AGENDA

Administrative Review Board
City Council Chambers
800 Municipal Drive, Farmington, NM
January 3, 2019 at 6:00 p.m.

Item No. | Page
---|---
1 | Call Meeting to Order
2 | Approval of the Agenda
3 | Approval of the Minutes from the December 6, 2018 Meeting
4 | Petition No. ARB 18-91 – a request from Sean Dugan (DPC Acquisitions LLC), for a variance to reduce the required 20-foot rear yard setback for the IND, Industrial District to 7.5-feet, for property located at 3100 Bloomfield Highway. (Gary Leikness)
5 | Business from:
   - Floor:
   - Chairman:
   - Members:
   - Staff:
6 | Adjournment

All decisions of the Administrative Review Board are final unless appealed in writing to the City Clerk’s office within 15 days.

ATTENTION PERSONS WITH DISABILITIES:
The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend a meeting and need an auxiliary aid or service, please contact the City Clerk’s office at 599-1101 or 599-1106, prior to the meeting so arrangements can be made.
January 3, 2019

ADMINISTRATIVE REVIEW BOARD
Petition ARB 18-91

Variance to allow for an existing building to encroach into the required 20-foot rear yard setback. The encroachment would be 12.5 feet, and therefore allow a 7.5 foot rear yard setback. The property is located at 3100 Bloomfield Hwy

DESCRIPTION OF PETITION
Community Development has received a request, from Sean Dugan (DPC Acquisitions LLC, for a variance to reduce the 20-foot required rear yard setback for the IND, industrial Zone, to 7.5 feet. This would allow the existing building, in the northeast section of this parcel to be brought into “conforming” status. The property is legally described as:

That part of the SW/4SE/4 of Section 14, Township 29 North of Range 13 West, N.M.P.M., in the City of Farmington, San Juan County, New Mexico.

Otherwise located at 3100 Bloomfield Hwy

GENERAL INFORMATION
Applicant: .................. Sean Dugan (DPC LLC)
Representative: ............. Scott Martin
Property Owner: ............. Sean Dugan
Nature of Petition: .......... The applicant is requesting a variance from the rear yard setback standards in order to bring an existing building into a “conformance” status.
Location of Property: ...... 3100 Bloomfield Hwy
Zoning: ...................... IND, Industrial District.
Existing Use: .................. vacant land, with existing buildings
Public Notice: ............... Publication of Notice of this petition appeared in the Daily Times on Sunday December 16, 2018. Property owners, within 100 feet (excluding right-of-way) were sent notice by certified mail on Wednesday, December 12, 2018 and a sign was posted on the property on Friday, December 21, 2018.
Staff: .......................... Gary Leikness, Planning Manager
PROJECT DESCRIPTION

Community Development has received a request, from Sean Dugan (DPC Acquisitions LLC, for a variance to reduce the required setback 20-foot required rear yard setback for the IND, industrial Zone, to 7.5 feet. This would allow the existing building, in the northeast section of this parcel to be brought into “conforming” status.

Unified Development Code
Pursuant to UDC 2.8.2, Nonresidential base zoning district density and dimensional schedule: The Industrial Zone requires a 20-foot rear yard setback.

The site includes several buildings, including the subject building, which is a three bay garage. The building is existing and does not meet the IND 20-foot required rear yard setback.

Proposal
The applicant is requesting a reduced setback, 7.5 feet, to an existing building, bringing the building in the north east corner of the lot, into “conforming” status. This would allow the applicant to rebuild the building if needed.

ANALYSIS

Variance Criteria – Section 8.12.4, UDC
A variance may be granted only where a literal enforcement of the Code provisions would result in unnecessary hardship for a particular property. In order to grant a variance, the ARB must make a positive finding of fact concerning each of the following or, if a positive finding of fact cannot be made that, the ARB specifically describes the circumstance that would outweigh the strict requirement for a positive finding of fact and determine that the variance will not be a public detriment:

1. That special conditions and circumstances exist, which are peculiar to the land, structure or building involved and are not applicable to other lands, structures or buildings in the same district; and, furthermore, that they are not self-imposed, self-created or otherwise the result of actions by the applicant.

There does not appear to be any special conditions or circumstance peculiar to the subject property. It is similar in size and shape to adjacent IND zoned property.

The subject property was purchased (self-imposed), with the building existing. The property is approximately 7.86 acres in size. The building is relatively small (~1700 sq ft). The buyers could have torn this building down to be rid of a non-conforming structure, however, they do see a use for it. It abuts single family residences on the rear of the lot.
If there were physical limitations, such as terrain, drainage, shape of the lot, or something limiting found on the property, these would be potential grounds for such a variance request.

This criterion is not met.

2. That a literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Code.

Strict application of the regulation would not deprive the applicant of "rights commonly enjoyed by other properties...", as there are no physical hardships on the property, which is generally consistent with the area. Other properties may construct garages, but must adhere to current setback standards. The applicant has the space available on his property to enjoy the property similar to those properties that are adjacent to the petitioner's

If physical limitations were limiting, or some similar hardship were existing, these would be potential grounds for such a variance request.

This criterion is not met.

3. The applicant demonstrates that the request is a minimum easing of the Code requirements, making possible the reasonable use of the land, building, or structure.

The requested variance represents the minimum easing of the Code requirements, in that the requested setback (7.5 feet) is the same as the existing setback (7.5 feet).

This criterion is met.

