

**TRANSCRIPT OF THE
SANTA FE COUNTY
SUSTAINABLE LAND DEVELOPMENT CODE
HEARING OFFICER MEETING**

Santa Fe, New Mexico

August 24, 2017

I. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Nancy Long on the above-cited date at approximately 3:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Staff Present:

Vicki Lucero, Building & Development Services Manager
John Michael Salazar, Development Review Specialist
Paul Kavanaugh, Building & Development Services Supervisor
Rachel Brown, Deputy County Attorney
Jaome Blay, Fire Marshal

II. Approval of Agenda

HEARING OFFICER LONG: I have approval of the agenda and there is one item on the agenda, so I will approve the agenda as it has been amended.

III. Public Hearings

- A. CASE # V 17-5140 Patrick Cameron & Karyn Baum Variance. TABLED**
- B. CASE # V 17-5090 Fredance, LLC Variance. TABLED**

- C. **CASE # V 17-5200 W. Gordon Harris Height & Off-Site Road Improvements Variances.** W. Gordon Harris, Applicant, Sommer, Karnes & Associates, LLP, Agent, Request a Variance of Ordinance No. 2016-9, the Sustainable Land Development Code, Chapter 7, Section 7.11 Road Design Standards, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to Allow a Roadway to be Less Than 20 Feet in Width and to Allow the Roadway to Exceed a Nine Percent Grade. An Additional Variance is Being Requested of Chapter 7, Section 7.17.9.3 Height to Exceed Thirty Feet on Land that Has a Natural Slope of Fifteen Percent or Greater. The Property is Located within the Overlook Subdivision at 191 Overlook Road Via La Barbaria Road within Section 16, Township 16 North, Range 10 East (Commission District 4), SDA-2 [*Exhibit 1: Borrero Support Letter; Exhibit 2: Architectural Renderings; Exhibit 3: Photograph of Vicinity*]

Hearing Officer Long read the case caption.

HEARING OFFICER LONG: So we will now here the staff report.

JOHN MICHAEL SALAZAR (Case Manager): Thank you, Hearing Officer Long. As stated in the caption, the applicant is requesting a variance to allow a roadway to be less than 20 feet in width as certain areas along Overlook Road are only 14 feet wide, to allow the roadway to exceed a nine percent grade as there are multiple areas along Overlook Road which exceed 15 percent due to the mountainous terrain and a height variance to exceed thirty feet on land that has a natural slope of 15 percent or greater. The existing residence is a multi-level home which steps down and was permitted in 1991. The proposed location for the new garage is an existing leveled off area on the north elevation where the applicant currently parks however it is stepped down from the existing residence.

The property at 191 Overlook Road consists of 2.6 acres within the vicinity of La Barbaria Road in the Residential Fringe zoning district.

The applicant's agent states that the Overlook Subdivision is a legacy development with internal roads that do not meet width or slope requirements of the SLDC. They continue to state that the existing roads cannot be brought into conformance due to the steep and mountainous conditions of the Overlook Subdivision. Overlook Subdivision was created in 1975 before any road design standards existed. The roads throughout the subdivision vary in width from 14 feet to 23 feet. The road grade exceeds 15 percent in various locations as well. These conditions have been triggered due to the development permit request for an attached garage addition.

The applicant is proposing a single-story garage connected to the lowest part of the existing home. The connection is made by a stairway from the garage to a walkway above the roof of the garage and connected to the existing deck on the residence. Land Use staff has indicated that the connection to the existing residence creates the need for a variance as the total height of the proposed structure would measure 43 feet 11 inches. The allowable height under the SLDC is 30 feet from the highest point of the structure to the lowest point at natural or finished grade on land that has a natural slope of 15 percent or greater. The current height of the multi-level residence is 36 feet 7 inches and was permitted in 1991.

The applicant's agent addressed the variance criteria and staff provided an interpretation of how the proposal meets or fails to meet the variance criteria as mentioned in the staff report.

Recommendation: Staff recommends denial of the applicant's request for a variance to allow a roadway to be less than 20 feet in width and to allow the roadway to exceed a nine percent grade.

Staff recommends denial of a height variance to exceed thirty feet on land that has a natural slope of 15 percent or greater and recommends that the applicant construct an unattached garage which would not require a variance.

If the decision of the Hearing Officer is to recommend approval of the variances staff recommends the following conditions be imposed:

1. The Applicant shall obtain a development permit.
2. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written recommendation. The Santa Fe County Planning Commission (SFCPC) will be holding a public hearing on this matter on October 19, 2017.

