



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: August 17, 2016

CASE #: V16-003

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

PURPOSE: To construct a 1,200 sq. ft.
accessory structure (a horse
barn)

**PROPERTY OWNER/
APPLICANT:** William Kershaw

LOCATION: 4209 Lost Ln
Las Cruces, NM 88005

LEGAL DESCRIPTION: A portion of U.S.R.S. Tract 6-3,
recorded Sept. 13, 1989, in the
DAC Clerk's Office with
Instrument #8915860.

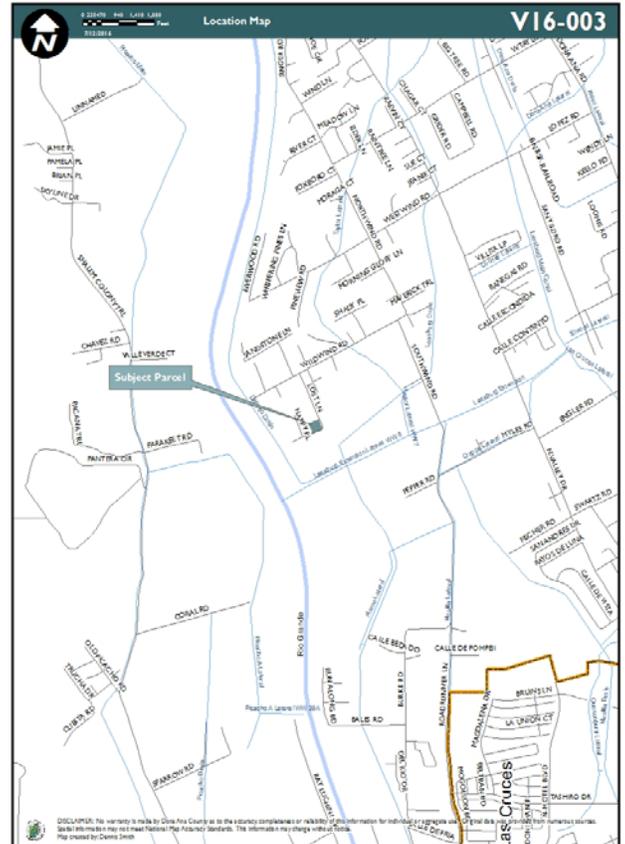
EXISTING ZONING: ER3M

PROPERTY SIZE: 1.7-acres

PARCEL ID #: 03-03564

RECOMMENDATION: Conditional 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

SITE	ZONING	LAND USE
North	ER2 (Residential, 1-acre minimum new lot size, single family site built homes)	Residential uses
South	ER2 (Residential, 1-acre minimum new lot size, single family site built homes)	Agricultural uses
East	ER3 (Residential, 1-acre minimum new lot size, single-family site-built homes.)	Agricultural uses and some residential
West	No zoning	Rio Grande

BACKGROUND

Existing Conditions & Land Use/Zoning:

The subject parcel is a 1.7-acre rectangular shaped residential corner lot. It is located within an ER3M (Residential, 1.0-acre minimum new lot size, single family, site-built and mobile homes) Zoning District. The property contains a 1,964 sq. ft. residence, constructed in 1989 and a 3,000 sq. ft. equipment shed. Water provided by Doña Ana Mutual Domestic Water Consumers Association. Wastewater disposal per NMED Permit #LC890996. Access is from Lost Lane, an unimproved (dirt) private, 40' road and utility easement, classified as a local road by the Mesilla Valley MPO.

The Request:

Two Variances are requested: 1) side yard setback from fifteen ft. (15') to zero ft. (0'), and 2) maximum accessory structure square footage from 3,000 sq. ft. to 4,200 sq. ft. To complete construction of a 1,200 sq. ft. accessory structure to be used as a horse barn.

