

**APPROVED MINUTES
VILLAGE OF LOS RANCHOS
Planning and Zoning Commission
6718 Rio Grande Blvd. NW
Warren J. Gray Hall
May 9, 2017
7:00 P.M.**

Present:

STAFF

Administrator: Kelly Ward

Attorney: Bill Chappell

Planning Staff: Tim McDonough, Director

1. **CALL TO ORDER – Chairman Brawley** called the meeting to order at 7:00 p.m.

A. OATH OF OFFICE

1. Sandra Pacheco

Chairman Brawley welcomed the newest Commissioner Sandra Pacheco and asked Attorney Chappell to administer the oath of office.

- B. ROLL CALL** - Commissioner Craig, Commissioner Riccobene, Commissioner Eby, Commissioner Phillips, Commissioner Pacheco, Commissioner Tourville, Commissioner Brawley,

Chairman Brawley stated there was a quorum present for the meeting.

C. APPROVAL OF THE AGENDA

Chairman Brawley asked Planner McDonough if there were any changes to the agenda.

Planner McDonough stated there were no changes, however he would like to point out that when putting together the packets they failed to get a document in the packet related to the variance application. It was submitted in time to be in the packet but can't really tell you why it was not. However, he thinks it was an important document to consider. So he handed it out. And if you would like to take a few minutes to review the document that is certainly appropriate and when you feel comfortable to proceed we can proceed.

Chairman Brawley stated that while they are on the subject as to why there are documents not in the packet he asked if there was a survey of a licensed certified surveyor of the property with the location of the buildings in question.

Planner McDonough stated that not that he was aware.

Chairman Brawley asked if there was a motion to approve the agenda.

MOTION: Commissioner Eby moved approval of the agenda.

SECOND: Commissioner Phillips seconded the motion.

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

~~Unknown Speaker~~ **Gary Mulryan** asked the planner if he could describe the document.

Planner McDonough introduced himself. The document was from the attorney John Campbell, that they received on March the 10th. Then described what the document contained.

Chairman Brawley stated if there are any more questions from the floor please address them to the Chair and then we will relay the question.

2. PUBLIC COMMENT PERIOD

There was no public comment.

3. CONSENT AGENDA

A. Approval of the April 11, 2017 regular meeting of the P & Z Commission.

Chairman Brawley asked if there were any additions, changes or corrections to the April 11, 2017 meeting minutes. Hearing none he then asked if there was a motion.

MOTION: Commissioner Phillips moved to approve the minutes of the April 11, 2017 P & Z meeting.

SECOND: Commissioner Eby seconded the motion.

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

4. PUBLIC HEARINGS AND APPLICATIONS

- A. **V-17-02** A request by Isidro Castillo for a Variance from §9.2.7(E)(a)2. Side setback shall be fifteen (15) feet. Applicant requests a variance to allow for a 20" eave intrusion into the setback area. Property is located at 900 Devon Lane and is legally known as Tract 101-A of the replat of tracts 101, 1160A and 116-B, MRGCD Map NO. 27, as the same are shown and designated on the plat thereof filed in the Office of the County Clerk of Bernalillo County, New Mexico on July 16, 2007 in plat book 2007C, page 188, as Document No. 200910288. The property contains 1.399 acres more or less.

Chairman Brawley asked Planner McDonough to give his report.

Planner McDonough stated that they need to swear in any speakers.

Chairman Brawley stated that if there is anyone who wants to speak for or against this case please stand and be sworn in.

Attorney Chappell swore in those of the audience present who would be speaking before the Commission. And then recused himself from the hearing as he had a conflict of interest since he had done some work for Mr. Mulryan. The Village had Mr. Juan Flores represent them.

Chairman Brawley welcomed Mr. Flores.

Planner McDonough stated he felt they should take a short recess to let the Commission review the document.

Commissioner Tourville asked yes, please.

Chairman Brawley called for a recess until 7:15.

HOUSEKEEPING NOTE: THERE WAS A RECESS FROM 7:09 PM TO 7:15 PM.

Commission discussion started with statements that there is no legal survey of the property available. That the Commission will approve or disapprove this variance with questionable data. A suggestion was given that maybe the ordinance should give more power to the Planning Director to demand a land survey. As the Village densifies it will become more and more critical to make sure of the property line.

