



COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety

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MEMORANDUM

TO: Cochise County Board of Supervisors
FROM: Keith Dennis, Senior Planner
For: James E. Vlahovich, Planning Director
SUBJECT: Docket SU-09-08A (Elder Care for Life)
DATE: December 21, 2010, for the January 4, 2011 Meeting

APPEAL OF A SPECIAL USE MODIFICATION BY THE PLANNING COMMISSION

Docket SU-09-08A (Elder Care for Life): The Applicant, Elder Care for Life, currently operates a Residential Care Institution on the property (Windmill Ranch), as allowed by Special Use pursuant to Section 707.06 of the Zoning Regulations. The Planning and Zoning Commission authorized the Special Use in March of 2009, with approval conditions requiring the Applicant to direct associated traffic to Calle de Naranja, a County-maintained road West of the property.

In November of 2010, the Applicant sought a Special Use Modification, to have these approval conditions removed from the Special Use and allow traffic to access Calle de Mango, a County-maintained road East of the property. The Commission denied the request, and the Applicant now appeals the ruling to the Board of Supervisors.

The subject parcel (Parcel # 104-02-006F) is located at 5605 E Labrador Lane in Hereford, AZ. The Applicant is Nathan Yarborough of Elder Care for Life.

II. PLANNING AND ZONING COMMISSION

On November 10, 2010, the Planning and Zoning Commission voted unanimously (7 – 0) to deny the Modification request. The Commission's ruling was based in part on numerous statements of opposition to the request from some 36 neighbors, 27 of which own property within the 1,000 notification buffer area. Commissioners also opposed the request due to a sentiment that, having agreed to the conditions of approval in 2009, the Applicant should be made to follow the approved and agreed-to conditions.

III. BACKGROUND AND NATURE OF APPEAL

Labrador Lane is a private road, approximately 1,300 feet in length. It is flanked by two County-maintained roads: Calle de la Mango to the East (paved) and Calle de la Naranja to the West (dirt). The subject property is slightly closer to Calle de la Naranja. Elder Care for Life staff

maintain Labrador Lane as required under a Private Maintenance Agreement to which the Applicant agreed in 2009.



Aerial photo of the project site. The roadway lines represent the extent of County-maintenance.

During the Citizen Review and subsequent public process leading up to the March 11, 2009 Commission hearing, staff received statements from neighbors concerned about traffic along Labrador Lane. In an effort to alleviate neighbor concerns, staff offered traffic-related approval conditions to the Commission. Specifically, Condition #2 required the Applicant to:

- A. Require all traffic accessing the site to use the Calle de Naranja route;
- B. Post a sign at the property line along Labrador Lane, instructing visitors to use the Calle de Naranja route; and
- C. Inform employees, delivery drivers, and residents' family members in writing to access the site through the Calle de Naranja route.

The Applicant sought a Special Use Modification from the Planning Commission, to have these conditions removed from the Special Use. They claim that Calle de la Naranja is subject to monsoon washouts; that Calle de la Mango is the more "intuitive" route to the facility; and that Calle de la Mango provides a more accessible route to Windmill Ranch. The Modification request included written statements of support from the fire department, ambulance and mortuary services. When the Commission denied the request, the Applicants exercised their right of appeal to the Board of Supervisors. The Applicants ask that the Board overturn the Commissions' denial of the Special Use Modification. The reasoning behind the request is attached as Attachment J.

IV. WINDMILL RANCH HISTORY

In 2007, the Applicant obtained a permit for a Residential Care Home with up to six residents ("Windmill Ranch"). Residential Care Homes are a permitted principal use in a TR District, and may be established without a public process or hearing. The facility opened in January of 2008.

After the home opened, neighbors East of the project became concerned about an increase in traffic associated with Windmill Ranch. In response to this concern, the Applicant agreed to clear a path along Westbound Labrador Lane to connect with Calle de la Naranja. The idea was to reduce traffic by allowing multiple routes to the home. Many in the neighborhood, including the Applicant and neighbors concerned about traffic, agree that the plan did not work; much of the Windmill Ranch-related traffic continued to use the paved Calle de la Mango, and residential traffic from Calle de la Naranja began to traverse Labrador Lane en route to Calle de la Mango. The result was more traffic, some of which was residential through traffic.

In March of 2009, the Planning and Zoning Commission granted a Special Use, to upgrade the facility to a Residential Care Institution, defined as having seven or more residents. At that time the Commission imposed the condition of approval, recommended by staff and noted in Section III of this Memo, that was the subject of the modification request.

In May of 2010, staff issued a Certificate of Occupancy for Windmill Ranch, as the Applicant had met all applicable requirements. Per the approved Special Use, there are now eight people living on the property. A gate across Labrador Lane at the Applicant's Eastern property line was removed around this time.

In September of 2010, the Applicant began the Special Use Modification process, conducting a new Citizen Review as required. The Citizen Review effort, as well as the County's notice to property owners within 1,000 feet of the property, yielded a statement of support from a neighbor, and opposition from 36 other neighbors, 27 of whom reside or own property within the 1,000 foot notification buffer area. Elder Care for Life also provided staff with written statements of support from the local fire district, an ambulance service provider and a mortuary service.

