MEETING DATE: December 13, 2018

CASE NO.: V18-014

REQUEST: Variance to the maximum allowed square footage for an accessory dwelling within the T2 (Rural) Zone.

PROPERTY OWNER/APPLICANT/AGENT: Enrique Ponte

LOCATION: 130 Santana Road, East of Vado, NM.

PROPERTY SIZE: 160.00-acres

PARCEL ID NO.: R1706712

RECOMMENDATION: Approval

CASE MANAGER: Albert Casillas Planner

SYNOPSIS:

The applicant is requesting a Variance to the maximum allowed square footage for an accessory dwelling within the T2 (Rural) Zone. The applicant is proposing a 2,184 sq. ft. accessory dwelling, where the maximum square footage allowed for an accessory dwelling is 1,250 sq. ft.

REPORT CONTENTS: (1) Case Analysis and Staff Recommendation (2) Supporting Documents (3) GIS Information & Maps
SURROUNDING ZONING AND LAND USE

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Existing Conditions and Zoning:
The 160.00-acre parcel is addressed as 130 Santana Road, east of Vado, NM and is located within a T2 (Rural) Zoning District which allows one accessory dwelling (1,250 sq. ft.) per every 5 acres of the property. There is an existing building permit issued on May 25, 2018 for construction of a 2,184 sq. ft. home which is currently in the framing stage. The second building permit is for construction of a 4,083 sq. ft. home and is on hold pending the outcome of the Variance request. The parcel is surrounded on all sides by mostly T2 (Rural) zoning. Access to the property will be from Santana Road, a privately maintained road.

The Request:
The applicant is requesting a Variance to the maximum allowed square footage for an accessory dwelling within the T2 (Rural) Zone and is proposing a 2,184 sq. ft. home where the maximum square footage allowed for each accessory dwelling is 1,250 sq. ft.

BACKGROUND
The 160.00-acre parcel is located within a T2 (Rural) Zoning District and is East of Vado, NM within Section 1, Township 25 South, Range 3 East and recorded in the Office of the Doña Ana County Clerk on March 14, 2016 under Instrument #1605249. The subject parcel can be further identified by Parcel ID # R1706712.

APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL
Chapter 350, Unified Development Code

§350-104.C.2 Duties of the Planning and Zoning Commission: Receive, hear and make final determinations on applications for variances and special use permits as prescribed by, and subject to, the procedures established herein.

§350-202.B General Notice Requirements

§350-207 Variances

§350-207.A Public Hearing and Approval
§350-207.B Findings

The P&Z and the BOCC, if the matter is appealed, may grant, grant with conditions, or deny a variance after making specific findings on whether the applicant has adequately demonstrated:

a. The variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice;

b. The variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice;

c. There is a physical hardship resulting from the size or shape of the parcel; or from existing structures on the parcel; or from topographic or physical conditions on the site or in the area of notice and the hardship is not self-imposed; and;

d. The variance upholds the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done.

§350-502 Regulations General to all Zones: Table 5.4 Site Standards: T2

NOTICE / NOTIFICATION

- 16 letters of notification were mailed to the property owners within the area of notice on November 16, 2018.
- Legal Ad was placed in the Las Cruces Sun-News on November 18, 2018.
- Signs posted on the property in a timely manner.
- Agenda posted on the DAC Web site.

Three (3) emails were received from neighboring property owners, not in opposition of the request, but of concerns regarding blocked access to their properties. Attached I have included a map of existing easements.

AGENCY COMMENTS

**DAC Engineering: **1. All impervious area drainage shall be retained on site.

**DAC Flood Commission: General Comments: **1. Pursuant to FIRM No. 35013C1350G, the subject property is not currently located within a FEMA Special Flood Hazard Area and is located in FEMA “Other Areas”, Zone “X”, “areas determined to be outside 500-year floodplain. Note that the property is still susceptible to localized flooding despite not being located within a FEMA Special Flood Hazard Area.

**DAC Fire Marshal: **1. D103.4 Dead Ends. Dead-end fire apparatus access roads in excess of 150 feet shall be provided with 120 foot hammerhead, 60 foot “Y” or 96 foot diameter cul-de-sac and a minimum width of 20 feet. The minimum entrance gate width shall be no less than 20 feet. 2. D102.1 Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire
department apparatus by way of an approved fire apparatus access road with an asphalt, concrete, or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds. Road width shall be no less than 20 feet.

