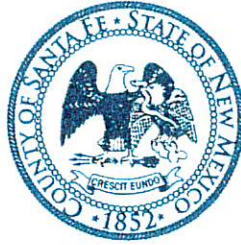


Henry P. Roybal
Commissioner, District 1

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 17-5280
PAMELA BARISH

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Commission) for hearing on December 21, 2017, on the application of Pamela Barish, (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 road to exceed 9% grade, to allow a roadway to be less than 20 feet in width, and a variance of Chapter 7, Section 7.11.6.6 to allow a grade at the approach of an intersection to exceed 5% for every one hundred (100) linear feet prior to the radius return of the intersection.

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 August 25, 2017, the Applicant submitted an application for a variance from Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow an existing road to exceed 9% grade, to allow a roadway to be less than 20 feet in width, and a variance of Chapter 7, Section 7.11.6.6 to allow a grade at the approach of an intersection to exceed 5% for every one hundred (100) linear feet prior to the radius return of the intersection.

2. The property is located at 30 Sendero del Oso (Property) and is zoned Rural Residential (RUR-R) within Section 32, Township 19 North Range 10 East (Commission District 1) (hereinafter "the Property").
3. The Applicant, Pamela Barish, is the owner of the property at Sendero del Oso as indicated by the warranty deed recorded in the records of the Santa Fe County Clerk on October 30, 2005, as Instrument No. 1455680.
4. The Applicant's intention is to obtain a residential building permit for the Property. However, the existing road, Sendero del Oso, that serves the Property does not meet the off-site road requirements per Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3), which requires a 20 foot road with two 10-foot driving lanes. Sendero del Oso ranges from 10-14 feet and has some sections as wide as 20 ft. in width for emergency vehicle turn-outs.
5. In addition, the grade of the Sendero del Oso exceeds the 4% standard for road grade established in Chapter 7, Section 7.11.6.6. The grade of Sendero del Oso has grades ranging from 9% to 15%.

II. Applicable Provisions of the SLDC

6. Chapter 4, Section 4.9.7.6 Administrative minor deviations:

The administrator is authorized to administratively approve minor deviations upon a finding that the deviation is required that the result is consistent with the intent and purpose of this SLDC, and that the deviation is not detrimental to adjacent or surrounding properties as follows:

- a. minor deviations from the dimensional requirements of Chapter 7, 8 and 9 of the SLDC not to exceed ten percent (10%) of the required dimension; and
- b. minor deviations from the density dimensional standards of Chapter 8 of the SLDC not to exceed five tenths of a percent (0.5%) of the gross acreage allowed in the zoning district.

7. Chapter 8, Section 8.6.4.1 Rural Residential (RUR-R) Purpose:

The purpose of the Rural Residential (RUR-R) district is to provide for the development of single-family homes on large lots, either individually 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.

8. Chapter 7, Section 7.11.1. Purpose and Findings states:

7.11.1.1. ensure that the design of the roads conforms to the policies of the SGMP;

7.11.1.2. provide for the safety of both vehicular and pedestrian traffic;

7.11.1.3. provide for livable residential, mixed-use and commercial environments;

7.11.1.4. provide for economy of land use, construction, and maintenance; and

7.11.1.5. provide for safe and efficient access to property.

9. Chapter 7, Section 7.11.6.6. Intersections and roundabouts states:

Grades at the approach of intersections shall not exceed five percent (5%) for one hundred (100) linear feet prior to the radius return of the intersection, excluding vertical curve distance.

10. Chapter 7, Section 7.11.11.5 Standards for Residential Development.

Residential development may reduce the road easement width for off-site and on-site roads to no less than 20 feet if adequate drainage control is provided and may allow the surface to be hardpacked dirt with compaction of 95% of the maximum density.

11. Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3).

	Avg. daily traffic	# of driving lanes	Lane width (ft.)	Non-vehicular side paths	Bike lanes	Minimum ROW (ft.)	Design Speeds (mph)	Max % Grade	Min. agg. base course	Min. bit. pavement	Max % Super-elev.
Major arterial or highway	5000 +	2-4	12	n/a	Two 5 ft. on-road	150	Level: 70 Rolling: 70 Mount.: 50-60	5%	6"	6"	8%
Minor arterial	2000 to 4999	2 - 4	12	n/a	Two 5 ft. on-road	120	Level: 60-75 Rolling: 50-60 Mount.: 40-50	5%	6"	5"	8%
Collector	401-1999	2	11	n/a	n/a	80	Level: 40-60 Rolling: 20-50 Mount.: 20-40	8%	6"	4"	8%
Local	0-400	2	10	n/a	n/a	50	Level: 30-50 Rolling: 20-40 Mount.: 20-30	9%	3"	n/a	8%
Cul-de-Sac	0 to 300	2	10	n/a	n/a	38	Level: 30-50 Rolling: 20-40 Mount.: 20-30	9%	63"	n/a	n/a
Residential Driveway	n/a	1	14	n/a	n/a	20	n/a	10%	n/a	n/a	n/a

12. 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.

