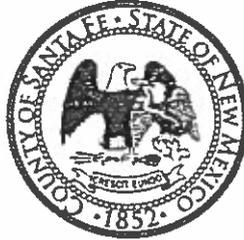


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V14-5080
VARIANCE
JASON MOHAMED

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on September 9, 2014, on the Application of Jason Mohamed (Applicant) for a variance of Article III, Section 10 (Lot Size Requirements) of Santa Fe County Ordinance 1996-10, the Santa Fe County Land Development Code (the Code), to allow two dwelling units on 2.5 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted subject to conditions, and makes the following findings of fact and conclusions of law:

1. The Applicant has requested a density variance to allow two dwelling units on 2.5 acres located at 11 Virginia Lane in Santa Fe County, within Section 24, Township 15 North, Range 8 East (the Property).
2. The Property is a lot created in 1984 as a result of a Family Transfer, and is recognized as a legal lot of record.
3. The Applicant and his wife acquired the real property by warranty deed recorded on the 25th day of September 2012 as instrument 1682516, at Book 138, Page 006, in the Santa Fe County Clerk's records.

4. The Applicant applied for a variance after receiving a Notice of Violation from a Santa Fe County Land Use Department Code Enforcement Officer because the Applicant placed a second dwelling unit (Manufactured Home) on the property without a Development Permit from Santa Fe County.
5. Currently there are two homes and two accessory structures on the subject property. The two accessory structures consist of a small well house and a stable. The property originally had a home of 2,800 square feet, which was constructed sometime in the 1980s. The two accessory structures were constructed sometime between 1992 and 2001. The second dwelling unit is approximately 1,200 square feet in size. The second dwelling unit is less than 50 percent of the size of the main residence.
6. Article III, Section 10 of the Code provides that minimum lot size in this area is 10 acres per dwelling unit. The Code also provides that Lot size can be reduced to 2.5 acres with signed and recorded water restrictions.
7. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the development permit application for the second dwelling unit.
8. The Applicant has stated that a variance is needed in order to provide his elderly mother with a home of her own and to provide assisted living and care for her. Aerial photographs show that the surrounding area contains numerous parcels which have multiple homes located on the lots. The Applicant advised that placing a manufactured home on the property will not result in a diminished property value for neighbors because the area has a variety of dwellings and lacks uniformity. The Applicant also asserted that the Application conforms to Chapter 10, Section 10.4, Supplemental Zoning Standards of

the Sustainable Land Development Code (which has been adopted to replace the Code but is not yet in effect) and which recognizes that accessory dwelling units are an important means by which people can provide separate and affordable housing for their elderly parents.

9. In advance of a hearing on the Application, the Applicant provided a notice of hearing that was published in the legal notice section of the Santa Fe New Mexican on April 24th 2014, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailings of notices of the hearing were also contained in the record for all adjacent property owners. The noticing met all Code requirements.
10. The Applicant provided a report from Glorieta Geo Science regarding the location for a well for the subject property. During the September 9, 2014 public hearing, the Applicant's attorney provided proof that the Applicant drilled a new 420 foot well which is producing 15 gallons per minute. A well permit was issued by the Office of the State Engineer.
11. A letter of opposition was submitted to the County and signed by seven area property owners opining that if the variance was approved, the additional residence would bring congestion to their neighborhood and open the door to all negative consequences that accompany overcrowding. For example, property values would be adversely affected and the water supply would be in jeopardy. At the hearing the concerns raised in opposition to the application were unsupported by substantial evidence, in the form of testimony from individuals qualified to render an expert opinion or other competent evidence.
12. The Applicant's agent tabled two previously scheduled public hearings: one on July 8th and one on August 12, 2014.

13. Staff recommended denial of the Application, and suggested the following conditions if approval were recommended:

- a. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each home. 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;
- b. The Placement of additional dwelling units or division of land is prohibited on the property;
- c. The Applicant must obtain a Development Permit for the second dwelling unit and accessory structures;
- d. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Development Permit Application;
- e. The Applicant shall comply with all Fire Prevention Division requirements at the time of the Development Permit Application;
- f. The Applicant, with approval from the Office of the State Engineer's Office, shall drill down to the second aquifer.

14. In support of the Application, the Applicant stated that they are in agreement with staff's conditions.

15. On September 9, 2014, the BCC held a public hearing on the Application request of a variance to allow two dwelling units on 2.5 acres.

16. Article II, Section 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. A Development Review Committee may recommend to the [BCC] and the [BCC] may vary, modify or waive the requirements of the Code upon adequate proof that compliance with a Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety.”

17. Section 3.1 concludes that, “In no event shall a variance...be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified.”

18. Article II, Section 3.2 states, “In no case shall any variation or modification be more than a minimum easing of the requirements.”

19. Granting this variance request will not nullify the purpose of the Code.

20. 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, and the relevant conditions inhibit the achievement of the purposes of the Code.

21. We find that there was credible evidence submitted to demonstrate that compliance with Article III, Section 10 of the Code, will result in an arbitrary and unreasonable taking of

property or exact hardship, and that a variance from the Code will not result in conditions injurious to health or safety.

22. Granting this density variance is a minimum easing of the density requirements of the Code.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the variance of Article III, Section 10 (Lot Size requirements) of the Land Development Code to allow two dwelling units on 2.5 acres at 11 Virginia Lane within Section 24, Township 15 North, Range 8 East (Property") subject to the staff conditions set forth in paragraph 13. The motion to approve the variance passed by a 5-0 vote, with Commissioners Anaya, Mayfield, Chavez, Holian and Stefanics voting in favor of the motion.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____, 2015.

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

CHAIR MAYFIELD: Thank you, Commissioner. Commissioners? Commissioner Stefanics, care to make a motion? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I move for approval of the master plan with staff conditions.

COMMISSIONER CHAVEZ: Second.

CHAIR MAYFIELD: We have a motion and a second. Is there any further discussion?

The motion passed by majority [3-2] voice vote, with Commissioners Anaya, Chavez and Holian voting in favor and Commissioners Stefanics and Mayfield voting against.

CHAIR MAYFIELD: So folks, we're going to move on to our next case. We'll just ask please for courtesy. It is a deliberative process and thank you for your participation.

- VII. A. 2. **CDRC CASE #V14-5080 Jason Mohamed Variance.** Jason Mohamed, Applicant, (Knutson Law PC) Kristofer C. Knutson, Agent, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow Two Dwelling Units on 2.5 acres. The Property is located at 11 Virginia Lane, within Section 24, Township 15 North, Range 8 East (Commission District 5)

MS. LUCERO: Thank you, Mr. Chair. I'll be presenting for Mr. Romero here tonight. The Applicant requests a variance of Article III, Section 10, Lot Size Requirements, of the Land Development Code to allow two dwelling units on 2.5 acres. The subject lot was created in 1984 via Family Transfer and is recognized as a legal lot of record. Currently there are two homes and two accessory structures on the property. The main residence, which is occupied by the Applicant, his family and mother is approximately 2,800 square feet and was constructed some time in the 1980s. The proposed manufactured home is approximately 1,200 square feet and will be occupied by the Applicant's mother. Staff cannot find any evidence that the main residence was permitted and the manufactured home was placed on the property illegally. The two accessory structures consist of a well house and stables, which were constructed some time between 1992 and 2001. Staff cannot find any evidence that these accessory structures were permitted.

On January 30, 2014, the Building and Development Services Division received a complaint regarding the placement of a manufactured home onto the property with no Development Permit posted from Santa Fe County. On February 6, 2014, Code Enforcement conducted an inspection on the property and issued the Applicant a Notice of Violation for Unpermitted Development.

The Applicant states a variance is needed in order to provide his elderly mother

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with a home of her own and to help provide assisted living and care for her. Currently, the proposed manufactured home is on the property and is vacant with no utilities connected.

If the variance is approved the applicant intends to utilize the existing well and septic system for the proposed home.

On May 14, 2014 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicant's request by a 4-3 vote. The CDRC added a condition that the applicant drill down to the second aquifer, with the approval from the Office of the State Engineer. This condition was based upon public testimony regarding water use and water levels in the area.

The applicant has received a report from Glorieta GeoScience which recommends that the applicant deepen his well which is situated in the Ancha Formation into the Espinosa-Galisteo Formation to improve production. The applicant has contacted Lujan Drilling and has contacted the OSE to conduct drilling operations.

Growth Management staff have reviewed this application for compliance with pertinent code requirements and finds that the project is not in compliance with County criteria for this type of request.

Staff recommendation: denial of the variance of Article III, Section 10, Lot Size Requirements of the Land development Code. If the decision of the BCC is to approve the Applicant's request for a variance, 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 home. 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 placement of additional dwelling units or division of land is prohibited on The property (As per Article III, Section 10).
3. The Applicant must obtain a Development Permit for the second dwelling unit and stables. (As per Article II, § 4.5.2b Article II, § 2).
4. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the development permit application. (Article III, Section 2.4.1.a.1a.4.)
5. The Applicant shall comply with all Fire Prevention Division requirements at the time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).
6. The Applicant shall drill down to the second aquifer with the Office of the State Engineer's approval as per CDRC.

Mr. Chair, for the record, Vicente handed out a packet from the applicant's attorney. [Exhibit 8] And with that, I stand for any questions.

CHAIR MAYFIELD: Thank you, Ms. Lucero. Commissioners, any questions of staff?

COMMISSIONER CHAVEZ: I have a clarifying question.

CHAIR MAYFIELD: Commissioner Chavez.

COMMISSIONER CHAVEZ: So the approval of the variance is denied because the lot size is too small for the two dwelling units?

MS. LUCERO: Mr. Chair, Commissioner Chavez, that's correct. The minimum lot size in this area is one dwelling for 2.5 acres, so there's only enough acreage for the one dwelling unit.

COMMISSIONER CHAVEZ: So they're actually – they would be doubling the density of this was approved.

MS. LUCERO: Mr. Chair, Commissioner Chavez, that's correct.

COMMISSIONER CHAVEZ: But both of the units are already on the property.

MS. LUCERO: Mr. Chair, Commissioner Chavez, they are both existing. The manufactured home is not connected though. It's just being stored there. It's not being utilized at this point.

COMMISSIONER CHAVEZ: Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you, Commissioner. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. Vicki, under the new code, could this be – if the second house were allowed, could this be considered a family compound?

MS. LUCERO: Mr. Chair, Commissioner Holian, based on the new code, this could possibly qualify as an accessory dwelling unit. The size of the manufactured home is 1,200 square feet and it's less than 50 percent of the size of the main house, but there may have to be some structural modifications, aesthetic modifications so it's made of the same material as the main house.

COMMISSIONER HOLIAN: I see. And then under the conditions, in case we were to approve this, on condition #2 it says the placement of additional dwelling units or division of land is prohibited on the property. Would that be put on the plat then? Would that be recorded on the plat? That condition?

MS. LUCERO: Mr. Chair, Commissioner Holian, since they're not dividing the property they won't be preparing a plat, but what we could do is have them re-record their warranty deed with a note stating that there are no further land divisions or additional dwelling units allowed.

COMMISSIONER HOLIAN: Okay. Thank you, Vicki.

CHAIR MAYFIELD: Thank you. Seeing no more questions we'll go to the applicant please. I'm sorry. Commissioner Anaya.

COMMISSIONER ANAYA: Just a comment, Mr. Chair. This is a little bit different than what we normally see. We normally see divisions of land where they're actually wanting to have fee-simple lots associated with the dwelling units. So I just want to point that out. We don't typically see the same parcel and multiple dwellings. So I would just point that out. Thanks.

CHAIR MAYFIELD: Thank you. So we'll move to the applicant please.

KRIS KNUTSON: Good evening. I'm Kris Knutson and I'm representing the applicant, Mr. Chair and Commission. This is Rosaline, the applicant's mother who, if this is approved, will be living in the home. Mr. Mohammed and his wife had

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scheduled vacations so they can't be present.

CHAIR MAYFIELD: Mr. Knutson, I know you're an attorney, but if the applicant wants to be sworn in now – I don't know if she's going to comment or not.

[Rosaline Mohammed was administered the oath.]

CHAIR MAYFIELD: Thank you. Sorry for butchering your name.

MR. KNUTSON: Mr. Chair, Commission, did you receive the packet I sent?

CHAIR MAYFIELD: We received it about two minutes ago.

MR. KNUTSON: Okay. So I'll go through it. Mr. Chair, Commission, the material I've provided, I'd like to talk about that. The first page should be an aerial overview of the subject property. It's outlined in red and the neighboring properties are noted A, B, C, D, E, F, G. And after that there's exhibits I've attached of the neighbors' properties and there are photographs that correspond to the neighboring properties, so I'm just giving you an idea of what the subject property looks like with the neighboring properties.

