### MINUTES OF THE REGULAR MEETING OF THE

## City of Carlsbad Planning & Zoning Commission

Monday, February 4, 2019, at 5:00 p.m.

Meeting Held in the Annex Planning Room 114 S. Halagueno



### CITY OF CARLSBAD CARLSBAD, NEW MEXICO

#### PLANNING AND ZONING COMMISSION

Monday, February 4, 2019 at 5:00 PM Municipal Annex 114 S. Halagueno Street Planning Room

- 1. Roll call of voting members and determination of quorum.
- Approval of Agenda.
- 3. Approval of Minutes from the Meeting held January 7, 2018.
- 4. Consider a recommendation to Council for an Annexation of approximately 3.31 acres located at 2710 Dona Ana St., legally described at Tract 1B, Navarrette Land Division
- 5. Consider a recommendation to Council for a Zone Change request for approximately 3.31 acres located at 2710 Dona Ana St., County to "R-R" Rural Residential
- 6. Consider a recommendation to Council for a request to Vacate a portion of the right-a-way located at 511 Luckey St.
- 7. Consider approval of a Variance request to allow reduced lot sizes at 511 Luckey St.
- 8. Consider approval of a Variance request to allow a 12' tall fence along the western property line at 1501 Mountain Shadow
- Consider a recommendation to Council for a Zone Change request for approximately 9.98 acres located at 3305 Boyd Dr., "R-R" Rural Residential to "C-2" Commercial 2 District
- Consider a recommendation to Council for a Zone Change request for approximately 16.77 acres located along Cascade Ave., "C-2" Commercial 2 District to "C-1" Commercial 1 District
- 11. Consider a recommendation to Council for a Zone Change request for approximately 4.61 acres located at 625 Park Dr., "C-2" Commercial 2 District to "C-1" Commercial 1 District
- Report regarding Summary Review Subdivisions.
- Adjourn.

If you require hearing interpreter, language interpreters or auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's office at (575) 887-1191 at least 48 hours prior to the scheduled meeting time.

MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING & ZONING COMMISSION HELD IN THE MUNICIPAL ANNEX PLANNING ROOM, 114 S. HALAGUENO STREET, FEBRUARY 4, 2019, AT 5:00 P.M.

**VOTING MEMBERS PRESENT:** 

JAMES KNOTT CHAIRPERSON
BRAD NESSER COMMISSIONER
LASON BARNEY COMMISSIONER
BRIGIDO GARCIA COMMISSIONER

**VOTING MEMBERS ABSENT:** 

JAMES MCCORMICK COMMISSION SECRETARY

**EX-OFFICIO MEMBERS PRESENT:** 

JEFF PATTERSON PLANNING DIRECTOR

TRYSHA CARRASCO DEPUTY PLANNING DIRECTOR

SECRETARY PRESENT:

JENNIFER CAMPOS PLANNING AND REGULATION

DEPARTMENT EXECUTIVE SECRETARY

OTHERS PRESENT:

LARRY MITCHELL 1505 LINCOLN

VALERIE BRANSON 1501 MOUNTAIN SHADOW KC GARNER 1501 MOUNTAIN SHADOW

GEORGE BRANTLEY 1304 W. RIVERSIDE NANCY BRANTLEY 1304 W. RIVERSIDE

MARCELO NAVARRETTE 2710 DONA ANA
PHIL PALMA 1102 MIEHLS DR.
CHARLA PALMA 1102 MIEHLS DR.
JON PUTMAN 5231 S. TIDWELL

EDWARD T. RODRIGUEZ 4711 CABALLERO DR.

DANNY CROSS
1133 TRACY PL
VIRGINIA RIOS
2419 PRIMROSE
LUIS RIOS
2419 PRIMROSE
VALERIE MURRILL
PO BOX 3142

RANDI BOULDEN 1205 W. PIERCE ST. WANDA WELCH 1205 W. PIERCE ST.

