



## RESOLUTION 2021-010

### **CITY OF ANTHONY, NEW MEXICO BOARD OF TRUSTEES' FINDINGS AND CONCLUSIONS FOR VARIANCE REQUEST FOR 1109 TIERRA HUICHOL**

THE CITY OF ANTHONY, NEW MEXICO BOARD OF TRUSTEES, met in open session on January 29, 2021 and held a hearing on Ashley J. Garcia's request for a variance on her property, located at 1109 Tierra Huichol, Anthony, New Mexico 88021. The Board, having reviewed the materials provided and considered the statements offered at the hearing, finds and concludes as follows:

#### **FINDINGS**

1. 1109 Tierra Huichol ("the Property") is owned by Ms. Garcia and is presently zoned as CR-1M.
2. CR-1M zoning requires a rear-yard setback of twenty-five feet.
3. Ms. Garcia has built a fifty-by-sixty-foot permanent structure, which she describes as a porch, within the existing rear-yard setback area.
4. When Ms. Garcia commenced building the porch, she was not aware of the required set back and, due to the pandemic, experienced difficulty in obtaining information concerning building restrictions.
5. Ms. Garcia applied for a variance for the Property, requesting that the rear-yard setback be changed to five feet.
6. Ms. Garcia's variance request was denied before the City's Planning and Zoning Committee on August 26, 2020 and she appealed to the Board.
7. Ms. Garcia provided thirteen signed letters to the Board from her neighbors indicating that they would not be affected by the construction on the Property and giving their full consent for the construction of the porch.
8. Ms. Garcia was the sole witness to speak at the hearing. She stated that:

- a. She and her partner had invested their savings into constructing the porch within the setback.
  - b. The porch was constructed by a licensed contractor, is well made, and is holding up well.
  - c. Ms. Garcia's contractor did not inform her of the setback restrictions or seek relevant approvals on her behalf.
  - d. There are no electrical lines in the area around the porch
  - e. Her neighbors were not opposed to the porch, as reflected in the letters provided.
  - f. The porch was necessary to provide shade for her children in the yard.
9. A review of the photographs of the porch, provided by Ms. Garcia, show that it appears to be of high quality and of agreeable design.
10. No one offered evidence to oppose Ms. Garcia's variance request.

### **CONCLUSIONS**

1. Ms. Garcia's requested variance, altering the rear-yard setback from twenty-five feet to five feet in order to accommodate the porch will not be detrimental to public health, safety, or welfare.
2. The requested variance will not be materially injurious to properties or improvements in the area of notice.
3. Ms. Garcia has invested her savings into the porch and has incurred an extraordinary economic hardship or will incur such a hardship if obligated to remove the porch from the Property.
4. The Board and Ms. Garcia recognize that Ms. Garcia's economic hardship is primarily self-inflicted as she commenced construction before obtaining a variance. However, the Board acknowledges that the City's Land-Use Ordinance does not explicitly prohibit the consideration of self-inflicted hardships when granting variances. Moreover, it appears that Ms. Garcia's ability to obtain information concerning relevant building information was hampered both by the pandemic and her licensed contractor's failure to notify her of the relevant restrictions or seek relevant approvals.

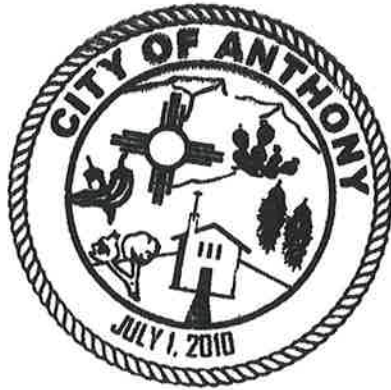
5. Granting the requested variance will uphold the spirit and intent of the City's Land-Use Ordinance and accomplish substantial justice.

**WHEREFORE, IT IS ORDERED** that the variance request is granted and the setback for the rear yard of 1109 Tierra Huichol shall be five feet instead of twenty-five feet. Planning and Zoning Commission's denial of the variance request is hereby reversed.

**PASSED, ADOPTED AND APPROVED THIS 3<sup>rd</sup> DAY OF MARCH 2021.**

  
Diana M. Trujillo, Mayor

{SEAL}



ATTEST:



Esther Motongo- City Clerk

**ROLL CALL VOTE:**

Mayor Pro Tem, Fernie Herrera

YES  NO



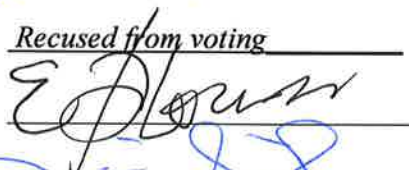
Trustee Gloria Gameros

YES  NO

Recused from voting

Trustee Elva Flores

YES  NO



Trustee Javier Silva

YES  NO

