



MINUTES

Planning and Zoning Commission

Tuesday, September 2, 2014
Grant County Administration Building
1400 Hwy 180 East
Silver City, New Mexico

Commissioners Present

Sherry Clements, Chair
Carmon L. Steven
Nickolas Seibel – arrived at 6:10pm
Lita Furby

Commissioners Absent

None

Staff Present

Peter F. Russell, Community Development Department Director
Jaime L. Embick, Planner/Zoning Administrator

The regular meeting of the Planning and Zoning Commission was called to order at 6:00pm by Chair Sherry Clements. The Pledge of Allegiance was recited. A roll call of commissioners was taken and a quorum of three commissioners was present.

Approval of Agenda

Commissioner Steven moved to approve the agenda as submitted. Commissioner Furby seconded the motion and it passed by unanimous voice vote of 3 to 0.

Approval of Minutes

Commissioner Furby moved to approve the minutes of the May 6, 2014 meeting as written. Commissioner Steven seconded and the motion was approved by unanimous voice vote of three to 0.

Public Hearings

VA 14-02 A request for a Variance to allow an open carport to remain within the required setback. The property, addressed as 2209 Cactus, is located on a tract of land described as Lot 5, Block 26, of the Silver Heights Addition to the Town of Silver City, Grant County, New Mexico. The applicant is Katie Kincheloe, owner.

The Notice of Decision is attached as Appendix A.

Commissioner Steven moved that the Commission approve the Variance Request #14-02: A request for a Variance to allow an open carport to remain within the required setback. The property, addressed as 2209 Cactus Street, is located on a tract of land described as Lot 5, Block 26 of the Silver Heights Addition to the Town of Silver City, Grant County, New Mexico. The applicant is Katie Kincheloe, owner; with the conditions that a building permit be obtained for the required repairs and that the Building Official and Fire Department sign off on the finished product. The seven findings as stated in the record are met.

The motion was seconded by Commissioner Furby.

The Commission, agreeing that the application meets the seven required findings, hereby approves by a roll-call vote of 3 to 0, the applicant's request for a Variance. Commissioner Seibel did not vote as he arrived after the hearing had begun.

Old Business

None

New Business

None

Community Forum

None

Reports from Staff

Mrs. Embick stated that there will be one public hearing on the October Agenda.

Reports from Commission

Commissioner Steven stated that the Taste of Downtown will be held Saturday, September 6, 2014, and will raise money the MainStreet Project.

Community Input

None

Adjournment

Commissioner Seibel moved to adjourn the meeting. Commissioner Furby seconded and the motion passed unanimously by voice vote. The meeting was adjourned at 6:40pm.

Sherry Clements, Chair
Planning & Zoning Commission

Date Approved

NOTICE OF DECISION

PLANNING & ZONING COMMISSION

Case No. VA 14-02

TOWN OF SILVER CITY

IN THE MATTER OF

Variance Request #14-02: A request for a Variance to allow an open carport to remain within the required setback. The property, addressed as 2209 Cactus Street, is located on a tract of land described as Lot 5, Block 26 of the Silver Heights Addition to the Town of Silver City, Grant County, New Mexico. The applicant is Katie Kincheloe, owner.

BACKGROUND

Mrs. Kincheloe hired Hugo Nieto as a general contractor to build a carport at her residence. Mr. Nieto turned in an application for a building permit and was informed by the Town that a Variance would be needed to build the carport within the required side setback. Mr. Nieto then told Mrs. Kincheloe that he had obtained a building permit and constructed the carport. The Building Inspector became aware of the construction and placed a stop work order on the project and cited Mr. Nieto in Municipal Court for building without obtaining a permit.

Mrs. Kincheloe was notified that she needed to remove the carport or pursue a Variance in order to have the carport remain in the required side setback.

THE EVIDENCE

Three Planning and Zoning Commission members constituted a quorum at the hearing, presided over by Chairperson Clements, on September 2, 2014. None of the commissioners had any ex-parte communication or a conflict of interest. The commission reviewed the application, proof of ownership, staff report, photographs, and sworn testimony given at the public hearing.

Jaime Embick presented the staff report and background information.

After departmental reviews of the application, Town staff comments included:

The Utilities Director, Public Works Director, Police Chief, Town Engineer, Meters Foreman and Lead Code Enforcement Officer had no comment.

The Fire Marshal stated, "Any construction within three feet of the property line must be fire rated (posts and soffit)."

As required by Section 6.2.8 (D) of the Land Use Code of 2010, the applicant contacted the forty-three property owners within 300 feet and submitted a Citizen Participation report. The property owner at 2213 Cactus Street wrote a letter in favor of the carport remaining. No negative response was received.

The forty-three property owners within 300 feet of the subject property were also contacted by the Community Development Department. No response was received.

In its review of the application, the Community Development Department Staff found the

application to be complete. During a site visit staff noted that neighboring properties have similar carports.

Commissioner Furby asked what the required side setback is.

Mrs. Embick stated the required side setback is 5 feet from the side property line.

