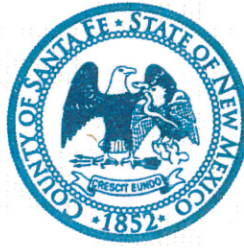


**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virginia Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

**DATE:** September 11, 2012

**TO:** Board of County Commissioners

**FROM:** Wayne Dalton, Building and Development Services Supervisor *WD*

**VIA:** Vicki Lucero, Building and Development Services Manager *VL*  
Penny Ellis-Green, Interim Land Use Administrator *PEG*

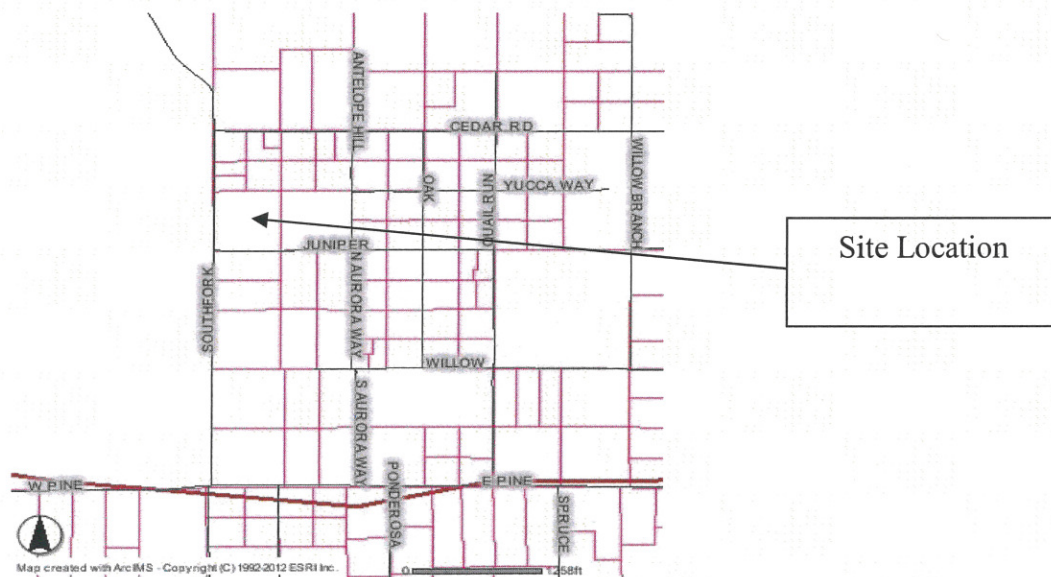
**FILE REF.:** CDRC CASE # V 12-5090 Lawrence Maes Variance.

**ISSUE:**

Lawrence Maes, Applicant, requests a variance current of Article III, §10 (Lot Size Requirements) of the Land Development Code to allow three dwelling units on 10.21 acres.

The property is located at 85A County Road 44, in the vicinity of Southfork, within Section 31, Township 15 North, Range 9 East, (Commission District 5).

**Vicinity Map:**



## SUMMARY:

The Applicant requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow three dwelling units on 10.21 acres. The subject lot was created in 1976 and is recognized as a legal non-conforming lot. There are currently two dwelling units on the property and an accessory structure (Garage). Currently one dwelling is occupied by the Applicant and the other is occupied by one of the Applicant's daughters and grandson. The need for the third dwelling is to house his other daughter and her family. The Applicant has submitted aerial photos of the property which does show that multiple structures were located on the property in 1981, and all the way up to the time the Applicant purchased the property in 1989. However, only two dwelling units have been on the property since 1989, and any claim to a non-conforming use has been lost for any additional dwellings that existed in 1981. The property also contains two uninhabitable mobile homes in addition to the existing dwellings. The Applicant intends to remove the uninhabitable structures from the property.

