



Agenda SERVED BY Geraldine Quiles

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AMENDED

PLANNING COMMISSION
Thursday, October 3, 2013 - 6:00pm
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/CONCLUSIONS

MINUTES: September 12, 2013

FINDINGS/CONCLUSIONS:

Case #2013-69. Saiz Family Transfer Subdivision. (TO BE POSTPONED)

- E. OLD BUSINESS
- F. NEW BUSINESS

1. Case #2013-81. 1121 West Ridge Rd Variance. Archaeo Architects, Agent for Stephen Cummings, requests a Variance to 14-5.6(I)(1) to place underground utilities outside the existing driveway location. The property is located within the Foothills Subdistrict of the Escarpment Overlay District and is zoned R-1 (Residential - One Dwelling Unit per Acre). (Dan Esquibel, Case Manager)
2. Case #2013-83. Tierra Vista Variance. JenkinsGavin Design and Development Inc., Agent for Next Generation Contracting et. al., requests a Variance to 14-7.2-1 to allow second story setback heights over 14 feet on 10 constructed Dwelling Units, set back 5 feet from the property lines. The properties are located on Joshua Lane, Tierra Vista Subdivision, and are zoned R-7 (Residential - Seven Dwelling Units per Acre). (Dan Esquibel, Case Manager)
3. Case #2013-84. Tierra Vista Variance. JenkinsGavin Design and Development Inc., Agents for Next Generation Contracting, requests a Variance to 14-7.2-1 to allow a rear yard setback for a constructed Dwelling Unit at 11' 6" setback where 15 feet is required. The property is located at 5319 Joshua Lane and is zoned R-7 (Residential - Seven Dwelling Units per Acre). (Dan Esquibel, Case Manager)

- G. STAFF COMMUNICATIONS
- H. MATTERS FROM THE COMMISSION
- I. ADJOURNMENT

NOTES:

- 1) Procedures in front of the Planning Commission are governed by the City of Santa Fe Rules & Procedures for City Committees, adopted by resolution of the Governing Body of the City of Santa Fe, as the same may be amended from time to time (Committee Rules), and by Roberts Rules of Order (Roberts Rules). In the event of a conflict between the Committee Rules and Roberts Rules, the Committee Rules control.
- 2) New Mexico law requires the following administrative procedures to be followed by zoning boards conducting “quasi-judicial” hearings. By law, any contact of Planning Commission members by applicants, interested parties or the general public concerning any development review application pending before the Commission, except by public testimony at Planning Commission meetings, is generally prohibited. In “quasi-judicial” hearings before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to reasonable cross examination. Witnesses have the right to have an attorney present at the hearing.
- 3) The agenda is subject to change at the discretion of the Planning Commission.
***Persons with disabilities in need of special accommodations or the hearing impaired needing an interpreter please contact the City Clerk’s Office (955-6520) 5 days prior to the hearing date.**



Agenda

CITY CLERK'S OFFICE

DATE 9/12/13 TIME 9:35a
SERVED BY [Signature]
RECEIVED BY [Signature]

PLANNING COMMISSION
Thursday, October 3, 2013 - 6:00pm
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

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SUMMARY INDEX
PLANNING COMMISSION

October 3, 2013

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B. Pledge of Allegiance	Recited	1
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D. Approval of Minutes & Findings and Conclusions		
1. Minutes of September 12, 2013	Approved as amended	2
2. Findings of Fact & Conclusions of Law		
• <u>Case #2013-69.</u> Saiz Family Transfer Subdivision	Postponed	2
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F. New Business		
1. <u>Case #2013-81</u> 1121 West Ridge Rd Variance	Approved with conditions	2-7
2. <u>Case #2013-83</u> Tierra Vista Variance	Approved with staff recommendations	7-9
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I. Adjournment	Adjourned at 7:38 p.m.	16

PLANNING COMMISSION
Thursday, October 3, 2013 - 6:00pm
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

CALL TO ORDER

A regular meeting of the City of Santa Fé Planning Commission was called to order by Chair Tom Spray on the above date at approximately 6:00 p.m. in the Council Chambers at City Hall, 200 Lincoln Avenue, Santa Fé, New Mexico.

A. ROLL CALL

Members Present

Commissioner Tom Spray, Chair
Commissioner Michael Harris
Commissioner Signe Lindell
Commissioner Lawrence Ortiz
Commissioner John Padilla
Commissioner Lawrence Ortiz
Commissioner Renee Villarreal

Members Absent

Commissioner Lisa Bemis [excused]
Commissioner Dan Pava [excused]
Commissioner Angela Schackel-Bordegary [excused]

Staff Present:

Mr. Matthew O'Reilly, Director, Planning and Land Use Department
Mr. Daniel A. Esquibel, Senior Planner, Current Planning Division
Ms. Kelley Brennan, Assistant City Attorney
Mr. Noah Berke, Technical Review Staff

NOTE: All items in the Committee packet for all agenda items are incorporated herewith by reference. The original Committee packet is on file in the Historic Planning Department.

B. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

C. APPROVAL OF AGENDA

The Agenda was approved as published without objection.

D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS

1. MINUTES: September 12, 2013

Commissioner Padilla noted that he was excused as he was at a conference in Las Cruces.

The minutes of September 12, 2013 were approved with one amendment without objection.

2. FINDINGS/CONCLUSIONS:

Case #2013-69. Saiz Family Transfer Subdivision

The Findings of Fact and Conclusions of Law for Case #2013-69, Saiz Family Transfer Subdivision were postponed to the next meeting.

E. OLD BUSINESS

There was no Old Business.

