

MINUTES

VILLAGE OF LOS RANCHOS de ALBUQUERQUE
6718 RIO GRANDE BOULEVARD N.W.
BOARD OF TRUSTEES REGULAR MEETING
JANUARY 9, 2008 -7:00 p.m.

Present:

Larry P. Abraham, Mayor

Donald T. Lopez, Trustee/Mayor Pro-Tem

Mary Homan, Trustee

Tim McDonough, Trustee

Pablo R. Rael, Trustee

Annabelle Silvas, Clerk

Kelly S. Ward, Administrator

Terry Nighbert, P&Z Director

Nancy Haines, Treasurer

Martha King, Attorney

Greg Perez, Fire Chief

1. **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

The Village of Los Ranchos' Governing Body held its Regular Meeting on Wednesday, January 9, 2008 in the Warren J. Gray Hall. The Mayor called the meeting to order at 7:00 p.m.

Mayor Abraham asked the Boy Scouts to introduce themselves.

A. APPROVAL OF AGENDA

MOTION: Trustee Lopez moved approval of the agenda with one change that Item 6.A. be deferred until the February 13, 2008 meeting. Trustee Homan seconded the motion.

VOTE: The motion carried unanimously, 4-0.

2. **PUBLIC COMMENT PERIOD**

No one had signed up for Public Comment.

3. **CONSENT AGENDA**

A. MINUTES – REGULAR MEETING–DECEMBER 12, 2007

There were no additions or corrections to the Minutes.

B. DEPARTMENT AND COMMITTEE REPORTS

1. LAW ENFORCEMENT/BCSD
2. FIRE
3. ANIMAL CONTROL

4. CODE ENFORCEMENT REPORT

MOTION: Trustee Rael moved approval of the Consent Agenda. Trustee Homan seconded the motion.

VOTE: The motion carried unanimously, 4-0.

4. REPORTS

A. MAYOR'S REPORT

Mayor Abraham reported that:

- There are only 362 more days for the Area I & J Sewer Project.
- They have met with some of the Legislators including Ed Sandoval, Dede Feldman, Theresa Zanetti, as well as Senator Ryan. They are all saying that the money this year will be very tight and the Village will need to prioritize its requests.
- The appraisal process has started on the Anderson property and they hope to have an agreement within the next few months.
- The Growers' Market will be held in the barn on Saturday, January 12, from 10 am to Noon.
- Rio Grande Blvd. will be totally shut down beginning Monday, January 14. Information regarding the street closures is being posted on the Village website.
- The speed boards have all been updated and they are now equipped to return data on how many cars are on the road and how fast they are going.
- Miller's Feed has done a lot of renovation to the old Congo Bar property.
- They are working on clearing the open space between Rio Grande and 4th Street; there will be nearly 50 acres of open space.

B. ADMINISTRATOR'S REPORT

Administrator Ward reported that:

- Rio Grande will be closed at Chavez for about 10 days. After that they will be off Rio Grande and into the Tinnin Farms area.
- They are meeting at 10 a.m. on Friday, January 11, with AMAFCA and Bernalillo County regarding the drainage on Garduño Road.
- Verizon walked in a contract yesterday and it is being reviewed by Attorney King.
- They need to start planning for hooking up Village property to the sewer system.
- The mid-year budget review will be presented this evening.
- Regarding the Village Center, they have two of the three appraisers selected and the documents are being drawn up to hire those two appraisers and still must hire the third.
- The Fire Station conceptual drawings are nearly complete. They will meet with the architect next week to finalize those and then move on to the detailed design drawings.

C. PLANNER'S REPORT

Planner Nighbert reported that:

- On January 8, the Planning staff presented to the Planning & Zoning Commission a Floor Area Ratio ordinance covering all the zones in the Village, including the C-1 zone. A second meeting to present additional information and amendments to the draft ordinance will be held in February and will be presented to the Board in March 2008.
- A summary of the department's annual report is: building permits have increased from 96 last year to 121 with a value of \$35 million; they prepared 109 Planning Reports which is 10 more than last year; the subdivision applications more than doubled; there were no zone map amendments; site development plans increased from 5 to 9 which shows there was an increase in the amount of commercial activity for buildings on 4th Street; conditional uses dropped; variances increased from 19 to 32; and there were 19 sign permits. Business registrations in 2007 were 309; 200 home occupations; 227 business renewals; 161 home occupation renewals; 25 business closures and 15 home occupation closures during the year.
- They have presented to the Council of Government's Transportation Improvement Plan an amendment for the bikeway asking for additional funding. The City of Albuquerque had \$39 million worth of funds set aside for their projects in 2007 and they only spent \$9 million of those funds.

