



MINUTES

Planning and Zoning Commission

Tuesday, December 1, 2015
Grant County Administration Building
1400 Hwy 180 East
Silver City, New Mexico

Commissioners Present

Sherry Clements, Chair
Carmon L. Steven
Susie Siedentop
Michael Larisch

Commissioners Absent

Nickolas Seibel, Vice Chair

Staff Present

Jaime L. Embick, Planner/Zoning Administrator

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

Approval of Agenda

Commissioner Larisch moved to approve the agenda as submitted. Commissioner Steven seconded the motion and it passed by unanimous voice vote of 4 to 0.

Approval of Minutes

Commissioner Steven moved to approve the minutes of the September 1, 2015 meeting as written. Commissioner Siedentop seconded and the motion was approved by unanimous voice vote of 4 to 0.

Public Hearings

VA 15-02: Request for a Variance to allow a carport to be constructed within the setback on the property addressed as 927 Camino de Suenos. The applicant is the owner, James Keels.

Commissioner Clements explained the public hearing process and asked the commission members if they had any ex-parte communication. The commissioners stated they had not.

Three people were sworn-in for testimony. Jaime Embick represented the Community Development Department. James Keels and Tim Donovan presented the applicant's case.

The Notice of Decision is attached as Appendix A.

Commissioner Larisch moved to not grant the variance because findings one and three were not met. Commissioner Sientop seconded the motion and it passed with a unanimous roll-call vote of 4-0.

The applicant's request for a variance was denied. Commissioner Clements informed the applicant that he may see Mrs. Embick after the meeting to discuss the appeal process.

New Business

None

Community Forum

None

Reports from Staff

Mrs. Embick stated that the Community Development Department will revise the Comprehensive Plan and Land Use Code beginning in 2016. She encouraged interested citizens to contact her if they would like to be involved in the process.

Reports from Commission

Commissioner Clements thanked CATS TV for their help with the meetings.

Community Input

None

Adjournment

Commissioner Steven moved to adjourn the meeting. Commissioner Sientop second and the motion passed by a unanimous voice vote of 4-0. The meeting was adjourned at 6:55 pm.

Sherry Clements, Chair
Planning & Zoning Commission

Date Approved

NOTICE OF DECISION

PLANNING & ZONING COMMISSION

Case No. VA 15-02

TOWN OF SILVER CITY

IN THE MATTER OF

Request for a Variance to allow a carport to be constructed within the setback on the property addressed as 927 Camino de Suenos. The applicant is the owner, James Keels.

THE EVIDENCE

Four Planning and Zoning Commission members constituted a quorum at the hearing, presided over by Chairperson Clements, on December 1, 2015. 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.

Mr. Keels and Tim Donovan presented the applicant's case. This included a written response to the seven required findings submitted by Mr. Keels and attached as Appendix A.

Commissioner Siedentop asked if there would be a problem putting the carport by the small windows. Mr. Donovan stated that would make the carport too close to the street.

Commissioner Clements asked why the city's recommendations were not possible. Mr. Donovan stated that the turning radius is too small. Commissioner Clements asked if the house was designed with the carport originally. Mr. Donovan stated yes, it was designed to be against the property line.

Commissioner Steven asked what the distance from the carport to the street is. Mr. Donovan and Mr. Keels stated they did not know what the distance to the street would be but that the drawing had been recommended by Mike Eley of the Community Development Department. Mr. Keels stated the carport was going to be on the end of the house but it would not fit because of the shortened lot.

Commissioner Siedentop asked what the carport will look like. Mr. Donovan stated it will be a metal structure with a metal roof and a storage area on the side. The southern end of the structure will be solid.

Commissioner Clements asked if the subdivision was designed by the city. Mrs. Embick stated that it was.

Commissioner Siedentop asked why the town did not recommend approval of the variance. Mrs. Embick stated that Mr. Keels has not been able to meet the required findings for a variance and the duty of staff is to follow the Land Use Code. There are other options for a solution. Mr. Keels chose the lot and had his home designed for this lot.

Commissioner Siedentop asked if the lot was donated by the town. Mr. Donovan stated that yes, the lot was donated and Mr. Keels provided the financing for the house.

Commissioner Steven asked if the driveway and sidewalk were in place before construction was started. Mr. Donovan stated yes, they were.

Commissioner Clements asked why there were no other choices for a lot. Mr. Donovan stated that the development was phased and Mr. Keels could have had a lot on the east side of the street or the west side. He chose the more attractive lot. He could have chosen the other lot. The other lot is flat and buildable, but it is carved out of a hill with the view of a cut bank. He stated that desirability is the answer to the question.

Commissioner Larisch asked if this included the 20 foot setback from the street. The drawing shows 10 feet. Mrs. Embick stated the carport can be moved over. The problem that is being addressed first is the side setback. The other problems can be addressed. Mrs. Embick also stated that the carport could be set at an angle twenty feet back from the front.

Commissioner Siedentop asked why it couldn't be set in the front of the house. Mrs. Embick stated if that occurred there would need to be a variance obtained for the 20 foot front setback. She stated the empty area of the lot seems to be the best solution for the 5 foot and 20 foot setback problems.

