



EXTRA-TERRITORIAL ZONING AUTHORITY

DOÑA ANA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

Doña Ana County Government Complex • 845 North Motel Boulevard
Las Cruces, New Mexico 88007 • Office: (575) 647-7237

MEETING DATE: July 21, 2010

CASE NO: Case # V10-004

REQUEST: Variances of twelve feet (12') and nine feet (9') to the side yard setback requirement of fifteen feet (15'), and a Variance of five feet (5') to the ten foot (10') setback requirement between structures

APPLICANT: Edward Lopez

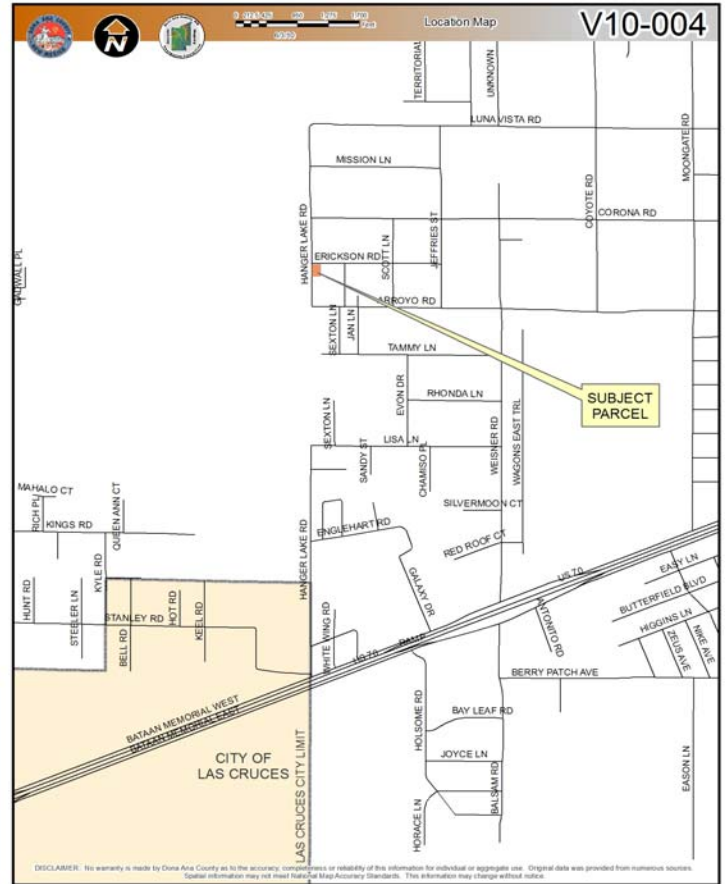
LOCATION: 8910 Erickson Rd., Las Cruces, NM

EXISTING ZONE: ER 3M (Residential, 1acre minimum lot size, single family, site built & mobile homes)

PROPERTY SIZE: 0.61-acres

RECOMMENDATION: DENIAL

STAFF CONTACT: Steve Meadows, ETZ Planner



SUMMARY

The applicant, Edward Lopez, is requesting Variances of twelve feet (12') and nine feet (9') to the side yard setback requirement of fifteen feet (15'), and a Variance of five feet (5') to the ten foot (10') setback requirement between structures within the ER3M Zoning District, to construct a 720 sq. ft. accessory building, a garage. The 0.61-acre parcel is located northeast of the City of Las Cruces, north of US Highway 70, and is addressed as 8910 Erickson Rd., Las Cruces, NM. The subject property is described as Lot 1A of the Hanger Lake Subdivision No. 1, Replat No. 1, located within Section 5, Township 22 South, Range 3 East, N.M.P.M of the USGLO Surveys as recorded in the Office of the Doña Ana County Clerk on May 31, 1988 in Book 15, Page 225. The parcel can be further identified by Map Code # 4-014-127-008-473.

Attachments:

- (1) Staff Analysis (2) Variance Application Supplemental Document / Site Plan (3) Applicable Policies and Ordinances (4) GIS Information & Maps: Aerial, Zoning Map, Notification List.

SURROUNDING ZONING

SITE	ZONING	LAND USE
North	State of New Mexico	State of New Mexico – No Zoning
South	ER4M	Residential, ½-acre minimum new lot size, single-family site-built & mobile homes.
East	ER4	Residential, ½ acre min. lot size, single-family site-built homes.
West	BLM US Govt.	Federal Government – No Zoning

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

ARTICLE II, SECTION 2.3 PROCEDURES FOR GRANTING VARIANCES

SECTION 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 (see 2.6.D, Administrative Variances).

