MEETING DATE: September 21, 2016

CASE #: V16-004

REQUEST: Variances to front yard setback & maximum accessory structure square footage

PURPOSE: To construct a 1,890 sq. ft. accessory structure (carport)

PROPERTY OWNER/APPLICANT: Michael & Darlene Ahlmann

LOCATION: 4898 Raintree Ln.
Las Cruces, NM 88007

LEGAL DESCRIPTION: Lot 9, Block A, Raintree Estates recorded Dec. 4, 2015, in the DAC Clerk’s Office with Inst. #1526890.

EXISTING ZONING: ER3

PROPERTY SIZE: 1.26-acres

PARCEL ID #: 03-21140

RECOMMENDATION: Approval

CASE MANAGER: Steve Meadows, Planner

Report Contents: (1) Cover Page (2) Applicable Policies and Ordinances (3) Staff Analysis (4) Site Plan and Supporting Documents (5) GIS Information and Maps (6) Public Notification.
SURROUNDING ZONING AND LAND USES

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<th>LAND USE</th>
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<td>Residential uses</td>
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<td>ER3 (Residential, 1-acre minimum new lot size, single family site built homes)</td>
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<td>Residential uses</td>
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<td>ER3 (Residential, 1-acre minimum new lot size, single-family site-built homes.)</td>
<td>Residential uses</td>
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BACKGROUND

Existing Conditions & Land Use/Zoning:

The subject parcel is a 1.26-acre rectangular shaped residential corner lot. It is located within an ER3 (Residential, 1.0-acre minimum new lot size, single family, site-built homes) Zoning District. The closest change in zoning is approximately 0.3 mile to the southeast (EC1). The property (See Site Plan page 10) contains a 3,763 sq. ft. residence with an 819 sq. ft. attached garage and a 1,452 sq. ft. accessory dwelling (1999 - Permit #21275), and a 1,163 sq. ft. detached garage (2006 – Permit #30412). Water is provided by Doña Ana Mutual Domestic Water Consumers Association and wastewater disposal per septic system, (NMED Permit #LC990111). Primary access is from Raintree Lane, a paved County maintained road, classified as a local road by the Mesilla Valley MPO. A 10’ utility easement is located along the west property line, a 5’ irrigation easement and an 18’ private drive easement are located along the east property line, and a 5’ roadway easement is located along W. Taylor Rd. Access to the proposed accessory structure is from W. Taylor Road, a paved County maintained road, classified as a local road in this area.

The Request:

Two Variances are requested: 1.) front yard setback from forty ft. (40’) to eleven feet six inches (11’ 6”), and 2.) maximum accessory structure footprint from 3,000 sq. ft. to 4,505 sq. ft. to construct a 1,890 (27’ X 70’) accessory structure (carport).

APPLICABLE PLANS, POLICIES AND CRITERIA FOR APPROVAL

Las Cruces Extra-territorial Zoning Ordinance No. 88-02, as amended:

Section 2.3 Granting Variances
Section 2.3.A  Application

An application for a variance shall be submitted to the Extra-territorial Zoning Authority by filing a copy of the application with the Doña Ana County 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 the 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 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.

**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.

**Section 3.1.C.1 ER3M RESIDENTIAL DISTRICT**

**3.1.C.1.a PURPOSE**

The purpose of the ER3M zoning district is to establish residential district is to establish residential districts of single-family site-built homes and mobile homes on moderate to large size lots, specifically designed to meet the demand for those persons whose lifestyles include raising and keeping of large and small animals in a semi-rural atmosphere.

**3.1.C.1.b DEVELOPMENT REQUIREMENTS**

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<td>1 acre (except cluster development)</td>
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<td>Minimum lot width</td>
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<td>Minimum lot depth</td>
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<td>Minimum side setback</td>
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<td>Minimum rear setback</td>
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<td>Maximum building height</td>
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**Section 3.1.C.2 ER3 RESIDENTIAL DISTRICT**

**3.1.C.2.a PURPOSE**

The purpose of the ER3 zoning district is to establish residential districts of single-family site-built homes on moderate to large size lots, specifically designed to meet the demand for those persons whose lifestyles include raising and keeping of large and small animals in a semi-rural atmosphere.

