

**Administrative Review Board
Meeting Minutes
October 8, 2020 – 6:00 P.M.**

The Administrative Review Board met in regular session via Zoom Virtual Platform on Thursday, October 8, 2020 at 6:00 p.m. in the City Council Chamber, 800 Municipal Drive, Farmington, New Mexico.

Members present:

Chair James Dennis
Brian Erickson
Jeff Johanson
Paul Martin

Members absent:

Vice Chair Cindy Lopez

Staff present:

Beth Escobar
Andrea Jones
Elizabeth Sandoval

Others addressing the Board (Via Zoom Virtual Platform):

Anthony McGarger
Lewis McMullen
Tina Trujillo
Derek Griffin

Call to Order

The meeting was called to order at 6:04 p.m. by Chair Dennis and there being a quorum present the following proceedings were duly had and taken.

Approval of the Agenda

Planning Manager Escobar asked that agenda item 3 be pulled from the agenda. The date listed for the approval of minutes was incorrect. A motion was made by Board Member Johanson and seconded by Board Member Erickson to remove agenda item 3 and approve the agenda. The motion passed unanimously by a vote of 4-0.

Adoption of Resolution

Adoption of a resolution setting and establishing a regular meeting day, time and place for the Administrative Review Board. A motion was made by Board Member Martin and seconded by Board Member Johanson to approve the resolution. The motion passed unanimously by a vote of 4-0.

Discussion Regarding Proposed Changes to the Unified Development Code

Planning Manager Escobar stated that some items were brought forth to the ARB Board during the summer. At that time the hope was to have the UDC adopted by October, that goal will not be met. Staff has had three good meetings with the Planning and Zoning Commission; the changes are extensive and hope to have the changes moved to Council by November. A link will be shared with the ARB Board for participation.

Chair Dennis asked when the meeting will take place.

Planning Manager Escobar stated that it should be in November and will she email the information to the Board.

Swearing in of Witnesses

All parties that wished to speak on behalf of Petition No. ARB 20-39 were sworn in by Elizabeth Sandoval, Administrative Assistant.

Discussion of Petition No. ARB 20-39 – 209 E. Ute. St.

Beth Escobar, Planning Manager, presented the staff report for Petition No. ARB 20-39 a request from Anthony McGarger, owner of property at 207-209 E. Ute St., for a variance to Sections 9.2.4 & 9.3.3 of the Unified Development Code (UDC) prohibiting rebuilding of a non-conforming building on a property for a non-conforming use. These sections of the Code prohibit the rebuilding of a non-conforming structure or the reinstatement of a non-conforming use if destroyed by fire, elements or other cause, by more than fifty percent.

Per Section 9.1.2 of the UDC:

The use of land, use of a structure, or a structure itself; including but not limited to substandard parcels, or structures not complying with applicable dimensional standards, shall be deemed to have nonconforming status when each of the following conditions are satisfied:

A. The use or structure does not conform to the regulations prescribed in the district in which such use or structure is located and was in existence and lawfully constructed, located and operating prior to, and at the time of the event that made such use or structure nonconforming.

B. The event that made such use, structure, lot or parcel nonconforming was one of the following: annexation by the City of Farmington, adoption of this UDC or a previous Zoning Ordinance, acquisition of land by the city for public purposes, amendment of this UDC, or by court order.

C. The nonconforming use or the use occupying the nonconforming structure has been operating since the time that the use or structure first became nonconforming without abandonment, as abandonment is defined in section 9.2.5, cessation of a nonconforming use.

When the petitioner purchased this property in 2006 (before the current UDC was adopted in 2007) it had an established multi-family use. This property qualifies as legal, non-conforming. UDC Sections 9.2.4 and 9.3.3 prohibits the reestablishment of a non-conforming use or the reconstruction of a non-conforming structure if it is destroyed by more than 50 percent. Allowing the rebuilding of either of the residential structures on the property would not have an adverse impact on the neighborhood. Denial of the variance would prohibit the property owner from refinancing the property and prevent the sale of the property.

