliminary and Final Development Plan to the County Development Review Committee within 30 days of the recordation of the Final Order. The Final Order was recorded on June 13, 2014. The Preliminary and Final Development Plan was not submitted within the 30 days of the recording date. An appeal of the Order was not filed within 30 days of the recording date;

“A copy of the recorded Final Order was mailed to the Applicants on June 16, 2014, via certified mail along with a letter stating the following: This letter is to inform you that the Board of County Commissioners met and acted on your request for reconsideration of conditions which were imposed by the BCC for Master Plan Zoning approval to allow a towing business on .33 acres. The decision of the BCC was to deny your Application, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended 30 days after recording of the Final Order. The Final Order was recorded on June 13, 2014. The enclosed order is a final order of the Board of County Commissioners, which, pursuant to Section 39-3-1.1 of the New Mexico Statutes Annotated 1978, you may appeal by filing a timely Notice of Appeal in the appropriate district court. Any such district court appeal must be filed within 30 days of the recording of this Order. The Order was recorded today, which is a matter of public record.

“On June 17, 2014, the United States Postal Service left notice of the certified letter at the Applicants’ mailing address. The Applicants did not contact staff nor did they file an appeal with the District Court during the 30-day period. The Applicants did contact staff after the 30-day deadline and inquired on how to proceed with their Application. Staff advised the Applicants that the deadline for submitting the Preliminary and Final Development Plan and for filing an appeal to District Court had lapsed;

“On August 13, 2014, approximately 29 days after the deadline for their submission, or approximately 59 days after the Final Order was recorded, Joseph Karnes on behalf of the Applicants submitted an Application for Master Plan Zoning, Preliminary and Final Development Plan. The plan set that was submitted was identical to the original submittal, submitted on February 7, 2013, which ultimately did not meet the Code requirements or conditions imposed by the Board of County Commissioners. The submittal was deficient in the following:

- a. The proposed Master Plan, Preliminary and Final Development Plan drawings do not demonstrate the easement required to create the 28-foot inside radius at the intersection of Agua Fria and Ben Lane, which is required by the County Fire Marshal.
- b. The proposed plan set illustrates 8 parking spaces for trucks, where the condition of approval, by the BCC, was to limit the tow trucks to five, three small tow trucks and two large tow trucks.
- c. A Master Plan Report and Development Plan Report was not submitted as per Article V, Section 5.2.2 Master Plan Submittals and Article V, Section 7.2.1 Final Development Plan Submittals.
- d. A survey to create a .33-acre parcel to be zoned as a Special Use, under the Village of Agua Fria Zoning District Ordinance Use Table, was not submitted;

“On November 13, 2014, the Land Use Administrator issued a letter to Mr. Karnes stating the following: The submission of the Robert & Bernadette Anaya

Master Plan, Preliminary and Final Development Plan is rejected as untimely and not constituting a complete Application.”

“The Applicants claim that they did not receive notice of the Final Order adopted by the BCC until after the 30 days had passed. They also claim that the Final Order did not address ramifications of failure to submit the Application within the identified timeframe.

“Staff Response: The Applicants failed to appeal in a timely manner, the BCC order imposing a deadline for submission of the Preliminary and Final Development Plan as a condition precedent to Master Plan approval. A certified letter along with the Final Order was mailed to the Applicants, a letter the Applicants did not timely retrieve. The failure of the Applicants to retrieve the order sent to them does not serve to extend the deadline for submission of the Preliminary and Final Development Plan, which deadline was triggered by the recording of the Order in the Office of the County Clerk. In light of the untimely filing of the Master Plan, Preliminary and Final Development Plan, no Master Plan Zoning is in place which would form the basis for the submission of a Preliminary and Final Development Plan. Having failed to meet a condition precedent to approval of the Master Plan, staff has no authority to accept the Master Plan, Preliminary and Final Development Plan for processing. Additionally, the documents presented were not compliant with submittal requirements of the Code.”

Mr. Larrañaga said staff recommends denial of the Applicants’ request to appeal the Land Use Administrator’s decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as the Master Plan, Preliminary and Final Development Plan submittal was deemed untimely and did not constitute a complete Application. Staff solicits the support of the County Development Review Committee to support the Land Use Administrator’s decision which was based on the Final Order and conditions imposed by the BCC.

Member Gonzales asked whether the eight-month period to file a master plan was typical and who authorized that amount of time. Mr. Larrañaga responded the BCC and confirmed that the applicant requested amendments to the conditions and while that was not granted they were given additional time.

Karl Sommer, PO Box 2476, Santa Fe, NM, appeared as counsel for the applicants and mentioned that the applicants’ home was in a recent fire and lacking insurance all of their resources are focused on their living dwelling. The fire has contributed to the tabling of this appeal before the CDRC.

