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Commissioner, District 3



**Anna T. Hamilton**  
Commissioner, District 4

**Ed Moreno**  
Commissioner, District 5

**Katherine Miller**  
County Manager

**DATE:** September 14, 2017

**TO:** Santa Fe County Planning Commission

**FROM:** John Lovato, Development Review Specialist Sr. *VZ for JZ*

**VIA:** Penny Ellis-Green, Growth Management Director *REC*  
Vicki Lucero, Building and Development Services Manager *VZ*

**FILE REF.:** CASE # V 17-5160 Prabhu Khalsa & Regina Spamer Variance

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**ISSUE:**

Prabhu Khalsa and Regina Spamer, Applicants, request a variance of the Sustainable Land Development Code Ordinance 2016-9 (SLDC) Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two story residence on a ridgetop, and a variance of Chapter 7.17.9.2.4 to allow a driveway to disturb 30% slope to access a buildable area.

The property is located at 01 Anand Nivas Way within the Vicinity of Sombrillo Within, Section 12, Township 20 North, Range 8 East, (Commission District 1)

**Vicinity Map:**



Site Location

## **SUMMARY:**

On July 27, 2017, this Application was presented to the Hearing Officer for consideration. The Hearing Officer supported in part of the Application and denied in part of the Application as memorialized in the findings of fact and conclusions of law written order. The Hearing officers recommend approval to allow disturbance of 30% slope for a driveway to access the buildable area and finds sufficient evidence of extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code. However, the Hearing Officer finds insufficient evidence and denies the height and two story variance request as the Applicant failed to prove extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code as the property contains 4,000 square feet to build an alternative style of home (Exhibit 10).

The Applicants are the owners of the property as evidenced by warranty deed as recorded in the records of the Santa Fe County Clerk on September 7, 2006, as Instrument # 1449846. The Applicants are pursuing the request for a variance to allow a proposed 2,304 square foot residence to have a 22' pitched roof on a ridgetop, to allow a second floor in the residence, and to disturb 3,065 square feet of 30% slope for construction of their driveway on their 0.92 acre parcel.

The (SLDC), Chapter 7, Section 7.17.9.3.2, states, "Structures on ridges, ridgelines and shoulders shall not exceed fourteen (14') feet in height and shall be limited to one story." This Section further states, "a structure on a ridge or ridgeline that is a one story pitched roof shall not exceed eighteen (18) feet in height so long as it is screened from view from an arterial or major arterial road."

The property is currently vacant. The proposed residence consists of two stories. The first level contains a kitchen, bedroom, laundry room, and living room /dining room. The second level consists of a master bedroom, master bathroom, two bedrooms, a study room, and bathroom. The structure is 24'X 48' on both levels for a combined total of 2,304 square feet.

The Applicants are also requesting to disturb 30% slope to access their buildable area with a driveway which is 15'-20' in width and 200' in length. Chapter 7.17.9.2.4, states, "Utilities, drainage structures, slope retention structures, and access roads and driveways may be located on a natural slope in excess of thirty percent (30%) so long as they disturb no more than three separate areas not exceeding 1,000 square feet each." The first disturbance of 30% slope consists of 70 square feet and is consistent with the SLDC. The second occurrence is 2,378 square feet of 30% slope and exceeds the extent of allowable slope disturbance. The third disturbance is 617 square feet and is consistent with the SLDC. The combined total disturbance of 30% slope is 3,065 square feet.

The Applicants state, "We are requesting these variances for permission to build a two story home. Before we were made aware that we would require a variance, we looked at the homes of our immediate neighbors which are both two story homes as well and we designed a two story home for ourselves. We then paid for plans to be drawn up for the County to acquire a building permit. As we are already invested in the plans for the home, and there are already two other homes on the same hillside that are two story." In addition we would like to request a variance to disturb 30% slope to access the buildable area."

## Height/ Two Story Variance

The Applicants response to the height request variance review criteria is as follows:

1. Where the request is not contrary to the public interest;

**Applicants' Statement:** Due to there being two other homes on either side of our property reaching above 24' feet in height, the height of our building will not be contrary to public interest and two-story design will not be contrary to public interest, but in line with the existing neighborhood features. Additionally, as we are a private property, surrounded by other private properties, the interest of the public seems minimal.

**Staff Response:** Although there are existing 24' two story homes in the vicinity, those homes are not on a ridgetop and do not have to meet height limitations of 14' flat roof or 18' pitched roof with a single story design. This property is located on a ridgetop and is limited by the SLDC to one story and is subject to Chapter 7, Section 7.17.9.3.2, which restricts structures on ridges, ridgelines and shoulders to fourteen (14') in height and limits them to be one story. This section does allow for a structure on a ridge or ridgeline that is a one story pitched roof to be no more than eighteen (18) feet in height, so long as it is screened from view from an arterial or major arterial road.

2. Where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner.

**Applicants' Statement:** The "extraordinary and exceptional situations" as related to this property is that it runs long from the North to the South, but somewhat narrow from East to West. In order to build the house set back from the driveway and neighbor's property the home's South facing wall that extends from East to West cannot be much longer than our current design. As we have implemented a passive solar design with all bedrooms having a South facing window, we will need our current design which reaches 22 feet in height. As we have already invested in the design and paid for plans, and we cannot implement an effective passive solar design separate from what we have, denying this variance would "result in peculiar and exceptional practical difficulties" for us. It would also result in "exceptional and undue hardship" on us as we are expecting our first baby and aren't ready to redesign the home, without a passive design, and pay for more plans

**Staff Response:** The fact that the Applicants designed a two story home is not grounds for granting a variance. The site contains a buildable area of 4,000 square feet in which a one story structure can be placed. The applicant can build an 18' pitched roof with a south facing façade to allow for southern exposure which will allow for sunlight to enter the building. The Applicant can place skylights along the southern pitch and keep the structure at 18' to allow additional southern sun exposure to enter the residence. The structure can allow for a 14' flat roof and remain one level while other rooms that don't have sunlight entering can have an 18' clear story pitched roof to allow for windows and sun light for an effective passive solar design. The site contains ample room for a one story house of the same size.

3. So that the spirit of the SLDC is observed and substantial justice is done.

**Applicants' Statement:** Granting this variance, allowing us to design our home consistent with the design of the neighbors and neighborhood, would allow for "substantial justice" to be done. Conversely, if the variance was denied, it would be unjust as both neighbors have already reached a height of 24' feet or more, which is greater than what we are requesting. In keeping with the "spirit of the SLDC," particularly the "sustainable" part, allowing our variance would allow our passive solar and sustainable design.

**Staff Response:** The surrounding residences are not located on a ridgetop and are not restricted to the same requirements as this property. The proposed structure is subject to current standards and shall not exceed 14' in height for a flat roof residence or 18' pitched as required by Ordinance 2016-9, the SLDC. This residence can be designed differently with a one story design and remain consistent with the SLDC. Granting this variance creates a possible precedent for surrounding properties where development is proposed on a ridgetop in this area as well as other communities in Santa Fe County.

#### **Disturbance of 30% Slope**

The Applicants response to the Variance Review Criteria for slope disturbance is as follows:

1. where the request is not contrary to the public interest

**Applicants' Statement:** The public interest, as it relates to private property in residential neighborhoods, is best served when private property owners are allowed to sustainably and safely build reasonable family homes on their own properties. As we need a driveway to reach our building site, and our current plan, which requires the slope disturbance, is the only reasonable option, we need this variance for the above mentioned interest to be served.

**Staff Response:** Staff has conducted an inspection on the property and concurs with the Applicants. There is no other access to the buildable area on the property without disturbing 30% slope while also being able to meet grade requirements.

2. Where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner

**Applicants' Statement:** In the case of our needed driveway, "the strict application of the code would result in peculiar and exceptional practical difficulties," due to the natural landscape and surrounding properties. Due to the fact that the North and West sides of the property are flanked by private property without any easements, and the fact that the South side of the property is well above the road, our only option is to build our driveway on the East side of the property. It just so happens that the East side of the property naturally has a slope greater than what is usually allowed to be disturbed. We cannot build our driveway without disturbing this slope, and not allowing our driveway would mean we could not build on our property, and would almost render the property worthless. This would certainly "result in peculiar and exceptional practical difficulties" AND "exceptional and undue hardship on the owner (us)."

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**Staff Response:** Staff has reviewed the Applicants' Grading and Drainage Plan and has determined that there is no other possible way for the Applicants to meet the requirements of the SLDC. Terrain creates a hardship to the Applicants and the selected route for the driveway is the only access to the buildable area of the property.

3. So that the spirit of the SLDC is observed and substantial justice is done.

**Applicants' Statement:** As mentioned above, in order for "substantial justice" to be done, we would be given the chance to build our driveway and home. As we invested in professional plans from an engineer, and we have a sustainably designed driveway and home, this variance would easily be in keeping with "the spirit of the SLDC."

**Staff Response:** There is no other access to the property and disturbance of slope is a necessity to access the buildable area.

The applicable requirements under the SLDC, which govern this Application are the following:

Chapter 7.17.9.2.4 Standards, states, "Utilities, drainage structures, slope retention structures, and access roads and driveways may be located on a natural slope in excess of thirty percent (30) so long as they disturb no more than three separate areas not exceeding 1,000 square feet each." (Exhibit 4)

Chapter 7.17.9.3.2, states, Height states, "Structures on ridges, ridgelines, and shoulders shall not exceed (14) feet in height and shall be limited to one story. However, a structure on a ridge or ridgeline that is a one story pitched roof structure shall not exceed eighteen (18) feet in height so long as the structure is screened from view from an arterial or major arterial road." (Exhibit 5)

Chapter 4, Section 4.9.7.1, Variances (Purpose) states:

The purpose of this section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this Code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the Code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

Chapter 4, Section 4.9.7.4, Variance Review Criteria. (Exhibit 6) states:

A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

1. where the request is not contrary to public interest;

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2. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

Chapter 4, Section 4.9.7.5 Variance Conditions of approval (Exhibit 7).

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

As required by the SLDC, the Applicants presented the Application to the Technical Advisory Committee (TAC) on April 6, 2017, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, TAC Meeting Table 4-1.

Notice requirements were met as per Chapter 4, Section 4.6.3, General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the Application, the Applicants provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for fifteen days on the property, beginning on July 2, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on July 7, 2017, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record. (Exhibit 8)

This Application was first submitted on May 30, 2017.

**RECOMMENDATION:**

On July 27, 2017, this Application was presented to the Hearing Officer for consideration. The Hearing Officer supported in part of the Application and denied in part of the Application as memorialized in the findings of fact and conclusions of law written order. The Hearing officer recommends approval to allow disturbance of 30% slope for a driveway to access the buildable area and finds sufficient evidence of extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code. However, the Hearing Officer finds insufficient evidence and denies the height and two story variance request as the Applicant failed to prove extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code as the Applicant contains 4,000 square feet to build an alternative style of home.

