



Oscar Dominguez
City Manager

PUBLIC HEARING
City of Anthony Board of Trustees
Conference Call
Friday, January 29th, 2021
6:00 P.M.
MINUTES

Mayor Diana M. Trujillo
MPT Fernie Herrera
Trustee Elva Flores
Trustee Javier Silva
Trustee Gloria Gameros

You can join meeting using your phone by dialing.

United States: [+1 \(872\) 240-3412](tel:+18722403412)

Access Code: 351-218-493

All members of the public entity participating remotely must identify themselves whenever they speak and must be clearly audible to the other members; public will be allowed 3 minutes presentation on agenda number 6.

1. **CALL TO ORDER** by Mayor Diana M. Trujillo
2. **PLEDGE OF ALLEGIANCE** led by Diana M. Trujillo
3. **ROLL CALL**

Present: MPT Fernie Herrera	YES	NO
Trustee Gloria Gameros	YES	NO <i>Absent</i>
Trustee Elva Flores	YES	NO <i>3 to 0 vote, motion passed.</i>
Trustee Javier Silva	YES	NO
Mayor Diana M. Trujillo	YES	NO
Quorum Established	YES	NO

Traducción del inglés al español y del español al inglés esta disponible a petición.

4. **CONFLICT OF INTEREST**
- **Mayor Trujillo:** *If any of the board member has conflict of interest, please recuse yourself from voting.*

5. **APPROVAL OF AGENDA ORDER**
1st Motion: Trustee Silva 2nd Motion: Trustee Flores

Roll Call:

MPT Fernie Herrera	YES	NO
Trustee Gloria Gameros	YES	NO <i>Absent</i>
Trustee Elva Flores	YES	NO <i>3 to 0 vote, motion passed.</i>
Trustee Javier Silva	YES	NO
Mayor Diana M. Trujillo	YES	NO

6. **ITEMS FROM THE FLOOR - None**
7. **CONSIDERATION AND ACTION**

- a) Consideration and Action to approve a variance Appeal request to approve a setback of 5' at the rear of property located on 1109 Tierra Huichol ID-R181747 which is in CR-1 Zone (Community Residential).

1st Motion: Trustee Flores 2nd Motion: Trustee Silva

Roll Call:

MPT Fernie Herrera	YES	NO
Trustee Gloria Gameros	YES	NO <i>Absent</i>
Trustee Elva Flores	YES	NO <i>3 to 0 vote, motion passed.</i>
Trustee Javier Silva	YES	NO
Mayor Diana M. Trujillo	YES	NO

- o **Mayor Trujillo:** *Who will be presenting this item?*
- o **City Manager:** *I'll just get the conversation started. So yes, this matter before the board this evening is an appeal from Ms. Garcia for the Variance that was not approved by the Planning and Zoning Commissioners.*
 - *Ms. Garcia is present, as is our city attorney, in case there are any questions around the Meeting, because these are unusual for the board.*
 - *So, with that, I'm happy to I suppose I'll hand it over to Ms. Garcia on the grounds for Ms. Garcia's Appeal. Many, lack of clarity for why the variance was not approved among others.*

- *I will let her speak for herself, and they're happy to answer any questions that the mayor or board may have. Thank you, Madam Mayor.*
- o *Mayor Trujillo: Ok yes, we'll go ahead and have Ms. Garcia present her case. You may proceed this question.*
- o *Ashley Garcia: Hi I'm Ashley Garcia. I have been a resident here in Anthony for well I can't even remember. I came because I did not think the meeting was a fair meeting. At my last one, they didn't explain to us exactly why it was denied. They did not tell us. Did not give us a reason, they just asked second. One said no, and they all just said no, without notes. Now, further reasons, another thing was, we tried reading the plans to them. they just didn't seem to really be interested in the plans. They just, I guess, didn't understand the plans and we tried and we gave them pictures of everything. And because that's what they had asked where they even said did a second meeting.*
 - *That time, they did a first they asked for a second one because they wanted us to take some easements.*
 - *I did get the easements, I took unto them they just wanted to make sure because they apparently, they said everything looks fine except that they didn't have an easement. they wanted to make sure that there were no easements on my property. that's why they did the second one, and when we took them the easements, and everything, I mean they asked why they still denied it with really, no reason. That was given to us at the end of that meeting.*
 - *Chairwoman told us, I'm sorry, we probably don't know much about this, and we don't probably know all the rules and regulations about it. And that is what we were like, well, that's part of their job, you know, I mean, to learn what this is about. So, really, I thought that was very unprofessional for her, to like, just say it, just like that. I mean, I didn't think it was fair for us not to know, and we tried asking, the other lady just kind like, cut us off and said that, to be quiet, and someone had made a motion. I mean, we've had this up. Maybe six months or more, I remember to be exact, but we've had it for over six months, and there hasn't been any issues. I took letters from my neighbors.*
 - *They all signed saying that it was okay, that they had no issues with this. There was no problem. I mean there is now easements on my land, there's really nothing. The construction is very well done, there's no problem with it falling next year or falling on someone or anything like that.*
- o *Mayor Trujillo: ok, thank you, Ms. Garcia.*
- o *City Manager: I would just like to follow up on Ms. Garcia's comments, all of them letters from neighbors were in support of the construction, there was no documented opposition to the project, and I'm trying to think that's, I think that's all stuff had to add, thank you Madam Mayor.*
- o *Mayor Trujillo: thank you Mr. Domingo yes, Alan.*
- o *Alan Dahl: Do you mind if I ask some questions just to maybe get some additional information.*
- o *Mayor Trujillo: No Sir, just go ahead you have this right.*
- o *Alan Dahl: Thank you, I appreciate it, Miss. Garcia.*
 - *When the city grants, variances, it has a standard that it has to adhere to, and so I wanted to walk through some of the elements for that standard and give you an opportunity to explain the facts that you believe support the granting of the variants under that standard.*
 - *One of the first thing that the board must consider is where're the granting of the variants will be detrimental to public health, safety, or welfare, or what otherwise injure the properties in your area. Both your property, but also your neighbors' properties.*
 - *You just indicated that you have those letters from your neighbors in support of it. Is there other evidence that you'd like to present to the board relating to the impacts that this will or will not have on the community?*
- o *Ashley Garcia: Other than the letters, I don't have neighbors in the back area, basically, it's just it's just a land that has no one in the back, on the sides, it's just land. Basically, my neighbors' home is more towards the front versus the back, so in the back, we did make sure that there was no like electric lines or anything like that though is going to interfere with this, and there isn't.*

