

MEMORANDUM

DATE: July 22, 2010

TO: County Development Review Committee

FROM: John M. Salazar, Development Review Team Leader

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

FILE REF: CDRC CASE # V 10-5180 Carl Ortega Variance

ISSUE:

Carl Ortega, Applicant, requests a variance of Article 4, Section 4.2 of Ordinance 2008-10 (Flood Damage and Stormwater Management) to allow a Small Lot Family Transfer Land Division of 2.5 acres into two 1.25 acre lots.

The property is located at 122 Old Dinosaur Trail, within Section 20, Township 16 North, Range 9 East, (Commission District 5).

SUMMARY:

The Applicant requests a variance of Ordinance 2008-10, Article 4, to allow a Small Lot Family Transfer Land Division of 2.5 acres into two 1.25 acre lots. The Applicant states he is requesting a variance in order to give his son a piece of property so he can build his own home in Santa Fe. The Applicant also states that at the time he purchased his property, only half of the property was determined to be in the Special Flood Hazard Area (SFHA).

The Applicant claims about a year ago the Federal Emergency Management Agency (FEMA) hired a company from back east to re-evaluate the flood zones in Santa Fe County. It is the Applicant's understanding that the company conducting the evaluation did not ever set foot on his property to do the assessment but rather used aerial views to determine the flood zones for Santa Fe County. The Applicant claims that after this new

determination, his entire property has been placed within the SFHA according to FEMA. The Applicant also claims he was never notified from either the County or FEMA regarding this determination. The Applicant believes the study from FEMA is in error and his house and lot are not entirely within the SFHA. The Applicant states hiring an Engineer to conduct a study to identify that his property is not entirely within the SFHA is an enormous expense and he and his son do not have that kind of money.

Ordinance 2008-10 Article 4, Section 4.2 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 (i.) An alternative buildable area located outside the limits of the SFHA is available, (ii.) Unable to be removed from the SFHA through the formal FEMA map revision or (iii.) Absent all weather access.” (Exhibit B).

Ordinance 2008-10 Article 4, Section 4.6.J states that the Prerequisites for granting variances are as follows:

- a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- b. Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- d. Variances may be issued by the BCC for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - i. The criteria outlined in Article 4, Section D (1)-(9) are met, and;
 - ii. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

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 table for further analysis.

RECOMMENDATION:

The Applicant’s request for a variance is based on a determination made by FEMA and the expense of conducting a study through the formal FEMA map revision process described in Article 4 Subsection 4.4. This is not the sort of hardship contemplated by the Code and does not satisfy the variance requirements of Ordinance 2008-10. Furthermore, neither the Code nor Ordinance 2008-10 support creation of lots that are totally encumbered by a SFHA. Therefore, staff recommends **denial** of the request.

ATTACHMENTS:

- Exhibit “A”- Applicant’s Letter of Request
- Exhibit “B”- Ordinance 2008-10 Section 4
- Exhibit “C”- Article II, Section 3 (Variances)
- Exhibit “D”- Article VII, Section 3.4.1b 3 (Buildable Areas)
- Exhibit “E”- Site Plan
- Exhibit “F”- Survey Plat
- Exhibit “G”- Proposed Lot Configuration
- Exhibit “H”- SFHA Overlay
- Exhibit “I”- Vicinity Map