Traffic-related concerns about Windmill Ranch have been the subject of controversy and tension in the neighborhood since the Residential Care Home was first established. Some neighbors were unaware that the business had moved into the area. As the public comments attached to this Memo indicate, some felt that Windmill Ranch should never have opened on Labrador Lane, due to a desire to preserve the character of what is described as a "rural" or "residential" neighborhood as well as deed restrictions limiting commercial activity in the area.

Evidence of the on-going dispute can be physically observed along Labrador Lane. In the past year, neighbors have installed two gates along the Eastern portion of the road, placed "no trespassing" signs on the gates, dug trenches meant to impede traffic, and planted cactus in strategic points along the easement. There have been heated altercations between neighbors on Labrador Lane over the traffic issue, and law enforcement has been involved in these disputes more than once.

More recently, the neighbor at the Northwest corner of Calle de la Mango and Labrador Lane commissioned a survey of the property lines and easement boundaries in the area. The survey determined that the road travelway of Labrador Lane did not align with the recorded access easement. The road travelway in fact lay to the North of the easement boundary; the fence and possibly the well belonging to the Southern neighbor have been determined to encroach into the easement. The Northern neighbor recently built a fence reflecting the true property/easement boundary, which has narrowed the travelway along Labrador Lane. Traffic is slowed by the gates, but the road can be passed.

As mentioned in Section III of this Memo, the Applicant has signed a Private Maintenance Agreement with the County, for the length of Labrador Lane (the condition did not specify Eastbound or Westbound). This agreement, attached to this Memo as Attachment K, requires that the Applicant maintain the length of this road in a "safe, passable condition." The Applicants have regularly mown and attempted to remove the ditches and berms from the roadway. These trenches would often reappear after being graded over; staff observed four such trenches along Labrador Lane East of Windmill Ranch during the site visit prior to the November Commission hearing. During that hearing, a neighbor mentioned that the majority of maintenance activities seem to take place East of the property, with not as much attention paid to the route connecting to Calle de la Naranja.

In their appeal form (Attachment J), the Applicants state that their ability to comply with the Private Maintenance Agreement requirements are hampered by the narrowing of Labrador Lane East of the property. Specifically, the appeal form refers to a requirement that the full 20-foot width of the easement be maintained. In fact, the legal access requirement in the agreement refers to the width of the dedicated easement, not to the physical width of the travelway. The legal access requirement is for a 20-foot wide access easement. The actual road travelway could be wider than 20 feet, or it could be more narrow. The Private Maintenance Agreement requires an Applicant to maintain the travelway in such a way as to keep it in "good driving condition." It appears the Applicant has done so, both West to Calle de la Naranja and East to Calle de la Mango. The narrowing of the roadway due to the new fence construction does not mean that the road is impassable.

V. SUMMARY AND CONCLUSION

It should be noted that the statements of support and opposition from neighbors and emergency services providers noted in this Memo were received as part of the Special Use Modification process leading up to the November 10, 2010 Commission hearing.

Factors in Favor of Granting the Appeal

1. Emergency Services providers including ambulance, fire and mortuary services expressed support in writing for the Special Use Modification request.
2. One neighbor, along Calle de la Naranja, expressed support for the Modification request.

Factor Against Granting the Appeal

1. The Department received statements of opposition to the Modification request from 36 neighbors, 27 of which are within the 1,000 foot notification buffer.
2. At their regular meeting of November 10, 2010, the Planning and Zoning Commission voted unanimously (7 – 0) to deny the request.

VI. RECOMMENDATIONS

Under normal circumstances, opposition from 24 neighbors within the 1,000 foot notification buffer would become the leading factor against approval of a Special Use or Modification request. Such strong opposition would normally override any factors in favor of approval, and staff would recommend denial as a result.

What is different about this case are the statements from emergency services providers, who have expressed their support for the request due to a desire to access the site via the routes to which they are accustomed, along routes with better surface quality (paved as opposed to dirt/gravel). They maintain that accessing the site as requested would provide, under normal circumstances, a quicker, safer route to the site. When ambulances or other first responders are called to Windmill Ranch, they are being called in to save lives. The Community Development Department cannot in good conscience make a recommendation that would conflict with stated the needs of emergency service providers.

Based on the factors in favor of approval, staff recommends that the Board grant the Appeal.

Sample Motion: *"Mr. Chairman, I recommend the Board grant the appeal of the Commission's November 10th ruling on the Elder Care for Life Special Use Modification as requested by the Applicant and as recommended by Staff."*

VII. ATTACHMENTS

- A. Docket SU-09-08 Staff Memo
- B. Location Map
- C. Recorded September 2010 Survey
- D. Transportation Planner's Comments
- E. Citizen Review
- F. Public Comment
- G. Other Agency Comments
- H. Support/Protest Map
- I. SU-09-08 and 09-08A Commission Meeting Minutes
- J. Appeal Form
- K. Private Maintenance Agreement