COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
EZC MINUTES
PAGES: 21

I Hereby Certify That This Instrument Was Filed for Record On The 17TH Day Of June, A.D., 2008 at 09:28 And Was Duly Recorded as Instrument # 1529175 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy _____ County Clerk, Santa Fe, NM

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MINUTES OF THE

SANTA FE COUNTY/CITY

EXTRATERRITORIAL ZONING COMMISSION

May 8, 2008

Santa Fe, New Mexico

This meeting of the Extraterritorial Zoning Commission was called to order by Chair Nancy Long at approximately 6:15 p.m. on the above-cited date at the Santa Fe Fairgrounds, 3229 Rodeo Road, Santa Fe, New Mexico. She apologized to the public for the delay.

Following the Pledge of Allegiance, roll call indicated a quorum as follows:

Members Present:
Nancy Long, Chair
Pat Gonzales
Mark Marquez
Mike Mier

Member(s) Excused:
Orlando Romero
Mary Helen Follingstad, Vice Chair
[One Vacancy]

Staff Present:
Shelley Cobau, County Development Review Division Director
Sue Herrmann, Assistant County Attorney
Vicki Lucero, Development Review Team Leader
Wayne Dalton, Building & Development Services Supervisor
Jose

APPROVAL OF THE AGENDA

Referring to the amended agenda, Ms. Cobau noted the following tablings:

Consent cases:
DL 07-4220, McDonald land division
DL 08-4040, Segal family transfer
DL 08-4100, Altshuler land division
DL 08-4120, Brooks land division

Commissioner Marquez moved to approve the agenda as amended. His motion was seconded by Commissioner Mier and passed by unanimous voice vote.

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APPROVAL OF MINUTES: March 13, 2008

Commissioner Mier moved to approve the minutes as published. His motion was seconded by Commissioner Gonzales and passed without opposition.

CONSENT AGENDA

Findings of Fact:

1. EZ Case DL 07-4320 Odai Land Division – Approved
2. EZ Case DL 07-4370 Lopez Land Division – Approved
3. EZ Case DL 07-4340 Miramontes, et al. Land Division – Approved

Commissioner Gonzales moved to approve the findings of the above previously approved cases. His motion was seconded by Commissioner Mier and passed by unanimous voice vote.

4. **EZ Case #DL 07-4220. McDonald Land Division** – Tabled
5. **EZ Case #DL 08-4040. McDonald Land Division** – Tabled

6. **EZ CASE # DL 08-4050 Norviel Land Division: Paul Norviel, Applicant, Louis Gonzales, Agent, request Plat approval to divide 12.5 acres into three tracts. The tracts will be known as Tract 2A (7.5 acres more or less), Tract 2B (2.5 acres more or less) and Tract 2C (2.5 acres more or less). The property is located off Estrellas de Tano, within Section 33, Township 18 North, Range 9 East, within the 2-Mile EZ, District 2**

County conditions

1. The on site access road must have a minimum 38' easement with a 20' driving surface and must be developed meeting Section 3.5 of the Extraterritorial Subdivision Regulations (Road Requirements and Standards). Prior to recording the Plat the Applicant must construct the road or provide Santa Fe County with a certified engineer's cost estimate for roadway improvements. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be included.
2. The Applicant must record Water Restrictive Covenants simultaneously with the Plat imposing 0.25 acre feet per year water restrictions, for Tract 2B and Tract 2C and .75 acre feet for Tract 2A. Water meters must be installed on each lot at the time of development and meter readings must be submitted to the Land Use Administrator annually by January 31st of each year. The Applicant must record a Shared Well Agreement simultaneously with the Plat.
3. Final Plat shall be recorded within eighteen (18) months of the date of final approval, per Section 3.3.5.C.9 (Final Plat Procedures) Extraterritorial Subdivision Regulations.
4. A future mailbox cluster may be required to serve these and other parcels, therefore a 15 X 100 foot easement shall be platted on the Estrellas de Tano frontage.
5. The Applicant must address all minor corrections as shown on the proposed Plat. The redlines have been delivered to the Applicant by Jose E. Larrañaga, Development Review Specialist. These redlines **must** be resubmitted with the Mylar prior to recordation.

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7. **EZ Case# DL 08-4130 Juarez Family Transfer: Javier and Rosalie Juarez, Applicant's, Allen Grace, Agent, request Plat approval to divide 2.9 acres into two lots for the purpose of a Family Transfer. The lots will be known as Lot 5-A (1.47 acres more or less) and Lot 5-B (1.50 acres more or less). The property is located at 74 Taylor Loop, via the East Frontage Road, within Section 5, Township 15 North, Range 8 East, within the 5-Mile EZ, District 5**

County Conditions:

1. Lot 5-A and Lot 5-B will take accesses from existing driveways.
2. The Applicant must record Water Restrictive Covenants simultaneously with the Plat imposing 0.25 acre feet per year water restrictions. Water meters must be installed on each lot at the time of development and meter readings must be submitted to the Land Use Administrator annually by January 31st of each year.
   The Applicant must record a Shared Well Agreement simultaneously with the Plat.
3. Final Plat shall be recorded within eighteen (18) months of the date of final approval, Per Section 3.3.5.C.9 (Final Plat Procedures) Extraterritorial Subdivision Regulations.
4. A future mailbox cluster may be required to serve these and other parcels, therefore a 15 X 100 foot easement shall be platted on the Taylor Loop frontage.
5. The Applicant must address all minor corrections as shown on the proposed Plat. The redlines have been delivered to the Applicant by Jose E. Larrañaga, Development Review Specialist. These redlines **must** be resubmitted with the Mylar prior to recordation.