LINDA RENNIE-TICE 1811 MOUNTAIN SHADOW

SCOTT GOODALE

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 Start Recording [5:00:44 PM]

#### 0:00:15 1. Roll call of Voting Members and Determination of Quorum.

Roll was called, confirming the presence of a quorum of commission members. The following members were present-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; Absent-Mr. McCormick.

#### 0:00:36 2. Approval of Agenda.

Mr. Nesser made a motion to approve the Agenda; Mr. Barney seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick. The motion carried.

#### 0:01:09 3. Approval of Minutes from the Meeting held January 7, 2019.

Mr. Nesser made a motion to approve the Minutes; Mr. Barney seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick. The motion carried.

### 0:01:44 <u>4. Consider a recommendation to Council for an Annexation of approximately 3.31 acres located at 2710 Dona Ana St., legally described at Tract 1B, Navarrette Land Division</u>

Mr. Navarrette was present. Mr. Patterson gave a synopsis of this request. The applicant has submitted a petition for annexation of approximately 3.31 acres located at 2710 Dona Ana Street. The applicant has provided property plat that identifies tract 1B of the Navarrette Land Division showing that it is adjacent to their current corporate boundary. The applicant stated the reason for his annexation request is to obtain city water services and vote in local elections. Planning staff has recommended approval. Mr. Navarrette said he would to be able to vote and have utility services. There was no public comment.

Mr. Garcia made a motion to approve the Annexation and Mr. Barney seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick. The motion carried.

### 0:04:48 <u>5. Consider a recommendation to Council for a Zone Change request for approximately 3.31 acres located at 2710 Dona Ana St., County to "R-R" Rural Residential</u>

Mr. Navarrette was present. Mr. Patterson explained this goes hand and hand with the previous item. The applicant has submitted a request for an application of "R-R" Rural Residential District zoning for an approximately 3.31 acre property, located at 2710 Dona Ana Street. Planning staff recommends approval to fit in with the rest of the zoning. Mr. Navarrette explained his reason for the annexation request was for public services of utilities and to be able to vote. There was no public comment.

Mr. Nesser made a motion to approve the Zone Change and Mr. Garcia seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick. The motion carried.

### 0:06:25 <u>6. Consider a recommendation to Council for a request to Vacate a portion of the right-a-way located at 511 Luckey St.</u>

Mr. Palma was present. Mr. Patterson explained this is a Vacation of approximately 0.011 acres along the north side of Lot 2, Block 69, Lowe Addition, located at 511 Luckey Street. The applicant has just about completed some apartments along this block and due to a survey error early in the project; he has actually built partially onto the city's right-of-way location. The only option he has is to request the city to vacate the portion of right-of-way where the building is sitting. On page 36 in your packet it shows the replat that the surveyor has done it shows a couple of feet too far into the city's right-of-way along west

Luckey Street. Mr. Palma has built basically on the back side of sidewalk, he's not intruding very much into the sidewalk, the right-of-way would be a little less than 60' now, but still wide enough to have the street, sidewalk, curb and gutter, etc. Planning staff recommends approval. Mr. Knott asked if the city has signed off on the plat. Mr. Patterson said not yet, city council has to make the decision on whether or not to vacate this portion of the right-of-way, this board will make a recommendation to them. Mr. Palma states that he has pulled all the permits that are required for this project. He found out after the fact that he had encroached, how it got this far before they were caught that they had encroached he had no clue. Now he's just trying to make things right. There was no public comment.

Mr. Nesser recommended approval for vacation of the right-of-way; Mr. Barney seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick. The motion carried.

