

**Planning & Zoning Commission**  
**May 12<sup>th</sup>, 2021 Minutes**  
**Virtual Meeting**

The regular meeting of the Planning and Zoning Commission was called to order at 6:00 p.m. by Chairman Kent Wilson. Chairman Wilson stated that the meeting was being held virtually via video and telephone conferencing. The meeting was also being live streamed for the public through the City of Gallup's Facebook page.

Upon roll call, the following were present:

Chairman K. Wilson  
Commissioner K. Mackenzie-Chavez  
Commissioner F. Pawlowski  
Commissioner M. Long  
Commissioner J. Cresto  
Commissioner K. Spolar

Chairman Wilson asked if any Commissioner had a conflict of interest for any agenda item and if so to recuse him/herself prior to discussing the particular item.

Upon roll call, the following votes were:

Chairman K. Wilson (No)  
Commissioner K. Mackenzie-Chavez (No)  
Commissioner F. Pawlowski (No)  
Commissioner M. Long (No)  
Commissioner J. Cresto (No)  
Commissioner K. Spolar (No)

Presented to the Chairman and Commissioners for their approval were the minutes of the April 14<sup>th</sup>, 2021 regular meeting. Commissioner Long motioned for approval of the minutes as presented. Seconded by Commissioner Cresto. Motion Carried.

Upon roll call, the following votes were:

Commissioner M. Long (Yes)  
Commissioner J. Cresto (Yes)  
Commissioner K. Mackenzie-Chavez (Yes)  
Commissioner F. Pawlowski (Yes)  
Commissioner K. Spolar (Yes)

Chairman Wilson asked the Madam Secretary to state the names of the individuals attending the virtual meeting. Upon roll call the following were present:

CB Strain, Planning and Development Director  
Barry Butler, Applicant & Property Owner

*Chairman Wilson administered the oath required by State Law for public forum for each of the individuals listed above.*

Chairman Wilson stated that anyone wishing to speak limit their comments to three minutes and not to duplicate a previous point; they will have one opportunity to testify. Chairman Wilson also notified the Commission that there may be individuals calling in from the public to make comments.

**ITEM ONE: CASE # 21-00800001:** Request by Butler Brothers, LLC, property owner for a Variance from Section 10-3-C-T1biii of the City of Gallup Land Development Standards regulating the location of an Accessory Storage Structure in areas between the façade of the principal structure and street frontage. The property is located at 1900 E. Historic Highway 66; more particularly described as Block 14 Lots 1 Thru 24, Zecca East 66 Addition.

Chairman Wilson: Commissioners before staff presents, I wanted to point out to the commissioners this is the first true Variance that we had come before the commission in over three years. Prior to that our experience as serving as commissioners have been going to the New Mexico Zoning Official Conferences and training that we received, we found out that the term “Variance” is probably the most misunderstood term that we use in Planning & Zoning Meetings by both Commissioners and the General Public. We certainly heard that in Gallup. The definition of a Variance is not peculiar to Gallup, the definition according the New Mexico Zoning Commission for a Variance is the same in Gallup as it is going to be any place else in the state. I know that Commission Pawlowski and Commissioner Mackenzie-Chavez, possible Commissioner Miller have went to those sessions as did I to really study this and realize that this is a first time Commissioner Spolar, Long, and Commissioner Cresto to deal with a Variance. While this one tonight is straight forward, it kind of gives us a chance to go through something that we don’t get to go through very often. Kind of use it as a teaching time also. After staff makes their presentation which is pretty straight forward I believe. If you wish as Commissioners to discuss Variances in general and kind of do a short tutorial on it. Lets move that to the end of our meeting tonight under the open forum and we can discuss Variances further. But for the sake of expediency and because this is very straight forward lets deal with this case as presented tonight. With that staff what do you have to present?