And Hearing Officer Long, I'll stand for questions.

HEARING OFFICER LONG: Is there an existing garage?

MR. SALAZAR: Hearing Officer Long, there is no garage on the property.

HEARING OFFICER LONG: And so staff's proposing that in order to meet the height requirement that a detached garage could be built and would come within the height restriction?

MR. SALAZAR: That's correct. Currently in the proposal with that walkway from the garage to the existing residence that makes it one structure. Without the walkway it's a separate structure and it wouldn't require a height variance.

HEARING OFFICER LONG: So it's the walkway that kicks it over in the height?

MR. SALAZAR: Yes.

HEARING OFFICER LONG: Okay. And the roadway that we're talking about is the access roadway to the driveway to this house?

MR. SALAZAR: That's correct. Overlook Road. Hearing Officer Long, it would be improving Overlook Road to the property.

HEARING OFFICER LONG: And so the requirement would be to increase the right-of-way for the entire length of Overlook Road? Is that what the code requires?

MR. SALAZAR: That's what the code requires.

HEARING OFFICER LONG: And how would that be accomplished if they don't own the land in front of other homes?

MR. SALAZAR: Hearing Officer Long, the applicant would need to get permission from the property owners along Overlook Road in order to increase that easement and make those improvements on Overlook Road.

HEARING OFFICER LONG: And we think there is no right-of-way that belongs to the County or has been dedicated to the County along Overlook? It is all in private ownership? Is that correct?

MR. SALAZAR: Hearing Officer Long, it's all private easement throughout that subdivision.

HEARING OFFICER LONG: Okay. Thank you. Would the applicant's agent come forward please and be sworn in and give us your name.

[Duly sworn, Karl Sommer testified as follows:]

KARL SOMMER: My name is Karl Sommer, Sommer, Karnes and Associates, Madam Hearing Officer. This case is I think one of many that comes in front of this body, in front of the Hearing Officer. It is a quirk of the current SLDC that people that are trying to improve their already existing homes, residential homes, with accessory structures which are normal and customarily used in this county and in the state, a garage.

This subdivision, as the Hearing Officer is probably aware, is on the south side of town. It is in the steep mountains. It is a legacy subdivision that was done in 1975 when two things – a subdivision plat need not be approved, and no permits were needed to build these roads. Almost every home up in this development, well, not almost – every home in this development will require a variance to make changes their home by virtue of this portion of the code with respect to the access roadways and we believe that in this particular circumstance with the Overlook conditions, the code with respect to the offsite improvements to make access roads compliant at nine percent creates an undue and unnecessary and extreme hardship.

In fact it's an impossibility to meet by the applicant. He has no control over the access of the real estate that is where the roads are located and then I think fundamentally, the roadways cannot be improved to meet County standards because they are too steep to begin with. You could not get nine percent anywhere on the roads where they are 15 percent. As the Hearing Officer knows, you need more length to do that in order to lower the grade. That's not possible.

And I believe the requirements of the variance have been met, without question, with respect to the access roadways. We've address all of those in our submittal to you but it is an impossibility for Mr. Harris who's here with me and I'm here with Mr. Will McDonald who is an architect who is helping Mr. Harris. There are also people here from the subdivision who are in support of this variance, and I will hand, if I can, the Hearing Office a letter from Holly Borrero. She speaks to the visibility of the proposed garage. Mr. McDonald will explain to you in detail how this home is situated on the lot. It is near the top of a ridge, although it's not on the ridge. It is on the north side of the ridge, not

visible from many places, and the garage that is proposed is at the lowest part of the lot. The only reason we're here for a variance is Mr. Harris would like to be able to get out of his car in his garage and walk outside the garage up to his house.

There's a stairway that needs to connect at the top with a platform. That's what creates the need for a variance. This is not increasing the height of the house above where it is located. It is actually adding a structure on the lowest part of the lot. It is not visible from almost any other lot in the development. And where it is visible it is minimally visible and it does not increase the overall profile of the house. As the Hearing Officer is well aware, the purpose behind height restrictions is to limit the visibility of structures and that is an aesthetic standard and we are not doing anything that increases the visibility of this structure from adjoining lots. It does not allow Mr. Harris any privilege that any other property owner normally enjoys in the use of a residential property. That is just a simple garage attached to his house.

