

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

December 19, 2019

I. This meeting of the Santa Fe County Planning Commission called to order by Chair Charlie Gonzales on the above-cited date at approximately 4:00 p.m. at the Main Conference Room, 2nd floor, Santa Fe County Administrative Complex, 100 Catron Street, Santa Fe, New Mexico.

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

Members Present:

Charlie Gonzales, Chair
Frank Katz, Vice Chair
J. J. Gonzales
Leroy Lopez
Susan Martin

Member(s) Excused:

Steve Shepherd
Fred Raznick

Staff Present:

Vicki Lucero, Building & Services Manager
Cristella Valdez, Assistant County Attorney
Roger Prucino, Assistant County Attorney
Jaome Blay, Fire Marshal
Nathan Manzanares, Development Review Specialist

IV. Approval of Agenda

There were no changes to the published agenda and it was accepted by consensus.

V. Approval of Minutes:

A Approval of November 21, 2019 Regular Meeting Minutes

Member Gonzales moved to approve and Member Lopez seconded. The motion passed without opposition and Member Martin abstaining.

SFC CLERK RECORDED 02/24/2020

VI. New Business

- A. CASE #19-5210 Henry H. Carey Revocable Trust Steep Slope Disturbance Variance. Henry H. Carey Revocable Trust, Applicant, Oralynn Guerrerortiz, Agent, requests a variance of Chapter 7, Section 7.17.4.3, (Disturbance of 30% Slope) to allow an existing foot trail to be improved creating a disturbance of approximately 3,500 square feet of slopes in excess of 30%. The site is within the Tesuque Community District Overlay within the Residential Community Zoning District. The site is located at 72B Bauer Road, within Township 17 North, Range 10 East, Section 5. (Commission District 1), SDA-2.**

[Chair Gonzales recused himself from this case and Vice Chair Katz conducted the process for this variance.]

MEMBER KATZ: Can we have the staff report on this case.

NATHAN MANZANARES (Case Manager): Issue, Henry H. Carey Revocable Trust, Applicant, Oralynn Guerrerortiz, Agent, requests a variance of Chapter 7, Section 7.17.4.3, Disturbance of 30 percent slopes, to allow an existing foot trail to be improved creating a disturbance of approximately 3,500 square feet of slopes in excess of 30 percent. The site is within the Tesuque Community District Overlay within the Residential Community Zoning District. The site is located at 72B Bauer Road, within Commission District 1.

The property consists of 9.3 acres and is in the Residential Community zoning district within the Tesuque Community. The Applicant request to improve approximately 350 linear feet along a private dirt foot trail from 3 feet to 6 feet in width. The current conditions of the trail are steep, with a raw dirt surface on a heavily forested slope. The proposed improvements also include removing dead brush and trees bordering the existing trail in order to reduce fire risk and danger to the area.

The Sustainable Land Development Code allows for disturbance of slopes in excess of 30 percent for driveways only; therefore, the Applicant is requesting a variance.

Upon review of the Applicant's proposal and visiting the site, Staff has concluded that the Applicant's proposal is unable to be developed under strict adherence to the terrain management regulations set forth in the SLDC. Therefore, Staff recommends approval of the Applicant's requested variance. If the decision of the Planning Commission is to recommend approval, staff recommends the following conditions be imposed as stated in the staff report and in accordance with Hearing Officer Virtue's recommended decision.

Mr. Katz, may I enter the conditions into the record as stated.

MEMBER KATZ: Yes, please.

Conditions

1. Construction shall be in accordance with engineered plans provided.
2. Applicant shall use an ATV, wood chipper and skid-steer loader (Bobcat) as stated in variance request, no other heavy machinery will be permitted during trail improvement construction.
3. The development must comply with Fire Prevention requirements and conditions.

4. The development must obtain development permits from the County before any construction can take place on the property.

MR. MANZANARES: Thank you. And I now stand for questions.

MEMBER KATZ: Does anybody have any questions? Okay. Applicant.

