

PLANNING & ZONING COMMISSION MEETING

**PACKET - REGULAR MEETING
DECEMBER 7, 2021**





**TOWN OF BERNALILLO
PLANNING AND ZONING COMMISSION
MEETING AGENDA**



A **REGULAR MEETING** of the **PLANNING AND ZONING COMMISSION** of the Town of Bernalillo will be held on **Tuesday, December 7, 2021** at **6:30 p.m. in-person and virtually via WebEx** as provided in the information below. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service, in order to attend or participate in the meeting, please contact the Town Clerk at 771-7128 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Town Clerk if a summary or other type of accessible format is needed.

If you prefer to attend virtually, you may do so in compliance with the New Mexico Open Meetings Act by joining the Planning and Zoning Commission Meeting from your computer, tablet or smartphone via the following link: <https://www.webex.com> (click JOIN) then type in:

Meeting Number/Access Code: 2552 347 0361

Meeting Password: 12072021

You can also dial-in using your phone: 1-408-418-9388 (US only)

PLANNING AND ZONING COMMISSION MEETING AGENDA

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES**
 - a) Regular Meeting of November 2, 2021
- 6. PUBLIC HEARINGS & ACTION ITEMS**
 - a) **VAR21-013:** FENCE HEIGHT VARIANCE OF 2 FEET AT 956 NAZCON PLACE, LEGAL DESCRIPTION: NAZCON SUBDIVISION, BLOCK 1, LOT 5.
 - b) **MSBP21-001:** BUILDING PERMIT FOR SUBSTANTIAL MODIFICATION OF BUILDING FACADE IN THE MAINSTREET OVERLAY ZONE AT 961 CAMINO DEL PUEBLO, LEGAL DESCRIPTION: LANDS OF DE VALLE NASH, LOT 5.
 - c) **VAR20-010:** RECONSIDERATION OF FENCE HEIGHT VARIANCE OF 2 FEET AT 543 AVENIDA ENCANTADA, LEGAL DESCRIPTION: CASA ENCANTADA SUBDIVISION, BLOCK 1, LOT 21. *(Remanded from District Court to Town Council and remanded from Town Council to Planning & Zoning Commission)*
 - d) **SumP21-001:** SUMMARY PLAT TO RELOCATE LOT LINE EFFECTING 485 AND 499 SHERIFF'S POSSE ROAD, ZONED R-R, LEGAL DESCRIPTION: C'DE BACA CASITAS SUBDIVISION, LOT A2A AND LOT A1. *(Withdrawn)*

7. COMMISSION BUSINESS & UPDATES

- a) Planning and Zoning Commission Business
 - 1. Meeting & Application Schedule 2022
- b) Decisions of Town Council/Ordinances/Appeals Filed/Status:
- c) Planning and Zoning Department Update:
 - i. New Home Occupations – As of agenda print date, the number of new home occupations, permissive per Zoning Code Sec. 18, is: 1
 - ii. Building Coordination & Review – As of agenda print date, the number of building/wall permits reviewed for zoning and floodplain ordinance compliance, is: 6
- d) Next Meeting: January 4, 2022 @ 6:30pm In-Person and Via WebEx.

8. ADJOURN

PUBLIC COMMENTS

Written comments should be emailed to the Planning Director at sshumsky@townofbernalillo.org or mailed to her at P.O. Box 638, Bernalillo, NM 87004. Written comments **received by 5pm prior to the meeting** will be distributed to the Planning Commission.

Members of the public attending via WebEx that wish to speak on any of the agenda items, or otherwise address the Planning and Zoning Commission, must type your full name and the agenda item you want to speak on, in the chat box. When the chairperson calls on you, state your name and address for the record. There is a 2-minute time limit per speaker.

An electronic version (PDF) of the final Agenda and Packet are available a minimum of 72 hours prior to the meeting at:

https://www.townofbernalillo.org/departments/planning_zoning/agendas_and_minutes.php

Locations of Agenda Postings in the Town of Bernalillo: T & T Supermart, Town Hall, US Post Office, Martha Liebert Public Library and the Town's website at: <http://www.townofbernalillo.org>

MINUTES

MINUTES

November 2, 2021

IN THIS SECTION:

- **Draft Minutes for November 2, 2021:**
Pending Approval

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**MINUTES OF A REGULAR MEETING
OF THE PLANNING & ZONING COMMISSION
OF THE TOWN OF BERNALILLO
HELD AT THE TOWN
November 2, 2021**

The Planning & Zoning Commission of the Town of Bernalillo met in person and virtually via WebEx in regular session within the laws and rules of the Town on November 2, 2021 at 6:32 pm.

ITEM 1: CALL TO ORDER

Chairperson Duran called the meeting to order at 6:32 PM, and led those attending in the Pledge of Allegiance.

ITEM 2: ROLL CALL

Upon Roll Call the following members were found present:

PRESENT:

Chairperson Juanita M. Duran
Commissioner Antonette Eichwald (**Via WebEx**)
Commissioner Joseph Quintana
Commissioner Joseph Moreno
Commissioner Dominick Lepore

ALSO PRESENT (in person):

Shelley Garcia-Trujillo
Brandyn Garcia
Cameron Trujillo
Tom Patrick
Eddie Quispe
Sylvia Paredes
Lucy Perales
Angelo Sanchez
Stephanie Shumsky, Planning & Zoning Director
LeeAnn Romero, Planning & Zoning Clerk

ABSENT:

Commissioner Raul Montaña

Others Present Not Identified

ALSO PRESENT (Via WebEx):

Angela Williamson
Michael Aronowitz
Terry Jackson
David McEachern
Donald Young

Others Present Not Identified

A quorum was present

ITEM 3: APPROVAL OF AGENDA

Commissioner Quintana motioned to approve the agenda as presented.

The motion was seconded by Commissioner Lepore and it carried unanimously.

Roll Call Vote:

Chairperson Duran - yes
Commissioner Quintana - yes

48 Commissioner Lepore - yes
49 Commissioner Moreno - yes
50 Commissioner Eichwald - yes
51 Commissioner Montaña - absent

52

53 **Motion Carried – Item Approved**

54

55 **ITEM 4: APPROVAL OF MINUTES**

56 Chairperson Duran stated that she had the following corrections to the minutes:

57 *Line 115: Remove “own”*

58 *Line 323: Add “could” before speak*

59

60 Commissioner Quintana made a motion to approve the minutes of October 5, 2021 with the
61 stated corrections.

62

63 The motion was seconded by Commissioner Lepore and it carried unanimously.

64

65 Roll Call Vote:

66 Chairperson Duran - yes

67 Commissioner Quintana - yes

68 Commissioner Lepore - yes

69 Commissioner Moreno - yes

70 Commissioner Eichwald - yes

71 Commissioner Montaña - absent

72

73 **Motion Carried – Item Approved**

74

75 **ITEM 5: SWEARING IN OF WITNESSES**

76 All WebEx and in person witnesses were sworn in individually on each item by Chairperson
77 Duran.

78

79 **ITEM 6: PUBLIC HEARINGS**

80 **A. SumP 21-010 SUMMARY PLAT:** Community Sciences Corporation (Agent), on behalf of
81 Michael Aronowitz (Property Owner), requests approval to replat an existing lot line between Lots 1-
82 A and 2-A, Lands of J.C. Leeper & Elizabeth Leeper, located at 442 and 434 Melissa Road, in
83 Township 13 North, Range 4 East, Section 32, New Mexico Principal Meridian, Town of Bernalillo,
84 Sandoval County, New Mexico, zoned R-1A and containing approximately 0.6520 acres (according to
85 Sandoval County Assessor records).

86

87 Tom Patrick, the agent for the applicant stated that the applicants are requesting a lot line
88 adjustment between the Lands of Leeper. Mr. Patrick stated the reason for his request was
89 because Mr. Aronowitz, the property owner of lot 2-A would like to ensure that he will have
90 room to place a prefabricated garage that he purchased. Mr. Patrick stated that they will also be
91 granting a reciprocal access easement around the new property corners so that both property
92 owners will have access without having to worry about staying on their respective sides when
93 they drive into their properties.

94

95 Commissioner Quintana made a motion to approve SumP 21-010 Community Sciences Corporation
96 (Agent), on behalf of Michael Aronowitz (Property Owner), requests approval to replat an existing lot
97 line between Lots 1-A and 2-A, Lands of J.C. Leeper & Elizabeth Leeper, located at 442 and 434
98 Melissa Road, in Township 13 North, Range 4 East, Section 32, New Mexico Principal Meridian,
99 Town of Bernalillo, Sandoval County, New Mexico, zoned R-1A and containing approximately
100 0.6520 acres (according to Sandoval County Assessor records), subject to the following conditions:

101 **Conditions:**

- 102 ***1. The plat shall be signed by the Surveyor and Property Owner prior to being signed by the***
103 ***Planning Commission Chairperson.***
- 104 ***2. The plat must be recorded in the office of the Sandoval County Clerk and two (2) copies, as***
105 ***recorded and properly stamped by the Sandoval County Clerk, must be provided to the Town***
106 ***of Bernalillo. An electronic copy of the recorded plat is also required.***
- 107 ***3. The plat must be recorded within three months after the date of approval or the final plat***
108 ***will become null and void.***

109
110 The motion was seconded by Commissioner Moreno, and it carried unanimously.
111

112 **Roll Call Vote:**

113 Chairperson Duran - yes
114 Commissioner Quintana - yes
115 Commissioner Lepore - yes
116 Commissioner Moreno - yes
117 Commissioner Eichwald - yes
118 Commissioner Montañó - absent

119

120 **Motion Carried – Item Approved**

121

122 **B. VAR21-009 VARIANCE:** Lucy Perales (Property Owner) requests approval of a Variance of
123 2' from the maximum allowed fence height of 4' within the front setback area at 1165 Calle
124 Mesquite, legally described as Old Sawmill Addition, Block 3, Lot 32, located in Township 12
125 North, Range 4 East, Section 6, New Mexico Principal Meridian, Town of Bernalillo, Sandoval
126 County, New Mexico, zoned R-2 and containing approximately 0.111 acres (according to
127 Sandoval County Assessor records).

128

129 Chairperson Duran asked the rest of the participants in the meeting if anyone else planned on
130 testifying for this item, to which there was additional participants that stated they would testify if
131 need be. Chairperson Duran then swore these additional members in as well.
132

132

133 Sylvia Paredes, the property owner's daughter stated to the Commission that she would be
134 speaking on behalf of her mother, Lucy Perales, since the item was highly emotional for her. Ms.
135 Paredes stated that the fence has an 8-foot clearance from the sidewalk. Ms. Paredes stated that
136 Ms. Perales has been residing at her residence since 1985, and the area has since become a bad
137 area with drug use. Ms. Paredes stated that Ms. Perales put up her fence for safety and privacy
138 since she lives alone. Ms. Paredes stated that if Ms. Perales has to remove the fence, it would be
139 a hardship for her. Ms. Paredes stated that the fence does not block the view for existing
140 residents when they are reversing. Ms. Paredes stated that the fence is only an issue for those that
141 may want to see into Ms. Perales' yard. Ms. Paredes stated that the fence has a far clearance and

142 an easement, so that the other townhome's residents had access. Ms. Paredes stated that within
143 the past month there have been raids down the street from Ms. Perales.

144
145 Chairperson Duran asked Ms. Paredes if the fence was in the front yard of Ms. Perales' home.

146
147 Ms. Paredes stated that this was correct, adding that permits have been requested for the fence.

148
149 Commissioner Moreno asked the applicant how the fence issue came under scrutiny.

150
151 Ms. Paredes stated that the issue was brought up because it was reported to the Town since the
152 fence is six feet, even though it is set back 8 feet from the sidewalk. Ms. Paredes stated that Ms.
153 Perales' townhome is on the corner lot, so the fence does not obstruct traffic or break any traffic
154 laws.

155
156 Commissioner Moreno asked Ms. Paredes if the fence obstructs the house leaving the home
157 unable to be seen from the street.

158
159 Ms. Paredes stated that only a certain section of the house is covered by the fence, but from the
160 street corner the house is still able to be seen.

161
162 Commissioner Quintana asked staff if they could state what the nature of the complaint was and
163 what objections the complainants had with the fence.

164
165 Ms. Shumsky stated that a complaint was called in to the Town Manager, and the Town Manger
166 asked if the Town's Code Enforcement officer could go out to the property and observe if there
167 was a non-compliant fence at the location. Ms. Shumsky stated that when Code Enforcement
168 went out, there was indeed a non-compliant fence. Ms. Shumsky also stated that the applicant did
169 come into Planning and Zoning and apply for a fence permit, and was notified by Planning &
170 Zoning that the height limit is 4 feet, so Ms. Perales' options were to bring down the fence to 4
171 feet, or to request a variance, which she chose to do. Ms. Shumsky stated that she didn't know
172 any further details about the nature of the complaint or complainants.

173
174 Commissioner Quintana asked Ms. Shumsky if the nature of the complaint was because the
175 house was being blocked by the fence, or if it was just because the complainants didn't like the
176 fence.

177
178 Ms. Shumsky once again stated that she didn't have any further information about the complaint,
179 but that she believed the complainants were in attendance, so they may be available to answer
180 any further questions that the Commission has.

181
182 Chairperson Duran stated for clarification that per the Comprehensive Zoning Ordinance, the
183 height of the fence in the front yard is 4 feet, not 6 feet. Chairperson Duran also stated that this
184 allows for the individuals coming around the street corner to see if any traffic is coming.

185
186 Ms. Paredes stated that the fence does not block the view of traffic.

187

188 Angelo Sanchez, Ms. Perales' former son-in-law stated that he helped construct the fence
189 originally, and the reason that the fence was setback 8 feet was to allow for the oncoming traffic
190 to be able to clearly see around the corner.

191
192 Commissioner Lepore asked Ms. Perales if this is the same fence that has been up for the past 12
193 years.

194
195 Ms. Paredes stated that was correct, and that the fence has been up for quite some time.

196
197 Mr. Sanchez stated that he put up the fence in the early 2000's so the fence has been up for
198 several years.

199
200 Chairperson Duran asked at this time if there were any public comments at this time.

201
202 There were public comments made at this time by Shelley Garcia-Trujillo and Brandyn Garcia,
203 both of whom were then sworn in by Chairperson Duran.

204
205 Ms. Garcia-Trujillo stated that the fence has been up for no more than 4 years. Ms. Garcia-
206 Trujillo stated that the fence does block her view when she reverses out of her property, and that
207 the fence is too high. Ms. Garcia-Trujillo also stated that Ms. Perales' fence is a hate crime
208 fence, since both herself and Mr. Garcia are members of the LGBTQ community.

209
210 Brandyn Garcia stated that he got in contact with the Bernalillo Police Department and was able
211 to obtain records to indicate that the level of crime in the neighborhood is very minimal. Mr.
212 Garcia stated that the issue with Ms. Perales has been ongoing for years because as previously
213 stated, himself and Ms. Garcia-Trujillo belong to the LGBTQ community. Mr. Garcia stated that
214 Ms. Perales put up the fence because "she didn't want to see their vulgar gay selves".

215
216 Chairperson Duran stated that she wanted to clarify that the Commission was here to discuss the
217 height of the fence as it pertains to the Comprehensive Zoning Ordinance.

218
219 Mr. Garcia stated that the fence does block his view. Mr. Garcia also stated that he nearly got hit
220 a few days prior to the meeting when he was backing out of his yard. Mr. Garcia stated that if
221 Ms. Perales is allowed to have a 6-foot fence in her front yard, he believes that the other
222 neighbors should be able to as well for the fairness of the neighborhood.

223
224 Ms. Garcia-Trujillo stated that she would like the fence to come down so that she can see the end
225 of the street which would also allow her to see the stop sign.

226
227 Mr. Garcia stated that they have received violations from Code Enforcement that they have
228 already taken care of. Mr. Garcia also stated that nothing is being done by Ms. Perales to address
229 the violations that she may have received from Code Enforcement.

230
231 Chairperson Duran asked staff if there are any pictures included in the packet that would allow
232 the Commission to see Ms. Garcia-Trujillo's yard.

233

234 Commissioner Quintana asked Mr. Garcia to identify which house was his on the aerial
235 photograph that was included in the packet.

236
237 Mr. Garcia stated that their house was adjoining Ms. Perales', and as shown on the aerial photo,
238 their house has a yellow roof.

239
240 Commissioner Quintana clarified with Mr. Garcia on whether the fence blocked his view to the
241 end of the street when backing out of his yard.

242
243 Mr. Garcia stated that the fence did indeed block his view. Mr. Garcia also stated that he could
244 understand Ms. Perales having the fence in front of her home, but he didn't understand why Ms.
245 Perales' fence had to block their view.

246
247 At this point in the meeting, the Commission and the in-person attendees were discussing the
248 exact location of the fence in relation to Mr. Garcia's car.

249
250 Mr. Garcia stated that since they have 3 vehicles, they have to park to accommodate the three
251 vehicles. Mr. Garcia also stated that the other day, both himself and the neighbor to the right of
252 his home almost got hit when reversing, and in this instance, they both didn't have the visibility
253 to see oncoming traffic. Mr. Garcia also stated that he doesn't believe that the fence has been up
254 for 13 years, and that he as well as Ms. Garcia-Trujillo don't believe that the fence has been up
255 for more than 4 years.

256
257 Ms. Garcia Trujillo stated that she wanted the fence down so that she could have her visibility.

258
259 Commissioner Quintana asked Ms. Garcia-Trujillo if she was asking for the fence to come down
260 completely.

261
262 Mr. Garcia stated that they did not want Ms. Perales' fence to be completely removed, but that
263 they want the fence to be the same height that everyone else in the neighborhood has.

264
265 Ms. Garcia-Trujillo stated that she would be fine with Ms. Perales having a 4-foot fence.

266
267 Chairperson Duran stated that 4 feet is the height allowed in the Comprehensive Zoning
268 Ordinance.

269
270 Commissioner Quintana stated that if Mr. Garcia and Ms. Garcia-Trujillo would be sitting in
271 their car, a 4-foot fence may still block their visibility.

272
273 Ms. Garcia-Trujillo stated that a 4-foot fence would not block their visibility as bad as a the
274 current 6-foot fence.

275
276 In this part of the meeting, some of the WebEx participants could not hear the Commissioners so
277 Chairperson Duran asked Commissioner Quintana if he could briefly restate what his questions
278 were, to which he did.

279

280 There was another public comment by Ms. Paredes. Ms. Paredes stated that unless Mr. Garcia
281 and Ms. Garcia-Trujillo wanted to see the stop sign from their front window, there is a clear view
282 of the stop sign from the street that would allow them to reverse clearly. Ms. Paredes also stated
283 that she wasn't aware of how often the Google Imagery was updated, so that would provide a
284 good example of how long the fence has been there.

285
286 Commissioner Quintana stated that the age of the fence is something that is a point of contention.
287 Commissioner Quintana asked Mr. Sanchez if he stated under oath that the fence is 13 years old.
288

289 Mr. Sanchez stated that was correct. Mr. Sanchez also stated that the reason he is sure that the
290 fence is older than 4 years is because his father passed away 5 years ago, and he distinctly
291 remembers the fence being up before his father's passing. Mr. Sanchez also stated that he used to
292 live in the residence with Ms. Paredes when their daughter was a young child which was around
293 the time the fence was constructed, and their child is now going to be 17. Mr. Sanchez also stated
294 that he has no reason to lie, and that he doesn't have any issues with Mr. Garcia and Ms. Garcia-
295 Trujillo, and he wishes that they were not having the issues that they are.

296
297 Commissioner Quintana asked Ms. Garcia-Trujillo why she maintained that the fence was only 4
298 years old.
299

300 Ms. Garcia-Trujillo stated that she filed a report about the fence about 2 years ago, and nothing
301 was done.
302

303 Commissioner Quintana asked Ms. Garcia-Trujillo if she remembered the building of the fence.
304

305 Ms. Garcia-Trujillo stated that to her best knowledge, the fence hasn't been up for longer than 4
306 or 5 years.
307

308 Mr. Garcia stated, "let's put it this way, my grandfather died in 2006, and if his dad died 5 years
309 ago, the fence was not there 5 years ago, not to disrespect his father. Mr. Garcia also stated that
310 14 years ago, that fence wasn't there."
311

312 Ms. Garcia-Trujillo asked the Commission if they wanted to see pictures proving that they
313 couldn't see the stop sign when backing out of their home. Ms. Garcia-Trujillo mentioned that
314 Ms. Paredes stated that you could see the stop sign from their door, and she didn't believe that
315 was the case.
316

317 The Commission stated that they understood that you cannot see the stop sign from the front
318 door, and that they are concerned with whether you can see the stop sign from the angle from
319 where they are reversing.
320

321 Mr. Garcia stated, "Like I said to you, I did almost get hit the other day just for the fact that it's
322 that high right there."
323

324 Commissioner Eichwald asked Ms. Garcia-Trujillo if her complaint was because she couldn't
325 see the stop sign from her front door.
326

327 Ms. Garcia-Trujillo clarified that she couldn't see Los Pinos Road from her home.

328

329 Commissioner Eichwald asked Ms. Garcia-Trujillo about how long she has resided in her home.

330

331 Ms. Garcia-Trujillo stated that she has lived there since 1989 or 1990.

332

333 Commissioner Eichwald asked Ms. Garcia-Trujillo if she stated that she has made two
334 complaints at this point.

335

336 Ms. Garcia-Trujillo stated that this was correct.

337

338 Commissioner Eichwald clarified the timelines of Ms. Garcia Trujillo's complaints.

339

340 Commissioner Lepore requested clarification on the setback of the fence from the curb.

341

342 Chairperson Duran stated the setback was 8 feet, but according to the Comprehensive Zoning
343 Ordinance, the setback for the home is 20 feet from the home to the property line. Chairperson
344 Duran asked staff, if an individual could not see the stop sign because of the fence and an
345 accident occurred, who would bear responsibility the resident or the Town of Bernalillo.

346

347 Ms. Shumsky stated that she did not know. Ms. Shumsky stated that she did know that the Town
348 of Bernalillo requires a clear sight triangle which is a 3-foot fence at the street-side corner of
349 corner lots. Ms. Shumsky also stated that this fence was not in the clear sight triangle.

350

351 Chairperson Duran stated that was what she wanted to clarify.

352

353 At this time, Chairperson Duran asked the Commission if there were any motions for either
354 approval or denial of this item.

355

356 Commissioner Quintana asked Chairperson Duran if the Commission could take a few minutes
357 to consider the motion.

358

359 Commissioner Lepore made a motion to approve VAR21-009 Lucy Perales (Property Owner)
360 requests approval of a Variance of 2' from the maximum allowed fence height of 4' within the
361 front setback area at 1165 Calle Mesquite, legally described as Old Sawmill Addition, Block 3,
362 Lot 32, located in Township 12 North, Range 4 East, Section 6, New Mexico Principal Meridian,
363 Town of Bernalillo, Sandoval County, New Mexico, zoned R-2 and containing approximately
364 0.111 acres (according to Sandoval County Assessor records), subject to the following
365 conditions:

366 **Conditions:**

367 ***1. The applicant shall obtain the required Town of Bernalillo wall/fence permit.***

368 ***2. The fence shall be maintained. Warped or damaged slats shall be replaced and the fence
369 shall be painted/stained.***

370

371 The motion was seconded by Commissioner Quintana and it carried unanimously.

372

373 Roll Call Vote:

374 Chairperson Duran - no
375 Commissioner Quintana - yes
376 Commissioner Lepore - yes
377 Commissioner Moreno - yes
378 Commissioner Eichwald - yes
379 Commissioner Montaña – absent

380
381 Chairperson Duran clarified her vote, stating that the Comprehensive Zoning Ordinance calls for
382 fences in the front of the house to be 4-feet tall.
383

384 Mr. Garcia asked for clarification on whether Ms. Perales' fence was approved to remain at 6
385 feet, to which Chairperson Duran stated that was correct. Mr. Garcia then stated since that was
386 the case, he wanted to know if Ms. Perales' boulders would have to be removed.
387

388 Chairperson Duran stated that the Commission was not speaking on the boulders in Ms. Perales'
389 yard, since the fence was the subject at hand.
390

391 Mr. Garcia then stated that it was not fair that Ms. Perales' fence could remain 6 feet when no
392 one else could have a 6-foot fence. Mr. Garcia then stated that they would be contacting the news
393 media.
394

395 **Motion Carried – Item Approved**
396

397 **C. VAR21-010 VARIANCE:** RBA Architecture (Agent) on behalf of Sarily LLC (Eduardo Quispe,
398 Property Owner) requests approval of a Variance from the Off-Street Parking Requirements at 247 US
399 Hwy 550, legally described as Land Division of Valle Grande Center, Tracts 3-A and 3- C, located in
400 Township 13 North, Range 4 East, Sections 31 and 32, New Mexico Principal Meridian, Town of
401 Bernalillo, Sandoval County, New Mexico, zoned C-1 and containing approximately 1.1864 acres
402 (according to Sandoval County Assessor records).
403

404 David McEachern, the agent for the applicant stated that they are requesting a variance to reduce the
405 required amount of parking spaces from 3 spaces per unit for an apartment complex down to 1.5
406 spaces per apartment. Mr. McEachern stated that the variance would apply to both the 1 bedroom and
407 2-bedroom apartment complexes. Mr. McEachern stated that the City of Albuquerque code requires
408 1.5 spaces per unit and Santa Fe requires 1.25 spaces per unit. Mr. McEachern stated that the project
409 was located on Highway 550. Mr. McEachern stated that the recent construction has allowed for
410 Highway 550 to be more pedestrian friendly, and better for mixed use. Mr. McEachern also stated that
411 the Railrunner station was located 0.6 miles away from the proposed development.
412

413 Commissioner Moreno asked Mr. McEachern how many people were anticipated to occupy each
414 dwelling, since the applicants are requesting less parking space.
415

416 Mr. McEachern stated that there are 6 one bedroom units, and 15 two bedroom units.
417

418 Commissioner Moreno asked if these would be three-story buildings.
419

420 Mr. McEachern stated that was correct.

421 Chairperson Duran asked Mr. McEachern if this site was in front of the apple orchard, or if it was part
422 of the orchard.

423
424 Mr. McEachern stated that this site is in front of the orchard. Mr. McEachern made a correction to the
425 number of units that he had originally stated. Mr. McEachern stated that in Building A there will be 6
426 one bedroom units, and 9 two bedroom units, and in Building B there will be 6 one bedroom units, and
427 15 two bedroom units.

428
429 Commissioner Moreno stated that these sites were originally going to be an RV Park. Commissioner
430 Moreno also asked Mr. McEachern if he knew why that development didn't pan out.

431
432 Mr. McEachern that he was not aware of the original plans, since it was before he joined the current
433 project.

434
435 Chairperson Duran mentioned that the applicants were wanting to change the parking requirements
436 from 3 spaces to 1.5. Chairperson Duran also stated that the Ordinance regarding parking spots had
437 recently been changed, and she wasn't entirely sure what the rationale behind that was. Chairperson
438 Duran mentioned that a statement was made by the agent for the applicant that other municipalities
439 have 1 space of 1.5 spaces per unit. Chairperson Duran asked Ms. Shumsky if this is something that
440 the Commission may need to revisit.

441
442 Ms. Shumsky stated that when the Comprehensive Zoning Ordinance was being updated the
443 Commission made the decision to stick with 1.5 spaces. Ms. Shumsky also stated that when the
444 discussion of parking spaces occurred at the Town Council, an attendee gave an example of an
445 apartment complex not having enough parking spaces for visitors, so the amount of parking was then
446 increased to 3 spaces per unit. Ms. Shumsky stated that she believes that 3 spots may be excessive, so
447 when looking at the text amendment in 2022, it may be worth revisiting. Ms. Shumsky also stated that
448 she did follow up on the applicants claims that other municipalities had reduced parking spaces, and
449 they were correct.

450
451 Commissioner Moreno stated that he did not have a problem with having 3 spots, because of one of
452 the Commissions jobs is to make sure that the small-town character of Bernalillo is being maintained.
453 Commissioner Moreno also stated that piecemealing the zoning may not be an avenue that the Town
454 of Bernalillo wants to take, especially in high density housing cases such as this.

455
456 Commissioner Quintana asked Mr. McEachern if he was going to be requiring 32 parking spaces.

457
458 Mr. McEachern stated that there would be 34 spots at Building B and 24 at Building A.

459
460 Commissioner Quintana asked Mr. McEachern how many spaces he would be needing with 1.5 spaces
461 per unit.

462
463 Mr. McEachern stated that he would need around 60 spaces total.

464
465 Chairperson Duran asked Mr. McEachern if the buildings are three-story.

466
467 Mr. McEachern stated that was correct.

468 Chairperson Duran asked staff if there were any height restrictions in relation to height of these
469 apartments.

470
471 Ms. Shumsky stated that these apartments are zoned C-1, so the C-1 height restrictions would apply.
472 Ms. Shumsky also stated that the height restriction in C-1 is 45-feet.

473
474 Mr. McEachern stated that the height for these buildings would be 30 feet, 9 inches.

475
476 There was a public comment at this time made by Eddie Quispe, the property owner. Mr. Quispe
477 stated that he did understand Commissioner Moreno's concern. Mr. Quispe also stated that in that area
478 on US 550, there are hardly any apartment complexes so it would likely not create the problem of
479 having high density traffic without enough parking spaces. Mr. Quispe stated that the nearest
480 apartment complexes are on NM Highway 528 near Home Depot, and on Camino Del Pueblo.

