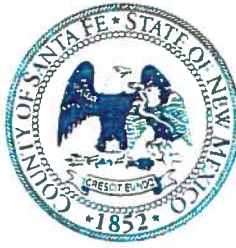


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: February 12, 2013

TO: Board of County Commissioners

FROM: Vicki Lucero, Building and Development Services Manager *VL*

VIA: Penny Ellis-Green, Land Use Administrator *PEG*

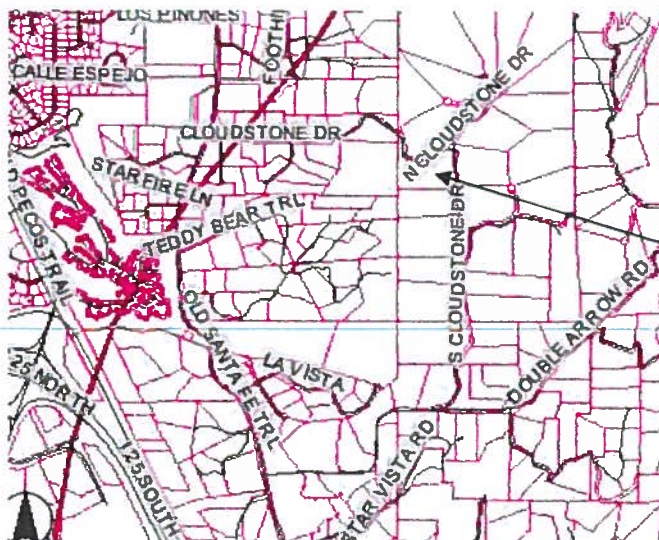
FILE REF.: CDRC CASE # V 12-5060 Jay Shapiro Variance

ISSUE:

Jay Shapiro, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 10.21 acres.

The property is located at 94 Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, (Commission District 4).

Vicinity Map:



Site Location

SUMMARY:

On January 8, 2013, the BCC met and acted on this case. The decision of the BCC was to table this request (Refer to Exhibit 11).

On September 20, 2012, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the request (Refer to CDRC minutes in Exhibit 10).

The Applicant requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 10.21 acres. The property is located in the Mountain Hydrologic Zone where the minimum lot size is 20 acres per dwelling unit with water restrictions of 0.25 acre feet per year. The 10.21-acre lot was created as part of a pre-code subdivision in 1976. At that time there were no water restrictive covenants imposed on these lots.

There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure. The accessory structure which was permitted on May 13, 2010, (Permit # 10-189) showed a bathroom, but no kitchen facilities. At the time of permitting, the Applicant signed a Development Affidavit stating that the accessory structure would not be converted at any time into a dwelling unit (Refer to Exhibit 8). The accessory structure has been converted into a dwelling with both kitchen and bathroom facilities.

The State Construction Industries Division (CID) informed the County that the accessory structure was constructed as a residence after they conducted a Final Inspection. The County issued a Notice of Violation for exceeding density and the Applicant immediately came in to submit a request for a variance.

During the final stages of design, after permits were issued, the Applicant added an area for a kitchen, which he states was approved by the Homeowner's Association. The Applicant also states that the structure in question is keeping with the character of the neighborhood and the other accessory dwelling units in the subdivision, and that the Applicant's guesthouse is smaller than the principal residence on the lot, is located near the principal dwelling and subordinate in character and use to the principal dwelling unit.

Article II, § 3 (Variances) of the County Code states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This Section goes on to state "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified." **Financial and/or medical hardships are not a basis for the granting of a variance.**

This Application was submitted on February 21, 2012 which was too late to complete the legal notice for the March CDRC public hearing. The Applicant was out of town during the time the notice was to be completed for the April hearing. This case was noticed for the May CDRC meeting. The Applicant was unable to have his attorney present at the May meeting and therefore requested that his case be tabled until June. Between that time we received a letter from the County Fire Marshal's Office stating that the applicant had not complied with their conditions of approval for the building permit and were therefore recommending denial of the request until such time that the conditions were met. The Applicant worked with Fire to address the outstanding issues which were resolved in time for the Applicant to be heard at the September 20th CDRC meeting.

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

APPROVAL SOUGHT: Approval of a variance from Article III, §10 (Lot Size Requirements) of the Land Development Code.

GROWTH MANAGEMENT AREA: El Centro, SDA-2

HYDROLOGIC ZONE: Mountain, minimum lot size per Code is 20 acres per dwelling unit with water restrictive covenants. The two proposed dwelling units exceed the number of units allowed on the subject property.

FIRE PROTECTION: Hondo Fire District.

WATER SUPPLY: Domestic Well

LIQUID WASTE: Conventional Septic System

VARIANCES: Yes

AGENCY REVIEW:	<u>Agency</u>	<u>Recommendation</u>
	County Fire	Approval

STAFF RECOMMENDATION: Denial of a variance from Article III, §10 (Lot Size Requirements) of the Land Development Code.

If the decision of the BCC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be

submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office. (**As per Article III, § 10.2.2 and Ordinance 2002-13**).

2. The Applicant must amend the development permit from the Building and Development Services Department for the second dwelling unit (**As per Article II, § 2.1**)
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Amended Development Permit Application (**As per Article III, § 2.4.1a.1(a) (iv)**).
4. The placement of additional dwelling units or division of land is prohibited on the property (**As per Article III, § 10**).
5. The Applicant shall comply with all Fire Prevention Division requirements (**As per 1997 Fire Code and 1997 NFPA Life Safety Code**).
6. No more than two electric meters shall be allowed on the property (**As per Article III, § 10**).

EXHIBITS:

1. Letter of request
2. Article III, §10 (Lot Size Requirements)
3. Article II, § 3 (Variances)
4. Site Photographs
5. Site Plan
6. Aerial of Site and Surrounding Area
7. Letters of Opposition
8. Development Affidavit
9. Fire review comments
10. September 20, 2012 CDRC Meeting Minutes
11. January 8, 2013, BCC Meeting Minutes

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February 17, 2012

VIA HAND DELIVERY

Mr. Wayne Dalton
Land Use Planning Department
Santa Fe County
102 Grant Ave
Santa Fe, New Mexico 87501

Re: Jay Jay Shapiro
94 Cloudstone Drive
Request for Variance – Letter of Intent

Dear Wayne:

We are writing on behalf of Jay Jay Shapiro. Please consider this Mr. Shapiro's letter of intent submitted with his development permit application for a variance to allow for two residences on his land located in Santa Fe County. You will find enclosed herewith Mr. Shapiro's application and \$275.00 check.

Mr. Shapiro is requesting a variance to the standards for the number of dwelling units allowed on his property. The Shapiro's property is 10.5 acres and lies within the planning and platting jurisdiction of Santa Fe County. It is commonly known as 94 Cloudstone Drive, Santa Fe, New Mexico. Mr. Shapiro has built a 3,000 square foot residence on the property and an accessory structure of approximately 1,350 square feet in size. These structures were built with permits issued by the County and CID. The accessory structure was designed as a separate guest quarters for use with the main house. Mr. Shapiro applied for and received approval for the structures from the homeowners' association within the subdivision, which has two or three other lots with homes and accessory guest homes.

During the final design stage for the accessory structure Mr. Shapiro, who is an architect, added an area for a kitchen, which was approved by the association. His plans submitted for permit showed his original design without a kitchen. Mr. Shapiro obtained a permit for the accessory unit, but it did not show the kitchen. He has now become aware that the kitchen was not a permissible addition to the plans without a variance. The kitchen was approved by the homeowners' association, but its lack of approval from the County Land

NBA-5

EXHIBIT

1

Sommer, Karnes & Associates, LLP


Wayne Dalton
February 17, 2012
Page 2 of 2

Use department requires that he seek a variance to the standards for accessory units and number of dwelling units on the property.

Mr. Shapiro realizes that the error on his part may result in the necessity to modify the accessory unit, but a variance is the avenue he would prefer to pursue. The structure is keeping with the character of the neighborhood and the other accessory dwelling units in the subdivision. We assume but do not know whether the other units have obtained variances of the type Mr. Shapiro is requesting. Mr. Shapiro's guest unit is smaller than the principal residence on the lot, is located near the principal dwelling and subordinate in character and use to the principally dwelling unit.

The County has in circumstances similar to these considered variance requests. We appreciate your offices processing of this request.

Sincerely,


Karl H. Sommer

Cc: Jay Jay Shapiro

NBA-6

TYPE OF USE	NUMBER OF PARKING SPACES
Retail Centers	1 per 1 employee plus per 200 sq. ft.
Restaurants, Bars	1 per 1 employee plus per 150 sq. ft.
Gas Stations	1 per 1 employee plus 1 per 300 sq. ft. of garage space.
Industrial	1 per employee plus 1 per 500 sq. ft.
Small Scale Centers, Home Occupations	1 per 1 employee plus 1 per 400 sq. ft. of commercial space.
Large Scale Residential, Institutional, Residential Resorts	2 per dwelling unit
Churches, auditoriums, theaters, arenas spaces used for public assembly	1 for each 4 seats
Uses not listed	As determined by the County

9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.

9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.

9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

History: 1980 Comp. 1980-6. Section 9, Parking Requirements was amended by County Ordinance 1990-11 adding requirements for auditorium uses, multiple uses and handicap access.

SECTION 10 - LOT SIZE REQUIREMENTS

10.1 Relationship of Lot Sizes to Water Policies

The General Plan sets forth the policy that future population growth in the County should be supported by adequate long term water availability and concentrate population growth in Urban and Metropolitan Areas and Traditional Communities. Development within these areas will generally be served by one or more regional water systems, or community water systems. Development outside of the Urban, Metropolitan Areas and Traditional Communities using domestic wells (Section 72-12-1 wells) should consider estimated long term water availability and protect water resources for existing County residents having domestic wells. Development may also be permitted if the applicant for a development permit demonstrates that he/she has water rights, excluding rights permitted under 72-12-1 NMSA 1978 or 75-11-1 NMSA 1953, recognized and permitted by the Director of Water Resources Department of Natural Resources Division of the State of New Mexico which are approved for transfer by the Director of Natural Resources Division to the site of the Development, and the permitted water rights are sufficient to support the proposed development.

