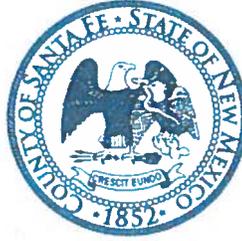


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. 15-5300

APPEAL

**DANIEL ERNEST GALLEGOS AND DIANA LYNN GAETZ
JOSEPH M. KARNES, AGENT**

ORDER

THIS MATTER came before the County Development Review Committee (CDRC) for hearing on November 19, 2015, on the Application of Daniel Ernest Gallegos and Diana Lynn Gaetz (Appellant) for an Appeal of the Land Use Administrator's decision to deem the submittal for a Lot Line Adjustment Application (Case# 15-3016) incomplete due to a lack of proof of legal access to the subject property. The CDRC, having reviewed the Application, supplemental materials, staff reports, and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Appellants Appeal the Land Use Administrator's decision to deem the submittal for a Lot Line Adjustment Application (Case# 15-3016) incomplete due to a lack of proof of legal access to the subject property.

2. The Property is located at 7 Lugar de Pacifica, within Section 9, Township 19 North, Range 9 East (Commission District 1).

3. Daniel Ernest Gallegos and Diana Lynn Gaetz acquired the Property by warranty deed, recorded on September 10, 2012, as instrument # 1681047 in the records of the Santa Fe County Clerk.

10. Noticing requirements were met as per Article II, Section 2.4.2 of the Santa Fe County Land Development Code. In advance of a hearing on the Appeal, the Appellant provided a certification of posting of notice of the hearing, confirming the public notice posting regarding the Appeal was made for twenty-one (21) days on the property, beginning on October 26, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on October 29, 2015, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailings of notices of the hearing were also contained in the record for all adjacent property owners.

11. The applicable requirements under the Santa Fe County Land Development Code, Santa Fe County Ordinance No. 1996-10, (Code) which govern this application are:

a. Article II, Section 2.3.4b, Appeal of Code Administrator Decision under Section 2.3.1 to the County Development Review Committee, of the Code states:

Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County Development Review Committee shall make and file its decision approving or disapproving the application or approving the application within conditions or modifications.

b. Article III, Section 2.4.2a (3), Types of Plats, of the Code states:

Lot Line adjustment is the graphic representation and legal description of an adjustment, alignment, or movement of a parcel, lot, or tract boundary, which does not constitute a subdivision or division of land.

c. Article III, Section 2.4.2b(3)(a), Submittals and Reviews, of the Code States:

The following submittals and review shall apply when an application for a development permit involves the types of plats listed above in Section 2.4.2a.

d. Article III, Section 2.4.2b(3) (a), Roads and Access-On-site and Off-site, of the Code states:

That all lots created under this Section [2.4.2] shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services whether by a road meeting county requirements constructed within an easement and utility easement or by direct access to a public right-of-way.

Attest:

Geraldine Salazar, County Clerk

Approved as to form:

A handwritten signature in cursive script, appearing to read "Gregory S. Shaffer", written over a horizontal line. The signature is written in black ink.

Gregory S. Shaffer, County Attorney

Member Gonzales asked why the Applicants were not waiting for the new code and Mr. Karnes said they would prefer to obtain the variance rather than continue with an outstanding violation.

Member Gonzales asked whether the variance would be moot once the code is adopted. Technically, yes, stated Andrea Salazar, Assistant County Attorney.

Chair Katz invited anyone present who wanted to speak on this item. There were none and the public hearing was closed.

Member Anaya thanked the applicants for doing the right thing. He moved to approve the variance for CDRC Case #V 15-5260 with the staff-imposed conditions. The motion was seconded by Member Martin and passed by unanimous [7-0] voice vote.

