



Planning Commission Meeting
August 9, 2012
6:00 p.m.
City Council Chambers
405 N. Paseo de Onate, Espanola, New Mexico
Agenda

I. Call to Order

II. Pledge of Allegiance

III. *Approval of Agenda*
Public Concerns.

IV
V IV. Items for Consideration

1. **Variance Request.** Mike Sandoval, property owner, is requesting a variance from development code requirements to allow two residential structures on one lot, located at 509 Calle Sandoval. This property is zoned R-6, Urban Residential District.

VI Approval of Minutes

April 12, 2012

VII Matters from the Planning Commission

VIII Matters from the Planning Staff

IX Adjournment

Planning & Zoning Commission Meeting
Thursday, August 9, 2012 – 6:00 pm
City Council Chambers, City Hall
405 N. Paseo de Oñate, Española, NM

I. Call to Order:

Commissioner Wright called the meeting to order at 6:04 pm with the following in attendance:

Commissioners: Amrit Khalsa
Clyde Vigil
Erle Wright, Vice Chairman
John Ricci
Julie Atencio
Richard Beaudoin

Staff: Russell Naranjo, Planning Director
Larry Valdez, Planning Tech
Desirae Medina, Addressor/GIS Tech

Commissioner
Absent: Anissa Martinez, Chairwoman

Others: See Attached Sign in Sheet

II. Pledge of Allegiance:

Commissioner Wright led the Pledge of Allegiance.

III. Approval of Agenda:

Commissioner Wright made a motion to amend the agenda to include "Approval of the Agenda." (See attached agenda)

Commissioner Beaudoin seconded the motion.

Motion Carried 6-0 vote.

IV. Public Concerns:

There were no public concerns; however, Mr. Naranjo stated that there were new faces on the commission and he would like to have them introduced.

The commission introduced themselves and Commissioner Wright briefly explained the protocol during "Items for Consideration."

V. Items for Consideration:

1. *Variance. Mike Sandoval, property owner, is requesting a variance from development code requirements to allow two (2) residential structures on one lot, located at 509 Calle Sandoval. This property is zoned R-6, Urban Residential District.*

Mr. Valdez read the staff report at 6:09 pm which identified that the applicant, Mike Sandoval, was requesting a variance from development code requirements to allow two (2) residential structures on one lot, located at 509 Calle Sandoval. He stated that staff has reviewed all submittals by the applicant and conducted a site visit of the property; however, at this time, staff could not make a recommendation either in favor or against this application to the Planning Commission based on the request being a direct violation of the code. He expressed that should it be approved, staff is asking that the mobile home be placed to meet the minimum setback requirements.

Commissioner Wright stated that since there was no Development Review Team minutes (DRT) within their packets, he was assuming there was no meeting.

Mr. Naranjo responded that there was no DRT meeting and in many variance cases, as in this one, it was not necessary.

Commissioner Wright stated that there was a driveway on the west side of the mobile home towards the east; however, that easement is not referenced on the survey. He asked if staff could address that.

Mr. Naranjo stated that he did not have a good answer and asked that the question be directed to the applicant at this time.

Commissioner Wright asked what would be considered the front and rear setbacks, given the nature of a flag lot.

Mr. Naranjo stated that staff's interpretation is based on the access to the lot. The front door, for instance, would interpret the front and then the rear and sides. He added that due to the lot being oddly shaped, a percentage is allowed.

Commissioner Ricci stated that 6,500 square feet is minimal requirement for an R-6 zoning and questioned why a variance is being sought when it could be divided and conform to the code.

Mr. Naranjo stated that staff did look at that as an option; however, when the lot was originally created, it was to be considered a subdivision, as per definition. He explained that in today's standards creating a subdivision would require criteria such as landscaping, lighting, water, sewer, paving etc. and creating another lot, would mean including all of these. Mr. Sandoval would then be looking at 7-8 variances instead of the one. He concluded that this is a legal non-conforming lot in a sense, and if the use is vacated then it needs to come into compliance.

Commissioner Ricci asked how the value of the property would be affected if it was approved.

Mr. Naranjo replied that the value is determined by other issues and variables attached to the lot; however, safety, health and general well fare is what should be looked at.

Commissioner Ricci asked what the current safety was in regards to fire protection.

Mr. Naranjo stated that by today's standards a fire hydrant would be required within a 200' run for fire suppression, but at this time he did not know what the length of that run was.

Commissioner Beaudoin stated that during his observation of the site there was a fire hydrant out there to the east at the beginning of the next lot.