10.1.1 Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights

Applicants seeking a development permit may base their application on water rights authorized and permitted by the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico, (with the exception of water rights permitted under Section 75-11-1 NMSA 1953 or 75-12-1 NMSA 1978). The applicant shall provide evidence that he/she owns or has an option to purchase the permitted water rights in an amount adequate to meet the needs of the development as shown by Article VII, Section 6.6.2, Water Budgets and Conservation Covenants. Any development permit approved and issued by the County shall be expressly conditioned upon the applicant obtaining final non appealable order or final non appealable approval from the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico authorizing the change in use and change in point of diversion to meet the needs of the proposed development. The minimum lot size permitted by this Section shall be 2.5 acres, unless the proposed development is within an Urban, or Metropolitan Area or a Traditional Community, in which case further adjustments of the lot size shall be permitted as provided by Sections 10.4, 10.5.2 and 10.5.3.

10.1.2 Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted Water Rights

BASIN ZONE: Minimum lot size shall be calculated based upon ground water storage only. Water that is in storage beneath the lot in the Basin Zone may be depleted over a 100-year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water without consideration of recharge of the ground water.

BASIN FRINGE ZONE: Same as Basin Zone.

HOMESTEAD ZONE: Minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 100 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 100 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead Zone minimum lot sizes based on storage in this zone would be larger than those based on recharge.

MOUNTAIN ZONE: Same as Homestead Zone.

METROPOLITAN AREAS-BASIN AND BASIN FRINGE: For Basin and Basin Fringe zones within a Metropolitan Area as shown on Code Maps 12, 14 and 15, it is anticipated that regional water systems will eventually be developed. Therefore, water that is in storage beneath a lot within a Metropolitan Area may be depleted over a 40 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 40 year supply of water without consideration of recharge of the ground water.

METROPOLITAN AREAS-HOMESTEAD AND MOUNTAIN ZONE: For Homestead and Mountain Zones within a Metropolitan Area, the minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not

both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 40 year lifetime. The lot must be large enough to have a ground water in storage beneath the lot for a 40 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 40 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead and Mountain Zones, minimum lot sizes based on storage in these zones would be larger than those based on recharge.

10.2 Calculation of Minimum Lot Size

Calculation of the minimum lot size under Section 10.1.2 shall be determined by the formula:

$$\frac{\text{Acre Feet}}{\text{Use (Year) x acres}}$$

Minimum Lot Size (Acres)=Water Available in acre feet per acre/year

$$\text{MLS} = \frac{U \times \text{acres}}{A}$$

Where:

MLS is the minimum lot size in acres; it is the size of a lot needed to supply anticipated water needs.

U is the anticipated water needs for the lot; it is the use of water which will occur from the intended development of the lot, measured in acre-feet per year. The standard values listed for A were derived using the procedures set forth in the water appendix of the Code. The standard value for U is set forth in Section 10.2.2. A is the amount of water available in the aquifers which are beneath the lot, measured in acre-feet per acre per year using recharge or storage as described in 10.1.2.

10.2.1 Standard Values for A and Adjustments. The standard values for A shall be as follows:

<u>BASIN ZONE:</u>	0.1 acre-feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.02 acre-feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre-feet per acre per year
<u>HOMESTEAD ZONE:</u>	.00625 acre-feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>BASIN ZONE:</u>	10 acres
<u>BASIN FRINGE ZONE:</u>	50 acres
<u>MOUNTAIN ZONE:</u>	80 acres
<u>HOMESTEAD ZONE:</u>	160 acres

The standard values of A may be adjusted if the applicant submits a hydrology report, either a detailed report (see Section 6.4 of Article VII), or a reconnaissance report (see Section 6.7 of Article VII). Values of A determined in such reports shall be reviewed by the County Hydrologist, who shall recommend to the Code Administrator whether or not

the value is reasonable, and if not, shall recommend a value appropriate for the use in determining minimum lot size.

The actual value of A used shall be based on the information submitted by the applicant, by the County Hydrologist or by others submitting information. If water conservation measures are used, as provided in Section 10.2.4b, and an actual value of A is determined, in most cases minimum lot sizes will be reduced below those listed in Section 10.2.1. However, applicants are advised that because of varying geologic conditions in Santa Fe County there is no assurance that a hydrology report will determine that the water supply in an area is more abundant than indicated by the standard value of A. In cases where the actual study shows a value of A which is less than the standard value (that is, there is less water available than assumed by the standard value), minimum lot size requirements may be increased beyond those indicated in this Section.

10.2.2 Calculation of Use

U shall have a standard value of 1.0 acre feet per year per dwelling unit for residential use. For all other uses U shall be equal to the actual anticipated consumptive use for the development. The standard value for residential use may be adjusted if an applicant proposes to utilize water conservation measures. There shall be no adjustments for conservation in Urban, Traditional Community and Agricultural Valley Areas.

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure on the value of U. As a minimum, the measures shall include: restrictions on use of water for irrigation purposes (including watering of lawns, gardens and shrubbery); restrictions on use of water for swimming pools; restrictions on the number of bathrooms per dwelling unit; restrictions on garbage disposal units; devices which reduce the utilization of water by appliances, kitchen fixtures, and bathroom fixtures; and pressure-reduction devices on in-coming water lines.

Any applicant who uses the application form as a basis for proposing conservation measures shall be allowed to reduce U in accordance with the effectiveness of the measures proposed. The maximum reduction in U which shall be considered achievable using this approach shall be a reduction of U to no less than 0.25 acre feet per year per dwelling unit. An applicant who proposes water conservation measures sufficient to reduce U to less than 0.25 acre feet per year per dwelling unit shall be required to prepare a water conservation report. See Section 6.6 of Article VII.

The actual value of U, and the minimum lot sizes which result, will depend on the conservation measures proposed by the applicant. In general, applicants who substantially restrict the use of irrigation (lawn and garden) water will be assumed to have a U of 0.5 acre feet per year per dwelling unit, while those who further restrict other types of water use will be assumed to require even less water. For reference purposes, the following lot sizes would be allowed if U is equal to 0.5 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	5 acres
<u>BASIN FRINGE ZONE:</u>	25 acres
<u>MOUNTAIN ZONE:</u>	40 acres
<u>HOMESTEAD ZONE:</u>	80 acres

For reference purposes, the following lot sizes would be allowed if U is equal to 0.25 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	12.5 acres
<u>MOUNTAIN ZONE:</u>	20 acres
<u>HOMESTEAD ZONE:</u>	40 acres

10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development

Special standards which set forth specific limitations on use for small scale commercial developments are set forth in this subsection. Applicants who propose small scale commercial development are required to prepare a written estimate of water use. The value of U shall be determined by that estimate unless otherwise determined by the Code Administrator. The Code Administrator shall have on file, a list of standard water consumption requirements for commercial activities. The applicant may use these figures in lieu of the written estimate of water use. Applicants may use standardized values for A as set forth in Section 10.2.2, or they may submit a hydrology report which contains an actual estimate of A for the land which is to be developed.

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

Because the policy for water management in Metropolitan areas allows for depletion of storage over a 40 year period, standard values for A are as follows:

<u>BASIN ZONE:</u>	.25 acre feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.05 acre feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>METRO BASIN ZONE:</u>	4 acres
<u>METRO BASIN FRINGE ZONE:</u>	20 acres
<u>METRO MOUNTAIN ZONE:</u>	80 acres

b. Adjustments for Water Conservation

For the division of land into four (4) or less lots, the minimum lot size may be adjusted using the procedures set forth in Section 10.2.2. For reference purposes, the minimum lot sizes which result if $U = 0.25$ acre feet per year per dwelling unit or commercial use are:

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	5 acres
<u>MOUNTAIN ZONE:</u>	20 acres

10.3 Exceptions to Minimum Lot Size Requirements

The minimum lot sizes calculated under Sections 10.1 and 10.2 shall not apply to the areas described in this Section and the minimum lot size contained in this Section shall control.

10.3.1 Metropolitan Area - Community Water Systems

Where a community water system provides water service to a development within the Metropolitan Areas, as shown on Code Maps 12, 14 and 15, the minimum lot sizes shall be:

<u>BASIN ZONE:</u>	1 acre
<u>BASIN FRINGE ZONE:</u>	2.5 acres
<u>MOUNTAIN ZONE:</u>	5 acres

10.3.2 Agricultural Areas

In the Estancia Valley Agricultural Area, minimum lot sizes shall be 50 acres for the Basin Fringe Zone and 10 acres for the Basin Zone. Adjustments for water conservation and water availability will not be allowed. In the Northern Valley Agricultural Area, the minimum lot size for lands with permitted water rights shall be five (5) acres. Adjustments to lot sizes in these areas are conditioned on the finding in each case by the County Development Review Committee that it is in the best interest of the County to convert water rights from agricultural to commercial or residential use.

10.3.3 Traditional Communities

The minimum lot size in traditional communities as shown on Code Maps 40-57, shall be .75 acres, except as follows:

14,000 sq. ft. - Where community water service and community sewer service systems are utilized, or a Local Land Use and Utility Plan is adopted.

10.3.4 Urban Areas

The minimum lot size in Urban Areas shall be 2.5 acres, except as follows:

1 acre - Where community water or community liquid waste disposal systems are utilized.

.50 acre - Where community water and community sewer systems are utilized.

10.4 Density Transfer

The minimum lot sizes specified in this Section 10 shall be taken as gross figures for the purposes of determining the total number of dwellings allowed in a particular development. The arrangement of dwellings in clusters or in such locations as to take advantage of topography, soil conditions, avoidance of flood hazards, access and reduced cost of development, shall not violate the lot size requirements of the Code so long as the total number of acres per lot conforms with the requirements of the Code.

