

Planning and Zoning Commission Minutes
City Council Chambers Northside of City Hall
360 Rio Communities Blvd.
March 4, 2021

This meeting was streamed on Facebook Live
<https://www.facebook.com/riocommunities>

Call to Order

- Vice-Chairman John Thompson called to order the Planning and Zoning Commission meeting at 6:35 p.m.

Pledge of Allegiance

- L. E. Rubin led the Pledge of Allegiance.

Roll Call

- Present-Vice-Chairman John Thompson, Secretary Scott Adair, and Mr. L. E. Rubin.
- Absent: Chairman Tom Scroggins and Lawrence Gordon
- Present- Attorney Samuel DeFillippo, Code Enforcer Reeves, and Deputy Clerk Amy Lopez

Approval of Agenda for March 4, 2021

- Secretary Adair made the motion to approve the agenda for March 4, 2021 as written. The motion was second by Secretary Adair. Vote: Vice-Chairman John Thompson - yes; Secretary Scott Adair – yes; L. E. Rubin – yes. With 3-0 vote the agenda for the Planning and Zoning meeting on March 4, 2021 was approved as written.

Approval of Meeting Minutes from February 18, 2021

- Commission began a discussion about corrections needing to be made on the minutes.
- L. E. Rubin made the motion to table the Meeting Minutes for February 18, 2021 as written. The motion was seconded by Secretary Adair. Meeting Minutes for the joint meeting with City Council on for February 18,2021 were tabled. Vote: Secretary Scott Adair – yes; L. E. Rubin – yes. With a 3-0 vote the agenda for the Planning and Zoning meeting was approved.

Public Comment

- No comments were made.

Public Hearing

- Vice-chair Thompson introduced Commission members and explained the public hearings that would take place.
- Mr. Rubin made a motion to recess the regular meeting and go into public hearing. The motion was second by Secretary Adair. Vote: Vice-Chairman John Thompson - yes; Secretary Scott Adair – yes; L. E. Rubin – yes. With 3-0 vote to recess the regular meeting and go into a public hearing.
- Vice-Chairman Thompson: So, we have suspended the regular meeting are in a public hearing. So, the purpose of this public hearing is to consider a variance request that involves the construction of a see-through fence to replace a previously constructed fence. This is the building that has two different addresses, and the best legal description is, it is the place behind the Oasis, the legal description is in the agenda. What I have is, and each of you should have received, a variance request for a Donald Chavez.

- Municipal Clerk Adair: May I please have a moment. Can I please call Mr. Chavez up to the chair, please.
- Donald Chavez: My name is Donald Chavez and I own the subject property.
- Vice-Chairman Thompson: Welcome Mr. Chavez. I am glad you could join us. Tell us about your request.
- Donald Chavez: This property, I had sold to the Solis family, just a little history. Back in September of last year, after they had a contentious relationship with the Code Enforcement officer, they finally moved out and abandoned the property, I regained legal ownership of it last month. But I had been working on renovating it, I put a new roof, it is being stuccoed now, it has new windows and is renovated on the inside, and it's all but done and what I would like to do to finalize that is to erect, replace the two-foot fence that has been there since Ron Gentry developed this neighborhood and strip mall, this was actually his residence. I want to replace that two-foot fence with a six-foot security fence. I understand that fences have to comply with the City ordinance, so I wrote to the American Fence Association, the one cited in your ordinance and looked up the security fence, the standards for and the security fences that they have that use a gage. That is the same as the paneling that I bought, only the fence spacing is two inches apart vertically. If I was to erect a fence around that bend, it is kind of a dog leg around that corner, for those of you that have seen it. It will be a little harder to see through that for traffic than if I used the same gage paneling, which is commonly used in New Mexico, which is used for cattle paneling, hog paneling. It is basically the same gage. It uses two by six, the space starts at two inches, then four inches and then six inches and it gradually gets wider until you get to the top so that animals don't get through. But your Code Enforcer said it was objecting because it was considered cattle panel, which is 6 or one and half a dozen of the other. This fence would be a lot easier to see through and would also provide the security for pet owners to keep their pet in the yard.
- Mr. Adair: Is this just going to be in the back yard?
- Donald Chavez: It's all a wrap around, it's all one yard.
- Mr. Adair: So, this will be in the front yard too?
- Donald Chavez: Well, there is no back yard. It is just, from the restraint, it dog legs, it's basically convex, coming all the way around to the gas station on the other side. So, it is just a big arc. There is no front yard, no back yard, it's just on yard. And so, when traffic comes through, they have to look either for oncoming traffic and the paneling I am using would be very easy to see through. The other thing is that fence has been there, like I said, Ron Gentry built that fence. State law provides that a road, any public road that divides two properties, the owners on either side own to the middle of the road, then there is a permanent easement that allows traffic to go through there, and of course, State law says after seven years it is a permanent easement. The other thing that the Code Enforcer was fussing about was that my survey, the line from the middle of the road. That intersects and goes to the next point of intersection, would cut through the fence, and would bring the edge of the road within seven feet of the building, which would be a hazard to the people who live there. The fence extends out more like ten or twelve feet. The fence does not interfere with traffic. The width of the road is the same on both sides, so there is no incursion or problem with the fence that has been there since we have become a Municipality. So, what I would like to do, simply, is take that two-foot fence and raise it to six-feet and use that paneling that I have out there as a fabric from post to post to complete that fence.
- Secretary Adair: I have a question.

