

Planning & Zoning Commission Meeting

Thursday, February 9, 2012 – 6:00 pm

City Council Chambers, City Hall

405 N. Paseo de Oñate, Española, NM

I. Call to Order

Chairwoman Martinez called the meeting to order at 6:03 pm. The following were present:

Commissioners: Anissa Martinez, Chairwoman
Amrit Khalsa
Erle Wright
Richard Beaudoin
Sunee Sandoval, absent

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

Others: See Sign-In Sheet

II. Pledge of Allegiance

Commissioner Wright led the pledge of allegiance.

III. Approval of Agenda

- I. Call to Order
- II. Pledge of Allegiance
- III. Approval of Agenda
- IV. Public Concerns
- V. Items for Consideration:

- 1. **Variance Request.** Felipe Zavala, property owner, is requesting a variance on side setbacks, for the placement of a manufactured home, on a legal nonconforming lot of record. The property is located at 733 State Road 76 and is zoned R-1, Rural Residential District.
- 2. **Rezone Request.** Leroy A. and Josephine D. Baros, property owners, are requesting to rezone approximately .316 acres from B-2, General Commercial District to R-1, Rural Residential District. The property is located at 424 Corlett Road and is zoned B-2, General Commercial District.

- VI. Approval of Minutes
- VII. Matters from the Planning Commission
- VIII. Matters from the Planning Staff
- IX. Adjournment

Commissioner Wright made a motion to approve the agenda as presented.

Commissioner Khalsa seconded the motion.

Motion carried, 4-0 vote.

IV. Public Concerns

There were no public concerns.

V. Items for Consideration

- 1. **Variance Request.** Felipe Zavala, property owner, is requesting a variance on side setbacks, for the placement of a manufactured home, on a legal nonconforming lot of record. The property is located at 733 State Road 76 and is zoned R-1, Rural Residential District.

Staff report was presented by Larry Valdez at 6:05 pm as follows:

Recommendations:

As is the case in any request for deviation from the Development Code, this office cannot recommend approval. Each request is approved or denied based on its own merits. In reviewing this case, recorded deeds indicate the property has been legal nonconforming prior to municipal ordinance adoption.

Executive Summary:

In accordance with the City of Española, Development Code, Resolution 2004-20, Site Development Requirements, Single Family Residential Districts, Table 1 states:

R-1 Districts:	Proposed
Lot Area: 43,560 square feet	16,247 square feet
Lot Width: 100 feet	77.84' West, 53.33 East
Setbacks: 50' Front 50' Rear 25' Sides	120' Front 80' rear 20 and 12' sides
Lot Coverage: 35%	12%
No. of Dwelling Units per lot: (1) One	(1) One

In reviewing this variance request, the Planning Commission shall determine whether all of the following Section has been met in making a determination of approval, conditional approval or denial.

Sec.156. Variance review criteria

- (a) The practical difficulty or unnecessary hardship is inherent to the lot and is peculiar because of size, shape, topography or some other characteristic of the lot which differentiates it from other lots in the vicinity or in the district. The hardship created should not be self-imposed.
- (b) The practical difficulty or hardship created is caused by a strict interpretation of the provisions of this Ordinance, is not self-imposed and is not generally shared by other lots in the vicinity or the district.
- (c) The granting of the requested variance is necessary for the preservation and enjoyment of a substantial property right of the applicant which is possessed by others in the vicinity.
- (d) The granting of the variance sought will not be contrary to the purpose or intent of this Ordinance, or injurious to property within 100 feet or otherwise detrimental to the general health, safety or general welfare of the community.

Should any request for variance not meet all four of the above listed criteria, the Planning Commission shall deny the request.

Summary:

The applicant, Felipe Zavala-Medina, purchased this property last year for the purpose of relocating his family and home on it. Understandably, he had no idea of the requirements for lot size or for the placement of the mobile home.

The property in review was transferred by deed to siblings of the original owners on August 5, 1977, later being recorded on book 363, pages 383-384, on June 6, 1978, in Santa Fe County. These dates predate the first municipal ordinance of the City of Espanola. Similar to other requests for rezone this past year, the zoning designation does not necessarily fit the size or location of the property. The property being long and narrow did not appeal to many other individuals and was therefore left to become a jungle of elm trees and such.

