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**MINUTES
VILLAGE OF LOS RANCHOS
Planning and Zoning Commission
6718 Rio Grande Blvd. NW
Warren J. Gray Hall
Regular Meeting
June 09, 2015
7:00 P.M.**

10 **Present:**

11
12 **STAFF**

13 **Administrator:** Kelly Ward

Attorney: Bill Chappell

14 **Planning Staff:** Tim McDonough, Director

15
16
17 **1. CALL TO ORDER – Chairman Seligman** called the meeting to order at 7:00
18 p.m.

19
20 **A. ROLL CALL** - Commissioner Craig, Commissioner Riccobene,
21 Commissioner Brawley, Commissioner Seligman, Commissioner
22 Phillips, Commissioner Colman, Commissioner Tourville.

23
24 **Chairman Seligman** stated there was a quorum present for the meeting.

25
26 **B. APPROVAL OF THE AGENDA**

27
28 **Chairman Seligman** asked Planner McDonough if there were any
29 changes to the agenda.

30
31 **Planner McDonough** stated that there is one addition he asked
32 Attorney Chappell to give a presentation on procedural issues and in
33 that this is a quasi-judicial hearing and wanted him to give the ground
34 rules.

35
36 **Chairman Seligman** asked does he want this to happen prior to the
37 hearing period.

38
39 **Planner McDonough** stated immediately after the Consent Agenda.

40
41 **Chairman Seligman** asked if there was a motion to approval to
42 amend the agenda.

43
44 **MOTION: Commissioner Tourville** moved to approve the amended
45 agenda.

46
47 **SECOND: Commissioner Brawley** seconded the motion.

48
49 **VOTE:** The motion carried unanimously (7-0)

1 **2. PUBLIC COMMENT PERIOD – There was no public comment.**

2
3 **3. CONSENT AGENDA**

4
5 **A. APPROVAL OF CONSENT AGENDA**

6
7 **1. Minutes of the March 31, 2015 special meeting.**

8
9 **Chairman Seligman** asked if there were changes or corrections to the
10 minutes of the March 31st special meeting.

11
12 **Commissioner Phillips** stated he had one correction. On page 16 line 42 it
13 should read, "Vote was (6-0) with Commissioner Phillips abstaining.

14
15 **Chairman Seligman** asked if there were any other changes and then asked
16 if there was a motion to approve the consent agenda as corrected.

17
18 **MOTION: Commissioner Colman** moved to approve the consent agenda
19 as corrected.

20
21 **SECOND: Commissioner Riccobene** seconded the motion.

22
23 **VOTE:** The motion carried unanimously (7-0).

24
25 **PRESENTATION ON QUASI-JUDICIAL PROCEEDINGS by Attorney Chappell**

26
27 **Attorney Chappell** started his presentation by passing out a short
28 memorandum of what he would discuss. Then proceeded to detail different
29 proceedings. The first was Type of Proceedings where he gave a summary of
30 what types of proceedings the Commission will be hearing. Then gave a
31 more detailed explanation in Legislative Proceedings and Quasi Judicial
32 Proceedings, which is much more involved summary. Participants in the
33 Quasi Judicial Proceedings must receive procedural "due process." At a
34 constitutional level, due process is protected by the 14th Amendment to the
35 U.S Constitution and not subject to modification by state or local laws. It is
36 somewhat flexible depending on the nature of the case. Here are some
37 general principles.

- 38
39 1. As you are acting in the capacity of a "judge," *ex parte*
40 communications with the parties is prohibited. "*ex parte*"
41 means communications with one of the parties when the other
42 party or parties are not present. The information upon which
43 you make a decision should be based upon reports, testimony
44 and evidence presented at the hearing.
45 2. The conduct of the hearing must be fair and impartial. The
46 Commission may decline to accept hearsay evidence, such as
47 letters or petitions, if admitting those into evidence would have
48 the effect of precluding a right of cross examination by persons
49 adverse to the positions in the letters or the petitions.
50 Administrative adjudicative proceedings involving substantial

1 rights of an applicant must adhere to the fundamental
2 principles of justice in procedural due process.

- 3 3. The Commission may establish reasonable limitations as to
4 the number of witnesses to be heard. This is true if the
5 testimony is simply going to be cumulative with evidence by
6 other witnesses. If requested, parties should be allowed to
7 “cross examine” witnesses as to their testimony. Just as the
8 Commission may place reasonable time limits on
9 presentations by the parties, the Commission can establish
10 reasonable time limits for cross examination.
11 4. In a quasi-judicial proceeding, all witnesses must be sworn.
12 5. One area in which due process is commonly found to have
13 been violated is the failure to give proper notice. Before
14 proceeding with any hearing, it would be prudent to inquire as
15 to what notice of the proceeding was given and satisfy any
16 questions as to whether or not that notice is adequate.
17

18 After you have conducted a quasi-judicial hearing and all evidence has been
19 admitted, state law allows something to occur at this point, which you cannot
20 do in a legislative process. After taking evidence, you may go into a “closed”
21 session to discuss the application. The applicant cannot be there, the Village
22 staff as a proponent of one side of the other could not be there, and he is of
23 the opinion that even the Village counsel cannot be there because his office
24 represents the position of the Village. He advised that it just be the members
25 of the Commission. After the discussion in either a closed or an open
26 meeting, then a vote should be taken in a public vote. Village ordinances
27 require all Commissioners to vote so that vote can be shown of record. No
28 record is required for the closed session.
29

30 **Chairman Seligman** recognized Commissioner Brawley.

