

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

CASE NO. V 17-5090
FREDANCE, LLC

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Commission) for hearing on December 21, 2017, on the application of Fredance, LLC, (Applicant) for a Variance of the Sustainable Land Development Code (SLDC). The Applicant seeks a variance of Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a road with a 30 ft. Right-of-Way rather than the required 50 ft. Right-of-Way for local roads. The property is located at 325 Glorieta Mesa Road (Property) and is zoned Rural Fringe within Section 12, Township 15 North, Range 11 East (Commission District 4).

The Commission, having reviewed the Application, staff reports, the Hearing Officer's Recommended Decision, and having conducted a public hearing on the Application, finds that the Application is well-taken and should be approved, and makes the following findings of fact and conclusions of law:

I. Background

1. On April 21, 2017, the Applicant submitted an application for a variance from Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a road with a 30 ft. Right-of-Way rather than the required 50 ft. Right-of-Way for local roads.

2. The property is located at 325 Glorieta Mesa Road (Property) and is zoned Rural Fringe within Section 12, Township 15 North, Range 11 East (Commission District 4).
3. The Applicant, Fredance, LLC is the owner of the property at 325 Glorieta Mesa Road as indicated by the warranty deed recorded in the records of the Santa Fe County Clerk on January 9, 2007, as Instrument No. 1466386. The applicant is requesting a variance to allow a right-of-way easement to be less than the required 50 ft. right-of-way easement for local roads providing access for non-residential uses.
4. The Applicant states that they, along with their development partner, will be proposing a non-residential use on a portion of the subject property. This non-residential development is not proposed by this application.
5. In 2003, the U.S. Forest Service (USFS) granted the USFS Easement to the Glorieta Mesa Ranch Road Maintenance Association, which was comprised of the owners of the properties within the Pecos Pueblo Land Grant east of U.S. Forest Service Road 612B, including the Applicant. The 30 ft wide Private Easement was created in 2005 by a s Summary Review Subdivision and Lot Line Adjustment Plat, book 587 page 015.

II. Applicable Provisions of the SLDC

6. Chapter 8, Section 8.6.3. Rural Fringe (RUR-F) Purpose:

The purpose of the Rural Fringe (RUR-F) district is to designate areas suitable for a combination of estate-type residential development, agriculture uses and other compatible uses. The RUR-F designation provides an intermediate step in development density between typical open space and agricultural/ranching lands and primarily residential (low density) parcels. This zone also serves to protect agricultural and environmental areas that are inappropriate for more intense development due to their sensitivity. The RUR-F zone accommodates primarily large lot residential, ecotourism, equestrian uses and renewable resource-based

activities, seeking a balance between conservation, environmental protection and reasonable opportunity for development. Density transfers and clustered development shall be allowed in order to support continued farming and/or ranching activities, conserve open space or protect scenic features and environmentally sensitive areas.

7. Chapter 4, Section 4.9.7.1, Variances, Purpose, states:

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.

8. Chapter 4, Section 4.9.7.4, Variance Review criteria states:

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:

- a. where the request is not contrary to public interest;
- b. 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
- c. so that the spirit of the SLDC is observed and substantial justice is done.

9. Chapter 4, Section 4.9.7.5 Conditions of approval.

- a. 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.
- b. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
- c. 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.

III. The Public Hearing Process

10. As required by the SLDC, the Applicant presented the Application to the Technical Advisory Committee (TAC) of February 20, 2017, at the regularly monthly meeting, which satisfied the requirements set forth in Chapter 4, Section 4.4.4.3, Pre-application TAC Meeting.
11. This case had to be tabled three times due to legal access/easement issues with the United States Forest Service (USFS). At this time the USFS has confirmed that they will be working with the Applicants to amend the easement agreement in order to provide legal access.
12. Prior to the hearing before the Commission, notice requirements of the SLDC were met pursuant to Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing. In advance of the hearing on the application, the Applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the Property, beginning on October 11, 2017. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on October 11, 2017, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject Property and a list of persons sent a mailing in contained in the record.
13. At the public hearing before the Commission, staff recommended that the Commission approve the Applicant's Variance request subject to the following conditions:
 - a. No development permits will be issued to the Applicant unless and until the new easement agreement has been issued and recorded by the United States Forest Service (USFS).