4. That the granting of the variance is in harmony with the general interest, the general purpose and intent of the Code, and is not injurious to the neighborhood or otherwise detrimental to the public welfare.

Setbacks are utilized to achieve access to sunlight and free flowing air. They are to protect adjacent properties from negative impacts. The homes behind the building do continue to have access to air and light. To ensure this continues, staff recommends that "height of the structure shall be limited to the existing 1-story, and existing height, found at the time of the variance approval."

A conditioned, a variance, as proposed, would not be injurious to the neighborhood. Nor would it be detrimental to the public welfare.

This criterion is met.
5. That the proposed variance will not permit a use not otherwise allowed in the underlying district.

The granting of this variance will not allow a use that is not otherwise allowed in the IND District.

This criterion is met.

6. That no nonconforming use of neighboring lands, structures or buildings in the same district and no permitted use of lands, structures or buildings in other districts has been or shall be considered grounds for the issuance of a variance.

No nonconforming uses, structures or buildings in the same district have been considered as grounds for this variance request.

This criterion is met.

7. That the applicant would suffer an unnecessary hardship if the variance requested were denied.

The applicant would suffer an unnecessary hardship if the variance were denied. The property has been purchased with a relatively small garage located in the rear of the property. To tear down an existing, functioning structure is a hardship that is unnecessary.

This criterion is met.

CONCLUSION
The Community Development Department concludes that the request for ARB 18-91 is a minimum easing of the code, and is in harmony with the neighborhood, and will not be injurious to the neighbors.

RECOMMENDATION
The Community Development Department recommends approval of Petition ARB 18-91, a request, from Sean Dugan (DPC Acquisitions LLC), for a variance to reduce the 20-foot required rear yard setback for the IND, industrial Zone, to 7.5 feet, located at 3100 Bloomfield Hwy, due to the request only meeting 5 out of the required 7 criteria, for granting a variance.

Staff recommends the following conditions:
1. The height of the structure shall be limited to the existing 1-story, and the existing height, found at the time of the variance approval.
Location of Subject Structure
Vacant Building

Subject Building
Comment Summary

PLANNING MEMO COMMENTS SUMMARY
ARB 18-91 3100 BLOOMFIELD HWY.
Deadline: 12/17/18

<table>
<thead>
<tr>
<th>City of Farmington Departments</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>City of Farmington Departments</strong></td>
<td></td>
</tr>
<tr>
<td>CD</td>
<td>Director - M. Horton</td>
</tr>
<tr>
<td>CD</td>
<td>Addressing - Planning Division</td>
</tr>
<tr>
<td>CD</td>
<td>Chief Building Official - D. Childers</td>
</tr>
<tr>
<td>CD</td>
<td>Long Range Planner</td>
</tr>
<tr>
<td>CD</td>
<td>MPO</td>
</tr>
<tr>
<td>CD</td>
<td>Oil &amp; Gas Inspector - L. Simms</td>
</tr>
<tr>
<td>CITY</td>
<td>City Manager’s Office - J. Baird</td>
</tr>
<tr>
<td>ELEC</td>
<td>Customer Care Manager - L. Richardson</td>
</tr>
<tr>
<td>ELEC</td>
<td>Electrical Engineering - L. Aligarbes</td>
</tr>
<tr>
<td>ELEC</td>
<td>T &amp; D - R. Romero</td>
</tr>
<tr>
<td>FIRE</td>
<td>Fire Captain - D. Doudy</td>
</tr>
<tr>
<td>FIRE</td>
<td>Fire Marshall - B. Vega</td>
</tr>
<tr>
<td>LEGAL</td>
<td>City Attorney - J. Breakell</td>
</tr>
<tr>
<td>LEGAL</td>
<td>Deputy City Attorney - E. Wayne</td>
</tr>
<tr>
<td>POLICE</td>
<td>Code Compliance - M. Romero</td>
</tr>
<tr>
<td>POLICE</td>
<td>Sergeant - P. Flores</td>
</tr>
<tr>
<td>PRCA</td>
<td>S. Reeves/ R. Crosby</td>
</tr>
<tr>
<td>PRCA</td>
<td>ORII - C. Styron</td>
</tr>
<tr>
<td>PW</td>
<td>City Engineer - N. Westerling</td>
</tr>
<tr>
<td>PW</td>
<td>Engineering - T. Sitta</td>
</tr>
<tr>
<td>PW</td>
<td>Streets Superintendent</td>
</tr>
<tr>
<td>PW</td>
<td>Traffic Engineer - I. BlueEyes</td>
</tr>
<tr>
<td>PW</td>
<td>Water/Waste Water - M. Tso</td>
</tr>
<tr>
<td>PW</td>
<td></td>
</tr>
</tbody>
</table>

Other Entities

New Mexico Gas Company - R. Castillo
Centurylink - D. Williams
Enterprise Field Services
**PETITION APPLICATION**

<table>
<thead>
<tr>
<th>PROJECT TYPE (Check Those Applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Annexation and/or Zoning</td>
</tr>
<tr>
<td>☐ Preliminary Plat</td>
</tr>
<tr>
<td>☑ Final Plan</td>
</tr>
<tr>
<td>☐ Summary Plat</td>
</tr>
<tr>
<td>☐ Special Use Permit</td>
</tr>
<tr>
<td>☑ Variance (ARB)</td>
</tr>
<tr>
<td>☐ Zone Change to District</td>
</tr>
<tr>
<td>☐ Temporary Use Permit</td>
</tr>
<tr>
<td>Proposed Length of Use:</td>
</tr>
<tr>
<td>☐ Well site equipment modification</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant's Name: Sean Dugan (DPC Acquisitions LLC)</td>
</tr>
<tr>
<td>Address: 709 E. Murray Dr. Farmington NM 87401</td>
</tr>
<tr>
<td>E-Mail: <a href="mailto:sakura@sakuraeng.com">sakura@sakuraeng.com</a></td>
</tr>
<tr>
<td>Telephone:</td>
</tr>
<tr>
<td>Relationship to Property Owner: Owner</td>
</tr>
</tbody>
</table>

**Legal Description of Subject Property:** B1567 P587

**Is Property subject to deed restrictions, covenants, or homeowners' association agreements?** Yes ☐ No ☑

If Yes, please provide copy with application.

