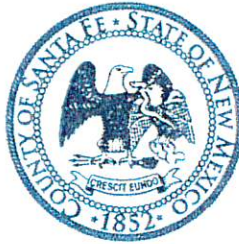


Henry P. Roybal
Commissioner, District 1

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 17-5200
W. Gordon Harris, Applicant

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Commission) for hearing on October 19, 2017, on the Application of W. Gordon Harris, Applicant, Sommer, Karnes & Associates, LLP, Agent, request a variance of Ordinance No. 2016-9, the Sustainable Land Development Code Chapter 7, Section 7.11 Road Design Standards, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade. An additional variance is being requested of Chapter 7, Section 7.17.9.3 Height to exceed thirty feet on land that has a natural slope of fifteen percent or greater. The property is located within The Overlook Subdivision at 191 Overlook Rd. via La Barabaria Rd. within Section 16, Township 16 North, Range 10 East (Commission District 4), SDA-2.

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:

1. The Applicant appeared before the Sustainable Land Development Code Hearing Officer (Hearing Officer) on August 24, 2017.

2. The Hearing Officer Recommended approval of a Variance of Chapter 7, Section 7.11 Road Design Standards, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade and a variance of Chapter 7, Section 7.17.9.3 Height to exceed thirty feet on land that has a natural slope of fifteen percent or greater.
3. 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 August 9, 2017. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on August 9, 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.
4. At the public hearing before the Commission, staff recommended that the Commission deny the Applicant's Variance requests.
5. The Commission hereby adopts in its entirety the Hearing Officer's Recommended Decision and Order (Recommended Decision and Order) attached hereto as Exhibit A, and all provisions set forth in the Recommended Decision and Order are incorporated by reference as though fully set forth herein; and
6. The requested variances of Chapter 7, Section 7.11 Road Design Standards, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade and a

variance of Chapter 7, Section 7.17.9.3 Height to exceed thirty feet on land that has a natural slope of fifteen percent or greater are approved.

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:



8 Rachel Brown, Interim County Attorney

Sustainable Land Development Code
Hearing Officer Meeting
August 24, 2017
CASE NO. V17-5200
W. Gordon Harris, Applicant

RECOMMENDED DECISION AND ORDER

THIS MATTER came before the Sustainable Land Development Code Hearing Officer for hearing on August 24, 2017, on the application of W. Gordon Harris, (Applicant) for a Variance of the Sustainable Land Development Code (SLDC). The Applicant seeks a variance of Chapter 7.11 (Road Design Standards), Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade. An additional variance is being requested of Chapter 7, Section 7.1.9.3 Height to exceed thirty feet on land that has a natural slope of fifteen percent or greater. The property is located within The Overlook Subdivision at 191 Overlook Road via La Barbaria Road (Property), within Section 16, Township 16 North, Range 10 East (Commission District 4). The Hearing Officer, having reviewed the application, staff reports, and having conducted a public hearing on the request, finds that the application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. On June 23, 2017, the Applicant submitted his application for a variance of Chapter 7.11 (Road Design Standards), Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade. An additional variance is being requested of Chapter 7, Section 7.1.9.3 Height, to exceed thirty feet on land that has a natural slope of fifteen percent or greater.
2. As required by the SLDC, the Applicant presented the application to the



Technical Advisory Committee (TAC) on May 18, 2017, at the regular 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. 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 August 9, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 9, 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 is contained in the record.

4. The following SLDC provisions are applicable to this case:

A. Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3).

B. Chapter 7, Section 7.17.9.3.1 Height.

The height of any structure located on land that has a natural slope of fifteen percent (15%) or greater shall not exceed eighteen feet (18'). The distance between the highest point of the structure and the lowest point at the natural grade or finished cut shall not exceed thirty (30) feet, unless the portion of the slope over fifteen percent (15%) is incidental to the entire site.

C. 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.

D 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 on the following criteria:

1. where the request is not contrary to the 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.

E Chapter 4, Section 4.9.7.5 Variance Conditions of approval states:

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.

