

Danny Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: January 8, 2013

TO: Board of County Commissioners

FROM: John Lovato, Development Review Specialist Senior

VIA: Penny Ellis-Green, Interim Land Use Administrator
Vicki Lucero, Building and Development Services Manager VJ
Wayne Dalton, Building and Development Services Supervisor VJ
for WD

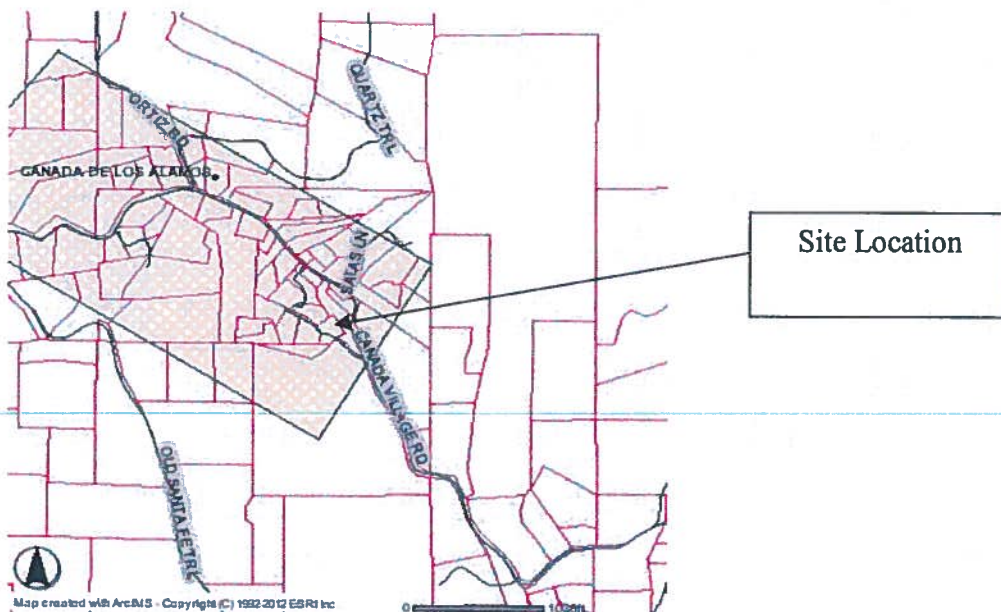
FILE REF.: CDRC CASE # V 12-5300 John & Virginia Kraul Variance For **Deliberation & Vote Only**

ISSUE:

John & Virginia Kraul, Applicants, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 0.90 acres.

The property is located at 7 Camino La Llorona, within the Traditional Community of Canada de Los Alamos, within Section 27, Township 16 North, Range 10 East, (Commission District 4).

Vicinity Map:



SUMMARY:

On December 11, 2012, the BCC met and acted on this case. The decision of the BCC ended in a tie Vote with two voting in favor for approval and two voting for denial of the requested variance. Under Commission Rules of Order the Application is automatically tabled until the next meeting at which a greater number of members are present. **This case is now coming before the BCC for deliberation and vote only.**

EXHIBITS:

1. December 11, 2012 BCC Report
2. December 11, 2012 BCC Minutes
3. Letter of Request
4. Article III, §10 (Lot Size Requirements)
5. Article II, § 3 (Variances)
6. Site Photographs
7. Site Plan
8. Aerial of site and surrounding area
9. Letters of opposition & Exhibits
10. Petition of approval
11. October 18, 2012 CDRC Minutes

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Vicki Lucero, Building and Development Services Manager
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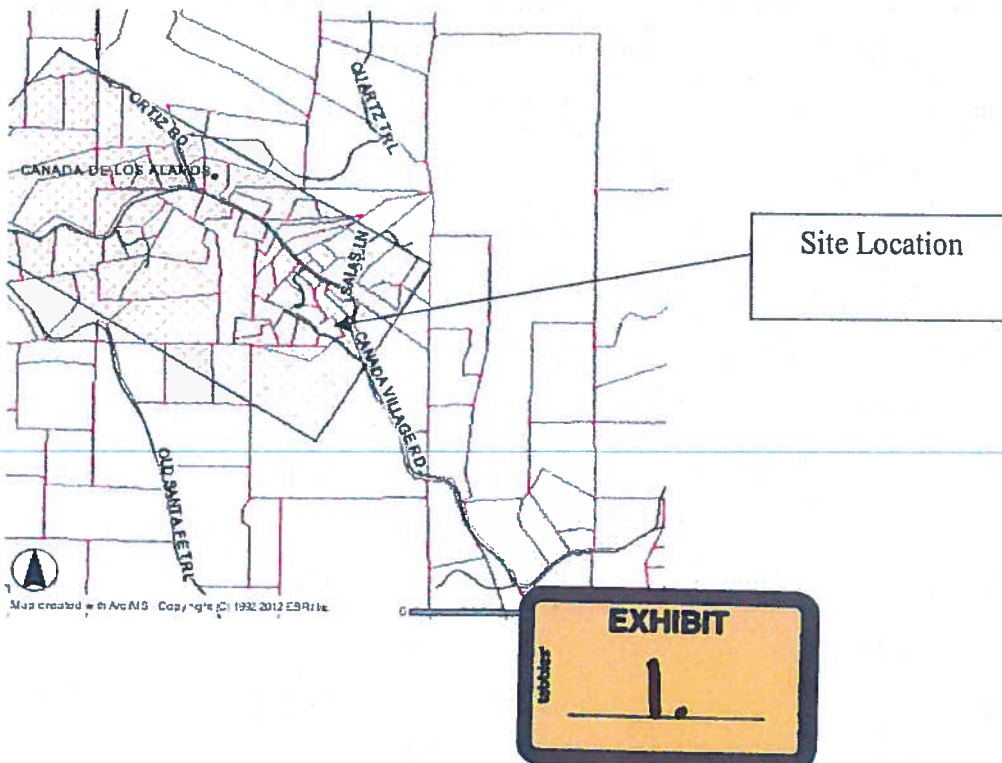
FILE REF.: CDRC CASE # V 12-5300 John & Virginia Kraul Variance

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The property is located at 7 Camino La Llorona, within the Traditional Community of Canada de Los Alamos, within Section 27, Township 16 North, Range 10 East, (Commission District 4).