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.

SECTION 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.

SECTION 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.

SECTION 2.3.E DURATION OF VARIANCE

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

SECTION 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.

SECTION 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.

SECTION 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

CASE # V10-004/Lopez: The applicant, Edward Lopez, is requesting Variances of twelve feet (12') and nine feet (9') to the side yard setback requirement of fifteen feet (15'), and a Variance of five feet (5') to the ten foot (10') setback requirement between structures within the ER3M Zoning District, to construct a 720 sq. ft. accessory building (a garage). Pursuant to Article 3, Section 3.1.C.1.b, a side yard setback of fifteen feet (15') is required within the ER3M Zoning District. Article 4, Section 4.2.A.4 requires a minimum distance of ten feet (10') between structures on the same lot, tract or

parcel. The applicant proposes to construct a 720 sq. ft. garage structure near the north side of the primary residence.

The subject parcel, located north of US Hwy. 70, is a 0.61-acre, fully developed residential parcel containing a 1,152 sq. ft. mobile home, a 616 sq. ft. open-air RV carport on the east side of the residence, a 340 sq. ft. carport attached to the front porch of the residence and a 150 sq. ft. skid mounted storage shed, to be removed and replaced by the proposed 720 sq. ft. accessory building (garage).

The applicant's request for a building permit for the proposed garage triggered this Variance request when staff noted the setback discrepancies on the site plan. The initial staff research indicated the RV carport and the attached carport were constructed without permits from Doña Ana County Building Services. The applicant advised he did not know he needed permits at the time of construction. The RV carport was placed three feet (3') from the property line in lieu of the fifteen foot (15') side yard setback and five feet (5') from the primary residence and the carport attached to the front porch of the residence was constructed six feet (6') from the parcels western boundary.

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

1. The Variance will not be a grant of special privilege because the applicant has noticed several apparent violations within his neighborhood concerning setback violations.
2. The RV carport on the east side and the carport on the west sides of the property are both constructed of metal and pose no fire hazards.
3. The RV carport would be difficult to relocate because the leach field lines are located on the northeast portion of the property.

VARIANCE CRITERIA

Article II, Section 2.3.C lists the three (3) Criteria for evaluating a Variance Request. The applicant has indicated in the first criteria, "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 land use district," that the granting of this Variance, "...will not constitute a grant of special privilege because he has noticed several violations in my neighborhood. Some people have built structures right on their property line. Others are in process of add-ons." Staff research located two Variances (V98-019 and V2000-038) granted within the same ER3M Zoning District that surrounds the subject parcel.

The second criteria concerning the Variance states that it "will not be detrimental to the public health, safety, welfare, or be materially injurious to properties or improvements in the vicinity." The applicant has stated that, "My two carports are all steel construction and do not pose a fire hazard." DAC Fire Marshal comments support the Variance Request. If the applicant had obtained the required permits for the carports and with the issuance of a building permit and the requisite inspections of the subsequent construction project, the public health, safety and welfare will be ensured and no properties will be materially injured by the proposed garage.

The third criteria states that, "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." The applicant states, "...I need to avoid the leach line. Would be hard to relocate the carport on the east side." According to the site plan, the leach field is located near the northeast corner of the property.

Section 2.3.B of the ETZ Ordinance stipulates that, “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.” Staff concludes that the placement of the carports could be modified and placed in other locations, or a reduction in size to maintain the setbacks. This would be considered a self imposed hardship and therefore, does **not** meet this criteria.