The Community Development Department concludes that the variance request meets the criteria as outlined in Section 8.12.4 of the UDC, that approval of ARB 20-39 is a minimum easing of the code, meets the intent of the code and is a property that has characteristics unique enough to allow for the reconstruction and reestablishment of a multi-family structure and use should the existing buildings be destroyed by more than 50 percent.

The Community Development Department recommends **approval** of Petition ARB 20-39 from Anthony McGarger for a variance from Sections 9.2.4 and 9.3.3: Non-conformities, Destruction or Demolition, of the Unified Development Code to allow for reconstruction and reestablishment of a non-conforming structure and use with the following stipulation:

- Any new construction shall comply with current building and fire codes.

Planning Manager Escobar asked if there were any questions.

Board Member Martin asked if the building had been damaged more than 50%.

Planning Manager Escobar stated the property has not experienced any damage. The applicant is asking that we waive the restrictions that if it is damaged by more than 50% that it cannot be replaced.

Chair Dennis stated that in this case, we are not saying that there has been damaged, this application is to put a clause on property, that in the event that damage should happen the applicant would be able to rebuild, also allowing for refinancing and sale of the property.

Planning Manager Escobar stated that was correct.

Board Member Martin asked if there was another way to achieve the outcome without going through a variance.

Planning Manager Escobar stated that first, due to changes in the finance laws there is an issue of mortgage companies not being able to write a legal non-conforming. Second, the Planning Division would typically look at this type of application as a Special Use Permit, but due to an ordinance adopted in 2018, Special Use Permits for residential uses do not stay with the land, only with the applicant. This variance request is the only avenue for the petitioner to get this change.

Board Member Martin asked if the ordinance passed by City Council stated that one could not use a Special Use Permit for this type of application.

Planning Manager Escobar stated no, that the ordinance states that Special Use Permits for residential uses do not transfer with the land, they go with the applicant.

Board Member Martin stated that his issue is with waving the 50% which goes with each legal non-conforming property in town.

Chair Dennis asked, if the variance is granted and 50% of the property is damaged, the applicant can rebuild to current code? Chair Dennis then stated that he did not see if stated that when rebuilding, the applicant would need to rebuild to size and character.

Planning Manger Escobar stated that if the Board approves the variance a stipulation could be added that the applicant could rebuild to current size and character of the property.

Board Member Martin asked, if a variance is granted, the applicant will still have to follow the building codes?

Planning Manager Escobar stated that was correct.

Petitioner Presentation:

Anthony McGarger, Petitioner, stated that the location has two structures, a guest house and a main unit, and was purchased in 2006. Mr. McGarger stated that due to age, he and his wife are trying to secure the property for their children in the event they should pass. Having a variance would transfer with the property, making it easier for their children to sell the property or rebuild in the event of damage.

Chair Dennis asked, do the two structures make this property non-conforming?

Planning Manager Escobar stated that the property is non-conforming due to the use as multifamily in a single family residential zone.

Chair Dennis asked, if the variance is not granted, could one unit on the property be taken out of service?

Planning Manager Escobar answered yes.

Anthony McGarger, Petitioner, stated that he purchased the property as two separate units, one unit being able to be rented, which has value to a purchaser. There are two separate addresses for the properties and if one is taken out of service, the value of the property could be significantly changed.

Public Hearing

Chair Dennis opened the public hearing. There being no members of the public wishing to speak, Chair Dennis closed the public hearing.

Administrative Review Board Action for Petition No. ARB 20-39 on October 8, 2020

A motion was made by Board Member Johanson and seconded by Board Member Erickson to **approve** Petition No. ARB 20-39, a request from Anthony McGarger, owner of property at 207-209 E. Ute St., for a variance to Sections 9.2.4 & 9.3.3 of the Unified Development Code (UDC) prohibiting rebuilding of a non-conforming building on a property for a non-conforming use. These sections of the Code prohibit the rebuilding of a non-conforming structure or the reinstatement of a non-conforming use if destroyed by fire, elements or other cause, by more than fifty percent.