31
32 **Commissioner Brawley** asked Attorney Chappell could he tell them more
33 about the example that he gave them in the introduction of certain types of
34 evidence that could be objected to. Who objects?
35

36 **Attorney Chappell** stated typically a party that is adverse to the person
37 presenting the evidence should object. On the other hand, if the Commission
38 itself deems it to be unreliable or a problem the Commission should reject
39 that and say “This is not something we are going to allow to be presented”.
40 Some Commissions have done that in order to avoid this and let people know
41 what’s going on they require that anything that is going to be put into the
42 record be provided 10 days before the hearing. So that the other side can see
43 it and can properly object to it or deal with it before he comes in. That’s the
44 biggest problem. If it goes to appeal to the Board of Trustees they can
45 present new evidence, but only those people who spoke at the meeting can
46 speak at the Board of Trustees meeting, but if it goes to the district level the
47 court cannot look at anything new it has to be in the record. They have to
48 make sure that what’s in the record supports their decision. Because it will be
49 upheld if there is substantial evidence to support it.
50
51

1 **Chairman Seligman** recognized Commissioner Riccobene.
2

3 **Commissioner Riccobene** asked if they call staff and ask a question for
4 instance, he had difficulty finding the exact code.
5

6 **Attorney Chappell** stated you have to be careful with it, but there is no
7 problem with any party calling somebody like the Planning Department to get
8 the information. They cannot discuss the variance or case since it's the same
9 department that maintains the record. Anyone should be allowed to get
10 information from them, but if there is any discussion if it was a very high
11 profile, sensitive case.
12

13 **Commissioner Riccobene** stated do not make the call.
14

15 **Attorney Chappell** affirmed don't make the call. Call him or somebody and
16 they'll get it for him because it's flexible. Under no circumstances they are
17 calling about more information like if they didn't get a copy of the report and
18 they can call and get it.
19

20 **Chairman Seligman** asked if there were any questions, then stated she had
21 a couple.
22

23 **Attorney Chappell** stated he hated questions from lawyers.
24

25 **Chairman Seligman** stated it's about questions on letters since she has
26 been on the Commission they have always accepted any type letter that's
27 been introduced. She doesn't have any problem with it because it's quasi-
28 judicial, but are they giving all parties at least ten (10) days notice?
29

30 **Attorney Chappell** stated that there is a problem with the procedure as it's
31 been followed in the past. Fortunately, they have not had an appeal beyond
32 the Board of Trustees. The Board of Trustees can correct that if they want to
33 because they can look at stuff and make decisions. They haven't had an
34 appeal beyond the Board of Trustees in which that was an issue that was
35 raised. He believes that the process that had been followed getting letters
36 from neighbors is a real sore spot. They could probably get everything
37 reversed if someone objected. In the case like they have tonight they had a
38 letter from the neighbor that was part of the package. It was available prior to
39 this hearing. If that letter had come in a couple of days prior to the meeting
40 and if somebody objected then they have a problem. Another thing they need
41 to say in a quasi-judicial proceeding is that they are required to interpret the
42 ordinances, as they exist. Just because everybody in the room is for what
43 they are asking for them to do doesn't mean that is the right interpretation
44 and right enforcement of the ordinances. Sometimes that is hard to not do
45 things because nobody is objecting, but what they are doing is when that
46 issue comes up it probably means what is called an administrative clause that
47 they can't make a different decision on a different case. So they can
48 inadvertently change the ordinance or change the standard. So the final
49 decision to make it correct is not a popularity contest. Not how many people
50 are for it and how many object to it or no objectors to still have to make the
51 same decision whether it's right or wrong.