D. LEGAL REPORT

Attorney King reported that:

- She worked on an employee and personnel matter for the Village.
- She worked on the Retail One litigation.
- She worked with the Planning & Zoning staff to edit some ordinances.
- She assisted in drafting some findings and conclusions.
- She served as legal counsel for Planning & Zoning Commission.

E. FIRE DEPT. REPORT

Fire Chief Perez reported that:

- The Fire Department had a busy year: 71% of their calls were medical, EMS type responses. The rest were a mixture of fire, false alarms, etc.
- They had 979 calls for the year and that was up 45 from the prior year.
- There were 95 calls for the month of December.
- They are averaging a 6-minute response time--from the moment the call is made to 911 and to when they are knocking on the caller's door.
- The Department had its first ISO audit since 1990. It only lasted for 2 hours and the auditor said everything was in order and looked good. Their current rating is a 5 and they are hoping to lower that number. The only area with an issue was the staffing level but they are trying to work around that.

- Ladder 12 is 16 years old and has been taken into the shop for a complete pump repair which could be very costly.
- The Department is in a training session on how to ladder buildings and how to do multi-story rescues using a ladder.
- He introduced Jeff Phillips who is a Village resident who volunteered to help the Department create a new Emergency Operations Plan for the Village.

Mayor Abraham read an e-mail from Apple Computers to him which indicated that when customers attempt to activate or re-activate a “.mac” account, they will have the following option listed when they enter the zip code of 87107: Los Ranchos de Albuquerque (without the “e”) because they don’t have a long enough data field. He said they are working on this and appreciate the customers’ patience.

5. FINANCIAL BUSINESS

A. DISCUSSION AND APPROVAL TO ACCEPT THE VILLAGE OF LOS RANCHOS DE ALBUQUERQUE AUDITED FINANCIAL STATEMENTS AS OF JUNE 30, 2007

Odessa Hamilton, Hinkle & Landers, stated that their basic overall opinion was “unqualified” which means that they did not have any findings. She said the tax revenues increased by 5% from the year before and the total revenue increased by 34%.

Trustee Lopez said he would like to commend Village staff and Odessa for doing such a magnificent job.

MOTION: Trustee Lopez moved approval of the audited financial statements as of June 30, 2007. Trustee Rael seconded the motion.

VOTE: The motion carried unanimously, 4-0

B. CASH REPORT – DECEMBER

Treasurer Haines reported that the ending cash balance as of December 31 was \$6,570,029.84 which was a slight decrease of \$5,803.55 from the prior month. She said the cash balance without the bond and open space money would be \$2,402,938.48. She said the year-to-date revenues exceed expenditures by \$4,116,335.64 and the year-to-date net revenues without the bonds and open space would be \$474,244.28. She said the only significant item during the month of December was a payment to Star Paving for 4th Street of \$192,000.

Trustee Lopez asked if we are now in the warranty period for 4th Street.

Planner Nighbert responded that they had the 11-month warranty walk-through today. He said they have a 2-1/2 page punch list which he went over with the engineer and contractor and the items were fairly minor. He said most of them had to do with the condition of the sidewalks and the curbs along the west side of 4th Street, south of Osuna.

Trustee Lopez said the reason he asked the question was because a lot of sediment gets into the drainage system from heavy rain storms and the Village has never had the capability of cleaning the sand out of there. He said something has to be done about that.

Planner Nighbert said he has spoken with Administrator Ward about contracting some of that out as well as possibly purchasing our own equipment.

Trustee Homan asked if the Village has an allowance in the current budget for that equipment or if it would be a variance to the current budget.

Administrator Ward said the Village has \$55,000 for street equipment and is considering a tractor. He said they are also considering a vac system, either a stand-alone or as a trailer. He said another possibility is to rent equipment or contract it out; however, he said since they would only use the equipment once in awhile, buying it does not seem like a prudent thing to do.