The applicant has taken pride in clearing the property for the placement of his mobile home and plans to include a long freestanding portal on the home. Water and wastewater utilities are assessable on State Road 76 but may require a permit from the New Mexico State Highway Department for tie-in.

Comments:

Staff has received a letter from the applicants' employer recommending approval of the variance request and approval of Mr. Zavala and his family as neighbors.

Exhibits:

1. Site plan of proposed request
2. Aerial photo of project location
3. Copy of letter from applicant's employer
4. Copy of Variance application
5. Copy of DRT minutes
6. Copy of current warranty deed

Chairwoman Martinez asked if the proposed portal was included in the square footage of the home.

Mr. Naranjo replied that only the heated square footage is considered.

Chairman Wright stated that according to the orthographic, it appears that the property to the south also does not meet setbacks.

Mr. Naranjo stated that the mobile home on that property has been there a while and is legal nonconforming.

Felipe Zavala, applicant, introduced his family and stated that they have lived in Española for 15 years and during that time they have rented, but now have purchased property. He stated that they would like to put a home on it and be part of the community. Mr. Zavala concluded that he wanted to make a nice place for his family and his community.

Ralph Atencio stated that his family owns and operates El Paragua Restaurant and they are in favor of the variance. He pointed out that the property has been deeded throughout the years, and Felipe has

taken ownership and cleaned it up. He added that allowing this variance would be good for the City and for Felipe and his family.

Chairwoman Martinez closed the public hearing at 6:15 pm.

Commissioner Wright stated that looking at the case and the variance criteria; it appears that the property, due to its shape and size, is a hardship in terms of setbacks. It also appears that in order to actually enjoy the property rights, a variance would be needed. He concluded that it would not be detrimental to the property owners within 100 feet to make the motion to approve the variance on side setbacks at 733 State Road 76.

Commissioner Khalsa seconded the motion to approve the variance on side setbacks.

There was no further discussion. The motion carried, 4-0 vote.

2. **Rezone Request.** *Leroy A. and Josephine D. Baros, property owners, are requesting to rezone approximately .316 acres from the B-2, General Commercial District to R-1, Rural Residential District. The property is located at 424 Corlett Road and is zoned B-2, General Commercial District.*

Mr. Valdez read the staff report at 6:18 pm as follows:

Recommendations:

The request has been reviewed by DRT Committee. Minutes of the meeting are included in your packets for review. The DRT Committee has noted the waste water connection on Corlett Road is very shallow and may be difficult to meet grade for new connections. This office recommends the use of the existing structure for conversion to residential occupancy.

Executive Summary:

This request is addressed in the City of Espanola, Official Development Code, Section 154, Amendment to the Official Zoning Map review criteria which states the following:

During the course of the review of any request for an amendment to the Official Zoning Map, the DRT shall utilize the following criteria in formulating a recommendation to the Planning Commission and the

Planning Commission shall make findings to reflect the following criteria in making its recommendation of approval, conditional approval or denial to the City Council and the City Council shall make findings to reflect the following criteria in its approval, conditional approval or denial:

- (1) *The request substantially conforms to the Comprehensive Plan and shall not be materially detrimental to the health, safety and general welfare of the City of Espanola. A request for amendment to the Comprehensive Plan shall, if necessary be submitted, processed, heard and decided upon concurrently with the request for amendment to the Official Zoning Map.*
- (2) *The requested zoning shall be reviewed considering the available development potential in the proposed district.*
- (3) *Consideration shall be given to the existing and programmed capacity of on-site and off-site public services and facilities including, but not limited to, water, sanitary, sewer, electricity, gas, storm sewer, streets, sidewalks, traffic control, parks, fire and police to adequately serve the property should a rezoning result in any increase of the intensity of use of the property.*
- (4) *The establishment, maintenance or operation of uses applied for will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working adjacent to or within the proximity of the subject property.*
- (5) *The existing zoning must be shown to be inappropriate for one or more of the following reasons:*
 - a. *It was established in error;*
 - b. *Changed conditions warrant the rezoning; or*
 - c. *A different zone is more likely to meet goals contained in the Comprehensive Plan.*
- (6) *The proposed zoning will not result in spot zoning or strip zoning as defined in Article I of this Ordinance unless one or more of the following criteria are met:*
 - a. *Granting such zoning accomplishes the policy and intent of the Comprehensive Plan;*
 - b. *Unique characteristics specific to the site exist; or*
 - c. *The zoning serves as an appropriate transition between land uses of higher and lower intensity.*

