

**MINUTES**  
**Tuesday, August 5, 2008**  
**Planning and Zoning Commission Meeting**  
**County Administration Building**  
**1400 Highway 180 East**  
**Silver City, New Mexico**

**Commissioners Present**

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

**Commissioners Absent**

**Staff Present**

Alexandra Perrault  
Luan Mitchell

The regular meeting of the Planning and Zoning Commission for the Town of Silver City was called to order at 7:00 p.m. by Chairman David Gershenson. The Pledge of Allegiance was recited. A roll call of commissioners was taken and a quorum was present.

**Approval of Agenda**

Commissioner Marsh moved to approve the agenda. Commissioner Jones seconded the motion. All in favor, motion carried.

**Approval of Minutes**

Commissioner Matelson moved to approve the July 1, 2008, Minutes as written. Commissioner Marsh seconded the motion. All in favor, motion carried.

**Old Business**

None

**New Business**

**Public Hearings**

**VA 08-5** – request for a variance to allow a 0’ setback where a 5’ setback is required (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 3808 Silver St., on Lot 3, Block 5, Section 26 of the Linda Vista Subdivision. The applicant is Rudy Jacquez.

Zan Perrault was sworn in as a witness. There was no ex parte conversation or conflict of interest on the part of any of the commissioners. The applicant was not in attendance for the second meeting in a row. Chair Gershenson asked the commissioners what they thought about that and Commissioner Abbot moved to deny the application for Variance 08-5. Commissioner Marsh seconded the motion. Zan stated she had spoken with Judge Jacquez and he had said he would not be able to attend the meeting. Chair Gershenson said the notice sign was down and wondered if Judge Jacquez truly wanted to continue with his application. Zan said the sign had apparently been ruined in a storm but she had not been notified in time to replace it. The commission voted unanimously to deny VA 08-5.

CU 08-2 A request for a Conditional Use Permit to allow a mobile home that does not meet the size requirements on a Residential B zoned lot. The property is located on a tract of land addressed as 503 N. Corbin St., on part of Lots 3 and 5, Block 124, Section 3 of the Fraser Addition. The applicant is Roman Gallegos.

Two people were sworn in for testimony. There was no ex parte conversation or conflict of interest on the part of any commissioner. Zan Perrault presented the staff report, concluding that staff did not recommend approval of the request. A Conditional Use Permit to move a trailer onto the same property was applied for in 2007 by Albert Ortega, who then owned the lot. Since he already had one trailer on the property, Mr. Ortega would have needed to meet the requirements for a mobile home park. Since then Mr. Ortega deeded the property to Mr. Gallegos, who is his son-in-law. It is thought by Community Development staff that this was done solely to avoid having to meet mobile home park standards. Also, there have been several complaints about Mr. Ortega's management of his rentals. As further reason for disapproval, the trailer that would be moved onto the property was built in 1972 and does not have a HUD seal. Proof that the wiring is copper and not aluminum would be required. A neighbor, Mr. Manuel Andazola, had written a letter in opposition to the permit.

Commissioner Foster inquired about skirting on the trailer. Zan explained that skirting is a requirement and when a trailer is moved onto property inside the town limits that is stated on the application. But if the permit is granted, it should probably be added as a condition that the owner has 90 days to have the trailer skirted. Commissioner Matelson asked how the condition of the trailer would be judged, if there were some other criteria besides copper wiring. Zan explained that all mobile homes are inspected by the state, not by our building inspector. Mr. Gallegos said confirmation of copper wiring in the trailer had been submitted with the last application, but Zan said she was unable to find it in the old file. Commissioner Jones asked why Mr. Gallegos wanted to put a trailer on the property and why Mr. Ortega deeded the lot to Mr. Gallegos. He replied that he already owns the trailer and that a family member would move into it. His mother has been sick

and his sister is moving back to Silver City to help care for her. Commissioner Jones commented that she was troubled by the conclusion drawn by staff. Zan said she had only spoken to Mr. Gallegos twice, that all other communication had been with Mr. Ortega. Commissioner Jones asked the applicant if he and Mr. Ortega were just trying to avoid having to bring the property up to mobile home park status. He said no. He also stated that the trailer was in good condition. Chair Gershenson commented that the commission would not judge someone's motive for applying for any permit, but Commissioner Jones said she asked the question because Mr. Gallegos deserved to rebut the staff's statement. Commissioner Foster noted that there was only a 2-foot difference in the required size and the size of the trailer in question. Zan reminded him of the copper wiring requirement.

Commissioner Matelson moved to approve the conditional use permit with a fourth condition that there be some sort of inspection of the mobile home. Zan said she didn't know how we could enforce that and suggested instead that the condition be that the applicant obtains all necessary permits before the mobile home is moved to the property. Commissioner Foster seconded the motion. Commissioner Jones stated that she felt she had to vote against the motion as it does not meet the findings that it will not affect the value of neighbors' property, it is not in harmony with the surroundings and there is even a question about preserving the public safety. Commissioner Abbott moved that condition number two be changed to read "the applicant must submit a grading/drainage sketch" instead of "should submit." Commissioner Marsh seconded and it was passed unanimously. Commissioner Marsh then added she felt the permit would be injurious to adjoining properties, that the trailer was too old and too small. Chair Gershenson agreed that the application can't meet all four findings. A roll call vote was taken on the motion to approve CU 08-2. The motion was denied with commissioners Foster and Matelson voting in favor, all others voting against. Chair Gershenson reminded the applicant that the decision could be appealed to the Town Council.

