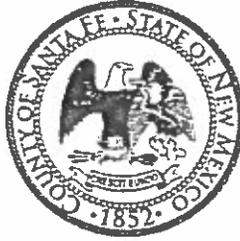


Henry P. Roybal
Commissioner, District 1

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. V15-5000
VARIANCE
VICTOR DURAN

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on May 12, 2015, on the Application of Victor Duran (Applicant) for a variance of Santa Fe County Land Development Code, 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), Section 6.4, Zoning Density, to allow two dwelling units on 2.5 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 conditions, and makes the following findings of fact and conclusions of law:

1. The Applicant requested a density variance to allow two dwelling units on 2.5 acres located at 18 Calle Lisa, within Section 7, Township 16 North, Range 7 East (Property).
2. The Property is a part of the Vista Land Subdivision, created in 1974, and is a legal lot of record.
3. The Applicant and his wife acquired the real property by warranty deed recorded on the 21st day of June 1977, in Book 349, Page 442, in the records of the Santa Fe County Clerk.

4. After receiving a Notice of Violation from Santa Fe County, the Applicant applied for a variance. The Notice of Violation arose from a written complaint from an adjoining neighbor regarding a potential density violation on the Applicant's property.
5. Currently there are two homes on the Property. The Applicant provided an Aerial photograph taken in 1981 that illustrates one residence (2,300 sq. ft.) on the property. The Applicant explained that in 1995 he converted his garage (permitted in 1988) into a dwelling unit (1,200 sq. ft.) to help provide 24 hour care for his elderly Great Aunt.
6. The Property is located within the Traditional Historic Community of La Cieneguilla Basin Hydrologic Zone and Basin Fringe.
7. In advance of a hearing on the Application, the Applicant provided a notice of hearing that 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. Receipts for certified mailings of notices of the hearing were also contained in the record for all adjacent property owners. The noticing met all Code requirements.
8. The applicable Ordinances and requirements under the Santa Fe County Land Development Code, Santa Fe County Ordinance No. 1996-10, (Code) which govern this application are:
 - a. Ordinance No. 2002-9, La Cienega Zoning Ordinance, Section 6.4.2, Basin Zone, 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 as 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. Ordinance No. 2002-9, La Cienega Zoning Ordinance, Section 6.4.3, Basin Fringe Zone, states:

Maximum density in the Basin Fringe Zone shall be fifty acres per one dwelling unit (50 acres). With proof of 100 year water supply through a geohydrologic reconnaissance report, and application of water use covenants, the maximum density may be increased to one dwelling unit per 12.5 acres. If an adequate 100 year supply of water, and no impairment to neighboring wells, is proven by an on-site geohydrological well test, land may be further divided to a maximum of 2.5 acres per dwelling unit. Density adjustments above one dwelling unit per 50 acres must follow requirements as outlined in Article III, Section 10 and Article VII, Section 10 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.

- c. 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.

- d. 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.”

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

9. The Applicant obtained two new septic permits from NMED (SF150014 and SF150015) to modify the existing liquid waste systems for both the main residence and for the second dwelling unit.

10. The Applicant asserted that a variance is needed in order to keep the second dwelling unit. The Applicant's wish is to have his elderly father reside in the second dwelling unit along with his son and daughter-in-law to help provide care for his father.
11. At the public hearing before the BCC on May 12, 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 dwelling unit. A water meter shall be installed for each home within ninety (90) days of recording the order granting the variance. 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 submission for a Development Permit (As per Article III, Section 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 second dwelling unit within ninety (90) days of recording the final order granting the variance. (As per Article II, Section 2). The Placement of additional dwelling units or division of land is prohibited on the property. (As per Ordinance No. 2002-9, Section 6.4) (Zoning Density).
 - c. All Junk Vehicles must be removed from the property within ninety (90) days of recording the final order granting the variance. (As per Ordinance No. 1993-6).
 - d. The Applicant shall comply with all Fire Prevention Division requirements at the time of the Development Permit Application. (As per 1997 Fire Code and NFPA Life Safety Code).
 - e. The 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.

