FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
10/7/2022 3:50 PM
AUDREY GARCIA
CLERK OF THE COURT
DS

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT

KENNETH AND KATHLEEN DEHOFF,

Plaintiffs-Appellants,

vs.

D-1329-CV-2021-01548

THE VILLAGE OF CORRALES
GOVERNING BODY and
LAURIE STOUT, in her capacity
As Corrales Planning and Zoning
Administrator,

Defendants-Appellees.

MEMORANDUM OPINION AND ORDER

THIS MATTER came before the Court on *pro se* Appellants' *Notice of Appeal*, filed October 19, 2021; Appellants' *Statement of [Appellate] Issues*, filed on November 29, 2021; Appellees' *Response to Statement of Appellate Issues*, filed on December 29, 2021; Appellants' *Request to Correct the Record NMRA1-074(I)*, filed November 22, 2021; Appellees' *Response of the Village of Corrales Opposing the Motion of Kenneth and Kathleen DeHoff to Amend the Record on Appeal*, filed November 29, 2021; Appellants' *Technical Correction to the Record Per NMRA 1-074(I)*, filed January 4, 2022; and the record of the proceedings below filed with this Court on November 18, 2021.

Appellants submitted three different architectural designs to the Planning and Zoning Administrator for the Village of Corrales (Lauri Stout) on three consecutive dates in July 2021 to obtain a building permit for the construction of their home. Ms. Stout denied a building permit on the first two submissions based on her review the drawings. Although Appellants were granted a building permit on the third submission, they appeal the decision of the Village of Corrales

Governing Body, which affirmed Ms. Stout's denial of Appellants' two prior building permit submissions for residential construction at 66 Bad Coyote Place, Corrales, New Mexico.

For the reasons set forth herein, this Court AFFIRMS the decision and ruling of the Village of Corrales Governing Body.

STANDARD OF REVIEW

NMRA Rule 1-074 governs appeals from administrative agencies to the District Court. For purposes of this rule, the term "agency" includes any state or local government administrative quasi-judicial entity (NMRA Rule 1-074(A)). Any person aggrieved by a decision of a municipality's Governing Body may appeal that decision to District Court, as Appellants have done in this matter. The scope of the Court's review is set forth in Rule 1-074(R) which provides for reversal of the decision of the Governing Body if:

1. The Governing Body acted fraudulently, arbitrarily or capriciously;
2. Based upon the whole record on appeal, the decision of the Governing Body is not supported by substantial evidence;
3. The action of the Governing Body was outside the scope of authority of the body; or
4. The action of the Governing Body was otherwise not in accordance with law.

Pursuant to Rule 1-074(T), the District Court, in its appellate capacity, shall issue a written decision, which may include:

1. Remanding the case to the administrative agency with specific instructions for further proceedings and determination; the remand may also include instruction to make the case ripe for judicial review;
2. Reversing the decision under review with a statement of the basis for the reversal as provided under paragraph "R" of Rule 1-074;

3. Affirming the decision under review, with a statement of the basis for affirmance.

REQUESTS TO EXPAND THE RECORD

The Court will first address Appellants' two requests to include additional documents into the record before this Court (in Appellants' words, "to correct" the record). The Court notes that Appellants failed to comply with NMRA Rule LR13-118, which requires notification to the Court through the proposed text email address when matters are ready for Court consideration and action.

Appellants ask this Court to introduce into the record on appeal a series of documents attached as **Exhibits A** through **E** to their request (*Appellants' Request to Correct the Record*, filed November 22, 2021). These documents were not introduced or entered into the record of the proceeding before the Village of Corrales Governing Body, and thus were not considered by the Village of Corrales Governing Body in its deliberations or decision-making.

Appellants' opportunity to introduce such documents into the record existed either at the hearing on the merits before the Governing Body, or by way of reconsideration, if available, prior to appeal to this Court. Appellants did neither.

NMRA Rule 1-074(H) provides in pertinent part that the record on appeal "shall consist of... a copy of all papers, pleadings, and exhibits filed in the proceedings of the agency, entered into or made a part of the proceedings of the agency, or actually presented to the agency in conjunction with the hearing..." [Rule 1-074(H)(2)]. The documents Appellants seek to have included in the record for this Court's appellate review were not part of the record below. Appellants nevertheless argue that the Court should admit these documents into the appellate record pursuant to NMRA Rule 1-074(I), which provides in pertinent part that documents "...omitted from the record on appeal by error or accident" may be admitted to ***correct*** the

appellate record, "...provided however only those materials described in Paragraph H of this rule shall be made a part of the record on appeal." [Rule 1-074(I)].