**VA 08-7** – A request for a variance to allow an accessory building larger than 600 square feet (Section 151.032 (B)(5)(f) of the Land Use Code). The property is located on a tract of land in a Residential A zone, addressed as 1304 Mississippi St., on the west 75' of Lots 11, 12, 13, 14, 15, and 16, Block 5, Section 34 of the Hardee Subdivision. The applicant is Ed Ludwig.

Three people were sworn in for testimony. There was no ex parte conversation or conflict of interest on the part of any commissioners. Zan Perrault presented the case, stating that the Community Development staff felt the size of the structure was excessive, but it would be an improvement for Mr. Ludwig to store his RV, ATV and other equipment inside. He has had problems with vandalism and tagging in the past, as have other neighbors. She said a Mr. and Mrs. Stevens had questioned the applicant's motive, suggesting that the structure would really be for his fly fishing business and that approval would start a trend towards more commercial uses in the neighborhood. Chair Gershenson asked what materials the building would be made of. The applicant replied

that it is a standard steel building kit, 14 feet high, but due to the lay of the land, it would only project eight feet above the road. In answer to a question from Commissioner Abbott, the applicant admitted that he had bought the property specifically so he could build the storage building. Commissioner Jones asked if a smaller building would work but the applicant's Fifth Wheel is 30 feet long, so he needs the 40-foot building. She also asked about the neighbors' concerns about his business. He explained that he teaches fly tying and has had the business in a 16-foot by 10-foot building for ten years. At most there are two cars parked at his business at a time. He intends to move the business into the new building and remove the older one. He also intends to do some landscaping to help hide the structure.

Judge Ron Hall, a neighbor of the applicant, spoke in favor of granting the variance. He said he has opposed other changes in the past, but he is aware of the vandalism problems and supports Mr. Ludwig's plan. The fly tying business creates no problems and Mr. Ludwig is a good neighbor and a good citizen.

Chair Gershenson spoke of his dilemma in personally wanting to vote for approval, but has difficulty in approving a commercial building in a residential A zone. Commissioner Jones remarked that this case is very different from a previous similar application as this building will not be so high above street level and will not dwarf the houses in the area. She also stated that it is more esthetically pleasing to have his vehicles stored in a garage rather than parked outside. Commissioner Abbot pointed out that the house and garage would only be 4,000 square feet in total on a piece of property that is 11,000 square feet. Chair Gershenson told the group that the Land Use Code Revision Task Force is recommending a change in the size limit of accessory buildings from a flat 600 square feet maximum, to a percentage of the size of the property. Commissioner Foster noted that it's a great building, but three times over the size limit. The applicant said he would be willing to put a fence around the building, but also noted that there is a 25 by 30 foot building already in the neighborhood and that the university has some corrugated metal building nearby and the property there is a mess. He added that he was unaware of the necessity for a variance and has already spent \$60,000 on the building. At this point Chair Gershenson commented that it would be good if the Town could somehow educate the public about the various permits and requirements. Commissioner Jones moved to defer the decision until next month's meeting to allow time for the commissioners to make a site visit. The motion died for lack of a second. Commissioner Abbott moved to approve VA 08-7 and Commissioner Jones seconded. Commissioner Matelson moved to amend the motion to add a condition that the applicant must submit a fencing and landscape plan to mask the building for approval. Commissioner Bonomo seconded and the motion was passed unanimously. Chair Gershenson reiterated that he has difficulty thinking all the findings are met. Commissioner Jones said she felt it was the best thing for the neighborhood and that this was not the proper time to be strict constructionists. The motion was passed by a six to one roll call vote, with Chair Gershenson the only vote in opposition.

**Reports from Staff**

None

**Reports from Commission**

Chair Gershenson said he had requested that the matter of notification signs be placed on the agenda because he thought the requirements were by ordinance and would need to be voted on. The agreement that an applicant signs is simply a contract between the Community Development Department and the applicant. He suggested the signs be placed no further than 5 feet from the property line rather than the current limit of 20 feet and the placement be no higher than three feet.

He also thanked Town Attorney Robert Scavron for his two and a half page written definition of ex parte, copies of which he had passed out to the other commissioners.

Commissioner Bonomo voiced her concern over people who spend considerable amounts of money without knowing about permits and other restrictions. Other Commissioners concurred.

**Community Input**

None

**Adjournment**

Commissioner Jones moved to adjourn the meeting. Commissioner Marsh seconded the motion. All in favor, motion carried with adjournment at 8:30 p.m.

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David Gershenson  
Planning & Zoning Commission Chair

September 2, 2008  
Approved