



Agenda

BOARD OF ADJUSTMENT
Tuesday, November 5, 2019 at 6:00 P.M.
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSION:**
 - MINUTES: October 1, 2019**
 - FINDINGS/CONCLUSIONS: None**
- E. OLD BUSINESS**
- F. NEW BUSINESS**

- 1. Case #2019-990. 1611 Camino Porvenir Variance.** Daniel Werwath, Applicant, requests a variance from Table 14-7.2-1 "Table of Dimensional Standards for Residential Districts" to allow a rear yard setback of less than 15 feet. The property is zoned R-5 (Residential - five dwelling units per acre).(Daniel Esquibel, Case Manager, daesquibel@santafenm.gov, 955-6587)

- G. STAFF COMMUNICATIONS**
- H. MATTERS FROM THE BOARD**
- I. ADJOURNMENT**

NOTES:

New Mexico law requires the following administrative procedures be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearing before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to cross-examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

RECEIVED AT THE CITY CLERK'S OFFICE

DATE: October 16, 2019

TIME: 10:21 AM

Board of Adjustment
November 5, 2019

Item	Motion/Description	Page
Call to Order	Rachel Winston, Vice Chair of the Board of Adjustment called the meeting to order at 6:04 p.m. in the City Council Chambers.	1
Roll Call	A quorum was established with roll call.	1
Approval of the Agenda	Mr. Maahs moved to approve the agenda as presented with a second from Ms. Hawkins which passed by voice vote.	1
Approval of the Minutes from October 1, 2019	Ms. Dearing moved to approve the minutes as presented with a second from Ms. Hawkins which passed by voice vote.	1
Approval of Findings/Conclusions	None	1
Old Business	None	1,2
New Business: 1. Case #2019-990. 1611 Camino Porvenir Variance	Ms. Hawkins moved to deny the variance in case # 2019-990 for the setback variance. There are not any special circumstances that are relevant to Chapter 14-3.6 (C) a,b,c (criteria 1), there are not any special circumstance that make it infeasible in compliance with Chapter 14-3.6 (C) 2 (criteria 2), the property can be used without a variance because the tree can be moved or removed as intended in Chapter 14 (criteria 4), and it is not contrary to the public interest, because it can be constructed without a variance (criteria 5), the applicant was notified that an ENN meeting isn't required, with a second from Mr. Maahs which passed by voice vote.	2-6
Staff Communications	Discussion Only	6
Matters from the Board	Discussion Only	6
Adjournment	With all business conducted for the Board of Adjustment, the meeting was adjourned at 7:05 p.m.	6

Board of Adjustment
City Council Chambers
200 Lincoln Ave. Santa Fe
Tuesday November 5, 2019

1. CALL TO ORDER

Rachel Winston, Vice Chair of the Board of Adjustment called the meeting to order at 6:04 p.m. in the City Council Chambers. A quorum was established with roll call.

ROLL CALL

Present:

Rachel Winston, Vice Chair
Coleen Dearing
Patricia Hawkins
Doug Maahs

Absent:

Gary Friedman, Chair
Daniel Werwath
Donna Reynolds

Staff and Others Present:

Noah Berke, City Land Use
Dan Esquibel, City Land Use
Linda Vigil, Stenographer

2. PLEDGE OF ALLEGIANCE

NOTE: All items in the packet for all agenda items were incorporated herewith by reference. The original packet is on file with the City Land Use Staff. Any additional attachments will be labeled as exhibits.

3. APPROVAL OF AGENDA

MOTION: Mr. Maahs moved to approve the agenda as presented with a second from Ms. Hawkins which passed by voice vote.

4. REVIEW AND APPROVAL OF MINUTES FROM October 1, 2019

MOTION: Ms. Dearing moved to approve the minutes as presented with a second from Ms. Hawkins which passed by voice vote.

5. APPROVAL OF FINDINGS/CONCLUSIONS

None.

6. OLD BUSINESS

None.