8. **CASE # DL 08-4110 Burks Family Transfer: Keith Burks, Applicant, requests Plat approval to divide 2.5 acres into three lots for the purpose of a Family Transfer. The lots will be known as Lot 3-A (1.0 acres more or less), Lot 3-B (.75 acres more or less) and Lot 3-C (.75 acres more or less). The property is located at 14 Vista Del Monte, via State Road 14, within Section 25, Township 16 North, Range 8 East, within the 5-Mile EZ, District 5**

County Conditions:

1. The on site access road must have a minimum 38' easement with a 20' driving surface and must be developed meeting Section 3.5 of the Extraterritorial Subdivision Regulations (Road Requirements and Standards). Prior to recording the Plat the Applicant must construct the road or provide Santa Fe County with a certified engineer's cost estimate for roadway improvements. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be included.
2. The Applicant must record Water Restrictive Covenants simultaneously with the Plat imposing 0.25 acre feet per year water restrictions. Water meters must be installed on each lot at the time of development and meter readings must be submitted to the Land Use Administrator annually by January 31st of each year.
   The Applicant must record a Shared Well Agreement simultaneously with the Plat.
3. Final Plat shall be recorded within eighteen (18) months of the date of final approval, per Section 3.3.5.C.9 (Final Plat Procedures) Extraterritorial Subdivision Regulations.
4. A future mailbox cluster may be required to serve these and other parcels, therefore a 15 X 100 foot easement shall be platted on the Vista Del Monte frontage.

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5. The Applicant must address all minor corrections as shown on the proposed Plat. The redlines have been delivered to the Applicant by Jose E. Larrañaga, Development Review Specialist. These redlines **must** be resubmitted with the Mylar prior to recordation.

9. EZ CASE # DL 08-4060 Trujillo Land Division: David and Yolanda Trujillo, Applicants, requests Plat approval to divide 1.50 acres into two tracts. The tracts will be known as Tract 2A-1 (0.75 acres more or less) and Tract 2A-2 (0.75 acres more or less). The property is located at 28A and 31 Camino Chupadero-County Road 78, in the Traditional Community of Chupadero, within Section 6, Township 18 North, Range 10 East, within the 5-Mile EZ, District 1

County Conditions:

1. The onsite access road must have a minimum 38' easement with a 20' driving surface and must be developed meeting Section 3.5 of the Extraterritorial Subdivision Regulations (Road Requirements and Standards). Prior to recording the Plat the Applicant must construct the road or provide Santa Fe County with a certified engineer's cost estimate for roadway improvements. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be included. Prior to recording the Plat, the Applicant must realign the existing access road within the platted easement.
2. The Applicant must record Water Restrictive Covenants on Tract 2A-2 simultaneously with the Plat imposing 0.25 acre-feet per year water restrictions per Article III, 10.1.1 and 10.1.2 of The Land Development Code. Water meters must be installed on Tract 2A-2 and meter readings must be submitted to the Land Use Administrator annually by January 31st of each year.
3. The Final Plat shall be recorded within eighteen (18) months of the date of final approval, per Section 3.3.5.C.9 (Final Plat Procedures) of the Extraterritorial Subdivision Regulations.
4. The Applicant must address all minor corrections as shown on the proposed Plat. The redlines have been delivered to the Applicant by John Lovato, Development Review Specialist. These redlines **must** be resubmitted with the Mylar prior to recordation.

Consent Action

Commissioner Gonzales asked whether the building issues regarding the Juarez family transfer had been reviewed by staff. Mr. Larrañaga said code enforcement conducted a site visit and Mr. Juarez has a business on the property and will screen and hide the equipment. The applicant is in compliance with the code.

Chair Long asked if anyone was in the public wishing to speak regarding the four consent cases presented for approval. There were none.

Duly sworn, Louis Gonzales, agent for the Norviel land division, said they agreed to all conditions.

Duly sworn, Allen Grace, agent for the Juarez family transfer agreed to all County conditions.

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Duly sworn, Keith Burks, applicant for the Burks family transfer agreed to all County conditions.

Nick Larrañaga, agent for Trujillo land division, under oath, agreed to all conditions.

Commissioner Mier moved to approve the four cases, (DL 08-4050, 08-4130, 08-4110 and 08-4060) with all staff-imposed conditions. His motion was seconded by Commissioner Marquez and passed by unanimous voice vote.

NEW BUSINESS

1. **EZ CASE # DL 08-4140 Lerma Family Transfer Isaac Lerma, Applicant, requests Plat approval to divide 4.73 acres into two lots for the purpose of a Family Transfer. The lots will be known as Lot 2-A (1.25 acres more or less) and Lot 2-B (3.48 acres more or less). The property is located at 19 Calle Suzanna, within the Pinon Hills Subdivision, via County Road 70, within Section 25, Township 17 North, Range 8 East, within the 5-Mile EZ, District 2**
[Exhibits 1-3: Pinon Hills Subdivision area residents' letters]

Chair Long recited the case caption and Mr. Larrañaga provided his staff report as follow:

"Applicant, Isaac Lerma, wishes to convey 1.25 acres of a 4.7 acre parcel, to his son. The application for a division of land by way of a Family Transfer is in compliance with applicable provisions of the Extraterritorial Subdivision Regulations, Section 3.3.6. The property has been in the family proper since 1992.

"There is currently one dwelling on the property. The property is located in the Pinon Hills Subdivision within the Basin Hydrologic Zone where the minimum lot size is 2.5 acres. Under the EZO, Family Transfers of one-half the minimum lot size are allowed, therefore creation of these lots is possible with .25 acre feet per year water restrictions.

"The subdivision in which the property is located was approved by the BCC in 1964. This subdivision is legal non-conforming, as it does not meet current subdivision standards for fire protection, roads, water and liquid waste."

Mr. Larrañaga said access to the lots will be from a shared roadway off of Calle Suzanna, via Santa Fe County Rd 70A, which crosses a 100-year floodplain. The ESR requires an all-weather crossing over 100-year floodplains, currently this crossing does not exist, so the lot(s) do not have the benefit of an all weather access. Since the property is located within a legal non-conforming subdivision; therefore, this application will be heard by the Board of County Commissioners.