5. The Applicant and Staff have addressed the variance criteria as follows:

a. *Where the request is not contrary to the public interest.*

i. Access Roads

a) The Applicant stated that this legacy development existed for

decades before the SLDC standards were adopted and the roadways cannot be brought into conformance. The development density and the burden for emergency vehicles is not being increased by the addition of a garage.

b) Staff acknowledged that the Overlook Subdivision was created in 1975 before the County imposed road standards. However, the width of 14' is only sufficient for a one-way driveway per code and does not provide adequate access. In addition, a 15% grade exceeds allowable grade requirements and emergency vehicles may not be able to access the Property.

ii. Height

a) The Applicant stated that although height limitations are imposed to limit visibility, the request for the garage attached to the lowest part of the home does not increase visibility from any location.

b) Staff responded that the distance between the highest point of the structure and the lowest point at the natural grade or finished cut shall not exceed thirty feet. The proposed addition will exceed the 30 foot height limit by nearly 14 feet when viewing the structure from the North elevation.

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.*

i. Access Roads

a) The Applicant states that the Overlook Subdivision is in a steep and mountainous region of the county and the grades of the existing roadways are an extraordinary condition of the Property, which makes any normal residential use of the property (like having a garage), without the variance impossible.

b) Staff responded that although the roads built within the Overlook Subdivision were constructed pre-code, current standards were put in place for better Fire

Department access in emergency situations and for safer roads when multiple vehicles are using the non-conforming roads.

ii. Height

a) The Applicant stated that because of the steep and mountainous nature of the property, the slopes on the lot are an extraordinary condition of the property, making the addition of a garage in any other location practically impossible, necessitating difficult grading (cuts through solid rock) and hardship to the Applicant.

b) Staff stated that connecting the garage to the residence results in a total height of 43'11". For this reason, Staff had previously suggested that the garage be a separate structure not connected to the existing residence. In that case, no variance would have been necessary.

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

i. Access Roads and Height

a) The Applicant stated that the SLDC is designed to protect environmental, cultural, historical and archeological resources and to protect the public from adverse public nuisance.

b) Staff stated that SLDC regulations promote both vehicular and pedestrian safety and the 14' roadway width does not provide adequate access. Also the increased height of 43'11" would increase visibility from the Northern elevation by nearly 14'.

6. At the public hearing, a letter of support by Holly Davis Borrero, a neighbor of the Applicant and President of the Overlook Homeowners Association, was read into the record. An additional three speakers spoke in support of the application; no one spoke in opposition to the application.

7. Beau Borrero spoke in favor of the application. He stated that he is the neighbor closest to the Applicant's home and that large trees will screen the height increase in the garage.

8. Bruce Valick, a member of the homeowners' board and a member of the architectural committee for the association, spoke in favor of the application, stating that he was solidly in support.

9. Lee Goodwin, a member of the homeowners' association and chair of the road committee, spoke in favor of the Application, stating that several years ago, the association commissioned an engineering study and the cost at that time to bring the subdivision roads to current standards was over two million dollars. She also said her home, below that of the Applicant's, would not be impacted by the proposed addition.

10. It is impossible for the Applicant to comply with the road standards of the SLDC as it would require obtaining additional road right-of-way from private property owners over which the Applicant has no control.

11. Based on the application and the evidence and testimony presented at the public hearing as described herein, the Hearing Officer finds there is sufficient evidence of extraordinary and exceptional conditions of the Property that would result in undue hardship to the Applicant from a strict application of the Code and that the Applicant has otherwise met all the variance criteria of the SLDC for both variance requests.

WHEREFORE, the Hearing Officer, based on the evidence presented, recommends approval of a Variance of Chapter 7.11 (Road Design Standards), Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) and Chapter 7, Section 7.1.9.3 Height.

Respectfully submitted,

Nancy R. Long

Nancy R. Long
Hearing Officer

Date: 9-11-17

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss SLDC HEARING OFFICER 0
PAGES: 7

I Hereby Certify That This Instrument Was Filed for
Record On The 12TH Day Of October, 2017 at 09:55:19 AM
And Was Duly Recorded as Instrument # **1838627**
Of The Records Of Santa Fe County

Deputy *Geraldine Salazar* Witness My Hand And Seal Of Office
County Clerk, Santa Fe, NM Geraldine Salazar