~~SECTION 11 - IMPORTING OF WATER~~~~11.1 Location Requirements~~

~~Developments which import water from the surface Rio Grande or other locations outside Santa Fe County to any location in Santa Fe County designated in the Development Code as other than urban or metropolitan locations are permitted to locate anywhere in the County provided they meet all requirements of the Code, except that in lieu of the density requirements as specified in Article III, Section 10, the proposed development shall meet the following criteria.~~

2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

SECTION 3 - VARIANCES

3.1 Proposed Development

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

3.2 Variation or Modification

In no case shall any variation or modification be more than a minimum easing of the requirements.

3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the

effect of the proposal in the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship, and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, and will do substantial justice. Additionally, no application for variance may be considered by the County Development Review Committee unless a copy of the application has been furnished to the Airport Manager for advice as to the aeronautical effects of the variance. If the Airport Manager does not respond to the application within 15 days after receipt, the County Development Review Committee may act on its own to grant or deny said application. Any permit or variance granted may be so conditioned as to require the owner of the structure in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary.

History. 1980 Comp. 1980-6. Section 3.4 is new material by County Ordinance 1984-3, adding an administrative procedure to height variation requests in airport overlay zones.

SECTION 4 - SPECIAL PROCEDURE FOR APPROVAL OF DEVELOPMENT ON LOTS WHICH DO NOT MEET LOT SIZE REQUIREMENTS OF CODE

4.1 Dwelling and Customary Accessory Structures

Dwelling and customary accessory structures may be erected on a lot which does not meet the lot size requirements of the Code, provided that:

- 4.1.1 The lot was in existence on the effective date of the Code (January 1, 1981) as demonstrated by the means listed in Section 4.4; or
- 4.1.2 The land is a lot which is part of a subdivision and the preliminary plat of the subdivision has been approved by the Board as of the effective date of the Code (January 1, 1981); or
- 4.1.3 The lot has been created by Small Lot Inheritance Transfer or Small Lot Family Transfer and the requirements of Section 4.3 of this Section are met.

4.2 Requirements of Code Not Involving Size of Lot

All other requirements of the Code including, but not limited to, building height, setback, use, design standards, environmental provisions, water restrictions, development, building and utility permits, and certificates of occupancy, as applicable, shall be met.

4.3 Small Lot Inheritance and Small Lot Family Transfer

Dwellings and customary accessory structures may be erected on a lot which does not meet size requirements of the Code and is being created by inheritance or family transfer, provided the definitions, restrictions and standards of this Section are met.

4.3.1 Purposes

- 4.3.1a To maintain local cultural values by perpetuating and protecting a traditional method of land transfer within families, especially within the traditional communities; and
- 4.3.1b To permit transfers of lots which do not meet the lot size requirements of the Code from grandparents, parents or legal guardians as a one time gift to a child or grandchild in order to provide a more affordable home site for these adult children.

Main House



EXHIBIT
4
NBA-15

tabbies

Guest House



NBA-16

Main
House

Guest House

NBA-17



Guest House



N3A-18

LEGEND / PLAT REFERENCE

BEARINGS ARE BASED ON THIS PLAT OF WHITE OAK LAS PIEDRAS INDICAS
BEARINGS ARE BASED ON BOOK 014 PAGE 020, IN THE OFFICE OF
THE SANTA FE COUNTY CLERK, NEW MEXICO.

- INDICATES POINT FOUND AND USED.
- INDICATES BRASS CAP MONUMENT FOUND.
- INDICATES CALCULATED POINT NOT SET.
- INDICATES UTILITY RISER.
- INDICATES FENCE LINE.
- INDICATES INDEX CONTOUR AND ELEVATION.
- *1000 INDICATES SPOT ELEVATION.

PROPOSED STUDIO ADDITION - MAY 2010

TRAVEL DRIVE

of cloudstone dr

LOT B

LOT 1

LOT 14

CLOUDSTONE DR

CLOUDSTONE BR.

VICINITY MAP

SCALE 1" = 50'

CONTOUR INTERVAL = 20'
ELEVATION ARE ASSUMED



TOPOGRAPHIC CERTIFICATE

I HEREBY CERTIFY THAT THE TOPOGRAPHIC WORKING AS SHOWN
ON THIS PLAT WAS PREPARED BY A TOPOGRAPHIC SURVEY DONE IN THE
FIELD BY ME OR UNDER MY PERSONAL SUPERVISION AND THAT
IT IS A TRUE AND CORRECT REPRESENTATION OF THE FIELD DATA.

DATE 03-23-01
BY A. B. L. -
L.A. TOPOGRAPHIC, N.M.P.S. No. 11025.

NBA-19

EXHIBIT

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February 15, 2012

Santa Fe County Land Use Department
P. O. Box 276
Santa Fe, NM 87504
Attention: Mr. Wayne Dalton

Re: Permit No. 10-189, 94 Cloudstone Drive, Santa Fe, NM 87505 -- Guest house constructed under such Permit may have been converted into a second dwelling unit in violation of applicable density regulations under Santa Fe County Code

Ladies and Gentlemen,

I am the owner of the residence at 111 Cloudstone Drive, Santa Fe, NM. The purpose of this letter is to bring to your attention that, on information and belief, the owner of 94 Cloudstone Drive, Mr. Jay Jay Shapiro, has constructed, or plans to construct, a second dwelling unit on his property in violation of applicable density regulations under the Santa Fe County Code, and to request that your office make an inquiry into the matter.

Approximately two to three years ago Mr. Shapiro mentioned to me that he planned to build a guest house on his property at 94 Cloudstone Drive, and that he intended to live in the guest house while renting out his main house on the property to someone else. Shortly thereafter, Mr. Shapiro submitted architectural plans for a guest house to the Architectural Committee of our mutual homeowners association, Monte de las Piedras Rosas Homeowners Association (herein the "Homeowners Association"). Although the architectural plans did not include an area labeled as "kitchen", the plans included an area that was obviously intended for a future kitchen and was next to an area on the plans that was for dining. Given Mr. Shapiro's stated intention to live in the guest house while renting out the main house, the President of the Homeowners Association, Mr. Lee MacLeod, in connection with approving the architectural plans, sent a letter to Mr. Shapiro reminding him that under the Covenants of the Homeowners Association "no portion of any Lot (other than the entire Lot) shall be leased for any period" (i.e., a homeowner cannot rent out one structure on his/her Lot and live in another structure on his/her Lot). The Covenants also provide that "Lots may only be used for single family residential use" and that "all laws, orders, rules, regulations or requirements of any governmental agencies having jurisdiction thereof relating to any portion of the Property shall be complied with . . ."

Mr. Shapiro is currently nearing completion of his guest house. In January of this year, Mr. Shapiro approached me at a store wanting to talk about his guest house. He once again informed me that he wanted to live in his guest house while continuing to rent out his main house. I reminded Mr. Shapiro that to do so would violate the Covenants of the Association. I also informed Mr. Shapiro that it was my understanding that under applicable Santa Fe County density regulations, two dwelling units are not permitted on a property the size of his (approximately 10 acres). Mr. Shapiro responded that the County did not actively enforce such density regulations. I advised Mr. Shapiro that, if the decision were mine to make, I would not agree to his using his guest house as a second dwelling unit. However, I recommended to him that, if he wanted to seek a waiver of the Covenants, he should contact Mr. MacLeod, the President of the Homeowners Association. He subsequently met with Mr. MacLeod. He

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EXHIBIT

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informed Mr. MacLeod that he wanted a waiver so as either to live in the guest house himself or to rent the guest house to a second tenant, in both cases while continuing to rent out his main house to his existing tenant. Mr. MacLeod after consulting with the Association's counsel got back to Mr. Shapiro and advised him that it would not be possible to waive the Association's Covenants as requested by Mr. Shapiro without amending the Covenants themselves, and that the Association in no event could consider any amendment of the Covenants that would conflict with the density regulations of the County. Indeed, the provision in the Association's Covenants prohibiting a homeowner from renting out less than the entire Lot is in harmony with the density regulations of the County.

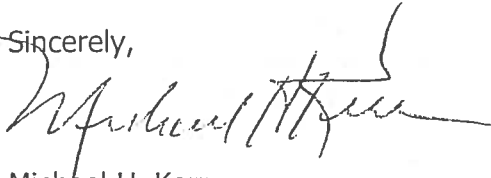
Based on the foregoing, it is apparent that Mr. Shapiro, in addition to the bathrooms shown on his architectural plans, either has already installed a kitchen in his guest house, or plans to do so. Otherwise, how else could he (or a second tenant) live in the guest house, while his main house is rented out to someone else?

If my understanding is correct that the density regulations of Santa Fe County would prohibit two dwelling units on Mr. Shapiro's property at 94 Cloudstone Drive and that the inclusion of both a kitchen and a bathroom in Mr. Shapiro's guest house would constitute such structure a second dwelling, I would appreciate your office making an inquiry to determine whether or not Mr. Shapiro's guest house is in compliance with applicable County density regulations, and, if not, taking appropriate remedial action.

If you have any questions or need additional information, please do not hesitate to contact me. In addition, Mr. Lee MacLeod, the President of the Homeowners Association, can confirm to you the substance of his communications with Mr. Shapiro. Mr. MacLeod lives at 26 North Cloudstone Drive, and his home phone is 982-8744 and his cell is 780-2870.

Finally, if your office pursues an inquiry into this matter, I would prefer that you not use my name. However, if it is necessary to use my name, you may do so.

