

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. V15-5150
VARIANCE
JUDE TERCERO
MARIA CERQUERA, AGENT

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on September 8, 2015, on the Application of Jude Tercero (Applicant) for a variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 acres, and a variance of Article V, Section 8.2.1c, Local Roads, of the Santa Fe County Land Development Code, Ordinance No. 1996-10 (Code) because Paseo de Tercero which services the property does not meet local road standards which require two ten foot driving lanes, a minimum right-of-way of fifty feet, and an all-weather driving surface. The BCC, 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 subject to conditions, and makes the following findings of fact and conclusions of law:

1. The Applicant requested a variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 acres; and a variance of Article V, Section 8.2.1c, Local Roads, of the Code because Paseo de Tercero which services the property does not meet local road standards which require two ten foot driving lanes, a minimum right-of-way of fifty feet, and an all-weather driving surface.

2. The Property is located within the Traditional Community of Agua Fria, at 2293 Paseo de Tercero. The subject lot was created in 1991, by way of Family Transfer and is a legal lot of record.

3. The Applicant acquired the real property by warranty deed recorded on the 23rd day of June, 1998, in Book 227, Page 048, in the records of the Santa Fe County Clerk.

4. Currently, there are two homes on the property. The main residence was constructed after 1992 (permit# 94-1335), which is approximately 2,500 sq. ft. and is served by City of Santa Fe Sewer and a private well. The second dwelling unit was permitted in 2012 (permit#12-442), which is approximately 1,440 sq. ft. and is served by City of Santa Fe Sewer and the Agua Fria Community Water System.

5. The Property is located within the Traditional Community of Agua Fria and the minimum lot size per Code is 0.75 acres per dwelling unit. Lot size can further reduced to 0.33 acres per dwelling unit with community water and community sewer.

6. Noticing requirements were met as per Article II, Section 2.4.2, of the Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming the public notice posting regarding the Application was made for twenty-one (21) days on the property, beginning on 19th day of June 2015. Additionally notice of hearing was published in the legal notice section of the Santa Fe New Mexican on June 25, 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.

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

- a. Ordinance No. 2007-2, Traditional Community of Agua Fria Zoning Ordinance, Section 10.6, Density and Dimensional Standards, identifies, "minimum lot size per the Code is 0.75 acres per dwelling unit. Lot size can be further reduced to 0.33 acres per dwelling unit with community water and community sewer."

b. Article V, Section 8.2.1c, Local Roads, of the Code States:

A local subcollector road has two (2) twelve (12) foot driving lanes, serves 31 to 60 dwelling units or lots, and carries an average daily traffic volume of 301 to 600 vehicles with a minimum right-of-way of fifty (50) feet. A local subcollector road has a six (6) inch minimum surface thickness of crushed gravel base course material, provided it can be shown that such minimum thickness is adequate based on subgrade soil conditions: a plasticity index of eight (8) to twelve percent (12%) shall be provided. A local lane, place or cul-de-sac road serves 0 to 30 dwelling units or lots and carries an average daily traffic volume of 0 to 300 vehicles with two (2), ten (10) foot driving lanes with a minimum right-of-way of fifty (50) feet. Local lanes, places and cul-de-sac roads shall be constructed with the same sub-grade and base course specifications as the subcollector road. See also Appendices A, B.1, B.2 and B-3 and Section 8.3 of this Article.

c. Article II, Section 3, Variances, of the Code states:

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the [BCC] and the [BCC] may vary, modify or waive the requirements of the Code upon adequate proof that compliance with a Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety.

d. Article II, Section 3.1 concludes that, “[i]n no event shall a variance...be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified.”

e. Article II, Section 3.2 states, “[i]n no case shall any variation or modification be more than a minimum easing of the requirements.”

8. The Applicant obtained correspondence from the Agua Fria Community Water System and from the City of Santa Fe Waste Water Division asserting that the water association will make water available for the proposed third dwelling unit at 2293 Paseo de Tercero and that city sewer is available for connection. Currently the Applicant is lacking approximately .448 acres in order to meet Code requirements, with existing water and sewer. The Applicant has agreed to hook up community water to the main residence which will lower the acreage requirement for the main residence to .33 acre. This will bring density to accordance with the Code for each dwelling.

