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MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

February 16, 2017

I. This meeting of the Santa Fe County Planning Commission convened on the above-cited date at approximately 4:05 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

II. Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Phil Anaya, Chair
Louie Gonzales, Vice Chair
Frank Katz
Leroy Lopez
Susan Martin

Member(s) Excused:

Bette Booth
Renae Gray

Staff Present:

Penny Ellis-Green, Growth Management Director
Tony Flores, Deputy County Manager
Vicki Lucero, Building & Services Manager
Paul Kavanaugh, Building & Services Supervisor
Mike Romero, Development Review Specialist
Mathew Martinez, Development Review Specialist
Andrea Salazar, Assistant County Attorney
Jaome Blay, Fire Marshal

IV. APPROVAL OF AGENDA

Commissioner Gonzales moved to approve the agenda and Commissioner Lopez seconded. The motion carried by unanimous [5-0] voice vote.

V. APPROVAL OF MINUTES: November 17, 2016

Building & Services Manager Lucero explained that the November minutes were being presented again because the caption was incorrect.

Commissioner Gonzales moved to approve the November minutes. Commissioner Katz seconded and the motion passed unanimously.

January 19, 2017

Member Lopez moved to approve the January 19th minutes as submitted. Member Gonzales seconded and the motion passed without opposition with abstentions from Members Katz and Martin.

VI. NEW BUSINESS

- A. **CDRC Case # V 16-5260 Manuel & Bernadette Hernandez Variance.**
Manuel and Bernadette Hernandez, applicants, request a variance of Chapter 9 Table 9-8-7 Dimensional Standards, La Cienega and La Cieneguilla Community District Overlay of Ordinance 2016-9, the Sustainable Land Development Code (SLDC) (formerly Ordinance 2015-11) to allow a 2.53-acre parcel to be divided into two lots; one lot consisting of 1.0 acres and one lot consisting of 1.53 acres. The property is located at 60 Camino Montoya, within the La Cienega and La Cieneguilla Community District Overlay (LCLCCD) (RES-E), within Section 21, Township 16 North, Range 8 East (Commission District 3)

MIKE ROMERO (Case Manager): Good afternoon, Planning Commission. Manuel and Bernadette Hernandez, applicants, request a variance of Chapter 9, Table 9-8-7 Dimensional Standards, La Cienega and La Cieneguilla Community District Overlay of Ordinance 2016-9, the Sustainable Land Development Code to allow a 2.53-acre parcel to be divided into two lots, one lot consisting of 1.0 acres and one lot consisting of 1.53 acres. The property is located at 60 Camino Montoya, within the La Cienega and La Cieneguilla Community District Overlay, within Section 21, Township 16 North, Range 8 East.

On December 22, 2016 the application was presented to the Hearing Officer. The Hearing Officer recommended approval of the requested variance.

The applicants acquired the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on July 2, 2001, Book 1933, Page 418. The property is recognized as a legal lot of record consisting of 2.53 acres and is currently vacant.

The applicants request a variance of Chapter 9, Table 9-8-7 Dimensional Standards, La Cienega and La Cieneguilla Community District Overlay of the SLDC to allow a 2.53-acre parcel to be divided into two lots, one lot consisting of one acre and one lot consisting of 1.53 acres. If the variance is granted the applicants intend to give their son, who has a medical condition, the one-acre parcel so he and his family can build their

own home. On the 1.53-acre parcel, the applicants intend to build their home, so they can live next door to their son and help care for him and his family.

The applicants state that they have owned the property for 10 years and it was their understanding at that time that they could not divide their property. They found out in 2009 the County had been allowing property owners to divide property, but this ended in December of 2015. The applicant further states that they never received notification either verbally or in writing that the option to divide their property would no longer be available, but if they had known they would have divided their property immediately.

The applicants state that property owners within the La Cieneguilla area have been able to obtain lots smaller than 2.5 acres and have divided parcels into 1.25-acre lots. The applicants state that the division of their property is not to make a profit, but solely for the benefit their son and his family. The applicants believe their situation is a hardship because of their son's medical condition and therefore request the variance to divide their property. The minimum lot size in LCLCCD, Residential Estate is 2.5 acres per dwelling unit.

Staff Response: Under the prior Land Development Code, Ordinance No. 1996-10 the applicants may have been able to divide their property under the small-lot family transfer provision. However, this provision no longer exists. The prior code would have required each lot to be 1.25 acres. On October 27, 2015, the Board of County Commissioners authorized the County to publish title and general summary of an ordinance to establish zoning for all land in Santa Fe County, to which the Sustainable Land Development Code would apply. On October 28, 2015, a letter was sent out to all property owners within Santa Fe County informing them that their property had been assigned a base zoning classification and that the proposed zoning map would approve base zoning classifications for all properties in the county.