13. 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.

14. 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

15. As required by the SLDC, the Applicants presented the Application to the Technical Advisory (TAC) on August 3, 2017, at the regularly scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, Section 4.4.4.4.3, Pre-Application TAC Meeting.

16. The Applicant appeared before the Sustainable Land Development Code Hearing Officer (Hearing Officer) on October 26, 2017.

17. 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 road to exceed 9% grade, to allow a roadway to be less than 20 feet in width, and a variance of Chapter 7, Section 7.11.6.6 to allow a grade at the

approach of an intersection to exceed 5% for every one hundred (100) linear feet prior to the radius return of the intersection.

18. The Applicant, Pamela Barish, is the owner of the property at Sendero del Oso as indicated by the warranty deed recorded in the records of the Santa Fe County Clerk on October 30, 2005, as Instrument No. 1455680.
19. 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.
20. At the public hearing before the Commission, staff recommended that the Commission approve the Applicant's Variance request from Ordinance No. 2016-9 the Sustainable Land Development Code (SLDC) Chapter 7, Section 7.11.6.6 to allow a grade at the approach of an intersection to exceed 5% for one hundred (100) linear ft. prior to the radius return of the intersection. The current grade is at 7% and with a minor deviation would allow the road grade to be 5.5%.

21. Staff recommends denial to allow the road to go down 10 ft. in width. Staff recommends that a minimum 12 foot driving surface be required for vehicle and pedestrian safety, subject to review and approval by the County Fire Marshal.

IV. Compliance with the SLDC

22. On November 28, 2017, the BCC approved changes to the road standards of the SLDC. The changes included allowing roads and driveways of up to 15% grade in areas of steep terrain, and the requirement for a 5% grade within a 100 linear ft. of an intersection now only applies to non-residential, multifamily and subdivisions. These changes were effective on December 29, 2017. At that time the Applicants variance request for the road grade and grade at the approach to the intersection will not be needed.
23. Sendero del Oso has been in existence since 1964.
24. Staff has conducted a site visit and has confirmed that Sendero del Oso does range between 10-14 feet in width in one section of the road that is approximately 20 feet in width. Staff has also confirmed that there is one section of Sendero del Oso that is at a 15% grade for 300 linear and one section that is at 13% for 61 feet.
25. The Commission finds that Sendero del Oso ranges between 10 to 20 feet in width and 9-15% grade in two locations.
26. The Applicant states that the road has an existing condition of 5% or less for a distance of approximately 50 ft. and that the grade increase to 5-9% for the first 100 ft. of roadway.
27. The Commission finds that the grade at approach to the intersection is not severe.

28. Sendero del Oso has a platted 20 foot wide right-of-way easement as indicated in Plat Book 622 Page .008.
29. Expanding the road to 20 feet wide may require the Applicant to add easement width for the road. In addition, grading the road to less than 9% grade would require additional easements. The Applicant states that it may not be possible to obtain additional easements.
30. The BCC finds that the lack of easement for grading the road to less than 9% grade and widening the road to 20 feet creates an unnecessary hardship.
31. The Applicant states that expanding the road width to 20 feet along the entire length of the road would require significant cutting and filling.
32. The Commission finds that it would be a burden on the Applicant to cut and fill along the entire length of the road to widen the road to 20 feet.
33. Staff states that widening the road to 20 feet would result in significant disturbance to the manmade and natural slopes of 30% or greater. The Commission finds that widening the road to 20 feet would have a significant impact on the terrain.
34. Staff stated that a minimum of 12 feet is required for vehicle and pedestrian safety.
35. The Santa Fe County Fire Marshal requested a place to turn a fire truck on the site itself, turnouts on the road to allow trucks to pass each other on the roadway.
36. The Applicant proposes to allow a 70 foot distance so that a fire truck can come down a lane and turn onto the property.
37. The Applicant proposes to keep the road unchanged and the purpose of the variance is to keep the road as currently designed.

