



# Town of Mesilla, New Mexico

## **PUBLIC HEARING and SPECIAL MEETING**

### **of the BOARD OF ADJUSTMENT AGENDA NOVEMBER 17, 2020**

**[THIS CASE WAS ORIGINALLY SCHEDULED TO BE HEARD ON NOVEMBER 20, 2020 BUT WAS RESCHEDULED TO NOVEMBER 17, 2020 TO MEET PUBLIC NOTICE REQUIREMENTS]**

### **BOA PUBLIC HEARING**

THE TOWN OF MESILLA BOARD OF ADJUSTMENT, WILL HOLD A PUBLIC HEARING ON **TUESDAY, NOVEMBER 17, 2020 AT 2:00 P.M.** TELECONFERENCE AT Phone: 1-346-248-7799, Meeting ID: 603 754 4231, Passcode: 193857 TO OBTAIN PUBLIC INPUT ON THE FOLLOWING:

V20-001: Submitted by Natalie Ogaz, a request for a Variance to building height for the construction of an eighteen foot high dwelling on a property located at 2729 Calle de San Albino. Zoned: Historic Residential (HR)

*A vote was taken by the BOA to close the regular meeting and open the public hearing for V20-001, a Variance case requiring a public hearing. Discussion was closed to the BOA and opened to the public.*

*Staff provided a brief description of the case, explaining that both the PZHAC and the BOT had approved a zoning permit for a dwelling on this property with an overall height of fifteen feet, and that the appellant had submitted plans to CID for a dwelling with a height of eighteen feet. Staff also explained that since the height of the dwelling is higher than what was approved by the BOT, a "Stop Work Order" order was issued by CID, and the appellant was told that a variance would be needed to allow the extra height. Staff mentioned that the appellant had been informed that the MTC required that the appellant provide a statement of need based on hardship created by the property to justify the need for the variance. That concluded staff's presentation and the hearing was opened to public input.*

*Public input followed (all speakers were sworn in and limited to three minutes):*

*Susan Krueger – Town resident, PO Box 1143, Mesilla, NM 8846*

*Read from an e-mail she had sent staff concerning this case, quoting various sections of the MTC:*

*Thoughts for the BOA Public Hearing on 11/17/2020 Susan Krueger*

*18.85.010: Under which circumstance, as explained in the first sentence of this section, will the BOA consider granting a variance in V20-001?*

*18.85.020: Under what circumstances, if any, is this request using a self-imposed hardship as justification for seeking a variance?*

*18.85.040 C. Required showing for variance: If granted, will this variance be injurious to the property improvements in the area? Would the variance violate the concept of scale? See 18.33.050: "Definitions," Historic Preservation Ordinance: "Scale is defined as proper proportion of structures in a historic development zone."*

*Jonathan Moore – 1986 Calle de Cura*

*Stated that he was for the structure, and that he had no issues.*

*Diane Moore – 1986 Calle de Cura*

*Stated that she understands that a mistake was made and that she heard that the eighteen foot height had been approved by the Town.*

*Samantha Bustamante – PO Box 180, Mesilla, NM 88046 (appellant's sister)*

*In favor of the variance, read the intro to a letter she had submitted to staff stating that the family cannot afford to rebuild the roof.*

*There was no further input. A vote was taken by the PZHAC to close the public hearing and reopen the regular meeting. Discussion was opened to the BOA members.*

## ADJOURNMENT OF THE PUBLIC HEARING

### **BOA SPECIAL MEETING**

THE TOWN OF MESILLA BOARD OF ADJUSTMENT, WILL HOLD A SPECIAL MEETING ON **TUESDAY, NOVEMBER 17, 2020 IMMEDIATELY AFTER THE PUBLIC HEARING** AT Phone: 1-346-248-7799, Meeting ID: 603 754 4231, Passcode: 193857

#### PLEDGE OF ALLEGIANCE

#### ROLL CALL AND DETERMINATION OF A QUORUM

*Board of Adjustment Chairperson Lucero and Board Members Cesario Alvillar and Stephanie Johnson-Burick were all present. There was a quorum.*

#### BOARD OF ADJUSTMENT BUSINESS

V20-001: Submitted by Natalie Ogaz, a request for a Variance to building height for the construction of an eighteen foot high dwelling on a property located at 2729 Calle de San Albino. Zoned: Historic Residential (HR)

*Discussion:*

*Board Member Alvillar*

*Stated that the contractor should have known the approved height.*

*Board Member Johnson-Burick*

*Questioned when height was discussed with the applicant (Staff mentioned it was brought up at both the PZHAC and BOT meetings.) She also brought up the fact that a neighbor across the street (John Wright) had a similar situation in which his roof was constructed too high and he cut it down a foot and a half.*

*Board Member Alvillar*

*Mentioned previous cases heard by the Planning Commission in which the commission allowed a "friendly amendment" to allow heights that were greater than allowed by the Code.*

*Board Chairperson Lucero*

*Mentioned that a self-imposed hardship is not a hardship. She also mentioned that the lower height of fifteen feet was approved by both the PZHAC and the BOT in 2017. The appellant came in again in 2020 and requested the higher height and doors instead of windows. The PZHAC allowed the doors to be used but denied the additional height. The BOT did the same. However, the contractor was given the plans with the eighteen foot height and not the plans with the fifteen foot height. The applicant was made aware that the taller height would not be allowed. Madam Chair Lucero was sorry that the original historic house had been torn down, and that the height of the new house needs to be lowered.*

*Board Member Johnson-Burick*

*Stated that the Code allows variances for hardships that are inherent with the land, and that she never saw the request for eighteen feet as a Trustee.*

*Board Member Alvillar*

*Questioning why it took so long to discover the additional height stated that the trusses should have been a give-away to the height.*

*Tom Maese – Chief Inspector for CID*

*Stated that the original plans submitted by the first contractor for the appellant were for a height of fifteen feet. The second contractor submitted plans for eighteen feet, and never called for any inspections before the roof inspection. CID does not police construction, it is up to the contractor to call for inspections when they are needed. The contractor has never explained why he never called for any inspections.*

*Board Chairperson Lucero*

*Asked how far the construction has gone.*

*Tom Maese– Chief Inspector for CID*

*Responded that construction was only about 40 to 50 percent complete, and that the roof, walls, insulation, electric work, sheetrock, plumbing, and the HVAC have not been completed and inspected. He also stated that a meeting was held with the appellant, her husband, the Mayor, Cynthia Hernandez (staff), Larry Shannon (staff) and himself at which the appellant was made aware of the violations. The appellant then became unruly and the meeting was ended.*

*Board Member Johnson-Burick called for the question and made a motion to approve the variance. This was seconded by Board Member Alvillar.*

*The vote was 1 – 2 as follows:*

*Board Member Alvillar*

*Yes – because of the amount of paperwork, the uncertainty about the building, and the fact that there are so many different styles in Mesilla.*

*Board Member Johnson-Burick*

*No – this is a difficult decision because of the families involved, but the Variance Code requires a hardship that justifies the variance, and the appellant did not provide adequate showings, and also that the height would be out of character with the area.*

*Board Chairperson Lucero*

*No – Concurred with Board Member Johnson-Burick; also that appellant failed to meet the requirements of sections 18.5.010, 18.85.020 and 18.85.030 of the Code; and the appellant did not show any hardship other than self-imposed hardship.*

*The motion failed and the variance was not approved.*

**ADJOURNMENT OF THE MEETING**

*The meeting was adjourned at 2:58 pm.*