

## MEMORANDUM

**DATE:** February 17, 2011

**TO:** County Development Review Committee

**FROM:** John M. Salazar, 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 # V10-5540 Linda Finkelstein Variance

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### **ISSUE:**

Linda Finkelstein, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow three dwelling units on 2.5 acres one of which is a request for temporary placement.

The property is located at 10 Timber Lane, within Section 28, Township 10 North, Range 7 East, (Commission District 3).

### **SUMMARY:**

The Applicant requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow three dwelling units on 2.5 acres (Exhibit "L"). The Applicant received a Notice of Violation from County Code Enforcement on November 23, 2009 for unpermitted development. On December 15, 2009 a Final Notice of Violation was issued. Two of the homes have been on the property since 1984 although staff is unable to locate any permits for either residence. The third mobile home was moved onto the property by the Applicant's nephew.

The subject property is located in one of the many doughnut holes located in the southern part of the County surrounded by the town of Edgewood. Of the two original mobile homes, the Applicant resides in one while her 91 year old cousin lives in the other. The Applicant's cousin suffers from severe dementia and states that she would like to build a breezeway between both mobile homes in order to safely care for her cousin day or night in all weather. She is requesting

permission to allow the third mobile home to remain on a temporary basis for a year or until her nephew can get back on his feet.

The two homes on the property are served by a single shared conventional septic system and served by New Mexico American Water in Edgewood. The Applicant is proposing that the third residence will have its own septic system and will receive its own water meter from NMAW. All three residences will share the same driveway.

Article III, Section 10 states the maximum allowable lot size within the Metro-Basin Fringe Hydrologic Zone is 2.5 acres per dwelling unit with community water.

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, and approve with conditions or table for further analysis of this request.

**RECOMMENDATION:**

Staff recommends that the request for a variance be denied; Article III, Section 10 states that the minimum lot size in this area is 2.5 acres per dwelling unit. Should the CDRC recommend approval of this case to the Board of County Commissioners, staff recommends that the following conditions are included with this action:

1. The Applicant shall obtain County development permits for all structures on the property.
2. The Applicant shall obtain an updated septic permit from NMED.
3. The third mobile home shall be permitted for one year after which time it must be disconnected and removed from the subject property. Should the hardship continue to exist, the Applicant shall request an extension from the Board of County Commissioners.
4. No other dwelling units shall be permitted on the subject property.

**ATTACHMENTS:**

- Exhibit "A" - Letter of Request for Variance
- Exhibit "B" - Vicinity Map
- Exhibit "C" - Aerial Photo of Property
- Exhibit "D" - Pre-Code Deed
- Exhibit "E" - Site Plan
- Exhibit "F" - Photos of Property
- Exhibit "G" - Notice of Violations
- Exhibit "H" - Article III, Section 10
- Exhibit "I" - Article II, Section 3