1 **Chairman Seligman** stated so he is saying that they need to adopt some
2 procedures for the introduction of letters that are going to come before them
3 so that everybody gets notice of this. Should they be doing that now?
4

5 **Attorney Chappell** stated he would highly recommend that that is what the
6 city and county do. There is a deadline that should be made available so they
7 could mitigate some of the concerns.
8

9 **Chairman Seligman** asked about the timing of the closed session is this
10 more appropriate after the motion is seconded or after the Commission has a
11 discussion? When could they go into closed session?
12

13 **Attorney Chappell** stated they wouldn't have a discussion before the closed
14 session. He thinks once all the evidence is presented. They are in a
15 procedural due process area they are not in a Robert's Rules order. And in a
16 Robert's Rules order they are not to have a discussion until a motion has
17 been made and seconded and then they have a discussion. The time to do
18 this and the statute allows this after they've got all the evidence here it
19 becomes quasi judicial so once all the evidence is presented then they can
20 go into closed session. They discuss it there come back and make their
21 motion.
22

23 **Chairman Seligman** stated so prior to the motion.
24

25 **Attorney Chappell** stated that is correct.
26

27 **Chairman Seligman** stated as for procedural as Chairman does she ask for
28 a vote as to whether or not the Commission wants to go to a closed session.
29

30 **Attorney Chappell** stated he thought that was totally up to her. The problem
31 with that is she may not want to condition it with a vote. There may be
32 reasons that one or more members may not want this conversation in public
33 and that might be why they want a closed session. She just asks if there is
34 anyone who wants to have this in a closed session. What she wants to have
35 is a free uninhibited discussion. And if there are a few Commissioners that
36 don't want to the chairman can make the decision.
37

38 **Chairman Seligman** thanked Attorney Chappell and asked if there were any
39 other questions.
40

41 **Planner McDonough** stated he wanted to make a comment having to do
42 with documents the department requirements are that all documents are
43 required prior to the packets going out to the Commission. Actually it's before
44 that. As a rule they only accept documents up to that point. They don't accept
45 them after that.
46

47 **Chairman Seligman** asked is the record available to both sides.
48

49 **Attorney Chappell** stated as a matter of practice people come in and hand
50 one in that is when they shouldn't accept it.
51

1 **Chairman Seligman** thanked Planner McDonough and Attorney Chappell
2 then moved on to the public hearings and applications. Then asked all those
3 who would be speaking to please stand and asked Attorney Chappell to
4 swear them in.

5
6 **Attorney Chappell** swore those in that would be speaking at tonight's
7 meeting.

8
9 **Chairman Seligman** asked Attorney Chappell if this was quasi-judicial.

10
11 **Attorney Chappell** stated this is a request for a variance, which is typical
12 quasi-judicial proceeding.

13
14 **4. PUBLIC HEARINGS AND APPLICATIONS**

15
16 **A. V-15-01** A request by Annette Chartier for a Variance from §9.4.3(E).
17 Applicant desires to convert an existing 186 SF porch into an enclosed
18 sunroom. The Tract is an MRGCD Tract (Class 2) which §9.4.3(E)
19 requires a variance to expand the footprint of an existing dwelling unit.
20 The property is located at 8500 Rio Grande Blvd. and is legally known as
21 Tract No. 37A on Middle Rio Grande Conservancy Map 25, situate in
22 Section 17, T11N, R3E, NMPM within the Town of Alameda Grant. The
23 property contains 0.15 acres more or less.

24
25 **Chairman Seligman** asked Planner McDonough for his planning report.

26
27 **Planner McDonough** stated that they probably noticed that there are two
28 requests so as not to make it cumbersome. Noting that all the documents are
29 attached to V-15-01 are also for V-15-02. Then gave his report with
30 recommendations for approval.

31
32 **Chairman Seligman** asked if there were any questions for Planner
33 McDonough from the Commission and recognized Attorney Chappell.

34
35 **Attorney Chappell** stated he hadn't had the chance to talk to Planner
36 McDonough about this. It seems to him for procedural purposes and
37 precedent purposes he agrees with the recommendation of Planner
38 McDonough, but it should simply be approved if it's going to be approved as
39 an interpretation of what is a "footprint". It includes because it does not define
40 everything under roof. In which case it does not require a determination of a
41 variance, but rather this is a determination that this is the footprint and keeps
42 this from being a precedent down the road. That may create a problem. He
43 thinks Planner McDonough is correct and they need to define the "footprint".
44 That footprint is what is under roof and is not an expansion of the footprint.
45 So no variance will be needed for this.

46
47 **Chairman Seligman** thanked Attorney Chappell and asked if the applicant
48 was present and to please come forward state her name and address for the
49 record.
50
51

1 **Annette Chartier** 8500 Rio Grande Blvd. NW

2
3 **Chairman Seligman** asked the applicant to tell them about her application
4 and why she needed a variance.
5

6 **Annette Chartier** stated that to begin with they didn't know about the need
7 for this. They had a contractor, who has since been fired that all permits were
8 in place. But, before that they thought it enhanced the whole area and the
9 Village at large. They were using this space as a patio and dining area and
10 thought it could be used better. They thought it was beautiful and went along
11 with the style of the homes around them and it keeps the integrity of the
12 house.
13

14 **Chairman Seligman** asked if there were any questions and then stated she
15 had one question. Was that space under roof?
16

17 **Annette Chartier** affirmed it was.
18

19 **Chairman Seligman** stated so that by the time the Village found out about it
20 the roof had been torn off is that what happened.
21

22 **Annette Chartier** stated yes it was.
23

24 **Chairman Seligman** asked if there were any questions and recognized
25 Commissioner Brawley.
26

