

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: October 19, 2017

TO: Planning Commission

FROM: John M. Salazar, Development Review Specialist Sr. JMS

VIA: Penny Ellis-Green, Growth Management Director V2 for PEG
Vicki Lucero, Building and Development Services Manager V2

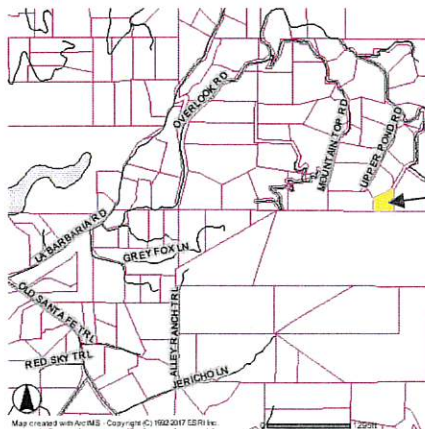
FILE REF.: CASE # V 17-5200 W. Gordon Harris Variances

ISSUE:

W. Gordon Harris, Applicant, Sommer, Karnes & Associates, LLP, Agent, request a variance of Ordinance No. 2016-9, the Sustainable Land Development Code Chapter 7, Section 7.11 Road Design Standards, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade. An additional variance is being requested of Chapter 7, Section 7.17.9.3 Height to exceed thirty feet on land that has a natural slope of fifteen percent or greater.

The property is located within The Overlook Subdivision at 191 Overlook Rd. via La Barabaria Rd. within Section 16, Township 16 North, Range 10 East (Commission District 4), SDA-2.

Vicinity Map:



Site Location

SUMMARY:

The Applicant is the owner of the property at 191 Overlook Road as indicated by the warranty deed recorded in the records of the Santa Fe County Clerk on November 25, 1997, in Book 1432, Pages 717-718. The Applicant is requesting a variance to allow a roadway to be less than 20' in road width as certain areas along Overlook Road are only 14' wide, to allow the roadway to exceed a 9% grade as there are multiple areas along Overlook Road which exceed 15% due to the mountainous terrain and a height variance to exceed thirty feet on land that has a natural slope of 15% or greater. The existing residence is a multi-level home which steps down and was permitted in 1991. The proposed location for the new garage is an existing leveled off area on the North elevation where the Applicant currently parks however it is stepped down from the existing residence.

The property at 191 Overlook Road consists of 2.6 acres within the vicinity of La Barbaria Road in the Residential Fringe zoning district.

The variances sought by the Applicant are regarding Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) and Chapter 7, Section 7.17.9.3 Height.

The variance sought by the Applicant is regarding Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3). The Applicant is requesting variances to allow a roadway to be less than 20' in width, and to allow the roadway to exceed a 9% grade. Chapter 7, Section 7.11.11.5 does allow a reduction of road easement to no less than 20 feet if adequate drainage control is provided for residential development.

This matter came before the Hearing Officer on August 24, 2017. The decision of the Hearing Officer was to recommend approval of the variances for Chapter 7, Section 7.11, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) and Chapter 7, Section 7.1.9.3 Height.

The Hearing Officer found that there was sufficient evidence of extraordinary and exceptional conditions of the Property that would result in undue hardship to the Applicant from a strict application of the Code and that the Applicant meets all the variance criteria of the SLDC for both variance requests.

The Applicant's agent states that the Overlook Subdivision is a legacy development with internal roads that do not meet width or slope requirements of the SLDC. They continue to state that the existing roads cannot be brought into conformance due to the steep and mountainous conditions of the Overlook Subdivision. Overlook Subdivision was created in 1975 before any road design standards existed. The roads throughout the subdivision vary in width from 14' to 23'. The road grade exceeds 15% in various locations as well. These conditions have been triggered due to the development permit request for an attached garage addition.

The Applicant is proposing a single-story garage connected to the lowest part of the existing home. The connection is made by a stairway from the garage to a walkway above the roof

of the garage and connected to the existing deck on the residence. Land Use Staff has indicated that the connection to the existing residence creates the need for a variance as the total height of the proposed structure would measure 43' 11". The allowable height under the SLDC is 30 feet from the highest point of the structure to the lowest point at natural or finished grade on land that has a natural slope of 15% or greater. The current height of the multi-level residence is 36' 7" and was permitted in 1991.

Growth Management Staff is currently working on changes to Chapter 7, Section 7.11 Road Design Standards in order allow lower minimum road widths and slopes to be greater than 9% on existing roadways within mountainous terrain.

The applicable requirements under the Santa Fe County Sustainable Land Development Code, Ordinance No. 2016 (SLDC), which governs this Application are the following:

Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) (Exhibit 5)

Chapter 7, Section 7.17.9.3.1 Height (Exhibit 6)

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.

Chapter 4, Section 4.9.7.1, Variances, 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 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, (Exhibit 7) Variance 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) where authorized by NMSA 1978, Section 3-21-8(C):

1. Where the request is not contrary to 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.

Chapter 4, Section 4.9.7.5 Variance 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 takes affirmative action consistent with the approval.

The Applicant's Agent addresses the Variance Criteria below as followed and Staff provides its interpretation of how the proposal meets or fails to meet the variance criteria:

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

Applicant's Response for Access Roads:

The road in this legacy development would not be able to meet the SLDC width and slope requirements, as the development has existed for decades before the SLDC standards were adopted. The public interest in this matter relates to the accessibility mainly for emergency vehicles. The density of the development is not being increased by the addition of a garage. As noted above, it is not possible to bring the roadways into conformance, but the variance request is not contrary to the public interest because the request does not increase the burden that already exists for emergency service vehicles.

Staff's Response for Access Roads:

The Road Design Standards have been created to provide for the safety of vehicular traffic while providing safe and efficient access to the properties. Per Table 7-13, a Local road requires two 10' lanes with a 50' right of way and a 3" minimum of aggregate basecourse. Ovlerlook Subdivision was created in 1975 before any road standards had been imposed by Santa Fe County however Chapter 7, Section 7.11.11.1.4 states for such instances: When a tract to be developed borders an existing road having a right-of-way insufficient to conform to the minimum standards required by these regulations, which right-of-way will be used by the proposed development, sufficient right-of-way shall be platted, and dedicated or reserved in such a way as would make the resulting right-of-way or road conform with the requirements of this section. The width of 14' is only sufficient for a one way driveway per Code and does not provide adequate access. In addition, a 15% grade exceeds allowable grade requirements and emergency vehicles may not be able to access the property.

Applicants Response for Height:

The height variance will not allow for an increase in the height of the highest part of the home; the top of the home will remain at the same height, and the only change will be to lower part of the structure. Height limitations are imposed for the purpose of limiting the visibility of structures. The request for the garage attached to the lowest part of the home does not increase visibility of the home from any location. The public interest in limiting the visibility of development is persevered because the structure will not be any more visible.

Staff's Response for Height:

The Code states: 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. Although the residence already exists, the proposed garage addition will exceed the 30 foot height limit by nearly 14 feet when viewing the structure from the North elevation. The existing residence was permitted in 1991 and has a height of 36 feet, 7 inches.

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;*

Applicant's Response for Access Roads:

The Overlook Subdivision is in a steep and mountainous region of the county. The grades of the existing roadways are an extraordinary condition of the property, which makes any normal residential use of the property (like having a garage), without the variance- impossible. This will result in practical difficulties and an undue hardship on Mr. Harris.

Staff's Response for Access Roads:

Chapter 7, Section 7.11.2 states: "Rural road standards shall apply to all roads within SDA-2 and SDA-3. Local roads serving a major subdivision, multifamily development or non-residential use over 10,000 sq. ft. in SDA-2 and SDA-3 may be required to provide paving, sidewalks or bike lanes for continuity if existing have this level of improvement." The roads built within the Overlook Subdivision were constructed pre-code however it does not negate the fact that the current standards have been put in place to allow the Fire Department better access when responding to emergency situations and to make roads safer when multiple vehicles are traveling on non-conforming roads.

Applicant's Response for Height:

The property is in a steep and mountainous region of the county. The slopes on the lot are an extraordinary condition of the property, which make the addition of a garage in any other location practically impossible to incorporate into the existing development on the property. Any attempt to relocate the proposed garage will result in an inordinate, unnecessary amount of difficult grading (cuts through solid rock) and will increase the visibility of the proposed structure. This will result in practical difficulties and an undue hardship for Mr. Harris.