He indicated that all existing infrastructure such as fire protection and roads within Pinon Hills/Alameda Ranchettes have been constructed in accordance with the subdivision standards that were in place in 1964 at the time of approval. Infrastructure requirements in 1964 were not as comprehensive as today's standards, thus the Pinon Hills/Alameda Ranchettes Subdivision is

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legal non-conforming. Access to the property crosses over a 100-year flood zone that does not have an all weather crossing. Staff does not support increasing density in areas that do not have adequate access for emergency vehicles. Therefore, staff recommends denial of the Applicant's request.

Commissioner Mier observed that the all-weather crossing has been brought up for all lot divisions in this subdivision and requested staff's confirmation of that fact. Mr. Larrañaga confirmed that was true and reminded the Commission that this case will go before the BCC.

Commissioner Mier said the County should bear the cost on developing an adequate all-weather crossing.

Duly sworn, Isaac Lerma, applicant, said he owns 4.19 acres and is creating a 1.25 acre lot for his son to build a home on. Mr. Lerma indicated that he currently lives on the property.

Mr. Larrañaga said other than the all-weather crossing the application meets code requirements.

Duly sworn, Roy McCabe requested that the Commission table this lot split until the County is able to monitor and enforce its imposed .25 acre-feet per-year water restriction. Mr. McCabe said the condition is not enforced and individuals that have received lot splits are not reporting water-monitoring readings to the County. He lauded the County's intentions as good but said without follow through they are worthless.

Mr. McCabe urged the Commission to table this request.

Stating it was hard to hold one applicant hostage for an entire process failure, Commissioner Gonzales asked the speaker whether he has taken his concern to the Land Use Administrator or County Manager. Mr. McCabe said he has and a solution has not been implemented. The County should enforce its rules and at the least create a paper trail. Bottom line, Mr. McCabe said he is worried about the water supply.

Commissioner Marquez recalled postponing action on lot divisions in this area until a hydrant was installed. Ms. Cobau said staff's recommendation for denial is based on lack of good access. Commissioner Marquez said his concern is fire protection and asked whether there were plans with this subdivision and Los Sueños.

Sue Herrmann, Assistant County Attorney, recalled that former EZ Commissioner Lujan had asked whether there were state funds available to improve fire protection in this area and there are not.

Mr. Lerma said he was willing to meet the County conditions and was willing to install meters and monitor water use. He mentioned that his son who will be living on the property is an EMT and firefighter and that his presence would benefit the community. Mr. Lerma said he has no intentions of selling the property.

Commissioner Mier said it was important the County enforce its conditions.

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Commissioner Mier moved to approve DL 08-4140 with all staff conditions. His motion was seconded by Commissioner Gonzales and passed by unanimous voice vote.

2. **EZ Case # V 08-4000 Collins Variance David Collins, applicant, requests approval of two variances of Section 9.8 (Mountain Special Review District Standards) of the Extraterritorial Zoning Ordinance to allow the height of a structure to exceed 14'; and to allow a two-story structure. The property is located in the Landmark Area of the Mountain Special Review District at 3264 Paseo Del Monte in Hyde Park Estates within Section 9, Township 17 North, Range 10 East, within the 2-Mile EZ, District 1**

Chair Long recused herself from this issue.

Vice Chair Gonzales recited the case caption and Ms. Lucero presented her staff report in the following detail:

"The property is a 1.23-acre lot in Hyde Park Estates De Santa Fe with an existing 1,600 square foot, two story residence. The residence was constructed at a height of 24' 3¾". The residence was constructed prior to the Mountain Special Review District Ordinance. The property lies partially in the Mountain Special Review District (MSRD), and partially in the EZ. Map 10 (MSRD Map) as referenced in the EZO shows the MSRD boundary line running down the center of the existing house. All land to the southeast of the district boundary line is in the MSRD and the land to the northwest is in the EZ.

"The Applicant is proposing to construct two additions to the existing house. One of the additions lies within the EZ area and is in conformance with EZO requirements. The second addition (which lies entirely in the MSRD) will require variances of the MSRD criteria. Proposed construction consists of a 1,687 square foot, 2-story addition, which will be attached to the southeast corner of the existing residence.

"The Applicant is requesting two variances for the proposed addition: 1) to allow a building height of 24' 3¾" (10' 3 ¾" over the required 14'); and 2) to allow for a two story addition.

"Section 9.8.C.5.b states: "The maximum height of any building or structure in the Mountain Special Review District shall not exceed fourteen feet (14') as measured from the tops of the surrounding parapets or roof pitch." Section 9.8.C.5.d states: "On Ridgetops and in Landmark areas, to the extent development is permitted under this Ordinance, only one (1) story buildings are allowed."

Ms. Lucero reviewed the ordinance requirement, the applicant's justification for the variance and staff's response and provided below.

The Applicant has addressed the review criteria of the MSRD and responded to the Variance criteria. Staff has also provided a response to the Variance Review Criteria.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands,

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structures, or buildings in the same district;

A) Applicant Response: All neighboring houses that can view my house (at all) are outside the MSRD. The three houses to the north / northwest and the house to the west (across Paseo Del Monte) are all outside this district. The only neighbor (which cannot visually see my house) to the south is the only house nearby my house that is in this district. The height of my neighbor's house to the north from the lowest level to the top ridge of his metal roof is approximately 42'.

B) Staff Response: The property lies within the Mountain Special Review District where the maximum height allowed is 14' as measured from the tops of the surrounding parapets or roof pitch. The existing structure is 23.3', and the new addition on the MSRD side will be 24'3-3/4".

2. A literal interpretation of the provisions of the Ordinance would deprive the applicant of right commonly enjoyed by other properties in the same district under the terms of the Ordinance:

A) Applicant Response: Half of my property is in this district and half is not (the district runs along my roof's ridge line). As stated above, 3 of my 4 neighbors are outside of this district. None of these neighbors (or the neighbor to the south which is in the district) would have their view at all encumbered because of this addition.