- Donald Chavez: Yes, sir.
- Secretary Adair: Why are you asking for a variance? If you have a fence with approved material, I wouldn't think you would need a variance.
- Donald Chavez: That is my question. The Code Enforcement Officer, in my opinion, has picked this property to death. The previous owners were just pulling their hair out. They gave up all their payments and deposits on this property, just to get the heck out of dodge.
- Secretary Adair: I am so sorry.
- Mr. Chavez: I am not here to complain, I am answering your questions. As far as I am concerned, I don't need a variance.
- Secretary Adair: What do you think? He meets all the requirements of six-foot or less, the setbacks are on here and if he is abiding by the six-foot rule, why does he need a variance. That is what I am thinking. Gentlemen, what do you think?
- Vice-Chairman Thompson: In my opinion, I don't think our Code Enforcement Officer picked anyone to death. We remember this clearly and there were some quite significant issues, such as them wanting to build a wall that intersected with there electrical panel. They had somethings that were just not safe, so we asked them to make some corrections. This is not what the issue is not about, okay, we are just looking at the fence. So, what I hear you is you believe it should be grandfathered in because it was here before we were a city. I don't think that the clause of being grandfathered in is applicable when there is a safety issue. And one of my concerns, and let me direct this to legal council, is we don't have a map of diagram, but there is one point where the roadway is just one or two feet from the structure. I know that is not ideal, we should have more distance, so should we have a fence that is something that might protect the corner of the building from a dump truck, a garbage truck or one of the many delivery trucks that takes food and paper supplies to the Oasis. Specifically, I am thinking we might have a mirror that is two feet and have two vehicles passing and that might present a safety issue that would jeopardize the owner or the residents.
- Attorney DeFillippo: Sure, I will try to answer that. I don't know about the safety issue you are discussing. I haven't seen this property specifically, however, I would refer to the Ordinance the City currently has. Obviously, we can't move the building itself I, seeing as to how that was built previously. In regard to the grandfather clause, that is a good question. Traditionally the grandfather clause would not be used in this case because the fence itself is changing. The purpose of the grandfathering clause would be to say the existing fence is not applicable to current zoning restrictions. I would ask Mr. Reeves to explain what the exact Zoning ordinance laws are in regard to this specific property and this new fence. That would be the subject of the variance. Based on what we have just heard now, we have a six-foot fence that may have complying materials, and it seems like those are complying based on the ASTM, but he would ask Mr. Reeves to discuss specifically what the violation was.
- Code Enforcer Reeves: Yes, I did visit the property and speak with Mr. Chavez about some items. Mr. Chavez did take care of all of those. But pertaining to the fence, it was noted that the type of fabric that was lying on the ground, and the discussion on what he was proposing to do, brought my attention to the type of fabric that was being used in that type of neighborhood. And I suggested to come to planning and zoning and get permission to use that type of fabric. As he kept on explaining and talking to me, which is fine, but the thing is in filling out the application for the variance, the number 2 item is not met. I proposed that he needs to come back in and bring in some drawings, plot plan, exact location of the fence that is going to be proposed to be erected on the property, type of post.

This is a new fence. The Commission needs to look at what is going in on the property because it is a unique piece of property. It is in an intersection and we have to make sure the line of sight is met, so we need to look at the type posts, their size and the fabric that is going in. Mr Chavez did present a survey, engineering drawing of the plot of land. He did present it to me, and we did look at the way it was laid out. The existing fence that is there does protrude from his property out into the roadway, so that is an issue. So, I think and I feel that he needs to bring in a plot plan that shows exactly where that fence location is going to be for that area.

