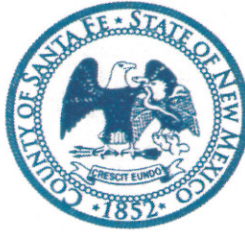


Danny Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: October 11, 2011

TO: Board of County Commissioners

FROM: Wayne Dalton, Building and Development Services Supervisor *WD*

VIA: Jack Kolkmeier, Land Use Administrator *JK*
Shelley Cobau, Building and Development Services Manager *SC*

FILE REF.: CDRC CASE # V 11-5220 Roland & Lois Betts Variance Structures

ISSUE:

Roland & Lois Betts, Applicant's, Sommer & Associates, (Karl Sommer), Agent, request a variance of Article III, Section 2.3.6 (Height Restrictions for Dwellings or Residential Accessory Structures) to allow an accessory structure to exceed twenty-four (24') feet in height.

The property is located within the La Tierra Nueva Subdivision, at 18 Headquarters Trail, within Section 1, Township 17 North, Range 8 East, (Commission District 2).

SUMMARY:

On August 18, 2011, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the Applicant's request for a variance by a 3-1 vote (Refer to Meeting Minutes Attached as Exhibit "A").

The Applicant's request a variance of Article III, Section 2.3.6 of the Land Development Code to allow a detached accessory structure to exceed twenty-four (24') feet in height. The proposed two story structure is approximately 1,523 square feet in size and will consist of a garage (539 sq. ft.) and exercise room (984 sq. ft.) with a total height of twenty seven (27') feet on the south facing elevation.

The property consists of 11.7 acres and currently has an existing residence. The proposed structure will be an accessory to the main residence as required by Ordinance No. 1997-4.

Article 2.3.6a states for the purpose of this section, height means the vertical distance from **any** point on the upper surface of a building or structure to the natural grade or finished cut grade, whichever is lower, directly below that point.

Staff has conducted a review of the Applicant's proposed plan and has also obtained an opinion from the Legal Department pertaining to the south elevation of the structure. Staff and the Legal Department concur that the proposed structure exceeds the height limitation as outlined within the Land Development Code. Staff measured the vertical distance between the highest point (**upper surface**) of the structure directly below to finished cut grade and determined that the structure is approximately twenty-seven (27') feet in height.

The Applicant's disagree with Staff's interpretation of the Code and are therefore requesting a variance.

Article III, Section 2.3.6b states that the height of any dwelling or residential structure shall not exceed twenty-four feet (24'). The vertical depth of fill materials from natural grade with or without retaining walls shall be considered as a component of the building or structure; this depth shall be included in the determination of the building height. Chimneys may extend three feet (3') beyond the height limitation.

The Applicant's have submitted revised elevations of the structure with a flat roof design which has received pre-approval by staff eliminating the need for a variance (Exhibit "F") however the Applicant's have decided to move forward with the original proposal.

Article II Section 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."

REQUIRED ACTION:

The BCC 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:

Staff has reviewed this submittal and has found the following facts **to deny** this Application: Article III, Section 2.3.6b states that the height of any dwelling or residential structure shall not exceed twenty-four feet (24'); height means the vertical distance from **any** point on the upper surface of a building or structure to the natural grade or finished cut grade, whichever is lower, directly below that point; the Applicant's design of the proposed structure is a self-inflicted condition and not a reason for variance as contemplated by the Code; The topography, location or the size of the site do not inhibit the Applicant's from complying with the provisions set forth in the Land Development Code; revised drawings have been pre-approved by staff eliminating the need for a variance; therefore staff recommends **denial** of the Applicant's request.

ATTACHMENTS:

- Exhibit "A"- CDRC Meeting Minutes
- Exhibit "B"- Applicant's Letter
- Exhibit "C"- Article III, Section 2.3.6 (Height Restrictions for Dwellings or Residential Accessory Structures)
- Exhibit "D"- Article II, Section 3 (Variances)
- Exhibit "E"- Proposed Plans
- Exhibit "F"- Revised Plans (Flat Roof Design)
- Exhibit "G"- Site Plan
- Exhibit "H"- Photos of Site
- Exhibit "I"- Aerial of Site and Surrounding Area
- Exhibit "J"- Vicinity Map

~~Member Gonzales asked if there had been any letters in support or in opposition. Mr. Dalton said he received an email with concern about a land division. Mr. Dalton explained that this was not a request for a land division and he did not hear from that person again. He did not believe there was a homeowners association in the area.~~

~~Noting that the case would go before the BCC, and that any declarations about how many dwellings there could be on the property were made by private parties, Chair DeAnda moved to deny the request for a variance. Member Gonzales seconded, and the motion to deny carried unanimously.~~

~~Mr. Dalton noted that the case is scheduled to be heard by the Board of County Commissioners on September 13th.~~

D. CDRC CASE # V 11-5220 Roland & Lois Betts Variance. Roland & Lois Betts, Applicants, Sommer & Associates, (Karl Sommer), Agent, Request a Variance of Article III, Section 2.3.6 (Height Restrictions for Dwellings or Residential Accessory Structures) to Allow an Accessory Structure to Exceed Twenty-Four (24') Feet in Height. The Property is Located within the La Tierra Nueva Subdivision, at 18 Headquarters Trail, within Section 1, Township 17 North, Range 8 East, (Commission District 2) Wayne Dalton, Case Manager

Mr. Dalton gave the staff report as follows:

“The Applicants request a variance of Article III, Section 2.3.6 of the Land Development Code to allow a detached accessory structure to exceed twenty-four feet in height. The proposed two-story structure is approximately 1,523 square feet in size and will consist of a garage, which is 539 square feet and exercise room which is 984 square feet with a total height of twenty-seven feet on the south facing elevation.