481
482 Commissioner Lepore made a motion to defer this item.

483
484 Ms. Shumsky stated that she needed to know exactly when the item would be deferred to.

485
486 Commissioner Lepore stated that he would like this item deferred to the December 7, 2021 Planning
487 and Zoning Commission Meeting, to allow the Commission to have more time to review the parking
488 regulations in the Comprehensive Zoning Ordinance.

489
490 Chairperson Duran asked staff if the item was to be deferred to the December 7, 2021 meeting if that
491 would allow enough time for any changes to be made to go through the entire process.

492
493 Ms. Shumsky stated that she didn't think that the December 7, 2021 meeting would allow for enough
494 time to do research, since she would be short staffed.

495
496 Commissioner Lepore stated that he would like this item deferred to the January 4, 2022 Planning and
497 Zoning Commission Meeting.

498
499 The motion was seconded by Commissioner Quintana and it carried unanimously.

500
501 Commissioner Quintana made a statement to Mr. McEachern and Mr. Quispe on his own behalf that
502 he believed the peoples work is best done in person, and he believed that since Mr. McEachern didn't
503 attend in person, it showed a lack of commitment to his project. Commissioner Quintana stated that he
504 would've preferred If Mr. McEachern attended in person so that if he wanted to present additional
505 materials to the Commission, it would've been easier to do so.

506
507 Roll Call Vote:

508 Chairperson Duran - yes

509 Commissioner Quintana - yes

510 Commissioner Lepore - yes

511 Commissioner Moreno - no

512 Commissioner Eichwald - yes

513 Commissioner Montañó - absent

514

515 **Motion Carried – Item Deferred to January 4, 2022**

516
517 **D. VAR21-011 VARIANCE:** Terry Jackson (Agent) for Terry & Connie Welke (Property Owners)
518 requests approval of a Variance of 9' to the 15' rear-setback required in The Orchards 3 Subdivision,
519 resulting in a 7' rear-yard setback at 947 Prairie Zinnia Drive, legally described as The Orchards 3
520 Subdivision, Lot 297, located in Township 13 North, Range 3 East, Section 36, New Mexico Principal
521 Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing
522 approximately 0.152 acres (according to Sandoval County Assessor records).

523
524 Record states that Commissioner Lepore recused himself for this item.

525
526 Terry Jackson, the agent for the applicants stated that the applicants requested his company to
527 construct a simple pergola to the rear of their home that would extend 9 feet and on to the patio. Mr.
528 Jackson stated that he has already received permission to build the pergola from the homeowner's
529 association in regards to color and construction. Mr. Jackson also stated that he has also spoken with
530 the neighbor that shares a wall with the Mr. & Mrs. Welke, stating that he doesn't have a problem with
531 the pergola. Mr. Jackson stated that the pergola is a simple shade structure with no walls, and it will
532 allow for some privacy from the sun.

533
534 Chairperson Duran requested clarification on what the pergola was constructed of, and whether it was
535 open on all sides.

536
537 Mr. Jackson confirmed the pergola was open on all sides. Mr. Jackson also stated that the support
538 columns were constructed out of fiberglass, the roof is constructed out of 3-inch-thick solid material,
539 and decorative lattice.

540
541 Commissioner Moreno made a motion to approve VAR21-011 Terry Jackson (Agent) for Terry &
542 Connie Welke (Property Owners) requests approval of a Variance of 9' to the 15' rear-setback required
543 in The Orchards 3 Subdivision, resulting in a 7' rear-yard setback at 947 Prairie Zinnia Drive, legally
544 described as The Orchards 3 Subdivision, Lot 297, located in Township 13 North, Range 3 East,
545 Section 36, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico,
546 zoned R-1 and containing approximately 0.152 acres (according to Sandoval County Assessor
547 records), based on the following conditions:

548 **Conditions:**

549 ***1. Prior to construction of the pergola, the applicant shall obtain the required Town and NM CID***
550 ***permits.***

551
552 The motion was seconded by Commissioner Quintana and it carried unanimously.

553
554 **Roll Call Vote:**

555 Chairperson Duran - yes
556 Commissioner Quintana - yes
557 Commissioner Lepore
558 Commissioner Moreno - yes
559 Commissioner Eichwald - yes
560 Commissioner Montaña - absent

561

562 Commissioner Quintana suggested to Mr. Jackson that he should make sure he has approval
563 from the homeowner's association in writing.

564

565 **Motion Carried – Item Approved**

566

567 **E. VAR21-012 VARIANCE:** Modulus Architects & Land Use Planning (Agent) on behalf of D&G
568 Price Limited Partnership (Property Owner) requests approval of a Variance from the Off-Street
569 Parking Requirements at Venada Plaza Subdivision, Lot 5B, located in Township 13 North, Range 3
570 East, Section 36, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New
571 Mexico, zoned S-U for Shopping Center with Master Plan and containing approximately 7.06ac+/-
572 (according to Sandoval County Assessor records).

573

574 Chairperson Duran swore Ms. Angela Williamson, the agent for the applicant in on this item.
575 Chairperson Duran then had a question for staff since this item also related to parking. Chairperson
576 Duran asked Ms. Shumsky if this item was similar to the parking request that was deferred earlier in
577 the meeting.

578

579 Ms. Shumsky stated that the location is different, but the request is the same as Mr. Quispe and Mr.
580 McEachern's variance request.

581

582 Chairperson Duran asked the Commission if they wished to also defer this item since the
583 requests were so similar. Chairperson Duran then asked Ms. Williamson if she understood why
584 the Commission may be requesting deferral of this item.

585

586 Ms. Williamson stated that she did understand the reason for the deferral, but if the Commission
587 would allow it she would like to make a few statements.

588

589 Chairperson Duran asked Ms. Williamson if her comments would be part of her presentation or
590 if they were just general statements.

591

592 Ms. Williamson stated that they were just general comments. Ms. Williamson then stated that
593 Commissioner Moreno spoke about maintaining the rural character of the Town of Bernalillo,
594 and with keeping 3 parking spaces per unit, this would have an adverse effect and create the
595 "Wal-Mart effect". Ms. Williamson stated that she has conducted research into this, and would
596 be willing to submit the research to Ms. Shumsky. Ms. Williamson also stated that in all of the
597 research that she has done, in cities across America several different entities are reducing the
598 amount of parking spaces needed to avoid having a sea of parking.

599

600 Commissioner Moreno and Chairperson Duran stated that they would appreciate if Ms.
601 Williamson could submit the research studies to Ms. Shumsky.

602

603 Commissioner Moreno asked Ms. Williamson what an alternative to a sea of asphalt would be.

604

605 Ms. Williamson stated that in all the research that she's being doing, the ULI talks about how the
606 number of parking that needs to be required creates higher housing costs, thus creating an
607 inequity in affordable housing. Ms. Williamson then stated that when she is referring to
608 affordable housing, she is referring to housing that is affordable to residents in these

609 communities. Ms. Williamson also stated that these studies indicate that car ownership has
610 reached its peak with car sharing, autonomous vehicles, and people working remotely. Ms.
611 Williamson also stated in the studies, it is mentioned that car ownership will be going drastically
612 down. Ms. Williamson stated that in one of the studies that she was going to submit, it stated that
613 in 50 cities across America, the number one way that affordable housing costs were going to be
614 addressed was by reducing the amount of required parking spaces. Ms. Williamson stated that by
615 having an excess amount of parking spaces, it is increasing the cost of the development. Ms.
616 Williamson stated that she would be happy to submit the research studies to the Commission.
617 Ms. Williamson also stated that in both small towns and urban locations, residents are being
618 priced out of the marketplace for affordable housing because of the requirements for parking
619 spaces driving up the costs. Ms. Williamson stated that the Institute of Transportation just
620 revised their recommendation that only 1.2 spaces be required regardless of the number of
621 bedrooms. Ms. Williamson also stated that there are some cities that are removing all
622 requirements for parking spaces, and seeing phenomenal effects from doing so.

623
624 Commissioner Quintana made a motion to defer this item to the January 4, 2022 Planning and
625 Zoning Commission Meeting.

626
627 The motion was seconded by Commissioner Moreno and it carried unanimously.

628
629 Roll Call Vote:

630 Chairperson Duran - yes
631 Commissioner Quintana - yes
632 Commissioner Lepore- yes
633 Commissioner Moreno - yes
634 Commissioner Eichwald - yes
635 Commissioner Montaña - absent

636
637 **Motion Carried – Item Deferred to January 4, 2022**

638
639 **ITEM 7. COMMISSION BUSINESS**

- 640 a) Planning and Zoning Commission Business
641 b) Decisions of Town Council/Ordinances/Appeals Filed/Status
642 c) Planning and Zoning Department Update:
643 i. New Home Occupations – As of agenda print date, the number of new home
644 occupations, permissive per Zoning Code Sec. 18, is: 0
645 ii. Building Coordination & Review – As of agenda print date, the number of building
646 permits reviewed for zoning and floodplain ordinance compliance, is: 7
647 d) Next Meeting: December 7, 2021 @ 6:30pm In-Person and Via WebEx

648 **ITEM 8. ADJOURN**

649 There being no further business, Commissioner Eichwald made the motion to adjourn the
650 meeting at 7:52 P.M. The motion was seconded Commissioner Quintana and it carried
651 unanimously.

652
653 Roll Call Vote:

654 Chairperson Duran - yes
655 Commissioner Quintana - yes

- 656 Commissioner Lepore - yes
- 657 Commissioner Moreno - yes
- 658 Commissioner Eichwald - yes
- 659 Commissioner Montaña - absent
- 660
- 661 **Motion Carried – Meeting Adjourned**

DRAFT

PUBLIC HEARING:
ITEM 6A

6A



PLANNING
&
ZONING
DEPARTMENT

TOWN OF BERNALILLO
"The City of Coronado"

Planning and Zoning Commission Meeting
Regular Meeting
December 7, 2021

Planning and Zoning
Director
Stephanie Shumsky

Staff Report

Building & Construction
Coordinator
Vacant

Code Enforcement
Officer / GIS Tech
Suzanne Hathon

Planning & Zoning Clerk
Vacant

Subject:

Monte and Laurie Yancey (Property Owners) request approval of a Variance of 2' from the maximum allowed fence height of 4' within the front setback area at 956 Nazcon Place, legally described as Nazcon Subdivision, Block 1, Lot 5, located in Township 13 North, Range 4 East, Section 30, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-R and containing approximately 0.616 acres (according to Sandoval County Assessor records).

Site Data:

Zone: R-R
Surrounding Zoning: R-R
Current Land Use: Single-Family Residential
Surrounding Land Uses: Single-Family Residential
Required Lot Size: 12,000sf
Actual Lot Size: 26,832.96sf+/-
Access: Nazcon Place
Utilities: Public
Required Parking: 2 spaces per dwelling
Handicapped Parking: n/a
Required Setbacks: Front 20', Sides 5', Rear 10'
Existing Setback (approx.): greater than required
Proposed Setbacks: no change

PLANNING
&
ZONING
COMMISSION

Juanita Duran
Chairperson

Dominick Lepore
Vice Chair

Joseph Moreno

Vacant

Antonette Eichwald

Raul Montano

Joseph O. Quintana

Summary of Request:

This is a request for a 2' variance to the allowed fence/wall height of 4' within the front yard setback area at the subject property.

According to the applicant's letter of justification, he would like to construct a 6' tall fence around the perimeter of the property for safety and security of his family and pets. He is proposing a "see-thru" gate at the front for driveway access. Due to the unique shape of the lot (at the end of a cul-de-sac), the front property line is the shortest property line surrounding the lot.

The requested variance is from the regulations in Comprehensive Zoning Code (Ord. No. 310), Section 22, (Fence Requirements), which only allows a 4' tall fence/wall within the front setback area.

The applicant provided a letter that indicates some justification for the request.

Plans, Policies and Regulations:

Comprehensive Land Use Plan:

A Resolution, approving the goals and objectives for a Comprehensive Plan, was adopted by the Town Council on May 13, 2002 (Resolution No. 5-13-02). The *Comprehensive Land Use Plan* was adopted by the Town Council on December 13, 2004 (Resolution No. 12-13-04) and contains goals and objectives that serve as a guide for policy decisions regarding the future management and development of the Town.

Comprehensive Plan Goals and Objectives applicable to this request are as follows:

Form of Development

Goal: Preserve and enhance the unique small town character and culture of Bernalillo.

Objective: Protect the character of established residential neighborhoods.

Goal: Maintain the appearance of a clean and scenic community.

Subdivision Regulations (April 1997):

A division of land is not under consideration therefore, the Subdivision Regulations are not applicable to this request.

Town of Bernalillo Housing Plan (March 2013):

The Town of Bernalillo Housing Plan does not apply to this request.

Mainstreet Overlay District:

The subject property is not located in the Mainstreet Overlay District therefore, the Design Guidelines are not applicable to this request.

Comprehensive Zoning Ordinance:

Section 8. R-R Rural Residential Zone.

The purpose of the R-R zoning district is to provide for large lot and low density residential uses that are conducive to a rural atmosphere.

Section 19. Process, Application and Approvals.

According to Comprehensive Zoning Ordinance, Section 19.F., a variance is a discretionary waiver from the zoning requirements to grant the property owner reasonable use of their land.

The Commission may approve a deviation from the numerical requirements of this Ordinance (i.e. setback or height requirements) where the applicant demonstrates:

1. A physical hardship unique to the property exists (i.e. topographical constraints or lot configuration resulting in reduced development flexibility); and
2. These circumstances are not generally found within the locality or neighborhood concerned; and
3. The hardship is not self-imposed; and
4. The project is not contrary to the public interest or safety; and
5. The spirit of the Zoning Ordinance is observed and substantial justice done; and
6. The variance is to the minimum extent necessary to allow the owner reasonable use of the land.

7. Financial gain or loss shall not be the determining factor in deciding a variance.

The applicant provided some justification for this request.

Notifications:

Notices were posted at T&T Supermart, Town Hall, US Post Office, Town of Bernalillo Public Library and on the Town of Bernalillo website. Notices were mailed (certified, return receipt requested) to abutting property owners within 100 feet of the subject site.

Planning Commission Options:

Make a motion to:

1. Approve the request, based on the findings and conditions recommended in the staff report (the staff report is part of the record); or
2. Approve the request, based on the findings and conditions, as amended from the staff report (indicate changes by reading them in to the record); or
3. Approve the request, based on the following findings and conditions (indicate your own findings and conditions by reading them into the record); or
4. Defer the request (prior to start of hearing) to a subsequent date, time and location; or
5. Continue the request (if hearing has already started but additional time is needed for hearing) to a subsequent date, time and location; or
6. Deny the request.
7. A Tie results in a denial. Request may be appealed to the Town Council.

*Any adopted Findings and Conditions are deemed "Findings and Conclusions of Law" and are relayed to the applicant in an Official Notice of Decision.

Staff Recommendation:

Denial of VAR21-013 based on the following Findings:

Findings:

1. VAR21-013 is a request by Monte and Laurie Yancey (Property Owners) for approval of a Variance of 2' from the maximum allowed fence height of 4' within the front setback area at 956 Nazcon Place, legally described as Nazcon Subdivision, Block 1, Lot 5, located in Township 13 North, Range 4 East, Section 30, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-R and containing approximately 0.616 acres (according to Sandoval County Assessor records).
2. According to Comprehensive Zoning Code, Section 22 (Fence Requirements), fences and walls are limited to a height of 4' within the front setback area in the R-2 zone.
3. The applicant provided some justification for this request but did not address all of the criteria for a variance.

If approved, staff recommends the following Condition:

1. Prior to resuming construction of the wall, the applicant shall obtain the required Town of Bernalillo wall/fence permit.



**TOWN OF BERNALILLO
PLANNING AND ZONING COMMISSION
MEETING NOTICE**



Notice is hereby given that a **REGULAR MEETING** of the **PLANNING AND ZONING COMMISSION** of the Town of Bernalillo will be held on **Tuesday, December 7, 2021** at **6:30 p.m. in-person and virtually via WebEx** as provided in the information below. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service, in order to attend or participate in the meeting, please contact the Town Clerk at 771-7128 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Town Clerk if a summary or other type of accessible format is needed.

If you prefer to attend virtually, you may do so in compliance with the New Mexico Open Meetings Act by joining the Planning and Zoning Commission Meeting from your computer, tablet or smartphone via the following link: <https://www.webex.com> (click JOIN) then type in:

Meeting Number/Access Code: 2552 347 0361

Meeting Password: 12072021

You can also dial-in using your phone: 1-408-418-9388 (US only)

PLANNING AND ZONING COMMISSION AGENDA - PRELIMINARY

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES**
 - a) Regular Meeting of November 2, 2021
- 6. PUBLIC HEARINGS & ACTION ITEMS**
 - a) **VAR21-013:** FENCE HEIGHT VARIANCE OF 2 FEET AT 956 NAZCON PLACE, LEGAL DESCRIPTION: NAZCON SUBDIVISION, BLOCK 1, LOT 5.
 - b) **MSBP21-001:** BUILDING PERMIT FOR SUBSTANTIAL MODIFICATION OF BUILDING FACADE IN THE MAINSTREET OVERLAY ZONE AT 961 CAMINO DEL PUEBLO, LEGAL DESCRIPTION: LANDS OF DE VALLE NASH, LOT 5.
 - c) **VAR20-010:** RECONSIDERATION OF FENCE HEIGHT VARIANCE OF 2 FEET AT 543 AVENIDA ENCANTADA, LEGAL DESCRIPTION: CASA ENCANTADA SUBDIVISION, BLOCK 1, LOT 21. *(Remanded from District Court to Town Council and remanded from Town Council to Planning & Zoning Commission)*
 - d) **SumP21-001:** SUMMARY PLAT TO RELOCATE LOT LINE EFFECTING 485 AND 499 SHERIFF'S POSSE ROAD, ZONED R-R, LEGAL DESCRIPTION: C'DE BACA CASITAS SUBDIVISION, LOT A2A AND LOT A1. *(Withdrawn)*

7. COMMISSION BUSINESS & UPDATES

a) Planning and Zoning Commission Business

1. Meeting & Application Schedule 2022

b) Decisions of Town Council/Ordinances/Appeals Filed/Status:

c) Planning and Zoning Department Update:

- i. New Home Occupations – As of agenda print date, the number of new home occupations, permissive per Zoning Code Sec. 18, is: 1
- ii. Building Coordination & Review – As of agenda print date, the number of building permits reviewed for zoning and floodplain ordinance compliance, is: _____

d) Next Meeting: January 4, 2022 @ 6:30pm In-Person and Via WebEx.

8. ADJOURN

PUBLIC COMMENTS

Written comments should be emailed to the Planning Director at sshumsky@townofbernalillo.org or mailed to her at P.O. Box 638, Bernalillo, NM 87004. Written comments **received by 5pm prior to the meeting** will be distributed to the Planning Commission.

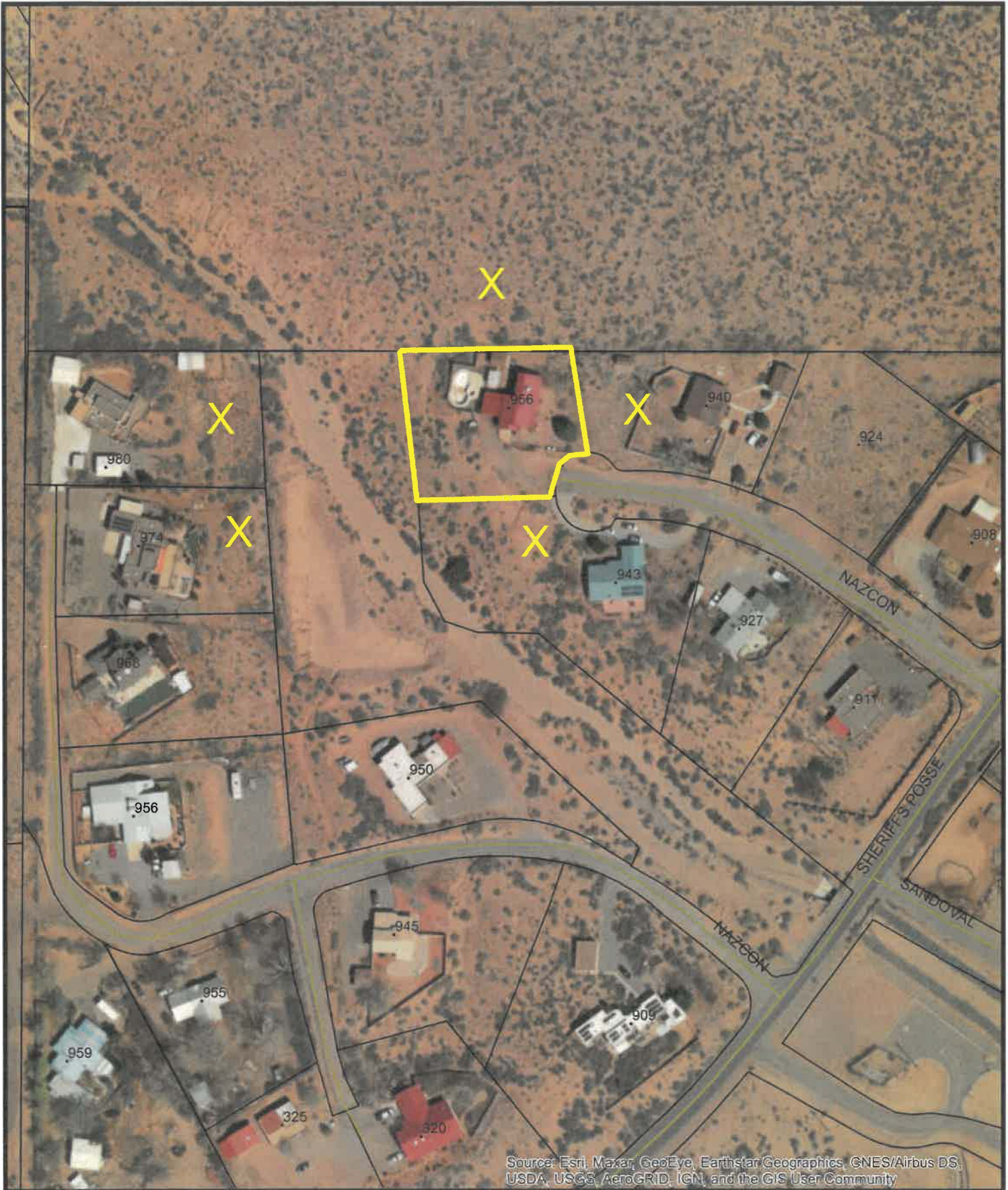
Members of the public attending via WebEx that wish to speak on any of the agenda items, or otherwise address the Planning and Zoning Commission, must type your full name and the agenda item you want to speak on, in the chat box. When the chairperson calls on you, state your name and address for the record. There is a 2-minute time limit per speaker.

An electronic version (PDF) of the final Agenda and Packet are available a minimum of 72 hours prior to the meeting at:

https://www.townofbernalillo.org/departments/planning_zoning/agendas_and_minutes.php

Locations of Agenda Postings in the Town of Bernalillo: T & T Supermart, Town Hall, US Post Office, Martha Liebert Public Library and the Town's website at: <http://www.townofbernalillo.org>

Town of Bernalillo, New Mexico
VAR21-013 - Abutters



Source: Esri, Maxar, GeoEye, Earthstar/Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



190 95 0 190 Feet

Prepared By: S. Shumsky

Date: 11/4/2021

Disclaimer: This map is for illustration purposes only and should not be relied upon for other uses.



Dec7, 2021 PZ - ABUTTERS			
VAR21-013			
NAME	PRIMARY ADDRESS	CITY, STATE, ZIP	SECONDARY ADDRESS
Monte & Laurie Yancey	956 Nazcon Pl	Bernalillo, NM 87004	
Bruce & Sandra Seligman	812 Salamanca St NW	Albuquerque, NM 87107	
Robert & Corrine Lovato	940 Nazcon Pl	Bernalillo, NM 87004	
Phillip Serbin	943 Nazcon Pl	Bernalillo, NM 87004	
Janice & Greg Dudley	974 Nazcon Rd	Bernalillo, NM 87004	
Diwan Bhathal & Brenda Wilson Revocable Trust	C/O Diwan Bhathal & Brenda Wilson	980 Nazcon Rd	Bernalillo, NM 87004
MSBP21-001			
NAME	PRIMARY ADDRESS	CITY, STATE, ZIP	SECONDARY ADDRESS
TNS Enterprises LLC	6017 Del Carmen Dr NE	Rio Rancho, NM 87144	
Torres & Torres Inc.	PO Box 1237	Bernalillo, NM 87004	
Joe & Orlinda Torres Revocable Trust	C/O Joe & Orlinda Torres	PO Box 357	Bernalillo, NM 87004
987 Camino Del Pueblo LLC	26 Sandia Lane	Placitas, NM 87043	
Angus McDougall	978 San Felipe Road	Bernalillo, NM 87004	
Laurie Schuller	26 Sandia Lane	Placitas, NM 87043	
Silva's Saloon, LLP	PO Box 244	Bernalillo, NM 87004	
Edwin Trujillo	973 Calle San Felipe	Bernalillo, NM 87004	
Bound For Success Inc.	PO Box 1960	Bernalillo, NM 87004	
Ralph, David, and Ernest Armijo & Felix & Lawrence Lucero	C/O Felix & Lawrence Lucero	PO Box 248	Bernalillo, NM 87004

**This page can be printed using your internet browser or by CTL + P
Account: R030764**

Location

Parcel Number 1-019-074-045-084
Tax Area 101SH_R - 101SH_R
Situs Address 956 NAZCON PL
Legal Summary Legal: S: 30 T: 13N R:
 4E Subd: NAZCON Block: 1 Lot: 5

Owner Information

Owner Name YANCEY, MONTE L AND
 LAURIE
Owner Address 956 NAZCON PL
 BERNALILLO, NM 87004-6305
 UNITED STATES OF AMERICA

Assessment History

Actual Value (2021 - Residential Cap applied) \$163,879
Primary Taxable \$54,626
Tax Area: 101SH_R **Mill Levy:** 27.108

Type	Actual	Assessed	Acres	SQFT	Units
Residential Land	\$31,119	\$10,373	0.752	32757.120	1.000
Residential Improvement	\$132,760	\$44,253		2033.000	

Transfers

Sale Date

[07/20/2020](#)

[03/05/2019](#)

Doc Description

[WARRANTY DEED](#)

[SOLE SEPERATE PROPERTY CONVEYAN](#)

[WARRANTY DEED](#)

[MISCELLANEOUS](#)

[PLAT](#)

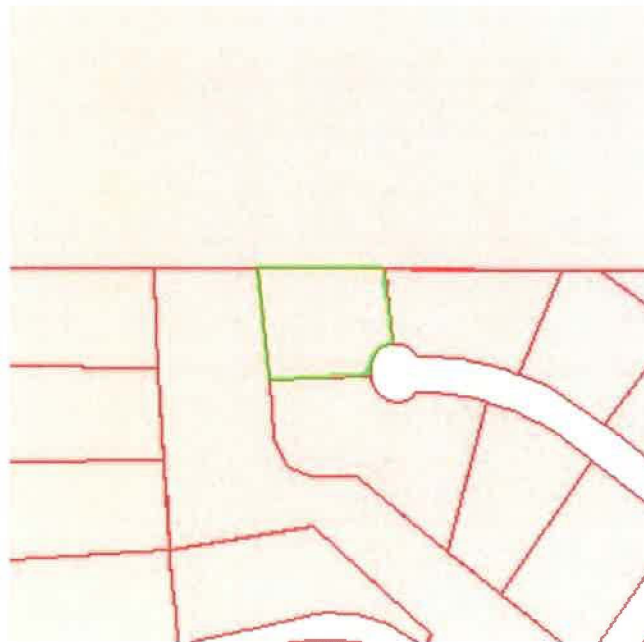
Images

Tax Year

Taxes

2021	\$1,480.80
2020	\$1,452.36

- [Map](#)
- [Photo](#)
- [Sketch](#)
- [GIS](#)





Town of Bernalillo

APPLICATION FOR ZONING VARIANCE

VAR 21-013
Applicant: Monte Yancey
Property Address: 956 Nazcon Pl

INSTRUCTIONS

In accordance with the Town of Bernalillo Comprehensive Zoning Ordinance (Ord. No. 310), a variance is a discretionary waiver from the zoning requirements to grant the property owner reasonable use of their land. The Commission may approve a deviation from the numerical requirements of this Ordinance where the applicant demonstrates that all of the following exist: 1) A physical hardship unique to the property (i.e. topographical constraints or lot configuration resulting in reduced development flexibility); and 2) These circumstances are not generally found within the locality or neighborhood concerned; and 3) The hardship is not self-imposed; and 4) The project is not contrary to the public interest or safety; and 5) The spirit of the Zoning Ordinance is observed and substantial justice done; and 6) The variance is to the minimum extent necessary to allow the owner reasonable use of the land. In addition, financial gain or loss shall not be the determining factor in deciding a variance.