- Mr. Adair: So, I didn't hear what he said. You are going to use the same footprint as your existing fence, same lines?
- Donald Chavez: It is not going to change.
- Secretary Adair: Are you going to use the same posts or are you going to use new post, obviously, for the six feet?
- Donald Chavez: It has two-inch round post, and I will be using two-inch square posts. Basically, I will be going exactly where the old ones.
- Secretary Adair: I would like to see where your property is in relation to fence to make sure the offsets are correct. Is that a problem to bring in a drawing?
- Donald Chavez: No, but it is the same footprint.
- Secretary Adair: So, there is not a change in offsets.
- Donald Chavez: No, it is the exact same footprint.
- Secretary Adair: Why can't it be grandfathered in?
- Vice-Chairman Thompson: I think our attorney addressed that. If the fence was left alone then it would be grandfathered in. By raising the fence and changing the nature of the fence, the grandfathering no longer applies and now we have to look at the boundary of the fence and where is in relation to the City's property. Is that a correct interpretation of what you said?
- Attorney DeFillippo: Yes, that is a good interpretation for the grandfather clause itself, but obviously, I can't tell, based on the documents I have reviewed, if there is an issue regarding Ordinance concerns. Mr. Reeves would be able to identify those issues better than I could in regard to those concerns, or if there is a right of way issues. I would have to defer to Mr. Reeves who, obviously, knows the property better than I do.
- Code Enforcer Reeves said pertaining to that area, that intersection, he can go six feet, but it has to be determined by line of sight (inaudible) it will deter some type of line-of-sight issue in that intersection, but if he is following his footprint of the existing fence line he will be built out of his property line and in to the roadway. Since he is changing
- Mr. Rubin: Are there going to be any gates going into fence, does it got access for vehicles to get into and out of the property? Is there a walkway into and out of this fence? What I received was a four-page document, one which was a gmail and the other was a copy of a check paying for some roofing, but I don't see any photographs or a drawing showing where the fence is going to go, the materials it is made of, or any egress, egress gate or anything to be able to enter the property. I guess I don't know what Mr. Chavez is asking for a variance for and I don't know if we can answer him without seeing the drawing showing where this fence is going and something that addresses, I am not taking sides with Mr. Reeves but I would like to see something from Mr. Chavez that address what Mr. Reeve's concerns were, so that we can see if we can grant a variance in this case or not.
- Vice-Chairman Thompson: Because it is not grandfathered in, it seems like we need to go back and determine where the property lines are, where the City

- property ends and where Mr. Chavez begins, and that would be the place to put the fence, not where it used to be. Am I accurate with that Mr. DeFillippo?
- Attorney DeFillippo: Yes, to be in compliance with the latest ordinance that would be required.
 - Secretary Adair: The two conditions would be the height of the fence and the offsets, (inaudible)
 - Vice-Chairman Thompson: Would it be clear to ask where Mr. Chavez's property was? Mr. Chavez, would you be able to tell us where the property line is?
 - Code Enforcer Reeves: I located the pins, but I think this condition, I feel Mr. Chavez should probably have it surveyed and marked. But we do have his survey map from when he purchased his property, but it depends on how comfortable you feel as a Commission, if you want to have it surveyed currently, then go from there, showing exactly where his property is, his property line is.
 - Vice-Chairman Thompson: In my opinion we don't have enough to make a decision. I don't see that we know enough. And the roofing stuff, I think, is not relevant, okay.
 - Donald Chavez: Mr. Reeves said he found the pins and one of those pins he found under the pavement, so he did not find any surveyor's marker or pins if that is what you are saying.
 - Code Enforcer Reeves: Well, Mr. Chavez, I am not a surveyor and I feel we should probably get one hired out and get the property surveyed to seek a comfort level for the commission, for the City and yourself. But he did locate a pin, using measurements, measuring off the building according to what the surveyor drew on your plot plan that you provided. But the (inaudible) I think the (inaudible) to get it surveyed properly, and identify your property lines, then go from there.
 - Donald Chavez: As a point of information, you placed a pin on your own, rather than a surveyor's pin. You told me placed a pin on your own and then I found that wasn't a surveyor's pin, it was yours.
 - Code Enforcer Reeves: There was one staked in under my measuring tape, so I raised it above dirt so I could pull the tape out to another location on your property.
 - Donald Chavez: That's fine, but it wasn't a surveyor's marker, that wasn't the surveyor's pin. It wasn't a legal pin.
 - Secretary Adair: To do a survey, you have to leave a stake or monuments to establish points of reference, you cannot legally take those off (inaudible), so it's not a true survey.
 - Donald Chavez: Let me ask this question. If I leave the fence at the height that it is and don't change the height, and leave the posts right where they are, and simply use this fabric at the height it is now, I don't need a variance? Is that correct?
 - Vice-Chairman Thompson: I think if you change the fabric, then you change the nature of the fence.
 - Donald Chavez: I am not changing the height.
 - Secretary Adair: You are going from a two by two (inaudible).
 - Donald Chavez: No, my question is if I just leave the fence at the height it is, I don't need to get the variance.
 - Secretary Adair: You are saying you leave the fence at the height it is at but instead of using the two-by-two diamond chain link fence, you use the four by four and by doing that you are changing the fence. You know, my only concern is, Gordon, is there anything existing that is a problem?
 - Code Enforcer Reeves: The only thing about setbacks is the existing fence is out of his property line and in the roadway.