Commissioner Furby asked what the hardship is in this case. Mrs. Embick stated that the homeowner was misled by her contractor who did not obtain the Building Permit although he told her that he did. Mr. Russell also stated that under normal circumstances the Variance would be obtained before the carport was constructed. In this case the owner thought that everything was approved and it wasn't. He stated that the hardship wasn't of Mrs. Kincheloe's creation because she believed she was following the correct process. He also stated that other properties in the neighborhood have similar structures. The side setbacks are in place for fire separation and privacy. If the neighbors and the Fire Marshal accept the situation, the issues are resolved. Commissioner Furby stated that she thought the hardship would be a disability but not an ignorance of the rules. Mr. Russell stated that not being allowed to have what the neighbors have is in essence a hardship. The owner did not know that the contractor hadn't obtained the permit as he had stated.

Commissioner Steven asked if the structure encroached onto the neighboring property. Mrs. Embick stated that it does not. Commissioner Steven also asked what would be involved in making the existing structure compliant with the current Fire Code. Mrs. Embick stated that would be a question for the contractor, Mr. Nieto.

Commissioner Clements asked if the work would be inspected by the Town after completion. Mrs. Embick stated that it would be inspected by the Building Official.

During his presentation, the applicant's son, Tommy Castillo addressed finding number one required for the Commission to grant the Variance: Mr. Castillo stated that he thought a building permit was in place and the parking area is very slippery in the wintertime. They thought that they had a permit because Mr. Nieto told them he got one.

Commissioner Clements stated that side encroachments are more about cohesiveness of the neighborhood. This carport blends in with the neighborhood now. She informed the public who watch the hearings that any project that has a building permit will have a form to post visibly. If the contractor does not have one, they may have not gotten the required permit.

The contractor, Hugo Nieto, stated that he applied for a permit for the carport but it was denied. He hadn't had any work and decided to do the job without a permit. Mrs. Embick stated a Variance would have been needed to build the carport in the current location.

Commissioner Furby asked if the carport could be made narrower. Mr. Nieto stated that it is currently eleven feet wide and can't be made smaller.

Commissioner Steven asked if the posts would have to be moved. Mr. Nieto stated the posts could be covered in stucco and the roof can be changed to metal instead of shingles. Mr. Russell stated the roof slope will not need changed if the material changes.

Commissioner Clements stated that Commissioner Seibel would not be eligible to vote because he missed the beginning of the hearing.

Commissioner Furby asked what the hardship in this case is. Commissioner Clements stated that weather conditions and the other neighbors having the same carport are the hardship. If the carport were narrower, it would not be usable. Commissioner Furby stated that she was still not sure of the hardship to be evaluated. Mr. Russell stated that if the carport could not be built in the setback, the shelter from the weather would not be available.

Commissioner Steven stated that the approval would have been easier to give if the Variance was requested before construction.

Commissioner Seibel stated that he did not want to punish the homeowner because they thought they were following the correct procedure and were misled. He stated that there should be consequences for the contractor.

Anissa Nieto, the contractor's wife, stated that Mr. Nieto was fined \$1100.00 in Municipal Court for this case.

Commissioner Clements stated that the hardship is also that the homeowner thought that she was obtaining the required permits and was misled. She stated that this can be considered a legitimate hardship.

Commissioner Furby stated that in any case where the contractor hasn't obtained the required permits, does this create a hardship? Commissioner Clements stated that these cases should be considered individually.

Mrs. Embick stated that Mr. Nieto has testified on record that he told Mrs. Kincheloe that he had obtained the required permit.

Commissioner Steven moved that the Commission approve the Variance Request #14-02: A request for a Variance to allow an open carport to remain within the required setback. The property, addressed as 2209 Cactus Street, is located on a tract of land described as Lot 5, Block 26 of the Silver Heights Addition to the Town of Silver City, Grant County, New Mexico. The applicant is Katie Kincheloe, owner; with the conditions that a building permit be obtained for the required repairs and that the Building Official and Fire Department sign off on the finished product. The seven findings as stated in the record are met.

CONCLUSIONS OF LAW

The Land Use Code, Section 3.3.2 (C) (11) (b), allows private garages, carports, and off-street parking areas used to serve the residents of the property are allowed as residential accessory uses, provided that:

b) The garage or carport is located at least 20 feet back from the closest edge of the right-of-way of the street that provides access to the garage or carport.

Section 3.3.2 (E) 3, of the Land Used Code states that no accessory building or structure except for allowed fences or walls shall be located within a required side yard setback.

According to Section 6.3.19 (A) of the Land Use and Zoning Code of 2010:

A Variance allows a building or structure to be built if strict enforcement of the Land Use Code would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the Land Use Code will be observed, public safety and welfare

secured, and substantial justice done. Under no conditions shall a variance permit a use that is not otherwise permitted in the zone district where the property is located.

DECISION

The Commission, agreeing that the application meets the seven required findings, hereby approves by a vote of 3 to 0, the applicant's request for a Variance with the conditions that a building permit be obtained for the required repairs and that the Building Official and Fire Department sign off on the finished product.

In approving the Variance, the Commission finds that the spirit of the Land Use Code will be observed, that public safety and welfare has been secured, and that justice has been done.

APPEAL

The determination of the Planning and Zoning Commission on this item may be appealed by filing a Notice of Appeal application with the Community Development Director by 5:00 pm, September 30, 2014.

Jaime L. Embick, Planner

Sherry Clements, Commission Chair

September 12, 2014