12. In support of the Application, the Applicant stated that he is in agreement with staff's conditions.
13. At the public hearing, no one from the public spoke in opposition or in favor of the Applicant's request. However, letters of opposition were included in the packet material submitted to the BCC.
14. The Applicant stated that compliance with the Code would exact a hardship because he would not be able to provide his son and son's family a place to live, as well as, he would not be able to take care of his elderly father.
15. 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 variance of Ordinance No. 1996-10, the Santa Fe County Land Development Code and 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 two dwelling units on 2.5 acres at 18 Calle Lisa within Section 7, Township 16 North, Range 7 East subject to the staff conditions set forth in paragraph 11. The motion to approve the variance passed by a unanimous 5-0 vote, with Commissioners Anaya, Roybal, Chavez, Holian and Stefanics voting in favor of the motion.

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:

Andrea Juley for
Gregory S. Shaffer, County Attorney

COMMISSIONER HOLIAN: Thank you, Mr. Chair. This motion concerns that portion of County Road 63A, otherwise known as La Cueva Road in Glorieta, where the road passed through Tract 5-C, owned by Gregory Fusse. I move to authorize the County Attorney through his staff or outside counsel to initiate and prosecute in the name of the BCC an appropriate action in court to establish the extent of the La Cueva Road easement on this property and cause the removal of unauthorized steel poles and fencing that have been erected in the County's easement.

COMMISSIONER CHAVEZ: Second.

CHAIR ANAYA: There's a motion from Commissioner Holian and second from Commissioner Chavez. Any further discussion? Seeing none.

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

X. PUBLIC HEARINGS

A. Land Use Cases

1. CDRC CASE # MIS 13-5051 Patrick Christopher and Marga Friberg. TABLED [See page 60.]

X. A. 2. CDRC CASE # V 15-5000 Victor Duran Variance. Victor Duran, Applicant, Requests 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 Two Dwelling Units on 2.5 Acres. The Property is Located within the Traditional Historic Community of La Cieneguilla at 18 Calle Lisa, Within Section 7, Township 16, North, Range 8 East (Commission District 3)

MIKE ROMERO (Case Manager): Good evening, Commissioners. Victor Duran, applicant, requests a variance of Santa Fe County Ordinance No. 1996-10 and the amendments thereunto contained in 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 two dwelling units on 2.5 acres. The property is located within the traditional historic community of La Cieneguilla at 18 Calle Lisa, within Section 7, Township 16, North, Range 8 East, Commission District 3.

On March 19, 2015 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicant's request with staff conditions by unanimous 6-0 vote.

The subject property, Lot C4 is part of the Vista Land Subdivision. This subdivision was created in 1974 and is recognized as a legal lot of record. The applicant has provided proof of ownership of the property by providing a Warranty Deed which was recorded in the County Clerk's Office June 21, 1977, Book 349 Page 442. Currently the applicant and his wife reside in the main dwelling unit, and the applicant's son and wife reside in the second dwelling unit.

The applicant has stated that a liquid waste system was permitted and installed on the property in 1979 when the residence was constructed. The applicant has provided an ariel photograph taken in 1981 that illustrates the residence on the property. However, the New Mexico Environment Department has no record of the liquid waste system being permitted. Since that time the applicant has obtained two new septic permits from NMED to modify the existing liquid waste systems for both the main residence and for the second dwelling unit.

On November 18, 2014, the Building and Development Services Division received a written complaint regarding a potential density violation on the subject property. On November 20, 2014, Code Enforcement conducted an inspection on the property. At that time the applicant was issued a Notice of Violation for Unpermitted Development and junk vehicles. Since that time staff has received two written letters of opposition regarding the applicant's request to have two dwelling units on 2.5 acres.

