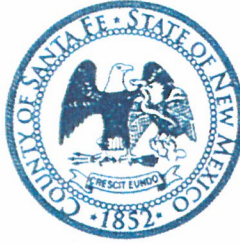


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



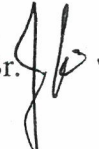
Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: September 12, 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 17-5001 Eldorado Area Water and Sanitation District

ISSUE:

Eldorado Area Water and Sanitation District, Appellant, Steve King, Agent are appealing the Santa Fe County Planning Commission's decision for denial to allow a variance of Chapter 7.17.5.2.6, to allow an 800 square foot well production facility/and water treatment purifying equipment, to be placed within the 75' foot setback from the FEMA Designated Special Flood Hazard Area, a variance of Chapter 7.11.12.3, Table 7-15, to allow a 50 Foot separation from access points, and a variance of Chapter 7.3.3 Setbacks, Table 7-A (Setback Table) to allow the facility to be located within an easement which is 7.5 feet from the property boundary. The 0.072 acre easement site is within a 3.56 acre parcel and lies within the Residential Estate Zoning District. The property is located at 3 Carissa Drive, in Eldorado within, Section 17, Township 15 North, Range 10 East, Commission District 5.

Vicinity Map:



SITE LOCATION

SUMMARY:

On April 27, 2017, the Applicant presented three variances to the Hearing Officer for Public Hearing. The three variances of the Sustainable Land Development Code (SLDC) are as follows: a variance of Chapter 7.17.5.2.6, to allow an 800 square foot well production facility/and water treatment purifying equipment, to be placed within the 75' foot setback from the FEMA Designated Special Flood Hazard Area, a variance of Chapter 7.11.12.3, Table 7-15, to allow a 25 Foot separation from access points, and a variance of Chapter 7.3.3 Setbacks, Table 7-A (Setback Table) to allow the facility to be located within an easement which is 7.5 feet from the property boundary. The Hearing Officer in support of the Application memorialized in her findings of fact and conclusions of law in a written order. (Exhibit 10)

On June 15, 2017, the variance request was presented to the Planning Commission and the Planning Commission denied all three variances by a 5-2 vote, because members believed the plans lacked sufficient information required for the request. (July 20, 2017, Minutes, and written order. (Exhibit 9)

Appellant's original variance request: The Appellants requested to place an 800 square foot well production facility and water treatment purifying equipment to be placed within their 3,100 square foot easement. A detailed design of well 19 was initiated in 2014. Based on results of this design investigation, the district proceeded with easement acquisition and well development. The Appellants stated, "As identified in the EAWSD utility Master Plan completed in July 2013, the district has an acute need to develop additional groundwater sources as required to meet our peak summer."

Therefore, the Appellant requested three variances to place the facility on the 0.072 acre easement site within a 3.56 acre parcel.

The Appellant states, "because of the lack of clarity regarding the basis for the County Planning Commission's denial of EAWSD request for variances for the Well 19 Production Facilities project, we defer to the findings and recommendations of the public Hearing Officers as the basis for our request for appeal to the Board of County Commissioners." The Appellants further states with documentation submitted in the appeal (Exhibit 1) that they are following all conditions recommended by the Hearing officer and County Staff as follows:

1. July 18, 2017, correspondence from Design Engineer Molzen Corbin certifying that the arroyo Bank is stable.
2. July 18, 2017, correspondence from Design Engineer Molzen Corbin certifying that flood levels in the arroyo will not increase due to the project with submitted Hydraulic calculations.
3. Revised civil drawings for the project placing the driveway at the northern boundary of the easement and placing delineators at the ends of the culvert.

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

Chapter 7, Section 7.17.5.2.6, All other development (Exhibit 4)

1. Erosion setbacks shall be provided for structures adjacent to natural arroyos, channels, or streams such that: (a) a minimum setback of 25' shall be provided from

all arroyos with flow rates of 100 cubic feet per second (100cfs); or (b) a minimum setback of 75' shall be provided from all FEMA designated 100 year Floodplains. Setbacks from FEMA designated Floodplains may be reduced if bank stabilization or stream bed and bank stability is designated or provided by a professional engineer. In no case shall the setback be reduced to less than 25'.

Chapter 7.11.12.3 Table 7-15, Separation of driveways for Non-Residential, Multi-Family and Mixed-Use Parcels. (Exhibit 6) Posted Speed of 25-30 M.P.H. must have a minimum distance of 200 feet.