**DAC Building Services:** No comments.

**DAC Rural Addressing Coordinator:** No comments.

**DAC Zoning Codes:** No open zoning violations at this time.

**DAC Codes:** Natural vegetation, no violations.

**Advance Planning:** Landscaping, Buffering, and Fencing requirements per UDC 350-507 do not apply as this is a residential use.

**NMDOT:** NMDOT has no issues or concerns on this request.

**STAFF ANALYSIS**

The Planning and Zoning Commission being duly appointed shall receive, hear and make final determination on this Variance request. The decision of the Planning and Zoning Commission can be appealed by an aggrieved party or person to the Board of County Commissioners.

The 160.00-acre parcel is addressed as 130 Santana Road, east of Vado, NM and is located within a T2 (Rural) Zoning District which allows one accessory dwelling (1,250 sq. ft.) per every 5 acres of the property. There is an existing building permit issued on May 25, 2018 for construction of a 2,184 sq. ft. home which is currently in the framing stage. The second building permit is for construction of a 4,083 sq. ft. home and is on hold pending the outcome of the Variance request. The parcel is surrounded on all sides by mostly T2 (Rural) zoning. Access to the property will be from Santana Road, a privately maintained road.

The applicant is requesting a Variance to the maximum allowed square footage for an accessory dwelling within the T2 (Rural) Zone. The applicant is proposing a 2,184 sq. ft. home where the maximum square footage allowed for each accessory dwelling is 1,250 sq. ft.

The applicant contends that the property is 160 acres and the accessory dwelling will be to provide housing for a person with special needs and a 24 hour personal care assistant.

§350-207.B Findings: (Staff response in bold) Applicants responses (Pg. 9)

a. The variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice. **On 9 Arapaho Road, approximately 5,000’ southwest from the subject parcel, a medium intensity residential application (Case PDR-M 2000-003) was approved in February 7, 2000 for 2 dwellings.**

b. The variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice. **Approval of a Variance to will not be detrimental to the public health, safety, and welfare, or be materially injurious to**
properties in the area as the property owner will be required to obtain all permits and inspections to be undertaken and approved to secure the public safety and welfare.

c. There is a physical hardship resulting from the size or shape of the parcel; or from existing structures on the parcel; or from topographic or physical conditions on the site or in the area of notice and the hardship is not self-imposed. The existing zoning and acreage of the property allows for up to 32 accessory dwellings for a combined allowed total of 40,000 sq. ft. The applicant is proposing a combined 6,267 sq. ft. for two accessory dwellings which is well below the total sq. ft. maximum allowed.

d. The variance upholds the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done. All permits and inspections will be required to be undertaken and approved to secure the public safety and welfare; therefore, providing substantial justice for the applicant to use an accessory dwelling to provide housing for a person with special needs and a 24 hour personal care assistant.

STAFF FINDINGS:

1. The request of this application is consistent with the requirements of §350-207 Variances of the Doña Ana County Code Chapter 350 Unified Development Code (Ordinance No. 287-2016, as amended).

2. The property is outside of any incorporated municipal zoning authority and is within Doña Ana County, therefore the Planning & Zoning Commission has jurisdiction to hear this case.

3. Pursuant to §350-104.C.2, the Doña Ana County Planning & Zoning Commission shall receive, hear and make final determinations on applications for variances and special use permits as prescribed by, and subject to, the procedures established herein.

4. Notice requirements have been met as prescribed in §350-202.B Public Hearing and Approval.

5. No adverse public comments were received regarding this proposal.


   a) The Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice. On 9 Arapaho Road, approximately 5,000’ southwest from the subject parcel, a medium intensity residential application (Case PDR-M 2000-003) was approved in February 7, 2000 for 2 dwellings.

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   c) There is a physical hardship resulting from the size or shape of the parcel; or from existing structures on the parcel; or from topographic or physical conditions on the site or in the area of
notice and the hardship is not self-imposed. The existing zoning and acreage of the property allows for up to 32 accessory dwellings for a combined allowed total of 40,000 sq. ft. The applicant is proposing a combined 6,267 sq. ft. for two accessory dwellings which is well below the total sq. ft. maximum allowed.

d) The variance upholds the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done. All permits and inspections will be required to be undertaken and approved to secure the public safety and welfare therefore, providing substantial justice for the applicant to use an accessory dwelling to provide housing for a person with special needs and a 24 hour personal care assistant.