- Donald Chavez: But it is grandfathered in as long as I leave it how it is and just change it back.
- (Inaudible conversations)
- Attorney DeFillippo: Sure, quite frankly, my concern in this is for Mr. Chavez. And the reason I say this is if the City for some reason needs to get to the property that they have the legal right to, the they can come and tear down your fence, there is no question about that even if its grandfathered in, if we are going to call it that, that is grandfathered in but you have already put in for a zoning permit or if you were able to build it and nobody was able to say anything about it. But leaving that fence, or whatever portion of it, should the City ever need to get to the easement or having effect on that property, it would run the risk of tearing down that fence. That's the concern that I see here, the material itself is not of great concern here as long as it meets the zoning requirements you folks have and you guys are willing to approve the material. Mr. Chavez does need to understand, that is City property it is sitting on and the City has the right to use that property.
- Donald Chavez: So just as another point of information there is no dispute, (inaudible), there is no incursion on the roadway, the roadways is the same width on the roadway on the South side of the road, on the North side of the road where there is a dispute. There is no incursion, the road is the same width all the way around with the fence where it stands now. If we were to bring the fence in toward the building where so that it is seven feet away from the building, then the roadway would be widened by ten or fifteen feet. Is there a reason to widen the roadway by ten or fifteen feet so that traffic comes closer to the house (inaudible).
- Code Enforcer Reeves: Well by moving your fence ten inches back into your property line, back into your property, that would provide more walking area outside your fence, that would help the public walk having a larger walkway through that area. Mr. Chavez, would that be okay for you to move that fence, move it back onto your property? I think it is then, twelve inches towards your place and construct your fence at three foot. That would take care of the line of sight at that intersection, then I don't see any problem for you to be able to do your work.
- Donald Chavez: No sir, because moving the fence line in, it would be seven feet away from the window and the outside of the wall and window and it creates a safety hazard for anyone who walks near the building. It allows traffic to be within arms-length of anyone who is trying walk into the building. The way it is standing right now the roadway is safe for traffic and it doesn't make it unsafe for people walking into the building by getting hit by a car. It is not safe.
- Code Enforcer Reeves: Since the fence line, the property line comes within seven feet nine inches, the corner of your building out to your property line we are probably going to need, we need a plot plan so the Commission can see exactly what we are looking at.
- Donald Chavez: I will leave the fence exactly how it is. If I put, the commission can decide whether or not I need a variance on the fabric. If the commission does not want to grant the variance for the fabric, I will just replace the fence with chain link. That fabric came down because you were complaining about the weeds. I took the fabric off so that I could clean up the weeds. If the City wants to leave things the way they are, I will just put the fabric back on the two fence posts and leave things just the way they are.
- Manager Dr. Moore: Mr Chairman, this is Marty. I just wanted to let you know that I have landed in Rochester and joined the audio.

- Vice-Chairman Thompson: Welcome and thank you for taking the time to join us.
- Manager Dr. Moore: Absolutely, my personal suggestion is, the variance was related to material and my understanding is, parties have provided information and discussion back and forth tells me that there are many issues that need to be discussed and solve. My personal recommendation is to go ahead, my suggestion is to go ahead and move the item for action and decision to your next Planning and Zoning meeting and walk through the questions and concerns that are being raised because clearly there are questions on both sides. That is my personal thought.
- Donald Chavez: I will just withdraw my request for variance.
- Vice-Chairman Thompson: (Inaudible)
- Secretary Adair: We are not trying to limit what you do, but this is limited information (inaudible). The best thing to do is to go out and look.
- Manager Dr. Moore: You are allowed to do that.
- Mr. Rubin: I don't think we are allowed to view the property unless we go as a group.
- Manager Dr. Moore: I don't know, is the attorney on, is the attorney on?
- Attorney DeFillippo: Yeah, I am here.
- Manager Dr. Moore: He can probably answer that question. The question from the Commissioners is, can they go out and look.
- Attorney DeFillippo: Sure, I have no objection to that.
- Manager Dr. Moore: I would like to propose that you find the time to go out there.
- Vice-Chairman Thompson: May I first have a motion to move to table this until we have enough information to make a decision, which would include a plot map and something to show the property line.
- Mr. Rubin: I make a motion that we continue this at our next, at which time, we would be provided the documents that are being requested, a plot map, (inaudible) to fairly review Mr. Chavez's request concerning the issue.
- Secretary Adair: I would second that.
- Vice-Chairman Thompson: Mr. Chavez, before you go and spend any more money, maybe give us some time to do, to figure this out, so you don't have to do things twice. Do you have a timeline between now and when you sell it?
- Donald Chavez: I have. Every month, every month that goes by that that building is not owned, I am sucking air because I am making payments on that property. So, it hurts me the longer the delay goes. The property was vacated back in September.
- Vice-Chairman Thompson: I understand from what you said is you want to make a yard that is safe for a dog or potential buyer. So, there is nothing (inaudible) because we don't know if the next owners or tenants are going to have a dog, is that right?
- Donald Chavez: No, the building will have better curb appeal if it has a fence around the front of it, other than just an open space. I really can't, I can't list it until there is a fence in front, a completed fence.
- Vice-Chairman Thompson: Okay, I don't understand real estate law to that. but I really don't see any reason you couldn't list it and get it on the market and tell people you are planning on a fence. Okay, we have had a motion and a second.
- Donald Chavez: I am not trying to interrupt, you know, your attorney is here. I am sure I am not legally prevented from listing it. My point is that I am sure the value of the property will be up to speed if the building is completed, and the fence is completed. That's my only point. I don't want to argue that.