“The property consists of 11.7 acres and currently has an existing residence. The proposed structure will be an accessory to the main residence as required by Ordinance No. 1997-4. Article 2.3.6a states for the purpose of this section, height means the vertical distance from any point, and the word ‘any’ being the key word there, on the upper surface of a building or structure to the natural grade or finished cut grade, whichever is lower, directly below that point.

“Staff has conducted a review of the Applicants’ proposed plan and has also obtained an opinion from the Legal Department pertaining to the south elevation of the structure. Staff and the Legal Department concur that the proposed structure exceeds the height limitation as outlined within the Land Development Code. Staff measured the vertical distance between the highest point (upper



surface) of the structure directly below to finished cut grade and determined that the structure is approximately twenty-seven feet in height.

“The Applicants disagree with Staff’s interpretation of the Code and are therefore requesting a variance.

“Article III, Section 2.3.6b states that the height of any dwelling or residential structure shall not exceed twenty-four feet. The vertical depth of fill materials from natural grade with or without retaining walls shall be considered as a component of the building or structure; this depth shall be included in the determination of the building height. Chimneys may extend three feet beyond the height limitation.

“The Applicants have submitted revised elevations of the structure with a flat roof design which has received pre-approval by staff eliminating the need for a variance, attached as Exhibit E, however the Applicant’s have decided to move forward with the original proposal.”

Mr. Dalton indicated staff has reviewed this submittal and has found the following facts to deny this Application: Article III, Section 2.3.6b states that the height of any dwelling or residential structure shall not exceed twenty-four feet; height means the vertical distance from any point on the upper surface of a building or structure to the natural grade or finished cut grade, whichever is lower, directly below that point; the Applicants’ design of the proposed structure is a self-inflicted condition and not a reason for variance as contemplated by the Code; The topography, location or the size of the site do not inhibit the Applicants from complying with the provisions set forth in the Land Development Code; revised drawings have been pre-approved by staff eliminating the need for a variance; therefore staff recommends denial of the Applicants’ request.

Member Gonzales asked how often the structure was measured. Mr. Dalton explained that it has not been built yet; it is only a proposal and the measurements were taken off the plans. Member Gonzales asked about the nature of the discrepancy and Mr. Dalton answered staff always measures from the highest point to the lowest point. He explained after the pitched roof was denied the architect came back with a flat roof which was approved. However, the applicant prefers the pitched design.

In response to questions from the chair, Mr. Dalton stated the only problem is with the south-facing elevation, which is 27 feet.

Member Anaya asked what kind of slope the property had and Mr. Dalton guessed it was probably between three and seven percent. Relying on past experience, Member Anaya said line of sight is often used as a criterion. Mr. Dalton said the aerial photograph shows houses in all directions.

Serving as counsel for the applicant, Karl Sommer introduced project architect Cindy Urban and distributed plat plans and elevations. *[Exhibit 1]* Mr. Sommer said the

case is simple; the code is not being used consistently. The façades of both designs submitted are the same yet staff judged them differently. He said the code is being consistently misread and misapplied historically.

Mr. Sommer used renderings to demonstrate his contention using measurements on a direct perpendicular line. He pointed out that the neighbor to the south has signed off on the design. Quoting from the code he said, "Height means the vertical distance from any point on the upper surface of the structure to the natural or finished grade, whichever is directly below that point."

Mr. Sommer offered a highlighted version of the Terrain Management Guidelines to support his interpretation, adding flat and pitched roofs should be measured in the same way. *[Exhibit 2]*

Ms. Cobau alluded to the Terrain Management Guidelines, page 15, below Mr. Sommer's highlighted section which says, "On ridgetops, limit structures to a single story, 14 feet for flat roofs, 18 feet for pitched." This shows the two styles of roofs are in fact measured differently. She said the height ordinance can be complied with easily by the second design submitted.

Mr. Sommer noted that statement refers to the fact there is a different measurement, 18 versus 14; it does not say you measure differently. It is a standard rather than an interpretation. Since the usable area inside a pitched roof is less the County allows them to go higher.

Noting they have been granted approval for the flat roof design, Chair DeAnda asked why they are requested the denied design.

Mr. Sommer indicated the applicant wants the house to resemble a school house; the government should not deny him that preference.

Chair DeAnda said the distinction did not seem to be arbitrary.

Member Gonzales asked if the three feet above the height limitation could be considered a minimal easing. Mr. Dalton said six inches would be a minimal easing. He added they have no problem with the schoolhouse design, only with the fact that the schoolhouse is too high.

There was no one from the public wishing to speak.

Based on signatures of neighbors on the plat and the topological setting, Member Anaya moved to approve the request in Case #V 11-5220 and Member Valdez seconded. The motion carried by 3-1 voice vote with Chair DeAnda voting against the motion.