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

Minimum lot size	1 acre (except cluster development)
Minimum lot width	100 feet
Minimum lot depth	100 feet
Minimum front setback	25 feet
Minimum side setback	15 feet
Minimum rear setback	25 feet
Maximum building height	35 feet

3.1.C.1.c ER3M PERMITTED USES

The following uses are permitted by right in the ER3M district:

1. All types of agriculture.
2. Barbed wire fences.
3. Barns and other structures normally used in connection with farming and ranching.
4. Christmas tree farms.
5. Cluster developments in accordance with Subdivision Regulations adopted by the ETZ Authority.
6. Detached single-family site-built homes and mobile homes.
7. Garage and yard sales or similar uses, limited to three (3) sales in a one (1) year period at a single address, and each sale shall be limited to three (3) consecutive days.
8. Greenhouses (non-commercial) garden and tool sheds. If detached from the main dwelling, the structures are subject to the provisions of Accessory Buildings under Article VII of the Ordinance.
9. Home Occupations subject to Section 3.4 of this Article.
10. Private swimming pools provided the provisions of Article 5 of this ordinance for fencing are met. The pool shall be no closer than five (5)

- feet from any property line and approval from all utilities is obtained to ensure overhead safety.
11. Raising large and small animals in accordance with Article VIII of the Ordinance.
 12. Recreational vehicles such as boats, trailers or similar uses, limited to a maximum of one (1) per dwelling unit in the front and side yard, and no limitations for the rear yard, provided there is at least a distance of five (5) feet from any property line.
 13. Residential type satellite dishes, television or receiving antenna, roof mounted, and not exceeding twenty (20) feet in height at the highest point of the roof.
 14. Septic tanks in accordance with the regulations of the New Mexico Environmental Improvement Division (EID) and Section 3.02 of this Article.
 15. Temporary real estate offices, when used in conjunction with a residential subdivision, provided such use is discontinued upon the completion of the development or within three (3) years from the date the building permit was issued, whichever is sooner.
 16. The sale of agricultural and farm products such as nursery stock, poultry, rabbits, chinchillas, fish, frogs, earthworms and bees, if produced or raised on the premises.
 17. Windmills built to withstand a 75 MPH wind and meet the Uniform Building Code.
 18. Agriculture uses and agriculture related uses not specifically listed under Sections 3.1.A.1.c and 3.1.A.1.d of this Article are permitted by right in the ER3M district.

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: There is enough space for the 15' setback. A drainage plan will be needed if the variance is approved.

DAC Flood Commission: 1) The subject property found not to be located 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 a "other flood areas" zone, "Areas of 500-yr Flood." The parcel can be further identified on FIRM No. 35013C1079 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. **Additional Comments:** What type of roof will the barn have? If the roof is pitched, a 0' setback could cause runoff from one side of the roof to drain onto neighboring property which is not allowed. All additional runoff that is created by the placement of the barn will need to be retained on property. Variance will be approved under the condition that the barn is oriented in a way that all runoff remains on site, or roof runoff is appropriately handled. **Applicant's Responsibility:** Before placement of the structure, drainage runoff as a result from increases to impervious area such as construction/placement of a secondary residence will need to be contained and maintained within the subject property boundaries via on-lot ponding.

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

DAC Building Services: If approved, a Building Permit will be required. As construction began prior to the issuance of the permit, a triple fee is required as per Section 179-19 of DAC Ordinances.

DAC Rural Addressing Coordinator: No comments.

DAC Zoning Codes: No open case.

DAC Codes: No violations. 7/20/16

NMED: *Wastewater Treatment and Disposal: Water Supply/Water Quality, Solid Waste Disposal, Surface Water Bureau:* No comments received

NMDOT: No significant impact to state's highway system.

Mesilla Valley MPO: Lost Lane is a local road.

CLC Planning Dept: The square footage of accessory structure is over the amount allowed if the property is annexed into the city. The applicant would need to request a non-conforming use certificate if ever annexed.

