

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 15-5110
VARIANCE
MARTA AND DOLORES PEREZ, APPLICANTS

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on August 11, 2015, on the Application of Marta and Dolores Perez (Applicants) for a variance of Ordinance No. 1996-10, the Santa Fe County Land Development Code (the Code), as amended by Santa Fe County Ordinance No. 2002-9, La Cienega and La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Community Zoning District (La Cienega Zoning Ordinance), Section 6.4, Zoning Density, to allow a Land Division of 2.5 acres into two lots; each consisting of 1.25 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 not well-taken and should be denied and makes the following findings of fact and conclusions of law:

1. The Applicants request approval of a variance of the La Cienega Zoning Ordinance, Santa Fe County Ordinance No. 2002-9, Section 6.4, Zoning Density, to allow a Land Division of 2.5 acres into two equal lots; each 1.25 acres.
2. The Property is located in Santa Fe County at 19 B Las Estrellas, within Section 27, Township 16 North, Range 8 East, within the Traditional Historic Community of La

Cienega (Property). The lot was created in 1990, by way of Family Transfer and is recognized as a legal lot of record consisting of 2.5 acres.

3. The Applicants acquired the real property by warranty deed recorded on December 16, 1994, in book 1123 page 197, in the records of the Santa Fe County Clerk.
4. The Property currently has a single family residence (1400sq. ft.) which was permitted in 2005, and two storage buildings. The Applicants are sisters and have owned and lived on the property since December 16, 1994, as evidenced by photographs of the property entered into the record as Exhibit 8 of the BCC packet.
5. Noticing requirements were met as per Article II, Section 2.4.2, of the Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming the public notice posting regarding the Application was made for twenty-one (21) days on the property, beginning on May 28, 2015. Additionally notice of hearing was published in the legal notice section of the Santa Fe New Mexican on May 28, 2015, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailings of notices of the hearing were also contained in the record for all adjacent property owners.
6. The applicable requirements under Santa Fe County Land Development Code, Santa Fe County Ordinance No. 1996-10, (Code) and Santa Fe County Ordinance No. 2002-9, La Cienega and La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Community Zoning District (La Cienega Zoning Ordinance), which governs this application are:
 - a. Section 6.4.2, Basin Zone, of the La Cienega Zoning Ordinance states:

Maximum density in the Basin Zone shall be ten acres per one dwelling unit (10 acres). With proof of 100 year water supply through a geohydrologic reconnaissance report, and adoption of water use covenants the maximum density may be increased to one dwelling

unit per 2.5 acres. Density adjustments above one dwelling unit per 10 acres must follow requirements outlined in Article III, Section 10 and Article VII, Section 6 of the Code, as amended, along with all requirements outlined in this ordinance. The maximum density shall not be increased even when community water and sewer systems are provided except where density transfer is used to protect sensitive lands or preserve community assets as described in Section 6.6 and gross density is maintained

b. Article II, Section 3, Variances, of the Code states:

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 condition 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 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.

c. Article II, Section 3.1 concludes that, “[i]n 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.”

d. Article II, Section 3.2 states, “[i]n no case shall any variation or modification be more than a minimum easing of the requirements.”

7. The Applicants have asserted that a variance is needed in order for each of them to individually own a piece of property. Currently, the Applicants are joint tenants owning the entire property together but they would individually like to be responsible for a half of the property.
8. At the public hearing before the BCC on August 11, 2015, staff and the CDRC recommended denial of the Application.
9. At public hearing, Carl Dickens spoke in opposition of the Application, addressing water issues in the La Cienega area. No one, but the Applicants spoke in favor of the Application.
10. This variance was not granted because it is more than a minimal easing of the Code.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby denies the request for a variance of Ordinance No. 1996-10, the Santa Fe County Land Development Code

as amended by Santa Fe County Ordinance No. 2002-9, La Cienega and La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Community Zoning District, Section 6.4, Zoning Density, denying the land division of 2.5 acres into two equal lots; located at 19 B Las Estrellas in Santa Fe County. The motion to deny the variance passed by a 2-1 vote, with Commissioners Stefanics and Roybal voting in favor of the motion to deny and Commissioner Chavez voting against the motion to deny. Commissioners Anaya and Holian were not present.

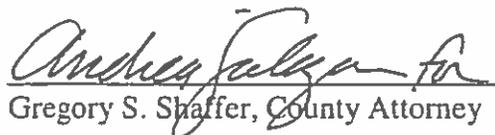
IT IS SO ORDERED

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

to check in with Commissioner Anaya. Mr. Chair, are you on the phone? Are you on the line here? Can you hear us? Commissioner Anaya? Try it one more time and then we'll move on.

COMMISSIONER HOLIAN: Mr. Chair, I would like to clarify that my motion includes the revisions that were presented to us today.

COMMISSIONER CHAVEZ: Okay, and are you okay with that?

COMMISSIONER STEFANICS: Yes.

COMMISSIONER CHAVEZ: Okay, Commissioner Anaya we tried. That was the secondary. We're going to go ahead and move on with it.

We have a motion and we have a second. Roll call.

MR. SHAFFER: Mr. Chair, if I could just clarify. The motion is as we understand it is to approve the version of the ordinance that was handed out by Mr. Brown at the beginning of this evening's hearing and then just for clarity, we also had a suggested revision proposed by one of our consultants and did your motion include that? That was to Section 10.2.2 which I think he read into the record earlier.

COMMISSIONER HOLIAN: Yes, it includes that.

COMMISSIONER CHAVEZ: Thank you, Mr. Shaffer. So there's some clarity on exactly what we're voting on and so everyone is clear on that. There is a motion and a second. Roll call vote please.

Commissioner Chavez	Aye
Commissioner Holian	Aye
Commissioner Stefanics	Aye
Commissioner Roybal	Aye
Commissioner Anaya	Excused - changed to Aye

[Commissioner Anaya was not available during the roll call vote but indicated later in the meeting, see page 33, by telephone that he voting for the motion.]

COMMISSIONER CHAVEZ: Thank you all for being here this afternoon. I do want to do a little bit of housekeeping and in the interest of time we do have land use cases for the remainder and we have some community strategic plans that we want to approve. But we have one case, CDRC 15-5110, Marta and Dolores Perez variance. We have a translator for this case. Are those applicants here? We're going to go ahead and hear that case first. We had promised to hear them by 6:30 and it's now 10 to 7 so.

VIII. D. Land Use Cases

1. CDRC CASE # V 15-5110 Marta and Dolores Perez Variance.
Marta and Dolores Perez, Applicants, Request a Variance of Ordinance No. 2002-9 (La Cienega and La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Community Zoning District), Section 6.4 (Zoning Density) to Allow a Land Division of 2.5 Acres Into Two Lots; Each Lot Consisting of 1.25 Acres. The Property is Located within the Traditional Historic Community of La Cienega at

**19 B Las Estrellas, within Section 27, Township 16 North,
Range 8 East (Commission District 3). Mathew Martinez, Case
Manager**

COMMISSIONER CHAVEZ: Mr. Martinez, do you want to go ahead and start your presentation. The interpreter, sir, okay, go ahead and be ready. If the applicants want to come closer too, they can.

MATHEW MARTINEZ (Case Manager): Thank you, Mr. Chair, Commissioners, Marta and Dolores Perez, Applicants, request a variance of Ordinance No. 1996-10, the Santa Fe County Land Development Code as amended by Santa Fe County Ordinance 2002-9, La Cienega and La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Community Zoning District, Section 6.4, Zoning Density, to allow a land division of 2.5 acres into two lots; each lot consisting of 1.25 Acres. The property is located within the Traditional Historic Community of La Cienega at 19 B Las Estrellas, within Section 27, Township 16 North, Range 8 East.

The subject lot was created in 1990, by way of Family Transfer and is recognized as a legal lot of record. There is currently a single family residence, 1,400 square feet, which was permitted in 2005 and two storage buildings on the property. The Applicants are sisters and have owned and lived on the property since December 16, 1994.

The Applicants request a variance to allow a land division of 2.5 acres into two lots; each lot consisting of 1.25 acres. The Applicants state they own the subject lot jointly and are requesting a Land Division so that both Applicants will own their own equal share and would no longer have a shared payment on the property.

On June 18, 2015, the County Development Review Committee, CDRC, met and acted on this case. The decision of the CDRC was to recommend denial of the Applicant's request

Staff's recommendation and the recommendation of the CDRC was to deny the Applicants' request for a variance of Ordinance No. 2002-9 La Cienega and La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Community Zoning District, Section 6.4 Zoning Density to allow a Land Division of 2.5 acres into two lots; each lot consisting of 1.25 acres.

If the decision of the BCC is to approve the Applicants request, staff recommends imposition of the following conditions. Mr. Chair, may I enter these conditions into the record?

COMMISSIONER CHAVEZ: Yes.

The 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. 2002-13).
2. A Plat of Survey meeting all 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 STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: Yes, I see that there was discussion about a possible guest dwelling on the same property and were the applicants not interested in – or accessory dwelling, were the applicants not interested in that?

MR. MARTINEZ: I don't believe so.

COMMISSIONER STEFANICS: That's in the minutes from the CDRC. It's on page 7 of the materials that you gave us. Ms. Lucero said an accessory dwelling would be allowed under certain criteria but further division would not be allowed. Are the applicants interested?

MR. MARTINEZ: No, they are not.

COMMISSIONER STEFANICS: Okay, thank you.

COMMISSIONER CHAVEZ: Does the applicant understand all of the staff recommendations? Sir, I was asking if the applicants are of understanding of the staff recommendations?

[The translator speaks to the applicants away from the microphone.]

COMMISSIONER CHAVEZ: Should I read them so you can translate? Okay. These are the conditions. There are four conditions of approval. The first condition: 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 on January 1st of each year. Water restrictions shall be recorded in the County Clerk's.

COMMISSIONER STEFANICS: Mr. Chair, they should have a copy of this.

COMMISSIONER CHAVEZ: No, I want him to –

COMMISSIONER STEFANICS: I know but they don't even have a printed copy is what I'm saying.

COMMISSIONER CHAVEZ: We can get them a printed copy but he would still have to translate it for them.

COMMISSIONER STEFANICS: I understand that. But he doesn't even have it to read it from.

COMMISSIONER CHAVEZ: Let's get him one then. Vicki, can we get him one?

GABRIEL DePABLO: Yeah, they have the report in their hand.

COMMISSIONER CHAVEZ: So come to the mike and for the record state your name and address if you would please.

MR. DePABLO: My name is Gabriel de Pablo I am a translator and interpretation. My address is 6419 Cerros Grande Drive here in the south part.

COMMISSIONER CHAVEZ: So I'm going to read the second condition of approval: A Plat of Survey meeting all Code requirements shall be submitted to the

Building and Development Services Department for review and approval.

MR. DePABLO: I think if I had the thing I could explain better.

[A copy of the conditions were provided to the interpreter and he talked with the applicants.] Yes, sir.

COMMISSIONER CHAVEZ: Okay, so you can attest for the applicants that they are in agreement of these four conditions.

MR. DePABLO: Yes.

COMMISSIONER CHAVEZ: Thank you. Okay, are there any questions for the translator? No. Commissioner Stefanics.

COMMISSIONER STEFANICS: I would still like to know and instead of our staff answering the interpretation could ask, have they been apprised that they can have an accessory dwelling on the property without dividing the property?

MR. DePABLO: They are interested in dividing the lot. They were told in five years time they would be able to divide the lot.

COMMISSIONER STEFANICS: Thank you.

MR. DePABLO: You are welcome.

COMMISSIONER CHAVEZ: If there are no further questions of staff, pleasure of the Board? Public hearing, thank you. Is there anybody here this afternoon to speak on this issues, CDRC V 15-5110, Marta and Dolores Perez variance. Sir.

[Duly sworn, Carl Dickens testified as follows]

CARL DICKENS: My name is Carl Dickens. I live at 26347 West Frontier Road, La Cienega, president of La Cienega Valley Association. This is an opportunity to express a long lasting community concern. When you talk about the well monitoring and they are going to have meters in each home and they're going to monitor and they are suppose to submit their records to the powers that be: that never happens. We now have over 450 homes that have been -- basically, a subdivision has been created out of lot splits and family transfers and it's one of those things that if you look at the water situation within our community this is a very serious concern. We've had the Acequia de La Cienega over the last 20 years has seen over a 60 percent decrease in the amount of water that is available per farming. Our community without water is not a community.

And I hate to in a sense single these people out for this particular issue but it is one of those things that as a community we have to stand up and start talking about. We can't continue to have these wells drilled into an additional use out of a community that has a very limited amount of water. One of the things that we have done as a community is we are now working with the Bureau of Geology and Mineral Resources out of Socorro to do a well monitoring project. We have 35 wells that we will monitor twice a year because we are seriously concerned about what is happening to our water sources and with that that's what I'd like to say, thank you.

COMMISSIONER CHAVEZ: Okay anyone else here to speak on this issue? Then I will now close the public hearing portion on this item and ask what the Commission would like to do.

COMMISSIONER STEFANICS: Mr. Chair, I move to deny.

COMMISSIONER CHAVEZ: Do I hear a second?

COMMISSIONER ROYBAL: I'll second.

COMMISSIONER CHAVEZ: There's a motion to deny. There's a second.

The motion passed by majority [2-1] voice vote with Commissioner Chavez casting the nay vote. [Commissioner Holian was not present for this action.]

COMMISSIONER CHAVEZ: The motion is denied. It was denied by a 2 to 1 vote to table it – actually motion to deny not to table. The motion was to not approve.

COMMISSIONER STEFANICS: Mr. Chair, if the interpreter would please share with the applicants that they do have the possibility of the accessory dwelling.

COMMISSIONER CHAVEZ: Right. Thank you.

WII. B. Community Plans

1. Resolution No. 2015-___, A Resolution Amending Resolution No.2007-120, the Pojoaque Valley Community Strategic Plan, and Resolution Nos. 2010-210 and 2010-225, the Sustainable Growth Management Plan, to Create the 2015 Pojoaque Valley Community Strategic Plan (First Public Hearing)

ROBERT GRIEGO (Planning Manager): Good afternoon, Mr. Chair, Commissioners, this is the first of two public hearings required by ordinance 2002-3. This item is a resolution to create the 2015 Pojoaque Valley Community Strategic Plan Update as an amendment of the SGMP and as part of the framework for the implementation of the Sustainable Land Development Code in accordance with the process established by Resolution 2015-18.

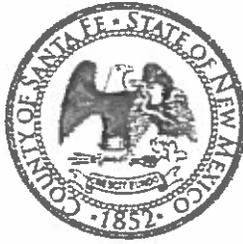
In your packet is background information regarding the process to create the plan update which included the following: review of the existing plan, review of the existing land uses and land use map, review of the regulatory framework of both the SGMP and the SLDC, the development of the 2015 community plan update, the review of the community overlay district draft for Pojoaque and a review of proposed zoning for Pojoaque Valley.

Proposed changes to the existing Pojoaque Valley Strategic Plan include the following: 1) amend the mixed use areas to remove certain properties within the Bouquet Historic District and areas adjacent to the US 84/285 that were identified by property owners as residential property; 2) update demographic information for the Pojoaque Valley based on the 2010 census and also the plan updates includes identification of community issues that have been brought forward through this planning process. This includes agriculture and environment regarding retaining the rural character and supporting agriculture opportunities to include community farms, markets, and an in formalized land exchange program for agricultural purposes; conserving open space and contiguous agricultural lands through agricultural preservation techniques such as an agricultural overlay district; maintaining the integrity of the acequia system; and, also

Henry P. Roybal
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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 14-5310
VARIANCE
PATRICK LYSAGHT, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) of Santa Fe County (County) for hearing on June 9, 2015, on the Application of Patrick Lysaght (the Applicant) for a variance of Article VII, Section 3.4.1.c.1.c, No Build Areas, of the Santa Fe County Land Development Code, Ordinance No. 1996-10 (Code) to allow the construction of an accessory structure on slopes greater than 30%; a variance of Article VII, Section 3.4.1.d.6, Development Site, of the Code to allow the finished floor of a structure to exceed (5') above natural grade; and a variance of Article III, Section 2.3.6.b.1, Height Restrictions, of the Code, and Section 3.8.2.d.2 of Ordinance No. 2000-13, Tesuque Community Zoning District (Tesuque Ordinance) to allow the accessory structure to exceed the 18' height limitations for structures on a 15% slope or greater. The BCC, having reviewed the Application, supplemental materials, staff reports, and having conducted a public hearing on the request, finds that the Application is not well-taken and should be not be granted and makes the following findings of fact and conclusions of law:

1. The Applicant requests approval of a variance from Article VII, Section 3.4.1.c.1.c, No Build Areas, of the Code, to allow the construction of an accessory structure on

slopes greater than 30%; a variance of Article VII, Section 3.4.1.d.6, Development Site, of the Code to allow the finished floor of a structure to exceed (5') above natural grade; and a variance of Article III, Section 2.3.6.b.1, Height Restrictions, of the Code, and Section 3.8.2.d.2 of the Tesuque Ordinance to allow the accessory structure to exceed the 18' height limitations for structures on a 15% slope or greater.

2. The twenty acre lot was created in 1981, and is recognized as a legal lot of record. Currently, there is a 4,300 square foot residence on the property which is a legal non-conforming residence. The Property is located in Santa Fe County at 11 Via Vecino, within the vicinity of Tesuque. The Applicant established ownership of the Property by providing a deed recorded as Instrument #1652127, in the Office of the Santa Fe County Clerk.

3. In 1998, the previous property owner was granted a significant variance which allowed the disturbance of 30% slopes and greater for a 549 square foot addition to the existing residence. A permit for the addition was issued in 1999.

4. On July 17, 2014, Building and Development Services received a complaint regarding the unpermitted development on the subject property. On July 21, 2014, Code Enforcement conducted an inspection on the property and issued a Notice of Violation for unpermitted development and disturbing slopes in excess of 30%. A stop work order was placed on the construction and no further work has been done.

5. The notice requirements set forth in the Tesuque Community Zoning District Ordinance, § 3.12 and Article II, § 2.4.2, of the Code were met. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty-one days on the property, beginning on February 25, 2015. Additionally, a notice of hearing was

published in the legal notice section of the Santa Fe New Mexican on February 26, 2015, as evidenced by a copy of that legal notice contained in the record. All adjacent property owners were given notice of the Application by certified mail.

6. The applicable requirements under the Santa Fe County Land Development Code, Santa Fe County Ordinance No. 1996-10, (Code) which governs this application are:

a. Article VII, § 3.4.1.c.1.c, No Build Areas, of the Code states, “[t]he following areas shall be set aside from use for development...[n]atural slopes of thirty percent (30%) or greater.”

b. Article VII, Section 3.4.1d.6, Development Site, of the Code states, “[b]uildings shall be constructed only within development sites. For a structure built on a natural slope of over twenty percent (20%), the finished floor elevation at any point shall not exceed five feet (5') above the natural grade below that point.”

c. Article III, Section 2.3.6.b.1 of the Code and § 3.8.2.d.2 of the Tesuque Ordinance, Height Restrictions, states:

The height of any dwelling or residential accessory structure located on land which has a natural slope of fifteen percent (15%) or greater shall not exceed eighteen feet (18'). The vertical distance between the highest point of a building and the lowest point of a building at natural grade or finished cut grade, whichever is lower, shall not exceed thirty feet (30'). The Code Administrator may waive this requirement if the portion of the structure located on land over 15% slope is incidental to the entire site.

d. Article II, Section 3.1 of the Code provides:

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 of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety.

e. Section 3.1 also provides that, “[i]n 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.”

f. Article II, Section 3.2 provides that “[i]n no case shall any variation or modification be more than a minimum easing of the requirements.”

7. The Applicant stated the variance is needed to provide an area for dry storage, a seasonal workshop for his hobbies, and to reduce the noise and dust that routinely accompanies his stone and wood carving hobbies. The Applicant further stated that the only other location on the property that met Code criteria is located on a ridge top which is inaccessible. Staff conducted a site visit and confirmed that there were no other Code compliant locations on the property to place the accessory structure. The site contains slopes of 30% and greater and has limited area less than 30% all of which are inaccessible.

8. At the Public hearing before the BCC on May 12, 2015, staff recommended denial of the requested variance. However, staff additionally recommended the imposition of conditions if the Application was granted, since the Application was not granted the conditions are not included in this Order.

9. At the public hearing, two letters were provided in support of the variance. In opposition of the variance request, Karl Sommer, Attorney for the Tesuque Valley Community Association, spoke. Mr. Sommer asserted that the applicant failed to present any hardship, which is necessary to obtain a variance. Additionally, he addressed that this Application does not comply with the intent of the Code.

10. At this public hearing a motion was made by Commissioner Roybal to deny the requested variance, and the motion was seconded by Commissioner Stefanics. The decision of the BCC ended in a 2-2 tie with Commissioners Chavez and Anaya voting in favor of the requested variance. Commissioner Holian was not present for the vote. Under Commission Rules of Order, Resolution No. 2009-2, Article VI, Section 7, “[i]f a vote results in a tie and one

or more members are absent for a reason other than voluntary or involuntary disqualification, the item shall be tabled until the next meeting...” In compliance with that rule, the case was automatically tabled until the June 9, 2015, BCC meeting, at which time a greater number of Commissioners were present.

11. At the June 9, 2015, BCC hearing, the BCC voted on the motion with the entire 5 member Commission present. Commissioner Roybal recused himself from the vote, Commissioners Stefanics and Holian voting in favor of the motion to deny the Application, and Commissioners Anaya and Chavez voting in opposition to the motion, the vote again resulted in a 2-2 tie.

12. In accordance with the Commission Rules of Order, Resolution No. 2009-2, Article VI, Section 7, “[i]f the vote results in a tie as a result of a voluntary or involuntary disqualification, the motion is lost.” The New Mexico Supreme Court case, *Patron v. City of Albuquerque*, 1983-NMSC-01, ¶ 7, 99 N.M. 3311, instructs that when a Board is making a decision for which the party has a burden to secure a majority vote and the vote results in a tie, “[a] tie vote does not constitute a majority” and this tie vote results in denial of the request. A variance application requires that an applicant demonstrate that strict compliance with the Code requirements would result in extraordinary hardship to the applicant. The Code places the burden of proof on the applicant. A majority vote in favor of the variance is necessary to obtain the variance. In the instant case, because the tie vote is not a majority vote, the tie constitutes a denial of the variance.

13. The Applicant failed to meet his burden of proof that strict compliance with the requirements of the Code would result in extraordinary hardship 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. The Applicant failed to demonstrate that compliance with Code provisions at issue would result in an arbitrary and unreasonable taking of property or exact hardship. Additionally, the Applicant failed to demonstrate that a variance from the Code would not result in conditions injurious to health or safety, that granting the variance would not nullify the purpose of the Code, and that the variance requested was a minimum easing of the Code.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby denies the request for a variance of Article VII, Section 3.4.1.c.1.c of the Code to allow the construction of an accessory structure on slopes greater than 30%; a variance of Article VII, Section 3.4.1.d.6 of the Code to allow the finished floor of a structure to exceed (5') above natural grade; and a variance of Article III, Section 2.3.6.b.1 of the Code and Section 3.8.2.d.2 of Tesuque Ordinance to allow the accessory structure to exceed the 18' height limitations for structures on a 15% slope or greater. The motion to deny resulted in a 2-2 tie vote, with Commissioner Roybal recusing himself. This tie vote constitutes denial of the variances.

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

just specifies some of the certain conditions that the league will use, for instance the concessions, the solid waste management, those sorts of things. It's actually being drafted right now. We modeled it after Bernalillo County's

COMMISSIONER ROYBAL: Okay, and is there going to be an amount of liability insurance?

MR. LEIGLAND: Mr. Chair, Commissioner Roybal, one million dollars.

COMMISSIONER ROYBAL: On million dollars.

MR. LEIGLAND: Yes. And that's actually the paragraph that had the typo.

COMMISSIONER ROYBAL: And the general – why is it that we need the general yearly budget for these leagues? Financial –

MR. LEIGLAND: Mr. Chair, Commissioner Roybal, when we talked to other public entities, it's just to make sure that the leagues are in financial standing so half-way through the season they don't somehow dissolve and then they let the trash bin that's there, it needs to get fixed. So the other counties said - well, actually we talked to Bernalillo County, Sandoval County and Rio Rancho and the City of Santa Fe and they said make sure that they're good so that they don't leave you holding the bag if they're not in good financial standing.

COMMISSIONER ROYBAL: All righty. Thank you.

CHAIR ANAYA: There's a motion and a second. Is there any further discussion. Seeing none, this is a roll call. Madam Clerk.

Commissioner Anaya	Aye
Commissioner Chavez	Aye
Commissioner Holian	Aye
Commissioner Roybal	Aye
Commissioner Stefanics	Aye

VIII. B. Land Use Cases

1. CDRC CASE # V 14-5310 Patrick Lysaght Variance. Patrick Lysaght, Applicant, Requests a Variance of Article VII, Section 3.4.1.c.1.c (No-Build Areas) of the Land Development Code to Allow the Construction of an Accessory Structure on Slopes Greater Than 30%, a Variance of Article VII, Section 3.4.1.d.6 (Development Site) to Allow the Finished Floor of a Structure to Exceed (5') Above Natural Grade, and a Variance of Article III, Section 2.3.6.b.1 (Height Restrictions) of the Land Development Code and Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District to Allow the Accessory Structure to Exceed the 18' Height Limitations for Structures on 15% Slope or Greater. The Property is Located at 11 Via Vecino in the Traditional Community of Tesuque, within Section 31, Township 18 North Range, 10 East (Commission District 1) (For Deliberation and Vote Only)

CHAIR ANAYA: Commissioner Roybal.

COMMISSIONER ROYBAL: Okay, on this ordinance I need to recuse myself from further participation in this matter. After the May 12th Board of County Commissioners meeting I mistakenly discussed the application with the applicant. I am recusing myself to avoid any questions as to whether I could make a fair and impartial decision in this matter. I did not share the content of my conversation with the applicant with other Commissioners. Thank you.

CHAIR ANAYA: Thank you, Commissioner Roybal. Mr. Shaffer, I have a question. So on this item we had a vote. It was a tie. We're only here for deliberation. Do you have to remake the motion or is it off of the last motion, or how does that work?

MR. SHAFFER: Mr. Chair, I think that given that the motion that was made resulted in a tie, it was brought back to this matter, given that you do have another Commissioner who is here and present for the deliberation and vote and for the first time I think it would be appropriate for a new motion to be entertained by the Chair. That would be my recommendation.

CHAIR ANAYA: What's the pleasure of the Board?

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR ANAYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: I would move the same as I did last time to deny.

COMMISSIONER HOLIAN: Mr. Chair, I will second that, and I don't know -- are we allowed to make comments at this time or just vote.

CHAIR ANAYA: I think it's only deliberation. There's a motion. There's a second.

The motion tie by 2-2 voice vote, Commissioner Roybal having recused himself.

CHAIR ANAYA: Mr. Shaffer.

MR. SHAFFER: Mr. Chair, in my view, given that the burden for justifying a variance is on the applicant, in other words, the applicant has the burden that facts exist that would justify the granting of the variance. My understanding of New Mexico law in that circumstance is where you have a tie vote the effect of that is to have a denial of the requested variance. In simplest terms, the applicant has failed to carry their burden and so they failed to convince the Board as a body that the facts exist that would justify the granting of the variance. Given that I would propose that an order be brought forth for the Board consideration that recite the application, the proceedings, the evidence that was offered and sets for the position that due to the tie vote the application is deemed denied because the applicant failed to carry its burden of proof to establish entitlement to the requested variance.

CHAIR ANAYA: Thank you, Mr. Shaffer.

VIII. B. 6. CDRC CASE # V 14-5130 Juan Gonzalez Density Variance.

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5. These conditions are precedent to granting of the variance. If the Applicant fails to comply with any conditions set forth above within the time periods provided, the variance shall be denied.

MR. ROMERO: I stand for any questions.

CHAIR ANAYA: Mr. Romero, I have a question to start off. On the vote of the CDRC was to approve the variance 6-0 with all staff conditions?

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

CHAIR ANAYA: Does anybody else have any questions of staff? Seeing none, is the applicant present? Mr. Duran, is there anything that you would like to add?

[Duly sworn, Victor Duran testified as follows]

VICTOR DURAN: My name is Victor Duran. I reside at 18 Calle Lisa in La Cieneguilla. I was going to say I've been talking with Mr. Romero and he made me aware of the conditions I have to agree to in order to get this variance enacted, and I'm agreeable on those terms.

CHAIR ANAYA: Okay. Any questions of the applicant? Seeing none, thank you, Mr. Duran. This is a public hearing. We'll open up the public hearing. Is there anybody here that would like to speak in favor of or in opposition to this application? Is there anyone here who would like to speak in favor or in opposition to this application? Seeing none, I close the public hearing and I'd move for approval with staff conditions.

COMMISSIONER CHAVEZ: Second.

CHAIR ANAYA: I made a motion, Commissioner Chavez seconds. Is there any further discussion? Seeing none.

The motion passed by unanimous [5-0] voice vote.

- X. A. 3. **CDRC CASE # V 14-5310 Patrick ght Variance. Patrick Lysaght, Applicant, Requests a Variance of Article VII, Section 3.4.1.c.1.c (No-Build Areas) of the Land Development Code, to Allow the Construction of an Accessory Structure on Slopes Greater than 30 percent, a Variance of Article VII, Section 3.4.1.d.6 (Development Site), to Allow the Finished Floor of a Structure to Exceed (5') Above Natural Grade, and a Variance of Article III, Section 2.3.6.b.1 (Height Restrictions) of the Land Development Code, and Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District to Allow the Accessory Structure to Exceed the 18' Height Limitations for Structures on a 15 percent Slope or Greater. The Property is Located at 11 Via Vecino in the Traditional Community of Tesuque, Within Section 31, Township 18 North Range, 10 East (Commission District 1)[Exhibit 8: Material from Applicant; Exhibit 9: Material in Opposition]**

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JOHN LOVATO (Case Manager): Thank you, Mr. Chair, Commissioners. Patrick Lysaght, Applicant, requests a variance of Article VII, Section 3.4.1.c.1.c, No-Build Areas of the Land Development Code to allow the construction of an accessory structure on slopes greater than 30 percent, a variance of Article VII, Section 3.4.1.d.6, Development Site, to allow the finished floor of a structure to exceed five feet above natural grade, and a variance of Article III, Section 2.3.6.b.1, Height Restrictions, of the Land Development Code, and Section 3.8.2.d of Ordinance 2000-13, Tesuque Zoning District to allow the accessory structure to exceed the 18-foot height limitations for structures on a 15 percent slope or greater. The property is located at 11 Via Vecino in the Traditional Community of Tesuque, Within Section 31, Township 18 North, Range 10 East, Commission District 1.

On March 19, 2015 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the variance requests by a 4-2 vote.

The subject lot was created in 1981 and is recognized as a legal lot of record. Currently, there is a 4,300 square foot residence on the property which is a legal non-conforming residence. In 1998, the previous property owner was granted a variance to allow the disturbance of 30 percent slopes and greater for a 549 square foot addition to the existing residence. A permit for the addition was issued in 1999.

On July 17, 2014, Building and Development Services received a complaint regarding unpermitted development on the subject property. On July 21, 2014, Code Enforcement conducted an inspection on the property and issued a Notice of Violation for unpermitted development and disturbing slopes in excess of 30 percent. A stop-work order was placed on the construction and no further work has been done.

After further review of the applicant's request, staff determined that the accessory structure also required a variance to allow the structure to exceed the 18-foot height limitation on slopes 15 percent and greater and a variance to allow the finish floor to be more than 5 feet above natural grade. The unpermitted 600 square foot accessory structure sits on slopes greater than 30 percent and is raised on 6"x 6" posts and contains no plumbing. The structure is 23'10" high, and the finish floor of the structure is seven feet above natural grade. A structural engineer determined that the structure is in compliance with all applicable State Building Codes and is structurally sound for required loads.

The applicant states the variance is needed to provide an area for dry storage, a seasonal workshop for hobbies, and reduce noise and dust that routinely accompany stone and woodcarving hobbies. The applicant further states that the only other location on the property that meets code criteria is located on a ridgetop and is inaccessible. Staff has conducted a site visit to confirm there are no other locations on the property to place the accessory structure. The site contains slopes of 30 percent and greater and has limited area less than 30 percent that are inaccessible.

Growth Management staff has reviewed this application for compliance with pertinent code requirements and finds the project is not in compliance with County criteria for this type of request.

Staff recommendation: Denial of variances from Article VII, Section 3.4.1.c.1.c, No-Build Areas, to allow the construction of a 600 square foot accessory structure which disturbs slopes in excess of 30 percent; a variance of Article VII, Section 3.4.1.d.6, Development Site, to allow the finished floor of the structure to exceed (5') above natural

grade; and a variance of Article III, Section 2.3.6.b.1 and of Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District, Height Restrictions, to allow the accessory structure to exceed the 18-foot height limitation for structures on a 15 percent slope or greater

At the March 19, 2015 County Development Review Committee meeting, the decision of the CDRC was to recommend approval with the following conditions. Mr. Chair, may I enter those conditions into the record?

CHAIR ANAYA: Yes, sir.

1. Water use shall be restricted to 0.25 acre-feet per year. A water meter shall be installed for the 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, Section 10.2.2 and Ordinance No. 2002-13)
2. The Applicant must obtain a Development Permit from the Building and Development Services Department for construction of the Accessory Structure. (As per Article II, Section 2).
3. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).

CHAIR ANAYA: Is the applicant present? Sir, if you'd come forward and please be sworn.

[Duly sworn, Patrick Lysaght testified as follows]

PATRICK LYSAGHT: My name is Patrick Lysaght. I live at 11 Via Vecino in Tesuque. Mr. Chair, Commissioners, I'd like permission to distribute a handout that can provide some background and context.

CHAIR ANAYA: Sure. You can give it to John and he can give it to us.

MR. LYSAGHT: What I'm distributing here is a few pages that include a summary statement, the request for variances, three of which I'll deal with individually, and there's an appendix that includes three emails that I've sent to our local members of the road association explaining our situation and our willingness to comply with all of their concerns as well as notes from adjacent property owners that have indicated no issues with our proposed project.

So I'd like to just simply start by saying that I made a big mistake. I was in fact building with a permit and the way this evolved was everything on the property, the driveway included and the house, everything is built on a very steep slope. All of it is that way. There's a deck on the back of the property that we purchased in November of 2011 that's on a much steeper slope and it's on posts just like this building in question. So I was a little naïve but I thought, it's not living space, there's no plumbing, there's no heating, and I did get a permit for power and I had it stubbed up. PNM approved a second meter because my distribution panel was completely full. So we went through all of this but it's just stubbed up so I can run extension cords for when I work there.

So right now I need that storage and I'd just like to say that when we purchased the property, on page 2 there, our decision to purchase the property was based on the declaration of protective covenants and building restrictions, originated in 1980 and amended in 1987. It says that in addition to one single-family dwelling there may be

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constructed on each tract customary outbuildings, garages – plural, car port, servants quarters, studio and/or one guesthouse and gatehouse, a stable and/or corral. That's the contract that I signed when I purchased the property.

So all of these things, where I needed the storage, we've got a two-car garage but it's completely full of art supplies and sculpture materials and so forth. We have two vehicles that we park outside and I've had two vehicles that we've had at the south end of town in storage since we purchased the property 42 months ago, because there's no place to put it. There's no flat land. I can bring those vehicles. It's cost me \$5,500 so far just in storage of vehicles. So you can see I need to get stuff out of the garage. I need to have it in dry storage. I don't need anything fancy; it's not living space.

So there was some issues associated with when we got the stop-work order it was very unfortunate because the project looked rather unsightly. It's on posts, on a slope and there's a lot of exposed cross-bracing that's not going to be visible when the rest of this project can be completed. It's about 60 percent done. So stopping a project right there, everybody was a little concerned about what's going on and this is an eyesore, but I can tell you that the whole plan was to be unobtrusive and to make this very discreet. In fact this building site is in front of my house and below it. The roof of this structure is below the foundation of my house. It's below the driveway grade level. We're trying to get everything down so it's unobtrusive and blends in. In fact we just planted 20 mature aspen, because 25 and 30 feet tall in that area that would be watered from harvesting n he roof. But even the roof of the building is a metal roof and it was designed with minimum pitch because of a concern of glare that might be bothersome to some neighbors.

The whole approach was to be a good neighbor and just try to get – but I did make that mistake of going ahead and building this. So that's where I stand. We have 9.5 acres. There's no level spot. We seem to have been given a set of restrictive covenants that I thought would be valid and the original owners applied for a variance on this same property that was much more severe that what I'm – they put an addition on a rooftop, or a hilltop, that built, cut into a hill in part and it was above the hills. So it was really something that would be more noticeable to neighbors and so forth. And that was 16 years ago and that was approved.

We have worked pretty tirelessly since I retired two years ago on trying to preserve the land. We're good stewards of the land. We've been putting in – trying to preserve the driveway with stone retaining walls on the hill. We're using the seeds from plants on our property to try to also mitigate erosion. We had a major downpour in September and some of our neighbors that have been in the area for over 30 years said this was the most extreme.

Well, interestingly, the only part of my property that wasn't impacted by this disastrous weather condition was the region underneath my building. I've also inquired about does it make sense for me, in terms of disturbing the land, to just have the posts. It's a total of 36 square feet of area on the slope where I've got posts that have been disturbed. But if you look at the full 600 square foot roof area, the slope underneath that, it's still less than two tenths of one percent of our land. So it's not like we're being haphazard about the land.

We also inquired about would it make sense to put a retaining wall underneath the

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structure. Two things could happen. The floor height now that's five feet, it says from the natural grade. So what happens if I put in a retaining wall and fill that? The floor would be – and the maximum height would also be within restriction.

So I think these things have to be determined case by case. So there's no real way of knowing whether it's better for the environment to excavate completely and built on level ground, or put in a retaining wall, or just build on a slope with the posts. So I don't even know today what the right answer is.

So our building, as John Lovato pointed out, as is, stopped in mid-construction, was inspected on site by a professional engineer from Hands Engineering. They approved everything the way it is now. They also approved my drawings for completion of the project. So as far as the structural integrity of what our plan is, it's very simple and it's also apparently robust enough in terms of engineering concerns.

As far as the aesthetic concerns I know that some neighbors that I've communicated with have indicated – I had Hardie board siding, for example, and they were recommending stucco – I've agreed. I'll just take that off if I can go forward with this project. I don't want to have any adversarial relationship with neighbors. If I could turn the clock back, I would. But here I am and I'm just trying to cooperate with everybody as best I can to move forward with this, knowing that it's going to blend in. It's not going to be obtrusive whatsoever. It's going to be completely functional from my planned use, and I'll also be able to bring my vehicles back to my property. Those are the kinds of things that provide a little context for this.

I think that in the appendix there's three emails that begin in November to our road association members. It's included here for completeness in terms of how I have tried to encourage everybody to voice their concerns so that we could cooperate and so that there's no animosity. There's nobody thinking I'm operating outside the law, or aesthetically doing something. There's no way that I'm going to do anything in that property that's going to adversely affect real estate property in the area and everybody that has communicated with me is convinced that that's the case. So they're not worried.

Also, we did get a notice that we sent out, certified mail, to all adjacent properties announcing the schedule for these meetings and so forth. There's 11 properties that are adjacent to ours. Three of them are owned by the Santa Fe Institute. The president of the Santa Fe Institute, Jeremy Sabloff, he wrote a letter saying he's not opposed to this and another letter that I got from another property owner, Henry Carey. Some of you may know him. Chairman and founder of the Forest Reserve Company. I'll just give you a quote about how he defines his business. "Using a structured process we help clients define a management strategy for their property that maximizes the value and beauty of their land." That's what he fights for. He has a letter saying he's unopposed to what I'm doing. Thank you very much for your time.

CHAIR ANAYA: Thank you, Mr. Lysaght. Are there any questions of the applicant from the Commission? Seeing none, this is a public hearing. Is there anyone here that would like to speak in favor of or against this case? Mr. Sommer.

KARL SOMMER: Members of the Commission, my name is Karl Sommer. My mailing address is Post Office Box 2476, Santa Fe, New Mexico. Mr. Chair, may I approach the bench. Members of the Commission, I'm here on behalf of the

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Tesuque Valley Community Association. They have hundreds of members. They have spent thousands of hours in showing their undying dedication to the preservation of their community, and to upholding, enhancing, and preserving the principles that you have in your code. And you all know that from the many presentations that have come in front of you. I'm here tonight on behalf of the association and its planning committee to oppose and vehemently oppose the granting of the variance in this case.

What this case is about is in lieu of asking for your permission the applicant is here asking for your forgiveness and mercy. He says to you, I made a mistake. Well, let's talk about that mistake. The mistake is he didn't use a permit and he didn't follow any of your regulations at all. And what he's asking you to do is to say, hey, compound my mistake by making it legal. We all know what needs to be done. The mistake needs to be corrected and I intend to show you tonight that the code prohibits this construction. The applicant has not and cannot demonstrate a hardship and this application should be denied.

What I've given you is stuff I've found off the web today and they are photographs of this house when Mr. Lysaght and his wife, Doctor – I don't know how to pronounce her last name – bought this million dollar house, and if you look at that first page it is a 4,850 square foot house with five bathrooms and five bedrooms and a two-car garage, according to this sheet on the MLS. The bought it on November 23, 2011. That's the date shown on that webpage. So we're not talking about a hovel. We're not talking about a small house where you have lots of people crammed in there and you have this need. We're talking about two people living in about 5,000 square feet on the top of a hill as I'll demonstrate to you.

If you go to the next page you'll see that Mr. Lysaght's webpage says what he's doing. He says here tonight he's retired. I don't know one way or the other whether he's retired, but if you look at his webpage, in 2001 he started incorporating woodcarving, stone-carving and metal sculpture into his work. And do you know what he wants to do on this property? Woodcarving, metal work, and he calls it a hobby. What we've got here is a potential home occupation. If he had come to you and said, I want a home occupation for these uses your answer would have been no because he doesn't meet any of your criteria.

On the next page that view is the view from their house. That's what they see. In other words, if you look down there that's what all the people looking up see. All those people see this house. That's just one of the views. The next page is the view of this house. And if you would look at this right here. This is this 4,850 square foot house, and you see that hole right in front of the house there that everybody can see from the valley? That's where he wants – that's where this building is going to go. He told you here tonight, he said you know what? This is neatly tucked, the top of this is neatly tucked below the driveway. Guess who doesn't see it. Guess whose unspoiled view of the valley is maintained. The applicant's. Guess whose view is not maintained. Everybody else in the community.

I submit to you that the claim that this was placed to preserve the view from elsewhere was simply there to preserve the view from his house. I pulled off Google Earth a photograph of this property from 2011. You see the long driveway? As you all

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know, there's a reason why people have very long driveways, because if the property is steep, in order to maintain a grade you have to have a very long driveway to get up to the top there. This is steep slopes, fragile slopes and very, very difficult terrain to build in. The only building site on this property was on the top of that ridge that you see there.

Go to the next page, it's the same photographs, and what I've done is is shown you what the view is like from down below in yellow, and all the red is the area where you have fragile 30 percent slopes. The one closest to the house is where this building is proposed to go. I submit to you that the purposes and the policies behind prohibiting 30 percent grades, heights, are all aimed at two things. One is to limit the damage to fragile slopes and the other is to prohibit the person from spoiling the view along steep and difficult terrain in areas just like those. Those are the purposes behind the code. You all know that because you've been enforcing the code for a long, long time. Those purposes would be absolutely nullified by granting this request.

It is not a matter or hardship when somebody wants a dry storage. That's a matter of preference. In a 4,850 square foot house with a two-car garage, this person wants dry storage for his art materials, and his art equipment. That's not a matter of hardship; that's a matter of preference. This person wants – he doesn't want the reasonable use and enjoyment of the property, he just wants more, and he wants it at the expense of your code and at the expense of his neighbors in the community.

Mr. Lysaght said he doesn't know what the solution is here. He told you that. He doesn't know whether there's – we know what the solution is: correct the mistake if that's what it was. It's very simple. Correct the mistake. There is no grounds. You should enforce the regulations as you have them. This is not a matter of hardship; this is simply a matter of preference. And I'll say to this. He told you, well, I've got cars stored off-site. My garage is chuck full of stuff. I've got to get it out of there. Did he own the cars when he bought the house? Did he own the equipment when he bought the house? Did he know what he was getting into when he bought a million dollar house on the side of the hill? That it didn't accommodate his cars and it didn't accommodate his equipment? Yes. He knew that. And he's here asking you to correct what was a mistake in the first place, if that's what it was.

I submit to you it wasn't a mistake. We're here because he wants more, not because there's a hardship. Please, on behalf of the association, we beg of you, enforce your code. The thousands of hours spent by hundreds of people enforcing the regulations deserve your consideration. Mr. Chair, thank you very much for your presentation. I know it's been a long night.

CHAIR ANAYA: Thank you, Mr. Sommer. Are there any other questions? Anybody else here that would like to provide feedback either for or against this. Applicant, you have an opportunity to make comments pertaining to some of the comments he made.

MR. LYSAGHT: I'd just like to clarify this a little bit. I think mostly what he said is pretty accurate. That is the place that I live. He seems to have – Mr. Sommer seems to have some sort of selective hearing because he wouldn't have made the accusations that he did about me if he simply paid attention when I explained about what the restrictive covenants include.

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CHAIR ANAYA: Mr. Lysaght, do me a favor. I'm going to give you an opportunity to respond but if you could just cut right to the issues that you want to respond to and leave out the he can't hear. Comments, like that. Just cut right to the comments as to what your refuting if you could.

MR. LYSAGHT: Okay. I don't want to pick this apart. I don't know what's the point of showing my website that I haven't update since 2000. I've been working as a woodworker and a stone-carver since 1980 so I do have a fair amount of equipment that doesn't fit in a library or a kitchen in my house or any other bedroom or anything like that. It's in the garage because it needs to have a shop. I expected to be able to have a shop on the property. That was the condition under which I purchased the property. So it's not like the previous speaker seemed to think that there's something personally that I'm doing personally to violate the community. And I just don't see it that way. In fact I've reached out to everybody. I'm just not used to if somebody had a question about what I was doing why they wouldn't come and talk to me before filing a formal complaint or coming after me with a lawyer, which is has also been a threat that I've received from another person in the community.

So I don't really – I don't understand the approach. Okay, so let's work this out. Here's an existing condition; let's find a solution that everybody can live with. That's the way I go about it and try to keep it not personal. So I'm just a little bit frustrated and at a loss when people deal with me that way because it's so unnecessary. I don't claim that there's a hardship. I claim that I bought a property that I fully expected to be able to continue with my hobbies. So that now seems like something I either can get with this project or I'm going to have to come back time and time again to try to get what I need on that property. It seems like it was – I won't say guaranteed but it was in my restrictive covenants as what I can do on my land and now I'm just trying to go about doing that as best I can from this point forward.

CHAIR ANAYA: Okay. Thank you, Mr. Lysaght. Are there any other members of the public that would like to speak in favor of or against this applicant? Seeing none, the public hearing is closed. We'll go to my Commissioners for questions. I have one question for you sir, or maybe staff. In the – you made a comment about the outside surface of the structure and that you're willing to stucco it.

MR. LYSAGHT: One neighbor said I should make it stucco so it matches the house. I hadn't plan to do that. It's Hardie board, so it's a concrete product that would not be affected by weather over time, and I was going to paint it the color of the house. But I agreed. I'll take the Hardie board off and I'll stucco it, because I'm just trying to cooperate and that was a request.

CHAIR ANAYA: Okay. That's the only question I have. So Mr. Lovato, that wasn't included in any condition that the CDRC provided.

MR. LOVATO: Mr. Chair, you're right. That wasn't included in any condition but it is included within the ordinance that they do earth tone colors and conform to the ordinance.

CHAIR ANAYA: Okay. So earth tone colors but not necessarily a plastered or stuccoed finish, but that's something that we can keep in mind whatever the determination of the Commission is.

MR. LOVATO: Mr. Chair, that's correct.

COMMISSIONER CHAVEZ: Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, there is a staff recommendation and I want to ask the applicant if he had a chance to look at the staff recommendations.

MR. LYSAGHT: Can you be specific please?

COMMISSIONER CHAVEZ: Well, there was one staff recommendation that I'll focus on and then maybe staff can share the other recommendations with you but water use shall be restricted to 0.5 acre-feet per year. A water meter shall be installed for the residence and annual water meters 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.

MR. LYSAGHT: On the water use, there's no water, there's no plumbing at this spot. If it's required that I have to have a sprinkler system, then I'll have water for that, but right now the only water associated with this is catchment. I have three 60-gallon storage barrels and that's going to be supplemented by a 3,000-gallon cistern.

COMMISSIONER CHAVEZ: I don't discourage that, sir but I'll read the recommendation again. Water use shall be restricted to 0.5 acre-feet per year. A water meter shall be installed for the residence. That's the residence that you're living in.

MR. LYSAGHT: That's all fine. We have our water monitored and we're on a well that we share with two other residences there, so we're well within the restrictions. In fact we're not at – it's just my wife and I that live there full time and we're only there really about seven months of the year. So we don't really use – we don't irrigate at all, so other than what we get from catchment. So our water use is extremely low.

COMMISSIONER CHAVEZ: Well, I'm going to read again. A water meter shall be installed for the residents. Annual water meters shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded.

MR. LYSAGHT: We have a record of them. Our neighbor, Sam Burford, who has been paying for the power for the pump as well as monitoring the water meter, so we just get a bill from him annually, but I can get that usage number if that's what you're concerned with. We have that in place for the residence.

CHAIR ANAYA: If we could, on that point, Commissioner. Mr. Shaffer, just a thought. Commissioner Chavez brings up a good point. For this case or any other case if we impose a water restriction and it's on a shared well, how could we legally bind the other parties to the shared well agreement? Or could we? Could we bind one of three parties in this case to water restrictions? Since it doesn't have anything to do with this case.

MR. SHAFFER: Mr. Chair, I don't read the condition as impacting the usage by the other property owners that have an interest in the well. Rather, I read this condition as being specific to the use by the property owner in front of you.

CHAIR ANAYA: How do you do that? How do you do that if you have three property owners and let's say they can use three acre-feet? How do you decipher? Are we saying the meter's not on the well but on the line to his house? Is that what we're

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saying? Because we can do it that way. We could say that a well meter be installed at the trunk line into his yard, I suppose. But we couldn't put one on the well itself because that serves to other people. So I guess I answered my own question.

MR. SHAFFER: I think that's correct, Mr. Chair. I would defer to Land Use staff but the condition states a water meter shall be installed for the residence so I read that as somehow just monitoring the use of the residence as opposed to the entire well

CHAIR ANAYA: Got you. Vicki, do you have something you want to add?

VICKI LUCERO (Building & Development): Mr. Chair, I just wanted to clarify the water restriction on this – the condition requiring the water restriction is actually .25 acre-feet. I think it was read into the record as .5. So it's a quarter acre-foot that we're recommending.

CHAIR ANAYA: Okay. Thank you. So Commissioners, this is District 1 I believe. Commissioner Roybal, any thoughts?

COMMISSIONER ROYBAL: I appreciate the fact that he did take ownership of the mistake he made but it is something that I would think most people would understand is common sense to check with your local county and make sure that you need to get these building permits or at least find out what the rules and regulations are before you start building.

MR. LYSAGHT: I actually wasn't that naïve. I did get the permit for power, and I misinterpreted the explanation about the 15 percent slope. I thought it was 15 degree from the horizontal. So if you go out 30 feet and you drop down nine it's a 30 percent slope but it's only a 17 degree angle. So I was within – I wasn't building on something that was greater than a 15 degree angle from the horizontal, and that was what I was guilty of, and I thought, it not being living space, no plumbing, no electricity inside of that kind of thing, no heating or anything, I thought I was okay. And I thought the slope was okay when I went ahead with it.

COMMISSIONER ROYBAL: I understand and I feel for your situation, but in this situation I'd have to go with what staff recommends and it would be the denial. So I'd like to make a motion as what staff has recommended is a denial for this.

COMMISSIONER STEFANICS: I'll second.

CHAIR ANAYA: There's a motion to deny from Commissioner Roybal with a second from Commissioner Stefanics. I have a question, I guess a logistical question. So a motion to deny gets approved then is the rectified situation him tearing the structure down?

MR. LOVATO: Mr. Chair, Commissioners, that would be the actual next step if the motion is denied in the approval.

CHAIR ANAYA: So just following that same vein. Is there a legal way, if the structure is torn down, obviously, that another structure could be erected on this property somewhere else?

MR. LOVATO: Mr. Chair, Commissioners, he would have to apply for a variance, just due to the nature of the topography on the property.

CHAIR ANAYA: No matter where a structure is built, he would have to get a variance.

MR. LOVATO: Mr. Chair, I would have to get a slope analysis to determine whether there's any other feasible area for this but judging from the property and slope that I pulled from our topography department there's really no other place to build on this property.

CHAIR ANAYA: Okay. Other questions from the Commission?

COMMISSIONER CHAVEZ: Just a comment, Mr. Chair. I know that this is an after the fact request. The structure is already there. It's after the fact. This is not the first time that a case like this has come before us. I think maybe in some cases people might have done it intentionally. Maybe it was an oversight. Maybe it was a mistake. But it's happened, and it's happened more than once in different parts of the county. So I don't know that having this torn down to be placed possibly somewhere else on the property would be a solution. If the applicant has agreed to certain conditions and agreed to change the color and the finish of the structure to help it blend in more I think that that would go a long way but I'm just not sure that having this individual tear that structure down is a solution. But those are just my comments right now and I guess it's unfortunate that when someone is in a situation like this it's very tenuous and unfortunate so I guess I'm kind of feeling for the applicant at this time. But that's all I'll say at this time, Mr. Chair. Thank you.

CHAIR ANAYA: Commissioner Roybal and Commissioner Stefanics –

COMMISSIONER STEFANICS: Call for the question.

CHAIR ANAYA: Well, I guess what I was trying to alleviate was maybe a split vote. Okay.

The motion to deny tied 2-2 with Commissioner Roybal and Commissioner Stefanics voting for denial and Commissioner Anaya and Commissioner Chavez voting against. [Commissioner Holian was not present for this action.]

CHAIR ANAYA: It's two to two so we'll have to deliberate just the question at the next meeting. Is that correct, Greg?

MR. SHAFFER: That's correct, Mr. Chair, under the Board's rules of order. If a motion results in a tie and a member is absent, other than due to voluntary recusal the item is tabled until the next meeting at which a greater number is present.

CHAIR ANAYA: I guess what I was going to say before the vote is if there was any alternative that would fulfill concerns of the neighbors as well as not affording it to be torn down. I guess that's what I was going to say. Is there any work that the applicant can do with the neighbors or Mr. Sommer or others that's in between tearing the structure down, by maybe making modifications to the structure.

COMMISSIONER ROYBAL: I'd like to say something.

CHAIR ANAYA: Commissioner Roybal.

COMMISSIONER ROYBAL: I do agree with that. It's hard to make a decision like that and I really feel like you are an honorable individual and it seems like

DRAFT

you would like to work towards a resolution so I would like to afford that opportunity for you also to meet with Karl Sommer and the people that are opposed at this time as well. If it's something that we can find a resolution to I would also be okay with that.

CHAIR ANAYA: Thank you, Commissioner Roybal. And Commissioner Stefanics, I didn't hear you call the question. My apologies.

MR. LYSAGHT: Thank you all very much for your time and for your recommendations.

- X. A. 4. **CDRC CASE # V/ZA/S 10-5352 Rio Santa Fe Business Park.**
Peña Blanca Partnership, Applicant, Jim Siebert, Agent,
Request a Master Plan Zoning Amendment to an Existing
Zoning Approval and Preliminary and Final Plat and
Development Plan Approval to Create Four (4) Commercial
Lots on a 31.44 + Acre Parcel to be Utilized as a
Commercial/Industrial Use. The Applicant Also Requests a
Variance to Allow a Cul-de-Sac (Dead-End Road) to Exceed
500 Feet in Length. The Property is Located at 54 Colony
Drive, North West of N.M. 599, North of Paseo de River,
Within Section 10, Township 16 North, Range 8 East,
(Commission District 20) [*Exhibit 10: Baca Appeal on Rio Santa
Fe Business Park; Exhibit 11: Baca Appeal on PNM Solar Center*]

JOSE LARRAÑAGA (Case Manager): Thank you, Mr. Chair. Peña Blanca Partnership, Applicant, Jim Siebert, agent, request a master plan zoning amendment to an existing zoning approval and preliminary and final plat and development plan approval to create four commercial lots on a 31.44-acre Parcel for commercial/industrial use. The applicant also requests a variance to allow a cul-de-sac to exceed 500 feet in length. The property is located at 54 Colony Drive, northwest of NM 599, north of Paseo de River, within Section 10, Township 16 North, Range 8 East.

On February 19, 2015 the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend approval by a 4-1 voice vote of the applicant's request for master plan zoning amendment to an existing zoning approval, preliminary and final plat and development plan approval to create four commercial lots on a 31.44-acre parcel for commercial/industrial use and a variance to allow a cul-de-sac to exceed 500 feet in length, with staff conditions subject to modification of staff condition #8. That was to include "unless a site threshold assessment is acceptable to the New Mexico Department of Transportation."

On December 14, 2010 the Applicant was granted Master Plan Zoning approval to allow commercial/industrial uses on 31.44 acres by the Board of County Commissioners. The conditions of approval included: water shall be supplied by Santa Fe County via an extension of service from the existing Buckman Direct Diversion transmission line; the Business Park wastewater system shall connect to the City of Santa Fe sewer system; the site would take access via the NM 599 Frontage Road.

The applicant is requesting an amendment to the approved Master Plan to allow the use of individual onsite wells as a water source for the development as a substitute for

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 15-5120

VARIANCE

CYNTHIA CARTER, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) of Santa Fe County (County) for hearing on August 11, 2015, on the Application of Cynthia Carter (Applicant) for a variance of Article III, § 10, Lot Size Requirements, of Santa Fe County Ordinance 1996-10, the Santa Fe County Land Development Code (Code) to allow two dwelling units on 1.458 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 Applicant requests approval of a variance of Article III, § 10, Lot Size Requirements, of the Code to allow two dwelling units on 1.458 acres.
2. The Property was created in 2007, by way of Family Transfer Land Division and is recognized as a legal lot of record. The Property is located in Santa Fe County at 17 Cloudstone Drive, within Section 6, Township 16 North, Range 10 East (Property), within the vicinity of Old Santa Fe Trail.

3. The Applicant acquired the real property by warranty deed recorded on January 16, 2013, as Instrument number 1693868, in the records of the Santa Fe County Clerk.
4. There is currently a 1,400 square foot residence on the lot.
5. Noticing requirements were met as per Article II, § 2.4.2, of the Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming the public notice posting regarding the Application was made for twenty-one (21) days on the property, beginning on May 26, 2015. Additionally notice of hearing was published in the legal notice section of the Santa Fe New Mexican on May 21, 2015, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailings of notices of the hearing were also contained in the record for all adjacent property owners.
6. The applicable requirements under the Santa Fe County Land Development Code, Santa Fe County Ordinance No. 1996-10, (Code) which governs this Application are:
 - a. Per Article III, § 10 of the Code:

The Property is located within the Mountain Hydrologic Zone which is 80 acres per dwelling unit but lot size can further be reduced to 20 acres per dwelling unit with signed and recorded water restrictions of 0.25 acre feet. At the time of the small lot family transfer the Extraterritorial Zoning Ordinance was in effect and this lot was part of the Santa Fe Urban Area which allowed for 2.5 acre lots, and small lot family transfers were allowed as one half of the minimum lot size.

- b. Article II, § 3, Variances, of the Code states:

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 condition 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 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.

c. Article II, § 3.1 concludes that, “[i]n 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.”

d. Article II, § 3.2 states, “[i]n no case shall any variation or modification be more than a minimum easing of the requirements.”

7. The Applicant would like to build a 700 square foot guesthouse with a separate septic system on the property.
8. The Applicant stated that if she is able to build a guesthouse to live in she can rent out the main house allowing her to afford the mortgage. Additionally, she stated that the incoming Sustainable Land Development Code would allow for a guest house but she is unable to wait for the new Code to come into effect.
9. At the public hearing before the BCC on August 11, 2015, staff recommended denial of the Application, and suggested the following conditions if approval were granted:
 - a. 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);
 - b. The Applicant must obtain a development permit from the Building and Development Services Division for the additional dwelling. (As per Article II, § 2);

- c. The Applicant shall provide a new liquid waste permit for the additional dwelling unit from the New Mexico Environment Department with the Development Permit Application. (As per Article III, § 2.4.1a.1 (a) (iv);
 - d. The placement of additional dwelling units or division of the land is prohibited on the property. (As per Article III, § 10);
 - e. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application. (As per 1997 Fire Code and NPFPA Life Safety Code);
10. In support of the Application, the Applicant stated that she is in agreement with the conditions.
11. At the public hearing Dennis Kinsel spoke in opposition to the Application. No one from the public spoke in support of the Application.
12. The Applicant stated that compliance with the current Code would exact a hardship because she can no longer afford her mortgage and does not want to lose her property. Additionally, the incoming Sustainable Land Development Code will allow this guest house but she is unable to wait for the new code because she wants to utilize the current low mortgage rates.
13. Granting this variance request will not result in conditions injurious to health or safety, it will not nullify the purpose of the Code, and it is a minimal easing of the Code.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of the Land Development Code, Article III, § 10, Lot Size Requirements, to allow two dwellings on 1.458 acres subject to the conditions set

forth in paragraph 9. The motion to approve the variance passed by a 3-0 voice vote.
Commissioners Anaya and Holian were not present.

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

County open space. Now, do we want to put open space on here or not? Are we going to pass that request on to COLTPAC? Okay, I'm comfortable passing it on to COLTPAC but would one of you guys make a note of that.

MR. AABOE: Mr. Chair, Commissioner, absolutely. We'll note to –

COMMISSIONER STEFANICS: If I could find the email I'll send it to you.

MR. AABOE: Absolutely. Thank you very much.

COMMISSIONER STEFANICS: Thank you.

COMMISSIONER CHAVEZ: Commissioner Stefanics, you just want that detail noted in the ICIP list for that particular project?

COMMISSIONER STEFANICS: No, it's not going to go on ICIP it's going to be referred to COLTPAC.

COMMISSIONER CHAVEZ: Okay. All right.

MR. AABOE: Will do, Commissioner.

COMMISSIONER CHAVEZ: So this is also a public hearing. I want to ask if there's anyone here this evening that would want to speak in support or opposition of this resolution adopting projects for inclusion in the infrastructural capital improvement plan? Seeing none, I will then close the public hearing portion of this item and ask what the pleasure of the Commission would be.

COMMISSIONER STEFANICS: Mr. Chair, I would move acceptance of the ICIP prepared for us after several public hearings.

COMMISSIONER ROYBAL: Second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Holian was not present for this action.]

COMMISSIONER CHAVEZ: Motion carries. Thanks for your patience, Erik.

VIII. D. Land Use Cases

2. **CDRC CASE # V 15-5120 Cynthia Carter Variance. Cynthia Carter, Applicant, Requests a Variance of Article III, § 10 (Lot Size Requirements) of Santa Fe County Ordinance No. 1996-10, the Land Development Code (Code), to Allow Two Dwelling Units on 1.458 Acres. The Property is Located at 17 Cloudstone Drive, within The Vicinity of Old Santa Fe Trail, within Section 6, Township 16 North, Range 10 East (Commission District 4). John Lovato, Case Manager [Exhibit 8: Opposition letter, Dennis Kensil]**

JOHN LOVATO (Case Manager): Thank you, Mr. Chair. Cynthia Carter, Applicant, requests a variance of Article III, § 10, Lot Size Requirements, of Santa Fe County Ordinance No. 1996-10, the Land Development Code (Code), to allow two dwelling units on 1.458 acres. The property is located at 17 Cloudstone Drive, within the vicinity of Old Santa Fe Trail, within Section 6, Township 16 North, Range 10 East,

Commission District 4.

On June 18, 2015, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the requested variance with a 3-1 voice vote. On September 13, 2007, the Extraterritorial Zoning Commission approved a Small Lot Family Transfer Land Division of a 2.918 acre lot into two equal 1.458 acre lots, creating two legal lots of record. The Applicant acquired one of the lots in 2013. Currently, on the property there is a 1,400 square foot residence, which is served by an onsite well and septic system.

The Applicant requests a variance of Article III, § 10, Lot Size Requirements, of the Code, to allow two dwelling units on 1.458 acres. The Applicant would like to build a 700 square foot guesthouse with a separate septic system on the property. The Applicant asserts that she can no longer afford her mortgage and does not want to lose her property. She states that if she is able to build a guesthouse to live in she can rent out the main house. In the Applicant's letter she addresses that the Sustainable Land Development Code is expected to be implemented within the next few months, which would allow for a guesthouse. Therefore, the Applicant requests the variance, rather than waiting, due to the rising interest rates. She would like to start building before the start of winter.

Growth Management staff has reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request. Staff recommended and the decision of the CDRC was to recommend denial of the request for a variance of Article III, §10, Lot Size Requirements, of the Code. If the decision of the BCC is to approve the variance request, Staff recommends imposition of the following conditions. Mr. Chair, may I enter those into the record?

COMMISSIONER CHAVEZ: Yes.

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 the additional dwelling unit 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).

MR. LOVATO: Thank you and I stand for any questions.

COMMISSIONER CHAVEZ: Questions of staff?

COMMISSIONER ROYBAL: How long did you say that it was before

guest houses are going to be allowed with the new ordinance? When will that be passed?
Did you say three months?

MR. LOVATO: Mr. Chair, Commissioner Roybal, the Sustainable Land Development Code has been approved but we're waiting on the zoning map.

COMMISSIONER ROYBAL: And how long do you think before that will be approved or complete?

MS. LUCERO: Mr. Chair, Commissioner Roybal, the goal is to have that implemented probably by the end of the year beginning of next year.

COMMISSIONER ROYBAL: Thank you.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER STEFANICS: So is the issue here, this question is for staff. Is the issue here is it's just because the code is not finalized or is the issue here that the main house was going to be used for a rental?

MR. LOVATO: Mr. Chair, Commissioner Stefanics, the code is not finalized yet. That's the issue right now and that's why the variance is being brought forward.

COMMISSIONER STEFANICS: Thank you for the clarification. Thank you very much.

COMMISSIONER CHAVEZ: This is also a public hearing so I'd like to ask if there is anyone in the audience that would like to speak in favor or support of this request, please come forward? The applicant, do you have anything you want to share with the Commission at this time? I know you've been waiting also.

[Duly sworn, Cynthia Carter testified as follows]

CYNTHIA CARTER: Yeah, hopefully the second time is the charm. I wanted to get this passed because the mortgage rates are really low right now and I need to get a loan in order to build this house and my situation is such that if I wait and the mortgage rates go up it's not going to be possible for me to afford having the mortgage for the guest house and my main mortgage. And I really need to have this guest house to move into because I can no longer afford my mortgage. I want to mention that I love my house. I love my property. I have a water catchment system that collects water off of the roof and goes into an underground tank. I am a very conscious steward of the land and when I build this guesthouse I would be very careful and I would – I would not be using a lot of resources and the – basically, yeah, that's – I just really would like to be able to do this now rather than wait until later when the code passes because I don't know what the mortgage rates are going to be like and I don't want to let go of my house. I love my house. I just got it two years ago and my financial situation changed since then.

COMMISSIONER CHAVEZ: Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, if this was approved is the applicant willing to abide by all the staff recommendations?

MS. CARTER: Yes.

COMMISSIONER STEFANICS: And you've seen them?

MS. CARTER: Yes, I have.

COMMISSIONER STEFANICS: And I have one other question of staff.

COMMISSIONER CHAVEZ: Yes, go ahead Commissioner Stefanics.

COMMISSIONER STEFANICS: What is the process that someone needs to go through to rent out a home?

MR. LOVATO: Mr. Chair, Commissioner Stefanics, we really don't have a process for that. It would just be coming in for a building permit administratively and complying with code.

COMMISSIONER STEFANICS: This isn't building. She wants to use her existing home for rental. So would it be a business and would she need a business license under our new code?

MR. LOVATO: Mr. Chair, Commissioner Stefanics, she would not.

COMMISSIONER CHAVEZ: Can I ask a follow-up question. What if the intent was to do a short term rental; do we have any provisions allowing or disallowing short term rental?

MR. LOVATO: Mr. Chair, there is nothing in our code.

COMMISSIONER CHAVEZ: Okay, just checking. Any other questions of the applicant or staff? No. Sir, if you want to comment on this case you are more than welcome to.

[Duly sworn, Dennis Kensil testified as follows]

DENNIS KENSIL: My name is Dennis Kensil and my address is 9 Cloudstone Drive. I live two lots away from the applicant on 2.5 acres with water supplied by a domestic well of limited capacity. As a general rule I am not opposed to guest houses nor am I opposed to new development. I have a guest house on my property that was permitted and built in the mid-1980s and I have developed and sold many residential home sites in the County and City of Santa Fe since 1988.

Recently, the single septic system that serves my house and guest house failed because of the rocky terrain and poor soils in that part of the county the state required that I double the size of my leach field and install an alternate system to accommodate the wastewater produced on my property. I was fortunate to live on a property large enough, 2.5 acres, to allow for the expansion of that leach field. I was told that eventually all leach fields need to be retired and new ones installed.

My concern with the current application is how the County processes these requests. One, it does not appear that the County requires any water availability report or soils analysis as part of a variance request to increase density. How does the County assure existing property owners that variances of the kind proposed by the applicant do not compromise the water quality and quantity in surrounding domestic wells? Two, when the applicant's lot was created in 2007 the EZC limited water use to .25 acre-foot per year and required water restrictions to be recorded against the property. Should the County be concerned about violating its own conditions of approval by the addition of a second dwelling unit on the property? Three, it does not appear that the County discussed the use of an advanced treatment system to accommodate wastewater from both the main house and the proposed guest house through a single-point of discharge. Wouldn't such a condition limit ground water risk from multiple septic tanks? Four, has the County discussed the applicant's willingness to expand the existing home and wastewater system rather than asking for a variance for a guest house and second septic system? Finally, is it legitimate to apply a code that is not yet in effect as justification for a second dwelling unit but then that same code is disregarded when it prohibits multiple

septic tanks? If approved, how are current property owners protected when the County picks and chooses which part of the Code to apply for a variance request?

Thank you.

COMMISSIONER CHAVEZ: Thank you, sir. So that closes the public hearing portion of the meeting. Any further questions of staff? Comments?

COMMISSIONER ROYBAL: Mr. Chair, in the light we will in four months be approving the Sustainable Land Development Code and the applicant will have the right to build this guest house with that code, I'd like to move for approval.

COMMISSIONER CHAVEZ: And I'll second and just note for the record that one restriction that goes along with the variance states that water use shall be restricted to .25 acre-foot per year per home and that a water meter shall be installed for each residence and that annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. So that's on the water side of it. On the septic system, staff is suggesting that these septic systems be updated and using the most modern technology available to us. Is that an accurate observation?

MR. LOVATO: Mr. Chair, in the report it should be stated that a new liquid waste septic permit shall be – so if I can note that on there.

COMMISSIONER CHAVEZ: Okay, that's fine. I think that's one concern that was mentioned earlier and that's a concern that we should not ignore. Okay, so there's a motion and a second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Holian was not present for this action.]

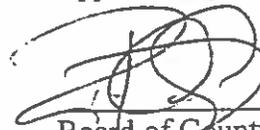
IX. Concluding Business

A. Announcements

B. Adjournment (Action Item)

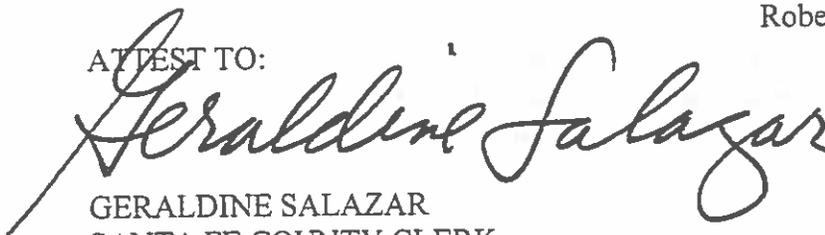
Having completed the agenda and with no further business to come before this body, Chair Anaya moved to adjourn and Vice Chair Chavez declared this meeting adjourned at 8:05 p.m.

Approved by:



Board of County Commissioners
Robert A. Anaya, Chair

ATTEST TO:



GERALDINE SALAZAR
SANTA FE COUNTY CLERK

9-8-2015