AYE: Chair Dennis, Board Member Erickson, Board Member Johanson and Board Member Martin.
 NAY: None
 ABSTAIN: None
 ABSENT: Vice Chair Lopez

APPROVED 4-0

Swearing in of Witnesses

All parties that wished to speak on behalf of Petition No. ARB 20-42 were sworn in by Elizabeth Sandoval, Administrative Assistant.

Discussion of Petition No. ARB 20-42 – 3800 San Medina Ave.

Beth Escobar, Planning Manager, presented the staff report for Petition No. ARB 20-42 a request from Lewis McMullen, son of Dan McMullen, owner of property at 3800 San Medina, for a variance to Section 2.5.2.B & C of the Unified Development Code to allow for placement of an accessory structure in the front setback.

Per Section 2.5.2 of the UDC:

A. No accessory structure or use shall be constructed or established on any lot prior to the issuance of a building permit for the principal structure or an occupancy permit for a principal use to which it is accessory. This provision shall not prohibit the issuance of a permit for a detached garage at the time of issuance of a building permit for a principal dwelling unit on the subject parcel.

B. Accessory uses and structures must be subordinate to the principal use and structure on the subject lot in terms of area, extent, and purpose. The total gross floor area of all accessory structures that are built in the required rear and side yard on a lot shall not exceed 1,000 square feet or 50 percent of the total gross floor area of the principal structure on the lot, whichever is greater. Any accessory structure that is constructed within the allowed building footprint shall not exceed 2,000 square feet or 50 percent of the total gross floor area of the principal structure, whichever is greater; or exceed 20 feet in height. The provisions of this paragraph shall not apply to agricultural uses.

C. Unless otherwise expressly stated herein, accessory structures and uses shall comply with all applicable regulations of this UDC, including the maximum height and setback regulations. No accessory use or structure shall cause any of these standards to be exceeded for the underlying zoning district.

Placement of the accessory structure in the back yard is challenging because of steep topography. Existing mature trees would screen the structure from the street. No neighborhood input has been received. There appear to be opportunities to place the structure on the north or south side, although both locations have challenges. The requirement for accessory structures to be on the side or in the rear yard preserves the streetscape of residential neighborhoods.

The Community Works Department concludes that the variance request for ARB 20-42 does not meet the criteria of Section 8.12.4 of the UDC, is **not** a minimum easing of the code and does not meet the intent of the code. There are unique characteristics to this property; however, there appear to be other locations for placement of the shed.

As noted above, per Section 8.12.4 of the UDC, if a positive finding of fact cannot be made based on the criteria cited above, the Board may specifically describe circumstances that would outweigh the strict requirement for a positive finding of fact and determine that the variance will not be a public detriment. Staff would note that placement in the front yard may have less of a neighborhood impact than placement of the accessory structure on the south side yard.

The Community Development Department recommends **denial** of Petition ARB 20-42 from Lewis McMullen, 3800 San Medina Ave. for a variance from Sections 2.5.2.B & C of the Unified Development Code.

Ms. Escobar asked if there were any questions.

Board Member Martin stated that on page 5 of the packet, the placement of the proposed placement of the shed is not the same as on page 7.

Board Member Johanson stated that page 7 shows where the shed could be placed without having to obtain a variance and page 5 is where the petitioner would like to place the shed on their property.

Petitioner Presentation

Lewis McMullen, Petitioner, stated that the reason he would like the shed in the proposed spot is because of the way the house is positioned on the property, making it difficult to place the shed anywhere else. The concerns with the north side driveway, the shed would be placed mid wall and the drainage from the roof would cause an issue. Some concerns about the north side of the property are also work vehicles being parked in that area, also plans to purchase a trailer for recreational use. The south side placement of the property poses concern due to sprinkler lines in that area, a telephone pole placed near the fence line and possible blocking of the view of motorist. Concerns with the backyard are the irrigation; a hot tub and a greenhouse are also placed in that area.

