



## EXTRA-TERRITORIAL ZONING AUTHORITY

DOÑA ANA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT  
Doña Ana County Government Center • 845 North Motel Blvd.  
Las Cruces, New Mexico 88007 • Office: (575) 647-7237

**MEETING DATE:** July 21, 2010

**CASE #:** V10-005

**REQUEST:** Variance to the one-acre minimum new lot size requirement in the ER 3 Zoning District.

**APPLICANT:** Warren Klein, Ted Scanlon & David Yaryan, agents

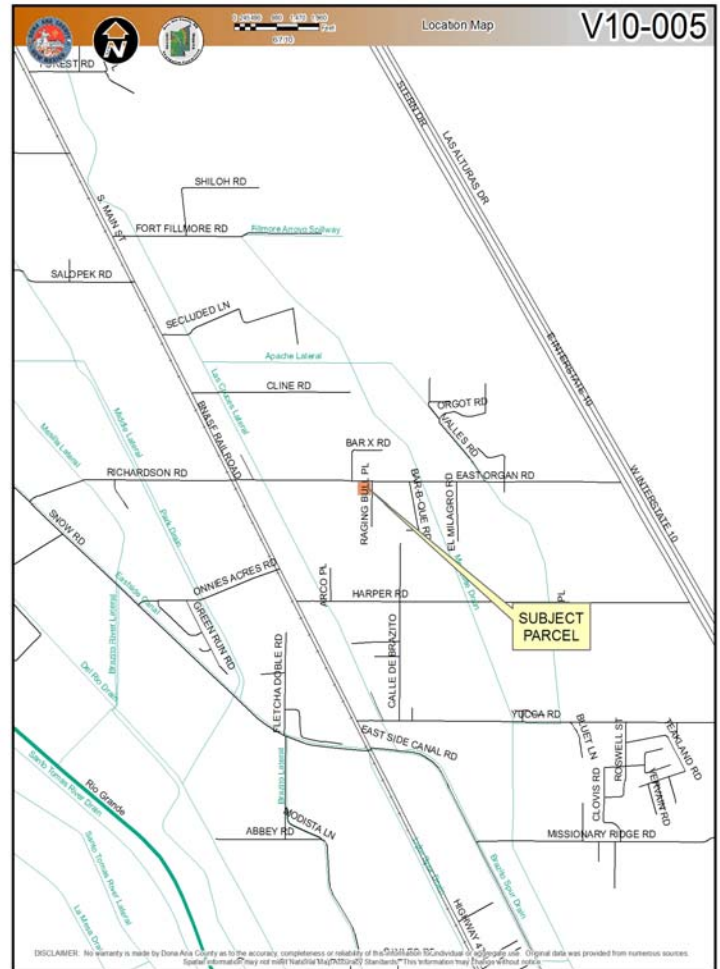
**LOCATION:** 480 East Organ Road

**ZONING:** ER 3 (Residential, 1-acre minimum new lot size)

**PROPERTY SIZE:** 2.0-acre

**RECOMMENDATION:** DENIAL

**STAFF CONTACT:** Jonathan Kesler, Planner



**SUMMARY:** The applicant, Warren Klein, Ted Scanlon and David Yaryan, agents, is requesting a Variance to the one-acre minimum new lot size requirement in the ER 3 Zoning District (Residential, 1-acre minimum new lot size, single-family site-built homes). The applicant seeks to create two lots through the ETZ Subdivision process that would be a net 0.92-acre each (1.0-acre gross) after the road easement dedication is removed. A 2133 sq. ft. site-built dwelling exists on proposed Tract A. If approved, a site-built dwelling would be constructed on proposed Tract B, for future resale. The 2.0-acre subject parcel is located south of the City of Las Cruces, immediately east of the Brazito community within Section 23, Township 24 South, and Range 2 East, and is addressed as 480 East Organ Road. It is described as being a portion of USRS Tract 15-41, recorded in the Office of the Doña Ana County Clerk on December 27, 1977, in Book 246, Pg 322, and can be further identified by Map Code # 4-011-142-089-213.