7. NEW BUSINESS

1. Case #2019-990. 1611 Camino Porvenir Variance. Daniel Werwath, Applicant requests a variance from Table 14-7.2-1 "Table of Dimensional Standards for Residential Districts" to allow a rear yard setback of less than 15 feet. The property is zoned R-5 (Residential five dwelling units per acre.)

Before the case was heard Ms. Winston read a statement into the record:

We have an unusual situation today, in that the Applicant is a member of the Board of Adjustment, raising a potential conflict of interest. We have sought guidance from the City Attorney's Office and have been advised as follows:

If any member of the Board of Adjustment is ever in a situation where the member feels he or she cannot be fair and impartial in deciding a case, the member is obligated to recuse himself or herself. Although not relevant here, recusal is also mandatory in a situation where there is a monetary conflict of interest as defined in the City of Santa Fe Code of Ethics, Section 1-7.5. Under these circumstances, a statement of the reasons for recusal is not required.

Additionally, as explained in the Code of Ethics Section 1-7.4, both the United States Constitution and New Mexico Constitutions "prohibit official actions tainted by a decision-maker's conflicts of interests, bias and prejudice, prejudgment, or other conduct creating the actuality or the appearance of impropriety.

If a member of the Board of Adjustment is in a situation that raises any of these concerns but the member believes that he or she is able to adjudicate fairly, the member should disclose the issue on record at the hearing and state that the member is confident that he or she can be fair and impartial in deciding the case.

In some situations, a member may wish to recuse themselves even though the member believes that he or she can be fair and impartial because the member wants to take a conservative approach in avoiding any appearance of impropriety.

This is allowed and may be advisable in a situation where there is a healthy quorum of board members present to decide the case. However, if everyone on the board were to recuse themselves there would be no one left to decide the matter.

It is therefore recommended that any member who can be fair in deciding this case should remain on the case. This recommendation is consistent with the Code of Judicial Conduct, which states that the recusal rules are sometimes overridden by the "rule of necessity," meaning that sometimes judges (or in this case, quasi-judicial officials) may need to decide a case despite a potential conflict because they are the only one available to make the decision.

Having entered the advice given to the board into the record of this meeting, I would like to ask for a roll call vote on the question of whether each member believes he or she can be fair in deciding this case today.

ROLL CALL VOTE

Affirmative (Yes)

Negative (No)

Mr. Maahs

Ms. Winston

Ms. Dearing

Ms. Hawkins

All voted in the affirmative-they can all be fair and imperative.

Vice Chair Winston gave the audience directions on how the case will be heard.

Staff Report:

Mr. Esquibel is recommending denial of the variance in this case. Staff didn't find they were able to meet the standards for variance in the findings. The balance was unable to be met.

Questions from the Board:

Ms. Winston asked staff to review each criteria.

Mr. Esquibel explained the criteria of qualifying of factors:

1. Unusual physical characteristics-*Did not meet*
2. Special circumstances that make it infeasible-*Did not meet*
3. Intensity of development shall not exceed the other properties that are subject to the same relevant provisions- *Meets*
4. The property can be used without the variance for a different use – *Did not meet*
5. Contrary to the public interest-*Did not meet*

Mr. Esquibel explained each criteria and the reasons it met or did not meet the requirements.

Criteria 1- Mr. Esquibel explained the side yard is neither unique nor unusual, most times the scenario is that there are adjoining yards. The tree meets the definition because of the size. In some scenarios it is up to the Land Use Director to decide if the tree can be removed and or be replanted or transplanted. The Land Use Director cannot decide in this case because it doesn't apply. It is an elm tree and is considered a noxious species. The applicant can use his discretion if he wished to cut the tree or transplant it.

Ms. Winston asked about the applicability of the tree since there isn't any master plan or development plan approval, and so the construction permit criteria doesn't apply because it doesn't fit any of the criteria is that correct? Mr. Esquibel stated that is correct.

Criteria 2-Mr. Esquibel states the special circumstance that would make in infeasible is more financial.

