

MEMORANDUM

DATE: August 10, 2010

TO: Board of County Commissioners

FROM: Vicki Lucero, Development Review Team Leader

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

FILE REF.: CDRC CASE # V 09-5270 Bryan Berg Variances

ISSUE:

Bryan Berg and Kristin Carlson, Applicants, request approval of six variances of the Uniform Fire Code and of Article VII, Section 3 (Terrain Management), Article V, Section 8.2 (Road Design), and Article III, Section 2.3 (Site Planning Standards for Residential Use) of the Land Development Code: 1) to allow the height of a residence to exceed 18' feet and to allow the overall height (from highest parapet to lowest natural or finished cut grade) to exceed 30 feet; 2) to allow the slope of the driveway to exceed 11%; 3) to allow a turn around that does not meet Fire Code requirements; 4) to allow a retaining wall greater than 10 feet in height; 5) to allow disturbance of slopes greater than 30%; and 6) to allow a finished floor elevation to exceed 5 feet above natural grade. The property is located at 11 Mountain Top Road, within the Overlook Subdivision, within Section 16, Township 16 North, Range 10 East (Commission District 4).

SUMMARY:

On June 17, 2010, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the requested variances (refer to Meeting Minutes in Exhibit "K").

On April 15, 2010, this case was heard by the CDRC. At that meeting the applicant withdrew his request for the variance to allow a conventional liquid waste disposal system. The decision of the CDRC was to table this case in order to conduct a site visit to the subject property (Refer to

meeting minutes in Exhibit "I"). On May 13, 2010, a site visit was conducted (refer to minutes in Exhibit J").

On December 17, 2009, the CDRC had tabled this case to allow the applicant to address issues regarding the turnaround for emergency vehicles (Refer to CDRC Minutes in Exhibit "G").

The applicant has been working with the Hondo Fire Chief and the County Fire Marshal regarding the turnaround. A revised proposal has been submitted (Refer to Exhibit "H"). The County Fire Marshal is recommending approval of this request with conditions (Refer to Exhibit "D").

The subject property is an existing 6.06-acre legal lot within the Overlook Subdivision. The lot is currently vacant however there is an existing 816 foot driveway and small building pad that was created by a previous owner. The Applicant is proposing to construct a 4,441 sq. ft. (heated) 3-story residence with a building footprint of 2,463 sq. ft. which includes patio and portals, as well as a 330 sq. ft. studio.

The property consists primarily of difficult terrain with some small areas of 0%-20%, and 20%-30%; but the majority of slopes on site exceed 30%.

Article VII, Section 3.4.1.c.1.c of the County Land Development Code (Code) states that natural slopes of 30% or greater are no build areas and shall be set aside from use for development. The proposed lot contains some scattered areas that are less than 30% slopes. The Applicants are requesting a variance to allow disturbance of 30% slope in order to construct a parking area along the driveway. A portion of the house and studio (approximately 32%) will be constructed on 30% slopes or greater.

Article VII, Section 3.4.3.d of the Code states retaining walls shall not exceed ten feet (10') in height. The Applicant is proposing a 13'-6" retaining wall. The Applicant states that because of the limited buildable area on site there is not enough area for parking, therefore, in an effort to create parking and keep it and the retaining wall itself non-visible and to minimize the disturbance of 30% slopes, the Applicants are requesting a variance of the height requirement.

Article V, Section 8.2 (Appendix 5.A) of the Code states that the maximum grade for a road/driveway accessing 1 lot is 11%. There is an existing driveway that was created by a previous owner which is at 19% grade. The Applicants are proposing to bring it down to a maximum grade of 12.69%. The Applicants state that the grading that would be required to bring the existing driveway down to 11% would be out of character for the surrounding landscape and neighborhood and would increase the existing cuts and cause irreparable damage to the land. Also, the cost of such grading would render them unable to develop the parcel. Therefore, in the interest of keeping the proposed development affordable and appropriate to the site in question the Applicants are requesting a variance to this requirement.

Article III, Section 2.3.6.b.1 of the Code states that the height of any dwelling or residential accessory structure located on land which has a natural slope of fifteen percent (15%) or greater shall not exceed eighteen feet (18') and that the vertical distance between the highest point of a building and the lowest point of a building at natural grade or finished cut grade, whichever is lower, shall not exceed thirty feet (30'). The Applicants are proposing a maximum building height of 28'-10" and an overall building height (from highest point of building to lowest point of building at finished cut grade) of 39'-2." The Applicants state that in an attempt to build a passive solar dwelling, utilize rainwater collection, disturb only those areas previously disturbed, and retain all significant trees a height variance is needed.

