

MEMORANDUM

DATE: April 16, 2009

TO: County Development Review Committee

FROM: John Lovato, Development Review Specialist

VIA: Shelley Cobau, Building and Development Services Manager
Wayne Dalton, Building and Development Services Supervisor

FILE REF: CDRC CASE # V 09-5050 Joseph Albillar Variance

ISSUE:

Joseph Albillar, Applicant, requests a variance of Article III, Section 2.4.1a.2.b (Access) and a variance of Article 4, Section 4.2 of Ordinance 2008-10 (Flood Damage and Stormwater Management) to allow the creation of two lots via the Family Transfer Land Division process as set forth in Article 4, Section 4.2., of the Land development Code.

The property is located in the La Cienaga/La Cieneguilla Traditional Historic Community at 80 Paseo de Angel, within Section 21, Township 16 North, Range 8 East, (Commission District 3).

SUMMARY:

Joseph Albillar requests a variance of Article III, Section 2.4.1a.2.b (Access) and a variance of Article 4, Section 4.2 of Ordinance 2008-10 (Flood Damage and Stormwater Management) to allow a two (2) lot Family Transfer Land Division. Access to the proposed lots would be by the use of North Paseo de Angel, a gravel roadway which crosses a FEMA designated Special Flood Hazard Area, via a non-improved dip section, which is frequently impassible during inclimate weather, and thereby is not all weather accessible.

The Land Development Code, Article III, Section 2.4.1a.2.b (Access) states: "All development sites created under this Section shall demonstrate that access for ingress and

egress, utility service and fire protection whether by public access and utility easement or direct access to a public right-of-way can be provided and meet the requirements of this Code” (Exhibit “D”).

Ordinance 2008-10 Article 4, Section 4.2(iii) states: “at no time shall a permit be issued for a new dwelling unit, site, lot, parcel or tract of land intended for placement of a habitable structure where the site is absent all weather access” (Exhibit E).

The Applicant states, “There are six other lot splits that have occurred under the current conditions for ingress and egress.” Therefore, there is precedence set for this request for the family transfer for his 18 year old son.

In response to this statement, staff researched the number of Family Transfer Land Divisions on Paseo de Angel and has determined that there have been three family transfers approved in the past, prior to adoption of Ordinance 2008-10. There are at least 58 properties that take access from this road, which does not meet minimum code requirements for emergency vehicle crossings. This crossing frequently floods, even in minor storm events, and fire department staff has conducted a swift water rescue recently at this location, when a motorist attempted to use the flooded dip section. The crossing is impassable for passenger and emergency vehicles during these events and there is no secondary access available.

The property has been in the family proper since 1995. The property is 2.50 acres and there is currently a residence on the lot which was constructed in 1995. The lot itself is not encumbered by floodplain.

Article II, Section 3 (Variances) of the County Code states that “where in the case of proposed development it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance.” This section goes on to state, “In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.”

REQUIRED ACTION:

The CDRC should review the attached material and consider the recommendation of staff; take action to approve, deny, approve with conditions or modifications or to table for further analysis of this request.

RECOMMENDATION:

The Applicant's request for variance cites that support for this request should be considered based on other divisions being granted in this area in the past years. This is not the sort of hardship contemplated by the Code. Further, the Code does not support creation of lots that have not demonstrated legal access or which are not benefitted by all weather access or sufficient emergency access. Therefore, staff recommends **denial** of the variance of Article III, Section 2.4.1a.2.b (Access) and of Article 4, Section 4.2 of Ordinance 2008-10 (Flood Damage and Stormwater Management).

ATTACHMENTS:

Exhibit "A" - Applicant's letter of request
Exhibit "B" - Survey Plat
Exhibit "C" - Vicinity map
Exhibit "D" -Article III, Section 2.4.1a.2.b (Access) of the Land Development Code
Exhibit "E" -Ordinance 2008-10
Exhibit "F"- Proposed Plat
Exhibit "G"- Article II, Section 3 (Variances)