When you get to Exhibit G-1 through G-4, that is – G-1 is the mobile home that was placed there and G-2 shows the mobile home with the main residence. G-3 is once again the main home, another view of that with the mobile home, and then G-4 is a view from sort of the front showing it behind a tree.

Exhibit H is the 2013 report by Glorieta GeoScience. Mr. Mohammed had this report done because his well was only producing less than two gallons per minute of water and he got this done all this happened to find out how he could get more adequate water and they recommended that a new well be drilled down to either the Espinosa or Galisteo formations in order to improve water yield.

Since then the applicant has drilled a new well down to 420 feet and that is producing about 15 gallons per minute and Exhibit I is the permit issued by the Office of the State Engineer and that is permitting use of water for up to two households and even though that authorizes up to three acre-feet, obviously if the applicant is allowed to have the proposed dwelling home the conditions will be .25 per house which is acceptable.

Exhibit J is the well record which has been recorded with the Office of the State Engineer showing the depth of the well. The drilling was completed by Lujan Drilling and I just attached Exhibit K which is the new code which shows I think that if this would have happened maybe a year or two from now perhaps this dwelling would have been approved administratively. And I'd like to point out that at the beginning of it it says accessory dwellings are an important means by which persons can provide separate and affordable housing for elderly, single parent and multi-generational family situations. I'm assuming that language was well thought out and that's why we're asking for this variance.

Mr. Mohammed did not know that putting the manufactured home, in case you're wondering, was against the code when he did it. A neighbor called on him because other houses around the area had manufactured homes but they were grandfathered in or not reported on or whatever. He assumed it was okay to do it. His assumption was wrong. Here he is asking you for a variance.

My understanding is that the code will take effect as soon as the zoning map is

finalized and adopted and other technical changes are made to the code, but we are here asking you for the variance.

Variations, as you know are intended to afford relief from the strict letter of the law. In this case the literal enforcement of the Land Development Code will deprive the applicant of having a family home for his mother, Rosaline, who has moved here from out east. It's our belief that if you grant the variance it's going to result in a minimal easing of the code that's in place right now, especially in light of the fact that the applicant has now deepened his well and he's not in the same area as a lot of his neighbors who have shallower wells, so he shouldn't be affecting their wells.

The granting of the variance we don't believe is injurious to the neighborhood. It's generally of the character, if you look at the surrounding rural residents and if the County requires it we will put stucco on the manufactured home, if that's a required, match it to the home. I don't know if that's necessary. It's my belief that the variance will not set a precedent which conflicts with the policies of the Extraterritorial Plan and the Land Development Code, especially since the new code provides for these sorts of separate and affordable housing for elderly family members.

The applicants and myself and Rosaline thank you for your time and consideration. If you have any questions I'll do my best to answer them.

CHAIR MAYFIELD: Thank you. Do you want to add anything else? You don't have to if you don't want to.

ROSALINE MOHAMMED: My son came here three years ago, fell in love with a girl from New Mexico and got married and he begged me to come because I've always wanted a garden. Because of my age and because of arthritis I can't do the gardening, the heavy things by myself. So we have a beautiful garden and that's what we planned. We like growing our food so we can eat, sustain ourselves. We put in solar, so we're really environmentally conscious and we want to protect and beautify the property.

CHAIR MAYFIELD: Thank you.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: I'd move for approval with the conditions.

COMMISSIONER ANAYA: Second.

CHAIR MAYFIELD: We have a motion and a second. Any further discussion?

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

CHAIR MAYFIELD: You're approved with staff conditions. Thank you.

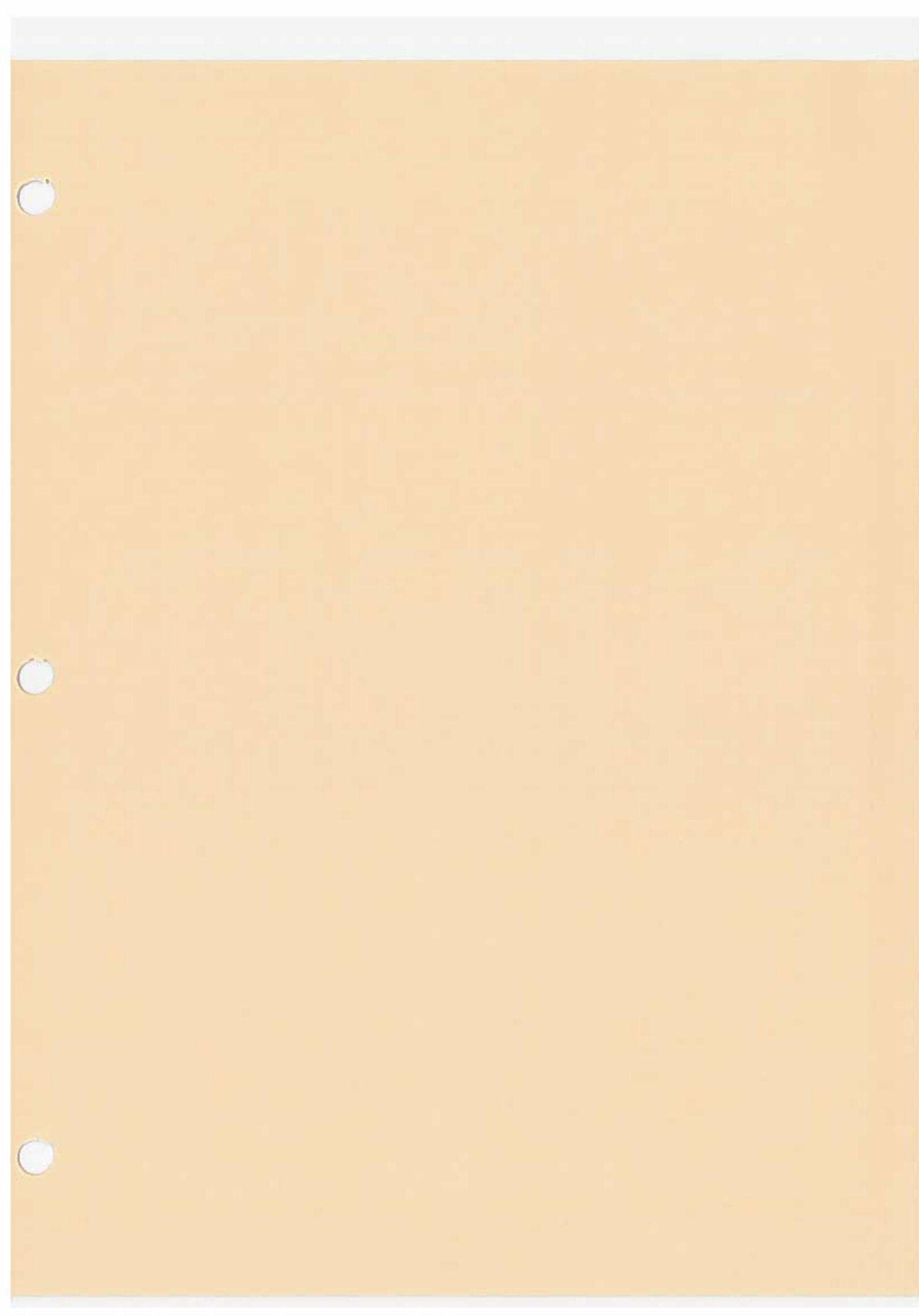
MS. MOHAMMED: Thank you so much.

CHAIR MAYFIELD: You're welcome.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR MAYFIELD: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, just a point on the record. There has been other cases that have been appealed. I would just put that on the record and I



Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 13-5190
VARIANCE
MINNIE WALSH, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as the "BCC" or the "Board") for hearing on December 9, 2014 and January 13, 2015 after receipt of a remand order from the First Judicial District Court. The matter had previously come before this Board for hearing on the Application of Minnie Walsh (hereinafter referred to as "the Applicant") for a variance of Article III, Section 10 (Lot Size Requirements), Article III, Section 2.4.1a.2.b (Access) of the Santa Fe County Land Development Code ("Code"), and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 1.195 acres into two lots. The previous hearing was held on October 8, 2013 and was decided on November 12, 2013.

In the November 2013 decision, the Board approved the Applicant's request by a vote of 3-2, incorporating staff's six recommended conditions which are repeated below. The November 2013 decision was appealed to the First Judicial District Court by Kris and Misha Peterson.

By order the Honorable Raymond J. Ortiz of the First Judicial District Court issued on July 21, 2014, the case was remanded back to the Board for re-hearing. The remand order required the Board to make specific written findings under the County's Land Development Code requirements

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and also under both prongs of the State Supreme Court's *Paule* case to justify the decision. Similarly, the remand required a re-presentation of the floodplain variance issue so that the Board could make specific written findings to justify its decision or make specific findings whether or not those requirements were applicable in the first instance.

The BCC, having again reviewed the Application and supplemental materials, including new and previous staff reports, and having conducted a second public hearing on the request pursuant to the judicial remand, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The current matter was fully heard on December 9, 2014 after which it was tabled by a unanimous vote of 4-0 until the Board's January 2015 meeting.
2. At the January 13, 2015 hearing, no additional evidence was taken and the Board merely voted on a motion to approve the Applicant's variance requests.
3. The Board hereby incorporates by reference the findings of fact and conclusions of law set forth in the Board's November 12, 2013 Order in this matter.
4. The Board again imposes the 6 following conditions that Staff recommended imposition of in the Board's November 2013 Order, namely:
 - a) Water use shall be restricted to .50 acre foot per year. A water meter shall be installed for the proposed home. 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;
 - b) A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department of review and Approval.

- c) The Applicant must comply with all conditions of approval within 90 days and prior to plat approval.
 - d) The Applicant shall comply with all Fire Prevention Division requirements.
 - e) The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property.
 - f) A restriction must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site access, including access by emergency vehicles, may not be possible at all times.
5. During the October 2013 hearing, Applicant agreed to the imposition of the 6 above-listed conditions recommended by staff during that hearing.
6. During the December 9, 2014 hearing, the following individuals testified in favor of the requested variances:
- a) Minnie Walsh who is the applicant;
 - b) Mike Adams who is the son-in-law of Applicant who, together with his wife (daughter of Applicant), would be the beneficiary of the lot split and family land transfer;
 - c) Jim Roybal who identified himself as a member of the Jacona Land Grant;
 - d) Michelle Adams who is the daughter of Applicant and would be the beneficiary of the lot split and family land transfer; and
 - e) Karen King a neighbor of Applicant and the Peterson family who has lived just south of Applicant for the past 22 years and knows the Applicant's family as well as the Peterson family.

7. During the December 9, 2014 hearing, the following individuals spoke against approval of the requested variances:

- a) Joseph Karnes as the attorney for Kris and Misha Peterson, spoke at length about his clients' opposition to the variances requested and asserted various legal reasons why the variances should be disapproved; and
- b) Scott Peterson who, while he did not explain his kinship with Kris and Misha Peterson, expressed his concern about the Applicant's family installing their trailer beyond the 2-year temporary use period permitted and that they let 5 years go by during which they put in a well and a septic system on a temporary permit.

8. During the December 2014 hearing, there was some discussion about the conditions the previous Board had imposed upon the Applicant in 2006 in its granting of the renewable two-year temporary placement of the second home on the Applicant's property. The record in this case listed 6 conditions that were imposed, three of which are, that:

- a) A temporary permit will be issued for a period of two-years, to be approved for consecutive two year periods by the CDRC. The applicant at that time must prove the hardship still exists.
- b) Water use shall be restricted to 0.25 acre foot per dwelling. A water meter shall be installed for both homes. Annual water meter readings shall be submitted to the Land Use Administrator by January 31st of each year. Water restrictions shall be recorded in the County Clerk's office.
- c) The applicant shall submit a liquid waste permit approved by the New Mexico State Environmental Department, for the second dwelling.

9. Applicant Minnie Walsh testified during the December 2014 hearing that after she received the temporary permit to site the second trailer on her property for two years, her husband became sick and passed away. Similarly, during the October 2013 hearing, Mike Adams testified that Applicant's husband John died in 2008.
10. During the December 2014 hearing, Mike Adams testified that they installed a septic system and well—permanent fixtures on the property—because they understood the 2006 conditions imposed by the previous Board as requiring that.
11. The record in this case establishes that Mr. Adams did apply for and receive wastewater permitting permission from the State Environmental Department; he did apply for and receive permission to drill a well from the State Engineer; and he did in fact receive a water adjudication order from a federal judge in 2009 arising out of the well-known *Aamodt* water rights litigation.
12. It was reasonable for Mr. Adams to assume that the referenced improvements he made to the Applicant's land in support of his temporary home were consistent with the 2006 conditions imposed by the previous Board relating to the control of water use and wastewater.
13. The Board hereby adopts the following findings of fact and conclusions of law that were read into the record by County land use staff who recommended their adoption during the December 2014 hearing:

As to the Floodplain Variance-
 - a) Portion of access that crosses the FEMA designated floodplain is off-site. Family Transfers are exempt from off-site improvements.
 - b) Six (6) other parcels utilize the same secondary access to the subject parcel.
 - c) Four (4) other parcels utilize the primary access to the subject property.