F. NEW BUSINESS

- 1. Case #2013-81. 1121 West Ridge Rd Variance.** Archaeo Architects, Agent for Stephen Cummings, requests a Variance to 14-5.6(l)(1) to place underground utilities outside the existing driveway location. The property is located within the Foothills Subdistrict of the Escarpment Overlay District and is zoned R-1 (Residential - One Dwelling Unit per Acre). (Dan Esquibel, Case Manager)

Mr. Esquibel presented the staff report to the Commission.

The Land Use Department recommended approval subject to the following conditions:

1. All disturbed areas shall be revegetated to stabilize slopes and to bring area back to a natural state.
2. Any and all trees or vegetation that are removed shall be replaced with equal or greater sized trees and vegetation.

3. All trenching and work shall be done by hand to the greatest extent possible, rather than by machinery in order to cause as little disturbance as possible.

The applicant is proposing to construct a dwelling and accessory dwelling unit on Lot 5-B consisting of 8.59± acres in the Ponderosa Ridge Subdivision. The applicant is requesting an alternative trenching location versus placing the utilities within the existing driveway as required. The applicant has addressed the variance criteria. In conclusion, the applicant's proposal presents a shorter route and minimal visual impact due to the property location. The required route for utilities represents a significantly greater length of utilities if utilities are placed in the driveway. However, no extraordinary hardship beyond cost has been identified in the application.

A soils engineering report was included as part of the application; however, it did not provide sufficient information to determine conditions associated with both routes. The proposed route reduces overall length of utilities to the building location and presents new but minimal scaring with no visibility from any public right-of-way. The Land Use Department does not find that the proposed alternative utility location violates the purpose and intent of the escarpment regulations because of the minimal visual and environmental impacts to the area. However, this does not negate compliance with 14-5.6 because the disturbance is located within the mapped foothills Subdistrict.

Should the Planning Commission find in favor of the proposed variance, the Land Use Department offers the conditions outlined on the first page of this report as additional safeguards for the proposed development request.

He added that present today was Mr. Noah Berke from the Technical Review Division who reviews for the escarpment overlay district in their Department.

Present and sworn was Mr. Jon Dick, 112 Camino Escondido, who went to the core of the issue and said the proposed route for utilities would literally not be seen by anyone except the adjacent neighbor Mr. Richard Groenendyke who wanted to speak to the Board also.

The driveway existed prior to his client acquiring the property. The utilities would run about 450' but there was a shorter route of 110'. When he initially talked with Staff they indicated that financial burden was not really something relevant. But in the end, they suggested that he mention it, so he told the Commission that their engineer, Mr. William Poole did estimate the additional cost of going up the driveway as about \$60,000 based on an additional transformer that would be needed because of the length of the utility run as well as carving through bed rock. It was a very rocky site up there. And based on the length of the lines required it didn't even include the need for increased size of the electrical lines to accommodate a solar panel. By the standards set by the City, the location wasn't even in the escarpment but it was mapped as though it was. On the web site you could see it was changed so this property wasn't in it. It cannot be seen by the escarpment. Whether it fell within foothills sub district or not, it would not be visible from the public right of way and only could be seen by one neighbor so they were complying with the spirit of the ordinance and the owner would have to pay upwards of \$60,000 to follow it.

Public Comment

Present and sworn was Mr. Richard Groenendyke, 1128 West Ridge Road, who said he and his wife lived next door. He was on the Ponderosa Ridge Architectural Control Committee (ACC).

He indicated he met with the owner in the summer of 2007 with his daughter and Mr. Cummings told him he didn't want to build soon but wanted to build a guest house. He told Mr. Cummings that he didn't think the ACC would approve a guest house being built before the residence.

Then in July a public notice sign was posted on the Ponderosa Ridge gate that requested the variance which Mr. Cummings had never talked with the ACC about. Mr. Satzinger, Chairman of the ACC, was out of town but later called Mr. Dick who said it was just an oversight on his part and needed to meet with the ACC. So they set a meeting for August 8. Mr. Dick brought the plans and they saw the floor plan showing 9,000 square feet under roof. The ACC first asked Mr. Dick about building the guest house first. And he told the Committee that was no longer a concern - that Mr. Cummings had changed his mind and was going to build the entire project at the same time.

So after looking at the plans, Mr. Groenendyke sent him a letter and Mr. Satzinger sent him a letter that the ACC had no problem with the variance for the direct utilities route. They had a later meeting on September 18 when all ACC members were present and they asked Mr. Dick when construction would begin. And he said Mr. Cummings had changed his mind and they were now postponing the construction but were still going forward with the approval that would be necessary and then Mr. Cummings would have the option to build the guest house and postponing the building of the rest of the project. So the ACC wrote a second letter after that and he didn't think that letter had been made part of the packet. He requested permission to share copies of that letter with the Commission.

Commissioner Lindell said she didn't have a copy of the first letter.

Chair Spray asked if it was not in the packet.

Mr. Esquibel said it was not.

Chair Spray asked Mr. Groenendyke if he had sufficient copies of both letters for the Commission and the staff.

Mr. Groenendyke said he had enough of the second letter and handed out the letter. [Attached as Exhibit A]

Mr. Groenendyke said the concern of ACC was the sequence of construction and there was not a concern with the utilities line relocation. They were opposed to building the guest house in the escarpment district. What they really were asking was for Mr. Cummings to first build a residence. He explained that Ponderosa Ridge was not a neighborhood for rental guest houses.

So they wanted a condition that it not just be a guest house. He said this project was a subterfuge to build only a guest house and they were opposed to it. They thought there would be no remedy afterwards if that was approved. It was not a money issue and no performance bond was being requested. As a member of Ponderosa Ridge Association, he was subject to its rules and regulations. The ACC was asking that the Planning Commission grant the variance but add the condition that he build this project in good faith, including the residence and not end up with only a guest house.