- Mr. Rubin: I don't think we have an objection to your fence, after we know where you are going to be putting it, because what I am hearing, where the fence currently exists, it extends out into the roadway.
- Donald Chavez: According to your Code Enforcer, to Mr. Reeves, it does. According to me, it does not because the road width is consistent, there is no incursion into the road. I invite you all to go out and look and look at the road and fence and you can judge for yourself. I think that is the best thing.
- Mr. Rubin: Do you have any documents that show where your property boundaries are? Because I personally have a similar problem, where I thought that my property extended out past where it legally did. So, without the proper I don't know that we can judge that. If your fence currently extends out into the right of way, I don't know how we approve something that extends out into, extends out into a roadway that is not on your property.
- Vice-Chairman Thompson: The point is, we don't have adequate information. So, it has been moved and seconded. Go ahead Mr. Chavez.
- Donald Chavez: I was just going to say you might want to have your attorney check that, in terms of the width of the roadway, because the width of the roadway is consistent all the way through that corner even though the fence has been there for thirty years.
- Vice-Chairman Thompson: Pre-dating the City. So, when you send us a request, what we really need is some sort of a map, a diagram, so we know what we are talking about. So, it has been moved and seconded that we postpone a decision on this, for two weeks, until our next meeting, which may or may not be in two weeks. March 18th would be our next scheduled meeting. It has been moved and seconded. I'll call to question how do you vote? Vote: Vice-Chairman John Thompson - yes; Secretary Scott Adair - yes; L. E. Rubin - yes. With 3-0 vote the motion to postpone a decision until next meeting,
- Vice-chair Thompson: Mr. Chavez, thank you for talking with us tonight and sharing your concerns, we share your concerns as well. We want to come to a good conclusion, we just need more information, then we will have this on the agenda as a discussion topic, not a hearing for, at our next meeting.
- Donald Chavez: Just a question, will you be going out, will you actually go out to see the property?
- Vice-Chairman Thompson: I guess we will get some guidance from our City Manager whether we go individually or as a group. I know I am familiar with it just by driving through, but I haven't been out there measuring or anything.
- Manager Dr. Moore: Yeah, Mr. Chairman, members of the Commission, there are two ways you can do it. I mean if an individual wants to go look, but if the Commission members wanted to go as a quorum, it would be considered a work session, a field work session of the Commission, and you could certainly do that, but you would have to post that you are going to have a work session and I believe our attorney can answer that.
- Attorney DeFlippo: Exactly, as long as there is not a quorum, if it is looked at individually it doesn't need to be posted, but if there is a quorum there needs to be notification. That's the only concern I have.
- Manager Dr. Moore: We can certainly do that that. How does the Commission want to do this?
- Donald Chavez: I would appreciate the opportunity to be out there if possible.
- Manager Dr. Moore: Absolutely, no problem.
- Donald Chavez: Let me know.

- Vice-Chairman Thompson: Mr. Chavez, we are on Facebook Live, so I am not going to ask you to give us your phone number, but perhaps you could leave us your phone number with Amy, so we have some way of contacting you.
 - Municipal Clerk Adair: It is actually on your application of the variance.
 - Vice-Chairman Thompson: I see it, I see it on the variance, never mind. Thank you, Scott. Okay, so because of the interest of time and publishing, it would be a whole lot easier to go out there individually and work one on one with you.
 - Donald Chavez: Okay, let me know when to be out there and I will be there.
 - Inaudible discussion.
 - Vice-Chairman Thompson: Is there anything else from Mr. Chavez? Okay.
 - Donald Chavez: Thanks guys, I really appreciate it.
- Municipal Clerk Adair: Now we also have Kim Lewis. Kim Lewis is the next item on the agenda.
 - Vice-Chairman Thompson: This concerns a height variance for a fence, and this is actually in the same neighborhood, on Rio Communities Way. Thank you for joining us Ms. Lewis.
 - Kim Lewis: Hello.
 - Vice-Chairman Thompson: Has everyone reviewed the letter that she sent? Okay, so, Ms. Lewis will you make your case?
 - Kim Lewis: Did you get my letter and read my letter?
 - Vice-Chairman Thompson: I did, but somethings weren't real clear, like how high do you want to make this fence and you sent a photograph of a seven-foot fence. Is this a case where you have already added a few feet to an existing fence?
 - Kim Lewis: You know what? Three years ago, if you read my letter, it is self-explanatory. I made the mistake of assuming that because there was already twenty-five foot of existing fence at that height in between the properties. That is probably why we bought the property because we were like oh good, we will just continue that height around the back yard so it would be safe for the old peeps. Well, I screwed up there, I guess.
 - Vice-Chairman Thompson: Just so it is clear, let me make sure we are talking on the same, you are saying there is 25', you mean there is 25' that way, is that between properties, 25' between, and how high is this fence?
 - Kim Lewis: Between each of those townhouses there was already 25' of existing height, at that height, in between my property, this property and the property next to it, there was 25' already existing when we bought the property at the height. So, I assumed, oh good.
 - Vice-Chairman Thompson: Wait a minute, I have been through there and I know there are no 25' high fences, I think what you are telling me is that the fence is about 8' tall and 25' long?
 - Kim Lewis: The fence in between the town houses is 25' at the 7' height, so I assumed that was okay and we continued the height in the back yard and around the other side. Do you understand what I am saying?
 - Secretary Adair: So, you want to add another course of block to match?
 - Kim Lewis: We made the mistake and did not get a building permit. We just assumed. Here let me read my letter to you, it is really self-explanatory. I am requesting this variance primarily due to security due to my elderly parents. In addition, this addition to the wall height was made three years ago when we bought the property. I made the mistake of assuming that because there was 25' of existing wall at this height, that I could continue this height around the back yard. It was one of the primary reasons we bought the property. I am the only living child my parents have, and I was scared to put them across from an