By Appellants' own admission, the "materials" they wish to have admitted into the appellate record were not materials described in Paragraph H of Rule 1-074. Appellants state that "...one day ***after our Appeal Hearing*** [before the Village of Corrales Governing Body], I [Appellant] submitted an IPRA request" for the documents in question. [Appellants' *Request to Correct the Records NMRA 1-074(I)*, paragraph 1] (emphasis added). Thus, the documents Appellants wishes to be included into the record were not even in Appellants' possession at the time of the hearing before the Governing Body. Moreover, there were not entered into the record of the proceeding before the Governing Body. As a result, they could not have been accidently or erroneously omitted in the transmission of the record from the Village of Corrales to this Court.

As to Appellants' *Technical Correction to the Record per NMRA 1-074(I)*, filed January 4, 2022, the Court applies the same analysis and reaches the same conclusion.

The Court FINDS that Appellants' *Request to Correct the Record NMRA 1-074(I)*, filed November 22, 2021, Appellants' *Technical Correction to the Record Per NMRA 1-074(I)*, filed January 4, 2022, are not well-taken, and ARE HEREBY DENIED.

FACTUAL OVERVIEW

On June 15, 2021, the Village of Corrales Governing Body considered and passed Ordinance No. 21-04, which, in pertinent part, amended portions of the Village's zoning ordinance "to provide clarity and [to] better implement the intended regulations of the Village of Corrales Comprehensive Plan and Zoning Ordinance." [Record, Bates #ROA000070].[1] The

[1] Appellants do not contest or dispute proper notice of the Village Council's meeting at which the Ordinance was considered and passed, nor do they contest or dispute Village compliance with all pre-publication requirements, including published notice of the proposed ordinance.

regulations meant for clarification relate directly to The Village of Corrales Comprehensive Land Use Plan (2009), which directs the Village to require the residential dwelling unit density to be limited to a maximum of one dwelling per lot, with a minimum lot size of one or two acres, depending on the zone. [Record, Bates #ROA000069].

Because the Village of Corrales has no municipal water or sewer systems, and the majority of residential and commercials lots rely on well water for occupant use (drinking water), and septic systems for sanitation, low-density development is not only an aesthetic issue, but a health and safety concern as well. [Record, Bates #ROA000070].

The Village proposed the clarifying language to its zoning code to ensure development of single dwelling units on approved lots. Specifically, Ordinance 21-04 amended the definition of accessory uses and structures (Section 18-29), with the following language: "Accessory Building or Structure means a building detached from, incidental and subordinate to the dwelling unit and located on the same lot, such as a detached garage, workshop, or studio. An Accessory Building or Structure shall not be used as a second or independent dwelling unit." [Record, Bates #ROA000070].

According to Laurie Stout, Planning and Zoning Administrator (PZA) for the Village of Corrales, the principle of "one dwelling unit per lot has been a backbone provision in the Village since 1972." [Record, Bates #ROA000020]. The new definition of "dwelling unit" refers to "a single unit with connected rooms" with each of the following uses: "living, sleeping, eating, cooking, and sanitation." [Record, Bates #ROA000020]. The term "connected" requires that all rooms be part of the same contiguous heated space, and are all accessible through the same exterior door. [Record, Bates #ROA000020]. The result is that no lot may have an accessory building that includes the listed uses above (living, sleeping, eating, cooking, and sanitation).

On July 16, 2021, Appellants provided a set of architectural drawings for structures to be built on their lot, 66 Bad Coyote Place, Corrales, NM, for the purpose of obtaining a building permit. According to the PZA, the drawings included a "casita" attached to the dwelling unit's garage that "had no interior connections to the rest of the Dwelling Unit or the garage." [Record, Bates #ROA000020]. The casita included a bedroom, a bathroom, a kitchen and a small workspace. The PZA concluded the proposed architectural drawings violated the planning and zoning code because the casita, although attached to the garage, did not have an interior heated connection to the rest of the dwelling, and included prohibited uses for an accessory building that met the definition of a second dwelling unit. On this basis, the PZA denied a building permit.