Board Member Erickson asked Mr. McMullen what the shed would be used for.

Mr. McMullen stated the shed would be used to hold personal items such as bikes, clothing, snowboarding equipment and tools.

Mr. McMullen also stated that he went to the Planning Division, a site plan map approved, went through all the steps, got the okay, and purchased the shed based on the approval of the shed.

Chair Dennis asked Mr. McMullen if he is the owner of the house on the property.

Mr. McMullen stated that his father is the owner of the house. The home is in a trust for Lewis McMullen.

Board Member Johanson asked if the shed has already been purchased.

Mr. McMullen stated that the shed has been purchased and built to match the house.

Board Member Martin stated that there are covenants in the neighborhood, and this petition could cause the covenants to be reviewed. There are alternative placements locations on the property where the shed could be placed.

Board Member Johanson asked if there was a variance for distance from the property line and placement in a different location, is that an option?

Planning Manager Escobar stated that since the board is a quazi-judicial action we have to either go forth with the information that was presented or Mr. McMullen can bring an addition variance forward.

Board Member Johanson asked, if the variance is not approved does Mr. McMullen have other options?

Planning Manager Escobar stated yes, McMillen does have other options, including having a staff member to out on site and find the location of the shed within the setbacks.

Public Hearing

Chair Dennis opened the public hearing. There being no members of the public wishing to speak, Chair Dennis closed the public hearing.

Administrative Review Board Action for Petition No. ARB 20-42 on October 8, 2020

A motion was made by Board Member Martin and seconded by Board Member Erickson to **deny** Petition No. ARB 20-42, a request from Lewis McMullen, son of Dan McMullen, owner of property at 3800 San Medina, for a variance to Section 2.5.2.B & C of the Unified Development Code to allow for placement of an accessory structure in the front setback.

AYE: Chair Dennis, Board Member Erickson, Board Member Johanson and Board Member Martin
 NAY: None
 ABSTAIN: None
 ABSENT: Vice Chair Lopez

DENIED 4-0

Chair Dennis stated that the decision of the ARB Board is final, unless appealed in writing through the City Clerk within 15 days.

Planning Manager Escobar clarified to Mr. McMullen that he can appeal the decision by submitting something in writing within 15 days.

Swearing in of Witnesses

All parties that wished to speak on behalf of Petition No. ARB 20-43 were sworn in by Elizabeth Sandoval, Administrative Assistant.

Discussion of Petition No. ARB 20-43 – 1013 W. Apache St.

Beth Escobar, Planning Manager, presented the staff report for Petition No. ARB 20-43 a request from Steve and Tina Trujillo, owners of property at 1013 W. Apache St., for a variance to Sections 9.2.4 & 9.3.3 of the Unified Development Code (UDC) prohibiting rebuilding of a non-conforming building on a property for a non-conforming use. These sections of the Code prohibit the rebuilding of a non-conforming structure or the reinstatement of a non-conforming use if the structure is destroyed by fire, elements or other cause, by more than fifty percent.

Per Section 9.1.2 of the UDC:

The use of land, use of a structure, or a structure itself; including but not limited to substandard parcels, or structures not complying with applicable dimensional standards, shall be deemed to have nonconforming status when each of the following conditions are satisfied:

A. The use or structure does not conform to the regulations prescribed in the district in which such use or structure is located and was in existence and lawfully constructed, located and operating prior to, and at the time of the event that made such use or structure nonconforming.

B. The event that made such use, structure, lot or parcel nonconforming was one of the following: annexation by the City of Farmington, adoption of this UDC or a previous Zoning Ordinance, acquisition of land by the city for public purposes, amendment of this UDC, or by court order.

C. The nonconforming use or the use occupying the nonconforming structure has been operating since the time that the use or structure first became nonconforming without abandonment, as abandonment is defined in section 9.2.5, cessation of a nonconforming use.

