

**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 17-5050**  
**Barbara Stromquist and Randy Felker, Applicants**

**ORDER**

**THIS MATTER** came before the Santa Fe County Planning Commission (Commission) for hearing on September 21, 2017, on the Application of Barbara Stromquist and Randy Felker, Applicants, James W. Siebert and Associates, Inc., Agent, are requesting a variance of Chapter 7, Section 7.17.9.2 Steep Slopes, Ridge Tops, Ridgelines, and Shoulders Standards to allow the construction of a home on a ridgetop. The 14.79 acre property is located at 45 Eagle Ridge Dr. within Section 18, Township 16 North, Range 10 East (Commission District 4).

The Planning 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 conclusion of law:

**I. Background**

1. On February 14, 2017, the Applicants submitted their application for the variance.
2. As required by the Sustainable Land Development Code, the Applicants presented the application to the Technical Advisory Committee (TAC) on November 3, 2016, at the regularly scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, Section 4.4.4.3 Pre-Application TAC Meeting and Table 4-1.

3. The Applicants conducted a pre-application neighborhood meeting on January 12, 2017, in accordance with Chapter 4, Section 4.4.4 Table 4-1.
4. The Applicant appeared before the Sustainable Land Development Code Hearing Officer (Hearing Officer) on May 25, 2017.
5. The Hearing Officer Recommended denial of a Variance of Chapter 7, Section 7.17.9.2 Steep Slopes, Ridge Tops, Ridgelines, and Shoulders Standards.
6. 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 April 12, 2017. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on April 12, 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.

## **II. Applicable Provisions of the SLDC**

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

### **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 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 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:

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.

Chapter 7, Section 7.17.9.2 Standards.

1. No structure may be constructed on a ridge top, ridgeline, or shoulder unless there is no other buildable area on the property. Only single story structures are allowed on ridges, ridge tops, and shoulders.

### **III. Findings and Conclusions**

7. In support of the requested variance, the Applicant's agent stated as follows:

- a. The ridgetop location is 1060 feet from the southbound driving lane of I-25 and the alternative building location is evaluated is 620 feet from the same.

The difference in distances results in two very different noise levels between

the two sites. The ridgetop location has a lower noise level according to the Applicant's measurements.

- b. The ridgetop location has less visual impact than the alternative site. The building site on the ridgetop would be limited to a maximum height of 14 feet with dwelling set up to 7 feet into the ground, with a total exposed height of 8 feet visible from I-25. In contrast, because the alternative site slopes toward I-25, the most visible side would be the side of the dwelling facing I-25.
  - c. No additional variances will be required to construct the home on the ridgetop contrary to staff's position that additional variances would be needed to build on the ridgetop.
8. The Applicants submitted letters from adjoining and neighboring landowners that supported the variance request and stating that many homes in the area are built on ridgetops. There were no letters of opposition to the application.
9. Staff responded to the requested variances as follows:
- a. Two-thirds of the site has multiple buildable areas, including the alternative site identified by the Applicants.
  - b. The SLDC does not address noise as a mitigating factor for locating a residence.
  - c. When the County Sheriff's Office measured noise levels at the two identified sites, the difference was minimal (.4 decibels), an insufficient decrease in noise levels to justify the ridgetop site.
  - d. Using story poles for the two sites, staff determined that both the ridgetop site and the alternative site have a visual impact from I-25

- e. The slope of the proposed driveway to the ridgetop site will affect 20% slopes and disturb rock outcroppings which are prohibited by the SLDC and would require an additional variance. The proposed driveway to the alternative site poses no such concern.

10. At the public hearing before the Commission, staff recommended that the Commission deny the Applicant's Variance request.
11. The Commission finds, along with the Hearing Officer, that noise is a factor when siting a residence.
12. The Applicant provided sound readings which indicated a significant noise difference between lower buildable sites and the buildable site on the ridgetop.
13. The Commission finds that the additional information submitted by the Applicant indicates there is a significant noise difference.
14. The Applicant's Agent states the ridgetop location is 1060 feet from the southbound driving lane of I-25 and the alternate building location is 620 feet from the same southbound driving lane. The difference in distances results in two very different noise levels between the two sites. The lower site has a decibel level of 62.6 during daytime hours while the ridgetop site has a decibel level of 59.1.
15. J.R. Damron spoke in favor of the application stating that being the closest neighbor to the Property he has no concerns with the proposed building site, the ridgetop site allows the Applicants to utilize passive solar in the design of the home, and the health issue of constant noise from the highway could cause hearing loss.

16. The Applicants agree to the comply with the recommended conditions and indicated a willingness to an additional condition requiring planting additional vegetation along the façade of the proposed residence along the façade facing Interstate 25.

17. The Commission finds that the additional vegetation along the façade will reduce the visibility of the home from Interstate 25.

18. The Commission hereby adopts the such findings and conclusions set forth in this Order; and

19. The Commission finds the variance is not contrary to the public interest because the location of the building site is further from the visible line of site from I-25 than the site that is not in conflict with the ridgetop regulations. The primary purpose of the ridgetop regulations is to reduce the visual impact of structures from the more prominent locations of visibility, which in this case is I-25. The alternative site that is not in conflict with the ridgetop regulations would permit a building height of 24 feet measured from natural grade and 30 feet from the highest to lowest point on the structure. Since the alternative site slopes towards I-25 the most visible façade would be the side of the dwelling facing I-25. The building site on the ridgetop would be limited to a maximum height of 14 feet with dwelling set up to seven feet into the ground, with a total exposed height of 8 feet visible from I-25. The existing tree cover would provide a visual barrier from I-25 and the applicant would be willing to add evergreen vegetation to further obscure the visibility of the structure from I-25. The ridgetop location has limited visibility from other dwellings in the Arroyo Hondo Subdivision and surrounding subdivisions in the area. The ridgetop location is therefore not contrary to the intent of the Sustainable Land Development Code.

20. The Commission finds the reasons offered to establish extraordinary and exceptional situations or conditions of the property which make strict application of the Code result in peculiar and exceptional practical difficulties or exceptional and undue hardship because noise can be a factor and the additional information provided by the Applicants indicated that there was a significant difference in noise between the two sites. The information provided by the Applicants shows a 4 decibel level difference from the two buildable sites in the A.M. with the higher readings taken from the site closer to I-25 and a 5 decibel difference from the two buildable sites in the P.M. with the higher readings taken from the site closer to I-25.
21. The spirit of the SLDC is observed and substantial justice is done because the setting of the home into the ground, maintaining existing vegetation around the building minimizes the visibility of the structure from I-25, much more so than a dwelling located at the alternative building site.
22. The requested variance of Chapter 7, Section 7.17.9.2 Steep Slopes, Ridge Tops, Ridgelines, and Shoulders Standards to permit the construction of a home on a ridgetop is approved with the following conditions:
- a. The Applicant must obtain building permits for the residence meeting the standards set forth in Chapter 7 of the SLDC.
  - b. The height of the dwelling unit shall not exceed 14' in height.
  - c. The Applicant shall not disturb any rock outcroppings or 30% slopes.
  - d. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application.

- e. The majority of the façade of the proposed residence facing Interstate 25 shall be obscured by planting trees as tall as 6 to 8 feet in height.

**IT IS SO ORDERED.**

This Order was adopted by the Commission on this \_\_\_\_ day of \_\_\_\_\_, 2017.

**THE SANTA FE COUNTY PLANNING COMMISSION**

\_\_\_\_\_  
Filandro Anaya, Chairperson

ATTEST:

\_\_\_\_\_  
Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
for Rachel Brown, Interim County Attorney