**REPRESENTATIVE / CONTACT PERSON (if other than applicant)**

| Name: Scott A Martin |
| Phone: 505-320-6767 |
| Address: 125 West Main St. Farmington NM 87401 |
| E-Mail: sakura@sakuraeng.com |

**OWNERSHIP**

| Name: Sean Dugan |
| Phone: |
| Address: 709 E. Murray Dr. Farmington NM 87401 |

**OWNER CERTIFICATION**

I certify that I am the owner and the information and exhibits herewith are true and correct to the best of my knowledge in filing this application. I am acting with the knowledge and consent of all persons in interest and understand that without the consent of all persons in interest this requested action cannot lawfully be accomplished. I give my permission for authorized officials of the City of Farmington or Planning and Zoning Commission to enter the premises described in this application. I understand applications will generally be reviewed by City Council at their first regular session following the P&Z review.

| Name: DPC Acquisitions LLC |
| Address: 709 E. Murray Dr. Farmington NM 87401 |
| Owner's Signature: |

**Received By:**

- Date: 1/30/18
- Fee Received: 70
- Project File No. ARB 18-91
- Date of Hearing/Meeting: ARB 11/3/19

- ☐ Blueline Copies of Plans
- ☐ Ownership Report (subject and surrounding properties)

- Legal Description
- ☐ Detailed Statement of Proposed Use

---

**COMM DEV DEPT**

---

**ARB 18-91 Petition Report**

---
November 29, 2018

Helen Landaverde
City of Farmington
Associate Planner
800 Municipal Dr.
Farmington, New Mexico 87401

Re: Variance Request for DPC 3100 Bloomfield Hwy Farmington, New Mexico.

Dear Ms. Landaverde:

Sakura has been engaged to assist DPC in obtaining a variance to the City of Farmington’s Unified Development Code hereafter UDC. DPC acquired the property at the above noted address. Upon taking ownership of the property DPC has decided to split the property into two parcels of land, a north and south piece as shown on the attached Summary Plat. Sakura was engaged to produce the plat for the lot split. In doing the field work Sakura noted that structure “B” as noted on the attached drawing is not within the required set back. The UDC requirements for industrial zoning requires a 20-feet set-back for a rear yard. The side yard set-back meets the UDC requirements. In DPC’s view the location of the buildings were placed at their location would come under what would be considered as an existing non-conforming use of the requirements. Sakura does not know when the properties were constructed on the property and DPC management would not know either due to the fact that DPC acquired the property under a previous owner’s failure to meet their loan commitment to DPC.

Sakura has attached the statement/answers to the Justification of Variance Form to this letter for Staffs use in determining approval of a variance request in front of the Administration Review Board.

Therefore, we are asking easing of the code requirement.

We are open for any question and can be reached at 1-505-564-2139.

Sincerely,

Paul F. Martin MBA, P.E. New Mexico
Colorado, Utah, Arizona, and Texas.
Principal Engineer and CFO for Sakura

File: 2018-462

Designing for Your Future
125 West Main Street, Suite A - Farmington, New Mexico 87401
Phone: 505-564-2139
www.sakura@sakuramea.com
JUSTIFICATION OF VARIANCE
(Continued)

6. That no non-conforming use of neighboring lands, structures or buildings in the same district and no permitted use of lands, structures or buildings in other districts has been or shall be considered grounds for the issuance of a variance.

7. That the applicant would suffer an unnecessary hardship if the variance required were denied.

Signature of Petitioner: [Signature]

Date: 11/30/18

Attach additional sheets if necessary or use the space below

Letter to City of Farmington
(ARB) ADMINISTRATIVE REVIEW BOARD
NOTICE OF HEARING

Notice is hereby given that the following application has been filed with the Administrative Review Board of the City of Farmington.

Petition No. ARB 18-91 - a request from Sean Dugan, represented by Sakura Engineering and Surveying, for a variance to the setbacks for property in the IND, Industrial district, located at 3100 Bloomfield Highway, in the City of Farmington, San Juan County, New Mexico, as described below:

LEGAL DESCRIPTION:
That part of the SW/4SE/4 of Section 14, Township 29 North of Range 13 West, N.M.P.M., in the City of Farmington, San Juan County, New Mexico.
Otherwise located at 3100 Bloomfield Hwy.

A public hearing will be held before the Administrative Review Board of the City of Farmington on Thursday January 3, 2019, at 6:00 p.m. in the City Council Chambers at City Hall, 800 Municipal Drive, Farmington, New Mexico to consider these variance requests. All persons of interest are invited to attend said hearing and shall have an opportunity to be heard on why said application should be granted or denied.