There were no other speakers from the public regarding this case and the public hearing was closed.

Commissioner Harris said when reading the packet materials he thought it would be straightforward but listened closely to what Mr. Groenendyke had to say. He had presumed the utilities would go into the garage with utilities. He asked if the circular structure in back was the proposed guest house.

Chair Spray asked Mr. Dick to come to the podium to address the question. Mr. Dick agreed.

Commissioner Harris said there were some procedures that would allow the guest house to be built first but the case before the Planning Commission was just for the variance for the utility line.

The sequence would be a matter between the two parties. He didn't have any objection to this presentation and the variance for the utility line location was appropriate.

Commissioner Padilla said that was one of his questions. Regarding the second condition regarding the trees and revegetation.

Mr. Esquibel asked Mr. Noah Berke to the podium to address that question.

Mr. Berke clarified that for that portion where the applicant proposed a variance, it was a cleared area that had only one tree. So for soil erosion control and natural landscape he recommended re-vegetation of it and of any disturbed areas disturbed by trenching.

Commissioner Padilla presumed removal included the tree. He asked if there was just one or if there were others that could be indicated.

Mr. Berke said the applicant indicated the trenching would be limited to 4' wide so only one tree was to be removed. And that tree was showing signs of poor health.

Commissioner Padilla surmised that an inventory of trees had been made and those could be removed. He asked if that verified by his department.

Mr. Berke agreed and it was staked out and he viewed it.

Commissioner Padilla assumed some machinery would be used and his department would require minimal disturbance if machinery was used.

Mr. Berke agreed and said the machinery proposed would be one backhoe and two small bobcats. The applicant said the scoop on the backhoe would be about 4' wide.

Commissioner Villarreal asked Mr. Groenendyke if he was saying their covenants required no guest house prior to building a main residence.

Mr. Groenendyke agreed, as well as how city permit procedure was.

Commissioner Villarreal asked staff to answer also.

Mr. O'Reilly answered that the City required the construction of a dwelling first before any accessory structures were built. So someone could build a very small house like a 1,000-1,200 sq. ft. to live in and later come back to request a 9,000 sq. ft. dwelling to become the main dwelling. But staff would caution them not to build greater than 1,500 sq. ft. and not higher than 15' if they wanted to turn it into a guest house later since those were the dimensional limits for a guest house.

Commissioner Lindell asked staff who determined "to the greatest extent possible."

Mr. Berke said staff would monitor and work with the applicant.

Commissioner Lindell asked Mr. Groenendyke if the September 14th letter from Jon Dick representing the applicant that he stated that it wouldn't be seen by anyone with the except the neighbor, Mr. Groenendyke whose September 15th letter which was included in the packet documented that he both supported the variance as a neighbor and also as a member of the ACC.

Then the Commission had a letter tonight and testimony from Mr. Groenendyke, dated September 22 presented here. She wanted to know about the covenants in terms of minimum square footage for a dwelling in the subdivision.

Mr. Groenendyke said he did not know the answer to that.

Commissioner Lindell asked Mr. Dick if he knew if there was a minimum size for a residence.

Mr. Dick didn't know. But he said Mr. Groenendyke was correct that his client had vacillated a number of times about whether they would build the guest house first. When he went to the ACC he said they would build the entire development together. But then they told him at the 11th hour that they wanted to build the guest house first and Mr. Groenendyke said in no uncertain terms that they would reject the proposal to build the guest house first. That was the end of the issue and he informed his client. He had been unaware of any letter from the ACC saying they agreed with his conclusion. He just got a letter that Archaeo had to build the residence first.

So that was a closed issue and no longer under consideration and when they build in a couple of years, they would build the entire construction at one time. He would ask that this statement be officially recorded as a stipulation. So they had no problem adding that as a condition to the variance.

Mr. O'Reilly said to help the Commission that the applicant has just stated the house wouldn't be built for a couple of years. But this variance was only good for three years.

Ms. Brennan said the City didn't usually enforce private covenants but this statement could be accepted by the Planning Commission as a condition.

Commissioner Lindell understood the City didn't usually enforce covenants so this might not be the direction the Commission would like to go. She just wanted to note that the letter referred to was not in the packet so they didn't get that letter and she considered the application was a little incomplete.

Mr. Dick said he had a copy of the letter and had submitted it to staff and he had no control over it from there.

Commissioner Padilla asked Mr. O'Reilly, how the approval of this variance request would be contrary to the covenants. He had heard no testimony that it was nor that it was the policy of the City not to enforce private covenants.

Commissioner Harris moved to approve the variance request of Case #2013-81 with the three conditions proposed by staff. Commissioner Padilla seconded the motion.

Commissioner Lindell asked Commissioner Harris if he would entertain a friendly amendment that the condition Mr. Dick offered that all the project would be built at once could be added.

Commissioner Harris did not accept the amendment as friendly.

The motion passed by majority voice vote with all Commissioners voting in favor except Ms. Lindell who opposed the motion.

- 2. Case #2013-83. Tierra Vista Variance.** JenkinsGavin Design and Development Inc., Agent for Next Generation Contracting et. al., requests a Variance to 14-7.2-1 to allow second story setback heights over 14 feet on 10 constructed Dwelling Units, set back 5 feet from the property lines. The properties are located on Joshua Lane, Tierra Vista Subdivision, and are zoned R-7 (Residential - Seven Dwelling Units per Acre). (Dan Esquibel, Case Manager)

Mr. Esquibel presented the staff report to the Planning Commission as follows:

The Land Use Department supports the proposed variance request. Should the Planning Commission

find in favor of the proposed variance, the Land Use Department offers the following condition:

No further intensification to height or setback shall be allowed.

