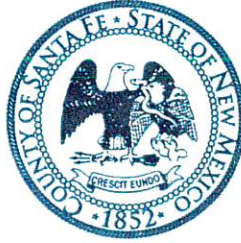


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: October 19, 2017

TO: Planning Commission

FROM: John M. Salazar, Development Review Specialist Sr. *JMS*

VIA: Penny Ellis-Green, Growth Management Director *PEG*
Vicki Lucero, Building and Development Services Manager *VL*

FILE REF.: CASE # V 17-5220 Ted & Barbara Seeley Variance

ISSUE:

Ted and Barbara Seeley, Applicants, request a variance of Ordinance No. 2016-9, the Sustainable Land Development Code (SLDC as amended), Chapter 7.11, Table 7-13, Road Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width with occasional pull-outs for traffic, to allow an easement of less than 38', and to allow the roadway to exceed a 9% grade in order to allow the issuance of a development permit.

The property is located at 57 Don Filomeno Road within Section 36, Township 19 North, Range 9 East (Commission District 1), SDA-2.

Vicinity Map:



SUMMARY:

The Applicants are the owners of the property at 57 Don Filomeno Rd. as indicated by the warranty deed recorded in the records of the Santa Fe County Clerk on October 20, 2006 as Instrument #1455825.

The Applicants are requesting a variance to allow a roadway to be less than 20' in width with occasional pull-outs for traffic and to allow the roadway to exceed a 9% grade in order to allow the issuance of a development permit for a 1,126 square foot residential addition. The noticed variance to allow an easement less than 38' is not required as the SLDC allows the easement to be 20' for residential uses and this property does have a 20' easement. The Applicants are adding a portal on the existing studio and adding a master bedroom, walk-in closet and covered portal on the existing residence.

On April 4, 2017, the Applicants submitted a development permit application for a residential addition. The Applicants are proposing to add 1,126 square feet for a two-story new master bedroom and closet with an additional bedroom on the second floor on the existing residence along with a portal to an existing studio.

The property at 57 Don Filomeno Rd. consists of 6.67 acres. The property is within the vicinity of the Rio En Medio Traditional Community in the Residential Fringe zoning district.

This matter came before the Hearing Officer on September 28, 2017. The decision of the Hearing Officer was to recommend approval for the variance of Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3).

The Hearing Officer found that there was sufficient evidence of extraordinary and exceptional conditions of the Property that would result in undue hardship to the Applicant from a strict application of the Code and that the Applicant meets all the variance criteria of the SLDC for the variance request.

The variances sought by the Applicants are regarding Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3). The Applicants are requesting variances to allow a roadway to be less than 20' in width, and to allow the roadway to exceed a 9% grade. Chapter 7, Section 7.11.11.5 does allow a reduction of road easement to no less than 20 feet if adequate drainage control is provided for residential development.

Don Filomeno Road is hard packed dirt. It has two instances in which the grade exceeds 9%, one instance is approximately 13% and the other is approximately 20%, and is as narrow as eight feet in some areas and as wide as twelve feet in others. Chapter 7, Section 7.11.11.5 allows for a reduction to off-site and on-site road easements to no less than 20 feet with adequate drainage control. The existing right-of-way is platted at 20 feet however most areas along Don Filomeno have drop-offs or inclines on either side of the road either at or in excess of 30% slopes. Due to natural terrain there is no feasible way for the Applicants to widen the road or reduce the grade.

The Applicants addressed the Variance Criteria below as follows and Staff provides its interpretation of how the proposal meets or fails to meet the variance criteria:

1. *where the request is not contrary to the public interest;*

Applicant's Response:

We do not believe the addition of the bedroom and closet is actually contrary to the public interest.

Staff's Response:

In order to bring Don Filomeno Road into compliance with Chapter 7, Section 7.11.11.5 it would require unsightly cut and fill areas to widen the road and reduce the grade as well as unsightly scarring along the landscape.

