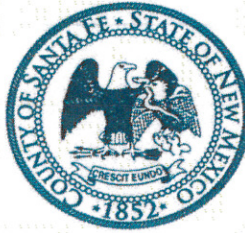


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel 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: January 8, 2013

TO: Board of County Commissioners

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

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

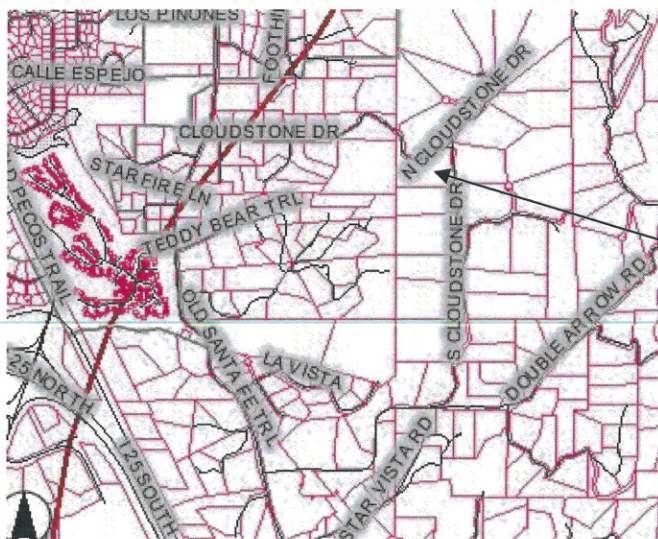
FILE REF.: CDRC CASE # V 12-5060 Jay Shapiro Variance

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 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

SOMMER, KARNES & ASSOCIATES, LLP

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Magdalena Babuljak, Legal Assistant

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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

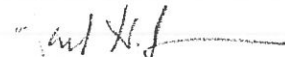
Wayne Dalton
February 17, 2012
Page 2 of 2

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 - VARIANCES3.1 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



tabbies®
EXHIBIT
4
NB A-15

Guest House

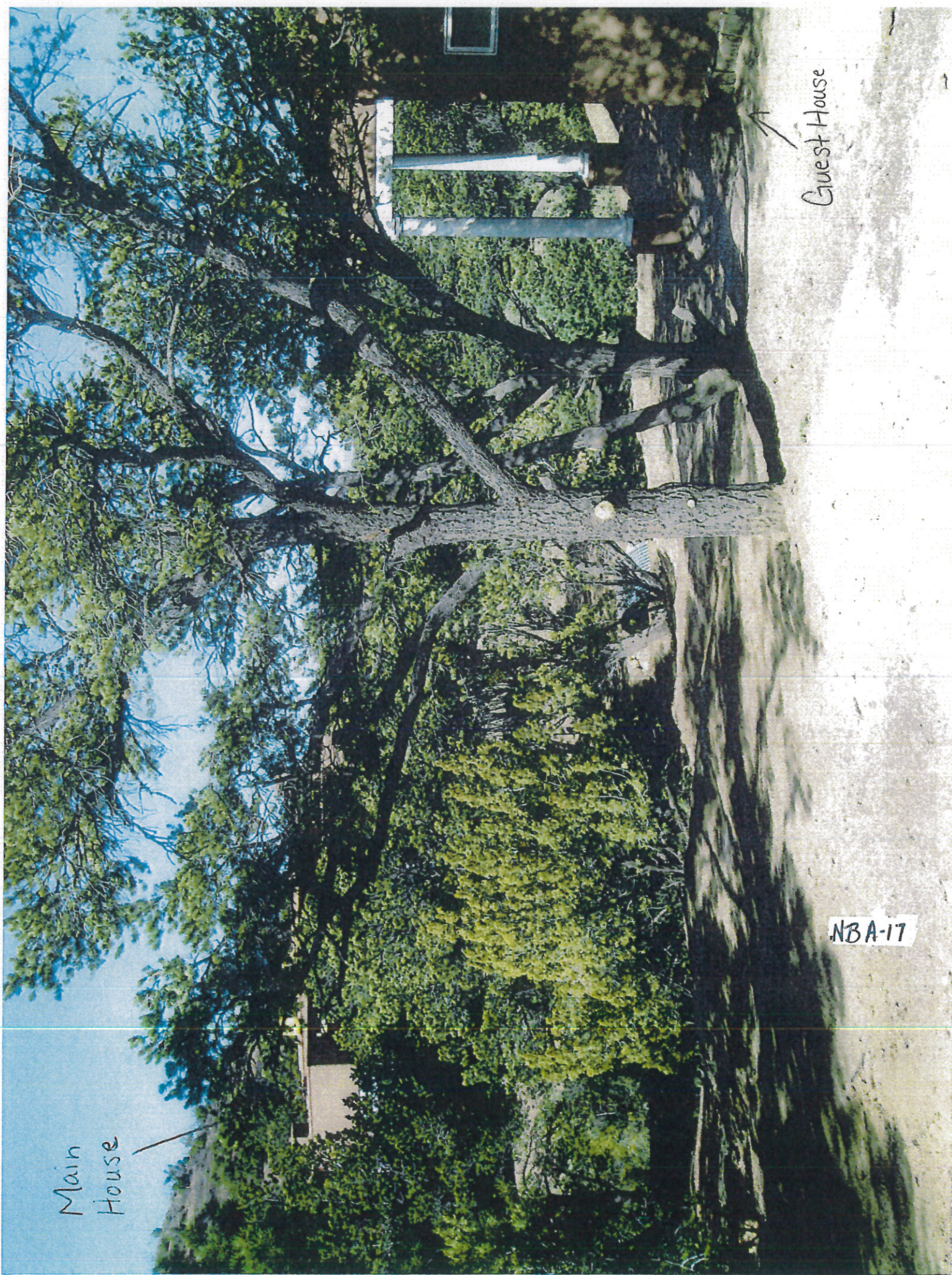


NB A-16

Main
House

Guest House

NBA-17



Guest House



NBA-18

ZIA RD
 OLD SANTA FE TRAIL
 CLOUDSTONE BR.



SCALE 1" = 50'
 0' 25' 50' 100' 125' 150'
 CONTOUR INTERVAL = 20'
 ELEVATIONS ARE ASSUMED

LEGEND / PLAT REFERENCE
 BEARINGS ARE BASED ON THE PLAT OF MONTE DE LAS PIEDRAS ROSAS
 SUBDIVISION, COUNTY OF SANTIAGO, NEW MEXICO, 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.
 ---1000--- INDICATES INDEX CONTOUR AND ELEVATION.
 *1000 INDICATES SPOT ELEVATION.

LOT B

PROPOSED STUDIO PLAT N MAY 2010

DEVAL CRIVE

94 CLOUDSTONE DR

LOT 14



TOPOGRAPHIC CERTIFICATE
 I HEREBY CERTIFY THAT THE TOPOGRAPHIC MAPPING AS SHOWN
 ON THIS PLAT WAS MADE BY ME OR UNDER MY CLOSE PERSONAL
 SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF
 IT IS TRUE AND CORRECT. FIELD WORK PERFORMED ON FEBRUARY 15, 2010.
 L.A. RODRIGUEZ, N.M.P.S. No. 12425, DATE 03-23-2010

NBA-19

EXHIBIT

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