Commissioner Steven asked if this will affect the passive solar feature of the home. Mrs. Embick stated there is approximately 30 feet from the house to the side setback and a flat roof on the carport will help.

Mr. Donovan stated that aesthetically the angled carport or a flat roofed carport will not work. The ideas that were suggested may be workable but would go against the aesthetics of the neighborhood and effect the passive solar gain of the home.

Commissioner Clements stated the home next door had to have a variance to correct a mistake made by the town. She also stated that a hardship has to exist to grant a variance, aesthetics do not fall into this category. It has to be something the homeowner did not create themselves. The existing constraints must be followed. It seems this situation was created by the applicant. Conditions one and three have not been met.

Commissioner Larisch stated he is a realtor and understands the aesthetics but agrees findings one and three have not been met as well as number five.

Commissioner Steven concurred that findings one and three have not been met.

Commissioner Siedentop stated she understands Mr. Keel's position but it does not meet the findings. She stated there are creative solutions available. The findings have not been met.

FINDINGS OF FACT

The Planning and Zoning Commission considered the evidence presented by staff, the applicant and the applicant's representative.

According to the Land Use and Zoning Code of 2010, the Planning and Zoning Commission shall only approve a variance if it makes the following findings, as required in Section 6.3.19 (D):

- 1) The hardship of which the applicant complains is one that is unique to the applicant rather than one suffered by the neighbors or the general public, and
- 2) The hardship relates to the applicant's land or property, and
- 3) The hardship was not created by the deliberate action of the applicant, or by one under his control, and reasonable remedies are not presently available, and
- 4) The granting of the variance is consistent with the Town's Comprehensive Plan, and
- 5) The granting of the variance is in harmony with the purposes and intent of the Land Use Code, and
- 6) The granting of the variance will not be injurious to the neighborhood surrounding the property where the variance is proposed, and otherwise is not detrimental to the public welfare, and
- 7) The variance will not result in the extension, expansion or enlargement of a non-conforming structure in violation of Article VII, and will not authorize the initiation of a non-conforming use of land.

CONCLUSIONS OF LAW

The Commissioners agreed that findings one and three were not met by the applicant; therefore, a variance may not be approved.

DECISION

The Commission, agreeing that the application does not meet the seven required findings, hereby recommends by a vote of 4 to 0, to disapprove the applicant's request for a variance.

By disapproving 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 with the Community Development Director by 5:00 pm, December 28, 2015.

Jaime L. Embick, Planner/Zoning Administrator

Sherry Clements, Commission Chair

December 11, 2015

To the Planning & Zoning Commission

Response to 6.3.19 Variance (D):

1. *The hardship of which the applicant complains is one that is unique to the applicant rather than one suffered by the neighbors or the general public,*

The hardship created for the applicant stems in large part because the west end of a small lot was not filled and compacted as were the adjacent lots extending to 10th St. in the Vista de Plata development. This resulted in approximately 12-15 feet loss of surface usage and the ability to place the carport in a more workable location. The neighbors, because their property was filled to the west boundary, do not have this impediment. Note that the property to the immediate north was granted a variance anyway.

2. *The hardship relates to the applicant's land or property,*

The hardship clearly relates to the applicant's land.

3. *The hardship was not created by the deliberate action of the applicant, or by one under his control, and reasonable remedies are not presently available,*

No action, deliberate or otherwise, was taken by the applicant to create this hardship.

Mr. Mike Eley suggested the following actions to mitigate the hardship,

- A. Move the driveway. This would worsen, not alleviate the hardship.
- B. Remove the rocks to the north boundary of the property. This would not, in any way, alleviate the problem and would adversely affect the landscaping design.
- C. Somehow put the carport on a slant across the lot. This might provide some relief to the turning radius issue but would be an impairment to the visual attractiveness of the development and require the applicant to perform an S maneuver rather than a hard left turn. Again, this might work for a compact vehicle but not a full size vehicle.

4. *The granting of the variance is consistent with the Town's Comprehensive Plan,*

In reviewing the Town Comprehensive Plan I feel that this variance is consistent with the regulatory language and the spirit of the plan. In Chapter 5: Housing, of the Comprehensive Plan (C. Housing Goals and Policies) it states:

"H Goal #1: Support the provision of an adequate supply of affordable housing in Silver City in order to curtail the displacement of low-income households.

H 1.2 C. Provide incentives to home builders....may include, but are not limited to....relaxation of development standards."

5. *The granting of the variance is consistent with the Town's Comprehensive Plan,*

While acknowledging that the land use and zoning code requires certain set-backs there is nothing in this variance request that conflicts with the statement under Article 1, Section 1.3 (Purpose). This is a common sense solution to an adverse condition created in part by the Vistas de Plata development and the Town of Silver City.

6. *The granting of the variance will not be injurious to the neighborhood surrounding the property where the variance is proposed, and otherwise is not detrimental to the public welfare,*

Rather than being injurious to the surrounding neighborhood, granting this variance will preserve the potential of resale of properties throughout the development.

7. *The variance will not result in the extension, expansion or enlargement of a non-conforming structure in violation of Article VII, and will not authorize the initiation of a non-conforming use of land.*

There are no non-conforming structures involved. This variance is specific to one tract of land and will not authorize the initiation of any extended use of land.