- d) All-weather access affects many of the properties in the area. For this reason, staff is recommending that the floodplain section amended in the Sustainable Land Development Code requires all-weather access only for major subdivision, multi-family developments, or non-residential development over 10,000 square feet.
- e) It would be an extraordinary hardship to the Applicant if they were required to construct an all-weather access due to unusual topography that would benefit everyone who utilizes the access. Moreover, Applicant does not own the land constituting the 750' long and 15' wide all-weather crossing and there is no other access to the parcel.
- f) The road crossing the FEMA designated floodplain is existing and no improvements are proposed so there will be no construction within the floodplain.

As to the Minimum Lot Size Variance-

- a) Primary Home is 2,200 square feet and the secondary home is 952 square feet. This meets the requirements of the SLDC for an accessory dwelling.
- b) Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant in that Applicant is seeking to permit one of her daughters to divide the lot by way of a Small Lot Family Transfer pursuant to a variance to assist her daughter with an affordable place to reside and own, where the Applicant's daughter has been living in a residence on the property since 2006.
- c) The granting of the requested variance is a minimal easing of the Code requirement to address topography or other such non-inflicted conditions to allow a Family Transfer land division on the Applicant's property and will not nullify the purpose of the Code.

14. Consistent with the Court's remand order that permitted the Board to make a specific finding as to whether or not its Flood Damage and Stormwater Management Ordinance requirements are applicable in the first instance, compliance with the detailed requirements of that Ordinance, such as provision of a stormwater analysis, shall not be required for the reasons stated elsewhere in this Order, which reasons include but are not limited to:

- a) A specifically-worded restriction must be placed on the Plat regarding the lack of all-weather access to the subject lot.
- b) Under the County's impending Sustainable Land Development Code, all-weather access compliance requirements only apply to major subdivisions, multi-family developments, or non-residential development over 10,000 square feet, none of which fall within the description of Applicant's lot split of her 1.195 acre lot.
- c) Applicant does not own the land constituting the all-weather crossing.
- d) There was uncontradicted testimony during both the October 2013 and December 2014 hearings that the Applicant and several families, including the Petersons, routinely use the low-water floodplain crossing to access their residences.

15. The granting of the requested variances from the Land Development Code will not result in conditions injurious to health or safety.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article III, Section 10 (Lot Size Requirements), Article III, Section 2.4.1a.2.b (Access) of the Code and a variance of Ordinance No. 2008-10 (Flood Damage and Prevention) on property located at 58 Arroyo Jaconita conditioned on the Applicant complying with

the conditions stated in Paragraph 4 herein. The motion to approve the granting of the variances passed by a 3-2 vote with Commissioners Anaya, Chavez and Roybal voting in favor of the motion and Commissioners Stefanics and Holian voting against the motion.

IT IS SO ORDERED.

This Order was approved by the Board of County Commissioners of Santa Fe County on this _____ day of _____, 2015.

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:

Willie R. Brown
for: _____
Gregory S. Shaffer, County Attorney

DRAFT

~~COMMISSIONER HOLIAN: Mr. Chair.~~

~~COMMISSIONER CHAVEZ: Commissioner Holian.~~

~~COMMISSIONER HOLIAN: I move for approval of CDRC Case V 14-5300, Cathy and Chris Stoia a variance with staff conditions.~~

~~COMMISSIONER ANAYA: Second.~~

~~COMMISSIONER CHAVEZ: So there's a motion and second with staff conditions. Any further discussion?~~

The motion carried by unanimous [4-0] voice vote.

- VII. A. 11. **CDRC CASE # V 13-5190 Minnie Walsh Variance.** Minnie Walsh, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) and a Variance of Article III, Section 2.4.1a.2.b (Access) of the Land Development Code and a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Family Transfer Land Division of 1.195 Acres into two Lots. The Board of County Commissioners rendered a decision to approve this request on October 8, 2013. The BCC's decision was then appealed to District Court, and the Court Decision on July 31, 2014, was to remand the case back to the BCC for a rehearing. The Property is Located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East (Commission District 1)

MR. LOVATO: Thank you, Mr. Chair, Commissioners. Minnie Walsh, Applicant, requests a variance of Article III, Section 10, Lot Size Requirements, and a variance of Article III, Section 2.4.1a.2.b, Access, of the Land Development Code and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, to allow a Family Transfer Land Division of 1.195 Acres into two lots. The Board of County Commissioners rendered a decision to approve this request on October 8, 2013. The BCC's decision was then appealed to District Court, and the Court Decision on July 31, 2014, was to remand the case back to the BCC for a rehearing.

On October 8, 2013, the request came before the BCC. The decision of the BCC was to approve the request by a vote of 3-2 with staff's recommended conditions. The BCC's decision was appealed to the First Judicial District Court by Chris and Misha Peterson. The Honorable Raymond J. Ortiz remanded the case back to the Board so that the board can make specific written findings under its Land Development Code requirements and also under both prongs of the Paule case to justify the decision they made. Similarly, this is also required for the floodplain variance, for a re-representation of evidence for written findings to justify the decision and make specific findings, or to make specific findings whether or not those requirements are applicable in the first instance.

Mr. Chair, I can summarize the case for you or keep on going?

COMMISSIONER CHAVEZ: No, I think it would be good for you to summarize from this point on.

MR. LOVATO: The Applicant requests a variance to allow a Family Transfer Land Division of 1.195 acres into two lots. The property is accessed by Arroyo Jaconita Road, a private road, and Loma Encantada, a private road. Arroyo Jaconita is a land/dirt/sand surface and is located in and crosses a FEMA designated Special Flood Hazard Area. The portion of Arroyo Jaconita Road that services the property is approximately 750 feet in length and 15 feet in width. Loma Encantada is a dirt driving surface that ends and enters the Jacona Land Grant. A portion of Loma Encantada crosses a FEMA designated Special Flood Hazard Area and is approximately 1/4 mile in length and 15 feet in width. Both Arroyo Jaconita, and Loma Encantada do not have all-weather driving surfaces and may be frequently impassible during and after inclement weather, and thereby are not all-weather accessible.

Currently, there is a double wide manufactured home, a single wide mobile home, and two accessory structures/sheds on the property. The property is served by two onsite wells, a conventional septic system, and a split flow septic system. Article III, Section 10 of the Land Development Code states that the minimum lot size in this area is 0.75 acres. In order to divide the subject property into two lots, the property would have to be at least 1.50 acres. The Applicant is requesting a variance to this requirement.

In 2006, the BCC granted a two year temporary approval to allow the placement of a second dwelling unit on the property. The Applicant failed to remove the structure at the conclusion of the two year period, as Exhibit 11 on the previous report. The Applicant stated that they sought to retain the second dwelling unit for more than two years; the Applicant was to apply for temporary approval every two years to be approved by the CDRC and report water meter readings to the Land Use Administrator by January 31st of each year.

The Applicant states the reason for this is due to the loss of her husband, and it has taken a few years for the family to focus and take the necessary steps toward making a home for her daughter's family permanent. The Applicant would like to provide her daughter and her family with an affordable place to live and provide clear title to the land so that they may build a permanent residence. Furthermore, she would like to maintain family ties to the land where her daughter grew up.

Staff recommendation: On October 8, 2013, the decision of the BCC was to approve the request for a variance of Article III, Section 10, Lot Size Requirements, a variance of Article III, Section 2.4.1a.2.b, Access, and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, to allow a Family Transfer Land Division of 1.195 acres into two lots, with these conditions listed below.

If the decision of the Board is to approve the request, staff also recommends the following findings of fact and conclusions of law in support of the decision. The findings of fact and conclusions for the floodplain variance:

1. Portion of access that crosses the FEMA designated floodplain is off-site. Family Transfers are exempt from off-site improvements.
2. Six other parcels utilize the same secondary access to the subject parcel.

3. Four other parcels utilize the primary access to the subject property.
4. All-weather access affects many of the properties in the area. For this reason, staff is recommending that the floodplain section be amended in the Sustainable Land Development Code to require all-weather access only for major subdivisions, multi-family developments, or non-residential development over 10,000 square feet.
5. It would be an extraordinary hardship to the Applicant if they were required to construct an all-weather access due to unusual topography that would benefit everyone who utilizes the access. Moreover, applicant does not own the land constituting the 750 feet long and 15 feet wide all-weather crossing and there is no other access to the parcel.
6. The road crossing the FEMA designated floodplain is existing and no improvements are proposed so there will be no construction within the floodplain

Minimum Lot Size Variance:

1. Primary Home is 2,200 square feet and the secondary home is 952 square feet. This meets the requirements of the SLDC for an accessory dwelling.
2. Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant in that Applicant is seeking to permit one of her daughters to divide the lot by way of small Lot Family Transfer pursuant to a variance to assist her daughter with an affordable place to reside and own, where so the Applicant's daughter has been living in a residence on the property since 2006.
3. The granting of the requested variance is a minimal easing of the Code requirement to address topography or other such non-self-inflicted conditions to allow a Family Transfer Land Division on the applicant's property and will not nullify the purpose of the Code.

Thank you, Mr. Chair. I stand for any questions.

COMMISSIONER CHAVEZ: Thank you. Questions of staff.

Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Lovato if you don't know the answer you can go to someone on staff that might but I'm sure you might know it. There was temporary approval for an additional structure for a two-year timeframe. What are the parameters of a temporary approval when we grant temporary approval on a structure? What do we utilize to grant a temporary approval of a structure? There was two structures, right? Am I correct that I heard that?

MR. LOVATO: Mr. Chair, Commissioner Anaya, that is correct. There were two structures that were permitted through a variance process that was later deferred by the Board to turn into a temporary approval for a, I believe, it was a four-year period. Every two years the CDRC was to grant further approval if the hardship was necessary at the time.

COMMISSIONER ANAYA: Okay, that's all I have right now. Thanks.

COMMISSIONER CHAVEZ: I guess I'm trying to get some clarify myself on this case because we already heard it, it went to District Court and it's back here for reconsideration. The judge is asking for written findings under the County's Land Development Code; have we responded at all to the judge's request?

MS. LUCERO: Mr. Chair, under the staff recommendation we did point out some finding of facts and conclusions of law if the Board wants to grant approval of this request.

COMMISSIONER CHAVEZ: What page are you on?

MS. LUCERO: It starts on page 6 of the staff report.

COMMISSIONER CHAVEZ: Okay.

COMMISSIONER ANAYA: Can I ask another question?

COMMISSIONER CHAVEZ: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Just if I could, Mr. Chair, a follow up to his question is we approved the decision by a 3-2 vote, that was appealed to District Court. The judge said he wants us to rehear it and provide additional findings of fact and we added to our final order additional findings of fact or are you just referring to the findings of fact that he ruled that we rehear this case?

MS. LUCERO: Mr. Chair, Commissioner Anaya, the findings of fact that we established were not part of the order they were just conclusions of law that we were putting forth in front of the BCC. If you do want to approve the variance then these are suggested findings for your approval.

COMMISSIONER CHAVEZ: Commissioner Anaya, maybe we could ask staff to read those into the minutes then, the points that would clarify our findings for the judge.

COMMISSIONER ANAYA: And, if I could, Mr. Chair.

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER ANAYA: I guess the other thing that I want clarity on and maybe this has to come from you, Mr. Shaffer, is there was a case heard and a decision rendered. The district judge did not overturn the case. He asked us to rehear the case with findings of fact. So in my head if he did not receive the findings of fact that we – we didn't remit any findings of fact we just remitted the final order, correct? Is that correct? Did I hear you correct Ms. Lucero that we just remitted the final order but we did not remit findings of fact to the judge?

MS. LUCERO: Mr. Chair, Commissioner Anaya, the final order was submitted to the District Court and if I understand correctly the judge's decision is there were not adequate findings in that final order to approve the variance.

COMMISSIONER ANAYA: So if I could, Mr. Chair, you then, we then expanded upon those findings of fact and those are in the packet?

MS. LUCERO: Mr. Chair, Commissioner Anaya, the final order has not been amended. These are just part of staff recommendations if the Board wants to approve the case again to adopt – these are suggested or recommended conclusions of law that the Board may want to include in their decision.

COMMISSIONER ANAYA: So and maybe it's flawed but my logic tells me that we already voted on the case and we should remit those findings before we – we shouldn't take another vote. We should remit those findings that we have in the packet to the judge for consideration based on the decision that has already been rendered not revoke the case. That's my take on it.