**ATTACHMENTS:** (1) Staff Analysis (2) Variance Application Supplement Documents (3) Applicable Policies and Ordinances (4) GIS Information: Aerial and Zoning Map, Notification List.

## **SURROUNDING ZONING**

<b>SITE</b>	<b>ZONING</b>	<b>LAND USE</b>
North	ER 3	Residential, 1-acre minimum new lot size, single-family site-built homes.
South	EV	Village District (Brazito); unincorporated places that have fairly dense residential areas mixed with commercial activities.
East	ER 3M	Residential, 1-acre minimum new lot size, single-family site-built and mobile homes.
West	ER ¾	Residential, ¾-acre minimum new lot size, single-family site-built homes.

### **LAS CRUCES EXTRA-TERRITORIAL ZONING ORDINANCE, NO. 88-02, AS AMENDED**

#### **ARTICLE II, Section 2.3. PROCEDURES FOR GRANTING VARIANCES**

##### **2.3.A APPLICATION**

An application for a variance shall be submitted to the Extra-territorial Authority by filing a copy of the application with the Dona Ana Planning Director. Application shall be processed in accordance with Subsection 2.1.C of this Article.

##### **Section 2.3.B GRANTING VARIANCES**

A variance may be granted by the Extra-territorial Authority if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary physical hardships for the applicant resulting from size, shape or existing structures thereon, or from topographic or physical conditions on the site or in the immediate vicinity, and that by granting the variance, the spirit of this Code will be observed, public safety and welfare secured and substantial justice done. Cost and inconvenience to the applicant of strict or literal compliance with the regulation may be given consideration, but shall not be the sole reason for granting a variance. Variances will be considered in the following cases:

1. Height, yard, **setback**, lot area, site coverage and gross floor area requirements of this Code;
2. Parking and loading requirements of this Code;
3. Sign and fence requirements of this Code;
4. Limitations stated for minimum distances permitted;
5. Strict application of the terms of this Code relating to the use, construction or alteration of buildings and/or signs.

### **2.3.C REQUIRED FINDINGS**

Before recommending or granting a variance, the ETZ Authority shall make the following findings:

1. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties with three hundred fifty (350) feet and also in the same land use district.
2. Granting of the variance will not be detrimental to the public health, safety, welfare or be materially injurious to properties or improvements in the vicinity.
3. Strict or literal interpretation and enforcement of the specified performance standard or regulation would result in unnecessary physical hardship inconsistent with the purposes of this Code.

### **2.3.D SURROUNDING PROPERTIES**

In granting variances, the Extra-territorial Authority may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable and will not adversely affect surrounding properties.

### **2.3.E DURATION OF VARIANCE**

A variance may be issued for an indefinite duration or for a specified duration only.

### **2.3.F NATURE OF VARIANCES SPECIFIED**

The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit or the zoning permit may simply not the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirements of the Code.

### **2.3.G HEARING VARIANCE REQUESTS**

The Extra-territorial Authority shall hear and decide all variance requests as expeditiously as possible. Public notification of the proposed action should be accomplished in accordance with Subsection 2.1.G of this Article.

### **2.3.H VOTING OF VARIANCE REQUESTS**

Decisions on any requests for variances of this Code shall be approved by simple majority of the total membership of the Extra-territorial Authority.

### **STAFF ANALYSIS**

The applicant, Warren Klein, Ted Scanlon and David Yaryan, agents, is requesting a Variance to the one-acre minimum new lot size requirement in the ER 3 Zoning District. The applicant seeks to create two lots through the ETZ Subdivision process that would be a net 0.92-acre each (1.0-acre gross) after the road easement acreage is removed. A site-built dwelling exists on proposed Tract A. If approved, a site-built dwelling would be constructed on proposed Tract B, for future resale. The 2.0-acre subject parcel is located south of the City of Las Cruces, immediately east of Brazito within Section 23, Township 24 South, and Range 2 East, and is addressed as 480 East Organ Road. It is described as being a portion of

USRS Tract 15-41, recorded in the Office of the Doña Ana County Clerk on December 27, 1977, in Book 246, Pg 322, and can be further identified by Map Code # 4-011-142-089-213.