Type or print clearly on this form, and submit to the Town of Bernalillo Planning & Zoning Commission through the Town Planner. Also include any required supplementary materials. Incomplete or inaccurate applications may delay the review process. The application must be accompanied by the appropriate Filing Fee of \$100.00 (one-hundred dollars) + Notification Fee.

TYPE OF VARIANCE REQUEST

HOW DOES REQUEST MEET 6 CRITERIA?

(explain here, attach additional sheets if necessary):

- Area:
[X] Height: Fence Height Variance of 2' in Front Setback
Width:
Setback:
Parking:
Signage/Fencing:

APPLICANT INFORMATION

Applicant: MONTE YANCEY Phone: 505-382-7208
Mailing Address: 956 NAZCON PL Email: laurizyancey1799@gmail.com

Agent (if any): N/A Phone:
Mailing Address: Email:

Property Legal Description: Nazcon Lot 5, BK 1
Property Address: 956 Nazcon Pl.

ACKNOWLEDGEMENTS

Application is hereby made for a Variance. I have examined, am familiar with, and have complied with, any and all requirements of the Comprehensive Zoning Ordinance of the Town of Bernalillo. I have also complied with the requirements of any and all other applicable rules, regulations, and ordinances related to property development within the Town of Bernalillo. I further understand and agree that neither the Town nor any of its agents shall be held liable for any lack of understanding, or misinterpretation, on my part, of any said requirements.

Signature of Applicant or Agent: [Signature] Date: 10-15-21

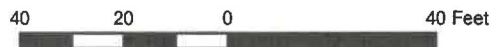
Receipt by P&Z Dept: [Signature]
Application Fee Total: 129.32

Date: 10/15/21
Receipt#: 00392828
Hearing Date/Time: Dec 7, 2021 @ 6:30

Town of Bernalillo, New Mexico



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Prepared By: L. Romero
Date: 10/15/2021

Disclaimer: This map is for illustration purposes only and should not be relied upon for other uses.

I WOULD LIKE THIS VARIANCE OF MY FENCE
AND GATE FOR THE PRIVACY AND SAFETY OF MY FAMILY
AND MY PETS.

I WOULD TO BUILD MY FENCE & GATE AT 6' TALL WITH
THE GATE AS A SEETHROUGH.
MY LOT IS ALSO DIFFERENT THEN MOST

Thank you

Monte Yancy
Monte Yancy
505-382-7208

TOWN OF BERNALILLO

(505) 867-3311

ACC#: 00392828 10/15/2021 4:03 PM

OPER: BG TERM: 002

REF#:

TRAN: 305.0000 ZONING FEES

956 NAZCON PL ZONING VAR

10.15.2021 BG

100-000-4042-1-2

Zoning Fees 129.32CR

TENDERED: 129.32 CASH

APPLIED: 129.32-

Balance 0.00

PUBLIC HEARING:

ITEM 6B

6B



PLANNING
&
ZONING
DEPARTMENT

TOWN OF BERNALILLO
"The City of Coronado"

Planning and Zoning Commission Meeting
Regular Meeting
December 7, 2021

Staff Report

Planning and Zoning
Director
Stephanie Shumsky

Building & Construction
Coordinator
Vacant

Code Enforcement
Officer / GIS Tech
Suzanne Hathon

Planning & Zoning Clerk
Vacant

Subject:

Yei Rogers (Agent) on behalf of TNS Enterprises, LLC (Property Owner) request approval of a Substantial Modification to a building portal and facade in the Mainstreet Overlay Zone at 961 Camino Del Pueblo, legally described as Lands of De Valle Nash, Lot 5, located in Township 12 North, Range 4 East, Section 5, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned C-1 and containing approximately 0.267 acres (according to Sandoval County Assessor records).

Site Data:

Zone: C-1

Surrounding Zoning: C-1 to North, East and South; R-1A to West

Current Land Use: Vacant

Surrounding Land Uses: Commercial and Single-Family Residential

Required Lot Size: n/a

Actual Lot Size: 11,630sf

Access: Camino Del Pueblo

Utilities: Public

Required Parking: based on use

Handicapped Parking: based on number of parking spaces provided

Required Setbacks: Front 10', Sides 0', Rear 10'

Existing Setback (approx.): Front >10', Sides 0' and >15', Rear <10'

Proposed Setbacks: no change

Summary of Request:

This is a request to cover the lower portion of the building's existing portal's support beams with decorative stone (see picture). The applicant indicated to staff that the wood beams are rotted at the base from water damage.

According to Zoning Ordinance, Section 17 (Mainstreet Overlay Zone), "All new development, redevelopment, demolition, or substantial change in appearance to property within the MainStreet Overlay Zone shall be carried out in accordance with a site development plan approved by the Commission. A substantial change in appearance includes exterior alterations, renovations, and additions to existing structures. Demolition refers to the complete removal of a structure located within the MainStreet Overlay Zone."

PLANNING
&
ZONING
COMMISSION

Juanita Duran
Chairperson

Dominick Lepore
Vice Chair

Joseph Moreno

Vacant

Antonette Eichwald

Raul Montano

Joseph O. Quintana

Furthermore, “Review and approval of any new development, redevelopment, demolition, or substantial change in appearance to properties within the MainStreet Overlay Zone shall be conducted by the Commission, and shall be made to determine compliance with the intent and provisions of the MainStreet Overlay Zone.”

The MainStreet Overlay District Design Guidelines, in regard to Porches, Portales and Awnings (Section G), go on to say “Original materials and decorative elements of historic porches and portales shall be retained when renovated. If necessary, replacement materials shall match original.”

Furthermore, Section L, regarding materials, states “If restoration is not possible due to advanced deterioration, replacements shall match original in size, shape, material, and finish.”

According to the MainStreet regulations, if the beams are rotted they should be replaced with the same type or similar type of beams. Covering the rotted beams with decorative rock is not only unsafe, in this case, it detracts from the historic façade of the structure, which is meant to be preserved.

Plans, Policies and Regulations:

Comprehensive Land Use Plan:

A Resolution, approving the goals and objectives for a Comprehensive Plan, was adopted by the Town Council on May 13, 2002 (Resolution No. 5-13-02). The *Comprehensive Land Use Plan* was adopted by the Town Council on December 13, 2004 (Resolution No. 12-13-04) and contains goals and objectives that serve as a guide for policy decisions regarding the future management and development of the Town.

Comprehensive Plan Goals and Objectives applicable to this request are as follows:

Form of Development

Goal: Preserve and enhance the unique small town character and culture of Bernalillo.

Goal: Maintain the appearance of a clean and scenic community.

Economic Development

Goal: Support and promote the local business community.

Objective: Preserve historic and cultural attractions as a means of attracting tourism.

Goal: Enhance Bernalillo's Main Street (Camino del Pueblo) as specialized business corridor and regional attraction.

Objective: Maintain and emphasize architectural design elements to establish a unique character for Main Street business and entertainment.

Subdivision Regulations (April 1997):

A division of land is not under consideration therefore, the Subdivision Regulations are not applicable to this request.

Town of Bernalillo Housing Plan (March 2013):

The Town of Bernalillo Housing Plan does not apply to this request.

Mainstreet Overlay District:

The subject property is located in the Mainstreet Overlay District therefore, the Design Guidelines are applicable to this request.

Comprehensive Zoning Ordinance:

Section 13. C-1 Commercial Zone.

The purpose of the C-1 zoning district is to allow those commercial and business activities that serve the community on a day-to-day basis.

Notifications:

Notices were posted at T&T Supermart, Town Hall, US Post Office, Town of Bernalillo Public Library and on the Town of Bernalillo website. Notices were mailed (certified, return receipt requested) to abutting property owners within 100 feet of the subject site.

Planning Commission Options:

Make a motion to:

1. Approve the request, based on the findings and conditions recommended in the staff report (the staff report is part of the record); or
2. Approve the request, based on the findings and conditions, as amended from the staff report (indicate changes by reading them in to the record); or
3. Approve the request, based on the following findings and conditions (indicate your own findings and conditions by reading them into the record); or
4. Defer the request (prior to start of hearing) to a subsequent date, time and location; or
5. Continue the request (if hearing has already started but additional time is needed for hearing) to a subsequent date, time and location; or
6. Deny the request.
7. A Tie results in a denial. Request may be appealed to the Town Council.

*Any adopted Findings and Conditions are deemed "Findings and Conclusions of Law" and are relayed to the applicant in an Official Notice of Decision.

Staff Recommendation:

Denial of MSBP21-001 based on the following Findings:

Findings:

1. **MSBP21-001** is a request by Yei Rogers (Agent) on behalf of TNS Enterprises, LLC (Property Owner) for approval of a Substantial Modification to a building portal/facade in the Mainstreet Overlay Zone at 961 Camino Del Pueblo, legally described as Lands of De Valle Nash, Lot 5, located in Township 12 North, Range 4 East, Section 5, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned C-1 and containing approximately 0.267 acres (according to Sandoval County Assessor records).
2. The proposed stone material conflicts with the MainStreet Overlay District Design Guidelines, as follows:
 - a. Section G, states that “Original materials and decorative elements of historic porches and portales shall be retained when renovated. If necessary, replacement materials shall match original.”
 - b. Section L, states that “If restoration is not possible due to advanced deterioration, replacements shall match original in size, shape, material, and finish.”
3. If the beams are rotted, they should be replaced with the same type or similar new beams. Covering the rotted beams with decorative rock may be structurally unsafe and detracts from the historic façade of the structure.

Untitled Map

Write a description for your map.

Before

Legend

 961 Camino Del Pueblo



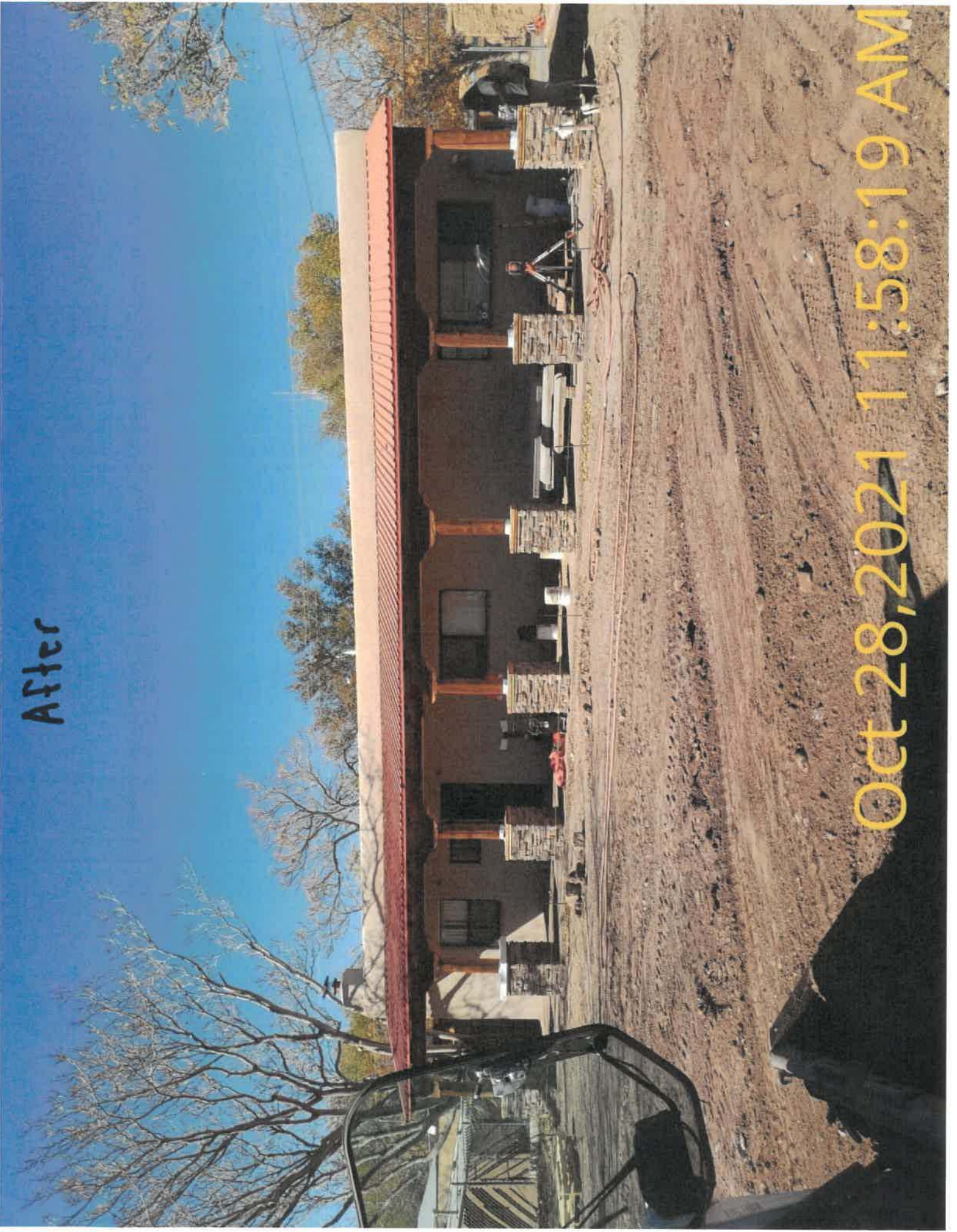
Google Earth

© 2021 Google

6.38 ft



After



Oct 28, 2021 11:58:19 AM

ORDINANCE NO. 185

AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF
THE TOWN OF BERNALILLO (ORDINANCE NO. 175)
PERTAINING TO THE MAIN STREET OVERLAY ZONE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN
OF BERNALILLO, NEW MEXICO, AS FOLLOWS:

A new Section 14.1 is hereby inserted into the Town of Bernalillo Zoning Ordinance:

SECTION 14.1. MAINSTREET OVERLAY ZONE.

The purpose of this Overlay Zone is to promote and protect a special character and human scale of development along South Camino del Pueblo which is designated as the Town of Bernalillo's MainStreet corridor. To the extent possible, historical and cultural elements of the MainStreet corridor shall be preserved and enhanced.

A. General Provisions:

1. **Boundaries:** The boundaries and properties of the MainStreet Overlay Zone shall be delineated on the Town of Bernalillo Zoning Map. As a minimum, all land which has frontage along South Camino del Pueblo between the U. S. Highway 550 (formerly N. M. Highway 44) intersection and the Avenida Bernalillo intersection shall be included in the MainStreet Overlay Zone.
2. **Overlay Zone Requirements:** The MainStreet Overlay Zone shall be administered as an additional zoning district with special requirements, superimposed over existing zoning districts. Any development within the MainStreet Overlay Zone must conform to the requirements of both zoning districts, or the more restrictive of the two districts.
3. *Restoration of Nonconforming Uses: If a nonconforming use existing at the time of adoption of this Section is damaged or destroyed to any extent, and by any means other than the willful act of the property owner, then the nonconforming use may be fully repaired and/or restored to its pre-damaged condition. Otherwise, restoration shall be in conformance with Section 18-E of the Comprehensive Zoning Ordinance of the Town of Bernalillo*

4. Design Requirements:

1. Statement of character: Bernalillo MainStreet, Camino del Pueblo, is the gathering place of the community. Important civic functions and public festivals, as well as daily business activities, occur along this street. Most of the buildings stand close to the street with a pedestrian walkway for frontage. The local residents prefer a small town atmosphere of low profile, human scale structures facing the street. Park-and-walk is the typical means of access to MainStreet establishments. Streetside landscaping and pedestrian amenities are desirable. Development in the MainStreet corridor should reflect the historical tradition, local culture, and individuality in the Town.
2. Design guidelines: The Town of Bernalillo **MainStreet Design Guidelines** is provided as a supplemental document adopted by reference to this Ordinance. The **MainStreet Design Guidelines** is available upon request from the Zoning Officer. For purposes of administering the MainStreet Overlay Zone, the following elements are included in the **MainStreet Design Guidelines** with special requirements and regulations pertaining to future development:
 - a) Setback requirements,
 - b) Building massing,
 - c) Building height,
 - d) Parking requirements,
 - e) Accessory structures,
 - f) Walls and fences,
 - g) Streetside and parking lot landscaping,
 - h) Porches, portales, and awnings,
 - i) Building materials,
 - j) Doors, windows and other openings on street face walls,
 - k) Architectural features of buildings,

- l) Installation of security bars, and
 - m) Sign requirements.
3. Prohibited activities: In order to maintain the special character of the MainStreet corridor, and to avoid development that would detract from that special character, the following activities are prohibited:
- a) Storage sheds or self storage mini-warehouses, and
 - b) Mobile homes and manufactured housing, including sales, rental, service, repair, and storage.

B. Review Process:

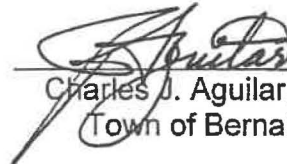
1. All new development, redevelopment, demolition, or substantial change in appearance to property within the MainStreet Overlay Zone shall be carried out in accordance with a site development plan approved by the Planning Commission. A substantial change in appearance includes exterior alterations, renovations, and additions to existing structures. Demolition refers to the complete removal of a structure located within the MainStreet Overlay Zone. A site development plan shall include:
- a) A plot plan showing the location, dimensions, height, and setback of all existing and any proposed buildings and structures on the development site,
 - b) Location and description of all existing and any proposed signs, exterior lighting, parking and loading areas, traffic access and circulation routes, and pedestrian areas,
 - c) Preliminary sketch drawings or elevations of any proposed buildings or structures, and
 - d) A landscaping plan showing location and type of street trees and other proposed and existing vegetation, with irrigation systems, on the development site.
2. Plan Review and Approval: In order for the Planning Commission to review and grant approval for any new development, redevelopment, demolition, or substantial change in appearance to properties within the MainStreet Overlay Zone, the following process applies:

- a) All owners of property within the MainStreet Overlay Zone shall be notified by letter from the Zoning Officer that their properties are subject to the requirements and regulations of the MainStreet Overlay Zone. A copy of the relevant sections of this Ordinance and the MainStreet Design Guidelines shall be attached to the letter of notification.
- b) Any building permit applications submitted to the Zoning Officer for proposed development within the MainStreet Overlay Zone shall be reviewed to determine compliance with the requirements of this Section. The building permit application must be accompanied by a site development plan as prescribed in this Section.
- c) Any improvements which do not require a building permit but which result in a substantial change of appearance or demolition to properties within the MainStreet Overlay Zone shall be made in accordance with the requirements of this Section. A written or graphic description of the proposed improvement project or demolition must be submitted to the Zoning Officer prior to the start of any on-site activity. The Zoning Officer shall have the discretion to require or not require a site development plan if necessary to determine compliance with this Section.
- d) Ordinary maintenance and repair where the purpose of the work is to correct deterioration to the structure and restore it to its condition prior to deterioration will not require a site development plan.
- e) Demolition shall only be permitted if it is determined by the Planning Commission that the property is incapable of producing a reasonable economic return under current conditions and that no means of preserving the structure has been found. ~~In making a determination regarding reasonable economic return, the Planning Commission may consider the estimated market value of the building, land and any proposed replacement structures, financial details of the property including, but not limited to, income and expense statements, current mortgage balances and appraisals, the length of time that the property has been on the market for sale or lease, potential return based on a projected future market, the building's structural condition, and other relevant items.~~
- f) Review and approval of any new development, redevelopment, demolition, or substantial change in appearance to properties within the MainStreet Overlay Zone shall be conducted by the Planning Commission, and shall be made to determine compliance with the

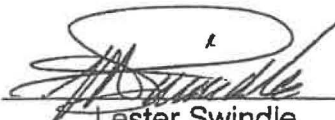
C. *Sunset Provision:*

1. *This Overlay Zone shall remain in effect for a period of fifteen (15) months following the effective date of this Ordinance and, after such time period, shall be deemed repealed unless granted an extension by ordinance adopted by the Trustees.*
2. *Future extensions of the effective date of this Overlay Zone may be defined as a specified time period or may be allowed to exist in perpetuity.*
3. *Future extensions shall be subject to public hearing and re-authorization of this Ordinance. The Town Council may consider amendments to this Ordinance at any time deemed necessary during the effective period.*

PASSED, APPROVED AND SIGNED this 26th day of February 2004, by the Board of Trustees of the Town of Bernalillo.


Charles J. Aguilar, Mayor
Town of Bernalillo

ATTEST:


Lester Swindle
Town Clerk-Manager

intent and provisions of the MainStreet Overlay Zone.

- g) Within 30 days after receiving the site development plan or written description of a proposed improvement or demolition, the Planning Commission shall approve or disapprove the proposed project, and shall transmit a written report of the review and decision to the property owner. Appeal of any decision by the Planning Commission shall be made to the Trustees in accordance with the provisions established by this Ordinance.



The design guidelines are based upon a common-sense approach for the enhancement and maintenance of our community's special character.

If you need help understanding the design guidelines, or if you want to know how to obtain a building permit, the Planning and Zoning Director or the Director of Community Development can answer your questions.

They can also provide helpful suggestions for how your proposal can comply with the zoning ordinance.

Call the Bernalillo Town Hall at 867-3311.

This publication was produced through a partnership between New Mexico MainStreet Program and Town of Bernalillo Main Street and intended for use in assistance with administering the Main Street Overlay Ordinance and Design Guidelines.

11/01

Design Guidelines

Town of Bernalillo Mainstreet Overlay District

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INTRODUCTION

What is the MainStreet Overlay District?

The Main Street Overlay District is a special zoning district that has been designated by ordinance within the Town of Bernalillo Comprehensive Zoning ordinance as Section 14.1. These design guidelines are a supplemental document which are adopted by reference to the zoning ordinance.

The purpose of the Main Street Overlay District is to promote and protect a special character and human scale of development along South Camino del Pueblo, which is designated as the Town of Bernalillo's Main Street corridor. To the extent possible, historical and cultural elements of the MainStreet corridor shall be preserved and enhanced.

The preservation of this irreplaceable heritage is in the interests of all who live in Bernalillo and love our community. This heritage defines who we are today and what we want our future to look like. It is a legacy to pass on to our children with pride.

Bernalillo has a centuries-old history of agriculture-based life-style. From the crops grown here, to the wine produced in our valley, to the nurturing of livestock, Bernalillo has a small town charm all it's own. The elements of the built



environment along Camino del Pueblo that give our community it's special flavor are things such as building setbacks, building heights, yard walls and fences, architectural features of the buildings, and other aspects of small town architecture that represent our cultural heritage.

Why is this overlay district necessary?

The location of our community, close to the City of Albuquerque and bordered by U.S. Highway 550, which has seen increasing development due to increasing vehicle traffic, makes the land within our Town limits attractive to developers.

The properties we have long known to be agricultural may be lost to housing developments, strip shopping centers, and franchise retail outlets. The small scale commercial and residential buildings that we pass everyday on our way to work and school could be lost in favor of larger or more modern buildings. This change would not only alter the feel of the community but would block the views of the surrounding landscape and geographic features that makes Bernalillo special.

It is necessary, therefore, to guide the kinds of development that can take place on our main street, and to encourage property owners to retain the elements of our town that give it the character that we know and love.



History of land use in Bernalillo.

Spanish resettlement following the 1680 Pueblo revolt established Bernalillo as a farming village in 1695. Bernalillo, part of the Rio Abajo settlement region, developed as a "Cordillera" village, Spanish for string or chain. Homes were built at the edge of long lot fields laid out in "varas", maintaining access to the acequia. Today these types of towns characteristically have one long main road.



Single room-deep flat-roofed adobe homes were constructed adding rooms in single file as the family grew. Most commonly, surrounding rooms opened onto a central open courtyard. These homes or family compounds developed as isolated units connected to their farmlands.

With the coming of the Railroad in 1880, and after WWII, homes were built as more compact free-standing houses situated 10 or 15 feet back from the street, following the Anglo American styles. However the lot split pattern of development continued in Bernalillo, and houses are clustered in familial and commercial residential compounds.

At the more densely built area of commercial development, toward the south end of Camino del Pueblo, buildings tended to share a continuous street-facing wall along the sidewalk. Along the back sides of these commercial buildings, however, the compound development form is obvious.

The compound-oriented land use patterns prevalent in Bernalillo are not represented in the regulatory language in these design guidelines. However, because this type of development reflects historic land-use patterns that continue to exist as an expression of social values dating to Bernalillo's 1695 founding, it is strongly suggested that new development in the Overlay District embrace this pattern.

USING THE GUIDELINES



How To Read These Guidelines

These guidelines are organized according to the elements of the built environment that represent and embody the unique character of the Town of Bernalillo. In an effort to preserve this treasured "character" and to insure against incompatible development, this document sets forth requirements for construction to properties within the MainStreet Overlay District.

Each of the "elements" sections are introduced with a paragraph describing the intent of the section, a description of how the particular element contributes to the character of the community.

The intent paragraph is followed by regulatory language that is generally applicable to all types of construction and is presented in bullet format. Following the general requirements are specific requirements that govern changes to historic properties, changes to existing non-historic properties, or guidelines for new construction.





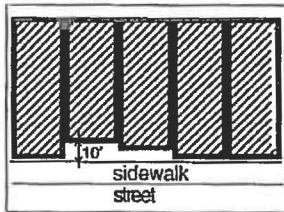
A) SETBACK

INTENT

The rural, small-town, intimate character along Camino del Pueblo is in part due to the consistent setbacks of buildings along the street. In the core commercial area, the setbacks from the sidewalk are negligible and many buildings share a common dividing wall, an effort to provide pedestrian shoppers with the efficiency of density and short traveling distances from door to door. Along the balance of the street, the setbacks reflect the residential preference of moderate spacing from the street for privacy and the integration of nature through landscaping.

GENERAL

1. Front setbacks for commercial and office buildings shall not exceed ten (10) feet from right of way
2. Exemptions are allowed for outdoor commercial activities such as dining and exterior displays



B) MASSING

INTENT

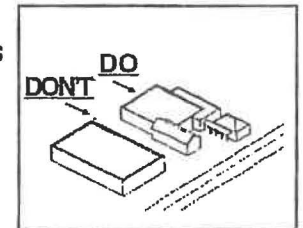
The small-town, intimate character of Camino del Pueblo is further reinforced by the small proportions of the buildings along its length. The great majority of the buildings are residential and small scale commercial. Many of the residential buildings are part of a compound development (see **History of Land Use in Bernalillo** at the front of this document). Enforcing the continuity of massing reinforces the character of the community.

HISTORIC

1. "Minor additions" to existing structures shall be placed to the rear or side of the original structure. "Major additions" shall be located to the rear of the original building.

NEW CONSTRUCTION

2. Design large buildings to appear as an arrangement of smaller units, with more massive elements flanked by smaller ones and located toward the rear of the property (EXEMPTION FOR "STREETWALL" INFILL)
3. No portion of a building shall exceed 50% of the total square footage of the building (EXEMPTION FOR "STREETWALL" INFILL)





C) HEIGHT

INTENT

As with massing and setback, the roof heights of the buildings that have historically lined the Camino del Pueblo, mostly single story, contribute to the intimate feeling of a community nestled in a fertile valley, that has given over most of the available land to agricultural pursuits. One of the community's greatest assets is the views beyond the buildings, an asset that will be preserved by keeping building heights low. Tall buildings introduced into the this setting would overwhelm the existing small scale structures and block the views.

GENERAL

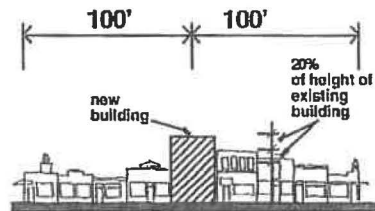
- 1- Total building height shall not exceed 26' above finished grade

HISTORIC

- 2- Height of additions to "historic" structures shall match or be lower than those of the existing structure

NEW CONSTRUCTION

- 3- Roof height of new construction shall not exceed 120% of existing roof heights within 100' radius



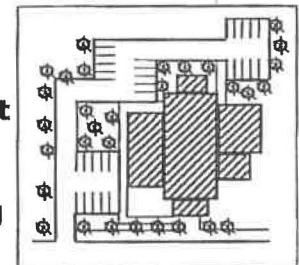
D) PARKING

INTENT

Since the town of Bernalillo originally developed during a time when automobiles were not a predominant factor in the residents' life-styles, properties did not accommodate vehicles as a primary land use goal. Land use primarily accommodates the pedestrian's need for close proximity of entranceways to the main street and the acknowledgment that natural materials and landscaping provided the substance from which the community's prosperity was derived (this community lived off the land). Creating large, paved, and visually obtrusive parking facilities would destroy the pastoral atmosphere of the properties along the main street.

GENERAL

- 1- Off-street parking and service entrances shall be located to the side or rear of buildings, not in front
- 2- Small interconnected parking lots are required if parking lots accommodate more than 10 cars
- 3- Parking located within five (5) feet of a property line adjacent to residential property shall be visually screened with a wall or landscaping
- 4- See landscaping section for parking lot landscape requirements
- 5- Height of parking lot lighting shall not exceed the height of the lowest adjacent buildings, to avoid glare to neighboring properties.





E) ACCESSORY STRUCTURES & UTILITY FACILITIES

INTENT

Open landscaped yards at the front of the properties on the main street provide a naturalistic setting for the buildings behind them. Filling that natural space with accessory structures creates visual clutter and breaks the harmony and continuity of the setbacks.