There was a request to hear the Planning Directors report so that they can make that determination. Questions about the legality of approving a variance retroactively were addressed to Attorney Flores, who stated it is alright to approve a variance after the fact depending on what the circumstances were at the time. The Commission needs to decide whether they will grant a variance.

Chairman Brawley asked Planner McDonough if he had any more to say.

Planner McDonough stated he would just give his report.

Chairman Brawley stated please do.

Planner McDonough gave his report ending with a recommendation of **approval** of the request for a Variance from §9.2.7(E)(2)(a)1. Front setback shall be: twenty-five (25) feet, and 2. Side setback shall be: fifteen (15) feet. To allow for the encroachment of the house eaves into the setback area.

Chairman Brawley asked if there were any comments or questions for the Planning Director.

After acknowledging he was finished with his report Planner McDonough gave a last word of how this has become a conflict where contractors are coming in having worked mostly in Albuquerque and are using Albuquerque standards.

The Commission had a couple of questions first was for clarification on the east boundary setback. The setback read one hundred ninety feet four inches (190' 4"). The question was asked was it clear in the code its not just the wall line but the setback requirement applies also to the eaves. Is that explicitly stated anywhere in the code. The A-1 code states from the property line to the nearest structure. It was noted that historically that is interpreted as the roofline.

Speakers for the discussion:

Isidro Castillo, 900 Devon Lane NW

Michael Baird, 901 Devon Lane NW

Gary Mulryan, 901 Leatherwood Lane NW

Chairman Brawley called the applicant forward and asked him to state his name and address.

Isidro Castillo 900 Devon Lane NW gave the history of what he had submitted and how he had to made adjustments to the roof. Explaining that he mostly built houses in Albuquerque and he honestly wasn't trying to take twenty-two inches (22"). Adding he would plant trees along the property line.

Chairman Brawley asked if there were any questions for Mr. Castillo.

Questions asked of Mr. Castillo were as follows: How did he determine where the property line was? He answered that he took the fence line as the property line. Did he have a survey of the property? Mr. Castillo stated he did not. It was clarified that on a real estate contract it is not required to have a survey. If he had known before that the eaves were encroaching what would he have done. The answer was it would have been easy to correct the problem.

Chairman Brawley asked for anyone who was in favor of the application to come forward and state their name and address.

Michael Baird 901 Devon Lane NW stated he doesn't know why the survey was not transferred to Mr. Castillo. He remembers that the property line was actually on the other side of the fence. The house is fine where it is. He developed that property in 2007 and he remembers the pins were on the other side of the fence when they did the survey approximately ten to twelve inches (10-12").

Chairman Brawley asked if there was anyone who was against the application to come forward and state their name and address.

Gary Mulryan 901 Leatherwood Lane NW started with a history of how he warned the planning staff back in July of last year. And how he and his family are being penalized when they did nothing. He noted that the variance request was dated in March and six weeks went by. The Village does not have the

authority to grant a retro active variance. He then quoted from the zone code and that the Commission did not grant a retro active variance recently on precisely the same reason referencing the Martin fence height variance denial. After clarifying his address and where it is he made additional statements about made up language in the planning report and how two other letters he wanted placed in the record were denied because he didn't meet the deadline. He stated that no where does it mention a deadline, not in the public notice, not on the application.

Commission questions were as follows what made him think his property value was depleted. Mr. Mulryan stated he doesn't have that fifteen foot (15') setback. Mr. Mulryan was asked if he was confident where the property line was. He stated he was not.

Chairman Brawley thanked him and then stated at this time he would give the applicant a chance to rebuttal.

Michael Baird stated he can't see where this is a big issue. It might be if the wall was in the setback, but it is not.

Planner McDonough asked if he could answer some of the questions raised. Then read from the zone code about the height of a building. Stating it is not limiting the height of a building it is referencing the fact anything over the seventeen feet (17') requires that area to be included in the Floor Area Ratio. A two story building is regulated to only twenty-six feet (26'). As to why it took so long from the time Mr. Castillo requested the variance it was because the Commission had asked that as much information as possible should be included in the packet so that they are fully informed. We asked that he do as much as possible to comply. Mr. Castillo already had legal help with his submittal.

Commissioner Craig asked what would this do to the Floor Area Ration (FAR)?

Planner McDonough explained how that is done by taking that plane and adding that square footage to the Floor Area Ratio.

