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**CITY OF BELEN
PLANNING & ZONING COMMISSION MEETING
MINUTES
AUGUST 30, 2010**

Chairman Rod Storey called the regular meeting of the Belen Planning and Zoning Commission meeting to order at 6:30 p.m.

Roll call being taken is as follows:

PRESENT: Chairman Rod Storey
Vice-Chair Dubra Karnes-Padilla
Commissioner Steven Fitzgerald
Commissioner Max Cordova

ABSENT: Commissioner Jon Trujillo

CITY STAFF: Lisa Miller, Zoning Enforcement Specialist

OTHERS: Rudy Jaramillo, Mayor
Karen Larson, Petitioner
Karl Larson, Petitioner
Michael Stewart, Petitioner
Yvonne Stewart, Petitioner
Terese Ulivarri, Citizen

APPROVAL OF AGENDA:

Lisa Miller informed the Commission of changes that need to be made to the agenda. Under Item 4. Approval of Minutes-The August 31, 2009 minutes need to be tabled until further notice. And under Item 6. Discussion-Strategic Growth Plan also needs to be tabled until further notice.

Vice-Chair Dubra Karnes-Padilla moved to approve the agenda as corrected.

Commissioner Steve Fitzgerald seconded the motion.

Motion carried.

APPROVE OF MINUTES:

Commissioner Steven Fitzgerald moved to approve the Minutes of March 29, 2010.

Vice-Chair Dubra Karnes-Padilla seconded the motion.

Motion carried.

ACTION ITEMS

- A. REQUEST FOR A VARIANCE ON THE FRONT FENCE HEIGHT:
KARL & KAREN LARSON. LEGAL DESCRIPTION:** Township 5 North,
Range 2 East, Section 18, BTS Addition, Block 42, Lots 17-19. AKA
212 S. Fifth St., Belen NM 87002.

Lisa Miller informed the Commission that she had received a few phone calls concerning this fence height, and found that the fence was a latilla fence that did exceed the 4 feet height limit for the front. The Larson's are present and can explain further and answer any questions.

Karl Larson informed the Commission that they had purchased this property to turn it into a single family home. It was originally a meat market, an efficiency apartment and a three bedroom home. They have taken seven dumpsters of trash, etc. and gutted it out completely. The home has been repaired and turned into one home, re-stuccod and proceeded to put up a fence, called a latilla or coyote fence around it to go with a traditional Spanish look.

Daren Larson showed the Commission some photos of the home before and after plus photos of the fence.

Chairman Rod Storey asked how high the fence was.

Karl Larson said the fence is probably 6 feet high.

Chairman Rod Storey asked Lisa Miller if that fence could be considered a clear, see through, type fence since there are spaces between the poles and you can see through it.

Lisa Miller said that there is not a clear answer because you can see through it between the poles but it is solid and not like a chain link fence. The City Ordinance does say that

the fence height for the front is three feet for a solid and four feet for a see through fence like chain link.

Chairman Rod Storey said that if it is considered a see through fence it still exceeds the height limit of four feet. He asked Mr. Larson how far back the fence was from the front of the property.

Karl Larson informed the Commission that he was not sure.

Karen Larson said that on the one side, as you are looking at the house, on the right was right next to the sidewalk and on the other side it is two feet or more from the sidewalk. The fence does not go all the way across the front. It will be open in the access area.

Chairman Rod Storey asked if it was zoned commercial because there was a meat market there at one time.

Karl Larson said that it is zoned C-R (Commercial Residential).

Vice-Chair Dubra Karnes-Padilla asked if they were living in the home at this time.

Karl Larson said no. That it will be a rental at some point.

Chairman Rod Storey asked what the complaint was for.

Lisa Miller said it was for the height.

Karen Larson said that they were just trying to take a little bit of the community and make it a little better and maybe give other members of the community the incentive to clean up and restore the area.

Chairman Rod Storey informed the Larson's that the Commission concerns are for safety which in some cases can prohibit fire and emergency access, but there does not seem to be an issue here.

Karen Larson said that the traffic is not impeded at all. They are in the middle of the block and the fence is located to where the vehicles coming in or out will be able to see the traffic coming or going down the street. There will be no gates in the area of access. It is going to stay open.

Therese Ulivarri, a neighbor, informed the Commission that she was not the one who called to complain about the fence. She is familiar with the Ordinance and at the time the fence was going up it was approximately two feet above the limit. It has since been cut down, but is still above the limit, and she understands what they are trying to do but she is concerned about backing out of the property, because you are not going to be able to see up or down the street until you are almost on them. She has talked to some of the

neighbors and they do not object and some could care less. The fence had already been completed before they applied for the Variance which all permits, etc. should have been acquired before. Her only objection is the fact that the fence is higher than it is supposed to be.