**3.1.C.2.b DEVELOPMENT REQUIREMENTS**

The development requirements set for the ER3M district as outlined in Section 3.1.C.1.b of this Article are applicable to the ER3 district.
3.1.C.2.c ER3 PERMITTED USES
The permitted uses set for the ER3M district as outlined in Section 3.1.C.1.c of this Article are applicable to the ER3 district, EXCEPT that mobile homes are not allowed in the ER3 district.

3.1.C.2.d ER3 SPECIAL USE PERMITS
The Special Use Permit uses and conditions set for the ER3M district as outlined in Section 3.1.C.1.d of this Article are applicable to the ER3 district.

4.2.A.1 SETBACK EXCEPTIONS
a. A fifteen (15) foot street setback shall be permitted on one (1) front yard of corner lots and double frontage lots and on two (2) front yards of triple frontage lots (see Appendix A for illustrations).

7.1.B SIZE REQUIREMENTS
1. The maximum accessory building footprints for all accessory buildings combined shall be limited to ten percent (10%) of the total (gross) lot area and shall not exceed three thousand (3,000) square feet, except where a variance has been issued. Applicants wishing to exceed the standards of this Article may apply to the Planning Director for a Variance following the procedures in Section 2.3 of this Ordinance, along with a non-refundable application fee.

AGENCY COMMENTS

DAC Engineering: OK

DAC Flood Commission: 1) The subject property is not found to be within a FEMA Special Flood Hazard Area, and can be further identified as being in “other areas” Zone “X”, “Areas determined to be outside the 500-year floodplain”. Be aware that directly to the West, less than 500 ft. away, lies an “other flood areas” zone, “Areas of 500-yr Flood.” The parcel can be further identified on FIRM No. 35013C1080 G. 2) Please be aware that the subject property is still susceptible to localized flooding despite not being identified within a FEMA Special Flood Hazard Area. 3) Additional reviews may warrant additional comments.

Applicant’s Responsibility: Before placement of the structure, drainage runoff as a result from increases to impervious area such as construction/placement of an accessory structure will need to be contained and maintained within the subject property boundaries.

DAC Fire Marshal: Variance approved. Any future structures will be required to meet all fire code requirements.

DAC Building Services: A Building Permit, electrical permit and any other necessary permits will be required prior to construction.

DAC Rural Addressing Coordinator: No comments.

DAC Zoning Codes: No open case.
**DAC Codes:** No violations. 8/18/16

**NMED:** Wastewater Treatment and Disposal: The property currently has a single liquid waste permit (LC990111) for both a four bedroom home and a one bedroom apartment.  
**Water Supply/Water Quality:** No comment received,  
**Solid Waste Disposal:** The Solid Waste Bureau has no comment or concern relative to solid waste matters,  
**Surface Water Bureau:** No comments received.

**NMDOT:** No significant impact to state’s highway system.

**Mesilla Valley MPO:** Raintree Lane is a local road. That portion of Taylor Rd. is a local road.

**CLC Planning Dept:** No concerns. However, if the property is annexed into the city limits then any new construction will need to meet the current Las Cruces zoning code.

**EBID:** No comments received.

**NM State Engineer’s Office:** No water rights issues.

**NOTICE / NOTIFICATION**

- 29 letters of notification mailed out on September 2, 2016.
- Legal Notification was posted in the Las Cruces Sun-News on Sunday, September 4, 2016.
- Signs were posted on the property in a timely manner.
- Agenda was posted on County Web Site.
- No correspondence in support or opposition was received by staff.

**STAFF ANALYSIS**

The applicant submitted the Variance request application on August 3, 2016, requesting a Variance from forty feet (40’) to sixteen ft. six in. (16’ 6”) on the front yard setback.

Initially, the applicant requested a Variance to the side yard setback to construct the accessory structure, but staff research revealed that with the addition of the new 1,890 sq. ft. structure the maximum accessory building footprint for all accessory structures would be surpassed. A 1,452 sq. ft. accessory dwelling constructed in 1999 (Permit #21275), and a 1,163 sq. ft. detached garage constructed in 2006 (Permit #30412) total 2,615 sq. ft. are located on the parcel. Section 7.1.B (Page 5) limits the total accessory structure footprint to 3,000 sq. ft. An additional Variance request to the maximum accessory building footprint from 3,000 sq. ft. to 4,505 sq. ft. was added to this case.