On July 20, 2021, Appellants provided a revised set of architectural drawings with the same building configuration (main dwelling, garaged with attached casita), but instead of labeling rooms in the casita as bedroom, bathroom, kitchen and a small work space, the plan now labeled the rooms as "office, shop and bathroom" overlaid on the same casita design. [Record, Bates #ROA000020]. At a meeting of the Governing Body (or the Planning and Zoning Commission – it is unclear from the record), of July 20, 2021, one or both Appellants testified that there would be a kitchen in the casita to be used for crop preparation, and a bedroom so that when Appellants travel, "someone may stay [in the casita] to tend the grounds and farm." [Record, Bates #ROA000020]. The PZA again concluded the proposed architectural drawings violated the planning and zoning code for the same reasons as before, and denied a building permit.

The PZA received a third set of architectural drawings on July 21, 2021, which changed the building configuration such that the casita was now connected to the main dwelling unit via heated space. The PZA approved this set of drawings and issued a building permit to Appellants

on this third design on July 21, 2021. [Record, Bates #ROA000081]. This third drawing was approved because Appellants "added a heated hallway from the former Casita adjacent to the Garage to the primary dwelling unit, creating an interior heated connection, and thereby eliminating the second dwelling unit." [Record, Bates #ROA000081].

APPEAL TO GOVERNING BODY

Appellants appealed the PZA denial of their initial two building permits to the Governing Body. The appeal was based on the rejected architectural drawings submitted for approval on July 16 and July 20, 2021.[2] The Governing Body heard the appeal on September 16, 2021.

In their appeal before the Governing Body, Appellants sought to overturn the first two rejections made by the PZA of their architectural drawings for the proposed residence at 66 Bad Coyote Way, Corrales, NM. While Appellants admitted that a third set of drawings was approved by the PZA, Appellants indicated they "prefer[ed] to build [their] initial plan," and requested that the second submission (July 19/20, 2021) be approved. [Record, Bates #ROA000008].

The Appellants brought two issues before the Governing Body, claiming the PZA denied their building permits in error. They are as follows:

Issue One Before the Governing Body

Appellants argued the rejection of their first two submissions was "due to capricious interpretations and application of the Corrales' village code" (sic) and that such interpretation of the newly amended ordinance was "ambiguously broad such that no reasonable person will be

[2] There appears to be some inconsistency in the record as to when the first two plans were submitted by Appellants for approval by the PZA. Nevertheless, there is no inconsistency as to Appellants submitting a total of three sets of architectural drawings, the first two of which were rejected for the reasons stated herein. The third submission was approved, and a building permit was granted/issued on July 21, 2021, because in their third/revised plan, Appellants "added a heated hallway from the former Casita adjacent to the Garage to the primary dwelling unit, creating an interior heated connection, and thereby eliminating the second dwelling unit." [Record, Bates #ROA000081].

able to guess at what [the Village/PZA] may consider valid." [Appellants' Appeal Letter, Record, Bates #ROA000008].

Appellants further argued that the definition of "dwelling" is ambiguous, specifically arguing that the Village ordinance failed to adequately define the terms "casita," apartment," or "duplex." [Appellants' Appeal Letter, Record, Bates #ROA000009].

Issue Two Before the Governing Body

Appellants also argued that the definition of "dwelling" requiring all rooms to be accessible through a single entrance violated state law ("Her [the PZA] submitted interpretation of connected to mean 'all rooms are a part of the same contiguous heated space and are accessible through the same door' is invalid under state law..." [Appellants' Appeal Letter, Record, Bates #ROA000009 thru #ROA000010]). Appellants failed to cite any statute or provision of the administrative code in support of their contention. Instead, Appellants cited to a case addressing private restrictive covenants (*Hill v. Community of Damien of Molokai*, 1996-NMSC-008), which is not controlling in this matter.

The Governing Body's Ruling

The Governing Body made factual findings and drew legal conclusions in support of their decision to affirm the PZA's rejection of the first two sets of architectural drawing submitted, and affirmed the granting of building permit for the third submission (of July 21, 2021), which both the PZA and the Governing Body found consistent with the requirements of the June 2021 amended Village ordinance.