This letter also provided the County's website information where property owners could look up the interactive zoning map and other resource materials pertaining to their property to find out what their zoning classification was. Santa Fe County staff, along with the Board of County Commissioners, also conducted numerous county wide public meetings, including extensive public input at planning community meetings regarding the SLDC. Santa Fe County staff confirmed that a notification letter was sent to the applicants. In addition, the La Cienega/La Cieneguilla Planning Committee was formed to review and update the community plan and write the community overlay. Another letter was sent to all property owners at the start of this process and two community-wide meetings were held in February of 2015. The zoning map was available and discussed at these meetings.

Recommendation: Staff's determination is that the applicants did not adequately address the variance review criteria. The applicants' hardship does not deal with the condition of the property but is based on a personal hardship. Staff recommends denial of a variance from Ordinance 2016-9, Chapter 9, Table 9-8-7, Dimensional Standards, La Cienega and La Cieneguilla Community District Overlay to allow a 2.53-acre parcel to be divided into two lots, one lot consisting of one acre and one lot consisting of 1.53 acres.

If the decision of the Planning Commission is to approve the Applicants request, staff recommends imposition of the following condition. May I enter this into the record? And I will go ahead and read this condition. The condition is:

1. The Applicants shall divide the 2.53-acre tract equally into two 1.265 acres lots.

The Hearing Officer recommended approval of the variance request after conducting a public hearing on December 22, 2016. At that time the variance request went before the Hearing Officer, under the prior Ordinance 2015-11, which was in effect at the time, the section pertaining to variances was in Chapter 14, Section 14.9.7.1. The revised Ordinance 2016-9 took effect on January 26, 2017. The section pertaining to variances is now in Chapter 4, Section 4.9.7.

If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's finding of fact and conclusion of law in the written recommendation. I stand for any questions.

CHAIRMAN ANAYA: Any questions for staff? Mr. Gonzales.

COMMISSIONER GONZALES: Chair Anaya, Mr. Romero, if the board approves this and there's two equal lots of record and they decide to get a well, what was staff's thinking on that? How much water could they use and would it be a shared well?

MR. ROMERO: Mr. Chair and Committee Member Gonzales, in the overlay district for the La Cienega/La Cieneguilla area, when they divide a property and lots are created under 2.5 acres they're required to have a shared well.

COMMISSIONER GONZALES: And do you know how much per year they could allocate or get out of the well?

MS. LUCERO: Mr. Chair, Commissioner Gonzales, the County would restrict them to a quarter acre-foot per residence. They would have to sign and record water restrictive covenants with the recordation of the plat and that's what the County would limit them to – a quarter acre-foot per residence.

COMMISSIONER GONZALES: So that's per lot?

MS. LUCERO: Per residence.

COMMISSIONER GONZALES: Per residence. So if they had two residences, that's a quarter each?

MS. LUCERO: That's correct.

COMMISSIONER GONZALES: Okay. Thank you.

CHAIRMAN ANAYA: Mr. Katz.

COMMISSIONER KATZ: I'm a little confused. What changed from what the law used to be where some people did get their lots divided and what it became? Maybe the County Attorney might want to answer that. I don't know.

ANDREA SALAZAR (Assistant County Attorney): Mr. Chair, Member Katz, what changes was the small lot family transfers. In our previous code, the 1996-10, we did have small lot family transfers, so we had two things. We had family transfers, which are a subdivision exception, and we had small lot family transfers. Under the 2015 and the newly adopted 2016-9 we don't have small lot family transfers anymore.

COMMISSIONER KATZ: Okay. Thank you. That helps. And the reference that the hearing was conducted in December so then something changed in January. What changed in January?

MS. SALAZAR: In January we adopted the Sustainable Land Development Code restatement, 2016-9, and what that did is we moved variances from Chapter 14 to Chapter 4, under Procedures. So basically we took the variance section out of Chapter 14 and moved it into Chapter 4, and there are some slight changes in the wording, grammatical changes, and so those are in there. So what you have in your packet right now is from Chapter 4, the new Sustainable Land Development Code.

COMMISSIONER KATZ: Was there any substantive difference in the criteria for the variance?

