



Minutes of the Regular Meeting
Of the Santa Cruz County
Board of Adjustment #3
February 18, 2016

APPROVED

Santa Cruz County Board of Supervisors Meeting Room # 120
2150 N. Congress Drive, Nogales, AZ 85621

BOARD MEMBERS PRESENT: Dean Davis, Arturo Vazquez, Jean Miller, Donald Davidson and
Charlotte Stockton

STAFF PRESENT: Mary Dahl and Angelika Ortiz

Mr. Davis called the meeting to order at 2:00 p.m. Pledge of allegiance preceded roll call and it was noted for the record that a quorum was present.

Mr. Davis ordered a call to the public. After hearing no response, he moved to the next item on the agenda, Case No. VAR-16-3-2 Parcel No. 112-15-025, a request for a variance from Article 9, Section 9120(B)(3) of the Santa Cruz County Zoning and Development Code to reduce the required front yard setbacks from 20 feet to 11 feet to expand a bathroom and closet on a B-1 (Neighborhood Business) zoned property located at 3 Camino Otero in Tubac, Arizona.

Ms. Dahl review the staff report and stated that the property has been developed as an art gallery and living quarters and that the applicants are asking to reduce the required front yard setbacks to expand the master bathroom and closet within the residentially-used portion of the existing building. She explained that the proposed addition would remain inside the perimeter wall.

Ms. Dahl mentioned that one of the variances the applicants requested over the years was to reduce the on-site parking and one of the conditions to grant that request was that the applicants would remove any obstacles encroaching in the public right-of-way adjacent to their property as directed by the County Engineer and that as of today those obstacles in the right of way and the signage prohibiting parking have not been removed.

Ms. Dahl informed the Board of two phone calls received in opposition of this variance due to the no parking signs and right-of-way encroachments. She suggested the following conditions for approval:

1. All required building permits and approvals shall be obtained prior to any work.
2. Construction shall strictly conform to the conditions of approval by the Tubac Historic Zone Advisory Board.
3. Prior to the issuance of any permits associated with this request, all objects in the County right-of-way in front of the property shall be removed as directed by the County Engineer.
4. Prior to the issuance of any permits associated with this request, the applicants shall remove all No Parking signs from their property and shall not post any signs that misrepresent to the public that parking is in any way restricted on Camino Otero or the adjacent alleyway.

Mr. Davis asked if the callers indicated they would be in favor if the obstacles on the right-of-way are removed.

Ms. Dahl responded that these were voice messages and that she did not had a conversation with the callers.

Mrs. Miller expressed concern that the Board is being asked to grant a variance on a property where there is clear evidence that the conditions set for a previous variance have not been met.

Mr. Davidson stated that he visited the property and indeed the rock piles and the signs are a nuisance. He asked why no action has been taken regarding the previous variance.

Ms. Dahl responded that Tubac is a unique place and that there are a lot of encroachments. She mentioned that the County paid to do an encroachment study and that a lot of property owners took care of their encroachments and others have not.

Mr. Jeffrey Latham made a presentation of the request. He addressed the rock piles and the signs and said the applicant is aware of that condition but that as of today no building permit has been applied for on the previous variance and that the owner is aware of that condition. Mr. Latham explained that the variance they are seeking would be a minor encroachment into the setback that would come out to the existing masonry wall.

Mrs. Stockton asked if the addition would abut to the existing wall.

Mr. Latham responded yes, that there would be no space between the wall and the new building.

Mr. Davis opened the public hearing.

Mr. Howard Bach spoke against the request. He asked the Board not to grant any variance until the rocks and the no parking signs are removed. Mr. Bach mentioned that the applicant paved the alleyway and whenever they want they barricade it. He asked that this be prohibited.

Mrs. Miller asked if no building permit has been issued for the variance parking.

Ms. Dahl responded that is the reason she specifically addressed that issue in the conditions for this variance approval.

Mrs. Miller asked if the applicant does not apply for a building permit soon, does that mean the rocks won't be moved anytime soon or if the permit is denied would the rocks be left there.

Ms. Dahl responded that the Board could impose a date for removal.

Mr. Davis asked Mr. Bach if the problem with the rocks and the no parking signs were corrected, would he have an objection with the building extending into the wall.

