

MINUTES

Tuesday, February 5, 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
Roxana Marsh
Teri Matelson

Commissioners Absent

Doug Abbott
Lori Ann Bonomo

Staff Present

Peter Russell
Alexandra Perrault
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 Marsh. The agenda was approved by unanimous vote.

Approval of Minutes

Commissioner Marsh moved to approve the minutes as written. Commissioner Foster seconded the motion. The minutes were approved by unanimous vote.

Old Business

None

New Business

VA 08-01 – A request for a variance to allow for a 3-foot side setback instead of the 5-foot side setback required in Table 151.033 (B) Density and Dimensional Standards of the Land Use Code, on a tract of land located on Lots 6 and 8, Block 4, Section 34 of the Brown Addition addressed as 2506 N. Walnut Drive. The applicant is Arthur L. Sanchez, owner.

There was no ex parte conversation or conflict of interest on the part of the commissioners. Three people were sworn in for testimony. Alexandra Perrault presented the case and noted that the applicant was applying for a variance to accommodate a carport that was already erected. He had hired a contractor to build the carport, and the contractor had neglected to obtain a building permit. When the building inspector discovered this, he issued a stop work order and the contractor was issued a citation.. As soon as Mr. Sanchez found out about it, he came to the Community Development Department to apply for a building permit. At that time it was realized that the carport encroaches two feet into the side setback of Mr. Sanchez's property and that he needed to apply for a variance.

Mr. Sanchez testified that the carport has not been completed. Water that will drip from the roof will not fall into the neighbor's yard as there will be gutters installed to channel the water into the his own yard. He has spoken with the neighbor who has no objections to the carport remaining where it is.

There was much discussion concerning the issue of setbacks. Commissioner Matelson stated she thinks the commission does set precedents in their decisions and that when people do things without permission and are allowed to "get away" with it, then more people will build first and ask permission later. She suggested that if the variance request were denied, it would be another punishment for the contractor to have to tear down the carport and rebuild it correctly. Both Peter Russell and David Gershenson reminded her that the commission does not have the authority to demand that. Commissioner Gershenson said he thought the contractor should be the one held responsible and penalized because a lot of times they are more concerned with getting a job than doing things properly. He also said setbacks are part of the discussion of the Land Use Code Revision Task Force and he would like to see more people attend the meetings. Commissioner Matelson said she had attended meetings but didn't feel she was given any chance for input. Chair Gershenson assured her she would get to speak if she chose to. Commissioner Jones asked what the punishment was for the contractor. Peter Russell said it was \$500 in this case but that it is the judge who sets the fines.

Commissioner Marsh moved to approve the variance without conditions. Commissioner Jones seconded the motion. In discussion, Commissioner Matelson argued that she did not believe the request met the necessary findings. Commissioner Foster agreed. Commissioner Jones advocated passing the measure as she did not think this was the best case on which to make this stand and that it was possible to be too doctrinaire, especially as in this case where the neighbor has no objections. Commissioner Foster agreed with her, but felt the homeowner should share some responsibility. Commissioner Gershenson agreed, stating the ultimate criteria for decisions should be fairness and equity. Peter Russell commented that the reason for the five-foot setbacks is to allow access by the fire department and as the carport was not enclosed it does not create a problem in that regard. He suggested it might be a good idea to set a condition that the carport not be enclosed. Commissioner Jones moved to amend the motion to include that condition. Commissioner Marsh seconded and the amendment was passed unanimously. The motion to approve the variance with the condition that the carport remain unenclosed was passed by a roll call vote of four to one, with Commissioner Matelson being the dissenting vote.

Reports from Staff

Zan Perrault reported that the variance request that was denied to Mr. Kelly by the commission on November 6, 2007, was appealed to the Town Council. The Council found there was new evidence and sent the matter back to the Commission where it will be treated as a whole new case. It will be presented to the commission on April 1, 2008. She also said that this would be her last meeting before going on maternity leave but that she will return in about three months. Peter Russell and Mike Eley will fill in during her absence. Peter Russell remarked that Zan will be missed but the department is trying to hire another planner but it taking longer than anticipated. He also said he had spoken with town attorney Robert Scavron who said he would be willing to do some training with new commissioners or anyone who would benefit from it. Commissioner Foster said he thought it would be helpful. He has new questions now that he has been on the commission for some years than he had when he was new. Commissioner Jones wished Zan and her husband great joy.

Reports from Commission

None

Community Input

Sean White offered that he was just at the meeting to observe. Mr. Sanchez thanked the commission for doing their job well.

Adjournment

Commissioner Jones moved that the meeting be adjourned. Commissioner Marsh seconded the motion. All in favor, the meeting was adjourned at 7:50 PM.

David Gershenson
Planning Commission Chair

March 4, 2008
Approved