

TRANSCRIPT OF THE
SANTA FE COUNTY
SLDC HEARING OFFICER MEETING

Santa Fe, New Mexico

June 14, 2018

I. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Nancy Long on the above-cited date at approximately 3:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Staff Present:

Vicki Lucero, Building & Development Services Manager
Tony Flores, Deputy County Manager
John Lovato, Development Review Specialist
Mike Romero, Development Review Specialist
Paul Kavanaugh, Building & Development Services Supervisor
Cristella Valdez, Assistant County Attorney
Jaome Blay, Fire Marshal

II. **Approval of Agenda**

HEARING OFFICER LONG: I will approve the agenda unless – are there any changes or amendments that need to be made to the agenda?

VICKI LUCERO (Building & Development Services Manager): Hearing Officer Long, there are no changes.

HEARING OFFICER LONG: Okay, so I'll approve the agenda. We have three cases for this afternoon's meeting.

III. **Public Hearings**

- A. **CASE # V 18-5070 Angelo Ortega Variance.** Angelo Ortega, applicant, James W. Siebert & Assoc., (Wayne Dalton), Agent, request a variance to the requirements set forth in the Sustainable Land Development Code (SLDC) of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 (Utilities) to allow a separate liquid waste system for the accessory dwelling unit. The property is located at 120 North Paseo de Angel, within the La Cienega and La Cieneguilla Community District Overlay (LCLCCD) (RES-E), within Section 22, Township 16 North, Range 8 East (Commission District 3

SFC CLERK RECORDED 07/05/2018

MIGUEL ROMERO (Case Manager): Good afternoon, Hearing Officer Long. The applicant is the owner of the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on July 5, 2001, as recorded in Book 1935 page 547. The property consists of 2.5 acres within the Residential Estate Zoning District within the La Cienega and La Cieneguilla Community Overlay Zoning District. The applicant is requesting a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision and a variance of Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit.

The applicant wishes to place a 920 square foot accessory dwelling unit on his property, providing the applicant's daughter a place of her own. The proposed accessory dwelling unit will be 920 square feet of heated area. The applicant states the heated area of the accessory dwelling is 50% of the 1,884 square feet of heated area of the principal residence. The applicant further states that the architectural design will be the same as the principal residence. The accessory dwelling height will not exceed the height requirements of the current dwelling unit, which is approximately 13 feet in height. After further review of the subdivision plat, it was determined that the subject lot was located within a major subdivision.

A note on the applicant's subdivision plat states, guest homes are prohibited on this lot. Currently, there is a 2,300 square foot residence on the property that is served by a well and a conventional septic system. The applicant is also requesting to install a separate septic system to accommodate the proposed 920 square foot accessory dwelling unit. The applicant states that the existing septic tank is already the largest tank manufactured; and very little to nothing can be done to the septic tank to accommodate the proposed accessory dwelling unit. Due to this exceptional situation, New Mexico Environment Department permitted a second system for the property. The second septic system has yet to be installed.

In 1994, an application for Vista de Sandia Subdivision was submitted, which is located within the La Cienega and La Cieneguilla Community District Overlay. The application for plat approval was granted by the Board of County Commissioners in 1996 under case number 94-2173. The approval was for a 16-lot subdivision and lot sizes ranged from 2.5 acres to 2.63 acres. The lot sizes were derived from a hydrologic study prepared by Geologist/Hydrologist, Jack Frost. Water use on each lot within the subdivision was restricted to 0.25 acre-foot water restriction based on the amount of water that the geo hydrologic report proved. At that time, a condition was imposed by the BCC that no guest homes were allowed within the Vista de Sandia Subdivision.

If the variances are granted by the Planning Commission, the applicant will request a partial plat amendment to change the note on the plat to allow an accessory dwelling unit on Lot 10 for the applicant's 2.5-acre parcel. This is a separate application process that requires a public hearing that will go before the BCC.

Previously in 2017, under Ordinance 2016-9, the applicant applied for a permit to allow a 920 square foot accessory dwelling unit. During the permit application review process, staff observed guesthouses were prohibited within the subdivision. Staff notified and advised the applicant that a permit would not be issued for the accessory dwelling unit on said property due to condition No. 12, as stated on Vista de Sandia Subdivision plat. The applicant then withdrew his application.

The applicant's property is located within a major subdivision. Chapter 10, Section 10.4.2.1, states that platted major subdivisions shall only be permitted to have an accessory dwelling unit if their approval and reports and SRAs allowed and accounted for this. The subdivision water availability report concluded that 0.28 acre-feet per year was available per lot. Therefore, they did not prove water for two houses. None of the reports accounted for two homes. The applicant currently proposes a separate septic system for the lot. Chapter 10, Section 10.4.2.4 requires the principal dwelling to share a septic system. Within the current application, the applicant has provided a signed letter from NMED stating that the lot size is adequate to install two systems.

Recommendation: The applicant and applicant's Agent did provide responses to the variance criteria. Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code (SLDC) of Chapter 10 Section 10.4.2.1 to allow an accessory dwelling unit within a major subdivision. The Vista de Sandia Subdivision Hydrogeological Review did not prove more than 0.28 acre-feet per lot. The subdivision plat states under Notes and Conditions No. 12 Guest houses are prohibited on these lots. The subdivision plat states under Notes and Conditions No. 12 Guest houses are prohibited on these lots.

Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code of Chapter 10, Section 10.4.2.4 to allow an accessory dwelling with a separate liquid waste system. The applicant has not provided any documentation from NMED that the existing septic system is at capacity and that an additional septic system will be required. The SLDC does not allow separate septic systems, for accessory dwelling units.

If the Hearing Officer recommends approval of the variances, staff recommends the following conditions be imposed:

1. The applicant must request a partial plat amendment vacation from the BCC to modify the note that prohibits guesthouses and re-record the plat. [Modified at staff report.]
2. The applicant must install a meter on the well and submit proof at time of development permit application.
3. The applicant will ensure that water use on Lot 10 does not exceed a total of 0.25 acre-feet per year for the dwelling and accessory dwelling combined.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission will be holding a public hearing on this matter on July 19, 2018. I stand for any questions.

HEARING OFFICER LONG: Okay. Thank you. First, just a general question as to why staff is recommending denial of this variance when it's similar to the Dorothy Montoya case that's referenced in the report where an accessory dwelling unit was approved and the partial plat vacation was also approved by the BCC. So I'm wondering, are the cases similar enough that there was consideration given to that case as precedent?

MR. ROMERO: Hearing Officer Long, there is some difference between this case and the Dorothy Montoya case. I believe the Dorothy Montoya case did have some additional variances attached to the application for the variance. Staff recommended denial for the Dorothy Montoya case and so within the code, within the

major subdivisions, even though the other applicant did get final approval we still have to recommend denial. For the fact [inaudible]

HEARING OFFICER LONG: Yes. Well, I agree with you on that because I didn't see it as a condition relating to the land itself but rather a personal hardship of the applicant, but obviously, I was overruled so I've got to take a look at that and I'm wondering if you all looked at that too. Do you have any comment, Vicki?

MS. LUCERO: Hearing Officer Long, they are very similar requests within the same subdivision with the same plat notes and conditions. The one difference that I can tell you is, as far as Dorothy Montoya, the second septic system, that was based on terrain issues. She did have where one area of the terrain was raised well above where the existing septic was. So there was a terrain-related issue in regards to her request.

HEARING OFFICER LONG: Okay. And then the third condition, if this request is approved is to limit water use to .25 acre-feet for both the dwelling unit and the accessory dwelling unit. And why is it not .28, which is what the water availability report allowed for when the subdivision was approved.

MR. ROMERO: Hearing Officer Long, that was what was come up with at the time. However, the water restrictions I believe that were set for that subdivision were set for a quarter acre-foot, .25.

MS. LUCERO: Hearing Officer Long, the County Commission did approve the plat vacation or partial plat vacation with a condition of a quarter acre-foot water restriction, so we're just being consistent with that approval and with the standard.

HEARING OFFICER LONG: Okay. And you want to keep going back to the Commission in a partial plat vacation lot by lot, or why don't we just have a general plat vacation that removes that prohibition on accessory units for the entire subdivision? That would just seem fair since there's already two applicants that have come forward, why not just do it all at one time?

MS. LUCERO: Hearing Officer Long, I think in order to process a request like that we would need every landowner within the subdivision to be part of the application or to be part of the request. So that's not something that has been submitted to us at this point but if that continues then maybe that's something that we can look at.

HEARING OFFICER LONG: Okay. When the applicant withdrew their application in 2017 after they were advised of the plat note that prohibited an accessory dwelling unit, or that condition, were they advised of the process of requesting the variance at that time?

MR. ROMERO: Hearing Officer Long, I believe permitting staff did advise Mr. Ortega of the variance process and I believe also he was one of the residents that may have received notice when the prior applicant, Dorothy Montoya, was requesting a variance for the same thing.

HEARING OFFICER LONG: Okay. In the report at one point, under staff response, it's stated that the applicant may have been able to divide their property under the small-lot family transfer provision under the prior Land Development Code. But I take it would have also required a partial plat vacation? Or is there some other provision that would have allowed them to divide their property? Or to build the accessory dwelling unit?

MS. LUCERO: Hearing Officer Long, under the old code, under the 1996 code, they were allowed to do a family transfer that would allow half the minimum lot

size. So they could have divided their lot into two 2.5-acre parcels, but those lots would not have been allowed to have an accessory dwelling unit under that code.

HEARING OFFICER LONG: They'd just have two dwelling units but on their own lot.

MS. LUCERO: Correct.

HEARING OFFICER LONG: Okay, I think that's all I have at this time. Thank you. Mr. Dalton is here as the applicant's agent, and I'll have you sworn in.

[Duly sworn, Wayne Dalton testified as follows:]

WAYNE DALTON: Hearing Officer, my name is Wayne Dalton, with James Siebert and Associates. I represent Angelo Ortega. Hearing Officer Long, I just want to touch on a few issues that you talked about just a few minutes ago, especially regarding the small-lot family transfer. I'm not going to sit up here and say anything negative about staff. I'm just going to say that at the time when he came into the County was well before the SLDC was going into effect and he could have applied for a small-lot family transfer. He had owned the property for five years. That option was not given to him at that time. He was advised until the SLDC went into effect and apply for an accessory dwelling unit. So I just wanted for the record that he was given poor advice on numerous occasions.