MS. SALAZAR: I don't believe there was substantive changes. I think that there was a little bit of wording changes, and I can grab the redlines and tell you exactly how it was changed, but I think there were probably about three words that were changed.

COMMISSIONER KATZ: I'd be curious as to what those were but you don't need to dig those out right yet. Okay, thanks. Thank you.

CHAIRMAN ANAYA: Thank you, Mr. Katz. Anybody else, questions for staff?

COMMISSIONER GONZALES: Chair Anaya, one more question. Mr. Romero, the owners said that they never received any notification and then the County said that they sent them out and then they sent another letter? How are people supposed to respond so that you would know that you got it or not?

MR. ROMERO: Mr. Chair, Commissioner Gonzales, I believe with our Planning Department that certified letters were sent out at those dates stated in the report and the dates were also – or the addresses with the property owners were also provided in data in our computer system. So we have a list of everybody within that district overlay that was – that has whatever current mailing address they have. Therefore they would have received it, I believe, certified mail and they would have signed for it.

COMMISSIONER GONZALES: Thank you.

CHAIRMAN ANAYA: Any other questions for staff? Hearing none, this is an open meeting so first thing we'd like to do is, are the owners here? And would they be willing – like to make a statement or state your case?

[Bernadette and Manuel Hernandez were placed under oath.]

BERNADETTE HERNANDEZ: My name is Bernadette Hernandez and I live at 1216 Luciander Road.

MANUEL HERNANDEZ: I'm Manuel Hernandez, 1216 Luciander Road also.

MS. HERNANDEZ: Mr. Romero has already stated everything. I think the only thing – to answer the questions that you were asking, we never got a certified mail, letter, stating that it had passed in 2015, so we never signed for anything. Do you have any questions for us?

MR. HERNANDEZ: And we've been property owners of that place for probably 20 years; it's not ten years. So, since we've had that place. We've had it for quite some time.

MS. HERNANDEZ: We've had it since we first got married. We've been married 34 years, so we've had that property, 32? And we're just asking to get permission to divide our property in half to give one parcel to our son and then we want to build our house also.

MR. HERNANDEZ: It's a little bit over 2.5. It's almost 2 ¾. It's actually stated on the paperwork here like 1.26.

MS. HERNANDEZ: So we are in agreement that we'd actually divide it in half.

COMMISSIONER GONZALES: Chair Anaya.

CHAIRMAN ANAYA: Mr. Gonzales.

COMMISSIONER GONZALES: Manuel and Bernadette Hernandez, when you asked to do it you were splitting it into 1.5 and then one? And now if this was approved they were going to split it exactly in half, and you're okay with that?

MR. HERNANDEZ: Yes.

MS. HERNANDEZ: Yes, we are.

MR. HERNANDEZ: We're okay with that.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER KATZ: Mr. Chair.

CHAIRMAN ANAYA: Mr. Katz:

COMMISSIONER KATZ: Thank you, Mr. Chair. Is there something extraordinary or exceptional about the condition of the property that justifies the wanting to split the property? I'm looking at the legal basis for granting the variance.

MR. HERNANDEZ: Are you talking about the property itself?

COMMISSIONER KATZ: The property itself.

MR. HERNANDEZ: It's pretty similar to all the property that surrounded around there.

MS. HERNANDEZ: The people behind us that did actually divide their property to their family are all 1.25, I believe.

MR. HERNANDEZ: Yes, because they were 2.5 acres. They're all basically the same. Some of them there's five-acre lots. A lot of them, there's 2.5-acre lots and then there's a lot of them that are right behind us, like we had expressed at a couple of the other meetings where they had split –

MS. HERNANDEZ: They already had split it with their family.

MR. HERNANDEZ: The lots –

COMMISSIONER KATZ: They had split it when the law allowed it?

MR. HERNANDEZ: Yes. Exactly.

MS. HERNANDEZ: When the law – and the properties, one of them behind us has actually – they're selling their properties, like they divided them.

MR. HERNANDEZ: Our intentions have never been to have that property to turn around and make any kind of profit and sell it.

MS. HERNANDEZ: We're going to keep it in the family.

COMMISSIONER KATZ: So what is the hardship that justifies us granting a variance?

MS. HERNANDEZ: That we would have – for us and our son, be close to each other and help each other and help my son with his medical condition.

COMMISSIONER KATZ: Now, you understand that you could build a dwelling for your son on the property and you could have two dwelling units there. Why isn't that what you need?