The subject parcel, located east of Brazito, is a 2.0-acre residential parcel containing a site-built home on the western half, while the eastern half is in agricultural cultivation. East Organ Road, classified as a local road by the Las Cruces MPO, serves as access to the parcel and is located along the north property line. It is a paved county road with a 40 foot ROW. The property receives water from Brazito MDWCA (Meter # 2009370742). No liquid waste permit was found for the existing home. The liquid waste system must be inspected by NMED to get a permit.

The applicant is citing the following reasons and hardships for the Variance Request:

1. "There are 20 properties within 350' of this property, 5 are larger, 11 are approximately the same size as the proposed lot[s] and 4 are smaller. The neighborhood will be supportive of this subdivision and Variance request."
2. "There will be no adverse effect[s] to the neighbors. To the contrary, developing this one-acre field will ensure upkeep of that lot and provide additional tax revenue. As with the one acre lot/field to the east of this property, no farmer can farm it at a profit."
3. "Strict interpretation of [the] full one-acre net size would cause the eastern half of the two-acre lot to accumulate weeds and limit county property tax revenue.

The applicant further states that the owner, Mrs. Klein, is elderly, and seeks to subdivide the eastern acre to generate income, rather than applying for a Special Use Permit to allow an accessory living quarters on the same parcel as the primary dwelling. Mrs. Klein had originally expressed a desire to have relatives nearby. The applicant doesn't want to seek a Zone Change either, as staff originally advised, even though there are two parcels that are zoned ER ¾ (Residential, ¾ -acre minimum new lot size, single-family site-built homes) west of the parcel addressed as 235 and 247 East Organ Road, respectively (Zone Change granted July 22, 2004, Case # Z04-004).

## **FINDINGS**

1. The request of this application is consistent with the requirements of the Las Cruces Extra-territorial Zoning Ordinance Article II, Section 2.1.C/Application Procedures and Section 2.1.G/Public Hearing and Notice Requirements.
2. The subject property is located outside the corporate limits of the City of Las Cruces, but within the five-mile Extra-territorial Zone (ETZ) as set forth by 3-19-5(1), NMSA 1978 and the Joint Powers Agreement between Doña Ana County and the City of Las Cruces. Therefore, the Las Cruces ETZ Commission (ETZ-C) has jurisdiction to review this case.
3. The property is located within the ER 3 District (Residential, 1-acre minimum new lot size, single-family site-built homes).
4. The Extra-territorial Zoning Ordinance Article III, Section 3.1.C.2.b requires a minimum new lot size of one-acre in the ER 3 Zoning District.
5. Before recommending or granting a variance, the ETZ Authority shall make the following findings. ***(Staff findings in bold italics)*** This Variance is **not** warranted because the applicant has **not** shown that:

1. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties with three hundred fifty (350) feet and also

in the same land use district. ***Of the twenty-one (21) properties within the area of notification, Doña Ana County has not approved any Variances in the past ten years.***

2. Granting of the variance will not be detrimental to the public health, safety, welfare or be materially injurious to properties or improvements in the vicinity. ***Required lot size minimums are in place to ensure the public health, safety, and welfare are met.***
3. Strict or literal interpretation and enforcement of the specified performance standard or regulation would result in unnecessary physical hardship inconsistent with the purposes of this Code. ***This is a self-imposed hardship. The applicant could seek a Special Use Permit for accessory living quarters, or a Zone Change to allow a smaller lot size.***

### **RECOMMENDATION**

Based on the applicants' failure to meet all three requirements of the Variance Decisional Criteria, Section 2.3.C, staff recommends **DENIAL** of Variance Request Case # V10-005.

### **AGENCY COMMENTS**

New Mexico Department of Transportation: No significant impact to state's highway system.

New Mexico Office of State Engineer: The State Engineer has no concerns in this matter

New Mexico Environment Department: No liquid waste permit was found for the existing home. The liquid waste system must be inspected by NMED to get a permit.

City of Las Cruces MPO: No comments. East Organ Road is a local road.

City of Las Cruces Planning Department: The proposed subdivision of the subject property must meet all ETZ subdivision requirements.