EBID: No comments received.

NM State Engineer's Office: No water rights issues.

NOTICE / NOTIFICATION

- 19 letters of notification mailed out on July 29, 2016.
- Legal Notification was posted in the Las Cruces Sun-News on Sunday, July 31, 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 application for Variance request Case #V16-003 on July 8, 2016, requesting a Variance from fifteen feet (15') to zero feet (0') on the side yard setback as a result of receiving a verbal "Cease and Desist" order from the Chief Building Official when the unpermitted construction was observed on the property June 30, 2016. The structure's steel beam framework was up and welding was taking place at the time the Building Official observed the site.

Initially, the applicant requested a Variance to the side yard setback for the unpermitted 1,200 sq. ft. accessory structure's encroachment of the setback until research discovered an existing accessory structure (metal building) on the subject parcel was 3,000 sq. ft. in size. The structure was permitted in 1987 with Permit #7487. Section 7.1.B (*Page 5*) limits the maximum accessory building footprint for all accessory structures to a combined 3,000 sq. ft. The addition of the 1,200 sq. ft. structure exceeds that standard. An additional Variance request to the maximum accessory building footprint from 3,000 sq. ft. to 4,200 sq. ft. was added to this case. The 1,924 sq. ft. residence and a 576 sq. ft. attached garage were constructed on the 1.7-acre parcel in 1989 with Permit #10263.

The applicant states (*Page 11*) that he cannot place the structure on the west portion of the property because it is irrigated and used to grow feed for his horses (currently 1 horse, 1 mule). He also states, the southeast corner of the property is the location of the residence (*See site plan Page 10*) and cannot be placed in that area. The area picked for the horse barn is in the northeast portion of the property, which is used to train his horses but he states it is unsafe to have a space of fifteen feet (15') between the structure and the fence line. The southern portion of that area contains trees and utilities so it could not be moved further south. The rear of the accessory structure is next to the adjacent fence line to the immediate north. The owners of that property, Mr. Lucas Taylor and Ms. Michele Pennell, provided a letter (*Page 12*) stating their support for the project.

This Variance request is a self-imposed hardship as the applicant did not seek a Building Permit prior to beginning construction of the horse barn on the 1.7-acre parcel. Any issues concerning setbacks and total square footage of accessory structures could have been discussed and addressed at that time.

Section 2.3.C; Required Findings

To grant a Variance the ETA must find that (*Applicant's responses Page 11*). **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 located one approved Variance (V93-009) within 350 ft. and within the same Zoning District. Additionally, there are residences and accessory structures on at least 8 properties (*Page 13*), including 2 adjacent properties that appear to be encroaching on setbacks. This demonstrates a development pattern in the neighborhood that does not adhere to the prescribed setbacks within an ER3M Zoning District and coupled with the approved Variance in the area, shows that approval of the variance 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. DAC Engineering (Page 6) will require a drainage report and DAC Flood Commission (Page 5-6) will require gutters on the north side of the structure to ensure that no runoff impacts the adjacent property. DAC Building Services notes (Page 6) that construction began prior to the issuance of a permit and obtaining a Building Permit and paying a triple fee will be required according to Section 179-19 of DAC Ordinances. No negative comments were received from the DAC Fire Marshal (Page 6) concerning the structure. By obtaining approval of the Variances, a Building Permit, meeting all of the conditions placed on the request, and by passing all inspections the public health, safety and welfare will be ensured.

