

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 08-5330 Hampton Variance

ISSUE:

William Hampton, Applicant, Joseph Karnes Agent, request a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow the continued use of a guest house on 6.01 acres, within the San Sebastian De La Luz Subdivision.

The property is located at 39 Burro Bend Road, within Section 2, Township 15 North, Range 10 East. (Commission District 4).

SUMMARY:

The Applicant requests a variance of Article III, Section 10 of the Land Development Code to allow the continued use of a studio/guest house on 6.01 acres. The property contains the studio/guesthouse, a yurt, and a primary residence and two sheds. The Applicant was issued a permit to place a dwelling unit on his property on June 17, 1994 (Exhibit D). The site plan submitted indicated a “shed” existed in the northeasterly portion of the property versus the “existing house”; which was subsequently depicted at the same location on the property in the application for an after-the-fact permit submitted in June of 2007 (Exhibit I). Based on the items represented to exist on the parcel in 2007, an after-the-fact permit was issued to allow placement of another accessory structure (shed) with a composting toilet and a recreational tent with a platform (yurt).

Following receipt of a complaint, County Code Enforcement conducted a walk through inspection of the structures, and it was determined that the studio contained a kitchen and a bathroom and is being used as a rental unit; and that a residence exists at the location indicated to be a “shed” in 1994. Staff has not been granted access to the interior of the yurt, which contains a fireplace and may be lived in as the shed next door contains the composting toilet and which the applicant admits is utilized as a dwelling unit in a letter dated 6/17/2007 (Exhibit J). A Notice of Violation was then issued to the property owner for unpermitted Development (Exhibit K).

The property is located within the Mountain Hydrologic Zone. Article III, Section 10, of the Land Development Code states that the minimum lot size in the Mountain Hydrologic Zone is 80 acres. Lot sizes can be reduced to 20 acres with 0.25 acre feet per year water restrictions. Lots sizes can further be reduced with proof of water availability. The property is served by a shared well system originally approved when Mr. Hampton divided the 100 acre parcel into nineteen lots and created the San Sebastian de La Luz Subdivision. Liquid waste is managed with two on-site conventional septic systems.

The Applicant’s Agent states that the Applicant requests this variance to legalize the guest house so that he may enjoy the same uses as many of his neighbors. The request further states that the studio and single family dwelling have existed on the property since 1986 (Exhibit A). Staff researched this and records indicate that the first application for construction on this property was made in 1994.

The Agent submitted a Water Resources Report for the well on Mr. Hampton’s property prepared by Corbin Consultants. The information submitted was reviewed for compliance and technical accuracy of the Santa Fe County Land Development Code by the County Hydrologist (Exhibit H). Article VII, Section 6.4.2 states, the need for a hydrology report shall demonstrate that groundwater sufficient to meet maximum annual water requirements of the development is physically available and can be practically recovered to sustain the development for a continuous period of one hundred (100) years. The County Hydrologist states that the reinterpretation of the original hydrology report, which is over 20 years old, does not meet the requirements of Article VII, Section 6.4.2 of the Santa Fe County Land Development Code, and adequate water to support a density variance is not demonstrated.

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 table for further analysis of this request.

RECOMMENDATION:

Staff recommends that the request for a variance be **denied**. Article III, Section 10 of the Land Development Code states the maximum adjusted lot size in this area is 20 acres per dwelling unit with water restrictions; therefore the proposed request is not in conformance with the Code. The Application does not adequately demonstrate that the need for the variance is based on unusual topography or other such non-self inflicted condition as set forth in Article II, Section 3. Staff recommends that either the kitchen or bathroom within the studio/guest house be removed within 90-days of final action of the BCC in order to comply with Code requirements.

If the decision of the CDRC is to recommend approval of the Applicant's request for a variance of Article III, Section 10, staff recommends the following condition be imposed:

1. No additional dwellings shall be permitted on the property beyond the primary residence and the studio/guesthouse.
2. The existing yurt may not be utilized as a residence, even on a temporary basis.
3. The dilapidated outhouse must be removed to prevent use.

ATTACHMENTS:

Exhibit "A" - Letter of request for Variance
Exhibit "B" - Vicinity Map
Exhibit "C" - Subdivision Plat
Exhibit "D" - Approved plans dated 6/17/1994
Exhibit "E" - Article III, Section 10 (lot size requirements) of the Code
Exhibit "F" - Article II, Section 3 (Variances) of the Code
Exhibit "G" - Article VII, Section 6.4.2
Exhibit "H" - Santa Fe County Water Resources Memo
Exhibit "I" - After-the Fact Permit Issued 7/20/2007
Exhibit "J" - Letter dated 6/17/2007
Exhibit "K" - Notice of Violation
Exhibit "L" - Photos of site
Exhibit "M" - Letters of opposition