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Katherine Miller
County Manager

DATE: November 28, 2017

TO: Board of County Commissioners

FROM: John Lovato, Development Review Specialist Sr.

VIA: Katherine Miller, County Manager
Penny Ellis-Green, Growth Management Director
Vicki Lucero, Building and Development Services Manager

FILE REF: CASE # APP 17-5161 Prabhu Khalsa and Regina Spamer

ISSUE:

Prabhu Khalsa Appellant, Oralynn Guerrerortiz, Agent, are appealing the Santa Fe County Planning Commission's decision for denial to allow a variance of the Sustainable Land Development Code Ordinance 2016-9 (SLDC) Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two story residence on a ridgetop.

The property is located at 01 Anand Nivas Way within the Vicinity of Sombrillo Within, Section 12, Township 20 North, Range 8 East, (Commission District 1)

Vicinity Map:



SITE LOCATION

1.

SUMMARY:

On July 27, 2017, this Application was presented to the Hearing Officer for consideration. The Hearing Officer supported in part of the Application and denied in part of the Application as memorialized in the findings of fact and conclusions of law written order. The Hearing officer recommend approval to allow disturbance of 30% slope for a driveway to access the buildable area and finds sufficient evidence of extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code. However, the Hearing Officer found insufficient evidence and recommended denial of the height and two story variance requests as the Applicant failed to prove extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code as the property contains 4,000 square feet to build an alternative style of home

On September 21, 2017, the variance request was presented to the Planning Commission and the Planning Commission approved of slope disturbance in excess of 30% as memorialized in the findings of fact and conclusions of law written order. However, the Planning Commission denied the request for the height and two story variance request as the Applicant failed to prove extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code

The Appellant states, "because the lands around the property have been altered in the past, it is difficult to now tell what is natural and what has been altered by the hand of man. The slopes of 30% on the west side of the property are only 5' in height, and that side has been definitely impacted by existing development so it is not clear if the slopes are natural. The adjacent roadway cut for East Sombrillo Road shows gentle slope form the west side of the building site, and likely was representative of the natural slope prior to development. (Photo Exhibit 1)

Appellant's original variance request: The Applicants are pursuing the request for a variance to allow a proposed 2,304 square foot residence to have a 22' pitched roof on a ridgetop, to allow a second floor in the residence, and to disturb 3,065 square feet of 30% slope for construction of their driveway on their 0.92 acre parcel. The property is currently vacant. The proposed residence consists of two stories. The first level contains a kitchen, bedroom, laundry room, and living room /dining room. The second level consists of a master bedroom, master bathroom, two bedrooms, a study room, and bathroom. The structure is 24'X 48' on both levels for a combined total of 2,304 square feet.

The applicable requirements under the Santa Fe County Sustainable Land Development Code, Ordinance No. 2016-9 (SLDC), which govern this Application are the following:

Chapter 7.17.9.2.4 Standards, states, "Utilities, drainage structures, slope retention structures, and access roads and driveways may be located on a natural slope in excess of thirty percent (30) so long as they disturb no more than three separate areas not exceeding 1,000 square feet each." (Exhibit 5)

Chapter 7.17.9.3.2, states, Height states, "Structures on ridges, ridgelines, and shoulders shall not exceed (14) feet in height and shall be limited to one story. However, a structure on a ridge or ridgeline that is a one story pitched roof structure shall not exceed eighteen (18) feet in

height so long as the structure is screened from view from an arterial or major arterial road.”
(Exhibit 6)

Chapter 4, Section 4.9.7.1, Variances (Purpose) states:

The purpose of this section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this Code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the Code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

Chapter 4, Section 4.9.7.4, Variance Review Criteria. (Exhibit 7) states:

A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

1. where the request is not contrary to public interest;
2. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

Chapter 4, Section 4.9.7.5 Variance Conditions of approval (Exhibit 8).

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.

All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

The Appellant addressed the variance criteria for the floodplain setback variance and staff responded as follows:

Height/ Two Story Variance

The Applicants response to the height request variance review criteria is as follows:

1. Where the request is not contrary to the public interest;

Applicants' Statement: Due to there being two other homes on either side of our property reaching above 24' feet in height, the height of our building will not be contrary to public interest

and two-story design will not be contrary to public interest, but in line with the existing neighborhood features. Additionally, as we are a private property, surrounded by other private properties, the interest of the public seems minimal.