Staff's Response for Height:

Should the garage not been connected to the existing residence, a variance would not be required. Since the Applicant is proposing to connect the two structures with a staircase, it would be considered one structure thus resulting in a total height of 43' 11". Staff had shared this information with the Applicant and suggests the garage be constructed as a separate structure.

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

Applicant's Response for Access Roads and Height:

The SLDC is designed to specifically provide protection of environmental, cultural, historical and archeological resources, lessening of air and water pollution, assurance and conservation of water resources, prevention of adverse climate change, promotion of sustainability, green development, and to provide standards to protect from adverse public nuisance or land use effects and impacts resulting from public or private development within the County.

Staff's Response for Access Roads:

The regulations within the SLDC are designed to provide for the safety of both vehicular and pedestrian traffic as well as safe and efficient access to property while ensuring that building projects are planned, designed, constructed, and managed to minimize adverse environmental impacts. The width of 14' along certain areas of Overlook Road is only sufficient for a one way driveway per Code and does not provide adequate access. In addition, a 15% grade exceeds allowable grade requirements and emergency vehicles may not be able to access the property.

Staff's Response for Height:

Full view from the Northern elevation of the residence would be 43'11" instead of the 30' allowed by Code. The location for the proposed garage would increase visibility by nearly 14'.

As required by the SLDC, the Applicants presented the Application to the Technical Advisory Committee (TAC) on May 18, 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 August 9, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 9, 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.

This Application was submitted on June 23, 2017.

RECOMMENDATION:

Staff recommends denial of the Applicants request for a variance to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade.

Staff recommends denial of a height variance to exceed thirty feet on land that has a natural slope of 15% or greater and recommends that the Applicant construct an unattached garage which would not require a variance.

The decision of the Hearing Officer was to recommend approval of the variances for Chapter 7, Section 7.11, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) and Chapter 7, Section 7.1.9.3 Height.

If the decision of the Planning Commission is to follow the Hearing Officer's recommendation of approval, staff recommends the following conditions be imposed:

- 1. The Applicant shall obtain a development permit.**
- 2. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application**

EXHIBITS:

1. Applicants Request
2. Site Plan
3. Proposed Plans
4. Aerial of Site/Slope Analysis
5. Chapter 7, Table 7-13 Rural Road Classification and Design Standards
6. Chapter 7, Section 7.17.9.3 Height
7. Chapter 4, Section 4.9.7.4, Variance Review criteria
8. Noticing
9. Hearing Officer Minutes
10. Hearing Officer Findings of Fact

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johnrf@sommerkarnes.com
Of Counsel

June 23, 2017

VIA HAND DELIVERY

Penny Ellis Green
Land Use Administrator
Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87501

**Re: Variance Requests of Gordon Harris
191 Overlook, Santa Fe, New Mexico**

Dear Ms. Ellis Green:

This letter is delivered in connection with the variance application for our client, Mr. Gordon Harris, who is the owner of the real property known as 191 Overlook Road, which is in the Overlook I subdivision in Santa Fe County.

Mr. Harris requests two variances: (1) to exceed the allowable height of the structures on the property and (2) to vary the requirement that he make offsite road improvements to Overlook Road with respect to width and slope of required access roads. We here address the variance criteria for both variances.

As shown in the plans enclosed with this letter, Mr. Harris proposes to add a single-story garage connected to the lowest part of his existing home. The connection is made by a stairway from the garage to a walkway above the roof of the garage and connected to the existing deck on the home. Santa Fe County Land Use staff has indicated that it is the connection that creates the need for a variance – if the connection was not proposed, no variance would be necessary. With the connection, the total height of the structure is 36'7", and the allowable height under the SLDC is 30 feet. The proposed structure will be 43'11", and therefore, requested variance to the height limitation is 13'11". In essence, Mr. Harris proposes to add just over seven feet (7") to the overall, existing height.



NBB-8

SOMMER, KARNES & ASSOCIATES, LLP

Ellis Green, Penny

June 23, 2017

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Additionally, as you know, this request to add a garage triggers the SLDC's roadway requirements for offsite, access roads. Overlook Subdivision is a legacy development, with internal roads that do not meet SLDC's width or slope requirements and cannot be made to conform because of the steep and mountainous conditions of the Overlook.

Section 4.9.7 provides as follows:

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.

The following addresses each of the foregoing criteria for each variance requested.

A. Criterion No. 1 -- The request is not contrary to the public interest.

1. Height Variance. The height variance will not allow for an increase in the height of highest part of the home; the top of the home will remain at the same height, and the only change will be to lower part of the structure. Height limitations are imposed for the purpose of limiting the visibility of structures. The request for the garage attached to the lowest part of the home does not increase the visibility of the home from any location. The public interest in limiting the visibility of development is preserved because the structure will not be any more visible.
2. Access Roads. The road in this legacy development would not be able to meet the SLDC width and slope requirements, as the development has existed for decades before the SLDC standards were adopted. The public interest in this matter relates to the accessibility mainly for emergency vehicles. The density of the development is not being increased and so the burdens upon the emergency services are not increased by the addition of a garage. As noted above, it is not possible to bring the roadways into conformance, but the variance request is not contrary to the public interest because the request does not increase the burden that already exists for emergency service vehicles.

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SOMMER, KARNES & ASSOCIATES, LLP

Ellis Green, Penny

June 23, 2017

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B. Criterion No. 2. The variance request is due to extraordinary and exceptional situations or conditions of the property and the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on Mr. Harris.

1. Height Variance. The property is in a steep and mountainous region of the county. The slopes on the lot are an extraordinary condition of the property, which make the addition of a garage in any other location practically impossible to incorporate into the existing development on the property. Any attempt to relocate the proposed garage will result in an inordinate, unnecessary amount of difficult grading (cuts through solid rock) and will increase the visibility of the proposed structure. This will result in practical difficulties and an undue hardship on Mr. Harris.
2. Access Roads. The Overlook Subdivision is in a steep and mountainous region of the county. The grades of the existing roadways are an extraordinary condition of the property, which make the any normal residential use of the property (like having a garage)– without the variance – impossible. This will result in practical difficulties and an undue hardship on Mr. Harris.

C. Criterion No. 3 -- The spirit of the SLDC is observed and substantial justice is done.

The spirit of the SLDC is captured in the following statement found in the SLDC:

The SLDC is designed to specifically provide protection of environmental, cultural, historical and archeological resources, lessening of air and water pollution, assurance and conservation of water resources, prevention of adverse climate change, promotion of sustainability, green development, and to provide standards to protect from adverse public nuisance or land use effects and impacts resulting from public or private development within the County.

The variances requested by Mr. Harris observes these expressed purposes of the SLDC. Specifically, Mr. Harris proposes the addition of a single-story garage on the lowest part of this property in an area that is already graded. The proposal minimized the impact of the garage from a visual and environmental standpoint. Further, it does not intensify the existing residential impact on the property, i.e., no additional residents or occupants will be added. The variance request observes the purposes of the SLDC as expressed above, while allowing Mr. Harris to make a normal and typical use of his home and property. It is fair and just to grant the variance.