DAC Engineering Department:

- 1) Access to East Organ Road shall not be allowed for the proposed lot.
- 2) [Applicant] must adhere to all regulatory agency requirements.

DAC Flood Commission: The subject property is not within a FEMA Special Flood Hazard Area (SFHA) pursuant to FIRM No. 35013C0650 E.

DAC Fire Marshal: No adverse comments.

DAC Building Services: A Building Permit is required and must meet all County, State and local code requirements. The permit has not been applied for.

Elephant Butte Irrigation District: No comments.

### **NOTICE / NOTIFICATION**

Twenty-one (21) letters of notification were sent out. No correspondence in support or opposition was received.

Legal Notification was posted in the Las Cruces Sun News on July 4, 2010.

Signs were posted on the property.

Agenda was posted on County Web Site.

## VARIANCE APPLICATION SUPPLEMENT

A Variance is 'permission to break the law'. Should the ETA approve your application, your elected officials are granting permission for you to proceed with your development in lieu of the development requirements placed on your neighbors. As such, receiving approval for a Variance is very difficult, but the landuse ordinance recognizes that some circumstances dictate a Variance be given. To make this determination, your application must meet the conditions placed within a 3 part test for granting Variances.

Please review the following 3 statements and enter your answer to each on the lines provided. There is no 'right' answer to these statements, but if you cannot answer to **ALL 3** of these tests, it is likely that your variance will be denied. Your answers will be analyzed by the ETZ Planner for consistency with the ordinance and the site of your request itself.

- \* 1. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties within three hundred fifty (350) feet and also in the same landuse district: (others within 350' should have the same conditions as your request)

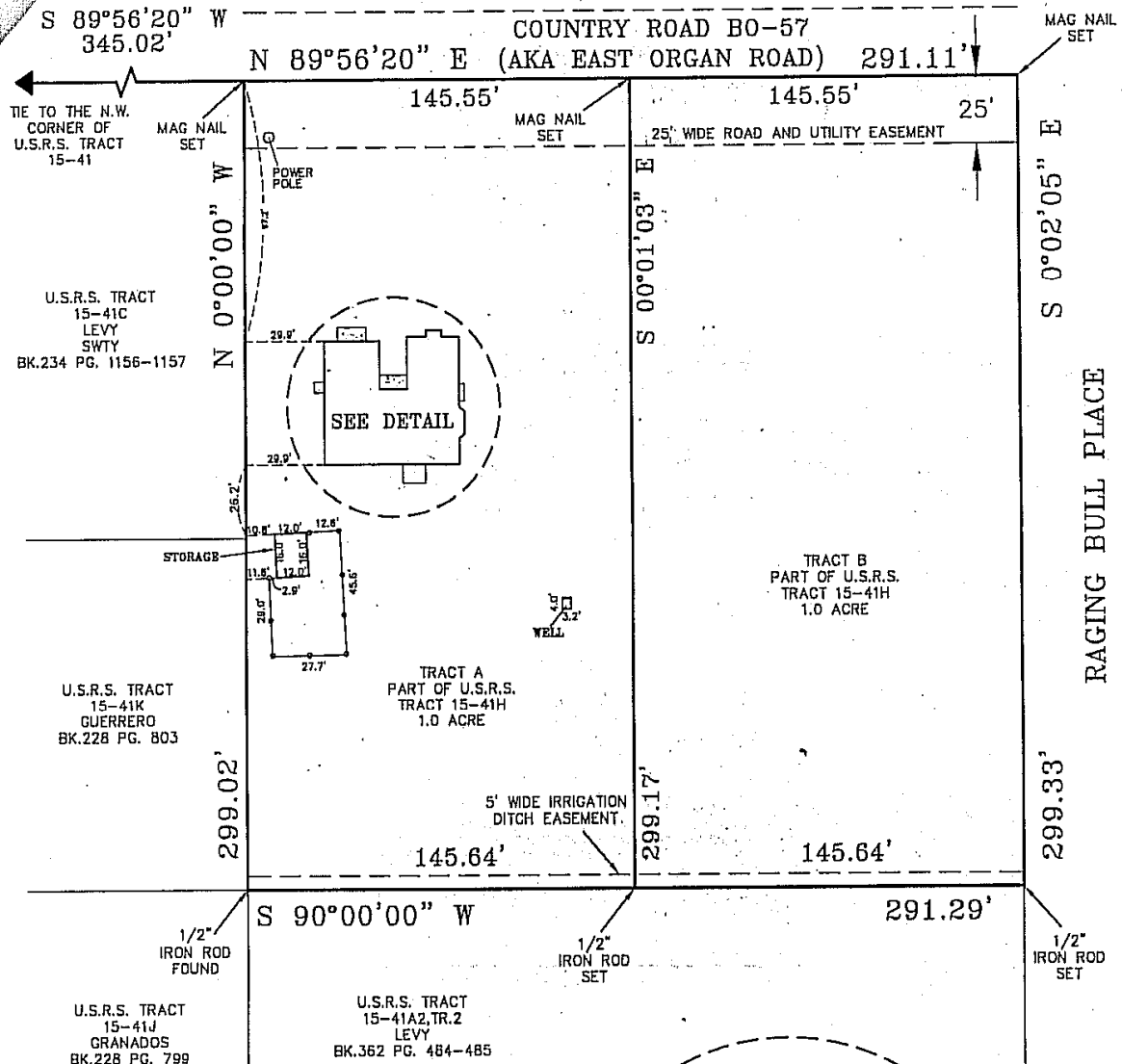
The building and its location, are consistent with other buildings in the vicinity. A precedent has already been set regarding a setback variance in the vicinity. My neighbor to the north obtained a 66% side setback variance and a 40% rear setback variance to place his shop 5' (setback is 15') from the side property line and 15' from the rear (set back is 25) Case # V07-006. My neighbor to the South has two structures within 5' of the property line (setback is 25'). Other neighbors have accessory buildings that are oversized and encroach the setback. This variance when granted, will not grant a special privilege to me as the county has already granted an easement in the neighborhood in excess of what I am asking for.