PROPOSED FINDINGS

If the Extra-territorial Zoning Authority wishes to approve Case V10-004 staff recommends the following proposed 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 (ETZC) has jurisdiction to review this case.
3. The property is located within the ER3M District (Residential, 1-acre minimum new lot size, single-family site-built & mobile homes).
4. The Extra-territorial Zoning Ordinance Article III, Section 3.1.C.1.b requires a fifteen foot (15’) side yard setback.
5. The Extra-territorial Zoning Ordinance Article IV, Section 4.2.A.4 requires a ten foot (10’) side yard setback.
6. The Variance request is not warranted under the Extra-territorial Zoning Ordinance Article II, Section 2.3.C/Required Findings, because the applicant has **not** shown that: *(DAC staff responses in italicized bold letters):*
 - a. Granting the Variances will not constitute a grant of special privilege inconsistent with the limitations on other properties within three hundred fifty (350) feet and also within the same land use district. *A search of DAC records failed to identify any approved variances within the area of notification, however, Variance Case # V98-019 and V2000-038 (Variances to setbacks) were approved within the same Zoning District surrounding the subject parcel.*
 - b. 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. *Applicant states that the two carports are fabricated from metal; therefore, are not a fire hazard. DAC Fire Marshal has made no adverse remarks concerning this Variance Request.*
 - c. 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. *Applicant failed to obtain proper permits for the two carports prior to construction from the DAC Building Services Dept. Any unnecessary physical hardships as a result of this failure to obtain proper permits constitutes a self impose hardship.*

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 # V10-004.

AGENCY COMMENTS

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

New Mexico Office of State Engineer: No adverse comments.

New Mexico Environment Department: New construction should meet setback from the liquid waste system, 5 feet from the septic tank and 8 feet from the leachfield. Based on the information presented thus far, we have no objections to the proposed variance on this property.

City of Las Cruces MPO: Hangar Lake is a Principal Arterial. Erickson is a local road.

City of Las Cruces Planning Department: No ETZ Subdivision issues exist.

DAC Engineering Department: 1.) Discuss with DAC Fire Marshal on the eve to eve distance. 2.) All storm water runoff from all impervious areas including existing must be contained within lot. Provide ponding calc's. 3.) Do not place on any existing easement or septic systems.

DAC Flood Commission: The subject property is not within a FEMA Special Flood Hazard Area (SFHA) per FIRM No. 35013C0550 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 Doña Ana County Development Design Standards, a Drainage Maintenance Agreement for the on-lot ponding provision will need to be utilized.

DAC Fire Marshal: Variance approved.

DAC Building Services: A Building Permit is required and must meet all County, State and local code requirements. The permit has been applied for and is on hold by the Planning Dept.

DAC Environmental Codes: Some weeds need to be cleaned up. Approved 6/17/10

DAC Rural Addressing: No comments.

Elephant Butte Irrigation District: No comments.

NOTICE / NOTIFICATION

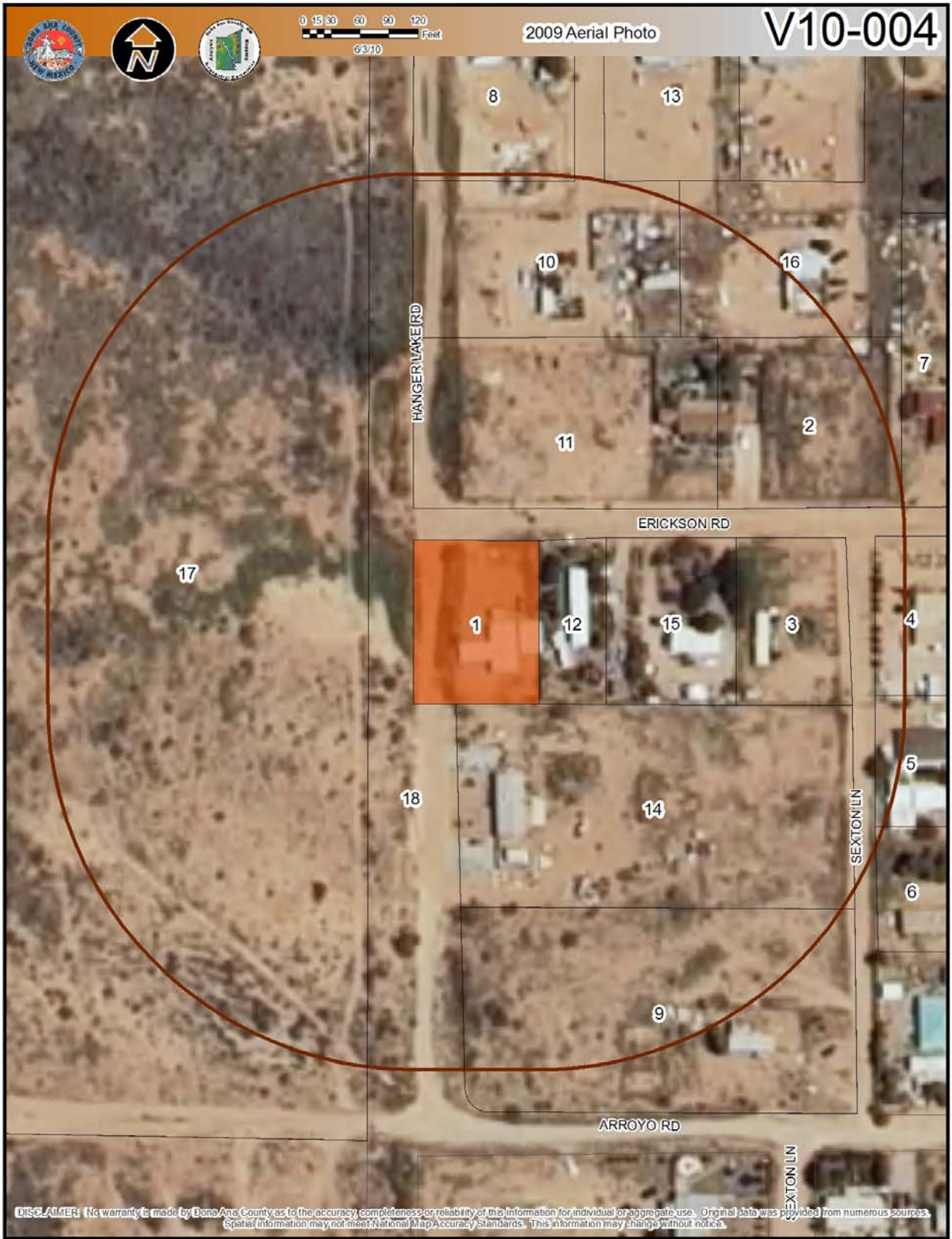
Eighteen (18) letters of notification were sent out.