C. CASE # 15-5300 Daniel Gallegos and Diana Gaetz Appeal. Daniel Ernest Gallegos and Diana Lynn Gaetz, Appellants, (Sommer, Karnes & Associates, LLP), Joseph M. Karnes, Agent, are appealing the Land Use Administrator's decision to deem the submittal for a Lot Line Adjustment Application (Case# 15-3016) incomplete due to the lack of proof of legal access to the subject property. The property is located at 7 Lugar de Pacifica, within Section 9, Township 19 North, Range 9 East (Commission District 1)

[Exhibit 1: 9/1/1992 US Department of the Interior/BIA letter to Northern Pueblos Agency re: Approval of sale of land to Marian G. Barnes from Pueblo of Nambe]

Case Manager Mike Romero read the case caption and presented the staff report as follows:

“The Appellants request an appeal of the Land Use Administrator’s decision to deem the submittal for a Lot Line Adjustment Application incomplete due to the lack of proof of legal access to the subject property.

“The Appellants state the access to the existing Gallegos property from CR 113S crosses a small area of land owned by Nambe Pueblo. They assert this the situation has existed for many years and that the pending Application for a lot line adjustment has no effect on this access. The Appellants provided multiple plats, deeds, and a letter from the United States Department of the Interior with their Application.

“County staff reviewed the plats, deeds, and letter and could not find proof that the subject property has legal access across the small area of land owned by Nambe Pueblo. Further, County staff has determined that the plats, deeds, and letter do not contain language in the documents granting the Applicant legal access through tribal property.

“The Appellants further state; ‘It is their position that these sections do not require proof of legal access for a lot line adjustment application. Article III, Section 2.4.2a(3) states that a lot line adjustment does not constitute a subdivision or division of land and is required to be prepared by a licensed surveyor. Article III, Section 2.4.2b identifies what submittals are required for such Applications. Neither of the foregoing sections contains requirements regarding access. Article III, Section 2.4.2b(3)(a)(1) states, in relevant part, “all lots created under this Section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services whether by a road meeting county requirements constructed within an easement and utility easement or by direct access to a public right-of-way. This section does not apply to the Application because no lot is “being created under this Section.” Since no lot is being created, the requirements of the sections, by their terms, do not apply.

“Staff Response: The request for a Lot Line Adjustment for Daniel Ernest Gallegos, Diana Lynn Gaetz, Aresenio Trujillo, Maryann Garcia, Manuel Garcia, Nanette Mayfield and Daniel Mayfield has been deemed incomplete.

“Growth Management staff has reviewed the Application (Case # 15-3016), for compliance with pertinent Code requirements and found that the Application for a Lot Line Adjustment was not in compliance with Code criteria because it is incomplete due to the lack of the Applicant providing legal access to the property.”

Mr. Romero said staff recommends that the CDRC uphold the Land Use Administrator’s decision to deem the submittal for lot line adjustment application incomplete due to the lack of proof of legal access to the subject property from the Pueblo of Nambe. The applicant will be required to provide documentation from the Pueblo of Nambe granting legal access.

Member Gonzales asked whether the code requires legal access for a lot line adjustment. Legal access to the property is required, stated Mr. Romero and he went on to confirm the subject property is a legal lot of record. Lugar de Pacifica crosses the Pueblo of Nambe property and there is no documentation from the pueblo that there is legal access to the properties.

Ms. Lucero said the code section that governs lot line adjustments requires that the applicant provide adequate access for ingress/egress, utility service, fire protection and emergency services by a road meeting County requirements constructed within an easement or by direct access to a public right-of-way. The applicant has not demonstrated that they have that access easement from the County road to the subject lot in question.

Noting no lot was being created, Chair Katz asked why the applicant’s case revolved around access. No one is getting access any differently than what they already have and questioned why the access requirement was being imposed.

Ms. Salazar referred to Article III, Section 2.2 where a lot line adjustment is defined as a plat review and plat reviews are subject to the submittal and review requirements of Article III, Section 2.4.2b. The code requires lot line adjustment to have these reviews.

Ms. Lucero clarified that there is a gap within the roadway that is owned by the pueblo and then the County roads continues again.

Member Gonzales said approving this lot line adjustment will not grant anyone access across tribal property that is currently occurring. He asked Fire Marshal Patty about the access. Fire Marshal Patty said the department does not deal with easements.

Member Gonzales asked a series of questions that obtained the following responses from Mr. Romero: CR 113 is paved and does cross a river; there are multiple properties that access via Lugar de Pacifica and those properties are legal lots of record.

