



Town of Mesilla, New Mexico

THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION
(PZHAC) WILL HOLD A REGULAR MEETING AT THE MESILLA TOWN HALL,
2231 AVENIDA DE MESILLA.

MONDAY-NOVEMBER 6, 2023, AT 6:00 PM

MINUTES

ATTENDEES:

COMMISSIONERS

Yolanda Lucero, Chairperson
Davie Salas, Commissioner
Eric Walkinshaw, Commissioner
Daniel Jones
David Rockstraw

STAFF

Eddie Salazar, Community Development Coordinator (CDC)
Thomas Maese (CID Inspector Supv)

PUBLIC

Jill Kerr	Trina Witter
Catherine Walkinshaw	Rosemary Alvillar
Andrea Bryan	Gail F.
Greg Lester	Graham Chapman
Russell Hernandez	Lori M.
Brenda Brown	Susan Krueger
Karina A.	

Madam Chair Lucero – started the meeting by identifying date and time as, November 6, 2023 @ 6pm. She then led us in the pledge of allegiance.

Mr. Salazar – established quorum by taking roll call, all commissioners present.

Madam Chair Lucero – moved work session listed on agenda after the last action item on our agenda during changes of agenda, item 3. Commission Salas first motion and Commissioner Jones seconded the motion and was approved 5 – 0.

A separate roll call was determined to also vote on approval of agenda, item 3. Commissioner Walkinshaw first motion and second motion by Commissioner Salas, vote 5 – 0.

PUBLIC INPUT

Susan Krueger – who is Sun State Towers and make sure they have the money to do it. They need to show proof of the need for coverage in the area...

Madam Chair Lucero – advised we are not to discuss or make comments on the upcoming hearing regarding cell towers, it is called “ex parte.”

There were no more comments from Mrs. Krueger or from anyone else in public.

Madam Chair Lucero – continued with the approval of the consent agenda. First motion by Commissioner Jones and second motion by Commissioner Salas. Vote was 5 – 0.

Madam Chair Lucero – moved to the next item on agenda, Action and Considerations.

Mr. Salazar - **PZHAC BUSS LIC #1156** – 1680 Calle de Alvarez, suite #5, submitted by Gary Vau, requesting approval to open and operate a business called Stone Crow Gourmet. Zone: Commercial (C).

Case was tabled from previous meeting due to not knowing if there was going to be a kitchen installed/constructed or if there was one already there.

Applicant was contacted and stated there will be no fryers or ovens. Business will be more of a concession stand type using only countertop appliances. A floor plan from the previous business was provided showing a layout of space and marked by applicant where his equipment/layout will be.

First motion to approve by Commissioner Rockstraw and second motion by Commissioner Walkinshaw.

Commissioner Walkinshaw – mentioned if the pizza oven that was marked on the floorplan to be outside has proper fire protection.

Mr. Salazar – did not ask about the pizza oven. Unaware what type of pizza oven and it being outside. Applicant was requested to be present at this meeting to answer any questions but unfortunately, he is not here at this moment.

Inspector Maese – pointed out several concerns regarding the application. Based on floorplan, it was previous a beauty shop. In reality it does not match what is there. Second question is the location of the pizza oven and if it is rated for outdoor use. To what degree are they going to be using it. Is it going to require a pizza oven hood?

Concern about the introduction letter mentioning fried spam and bologna sandwiches. Now we are talking about frying foods which constitutes a commercial kitchen.

Lastly, the change of occupancy, where it is going from beauty shop to a restaurant, which will require more detailed plan. Once PZHAC, then these questions will need to be answered before a permit will be issued and business allowed to open.

Commissioners Salas – so basically, what he is showing there is not necessarily what is being proposed.

Inspector Maese – it makes it hard what is going to be needed when the drawing is not accurate.

Commissioner Salas – do we want to vote on it regarding the business registration with the condition that all CID requirements are met or do we want to table it again.

Commissioner Jones – stated it is very frustrating that we moved on it once before and thought it was very clear on what is needed. Thought the applicant should have been present to answer any questions. Recommended to table it again.

Madam Chair Lucero – the consensus is to table, accepted a motion to table it again. First motion by Commissioner Salas and second motion by Commissioner Rockstraw for more information. Vote 5 – 0 to table case.

Mr. Salazar – **PZHAC CASE #061738** – 2316 Snow Rd, submitted by John Padilla, requesting approval to build a new residential home on property. Zone Residential Single Family. (R-1).

Case was tabled by Mr. Salazar due to uncertainty on the proper zoning. It was requested the case be tabled to investigate it further.

First motion to table this case Commissioner Jones and second by Commissioner Salas.

WORK SESSION – ORDINANCE 18,54 WIRELESS COMMUNICATION FACILITIES

Madam Chair Lucero led us into the work session regarding telecommunication code interpretation to include, necessary requirements to meet our municipal code.