Sincerely,



Michael H. Kerr
111 Cloudstone Drive
Santa Fe, NM 87505
mkerr@kirkland.com
312-339-3251

cc: Mr. Lee MacLeod
President, Monte de las Piedras Rosas Homeowners Association
26 North Cloudstone Drive
Santa Fe, NM 87505

NB A-22

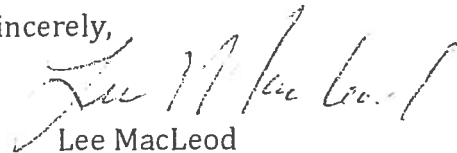
Mr. Wayne Dalton
Land Use Planning Department
Santa Fe County
102 Grant Ave
Santa Fe, New Mexico 87501

Re: Jay Jay Shapiro
94 Cloudstone Drive
Request for Variance

Dear Wayne,

I just wanted to correct an assertion in Karl Sommer's letter written on behalf of Jay Jay Shapiro. The Monte De Las Piedras HOA was never approached by Jay Jay Shapiro about adding a kitchen to his guest house and never approved a kitchen in Jay Jay's guest house. We simply do not have any rules that preclude a kitchen. The plans that we approved were the same plans that were approved by The Land Use Planning Department that did not show a kitchen.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee MacLeod", written over a horizontal line.

Lee MacLeod
President,

Monte De Las Piedras Home Owner's Association
26 North Cloudstone Drive
Santa Fe, NM 87505

NBA-23

Vicki Lucero

From: Wayne Dalton
Sent: Monday, April 09, 2012 9:54 AM
To: Vicki Lucero
Subject: FW: Permit No. 10-189, 94 Cloudstone Drive

Vicki,

For your information..

Wayne

-----Original Message-----

From: Kerr, Michael H. [<mailto:mkerr@kirkland.com>]
Sent: Sunday, April 08, 2012 3:58 PM
To: Wayne Dalton
Subject: Permit No. 10-189, 94 Cloudstone Drive

Dear Mr. Dalton,

When we spoke in February you advised me that CID in connection with its final inspection of the accessory structure at 94 Cloudstone Drive which was constructed pursuant to the above referenced Permit, had discovered that a kitchen had been installed in such structure which was not on the approved plans and had so informed the Department of Land Use. I understand that the owner of 94 Cloudstone is now seeking a variance to permit him to have two dwellings on his property. The purpose of this email is to bring to the attention of your Department that Mr. Shapiro's accessory structure has now been occupied on a full time basis for the last several weeks. Since he had previously expressed his intention to rent out the second dwelling on his property to a second tenant (his original dwelling having already been rented out to another tenant), I can only assume that he has gone ahead and done so. I am surprised insofar as I would have thought that CID would not have issued a Certificate of Occupancy in light of his non-conforming kitchen. Further, I would also have thought that it was premature for Mr. Shapiro's new structure to be occupied as a second dwelling on his property in advance of your Department approving his application for a variance.

Please do not hesitate to call me if you have any questions.

Regards,

Michael H. Kerr
111 Cloudstone Drive
Santa Fe, NM 87505
312-339-3251

Sent from my iPhone

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

NBA-24

May 2, 2012

Santa Fe County Land Use Administrator
P.O. Box 276
Santa Fe, NM 87504-0276

Re: CDRC Case #V 12-5060 – Application by Owner for Variance to Allow a Second Dwelling on 94 Cloudstone Drive, Santa Fe, NM 87505

Ladies and Gentlemen:

I am in receipt of Notice regarding the public hearing to be held regarding the above referenced Case. I am the owner of 111 Cloudstone Drive, Santa Fe, NM 87505, which is directly across from 94 Cloudstone Drive. Unfortunately I will be out of town on May 17, the hearing date, so I will not be able to attend the hearing in person. Accordingly, I am submitting this letter as my written objection to the request by Mr. Jay Jay Shapiro, the owner of 94 Cloudstone Drive, for a variance to allow a second dwelling unit on such property.

I am objecting to Mr. Shapiro's application for a variance for the following reasons:

1. Granting such Variance Would Be Inconsistent with Public Policy. One of the key public policies behind the density regulations of Santa Fe County is the protection of the fragile high desert eco-system in which we live by not over burdening the land and aquifers (which are under substantial stress in urban areas) with excessive development. Such density regulations were developed and enacted into law after long and careful study and analysis. A variance under such regulations should only be granted in instances where a property owner demonstrates that a compelling hardship not of his or her own making would result without a variance. Mr. Shapiro has not demonstrated hardship of any kind. Rather, all he has demonstrated is that he violated the law and now wants to be excused from the consequences of his own misconduct.
2. Granting such Variance Would Be to Reward the Applicant, Mr. Shapiro, for Violating the Law and his Agreement with Santa Fe County. Santa Fe County, as a condition to granting Mr. Shapiro Development Permit No. 10-189 for a detached accessory building (herein the "accessory building"), required Mr. Shapiro to enter into a Development Affidavit in which he agreed that the accessory building *"shall be constructed as per County approved plans and shall not be converted at any time into a dwelling unit without the prior written approval of the Santa Fe County Land Use Administrator"*. Mr. Shapiro, who as a long-time architect and builder in Santa Fe should be knowledgeable of land use laws and regulations, violated both the law and his agreement with the County by building a kitchen in his accessory building (which already had two bathrooms) without prior approval of the Land Use Administrator.

Mr. Shapiro would have you understand that his violations of the law and of his agreement with the County were inadvertent. This is difficult to believe. Mr. Shapiro's lawyer in a letter to Mr.

NBA-25

Wayne Dalton in the Santa Fe County Land Use Planning Department dated February 17, 2012 (the "February 17 letter") stated that:

During the final design stage for the accessory structure Mr. Shapiro, who is an architect, added an area for a kitchen, which was approved by the association. His plans submitted for permit showed his original design without a kitchen. Mr. Shapiro obtained a permit for the accessory unit, but it did not show the kitchen. He has now become aware that the kitchen was not a permissible addition to the plans without a variance. The kitchen was approved by the homeowners' association, but its lack of approval from the County Land Use department requires that he seek a variance. . .

The February 17 letter would have you believe that *"during the final design stage"* Mr. Shapiro *"added an area for a kitchen"* and that *"he has now become aware that the kitchen was not a permissible addition . . ."* This is belied by Mr. Shapiro's plans themselves – the area which has now become the kitchen (which was disingenuously labeled as "Office" on the plans) was shown on such plans as being next to an area labeled as "Din" for dining. Without a kitchen, there would be no need for a dining area. If that were not enough to show that Mr. Shapiro always intended to include a kitchen, Mr. Shapiro, before he even filed his plans with the County or the homeowners' association, told both me and the president of the homeowners' association that he intended to live in his proposed guest house while he rented out the principal residence on his property to someone else. This demonstrates that he intended from the beginning for his so-called accessory structure to have both a bathroom and a kitchen.

With regard to Mr. Shapiro only *"now"* becoming aware that the kitchen was not a permissible addition, that is difficult to believe in light of Mr. Shapiro status as a long standing and experienced architect and builder in Santa Fe. If anyone should be familiar with the County's land use regulations, including the density regulations and what constitutes a "dwelling," it should be Mr. Shapiro. It is not as if he inadvertently overlooked the density requirements. To the contrary, he entered into an agreement with the County in which he specifically agreed that his accessory building "shall not be converted at any time into a dwelling unit . . .". Any person on the street, but especially an experienced architect and builder, would know that a structure with an entry portal and hall, two bedrooms, two bathrooms, a kitchen, a living room area, a dining room area, a den, a portal for entertainment and five fireplaces constituted a "dwelling unit".

With regard to the assertion in the February 17 letter that *"the kitchen was approved by the homeowners' association"*, that too is not the case. The president of the homeowners' association has separately provided the Land Use Planning Department a letter making it clear that the homeowners' association at no time approved a kitchen for Mr. Shapiro's accessory structure. To the contrary, the covenants of the association require owners to comply with all applicable laws and regulations. Further, the association notified Mr. Shapiro that his plan to live in his guest house while renting out the principal residence on his property to someone else would violate the association's covenants.

Based on the foregoing, it seems apparent that Mr. Shapiro's violation of the density regulations of Santa Fe County and of his written agreement were not inadvertent. To now grant him a variance would be to condone his misconduct.

3. **Other Properties in the Area with Accessory Guest Houses Should Not Constitute a Basis for Granting a Variance.** It may be argued by Mr. Shapiro that the existence of other accessory guest houses on properties in the area should constitute a basis for granting his application for a variance. If all one had to do to get a variance under a land use regulation was to show that someone else in the past had received a variance, then very quickly such regulation would become meaningless. Rather, any request for a variance should stand or fall on the merits of the particular facts and circumstances of the individual case. Certainly there are other properties in the area which have accessory guest houses. However, unless Mr. Shapiro has reason to know that such guest houses are non-conforming with applicable laws and regulations, this should not be an issue. Most of such guest houses were built many years ago at a time when the laws and regulations were different – there is no reason to suppose that they did not comply with applicable laws and regulations at the time they were built. To the extent that an owner of any other accessory guest house should need to apply for a variance to have two dwelling units on his/her property, then his/her application should be judged on the merits of the particular facts and circumstances of his/her case.

4. **The Granting of Mr. Shapiro's Application for a Variance Would Adversely Impact Other Homeowners.** One of the principal attractions to ownership of a home in the Monte de las Piedras Rosas homeowners' association is the semi-rural character of the area, with each lot being 10 or more acres and with occupancy limited to a single family in one dwelling. As matters currently stand, no more than 24 dwellings can be built on the properties comprising the association. When Mr. Shapiro first mentioned to me approximately two years ago that he was planning on building a guest house on his property so that he could live in it while continuing to rent out the principal residence on his property, I explained to him that I was opposed to his doing so on the basis that if everyone else in the association followed his example the semi-rural character of the area would be dramatically changed. The very quality which attracted homeowners to the association in the first place would be lost. I also explained to him at the time that to do so would violate applicable County density regulations.(explaining to him that under such regulations he could not build a guest house with both a kitchen and a bathroom) and the association's covenants. He went ahead and did it anyway – thumbing his nose at the County, at the homeowners' association, and at his neighbors.

