

MINUTES
Tuesday December 1, 2009
Planning and Zoning Commission Meeting
County Administration Building
1400 Highway 180 East
Silver City, New Mexico

Commissioners Present

Chair David Gershenson
Doug Abbott
Lori Ann Bonomo
Alice Jones
Teri Matelson
Gillian Sherwood

Commissioners Absent

Ken Foster

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 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 as written. Commissioner Abbott seconded the motion. All in favor, motion carried.

Approval of Minutes

Commissioner Bonomo moved to approve the Minutes of the November 3, 2009, meeting as written. Commissioner Jones seconded. All in favor, motion passed.

Old Business

None

New Business

Public Hearings

CU 09-3 – request for a Conditional Use Permit to do away with a previously imposed condition that limits the owner from containing more than two dogs on her property. The property is located on a tract of land addressed as 111 S. Bennett St., on Lots 12 and 14, and part of Lots 4, 6, 8, and 10, Block 32, Section 3 of the Fraser Addition. The applicant is Angela R. Vega.

There was no ex parte communication or conflict of interest on the part of any commissioner present. Seven people were sworn in for testimony. Alexandra Perrault presented the case explaining that the applicant is asking for removal of a condition imposed on her property when she was granted a Conditional Use Permit to move a mobile home that was smaller than allowed according to the Land Use Code onto her property in 2006. At that time, the commission imposed a condition that Ms. Vega have

no more than two dogs on the property to appease some neighbors who were concerned about barking. Ms. Vega had more than two dogs at that time and was forced to get rid of all but two of them. Ms. Vega felt she was being held to a higher standard than other citizens of Silver City because even though the legal number of dogs or cats allowed by owners in the city limits is two, anyone can apply for a variance for a kennel or breeder's permit, which would allow them to have more than two dogs. With the condition imposed on Ms. Vega in 2006, she was ineligible to apply for those permits. Ms. Vega testified that she breeds Boxer dogs. She said the dogs would be contained and that she would keep them from constant or incessant barking. She also stated that the two property owners who were concerned about barking don't live there, the properties are rented and one has been vacant for some time.

Commissioner Jones asked why the condition that was imposed was a hardship on Ms. Vega when only two animals are allowed in town, and also wasn't the lot too small for a kennel and thus the reason for the original CUP? Ms. Perrault explained that without the condition, Ms. Vega could apply for a kennel permit like any other citizen, and that the original CUP was necessary because the mobile home was too small, not the lot.

Mr. and Mrs. Patrick Hart testified that they would object to more than two dogs being kept by Ms. Vega. They had supported her CUP application for the smaller trailer but worry that with a kennel next door they would have trouble selling or renting their property.

Animal Control Officer Sherwood Nance testified that only two dogs, two cats or one dog and one cat are allowed by town ordinance. Commissioner Sherwood asked if everyone in town who has more than that has applied for and been granted a kennel license. Officer Nance replied that most are in violation of the code. When asked the procedure is if someone is in violation, Officer Nance replied that if there is a complaint, he goes to investigate and if necessary cites the owners into court.

Commissioner Jones moved to approve CU 09. Commissioner Matelson seconded and the motion was approved by unanimous roll call vote.

VA 09-8 – request for a variance to allow a kennel on a property that is less than one acre in size (Section 151.032(B)(3)(h) of the Land Use Code). The property is located on a tract of land in a Residential B zone, addressed as 111 S. Bennett St., on Lots 12 and 14, and part of Lots 4, 6, 8, and 10, Block 32, Section 3 of the Fraser Addition. The applicant is Angela R. Vega.

There was no ex parte communication or conflict of interest on the part of any commissioner present. Seven people were sworn in for testimony. Alexandra Perrault presented the case. Ms. Vega testified that her lot is small, but she does not have any very near neighbors. The terrain where she would be putting the kennel made it very difficult for anyone to build a house there and that the kennel would be far away from Mr. Hart's property. Commissioner Jones asked how many dogs she would like to have. Ms. Vega replied that she has five dogs at her kennel in Hurley and would like to have six at this property. Commissioner Jones questioned if that was six dogs plus however many puppies, and Ms. Vega said she would be allowed to keep the puppies until they are four

months old. Commissioner Matelson asked if she had had any complaints about barking dogs at her kennel in Hurley and the response was no. Commissioner Jones asked if she'd had any complaints about the two dogs she has now and Ms. Vega replied, no and that some neighbors didn't even realize she had them.