Madam Hearing Officer, I also want to state that the second dwelling will be for the applicant's daughter. The applicant's daughter currently resides with him in the existing residence so water will stay the same, liquid waste will stay the same, and traffic in the area will stay the same. She already lives there. We're all aware the Vista de Sandia Subdivision was a previously approved major subdivision with a water restriction of .28 acre-feet. I would just like to state when that subdivision was approved the density in that area was 2.5 acres, so therefore it was only required to prove enough water for 16 lots. He may not have wanted guest units at the time.

Hearing Officer, there are actually many lots, I could say maybe hundreds, maybe thousands of lots in Santa Fe County that have a quarter acre-foot water restriction under allowed accessory dwelling unit. So this is just because it's located in a major subdivision it's not allowed. But I just wanted to point that out. Also with the septic system, we feel that that shouldn't even be in the code. The County doesn't regulate septic systems; the New Mexico Environment Department regulates septic systems. So it should say accessory dwellings units should share the septic or as approved by the New Mexico Environment Department. In this case there's really nothing the applicant can do to accommodate an extra bedroom and a bathroom. He's already got the maximum manufactured tank size which is 1250 gallons, so there's really nothing he can do to modify the system for this accessory dwelling unit. So that's why the New Mexico Environment Department issued him a second septic permit.

Based on that fact and based on the fact that he had enough land on the property as well.

HEARING OFFICER LONG: So that permit has been issued by NMED.

MR. DALTON: Hearing Officer, that is correct. He has been issued a second permit for the second septic system. That basically concludes my presentation. We do agree with staff's condition and I want to thank staff for working with us, especially Miguel. He's been great, and I do stand for any questions.

HEARING OFFICER LONG: Okay. Thank you. I just had the question about the NMED approval. So I think that's all. I have a follow-up question for staff, just philosophically, why does the code require that the dwelling unit and the accessory dwelling unit share one septic tank for a lot of this size?

MS. LUCERO: Hearing Officer Long, I think the general – when the code was being developed it was intended to have – since the family transfer provision went away it was intended to allow people relief as far as having a family member on site to kind of deter them from being rentals. I think that requirement was added to where they had to share a septic system, but we are actually looking at some possible changes to the code and that's something that we're looking at is amending that language.

HEARING OFFICER LONG: I think that makes sense, because I don't know that having a separate septic system is going to encourage rentals or having one septic system discourages it. Because it's not like you have a monthly sewer bill; you have a septic system.

All right. Is there anyone here that came this afternoon that would like to speak to this case? In support or against? I will note for the record that there is no one wishing to speak to this case.

Thank you for the presentations and thank you, Mr. Dalton. You know what the process is, that I issue a recommendation and that would be done within two weeks and you'll go to the Planning Commission. Thank you. And maybe to the BCC too.

**III. B. CASE # V 18-5060 Emilio E. Ortiz and Linda D. Ortiz Variance.
Emilio E. Ortiz and Linda D. Ortiz-Chavez, applicants, Eileen Ortiz Agent, request a variance to the requirements set forth in the Sustainable Land Development Code (SLDC) of Chapter 9, Table 9.16.5 (Dimensional Standards) to allow a 1.43-acre parcel to be divided into two equal lots; each lot consisting of 0.715 acres. The property is located at 39 Cañada Ancha, within the Chimayo Community District Overlay (ChCD) in the Traditional Community Zoning District (TC), within Section 1, Township 20 North, Range 9 East (Commission District 1**

MR. ROMERO: Hearing Officer Long, the applicants acquired the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on August 3, 2011, as Instrument No. 1641770. The property is recognized as a legal lot of record located in the Traditional Community Zoning District within the Chimayo Community District Overlay. The applicants are requesting a variance to the requirements set forth in the Sustainable Land Development Code of Chapter 9, Table 9.16.5 to allow their property to be divided into two equal lots.

The applicants have indicated in their letter of intent, a request to divide their 1.43-acre parcel into two equal lots; each lot consisting of 0.715 acres for each of his daughters. However, the recorded survey plat indicates that the parcel consists of 1.453 acres. If the applicants were to divide their 1.453-acre parcel into two equal lots, each lot would consist of 0.7265 acres. The applicants would be lacking approximately 0.047 of an acre in order to divide their property administratively. Currently, there is single-family residence located on the property, which was permitted in March 2018. The

property is accessed from Cañada Ancha, which is identified as CR 94 and maintained by Santa Fe County.

Chapter 9, Table 9.16.5 in the Traditional Community Zoning District, within the Chimayo Community District Overlay does not allow lots to be smaller than 0.75 acres. Under the prior Land Development Code the applicants would not have been able to divide their property administratively, as 0.75 acres was the minimum base density at that time, unless the property had the ability to connect to community water and sewer, in which case the lot size could have gone down to 0.33 acre per lot. The requirements for a small lot family transfer under the prior code would have allowed the lot to be half the minimum lot size but no smaller than 0.75 acres.

Chapter 4, Section 4.9.7.6 of the SLDC allows deviations not to exceed five tenths of a percent of the gross acreage allowed in the zoning district, which would bring the applicants lot size to 1.4925 acres with each lot consisting of 0.746 acres.