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## **Staff Recommendation:**

**Height:** Staff recommends denial of the requested variance for height. The Applicant's 22' residence exceeds height requirements of the SLDC which allows a 14' one story flat roofed residence or 18' pitched roof one story residence. The Applicant can create an alternative design so the structure meets height requirements

**Two story:** Staff recommends denial of the requested variance for two story. Structures on ridges, ridgelines, and shoulders shall be limited to one story structures. The Applicants' proposal does not meet requirements of the SLDC; surrounding properties are not located on ridgetops and there is space for the Applicant to build the same size house as a single story with an alternative design to allow a solar passive residence.

**Disturbances:** Staff recommends approval of the variance for slope disturbance. The Application is not in strict compliance with the SLDC, but this Application meets the criteria necessary for granting a variance. Due to the topography of the lot, the Applicant is unable to build a home on their lot without a variance. Criteria 1, is that the request is not contrary to the public interest. The request meets this criteria as the site offers limited buildable area. The inability to build on the property due to the requirements in Chapter 7, Section 7.17.9.2.4, demonstrates that they have met the variance criteria where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The terrain on this property consists of steep slopes, and minimal buildable area. In order to construct any residence on this property a variance request is necessary. This causes peculiar and exceptional practical difficulties or exceptional and undue hardship on the Applicant/Owner, which meets Criteria 3, that the spirit of the SLDC is met. Therefore, staff recommends approval of the Applicants' request for the variance.

## **EXHIBITS:**

1. Applicants Request
2. Proposed plans
3. Aerial Photo of Site
4. Chapter 7, Section 7.17.9.2.4 Steep Slopes Shoulders and Ridgeline (Standards)
5. Chapter 7, Section 7.17.9.3.2 Height on Ridges, Ridgelines, and Shoulders.
6. Chapter 4, Section 4.9.7.4, Variance review criteria
7. Chapter 4, Section 4.9.7.5, Conditions of approval
8. Notice
9. July 27, 2017, Hearing Officer Meeting Minutes
10. Hearing Officer's Recommended Decision and Order



**John F. Lovato**

**From:** Prabhu Singh Khalsa <prabhukhalsa@gmail.com>  
**Sent:** Thursday, June 29, 2017 3:56 PM  
**To:** John F. Lovato  
**Subject:** Variance for 1 Anand Nivas Way

Thursday, June 29, 2017

To whom it may concern,

In regards to the property at 1 Anand Nivas Way, Espanola, NM 87532 (Santa Fe County), we are writing to request two variances in order to build our driveway and home. Before we were made aware that we would require two variances, we looked at the homes of our immediate neighbors on the same hillside which are both two-story homes and we designed a two-story home for ourselves. We then paid for the plans to be drawn up for the county to acquire a building permit. After this we discovered that despite the existing neighbor's homes we would require a variance for our house. The county also informed us that we would require a variance for the driveway, due to the nature of the land. Below we have addressed the criteria for each variance.

Thank you for your consideration in this matter

Sincerely,  
Prabhu S. Khalsa  
Regina M. Spamer

**Height:**

1. Due to there being two other homes on either side of our property reaching above 24' feet in height, the height of our building will not be contrary to public interest, but inline with the existing neighborhood features.
2. The "extraordinary and exceptional situations" as related to this property is that it runs long from the North to the South, but somewhat narrow from East to West. In order to build the house set back from the driveway and neighbor's property the home's South facing wall that extends from East to West cannot be much longer than our current design. As we have implemented a passive solar design with all bedrooms having a South facing window, we will need our current design which reaches 22 feet in height. As we have already invested in the design and paid for plans, and we cannot implement an effective passive solar design separate from what we have, denying this variance would "result in peculiar and exceptional practical difficulties" for us. It would also result in "exceptional and undue hardship" on us as we are expecting our first baby and aren't ready to redesign the home, without a passive design, and pay for more plans.
3. Granting this variance, allowing us to design our home consistent with the design of the neighbors and neighborhood, would allow for "substantial justice" to be done. Conversely, if the variance was denied, it would be unjust as both neighbors have already reached a height of 24' feet or more, which is greater than what we are requesting. In keeping with the "spirit of the SLDC," particularly the "sustainable" part, allowing our variance would allow our passive solar and sustainable design.

**Two Story:**

1. Due to there being two other homes on either side of our property which are both two-story homes our two-story design will not be contrary to public interest, but inline with the existing neighborhood features. Additionally, as we are a private property, surrounded by other private properties, the interest of the public seems minimal.
2. As mentioned above, the "extraordinary and exceptional situations" as related to this property is that it runs long from the North to the South, but somewhat narrow from East to West. In order to build the house set back from the driveway and neighbor's property the home's South facing wall that extends from East to West cannot



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be much longer than our current design. As we have implemented a passive solar design with all bedrooms having a South facing window, we will need our current two-story design. In fact no other design would allow all bedrooms and the living room and kitchen to have South facing windows. As we have already invested in the design and paid for plans, and we cannot implement an effective passive solar design separate from what we have, denying this variance would "result in peculiar and exceptional practical difficulties" for us. It would also result in "exceptional and undue hardship" on us as we are expecting our first baby and aren't ready to redesign the home, without a passive design, and pay for more plans.

3. Granting this variance, allowing us to design our home consistent with the design of the neighbors and neighborhood, would allow for "substantial justice" to be done. Conversely, if the variance was denied, it would be unjust as both neighbors with adjacent property lines already have two-story homes. In keeping with the "spirit of the SLDC," particularly the "sustainable" part, allowing our variance would allow our passive solar and sustainable design.

#### Slope Disturbance:

1. The public interest, as it relates to private property in residential neighborhoods, is best served when private property owners are allowed to sustainably and safely build reasonable family homes on their own properties. As we need a driveway to reach our build site, and our current plan, which requires the slope disturbance, is the only reasonable option, we need this variance for the above mentioned interest to be served.

2. In the case of our needed driveway, "the strict application of the code would result in peculiar and exceptional practical difficulties," due to the natural landscape and surrounding properties. Due to the fact that the North and West sides of the property are flanked by private property without any easements, and the fact that the South side of the property is well above the road, our only option is to build our driveway on the East side of the property. It just so happens that the East side of the property naturally has a slope greater than what is usually allowed to be disturbed. We cannot build our driveway without disturbing this slope, and not allowing our driveway would mean we could not build on our property, and would almost render the property worthless. This would certainly "result in peculiar and exceptional practical difficulties" AND "exceptional and undue hardship on the owner (us)."

3. As mentioned above, in order for "substantial justice" to be done, we would be given the chance to build our driveway and home. As we invested in professional plans from an engineer, and we have a sustainably designed driveway and home, this variance would easily be in keeping with "the spirit of the SLDC."

# 1 Anand Nivas Way, Somerville, Santa Fe, New Mexico Single Family Residence and Driveway Development DRAINAGE CALCULATIONS SUMMARY

## Present Conditions of Existing

The project site is a 3.9 acre vacant lot located on a mesa surrounded by steep slopes. The terrain has a poor coverage of shrubs and grasses. There are no FEMA flood zones or wetlands on the property.

Soils: Available soils have been mapped by the US Natural Resource Conservation Service and the soil map shows the site is in the 100-year flood zone. The soil is a very poor, shallow, and dry. The soils present, percentage and hydrologic soil group are listed below:

Map Unit Name	Percent of AOT	Hydrologic Soil Group
Opokasho-Quartzite Complex	5.0	B
Opokasho-Quartzite Complex	95.0	B

Vegetation: The terrain has a poor coverage of shrubs and grasses.

Current Curve Number: The project site has a very low natural runoff rate and the natural curve number of the existing condition is 1.0.

Proposed Development: The project site has a very low natural runoff rate and the natural curve number of the existing condition is 1.0. The proposed development is a single family home with a gravel driveway. For the proposed development, the curve number is 1.0.

Post Development Drainage Flow: If 100% of the impervious area as noted above is developed, the 24-hour storm runoff would result in a peak discharge from the lot of 1.41 cubic feet per second (CFS) with a time of arrival of 200 feet, which is 804 cubic feet more than current conditions.

Frequency	Precipitation	Runoff Q, in cfs	Runoff Volume, cu ft
1:100	3.52	0.78	1.41
1:50	3.00	0.68	1.25
1:25	2.50	0.58	1.09
1:10	2.00	0.48	0.93
1:5	1.50	0.38	0.77
1:2	1.00	0.28	0.61
1:1	0.50	0.18	0.45

Frequency	Precipitation	Runoff Q, in cfs	Runoff Volume, cu ft
1:100	3.52	0.78	1.41
1:50	3.00	0.68	1.25
1:25	2.50	0.58	1.09
1:10	2.00	0.48	0.93
1:5	1.50	0.38	0.77
1:2	1.00	0.28	0.61
1:1	0.50	0.18	0.45

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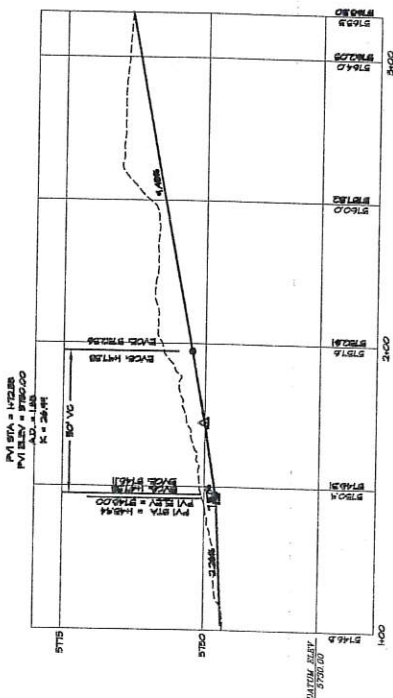
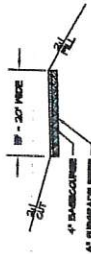
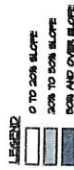
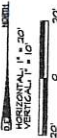
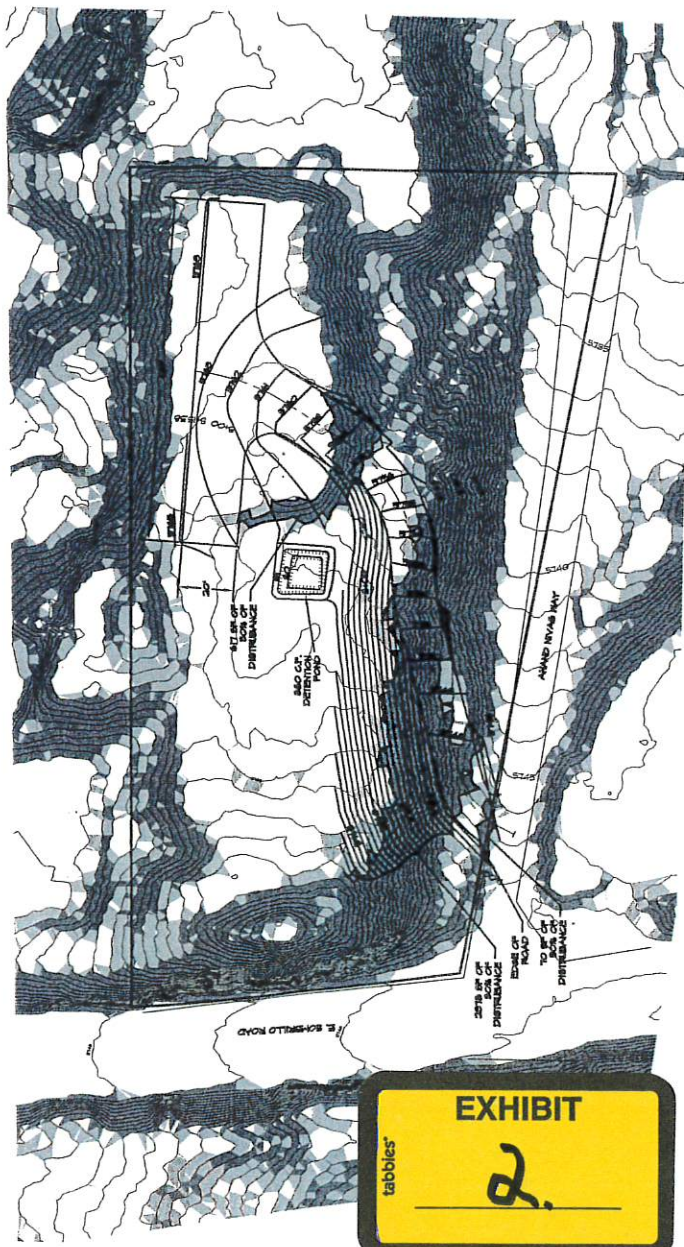
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The proposed plan is to develop a single family home with a gravel driveway. For the proposed development, the curve number is 1.0. The proposed development is a single family home with a gravel driveway. For the proposed development, the curve number is 1.0.