The Applicant has received a letter from the Agua Fria Community Water system asserting that water is available for the property.

9. The Applicant stated that a variance is needed in order to develop the remaining portion of the property. The Applicant intends to place an additional home on the property both to provide additional income and to give to his children homes when they meet adulthood. The Applicant intends to give each child a dwelling unit at that time. The road Paseo de Tercero, which services the property, fails to meet local road standards, which require two ten-foot driving lanes, a minimum right-of-way of fifty feet and an all-weather driving surface. Currently Paseo de Tercero does not meet these standards because it is a sixteen (16') foot wide dirt road with a twenty (20') foot entrance, and the exit and utility easement is eight-hundred and seventeen (817') feet from Rufina to the end of the Applicant's property line. Paseo de Tercero can be accessed through Rufina or by Agua Fria Road.

10. At the public hearing before the BCC on September 8, 2015, staff recommended denial of the Application, and suggested the following conditions if approval were granted:

- a. The Applicant shall comply with all applicable water conservation measures. (As per Ordinance No. 2002-13).
- b. The Applicant must obtain a Development Permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, Section 2).
- c. The placement of additional dwelling units is prohibited on the property. (As per Ordinance No. 2007-2, Section 10.6).
- d. The Applicant shall comply with all Fire Code requirements and Fire Prevention Division requirements at the time of Development Permit Application. (As per 1997 Fire Code and NFPA Life Safety Code).

e. The Applicant shall provide proof that the main residence is connected to the Agua Fria Community Water System prior to issuance of the Development Permit for the third dwelling unit.

f. The Applicant shall provide a Road Plan showing proposed improvements to Paseo de Tercero for review and approval. The road must be built out to 20' in width, where possible, and must include pull outs as determined by the County Fire Marshal. All road improvements must be constructed prior to the issuance of the building permit for the third dwelling unit.

11. In support of the Application, the Applicant stated he agrees with the conditions.

12. At the public hearing, no one from the public spoke in opposition or in favor of the Applicant's request.

13. Granting this variance request will not result in conditions injurious to health or safety, it will not nullify the purpose of the Code, and it is a minimal easing of the Code.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 acres and Article V, Section 8.2.1c, Local Roads, of the Code for Paseo de Tercero which services the property and does not meet local road standards, subject to the staff conditions set forth in paragraph 11. The motion to approve the variance passed by a unanimous 4-0 vote, with Commissioners Stefanics, Holian, Roybal, and Chavez voting in favor of the motion. Commissioner Anaya was not present for this vote.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ____ day of _____, 2015.

By: _____

Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

language. So if I can get the permits so that I can start the utility work and then fix the road when I'm done -- because I don't want to do it twice is what I'm saying.

COMMISSIONER CHAVEZ: Right. Well, I want to defer that question to staff because it is spelled out in one of the conditions of approval but I'm not sure -- I want staff to respond to that question.

VICKI LUCERO (Building & Development Services): Mr. Chair, just to clarify, the condition says that the requirements will need to be completed at the time of development permit application. So we would actually issue the permit for the utilities and for the site improvements before we issued the permit for the residence. So we would issue two separate permits.

COMMISSIONER CHAVEZ: Okay. So then if I read the condition 6 it says all road improvements must be constructed prior to the issuance of the building permit for the third dwelling. So you're saying that the permits for road improvements will be separate from the building permit.

MS. LUCERO: That's correct, Mr. Chair.

COMMISSIONER CHAVEZ: So, Mr. Tercero, does that help? That would help you, right?

MR. TERCERO: Yes. Thank you.

COMMISSIONER CHAVEZ: Sure. So then I'll close the hearing portion and bring it back to the Commission. I'll go ahead and make a motion to approve this request. On this case with staff recommendations. So I want to ask the applicant again. You agree with the six staff recommendations? [Mr. Tercero nods in the affirmative]

COMMISSIONER ROYBAL: I'll second.