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;*

Applicant's Response:

The off-site access road and easement would not be able to meet the SLDC width and slope requirements of the current code. Also the road and community have existed decades before the SLDC standards were adopted. The public interest in this matter, I believe, relates to the accessibility of large emergency vehicles. The increased density this bedroom and closet represent does not contribute a further practical increased burden for emergency services.

Staff's Response:

Don Filomeno Road was constructed pre-code and there is no additional area for widening on the majority of the road nor is there additional area for reducing the grade throughout.

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

Applicant's Response:

The spirit of the SLDC is captured in the following statement found in the SLDC:

“The SLDC is designed to specifically provide protection of environmental, cultural, historical and archeological resources, the lessening of air and water pollution, assurance and conservation of water resources, prevention of adverse climate change, promotion of

sustainability, green development, and also to provide standards to protect from adverse public nuisance or land use effects and impacts resulting from public or private development within the County.”

The proposed variances requested observe those expressed purposes of the SLDC. The proposed bedroom closet will have minimal impact on the property while allowing them to make a normal and typical use of their property. It is fair and just to grant the variance.

Staff's Response:

The regulations within the SLDC are designed to provide for the safety of both vehicular and pedestrian traffic as well as safe and efficient access to property while ensuring that building projects are planned, designed, constructed, and managed to minimize adverse environmental impacts. Upgrading Don Filomeno Road would have major adverse environmental impacts due to the amount of cut and fill that would be required. Chapter 7, Section 7.17.1.6, Terrain Management Purpose states: “appropriately locate roads, driveways and utilities so as to minimize unsightly cut and fill areas, and scarring;” As stated earlier, upgrading the road will create unsightly cut and fill areas as well as scarring.

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, Section 7.11.11.5. Standards for Residential Development

1. Residential development may reduce the road easement width for off-site and on-site roads to no less than 20 feet if adequate drainage control is provided and may allow the surface to be hardpacked dirt with compaction of 95% of the maximum density.

Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3). (Exhibit 4)

Chapter 4, Section 4.9.7.1, Variances, Purpose

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, (Exhibit 5) Variance Review criteria 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) where authorized by NMSA 1978, Section 3-21-8(C):

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.

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.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant takes affirmative action consistent with the approval.

As required by the SLDC, the Applicants presented the Application to the Technical Advisory Committee (TAC) on July 6, 2017, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, TAC Meeting Table 4-1.

Notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the Application, the Applicants provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for fifteen days on the property, beginning on June 7, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on June 7, 2017, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record.

This Application was submitted on July 28, 2017.

RECOMMENDATION:

Staff recommends approval of the Applicants request for a variance to allow a roadway to be less than 20' in width, and to allow the roadway to exceed a 9% grade as it is not possible to widen the road nor is there enough length on the road to decrease the grade.

The Hearing Officer recommends approval of the Applicants request for a variance to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade as it is not possible to widen the road nor is there enough length on the road to decrease the grade with the following condition:

NBA-5

1. **The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application**

The Hearing Officer has memorialized findings of fact and conclusions of law in a written recommendation (Exhibit 7), which the Planning Commission (SFCPC) may adopt.

EXHIBITS:

1. Applicants Request
2. Aerial Photo of Site
3. Chapter 7, Table 7-13 Rural Road Classification and Design Standards
4. Chapter 7, Section 7.11.11.5. Standards for Residential Development
5. Chapter 4, Section 4.9.7.4, Variance Review criteria
6. Noticing
7. Hearing Officer Minutes
8. Hearing Officer Findings of Fact

Variance 8/31/17

Re: Variance Request of Ted and Barbara Seeley
57 Don Filomeno rd Santa fe, New Mexico

This letter is in connection with the variance application for Ted and Barbara Seeley who are owners of real property known as 57 Don Filament rd. which is in Santa Fe county.

The Seeleys request a variance regarding current access road code. Namely the requirements to make offsite road improvements to our access road with respect to width and slope of said access road, in regard to our preposed application for a building permit to add a bedroom and closet to our existing house.