SOMMER, KARNES & ASSOCIATES, LLP


Ellis Green, Penny

June 23, 2017

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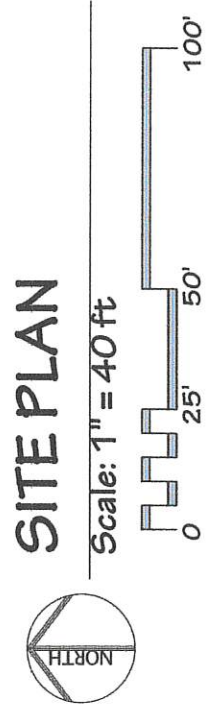
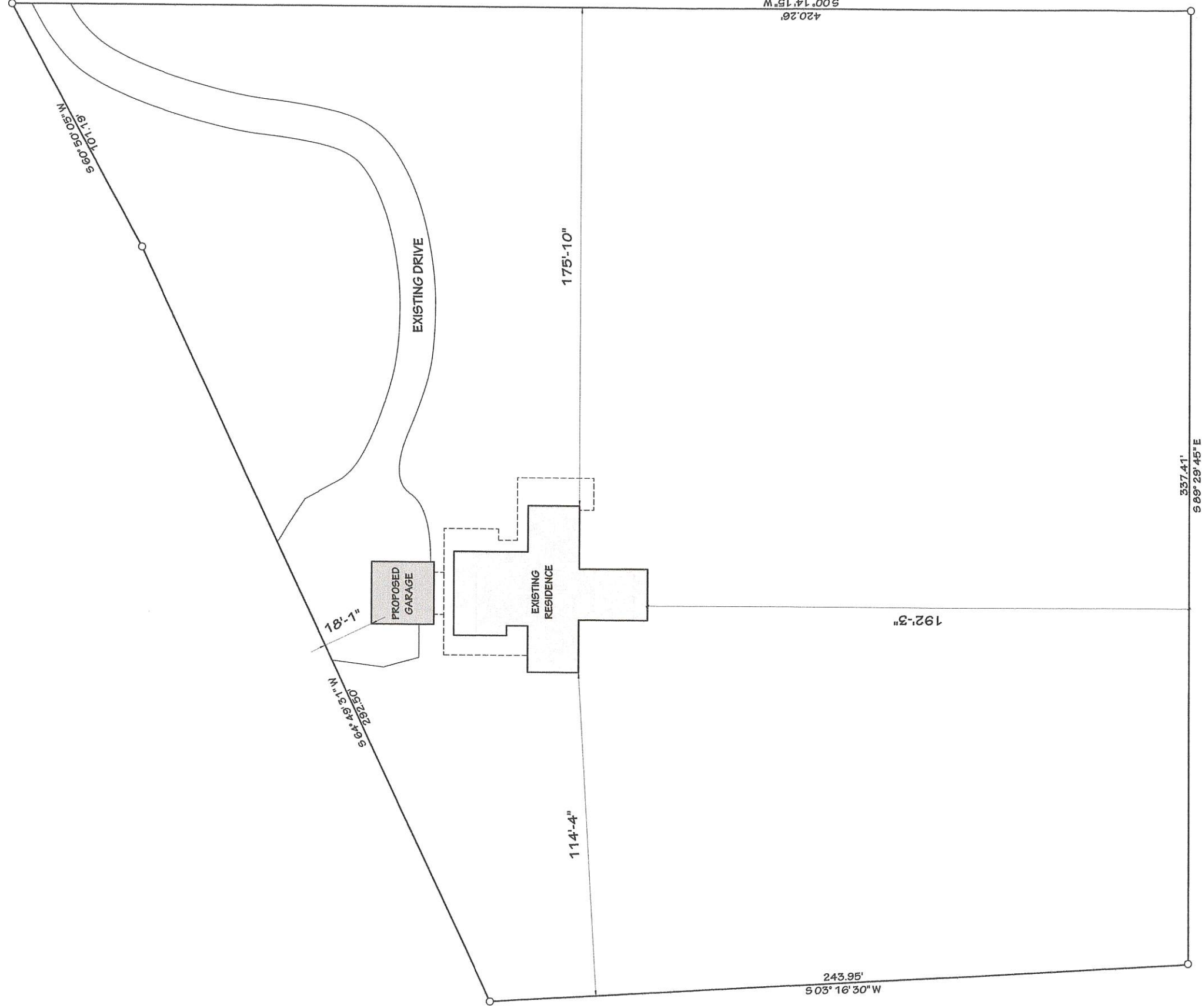
Please let us know if further information is needed.

Sincerely,

A handwritten signature in blue ink that reads "Karl H. Sommer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Karl H. Sommer

cc: Gordon Harris and Will McDonald

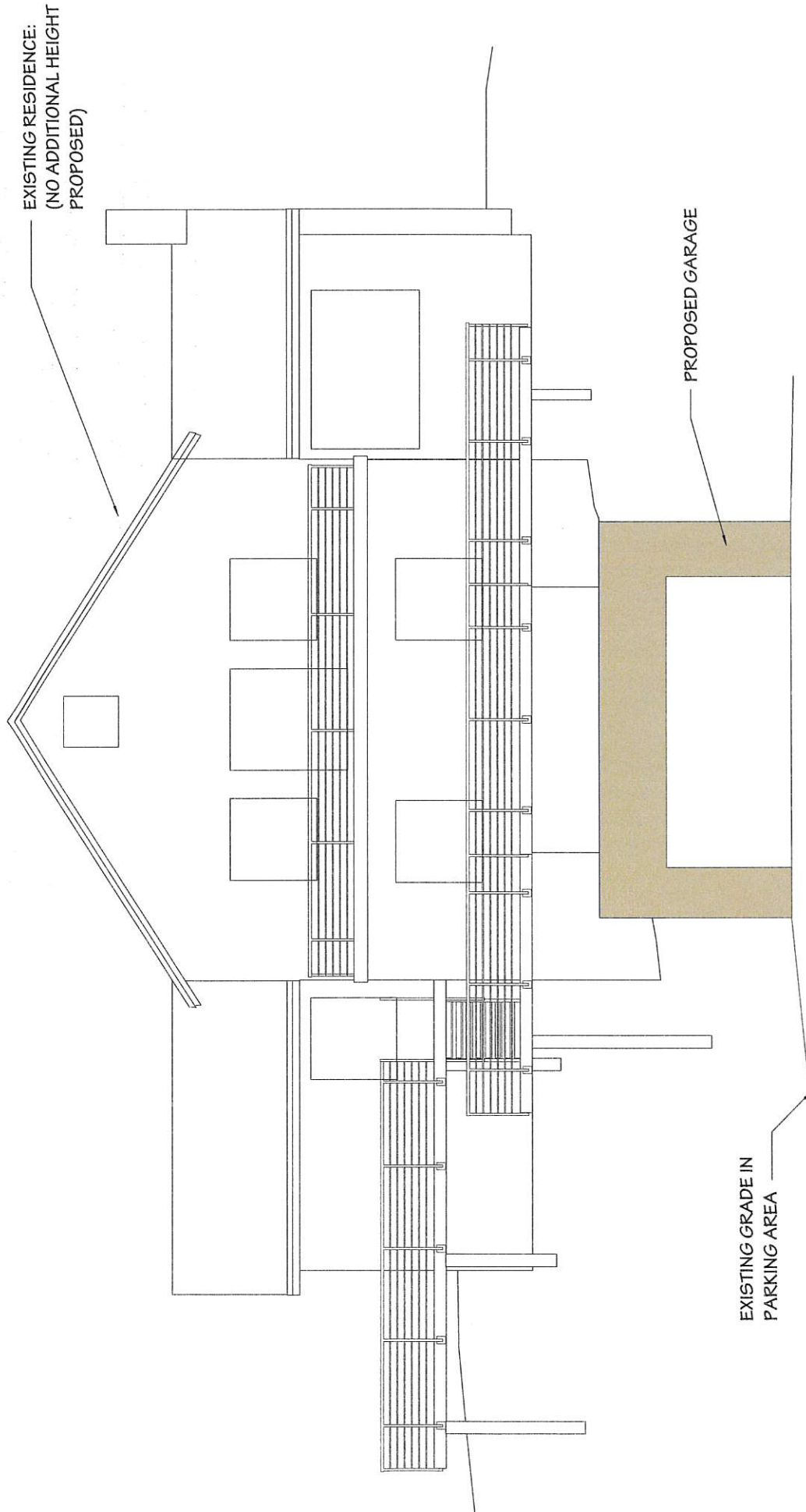


HARRIS RESIDENCE

191 Overlook Road



NBB-12



191 Overlook Road NOTE ON HEIGHT VARIANCE:

SANTA FE COUNTY REQUIRES A HEIGHT VARIANCE TO BUILD PROPOSED GARAGE BECAUSE IT WILL ADD TO THE OVERALL, TOP-TO-BOTTOM, HEIGHT OF THE STRUCTURE.

CURRENT CODE ALLOWS 30 FEET MAXIMUM.

THE HEIGHT OF THE EXISTING RESIDENCE WILL BE UNCHANGED.