Karen Walker
Administrative Assistant

Property Owners Letter (POL)

NOTICE OF PUBLIC HEARING
VARIANCE REQUEST
PETITION NO. ARB 18-91

December 12, 2018

Dear Property Owner:

Notice is hereby given that an application has been filed with the Administrative Review Board of the City of Farmington, New Mexico, a request from Sean Dugan, represented by Sakura Engineering and Surveying, for a variance to the setbacks for property in the IND, Industrial district located at 3100 Bloomfield Highway, in the City of Farmington, San Juan County, New Mexico, as described below:

LEGAL DESCRIPTION
That part of the SW/4SE/4 of Section 14, Township 29 North of Range 13 West, N.M.P.M., in the City of Farmington, San Juan County, New Mexico.
Otherwise located at 3100 Bloomfield Hwy.

A public hearing will be held before the Administrative Review Board of the City of Farmington on Thursday January 3, 2019 at 6:00 p.m., in the City Council Chambers at City Hall, 800 Municipal Drive, Farmington, New Mexico to consider this variance request. All persons of interest are invited to attend said hearing and shall have an opportunity to be heard on why said application should be granted or denied.

You are receiving this letter because you may own property within 100 feet (excluding public right-of-way) of the proposed change. You are invited to attend the hearing noted above or submit written comments prior to the meeting to the Community Development Department - Planning Division at 800 Municipal Drive, Farmington, New Mexico 87401. Please be advised that all submitted comments will become public record and that there is the possibility that any petition may be withdrawn before the hearing date.

If you have any questions or would like additional information regarding this notice or the petition, please contact Gary Leikness at 505-599-1309 or gleikness@fmtn.org.

Sincerely,

Karen Walker
Administrative Assistant
Mailing List

Names and Tax-Roll Addresses of Owners Within One Hundred (100) Feet (excluding roadways and easements) of the Following Described Property

Referenced as TRACT 1:

That part of the Southwest Quarter of the Southeast Quarter (SW/4SE/4) of Section Fourteen (14), in Township Twenty-Nine (29) North of Range Thirteen (13) West, N.M.P.M., in the City of Farmington, San Juan County, New Mexico described as follows:
BEGINNING at a point on the North right-of-way line of State Highway No. 17, which point is North 86°47.56” West 1597.80 feet from the Southeast corner of said Section 14;
THENCE North 00°30’50” East 200.00 feet;
THENCE South 89°29’10” East 20.00 feet;
THENCE North 01°01’38” West 1050.33 feet;
THENCE South 89°50’30” East 265.60 feet;
THENCE South 00°07’44” East 1074.26 feet;
THENCE West 111.00 feet;
THENCE South 177.68 feet to the North line of said right-of-way line;
THENCE North 89°02’00” West 160.00 feet along said right-of-way line to the point of beginning.

AND

That part of the Southwest Quarter of the Southeast Quarter (SW/4SE/4) of Section Fourteen (14), in Township Twenty-Nine (29) North of Range Thirteen (13) West, N.M.P.M., in the City of Farmington, San Juan County, New Mexico described as follows:
BEGINNING at a point which is North 86°47.56” West 1597.80 feet and North 00°30’50” East 200.00 feet and South 89°29’10” East 20.00 feet and North 01°01’38” West 670.63 feet from the Southeast corner of said Section 14;
THENCE North 21°33’10” West 408.61 feet;
THENCE South 89°50’20” East 143.00 feet;
THENCE South 01°01’38” East 379.70 feet to the point of beginning.

TRACT 1, 3 & 9

DPC Acquisitions LLC
P.O. Box 420
Farmington, NM 87402

That part of the SW/4SE/4 of Section 14, in Township 29 North, Range 13 West, N.M.P.M., in the City of Farmington, San Juan County, New Mexico.

Book 1567, page 587

AND

All of the DUSTIN INDUSTRIAL PHASE 3, in the City of Farmington, San Juan County, New Mexico, filed for record October 26, 1990.

Book 1565, page 484

AND
That part of the E2SW/4SE/4 of Section 14, in Township 29 North, Range 13 West, N.M.P.M., in the City of Farmington, San Juan County, New Mexico.

Book 1567, page 587

TRACT 2
Manuel D. Brooks Living Trust
2900 C Bloomfield Highway
Farmington, NM 87401

That part of the E2SW/4SE/4 of Section 14, in Township 29 North, Range 13 West, N.M.P.M., in the City of Farmington, San Juan County, New Mexico.

Book 1316, page 556

TRACT 4
Davene J. Cole Living Trust
913 North Spencer Avenue
Bloomfield, NM 87413

Lots 1 and 2, in Block 7, of the CHULA VISTA SUBDIVISION, in the City of Farmington, San Juan County, New Mexico, filed for record January 22, 1959.

Book 1629, page 715

TRACT 5
Abraham Sotelo and Berenice Sotelo
2705 East Maple Street No. A
Farmington, NM 87401

Lots 1B, in Block 5, of the CHULA VISTA SUBDIVISION REPLAT “B”, in the City of Farmington, San Juan County, New Mexico, filed for record December 9, 2005.

Book 1415, page 302

TRACT 6
Lauro Borunda-Loya and Oralia Mujica Baiderr
2801 East Maple Street
Farmington, NM 87401

Lot 2, in Block 5, of the CHULA VISTA SUBDIVISION, in the City of Farmington, San Juan County, New Mexico, filed for record January 22, 1959.