Article VII, Section 3.4.1.d.6 of the Code states that for a structure built on a natural slope of over twenty percent (20%), the finished floor elevation at any point shall not exceed five feet (5') above the natural grade below that point. The Applicant is proposing a maximum finished floor height of 14' above natural grade for portals and 9' above natural grade for the residence. The Applicants state that they are requesting a variance of this requirement in order to provide the smallest possible footprint and disturbance of terrain for a single family residence, and maximum solar exposure for a passive solar design.

Article II, Section 3.1 (Variances) of the County Code states, "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 non-self-inflicted conditions or that these conditions would result in inhibiting in achievement of the purposes of the Code, an applicant may file a written request for a variance."

The Uniform Fire Code states that dead-end roadways more than 300 ft in length shall be provided with a turnaround at the terminus having no less than 120 feet outside diameter of traveled way. A "hammerhead-T" turn-around to provide emergency vehicles with a three-point turnaround ability may be allowed. The applicants are proposing to build a modified hammerhead turn around. The County Fire Marshal has reviewed this proposal and recommends approval.

Ordinance No. 2001-11 (Wildland Interface Code) mandates a uniform 14' width for driveways that must allow access for emergency vehicles. Section 4 of this Ordinance goes on to state that whenever the Fire Marshal denies or refuses to grant an application for a permit, or when it is claimed that the provisions of this Code do not apply, or that the true intent and meaning of the Code have been misconstrued or wrongly interpreted, the Applicant may appeal the decision of the Fire Marshal to the County Development Review Committee. The Applicant was requesting a minimum driveway width of 12' along some portions of the driveway. The CDRC approved this request at the June 17, 2010 CDRC meeting. Therefore, no further action is required.

REQUIRED ACTION:

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

RECOMMENDATION:

The Applicant is proposing a 4,441 sq. ft. multi level residence. The subject property is a legal lot of record. The lot is limited by steep terrain which makes it difficult to construct a residence and a driveway that meets County Code Requirements. Land Use staff has conducted a site visit and reviewed the slope analysis and has determined that there is no other buildable area on the site. It is staff's position that the variances requested are unavoidable due to the rugged terrain and small buildable area on the property.

Based on the revised proposal for the emergency turn around, the County Fire Marshal's Office is supporting the variances requested for driveway standards including the emergency turn around.

The Applicant is seeking a height variance that would allow for passive solar design. Staff conducted a site visit in which the applicant installed story poles to show the height of the proposed structure. Staff determined that the structure would not be visible from minor arterial roads. If the Applicant were required to reduce the height of the structure they would have to increase the footprint of the residence which would result in more disturbance of 30% slopes.

Due to the difficult terrain on this property staff's position is that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant as stated in Article II, Section 3.1 of the Code.

Therefore, staff's recommendation and the decision of the CDRC is to recommend approval of all variances requested subject to the following conditions:

1. No grading or disturbance of ground beyond grading limits shown shall occur. Except for developable areas for building envelopes, roads, or driveways, disturbance of natural vegetation shall be prohibited. Cleared or graded areas, or cut and fill areas shall be re-vegetated to the approximate original density and type of vegetation existing prior to disturbance.
2. Per revised drawings the area at the end of the driveway nearest the proposed residence shall incorporate a modified hammerhead turnaround.
3. The maximum slope for the 14' wide driving surface shall not exceed 11%.
4. Guardrails must be placed along sections of the driveway that are less than 14' in width.

ATTACHMENTS:

Exhibit "A" – Developer's report
Exhibit "B" - Developer's plans
Exhibit "C" – Vicinity Map
Exhibit "D" – Reviewing Agency Responses
Exhibit "E" – Slope Analysis

- Exhibit "F" - Letters of support
- Exhibit "G"-December 17, 2009, CDRC Minutes
- Exhibit "H"- Revised turnaround for emergency vehicles
- Exhibit "I"- April 15, 2010, CDRC meeting minutes
- Exhibit "J" – May 13, 2010 CDRC site visit minutes
- Exhibit "K"-June 17, 2010 CDRC meeting minute