COMMISSIONER CHAVEZ: Okay. There's a motion and a second. Any further discussion? Seeing none.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

- VIII. C. 2. CDRC CASE #V 15-5160 Susan Stokes. Susan Stokes, applicant, Requests a Variance of Ordinance No. 2007-02, Section 10.6 (Village of Agua Fria Zoning District, Density And Dimensional Standards) to Allow the Creation of Three (3) Lots (Lot 1-1.642 Acres, Lot 2-1.010 Acres, and Lot 3-1.174 Acres) on 3.826 Acres, More or Less, Utilizing an On-Site Well and Septic System rather than Community Water or Sewer. The Property Lies within the Agua Fria Low-Density Urban Zone (AFLDUZ) Where the Minimum Lot Size is 2.5 Acres per Dwelling. The Property is Located within the Village of Agua Fria Zoning District at 4745 Rivers Edge Lane, within Section 32, Township 17 North, Range 9 East (Commission District 2)

VICENTE ARCHULETA (Case Manager): Thank you, Mr. Chair. On

about this case, about the future in the code when we come up with cases where the 20 foot is not going to work, what provisions do we have in the new code?

PENNY ELLIS-GREEN (Growth Management Director): Mr. Chair, Commissioner Stefanics, I'm not 100 percent sure I understand the question but I think the 20 foot is the reduced amount allowed in this code. The standard in the new code at the moment is the full 38-foot easement and so I don't think there is that exception for family transfers, and then it would be a request for a variance, a similar kind of process.

COMMISSIONER STEFANICS: Okay. So what I'm actually suggesting, Penny, is that I think we're going to need to add some – and I don't have the solution – I think we're going to need to add some specific language, instead of just a variance for anything, maybe there needs to be some specific suggestions for when something cannot be met. Because you have a lot of pre-existing lots and legal non-conforming lots. So I think that instead of having hundreds – and I think it will be hundreds over the future of variances, maybe we need to come up with some language. So I'm just asking you to think about that. Okay?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, I would add that at some point there is going to be kind of like a minimum that is required for public safety. And whether that is the 38-foot, the 20-foot or 18-foot could be case by case depending on the length of the driveway or roadway, but at some point it is going to be a public safety issue and then I think that the staff position would be that then the land shouldn't be further divided. But where that cutoff would be is something that we would need to discuss.

COMMISSIONER STEFANICS: Well, we might also look at things like homeowners signing release of liability for the County to protect – if somebody wants to live in an area – and I'm not talking about our heavily populated areas but if somebody wants to live in an area that is not conducive to having a wider road because it might go off the edge of the mountain or whatever, maybe we need to look at some liability releases or waivers or something.

MS. ELLIS-GREEN: Okay.

COMMISSIONER STEFANICS: Okay. It's just a thought to look at. Thank you. Thank you, Mr. Chair.

COMMISSIONER CHAVEZ: Okay, so I think we've covered questions from staff. I want to now ask the applicant if they have anything that they want to add, and if there's anyone else that would like to speak in support or opposition to this request please come forward at this time. The applicant, you're welcome to add anything that you would like to at this time.

[Duly sworn, Jude Tercero testified as follows:]

JUDE TERCERO: The only thing I'd like to add is we went through the other hearing, so we're already going to add the water, so we've already complied with that. Talked with the Fire Marshal and willing to do whatever they need to do that we can do. The part that I'm kind of not clear about is if I can't get the permit before these requirements are – because I have to tear up the road to run the water, so I would like to get the permits so I can do the work but if I have to fix the road before I get the permits then I'm going to do double work, which is going to cost me. So I didn't understand that

driveways section. And if we were to approve this variance with staff recommendations, with staff conditions, would that mean that they would have to comply with these requirements?

MR. ROMERO: Mr. Chair, Commissioner Holian, that is correct. In the staff report that has been provided one of the conditions of approval actually is – which would be #6, if you look at #6, if you look at condition #4 and you look at condition #6 they do mention the fact that #4 does state that the applicant shall comply with all fire code requirements and the Fire Prevention Division requirements at the time of development permit application. Number 6 does state that the applicant shall provide a road plan showing proposed improvements to Paseo de Tercero for review and approval. The road must be built out to 20 feet in width where possible and must include pull-outs and determined by the County Fire Marshal. All road improvements must be constructed prior to the issuance of a building permit for the third dwelling unit.

COMMISSIONER HOLIAN: Okay. Thank you.