MOTION: Trustee Homan moved approval of the Cash Report. Trustee McDonough seconded the motion.

VOTE: The motion carried unanimously, 4-0.

C. DISCUSSION AND APPROVAL OF RESOLUTION NO. 2008-1-1- REVISING THE 2007/2008 FISCAL MID YEAR BUDGET

Administrator Ward said they will adjust revenues by \$303,000 which reflects \$220,000 of increased Gross Receipts Tax. He said on the expenditure side, there was a \$96,000 increase and approximately \$55,000 of it was because they rolled in a capital appropriation for street equipment which was not in there when they generated this budget. He said the next big item of increase was for the Fire Department's overtime wages and temporary wages. He said there was a State law that was adjusted and they are compensating for not being able to pay on a 48-hour shift. He said the Municipal League has as their number one priority fixing that problem.

MOTION: Trustee Lopez moved approval of the Mid-Year Budget request and Resolution No. 2008-1-1 as written. Trustee Homan seconded the motion.

ROLL CALL VOTE: Trustee McDonough, yes; Trustee Homan, yes; Trustee Lopez, yes; Trustee Rael, yes. The motion carried unanimously, 4-0.

6. PUBLIC HEARINGS AND APPLICATIONS

A. A REQUEST BY JOSHUA J. SKARSGARD, ESQ. AGENT FOR DOUG PETERSON, PROPERTY OWNER, FOR SITE DEVELOPMENT PLAN APPROVAL FOR NEW COMMERCIAL CONSTRUCTION IN THE VILLAGE CENTER ZONE AND FOURTH STREET COMMERCIAL CORRIDOR. THE PROPERTY IS LOCATED AT 6561 4TH STREET NW AND IS LEGALLY KNOWN AS TRACT 41G, M.R.G.C.D. MAP NO. 29, ELENA GALLEGOS GRANT IN PROJECTED SECTIONS 28 AND 29, T11N, R3E, N.M.P.M. CITY OF

**ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, MAY 31, 1962.
THE PROPERTY CONTAINS .9317 ACRES MORE OR LESS.**

This item was deferred to the February 13, 2008 meeting.

B. AN APPEAL BY ALLISON AND FISHER, ATTORNEYS FOR DENNIS NEFF, TO THE BOARD OF TRUSTEES OF ACTION TO DENY APPLICATION V-07-01 BY PLANNING AND ZONING COMMISSION ON NOVEMBER 13, 2007 AGENDA ITEM 5A, FOR A VARIANCE FROM THE TWO HUNDRED EIGHTY FEET (280') SETBACK IN THE NORTH RIO GRANDE CHARACTER AREA A TO ALLOW FOR ONE HUNDRED NINETY FEET (190') FOR PARTIAL LOT WIDTH. THE PROPERTY IS LOCATED AT 6847 RIO GRANDE BLVD. AND IS LEGALLY KNOWN AS TRACT NO. TWO (2) OF THE LANDS OF AL UNSER, JR. (BEING A REPLAT OF TRACTS A-1 AND A-2, LANDS OF WAYNE LOVELADY), VILLAGE OF LOS RANCHOS DE ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO AS THE SAME IS SHOWN AND DESIGNATED IN THE PLAT THEREOF ON FEBRUARY 21, 1997, V. 97C, FOLIO 57. THE PROPERTY CONTAINS 1.6353 ACRES MORE OR LESS.

Attorney King swore in those persons wishing to speak under Item 6.B.

Planner Nighbert discussed his Planning Report No. PZ-08-07. Regarding previous action, he said that on January 9, 2007, the Planning & Zoning Commission denied a variance request by agents for Dennis Neff to allow for 150 foot setback from the property line in the North Rio Grande Character Area A where a 280 foot setback is required. He said the denial was appealed to the Board of Trustees and heard on April 11, 2007. The applicant changed his variance request from 150 feet to 190 feet for half the lot width. He said the Board of Trustees remanded the variance request to the Planning & Zoning Commission based on a new configuration of the variance area. He said the application on remand was heard on November 13, 2007 and the Planning & Zoning Commission unanimously denied the variance request. He said the findings were: 1) There is no hardship as required by Ordinance 183, Section 24 E(3)(a) and (b): A. The property is not unique; B) The setback requirement is consistent with Master Plan 4.4.2 concerning open expanse, open space, vegetation and wildlife; C) A variance would be contrary to the open expanse, open space, vegetation and wildlife provisions. 2) There is at least 14,000 square feet of buildable area without the variance and that should be adequate. 3) The setback is a central part of the preservation of Rio Grande Blvd. 4) Granting an exception would set an ill-conceived precedent.