If the applicants were to request a minor deviation of Chapter 4, Section 4.9.7.6, the applicants would be lacking approximately 0.0395 of an acre in order to divide their property administratively.

Recommendation: The applicant did provide responses to the variance criteria. Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code of Chapter 9, Table 9.16.5 Dimensional Standards to allow a 1.453-acre parcel to be divided into two lots; each lot consisting of 0.7265 acres.

If the Hearing Officer recommends approval of the variance, staff recommends the following conditions be imposed:

1. Accessory Dwelling units will be prohibited on both lots.
2. No further division of land will be allowed.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission will be holding a public hearing on this matter on July 19, 2018. I stand for any questions.

HEARING OFFICER LONG: So really the issue for staff, in recommending denial, even with the administrative deviation allowance is there's just not enough acreage to meet the minimum lot size.

MR. ROMERO: Hearing Officer Long, that is correct.

HEARING OFFICER LONG: Even though it comes very close, you can't get there.

MR. ROMERO: That is correct. The base density for that area is $\frac{3}{4}$ of an acre.

HEARING OFFICER LONG: Okay. And then there's a statement in the report, staff response, that if the variance request is approved the applicants may be required to install separate septic systems? And I think this was under the concern about environmental issues. Is that something that we know, that separate systems would be required? Or it's just a possibility. I'm looking at NBB-5, at the top of the page under staff response. So it's under the criteria that the spirit of the SLDC is observed and justice is done. So under staff response there is a statement that the applicants may be required to install separate septic systems which could infringe on environmental limits. I'm just wondering what we know about the Environment Department requirements, or if that has even been investigated at this point.

MS. LUCERO: Hearing Officer Long, I don't know if the applicants have approached the Environment Department at this point but generally they require .75 acres per lot in order to allow a septic system. So there's a chance that they may be required to do some sort of an advanced type system, or two separate advanced type systems, being that the lot size would be below that.

HEARING OFFICER LONG: Okay. Thank you. All right, let me as if the applicant is here. All right. And who will be speaking for the applicant? Will you come forward and be sworn in by our recorder and then give us your name.

[Duly sworn, Eileen Ortiz testified as follows:]

EILEEN ORTIZ: My name is Eileen Ortiz. Thank you for this opportunity for us to be here. I'm Eileen Ortiz, the agent for Emilio Ortiz, my father, and my sister, Linda Ortiz-Chavez. On behalf of my father, we are requesting a variance on 1.453 acres. My father has given equally to both of us .71 acres. My sister Linda has and will leave the site of her property agriculture. On my side it has been agreed for my single daughter, mother of one, to place a mobile home, which is already there and her septic system and she already connected to community water.

Myself and my sister, we have agreed that it would be in our best interest not to own this land together. Me and my children use my land on the south side and my sister and her family use the property, her side, the north side. Each one of us has a distinct driveway. We both have our own needs and use for our properties separately. We don't know how many more years we'll have our father, and my father's wishes are for this property to be divided separately, me for my side and my sister on her side.

And also so me and my sister will be at peace and agreement and not to encumber each other. The neighborhood meeting that we did have only one person went and he did request a favor from my father that he did give to his two daughters separately two lots. And I hope that you find within you to allow the variance to be allowed. And thank you for the opportunity to voice my opinion.

HEARING OFFICER LONG: Thank you, Ms. Ortiz. So on the property currently is a mobile home and it has it's own septic system. Is that correct? And your sister lives there?

MS. ORTIZ: No. My daughter.

HEARING OFFICER LONG: Oh, your daughter lives there. Okay. And then if the property were divided it is the intent to keep the other lot as agricultural?

MS. ORTIZ: Correct.

HEARING OFFICER LONG: So you haven't investigated if you did move a mobile home on that property or on that other side of the property, or build a unit, whether you would be required to install another septic tank or not.

MS. ORTIZ: On my side where my daughter is, there is a septic tank and community water, but on the other side is my sister's. She has left it agriculture and her intentions are to leave it that way.

HEARING OFFICER LONG: Okay.

MS. ORTIZ: She doesn't plan to do any – to build anything or do anything there.

HEARING OFFICER LONG: And you said at the neighborhood meeting there was one individual that attended? Is that right?

MS. ORTIZ: Correct. There was only one that went.

HEARING OFFICER LONG: And that person was supportive?

MS. ORTIZ: Yes, he was.

HEARING OFFICER LONG: Okay. And you heard staff – and you’ve probably seen the conditions that would be imposed if this variance request is approved by the Planning Commission. Do you agree with those conditions? Do you want me to read them again?

MS. ORTIZ: Yes, please.

HEARING OFFICER LONG: That is accessory dwelling units will be prohibited on both lots. You couldn’t build a second unit on either lot. And no further division of land will be allowed. So you couldn’t divide it again.

MS. ORTIZ: Oh. Okay. Yes.

HEARING OFFICER LONG: Are those agreeable? Both?

MS. ORTIZ: Yes.

HEARING OFFICER LONG: All right. Thank you. We’ll see if there’s anyone else here this afternoon that would like to speak to this request.