### 0:9:49 7. Consider approval of a Variance request to allow reduced lot sizes at 511 Luckey St.

Mr. Palma was present. Mr. Patterson explained this item references in the previous item, the applicant has installed 5 apartments at the location on 511 Luckey Street and has decided to split each apartment into a separate piece of property in doing so he had fell below what we require in R-2 zoning is the minimum zoning lot size which would be 2500 square feet. He is creating 5 lots that average about 1880 square feet as such he would need a variance. The Planning Department doesn't see a detrimental aspect to this since the apartments are already built, Planning Staff recommends approval. Mr. Palma explained as far as the financing he's never done a project this big before, he's doing this all by himself and the only way he could afford that much of develop that much property was to do them in stages. He couldn't afford to build 5 and sell them as one unit, that's why he didn't do them individually. Mr. Knott asked if splitting the apartments in individual lots was because of his financing. Mr. Palma said "yes". There was no public comment.

Mr. Nesser made a motion to recommend variance and Mr. Barney seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick: None. The motion carried.

### 0:13:44 <u>8. Consider approval of a Variance request to allow a 12' tall fence along the western property line at 1501 Mountain Shadow</u>

Ms. Branson and Mr. Garner were present. Mr. Patterson explained this is an Appeal (variance) from Section 56-70(d)(5)(a)(b) to allow a 12' tall perimeter fence along the western property line, as opposed to the maximum allowed 7' fence height at 1501 Mountain Shadow, zoned "R-1" Residential 1 District. If you look on page 59 in your packet it shows approximately where they would like to locate the perimeter fence, he knows that the applicant has previously spoken to K.C. Cass the Building Official as far as construction of the fence. The applicant stated that golf balls coming from the golf course have been breaking windows and damaging property, they would like to put up some type of screen to keep some of the golf balls out. The Planning would recommend approval with two conditions:

- 1. The applicant shall work with the Building Official to ensure the fence is built to applicable Building Code.
- 2. Make sure as the wall approaches Mountain Shadow that it doesn't impede on any kind of line of sight coming to that corner, to be constructed in a way that it wouldn't block the line of site of people going up to the intersection.

Ms. Branson states that it's not blocking any line of sight because it goes from the edge of her house in line with the next house over there, but not up to the house, but it is not any further to the road of either of the homes. In the back it's going from her property with a 14' easement, well not an easement. Mr. Garner said it's basically giving part of the property. Mr. Knott asked if it was a utility easement. Mr. Garner said on the drawings the property lines goes right up to the house. They have utilities on that side of the house so there's only 14' space between the fence and then next house. Mr. Patterson said on the GIS where it has imported they are leaving a space there on the west side. Mr. Knott asked if that was a dedicated easement or are you just align out a private 14' easement that you could block off. Ms. Branson said all the other house touch each other, but she's allowing that to stay open. Also, there's a swimming pool (looking at the map) that it goes up to this wall and to the back, she would like to open it up and go onto the back, right now she can't take her grandkids outside without anywhere in the back, there's numerous golf balls being hit and more now than ever. There are a lot of people that are members of the Country Club course and they don't know how to play. The golfers are breaking windows and Mr. Garner is fixing them, there are no offers to repair them even if you know who did it, no offer to pay for it. It used to as a gentlemen's sport where they offer to pay for the damage that's just nonexistent. Mr. Knott asked if she was applying for a privacy fence to the west of your existing yard. Ms. Branson said "no" she's going to probably plant some more trees on the outside of the fence that would at least block a window over here (looking at the map) it's still not covered by the fence. At least to keep the golf balls from going into the courtyard. She's already planted these trees (looking at the map) to try to stop some of it. Mr. Knott said he doesn't have a drawing where your property line is in relation to your fence in the packet. Ms. Branson said her utility easement is not in front of her property. Mr. Knott said he thinks on the golf course along the houses on the east and west there's a 15' easement directly behind the existing fence. The red line is that your boundary line (looking on the map on page 62). Ms. Branson said "yes" the red line abuts up to the house at 1507 Mountain Shadow. Mr. Knott asked if she wanted to enclose your property boundary you could extend quite a ways into the existing golf course. Ms. Branson said "yes" she believes the previous owners gave that to the golf course years ago long before they bought it. Mr. Knott said it wasn't a current survey per say it's just a drawing you picked up or is that an accurate survey and are there any easements grounded off of that drawing. Mr. Patterson noted if you look at the screen this is the original plat for the subdivision showing a 15' utility easement to the west and south of the subject property and a 31' utility easement along Johnson Street. Ms. Branson said those are the line of the sewer and water. Mr. Knott asked if lot 2 has been divided. Mr. Patterson said it looks to be the case. This is a subsequent plat lot 2 was created. Ms. Branson said this in only going to prevent the golf balls breaking these windows right here (looking at the map) she still has them landing in front of the house.