SOMMER, KARNES & ASSOCIATES, LLP

Mailing Address

Post Office Box 2476
Santa Fe, New Mexico 87504-2476

Street Address

200 West Marcy Street, Suite 142
Santa Fe, New Mexico 87501

Telephone: (505) 989.3800

Facsimile: (505) 982.1745

July 8, 2011

Shelly Cobau
County of Santa Fe
Land Use Department
102 Grant Avenue
Santa Fe, NM 87501

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Mychal L. Delgado, Paralegal
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mpb@sommer-assoc.com

Re: Appeal – Height Restriction Analysis for Project Located at 18 Headquarters Trail

Dear Ms. Cobau:

This firm represents Roland and Lois Betts, owners of the property located at 18 Headquarters Trail, Santa Fe, NM. Our firm is appealing the decision by Wayne Dalton, which decision was confirmed via telephone call on dated July 8, 2011 from Assistant County Attorney Linda M. Trujillo to me. Alternatively, we are requesting a variance to the height regulations applicable to this property if staff's interpretation and application of the applicable height regulations are upheld.

Enclosed are the following documents with respect to this application:

1. Development Permit Application;
2. Plan Set Depicting the Proposed Project (3 sets); and
3. A check for \$250.00 for the Appeal Fee.

We just received a final decision from Mr. Dalton and Ms. Trujillo yesterday, and so we are filing this application as quickly as we are able. I will supplement the submittals by Wednesday of next week.

Please let our office know if you require any additional information at this time.

Sincerely,



Karl H. Sommer
KHS:mld

Enclosures

cc: Roland Betts
Cindy Urban
Linda Trujillo



2.3.4b Any development site on a ridgetop must be set back from the shoulder toward the crest of a hill or ridge pursuant to Article VII, Section 3.4.1 d. Performance Standards for Development Site.

2.3.5 Shared points of ingress and egress to adjacent development sites is encouraged, unless it can be demonstrated that additional or separate access is necessary. Design standards and submittal requirements as set forth in Article III, Section 4.4.3a, for Driveway Access, and Article VII, Section 3.4.4, Roads and Driveways shall be applied.



2.3.6 Height Restrictions for Dwellings or Residential Accessory Structures

2.3.6a. For the purpose of this Section, height means the vertical distance from any point on the upper surface of a building or structure to the natural grade or finished cut grade, whichever is lower, directly below that point.

2.3.6b. The height of any dwelling or residential accessory structure shall not exceed twenty-four feet (24'). The vertical depth of fill materials from the natural grade, with or without retaining walls, shall be considered as a component of the building or structure; this depth shall be included in the determination of building height. Chimneys may extend three feet (3') beyond the height limitation. In addition:

1. 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'). 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 Code Administrator may waive this requirement if the portion of the structure located on land over 15 % slope is incidental to the entire site.
2. On ridgetops as defined in Article X of the Code, only one story buildings are allowed. On ridgetops, the height of any dwelling or residential accessory structure shall not exceed fourteen feet (14'), except one story pitched roof style buildings may be allowed a maximum height of eighteen feet (18') provided such roof can be screened from a public way and pursuant to a site visit and approval of the Code Administrator.
3. Structures for agricultural purposes shall meet the requirements of Article III, Section 1.

2.3.6c. Requests for residential accessory structures such as windmills and radio antennas to exceed the maximum height restrictions shall be reviewed for approval by the County Development Review Committee. When an exception to the height restrictions is desired, the applicant shall submit plans for the installation and operation of the accessory structure with a report explaining why the requested height of the structure is necessary for proper function. The County Development Review Committee shall consider: whether the requested structure is reasonably necessary to be on the proposed site; whether the applicant has demonstrated that the requested height is the minimum height necessary for the proposed structure to function properly, not to exceed a maximum height of forty-five feet (45'); and the size of the lot and impact on neighboring properties.

2.3.7 Terrain Management

All development of a lot, tract, or parcel shall be done in accordance with the Santa Fe County Land Development Code, Article VII, Section 3, Terrain Management.



2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

→ SECTION 3 - VARIANCES

3.1 Proposed Development

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 conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. 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.

3.2 Variation or Modification

In no case shall any variation or modification be more than a minimum easing of the requirements.