- **Alan Dahl:** *did you know if on the back area? you said you currently you don't haven neighbors, did you know where is you could some point neighbors, well the lot behind you. How is the set up? How is it plotted?*
- **Ashley Garcia:** *I did talk to that neighbor, I'm sorry, I actually did meet the neighbor when this was going on, way back, and I did ask them, and he says, he doesn't live here, he only build like a little garage sort of thing in the back he said he only come and listens to music and watches some games or he just kind of say he comes in to chill. That's how he said it. He said that he doesn't plan on doing anything there, but I did because he sold part of the land, I guess. but that was towards the sides, no really, right behind it.*
- *I did talk to him because my trampoline had actually flown to the back, well in the past, so that's why I even had to meet up with him, because I told everything, and because he helped me with my trampoline, and I had to, like jump it back over, since there's nothing there. Other than that, he said he has no plans doing anything else, he said his land is somewhere else.*
- **Alan Dahl:** *So, it's not a residence, but there is some sort of garage behind your land?*
- **Ashley Garcia:** *Not, behind it. It's towards the side of it. It's kind of it's not even near like it's not right behind it. It's like, my neighbor next to me, I would say it's behind her, not behind me.*
- **Alan Dahl:** *ok, so the next element that the Board of Trustees has to look at is whether a variance is justified and the language that the ordinance uses is due to physical hardship, and extraordinary economic hardship for applicant where should be you due to the size shape, structures, topography, conditions the site? So, is there anything about your lot in particular that makes it difficult to use effectively for the purpose that it's zoned for, which is residential? what, basically are the why do you believe that your lot should be used in a different way from, say other lots in your area?*
- **Ashley Garcia:** *for example why am building, and not the others, or?*
- **Alan Dahl:** *yeah exactly. So, wait, what you're asking for is called a dimension variance, right? So, there's a couple of types of variances. One is a use variant, where you ask two, use the property in a way that it's not zoned for, but that's not what you're asking. You're asking to just have a variance on the setback. So, what the Board of Trustees has to decide is whether there's a justified reason for why you should have a change to that setback. Is there something about your lot in particular that would make it difficult to comply with that setback and still use it as a residence? or What's the motivation, why do you think that variance is justified?*
- **Ashley Garcia:** *to be honest, I mean I didn't know there was a setback at the beginning, so the reason I didn't think that there was going to be any issues is because I've seen many people building around here. I mean, I'm not the only one doing it. I seen many people doing that. I didn't know there was gone be an issue just because of that, I've seen people building on their actual back wall side wall. To be honest I didn't know there was going to be this issue; I mean, there's homes getting built here, some of them don't have permits, and I mean, there's many little things that I was like, OK, well, everyone's doing it, I guess.*
- *Got everyone into this, but I was the one who made it, you know, got caught into this, and to be honest, I did call Las Cruces and asked about it. And they said, I had to go through you guys. And then they did state that you guys were closed when I started doing this.*
- *So, everyone was like, well, just go ahead and start It shouldn't tell you anything. Yeah, No, I should not listen to that. Right, because all my neighbors, we're like, well, yeah, you have an issue yeah, no.*
- *Now I'm in total Regret of starting without doing it right, but you guys were closed at that time I did call Las Cruces. When I talked to them, an inspector in Las Cruces said, well, you shouldn't have an issue because that's an accessory, not like a home basically how they called it, an accessory.*
- *I called back and I told them, and they said, "we're waiting for you". I was like, oh, well, I still haven't had it, and, you know, so they were waiting for my permit, and others stuff.*
- *They said, well, it's an accessory. So that's why I was like, oh ok I was like, I don't know, I just, wanted to let you guys know, that's why I was being honest. I didn't know there was going to be that issue with the setback and all that stuff.*

Mayor Trujillo: *I'm just asking for the ones that are on phone call, please can you mute your phones because we are hearing the background noise? yes, Mayor Pro Tem Herrera.*