Commissioner Matelson said she would like to support Ms. Vega's enterprise, but was concerned about the kennel being in a residential area. Commissioner Gershenson stated that his concern was that the approved size of a lot for a kennel is one acre and what Ms. Vega is asking for is four times smaller than that.

Ms. Jesusita Chacon, a neighbor, state that she loves dogs but they bark and she has trouble sleeping. When Ms. Vega had more than two dogs before, they did bark. Mr. Hart agreed that the dogs did bark and that due to the topography of the area, Ms. Vega would not be able to keep a kennel 100 feet from his property. He said he had a petition signed by some neighbors against the kennel. Mrs. Hart wondered what would happen if Ms. Vega went over the limit of six or seven dogs. What if she couldn't get rid of the puppies? Mr. Eraclio Chacon said when Ms. Vega had five dogs they did bark and two is enough. Ms. Vega replied that she thought any barking issues should be handled on an individual basis and also that one of the neighbors on Mr. Hart's petition had told her in person he did not have any objections to the kennel.

Chair Gershenson asked Officer Nance what conditions would have to be met in order to obtain a kennel license. Officer Nance replied that among other, Ms. Vega would have to have written statements from all adjoining property owners that they did not object to the kennel and the kennel would need to be placed 200 feet from any house.

Commissioner Abbott commented that he did not see that all of the necessary findings could be met. He then made the motion to deny Variance application 09-08 on the basis of Finding #3 – The hardship is not the result of the applicant's own action – could not be met. Commissioner Matelson seconded the motion and it was passed by unanimous roll call vote. Ms. Perrault reminded the applicant that she could appeal the decision to the Town Council.

Reports from Staff

None

Reports from Commission

Chair Gershenson spoke about setting a date for voting on the Land Use Code Revisions. The agenda for the January meeting is quite full and it is recommended that we wait until after that. It was decided to check out dates and try for early February. Commissioner Jones reported that she had had a conversation with Mayor Marshall and that he had said the Town Council will probably not review the LUC revisions until after the election and the new council is in place, which means they may not get to it until June. In that case, she feels there is ample time for the commission to work on the things that were postponed such as mining and solar rights. It was decided to get some guidance from the council regarding that.

Community Input

Mr. Tony Morones spoke to the commission with questions regarding the zoning changes proposed for the Land Use Code. He said some wording on the Town's website was confusing, so that he understood changes were going to be made without public input. Chair Gershenson assured him the public had been invited to all meetings concerning the LUC revisions and would be welcomed at any further meetings, including the Town Council when they review it. Chair Gershenson suggested Mr. Morones put his questions and concerns in a letter and mail or email it. Mr. Morones said he had done that several days earlier to the mayor and thought it would have been passed on to the commission by now. Mr. Morones also requested that the term "mobile home" be removed from the LUC and replaced with "single-wide manufactured home." He claimed the term "mobile home" has a stigma attached to it.

Mr. Hart asked how changes to the Land Use Code would affect property in the ETJ and was told it only applied to Town limits. Then he asked what about a piece of property that straddles town limits and county. Chair Gershenson explained that zoning restrictions would only apply to the part in the town limits and any subdivisions would have to go before both the Town and the County. He also said that the Town is looking for applicants for a joint Town/County subdivision committee and suggested Mr. Hart apply.

Mrs. Morones asked if she would be able to add on to her single-wide manufactured home after all the LUC revisions take effect. It was explained to her that the state handles all issues regarding mobile homes and nothing is approved through the Community Development office. Mrs. Morones said she had made an addition to her single-wide in 1994 and had a permit signed by Peter Russell, current community development director, for that work. She did not understand why she would need to apply to the state for any further alterations she would like to make. When Commissioner Matelson suggested she go to the Community Development Department with her questions, she replied that she did not want to go to that office because "those people are rude." Mrs. Morones repeated that she was concerned about "what will happen to single-wide manufactured homes when all these revisions take place." Chair Gershenson suggested she bring her questions and concerns to the public meeting when the Planning and Zoning Commission votes on the LUC revisions.

Adjournment

Commissioner Bonomo moved to adjourn the meeting. Commissioner Sherwood seconded the motion. All in favor, the meeting adjourned at 8:35 p.m.

David Gershenson
Planning & Zoning Commission Chair

Approved January 5, 2010