3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the



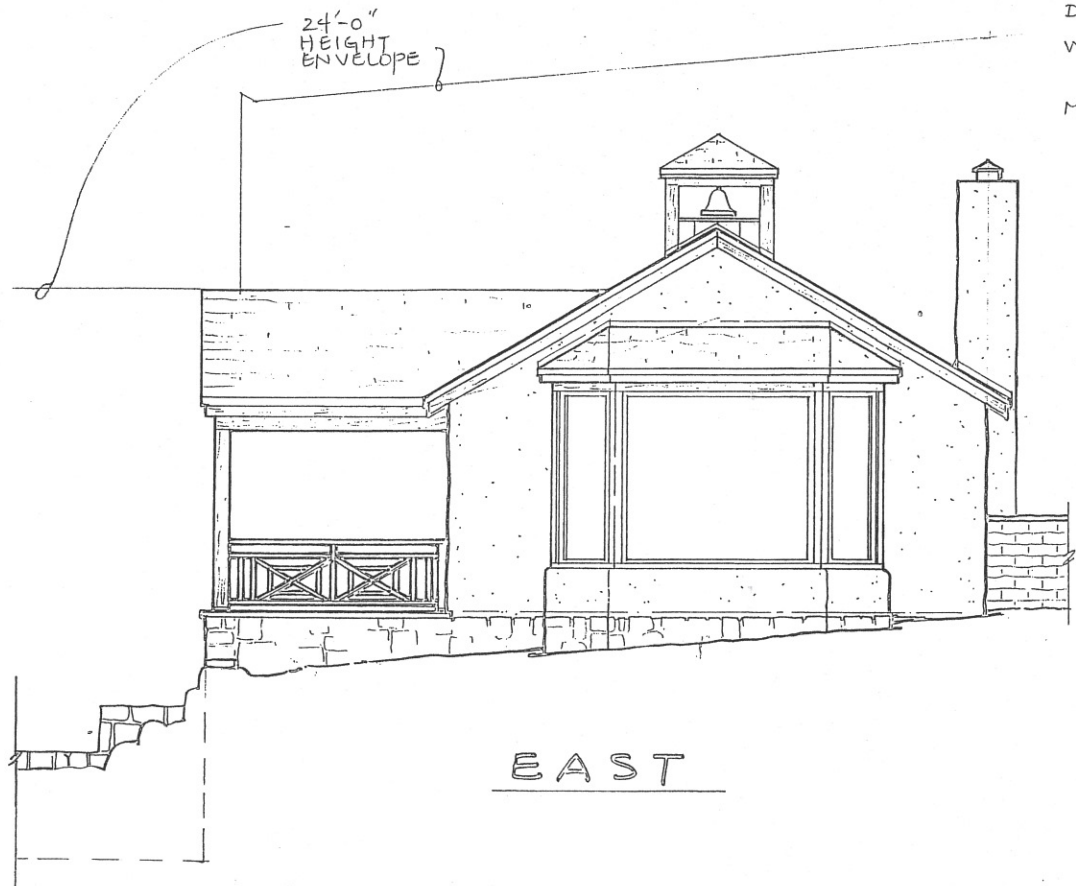


WEST

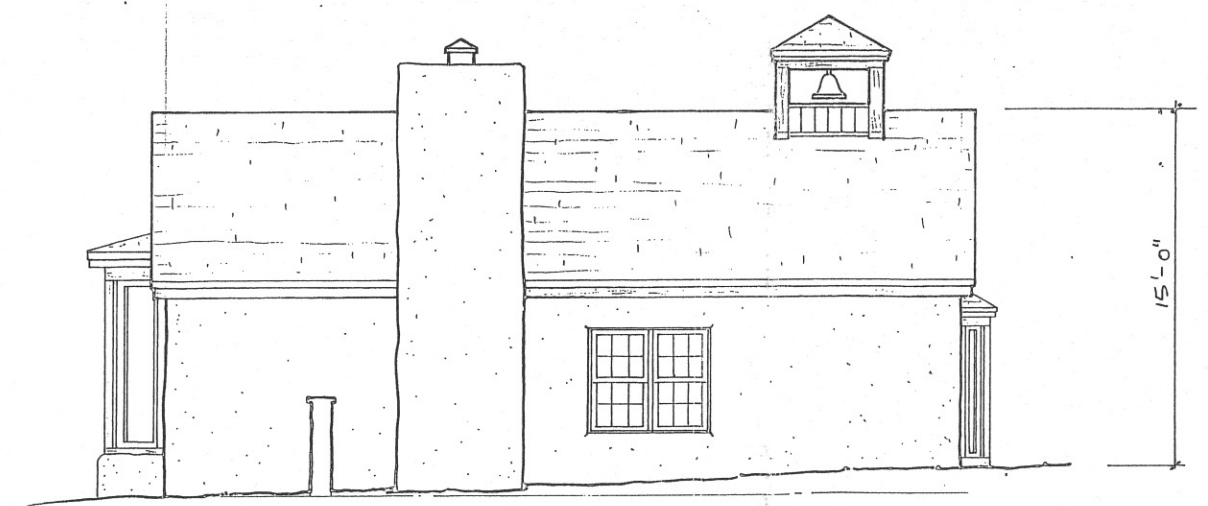


SOUTH

EXTERIOR FINISHES:
 ROCK—MATCH EXISTING ROCK AT DRIVEWAY EDGE
 STUCCO—MATCH EAST WALL OF EXISTING RESIDENCE
 WOOD—RECLAIMED, AGED WOOD, CLEAR SEAL
 ROOFING—CEDAR SHINGLES TO MATCH EXISTING RESIDENCE
 DOORS—ANTIQUÉ & NEW FACED W/RECLAIMED WOOD, CLEAR SEAL
 WINDOWS—'MARVIN' OR SIMILAR, WOOD, STAIN & SEAL TO MATCH RECLAIMED WOOD
 METAL FLASHING—AGED COPPER