- **Mayor Pro Tem Herrera:** *yeah. I know Alan got the floor for a couple of questions.*
- **Alan Dahl:** *Absolutely. Ms. Garcia how long ago did you start on this project?*
- **Ashley Garcia:** *I believe it was I can't remember exactly, but I believe it was June, July around there.*
- **Mayor Pro Tem Herrera:** *Last year, Right?*
- **Ashley Garcia:** *yes. I'm not exactly sure, but I think that's when it when it started.*
- **Mayor Pro Tem Herrera:** *that's fine. I just need to know the time.*
- *When you started on it, were you aware that the city had been a city now for 10 years? And there had been, codes and regulations that we're built into the city when we made the city. Some of those were the land use regulations on the books and all kinds of other stuff setbacks and permits from the city and submit all your plans, plus get in approval from construction industrial division of State of New Mexico. I believe, looking at the paperwork contractor who was building that garage, they didn't get any of the permits? They just started doing it, on their own.*
- **Ashley Garcia:** *Like I said, yes, I did call Las Cruces before we started this project and that's when they told me that it was closed. The Anthony was closed because I call to ask like where I had to go, and that's when they told me rock walls or edge Certain, like, little things that they were telling me that had to go through Anthony but this whole time, I thought it was in Las Cruces. I did not know I was it here in Anthony, until they told me, Like I said that they are closed. So that is when I was asked the neighbors, and that is one that I, oh, they have never told us anything that, we have started it, and we've done it. And so, I was like, oh, okay well, I guess it's okay, because I've heard from some people who built bridges and they've never said we needed a permit. I've had relatives that all have, we've asked, and they said, we don't need this for four inches, and so it was like a mix of everything and that's why I was like, oh, I guess it'll be easy, you know what I mean?*
- *Some people, most of the people are telling me, there is no need for a permit, and there's no need for this, and yeah, I was wrong. I was wrong and I did it the wrong way in. That's why I'm here to try to fix this and No?*
- **Mayor Pro Tem Herrera:** *Yeah, and I realize that confusion on a lot of the residents. I used to be the code enforcement officer at one time for the city and, there was a lot of confusion as to the regulations. When you see and ask Las Cruces, you mean city of Las Cruces or was it the State CID office.*
- **Ashley Garcia:** *The CID.*
- **Mayor Pro Tem Herrera:** *Construction Industries Division of the State, yes.*
- **Ashley Garcia:** *That is why I called, and they referred me to you guys, but they said, Oh, but it's closed. I did call the city, then the city referred me to them.*
- **Mayor Pro Tem Herrera:** *they should have referred you to the Planning and Zoning Commission in the first place. I do not know who you talk to, but that should have been the that should have been the first step. Ones you got approval from them then you should have gone through CID. Yeah, and I was just looking at their plans and so, you've got five-foot setbacks on all sides in your home?*
- **Ashley Garcia:** *yes.*
- **Mayor Pro Tem Herrera:** *what you're asking is, because we've got 25, but on the side yard 5ft yard 25 feet according to ours Community residential, single family mobile home. Regulations that we have here, sure yeah, ok. I think you answered most of the questions that I have. Thank you, is there anybody else? go ahead,*
- **Alan Dahl:** *well I just have one more element So, the last thing that the Board of Trustees has to consider before they can grant the variants in addition to essentially the safety and health of the variants, the why, is there a fiscal hardship, is there an economic reason why you have to use it? Have to have the variants. The third thing that they have to ask is whether granting the variance will uphold the spirit and intent of the ordinance so the idea of, you know, promoting a beautiful and orderly community, and accomplish substantial justice. So, Ms. Garcia, do you have anything that you would like to say in terms of how do you think the variants will accomplish substantial justice or why it might be unjust not to grant the variance? Anything along those lines?*

- **Ashley Garcia:** one of the things, I don't know if I just mentioned that when I called inspector in Las Cruces, when they came down to see the project though is being done. He said Everything look good and that there shouldn't be an issue just because it wasn't accessory building, it wasn't like if I was building a home or anything like that. But other than that, we have put our savings into this, I mean, literally, my partner left and worked at a state for us to be able to make our home.

- Better, I mean, when we started this home, my home had holes on the floor, holes on the ceiling and told there was it was a mess there was leaking everywhere I mean little by little. We have children that little by little, we try making this a better place for them I mean, this, right now they are super excited, just because, that is where they play. They literally go outside, and they're able to play there without being straight into the sun. Cars are not heating up in the summer, and not freezing in the winter. I mean, it is actually helped us.

- We've had it up for this long, and we there has not been any issues. No neighbors have come up with any issues. I mean, it has rained, it snowed. It's that's been windy. And there has not been any, anything that you can say, Well, the building's going to fall, or anything that you can say, that, it could be a health issue to someone. Um, fire is an ambulance.

- An ambulance could go all the way to the back without an issue. If needed, there would not be an issue with them going back there, and with the whole Van, or anything like that.

Um, I don't know if I've answered your questions, how you wanted me to, but, I mean, I just feel like, it would be fair, just because I mean, this is our savings, and this is for our kids, this is our future in New Mexico we want to make it looks nice and a lot of the things we've seen here are not the best builder, and we have done our best to build it the right way.

- **Mayor Pro Tem Herrera:** May I ask one more question?

- **Alan Dahl:** of course, Mayor Pro TEM

- **Mayor Pro Tem Herrera:** Thank you. Ms. Garcia was it in your plans to close the entire garage or just leave it open?

- **Ashley Garcia:** We're not going to close it; it is going to remain open. Just because it's a porch.

- **Mayor Pro Tem Herrera:** Right? Or are you planning to do any plumbing on electrical water or gas, anything. That might require another permit to do that.

- **Ashley Garcia:** No, not at this time or probably not in a very long time. After this I don't think I want to.

- **Mayor Pro Tem Herrera:** Did anybody explain to you about the different variances that are available to the city? Also, through the planning and zoning? And, of course, appeals to the Board of Trustees. There are several variances that could be done there, but the one that you are asking for right now is the variance on these setbacks. And those setback requirements are pretty well-set stone the regulations that we have here in the city but there's also another level, but it'll get in trouble by saying this as a resident, you should know, and it's called the hardship variance. That means that if you can prove that it's going. So, costs your financial hardship you can actually ask for a hardship on that one, also.