I'm going to turn it over to Mr. McDonald to describe for you exactly how the garage and the house relate to one another and then we'll answer any questions you have. And Mr. Harris is here to answer any questions you might have. Thank you.

HEARING OFFICER LONG: Thank you.

[Duly sworn, Will McDonald testified as follows:]

WILL MCDONALD: My name is Will McDonald. So, as Mr. Sommer explained, the addition is at the lower part of the property and here's a drawing –

HEARING OFFICER LONG: Is that drawing in the packet materials, do you know?

MR. MCDONALD: I gave it to Mr. Salazar but I have other copies of it.

HEARING OFFICER LONG: I believe it is Exhibit 3, for the record.

MR. MCDONALD: So the point is, looking – this is the north elevation. Here's the existing house, the high point of the house is not going to change. What's going to add the additional height is adding the garage at the bottom here, so that it goes from 36 feet 7 inches to 43 feet 11 inches because it's here at the bottom. But the point is that with trees all along here, and I have some photos that I can show you from a distance, that adding this garage does not increase the visibility of the house.

HEARING OFFICER LONG: So if I'm understanding this, then the height of the residence is unchanged, but because you are measuring it from a lower point where the garage will be constructed, that is the increase in height?

MR. MCDONALD: That's exactly right. So according to the code it's the overall height of the building from the lowest point to the highest point. So we've lowered the lowest point and that's what brings us here now.

HEARING OFFICER LONG: I understand that now.

MR. MCDONALD: For this part of that. Here's a photograph that Gordon Harris took of the house from one of the properties that's able to view it. Here's the site. Here's where the photograph was taken from. There's a valley here. You can see that there's a ridge to the south.

HEARING OFFICER LONG: As I'm looking at this photograph, and we'll add this to the record, the garage would be where? At the front of the photograph or to the left or right at the front?

MR. MCDONALD: Right here.

HEARING OFFICER LONG: So you have indicated in that black circle approximately where the garage would be constructed, which is to the front in this photograph.

MR. MCDONALD: Directly to the front, that gable that you see. So let me just – here is a couple of drawings that also show the relationship with the existing house and the garage. And so my main point here is that the garage does not add to the visibility of the house. It does add to the height of the house based on the definition of the County.

And while we could forego the attachment as defined by the County, if we were to put the walkway, that it would attach – the building itself – well, it boils down to a definition of what attached is, but its location wouldn't be different; its height wouldn't be different; its visibility wouldn't be different detached or attached.

HEARING OFFICER LONG: Okay. I take it that your client would like to be able to walk from the garage into the house without having to go outside.

MR. MCDONALD: The walkway is actually outside of the garage, but up along the side of the garage, attached, so that he would be able to walk onto the existing deck that's surrounding that side of the house.

HEARING OFFICER LONG: So the deck is outside. You actually would have to go outside.

MR. MCDONALD: Yes.

HEARING OFFICER LONG: But it would be connected.

MR. MCDONALD: It isn't a direct passage way from the interior of the garage to the interior of the house. So in that sense it's not attached. The attachment is only on the outside.

HEARING OFFICER LONG: Okay. Thank you.

MR. SOMMER: The Hearing Officer is very familiar with the standards under which the variance criteria are applied, and very briefly, the public interest in a case dealing with the roadways and the visibility is pretty clear here. And the question is, is what is proposed going to exacerbate a condition that exists already? The answer is no. It's not going to add more traffic. It's not going to add more intensity to the residential development, in the sense that there's not more dwelling units or anything like that. So with respect to the roadway that condition exists and Mr. Harris is going to go up and down those roads as it is right now. Emergency vehicles are either going to get there or not get there. And this addition will have absolutely no effect. So in that way it is not contrary to the public interest to grant this variance.

The second criteria is where it must be due to some extraordinary or exceptional situations or conditions of the property. I think that's clear that the condition of this land is one, it is sloped, and the existing home on it is at the highest part of the lot. There's only one other place. So this variance related directly to a condition of the property, and that is its topography.

With respect to the roadways it is clear that the variance is related to the condition of the roadways and that is that they are steep and they're old roads and they cannot be improved to meet current standards. So that criterion of the code is easily or demonstrably met. The last one is fairly vague, which is so that the spirit of the SLDC is observed and substantial justice is done. And the spirit of the SLDC is, I believe, to not

exacerbate conditions that don't comply for legal non-conforming conditions. You're not allowed to expand them. We're not doing anything that would exacerbate an existing condition at all. That's the spirit of the SLDC.