Book 1533, page 392

TRACT 7
Frank J. Anderson
P.O. Box 4684
Tubac, AZ 85646

Lots 3 and 4, in Block 5, of the CHULA VISTA SUBDIVISION, in the City of Farmington, San Juan County, New Mexico, filed for record January 22, 1959.

Book 1012, page 505
Book 1012, page 506
TRACT 8
Dowell Incorporated
919 Congress Avenue Suite 1450
Austin, TX 78701

That part of the SE/4SE/4 of Section 14, in
Township 29 North, Range 13 West, N.M.P.M., in
the City of Farmington, San Juan County, New
Mexico.

Book 322, page 195

TRACT 10
Ross F. and Joan Lankford Living Trust
8250 Foothills Drive
Farmington, NM 87402

That part of the NW/4NE/4 and the NE/4NE/4 of
Section 23, in Township 29 North, Range 13
West, N.M.P.M., in the City of Farmington, San
Juan County, New Mexico.

Book 1319, page 159
Book 1422, page 789

TRACT 11
Weidon V. Delancy Jr. and Lolita Delaney
2305 East 14th Street
Farmington, NM 87401

That part of the NW/4NE/4 of Section 23, in
Township 29 North, Range 13 West, N.M.P.M., in
the City of Farmington, San Juan County, New
Mexico.

Book 1625, page 631

TRACT 12
Western Refining Retail LLC
1250 West Washington Street Suite 101
Tempe, AZ 85281

That part of the NW/4NE/4 of Section 23, in
Township 29 North, Range 13 West, N.M.P.M., in
the City of Farmington, San Juan County, New
Mexico.

Book 1590, page 281

TRACT 13
Nygren Investments, LLC
816 East Crestview Drive
Farmington, NM 87401

Lot 2, of the SHANNON BLUFF ADDITION, in
the City of Farmington, San Juan County, New
Mexico, filed for record December 20, 1984.

Book 1503, page 519

TO: November 21, 2018, 4:30 p.m.

LIABILITY LIMITED TO THE AMOUNT PAID FOR THIS CERTIFICATE.

SAN JUAN COUNTY ABSTRACT & TITLE COMPANY

[Signature]

By: Tomaine Austin, Abstractor
The Administrative Review Board met in regular session on Thursday, December 6, 2018 at 6:00 p.m. in the City Council Chamber, 800 Municipal Drive, Farmington, New Mexico.

Members present

Chair-James Dennis
Ireke Cooper
Jeff Johanson
Paul Martin
Oliver Roe

Members absent: None

Staff present:
Isaac BlueEyes
Derrick Childers
Helen Landaverde
Gary Leikness
Mary Holton
Karen Walker

Others addressing the Board:
Kate Babcock
Michelle Barnard
Rebecca Hawbecker
Wilfred Hawbecker
Doug Kinsey
Amy Leupold
Mary Frances Leupold
Wayne Leupold
Charles Wilson

Call to Order
The meeting was called to order at 6:00 p.m. by Chair Dennis and there being a quorum present the following proceedings were duly had and taken.

Approval of the Agenda
A motion was made by Board Member Martin and seconded by Board Member Cooper to approve the agenda. The motion passed unanimously by a vote of 5-0.

Approval of the Minutes from the November 8, 2018 Regular Meetings
Board Member Martin made a motion to approve the minutes of the November 8, 2018 regular meeting. The motion was seconded by Board Member Cooper and passed unanimously by a vote of 5-0.

Swearing in of Witnesses
All parties that wished to speak on behalf of any agenda item were sworn in by Karen Walker.
Petition No. ARB 18-87  
Variance to the height of a freestanding sign

NOTE: Board Member Martin left the room due to a possible conflict of interest.

Discussion of ARB No. 18-87 on December 6, 2018

Associate Planner Helen Landaverde presented the staff report for ARB 18-87, a request from Leaf Properties, Inc. represented by Doug Kinsey, for a variance to increase the height of a freestanding sign from 10-feet to 20-feet for a new retail store, a Dollar General, for property in the LNC, Local Neighborhood Commercial District located at 4515 Wildflower Parkway.

Pursuant to the Unified Development Code Section 5.8.7(b), the maximum allowable height for a freestanding sign in the LNC District is 10 feet. The size of the property is 5.470 acres. There is a 40-foot utility easement, including a 20-foot BP gas pipeline easement, within the required front yard setback on the subject property. The topography of the property varies; the grade elevation in the front yard area is higher than the project’s site grade elevation.

BP Oil is requiring the petitioner to place the proposed freestanding sign behind the 20-foot gas pipeline easement. The applicant proposes to place the sign at the entrance of the parking lot area and behind the 40-foot utility easement. Normally a freestanding sign would be allowed to be placed within the required front yard setback; however, the proposed sign cannot be placed within the existing easements found on the property.

The applicant is requesting approval to place a 20-foot tall freestanding sign behind the existing easements to provide better visibility for the freestanding sign from the public right-of-way. The sign consists of approximately 50 ft.² of sign area.

The surrounding properties are zoned commercial and residential. This area for the most part is currently undeveloped, said Ms. Landaverde.

ARB 18-87 meets the variance criteria listed in section 8.12.4 of the UDC, and the Community Development Department recommends approval.

Chair Dennis questioned how far the petitioner's property was from Mesa View Elementary School.

Doug Kinsey with Leaf Properties, pointed on the map the distance from the elementary school. Board Member Cooper noted that the properties are quite a distance apart. Mr. Kinsey explained the elevation differences in the area. The petitioner’s property is in a valley and Mr. Kinsey said a sign at the 10-foot height would not have enough visibility in both directions on the road.