Section 4.9.7.4. revue criteria provides as follows:

4.9.7.4.Review criteria. Variance may be granted only by a majority of all the members of the planning commission [or board, on appeal from the planning commission] based upon the following criteria:

1. where the request is not contrary to the public intrest;
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.

The following addresses each of the forgoing criteria for the variance requested.

Criteria No. 1 — The request is not contrary to the public interest;

We do not believe the addition of the bedroom and closet is actually contrary to the public interest.

Criteria No. 2 — Where due to extraordinary and exceptional situations and conditions of the property, the strict application of the code would result in peculiar and exceptional difficulties or exceptional and undue hardship on the owner.

1. The off site access road and easement would not be able to meet the SLDC width and slope requirements of the current code. Also the road and community have existed decades before the SLDC standards were adopted. The public interest in this matter, I believe, relates to the accessibility of large emergency vehicles. The increased density this bedroom and closet represent does not contribute a further practical increased burden for emergency services.

2. Access road. The right of way and access road in question

NBA7



are serviceable the way they are, and the surrounding terrain presents formidable and extraordinary hardship and practical difficulties in trying to comply with code, and in any case are out of the control of the owners of the proposed bedroom closet addition.

Criteria No. 3 — The spirit of the SLDC is observed and substantial justice is done.

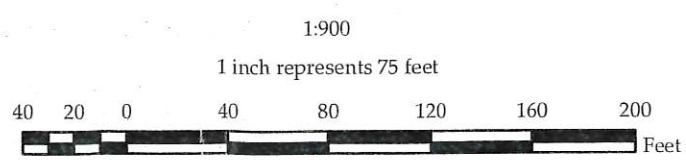
The spirit of the SLDC is captured in the following statement found in the SLDC:

“The SLDC is designed to specifically provide protection of environmental, cultural, historical and archeological resources, the lessening of air and water pollution, assurance and conservation of water resources, prevention of adverse climate change, promotion of sustainability, green development, and also to provide standards to protect from adverse public nuisance or land use effects and impacts resulting from public or private development within the County.”

The variance requested by Mr. and Mrs. Seeley observes those expressed purposes of the SLDC. The proposed bedroom closet will have minimal impact on the property while allowing them to make a normal and typical use of their property. It is fair and just to grant the variance.



- | | | |
|---------------------|----------------------------------|-----------|
| Subject Property | Official FEMA Flood Zones - 2012 | Roads |
| Parcels | 0.2 % Annual Chance Flood Hazard | Driveways |
| Elevation Isolines | 2012 Zone A (No BFEs Determined) | |
| 7400 Foot Elevation | 2012 Zone AE | |
| 7800 Foot Elevation | 2012 Flood ways | |
| | 2012 Zone AO | |
| | 2012 Zone D | |



Aerial Photography from 2014
Contour Interval 2 Feet (source: 2001)
North American Vertical Datum 1988

This information is for reference only.
Santa Fe County assumes no liability for
errors associated with the use of these data.
Users are solely responsible for
confirming data accuracy.



April 4, 2017

Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3).

	Avg. daily traffic	# of driving lanes	Lane width (ft)	Non-vehicular side paths	Bike lanes	Minimum ROW (ft)	Design Speeds (mph)	Max % Grade	Min. agg. base course	Min. bit. pavement	Max % Super-elev.
Major arterial or highway	5000 +	2-4	12	n/a	Two 5 ft. on-road	150	Level: 70 Rolling: 70 Mount.: 50-60	5%	6"	6"	8%
Minor arterial	2000 to 4999	2 - 4	12	n/a	Two 5 ft. on-road	120	Level: 60-75 Rolling: 50-60 Mount.: 40-50	5%	6"	5"	8%
Collector	401-1999	2	11	n/a	n/a	80	Level: 40-60 Rolling: 20-50 Mount.: 20-40	8%	6"	4"	8%
Local	0-400	2	10	n/a	n/a	50	Level: 30-50 Rolling: 20-40 Mount.: 20-30	9%	3"	n/a	8%
Cul-de-Sac	0 to 300	2	10	n/a	n/a	38	Level: 30-50 Rolling: 20-40 Mount.: 20-30	9%	63"	n/a	n/a
Residential Driveway	n/a	1	14	n/a	n/a	20	n/a	10%	n/a	n/a	n/a

7.11.3. General Requirements. Adequate roads shall be provided such that the arrangement, character, extent, width and grade of each shall conform to this Section.