- **Ashley Garcia:** To be honest, like I said on my first meeting, they didn't tell me they didn't explain anything, to be honest. I did not even know there was different variances. I just thought, oh, well it's a variance and I didn't know there was different variances, to be honest. When I tried talking to planning and zoning when I went in the first time, and I actually needed help filling out the information that was asked and they really never even came out. They kept sending the secretary and they would make excuses and they wouldn't come and help me. They kept sending her back and forth back I mean, I felt bad for her, because I didn't get any help, and she was just like, back and forth asking for me. Because they said, first, he was at lunch, then he was busy, and then he could not. So, there was, like a lot of things that we are kind of, unprofessional. So, I did not get these, please explain to me or anything like that. They just said it's gone be this, and we got to do this. I needed help, and I didn't get the help. In the begin with, Mr. Dominguez was very helpful. Like, if I had a question, I would call him, I would e-mail him but other than that, that's as far as planning and zoning, I didn't get much help.

- **Mayor Pro Tem Herrera:** Good, thank you, Mrs. Garcia, we just had a city manager for a short time, a little over a year, he's trying to work up things to make it better for the citizens and for the city.

- **Ashley Garcia:** city manager has been very helpful also Esther She's been very nice. Esther and Mr. Dominguez have been very helpful and they've been very nice, they understood my situations, I mean, when I've had to cancel, I know we've all gone through a lot this year, 2020 Like, it's been a tough year, Covid has really taken a toll on everyone, but they've there and I'm very thankful for them. And everyone, I mean, I've seen Mayor doing a lot of

great things now I've seen on my Facebook, she's on there and I have written, she's doing a lot of changes, you know. And it's a good thing, I mean, we want to change Anthony and we want to make it look better.

- **Mayor Pro Tem Herrera:** So, well, thank you. Thanks go ahead.
- **Alan Dahl:** Just two more questions briefly following up on what Mayor Pro TEM said. If the city, we're not to grant the variance, Ms. Garcia, could you explain whether that would cause you economic hardship? And, if so, why?
- **Ashley Garcia:** That would be my whole savings, basically I have lived in. We have been working for this, for our kids to make our home better, to make it look better I'm in that money, maybe we could have used no building, a house, we want it to stay. We're happy here. We're comfortable. I mean, we have great neighbors, um, he said we just wanted our place to look better, and it's a hard thing to be with, because just because they mean this is money, we, we've put into it to make the place where we're comfortable in look better, and we want to stay in Anthony, and I mean as far as homes there are homes starting from 200, I mean they're not cheap, I mean.
- **Alan Dahl:** Just a quick follow up. Let's pretend for a second that it had not been built the patio at all. Is there any reason why? again, we're pretending that it hasn't been built but is there any reason why the 25-foot setback would be a problem if you hadn't built the patio already?
- **Ashley Garcia:** Because it would start basically, the lands here are very narrow, they're kind of small. So, basically, if I started out like the 20 feet and I wanted to make it, says, I did, just so that our vehicles could fit or an RV could fit, kids playground like they're trampoline and their pool and stuff, we wouldn't have been able to fit it just because they would have kind of fallen over the mobile home.
 - So, basically it would have been some porch over the mobile home, and, you know, so it wouldn't have fit and wouldn't have given us the shade we want, and then the wall in the back, the one that you guys, the variance part. For example, a kid got hurt in the back, or an adult fell in the back when needed, help say an ambulance, or, know something that needed to go back there. They wouldn't have fit, like, I mean, the car wouldn't be able to fit way in the back. You would have to carry that person out of there, to be able to get help. So instead of losing like 20 feet, will we lose, like 5 which is easier to carry from 20 It's way easier to carry someone just to get him to a bed, you know.
- **Alan Dahl:** Then the last question I had is, Wait. The Board of Trustees has a series of documents. You can see some on the screen right now. I believe they were submitted to P&Z. Let me pull up my copies. So, we have the letters of support that you'd referenced.

There is a copy of your letter concerning why, your basis for appeal. I'm just going to run through these really quickly and make sure you know, what is in our possession? There's also. Let's see here a copy of your receipt for the application of a variance.

It looks like it was \$200 fee document that Esther had up on the graph paper. And I see if there's anything else here. I believe we have a copy of the Tierra Encantada Subdivision Phase one, map.
- **Ashley Garcia:** The easements that I brought in, yeah.
- **Alan Dahl:** some, a few pictures of the property itself and the, and the shade structure, um, and a shot from Google Maps, was there anything else that you wanted in the record as physical evidence as documentary evidence for the board to consider?
- **Ashley Garcia:** it's very well built. I mean, the porch is very well built It's not going to harm anyone. I mean, we have things that, you know, I've seen a lot of people not doing. I mean, it's not sitting on my wall. Like, some people have built their porch or anything. This, this is gone actually. Um, not affecting anyone and like I said, only while there is it's in the back and that back, it's the only one that's gone stay, it's not going close to anything else. like I said, our vehicles fit in there, we're able to go and sit there up to now, it hasn't harmed anyone. It hasn't. No one's complained about it, it's actually benefits. The kids are, they're always play under there and, I mean, they're not in the sun and its benefit is you know, Like I said, this is savings that we, we've put down. We got savings to do this, to make this look better. I mean, I don't know what to say. I mean, it's, like I said, we've put her heart into this to make or replace look better. I mean, I got pregnant at 16 and had my first child at 17 we've come this far, trying to help, making it look better.
- **Trustee Flores:** Madam Mayor
- **Mayor Trujillo:** Trustee Flores, let me ask a question really quick, please. Not a question, just a comment
- **Trustee Flores:** Yes, ma'am.
- **Mayor Trujillo:** So, there's, um, I'm just trying to see it in that, from the outside, in, Ms. Garcia. I know you had said about safety reasons that my only concern with this is because I know we've had talks in the past with the county where in 2006 there was a house that burned down here on Acosta road, right? And this happened, because