COMMISSIONER CHAVEZ: So, Mr. Romero, so let's go back to that language in condition 6. The road must be built out into 20-foot width where possible. And I think in the village where possible – there's going to be a lot of limitations, a lot of constraints on right-of-way because of how the settlement pattern have evolved. And so I think in some cases it's going to be almost impossible to create that 20-foot width where there's no right-of-way, there's no easement. There just isn't any room to move. So I think we really need to take that to heart where it says where possible, where it makes sense or where it's feasible.

MR. ROMERO: Correct.

COMMISSIONER CHAVEZ: So I just wanted to go back to that language for just a minute.

MR. ROMERO: Mr. Chair, that is correct. I went out there; Fire's been out there. We conducted site visits and there are areas that aren't able to be built out to 20 feet. There is a 20-foot easement that is an access and exit easement on that road, but that is correct. Where available they would have to provide that 20-foot driving surface for fire.

COMMISSIONER CHAVEZ: And I don't know if the pull-outs would be feasible or practical either, but this condition also goes on to state that all road improvements must be constructed prior to the issuance of the building permit for the third dwelling unit. So again I think within reason, we could expect for some road improvements but again, I think that there are going to be some limitations there so I'm not sure how that's going to work. Anyway, those are I think my comments. Are there any other questions or comments to staff? Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. In all full disclosure, I'm going through the same kind of discussion on my own road, and I'm wondering – this isn't so much about this case and I'm wondering if Penny is here, who could talk a little bit about this in the Land Use Code we're going to be looking at. Similar to Commissioner Chavez' comments about the feasibility, what happens in our code to come, that we've approved in principal, when there are difficulties to accomplish this? The 20 feet? Because I'm looking at the future, Penny; not about this case. Not

lacking approximately .448 acres in order to meet Code requirements.

During the CDRC meeting, Committee Member Katz remarked that if the main residence were on community water, the amount of land required in order to place a third dwelling unit would be significantly less, and would bring the land area much closer to the necessary acreage. Mr. Tercero asserted if the water system offered membership, he would be willing to connect to the water system. Currently the main residence is connected to City of Santa Fe sewer and is utilizing a private well. The applicant has since provided correspondence from the Agua Fria Community Water System, dated August 10, 2015, acknowledging that water will be made available for the applicant. With all three dwelling units on Community Water and City Sewer, the applicant will now be lacking approximately 1600 square feet in order to meet density requirements to allow a third dwelling unit.

Staff recommendations: Denial of a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 acres and a variance of Article V, Section 8.2.1c, Local Roads, of the Code. If the decision of the BCC is to approve the applicant's request, staff recommends imposition of the following conditions. May I enter these into the record?

[The conditions are as follows:]

1. The Applicant shall comply with all applicable water conservation measures. (As per Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, Section 2).
3. The placement of additional dwelling units is prohibited on the property. (As per Ordinance No. 2007-2, Section 10.6).
4. The Applicant shall comply with all Fire Code requirements and Fire Prevention Division requirements at the time of Development Permit Application. (As per 1997 Fire Code and NFPA Life Safety Code).
5. The Applicant shall provide proof that the main residence is connected to the Agua Fria Community Water System prior to issuance of the Development Permit for the third dwelling unit.
6. The Applicant shall provide a Road Plan showing proposed improvements to Paseo de Tercero for review and approval. The road must be built out to 20' in width, where possible, and must include pull outs as determined by the County Fire Marshal. All road improvements must be constructed prior to the issuance of the building permit for the third dwelling unit.

The letter that has been provided to you is from Santa Fe County Fire. [Exhibit 2] That letter was provided to me before the public hearing. The applicant has been provided a copy of that new letter from Fire.

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER CHAVEZ: Commissioner Holian.

COMMISSIONER HOLIAN: I have a question. In view of this new letter from our Fire Prevention Division, there are some requirements under the roadways,

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applicant, Maria Cerquera, agent, request a variance of Ordinance No. 2007-2, the Village of Agua Fria Zoning District, Section 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 acres. This request also includes a variance of Article V, Section 8.2.1c, Local Roads, of the Land Development Code, as Paseo de Tercero which services the property does not meet local road standards consisting of two ten-foot driving lanes, a minimum right-of-way of fifty feet and an all-weather driving surface.