7.11.3.1. Connectivity. The arrangement of roads in any development shall provide for the continuation or appropriate projection of existing or proposed highway or arterial roads in surrounding areas according to the Official Map, and shall provide reasonable means of ingress and egress to surrounding property. Roads within subdivisions shall not be gated unless the road is a dead end road serving no more than five (5) lots.

7.11.3.2. Road Names. Road names or numbers shall not duplicate or be similar to the names or numbers of existing roads; if the proposed road is an extension of an existing road, then the proposed road shall have the name of the existing road. All road names and numbers shall be assigned by the Santa Fe County Rural Addressing Division.

7.11.3.3. Service Life. Pavement shall be designed for a 20-year service life, and the design of pavement structures shall conform to the New Mexico Standard Specifications for Road and Bridge Construction. Pavement design documentation shall be prepared and signed by, or shall be under the supervision of, a professional engineer.

7.11.3.4. Rules of Interpretation. If and where Section 7.11 fails to adequately address



development units, or those non-residential developments consisting of 25,000 square feet or more, shall provide access to an existing County road, highway, state highway or federal highway and shall provide a minimum of two (2) access points to the referenced roadway. Such development shall also provide for connections to roads and highways identified on the Official Map.

3. A major subdivision, non-residential development exceeding 10,000 square feet and multi-family development shall provide all-weather access during a 100 year storm event to all lots or development sites.

7.11.11.4. Standards for Land Divisions and Subdivisions Exemptions.

1. Divisions of land for grazing or farming as identified in Section 5.4.3.8. are exempt from on-site and off-site road requirements.
2. Divisions of land that create no parcel smaller than one hundred forty (140) acres as identified in Section 5.4.3.11 are exempt from on-site and off-site road requirements, except when more than one (1) such parcel is created in an area of land, the Administrator may require on and off-site road improvements.
3. Other land divisions and subdivisions exemptions may reduce the road easement width for off-site and on-site roads to no less than 20 feet if adequate drainage control is provided and may allow the surface to be hard packed dirt with compaction of 95% of the maximum density.
4. Required off-site and on-site road improvements shall be constructed prior to plat recordation.
5. Plats creating a sending area for TDR purposed shall be exempt from on-site and off-site road improvements.

7.11.11.5. Standards for Residential Development.

1. Residential development may reduce the road easement width for off-site and on-site roads to no less than 20 feet if adequate drainage control is provided and may allow the surface to be hardpacked dirt with compaction of 95% of the maximum density.

7.11.12. Driveways. Access to individual lots and parking areas shall be designed in accordance with the requirements of this Section.

7.11.12.1. Driveway Standards.

1. Driveways shall not be located within the functional area of an intersection or located in such a manner as to interfere with the entry into or exit from an adjacent driveway.
2. All driveways shall conform to all minimum sight distances specified per AASHTO. For driveways accessing roads with a posted speed limit of fifteen (15) mph or less, the sight distance shall be a minimum of 80 foot.
3. The entrance of a driveway to a road shall not impede the flow of stormwater along the road or highway. Installation of culverts may be required to ensure compliance with this Section. If installed, a culvert shall be at least eighteen (18)



c. the proposal conforms to the SLDC and is consistent with the goals, policies and strategies of the SGMP.

2. Minor Amendments Causing Detrimental Impact. If the Administrator determines that there may be any detrimental impact on adjacent property caused by the minor amendment's change in the appearance or use of the property or other contributing factor, the owner/applicant shall be required to file a major amendment.

3. Major Amendments. Any proposed amendment, other than minor amendments provided for in Section 4.9.6.9.1, shall be approved in the same manner and under the same procedures as are applicable to the issuance of the original CUP development approval.