Next Generation Contracting obtained ten building permits and constructed ten houses for lots within the Tierra Vista Subdivision that violate side yard setback standards. The plans submitted identified two-story house designs which exceed 14 feet in height within 10 feet from the property lines. During the process of city building permit review an interpretation error occurred which allowed the permitting of these structures. Reviewers incorrectly believed this subdivision to be part of the Vistas units subdivision, adjoining to the east and south, which had been granted variances to second story setback requirements. The applicant is now requesting a similar variance to Chapter 14-7.2-1 for the structures located on Lots 1, 7, 14, 18, 26, 27, 28, 29 and 30. Approval of the variance will allow owners of the lots to be able to rebuild the existing design in the event of substantial destruction of the existing structure.

In conclusion, the Land Use Department received applications, issued permits and made inspections in good faith. The errors associated with the permits identify an unintended, unforeseen circumstance for the buildings within Lots 1, 7, 14, 18, 26, 27, 28, 29 and 30 of the Tierra Vista subdivision. The Land Use Department believes that the issues relevant to this request comply with 14-3.16(C) "Approval Criteria" for a variance.

Chair Spray asked the applicant to be sworn.

Present and sworn was Ms. Jennifer Jenkins, 130 Grant Avenue, Suite 101, who said she was here on behalf of Nick Montoya and Next Generation Contracting. She said it was a positive thing because in this part of town, they ended up with smaller projects that often lacked cohesiveness but they had two nice neighborhoods being constructed together. She felt staff already hit the high points and she just wanted to assure that the homeowners would not be saddled with a nonconformity that was not their doing.

Her associate passed out photos of the Tierra Vista Subdivision [attached as Exhibit B].

There were no speakers from the public regarding this case and the public hearing was closed.

Commissioner Padilla asked about the applicant's response to 14-16 (C) 2 - regarding special circumstances caused by an oversight both by the builder and city staff that created a nonconformity which, in turn, caused impediments for the home owner with regard to rebuilding, selling, financing and insuring their properties. First, he asked if the contractor was also the developer of the subdivision.

Ms. Jenkins agreed.

Commissioner Padilla noted that they had representation when the lots were sold by either a real estate agent or someone representing them.

Ms. Jenkins said they bought the platted lots before anything was constructed there.

Commissioner Padilla asked, after construction and they went on the market for sale, if there was prospective buyers were alerted to the fact there could be a problem with the setbacks.

Ms. Jenkins said they were not initially and but did so when it was discovered and they were notified.

Commissioner Padilla surmised they were sold fee simple to individuals and there were owners who lived there and were identified.

Ms. Jenkins said she would have to look at her master list and said most but not all had been notified.

Commissioner Padilla asked if at that point they were able to secure financing and insurance for those properties and if they were in jeopardy of losing either or both at this time.

Ms. Jenkins didn't believe so but couldn't speak to that issue specifically. In her experience, if an appraiser found something that was a nonconformity with zoning code often could come up. She didn't think that problem was discovered. Her primary concern was with respect to a nonconformity should the house be destroyed by fire and their ability to rebuild all of their square footage.

Commissioner Padilla understood the issue here was further compounded by either an appraisal or a title company in the city review, didn't see this. They were able to close the property and able to secure financing and insurance for the property. So in the event of a catastrophe, that they would be nonconforming and when they needed to rebuild, they would have to conform with the setbacks.

Ms. Jenkins agreed.

Commissioner Padilla had- a follow up question. The Commissioners were provided a copy of the development plat and imagined the owner-developer agreed to the conditions and #1 said it must comply with the codes of the City. He asked if there was a reason why, other than that the developer was able to do it on the other subdivision, that the other subdivision would have that same requirement.

Ms. Jenkins said that was what happened. So all the plans were approved and there was an assumption (incorrect assumption) and was treated as one. It was an oversight.

Commissioner Padilla added that it was also the oversight of the person who reviewed the development project. Ms. Jenkins agreed.

Commissioner Padilla concluded that it was also incumbent on the design professional, the appraiser, a closing officer, etc.

Ms. Jenkins agreed that the list was long.

Commissioner Lindell said she was going to support the staff on this but would like never to see 10 houses built on lots that were not in compliance. This was not a small error and it was upsetting. She didn't know if this was disclosed to home owners. She was familiar with the subdivision. The consequences would fall on the home owners. She never wanted to see another case like this.

Commissioner Lindell moved to approve Case #2013-83 with staff recommendations. Ms. Villarreal seconded the motion and it passed by majority voice vote with all voting in favor except Commissioner Padilla who voted against.

- 3. Case #2013-84. 5319 Joshua Lane Tierra Vista Variance.** JenkinsGavin Design and Development Inc., Agents for Next Generation Contracting, requests a Variance to 14-7.2-1 to allow a rear yard setback for a constructed Dwelling Unit at 11' 6" setback where 15 feet is required. The property is located at 5319 Joshua Lane and is zoned R-7 (Residential - Seven Dwelling Units per Acre). (Dan Esquibel, Case Manager)

Mr. Esquibel presented the staff report for this case as follows:

The Land Use Department does not support the proposed variance request. Should the Planning Commission find in favor of the proposed variance, the Land Use Department offers the following conditions:

1. In the event of damage to the structure requiring a rebuild to the area not in conformance to city standards, the applicant will construct to conform to city standards.
2. No further encroachment in the rear yard setback is allowed.

On May 13 2013 Next generation Contracting was issued a building permit to construct a dwelling unit on Lot 10 of the Tierra Vista Subdivision in compliance with the rear setback requirements. During the initial siting of the building by the contractor a field error occurred creating a three and a half foot encroachment into the rear yard setback. This placed the dwelling at 11' 6" from the rear property line instead of the required 15' rear yard setback and out of conformance to city setback standards.