In addition to the Zoning Map Review Criteria specified in Section 154, additional mandatory criteria has been established by recent New Mexico case law:

- A) *Applicants burden of proof. Since the community and neighbors have an interest in stability of land use and zoning, the applicant must provide a sound justification for the change. The burden of proof is on the applicant to show why the change should be made, not on the city to show why the change should not be made.*
- B) *Consistency with adopted plans. A proposed re-zoning "shall not be in significant conflict" with the comprehensive plan or other adopted City plans.*
- C) *Existing Zoning is inappropriate – Applicant must demonstrate:*
 - 1) *There was an error when the existing Zone was created*
 - 2) *Changed neighborhood or community conditions justify the change*

3) A different use category is more advantageous to the community even though 1 or 2 above do not apply.

Evaluation:

The Planning Commission makes a recommendation to the City Council for rezoning applications and the City Council makes the final determination for approval or denial.

Summary:

The location of the proposed zone change, 424 Corlett Road, was once a prominent business restaurant, Matilda's Restaurant. In reviewing the City of Espanola, Comprehensive Plan for the proposed zone change, it became apparent we have lost a valuable asset. Part of the comprehensive plan addresses the importance of providing cultural experiences to visiting tourists. Such was the case with Matilda's Restaurant.

The applicant approached this office after purchasing the restaurant property with numerous ideas of creating a cash flow for the purpose of paying back the loan. After various visits and options were reviewed, the applicants' desire was to apply for a zone change to allow for demolition of the structure to create multiple hookups for mobile home placement. This was the least desirable option presented.

In applying for a zone change, a legal nonconforming lot will be created. The adjoining neighbor across Corlett Road successfully rezoned her property from B-2, General Commercial District, to R-1, Rural Residential Zoning District in 2005. The property does meet minimum lot size requirements at 1.5 acres although has multiple structures.

The comprehensive plan encourages a balanced growth strategy with emphasis on infill development of suburban and urban residential housing as well as mixed-use facilities. For this reason, this request has not been favorably recommended.

Development Team review noted the current sewer connection for this property runs behind Standard Motor Parts and will require that the new owner obtain an easement from adjoining neighbors, to tie in any future connections. As noted in the DRT minutes, the current sewer line on Corlett Road is very shallow and will be difficult to meet grade on a new sewer tap from this property.

Comments:

At this time staff has not received any comments from adjoining property owners or neighborhood groups.

Exhibits:

1. Aerial photos of project location.
2. Legal descriptions of properties.
3. Copy of P & Z Application.
4. Copy of DRT minutes.

Commissioner Beaudoin asked if it was true that a minimum one (1) acre was required for an R-1 zoning.

Mr. Naranjo acknowledged that those are the standards set forth within the code.

Commissioner Beaudoin asked if there was any zoning that could be requested that would allow a third of an acre as minimum.

Mr. Naranjo stated that the property is applying for an R-1 because it is not adjacent to any other zoning that would allow for just over 10,000 square feet.

Commissioner Beaudoin asked if its current zoning of B-2 would allow for two (2) additional hook-ups.

Mr. Naranjo answered that it would not allow for a mobile home hook-up; however, it does for a single family dwelling. Therefore, based on code, the old house is in compliance.

Leroy Baros, applicant, stated that the building was old and dilapidated and bringing it up to code would involve a great investment. He stated that he did not know how the hook-ups worked, but the restaurant already had sewer and water; therefore, his idea was to use what is currently there.

Chairwoman Martinez asked Mr. Baros if he was aware that there was a sewer line issue.

Mr. Baros stated, "No."

Chairwoman Martinez informed Mr. Baros that there was a development review team which consisted of management from water, wastewater, and public safety and they have noted that grading would be needed for a new connection because it is currently too shallow. They also noted that the current sewer connection runs behind Johnny's Auto; therefore, an easement would need to be acquired.

Chairwoman Martinez opened public hearing.