Vicinity Map:



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SUMMARY:

The Applicants request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 0.90 acres. The property is located within the Traditional Community of Canada de Los Alamos where the minimum lot size is 0.75 acres per dwelling. The subject lot was created in 1998, by way of a Family Transfer. There is currently a permitted residence, which is a modular unit; a modular unit with bath facilities which was permitted as an accessory structure and is now proposed to become a dwelling; an accessory structure used for storage; a garage; and a proposed storage shed on the property. The current accessory structure proposed for use as a residence is a 625 square foot modular unit.

In March of 1998, the Applicants obtained a permit for an accessory structure. The structure was then converted into a dwelling unit without authorization from the County, and the Applicants' sister resides in that unit. On October 7, 2011, a Notice of Violation was issued for exceeding density. Following issuance of the NOV, the Applicants converted the unit back to an accessory structure, as verified through an inspection. The Applicants are now in compliance with what was permitted in 1998.

The Applicants state, a variance is needed due to the sister's medical condition. The Applicants' sister has never had an income. The Applicants claim providing their sister with an affordable place to reside would provide their sister with emotional and financial support, along with peace of mind that she will have a place to call home and will also insure she has care and support from her family in the future.

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." **The variance criteria does not consider financial or medical reasons as extraordinary hardships**

This Application was submitted on August 17, 2012.

On October 18, 2012, the CDRC met and acted on this case, the decision of the CDRC was to recommend denial of the Applicants' request by a 4-2 vote (Minutes Attached as Exhibit 8)

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 at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).

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. October 18, 2012 CDRC Minutes

CDRC CASE # V 12-5300 John & Virginia Kraul Variance: John & Virginia Kraul, Applicants, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 0.90 acres. The property is located at 7 Camino La Llorona, within the Traditional Community of Canada de Los Alamos, within Section 27, Township 16 North, Range 10 East (Commission District 4)

JOHN LOVATO (Case Manager): The property is located within the Traditional Community of Canada de Los Alamos where the minimum lot size is 0.75 acres per dwelling. The subject lot was created in 1998, by way of a Family Transfer. There is currently a permitted residence, which is a modular unit; a modular unit with bath facilities which was permitted as accessory structure and is now proposed to become a dwelling; an accessory structure used for storage; a garage; and a proposed storage shed on the property. The current accessory structure proposed for use as a residence is a 625 square foot modular unit.

In March of 1998, the Applicants obtained a permit for an accessory structure. The structure was then converted into a dwelling unit without authorization from the County, and the Applicant's sister resides in that unit. On October 7, 2011 a Notice of Violation was issued for exceeding density. Following issuance of the Notice of Violation, the Applicants converted the unit back to an accessory structure, as verified through an inspection. The Applicants are now in compliance with what was permitted in 1998.

The Applicants state, a variance is needed due to the sister's medical condition. The Applicant's sister has never had an income. The Applicants claim providing their sister with an affordable place to reside would provide their sister with emotional and financial support, along with peace of mind that she will have a place to call home and will also insure she has care and support from her family in the future.

On October 18, 2012, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants' request by a 4-2 vote.

Growth Management staff have 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: 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 those conditions into the record?

CHAIR STEFANICS: Yes, you may.

Conditions:

1. Water use shall be restricted to 0.50 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 No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
3. The Applicant shall provide an updated liquid waste permit for both homes from the New Mexico Environment Department with the 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



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property. (As per Article III, § 10).

5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).

CHAIR STEFANICS: The first question I have before we go to the applicant is why do we have pictures of a refrigerator and a sink and some other things in this?

MR. LOVATO: Madam Chair, at the time the inspection was done we took photographs of everything. Where the kitchen was, where the sinks were just for proof that everything that everything had been removed for staff files.

CHAIR STEFANICS: I understand, okay. So is the applicant here? Do you have anything you'd like to say? So would you rise and be sworn in.

[Duly sworn, Virginia and John Kraul were duly sworn]

VIRGINIA KRAUL: My name is Virginia Kraul and I live 07 Camino La

Llorona.

JOHN KRAUL: And I'm her husband, John Kraul, and I live at 07 Camion La

Llorona also.

CHAIR STEFANICS: Okay.

MS. V. KRAUL: So we are here today to request a variance to convert the accessory structure into a dwelling.

CHAIR STEFANICS: Could you speak into the mike?

MS. V. KRAUL: We are here today to request a variance to convert the accessory structure into a dwelling. My sister in-law is living in there and she has really nowhere else to go and she is un – she's not medically stable and she needs assistance daily.

And I don't know if you received the other petitions?

CHAIR STEFANICS: Yes. We're asking for your presentation. We're not talking about anything else. So just give us your presentation before I go to the public hearing, please.

MS. V. KRAUL: Okay. We would appreciate if we would be able to turn this into dwelling.

CHAIR STEFANICS: Okay, thanks. Do you have anything to say, sir?

MR. J. KRAUL: Nothing.

CHAIR STEFANICS: Okay, great. Thanks for coming. Okay, we're at the point at public hearing. Are there individuals in the audience that would like to speak for or against this request? Okay, I have two hands. Anybody else? I have three hands. Three, okay so would everybody who is going to speak come up all at once so you can be sworn in at once. Please. This is our transcriber, she needs to swear everybody. Are you also coming up? Okay. So let's get everybody up here who is going to speak. So when you speak I need you all to use the microphone. Identify yourself by name and your address so whoever would like to start.

[Duly sworn, April Velasco testified as follows]

APRIL VELASCO: Hi, my name is April Velasco and I live at 14 Camino La Llorona and I approve of this.

CHAIR STEFANICS: You support this?

MS. VELASCO: Yes, I support it.

CHAIR STEFANICS: Thank you so much. The next person.

[Duly sworn, Andreas Garcia testified as follows]

ANDREAS GARCIA: Andreas Garcia, 107 Cañada Village Road. I speak in behalf of the rest of the Garcias – the better there. We all approve this motion we'd like to see this lady have a place to be able to call home. Thank you.