B) Staff Response: A literal interpretation of the provisions of the Ordinance would preclude the Applicant from matching the proposed addition to the existing structure.

3. There are special conditions and circumstances which are not the result of actions by the applicant, and that the hardship is not self-imposed or self-created:

A) Applicant Response: The only true flat building site on my property is in the MSRD (shown in attached photos). The design as presented (which as stated in the Letter of Intent) is best for all my neighbors for viewing of the mountains. Because of the location of my property and that my neighbors are not in this district, my property should not be in the MSRD.

B) Staff Response: The circumstances which have led to the Applicant requesting a variance are not self-imposed or self-created. The height of the proposed addition on the MSRD side is intended to complement the existing structure and the proposed new addition on the EZ side by being the same height which will standardize the overall look of the entire residence.

4. Granting the variance requested will not confer on the applicant any special privilege that is denied by the Ordinance to the owners of other lands, structures or buildings in the same district;

A) Applicant Response: As shown in all the attached exhibits (3-D renderings / site plan / front elevation and site photographs) this new addition to the house on the side in the MSRD will stay within the architectural vocabulary and size / shape of the existing house. By building this addition on this side and not the north side (side of the property outside the MSRD) the neighbors views over my house will be less encumbered as described in the Letter of Intent and in answer #2.

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B) Staff Response: The MSRD Ordinance is specific that the height of buildings be no greater than 14', which creates the need for this variance request.

5. The applicant demonstrate that the request is a minimum easing of the Ordinance requirements, making possible the reasonable use of the land, building or structure;
   A) Applicant Response: This addition is designed to disturb the existing site as little as possible. The largest flat area of expansion for this existing house is where this addition is designed to be built on the MSRD side of the house. This addition will disturb only a few trees and not disturb any natural drainage on the existing site.
   B) Staff Response: The height of the proposed new EZ addition is allowed under the EZO. The proposed MSRD addition would be the same height as the existing residence and the EZ addition. Staff believes that allowing the MSRD addition to be the same height as the existing residence and the proposed EZ addition could be considered a minimal easing of the Ordinance.
6. The granting of the variance is in harmony with the general interest, the general purpose and intent of the Ordinance, and is not injurious to the neighborhood or otherwise detrimental to the public welfare;
   A) Applicant Response: As stated in the Letter of Intent, this design is designed to have the least impact on all of my neighbor's views or encroaching on their privacy by building too close to their house. It is designed to blend (and enhance) in with the established existing house, and it will not be able to be viewed from any public street (the addition will be approximately 20' below the existing street level).
   B) Staff Response: The general intent of the Ordinance in this regard is to minimize destruction of the pristine visual quality of the Sangre de Cristo Mountains from large or predominant structures as seen from major arterials. It has been determined that the proposed structure will not be visible from any major arterial, therefore, the request meets the purpose and intent of the Ordinance.
7. That the variance will not set a precedent which conflicts with the policies of the Extraterritorial Plan and this Ordinance;
   A) Applicant Response: This plan will not set any precedent for any new development in this neighborhood (as shown by the attached photographs showing the majority of houses have sloped roofs and are all multiple stories) and will allow the best use of the land for my neighbors and my new house addition.
   B) Staff Response: Approval of the requested variance will not set a precedent with the policies of the EZO. There are special circumstances with this particular property and the proposal does meet the intent of the MSRD.
8. The proposed variance will not permit a use not generally or by special exceptions permitted in the district involved or an use expressly or by implication prohibited by the terms of this Ordinance;

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A) Applicant Response: Acceptance of this variance will not grant the addition to my house any special privileges. The design presented for this variance "embraces" the overall purpose and intent of the MSRD (creating fewer disturbances for views / drainage / using the most buildable area of the site / preservation of existing vegetation, etc.).
B) Staff Response: The approval of this variance will permit a use not generally permitted in the district.

9. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures or buildings in other districts has been or shall be considered grounds for the issuance of a variance;
   A) Applicant Response: The neighboring land will not be unduly hampered in any way by granting of this variance. To the contrary (as described in the Letter of Intent), if this variance is not granted and I will need to build the entire addition on the north side of my property (property outside the MSRD) then the views and disturbance of vegetation will be more greatly impacted for my property and my neighbor's properties.
   B) Staff Response: No non-conforming uses have been considered as grounds for issuance of this request.
10. The applicant would suffer unnecessary hardship if the variance requested were denied.
   A) Applicant Response: The neighboring land will not be unduly hampered in any way by granting of this variance. To the contrary (as described in the Letter of Intent), if this variance is not granted and I will need to build the entire addition on the north side of my property (property outside the MSRD) then the views and disturbance of vegetation will be more greatly impacted for my property and my neighbor's properties.
   B) Staff Response: If the variance for height was denied, the Applicant's ability to construct an addition that was compatible with the existing residence would be difficult.

Ridgetop / Landmark areas (1 story structure allowed):

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;
   A) Applicant Response: All of the existing houses that are my neighbors have two-story houses. My existing house is a two story house. Any addition to "blend in architecturally and enhance the neighborhood" needs to be a two story structure. As stated above in the height variance, I have studied the elevations at great length to keep the height of this two story structure at the same roof ridge line as the existing house.
   B) Staff Response: The property lies within the Mountain Special Review District in the Landmark area where only one story buildings are allowed. The existing structure has two stories and the proposed new addition on the EZ side has two stories. The new addition on the MSRD side will blend in architecturally. The parcel bisected by a boundary could be considered a special circumstance.