The Applicant has stated that in 1995 he converted his garage into a dwelling unit to help provide 24-hour care for his elderly great aunt. Since the passing of his great aunt the applicant has allowed his son and his family to reside in the second dwelling unit.

The applicant states a variance is needed in order to keep the second dwelling unit. The applicant wishes to have his elderly father reside in the second dwelling unit along with his son and daughter-in-law to help provide care for his father.

Staff recommendations: Staff recommends denial of a variance of Ordinance No. 2002-9, La Cienega and La Cieneguilla Traditional Community Planning area, and the La Cieneguilla traditional community zoning district, Section 6.4, Zoning Density, to allow two dwelling units on 2.5 acres. The decision of the CDRC is to recommend approval of the applicant's request, staff recommends imposition of the following conditions. May I enter these into the record?

CHAIR ANAYA: You may.

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per dwelling unit. A water meter shall be installed for each home within ninety (90) days of recording the order granting the variance. 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 submission for a 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 Division for second dwelling unit within ninety (90) days of recording the final order granting the variance. (As per Article II, Section 2). The placement of additional dwelling units of Division of Land is prohibited on the property. (As per Ordinance No. 2002-9, Section 6.4) (Zoning Density).
3. All Junk Vehicles must be removed from the property within ninety (90) days of recording the final order granting the variance. (As per Ordinance 1993-6).
4. 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).

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.

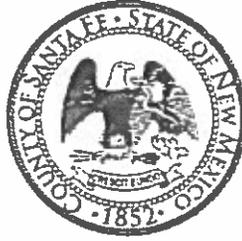
The motion passed by unanimous [5-0] voice vote.

- X. A. ~~2~~ 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]

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

CDRC CASE #V 14-5130

VARIANCE

JUAN GONZALEZ

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 Juan Gonzalez (Applicant) for a variance of Article III § 10, (Lot Size Requirements), of the Santa Fe County Land Development Code, Ordinance No. 1996-10 (Code) to allow two dwelling units on 10.07-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 conditions, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a variance of the lot size requirements in the Code to allow two dwelling units on a 10.07± acre site (the Property).
2. The Property is located at 59 B South Fork, within Section 31, Township 15 North, Range 9 East.
3. Applicant acquired the Property by warranty deed, recorded on March 17, 1998, in Book #1566, Pages 662-663 in the Santa Fe County Clerk's records.
4. The Property currently has a 2,240 square foot residence along with the 1,986 square foot barn both of which are permitted. The Applicant is proposing to remodel the existing 1,986 square foot barn into a second dwelling unit on the Property.

5. The Applicant complied with the notice requirements of 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 and confirmed that public notice posting regarding the Application was made for twenty one days on the property, beginning on March 26, 2015. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on March 26, 2015, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners and Home Owners Associations.

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. The Property is located in the Basin Fringe Zone. Article III, § 10.2, Lot Size Requirements, lists the minimum lot size as 50 acres. The maximum allowable adjustment allows a lot size of 12.5 acres per dwelling unit water restrictions.

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 Applicant has asserted that a variance is needed in order to help out family members who are currently struggling financially.

8. In accordance with the Code, on April 16, 2015, the County Development Review Committee (CDRC) held a public hearing on the Application and unanimously recommended approval of the Application.

9. On June 9, 2015, the BCC held a public hearing on the Application. Staff recommended denial of the variance, 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 home. 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 2002-13).

b. The Applicant must obtain a development permit from the Building and Development Services Division for the proposed dwelling unit (As per Article II, § 10.2.2 and Ordinance No. 2002-13).

c. Both dwelling units shall share the existing driveway.

d. The placement of additional dwelling units or further division of land is prohibited on the property (As per Article III, § 10).

e. The Applicant shall provide an updated liquid waste permit for the proposed dwelling unit from the New Mexico Environment Department with the Development Permit Application (As per Article III, § 2.4.1.a.1(a)iv).

f. The Applicant shall comply with all Fire Prevention Division requirements at the time of Development Permit Application (As per 1997 Fire Code and NFPA Life Safety Code).