ORALYNN GUERRERORTIZ: My name is Oralynn Guerrerortiz, I am with an engineering firm of Design Enginuity. With me today is Henry Carey, to my left and two of his neighbors who will speak for themselves.

[Those wishing to speak were administered the oath]

MS. GUERRERORTIZ [Duly sworn]: I'm at 1421 Luisa Street, Suite E, here in town and I will enter these photos in the record just so you can see the existing dirt trail and there is just a concern about a lot of dead trees on the property and a desire by Mr. Carey to remove those dead trees. The property is at the very end of Bauer Road and it actually borders the Tesuque Creek. Here is a blowup of the property. Mr. Carey lives here and the foot trail kind of starts here and goes down to the creek. If you've seen the engineering plans, it's a pretty steep – it's a fairly steep road – footpath. We're not going to change where the footpath is at all. We are just widening it so it can get equipment down there like mulchers and maybe pull out some materials that are dead.

We agree to all of staff's conditions and I would be happy to stand for any questions.

MEMBER KATZ: Any questions.

MEMBER GONZALES: I have a couple of questions. I just read the letter from the Tesuque Village person that they were concerned about this that it would eventually be widened to a wider trail and then in the future it would be turned into a driveway and driveways are allowed. I have no idea if that's going up to a mesa or going down or wherever it is.

MS. GUERRERORTIZ: It's going down to the creek at a really steep grade. It's almost 20 to 25 percent. It would never meet driveway standards with the Fire Marshal. There is no intention ever for it to be used as a road access or for any development down there. It is simply for actually better stewardship of the land and to remove a lot of dead trees that are a concern.

MEMBER GONZALES: I think that was the only concern that Tesuque Village people had, I think. If that's the case, that would be fine. And that's about the only question I had.

MEMBER KATZ: Okay, any other questions? Okay. This is a public hearing and we will hopefully now hear from two members of the public.

[Previously sworn Lynn Pickard testified as follows:]

LYNN PICKARD: My name is Lynn Pickard and I'm the co-chair of the Tesuque Valley Community Association. Whenever anything is proposed in terms of a variance or even development in Tesuque that requires something more staff we are notified and we put together a committee who goes out and listens to the project and gives our approval or disapproval.

I'm here today because usually the community is always in a position of "no, let's not do this, not in my backyard, let's not do the other thing," and today I am happy to report we're here to support. Basically, the position of the Tesuque Valley Community Association is that we have three priorities: one, to make sure that the Tesuque Valley Community Plan which the Board of County Commissioners adopted six years ago is adhered to, to the extent possible. Second, we're concerned with fire danger and third we're concerned with flood danger. And

because of the fire danger here we are very supportive of what the landowner wants to do to mitigate the fire danger.

MEMBER KATZ: Thank you.

[Previously sworn, Michael Frazer, testified as follows:]

MICHAEL FRAZER: My name is Michael Frazer. I'm a neighbor. I live down at the bottom of the hill, downstream from this project and I'm very supportive of what Henry wants to do. The treatment of the fuels is really critical. That whole canyon is potentially a fire chimney and anything started on that trail – a human caused fire that might start on the trail could get started right there. So I think anything he does there is to the good. So I am very supportive.

MEMBER KATZ: Thank you. Anybody else want to discuss this case? In that case, the public hearing is closed. I'll come back to the Commission. Questions, discussions. Yes.

MEMBER LOPEZ: Mr. Chair, this trail here is it used for biking or anything like that?

MS. GUERRERORTIZ: Mr. Carey, could you answer that question.

MR. CAREY: The existing trail that we're proposing to widen?

MEMBER LOPEZ: Yes.

MR. CAREY: No, it's not. It is just a footpath.

MEMBER LOPEZ: Okay, thank you.

MEMBER KATZ: Anybody else? I think we're ready for a motion then. Yes, Susan.

MEMBER MARTIN: Mr. Chairman, I would move case number 19-5210, Henry Carey Revocable Trust variance, move for approval with conditions.