apartment building and backed up to a vacant field because my parents are both wheelchair bound. My father is totally deaf, and my mother is very hard of hearing. Now they have a, they have a caregiver during the day, which is great, but they cannot afford 24-hour care. And I moved them from Los Lunas here to be closer to me, but my house is not wheelchair accessible. And this place was set up great, it was wheelchair accessible, it had that high wall, and I thought oh yay, sweet. I did not even give a thought to think that I had to get permission. So that wall has been there, it has been in existence for three years, you cannot see it in the street, nobody knows its there, both neighbors on either side, when we added to the wall, were not in objection to it and they wished they could afford to do the same thing, they both told me. It is real easy for you all to know where it is because if you go in the back parking lot and look across the vacant field it is the house that has the higher wall than the other townhouses. I am hoping to leave it alone and let it be. I realize it is 7'-4" in height and I know that it no excuse. I put in my letter that we drove around and in 30 minutes the other day, prior to my court date, and we noted 150 other properties that are breaking height restriction. I know that is no justification to keep my parent's wall that height, but I was hoping to buy a few years of security, you know. They might be dying pretty soon. It is a security thing, and I hate to have to lower the wall, you know. I no sooner went to court the other day and then the news came out saying thieves are targeting people that are backed up to vacant fields. It's just a security thing.

- Vice-Chairman Thompson: Thank you. Just so you know. Okay, L. E., go ahead.
- Mr. Rubin: Mr. Reeves are you still with us.
- Code Enforcer Reeves: Yes, I am.
- Mr. Rubin: Gordon, in reference to this application, are there any other problems other than the fact that this fence was built above the six-foot limit? Are there any other problems that you have cited with this property?
- Code Enforcer Reeves: What brought it to my attention is the ordinance, the ordinance states that any fence over six foot needs to be permitted, need to have a permit to construct a higher fence.
- Inaudible discussion.
- Mr. Rubin: Was this fence put up, Gordon, as far as you can tell to meet standards. I mean, they didn't just go out there and stack cinder blocks on an existing fence? this was put in and done professionally with the grout lines between the cinder block?
- Code Enforcer Reeves: The fence looks great except for one item.
- Secretary Adair: Can I interject real quick, the maximum height without a permit is eight not six feet. She is lower than the range.
- Kim Lewis: But I didn't ask for permission.
- Secretary Adair: You don't need one.
- Kim Lewis: I didn't get a permit.
- Secretary Adair: You don't need a variance, you just need a permit.
- Kim Lewis: I didn't get one, I just assumed.
- Secretary Adair: We are not talking about a variance, since you are well under 8', you are just missing a building permit after the fact. That is my understanding.
- Code Enforcer Reeves: Right. When I first wrote the letter to, when I wrote the letter to the party, I asked them if they had gotten a permit to construct the fence to that height and if they did to please bring in your documentations, your permit, and CID has signed off on that, and present it to P&Z and so they can look at it and grant the height of your wall.