the building they had a shed, that was really close to another house and almost caught fire. My concern here is because I don't think we have. If you can correct me, Alan or Mr. Dominguez, is it 25 feet on this on the sides because I don't know if you heard about the fire yesterday that happened in El Paso in this bush fire and the wind it caught so fast almost caught the other houses. Thank God, they were far away, what happens if here let us say your neighbor's house or your house catches fire it will spread to the other house. That's why there's the setbacks because of a fire safety, and, you know, it can like, burn the whole house. Porch, I didn't notice also that the porch is on top of the mobile home, is that correct?

- **Ashley Garcia:** The houses around are not close to my porch, basically where my house is, that's where the next house is, but not the porch. The porch is not. So, if I were to build it further up that's where the houses would have been where the porches right now, there's no one around it. There are no neighbors. There is no neighbors on the side, or in the back. So, if there was a fire, it would be far.
- **Mayor Trujillo:** you don't have neighbors on either side?
- **Ashley Garcia:** There's neighbors on the sides but not where the porch is.
- **City Manager:** Madam mayor, this is city manager, the issue is what set the setback behind the residents, not to the sides, and yes, it should be 25 feet and instead, it's five feet.
- **Mayor Trujillo:** I was just asking also if the porch was on top of the mobile home, or right next to the mobile. Or your house? Is it right next to it, like right next to that?
- **Ashley Garcia:** Yes.
- **Mayor Trujillo:** Ok, all right, thank you.
- **Mayor Pro Term Herrera:** There's a picture that was given to us in the folder and you can see the mobile home and you can see the patio and the mobile home is not included in yet inside.
- **Mayor Trujillo:** It's not inside nor on top of it or anything like that?
- **Mayor Pro Term Herrera:** not according to the picture that I'm looking at.
- **Mayor Trujillo:** Okay go ahead trustee Flores, you have the floor.
- **Trustee Flores:** Hello, Mrs. Garcia. I have a few questions for you. Number one, when you built your porch, did you say that? They do get a license the constructor.
- **Ashley Garcia:** Yes. The, the persons that's making, this, they have a license, it's, it's a construction company, that's licensed.
- **Trustee Flores:** Because we didn't get your license number, and I would appreciate that, because I just to make sure that they are licensed. And then, if you could please get that. Also, if he was a licensed contractor usually because you are paying him to do this, he should have advised you in many different things and it's sad that he didn't, because I feel that he should have advised you to get a permit, first of all, and that you look into whatever it takes before you spend your money on anything like this.
- So, he should have helped you especially because you're paying him or not but if you are, you know, he should have a how do, and, in advising you with all these things. What I would like to say to you is, that, our P & Z they make this decision, because they have to follow the rules and regulations that are here for the City. And the reason we have rules and regulations, it's very hard, but the reason we have them is to protect the people and to make sure that everyone is safe, and that they're following these rules.
- Number one, you have very good neighbors, because they did think that it was okay for you to do this, so that, that's very nice to hear and know. But also, what happens with this, is that, in a sense, it opens, kind like the can of worms. Because if we approve you, and I'm not saying we are, we're not, I'm just saying, if you get approved. Then we would have to approve everyone that came around, with the same issue and then our rules and regulations would be overlooked or overstepped. So, the P & Z are a group of people that have been trained. I'm sad to hear what you told us, that, you know, how you felt. I apologize for that, if you felt that way, and if they treated you, know, where you feel that you were ignored or whatever, that's not their job. Their job is to make sure that they follow the rules and regulations. They have been too many, trainings, these set of P&Z board members have been with us for many years, and I know that they gone to every training this State has, and so we as the board of trustees have to depend on them and what they say and their judgements, then, and wide because they know more than we do. So, that's why we pay them the hire them for the city, that's the reason why we have them there. Now, um, I'd like for you to also consider that the board, if we say yes, to you, and something should happen, where we have a fire, or somebody gets hurt, or whatever the board will be would be held, you know, to our vote, because we were against what our rules and regulations are or the P & Z.
- So, I want to think of that, because it's very hard, and I truly, truly understand, your position. I just wish you had told us or looked into it, know, before you spend your money. Your porch looks beautiful, but, you know I just

wish that your contractor has helped you and advice do and many different ways. I just would like to say that, we as a board have to be very cautious, and we have to think a lot about these things. They are hard decisions sometimes but we have to also abide by certain things, you know, because like I said. If we say yes to you, will there be more people that will come up to us. I don't know but, well it's a lot to think about. And so, you know, I wish you luck. And I hope that no, that we all learn something here today. Thank you, Ms. Garcia.