GENERAL

- 1- Accessory structures shall be located at the rear of the main building, not visible from Camino Del Pueblo**
- 2- Rooftop equipment, satellite dishes, site utility appurtenances, utility pads, garbage receptacles, and loading areas shall be located at the rear of the main building, not visible from Camino Del Pueblo as possible, or shall be screened from public view by means of design and materials similar to the main building**
- 3- Wireless communications towers are prohibited from the MainStreet Overlay District**



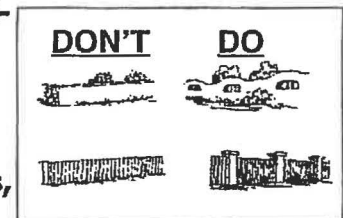
F) FENCES AND WALLS

INTENT

Fences and walls along Camino del Pueblo have historically served the purpose of marking boundaries and securing animals. Preserving the low height of fences and walls at the street sides of properties allows for extended views past the edge of the right-of-way and contributes to the openness and communal feel of the village. High, solid walls create visual impediments and contribute to a feeling of unfriendliness and claustrophobia. Allowing the introduction of industrial fencing materials would compromise the agrarian nature of the community. The use of unfinished or temporary materials creates a look of shabbiness.

GENERAL

- 1- All fences and walls located in front setback shall be a maximum of three (3) feet tall (small sections, such as gateway arches, can exceed the standard height)**
- 2- The following wall/fence materials are prohibited in the MainStreet Overlay District (with the exception of agriculturally zoned properties): raw concrete block, chain link with plastic slats, corrugated metal, palette, plywood, chicken wire, barbed wire, and field fence, bamboo**
- 3- Stretches of fence/wall that exceed 30% of street frontage shall be broken with openings, recesses, columns, or landscaping**





G) PORCHES, PORTALES, AND AWNINGS

INTENT

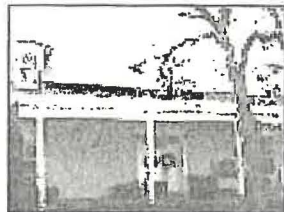
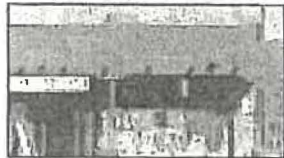
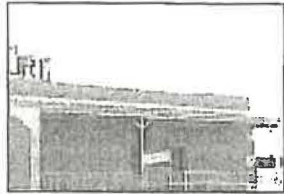
Porches and portales have been used historically in the Rio Grande valley to provide shelter at an entranceway, to allow for outdoor gathering, and to define the building entry. Shading elements are used by businesses to protect their inventory from damaging direct sunlight. These forms also serve to break up the massiveness of the larger buildings to which they are attached.

GENERAL

- 1- New porches are encouraged to be architecturally compatible with the main building with regard to design and materials
- 2- Awnings or canopies are encouraged to fit within the proportions of the street face of the building. Awnings and canopies should avoid obscuring architectural detailing.

HISTORIC

- 3- Enclosing porches and portales with opaque materials is prohibited
- 4- Original materials and decorative elements of historic porches and portales shall be retained when renovated. If necessary, replacement materials shall match original.



H) ARCHITECTURAL FEATURES

INTENT

Architectural detailing defines the style of a building and tells a story about its history, uses, and occupants. These factors contribute to the sense of place and identity that makes Bernalillo different from any other place, and gives Bernalillo's residents a sense of pride and of belonging. Buildings devoid of detailing are devoid of character and contribute to social malaise.

HISTORIC

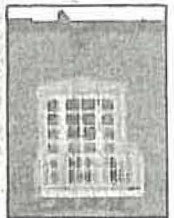
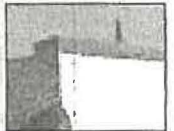
- 1- Architectural elements that contribute to the "historic character" of "historic" structures in the MainStreet Overlay District shall be maintained and preserved. See Secretary of the Interior's Standards on pages 26-27
- 2- If restoration is not possible due to advanced deterioration, replacements shall match original in size, shape, material, and finish.
- 3- Removal of "historic" architectural detailing is not permitted.

ADDITIONS

- 4- When renovating existing non-"historic" buildings, architectural features that help define the character of a building, such as fine craftsmanship, shall be retained

NEW CONSTRUCTION

- 5. Street facing facades shall include decorative detailing to create visual interest and contribute to "historic character" in new construction.





J) LANDSCAPING

INTENT

Landscaping defines the existing rural, agricultural charm of Bernalillo, since the community developed around the activities of farming and livestock husbandry. Trees and shrubs have been used to mark the boundaries of driveways and property lines, and provide shade and windbreaks. Landscaping should be placed in a manner that will not block lines of sight from the street or compromise visibility of motorists at driveways. New landscaping should be placed to accommodate the sizes of mature plant materials to avoid overcrowding. The plant list in the appendices provides suggestions for retaining species that have historic precedence and are appropriate for low water consumption.

GENERAL

- 1- A minimum of 12% of lot area (that part of the site not covered by buildings) visible from the street shall be landscaped**
- 2- Property owners are encouraged to line the street frontage of a lot with landscaping to define and strengthen the street edge**
- 3- Trees placed along Camino Del Pueblo shall not interfere with vehicular or pedestrian movement.**
- 4- Space street trees a minimum of 25' apart**
- 5- Street tree species shall be appropriate to proximity to pavement and**



utility lines to prevent damage from roots. See planting list in appendix for recommended street trees

6- All landscaping irrigation systems shall be designed and maintained so as to create ongoing compliance with guidelines (landscaping that has died due to lack of irrigation is considered non-compliant). See planting list for recommended drought resistant species

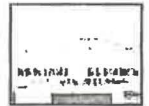
7- Parking lot landscaping shall include one shade tree per ten spaces, with a minimum of one shade tree per lot. Locate trees so as to provide shade to parking spaces. See planting list for recommended shade trees

8- Off street parking lots with street frontage shall include planting buffer at street edge, minimum width five feet with plant materials and other landscaping elements. Trees are encouraged but must meet other requirements of this section

9- Preserve 25' Vehicle Sight Triangle at driveways by using plantings not exceeding 3' in height within the sight triangle.



L) MATERIALS



INTENT

Exterior materials protect a building from the elements and add decorative detailing for visual delight. Historically, builders in Bernalillo relied on naturally occurring and locally available materials for construction. This has provided the buildings in this town with a look that is more in tune with the land on which they are built. Industrial or institutional finish materials would create a jarring and undesirable contrast to the land and to the existing architecture.

GENERAL

- 1- The following finish materials are prohibited in the MainStreet Overlay District: aluminum siding, metal panel siding, mirrored glass, raw cinderblock or concrete, and plastic or vinyl siding**
- 2- Traditional finish materials are encouraged for exterior surfaces of buildings: wood, stucco, brick, stone, cast stone, adobe, terron.**

HISTORIC

- 3- Original "historic" and character defining materials shall be retained when renovated, and repaired instead of demolished if in disrepair**
- 4- If restoration is not possible due to advanced deterioration, replacements shall match original in size, shape, material, and finish (proof of necessity of replacement shall be required)**
- 5- Additions to existing "historic" structures shall include materials consistent with or visually compatible to those found on the original structure, if addition is visible from public right of way.**



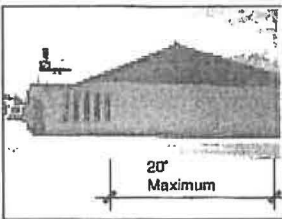
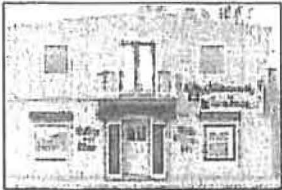
M) OPENINGS IN STREET FACING WALLS

INTENT

Openings in a building create a balance of massiveness and transparency and tell a story about the history of the structure, its uses and occupants. Openings provide an opportunity to add decorative features for visual appeal, and to break up the larger scale of a building wall with elements that are human size and scale.

GENERAL

1. Main entries to main buildings shall be located at the street side of the building
2. Street oriented building face shall have a minimum ratio of 1 to 5 of openings in opaque wall surfaces at street level, 1 to 8 at upper levels. Openings are considered doors, windows, decorative vents, and canales/scuppers, including trim.
3. A maximum of 20 lineal feet of unbroken opaque wall surface is allowable.

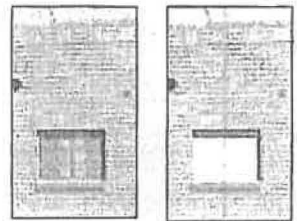
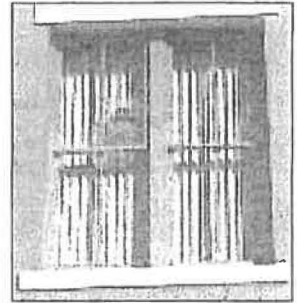
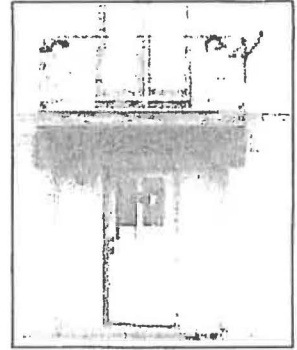


Town of Bernalillo
Main Street Overlay District
Design Guidelines



HISTORIC

4. Original size, shape, and location of openings shall be retained when renovating historic structures in the MainStreet Overlay District
5. Original materials of openings in historic structures shall be retained whenever possible. Replacements, when necessary, shall match originals as closely as possible.
6. Original trim of openings in historic structures (casing, sill, lintel, mullions and muntins) shall be retained whenever possible.
7. Filling in of character defining openings in "historic" structures in the MainStreet Overlay District is prohibited.



NEW CONSTRUCTION

8. Architectural detailing at openings (e.g. casing, trim, sill, lintel, or mullions) in new construction is required.

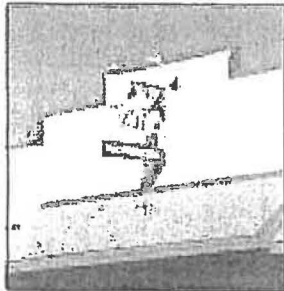
Town of Bernalillo
Main Street Overlay District
Design Guidelines



N) SIGNS

INTENT

Signs serve to direct and inform, and can add visual interest to a building through appropriate and attractive graphics and colors. Signs should occupy a minimum amount of area and fit within the scale of the building they are mounted upon or the site they sit in. Signs should be designed to avoid overwhelming the site or the architecture and prevent visual clutter. Sign lighting should be kept to a minimum and not present a nuisance or create light pollution. Neon signage played an important and romantic role in the commercial history of Bernalillo during the years when Route 66, the mother road, ran down Camino del Pueblo.



Town of Bernalillo
MainStreet Overlay District
Design Guidelines

GENERAL

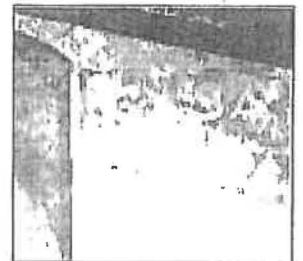
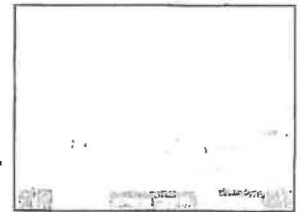
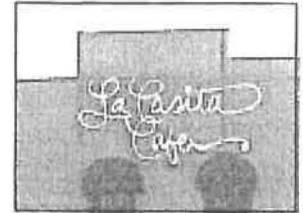
- 1- The following types of signs are prohibited in the MainStreet Overlay District: translucent plastic sign faces with internal light source, mobile or stationary readerboards (except at theater marquees and community use facilities), pylon signs taller than 8 feet high, billboards, highly reflective metal, flashing or pulsating sign lighting
- 2- Painted or wall mounted signs shall cover a maximum of 15% of the building face, not to exceed 40 square feet (not including "murals").



- 3- Building mounted signs shall fit within the proportions of the building face and shall not obscure architectural detailing.
- 4- Signs that advertise a business that no longer exists or has moved from property must be removed within thirty (30) days.
- 5- Use of neon in new signage is encouraged in the Main Street Overlay District

HISTORIC

- 6- "Historic" and ghost signs (remnants of "historic" painted signs on building faces) shall be preserved and incorporated in building renovation design



Town of Bernalillo
MainStreet Overlay District
Design Guidelines



P) SECURITY BARS

INTENT

Although security bars detract from the simple, elegant beauty of the presence of openings in a wall surface, they are often necessary for crime prevention. Security bars should be simple and unobtrusive enough to compliment and not detract from the decorative value of the windows or doors they protect.

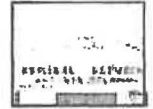
GENERAL

- 1. Roll-down and retractable security devices at commercial properties are prohibited in the MainStreet Overlay District**
- 2. Install security measures at the interior of the building wherever possible**

HISTORIC

- 2. Security bars at openings in "historic" properties are encouraged to be compatible with the design of the architecture**
- 3. Completely covering windows with opaque material is prohibited.**

DEFINITIONS



These definitions for the design guidelines document cover regulatory language that is not already defined in the Town of Bernalillo Comprehensive Zoning Ordinance. These definitions do not modify any definitions covered by that master document.

ARCHITECTURALLY COMPATIBLE

Having similar character and harmonious qualities.

HISTORIC

Any structure whose original date of construction, wholly or in part, occurred earlier than fifty (50) years before the present year. Check Camino del Pueblo Conservation Inventory (building survey) to confirm date of structures.

HISTORIC CHARACTER

An appearance that contributes to the unique visual quality of historic buildings due to the presence of materials and methods used at a specific time in history.

MAJOR ADDITION

Any construction that totals in square footage more than 50% of the existing construction.

MASSING

The overall composition (three-dimensional appearance) of the exterior of the major volumes of a building.

MINOR ADDITION

Any construction that totals in square footage less than 50% of the existing construction.

MURALS

Any painting on a wall surface that does not advertise a business or product.

RENOVATION

The process of repairing and changing an existing building for modern use, so that it is functionally equal to a new building.

RESTORATION

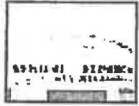
The process of returning a structure or object to its condition at a particular time in its history, using the same construction materials and methods as the original, as possible.

ROOF HEIGHT/BUILDING HEIGHT

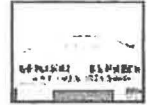
The tallest part of the roof which provides shelter to the house. Antennae, satellite dishes, and other appurtenances are not considered part of the roof.

STREETWALL

A mostly solid vertical surface formed by commercial buildings lining the sidewalk and sharing common demising walls, continuous along the sidewalk edge.



PLANT LIST



Shade Trees

Albizia julibrissin	<i>Mimosa</i>
Gymnocladus dioica	<i>Kentucky Coffee</i>
Robina pseudoacacia	<i>Black Locust</i>
Pistachia chinensis	<i>Chinese Pistache</i>
Ziziphus jujuba	<i>Chinese Date Jujube</i>

Street Trees

Cercis	<i>Redbud</i>
Fraxinus velutina	<i>Rio Grande/Fan-Tex</i>
Gleditsia triacanthos	<i>Honey Locust</i>
Koelreuteria paniculata	<i>Golden Raintree</i>
Tilia cordata	<i>Littleleaf Linden</i>
Sorbus aucuparia	<i>European Mountain Ash</i>

Screen Planting

Ligustrum japonicum	<i>Waxleaf Privet</i>
Prunus caroliniana	<i>Carolina Cherry Laurel</i>
Pyracantha lelandii	<i>Firethorn</i>
Abelia grandiflora	<i>Glossy Abelia</i>
Lonicera tartarica	<i>Tartarian Honeysuckle</i>
Syringa vulgaris	<i>Common Lilac</i>
Thuja species	<i>Arbor vitae</i>
Photina fraseri	<i>Photina</i>

Low Water Planting

Evergreen Trees

Cercocarpus iedifolius	<i>Curleaf Mountain Mahogan</i>
Yucca elata	<i>Soaptree Yucca</i>
Yucca faxoniana	<i>Palm Yucca</i>

Small Deciduous Trees

Chilopsis iinearis	<i>Desert Willow</i>
Melia azedarach	<i>Texas Umbrella Tre</i>
Prosopis glandulosa	<i>Honey Mesquite</i>
Sambucos mexicana	<i>Mexican Elder</i>
Zizphus jujuba	<i>Chinese Date Jujube</i>

Evergreen Shrubs

Artemisia cana	<i>Silver Sage</i>
Atriplex canescens	<i>Fourwing Saltbush</i>
Baccharis salicina	<i>Desert Broom</i>
Ephedra viridis	<i>Mormon Tea</i>
Fallugia paradoxa	<i>Apache Plume</i>

Deciduous Shrubs

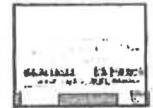
Celtis palida	<i>Desert Hackberry</i>
Chrysothamnus nauseosus	<i>Chamisa</i>
Psorothamnus scoparia	<i>Broom Dalea</i>
Rhus microphyllia	<i>Littleleaf Sumac</i>



Secretary of the Interior's Standards for the Rehabilitation of Historic Properties

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.



6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

REHABILITATION AS A TREATMENT.

When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, Rehabilitation may be considered as a treatment.



ACKNOWLEDGMENTS

Bernalillo Main Street Association Design Committee and the **Town of Bernalillo Community Development and Planning and Zoning staff** for project conception, support, administration, and sponsorship.

New Mexico MainStreet Program for technical advice and consulting, graphic design and layout.

Joe Quintana, MRGCOG planner, for planning and technical support.

Corrales Main Street for brochure sketches.

Claudia Smith for technical consulting and Baseline Property Survey work.

Master Gardeners for planting list

Town of Bernalillo Planning and Zoning Commission for guidance.

RESOURCES

NM Historic Preservation Division

www.museums.state.nm.us/hpd/

National Trust for Historic Preservation

www.nthp.org

New Mexico State Statutes

www.prairienet.org/~scruffy/f.htm

Secretary of the Interior's Standards for the treatment of historic properties

www2.cr.nps.gov/tps/secstan2.htm

New Mexico MainStreet Program

www.edd.state.nm.us

Town of Bernalillo
MainStreet Overlay District
Design Guidelines

Will interior work or routine maintenance be reviewed under this overlay zoning?

No, interior alterations and routine maintenance that does not affect exterior appearances are not reviewed.

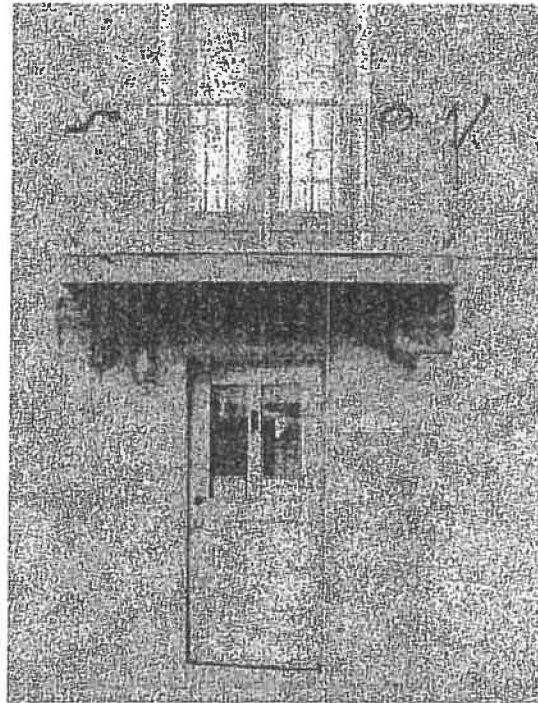
What will be the process for making changes to my property?

All owners of property within the MainStreet Overlay District shall receive copies of the zoning ordinance and design guidelines to keep for future reference. When you are ready to make changes to your property, you will apply for a building permit. Any proposed new development, redevelopment, demolition, or substantial change in appearance to properties within the Overlay District shall be reviewed by the Planning Commission, which shall determine compliance with the design guidelines for the Overlay District.

Who can I call for help?

The Design Guidelines are based upon a common-sense approach for the enhancement and maintenance of our community's special character. If you need help understanding the design guidelines that you will receive (or to receive additional copies), or if you want to know how to obtain a building permit, the Planning and Zoning Director or the Director of Community Development can answer your questions. They can also provide helpful suggestions for how your proposal can comply with the overlay ordinance.

Call the Bernalillo Town Hall at 867-3311.



*Come to learn
about the proposed*

***Town of
Bernalillo***

***Mainstreet
Overlay
District***

*at the
Public Open House*

Bernalillo Town Hall

Your Voice Counts!!



**TOWN OF BERNALILLO
PLANNING AND ZONING COMMISSION
MEETING NOTICE**



Notice is hereby given that a **REGULAR MEETING** of the **PLANNING AND ZONING COMMISSION** of the Town of Bernalillo will be held on **Tuesday, December 7, 2021** at **6:30 p.m. in-person and virtually via WebEx** as provided in the information below. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service, in order to attend or participate in the meeting, please contact the Town Clerk at 771-7128 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Town Clerk if a summary or other type of accessible format is needed.

If you prefer to attend virtually, you may do so in compliance with the New Mexico Open Meetings Act by joining the Planning and Zoning Commission Meeting from your computer, tablet or smartphone via the following link: <https://www.webex.com> (click JOIN) then type in:

Meeting Number/Access Code: 2552 347 0361

Meeting Password: 12072021

You can also dial-in using your phone: 1-408-418-9388 (US only)

PLANNING AND ZONING COMMISSION AGENDA - PRELIMINARY

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES**
 - a) Regular Meeting of November 2, 2021
- 6. PUBLIC HEARINGS & ACTION ITEMS**
 - a) **VAR21-013:** FENCE HEIGHT VARIANCE OF 2 FEET AT 956 NAZCON PLACE, LEGAL DESCRIPTION: NAZCON SUBDIVISION, BLOCK 1, LOT 5.
 - b) **MSBP21-001:** BUILDING PERMIT FOR SUBSTANTIAL MODIFICATION OF BUILDING FACADE IN THE MAINSTREET OVERLAY ZONE AT 961 CAMINO DEL PUEBLO, LEGAL DESCRIPTION: LANDS OF DE VALLE NASH, LOT 5.
 - c) **VAR20-010:** RECONSIDERATION OF FENCE HEIGHT VARIANCE OF 2 FEET AT 543 AVENIDA ENCANTADA, LEGAL DESCRIPTION: CASA ENCANTADA SUBDIVISION, BLOCK 1, LOT 21. *(Remanded from District Court to Town Council and remanded from Town Council to Planning & Zoning Commission)*
 - d) **SumP21-001:** SUMMARY PLAT TO RELOCATE LOT LINE EFFECTING 485 AND 499 SHERIFF'S POSSE ROAD, ZONED R-R, LEGAL DESCRIPTION: C'DE BACA CASITAS SUBDIVISION, LOT A2A AND LOT A1. *(Withdrawn)*

7. COMMISSION BUSINESS & UPDATES

a) Planning and Zoning Commission Business

1. Meeting & Application Schedule 2022

b) Decisions of Town Council/Ordinances/Appeals Filed/Status:

c) Planning and Zoning Department Update:

- i. New Home Occupations – As of agenda print date, the number of new home occupations, permissive per Zoning Code Sec. 18, is: 1
- ii. Building Coordination & Review – As of agenda print date, the number of building permits reviewed for zoning and floodplain ordinance compliance, is: _____

d) Next Meeting: January 4, 2022 @ 6:30pm In-Person and Via WebEx.

8. ADJOURN

PUBLIC COMMENTS

Written comments should be emailed to the Planning Director at sshumsky@townofbernalillo.org or mailed to her at P.O. Box 638, Bernalillo, NM 87004. Written comments **received by 5pm prior to the meeting** will be distributed to the Planning Commission.

Members of the public attending via WebEx that wish to speak on any of the agenda items, or otherwise address the Planning and Zoning Commission, must type your full name and the agenda item you want to speak on, in the chat box. When the chairperson calls on you, state your name and address for the record. There is a 2-minute time limit per speaker.

An electronic version (PDF) of the final Agenda and Packet are available a minimum of 72 hours prior to the meeting at:

https://www.townofbernalillo.org/departments/planning_zoning/agendas_and_minutes.php

Locations of Agenda Postings in the Town of Bernalillo: T & T Supermart, Town Hall, US Post Office, Martha Liebert Public Library and the Town's website at: <http://www.townofbernalillo.org>

Town of Bernalillo, New Mexico
MSBP21-001 - Abutters



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Prepared By: S. Shumsky
Date: 11/4/2021

Disclaimer: This map is for illustration purposes only and should not be relied upon for other uses.

Dec7, 2021 PZ - ABUTTERS			
VAR21-013			
NAME	PRIMARY ADDRESS	CITY, STATE, ZIP	SECONDARY ADDRESS
Monte & Laurie Yancey	956 Nazcon Pl	Bernalillo, NM 87004	
Bruce & Sandra Seligman	812 Salamanca St NW	Albuquerque, NM 87107	
Robert & Corrine Lovato	940 Nazcon Pl	Bernalillo, NM 87004	
Phillip Serbin	943 Nazcon Pl	Bernalillo, NM 87004	
Janice & Greg Dudley	974 Nazcon Rd	Bernalillo, NM 87004	
Diwan Bhathal & Brenda Wilson Revocable Trust	C/O Diwan Bhathal & Brenda Wilson	980 Nazcon Rd	Bernalillo, NM 87004
MSBP21-001			
NAME	PRIMARY ADDRESS	CITY, STATE, ZIP	SECONDARY ADDRESS
TNS Enterprises LLC	6017 Del Carmen Dr NE	Rio Rancho, NM 87144	
Torres & Torres Inc.	PO Box 1237	Bernalillo, NM 87004	
Joe & Orlinda Torres Revocable Trust	C/O Joe & Orlinda Torres	PO Box 357	Bernalillo, NM 87004
987 Camino Del Pueblo LLC	26 Sandia Lane	Placitas, NM 87043	
Angus McDougall	978 San Felipe Road	Bernalillo, NM 87004	
Laurie Schuller	26 Sandia Lane	Placitas, NM 87043	
Silva's Saloon, LLP	PO Box 244	Bernalillo, NM 87004	
Edwin Trujillo	973 Calle San Felipe	Bernalillo, NM 87004	
Bound For Success Inc.	PO Box 1960	Bernalillo, NM 87004	
Ralph, David, and Ernest Armijo & Felix & Lawrence Lucero	C/O Felix & Lawrence Lucero	PO Box 248	Bernalillo, NM 87004

Mainsheet Facade



Multi-Purpose State Building Application

State of New Mexico Regulation and Licensing Department Construction Industries Division

Santa Fe 2550 Cerrillos Rd Santa Fe, NM 87505 Phone: (505) 476 - 4700 Fax: (505) 476 - 4685
 Albuquerque 5500 San Antonio NE Albuquerque, NM 87109 (505) 222 - 9800 (505) 765 - 5670
 Las Cruces 505 S. Main St. Ste. 103 Las Cruces, NM 88004 (575) 524 - 6320 (575) 524 - 6319

Building Permit (Commercial includes electrical/mechanical/plumbing reviews) Residential Commercial Pre-Bid Trade Review Only

New Construction Alteration/Repairs/Demolition Additions Foundation only Reroof Electrical Review

wood metal frame masonry adobe rammed earth metal structure other Mechanical/Plumbing Review

Description of work: Adding stacked stone to existing Vegas @ front porch.

THE FOLLOWING INFORMATION MUST BE PROVIDED

Physical Address of job site (must provide a physical address) _____ Nearest City/Town/Village _____ Zip Code _____ County _____

GPS Coordinates optional _____ X Coordinate _____ Y Coordinate _____

MUST provide written Directions

Property Owner or Homeowner Information:

TNS Enterprises LLC Wei Rogers Wizereltrica@yahoo.com
 First Name Last Name E-mail address
9615 Camino Del Pueblo Bernalillo NM 87009 505-249-7449
 Address No. & Street / PO Box / Rural Route City State Zip Code Phone

Contractor Information (must provide proof of contract):

Company Name _____ NM State License # and classification _____
 Address No. & Street / PO Box / Rural Route _____ City _____ State _____ E-Mail Address: _____
 Contact Information (Name) _____ Phone _____ Fax _____

Design Professional Information:

Company Name _____ NM State License # _____
 Address No. & Street / PO Box / Rural Route _____ City _____ State _____
 Contact Information (Name) _____ Phone _____ E-mail address: _____

Type of Construction I II III IV V A B Energy Compliance Prescriptive Trade-off Performance Climate Zone: 1 2 3 4 5 6 7

Occupancy Group A B E F H I M R S U

Division 1 2 3 4 5

Square Footage: _____ Fire Sprinklers Apply Y / N LP gas Appliance Apply Y / N

Valuation / Sign Contract: _____

APPLICANT MUST READ AND SIGN THE FOLLOWING: I hereby acknowledge by my signature below that I have read this application and state that the above is correct. I agree to comply with the requirements for the New Mexico Building Code. I waive my right to require any inspector to possess a search warrant before they enter the premises to inspect the building covered by this permit. However, I waive this right only on the following conditions: The inspector must be approved by the Construction Industries Division and this inspection must be made at reasonable times for purpose of determining whether the work of building or structure on the premises complies with the New Mexico Building Code. I understand that the issuance of this permit shall not prevent the Construction Industries Division from requiring compliance with the provisions of the New Mexico Building Code.