4.9.6.10. Expiration of CUP. Substantial construction or operation of the building, structure or use authorized by the CUP must commence within twenty-four (24) months of the development order granting the CUP or the CUP shall expire; provided, however, that the deadline may be extended by the Planning Commission for up to twelve (12) additional months. No further extension shall be granted under any circumstances, and any changes in the requirements of the SLDC, or federal or state law shall apply to any new CUP development approval application.

4.9.7. Variances.

4.9.7.1. Purpose. 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 and standards of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

4.9.7.2. Process. All applications for variances will be processed in accordance with this chapter of the Code. A letter addressing Section 4.9.7.4. review criteria must accompany the application explaining the need for a variance.

4.9.7.3. Applicability. When consistent with the review criteria listed below, the planning commission may grant a zoning variance from any provision of the SLDC except that the planning commission shall not grant a variance that authorizes a use of land that is otherwise prohibited in the relevant zoning district.

4.9.7.4. Review criteria. A variance may be granted only by 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 the 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.



4.9.7.5. Conditions of approval.

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.
3. 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.

4.9.7.6. Administrative minor deviations. The Administrator is authorized to administratively approve minor deviations upon a finding that the deviation is required, that the result is consistent with the intent and purpose of this SLDC, and that the deviation is not detrimental to adjacent or surrounding properties as follows:

1. minor deviations from the dimensional requirements of Chapters 7, 8 and 9 of the SLDC not to exceed ten percent (10%) of the required dimension; and
2. minor deviations from the density dimensional standards of Chapter 8 of the SLDC not to exceed five tenths of a percent (0.5%) of the gross acreage allowed in the zoning district.

4.9.8. Beneficial Use and Value Determination (BUD).

4.9.8.1. Purpose. The intent of the SLDC is to provide, through this Section, a process to resolve any claims that the application of the SLDC constitutes an unconstitutional regulatory taking of property. This Section is not intended to provide relief related to regulations or actions promulgated or undertaken by agencies other than the County. The provisions of this Section are not intended to, and do not, create a judicial cause of action.

4.9.8.2. Application. In order to evaluate whether, and if so, the extent to which, application of the SLDC unconstitutionally creates a regulatory taking without just compensation, or other constitutional deprivation, an applicant, once denied development approval or granted conditional development approval, or as otherwise provided in Section 7.16.3.1, may apply to the Administrator for a beneficial use and value determination, the application for which shall describe:

1. the extent of diminution of use and value with respect to the entirety of the owner's, or lessee's real property interests in common ownership;
2. the distinct and reasonable investment backed expectations of the owner, lessee, or predecessors in interest, in common ownership;
3. the availability of cluster development, phased development, tax incentives, or transfers of development rights;
4. any variance or relief necessary or available to relieve any unconstitutional hardship or regulatory taking created;

The newspapers of **New Mexico** make public notices from their printed pages available electronically in a single database for the benefit of the public. This enhances the legislative intent of public notice - keeping a free and independent public informed about activities of their government and business activities that may affect them. Importantly, Public Notices now are in one place on the web (www.PublicNoticeAds.com), not scattered among thousands of government web pages.

County: Santa Fe
Printed In: Santa Fe New Mexican
Printed On: 2017/08/09

LEGAL #83024

CASE # V 17-5220 Ted and Barbara Seeley Variance

Dear Property Owner:

Notice is hereby given that a public hearing will be held to consider a request by Ted and Barbara Seeley requesting a variance of Ordinance No. 2016-9, the Sustainable Land Development Code (SLDC as amended), Chapter 7.11, table 7-13 Road Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width with occasional pull-outs for traffic, to allow an easement of less than 38', and to allow the roadway to exceed a 9% grade in order to allow the issuance of development permit. The property is located at 57 Don Filomeno Road within Section 36, Township 19 North, Range 9 East (Commission District 1).