APPELLANTS' APPEAL TO THIS COURT

The Appellants timely appealed the Village of Corrales Governing Body's affirmance of the PZA's decisions to this Court. In their *Statement of [Appellate] Issues*, Appellants raise five

issues (referred to by Appellants as "defects of law") for appellate review. [*Statement of Issues*, pg. 4].

I. APPELLATE ISSUE ONE

Appellants first argue that Ordinance 21-04 is invalid on the basis that the Village Mayor "never endorsed the Ordinance" in violation of NMSA Sect. 3-17-4(B). [*Statement of Issues*, pg. 4]. Appellants next argue that Ordinance 21-04 is invalid on the basis that there is "no enacting clause in the Ordinance" in violation of NMSA Sect. 3-17-2. [*Statement of Issues*, pg. 4]. Appellants further argue that Ordinance 21-04 "is in direct conflict with the Corrales Village Comprehensive Plan adopted April 2009 and the assertion of the Ordinance preamble that declares compatibility with the comprehensive plan is false." [*Statement of Issues*, pg. 4]. Appellants also argue that the Village violated NMSA Sect. 3-17-3(A) by "failing to state the subject matter, a new policy of outlawing accessory dwelling units, in the Albuquerque Journal notice of hearing for Ordinance 21-04." [*Statement of Issues*, pg. 4].

Appellants raised none of these issues/arguments to the Governing Body in the proceeding below. Thus the first opportunity to respond to these allegations is before this Court, which is required to review the matter on the record below. As a result, neither the PZA nor the Governing Body had an opportunity to challenge or dispute Appellants' assertions, including the inability to introduce evidence into the record that would refute Appellants' arguments at this procedural point in the matter.

It is well established in this state that theories, defenses, or other objections will not be considered when raised for the first time on appeal. This Court serves in its appellate capacity to review the Governing Body's decisions pursuant to NMRA Rule 1-074. In order to preserve an issue for appeal, a party must make a timely objection (in this case with this issue, raising an

objection to the "validity" of the ordinance), that specifically apprises the tribunal of the nature of the claimed error and invokes an intelligent ruling thereon. See *City of Las Cruces v. Rodriguez*, Court of Appeals of New Mexico, 10/16/2014, Docket Number 32,904, Unreported Opinion, citing *State v. Elliott*, 2001-NMCA-108, ¶ 21.

The purpose of the preservation requirement has been outlined by the New Mexico Supreme Court. Specifically, preservation is required so that (1) the tribunal (in this case the Governing Body) is alerted to error so that it has a fair opportunity to correct the mistake, and (2) the opposing party is given a fair opportunity to meet the objection. *Garcia ex rel. Garcia v. La Farge*, 1995-NMSC-019, ¶ 27. (See also *Princeton Place v. N.M. Hum. Servs. Dep't*, 2022-NMSC-005, which notes that the Rules of Appellate Procedure provide that "[t]o preserve an issue for review, it must appear that a ruling or decision by the trial court [in this case the Governing Body] was fairly invoked." Rule 12-321(A) NMRA. "The preservation rule is intended to ensure that (1) the district court is timely alerted to claimed errors, (2) opposing parties have a fair opportunity to respond, and (3) a sufficient record is created for appellate review." *Progressive Cas. Ins. Co. v. Vigil*, 2018-NMSC-014, ¶ 31, 413 P.3d 850).

The Court FINDS Appellants failed to preserve *Appellate Issue One* for this Court's appellate review. Appellants' assertions that the ordinance was invalid for the multiple reasons put forth was not before the Governing Body. It first appears as an issue before this Court sitting in appellate review.

The Court notes that even if Appellants did preserve this issue for appellate review, or that they may be entitled to argue the invalidity of the ordinance for the first time on appeal to the District Court, the Court finds Appellants' arguments lack merit and are refuted by the record. In its response to Appellants' *Statement of [Appellate] Issues*, Appellees systematically and

methodically refute point for point Appellants' arguments that the ordinance is legally flawed or invalid.

II. APPELLATE ISSUE TWO

Appellants argue that the PZA's denial of a building permit for their first two architectural drawings "was arbitrary, capricious, fraudulent, not supported by substantial evidence and contrary to the law." [*Statement of Issues*, pg. 5]. The Court FINDS that Appellants preserved this issue for appellate review (identified above as "Issue One Before the Governing Body").