Chairman Brawley asked if it affected his FAR?

Planner McDonough stated it is no where near his FAR.

Chairman Brawley clarified it's no where near the limit.

Planner McDonough stated that was correct.

Chairman Brawley stated he is still concerned about where the property line is with no survey and he asked what the other Commissioners thoughts were about this.

Commissioner Riccobene had no comments.

Commissioner Phillips stated he was with Commissioner Brawley he appreciated the presentations, but he was all for holding off until they have this piece of information.

Commissioner Craig stated he thought they needed a survey and they don't look at costs. We need to look at our code.

Chairman Brawley stated that if they deny this and he has to redo the eaves and a survey proves that it's not then he has to redo the project again. That is not good business.

Commissioner Eby stated she is ready to vote on it because whatever the encroachment is the applicant did everything right. He went and got his plans approved unlike the previous variance who did not get permission first. She thinks this is a mistake the Village made and is ready to vote on it.

Chairman Brawley stated that he thinks there is a way to fix this that could be helpful in some ways and in some ways not. But it comes down to the fact that they don't know what they are approving.

Commissioner Craig stated that as a contractor Mr. Castillo has that added responsibility of doing it right. He would still like to see a survey before making a decision.

Commissioner Pacheco had no comments.

Commissioner Tourville stated that Mr. Castillo did the right things and did not seem to do anything maliciously and as a licensed real estate professional he doesn't see anything that would have degrade his neighbor's property value not to the extent his neighbor says it is. And as for the mechanicals in the setback that's all over the Village be it HVAC or pool equipment.

Chairman Brawley asked if there was a motion.

Commissioner Riccobene stated that burden is put on the contractor and he seems to have done everything correct and there is no doubt that they need to tighten up, that this is a throwback from when roofs were flat and had no eaves. He is ready to move forward he doesn't see a huge impact to the neighbor.

Commissioner Pacheco had a question would a survey change what is right now.

Chairman Brawley stated that it could in a variety of ways, but as a Commission they are here to interpret the ordinance. Does it apply and if it does then they vote one way and if it doesn't apply or they think there is significant reason other than cost then it shouldn't apply. They can grant a variance with conditions if they like, but it would be remiss on their part not to look at the ordinance and try to understand what it says. Where to determine if this is a hardship or not. That's how they grant a variance on a hardship and the hardship can't be money.

Commissioner Riccobene asked are we talking about moving the entire structure six inches. The eaves are a couple of inches in and the wall is a couple of inches in.

Commissioner Brawley stated that the wall would be a major issue. The eaves are an aesthetic problem.

Commissioner Eby stated if the wall is within six inches (6") is the issue and money can't be the hardship. If Mr. Castillo had come to us before and asked for this variance they probably would have said no. The house is built now and the hardship does include the significant costs of altering the building. And if the wall is in the setback that's even more of a hardship. And the delay in being able to inhabit the house is a hardship. She hasn't been on the Commission that long but all those issues are hardships.

Attorney Flores stated that first of all the ordinance does not define undue hardship nor hardship. And this section states unnecessary hardship and then lists six (6) items. The reference to financial loss or gain is only found in number four. What Planner McDonough was purposing was number five and six. Number five states a variance only enough to relieve the hardship. That statement uses only hardship it doesn't use unnecessary hardship. The Commission can make the decision not just on gain or loss.

Chairman Brawley thanked Mr. Flores.

Commissioner Riccobene stated that the circumstances are that he was given permission by the Village.

Chairman Brawley stated yes.

Attorney Flores stated the plans Mr. Castillo submitted speaking as an attorney there is fine print. The plans submitted actually contain a notation the house setback fifteen feet (15') that was what was approved, but the notation says all measurements are to the wall. And then there is a drawing that shows the eaves extending beyond the wall. What Mr. McDonough is saying was it was there and they made a misstep. That's the dilemma it was no fault of the applicant. The note is there and the drawing showing the eaves sticking beyond the wall and the length of those eaves.

Chairman Brawley thanked Mr. Flores and asked if there were any more questions. And then asked if there was a motion.

Commissioner Eby move to approve the variance as stated in the Planner's report. Then stated maybe we should see if all the Commission is ready to vote on this tonight.

Chairman Brawley stated there were enough members willing to vote.