X _____ Signature _____ Date 10/29/21

Official Use Only

Date Issued: _____ Processed By: _____ Tracking Number: _____
 Received By: _____ Total Fees Due: _____
 Walk In Mail E-Mail: _____ Partial Payment: _____
 Paid By: _____ Balance Due: _____
 Check Money Order Credit Card Purchase Order

PLANNING/ZONING APPROVED BY: _____ Signature _____ Date: _____

FLOOD PLAIN APPROVED BY: _____ Signature _____ Date: _____

GENERAL BUILDING APPROVED BY: _____ Signature _____ Date: _____

UPC/UMC APPROVED BY: _____ Signature _____ Date: _____

NEC APPROVED BY: _____ Signature _____ Date: _____

PUBLIC HEARING: ITEM 6C

6C



TOWN OF BERNALILLO
"The City of Coronado"

SUMMARY for Planning & Zoning Commission 12/7/21

SUBJECT: VAR20-010, a request by Rigoberto Garcia (property owner) for a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada, legally described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13 North, Range 4 East, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records).

HISTORY:

- On October 6, 2020, for lack of a motion and without findings, the Planning and Zoning Commission denied the applicant's request.
- On November 4, 2020, the applicant filed an appeal of the Planning and Zoning Commission's denial.
- On November 23, 2020, the Town Council considered the appeal and upheld the Planning Commission's denial of the request without adopting any findings.
- On December 18, 2020, the applicant filed an appeal of the Town Council's decision with the 13th Judicial District Court and, after several procedural issues, on September 16, 2021, the case was vacated and remanded back to the Town Council. The decision was based on analysis and direction from the Judge, as indicated on page 12 of the Memorandum Opinion and Order (attached).
- On October 25, 2021, the Town Council remanded this request to the Planning and Zoning Commission for re-consideration based on the Judge's Memorandum Opinion and Order (to adopt findings of fact/conclusions of law).

ATTACHMENTS:

1. Memorandum Opinion and Order dated 9/16/2021
2. Notification of Town Council Hearing of Remand
3. Notice of Decision and Minutes from Town Council Hearing of Appeal 11/23/2020
4. Staff Report for Town Council Hearing of Appeal (including P&Z NOD, minutes, notice, etc.)



**TOWN OF BERNALILLO
PLANNING AND ZONING COMMISSION
MEETING NOTICE**



Notice is hereby given that a **REGULAR MEETING** of the **PLANNING AND ZONING COMMISSION** of the Town of Bernalillo will be held on **Tuesday, December 7, 2021** at **6:30 p.m. in-person and virtually via WebEx** as provided in the information below. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service, in order to attend or participate in the meeting, please contact the Town Clerk at 771-7128 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Town Clerk if a summary or other type of accessible format is needed.

If you prefer to attend virtually, you may do so in compliance with the New Mexico Open Meetings Act by joining the Planning and Zoning Commission Meeting from your computer, tablet or smartphone via the following link: <https://www.webex.com> (click JOIN) then type in:

Meeting Number/Access Code: 2552 347 0361

Meeting Password: 12072021

You can also dial-in using your phone: 1-408-418-9388 (US only)

PLANNING AND ZONING COMMISSION AGENDA - PRELIMINARY

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES**
 - a) Regular Meeting of November 2, 2021
- 6. PUBLIC HEARINGS & ACTION ITEMS**
 - a) **VAR21-013:** FENCE HEIGHT VARIANCE OF 2 FEET AT 956 NAZCON PLACE, LEGAL DESCRIPTION: NAZCON SUBDIVISION, BLOCK 1, LOT 5.
 - b) **MSBP21-001:** BUILDING PERMIT FOR SUBSTANTIAL MODIFICATION OF BUILDING FACADE IN THE MAINSTREET OVERLAY ZONE AT 961 CAMINO DEL PUEBLO, LEGAL DESCRIPTION: LANDS OF DE VALLE NASH, LOT 5.
 - c) **VAR20-010:** RECONSIDERATION OF FENCE HEIGHT VARIANCE OF 2 FEET AT 543 AVENIDA ENCANTADA, LEGAL DESCRIPTION: CASA ENCANTADA SUBDIVISION, BLOCK 1, LOT 21. *(Remanded from District Court to Town Council and remanded from Town Council to Planning & Zoning Commission)*
 - d) **SumP21-001:** SUMMARY PLAT TO RELOCATE LOT LINE EFFECTING 485 AND 499 SHERIFF'S POSSE ROAD, ZONED R-R, LEGAL DESCRIPTION: C'DE BACA CASITAS SUBDIVISION, LOT A2A AND LOT A1. *(Withdrawn)*

7. COMMISSION BUSINESS & UPDATES

a) Planning and Zoning Commission Business

1. Meeting & Application Schedule 2022

b) Decisions of Town Council/Ordinances/Appeals Filed/Status:

c) Planning and Zoning Department Update:

- i. New Home Occupations – As of agenda print date, the number of new home occupations, permissive per Zoning Code Sec. 18, is: 1
 - ii. Building Coordination & Review – As of agenda print date, the number of building permits reviewed for zoning and floodplain ordinance compliance, is: _____
- d) Next Meeting: January 4, 2022 @ 6:30pm In-Person and Via WebEx.

8. ADJOURN

PUBLIC COMMENTS

Written comments should be emailed to the Planning Director at sshumsky@townofbernalillo.org or mailed to her at P.O. Box 638, Bernalillo, NM 87004. Written comments **received by 5pm prior to the meeting** will be distributed to the Planning Commission.

Members of the public attending via WebEx that wish to speak on any of the agenda items, or otherwise address the Planning and Zoning Commission, must type your full name and the agenda item you want to speak on, in the chat box. When the chairperson calls on you, state your name and address for the record. There is a 2-minute time limit per speaker.

An electronic version (PDF) of the final Agenda and Packet are available a minimum of 72 hours prior to the meeting at:

https://www.townofbernalillo.org/departments/planning_zoning/agendas_and_minutes.php

Locations of Agenda Postings in the Town of Bernalillo: T & T Supermart, Town Hall, US Post Office, Martha Liebert Public Library and the Town's website at: <http://www.townofbernalillo.org>



**TOWN OF BERNALILLO
PUBLIC NOTICE**



Notice is hereby given that the **REGULAR MEETING** of the Governing Body of the Town of Bernalillo will be held on **Monday, October 25, 2021 at 6:30 p.m.** for a Remote Meeting via WEBEX as provided in the information below. To obtain copies or if you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact the Town Clerk at 771-7128 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ida Fierro at 771-7128 if a summary or other type of accessible format is needed.

REMOTE MEETING IN COMPLIANCE WITH THE NEW MEXICO OPEN MEETINGS ACT

Please join this Meeting from your computer, tablet, or smartphone: <https://www.webex.com> (click JOIN) then type in:

Meeting Number/Access Code: **2550 162 3222** Meeting Password: **10252021**

You can also dial-in using your phone: **1-408-418-9388 (US only)**

**Members of the public shall be permitted into the Town Council Chambers or
Members of the public wishing to participate in the Council Meeting may also do so virtually.**

Ida Fierro, Town Clerk
Posted this 21st day of October 2021

FINAL COUNCIL AGENDA

ATTACHMENT

1.CALL TO ORDER

2.PLEDGE OF ALLEGIANCE

3.ROLL CALL

4.APPROVAL OF AGENDA

5.PUBLIC HEARING:

- a) Discussion, Consideration, and Action on item Remanded form District Court to Town Council VAR20-010, a request by Rigoberto Garcia (property owner) for a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada, legally described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13N, Range 4E, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records). Presenter: Stephanie Shumsky **A**

6.APPROVAL OF MINUTES

- a) Regular Meeting of October 11, 2021 **B**

7.NEW BUSINESS

- a) Discussion, Consideration, Action, Approval and Adoption of Resolution 10/25/2021 Budget Adjustment for Special Revenues. Presenter: Terri Gray **C**
- b) Discussion, Consideration, Action, Approval and Adoption of Resolution 10/25/2021A Budget Adjustment for Capital Projects. Presenter: Terri Gray **D**
- c) Discussion, Consideration, Action, Approval and Adoption of Resolution 10/25/2021B Participation in Transportation Project Fund Program Administered by New Mexico Department of Transportation LP30019 Calle San Lorenzo. Presenter: Ida Fierro **E**
- d) Discussion, Consideration, Action, and Approval of Transportation Project Fund Grant Agreement LP30019 San Lorenzo. Presenter: Ida Fierro **F**
- e) Discussion, Consideration, Action, Approval and Adoption of Resolution 10/25/2021C Participation in Transportation Project Fund Program Administered by New Mexico Department of Transportation LP30021 S. Hill Road. Presenter: Ida Fierro **G**
- f) Discussion, Consideration, Action, and Approval of Transportation Project Grant Agreement LP30021 S Hill Road. Presenter: Ida Fierro **H**
- g) Discussion, Consideration, Action, Approval and Adoption of Resolution 10/25/2021D Participation in Transportation Project Fund Program Administered by New Mexico Department of Transportation LP30025 Gutierrez Road. Presenter: Ida Fierro **I**
- h) Discussion, Consideration, Action, and Approval of Transportation Project Grant Agreement LP30025 Gutierrez Road. Presenter: Ida Fierro **J**
- i) Discussion, Consideration, Action, and Approval of Resolution 10/25/2021F Municipal Election March 2, 2022. Presenter: Ida Fierro **K**
- j) Discussion, Consideration, Action, and Approval of Recommendation of Lodger's Tax Award October 2021. Presenter: Mike Kloeppe **L**
- k) Discussion, Consideration, Action, and Approval of State of New Mexico Department of Environment Capital Appropriation Project Bernalillo SCADA System Wastewater Facility. Presenter: Ida Fierro **M**

ATTACHMENT 1
MEMORANDUM OPINION AND ORDER

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT

FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
9/16/2021 9:23 AM
AUDREY GARCIA
CLERK OF THE COURT
Audrey Garcia

RIGOBERTO GARCIA

Plaintiff/Appellant,

v.

Case No. D-1329-CV-2020-01925

TOWN OF BERNALILLO,

Defendant/Appellee.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Plaintiff/Appellant's appeal from the Town of Bernalillo's denial of a requested variance to install a six foot fence in a residential zone that permits fences up to four feet. Plaintiff asks this Court to reverse the decision of the Bernalillo Town Council upholding the Planning and Zoning Commission's denial of his variance. For the reasons set forth below, the Court hereby **VACATES** the decision of the Bernalillo Town Council, and **REMANDS** this matter for further proceedings.

I. Procedural History

On August 19, 2020, Appellant submitted his Application for Fence/Wall Permit. (Record Proper, pages 2-7).

On September 2, 2020, Appellant submitted his Application for Zoning Variance. (Record Proper, pages 22-28), requesting a variance from the R-1 zoning requirement of a four foot fence. Appellant's application for zoning variance went before the Planning and Zoning Commission on October 6, 2020. Staff to the Planning and Zoning Commission recommended denial of the requested variance based on certain enumerated proposed findings of fact. The Planning and

Zoning Commission failed to make any findings, and more to the point, failed to make a motion on Appellant's requested variance. As a result, the request was denied on the basis that no motion was made – at all. (Record Proper, page 31).

On October 22, 2020, Appellant submitted his application for appeal of the denial of his variance request to the Town of Bernalillo Town Council. Appellant's appeal came before the Town Council on November 23, 2020. Without making any findings, the Town Council upheld the denial of Appellant's requested variance. (Record Proper, page 86 and 87).

Appellant timely filed his Notice of Appeal with the District Court on December 18, 2020. Having failed to serve Defendant/Appellee with his notice, the Court dismissed this matter on April 5, 2021. Appellant filed his Motion to Reinstate on April 8, 2021. By way of *Certificate of Service*, filed with the Court on April 8, 2021, Appellant certified that he served Appellee Town of Bernalillo with his *Motion to Reinstate* and his *Notice of Appeal*. Appellee Town of Bernalillo did not file a response to Appellant's *Motion to Reinstate*. The Court set this matter for a hearing on May 19, 2021. Despite being provided with notice of the hearing by the Court, Appellee, Town of Bernalillo, failed to appear at the hearing on Appellant's *Motion to Reinstate*. The Court granted Appellant's *Motion to Reinstate* on May 19, 2021.

Appellant filed his *Statement of Appellant Issues* on June 11, 2021. Counsel for Appellee Town of Bernalillo entered his appearance on June 16, 2021. Appellee Town of Bernalillo filed the *Record Proper* of the proceedings before the Town of Bernalillo Planning and Zoning Commission and the Town of Bernalillo Town Council on June 16, 2021.

Appellee Town of Bernalillo filed its *Response to Statement of Appellant Issues* on July 14, 2021. Appellant filed his *Reply Brief* (styled by Appellant and entered into the court record by the clerk's office, as a "response") on July 28, 2021.

Neither party requested a hearing. This matter is ripe for decision.

II. Jurisdiction and Standard of Review

Rule 1-074 NMRA governs appeals from administrative agencies to the district court. For purposes of this rule, the term “agency” includes any state or local government administrative quasi-judicial entity. (Rule 1-074(A), NMRA). Any person aggrieved by a decision of the Town of Bernalillo Town Council in review of Ordinance No. 310 (Comprehensive Zoning Regulations) may appeal that decision to state district court. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(J), page 41 and Section 19(J)(3)(d), page 42). The scope of this Court’s review is set forth in Rule 1-074(R), NMRA, which provides that the District Court shall apply the following standards of review:

- (1) Whether the agency acted fraudulently, arbitrarily, or capriciously;
- (2) Whether based upon the whole record on appeal, the decision of the agency is not supported by substantial evidence;
- (3) Whether the action of the agency was outside the scope of authority of the agency; or
- (4) Whether the action of the agency was otherwise not in accordance with law.

Pursuant to Rule 1-074(T), the district court, in its appellate capacity, shall issue a written decision, which may include:

- (1) Remanding the case to the administrative agency with specific instructions for further proceedings and determinations; the remand may also include instructions to make the case ripe for judicial review;
- (2) Reversing the decision under review with a statement of the basis for the reversal as provided under paragraph “R” of this rule;
- (3) Affirming the decision under review, with a statement of the basis for affirmance.

III. Record Before the Court

Appellant built a non-conforming wooden fence on his property located at 543 Avenida Encantada, Bernalillo, NM, 87004, zoned R-1 (Record Proper, page 10) in violation of Town of Bernalillo Zoning Ordinance No. 310, Section 22. Appellant failed to obtain a permit from the Town of Bernalillo to construct the fence, which he applied for after the fact, on August 19, 2020. (Record Proper, page 10 and page 63 (“Recently, the applicant constructed a 6’ wood panel fence along the front and sides of the property without a permit. Upon notice, the property owner applied for a [zoning] variance and a [fence] permit.”). Appellee Town of Bernalillo initiated a code enforcement case against Appellant “due to the accumulation of junk and debris throughout the property, which includes an old bus, chickens, piles of wood boards, and cleaning buckets, among other discarded items. The Town of Bernalillo has repeatedly received complaints about the upkeep of this property from several neighborhood residents.” (Record Proper, page 11 and page 64).

Staff to the Town of Bernalillo Planning and Zoning Commission expressed concern that allowing a six foot fence “is simply a means to obstruct otherwise illegal accumulation of debris from public view, and create a hazard for emergency and safety personnel.” (Record Proper, page 11 and page 64).

Appellant submitted his Application to the Planning and Zoning Commission for Zoning Variance on September 2, 2020, requesting a two foot variance from Comprehensive Zoning Code, Ord. No. 310, Section 22 (Fence Requirements), which only allows fences of four feet in height with the front setback in the R-1 zone. (Record Proper, page 10). If approved, the variance would

allow for a six foot tall fence or wall within the front setback on Appellant's property. (Record Proper, page 10).

Planning and Zoning Commission Hearing on Application for Variance

The Planning and Zoning Commission heard Appellant's application on October 6, 2020. Staff to the Planning and Zoning Commission compiled their "Staff Report," which recommended the application for variance be denied upon adoption of specified proposed findings, including that "due to the accumulation of junk and debris on the property, a 6' fence will create an additional hazard for emergency and safety personnel." (Record Proper, page 13).

At the October 6, 2020 Council Meeting, after presentation of the staff report, and after hearing from the applicant/Appellant, the Vice Chair of the Planning and Zoning Commission asked members for a motion. No motion was made. As a result the Vice Chair instructed staff to notify the applicant that since there was no motion made, the application for variance was denied. (Record Proper, page 31). The Planning and Zoning Commission made no findings whatsoever with regard to the application, and thus had no factual basis for denying the application.

Notice from the Planning and Zoning Director was sent to applicant/Appellant Rigoberto Garcia on October 7, 2020, stating that at "a regularly scheduled public hearing on October 6, 2020, the Town of Bernalillo Planning and Zoning Commission, for lack of a motion, DENIED (emphasis in original) your request for a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada...." (Record Proper, page 32).

Appeal Before the Town Council of Planning and Zoning Commission Denial

Appellant timely filed his appeal of the Planning and Zoning Commission's denial of his application for variance to the Town of Bernalillo Town Council on October 22, 2020 (Paid appellate fee on November 4, 2020). In his appeal before the town Council, Appellant argued that

the Planning and Zoning Commission's decision was "arbitrary or capricious" and "not supported by the evidence in the matter." (Record Proper, page 43). In his written appeal, Appellant argued that the Planning and Zoning Commission's decision was arbitrary because it "was based on nothing." Appellant's contention was that "no arguments were presented, either by neighbors or by council members or by Planning and Zoning [staff] as to why the variance should not be granted." (Record Proper, page 44). Appellant further argued that the Planning and Zoning Commission's decision was capricious and unfair because other properties in proximity to his own had fences or walls taller than four feet. (Record Proper, page 44). In addition, Appellant argued that the decision was not supported by evidence, stating that "indeed no evidence was presented at all." (Record Proper, page 44).

Appellant argued that the "baseless decision" of the Planning and Zoning Commission was actually a pretext to obscure what he considered to be the real reason for denial, which was an animosity that existed between the Planning and Zoning "inspector" and himself. (Record Proper, page 44).

The Town of Bernalillo Town Council heard Appellant's appeal on November 23, 2020. Appellant's appeal was introduced by the Planning and Zoning Director, who indicated that the Planning and Zoning Commission failed to make a motion of Appellant's original application for variance, which acted as a denial of Appellant's application. (Record Proper, page 80).

One of the Town Councilors asked the Director if the Planning and Zoning Commission lacked "enough information to make a decision." (Record Proper, page 80). The Director replied that the Planning and Zoning Commission had "quite a bit of information" including the application, the staff report, which included photos and a map of the premises, and that they were able to discuss the application with the applicant, who provided them with a lengthy description

of the property and why applicant sought the variance. The Director further indicated that the Planning and Zoning Commission engaged in “quite a bit of discussion” about the application. The Director concluded her statement by noting that “when the Planning Commission does not want to approve something, they will just not make a motion.” (Record Proper, page 81). After lengthy discussion that revealed the Town Council’s angst with the lack of factual foundation for the Planning Commission’s decision, including disclosures that at least two members of the Town Council engaged in his/her own fact finding mission (“I drove the neighborhood,” and further noted that “there are other properties that have six feet fences and there is one in [a] front yard.” Record Proper, page 81), Mayor Torres asked for a motion on the Planning Commission’s denial of the application for variance. A motion was made to uphold the Planning and Zoning Commission’s denial of the variance, which passed unanimously by the Town Council. (Record Proper, pages 84-86). No factual findings were made. A letter was sent to the Appellant, dated November 24, 2020, stating the Town Council upheld the Planning and Zoning Commission’s denial of his requested variance. (Record Proper, page 87).

Appellant timely filed his appeal to District Court on December 18, 2020.

IV. Analysis

Application for Fence/Wall Permit

Residents of the Town of Bernalillo are required to obtain a permit to construct a fence on their property. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 22(E), page 49). Appellant failed to do so, and was given notice of that failure by Town of Bernalillo zoning code enforcement staff. In addition, Appellant was notified that the zoning for his property prohibited the construction of a fence or wall that exceeded four feet in height without an approved/permitted variance. Appellant’s

Application for Fence/Wall Permit was, for all intents and purposes, administratively denied by zoning code enforcement staff, the appeal of which was constructively incorporated into Appellant's Application for Zoning Variance.

Any person aggrieved by an administrative decision, in this case the denial/rejection of the Application for Fence/Wall Permit, may appeal that decision to the Planning and Zoning Commission. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(J), page 41). "A majority of the members of the [Planning and Zoning] Commission... is required to reverse, change, or affirm the previous decision." (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(J)(3)(c), page 42). The "*previous decision*" here is the administrative decision of zoning code enforcement staff that effectively denied Appellant's Application for Fence/Wall Permit. A "majority of the members" of the Planning and Zoning Commission did not act on, or vote on, Appellant's Application for Fence/Wall Permit in violation of Section 19(J)(3)(c), and further they failed to make any findings or conclusions relating to Appellant's Application for Fence/Wall Permit.

Application for Zoning Variance Before the Planning and Zoning Commission

A request for a variance to an existing zoning restriction shall be submitted with the filing fee to the Zoning Officer on the prescribed application form. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(E)(1), page 39). Completed applications for a variance are to be heard at the next scheduled Planning and Zoning Commission meeting. (Town of Bernalillo Zoning Ordinance No. 301, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(E)(2), page 39).

A variance is a discretionary waiver from the zoning requirements to grant the property owner reasonable use of their land. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(F), page 39). The Commission may approve a deviation from the numerical requirements of the applicable ordinance, such as height limitations, when the applicant demonstrates:

1. A physical hardship unique to the property exists (i.e., topographical constraints or lot configuration resulting in reduced development flexibility); and
2. These circumstances are not generally found within the locality of neighborhood concerned; and
3. The hardship is not self-imposed; and
4. The project is not contrary to the public interest or safety; and
5. The spirit of the Zoning Ordinance is observed and substantial justice done; and
6. The variance is to the minimum extent necessary to allow the owner reasonable use of the land;
7. Financial gain or loss shall not be the determining factor in deciding a variance.

(Record Proper, page 11-12, and Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(F)(1)-(7), pages 39-40).

The Planning and Zoning Commission is authorized to make final decisions to approve, deny, or approve with conditions, applications for a variance on zoning restrictions. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(C)(2)(b), page 37).

The Planning and Zoning Commission failed to act on Appellant's application for a zoning variance. The Planning and Zoning Commission did not establish findings to support a decision either granting or denying the application for variance. No motion was made and no vote was taken on Appellant's application. Based on its non-action, Appellant's application was affirmatively denied by the Planning and Zoning Commission. It is unclear where the Planning and Zoning Commission derives its authority to deny an application for a variance on the basis of failing to act upon that application.

Appeal Before the Town Council of the Planning and Zoning Commission's Denial

Any person aggrieved by a decision of the Planning and Zoning Commission in carrying out the provisions of the zoning ordinance may appeal that decision to the Bernalillo Town Council. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(J), page 41).

The standard of review by the Town Council of a Planning and Zoning Commission decision is whether:

1. An error was made in the presentation of the facts;
2. The decision was arbitrary or capricious; or
3. The decision was not supported by the evidence in the matter.

(Town of Bernalillo Zoning Ordinance, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(J)(1), pages 41-42).

The Town of Bernalillo Town Council is authorized to make final decisions to approve, approve with conditions, deny, or table until a specified future date, appeals from Planning and Zoning Commission decisions. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(C)(3)(d), pages 38).

Here, after lengthy discussion, and upon motion, the Town Council voted to uphold the Planning and Zoning Commission's denial of Appellant's Application for Zoning Variance. The record before the Court contains no written decision by the Town Council, no findings and no conclusions upon which the Town Council based its decision. In its letter to Appellant, the Town Council simply stated that it upheld the Planning and Zoning Commissions denial, and provided instructions on how to appeal their decision to District Court. (Record Proper, page 87).

Any person aggrieved by a decision of the Town Council may appeal to state district court. (Town of Bernalillo Zoning Ordinance No. 310, adopted by the Board of Trustees of the Town of Bernalillo, January 27, 2020, Section 19(J), page 41 and Section 19(J)(3)(d), page 42).

To grant the relief sought by Appellant, the Court must find that, in issuing its final decision, the Town Council:

- (1) Acted fraudulently, arbitrarily, or capriciously;
- (2) The decision was not supported by substantial evidence;
- (3) The action taken was outside the scope of its authority; or
- (4) The action was otherwise not in accordance with law.

(Rule 1-074(R), NMRA)

In his Statement of Appellate Issues, Appellant seeks review on the basis that the Town Council's decision was arbitrary and capricious and was not supported by substantial evidence.

"A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record." *Rio Grande Chapter of the Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005.

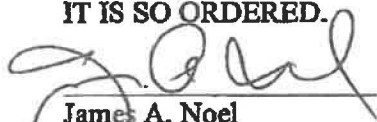
A factual and legal basis of a zoning decision is required. (See NMSA Sect. 3-21-9 "A person aggrieved by a decision of the zoning authority or any officer, department, board or bureau

of the zoning authority may appeal the decision pursuant to the provisions of Section 39-3-1.1 NMSA 1978"; and NMSA Sect. 39-3-1.1, which provides in pertinent part that zoning authorities, the definition of which includes the Town of Bernalillo (see Sect. 3-21-1 NMSA), must "prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order." Sect. 39-3-1.1(B)(1)). The district court exercising appellate jurisdiction under Section 39-1-1.1 NMSA 1978 is not a fact-determining body. Where, as in this case, a governing body is required by statute to provide a written factual and legal basis for its decision, and a decision turns on factual questions that the governing body failed to resolve, the district court must remand for further proceedings. *VanderVossen v. City of Espanola*, 2001-NMCA-016, 130 N.M. 287, 24 P.3d 319, cert. quashed.

In this case, the Court FINDS that the decisions of the Planning and Zoning Commission and the Town Council were devoid of any factual findings or rational basis for denial. When viewed in light of the whole record before this Court, the Town Council's decision falls squarely within the legal definition of arbitrary and capricious. Moreover, the Town Council's failure to adhere to the requirements of Sect. 39-3-1.1 was not in accordance with law.

For the foregoing reasons, the Court hereby VACATES the Bernalillo Town Council's decision upholding the Planning and Zoning Commission's denial of Appellant's Application for Variance. The Court REMANDS this matter to the Town of Bernalillo Town Council for further proceedings, and to establish a factual basis for granting, denying or otherwise acting on the Appellant's Application for Variance and Application for Fence/Wall Permit.

IT IS SO ORDERED.


James A. Noel
District Court Judge

I do hereby I served a copy of this document to all parties on the date of filing: /S/ JT

Rigoberto Garcia
543 Avenida Encantada
Bernalillo, NM 87004
George H. Perez E-filed

ATTACHMENT 2
NOTIFICATION OF TOWN COUNCIL
HEARING OF REMAND

Town of Bernalillo, New Mexico
VAR20-010 Abutters



Source: Esri, Mapbox, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Prepared By: S. Shumsky
Date: 9/9/2020

Disclaimer: This map is for illustration purposes only and should not be relied upon for other uses.

ABUTTERS - PZ OCT 6, 2020			
VAR 20-010			
NAME	PRIMARY ADDRESS	CITY, STATE ZIP	SECONDARY ADDRESS
Rigoberto & Rebecca Garcia	543 Avenida Encantada	Bernalillo, NM 87004	
Alex & Sofia Jaureguiberry	601 Avenida Encantada	Bernalillo, NM 87004	
Manuel Perez	549 Avenida Encantada	Bernalillo, NM 87004	
Robert & Clara Satriana	543 Calle De La Angel	Bernalillo, NM 87004	
Julia C'De Baca	542 Avenida Encantada	Bernalillo, NM 87004	
Richard & Marcella Casias	531 Avenida Encantada	Bernalillo, NM 87004	
Francisco Salazar	524 Avenida Encantada	Bernalillo, NM 87004	
Francisco & Ramona Salazar	530 Avenida Encantada	Bernalillo, NM 87004	
James Salazar & Clorice Prairie	533 Avenida Encantada	Bernalillo, NM 87004	
Krystal Marquez	542 Avenida Encantada	Bernalillo, NM 87004	

ATTACHMENT 3
NOD AND MINUTES FROM
TOWN COUNCIL HEARING OF APPEAL



Town of Bernalillo

"The City of Coronado"

KEEP THIS LETTER FOR YOUR RECORDS

November 24, 2020

Rigoberto Garcia
543 Avenida Encantada
Bernalillo, NM 87004

SUBJECT: NOTICE OF DECISION (APPEAL - VAR20-010)

Dear Property Owner,

At a public hearing on November 23, 2020, the Town of Bernalillo's Town Council DENIED your appeal of VAR20-010 and upheld the Planning and Zoning Commission's denial of your request for a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada, legally described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13 North, Range 4 East, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records).

This decision may be appealed to the Thirteenth Judicial District Court within the time frame allowed by the Court. For more information, visit <https://thirteenthdistrictcourt.nmcourts.gov>

If you have questions, please contact me at (505) 771-5896 or sshumsky@townofbernalillo.org

Sincerely,

Stephanie Shumsky

Stephanie Shumsky
Planning and Zoning Director

Cc: Ida Fierro, Town Clerk (file copy)
Suzanne Hathon, Code Enforcement Officer

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**MINUTES OF A REGULAR MEETING
OF THE GOVERNING BODY OF THE TOWN OF BERNALILLO
HELD AT THE TOWN HALL
November 23, 2020**

The Governing Body of the Town of Bernalillo met in a regular session, virtually via WebEx, within the law and rules of the Town on November 23, 2020, at 6:30 P.M.

