

MINUTES

Tuesday, April 1, 2008
Planning and Zoning Commission Meeting
County Administration Building
1400 Highway 180 East
Silver City, New Mexico

Commissioners Present

Chair David Gershenson
Ken Foster
Alice Jones
Teri Matelson
Doug Abbott
Lori Ann Bonomo
Roxana Marsh

Commissioners Absent

Staff Present

Peter Russell
Luan Mitchell

The regular meeting was called to order at 7:00 pm by Chair David Gershenson. The Pledge of Allegiance was recited. A roll call of commissioners was taken and a quorum was present.

Approval of Agenda

Commissioner Jones moved to approve the agenda and was seconded by Commissioner Abbott. The agenda was approved by unanimous vote.

Approval of Minutes

Commissioner Jones noted that there was a no record of the vote on Part B of VA 08-2. Luan will make the correction and approval of the minutes will be postponed until the May 6, 2008, meeting.

Old Business

None

New Business

VA 07-11 A request for a variance to allow a land division where the resulting lots will not meet the minimum lot size and frontage requirements (Table 151.033(B) of the Land Use Code). The property is located on a tract of land in a Residential A zone, addressed as 803 and 805 W. 7th St. on part of Lots 9, 10, 11, 12, 13, 14, 15, and 16, Section 3 of the Black's Addition. The applicant is Joseph Kelly.

There was no ex parte communication or conflict of interest on the part of any of the commissioners. Three people were sworn in for testimony. Peter Russell presented the case and reminded the commission that this request had previously been heard in

November and was denied. The applicants appealed to the Town Council and the appeal was heard at the January 22, 2008, regular council meeting. Due to the new evidence presented at that meeting, the council remanded the Variance request back to the Planning and Zoning Commission. Included in the staff report was Community Development staff's recommendation not to approve the variance. Chair Gershenson thanked Mr. Russell for the clear recommendation, admitting that it makes the job of the commissioners easier. He asked why the two houses were defined as a duplex. Mr. Russell suggested it was because there were two dwelling units on one lot even though they did not have a common wall. Commissioner Abbot wanted to know why the required lot size is 5,000 sq. ft. Mr. Russell answered that it is a common lot size, probably coming from the size of a city block being two acres and if divided into eight lots, the size of the lots would be approximately 5,000 sq. ft.

Kathleen Watson, attorney for the applicant, testified that the property was designated a duplex by the bank as a creative way for the Kelly's to get financing. Two separate dwellings on one lot is a non-conforming use, but a duplex is allowed. She said the two houses had always been considered totally separate and have always had separate utilities and two separate addresses. As far as being considered a duplex is concerned, there is some question as to how they would be treated if one or both were substantially destroyed. Would the Kellys be allowed to rebuild both houses, or one if only one were severely damaged?

She stated she believed they would meet all eight necessary findings. The hardship is unique to the applicant's land as they were unable to find any other similar situation. The hardship applies to the land. It is not the result of the applicant's own actions as the property was configured as it is now when they bought it. The request is consistent with the Comprehensive Plan by maintaining the historic character of the neighborhood. The Land Use Code, with regard to the historic district, only specifically states that the lots should be no bigger than comparable lots and says nothing about smaller lots, so it is consistent with the code. And there are plenty of lots smaller than 5,000 sq. ft. in the neighborhood. The request is the minimum necessary for reasonable use of the land. It will not be a detriment to the neighborhood, but will instead be a benefit by providing additional affordable single-family housing for purchase. Finally, the variance will not result in the extension of a non-conforming situation. As it is, the property is non-conforming by having two dwellings on one Residential A zone lot. By allowing two lots smaller than dictated by the Land Use Code, they would be trading one non-conformity for another.

Commissioner Abbot commented that the houses are not non-conforming now as duplexes are allowed in Residential A. Chair Gershenson expressed the opinion that having the two properties available for sale would not necessarily increase affordable housing as they are affordable rentals now. Commissioner Jones felt that use of the assessor's map was misleading as it does not show the buildings and some of the small lots were occupied by one structure on several lots. She felt the exhibit was irrelevant. Commissioner Matelson agreed it was irrelevant, saying that what the commission had to consider was the findings, not how many more lots there are that are smaller than 5,000 sq. ft. Ms. Watson replied that the evidence was part of the factual argument. Commissioner Matelson also expressed her concern that whoever bought the houses

would want to expand them in some way and would be back to the commission asking for another variance. Chair Gershenson questioned whether there was enough room for the four parking spaces that would be required and was answered that there is an 18-foot-wide space between the houses that would accommodate four vehicles. Commissioner Foster questioned the seemingly contradictory statements in the staff report that they were applying for the variance because of the difficulty of getting financing and that they were not seeking financing at this time. Mrs. Kelly responded that they could not get financing on the property when they bought it and had to take a loan on their own house, but they were not seeking financing now. Ms. Watson said she was mistaken when she said they had gotten the loan for a duplex, but it was the insurance that was designated that way. Commissioner Matelson said she remembered from the first time this variance request was heard that the Kellys bought the property to have some say in who would be living in their backyard, but they didn't want to be landlords. Did they just buy the houses to sell them again? Mrs. Kelly said they had no intentions of selling the houses. They were built in 1915 and need a lot of renovation, plumbing and electrical issues, especially. It would be nice if they could get some financing to do that. Chair Gershenson asked if the rent would go up if they were considered individual houses instead of a duplex. Mrs. Kelly said she didn't know. Commissioner Matelson suggested there were other opportunities for the property such as connecting them with a carport.

Commissioner Jones suggested they could discuss the issue all night but she did not believe all the findings could be met. She moved to deny the variance request. Commissioner Marsh seconded the motion. A roll call vote was taken and the motion was passed unanimously. Chair Gershenson reminded the applicant that an appeal may be made to the Town Council.

Reports from Staff

None

Reports from Commission

Commissioner Foster asked when the stoplight would be put at Rosedale Road and Highway 180. Peter Russell answered that the highway project is due to be finished in November or December and the light will be installed then. He also mentioned that a representative of Walgreen's has been calling for information and it looks like they will be building a store there.

Community Input

None

Adjournment

Commissioner Marsh moved that the meeting be adjourned. Commissioner Bonomo seconded the motion. All in favor, the meeting was adjourned at 8:20 PM.

David Gershenson
Planning Commission Chair

May 6, 2008
Approved