MS. HERNANDEZ: Because if we do it that way, you're only limited to a size, so you wouldn't be able to have like a kitchen – it wouldn't be big enough for his family. He has two kids.

COMMISSIONER KATZ: He has two kids.

MS. HERNANDEZ: And that's basically a guesthouse. So if you've ever been in a guesthouse, you can only have so much, it has to be only so many square feet.

COMMISSIONER KATZ: 1,400 square feet.

MS. HERNANDEZ: So that's why we weren't – we didn't want to do that.

MR. HERNANDEZ: Plus we'd like to be able to give our son, for him to have something in his name.

COMMISSIONER KATZ: Yes, but that's that money thing. That's the profit thing that you said you weren't doing it for the profit. You were doing it because you wanted to have him nearby.

MR. HERNANDEZ: When we leave, when we're not around anymore –

COMMISSIONER KATZ: Then he would own the whole lot.

MR. HERNANDEZ: Yes.

COMMISSIONER KATZ: In any case.

MS. HERNANDEZ: But the main – the reason we want to divide it is so he can have a bigger property. The house could be bigger. Because if we didn't, then it would be a guesthouse and you're only limited to a guesthouse.

COMMISSIONER KATZ: No, you're limited to a residence with 1,400 square feet. An awful lot of people in this city live in houses that are 1,400 square feet or less and so – okay. Thank you very much.

COMMISSIONER GONZALES: Chair Anaya.

CHAIRMAN ANAYA: Mr. Gonzales.

COMMISSIONER GONZALES: Do you live on the property currently?

MS. HERNANDEZ: No, we do not.

MR. HERNANDEZ: No, it's vacant.

MS. HERNANDEZ: It's vacant right now.

MR. HERNANDEZ: There's nothing built on it at all. Whatsoever.

COMMISSIONER GONZALES: So you're going to build a house and he's going to build a house?

MS. HERNANDEZ: Yes.

COMMISSIONER GONZALES: What comes into play here is the financing. The bank – if you have one lot you can only encumber it with one loan. If you have two lots he could have a loan for his house and then you could have a loan for your house. Is that what your plans are?

MS. HERNANDEZ: Yes. That's part of the reason.

MR. HERNANDEZ: That's a part of the reason.

MS. HERNANDEZ: Exactly. So he could have it in his name and build his house and then we can build ours.

COMMISSIONER GONZALES: Thank you.

CHAIRMAN ANAYA: Any other questions of the board for the owners? Again, like I mentioned, this is an open meeting. Do we have anybody speaking for or against that wishes to come up? We have one.

[Duly sworn, J. J. Gonzales testified as follows:]

J. J. GONZALES: My name is J. J. Gonzales. I live at 54 Entrada La Cienega. Good evening. I haven't seen you people for quite a while. I wish you well. I belong to the La Cienega Valley Association and this lot is within the La Cienega/La Cieneguilla planning area, so that's why – and then the Valley Association became a registered community organization last September and this is the first case we have seen under this new SLDC. As a community organization, any variances in the La Cienega

area are referred to the LCVA and the applicants are required to meet with the local review committee that we have.

That meeting occurred in December. We had a lengthy discussion with the applicants and we came up with the agreement that based on their compelling arguments that they made and their hardship and stuff we felt that we could approve the request for their variance. And we had some conditions and they were very agreeable with the conditions we came up with. Some of the conditions are that the 2.5-acre lots be divided equally, 1.25 or 1.253 acres, things like that. So that was one of the conditions we had. They were in agreement with that.

The other condition was that their water use be limited to a quarter acre-foot per lot, and that is consistent with what the County Land Use requires and that was very agreeable. Another condition that we had as a requirement with the County was that the well be metered. That's a State Engineer requirement, and that each lot have a meter. So there's meters for both dwellings and at the wellhead to make sure that they comply with the requirements and that they send those readings to whatever agency is responsible. I know they have to send them to the County or to the State Engineer on an annual basis.

The other condition that we had was that there be no further lot splits of the lots, that these lots be 1.25-acre, one and a quarter acres. That was agreeable.

The other condition we had, which I think is not on the books anymore was a five-year holding period. That used to be a condition but that is no longer a condition. So we sent that in but I understand that that is not a requirement anymore.