Michael Allison, Attorney representing applicant, said following his comments they will have Chuck Cala, Professional Surveyor, who would like to address some of the issues pertaining to the appeal. He said there have been several prior hearings and he would like to enter into the record Exhibits 1-10 which he gave to Planner Nighbert. He said the appeal pertains to the 180-foot Rio Grande setback and they are requesting a variance. He said they are referencing Ordinance 183, 24.E.3 (a) (2) which is setting forth the standard for their appeal. He said their position is that owing to special conditions relating to the specific characteristics of the property and certain other facts, a literal enforcement of the Ordinance would result in an unnecessary hardship. He said that

Tract 2 is a non-conforming lot in the sense of existing developments in place prior to Mr. Neff's acquisition of the property and prior to the passage of Ordinance 191. He said Ordinance 191 specifically exempts non-conforming development. He said that at the time Mr. Neff acquired the property, he was under the specific understanding that Tract 2 was grandfathered with respect to the setback Ordinance and was exempt from the Ordinance in all respects. He said the hardship issues of the particular configuration of this lot must be considered in light of Mr. Neff's reasonable reliance that the Ordinance was not applicable to this tract of land. He said they also believe that the various reports from staff to Planning & Zoning contain certain mathematical and measurement-type errors and other erroneous assumptions regarding the buildability upon this lot. He said there is also a prior precedent with the Lionel Ortega property which they think demonstrates that based on the respective sizes and configurations and specific characteristics of Tract 2 as compared to the Ortega parcel, it clearly shows that since Mr. Ortega was granted a variance, then Mr. Neff should also be granted a variance with the exact same standards. He said a compromise that was worked out is that what they are now asking for in terms of a variance only affects the southern half of the lot and not the northern half.

Chuck Cala, Specialist Surveyor with High Mesa Consulting Group, said they were involved in the initial variance request early last year. He distributed an exhibit which indicated that the buildable area behind the existing setback line and the other setback lines to the north and west and south was 9,000 square feet. He said 3,000 square feet of that buildable area is located north of the existing courtyard which is in an area that has been represented as undesirable for development by adjoining property owners. He said this is in contrast to the staff report which said there was 14,000 square feet of buildable area. He distributed another exhibit which showed the most recent version of their request. He said the ratio of the buildable area to the overall lot area has been misrepresented by the staff reports. He said the most recent report identified that only 14,000 square feet is allowable based on the ratio that the Village is applying and he asked if that was correct.

Planner Nighbert responded that they based that on the 33% buildable area that was allowable in the subdivision CCRs.

Chuck Cala said there were two statements that Mr. Nighbert made: one was that there was an existing 14,000 square foot buildable area behind the 280 foot setback and that is not true; there is 9,020 square feet behind that line. He said the second statement Mr. Nighbert made was that the allowable buildable area for Lot 2 is 14,000 square feet and that is not the case. He said the allowable buildable area as defined by the covenants is 33% of the lot area and that is approximately 72,000 sq. ft. He said the only other case that they could apply comparisons to was the case involving Lionel Ortega. He said that variance was approved by the Village with very similar conditions that they are now demonstrating. He said he prepared a transparency that shows the Ortega property had greater area to develop. He said they would ask that the Board re-evaluate the similarities of their case to the Ortega case which was previously approved.

Trustee Homan said Mr. Cala repeatedly mentioned that there is about 3,000 sq. ft. that is undesirable to build upon due to a neighbor. She asked if the square footage numbers he had been discussing included that 3,000 sq. ft.

Chuck Cala responded that the 9,000 sq. ft. identified includes the approximately 1/3 north portion of the buildable area.