10. In support of the Application, the Applicant stated that he is in agreement with the conditions.

11. Any finding or conclusion set forth above that may be construed to constitute a conclusion of law is hereby incorporated as such to the same extent as if it was expressly denominated as a conclusion of law.

12. The Applicant stated that compliance with the Code would exact a hardship because he would not be able to provide his son a place to live.

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 BCC hereby approves the request for a variance of Article III § 10 of the Code to allow two dwelling units on 10.07 acres subject to staff conditions set forth in paragraph 8. The motion to approve the Application passed by a 5-0 vote, with Commissioners Anaya, Holian, Stefanics, Roybal and Chavez unanimously voting in favor of the motion.
IT IS SO ORDERED.

This Order was approved by the Santa Fe County Board of County Commissioners on this 29th day of September, 2015.

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

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.

Juan Gonzalez, Applicant, Requests a Variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 10.07 Acres. The Property is Located at 59 B South Fork, within Section 31, Township 15 North, Range 9 East (Commission District 5) [Exhibit 4: Letters of Support]

JOHN MICHAEL SALAZAR (Case Planner): Thank you, Mr. Chair. John Lovato is handing out some letters of support from the applicant's neighbors.

Juan Gonzalez, applicant, requests a variance of Article III, Section 10 of the Santa Fe County Land Development Code and Ordinance No. 1996-10 to allow two dwelling units on 10.07 acres. The property is located at 59 B South Fork, within Section 31, Township 15 North, Range 9 East, Commission District 5.

On April 16, 2015, the County Development Review Committee met and recommended approval of the variance to allow two dwelling units on 10.07 acres by a unanimous vote, 6-0.

The property is a legal non-conforming lot created before 1981. The current configuration was created in 1998 through a lot line adjustment and is recognized as a legal lot of record with 0.25-acre feet water restrictions. Currently, a 2,240 square foot residence and a barn are permitted on the property. The property is located within the Basin Fringe Zone. Article III, Section 10.2 lists the minimum lot size as 50-acres. The maximum allowable adjustment allows a lot size of 12.5 acres with water restrictions. Therefore the lot is already smaller than the Code requires for a single dwelling unit.

The Applicant requests the variance because the additional residence is needed to help family members who have fallen on hard economic times. Also, the applicant mentions he was going to wait until the Sustainable Land Development Code was adopted so he could build an accessory dwelling unit on the property, however, with the delays for the new code's adoption; he can no longer wait. Thus, he is before you requesting a variance. The applicant proposes to convert the existing 1,986 square foot barn into a dwelling unit. This conversion creates two dwelling units which does not meet minimum lot size requirements set forth by the code.

Recommendation: Staff recommends denial of a variance of Article III, Section 10 of the Code. If the decision of the BCC is to approve the Applicant's request, staff recommends imposition of the following conditions. Mr. Chair, may I enter those into the record?

CHAIR ANAYA: Yes, you may.

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each home. 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 Division for the proposed dwelling unit (As per Article II, § 2).

3. Both dwelling units shall share the existing driveway.
4. The placement of additional dwelling units or further division of land is prohibited on the property (As per Article III, § 10).
5. The Applicant shall provide an updated liquid waste permit for the proposed dwelling unit from the New Mexico Environment Department with the Development Permit Application (As per Article III, § 2.4.1a.1(a)iv).
6. The Applicant shall comply with all Fire Prevention Division requirements at the time of Development Permit Application (As per 1997 Fire Code and NFPA Life Safety Code).

CHAIR ANAYA: John Michael, I have one question. Did I hear you correct in your summary that if our new code was implemented that this would fall under the proposed provision? It's not final but it would fall under the proposed provision of a accessory structure?