Mr. Sommer said the request before the CDRC is whether or not the Land Use Administrator had the authority to accept the submission out of time and whether or not the master plan zoning, by its own accord, disappeared that legislative action when the 30-days passed.

Mr. Sommer said the history of the Anaya's case is long and has been a struggle for them and while they received final approval they did not receive the final request. Their plans were finalized by engineer Morey Walker. However, the Anayas were unaware of the associated time period within the final order. The Anayas retained Mr. Sommer's law firm subsequent to the lapse in the time period and the plans were immediately submitted.

Mr. Sommer repeated the issue before the CDRC: Did the zoning disappear when the Anaya's failed to file within the time period? What is the effect of the failure to meet the time period? He mentioned that his clients lacked sophistication in regards to property ownership and that explains some of the confusion regarding time frames.

Member Booth asked whether the applicants received the certified letter and Mr. Sommer said it was received after the 30-day time period. He was unaware of whether they received notice of the certified letter.

In response to a question regarding post office notification, Mr. Larrañaga directed the CDRC to USPC tracking document an exhibit within their packet.

Chair Katz said he understood the applicant was given a time in which to file the master plan and failed to do so. As a result, the Land Use Administrator said it's late and did not accept it. He asked whether the denial of the master plan removed the zoning. Mr. Sommer said he understood that the final act of the BCC was to grant approval of a zoning application for a master plan which constitutes zoning for the property. The question is does the zoning go away since they failed to meet the time imposed by the BCC order? Staff declares that the consequence of not meeting the deadline is the zoning is gone and the property is now zoned residential.

Under oath, Georgia and Henry Roybal identified themselves as the original complainants against the Anayas who knocked down their wall in January 2012. Ms. Roybal said she and her husband have been dealing with the Anayas' development plan since that time.

Ms. Roybal said she was puzzled that the Anayas did not receive their certified mail because as a listed PRC business they are required to man the 24/7 towing company office. In fact, she sent herself certified mail to test the post office and found the delivery to be timely and was advised twice of the mail from the post office.

Ms. Roybal said she represents the 10 families affected by the Anayas' business. She said businesses can move more easily than the 10 families it affects. The residents on Ben's Lane are limited in activities because of the tow truck business. She offered to share photographs of the situation.

There were no other speakers and Chair Katz closed the public hearing.

Mr. Larrañaga clarified that the request before the CDRC is to support the Land Use Administrator's decision to deny the applicants' request to appeal the Land Use

Administrator's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as per the BCC conditions and the untimely manner of the submittal.

With respect to CDRC Case #A 13-5062, Member Martin moved to deny the applicants' request to appeal the Land Use Administrator's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as it was deemed untimely and did not constitute a complete application. Member Gray seconded and the motion passed by unanimous [6-0] voice vote.

C. CDRC CASE # DP 15-5090 The Legacy at Santa Fe: PinPoint Equities, LLC, Applicant, JenkinsGavin, Agents, request Preliminary and Final Development Plan approval for an Assisted Living Facility on 6.78 ± acres within Phase I-A of Aldea de Santa Fe. The 66,476 square foot facility will contain 84 beds and will be constructed 33 feet 10 inches in height. The property is located at 34 Avenida Frijoles, North of 599, within Section 20, Township 17 North, Range 9 East, (Commission District 2)
[Exhibit 1: Revised Applicant Proposal; Exhibit 2: Jason Gonzales email concerning access road; James & Barbara Talley letter concerning access road; Exhibit 4: Emails to JenkinsGavin supporting the development; Exhibit 5: Applicant slide show, site photos and drawings]

Ms. Lucero advised the CDRC that staff received a revised proposal [*Exhibit 1*] this morning that relocates and realigns the onsite access road to the project. Staff has not had the opportunity to conduct an analysis and the applicant would need to submit additional information – plans, profiles on the roadways, road sections, scaled drawings, slope disturbances, etc. – and following Land Use review, the plans would be forwarded to County Public Works and the Fire Marshal.

Ms. Lucero said the revised proposal creates an incomplete submittal that lacks a staff recommendation. She recommended the case be tabled if the applicant wants to use the revised plan.

Agent Jennifer Jenkins said they were prepared to go forward with the original proposal.

Mr. Larrañaga read the case caption and reviewed staff's report as follows:

"The Applicant is requesting Preliminary and Final Development Plan approval for an assisted living facility in conformance with the Aldea de Santa Fe Amended Master Plan and Santa Fe County Ordinance No. 1996-10, the Land Development Code. The Amended Master Plan was approved on February 2005, by the Extraterritorial Zoning Authority. The 6.78-acre site is recognized as an Institutional Use in the Amended Master Plan. The uses allowed, as per the Amended Master Plan, for an Institutional Use are: Educational Institutions; Civic and Religious Organizations. This includes: Museums, School Buildings, School