PLEASE CONTACT JOHN SALAZAR AT SANTA FE COUNTY LAND USE DEPARTMENT IF YOU HAVE QUESTIONS:

(505)986-6229

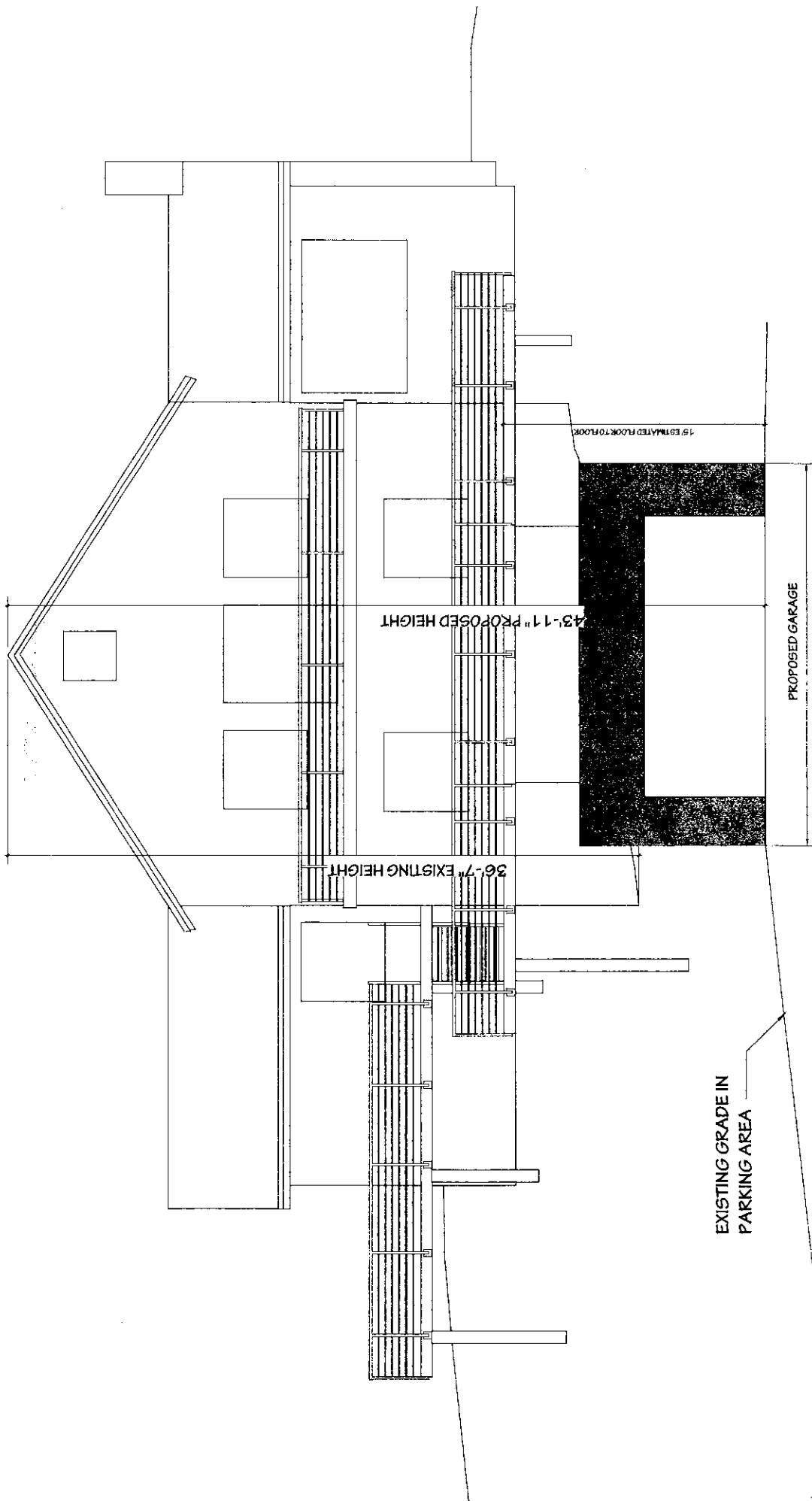
jmsalazar@santafecountynm.gov

PROPOSED NORTH ELEVATION

Scale: 1/8" = 1'-0"

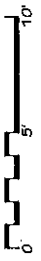


NB-13



PROPOSED NORTH ELEVATION

Scale: 1/4" = 1'-0"



NRB-14..

SHEET INDEX:

1. SITE PLAN, ROOF PLAN, RETAINING WALL
2. FOUNDATION PLAN & DETAILS
3. FLOOR PLANS
4. FRAMING PLANS
5. EXTERIOR ELEVATIONS, INTERIOR ELEVATIONS
6. EXTERIOR ELEVATIONS, INTERIOR ELEVATIONS
7. BUILDING SECTIONS
8. SCHEDULES & DETAILS
9. DETAILS
10. DETAILS
11. SPECIFICATIONS
12. SPECIFICATIONS
13. STAIRWAY ELEVATIONS/SECTIONS
14. ELECTRICAL/MECHANICAL PLANS

AREA SUMMARY:

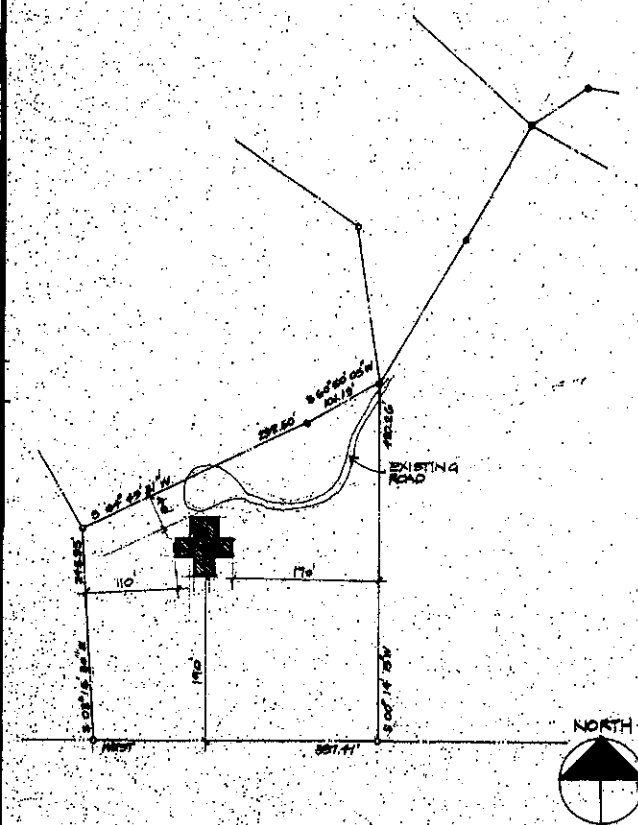
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888 SQ. FT. DECKS