Administrative Review Board Action of December 6, 2018

A motion was made by Board Member Cooper and seconded by Board Member Roe to approve Petition No. ARB 18-87, a request from Leaf Properties, Inc., represented by Doug Kinsey, for a variance to increase the height of a freestanding sign from 10-feet to 20-feet a new retail store for property in the LNC, Local Neighborhood Commercial District located at 4515 Wildflower Parkway.

AYE: Chair Dennis, Board Members Cooper, Johanson, and Roe.

NAY: None
ABSTAIN: Board Member Martin

ABSENT: None

APPROVED 4-0

Petition No. ARB 18-84
Appeal of an Administrative Decision on an Encroachment

Discussion of ARB No. 18-84 on December 6, 2018
Planning Manager Gary Leikness presented the staff report for ARB 18-84, an Appeal of an Administrative Decision, from Charles and Kim Wilson to allow a gate to fully encroach into a public right-of-way (alley) that abuts the southern parcel line of 1804 Knudsen Avenue in the SF-7, Single-family District.

The appellant originally submitted an application in the later part of last year for a Revocable Encroachment Permit to the City requesting that he be allowed to encroach into a City right-of-way (alley), and install cables and posts to block the alley from all vehicular usage. Mr. Leikness presented pictures of the proposed cable and post gate. The Community Development Department made a determination to not allow the blocking of the alley based on the recommendations made by the Traffic Engineering Division.

Mr. Leikness noted the Comment Summary on page 42 of the P&Z Agenda Book. The comments from the Fire Marshall, Code Compliance, and Public Works are listed below.

- Fire Marshall- “A gate of any type will delay response to the areas affected. If approved, it will require a knox lock for the Fire Department to use.”
- Police/Code Compliance- “This alley needs to remain open for constant access to the power lines and utilities. Also, this would limit access for the surrounding properties to the rear of their property if a fences were to block the alley. Additionally, Emergency Services need access at all times to deal with specific emergencies.”
- Public Works- “The Public Works Engineering Department has no conflict with this petition request. However, any encroachment permits granted within the alley should have a signed agreement between all the adjacent property owners to the alley (1803 and 1801 Sage Dr. and 1804 and 1704 Knudsen Ave.), as well as the consent of all affected utilities that currently utilize the alley (COF Electric, NM Gas, etc.).”

Letters of opposition from two of those adjacent property owners was received. One property owner was neutral, said Mr. Leikness.

New Mexico Gas Company has a gas main in this alley and said, “We need access for meter reading, line locating, leak surveys, gas line maintenance & emergency situations.”

Tonight, said Mr. Leikness, the major decision is to decide if the Community Development Department followed the correct criteria. Those criteria are listed below from Section 24-4-3(c).

1. The proposed permit would not cause public property to become dangerous or hazardous to the Public when used by the Public for the purpose for which it was intended to be.
It was determined by the Traffic Study, performed by the Traffic Engineering Division of the City of Farmington Public Works Department that a gate will force an unsafe pull out onto Knudsen. The Department appropriately addressed this criterion in the decision.

2. The proposed encroachment will not in itself become in a dangerous or defective condition or unreasonably endanger or interfere with Public health, safety, or convenience.

The proposed gate will interfere with public convenience by limiting yard access (Traffic Study). In addition, the alley is limited to only a single access lane because of gas meters and other utility fixtures.

3. The encroachment will not become unsightly.

The encroachment would not be maintained by the City.

4. The issuance of the permit is otherwise in the interest of the health, safety, and welfare of the citizens of the City.

As mentioned in the Traffic Study, the alley is on top of a vertical, therefore, promoting good visibility. Whereas the alternative access to Knudsen Avenue is via Yucca Avenue. Yucca is determined to be safe, but better visibility is at the alley.

A denial was recommended as well due to precedence to encroach the alleys in the City.

The criteria for appeals are from Section 24-4-8.

The purpose of the hearing will be to determine if the decision of the Community Development Department, in consultation with other departments, made a proper decision. The Department denied the encroachment application based upon the Traffic Study, performed by the Public Works Department, which included analyses and advisement. The analysis was performed by our own experts and therefore valid and applicable. By relying on this study, the Director made a proper decision to deny the encroachment request

The Community Development Department recommends that the Administrative Review Board uphold the decision to deny.

Chair Dennis asked what the procedure was to vacate an alley. Mr. Dennis felt that the alley should be usable for everyone in the area. Director Mary Holton said that in the past, when the City has vacated alleys, there is a set process. The Chief Building Inspector oversees the process as the ones that have been successful is where the land surrounding an alley has been under one ownership. Ms. Holton noted that most encroachment permits are issued at a building permit stage.

Board Member Martin asked if the person who did the Traffic Study is licensed. Isaac BlueEyes, City Traffic Engineer, said he is not licensed as a Professional Engineer, PE.

Charles (Chuck) Wilson, 1804 Knudsen, asked to review some of the statements that were made in the Staff Report. Mr. Wilson said the Staff Report states that he would like to block “all vehicular usage”. He stated that he only wants to block all thru traffic usage in the alley. He does not want to block the alley for people entering their yards or for utility or emergency work.
Mr. Wilson said the traffic in the alley is a nuisance because it is loud and dusty. The alley is narrow and is not meant to be used as a thru street.