Chapter 7.3.3 Setbacks Table 7-A: Setback Table (Exhibit 5) The Residential Estate (RES-E) Zoning District requires a minimum front setback of 10 feet, and a minimum side and rear setback of 25 feet.

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 floodplain setback variance and staff responded as follows:

1. "where the request is not contrary to the public interest"

Appellants Response: The proposed finish floor of the well house is elevated one foot above the base flood elevation.

Staff Response: The structure as proposed is 1' above Base Flood Elevation.

Appellants Response: The building meets the County's 25 foot arroyo setback requirement, as the building is situated approximately 43 feet from the top of the west bank of the actual arroyo.

Staff response: The SLDC requires a 75' setback from the floodplain not the bank of the arroyo. Setbacks can be reduced to 25' with bank stabilization. The engineer has certified that the banks are stable. However, the structure is located within the FEMA designated flood plain and is required to be 1' above Base flood Elevation, water tight with walls impermeable to the passage of water with structural components have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Proposed encroachments shall not result in any increase in flood levels during the occurrences of the base flood discharge. Since the time of the decision of the Planning Commission, the Applicant has submitted documentation demonstrating that the development will not increase flood levels with a no rise certification and drainage analysis.

Appellants Response: The embankment around the well house has been armored with rip-rap and the appellant has submitted a no rise certification and certification that the bank of the arroyo is stable from a licensed engineer.

Staff Response: Since the time of the decision by the Planning Commission, the engineer has certified the embankment of the arroyo is stable. The engineer states that the fill slope on the south and east side of the building will be protected with rip-rap to provide bank stabilization and existing vegetation will minimize bank migration.

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"

Appellants Response: Situating the building in the southeast corner of the acquired property was done intentionally in order to keep it out of the line-of-site of the property owner's home. Redesign and/or additional easement acquisition which might be required would increase project costs, impose

further limitations on the current property owner and significantly delay the availability of this much needed additional source of water to the community.

Staff Response: The well was situated to the southeast corner of the property with regards to the property owner so that the structure was out of sight. However, staff is concerned for a 100 year storm event occurring which can cause upstream and downstream flooding. The structure and well should have been placed further northeast for safety concerns and Code compliance for access, FEMA designated setback requirements, and property boundary setbacks.

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

Appellants Response: The proposed variance improves the building aesthetics from the perspective of the home owner and neighborhood without compromising the protection and safety of this unoccupied utility structure.

Staff Response: The location of the structure is a safety concern due to setbacks from the FEMA designated floodplain area and site distance separation associated with the site. The well is already in place, and the structure will be located within the FEMA designated area.

The second variance sought by the Applicants is a variance of Chapter 7, Section 7.11.12.3.3, Table 7-15 to allow a 25 foot separation from access points. The Agent states, "because of space limitations, the actual driveway setback from the intersection is approximately 25 feet."

The Applicants responded to the variance review criteria for the driveway separation variance as follows:

1. "where the request is not contrary to the public interest"

Appellants Response: The driveway will be used on an infrequent basis estimated to be not more than five days per week as required for weekday spot inspections and periodic maintenance. There is a stop sign for westbound traffic on Torreon Road. The stop condition eliminates conflicts between vehicles entering or leaving the site and westbound traffic on Torreon Road. The intersection sight distance for southbound traffic on Torreon Road is approximately 400 feet. The speed limit is 25 MPH. The AASHTO recommended intersection sight distance is 200 feet for a posted 25 mph speed limit.

Staff Response: The proposed access is 25' from the existing intersection. The SLDC requires a 200' separation, however it also refers you to the American Association of State Transportation Officials (AASHTO) Standards for low volume roads. AASHTO requires a minimum separation of 125'. The structure may be infrequently used. However, at any time maintenance may occur and there is no parking. Well trucks and other equipment used to fix or repair the well may impede and create safety hazards for pedestrians and other vehicles. The easement for the well and water system is located at the corner of an intersection off of

Carrisa Road and Avenida Torreon. Due to the location of the roads intersections, a 25' setback is what the Applicant proposes. The required distance between access points is 200' with a speed limit of 25-30 mph or 125' per AASHTO standards. The structure's access is a safety hazard for pedestrian and vehicle traffic, as the turning radius for the road intersection and radius for the driveway merge into each other. The driveway separation standards were in the 1996 Land Development Code as well as the SLDC.

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"

Appellants Response: the 200 setback cannot be accommodated without significant additional easement acquisition which would increase project costs, impose further limitations on the current property owner and significantly delay the availability of this much needed additional source of water to the community.