A public hearing will be held in the County Commission Chambers of the Santa Fe County Courthouse, corner of Grant and Palace Avenues, Santa Fe, New Mexico on the 24th day of August 2017, at 3:00 p.m. on a petition to the Santa Fe County Hearing Officer and on the 19th day of October 2017, at 4:00 p.m. on a petition to the Santa Fe County Planning Commission.

Please forward all comments and questions to the County Land Use Administration Office at 986-6225.

All interested parties will be heard at the Public Hearing prior to the Hearing Office/Planning Commission taking action.

All comments, questions and objections to the proposal may be submitted to the County Land Use Administrator in writing to P.O. Box 275, Santa Fe, New Mexico 87504-0276; or presented in person at the hearing.

Published in the Santa Fe New Mexican on August 9, 2017.

Public Notice ID:



NBA-14

PUBLIC NOTICE

Notice is hereby given that an application has been filed with Santa Fe County for a VARIANCE OF THE SUSTAINABLE LAND DEVELOPMENT CODE CHAPTER 7, SECTION 7.11, TABLE 7-13 ROAD DESIGN STANDARDS (SDA-2 AND SDA-3) TO ALLOW A ROADWAY TO BE LESS THAN 20 FEET IN WIDTH WITH OCCASIONAL PULL-OUTS FOR TRAFFIC, TO ALLOW AN EASEMENT OF LESS THAN 38 FEET AND TO ALLOW THE ROADWAY TO EXCEED A 9% GRADE IN ORDER TO ALLOW THE ISSUANCE OF A DEVELOPMENT PERMIT

Name of Applicant TED AND BARBARA SEELEY

Address of Request 57 DON FILOMENO RD.

Legal Description: Section 36 Township 19 NORTH Range 9 EAST NMPM Santa Fe County, New Mexico.

A PUBLIC HEARING will be held/made at the Old Santa Fe County Courthouse, corner of Palace and Grant Avenues, Santa Fe, New Mexico on/after the 24th day of AUGUST, 2017, at 3 PM before the HEARING OFFICER AND ON THE 19th DAY OF OCTOBER, 2017 AT 4 PM BEFORE THE PLANNING COMMISSION

Further information can be obtained by contacting, the Land Use Department, P.O. Box 276, Santa Fe, NM 87504 Phone (505)986-6225. Development Permit # V 17-5220

NBA-15

application other than the applicant and the applicants agent and the representatives that are here today. Okay. I don't have any other questions. Thank you.

III. C. CASE #V17-5140. Patrick Cameron & Karyn Baum Variance. **TABLED**

III. D. **CASE # V 17-5220 Ted & Barbara Seeley Variance. Ted and Barbara Seeley, applicants, request a variance of Ordinance No. 2016-9, the Sustainable Land Development Code (SLDC as amended), Chapter 7.11, Table 7-13, Road Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20 feet in width with occasional pull-outs for traffic, to allow an easement of less than 38 feet, and to allow the roadway to exceed a nine percent grade in order to allow the issuance of a development permit. The property is located at 57 Don Filomeno Road within Section 36, Township 19 North, Range 9 East (Commission District 1) SDA-2**

JOHN MICHAEL SALAZAR (Case Manager): Thank you, Hearing Officer Long. On April 4, 2017, the applicants submitted a development permit application for a residential addition. The applicants are proposing to add 1,126 square feet for a two-story new master bedroom and closet with an additional bedroom on the second floor on the existing residence along with a portal to an existing studio. As stated in the caption, the applicants are requesting a variance to allow a roadway to be less than 20 feet in width with occasional pullouts for traffic and to allow the roadway to exceed a nine percent grade in order to allow the issuance of this development permit.

The noticed variance to allow an easement of less than 38 feet is not required as the SLDC allows the easement to be 20 feet for residential uses and this property does have a 20-foot easement.

The variances sought by the applicants are to allow a roadway to be less than 20 feet in width, and to allow the roadway to exceed a nine percent grade. Chapter 7, Section 7.11.11.5 does allow a reduction of road easement to no less than 20 feet if adequate drainage control is provided for residential development.

