



COCHISE COUNTY PLANNING DEPARTMENT

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Check No. 1305
\$300 paid Nov 24, 2010

Judy Anderson, Director

SPECIAL USE APPLICATION FOR APPEAL



NAME OF APPELLANT: Eldercare for Life

ADDRESS: P.O. Box 429 6164 S. Hwy 92 Hereford AZ 85615

PHONE NUMBER: 520-803-1234 520-266-1417 520-266-4178

NUMBER OF DOCKET APPEALED: SU-09-064

DATE OF COMMISSION DECISION: November 10, 2010

DATE OF APPEAL SUBMITTAL: 11-23-10 FEE PAID: \$300⁰⁰

In addition to the \$300 fee, the following information shall be provided before an appeal can be accepted. If more room is needed please attach additional pages.

1. Description of the decision being appealed. An appellant can appeal the Commission's decision for approval or disapproval or any conditions stipulated as part of docket approval.

The Cochise County Planning and Zoning Commission voted unanimously (7-0) to deny our request to modify our approved Special Use conditions. These conditions were placed in March 2009 and require Windmill Ranch Assisted Living Home to direct all traffic through the Calle de la Naranja route. We appeal the decision of this commission.

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2. A complete statement of all reasons why the appellant believes that the decision, or any part of the decision was erroneous, arbitrary, capricious, or any abuse of discretion.

We appeal the decision to deny our request of removal of traffic
restrictions due to the following:

- 1) The Commission's decision contradicts the County's own policy regarding respect of legal easements and assumes they have jurisdiction over this when they do not.
 - 2) Eldercare is unable to meet other conditions placed in the Road Maintenance Agreement which says we must maintain 20 ft width of the roadway—due to the fencing, trees, ditches, humps and other obstructions being placed within the easement by the opposing neighbors. These acts are being done due to the county's empowerment of the opposition and lack of reprimand for doing so. **CONTINUED**
- (Attachment D)
page 2

3. Written presentation of additional testimony & evidence. A full explanation of the additional testimony & evidence that will be submitted with explanation of why this was not presented to the Planning Commission.

The points brought up by the Commission occurred after the floor was closed to the public and our additional facts could not be presented.

SIGNATURE Norman Vandant Sr. Eldercare Inc

Continued from section 2:

- 3) The Commission failed to "make reasonable accommodation" to allow the residents of Windmill Ranch usual access to their home. The Residential Care Home is an allowed use in residential zoning. Therefore, the Commission has discriminated against older, disabled persons by not following the Americans with Disabilities Act and the Older Americans Act. The restrictions placed would never have been given to a residence housing a family of eight people. The Commission failed to advocate for fairness to the disabled in living in a community setting.
- 4) Safety issues are real. For the three weeks prior to the day of the Commission meeting, the eastern Calle de la Mango easement entrance was totally obstructed. The narrow passageway now does not meet the 20 foot requirement. Rapid response of emergency vehicles is being hindered by both the narrowing of this entrance and the delayed passage of the longer, unimproved Calle de la Naranja route.
- 5) The original eastern Calle de la mango entrance also serves as the legal access for parcels adjacent to Windmill Ranch. We are blamed for any traffic utilizing this legal easement. It is not right to block the easement and prevent other parcels from use of their own deeded easement.
- 6) The Commission was given erroneous information by the opponents about the status of the legal easement.
- 7) The Commission was given erroneous information by the opponents about the volume of traffic generated by Windmill Ranch and the Commission failed to consult their own Transportation Planners report proving this. (Attachment C)
- 8) The stress of the neighbor's in opposition is heightened because these neighbors feel they must patrol and restrict an easement's use in a self-appointed fashion. It would greatly reduce the stress of these opponents if the Commission had removed the restrictions and the concomitant unrealistic expectations of the neighbors.
- 9) The Commission stated that they did not need to change the conditions because "the applicant had originally agreed to them." The Applicant did initially prepare an Appeal in March 2009 to request review of the conditions. However, the Planning and Zoning staff told us that we should try the conditions and come back at a later date if they did not work and ask for a "modification." Item 7 on page 2 of the letter dated March 12, 2009 from Planning & Zoning (Attachment A) and our Acceptance of Conditions form (Attachment B) says:

"Any further changes to the approved Special Use Modification shall be subject to review by the Planning Department and may

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require additional modification and approval by the Planning and Zoning Commission.”

This indicates that changes can be sought and would be considered.

10) The Commission was not aware that the conditions requiring all traffic accessing the site to use the Calle de la Naranja route –did not include all traffic. On page 3, 3rd paragraph of the Planning & Zoning communication quoted above says:

“Please note that condition #3 is intended to apply to employees, service providers and guests of the home, and not to emergency service providers who will continue to take the shortest route to your facility.”

It does not say all traffic and it does not restrict the residents of the home from using their own easement/ legal access per this clarification.

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I (or) we, Nathan Yarbrough, owner of the
Assisted Living Home (Windmill Ranch) located at
5605 E. Labrador Ln, in
Hereford, Az 85615, agree to maintain
EASEMENT in good driving condition
from my driveway to Calle De Naranja + Calle De la Mango as
needed for the duration of the said facility.

I (or) we acknowledge that the Cochise County Highway and
Floodplain Department does not and will not maintain the above
mentioned non-maintained road.

I (or) we certify that I (or) we have the legal authority to use the
proposed access which connects the subject parcel to a publicly
maintained road for the above-mentioned proposed use. Said legal
access is not less than 20 feet wide throughout its entire length and
adjoins the site for a minimum distance of 20 feet.

Nathan Yarbrough
Signature

20 Apr 09
Date

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