And then we sent a letter to the Land Use staff to incorporate and it was sent to the Hearing Officer in December. At the December meeting, the Hearing Officer had the applicants, had the staff report, and apparently the Hearing Officer took the recommendation of the original application that said that one lot would be 1.5 acres and one lot would be 1.0 acres. That was the original request and by December 22nd the conditions that we had of equal size lots disappeared. They were no longer in force, for some reason. And the Hearing Officer in their decision said that each lot was approved – the variance was approved, each lot would be 1.5 and 1.0 acres. That is why I'm here tonight because we thought we had some conditions and an understanding with the applicants and it was not followed through for some reason, which is the prerogative of the Hearing Officer. If they want to change whatever they do I guess that's their position.

So what I'm asking here tonight is that some of our conditions be incorporated if you approve this variance, some of our conditions be incorporated into the approval. The ones we really wanted was the lot size requirement, that they be equal size lots and our water use requirement and meters on their wells. And we also support the Land Use, if you approve this lot I think the Land Use Department said that each lot should be equal size lots. And with that I think I am finished with my comments. But thank you very much.

CHAIRMAN ANAYA: Hold on, Mr. Gonzales. Do we have any questions for Mr. Gonzales from this board?

COMMISSIONER GONZALES: Chair Anaya, Mr. Gonzales, what is the name of your board again? La Cienega?

MR. GONZALES: La Cienega-La Cieneguilla Valley Association, LCVA.

COMMISSIONER GONZALES: And how long have you been a member of this board?

MR. GONZALES: Off and on since it was created in 1996.

COMMISSIONER GONZALES: And all the board members, they're in favor of this variance and are okay with it?

MR. GONZALES: Yes. The board members authorized me to come speak on the conditions. Exhibit 7 in your packet shows a letter that was sent to the Land Use.

COMMISSIONER GONZALES: Thank you, Mr. Gonzales. Thank you, Chair Anaya.

CHAIRMAN ANAYA: Any other questions? I do. Mr. Gonzales, going back to prior 2015, where we were able to do lot transfers, family lot transfers and things like that that's right here in front of us right now, how many more projects do you foresee coming in front of us with this same issue?

MR. GONZALES: There have been several requests for lot transfers in that area. All the lots were 2.5- or 5-acre lots and like Mrs. Hernandez says, anybody that has a lot in that area, they've been splitting them down and many lots are 1.25 acres. And that was the old rule was with water restrictions you can split your lot to half the size of a regular lot and there's a lot of 1.25-acre lots in that area.

CHAIRMAN ANAYA: 1.25?

MR. GONZALES: Yes. One and a quarter-acre lots.

CHAIRMAN ANAYA: Just over one-acre lots. Another question that I have out there is utilities. What kind of utilities do you have? County? Private?

MR. GONZALES: The La Cienega area is served by the County water system and the La Cienega Mutual Domestic. In La Cieneguilla, they have private wells and shared wells. And with underground electrical. They don't have natural gas in that area.

CHAIRMAN ANAYA: And this particular area, how far away is the water away from there?

MR. GONZALES: It's probably two or three miles. It's on 599. The County water system is on 599 and this area is La Cieneguilla which is probably three or four miles from that area.

CHAIRMAN ANAYA: Okay. Thank you, sir. Any more questions? Hearing none, I have a question for staff, if I may. On Exhibit 2 in the packet, it states Camino Quintana and on Camino Quintana nowhere is it mentioned in the packet nor can I find it on the map. We're talking about Camino Montano?

MR. ROMERO: Mr. Chair, it's Camino Montoya. What I did with this survey plat was that at the time that the survey plat was created that was the name of the road, was Camino Quintana. What I did is confirmed with Rural Addressing, because that was a question I had. This doesn't say Camino Montoya, this is Camino Quintana. Speaking with staff from Rural Addressing, and this is staff that has been here for about 20+ years, that it has been referred to as Camino Montoya. So at some point in time, from my understanding through that department was that it was Camino Quintana and then at some point it was changed to Camino Montoya. However, this plat does say that it is Camino Quintana. This is the most relevant dated plat that we do have of this property, which is the lot 3-A-1.

CHAIRMAN ANAYA: Okay. Another question that I have is, naturally they're not bringing us any plans to be built so therefore it's not going to show exactly how they're going to split the lot and how the road is going to maintain the second lot.

MR. ROMERO: Mr. Chair, so if you go to Exhibit – page 3, you'll see the proposed split and so you'll see the parcel there and you'll see where the parcel would be split as to what was originally proposed as the one-acre and the 1.53.

CHAIRMAN ANAYA: I'm sorry, what page again?

MR. ROMERO: Page 11, right after Exhibit 3.

CHAIRMAN ANAYA: Okay. I'm on 11.