Upon roll call the following members were found to be present:

PRESENT:	ALSO PRESENT:
Councilor Valverde	
Councilor Torres-Quintana	
Councilor Prairie	
Councilor Dominguez	
Mayor Torres	

ABSENT: Others Present Not Identified

APPROVAL OF AGENDA: 4)
Mayor entertained a motion.

Councilor Dominguez moved to approve the agenda as presented. The motion was seconded by Councilor Torres-Quintana.

Roll Call Vote:

Councilor Dominguez	Yea
Councilor Prairie	Yea
Councilor Torres-Quintana	Yea
Councilor Valverde	Yea

PUBLIC HEARING: 5a) Discussion, Consideration, and Approval of the Proposed Issuance by the Alcohol and Gaming Commission of the State of New Mexico, or a Transfer of Ownership of Liquor License Number 0426. The Applicant BW & Gas & Convenience Retail, LLC doing business as Allsup's #102216. The License is currently held at this Location, but had a Change of Ownership. Location of License 0426 is 712 Camino Del Pueblo, Bernalillo, NM. Presenter: Ida Fierro

Ida Fierro, Town Clerk/Administrator, introduced the proposed transfer of ownership of Liquor License Number 0426: In your packet, you have an application for transfer of dispenser's liquor license for Allsup's to BW Gas & Convenience Retail LLC. The only thing that is changing in the license is a transfer of ownership for the license. I stand before you for any questions.

Mayor asked if the Governing Body had any questions. There were none.

Mayor asked if there was anyone from BW Gas & Retail was present to comment.

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Linda Aiken, attorney for BW & Gas, was present and stated her name and title for the record: I have nothing to add, unless you have any questions.

Mayor Torres asked if there was any public comment or questions. There were none.

Mayor Torres asked for a motion on the Proposed Issuance by the Alcohol and Gaming Commission of the State of New Mexico, or a Transfer of Ownership of Liquor License Number 0426. The Applicant BW & Gas & Convenience Retail, LLC doing business as Allsup's #102216. The License is currently held at this Location, but had a Change of Ownership. Location of License 0426 is 712 Camino Del Pueblo, Bernalillo, NM.

Councilor Valverde made a motion to approve the transfer of ownership of Liquor License Number 0426. The motion was seconded by Councilor Prairie.

Roll Call Vote:

Councilor Prairie	Yea
Councilor Valverde	Yea
Councilor Dominguez	Yea
Councilor Torres-Quintana	Yea

PUBLIC HEARING: 5b) Discussion, Consideration, and Action of the Planning and Zoning Commission's denial (for a Lack of Motion) of VAR20-010. Described as follows: Rigoberto Garcia (Property Owner) filed an appeal of the Planning and Zoning Commission's Denial of VAR20-010. described as follows: A request for a Variance of 2' to the Allowed Fence Height of 4' at 543 Avenida Encantada. Legally Described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13N, Range 4E, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, Zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records). Presenter: Stephanie Shumsky

Stephanie Shumsky, Planning and Zoning Director, introduced VAR20-010 appeal to the Governing Body: On November 4th, Mr. Garcia filed an appeal of the Planning and Zoning Commission's denial of Variance 20-010. There are three criteria in which to file an appeal: (a) the applicant has to indicate if an error was made in the presentation of the facts, (b) the decision was arbitrary or capricious, or (c) the decision was not supported by evidence in the matter. Mr. Garcia filed his appeal under criteria (b) and (c), which is that the decision was arbitrary or capricious and the decision was not supported by evidence. Applicant provided their appeal application, a lengthy justification in addressing the criteria for the appeals, and also in your packet is the Planning and Zoning Commission Minutes, Notice of Decision, and Staff Report. The Planning Commission discussed this item and then there was no motion and the item, therefore, was denied. With that, I stand for any questions.

Councilor Prairie asked: Did the Commission not have enough information to make a decision?

91

92 Stephanie Shumsky replied: The Planning Commission had a quite a bit of information. They have
93 the application, they had the staff report – which included photographs, a map showing the
94 property – they were able to discuss the item with the applicant, they applicant did provide them a
95 lengthy description of the property and why they needed the fence height variance, and they did
96 have quite a bit of discussion. But, generally, when the Planning Commission does not want to
97 approve something, they will just not make a motion.

98

99 Councilor Prairie asked: And what does the Zoning Ordinance say about fences?

100

101 Stephanie Shumsky replied: Fences within the front yard setback, in any residential zone, are
102 limited to four feet in height. Mr. Garcia is requesting a six-foot-high fence within the front yard
103 setback area. In your packet there are some photos that were provided with the staff report that
104 went to the Planning Commission. You can see that he's already installed the fence. You can see
105 what the fence looks like from the street view. Staff recommended denial primarily on safety
106 factors. It is difficult for emergency personnel to see inside a yard when someone has a solid fence
107 that is taller than four feet.

108

109 Mayor Torres asked if any of the other Councilors had questions.

110

111 Councilor Dominguez asked: I'm looking at the application and I drove the neighborhood, there
112 are other properties that have six feet fences and there is one in front yard. Were those approved
113 with the prior ordinance? Was it different?

114

115 Stephanie Shumsky replied: I don't know if those were approved under the previous ordinance.
116 The current ordinance did not change from the previous ordinance in relation to the height of
117 fences in front yard setbacks. It's always been four feet. That has always been the Town's limit
118 and I can't speak to those other properties if they've received variances in the past or not.

119

120 Mayor Torres also replied: To my knowledge, since I've been here, the Governing Body has not
121 approved a six-foot fence for a front fence. But, prior to that, I couldn't answer either.

122

123 Councilor Prairie stated: I believe the house across the street is five or six and it has been there for
124 about 15 years. Because, I recently painted that house when it was built and I remember them
125 putting the chain-link fence shortly after.

126

127 Councilor Dominguez asked: Stephanie, is it my understanding that, under our ordinance, the front
128 fence could only be four feet high, while the side and back can be six feet?

129

130 Stephanie Shumsky replied: The fence can only be four feet within the front yard setback, which is
131 along the front property line and along the side property line 20 feet back. And then, it can be six
132 feet tall.

133

134 Councilor Dominguez asked: And is that throughout the town?

135

136 Stephanie Shumsky replied: That's throughout the town in any residential zone.

137

138 Councilor Torres-Quintana stated: I'm feeling the same way as Councilor Dominguez. We do have
139 houses in that area that do have the same issue? Are we then going to make them adjust their
140 fencing?

141

142 Stephanie Shumsky replied: We can research each of those individual cases and follow-up with
143 them if they did not receive a variance. That's easy enough to do. However, variances are taken on
144 their own merit. So, I cannot speak to the merits of any of those other fences at this time because
145 each variance is different. It is up to the applicant address the criteria for the variance. I can't speak
146 to what was done in the past.

147

148 Councilor Torres-Quintana stated: I just wanted to confirm the what was stated in the minutes of
149 the Planning and Zoning Commission meeting that was brought up by Commissioner Quintana:
150 Was this brought up because of an open case? No residents called it in as a concern?

151

152 Stephanie Shumsky replied: There are several issues with this property, but the reasoning for the
153 fence is that the Town noticed that Mr. Garcia constructed the fence without a permit. They then
154 received a notice of violation and they were required to obtain a variance if they were to keep the
155 six-foot fence. I can't speak to the other issues they have on the property with the Town.

156

157 Councilor Torres-Quintana stated: As far as your aware, this was brought up because it was an
158 issue that the Town noticed. Did no one in the area had complained about it, prior to?

159

160 Stephanie Shumsky replied: The Town has received many complaints about that property from
161 various neighborhood residents. However, in this particular case with the fence, I believe it was the
162 Town's Code Enforcement Officer that noticed the fence had been constructed. We then
163 researched to see whether or not they received a permit – which they did not. And then Mr. Garcia
164 received a notice that he had to request a variance.

165

166 Councilor Prairie asked: So, it's ok to not to have permit, but ask for a variance? Is that what I'm
167 hearing?

168

169 Stephanie Shumsky replied: No. It's not right to build something without a permit. A variance is
170 not an appeasement of that requirement. People should request a permit first, if they don't want to
171 comply with the Town's requirements, they should then request a variance before they get their
172 building permit. If the variance gets approved, they can get their building permit. If the variance is
173 not approved, then they will have to comply with the Town Ordinance.

174

175 Councilor Prairie stated: I know that in the past, when Mr. Benney was here, he would put up Stop
176 Notices until they could get a permit. Why is this not the case?
177

178 Stephanie Shumsky replied: Generally, when there is a notice of violation that goes out, and then
179 an applicant immediately makes an application, or files an appeal, it pretty much stays that action.
180 It stops where it is. He hasn't, to my knowledge, change or expanded the fence at all. He stopped at
181 that point when he was notified that he needed a permit. He filed his application for the variance
182 and you need a permit. So, he stopped and, if this is denied, he will have to modify his fence or
183 removed the fence, whatever is decided.
184

185 Mayor Torres then asked if Mr. Garcia would like to address the Council.
186

187 Mrs. Garcia addressed the Council: This is Mrs. Garcia, Rigoberto's wife. We are here together on
188 the call. I believe that our application and reasons were sent to everyone. I do want to note that on
189 our application for the variance, it asked to explain the inherent hardship. And, our property, if you
190 look at the map, is funnel shaped. If you were to subtract 20 feet of setback from the whole front of
191 our property, that actually subtracts 2,320 square feet from our property. That becomes basically
192 unusable because it is the setback. Our property is about 8,000 square feet, so that is about a
193 quarter of our land is unusable because of the setback. As it was mentioned, there is a lot of other
194 houses in the area that do have a six-foot fence in front of their side yard, along the front, but just
195 in front of the side yard – which is just what we are asking for. We are not asking to have a fence
196 in front of the house. So, we are asking for a fair decision since other yards are fenced with a
197 privacy fence all the way out to the property line in front. We are not asking to put a fence in front
198 of the house, just in front of the side yard. We are just asking for the consideration that we did
199 make the mistake of not getting a permit first... *in Ambrose*
200

201 Audio and video connection to Mr. and Mrs. Garcia was lost.
202

203 Mayor Torres stated: Mrs. Garcia we lost you for a minute there. We last heard that others have the
204 same things with their homes.
205

206 Audio and video connection to Mr. and Mrs. Garcia continued to be lost. Mayor Torres asked staff
207 to reach out to Mr. and Mrs. Garcia by other means.
208

209 Connection to Mr. and Mrs. Garcia was reestablished on Webex.
210

211 Councilor Dominguez asked of the Garcias: We missed part of your presentation just now. I do
212 have a question. Are you requesting on sides of the fence?
213

214 Mrs. Garcia responded: I said, we apologize for not obtaining a permit. I didn't know we needed
215 to. We realize that ignorance of the law is not an excuse, but where we lived before, we didn't
216 need to get a permit to build a fence. The fence that we have built is six-foot tall, but it is only in

217 front of the side yard, it's not in front of the house.

218

219 Mayor Torres stated: I want to clarify that, Mrs. Garcia. I think we are saying the same thing, but a
220 little bit differently. So, when you say you want a fence in front of the side yard, you're talking
221 about front property line that's closest to the street, but not in front of your actual house structure?
222 But it is the front property line in which you are asking for the variance for? Is that correct?

223

224 Mrs. Garcia responded: Yes, that is correct.

225

226 Councilor Valverde stated: Mayor, that was my question also because basically, if we're talking
227 about a fence in front of the house. But the Garcia's are referencing a side yard. So, I was a little
228 confused.

229

230 Mayor Torres asked: Did my clarification make sense?

231

232 Council Valverde stated: With the applicant saying there is a fence in front of the house and then
233 now, come to see it is the side yard. Is she trying to change the definition of the yard different from
234 the Zoning?

235

236 Mayor Torres replied: So, the way we have always referred to the front is that we are talking about
237 the property line along the roadway. And for us, we don't usually distinguish between the front of
238 the yard and the front of the side yard. So, what she is talking about is a fence that along the front
239 property line, but the fence starts where the house ends and runs to the corner, to the side property
240 line. Does that make sense?

241

242 Councilor Valverde replied: I think so. I drove by and it did seem like it was on the front.

243

244 Councilor Prairie asked: Is there any restrictions by the home owners association or a covenant?
245 George, could you answer that?

246

247 Mayor Torres asked: George, did you hear the question?

248

249 George Perez, Town Attorney, replied: Yes, I think I heard the question. I don't believe the
250 covenant referred to any fencing. But, I don't have them in front of me so I don't know for sure.
251 The only restriction, that I know of, is what the Town Ordinance says that you can't have a six-
252 foot fence on your front yard. She's calling it a side yard, but the picture depicts a six-foot fence in
253 the front.

254

255 Mrs. Garcia stated: If I may, it is in the front, but it is not in front of the house.

256

257 Mayor Torres responded: We understand that. The way you stated it is a little different than we are
258 used to referring to it. But, I think we all understand now what you meant. I just wanted to say that

259 I know there is frustration with other zoning violations. We've seen it before in the town. My
260 biggest concern is for safety. What I worry about is if we allow six-foot fences in the front, along
261 the front property line – whether its to the side of the house or not – just based on the fact that it
262 really limits visibility. If Police or Fire have to respond, with a four-foot fence, you can see inside
263 the yard. With a six-foot fence, we don't have any staff that would be able to see in there. I know
264 it's a frustration because the fence was built. But, I just worry that we would be putting staff in
265 harms way. I would hate to start approving variances for six feet in the front because the bottom
266 line is that it is a safety issue. A four-foot fence still would allow you to use your property, it is not
267 taking from your property. This would just allow for the visibility and the visibility I have concern
268 with is by our staff, by our Police and Fire Departments in particular. I just wanted to state that.
269

270 Mayor asked if the Governing Body had any further questions. There were none.

271

272 Mayor Torres asked if there was any public comment or questions. There were none.

273

274 Mayor Torres asked Mrs. Garcia if she had any further comments.

275

276 Mrs. Garcia responded: With the issue you just mentioned; the fence is only 35 feet long and does
277 not go in front of the house. It does not block the address or access to the house, it doesn't block
278 the drive way, it doesn't block the front of the house in any way. So, I don't think it would pose a
279 safety issue from our point of view because access to the house is completely open.

280

281 Mayor Torres asked for a motion on Planning and Zoning Commission's denial (for a Lack of
282 Motion) of VAR20-010, Described as follows: Rigoberto Garcia (Property Owner) filed an appeal
283 of the Planning and Zoning Commission's Denial of VAR20-010, described as follows: A request
284 for a Variance of 2' to the Allowed Fence Height of 4' at 543 Avenida Encantada, Legally
285 Described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13N, Range 4E,
286 Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico,
287 Zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor
288 records).

289

290 Councilor Prairie moved to uphold the Planning and Zoning Commission's denial of VAR20-010
291 and must be modified to four feet. The motion was seconded by Councilor Valverde.

292

293 Councilor Dominguez asked: Could I make an amendment before I vote?

294

295 Mayor Torres responded: You could make a motion for the amendment and we would have to
296 revert to Councilor Prairie and Valverde for approval.

297

298 Councilor Dominguez stated: I would like to make an amendment that would add that the other
299 fences in the neighborhood, that we could check if permits were approved for that. And if not, then
300 the Planning and Zoning do the same thing with those property owners as we are doing with this

301 one.

302

303 Mayor Torres responded: I would suggest that we can do that, but I don't think that it can be in the
304 motion. George, what do you think?

305

306 George Perez responded: I agree with the Mayor. I do not think that this is appropriate for this
307 item. You're asked to uphold or deny the action of the Zoning Commission. Other properties
308 should not come into a motion concerning this property.

309

310 Councilor Dominguez thanked everyone, rescinded her amendment, and voted yea.

311

312 **Roll Call Vote:**

313 Councilor Valverde Yea

314 Councilor Dominguez Yea

315 Councilor Torres-Quintana Yea

316 Councilor Prairie Yea

317

318

319 **PUBLIC HEARING: 5c) Discussion, Consideration, and Action of the Planning and**
320 **Zoning Commission's denial (for a Lack of Motion) of CUP20-004, described as follows:**
321 **Troika Consortium, LLC- Gilbert and Debby Lucero (appellant) and Elsie Cordova (Agent)**
322 **filed an appeal of the Planning and Zoning Commission's denial of CUP20-004, A Conditional**
323 **Use Permit for New and Used Car Sales at 791 US HWY 550, Legally described as Lands of C De**
324 **Baca Subdivision, Lot C, Located in Section 30, Township 13N, Range 4E, New Mexico Principal**
325 **Meridian, Town of Bernalillo, Sandoval County, New Mexico, Zoned C-1 and containing**
326 **approximately 1.987 acres (according to Sandoval County Assessor records). Presenter:**
327 **Stephanie Shumsky Stephanie**

328 Stephanie Shumsky, Planning and Zoning Director, introduced CUP20-004 appeal to the
329 Governing Body: At their November meeting, the Planning Commission denied this request for
330 lack of a motion. There was a lot of discussion about this item. A motion was actually made for
331 approval with all the conditions that were recommended by staff. There was no second to that
332 motion and no follow-up motion made, therefore the item was denied. The applicant submitted
333 their appeal immediately after the meeting. They have indicated that they feel an error was made in
334 the presentation of the facts and that the decision was arbitrary or capricious. In your packet is the
335 application, the notice of decision, the minutes from the meeting, the staff report, and the letters of
336 opposition that were part of the Planning and Zoning Commissions packet. A lot of letters of
337 opposition by the neighborhood residents. I'll stand for any questions.

338

339 Mayor Torres asked if there was anyone present for Trioka Consortium LLC.

340

341 Elsie Cordova identified herself and greeted the Governing Body, stating: I am speaking on my
342 behalf and Mondragon Motors. In regards to Stephanie's remarks to the original meeting we had,
343 yes, we did meet with them. However, we were not provided the necessary information prior to the

ATTACHMENT 4
STAFF REPORT FOR TOWN COUNCIL
HEARING OF APPEAL (P&Z NOD, MINUTES, ETC.)



TOWN OF BERNALILLO
"The City of Coronado"

ITEM: APPEAL – VAR20-010

PLANNING
&
ZONING
DEPARTMENT

Planning and Zoning
Director
Stephanie Shumsky

Building Official
Vacant

Planning & Zoning
Clerk
Lee Ann Romero

PLANNING
&
ZONING
COMMISSION

Juanita Duran
Chairperson

Dominick Lepore
Vice Chair

Joseph Moreno

Sandra Candelano

Antonette Eichwald

Raul Montano

Joseph O. Quintana

Staff Summary

On November 4, 2020, Rigoberto Garcia (property owner) filed an appeal of the Planning and Zoning Commission’s denial (for lack of a motion) of VAR20-010, a request for a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada, legally described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13 North, Range 4 East, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records).

Zoning Ordinance, Section 19.J., provides the process, application and approval regulations for an appeal, as reiterated below:

J. Appeals. Any person aggrieved by an administrative decision, a decision of the Commission, or the Town Council in carrying out the provisions of this Ordinance may appeal such decision. Administrative decisions may be appealed to the Commission; Commission decisions may be appealed to the Town Council; and Town Council decisions may be appealed to State District Court.

1. Criteria for Appeal:
 - a. An error was made in the presentation of the facts; and/or
 - b. The decision was arbitrary or capricious; and/or
 - c. The decision was not supported by the evidence in the matter.
2. Application. Any appeal following a decision made by the Zoning Officer or the Commission shall be made in writing on prescribed forms available at the Town office with the applicable filing fee and submitted to the Zoning Officer. The Town Council shall only consider appeals submitted within 30 days after the decision, which is the subject of the appeal.
3. Public Hearing.
 - a. At the hearing, the Commission or Town Council shall issue its decision on the appeal. Notification of the time and place of the public hearing shall be noticed per the Open Meetings Act requirements [10-15-1 to 10-15-4 NMSA 1978].

- b. Stay of Proceedings.** An appeal shall stay all proceedings in the action unless the Zoning Officer certifies that a stay will cause imminent peril to life or property.
- c. Decision.** A majority vote of the members of the Commission or Town Council is required to reverse, change, or affirm the previous decision.
- d. State District Court.** Appeal of a Town Council decision shall be made to the State District Court. Appeals must be filed within 30 days after the decision, which is subject to the appeal.

The Appellant filed this appeal under criteria b and c, and asserts that the Planning and Zoning Commission's decision was arbitrary or capricious and that their decision was not supported by the evidence in the matter. In support of his case, the Appellant provided an (undated) letter of justification.

Attachments:

- 1. Application for Appeal filed 11/4/2020**
- 2. VAR20-010 Notice of Decision**
- 3. Minutes from the 10/6/2020 Planning Commission hearing**
- 4. VAR20-010 Staff Report**

ATTACHMENT 1



"The City of Coronado"

Paid 11/4/2020
RECEIVED
OCT 22 2020
BY: P32 Dept.

Town of Bernalillo

APPLICATION FOR APPEAL

Appeal of Zoning Officer or Planning & Zoning Commission decision, in accordance with Comprehensive Zoning Ordinance, Section 19 or Subdivision Ordinance, Section 25.

INSTRUCTIONS

In accordance with the Town of Bernalillo Comprehensive Zoning Ordinance, Section 19 or Subdivision Ordinance, Section 25, any aggrieved person or persons affected by any action or decision made by the Zoning Officer or the Planning & Zoning Commission in the fulfillment of their duties may appeal *in writing* to the Town Council *within 30 (thirty) days* after the date of said action or decision. Appeals not submitted in writing, or appeals submitted after the 30 days, shall not be considered. To appeal, type or print clearly on this form and submit to the Governing Body of the Town of Bernalillo through the Town Manager. Include the reason for the appeal and how the appeal meets the criteria required in the Zoning Ordinance or Subdivision Ordinance. Incomplete or inaccurate applications may delay the review process. The application must be accompanied by the appropriate *Filing Fee of \$100.00 (one-hundred dollars)*.

APPLICANT INFORMATION:

Rigoberto Garcia		543 Avenida Encantada		
NAME		ADDRESS		
Bernalillo	NM	87004	505-948-6462	colochihnm@yahoo.com
CITY	STATE	ZIP	PHONE	EMAIL

AGENT INFORMATION (IF APPLICABLE):

NAME		ADDRESS		
CITY	STATE	ZIP	PHONE	EMAIL

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY:

543 Avenida Encantada, Casa Encantada Subdivision, Block 1, Lot 21
Township 13 north, Range 4 East, Section 31, NM Prin. Meridian
Town of Bernalillo, Sandoval Cty, NM

TYPE OF APPEAL REQUESTED

- Zoning Officer Decision
- Planning & Zoning Commission Decision

See next page for criteria/explanation section

WHAT IS THE REASON FOR THIS APPEAL (one or more must apply)?

- An error was made in the presentation of the facts.
- The decision was arbitrary or capricious.
- The decision was not supported by the evidence in the matter.

EXPLANATION (attach a separate sheet if necessary):

Please see attached.

ACKNOWLEDGEMENTS

Application is hereby made for familiar with, and have complied with, any and all requirements of the Comprehensive Zoning Ordinance of the Town of Bernalillo related thereto. I further understand and agree that neither the Town nor any of its agents shall be held liable for any lack of understanding, or misinterpretation, on my part, of any said requirements.

Signature of Applicant or Agent: [Signature] Date: 10/19/2020

Receipt by Town Manager: [Signature] Date: 10/19/2020

Application Fee Total: \$ 100.00 Receipt #: 00863173

Hearing Location, Date & Time: _____

I appeal the decision to deny my application for a variance for the following reasons:

The decision was arbitrary. It was based on nothing. No arguments were presented, either by neighbors or by council members or by Planning and Zoning, as to why the variance should not be granted. This fence does not encroach upon nor violate the property rights of any other homeowner on our street. It does not deprive any other homeowner of the free use of their land. It cannot be classified as a nuisance or risk to any person.

The decision was capricious and unfair. The house on the northeast corner of Camino Don Tomas and Calle del Norte has a 6 foot fence across the front part of the side yard. It lowers to approximately 4 feet in front of the house. The house on the southeast corner of Calle del Norte and Calle de la Angel has a 6 foot wall with beautiful black stucco about 5 feet from the pavement running along the north side in front of the side yard, again lowering to about 4 feet in front of the house itself. Across Calle de la Angel to the west is another house with a privacy fence in front of the whole house with the exception of the garage. The house directly across the street from us on Avenida Encantada has a six foot chain link fence with slats that encloses the majority of the yard and is less than 5 feet from the pavement in some spots. There are many other examples, but these are very close to our property. If they were granted a variance while we were not, this goes to the capriciousness of the decision. Whether they were granted a variance or simply were allowed to leave their six foot fences or walls in place because no one reported them, either shows that this decision is unfair.

The decision was not supported by evidence; indeed, no evidence was presented at all. Every act of government should be made in the best interest of and for the health, safety, and general welfare of the public. This fence does not negatively affect the health, safety, or general welfare of anyone. It makes the neighborhood look tidier, so it also does not negatively affect the value of surrounding property.

We believe this baseless decision may have been influenced by inspector, Susanne Hatham. She has bullied and harassed me since we moved here. She has come to my property and demanded access, which I have denied her. She has gone to neighbors and demanded access to their property so she could spy on my yard. She took pictures of my property from my neighbor's deck. She told me that she "knew why I was putting up the fence—that it was to hide my 'junk.'" On the zoom meeting with the City Council regarding the application for variance, Council member Quintana falsely accused me in the presence of all the members and everyone on the call, saying that he understood I was putting of the fence to hide "debris." I believe his baseless remark, yea insult, stemming from personal prejudice propagated by the Inspector, influenced the other members to deny my application. This is grossly unfair, as there is no evidence that I have any "debris" in my property. Any decision made by government officials must be based on facts and verifiable evidence, not on whim, baseless belief, or unfounded prejudice.

I strongly deny having "junk" or "debris" on my property. I have read the Town statutes defining litter, and nothing in my yard falls into that category.

The zoning laws and exceptions thereto (variances) are supposed to reflect the vision and desire of the public and serve their general welfare (and not the desires of one troublesome neighbor, of a

disrespectful inspector, or of a few councilpersons.) We ask that this decision be based on facts and evidence, not whim. Please also take into consideration the fact that no neighbor presented arguments against the fence in question on the Zoom Meeting. Lastly, we ask that you also be mindful of our rights as homeowners to enjoy the full use of our property, especially in light of the fact that we are not encroaching upon the property rights of those around us.

Please see our application for variance to understand the reasons we would like to have full use of our side yard.

copy of Variance Application 6 factors

We are respectfully asking to be allowed to have a privacy fence around a portion of our property, to extend the use of our side yard.

1. Our property is "funnel" shaped; the front is nearly twice as wide as the back. Our property line is supposedly about 20' from the edge of the pavement. Therefore the setback would supposedly be another 20' from the property line, resulting in a 40' swath of gravel about 116 feet long across the front of our lot which can only be used for parking. That's 4,640 sq ft of land that is basically unavailable for use.
2. Most lots in the area are not wider at the front than the back.
3. This hardship is inherent to the shape of the lot and is not self-imposed.
4. This project poses no public safety issue. It makes the neighborhood look neater and tidier. The fence is new and made of pine and is beautifying to the area.
5. We believe the spirit of the Zoning Ordinance is to have consistency throughout the community and that all improvements be aesthetically pleasing. There are many 6' walls and fences throughout the neighborhood that sit on property lines, some 5'-20' from the asphalt. The house directly in front of our property across the street has a 6' fence surrounding the whole yard, in close proximity to the road. A house at the end of our street has a 6' wall about 5' from the pavement on the front end of their side yard just as we are asking to do. There are many other examples. Therefore consistency would be observed and justice done.
6. Again, the front line of our property is much wider than the back, making the back yard smaller than the heretofore unusable front setback area. Therefore, to make reasonable use of our land, we would like to extend the side yard to the front property line. The 6' ft privacy fence would only be approximately 35' long. Our front property line is approximately 116' long. The other 81' would be open with no fencing. The privacy fence would not be in front of the house, but this improvement would extend our side yard out and give us better use of our land.



Town of Bernalillo

"The City of Coronado"

KEEP THIS LETTER FOR YOUR RECORDS

October 7, 2020

Rigoberto Garcia
543 Avenida Encantada
Bernalillo, NM 87004

SUBJECT: NOTICE OF DECISION (VAR20-010)

Dear Property Owner,

At a regularly scheduled public hearing on October 6, 2020, the Town of Bernalillo Planning and Zoning Commission, for lack of a motion, DENIED your request for a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada, legally described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13 North, Range 4 East, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records).

Any aggrieved person or persons affected by any action or decision made by the Zoning Officer or the Commission may appeal to the Trustees (Town Council) within 30 days for zoning matters, or within 15 days for subdivision matters, after the date of the action or decision being appealed.