Mr. Wilson said his driveway empties into the alley on the south end. The alley is at the crest of the hill. From Yucca, you cannot see over the top of the hill to the south. From the alley, visibility is limited to the north. That information is not in the Traffic Study, said Mr. Wilson. The Staff Report says the Traffic Study “looked at the clear vision of the alley and found it to be safe and functioning well”. There is no discussion of that in the Traffic Study.

Mr. Wilson said he started the encroachment process in August of 2017. We received a lot of help from the City. Mr. Wilson said that he knew about the Fire Marshals comment about an access lock. The design of the gate allows for that.

Mr. Wilson said the statement from Code Compliance that a gate “would limit access for the surrounding properties to the rear of their property” would not happen with the position of the proposed gate. Mr. Wilson said the Fire Department told him that they would be able to get to the front and back of houses with a gate at his proposed location.

As far as an unsafe pullout onto Knudsen that is stated in the Traffic Study, that is part of the complaint that pulling out from Yucca onto Knudsen is an unsafe intersection and, should the alley be blocked, would force an unsafe pullout at that intersection. The Traffic Study proves that the intersection is not unsafe. Mr. Wilson said another Traffic Study was done in 2016 with a similar complaint. Signs were added after that Traffic Study.

Mr. Wilson said the Traffic Study was very thorough, but he thinks things were misapplied in the denial statements. Mr. Wilson said the Traffic Study brings out that neighbors are using the alley as a thru street instead of Yucca. The Traffic Study did measurements and compared it to the safety criteria. The Traffic Study said you can see 190-feet to the south from Yucca, said Mr. Wilson. You cannot see 190-feet to the north from the alley due to the blind spot.

The Traffic Study says the intersection at Yucca is safe and suggests adding signs. Mr. Wilson said the alley is properly described in the Traffic Study as a 22-foot wide dirt road for utility use.

Part of the City’s reasoning for not allowing the encroachment, said Mr. Wilson, is that during the seven-day Traffic Study period, there was a low volume of traffic. I agree with that, and that matched what the utility design of the alley is for. That volume is what we want to achieve with the encroachment, said Mr. Wilson.

In the determination, there are some things that I believe are confused, said Mr. Wilson. That being the purpose of this meeting, to determine if the Traffic Study was properly done, I think the Traffic Study was done well. The City knew a number of things in the denial letter to us. It was directly stated that the gate was to stop thru vehicle traffic, he said.

Chair Dennis said his understanding is that Mr. Wilson feels the alley is getting used as a thru street and is causing disruption for Mr. Wilson. The Traffic Study found that it was used primarily by one vehicle a day and Mr. Wilson did not feel the 7-day Traffic Study was a true statement of the actual use.

Mr. Wilson said the traffic counter was put in around the 3rd of August. The data is from the week ending on the 28th, he said. The counter was in for 25 days, was vandalized, and reinstalled by the City around the 10th. It then had technical difficulties and it took 3-weeks to get 1-week’s worth of data. There is information from other neighbors stating in the complaints that it is used multiple times a day, said Mr. Wilson.
Chair Dennis asked Mr. Wilson how much traffic he felt used the alley on a regular basis. Mr. Wilson said there are 6-8 trips a day sometimes.

Board Member Martin asked if the proposed gate would be close to Mr. Wilson's rear property. Mr. Wilson said it would be approximately 10-feet toward the direction of his property. Mr. Martin asked Mr. Wilson if the neighbor to the south used the alley. Mr. Wilson said that neighbor did use the alley. Mr. Martin asked Mr. Wilson why he was proposing to place the gate 10-feet toward his property. Mr. Wilson said that would allow the Fire Department adequate access to the properties. Mr. Martin asked who Mr. Wilson spoke with at the Fire Department. Mr. Wilson said the 10-feet, along with the lock, is what he was told by the City would be necessary. Mr. Martin asked when the problem with the alley began. Mr. Wilson said it has been ongoing for a number of years. He has asked people to stop using the alley without success, and has tried various things to make it quieter inside his home. Mr. Martin asked if it was more prevalent during the summer months when school is out. Mr. Wilson said it is about the same all year. It is people going to work and coming home or going to work and coming home for lunch.

Board Member Roe asked if Mr. Wilson thought the neighbors of the 16 homes on the alleyway were the people who were using the alley or if it was outsiders using it to cut through. Mr. Wilson said it was a little of each. He said the four residents attached to the alley between Knudsen and Sage were primarily the people using the alley, but other people were using it too.

Wayne Leupold, 1803 Sage Drive, said this issue affects him more than anyone else. He said he bought the home in 1991. It is safer to use the alley than to go to Yucca to access Knudsen. It is ridiculous that Mr. Wilson doesn’t want anyone to use the alley. Since Mr. Wilson has said that no one can use the alley, I haven’t used the alley, said Mr. Leupold. “One-time last summer, I was going up the alley around 3:00 in the afternoon and Mr. Wilson yelled at me to slow down. I looked at my speedometer and I was going only 11 mph”. “I think this is a waste of your time”, said Mr. Leupold. “I work in my backyard a lot and one or two people use the alley a day. The Traffic Study was correct”, said Mr. Leupold. “He got his wish. I don’t use the alley anymore. I don’t know why we are wasting our time here.”