John Ricci, 209 Old School Road, stated that Corlett Road is poor for a residential area. He stated that just beyond the property is a mobile home park with over 100 homes and thus, there is already a lot of traffic on the narrow road. He expressed that the road and the appearance of the property should be brought up to standards. He concluded that he is opposing the request because additional housing would increase traffic and congestion.

Joe Duran, 415 Corlett Road, expressed the following reasons why rezoning the property from a B-2 to an R-1 would not be the best solution for the City:

- **Justifications.** He stated that 70 percent of the City is residential; therefore, there are plenty of lots available for infill: The remaining 30 percent is the City's primary source of revenue from GRTs. He expressed that .316 is less than the required acreage needed for an R-1, and by approving the rezone they would be going against the minimum requirements.
- **Development.** He stated that the existing property was developed by the late Felipe Guillen and was occupied as a restaurant. He stated that it would be cost effective to renovate the building as a single-family dwelling, which is allowed in the current zone. He added that should it be commercially occupied the approval of a structural engineer and architect would be required. He concluded that commercial use would limit the hours of operation and traffic flow, which would be beneficial to the vicinity.
- **Fire Protection.** Mr. Duran stated that there was a lack of fire hydrants. The closest was at Stop-N-Eat and the other was at the corner of Corlett Road and Old School Road, both of which exceeded the fire line extension.
- **Wastewater.** Mr. Duran stated that there is a 4" service line through the property and unto a service line that discharges into a manhole on Corlett Road, which is located in front of his property. He stated that it leads out to Riverside Drive and the City has high maintenance hours on the existing line as it is and there is no main sewer line in front of 424 Corlett Road. He added that the north side services of Corlett Road are all connected to one- 4" line through the Maestas'. He concluded that there is insufficient infrastructure.
- **Traffic.** Mr. Duran stated that there are 80 mobile home residences within the Santo Niño Mobile Home Park and over 50 additional residences, totaling an average of 260 vehicles. He stated that vehicles travel at a high rate speed and it is dangerous for the children at the school bus stop as it is.
- **Corlett Road.** Mr. Duran stated that the street is paved; however, the dirt from the shoulder is infringing onto the roadway, thus narrowing the paved surface. He added that the damaged asphalt is creating unsafe potholes, due to the high traffic, and there is no drainage invert near the old Mel Patch building to capture the runoff of Corlett Road.

Mr. Duran stated that if the commission considers rezoning the property they should also consider the impact that the infrastructure and items mentioned will have on the livelihood of the neighbors.

Louana Hauck, 208 Old School Road, reiterated that the sewer is a big problem on Corlett Road and Old School Road. She stated that 3-4 days out of the week the outdoors smell of sewer due to that shallow line. She added that the City has tried to go in and find a solution, but there is so much going through because it is connected to the same main line that connects to the Santa Claran Hotel and Casino. She concluded that they could not afford to get any more hook-ups and the neighbors would attest to that.

Public Hearing was closed at 6:39 pm.

Commissioner Wright asked if Corlett Road was city right of way.

Mr. Naranjo replied that it is city up to a point and then it becomes tribal up to State Road 76.

Mr. Duran stated that Corlett Road is city up until Old School Road: then it becomes tribal.

Commissioner Wright stated that when the pueblo closed off the road it created a traffic circulation concern, but there was not much the planning commission could do, but recommend acquiring additional right of way for that road.

Commissioner Khalsa asked if he is considering remodeling to continue commercial use and stated that it would cost less to lease the single family dwelling as residential.

Mr. Baros stated that he has seen a contractor about renovating it for residential.

Commissioner Beaudoin asked when the property was purchased and if he understood the zoning and how it would affect what he could do with the property.

Mr. Baros replied that he purchased the property in August, 2011 and he knew of the zoning, but not in the detail that he is learning today.

Chairwoman Martinez stated that she wanted to remind everyone that the commission only makes a recommendation to the city council and then they will move to approve or deny the rezone.

Commissioner Wright reviewed the criteria, per the Development Code, that is utilized in making a recommendation. He stated that in evaluating this case he could not see it happening. He added that to rezone and then allow for two (2) mobile home hook-ups would not be moving the City forward and therefore, he would not be in favor of approving a recommendation to council.

