

# MINUTES OF THE EXTRA-TERRITORIAL ZONING AUTHORITY (ETA) MEETING

August 21, 2013

5:30 p.m.

*(Note: These are not verbatim minutes, these are summary notes.)*

## MEMBERS PRESENT:

Leticia Benavidez, Commissioner  
Nathan Small, Councilor  
Billy Garrett, Alternate  
Miguel Silva, Vice-Chairman

## OTHERS PRESENT:

Daniel Hortert, Director, Community Development  
Steve Meadows, Planner  
Dave Medeiros, Deputy County Attorney  
Robert Kyle, CLC Bldg. & Devel. Svcs. Administrator

## MEMBERS ABSENT:

Wayne Hancock

### 1. CALL TO ORDER

**Vice-Chairman Silva** called the Regular Meeting of the Extra-Territorial Zoning Authority to order at 5:36 p.m. Wednesday, August 21, 2013 in the Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, NM.

### 2. ROLL CALL

Commissioner Benavidez	Here
Councilor Small	Here
Commissioner Garrett	Here
Vice-Chairman Silva	Here

### 3. ANNOUNCEMENTS

**Dave Medeiros, Deputy County Attorney**, announced that Commissioner Karen Perez has resigned from the County Commission leaving a spot on the ETA, as well as a vacancy in the office of Chair. There is a Board of County Commissioners Meeting scheduled for August 27, 2013. One of the items on that agenda will be to choose a new Doña Ana County member assigned to the ETA. We have a new Commissioner, Benjamin Rawson. It is up to a vote of the Commission, but it appears that Commissioner Rawson will be chosen for that slot. In the meantime, under the By Laws, the Vice-Chair will assume the duties of the Chair. There needs to be an agenda item on the next ETA Meeting to elect the vacant chair position. Just as a reminder, in the By Laws, all that takes is a majority vote of a quorum of Authority members present at the time to elect the chair.

### 4. APPROVAL OF MINUTES: June 19, 2013 Meeting Minutes

**Councilor Small** made a motion to approve the minutes of the June 19, 2013 ETA Meeting, with **Commissioner Benavidez** seconding the motion.

The motion was **APPROVED** by a vote of 4-0.

**5. CHANGES TO THE AGENDA**

No changes to the agenda.

**6. PUBLIC INPUT**

None.

**NEW BUSINESS  
REVIEW/ DISCUSSION / ACTION**

**7. MINOR SUBDIVISIONS AND LARGE LAND AREA SUBDIVISIONS REPORT UPDATE FROM THE CITY OF LAS CRUCES COMMUNITY DEVELOPMENT DEPARTMENT STAFF**

**Robert Kyle, Building & Development Services Administrator, City of Las Cruces**, reported that there were two minor subdivisions received by the City of Las Cruces for the month of June. One request was a 2-lot split on 5 acres, the other was 4-lot split on 40 acres. In July, the City received one request for a 2-lot split on 7.4 acres.

**8. CASE # V13-007 / Palacios, 320 Armstrong Road, Las Cruces**

**Steve Meadows, Planner**, was sworn in and presented the case which is a variance request to the side yard setback from 15' to 5' in order to construct an 800 sq. ft. attached garage within an ER2 Zoning District on a 0.33 acre lot. No correspondence was received in support or in opposition of the request. Staff found five setback variances granted within this ER2 zoning district so the granting of the variance will not constitute a special privilege. Due to the size and shape and structures on the property the garage cannot be constructed in any other area of the lot which would constitute an unnecessary physical hardship upon the applicant. Based upon Staff's findings and analysis of the situation, Staff's recommendation is for approval of the variance request.

**Commissioner Benavidez** asked if this was going to be an enclosed one-car or two-car garage.

**Steve Meadows** responded that it will be an enclosed two-car garage.

**Commissioner Garrett** asked if the boundary line shown on this map (projected on screen) was correct.

**Steve Meadows** responded that he would be reluctant to say that the line you see on that is exactly where the boundary is.

**Commissioner Garrett** said we should use the map that has the survey data as the reference for the property line because this suggests that there is room along that side, which in fact is not their property, in order to provide some other alternative. I want to eliminate that as a point of discussion.

**Dan Hortert, Director of Community Development**, was sworn in and said that for clarification purposes, the map was based on the GIS boundaries which are not typically metes and bounds.

**Elizabeth Palacios, 320 Armstrong Road**, was sworn in. I have nothing further to add to the presentation by the Planning Department.

**Councilor Small** made a motion to approval the variance request based upon staff presentation and testimony and **Commissioner Benavidez** seconded the motion.