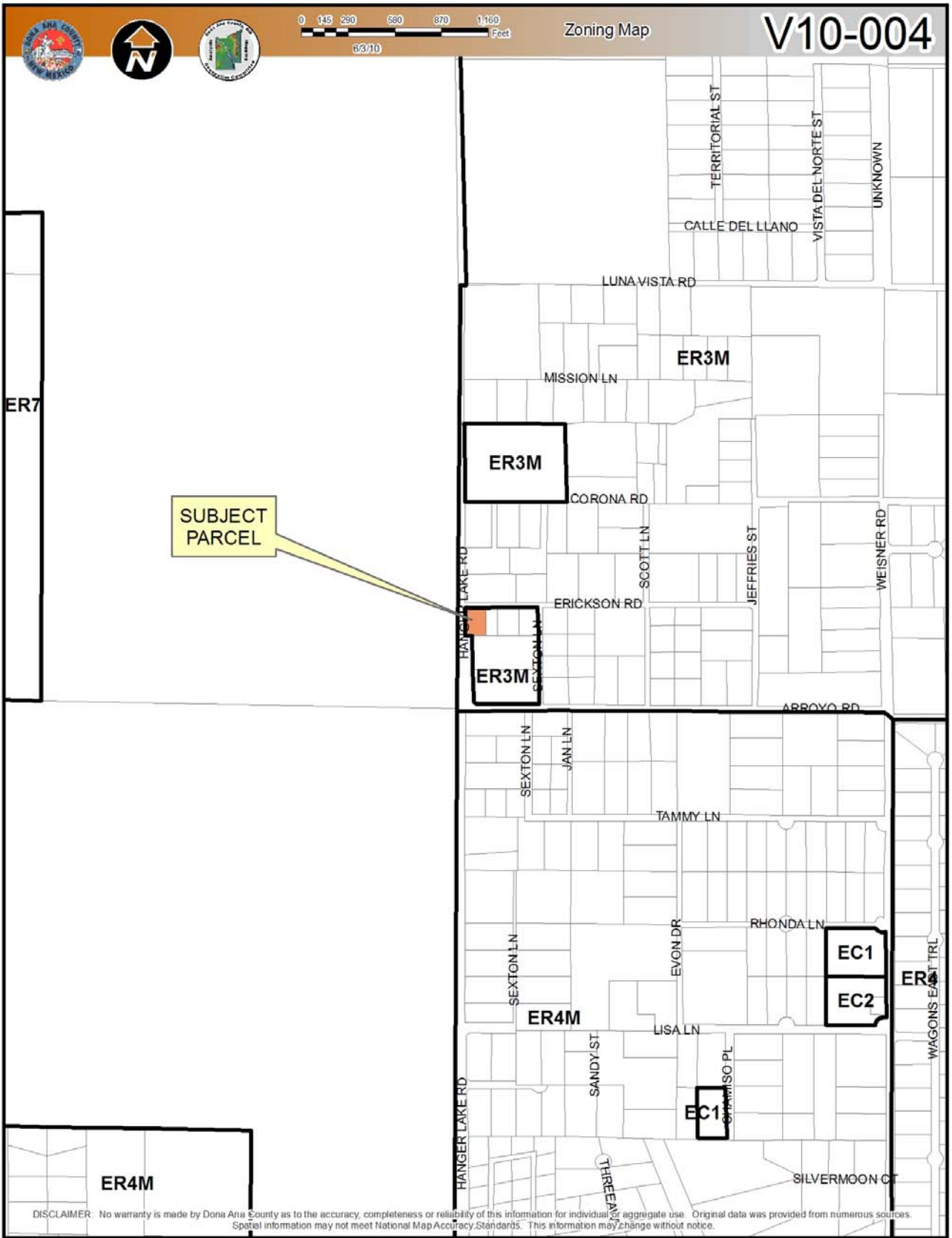
Legal Notification was posted in the Las Cruces Sun News on July 4, 2010.