38. On some portions of the road that are 10 feet wide, the Applicant could cut into the edge of the slope to widen the road to 12 feet.
39. The Applicant stated that the total linear length of road that is currently 10 feet wide is around 300-400 feet.
40. The Commission finds that in addition to fire safety, road width also pertains to vehicle and pedestrian safety and further finds that a road that is at least 12 feet in width is necessary for such safety.
41. The Applicant has not had an engineer or contractor determine that widening the road to 12 feet would not be feasible and did not submit a Plan and Profile.
42. The Commission finds that the Applicant could cut into the slope to widen the road from 10 feet to 12 feet, where necessary.
43. The Applicant did not provide information that the 20 foot easement cannot accommodate widening the road from 10 to 12 feet.
44. The Commission finds that the Applicant has not demonstrated that it will create an undue hardship to widen the road from 10 to 12 feet.

V. Support for Application

45. During the public hearing no one from the public spoke in opposition or in favor of the variance request.

VI. Conclusions of Law

46. 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.
47. On November 28, 2017, the BCC approved changes to the road standards of the SLDC. The changes included allowing roads and driveways of up to 15% grade

in areas of steep terrain, and the requirement for a 5% grade within a 100 linear ft. of an intersection now only applies to non-residential, multifamily and subdivisions. These changes were effective on December 29, 2017. At that time the Applicants variance request for the road grade and grade at the approach to the intersection will not be needed.

48. The Commission finds that a variance to the requirements set forth in Chapter 7, Table 7-13 to allow an existing road to exceed 9% grade is not contrary to public interest, allows the spirit of the SLDC to be observed, and substantial justice to be done because the approved amendments to the SLDC allowing up to 15% grade in areas of steep terrain demonstrate that a variance is consistent with the public interest and the spirit of the SLDC and cutting and filling to bring the road below 9% grade will required excessive disturbance of the terrain.

49. With regard to the variance of Chapter 7, Table 7-13 to allow an existing road to exceed 9% grade, the Commission finds that amount of cutting and filling required to bring the entire length of the road below 9% grade and the easements required are extraordinary and exceptional situations or conditions of the property, and strict application of the code would result in an exceptional or undue hardship.

50. The requested variance to the requirements set forth in Chapter 7, Table 7013 to allow an existing road to exceed 9% grade 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

51. The Commission finds that a variance to the requirements set forth in Chapter 7, Section 7.11.6.6 to allow a grade at the approach of an intersection to exceed 5% for one hundred (100) linear feet prior to the radius return of the intersection, is not contrary to public interest, allows the spirit of the SLDC to be observed, and substantial justice to be done because the BCC has recently approved amendments to the SLDC which will make the requirement for 5% grade within 100 linear ft. of an intersection applicable only to non-residential, multifamily and subdivisions and because the road has an existing condition of 5% or less for a distance of approximately 50 ft. and the increasing grade between 5-9% is not severe for the first 100 ft. of roadway.

52. With regard to the variance of Chapter 7, Section 7.11.6.6, the Commission finds that amount of cutting and filling required to bring the grade to 5 % at the approach of an intersection for (100) linear ft. 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.

53. The requested variance to the requirements set forth in Chapter 7, Chapter 7.11.6.6 to allow a grade at the approach of an intersection to exceed 5% for on hundred (100) linear ft. prior to the radius return of the intersection:

- 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

54. The Commission finds that a variance to the requirements set forth in in Chapter 7, Table 7-13 to allow a roadway to be less that (20) feet in width, but no less

than 12 feet in width, is not contrary to public interest, allows the spirit of the

SLDC to be observed, and substantial justice to be done because a minimum width of 12 ft. will balance reduce additional disturbance to the terrain that widening the entire length of the road to 20 ft. would cause and allow for pedestrian and traffic safety on the roadway.

55. With regard to the variance of Chapter 7, Section 7.11.6.6, to a roadway to be less than (20) feet in width, but no less than 12 feet in width, the Commission finds that amount of cutting and filling required to widen the entire length of the road to 20 ft. and the additional easement that would be required to complete such improvements are an extraordinary and exceptional situations or conditions of the property, and strict application of the code would result in an exceptional or undue hardship.

56. The requested variance of Chapter 7, Section 7.11.6.6, to a roadway to be less than (20) feet in width, but no less than 12 feet in width:

- 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 unanimously approves from Chapter 7, Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow an existing road to exceed 9% grade and to allow a roadway to be less than 20 feet, but no less than 12 feet, in width, and a variance of Chapter 7, Section 7.11.6.6 to allow a grade at the approach of an intersection to exceed 5% for every one hundred (100) linear feet prior to the radius return of the intersection. 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