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2. A literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Ordinance:
   A) Applicant Response: The majority of all the houses in Hyde Park Estates are two story houses. I believe that all but one house on Paseo Del Monte (the portion of Paseo Del Monte that faces the mountains) are two story houses. The majority of the neighborhood was completed in the late 1960's – late 1970's (so almost the entire neighbor is built out) and by depriving me of this right I would not have the same rights as my neighbors.
   B) Staff Response: A literal interpretation of the provisions of the Ordinance would preclude the Applicant from adding a two-story to the existing two-story structure.
3. There are special conditions and circumstances which are not the result of actions by the applicant, and that the hardship is not self-imposed or self created:
   A) Applicant Response: My existing house is a two story house and the best addition for the structure and blending the architecture is a two story addition entry. As shown in the attached photographs this new two story addition will not visually impact the views of any of my neighbors.
   B) Staff Response: The circumstances which have led to the Applicant requesting a variance are not self-imposed or self-created.
4. Granting the variance requested will not confer on the applicant any special privilege that is denied by the Ordinance to the owners of other lands, structures or buildings in the same district;
   A) Applicant Response: As stated above the majority of all the houses in this neighborhood were built before this MSRD was superimposed on the land. The majority of these houses are two stories, as is my house. This addition only allows me to complete this existing house creating a new home that will appear to be designed and built at the same time instead of an addition that is contrary to the design of the existing structure.
   B) Staff Response: The MSRD Ordinance is specific that only one story buildings are allowed in the Landmark area. Many of the structures in Hyde Park Estates were built with two stories, prior to the MSRD Regulations. If granted, the variance will not confer any special privilege to the Applicant that owners of other residences in Hyde Park Estates don't already enjoy.
5. The applicant demonstrate that the request is a minimum easing of the Ordinance requirements, making possible the reasonable use of the land, building or structure;
   A) Applicant Response: This new addition is designed for the most minimal impact on the existing land. The two story structure not only aesthetically blends in with the existing house, but disturbs the least amount of natural landscape of the existing land / lot.
   B) Staff Response: The proposed addition in the EZ is allowed under the EZO. The proposed MSRD addition would be the same height as the existing two story residence and the proposed two story EZ

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addition. Staff believes that allowing the two-story in the MSRD portion of the parcel could be considered minimal easing of the Ordinance.

6. The granting of the variance is in harmony with the general interest, the general purpose and intent of the Ordinance, and is not injurious to the neighborhood or otherwise detrimental to the public welfare;
   A) Applicant Response: As stated above the neighborhood architecture is mostly two story houses that have sloped roofs and are built of the same style of architecture of my existing house. I feel as an architect this new addition enhances both my house and therefore enhances the neighborhood for my neighbors.
   B) Staff Response: The general intent of the Ordinance in this regard is to minimize destruction of the pristine visual quality of the Sangre de Cristo Mountains from large or predominant structures as seen from major arterials. It has been determined that the proposed structure will not be visible from any major arterial, therefore, the request meets the purpose and intent of the Ordinance.
7. That the variance will not set a precedent which conflicts with the policies of the Extraterritorial Plan and this Ordinance;
   A) Applicant Response: This variance will only allow me to add an addition to my house which architecturally will look like the house was built with the original structure – so it will not set any new precedents for the Extraterritorial Plan and this Ordinance.
   B) Staff Response: Because the existing residence is bisected by the MSRD boundary, Staff believes that this is a special circumstance that would not set a precedent.
8. The proposed variance will not permit a use not generally or by special exceptions permitted in the district involved or a use expressly or by implication prohibited by the terms of this Ordinance;
   A) Applicant Response: Acceptance of this variance will not grant this house or me any special exceptions that are not already in this district. As stated above the majority of all houses in Hyde Park Estates as well as all of my neighbors have two story houses.
   B) Staff Response: The approval of this variance will permit a use not generally permitted in the district. However, because the parcel is bisected by the MSRD boundary and because the residence is already existing, Staff believes that it is not unreasonable to support the variance.
9. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures or buildings in other districts has been or shall be considered grounds for the issuance of a variance;
   A) Applicant Response: As stated above in the height variance request, if this variance is not granted I will be forced to build a two story addition to my property on the side of my house that is not in the MSRD – which will unduly harm my neighbors privacy and views. This small two story addition in the MSRD is the best approach to architecturally blend the new addition with the existing house, disturb the least amount of land, and disrupt the least amount of views of my neighbors.

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B) Staff Response: No non-conforming uses have been considered as grounds for permitting this request.

10. The applicant would suffer unnecessary hardship if the variance requested were denied.
    A) Applicant Response: This new addition is only to build on the structure and architecture established and built on my property. Having to "force" a style or architectural design that is not in the same architectural style will unduly harm the integrity of my home. The home and the neighborhood would suffer having a house that would look like it was built in two different generations instead of a house that has continuity and looks like it was built at the same time.
    B) Staff Response: The proposed site is preferred by the Applicant, however, the Applicant has demonstrated that this building site, while requiring variances, would provide the best site for the proposed addition.

Ms. Lucero said the applicant, is requesting two variances of the Extraterritorial Zoning Ordinance, Mountain Special District standards; Section 9.8.C.5.b and Section 9.8.C.5.d (building height and number of building stories allowed) to allow a building height of 24' 3 ¾" (8' over the required 14'; and to allow the MSRD side of the new addition to have two stories. Based on the variance review criteria, staff believes that there are special circumstances that exist with this particular property due to the fact that the MSRD boundary bisects the existing residence which was constructed prior to the MSRD ordinance becoming effective. The Applicant is requesting to construct an addition that is proportional to the existing residence. Staff also believes that the proposal meets the intent of the MSRD Ordinance to protect the visual quality of the Sangre de Cristo Mountains as seen from Major Arterials. Therefore, Staff recommends approval of the request subject to the following conditions:

1. Window and door glazing shall be limited to no more than thirty percent (30%) of façade, except:
   a. glazing shall be limited to no more than fifty percent (50%) under portals eight (8') or deeper, or
   b. subsection 4.a shall not apply to glazing on a south-facing façade where incorporated into a documented, design solar heating application equivalent to one for which the annual "Solar Saving Fraction (SSF)" exceeds sixty percent (60%). See for example "*Passive Solar Design Handbook*" Balcomb et al., DOE/Los Alamos National Laboratories, 1984. Glazing shall be non-mirrored and the LRV shall be less twenty percent (20%).
2. The colors of exterior finish materials shall be those colors predominately extant year round in the natural environment, such as browns, greens, or dark mauve, at the building site.
3. The Applicant must comply with all other applicable standards of the Extraterritorial Zoning Ordinance.