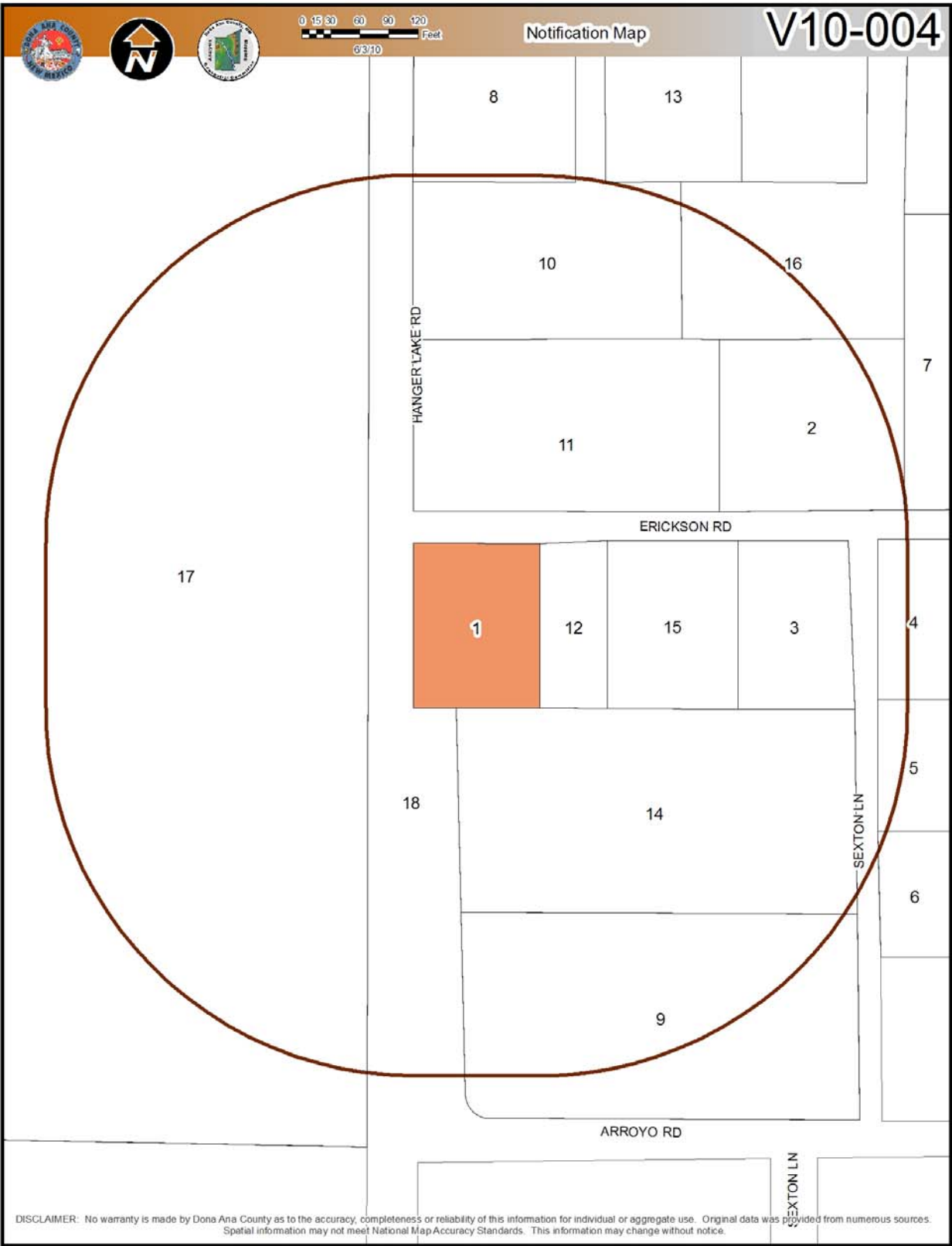
Signs were posted on the property.

