

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 14-5270

VARIANCE

MADELEINE WELLS, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) of Santa Fe County (County) for hearing on December 9, 2014, on the Application of Madeleine Wells and Mary O'Brien (the Applicants) for a variance of Article III, § 10 (Lot Size Requirements) of Santa Fe County Ordinance 1996-10, the Santa Fe County Land Development Code (the Code) to allow two dwelling units on 6.195 acres. The BCC, having reviewed the Application, supplemental materials, staff reports, and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted subject to staff conditions, and makes the following findings of fact and conclusions of law:

1. The Applicants request approval of a variance of Article III, § 10 (Lot Size Requirements) of the Code to allow two dwelling units on 6.195 acres.
2. The subject property was created in 1995 by way of Land Division and is a recognized legal lot of record. The Property is located in Santa Fe County at 30 Sibley Road, within Section 17, Township 16 North, Range 10 East ("Property"), within the vicinity of Canoncito.

3. The Applicants purchased the property in 1993, at a time when two structures existed and were habitable dwelling units. Since the purchase, one of the dwelling units has become inhabitable and the Applicants request a variance to place a second dwelling unit on 6.195 acres.
4. There is currently a 1,425 square foot occupied home on the lot.
5. The Code specifies a minimum lot size under Article III, § 10 of 20 acres with 0.25 acre foot water restrictions per dwelling unit.
6. As required by Article II, Section 2.4 of the Code, the Applicant posted a public notice board on the property for twenty one days beginning on the 25th of September, 2014, advertised the hearing in the Santa Fe New Mexican, and sent out certified letters to adjoining property owners.
7. At the public hearing before the BCC on August 12, 2014, staff recommended denial of the requested variance.
8. Staff recommended imposition of the following conditions of approval if the Application was granted:
 - a. Water use shall be restricted to .250 acre feet per year per lot. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office;
 - b. The Applicants must obtain a development permit from the Building and Development Services Department for the additional dwelling;

- c. The Applicants shall provide an updated liquid waste permit for both homes from the New Mexico Environment Department with the Development Permit Application;
- d. The Placement of additional dwelling units or division of the land is prohibited on the property;
- e. The Applicants shall comply with all Fire Prevention Division requirements at time of plat approval;
- f. The Applicants shall remove the abandon structure on the property prior to Development Permit issuance.

9. Article II, Section 3.1 of the Code states that, "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the [BCC] and the [BCC] may vary, modify or waive the requirements of the Code upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety." Section 3.1 concludes that, "In no event shall a variance...be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified."

10. Article II, Section 3.2 states, "In no case shall any variation or modification be more than a minimum easing of the requirements."

11. The Applicants stated that they have an extraordinary hardship because of unusual topography or other non-self-inflicted condition, and asserted that compliance with the Code would result in an arbitrary and unreasonable taking of property or exact a hardship and claimed that a variance from the Code would not result in conditions injurious to health or safety.
12. The Applicants stated there have always been two dwellings on the property. Further, the Applicants asserted that the nature of the proposed dwelling would not be injurious to health and safety in part because it has all-weather access as opposed to the existing abandon dwelling unit which was located and accessed through a FEMA Designated Special Flood Hazard Area. The Applicants purchased the property with two dwelling units on the property and would like to replace the abandon structure with a new dwelling unit.
13. At public hearing there was no opposition of the Application.
14. Evidence was provided by the Applicants that compliance with the Code provisions will exact a hardship.
15. The variance is a minimal easing of Code requirements as two structure have existed on the property since the purchase of the property in 1993.
16. Granting this variance request will not nullify the purpose of the Code, and would not result in conditions injurious to health or safety.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwellings on 6.195 located at 30 Sibley Road, Santa Fe County subject to the conditions in paragraph 6. The motion to approve the variance passed by a 4-0 vote, a unanimous decision.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____, 2014.

By: _____
Robert A. Anaya, Chair

Attest: _____
Geraldine Salazar, County Clerk

Approved as to form:

Gregory S. Shaffer, County Attorney

DRAFT

COMMISSIONER CHAVEZ: Mr. Chair.

COMMISSIONER ANAYA: Commissioner Chavez.

COMMISSIONER CHAVEZ: I'm going to make a motion to approve the request for a variance with staff recommendations.

COMMISSIONER STEFANICS: I'll second.

COMMISSIONER ANAYA: There's a motion and a second to approve with staff recommendations to approve the variance. Any further discussion or questions? Commissioner Chavez.

COMMISSIONER CHAVEZ: Yeah, I guess this would be to staff. On the sewer system, the City of Santa Fe sewer system, the applicants have received a letter of commitment; does that give them the go ahead?

MR. MARTINEZ: Mr. Chair, Commissioner Chavez, that's correct.

COMMISSIONER CHAVEZ: Okay, that's all I have. Motion and a second with no further discussion.

The motion carried by unanimous [4-0] voice vote.

- VII. A. 8. **CDRC CASE # V 14-5270 Madeline Wells and Mary O'Brien Variance. Madeline Wells and Mary O'Brien, Applicants, Request a Variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 6.195 Acres. The Property is Located at 30 Sibley Road, within the Vicinity of Cañoncito, Within Section 13, Township 15 North, Range 10 East (Commission District 4)**

JOHN LOVATO (Case Manager): Thank you, Mr. Chair, Commissioners. Madeline Wells and Mary O'Brien, Applicants, Request a Variance of Article III, § 10, Lot Size requirements, of the Land Development Code to allow two dwelling units on 6.195 acres.

The subject lot was created in 1993, by way of a Land Division, approved by the Land Use Administrator, and is recognized as a Legal Lot of Record. In 1995, by warranty deed, Maria O'Brien transferred to Madeline Wells an undivided half interest in the subject property. There is currently a residence, an abandoned structure, and two storage sheds located on the property. The abandon structure is non-habitable, and the current habitable residence is 1,425 square feet.

The Applicants request a variance of the Land Development Code to allow two dwelling units on 6.195 acres. The Applicants state, when they initially purchased the property in 1993, both structures existed. Since the purchase of the property, the structure across the creek has been abandoned and is no longer accessible due to lack of all-weather access and the structure is non-habitable. The proposed structure will not be located across the river and will have all-weather access. The Applicants state they purchased the property together with the intention of constructing a second dwelling so they both have homes they could reside in. Their request is to replace the abandon second dwelling with a habitable dwelling. There are several properties with similar lot sizes and

multiple dwellings and accessory structures in the immediate area.

On October 14, 2014, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend approval of the Applicants request by a 3-1 vote.

Staff recommendation: Denial of a variance of Article III, §10, Lot Size Requirements, of the Land Development Code. If the decision of the BCC was to grant approval of the variance, staff recommends imposition of the following conditions. Mr. Chair, may I enter those into the record?

COMMISSIONER ANAYA: Yes, you may.

Conditions:

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office at the time of Development Permit (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling. (As per Article II, § 2).
3. The Applicant shall provide an updated liquid waste permit for both homes from the New Mexico Environment Department with the Development Permit Application (As per Article III, § 2.4.1a.1 (a) (iv).
4. The placement of additional dwelling units or Division of land is prohibited on the property. (As per Article III, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).
6. The Applicant shall remove the abandon structure on the property prior to Development Permit issuance. (As per Ordinance No. 2009-11).

COMMISSIONER ANAYA: Are there questions of staff? Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. So would the existing dwelling, the abandoned structure be allowed , even though it is non- habitable, would it stay standing?

MR. LOVATO: Mr. Chair, Commissioner Stefanics, that's probably a question you should ask of the applicant. It is recommended that it be removed or otherwise converted into a studio.

COMMISSIONER STEFANICS: Mr. Chair, the reason I asked the question is that I know it takes time and money to remove something but then there would be three. So it's part of your staff condition; right?

MR. LOVATO: Mr. Chair, Commissioner Stefanics, that is correct.

COMMISSIONER STEFANICS: And the applicant is in agreement with all of the staff conditions?

MR. LOVATO: Mr. Chair, Commissioner Stefanics, I leave that up to her.

COMMISSIONER STEFANICS: I'm sorry?

MR. LOVATO: She hasn't come forward stating she wasn't against them but I would defer that question to her.

COMMISSIONER ANAYA: Any other questions of staff?
Commissioner Chavez.

COMMISSIONER CHAVEZ: I had that same concern and so I think that one condition does speak to that but I think you're right, Commissioner Stefanics, that abandoned building could be remodeled or repurposed into a – it could serve a purpose so I think we do need to have that discussion. But that question would go to the applicant.

COMMISSIONER ANAYA: So I have a question of my colleagues, I guess. If there's a structure – so what we're talking about is habitable space, another dwelling, but there are other structures that are storage units or studios so I guess I should ask the question, Are you suggesting that we clarify what types of space it could be if it wasn't – I mean, we obviously don't want it to be another habitable dwelling but it could be a storage building or a studio within the code. Correct, couldn't it? I guess I would look to staff.

MS. LUCERO: Mr. Chair, it could be converted into a garage or a storage facility of some sort.

COMMISSIONER ANAYA: So does the conditions say it has to be removed or it can be used as a dwelling I guess is what I'm hearing, just for clarity.

MS. LUCERO: Mr. Chair, the condition in the staff report is that they remove the abandoned structure on the property and it's my understanding that the structure is non-habitable and I don't even know whether it is structurally stable.

COMMISSIONER ANAYA: I got you, understood.

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER ANAYA: Commissioner Holian.

COMMISSIONER HOLIAN: In the notes under the summary it also says that that particular structure lacks all-weather access as well.

COMMISSIONER ANAYA: Okay, thank you. Other questions of staff?
Is the applicant present? If the applicant would please come forward and be sworn in, thank you.

[Duly sworn, Madeline Wells testified as follows:]

MADELINE WELLS: My name is Madeline Wells. I'm one of the two applicants primarily taking care of the application process. If I may clarify about the existing structures on the property. There's – we started out with two habitable structures, both small houses. The one that you're speaking of is the main house, the habitable structure, has been enlarged with proper permitting. That's habitable. It's accessible to the road. The structure in question that you're recommending that it be removed, that one does not have all-weather access. We had, my co-owner and I, had contemplated having it razed because the roof is actually caving in and because of the lack of all-weather access it's really not repairable. So my visualization of the process is that when weather permits we would actually have a backhoe come and knock it down.

COMMISSIONER ANAYA: Thank you, Ms. Wells. Are you okay with all of the other conditions that were set forth?

MS. WELLS: Yes.

COMMISSIONER ANAYA: For clarification of the record.

MS. WELLS: Yes.

COMMISSIONER ANAYA: Do you have anything else you would like to add?

MS. WELLS: I just wanted to clarify the fact that we are – that when I bought a share of the property from Mary O'Brian who at the time was sole owner there were the two habitable structures there and we had intended to occupy them separately. Because of erosion in the creek the one, you know, like lost its all-weather access so basically we're wanting to replace that one by something that would be with a size ratio that would be allowed in that area should the new zoning be implemented.

Thank you very much, Mr. Chair and members of the Commission.

COMMISSIONER ANAYA: Thank you, Ms. Wells. Any questions of the applicant? This is a public hearing, is there anybody here who would like to speak either in favor or against? This is a public hearing. Seeing none, what's the pleasure of the Board?

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER ANAYA: Commissioner Holian.

COMMISSIONER HOLIAN: I will note that historically there have been two dwellings on that lot for quite awhile and what is requested is consistent with the neighboring lots so I would like to move approval of CDRC Case V 14-5270, Madeline Wells and Mary O'Brien variance with staff conditions.

COMMISSIONER STEFANICS: Second.

COMMISSIONER CHAVEZ: Second.

COMMISSIONER ANAYA: There's a motion and two seconds for approval of the variance with staff conditions. Any further discussion?

The motion carried by unanimous [4-0] voice vote.

MS. WELLS: Thank you, Mr. Chair and members of the Commission.

- VII. A. 9. **CDRC CASE # S 12-5452 Cielo Colorado Estates Final Plat and Development Plan For Phase 1. Cielo Colorado LLC, Applicant, James W. Siebert, Agent, Request Final Plat and Development Plan Approval for Phase 1 (Lots 11-16) Consisting of Six Lots of the Cielo Colorado Estates 24-Lot Residential Subdivision on Tract 15A-2 of the Eldorado at Santa Fe Subdivision Consisting of 246.30 Acres More or Less. The Applicant Also Requests Approval to Vacate and Relocate two Portions of the Camino Acote 50-Foot Ingress/Egress and Utility Easement That is Located Within Proposed Lot 1, Vacate the Portion of Camino Acote that Runs Through Lots 10, 16, 17, 18 And 19 and Vacate the Old Ingress/Egress and Utility Easement That Runs Through Proposed Lot 1, Which is no Longer in Use. The Property is Located on the East Side of US 285, off Camino Acote, Within Sections 20, 21 and 22, Township 15 North, Range 10 East (Commission District 4)**

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 14-5300

VARIANCE

CATHY AND CHRIS STOIA, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) of Santa Fe County (the County) for hearing on December 9, 2014, on the Application of Cathy and Chris Stoia (the Applicants) for a variance of Article III, § 10 (Lot Size Requirements) of Santa Fe County Ordinance 1996-10, the Land Development Code (the Code), to allow a Land Division of 12.87 acres into two lots. The BCC, having reviewed the Application, supplemental materials, staff reports, and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted subject to conditions, and makes the following findings of fact and conclusions of law:

1. The Applicants request approval of a variance of Article III, § 10 (Lot Size Requirements) of the Code to allow a Land Division of 12.87 acres into two lots. One lot consisting of 7.818 acres and one lot consisting of 5.060 acres.
2. The subject property was created in 1974 and is a recognized legal lot of record consisting of 12.87 acres, which is located in Santa Fe County at 20 La Barbaria, within

Section 17, Township 16 North, Range 10 East ("Property"), within the vicinity of Old Pecos Trail.

3. The Applicants submitted a deed and Power of Attorney as proof of ownership.
4. The 12.87 acre parcel currently has a 3,300 square foot home on the lot.
5. The Code specifies a twenty acre minimum lot size under Article III, § 10 provided there are water restrictions imposed of 0.25 acre feet of water per dwelling unit per year. There are no water restrictions on the property.
6. As required by Article II, Section 2.4 of the Code, the Applicants posted a public notice board on the property for twenty one days beginning on the 23th of September, 2014, advertised the hearing in the Santa Fe New Mexican, and sent out certified letters to adjoining property owners.
7. On October 16, 2014, the CDRC met and acted on this case. The decision of the CDRC ended in a tie vote with two committee members voting in favor of the motion to approve the requested variance and two committee members voting against the motion to approve the requested variance.
8. On November 20, 2014, the CDRC took up the motion again with additional members present and, recommended approval of the Applicants' request.
9. At the Public Hearing before the BCC on August 12, 2014, staff recommended denial of the requested variance.
10. Staff recommended imposition of the following conditions of approval:
 - a. Water use shall be restricted to .250 acre feet per year per lot. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to

the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office;

b. A Plat of Survey meeting all Code requirements shall be submitted to the Building and Development Services Department for review and approval;

c. Further Division of the subject property tract is prohibited. This shall be noted on the Plat; and

d. The Applicants shall comply with all Fire Prevention Division requirements at time of plat approval.

11. Article II, Section 3.1 of the Code states that, "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the [BCC] and the [BCC] may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with a Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety." Section 3.1 concludes that, "In no event shall a variance...be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified."

12. Article II, Section 3.2 states, "In no case shall any variation or modification be more than a minimum easing of the requirements."

13. The Applicants stated that they do not have an extraordinary hardship because of unusual topography or other non-self-inflicted condition, and instead, asserted that compliance with the Code would exact a hardship and claimed that a variance from the Code would not result in conditions injurious to health or safety.
14. The Applicants stated that due to financial difficulties related to health problems they will lose their property if the Application for Variance is denied. Further, Applicants asserted that the nature of the proposed lot split is in character with existing densities in the area.
15. The proposed 5.08 acre lot and 7.81 acre lot are larger than most lots in the surrounding area and will not be out of character with existing densities in the area. Lot sizes currently range from 1.55 acres to 7.87 acres within the immediate area. The agent for Applicants confirmed that the Applicants intend to sell the 5.060 acre parcel to a business partner.
16. At public hearing, area resident Paula Tackett, spoke in support of the Application based on her recognition that the water restrictions necessary for approval would reduce the total amount of water that could be utilized on the property from the current three acre feet to only .50 acre feet total.
17. Sufficient evidence was provided by the Applicants that compliance with the Code provisions will exact a hardship, and proof that a variance from the Code would not result in conditions injurious to health or safety.
18. Granting this variance request will not nullify the purpose of the Code, and would be a minimal easing of Code requirements.

WHEREFORE the BCC hereby approves the request for a variance of Article III, § 10 (Lot Size Requirements) of the Code to allow a Land Division of 12.87 acres into two lots located at 20 La Barbaria, Santa Fe County, subject to the conditions in paragraph 10.

The motion to approve the variance passed by a 4-0 vote, a unanimous decision with Commissioners Stefanics, Anaya, Chavez and Holian all voting in favor of the request. Commissioner Mayfield was not present for the Public Hearing.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____, 2015.

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

12-5452 Cielo Colorado Estates Final Plat and Development Plan with staff conditions.

COMMISSIONER ANAYA: Second.

COMMISSIONER CHAVEZ: Motion and a second. Any discussion?

Seeing none --

The motion carried by unanimous [4-0] voice vote.

- VII. A. 10. **CDRC CASE # V 14-5300 Cathy and Chris Stoia Variance.**
Cathy and Chris Stoia, Applicants, Request a Variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to Allow a Land Division of 13 Acres into two Lots. The Property is Located at 20 La Barbaria Road, Within the Vicinity of Old Pecos Trail, Within Section 17, Township 16 North, Range 10 East (Commission District 4)

MR. LOVATO: Thank you, Mr. Chair. Cathy and Chris Stoia, Applicants, request a variance of Article III, § 10, Lot Size Requirements, of the Land Development Code to allow a land division of 13 acres into two lots.

The subject lot is recognized as a non-conforming lot. There is currently a residence and an accessory structure/shed on the property. The residence on the property is recognized as legal non-conforming and was constructed in 1974. On December 11, 2012, the Applicants were granted a variance of height and placed an addition onto the existing residence. The Applicants now wish to divide their property into two lots: One lot consisting of 5.06 acres and one lot consisting of 7.81 acres. Currently, there are two wells located on the property and each lot will have its own well.

The minimum lot size in this area is 20 acres with 0.25 acre-foot water restrictions. Lot size can be further reduced with proven water availability. The Applicants state, they have stalled their Application in hopes the Sustainable Land Development Code, SLDC, would take effect. The Application would be in conformance with the proposed SLDC, where the property falls within the Residential Fringe Zoning District and will be subject to minimum lot sizes of one dwelling per 5 acres. The Applicant further states that the proposed 5.08 acre lot and 7.81 acre lot are larger than most lots in the surrounding area and will not be out of character with existing densities in the area. Lot sizes range from 1.55 acres to 7.87 acres within the immediate area as noted in Exhibit 9.

On October 16, 2014, the CDRC met and acted on this case. The decision of the CDRC ended in a tie vote with two members voting in favor of the motion for approval of the requested variance and two members voting against the motion to approve the variance. Under Commission rules, the order and application was automatically tabled until the next meeting which a greater number of members were present. On November 20, 2014, the CRDC met and acted on this case. The decision of the CDRC was to recommend approval of the Applicant's request by a 3-2 vote.

Staff recommendation: Denial of variance of Article III, Subsection X, lot size

DRAFT

requirements to allow land division of 12.87 acres into two lots. The CDRC was to recommend approval of the Applicant's request with imposition of the following conditions. Mr. Chair, may I enter those conditions into the record?

COMMISSIONER CHAVEZ: Yes, you may.

MR. LOVATO: Thank you, Mr. Chair. I stand for any questions.

Conditions:

1. Water use shall be restricted to 0.25 acre-feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2008-05).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).
3. Further Division of either tract is prohibited; this shall be noted on the plat. (As per Article III, § 10)
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat Review (As per 1997 Fire Code and NFPA Life Safety Code).

COMMISSIONER CHAVEZ: Questions of staff.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Yes, go ahead.

COMMISSIONER STEFANICS: Why are not the applicants waiting for the new code? Because it says it in the materials that you provided.

MR. LOVATO: Mr. Chair, Commissioner Stefanics, it's my understanding but I can refer this to the applicant's agent, that the – that there's some health issues within the family and they are bound to this property and in terms of losing the property due to the health conditions. But I will let her further reiterate that.

COMMISSIONER STEFANICS: So the intention here is not to keep the divided property.

MR. LOVATO: Mr. Chair, Commissioner Stefanics, I will also defer that question to the applicant.

COMMISSIONER CHAVEZ: Other questions of staff? Then I'll go to the applicant.

[Duly sworn, Antonia Quast testified as follows:]

ANTONIA QUAST: My name is Antonia Quast. I am the representing agent and business partner of the Stoias. Mr. Chair, Commission, thank you for hearing me.

We are asking for what is being proposed already in the new zoning a little ahead of time due to financial hardship with the failing health and soon passing of our father, Kathy's dad. With that would have to be the entire sale of what has been Kathy and Chris' dream home. The idea of the subdivision a little ahead of time is because myself and my partner would be the ones purchasing the other side. I'm a Santa Fe resident. So if that answers your question, Commissioner Stefanics. I'm sorry if that isn't clear

enough.

And the second issue being the water use under the new proposal imposed by the County would actually have the two homes on the property using less water than what the single family home has been using for 40 years. And I believe that those have been the two issues at hand and we have absolutely no opposition either from any of our neighbors in the zoning.

COMMISSIONER CHAVEZ: Any other questions of the applicant. What I would like to do now is ask if there are any members of the public here tonight that would like to speak in support or opposition of this case? Please approach.

[Duly sworn, Paula Tackett testified as follows:]

PAULA TACKETT: Paul Tackett. I'm a neighbor of the Stoias and I was at the earlier hearing and was in opposition because of the water usage. And when Commissioner Anaya, there was something about going to .25 acres per lot and recognizing in a year this permission will be allowed it seemed to make sense to myself and a few of the neighbors that I talked to that if the Stoias were willing to go with a .25 per lot it will be less than they are allocated or allowed to use at this point and that would address in a more rational manner the use of water. We all recognize that water is a terrible issue in this state, in this city, everywhere. And why we're getting so much rain and not snow, I don't understand it, Mr. Chair, but we'll take whatever water we can get.

So in discussions with Ms. Quast and just some of the neighbors we thought well, .25 acres per lot that half an acre that beats 3 acres and I think we were persuaded given that they're here and that they spent a considerable amount of money adding onto their dream home and seem to want to be good neighbors I think we thought, Well, we would – I would withdraw my objections at that point and that's why you have a letter reflecting that in your packet and I would stand for any questions.

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER CHAVEZ: Yes, Commissioner Holian.

COMMISSIONER HOLIAN: Ms. Tackett, so by in large as far as you know the neighbors are okay with this.

MS. TACKETT: I only talked to a couple and they were okay with the conditions that have been imposed or that would be imposed in terms of third party monitoring, reporting and the limitation.

COMMISSIONER HOLIAN: And while you're here, in the packet I think in one of the letters that we received it was mentioned that some of the wells have been going dry in the La Barbaria area, can you fill me in on that?

MS. TACKETT: I only know that from conversation. I don't know that – that's further up La Barbaria and I believe it's further up to where Representative Max Coll's house was or is – he's no longer around, but that whole area up in La Barbaria. The spring used to run and it no longer runs.

COMMISSIONER HOLIAN: How about in your area? How about your well?

MS. TACKETT: Well, my well has – I had to put a new well in not because of the water but because the original folks had just cased it down 20 feet and the

granite sort of fell in on it finally and I had to do a new well. Originally I went to 350 but the originally well went to 160 and then this was years ago and then with all of the building suddenly I had no water and no recharge so I went back in and lowered it back down and – I have to wait. I can't do too many things at once but it does recharge. There are periods where the hose kind of stops and the bathtub fills to that and stops and that makes it a little cold but other than that, if I wait or be quick, is what I've learned to do. Water is an issue. We just – I was born and raised in New Mexico and I know water is an issue.

This seems to be a rational, reasonable working out of the situation.

COMMISSIONER HOLIAN: Thank you, Ms. Tackett.

COMMISSIONER CHAVEZ: Thank you, Ms. Tackett. That will close the public hearing portion of the meeting. Oh, Commissioner Anaya, you had a question or comment.

COMMISSIONER ANAYA: I was just going to say it was good to see you Ms. Tackett. You had many, many years of service, public service and we thank you for that. But it's good to see you and appreciate the compromised that you struck with your neighbor.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Commissioner Stefanics.

COMMISSIONER STEFANICS: I have a question. There's a couple of questions. So I'm looking at the staff recommendations about the water use being restricted to .25 feet and that water meters have to be installed for each lot. So does that mean there will not be a shared well and there will be two separate wells?

MR. LOVATO: Mr. Chair, Commissioner Stefanics, that is correct.

COMMISSIONER STEFANICS: Okay. Later on in the materials I read that there might be use of one of the houses or one of the pieces of the property in a house for a vacation rental but now I'm hearing something different?

MR. LOVATO: Mr. Chair, Commissioner Stefanics, I believe that was in one of the letters of opposition.

COMMISSIONER STEFANICS: So could I ask the applicant please.

MS. QUAST: Yes, ma'am, in the past, a few time when Cathy and Chris were out of town they had friends that stayed in their home and rented, more or less rented it from them for a couple of weeks.

COMMISSIONER STEFANICS: So what is the intent of the second home?

MS. QUAST: For me to live in.

COMMISSIONER STEFANICS: So it's not going to be used for a vacation rental?

MS. QUAST: No, no.

COMMISSIONER STEFANICS: Okay, I think that concludes my questions, thanks.

MS. QUAST: Thank you, ma'am.

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COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER CHAVEZ: Commissioner Holian.

COMMISSIONER HOLIAN: I move for approval of CDRC Case V 14-5300, Cathy and Chris Stoia a variance with staff conditions.

COMMISSIONER ANAYA: Second.

COMMISSIONER CHAVEZ: So there's a motion and second with staff conditions. Any further discussion?

The motion carried by unanimous [4-0] voice vote.

- VII. A. 11. **CDRC CASE # V 13-5190 Minnie Walsh Variance.** Minnie Walsh, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) and a Variance of Article III, Section 2.4.1a.2.b (Access) of the Land Development Code and a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Family Transfer Land Division of 1.195 Acres into two Lots. The Board of County Commissioners rendered a decision to approve this request on October 8, 2013. The BCC's decision was then appealed to District Court, and the Court Decision on July 31, 2014, was to remand the case back to the BCC for a rehearing. The Property is Located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East (Commission District 1)

MR. LOVATO: Thank you, Mr. Chair, Commissioners. Minnie Walsh, Applicant, requests a variance of Article III, Section 10, Lot Size Requirements, and a variance of Article III, Section 2.4.1a.2.b, Access, of the Land Development Code and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, to allow a Family Transfer Land Division of 1.195 Acres into two lots. The Board of County Commissioners rendered a decision to approve this request on October 8, 2013. The BCC's decision was then appealed to District Court, and the Court Decision on July 31, 2014, was to remand the case back to the BCC for a rehearing.

On October 8, 2013, the request came before the BCC. The decision of the BCC was to approve the request by a vote of 3-2 with staff's recommended conditions. The BCC's decision was appealed to the First Judicial District Court by Chris and Misha Peterson. The Honorable Raymond J. Ortiz remanded the case back to the Board so that the board can make specific written findings under its Land Development Code requirements and also under both prongs of the Paule case to justify the decision they made. Similarly, this is also required for the floodplain variance, for a re-representation of evidence for written findings to justify the decision and make specific findings, or to make specific findings whether or not those requirements are applicable in the first instance.

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 14-5230

VARIANCE

SAM MENDOZA , APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) of Santa Fe County (the County) for hearing on December 9, 2014, on the Application of Sam Mendoza (Applicant) for a variance Article II, Section 4.3.3b.ii (Small Lot Family Transfers) of Santa Fe County Ordinance 1996-10, the Santa Fe County Land Development Code (the Code) to allow a Small Lot Family Transfer of 2.79 acres into two lots. prior to being in the possession of the family proper for a five year period. The BCC, having reviewed the Application, supplemental materials, staff reports, and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted subject to staff conditions, and makes the following findings of fact and conclusions of law:

1. The Applicant requests approval of a variance of Article II, Section 4.3.3b.ii (Small Lot Family Transfers), of the Code to allow a Small Lot Family Transfer of 2.79 acres (the Property) into two lots prior to being in the possession of the family proper for a five year period.

2. Article II, Section 4.3.2.b provides that a Small Lot Family Transfer is a lot created as a gift from a grandparent, parent or legal guardian to his or her natural or adopted child or grandchild or legal ward, which does not meet the density requirements of the Code. Any person may receive only one lot through Small Lot Family Transfer. Under these requirements the Applicant meets the requirements for a Small Lot Family Transfer. However, Article II, Section 4.3.3bii provides that for a Small Lot Family Transfer, the Applicant must submit proof that the land has been in the lawful possession of the family proper for no less than a five year period and that the recipient is an adult or emancipated minor. The Applicant fails to meet this requirement because he purchased the property on March 18, 2014, and therefore has not owned the property for the required five year period.

3. As evidenced by the Family Transfer Survey Prepared for Gilbert J & Rosie Lopez of Tract 1-C, recorded in the records of the Santa Fe County Clerk at Book 586, Page 003 on April 25, 2005, the Property was created in April 2005, by way of Family Transfer and is recognized as a legal lot of record consisting of 2.79 acres. The Property is located in Santa Fe County at 58 Camino Don Fidel, off of the 599 West Frontage Rd within Section 36, Township 17 North, Range 9 East.

4. The 2.79 acre parcel is vacant.

5. The Applicant proposes to utilize a shared well and conventional septic system to provide water and wastewater for proposed lots.

6. All noticing requirements set forth in the Code were met.

7. The Code provides that the minimum lot size for the Property is 10 Acres per dwelling unit. Lot size can further be reduced to 2.5 acres per dwelling unit with signed and recorded

water restrictions. Lot size can be further reduced to 1.25 acres per dwelling via Small Lot Family Transfer. Currently the lot is restricted to 0.25 acre feet per year.

8. At the Public Hearing before the BCC on December 9, 2014, staff recommended denial of the requested variance.

9. Staff recommended imposition of the following conditions of approval if the variance were approved:

a. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerks Office (As per Article III Section 10.2.2 and Ordinance No. 2002-13).

b. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, Section 2.4.2).

c. Future division of either tract is prohibited: this shall be noted on the plat. (As per Article III, Section 10).

d. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat Review (As per 1997 Fire Code and NFPA Life Safety Code).

10. Article II, Section 3.1 of the Code states that, "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a

variance. A Development Review Committee may recommend to the [BCC] and the [BCC] may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety.” Section 3.1 concludes that, “In no event shall a variance...be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified.”

11. Article II, Section 3.2 states, “In no case shall any variation or modification be more than a minimum easing of the requirements.”

12. The Applicant stated that a variance was needed in order to give property to his grandchildren. Following the death of his daughter, the Applicant purchased the property with the intent of giving his oldest granddaughters a piece of property of their own. This would allow his grandchildren to reside next to and support each other now that their mother was deceased. The Applicant advised that his wife was ill and he was desirous of settling his estate now.

13. The following additional condition of approval was proposed during the BCC meeting: The newly created lots shall not be sold for a period of five years.

14. No members of the public spoke in support of or opposition to this Application.

15. Strict compliance with the five year holding period in within the Small Lot Family Transfer provision of the Code will exact a hardship, and a variance from that requirement of the Code will not result in conditions injurious to health or safety. 16. Granting this variance

request will not nullify the purpose of the Code, and would not result in conditions injurious to health or safety.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article II, Section 4.3.3bii (Small Lot Family Transfer), of the Code to allow a Small Lot Family Transfer of 2.79 acres into two lots prior to being in the possession of the family proper for a five year period. Located at 58 Camino Don Fidel, off the 599 West Frontage Road, Santa Fe County subject to the conditions in paragraphs 9 and 13.

The motion to approve the variance passed by a 4-0 vote, a unanimous decision.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____, 2015.

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

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MR. SALAZAR: Mr. Chair, Commissioner Chavez, we can include the conditions that Alcohol and Gaming placed in their memos.

COMMISSIONER CHAVEZ: Okay, that would be fine. Thank you, Mr. Chair.

COMMISSIONER ANAYA: Thank you, Commissioner Chavez. Other questions of staff? Seeing none, is the applicant present?

[Duly sworn, Linda Aiken, testified as follows]

LINDA AIKEN: My name is Linda Aiken, I'm the attorney that's handling the liquor license portion of this transaction.

COMMISSIONER ANAYA: Excellent. Do you have anything further to add?

MS. AIKEN: I think that Mr. Salazar has done an excellent job of explaining. It's purely a transfer of ownership. It's the same business.

COMMISSIONER ANAYA: Okay. Any questions of the applicant? Seeing none, is there anybody here that would like to speak in favor or against this transaction – case? Anybody here? What's the pleasure of the Board.

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER ANAYA: Commissioner Holian.

COMMISSIONER HOLIAN: I move for approval of BCC case #MIS 14-5460.

COMMISSIONER CHAVEZ: Second.

COMMISSIONER ANAYA: A motion, Commissioner Holian. Second by Commissioner Chavez. Any further discussion? Seeing none, all those in favor.

The motion carried by unanimous [4-0] voice vote.

VII. A. 3. BCC CASE # PCEV 14-5420 Ernest Chavez Vacation of Plat. (TABLED)

VII. A. 4. BCC CASE # PCEV 14-5450 Kelly Wilson Vacation of Easement. (TABLED)

VII. A. 5. BCC CASE # PCEV 14-5410 Richard Berman Vacation of Easement. (TABLED)

VII. A. 6. CDRC CASE # V 14-5230 Sam Mendoza Variance. Sam Mendoza, Applicant, Requests a Variance of Article II, Section 4.3.3bii (Small Lot Family Transfers), of the Land Development Code to Allow a Small Lot Family Transfer of 2.79 Acres into two Lots Prior to Being in Possession of the Family Proper for a Five-Year Period. The Property is Located at 58 Camino Don Fidel, off the 599 West Frontage Road, Within Section 36, Township 17 North, Range 9 East (Commission District 2)

MATHEW MARTINEZ (Case Manager): Good evening, Mr. Chair,

Commissioners. My name is Mathew Martinez, Building Development Services. Sam Mendoza, Applicant, requests a variance of Article II, Section 4.3.3bii, Small Lot Family Transfers, of the Land Development Code to allow a small lot family transfer of 2.79 acres into two lots prior to being in possession of the family proper for a five-year period. The property is located at 58 Camino Don Fidel, off the 599 West Frontage Road, within Section 36, Township 17 North, Range 9 East, Commission District 2.

The subject lot was created in April 2005, by way of Family Transfer and is recognized as a legal lot of record. The Applicant has owned the property since March 18, 2014. Since the Applicant has only owned the property for a five month period, the property is not eligible for a Small Lot Family Transfer.

The property is currently vacant. Article II, § 4.3.3bii, Small Lot Family Transfers, of the Land Development Code states proof that the land has been in the lawful possession of the Family Proper for no less than five years and that the recipient is an adult or emancipated minor is required. The Applicant is requesting a variance of Article II, § 4.3.3bii, Small Lot Family Transfers, of the Land Development Code to allow a Small Lot Family Transfer of 2.79 acres into two lots prior to possessing the property for a five year period. The Applicant states a variance is needed in order to give property to his grandchildren. The Applicant purchased the property with the intent of giving his oldest granddaughters a piece of property of their own. This would allow his grandchildren to reside next to and support each other after the passing of their mother.

On August 21, 2014, the County Development Review Committee, CDRC, met and acted on this case, the decision of the CDRC was to recommend approval of the Applicant's request with staff conditions by a 3-2 voice vote. Minutes Attached as Exhibit 1.

Staff recommendation: Denial of a variance of Article II, § 4.3.3.b.ii, Small Lot Family Transfers, of the Land Development Code to allow a Small Lot Family Transfer of 2.79 acres into two lots prior to being in possession of the Family Proper for a five-year period.

The decision of the CDRC was to recommend approval of the variance subject to the following conditions. Mr. Chair, may I enter these conditions into the record?

COMMISSIONER ANAYA: Yes, you can.

The Conditions are as follows:

1. Water use shall be restricted to 0.25 acre-feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).
3. Future division of either tract is prohibited: this shall be noted on the plat. (As per Article III, § 10).
4. The Applicants shall comply with all Fire Prevention Division requirements at

time of Plat Review (As per 1997 Fire Code and NFPA Life Safety Code).

MR. MARTINEZ: I stand for any questions?

COMMISSIONER ANAYA: Any questions? Is the applicant here? Mr. Mendoza, if you'd like to come forward please. If you'll raise your right hand you can be sworn in.

[Duly sworn, Sam Mendoza testified as follows:]

SAM MENDOZA: My name is Sam Mendoza. Good evening, Mr. Chair and Commissioners. I put in for this variance because my daughter passed away and my grandchildren were left orphans basically with no one else to take care of them but me and my wife. And I feel that they're at the age that having a piece of property in order to survive in this town and get a little place to live on their own so they'll be able to stay in Santa Fe with the rest of the family members.

I'm not a developer. I'm not here to make a profit. And that's about it. That's the only reason that I ask for a variance. And me and my wife, Gloria, would appreciate your – whatever you can give us.

COMMISSIONER ANAYA: Thank you, Mr. Mendoza. Commissioner Chavez.

COMMISSIONER CHAVEZ: Mr. Mendoza, do you understand the conditions of approval?

MR. MENDOZA: Yes, I do. I have read through them.

COMMISSIONER CHAVEZ: And I think the one that maybe would stand out more is condition number 3, further division of either tract is prohibited. This shall be noted on the plat. You guys are okay with that, no?

MR. MENDOZA: Could you say that again?

COMMISSIONER CHAVEZ: It says, further division of either tract is prohibited. This shall be noted on the plat. And you're okay with that?

MR. MENDOZA: Yes, I agree with that.

COMMISSIONER CHAVEZ: Thank you, Mr. Chair.

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER ANAYA: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. Mr. Mendoza, is there a reason why you can't wait for another four years to do this family lot split?

MR. MENDOZA: Well, my wife has been very ill. I'm getting up in age and I'd like to settle that estate now that it is possible. It is still a bare piece of land. The well has be dug on it. It's going to take still four or five years to get that done. I don't have the monies to go and do it. So I want to get it where I can get started on doing this.

COMMISSIONER HOLIAN: Are you planning on selling one of the lots?

MR. MENDOZA: No. They're both given to two of my granddaughters and not to be sold.

COMMISSIONER HOLIAN: And couldn't you leave the land to them jointly and then they could split it later on?

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MR. MENDOZA: Like I say, I'm getting up in years and I'd like to get this thing settled. Knowing how family things happen, it's better that they each have it in their own name. That's the way I feel and I feel it needs to be settled now and taken care of for the future and, you know, before this land is even developed it's going to take a while.

COMMISSIONER HOLIAN: So you visualize that you'll split the land and then each granddaughter will have one lot and they'll build on it; is that correct?

MR. MENDOZA: That is correct.

COMMISSIONER HOLIAN: Thank you, Mr. Mendoza.

COMMISSIONER ANAYA: Other questions of Mr. Mendoza? I have one. Other than the – this is for staff, Vicki or Ms. Lucero or whoever wants to answer it, Mr. Martinez, I'm sorry. Other than the provision of the term this would meet the criteria for the size of the lot?

MR. MARTINEZ: Mr. Chair, that is correct.

COMMISSIONER ANAYA: Okay, thank you. Commissioner Stefanics.

COMMISSIONER STEFANICS: If once we approve this there is – I should ask this as a question to Mr. Shaffer, is there not a statutory requirement at the state level that the family retain it for at least five years on lot splits?

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, I don't actually know that at the top mind. I'd have to look at that very quickly and get back to you.

COMMISSIONER STEFANICS: Well, the other thing, Mr. Chair, is I believe we have made that a requirement of some other non-conforming lot splits that we have done so if the Commission is amenable I would add that to the conditions. That the family would have to hold it for at least five years.

COMMISSIONER ANAYA: What's the pleasure of the Commission? I would just comment, Commissioner Stefanics, my take on this particular case is that it would fall underneath the lot size requirements and I don't think the kids have an intention but I don't know their situation associated with their finances or anything like that so I think that would add an additional hardship that they're already dealing with associated with the loss of their mother. So I'm okay not putting a timeframe given the fact that it's within the lot size requirements. That's my take.

COMMISSIONER STEFANICS: Mr. Shaffer, did you find an answer?

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, I'm informed by the Deputy County Attorney that there is not such a requirement of holding the lot after it is created. And in addition that would raise potential alienation of property issues that I think would be best if we avoided.

COMMISSIONER CHAVEZ: Mr. Chair.

COMMISSIONER ANAYA: Are you done, Commissioner Stefanics?

COMMISSIONER STEFANICS: I am, Mr. Chair, except that I do think that we have imposed that on some other decisions but I am willing to listen to others.

COMMISSIONER ANAYA: Commissioner Chavez.

COMMISSIONER CHAVEZ: Thank you, Mr. Chair. Commissioner Stefanics, I could see the concept that you're trying to present and I could see how that

might apply to other applications or other applicants. But I think the intent of this applicant is for the family not to sell the land, to keep it in the family and try and keep the family here in town. So to propose that they would have to keep it in the family structure for five years and then be able to sell I think goes against the concept of what Mr. Mendoza is asking for. I think you're hoping that they don't sell the property, right?

MR. MENDOZA: I have no objections to what Ms. Stefanics said there. If you want to put a five year restriction on there, it wouldn't bother me a bit. I'm sure I wouldn't be sold not even in a five years from now. My intent is for the family, for them to use the property for their lives and to improve their lives and – I can't – if I pass away next year I can't really project what they would do with it. I'm hoping that they would keep it for the rest of their lives.

COMMISSIONER CHAVEZ: So anyway, I'm kind of sympathetic to the request and knowing the family I think I would trust that they will respect what you're doing and not sell. But you're right, we don't always know what the future will hold. But I don't see that condition being necessary in this case but I'll yield the floor, Mr. Chair.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER ANAYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, I think that probably many of us know the family. And so it's not about the family. It's about equitable standards. And if we have in fact imposed this on other lots splits, that is what I'm talking about. I'm not talking about putting anything different on this decision for this family. And so it – I might be losing my memory about this but it bothers me if we do different standards. That's all I'm saying and I have no doubt about the family's intention and we're all bordering on relying on the family reputation. So I'll just stop there.

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER ANAYA: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. It just sort of bothers me – you know, I think that the family – I can understand why they're doing what they're doing and I am sympathetic to what they're doing but this property has only been owned for less than a year actually. This goes against our County Code and it is a variance and what I'm worried about specifically is that it sort of opens the doors for, you know, everybody in the County saying, Hey, you approved this particular case. So they go out and buy and lot and –

MR. MENDOZA: -- you could do that anyway –

COMMISSIONER HOLIAN: Pardon?

MR. MENDOZA: You could say that about every case that comes up. I mean, every case that comes before the Commission.

COMMISSIONER HOLIAN: Certain cases, yes, you could say that about. But I would feel more comfortable if there were a five year limit before the lots could be sold, myself.

MR. MENDOZA: I would too. But circumstances change things. I'm doing this as a grandfather trying to take care of my grandkids in order that they have a future and now is my opportunity to do it and that's what I want to do.

COMMISSIONER HOLIAN: But then why do we have a code? You know, why do we have a code with certain rules in it.

MR. MENDOZA: Well, that's why I'm here for a variance.

COMMISSIONER ANAYA: If we could – if we could, Commissioners, if we could come back to the Chair just to make sure that we keep decorum. But you still have the floor Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. I'm just sort of saying that I would feel more comfortable if this were consistent with the code.

COMMISSIONER ANAYA: Thank you, Commissioner Holian. Any more questions or comments? I would make a comment before I go to Commissioner Chavez and I think that having sat here for four years – I would first go back to you, Commissioner Stefanics, and say that, yes, in not all of the cases but absolutely in some of the cases we have imposed terms on the cases. We have done that. And I think what we found in some of the past cases that there were some people that were just doing a lot split to sell it. And that goes against the integrity of the family transfer and so I would acknowledge that cause we did in fact do that. And, I think going to what you're Commissioner Holian, we have the latitude to provide for variances and have done that in the past and people have an avenue if they choose to oppose a variance to go to court. And in some cases they have done that. But in many, many cases at this Commission with us as well as prior Commissions well before we sat in these chairs, the family transfer has afforded people an opportunity that they wouldn't have otherwise had through variance. And you're right there are recommendations that run contrary with some of the provisions of our code but we've made those determinations in many, many people have had the opportunity to live and have property and homes.

So, I said it before, respecting the judicial system, I'm willing to take that chance to assure that there are opportunities even at the risk that someone might oppose it and at the risk that it might be overturned because I think the vast majority of times that they haven't been. That being said, I'll leave it at that. Commissioner Chavez.

COMMISSIONER CHAVEZ: Well, this case was also reviewed by the CDRC, the County Development Review Committee met and acted on this case and their decision was to recommend the applicant's request with staff conditions by a 3-2 voice vote. So I'm sure questions were raised there similar to the questions that we're raising here this evening.

But what I would like to do, Mr. Chair, is to make a motion to approve the variance with the staff recommendations and I would add a fifth recommendation that the two lots created, if this is approved, would not be sold for five years.

COMMISSIONER HOLIAN: I will second that.

COMMISSIONER ANAYA: There's a motion on the floor and a second by Commissioner Holian. Any other discussion? Commissioner Stefanics.

COMMISSIONER STEFANICS: Does anybody else want to speak?

COMMISSIONER ANAYA: You're correct. We're going to go to the floor. Is there anybody in the audience who would like to speak in favor or against this particular action? Thank you, Commissioner Stefanics for – is there –

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MR. MENDOZA: Thank you for your consideration.

COMMISSIONER ANAYA: Seeing none.

The motion carried by unanimous [4-0] voice vote.

MR. MENDOZA: Thank you for your consideration. Thank you very much.

- ~~III. A. 7. CDRC CASE # V 14-5190 Pablo & Maria Cerquera Variance.
Pablo and Maria Cerquera, Applicants, Request a Variance of Ordinance 2007-2 Village of Agua Fria Zoning District, Section 10.6 (Density and Dimension Standards), to Allow a Third Dwelling Unit on 0.962 Acres. The Property is Located at 2247 Paseo de Tercero, in the Traditional Community of Agua Fria, Within Section 5, Township 16 North, Range 9 East, (Commission District 2)~~

~~MR. MARTINEZ: Pablo and Maria Cerquera, Applicants, request a Variance of Ordinance 2007-2 Village of Agua Fria Zoning District, Section 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 Acres. The property is located within the Traditional Village of Agua Fria at 2247 Paseo de Tercero, in the Traditional Community of Agua Fria, Within Section 5, Township 16 North, Range 9 East, Commission District 2.~~

~~The subject lot was created in 1991, by way of Family Transfer and is recognized as a legal lot of record. The Applicants have owned the property since 1994. There are currently two dwelling units on the property. Currently the Applicants and their family reside in one of the existing homes and the other is occupied by tenants. The Applicants have stated the proposed home will also be occupied by tenants until such time their children are of age/adults.~~

~~The Applicants request a variance of Ordinance No. 2007-2, Village of Agua Fria Traditional Community Zoning District, § 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 acres. The Applicants state a variance is needed in order to develop the remaining portion of the property. The Applicants intend to place an additional manufactured home on the property to provide them with additional income and for future use for their children. The property is lacking approximately 0.038 acres or 1,152 square feet in order to meet Code requirements for a third dwelling unit on one lot.~~

~~On August 21, 2014, the County Development Review Committee, CDRC, met and acted on this case, the decision of the CDRC was to recommend approval of the Applicants request with staff conditions by a 5-0 voice vote with the finding that the amount of acreage they are lacking to meet code requirements is minimal. Minutes Attached as Exhibit 1.~~

~~Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County~~