27 **Commissioner Brawley** asked if there is an overhang?
28

29 **Annette Chartier** stated no there is no overhang.
30

31 **Commissioner Brawley** stated so it stops at the wall.
32

33 **Annette Chartier** stated it stops at the wall. There might be a little bit.
34

35 **Commissioner Brawley** asked is it overhanging by three (3) feet.
36

37 **Annette Chartier** replied no it's just enough to keep it off the adobe.
38

39 **Commissioner Brawley** stated one of the difficulties is that they define the
40 setback from the drip line from the roof not from the face of the wall and so
41 when they get into the question of defining what the footprint is they need to
42 sort that out as well. There are serious issues related. They have plans that
43 are reviewed by the county and they have had instances where variances
44 have been an issue and have less than the required setback for non-fire rated
45 walls. And the county misses it and they end up with an issue. Part of the
46 solution that helped them solves cases like this are in the ordinance before
47 they get to a variance request. And they do need to talk more about that.
48

49 **Planner McDonough** thanked Commissioner Brawley and stated he really
50 appreciated that.
51

1 **Chairman Seligman** recognized Commissioner Riccobene.

2
3 **Commissioner Riccobene** stated that the variance was for two and a half (2
4 ½) feet that was done years ago. But he is not seeing this as being close to
5 that two and a half (2 ½) feet. It is five (5) to six (6) feet from the property line
6 is that correct.

7
8 **Planner McDonough** stated that's what it appears to them. They were
9 certainly surprised by that two and a half (2 ½) foot setback.

10
11 **Chairman Seligman** asked if there was anyone who wanted to speak in
12 favor of the application. Then asked an audience member to come forward
13 and state their name and address for the record.

14
15 **Phil Nicklaus** 825 El Pueblo Road NW stated he is the immediate neighbor
16 to the east and he has been in his house for 37 years. He has no problem
17 with the plan they have to remodel if anything it enhances the property value
18 and appearances. They have improved the appearance of that area. He can
19 see the modifications, but they don't block his view and it helps the
20 appearance of the neighborhood in general.

21
22 **Chairman Seligman** thanked Mr. Nicklaus and asked if there were any
23 questions. Then asked if there was anybody in the audience who wanted to
24 speak against the application. Then closed the floor for public comment and
25 asked the Commission if they wanted a closed session. Then had a question
26 for Attorney Chappell. Before they do this because he indicated they do not
27 need a motion to approve this variance. It's her understanding that this was
28 under roof before and may not have to have any kind of motion. What do they
29 need?

30
31 **Attorney Chappell** stated he would still for the purposes of the record have a
32 motion to approve this as interpreting that the footprint of the house was that
33 area under roof and therefore; can continue without the granting of a
34 variance.

35
36 **Chairman Seligman** asked if there was a motion.

37
38 **MOTION: Commissioner Phillips** moved to approve this as interpreting that
39 the footprint of the house was that area under roof and therefore; can
40 continue without granting of a variance.

41
42 **SECOND: Commissioner Craig** seconded the motion.

43
44 **Chairman Seligman** asked if there was any discussion then called for a vote.

45
46 **VOTE:** the motion carried unanimously (7-0).

47
48 **B. V-15-02** A request by Annette Chartier for a Variance from §9.2.7(E) 2(a)
49 2. Applicant requests a variance to §9.2.7(E) 2(a) 2, a side setback shall
50 be fifteen (15) feet, to allow for a two (2) foot side setback on the east
51 side. The property is located at 8500 Rio Grande Blvd. and is legally

1 known as Tract No. 37A on Middle Rio Grande Conservancy Map 25,
2 situate in Section 17, T11N, R3E, NMPM within the Town of Alameda
3 Grant. The property contains 0.15 acres more or less.
4

5 **Chairman Seligman** asked Planner McDonough for the planning report.
6

7 **Commissioner Colman** asked if she could make a disclosure about this
8 variance.
9

10 **Chairman Seligman** stated to make her disclosure now.
11

12 **Commissioner Colman** stated she called Planner McDonough for
13 clarification. If this variance was passed did it grant a property right or were
14 they discussing for a variance just for the shed. The answer she received is
15 that it would give a property right that she might want to ask this question of
16 Attorney Chappell during the meeting that according to Planner McDonough it
17 created a property right for that whole back yard versus just a variance for the
18 shed. They did not discuss the one versus the other. She just wanted to do a
19 full disclosure.
20

21 **Chairman Seligman** stated they needed to hear from Attorney Chappell and
22 that is a good question to ask.
23

24 **Attorney Chappell** stated he did not think it was necessary to recuse herself
25 from this discussion. If she liked he can address the question. Zoning is not in
26 itself a property right it is one of those sticks of benefits that they own to a
27 piece of property. What they are addressing is a variance of this nature would
28 continue with that property if it was sold it is not a right it would go away when
29 this property owner sold it. So even if it is not technically a property interest it
30 is one of those bundles of rights that go with the use of the property and
31 would be permanent.
32