Article II, § 4.5.2b states a non-conforming use of a structure or land, or a non-conforming structure previously established as a use similar to a proposed new use of the structure or land, or use of a structure or land which has been suspended by a period of time not longer than one year, may be re-used, extended or expanded.

The Applicant states, as a result of a physical and mental trauma that accompanied an accident, as well as other medical conditions suffered by his daughter and family, a variance is needed. The Applicant further states his daughter's family passes the scene of the accident that took the life of their Grandmother and this is traumatizing. His son-in-law and grandchildren suffer physically and mentally and also suffer with PTSD (Post Trauma Stress Disorder). The youngest child suffered a brain injury and has been diagnosed with ADD (Attention Deficit Disorder) as a result of the accident.

Article II, § 3 (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 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." **The variance criteria does not consider financial or medical reasons as extraordinary hardships**

**This Application was submitted on April 6, 2012**

**On May 17, 2012, the CDRC met and acted on this case. The decision of the CDRC was to table this case in order for the Applicant to obtain aerial photographs of the property.**

**On June 21, 2012, the CDRC met and acted on this case, the decision of the CDRC was to recommend approval of the Applicant request by a 4-2 vote (Minutes Attached as Exhibit 1).**

**Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request.**

**APPROVAL SOUGHT:** Approval of a variance from Article III, §10 (Lot Size Requirements) of the Land Development Code.

**GROWTH MANAGEMENT AREA:** Galisteo, SDA-2

**HYDROLOGIC ZONE:** Basin Fringe Zone, minimum lot size per Code is 12.5 acres per dwelling unit. The three proposed dwelling units exceed the number of units allowed on the subject property.

**FIRE PROTECTION:** Turquoise Trail Fire District.

**WATER SUPPLY:** Shared Domestic Well

**LIQUID WASTE:** Conventional Septic System with an additional system to serve the proposed dwelling unit.

**VARIANCES:** Yes

<b>AGENCY REVIEW:</b>	<u>Agency</u>	<u>Recommendation</u>
	County Fire	Approval

**STAFF RECOMMENDATION:** **Denial of a variance from Article III, § 10 (Lot Size Requirements) of the Land Development Code.**

If the decision of the BCC is to approve the Applicant's request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office **(As per Article III, § 10.2.2 and Ordinance No. 2002-13)**.
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. **(As per Article II, § 2)**.
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with Development Permit Application **(As per Article III, § 2.4.1a.1 (a) (iv))**.

4. The placement of additional dwelling units or Division of land on the property is prohibited. The two uninhabited mobile homes on the property must be removed prior to building permit issuance (**As per Article III, § 10**).
5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (**As per 1997 Fire Code and NFPA Life Safety Code**).

**EXHIBITS:**

1. CDRC Minutes
2. Letter of request
3. Article III, §10 (Lot Size Requirements)
4. Article II, § 3 (Variances)
5. Article II, § 4.5.2b (Re-use or Expansion of Non-conforming Use)
6. Site Photographs
7. Site Plan
8. Aerial of Site and Surrounding Area
9. Letters from Physicians
10. Fire Prevention Division Review Letter

**APPROVAL OF THE MINUTES: May 17, 2012**

Member Anaya said the minutes inaccurately showed his absence as unexcused; it was an excused absence.

Chair DeAranda moved to approve the minutes as corrected. Her motion was seconded by Member Gonzales and passed by unanimous [6-0] voice vote.

**VI. OLD BUSINESS**

- A. CDRC CASE # V 12-5090 Lawrence Maes Variance. Lawrence Maes, Applicant, requests a variance of Article III, §10 (Lot Size Requirements) of the Land Development Code to allow three dwelling units on 10.21 acres. The property is located at 85A County Road 44, in the vicinity of Southfork, within Section 31, Township 15 North, Range 9 East (Commission District 5)**

Wayne Dalton read the caption and staff report as follows:

“This Application was submitted on April 6, 2012. On May 17, 2012, the CDRC met and acted on this case. The decision of the CDRC was to table this case in order for the Applicant to obtain additional information.

