

## MEMORANDUM

**DATE:** December 17, 2009

**TO:** County Development Review Committee

**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

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### **ISSUE:**

Bryan Berg and Kristin Carlson, Applicants, request approval of eight variances of the Uniform Fire Code and Urban Wildland Interface requirements and of Article VII, Section 2 (Liquid Waste Disposal), 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 driveway to be less than 14 feet wide (as required by Fire Code); 4) to allow a turn around that does not meet Fire Code requirements; 5) to allow a retaining wall greater than 10 feet in height; 6) to allow a conventional liquid waste disposal system rather than an advanced liquid waste system; 7) to allow disturbance of slopes greater than 30%; and 8) 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:**

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 (CLDC) 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 CLDC 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 CLDC states that the maximum grade for a road/driveway accessing 1 lot is 11%. The maximum road grade is also limited to 11% per Section 902.2.2.6 of the Uniform Fire Code. 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 VII, Section 2.4.10 (Table 7.2) of the CLDC states that conventional liquid waste disposal systems cannot be used on slopes greater than 15%. The applicants have met with NMED and have obtained a permit from them for a conventional septic system (Refer to Exhibit "A"). However, because this is not allowed by County Code the applicants are requesting a variance.

Article III, Section 2.3.6.b.1 of the CLDC 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 39'-2" and an overall building height (from highest point of building to lowest point of building at finished cut grade) of 28'-10." 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 CLDC 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.

Ordinance No. 2001-11 (Wildland Interface Code) mandates a uniform 14' width for driveways that must allow access for emergency vehicles. The applicants are requesting a minimum driveway width of 12' along some portions of the driveway. The applicants state that the cost of such improvements would begin to exceed the cost of the parcel just one year ago, and would render them unable to afford the improvements and they would be denied rightful use of the property. Therefore, a variance is requested.

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 parking area 60 feet long and 33'-6" deep located along the edge of the driveway to help minimally accommodate emergency vehicles. The applicants state that given the extreme topography of the site, the construction of a legal sized hammerhead solely dedicated to emergency vehicles would not only eliminate a feasible building site but would far violate beyond reason the intent and parameters of the Ordinance for: building height, retaining wall height, removal of significant trees, visibility from a major arterial, and disturbance of slopes exceeding 30%. The Fire Marshal has reviewed this application and does not support the requested variance (Refer to Exhibit "D").

**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 to table for further analysis of this request.

**RECOMMENDATION:**

The Applicant is proposing a 4,441 sq. ft. multi level residence. Based on the proposed width and grade of driveway and inadequate turn around an emergency vehicle would not be able to access the site, therefore, the County Fire Marshal's Office is recommending denial of this request.

The subject property is a legal lot of record. The lot is limited by excessively 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. Staff recommends approval of the variances of Article VII, Section 2 (liquid waste disposal), and Article VII, Section

3 (Terrain Management). Strict compliance with the requirements of the Code could result in extraordinary hardship to the applicant. The applicant is seeking a height variance that would allow for passive solar design. The New Mexico Solar Rights Act states that a county or municipality shall not restrict the installation of a solar collector as defined pursuant to the Solar Rights Act (See Exhibit "G"). Therefore, staff recommends approval of the requested variances of Article III, Section 2.3 (Site Planning) to allow the height of the residence to exceed 18' and to allow a retaining wall greater than 10' in height subject to the following conditions:

1. A disclosure statement releasing Santa Fe County of all liability, signed by the applicant and notarized, must be recorded with the warranty deed or survey plat in the County Clerk's office.
2. 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.

**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"- NM Solar Rights Act