DESIGN ENGINEER

1 ANAND NIVAS WAY

DRIVWAY PLAN AND PROFILE

DATE: 05/18/2017

BY: C. G. G. G.



NOTE: THESE ARE RECOMMENDATIONS ONLY. THE CLIENT IS RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT. THE ENGINEER DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED. THE ENGINEER'S LIABILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE PROJECT. THE ENGINEER'S LIABILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE PROJECT.

Prepared by: C. G. G. G., PE 05-18-2017

NBA-10

DATE	1/4/11	01/01/2011
REVISION		
CHECKED BY	AD	
DRAWN BY	AD	
DESIGNED BY	AD	
PROJECT	NEW RESIDENCE	

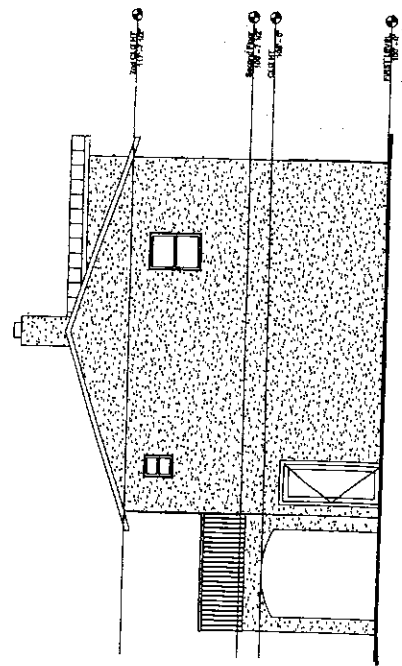
SHEET #  
**06**  
OF 06

DESCRIPTION  
Elevations

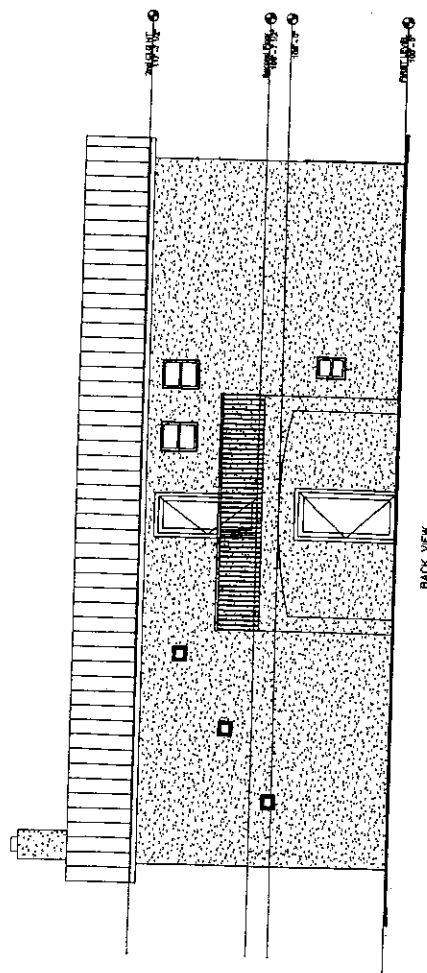
PROJECT  
NEW RESIDENCE

CLIENT:  
Prabhu Singh Khalsa  
East Sombrillo Rd.  
Española, NM

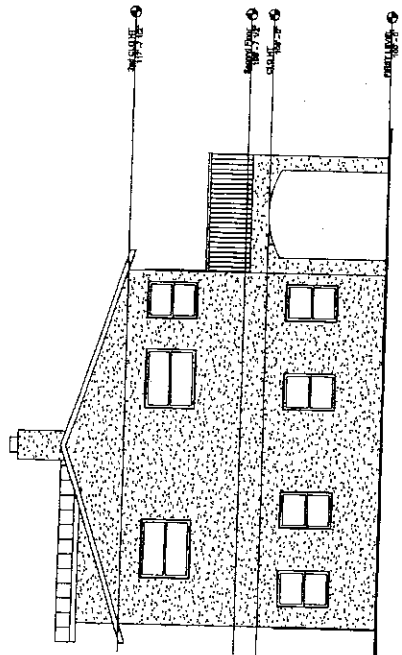
QUEZADA DESIGN  
505-977-9855  
ALBUQUERQUE, NM



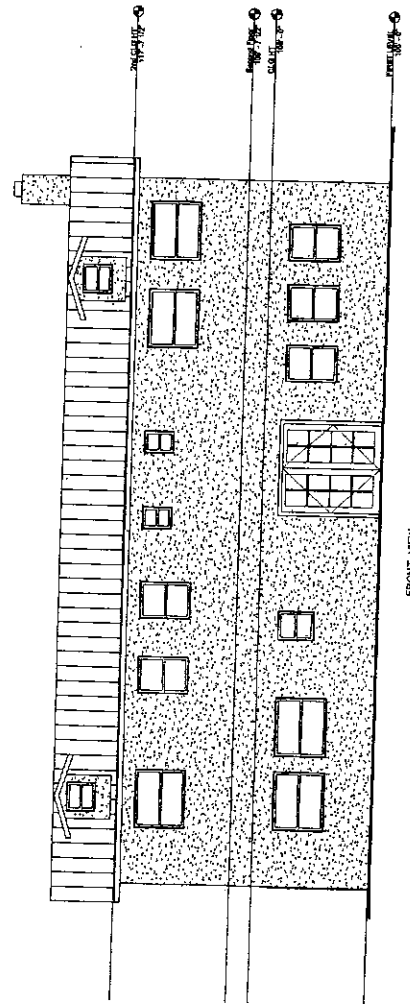
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BACK VIEW  
SCALE: 1/4"=1'-0"

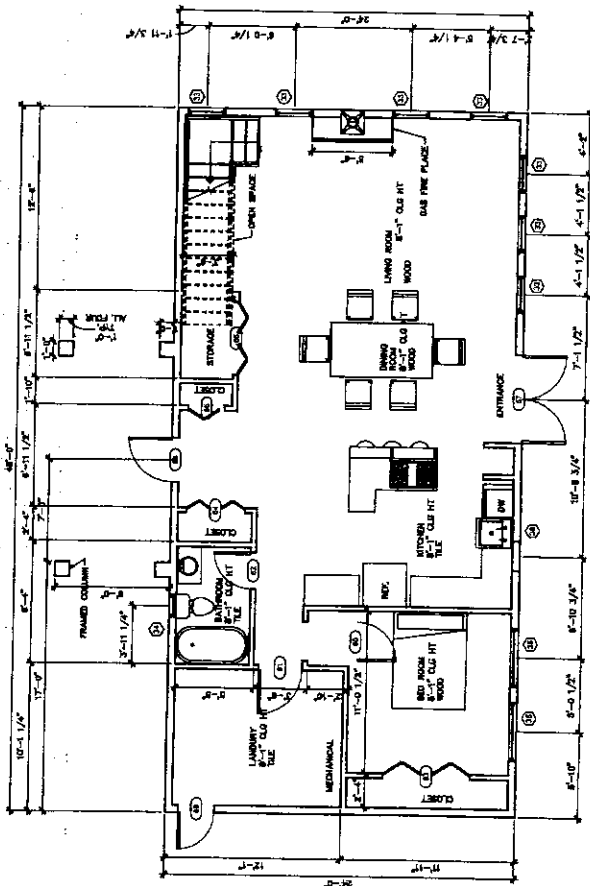


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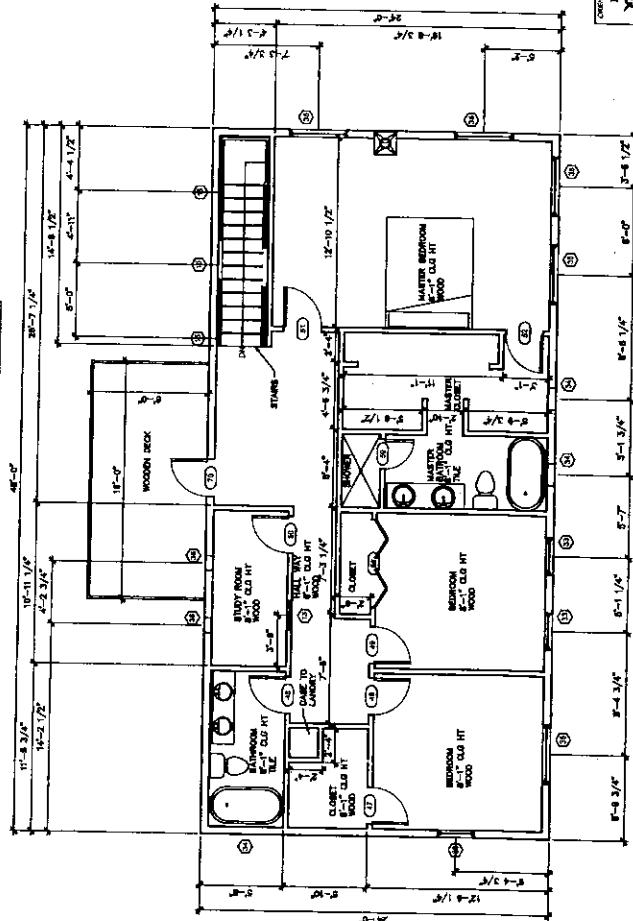