- **Ashley Garcia:** As far as like, you're saying, that I've had people ask me about it, and I've told them that it's been the hardest thing to get through this. And it's been to be honest, I wouldn't do it anymore. I mean, I wouldn't have done this. To be honest, anymore, if this, if I would've known that, this was going to be the case, because I've had people ask me, like, about my permanent, and about this and about that and I've told them what I've gone through.
- And they, they right away say no, I have a very close friend that said she was gone go turn in everything, and she was going to pay, and they told her what my situation was she said, never mind, I don't need this. So, it's not easy, to be honest, it's not easy, and I'm sure not, everyone's going to want to do it, it's been tough, and they've made it tough. And, and to be honest, I didn't know about all these regulations, and rules, and all these, this good stuff, but I feel the way we've done it, I mean, as far as permit ways, I mean, we didn't do it the right way. As far as construction, yes, we've done it the right way. I mean, it has things in there that if you go down the road, you see some houses that are falling apart, and some houses that are ready they're literally falling, I mean, my neighbors.
- **Trustee Flores:** Ms. Garcia, we cannot talk about other people's homes.
- **Ashley Garcia:** I agree. I'm just saying that.
- **TRUSTEE FLORES:** They might have been there already when the city became a city, so we cannot do anything about that. But since 2010, when the city became a city, then that's where we kind started on, you know, making sure we have rules and regulations and trying to help people.
- I think that what happened to you and I am so sorry, is that your contractor is the one you have to pick up all this with, because he's the one that should have advised you. In with many things, you know, before you even paid him, or did whatever, he is in charge of that. That's why, you know, again, there's rules and regulations, because he also has to follow those and, his first number one rule should have been to have plans, we need to send this, and he should've gone with you through all the steps with you. It's not about, you know, that it's going to field like I said, it looks nice but it's more about the safety issue, you're putting us also an a bit of a position where, if we say yes to you, we have to say yes to everybody else. If we say yes, we have to also be aware that if something happens it's going to be on us because we approved it and we went against the planning and zoning. So, I would just like for you to think about that and we will just go from there. Thank you.
- **Ashley Garcia:** Thank you and I have thought about it, And I know what you're talking about, about safety and stuff. But like I said, it's been over six months that this building has been up, and I haven't had any issues or anything. Also when I called Las Cruces, was when I talked to the State inspector over there, they said, we're waiting for your permit because when, I went over there, because we saw what was getting done, and he said, everything looks good. I mean, we're just waiting for your permit. I asked him, what do I do? Do I come to you guys? or whatever, and that's when they when they told us now go to Anthony, first I called, they said you guys were closed and then the state inspector came and checked it out and that's when he said, it's an accessory building, it's not like you're building a home, it's an accessory building, so I'm just waiting for your permit for us to like unlock, basically you're case. So that's what I mean.
- **Mayor Pro Term Herrera:** Madam Mayor.
- **Mayor Trujillo:** yes, Mayor pro TEM.
- **Mayor Pro Term Herrera:** yes, thank you. The entire purpose of this meeting is to see if we can allow her to have a variance. On the back side of the property which is just five feet instead of the 25-foot required. The other side in the front seems to be good there's no problem with that, is just the other one. I have to remind everybody else, I was a trustee of the board. We have given variances in the past to other people, and it does not create a liability. It's just a variance. I think I big variance the biggest one that we have given, is the one there at Jacienda de Anthony, according to our rules or regulations of planning and zoning. Our homes have to be built on lots that are 6000 square feet. Well, they came to us and asked for a variance so they could build homes in 5000 thousand, to 6000-foot range, which the city did approve the board approved. But I think that the only issue that we're looking at right now is the back setback. And just by looking at the pictures, and the plotting and all that stuff. Alan, correct me if I'm wrong, but I don't believe that our decision would cause any liability to the city. If we were to approve the setback on the property, because everything else seems to be, once they got that permit. And

the state said, it's okay. We are not contesting the collection of the building itself. Were they the Planning & Zoning was concerned about the setback issue? Alan, do you have anything on that?

- **Alan Dahl:** Yes. Mayor Pro TEM, so, um. Not to get too far off topic, but I agree with your assessment. Governmental entities and their employees and officers are entitled to certain immunity, unless it has to do with very specific circumstances, such as the maintenance and operation of public lands. So, because this isn't public property, it likely does not impact anything to do with the city in terms of liability, but, uh, you are correct that the scope of this is to determine whether there are sufficient facts for the governing body to find that the elements necessary to grant a variance have been met.
- **Trustee Silva:** Madam Mayor, this is Trustee Silva.
- **Mayor Trujillo:** Yes, Trustee Silva you may proceed.
- **Trustee Silva:** Thank you. Mrs. Garcia, good afternoon. I have a couple of questions, in general, and then 1 or two that are, for Alan, our attorney himself.
- **Trustee Silva:** first and foremost, before anything, I want to say that you know what trustee Flores said regarding your contractor before the first shovel went into the ground, the first piece of cement was put down or what have you, that contractor, nine out of ten times will pull a permit. They won't ask you to do it because you're not the contractor. You're not the general contractor. They, themselves, will go out to CID and, if not, through the city, first city will issue a document at the city and then, you get a signature from Mr. Roman and from the public works and then you take that out to Las Cruces and you take that to the CID and they, issue a permit. So, that contractor, I mean, if he or she has been doing this for quite some time and by the look of the work by the, by the lookup, the job looks like they've been doing. I mean, it looks like it's well done. So, they should have known that they, above all, they should have known that. I'm not sure, can you answer to that question at any point in time? Did they mention that to you?
- **Ashley Garcia:** Good afternoon. No, like I said, it was like no, just, where if I were to go ahead and do it, do it, and we did it. No, it wasn't like, No, you need this, and this, and like I said, when I called, they said it was closed, so they were like, just go ahead and do it. That's why it was, like basically, like you said, we did do it the right way. I mean, in case of anything, in case you guys need, like pictures of like the first shovel going down into the ground. We have pictures of all that. We have pictures of the submit. We have pictures, you know, we have pictures of everything in case of anything but, yeah, no it wasn't mentioned. It was something that was just like we'll do it, do it. All right.
- **Trustee Silva:** Ok, so, at what point in time, you said that you went to the city, and they told you to go ahead, because they were closed. So, are you saying that you actually went to the city request?
- **Ashley Garcia:** I called Las Cruces.
- **Trustee Silva:** What was it before? Before you started the job.
- **Ashley Garcia:** Yes. Before I started, I call Las Cruces to ask them, and that's when they said, well, since it's a porch, you have to call Anthony. You had to go to Anthony, but it's closed. I was like, Oh, okay well that's when I asked around to be like, hey, what do I do, or, just go ahead and do it, that's how we've been doing. So that's when I was like, okay well, then everyone's doing it, just do it. But, I mean, it's a hit and miss, I was the one that was hit they were missed, and I understand it now, that's just how it is. I mean, Right.
- **Trustee Silva:** and I just wanted....
- **Ashley Garcia:** Of course, if it was me, I should have waited. I mean, it should awaited is just that I had material here it was going to go to waste, and I don't want that to happen either. So, I did wait and the material was sitting here for a very long time, and that's why I was like, well, I mean, I guess we'll do it, because, I mean, it's sitting there and literally, it's getting wet and no, weather was when it was like super hard, and then it would rain. So that's why I was like, okay well, then lets just do it. I mean, for it to be sitting there versus it going to be put to use while everyone's doing it, well, then I'll do it. So, that's really how it happened. But I did try, and I called, and that's when they said No, you have to go through Anthony. They're closed, then that's when we started job. That's when the state inspector came down and said, it's an accessory building, you just have to go get your permit there in Anthony um, it looks good. I mean, there's nothing wrong with me, he didn't expect it here was someone inspecting it, and he's the one that saw it and everything and he said, well just go get your permit, everything looks good you can continue you could finish, that's why I didn't think much of it.
- **Trustee Silva:** Ok, thank you. Allan, regarding, to me, you know, the fact that Mrs. Garcia has mentioned that they put in savings into the building, and one of the section 2-6 of the variances, granting a variance is justified because there is a physical hardship or extraordinary economic hardship for the applicant. Well, I mean economic hardship, the fact that that I don't know how I would feel it, but knowing that I had put a good chunk of change