Mr. Naranjo stated that there is a hydrant located on that site and the survey does note it as a fire hydrant, but he believes that it is actually a flush hydrant and it is not capable of being used for fire suppression.

Commissioner Ricci stated that the closest fire hydrant he saw was off of Railroad.

Mr. Michael Sandoval, applicant, stated that he had received a variance for this lot many years ago and unfortunately after the lot was vacated he did not connect a mobile home within the 180 days. He explained that he is a cancer patient and leasing this space allows for additional income. He assured that he had no intentions of adding any more mobile homes than the one he is proposing.

Commissioner Beaudoin asked if he knew what the size of the unit was going to be.

Mr. Sandoval stated that it would be 16X76 after the removal of the hitch.

Commissioner Beaudoin asked who the property to the east belonged to.

Mr. Sandoval stated that it belonged to his son.

Commissioner Beaudoin asked what would happen to the access if his son sold the lot.

Mr. Sandoval stated he son was given access to the east, but he never developed the easement. He affirmed that his son was aware that he may be getting a longer trailer and that it would cut access to his property. He explained that his son has been using it as an easement, and he has not complained, but his entrance to the east needed to get developed.

Commissioner Beaudoin questioned staff if there would be in issue in the code if the property were to be sold and the easement existed now.

Mr. Naranjo stated that there is a possibility of a legal challenge on whether or not a prescriptive easement is involved.

Mr. Sandoval assured that his son was aware that it could be shut off at any time.

Commissioner Beaudoin stated it would be best to show the easement on the deed just in case the property is sold. He explained that an easement is being created right now and it may be something for Mr. Sandoval to a look into for the future.

Commissioner Wright stated that a prescriptive easement is determined by how long it has been in use and asked Commissioner Vigil if he could provide some information on that.

Commissioner Vigil stated that the length of time in New Mexico is ten (10) years.

Mr. Sandoval stated that he was aware of the matter and the placement of the mobile would not hinder access.

Commissioner Vigil recommended shutting off the access right now and placing the mobile home so that it is within the set back requirements.

Commissioner Wright added that it has been graveled and in use for at least ten (10) years; therefore, it could be established. He asked staff how that would apply to the driveway.

Mr. Naranjo replied that the setbacks are measured from the property lines and not the easements.

Commissioner Wright stated that it was a potential civil matter, and Commissioner Vigil has recommended that it be closed off; however, it cannot be a condition of approval.

Commissioner Vigil affirmed that he does recommend closing it off and also recommends that Mr. Sandoval stipulate the agreement he has with his son in writing and get all his paperwork in order.

Commissioner Atencio asked how long the mobile home had been vacated from the property.

Mr. Sandoval stated that it was well over the 180 days and the City did not have records of utilities being connected for his previous tenant.

Commissioner Ricci stated that he thought code cited that when a property was rezoned anything existing was "grandfathered in." He questioned if it was vacated once before it was rezoned.

Mr. Naranjo explained that it was actually rezoned to an R-6 around 1984 and the actual development of the plots came shortly after. He estimated that the City allowed for the initial hook-ups in the 90s and he didn't know how many tenants have come in and out, but the department caught on to it: It had been accepted by the City as non-conforming, but unfortunately once vacated the code requires compliancy.

Commissioner Atencio asked what the time lapse was from the first mobile home.

Mr. Sandoval stated that it was about three (3) months.

Commissioner Wright stated that the property was near the river and asked staff if an elevation certificate would be required or if it would need to be added as a condition of approval.

Mr. Valdez confirmed that it is located within a flood zone and stated that an elevation certificate is part of the issuance of the zoning permit.

Mr. Sandoval stated that at one time Mr. Joe Duran confirmed that he was not within a flood zone; however, the insurance recently asked for a re-evaluation, therefore he complied to satisfy them.

Commissioner Wright opened the public hearing at 6:42 pm.

Mr. Sandoval stated that he had distributed the letters of notification to his neighbors, but none of them were there. He announced that the people sitting with him were his tenants for this lot.

Mr. John Gonzales stated that he was the boyfriend of the tenant and he would not be living there; however, he had some questions on her behalf. He asked what the timeframe was for her to be able to move the mobile home in, should it be approved. He explained that she has entered into a contractual lease with Mr. Sandoval and has closed on the sale of her mobile home. He stated that they would like a timeframe as to make the necessary arrangements.

Mr. Sandoval stated that they had come to him months ago but he had to wait to go before the commission. He expressed that they have been patient and are anxious to move in.

Commissioner Wright asked staff what the timeline would be if there was a favorable decision.

Mr. Naranjo stated that the City would accept it the day approval is granted, but there is a ten (10) day appeal period and it would be smart to wait the ten (10) days.