The applicant states (Page 12) that he wishes to place solar panels on his property but is restricted from doing so by the neighborhood protective covenants that do not allow them to be placed on the residence because they could be seen. He proposes to build the carport and place the solar panels on the carport. The platted subdivision (Pg. 11) prescribes a building setback of forty feet (40’) running through the proposed location. The subject parcel is considered a corner lot with double frontage due to frontages on the west from Raintree Lane...
and on the north from W. Taylor Road. Normally a front yard setback of twenty-five feet is required per Section 3.1.C.2.b referencing Section 3.1.C.1.b (Pg. 4), but the double frontage is regulated by Section 4.2.A.1. Setback Exceptions (Pg. 5) with a standard allowing one (1) front setback of fifteen feet (15’). However, it is the policy of the DAC Community Development Dept. to recognize all building setbacks prescribed on platted subdivisions, therefore the setback of forty feet (40’) is the setback that will be encroached upon by the requested 27’ X 70’ (1,890 sq. ft.) carport.

Further complicating the setback issue is the additional five feet (5’) of Roadway Easement shown on the plat (Pg. 11) further reducing the resulting setback to eleven feet six inches (11’ 6”) as opposed to the original sixteen feet six inches (16’ 6”) request.

Staff located four (4) approved Variance requests for setbacks within the same ER3 Zoning District (Pg. 13) as the subject property (V00-008/Barney, V07-002/Stull, V09-002/Alexander, and V09-004/Johnson). Staff also located three (3) approved Variance requests for variances to maximum size of accessory structures within the same ER3 Zoning District (Pg. 14) as the subject property (V00-011/R. Gamboa, V05-002/Harty, and V06-007/P. Gamboa).

Section 2.3.C; Required Findings
To grant a Variance the ETA must find that (Applicant’s responses Page 12). Staff analysis in bold:

A): Granting 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 within the same land use district. Staff identified four approved Variances (V00-008, V007-002, V09-002, and V09-004) within the same ER3 Zoning District (Pg. 13). Staff also identified three approved Variances to the maximum accessory structure size (V00-011, V05-002, and V06-007) within the ER3 Zoning District (Pg. 14). These approved Variances demonstrate that approval of the requested Variances would not be considered a special privilege inconsistent with other properties in the area.

B): Granting the Variance will not be detrimental to the public health, safety, welfare or be materially injurious to properties or improvements in the vicinity. No negative comments were received from the reviewing agencies (Pgs. 5-6) concerning the request. By obtaining approval of the Variances, a Building Permit, passing all inspections, and meeting all other development standards the public health, safety and welfare will be ensured. No materials or evidence was presented to staff alleging any material injury to properties or improvements in the vicinity.

C): Strict or literal interpretation and enforcement of the specified performance standard or regulation will not result in unnecessary physical hardship inconsistent with the purposes of this code. Due to the recognized forty foot (40’) setback prescribed on the platted subdivision and the placement of the residence on the property, the applicant is prevented from placing the carport on the site without encroaching on the setback. Coupled with the restrictive covenants that prevent the placement of the solar panels on the residence the applicant would be prevented from erecting the carport and using it as the base for the solar panels. This would be an unnecessary physical hardship as the applicant would be unable to place either the carport or the solar panels on his property which would not uphold the spirit of the Code.
In staff’s opinion, the request has met the Section 2.3.C Required Findings and by approving the Variance Request the spirit of the code will be upheld and substantial justice done.

**STAFF FINDINGS**

1. 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 Authority (ETA) has jurisdiction to review this case.

2. The Raintree Estates Plat was filed September 24, 1996, in Plat Book 18, Pages 543-544 and the 1.26 acre subject parcel is described as Lot 9, Block A, of the Raintree Estates, recorded in the Office of the DAC Clerk on December 4, 2015, with Instrument #1526890.