Applications for appeal are available at:
www.townofbernalillo.com/departments/planning_zoning/forms_applications

If you have questions, please contact me at (505) 771-5896 or sshumsky@townofbernalillo.org

Sincerely,

Stephanie Shumsky
Planning and Zoning Director

Cc: Ida Fierro, Town Clerk (file copy)
Suzanne Hathon, Code Enforcement Officer

TOWN OF BERNALILLO
(505) 867-3311

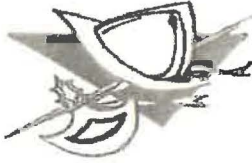
REC#: 00363173 11/04/2020 4:24 PM
OPER: MG TERM: 002
REF#: 1067

TRAN: 305.0000 ZONING FEES
APPEAL 11.4.2020 MG
100-000-4042-1-2
Zoning Fees 100.00CR

TENDERED: 100.00 CHECK
APPLIED: 100.00-

CHANGE: 0.00

ATTACHMENT 2



Town of Bernalillo

"The City of Coronado"

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Sincerely,

Stephanie Shumsky
Planning and Zoning Director

Cc: Ida Fierro, Town Clerk (file copy)
Suzanne Hathon, Code Enforcement Officer

ATTACHMENT 3

1
2 **MINUTES OF A REGULAR MEETING**
3 **OF THE PLANNING & ZONING COMMISSION**
4 **OF THE TOWN OF BERNALILLO**
5 **HELD AT THE TOWN**
6 **October 6, 2020**
7

8 The Planning & Zoning Commission of the Town of Bernalillo met in person and virtually via
9 WebEx in regular session within the laws and rules of the Town on October 6, 2020 at 6:35pm.

10
11 **Call to Order**

12
13 Vice Chairperson Lepore called the meeting to order at 6:35 PM, and led those attending in the
14 Pledge of Allegiance.
15

16 **Roll Call**

17
18 Upon Roll call the following members were found present:
19

20 **PRESENT:**

21 Commissioner Raul Montaña
22 Commissioner Antonette Eichwald (Via WebEx)
23 Commissioner Joseph O. Quintana
24 Commissioner Dominick Lepore
25 Commissioner Joseph Moreno
26

ALSO PRESENT: (via WebEx):

Paul Liebert
Elsie Cordova
Mark Mondragon
Maurice Herrera
Racquel Gonzales-Petelsk
Robert C De Baca
Rigoberto Garcia
Julia C De Baca
Oliver Romero
Jennifer Donaldson
Ralph Brown
Others Present Not Identified
ALSO PRESENT (in person):
Mike Kloeppe, Economic Dev. Director
Stephanie Shumsky, Planning & Zoning Director
LeeAnn Romero Planning & Zoning Clerk

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38 **ABSENT:**

39 Commissioner Sandra Candelario
40 Chairperson Juanita Duran
41 A quorum was present
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APPROVAL OF AGENDA: Item 3)

Commissioner Quintana motioned to approve the agenda as presented. Record shows a request of deferral on item 6e) **ZMA 20-006 Zone Map Amendment** to a later date. The motion was seconded by Commissioner Montaño and it carried unanimously.

Motion Carried – Item Deferred to Next Meeting

APPROVAL OF MINUTES: Item 4)

Commissioner Quintana made a motion to approve the minutes of September 1, 2020 as presented. The motion was seconded by Commissioner Moreno and it carried unanimously.

Roll Call Vote:

- Commissioner Quintana - yes
- Commissioner Lepore - yes
- Commissioner Moreno – yes
- Commissioner Eichwald – yes
- Commissioner Montaño – yes

Motion Carried – Item Approved

SWEARING IN OF WITNESSESS: Item 5)

All WebEx witnesses were sworn in individually on each item by Vice Chairperson Lepore.

PUBLIC HEARING: Item 6a) DEMO 20-001 Demolition Permit: Paul Liebert (property owner, requests approval to demolish and remove three small shed/storage structures at the rear of the property at 865 S. Camino del Pueblo, legally described as Tract 14, MRGCD Map 11, located in Township 12 North, Range 4 East, Section 5, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned C-1, in the Mainstreet Overlay Zone, and containing approximately 0.396 acres (according to Sandoval County Assessor records).

Paul Liebert resident at 865 South Camino Del Pueblo stated that there are three structures within his property, a garage and two sheds that he is requesting to demolish.

There were no public comments or questions from the Commission at this time.

Commissioner Quintana made a motion for approval of DEMO20-001 a request by Paul Liebert (property owner) to demolish and remove three small shed/storage structures at the rear of the property at 865 S. Camino del Pueblo, legally described as Tract 14, MRGCD Map 11, located in Township 12 North, Range 4 East, Section 5, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned C-1, in the Mainstreet Overlay Zone, and containing approximately 0.396 acres (according to Sandoval County Assessor records), under the following conditions:

Conditions:

- 1.) The applicant shall obtain the required demolition permit through the New Mexico Construction Industries Division prior to demolition of the structure.***

90 Mr. Liebert stated that he would need to figure out what the condition meant.
91 Ms. Shumsky stated to Mr. Liebert that since his application for demolition was submitted to the
92 Town of Bernalillo, the permitting and inspection program has been transferred over to the State
93 of New Mexico Construction Industries Division. Ms. Shumsky stated the location of the office
94 to Mr. Liebert and stated how the process would be handled by the Construction Industries
95 Division.

96
97 The motion was seconded by Commissioner Moreno and it carried unanimously.

98
99 **Roll Call Vote:**
100 Commissioner Quintana - yes
101 Commissioner Lepore - yes
102 Commissioner Moreno – yes
103 Commissioner Eichwald – yes
104 Commissioner Montañó – yes

105
106 **Motion Carried – Item Approved**

107
108 **PUBLIC HEARING: Item 6b) VAR 20-009 VARIANCE: Elena Chavez (property**
109 **owner)** requests approval of a Variance of 2’ to the allowed fence height of 4’ at 137 E. Calle
110 Montoya, legally described as Perea Addition, Block 2, Lot 1, located in Township 13 North,
111 Range 4 East, Section 32, New Mexico Principal Meridian, Town of Bernalillo, Sandoval
112 County, New Mexico, zoned R-1A and containing approximately 0.130 acres (according to
113 Sandoval County Assessor records).

114
115 Maurice Herrera, resident at 137 East Calle Montoya is requesting a 5-foot chain link fence
116 instead of a 4-foot fence in the front of the home, along with a 6-foot wooden fence on the side of
117 the home. The fences were up before the mobile home was pulled onto the property, Mr. Herrera
118 is requesting permission to replace the current fences. Mr. Herrera also stated that there have
119 been numerous people on his property, so the fences would help to protect his yard. Mr. Herrera
120 stated that the 6-foot fence extends about 12-15 feet before the stop sign, and the front is chain-
121 link fencing.

122
123 Record shows Commissioner Moreno recused himself from this item.

124
125 Commissioner Montañó asked Mr. Herrera if there was going to be a foot difference between the
126 fences. Commissioner Montañó also asked Mr. Herrera if it is just going to be open chain-link or
127 if he would be putting any slats into the fence.

128
129 Mr. Herrera stated that he would not be putting slats into the fence at this time.

130
131 Vice Chairperson Lepore asked the Commission for a motion to which there was none made.

132
133 Mr. Herrera asked the Commission why his item was denied.

134
135 Vice Chairperson Lepore then let the applicant know that since there was no motion made, the
136 item was denied and may be appealed at Town Council.

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Mr. Herrera then requested a phone call from Ms. Shumsky for further clarification.

Ms. Shumsky stated that Mr. Herrera can construct a 4-foot fence along the front, and front sides of his properties if he so chose.

Mr. Herrera then stated that he was just wanting to replace his fence with a five and six-foot fence to protect his property, and that it would make the property look 100 percent better than it currently does.

Vice Chairperson Lepore let the applicant know that since there was no motion made, the item was denied and may be appealed at Town Council.

No Motion - Item Denied

PUBLIC HEARING: Item 6c) VAR 20-010 VARIANCE: Rigoberto Garcia (property owner), requests approval of a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada, legally described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13 North, Range 4 East, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records).

Rebecca Garcia resident at 543 Avenida Encantada stated that the request is for a privacy fence across a partial area of the side yard. Ms. Garcia stated that the property is funnel shaped, so the front of the property is twice as wide as the back of the property. Ms. Garcia stated, to make full use of the side yard she wants to extend the line of the side yard to the front line. The fence is about 35 feet.

Some of Ms. Garcia's comments were inaudible at this point.

Commissioner Quintana asked Ms. Garcia if the Town of Bernalillo Code Enforcement has an open court case against her due to the accumulation of debris on her property.

Ms. Garcia stated that the case is open, but there is no debris on the property. Ms. Garcia also stated that she plead not guilty to that, per the definition of debris on the Town website.

Commissioner Quintana stated his concern that Ms. Garcia may be wanting to use the fence to hide the debris and junk on her property. Commissioner Quintana also asked Ms. Garcia if this was the reason for the variance request.

Ms. Garcia stated that per the definition on the Town of Bernalillo website, they do not have junk or debris on the property.

Commissioner Quintana asked Ms. Garcia to describe what was on the property.

Ms. Garcia stated there was machinery, a boat, and two trailers.

183 Vice Chairperson Lepore asked the Commission for a motion to which there was none made.
184 Vice Chairperson Lepore let the applicant know that since there was no motion made, the item
185 was denied and may be appealed at Town Council.
186

187 Ms. Garcia asked if the instructions for the appeal process would be listed on the Town website.
188

189 Ms. Shumsky stated that the Notice of Decision would be sent to her in the mail detailing the
190 decision results along with instructions for the appeal process.
191

192 **No Motion - Item Denied**
193

194 **PUBLIC HEARING: Item 6d) CUP 20-004 Elsie Cordova (Agent), on behalf of A**
195 **Troika Consortium LLC (Property Owner)**, requests approval of a Conditional Use Permit for
196 New and Used Car Sales at 791 US Hwy 550, legally described as Lands of C De Baca
197 Subdivision, Lot C, located in Section 30, Township 13N, Range 4E, New Mexico Principal
198 Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned C-1 and containing
199 approximately 1.987 acres (according to Sandoval County Assessor records).
200

201 Elsie Cordova and Mark Mondragon, residents at 1426 Laguna Court NE stated a request to open
202 up a small used car dealership on Highway 550. The lot is proposed to have 10-15 previously
203 owned vehicles. Mr. Mondragon stated that they have finished the class with the New Mexico
204 Independent Automobile Dealers Association. Mr. Mondragon also stated that the director of the
205 Association has helped the applicants for the past year with their business plan. Mr. Mondragon
206 stated that they have also worked on their loan plan, and have secured a \$100,000 line of credit,
207 along with \$100,000 of their own money for this venture. Mr. Mondragon also stated that the
208 property owner, Gilbert Lucero will also be coming in as a future partner at a later date. Mr.
209 Mondragon stated that they have extensive experience in the automobile industry. Mr.
210 Mondragon stated that they also already have their State and Federal Tax ID numbers, along with
211 their certification for the New Mexico Independent Automobile Dealers Association.
212

213 Ms. Cordova stated that in regards to the business being located in the Bernalillo Community,
214 part of their business plan includes giving back to the community, and being actively involved
215 with local charities and fundraisers. Ms. Cordova stated that they also plan to be active
216 participants with events happening in the community such as parades, and being sponsors, along
217 with working with the local schools and churches, that way they can be actively involved and
218 give back to the community.
219

220 Mr. Mondragon stated that the director of the New Mexico Independent Automobile Dealers
221 Association had dealership located about 9 block away from where the proposed dealership
222 would be, that provided the Community service there with a good product and from his
223 experience he saw a need there, and that he is excited about this dealership being there and being
224 able to provide that service and product.
225

226 Ms. Cordova stated that they are one of the only dealerships within a 10-mile radius, so the need
227 is there.
228

229 Commissioner Moreno questioned what the thought process was in regards to the traffic flow and
230 how traffic patterns in and out of Sheriff's Posse Road would be addressed, since there are
231 projects that are being anticipated down the road, such as the Beehive nursing home in that area.
232

233 Mr. Mondragon stated that they have been working closely with the property owner, Gilbert
234 Lucero. Mr. Mondragon stated that if they referenced the property on US 550 that they do have
235 direct access from US 550 right into where the old Cantina building is, and on Sherriff's Posse
236 Road they have access about 125 feet from US 550 which is right in front of the building. Mr.
237 Mondragon stated that they will be sharing the building with Mr. Lucero, and that they would be
238 doing a 550-square foot build out on the right side of the building. Mr. Mondragon said that there
239 was a road that runs completely through the property.
240

241 Commissioner Montañó asked the applicants how many people from Bernalillo they planned on
242 employing at the proposed dealership.

243 Mr. Mondragon stated that right now it would be himself and Ms. Cordova, along with two
244 salesmen, a detail person and assistant, totaling 7-8 people.
245

246 Commissioner Quintana stated that the assisted living facility next door had concerns regarding
247 oil, exhaust, and fumes. The concerns also included sight, traffic, and sound contamination and
248 how they would be mitigated. Commissioner Quintana also asked the applicants if they believed
249 these would be issues they would face.
250

251 Ms. Cordova stated that these are valid concerns, but that concerning the cars that they would
252 have oils spills and leakage would not be a problem.
253

254 Mr. Mondragon stated that they consider the conditions of the vehicles, and they consider
255 purchasing vehicles with 100,000 miles or less, along with each vehicle receiving a 21-point
256 inspection. Mr. Mondragon stated to address the foot traffic, that the sales would be mostly by
257 appointment, reducing the total number of patrons on the lot and in the building, and that a lot of
258 the marketing would take place online. Mr. Mondragon stated that there would also not be any
259 mechanical work taking place on the premises.
260

261 Commissioner Eichwald asked if the property owner would continue selling the items he
262 currently has on the property.
263

264 Mr. Mondragon stated that Mr. Lucero is downsizing to about 15% of the number of items he
265 currently has on the property, so that he can put a lot of the rock that he sells inside of his
266 business.
267

268 Commissioner Eichwald asked the applicants what kind of signage they would have on the
269 property.
270

271 Mr. Mondragon stated that they would be putting a minimal amount of signage on the property,
272 and that the State Licensing Department for Dealerships only requires a small sign in the front of
273 the building. Mr. Mondragon also stated that there would be no big lights, and that with the
274 number of cars that they would have there the light would be sufficient.
275

276 Commissioner Eichwald asked the applicants if there would be security lights at night.
277
278 Mr. Mondragon stated that Mr. Lucero has security lighting on the front of the building currently,
279 and he wants to add additional lights to both sides of the building. Mr. Mondragon stated that
280 there would also be security cameras that Mr. Lucero has installed that can be monitored from
281 Mr. Lucero's home or phone.
282
283 Commissioner Eichwald asked about the type of lighting that would be installed.
284
285 Mr. Mondragon stated that the lights would be small light fixtures on each end facing inward
286 toward the interior of the structure, so they would not cause issues for the Beehive nursing home
287 or for traffic.
288
289 Commissioner Moreno asked Ms. Shumsky if it was the same building owner for 781 and 791.
290
291 Ms. Shumsky stated that she believed that Mr. Lucero was the property owner for both of those
292 properties.
293
294 Commissioner Montañó asked the applicants what their hours and days of business were.
295
296 Mr. Mondragon stated the days of operation would be Tuesday through Saturday and the hours
297 would be 10 a.m. to 3 p.m. Mr. Mondragon stated that the sign would feature their phone number
298 in the occasion that someone wanted to make an appointment to purchase a car outside of their
299 normal hours of operation.
300
301 Ms. Shumsky also stated as a point of clarification to the applicants that the subject property
302 currently does not have an easement to utilize the access off of US 550, nor do they have a
303 permit with the New Mexico Department of Transportation. Ms. Shumsky stated that if the
304 applicants planned on using that access, they will be required to have an easement to their
305 property, also they are required to obtain an access permit from the New Mexico Department of
306 Transportation. Ms. Shumsky stated that since Mr. Lucero is the property owner of both lots he
307 has been able to utilize the access, but legally there is no access point from US 550, so that
308 would need to be established.
309
310 Mr. Mondragon stated that if there was anything that Mr. Lucero needed to do to assist them that
311 he would do it if it was a condition of their approval.
312
313 Ms. Shumsky asked the applicants if they viewed the staff report and looked over the
314 recommended conditions.
315
316 Ms. Cordova stated that they had not received anything other than the invitation to the meeting.
317
318 Ms. Shumsky stated that the notification that they received for the meeting indicated that the
319 agenda packet was available online 72 hours prior to the meeting, so it is up to the applicants to
320 review the packet prior to the meeting, which had the recommended conditions listed by the
321 planning staff.
322

323 Ms. Cordova stated that she was not aware that it is the applicant's responsibility to review the
324 packet prior to the meeting.

325

326 Ms. Shumsky stated that the recommended conditions were related to some of the concerns that
327 Commissioner Quintana stated, which included no leaking fluids, the light must be shielded
328 away from the nursing home, there is to be no more than 20 cars on the property, that a solid wall
329 or fence be provided adjacent to the residential uses to the South, also there is to be no repairs or
330 maintenance. Ms. Shumsky also stated that the Town of Bernalillo has a standard conditional use
331 requirement that if the business registration for the auto business lapses for 12 month, that the
332 conditional use is void.

333

334 The applicants stated that they keep all of their paperwork and certifications up to date, but that
335 they were waiting on the approval of Conditional Use Permit before they submitted a business
336 registration application with the Town of Bernalillo.

337

338 Commissioner Quintana made a motion for approval on CUP 20-004 Elsie Cordova (Agent), on
339 behalf of A Troika Consortium LLC (Property Owner), requests approval of a Conditional Use
340 Permit for New and Used Car Sales at 791 US Hwy 550, legally described as Lands of C De
341 Baca Subdivision, Lot C, located in Section 30, Township 13N, Range 4E, New Mexico
342 Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned C-1 and
343 containing approximately 1.987 acres (according to Sandoval County Assessor records), subject
344 to the following conditions,

345 **Conditions:**

346 1.) *The applicant shall obtain the required permits for building improvements and business operations.*

347 2.) *The applicant shall comply with the Town of Bernalillo's Zoning Ordinance requirements, as well as any*
348 *other laws and requirements for new and used car sales.*

349 3.) *In order to mitigate negative impacts on adjacent residential properties:*

350 *a. A 6' tall solid wall or fence shall be constructed along the south property line.*

351 *b. Lights shall be shielded so as not to shine onto adjacent residential use*
352 *properties.*

353 *c. Only the sale of new and used cars (and light/passenger trucks) shall be*
354 *permitted.*

355 *d. Cars shall not be allowed to idle nor engines revved.*

356 *e. The number of vehicles for sale at any one time shall be limited to 20.*

357 *f. Cars shall not be parked haphazardly but shall be parked in identifiable,*
358 *marked parking spaces that meet Town requirements (min. 9'x20').*

359 *g. Oil and other fluids shall not be allowed to drip onto the ground.*

360 *h. No repair or maintenance of cars shall occur at the subject property.*

361 4. Per Section 19.E.b., "If a property with a Conditional Use Permit changes ownership, the new owner shall apply
362 to the Town for a new Conditional Use Permit. Otherwise, the use may continue under that permit without
363 reapplying, as per the permit (if there is an expiration date)".

364

365 The motion was not seconded, so the motion failed. There was no additional motion made. Vice
366 Chairperson Lepore let the applicant know that since there was no other motion made, the item
367 was denied and may be appealed at Town Council.

368

369 **Motion Failed – Item Denied**

370

371 **PUBLIC HEARING: Item 6e) ZMA 20-006 ZONE MAP AMENDMENT: Modulus**
372 **Architects Inc./Angela Williamson, CEO (Agent),** on behalf of D&G Price Limited
373 **Partnership**
374 (Property Owner), requests approval of a Zone Map Amendment from Special Use (SU) for Shopping
375 Center with Master Plan to Special Use (SU) for Office, Warehouse and Industrial Uses, including a
376 Fenced Outdoor Storage Yard, with Master Plan, at Venada Plaza, legally described as Venada Plaza
377 Subdivision, Lot 5-B, located in Township 13 North, Range 3 East, Section 36, New Mexico Principal
378 Meridian, Town of Bernalillo, Sandoval County, New Mexico and containing approximately 7.325 acres
379 (according to Sandoval County Assessor records).

380

381 **No Motion - Item Deferred**

382

383 **PUBLIC HEARING: Item 6f) VAR 20-005 VARIANCE: Tommy Lucero (property**
384 **owner,** requests approval of a 19' Variance to the required 20' front setback at 1201 Gutierrez Road,
385 legally described as MRGCD MAP 11, Tract 222D2, located in Township 12 North, Range 4 East,
386 Section 5, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned
387 R-1A and containing approximately 0.186 acres (according to Sandoval County Assessor records).

388

389 Record shows the applicant was not in attendance at this meeting. The commission deferred this
390 item to a later date. This is the third time that this item has been deferred by the Planning and
391 Zoning Commission.

392

393 Ms. Shumsky stated that Mr. Lucero has received several notifications for the meeting.

394

395 **Motion Carried - Item Deferred to Next Meeting**

396

397 **Item 7. Department COMMISSION BUSINESS - Updates:**

398 **a. Department and Projects Update**

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- Town Hall open to public by appointment only until further notice.
 - Face coverings and social distancing in place at Town buildings and facilities until further notice.
 - All Planning and Zoning Department applications, forms and publications are available on the website at:
https://www.townofbernalillo.org/departments/planning_zoning/index.php
 - All applications are electronically fillable and submit-able.
 - **Building Permit Activity: August 2020** -The Certified Building Official issued the following permits: 0 demolition, 0 manufactured homes, 0 new commercial, 0 commercial remodel, 3 re-roofs, 0 garage, 1 solar arrays, 2 new residential, 0 residential remodel, 0 pool, 0 carports and 1 misc. work. The total fees were \$5,259.00
 - **Code Compliance: August 2020 (June 22 – July 28)** - The Code Compliance Officer conducted 173 property inspections, sent 70 Notices of Violation, opened 35 New Cases, re-opened 12 Cases, closed 35 Cases and had 15 Court cases.
- b. New Home-Based Businesses - None
- c. Appeals – ZMA20-005
- d. Next Meeting – November 4, 2020 @ 6:30pm via WEB EX.

418 **Item 8. ADJOURNMENT:**

419 There being no further business, Commissioner Eichwald made the motion to adjourn the
420 meeting at 7:40 P.M. The motion was seconded Commissioner Moreno and it carried
421 unanimously.

ATTACHMENT 4



TOWN OF BERNALILLO
"The City of Coronado"

ITEM: VAR 20-010

PLANNING
&
ZONING
DEPARTMENT

Planning and Zoning
Director
Stephanie Shumsky

Building Official
Vacant

Planning & Zoning
Clerk
LeeAnn Romero

PLANNING
&
ZONING
COMMISSION

Juanita Duran
Chairperson

Dominick Lepore
Vice Chair

Joseph Moreno

Sandra Candelano

Antonette Eichwald

Raul Montano

Joseph O. Quintana

Planning and Zoning Commission Meeting
Regular Meeting
October 6, 2020

Staff Report

Subject:

Rigoberto Garcia (property owner) requests approval of a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada, legally described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13 North, Range 4 East, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records).

Site Data:

Zone: R-1
Surrounding Zoning: R-1 to North, South, East and West
Current Land Use: Single-Family Residential
Surrounding Land Uses: Single-Family Residential
Required Lot Size: 6,000sf
Actual Lot Size: 12,196sf
Access: Avenida Encantada
Utilities: Public
Required Parking: 2 spaces/dwelling
Handicapped Parking: n/a
Required Setbacks: Front = 20', Side = 5', Rear = 10'
Proposed Setbacks: no change

Summary of Request:

This request is for a 2' Variance from Comprehensive Zoning Code (Ord. No. 310), Section 22, (Fence Requirements), which only allows fences of 4' in height within the front setback in the R-1 zone. If approved, the variance would allow for a 6' tall fence or wall within the front setback (along the front and sides) at the subject property.

Recently, the applicant constructed a 6' wood panel fence along the front and sides of the property without a permit. Upon notice, the property owner applied for a variance and a permit.

The applicant provided some justification for this request that addressed each of the criteria for a variance. In the letter, the applicant discusses the lot's unusual shape and the need for more useable area in the yard, which he claims the fence will provide.

Currently, the Town has a code enforcement court case against this property owner due to the accumulation of junk and debris throughout the property, which includes an old bus, chickens, piles of wood boards and cleaning buckets among other discarded items. The Town has repeatedly received complaints about the upkeep of this property from several neighborhood residents. Staff is concerned that a 6' fence is simply a means to obstruct the view into the property, which, in addition to the accumulated debris, creates more of a hazard for emergency and safety personnel.

Plans, Policies and Regulations:

Comprehensive Land Use Plan:

A Resolution, approving the goals and objectives for a Comprehensive Plan, was adopted by the Town Council on May 13, 2002 (Resolution No. 5-13-02). The Comprehensive Land Use Plan was adopted by the Town Council on December 13, 2004 (Resolution No. 12-13-04) and contains goals and objectives that serve as a guide for policy decisions regarding the future management and development of the Town.

Comprehensive Plan Goals and Objectives applicable to this request are as follows:

Form of Development

Goal: Maintain the appearance of a clean and scenic community.

Subdivision Regulations (April 1997):

A division of land is not under consideration therefore, the Subdivision Regulations are not applicable to this request.

Town of Bernalillo Housing Plan (March 2013):

The Town of Bernalillo Housing Plan does not apply to this request.

Mainstreet Overlay District:

The subject property is not located in the Mainstreet Overlay District therefore, the Design Guidelines are not applicable to this request.

Comprehensive Zoning Ordinance:

Section 9. R-1 Single-Family Residential Zone.

According to Comprehensive Zoning Ordinance Section 9, the purpose of the R-1 zoning district is to allow for a low density of population in which the principal land use is single-family dwellings.

Section 19. Process, Application and Approvals.

According to Comprehensive Zoning Ordinance, Section 19.F., a variance is a discretionary waiver from the zoning requirements to grant the property owner reasonable use of their land.

The Commission may approve a deviation from the numerical requirements of this Ordinance (i.e. setback or height requirements) where the applicant demonstrates:

1. A physical hardship unique to the property exists (i.e. topographical constraints or lot configuration resulting in reduced development flexibility); and
2. These circumstances are not generally found within the locality or neighborhood concerned; and
3. The hardship is not self-imposed; and
4. The project is not contrary to the public interest or safety; and

5. The spirit of the Zoning Ordinance is observed and substantial justice done; and
6. The variance is to the minimum extent necessary to allow the owner reasonable use of the land.
7. Financial gain or loss shall not be the determining factor in deciding a variance.

The applicant provided some justification that commented on each of the variance criteria (see attached application and letter of justification).

Notifications:

Notices were posted at T&T Supermart, Town Hall, US Post Office, Town of Bernalillo Public Library and on the Town of Bernalillo website. Notices were mailed (certified, return receipt requested) to abutting property owners within 100 feet of the subject site.

Planning Commission Options:

Make a motion to:

1. Approve the request, based on the findings and conditions recommended in the staff report (the staff report is part of the record); or
2. Approve the request, based on the findings and conditions, as amended from the staff report (indicate changes by reading them in to the record); or
3. Approve the request, based on the following findings and conditions (indicate your own findings and conditions by reading them into the record); or
4. Defer the request (prior to start of hearing) to a subsequent date, time and location; or
5. Continue the request (if hearing has already started but additional time is needed for hearing) to a subsequent date, time and location. or
6. Deny the request; or
7. No Motion/No Second or Tie results in a denial, request may be appealed to the Town Council.

*Any adopted Findings and Conditions are deemed "Findings and Conclusions of Law" and are relayed to the applicant in an Official Notice of Decision.

Staff Recommendation:

Denial of VAR20-010 based on the following Findings:

Findings:

1. VAR20-010 is a request by Rigoberto Garcia (property owner) for a Variance of 2' to the allowed fence height of 4' at 543 Avenida Encantada, legally described as Casa Encantada Subdivision, Block 1, Lot 21, located in Township 13 North, Range 4 East, Section 31, New Mexico Principal Meridian, Town of Bernalillo, Sandoval County, New Mexico, zoned R-1 and containing approximately 0.280 acres (according to Sandoval County Assessor records).
2. According to Comprehensive Zoning Code, Section 22 (Fence Requirements), fences are limited to a height of 4' within the front setback area in the R-1 zone.
3. If approved, this request will result in a 6' tall wood panel fence along the front and side property lines.
4. In a letter of justification, the applicant commented on the following variance criteria:
 - a. A physical hardship unique to the property exists (i.e. topographical constraints or lot configuration resulting in reduced development flexibility); and
 - b. These circumstances are not generally found within the locality or neighborhood concerned; and
 - c. The hardship is not self-imposed; and
 - d. The project is not contrary to the public interest or safety; and
 - e. The spirit of the Zoning Ordinance is observed and substantial justice done; and
 - f. The variance is to the minimum extent necessary to allow the owner reasonable use of the land.
 - g. Financial gain or loss shall not be the determining factor in deciding a variance.
5. Due to the existing accumulation of junk and debris on the property, a 6' fence will create an additional hazard for emergency and safety personnel.