- \* 2. Granting of the variance will not be detrimental to the public health, safety, welfare or be materially injurious to properties or improvements in the vicinity: (what you want to do should not pose a threat to the safety of your neighbors, i.e. fire safety)

There is no material change in public health or safety issues by allowing a 15' setback rather than 25'. A 15' setback for an accessory building allows for ample buffering from the neighbors. The neighbor to the west has several acres, his home and accessory buildings are several hundred feet away from the property line, which contributes to the buffering between the lots. The western neighbor also is bordered by the neighbor to the north where there is a permitted Accessory building within 15' of the property line. Allowing a 15' setback will not effect or injure any of the properties or improvements in the vicinity. There are plenty of buildings in the neighborhood that encroach the setbacks, and my neighbor to the north has obtained a 66% side setback variance and a 40% rear setback variance to place his shop 5' (setback is 15') from the side property line and 15' from the rear (set back is 25) Case # V07-006. I am only asking for a 40% variance for the rear setback.

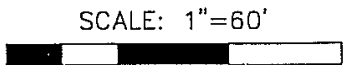
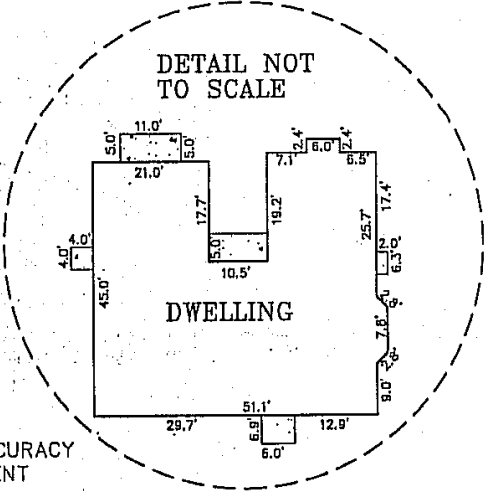
- \* 3. Strict or literal interpretation and enforcement of the specified performance standard or regulation would result in unnecessary physical hardship inconsistent with the purposes of this Code: (self-imposed or financial hardships are not valid)