MEMBER GONZALES: I would second that.

MEMBER KATZ: It's been moved and second. All in favor.

The motion passed by unanimous 4-0 voice vote. [Charlie Gonzales recused himself from this case]

- B. CASE 19-15180 Gregorio and Elizabeth Lopez Setback Variance. Gregorio and Elizabeth Lopez, Applicants, Rick Chatroop, Agent, request a variance of setback requirements of Chapter 9, Section 9.11.2.1 (Tres Arroyos del Poniente Community District Overlay, Setback from NM 599) of the Sustainable Land Development Code (SLDC), requiring a 250-foot setback from NM 599. The property is located off of NM 599 North Frontage Road at 572 NM 599 Frontage Road within the Tres Arroyos del Poniente Community Overlay District and is zoned Residential Estate, within Section 1, Township 16 North, Range 8 East and Section 36, Township 17 North, Range 8 East (SDA-2). (Commission District 2)**

CHAIR GONZALES: Thank you all for coming. This is case number 19-5180, Gregorio and Elizabeth Lopez setback variance. Please, go ahead and give your staff presentation.

MR. MANZANARES: Thank you, Mr. Chair. Issue, Gregorio and Elizabeth Lopez, Applicants, Rick Chatroop, Agent, request a variance of setback requirements in Chapter 9, Section 9.11.2.1. This is a highway set from 599 in the Tres Arroyos Community District and requires a 250 foot setback from New Mexico 599. The property is located off of 72 NM 599 Frontage Road within Commission District 2.

The property consists of two legal lots of record, one of which is located within the City of Santa Fe's jurisdiction and the other located in Santa Fe County's jurisdiction which Mr. and Mrs. Lopez intend on developing. Both lots combine for a total of 6.27 acres. The lot located within Santa Fe County is where the proposed residence will be located. It is within the Residential Estate zoning district within the Tres Arroyos del Poniente Community District. Applicants request to build a single family residence within the required 250 foot setback. The Applicants state that there is poor drainage on the property that does not allow development in the northern rear end of the property and therefore, request a variance to build within the setback approximately 98 feet. The Applicants also state that this request is also based off development that has already been done on adjacent properties within the area that has taken place within the now required setback.

Upon review of the Applicants' proposal and visiting the site, Staff has concluded that the Applicants' proposed variance is justifiable. To develop under strict adherence to the NM 599 setback set forth by the SLDC, could cause the potential risk for future flooding by building within a drainage area. In addition, multiple residences and structures were built prior to the adoption of the SLDC that now requires a highway setback from NM5 99. Therefore, Staff recommends approval of the Applicants requested variance. If the decision of the Planning Commission is to recommend approval, staff recommends that the conditions stated in the staff report be imposed in accordance with the Hearing Officer's recommendation. Mr. Chair, may I enter the conditions into the record as stated in the staff report?

CHAIR GONZALES: Yes, you may.

Conditions:

1. Construction shall be in accordance with Topographic Plan done by Mr. Rick Chatroop, Applicants shall not build within hatched area designated as a drainage by Mr. Chatroop.
2. Applicants shall provide an Engineered Grading & Drainage plan with submittal for a Single Family Residence Permit.
3. The development must comply with Fire Prevention requirements and conditions.
4. The development must obtain development permits from the County before any construction can take place on property.

MR. MANZANARES: Thank you, Mr. Chair. I now stand for any questions.

CHAIR GONZALES: Mr. Katz.

MEMBER KATZ: I am a little puzzled as to what the lots are here.

MR. MANZANARES: Mr. Chair, Mr. Katz, it is a little confusing. If you go to Exhibit 2, that's probably the best illustration, on NBA-8 you can see Tract D3 which is within the City's jurisdiction and Tract D2 which is in the County jurisdiction. Tract D2 is where Mr. and Mrs. Lopez intend on building and the drainage area will be in the rear of the property there that they want to avoid thus pushing them closer to NM 599.

