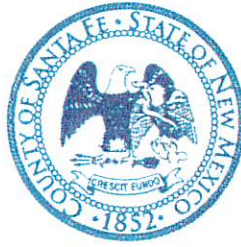


Henry P. Roybal
Commissioner, District 1

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 17-5130
KEVIN BRAUN VARIANCE

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Planning Commission) for hearing on September 21, 2017, on the Application of Kevin Braun, Applicant, to request a variance of Chapter 7, Section 7.17.10.4.2 (Roads and driveways) to allow a driveway to disturb 8 separate occurrences of 25% slope or greater. The property is located at 16 S. Cloudstone Drive, within Section 5, Township 16 North, Range 10 East (Commission District 4)

The Planning Commission, having reviewed the Application, staff report, staff's recommendation, the Hearing Examiner's Recommended Decision and Order, and having conducted a public hearing on the Application, finds that the Application is well-taken and hereby grants the variance based on the following findings of fact and conclusions of law:

1. The Commission hereby adopts in its entirety the Hearing Officer's Recommended Decision and Order attached hereto as Exhibit A.
2. The Application for a variance of Chapter 7, Section 7.17.10.4.2 (Roads and driveways) to allow a driveway to disturb 8 separate occurrences of 25% slope or greater is approved.

IT IS SO ORDERED.

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

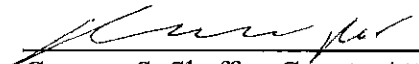
THE SANTA FE COUNTY PLANNING COMMISSION

Filandro Anaya, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



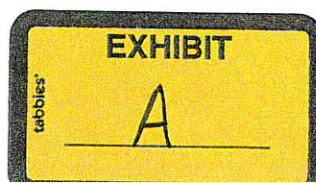
Gregory S. Shaffer, County Attorney

CASE NO. V17-5130
Kevin Braun, Applicant

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 Kevin Braun, (Applicant) for a Variance of the Sustainable Land Development Code (SLDC). The Applicant seeks a variance of Chapter 7.17.10.4.2 (Roads and Driveways) to allow a driveway to disturb 8 separate occurrences of 25% slope or greater. The property, which is currently vacant, is located at 16 S. Cloudstone Drive (Property), within Section 5, 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 May 16, 2017, the Applicant submitted his application for a variance of Chapter 7.17.10.4.2 (Roads and Driveways) to allow a driveway to disturb 8 separate occurrences of 25% slope or greater.
2. As required by the SLDC, the Applicant presented the application to the Technical Advisory Committee (TAC) on March 2, 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,



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beginning on July 12, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on July 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 is contained in the record.

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

A. Chapter 7, Section 7.17.10.4.1. (Roads and Driveways) provides:

Roads and driveways shall not be designed or constructed on slopes over twenty-five percent (25%).

B. Chapter 7.17.10.4.2.

Exceptions may be approved by the Administrator for roads and driveways proposed to cross slopes greater than twenty-five percent (25%) that disturb no more than three (3) isolated occurrences of up to one thousand (1,000) square feet each, provided that the applicant demonstrates that crossing such slopes has minimal impact to the terrain or to the visual quality and otherwise would conform to the purposes, design criteria and development standards set forth in this Section 7.17.

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.

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

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

i. The Applicant stated that the variance request is not contrary to the public interest because he will be building a residence matching the existing criteria of the surrounding homes within the neighborhood.

ii. Staff stated that many of the surrounding properties were developed before Ordinance 1996-10 (the Land Development Code) was adopted. Santa Fe County did not address slope disturbance prior to the Code. Therefore, neighboring properties may not have been required to develop their properties taking into consideration the impact of the development on surrounding properties and watersheds.

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 he requests the variance due to the extraordinary and exception site conditions to build a new driveway.

ii. Staff stated that strict Code requirements could allow the structure to be placed closer to South Cloudstone Drive to avoid the variance of road disturbance, but that would cause other problems with floodplain setbacks and would require a variance from property setbacks and setback from the FEMA Designated Flood Hazard Area, which would require engineering and alteration of drainage patterns on the site and could impact surrounding properties upstream and downstream from the site.

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

i. The Applicant stated that the construction will add value to the community, providing future tax revenue to the County in the form of property taxes and sales tax.

ii. Staff stated that due to the topography, the property has limited buildable area and requires slope disturbance. Any development within this lot will require some sort of variance whether it be a variance or slope disturbance or a variance to meet setbacks from property boundaries or setbacks from the FEMA Floodplain Hazard Area.

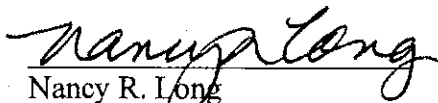
8. At the public hearing, no one spoke in opposition to the application.

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 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 7.17.10.4.2 (Roads and Driveways) to allow a driveway to disturb 8 separate occurrences of 25% slope or greater.

Respectfully submitted,



Nancy R. Long
Hearing Officer

Date: 8-15-17

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

SLDC HEARING OFFICER 0
PAGES: 5

I Hereby Certify That This Instrument Was Filed for
Record On The 16TH Day Of August, 2017 at 10:06:52 AM
And Was Duly Recorded as Instrument # 1833809
Of The Records Of Santa Fe County

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