The property is located within the Traditional Community of Agua Fria, at 2293 Paseo de Tercero within Section 5, Township 16 North, Range 9 East, Commission District 2.

On July 16, 2015, The CDRC met and acted on this case. The decision of the CDRC was to recommend approval with staff conditions of the applicant's request by unanimous 6-0 vote.

The subject lot was created in 1991, by way of Family Transfer and is recognized as a legal lot of record. The applicant has provided proof of ownership of the property by providing a warranty deed which was recorded in the County Clerk's Office on June 23, 1998, in Book 227, Page 048. There are currently two dwelling units on the subject property. The main residence was constructed after 1992, permit #94-1335, which is approximately 2,500 square feet and is served by City of Santa Fe sewer and a private well. The second dwelling unit was permitted in 2012, permit #12-442, which is approximately 1,440 square feet and is served by City of Santa Fe sewer and the Agua Fria Community Water System. As part of that approval, the applicant was required to install a retention pond on the property. The proposed third dwelling unit would be served by City of Santa Fe sewer and Agua Fria Community Water System. Currently, the applicant rents both dwelling units for additional income.

The applicant requests a variance of the Agua Fria Ordinance, Section 10.6 Density and Dimension Standards, to allow three dwelling units on 0.962 acres. In the Traditional Community of Agua Fria, minimum lot size per Code is 0.75 acres per dwelling unit. Lot size can be further reduced to 0.33 acres per dwelling unit with community water and community sewer. For construction of one to four dwelling units Article III Section 2.4.1, states that the applicant must provide submittals for new construction, and meet standards as applicable and as required in Article V, Section 8, Subdivision Design Standards. The applicant also requests a variance of Article V, Section 8.2.1c, Local Roads, of the Code. The road Paseo de Tercero, which services the property, fails to meet local road standards, which require two ten-foot driving lanes, a minimum right-of-way of fifty feet and an all-weather driving surface. Currently Paseo de Tercero does not meet these standards because it is a sixteen-foot wide dirt road with a twenty-foot entrance, and the exit and utility easement is 817 feet from Rufina to the end of the applicant's property line. Paseo de Tercero can be accessed through Rufina or by Agua Fria Road.

The applicant asserts these variances are needed in order to develop the remaining portion of the property. The applicant intends to place an additional home on the property both to provide additional income and to give to their children when they meet adulthood. The applicant intends to give each child a dwelling unit at that time. The property is

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up approach to develop these plans and staff really stepped up and did the work that needed to be done, but I really like the partnership that was established between staff and the community members and hopefully we can build on that and keep that communication open as we move forward.

MS. TOLL: Good. Thank you.

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER HOLIAN: Well, I would like to thank you, Ms. Toll, for imparting that information to us. We really appreciate it. I realize it's difficult going through this community planning process but I think in the long run it really does help to bring people together and to talk about what's really important about their community and what they want to preserve in their community. So I appreciate all the work that everybody did in your community as well.

MS. TOLL: Thank you.

COMMISSIONER CHAVEZ: So that closes the public hearing portion then. Pleasure of the Commission?

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER STEFANICS: I would move for approval.

COMMISSIONER HOLIAN: Second.

COMMISSIONER CHAVEZ: So we have a motion and a second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

VIII. C. Land Use Cases

1. **CDRC Case # V 15-5150 Jude Tercero.** Jude Tercero, Applicant, Maria Cerquera, Agent, Request a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.6 (Density and Dimension Standards), to Allow Three Dwelling Units on 0.962 Acres. This Request also Includes a Variance of Article V, Section 8.2.1c (Local Roads), of the Land Development Code as Paseo de Tercero which Services the Property Does Not Meet Local Road Standards Consisting of Two Ten Foot Driving Lanes, a Minimum Right-Of-Way of Fifty Feet and an All-Weather Driving Surface. The Property is Located within the Traditional Community of Agua Fria, at 2293 Paseo de Tercero, within Section 5, Township 16 North, Range 9 East (Commission District 2)

COMMISSIONER CHAVEZ: Mr. Romero, you'll be presenting for us?

MIKE ROMERO (Case Planner): Mr. Chair, that is correct. Jude Tercero,