“There are currently two dwelling units on the property and an accessory structure which is a garage. The applicant has submitted an aerial of the properties which does identify multiple structures were located on the property in 1981 and up to the time the applicant purchased the property in 1989. However, only two dwelling units have been on the property since 1989 and grandfather status has been lost for any additional dwellings that existed in 1981.

“The property also contains two uninhabitable mobile homes in addition to the existing dwellings. The Applicant intends to remove the uninhabitable structures from the property.

“The Applicant states, as a result of a physically and mentally traumatizing accident, along with other medical conditions his daughter and family have been through, a variance is needed for the financial and trauma burdens accompanied by this accident. The Applicant further states his daughter’s family passes the scene of the accident that took their grandmother and is traumatizing for his daughter’s family. His son-in-law and grandchildren suffer physically and mentally and both her husband and oldest son suffer with PTSD. The youngest child suffered a brain injury and has been diagnosed with ADD as a result of this accident.”

Mr. Dalton stated that staff recommends denial of the variance from Article III, §10, Lot Size Requirements, of the Land Development Code. If the decision of the



CDRC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with Development Permit Application (As per Article III, § 2.4.1a.1 (a) (iv)).
4. The placement of additional dwelling units on the property is prohibited. The two uninhabited mobile homes on the property must be removed prior to building permit (As per Article III, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit application (As per 1997 Fire Code and NFPA Life Safety Code).

Member Katz requested additional information on "grandfathering." Mr. Dalton said the grandfather date is 1981 so anything on the property prior to 1981 would be grandfathered. However, if structure has not been in continuous use for a period of a year the grandfather status is lost. Therefore, two dwelling units are permissible on this property. He explained that if a structure was removed from the property and replaced within one year, the grandfather status is still applicable.

Duly sworn, Lawrence Maes, applicant and property owner and his daughter Anna Marie Maes Hernandez were duly sworn.

Mr. Maes said each of the units has its own meter.

Chair DeAnda asked for details of the current number of dwellings on the property. Mr. Maes said he and his wife live in one of the structures and his other daughter and grandson in the other one. The need for a third unit is to house his other daughter, Anna Marie Maes Hernandez.

Ms. Maes Hernandez said she was recently diagnosed with a brain tumor. She said she is the wife and mother of those involved in the car accident which happened on Airport Road. She outlined her health problems and the difficulties arising out of the accident, which have led to the need for the variance.

Member Gonzales asked about the structures that were no longer on the property but were there in 1989. Mr. Maes said the individual he purchased the property from was in foreclosure on two of the mobile homes. Mr. Maes said he tried to purchase them but was unable to. He purchased a mobile home and moved onto the property and sometime

later purchased an additional one for his daughter. Eventually they purchased a double-wide and moved the old single wide to a different site on the property. The uninhabitable mobile unit is a 40-foot self-contained trailer which he moves on and off the property for employment purposes. Neither of the two unused units is hooked up to utilities.

Responding to a series of questions posed by Member Gonzales, Mr. Maes said his property is walled in and none of his neighbors have complained. Most of the immediate neighbors are on 2.5 acres and many have two units. In fact, one of his neighbors received a variance to create two lots on 2.5 acres and has since sold both lots. Mr. Maes said he has a well on his property.

Member Anaya asked whether the two mobile homes were permitted and Mr. Maes said they were from DOT.

There was no one from the public wishing to speak on this case.

Member Anaya asked whether the new code had variance provisions for financial or medical situations. Mr. Dalton said no.

Interim Land Use Administrator Ellis-Green said density-wise the new code will not differ from the existing code. She said medical and/or financial hardships are not grounds for a variance.

Member Anaya moved to approve the variance request for V 12-5090 with staff conditions. His motion was seconded by Member Valdez and passed by majority [4-2] voice vote with Chair DeAnda and Member Katz voting in the negative.