into doing a project like this, and at the end of the day, I wasn't going to be able to complete it. My question to that, Alan, in the event that the city was to deny a variance, would they have to take the building down, or would it sit and remain as is?

- **Alan Dahl:** If variants were denied. The building would have to be removed in order to be in keeping with the city code. They.....
- **Unknown Speaker:** I would say remove what you want removed, if you want 5 feet back remove 5 feet back, but, if they're saying, you need 25 feet, then you need 25 feet. That's what I would say.
- **Mayor Trujillo:** point of order Sir,
- **Unknown Speaker:** that's the law that's the rule that the fate, this is now, that was then.
- **Mayor Trujillo:** That is very unprofessional.
- **MPT Herrera:** point of order madam Mayor.
- **Mayor Trujillo:** Well, yes, but he kept talking and talking. So, I have to have Esther Mute him, I'm Sorry.
- **Alan Dahl:** as I was saying, trustee so if a variance isn't granted, then the lot would remain a 25 foot setback and so, to the degree that there is any structure built on the 25-foot setback, it would have to be removed or the landowner, Miss Garcia, if she's the holder of the deed, would be subject to fines by codes.
- **Trustee Silva:** Ok, and then Couple of questions more for Mrs. Garcia, you said that the individual at the at the CID made a statement regarding that the building was just an accessory, Mayor Pro Term, do you know if there's any rules and regulations regarding such thing as accessory and they could not fall under that category? And the do they also pertains to the 25 feet from the back wall or is it only to homes or is that everything in general?
- **Mayor Pro Term Herrera:** Well, yes It involves accessory buildings, that's the setback and I believe Section 6.8 CR-1M and it tells you what the minimum setbacks are on community, residential, single, or a mobile home. They didn't give us the one on the accessories, but yeah, my experiences that they have to appear to the setbacks. The question that we're having here is the setback issue and not the building itself. The building, all they had to do was get a permit to build a building, but they would have had to go through us, or through planning & zoning make sur the setback were all right, which they didn't do. The other option that they have if, for some reason, the Board denied the variance tonight, then they would have the option of going back to P&Z and request hardship variance which they would, have to show financial difficulties, how much money they're going to lose on it? Oh, no, that's a whole different thing.
- **Alan Dahl:** I don't know if that that's the Case Mayor Pro Term. There's only one type of variance under the city's ordinances and it does take into consideration whether or not there will be a financial hardship. So, the city's ordinance doesn't make a differentiation between hardship variants and other types of variances. It treats them all the same as far as the land use or rather the development ordinance and land use ordinance that we have on the books.
- **Mayor Pro Tem Herrera:** I'm sorry I'll have to disagree with you on that, because I have seen it in our land use ordinances where there is hardship variances that the people can apply for and it has happened, in the past. People have built houses and they were asking for a hardship because or even a mobile home that wasn't within the prescribed setback and it was going to be a hardship for those families and the Planning zoning did rule and then approved those hardship variances. I have seen it under that there are various hardship variances that they can apply for. But Alan, just to make it clear to everybody else the one that we are looking at right now is for the setback variance that does not include how much it cost, or hardship. I know it's a hardship on him, but that's not what we're doing tonight.
- **Alan Dahl:** Mayor Pro TEM, one of the criteria is hardship though, for what's being asked for tonight, but all variances under the City Code and this is the section that was provided in your packet. This is Section 2.6 of the land use ordinances subsection E provides that there're the three criteria for any land use ordinance or for any variance, excuse me. It can't be detrimental to public health, safety or welfare or materially injurious to properties or improvements in the area of notice. Granting variances justified because there's a physical hardship or extraordinary economic hardship for the applicant, resulting from the size shape by existing structures or topographical or other physical conditions on the site are the area of notice and the last consideration is whether granting the variance will uphold the spirit and intent of this ordinance the land use ordinance and accomplish substantial justice. Those are the three criteria that the Board of Trustees has to consider.
- **Trustee Silva:** Allan, Mayor madam
- **Trustee Flores:** madam Mayor, this is Trustee Flores. Alan, I would like to ask you a question, can you hear me.
- **Alan Dahl:** I can hear your trustee.