EAST



NORTH

EXTERIOR ELEVATIONS

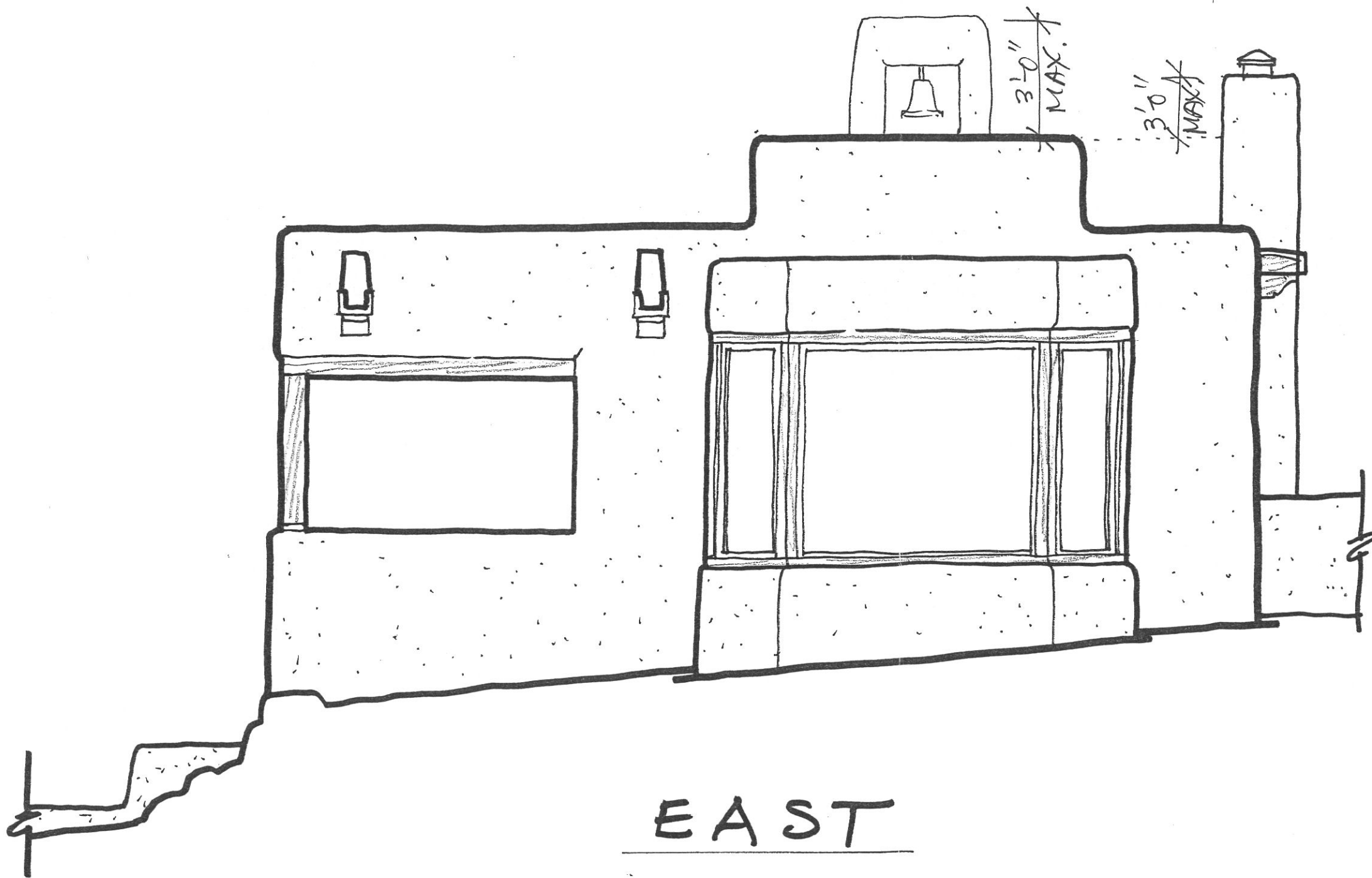
THE BETTS RESIDENCE
 17 HEADQUARTERS TRAIL • SANTA FE • NM