MEMBER KATZ: And that goes downhill; right?

RICK CHATROOP: Yes.

MR. MANZANARES: If you also look at the next page there, Mr. Chatroop on NBB-9 designated that drainage area with a hatched area and also showed where the proposed residence would be located.

MEMBER KATZ: Okay, thank you.

CHAIR GONZALES: I have a question. Being that were on the subject of those lots, one of my questions was and I didn't realize it was in the City, but I guess and I don't know whether you can answer this question or not, but is that property going to be usable without a variance?

ELIZABETH LOPEZ: We didn't either. We didn't know that part of it was within the City.

MR. MANZANARES: Mr. Chair, this property is an anomaly. It just happened to not get annexed during the last annexation. The Lopezes did try to work with the City to get it annexed but there is really no timeframe and we didn't want to hinder their development. They did get an approved driveway permit through NM DOT and the City so they're going to be accessing DOT right-of-way, City right-of-way and then into the County.

As far as it being developed, Tract D3, all of that permitting would be done through the City. It is very narrow, very limited but that ultimate would be up to the City to decide if anything could be developed there. That would be outside of the County's jurisdiction.

CHAIR GONZALES: Okay, thank you. You answered a couple of my questions. Any other questions from the Commission? Leroy, anything? Okay, let's open up for a public hearing.

[Duly sworn, those wishing to speak were duly sworn: Rick Chatroop, Gregorio Lopez and Elizabeth Lopez]

RICK CHATROOP: I've prepared a little bit of an exhibit for you all. The green cross-hatched area is the City lot and as previously stated I work with the City quite a bit to get this into the County because it was intended to be in the County. But when I dealt with the City engineers and the City planning department the best answer I could get from them was, We understand we've made some mistakes in that area but we're not going to give you any time frame that we're going to correct them by. So they basically invalidated a lot that these people purchased. In the future, we'd like to be able to work with the County and adjust this but even to do an adjustment we have to deal with the City. So we're at their mercy and they are in no hurry to do anything about this. They basically said, We're not going to give you a timeframe. We don't know when we'll do it. It is our mistake. That's what we get for hiring planners instead of surveyors when we do the map for the annexation. And that's the best answer I could get.

I've also cross-hatched on here where the flooding starts and kind of the area where if I was to build I would not be putting my house in that area. If we look at the reverse side of this, this is the same drawing but with the aerial photo imposed; this structure was a neighbor's structure that as actually flooded out because of the flow coming in and across this area.

GREGORIO LOPEZ: I think it was two years ago of three when we got that big rain.

MR. CHATROOP: He removed it. He left a brand new deck he built in place and apparently it was scavenged –

MR. LOPEZ: All the neighbors took it. It was brand new.

MR. CHATROOP: So this area has a history and already this whole back area was flooded. Flooded enough that he would not deal with it and moved his home out and leave multiple dollars worth of improvements there.

That's the criteria that we're going along. And I know that generally we address the criteria of the request for the variance and the first one is, It's not contrary to public interest. No, we're trying to help the public by not putting a structure back there and directing more drainage onto the adjoining lots and causing an issue for the neighborhood. Cause as you can tell by the topo this whole area is going to be prone to flooding back there and anytime you put an interference you're going to channel more drainage into certain lots and maybe creating more of a channel and erosion. So I believe we are working to help the public and not contrary to the public use.