In conclusion, all proposed development must meet *minimum* code standards. The Land Use Department has reviewed the variance material and determined that the applicant's responses to the variance criteria do not satisfy the criteria required per 14-3.16 (C). The city will not require the homeowner to move or reconstruct the structure to come into compliance. However, in the event of damage to the structure such that total reconstruction to meet city standards where required, new construction would be required.

Ms. Jenkins (previously sworn) said additional information had come to their attention that she would like to present or would ask that it be postponed to go into that later.

Chair Spray asked for staff opinion or wishes of the Commission.

Mr. O'Reilly said he was not sure what the applicant would present as additional information. A junior staff member was asked to write a letter yesterday, apparently at the agent's request and that was in error. That letter was apparently requested in order to bolster the applicant's case. The Land Use Department disavows that letter.

If that was what the applicant intended to present here, they should present it and staff would speak to it then and the position of the Land Use Department stands as in the staff report.

Ms. Jenkins referred to a page toward the back of the packet to the little survey on the third to last page. It showed that the house had its front door on Joshua Lane; had a twenty foot setback and then the rear yard was 11.5' where normally a fifteen foot setback was required. Staff asserted in the report, which again was an oversight on the developer's part that if destroyed it would have to be re built in compliance. The reason this house had a 20' setback in front was because it had a garage and that required a 20' setback. So the house was moved in the field a couple of years ago. While researching it, they turned up an email from the Permitting Office that stated that it had a double frontage situation with Joshua Lane on one side and Calle Vista on the other side. The front door obviously was on Joshua Lane and the back door was obviously on Calle Vista.

An email was sent out in 2011. She didn't have the staff letter. Mr. O'Reilly was correct that when staff informed them that the variance might no longer be necessary because as the code provided, with two frontages, they would have seven foot setbacks. So she asked just to memorialize that for the benefit of her client's records that it was indeed the case. Then today she learned that the Land Use Director did not concur with staff's interpretation of the Code. So she was not going to talk about the letter. The contractor felt he could build based on an email he received in 2011 from the Building Permit Division.

She didn't necessarily disagree with Mr. O'Reilly's code interpretation but they were acting on information received from the City. She knew this had things not reflected by the staff report.

There were no speakers from the public regarding this case and Chair Spray declared the public portion of this case closed.

Chair Spray asked for Mr. O'Reilly's response to the email.

Mr. O'Reilly said the applicant submitted a plan that met the code and those were approved. And then decided in the field to move the house significantly and that wasn't allowed without amending the permit first. Although the applicant might have relied on an email he got two years ago, licensed contractors know any move of house required first to amend the permit.

Chair Spray asked if the Commission decided to reject the variance tonight, whether that would preclude them coming back again later.

Mr. O'Reilly deferred to Ms. Brennan.

Ms. Brennan said there was a time period until they could apply again but didn't believe there was any restriction on the number of times they could request the variance.

Mr. O'Reilly said he couldn't tell and perhaps the applicant could clarify but it wasn't clear why the house was moved. If it was simply an error it could be addressed by the contractor going forward as he built more houses. They could have a licensed surveyor survey it before pouring concrete.

In the staff analysis on page 4, under section 14-3.16 C-5, the variance was not contrary to the public interest but it did affect the public interest. If the variance was not granted and then destroyed, the rebuilding would require the house to be relocated. Granting a variance on this one lot would not be against the public interest.

Chair Spray was not sure for what purpose the applicant entertained the option to postpone the case.

Commissioner Lindell asked if this house had been sold.

Ms. Jenkins said it was under contract.

Commissioner Lindell asked if the purchaser had been made aware of this problem.

Ms. Jenkins said the buyer's real estate agent has been made aware so they assumed the agent had made the applicant aware.

Commissioner Lindell asked if they had any assurance that the purchaser's real estate agent had conveyed that to the purchaser.

Ms. Jenkins conferred with her client and said the buyer's agent had not informed her client whether or not the agent had informed the buyer. However, the agent had been informed.

Commissioner Lindell was under the impression this house was sold and someone was living in it. She asked if this field error was discovered at about 50% completion.

Ms. Jenkins said yes, when they analyzed every lot in the subdivision on behalf of the client to make sure they were coming in to address variance needs because they knew there was an issue with the previous case so they analyzed every single lot on his behalf. And then they discovered that it looked like lot 10 was encroaching into the rear lot setback. So they needed to address that as well.

Commissioner Lindell said it begged the question if this was found out at 50% completion and they knew there was a problem why they completed the house construction was completed and why they didn't come looking for a variance a lot earlier.

Ms. Jenkins said 50% complete was a big level of completion. That was all utilities, foundation, walls. It was a time when they were pretty deep into it so ripping it out and starting over probably didn't seem possible then.

Commissioner Lindell said she was not recommending they rip it all out and start over but maybe start this process at that point in time instead of waiting. It was much harder after it was finished and under contract than when just the foundation and stud walls were up.

She asked Ms. Jenkins if the buyer been offered any kind of compensation.

Ms. Jenkins said she did not know.

Commissioner Lindell asked if this was designated as an affordable home.

Ms. Jenkins didn't believe so.

Commissioner Lindell asked if they had a Certificate of Occupancy. Ms. Jenkins said not yet.

Chair Spray asked Mr. O'Reilly what the practical effect of denial would mean.

Mr. O'Reilly said this was somewhat unique in that the encroachment was discovered prior to final inspection and assurance of a Certificate of Occupancy. He said that because the City had houses in other parts of the City, particularly in historic districts on the north and east side that found themselves in a similar situation because new zoning ordinances had been adopted that automatically made them nonconforming so he believed this house would fall into that category. It would be nonconforming. Nonconforming meant that if it was destroyed and had to be rebuilt, it would have to be rebuilt in conformance with the laws that were in effect at the time it was applied to be rebuilt. But if the variance were granted and it was destroyed, then they could rebuild it as it was now.