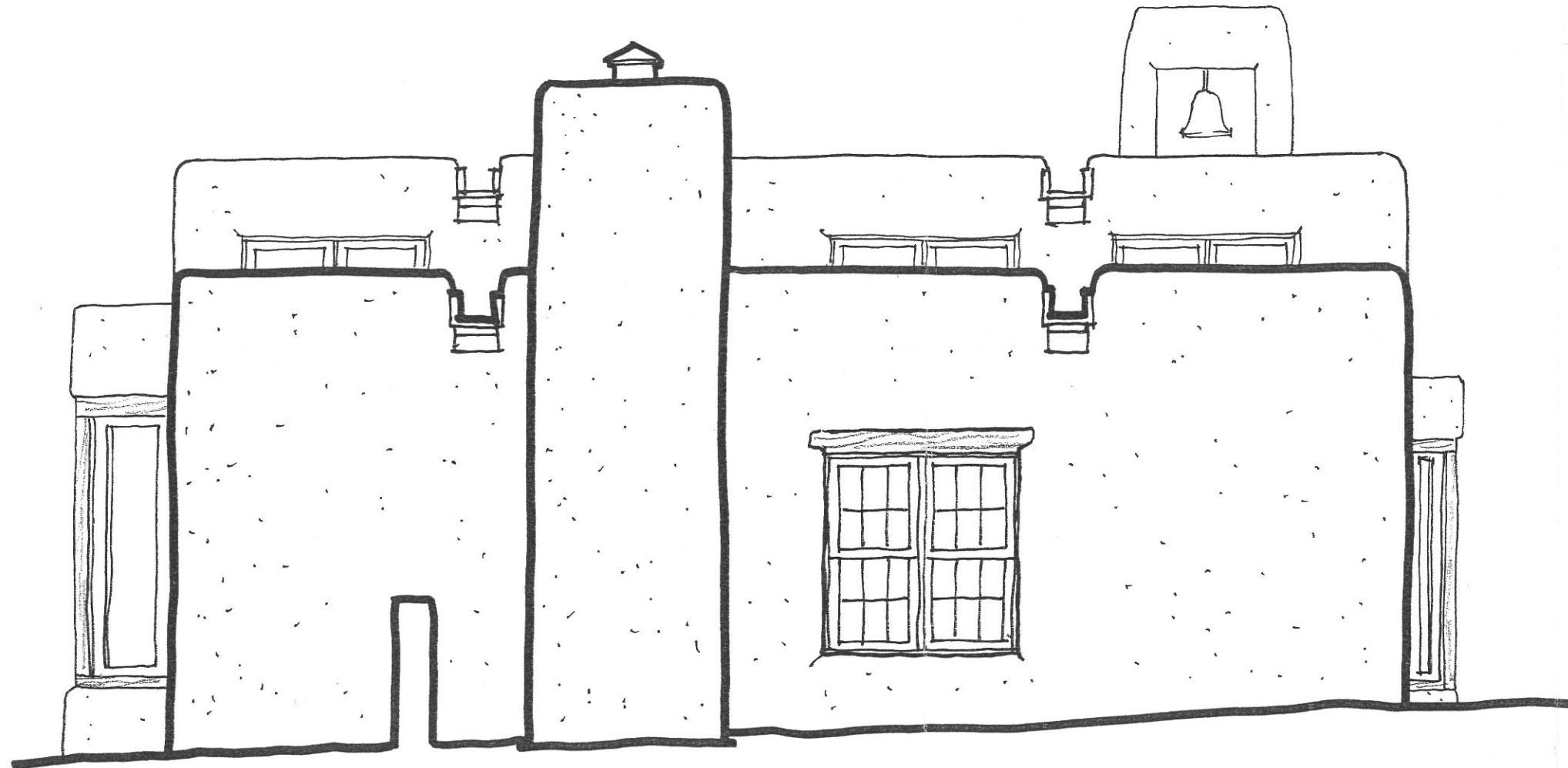
SOUTH

EXHIBIT
F





WEST

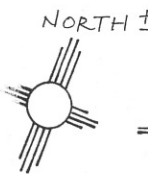
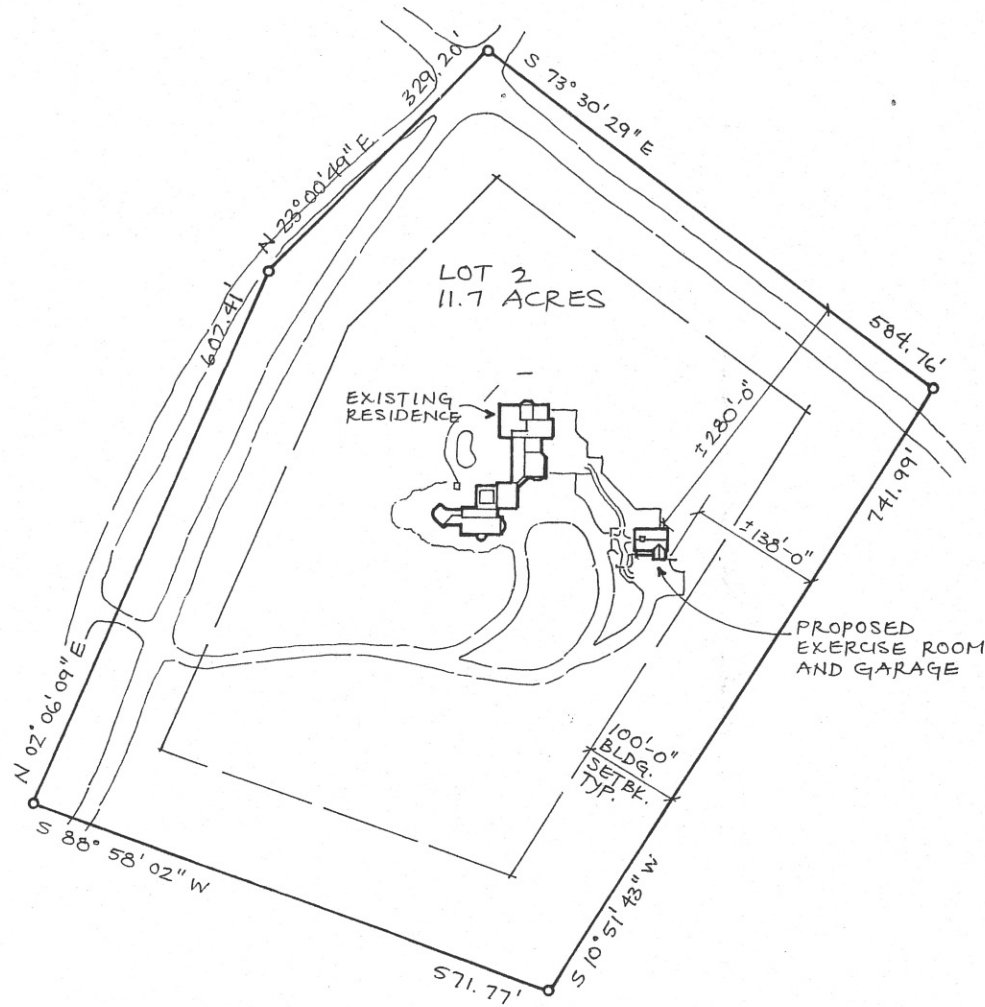