And the second criteria, extraordinary exceptional situations, it's not extraordinary but it's a drainage area. And I've done thousands of maps with Santa Fe County and every time I have a natural drainage on the map, they request that there be a note on the plat that there can be no modification of the natural flow of drainage. So once again we're going along with what they requested and what they've requested on all subdivisions, lot splits and probably when you go for a building permit they're going to ask for the same thing. So that's the extraordinary condition is that we just don't have the area without causing problems for the neighbors. And these are large lots. These are not small lots. These are huge lots and he just wants to put a structure on there and we're still 100 feet off the right-of-way. And as you see by the photos and the photos that Nathan referenced, we have house, buildings, more buildings and other residences all at less than 98 feet – they are more in the 60 to 70 foot range on the frontage of the right-of-way. But in the history of creating 599 these structures were already grandfathered in so we're not going contrary to that because the appearance is going to stay the same. Because you have structures into the right-of-way – or not into the right-of-way but into the zone area already in place on both side. So it's not going to create an eyesore sticking out when you come down the highway and you see all of a sudden this house sticking out away from everybody else's because this is a situation that goes for miles along here. You know, the road came after the lots in this case. You know, and then unfortunately, with the planning – I mean, not unfortunately, I understand there is a need for setbacks along the highway, that doesn't take into consideration at the time where I think this lot should have been purchased when the right-of-way acquisition went through because they made a 60 x 900 foot lot that what good did it do for the person to keep this lot and then it's included in the setback by the County so even if it had went to the County you couldn't use that lot at all. So those are some of the conditions that they have created, not the clients and not the people who developed the lots but in the course of modernization and adding highways has forced the situation.

And the third requirements if the spirit of the SLDC is observed. Of course, we are trying to work with the SLDC. We are going back as far as we can reasonably go back. We are not interfering with natural drainage. And those are all what I would consider the main parts of the SLDC, it is sustainable. If we're starting to build and we're forced to build in the drainage areas and affect your neighbors, that's not sustainable. Let's build in the high areas, on the good drainage and the good locations and for the clients' needs that a very important location because of their disabled

SFC CLERK RECORDED 02/24/2020

daughter. There's more conditions than they just want to put their house there. It's important for them to have their house there.

MR. LOPEZ: On the north part of that there's a 25-foot utilities setback also. So the utilities are already there.

CHAIR GONZALES: All right. I think I called a public hearing. Is there anybody else here part of your presentation?

MR. CHATROOP: No, I think that's it. These are just the owners. There's no one else here.

CHAIR GONZALES: Okay. Any other questions of staff?

MEMBER KATZ: I applaud how you're developing this property. It makes total sense to me. My question is that back portion that is the drainage area, can that be developed, might it be developed in the future? What is to prevent it from being developed?

MR. CHATROOP: Well, if they put their house on there you're going to limit the number of homes that can be built on there. It will probably become a single family lot from what I understand.

MEMBER KATZ: Can there be a guest house, yes.

MR. LOPEZ: Not in here.

MEMBER KATZ: Not in the drainage area?

MR. LOPEZ: I wouldn't, no. I would not do that.

MR. CHATROOP: You would be just opening yourself to a lot of problems.

MEMBER KATZ: Thank you very much.

CHAIR GONZALES: I have a couple of questions. What is the square footage of the proposed house?

MS. LOPEZ: Right now it's at 3,380. But we need to get a final number from an architect because if it gets way up there we'll have to downsize – you know how that goes.

CHAIR GONZALES: Another question; is there a Tres Arroyos del Poniente association or something?

MR. CHATROOP: There is nothing out there.

MEMBER GONZALES: It used to be Tres Arroyos but I don't know if they continued to have it.

MR. CHATROOP: No, because I would have had to notify anyone in those areas.

MR. LOPEZ: I built a pretty massive fence –

CHAIR GONZALES: I know. I pass by there every day.

MR. LOPEZ: I had extra pipe so –

CHAIR GONZALES: And a DOT designed culvert.

MR. LOPEZ: Yeah, and then after I built it he told me, hey, why did they make you built it? The main guy told me this.

CHAIR GONZALES: The first thing I spotted on the highway was that DOT culvert. A question I have for staff is that this setback that we're talking about, that's not from the old Highway Corridor ordinance – that's all gone is; right?

MS. LUCERO: Mr. Chair, the Highway Corridor Ordinance, yes, that's no longer in effective. I believe the Tres Arroyos del Poniente Community District Overlay did take into consideration or did keep some of the setback requirements.