Don Filomeno Road is hard-packed dirt. It has two instances in which the grade exceeds 9 percent, one instance is approximately 13 percent and the other is approximately 20 percent, and is as narrow as eight feet in some areas and as wide as twelve feet in others. The existing right-of-way is platted at 20 feet however most areas along Don Filomeno have drop-offs or inclines on either side of the road either at or in excess of 30 percent slopes. Due to the natural terrain there is no feasible way for the applicants to widen the road or reduce the grade.

The applicants addressed the variance criteria and staff provided its interpretation of how the proposal met or fails to meet the variance criteria as noted in the staff report.

Chapter 7, Section 7.17.1.6, Terrain Management, the purpose of the terrain management section – it states, Hearing Officer Long, that the purpose of this section is to appropriately locate roads, driveways and utilities so as to minimize unsightly cut and fills and scarring. Upgrading Don Filomeno Road will create unsightly cut and fill areas as well as scarring. Therefore, staff recommends approval of the applicants' request for a variance to allow a roadway to be less than 20 feet in width, and to allow the roadway to



exceed a 9 percent grade as it is not possible to widen the road nor is there enough length on the road to decrease the grade subject to the following conditions:

1. The applicant shall coordinate with the County Fire Marshal to provide pull-outs where able within the existing easement.
2. The applicant shall comply with all Fire Prevention Division requirements at time of development permit application.

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 October 19, 2017.

I'll stand for questions, Hearing Officer Long.

HEARING OFFICER LONG: Thank you. So a 38-foot easement is not required in this area.

MR. SALAZAR: No. Because it's a residential use.

HEARING OFFICER LONG: Okay. So there's no variance required for that.

MR. SALAZAR: Correct.

HEARING OFFICER LONG: Thank you. All right, is the applicant present? No other questions. Thank you. You may come forward, sir and I'll swear you in to start with.

[Duly sworn, Ted Seeley testified as follows:]

TED SEELEY: My name is Ted Seeley and I'm here for some questions. I just want to say that this little road through my community already handles fairly significant trucks. We come and go on a fairly regular basis down there. There is already maybe six natural pull-outs that serve us at this time and there's probably ten if you account for the minor ones. But it's pretty impossible to do something with that road and I'm not the – I don't have any right to do anything with it in the first place.

HEARING OFFICER LONG: Mr. Seeley, you're speaking to the conditions to provide pull-outs where able within the existing easement? That condition? Is that what you're speaking to? So staff is recommending approval of your variance request but subject to two conditions and one is to coordinate with the County Fire Marshal and comply with Fire Prevention Division requirements at the time of a development permit for your property.

MR. SEELEY: Okay.

HEARING OFFICER LONG: So I think you could take up those issues at the time that you submit for a development permit in conjunction with the County Fire Marshal to see if there are additional pull-outs that they would recommend and whether you would have the ability to provide those or not. So you can address that at that time.

MR. SEELEY: All right. Thank you.

HEARING OFFICER LONG: Is there anyone here this afternoon that would like to speak for or against this application. There is no one present that wishes to do so. So let me ask staff again. The requirement for providing pull-outs – I would take it if that's feasible, and that would be in conjunction with the County Fire Marshal's review of the proposal for the development permit.

MR. SALAZAR: Hearing Officer Long, that would be correct. That would be at the discretion of the Fire Marshal if he goes out to meet with the applicant and look at the road.

HEARING OFFICER LONG: Okay. I just wanted to make sure that was correct information I was giving the applicant. So thank you. Okay, that will conclude that case and that hearing. Is there anything else that we need to take up this afternoon?

MS. LUCERO: No, I think that's everything, Hearing Officer Long.

HEARING OFFICER LONG: Okay. Thank you everyone. Then our meeting is adjourned.

G. Adjournment

With no further business, Hearing Officer Long adjourned the meeting at approximately 3:45 p.m.