Staff Response: Although there are existing 24' two story homes in the vicinity, those homes are not on a ridgetop and do not have to meet height limitations of 14' flat roof or 18' pitched roof with a single story design. This property is located on a ridgetop and is limited by the SLDC to one story and is subject to Chapter 7, Section 7.17.9.3.2, which restricts structures on ridges, ridgelines and shoulders to fourteen (14') in height and limits them to be one story. This section does allow for a structure on a ridge or ridgeline that is a one story pitched roof to be no more than eighteen (18) feet in height, so long as it is screened from view from an arterial or major arterial road.

2. Where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner.

Applicants' Statement: The "extraordinary and exceptional situations" as related to this property is that it runs long from the North to the South, but somewhat narrow from East to West. In order to build the house set back from the driveway and neighbor's property the home's South facing wall that extends from East to West cannot be much longer than our current design. As we have implemented a passive solar design with all bedrooms having a South facing window, we will need our current design which reaches 22 feet in height. As we have already invested in the design and paid for plans, and we cannot implement an effective passive solar design separate from what we have, denying this variance would "result in peculiar and exceptional practical difficulties" for us. It would also result in "exceptional and undue hardship" on us as we are expecting our first baby and aren't ready to redesign the home, without a passive design, and pay for more plans

Staff Response: The fact that the Applicants designed a two story home is not grounds for granting a variance. The site contains a buildable area of 4,000 square feet in which a one story structure can be placed. The applicant can build an 18' pitched roof with a south facing façade to allow for southern exposure which will allow for sunlight to enter the building. The Applicant can place skylights along the southern pitch and keep the structure at 18' to allow additional southern sun exposure to enter the residence. The structure can allow for a 14' flat roof and remain one level while other rooms that don't have sunlight entering can have an 18' clear story pitched roof to allow for windows and sun light for an effective passive solar design. The site contains ample room for a one story house of the same size.

3. So that the spirit of the SLDC is observed and substantial justice is done.

Applicants' Statement: Granting this variance, allowing us to design our home consistent with the design of the neighbors and neighborhood, would allow for "substantial justice" to be done. Conversely, if the variance was denied, it would be unjust as both neighbors have already reached a height of 24' feet or more, which is greater than what we are requesting. In keeping with the "spirit of the SLDC," particularly the "sustainable" part, allowing our variance would allow our passive solar and sustainable design.

Staff Response: The surrounding residences are not located on a ridgetop and are not restricted to the same requirements as this property. The proposed structure is subject to current standards and

shall not exceed 14' in height for a flat roof residence or 18' pitched as required by Ordinance 2016-9, the SLDC. This residence can be designed differently with a one story design and remain consistent with the SLDC. Granting this variance creates a possible precedent for surrounding properties where development is proposed on a ridgetop in this area as well as other communities in Santa Fe County.

RECOMMENDATION:

As staff did not recommend the initial variance request, staff recommends the BCC deny the appeal and uphold the Santa Fe County's Planning Commissions decision to deny a variance of Chapter 7.17.9.3.2, Height of Structures on ridges, ridgelines, and shoulders shall not exceed (14) feet in height and shall be limited to one story.

The Hearing Officer recommended denial for the height to exceed 14' and to allow a two story residence on a ridgetop as memorialized in the findings of fact and conclusions of law written order as the Applicant failed to prove extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code as the property contains 4,000 square feet to build an alternative style of home.

The Planning Commission denied the variances for the residence to exceed 14' on a ridgetop and two story because they believed that the application and plans provided did not meet the requirements and evidence necessity to grant the variance and meet the variance criteria. If the decision of the BCC is to deny the appeal, the BCC may adopt the findings of the Planning Commission. (Exhibit 12)

An appeal of the decision of the Planning Commission shall be reviewed de novo by the Board per Chapter 4, Section 4.5.4 of the SLDC and the Board may make their own findings and conclusions.

EXHIBITS:

1. Letter of Appeal/Photo of slope
2. Proposed Plans
3. Chapter 4, Section 4.5.4 Appeals
4. Aerial Photo of Site
5. Chapter 7, Section 7.17.9.2.4 Steep Slopes Shoulders and Ridgeline (Standards)
6. Chapter 7, Section 7.17.9.3.2 Height on Ridges, Ridgelines, and Shoulders.
7. Chapter 4, Section 4.9.7.4, Variance review criteria
8. Chapter 4, Section 4.9.7.5, Conditions of approval
9. July 27, 2017, Hearing Officer Meeting Minutes
10. Hearing Officer's Recommended Decision and Order
11. September 21, 2017, Santa Fe Planning Commission Meeting Minutes
12. September 21, 2017, Santa Fe Planning Commission Final Order