Chairman Rod Storey informed Ms. Ulivarri that there is no permitting on a fence up to six feet, they just need to follow the Ordinances and once it was identified, they were informed of the Ordinance.

Terese Ulivarri said that the owners are right in the respect that they are not obstructing the corners but what happens to the rest of us who would like to have the same kind of fence who are on corners. Her fathers' home has been broken into twice and she has been broken into once and would like to do something like that but knows why ordinances count and doesn't know if the Commission would give them a variance to do the same thing. This is the first time she has seen a coyote fence in Belen, and is not saying that they do not belong here and it does look very nice, this is a height issue.

Chairman Rod Storey asked Mr. Larson if the fence was cut down to the top rail would it meet the four feet height.

Karl Larson said that it would not. The top of the fence is at six feet and the rail is about 12 to 18 inches below that.

Vice-Chair Dubra Karnes-Padilla moved to deny the Variance request.

Commissioner Max Baca seconded the motion.

Vote to deny was as follows:

Vice-Chairman Dubra Karnes-Padilla -	Yes
Commissioner Max Baca -	Yes
Commissioner Steven Fitzgerald -	No

Chairman Rod Storey said that if it was cut down to the proper height it would still look nice. He does not consider that a solid fence so the fence height would be four feet.

Karl Larson said that there are other properties in the area that are six feet and they have been there for years and there are other places that have shrubs that are so high they are blocking the sidewalk and the view and no one is making them take them down. They are staying as they are.

Chairman Rod Storey said that they could always send the Code Enforcement Officer out there to take a look at them but if it has been there for years it is grandfathered in.

Karl Larson said that the coyote fence is made that way and that was the look that they were wanting.

Karen Larson said that it was also for security. The mailman has told them that there were a lot of break ins in that area and we want to make sure our investment is secure.

Karl Larson said that the improvement to his property will affect the property values of the neighborhood. They will improve.

**B. REQUEST FOR A VARIANCE ON THE SIDE & BACK FENCE
HEIGHT:MICHAEL & YVONNE STEWART. LEGAL DESCRIPTION:
Township 5 North, Range 1 East, Section 13, Map 100, Land of Steve & Eugene
Gabaldon, Tract D., AKA 1108 W Didier Ave, Belen NM 87002.**

Lisa Miller informed the Commission that Mr. & Ms Stewart came in to request the Variance due to the fact that they were sent a Notice of Violation. During her field checks she noticed the fence. The fence does meet the front setbacks but the back was above the 6 feet height requirements.

Michael Stewart informed the Commission that the fence had been there for three years and came into the office to find out how many years it has to be there before it is grandfathered in. He said that he has gotten no response to that. None of the neighbors have ever complained about it. He does not think that there have been any responses sent back from the neighbors. They appreciate that it does keep his dogs in his yard. He is just trying to keep his dogs in his yard like a responsible pet owner should do. The neighborhood dogs run all over. He meets the front setbacks and behind the front gate it does get taller because of the slope of his lot.

Chairman Rod Storey asked how far the fence was from the front.

Michael Stewart said that on the east side it is 42 feet 6 inches and on the west side it is 41 feet. He knows it is tall, he has read the code but it is for protection, it keeps kids out of his back yard and keeps his dogs in the back yard. He has a male dog that is a biter and does not want him loose.

Chairman Rod Storey asked what it was made of.

Michael Stewart said that it was six foot cedar on pressure treated posts but the cedar pickets are in some areas two feet off the ground and in some places three feet off the ground. It is also a foot in from the block wall.

Chairman Rod Storey asked that if they are two feet off the ground, do they have some kind of mesh to keep the dogs in.

Michael Stewart said no, but they can not get under it due to the other block fence.

Chairman Rod Storey asked Ms. Miller if the setback enough as long as it is 20 feet back.

Lisa Miller said that after the 20 foot front setback the height can be 6 feet. Any thing over that has to come in for a variance. Six foot is the limit on that. The reason it is set that way is because if a fence goes over six feet it has to have the extra support to handle the weight and height. A block wall after six feet has to be engineered and a footing put in to handle the extra weight, a chain link fence may need to have the support poles a little closer together to accommodate the extra height, and that is why it has been set at six feet.

Yvonne Stewart informed the Commission that Michael Stewart is in Construction and that the support poles are down two feet, imbedded in concrete. He is in construction so he knows what he is doing.