MR. ROMERO: Okay, so that site plan that you see right there you'll see how it's split, essentially if you will almost north and south. So from talking with the applicants the roadway that the proposed driveway will be to the north of the property so you could come up from Camino Montoya and that road would access both lots to the north of that lot. However, because this is identified in the permitting process, you don't see that here.

CHAIRMAN ANAYA: Okay.

MR. ROMERO: So essentially they're proposing the split, if it gets approved they go through development permit process, that's when we'll talk about metering wells, shared wells, permits from the Office of the State Engineer's Office. We'll have more of a description of what the size of the driveway will be. That will be reviewed by staff in Land Use. That will also be reviewed by Fire, etc.

CHAIRMAN ANAYA: Any other questions for staff before I close? Mr. Katz.

COMMISSIONER KATZ: My question is that the variance criteria that we – it seems quite strict. It requires an extraordinary or exceptional situation or condition of the property. There's no basis for a variance because of personal hardship. So my question is how can we vote in favor of a variance here? It seems to be totally against what the code says.

MS. SALAZAR: Mr. Chair, Commission Member Katz, is that a question for us as staff?

COMMISSIONER KATZ: Is there a way that I could vote in favor of the variance, legally, when there is no personal hardship basis for the variance.

MS. SALAZAR: Commission Member Katz, when you look at the variance criteria, and I did find the redlines. That is something that did change in this 2016-9 code. It used to be, Where owing to special conditions a literal enforcement of the SLDC will result in unnecessary hardship to the applicants. During this application it did switch to what you just read, Where due to extraordinary and exceptional situations or conditions of the property the strict application of the code would result in peculiar or exceptional practical difficulties or exceptional or undue hardship on the owner. So that was one of the switches.

COMMISSIONER KATZ: That may explain, then, why the Hearing Officer might have gone one way and then the law has now changed to make it hinge on the property itself, not on a personal. Is that correct?

MS. SALAZAR: Yes, Commission Member Katz.

COMMISSIONER KATZ: Okay. Is it also true that under the old code a person on this lot, that the Hernandezes could not have built a guesthouse or a secondary dwelling, that there were no accessory dwellings allowed under the old law?

MS. LUCERO: Mr. Chair, Commission Member Katz, that is correct. Under the old code we did have the family transfer provision which the applicants brought up earlier, so they may have been able to divide the property but they wouldn't have been allowed to just put a guesthouse on there.

COMMISSIONER KATZ: So one of the changes in the law was no, you can't divide the property, but if you do have the situation of a multi-generational constellation that wants to live together – a grandmother who needs care or perhaps a son who needs care – now you can have the secondary dwelling. So that was kind of the exchange in the law.

MS. LUCERO: That's correct. Yes.

COMMISSIONER KATZ: Okay. Thank you very much.

MR. ROMERO: Mr. Chair, Commissioners, if I may clarify from the previous. I stated that during the planning process for the zoning map, etc. for the letters that went out to residences, it was sent out regular mail and if the resident didn't receive the information or it came back to the County as not receivable, the address changed, whatever it may be, at that point in time the County would send it back out certified mail. And I originally said that it was sent out certified mail, but it was sent out regular mail. If it came back then it was sent out certified mail, and that was the zoning map included. We do have a database that includes all the residents in Santa Fe County, specifically also to the traditional areas and the names, addresses, mailing information, etc.

COMMISSIONER KATZ: Mr. Chair.

CHAIRMAN ANAYA: Mr. Katz.

COMMISSIONER KATZ: I would like to compliment the County on doing it that way. All too often I remember the rule was always send it out certified mail and sometimes people don't want to accept certified mail so they don't accept it. This way you get both the acceptance of regular mail and then the extra certified mail effort. So I appreciate the County's change there.

MR. ROMERO: Thank you, Commissioner.

CHAIRMAN ANAYA: Thank you, Mr. Katz. Any other questions?

Hearing none, I'm going to close the hearing section, public comments. Do we have a motion for –

COMMISSIONER KATZ: Yes, Mr. Chair. I would like to make a motion.

CHAIRMAN ANAYA: Yes, Mr. Katz.

COMMISSIONER KATZ: In this case I would make a motion to deny the variance because there is no legal basis to do it. I understand the sense of the owners that they said, Gee, we could have done this under the old law. I understand their wanting a little more flexibility to have perhaps a larger house for either themselves or their son. I guess they could choose which one of them lived in the larger house if they just had an accessory dwelling. But there's no basis in the law for doing that. The law was changed and it was changed to allow the accessory dwelling, to allow them to do exactly what they want to do and the only way to grant the variance is to ignore the law and I don't think that that is an option that is open to us so I would move to deny the variance.