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. Although it is considered a self-imposed hardship, the physical features on the property including land under irrigation, the placement of existing residential and accessory structures, and the presence of utilities, trees and fencing, have limited the placement of the horse barn. A large portion of the subject parcel is utilized for the raising, feeding and training of horses. Other properties in the area also contain horse facilities. Additionally, due to the development pattern within the neighborhood that includes at least eight properties with structures located within the setbacks (Page 13), and one approved Variance within the same ER3M Zoning District, denial of the requested Variances would be an unnecessary physical hardship and 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 1.7-acre subject property is described as a tract of land situated in Sec. 34, Twp. 22 South, Rge. 1 East, and Sec. 3, Twp. 23 South, Rge. 1 East, U.S.R.S. Surveys, Dona Ana County, NM and being a portion of U.S.R.S. Tract 6-3, as recorded in the Office of the Doña Ana County Clerk on Sept. 13, 1989 with Instrument #8915860.
3. Water services are provided to the property by Doña Ana Mutual Domestic Water Consumers Association and wastewater disposal per NMED septic Permit #LC890996.
4. The subject property is located within an ER3M Zoning District requiring a fifteen foot (15') side yard setback per Section 3.1.C.1.b, Development Requirements.
5. 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.

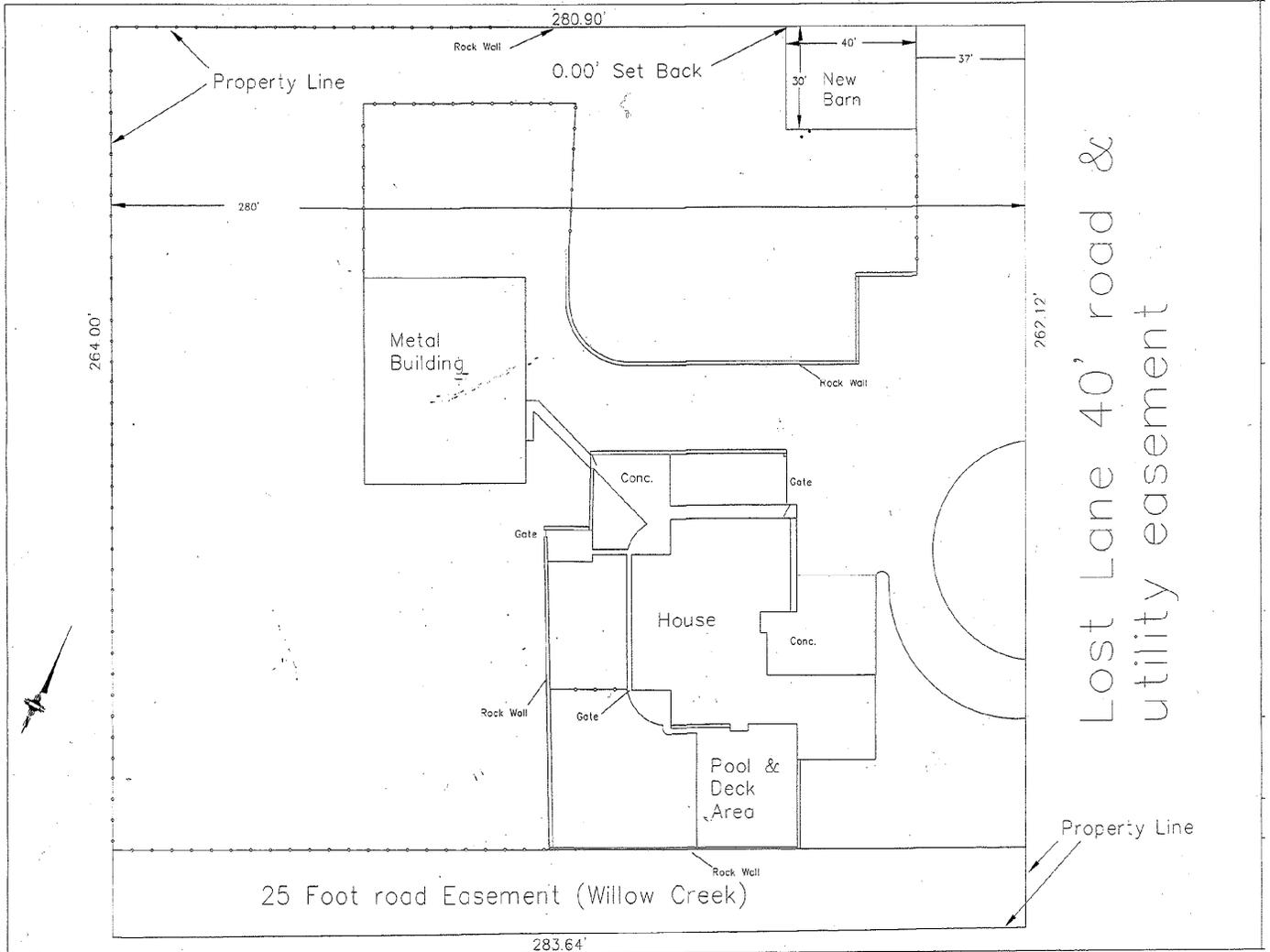
6. Construction on the 1,200 sq. ft. accessory structure began before the issuance of a Building Permit from DAC and is considered a self-imposed hardship.
7. The 1,924 sq. ft. residence and a 576 sq. ft. attached garage were constructed in 1989 with Permit #10263.
8. The 3,000 sq. ft. metal building was constructed in 1987 with Permit #7487.
9. One approved Variance is located within the same ER3M Zoning District.
10. A large portion of the subject parcel is used in support of the raising, feeding, and training of the owners' horses.
11. Several properties in the neighborhood contain horse facilities.
12. The development pattern in the surrounding neighborhood includes eight (8) structures that are within the setbacks in the ER3M Zoning District or within 350 feet of the subject parcel.
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 **Conditional Approval** of Variance Request Case # V16-003/Kershaw and allow Variances from fifteen feet (15') to zero feet (0') on the side yard setback and from 3,000 sq. ft. to 4,200 sq. ft. to the maximum accessory building footprint square footage. Staff proposes the following conditions for approval of the Variance request:

- 1) *Applicant shall obtain Building Permit from DAC Building Services and pay a triple fee.*
- 2) *Applicant shall provide a drainage report for review by the DAC Engineering Dept. with the submittal of the Building Permit.*
- 3) *Applicant shall provide gutters to the structure to prevent runoff from impacting the adjacent property and on-lot ponding shall be provided as required.*

Site Plan



2.3.C Responses

Variance Application Supplement answers:

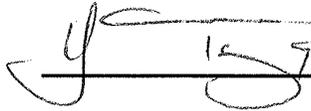
1. Within the 350' of our property there are several buildings in our neighborhood that have been built on a zero backset from their property lines. In the past we have also signed a variance to agree to allow our neighbor to divide and set a home with a zero property line clearance.
2. In this location there are no other buildings within 50' of this horse barn. This is a metal barn and is situated so that it would not be of any threat to the safety of our neighbors. We believe it would be the best and safest place for this structure.
3. The whole west side of our property is used for irrigation and feed for the horses and the SE corner of our property is residential use. The NE side, where we propose to build the horse barn, is the only spot to not be in conflict with the other uses of our property. This area is where we train our horses. A 15' setback space between the barn and the fence line is not usable or safe. Within the NE section of the property, the South portion of this section has trees and utilities that would be in conflict with the barn.

We hope that going through this variance process will show that we would like to do this properly and not have any future problems. Thank you for your time and consideration in this matter.

Adjacent Neighbor's Letter

July 8, 2016

We, the owners of the property, 4223 Lost Lane, just north of 4209 Lost Lane (Map Number 4-004-133-129-068), do not have an issue with our neighbors building a horse barn with a zero backset on our south property line.

 _____

date 7/8/16

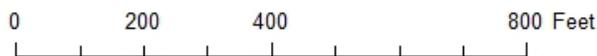
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date 7/8/16

Potential Setback Issues & 1 Approved Variance



8 Potentail Setback Issues & 1 Approved Variance V16-003/Kershaw



This map was created by the Doña Ana County G.I.S. to assist in the administration of local regulations. Neither the County of Doña Ana or the Doña Ana County Geographic Information System assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the County of Doña Ana at (505) 647-7237.