Mr. Salazar – it is not a common application and thanks to commission to help review the code and advise what requirements need to be met by any application submitted by a wireless communication business.

Town code requires notification to be included a local newspaper. Where or who would be best place to run notice.

Commissioner Salas – advised any local newspaper that provide legal notices, such as Sun News or Las Cruces bulletin.

Mr. Salazar – mentions the applicant is present, but due to ex parte, we will not be talking about the case. I did ask him if he could educate us on the Federal Communication Commissioner (FCC) laws are regulations.

Reminded everyone, we are not to talk about the case.

Mr. Chapman – introduced himself to the commission. Stated every piece of equipment before it is pushed out to the general public is evaluated and tested by the FCC. Includes any type of band and any type of frequency as well.

All carriers pay a lot of money for the rights and licenses to emit these frequencies. It is common for a few jurisdictions to request copies of those licenses.

Carriers don't put up structures themselves. Those are the mom and pop shops, structure communication companies. Anytime a structure communication company applies for a permit, they

usually have what is called an anchor company, like Verizon, T-Mobile or AT & T. Common to list them in application at time of permit request.

Mr. Salazar – is there other agencies that regulate cell towers other than the FCC?

Mr. Chapman – cell towers are probably the most federally regulated industries. We follow aviation, the FAA.

On a separate comment, talked about the Telecommunications Act of 1996, regarding health and environmental concerns. First and foremost, this act gives municipalities the authority to review these applications but it also gives you a framework and timeline on what you can and can't do. (Section 7.04)

Because the equipment and frequencies have been tested by the FCC, a municipality cannot deny an application, simply because they feel it is unsafe.

Mr. Salazar – 18.54.040 – of town code states a visual model might be requested by the commission or a photographic simulator good enough?

A balloon test shows the community a real-life simulation on where and how visible a cell phone tower will be in the proposed area.

Applicants are also able to submit in lieu of a balloon test, a photographic simulation of proposed area now that computer technology allows us to do so.

Balloon test is not required only if requested by the commission. I would like to ask the commission, what their thoughts are on this.

Commissioner Walkinshaw – stated he would like to see the balloon test so people can see it.

Mr. Chapman – stated technology has allowed us to give a very good representation of the cell tower. As for the balloon test, if the commission strongly feels about the test, he suggested a drone test. There are many obstacles with balloon testing such as they pop, fly away or minimal wind moves them and don't get an accurate representation.

Commissioner Walkinshaw – is it large enough to see it from 3 miles away?

Mr. Chapman – yes, there are many types of drones.

Commissioner Salas – wouldn't mind seeing the drone, have a lot of senior residents that need a visual to understand.

Commissioner Walkinshaw – as per code requirements, the balloon or if a drone is used, needs to be up no less than 3 days and 15 days before the meeting.

Mr. Chapman – working with other municipalities, the balloon test requirement is met by giving out notice to the public when a drone will be flown so who ever feels the need can go out and see it at a predetermined date and time.

Commissioner Salas – would still like to see the drone, maybe for 3 hours or 2 hours or more than one time during the day.

Mr. Chapman – if the commission could include in the code that a balloon test is going to be required prior to an applicant applying because going by the FCC law, telling an applicant after 30 days of applying, a balloon test is required, it is not really allowed. So, suggested the code is clear on the testing requirements.

Madam Chair Lucero – what I understood is, that you are suggesting the code states if a balloon test is required and not state as it is, that it may be required depending on the commission.

Mr. Chapman – exactly or a drone test, so they can plan and act accordingly.

Commissioner Rockstraw – suggested/asked if the simulation could be layered on google earth so that it can be viewed by from anywhere and anyone around town?

Mr. Chapman – that would be great product. Typically what we provide for jurisdictions is a 3 page booklet. How the town would look like, 100 ft looking north. Now here 500 ft looking east, and here is ¼ mile away. So there is a diversity of different angles and distances.

Commissioner Walkinshaw - think many of the residents would want to know, how will it look like from my house.

Commissioner Rockstraw – that is why putting on Google is a great idea, cause anyone can look at it and see for themselves.

Mr. Chapman – asked how many people are in the town of Mesilla and how many cell towers.

Madam Chair Lucero – at the end of town, on Union Ave, we have 2 cell towers on one parcel. Jurado's property.

Mr. Chapman – telecom industries is an industry that is vastly improving. This is the hardest and most difficult ordinance I have done in my line of work.

(public clapping)

Mr. Chapman – yes, it is very hard, but people need quality coverage. In 2023 and 2024 it should be treated as a public utility such as water, gas and electricity.

As the community grows n grows it would be less appealing to for providers to consider this municipality as an option having such strict requirements.

Commissioner Walkinshaw – asked if there could be a condition placed to receive photographic simulations AND a drone simulation. As where the drone simulations would have notices posted/given on date and times.