33 **Commissioner Colman** stated it's not specific to the shed so if it was sold or
34 the owner came back and said they want to extend the building or he wants
35 to put something else along that whole line now that there is a two and a half
36 (2 ½) foot variance.
37

38 **Attorney Chappell** stated that is perhaps not correct. If they approve this
39 variance for that particular encroachment it would not necessarily mean you
40 could encroach that setback in the future with another variance. He thinks if
41 they limit it to this particular circumstance. So it doesn't cause an effect.
42

43 **Commissioner Colman** stated that it was what she was trying to get at.
44

45 **Attorney Chappell** stated she could do that.
46

47 **Commissioner Colman** thanked Attorney Chappell.
48

49 **Chairman Seligman** asked if there are any questions on this and asked
50 Planner McDonough for his planning report.
51

1 **Planner McDonough** stated he would not go through the whole thing but by
2 Village code and ordinance out buildings less than two hundred (200) square
3 feet do not require nor will the county issue a building permit for that size of
4 an accessory building. So they were not in violation of not having a building
5 permit, but on inspection it was built and in place. So after considerations the
6 department recommends denial of 15-02.

7
8 **Chairman Seligman** recognized Commissioner Colman.

9
10 **Commissioner Colman** asked in terms of their voting she needs
11 clarification. Do they have to come up with a reason that is in conformance
12 with the code? So Planner McDonough looked at the code and couldn't find
13 anyway to justify this. If she votes to approve it for her own reasons and not
14 by code related is that not acceptable in terms of her duties and
15 responsibilities as a Commissioner.

16
17 **Attorney Chappell** stated that the Commission has some flexibility in
18 interpreting the ordinances. The Commission cannot substitute its judgment
19 for what is contained in the ordinances. This is not how it works or it doesn't
20 work. It is a question of whether the ordinance will permit it within some
21 flexibility in the interpretation. If they look carefully at the ordinance they have
22 these rules for the setback and if there is a variance for the setback and there
23 is criteria that says they must show certain things and one of those being a
24 hardship. There are certain things that are cumulative and one is a hardship
25 something that was created not by this person and not by any government
26 action after the purchase of the property. So they have to make a decision
27 where a property owner buys property with this restriction on it and then
28 shows a hardship by saying "I can't do something because I'll be in violation
29 of the ordinance". So as a Commissioner that is something they need to do to
30 determine whether or not to make an exception to the ordinance based on
31 the criteria on the other ordinance that says they can create the variance.

32
33 **Commissioner Colman** thanked Attorney Chappell.

34
35 **Chairman Seligman** recognized Commissioner Brawley.

36
37 **Commissioner Brawley** stated he thinks they have an ordinance that says if
38 they have a structure they have a requirement it may not be a uniform
39 building code requirement, but they have to submit an application to the
40 Village for any kind of structure and if that application landed on the desk for
41 the shed they would have looked at it from a zoning standpoint that it didn't
42 need to go before the county. And looking at the setback and said this does
43 not comply.

44
45 **Planner McDonough** stated he thought that was true in terms if it had been
46 submitted his understanding through procedure was that accessory buildings
47 of the size he talked about did not go through our process. He'll look at the
48 code again.

1 **Commissioner Brawley** stated it is pretty inclusive and includes pools, out
2 buildings and all kinds of things and includes fences separately. It's very
3 inclusive.
4

5 **Planner McDonough** stated he would take a look at that.
6

7 **Attorney Chappell** stated that he thought Commissioner Brawley was
8 correct. The reasoning is what the Village does is the zoning review where
9 there's a gap many times that review comes from the county before issuing a
10 building permit. And if it weren't for the source, then it probably would never
11 get to the Village. By the ordinance it should have come to the Village for the
12 zone review process.
13

14 **Chairman Seligman** asked had this been a prefab building basically no
15 building required does that still apply. This was built as opposed to being
16 bought and set on the property.
17

18 **Attorney Chappell** stated it's the same as building it on site.
19

20 **Chairman Seligman** asked if there were any questions and asked the
21 applicant to come forward and state why they should grant a variance.
22

23 **Annette Chartier** stated the county told them that they could have a two
24 hundred (200) foot or less structure built. They didn't know that they had to
25 have permission from the Village. The county permit was okay, but ignorance
26 is no excuse. They thought when they went to the county that was the place
27 to start. Secondly, they would never have considered needing or wanting a
28 shed had they not had so many thefts. They talked to Tim about putting it in
29 the front yard, but it would have only three sides. Then putting in the back
30 yard they did not want to ruin the landscape. They have such a small property
31 and have no place else to put things.
32

33 **Chairman Seligman** asked if there are any questions of the applicant, then
34 stated she had a question. When they went to the county did they mention
35 anything about the setbacks?
36