If the variance was denied, the City would not require that they tear down 3.5 feet of it, particularly if there was assurance that the rest of the houses in this subdivision would be built properly in conformance.

Chair Spray concurred. If approved the variance would go with the house in perpetuity.

Commissioner Harris asked if the variance was granted, whether the City would be prepared to issue a certificate of occupancy for this house.

Mr. O'Reilly said this construction was subject to the International Residential Code and also to the NMAC code. The NMAC required and clearly stated that the responsibility for construction and local codes falls on the contractor. NMAC gives the City authority to withhold a certificate of occupancy if it was not in compliance with those various codes and the City's Land Development Code which had the setback requirements.

On the other hand, if the Planning Commission granted the variance there would be no conflict for the inspector not to grant the certificate of occupancy. It might even be granted if the variance was not granted. But the setbacks are required for a reason - to provide light and air around houses and a rear yard to use. And if the other houses around it were built with the same errors, it would compound the problem with air and light. So if the Planning Commission approved this variance and the applicant accepted a condition to lay out the rest of the houses in compliance, he thought they could find it within code. But the compliance officer could require compliance with the rest of them even without the Planning Commission.

Commissioner Harris said that was a good explanation and he understood the subtleties. Los Alamos County had a longstanding practice of reviewing that even before foundations were dug. It is a tight subdivision for lot size and house placement. There are a series of mistakes or errors that occurred and this is the opportunity to clean up the record and if approved, and the rest of codes met, that the building inspector could consider it not a problem.

Mr. O'Reilly explained that the International Residential Building Code also granted the building official to prevent occupancy of any violation of these codes. Things come up during construction all the time. Last year they granted 4,400 permits which probably meant about 30,000 to 40,000 inspections. If a re-stucco encroached one inch the official probably wouldn't make them change it. But if it encroached into a flood zone, they probably would make them remove that entirely. They have to use judgment on them. There are elements of buildings that are actually allowed encroachment on a setback. Awnings and eyebrows and roof overhangs frequently are allowed to remain. If the Land Use Department could be satisfied this error wouldn't be made on adjacent lots, they probably would stick with the staff report statement that it had no impact on the public interest.

Commissioner Harris thought the applicant acted in good faith and the error might not be caught until 20 years later when a catastrophe hit. But if addressed now, with a catastrophe in the future, it would allow them to rebuild.

Commissioner Padilla had a real problem with this case and a problem with the previous case. It seemed that Next Generation Construction needed to be taught the basic construction principles and codes so they could move forward and truly be next generation. To just arbitrarily move a house because they thought they had two fronts. It was very clear to him that this house fronts Joshua Lane as every other one does. So he felt this siting was unacceptable and should not be taken into consideration this evening from this email. To make that assumption was unacceptable.

Mr. O'Reilly mentioned that there were nonconforming conditions on the east side and in the historic district. But some of those who encroached on the east side were probably built before the code existed. He said he would be willing to bet they would have a full house at this meeting if this was on the east side. But because it wasn't those who lived in that area were probably not unified to protest and take this developer to task or they were working two jobs and raising kids and couldn't come here.

To ask forgiveness instead of permission beforehand is not acceptable. He would never have submitted a set of plans like these. There should be more than just conformance with the rest of the houses.

To educate this contractor about codes they must follow - they can't get by and then ask for forgiveness. It does really impact the community and upon the neighbors. Unfortunately they aren't unified to come here and stand up for the codes.

Chair Spray asked if there were any monetary consequence like a bond requirement to be posted or a fine that could be contemplated.

Mr. O'Reilly said the only fine allowed to be imposed was if someone built without a permit and they would be charged a double fee. So there was no fine here. If you grant the variance the Land Use Department would require the applicant to submit a permit amendment.

Chair Spray asked if that was part of the waiving of fees for a building permit.

Mr. O'Reilly believed this was submitted during the time of zero impact fees. But there were fees for water requirements.

Commissioner Lindell thought Mr. O'Reilly and the staff report had clearly said that there was negligible public affect. However she was going to support the recommendation of approval, although not enthusiastically.

Commissioner Lindell moved to approve Case #2013-84 with staff conditions and a condition that the purchaser be expressly informed of this situation and that the remainder of the subsequent lots in this subdivision be staked by a licensed surveyor.

Ms. Brennan asked if the applicant would accept those conditions. Ms. Jenkins agreed.

Commissioner Villarreal seconded the motion. She asked that the surveyor would be aware of this going into this subdivision or that the surveyor be informed.

The motion passed by majority voice vote with Commissioner Ortíz and Commissioner Padilla voting against.

G. STAFF COMMUNICATIONS

Mr. O'Reilly noted there were three Commissioners who were not present when he presented helpful hints. He put copies of those hints on their desks for review and invited them to contact him if they had questions.

H. MATTERS FROM THE COMMISSION

Commissioner Lindell thanked Mr. O'Reilly very much for the sheet on procedures and practices. She hoped a copy of this would be provided when new commissioners were appointed as an orientation. It was well done.

Secondly she had a question for Ms. Brennan. She watched the Council meeting on TV as they heard the Manderfield case. Her understanding was that the Planning Commission would be hearing that again and asked if the minutes of that Council meeting could be included in our packet.

Ms. Brennan believed they would have copies of the minutes and findings although they might not be all signed and the Commissioners would be advised of any changes. Those findings would be on Council's agenda next Wednesday.

Chair Spray asked if that would be a de novo case on it.

