



VILLAGE OF RUIDOSO
Village Hall
313 Cree Meadows Drive



PLANNING COMMISSION
SPECIAL MEETING
MINUTES

December 15, 2009, 2:00 PM
(Rescheduled from December 1, 2009)

1. CALL TO ORDER & ROLL CALL

The meeting was called to order by Chairman Glen Barrow at 2:02 pm. Roll call was taken. Members present were Commissioners Barrow, Barnett, Dutton, Alborn and Hirschfeld. Commissioners Hood and Williams were absent.

Staff present was Village Attorney Daniel Bryant, Planning Administrator Robert Decker and Staff Planner Jennifer Williams. Deputy Village Manager Bill Morris was present in the audience.

2. CERTIFICATION OF COMPLIANCE WITH RESOLUTION 2009-01

Mr. Decker certified that all required postings were done within the time limits required.

3. APPROVAL OF AGENDA

A motion was made by Commissioner Barnett to approve the agenda as written. The motion was seconded by Commissioner Hirschfeld. The motion passed with all ayes.

4. APPROVAL OF MINUTES

A. Regular Meeting – November 03, 2009

Commissioner Hirschfeld stated that he recalled making a statement under Commissioner Comments about the building requirements for a residential structure in a commercial zone. He did not see those comments in the minutes and asked that they be added to reflect those comments.

A motion was made by Commissioner Barnett to approve the minutes with the amendment requested by Commissioner Hirschfeld. The motion was seconded by Commissioner Hirschfeld. The motion passed with all ayes.

5. PUBLIC HEARING

A. PV09-012 – Variance Request – N/2 of Lot 10, Block C, Central Subdivision; Danny Calhoun, Applicant – Benchmark Engineering & Surveying, Agent

Paul Van Gulick approached the podium and was sworn in. He indicated that he passed out an updated report to all of the Commissioners. He explained that the lot is located in Upper Canyon. He added that the house is approximately 30 years old and that the variance was for a 130 foot addition. The addition is going to offer a means in ingress and egress to an existing loft that is upstairs. There is currently a pull down set of stairs that access the loft and that set of stairs is a safety issue. He stated that in the area there are a lot of variations in the distance between houses and their setbacks. He stated that the property had a large privacy fence and he didn't see that there would be any effect on the adjoining property. The addition is not living space, only a small area for ingress and egress. He added that this area is an area in the Comprehensive Plan that has a unique character and that it has grown up differently over the years than other parts of town. This area has been identified in those plans as an area for possible unique zoning.

Chairman Barrow stated that he had no questions and asked if other Commissioners had questions. No Commissioners commented. Chairman Barrow asked if anyone in the audience wished to comment and there were no responses.

Commissioner Dutton asked if any neighbors had contacted staff in opposition to the request. Chairman Barrow and Mr. Decker stated that there were none. Chairman Barrow closed the public hearing.

Commissioner Dutton asked to speak. He stated that he wanted to let the record show that he was personal friends with the applicant.

Commissioner Alborn asked if the residents were full time residents. Mr. Van Gulick stated that they were not. He added that many of the property owners in that area are not full time residents.

Attorney Bryant reminded the Commission that since this is a variance request, it requires a 2/3 majority vote. Since only 5 members are present, in order to meet the requirement, the vote will need to be 4 in favor of granting the variance. He asked that the vote be recorded by name.

Commissioner Dutton made a motion to grant the variance due to the unique character of the neighborhood, because the addition will provide safety to the residence and that the lot is somewhat substandard because it is so narrow. Commissioner Barnett seconded the motion. All present Commissioners voted aye. Those Commissioners who voted aye were Chairman Barrow and Commissioners Barnett, Dutton, Alborn and Hirschfeld.

6. REGULAR ITEMS

A. PSD09-002 – Revised Site Plan – Lot 2A – 8, Block 3, Riverside Addition; Thomas Farrell and Shari Smith, Applicants – Shaw Engineering, Agent

Mr. Decker stated that he was going to stay out of the discussion in this case because his wife works at Michelle's. Mr. Morris will be representing staff in this discussion. Attorney Bryant stated that for the record, Mr. Decker does not legally have a conflict of interest.

Mr. Morris reminded the Commission of the details of the case. He reminded the Commission that they had heard the case at the last meeting but that there was concern regarding the amount of shadow that the building would cast upon the neighboring property, Michelle's. The new information in the updated staff report states that the two parties meet and agreed to the changes in the site plan. The applicant had agreed to move the building 10.5' from the property line along Sudderth and 10' from the property line to the East and the neighboring property.

