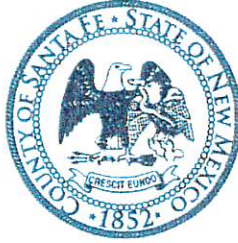


Henry P. Roybal
Commissioner, District 1

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 17-5210
ROSS BEE

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Commission) for hearing on November 16, 2017, on the application of Ross Bee, (Applicant) for a Variance of the Sustainable Land Development Code (SLDC). The Applicant seeks a variance of Chapter 7, Table 7-13: Rural Road Classifications and Design Standards (SDA-2 and SDA-3) to allow an existing roadway to exceed 9% grade and a variance of Chapter 7, Section 7.17.9.2.4 to allow disturbance of 30% slopes in six separate areas. The property is located at 40A River Valley Road (Property), and is zoned Rural Residential (RUR-R) and Traditional Community (TC) within Section 32, Township 19 North Range 10 East (Commission District 1).

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:

1. The Applicant appeared before the Sustainable Land Development Code Hearing Officer (Hearing Officer) on September 28, 2017.
2. The Hearing Officer Recommended approval of a Variance of Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 AND SDA-3) to allow an existing roadway to exceed 9% grade and a variance of Chapter 7, Section 7.17.9.2.4 to allow disturbance of 30% slopes in six separate areas.

3. Prior to the hearing before the 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 September 13, 2017. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on September 13, 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 approve the Applicant's Variance request.
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 variance of Chapter 7, Table 7-13: Rural Road Clasifications and Design Standards (SDA-2 and SDA-3) to allow an existing roadway to exceed 9% grade and a variance of Chapter 7, Section 7.17.9.2.4 to allow disturbance of 30% slopes in six separate areas.

IT IS SO ORDERED.

This Order was adopted by the Commission on this ____ day of _____, 2017.

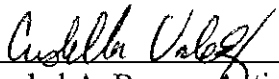
THE SANTA FE COUNTY PLANNING COMMISSION

Filandro Anaya, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



for Rachel A. Brown, Acting County Attorney

Sustainable Land Development Code
Hearing Officer Meeting
September 28, 2017
CASE NO. V17-5210
Ross Bee, Applicant

RECOMMENDED DECISION AND ORDER

THIS MATTER came before the Sustainable Land Development Code Hearing Officer for hearing on September 28, 2017, on the application of Ross Bee, (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 an existing roadway to exceed 9% grade and a variance of Chapter 7, Section 7.17.9.2.4 to allow disturbance of 30% slopes in six separate areas. The property is located at 40A River Valley Rd. (Property), and is zoned Rural Residential (RUR-R) and Traditional Community (TC) within Section 32, Township 19 North, Range 10 East (Commission District 1). 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 July 17, 2017, the Applicant submitted his application for a variance of Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow an existing roadway to exceed 9% grade and a variance of Chapter 7, Section 7.17.9.2.4 to allow disturbance of 30% slopes in six separate areas. The Applicant intends to construct a 2,500 square foot accessory structure on the Property, which is accessed off S.R. 592 onto River Valley Rd. which is identified as a private road with a (38) ft. right-of-way (ROW) that serves (4) lots. River Valley Rd. was permitted and built under the previous Santa Fe County Land Use



Code and with the adoption of the SLDC, off-side roadway standards changed per Table 7-13, making River Valley Road non-compliant.

2. As required by the SLDC, the Applicant presented the application to the Technical Advisory Committee (TAC) on July 20, 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 September 13, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on September 13, 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 8, Section 8.6.4.1. Rural Residential (RUR-R) Purpose provides:

The purpose of the Rural Residential (RUR-R) district is to provide for the development of single-family homes on large lots, either individual or as part of rural subdivisions; to preserve the scenic and rural character of the County; to provide consolidated open space and agriculture lands; and to recognize the desirability of carrying on compatible agriculture operations and home development in areas near the fringes of urban development while avoiding unreasonable restrictions on farming or ranching operations. Uses that support rural character of the broader area shall be allowed including agriculture productions, small-scale renewable energy production, home-based businesses, bed and breakfasts, agro-tourism, equestrian and boarding facilities, farmers markets and produce stands. 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.

B. Chapter 8, Section 8.6.8.1 Traditional Community (TC) Purpose provides:

The purpose of the Traditional Community (TC) district is to designate areas suitable for residential, small-scale commercial and traditional agriculture uses consistent with the existing development patterns of traditional communities. The TC district accommodates traditional community patterns, preserves historic and cultural landscapes, and protects agriculture uses, including agriculture found in traditional communities with acequia systems, from encroachment by development. Density bonuses and transfers of development rights may be utilized to achieve the purposes of the district. 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.

C. Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) (Cul de Sac) requires the road grade be a maximum of 9%.

D. Chapter 7, Section 7.17.9.2.4 (Standards) states:

Utilities, drainage structures, slope retention structures and access roads and driveways may be located on a natural slope in excess of thirty percent (30%) so long as they disturb no more than three separate areas not exceeding 1,000 square feet each.

E. 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;

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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.

7. The Applicant and Staff have addressed the variance criteria for the road grade as follows:

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

i. The Applicant stated that maintaining the existing grades that range from 8.2% to 13.8% with a very small section at 15% will allow the rural roadway to be preserved, as well as the existing Rio en Medio crossing to the north. If the required 9% grade were implemented, the crossing would require a 20 foot high fill with a major bridge structure as indicated in the engineer's Plan and Profile.

ii. Staff acknowledges that the rural roadway and Rio en Medio would be impacted if the Applicant were required to meet the 9% road grade requirement.

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. The Applicant stated that River Valley Road is the only means to access the Property. The existing terrain and limited horizontal length of the road from the roundabout to the Rio en Medio do not allow the road to be re-engineered to lower the grades to the requisite 9%.

ii. Staff stated that the portion of River Valley Road from the existing roundabout to the Applicant's driveway doesn't meet the (20) foot driving surface and 9% grade. Acknowledging that River Valley Road has been in existence since November 20, 1963, Staff determined that requiring the Applicant to use approximately (20) ft. of fill to meet the 9% grade would be excessive.

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

i. The Applicant stated that granting the variance would sustain the intent and Spirit of the SLDC by minimizing scarring and disturbance of the natural terrain and preserving the rural nature of the existing road. The proposed road widening will allow for local and emergency vehicles to pass safely

ii. Staff agreed that widening a portion of the road to 20 ft. will bring River Valley Road into compliance, increasing vehicular and pedestrian safety.

8. The Applicant and Staff have addressed the variance criteria for the disturbance of 30% slopes as follows:

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

i. The Applicant stated that most of the slopes which would be disturbed are manmade and the disturbance of slopes in 6 locations to widen the road to the required 20 foot width is in the public interest and will provide a safe and sustainable access for property owners and emergency services to the four lots accessed from the roundabout north.

ii. Staff stated that utilities, drainage structures, slope retention structures, and access roads and driveways may be located on natural slope in excess of thirty percent (30%) so long as they disturb no more than three separate areas not exceeding 1,000 square feet each. Although the SLDC allows three allotted disturbances of 1,000 square feet per disturbance (3,000 square feet total), the total square footage of the six disturbances falls under 3,000 square feet.

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. The Applicant stated that River Valley Road was permitted and built under the previous Santa Fe County Land Use Code and by current SLDC standards is noncompliant. However, the only means to access the subject properties is from this road. Although widening the road to 20 ft. disturbs the existing terrain which has naturally occurring (30%) slopes, the road cannot be relocated to areas of lesser slopes.

ii. Staff stated that in order for the Applicant to meet the 20 ft. driving surface, it will be necessary to disturb the existing terrain including ten manmade slopes in order to maintain the required 38 ft. access required by the SLDC.

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

i. The Applicant stated the requested variance minimizes the scarring and disturbance of the natural terrain and provides for safe vehicular and pedestrian traffic. The road widening enhances the livability of the residential neighborhood and allows local and emergency vehicles to pass safely.

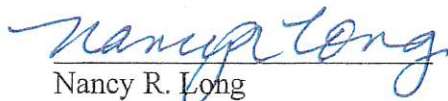
ii. Staff stated that although the number of disturbances exceeds the SLDC requirements, the total square footage of natural 30% slope disturbed is less than the total 3,000 square foot disturbance as defined in the SLDC.

9. At the public hearing, no one spoke in opposition to the application.

10. 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 that would result in undue hardship to the Applicant from a strict application of the Code and that the Applicant has met the variance criteria of the SLDC.

WHEREFORE, the Hearing Officer, based on the evidence presented, recommends approval of a Variance of Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow an existing roadway to exceed 9% grade and a variance of Chapter 7, Section 7.17.9.2.4 to allow disturbance of 30% slopes in six separate areas.

Respectfully submitted,



Nancy R. Long
Hearing Officer

Date: 10-16-17

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

SLDC HEARING OFFICER O
PAGES: 7

I Hereby Certify That This Instrument Was Filed for
Record On The 20TH Day Of October, 2017 at 10:40:06 AM
And Was Duly Recorded as Instrument # **1839291**
Of The Records Of Santa Fe County

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