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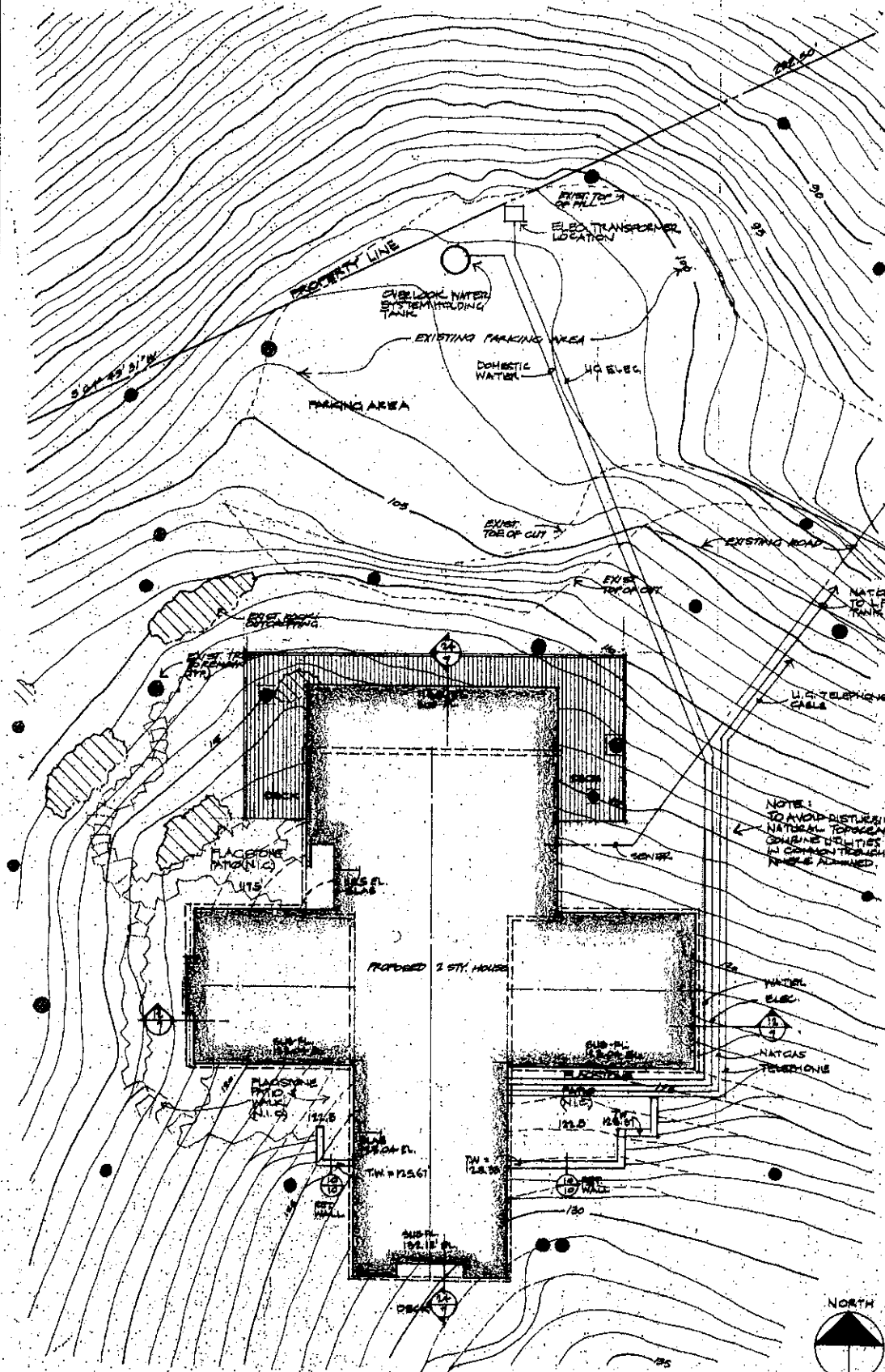
TRACT 39, THE OVERLOOK
SECTION 10, TOWNSHIP 18 NORTH, RANGE 10 EAST, N.M.P.M.

GENERAL CONTRACTOR:

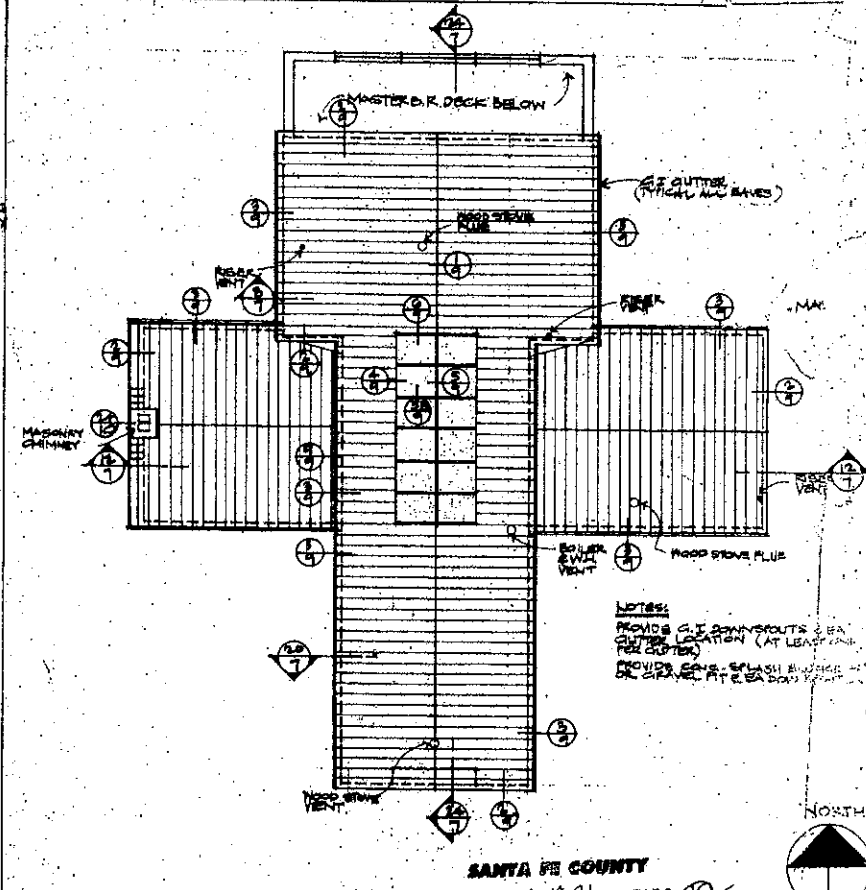
MAC WATSON, STATE LIC. NO.
1817 CANYON ROAD
SANTA FE, N.M. 87501 TEL. 983-8078



Full site plan 1/8" = 1'-0"



Partial site plan 1/8" = 1'-0"



SANTA FE COUNTY
DATE 6-18-91 INITIAL RC

Roof plan 1/8" = 1'-0"

NOTICE!
THE APPROVED PLAN MUST BE AT JOB SITE AT ALL TIMES DURING CONSTRUCTION

NOTE

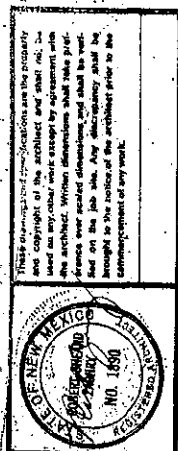
APPROVED PLANS AND SPECIFICATIONS SHALL NOT BE CHANGED WITHOUT AUTHORIZATION FROM CONSTRUCTION INDUSTRY DIVISION.

PLANS APPROVED

Construction Industries Division
General Construction Bureau

NO EXCEPTIONS TAKEN
EXCEPTIONS AS NOTED

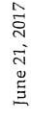
By *[Signature]*
Permit No. 912097
Does not include Mechanical or Electrical



Robert Zachry

NO.	DATE	REVISION
1	6-18-91	INITIAL RC
2	6-18-91	INITIAL RC
3	6-18-91	INITIAL RC
4	6-18-91	INITIAL RC
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DRAWING NO. 1850-1-10



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confirming data accuracy.

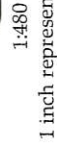


Table 7-13: Rural Road Classification and Design Standards (SDA-2 and SDA-3).

	Avg. daily traffic	# of driving lanes	Lane width (ft)	Non-vehicular side paths	Bike lanes	Minimum ROW (ft)	Design Speeds (mph)	Max % Grade	Min. agg. base course	Min. bit. pavement	Max % Super-elev.
Major arterial or highway	5000 +	2-4	12	n/a	Two 5 ft. on-road	150	Level: 70 Rolling: 70 Mount.: 50-60	5%	6"	6"	8%
Minor arterial	2000 to 4999	2 - 4	12	n/a	Two 5 ft. on-road	120	Level: 60-75 Rolling: 50-60 Mount.: 40-50	5%	6"	5"	8%
Collector	401-1999	2	11	n/a	n/a	80	Level: 40-60 Rolling: 20-50 Mount.: 20-40	8%	6"	4"	8%
Local	0-400	2	10	n/a	n/a	50	Level: 30-50 Rolling: 20-40 Mount.: 20-30	9%	3"	n/a	8%
Cul-de-Sac	0 to 300	2	10	n/a	n/a	38	Level: 30-50 Rolling: 20-40 Mount.: 20-30	9%	63"	n/a	n/a
Residential Driveway	n/a	1	14	n/a	n/a	20	n/a	10 %	n/a	n/a	n/a

7.11.3. General Requirements. Adequate roads shall be provided such that the arrangement, character, extent, width and grade of each shall conform to this Section.