Appearing for the applicant was their counsel, Brian Egolf. He noted there were two proposed additions, each having its own different requirements. Using an aerial photo, Mr. Egolf, delineated how the landmark zone bisects the house. While reviewing the photo, he

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explained to that his clients, Siastus and the Hiesigers are involved in a legal issue which he asserted was not relevant to the variances before the Commission. The request does not infringe on the pending litigation and described the old boundaries as well as the new boundaries. He said there was an issue regarding the water tank and his clients have agreed to move the tank.

Referring to the lawsuit, Mr. Egolf said one of the questions is whether the County acted property when it vacated an easement in 2001. He reiterated that this is not the proper venue in which to air that case.

Attorney Thomas Simons on behalf of Asher and Catherine Hiesiger questioned the legality of the Commission hearing this case because at this point with the Chair recused there are only three members.

Ms. Herrmann said that according to Roberts Rules of Order, the Commission has a quorum and the Chair abstaining does not affect the quorum.

Mr. Simons said he objects to a decision being made without a quorum.

Mr. Simons distributed a packet [Exhibit 4] and said there is public road deed that was vacated incorrectly by the County and must be resolved before any action is taken on this case. The county road was invalidly vacated because access to Tract 4 has been lost, the Open Meeting Act was violated, no notice was provided to his clients and by the County granting this vacation his clients are landlocked. The County must void the deed, stated Mr. Simons. Where the Collins want to put their septic tank is on a County Road and further the Collins' home is too close to the road. Mr. Simons said the County and Collins are named in this lawsuit.

Mr. Simons cautioned the Commission that approving the variances will further expose the County to liabilities -- violation of setback requirements, traffic problems, improperly sited septic tank and other issues.

Returning to the podium, Mr. Egolf said his clients were willing to relocate the septic system to the southern edge of the property. The opponents' counsel has failed to show how the Collins' request will encroach on the northern side of the property. In fact, he pointed out that the alleged road is a "dirt path."

Threats of future liabilities to the Commission are groundless in relation to what's being asked for here tonight, stated Mr. Egolf. Even if the road were reinstated, the variance request and boundaries of the zone don't change. The building pre-dates the lot line adjustment that Mr. Simons refers to.

Mr. Egolf said his clients agree to the County conditions without reservation.

Commissioner Marquez asked the applicant's counsel to identify where the access for Lot 4 was and in the course of his descriptions of the access, Mr. Egolf stated that if it is landlocked an access will be found.

There were no other speakers on this case.

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Commissioner Mier moved to approve the variances requested in V 08-4000 with staff-imposed conditions. Commissioner Marquez seconded and the motion passed by unanimous voice vote.

3. EZ Case #S 06-4311 Ponderado Subdivision Phase II. Ponderado Subdivision (Ted Wegner and Judy Ross), applicants, Tigges Planning Consultants (Linda Tigges), agent, request Final Development Plan and Plat approval of Phase II for a 14 lot residential subdivision on 43.245 acres more or less and a variance of Section 3.5 of the Extraterritorial Subdivision Regulations (ESR) to allow driveway access for two lots on a minor arterial road. The proposed subdivision is located at the end of Camino Peralta off County Road 68, which is north of NM State Road 599, within Section 30, Township 17 North, Range 9 East within the 5-mile EZ District

Chair Long read the case caption and Mr. Archuleta reviewed his staff report as follows:

"On December 14, 2006 the EZC met and tabled this case so the applicant could work with the Affordable Housing and Land Use staff. The applicant was directed to reduce access points to Hager Road/Los Sueños Trail by changing the configuration of lots.

"On October 10, 2006 the BCC granted approval for final development Plan and Plat for Phase 1 of the Ponderado subdivision which consisted of two lots – one was 2.996 acre residential lot and the other 40.249 acre lot – and preliminary development plan approval for Phase II which consists of the remaining 14 lots – 13 residential and one dedicated open space on 40.249 acres, subject to staff conditions.

"The applicant requests final development plan and plat approval for Phase II consisting of the remaining 14 lots on 40.249 acres. The entire subdivision consists of 15 lots – 14 residential lots and one open space lots, which includes two affordable lots meeting the County's Affordable Housing ordinance. The lots range in sizes of .993 acres to 3.581 acres.

"The property is located within the Basin Fringe Hydrologic Zone which allows one dwelling unit per 2.5 acres with proof of adequate water and .25 acre-feet water restriction.

"The request also includes a variance of Section 3.5, Road Requirements and Road Standards, of the ESR to allow driveway access for Lots 13 and 14 on a minor arterial road. Section 3.5.1.F.1 states, that when a proposed subdivision or development contains lots abutting or adjacent to a minor or minor arterial, it shall be planned so that lots do not front on the arterial. The subdivision or development shall be laid out to have a minimum number of road or street intersections with arterial; intersections and driveways shall meet the standards of 3.5.8 of these regulations."

Mr. Archuleta indicated that the applicant responded to the variance criteria [*Exhibit 5*] and staff has responded to the applicants' claims [See staff's report].

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Staff recommends approval of the variance request for driveway access from Los Sueños Trail for Lot 14 because alternative access is not available. However, staff recommends denial of the variance request for direct access for the driveway to Lot 13, which can take access off Camion Peralta within an easement through Phase I, Lot 12.