Mr. Berke explained the tree it is at the sole discretion of the applicant, the layout of the applicant didn't show. There are other options to build around it. Transplanting is an alternative option to save the tree.

Mr. Maahs asked the structure will it require the footing that will be within the area where the tree is.

Mr. Esquibel explained that wasn't included in the review process, there was a recommendation which gave the option of changing the direction of the home there is another tree on the other side they want to save.

Criteria 3- Mr. Esquibel explained it shall not exceed the provisions of Chapter 14. The applicant met that criteria. They weren't going to exceed the two story guest house.

Criteria 4- Mr. Esquibel explained it is not the best use of the property. The structure can be flipped another way.

Criteria 5- Mr. Esquibel explained it does not apply to the section of the code that involves the public interest. Staff recommended other options for the structure which would allow the development in accordance with the code.

Applicant:

Lacy Adams (1611 Camino Porvenir) handed out a powerpoint presentation and letters of support to the members. (See Exhibit A)

Ms. Adams states the two story structures are common, there were setback examples given.

Ms. Adams explained solar panels will be placed on the roof once it is built. The structure would allow them to work from home which is very desirable as they have a small child.

Criteria 1- Ms. Adams states the home is one of the oldest homes in the neighborhood and has one of the oldest trees in the neighborhood which makes it unique.

Criteria 2- Ms. Adams states the design if changed, would not be feasible. There is not enough turning radius room.

Criteria 3- Ms. Adams states this criteria was met.

Criteria 4- Ms. Adams states the redesigns do not make the best use of the property.

Criteria 5- Ms. Adams believes they have the letters of support. (See Exhibit A)

Questions from the Board:

Ms. Winston asked if the neighbor who has the closest set back to the yard wrote a letter in support. Ms. Adams explained that is a rental and the owner lives out of state.

Mr. Maahs asked about some other homes that didn't follow the code. Ms. Adams explained there are many examples in the neighborhood. Mr. Maahs asked if they had permits. Ms. Adams is not sure.

Public Comment:

- Mr. Miguel Chavez (1615 Camino Porvenir) has been living in that neighborhood for 30 years. The shop he built was permitted and he was able to work from home. Developing a piece of property can be expensive. He is torn, his first inclination was to support staff's recommendation even though losing the tree can be expensive. From his experience there is a neighbor to the west who cut five Siberian elms this summer, they are known to cause a lot of damage. At one time the neighborhood dealt with sewer issues. It is hard to prune them as well.

He thinks to keep it simple, he would be more inclined to support staff's recommendation.

- Jonah Stanford (9028 Shoofly Street) lives around the corner and he wants to be supportive of the project. He is an architect and thinks it is the best design and it serves their vehicle movement and full use of the property.
- Amy Westfall (804 Baca Street) lived there 20 years and works from home. It is important to allow them to build a space to keep the neighborhood safe. She has a similar tree. Her neighbor owns a large landscaping company who thinks her tree is good and can last a while. Trees that can survive a long time, will withstand climate change. She thinks it is important for the neighborhood.

Ms. Winston will not vote she is serve as a tie breaker.

Ms. Dearing is torn because of the species of the tree. It can provide shade to other properties.

Ms. Hawkins is torn as well because she understands the City has a Land Use Code and the Board is often criticized for being free and easy with variances and if they keep giving them, what happens when they vote against one?

Mr. Maahs is also torn because of the other sign variances that were approve although they presented examples of non-compliance, his question about the neighborhood that has non-compliant structures stands.

Ms. Hawkins states the tree is not an endangered tree species. If it were, it would be a different story.

Ms. Winston explained when making the motion the explanation of each criteria needs to be clear.

Mr. Maahs asked about criteria 1 that had three subsections, were any met? Mr. Esquibel states they didn't find any of those were met.

Ms. Winston asked to have a short recess to allow the board to discuss the criteria in the motion.