Approved by:

Nancy Long, SLDC Hearing Officer
Santa Fe County

Sustainable Land Development Code
Hearing Officer Meeting
September 28, 2017
CASE NO. V17-5220
Ted and Barbara Seeley, Applicants

RECOMMENDED DECISION AND ORDER

THIS MATTER came before the Sustainable Land Development Code Hearing Officer for hearing on September 28, 2017, on the application of Ted and Barbara Seeley, (Applicants) for a Variance of the Sustainable Land Development Code (SLDC). The Applicants seek a variance of Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width with occasional pullouts for traffic, to allow an easement of less than 38', and to allow the roadway to exceed a 9% grade to allow the issuance of a development permit. The property is located at 57 Don Filomeno Road within Section 36, Township 19 North, Range 9 East (Commission District 1) (SDA-2). The Hearing Officer, having reviewed the application, staff reports, and having conducted a public hearing on the request, finds that the application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. On July 28, 2017, the Applicants submitted their application for a variance of Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width with occasional pullouts for traffic, to allow an easement of less than 38', and to allow the roadway to exceed a 9% grade to allow for the issuance of a development permit. The Applicants intend to construct a 1,126 square foot addition to the existing residence on the Property, consisting of a two-story new master bedroom



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and closet with an additional bedroom on the second floor, along with a portal to an existing studio.

2. As required by the SLDC, the Applicant presented the application to the Technical Advisory Committee (TAC) on July 6, 2017, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, Section 4.4.4.3 Pre-application TAC Meeting and Table 4-1.

3. Notice requirements of the SLDC were met pursuant to Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing. In advance of the hearing on the application, the Applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the Property, beginning on June 7, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on June 7, 2017, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject Property and a list of persons sent a mailing is contained in the record.

4. The following SLDC provisions are applicable to this case:

A. Chapter 7, Section 7.11.11.5. Standards for Residential Development.

Residential development may reduce the road easement width for off-site and on-site roads to no less than 20 feet if adequate drainage control is provided and may allow the surface to be hardpacked dirt with compaction of 95% of the maximum density.

B. Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3).

C. 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 and standards of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

D Chapter 4, Section 4.9.7.4, Variance Review criteria 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 on the following criteria:

1. where the request is not contrary to the 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.

E Chapter 4, Section 4.9.7.5 Variance Conditions of approval states:

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.
3. 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.

7. The Applicant and Staff have addressed the variance criteria as follows:

a. *Where the request is not contrary to the public interest.*

i. The Applicants stated that the addition of the bedroom and closet is not contrary to the public interest.

ii. Staff stated that bringing Don Filomeno Road into compliance with Chapter 7, Section 7.11.11.5 would require unsightly cut and fill areas to widen the road and reduce the grade as well as unsightly scarring along the landscape.

b. *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.*

i. The Applicants stated that the road and community predate the SLDC standards. The key issue is accessibility of large emergency vehicles, which would not be significantly impacted by Applicants adding a bedroom and closet.

ii. Staff noted that Don Filomeno Road was constructed pre-code and there is no additional area for widening on the majority of the road nor is there additional area for reducing the grade throughout.

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

i. The Applicants stated that the addition of the proposed bedroom closet will have minimal impact on the property while allowing Applicants to make a normal and typical use of their property, which is consistent with the spirit of the SLDC.

ii. Staff stated that upgrading Don Filomeno Road would have major adverse environmental impacts, creating unsightly cut and fill areas as well as scarring.


8. At the public hearing, no one spoke in opposition to the application.

9. Based on the application and the evidence and testimony presented at the public hearing as described herein, the Hearing Officer finds there is sufficient evidence of extraordinary and exceptional conditions that would result in undue hardship to the Applicant

from a strict application of the Code and that the Applicant has met the variance criteria of the SLDC.

WHEREFORE, the Hearing Officer, based on the evidence presented, recommends approval of a Variance of Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width with occasional pullouts for traffic, to allow an easement of less than 38', and to allow the roadway to exceed a 9% grade to allow the issuance of a development permit.

Respectfully submitted,


Nancy R. Long
Hearing Officer

Date: 10-12-17