37 **Annette Chartier** stated no they did not. It was only when they got the permit
38 for the front they said that they did not need it because it was less than two
39 hundred (200) square feet. They took that at face value.
40

41 **Chairman Seligman** asked if there were any more questions and recognized
42 Commission Tourville.
43

44 **Commissioner Tourville** stated so this shed could exist, but has to be two
45 and a half (2 ½) feet from the property line.
46

47 **Annette Chartier** stated she could move it, but she would have to take down
48 this one hundred (100) year old tree.
49

50 **Commissioner Tourville** asked where is the tree located.
51

1 **Annette Chartier** stated there is a picture where the tree is right in front of
2 the shed and there is no where else to put it. If they move the shed they
3 would have to take down the tree.
4

5 **Commissioner Tourville** asked could the shed come further south.
6

7 **Annette Chartier** stated it would still interfere with the tree and to move it
8 south would still have the same setback and if they move it west they'd and if
9 they move it west they'd have it in the middle of the yard this way its out of
10 the way and back in the corner. They wanted to just have the bikes in the
11 corner, but because of the thefts people just hop the wall.
12

13 **Commissioner Tourville** stated he is looking at the drawing and the shed is
14 at the very northern part of the property. If they moved it all the way down to
15 the south and then they wouldn't have the tree.
16

17 **Annette Chartier** stated then they have to take down another tree. There is a
18 tree in that corner. A big elm.
19

20 **Commissioner Tourville** stated an elm.
21

22 **Annette Chartier** corrected her statement and stated the tree was a locust
23 and the shed would be much more visible to El Pueblo.
24

25 **Chairman Seligman** recognized Commissioner Phillips.
26

27 **Commission Phillips** asked in the drawing provided it goes with
28 Commissioner Tourville question the setback is on the eastern property line
29 correct.
30

31 **Planner McDonough** stated that was correct.
32

33 **Commissioner Phillips** stated sliding it south wouldn't help any.
34

35 **Planner McDonough** stated if they look at that drawing there are setback
36 requirements on all sides. So the front is twenty five (25) feet, the east is
37 fifteen (15), the west is also fifteen (15). It really begins to restrict the lot.
38

39 **Commissioner Tourville** stated that moving it south as well as out of the
40 setback.
41

42 **Annette Chartier** stated it would look really weird it would not be
43 aesthetically pleasing. They put it in the most aesthetically pleasing space.
44

45 **Commissioner Riccobene** stated it's currently fifteen (15) feet on that
46 property line?
47

48 **Planner McDonough** stated that was correct.
49

50 **Commissioner Craig** asked if this was A-1 Zoned.
51

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Planner McDonough stated yes it was.

Commissioner Craig asked if they had ordinances for sheds.

Planner McDonough asked in what respect.

Commissioner Craig stated for the setback.

Planner McDonough stated the setback requirements are no structures within the setback area.

Chairman Seligman asked if the shed is considered a structure with the county.

Planner McDonough affirmed that statement.

Commissioner Craig stated the county defines anything under two hundred (200) square feet as structure.

Planner McDonough stated they just don't permit it. They don't give it a name. It's just an accessory building.

Commissioner Craig stated so the setback is fifteen (15) from the north and the east.

Inaudible section multiple persons speaking at the same time.

Chairman Seligman stated that should be directed to the Chair.

Commissioner Craig apologized.

Chairman Seligman recognized Commissioner Craig.

Commissioner Craig stated he is looking at the neighbor's shed and it's not in compliance.

Planner McDonough stated he would assume that is a non-conforming building. At time of annexation that building existed or at a time when their code was not in place. It is allowed as a legally non-conforming use.

Commissioner Craig stated this was built after 2000.

Planner McDonough stated yes this was built in the last two or three years.

Chairman Seligman asked if there are any more questions or comments. And asked if there was anyone else who wanted to speak in favor of this variance. Then asked an audience member to come forward and state their name.

1 **Phil Nicklaus** stated just the aesthetics of where the shed is he thinks it's in
2 the right place and is a very nice shed it's well constructed and he thinks
3 aesthetically that it is the best place for the view from the road.
4

5 **Chairman Seligman** asked if there was anyone else who wanted to speak in
6 favor and asked the audience member to state his name and address for the
7 record.
8

9 **Roy Bedeaux** 8203 A Guadalupe Trail NW stated he has been a friend with
10 the applicant for a few years. She was brought up in the North Valley. He
11 gave his reasons for why the shed looked better in place and how it was
12 aesthetically pleasing.
13

14 **Chairman Seligman** asked if there was anyone else who wanted to speak in
15 favor of the application and then if there was anyone who wanted to speak in
16 opposition of the variance. Then closed the floor to public comments.
17

18 **Chairman Seligman** stated she would like to exercise her right as the Chair
19 and wanted to discuss this in closed session.
20