MR. SALAZAR: Mr. Chair, as it's written, as the SLDC is written right now they would be allowed an accessory dwelling unit. It would have to be half the size of the existing structure, up to 1,500 square feet. In this case it would be 1,120 square feet for that accessory dwelling unit, and it would have to be of the same design as the existing dwelling unit. So since the existing dwelling unit is a mobile home the second dwelling unit would have to be a mobile home as well.

CHAIR ANAYA: Okay. Thanks for that. Is the applicant present? Yes, sir. Is there anything you'd like to add?

JUAN GONZALES: No, sir.

CHAIR ANAYA: Okay. Thank you. This is a public – was there anything else, any questions of staff or the case thus far? Seeing none, this is a public hearing. Is there anybody here who would like to speak in favor or against this proposal? Is there anyone here that would like to speak in favor or against this proposal? Seeing none, this public hearing is closed. What's the pleasure of the Board?

COMMISSIONER STEFANICS: Mr. Chair, to get the discussion moving, I'll move to deny.

COMMISSIONER HOLIAN: I'll second that.

CHAIR ANAYA: There's a motion and a second to deny. Is there any further discussion?

COMMISSIONER STEFANICS: I'd be interested in hearing if in that district there's – the Commission has any opinion, but if not, that's fine too. I don't want to put anybody on the spot.

CHAIR ANAYA: John Michael, this is in District 5? This is your district.

MR. SALAZAR: Commission District 5, Mr. Chair.

CHAIR ANAYA: This is in your district, Commissioner.

COMMISSIONER STEFANICS: Wait a minute. Which one are we on?

CHAIR ANAYA: We're on 6.

COMMISSIONER STEFANICS: Oh, I'm sorry. I was on number 2.

CHAIR ANAYA: I was just going to say, Commissioner –

COMMISSIONER STEFANICS: I withdraw my motion.

CHAIR ANAYA: The CDRC voted 6-0 on this particular case. We didn't have any people in favor or against it. We are on case #6.

COMMISSIONER STEFANICS: I'm sorry. I will move to approve with the conditions.

CHAIR ANAYA: Motion to approve with conditions.

COMMISSIONER HOLIAN: Second.

CHAIR ANAYA: There's a second from Commissioner Holian. Any further discussion? Seeing none.

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

VIII. B. 2. CDRC CASE # MIS 13-5051 Patrick Christopher and Marga Friberg. Patrick Christopher and Marga Friberg, Applicants, Request Reconsideration of a Condition Imposed by the BCC Requiring a 0.25 Acre Foot Water Restriction for an Approved Variance of Article III, § 2.4.1a.2.B (Access) of the Land Development Code and a Variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow the Construction of a Residence on 14.981 Acres. The Property is Located 250-C Kalitaya Way, within the Vicinity of Buckman, within Section 29, Township 19 North Range 8 East (Commission District 1)

JOHN LOVATO (Case Planner): Thank you, Mr. Chair and Commissioners. Patrick Christopher and Marga Friberg, applicants, request reconsideration of a condition imposed by the BCC requiring a 0.25 acre-foot water restrictions for an approved variance of Article III, Section 2.4.1a.2.b, Access, of the Land Development Code and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, to allow the construction of a residence on 14.981 acres. The property is located at 250-C Kalitaya Way off Old Buckman Road, within Section 29, Township 19 North, Range 8 East, Commission District 1.

On May 14, 2013, the BCC approved a variance of Article III, Subsection 2.4.1a.2.b, Access, of the Land Development Code and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management to allow the construction of a residence on property consisting of five lots which total 14.981 acres with staff conditions. The applicants agreed to all conditions which also included a lot consolidation. The lots consisted of 3.84 acres, 3.87 acres and three 2.5-acre lots. The subject properties are part of a subdivision created in the 1940s with the US Government's Small Parcel Act which assisted veterans in acquiring their own property.

The applicants request reconsideration of condition number one imposed by the BCC which states: Water use shall be restricted to 0.25 acre-foot per year. A water meter shall be installed for the proposed home. 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.

SFC CLERK RECORDED 07/16/2015