Opponents:

Bonnie Kelly, 6900 Rio Grande Blvd., said she lives across the street from the property in question. She said John Robb is ill and asked that she speak on behalf of the Los Ranchos Neighborhood Association to voice their opposition to the variance. She said they assert that the hard-won reinstatement of the 280 foot setback was in place at the time of the purchase of the property. She said they do not see hardship and probably most importantly they see this as a test case where if you allow the slightest variance to the 280 foot setback, it will be cited as a precedent and seriously compromise any future compliance with the ordinance.

Response to Opposition:

Michael Allison said he would like to respond to Ms. Kelly's comments regarding setting a precedent. He said the ordinance itself in conjunction with other ordinances of the Village recognized that there are certain properties or parcels which should not be subject to the ordinance. He said to the extent that might set a precedent, it is only based on the particulars of that parcel and the standards for defining an unnecessary hardship. He said that might be a precedent for subsequent parcels that are essentially the same as this parcel or can be looked at in the same way for buildable area. He said that is why the prior variance for Mr. Ortega is of precedent-setting value. He said the other issue that did not bear upon Mr. Ortega's property was the specific representation by the Village that this property was exempt from the ordinance. He said they believe the decision of the Planning & Zoning Commission was based on certain inaccurate assumptions regarding the buildable area; it ignores the prior representation of the Village that Tract 2 was exempt and it did not take into account the Ortega precedent. They believe they have met the burden of showing an unnecessary hardship. From a technical point of view, he said they submit that the decision of the Planning & Zoning Commission was effectively arbitrary, that it violates the legal standards that are set out in the ordinances of the Village and it is a denial of equal protection and may amount to an inverse condemnation of Tract 2.

Trustee Lopez said he had a comment about the September 20, 2004 letter that Juan Vigil wrote to Mike Mattioli. He said he thinks the key sentence in the middle of that letter that says: "Because the existing structure encroaches the 280 foot setback requirement of the Rio Grande Character Area and the building is approximately 20 feet from the rear lot line, the lot is considered grandfathered." He said that does not say to him that a variance will be approved.

Mayor Abraham said he and Juan Vigil walked the property with Mike Mattioli and they specifically walked the rear of the property because he would never entertain the idea of a piece of property on Rio Grande going in front of the 280 foot set back so there is no way he would ever have made an agreement with Mr. Mattioli that they would ever grant a variance in front of the 280 foot setback. He said what Juan Vigil was referring to

was that a variance would be needed because there is an area to the rear and they would have to get closer to the rear setback. He said the grandfather term was referring to the fact that the existing building is encroaching into the 280 foot setback and that is the reason that building was grandfathered.

Trustee Lopez said that because Mike Mattioli owned the property at that time, it makes sense that Juan Vigil would say it was grandfathered. But he said now you have a new property owner, not the original property owner.

Mayor Abraham said they did identify the properties when they put the setback in. He said the deal with Lionel Ortega was discussed when they were putting in the 280 foot setback because he was an existing property owner. The deal with the Unser's and Prado was that they voluntarily agreed to a 280 foot setback. He said he does not know when Tract 2 was taken out of the subdivision and he asked Mr. Allison if the home was in the Prado subdivision or out of the subdivision.

Michael Allison responded that the home is technically not in the subdivision in a legal sense; however, there was a contractual agreement when Tract 2 was sold that Mr. Neff agreed to be bound by the covenants and it runs with the land and the tract is contractually subject to the restricted covenants but it was not part of the platted subdivision.

Mayor Abraham said if this lot is contractually bound to the covenants, then why are they looking at a Rio Grande address and not a Cottonwood address?

Michael Allison responded that the historical address is Rio Grande.

Mayor Abraham said the historical address on the existing home with the blue roof is Rio Grande, but this was an office and they did not both have Rio Grande addresses. He said he believes it should have a Cottonwood address if it is going to be bound by the Prado CCRs.

Michael Allison said he believes that is a separate issue but the address remains a Rio Grande address because there was an access on Rio Grande just for the office.

Mayor Abraham said the building was an office and he asked what it is now. He asked if it is now a 1700 foot house. He asked how it got from an office to a house.

Michael Allison said he believes it is probably prohibited under the covenants from operating as an office.

Mayor Abraham asked Dennis Neff if a building permit was ever taken out to convert it from an office to a house.