CB Strain – In our code our Land Development Standards, Section 10-3-C-t-1-b-iii specifically prohibits accessory storage structures in the area between a building façade and a street frontage, any street frontage. In this particular case this is the property (referring to the Aerial Imagery) as you can see the Butlers Building is surrounded on all four sides by street frontages which makes it impossible to comply with the rule. So in order to qualify for a Variance you have to meet certain criteria and basically the criteria is in your agenda packet for you to review. Basically what it means is you have to have a hardship peculiar to the land that prevents you from complying with the rule and that would cause an undo and unnecessary hardship unto the property owner. That somebody else in a different property within the same zoning district can enjoy. In this case because the building is actually surrounded on all four sides by street frontage and because it is impossible to meet that requirement that is the hardship. Their hardship is there is no way that they can meet that requirement any way you cut it. This is peculiar to the land. It deals with the land and the streets and how they are situated. So the Butler Brothers do meet the criteria for a Variance. As the chairman stated earlier this is a very straight forward Variance case. It is very obvious Variance case because of the hardship it very apparent that there is no way to meet the requirement in the rule. There is a very simple. Not much more to discuss on that other than they do meet the criteria for a Variance. One thing I did forget to

mention in my memo was that our code does limit the amount of accessory storage you can have. It is 10% of the principal structure. So 10% of that square footage of the principal structure is the amount of square footage they could use for accessory storage. In this case they have an existing shipping container in the back. I believe it is an 8' x 40' and I believe they want to place another 8' x 40' shipping container back there as well. Those two combined I believe... Correct if I am wrong, Mr. Butler I believe you said your building is about 14,000 square feet, around there?

Barry Butler: That is correct. Actually what we are wanting to do is put an 8' x 20'.

CB: That's fine. Even if it was an 8' x 40' they are still significantly under the threshold for the accessory storage. They are actually allowed up to 1,300 square feet and they are putting about 400 almost 500 square feet. They are not in violation of that rule at all. That is one thing I forget to mention in my memo, but it is something that we regulate and I needed to mention tonight to put on record that provision is no being exceeded. Also the setback provisions for having it separated from the structure, they are going to place it right up against the structure so when that is done we will consider it as part of the whole structure. There is not going to be a space between the building and the shipping container. Every aspect of the code is being complied with when it comes to the accessory storage structure, including the criteria for the Variance that has to be met. Staff does recommend approval of the application tonight. So with that I will stand for any questions.

Chairman Wilson: Commissioners do you have any questions for staff? No. Mr. Butler is here in favor of the case, please state your name and go ahead and address the Commission.

Barry Butler: Mr. Chair this is Barry Butler. We would like to thank staff for their recommendation of approval and the Planning & Zoning Committee for their consideration. Thank you.

Chairman Wilson: Madam Secretary has anyone called in wishing to speak for or against this case?

Secretary: Mr. Chair, no one has called in.

Chairman Wilson: Thank you. Commissioners do you have any other questions. If not, are there any other interested parties wishing to speak to the case?

Chairman Wilson stated that the hearing was closed.

Motion to approve or deny the request for Case Number 2021-00800001. Commissioner Pawlowski motioned for approval of Item One. Seconded by Commissioner Mackenzie-Chavez. Motion Carried.

Upon roll call, the following votes were:

Commissioner F. Pawlowski (Yes)  
Commissioner K. Mackenzie-Chavez (Yes)  
Commissioner M. Long (Yes)  
Commissioner L. Miller (Yes)  
Commissioner J. Cresto (Yes)

Commissioner K. Spolar (Yes)

**INFORMATION ITEMS**

**ITEM TWO:** City Council Actions Taken

**ITEM THREE:** April 2021 Building Permit Activity Report

**OPEN FLOOR:**

Chairman Wilson asked the Madam Secretary if there was anyone who called in wishing to comment on a non-agenda item. There were none.

Chairman Wilson asked if there was anyone in attendance that would like to comment on a non-agenda item. There were none.

Chairman Wilson: Since we have an open floor I would like to take as much time or as little time as possible to revisit the Variance. I do think that we begin to meet in public together again, in the front of our books Madam Secretary that we need the definition as presented in our book tonight on the limitations and grounds for a Variance. That would be "Exhibit A" that is in our book and the criteria for a Variance just as a reference as we get into our meetings and we get to listening and trying to remember the definition of something we haven't viewed but once every three or four years I think would be a good ready reference in our manual. So commissioners I will open the floor to your on any discussions on Variances you would like.