Mr. Chapman – what is standard is, submit photographic simulations, and during the process of the application work with the planners and a field supervisor to set up a time to fly up a balloon or a drone. That would be after the application has been submitted and during the FCC shot clock has commenced.

Commissioner Walkinshaw – asked if Mr. Chapman could explain what the FCC shot clock is.

Mr. Chapman – passed out some literature regarding the topic. Prior to 1996, a lot of jurisdictions where purposely postponing and not reviewing all the telecommunications applications. Which

was denying their citizens services. Because of that, FCC created a shot clock to give time for a government agency to process the application. The shot clock starts as soon as the application is submitted.

For an entire new telecommunication site, the shot clock is 150 days and for an upgrade to an existing facility usually 90 days.

The jurisdiction has 30 days to review its completeness. During that time frame, jurisdictions can pause shot clock until all requirements to apply are met. You have to supply that deficiency notice, otherwise the shot clock keeps going.

At the end of the day, the FCC want jurisdiction to have the authority to review these applications, but they really want the framework to be regarding coverage or capacity. Is it the least intrusive as possible.

Jurisdictions have the authority to impose more stringent requirements as long there are not unreasonable but it is capped by those 150 days.

Mr. Salazar – for a special use permit or any permit request, there is a procedure we follow. For a special used permit request, the application is submitted for the special use permit and if approved, it is followed up with a zoning permit if construction is to be done. Can a telecommunication tower applicant apply for the zoning permit at the same time as the special use permit providing, they meet all the zoning documentation requirements?

Mr. Chapman – I have never experienced in any other municipality having to submit through a SUP and then for a zoning permit. Both should be considered to be zoning action and happen at the same time.

Commissioner Salas – can't they just do it at the same time.

Mr. Chapman – we are happy to do both at the same time. The one issue is zoning permit requires construction documents. In any other agencies we provide zoning plan sets that don't have stamped and approved plans. Once approved by the agency, then the applicant does submit engineered stamped plans.

Recommended the commission allows SUP, zoning and business application requests with unstamped zoning plans. Once approved then, there will be no issue submitting stamped construction plans.

Commissioner Salas – so, why should we treat you differently than anybody else? I have a problem with that, we expect everyone else to submit these plans along with zoning request. Seems like you are asking for a special favor and nobody else asks for special favors. You should come prepared with everything, that is your homework to do.

Mr. Chapman – simply stating, the standard for applying for a telecommunication tower.

Mr. Salazar – interrupted and confirmed we are talking about the application process and not about any case.

Commissioner Salas – yes, we are talking about an application about anyone that submits for a cell tower. Anyone that wants to build a house needs to come with a full set of plans.

Mr. Chapman – building a house is not as federally regulated and the cost associated with it as a telecommunication tower.

Commissioner Salas – directed a question to Inspector Maese, if CID going to require utility plans.

Inspector Maese – stated CID has deregulated a lot of the requirements for cell towers because they are so federally regulated one of them are the utility requirements. There might be some things that will still be required for a CID permit but will have to be dealt with case-by-case basis.

Commissioner Salas – so an applicant would have to bring in the plans in order for CID to determine if a permit is required.

Inspector Maese – that is correct.

Commissioner Salas – if he is good with it, then I am good with it. If you want to do business in this jurisdiction, you going to have to comply with all requirements.

Mr. Chapman – stated, this is a federally regulated business that allows business in this jurisdiction.

Commissioner Salas – we are not saying no, but why should an applicant be treated as anybody else?

Madam Chair Lucero – it is up to us to enforce the requirements for zoning, and it is up to CID to enforce building permits.

Inspector Maese – all goes back to what is presented to this commission is what is going to be submitted at our office. In order to be acceptable, there needs to be a complete set of plans. If the plans do not meet the zoning requirements of the Town of Mesilla, it is 100% sure that they will not meet CID requirements.

The code does comment as well about working with the building department and because the Town of Mesilla does not have a building department, it would have to go through the state office.

Once it is approved here, I can make a determination if the plans are complete. If they are not complete, they will be rejected. In which it will delay the installation of the project even longer.

As far as the ordinance, there is a section in there that I recommend be reviewed because the requirements that are in the ordinance, are way outdated. So, I recommend that section be reviewed and updated before any application for towers is accepted. The ordinance is based when the Town of Mesilla still had a building department based off codes that have not been used for several years.

Madam Chair Lucero – I think that is why Mr. Salazar put this workshop together.

Mr. Salazar – that is correct. I want to be consistent with what we have in our code right now. What Inspector Maese is suggesting amending the code, can only happen after this application. We are on the clock, and we can't amend the code in the middle of this case.

Commissioner Salas – that's not going to happen any time soon. If the applicant wants to do business here, he will have to meet the requirements that are set for everyone.