[Duly sworn, Linda Ortiz-Chavez testified as follows:]

LINDA ORTIZ-CHAVEZ: Hearing Officer Long and the Planning Commission, my name is Linda Ortiz-Chavez and I am the joint owner of the property located at 39-A Cañada Ancha in Chimayo, and I am the youngest daughter of Emilio Ortiz. My sister Eileen and I have been equally benefiting from 39-A Cañada Ancha . Eileen and I both of the need and the use for the property. We do not share a driveway because we do not want to interfere with each other. Eileen and I have an existing driveway on each side of the property.

Both of us have been using the property to access the County Road from our childhood home since we were in grade school. Before my father purchased the property it was abandoned with a vacant structure. Trespassers were storing stolen property there. When my father Emilio purchased the land in 2011 the neighborhood became safer. We demolished the structure, built fences and rehabilitated the agricultural land. He bought the property for the safety of his family.

I believe sharing the property would not be in our best interest for Eileen, myself and our children. It would affect us in several ways such as sharing a increased number of liabilities, the burden of sharing expenses such as the property taxes, and the responsibility of sharing the maintenance and repairs. The existing driveway on the north side of the property is a safe path for my children to access the bus stop at the County Road. With minor improvements emergency vehicles and service vehicles would be able to access our residence easier through 39-A Cañada Ancha, parcel A-1. On the other side of our property service vehicles and emergency vehicles struggle to access my father’s residence and my residence because the road is too narrow. Also, we cannot receive packages as they become damaged or they end up missing because we share an easement with other neighbors.

My husband, our children, and my father Emilio are currently using and have the need for the northern side of the property, located at 39-A Cañada Ancha for agriculture, open space, and a safe access to the County Road. Furthermore, I do not have plans to develop the north side of the property. My interest in the property is to have a safe path for my family and to continue the tradition of planting crops. In the event we were to consider to develop the property for a residence we will meet the state code, County

ordinance and requirements. I would like for my children to have a chance to develop the opportunity for a residence in the future in the event they have a need to do so.

Please allow the variance to be granted. An approval of the variance would keep the peace and eliminate future disputes within our family. Thank you.

HEARING OFFICER LONG: Thank you for your comments.

[Duly sworn, John Chavez testified as follows:]

JOHN CHAVEZ: My name is John Chavez. I'm going to leave this to the side for a second so you can see Emilio. He's here with us.

HEARING OFFICER LONG: Okay, that's fine.

MR. CHAVEZ: I just want you to be able to see Emilio. He's sitting right there.

HEARING OFFICER LONG: Oh. All right. Thank you.

MR. CHAVEZ: Can I provide a copy of my written statement to yourself and to staff? There's attachments and pictures and what not.

HEARING OFFICER LONG: Yes, you may. So Mr. Chavez, you said Emilio is your father?

MR. CHAVEZ: My father-in-law.

HEARING OFFICER LONG: Father-in-law. Okay.

MR. CHAVEZ: Hearing Officer Long, I want to bring a brief history about this family and who we are. Hearing Officer Long, traditional people must be allowed to remain in the traditional community. Chimayo is one of several communities within the boundaries of the Santa Cruz de la Cañada Land Grant. In 1935 Emilio Ortiz was born at 4 Entrada de Ortiz in Chimayo, just about 100 yards away from the subject property. In fact, his family ancestors' names appear as some of the original grantees in the Spanish decree known as the de Vargas Decree that granted the Santa Cruz de la Cañada Land to 65 families in 1695.

His family's names appear in every subsequent census from 1750 until the present date. His family was living in the place of his birth during the Mexican-American War of 1846 and some of the direct beneficiaries of the international treaty ratified by the Congress of the United States known as the Treaty of Guadalupe Hidalgo. Articles VIII and IX ensured the safety of existing property rights of Mexican citizens in the transferred territories.

The Santa Cruz de la Cañada Grant was recognized by the US Court of Private Land Claims in 1899 when the US Surveyor General's Office surveyed the grant in 1901 and the United States Congress enacted it and caused it to be patented. The patent read, The tract described above described, to have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said grantees and to the heirs and assigns forever for their use and benefit. President William H. Taft signed it into law in 1910.

Emilio Ortiz and his family are the living embodiment of traditional people living and farming in a traditional community. [Audio problems were experienced.]

Linda's maternal side, Bernardo Abeyta, was the man who build el Santuario de Chimayo, which is now one of the most recognized tourist destinations in the entire State of New Mexico.

I believe this hearing process was created due to the fact that not all circumstances fit neatly into the letter of the law or ordinance because there is also a human side. The

purpose of this variance request isn't for land speculation or profiteering but rather so that Emilio and his extended family can continue to live together on their ancestral lands with the traditions they've upheld from time immemorial. When it comes down to talking about affecting the lives of human beings their voices must be heard. Therefore I pray and beg that in your wisdom grant this variance request. Thank you.

HEARING OFFICER LONG: Thank you, Mr. Chavez, for the documents in your presentation. It's always very interesting to see those old deeds that are signed by presidents from long ago and think about the history of that area. So it was very interesting presentation. Thank you.

All right. Is there anyone else that would like to speak to this case? I will note that Mr. Emilio Ortiz is in the audience and was pointed out to me.

EMILIO ORTIZ: Do you want me to speak?