Commission Cresto: With Mr. Butler being here tonight reminded me that we have discussed getting some new language for using alternative paving methods or recycled asphalt. I was wondering where we are at with that new language if we have anything to discuss there.

Chairman Wilson: I believe we do. Thank you for bringing that up. Director Strain can you bring us up to date on where we are.

CB: We did actually reach out to our engineer on contract that is Depauli Engineering to do some research and see what it would take to allow the recycle asphalt. He did actually get back to us. Depauli Engineering's response, it says unfortunately no soils engineering firm will assist us in designing a parking surface consisting of only asphalt millings. They have indicated that a pavement section consisting of millings does not provide for structural strength for a driving surface. The firms have offered to assist with design of a flexible wear surface using a combination of asphalt milling, base coarse gravel, oil and heat similar to hot mix. This option was not pursued, because it is no different than a plant mix pavement provided by the local hot plants. There would be no cost savings. We could only recommend asphalt millings for walking paths and dust control over areas without vehicle traffic at this time. If a cold mix pavement design using only millings becomes available then we will let you know. So that was the findings from Depauli Engineering. Basically what they are saying is there would be no cost savings. I know state highway department does it, but they actually have the equipment to do the mix and the combination of all the different materials needed to make the surface suitable for traffic. What the proposal was from the Butler Brothers was just using straight millings, laying them down and rolling them. So that would not be sufficient. However, that being said they did have a valid argument when it came to what our code actually said about placement. That is our code addresses all parking areas, parking lots and things like that. Of course you only have a driving

aisle and a parking lot, but none of our specific use provisions pertaining to storage facilities, self storage facilities addresses the areas between the storage structures and what kind of surface material to use. Because we don't regulate that, I can't tell them they can't use what they want to use. With that being said we allowed them to use the millings in those areas they originally wanted too. But for parking areas and parking lots and driving aisles and things like that we would can't recommend the millings because it is not a suitable surface. Unless you do the other things, mixing it with the base coarse and the heat and the oil and everything else which of course drives up the price and it's just as much as other. Plus you need the machinery to do it. Which none of the contractors in town have, so that is where it ended.

Commissioner Cresto: Thank you Director, Commissioners for the opportunity to hear that. Unfortunately makes sense, sounds like something really good for the environment to reuse that stuff instead of just using it or throwing it or whatever. I appreciate it that we can use it for non-drive pads, for erosion control, that type of thing. At least something to do with all that asphalt that's gets milled up.

CB: Sure. Not to say that if somebody was to have to the actual equipment to make it happen, I just think the cost comparison between virgin asphalt and the recycled is the same if not a little bit more so not to say that we wouldn't not allow if that was the case if they can prove was needed to do that. I think at that point we would just treat it as regular asphalt so that we won't have to amend the code at that time.

Commissioner Cresto: Thank you and that would include areas that traditionally you can just use a base coarse or a once every 10 years driving path or whatever that's not used. I'm thinking when I was with the school district we used base coarse for some fire loops around the back sides that really never get driven on. You can use it in the same places as you use base coarse to cover the base coarse cap it kind of thing?

CB: The schools are out of our jurisdiction. Anyplace that is going to have vehicular traffic that are code requires an asphalt surface, would have to be asphalt or that alternative would have to be recycled which includes all the steps to make it. Because once you do that it's just like regular asphalt basically it becomes regular asphalt at that point. For any other areas as long as they don't have vehicular traffic on them that our code requires that surfaces then they can put that down.

Commission Cresto: Thank you Director. Thank you Chair.

Chairman Wilson: I have a question CB. Going back to that Variance for a minute. If that piece of property that we just voted on there, if that did not have a street on the fourth side and only had streets on three sides. How would of that had changed that issue as regard to Butlers request?