Mr. Dalton said this case will go to the Board of County Commissioners on August 14<sup>th</sup>.

#### ~~VII. NEW BUSINESS~~

- ~~A. CDRC CASE # MIS 12-5190 Kevin Hart Accessory Structure. Kevin Hart, Applicant, requests approval of a 3,750 Square Foot Accessory Structure to be utilized as personal storage on 2.5 acres. The Property is located at 17 Los Cielos Lane in the vicinity of La Cienega, Within Section 27, Township 16 North, Range 8 East, (Commission District 3)~~

~~Mr. Dalton recited the case caption and provided the staff report as follows:~~

~~“On March 11, 1997, the Board of County Commissioners adopted Ordinance No. 1997-4 which states that the CDRC is required to review for approval, any accessory structure which is greater than 2,000 square feet.~~

~~“The Applicant requests approval to construct an accessory structure totaling 3,750 square feet to be utilized for personal storage. The proposed structure is a~~

04/06/2012

To whom it may concern;

I am writing this letter requesting a hardship variance for myself and my family. Due to the unfortunate events of last year, we have been put in a financial and emotional state. In November of 2010, I was diagnosed with a pituitary tumor. While the doctors began doing more detailed studies of the tumor they began to notice some scarring in my brain. Not sure what the scarring was they began to do more testing; lots and lots of testing. Then my families' world was completely turned upside down. On April 9, 2011, the woman who was the heart and soul of the family, was killed in a senseless car accident. My children and my husband were severely hurt, especially my 3 year old son. Gang members who decided to have a bad drug deal at the mall began to chase each other down Airport road. They were shooting at each other and the front vehicle collided with my husband's vehicle. Inside the vehicle was my husband who was driver. My grandmother was the passenger and my two children who were in the back seat. The accident happened less than 500 feet from the front of our home and if this wasn't enough it was my mother's birthday.

My husband and my children have suffered many medical issues. My husband received a severe concussion, a traumatic brain injury and, a brain bleed and several facial lacerations. These injuries have been ongoing especially do to the brain bleed. The brain bleed has caused scarring in his brain and he suffers from headaches on a daily basis. He also suffers from depression, anxiety, guilt, and PTSD. He has to attend counseling on a weekly basis and has to take medication in order to deal with these issues. My 8 year old son has also received several injuries from the accident. He received facial lacerations which has left permanent scars on his face. He had four broken permanent teeth; which will eventually need root canals; it causes him discomfort on a daily basis. The physically injuries were not as severe as were the emotional and physiological injuries. My son suffers from depression, anxiety, PTSD, and is having severe problems in school. He too has to attend counseling on a weekly basis and his teachers say that he is unable to focus in school. We are concerned that he too may have a brain injury and he needs to be re tested. My youngest son was injured the worst. He was the one who was sitting behind my grandmother when she was killed. My son had two broken legs, a skull fracture, a concussion, a traumatic brain injury, paralysis on the right side of his face, lazy eye (right side), and cuts between his toes, blood in his ears. He had to be put in a medicated coma and med- vaced to UNM hospital because he was in critical condition. He has had to have two surgeries to repair his legs. Doctors have stated that he has ADD due to the traumatic





brain injury plus he has very poor impulse control. He has to attend Physical therapy plus counseling on a weekly basis. He still has some partial hearing loss in his right ear and some facial paralysis.

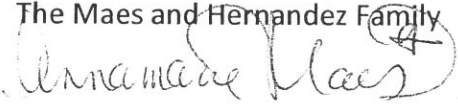
During the last year we have been dealing with the trying to deal with death of my grandmother, the injuries of my children and husband plus restarting the testing that I promptly had to stop. In July of 2011, I received the definitive answer from the neurologist. The tests revealed that I had Multiple Sclerosis! I had been given news that eventually my ability to care for myself may become very limited. I have stated a treatment for my illness, however we do not know how well I will do on the treatment or how the illness will progress. Due to the uncertainty, my husband and I believe being close to my parents would benefit us. My husband will need assistance with the children if I were to get to the point where I could not help him.