Dennis Neff, 6847 Rio Grande Blvd., said it was a building permit with regard to 1015 Cottonwood and the house was an office at the time and when they did that the ordinance was just changed to come to the Village. He said at that time he got a permit for the

amount of both remodels. He said the contractors who did the work were getting permits from the County.

Mayor Abraham asked Mr. Neff if he knew he would need a variance to build on the property when he bought it.

Dennis Neff responded that he had major discussions with Tim McNaney at the time and yes he was aware of needing a variance.

Trustee Rael said he had a question for Mr. Cala. He wanted to know if the reference to the 3,000 sq. ft. area being unbuildable was in the CCRs or hearsay.

Chuck Cala responded that the reason they say it is undesirable is because Mr. Neff had spoken with the Prado Subdivision property owners and they represented to Mr. Neff that building in that narrow corridor of the northern 1/3 of the buildable area would not be desirable because of the close proximity to their existing property lines. He said it is not part of the CCRs.

Dennis Neff said his concern is that he will have a very long, thin house and it would have to be a two story in order to get the square footage he wants.

Trustee Rael asked Planner Nighbert if he thought anything was brought forward that would cause him to change his position.

Planner Nighbert said in his original calculations he thought there was 14,000 sq. ft. He said he did include the total area that was behind the line. He said Mr. Cala's calculations were correct as far as the 9,000 sq. ft. He said that would be the one area that he would admit his calculations were not as exact as Mr. Cala's. He said his position, however, has not changed from that expressed in his Planning Reports.

Mayor Abraham said he has not heard anyone talk about Ordinance 209 which would govern this property.

Planner Nighbert said he would defer to Attorney King for a discussion on the Neff variance and the fact that Ordinance 209 does apply to this issue.

Attorney King said Ordinance 209 says that the regulation applies to all A-1 properties in the zone map.

Chuck Cala said he is not familiar with the ordinance or the criteria for floor area ratio.

Planner Nighbert explained that the Village had received an opinion from its attorney explaining that Ordinance 209 does apply and it sets floor area ratio limits of 20% of the land area that can be built into a building area that is enclosed by walls and roof, both heated and unheated. He said it was recently passed and would therefore set the size of total structures on this piece of property at 8,600 sq. ft. He then read excerpts from his Planner's Report which concluded that the owner of Tract 2 would be subject to the 280 foot setback and other regulations in the Prado CCRs. He said he applied a 43,560 foot

standard at 33% to the Neff property even though it was 72,000. He also said what he applied to the Ortega property was a developable right of A-1 and what he is applying to the Neff property is almost the same except Neff was under a different restriction and that was 33%.

Mayor Abraham said what they need to decide is whether a building is going to be put in the 280 foot setback. He said he does not think they need to guarantee someone that they can build as big a house as possible.

Trustee Homan said she understood from the opening statements that the existing office on the property was 1,700 sq. ft. and they were trying to get it to the 3,000 sq. ft. that was part of the CCRs. She said it now appears that they are looking at 5,000 to 6,000 sq. ft. which is double what the initial suggestion was at the beginning of the presentation.

Michael Allison said he did not mean to imply that there is a requirement, he said he was saying that the minimum square footage requirement for homes in Prado is 3,000 sq. ft., but most of them are actually 5,000-7,000 sq. ft. He said their point is that Neff is not required to bring the existing structure up to 3,000 sq. ft.; however, they are seeking a variance to make the improvements more consistent with the neighborhood.

Dennis Neff said what he would like to do is a building envelope in front of the existing home. He would like to build a garage, retain the courtyard, and put in a 5,000 sq. ft. house. He said technically there would be garages between the two houses. He said he is asking for the 1,700 sq. ft. existing plus an additional 5,000 to 5,500 sq. ft. and another 700 sq. ft. for the garage.

Trustee McDonough said he would like to ask the question that if the Board denies the appeal, what is the applicant's possible recourse for coming back with an alternative plan? He asked if there is a timeframe that he must adhere to if he comes back with a different plan.

Planner Nighbert said he believes it is one year from the date of this variance before he can make another request for variance.

