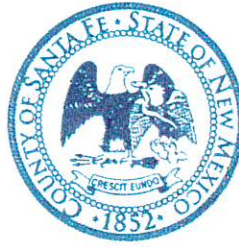


Henry P. Roybal
Commissioner, District 1

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 17-5160
SPAMER/KHALSA VARIANCE

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Planning Commission) for hearing on September 21, 2017, on the Application of Prabhu Khalsa and Regina Spamer, Applicants, to request variances of the Sustainable Land Development Code, Ordinance 2016-9 (SLDC), Chapter 7, Section 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, so as to allow a two story residence on a ridgetop, and a variance of Chapter 7, Section 7.17.9.2.4 to allow a driveway to disturb 30% slope to access a buildable area.

The Planning Commission, having reviewed the Application, staff report, staff recommendations, and having conducted a public hearing on the Application, finds that the Application is well-taken and approved in regard to the variance of Chapter 7, Section 7.17.9.2.4, to allow a driveway to disturb 30% slope, but is not well taken and is hereby denied as to the variance of Chapter 7.17.9.3.2, regarding the height of the structure, to allow a two story residence, based on the following findings of fact and conclusions of law:

1. The Planning Commission hereby adopts in its entirety the Hearing Officer's Recommended Decision and Order attached hereto as Exhibit A.

2. The variance of Chapter 7, Section 7.17.9.2.4 to allow a driveway to disturb
30% slope is granted and all other variance requests are denied.

IT IS SO ORDERED.

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

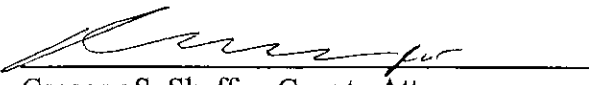
THE SANTA FE COUNTY PLANNING COMMISSION

Filandro Anaya, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

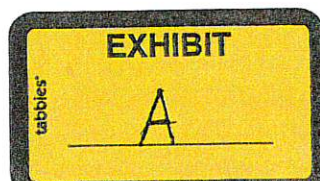
CASE NO. V17-5160

Prabhu Khalsa and Regina Spamer, Applicants

RECOMMENDED DECISION AND ORDER

THIS MATTER came before the Sustainable Land Development Code Hearing Officer for hearing on July 27, 2017, on the application of Prabhu Khalsa and Regina Spamer (Applicants) for variances of the Sustainable Land Development Code (SLDC). The Applicants seek a variance of Chapter 7, Section 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, so as to allow a two-story residence on a ridgetop; and a variance of Chapter 7.17.9.2.4 to allow a driveway to disturb a 30% slope to access a buildable area. The property is located at 01 Anand Nivas Way (Property) within the Vicinity of Sombrillo, Section 12, Township 20 North, Range 8 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 should be granted in part and denied in part, and makes the following findings of fact and conclusions of law:

1. On May 30, 2017, the Applicants submitted their application for the variances.
2. As required by the SLDC, the Applicants presented the application to the Technical Advisory Committee (TAC) on April 6, 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 Applicants 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,



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beginning on July 2, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on July 7, 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, 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.

B. Chapter 7.17.9.3.2 (Height) states:

Structures on ridges, ridgelines, and shoulders shall not exceed fourteen (14) feet in height and shall be limited to one story. However, a structure on a ridge or ridgeline that is a one story pitched roof structure shall not exceed eighteen (18) feet in height so long as the structure is screened from view from an arterial or major arterial road.

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 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, Variances, 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 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 Variances, 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 on the height/two-story variance as follows:

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

i. Applicants stated the height of the proposed building is consistent with the height of the two other homes on either side of the property, which exceed 24' in height.

ii. Staff stated that although the two other homes exceed 24' in height, neither of those homes is on a ridgetop. Therefore, those homes are not required to meet height limitations of 14' flat roof or 18' pitched roof with a single-story design.

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. Applicants stated they have paid for plans for the proposed construction implementing a passive solar design and are not financially able to pay for additional plans to redesign the home without a passive design.

ii. Staff disagreed with the Applicants' financial argument and stated that the site contains a buildable area of 4,000 square feet which would accommodate a one-story structure with an 18' pitched roof with south facing façade and a solar design.

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

i. Applicant stated that the proposed construction would be harmonious with the two neighboring properties, which exceed 24' in height. The proposed construction would allow the proposed passive solar and sustainable design.

ii. Staff responded that because the neighboring properties are not on ridgetops, those properties are not subject to current standards for ridgetop construction. The Code requires the proposed construction to comply with the Code.

6. The Applicant and Staff have addressed the variance criteria on the disturbance of 30% slope variance as follows:

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

i. Applicant stated the proposed driveway is needed to reach the building site.

ii. Staff agreed that there is no other access to the buildable area on the property without disturbing 30% slope while also being able to meet grade requirements.

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. Applicant stated that the only option is to build the driveway on the East side of the property, but the driveway cannot be built without disturbing that slope.

ii. Staff agreed that there is no other possible way for the Applicants to meet the requirements of the SLDC.

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

i. Applicant stated they had invested in professional plans for an engineer and have a sustainably designed driveway and home.

ii. Staff agreed that there is no other access to the property and disturbance of slope is a necessity to access buildable area.

7. At the public hearing, a letter from James A. Trapp in opposition to the application was presented and is contained in the record.

8. Two individuals spoke at the public hearing, expressing concerns about potential run off from the site and about the disturbance of slopes that will occur with the driveway construction.

9. 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 Applicants from a strict application of the Code in regard to the 30% slope variance request for construction of the driveway and finds the variance criteria is met. The Hearing Officer finds there is insufficient evidence of extraordinary and exceptional conditions of the Property that would result in undue hardship to the Applicants from a strict application of the Code in regard to the height of the proposed construction and the two-story design.

WHEREFORE, the Hearing Officer, based on the evidence presented, recommends as follows:

A. Approval of a variance of Chapter 7.17.9.2.4 to allow a driveway to disturb a 30% slope to access a buildable area. The Application meets the criteria necessary for granting a variance.

B. Disapproval of a variance of Chapter 7, Section 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two-story residence on a ridgetop. The Applicants' proposed 22' two-story residence exceeds the height requirements of the SLDC. The SLDC provides that structures on ridges, ridgelines, and shoulders shall be limited to one-story structures and the Applicants have failed to meet the variance criteria of the SLDC with regard to this variance request.

Respectfully submitted,

Nancy R. Long

Nancy R. Long
Hearing Officer

Date: 8-15-17

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

SLDC HEARING OFFICER O
PAGES: 6

I Hereby Certify That This Instrument Was Filed for
Record On The 16TH Day Of August, 2017 at 10:06:50 AM
And Was Duly Recorded as Instrument # 1833807
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar

Deputy *Geraldine Salazar* County Clerk, Santa Fe, NM