HEARING OFFICER LONG: No, I think you have a very good team in place that made a very good presentation on your behalf, but thank you for coming. You can if you want. You do not have to speak. So I will note that there is no one that wishes to speak in opposition to this case and we heard from the applicant and applicant's family. So thank you for your presentations. I appreciate it and this case will then go on to the Planning Commission. I make a recommendation and sometimes they follow my recommendations and sometimes they don't. Will this be July 19th as well, Vicki, for a hearing?

MS. LUCERO: Hearing Officer Long, yes, that is correct.

HEARING OFFICER LONG: So you'll be back here in the same place for the Planning Commission. Thank you very much.

III. C. CASE # SVAR 18-5080 Sergio Nuñez Variance. Sergio Nuñez applicant, Mike Montiel, Agent, request a variance of Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks, of the La Cienega and La Cieneguilla Overlay District to allow an existing unpermitted accessory dwelling and existing accessory structure to be 9 feet from the property boundary, and a variance of Chapter 10.4.2.4, (Utilities), to allow a second septic system to be utilized for the accessory dwelling. The property is within the Residential Estate Zoning District within the La Cienega/ La Cieneguilla Overlay District and located at 20 Calle de Juan within Section 20, Township 16 North, Range 8 East, (Commission District 3)

JOHN LOVATO (Case Manager): Thank you, Hearing Officer Long. On February 1, 2018, the applicant was issued a notice of violation for an unpermitted 900 square foot accessory dwelling, and a 432 square foot unpermitted garage. The violation came in as a complaint for illegal construction. The applicant constructed a garage without a permit and then converted the garage into an accessory dwelling. The applicant also constructed the 432 square foot accessory structure – garage – without a permit.

The applicant was informed that the unpermitted accessory dwelling and accessory structure did not meet a 50-foot setback from the west side of the property boundary, and the accessory dwelling was required to share a septic system.

The property consists of 2.5 acres and is within the Residential Estate Zoning District within the La Cienega and La Cieneguilla Community District Overlay. Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks, of the SLDC in that community district overlay states that the rear and sides of the building must be set back a minimum of 50 feet from the property line. Table 9-8-7, under Section c. setbacks iii, states in cases where setback requirements would prohibit development of a lot, the Administrator may approve setback requirements in accordance with Section 7.3, table 7-A of the SLDC and is a minimum of 25 feet from all back and side boundaries and a minimum of 10 feet from the front. The applicant had plenty of room on the property to meet these setback requirements.

The Agent states the applicant constructed the 900 square foot structure in 2006, as a garage and storage. He later converted it in 2007 to a two-bedroom, one bathroom apartment for his daughter and grandchild to reside in. The agent further states the applicant also constructed the 432 square foot smaller garage during that time.

The applicant has address the variance criteria and staff responded on whether or not it met that criteria.

Recommendation: Setback Variance: The application is not in strict compliance with the SLDC. The applicant never obtained a permit to construct the two garages in 2006, or convert the 900 square foot accessory structure into an accessory dwelling. However, in 2006 there was no required setback from property boundaries. Therefore, staff recommends approval of the requested variance.

Utilities Variance: Staff recommends approval of the requested variance. Chapter 10.4.2.4, which states liquid waste shall be in common with the principal residence; however, if the principal residence is on a separate septic system, then any modifications to the system to accommodate the accessory dwelling unit shall be approved by NMED.

If the decision of the Hearing Officer is to recommend approval, staff recommends the imposition of the following conditions. Hearing Officer Long, may I enter the conditions into the record?

HEARING OFFICER LONG: Yes, you may.

[The conditions are as follows:]

1. The applicant shall obtain an after the fact permit for the garage and accessory dwelling.
2. Any further development shall comply with design standards of the SLDC.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written recommendation. The Santa Fe County Planning Commission will be holding a public hearing on this matter on July 19, 2018. Thank you. I stand for any questions.

HEARING OFFICER LONG: [inaudible]

MR. LOVATO: Hearing Officer Long, it is pertinent that it goes through our office as an administrative approval if the variance is granted. And it's just making an application that the plans he has submitted are pretty sufficient and could qualify as moving forward for that proceeding.

HEARING OFFICER LONG: Is there a chance there would have to be modifications to the accessory building or the garage?

MR. LOVATO: Hearing Officer Long, all that would be required is a complete floor plan that shows all the improvements or whatever he's done in there.

HEARING OFFICER LONG: The plans.

MR. LOVATO: Correct.

MS. LUCERO: Hearing Officer Long, if I could just clarify, it would go through the same process as any normal permit. We call it after the fact because it's already constructed and in addition they would have to pay some additional fees for starting construction without permits.

HEARING OFFICER LONG: Okay, I do have my mike on now and it's not making that noise. Okay, I think we'll hear from some folks but also you handed out a letter that was received opposing this variance request and referencing covenants. And I know that would be a private matter with the individuals within this area, but have you been made aware of any covenants or looked at any that govern this property?

MR. LOVATO: Hearing Officer Long, I have not seen any of the documentation for the covenants.

HEARING OFFICER LONG: Okay. All right. Thank you. Is the applicant on this case here this afternoon? All right, would you come forward please, sir? You can be sworn in and then go to the podium.