Chairman Barrow stated that the Commission received a letter from Dick Cooke regarding the replacement plan for trees that were removed. The letter indicates that the plan for tree replacement is not adequate. Chairman Barrow asked Attorney Bryant if the Commission could add a condition that states that the applicant must follow the recommendations of the Forestry Department. Attorney Bryant stated that the letter doesn't really have any recommendations except to ask that a few species of trees be considered. He added that he would recommend that the condition be that before a building permit is issued that the landscape plan be finalized with the Forestry Department.

Mr. Morris stated that the approval did state that the Certificate of Occupancy would not be issued until the applicant has met the requirements of the landscape plan that was approved by the Village Forester.

Commissioner Alborn asked why the Forestry Department was not contacted earlier in regards to removal of the trees. Mr. Morris stated that in this case, the applicant was complying with our rules. He added that the Forestry Department probably could have been included a little earlier. What the letter didn't reveal was that the Forestry Department actually concerned with the removal of the specific trees that were destroyed. After leveling the parking lot, many of the roots of the trees became exposed and would not have been able to be saved.

Mr. Dutton stated that he would like to see a condition that states that the applicant has to plant 4 to 6 pine or fir trees that would do well in that atmosphere.

Mr. Morris reminded everyone that the Forestry Department looks at the replacement in terms of basal area. He said that an option is to reduce the number of trees replaced by adding larger sized trees in fewer numbers.

Chairman Barrow stated that the Commission is limited on what they can require the applicant to do by law. He stated that he thinks that they have gone above and beyond to make sure that they complied with the conditions that were set in moving the building location. Mr. Morris agreed. Chairman Barrow stated that he thought it was worth it to ask but that he didn't think it could be required.

Commissioner Hirschfeld asked that the issue of the letter from Mr. Cooke be addressed further. He asked Mr. Morris why this happened. Why isn't the Forestry Department being involved at the earliest possible time? Mr. Morris stated that it's something that needs to be worked on and changed. Commissioner Hirschfeld said that it seems like that is what the Commission always hears, after the fact.

Michael O'Brian approached the podium. He stated that he and his wife did not meet with the applicant or his agent. He stated that they made several phone calls in an effort to try to arrange a meeting but it never happened. He added that the applicant did leave him a message stating that the updated site plans had been delivered to the planning staff and that Mr. O'Brian could come down to Village Hall and take a look at them. He

stated that the placement of the building still doesn't address the issue. He also added that the building doesn't fit with the character of the downtown area. Mr. O'Brien compared the proposed restaurant to the size of Lincoln Towers.

Chairman Barrow stated that he was sorry to hear that the applicant and Mr. O'Brien had not met to discuss the issue. He added that he personally felt that the law allows for too high of building heights. He added that many of the people present could recall that the Commission has tried to change that rule over the years but has never been successful. He asked Attorney Bryant if the Commission had recourse as far as the height of the building goes.

Commissioner Dutton asked if there was any proof that the proposed restaurant would devalue the neighboring properties. He stated that he thought that it would devalue the property should traffic be decreased as a result of the building.

Commissioner Alborn asked Attorney Bryant does the fact that the meeting between the two parties hadn't occurred have any legal bearing on what is going on. Attorney Bryant stated that the action that was taken was contingent upon the building being moved back from Sudderth 10.5'. The updated site plan that was provided fulfilled that requirement and it also does the additional step of moving the building an additional 10' from the property line with Michelle's. That should have some mitigating effect on the shadow and ice concerns that were raised at the time of the last meeting. He added that it is extremely difficult to determine if the proposed building is going to make the shadows worse, better, mitigate or not mitigate because of all of the factors related to the sun location at this time of year along with the trees and general location of the buildings in that area of town. He also added that the condition did not say that the parties had to have a meeting or that they must come to an agreement. All that it stated was that the building be moved back and the revised plan meets that condition. He stated that the failure to meet or the brevity of the meeting cannot be used in the discussion today.

Commissioner Hirschfeld stated that he made the motion without the condition of the meeting because he thought that it was clear that that needed to happen. Attorney Bryant stated that he along with many others in the room was delighted that the staff report indicated that the meeting had taken place. Mr. O'Brien stated that he felt that was the spirit of the discussion as well, that the meeting was to take place. Chairman Barrow stated that he recalled that Michelle stated that she didn't want to hold things up and that the vote should be taken. Mrs. O'Brien stated that she doesn't want to hold things up; she just wanted them to consider moving the building to the back of the lot.

Chairman Barrow stated that he felt like there needed to be laws to keep the development of building to be right up along the property line. He stated that they have tried several times to change laws to disallow that but haven't been successful.

Mr. O'Brien added that the building doesn't fit with what is in the downtown area. Chairman Barrow stated that the Village has no architectural requirements or guidelines either.