D.A.C. Geographic Information Systems
845 N. Motel Blvd.
Las Cruces, NM 88007
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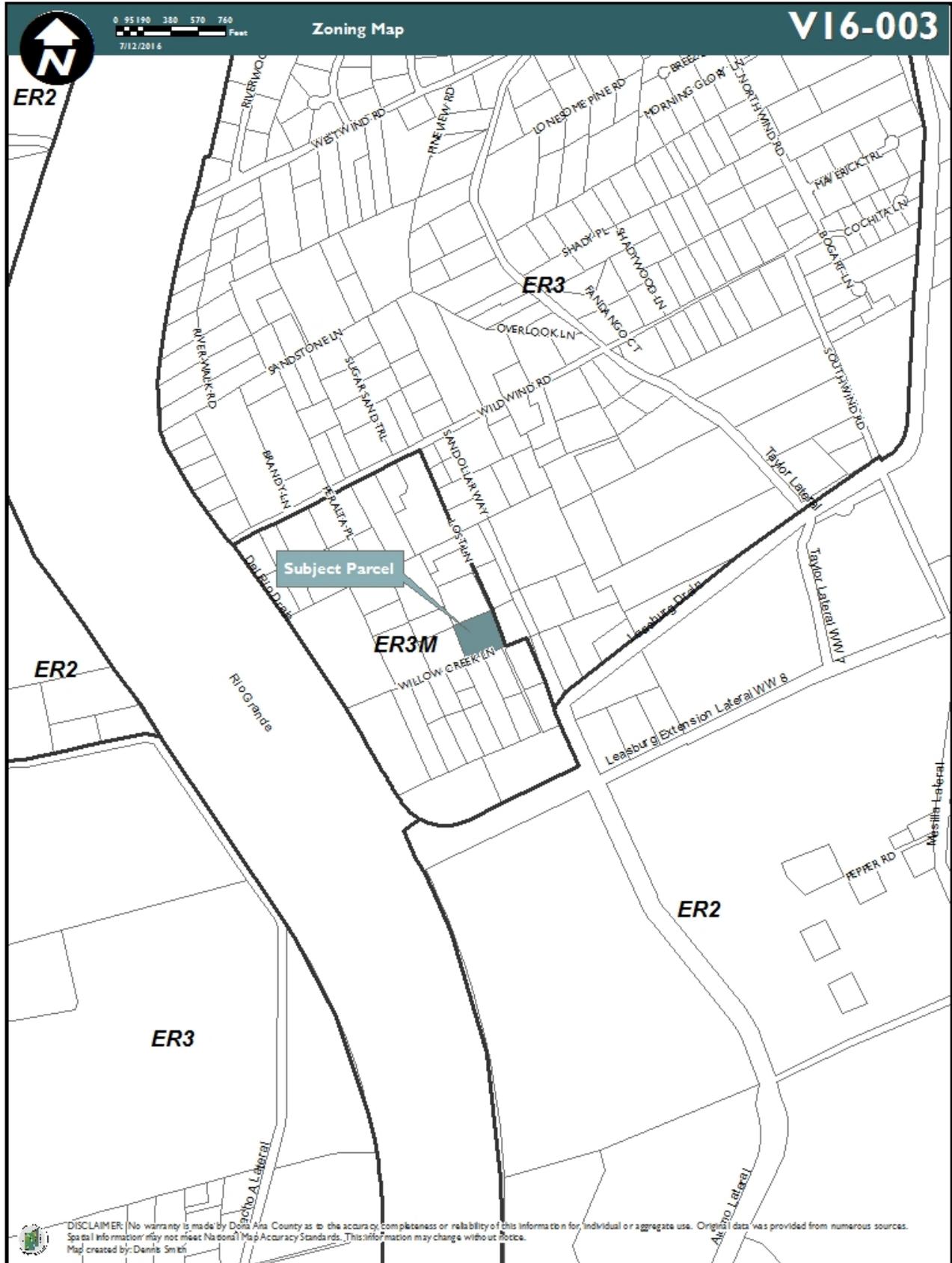
Close-up Aerial of Subject Property