Ms. Rennie-Tice said she owns the property at 1505 Mountain Shadow; her only concern is that one 12' wall is built an extremely high wall if that would set up a precedent for others to be built up and down the golf course. The house that she has and she doesn't live in it, but did contact the person that lives in it and they get about 6 golf balls a year in their backyard. Mr. Knott asked she has the house that adjoins the property of this applicant. Ms. Rennie-Tice said "yes". Mr. Knott asked if she has experience any window breaking on the properties. Ms. Rennie-Tice said "no". Mr. Knott said he noticed the majority of the houses that boarder the golf course most of them have 3' or 4' fence is there some reason for that. Ms. Rennie-Tice said she thinks it's a part of the covenants, but there are some houses along there that do have higher fences there's probably 3 or 4 house that are like 6'. Mr. Knott said he thinks that subdivision was built earlier than others and the restrictions and covenants varied depending on what time the project has been approved if they have covenants or not. He asked Ms. Rennie-Tice having 3 houses by the golf course if she had a copy of any covenants. Ms. Rennie-Tice said she has looked at a copy of the covenants. Mr. Knott asked her when she purchased the property the fence height you thought it was 3' or 4'. Ms. Rennie-Tice said probably yes. She doesn't know she was just thinking about the appearance of the golf course, can only one fence be granted and then no one else can build a fence up that high. Mr. Knott said he thinks if you have a variance it has to stand on its own. Mr. Patterson said