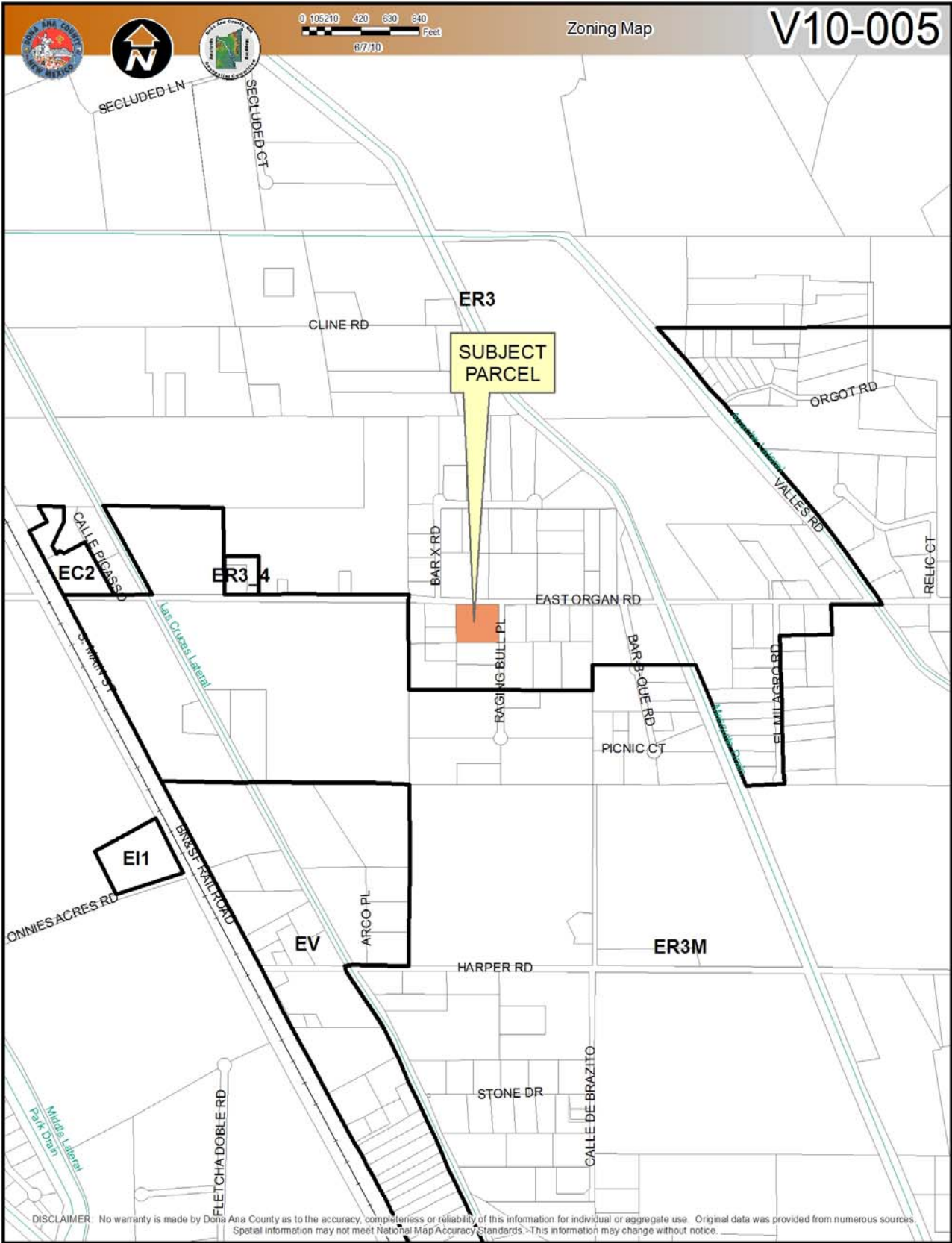
Due to the narrowness of the lot and the existing garden wall, ponding area, sidewalk, trees and other landscaping this is the only logical location for the building. The Accessory building is being built to house a large RV, a boat, and some classic cars and Equipment. Due to the large turning radius of the RV, the building needs to be pushed to the west (into the setback) to be able to make the swing through the garage door opening. The Accessory Building will be built in a similar style to match the current home on the property, make it a pleasing view for my neighbors. It will allow all of my equipment, and vehicles to be stored indoors out of the view of my neighbors.

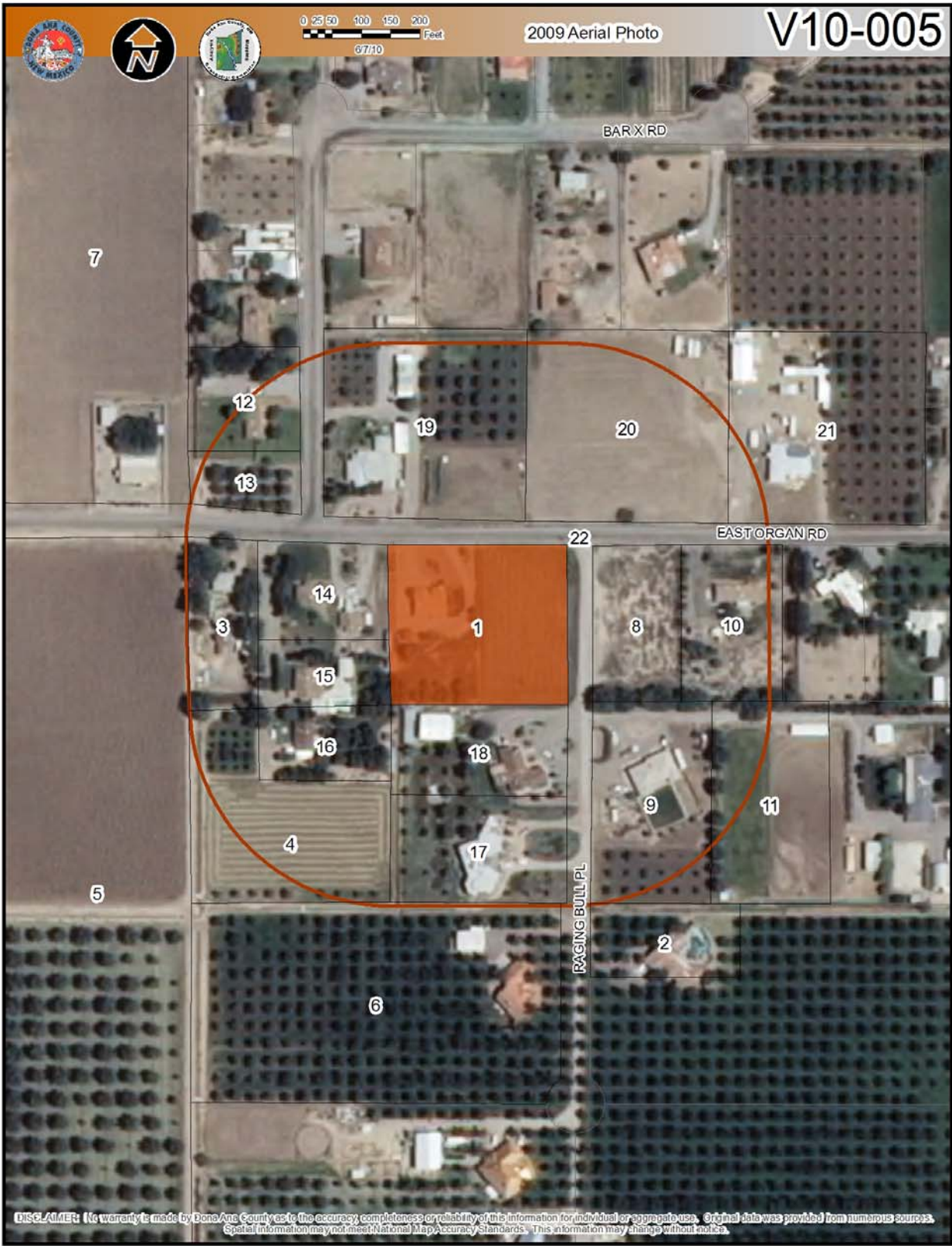


"INDEXING INFORMATION FOR COUNTY CLERK"  
 PROPERTY OWNER: GAMMON  
 PROPERTY LOCATION: SEC. 23, T.24S., R.2E.,  
 N.M.P.M. SOUTH OF MESILLA PARK.

NOTES:  
 FLOOD ZONE "X"; AREAS DETERMINED TO BE OUTSIDE  
 500-YEAR FLOOD PLAIN, IN MAP NO. 35013C0650 E,  
 EFFECTIVE SEPTEMBER 27, 1991.  
 THIS SURVEY MAKES NO GUARANTEES AS TO THE ACCURACY  
 OF THE ABOVE INFORMATION. THE LOCAL F.E.M.A. AGENT  
 SHOULD BE CONTACTED FOR VERIFICATION  
 INFORMATION IN THE PREPARATION OF THIS PLAT DERIVES FROM  
 DEED FILED DECEMBER 27, 1977, IN BOOK 246, PAGE 322.







CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
1	4-011-142-089-213	KLEIN WARREN A ET UX	1801 WYOMING AVE STE 201	EL PASO	TX	79902
2	4-011-142-082-289	CALHOUN SAMUEL E & DIANE B	PO BOX 150	CHAMBERINO	NM	88027-0150
3	4-011-142-073-213	JIMENEZ ARTURO & ESPERANZA	2407 COCHRAN AVE	LOS ANGELES	CA	90016-2126
4	4-011-142-080-245	GRANADOS MARIA DEJESUS A	HC 30 BOX 302	MESILLA PARK	NM	88047-9607
5	4-010-142-480-280	MJ LAND LLC	1433 SNOW RD	LAS CRUCES	NM	88005-3914
6	4-011-142-073-278	MARRUFO ROBERT & BARBARA EICHHORST	8050 RAGING BULL PLACE	MESILLA PARK	NM	88047
7	4-010-142-500-160	JIM HILL & DEBBY F HILL &	PO BOX 847	MESILLA PARK	NM	88047
8	4-011-142-116-211	NYILAS PRISCILLA E	2070 NW 111TH LOOP	OCALA	FL	34475
9	4-011-142-120-243	ROSENCRANS RUBEN & ELIZABETH J	8031 RAGING BULL PL	MESILLA PARK	NM	88047-9737
10	4-011-142-133-213	MILLER LEON F JR & DONNA M MILLER &	610 E ORGAN RD	MESILLA PARK	NM	88047
11	4-011-142-140-243	MARIE LOUISE MARTINEZ	7179 INDUSTRIAL AVE	EL PASO	TX	79915-1215
12	4-011-142-050-161	TORRES EDWARD JR & PATRICIA P	403 BAR X RD	LAS CRUCES	NM	88047
13	4-011-142-050-180	EWING WAYNE GORDON JR	HC 30 BOX 393	MESILLA PARK	NM	88047-9609
14	4-011-142-065-210	JAVIER CARPIO & ELIZABETH A	1801 WYOMING AVE STE 201	EL PASO	TX	79902
15	4-011-142-065-221	GUERRERO RAMIRO R ET UX	HC 30 BOX 302	MESILLA PK	NM	88047-9607
16	4-011-142-065-230	GRANADOS MARIA DEJESUS A	HC 30 BOX 302	MESILLA PARK	NM	88047-9607
17	4-011-142-090-255	MUNDA DUSTIN & MICHELLE &	1801 WYOMING AVE	EL PASO	TX	79902
18	4-011-142-090-225	LEVY THOMAS L & DEBORAH A	1801 WYOMING AVE STE 201	EL PASO	TX	79902
19	4-011-142-077-184	CUARON ISAAC M JR & EVANGELINE E	445 E ORGAN RD	MESILLA PARK	NM	88047
20	4-011-142-112-185	FLORY CHARLES M LIVING TR	91 AUTUMN ST	LODI	NJ	07644-3105
21	4-011-142-152-186	PARRA ERNESTO & RUTH PARRA	625 E ORGAN RD	MESILLA PARK	NM	88047
22		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001