CHAIR STEFANICS: Thank you very much. Next.

ANTONIO VELASCO: My name is Antonio Velasco. I live at 7 Camino La Llor – I mean 14 Camino La Llorona and I approve this. I just want a place for my wife's aunt to call home.

CHAIR STEFANICS: Thank you very much for coming. Yes, ma'am. No, I need your name and address please.

[Duly sworn, Joyce Kraul testified as follows]

JOYCE KRAUL: My name is Joyce Kraul and my address is 6-C Camino La Llorona and also [inaudible] Cerro Gordo.

CHAIR STEFANICS: Okay, go ahead. One person at a time, please, to speak.

MS. J. KRAUL: Okay, well, although we sympathize with the situation we feel that John and Virginia should not be allowed to have two dwellings on their property for the following reasons. We feel that their property is too small, 0.90 acres to accommodate all these structures already on the property. Their residence, they do studio, a garage, and a half of singlewide trailer and their accessory structure-type dwelling that they're talking about. This does not include, well, like, you know, their easements, and they also have to have a hammer turnaround, hammerhead turnaround.

Miguela has been on the property – on that place since February 2011 after she gave her inheritance property to John and Virginia's daughter, Amanda Kraul Rodriguez. Prior to Miguela living there they had it rented to a – well, they had it rented and also they had Amanda and her then boyfriend, Ruben, living within that structure.

When John and Virginia's survey plat – well, they do have a studio that is – with a bath and kitchen. But, instead, of – they have that rented out to a [inaudible] pottery for storage. And like three or four times out of the year they have like a semi – like a semi, what would you call it?

EDWARD KRAUL: Semi-trailer. We have pictures of it.

MS. J. KRAUL: We have a picture. It's there. It's really in the way and it's just really awkward. And, because the property is so small for all of this existing structures it is very congested and difficult to drive through. Cars are pulling out of all directions. It is congested with vehicles, with their own vehicles – they have quite a few. They have five and they have a trailer. And when they have visitors it's – and John also works on other people's cars [inaudible] garage, and it makes very difficult and dangerous to drive through there especially in the winter time.

Perhaps it would be different if John and Virginia's lot was in the back, not the first lot of seven other lots that have to drive through with this congestion.

We feel bad for Miguela's situation, like we said before. John and Virginia's house is big enough to have her live with them. I believe they said they have six bedrooms. Amada – well, when Miguela gave Amada her property she could care for her, you know, she did give her inheritance. Miguela could also move into, like I said, John and Virginia's already existing studio. Miguela could possibly qualify for some kind of low-income home if she wanted I suppose. Miguela is still young and she might meet someone and possibly get married. If

Miguela would have used her property as a density to put a second dwelling on John's property it would not have come to this unfortunate situation.

And, also, we have –

MR. E. KRAUL: We were misinformed.

CHAIR STEFANICS: Just one at a time. Let her finish.

MS. J. KRAUL: Also we have some papers –

MR. E. KRAUL: We submit a packet but we were misinformed.

CHAIR STEFANICS: Wait a minute. We need to your name, sir.

MS. J. KRAUL: Can I just give you some pictures.

CHAIR STEFANICS: Okay, give it to the staff, Mr. Lovato. Okay, so please introduce yourself and your address.

[Previously sworn, Edward Kraul testified as follows]

EDWARD KRAUL: My name is Edward Kraul, 6C La Llorona. We were misinformed by personnel here at the County. We were submitting a package and they told us to submit the package by the 14th. We had the intention that the package was submitted to the Development Review Board was going to be submitted to you guys and everything so that's why you didn't get a package from us on all this material because we were misinformed by personnel here. And if you could have reviewed all of this, you could have reviewed all of this prior if we would have been informed properly. Because we were misinformed by John Lovato that they were going to submit what we submitted to the other board of – that they were going to submit to you materials we are submitting to you now. Because we have a petition of everybody in the historical village that doesn't want this and this is what you should have reviewed prior to coming to this meeting.

And, like I said we were misinformed by County personnel. And if you would have taken the time to review this document that we submitted through the Development Review Board then you would be aware of exactly what is going on. You don't have the time – you didn't this in front of you as you do now. If you take the time to review it. Because the density on that property it shows. The petition is from everybody in the historical. This gentleman that spoke, Garcia, he doesn't live in the historical. He lives in Cañada but he doesn't in the historical. We're talking about the historical 20 acre tract in the Village of Cañada de los Alamos and a lot of the neighbors who signed the petition is very concerned about septic systems and congestion of traffic and to have two dwellings on one property. I mean, you just can't have two houses on one property because someone is ill.

CHAIR STEFANICS: Okay. Is there anything else?

MR. E. KRAUL: No, I'm fine, thank you.

CHAIR STEFANICS: Okay, well, we really appreciate you coming and sharing that with us.

MR. E. KRAUL: Thank you.

CHAIR STEFANICS: Thank you very much. Is there anybody else who wanted to speak? Yes, the woman in the green, are you wanting to speak? Is that a yes or a no? Are you wanting to speak? You raised your hand; are you wanting to speak? Okay, come up please and be sworn in. Is there anyone else that wants to speak during this public time? Okay, wait a minute. You are encouraged if there is anybody else in the audience. I just want to go through this one more time swearing in. Okay, come on up. Everyone will get sworn in at once.

Okay, so if you would introduce yourself by name and address.

[Duly sworn, Miguela Martinez testified as follows]

MIGUELA MARTINEZ: My name is Miguela Martinez. I live at 07 Camino La Llorona. My brother has brought up the issue of me having land. When I came back – I lost my husband. He died five years ago from Agent Orange. My family shipped me all around trying to get me to – you know, get over – try to live with it. I was married for 20 years. I came back. I tried to get a loan on my land. When my husband died I only got a spousal benefit. I do not make enough money on that land. So that is why I gave it to my niece because she needed a home for her husband and her two children. I have a nice little studio that I am living in. That's all I have. That's all I am asking for is to stay where I am. To be around my family. That is all. I thank you very much.

CHAIR STEFANICS: Thank you very much for coming tonight and speaking.
Yes, sir. Your name and address.