Mr. Bach responded that the rocks have always been an objection and that he has issue with people projecting their buildings out into the setback because it is narrow street and it would stick up more than any other building on that street.

Mr. George Thomson spoke against the request. He expressed concern about changing the historic nature of the Village of Tubac.

Mr. Latham explained that the rocks and the no parking signs were not arbitrarily placed. He stated that during the original construction of the gallery they were required to elevate the building a couple of feet above the street and that at that time they were required to do some sort of soil stabilization. The rocks that

were placed to stabilize the bank made it impossible to park there and that is why the no parking signs were placed. He said that if it required by the Board, the rocks and the signs would be removed.

Mr. Davis asked how far the rocks project into the right-of-way.

Ms. Dahl responded that not all of the rocks are on the right-of-way, as depicted in the pictures, but they are farther than necessary for bank protection.

Mr. Davidson asked if the applicants would consider a step down roof so the parapet on the addition would be lower.

Mr. Latham responded that the THZAB required it to be at the same height of the rest of the building.

Mr. Davis closed the public hearing and moved to comments, questions and deliberation by the Board.

Mrs. Stockton mentioned that there are more persons coming forward in opposition than in favor of the variance.

Mr. Davis said that the staff report indicated that the THZAB approved the project and that they look at anything happening in Tubac with a very careful eye. He concurred that the rocks on the right-of-way and the no parking signs are an issue and mentioned that, in his mind, the wall projection was not a major aesthetic issue.

Mrs. Miller concern that they did not follow the conditions set for granting them the previous variances and also for the blocking of the alley.

A discussion followed regarding the possibility of tabling the case until these items are resolved.

Mr. Gary Rose addressed the Board and explained that the property was built as a business/residence that even though they own a house in Tucson they decided to live in Tubac. He said that if they had made that decision prior they would probably have built the original building differently.

Mr. Rose explained that as part of a construction permit in 2001 they had to meet parking requirements they later requested a variance to build another building along the alleyway but the County had change the parking requirements and they did not continue with that proposal because they could not expand the parking as required. Mr. Rose mentioned that they had no problem removing the rocks.

Mrs. Stockton asked for clarification on the site plan and mentioned that there is a lot of space on the other side of the property where they could expand without having to request a variance.

Mr. Rose responded that would be taking away their future business opportunities.

Mrs. Miller asked Mr. Rose to clarify the statement made regarding the blocking of the alley.

Mr. Rose responded that it was eight days in a year, which coincided with 5 days of Tubac Festival and 3 days in November. He stated that the alley was not full blocked, but that cones were placed on the edge of the property to prevent visitors from parking and blocking the alley.

Mr. Latham clarified that the septic system is in front of the building where the bathroom is and to put a bathroom in the back of the building as suggested by Mrs. Stockton would be a big deal.

Mr. George Thomson approached the Board and mentioned that the storeowner across the street asked him to voice his opposition for the request due to the changes it would impose to the street and the number of things that have happened to the property.

Mrs. Stockton made a motion, seconded by Mr. Davidson, to table the request until March 17, 2016 and asked that the rocks and no parking signs be removed.

Motions was approved unanimously.

Mr. Davis moved to next item on the agenda, Case No. CUP-16-3-3 Parcel No. 117-02-584, a request for a conditional use permit to house two farm animals (horses) on an R-2 (Residential) zoned property located at 462 Camino Brizza Bonell in Rio Rico, Arizona.

Ms. Dahl reviewed the staff report. She mentioned that after receiving a zoning violation the applicant removed the horses only to bring them back later. She stated that the applicant submitted an application to seek a Conditional Use Permit to house two horses on this property but when an inspection was made, numerous farm animals were found on this and an adjacent property owned by the applicant and also structures had been built and fencing installed in the floodplain. In addition, there is another farm animal being kept on his residential lot where the initial violation began.

Ms. Dahl stated that there are numerous zoning violations on these properties owned by Mr. Alvarez and that the County Attorney feels the Board should not act on something with all these zoning and floodplain violations. She recommended denial of the request and that if Mr. Alvarez corrects all these violations he can come at a later date to apply for a Conditional Use Permit.

Mr. Davis asked the applicant for a presentation of the request.