Michael Stewart informed the Commission that he still does not understand the grandfather issue.

Chairman Rod Storey told Mr. Stewart that usually the things that are grandfathered in are the ones before the current code was written and adopted and as far as he remembers that last code was written in 96 so anything built after that would have to meet the current code even if the fence has been there for three years.

Chairman Rod Storey asked if there was a street or alley behind the property.

Michael Stewart said there were no roads or alleys, just the back yard of another home on the next street north of them.

Commissioner Max Cordova asked if the six foot fence would not be enough to keep the dogs in.

Michael Stewart said no, because his female dog has already jumped the six foot fence before and that is why he added another six inches or more and put a pro panel fence on the inside of it so there would be a smooth surface because his dogs would catch the cross rails to clear the fence.

Chairman Rod Storey asked if the front gates were locked.

Michael Stewart said they were.

Vice-Chair Dubra Karnes-Padilla asked what the height of the front gates was.

Michael Stewart said they were six feet.

Vice-Chair Dubra Karnes-Padilla asked if his dogs jumped over the gates.

Michael Stewart said that they did not for some reason they don't jump over the pro panel, but she could if she wanted to.

Karen Larson commented that she was hoping that the Board shows consistency in their decisions concerning the variances' because one was not approved due to the height.

Chairman Rod Storey said that the Commission does take that into consideration and that each of the variances are viewed on a case to case basis on cause, hardship, etc. In this case he does not see it as much as an issue being that it is not in the front.

Commissioner Max Cordova commented that if you have a six foot fence it should be sufficient enough to contain your animals.

Michael Stewart said that if all of the other dogs in the neighborhood were not loose and getting his dogs all worked up they may not jump a six foot fence, but I am trying to be a responsible pet owner by keeping my dogs confined to my property, but the others in the neighborhood have no concept of that. I will not chain my dogs up.

Vice-Chair Dubra Karnes-Padilla moved to deny the variance.

Motion died due to lack of a second.

Chairman Rod Storey asked if there were any other motions.

Commissioner Steven Fitzgerald feels that being the front setback has been met, the fence has been there for three years without having any of the neighbors complain about it, that it is not that big of an issue and he wants to keep his animals confined to his yard and not out running around.

Commissioner Steven Fitzgerald moved to approve the variance.

Motion died due to lack of a second.

Chairman Rod Storey asked Ms. Miller what the next step would be.

Lisa Miller informed them that she did not really know because that has never happened, that she is aware of. She asked Mayor Rudy Jaramillo what the next step would be.

Mayor Rudy Jaramillo informed the Commission and the two applicants that they can appeal the decision of the Planning & Zoning Commission. That appeal would be heard by the City Council. With the second applicant, due to the fact that no decision was made due to the lack of a second, it will go to the City Council for a decision to be made. The next City Council that they would be able to hear these issues would be September 20, 2010 because it has to be advertised again and you need 15 days for that.

Chairman Rod Storey informed Mr. Larson that he could appeal the decision of the Planning & Zoning Commission by going to the City Council and that Mr. Stewart will need to be forwarded to the City Council for a decision due to the lack of a decision by the Planning & Zoning Commission.

Michael Stewart asked what would happen if he just let it ride.

Chairman Rod Storey asked Ms. Miller if he had been cited for this.

Lisa Miller said that they were mailed a Notice of Violation and that is when they came in to request a variance.

Chairman Rod Storey informed Mr. Stewart that it needs to go to City Council before it goes before a judge.

Karen Larson asked if the fence has to be taken down now or can it be left as is until it is heard by City Council.

Chairman Rod Storey informed them that they could stay there until the City Council gave its final decision.

1. Michael Stewart asked the Commission if there would be a further charge to be heard by the City Council.

Chairman Rod Storey informed him that due to the fact that no decision was made by the Planning & Zoning Commission, it goes to the City Council and does not have any further fee for that. He was not sure about an appeal.

Mayor Rudy Jaramillo informed both applicants that there would be no further fees.

ADJOURNMENT

There being no further business to come before the City of Belen Planning & Zoning Commission, Commissioner Steven Fitzgerald moved to adjourn.

Commissioner Max Cordova seconded the motion.

Motion carried.

The regular meeting of the City of Belen Planning & Zoning Commission adjourned at 7:20 PM.

/s
Roderick Storey, Chairman
City of Belen Planning & Zoning Commission

ATTEST:

/s
Lisa R. Miller
Zoning Enforcement Specialist
Planning & Zoning Department