[Duly sworn, John Quintana testified as follows]

JOHN QUINTANA: My name is John Quintana. I live at 116 Bob Street. I have known Miguela for many, many years and I'm aware of her physical and emotional state. She really does need the support of her family. But I want to address one thing about low-income housing. She is a single individual. She is not over 62. She does not meet the disability requirement. She is not eligible. There is nothing that can be done. I work for the Santa Fe Civic Housing Authority. She can't go and apply. So that is not an option. Thank you.

CHAIR STEFANICS: Thank you very much for coming this evening. Okay, is there either any questions of staff. Yes.

COMMISSIONER ANAYA: I have a few questions.

CHAIR STEFANICS: Commissioner Anaya and then Commissioner Holian.

COMMISSIONER ANAYA: Madam Chair and the applicant, if you guys could stand up. Have you reviewed each of the four conditions associated with the request? Restriction of the .25 acre-feet of water, the need to acquire a building development permit, the need to get a permit for liquid waste which isn't our – if this were to be granted then you would have to get a permit from them and they would have to whether or not the seepage is correct and whether or not you environmentally could put that in; do you understand that?

MR. J. KRAUL: Yes, sir.

COMMISSIONER ANAYA: They could potentially not approve it and that doesn't have anything to do with us.

MR. J. KRAUL: Yes, sir. But see you were misled again. I do own a three-bedroom house and I have a septic, I have a permit there for a four bedroom already. A lot of this you're being misled by Mr. Kraul, I'm sorry.

COMMISSIONER ANAYA: Oh, no. I'm not speaking to that. I'm just speaking to – the Environment Department would be the one who would have to approve and issue one, not us.

MR. J. KRAUL: Yes, sir.

COMMISSIONER ANAYA: And then the compliance requirements associated with the fire could involve needing space to have an appropriate hammerhead turn.

MR. J. KRAUL: Yes, sir. If you look on the pictures we gave you.

COMMISSIONER ANAYA: I looked at the pictures. I just want to make sure that you –

MR. J. KRAUL: We've already gone through the Fire Marshall and he's already approved it and he's already seen where we have it and we have a turnaround.

COMMISSIONER ANAYA: You know what you have to do?

MR. J. KRAUL: Yes, we've already done everything that the County has asked us to do, sir.

COMMISSIONER ANAYA: That's all I have, Madam Chair.

MR. J. KRAUL: Yes, sir.

CHAIR STEFANICS: Mr. Patty, why don't you come forward in case there are questions for you. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Mr. and Mrs. Kraul, is there a reason why your sister can't live in the primary residence that is on that lot?

MR. J. KRAUL: Well, because she probably would like her own privacy rather than to be living with me. And, like I said, it's already there. I already have a permit for it. All we're asking for is just to put a kitchen in. She already has a bathroom. I'll we doing is asking to turn it into a dwelling. If she lives in my house or if she live in that little apartment, she's going to use the same water. She's going to use the same – anything she uses in my house she's going to use in there. The only thing is she'll have a little bit more of her own privacy, you know, for herself. That's the only thing. Because right now we have a permit since 10 years ago for that structure. We're not changing nothing.

COMMISSIONER HOLIAN: It does seem like a fair amount of structures on your property.

MS. V. KRAUL: Yes, so actually, that's why I wanted you to take a look at the pictures because if you look at the ones that I just gave you with the additional petition that was signed. The entrance, number one is an easement, two is the hammerhead turnaround, three as you can see is one side of the property, okay. And as you get into the other side from the County, and let me find it for you, on NB 825, that is the opposite side of the easement. So the property is split up in between the easement. So the aerial view does look like everything is congested but if you're looking at it like you're at a picture, you can see that it's not all congested.

COMMISSIONER HOLIAN: And then I had a question about the petition. The petition that we have in our packet that was submitted by Edward Kraul, I believe, has quite a few more names on it. So this is a subset of the people who signed the petition who are reversing their position; is that what you're claiming?

MR. J. KRAUL: Yes, ma'am. The one he had signed he had signed from probably people downtown and all over the neighborhood except for where we lived. The people that live in the village of Cañada. I did go to their home and that's why I got this new petition for you because they did not understand what we were doing. They thought that we were subdividing property and these are things that were misled and there were some names that Mr. Kraul has on his list I have on mine now with phone numbers and you can call them because now they understand what is going on and they do not have a problem with this. None of the neighbors up there. And I'm talking about the people who live in the village with us, not outsiders that live over a mile or farther that he has on that list.

I could have went down, miles down that road and just kept getting them but I didn't do that. I just got people who live in the village itself, where I live.

COMMISSIONER HOLIAN: Thank you, Mr. Kraul. I have a question for Mr. Edward Kraul, do you have a comment on that on the petition issue?

MR. E. KRAUL: I haven't seen any petition that they submitted. If you look at all the addresses on our petition they're everybody in the village.

MS. J. KRAUL: And when we went to get their signatures we gave them a look with some pictures, we gave them that one we gave you I guessed it's called a side view of their property and how congested it was. And also because [inaudible] and we did get [inaudible] and maybe it is so that we did get some from neighboring – there's not more than one mile away, half a mile away.

COMMISSIONER HOLIAN: All right. Okay, all right. Okay, that's enough. I understand.

CHAIR STEFANICS: Commissioner Holian, has had her questions answered, thank you.

COMMISSIONER HOLIAN: I'm done.

CHAIR STEFANICS: Other questions, comments? Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I would move for approval with all staff conditions.

CHAIR STEFANICS: Is there a second.

COMMISSIONER VIGIL: I'll second it for further discussion.

CHAIR STEFANICS: Okay. There's a motion and a second and we're still on discussion. Commissioner Vigil.

COMMISSIONER VIGIL: Okay, so I guess I'm trying to get a visual of this because all I have are pictures and I'm not sure who answered this. Currently, your sister is actually living there and under the current County guidelines she's allowed to live there because it's considered a guesthouse; is that it, Vicki? Or what's the situation with that?

MR. LOVATO: Madam Chair, Commissioner Vigil, she is not allowed to live in the guesthouse. It's not really even a guesthouse right now. It's an accessory structure.

