

MINUTES
Tuesday June 1, 2010
Planning and Zoning Commission Meeting
County Administration Building
1400 Highway 180 East
Silver City, New Mexico

Commissioners Present

Chair David Gershenson
Alice Jones
Teri Matelson
Doug Abbott

Commissioners Absent

Lori Ann Bonomo
Ken Foster
Gillian Sherwood

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 7:05 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. Commissioner Matelson seconded and the motion passed unanimously.

Approval of Minutes

Commissioner Matelson was concerned that the Minutes and the Notice of Decision did not match exactly and suggested Zan and Luan coordinate them. She also requested that a question she put to the applicant for VA 10-4 regarding solar energy be included to the Minutes. Commissioner Abbott moved to approve the Minutes as amended. Commissioner Jones seconded and it was passed unanimously.

Old Business

None

Public Hearings

VA 10-4 – request for a variance to allow a 14’ setback and a 17’ setback where 20’ side setbacks are required (Table 151.033(B) of the Land Use Code). The property is located on a tract of land in an Industrial zone, addressed as 4008 Hwy. 90 S., located within the NE ¼ and SE ¼ of the NE ¼ of Section 16, T 18 S, R 14 W, N.M.P.M. within the Town of Silver City. The applicant is Charles Cassidy.

Zan explained that, due to an error in measuring the distance from the structure to the property line, the applicant is asking for a 10-foot setback, rather than the 17-foot setback listed in the staff report. She said the measuring was done by Community Development staff, not the

applicant, and they had measured from the main structure of the house rather than from the attached porch. There followed discussion about whether to postpone the hearing until the correct measurements could be included in a new legal notice. Chair Gershenson said it would be unfair to the applicant to make him wait another month for the hearing, but any decision could be challenged because of the incorrect legal ad. Karen McClish, the neighbor who made it necessary for Mr. Cassidy to apply for the variance, said it is unlikely she would appeal. Commissioner Jones moved to proceed with the hearing and was seconded by Commissioner Abbott. The motion was approved unanimously.

Three people were sworn in for testimony. There was no ex parte conversation or conflict of interest. Ms. Perrault presented the case, explaining that the applicant had applied for and been granted a moving permit to install a manufactured home on the property in June 2007, nearly three years ago. The application form showed the structure would be installed within the legal setbacks. Mr. Cassidy was out of town when the house was delivered but had no reason to believe it was not placed correctly. The Community Development Department also had no reason to question the placement until a complaint was received from a neighboring property owner. She said staff recommended issuing the variance for the reasons that the complaining neighbor bought her property within the last year with full knowledge of the building's location, and also because the property is in an Industrial zone where the setbacks are much greater than what is normally required of the type of building on the applicant's property. The applicant contacted six neighbors to get feedback on the application although there were only three on the Citizen Participation list. He received three comments in favor of the variance. The community development department did not receive any comments, but Ms. McClish did come to the office to see the file.

Mr. Cassidy testified that the business operating on his property consists of two gun ranges, driver's education, and security and law enforcement training. He said that his business, Pro Force, had been in business in Silver City for 14 years and that they had always tried to do everything according to the regulations. He stated that the manufactured home on his property had been set when he was out of town and he assumed that it was done in accordance with the Town's setback standards. The applicant added that when it was brought to his attention, he cooperated fully with the Town of go through the process of applying for a variance. He testified that the neighboring property owner was fully aware of the home's location when they bought their property and they never had any problems with it until their own business went out of business because it was not in compliance with the Town's ordinances. He pointed out that the neighboring property owner also has a 20-foot side setback requirement so there is a large area between the houses in which nothing is supposed to be built.

Karen McClish, owner of the property adjacent the applicant's, testified that the applicant's residence is very close to her property line and that he uses her driveway for access to this home. She said that the applicant stores his stuff on her property because his home is so close to the property line, he doesn't have any room left for storage. She stated that she could not put a fence on her property because when she tries her fence posts are pushed over, bent or removed. She added that she did not have the finances to hire a lawyer and take legal recourse or continue to repair the fence, and that she has a very sick husband, so all her time and effort

goes into that. Ms. McClish complained that bullets enter her property from the shooting range and that is another reason she wishes to put up a fence. She stated that she cannot sell her property because of the manufacture home's proximity to her property and the issues with the shooting range.

Mr. Cassidy testified that the shooting range had been inspected by the police chief before it was opened and has been inspected regularly since. It has also been checked out by the National Rifle Association as well and is safe. He also noted that the issue at hand was the setback variance, not his shooting range. Commissioner Jones agreed that testimony regarding the shooting range was irrelevant.

Commissioner Jones asked what action would be taken if the variance were denied. Zan said the applicant would probably be required to move the building. Chair Gershenson asked if the moving company would bear any responsibility and Commissioner Jones noted that it is ultimately the owner's responsibility to make sure the home is moved where it should be according to the permit that was issued by the Town. Follow up by community development staff on permits with requirements was noted as necessary.

Commissioner Jones said she had a problem seeing how the variance could meet several of the findings. She did not think the hardship relates to the applicant's land rather than personal circumstances and that the hardship is the result of the applicants own actions. Finding that the variance will neither result in the extension of a non-conforming situation nor authorize the initiation of a non-conforming use of land could also not be met. Commissioner Gershenson stated that he believes the commission has the right and obligation to make the findings flexible based on fairness and equity. Commissioner Matelson said that a mistake had been made and that she did not think it was unreasonable to ask that it be corrected, even if it is costly. Commissioner Abbott pointed out that several issues had been raised that did not have anything to do with issuing the variance. Chair Gershenson said the neighbors' feeling that they are being encroached on was a valid concern.

Commissioner Abbott moved to deny the variance because it does not meet all the findings as is required. Commissioner Jones seconded. In discussion Chair Gershenson stated he had trouble ignoring the neighbor who is encroached on, but it was then noted that no one lives on that property. Commissioner Jones felt that the fact that no one living there was not the issue. Commissioner Jones wanted the record to state that the basis for the commission's decision was that the variance cannot meet all of the eight finding necessary and that no other considerations played a role in their decision. The motion to deny the variance was passed by unanimous roll call vote. Mr. Cassidy asked what his rights were regarding an appeal and Ms. Perrault said he had 15 days from the Notice of Decision to apply for an appeal and that it would be heard by the Town Council..

New Business

None

Reports from Staff

Ms. Perrault reported that the Town Council passed the preliminary subdivision request as had the commission, but one of the councilors commented on the commission's decision to approve the variance allowing 2500 sq ft lots with 25 feet of street frontage. The councilor thought at least one of the findings could not be met.

Reports from Commission

None

Community Input

None

Adjournment

The meeting was adjourned at 8:20 by unanimous agreement.

David Gershenson, Chair
Planning & Zoning Commission Chair

Approved July 6, 2010