Land Use Aerial



Zoning Map

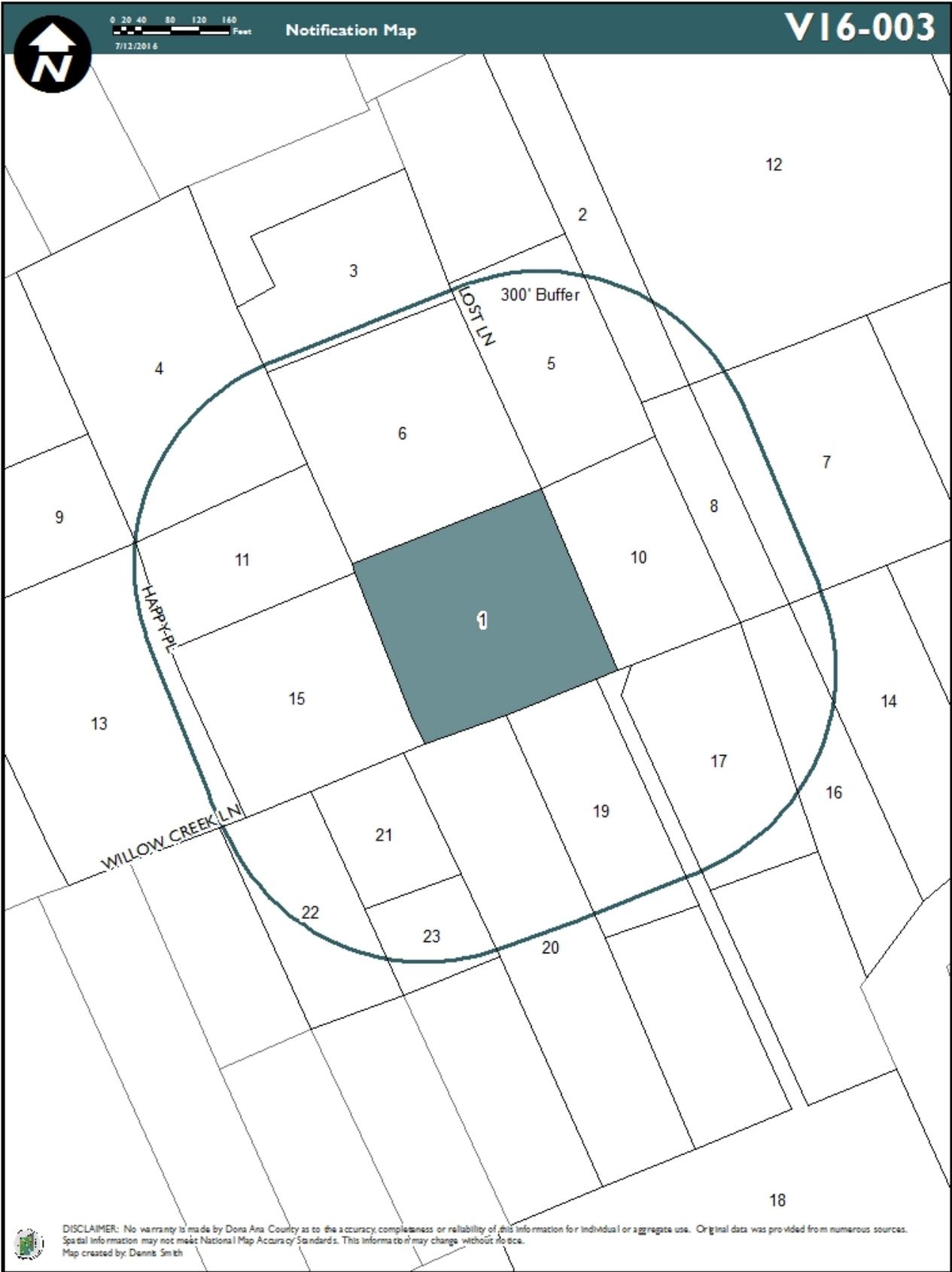


Aerial of Area of Notification



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Area of Notification Map



Area of Notification List

CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
1	4-004-133-129-068	KERSHAW WILLIAM J & LAVERNE D	PO BOX 2546	LAS CRUCES	NM	88004
2	4-004-133-148-020	CHANDLER OTHA JANE	2760 WILLOW CREEK	LAS CRUCES	NM	88005
3	4-004-133-114-026	MARCUS J BANKS & BETSY C	2600 SAN ANDRES DR	LAS CRUCES	NM	88007
4	4-004-133-083-032	EVANS JARRED P & ALLISON	PO BOX 4	RADIUM SPRINGS	NM	88054-0004
5	4-004-133-069-015	ADAMS JAMES JEFFERSON & TRICIA A	4220 LOST LN	LAS CRUCES	NM	88005-5510
6	4-004-133-117-041	TAYLOR LUCAS T & MICHELE L PENNELL	4223 LOST LN	LAS CRUCES	NM	88007
7	4-004-133-177-045	CHANDLER OTHA JANE	2760 WILLOW CREEK	LAS CRUCES	NM	88007
8	4-004-133-160-050	CHANDLER OTHA JANE	2760 WILLOW CREEK	LAS CRUCES	NM	88005
9	4-004-133-063-058	HILL JOHN M	3513 HAPPY PL	LAS CRUCES	NM	88005-4545
10	4-004-133-075-028	MCKIM PAUL & SHARON	4210 LOST LN	LAS CRUCES	NM	88007