[Duly sworn, Sergio Nuñez testified as follows:]

SERGIO NUÑEZ: Sergio Nuñez.

HEARING OFFICER LONG: And Mr. Nuñez, are you in agreement with the staff conditions if this variance is approved? Recommended for approval and approved, which is you've got to apply, submit an after the fact permit for the garage and accessory dwelling unit?

MR. NUÑEZ: Yes, ma'am. In fact I already submitted some of the planning for the new garage.

HEARING OFFICER LONG: All right. Staff may require some additional information but they would let you know. Was there a neighborhood meeting on this application?

MR. NUÑEZ: Yes. Some months ago.

HEARING OFFICER LONG: Okay. What happened there?

MR. NUÑEZ: Some were in favor and a few were against us. It's kind of hard to say for me but the only thing that I told them, I built in 2006 without knowing and now that I want to make it right they're against it, so I don't know. It is what it is.

HEARING OFFICER LONG: Okay. Thank you. And then, Mr. Nuñez, I think there'll be some people here that want to speak that are here this afternoon to your case, so if you want to speak again after they are through with their comments, you are allowed to do that. All right?

MR. NUÑEZ: Thank you.

HEARING OFFICER LONG: All right. How many individuals do I have here this afternoon that would like to speak to this case, if you could raise your hand so we could see how many? Just one. Okay. And he may be speaking for others. Is that what I understand? Okay, whoever wants to speak just come forward and I'll have you all sworn in at the same time. If you'll just come to the first row then we'll know what we've got.

[Duly sworn, Sam Page testified as follows:]

SAM PAGE: My name is Sam Page. I was elected the president of the Vista Land Subdivision Homeowners Association in January and we first became aware of this request for the variance last week when one of the neighbors brought forth a notice about this hearing and so we found out that they're trying to get a variance for the distance from the lot line. The problem is this is in violation of the covenants, so we would have to oppose this. And I know the County doesn't have anything to do with enforcing the covenants but if they do allow the variance we'll still have to go ahead and file a lawsuit then to enforce the covenants that it has to be within 25 feet of the side lot line.

HEARING OFFICER LONG: So your covenants have a 25-foot setback requirement.

MR. PAGE: Yes.

HEARING OFFICER LONG: All right. And so is this property that we're talking about this afternoon within a subdivision?

MR. PAGE: Yes, it is.

HEARING OFFICER LONG: And what's the name of it?

MR. PAGE: Vista Land Subdivision.

HEARING OFFICER LONG: And how many lots are in that subdivision, would you say?

MR. PAGE: Right now with the lot splits and stuff I think there's about 114.

HEARING OFFICER LONG: Okay. All right. And so you're speaking on behalf of the homeowners association. Is that right?

MR. PAGE: Yes.

HEARING OFFICER LONG: Okay. Thank you, sir.

MR. PAGE: If I could add, the homeowners association has filed suits before for other things, for violation of the covenants and the covenants have been found to be valid and the homeowners association has pursued this, any covenant violations. Otherwise our covenants are really no good, so we would be forced to do that. We also don't have any provision within our covenants for any type of variance to be allowed so even if we wanted to we couldn't do it and keep within our covenants. The thing that would happen is the building would have to be brought into compliance with the covenants by moving at least 25 feet away from the lot line, or move the lot line.

HEARING OFFICER LONG: Okay, let me ask you this. Apparently these two garages were constructed in 2006, so quite some time ago. Twelve years ago. And why is it that the HOA didn't seek to enforcement the covenants during this period of time?

MR. PAGE: Because we weren't aware that they were in violation of the covenants. The covenants do allow for accessory structures to be built, but the portion they're in violation of is the distance from the lot line.

HEARING OFFICER LONG: Okay. Understood. So you weren't aware of it until this application was coming forward. Is that right?

MR. PAGE: That's correct.

HEARING OFFICER LONG: Okay. Thank you. Okay, anyone else that would like to speak? I know Mr. Page was speaking on behalf of the homeowners

association and I'll note that there are some other individuals here that are with him in the audience. Okay, Mr. Nuñez, did you want to say anything in response, which we allow all applicants to do?

MR. NUÑEZ: Yes, your honor. If they didn't know, how would I know? They didn't know that I was in any violation; how would I know? I didn't have any records or anything, how would I know? I only found that out when we went to that meeting.

HEARING OFFICER LONG: Were you aware that your property was subject to covenants?

MR. NUÑEZ: I did, but not the violation that I was in.

HEARING OFFICER LONG: Not the setback issue?

MR. NUÑEZ: Never. Besides, when I bought the house from the previous owner, the slab was already there, so I just built it.

HEARING OFFICER LONG: When did you buy the house?

MR. NUÑEZ: 2005.

HEARING OFFICER LONG: Okay.

MR. NUÑEZ: The residence was there a long time. [inaudible]

HEARING OFFICER LONG: Thank you. Okay, let me ask staff, what led to the Notice of Violation that got all of this started. I think that was in February of this year?

MR. LOVATO: Hearing Officer Long, that came through as a violation for illegal construction. I guess he was working on one of the existing residences so when they went out they obviously came across it and did not find any permits for these particular structures.

HEARING OFFICER LONG: So someone reported it in the area.