5. **Continuation of Improper Conduct.** Mr. Shapiro has not even waited for the Santa Fe County Land Use Administrator to make a determination on his application for a variance before proceeding with his plans. Rather, Mr. Shapiro, in violation of the applicable density regulations and of his agreement with the County and in violation of the covenants of his homeowners' association, has gone ahead and created a separate street address for his accessory structure (it now has a permanent marker showing "92" Cloudstone Drive) and has rented it out as a stand-alone dwelling separate from the principal residence on his property. Mr. Shapiro's lawyer in his February 17 letter asserts that Mr. Shapiro's guest unit is

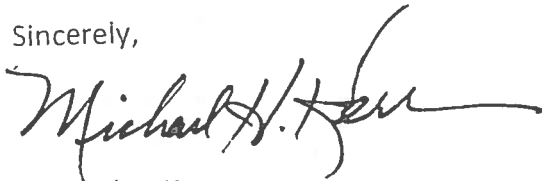
"subordinate in . . . use to the principal dwelling unit". That is not supported by the facts. To the contrary, Mr. Shapiro now has two, stand-alone dwelling units on his property, each of which has a separate address and is rented out to a separate tenant.

Mr. Shapiro's lawyer in his February 17 letter also cites the fact that Mr. Shapiro's second dwelling is smaller than the principal residence on his property and is in keeping with the character of the neighborhood as a reason to support his application for a variance. Such a standard would render the County's density regulations meaningless.

For all of the reasons stated above, Mr. Shapiro's application for a variance should be denied.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Michael H. Kerr
111 Cloudstone Drive
Santa Fe, NM 87505
knectics@gmail.com
312-339-3251

✓ Cc: Mr. Wayne Dalton
Land Use Planning Department
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

July 29, 2012

Mr. Wayne Dalton
Land Use Planning Department
Santa Fe County
102 Grant Ave.
Santa Fe, New Mexico 87501

Dear Mr. Dalton,

Initially, I would like to apologize for taking up more of your time regarding Jay Jay Shapiro's guest house at 94 Cloudstone Drive. I believe we are both after the same thing, which is to bring Jay Jay into compliance with County density rules. It would be very helpful to have someone with expertise explain the time line with respect to his request for a variance for the kitchen in the guest house. I attended the first CDRC meeting and my wife the second meeting, but his request was tabled each time. My understanding, after talking to Bill Dougherty, who I believe spoke to you after the second meeting, is that Jay Jay needs to address problems with his driveway before he can ask for the variance. Is there a time limit in which he needs to deal with the driveway? Currently, he appears to have rented the guest house and the main house to separate families which violates our covenants, as well as what I assume to be the density rules of Santa Fe County. The girl living in the guest house, refers to Jay Jay as her landlord and there is another couple who seem to be living in the main house. If there is an actual time line which will force Jay Jay to bring his driveway into compliance and require him to then get a variance for his kitchen, which we assume he will not receive, then there is probably no point in our pursuing him legally for his violation of our covenants. The removal of the currently illegal kitchen should preclude his being able to rent both houses separately. However, if he is able to play a waiting game indefinitely, then we will have to look into legal action against him. Any light you or your office can shed on this situation would be very helpful.

I can be reached at 505-982-8744(H), 505-780-2870(C) or at n.macleod@att.net

Sincerely,



Lee MacLeod
President, Monte De Las Piedras Rosas Homeowners Association

NB A-29

DEVELOPMENT AFFIDAVIT

I/WE Jay Jay Serrano, being the owner(s) of tract/lot 11, located in Section 5, Township 16 North, Range 10 East, N.M.P.M. Santa Fe County, New Mexico, be first duly sworn and under oath, do hereby swear or affirm the following:

1. The undersigned are the owners of the above referenced lot;
2. The undersigned understand that the Development Permit No. 10-189 is being issued for DETACHED ACCESS ROAD
3. The undersigned owner or their successors agree that the ABOVE listed in item No. 2 above shall be constructed as per County approved plans and shall not be converted at any time into a dwelling unit without the prior written approval of the Santa Fe County Land Use Administrator.
4. The undersigned owners agree this Affidavit will accompany all conveyance documents if the property is transferred in the future.

FURTHER Affiant saith not.

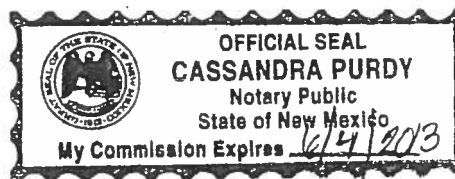
Jay Jay Serrano
Owner's Signature

Owner's Signature

STATE OF NEW MEXICO)

)ss

COUNTY OF SANTA FE)



The foregoing instrument was acknowledged before me by the person(s) whose name(s) appear above, on this 13th day of May, 2000.

Cassandra Purdy
Notary Public

6/4/2013
My Commission Expires

NB A-30

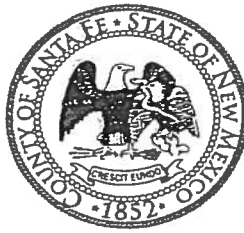
EXHIBIT

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Daniel "Danny Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Santa Fe County Fire Department

Fire Prevention Division

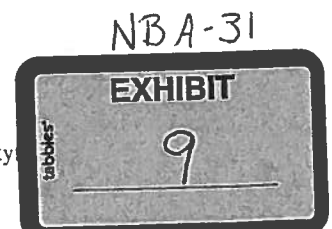
Official Submittal Review

Date	August 7, 2012		
Project Name	Jay Jay Shapiro		
Project Location	94 Cloudstone Drive. "Extreme Wildland-Urban Hazard Area"		
Description	Re: Denied variance – issues corrected	Case Manager	Vickie Lucero
Applicant Name	Jay Jay Shapiro	County Case #	V-12-5060
Applicant Address	94 Cloudstone Drive Santa Fe, NM 87505	Fire District	Hondo
Applicant Phone	505-699-6161		
Review Type	Commercial <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Sprinklers <input type="checkbox"/> Hydrant Acceptance <input type="checkbox"/> Master Plan <input type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Inspection <input checked="" type="checkbox"/> Lot Split <input type="checkbox"/> Wildland <input type="checkbox"/> Variance <input checked="" type="checkbox"/>		
Project Status	Approved <input checked="" type="checkbox"/> Approved with Conditions <input type="checkbox"/> Denial <input type="checkbox"/>		

The Fire Prevention Division/Code Enforcement Bureau of the Santa Fe County Fire Department has reviewed the above submittal and the required compliance with applicable Santa Fe County fire and life safety codes, ordinances and resolutions as indicated (*Note underlined items*):

Summary of Review

- Per drawings and on-site meetings with Mr. Shapiro, the previously denied driveway now incorporates an area for emergency vehicle purposes conforming to the access and turnaround requirements and dimensions of the Santa Fe County Fire Department. (page #2)
- This development location is rated within an "Extreme Wildland-Urban Hazard Area" and complies with all applicable regulations within the SFC Ordinance 2001-11 / EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such areas. (page #2)
- Improvements to the property have been addressed in areas that were denied by this office in prior review. (page #3)



Fire Department Access

Shall comply with Article 9 - Fire Department Access and Water Supply of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal

- **Fire Access Lanes**

Section 901.4.2 Fire Apparatus Access Roads. (1997 UFC) When required by the Chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.

- **Roadways/Driveways**

Shall comply with Article 9, Section 902 - Fire Department Access of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

Per drawings and on-site meetings with Mr. Shapiro, the previously denied driveway now incorporates an area for emergency vehicle purposes conforming to the access and turnaround requirements and dimensions of the Santa Fe County Fire Department.

- **Street Signs/Rural Address**

Section 901.4.4 Premises Identification (1997 UFC) Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property.

Section 901.4.5 Street or Road Signs. (1997 UFC) When required by the Chief, streets and roads shall be identified with approved signs.

Properly assigned legible rural address is posted and maintained at the entrance to the individual lot.

- **Slope/Road Grade**

Section 902.2.2.6 Grade (1997 UFC) The gradient for a fire apparatus access road shall not exceed the maximum approved.

The maximum approved slope of the driveway access/egress does not exceed 11%.

Urban-Wildland Interface

SFC Ordinance 2001-11, Urban Wildland Interface Code

This development location is rated within an "Extreme Wildland-Urban Hazard Area" and complies with all applicable regulations within the SFC Ordinance 2001-11 / EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such areas.

- **Building Materials**

Buildings and structures located within urban wildland interface areas, not including accessory structures, are constructed in accordance with the Fire Code, the Building Code and the Urban Wildland Interface Code.

- **Location/Addressing/Access**

Per SFC 2001-11/EZA 2001-04, addressing complies with Santa Fe County Rural addressing requirements.

- **Vegetation Management**

The area around the studio is being thinned to mitigate the chances of Wildland fire involvement.

General Requirements/Comments

- **Inspections/Acceptance Tests**

Prior to acceptance and upon completion of the permitted work, the Owner called for and submitted to a final inspection by this office for confirmation of compliance with the above requirements and applicable Codes.

Improvements to the property have been addressed in areas that were denied by this office in prior review.

- **Permits**

As required

Final Status

Recommendation for Development Plan approval with the above improvements applied.


Tim Gilmore, Inspector


Code Enforcement Official

8-8-12
Date

Through: David Sperling, Chief/Fire Marshal

File: DevRev/H/Shapirorequirements/080712

Cy: Applicant
Hondo District Chief
Buster Patty, Capt., Fire Prevention Div. 

NBA-33

Official Submittal Review

3 of 3

~~Attorney Brown stated she would review the sections to make sure what was drafted reflected the discussion and decision of the CDRC~~

~~Member Katz moved to table approval of the findings and Member Martin seconded. The motion to table passed by 6-0 voice vote.~~

VIII. NEW BUSINESS

- A. CDRC CASE # V 12-5060 Jay Shapiro Variance. Jay Shapiro, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 10.21 Acres. The Property is Located At 94 Cloudstone Drive, Within Section 5, Township 16 North, Range 10 East, Commission District 4

Ms. Lucero read the case caption and the following staff report:

"The Applicant requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 10.21 acres. The property is located in the Mountain Hydrologic Zone where the minimum lot size is 20 acres per dwelling unit with water restrictions of 0.25 acre feet per year. The 10.21-acre lot was created as part of a pre-code subdivision in 1976. At that time there were no water restrictive covenants imposed on these lots.