With respect to visibility, I think we've demonstrated that the spirit of the SLDC is to limit the visibility of buildings and that is the purpose behind what the height limitation is. This will not – and is in keeping with that, because it does not make the residence or the profile of the residence any more visible. I believe we've met the criteria. It is based entirely in the conditions of the property, not just the desires of the homeowner, which often some variances are, and he's not asking for anything out of the ordinary or some extraordinary privilege that others don't get to enjoy. We'd stand for any questions we might have.

HEARING OFFICER LONG: Thank you. Let me open this up to public hearing and see if there is anyone that would like to speak, either for or against these variance requests. Is there anyone here? Okay. You can come forward, sir.

[Duly sworn, Beau Borrero testified as follows:]

BEAU BORRERO: Beau Borrero. I would like to say that Gordon Harris' house figures prominently in the view from my kitchen and living room. I think of anybody in the neighborhood I can probably see Gordon's house the most. It's the thing that you see when you look out my living room and kitchen windows and the location of this garage would not make any difference to the view from my house. The area where the garage is proposed is almost completely surrounded by large trees and to add to what's been said about the condition of the site, the back of Gordon's house, which is against the steep part of the hillside is only about – a guesstimate – about 15 feet above slope. So this is not an unusually tall house by any regards but rather it's the steepness of the slope and the fact that the location of this garage that is making this height an issue.

HEARING OFFICER LONG: Thank you.

MR. BORRERO: Thank you.

HEARING OFFICER LONG: All right, sir, would you come forward?

[Duly sworn, Bruce Valick testified as follows:]

BRUCE VALICK: Bruce Valick. I'm on the OHA board and the OHA Architectural Committee, and I'd say that everything that Gordon has done to improve the house has improved the OHA standards. Our home is opposite the canyon from his. We do see his home. In looking at the drawings, we would not see any portion of the garage that would sit below it from our place. Again, the number of trees would cover that completely. So as both a board member and an architectural control member I solidly support and hope that you'll grant the variance for him. Thank you.

HEARING OFFICER LONG: Thank you.

[Duly sworn, Lee Goodwin testified as follows:]

LEE GOODWIN: My name is Lee Goodwin. I'm a board member of the Overlook Homeowners Association and I am also the chair of the Road Committee, and I support the request for both variances, particularly with respect to the roads, I would like to say that four years ago the OHA commissioned an engineering study of our road system and among other things, the engineer pointed out that to bring our road system up to the current standards, although it is grandfathered in, but if we were to try to bring it up to current standards it would cost in excess of \$2 million to do so. Our annual road

budget at that time was perhaps \$10,000 and we have managed to get a dues increase and are able to spend approximately \$20,000 to \$22,000 a year on our roads at this point. That money goes to maintenance but not to the kind of improvements that would required to bring it up to current standards.

Secondly, our home is below the hill from Gordon's and we are able to see the top of his home. Our view certainly would not be affected by the addition of the garage as it would be obscured by the existing trees. And I'd also like to reiterate what Beau said earlier, that Gordon's home in fact is built into a rather steep slope and so the downhill side of the home has a much taller face than the uphill side of the home and there are a number of homes that have been constructed in a similar manner in our association.

HEARING OFFICER LONG: Thank you. Okay, anybody else? All right. Thank you all for offering your comments and coming to the hearing this afternoon. I know it takes some time out of your day and I appreciate your perspective and your comments.

III. D. CASE # V 17-5220 Ted & Barbara Seeley Variance. TABLED

IV. Adjournment

HEARING OFFICER LONG: Is there anything else that staff would like to add regarding this case?

MS. LUCERO: No, I don't believe so, Hearing Officer Long.

HEARING OFFICER LONG: All right. Thank you all very much. As your agent knows, as Chair I make recommendations. I don't make the final decision but I will prepare a written decision of recommendation that would go to the Planning Commission. So I've got a couple of weeks to do that and then it can be made available to you. All right. Thank you all. That was all we had on the agenda so I will adjourn the meeting.

[The hearing was adjourned at approximately 3:30 pm.]

Approved by:

Nancy Long
Nancy Long, SLDC Hearing Officer
Santa Fe County

SLDC HEARING OFFICER M
PAGES: 8

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

I Hereby Certify That This Instrument Was Filed for
Record On The 12TH Day Of October, 2017 at 09:55:18 AM
And Was Duly Recorded as Instrument # 1838626
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar

Deputy *Geraldine Salazar* County Clerk, Santa Fe, NM