7.11.3.1. Connectivity. The arrangement of roads in any development shall provide for the continuation or appropriate projection of existing or proposed highway or arterial roads in surrounding areas according to the Official Map, and shall provide reasonable means of ingress and egress to surrounding property. Roads within subdivisions shall not be gated unless the road is a dead end road serving no more than five (5) lots.

7.11.3.2. Road Names. Road names or numbers shall not duplicate or be similar to the names or numbers of existing roads; if the proposed road is an extension of an existing road, then the proposed road shall have the name of the existing road. All road names and numbers shall be assigned by the Santa Fe County Rural Addressing Division.

7.11.3.3. Service Life. Pavement shall be designed for a 20-year service life, and the design of pavement structures shall conform to the New Mexico Standard Specifications for Road and Bridge Construction. Pavement design documentation shall be prepared and signed by, or shall be under the supervision of, a professional engineer.

7.11.3.4. Rules of Interpretation. If and where Section 7.11 fails to adequately address



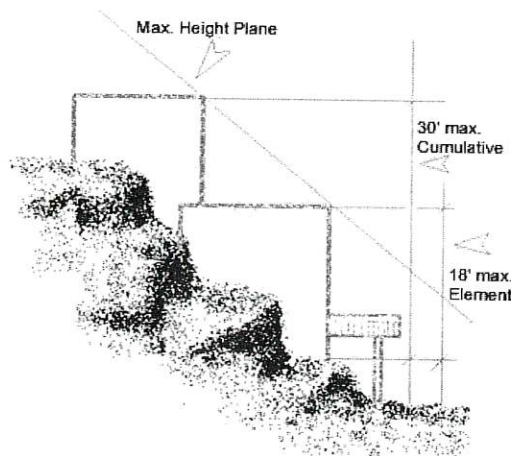
6. The finished floor elevation of any structure built on a natural slope between fifteen percent (15%) and thirty percent (30%) shall not exceed five feet above the natural grade at any point.

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, windows, walls and facade colors visible from adjacent properties or from arterial or collector roads shall be muted and of non-reflective or non-glossy materials with a Light 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 created;

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LEGAL #83026
CASE # V 17-5200 W.
Gordon Harris
Height and Off-Site
Road Improvements
Variances
**NOTICE OF PUBLIC
HEARING**

Continued...

Notice is hereby given that a public hearing will be held to consider a request by W. Gordon Harris, Applicant, Sommer, Karnes & Associates, LLP, Agent, for a variance of the Sustainable Land Development Code Chapter 7, Section 7.11 Road Design Standards, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade. An additional variance is being requested of Chapter 7, Section 7.17.9.3 Height to exceed thirty feet on land that has a natural slope of fifteen percent or greater. The property is located within The Overlook Subdivision at 191 Overlook Rd. via La Barabaria Rd. within Sections 16, Township 16 North, Range 10 East (Commission District 4).

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 on the 24th day of August 2017, at 3:00 p.m. on a petition to the Santa Fe County Hearing Officer and on the 19th day of October 2017, at 4:00 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 August 9, 2017.

EXHIBIT

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- C. **CASE # V 17-5200 W. Gordon Harris Height & Off-Site Road Improvements Variances.** W. Gordon Harris, Applicant, Sommer, Karnes & Associates, LLP, Agent, Request a Variance of Ordinance No. 2016-9, the Sustainable Land Development Code, Chapter 7, Section 7.11 Road Design Standards, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to Allow a Roadway to be Less Than 20 Feet in Width and to Allow the Roadway to Exceed a Nine Percent Grade. An Additional Variance is Being Requested of Chapter 7, Section 7.17.9.3 Height to Exceed Thirty Feet on Land that Has a Natural Slope of Fifteen Percent or Greater. The Property is Located within the Overlook Subdivision at 191 Overlook Road Via La Barbaria Road within Section 16, Township 16 North, Range 10 East (Commission District 4), SDA-2 [*Exhibit 1: Borrero Support Letter; Exhibit 2: Architectural Renderings; Exhibit 3: Photograph of Vicinity*]

Hearing Officer Long read the case caption.

HEARING OFFICER LONG: So we will now here the staff report.

JOHN MICHAEL SALAZAR (Case Manager): Thank you, Hearing Officer Long. As stated in the caption, the applicant is requesting a variance to allow a roadway to be less than 20 feet in width as certain areas along Overlook Road are only 14 feet wide, to allow the roadway to exceed a nine percent grade as there are multiple areas along Overlook Road which exceed 15 percent due to the mountainous terrain and a height variance to exceed thirty feet on land that has a natural slope of 15 percent or greater. The existing residence is a multi-level home which steps down and was permitted in 1991. The proposed location for the new garage is an existing leveled off area on the north elevation where the applicant currently parks however it is stepped down from the existing residence.

The property at 191 Overlook Road consists of 2.6 acres within the vicinity of La Barbaria Road in the Residential Fringe zoning district.

The applicant's agent states that the Overlook Subdivision is a legacy development with internal roads that do not meet width or slope requirements of the SLDC. They continue to state that the existing roads cannot be brought into conformance due to the steep and mountainous conditions of the Overlook Subdivision. Overlook Subdivision was created in 1975 before any road design standards existed. The roads throughout the subdivision vary in width from 14 feet to 23 feet. The road grade exceeds 15 percent in various locations as well. These conditions have been triggered due to the development permit request for an attached garage addition.



The applicant is proposing a single-story garage connected to the lowest part of the existing home. The connection is made by a stairway from the garage to a walkway above the roof of the garage and connected to the existing deck on the residence. Land Use staff has indicated that the connection to the existing residence creates the need for a variance as the total height of the proposed structure would measure 43 feet 11 inches. The allowable height under the SLDC is 30 feet from the highest point of the structure to the lowest point at natural or finished grade on land that has a natural slope of 15 percent or greater. The current height of the multi-level residence is 36 feet 7 inches and was permitted in 1991.

The applicant's agent addressed the variance criteria and staff provided an interpretation of how the proposal meets or fails to meet the variance criteria as mentioned in the staff report.

Recommendation: Staff recommends denial of the applicant's request for a variance to allow a roadway to be less than 20 feet in width and to allow the roadway to exceed a nine percent grade.

Staff recommends denial of a height variance to exceed thirty feet on land that has a natural slope of 15 percent or greater and recommends that the applicant construct an unattached garage which would not require a variance.

If the decision of the Hearing Officer is to recommend approval of the variances staff recommends the following conditions be imposed:

1. The Applicant shall obtain a development permit.
2. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written recommendation. The Santa Fe County Planning Commission (SFCPC) will be holding a public hearing on this matter on October 19, 2017.

And Hearing Officer Long, I'll stand for questions.

HEARING OFFICER LONG: Is there an existing garage?

MR. SALAZAR: Hearing Officer Long, there is no garage on the property.

HEARING OFFICER LONG: And so staff's proposing that in order to meet the height requirement that a detached garage could be built and would come within the height restriction?

MR. SALAZAR: That's correct. Currently in the proposal with that walkway from the garage to the existing residence that makes it one structure. Without the walkway it's a separate structure and it wouldn't require a height variance.

HEARING OFFICER LONG: So it's the walkway that kicks it over in the height?

MR. SALAZAR: Yes.

HEARING OFFICER LONG: Okay. And the roadway that we're talking about is the access roadway to the driveway to this house?

MR. SALAZAR: That's correct. Overlook Road. Hearing Officer Long, it would be improving Overlook Road to the property.

HEARING OFFICER LONG: And so the requirement would be to increase the right-of-way for the entire length of Overlook Road? Is that what the code requires?

MR. SALAZAR: That's what the code requires.

HEARING OFFICER LONG: And how would that be accomplished if they don't own the land in front of other homes?

MR. SALAZAR: Hearing Officer Long, the applicant would need to get permission from the property owners along Overlook Road in order to increase that easement and make those improvements on Overlook Road.

HEARING OFFICER LONG: And we think there is no right-of-way that belongs to the County or has been dedicated to the County along Overlook? It is all in private ownership? Is that correct?

MR. SALAZAR: Hearing Officer Long, it's all private easement throughout that subdivision.