Mr. Berke explained at the last City Council meeting there was an appeal about a sign variance. Staff recommended denial for the height of the sign and the planning commission sided with staff, the appeal went on to Council. Some criteria can be satisfied but if not fully they can't grant it. If there are four and one isn't met it cannot be granted. The criteria has to be fully satisfied.

MOTION: Ms. Hawkins moved to deny the variance in case # 2019-990 for the setback variance. There are not any special circumstances that are relevant to Chapter 14-3.6 (C) a,b,c (criteria 1), there are not any special circumstance that make it infeasible in compliance with Chapter 14-3.6 (C) 2 (criteria 2), the property can be used without a variance because the tree can be moved or removed as intended in Chapter 14 (criteria 4), and it is not contrary to the public interest, because it can be constructed without a variance (criteria 5), the applicant was notified that an ENN meeting isn't required, with a second from Mr. Maahs which passed by voice vote.

Mr. Berke explained to the board they are always welcome to make a simple motion if they agree or disagree with staff's recommendation or they can create their own but they have a right to go through it.

Mr. Esquibel explained to the applicant that they have 15 days from the when the findings are voted on at the next meeting to appeal.

8. MATTERS FROM STAFF

None.

9. MATTERS FROM THE BOARD

Ms. Dearing will not be at the next meeting.

Mr. Berke wanted to mention for the records that Ms. Reynolds emailed to say she could not make it and should be shown as excused.

10. ADJOURN

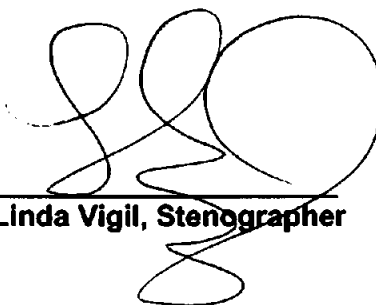
With all business conducted for the Board of Adjustment, the meeting was adjourned at 7:05 p.m.

SIGNATURES

FOR GARY FRIEDMAN



Gary Friedman, CHAIR



Linda Vigil, Stenographer

1611 Camino Porvenir Variance

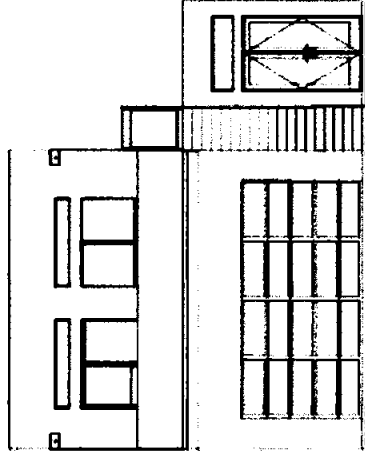
The most difficult 4 feet ever

What we are requesting

The building meets all other zoning requirements

Moving the building just 4 feet will:

- Save one of the oldest trees in our neighborhood
- Maximizes our unique lot shape
- Minimize environmental impact
- Preserve character of neighborhood



SOUTH

SECTION

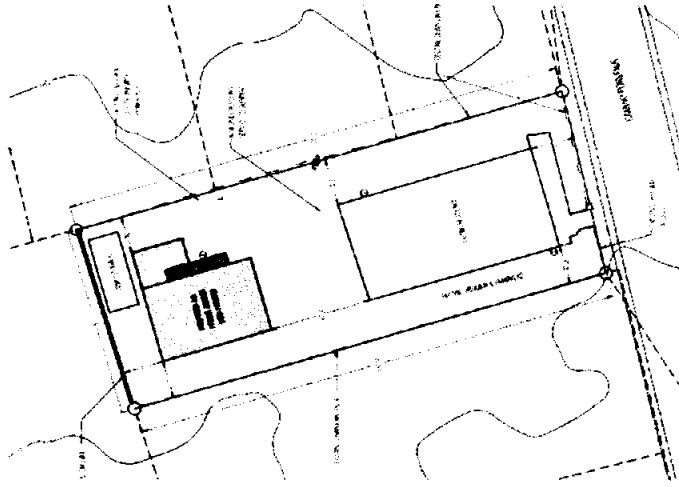
The property

50'x130' Lot

Primary structure renovated in 2015

The new two story accessory structure:

- Garage
- Home office
- Graphic design studio



Key Land Use Issue

Accessory units have a typical setback of 5-feet on all sides

Buildings cannot exceed 14 feet within 10 feet of property boundary

City code arbitrarily requires structures taller than 14 feet to have a 15 foot setback from the rear property line



The neighborhood context

Accessory structures- common

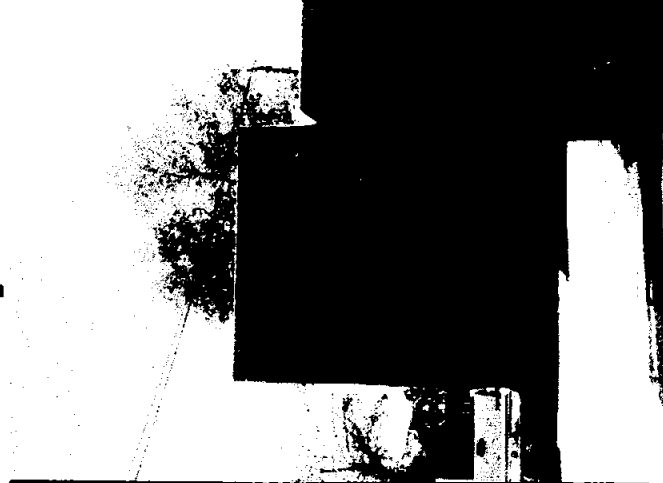
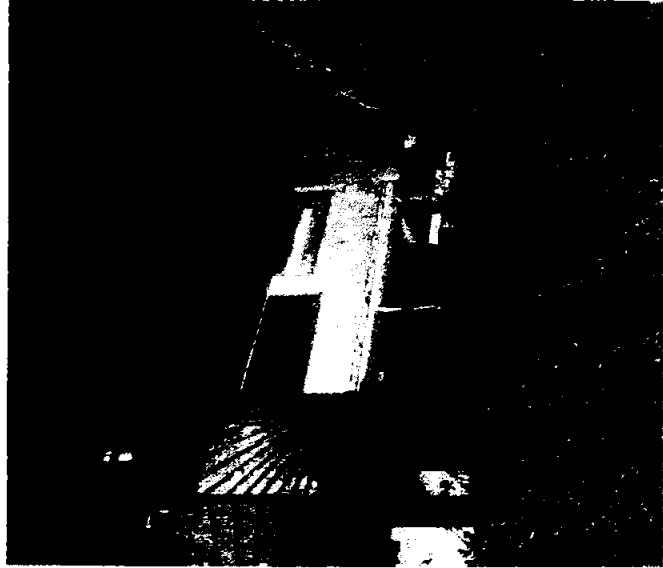
Two story structures- common

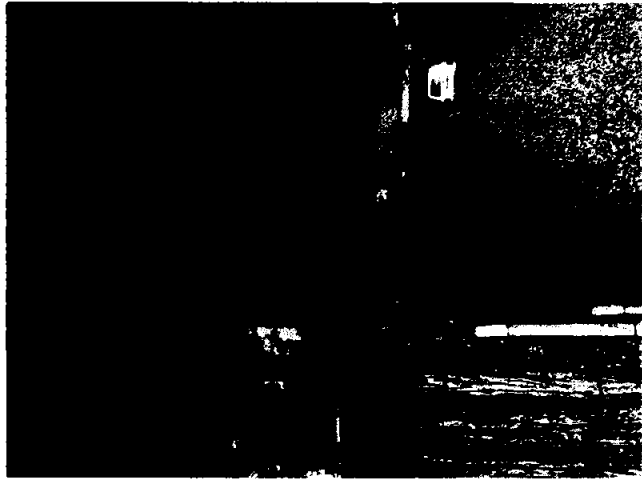
Accessory structure <14'- common

Standard subdivision setbacks- not common



Small setbacks the rule, not the exception





Why this is good on a macro level

This approach maximizes the awkward lot layout

Minimizes building footprint

Arbitrary setbacks don't promote infill or density

Solar panels will make our home more carbon neutral

Working from home means less driving

Save one of the oldest trees in the neighborhood

Criteria 1: Unique Lot

We respectfully disagree with Land Use's interpretation:

Oldest house in the neighborhood

One of the oldest and largest trees

Setbacks in this neighborhood are quite different than newer areas of Santa Fe

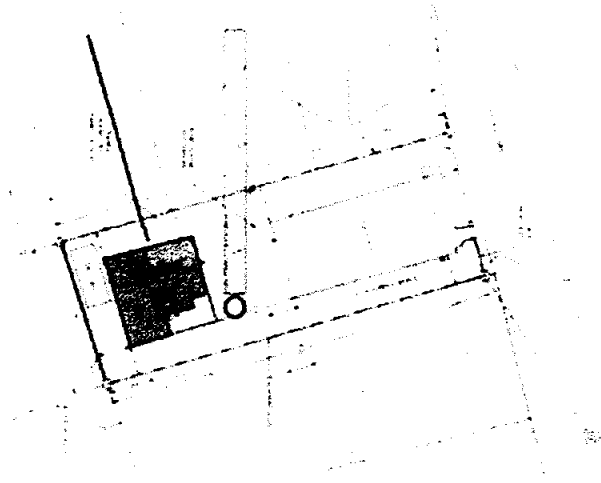
Criteria 2: Redesign Infeasible

While we appreciate Land Use's attempt to redesign the AU:

Did not show it shifted forward to 15 ft from rear line

Does not allow enough turning radius into garage

Impacts another mature apricot tree on the eastern property edge



Criteria 3: Intensity-met

Land use agrees that the intensity of development does not exceed what is common in the neighborhood

Criteria 4: Minimum Variance

Four feet is the minimum required to clear the tree and allow for ingress and egress from the garage

Proposed Land Use Dept redesigns to not consider site obstacles and usability, let alone usability and cost to develop

Criteria 5: Not Contrary to public interest

Arbitrary setbacks that create more negative impact are not in the public interest.

The ubiquitous use of smaller setbacks in this neighborhood has not proven contrary to public interest

Preserving this tree will provide for more public benefit than 4 unusable feet at the rear of our property line.

Does not result in smaller side yard for adjacent property than is permitted by code (10ft for 14ft or taller)

Summary

This is the minimum request to allow us to build a building that is best suited for the site and impacts to surrounding properties.

We have support for variance request from all neighbors we were able to contact (two properties are rental units with out of state owners).

The variance request is in the best interest of the community and supported by majority of our neighbors

Questions

11-3-19

To whom it may concern :

My name is Patricia Montoya Takas and I live on Camino Peroverin. I have lived on this street, all my life. As a matter of fact, I was born in the house my father built. I have seen a lot of people come and go on this street. I met Daniel Werwath and Lacey Adams, because they were gracious enough to show me the house they bought & renovated. I was very impressed with the care, they took with the house. I used to play there when I was a child.

The purpose of this letter is to say, that both my husband and I feel they should be given a variance. The only thing that it would hurt, would be the tree they would have to cut down. That tree was there before I was born. (1953)

My husband and I will be out of town, so will be unable to attend the Public Hearing. I wanted to let our thoughts be known. I hope you will consider their building permit.

Thank you
Steve & Patricia Takas



Daniel Werwath <dwerwath@gmail.com>

Land use case 2019 -990

Daniel Werwath <dwerwath@gmail.com>
To: daniel werwath <dwerwath@gmail.com>

Tue, Nov 5, 2019 at 2:21 PM

From: **Andrew Sanders** <amspottery@yahoo.com>
Date: Tue, Nov 5, 2019 at 2:15 PM
Subject: Land use case 2019 -990
To: Daniel Werwath <dwerwath@gmail.com>

Greetings,

Subject: Land Use Case 2019-990

I own the property at 730 Baca Street which is contiguous to the subject property at 1611 Camino Porvenir. I am writing to express my support for the granting of a reduction in rear yard setback from 15 feet to 11 feet. This will be better for the neighborhood and will not negatively impact my property at all.