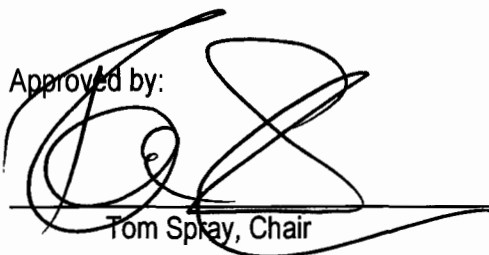
Ms. Brennan agreed and she believed the application had changed after the Commission's recommendation and it substantially revised the application.

Chair Spray asked if discussions were continuing at Mr. O'Reilly's office.

Mr. O'Reilly hesitated and said he understood the parties were meeting with those whom the Council requested. There were issues that needed attention to properly bring the case before the Commission.

I. ADJOURNMENT

Having completed the agenda and with no further business to come before the Planning Commission, the meeting was adjourned at 7:38 p.m.

Approved by: 
Tom Spray, Chair

Submitted by:


Carl Boaz, Stenographer

EX. A

22 September 2013

Jon Dick, Archaeo
1519 Upper Canyon Road, Studio A
Santa Fe, New Mexico 87501

Re: Cummings Residence, 1121 West Ridge Rd, Santa Fe, NM 87505

Dear Jon,

On September 18, 2013 a Ponderosa Ridge Architectural Control Committee meeting was held to update the entire committee, Er-Dien Weiner, Larry Cicci, Richard Groenendyke and Jim Satzinger, on the Cummings Residence design proposal and the current plans of the Cummings family.

After explanation of the project and display of graphics, architect Jon Dick informed the committee that the Cummings family has decided to postpone construction until a future date. Mr. Dick then asked the committee to consider approving the design and construction of the roadway access, site utilities and a guest house prior to construction of the main residence.

The ACC conducted an open discussion and reached a unanimous decision. Lot development in Ponderosa Ridge must include the design and construction of a main residence. Site grading and utilities, roadway construction and accessory structures are all appurtenant to a single-family residential dwelling, and are approved and permitted in this way.

Therefore, no design and construction of roadway access, site utilities, accessory structures, or a guest house at 1121 West Ridge Rd will be approved by the Ponderosa Ridge Architectural Control Committee prior to final approval by the ACC of a design and construction proposal that includes a main residence. Receipt of a cash bond of \$1500, an ACC meeting with the contracted builder, and a construction permit for site development and construction of a main residence and other structures from the City of Santa Fe will also be required at that time.