FRONT VIEW  
SCALE: 1/4"=1'-0"

NBA-11

[illegible]

First Floor Plan  
SCALE: 1/4" = 1'-0"



Second Floor Plan  
SCALE: 1/4"=1'-0"

GROSS WEIGHTS							
Group	Age-Sex Type	Food Consumption Calories per Day	Height in	Weight lb	Mean Temp F	Time in Day	Time in Night
1	Male 30-39	1000	5' 10"	150	98.6	12	12
2	Male 40-49	1000	5' 10"	150	98.6	12	12
3	Male 50-59	1000	5' 10"	150	98.6	12	12
4	Male 60-69	1000	5' 10"	150	98.6	12	12
5	Male 70-79	1000	5' 10"	150	98.6	12	12
6	Male 80-89	1000	5' 10"	150	98.6	12	12
7	Male 90-99	1000	5' 10"	150	98.6	12	12
8	Male 100-109	1000	5' 10"	150	98.6	12	12
9	Male 110-119	1000	5' 10"	150	98.6	12	12
10	Male 120-129	1000	5' 10"	150	98.6	12	12
11	Male 130-139	1000	5' 10"	150	98.6	12	12
12	Male 140-149	1000	5' 10"	150	98.6	12	12
13	Male 150-159	1000	5' 10"	150	98.6	12	12
14	Male 160-169	1000	5' 10"	150	98.6	12	12
15	Male 170-179	1000	5' 10"	150	98.6	12	12
16	Male 180-189	1000	5' 10"	150	98.6	12	12
17	Male 190-199	1000	5' 10"	150	98.6	12	12
18	Male 200-209	1000	5' 10"	150	98.6	12	12
19	Male 210-219	1000	5' 10"	150	98.6	12	12
20	Male 220-229	1000	5' 10"	150	98.6	12	12
21	Male 230-239	1000	5' 10"	150	98.6	12	12
22	Male 240-249	1000	5' 10"	150	98.6	12	12
23	Male 250-259	1000	5' 10"	150	98.6	12	12
24	Male 260-269	1000	5' 10"	150	98.6	12	12
25	Male 270-279	1000	5' 10"	150	98.6	12	12
26	Male 280-289	1000	5' 10"	150	98.6	12	12
27	Male 290-299	1000	5' 10"	150	98.6	12	12
28	Male 300-309	1000	5' 10"	150	98.6	12	12
29	Male 310-319	1000	5' 10"	150	98.6	12	12
30	Male 320-329	1000	5' 10"	150	98.6	12	12
31	Male 330-339	1000	5' 10"	150	98.6	12	12
32	Male 340-349	1000	5' 10"	150	98.6	12	12
33	Male 350-359	1000	5' 10"	150	98.6	12	12
34	Male 360-369	1000	5' 10"	150	98.6	12	12
35	Male 370-379	1000	5' 10"	150	98.6	12	12
36	Male 380-389	1000	5' 10"	150	98.6	12	12
37	Male 390-399	1000	5' 10"	150	98.6	12	12
38	Male 400-409	1000	5' 10"	150	98.6	12	12
39	Male 410-419	1000	5' 10"	150	98.6	12	12
40	Male 420-429	1000	5' 10"	150	98.6	12	12
41	Male 430-439	1000	5' 10"	150	98.6	12	12
42	Male 440-449	1000	5' 10"	150	98.6	12	12
43	Male 450-459	1000	5' 10"	150	98.6	12	12
44	Male 460-469	1000	5' 10"	150	98.6	12	12
45	Male 470-479	1000	5' 10"	150	98.6	12	12
46	Male 480-489	1000	5' 10"	150	98.6	12	12
47	Male 490-499	1000	5' 10"	150	98.6	12	12
48	Male 500-509	1000	5' 10"	150	98.6	12	12
49	Male 510-519	1000	5' 10"	150	98.6	12	12
50	Male 520-529	1000	5' 10"	150	98.6	12	12
51	Male 530-539	1000	5' 10"	150	98.6	12	12
52	Male 540-549	1000	5' 10"	150	98.6	12	12
53	Male 550-559	1000	5' 10"	150	98.6	12	12
54	Male 560-569	1000	5' 10"	150	98.6	12	12
55	Male 570-579	1000	5' 10"	150	98.6	12	12
56	Male 580-589	1000	5' 10"	150	98.6	12	12
57	Male 590-599	1000	5' 10"	150	98.6	12	12
58	Male 600-609	1000	5' 10"	150	98.6	12	12
59	Male 610-619	1000	5' 10"	150	98.6	12	12
60	Male 620-629	1000	5' 10"	150	98.6	12	12
61	Male 630-639	1000	5' 10"	150	98.6	12	12
62	Male 640-649	1000	5' 10"	150	98.6	12	12
63	Male 650-659	1000	5' 10"	150	98.6	12	12
64	Male 660-669	1000	5' 10"	150	98.6	12	12
65	Male 670-679	1000	5' 10"	150	98.6	12	12
66	Male 680-689	1000	5' 10"	150	98.6	12	12
67	Male 690-699	1000	5' 10"	150	98.6	12	12
68	Male 700-709	1000	5' 10"	150	98.6	12	12
69	Male 710-719	1000	5' 10"	150	98.6	12	12
70	Male 720-729	1000	5' 10"	150	98.6	12	12
71	Male 730-739	1000	5' 10"	150	98.6	12	12
72	Male 740-749	1000	5' 10"	150	98.6	12	12
73	Male 750-759	1000	5' 10"	150	98.6	12	12
74	Male 760-769	1000	5' 10"	150	98.6	12	12
75	Male 770-779	1000	5' 10"	150	98.6	12	12
76	Male 780-789	1000	5' 10"	150	98.6	12	12
77	Male 790-799	1000	5' 10"	150	98.6	12	12
78	Male 800-809	1000	5' 10"	150	98.6	12	12
79	Male 810-819	1000	5' 10"	150	98.6	12	12
80	Male 820-829	1000	5' 10"	150	98.6	12	12
81	Male 830-839	1000	5' 10"	150	98.6	12	12
82	Male 840-849	1000	5' 10"	150	98.6	12	12
83	Male 850-859	1000	5' 10"	150	98.6	12	12
84	Male 860-869	1000	5' 10"	150	98.6	12	12
85	Male 870-879	1000	5' 10"	150	98.6	12	12
86	Male 880-889	1000	5' 10"	150	98.6	12	12
87	Male 890-899	1000	5' 10"	150	98.6	12	12
88	Male 900-909	1000	5' 10"	150	98.6	12	12
89	Male 910-919	1000	5' 10"	150	98.6	12	12
90	Male 920-929	1000	5' 10"	150	98.6	12	12
91	Male 930-939	1000	5' 10"	150	98.6	12	12
92	Male 940-949	1000	5' 10"	150	98.6	12	12
93	Male 950-959	1000	5' 10"	150	98.6	12	12
94	Male 960-969	1000	5' 10"	150	98.6	12	12
95	Male 970-979	1000	5' 10"	150	98.6	12	12
96	Male 980-989	1000	5' 10"	150	98.6	12	12
97	Male 990-999	1000	5' 10"	150	98.6	12	12
98	Male 1000-1009	1000	5' 10"	150	98.6	12	12
99	Male 1010-1019	1000	5' 10"	150	98.6	12	12
100	Male 1020-1029	1000	5' 10"	150	98.6	12	12
101	Male 1030-1039	1000	5' 10"	150	98.6	12	12
102	Male 1040-1049	1000	5' 10"	150	98.6	12	12
103	Male 1050-1059	1000	5' 10"	150	98.6	12	12
104	Male 1060-1069	1000	5' 10"	150	98.6	12	12
105	Male 1070-1079	1000	5' 10"	150	98.6	12	12
106	Male 1080-1089	1000	5' 10"	150	98.6	12	12
107	Male 1090-1099	1000	5' 10"	150	98.6	12	12
108	Male 1100-1109	1000	5' 10"	150	98.6	12	12
109	Male 1110-1119	1000	5' 10"	150	98.6	12	12
110	Male 1120-1129	1000	5' 10"	150	98.6	12	12
111	Male 1130-1139	1000	5' 10"	150	98.6	12	12
112	Male 1140-1149	1000	5' 10"	150	98.6	12	12
113	Male 1150-1159	1000	5' 10"	150	98.6	12	12
114	Male 1160-1169	1000	5' 10"	150	98.6	12	12
115	Male 1170-1179	1000	5' 10"	150	98.6	12	12
116	Male 1180-1189	1000	5' 10"	150	98.6	12	12
117	Male 1190-1199	1000	5' 10"	150	98.6	12	12
118	Male 1200-1209	1000	5' 10"	150	98.6	12	12
119	Male 1210-1219	1000	5' 10"	150	98.6	12	12
120	Male 1220-1229	1000	5' 10"	150	98.6	12	12
121	Male 1230-1239	1000	5' 10"	150	98.6	12	12
122	Male 1240-1249	1000	5' 10"	150	98.6	12	12
123	Male 1250-1259	1000	5' 10"	150	98.6	12	12
124	Male 1260-1269	1000	5' 10"	150	98.6	12	12
125	Male 1270-1279	1000	5' 10"	150	98.6	12	12
126	Male 1280-1289	1000	5' 10"	150	98.6	12	12
127	Male 1290-1299	1000	5' 10"	150	98.6	12	12
128	Male 1300-1309	1000	5' 10"	150	98.6	12	12
129	Male 1310-1319	1000	5' 10"	150	98.6	12	12
130	Male 1320-1329	1000	5' 10"	150	98.6	12	12
131	Male 1330-1339	1000	5' 10"	150	98.6	12	12
132	Male 1340-1349	1000	5' 10"	150	98.6	12	12
133	Male 1350-1359	1000	5' 10"	150	98.6	12	12
134	Male 1360-1369	1000	5' 10"	150	98.6	12	12
135	Male 1370-1379	1000	5' 10"	150	98.6	12	12
136	Male 1380-1389	1000	5' 10"	150	98.6	12	12
137	Male 1390-1399	1000	5' 10"	150	98.6	12	12
138	Male 1400-1409	1000	5' 10"	150	98.6	12	12
139	Male 1410-1419	1000	5' 10"	150	98.6	12	12
140	Male 1420-1429	1000	5' 10"	150	98.6	12	12
141	Male 1430-1439	1000	5' 10"	150	98.6	12	12
142	Male 1440-1449	1000	5' 10"	150	98.6	12	12
143	Male 1450-1459	1000	5' 10"	150	98.6	12	12
144	Male 1460-1469	1000	5' 10"	150	98.6	12	12
145	Male 1470-1479	1000	5' 10"	150	98.6	12	12
146	Male 1480-1489	1000	5' 10"	150	98.6	12	12
147	Male 1490-1499	1000	5' 10"	150	98.6	12	12
148	Male 1500-1509	1000	5' 10"	150	98.6	12	12
149	Male 1510-1519	1000	5' 10"	150	98.6	12	12
150	Male 1520-1529	1000	5' 10"	150	98.6	12	12
151	Male 1530-1539	1000	5' 10"	150	98.6	12	12
152	Male 1540-1549	1000	5' 10"	150	98.6	12	12
153	Male 1550-1559	1000	5' 10"	150	98.6	12	12
154	Male 1560-1569	1000	5' 10"	150	98.6	12	12
155	Male 1570-1579	1000	5' 10"	150	98.6	12	12
156	Male 1580-1589	1000	5' 10"	150	98.6	12	12
157	Male 1590-1599	1000	5' 10"	150	98.6	12	12
158	Male 1600-1609	1000	5' 10"	150	98.6	12	12
159	Male 1610-1619	1000	5' 10"	150	98.6	12	12
160	Male 1620-1629	100					



tabbles<sup>®</sup>  
**EXHIBIT**  
**3.**



Subject Property  
Parcels  
Flood Hazard  
7400 Foot Elevation  
7800 Foot Elevation  
2012 Base Flood Elevations

0.2 % Annual Chance Flood Hazard  
2012 Zone A (No BFEs Determined)  
2012 Zone AE  
2012 Floodways  
2012 Zone AO  
2012 Zone D



Aerial Photography from 2014  
Contour Interval 2 Feet (source: 2001)  
North American Vertical Datum 1988  
  
This information is for reference only.  
Santa Fe County assumes no liability for  
errors associated with the use of these data.  
Users are solely responsible for  
confirming data accuracy.