Mr. Fernando Alvarez, Mr. Alvarez son, said that when they received the first zoning violation his father went and look for this property which they were told they could have horses because it was in the Ranchettes. However, when they applied for a building permit for the horse shelter he was informed that he needed a Conditional Use Permit.

Mr. Vazquez mentioned that the site plan shows the structurers will meet the 100 foot setback but that the existing structures are encroaching on the setbacks and asked if they are planning to remove them.

Mr. Alvarez responded yes.

Mr. Davis opened the public hearing after hearing no response, he moved to questions, deliberation and action by the Board.

Mr. Davis made a motion, seconded by Mrs. Stockton, to deny the request until all issues and zoning violations are corrected.

Mr. Davis moved to next item on the agenda: CUP-16-3-4 a request for a conditional use permit to construct a 120-foot tall Wireless Communication Facility with ground equipment on a GR (General Rural) zoned property located at 290 Elgin-Canelo Road in Elgin, Arizona.

Ms. Dahl reviewed the staff report. She stated that Verizon is looking to increase coverage in the eastern part of the County and that they hired a consulting company to help them find a suitable location and to apply for a conditional use permit.

Ms. Dahl stated that the proposal includes leasing 2,500 square foot area from Vina Sonoita located in the extreme corner of the 105 acre parcel and that the tower is proposed to be a 120 feet high monopole with the final height of the antenna being 124 feet high.

Ms. Dahl addressed some of the comments from the public received and mentioned that the closest residential area to the proposed tower location is Sunset Knolls Subdivision.

Ms. Dahl spoke about the telecommunication act and mentioned that a section of that act preserves local authority over zoning and land use decisions for wireless service facilities but that it does set forth specific limitations to County authority as follows:

- State or local government shall not unreasonably discriminate among providers of functionally equivalent services; and
- Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

Mr. Davidson asked for clarification regarding Elgin being a census designated place.

Ms. Dahl explained that Elgin is an unincorporated place and it is designated as a census designated place according to the Census Bureau.

Mr. Davidson asked what company provides phone service to Elgin.

Ms. Dahl responded that there is a tower in Sonoita and some towers going toward Cochise County but that there are some spotty areas.

Mrs. Miller commented that presently, many residents rely on land line service because cell phone coverage is unavailable.

Mrs. Stockton asked about the height of the Sulphur Springs transmission poles.

Ms. Dahl referred the question to someone in the public during the public hearing.

Mr. Garret Jonilonis, Pinnacle Consulting, Inc. representing Verizon Wireless, made a presentation of the request and mentioned that they have been looking for a location since 2013-2014. He stated that the reasoning for this application for a monopole on the Dutt's property is basically expansion of the infrastructure to address significant coverage deficiencies.

He said that they have a number of towers with varying distances, some in Fort Huachuca down to Sierra Vista to Sonoita and that the maps provided show the coverage available in voice and data showing a large gap on that zone.

He spoke about the proposed location, setbacks, mitigation, proposed method of concealing the tower and height and mentioned that the proposed antennas would cover 5 ½ miles to the north, 4 ½ miles to the west

and 6 ½ miles east to Cochise County line and this would enhance voice and data coverage and give another option for cheaper broadband internet access.

Mr. Dean Davis asked if the tower could not be located somewhere where it would not be in the middle of a wide open area so the aesthetic impact would not be an issue. He mentioned that the majority of the negative comments relate to aesthetic impact.

Mr. Jonilonis responded this is the optimum location and height for what they are trying to accomplish.

Mrs. Charlotte Stockton asked Mr. Jonilonis if he knew how tall the utility poles are.

Mr. Jonilonis responded no.

Mrs. Jean Miller asked if this property is not in a subdivision.

Mr. Jonilonis responded it is not within any subdivision.

Mr. Arturo Vazquez asked if other alternatives were explored to provide service, like lower towers or more towers.

Mr. Jonilonis responded that they did evaluate shorter poles, but in order to get the same amount of coverage, more than one facility would be required. He discussed stealth technologies such as disguising as a tree, flagpole etc.

Mr. Davis opened the public hearing.

Ms. Tiffany Peterson spoke against the request. She mentioned that she is one of the property owners that would be affected the most and that her property has been in the family since 1979. She described an agreement made by her family and other neighbors, including the Dutt's that all the utilities were going to be buried so that the views and the value of the properties would be protected. She also expressed concern regarding health and safety issues.