Another issue that I failed to mention is that those who caused the accident did not have any car insurance. Out of the three vehicles that were involved the only car that had insurance was mine. The accident has caused financial hardship for my husband and me. We have taken time off from work to tend to our children and to my medical issues and we are trying to find a means to try to get back on our feet.

We believe that if you grant the permit and allow us to put a home on my parents property my husband, my children and myself will have the security that we so need.

We want to thank you for taking the time to read this letter and your consideration for the permit.

Thank You,

The Maes and Hernandez Family  


TYPE OF USE	NUMBER OF PARKING SPACES
Retail Centers	1 per 1 employee plus per 200 sq. ft.
Restaurants, Bars	1 per 1 employee plus per 150 sq. ft.
Gas Stations	1 per 1 employee plus 1 per 300 sq. ft. of garage space.
Industrial	1 per employee plus 1 per 500 sq. ft.
Small Scale Centers, Home Occupations	1 per 1 employee plus 1 per 400 sq. ft. of commercial space.
Large Scale Residential, Institutional, Residential Resorts	2 per dwelling unit
Churches, auditoriums, theaters, arenas, spaces used for public assembly	1 for each 4 seats
Uses not listed	As determined by the County

- 9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.
- 9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.
- 9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

History. 1980 Comp. 1980-6. Section 9, Parking Requirements was amended by County Ordinance 1990-11 adding requirements for auditorium uses, multiple uses and handicap access.

## SECTION 10 - LOT SIZE REQUIREMENTS

### 10.1 Relationship of Lot Sizes to Water Policies

The General Plan sets forth the policy that future population growth in the County should be supported by adequate long term water availability and concentrate population growth in Urban and Metropolitan Areas and Traditional Communities. Development within these areas will generally be served by one or more regional water systems, or community water systems. Development outside of the Urban, Metropolitan Areas and Traditional Communities using domestic wells (Section 72-12-1 wells) should consider estimated long term water availability and protect water resources for existing County residents having domestic wells. Development may also be permitted if the applicant for a development permit demonstrates that he/she has water rights, excluding rights permitted under 72-12-1 NMSA 1978 or 75-11-1 NMSA 1953, recognized and permitted by the Director of Water Resources Department of Natural Resources Division of the State of New Mexico which are approved for transfer by the Director of Natural Resources Division to the site of the Development, and the permitted water rights are sufficient to support the proposed development.



10.1.1 Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights

Applicants seeking a development permit may base their application on water rights authorized and permitted by the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico, (with the exception of water rights permitted under Section 75-11-1 NMSA 1953 or 75-12-1 NMSA 1978). The applicant shall provide evidence that he/she owns or has an option to purchase the permitted water rights in an amount adequate to meet the needs of the development as shown by Article VII, Section 6.6.2, Water Budgets and Conservation Covenants. Any development permit approved and issued by the County shall be expressly conditioned upon the applicant obtaining final non appealable order or final non appealable approval from the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico authorizing the change in use and change in point of diversion to meet the needs of the proposed development. The minimum lot size permitted by this Section shall be 2.5 acres, unless the proposed development is within an Urban, or Metropolitan Area or a Traditional Community, in which case further adjustments of the lot size shall be permitted as provided by Sections 10.4, 10.5.2 and 10.5.3.

10.1.2 Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted Water Rights

BASIN ZONE: Minimum lot size shall be calculated based upon ground water storage only. Water that is in storage beneath the lot in the Basin Zone may be depleted over a 100-year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water without consideration of recharge of the ground water.

BASIN FRINGE ZONE: Same as Basin Zone.

HOMESTEAD ZONE: Minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 100 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 100 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead Zone minimum lot sizes based on storage in this zone would be larger than those based on recharge.