March 31, 2017

NBA-13



with limits of disturbance (LOD) fencing or construction barriers prior to any grading or clearing.

**7.17.6.5.** No grading is permitted within one foot of a property line, except for roads driveways and utilities.

**7.17.6.6.** Temporary fencing shall be installed to protect natural vegetation.

**7.17.6.7.** Retaining walls shall not exceed ten (10) feet in height.

**7.17.7. Restoration of Disturbed Areas.**

**7.17.7.1.** Disturbed areas not stabilized by landscaping shall be permanently revegetated to approximate the density and species or vegetation at the site prior to grading.

**7.17.7.2.** Abrupt angular transitions and linear slopes shall be stabilized.

**7.17.7.3.** All structures except retaining walls or soil stabilization improvements shall be set back from the crest of fills or the base of cuts for a minimum distance equal to the depth of the fill or the height of the cut, unless a structurally sound retaining wall is built for the cut or fill slope. Retaining walls may be part of a building.

**7.17.8.** [Reserved]

**7.17.9 Steep Slopes, Ridge tops, Ridgelines, and Shoulders.**

**7.17.9.1 Applicability.** This Section applies to development of any structure on a slope whose grade exceeds fifteen percent (15%), areas where slope exceeds thirty percent (30%); and to a ridge, ridge top, ridgeline, or shoulder.

1. Where a ridgetop measures more than five hundred feet (500') from shoulder to shoulder, the ridgetop standards and requirements shall apply within two hundred feet (200') of the shoulder of the ridge.

**7.17.9.2 Standards.**

1. No structure may be constructed on a ridge top, ridgeline, or shoulder unless there is no other buildable area on the property. Only single story structures are allowed on ridges, ridge tops, and shoulders.
2. Buildable areas on a ridge top, ridgeline, or shoulder shall be set back 25 (twenty five) feet from the shoulder.
3. No structure may be constructed on a natural slope of thirty percent (30%) or greater.
4. Utilities, drainage structures, slope retention structures, and access roads and driveways may be located on a natural slope in excess of thirty percent (30%) so long as they disturb no more than three separate areas not exceeding 1,000 square feet each.
5. No structure may be constructed on a slope where evidence exists of instability, or other natural or man-made hazards.

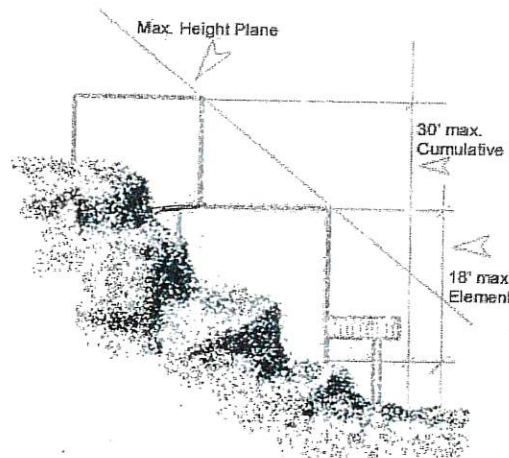
6. The finished floor elevation of any structure built on a natural slope between fifteen percent (15%) and thirty percent (30%) shall not exceed five feet above the natural grade at any point.

7. No significant tree may be removed from slopes greater than thirty (30) percent.

#### 7.17.9.3 Height.

1. The height of any structure located on land that has a natural slope of fifteen percent (15%) or greater shall not exceed eighteen feet (18'). The distance between the highest point of the structure and the lowest point at the natural grade or finished cut shall not exceed thirty (30) feet, unless the portion of the slope over fifteen percent (15%) is incidental to the entire site.

Figure 7.6: Height of Structures in Steep Slope Areas.



2. Structures on ridges, ridgelines, and shoulders shall not exceed fourteen (14) feet in height and shall be limited to one story. However, a structure on a ridge or ridgeline that is a one story pitched roof structure shall not exceed eighteen (18) feet in height so long as the structure is screened from view from an arterial or major arterial road.

#### 7.17.9.4. Architectural and Appearance Standards.

1. A Structure located on a slope in excess of fifteen percent (15%) shall be designed to conform to the natural terrain by following contours to minimize cuts and fills, fitting into existing landforms and solidly meeting the ground plane. Any pier foundations shall be enclosed so that exterior walls appear to meet the ground and such a foundation system shall not exceed five vertical feet above the natural grade.

2. Buildings should be designed within variations in height and orientation, and within offset walls to reduce the visible mass or bulk.

3. Roof colors shall be muted and of non-reflective or non-glossy materials. Colors visible from adjacent properties or from the street shall be muted and of non-reflective Value (LRV) of less than 40



c. the proposal conforms to the SLDC and is consistent with the goals, policies and strategies of the SGMP.

**2. Minor Amendments Causing Detrimental Impact.** If the Administrator determines that there may be any detrimental impact on adjacent property caused by the minor amendment's change in the appearance or use of the property or other contributing factor, the owner/applicant shall be required to file a major amendment.

**3. Major Amendments.** Any proposed amendment, other than minor amendments provided for in Section 4.9.6.9.1, shall be approved in the same manner and under the same procedures as are applicable to the issuance of the original CUP development approval.

**4.9.6.10. Expiration of CUP.** Substantial construction or operation of the building, structure or use authorized by the CUP must commence within twenty-four (24) months of the development order granting the CUP or the CUP shall expire; provided, however, that the deadline may be extended by the Planning Commission for up to twelve (12) additional months. No further extension shall be granted under any circumstances, and any changes in the requirements of the SLDC, or federal or state law shall apply to any new CUP development approval application.

#### **4.9.7. Variances.**

**4.9.7.1. Purpose.** The purpose of this Section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements and standards of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

**4.9.7.2. Process.** All applications for variances will be processed in accordance with this chapter of the Code. A letter addressing Section 4.9.7.4. review criteria must accompany the application explaining the need for a variance.

**4.9.7.3. Applicability.** When consistent with the review criteria listed below, the planning commission may grant a zoning variance from any provision of the SLDC except that the planning commission shall not grant a variance that authorizes a use of land that is otherwise prohibited in the relevant zoning district.

**4.9.7.4. Review criteria.** A variance may be granted only by a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

1. where the request is not contrary to the public interest;
2. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
3. so that the spirit of the SLDC is observed and substantial justice is done.



#### 4.9.7.5. Conditions of approval.

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

**4.9.7.6. Administrative minor deviations.** The Administrator is authorized to administratively approve minor deviations upon a finding that the deviation is required, that the result is consistent with the intent and purpose of this SLDC, and that the deviation is not detrimental to adjacent or surrounding properties as follows:

1. minor deviations from the dimensional requirements of Chapters 7, 8 and 9 of the SLDC not to exceed ten percent (10%) of the required dimension; and
2. minor deviations from the density dimensional standards of Chapter 8 of the SLDC not to exceed five tenths of a percent (0.5%) of the gross acreage allowed in the zoning district.

#### 4.9.8. Beneficial Use and Value Determination (BUD).

**4.9.8.1. Purpose.** The intent of the SLDC is to provide, through this Section, a process to resolve any claims that the application of the SLDC constitutes an unconstitutional regulatory taking of property. This Section is not intended to provide relief related to regulations or actions promulgated or undertaken by agencies other than the County. The provisions of this Section are not intended to, and do not, create a judicial cause of action.

**4.9.8.2. Application.** In order to evaluate whether, and if so, the extent to which, application of the SLDC unconstitutionally creates a regulatory taking without just compensation, or other constitutional deprivation, an applicant, once denied development approval or granted conditional development approval, or as otherwise provided in Section 7.16.3.1, may apply to the Administrator for a beneficial use and value determination, the application for which shall describe:

1. the extent of diminution of use and value with respect to the entirety of the owner's, or lessee's real property interests in common ownership;
2. the distinct and reasonable investment backed expectations of the owner, lessee, or predecessors in interest, in common ownership;
3. the availability of cluster development, phased development, tax incentives, or transfers of development rights;
4. any variance or relief necessary or available to relieve any unconstitutional hardship or regulatory taking.





## CERTIFICATION OF POSTING

I hereby certify that the public notice posting regarding Sustainable Land Development Code.

Case # V17-5160 was posted for 15 days on the property beginning

The 9 day of July  
2017. \*\*

*Regina Y Spamer*  
*Regina Y Spamer*  
Signature

\*Photo of posting must be provided with certification

**\*\*PLEASE NOTE:** Public notice is to be posted on the most visible part of the property. Improper legal notice will result in re-posting for an additional 15 days. It is the applicant's responsibility to ensure that the notice is on the property for the full 15 days.

STATE OF NEW MEXICO }

COUNTY OF ~~SANTA FE~~ }

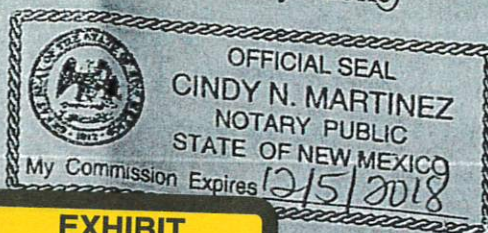
*Rio Arriba*

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of  
July, 2017, By Regina Macias-Spamer.

*Cindy N. Martinez*  
Notary Public

My Commission Expires:

12/5/2018



EXHIBIT

8.