CB: It really depends on the site itself because there could be different variables there that he would still qualify. Say that he had streets on three sides but on the back of the property the building was right up against the line or close to his property line and he didn't have the room to put a storage structure there, but he did have the room on one of the frontages. That would qualify because there is a hardship in that he does not have the space in the back to do it because the building is almost back there. This would of course would apply probably only to existing buildings that were built years ago that don't meet the setbacks anyway and things like that. New buildings are required to meet setback and all of that now. It just depends there could be variables involved that would allow it, but if he had the room in the back to do it then it would still have to meet all the separation requirements and all of that, then he wouldn't qualify there is an alternative to put it elsewhere on the property and to comply the rule. It just depends on what exists on the property.

Chairman Wilson: Okay, remembering prior conversations I thought that a hardship had to be due to the land and the hardships you described are manmade. If the building is too close to the property line to accommodate the new request that is not a natural hardship that's a manmade hardship. If a street goes on

all four sides and the street creates a hardship that's not a natural hardship and that is what I thought hardships had to be. Natural terrain related not because man built something close to the property line.

CB: No necessarily. The codes says it has to be a hardship peculiar to the land. It gives examples, but it says it is not limited to those examples. It doesn't say that it has to be a natural hardship peculiar to the land. It could just be the case that they did not have land available to place it where it was at. So in other words they want to eliminate... In other words it cannot be a financial hardship, in other words it is going to cost them too much money or whatever. That does not qualify for a Variance. It has to be something tied to the land that prevents compliance with the rule. Staff interprets that as just that. When we go out and look it, we look at the site and say okay is there any possible physical way this can work and what is preventing this from working? So if it's a slope in the back, lack of property, if its frontages on all sides that prevent compliance. Those are things we look at. Those are specifically tied to the land. Because what happens in this case with this piece of property in Heavy Commercial Zone District. You might have a property a block or a mile away that the ability to meet the requirements for the Variance. So they are enjoying the same privilege. There being deprived of the same privilege of somebody else in the same district because of something they cannot control in other words because it is tied to the land. Those are hardships that qualify for a Variance because it's not, it's out of there control basically. Again, usually when we hear Variance you opened with the meeting saying that the term itself is misused a lot. Misinterpreted a lot. A lot of the times people say if you don't want to comply with the rule, go ask for a Variance. That is not the intent of a Variance at all. That is why we have criteria that you have to meet in order to even qualify for a Variance. So just because someone does not to comply with the rules. Say somebody wants to build a five story house in a neighborhood, well our height limit is a certain limit and a five story house would exceed that limit. There is no hardship that prevents you from not building five stories, but they will ask for a Variance because they want to do it. That would not qualify because there is no hardship there. They just don't want to comply with the rule. That is why we have to have criteria. That's why staff vets the criteria to make sure it meets with the codes intent. Then we present it to the commission. When it comes to you guys, our recommendation is based on the code and what it requires and what its intent is. Interpretation, we have to be real careful with it. After doing this for so long you know what qualifies and what doesn't. We look to make sure we are not going to get into trouble violating the rule in anyway. It does meet the criteria. That's why it gives a little leeway in its examples and it says its not limited to these examples. In other words there could be a circumstance that still qualifies them that nobody thought of. That's where we are at.

Chairman Wilson: Fellow Commissioners, any other questions on this subject? If not may I have a motion to adjourn the meeting.

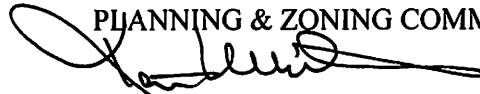
Motion was made by Commissioner Pawlowski to adjourn the meeting. Seconded by Commissioner Cresto. Motion Carried.

Upon roll call, the following votes were:

Commissioner F. Pawlowski (Yes)  
Commissioner J. Cresto (Yes)  
Commissioner K. Mackenzie-Chavez (Yes)  
Commissioner M. Long (Yes)  
Commissioner L. Miller (Yes)  
Commissioner K. Spolar (Yes)

Commission Adjourned at 6:35 p.m.

PLANNING & ZONING COMMISSION



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KENT WILSON, CHAIRMAN

ATTEST:



CLYDE (C.B.) STRAIN

SECRETARY TO PLANNING & ZONING COMMISSION