"A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis when viewed in light of the whole record." *Rio Grande Chapter of the Sierra Club v. N.M. Mining Comm's*, 2003-NMSC-005. "The determination of whether a decision is arbitrary, capricious and unreasonable is not a question separate and apart from whether the decision is supported by substantial evidence." *Board of Educ. of the City of Albuquerque v. New Mexico State Board of Education*, 1975-NMSC-057. "Substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion. Evidence is substantial even if it barely tips the scales in favor of the party bearing the burden of proof." *Landavazo v. Sanchez*, 1990-NMSC-114.

The evidence before this Court reflects that the PZA thoroughly reviewed the plans Appellants submitted to obtain their building permit. The evidence also reflects that the PZA considered and applied the pertinent zoning restrictions, and concluded that the first two architectural drawings submitted by Appellants violated the Village's zoning restrictions, specifically the existence of multiple dwelling units on the same lot as defined by the Village code. As a result, the PZA denied building permit(s) for the first two drawings on that basis. The Governing Body, upon its review of the record presented to it, drew the same conclusions.

This Court FINDS that the standards are clear as set forth in the Village's code, and concludes that there was substantial and compelling evidence in support of the PZA's denial of the building permits on the first two architectural submissions. The Court further FINDS that the PZA did not act contrary to law; rather she acted within her legal authority in applying the code provisions to Appellants' drawings. The Court FINDS that neither the PZA nor the Governing Body acted arbitrarily or capriciously in applying the Village's zoning ordinances to Appellants' plans.

III. APPELLATE ISSUE THREE

Appellants argue that in denying their first two site plans and architectural drawings, the PZA violated Appellants' Equal Protection rights. [*Statement of Issues*, pg. 7].

Appellants did not raise this issue before the Governing Body. For the reasons set forth above, the Court FINDS Appellants failed to preserve *Appellate Issue Three* for this Court's appellate review.

The Court notes that even if Appellants did preserve this issue for appellate review, or that they may be entitled to assert an equal protection violation for the first time on appeal to the District Court, the Court finds Appellants equal protection rights were not violated. Moreover, even if there is a cognizable equal protection claim, the relief would not be in the form of an exemption from the zoning restrictions, but rather full enforcement of the restrictions on any all similarly situated residential home builder/owner retroactively applied to adoption of the amended ordinance as of June 15, 2021. In other words, Appellants would not be entitle to the relief sought – that is, an exemption from the zoning restrictions.

IV. APPELLATE ISSUE FOUR

Appellants argue that the PZA's denial of building permit for the first two submission made by Appellants constituted an "ultra vires act" on the part of the PZA. [*Statement of Issues*, pg. 7].

Appellants did not raise this issue before the Governing Body. For the reasons set forth above, the Court FINDS Appellants failed to preserve *Appellate Issue Four* for this Court's appellate review. Even so, as noted above, this Court explicitly FINDS that the PZA acted within her legal authority.

V. APPELLATE ISSUE FIVE

Finally, Appellants claim that they were not afforded procedural due process when the PZA denied a building permit for the first two submissions they made ("...both denials of July 19 and July 20, 2021..." [*Statement of Issues*, pg. 8]).

Appellants did not raise this issue before the Governing Body. For the reasons set forth above, the Court FINDS Appellants failed to preserve *Appellate Issue Five* for this Court's appellate review.

The Court notes that even if Appellants did preserve this issue for appellate review, or that they may be entitled to assert a violation of procedural due process for the first time on appeal to the this Court, the Court finds Appellants were provided adequate procedural due process.

VI. CONCLUSION

The Court FINDS as follows:

1. The Governing Body did not acted fraudulently, arbitrarily or capriciously when it affirmed the denial of building permit on Appellants' first two architectural drawings.

2. Based upon the whole record on appeal, which is limited to ***those specific appellate issues brought by Appellants to the Governing Body***, the decision of the Governing Body was supported by substantial evidence;
3. The action of the Governing Body was well within its scope of authority; and
4. The action of the Governing Body was in accordance with law.

For the reasons set forth herein, this Court AFFIRMS the Governing Body's decision affirming the PZA's denial of building permits for Appellants' first two architectural drawings, and DISMISSES this appeal with prejudice.

IT IS SO ORDERED.

The Honorable James A. Noel
District Court Judge

I hereby certify that on this day, this Order was sent to all parties to this case using Odyssey's electronic service.

Johanna Tarango, TCAA