**Dave Medeiros, Deputy County Attorney**, was sworn in. He suggested that someone on the Authority go through the criteria and come up with some specific findings that can be read into the record.

**Councilor Small** discussed that granting this variance would not constitute a grant of special privilege because other setback variances have been granted in the area; granting this variance will not be detrimental to the public health, safety and welfare; and finally it has been concluded that the setback requirement interpretation would constitute a physical hardship upon the applicant. Because of these three conditions, I would move to approve this request.

The motion was **APPROVED** by a vote of 4-0-0 by the Authority.

9. **CASE # V13-008 / Millan, 9741 Butterfield Blvd., Las Cruces**

**Steve Meadows, Planner**, was sworn in and presented the case which is a variance request to the rear yard setback from 25' to 4' for an existing 819 sq. ft. accessory structure and from 10 ft. to 1 ft. for a setback between structures within an ER5M Zoning District on a 0.17 acre lot. The accessory structure will be a carport and construction was started without a permit. Work was stopped after the Planning Department received a complaint. One letter and one email were received in opposition to the proposed structure. Last week a letter was received from the Lower Rio Grande Water Association objecting to the carport being built over the utility easement, saying that their water main is there and it prevents them from being able to get back there to work on the water main if necessary. The property is allowed a five ft. setback on the sides because this lot is less than 51 ft. wide. There also must be 10 feet between all structures within a lot.

Granting the variance is not considered a special privilege because another variance had been approved for the same zoning district. The unpermitted carport was placed over a platted 5ft utility easement and documentation from the water utility was submitted to staff claiming that approval of the variance would be materially injurious to properties or improvements in the vicinity. Since the applicant did not apply for a permit which would have exposed the setback and easement issues and alternatives could have been explored – this constitutes a self-imposed hardship. Based on staff's findings and analyses, staff's recommendation is denial of the proposed variance.

**Commissioner Benavidez** asked if a cement slab has been installed on the property for a carport and does the encroachment of the utility easement pertain to the house only or the neighborhood.

**Steve Meadows** responded that there has been a slab poured for the carport. Also, the easement is platted on the Butterfield Park Subdivision and all of the properties that are along there have 5 ft. utility easement. The water main located there is for the whole neighborhood.

**Dave Medeiros, Deputy County Attorney** was sworn in. Whatever you do tonight on this variance request, understand that it is not going to have an effect on the rights of any holder of an easement that goes on the back of that property. If the structure is built into that easement, the holder of that easement can take action against the property owner to remove that structure from that easement if it interferes with the use of and enjoyment of that easement. If you decide to allow the variance to the setback, it is not going to get rid of a potential problem that this property owner may still have relative to the holder of that easement. You can't extinguish the rights of an easement holder by granting a variance.

**Vice-Chair Silva** asked where the utility easement runs.

**Steve Meadows** responded that the water easement runs along the north side of the property and the entire length of all those parcels.

**Vice-Chair Silva** asked if a repair was needed, how does the utility company access their easement.

**Steve Meadows** said he thinks they would have to enter private property to access easement since there are fences that block off one property to another. If the variance is not approved, the building would have to either be removed or moved with a permit at least to the 25 ft. setback, all at the cost of the homeowner.

**Vice-Chair Silva** asked what safety issues are there with the 1 ft. setback between the two structures and did the Fire Marshal look at this particular case?

**Steve Meadows** said the 1 ft. setback between structures poses a fire safety issue. The Fire Marshal did look at the case but did not address this issue.

**Minerva Millan, 9741 Butterfield Blvd.**, the applicant, was sworn in. Her daughter, who is translating for Ms. Millan, was also sworn in. **Ariana Millan, 9741 Butterfield Blvd.** The wall in the little space is going to be removed because if that wall is damaged they don't have enough room to repair it.

**Vice-Chair Silva** asked Ms. Millan if she understood what was discussed earlier about the utility easement at the rear of the lot and that the letter from the water department was challenging the structure on the easement.

**Ms. Millan** responded yes.

**Vice-Chair Silva** asked Ms. Millan if she understood what Mr. Medeiros said, that even if we were to approve it, the utility company could challenge this in court and there could potentially be an overruling of what we decide.

**Ms. Millan** responded yes.

**Councilor Small** asked if the taking down of that wall – will it connect the two structures or just not have the wall.