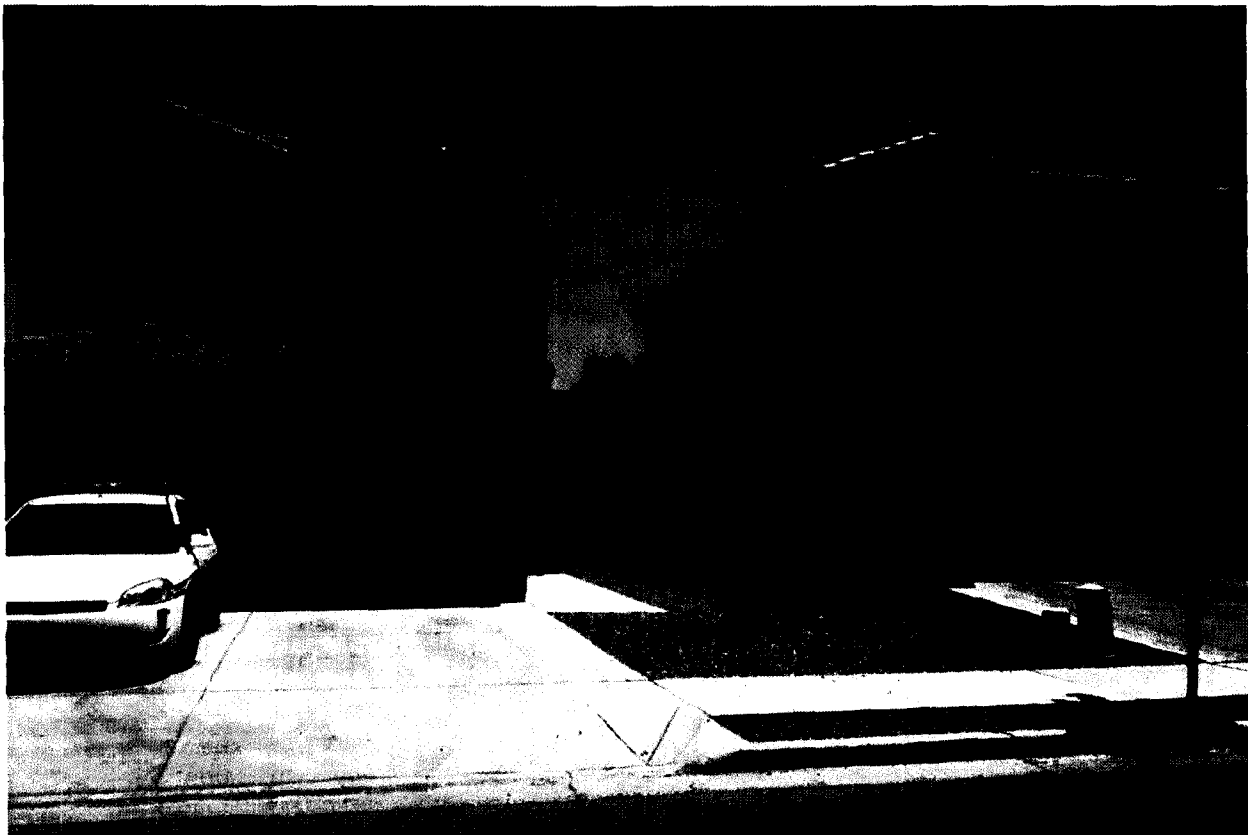
Sincerely,

James A Satzinger AIA
Chair, Ponderosa Ridge ACC

cc: Larry Cicci, Richard Groenendyke, Jon Schneider, Er-Dien Weiner

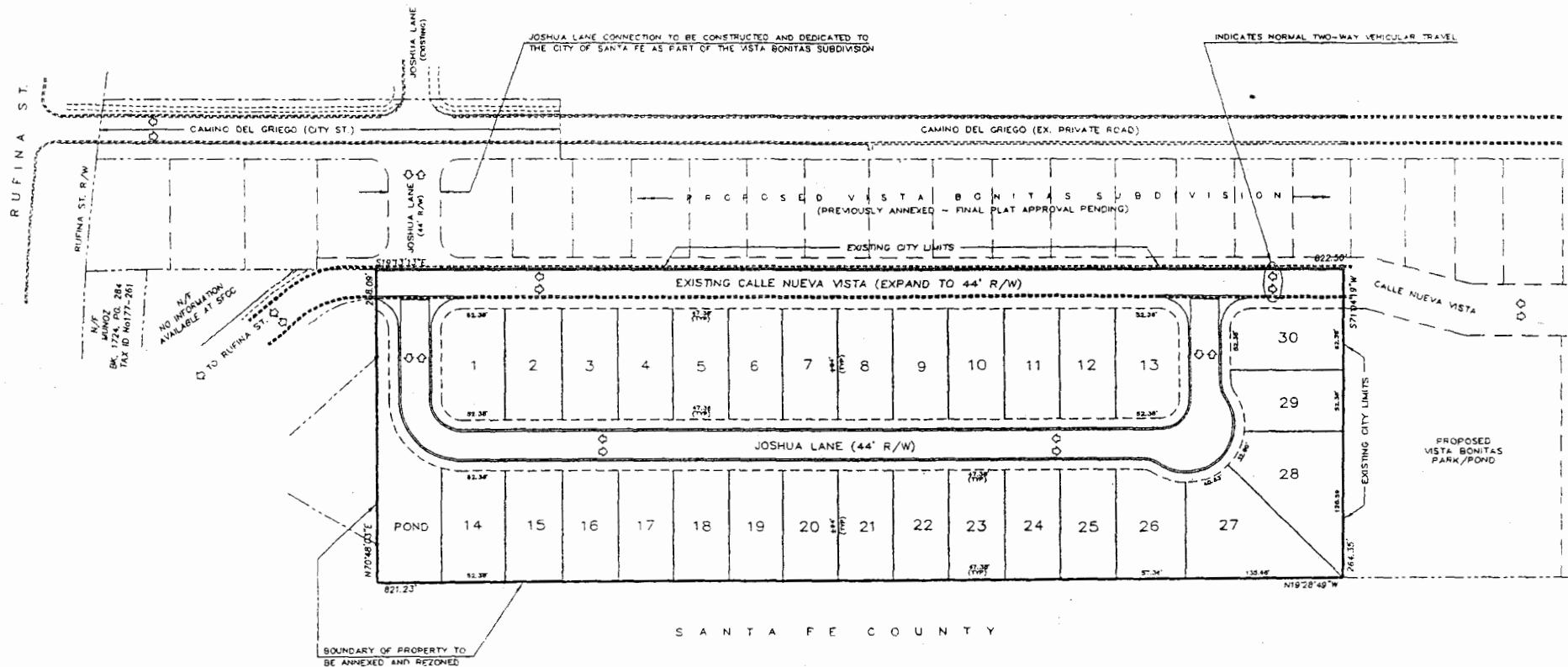
Ex B

TIERRA VISTA SUBDIVISION



CITY OF SANTA FE

Exc



NOTES

1. THIS PLAN IS FOR THE PURPOSE OF ANNEXATION AND REZONING OF THIS PROPERTY ONLY. THE INFORMATION SHOWN HEREON IS CONCEPTUAL AND FOR THE LIMITED PURPOSE OF DEMONSTRATING GENERAL DEVELOPMENT FEASIBILITY. THIS PLAN IS NOT FOR CONSTRUCTION AND IS NOT INTENDED FOR CITY SUBDIVISION APPROVAL.
2. THE PROPERTY BOUNDARY SHOWN HEREON WAS DETERMINED BY A BOUNDARY SURVEY PERFORMED BY SOUTHWEST MOUNTAIN SURVEYS IN APRIL 2005.
3. ALL STREETS, WATER LINES AND SANITARY SEWERS WITHIN TIERRA VISTA ARE TO BE CONSTRUCTED TO CITY OF SANTA FE STANDARDS AND DEDICATED TO THE CITY OF SANTA FE.
4. FOR EXISTING SITE CONDITIONS, REFER TO TOPOGRAPHIC SURVEY.

TIERRA VISTA SUMMARY

TOTAL ACREAGE:	5.02 AC
BOUNDARY CONTIGUITY WITH EX. CITY LIMITS:	50%
PROPOSED ZONING:	R-7
PROPOSED NUMBER OF LOTS:	30
LOT ACREAGE:	3.28 AC
R.O.W. ACREAGE:	1.67 AC
MEDIAN LOT SIZE:	4,470 SF
SETBACKS, LOT COVERAGES, ETC.:	PER R-7

FOR ANNEXATION AND REZONING ONLY
NOT FOR CONSTRUCTION



O'REILLY
PLANNING & ENGINEERING

PROJECT NO. 11-001
SUBJECT: TIERRA VISTA ANNEXATION
DATE: 11/01/01

PREPARED BY: [Name]
CHECKED BY: [Name]
DATE: 11/01/01

SCALE: 1" = 40'

SHEET NO. 5 OF 6