MR. SHAFFER: Mr. Chair, I would ask Assistant County Attorney Willie Brown to interject if I've got it wrong but the order from the court was a remand back of

the case to the Board of County Commissioners so that evidence can be represented and the Board can make specific written findings under its Land Development Code requirements and also under both prongs of a Supreme Court Case abbreviate by shorthand here Paule Case to justify whatever decision they make. Similarly on the flood plain variance the court remanded the case back to the Board for a representation of evidence and for the Board to make a decision support of detailed written findings with respect to all requirements as to the requested flood plan variance to justify its decisions or to make specific findings as to whether or not these requirements are applicable in the first instance if that is the Board's position.

So the Court has instructed that the case be reheard and I think in that remand order allows the Board if it feels as if in light of the additional evidence or the representation of the evidence to make a different decision then it would have the leeway to do that under the court's remand. Whatever decision the Board ultimately makes will result in a final order that will include findings of fact and conclusions of law that would support the Board's decision which then again could be appealed to the district court.

I hope that clarifies things, Mr. Chair.

COMMISSIONER ANAYA: I thank you, Mr. Chair, if I could.

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER ANAYA: And following that logic then it would be my desire to remit the additional information that Ms. Lucero referred to in consideration of the vote that has already taken place, not a revote.

And so I would move that the original action – the original vote is sustained and that the additional information that staff is providing us today in the packet that that be provided as justification for the order and findings of fact if that's the right language.

COMMISSIONER CHAVEZ: And I would second for purposes of discussion and I want to go back to the question that I asked of staff earlier because the Court is asking us to justify the decision that we made prior and so you've added conditions of approval that you believe will satisfy the Court's concern. I know staff did earlier but just the points that you added in conditions of approval.

MS. LUCERO: Mr. Chair, are you referring to conclusions of law that staff added in support of an approval of a variance?

COMMISSIONER CHAVEZ: Yes.

MS. LUCERO: The conclusions of law for the floodplain variance are as follows:

1. Portion of access that crosses the FEMA designated floodplain is off-site. Family Transfers are exempt from off-site improvements.
2. Six other parcels utilize the same secondary access to the subject parcel.
3. Four other parcels utilize the primary access to the subject property.
4. All-weather access affects many of the properties in the area. For this reason, staff is recommending that the floodplain section be amended in the Sustainable Land Development Code to require all-weather access only for major subdivisions, multi-family developments, or non-residential development over 10,000 square feet.
5. It would be an extraordinary hardship to the Applicant if they were required to construct an all-weather access due to unusual topography that would benefit

everyone who utilizes the access. Moreover, applicant does not own the land constituting the 750 feet long and 15 feet wide all-weather crossing and there is no other access to the parcel.

6. The road crossing the FEMA designated floodplain is existing and no improvements are proposed so there will be no construction within the floodplain

The conclusions of law for the Minimum Lot Size Variance are as follows:

1. Primary Home is 2,200 square feet and the secondary home is 952 square feet. This meets the requirements of the SLDC for an accessory dwelling.
2. Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant in that Applicant is seeking to permit one of her daughters to divide the lot by way of small Lot Family Transfer pursuant to a variance to assist her daughter with an affordable place to reside and own, where so the Applicant's daughter has been living in a residence on the property since 2006.
3. The granting of the requested variance is a minimal easing of the Code requirement to address topography or other such non self-inflicted conditions to allow a Family Transfer Land Division on the applicant's property and will not nullify the purpose of the Code.

COMMISSIONER CHAVEZ: [speaks away from microphone]

MS. LUCERO: Mr. Chair, that's correct and if the decision of the BCC is to incorporate these they would be incorporated into the final order.

COMMISSIONER CHAVEZ: Are there any other questions to staff? Then I would like to open this to the public and ask if there are any public here tonight who would like to speak in support or opposition of this case. Please come forward.

While the public is approaching the dais I am remiss in asking the applicant if they would like to approach the Commission. If the applicant could please come forward and correct anything or add anything to the record.

[Duly sworn, Minnie Walsh testified as follows:]

MINNIE WALSH: Mr. Chair and Commissioners, my name is Minnie Walsh and I would for my son in-law, Mike Adams, to speak in my behalf.

[Duly sworn, Mike Adams testified as follows:]

MIKE ADAMS: Mr. Chair, Commissioners, thank you for hearing us. I would just like to state that we agree to the conditions of approval and those haven't changed and that I totally – my argument would be the findings of fact that the staff has presented. So I think that eloquently expresses everything that we would have say. The only thing I would mention as far as setting a precedent for other properties is that the state requires any property sizes less than 3/4 of an acre to have an advanced septic system that we already have and we will part of the regional water system. Other than that I can't think of anything else that would say our case, other than you already approved it. Nothing legally has changed in the proceeding time except that the 2008-10 ordinance has been overturned or repealed/replaced. I don't think anything has changed legally that would hurt our case and we certainly agree with the conditions and the stipulations that are being made as findings of fact, I would agree and that would be the basis of any argument I would make to you.

COMMISSIONER CHAVEZ: Thank you. Thank you for being patient.

DRAFT

Ma'am.

COMMISSIONER HOLIAN: Mr. Chair, I have a question of the applicant.

COMMISSIONER CHAVEZ: Yes, go ahead.

COMMISSIONER HOLIAN: One thing that I'm a little worried about is that septic systems are really proliferating in the valley and they're getting very close together and they're getting very close to the wells. It's mentioned here in the packet that you have two septic systems already on the property and one of them is called a split flow septic system; what does that mean?

MR. ADAMS: It doesn't put any black water in the ground. It uses holding tanks. It processes the gray water and then reintroduces it into the ground. But it's totally processed. And then the black water is in holding tanks that we remove periodically. I would also notice you that in the packet originally there's a letter from the Pojoaque Pueblo Development Corporation which the Pojoaque Pueblo borders us and that there will be no further development in that area, that none is planned. That's part of the bison reserve. The Jacona Land Grant is our other neighbor to the west and they have no plans to develop that area. So we're not having if you look on the state reports, we're not having any septic issues there. We also don't have water issues right now and of course we would be part of the regional water system. So any concerns about septic systems, the state's been out the Petersons raised a concern about it and the state came out and reinspected and they found the systems are up to code and like I say, the bordering properties are not going to be developed. So all of the houses that are there are the ones that are there now.

COMMISSIONER HOLIAN: Thank you.

COMMISSIONER CHAVEZ: Any other questions for the applicant?
Thank you for catching that Commissioner Holian. Okay, I'll go now to the public, members of the public who would like to speak in support or opposition of this request?

[Duly sworn, Karen King testified as follows:]

KAREN KING: Honored Commissioners, my name is Karen King and I've lived just south of the Walshes for the past 22 years. I want to start with what I want to say by telling you a little bit about myself. I spent 22 years in law enforcement including 11 years as a special agent for the New Mexico [inaudible] and what I did was investigate illegal subdivisions in the state. And this area is most – can best be described as a checkerboard area. We've got the Jacona Grant there to the west of us or the north of us and west of us. And then we've got the Pueblo directly to the east. My property is to the south. The Petersons property is to the west – the other west. Anyway, it is a particular area that not everyone would like to live in. It's beautiful but it's very challenging. And all of us need one another. We have all helped one another. The Petersons have helped me when people were stealing property, you know, metal off of my property and called. They helped when my dog was run over to carry the dog to the car to transport it. The Walshes the same way. Mike Adams often borrows a tractor to make the road passable. And we help each other by pulling each other out. I gave a ride to one of the Peterson's tenants not long ago because she couldn't get her car in that area.

So it is an unusual piece of property but we enjoy living there. My neighbors are wonderful people and they deserve to be able to enable their family to live and stay there.

That's all I'd like to say, thank you.

COMMISSIONER CHAVEZ: Thank you, ma'am.

JOSEPH KARNES: Good evening, Chair Chavez, members of the Commission. My name is Joseph Karnes, Sommer, Karnes and Associates here tonight on behalf of Chris and Misha Peterson who live adjacent to the Walsh property.

We stand tonight in opposition to this application. I'll start by pointing out that your Growth Management staff has recommended denial of this application, although, that was not made very clear tonight. The flood plain administrator, Ms. Lucero, has recommended in her staff report denial of this application. She is here tonight. The County Fire Department has recommended denial of this application. Mr. Patty from the Fire Department is here tonight. The CDRC when they considered this application a year or so ago recommended denial of this application. And Judge Ortiz rejected this application and sent it back to you. Why? Because the order that was adopted by this Commission did not contain adequate legal findings to support the variances that this Commission decided to grant.

Now I heard earlier tonight some discussion on another case about equal treatment and equal application of this County's code to equally situated applications. I stood before you in August of this year on an application that you may recall, requesting a lot density variance for a property that had a minimum lot size of .75 acres, the same as this minimum lot size. A well respected attorney here, Lorenzo Atencio came before you. He had a property that was 1.45 acres in size. He came before you and asked for a variance to allow him to split that lot into two parcels and this Commission denied that application unanimously and properly so because the findings that are required by law and by your code could not be met. What are those findings? With respect to a land division the finding needs to be that it can be shown by the applicant that strict compliance with the requirements of the code would result in an extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions. Mr. Atencio made a number of creative arguments to try and convince you that his 1.45 acre should be allowed to be split subject to a variance and you rejected it unanimously. Why? Because his lot was too small. If your code means anything at all your point .75 acre minimum lot size has to be respected unless there is a situation involving unusual topography or some other non-self-inflicted condition.

This case is worse than that. This parcel is 1.19 acres in size. Not 1.45. Mr. Atencio was .05 acres short of making the required 1.5 acres. This parcel is .3 acres short. It's far short. And I explained to you in August if you allowed your code to be abused in this way there will be a land rush of property owners who have parcels that are too small. I'd go out and buy one myself if I knew I could come in and get a lot split based on a variance. That's not what your code allows.

There was discussion earlier about recommended findings to satisfy Judge Ortiz when he sent this back to you because the findings that were adopted before weren't good enough. And what is the finding that is before you tonight? I'm going to read it to you. This is what your staff is recommending that you adopt as far as the minimum lot size variance: The Applicant is seeking to permit one of her daughters to divide the lot by way of small Lot Family Transfer pursuant so that her daughter can be provided with an affordable place to reside and own, where the Applicant's daughter has been living in a

residence on the property since 2006.

That doesn't meet your standard. That's a self inflicted condition. This applicant came and bought a property that's too small. That's not your problem. That's not my problem. That's not the Peterson's problem. That's their problem. I'd like to split my lot too so that my daughter can have a place to live. That's not a good enough reason. In bold face print in the staff report it says, the variance criteria does not consider financial or medical reasons to be extraordinary hardships. They've come before you and the only evidence they presented to you is a financial hardship. That is not good enough. That was not good enough for Mr. Atencio and that's not good enough for the Walshes and that's not good enough for any court in the State of New Mexico.

Now, I want to give you a little bit of background on this case. In 2006, it was described that there was an approval by this Commission, a previous Commission, for a temporary permit for a second unit. A temporary permit. I submit to you that there is nothing in your code to allow for a temporary permit. But in any event, back in 2006 the Commission required that the applicant come back every two years to renew that temporary permit. The applicant didn't do that for over seven years and is now coming before you to ask that you allow for a lot split. They've also explained previously and tonight that they put in a septic system and they put in a well on reliance on that temporary permit. I submit to you that that's not a reason, that's not a rationale to bootstrap a temporary approval into a permanent lot split. Who would go out and put in permanent improvements in reliance on something that was temporary? That doesn't go anywhere toward satisfying your code. The septic system may be in compliance with all of the Environment Department regulations. The well may have been approved by the Office of the State Engineer. But that says nothing about meeting the requirements of your code that the extraordinary hardship be based on unusual topography or other non-self-inflicted conditions. Those conditions don't exist here and drilling a well and putting in a septic system don't address those concerns. Those are not rationales for you to approve this application. Nor make findings to approve this application.

The applicant's approach is a recipe for making your rules irrelevant. They're asking you to ignore your rules. You didn't do that in the Atencio case and there's no basis for you to do that here tonight. The only argument that the applicant has made is that I want to have a second unit so my daughter can have her own unit on a separate piece of property that she could sell someday. That is not consistent with your code and that is not consistent with your requirements or the variance requirements.