Commissioner Wright closed the public hearing at 6:47 pm.

Commissioner Beaudoin stated that section 156 A-D needed to be met in order to approve the request and based on what had been provided, what they know and past history, it is his concern that there is potential for an issue with the neighbor to the east. He added that the actual length of the mobile home would go into the existing driveway an addition 10-12 feet and wanted the applicant to understand that he could be in for a situation.

Commissioner Khalsa stated that this was a request for a variance and any future theoretical disputes had no relevance. He stated that it was Mr. Sandoval's right and privilege; legal recommendations should not be given.

Commissioner Ricci stated that approving this would set precedents and allow the neighbors to do the same, regardless of the code. He stated that a change had been made and now it should meet code.

Commissioner Khalsa stated that he agreed that time had lapsed, but the four (4) criteria for granting a variance has been met and it is not self imposed.

Commissioner Wright stated that the issue was that the second dwelling was not allowed and requires a variance, per code. The lot size is large enough and by looking at the adjacent lots it cannot be subdivided any further without having to meet the subdivision requirements. He agreed with Commissioner Beaudoin that there was a potential problem; however, as Commissioner Khalsa stated, it is not for the commission to decide on the easement.

There were no further questions and/or discussion.

Commissioner Khalsa made a motion to approve the variance request to allow Mr. Sandoval two (2) residential structures on one lot located at 509 Calle Sandoval.

Commissioner Beaudoin seconded the motion.

Motion carried 5-1 vote, with Commissioner Ricci voting against the motion.

Mr. Naranjo apologized and corrected the appeal period as being 15 calendar days.

VI. Approval of Minutes, April 12, 2012:

Commissioner Beaudoin made a motion to approve the minutes as presented.

Commissioner Vigil seconded the motion.

Motion carried 6-0 vote.

VII. Matters from the Planning Commission:

Commissioner Wright again welcomed the new commissioners.

Sasha Heller, Rio Grande SUN reporter, introduced himself.

There were no further matters.

VIII. Matters from the Planning Staff:

Mr. Naranjo informed that there were a lot of topics to cover this evening; however, since Chairwoman Martinez was absent, he inquired if the commission still wanted to stay for the scheduled workshop or postpone for another day. He reported that issues had been brought up and it is requested that they are presented to a committee for recommendation prior to being heard before the council: He declared that the commission is capable of making recommendations to the council. He stated that staff in the past years have ran into issues with the vendor permit ordinance and explained that it is difficult to regulate and it is worthy of a workshop to work on verbiage to submit to the council.

Commissioner Khalsa asked if staff had the ability to collect a fee.

Mr. Naranjo stated that they do and he was looking to have code enforcement out on the weekends.

Commissioner Ricci asked if a vendor could be red tagged at that moment.

Mr. Naranjo stated the code enforcement idea would be like getting a permit at the lake and stated that it was "food for thought" and by all means welcomes further discussion.

Commissioner Beaudoin presented two (2) thoughts: the first was to express that the community needed to decide if it was beneficial to locate all vendors into one area with discounted permits and have some sort of organization or continue with chaos. He recommended that perhaps the City could discuss these issues with the local tribes and work something with them to have a vendor area. Secondly, he stressed that the ordinance needed to be strong enough. He expressed that as a business owner it is a struggle to have to pay the lease and utilities when someone vending on the streets makes more on one day's sales: The vending is chasing businesses out of town. He stated that if an orderly community is wanted then the ordinance needs to have enough teeth to push them elsewhere. Once it is enforced for a year, it will be easier for a vendor to go to a designated location than to vend on the streets.

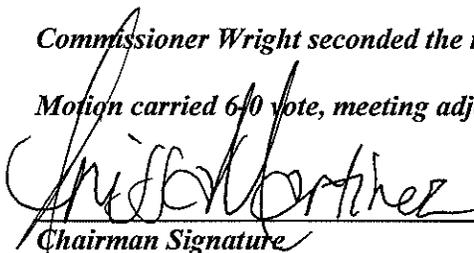
Mr. Naranjo suggested that the meeting be adjourned and discussions continue within the workshop.

IX. Adjournment:

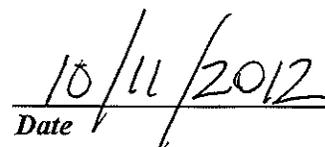
Commissioner Khalsa moved to adjourn the meeting.

Commissioner Wright seconded the motion.

Motion carried 6/0 vote, meeting adjourned at 7:21 pm.



Chairman Signature



Date



Secretary Signature



Date