COMMISSIONER VIGIL: It has a bathroom?

MR. LOVATO: Yes, it has a bathroom. But it doesn't have a kitchen and currently our accessory structure ordinance constitute a dwelling as having a bathroom and a kitchen. She's either allowed a bathroom or a kitchen but not both.

COMMISSIONER VIGIL: So if it was a guesthouse would we be going through this same procedure?

MR. LOVATO: Madam Chair, Commissioner Vigil, we would be going through the same procedure. They exceed the density.

COMMISSIONER VIGIL: Okay.

CHAIR STEFANICS: On that point may I ask a question?

COMMISSIONER VIGIL: Please.

CHAIR STEFANICS: Penny, in the new code people are going to be allowed to have a guesthouse.

PENNY ELLIS-GREEN (Land Use Administrator): Madam Chair, Commissioners, it would not be called a guesthouse. It would be an accessory dwelling unit for

a family member. But it's smaller than the existing house and I believe we've had a – it's up to 1,000 square foot. So that's a proposal on the new code.

This permit was approved as an accessory structure and not as a guesthouse and you can't live in an accessory structure. But under the new code you are correct that we would allow a permit for an accessory dwelling unit.

CHAIR STEFANICS: So, on this point still, because Commissioner Vigil still has the floor and I'll go to another on this point, but on this point, we are a few months away from approving something that would allow this. Is that correct?

MS. ELLIS-GREEN: Madam Chair, Commissioners, yes, you maybe. I am not sure what kind of public comments we've got on that section of the code and we haven't had direction from the Board as to whether or not the Board wants to see that section remain in the code. The next time we come in front of the board we should have an analysis and the staff is recommending that we have that permit allowed under the code. So, yes, we may be within six months of approval of that.

CHAIR STEFANICS: Okay, on this point, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, on this point is the premise of my motion. We have had public comment and feedback I believe from at least one of my colleagues and I know I have been supportive of that amendment in the new code and that's my reason around doing it now with staff conditions. Thanks.

CHAIR STEFANICS: Thanks. Commissioner Vigil, you still have the floor.

COMMISSIONER VIGIL: I was just asking my colleague if the dwelling was under 1,000 square feet which would comply with the new development code and I guess it is; is that correct?

CHAIR STEFANICS: Mr. Lovato?

MR. LOVATO: Madam Chair, Commissioner Vigil, that is correct. It is 625 square feet.

COMMISSIONER VIGIL: One question that I need to ask in one of the photos that we saw we actually saw a fence for cattle; is that correct?

MR. LOVATO: Madam Chair, Commissioner Vigil, that is correct. It is an old photograph.

COMMISSIONER VIGIL: So does that exist now?

MR. LOVATO: That no longer exists.

COMMISSIONER VIGIL: Okay.

CHAIR STEFANICS: Anything else?

COMMISSIONER VIGIL: Could you identify the use of each building that's currently now in existence?

MR. LOVATO: Madam Chair, Commissioner Vigil, they have two storage units – a storage unit and a garage structure. They have –

COMMISSIONER VIGIL: Is that adjacent to the house?

MR. LOVATO: Right, it's opposite the road easement. And they also have the primary residence and the studio.

COMMISSIONER VIGIL: And which is the – is it the studio we're looking at to create a variance for or is there a separate dwelling?

MR. LOVATO: Madam Chair, Commissioner Vigil, it is the existing studio.

COMMISSIONER VIGIL: I heard testimony that that's currently being leased for storage space. Clarify that conflicting testimony for me.

MR. LOVATO: The existing studio is not being used. I was one of the code enforcement officers that went out on site and it was just explained as a studio accessory structure.

COMMISSIONER VIGIL: So is there a unit that is being leased for storage space?

MR. LOVATO: Madam Chair, Commissioner Vigil, I cannot answer that question. Perhaps the applicant can.

COMMISSIONER VIGIL: Okay, I see a no nod. Thank you very much.

CHAIR STEFANICS: Thank you. Any other questions or comments. There is a motion to approve the variance with staff conditions. If there is no further questions, we will vote.

The motion tied by 2-2 vote with Commissioners Stefanics and Anaya voting for Holian and Vigil voting against.

CHAIR STEFANICS: We have a tie vote and the case is laid on the table.

COMMISSIONER ANAYA: It goes to the next meeting right?

CHAIR STEFANICS: Not necessary. It is on the table unless somebody makes a motion.

COMMISSIONER ANAYA: I'll clarify that we've had two two votes that go to the next meeting for strictly reasons of voting so to be consistent with that –

CHAIR STEFANICS: Mr. Ross.

MR. ROSS: Madam Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR STEFANICS: Okay, so, Mr. Ross, this will just roll over to next month?

COMMISSIONER ANAYA: Just for a vote.

MR. ROSS: Just for a vote. Vote only.

CHAIR STEFANICS: A vote only.

MR. ROSS: Right. When Commissioner Mayfield is here.

CHAIR STEFANICS: Okay and even though we'll have a brand new Commissioner, they wouldn't have the opportunity to hear the case.

MR. ROSS: No, they'll have to acquaint themselves with transcript, using a transcript, the minutes and the exhibits involved here.

COMMISSIONER ANAYA: It's only a vote?

MR. ROSS: It's only a vote. Vote only.

CHAIR STEFANICS: Thank you very much so that we're all clear on that, thank you for that clarification, Commissioner and Mr. Ross.

Okay, so it's obviously going to the next meeting. Thank you.

EXHIBITS:

- | | |
|--|----|
| 1. Letter of request | |
| 2. | Ar |
| ticle III, §10 (Lot Size Requirements) | |
| 3. | Ar |
| ticle II, § 3 (Variances) | |
| 4. Site Photographs | |
| 5. Site Plan | |
| 6. Aerial of site and surrounding area | |
| 7. Letters of opposition. | |
| 8. October 18, 2012 CDRC Minutes | |

September 16, 2012

To Whom It May Concern,

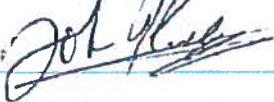
We are writing in reference to Miquela Martinez who is appearing before your county commissioners due to her living situation.