If approved, Mr. Archuleta asked that the Commission impose the following conditions:

1. Lot 13 shall take access off Camino Peralta within an easement through Phase I, Lot 12.
2. Compliance with applicable review comments from the following:
    a. State Engineer
    b. State ED
    c. State DOT
    d. County Hydrologist
    e. County Developer Review Director
    f. County Fire Marshal
    g. County Public Works
    h. County Technical Review
    i. State Soil and Water District
    j. County Affordable Housing
3. Lots 6 and 7 shall share a driveway as required by Article III, Section 4.4.3.a of the Land Development Code
4. The easement along the west property line will be an acceptable public trail easement.
5. Final homeowner documents (covenants, by-laws, articles of incorporation, disclosure statement) are subject to approval by staff and shall include but not be limited to the following:
    a. Water restrictions of .25 acre-feet per lot
    b. Shared well agreement
    c. Water conservation measures shall include water storage from roof drainage
    d. Maintenance of roads and drainage facilities
    e. Maintenance of septic systems
    f. Solid waste removal by the Homeowners Association if the homeowner is not complying
    g. Affordable lots
    h. Floodplain obstructions, minimum lowest floor elevations
6. Each lot is required to install residential fire suppression sprinkler systems and alarms as required by the Urban Wildland Interface Code Ordinance No. 2001-11 and this shall be noted on the plat.
7. All redlines shall be addressed.
8. Applicant shall address the following issues form the Santa Fe County Hydrologist prior to:
    a. All water will be supplied by shared wells, each supplying at least three lots
    b. Submit a coy of the Water Quality Analysis from NMED to fulfill the water quality requirements
9. Applicant shall identify affordable lots on plat of survey and disclosure statement as required by Ordinance No. 2006-2
10. The applicant must record water restrictive covenants simultaneously imposing .25 acre-feet per year per lot as required by Article VII, Section 6.6.2 of the Land Development Code. Water meters for each subject parcel must be installed to monitor water use.

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Water consumption reports must be submitted to the County Hydrologist by January 31st of each year and submitted to the OSE on a quarterly basis. The applicant shall add this responsibility to the Director's duties listed in the Well Sharing Agreement.

11. Trails shall be developed within common open space around perimeter of subdivision.
12. Submit Engineer's cost estimate and acceptable financial surety for completion of required improvements as approved by staff. Upon completion, submit certification by registered engineer that improvements have been completed in conformance with approved development plans.
13. A financial guarantee is required for the full cost of Los Sueños Trail/Hager Road construction prior to the plat being recorded.
14. Submit solid waste fees in conformance with the ESR.
15. Common ponds for road drainage to be located in easements. Calculations for size of culverts must be provided to support culvert design. These calculations must be provided for review and approval prior to recordation of the final plat.
16. No building permit shall be issued on any lot until Los Sueños Trail/Hager Road connection is complete and accepted by Santa Fe County.
17. Lot 13 minimum net lot size shall be at least one acre or a community water system will be required as per Article V, Section 9.3.1, Table 5.1.
18. A conditional letter of map revisions (CLOMR) is currently under review by FEMA for the Hager Road/Los Sueños Trail crossing of the Arroyo Los Frijoles. Upon completion of construction a Letter of Map Revision must be submitted to the County and to FEMA.
19. The applicant must address all redline comments by staff shown on the plat of survey and terrain management plan. These plans may be picked up from Vicente Archuleta, Development Review Specialist within the Land Department. These plans must be resubmitted on Mylar prior to recordation.

Appearing was counsel for the applicant, Chris Graeser, who stated they have done extensive work to address staff's concerns. The trial has been moved, an affordable lot has moved, the variance for Lot 13 was requested to meet the desires of the neighbors that the EZC directed the applicant to work with. He said he understood there is an emergency access and public open space that will be owned by the homeowners association but open for the public.

Using a site map, Mr. Graeser identified Lots 14 and 6 as affordable and explained the road maintenance that the homeowners association would enforce. Road maintenance is determined by the distance of the road the resident travels and the two affordable lots are situated to use the least amount thus reducing their fees.

Commissioner Gonzales said he wasn't satisfied with the affordable lots and asked whether that was really the best the developer could do. Mr. Graeser responded that the two lots conform to the ordinance and it is in the developer's best interest for all the lots to be attractive.

Mr. Graeser discussed that conditions 1 and 16 are only applicable if the variance is denied and Mr. Archuleta confirmed that was correct.

There were no other speakers on this case.

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Commissioner Gonzales moved to approve staff's recommendation and approve the variance request for driveway access from Los Sueños Trail for Lot 14 and deny the variance request for direct access for the driveway to Lot 13 and the imposition of applicable staff-imposed conditions. His motion was seconded by Commissioner Mier and passed by unanimous voice vote.

4. **EZ CASE # Z/DP 08-4080 Sonlit Hills Christian Fellowship San Marcol Gas Appliance Co. Inc., applicant, Randy Scrafford, agent, request Master Plan Zoning with Preliminary and Final Development Plan approval for a 2,840 square feet church facility on 1.71 acres. The property is located at the southeast intersection of Agua Fria and Henry Lynch Road, within Section 32, Township 17 North, Range 9 East, within the 2-Mile EZ, District 2**
[*Exhibit 6: County Fire Department Memorandum*]

Chair Long recited the case caption and Ms. Lucero offered her staff report as follows:

"The subject property consists of an existing 1.71-acre lot with legal non-conforming uses. These uses include storage units, and office/warehouse uses. There are currently six buildings on the site. Four buildings are used for storage units, one building is used as an office for a realty and property management business, and one building has been used as an office/warehouse but is currently unoccupied.

"The applicant is requesting Master Plan Zoning as a "Special Exception" and Preliminary and Final Development Plan approval to allow the unoccupied 2,840 square feet office/warehouse building to be converted into a church facility. The proposed church will consist of a sanctuary that will accommodate up to 120 people, 2 classrooms, a coffee area and restroom facilities."