COMMISSIONER MARTIN: I'll second the motion.

CHAIRMAN ANAYA: Okay, we have a first and a second.

The motion to deny failed by a 2-3 voice vote with Members Katz and Martin voting aye and with Members Gonzales, Lopez and Anaya voting nay.

CHAIRMAN ANAYA: Do we have another motion?

COMMISSIONER GONZALES: Chair Anaya.

CHAIRMAN ANAYA: Just a second.

COMMISSIONER KATZ: I don't have another motion.

CHAIRMAN ANAYA: You don't care?

COMMISSIONER KATZ: I don't have another motion.

CHAIRMAN ANAYA: Okay, that's what I was going to ask. We can go ahead to do another motion to see. Is that correct?

MS. SALAZAR: Mr. Chair, you may make another motion. I would just like to express that under Variances, it must be a majority of the Commission members to grant a variance.

CHAIRMAN ANAYA: So that would be, since we have five, we're not going to get it.

COMMISSIONER MARTIN: You're not going to get to four.

MS. SALAZAR: Mr. Chair, a majority of the Planning Commission members would be four.

COMMISSIONER GONZALES: So we could attain another motion to see if we get four. If we don't then it's dead.

MS. SALAZAR: Commission Member Gonzales, yes, that is correct.

COMMISSIONER GONZALES: That's what I thought.

CHAIRMAN ANAYA: Okay so do we have another motion for Case #V16-5260?

COMMISSIONER GONZALES: Chair Anaya.

CHAIRMAN ANAYA: Mr. Gonzales.

COMMISSIONER GONZALES: I'd like to make a motion for Case #V16-5260, Manuel and Bernadette Hernandez to grant their variance request.

CHAIRMAN ANAYA: Is that with conditions?

COMMISSIONER GONZALES: Yes, with staff's conditions.

CHAIRMAN ANAYA: We have a motion. Do we have a second?

COMMISSIONER LOPEZ: I'll second.

CHAIRMAN ANAYA: Mr. Lopez with a second.

The vote was 3-2 with Members Gonzales, Lopez and Anaya voting with the motion and Members Katz and Martin voting against.

CHAIRMAN ANAYA: Motion does not pass; lack of majority of the members.

COMMISSIONER GONZALES: Point of order, Chair Anaya. Since we denied can they appeal the decision to the Commission or could they wait till we have a majority and bring it back? When other members show up, like six of us.

MS. SALAZAR: Chair, Commission Member Gonzales, I believe as in a previous case that we had in front of the Planning Commission you could table the case and wait until a majority or until you have a larger amount of members. You could stay with your motions and this would be a denial of the variance and if the applicants would like to appeal that decision they could appeal it to the BCC but it is whatever the Planning Commission chooses to do.

COMMISSIONER GONZALES: Chair Anaya, so if we were to make another motion to table, would we need a majority for that or can we do it with the members that are here, the 3-2 vote for a table?

CHAIRMAN ANAYA: Attorney.

MS. SALAZAR: Chair, Commission Member Gonzales, you don't need a majority of the quorum to vote on a tabling motion, only on the variance.

COMMISSIONER GONZALES: Thank you.

CHAIRMAN ANAYA: Question for staff then in this particular case, if it's still a 3-2 to table and then this whole conversation starts over again. Correct? Or is it just the vote with full members?

MS. SALAZAR: Chair, it would only be the vote that would be tabled and then done at the next meeting.

CHAIRMAN ANAYA: Okay, and if we don't table it and let it stand as a denial, it automatically is appealed to the BCC and they can determine? Or does it –

MS. SALAZAR: Chair, it is not an automatic appeal. The applicants would have to appeal to the BCC. You are the final deciders of variances.

MR. ROMERO: So, Mr. Chair, the way the appeal works is the applicants would actually have to file another application with another fee. I believe they'd also have to send out mailings again to residences, CO's, about the appeal itself so it will be another application and another finance for the applicants for the appeal to the Board of County Commissioners. And I believe the appeal to the Board of County Commissioners from the Planning Commission decision is 30 business days. We can clarify that after the meeting. I can explain that, set up another meeting with the applicants that will be more set in stone and more clarified to the applicants. Just to throw that out there. I believe it's a 30-day process.

CHAIRMAN ANAYA: Thank you.

COMMISSIONER GONZALES: Chair Anaya.

