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October 6, 2016

Via Email Only to: tmcdonough@losranchosnm.gov

Tim McDonough, Director
Planning & Zoning Department
Village of Los Ranchos de Albuquerque
6718 Rio Grande Boulevard
Village of Los Ranchos, New Mexico 87107

Re: ***Appeals Related to 795 Ranchitos Road***

Dear Mr. McDonough:

We have been advised that appeals of the action of the Planning and Zoning Commission at its August 9, 2016 meeting regarding two applications for variance related to the property at 795 Ranchitos Road have tentatively been placed on the agenda for the October 12, 2016 Board of Trustees' meeting. You have advised that Abel Garcia, the applicant in both variance requests, has now sold the property and is therefore no longer the owner. You have requested an opinion that can be placed in the records in the appeals as to the proper process for the appeals based upon the change of ownership. Consequently, this letter is not intended to be an attorney-client privileged communication but may be placed in the appellate records, as this is the same response I would provide to the Board of Trustees if asked those questions at the public meeting.

Because of the different actions of the Planning and Zoning Commission, the status of the two appeals (which were heard as two separate applications) is also very different. Consequently, I will provide a response to each one separately.

1. Appeal of decision by the Planning and Zoning Commission approving a variance for the setbacks.

The action of the Planning and Zoning Commission approving a variance as to the setbacks in the A-1 zone constitutes a final action, subject to the possibility of being set aside in the appellate process. Once approved, the variance "attaches" to the property and transfers with the ownership. Consequently, the new owner of the property acquired the benefit of the variances, subject to a possible modification based upon an appellate decision.

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The appellants in that case, which are adjacent property owners, have a right to appeal the decision of the Planning and Zoning Commission and we understand an appeal was properly perfected. To not allow that appeal to go forward would result in the setback variances being final with no avenue to contest the decision, thereby denying the appellants their right to appeal. Appellants are still interested parties and those interests cannot be eliminated by conveyance of title to the property. Consequently, the appeal should go forward for decision by the Board of Trustees.

2. Appeal of decision denying the variance to subdivide the Property.

The applicant for this variance was Abel Garcia, the owner of the property, through an agent. The agent representing the owner has no greater rights than the property owner. By conveyance of the property, the former owner in essence abandoned the application and the issue has become moot as the Board of Trustees can no longer grant to Mr. Garcia the relief requested under the application. These proceedings are quasi-judicial and in that context, Mr. Garcia no longer has “standing” to pursue the appeal.

An additional problem is the Board of Trustees cannot render a decision on an appeal denying a variance related to a new owner of the property as there is no evidence or record in the appellate file relating to the new owner. The Board of Trustees reviews the documents and evidence presented before the Planning and Zoning Commission in order to make its decision. The granting of a variance is by definition “spot zoning.” Spot zoning is generally not valid unless it meets a specific set of criteria under which the variance would be authorized. In the context of the Village ordinances, the ordinances set out the procedures and the elements which would justify the granting of a variance or a spot zone. One of the specific elements that must be shown is “unnecessary hardship.” Even though the variance, if granted, would affect the property, an unnecessary hardship must be defined in the context of the owner of the property and how it affects the owner’s use of the property, if otherwise permissible. In order to grant a variance, a finding must also be made that the variance requested is not broader than is necessary to alleviate the specific hardship and the variance is not for economic reasons.

In this case, the Planning and Zoning Commission made a decision on the above elements based upon Mr. Garcia being the property owner. He was apparently a long-time owner and had experienced difficulty in selling the property. The Board of Trustees will have no record and no evidence to review which could support or deny a variance to a new owner who has acquired the property with knowledge of its limitations and has not filed an application delineating why a variance should be granted. For the Board of Trustees to open the hearing to allow new evidence to be presented directly to the Board of Trustees is inappropriate, because procedurally, under Village

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ordinances, there must be an application by the property owner which must first be heard by the Planning and Zoning Commission.

Based upon the foregoing, it is my opinion that (1) the appeal on the subdivision of the lot is moot and the new owner does not have standing to pursue the appeal; (2) the Board of Trustees, just as a court, should not undertake to hear and/or give guidance on a moot question in which it cannot grant the relief requested; and (3) the Board of Trustees should not take evidence related to the new owner as that would bypass the required application process through the Planning and Zoning Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bill Chappell, Jr.", written in a cursive style.

Bill Chappell, Jr.

BC:gmb

cc: Mayor Larry Abraham (*Via Email*)

Kelly Ward, Administrator (*Via Email*)

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