- **Trustee Flores:** Okay, sorry, thank you. Alan, I would like for you to tell us just one more time, tell us that BOT,
- **Mayor Pro Tem Herrera:** Madam Mayor, Trustee is breaking up, we cant hear her
- **Mayor Trujillo:** Trustee Flores, we can't hear you breaking up
- **Trustee Flores:** I know Done!
- **Alan Dahl:** Madam Mayor may I make a suggestion?
- **Mayor Trujillo:** yes Alan go ahead
- **Alan Dahl:** Suggestion is, this is an adjudication hearing , Um.....
- **Trustee Flores:** Safety, also, I noticed that on the picture to the, I guess it's the south of the building block, that is empty because.....
- **Mayor Pro Tem:** Trustee Flores you are breaking, we can't hear what you are saying.
- **Alan Dahl:** Madam Mayor, my suggestion is that one of the exceptions to the Open Meetings Act is that you can go into closed session to discuss the evidence that you've heard. I would suggest that after the board has heard evidence from anyone else who wants to present this evening, the board go into closed session briefly, to discuss. And at that point, the board can ask me any legal questions that it might have. Just for purposes of speeding up the actual process, yeah, thank you, Madam Mayor.
- **Mayor Trujillo:** Any of the trustees wants to make a motion to go into closed session?
- **Alan Dahl:** Madam Mayor. But before going into closed session, I suggest that if there's anyone else here who wants to, if Ms. Garcia has said what she wants to say, if there's anyone else here who wants to present an opposing view, present evidence in favor of their position, or even supporting position. They be given a chance to do so before board goes into closed session.
- **Mayor Trujillo:** does anyone need to speak, before we go into closed session?
- **Trustee Silva:** yeah madam Mayor, this is Trustee Silva. In all fairness, I know there was an individual that got muted, if they wanted to speak. I believe that individual being a citizen of the city of Anthony should be allowed to be unmuted and speak, and they have something to say.
- **Mayor Trujillo:** Ok.
- **City Clerk:** They are unmuted not trustee.
- **Trustee Silva:** You can ask Mayor.
- **Mayor Trujillo:** Thank you. Um, do we you anything to say? Okay, I hear none. We can proceed to closed session.
- **Trustee Flores:** Esther before we get into closed session, we need a number to call in.
- **City Clerk:** Madam Mayor and emailed will be sent by City Manager in a little bit.

❖ **Motion to go into Closed Session at 7:20P.M.**

1st Motion: Trustee Silva 2nd Motion: MPT Herrera

Roll Call:

MPT Fernie Herrera	YES	NO
Trustee Gloria Gameros	YES	NO Absent
Trustee Elva Flores	YES	NO 3 to 0 vote, motion passed.
Trustee Javier Silva	YES	NO
Mayor Diana M. Trujillo	YES	NO

❖ **Motion to go into Open Session at 8:13 P.M.**

- **Mayor Trujillo:** no decision was made during closed session. I entertain a motion to open session.

1st Motion: Trustee Silva 2nd Motion: MPT Herrera

Roll Call:

MPT Fernie Herrera	YES	NO
Trustee Gloria Gameros	YES	NO absent
Trustee Elva Flores	YES	NO 3 to 0 vote, motion passed.
Trustee Javier Silva	YES	NO
Mayor Diana M. Trujillo	YES	NO

7. **CONSIDERATION AND ACTION**

Consideration and Action to approve a variance Appeal request to approve a setback of 5' at the rear of property located on 1109 Tierra Huichol ID-R181747 which is in CR-1 Zone (Community Residential).

MPT Herrera: are we voting to approve or disapprove?
Mayor Trujillo: yes, to approve.

1st Motion: Trustee Flores 2nd Motion: Trustee Silva

Roll Call:

MPT Fernie Herrera	YES	NO
Trustee Gloria Gameros	YES	NO absent
Trustee Elva Flores	YES	NO 3 to 0 vote, motion passed.
Trustee Javier Silva	YES	NO
Mayor Diana M. Trujillo	YES	NO

- **Alan Dahl:** Just to be clear trustees, the vote to approve the variance request did pass, Mrs. Garcia the Board of Trustees will issue an official written decision on the matter in the next few weeks but for purposes of this evening, the variance request has passed and that will be reflected in the final decision.
- **Ashley Garcia:** Thank you everyone
- **Mayor Trujillo-** you are welcome Miss. Garcia have a great evening.

8. **ADJOURNMENT – at 8:15 P.M.**

1st Motion: Trustee Silva 2nd Motion: MPT Herrera

Roll Call:

MPT Fernie Herrera	YES	NO
Trustee Gloria Gameros	YES	NO absent
Trustee Elva Flores	YES	NO
Trustee Javier Silva	YES	NO
Mayor Diana M. Trujillo	YES	NO



Diana Murillo-Trujillo
Diana Murillo-Trujillo, Mayor

ATTEST:

Esther Motongo, City Clerk