The petitioners purchased the property in 2008 and it has been used as a single-family residence since that time. This property qualifies as legal, non-conforming. Sections 9.2.4 and 9.3.3 prohibits the reestablishment of a non-conforming use or the reconstruction of a non-conforming structure if it is destroyed by more than 50 percent.

Allowing the rebuilding of the residential structure on the property would not have an adverse impact on the neighborhood. Denial of the variance would prohibit the property owner from refinancing the property and prevent the sale of the property.

The Community Development Department concludes that the variance application meets the criteria for approval included in Section 8.12.4 of the UDC, that ARB 20-43 is a minimum easing of the code, meets the intent of the code and is a property that has characteristics unique enough to allow for the reconstruction and reestablishment of a single-family structure and use should the existing building be destroyed by more than 50 percent.

The Community Development Department recommends approval of Petition ARB 20-43 from Steve and Tina Trujillo for a variance from Sections 9.2.4 and 9.3.3: Non-conformities, Destruction or Demolition, of the Unified Development Code with the following stipulation:

- Any new construction shall comply with current building and fire codes.
- Dust control and noise mediation shall be in place for any new construction.

Planning Manager Escobar asked if there were any questions.

Board Member Martin asked if ARB 20-43 has the same issues as ARB 20-39.

Planning Manager Escobar stated that was correct.

Chair Dennis asked if the property was located next to Navajo Prep School.

Petitioner Presentation

Tina Trujillo, Petitioner, stated they are near Navajo Prep School, three houses down from the Christian radio station.

Chair Dennis asked if the area was residential zoning prior to be changed to commercial zoning.

Planning Manager Escobar stated that was correct.

Board Member Erickson asked, if the variance is approved would it stay with the applicant or the property?

Planning Manager Escobar stated that if approved, the variance would stay with the property.

Tina Trujillo, Petitioner, stated that she and her husband are just trying to get things uniformed fir their children. Ms. Trujillo stated that refinancing has not been an option due to zoning.

Mr. Griffin stated that he owns the apartment building to the south of the property. Mr. Griffin stated that as a local property owner, he just wanted to be aware of what was going on in the area.

Board Member Johanson asked, if the property burned down, the applicant could build as a commercial property?

Planning Manager Escobar stated that was correct.

Public Hearing

Chair Dennis opened the public hearing. Mr. Griffin, property owner within 100 feet, was sworn in by Elizabeth Sandoval, Administrative Assistant. Mr. Griffin asked for clarification on the petition. After Chair Dennis provided clarification, Mr Griffin stated he had no comments.

There being no other members of the public wishing to speak, Chair Dennis closed the public hearing.

Administrative Review Board Action for Petition No. ARB 20-43 on October 8, 2020

A motion was made by Board Member Erickson and seconded by Board Member Martin to **approve** Petition No. ARB 20-39, a request from Steve and Tina Trujillo, owners of property at 1013 W. Apache St., for a variance to Sections 9.2.4 & 9.3.3 of the Unified Development Code (UDC) prohibiting rebuilding of a non-conforming building on a property for a non-conforming use. These sections of the Code prohibit the rebuilding of a non-conforming structure or the reinstatement of a non-conforming use if the structure is destroyed by fire, elements or other cause, by more than fifty percent.

AYE: Chair Dennis, Board Member Erickson, Board Member Johanson and Board Member Martin
 NAY: None
 ABSTAIN: None
 ABSENT: Vice Chair Lopez

APPROVED 4-0

Business from the Floor: Planning Manager Escobar stated that Mr. Johanson will not be renewing his service on the ARB Board for the next year.

Business from the Chair: There was no business from the Chair.

Business from the Members: There was no business from the Members.

Business from Staff: There was no business from Staff.

Adjournment: The October 8, 2020 meeting of the Administrative Review Board was adjourned at 7:24 p.m. A motion to adjourn was made by Board Member Johanson and seconded by Board Member Erickson and passed unanimously by a vote of 4-0.



 James Dennis – Chair



 Elizabeth Sandoval - Administrative Assistant

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