NBA-18



LEGAL #82884

CASE # V 17-5160  
Khalsa/Spamer

**NOTICE OF PUBLIC  
HEARING**

Notice is hereby given that a public hearing will be held to consider a request by Prabhu Khalsa and Regina Spamer, Applicants, for a variance of Chapter 7.17.9.2.3.2 height of a structure to exceed 18' on a ridgetop, allow a two story residence on a ridgetop, and a variance of Chapter 7.17.9.2.4 allow a driveway to disturb 30% slope to access a buildable area. The property is located at 01 Anand Nivas Way within the

Vicinity of Sombrello  
Within, Section 12,  
Township 20 North,  
Range 8 East, (Commission District

A public hearing will be held in the County Commission Chambers of the Santa Fe County Courthouse, corner of Grant and Palace Avenues, Santa Fe, New Mexico July 27, 2017, at 3 p.m. on a petition to the Santa Fe County Hearing Officer and on September 21, 2017 at 4 p.m. on a petition to the Santa Fe County Planning Commission.

Please forward all comments and questions to the County Land Use Administration Office at 986-6225.

All interested parties will be heard at the Public Hearing prior to the Hearing Officer/Planning Commission taking action.

All comments, questions and objections to the proposal may be submitted to the County Land Use Administrator in writing to P. O. Box 276, Santa Fe, New Mexico 87504-0276, or presented in person at the hearing.

Published in the Santa Fe New Mexican on July 12, 2017.

LIST OF PROPERTY OWNERS WITHIN 500 FT.  
(Regina & Prabhu's property)

**Owner Name:**  
SPENCER-BROCKWAY,  
MEGEATH  
**Physical Address:**  
11 E SOMBRILLO RD  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
11 SOMBRILLO RD  
ESPANOLA, NM 875329628

**Owner Name:**  
ROMERO, FRED P III &  
**Physical Address:**  
13 E SOMBRILLO RD  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 155  
SANTA CRUZ, NM 87567-0155

**Owner Name:**  
TRAPP, ROBERT  
**Physical Address:**  
19 E SOMBRILLO RD  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
BOX 122  
ESPANOLA, NM 87532

**Owner Name:**  
KHALSA, KRISHAN K  
**Physical Address:**  
5 ANAND NIVAS WAY  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
806 BAMBOO LN  
DELREY BEACH, FL 33483

**Owner Name:**  
SANDOVAL, ROSITA O  
**Physical Address:**  
6 ANAND NIVAS WAY  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 1874  
ESPANOLA, NM 87532

**Owner Name:**  
KHALSA, SAT SIRI K  
**Physical Address:**  
3 KHALSA WAY  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
BOX 486  
SANTA CRUZ, NM 87567

**Owner Name:**  
KHALSA, HARI S & LORENA P  
**Physical Address:**  
9 KHALSA WAY  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 1421  
SANTA CRUZ, NM 87567

**Owner Name:**  
KHALSA, SATNAM SINGH & GFK  
**Physical Address:**  
11 KHALSA WAY  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 776  
SANTA CRUZ, NM 87567

**Owner Name:**  
RODRIGUEZ, BENJAMIN P &  
**Physical Address:**  
1 C OLD ORCHARD LN  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 1393  
SANTA CRUZ, NM 87567

**Owner Name:**  
BROWN, CECIL JR OR EDITH G  
**Physical Address:**  
1 B OLD ORCHARD LN  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 718  
SANTA CRUZ, NM 87567

**Owner Name:**  
BUSTOS, LOURDES  
**Physical Address:**  
1 E SOMBRILLO RD  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 1348  
SANTA CRUZ, NM 87567

**Owner Name:**  
LEGACY OF YOGUI  
FOUNDATION  
**Physical Address:**  
27 NM 106  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 1910  
SANTA CRUZ, NM 87567

**Owner Name:**  
ROYBAL, DULCINIA V  
**Physical Address:**  
3 W SOMBRILLO RD  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
2201 WEDGEWOOD CT NW  
ALBUQUERQUE, NM 87120

**Owner Name:**  
WEISS, ALAN  
**Physical Address:**  
0 SOMBRILLO  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
PO BOX 351959  
LOS ANGELES, CA 90035 (3 lots)

**Owner Name:**  
AKAL SECURITY INC.  
**Physical Address:**  
22 E SOMBRILLO RD  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
7 INFINITY LOOP  
ESPANOLA, NM 87532

**Owner Name:**  
SOMBRILLO ELEMENTARY  
SCHOOL  
**Physical Address:**  
18670 US 84-285  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
20C NM 106  
ESPANOLA, NM 87532

**Owner Name:**  
CHENG, PAUL & ANNE  
**Physical Address:**  
0 E SOMBRILLO RD  
ESPANOLA, NM 87532  
**Owner Mailing Address:**  
11412 FIELDSTONE LN  
RESTON, VA 20191-3919

**Owner Name:**

KHALSA, GURU SANT SINGH &  
SUKHDEEP KAUR

**Physical Address:**

SR 106  
ESPANOLA, NM 87532

**Owner Mailing Address:**

1967 RAPID WATER WAY  
YUBA CITY, CA 95991-8232

**Owner Name:**

DREAMCATCHER CINEMA 10,  
LLC

**Physical Address:**

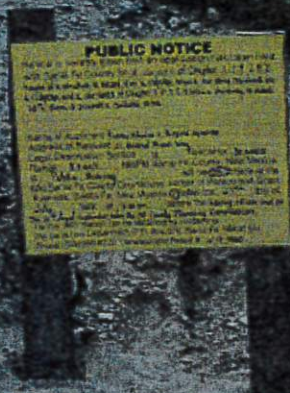
15 NM 106  
ESPANOLA, NM 87532

**Owner Mailing Address:**

BOX 427  
ELKHART, KS 67950

NBA-21





NBA-22





NBA-23



request meets this criterion as the site offers limited buildable area and meets all other aspect of the SLDC.

The inability to build on the property due to the requirements in Chapter 7, Section 7.17.10.4.1, demonstrates that they have met the variance criteria where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The access to the only buildable area on this property crosses three drainages. The terrain on this property consists of steep slopes due to drainages and offers minimal building locations. In order to construct any residence on this property a variance request is necessary. This causes peculiar and exceptional practical difficulties or exceptional and undue hardship on the applicant/owner, which meets Criterion 3, that the spirit of the SLDC is met. Therefore, staff recommends approval of the applicant's request for the variance.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written recommendation. The Santa Fe County Planning Commission will be holding a public hearing on this matter on September 21, 2017.

Hearing Officer Long, I stand for any questions you may have.

HEARING OFFICER LONG: Thank you. I know I had a question but I found it in the material, so thank you. Will the applicant come forward please and be sworn in?

[Duly sworn, Kevin Braun testified as follows:]

KEVIN BRAUN: I'm Kevin Braun and thank you for your time, Hearing Officer Long. We appreciate the recommendations of the staff. We don't have any comments at this time.

HEARING OFFICER LONG: Okay. Is this a house that you are building to sell? Not that that's relevant but since you're a builder, I'm wondering if this is a house that you're building for you or to sell.

MR. BRAUN: Yes, that's the plan. It's a long-term project. We understand that it's a difficult lot so we're giving ourselves several years to develop it properly and it's a desirable neighborhood so we feel like it's worth the effort.

HEARING OFFICER LONG: Great. Okay. Let's see if there is anyone here that came to speak to this request for a variance. And there is no one present who wishes to speak to this case. So that will close the public hearing. So I don't have any further questions. And good luck on this difficult lot.

MR. BRAUN: Thank you. Appreciate it.

- F. **CASE # V 17-5160 Prabhu Khalsa & Regina Spamer Variance.**  
**Prabhu Khalsa and Regina Spamer, Applicants, Request a Variance of the Sustainable Land Development Code Ordinance 2016-9 (SLDC) Chapter 7.17.9.3.2, Governing Height of a Structure, to Exceed 18 Feet on a Ridgetop, and to Allow a Two-Story Residence on a Ridgetop. The Applicants are also requesting a variance of Chapter 7.17.9.2.4 to Allow a Driveway to Disturb 30 Percent Slope to Access a Buildable Area. The property is Located at 01 Anand Nivas Way within the Vicinity of Sombrillo within Section 12, Township 20**



**North, Range 8 East (Commission District 1) [Exhibit 4: Trapp Letter in Opposition]**

Hearing Officer Long read the case caption.

MR. LOVATO: Thank you, Hearing Officer Long. The applicants are pursuing the request for a variance to allow a proposed 2,304 square foot residence to have a 22-foot pitched roof on a ridgetop, to allow a second floor in the residence, and to disturb 3,065 square feet of 30 percent slope for construction of their driveway on their 0.92-acre parcel.

The SLDC, Chapter 7, Section 7.17.9.3.2, states, "Structures on ridges, ridgelines and shoulders shall not exceed 14 feet in height and shall be limited to one story." This section further states, "A structure on a ridge or ridgeline that is a one-story pitched roof shall not exceed 18 feet in height so long as it is screened from view from an arterial or major arterial road."

The property is currently vacant. The proposed residence consists of two stories. The first level contains a kitchen, bedroom, laundry room, and living room/dining room. The second level consists of a master bedroom, master bathroom, two bedrooms, a study room, and bathroom. The structure is 24 X 48 on both levels for a combined total of 2,304 square feet.

The applicants are also requesting to disturb 30 percent slope to access their buildable area with a driveway which is 15' to 20' in width and 200' in length. Chapter 7.17.9.2.4, states, "Utilities, drainage structures, slope retention structures, and access roads and driveways may be located on a natural slope in excess of 30 percent so long as they disturb no more than three separate areas not exceeding 1,000 square feet each."

The first disturbance of 30 percent slope consists of 70 square feet and is consistent with the SLDC. The second occurrence is 2,378 square feet of 30 percent slope and exceeds the extent of allowable slope disturbance. The third disturbance is 617 square feet and is consistent with the SLDC. The combined total disturbance of 30 percent slope is 3,065 square feet.

The applicants state, "We are requesting these variances for permission to build a two-story home. Before we were made aware that we would require a variance, we looked at the homes of our immediate neighbors which are both two-story homes as well and we designed a two-story home for ourselves. We then paid for plans to be drawn up for the County to acquire a building permit. As we are already invested in the plans for the home, and there are already two other homes on the same hillside that are two story." In addition we would like to request a variance to disturb 30 percent slope to access the buildable area."

The applicants have addressed the variance criteria and staff has responded as contained in the report.

Recommendation: Height: Staff recommends denial of the requested variance. The applicants' 22-foot residence exceeds height requirements of the SLDC which allows a 14-foot one-story flat-roofed residence, or 18-foot pitched roof one-story residence. The applicant can create an alternative design so the structure meets height requirements.

Two Story: Staff recommends denial of the applicants' request. Structures on ridges, ridgelines, and shoulders shall be limited to one-story structures. The applicants'

proposal does not meet requirements of the SLDC; surrounding properties are not located on ridgetops and there is space for the applicant to build the same size house as a single story.