21 **COMMISSIONER'S RETIRED FOR A CLOSED SESSION AT 8:15 p.m.**
22

23 **Chairman Seligman** called the meeting to order at 9:20 p.m. and stated it
24 appears that the drawing shows the shed is right on the lot line. And in the
25 planning report they are asking for a 2' foot setback.
26

27 **Planner McDonough** stated when the request was filed it was not clear what
28 they were requesting. So he used that number. In listening to the discussion
29 about the tree it sounds as if the shed has to be right on the line. So he was
30 in error by making it 2.5 feet they did not specifically set a number. He was
31 trying to develop what was gong to have to happen to bring them into
32 compliance with the code.
33

34 **Chairman Seligman** stated so in terms to the notification to the public was it
35 noticed as a 2' foot setback or was it just noticed.
36

37 **Planner McDonough** stated it was just noticed as a variance.
38

39 **Chairman Seligman** stated that they are okay with that. Is there any formal
40 discussion from the Commission for the record? Do we have a motion?
41

42 **Attorney Chappell** stated Chairman Seligman should make a statement that
43 the closed session was a deliberation only on this issue for the record since
44 that is a requirement.
45

46 **Chairman Seligman** stated for the record the only discussion that the
47 Planning and Zoning Commission had in closed doors was specifically
48 related to Variance request V-15-02. Then called for a motion.
49
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51

1 **MOTION: Commissioner Craig** moved to approve a Variance from
2 §9.2.7(E)2(a)2 to allow for:

- 3 (1) It is a not contrary to the public interest and
4 (2) a literal enforcement of this Ordinance will result an unnecessary hardship
5 such that relief is justifiable in accordance with the goals and the policies
6 of the Village Master Plan.

7
8 **Chairman Seligman** asked if there was a second.

9
10 **SECOND: Commissioner Colman** seconded the motion.

11
12 **Chairman Seligman** asked if there was any discussion.

13
14 **Planner McDonough** asked if they could clarify the setback distance to be on
15 the line or half a foot.

16
17 **Commissioner Colman** stated at the lot line because that is where it is.

18
19 **Commissioner Craig** asked if they knew that?

20
21 **Planner McDonough** stated they don't know that.

22
23 **Attorney Chappell** stated maybe they should say as constructed.

24
25 **Commissioner Craig** stated he would amend that to read as it pertains to the
26 existing shed and pergola. As existing on the site.

27
28 **Chairman Seligman** asked Commissioner Colman if she would accept that
29 amendment.

30
31 **Commissioner Colman** stated she would second.

32
33 **Chairman Seligman** asked if there was any discussion.

34
35 **Commissioner Riccobene** stated the pergola is not in question.

36
37 **Chairman Seligman** stated that is correct it's just the shed.

38
39 **Commissioner Riccobene** stated it's a shade structure.

40
41 **Chairman Seligman** stated it's a shed and shade structure.

42
43 **Commissioner Riccobene** reiterated the shade structure is not in question.

44
45 **Commissioner Craig** stated that 15-02 called for a shed and open pergola
46 and asked is it attached to the shed.

47
48 **Planner McDonough** stated no.

1 **Commissioner Phillips** stated his understanding of the drawing what is
2 labeled, as the shade structure is not subject to the variance request.
3

4 **Commissioner Colman** asked if it would under the Ordinance.
5

6 **Chairman Seligman** stated the applicant testified it had a shade structure or
7 overhang on it.
8

9 **Planner McDonough** stated when they talk about the pergola it is identified
10 on this drawing as an existing shade. There is also a shade or a structure that
11 is directly north of the existing shed, which is the overhang. It's been the
12 interpretation of the Planning and Zoning that that 2.5 setback variance
13 applied to the entire lot line. And under that interpretation it would not include
14 the pergola or the existing shade structure. Clarifying it is the box between
15 the house and the shed.
16

17 **Chairman Seligman** asked does the shed have a shade structure attached
18 to it.
19

20 **Planner McDonough** affirmed it did have a shade structure attached to it.
21

22 **Chairman Seligman** stated so the shed and the shade structure and asked
23 Commissioner Craig to clarify the motion.
24

25 **MOTION: Commissioner Craig** moved to approve a Variance from
26 §9.2.7(E)2(a)2 to allow for the existing shed and shade structure attached to
27 the shed.
28

29 **FINDINGS:**

- 30 (1) It is a not contrary to the public interest and
- 31 (2) A literal enforcement of this Ordinance will result an unnecessary hardship
32 such that relief is justifiable in accordance with the goals and the policies
33 of the Village Master Plan.

34 **SECOND: Commissioner Colman** seconded the motion.
35

36 **Chairman Seligman** asked if there was any discussion and called for a roll
37 call vote.
38

39 **VOTE:** Commissioner Craig aye, Commissioner Riccobene aye,
40 Commissioner Brawley aye, Commissioner Phillips aye, Commissioner
41 Colman aye, Commissioner Tourville nay and the Chair voted aye.
42

43 The motion carried (6-1) with Commissioner Tourville against.
44

45
46 **5. OLD BUSINESS-None**

47
48 **6. NEW BUSINESS-None**
49
50
51

1 7. **REPORTS**

2
3 **A. PLANNING DEPARTMENT REPORT**

4
5 **Chairman Seligman** asked Planner McDonough if he had any reports for the
6 Commission.