NORTH

ALTERNATE STYLE FOR BETTS PROJECT

SCALE: 1/4" = 1'-0"

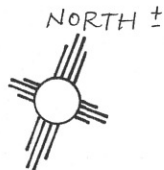
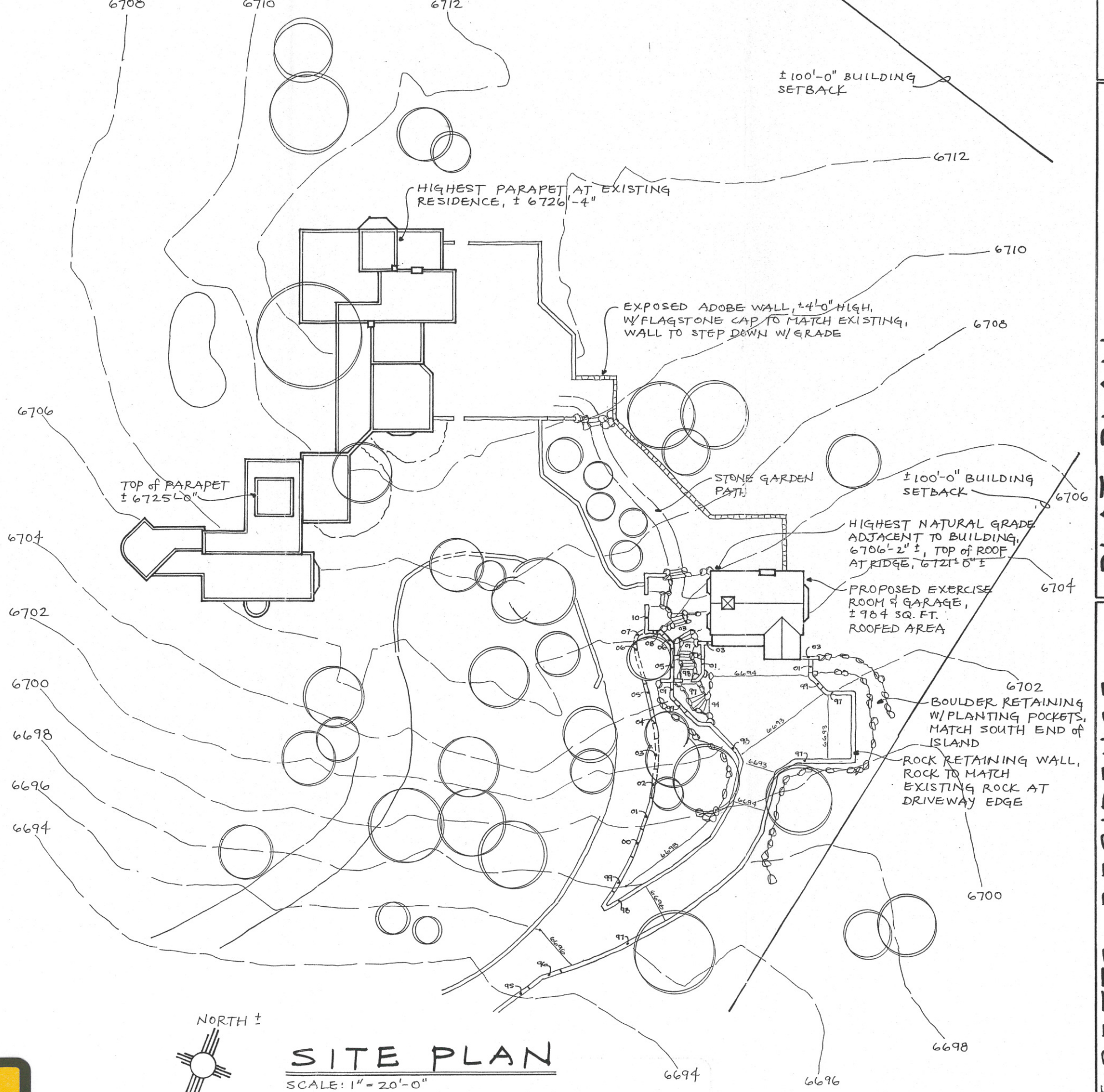
DATE: 7-19-2011



PLAT PLAN

SCALE: 1" = 100'-0"

NOTE:
 DATA FOR THIS DRAWING TAKEN FROM
 A 2008 ORTHOPHOTOGRAPHY BY SANTA FE
 COUNTY PRINTED ON APRIL 29, 2011



SITE PLAN

SCALE: 1" = 20'-0"



