

DATE: September 20, 2012

TO: County Development Review Committee

FROM: Vicki Lucero, Building and Development Services Manager

VIA: Penny Ellis-Green, Interim Land Use Administrator

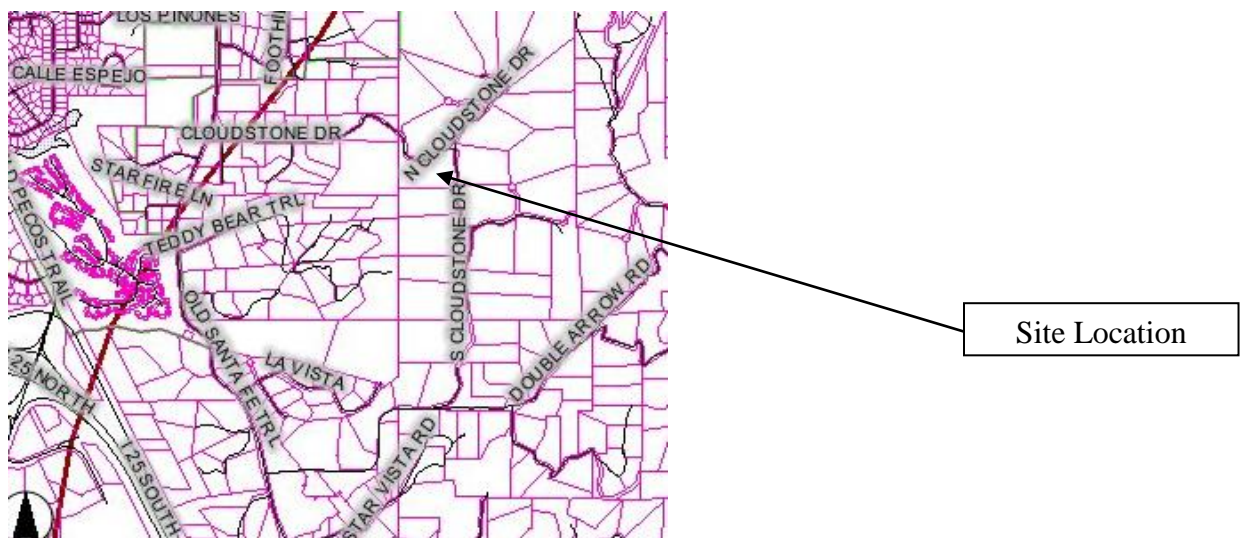
FILE REF.: CDRC CASE # V 12-5060 Jay Shapiro Variance

ISSUE:

Jay Shapiro, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 10.21 acres.

The property is located at 94 Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, (Commission District 4).

Vicinity Map:



SUMMARY:

The Applicant requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 10.21 acres. The property is located in the Mountain Hydrologic Zone where the minimum lot size is 20 acres per dwelling unit with water restrictions of 0.25 acre feet per year. The 10.21-acre lot was created as part of a pre-code subdivision in 1976. At that time there were no water restrictive covenants imposed on these lots.

There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure. The accessory structure which was permitted on May 13, 2010, (Permit # 10-189) showed a bathroom, but no kitchen facilities. At the time of permitting, the Applicant signed a Development Affidavit stating that the accessory structure would not be converted at any time into a dwelling unit. The accessory structure has been converted into a dwelling with both kitchen and bathroom facilities.

The State Construction Industries Division (CID) informed the County that the accessory structure was constructed as a residence after they conducted a Final Inspection. The County issued a Notice of Violation for exceeding density and the Applicant immediately came in to submit a request for a variance.

During the final stages of design, after permits were issued, the Applicant added an area for a kitchen, which the Agent states was approved by the Homeowner's Association. The Agent also states that the structure in question is keeping with the character of the neighborhood and the other accessory dwelling units in the subdivision, and that the Applicant's guesthouse is smaller than the principal residence on the lot, is located near the principal dwelling and subordinate in character and use to the principal dwelling unit.

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."

Financial and/or medical hardships are not a basis for the granting of a variance.

This Application was submitted on February 21, 2012.

Growth Management staff has 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: El Centro, SDA-2

HYDROLOGIC ZONE: Mountain, minimum lot size per Code is 20 acres per dwelling unit with water restrictive covenants. The two proposed dwelling units exceed the number of units allowed on the subject property.

FIRE PROTECTION: Hondo Fire District.

WATER SUPPLY: Domestic Well

LIQUID WASTE: Conventional Septic System

VARIANCES: Yes

| | | |
|-----------------------|---------------|-----------------------|
| AGENCY REVIEW: | <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 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 1st of each year. Water restrictions shall be recorded in the County Clerk's Office. **(As per Article III, § 10.2.2 and Ordinance 2002-13).**
2. The Applicant must amend the development permit from the Building and Development Services Department for the second dwelling unit **(As per Article II, § 2.1)**
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Amended Development Permit Application **(As per Article III, § 2.4.1a.1(a) (iv)).**
4. The placement of additional dwelling units or division of land is prohibited on the property **(As per Article III, § 10).**

5. The Applicant shall comply with all Fire Prevention Division requirements (**As per 1997 Fire Code and 1997 NFPA Life Safety Code**).
6. No more than two electric meters shall be allowed on the property (**As per Article III, § 10**).

EXHIBITS:

1. Letter of request
2. Article III, §10 (Lot Size Requirements)
3. Article II, § 3 (Variances)
4. Site Photographs
5. Site Plan
6. Aerial of Site and Surrounding Area
7. Letters of Opposition
8. Development Affidavit
9. Fire review comments