"There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure. The accessory structure which was permitted on May 13, 2010, (Permit # 10-189) showed a bathroom, but no kitchen facilities. At the time of permitting, the Applicant signed a Development Affidavit stating that the accessory structure would not be converted at any time into a dwelling unit. The accessory structure has been converted into a dwelling with both kitchen and bathroom facilities.

"The State Construction Industries Division (CID) informed the County that the accessory structure was constructed as a residence after they conducted a Final Inspection. The County issued a Notice of Violation for exceeding density and the Applicant immediately came in to submit a request for a variance.

"During the final stages of design, after permits were issued, the Applicant added an area for a kitchen, which the Agent states was approved by the Homeowner's Association. The Agent also states that the structure in question is keeping with the character of the neighborhood and the other accessory dwelling units in the subdivision, and that the Applicant's guesthouse is smaller than the principal residence on the lot, is located near the principal dwelling and subordinate in character and use to the principal dwelling unit."

Ms. Lucero stated staff was recommending denial of the variance. If the decision of the CDRC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office. (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant must amend the development permit from the Building and Development Services Department for the second dwelling unit (As per Article II, § 2.1)
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Amended Development Permit Application (As per Article III, § 2.4.1a.1(a) (iv).
4. The placement of additional dwelling units or division of land is prohibited on the property (As per Article III, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements (As per 1997 Fire Code and 1997 NFPA Life Safety Code).
6. No more than two electric meters shall be allowed on the property (As per Article III, § 10).

Chair Gonzales asked when the notice of violation was issued. Ms. Lucero said she did not have copy of the violation but she believed it was in January or February. Chair Gonzales asked why there was such a long period of time between taking out a building permit and calling for a final inspection since generally building permits are good for one year only.

Member DeAnda noted that in previous packets where this case had been tabled there was a copy of the permit stating it referred to a single family dwelling and a second dwelling was not permitted. Ms. Lucero stated that was Exhibit 8.

Duly sworn, Jay Shapiro stated he has worked as an architect for 50 years. The project took so long due to the dip in the economy. After the slab was put in the bank withdrew funding. The slab sat for over a year and the nearby homeowners complained it was an eyesore. Upon obtaining additional funds he completed the project as a dwelling unit, after receiving assurance from the prior president of the homeowners association that he could build a guesthouse with a kitchen. Of the 21 homes in the association, six have guesthouses and four of those have kitchens. He said he hoped he had contributed to the community and he hoped he would be afforded forbearance from the committee.

Lee Shapiro, under oath and wife of the applicant, said the house really was beautiful and she hoped they would approve it.

Mr. Shapiro explained the circumstances through which notice of violation came to be issued.

Member Katz expressed his concern that Mr. Shapiro specifically signed an affidavit saying he would not build a second dwelling on the property. Mr. Shapiro agreed that he was contravening County regulations but he was relying on advice from someone in the homeowners association. "I would just like to have a clean slate across the board. If I have to remove my kitchen I have no problem with that." However, he felt that the others in the area with similar circumstances should have to remove theirs as well.

Member DeAnda pointed out the committee had no way of knowing the circumstances of the other cases. Neither Mr. Shapiro nor his attorney have direct knowledge whether the others received variances or were legal non-conforming. She recommended Mr. Shapiro report those people to the Code Enforcement Division and they will deal with it.

Mr. Shapiro reiterated that he was under the impression a precedent had been set.

There being no other speakers the public hearing was closed.

Captain Buster Patty from the Fire Prevention Division indicated that Mr. Shapiro complied with the only requirement placed on him by the Fire Department, namely a turnaround. The road exceeds grade but it is legal non-conforming.

Member DeAnda moved to deny CDRC Case #V 12-5060. Member Martin seconded and the variance requested was unanimously [6-0] denied.

Ms. Lucero stated this case would be heard by the BCC, probably at the November 13th meeting.

VIII. PETITIONS FROM THE FLOOR

None were offered.

IX. COMMUNICATIONS FROM THE COMMITTEE

Member Drobnis noted that he would not be in attendance at the next meeting.

Member DeAnda thanked the committee for their support during her term as chair. She appreciated the support and attendance. She also thanked staff.

X. COMMUNICATIONS FROM THE ATTORNEY

None were presented.

XI. COMMUNICATIONS FROM STAFF

None were presented.

DRAFT

COMMISSIONER CHAVEZ: No, I don't have questions but I would go ahead and move for approval, hope for a second, and then we could continue with discussion.

COMMISSIONER ANAYA: Second.

CHAIR HOLIAN: Okay, I have a motion and a second for the Tavelli Master Plan Extension. Is there any further discussion?

COMMISSIONER ANAYA: Well, what I would – I was remiss. My motion would include all staff recommendations.

CHAIR HOLIAN: I don't believe there are any staff recommendations in this case. Is that true, Vicki? Other than the two years.

MS. LUCERO: Madam Chair, the application would still be subject to the conditions of approval on the prior master plan but we don't have anything additional.

CHAIR HOLIAN: I see. Thank you. Okay, I have a motion and a second.

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

XVII. A. 5. CDRC CASE #V 12-5060 Jay Shapiro Variance. Jay Shapiro, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 10.21 Acres. The Property is Located at 94 Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, Commission District 4

MS. LUCERO: Thank you, Madam Chair. On September 20, 2012, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the request. The applicant requests a variance of Article III, § 10, Lot Size Requirements, of the Land Development Code to allow two dwelling units on 10.21 acres. The property is located in the Mountain Hydrologic Zone where the minimum lot size is 20 acres per dwelling unit with water restrictions of 0.25 acre feet per year. The 10.21-acre lot was created as part of a pre-code subdivision in 1976. At that time there were no water restrictive covenants imposed on these lots.

There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure. The accessory structure which was permitted on May 13, 2010 showed a bathroom, but no kitchen facilities. At the time of permitting, the Applicant signed a Development Affidavit stating that the accessory structure would not be converted at any time into a dwelling unit. The accessory structure has been converted into a dwelling with both kitchen and bathroom facilities.

"The State Construction Industries Division informed the County that the accessory structure was constructed as a residence after they conducted a Final Inspection. The County issued a Notice of Violation for exceeding density and the Applicant immediately came in to submit a request for a variance.

During the final stages of design, after permits were issued, the Applicant added an area for a kitchen, which the Agent states was approved by the Homeowner's Association. The Agent also states that the structure in question is keeping with the character of the neighborhood and the other accessory dwelling units in the subdivision,

EXHIBIT

tabbles

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and that the Applicant's guesthouse is smaller than the principal residence on the lot, is located near the principal dwelling and subordinate in character and use to the principal dwelling unit.

This application was submitted on February 21, 2012. Growth management staff has reviewed this application for compliance with pertinent code requirements and finds the project is not in compliance with County criteria for this type of request.

Staff recommendation: Denial of a variance from Article III, Section 10 of the Land Development Code. If the decision of the BCC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions. Madam Chair, may I enter the conditions into the record?

CHAIR HOLIAN: Yes, you may.

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office. (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant must amend the development permit from the Building and Development Services Department for the second dwelling unit (As per Article II, § 2.1)
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Amended Development Permit Application (As per Article III, § 2.4.1a.1(a) (iv).
4. The placement of additional dwelling units or division of land is prohibited on the property (As per Article III, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements (As per 1997 Fire Code and 1997 NFPA Life Safety Code).
6. No more than two electric meters shall be allowed on the property (As per Article III, § 10).

MS. LUCERO: Thank you. I stand for questions.

CHAIR HOLIAN: Thank you. Are there any questions of staff? Is the applicant here?

CHRISTOPHER GRAESER: Mr. Shapiro is here with me. Mrs. Shapiro was here earlier but she had to go home and tend to the dogs. And I recognize that everyone gets to go home when we're done, so I will keep the billable time short, J.J.

This structure was permitted, permitted as an accessory structure. The issue here is essentially the kitchen and the permit did not include a permit for the kitchen. Mr. Shapiro has been upfront about that. However, the structure was permitted by CID, by Santa Fe County and approved. He did submit plans to the homeowners association that clearly showed a kitchen in there. The homeowners association approved it. There are six other lots – at least six, there might be more – in this small Monte de las Piedras Rosas Subdivision that have guesthouses, the majority of those with kitchens in the guesthouses.

He was assured by the homeowners association president at that time that the president has received a variance for his guesthouse. So it was with this background in good faith that he went ahead and built it out. There was a delay between permitting on it.

It took about a year. He had lost his financing and then actually the neighbors were complaining that the slab was there but the guesthouse wasn't there and he finally did finish it at that point and he put a kitchen in it.

So when he got the N of V he came right in and asked for the variance. What he's asking is just to keep what he's done, so he doesn't have to rip it out. He's not asking for a subdivision. I'll note that this is pretty close to the prior couple of subdivision variances this Commission just approved. But he's not asking for a subdivision. He will agree not to rent it out separately. That was the primary concern. You have a couple letters from a neighbor and that was a primary concern. It had to do with renting it separately. He'll agree not to rent it separately. He'll agree not to subdivide it. You had discussed a family use restriction. While we were sitting here Mr. Shapiro said he'd be okay with that. In other words it's truly just a guesthouse.

The staff conditions suggest – there's no current water restrictions. Staff conditions suggest limiting it to a quarter acre-foot per unit. And Mr. and Mrs. Shapiro are actually willing to go down lower than that. Maybe a little bit lower than a quarter acre-foot recognizing it's a guesthouse but certainly they don't need a full acre-foot. I the concern is water use we can lower that.

The Fire Marshal has been out there, inspected it, has recommended approval with regard to fire issues.

Mr. and Mrs. Shapiro are long-time, established residents. They're not looking to make a buck and move on. Mr. Shapiro has been involved in a number of civic activities, volunteering time on the committee on constructing a new state parking garage, on the cathedral, St. John's College, things such as that.