- Secretary Adair: P&Z does not need to grant the height of the wall; she is not in violation. All they need is a building permit. Do you agree?
- Manager Dr. Moore: Mr. Chairman, if I could add, I was going over, I was actually going over the zoning code. The zoning code does require, it has to have a building permit and it needs to show that it meets the engineering standards for a fence of that height.
- Code Enforcer Reeves: If you have a wind load on that type of fence, so the footing that is put in has to take care of that type of wind load, on that type of fence. If you go to the drawing that shows 7'-4" that she wrote down here, where it says 7'-4", they call these pilasters that helps strengthen a fence that height. My concern was that one pilaster, right here, did not continue all the way up, so that weakened the load all through there. So, that is the reason I am saying CID engineering of that footing needs to be permitted.
- Kim Lewis: I understand. That is where we walk in the gate. I fence builder built it.
- Code Enforcer Reeves: Also, the height of that fence is measured from the lowest grade and that is the outside of the fence and it is 8', measured to the lowest grade.
- Kim Lewis: You know, I sent my husband over there Mr. Reeves, and he walked all along and measured inside and outside, and I know that he found it was 7'-4". Unless you went to the lowest point there was. I know, I did not get a building permit, but it still is a security issue for me, and I would like to have it at that height, if possible. So, whatever I need to do.
- Vice-Chairman Thompson: Dr. Moore do you have any guidance for us?
- Manager Dr. Moore: My personal recommendation to you, it sounds like, well, we have the applicant stating one height, we have the professional stating another height. But I think, because the height of the fence that still has a wind load requirement that has to be met by CID. My personal recommendation for them is to work with the Code Enforcer and if it needs to be brought back by some sort of approval, it certainly can be brought back, at your next meeting.
- Vice-Chairman Thompson: You are not suggesting that we deny or approve it, just need additional information. Just making a general comment about zoning ordinance and variances in general, not specific to any case we have heard tonight, it would be really good if everything that came to our committee had a diagram to scale or to some scale or even a magic marker on a napkin would sure help us with these things, whoever is responsible for these things.
- Manager Dr. Moore: Yes, Mr. Chairman, members of the Commission, I would highly agree and endorse that, and in fact, we are having internal discussions to create checklist, so applicants can see clearly, specifically, and exactly what you need so you can to make informed decisions.
- Vice-Chairman Thompson: So, Ms. Lewis, I totally relate to the situation you are dealing with, with your parents. I am in a very similar situation with parents in their 90's. Just the letter that you wrote is a letter I could have written. So, I am totally in agreement with you. But our job as a Commission is to enforce City ordinances and look out for the City and the public.
- Kim Lewis: Is that what we need an engineer to approve it and maybe add some pilasters, et cetera? Is that what we need? An engineer to sign off on it?
- Mr. Rubin: (Inaudible) Mr. Chair? She's got, we are in kind of a predicament here, where it is already built and if we sign off on it after the fact. Is this a fence that would require CID approval to be okay, Gordon? Gordon, you are muted.

- Code Enforcer Reeves: Sorry about that. But any fence over six foot up to eight foot, it needs to be permitted and by permitted, CID needs to look at the drawings, look at the footings, to obtain the wind load on that type of a fence.
- Mr. Rubin: It is already built, so can CID come and look at it after the fact and sign off on it?
- Code Enforcer: They are going to have to approve CID and ask their recommendation on how to approach that. But my concern is that one pilaster that didn't continue all the way up, that weakens that section of fence. But I am not an engineer but being in the trade a long period of time, it would affect that type of fence, but they need to go to CID and talk to an architect or engineer and see what CID wants them to do to resolve this. If CID comes back and she can come back with approval and with recommendations of how to do it, I am willing to look at it and work with her to resolve it.
- Mr. Rubin: I don't object, myself to the height of the fence, I just want to be sure that CID is willing to sign off on it and its ability to withstand the wind requirements.
- Inaudible discussion.
- Manager Dr. Moore: Mr. Chairman, with the facts that you looked at mixed with the facts that you have laid out here, it does seem prudent and perhaps our attorney can weigh in, but it does seem it would be prudent to recommend that the approval be conditioned upon CIDs ultimate approval and pass off on the fence.
- Kim Lewis: Is CID I just call here in town? And I just call CID?
- Municipal Clerk Adair: No, they are in Albuquerque.
- Manager Dr. Moore: It is State of New Mexico Construction Industries Division. We do not, we don't pass that, it is a State approval. So, what we are talking about is we can certainly, and Gordon has contacts with those people at CID to make sure you are in contact with them and do what we need to do there.
- Code Enforcer Reeves: And I will provide that information for you and help you out, okay?
- Kim Lewis: Okay.
- Inaudible discussion.
- Vice-Chairman Thompson: I am not an engineer, but I do have an associate degree in physics, which doesn't qualify me, I know, we don't want to jeopardize the safety of your parents, we don't want you to have to take down your wall. But what ultimately might happen, is there might be some kind of retroactive conditions here they can hammer some rebar down, there is probably a textbook that someone can go to that says based on this, you don't need that many pilasters.
- Kim Lewis: I have a daughter in the heavy construction industry so she will know the engineers and stuff to find out.
- Vice-Chairman Thompson: There is probably a simple solution and it might be putting some really long nail down in there, top to bottom and putting some more cement. There is a solution here, we don't want to tell you no, and we don't want to tell you to take down the fence. We want to make sure.
- Kim Lewis: That it meets code, yes.
- Vice-Chairman Thompson: And your comment about the 150 fences, there could be another 150 variances for those fences or other situation there, it doesn't mean that there are that many people out of compliance, just different situations.
- Kim Lewis: Like I told Mr. Reeves from the get-go, when Mr. Craig was the first code enforcer and he had everyone move their camp trailers behind their house,

so we had to tear down a fence in between our front and back yard to move a camper into the back yard, when it was perfectly inconspicuous amongst the trees on the side of the house. And n body else did it, so I thought why don't we wait and be last this time, instead of first, but we are trying to do it the right way and I will sure find out. And then what come back to you all?