HEARING OFFICER LONG: Okay. Thank you. Would the applicant's agent come forward please and be sworn in and give us your name.

[Duly sworn, Karl Sommer testified as follows:]

KARL SOMMER: My name is Karl Sommer, Sommer, Karnes and Associates, Madam Hearing Officer. This case is I think one of many that comes in front of this body, in front of the Hearing Officer. It is a quirk of the current SLDC that people that are trying to improve their already existing homes, residential homes, with accessory structures which are normal and customarily used in this county and in the state, a garage.

This subdivision, as the Hearing Officer is probably aware, is on the south side of town. It is in the steep mountains. It is a legacy subdivision that was done in 1975 when two things – a subdivision plat need not be approved, and no permits were needed to build these roads. Almost every home up in this development, well, not almost – every home in this development will require a variance to make changes their home by virtue of this portion of the code with respect to the access roadways and we believe that in this particular circumstance with the Overlook conditions, the code with respect to the offsite improvements to make access roads compliant at nine percent creates an undue and unnecessary and extreme hardship.

In fact it's an impossibility to meet by the applicant. He has no control over the access of the real estate that is where the roads are located and then I think fundamentally, the roadways cannot be improved to meet County standards because they are too steep to begin with. You could not get nine percent anywhere on the roads where they are 15 percent. As the Hearing Officer knows, you need more length to do that in order to lower the grade. That's not possible.

And I believe the requirements of the variance have been met, without question, with respect to the access roadways. We've address all of those in our submittal to you but it is an impossibility for Mr. Harris who's here with me and I'm here with Mr. Will McDonald who is an architect who is helping Mr. Harris. There are also people here from the subdivision who are in support of this variance, and I will hand, if I can, the Hearing Office a letter from Holly Borrero. She speaks to the visibility of the proposed garage. Mr. McDonald will explain to you in detail how this home is situated on the lot. It is near the top of a ridge, although it's not on the ridge. It is on the north side of the ridge, not

visible from many places, and the garage that is proposed is at the lowest part of the lot. The only reason we're here for a variance is Mr. Harris would like to be able to get out of his car in his garage and walk outside the garage up to his house.

There's a stairway that needs to connect at the top with a platform. That's what creates the need for a variance. This is not increasing the height of the house above where it is located. It is actually adding a structure on the lowest part of the lot. It is not visible from almost any other lot in the development. And where it is visible it is minimally visible and it does not increase the overall profile of the house. As the Hearing Officer is well aware, the purpose behind height restrictions is to limit the visibility of structures and that is an aesthetic standard and we are not doing anything that increases the visibility of this structure from adjoining lots. It does not allow Mr. Harris any privilege that any other property owner normally enjoys in the use of a residential property. That is just a simple garage attached to his house.

I'm going to turn it over to Mr. McDonald to describe for you exactly how the garage and the house relate to one another and then we'll answer any questions you have. And Mr. Harris is here to answer any questions you might have. Thank you.

HEARING OFFICER LONG: Thank you.

[Duly sworn, Will McDonald testified as follows:]

WILL MCDONALD: My name is Will McDonald. So, as Mr. Sommer explained, the addition is at the lower part of the property and here's a drawing –

HEARING OFFICER LONG: Is that drawing in the packet materials, do you know?

MR. MCDONALD: I gave it to Mr. Salazar but I have other copies of it.

HEARING OFFICER LONG: I believe it is Exhibit 3, for the record.

MR. MCDONALD: So the point is, looking – this is the north elevation. Here's the existing house, the high point of the house is not going to change. What's going to add the additional height is adding the garage at the bottom here, so that it goes from 36 feet 7 inches to 43 feet 11 inches because it's here at the bottom. But the point is that with trees all along here, and I have some photos that I can show you from a distance, that adding this garage does not increase the visibility of the house.

HEARING OFFICER LONG: So if I'm understanding this, then the height of the residence is unchanged, but because you are measuring it from a lower point where the garage will be constructed, that is the increase in height?

MR. MCDONALD: That's exactly right. So according to the code it's the overall height of the building from the lowest point to the highest point. So we've lowered the lowest point and that's what brings us here now.

HEARING OFFICER LONG: I understand that now.

MR. MCDONALD: For this part of that. Here's a photograph that Gordon Harris took of the house from one of the properties that's able to view it. Here's the site. Here's where the photograph was taken from. There's a valley here. You can see that there's a ridge to the south.

HEARING OFFICER LONG: As I'm looking at this photograph, and we'll add this to the record, the garage would be where? At the front of the photograph or to the left or right at the front?

MR. MCDONALD: Right here.

HEARING OFFICER LONG: So you have indicated in that black circle approximately where the garage would be constructed, which is to the front in this photograph.

MR. MCDONALD: Directly to the front, that gable that you see. So let me just – here is a couple of drawings that also show the relationship with the existing house and the garage. And so my main point here is that the garage does not add to the visibility of the house. It does add to the height of the house based on the definition of the County.

And while we could forego the attachment as defined by the County, if we were to put the walkway, that it would attach – the building itself – well, it boils down to a definition of what attached is, but its location wouldn't be different; its height wouldn't be different; its visibility wouldn't be different detached or attached.

HEARING OFFICER LONG: Okay. I take it that your client would like to be able to walk from the garage into the house without having to go outside.

MR. MCDONALD: The walkway is actually outside of the garage, but up along the side of the garage, attached, so that he would be able to walk onto the existing deck that's surrounding that side of the house.

HEARING OFFICER LONG: So the deck is outside. You actually would have to go outside.

MR. MCDONALD: Yes.

HEARING OFFICER LONG: But it would be connected.

MR. MCDONALD: It isn't a direct passage way from the interior of the garage to the interior of the house. So in that sense it's not attached. The attachment is only on the outside.

HEARING OFFICER LONG: Okay. Thank you.

MR. SOMMER: The Hearing Officer is very familiar with the standards under which the variance criteria are applied, and very briefly, the public interest in a case dealing with the roadways and the visibility is pretty clear here. And the question is, is what is proposed going to exacerbate a condition that exists already? The answer is no. It's not going to add more traffic. It's not going to add more intensity to the residential development, in the sense that there's not more dwelling units or anything like that. So with respect to the roadway that condition exists and Mr. Harris is going to go up and down those roads as it is right now. Emergency vehicles are either going to get there or not get there. And this addition will have absolutely no effect. So in that way it is not contrary to the public interest to grant this variance.

The second criteria is where it must be due to some extraordinary or exceptional situations or conditions of the property. I think that's clear that the condition of this land is one, it is sloped, and the existing home on it is at the highest part of the lot. There's only one other place. So this variance related directly to a condition of the property, and that is its topography.

With respect to the roadways it is clear that the variance is related to the condition of the roadways and that is that they are steep and they're old roads and they cannot be improved to meet current standards. So that criterion of the code is easily or demonstrably met. The last one is fairly vague, which is so that the spirit of the SLDC is observed and substantial justice is done. And the spirit of the SLDC is, I believe, to not

exacerbate conditions that don't comply for legal non-conforming conditions. You're not allowed to expand them. We're not doing anything that would exacerbate an existing condition at all. That's the spirit of the SLDC.

With respect to visibility, I think we've demonstrated that the spirit of the SLDC is to limit the visibility of buildings and that is the purpose behind what the height limitation is. This will not – and is in keeping with that, because it does not make the residence or the profile of the residence any more visible. I believe we've met the criteria. It is based entirely in the conditions of the property, not just the desires of the homeowner, which often some variances are, and he's not asking for anything out of the ordinary or some extraordinary privilege that others don't get to enjoy. We'd stand for any questions we might have.

HEARING OFFICER LONG: Thank you. Let me open this up to public hearing and see if there is anyone that would like to speak, either for or against these variance requests. Is there anyone here? Okay. You can come forward, sir.

[Duly sworn, Beau Borrero testified as follows:]

BEAU BORRERO: Beau Borrero. I would like to say that Gordon Harris' house figures prominently in the view from my kitchen and living room. I think of anybody in the neighborhood I can probably see Gordon's house the most. It's the thing that you see when you look out my living room and kitchen windows and the location of this garage would not make any difference to the view from my house. The area where the garage is proposed is almost completely surrounded by large trees and to add to what's been said about the condition of the site, the back of Gordon's house, which is against the steep part of the hillside is only about – a guestimate – about 15 feet above slope. So this is not an unusually tall house by any regards but rather it's the steepness of the slope and the fact that the location of this garage that is making this height an issue.