Disturbances: The application is not in strict compliance with the SLDC, but this application meets the criteria necessary for granting a variance. Due to the topography of the lot, the applicant is unable to build a home on their lot without a variance. Criterion 1 is that the request is not contrary to the public interest. The request meets this criterion as the site offers limited buildable area. The inability to build on the property due to the requirements in Chapter 7, Section 7.17.9.2.4, demonstrates that they have met the variance criteria where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The terrain on this property consists of steep slopes a minimal building location. In order to construct any residence on this property a variance request is necessary. This causes peculiar and exceptional practical difficulties or exceptional and undue hardship on the applicant/owner, which meets Criterion 3, that the spirit of the SLDC is met. Therefore, staff recommends approval of the applicant's request for the variance.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission will be holding a public hearing on this matter on September 21, 2017.

Hearing Officer Long, I stand for any questions.

HEARING OFFICER LONG: In regard to the two story request, under your recommendation it states that – oh, I think I understand now. You're saying that the surrounding properties that do have two-story residences on them are not on ridgetops.

MR. LOVATO: Hearing Officer Long, that is correct.

HEARING OFFICER LONG: All right. Thank you. Would the applicants come forward please?

[Duly sworn, Prabhu Khalsa testified as follows:]

PRABHU KHALSA: My name is Prabhu Khalsa. So first I would like to just say if we could avoid breaking code we would. We didn't want to request a variance. It's been a challenging process. Actually the next meeting is the day after our due date so I'm not even sure we're going to make it.

We definitely appreciate the staff's recommendation for allowing us to do the driveway. If you've been to the property and they have; John's seen it. It's kind of obvious that – it's pretty flat on top and it's kind of a steep slope on the east side but that's the only side we can get to the property from. But it's pretty flat on top. It's a really good buildable area which is where we'd like to build a house. So we basically need the variance to be able to get to our buildable spot.

As far as the two-story building, I said in my application that I look to my left and I look in front of me and there are two-story homes immediately, closer than the distance of this courtroom would be two two-story homes to the – so why they're not considered on a ridgetop but we are doesn't make any sense to me at all. And I heard you say earlier that the financial burden is no reason to grant a variance and so the fact that we already paid for our two-story plans, I guess, doesn't weigh in on this. But I felt that – what I argued in my response about justice and about the public good and everything and undue hardship. I don't see why – I don't understand why the two residences immediately next

to me on the exact same hillside, literally at the same – one of them is at the exact same level as me, why they're allowed to be built and I'm not.

I don't really understand what qualifies a ridgetop. If they're not a ridgetop and I am, what's the qualifying factor there? I mentioned that as far as a two-story home, I was talking about the sustainable aspect of it. I'm an environmentalist. I really care about doing this house as best I can. I'm yet to determine how big of a loan I'm going to get but I'm certain that I'm not going to get a big enough loan to do what I'd like to do, which is like rammed earth, or adobe or something like that, which is a little more sustainable. So I'll probably do probably more traditional 2 X 6 construction. But I plan to like spray foam the inside so it's very low energy usage.

What I get from a two-story home in terms of sustainability is first I have half the roof size, because I have one roof for two stories. Second, what I get is the radiant heat on the first floor will radiate up towards the second floor so I may not even need to use heat on the second floor. Also what I get is I designed the house myself and then paid an architect to do the official plans. What I also get is that every bedroom has a south-facing window and they mentioned that the County's response, saying that I could do a skylight or a clerestory and I thought skylights are not sustainable at all. The amount of energy that gets lost through the skylight, so I'm planning to spray foam my ceiling and my roof so I can have like an R-50 of something on my roof so that the heat doesn't come in in the summer and that the heat doesn't escape in the winter. Skylights are not sustainable at all. They're a terrible design if you're trying to build a green home.

And as far as clerestory, I guess that might work but I'd have to do a flat roof and I don't want to mess with a flat roof. They're very difficult. You have a parapet and then you have a flat roof and the parapets always crack. They always leak. I know because I have my small, 500 square foot house that I live in now has a parapet and I had to basically get metal caps custom made to cover the parapets because I just didn't want to restucco every five, ten years or something.

So I actually took some pictures today before coming in. If you'd like to see them on my phone. This thing kind of shows – this is my property here. This is the existing driveway that goes kind of down and then up to the neighbors. And we're looking to build the driveway here. And then we're looking to build like right here. And so if we're building it kind of right in the middle of the lot it's really like 20 or 30 feet [] and then right here is a two-story home. Also, actually the distance from here to this home here is much bigger and actually that's what I have on my phone, if I can approach you and show you the picture.

HEARING OFFICER LONG: Sure. They won't be in the record but I'll take a look at them.

MR. KHALSA: Okay. I can email them in if that's allowed. So this is a picture – so here's my neighbor's two-story house. See that car – the distance between this car.

RACHEL BROWN (Deputy County Attorney): Madam Hearing Officer.

HEARING OFFICER LONG: Yes.

MS. BROWN: Can we have the comments on the record? Perhaps he could share your microphone.

HEARING OFFICER LONG: Yes. Please speak into the microphone.

MR. KHALSA: Okay, so I'm showing a picture of my neighbor's house and the distance between that house and this car in the current driveway. And then I'd like to show you this other picture I took. Here's the car again and here's my -- where I'm proposing to build. If this distance is considered a ridgetop but this distance isn't, I'm not really sure why -- I just don't understand it. I don't know what qualifies as a ridgetop. And so I definitely feel it would be unjust to consider my lot. So this is the top of their property here. It's literally the same height and just a few feet away from that two-story house. So if I'm standing right where the build site is, this is a two-story house and that's a two-story house.

So we designed it. We had no idea of codes when we designed the house. We just thought there's two two-story houses so why can't we just build a two-story house.

HEARING OFFICER LONG: All right. Let me ask you, we received a letter from Mr. James Trapp that is opposing the variance request and he says his property is in direct eyesight to the west, or your property is direct eyesight to the west of his.

MR. KHALSA: I can actually show you -- if I'm allowed to approach again.

HEARING OFFICER LONG: Yes. Bring the microphone with you if you're going to speak.

MR. KHALSA: Well, first of all I'd like to say that I feel like his family has a little bit of a grudge against the Sikh community. I think he might have just seen my name and said I'm going to oppose this. His father was my immediate neighbor when I was a child.. When I was seven years old he came out yelling and screaming at me and my brother for stealing his cherries which we didn't take his cherries, but anyway, he was a very angry man and his son is a little bit upset about the whole thing too. So I think it's more to do with a grudge than anything else. We're actually pretty far away from him, where this property is. Any well or septic that I have won't affect him at all. We're hundreds of feet away from him.

So his property is this one.

HEARING OFFICER LONG: So we're looking at the vicinity map on the first page of the report.

MR. KHALSA: So Mr. Trapp's property is this one, next to Khalsa Way. Khalsa Way is where I grew up, just down the road from there. This is where we're building. So I am west of his property but where his home is is east of these other properties. So what he's looking at from his home, he might see my property when he is driving up his driveway but he won't see it when he's looking out his bedroom window.

HEARING OFFICER LONG: Okay. Thank you. I just wanted to determine where that property was. Did you have a comment, Vicki?

MS. LUCERO: Hearing Officer Long, I just wanted to clarify and answer kind of a question that the applicant had in regards to what defines a ridgetop. A ridgetop is not based on the elevation of the site but it's based on the slopes around the buildable site. If there's 30 percent slopes on the sides of the buildable area then we consider it a ridgetop.

MR. KHALSA: What constitutes the sides of a buildable area/

MS. LUCERO: I'm sorry. What was the question?



MR. KHALSA: You said if it's 30 percent or greater slope on the sides of a buildable area. What defines the sides of a buildable area? Like how far away from the home?

MS. LUCERO: It would basically be adjacent to the buildable area. So you have your flat area on the top where you're building on, and then it drops off on both sides to 30 percent slopes.

MR. KHALSA: Okay, but both of my immediate neighbors have the exact same thing going on. It's the same hillside. It's a slope – if you look at this other two-story house like immediately in front of me, their driveway, it's greater than 30 percent slope right there.

HEARING OFFICER LONG: Is it possible those houses were build some time ago when the code requirements could have been different?

MR. LOVATO: Hearing Officer Long, if you look at Exhibit 2 in your packet, it defines the property and shows you the 30 percent slope. The property Mr. Khalsa is talking about is north of that location and I have analyzed and came up with many questions of what is ridgetop on this lot and after looking at the slope analysis done by an engineer it appears the 30 percent slopes on the neighboring lots were created man-made. So we don't consider man-made slopes as part of that component. And so when they cut the driveway and they cut the building pad on top of that neighboring property those slopes were created by man-made slopes. So I also did some research and looked up properties associated with permitting on lots. The property on which question is north of that actually has recent permits but in further permitting it appears to be legal non-conforming.

And I did contact NMDOT to see if we can obtain some aerial photographing to see when those structures were constructed and I had no luck in doing so, so that's just the basis where it's at right there on that.

HEARING OFFICER LONG: So you're saying that the lot is a legal non-conforming lot to the north?

MR. LOVATO: The actual structure.

HEARING OFFICER LONG: The structure is.

MR. LOVATO: Right. That's what we're feeling or justifying is that. However, even though those are man-made slopes that were created.

HEARING OFFICER LONG: On the property to the north as well?

MR. LOVATO: Correct.

HEARING OFFICER LONG: All right. Thank you for taking such a careful look at that. Why don't you just wait a moment and let me see if there's anyone here that came to speak to this application, because you may want to – okay there's two people here. All right. Why don't you come forward, both of you, to the front row, if you're both going to speak, or all three of you. And then you can be sworn in at the same time. Yes. That's fine. Just indicate that and you can be sworn in right where you're standing if you raise your right hand.

[Duly sworn, Manuel Vigil testified as follows:]

MANUEL VIGIL: My name is Manuel Vigil. I am speaking on behalf of my aunt, Rosita Sandoval.

HEARING OFFICER LONG: And is this your aunt with you, that's standing with you?

MR. VIGIL: Yes, ma'am

HEARING OFFICER LONG: All right. Go ahead.

MR. VIGIL: Her concerns, she's against this due to the fact that she feels that she's being overlooked on her property. Her property is located a little bit northeast, about may 100 feet from this gentleman's property and her concerns are construction. It's all downhill from the property up top down to her property. The driveway where he wants to get access to build, to get into the construction, there's many utilities in that area – gas lines, phone lines. In fact the County just installed a fire hydrant right at the roadway itself.

Her concerns are also are because of the area it's going to be a septic system that's going to be installed for sewage. It's possible, it could happen that there's going to be a crack in that structure. That sewage can go down hill and contaminate her will because like I explained, everything is downhill from the property itself, from #1 down to my aunt's property.

HEARING OFFICER LONG: And Mr. Vigil, we're here not on the building permit but on the development of the site but on the variance request for a two-story house as well as disturbing 30 percent slopes from the driveway. So I understand those concerns but they're not directly applicable to this application. Just so that you know.

MR. VIGIL: Okay, well, my question on that then on the 30, the proposal is to make the driveway up that slope to begin construction. Correct?