11	4-004-133-095-057	MORALES GREGORIO M & TERESA S	4186 LOST LAND	LAS CRUCES	NM	88005-4500
12	4-004-132-170-520	CHANDLER OTHA JANE	2760 WILLOW CREEK	LAS CRUCES	NM	88005
13	4-004-133-077-082	HANSON JOHN R	2890 WILLOW CREEK LN	LAS CRUCES	NM	88007-4546
14	4-004-133-180-075	DIAZ MARIO A & YOLANDA	1425 TRES HIJOS PL	LAS CRUCES	NM	88007
15	4-004-133-106-074	BENTING STUART L & KAREN L	3504 HAPPY PL	LAS CRUCES	NM	88007
16	4-004-133-160-077	CENICEROS JOSEPH T	3940 LOST LN	LAS CRUCES	NM	88007
17	4-004-133-170-100	CENICEROS JOSEPH T	3940 LOST LN	LAS CRUCES	NM	88007
18	4-004-133-155-147	IVEY CLAY & SHANNA	PO BOX 2672	MESILLA PARK	NM	88047
19	4-004-133-148-089	CHAMBERS CAREY L & DENISE D MURPHY-	2849 WILLOW CREEK LN	LAS CRUCES	NM	88007
20	4-004-133-142-114	ALEXANGEL F A REV TRUST	PO BOX 807	LOS ALAMOS	NM	87544
21	4-004-133-120-092	MAYNES MICHAEL A & DARLENE G	1208 GUNFIGHT PEAK	LAS CRUCES	NM	88012
22	4-004-133-105-125	RAY IAN M & KAREN L	2877 WILLOW CREEK LN	LAS CRUCES	NM	88007
23	4-004-133-123-105	LUCERO MARTHA J & DANIEL	2865 WILLOW CREEK	LAS CRUCES	NM	88007