

MEMORANDUM

DATE: October 12, 2010

TO: Board of County Commissioners

FROM: Wayne Dalton, Building and Development Services Supervisor

VIA: Jack Kolkmeier, Land Use Administrator
Shelley Cobau, Building and Development Services Manager

FILE REF.: CDRC CASE # MIS/V10-5260 Kurt Bowker Accessory Structure/Height Variance

ISSUE:

Kurt Bowker, Applicant, requests approval of an After the Fact accessory structure totaling 21,132 square feet to be utilized for personal use on 10.01 acres. This request also includes a variance of Article III, Section 2.3.6b (Height Restrictions for Dwellings and Accessory Structures) of the Land Development Code to allow the accessory structure to exceed 24' feet in height. The property is located at 74 Martin Lane, within Section 33, Township 10 North, Range 8 East, (Commission District 3).

SUMMARY:

On August 19, 2010, the CDRC met and acted on this case. The decision of the CDRC was to table the case in order for the applicant to work with staff and discuss the possibility of a lot line adjustment, lot consolidation or agricultural exemption. On August 31, 2010, staff met with the Applicant, the decision of the Applicant was to work with the County Assessor's Office in order to obtain an agricultural exemption on the property.

On September 16, 2010, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial for an After the Fact accessory structure totaling 21,132 square feet and for a variance of Article III, Section 2.3.6b (Height Restrictions for Dwellings and Accessory Structures) of the Land Development Code to allow the accessory structure to exceed 24' feet.

The Applicant requests approval of an After the Fact 21,132 square foot accessory structure which the Applicant claims is for personal use. This request includes a variance of Article III, Section 2.3.6b (Height Restrictions for Dwellings and Accessory Structures) of the Land Development Code to allow the structure to exceed 24' feet.

On August 29, 2007, a complaint was received by the Land Use Department for a structure being constructed on the property with no permit posted. On August 30, 2007, an inspection was conducted on the property and the Applicant was issued a Notice of Violation (NOV) from Santa Fe County Code Enforcement for unpermitted development. The Applicant failed to respond to the NOV and was then filed into Magistrate Court on September 18, 2007. The Applicant has completed the court process pending the Applicant complying with County Ordinances and has been ordered by the judge to submit an application for approval of the accessory structure.

The subject property currently has an existing residence (permit #97-744) and barn (permit #96-3268). Both structures were permitted by the previous owner. The property is served by a conventional septic system and well.

The existing structure has been constructed on two properties owned by the Applicant. One property being 10.01-acres and contains an existing residence and barn, and a 30.3-acre property which is currently vacant. Staff feels that a lot line adjustment or lot consolidation is necessary in order for the structure to be an accessory to the primary residence and comply with Ordinance #1997-4.

VARIANCE:

The Applicant requests a variance of Article III, Section 2.3.6b of the Land Development Code to allow the existing structure to be an average height varying between 28' and 36' feet 7" inches.

Article III, Section 2.3.6b states: "The height of any dwelling or residential accessory structure shall not exceed 24' feet. The vertical depth of fill materials from a natural grade with or without retaining walls shall be considered as a component of the building or structure. This depth shall be included in the determination of building height. Chimneys may extend 3' feet beyond the height limitation."

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 BCC 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:

Staff recommends denial of the requested variance to allow the height of the After the Fact accessory structure to exceed 24' feet (height varies between 28' and 36'feet 7" inches). Article III, Section 2.3.6b (Height Restrictions for Dwellings and Accessory Structures of the Land Development Code states: "the height of any dwelling or residential accessory structure shall not exceed 24' feet. Staff's analysis of the variance criteria does not justify the approval of this application; the Applicant has not justified a hardship which is contemplated by the Code; or that strict compliance with the code would result in extraordinary hardship to the Applicant. The variance requested by the Applicant is not considered a minimal easing of the requirements of the Code.

Should the BCC approve the Applicant's request, staff suggests the following conditions be imposed.

1. The Applicant must apply for and receive approval for an agricultural exemption, a lot line adjustment, or lot consolidation prior to development permit issuance.
2. The structure shall not be utilized for any residential or commercial use.
3. The Applicant must obtain a development permit from the Building and Development Services Department that meets all Code requirements.
4. The Applicant must obtain a building permit from the State Construction Industries Division.
5. The Applicant must comply with all Terrain Management requirements set forth in the Land Development Code.
6. The Applicant must comply with Water Harvesting requirements set forth in Ordinance 2003-6.
7. The Applicant must submit scaled as built construction plans of the structure prior to development permit issuance.

Attachments:

- Exhibit "A"- Letter of Request
- Exhibit "B"- Vicinity Map
- Exhibit "C"- Site Plan
- Exhibit "D"- Plat of Survey
- Exhibit "E"- Ordinance 1997-4 (Accessory Structures)
- Exhibit "F"- Proposed Building Plans
- Exhibit "G"- September 16, CDRC Minutes