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Katherine Miller
County Manager

DATE: November 28, 2017

TO: Board of County Commissioners

FROM: John Lovato, Development Review Specialist Sr. 

VIA: Katherine Miller, County Manager
Penny Ellis-Green, Growth Management Director
Vicki Lucero, Building and Development Services Manager 

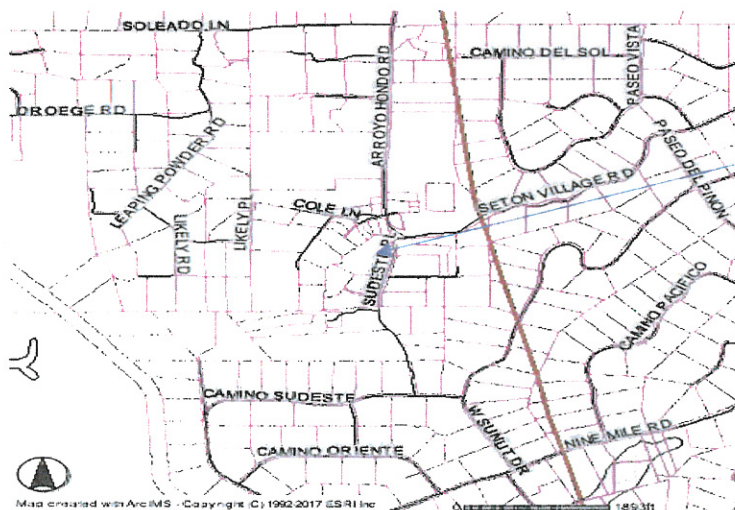
FILE REF: CASE # APP 17-5101 Regina Buckley Appeal

ISSUE:

Regina Buckley, Appellant, Scott Hoeft, Agent are appealing the Santa Fe County Planning Commission's decision for denial to allow a variance of Ordinance 2016-9, Chapter 8.6.5 Table 8.9, (Dimensional Standards) Residential Fringe (RES F) to allow 9.19 acres to be divided by way of Family Transfer, into two 4.6 acre lots.

The property is located at 11 Sudeste Place, within Section 24, Township 16 North, Range 9 East (Commission District 4).

Vicinity Map:



SITE LOCATION

SUMMARY:

On June 22, 2017, the Applicant presented a variance of Ordinance 2016-9, Chapter 8.6.5 Table 8.9, (Dimensional Standards) Residential Fringe (RES F) to allow 9.19 acres to be divided by way of Family Transfer, into two 4.6 acre lots. The Hearing Officer in support of the Application memorialized in her findings of fact and conclusions of law in a written order. (Exhibit 12) subject to the following conditions.

- 1. No further division of this property will be allowed.**
- 2. Accessory dwelling units will not be allowed on either lots due to the substandard lot size.**

On August 17, 2017, the variance request was presented to the Planning Commission and the Planning Commission denied the variances by a 5-2 vote, because allowing additional accesses and substandard lot sizes were contrary to the public interest, the applicant failed to provide evidence of extraordinary and exceptional situations or conditions of the property, and the spirit of the SLDC is observed and substantial justice is done by maintaining minimum lot sizes when the property owner can add a dwelling unit to her property for her children. (July 20, 2017, Minutes and written order. (Exhibit 14)

Appellant's original variance request: The Applicant requested a variance of Chapter 8.6.5, Table 8.9 Dimensional Standards, Residential Fringe (RES-F) to allow 9.19 acres to be divided by way of a Family Transfer into two 4.6 acre lots. Minimum lots size in the Residential Fringe Zoning District is 5 acres per dwelling. Currently there is a 1,694 square foot residence on the property in which the Applicant resides in.

If the Appeal is granted the Applicant intends to give her son one of the lots.

The Applicants agent stated, "The property is located in Sunlit Hills, an area composed of a variety of residential lots that range in size from 1-acre to 25 acres. The site abuts Seton Village (to the north), which is a Residential Community (RES C-1) and features 1-acre-densities."

The applicable requirements under the Santa Fe County Sustainable Land Development Code, Ordinance No. 2016-9 (SLDC), which govern this Application are the following:

Ordinance 2016-9, Chapter 8.6.5 Table 8.9, (Dimensional Standards).

Chapter 4, Section 4.9.7.1, Variances, Purpose

The purpose of this Section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties

or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements and standards of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

Chapter 4, Section 4.9.7.4, Variance Review Criteria of the SLDC states, (Exhibit 7) A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

1. where the request is not contrary to public interest;
2. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

Chapter 4, Section 4.9.7.5 Variance Conditions of approval.