MOUNTAIN ZONE: Same as Homestead Zone.

METROPOLITAN AREAS-BASIN AND BASIN FRINGE: For Basin and Basin Fringe zones within a Metropolitan Area as shown on Code Maps 12, 14 and 15, it is anticipated that regional water systems will eventually be developed. Therefore, water that is in storage beneath a lot within a Metropolitan Area may be depleted over a 40 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 40 year supply of water without consideration of recharge of the ground water.

METROPOLITAN AREAS-HOMESTEAD AND MOUNTAIN ZONE: For Homestead and Mountain Zones within a Metropolitan Area, the minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not

both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 40 year lifetime. The lot must be large enough to have a ground water in storage beneath the lot for a 40 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 40 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead and Mountain Zones, minimum lot sizes based on storage in these zones would be larger than those based on recharge.

## 10.2 Calculation of Minimum Lot Size

Calculation of the minimum lot size under Section 10.1.2 shall be determined by the formula:

$$\frac{\text{Acre Feet}}{\text{Use (Year) x acres}}$$

Minimum Lot Size (Acres)=Water Available in acre feet per acre/year

$$\text{MLS} = \frac{U \times \text{acres}}{A}$$

Where:

MLS is the minimum lot size in acres; it is the size of a lot needed to supply anticipated water needs.

U is the anticipated water needs for the lot; it is the use of water which will occur from the intended development of the lot, measured in acre-feet per year. The standard values listed for A were derived using the procedures set forth in the water appendix of the Code. The standard value for U is set forth in Section 10.2.2. A is the amount of water available in the aquifers which are beneath the lot, measured in acre-feet per acre per year using recharge or storage as described in 10.1.2.

10.2.1 Standard Values for A and Adjustments. The standard values for A shall be as follows:

<u>BASIN ZONE:</u>	0.1 acre-feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.02 acre-feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre-feet per acre per year
<u>HOMESTEAD ZONE:</u>	.00625 acre-feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>BASIN ZONE:</u>	10 acres
<u>BASIN FRINGE ZONE:</u>	50 acres
<u>MOUNTAIN ZONE:</u>	80 acres
<u>HOMESTEAD ZONE:</u>	160 acres

The standard values of A may be adjusted if the applicant submits a hydrology report, either a detailed report (see Section 6.4 of Article VII), or a reconnaissance report (see Section 6.7 of Article VII). Values of A determined in such reports shall be reviewed by the County Hydrologist, who shall recommend to the Code Administrator whether or not

the value is reasonable, and if not, shall recommend a value appropriate for the use in determining minimum lot size.

The actual value of A used shall be based on the information submitted by the applicant, by the County Hydrologist or by others submitting information. If water conservation measures are used, as provided in Section 10.2.4b, and an actual value of A is determined, in most cases minimum lot sizes will be reduced below those listed in Section 10.2.1. However, applicants are advised that because of varying geologic conditions in Santa Fe County there is no assurance that a hydrology report will determine that the water supply in an area is more abundant than indicated by the standard value of A. In cases where the actual study shows a value of A which is less than the standard value (that is, there is less water available than assumed by the standard value), minimum lot size requirements may be increased beyond those indicated in this Section.

#### 10.2.2 Calculation of Use

U shall have a standard value of 1.0 acre feet per year per dwelling unit for residential use. For all other uses U shall be equal to the actual anticipated consumptive use for the development. The standard value for residential use may be adjusted if an applicant proposes to utilize water conservation measures. There shall be no adjustments for conservation in Urban, Traditional Community and Agricultural Valley Areas.

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure on the value of U. As a minimum, the measures shall include: restrictions on use of water for irrigation purposes (including watering of lawns, gardens and shrubbery); restrictions on use of water for swimming pools; restrictions on the number of bathrooms per dwelling unit; restrictions on garbage disposal units; devices which reduce the utilization of water by appliances, kitchen fixtures, and bathroom fixtures; and pressure-reduction devices on in-coming water lines.