Mr. John Harvey spoke against the request. He spoke about the process/agreement they went through to get power to their properties, including Dr. Dutt's property and that they stipulated that all power lines had to be buried. He spoke about small cell towers and antenna systems, land devaluation and visual impact. He suggested that the boosters that many people use to enhance their wireless access had somehow been rendered ineffective by Verizon.

Ms. Sue Downing spoke against the request and addressed land values, scenic views and depreciation to her property. She noted that her property is 825 feet directly south of the proposed tower. She expressed concern about noise from the generators, fuel usage, spillage, wildfire risk and water contamination. She also questioned why boosters were no longer as effective as they once seemed to be.

Mr. Charles McChesney, attorney for the Babacomari Ranch owners, spoke against the request. He stated that there are a lot of utility easements throughout their property. He mentioned that the majority of the new transmission poles are 65 feet tall. Mr. McChesney stated that the Babacomari has supported the social and economic development of the area by providing land for the vineyards and for the fire department to build a station in the future, but they also spent a lot of capital and time in conserving that unique valuable area of the County.

Mr. McChesney stated that he is opposed to the approval of this monopole as presented, but that he is in favor of somehow providing the necessary wireless services to the community. He concluded by asserting that there should be other alternatives as to what is presented.

Mr. Jonilonis responded to some of the public concerns.

1. Boosters are stand-alone third party pieces of equipment that his client has no control over.
2. Any generator noise is due to the backup generator due to the unreliability from Sulphur Springs Valley Electric Coop.
3. As regards property values, additional reliable wireless services might encourage buyers who value such amenities.
4. Economic implications of reliable connectivity can be positive both for real estate sales and for small businesses.
5. The small cell application of Distributed Antenna System (DAS) is more commonly used along existing easements and right-of-ways generally maintained in more urban settings with small coverage area.
6. This is the only property in the area that has a quasi-commercial activity already on the property.
7. The top of the antenna on the pole would be 124 feet above the ground and they are committed to paint it to match for continuity.
8. Air pollution studies are a State mandated function and the specifications for noise decibel level and type of fuel use would be addressed at the building permitting process.
9. The submittal meets code requirements in all other respects. Pinnacle did conduct public outreach to try to address the neighbors' concerns.

Mrs. Stockton asked if the Engineer has determined that the mini poles will not work to improve coverage even if it is not to the maximum. She stated that smaller poles would be better received and also mentioned that the majority of the supporting letters are from Sonoita businesses.

Mrs. Miller responded that there are a few from Elgin residents.

Mr. Jonilonis responded that the small cell technology takes them back to the same problems, which include additional verticality, additional applications and more public outreach as opposed to a singular structure. He also pointed out that the small cells do not have the ability to provide the coverage needed to reach not only the residents, but also visitors traversing the area.

Mrs. Stockton stated that in her view they do not need to cover undeveloped roadless areas.

Mrs. Miller stated that as a real estate agent, she has been stranded without cell coverage and she has had clients not wanting to look at homes because there is no cell phone coverage or internet service.

Mr. Davidson asked for clarification regarding the booster problem and asked if Verizon controls the boosters on the region.

Mr. Jonilonis responded not to his knowledge. He stated again that these are stand-alone devices that take reception/ broadcast from the nearest cell tower and boost the signal.

Mr. Davidson asked if Verizon has, in a cost effective manner, seriously examined alternatives to the pole.

Mr. Jonilonis responded they would have to acquire multiple properties along SR 82/83 to get the coverage equal to this singular installation with one base station, one radio and one set of antennas. Such a system would be expensive and it might not even be worth the installation because it would cost eight times more than a single installation.

Mr. McChesney stated that the reason for a single tower is that Sun State Towers, the primary lease holder, would have the ability to lease the tower site to multiple tenants.

Mr. John Harvey asked if powerlines to the tower would be overhead or buried.

Mr. Jonilonis responded that it would be underground.

Mr. Davis closed the public hearing and moved to questions, deliberation and action by the Board.

Mr. Davis concurred that there is a need for better wireless service but expressed concern for the size of the monopole and stated that there is got to be a better location for this project.

Mr. Davidson asked Ms. Dahl why this was not a zoning issue.