**STAFF RECOMMENDATION:**

Based on the request meeting the applicable sections of the Doña Ana County Code Chapter 350 Unified Development Code (Ordinance No. 287-2016, as amended), Staff recommends **Approval** of Case #V18-012.
APPLICANT’S NARRATIVE

Carlos Estrada Vega
JD Builders LLC

Dona Ana County
Community Development Dept.
Zoning Enforcement
845 N Motel Blvd.
Las Cruces, NM 88007-8100

September 12, 2018

VARIANCE REQUEST

We are writing this letter to ask permission to build a second residence on a 160 Ac piece of property located on Parcel 4018145382344 Account No. R1706712 owned by:
Mister Enrique Nicanor Ponte
112 Camino Penasco
El Paso, TX
79912

It is our understanding that the maximum area for an additional dwelling on the property is 1,250 sq. ft. There are special circumstances that require for Mr Ponte to build a house larger than the area specified on the zoning of the property. The dwelling proposed is to provide housing for a person with special needs and a 24 hour personal care assistant. We are requesting permission to build a second dwelling of up to 2,500 sq. ft. including covered parking and porches instead.

It will be a hardship to owner to bring the project to a current electrical code. The house is made with SIP panels, pulling wires of adding wire into the walls will be of a tremendous cost. Electrical Panels and all finishing of the project will be done as requested by the Building Department.

We appreciate your help on this matter, we want to finish the project as soon as possible to be able to relocate the patient her family and the farm.

If you have any question regarding the project please call me I will come to your office to present the project and discuss the situation with you in person.

Thank you very much,

Carlos Estrada-Vega
JD Builders, LLC
Project Coordinator and Designer
575-636-3583
LETTER FROM PUBLIC

Albert Casillas

From: K. Mora <krmora@gmail.com>
Sent: Thursday, November 29, 2018 9:38 AM
To: Albert Casillas
Subject: CASE #V18-014: Request for Information

RE: CASE #V18-014

Greetings Mr. Casillas,

Thank you for your letter concerning Mr. Enrique Ponte's request for a variance to the maximum allowed square footage for an accessory dwelling within the T2 (Rural) Zone. Can you send me the definition of an "accessory dwelling" and a copy of Mr. Ponte's request with the specific description of the proposed dwelling? Additionally, can you help me address a public easement issue we've been unable to resolve with Mr. Ponte? He has illegally fenced off (with locked gates) the entire area, including the public easement leaving no access to my and other owners' property. Please advise on this issue and add the item to the public hearing agenda.

I'm available to discuss this request at your convenience and can be reached at 703-303-9553 or krmora@gmail.com.

Thanks for your help.

-Ken Mora
Albert Casillas

From: Mary Mora <chilestop@icloud.com>
Sent: Wednesday, December 5, 2018 10:07 PM
To: Albert Casillas
Subject: Case #V18-014

To Whom it may concern:

I have no objection to Mr. Enrique Ponte building an accessory dwelling on his land as long as he adheres to the county guidelines for such buildings and he opens up the easements that he has blocked off with fences, gates and locks that bars his neighbors from accessing their on parcels which are adjacent to his land. If he refuses to give his neighbors access to their own land, then he cannot count on our vote for his request.
Thank you,
Mary Mora
From: K. Mora <krmora@gmail.com>
Sent: Thursday, December 6, 2018 4:46 AM
To: Albert Casillas
Cc: Albert Casillas
Subject: CASE #V18-014: Public Hearing Input

RE: CASE #V18-014

Dear Mr. Casillas,

I have no objection to Mr. Ponte’s request so long as he removes the locked gates he installed on the established public access easements to other properties in the area. If Mr. Ponte doesn’t agree, then I can’t endorse his proposal and vote to object. He installed the fence and locked gates without consulting his neighbors or local authorities.

Thank you for the opportunity to provide input for the public hearing.

Best,

-Ken Mora
EXISTING EASEMENTS
PROPERTY NOTIFICATION
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