Agenda was posted on County Web Site.

As of July 16, 2010, one phone call in support was received from Ms. Savage (#2 on Notification List) on July 6, 2010. No negative input was received by staff.







Notification List

CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
1	4-014-127-008-473	LOPEZ EDWARD JOE	PO BOX 426	ORGAN	NM	88052-0426
2	4-014-127-037-454	BRENDA SAVAGE	8925 EKICKSON RD	LAS CRUCES	NM	88012
3	4-014-127-045-473	MARY ANN SALAS AKA &	PO BOX 1661	LAS CRUCES	NM	88004
4	4-014-127-080-471	MARTINEZ JUAN R & AIDA	8789 E TOMMY LN	LAS CRUCES	NM	88012
5	4-014-127-080-487	CHAPMAN MICHAEL D	1827 MULBERRY	LAS CRUCES	NM	88001-2015
6	4-014-127-080-503	PAUL R CROWE III & D K CUNNINGHAM	RR 15 BOX 1010	BEDFORD	IN	47421-9054
7	4-014-127-081-448	MARIA TORRES	8945 ERIKSON	LAS CRUCES	NM	88012
8	4-014-127-008-413	SANCHEZ MIGUEL A & MARIA L HURTADO	8900 CORONA	LAS CRUCES	NM	88012-8556
9	4-014-127-026-503	RHODES STEPHENNE LYNNE &	1983 OXBOW COURT	LAS CRUCES	NM	88012
10	4-014-127-012-438	SERJIO B HERNANDEZ &	5432 SIERRA VISTA AVE	LAS CRUCES	NM	88001
11	4-014-127-014-454	MILLER MARK J & MARGARITA F	1815 CARLYLE DR	LAS CRUCES	NM	88005
12	4-014-127-021-473	ALMAGUER EDDIE S & TILLIE M	8920 ERICKSON RD	LAS CRUCES	NM	88012
13	4-014-127-025-413	MIGUEL SANCHEZ & MARIA HURTADO	8900 CORONA RD	LAS CRUCES	NM	88012
14	4-014-127-026-481	PABLO M ESPINOZA & ESPERANZA	6526 HANGER LAKE RD	LAS CRUCES	NM	88012
15	4-014-127-032-473	CELIA M PENA & CECILIA E PENA	8930 ERICKSON RD	LAS CRUCES	NM	88012
16	4-014-127-035-438	JESUS M RAMIREZ	8924 CORONA	LAS CRUCES	NM	88012
17	4-013-127-396-264	UNITED STATES OF AMERICA	1800 MARQUESS	LAS CRUCES	NM	88005-3371
18		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001

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)

I AM NOT ASKING FOR SPECIAL PRIVILEGE, WHEN I FOUND OUT ABOUT LIMITATIONS TO PROPERTY LINES ECT, I NOTICED SEVERAL VIOLATIONS IN MY NEIGHBORHOOD. THE STRUCTURES I'VE SEEN ARE PERMANENT. I AM ASKING FOR A 9'-0" VARIANCE ON MY WEST SIDE, & A 12'-0" VARIANCE ON THE EAST SIDE.

- 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)

MY TWO CARPORTS ARE ALL STEEL CONSTRUCTION AND DO NOT POSE A FIRE HAZARD.

- 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)

BEING MY PROPERTY IS SMALL, I NEED TO AVOID THE LEACH LINE, WOULD BE HARD TO RELOCATE CARPORT ON EAST SIDE. AS I MENTIONED ABOVE, SOME PEOPLE IN MY AREA HAVE BUILT STRUCTURES RIGHT ON THEIR PROPERTY LINE. OTHERS ARE IN THE PROCESS OF AD-ONS.

Site Plan