Best regards,
Andrew Sanders



Daniel Werwath <dwerwath@gmail.com>

City case number 2019-990

Sean Ham <sean@iconikcoffee.com>

Tue, Nov 5, 2019 at 3:15 PM

To: "daesquibel@santafenm.gov" <daesquibel@santafenm.gov>, "dwerwath@gmail.com" <dwerwath@gmail.com>

City case number 2019-990, I live next door to the property and support the variance request.



Sean Ham
Iconik Coffee Roasters
(505) 629-0764

sean@iconikcoffee.com | iconikcoffee.com

Follow us: Facebook | Instagram @iconikcoffeeroasters



Daniel Werwath <dwerwath@gmail.com>

Case number 2019-990

1 message

Piper Kapin <piperkapin@gmail.com>
To: daesquibel@santafenm.gov
Cc: Daniel Werwath <dwerwath@gmail.com>

Mon, Nov 4, 2019 at 9:59 AM

Hello-

I am writing as I cannot attend the meeting Tuesday at 6pm regarding the variance for case 2019-990. I am writing in full support of this variance request as a neighbor in this area who is familiar with this property and project.

The preservation of the existing old tree on the property (over 100yrs old) is an important and valid request for this variance. Along with being healthy and important for the environment and provider of shade for this property, this tree will ultimately provide screening of this structure to the street which is a positive. There will be no negative effects on the surrounding properties. This proximity is congruent with properties and set backs all around our neighborhood and thus should be allowed.

Please feel free to contact me with any further questions.

Sincerely,
Piper Kapin
Former Planning Commissioner District 1
510 Escudero St, Santa Fe, NM 87505

ESQUIBEL, DANIEL A.

From: Piper Kapin <piperkapin@gmail.com>
Sent: Monday, November 4, 2019 9:59 AM
To: ESQUIBEL, DANIEL A.
Cc: Daniel Werwath
Subject: Case number 2019-990

Follow Up Flag: Follow up
Flag Status: Flagged

Hello-

I am writing as I cannot attend the meeting Tuesday at 6pm regarding the variance for case 2019-990. I am writing in full support of this variance request as a neighbor in this area who is familiar with this property and project.

The preservation of the existing old tree on the property (over 100yrs old) is an important and valid request for this variance. Along with being healthy and important for the environment and provider of shade for this property, this tree will ultimately provide screening of this structure to the street which is a positive. There will be no negative effects on the surrounding properties. This proximity is congruent with properties and set backs all around our neighborhood and thus should be allowed.

Please feel free to contact me with any further questions.

Sincerely,
Piper Kapin
Former Planning Commissioner District 1
510 Escudero St, Santa Fe, NM 87505

ESQUIBEL, DANIEL A.

From: Geet Jacobs <geetjacobs@gmail.com>
Sent: Tuesday, November 5, 2019 11:51 AM
To: ESQUIBEL, DANIEL A.
Subject: Support for case number 2019-990

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Mr Esquibel,

I am emailing you in support for Lacey Adams and Daniel Werwath's request for a variance on case 2019-990. The neighborhood can support it and I see no reason to not support this case.

I live at 746 Baca St and can see the beautiful tree form my house.

Thank you,
-Dale Geet Jacobs

ESQUIBEL, DANIEL A.

From: Sean Ham <sean@iconikcoffee.com>
Sent: Tuesday, November 5, 2019 3:15 PM
To: ESQUIBEL, DANIEL A.; dwerwath@gmail.com
Subject: City case number 2019-990

City case number 2019-990, I live next door to the property and support the variance request.



Sean Ham
Iconik Coffee Roasters
(505) 629-0764

sean@iconikcoffee.com | iconikcoffee.com

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