CHAIRMAN ANAYA: Mr. Gonzales.

COMMISSIONER GONZALES: So if we table and then they come back before the board again and then deny it again, then they could appeal it. That alone would just delay it possibly a whole month or two months to go to the Commission. Right?

MR. ROMERO: Mr. Chair, Commissioner Gonzales, that is correct.

COMMISSIONER GONZALES: Thank you.

CHAIRMAN ANAYA: What's the pleasure of the board?

COMMISSIONER KATZ: Mr. Chair.

CHAIRMAN ANAYA: Mr. Katz.

COMMISSIONER KATZ: Mr. Chair, thank you. I would encourage my fellow members to leave it up to the Commission. I am puzzled as to the willingness of my fellow Commissioners to pretty blatantly ignore what the law says.

COMMISSIONER GONZALES: I personally don't think we're doing that. I think it's a minor bending of the rules on this variance, if they were letting other people do it before this and they were just – and they didn't get their notice or not. I think that's relevant.

CHAIRMAN ANAYA: Okay, do we have any other motions? Hearing none, Case #V16-5260 is a denial.

B. Possible Action on the Findings of Fact and Conclusions of Law for Case #V16-5260, Manuel and Bernadette Hernandez Variance

MS. SALAZAR: Chair, Planning Commission Members, we do have an order for approval in the packet. That is not what happened so we will be drafting a new order to present to you at the next meeting.

CHAIRMAN ANAYA: Thank you, ma'am.

C. Petitions from the Floor
None were offered.

D. Communications from the Committee

COMMISSIONER KATZ: Yes, let me mention, I think I'm going to be away at the next meeting. I'm coming back that day but I don't think I get back until after the meeting.

CHAIRMAN ANAYA: Thank you, Mr. Katz.

E. Communications from the Attorney: Study Session on Variances and Other Changes to the SLDC

MS. SALAZAR: Mr. Chair, Planning Commission Members, the one thing I would like to address today and we did note was a study session on variances, since we did have a change in our code. The Sustainable Land Development Code restatement, 2016-9, is now in effect, and that changed where our variances are located. We did address that briefly in the previous case. But they have been moved to the Procedures section in Chapter 4. So in looking at the changes that have been made to the variance section there is a change in one line in the purpose section which is now Dimensional Requirements and Standards of the code can be considered in the variances.

We also did add that applicants must address the variance criteria in a letter when they ask for a variance, and then probably the most substantial change was the change to review criterion number two where we did change number two from, Where owing to special circumstances a literal enforcement of the SLDC will result in unnecessary hardship. We changed that to what was read earlier, which is, Where due to extraordinary and exceptional situations or conditions of the property. So now it's the property alone, not just hardship on the applicant, where it has to be of the property that the application of the code would result in exceptional practical difficulties or exceptional undue hardship to the applicant. So now it's more of a two-pronged analysis when looking at variances in number 2.

So that is how variances have changed in this new restatement of the code.

The second thing I would like to add is that most of the hearing standards have been changed into this procedural section, so you will now find any types of minor amendments. I believe conceptual plans are also in Chapter 4, so any procedure that comes before you will be housed in Chapter 4 of this restated code. And I think those were the main focuses that I wanted to talk about since you are the deciders of variances.

CHAIRMAN ANAYA: Thank you, ma'am. Any other comments from the attorney?

F. Matters from Land Use Staff

MS. LUCERO: Mr. Chair, just to follow up on what Ms. Salazar mentioned on variances, as you've probably noticed, staff generally recommends denial on variance requests. We follow what the code says. The code is very specific in regards to hardships based on the land and topography. So a staff recommendation with approval on a variance is – basically it's very rare and would only occur in certain situations where the land is difficult to build upon because of the terrain constraints.

CHAIRMAN ANAYA: Such as the one we had last meeting? Where the footprint was –

MS. LUCERO: Yes, that's correct. In a similar situation. I think staff still didn't recommend approval because there were other areas to build but for example if there was no buildable area on the property whatsoever we would recommend building on the best suitable location.

CHAIRMAN ANAYA: Okay. Thank you.

G. Next Planning Commission Meeting: March 16, 2017

H. Adjournment

Having completed the agenda and with no further business to come before this Committee, Chairman Anaya declared this meeting adjourned at approximately 5:00 p.m.



Approved by:

Filandro Anaya, Chair
Planning Commission

TEST TO:
Geraldine Salazar
GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Submitted by: Debbie Doyle, Wordswork

Debbie Doyle - Wordswork