Mr. Baros replied that he was under the impression that the request was to rezone the property to residential and then get permission for the mobile homes, and if not granted, then to refurbish the existing structure; however, he felt as if two things were happening here. He expressed that commercial taxes are too costly.

Commissioner Khalsa stated that there is an existing single family dwelling, but if Mr. Baros wanted to put anything else, then he would have to rezone. He added that leasing a single family dwelling is allowed and the tenant would just have the same sewer problems as the neighbors. It would be expensive to bring that building up to code for commercial use, but it was not bad for a house. He concluded that with less than a third of an acre, approving the rezone would be going backwards, but there were still options.

Commissioner Wright clarified that they were only considering the rezone at this point.

Mr. Baros stated that he would not like commercial, because it would increase traffic.

Chairwoman Martinez stated that in real estate investment a B-2 is more valuable than an R-1 and rezoning could drop the value of the property. She informed Mr. Baros that he could actually be hurting his investment by downgrading.

Commissioner Wright made a motion to deny the request to rezone .316 acres located at 424 Corlett Road on the grounds that the approval would lack conformity with the Comprehensive Plan.

Commissioner Khalsa seconded the motion.

Motion carried, 4-0 vote.

Chairwoman Martinez asked if this request would go before the City Council's next meeting.

Mr. Naranjo stated that it would be up to the applicant if he wished to proceed with his request or withdraw his application. He suggested that Mr. Baros think about it and then let staff know of his decision.

VI. Approval of Minutes—January 12, 2012

Chairwoman Martinez asked if there were any changes to the minutes.

Commissioner Khalsa stated that on the bottom of page 8, his comment regarding "the feelings of the Ash Pines" needed some clarification. He also suggested adding "arborist consultation" and "in addition for the next review" on the third paragraph of page 9.

Commissioner Wright moved to approve the minutes for January 12, 2012 as amended.

Commissioner Khalsa seconded the motion.

Motion carried, 4-0 vote.

VII. Matters from the Planning Commission

Commissioner Wright stated that he still had issues regarding the dump permits, but he had not yet spoken with the council and that he would perhaps send a letter to Mayor Lucero and the City Manager.

Mr. Naranjo stated that it may be best to take it to the council.

Commissioner Wright expressed that it could be a concern for property owners that need to maintain their properties because North Solid Central Waste will not pick that stuff up. He reminded everyone that they are still in danger of a quorum and the likelihood would be that no one will be appointed until after the election.

Chairwoman Martinez stated that they were all asked to submit a biography for the website and asked that they be sent to Mr. Naranjo when they are completed. She asked what the status was of updating the Planning Commission minutes on the City's website.

Mr. Naranjo stated that he was still looking into that matter.

Chairwoman Martinez stated that she read an article in the Rio Grande SUN regarding an abandoned building ordinance and would like more information on the ordinance.

VIII. Matters from the Planning Staff

Mr. Naranjo informed the commission that the city council had requested an abandon building ordinance and wanted it quickly; therefore, an ordinance was created. Mr. Naranjo summarized what the ordinance entailed and stated that there were a few things to fix.

Chairwoman Martinez stated that according to the article, the ordinance takes effect on February 22, 2012.

Commissioner Beaudoin asked if the ordinance required that the property taxes be current for registration.

Mr. Naranjo stated, "Yes" and informed the commission that two (2) cases that were heard before the commission had been appealed before the city council, and were approved.

Commissioner Wright requested a copy of the court's decision regarding the Phillip Chacon case.

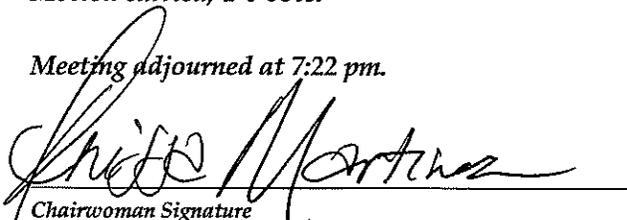
IX. Adjournment

Commissioner Khalsa made motion to adjourn the meeting.

Chairwoman Martinez seconded the motion.

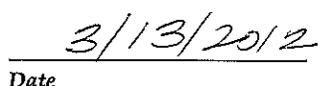
Motion carried, 4-0 vote.

Meeting adjourned at 7:22 pm.


Chairwoman Signature


Date


Secretary Signature


Date