Ms. Lucero indicated that the development was reviewed for access, parking, terrain management, water, fire protection, liquid and solid waste, signage and lighting, and landscaping. Staff recommends Master Plan Zoning with Preliminary and Final Development Plan approval subject to the following conditions:

1. Master Plan/Development Plan with appropriate signatures must be recorded with the County Clerk.
2. All redline comments must be addressed, redlines must be returned.
3. Contract from a licensed solid waste disposal service must be submitted prior to recordation of the Development Plan.
4. Signage and lighting plans must conform to EZO requirements.
5. The applicant will be required to submit a financial guarantee, in an amount approved by the County, for all improvements including fire protection, roads retention ponding and landscaping prior to Master Plan/Development Plan recordation. The financial guarantee for landscaping and revegetation will be kept until the plantings have taken, for a minimum of one year after installation.
6. The applicant must obtain an updated access permit from the City of Santa Fe prior to Master Plan/Development Plan recordation.

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7. An updated septic permit from NMED must be submitted prior to Master Plan/Development Plan recordation.
8. Water use shall be restricted to 0.25 acre-feet per year. Water restrictive covenants shall be recorded with the Master Plan/Development Plan. A meter shall be installed for monitoring water use and annual meter readings shall be submitted to the County.
9. A water quality test must be submitted for review prior to Final Development Plan recordation.
10. Compliance with applicable review comments from the following:
    a) State Engineer
    b) State Environment Department
    c) State Highway Department
    d) County Water Resources Specialist
    e) Development Review Manager
    f) County Technical Review Division
    g) County Fire Marshal
    h) County Public Works

There were no questions of staff and the applicant was invited forward.

Duly sworn, Randy Scrafford, agent, said they were in agreement with all staff conditions.

There was no public wishing to speak on this issue.

Commissioner Gonzales moved to approve EZ Case Z/DP 08-4080 with all staff-imposed conditions. His motion was seconded by Commissioner Mier and passed by unanimous voice vote.

5. <u>EZ CASE # PPL/FPL 08-4010 Mesa Vista Business Park</u>: Mesa Vista LLC, Applicant, James Siebert, Agent, requests Preliminary and Final Plat and Development Plan approval of Phase II for the Mesa Vista Business Park. The project consists of 8.07 acres which would be divided into six (6) commercial lots. The property is located west of State Road 14 and south of the I-25 West Frontage road (Fireplace Drive), within Sections 25 & 26, Township 16 North, Range 8 East, within the 5-Mile EZ, District 3.

Chair Long read the case caption and Mr. Larrañaga reviewed the staff report as follows:

"On November 18, 1997, the Board of County Commissioners approved the Master Plan for Thornburg Enterprises, Ltd. On November 29, 2001, the County Development Review Committee approved Preliminary Development Plan for Phase II and Preliminary and Final Development Plan for Phase I. On July 11, 2006 the Board of County Commissioners approved a Master Plan Amendment along with Preliminary and Final Development Plat approval for Phase I.

"The Applicant is requesting Preliminary and Final Plat and Development Plan approval for Phase II of the Mesa Vista Business Park. The 8.07-acre parcel will be divided into

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six commercial lots which vary in size. The Final Development Plans for individual lots will be processed administratively and must comply with all conditions imposed with prior approvals and current code criteria."

Mr. Larrañaga said the application was reviewed for access, water supply, liquid and solid waste, fire protection, terrain management, archeological review and environmental review. The Applicant's request for Preliminary and Final Plat approval for Phase II is in conformance with the Extraterritorial Zoning Ordinance and the Community College District Ordinance. Staff recommends approval of the Preliminary and Final Plat for Phase II, of the Mesa Vista Business Park, to create six (6) commercial lots subject to the following conditions:

1. Compliance with applicable review comments from the following:
    a. State Engineer's Office
    b. Environment Department
    c. New Mexico Department of Transportation
    d. County Hydrologist
    e. Santa Fe County Public Works
    f. County Technical Review Division
    g. Santa Fe County Fire Marshal
    h. County Utilities
2. The total development shall not exceed the 3.86 acre-feet per year of water usage as appropriated by the City and the Sangre de Cristo Water Division. ~~Water restrictive covenants must be recorded with the Final Plat for Phase II~~. [removed at motion]
3. The Applicant shall participate in a CCD wide infrastructure extension policy for infrastructure improvements, operation, and maintenance.
4. Submit cost estimate and financial surety for completion of required improvements as approved by staff.
5. Final Development Plans for individual lots will be processed administratively and must comply with all conditions imposed with prior approvals and current code criteria.
6. Final Plat shall be recorded within eighteen (18) months of the date of final approval, per Section 3.3.5.C.9 (Final Plat Procedures) of the Extraterritorial Subdivision Regulations.
7. The Applicant must address all minor corrections as shown on the proposed Plat. The redlines have been delivered to the Applicant by Jose E. Larrañaga, Development Review Specialist. These redlines **must** be resubmitted with the Mylar prior to recordation.

Duly sworn, Victoria Reyes planner with Jim Siebert & Association, noted an error in condition two. She stated that because the development receives water from the City the second sentence regarding recording water restrictive covenants on the plat was not applicable.

Mr. Larrañaga confirmed that the applicant was correct.

There was no public wishing to speak regarding this case and no questions from the Commission.

Commissioner Gonzales moved to approve PPL/FPL 08-4010 with the modification to condition 2 and all other conditions. His motion was seconded by Commissioner Mier and passed by unanimous voice vote.

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PETITIONS FROM THE FLOOR

None were presented.

COMMUNICATIONS FROM THE COMMISSION

In response to a concern about obtaining a quorum, Chair Long said it was possible that the City will not appoint another member.

MATTERS FROM LAND USE STAFF

Ms. Cobau said Mr. Wayne Dalton, Building & Development Services Supervisor, will be serving as senior staff for the EZC.

ADJOURNMENT

This meeting was declared adjourned at approximately 7:35 p.m.

Approved by:

Mary Ellen Fallingstad for NL

Nancy Long, Chair

ATTEST TO:

Valerie Espinoza by VT

VALERIE ESPINOZA
SANTA FE COUNTY CLERK

Respectfully submitted:

Karen Farrell, Wordswork

PAULA L. SANCHEZ NOTARY PUBLIC STATE OF NEW MEXICO

NOTARY

My commission expires March 14, 2009.