The Commission had a short discussion as to how the motion should read and what was requested in the variance application. After clarifying that it was for the eaves only the motion was then made.

MOTION: Commissioner Eby moved to approve a Variance from §9.2.7(E)(2)(a)1. Front setback shall be: twenty-five (25) feet, and 2. Side setback shall be: fifteen (15) feet; to allow an encroachment of the roof eaves into the setback area, with the following Findings:

(a) The variance is in conformance with the goals and policies of the Village Master Plan;

- (1) It is not contrary to the public interest; the variance is extremely minor on a residence set back from public view.
- (2) Owing to special conditions, a literal enforcement of this Ordinance will result in unnecessary hardship.

The only remedy beyond a variance would be to move the entire house twenty-four inches north and east, if feasible, or to reconstruct the roof to eliminate the eaves, both of which will result in unnecessary hardship.

(b) For purposes of this section, enforcement of this Section shall be deemed to cause unnecessary hardship if:

- (5) The development proposed in the variance differs from that allowed in this Ordinance only enough to relieve the alleged hardship; or

The Variance request is only to allow the encroachment of the eaves and not the reduction of the overall setback distance.

- (6) The alleged hardship is such that relief is justifiable in accordance with the goals and policies of the Master Plan.

2020 Master Plan Section 2 Village Form 2.1.1 Objectives, Neighborhoods: Maintain development consistent with the unique qualities of each area throughout the Village.

2.1.2 Policies and Actions Steps Policy A. Maintain the corridors and character areas of the Village as distinct sectors or neighborhoods, identified by the unique characteristics of each.

Policy B. In each of the character areas, preserve the unique characteristics by recognizing and continuing the traditional land development patterns in the character areas, specifically with respect to:

- Prevalent land utilization
- Lot patterns

Therefore, the Variance request meets the requirements of Section 24(E) (a) (1) and (2); and (b) (5) and (6).

SECOND: Commissioner Tourville seconded the motion.

ROLL CALL VOTE: Commissioner Craig-No; Commissioner Riccobene-Yes; Commissioner Eby-Yes; Commissioner Phillips-No; Commissioner Pacheco-Yes; Commissioner Tourville-Yes; Commissioner Brawley-No.
The Vote carried with a (4-3).

HOUSEKEEPING NOTE Mr. Flores excused himself.

5. OLD BUSINESS

A. Election of Officers 2017

Chairman Brawley asked if there was a nomination.

Commissioner Craig moved to retain current officers.

Chairman Brawley stated there is a motion on the table to retain the current officers. Mr. Brawley as chair, Mr. Phillips as Vice-Chair and Mr. Tourville as Secretary.

Commissioner Phillips seconded the motion.

Vote: carried with a vote of (6-1). Commissioner Brawley voting no.

HOUSEKEEPING NOTE THERE WAS A SHORT RECESS WITH THE COMMISSION RECONVENING AT 9:05 PM.

The Commission had a short discussion on what they can do about houses built on the setback line. After suggestions and questions no action was taken and they moved onto the next item.

B. Discussion and action on text amendments to the Commercial Zoning Code

Discussion was on what they have done so far on the C-1 zone. That it permits urban mixed use, but doesn't limit it as in the V-C zone. It makes for a transitional zone. There was a consensus to remove the maximum dwelling unit area. They talked about the formatting and changing the wording especially the word "shall". Then there was discussion of building width the maximum at sixty-two feet (62'). Susan Henderson will provide language about the Acequia and parcels.

6. NEW BUSINESS

There was no new business.

7. REPORTS

A. PLANNING DEPARTMENT REPORT

The report included an update on the 4th Street Project, and Planner McDonough has been working with Attorney Chappell on code revisions. The intern Karlie Gedig has agreed to continue with the Village. Planner McDonough received his Flood Plain Manager certification and they have had a lot of questions from businesses that are

interested in opening in the Village.

9. COMMISSIONER'S INFORMAL DISCUSSION

There was no informal discussion.

10. ADJOURNMENT

MOTION: Commissioner Craig moved to adjourn at 10:05 p.m.

SECOND: Commissioner Phillips seconded the motion.

VOTE: carried unanimously (7-0).

**APPROVED as amended by the Planning and Zoning Commission of the Village
Los Ranchos de Albuquerque this 13th day of June, 2017.**

ATTEST:

Tim Tourville, Secretary
Planning and Zoning Commission