7
8 **Planner McDonough** stated he did and he put them into their packets. So he
9 will not spend a lot of time and what he has done was give them an idea of
10 what's been going on since the last meeting. He then discussed the
11 stormwater plan, what the department has been doing with building permits,
12 and business registrations.

13
14 **Chairman Seligman** stated she would like to thank Planner McDonough for all
15 the help he has given.

16
17 **Commissioner Brawley** stated he was stunned with the numbers even with all
18 the rain they have had.

19
20 **Planner McDonough** stated that is a good point.

21
22 **Chairman Seligman** recognized Commissioner Phillips.

23
24 **Commissioner Phillips** stated on the first page of his report there is an
25 interesting item upcoming in regards to the change and transition to the 2015
26 International Building Code (IBC) and the International Fire Code (IFC) you
27 state that Planning and Zoning will read the review. He was wondering if he
28 could express what he means by that.

29
30 **Planner McDonough** state he was sorry that should have said the Planning
31 and Zoning Department will read that review.

32
33 **Commissioner Phillips** asked did he miss read it.

34
35 **Planner McDonough** stated he miswrote it. He would not burden them all with
36 reading the IBC. He was looking for a little sympathy he will be reading those
37 codes on their behalf.

38
39 **Chairman Seligman** recognized Attorney Chappell.

40
41 **Attorney Chappell** stated as sort of a conclusion to his earlier presentation
42 this is the first time that they have had a closed session with these kinds of
43 issues. This is the first time this option is available based on what we saw
44 tonight he thinks the Commission should think about establishing rules in
45 respect to closed session for instance how many people does it take to request
46 a closed session should it be a majority and because of the due process
47 question is there something that says that closed sessions will take no longer
48 than "x" amount of time. So they have had two or three requests in a night and
49 if you have to make people wait an hour or two to go home and so forth in this
50 case there was a specific reason, but now that that is probably a usable
51 process for the Commission he would suggest what kind of rules that it wished

1 to make with respect to use of that that is convenient for the Commission and
2 the participants who are subject to those kinds of things.

3
4 **Chairman Seligman** stated they were getting their feet wet and was a good
5 learning process for all of them.

6
7 **Attorney Chappell** stated he is not complaining at all he's simply saying that
8 now they have this in their repertory of things they probably need to adopt
9 some policies so that everyone understands what the process is.

10
11 **Chairman Seligman** asked if he would propose some policies for them.

12
13 **Attorney Chappell** stated he is a technician and not a policy maker. If they
14 can tell him what they want a policy to be he will be happy to write it so that
15 everybody understands it, but he doesn't know what that policy ought to be
16 from their perspective. Suggestions he can put in words, but he is not the
17 policy guy.

18
19 **Chairman Seligman** asked if they need to have a public meeting or can they
20 discuss this with him privately.

21
22 **Attorney Chappell** stated that what they should probably do is to send him a
23 message or a call not as a group so it is not a public meeting. He will put those
24 together and make a presentation and let them work with it.

25
26 **Chairman Seligman** thanked Attorney Chappell.

27
28 **Commissioner Brawley** stated that if they do use it. He thinks there are
29 expectations on the part of the applicants and general public that want to hear
30 the discussion. There are all sorts of options maybe a little bit off putting for
31 varied reasons to use it. He thinks they do need rules if they use it, but his
32 general tendency is to use it as little as they can.

33
34 **Chairman Seligman** stated she agrees with that. Then asked if there were any
35 other comments and did anyone have questions and then moved onto the
36 informal discussion.

37
38 **9. COMMISSIONER'S INFORMAL DISCUSSION**

- 39
40
- 41 • Talked about the discussion they had and how it pertained to the
 - 42 Master Plan and how they had a tiny lot that had to go by rules that
 - 43 pertain to much larger lots.
 - 44 • Maybe start discussing the Master Plan.
 - 45 • Suggestion was made to have a workshop and do it in that context.
 - 46 • Have a poll if there is no business for the next meeting so they can
 - 47 have workshops about rules. Use the opportunity to use that time for
 - 48 work sessions.
 - 49 • Reminder about turning off microphones if they are not speaking.
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10. ADJOURNMENT

Chairman Seligman asked if there was a motion for adjournment.

MOTION: Commissioner Craig moved to adjourn the meeting at 9:42 p.m.

SECOND: Commissioner Tourville seconded the motion.

VOTE: the motion carried unanimously. (7-0)

APPROVED by the Planning and Zoning Commission of the Village Los Ranchos de Albuquerque this _____ day of _____, 2015.

ATTEST:

Tim Tourville, Secretary
Planning and Zoning Commission