PLAT PLAN AND
 SITE PLAN

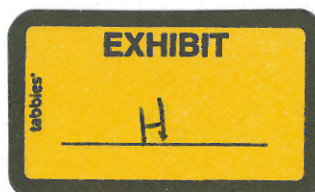
THE BETTS RESIDENCE
 18 HEADQUARTERS TRAIL, SANTA FE, NM



8/8/2011

Roland and Lois Betts

18 Headquarters Trail





8/8/2011

Roland and Lois Betts
18 Headquarters Trail



8/8/2011

Roland and Lois Betts

18 Headquarters Trail

Map of Property in Santa Fe County

Legend

- driveways
- Minor Roads
- Major Roads
- Parcels_sde
- Section Lines

2011 FEMA Data

Draft Fema Data 2011

- 0.2 PCT
- A
- AE
- AO; D; X

2008 FEMA Data

- 500 Year
- 100 Year

1:2,400

1 inch represents 200 feet



WARNING:
Two (2) foot contour data sets are NOT SUITABLE FOR ENGINEERING WORK. These data are appropriate for PLANNING PURPOSES ONLY.

Orthophoto from 2008

Contour Interval 2 Feet

This information is for reference only. Santa Fe County assumes no liability for errors associated with the use of these data. Users are solely responsible for confirming data accuracy.



July 18, 2011

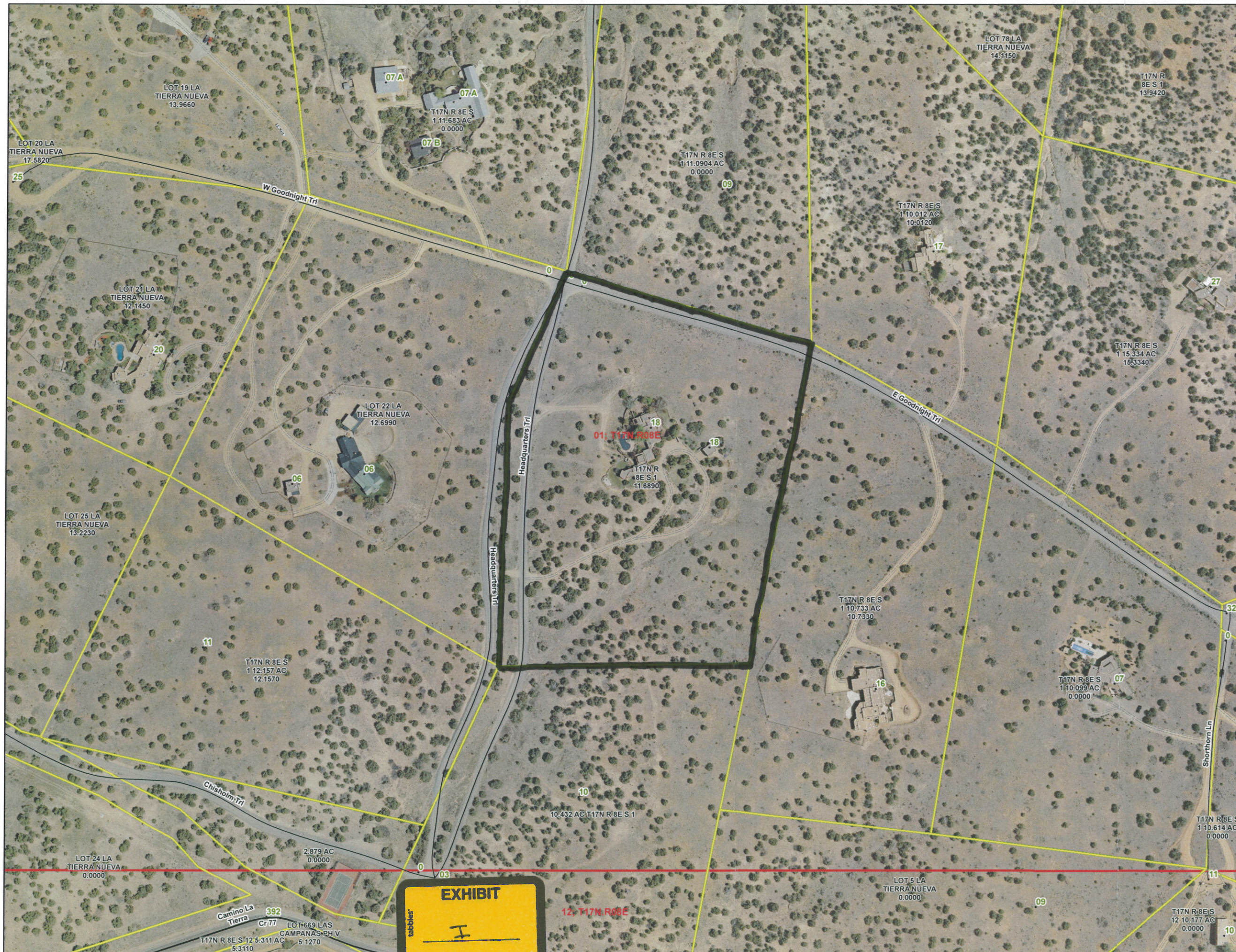


EXHIBIT
I