MOTION: Trustee Homan said Mr. Neff knowingly purchased a lot with existing challenges due to the existing structures on the property, the existing 200 foot setback, yet he had a desire for a large home and he was encumbered by contractual restrictions on the property and building potential. She said they are all sympathetic to his situation; however, Mr. Neff has basically created this problem on his own. She said he purchased the property with known risks and now he wants this Board to give him relief from his own actions and desires and she does not believe those are just reasons or a basis for granting this request and as such she would move to deny his request. Trustee Lopez seconded the motion.

Attorney King stated that findings needed to be made before they can vote on the motion.

Trustee Homan stated the variance is contrary to public interest and the Board has found there was no hardship.

Trustee McDonough said the findings cited by the P & Z Commission are all appropriate.

Planner Nighbert stated there is a discrepancy on the 14,000 sq. ft. of buildable area. He said it is not correct. He said it is Mr. Cala's contention that it would be 9,000 sq. ft. of buildable area.

Trustee McDonough said that they have discussed maximum building sizes a lot but the issue is really the 280 foot setback. The letter from Mattioli, agent for the owner, specifically requested clarification about the grandfather issue. He was not clear about it. The response back was that if you are going to build anything, you will need a variance. He said he did not see the gray area, it was pretty clear. He said building sizes aside, the real issue is the 280 foot setback, which the Board had labored over significantly four years ago.

Planner Nighbert offered that Mr. Neff could build a bigger house if he went to two stories. He said there is no ordinance that precludes him from building a two story, even though the house is on Rio Grande.

Mayor Abraham said it has been established that the variance is contrary to the public interest:

- 1) Owing to special conditions, literal enforcement will not result in an unnecessary hardship considering the lot was purchased with full knowledge that a variance would be needed.
- 2) The property is not exceptional by reason of physical characteristics of the land existing when the provisions were adopted or by government action. Ordinance 191, the setback ordinance, was in effect when Prado Subdivision was approved and when the applicant purchased the property. The developers of Prado Subdivision did not request a waiver of Ordinance 191 for this parcel within its subdivision approval documentation. Tract 2 is not included in the Prado Subdivision recorded plat. Any argument that the Mayor or Administrator did grant or would grant a variance has not been established, and even if it could be established as a matter of fact, could not be established as a matter of law because the governing body (i.e. the Board of Trustees and the Planning and Zoning Commission) are the only Village entities authorized by ordinance to grant variances.
- 3) The parcel is not irregular or unusually narrow in shape.
- 4) Reasonable use can still be made of the land. Ordinance 209 covers this property. There is sufficient land behind the 280 foot setback to allow for 11,708 square feet of building, according to the Floor Area Ratio, that is an approximate number, therefore reasonable use of the land can be made.
- 5) The fact that the affected parcel might have a greater value with the variance is not sufficient or justification in itself to authorize a variance.

- 6) The development proposed in the variance does not differ from that allowed in this ordinance only enough to relieve the alleged hardship.
- 7) And the alleged hardship is not justifiable in terms of the Master Plan, specifically the provisions of 4.4.2 concerning preservation of open expanse, open space, vegetation and wildlife.
- 8) An additional variance would be required. Ordinance 209 imposed a Floor Area Ratio on all A-1 zoned property within the Village. Tract 2 is zoned A-1 and contains 1.6353 acres. The approximate 11,708 square feet would be allowed.

Mayor Abraham said that the Ortega case was different because Ortega was the owner of record when Ordinance 191 was put into effect. The Johnstone property is not in the 280 foot setback area. These are not cases that can be compared.

Dennis Neff said with regard to the Johnstone issue, the reason that it was brought up as an issue is that if a variance is granted, one of the issues is that if there is a home or a building on either side of the lot where there is a variance request, then the building cannot be allowed to go in front of that building.

Mayor Abraham said that a line of sight is no longer (in effect). When there is a 280 foot setback, the line of sight does not apply.

Dennis Neff said that if a lot is less than 375 feet deep, if there was a home on either side of you, then the building could not go in front of the neighbor.

Attorney King said based on the new information, it would only be a 5,000 to 5,500 square foot addition, it would not need an additional variance. Ordinance 209 would have to be kept as a finding.

Mayor Abraham said if it was that low. He said Ordinance 209 should be kept in as a finding.

Trustee Lopez asked the Mayor to call for the question.

VOTE: The motion carried unanimously, 4-0.

7. OLD BUSINESS

There was no old business.