There was some discussion as to whether a representative for the applicant was present. A representative was present, Jock Tallman.

Commissioner Dutton asked what the height of the building is going to be. Attorney Bryant stated that he was looking through the plans to see what the Commission could look at that displays the building height. Attorney Bryant showed two renderings. One, which shows the building as it was proposed initially which was somewhat of a barn-like building. The current rendering shows that the roof line was changed significantly. The rendering do not show any dimensions.

Commissioner Dutton asked Attorney Bryant if Section 2 has any teeth to it. Commissioner Dutton reads the language of Section 2 and asks if that statement gives the Commission any power as far as the site plan goes. Attorney Bryant stated that since the only condition that was listed as part of the previous approval is that the building be moved 10' back, the Commission went past the considerations that were listed in Section 2. All that the Commission can do at this point is determine if the applicant meeting the conditions that were required of him. Attorney Bryant stated that he felt like he did meet those requirements.

There was continued discussion as to the height of the building between the Commissioners and Mr. O'Brien.

Rick Albors stated that he recalled a floor ratio ordinance that was once prepared. He stated that perhaps that type of an ordinance would help this situation. He asked the Commission if anyone recalled the ordinance. Chairman Barrow stated that he recalled the ordinance. He added though that under that ordinance he believed this building would comply, but that there was a provision that stated that a building would have to go back a certain amount before it could go up.

Jock Tallman approached the podium. He discussed the changes to the plan and the provided some photos via a web camera that shows the shadowing of Michelle's throughout the day presently. The photos were taken on 12/2/2009 at different times during the day. He also added that they too just received the letter from Dick Cooke regarding the landscaping plan and would do whatever was necessary to comply with the requirements.

There was continued discussion about the landscaping and when the Forestry Department got involved or should have gotten involved.

There was continued discussion about the parking and landscaping criteria within the midtown area.

Chairman Barrow asked if the Commission was ready to take a vote to the amended site plan. Commissioner Dutton made a motion to approve the amended site plan. There was no second motion, therefore the motion died for lack of a second. There was discussion about what happens at this point because no second was made. There were statements made regarding what would really happen since the attorney was not present at this time. Mr. Decker stated that staff would thoroughly discuss the issue with Attorney Bryant. Mr. Decker stated that he believed that the original site plan is still in place as the amended one was not approved.

Chairman Barrow made a motion to table the decision until the next regularly scheduled meeting. Commissioner Barnett seconded the motion. The motion passed with all eyes.

Chairman Barrow asked Mr. Tallman to ask the applicants to meet with the neighbors and to add heights to the rendering of the building.

7. PUBLIC INPUT

There was no public input.

8. STAFF REPORTS

A. DISCUSSION OF THE FOLLOWING ITEMS:

I. Code Enforcement Update

An update from Kalama Davis was provided. There was discussion about getting Mr. Davis help and also using the building inspectors as possible help. There was also discussion as to why the code enforcement officer is helping the animal control officer when there is so much work for him to do around the Village.

II. Zoning 101 Workshop

i. December 15, 2009 10:00am – 3:00pm

The Zoning 101 Workshop was cancelled. There was an email that went around to the Commission asking for suggested dates for a meeting in January.

9. COMMISSIONER COMMENTS

Commissioner Dutton stated that he appreciated the email which contains the packets. He stated that he would prefer to receive the electronic copy and that it was a great way to save trees.

Commissioner Hirschfeld stated that he wanted to review the sign ordinance at the next meeting. He added that he wanted to go back to a two meeting schedule at some point. There was some discussion about why the Commission went to a once-a-month meeting in the first place. It was suggested by Chairman Barrow that the discussion be an item on the agenda at the next meeting.

There was discussion regarding how the comprehensive plan update was going and when the approval was going to be coming.

Commissioner Hirschfeld asked if the Commission could get a little more information regarding the building report. He would like to see red tags, change of use, business registration, etc.

Commissioner Dutton asked what all of the plumbing inspections listed on the building report was about. Mr. Decker stated that our new plumbing inspection has been very busy. He also added that electrical permits would start to show up on the building inspections list.

Commissioner Barnett asked if at the next meeting all of the information regarding the Irish pub could be included in the packets.

Commissioner Alborn stated that he appreciated the lengthy discussion that the Council did regarding the intenerate vendors.

There were no further comments.

10. ADJOURNMENT

The meeting was adjourned at 3:40 pm.

These minutes prepared December 22, 2009

Jennifer Williams, Staff Planner

These minutes approved and accepted January 5, 2010

Glen Barrow, Planning and Zoning Commission Chairman