- Vice-Chairman Thompson: We can adjourn our hearing and give you the opportunity to state your case and come back and do our research. Then we will come back with guidance for you.
- Manager Dr. Moore: You can do that procedurally, you can do that, or you can actually offer conditional approval provided that CID gives its approval and signs off on the fence.
- Attorney DeFillippo: And I agree with Mr. Thompson. I think a good way of doing that is if what the Council wants to do is give her conditional approval then she would simply have to provide you folks the approval from CID and then that would not force her to come to another hearing, and that would not require another hearing to make that determination.
- Kim Lewis: Will do.
- Vice-Chairman Thompson: L. E. I would like to entertain such a motion.
- Mr. Rubin: I make a motion that we return to regular Zoning business meeting.
- Vice-Chairman Thompson: Before we return, would you like to make a motion about a conditional approval for Ms. Lewis?
- Mr. Rubin: I think that is something we do when we get to the next part of the meeting, but I could be wrong.
- Manger Dr. Moore: Procedurally, Mr. Chairman, members of the Commission, I believe he is right, I believe you close the hearing and then you can then act of the item.
- Vice-Chairman Thompson: So, L. E. made a motion to adjourn the hearing and return to the regular business meeting. Is there a second?
- Secretary Adair: Second.
- Motion and roll call to go back into Regular Zoning Commission Business Meeting session.
- Mr. Rubin motioned to go back into Regular Zoning Commission Business Meeting. The motion was second by Secretary Adair. Vote: Vice-Chairman John Thompson - yes; Secretary Scott Adair – yes; L. E. Rubin – yes. With 3-0 vote the motion to go back into the Regular Business Meeting was approved.

Discussion

Public Comment: The Commission will take public comments on *this meeting's specific agenda items*. These should be in written form via email or faxed through 4:45 PM on Thursday March 4, 2021. Hard copies can be faxed to 505-861-6804 or emailed to info@riocommunities.net. These comments will be distributed to all Commissioners for review

Discussion, Consideration, and Decision – Approval/non-approval of the variance request involves the construction of a see-through security fence to replace the previously constructed fence. Legal Description: #10090275002850000, 480 Rio Communities Blvd #2

- Municipal Clerk Adair said Commission already made a motion to table this item until the next meeting and do not have to vote on it here.

Discussion, Consideration, and Decision – Approval/non-approval involves the height of a fence. Legal Description: #1009027433300000000 Subdivision: LEMON GROVE ESTATES Lot: 12A D-5-21 1997 REV

- Kim Lewis began a discussion.
- Mr. Rubin made a motion to give approval to the request of the variance pending approval from CID. Secretary Adair second the motion. Vote: Vice-Chairman John Thompson - yes; Secretary Scott Adair – yes; L. E. Rubin – yes. With 3-0 vote the motion to give the approval of the variance pending approval from CID was approved.

Tiny Houses Letter

- Vice-Chairman Thompson said he had had several discussions with Jill Cleary trying to get the information we need to write a letter which would allow her to become an RV dealer. He further explained the lady at the State does not want to have a meeting or a zoom meeting but wants us to find the correct wording and I have found a section that the zoning allows RV sales. He asked for permission from the Commission to work with the City Manger and the attorney to write the letter.
- Manager Dr. Moore asked for clarification of the nature of the letter.
- Vice-Chairman Thompson explained.
- Code Enforcer Reeves asked if tiny homes would bring lodgers tax into question and began a discussion.
- Code Enforcer Reeves asked when lodging tax come into play.
- Attorney DeFillippo said it does not sound like she is going to be renting them out but will be keeping them until they are purchased and then they would rent spaces from her. He then explained if that is their permanent residents, there is no lodgers tax and continued the discussion.
- Vice-Chairman Thompson said once a letter is prepared would the commission like to review it or would writing it with the help of Dr. Moore and the attorney be sufficient.
- Mr. Rubin said he would not have an objection of having the help of Dr. Moore and Code Enforcer Reeves helping and getting that letter off our agenda.

Animal Welfare

- Mr. Rubin said he would like to see the animal welfare on the next agenda.

General Discussion

- There was no discussion.

Adjourn

- Vice-Chairman Thompson motioned to adjourn. Mr. Rubin second the motion and the meeting adjourned at 8:05 p.m. with a 4-0 vote.

Respectfully submitted,

Amy L. Lopez, Deputy Clerk

Date: _____

Approved:

Thomas Scroggins, Chairman

John Thompson, Vice-Chairman

Scott Adair, Secretary

L. E. Rubin

Lawrence Gordon