Ms. Dahl responded that it is a zoning issue and that it has been in the zoning code for many years that in residentially-zoned districts a conditional use permit for a wireless communication facility might be appropriate after a public hearing.

Mrs. Miller stated that something needs to be done to keep the County moving forward in the wireless age rather than suffer the bad economic impacts of having little or no connectivity.

Mrs. Stockton asked if they can vote to table the request and asked the applicant to come with a different location or mini towers.

Mrs. Miller responded that mini towers would mean multiple locations.

Mr. Davis responded that they would have to either accept the location or deny the request based on the comments from the public.

Mrs. Stockton made a motion, seconded by Mr. Davidson, to deny the request for Case No. CUP-16-3-4 Parcel No. 108-19-012: A request for a conditional use permit to construct a 120-foot tall Wireless Communication Facility with ground equipment on a GR (General Rural) zoned property located at 290 Elgin-Canelo Road in Elgin, Arizona.

Mr. Davis stated his contention that another location would be better for the neighbors. Messrs. Velasquez and Davidson both expressed concerns for the visual impacts and thought that other alternatives had not been fully evaluated. Mrs. Stockton thought that shorter poles were an option that needed to be more fully considered. Mrs. Miller expressed a great deal of conflict knowing that today's homebuyers value connectivity.

The Chairman called for those in favor of the motion and it passed by a vote of 4 to 1, with Mrs. Miller voting against the motion.

Motion was approved by a 4 to 1 vote.

Mr. Davis moved to next item on the agenda, Case No. VAR-16-3-5 Parcel No. 109-34-002L, a request for a variance from Article 9, Section 906(C)(1) of the Santa Cruz County Zoning and Development Code to reduce the required setbacks from 75 feet to 12 feet to build a horse shelter on a GR (General Rural) zoned property located at 105 Lariat Trail in Sonoita, Arizona.

Ms. Dahl reviewed the staff report and explained that the applicants came to acquire building permits for horse shelters and during the course of constructions they made some field adjustments not knowing the importance of the 75 feet setback requirement. She mentioned that other structures on the property are within the required setbacks as long as they are not used to house animals and are just used as carports or accessory structures.

She recommended approval of the request with the following condition.

1. All horse shelters on the property shall be maintained in accordance with Section 906.C. of the Zoning and Development Code.

Mr. John Vause and Ms. Melinda Pearson made a presentation of the request, he mentioned that they are not permanent residents yet but that they taking steps to make that possible. Constructing the horse shelters is one of the first steps they are taking. The horse shelter on the east posed a problem because they were trying to avoid contact with the utilities that run diagonally and they were also trying to stay on the high side of the property so the horses would not be in a low spot during monsoon season. They were also trying to get out of line of sight to the east neighbor. He mentioned they spoke with their neighbor and she was ok with it and they did not know they needed to seek a setback variance.

Mr. Davis opened the public hearing.

Ms. Clair Downing spoke against the request. She express concern that the value of her property to the south would be affected by the setback variance.

Mr. Vazquez asked for clarification that the 75 feet setback applies only to animal shelters.

Ms. Dahl responded yes.

Mr. Vause clarified that the other structures will not be for animal shelters.

Mr. Davis closed the public hearing and moved to question, deliberation and action by the Board.

Mrs. Miller made a motion, seconded by Mrs. Stockton, to approve Case No. VAR-16-3-5 with the following conditions:

1. All horse shelters on the property shall be maintained in accordance with Section 906.C. of the Zoning and Development Code.
2. Any new horse shelter must be placed at least 75 feet away from any property line.

Mr. Davis moved to the approval of the December 10, 2015 minutes.

Mr. Davidson made a motion, seconded by Mrs. Stockton to approve the December 10, 2015 minutes as presented.

Motion was approved unanimously.

Mr. Davis moved to election of Chairman and Vice Chairman for 2016

Mrs. Stockton nominated Mr. Davis for Chairman. Nominations were closed and Mr. Davis was unanimously elected for Chairman.

Mrs. Miller nominated Mrs. Stockton for Vice Chair. Nominations were closed and Mrs. Stockton was unanimously elected for Vice Chair.

Meeting was adjourned at 5:20 p.m.



Dean Davis – Chair