- b. If the proposed development will generate more traffic than a single family residence (10 trips per day), a Traffic Impact Analysis will be required with the Site Development Plan application. If it is determined at that time that additional road improvements are warranted which require additional easement, the Applicant will be responsible for acquiring the additional ROW.

c. Compliance with the SLDC

- 14. The Applicant is only asking for a variance of the easement width, and not a variance to the road improvements.
- 15. The Applicant states that the existing road within the USFS Easement and the Private Easement is adequate and that given the rural nature of the area and the relatively limited number of properties served by easements, and the low intensity zoning adopted by the SLDC, it is not likely that the existing road within the easements will ever need to be expanded beyond its existing 2-lane, minimum 20' wide condition.
- 16. Staff conducted a site visit and feels that the off-site road (Glorieta Mesa Rd.) is in good condition and with some maintenance can meet the SLDC requirements for width.
- 17. The Applicant did not provide a Traffic Impact Assessment for the development of the property. However, the Applicant states that the proposed non-residential development will not generate any more traffic than a single family dwelling (10 trips per day) and that the proposed Crystal Earth Pavilion is designed for the "individual experience," and there are no large group gatherings or regular services.
- 18. The Applicant further states that the existing road is a lightly used road with very little traffic that goes on this road, so there is not a need in the foreseeable future

or for the meditation pavilion that is planned to have a road that is wider than 20 feet in width.

19. The Applicant states that the home owners association maintains the road and there are drainage ditches on either sides of the road, or at least one side of the road.

20. Staff has confirmed with Santa Fe County Fire Prevention that by granting the variance to allow a 30 foot Right of Way would not affect public safety as long as a 20 foot unobstructed roadway was provided and the Applicant met the road requirements of the Fire Code.

21. The Commission finds that, based on the information provided by the Applicant and staff's site visit, that the existing road width and east will be sufficient for the proposed development and that the 30 foot easement is sufficient for the pavilion as proposed, as long as it does not generate any more traffic than a single family dwelling.

22. Accordingly, the Commission finds that a 30 foot easement for the existing residences and proposed development will not affect public safety.

23. The Applicant states that acquiring a new easement by the USFS and the private owners would cause peculiar and exception practical difficulties and may be impossible to achieve.

24. The Commission finds that acquiring a new easement for the proposed development would cause practical difficulties.

25. The Applicant does not oppose the conditions suggested by Staff.

d. Support for the Application

26. During the public hearing no one spoke in opposition of the variance request.

27. The record contains testimony in support of the Application. Bob Sherwin and Ken Hardin provided testimony in support.

28. The basis for the support to the application presented from members of the public can generally be characterized as follows:

- a. The road is very low traveled and goes through the forest.
- b. The proposed development will be for private experiences.
- c. The Board of directors for the homeowners association supports the variance.

29. The Commission finds that the Applicant and public testimony demonstrate that the 30 foot easement will adequately support the proposed development.

e. Conclusions of Law

30. Any finding or conclusion of law set forth above that may be construed to constitute a conclusion of law is hereby incorporated as such to the same extent as if it was expressly denominated as a conclusion of law.

31. The Commission finds that a variance to the requirements set forth in Chapter 7, Table 7-13, Rural Road Classification and Design Standards to allow a road with a 30 foot Right-of-Way is not contrary to the public interest, allows the spirit of the SLDC to be observed, and substantial justice is done because public safety will not be compromised as long as the existing road is 20 ft in width and is well maintained, has a low volume of traffic, and the proposed development will not generate more traffic than a single family home.

32. The Commission finds that the conditions proposed by staff provide additional safeguards to the public interest by requiring a confirmation of the 30 foot

easement prior to issuance of development permits and additional improvements and easement if warranted.

33. The Commission finds that acquiring a 50 foot easement, at this time, is an extraordinary and exceptional situation or condition of the property, and strict application of the code would result in an exceptional or undue hardship because the burden of acquiring the easement is not proportional to the impact the proposed development will have if it generates the same traffic as a residential dwelling.

34. The requested variance from Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a road with a 30 ft. Right-of-Way rather than the required 50 ft. Right-of-Way for local roads meets the following variance criteria:

- a. the request is not contrary to public interest;
- b. 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
- c. the spirit of the SLDC is observed and substantial justice is done.

WHEREFORE the Commission finds the Application is well taken and hereby, by a vote of 6-0, approves the requested variance from Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) of the SLDC to allow a road with a 30 ft. Right-of-Way rather than the required 50 ft. Right-of-Way for local roads, subject to the following conditions:

- a. No development permits will be issued to the Applicant unless and until the new easement agreement has been issued and recorded by the United States Forest Service (USFS).
- b. If the proposed development will generate more traffic than a single family residence (10 trips per day), a Traffic Impact Analysis will be

required with the Site Development Plan application. If it is determined at that time that additional road improvements are warranted which require additional easement, the Applicant will be responsible for acquiring the additional ROW.

Pursuant Chapter 4, Section 4.9.7.5 , 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

IT IS SO ORDERED.

This Order was adopted by the Commission on this ____ day of _____, 2018.

THE SANTA FE COUNTY PLANNING COMMISSION

Filandro Anaya, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Bruce Frederick, County Attorney