Staff Response: Additional or alternative easement can be obtained to accommodate a safer location for the driveway. Since the time of the Planning Commission's denial, the Appellants have moved the driveway to further towards the northeastern end of the easement.

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

Appellants Response: The proposed variance provides for the full protection and safety of the property owner, the neighborhood, the community, District staff and all vehicle and pedestrian traffic along the affected sections of Torreon and Carissa Roads

Staff Response: The SLDC regulations provide for the full protection and safety for all and require a 200' separation between access points.. The driveway will be accessed infrequently for inspection and maintenance of the facility. Santa Fe County conducted traffic counts on Avenida Torreon on January 24th and 25th, 2017. The Counts show the A.M. peak volume at 4 vehicles and the P.M. Peak volume at 5 vehicles. Public works feels that the traffic counts are very low. However, Public Works state they cannot support the variance. If the variance is granted Public Works staff recommends the following conditions:

1. Applicant to place the driveway at the most northern boundary of the easement.
2. Applicant shall place delineators at the end of the culverts.

The third variance the Applicants seek is a variance of Chapter 7.3.3.7 Table 7-A (Setback Table) to allow the facility to be located within an easement which requires a 25 foot building setback from the property lines. The proposed structure is 7.5 feet from the property boundary. The Agent states, "Because of site constraints and to accommodate the wishes of the property owner and neighborhood association, the building is situated towards the southeast corner of the acquired easement approximately 7.5 feet from the property line."

The Applicants responded to the variance review criteria for the property line setback variance as follows:

1. "where the request is not contrary to the public interest"

Appellants Response: The building is not occupied and used only to house process piping and equipment associated with the well. The building will be constructed of fire resistant materials consistent with the New Mexico Fire Code. The southeast property boundary on which the building encroaches is adjacent to the floodplain and therefore will not infringe on other structures.

Staff Response: This structure lies within the Residential Estate Zoning District where the required setback is 25' from the rear property boundary. The structure is setback 7.5 feet from the southeastern boundary of the property where the easement was acquired. Although the structure is unoccupied, all structures must follow the SLDC (Code) requirements for setbacks. There is ample room on the property to meet the 25' setback. The structure and property boundary lies within the FEMA designated floodplain. The structure is setback 7.5 feet from the property.

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"

Appellants Response: Situating the building in the southeast corner of the acquired property was done intentionally in order to keep it out of the line-of-site of the property owner's home. Redesign and/or additional easement acquisition which might be required would increase project costs, impose further limitations on the current property owner and significantly delay the availability of this much needed additional source of water to the community.

Staff Response: The SLDC went through numerous public hearings and meetings to present changes to surrounding communities including Eldorado. The Applicants were one of the organizations who were notified of these meetings and made aware of the SLDC requirements. This easement was acquired in August 4, 2016, and the Applicant should have been aware of the required setbacks. There is ample space on the property to meet the required setback by moving the easement.

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

Appellants Response: The proposed variance improves the building aesthetics from the perspective of the home owner and neighborhood without compromising the protection and safety of the infrequent users of this unoccupied utility structure.

Staff Response: While the building is situated further to the southeast and out of line-of-site from the property owner's home, moving the structure northeast would greatly improve safety.

If the easement was moved required access setbacks, FEMA designated floodplain setbacks, and property setbacks would meet the Code and not require variances.

This Appeal was submitted on August 2, 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 Chapter 7.17.5.2.6, to allow an 800 square foot well production facility/and water treatment purifying equipment, to be placed within the 75' foot setback from the FEMA Designated Floodplain Hazard Area, a variance of Chapter 7.11.12.3, Table 7-15, to allow a 50 Foot separation from access points, and a variance of Chapter 7.3.3 Setbacks, Table 7-A (Setback Table) to allow the facility to be located within an easement which is 7.5 feet from the property boundary.

The Hearing Officer recommend approving all of the variances because she believed that the applicants met the variance criteria.

The Planning Commission denied the variances because they believed that the application and plans provided 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 8) 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 9)

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. Project Plans
3. Chapter 4, Section 4.5.4 Appeals
4. Chapter 7, Section 7.17.5.2.6, (All other development)
5. Chapter 7.3.3 Setbacks Table 7-A (Setback Table)
6. Chapter 7.11.12.3 Table 7-15, Separation of driveways
7. Chapter 4, Section 4.9.7.4 Variance Review Criteria
8. April 27, 2017, Hearing Officer Meeting Minutes
9. Recommended Decision and Order from the Hearing Officer
10. July 20, 2017 Planning Commission Minutes, and written order
11. No Rise Document
12. Stabilization document
13. Fire Review
14. Public Works review