CHAIR GONZALES: It sounds like it because 250 that was a hard one. Another question I have is, are you ever going to try and get access from Camino Don Fidel?

MR. CHATROOP: You can't.

MR. LOPEZ: We can't. That's a private road. We tried initially and the person that gave it to us was with the County and he gave it there and then they came in and talked to Nathan and a couple of other people there – I can't remember the other guys name that left – but anyway they took it away and that's when I went – when I bought this property the DOT told me, if you have problems getting accessing just come to me and I will give you accessing through the frontage road.

CHAIR GONZALES: That's all I have. Any other questions?

MEMBER GONZALES: The only questions I have is that I drive that road once or twice a week and I see a lot of houses that are close to the road and those are all grandfathered in?

MR. CHATROOP: Those are grandfathered in.

MEMBER GONZALES: And when they built that road they just bought right-of-way, condemned properties and left little pieces of property like that property that was there.

MR. CHATROOP: That was a strange acquisition because the City actually purchased that property. It wasn't the Highway Department that did. A portion of 599, and I'm trying to think if that area as included but it was bought by the City because they intended to do it one way or the other and the Highway came in and got the rest of it. But – cause I've had to deal with out parcels and that's what I mean about this should have been an out parcel.

But I've had to deal with out parcels and I went to the Highway Department and they said, We don't own that. And I said you bought it and designated it as an out parcel. Well, the City owns that and then you go to the City and they say, We don't own that.

MR. LOPEZ: Cause the City water line goes right in front, right here in between the frontage road and my fence is the City main water line.
[Gregorio "Greg" Lopez and Elizabeth Lopez identified themselves from the record.]

CHAIR GONZALES: This is a public hearing. Is there anybody else here to speak? Okay, I'll close the – oh, did you want to speak.

MR. CHATROOP: One other thing, I did get a neighbor, a neighbor over here, and he was concerned about the drainage, I don't want them to get in that drainage. We have enough problems without people putting structures in that. So he was all in full support that they get the variance.

CHAIR GONZALES: All right, nobody here for the public hearing. I'm going to close the public hearing. What's the pleasure of the Commission?

MEMBER LOPEZ: I so move, Mr. Chair, case 18-5180, Gregorio and Elizabeth Lopez variance.

CHAIR GONZALES: Is it 18 or 19?

MR. MANZANARES: Nineteen.

SFC CLERK RECORDED 02/24/2020

MEMBER LOPEZ: Case number 19-5180 Gregorio and Elizabeth Lopez variance be approved.

MEMBER MARTIN: Second.

MS. LUCERO: Mr. Chair, if I could get clarification; does that include approval with staff conditions?

MEMBER LOPEZ: With staff recommendations.

MEMBER MARTIN: With staff conditions, yes.

CHAIR GONZALES: All in favor say "aye."

The motion passed by unanimous [5-0] voice vote.

VII. Petitions from the Floor - None were offered.

VIII. Communications from the Commission Members

Holiday wishes were extended to all.

IX. Communications from the Attorney - None were presented.

X. Matters from Land Use Staff

The meeting schedule for 2020 was distributed.

XI. Next Planning Commission Meeting: January 16, 2020 – 100 Catron Street

XII. Adjournment

Having completed the agenda and with no further business to come before this Commission, Chair Gonzales declared this meeting adjourned at approximately 4:30 p.m.

Approved by:

Charlie Gonzales, Chair
Planning Commission



GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Respectfully submitted by:

Karen Farrell, Wordswork

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

PLANNING COMMISSION MI
PAGES: 10

I Hereby Certify That This Instrument Was Filed for
Record On The 24TH Day Of February, 2020 at 08:55:59 AM
And Was Duly Recorded as Instrument # 1909892
Of The Records Of Santa Fe County

Deputy _____ County Clerk, Santa Fe, NM

Santa Fe County Planning Commission: December 19, 2019

SFC CLERK RECORDED 02/24/2020