Am I missing anything from my list here? We do have a little concern with how the agenda worked tonight. The item next to this on the agenda is another request for a variance for a guesthouse on the same road in the same subdivision.

CHAIR HOLIAN: Mr. Graeser, that has been tabled.

MR. GRAESER: I understand that. Our perspective is they probably should have been heard at the same time because it seems like they should both be treated the same. We're just concerned about any disparate treatment on those. So we would certainly be amenable if the Commission wants to withhold voting on that until it hears that other case next month as well.

That said, the Shapiros are certainly willing to consider any conditions the Commission might want to put on it to assuage any concerns and we think that agreeing not to rent separately addresses the primary concern of the neighbors. So if you have any questions I'm happy to answer them.

CHAIR HOLIAN: Okay. Any questions for Mr. Graeser? Okay. This is a public hearing. Is there anybody here who would like to speak on this case, either for or against? Okay, hearing none, the public hearing is closed. Are there any other questions for staff or the applicant?

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you. Penny, would you answer a question about future code? The accessory structure right here is about – it says it's

approximately 1350 square feet. What do we have in our future code projected? A thousand or 1200?

MS. ELLIS-GREEN: Madam Chair, Commissioner Stefanics, it would be 50 percent of the building footprint of the principle residence or 1200 square feet, whichever is less.

COMMISSIONER STEFANICS: Whichever is less. So this would still exceed the 1200.

MS. ELLIS-GREEN: That is correct.

COMMISSIONER STEFANICS: So even under the new code this would truly be a variance.

MS. ELLIS-GREEN: That's correct. Actually, I misstated earlier. I think the second dwelling is less than 1200 square feet but it is larger than 50 percent of the main house, so yes, it would still require – it would not comply with the new code.

COMMISSIONER STEFANICS: Okay. Thank you very much. Madam Chair, I think that we have many properties throughout the county that have had accessory dwellings, second dwellings, whatever, built when people purchased them, not really knowing. It kind of goes back to the code of the west where people don't really know what they're allowed to have and not allowed to have. Now, that's a little bit different than people building and not coming forward. But I do think we're going to have more and more cases. We've already had several just in the few years I've been here but I think that –

CHAIR HOLIAN: Okay. Actually I have some questions. Are you finished?

COMMISSIONER STEFANICS: I am. I just find it very difficult to treat everybody equitably. That's my issue. And I'm looking at our attorney, because I would find that to be the standard that we try to adhere to. So I don't know. Steve, do you have any comments on this?

MR. ROSS: Madam Chair, Commissioner Stefanics, if it's any comfort to you, I think all these cases are unique on their facts, so there's always a little bit of difference, a little bit of shading between each and every case. They may seem similar on their face but there's always slight differences that are always very important. So I think we have to take every case as it comes. I'm not worried too much about how it looks on the outside.

COMMISSIONER STEFANICS: Thank you very much. Thank you, Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, thank you. Madam Chair and Commissioner Stefanics, thanks for that question. Mr. Ross, thanks for that answer. I think the applicant's representative mentioned the next case that was unfortunately tabled and I hear the concern and I also hear – I studied the next case and it was tabled but I think this case is different from the next case. I have a couple questions as far as Exhibit 8. Whoever wants to answer these questions from the applicant. There was an affidavit and if you guys can explain to me on the affidavit why this affidavit was signed by the applicant and if they understood what they signed when they signed this affidavit?

MR. GRAESER: Madam Chair, Commissioner Mayfield, Mr. Shapiro had expressed to me that there was a little confusion what counted as a dwelling unit or not, as to whether that was a guesthouse or a principle house. That said, he was relying more on the fact that everyone else in his neighborhood, to his knowledge, who had a guesthouse, had been able to get a variance because the HOA president had told him that, so he didn't really think it would be a big deal if there was an issue of it going forward.

COMMISSIONER MAYFIELD: Give me one second to read this once again. And then sir, let me ask this, because he said he ran into somebody from the homeowners group and you indicated that he had a misunderstanding of the kitchen? That he was not going to put a kitchen into the second dwelling? I'm reading staff's letter to us. At the time of permitting the applicant signed a development affidavit saying the accessory structure would not be converted at any time into a dwelling unit. The accessory structure has been converted into a dwelling unit with both a kitchen and a bathroom facility. So if they had one or the other or if it had only just one?

MR. GRAESER: The plans that were submitted to the County showed the bathroom but not a kitchen.

COMMISSIONER MAYFIELD: But did it show anything else in lieu of the kitchen on the plans?

MR. GRAESER: I don't know that because I haven't seen them. Vicki, do you know? Did it show something in lieu of a kitchen on the plan? I'm sorry. I haven't seen the plan. I think it's shown as an office area. Madam Chair, Commissioner Mayfield, it's shown as an office area on the plans.

COMMISSIONER MAYFIELD: And that's what I recall from when I read that and thank you, Commissioner Chavez, for pointing that out to me. And then when I'm looking at – and I think it's – I guess the paper by the law firm that's representing the applicant. If I'm looking at Exhibit 1, and I'm looking at the third paragraph that was submitted, it says during the final design stages for the accessory structure, Mr. Shapiro, who is an architect, added an area for a kitchen, which was approved by the association. His plans submitted for a permit showed his original design without a kitchen.

I'm taking that on its own merit. Mr. Shapiro is an architect who I think would be more familiar with County design and permitting and everything else than arguably the average Joe who's coming into the review process with the County. Steve, I don't want to get myself into trouble by saying this but there is a little different standard by an individual who has an architectural background and should be understanding these and to be submitting this structure without a kitchen, saying it's an office and then signing an affidavit and then coming back after and changing the whole design. I think CID went back if I'm recalling what I read in here, came back and said wait a minute. When the CID came back and looked at it and said, you've put a kitchen in now. Is that how I'm recalling what I read in here?

MR. GRAESER: Yes, that's my understanding of it, Madam Chair, Commissioner Mayfield. Yes.

COMMISSIONER MAYFIELD: Do you know how all that took place?

MR. GRAESER: Again, the issue being that at least half a dozen other people in this small subdivision –

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COMMISSIONER MAYFIELD: But again, let's get away from half a dozen other people, because all these variances stand on their own merit. Because one of these other cases that you mentioned, I think, is somebody bought a house from a third party, not knowing what they bought with those permits. So that's a whole different issue on a whole different merit. But this is on this one applicant, who came in, got a permit, said there was not a kitchen, was an architect. Got the designs through, signed the affidavit stating it wasn't going to be there, and then came in and converted that. So that's why I'm having the hard time on making this decision on.

MR. GRAESER: Madam Chair, Commissioner Mayfield, I certainly understand that and I think Mr. Shapiro has been upfront that he put in a kitchen that wasn't allowed. I think it mostly comes under what my six-year old tells me when he says everybody else was doing it, and that's why we're asking not to have to rip it out but offering anything else we can to assuage the Commission's concern as far as restrictions or conditions on it. He's been upfront that he put in a kitchen that wasn't allowed.

COMMISSIONER MAYFIELD: Okay, so Madam Chair, Mr. Ross, thank you. Worst scenario, what would happen? The County would just say remove the kitchen if this was denied? I guess it could be appealed to a different court or something. But what's like the process if the County denied this?

MR. ROSS: Madam Chair, the process is exactly as you identified. Land Use staff, code enforcement would insist that the characteristics of the accessory dwelling that violate the code, i.e., the kitchen facilities, would have to be removed and disabled. His remedy, if he doesn't like that, if he doesn't like this decision or a subsequent code enforcement decision would be to appeal the decision of this body to district court. Once again, that's on a very narrow, highly deferential standard of review. In other words, if he gets over there it's very difficult to overturn a decision of this body.

COMMISSIONER MAYFIELD: Madam Chair, one last question for the applicant would be, so was the intent then straight up just to kind of do a bait and switch on the County on this? Or was the intent to build an accessory dwelling never to have a kitchen in it and then changed the mind at the last minute?

MR. GRAESER: Madam Chair, Commissioner Mayfield, to be clear, we're not talking about any legal action. Mr. Shapiro is going to accept whatever the Commission's decision is. I think he had a year to kind of sit on it. He got his approval and then lost his funding. He'd got the slab poured at that point. It was sitting there for a year and I think that's the time when he decided to do something different.

COMMISSIONER MAYFIELD: So, maybe, I'm just going to ask this question. You have the main residence that was approved. You have the accessory dwelling, 1300 and some square feet. What was the intent of the accessory dwelling without a kitchen? Was it going to be used as an office without a bedroom, with no kitchen?

MR. GRAESER: It certainly has bedrooms in it. I don't think there's any indication it was going to be used for anything other than guests. I think the difference is do your guests cook their own food or do they come in your house and cook? It's the kitchen area that's the point of contention.

COMMISSIONER MAYFIELD: Thank you. That's all I have, Madam Chair. Thank you.

CHAIR HOLIAN: Mr. Graeser, I have a couple of questions. I read in the packet that at one time both structures were rented out, so I wondered what is the case now.

MR. GRAESER: Those structures are not rented out now. That became an issue, having the woman staying in the guesthouse leave. It's not currently rented out. They live in a house and as I said they're entirely willing to a greater restriction that they can't rent it out.

CHAIR HOLIAN: Mr. Shapiro lives in the main house? Is that correct.

MR. GRAESER: Oh, you live in the other one? Sorry. My mistake.

CHAIR HOLIAN: Both dwelling units are vacant?

MR. GRAESER: Correct.

CHAIR HOLIAN: I think you'll have to come to the microphone or maybe Mr. Graeser can repeat what you said.

MR. GRAESER: He said because it's been vacant – it was my mistake. I misunderstood. I thought he was living in this but he's living in the other house they have. He's been vandalized four times since it's been vacant. No one's been there.

CHAIR HOLIAN: Okay, and can you tell me what Mr. Shapiro plans to do now with the units?

MR. GRAESER: I can't. Do you have plans?