Commissioner Jones – this is the second time that I have sat on the board that the code has let us down. We need to make decisions and we shouldn't be making none at all. I think that this really needs to be updated.

Mr. Salazar – we have brought up this subject many times to amend our ordinances. But the fact of the matter is, we can't amend an ordinance during an open application and the shot clock is ticking. If we do not make a decision, either the commission or our governing body, the federal government is going to step in and they are going to make the decision for us. Simple as that. So we need to give due process.

Madam Chair Lucero – we can't hold back an applicant. If the commission does not approve the request, then they will need to appeal to the board of trustees. We should not be holding up an applicant. It is not fair to the applicant, we need to make a decision based on what we have now.

Mr. Chapman – agreed with everyone that has been currently stated regarding the modification of the code, but if an application has already been submitted, according to FCC law, the application still stands with the FCC shot clock still running.

Commissioner Salas – went on record to state, everything he was talking about had nothing to do with this ordinance.

Mr. Salazar – we definitely need to set a time soon, to review this ordinance and amend our ordinance. I feel like Commissioner Salas, code is code and we all have to follow the same rules. I am just unaware of the FCC requirements and regulations in which I need to do more research.

The section of the code Commissioner Salas mentioned, it is pretty black and white. Needs to submit all the plans to include engineering stamps.

Just want to state, at the beginning of the application, there were a lot more disagreements regarding requirements, but Mr. Chapman was cooperative and met a lot of them.

Other than the questions and topics we discussed, that is all I have for tonight.

Madam Chair Lucero – asked if there were any further questions by the commission.

Commissioner Walkinshaw – the thought to initially submit to us is everything you will need to go to CID, except that is where you would get the stamp. Is that right?

Mr. Chapman – correct, everything that is submitted needs to be building permit ready. If it is about the stamps, we provide documents with stamps by our engineers...

Mr. Salazar – Madam Chair, I would like to caution you again about not talking about the case. This is just the review of the code.

Mr. Chapman – generally, I believe applicants would have no issue providing zoning documents with stamped approved plans from their engineers registered in the state.

Madam Chair Lucero – ok, if you are comfortable with what we discussed tonight.

Mr. Salazar – I believe I am uncertain if the special use permit application and the zoning are going to be submitted at the same time.

Commissioner Salas – I think if they are willing to do it, it should be done all together. I think everyone is in agreement with that. But he has to come in with everything.

Mr. Salazar – ok, everyone agrees with that, correct?

Madam Chair Lucero – yeah, I think that is the consensus of the board.

Ok, we will move forward, to Commissioners and staff comments.

Mr. Salazar – emphasized the case packets are sent out early in the week before the meeting. Would greatly appreciate the commission to review packets and contact the CDC if there are any concerns or questions to prevent cases from being tabled, would greatly be appreciated. Waiting till the last minute to review packets and bring your concerns the day of, is a disservice to our community. We want to give all applicants due process.

Madam Chair Lucero – we need to recommend that the applicants be present at the time of application being reviewed by the commission.

Mr. Salazar – a recommendation was made to the applicant. Unfortunately, some residents are not able to attend the meeting. I know it would be the best thing to do, but we can't hold that against. Just asking for a little help from the commission, that is all.

Commissioner Walkinshaw – one of the packets just wasn't completed and I feel it is something you should catch.

Mr. Salazar – you are correct, that is my responsibility to catch these things. But, there are so many questions that can come up that I am unaware of. This case was previously tabled because it was not sure if there was already an existing kitchen and no floor plan was submitted. So, I called applicant and they advised, there was already an existing kitchen and a floor plan was submitted of the existing layout. I was under the assumption that is what the commission wanted.

Commissioner Jones – are allowed to require the applicant be present at this time of review.

Mr. Salazar – not by code, no.

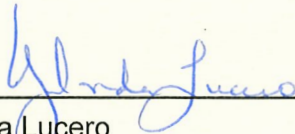
Commissioner Salas – there should be a review meeting reviewing these before it gets to us. So, I don't know what is happening with that.

Mr. Salazar – I don't want you to misunderstand, I am not putting the blame on the commission, all I am asking for is a little help. So we can give these applicants due process and stop delaying these requests.

Madam Chair Lucero – ok, I move now for adjournment. First motion Commissioner Jones and Second by Commissioner Salas.

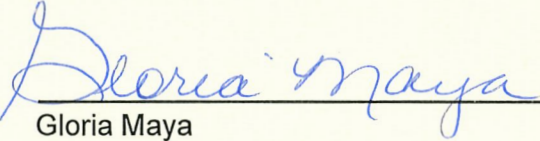
Mr. Salazar – took roll call and vote was 5 to 0.

Meeting adjourned.



Yolanda Lucero
Chairperson

ATTEST:



Gloria Maya
Town Clerk/Treasurer