that's correct, these variance that are given issued by the commission do stand on their own if someone wanted to build a fence higher than the city's cap on residential fences they would have to come to the same process it would be up to the discretion of the commission whether or not they grant that request, if they grant Ms. Branson's request tonight it doesn't mean any of her neighbors couldn't do the same thing without following the same process. Mr. Knott asked that it would not necessarily create a precedent because variances stand on their own. You could have a 15' fence on one property and 12' or 24' or whatever was granted during the variances. He asked Ms. Rennie-Tice if she was in favor or against the request. Ms. Rennie-Tice said she's not sure if the property was large enough to put a dwelling on it, but if a house was built on the property being the front of it, then it would be as high as the house. Ms. Branson said that was correct or an addition would be as high as the house. Ms. Rennie-Tice said that was correct, but her only concern is that it goes all the way back to the fence. She doesn't know any other places over there. Ms. Branson said she's not blocking anybody's view on that lot, so if anybody else that come to build a fence she thinks that would depend on whose view there blocking, but where she wants to put it she's not blocking anybody's view except for across the street that can see onto the golf course, which it that doesn't matter because they don't live there. Other than that would be up to each person, she knows that they have nets on different homes out there, as far as using this lot for myself if she did an addition to the house it would still be the same height. Ms. Rennie-Tice asked if she could build all the way to the end of the fence. Ms. Branson said she didn't know she would have to speak to the inspector. Ms. Rennie-Tice said most of those homes are built so far back they have about a 6' petty. Ms. Branson said (looking at the map) she has a small fence back here behind her back door. Without putting some kind of netting it gets hit constantly. Ms. Rennie-Tice said the only thing she's saying is that she's not sure if you could build a house all the way to the fence line to this house, because the back door would be opening into the easement. Ms. Branson said she wouldn't be building a house, but she could put an addition to the house. Ms. Rennie-Tice said that was her only concern and if everyone else is happy with it then she would be happy also. Ms. Branson said she was just looking for a comfortable place to go outside. Mr. Garner said he doesn't blame Ms. Branson because he has children also. I've had to dodge a ball before. Ms. Branson said Mr. Garner has replaced her windows due to this problem, but it seems that it's constantly. When they have a golf tournament it gets worse, the golf balls hits this rock wall (looking at the map) bounces back and breaks her window in front of the house. So aside of fighting with the Country Club, she has to do something to be able to use her house. Mr. Knott asked Mr. Patterson playing the devil's advocate, looking at the plat and looking at the property line under the current city building regulations, she could build a 7' tall fence along her existing property boundaries. She could apply for a city permit and build a 7' fence is that correct. Mr. Patterson answered along the property line. Mr. Knott also says that in looking at the setback for the variance it appears on the north side the fence would be in line the current house, so the statement if you were to have an addition you could follow that same line of a solid wall you're asking for a 12' fence with some kind of stabilizers on it so as you said earlier if you put an addition you follow the same footprint and build an addition to your house is that correct. Ms. Branson said "yes". Mr. Knott said you could build an existing structure pretty much what your existing variance application is or you can do a 7', he doesn't think the country club wouldn't be very happy. Ms. Branson said it would come out further. Mr. Rodriguez said he's there to speak as a general contractor not any other capacity, he thinks the number one concern that he's heard coming back and forth is the setbacks, it is in line with the existing houses, but the height of the fence at 12' will be in line with house on both sides, so that when it is finished and stucco it will look like an extension of the existing house it will be a finished surface that will blend right in and the only obstruction that he could only per see would be the neighbor across Mountain Shadow looking through their property at the golf course, which really it's their property and they have the right to cover that up. The only thing that they are really considering here is the 12'. Mr. Knott asked he knows that there are faced with a lot of decision with these variances and he has personal knowledge with these subdivisions and they have established deed restrictions covenants, his experience and his frustrations on some of his subdivisions is after he's tried to establish guidelines that the covenants have be violated and not followed, since he's been on the planning board they don't have the ability to consider those, because they're not attorneys, we do have attorneys, but we don't have that right. Anytime he's bought a piece of

property he's always gotten a title policy, a survey, a deed restrictions, and covenants. He asked Ms. Branson if she had a copy of the covenants and deed restrictions was that included in your packet when you purchased the property. Ms. Branson said she believes so "yes". Mr. Knott asked if she's researched if this is going to affect your application and that you feel that you're okay. Ms. Branson said if she doesn't get the variance she could add to her home, which she doesn't need, but is that's what she has to do for some privacy. As to what you just said a lot of this has been broken and she doesn't want to name the individuals, but it's been done. Mr. Knott said if you go down every fairway that has houses on both sides you'll see little holes in the stucco and various things broken that's one of the dangers of living on the golf course. He asked Mr. Patterson asking him that we as a body they don't look at deed restrictions and covenants that's not within our jurisdiction or that's not something that we look at is that correct. Mr. Patterson said that's correct. Mr. Knott said that would be up to the homeowners group or architectural committee or whoever is in charge of enforcing the covenants. Mr. Patterson said that's correct the variance is only good for the rules that the city has and its zoning ordinance where it's location in no way it supersedes or over rules any kind of HOA or covenants that are present for that property. If there's further steps on that side that the applicant has to pursue you have to pursue those he doesn't have a lot of knowledge of which set up for this subdivision. Mr. Knott said with their decision it's just based on the application and based on the information that's come to the board. Mr. Patterson said correct and the rules the board upholds

Mr. Garica made a motion to approve the variance with the conditions that Mr. Patterson has stated. Mr. Nesser seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney; No-None; Abstained-Mr. Knott; Absent-Mr. McCormick. The motion carried.