CHAIR HOLIAN: Mr. Shapiro, either you have to repeat it or-

MR. GRAESER: I'm sorry. Just to save time, Mr. Shapiro is 72 years old. He's planning on retiring so I think selling this and a couple other houses and downsizing to the smallest one.

CHAIR HOLIAN: I'm sorry, Mr. Shapiro. You're going to have to come forward and be sworn in if you want to add something.

[Duly sworn, Jay Shapiro testified as follows:]

JAY SHAPIRO: Jay Shapiro.

CHAIR HOLIAN: Okay. What would you like to add, Mr. Shapiro?

MR. SHAPIRO: Just in response to the chair, what my plans were.

Unfortunately, when I did have a tenant in this house it was all predicated on the finances of today. My bank wouldn't give me a permanent loan because I had another house. They told me they could give me a commercial loan. So I went and I rented it to get a commercial loan. Then they told me I couldn't; it wasn't good enough. I had to have a three-year rental. So I went back to the doctor I rented it to and said, will you stay there three years? He said, fine. So we signed a three-year. I finally sold my other house. I built this house to move in to, and then when I sold my other house he still had two more years on his lease; he wouldn't move out because he had a lease. He was entitled to that. So I was somewhat homeless. I have a family. I have four dogs. I didn't know who was going to rent to me so I bought a small little house in the meantime, until May, which just ended and the doctor moved out and now I'm with two houses and I'm going to keep one and sell one, whichever one – I only need one house. I didn't intend – it's circumstances of today's economy. No one's hiring me as an architect. It's just the economy now.

CHAIR HOLIAN: Is this house on Cloudstone Drive for sale now?

MR. SHAPIRO: Yes, it is, but so is my own house.

CHAIR HOLIAN: Okay. Thank you. Thank you, Mr. Shapiro.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: I just want to make a comment as we go forward. In the other accessory dwellings that we have granted variances to it has been specifically for members of the immediate family. It hasn't been for resale value, which puts this in a totally different light than some of the other cases that we've been dealing with. And I think this makes me uncomfortable to grant a variance for sale or profit and I find that different than some of our other cases, and I'd like to hear what some of my other colleagues have to say.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Commissioner Stefanics, this probably is not any consolation but I think that on the other cases we're putting a restriction that I think is going to be somewhat hard to enforce. It's a limited restriction for two years or three years or five years, but what happens after that five years? We're back on the scenario that you're concerned about. And so I think that it has some bearing on this case, but in any event it's the property owner and right and due process to sell if they have to or when they need to. So I think the restrictions are making a statement but I don't think that it's really going to solve the problem of someone speculating by doing a lot split, whether it's done after the fact or whether it's done intentionally from the very beginning.

So I have mixed feelings about the restrictions that say you can't sell within three years, because it's short-lived.

CHAIR HOLIAN: Commissioner Chavez, I don't believe that's a restriction that was –

COMMISSIONER CHAVEZ: No, but on the other cases we were putting a restriction that said it's not to be sold or it's only to be rented to a family member for a specific length of time and then after that it's subject to the market.

COMMISSIONER STEFANICS: Madam Chair, on this point.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: In the area that I live in there actually has been some situations where there's been a house and an accessory dwelling that has been sold with language that says you can subdivide and make this two lots, and it never could be done. But it was sold under that premise. It couldn't be done according to our code. But people are buying properties like that. So this individual could sell their property and say it could be divided into two lots with these two dwellings and we would not approve it when somebody came forward.

So our actions could in fact set up a buyer beware situation. And this is the conundrum I'm feeling. It's like if we approve something are we in fact allowing somebody to come in and buy something that they can't do what they thought they could do with it? I have neighbors who cannot subdivide their properties with two dwellings. It's not allowed.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: It seems that that's another restriction we've placed on some of these land use cases where we've said these lots can no longer be built on. You've locked it and said no additional structures will be allowed on this

particular lot. So I think in this case this would be one condition that could be placed on this.

CHAIR HOLIAN: Commissioner Chavez, that already exists, because it couldn't according to the County code. It's not an extra restriction.

COMMISSIONER CHAVEZ: So the density on this particular lot would not be able to increase past these two –

CHAIR HOLIAN: Not according to our code.

COMMISSIONER CHAVEZ: Okay.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Mr. Ross or Ms. Lucero, back on Exhibit 8 and Exhibit 10, can one of you give me a definition of a dwelling unit please. Maybe as the code has it if we have it in the code.

MR. ROSS: Madam Chair, Vicki, do you have the code definition? It's something that can be used for habitation.

COMMISSIONER MAYFIELD: For habitation.

MR. ROSS: Live in it.

COMMISSIONER MAYFIELD: Right.

MR. ROSS: That's the reason we were having the discussion earlier about the kitchen. If there's no kitchen there it's impractical or impossible to live in the place.

COMMISSIONER MAYFIELD: Right. So if we approved for Mr. Shapiro a permit for both structures, one's a dwelling, one's not, because he signed an affidavit as condition 3, right?

MR. ROSS: Right.

COMMISSIONER MAYFIELD: I'm back to Exhibit 8. The undersigned owner or their successors agree to the above listed on number 2, shall be constructed as per dwelling unit – or converted, excuse me, to any time into a dwelling unit. So what are we saying? We're approving it, but we're telling him it can never be converted into a dwelling unit. So Steve, help me out a little bit with that.

MR. ROSS: It's like an office.

COMMISSIONER MAYFIELD: Yes, but I asked that question of the applicant a little earlier. Well, guys, was it an office? Did it have bedrooms in it? We approved a structure that had bedrooms in it, it had bathrooms in it, it just didn't have a kitchen. But we're telling him he can never have it as a dwelling unit. So a definition of a dwelling unit is just – what, Steve? You don't sleep in it at night. You don't use it during the day? You don't use it at night?

CHAIR HOLIAN: So Vicki, do you have that definition?

MS. LUCERO: Madam Chair, Commissioner Mayfield, I don't have the definition in front of me but the definition of an accessory structure in the ordinance states that it can't be used as a dwelling unit and it can only have either a kitchen or a bathroom, but not both.

COMMISSIONER MAYFIELD: I know, and again, I'm not trying to be difficult on this, but what does a dwelling unit mean? You don't sleep in it over night? You don't cook in it? You guys approve plans. I don't have the plans in front of me but it definitely had bedrooms in it. It definitely had a bathroom in it. It just didn't have a

kitchen in it. But then later you say it can't be used as a – converted to dwelling. So, again, what does dwelling mean? He could have slept in it at night, right? It just means he couldn't cook in it?

MS. LUCERO: Madam Chair, Commissioner Mayfield, we're going to look up – get you the definition of a dwelling unit from the County code so if you can give it a couple minutes and we'll get that information for you.

COMMISSIONER MAYFIELD: Thanks.

MR. ROSS: Madam Chair, Commissioner Mayfield, I think you're hitting on the issue and that is restricting it to a dwelling unit means that one of those various functions that's required to create a dwelling unit – bathroom, bedroom, kitchen – all those have to be present. And I know that Land Use has always consistently said you can either have a kitchen or you can have a bathroom, but not both.

CHAIR HOLIAN: Mr. Ross, you mean for an accessory structure.

MR. ROSS: I'm sorry. What did I say? For an accessory structure. So if you take one of those elements out it's impractical, impossible, to actually live in the accessory structure, thus creating the restriction on permanent use that's consistent with an accessory dwelling, not a permanent dwelling.

COMMISSIONER MAYFIELD: And Madam Chair, while they're looking for it, Mr. Ross, would you still arguably, and I'm going to say have it hooked up to a wastewater system regardless if you had the kitchen or the bedroom?

MR. ROSS: Well, I guess you would have to have some means of disposing either of liquid waste or sewage if you had either a bathroom or a kitchen. But the whole idea is you don't have both.

COMMISSIONER MAYFIELD: And I'm sorry I'm just hung up on the word dwelling but I'm hung up on it.

MR. ROSS: Words like this you usually use the common sense definition because it's a fairly – it's not a legal term.

COMMISSIONER MAYFIELD: It's not. And I'm just saying, well, why are we issuing these permits?

MR. ROSS: Well, perhaps permanent was little bit –

CHAIR HOLIAN: Commissioner Mayfield, I believe the permit was incorrectly issued and that's why there's a condition in here that the applicant must amend the development permit.

MS. ELLIS-GREEN: Madam Chair, Commissioners, the dwelling definition in the code is 1) a structure or a portion thereof used, intended to be used, or that has been previously used by a person or persons for residential use; 2) a mobile home; or 3) each unit occupied by a person or persons in any structure or portion thereof used or intended to be used for residential purposes by a person or persons. Any such structure, mobile home or unit that contains both a) kitchen or cooking facilities; and b) a bathtub or shower shall be presumed to be a dwelling unit. Recreational vehicles do not qualify as a dwelling unit.

COMMISSIONER MAYFIELD: Okay, so that means, Madam Chair, it has both. Okay.

CHAIR HOLIAN: Right.

COMMISSIONER MAYFIELD: Thank you.

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CHAIR HOLIAN: Mr. Graeser, would you like to add something?

MR. GRAESER: Just a clarification and suggestion. The permit wasn't incorrectly issued. It was properly issued under the County code under that definition. The building had bedrooms. No one was hiding that, and the permit was issued for a building with bedrooms. These kind of things set people up to fail a little bit. But my suggestion is if the concern is further development or subdivision or anything like that we record a deed restriction allowing no further construction on the site and no subdivision, if that addresses those concerns.

CHAIR HOLIAN: Okay. Thank you, Mr. Graeser. Any further questions? What are the wishes of the Board?

COMMISSIONER STEFANICS: Madam Chair, I move to table.

CHAIR HOLIAN: Is there a second?

COMMISSIONER MAYFIELD: I'll second that.

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

XVIII. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chair Holian declared this meeting adjourned at 9:22 p.m.

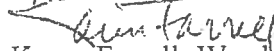
Approved by:

Board of County Commissioners
Kathy Holian, Chair

ATTEST TO:

GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Respectfully submitted:


Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501