Board Member Martin asked Mr. Leupold if he notices other people using the alley. Mr. Leupold said, “Rarely”. Mr. Martin asked if teenagers used the alley. Mr. Leupold said there are not many kids living in the neighborhood. Mr. Leupold said he is the one who uses the alley the most, but he does not use it anymore. “When we moved in, everybody else moved out, said Mr. Leupold. He said Mr. Wilson has a camera focused on the alley, “He can tell you who goes up the alley any time of the day or night,” said Mr. Leupold. “I don’t use it anymore. I was the one who used it the most. He got his wish.” “Who buys a house next to an alley and doesn’t want anybody to use the alley.” “I teach at Heights (Middle School). I rarely use the alley even though I’m going east.”

Rebecca Hawbecker, 1804 Sage Dr., said Mr. Wilson has a camera on the alley and he should be able to produce evidence of the 8-10 cars that are using the alley. The police have been called on this situation. Ms. Hawbecker commented on the safety of the intersection of Yucca and Knudsen. She said people are not driving fast or playing loud music when they use the alley. The cul-de-sac at Sage is sometimes crowded and there is not always room to turn around, therefore, the alley is more accommodating. Ms. Hawbecker said people use the alley to pull campers into their backyards. The alley is not being abused, she said. Ms. Hawbecker said she has lived in the neighborhood since 2000 and the alley has never been a problem until the last few years.
Wilfred Hawbecker, 1804 Sage Dr., said the alley cannot be blocked. He said his gas meter was struck once and the gas company came down the alley to shut off the gas. He said he has almost been rear ended at Yucca and Knudsen.

Amy Leupold, 1803 Sage Dr., said there might be a false reading in the traffic count due to Mr. Wilson’s driveway connecting to the alley where the counter was placed. She said police have been called several times and the situation is stressful. Ms. Leupold said she has not used the alley since June of 2017. Ms. Leupold said the alley is used reasonably.

Mary Frances Leupold, 1803 Sage Dr., said she retired in 2008, and can see everybody who uses the alley. It is not being abused. She said her family uses the alley to gain access to their backyard. She said her family has lived in the neighborhood the longest. Ms. Leupold said there are 3 families who bought property in that area because of the alley. She said she would not be able to open the gate to her backyard if the alley was gated, and it would be a hazard if people had to back down the alley. Ms. Leupold said no one except Mr. Wilson has ever complained about the use of the alley. She said no one is using the alley as frequently as Mr. Wilson says they are. Ms. Leupold said Mr. Wilson could tell you who yanked up the traffic counter cables because Mr. Wilson has a camera focused on the alley. We never use the alley, she said.

Kate Babcock, 1609 Yucca, said she has a utility trailer and it is easier to come down the alley to Knudsen. People who use the alley are usually neighbors and she doesn’t think the alley use is a problem. The intersection at Yucca and Knudsen is very scary, she said.

Charles Wilson said he is not calling the police on people who are walking in the alley. He said there are other problems happening on the block and the police have a record of when he has called them. He said he has called the police and asked for help on how to stop the problem in the alley. Mr. Wilson said he has had the police called on him multiple times by neighbors. The police have suggested mediation. Mr. Wilson said the letter in the ARB Agenda Book from the Leupolds states that they use the alley 3 times a day. Mr. Wilson said that is probably accurate. He said the situation is stressful. Mr. Wilson said he has had problems in the neighborhood, his vehicle has been broken into, and that is why he has cameras. He said the police suggested cameras, lights, and a security system.

Chair Dennis asked if Mr. Wilson built the house. Mr. Wilson said he moved into the neighborhood in 2001. He said he made inquiries about the use of the alley and if people would be driving that close to his house all the time. He said he was told the rules for the alley was for it to not be used as a thru street, but for utility access only. I did look up and down the alley and there are neighbors who use the alley to access their garages and they would need to use the alley. I did look at that before we moved in, he said.

Board Member Cooper said the job of the ARB Board is to determine if the City did what they are supposed to do. Chapter 24, article 4 says the City may or may not grant encroachments on City property. Section 24-4-1 says no person shall encroach on, in, over, or under any real property owned by the City or any public right-of-way. The criteria for allowing encroachments are in 24-4-3(c). Conditions 1, 2, and 4 are straight forward. Condition 3 would apply only for maintenance if the petitioner were to install the gate. The City has done what they were supposed to do by following the Municipal Code.

Board Member Johanson said the City stated that any encroachment to the alley should have a signed agreement by all of the adjoining property owners to the alley. That is not the case here.
Board Member Martin said the City staff has gone above and beyond to accommodate the petitioner and the neighbors. Mr. Martin referred to his 40 years as an engineer and 20 years working with the City, he feels that alleys have a distinct use and need to be open for access.

**Administrative Review Board Action of December 6, 2018**

A motion was made by Board Member Martin and seconded by Board Member Cooper to deny Petition No. ARB 18-84, and that the Community Development Director properly made a decision to deny Charles and Kim Wilson to allow a gate to encroach into a public right-of-way (alley) that abuts the southern parcel line of 1804 Knudsen Avenue in the SF-7, single-family district.

**AYE:** Chair Cooper, Board Members Cooper, Dennis, Johanson, Martin, and Roe.

**NAY:** None

**ABSTAIN:** None

**ABSENT:** None

**DENIED 5-0**

**Discussion and Approval to reschedule or cancel the ARB meeting of July 4, 2019**

A motion was made by Chair Dennis and seconded by Board Member Roe to reschedule the July meeting for July 11, 2019.

**Business from the Floor:** There was no business from the Floor.

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

**Business from the Members:** Board Member Cooper announced his resignation from the ARB.

**Business from Staff:** There was no business from Staff.

**Adjournment:** The December 6, 2018 meeting of the Administrative Review Board was adjourned at 7:27 p.m.