# 0:40:40 9. Consider a recommendation to Council for a Zone Change request for approximately 9.98 acres located at 3305 Boyd Dr., "R-R" Rural Residential to "C-2" Commercial 2 District

Mr. Putman was present to represent this item. Mr. Patterson gave a synopsis of this request. The applicant has submitted a petition for a Zone Change for an approximately 10.00 acre parcel; located at 3305 Boyd Drive on page 72 in your packet it shows the plat of the property. Currently there is a house on the property, the applicant would like to convert that house into an office, in order to do that they need to apply for a C-2 commercial zoning. The surrounding area is R-R, technically it would create a spot zone; however if you see the mixed use down Boyd Drive that corridor there is C-2 in that area and it is largely a commercial corridor until you get to Hidalgo Road. Planning staff recommends approval. Mr. Putman said the R-R that's to the north, west, and south is zoned by a bus company business, he understands that a bus transit can be R-R zoned but it's not residential. There was no public comment.

Mr. Nesser made a motion to approve the item. Mr. Garcia then seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick. The motion carried.

## 0:44:32 <u>10. Consider a recommendation to Council for a Zone Change request for approximately 16.77 acres located along Cascade Ave., "C-2" Commercial 2 District to "C-1" Commercial 1 District</u>

Mr. Cross and Mr. Mitchell were present. Mr. Patterson gave a synopsis of a request for Zone Change from "C-2" Commercial 2 District to "C-1" Commercial 1 District for an approximately 16.77 acre parcel, located at Cascade Avenue. In your packet on page 90 you will see the outline of the properties on the plat. Planning Department has an understanding that there is a new development being purposed and what being purposed wouldn't be allowed in C-2 zoning, it would be allowed in C-1 zoning. There would be a mix of residential and commercial use as such the applicants approached the city and started

the process to get the zoning changed for the subject properties and if you look on the agenda on the next item the city owned property is part of it as well but it's a separate item, but the hope is to have all the properties there developed changed to C-1 to further the purposed development. Planning Department recommends approval. Mr. Cross states that over a decade the DOD has tried to develop that as a commercial property and it just hasn't worked and so they went out in October and had an RFP proposal bids for people to propose what they wanted at the Cascades. Out of the seven people they only had one proposal come back, this proposal was a mixture of residential and commercial. Commercial would all be at the bottom floor and residential would be above as condos. This would not be rental properties it would be nice affordable housing, they believe if they could develop that property with people there and businesses all going in hand and hand at the same time they could make a big plus for this community. The CDOD will eventually sell all the properties and get out of the property business. Mr. Mitchell states that this is a grand opportunity to bring in more residential and they're looking forward for this project to move along. Mr. Cross mentions that the CDOD board has voted and approved this pending on this coming together. There was no public comment.

Mr. Barney made a motion to approve the Zone Change and Mr. Nesser seconded the motion. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick. The motion carried

Mr. Patterson stated that this item will go before City Council on March 26, 2019 meeting.

0:49:05 <u>11. Consider a recommendation to Council for a Zone Change request for approximately 4.61 acres located at 625 Park Dr., "C-2" Commercial 2 District to "C-1" Commercial 1 District</u>

Ms. Carrasco stated that this going hand and hand with the previous item, this is the City's portion of the owned area at the Cascades. If you look in your packet on page 103 you'll see the outlined area that belongs to the City and is being considered for rezoning. Planning Staff recommends the zone change to C-1. Mr. Cross said it goes hand and hand to complete the project. There was no public comment.

Mr. Nesser motioned to approve. Mr. Barney seconded. The vote was as follows: Yes-Mr. Garcia, Mr. Barney, Mr. Knott, Mr. Nesser; No-None; Abstained-None; Absent-Mr. McCormick. The motion carried.

#### 0:50:56 12. Report regarding Summary Review Subdivisions.

There was discussion of the various plats signed by the designees. Nothing unusual was noted.

0:52:36 **13. Adjourn.** 

There being no other business, the meeting was adjourned.

0:52:42 Stop Recording [5:53:26 PM]

Chairman Date