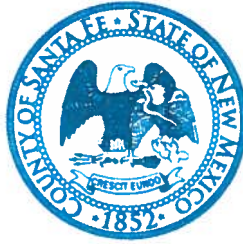


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**CASE NO. V 16-5150
HEARTS WAY RANCH
SUSAN CARTER APPLICANT**

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Commission) for hearing on September 15, 2016, on the Application of Hearts Way Ranch, Susan Carter, (Applicants) for three variances of the Sustainable Land Development Code (SLDC) to allow a retreat facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres. The Applicant requests a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%; a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence; and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements. The 39.5 acre property is located at 34 Sendero de Corazon, via La Barbaria Trail within Section 9, Township 16 North, Range 10 East (Commission District 4), SDA-3.

The Planning Commission, having reviewed the Application, staff report, the Hearing Officer's recommendation, 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 Commission hereby adopts in its entirety of the Hearing Officer's Recommended Decision and Order attached hereto as Exhibit A; and
2. The Application to allow a retreat facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres with a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%; a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence; and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads is approved subject to the conditions memorialized in the Hearing Officer's Recommended Decision and Order.

IT IS SO ORDERED.

This Order was adopted by the Commission on this ___ day of _____, 2016.

THE SANTA FE COUNTY PLANNING COMMISSION

Frank Katz, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

CASE NO. V16-5150
Heart's Way Ranch, Susan Carter, Owner, Applicant

RECOMMENDED DECISION AND ORDER

THIS MATTER came before the Sustainable Land Development Code Hearing Officer for hearing on August 25, 2016, on the application of Heart's Way Ranch, Susan Carter, Owner (Applicant) for Three Variances: a Variance of Chapter 7, Section 7.11.6.6 to Allow the Grade of the Approach at the Intersection to Exceed 5%; Chapter 7.11.2, Table 7-13, to Allow the Overall Grade of the Driveway to Exceed 10%; and 7.11.2 Table 7-13 – Local Road Design Standards to Allow Access from Offsite Roads That Do Not Meet Code, of the Sustainable Land Development Code (SLDC). The Applicant proposes a Retreat Facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres (Property). The site is zoned as Rural Fringe (RUR-F). Appendix B of the SLDC designates a retreat as a permitted use within the RUR-F Zoning District. The Property is located at 34 Sendero De Corazon, Via La Barbaria Trail, within Township 16 North, Range 10 East, Section 9 (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 27, 2016, the Applicant submitted their application for the variances.
2. As required by the SLDC, the Applicant presented the application to the Technical Advisory Committee (TAC) on May 19, 2016, 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 were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. 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 10, 2016. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 10, 2016, 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. Staff prepared the sign for posting on the Property and will review its sufficiency and whether a second sign is warranted prior to the Planning Commission hearing.

4. The site is within the Rural Fringe Zoning District and is zoned as Rural Fringe (RUR-F). Appendix B of the SLDC designates a retreat as a permitted use within the RUR-F Zoning District. The Property is located at 34 Sendero De Corazon, via La Barbaria Trail, within Township 16 North, Range 10 East, Section 9 (Commission District 4).

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

A. Chapter 7, Section 7.11.6.6 provides:

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.

B. Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-3) requires a 10% or less grade for the driveway to the Property

C. Chapter 7, Section 7.11.2, Table 7-13, Local Road Design Standards, requires offsite roads to have a 20' driving surface.

D. Chapter 14, Section 14.9.7.1, 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.

E. Chapter 14, Section 14.9.7.4, 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) where authorized by NMSA 1978, Section 3-21-8(C):

1. where the request is not contrary to public interest;
2. where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

F. Chapter 14, Section 14.9.7.5 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 takes affirmative action consistent with the approval.

6. In support of the requested variances, the Applicant provided responses as follows:

1) The request is not contrary to the public interest in that the private driveway which will be used primarily by the Property owners for access to the single family residence at the easternmost end of the drive, and by four to six retreat guests to access the two casitas that will provide overnight accommodations, was constructed pursuant to previous code

requirements, has fire protection measures already constructed and the proposed use will be a decrease in intensity.

2) Owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant in that the Property comprises very steep terrain and compliance with the SLDC grade requirements for the driveway would excessively damage the terrain and be prohibitively expensive and it would cause unnecessary hardship (and perhaps not be possible) to widen the access road (La Barberia Trail) or reduce the road grade at the intersection.

3) The spirit of the SLDC is observed and substantial justice is done by minimizing adverse environmental impacts that any reduction in driveway grade would cause while satisfying requirements for emergency access and life safety. The variance request observes the spirit of Section 1.4.2.11 of the SLDC which encourages local small businesses in order to support a balanced, vigorous economy.

7. Staff recommended denial of the requested variances.

8. At the public hearing, there was testimony both for and against the requested variances. In support, there was testimony in regard to the need for the business, the soundness of the Applicant, the adequacy of La Barberia Trail and of the driveway serving the Property. In opposition, there was testimony as to the alleged legal insufficiency of the variance requests, the inadequacy of La Barberia Trail, the fire hazard in the area and related matters.

The Hearing Officer finds:

1. Based on the application and the evidence and testimony presented at the public hearing as described herein, the use for which the variance is requested:

A. is not contrary to public interest;

B. Owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant; and

C. Granting the variance will result in the spirit of the SLDC being observed and substantial justice done.

2. An extraordinary and exceptional situation has been demonstrated due to the steep terrain of the Property and the avoidance of scarring of the hillside to reconstruct the driveway, which is well constructed and contains fire protection measures including pull-out areas and two 10,000 gallon water storage tanks; it would be difficult or impossible to widen La Barberia Trail (and prohibitively costly) or to change the grade of the intersection of La Barberia Trail as it is an existing road constructed many years ago with inadequate easement; and denying the variance requests would hinder the spirit of the SLDC in fostering local businesses.

3. The conditions for approval of the requests are recommended as follows:

a. The turnouts and turnarounds of the driveway shall be maintained as approved by the County with an all-weather driving surface and with an un-obstructed vertical clearance of 13'-6"; and

b. The driveway shall meet a minimum 28' inside radius on curves.

c. The entrance gate at the top of Sendero Del Corazon shall be set to open further to allow for the increased turn and radius into the Casita B driveway.

d. Due to the potential access issues and remote location of this project, for life safety and property protection, the Applicant shall install Automatic Fire Protection Sprinkler systems meeting NFPA13R requirements in Casitas A&B.

- e. The Applicant shall comply with all applicable regulations within SFC Ordinance 2001-11/EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such area.
- f. The Applicant shall have a vegetation management plan as required by the Urban Interface Fire Code 2001-11 for approval by the County.

WHEREFORE, the Hearing Officer recommends approval of a Variance of Chapter 7, Section 7.11.6.6 to Allow the Grade of the Approach at the Intersection to Exceed 5%; Chapter 7.11.2, Table 7-13, to Allow the Overall Grade of the Driveway to Exceed 10%; and 7.11.2 Table 7-13 – Local Road Design Standards to Allow Access from Offsite Roads that do not meet code, all of the Sustainable Land Development Code (SLDC), subject to the recommended conditions of approval.

Respectfully submitted,

Nancy R. Long
 Nancy R. Long
 Hearing Officer

Date: 8-31-16

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 2ND Day Of September, 2016 at 09:34:54 AM and Was Duly Recorded as Instrument # **1803542** Of The Records Of Santa Fe County

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