Any applicant who uses the application form as a basis for proposing conservation measures shall be allowed to reduce U in accordance with the effectiveness of the measures proposed. The maximum reduction in U which shall be considered achievable using this approach shall be a reduction of U to no less than 0.25 acre feet per year per dwelling unit. An applicant who proposes water conservation measures sufficient to reduce U to less than 0.25 acre feet per year per dwelling unit shall be required to prepare a water conservation report. See Section 6.6 of Article VII.

The actual value of U, and the minimum lot sizes which result, will depend on the conservation measures proposed by the applicant. In general, applicants who substantially restrict the use of irrigation (lawn and garden) water will be assumed to have a U of 0.5 acre feet per year per dwelling unit, while those who further restrict other types of water use will be assumed to require even less water. For reference purposes, the following lot sizes would be allowed if U is equal to 0.5 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	5 acres
<u>BASIN FRINGE ZONE:</u>	25 acres
<u>MOUNTAIN ZONE:</u>	40 acres
<u>HOMESTEAD ZONE:</u>	80 acres

For reference purposes, the following lot sizes would be allowed if U is equal to 0.25 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	12.5 acres
<u>MOUNTAIN ZONE:</u>	20 acres
<u>HOMESTEAD ZONE:</u>	40 acres

10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development

Special standards which set forth specific limitations on use for small scale commercial developments are set forth in this subsection. Applicants who propose small scale commercial development are required to prepare a written estimate of water use. The value of U shall be determined by that estimate unless otherwise determined by the Code Administrator. The Code Administrator shall have on file, a list of standard water consumption requirements for commercial activities. The applicant may use these figures in lieu of the written estimate of water use. Applicants may use standardized values for A as set forth in Section 10.2.2, or they may submit a hydrology report which contains an actual estimate of A for the land which is to be developed.

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

Because the policy for water management in Metropolitan areas allows for depletion of storage over a 40 year period, standard values for A are as follows:

<u>BASIN ZONE:</u>	.25 acre feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.05 acre feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>METRO BASIN ZONE:</u>	4 acres
<u>METRO BASIN FRINGE ZONE:</u>	20 acres
<u>METRO MOUNTAIN ZONE:</u>	80 acres

b. Adjustments for Water Conservation

For the division of land into four (4) or less lots, the minimum lot size may be adjusted using the procedures set forth in Section 10.2.2. For reference purposes, the minimum lot sizes which result if U = 0.25 acre feet per year per dwelling unit or commercial use are:

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	5 acres
<u>MOUNTAIN ZONE:</u>	20 acres

10.3 Exceptions to Minimum Lot Size Requirements

The minimum lot sizes calculated under Sections 10.1 and 10.2 shall not apply to the areas described in this Section and the minimum lot size contained in this Section shall control.

10.3.1 Metropolitan Area - Community Water Systems

Where a community water system provides water service to a development within the Metropolitan Areas, as shown on Code Maps 12, 14 and 15, the minimum lot sizes shall be:

<u>BASIN ZONE:</u>	1 acre
<u>BASIN FRINGE ZONE:</u>	2.5 acres
<u>MOUNTAIN ZONE:</u>	5 acres

10.3.2 Agricultural Areas

In the Estancia Valley Agricultural Area, minimum lot sizes shall be 50 acres for the Basin Fringe Zone and 10 acres for the Basin Zone. Adjustments for water conservation and water availability will not be allowed. In the Northern Valley Agricultural Area, the minimum lot size for lands with permitted water rights shall be five (5) acres. Adjustments to lot sizes in these areas are conditioned on the finding in each case by the County Development Review Committee that it is in the best interest of the County to convert water rights from agricultural to commercial or residential use.