8. NEW BUSINESS

A. DISCUSSION AND APPROVAL OF RESOLUTION NO. 2008-1-2 – AUTHORIZING THE SUBMISSION OF A NEW MEXICO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM APPLICATION TO THE NM

DEPARTMENT OF FINANCE IN THE AMOUNT OF \$50,000 FOR THE HIRING OF A CONSULTANT TO PREPARE THE 2020 MASTER PLAN

Administrator Ward stated that the initial discussion came in the form of approval to submit the application which requires a resolution from the Board recognizing that the Village wants to do this planning. He said if the resolution is approved, they will attach it to the application.

MOTION: Trustee Lopez moved approval of Resolution No. 2008-1-2 authorizing the submission of a New Mexico Community Development Block Grant Program application to the NM Department of Finance in the amount of \$50,000 for the hiring of a consultant to prepare the 2020 Master Plan. Trustee Rael seconded the motion.

ROLL CALL VOTE: Trustee McDonough, yes; Trustee Homan, yes; Trustee Lopez, yes; Trustee Rael, yes. The motion carried unanimously, 4-0.

B. DISCUSSION AND APPROVAL TO INSTALL TWO STOP SIGNS AT THE INTERSECTION OF PUEBLO SOLANO AND DEL AKER IN ORDER TO CREATE A THREE-WAY STOP

MOTION: Trustee Rael moved approval to install two stop signs at the intersection of Pueblo Solano and Del Aker in order to create a three-way stop. Trustee Lopez seconded the motion.

Trustee Homan asked where they would be installed so as not to back up traffic but still allow proper line of sight to make the corner. She said she believes it creates an awkward situation because of the S swing through the corner area. She asked if it would be more appropriate to install speed bumps.

Planner Nighbert said he realizes that it is not the best solution because there could be a back up on the curve at the stop sign, but it would slow down the traffic. He said speed humps were discussed and the curve would still be there and people would not stop at the curve. He said they did an informal survey of the residents and they agreed that the stop signs would work better.

VOTE: The motion carried unanimously, 4-0.

C. DISCUSSION AND APPROVAL OF PRECINCT BOARD MEMBERS AND COMPENSATION FOR THE MARCH 4, 2008 REGULAR MUNICIPAL ELECTION

MOTION: Trustee Homan moved approval of precinct board members and compensation for the March 4, 2008 Regular Municipal Election. Trustee McDonough seconded the motion.

VOTE: The motion carried 3-0 with Trustee Lopez abstaining.

9. TRUSTEES INFORMAL DISCUSSION

Trustee Rael said Administrator Ward told him twice that he was working on the contracts for the property owners. He asked for an update.

Administrator Ward said he will make this a priority and get it done.

Trustee McDonough said he would like to mention codifying the ordinances. He said he finds it frustrating to try to figure out what the right ordinance is.

Mayor Abraham said the Village has been under advice from its attorneys to clean up the ordinances but there are several that need to be redone before any attempt to codify them is undertaken.

Trustee Homan said she believes the ordinances that have been revised and are up to date should be codified and posted on the website so the residents have access to them.

Attorney King said she will check with Randy Van Vleck who gave a report on codification procedures and companies that specialize in codifying ordinances.

Mayor Abraham said the Village Historical Committee approached him about moving the old Schulte home from the new fire station property to Village property in order to house historical artifacts and some of Kit Sargeant's items. He said this might also satisfy Leo Bartolucci's request to honor the former trustees.

Mayor Abraham discussed the closing of Rio Grande Blvd. and also made a suggestion on redesigning the intersection of Chavez and Rio Grande with some right turn lanes. He also mentioned that there was a discrepancy in the annexation of Ortega whereby the papers state that the annexation only goes to south of the road. He said the Village does not even own the south part of Ortega and therefore the repaving project will have to be done in conjunction with Bernalillo County. He said the Village has received two grants for 4th Street for Scenic Byway and to put in gateways. He said he believes there is \$100,000 to accomplish it.

10. ADJOURNMENT

Trustee Lopez moved to adjourn at 9:36 p.m.

APPROVED by the Board of Trustees of the Village of Los Ranchos de Albuquerque this _____ day of _____, 2008.

ATTEST:

Annabelle Silvas,
Village Clerk