3. Water services are provided by Doña Ana Mutual Domestic Water Consumers Association and wastewater disposal per NMED Septic Permit #LC990111.

4. The subject property is located within an ER3 Zoning District requiring a twenty-five foot (25’) front yard setback per Section 3.1.C.2.b, Development Requirements referencing Section 3.1.C.1.b.

5. Section 4.2.A.1.a Setback Exceptions, allows a fifteen (15) foot street setback on one (1) front yard of corner lots.

6. It is the policy of the DAC Community Development Department to recognize setbacks shown on platted subdivisions.

7. The subject property has a forty foot (40’) front yard setback shown along the northern boundary fronting W. Taylor Road.

8. The subject property has an additional five feet (5’) of roadway easement dedicated along the property boundary fronting W. Taylor Road.

9. The maximum accessory building footprint for all accessory buildings combined shall be limited to 10% of the total (gross) lot area and shall not exceed 3,000 sq. ft. per Section 7.1.B, Size Requirements.

10. The subject property contains a 1,452 sq. ft. accessory dwelling constructed in 1999 with Permit #21275, and a 1,163 sq. ft. detached garage constructed in 2006 with Permit #30412 totaling 2,615 sq. ft.

11. Four approved Variances for setbacks are located within the same ER3 Zoning District.

12. Three approved Variances to maximum accessory structure size are located within the same ER3 Zoning District.

13. The Variance request meets all three of the Required Findings of Section 2.3.C.
STAFF RECOMMENDATION

Based on staff’s findings, staff analysis and the applicants’ request meeting all three requirements of Section 2.3.C Required Findings, staff recommends Approval of Variance Request Case # V16-004/Ahlmann and allow a Variance of twenty-eight feet six inches (28’ 6”) resulting in an eleven feet six inch (11’ 6”) front yard setback and a Variance of 1,505 sq. ft. resulting in a 4,505 sq. ft. maximum accessory building footprint to construct a 1,890 sq. ft. accessory structure (carport).
Site Plan
2.3.C Responses

Michael and Darlene Ahlmann

VARIANCE APPLICATION SUPPLEMENT

1.) Staff located two approved variances within the same zoning district. (V07-002/Stull on 5/16/2005 set back variance and V09-004/Johnson on 12/10/2009 set back variance.) The surrounding neighborhood contains several lots that have building patterns with potential setback issues.

2.) By obtaining variances for the setbacks and a building permit with the required inspections, the public health, safety, and welfare will be ensured. We will follow all OSHA safety protocols during the construction of the building as well as the solar panels. No correspondence from the subdivision was received alleging the approval of a variance would be materially injurious to any properties or improvements in the area.

Our home is in the Raintree estates Subdivision and is subject to the Raintree Estates Protective Covenants. A Raintree Estates Administrative Control Committee has been established among the residents to ensure that all new exterior construction projects comply with the Covenants. Restrictions apply to the placement of solar panels on the property. Our design complies with the Covenants, has been reviewed by the other residents, and is approved by the Administrative Control Committee chairman David Hooker.

3.) Due to the location of the existing residence parking area on the lot, and the development pattern within the immediate area, and HOA within the subdivision restricting solar panels from being visible on the roof, it would be an unnecessary physical hardship if the requested variances are denied. Denial would prevent the applicant from acquiring solar panels as well as having covered parking for their existing driveway.
ER3 District Setback Variances Approved

CASE #V16-004 / Ahlmann

This map was created by the Dona Ana County OAS to assist in the administration of local regulations. Neither the County of Dona Ana nor the Dona Ana County Geographic Information System assume any legal responsibilities for the information contained in this map. Those noting errors or omissions are encouraged to contact the County of Dona Ana at (505) 547-2227.
ER3 District Approved Accessory Structure Variances

CASE #V16-004 / Ahlmann

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D.A.G. Geographic Information Systems
545 N. Metal Blvd.
Las Cruces, NM 88007
(505) 647-7237

Extra-territorial Zoning Authority – September 21, 2016
Case # V16-004 / AHLMANN

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Close-up Aerial of Subject Property
Land Use Aerial
Aerial of Area of Notification
## Area of Notification List

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<th>MAP_CODE</th>
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