10.3.3 Traditional Communities

The minimum lot size in traditional communities as shown on Code Maps 40-57, shall be .75 acres, except as follows:

14,000 sq. ft. - Where community water service and community sewer service systems are utilized, or a Local Land Use and Utility Plan is adopted.

10.3.4 Urban Areas

The minimum lot size in Urban Areas shall be 2.5 acres, except as follows:

1 acre - Where community water or community liquid waste disposal systems are utilized.

.50 acre - Where community water and community sewer systems are utilized.

10.4 Density Transfer

The minimum lot sizes specified in this Section 10 shall be taken as gross figures for the purposes of determining the total number of dwellings allowed in a particular development. The arrangement of dwellings in clusters or in such locations as to take advantage of topography, soil conditions, avoidance of flood hazards, access and reduced cost of development, shall not violate the lot size requirements of the Code so long as the total number of acres per lot conforms with the requirements of the Code.

## SECTION 11 - IMPORTING OF WATER

11.1 Location Requirements

Developments which import water from the surface Rio Grande or other locations outside Santa Fe County to any location in Santa Fe County designated in the Development Code as other than urban or metropolitan locations are permitted to locate anywhere in the County provided they meet all requirements of the Code, except that in lieu of the density requirements as specified in Article III, Section 10, the proposed development shall meet the following criteria.

### 2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

### 2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

### 2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

## → SECTION 3 - VARIANCES

### 3.1 Proposed Development

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 conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. 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.

### 3.2 Variation or Modification

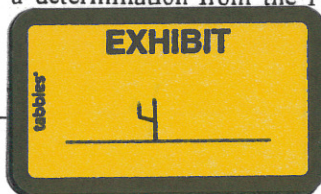
In no case shall any variation or modification be more than a minimum easing of the requirements.

### 3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

### 3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the





→ 4.5.2 Re-use or Expansion of Non-conforming Use

- 4.5.2a Except as otherwise provided in this Section, any non-conforming use of land or structure may be continued so long as it remains otherwise lawful.
- 4.5.2b A non-conforming use of a structure or land, or a non-conforming structure, previously established as a use similar to a proposed new use of the structure or land, or a use of a structure or land which has been suspended by a period of time not longer than one (1) year, may be re-used, extended or expanded provided:
- 1) the re-use, expansion or extension does not increase the intensity of development or alter the character of the non-conforming use on the site according to any limitations set by the Code relating to development standards for lot coverage, height, waste disposal, water use, setbacks, traffic generation, parking needs, landscaping, buffering, outdoor lighting, access, or signage;
  - 2) The re-use, expansion or extension can be brought into compliance with the Code as specified above in 4.5.2b.1;
  - 3) The re-use, expansion or extension does not confer a privilege upon the applicant;
  - 4) The re-use, expansion or extension is not incompatible with the surrounding uses of land and is deemed to be of interest to the health, welfare and safety of the community;
  - 5) In certain instances where conformance to Code requirements is impossible, a variance may be required.
  - 6) A change of tenancy or ownership for an existing non-conforming uses does not require development review.
  - 7) All non-conforming signs shall meet the requirements set forth in Article VIII, Subsection 7.16 - Sign Removal and Non-Conforming Signs.

4.5.3 Submittals and Reviews

- 4.5.3a Re-use or expansion of non-conforming uses are subject to the submittals and review requirements set forth in the Code for the category of use which is proposed.
- 4.5.3b If deemed to be in the public interest by the Code Administrator, a public hearing shall be required pursuant to this Article II.

History. 1980 Comp. 1980-6. Section 4.5 is new and revised material relating to non-conformities added to Article II by County Ordinance 1990-11.

## SECTION 5 - ENFORCEMENT

### 5.1 Complaints

Whenever a violation of this Code occurs or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be submitted to the County Land Use Department. The code enforcement staff shall investigate promptly and take action thereon as follows:



Lawrence Maes Variance  
85A County Road 44 (Southfork)





Lawrence Maes Variance  
85A County Road 44 (Southfork)