

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 # V10-5560 Juan Lozoya Variance

ISSUE:

Juan Lozoya, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow four dwelling units on 1.25 acres.

The property is located at 31 Cerro del Alamo, within Section 28, Township 16 North, Range 8 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 four dwelling units on 1.25 acres (Exhibit "L"). The Applicant received a Notice of Violation from County Code Enforcement on July 21, 2010 on a received complaint for exceeding density and unpermitted development.

The subject property was created through a small lot family transfer and is under a .25-acre foot per year water restriction. Per Code the .25-acre foot per year water restriction is sufficient for a family of four and could not sustain three additional dwelling units. No meter readings have been submitted to the Land Use Administrator since the lot was created so it is uncertain at this time how much water is actually being used on the property.

The Applicant states that he bought the property in its current state with a three unit apartment building and a single wide mobile home. All four units are currently rented and the Applicant states that he needs the income at this time. Staff has researched the property and found that it

was originally owned by the Applicant's brother. The prior owner applied for, and received a development permit for a garage in 1998. The permitted garage has since been remodeled into a three unit apartment building consisting of a one bedroom unit and two (2), two bedroom units. All three units have a kitchen, a single bathroom and share a laundry facility accessed from the outside. All facilities are currently served by a single conventional septic system.

The minimum lot size required for a conventional septic system is 0.75 acres for a three bedroom home, the lot size minimum increases with each additional bedroom (Exhibit "J"). The State Environment Department (NMED) has specific regulation regarding maximum design flow based on parcel size; NMED staff has indicated that the maximum number of bedrooms that could be allowed on a 1.25 acre parcel is five. More than five bedrooms might not be permitted by the NMED, and the Applicant is herein advised that an advanced liquid waste treatment system might be required, dependant on the number of bedrooms present, and the number proposed. Permitting of the liquid waste disposal systems is through the NMED, and must be addressed prior to application for a County Development Permit.

Article III, Section 10 states the maximum allowable lot size within the Basin Hydrologic Zone is 2.5 acres per dwelling unit. The subject property is currently 1.25 acres because of a small lot family transfer that took place in August of 1997. Additionally, the property does not meet NMED standards to sustain four separate septic systems, and the Applicant has not provided current documentation from the NMED regarding the existing system.

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. The lot size was reduced to 1.25 acres via the Small Lot Family Transfer process in August of 1997 (Exhibit D). The subject property is currently restricted to a .25 acre foot per year water restriction which cannot sustain four dwelling units and does not contain enough acreage to sustain septic systems for each dwelling unit. The parcel is outside any commercial node that would allow rezoning as an apartment; rezoning would also require a variance which would not be supported by staff.

ATTACHMENTS:

- Exhibit "A" - Letter of Request for Variance
- Exhibit "B" - Vicinity Map
- Exhibit "C" - Aerial Photo of Property
- Exhibit "D" - Plat of Record
- 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
- Exhibit "J" - NMED Criteria for Septic Systems
- Exhibit "K" - Letter of Opposition