We feel strongly about helping Miquela, and about her future, and we want to try to make you feel the same way. Miquela is a person of good moral character. I realize that you may not know her like we do, but it's true nonetheless. I have been very close to Miquela for all my life, and in time we have seen her go through ups and downs, but all the while we have been convinced that she is a decent person at the core. She struggled with the loss of her husband. Dealing with the death of a family member is an incredibly difficult time. Since his unexpected death she has not had the same income due to this tragedy. She has little means to support herself she has to pay for her medicine and doctor bills so due to this she does not have enough to pay rent. She recently had to have a surgery to remove her Gallbladder. We have been there for Miquela to offer her emotional and practical support. This issue has been causing Miquela and her brother Johns family great deal of stress not know where she will end up living she cannot afford to rent a place on her own. She has been living in my accessory structure type dwelling for the past six years.

Miquela is living on our property in an accessory structure type dwelling in which is being questioned by our older brother. We feel that Miquela's living quarters are fit and up to standard. While she has occupied this accessory structure type dwelling, she has not infringed on any other persons living situation.

Our final request today is that you will allow us to continue the living arrangement that has been working for us and Miquela. If any issue of concern is deemed unfit or not meeting standard, we are willing do what is necessary come into compliance.

Sincerely, John Kraul



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| 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.

EXHIBIT

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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:

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

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





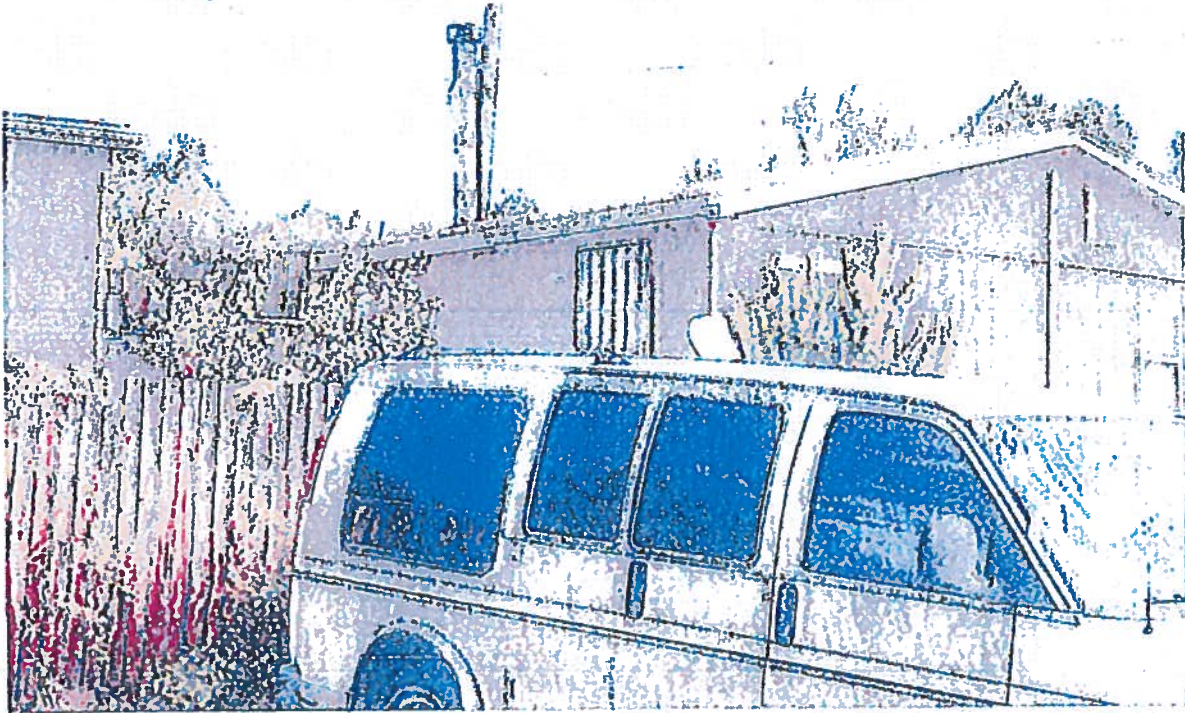
John & Virginia Kraul

#7 Camino La Llorona

V-12-5300

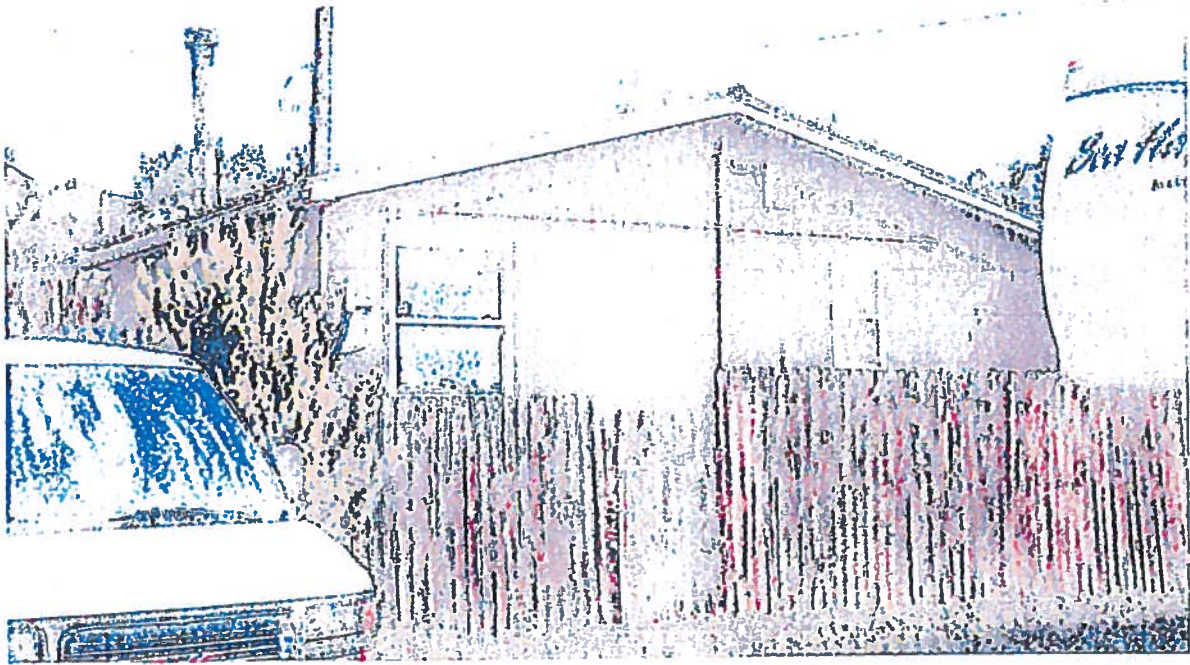
Existing residence





John Kraul Variance

9/7/1012



John Kraul Variance

9/7/1012



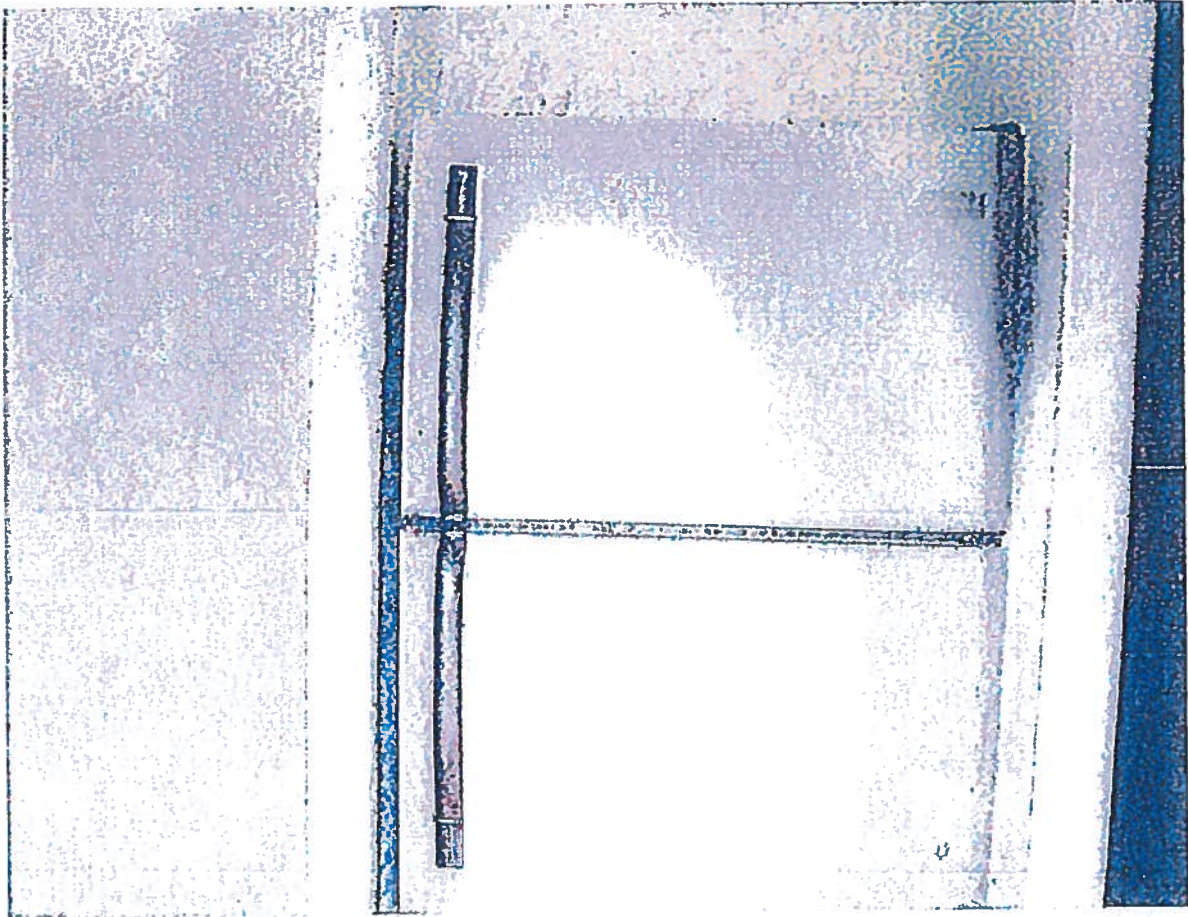
John Kraul Variance

9/7/2012



John Kraul Variance

9/7/2012



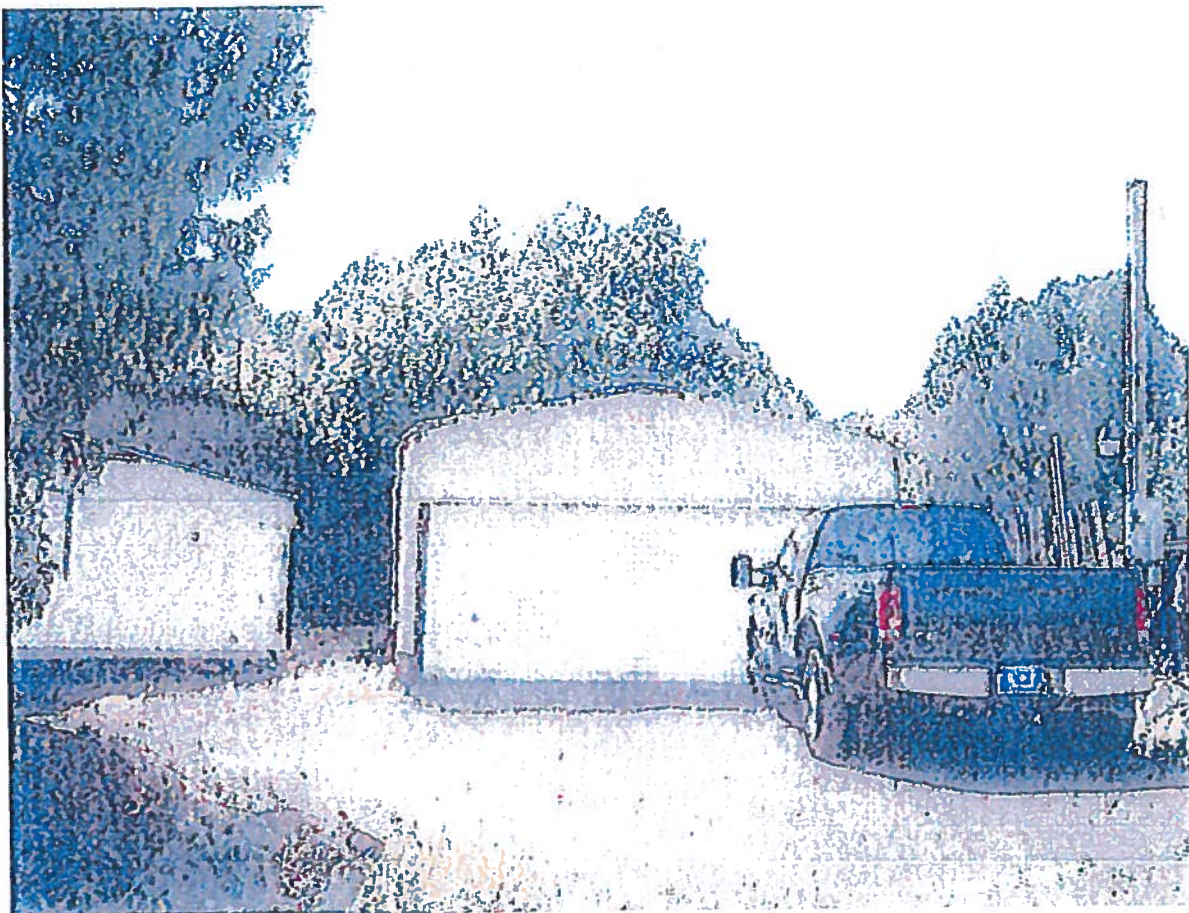