HEARING OFFICER LONG: That would be the access to the home. Yes.

MR. VIGIL: Well, that's the area that she has concern on because the utilities are right in that area where this request is.

HEARING OFFICER LONG: Okay. Thank you. All right, ma'am. Would you come forward?

[Previously sworn, Megeath testified as follows:]

MEGEATH BROCKWAY: Hi. My name's Megeath Brockway and my concern also is in the driveway because Rose's property is right – there's a little access road that goes down there and Rose's property is right on the bottom. So we right now have issues when it rains like it is now. There's just a river that goes down. So depending on the design of your driveway – I'm just concerned that that will create more of a funnel down to that bottom and just be destructive. Other than that, I'm excited to have them as neighbors, so that's great.

HEARING OFFICER LONG: Okay. Thank you. Is there anyone else that wishes to speak to this application. If not all let the applicant sum up. Nobody else? Would you come forward please.

MR. KHALSA: so as I stated earlier, I'm kind of passionate about environmentalism and the first thing I thought about, actually, was runoff when I bought that property. I thought, wow, someday when I do my driveway I'm going to have to really account for runoff and if I do it properly I might be able to do an improvised wetland and maybe plant some bamboo and stuff. When we were told that we needed a variance to do the driveway I don't remember if it was required or something for us to get an engineer, so we hired an engineer. It was an additional expense but she did a great job. She designed the driveway and she did account for the runoff and I plan to basically

watch it my whole life. We'd like to raise the child that we're expecting soon and any future child we have on that property, and I plan to always make constant improvements.

And as far as septic. I think that's a concern in northern New Mexico. It's definitely – I don't think it's related to this variance. I think if that's a problem then the County does need to change it's code but we plan to be completely compliant in terms of the code for septic and – so I think right now, in the Exhibit 2 you can see like a little ponds that the engineer designed for runoff.

So actually, I plan to do a graywater system, so most of our household water usage will go to trees and not back into the – water actually – graywater has a much better chance, any water has a much better chance or remediating in the ground, especially around mulch and other things that have bacteria than just sitting in a septic tank down in the ground. Even black water would have a better chance of being remediated above ground than in a septic.

So we would hardly use the septic except for the blackwater as required. I've considered composting toilets and everything and that may be something in the future. They need a little better development than currently. My brother knows a lot about composting toilets and he says the technology is decent but it's a little unreliable so we will need the septic for flushing toilets.

But otherwise, yes. I plan to have as minimal impact as possible with this house and so I guess that's it. Oh, actually, I did want to address what John mentioned to you about the other house not being considered on a ridgetop. There's evidence, just by looking at the property that perhaps the 30 percent slope we're trying to disturb was also created by people moving earth, including the neighbor who moved the earth to build his two-story house. If you look at it, it doesn't look completely natural. There's somewhat of an existing driveway there now, but it's really steep and it's north-facing and I wanted to do a different driveway that's south-facing so that the snow will melt in the winter and the County code, I think on that is it has to be a ten percent slope. We managed to design a very long – it's probably like an eight percent slope. But there was already a driveway there at one point.

HEARING OFFICER LONG: Ma'am, will you come forward just so we can get that on the record, and state your name again please.

MS. BROCKWAY: Megeath Brockway. We're you going to take part of the hill off, so that it's level with Krishen's property?

MR. KHALSA: So what we're trying to do is – what we'd like to do is basically – so here's the property. Well, these are the engineer's plans. So we're basically just kind of carving into the hillside a little bit and then she recommended here a cut-back, which will reduce erosion, and then she said there's these kind of – I think they're made of coconut fibers, they're these mats that you can put down to prevent erosion. And then I'm planning to plant – I was thinking to plant jujubes because they're a special kind of tree to me, that are used elsewhere for erosion control. So I'm going to put the mats in then I'm going to plant trees. I'm going to plant hundreds of trees on this property over time, between my graywater and rainwater catchment, it's going to turn into a green oasis.

HEARING OFFICER LONG: Can I just say maybe you all can talk after the hearing's over since this is unrelated and you're all here, so you may just want to meet up out in the hallway and get your questions answered.

MR. KHALSA: Thank you.

HEARING OFFICER LONG: Okay. Thank you very much. Thank you all for coming today. All right, that will conclude this case then unless there's anything else staff wanted to offer. All right.

**G. Adjournment**

With no further business, Hearing Officer Long adjourned the meeting at approximately 3:45 p.m.

Approved by:

  
Nancy Long, SLDC Hearing Officer  
Santa Fe County

**RECOMMENDED DECISION AND ORDER**

**THIS MATTER** came before the Sustainable Land Development Code Hearing Officer for hearing on July 27, 2017, on the application of Prabhu Khalsa and Regina Spamer (Applicants) for variances of the Sustainable Land Development Code (SLDC). The Applicants seek a variance of Chapter 7, Section 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, so as to allow a two-story residence on a ridgetop; and a variance of Chapter 7.17.9.2.4 to allow a driveway to disturb a 30% slope to access a buildable area. The property is located at 01 Anand Nivas Way (Property) within the Vicinity of Sombrillo, Section 12, Township 20 North, Range 8 East (Commission District 1). The Hearing Officer, having reviewed the application, staff reports, and having conducted a public hearing on the request, finds that the application should be granted in part and denied in part, and makes the following findings of fact and conclusions of law:

1. On May 30, 2017, the Applicants submitted their application for the variances.
2. As required by the SLDC, the Applicants presented the application to the Technical Advisory Committee (TAC) on April 6, 2017, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, Section 4.4.4.3 Pre-application TAC Meeting and Table 4-1.
3. Notice requirements of the SLDC were met pursuant to Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing. In advance of the hearing on the application, the Applicants provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the Property,



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beginning on July 2, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on July 7, 2017, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject Property and a list of persons sent a mailing is contained in the record.

4. The following SLDC provisions are applicable to this case:

A. Chapter 7, Section 7.17.9.2.4 (Standards) states:

Utilities, drainage structures, slope retention structures and access roads and driveways may be located on a natural slope in excess of thirty percent (30%) so long as they disturb no more than three separate areas not exceeding 1,000 square feet each.

B. Chapter 7.17.9.3.2 (Height) states:

Structures on ridges, ridgelines, and shoulders shall not exceed fourteen (14) feet in height and shall be limited to one story. However, a structure on a ridge or ridgeline that is a one story pitched roof structure shall not exceed eighteen (18) feet in height so long as the structure is screened from view from an arterial or major arterial road.

C. Chapter 4, Section 4.9.7.1 (Variances, Purpose), states:

The purpose of this Section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

D. Chapter 4, Section 4.9.7.4, Variances, Review criteria states:

A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

1. where the request is not contrary to the public interest;
2. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and

exceptional practical difficulties or exceptional and undue hardship on the owner; and

3. so that the spirit of the SLDC is observed and substantial justice is done.

E Chapter 4, Section 4.9.7.5 Variances, Conditions of approval states:

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

5. The Applicant and Staff have addressed the variance criteria on the height/two-story variance as follows:

- a. *Where the request is not contrary to the public interest.*
  - i. Applicants stated the height of the proposed building is consistent with the height of the two other homes on either side of the property, which exceed 24' in height.
  - ii. Staff stated that although the two other homes exceed 24' in height, neither of those homes is on a ridgetop. Therefore, those homes are not required to meet height limitations of 14' flat roof or 18' pitched roof with a single-story design.
- b. *Where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner.*



i. Applicants stated they have paid for plans for the proposed construction implementing a passive solar design and are not financially able to pay for additional plans to redesign the home without a passive design.

ii. Staff disagreed with the Applicants' financial argument and stated that the site contains a buildable area of 4,000 square feet which would accommodate a one-story structure with an 18' pitched roof with south facing façade and a solar design.

c. *So that the spirit of the SLDC is observed and substantial justice is done.*

i. Applicant stated that the proposed construction would be harmonious with the two neighboring properties, which exceed 24' in height. The proposed construction would allow the proposed passive solar and sustainable design.

ii. Staff responded that because the neighboring properties are not on ridgetops, those properties are not subject to current standards for ridgetop construction. The Code requires the proposed construction to comply with the Code.

6. The Applicant and Staff have addressed the variance criteria on the disturbance of 30% slope variance as follows:

a. *Where the request is not contrary to the public interest.*

i. Applicant stated the proposed driveway is needed to reach the building site.

ii. Staff agreed that there is no other access to the buildable area on the property without disturbing 30% slope while also being able to meet grade requirements.

b. *Where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner.*

i. Applicant stated that the only option is to build the driveway on the East side of the property, but the driveway cannot be built without disturbing that slope.

ii. Staff agreed that there is no other possible way for the Applicants to meet the requirements of the SLDC.

c. *So that the spirit of the SLDC is observed and substantial justice is done.*

i. Applicant stated they had invested in professional plans for an engineer and have a sustainably designed driveway and home.

ii. Staff agreed that there is no other access to the property and disturbance of slope is a necessity to access buildable area.

7. At the public hearing, a letter from James A. Trapp in opposition to the application was presented and is contained in the record.

8. Two individuals spoke at the public hearing, expressing concerns about potential run off from the site and about the disturbance of slopes that will occur with the driveway construction.

9. Based on the application and the evidence and testimony presented at the public hearing as described herein, the Hearing Officer finds there is sufficient evidence of extraordinary and exceptional conditions that would result in undue hardship to the Applicants from a strict application of the Code in regard to the 30% slope variance request for construction of the driveway and finds the variance criteria is met. The Hearing Officer finds there is insufficient evidence of extraordinary and exceptional conditions of the Property that would result in undue hardship to the Applicants from a strict application of the Code in regard to the height of the proposed construction and the two-story design.

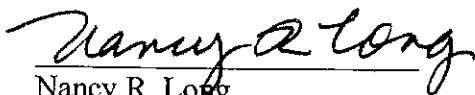


WHEREFORE, the Hearing Officer, based on the evidence presented, recommends as follows:

A. Approval of a variance of Chapter 7.17.9.2.4 to allow a driveway to disturb a 30% slope to access a buildable area. The Application meets the criteria necessary for granting a variance.

B. Disapproval of a variance of Chapter 7, Section 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two-story residence on a ridgetop. The Applicants' proposed 22' two-story residence exceeds the height requirements of the SLDC. The SLDC provides that structures on ridges, ridgelines, and shoulders shall be limited to one-story structures and the Applicants have failed to meet the variance criteria of the SLDC with regard to this variance request.

Respectfully submitted,



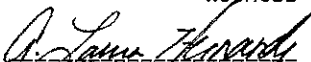
Nancy R. Long  
Hearing Officer

Date: 8-15-17

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

SLDC HEARING OFFICER O  
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I Hereby Certify That This Instrument Was Filed for  
Record On The 16TH Day Of August, 2017 at 10:06:50 AM  
And Was Duly Recorded as Instrument # 1833807  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Geraldine Salazar  
Deputy  County Clerk, Santa Fe, NM