I want to speak briefly about the flood issues because this is an important subject. I understand that your new code that has not come into effect yet would allow for people to transverse across a non all-weather access to their property but I'm not going to make this argument to you. I'm just going to read from your flood plain administrator's staff report. Ms. Lucero on August 7, 2013, said the following, I'm going to summarize. She wrote a three-page staff report that recommended denial of this application. And she said, the applicant has not provided the stormwater analysis which identifies the quality – excuse me, the quantity, depth and velocity of flows present in the crossings. The information would be needed to assess the potential danger of this crossing. Note the flow depths as little as 12 inches when velocities are considered are enough to wash away or create buoyancy of an average vehicle. This is a dangerous and sometimes deadly

situation. As a minimum the applicant should be required to provide an analysis of the depth and velocity of flooding expected at this crossing using the specified methodology in place of culverts or other conveyances needed based on the report to provide dry access for emergency vehicles. Why is that important? Because your Flood Plain Ordinance requires a finding based on evidence that the granting of the variance will not result in additional threats to public safety. What Ms. Lucero was asking for was an analysis to say when the arroyo is running, how much water is running that arroyo, how many feet is it? Is it 12 inches which is enough to wash away a vehicle? Is it 2 feet; is it 3 feet; is it 5 feet? We don't know; why? Because as Ms. Lucero said, the applicant has not provided a stormwater analysis. There's no basis upon which you can determine based on evidence that this application, this second unit if allowed to remain, would not result in what, additional threats to public safety. When the arroyo is running there are threats to public safety. Who is that threat going to be borne by? By the Fire Department? By the Sheriff's Department? By ambulances that may need to come out to the property to rescue somebody or to attend to somebody who has a problem resulting from the rains and floods and they're going to have to cross what? What kind of flood will they have to cross? We don't know. Ms. Lucero observed that we don't know because the applicant didn't comply with your rules. That's the problem here.

However, that's secondary. The first issue is you don't even get to that point because your code requires that in order for you to grant a density variance the applicant needs to show an extraordinary hardship based on an unusual physical condition or some other non self-inflicted condition. Judge Ortiz looked at the findings that you adopted previously and said, Un uh. It's not there. I can't accept this. That's why he sent it back. Your staff has done their best. They wrote some findings and they say what I read before, the applicant wants to provide a second unit for their daughter. Well, that's fine and dandy but that doesn't address your code requirement. That doesn't meet the legal requirements and for that reason this application has to be denied. And I'll make one more observation, if you approve it tonight, what is somebody like Mr. Atencio going to think or any other applicant that has been denied on the same exact type of application. In fact, Mr. Atencio is only .05 acres short. This applicant is overly .3 acres short. What is Mr. Atencio going to do, this fine attorney in Santa Fe County. He's going to charge you with discrimination. Denial of equal protection or some other creative legal theories he might come up with. Your decision shouldn't be based on who the applicant is or what their rationale is. It should be based on equal application of the law to an equally situated application. And this application has a 1.19 something acre parcel. It's .3 acres short and there is absolutely no basis in the findings that have been submitted to you, they'll fail, because we'll challenge this again. And this application has cost the County money. It's cost the applicants' money. It's cost my clients' a lot of money and time dealing with it. And what are we joking here. There's no basis at all. Somebody coming forward with a serious finding that you can make to justify the requirement in this County Code of an extraordinary hardship based on unusual topographic conditions or other non self-inflicted condition. The applicant is saying, Oh, the lot's too small and I want an extra lot for my daughter. That doesn't cut it and for that reason this application needs to be denied. Thank you.

COMMISSIONER CHAVEZ: Thank you. Any other members of the

public. I'm going to give the applicant just a few minute to respond. Okay good and then I'll let the applicant respond briefly.

[Duly sworn, Jim Roybal testified as follows]

JIM ROYBAL: My name is Jim Roybal and I'm a member of the Jacona Land Grant Board of Directors. And the Jacona Land Grant in principle would like the County Commission to stick to the 3/4 acre divisions where they are set in the traditional communities. But in this case we do not oppose this division. We recognize that there's a lot of properties in the valley that are much smaller and there's all sorts of properties that do not meet the requirements. However, our property does border their thing and we have no plans at present to develop this property but as it stands now we were proposed to have a 10 acre per house lot size for the adjacent property to this lot and in a recent hearing they wanted to increase that to 20 acres per lot size. So that seems just a little uneven even though we are within or right on the border of the traditional community to go from 3/4 of an acre to 10 acres.

Our concern was that we just maintain the same easement that they currently have. They're paying for an easement to the north and the easement across the river has never been granted by us. They just – it has been used over the years and it's just taken by grandfathered or by perpetual use. They don't have a legal easement to cross the grant property which is the river there. So that's all I have to add to this, to your consideration. Thank you for your time.

COMMISSIONER CHAVEZ: Any other member of the public who would like to speak please come forward. Sir, if you would like to approach and be sworn at the same time.

MICHELLE ADAMS: My name is Michelle Adams. I'm the daughter of Minnie that will be living on this piece of property and he does not know me. He does not know me. This is my home. And I am in need of this property to live there by my mom who is not getting any younger. The reason we moved there is because of my father's health. He has now passed away and my mom is not getting any younger. And it may not be a financial – it may be a financial at this point but my mom can't even take off a lid on a water bottle. We help her. We love her. I have no intention of ever selling that property. That is my home. And that will be given to my children, to their children and to their children. And for him to speak of me like I'm so shallow. He doesn't know me. I love my mother. I have every intention on taking excellent care of her because of love her like we did with my father. And we all share the road that he talks about the flood. We all share it. It is his access as well as it is for us.

I'm a little like – why is it okay for them and not okay for me, why? I love my mom and I have every intention of taking good care of her regardless of what they say. I will take care of my mom.

Thank you very much for your time. I appreciate being able to stand here and say that. Thank you.

[Duly sworn, Scott Peterson testified as follows]

SCOTT PETERSON: My name is Scott Peterson. I never wanted this to be a personal issue. I never wanted it to come to this. But when this first came up it was a two-year temporary use to have their trailer there. And we were concerned about it at the time but we decided not to object giving them the benefit of the doubt. We all go

through hard times but it is hard to believe that someone can forget for five years that they're there on a temporary permit and then in the meantime put in a well and a septic system on a temporary permit. We didn't quite understand that.

When we chose to build our home there it was a major investment and we obeyed all the rules and trusted everyone else including our neighbors would be made to do the same. And we trusted our County government to uphold these rules. That's all I have to say, thank you.

COMMISSIONER CHAVEZ: Thank you.

MINNIE WALSH: I can't remember the date but it's been a couple of years back. Yes, we did not follow through and the reason for that was because my husband got sick and he couldn't and he got worse and he got worse and finally he passed away. Well, if anybody has had somebody to pass away it took me – it's still taking me a long time to recover from it.

I'm not going no where but unfortunately Mr. Peterson is trying to selling his house and moving. Thank you.

COMMISSIONER CHAVEZ: Yeah, I'm going to let –

MR. ADAMS: Thank you, Mr. Chair, Commissioners. I think it's very important to mention that this is not a personal issue at all. Nobody in our family holds any animus towards the Peterson. They have their right absolutely to oppose what we're trying to do and I am completely understanding of that. I would like to address what Mr. Karnes said. Mr. Karnes is an excellent lawyer. With the Atencio case he didn't mention anything else. It's hard to believe the Commission would vote 5-0 against such a small variance if there weren't other factors involved. And like a good lawyer he's only mentioning the things that fit his position.

There's no info against the findings. He made a great argument against the previous code if 2008-10 ordinance still existed maybe there's an opportunity for that, but of course, that doesn't fit his argument. He didn't mention the fact that our property is not involved with the floodplain at all. It doesn't border a floodplain. It's 3/4 of a mile from the floodplain. That's something that needs to be brought out.

About the improvements to the property too, the County Commission stipulated that we do permanent improvement to the land. We were stipulated that we do a state approved septic system. We would do a state approved well and we would do all the other permits. I'm not sure what happened but that's the reason that we did that. We didn't do that to try and force the Commission to do it. The Commission stipulated that as part of their order back in 2006. And something else that – Mr. Karnes is an excellent lawyer and he's making the points that fit his position but the purpose of the code is to permit family transfers. It clearly says that. In fact, I've got it – Section 4.3.1.B of the Code permits transfer which do not meet lot size requirements in order to provide more affordable home sites – it's been mentioned before that this is a financial hardship issue, the code just says more affordable. That's what the code says, that we permit family transfers. In fact, in the new code there really aren't too many requirements at all except trying to prevent the fraud where people subdivide land illegally. But the code permits family transfers and I just thought those points were important to mention and I know this is really dragging on. Thank you.

COMMISSIONER CHAVEZ: In some cases land use decisions and land

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use cases just by their nature tend to be a little divisive. You know, people are very protection of their property, their personal property and their property rights and so it presents us with a challenge. I think this is one of the more challenging cases that I've experienced in the two years that I've been on the Commission. And so it doesn't make any of our jobs easier.

So I'll close the public hearing portion of the meeting and bring it back to the Commission and ask for your direction. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I believe we have a motion and a second on the floor. I just want to make a few brief comments. I think your assessment of this case is accurate. We sit as Commissioners hearing land use cases on a regular basis and they're not easy. They're difficult cases. I don't think we have any attorneys on the Commission but I might be mistaken maybe we do. I don't think we do though. But I always continue to learn when I sit on the bench but I always go back to some fundamental precepts of, you know, why I sit here and I do anything in my power every day all the time as a Commissioner to be fair and objective in my deliberations in what I do. But I think tonight it's amazing that tonight even more emphasizes the need for us as a Commission to continue to provide mechanisms in our procedures and our policies that provide us even more latitude to do what's right and to do what we can to, where we can, help people in a responsible manner.

I respect the Petersons and their rights as citizens to hire an attorney. I respect the Walshes and their right to follow their path whatever that might be. And Mr. Karnes I can respectfully say, I can't speak for Judge Ortiz and I can't pretend to know what he thinks. I think you maybe can but I can't and I won't speak for him. I respect you, and I respect all of you. We make decisions. Whatever the decision is of the court we'll respect. Whatever the decision of my colleagues is I'll respect. But we in my estimation need to do whatever we can to help our families and also sustain a code that's responsible and it's a balance and many times it's a challenging balance. So I would leave it at that, thank you, Mr. Chair.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Commissioner Stefanics.

COMMISSIONER STEFANICS: Could you repeat the motion?

COMMISSIONER ANAYA: I made a motion to submit the findings that are presented in our packet that were, under my understanding, not presented to the judge that expand upon why the decision was made to approve the variance. And if I could restate it, we never remitted the additional items that Ms. Lucero spoke to earlier and I believe I had a second on the motion.

COMMISSIONER CHAVEZ: Mr. Shaffer, did you have a comment? I think you were holding a comment that you wanted to make earlier.

MR. SHAFFER: If I could, Vice Chair. The comment I wanted to make was that I don't read anything in Judge Ortiz' order that would mandate that the Board adopt specific findings this evening. In other words, the Court ordered a representation of the evidence and the Board to make a decision on that representation as well as the evidence that was submitted before. Ordinary course then would be for a final order including findings of fact and conclusions of law to come back at a further meeting. And so I just wanted to be clear that I don't feel that the Board is constrained to adopt any

specific findings this evening but that even if the Board were to direct to herein include some variation as a directional comment on the findings that were presented by staff you would still have a final order that would come back to the Board that would incorporate those findings of fact and any other findings of fact that the Board wanted to adopt when it acts on that final order. So it's really just a procedural note that I would offer for the Board for what it is worth.

COMMISSIONER ANAYA: Mr. Chair.

COMMISSIONER CHAVEZ: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Mr. Shaffer, and I apologize if I'm going to be just blunt but did the judge ask us to revote again? I heard – I've heard several things from you and I heard multiple things from Mr. Karnes and others. Did Judge Ortiz ask us to revote this case? Yes or no. That's what I want to know.

MR. SHAFFER: Mr. Vice Chair, Commissioner Anaya, that is my understanding of the Board's order. That was a representation of the evidence and for the Board to make a decision based on the representation of the evidence.

COMMISSIONER CHAVEZ: So, Commissioner Anaya, if I'm reading the memo the District Court decision on July 31, 2014 was to remand the case back to the BCC for a rehearing. So in that direction we were to rehear the case and vote again even though we had already taken prior action.

MR. SHAFFER: Commissioner Chavez, I'm reading from the order. It says that some evidence can be represented and the Board can make specific findings under its Land Development Code requirements. It also [inaudible] under both prongs of the Supreme Court Case, the Paule Case, to justify whatever decision they make. So, again, I read that as being a call for any decision. It can be the same decision that was reached in the first instance but that's how I read the order. And I defer to Mr. Brown who was present in those proceedings as to whether or not that was his understanding.

WILLIE BROWN (Assistant County Attorney): Good evening, Mr. Chair and members of the Commission and I was in court along with Mr. Karnes and I did hear the Judge's verbal instructions and then we came to an agreement as to the proposed order which the judge signed. By all intents and purposes I interpret what the judge did in remanding the case back for a full rehearing, which you did, you heard from both sides. You gave anybody who wanted to speak to speak including all members of the audience. And at the end of that because you're an elected body you can only make decisions by a quorum present and a vote and in no uncertain terms in the remand order it says a couple of times, it uses the word "to make a decision." So I would interpret that to make a decision that you have to vote on it. That you can't just remit findings of fact.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: I move to table until the January meeting.

COMMISSIONER HOLIAN: Second.

COMMISSIONER CHAVEZ: There's a motion –

COMMISSIONER ANAYA: Mr. Chair, we already had a motion on the floor. I'll pull my motion. I want to remove my motion if you're okay as the seconder.

COMMISSIONER CHAVEZ: I'll withdraw my second. But I think a

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tabling will actually superseded will it not? And there's no discussion.

The motion to table carried by unanimous [4-0] voice vote.

COMMISSIONER CHAVEZ: Thank you all for your patience and we'll continue the discussion.

VIII. Concluding Business

A. Announcements

COMMISSIONER ANAYA: He was just here. Commissioner-elect Roybal was here. Did he step out? I just wanted to thank him for coming to the meeting today and acknowledge that he was here.

B. Adjournment

Having completed the agenda and with no further business to come before this body, Chair Mayfield declared this meeting adjourned at 7:50 p.m.

Approved by:

Board of County Commissioners
Robert Anaya, Commissioner

ATTEST TO:

GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Respectfully submitted:


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

- II. B. 8. CDRC CASE # Z 06-5033 Village at Galisteo Basin Preserve (“Trenza”) Master Plan Amendment. TABLED
- II. B. 9. CDRC CASE # V 13-5190 Minnie Walsh Variance. Minnie Walsh, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) and a Variance of Article III, Section 2.4.1a.2.b (Access) of the Land Development Code and a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Family Transfer Land Division of 1.195 Acres into Two Lots. The Board of County Commissioners Rendered a Decision to Approve this Request on October 8, 2013. The BCC’s Decision was then Appealed to District Court, and the Court Decision on July 31, 2014, was to Remand the Case Back to the BCC for a Rehearing. The Property is Located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1)

CHAIR ANAYA: This item we had the public hearing already. The public hearing was closed. Is that correct, Mr. Lovato?

JOHN LOVATO (Case Manager): Mr. Chair, that is correct.

CHAIR ANAYA: So now we’re waiting the questions of the Commission or action from the Board? Correct?

MR. LOVATO: Mr. Chair, that is correct.

CHAIR ANAYA: What’s the pleasure of the Board?

COMMISSIONER ROYBAL: I believe this one is in District 1 and I move for approval.

COMMISSIONER CHAVEZ: Second.

CHAIR ANAYA: There’s a motion from Commissioner Roybal for approval, second by Commissioner Chavez.

COMMISSIONER CHAVEZ: And there are staff recommendations on this as well.

CHAIR ANAYA: Motion to approve with staff conditions, Commissioner Roybal?

COMMISSIONER ROYBAL: Yes.

CHAIR ANAYA: Second from Commissioner Chavez? Any other discussion? Seeing none.

The motion passed by majority 3-2 voice vote with Commissioners Holian and Stefanics voting against.



Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**CDRC CASE # Z/DP/V 14-5430 SANTA FE BREWING CO. EXPANSION
LOCK BUILDERS, LLC, APPLICANT**

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) of Santa Fe County (County) for hearing on January 13, 2015, on the Application of Lock Builders, LLC (Applicant) for a Master Plan Amendment, Preliminary and Final Development Plan approval in accordance with Santa Fe County Ordinance 1996-10, the Santa Fe County Land Development Code (Code), as amended by the Santa Fe County Ordinance 2000-12, the Community College District Ordinance (CCDO), to allow an expansion to an existing brewing facility on 4.97 ± acres. The Applicant's request also included a variance of Ordinance 2000-12, Article XV, Section 6.H Open Space Standards to allow 37% open space. The BCC, having reviewed the Application, supplemental materials, staff reports, and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, subject to conditions, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a Master Plan Amendment, Preliminary and Final Development Plan approval and a variance of the 50% open space required in the CCDO for the expansion of an existing brewing facility, referred to as Santa Fe Brewing Co., on a 4.97± acre site (the Property).

2. The Property is located at 35 Fire Place in the Community College District, within Section 24, Township 16 North, Range 8 East.

3. "All development within th[e] Community College District is required to submit a Master Plan, Preliminary Development Plan and Final Development Plan." Code, Article XV, Section 4.

4. Lock Builders, LLC acquired the Property by warranty deed, recorded on September 3, 2004, as instrument 1345018 in the Santa Fe County Clerk's records.

5. The Applicant authorized Jenkins/Gavin Design & Development, Inc. to act on their behalf in making application for the proposed development, as evidenced by the written authorization contained in the record.

6. The Applicant is proposing a 2,400 square foot addition to the north side of the existing brewing facility; a new 6,300 square foot entrance, lobby and tasting room on the east side of the existing building; additional bottling and brewing facilities totaling 47,000 square feet to be added to the proposed lobby and tasting room; and a 3,500 square foot landscaped outdoor area with seating and a performance platform.

7. In 2004, the Santa Fe Brewing Master Plan and Preliminary Development Plan was adopted to allow a brewing facility and restaurant and 11,200 square foot warehouse on 4.91-acres within a designated Employment Center Zone.

8. The Master Plan was subsequently amended in 2011 to permit outdoor entertainment at the restaurant.

9. The CCDO was adopted on December 11, 2000. The CCDO establishes comprehensive zoning and development in the Community College District, which is Santa Fe County's designated growth area and includes the Property.

10. The CCDO Land Use Zoning Map, adopted in 2000, designated the Property as part of an Employment Center Zone. The uses permitted in an Employment Center Zone include Commercial/Industrial developments such as that described in the Application.

11. The Applicant complied with the notice requirements of Article II, Section 2.4.2 of the Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing and confirmed that public notice posting regarding the Application was made for twenty one days on the property, beginning on November 26, 2014. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on November 26, 2014, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners and Home Owners Associations.

12. In accordance with the Code, on December 18, 2014, the County Development Review Committee (CDRC) held a public hearing on the Application and recommended approval of the Application.

13. On January 13, 2015, the BCC held a public hearing on the Application. A staff report was presented to the BCC and the Applicant's agent made a presentation in support of the Application. Staff recommended denial but included the following recommended conditions if the Application were approved:

- a) The Applicant shall comply with all review agency comments and conditions as per Article V, § 7.1.3.c.
- b) Master Plan with appropriate signatures, shall be recorded with the County Clerk as per Article V, § 5.2.5.
- c) The Applicant shall provide a trail connection to the proposed district trail and trailhead/bicycle and pedestrian access point on the property which can be counted

as open space behind the restaurant on Lot 2-A along with vehicular and bicycle parking.

d) Final design plans for the required improvements to Highway 14 shall be submitted for review and approval by NMDOT prior to Final Development recordation.

e) The Applicant shall prove water availability and available water rights for any use exceeding the 10.8 acre-foot per year from their current well.

14. The Property is not located within a FEMA designated 100 year flood zone. Floodplain and terrain management were adequately addressed by the Application.

15. Fire protection was sufficient as proposed, with two existing fire hydrants, one located near the restaurant and the second located near the proposed beer garden, and a proposed third hydrant south of the restaurant in the parking lot which will be accessed from Highway 14.

16. The Master Plan and Preliminary and Final Development Plan did not contain the mandatory 50% minimum open space because the existing brewery facility needs a loading dock area, requiring significantly more asphalt than a regular office or commercial space would need. The additional parking and loading area contributed to the project having only thirty-seven percent (37%) open space. To partially address the open space deficiency the Applicant will place signage notifying the public that the parking area is open to the public to access the Arroyo Hondo Trail. There will be a trail head on the property.

17. Article II, Section 3.1 of the Code states that, "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 [BCC] and the [BCC] may vary, modify or waive the requirements of the Code upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety.” Section 3.1 concludes that, “In no event shall a variance...be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified.” Article II, Section 3.2 states, “In no case shall any variation or modification be more than a minimum easing of the requirements.”

18. The use of the parking area for public access to the trail and the proposed district trail and trailhead/bicycle/pedestrian access point on the property are very useful for the community in a way that a larger open space isolated in an industrial or commercial area might not be, leading to the conclusion that the variance request achieves the purpose of the open space requirement despite the deviation from rigid adherence to the fifty percent (50%) requirement.

19. Evidence was provided by the Applicant that compliance with the Code provisions will exact a hardship.

20. The variance is a minimal easing of Code requirements to ensure that useful open space is provided to the extent possible without inhibiting economic development on an isolated commercial property which does not have meaningful open space potential due to existing development on the site.

21. Granting this variance request will not nullify the purpose of the Code, and will not result in conditions injurious to health or safety.

22. No objection to the Application was identified by the Office of the State Engineer, New Mexico Environment Department, and New Mexico Department of Transportation.

23. At the public hearing, no one from the public was in attendance to speak either in favor or in opposition of the Application.

24. The water budget for the project is estimated as 11.9 acre feet per year for the existing well on Lot 2-A, in addition Santa Fe Brewing Co. utilizes the Santa Fe County water system and the facility expansion will continue the County water usage.

25. The Applicant has proposed to connect to the City of Santa Fe sewer line located along Highway 14. The Property will also utilize an on-site liquid waste treatment system in order to treat the wastewater before it is injected into the City sewer.

26. The Application is comprehensive in establishing the scope of the project.

27. The Master Plan and Preliminary and Final Development Plan conform to the eligible use allowed under the CCDO and the Community College District Plan.

28. The Application requests a Master Plan rezoning of the Property which now includes property from the former Los Cabos subdivision. Allowable uses for the Property include distribution facilities, warehouse, storage, industrial and restaurants, since the Property is within an Employment Center Zone.

29. Master plan approval means that "that the development concept is acceptable and that further approvals are likely unless the detailed development plans cannot meet the requirements of applicable law and County ordinances in effect at that time." Code, Article V, § 5.2.6(a).

30. Subject to the conditions noted below, the application should be approved based upon the criteria established in Land Development Code, Article XV, Section 4(B)(3), as follows:

- a. The Application conforms to the Santa Fe County Growth Management Plan, as amended by the Community College District Plan, and SGMP.
- b. The Application does not propose phasing.

c. At the conceptual level required for master plan approval, the Application conforms to the CCDO and other applicable laws and ordinances in effect at the time of consideration.

d. At the design level required for preliminary and final development plan approval, the Application conforms to the CCDO and other applicable laws and ordinances in effect at the time of consideration.

31. The following conditions of approval shall be applicable and have been agreed to by Applicants:

a) The Applicant shall comply with all review agency comments and conditions as per Article V, § 7.1.3.c.

b) Master Plan with appropriate signatures, shall be recorded with the County Clerk as per Article V, § 5.2.5.

c) The Applicant shall provide a trail connection to the proposed district trail and trailhead/bicycle and pedestrian access point on the property which can be counted as open space behind the restaurant on Lot 2-A along with vehicular and bicycle parking.

d) Final design plans for the required improvements to Highway 14 shall be submitted for review and approval by NMDOT prior to Final Development recordation.

e) The Applicant shall prove water availability and available water rights for any use exceeding the 10.8 acre-foot per year from their current well.

WHEREFORE, the BCC hereby approves the request for a Master Plan Amendment, Preliminary and Final Development Plan approval to allow an expansion to an existing brewing facility on 4.97-acres and a variance of Ordinance No. 2000-12, Article XV, Section 6.H Open

Space Standards to allow 37% open space rather than the required 50% open space. The motion to approve the Application passed by a 5-0 vote, with Commissioners Anaya, Holian, Stefanics, Roybal and Chavez voting in favor of the motion.

IT IS SO ORDERED.

This Order was approved by the Santa Fe County Board of County Commissioners on this 10th day of February, 2015.

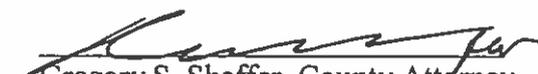
SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

II. B. Land Use Cases

1. CDRC CASE # Z/DP/V 14-5430 Santa Fe Brewing Co Expansion. Lock Builders, LLC, Applicant, JenkinsGavin, Agents, Request a Master Plan Amendment, Preliminary and Final Development Plan Approval to Allow an Expansion to an Existing Brewing Facility on 4.97 Acres. This Request Also Includes a Variance of Ordinance No. 2000-12, Article XV, Section 6.H Open Space Standards to Allow 37% Open Space Rather than the Required 50% Open Space. The Property is Located at 35 Fire Place within the Community College District, within Section 24, Township 16 North, Range 8 East, (Commission District 5)

JOHN MICHAEL SALAZAR (Case Manager): Thank you, Mr. Chair. On December 18, 2014, the County Development Review Committee met and acted on this case. After conducting a public hearing and taking testimony from the applicant and his agent the CDRC recommended approval for a master plan amendment, preliminary and final development plan to allow an expansion to an existing brewing facility on 4.79 acres. The CDRC also recommended approval to allow a variance of Ordinance No. 2000-12, Article XV, Section 6.H to allow 37 percent open space rather than the required 50 percent open space.

On November 9, 2004, the Board of County Commissioners approved CCDRC CASE # MP 04-5440, Santa Fe Brewing Master Plan. The approval incorporated master plan zoning and preliminary development plan within a designated employment center zone to allow a brewing facility and restaurant, and an 11,200 square foot warehouse on 4.97 acres. The master plan was subsequently amended in 2011, to permit outdoor entertainment at the restaurant.

As mentioned in the caption, the applicant is requesting a master plan amendment to the existing 1.7-acre brewing facility site in order to rezone 3.27 acres on lot 1-A, which was recently added via a lot line consolidation. The additional acreage was originally part of the Los Cabos Master Plan which was approved in August 2008. The master plan created three lots for the purpose of constructing 18,750 square feet of commercial and industrial uses. However, the project was never constructed and the approval has since expired.

The Applicant is also requesting preliminary and final development plan approval for the expansion. This proposed brewery expansion will be developed in one phase and will include a 2,400 square foot addition to the north side of the existing brewing facility; a new 6,300 square foot entrance, lobby and tasting room on the east side of the existing building; additional bottling and brewing facilities totaling 47,000 square feet to be added to the proposed lobby and tasting room; and a 3,500 square foot landscaped outdoor area with seating and a performance platform.

The Applicant is also requesting a variance of Ordinance No. 2000-12, Article XV, Section 6.H, Open Space Standards. The Community College District Ordinance requires 50 percent open space for new development which would consist of about 149,693.94 square feet of open space. The applicant's 37 percent proposal comes out to 110,344 square feet.

The applicant states the following reasons for the variance: The necessity for this

open space reduction stems from the fact that the Project is a manufacturing facility in an Employment Center Zone. Therefore, although the lot coverage is only 26 percent, significant paved areas are essential for loading and deliveries, which reduces the amount of available open space. Full compliance would limit the functionality of the manufacturing facility and its role as an important employer in Santa Fe County.

Staff's response to this is the 50 percent open space requirement in the CCDO does not contemplate flexibility based on use. Planning Division staff has reviewed this application and has stated that the applicant may utilize proposed trail connections allowing public access to district trail systems for the purpose of meeting the 50 percent requirement and has recommended the following conditions of approval should the variance be granted:

1. Provide a trail connection to the proposed district trail and trailhead/bicycle and pedestrian access point on the property which could be counted as open space.
2. Staff supports the inclusion of a district trail connection and trailhead/bicycle and pedestrian access point in the open space requirement.

The Applicant has agreed to accept the conditions as they believe it is a bigger benefit to the community rather than dedicating unusable property such as arroyos or floodplain as open space.

I'll move on to staff recommendation, Mr. Chair. Staff recommends denial of the applicant's request for a variance of Ordinance No. 2000-12 Article XV, Section 6.H, to allow 37 percent open space. If the decision of the BCC is to approve the open space variance, and the master plan amendment, preliminary and final development plan to allow an expansion to the existing brewing facility, staff recommends the following conditions be imposed:

1. The Applicant shall comply with all review agency comments and conditions as per Article V, § 7.1.3.c.
2. Master Plan with appropriate signatures, shall be recorded with the County Clerk as per Article V, § 5.2.5.
3. The Applicant shall provide a trail connection to the proposed district trail and trailhead/bicycle and pedestrian access point on the property which can be counted as open space behind the restaurant on Lot 2-A along with vehicular and bicycle parking.
4. Final design plans for the required improvements to Highway 14 shall be submitted for review and approval by NMDOT prior to Final Development recordation.

Mr. Chair, there are these four conditions that I would like to enter into the records but there is also an additional one that I would like to read into the record.

CHAIR ANAYA: Go ahead.

MR. SALAZAR: The additional condition would be:

5. The applicant shall prove water availability and available water rights for any use exceeding the 10.8 acre-foot per year from the well that they're currently allowed.

CHAIR ANAYA: Thank you, John Michael.

MR. SALAZAR: Thank you, Mr. Chair. I'll stand for questions.

CHAIR ANAYA: Questions of staff. Commissioner Chavez.

COMMISSIONER CHAVEZ: So, Mr. Salazar, it seems on face value if the applicant agrees to your recommendations to address the open space, the need for the variance is a moot point, isn't it?

MR. SALAZAR: Mr. Chair, Commissioner Chavez, it's not. It's just an additional - they're giving us more - although we can't really count it because it's part of the parking area and parking area can't be included in the open space number.

COMMISSIONER CHAVEZ: But if they did provide the trail connection for the trailhead, bicycle and pedestrian access points, your memo states that that could be counted as open space. And then staff would support the inclusion of a district trail connection and trailhead and pedestrian access point in the open space requirement. So am I reading something into that that's not there?

MR. SALAZAR: Mr. Chair, Commissioner Chavez, I suppose that could be worded different but staff believes that does help make this a minimal easing for this variance.

COMMISSIONER CHAVEZ: Okay. Thank you, Mr. Chair.

CHAIR ANAYA: Thank you, Commissioner Chavez. Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. Could John Michael or one of the other staff share with me any other entity that we've waived this for?

MS. LUCERO: Mr. Chair, Commissioner Stefanics, I'm sorry. Can you repeat the question?

COMMISSIONER STEFANICS: Can you give me an entity, an organization, a company, that we've done this waiver or in the past?

MR. SALAZAR: Mr. Chair, Commissioner Stefanics, just from my experience, a lot of the time it's new construction that's taking place within the Community College District, especially the area where Rancho Viejo is located where a lot of this open space was designated originally. This is on an existing property that the CCDO didn't really taking into consideration when the 50 percent open space requirement was created.

COMMISSIONER STEFANICS: I understand that. The reason I'm asking the question, Mr. Chair, is that I'm wondering if we've been consistent with our standard and if we're changing it now for a new entity. And if we've changed it for others, I'd like to know that. If we haven't, I'd like to know that.

CHAIR ANAYA: Commissioner Stefanics, and maybe staff, you guys can give me some feedback, but I seem to recall that we've had some adjustments to where open space would be allotted and trail alignments.

COMMISSIONER STEFANICS: This is a percentage.

CHAIR ANAYA: Go ahead.

MS. LUCERO: Mr. Chair, Commissioner Stefanics, we do recall that there was a project several years back. It was a door company out off of Highway 14 and I believe that they did have some sort of a variance in regards to the open space, although they were moving into an existing building. They weren't adding any additional structures. So that was in existence, I believe, prior to when the CCD came in effect.

COMMISSIONER STEFANICS: Well, Mr. Chair, if that is correct, that's La Puerta, and they are the neighbor to the brewing company. So, that's one of the reasons I'm

asking. If we've set a precedent I'd like to know, in that area. So maybe you guys could research that while we keep going. Thank you, Mr. Chair.

CHAIR ANAYA: Any other questions or comments right now? If now we'll go to the applicant. Is there anything the applicant would like to add?

JENNIFER JENKINS: Thank you, Mr. Chair, Commissioners. I'm Jennifer Jenkins with JenkinsGavin design and development here this evening on behalf of Brian Lock and the Santa Fe Brewing Company.

[Duly sworn, Jennifer Jenkins testified as follows:]

MS. JENKINS: I just have a couple of items I wanted to add. I'll be brief. So this is an aerial of the subject property. This is Fire Place Lane and here's I-25, and this is Fire Place Lane that serves as the primary access. Highway 14 is a little bit off the map here. And this is the restaurant building, which is currently not functioning as a restaurant; it's an event space for evening music events. And here's the existing brewery facility.

What precipitated this, as was mentioned in the staff report, were these three parcels here were approved as the Los Cabos project for a commercial project. That project was never developed and it has an access point here on Highway 14. And that master plan has since expired. These lots came up for sale, which was an unbelievable stroke of luck for Brian, because he had significant needs to expand and he had nowhere to go. He was running out of space. In what his site could accommodate there were significant limitations there. So he jumped on the opportunity to acquire these parcels.

So we're dealing with an existing facility. We're dealing with an existing sort of land configuration and terrain that we are - we had to make his program fit within the geometry of the real estate that is here.

So the restaurant building is now on its own parcel. It has been separated out although it's still part of the original Santa Fe Brewing Company master plan. So now we have a new 4.9-acre parcel which is the subject of the development plan request that's before you this evening. So again, here's the existing brewing facility, and then it's being added on to and coming around this way. So this is the brewing and bottling activities. The new, kind of front door entry is going to be here. So using the existing parking area here this is a densely landscaped beer garden area, and the front door and the tasting room. So we're utilizing the existing access off of Fire Place. This is a loading only access, because this is the loading dock area back here off of Fire Place, and then we have an additional access coming off of Highway 14 and some additional parking being constructed here.

So in speaking to the request for an open space variance, this is a manufacturing facility so we have a lot more asphalt than what would be typical for whether it's an office building or some other sort of commercial use. So that cuts into our ability to have those kind of landscaped or undisturbed areas. And just to keep it in perspective, the difference between the 50 percent that the code requires and the 37 percent we are providing is an area - it's less than 40,000 square feet or an area that's 200 feet by 200 feet.

So we met with the Trails and Open Space staff and they expressed interest in providing some trailhead parking on this property because the Arroyo Hondo Trail improvements are going to be coming right through here. Brian actually loved the idea. This parking area sort of that's behind the restaurant is really underutilized unless there's an event going on. Really, during the day, there's really nobody parking over there. So this area,

we're going to be doing some signage, and notifying the public that this is permissible parking for people accessing the trail.

So we feel like this is much more to the public benefit than a little 200 by 200 postage stamp of green space on a piece of private property. And I think another important thing, I think as John Michael was alluding to, in the Community College District when we talk about open space, and you look at Rancho Viejo, which was kind of the genesis of the CCDO originally, their open space is part of a master planned community and it travels throughout the entire project, taking advantage of arroyos and those sorts of areas. So every parcel in Rancho Viejo does not have to comply with the 50 percent open space requirement. That open space is provided comprehensively and coordinated throughout the entire master planned community.

Santa Fe Brewing Company doesn't have the benefit of master planned community with respect to that type of open space program. So he's subject to providing all of that onsite. And we feel like this is a really good compromise. We had a really good meeting with Trails and Open Space staff on this issue and we feel it is something that is much more to the public good. So with that I would be happy to stand for any questions. Thank you.

CHAIR ANAYA: Are there any questions? Seeing none – Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. Jennifer, when would construction start and about how long would it take, do you think?

MS. JENKINS: We hope to start construction as early as probably March, and probably be under construction for about six months, eight months. Probably more like six to eight months. So he would have started six months ago if he could have. So, yes, this is starting right away.

COMMISSIONER HOLIAN: Okay. Thank you.

CHAIR ANAYA: Thank you. Other questions, Commissioners? Seeing none, this is a public hearing. Is there anyone here that would like to speak against this particular project? Anyone like to speak against this project? Is there anyone here that would like to speak in favor of this project or any other comments? Seeing none, this public hearing is closed. Pleasure of the Board?

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR ANAYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: I'll move for approval with all staff conditions including the new one read in.

COMMISSIONER HOLIAN: Second.

CHAIR ANAYA: There's a motion to approve from Commissioner Stefanics with all staff conditions and a second by Commissioner Holian. Any further questions or comments or discussion? Just a brief comment. I think relative to the open space discussion, I appreciate Commissioner Stefanics' asking the question about other projects, but I do recall that we've had subdivisions that end up with a space that's open, but it's not necessarily functional. And so I would say that the compromise in having functional space is much more important to me.

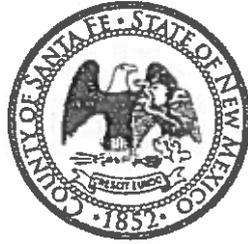
The motion passed by unanimous [5-0] voice vote.



Henry P. Roybal
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

CASE NO. MIS 02-4326
LA PRADERA TIME EXTENSION
GARDNER ASSOCIATES AND LA PRADERA ASSOCIATES, APPLICANTS

ORDER

THIS MATTER came before the Santa Fe County (County) Board of County Commissioners (BCC) for hearing on May 13, 2014, on the Application of Gardner Associates and La Pradera Associates (Applicants) for a 24-month time extension of the Final Plat and Development Plan for Phases 4, 5 and 6B and the Master Plat Lots (Lots 33 and 69) in Phase 1 consisting of 72 lots of the La Pradera Subdivision. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing, finds that the Application is well-taken and should be granted and makes the following findings of fact and conclusions of law:

1. On May 13, 2014, the BCC held a public hearing on the Applicants Application for a 24-month time extension of the previously approved Final Plat and Development Plan for Phases 4, 5 and 6B and Master Plat Lots (Lots 33 and 69) in Phase 1 consisting of 72 lots of the La Pradera Subdivision. At that hearing, Applicants presented a historical summary of the La Pradera Subdivision.

2. On January 28, 2003, the Extraterritorial Zoning Authority (EZA) granted Master Plan approval for a mixed use development formerly known as La Pradera, which consisted of 80 residential units, 16,334 square feet of commercial space and 16,334 square feet of residential space on 69.2 acres.

3. On March 9, 2004, the Board of County Commissioners granted Final Plat and Development Plan approval for the mixed-use development.

4. On June 30, 2005, the EZA granted approval of a Master Plan Amendment to the previously approved La Pradera (Phase I) mixed-use subdivision to allow an expansion of an additional 158 residential lots (Phases 2-6) on 94 acres.

5. On January 31, 2006, the BCC granted Preliminary Plat and Development Plan Approval for Phases 2-6 and Final Plat Approval for Phases 2 and 3 consisting of 97 lots.

6. On July 10, 2007, the BCC granted Final Plat and Development Plan Approval for Phases 4 thru 6 of the La Pradera Subdivision which consisted of 60 lots on 28.4 acres.

7. On May 10, 2011 the BCC granted authorization of a Master Plat for the creation of 21 residential (live/work) lots within Phase 1 of the existing La Pradera Subdivision.

8. On September 13, 2011, the BCC granted approval of a Master Plan Amendment to allow the creation of 27 new residential lots and to allow for the previously approved 32,667 sq. ft. of commercial/residential area, parking lot and 11 condominiums to be replaced with 17 single family residential live/work lots. The request also included Preliminary and Final Plat and Development Plan approval for 27 new lots and several lot line adjustments in Phases 2-6 and 4 Master Plat lots which can be developed into 17 single family and live/work lots in Phase 1. The BCC also approved Final Plat for Phases 1, 2, 3, 6B and Master Plat lots 34 and 69A.

9. The Applicants now seek a 24-month time extension of Phases 4, 5, 6B and Master Plat of Lots 33 and 69 of the previously approved Mixed-Use La Pradera Subdivision under Resolution No. 2011-193, Ordinance No. 2011-11 and Ordinance 1996-19, the Santa Fe County Land Development Code (the Code), Article 5.4.6.

10. The property is located off Dinosaur Trail, south of I-25, within the Community College District, within Section 17, Township 16 North, Range 9 East.

11. In support of the Application, the Applicant's Agent submitted a letter of request, a development plan report including proof of legal lot of record and proof of ownership, a development plan set of drawings, and survey plat.

12. Article V, Section 5.4.6 of the County Land Development Code states, "An approved or conditionally approved final plat, approved after July 1, 1996 shall be recorded within twenty-four (24) months after its approval or conditional approval or the plat shall expire. Upon request by the subdivider, an additional period of no more than thirty-six (36) months may be added to the expiration date by the Board."

13. On December 13, 2011, the BCC adopted Resolution No. 2011-193 which found the existence of severe economic conditions and suspended enforcement of specified provisions of Article V of the Land Development Code that concern expiration of Master Plans, Preliminary Plats and Final Plats.

14. On December 13, 2011, the BCC also adopted Ordinance No. 2011-11 which states: "the Board of County Commissioners ("the Board") may suspend provisions of Article V, Sections 5.2.7, 5.3.6 and 5.4.6 of the Code upon a finding of economic necessity, which is defined in terms of a score of 100 or less on the Conference Board's Leading Economic Index® for the United States for any quarter, and for three years following any such event, and the Board

recognizes that these conditions are present and desires to temporarily suspend the enforcement of those sections of Article V that set forth expiration of Master Plans, Preliminary Plats and Final Plats for two years pending an economic recovery”.

15. The Applicants stated: “as you are aware market conditions slowed the home sales in our community”. Therefore, lot sales were down.

16. Under the circumstances and given the evidence and testimony submitted during the public hearing, the Application should be approved for a 24-month time extension of Phases 4, 5 and 6B and Master Plat Lots 33 and 69 of the previously approved Mixed-use La Pradera Subdivision should be approved.

WHEREFORE, THE BCC HEREBY APPROVES the Application for a 2-year time extension of the Final Plat and Development Plan for Phases 4, 5, 6B and the Master Plat Lots 33 and 69 in Phase 1 consisting of 72 lots of the La Pradera Subdivision which will now expire on May 13, 2016. The motion to approve the Time Extension passed by a 4-0 vote, with Commissioners Mayfield, Anaya, Chavez and Stefanics voting in favor of the motion. Commissioner Holian was not present for the Meeting.

IT IS SO ORDERED:

This Order was approved by the Board of County Commissioners on this _____ day of _____, 2015.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Robert A. Anaya, Chair

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

Santa Fe County
Board of County Commissioners
Regular Meeting of May 13, 2014
Page 140

CHAIR MAYFIELD: Thank you, Commissioners and thank you all for being with us.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: I am asking our Land Use Administrator though to address this for the future so that we do have some clarity in our code.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, in the use table –

COMMISSIONER STEFANICS: I think that as we hear about different occupations we need to decide where they fit.

MS. ELLIS-GREEN: Okay. We will be in front of the Board at the end of May and the end of June. We are bringing forward changes to the use table and changes to the SLDC so we can certainly have that discussion.

COMMISSIONER STEFANICS: It would be appreciated. Because we're going to have requests for different types of occupations and maybe we have to identify not the occupation per se but the issue. Acceptance within a neighborhood? Now, I don't believe in not in your backyard, especially when it comes to things like affordable housing, etc. So I think we have to be careful about occupations and not in my backyard. But if we want to start looking at water quality, air quality, hours of operation, anything else, I think we need to identify some of those things. Thank you very much.

CHAIR MAYFIELD: Thank you, Commissioners. Welcome to a new day.

- VIII. B. 6. **BCC CASE # MIS 02-4326 La Pradera Subdivision Time Extension.** Gardner Associates and La Pradera Associates, Applicants, Request a 2-Year Time Extension of the Previously Approved Final Plat and Development Plan for Phases 4, 5 and 6B and the Master Plat Lots (Lots 33 and 69) in Phase 1 Consisting of 72 Lots of the La Pradera Subdivision. The Property is Located Off of Dinosaur Trail, South of I-25, within the Community College District, within Section 17, Township 16 North, Range 9 East, NMPM, Santa Fe County (Commission District 5)

On January 31, 2006 the BCC granted Preliminary Plat/Development Plan approval for Phases 2 thru 6 and final approval for Phases 2 and 3 consisting of 97 lots. The final plat for Phase 2 and 3 were recorded per this approval.

On July 10, 2007, the BCC granted Final Plat/Development Plan approval for phases 4 thru 6 of the La Pradera Subdivision which consisted of 60 lots on 28.4 acres

On May 10, 2011, the BCC granted authorization to proceed with a Master Plat for the creation of 21 residential lots within Phase 1 of the existing La Pradera Subdivision, which does not require that a specific lot layout be defined prior to plat recordation and would grant administrative authority to create lot boundaries once buyers are identified or home construction is complete.

On September 13, 2011, the BCC granted approval of a Master Plan Amendment to allow the creation of 27 new residential lots and to allow for the previously approved 32,667 square feet of commercial/residential area, parking lot and 11 condominiums to be replaced with 17 single-family residential live/work lots. The request also included Preliminary and

Santa Fe County
Board of County Commissioners
Regular Meeting of May 13, 2014
Page 141

Final Plat and Development Plan approval for 27 new lots and several lot line adjustments in Phases 2-6 and 4 Master Plat lots which could be developed into a total of 17 single-family, live/work lots.

The Applicants now request a time extension of Phases 4, 5, 6B which expired in July 2009 and Master Plat Lots 33 and 69 which expired in September 2013. Phase 6B will be recorded immediately if this request is granted. Phase 5 will likely be recorded in February 2015. Phase 4 in August 2015 and Master Plat lots 33 and 69 will likely be recorded in summer of 2014.

The Applicant states: "As you are aware market conditions slowed the home sales in our community."

Article V, Section 5.4.6 of the Code states, "An approved or conditionally approved final plat, approved after July 1, 1996 shall be recorded within 24 months after its approval or conditional approval or the plat shall expire. Upon request by the subdivider, an additional period of no more than 36 months may be added to the expiration date by the Board." On December 13, 2011, the Board of County Commissioners adopted Resolution No. 2011-193 which found the existence of severe economic conditions and suspended enforcement of specified provisions of Article V of the Land Development Code that concern expiration of Master Plans, Preliminary Plats and Final Plats.

On December 13, 2011, the Board of County Commissioners also adopted Ordinance No. 2011-11, which states "The Board of County Commissioners may suspend provisions of Article V, Sections 5.2.7, 5.3.6, and 5.4.6 of the Code upon a finding of economic necessity, which is defined in terms of a score of 100 or less on the Conference Board's Leading Economic Index for the United States for any quarter, and for three years following any such event, and the Board recognizes that these conditions are present and desires to temporarily suspend the enforcement of those sections of Article V that set forth expiration of Master Plans, Preliminary Plats and Final Plats for two years pending an economic recovery."

As of July 10, 2009, the Final Plat and Development Plan for La Pradera Phases 4, 5 and 6B have expired. As of September 13, 2013 the Preliminary and Final Plat for the Master Plat Lots in Phase 1 have also expired. As of December 2013, the Conference Board Leading Economic Index was 99.4.

Staff recommendation: Approval of the request for a 24-month time extension of the approved Final Plat and Development Plan for La Pradera Phases 4, 5 and 6B and the Master Plat Lots – Lots 33 and 69, in Phase 1.

Mr. Chair, I stand for questions.

CHAIR MAYFIELD: Thank you, Mr. Archuleta. Do we have the applicant with us tonight? Ms. Guerrerortiz.

[Previously sworn, Oralynn Guerrerortiz testified as follows:]

MS. GUERRERORTIZ: I'm Oralynn Guerrerortiz with Design Ingenuity and I've already been sworn.

CHAIR MAYFIELD: Please, do you have anything to add?

MS. GUERRERORTIZ: I don't at this time. I can't think anymore. But there's no conditions. We're hoping that you'll go ahead and agree to our request for extension.

CHAIR MAYFIELD: Thank you. This is a public hearing. Does anyone from the public wish to comment on this case before us tonight? Seeing none, this portion is closed.

Santa Fe County
Board of County Commissioners
Regular Meeting of May 13, 2014
Page 142

COMMISSIONER STEFANICS: Mr. Chair.
CHAIR MAYFIELD: Commissioner Stefanics.
COMMISSIONER STEFANICS: I'll move for approval.
COMMISSIONER ANAYA: Second.
CHAIR MAYFIELD: We have a motion and a second.

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

CHAIR MAYFIELD: Thanks for being with us tonight.
COMMISSIONER ANAYA: Mr. Chair.
CHAIR MAYFIELD: Commissioner Anaya.
COMMISSIONER ANAYA: Just a question. The item expired – typically we've been seeing them before the expiration. Just as we go forward, I would just encourage all applicants to come in for the extension before the expiration, not after.

MS. GUERRERORTIZ: May I speak to that point?

COMMISSIONER ANAYA: Sure.

MS. GUERRERORTIZ: I don't really want to go into the details but we did make application. We had several conversations in 2009 which – we expired I think they say in August 2009. We actually got a letter from Shelley Cobau dated April 2009. I have it in my possession if you'd like a copy, and it says that the staff made a determination at that time that we did not need to come before the BCC for an extension. I could read it if you'd like me to read it but I can guarantee you that we mind the dates; we were here and we were told we did not have to come.

CHAIR MAYFIELD: Thank you. You could give that to Ms. Ellis-Green though so she could have it for her records.

MS. GUERRERORTIZ: Staff was given a copy.

CHAIR MAYFIELD: Thank you, Oralynn.

COMMISSIONER ANAYA: Mr. Chair, one other question. Mr. McCarthy or Mr. Bobby Lee, are you guys seeing any indication of the market shifting and improving associated with real estate and construction? Do we have – they seem to be improving but from your perspective, are they?

BOBBY LEE TRUJILLO: Yes, the market is starting to get better now. We've seen more of a stabilization and we've been able to get a couple of buildings out of Albuquerque to come and work in our subdivision so it's starting to pick up.

COMMISSIONER ANAYA: Good. Thank you, Mr. Chair. Thank you.

- VIII. B. 7. CDRC CASE # Z 14-5010 31 Bonanza Creek Road. Leslie Moody and Mitchell Ackerman, Applicants, Jenkinsgavin, Agents, Request Master Plan Zoning Approval to Allow a Bed and Breakfast within an Existing Residence on 9.94 Acres. The Property is Located on the West Side of Highway 14 Off Bonanza Creek Road (County Road 45), within Section 26, Township 15 North, Range 8 East (Commission District 5)**