HEARING OFFICER LONG: Thank you.

MR. BORRERO: Thank you.

HEARING OFFICER LONG: All right, sir, would you come forward?

[Duly sworn, Bruce Valick testified as follows:]

BRUCE VALICK: Bruce Valick. I'm on the OHA board and the OHA Architectural Committee, and I'd say that everything that Gordon has done to improve the house has improved the OHA standards. Our home is opposite the canyon from his. We do see his home. In looking at the drawings, we would not see any portion of the garage that would sit below it from our place. Again, the number of trees would cover that completely. So as both a board member and an architectural control member I solidly support and hope that you'll grant the variance for him. Thank you.

HEARING OFFICER LONG: Thank you.

[Duly sworn, Lee Goodwin testified as follows:]

LEE GOODWIN: My name is Lee Goodwin. I'm a board member of the Overlook Homeowners Association and I am also the chair of the Road Committee, and I support the request for both variances, particularly with respect to the roads, I would like to say that four years ago the OHA commissioned an engineering study of our road system and among other things, the engineer pointed out that to bring our road system up to the current standards, although it is grandfathered in, but if we were to try to bring it up to current standards it would cost in excess of \$2 million to do so. Our annual road

budget at that time was perhaps \$10,000 and we have managed to get a dues increase and are able to spend approximately \$20,000 to \$22,000 a year on our roads at this point. That money goes to maintenance but not to the kind of improvements that would required to bring it up to current standards.

Secondly, our home is below the hill from Gordon's and we are able to see the top of his home. Our view certainly would not be affected by the addition of the garage as it would be obscured by the existing trees. And I'd also like to reiterate what Beau said earlier, that Gordon's home in fact is built into a rather steep slope and so the downhill side of the home has a much taller face than the uphill side of the home and there are a number of homes that have been constructed in a similar manner in our association.

HEARING OFFICER LONG: Thank you. Okay, anybody else? All right. Thank you all for offering your comments and coming to the hearing this afternoon. I know it takes some time out of your day and I appreciate your perspective and your comments.

III. D. CASE # V 17-5220 Ted & Barbara Seeley Variance. TABLED

IV. Adjournment

HEARING OFFICER LONG: Is there anything else that staff would like to add regarding this case?

MS. LUCERO: No, I don't believe so, Hearing Officer Long.

HEARING OFFICER LONG: All right. Thank you all very much. As your agent knows, as Chair I make recommendations. I don't make the final decision but I will prepare a written decision of recommendation that would go to the Planning Commission. So I've got a couple of weeks to do that and then it can be made available to you. All right. Thank you all. That was all we had on the agenda so I will adjourn the meeting.

[The hearing was adjourned at approximately 3:30 pm.]

Approved by:

Nancy Long, SLDC Hearing Officer
Santa Fe County

**Sustainable Land Development Code
Hearing Officer Meeting
August 24, 2017
CASE NO. V17-5200
W. Gordon Harris, Applicant**

RECOMMENDED DECISION AND ORDER

THIS MATTER came before the Sustainable Land Development Code Hearing Officer for hearing on August 24, 2017, on the application of W. Gordon Harris, (Applicant) for a Variance of the Sustainable Land Development Code (SLDC). The Applicant seeks a variance of Chapter 7.11 (Road Design Standards), Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade. An additional variance is being requested of Chapter 7, Section 7.1.9.3 Height to exceed thirty feet on land that has a natural slope of fifteen percent or greater. The property is located within The Overlook Subdivision at 191 Overlook Road via La Barbaria Road (Property), within Section 16, Township 16 North, Range 10 East (Commission District 4). The Hearing Officer, having reviewed the application, staff reports, and having conducted a public hearing on the request, finds that the application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. On June 23, 2017, the Applicant submitted his application for a variance of Chapter 7.11 (Road Design Standards), Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) to allow a roadway to be less than 20' in width and to allow the roadway to exceed a 9% grade. An additional variance is being requested of Chapter 7, Section 7.1.9.3 Height, to exceed thirty feet on land that has a natural slope of fifteen percent or greater.
2. As required by the SLDC, the Applicant presented the application to the



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Technical Advisory Committee (TAC) on May 18, 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 Applicant 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 August 9, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 9, 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, Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3).

B. Chapter 7, Section 7.17.9.3.1 Height.

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.

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 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.

D Chapter 4, Section 4.9.7.4, Variance 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 on 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 Variance 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 as follows:

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

i. Access Roads

a) The Applicant stated that this legacy development existed for decades before the SLDC standards were adopted and the roadways cannot be brought into conformance. The development density and the burden for emergency vehicles is not being increased by the addition of a garage.

b) Staff acknowledged that the Overlook Subdivision was created in 1975 before the County imposed road standards. However, the width of 14' is only sufficient for a one-way driveway per code and does not provide adequate access. In addition, a 15% grade exceeds allowable grade requirements and emergency vehicles may not be able to access the Property.

ii. Height

a) The Applicant stated that although height limitations are imposed to limit visibility, the request for the garage attached to the lowest part of the home does not increase visibility from any location.

b) Staff responded that the distance between the highest point of the structure and the lowest point at the natural grade or finished cut shall not exceed thirty feet. The proposed addition will exceed the 30 foot height limit by nearly 14 feet when viewing the structure from the North elevation.

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. Access Roads

a) The Applicant states that the Overlook Subdivision is in a steep and mountainous region of the county and the grades of the existing roadways are an extraordinary condition of the Property, which makes any normal residential use of the property (like having a garage), without the variance impossible.

b) Staff responded that although the roads built within the Overlook Subdivision were constructed pre-code, current standards were put in place for better Fire

Department access in emergency situations and for safer roads when multiple vehicles are using the non-conforming roads.

ii. Height

a) The Applicant stated that because of the steep and mountainous nature of the property, the slopes on the lot are an extraordinary condition of the property, making the addition of a garage in any other location practically impossible, necessitating difficult grading (cuts through solid rock) and hardship to the Applicant.

b) Staff stated that connecting the garage to the residence results in a total height of 43'11". For this reason, Staff had previously suggested that the garage be a separate structure not connected to the existing residence. In that case, no variance would have been necessary.

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

i. Access Roads and Height

a) The Applicant stated that the SLDC is designed to protect environmental, cultural, historical and archeological resources and to protect the public from adverse public nuisance.

b) Staff stated that SLDC regulations promote both vehicular and pedestrian safety and the 14' roadway width does not provide adequate access. Also the increased height of 43'11" would increase visibility from the Northern elevation by nearly 14'.

6. At the public hearing, a letter of support by Holly Davis Borrero, a neighbor of the Applicant and President of the Overlook Homeowners Association, was read into the record. An additional three speakers spoke in support of the application; no one spoke in opposition to the application.

7. Beau Borrero spoke in favor of the application. He stated that he is the neighbor closest to the Applicant's home and that large trees will screen the height increase in the garage.

8. Bruce Valick, a member of the homeowners' board and a member of the architectural committee for the association, spoke in favor of the application, stating that he was solidly in support.

9. Lee Goodwin, a member of the homeowners' association and chair of the road committee, spoke in favor of the Application, stating that several years ago, the association commissioned an engineering study and the cost at that time to bring the subdivision roads to current standards was over two million dollars. She also said her home, below that of the Applicant's, would not be impacted by the proposed addition.

10. It is impossible for the Applicant to comply with the road standards of the SLDC as it would require obtaining additional road right-of-way from private property owners over which the Applicant has no control.

11. 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 of the Property that would result in undue hardship to the Applicant from a strict application of the Code and that the Applicant has otherwise met all the variance criteria of the SLDC for both variance requests.

WHEREFORE, the Hearing Officer, based on the evidence presented, recommends approval of a Variance of Chapter 7.11 (Road Design Standards), Table 7-13 Rural Road Classification and Design Standards (SDA-2 and SDA-3) and Chapter 7, Section 7.1.9.3 Height.

Respectfully submitted,



Nancy R. Long
Hearing Officer

Date: 9-11-17