Using a map and the plat provided within the packet, Staff identified the area lacking legal access.

Member Booth asked about how the letter from the Department of Interior relates to the case. Mr. Romero said the applicant provided the information to staff and hoped it proved legal access through the pueblo. The letter was reviewed by staff and found to lack clear proof of access.

Joseph Karnes, counsel for the applicants, said the code only applies to lots created. This lot was created decades before the code came into effect and therefore the section relied on by staff does not apply to this case.

Mr. Karnes said Daniel Gallegos and Diana Gaetz, as well as the other affected property owners were available for questions. Also present in support of the application were Pedro Garcia and Melissa Mascaranas. The property came into ownership by the applicants' mother, Mrs. Barnes, in 1972. In 1992 an issue arose with the Pueblo of Nambe and the applicants' mother went through a process with the pueblo and the US Department of the Interior to obtain a .257-acre parcel in between the property and CR 113S. The sale of the property went through the NEPA and came up with a recommended approval of the sale based on a finding of no significant impact.

Mr. Karnes said the applicants have assiduously tried to protect their property and investment by ensuring they have clear title to the property. The 1992 letter was intended to resolve the access issue. The .257-acre piece was to enable them to reach the County road.

The applicants received the property from their mother in 2012 and realized there were some boundary issues both on the east and west side. The applicants have spent many hours clearing up the boundary issues and ensuring clear title to the properties in the area.

Mr. Karnes said surveyor Phil Wiegel noticed there was a postage stamp, 40x50 square foot piece of property that no records exist on. The US Department of the Interior said it was part of the road in 1992.

The key here is that the lot line adjustment plat has nothing to do with access, stated Mr. Karnes. Further, the lot in question was not created under the section of code that staff is citing. He offered that the County could place a note on the plat stating that approval of the plat does not affect, change or guarantee legal access.

Referring to the lot line adjustment plat, Chair Katz asked whether CR 133S was on pueblo land and Mr. Karnes confirmed it was. Further, he said they were unable to locate documentation showing the County has easement for that road. From reviewing the plat, Chair Katz suggested the road may have originally been more to the southeast than it is today.

Duly sworn, Phillip Wiegel, surveyor, said he found the survey done for the Department of Interior when Ms. Barnes purchased the property from Nambe Pueblo [*Exhibit 1*] and the boundary appeared to be closer to the edge of what was considered the road. He said it appeared it was the intent of the survey to take the property up to what was the considered the County road at the time. The CDRC reviewed the plat provided by Mr. Wiegel.

There were no other speakers on this case and Chair Katz closed the public hearing.

Ms. Lucero confirmed that staff's concern is that the easement fails to connect to the County road. Chair Katz suggested the boundary of the County road could be the boundary of the subject project. He proposed the gap had to do with the usage of the road but the survey appears to clarify the issue. Ms. Lucero reviewed the plat and said it was unclear whether the boundary for parcel D actually goes up to the County road.

Member Booth moved to approve the appeal of the Land Use Administrator's decision with the staff conditions and place a note on the plat that this does not affect, change or guarantee legal access. Member Gonzales seconded and the motion passed by unanimous [7-0] voice vote.

- D. CDRC CASE # V 15-5270 Kathleen Kaupp Variance. Kathleen Kaupp Applicant, Michael Henry, Agent, request a variance of Article III, Section 23.6b.2 (Height restrictions for dwellings or residential accessory structures) of Ordinance 1996-10 (the Code) and Section 3.8.1.d of Ordinance No. 2000-13 Tesuque Community Zoning District (Height on slopes and ridgetops) to allow a 365 square foot accessory structure addition to exceed 14 feet on a ridgetop on 2.82 acres. The property is located at 7 Thorpe Way, within the Bishops Lodge Estates Subdivision, within Section 6, Township 17 North, Range 10 East (Commission District 1)**
[Exhibit 2: David Dougherty email to County Staff opposing the variance; Exhibit 3: Santa Fe County Fire Department memo]

Case manager, John Lovato presented the staff report as follows: