



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 #: V10-003

REQUEST: Variance of 10' to the 25' rear yard setback to construct a 2000 sq. ft. accessory building.

APPLICANT: Max Schroeder

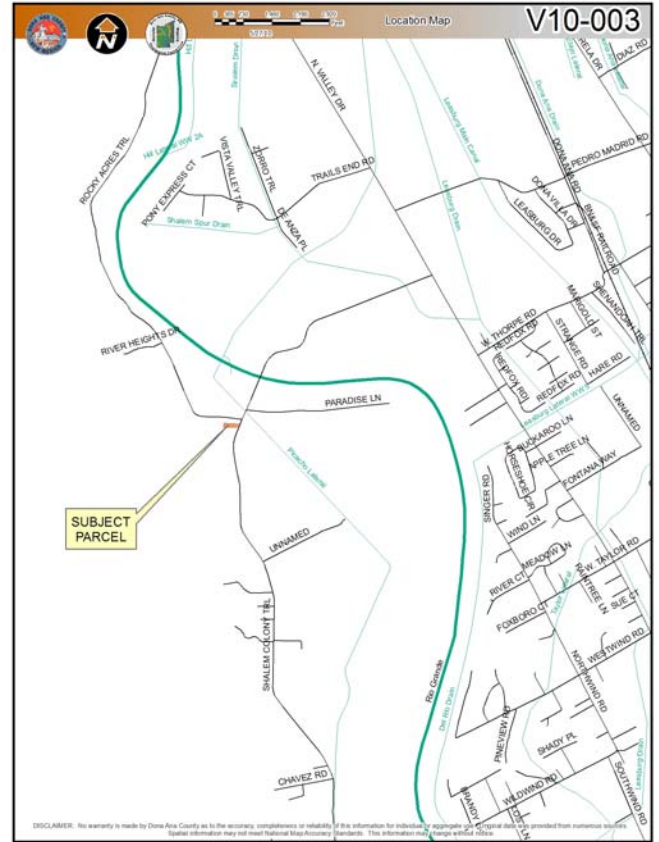
LOCATION: 5871 Shalem Colony Trail

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

PROPERTY SIZE: 1.0-acre

RECOMMENDATION: DENIAL

STAFF CONTACT: Jonathan Kesler, Planner



SUMMARY: The applicant, Max Schroeder, is requesting a Variance of ten feet (10') to the rear yard setback requirement of twenty-five feet (25') within the ER3 Zoning District (Residential, 1-acre minimum new lot size, single-family site built homes) resulting in a fifteen foot (15') rear yard setback, to construct a 2,000 sq. ft. accessory building, an RV Garage. The 1.0-acre parcel is located north of the City of Las Cruces, north of Picacho Ave., and is addressed as 5871 Shalem Colony Trail, Las Cruces, NM. The subject property is described as part of Lot 8 in Section 20, Township 22 South, Range 1 East, of the U.S G.L.O. Surveys as recorded in the office of the Doña Ana County Clerk on November 13, 1978, in Book 252, Pgs 370-371, and can be further identified by Map Code # 4-002-130-410-508.

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

SURROUNDING ZONING

SITE	ZONING	LAND USE
North	ER 1	Residential, 5-acre minimum new lot size, single-family site-built homes.
South	ER 4	Residential, ½ acre min. lot size, single-family site-built homes.
East	ER 2	Residential, 2-acre minimum new lot size, single-family site-built homes.
West	EH	BLM, federal land.

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 note 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, Max Schroeder, is requesting a Variance of ten feet (10') to the rear yard setback requirement of twenty-five feet (25') to construct a 2,000 sq. ft. accessory building, an RV Garage. The property is located north of the City of Las Cruces and north of Old Picacho near the Rio Grande. It is a 1.0-acre, fully developed residential parcel containing a 3371 sq. ft., site-built residence, and a 280 sq. ft. gazebo. Shalem Colony Trail, classified as a minor arterial by the Las Cruces MPO, serves as access to the parcel and is located along the east property line. It is a paved county road with a ROW that varies from 40 to 60 feet.

The property contains an approved liquid waste system (Permit #DA02-0398) and receives water from Picacho MDWCA (Meter # 57077678).

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

1. The Variance will not be a special privilege inconsistent of the limitations on other area properties, the parcel bordering the applicant's to the north (#2 on notification list) received a Variance of 10' to the rear yard setback requirement of 25' on August 15, 2007, Case # V07-006.
2. "Due to the narrowness of the lot and the existing garden wall, ponding area, sidewalk, [swimming pool], trees and other landscaping, this is the only logical location for the building. [It would be] 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 [moved] to the west (into the setback) to be able to make the swing into the garage door opening."
3. "The accessory building [would] be built of a similar style to match the current home on the property, mak[ing] it a pleasing view for my neighbors. It will allow all of my equipment and vehicles to be stored indoors out of view of my neighbors."

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 twenty-five foot (25') rear yard setback.
5. Before recommending or granting a variance, the ETZ Authority shall make the following findings, per Section 2.3.C Required 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 only approved one (1) Variance in the past ten years. Richard Gorman was granted a Variance to rear yard setbacks on his property at 5875 Shalem Colony Trail in 2007 (Case # V07-006/Gorman, #2 on the notification list). However, a Variance to side and rear yard setbacks was approved on the Arturo Valle property at 4270 Rocky Acres Trail in 1999 (Case # V99-019/Hignight, # 6 on the notification list).***
 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 setbacks 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 locate the accessory building out of the rear yard setbacks, or reduce its 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 # V10-003.

AGENCY COMMENTS

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

New Mexico Office of State Engineer: No adverse comments.

New Mexico Environment Department: No comments or objections.

City of Las Cruces MPO: Shalem Colony Trail is a minor arterial requiring a 100' ROW.

City of Las Cruces Planning Department: The property was created prior to the ETZ Subdivision regulations.

DAC Engineering Department:

- 1) All storm water runoff from all impervious areas must be retained within the subject property. Provide ponding area.
- 2) Do not place garage on any existing easements or liquid waste systems.
- 3) Must acquire all building permits.

DAC Flood Commission: The subject property is not within a FEMA Special Flood Hazard Area (SFHA) per FIRM No. 35013C0525 E.

Applicant's Responsibility: 1) Pursuant to the Dona Ana County Development Design Standards, excess storm drainage (as a result of roof run-off also known as increases to impervious areas), to be retained within the subject property; on-lot drainage ponding shall be required. 2) Pursuant to the Dona Ana County Development Design Standards, a Drainage Maintenance Agreement for the on-lot ponding provision will need to be utilized.

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.

DAC Environmental Codes: No codes violations. 06/17/10

Elephant Butte Irrigation District: No comments.

NOTICE / NOTIFICATION

Twenty-one (21) letters of notification were sent out. **Three (3)** emails of support were received by July 15, 2010 (attached).

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)

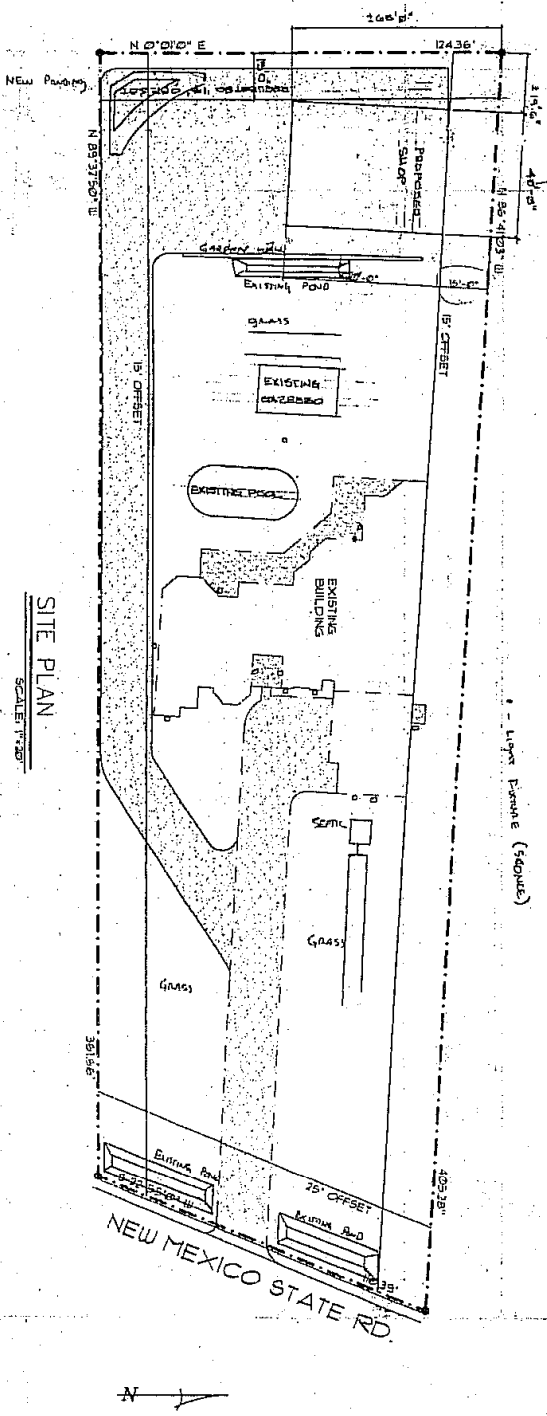
The building and its location, are consistent with other buildings in the vicinity. A precedent has already been set regarding a setback variance in the vicinity. My neighbor to the north obtained a 66% side setback variance and a 40% rear setback variance to place his shop 5' (setback is 15') from the 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.

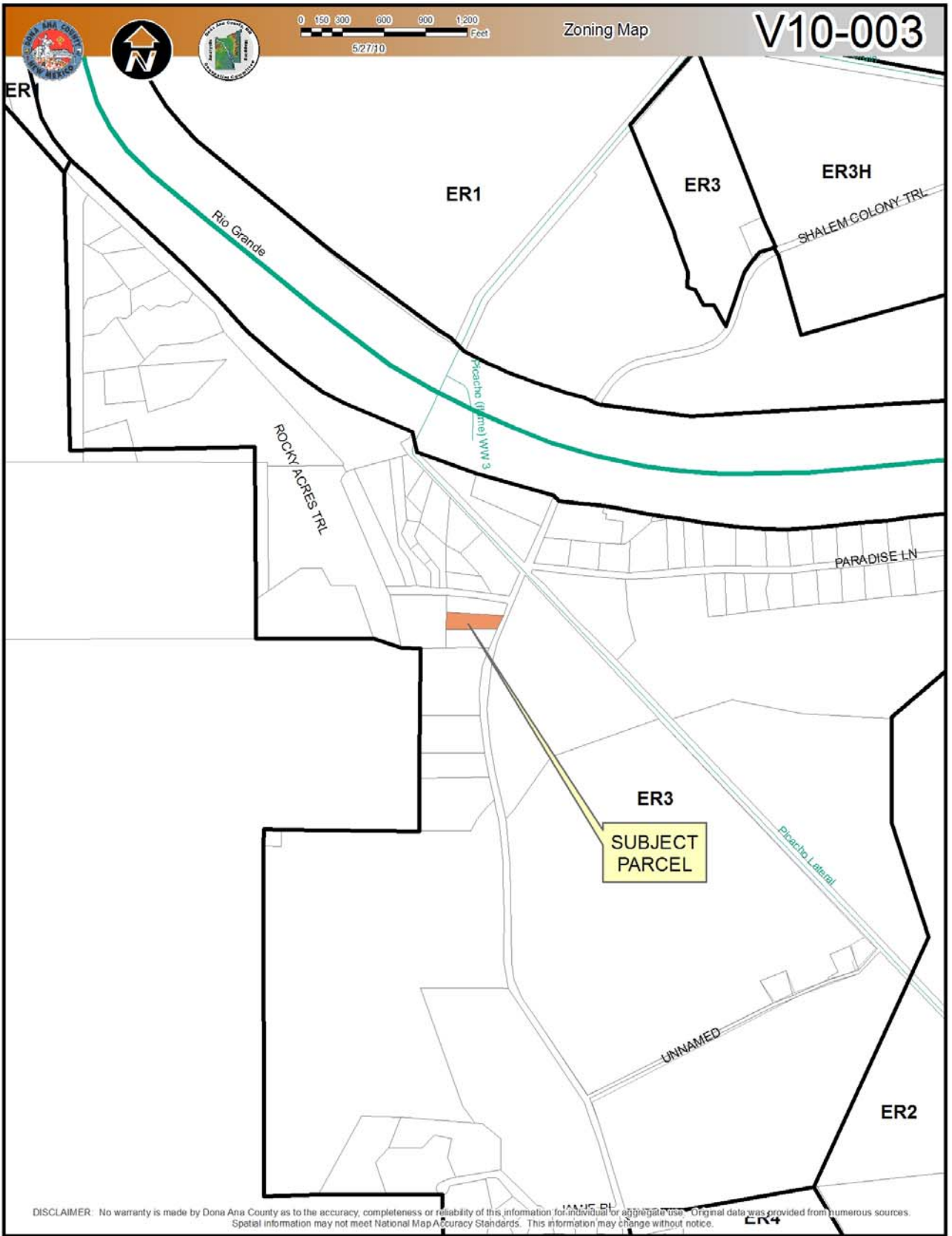
- * 2. Granting of the variance will not be detrimental to the public health, safety, welfare or be materially injurious to properties or improvements in the vicinity: (what you want to do should not pose a threat to the safety of your neighbors, i.e. fire safety)

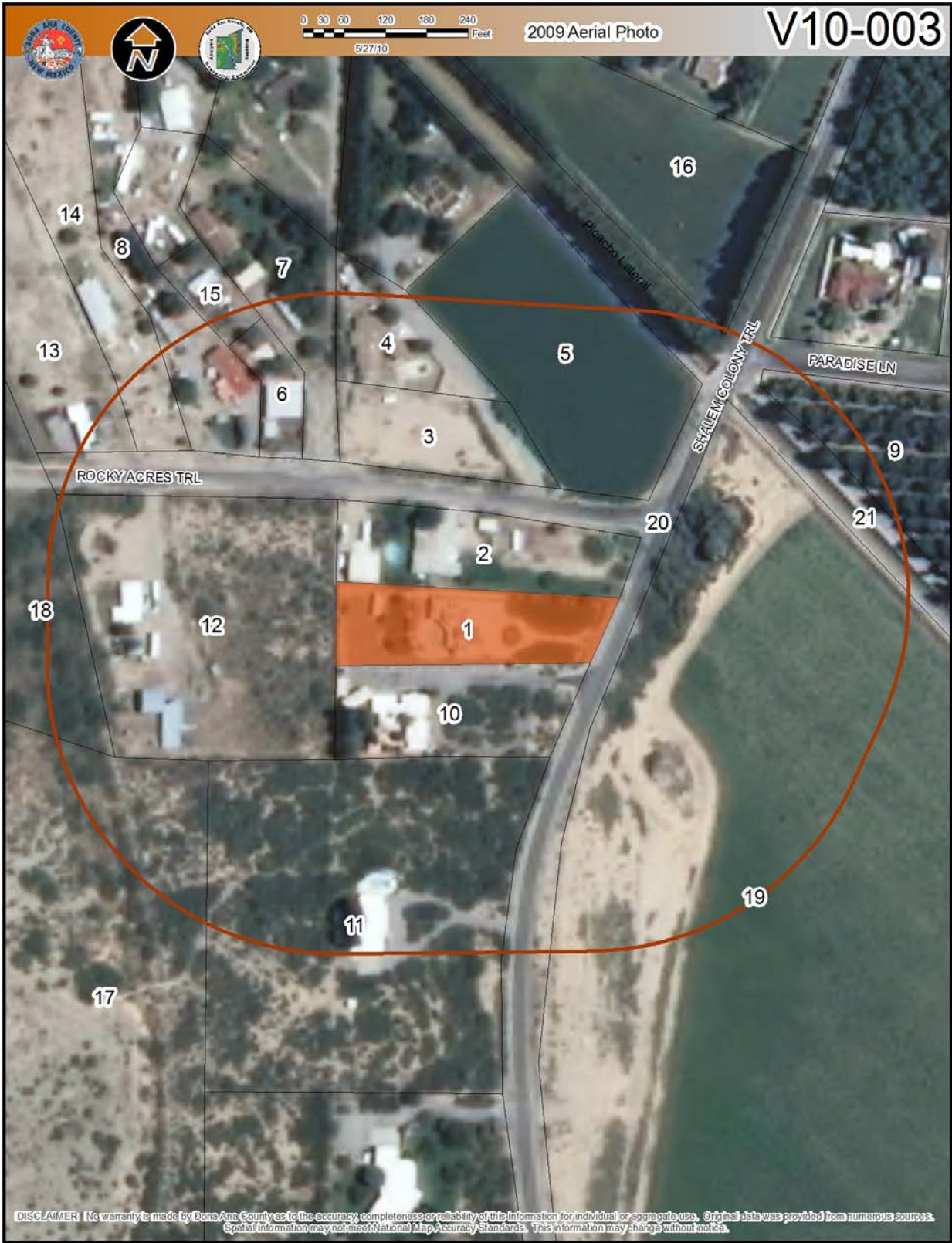
There is no material change in public health or safety issues by allowing a 15' setback rather than 25'. A 15' setback for an accessory building allows for ample buffering from the neighbors. The neighbor to the west has several acres, his home and accessory buildings are several hundred feet away from 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.







CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
1	4-002-130-410-508	SCHROEDER MAX & DINA	5871 SHALEM COLONY TRL	LAS CRUCES	NM	88007
2	4-002-130-411-500	GORHAM RICHARD G & KARLEEN	5875 SHALEM COLONY TRAIL	LAS CRUCES	NM	88005-5839
3	4-002-130-406-480	TURNER GARLAND L & CAROL W WALKER	4102 ROCKY ACRES TRL	LAS CRUCES	NM	880075811
4	4-002-130-401-467	TURNER GARLAND L & CAROL W WALKER	4102 ROCKY ACRES TRL	LAS CRUCES	NM	880075811
5	4-002-130-410-460	SALOPEK MICHAEL J & MARY C	5403 ROCKY ACRES TRL	LAS CRUCES	NM	88007
6	4-002-130-393-478	VALLE ARTURO	4270 ROCKY ACRES TRL	LAS CRUCES	NM	88007
7	4-002-130-404-482	HALLSTED JOLYNN M & PAUL A	4240 ROCKY ACRES TRL	LAS CRUCES	NM	88005-5858
8	4-002-130-379-468	SMITH PATRICIA J & JESSE E SMITH	4280 ROCKY ACRES TRL	LAS CRUCES	NM	88007
9	4-003-131-010-010	ROGERS DONALD L & KATHY A	3815 PARADISE LANE	LAS CRUCES	NM	88007
10	4-002-130-411-520	WETHERHOLT LYLE TRUSTEE	1332 FOX DEN CT	LAS CRUCES	NM	88007
11	4-002-131-437-023	BURKHARDT FREDERICK C & DOLLY G TR	5855 SHALEM COLONY TRL	LAS CRUCES	NM	880075839
12	4-002-130-445-474	GRIFFIN GARVIN MAC	4289 ROCKY ACRES TRL	LAS CRUCES	NM	88007
13	4-002-130-381-482	SMITH WILLIAM M	4832 CAMPBELL	LAS CRUCES	NM	88005-8835
14	4-002-130-389-472	SMITH EARL E JR	4290 ROCKY ACRES TRL	LAS CRUCES	NM	88007
15	4-002-130-383-463	SMITH CLAUDE EARL & DIANA	PO BOX 464	FAIRACRES	NM	88033
16	4-002-130-440-470	BLIZZARD W RENE' & DAVID W MORRIS	5945 SHALEM COLONY TRL	LAS CRUCES	NM	88005-5870
17	4-002-131-125-264	UNITED STATES OF AMERICA	1800 MARQUESS	LAS CRUCES	NM	88005-3371
18	4-002-130-313-450	BURKE FRANCIS	PO BOX 281	FAIRACRES	NM	88033-0281
19	4-003-131-005-085	SIMPSON FAMILY FARMS LLC	5835 SHALEM COLONY TRL	LAS CRUCES	NM	88007
20		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001
21		EBID	530 S. MELENDRES	LAS CRUCES	NM	88001

7/15/2010

Mail - Variance request for 5871 Shale...



Max Schroeder <max@allstarhomesnm.com>

Variance request for 5871 Shalem Colony Trail

1 message

Gorham, Richard G. (WSTF-RD)[GSI] <richard.g.gorham@nasa.gov>
To: "max@allstarhomesnm.com" <max@allstarhomesnm.com>

Wed, Jul 14, 2010 at 1:54 PM

Max,

As you know, Karleen and I live next door to you on the North side at 5875 Shalem Colony Trail. We have discussed your variance request for building the shop in your back yard and have no issue with the variance request and its associated details. Please let us know if you need any additional help in gaining approval.

Good Luck

Richard Gorham

Ph 575-525-3330

Cell 575-644-6996

Wk 575-524-5346

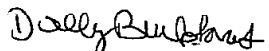
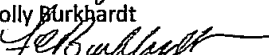
To whom it my concern:

ETZ Variance Request

Re:Case # V10-003/Schroeder

We live at 5855 Shalem Colony Trail and have no objection to Max constructing a 2000 sq.ft.accessory building.

Sincerely,

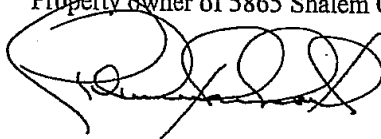

Dolly Burkhardt

Fred .Burkhardt

To: Dona Ana County Planning & Zoning Commission or Las Cruces Extra Territorial Planning Commission, whichever authority applies.

Re: Variance for 5871 Shalem Colony Rd.
Las Cruces, NM 88007

As the property owner contiguous to the above cited property it is my understanding that a variance request has been submitted for construction of a shop/garage building with a setback of three feet. Be it noted that I do not have any objection to this variance as it is in conformity with other properties in the immediate area.

Lyle Wetherholt
Property owner of 5865 Shalem Colony Tr.



6-12-10