John Kraul Variance

9/7/2012



John Kraul Variance

9/7/2012



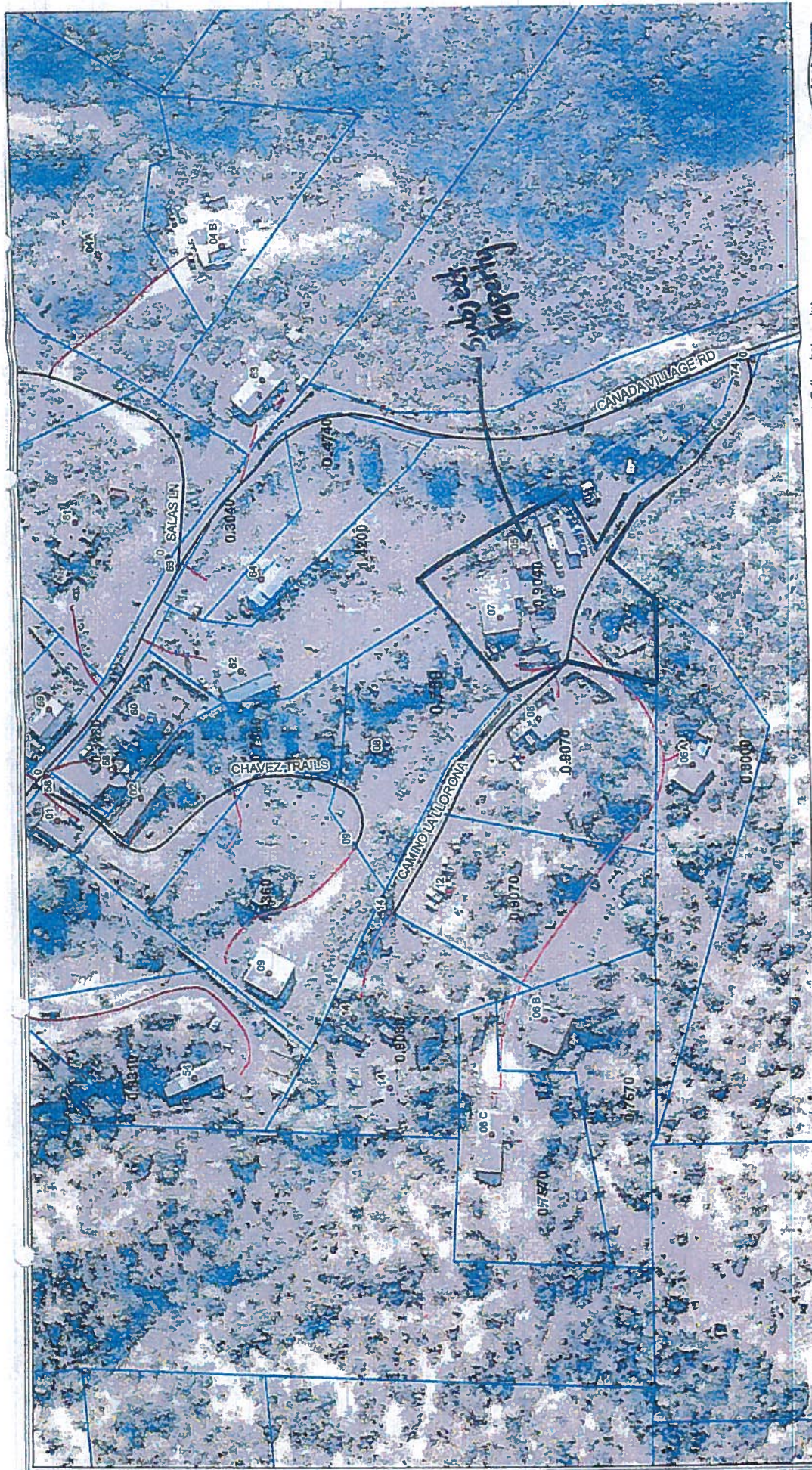
John & Virginia Kraul

V 12-5300

Storage sheds

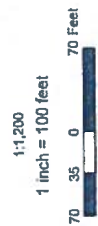


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2008 Orthophotography
2 FOOT CONTOURS

This information is for reference only.
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Legend
— ROADS
□ Parcels



EXHIBIT
8.

October 10, 2012

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