If approved, staff recommends the following Condition:

1. The applicant shall obtain the required permits for construction of the fence/wall.

**This page can be printed using your internet browser or by CTL + P
Account: R115600**

Location

Parcel Number 1-019-073-365-210
Tax Area 101RHE_R - 101RHE_R
Situs Address 543 AVENIDA
ENCANTADA
Legal Summary Legal: S: 31 T: 13N R:
4E Subd: CASA ENCANTADA Block: 1
Lot: 21

Owner Information

Owner Name GARCIA, REBECCA M
AND GARCIA-HERMOSILLO,
RIGOBERTO
Owner Address 543 AVENIDA
ENCANTADA
BERNALILLO, NM 87004-6013
UNITED STATES OF AMERICA

Assessment History

Actual Value (2020) \$140,769
Primary Taxable \$46,923
Tax Area: 101RHE_R Mill Levy: 33.073

Type	Actual	Assessed Acres	SQFT	Units
Residential Land	\$17,685	\$5,895	0.280	12196.800 1.000
Residential Improvement	\$123,084	\$41,028		1265.000

Transfer

Sale Date
02/01/2019

Doc Description
WARRANTY DEED
AFFIDAVIT OF DEATH
DEATH CERTIFICATE
TRANSFER ON DEATH DEED
REVOCAION TRANSFER ON DEATH
TRANSFER
DEED

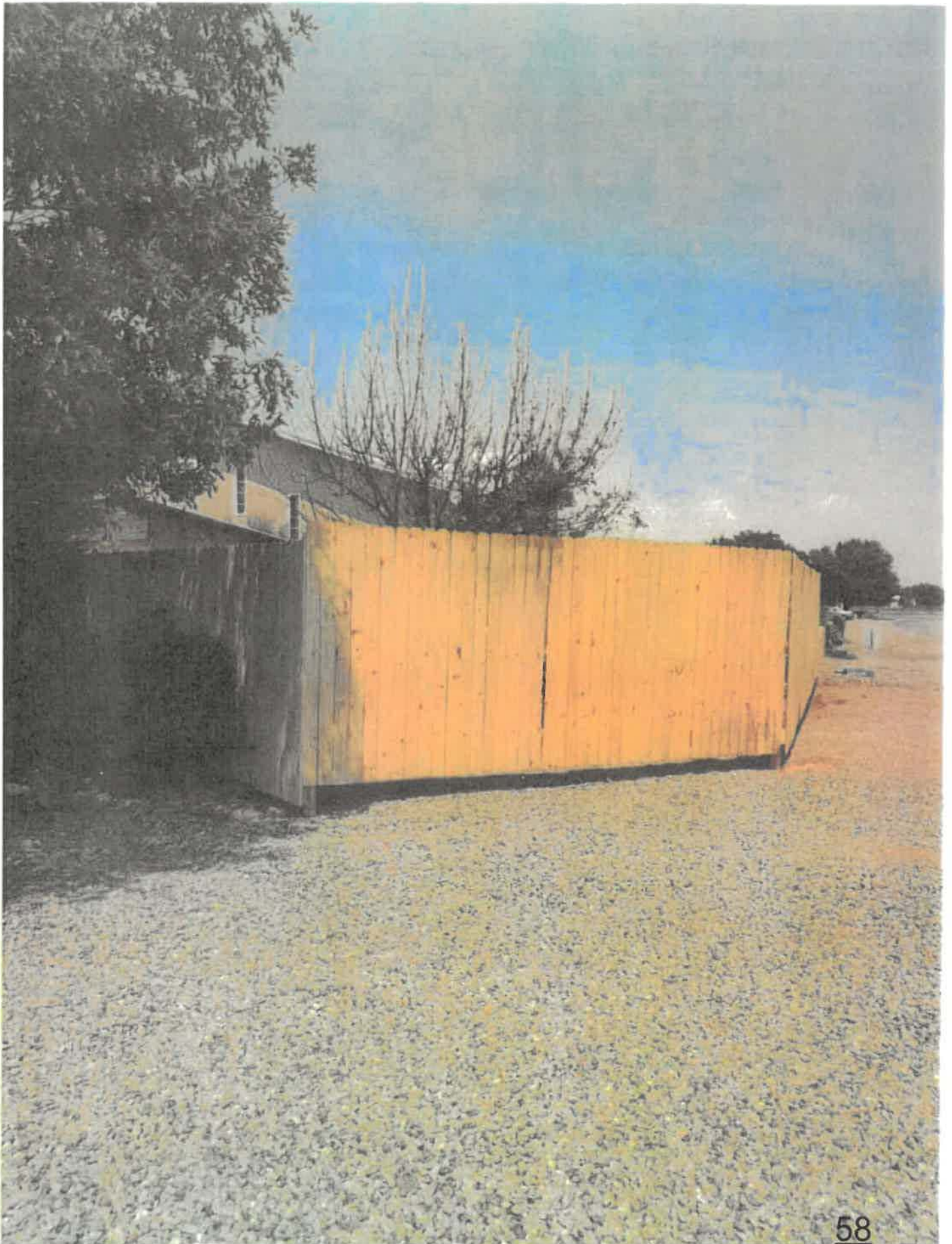
Images

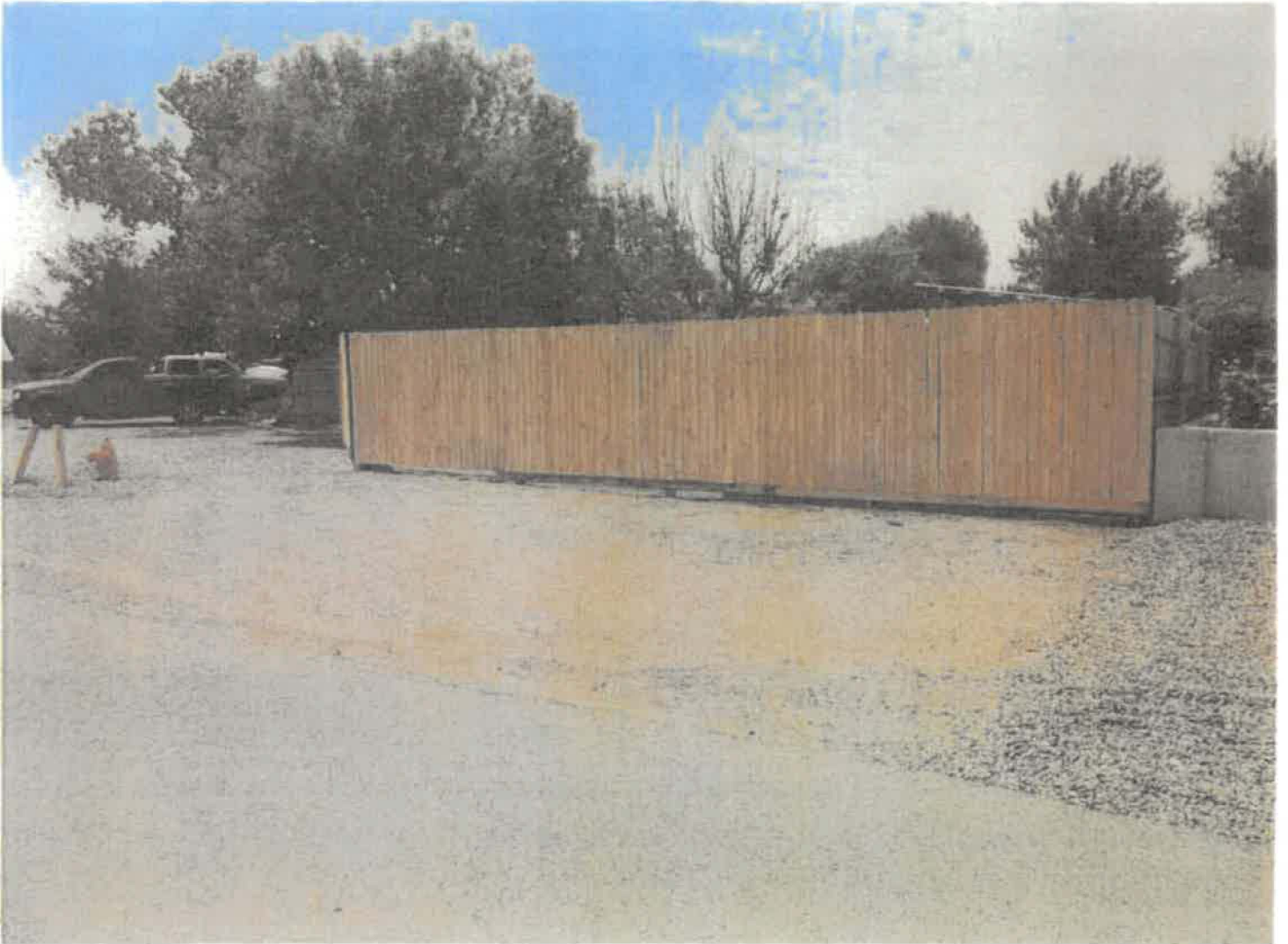
Tax Year	Taxes
*2020	\$1,551.88
2019	\$1,212.68

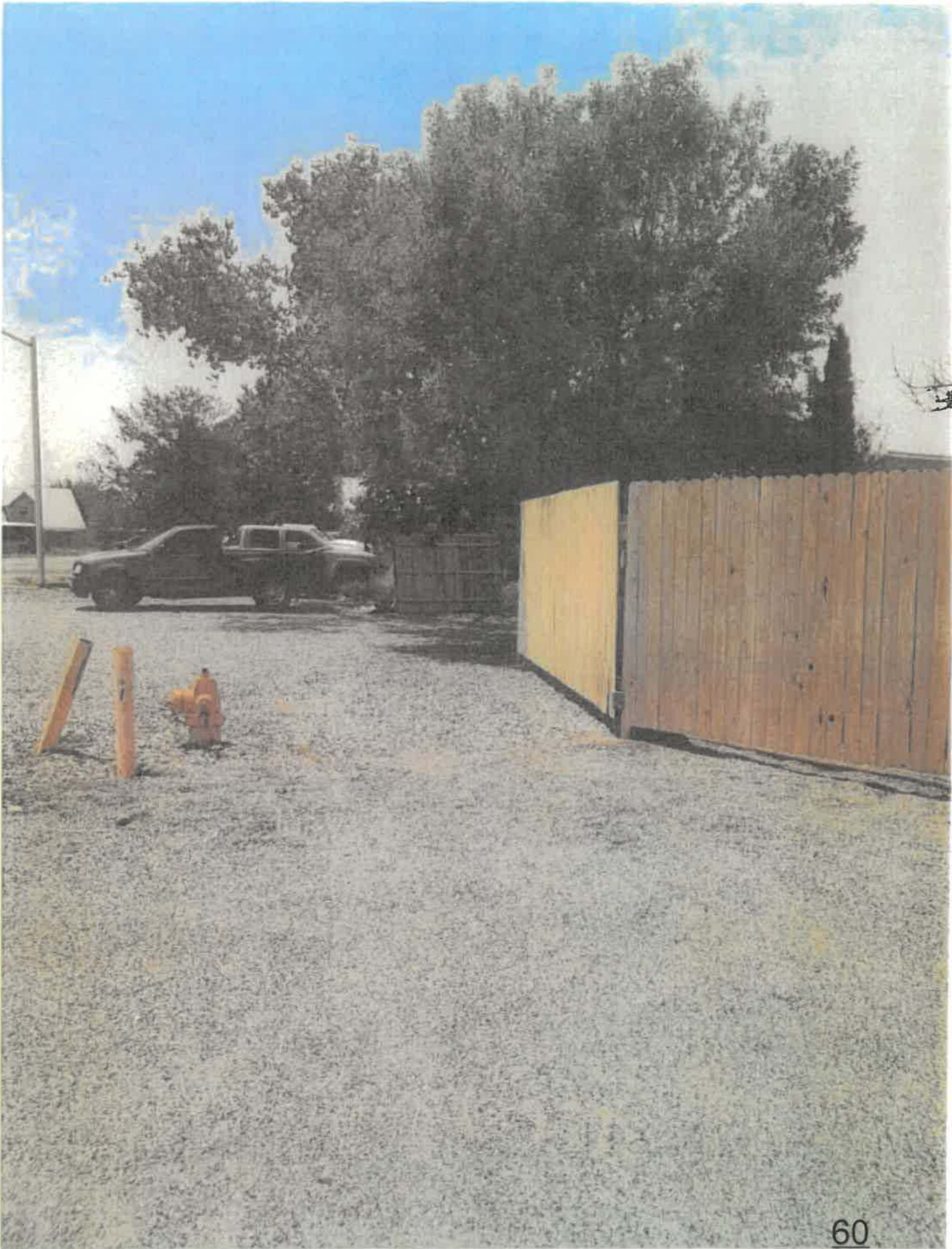
* Estimated

- [Map](#)
- [Photo](#)
- [Sketch](#)
- [GIS](#)











**TOWN OF BERNALILLO
PUBLIC NOTICE**



ATTENTION: IF YOU RECEIVED THIS NOTICE BY CERTIFIED MAIL, THEN YOU ARE A PROPERTY OWNER WITHIN 100' OF ONE OR MORE OF THE PROPERTIES LISTED BELOW. QUESTIONS? CALL THE PLANNING DIRECTOR AT 505-771-5896.

Notice is hereby given that a **REGULAR MEETING** of the **PLANNING AND ZONING COMMISSION** of the Town of Bernalillo will be held on **Tuesday, October 6, 2020 at 6:30 p.m.** as a **Remote Meeting via WEBEX** as provided in the information below. **Due to COVID-19 restrictions, the meeting will be electronic only.** If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service, in order to attend or participate in the meeting, please contact the Town Clerk at 771-7128 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Town Clerk if a summary or other type of accessible format is needed.

REMOTE MEETING IN COMPLIANCE WITH THE NEW MEXICO OPEN MEETINGS ACT

Please join this Planning and Zoning Commission Meeting from your computer, tablet, or smartphone: <https://www.webex.com> (click JOIN) then type in:

Meeting Number/Access Code: 126 655 5792

Meeting Password: 10062020

You can also dial-in using your phone: 1-408-418-9388 (US only)

PLANNING AND ZONING COMMISSION AGENDA – PRELIMINARY

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES**
 - a) Regular Meeting of September 1, 2020
- 6. PUBLIC HEARINGS**
 - a) DEMO20-001: DEMOLITION PERMIT FOR 3 SHED STRUCTURES AT 865 S. CAMINO DEL PUEBLO, LEGAL DESCRIPTION: MRGCD MAP 11, TRACT 14.
 - b) VAR20-009: FENCE HEIGHT VARIANCE OF 2 FEET AT 137 E. CALLE MONTOYA, LEGAL DESCRIPTION: PEREA ADDITION, BLOCK 2, LOT 1.
 - c) VAR20-010: FENCE HEIGHT VARIANCE OF 2 FEET AT 543 AVENIDA ENCANTADA, LEGAL DESCRIPTION: CASA ENCANTADA SUBDIVISION, BLOCK 1, LOT 21.

- d) CUP20-004: CONDITIONAL USE PERMIT FOR NEW AND USED CAR SALES AT 791 US HIGHWAY 550, LEGAL DESCRIPTION: LANDS OF C DE BACA SUBDIVISION, LOT C (1.987 AC).
- e) ZMA20-006: ZONE MAP AMENDMENT FROM SPECIAL USE (SU) FOR SHOPPING CENTER TO SPECIAL USE (SU) FOR OFFICE, WAREHOUSE AND INDUSTRIAL USES AT VENADA PLAZA, LEGAL DESCRIPTION: VENADA PLAZA SUBDIVISION, LOT 5-B (7.325 AC).
- f) VAR20-005: FRONT SETBACK VARIANCE OF 19 FEET AT 1201 GUTIERREZ ROAD, LEGAL DESCRIPTION: MRGCD MAP 11, TRACT 222D2. (*Deferred from September 1st meeting*)

- 7. COMMISSION BUSINESS
- 8. ADJOURN

PUBLIC COMMENTS

Written comments should be emailed to the Planning Director at sshumsky@townofbernalillo.org or mailed to her at P.O. Box 638, Bernalillo, NM 87004. Written comments received prior to the meeting will be distributed to the Planning Commission.

Members of the public that wish to speak on any of the agenda items, or otherwise address the Planning and Zoning Commission, must sign in to WEBEX. In the chat box, indicate your name and the agenda item you want to speak on. When the chairperson calls on you, state your name and address for the record. There is a 2-minute time limit per speaker.

An electronic version (PDF) of the final Agenda and Packet are available a minimum of 72 hours prior to the meeting at: https://www.townofbernalillo.org/departments/planning_zoning/agendas_and_minutes.php.

Locations of Agenda Postings in the Town of Bernalillo: T & T Supermart, Town Hall, US Post Office, Martha Liebert Public Library and the Town's website at: <http://www.townofbernalillo.org>

Town of Bernalillo, New Mexico
VAR20-010 Abutters



Disclaimer: This map is for illustration purposes only and should not be relied upon for other uses.

Prepared By: S. Shumsky
Date: 8/9/2020

ABUTTERS - PZ OCT 6, 2020			
VAR 20-010			
NAME	PRIMARY ADDRESS	CITY, STATE ZIP	SECONDARY ADDRESS
Rigoberto & Rebecca Garcia	543 Avenida Encantada	Bernalillo, NM 87004	
Alex & Sofia Jauregulberry	601 Avenida Encantada	Bernalillo, NM 87004	
Manuel Perez	549 Avenida Encantada	Bernalillo, NM 87004	
Robert & Clara Satriana	543 Calle De La Angel	Bernalillo, NM 87004	
Julia C'De Baca	542 Avenida Encantada	Bernalillo, NM 87004	
Richard & Marcella Casias	531 Avenida Encantada	Bernalillo, NM 87004	
Francisco Salazar	524 Avenida Encantada	Bernalillo, NM 87004	
Francisco & Ramona Salazar	530 Avenida Encantada	Bernalillo, NM 87004	
James Salazar & Clorice Prairie	533 Avenida Encantada	Bernalillo, NM 87004	
Krystal Marquez	542 Avenida Encantada	Bernalillo, NM 87004	



Town of Bernalillo

APPLICATION FOR ZONING VARIANCE

VAR 20-010
Applicant: Rigoberto Garcia
Property: 543 Avenida Encantada

INSTRUCTIONS

In accordance with the Town of Bernalillo Comprehensive Zoning Ordinance (Ord. No. 310), a variance discretionary waiver from the zoning requirements to grant the property owner reasonable use of their land. Commission may approve a deviation from the numerical requirements of this Ordinance where the applicant demonstrates that all of the following exist: 1) A physical hardship unique to the property (i.e. topographic constraints or lot configuration resulting in reduced development flexibility); and 2) These circumstances not generally found within the locality or neighborhood concerned; and 3) The hardship is not self-imposed and 4) The project is not contrary to the public interest or safety; and 5) The spirit of the Zoning Ordinance observed and substantial justice done; and 6) The variance is to the minimum extent necessary to allow the on reasonable use of the land. In addition, financial gain or loss shall not be the determining factor in deciding a variance.

Type or print clearly on this form, and submit to the Town of Bernalillo Planning & Zoning Commission through the Town Planner. Also include any required supplementary materials. Incomplete or inaccurate applications may delay the review process. The application must be accompanied by the appropriate Filing Fee of \$75.00 (seventy-five dollars).

TYPE OF VARIANCE REQUEST

- Area: _____
- Height: 6' Fence
- Width: _____
- Setback: _____
- Parking: _____
- Signage/Fencing: Privacy fence

HOW DOES REQUEST MEET 6 CRITERIA?

(explain here, attach additional sheets if necessary):

Please see attachment.

APPLICANT INFORMATION

Applicant: Rigoberto Garcia Phone: 505-948-6462
 Mailing Address: 543 Avenida Encantada Email: colochihnm@yahoo.com

Agent (if any): _____ Phone: _____
 Mailing Address: _____ Email: _____

Property Legal Description: Lot 21, Block 1, Subdivision Casa Encantada
 Property Address: 543. Avenida Encantada, Bernalillo NM 87004

ACKNOWLEDGEMENTS

Application is hereby made for a Variance. I have examined, am familiar with, and have complied with, any and all requirements of the Comprehensive Zoning Ordinance of the Town of Bernalillo. I have also complied with the requirements of any and all other applicable rules, regulations, and ordinances related to property development within the Town of Bernalillo. I further understand and agree that neither the Town nor any of its agents shall be held liable for any lack of understanding, or misinterpretation, on my part, of any said requirements.

Signature of Applicant or Agent: [Signature] Date: 9/2/2020

Receipt by P&Z Dept: [Signature] Date: 9/2/2020
 Application Fee Total: \$75.00 Receipt#: 00357989
 Hearing Location: Town of Bernalillo Council Chambers Hearing Date/Time: Oct. 6, 2020 6:30 pm

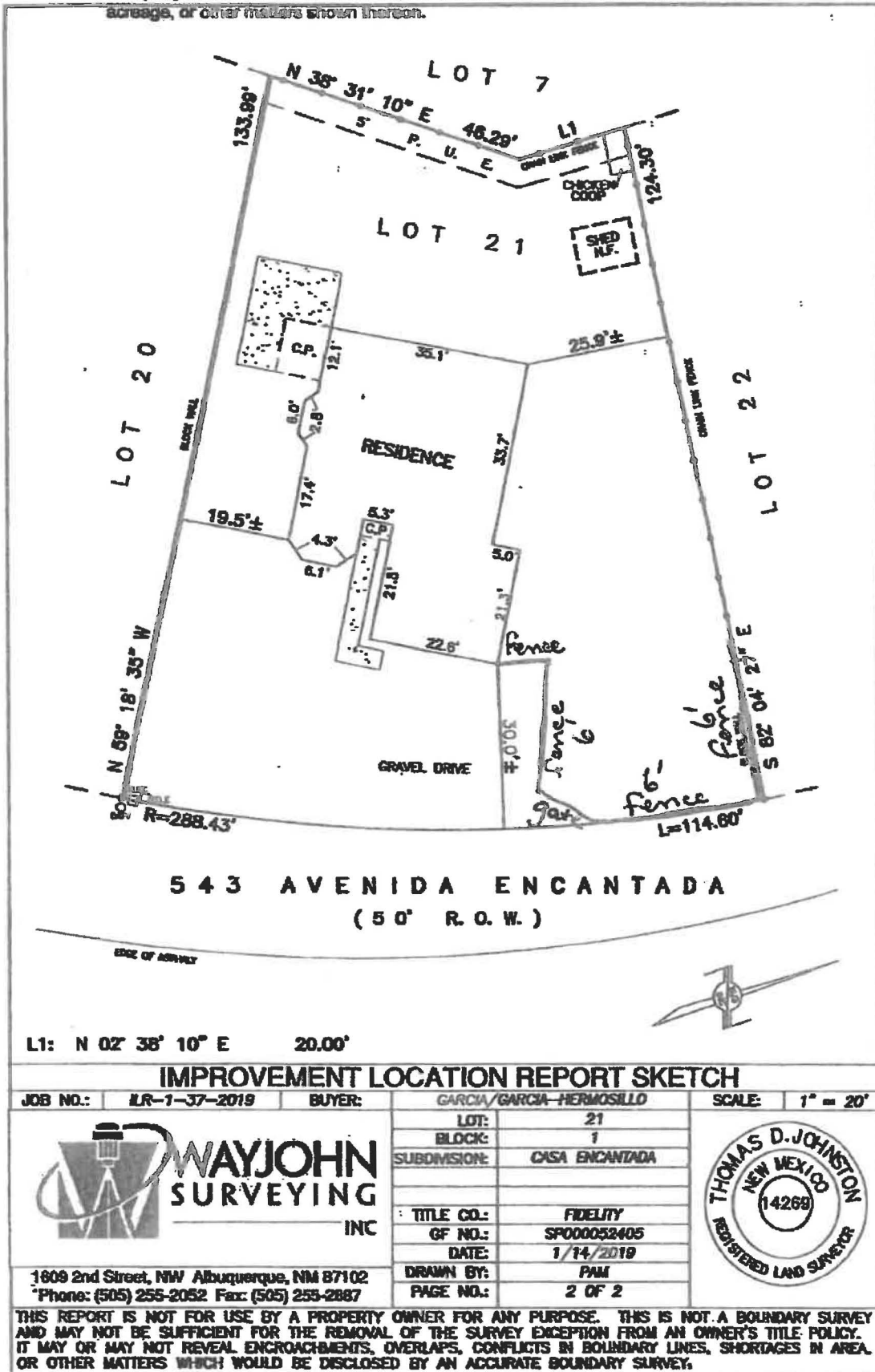
Form updated 3/10/2020

Via WEBEX
65

We are respectfully asking to be allowed to have a privacy fence around a portion of our property, to extend the use of our side yard.

1. Our property is "funnel" shaped; the front is nearly twice as wide as the back. Our property line is supposedly about 20' from the edge of the pavement. Therefore the setback would supposedly be another 20' from the property line, resulting in a 40' swath of gravel about 116 feet long across the front of our lot which can only be used for parking. That's 4,640 sq ft of land that is basically unavailable for use.
2. Most lots in the area are not wider at the front than the back.
3. This hardship is inherent to the shape of the lot and is not self-imposed.
4. This project poses no public safety issue. It makes the neighborhood look neater and tidier. The fence is new and made of pine and is beautifying to the area.
5. We believe the spirit of the Zoning Ordinance is to have consistency throughout the community and that all improvements be aesthetically pleasing. There are many 6' walls and fences throughout the neighborhood that sit on property lines, some 5'-20' from the asphalt. The house directly in front of our property across the street has a 6' fence surrounding the whole yard, in close proximity to the road. A house at the end of our street has a 6' wall about 5' from the pavement on the front end of their side yard just as we are asking to do. There are many other examples. Therefore consistency would be observed and justice done.
6. Again, the front line of our property is much wider than the back, making the back yard smaller than the heretofore unusable front setback area. Therefore, to make reasonable use of our land, we would like to extend the side yard to the front property line. The 6' ft privacy fence would only be approximately 35' long. Our front property line is approximately 116' long. The other 81' would be open with no fencing. The privacy fence would not be in front of the house, but this improvement would extend our side yard out and give us better use of our land.

to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, encroachments, distances, location of easements, acreage, or other matters shown thereon.



TOWN OF BERNALILLO
(505) 867-3311

REC#: 00357983 9/02/2020 12:10 PM
OPER: JM TERM: 002
REF#: CK 1066

TRAN: 305.0000 ZONING FEES
543 AVENIDA ENCANTADA
BERNALILLO NM 87004
100-000-4042-1-2
Zoning Fees 75.00CR

TENDERED:	75.00	CHECK
APPLIED:	75.00-	
CHANGE:	<u>0.00</u>	

PUBLIC HEARING: ITEM 6D

A blue callout box with a white border and a white shadow, containing the text "6D" in a bold, black, sans-serif font.

6D

From: [Tom Patrick](#)
To: [Stephanie Shumsky](#)
Cc: [BOB C DE BACA](#)
Subject: FW: update on Robert C De Bacas replat
Date: Friday, November 5, 2021 7:09:57 AM

Stephanie...Withdraw the request per Mr. C de Baca.
Tom

From: BOB C DE BACA <mayamail_4@msn.com>
Sent: Thursday, November 4, 2021 6:05 PM
To: Tom Patrick <TomPatrick@communitysciences.com>
Subject: Re: update on Robert C De Bacas replat

Let's just go ahead and withdraw.
Thnaks

From: Tom Patrick <TomPatrick@communitysciences.com>
Sent: Thursday, November 4, 2021 3:38 PM
To: BOB C DE BACA <mayamail_4@msn.com>
Subject: FW: update on Robert C De Bacas replat

Bob?

From: Stephanie Shumsky <sshumsky@townofbernalillo.org>
Sent: Thursday, November 4, 2021 3:01 PM
To: Tom Patrick <TomPatrick@communitysciences.com>
Subject: RE: update on Robert C De Bacas replat

does he want to withdraw his application and resubmit once he figures it out? Or request another deferral? I'd prefer if he withdrew it for now because we don't want it lingering beyond the year's end.

Stephanie Shumsky, AICP, CFM, CZO
Planning & Zoning Director

Town of Bernalillo
P.O. Box 638
Bernalillo, NM 87004
(505) 771-5896
sshumsky@townofbernalillo.org



TOWN OF BERNALILLO

**PLANNING AND ZONING COMMISSION
2022 MEETING SCHEDULE**

(ADVERTISED – PUBLIC HEARING DATES)

APPLICATION SUBMITTAL DEADLINE Wednesday@ Noon <i>(for the following month's meeting)</i>	NOTIFICATION & POSTING <i>(Internal Deadline)</i>	PUBLIC HEARING DATES* 6:30pm
December 8, 2021	<i>December 17</i>	January 4
January 5	<i>January 14</i>	February 1
February 2	<i>February 11</i>	March 1
March 2	<i>March 18</i>	April 5
April 6	<i>April 15</i>	May 3
May 4	<i>May 20</i>	June 7
June 8	<i>June 17</i>	July 5
July 6	<i>July 15</i>	August 2
August 3	<i>August 19</i>	September 6
September 7	<i>September 16</i>	October 4
October 5	<i>October 14</i>	November 1
November 2	<i>November 18</i>	December 6
December 7	<i>December 16</i>	January 3, 2023
January 4, 2023		

***Meetings will take place electronically via WebEx and in-person, as permitted.**

The Planning and Zoning Commission may change a meeting date in accordance with the Open Meetings Act.

If necessary, Special Meetings may be scheduled by the Planning and Zoning Commission in accordance with legal notice requirements.

The application deadline is the first Wednesday of each month at noon for the Planning and Zoning Commission hearing the following month.