**Ms. Millan** responded that both of them would be together.

**Commissioner Garrett** expressed his concern about the building being entirely within the 25' setback and said it looks like the storage building is as well. The entire space behind that which should be open is filled with this building. It is even more complicated by the fact that this does impinge on the utility easement. In the aerials it seems that ancillary buildings in this area are staying back 25 ft from the back property line. I am especially troubled that this is such a very narrow lot. The zoning in this area is 1/3 acre lots and this lot is almost half that. I am concerned with public wellbeing, including issues with the utility easement as well as the placement of the building within the setback.

**Councilor Small** asked with the connection of buildings - would that reduce any of the concern about the public health, safety and welfare?

**Steve Meadows** responded that by the combination of these two buildings, Building Services would look over the plans provided to determine if the plans meet the requirements. This still leaves the issue of the utility easement in the back which affects not only this property, but all the properties up and down the line.

**Councilor Small** asked with regard to utility easement, has this been in place since the platting of the property and construction of the structures? Is it currently being used by the water company?

**Steve Meadows** said the easement has been in place since the platting of the property and he didn't know to what extent the easement was being used by the water company. Based on their letter, it is being currently used.

**Commissioner Garrett** said in the email from the Lower Rio Grande, it state that the structure will prohibit access for repair and upgrade of the existing water main located in the utility easement.

**Councilor Small** said with the utility easement concerns, is there a way to allow for a variance for a smaller portion of this structure, understanding that there would be expense and work for the applicant to take part of it off of there.

**Steve Meadows** said there are a lot of options, such as moving the wall one ft. to get it out of the easement area.

**Dave Medeiros, Deputy County Attorney**, was sworn in and said Section 2.3.D of the code says you can grant a variance with a series of conditions such as one granting the variance if everything within that utility easement is removed.

**Vice-Chair Silva** asked if the access of easement is through a private road? And how many feet are there?

**Steve Meadows** said it is 4 ft from the property line to the wall, so it would be an additional 1 ft. to remove everything from the easement.

**Commissioner Garrett** asked if someone could explain who is responsible for making sure the easement holder is able to access an easement.

**Dave Medeiros** responded the owner of land upon which the easement lies is responsible.

**Commissioner Garrett** spoke about the 21' x 39' accessory structure. It is not just that they are in the easement, it's that they have a chain link fence along the property line. There is no way fire equipment can access this area.

**Vice-Chair Silva** said he agreed with many of the findings of staff and is very concerned about the encroachment upon the utility easement. It would be nice to alter the structure so all is not wasted; maybe staff can assist the applicant and make some recommendations.

**Commissioner Garrett** made a motion to approve the request for a variance with

**Commissioner Small** seconding the motion.

**Commissioner Garrett** said he will be voting no on the motion. This does not grant a special privilege and approval of the variance would be detrimental to public health, safety, and welfare; and injurious to the public principally because of the blocking of the easement.

**Councilor Small** said there is a clear case laid out how this is materially injurious to the public health, safety and welfare; the minor tweaks and changes available to us at this hearing are likely not enough to take care of those issues so I'll be voting no.

**Commissioner Benavidez** said I am concerned about the public health, safety, and welfare, because if the water main was to break in the future and the utility could not access the easement to repair the break, the surrounding neighborhood would be affected.

**Councilor Small** asked what avenues for assistance or remedies to the property owners are available?

**Steve Meadows** responded that first we would work with the applicant. We always give them a certain amount of time to comply – it’s not due tomorrow. We always try to help with alternatives and ideas. We can’t tell them what to do but we always try to work with them to help in any way we can.

The motion for a variance request was **DENIED** by a vote of 4-0-0.

**10. NOTICE OF CLERICAL CORRECTIONS TO THE ETZ ORDINANCE PER SECTION 2.5.C**

Steve Meadows informed the Authority of various typographical and grammatical errors, duplications, missing chart, etc. to the ETZ Ordinance per Section 2.5.C and staff’s correction of them in the Ordinance.

**11. ADMINISTRATIVE APPROVALS**

**Daniel Hortert, Meadows, Planner**, reported for the month of July. Permits were issued in July for 10 new single-family residences, 3 new commercial, 18 additions to single-family residences, and 29 installations of mobile homes.

**12. STAFF INPUT**

Dave Medeiros introduced to the Authority Benjamin Rawson, a new member to the Board of County Commissioners.

**13. AUTHORITY INPUT**

None.

**14. ADJOURNMENT**

**Councilor Small** made a motion to adjourn the meeting with **Commissioner Benavidez** seconding the motion. The motion to adjourn was **APPROVED** by a vote of all ayes from the Authority. **Vice-Chairman Silva** adjourned the meeting at 7:14 p.m.

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Officer: Extra-Territorial Zoning Authority

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Submitted by: Diane M. Duback, Recording Secretary