MR. LOVATO: Right.

HEARING OFFICER LONG: So in terms of the covenant issue and I hear what Mr. Page is saying that they weren't aware of it and that could be an issue in a covenant enforcement case and theirs is 25, but that would be a separate legal proceeding, I take it, even if the variance were allowed it would still be in violation of the covenants, apparently, according to Mr. Page and that would be something they could pursue. If the variance is not granted for these structures then what would the County's option be?

MR. LOVATO: Hearing Officer Long, if these are not granted then they would have to take them down, demolish both structures. If he wanted to re-permit them in a separate location then he'd have to go through the procedure but that would be done administratively through the building permit process.

HEARING OFFICER LONG: Okay. Thank you. I understand. All right, there's someone else who decided to speak. We closed the public hearing but I'll allow it if it's brief. And then Mr. Nuñez, you can respond to this one as well if you would like.

[Duly sworn, Rose Tapia testified as follows:]

ROSE TAPIA: My name is Rose Tapia and I am vice president of the homeowners association, which we were just elected in. To talk about – or not talk about but say about Mr. Nuñez and his permit for that garage, at the time when he started building that garage, I called to the County office to report his building of that garage because I did not see a permit out there. So when I called I saw the County inspector went out there and I had a conversation with him, because he didn't know exactly where

the property was located, and I'm right by there. So when he went up there he said that he had gotten some violations of – well, anyway, he was charged with not having a permit so they stopped construction and he had to go and apply. So what I'm wondering is why did they allow – why did the County allow him to build that garage if it wasn't in compliance with the County ordinance at that time? And that was at the time he started that garage.

And then we – I have gotten a couple of complaints, because we've been there since 1984, so we were one of the first homeowners in that subdivision and we had made friends around the area. And then the ones that came and brought it to our attention, to my husband's and my attention about that letter that he sent out for this hearing today to be able to get a variance on that property. And I took it to the president, which is Sam Page, and I said, and it states there that he should have gotten – we should have received also a copy of that letter stating that there was going to be a hearing asking for this variance. Otherwise we would not have known about this variance or the application for that variance. So he's the one – he was a concerned neighbor, which was – lives right next to him, and he said I thought maybe you all should know about that, and that's the reason why we found out about that letter and the variance for that. But I'm the one that asked him because he said – well, I spoke with the County inspector at that time and he told me that they were going to go up there and that he had gotten stop construction. He had to go and apply, so that's what I'm wondering, how come they let him go ahead and still build that building without building back then?

HEARING OFFICER LONG: In 2006?

MS. TAPIA: Yes. I think it was right around that time or a little bit later.

HEARING OFFICER LONG: Okay. Apparently the County doesn't have a record of that, but at that point there were no setback requirements, so it would have just been that he would have had to obtain a permit but it wouldn't have had the 50-foot setback. Okay. Thank you.

Okay, Mr. Nuñez, did you want to offer anything else?

MR. NUÑEZ: Whatever happened back in 2006, I never knew there was any complaints or any notifications from the County from no homeowners association, no neighbors until recently. That's my only argument. I never knew anything about it till I applied to make it legal.

HEARING OFFICER LONG: All right. Thank you. All right, so is that correct that you did not find – staff did not find any file that indicated there had been a previous Notice of Violation, nor did you find any application for a permit for the garages?

MR. LOVATO: Hearing Officer Long, I did not really look into that. We can certainly take a look into it. I don't know if there'll be any record of such violations that may have been granted back when. That's basically what I can add.

MS. LUCERO: Hearing Officer Long, we didn't have any record that there was a permit ever obtained for that, so we did research that, but as far as the violation we weren't aware that there was a previous violation report.

HEARING OFFICER LONG: Okay. All right, thank you, everyone for your input and for coming this afternoon. I appreciate your comments and along with the other cases I issue a recommendation and that's done by written report, and that will be

done within two weeks. And then the Planning Commission considers the case on July 19th. Thank you.

Okay, is there anything else that we need to take care of today?

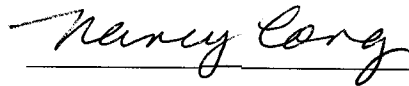
MS. LUCERO: Hearing Officer Long, I believe that we are complete with the agenda. I just want to take the opportunity to thank you for your services as the Hearing Officer over the last couple of years. It's been a pleasure working with you.

HEARING OFFICER LONG: Well, thank you. I feel the same way and I'm going to miss doing it. So thank you very much. Okay, we are adjourned.

IV. Adjournment

Hearing Officer Long adjourned the hearing at 4:00 p.m.

Approved by:



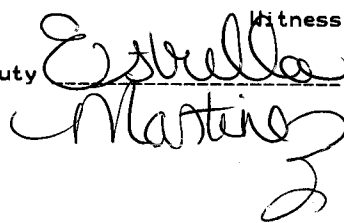
Nancy Long, SLDC Hearing Officer
Santa Fe County



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

SLDC HEARING OFFICER
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I Hereby Certify That This Instrument Was Filed for
Record On The 5TH Day Of July, 2018 at 08:40:15 AM
And Was Duly Recorded as Instrument # 1861852
Of The Records Of Santa Fe County

Deputy  Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

SFC CLERK RECORDED 07/05/2018