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time

The Appellant addressed the variance criteria for the density variance and staff responded as follows:

The Applicant has addressed the variance criteria as follows:

1. Where the request is not contrary to public interest;

Applicant's Statement: The request for a family transfer lot split is not contrary to public interest and is a family exemption land division in the SLDC, Section 8.6.5.3. The proposed division is a natural part of the estate planning process that most families embark upon. It is permitted to divide a piece of land and donate or give to a family member as stipulated in this section of the code. The lot sizes at 4.6-acre are slightly substandard and a minor deviation from the Code in an area that features a wide range of lot sizes.

Staff Response: The property lies within the Residential Fringe Zoning District. The base density is 5 acres per dwelling unit. Family transfers are required to meet density requirements of the code. The subject lot which is 9.19 acres does not meet the density requirement. The lot would need an additional 0.81 acres in order to qualify for a Family Transfer Land Division. However, since the 9.19 acre lot is a legal lot of record, the Applicant could qualify for an accessory dwelling unit in accordance with Chapter 10.4 of the SLDC.

2. Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant;

Applicant's Statement: Literal enforcement of the SLDC will not permit the family transfer to occur. In an area that features a host of lot sizes (the subject lot is actually one of the larger parcels) that range in size from 1-acre to 25-acres, not permitting the division would seem contrary to the spirit of the development of the area. Seton Village has small lots that are 1-acre in size. The subject parcel is 9.19-acres. This lot split is 4.6 acres per lot, which is 92% of the density requirement per the new SLDC code.

Staff Response: The 1996 Land Development Code allowed for densities of 5 acres in this area or 2.5 acres if community water was available. The existing lot is not served by community water and does not meet minimum lot size. Under the Sustainable Land Development Code, the minimum lot size is 5 acres in this zoning district. Many of the surrounding lots are legal non-conforming lots. The lots were created prior to 1981 and are in the range of 1-40 acres in size.

3. So that the spirit of the SLDC is observed and substantial justice is done.

Applicant's Statement: The variance request maintains the intent of the SLDC with this minimal density reduction. The land will appear and have a look and feel of a 5-acre parcel and will not appear that is smaller than the intention of the RES-F density. It is anticipated that the minimal easing will have no discernable impact on the value of the neighboring lots in this area.

Staff Response: Increased density in this area creates more traffic, water use, and creates a substandard lot size. The proposed variance if approved also creates a precedent for other lots/property owners in the area to create substandard lots.

This Appeal was submitted on October 31, 2017, within the thirty days allowed by Chapter 4, Section 4.5.4 of the SLDC.

RECOMMENDATION:

As staff did not recommend the initial variance request, staff recommends the BCC deny the appeal and uphold the Santa Fe County's Planning Commissions decision to deny a variance of 9.19 acres to be divided by way of a Family Transfer into two 4.6 acre lots. The property lies within the Residential Fringe Zoning District. The base density in the Residential Fringe is 5 acres per dwelling unit. Allowing a variance creates a precedent to surrounding properties and creates substandard lot sizes. Previous lot sizes that range from 1-40 acres are legal non-conforming or created prior to the Sustainable Land Development Code.

On June 22, 2017, this Application was presented to the Hearing Officer for consideration. The Hearing Officer supported the Application as memorialized in the findings of fact and conclusions of law written order, subject to conditions.

The Planning Commission denied the variance because they believed that the applicant did not meet the requirements and evidence necessity to grant the variance and meet the variance criteria. If the decision of the BCC is to deny the appeal, the BCC may adopt the findings of the Planning

Commission. (Exhibit 14) If the decision of the BCC is to grant the Appeal and the variance requested the BCC may adopt the findings from the Hearing Officer (Exhibit 12)

An appeal of the decision of the Planning Commission shall be reviewed de novo by the Board per Chapter 4, Section 4.5.4 of the SLDC and the Board may make their own findings and conclusions.

EXHIBITS:

1. Letter of Appeal
2. Applicants Request
3. Proposed Survey Plat
4. Aerial of Site and Surrounding Area/Site Plan
5. Chapter 8, Table 8-6-5 Table 8-9 Dimensional Standards
6. Chapter 4, Table 4-1, Procedural Requirements.
7. Chapter 4, Section 4.9.7.4, Variance review criteria
8. Chapter 4, Section 4.9.7.5, Conditions of approval
9. Noticing
10. Community Meeting Material
11. June 22, 2017, Hearing Officer Meeting Minutes
12. Recommended Decision and Order
13. August 17, 2017, Planning Commission Minutes
14. October 23, 2017, Final Order
15. Letter of Opposition