

City of Santa Fe, New Mexico

memo

DATE: March 30, 2016, for the April 7, 2016 Meeting

TO: Planning Commission

VIA: Lisa Martinez, Director, Land Use Department 

Greg Smith, AICP, Division Director, Current Planning Division 

FROM: Katherine Mortimer, Supervising Planner, Land Use Department 

Case #2016-17. 195 Brownell Howland Road Escarpment Variance. Thomas Lechner, agent for Anne Thompson Davenport, request approval of a variance to allow an addition to an attached garage within the Ridgetop Subdistrict of the Escarpment Overlay District. The 5.08 acre property is zoned R-1 (Residential – 1 unit per acre). (Katherine Mortimer, Case Manager)

RECOMMENDATION

If the Commission determines the proposed 300 square-foot addition to the existing residence meets the variance criteria outlined below, the Commission may **APPROVE WITH CONDITIONS**. Appropriate conditions are provided in Exhibit A of this report.

I. BACKGROUND

The applicant requests a variance to Section 14- 5.6(D)(1) “Location of Structures; Buildable Site” which states:

“For all *lots* subdivided or resubdivided on or before February 26, 1992, all *structures* shall be located within the foothills subdistrict unless the only *buildable site* is located within the ridgetop subdistrict. For all *lots* subdivided or resubdivided after February 26, 1992, *development* in the ridgetop subdistrict of the escarpment overlay district, other than driveway access and utilities, is prohibited. [Underlining added for emphasis.]

Because this lot was created by a lot split in 2009, no additional development may occur in the Ridgetop unless a variance is approved.

II. EXECUTIVE SUMMARY

Should the Commission approve the requested variance, an application for building permit shall incorporate all conditions of approval and be consistent with the building and features included in the application for variance before construction can proceed. The variance is limited to the building footprint as shown on the plans submitted with this application. The addition shall further comply with all other requirements of the Escarpment Overlay District and Chapter 14.

The applicant proposes a 300 square-foot addition to the east side of the 4,112 square-foot footprint of the existing home to create an attached accessory dwelling unit (guest house). An existing studio (former single-car garage) would also be converted and included in the guest house. The guest house would be used for housing a future guest or for domestic help.

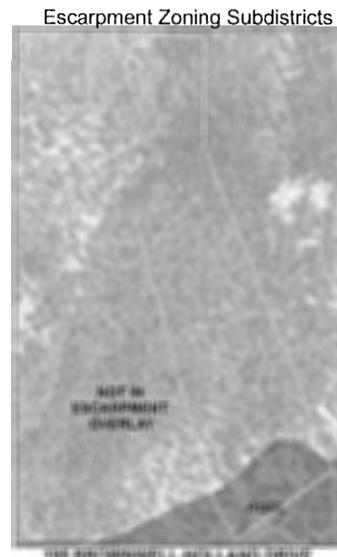
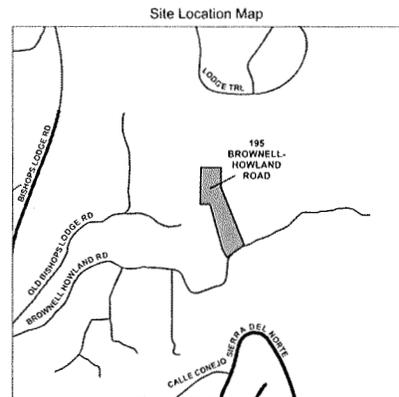
Almost all of the existing home and all of the proposed addition are within the Ridgetop Subdistrict of the Escarpment Overlay District. None of the lot is within the Foothills Subdistrict. The proposed addition would only be visible from Brownell-Howland Road adjacent to the site and within a short distance up and down the road. An attached or detached guest house located on the north side of the house would reduce or eliminate the encroachment into the escarpment district, but would involve additional grading on a steeper portion of the lot. If located elsewhere on the site the existing studio could not be incorporated.

If the Commission determines that special circumstances apply to the lot, the variance may be approved. The proposed location for the addition on the southwest corner of the residence would limit visibility from locations other than the property frontage and would minimize grading and removal of existing trees.

III. ACCESSORY DWELLING UNIT

Accessory dwelling units are permitted in the R-1 zoning district and must comply with the regulations set forth in Section 14-6.3(D)(1) including, but not limited to:

- Meet parking standards as set forth in Section 14-8.6 which requires 2 spaces for the principle dwelling unit and any accessory dwelling unit exceeding 1000 sf or 1 space for accessory dwelling units that are less than



1000 sf;

- shall be limited to one story and shall not exceed fourteen (14) feet to the top of the parapet or to the highest point of the roof if there is no parapet;
- shall be of the same architectural style as the principal dwelling unit;
- shall record a restrictive covenant that requires the current property owner and all future property owners to comply with Subsection 14-6.3(D)(1);
- shall not be subdivided from a principal dwelling unit or sold under separate ownership from a principal dwelling unit unless the accessory dwelling unit meets all applicable requirements for a principal dwelling unit.

The proposed guest house would comply with all of these requirements.

IV. ESCARPMENT OVERLAY ZONING DISTRICT

Land within the Escarpment Overlay district is considered to have significant visual impact to the City. Within the Overlay District, the Ridgetop Subdistrict is considered more visible than the Foothills Subdistrict. In addition to placement restrictions, buildings within the Escarpment Overlay District are subject to height, color, exterior lighting, and landscaping restrictions intended to reduce potential visual impacts as set forth in Section 14-5.6. Should the variance be granted, the proposed addition would be required to comply with the following requirements.

The purpose of the Escarpment Overlay Zoning District per Section 14-5.6(A)(1) is to:

- (a) Promote the economic, cultural, and general welfare of the people of the city;
- (b) Ensure the harmonious, orderly, and efficient growth and development of the city;
- (c) Conserve the value of buildings and land;
- (d) Encourage the most appropriate use of land; and
- (e) Preserve the natural environment and the distinctive and historic ridgetop and foothills area environment as a visual asset for the benefit of the community and to maintain and encourage the sense of the city as a small community.
- (f) Reduce the risk to life and health of residents in the escarpment by reducing wildfire risk; and
- (g) Encourage the conservation of water, especially for maintaining landscaping materials.

The intent of the Escarpment Overlay District per Section 14-5.6(A)(3) is:

- (a) Preservation of the city's aesthetic beauty and natural environment is essential to protect the general welfare of the people of the city, to

promote tourism and the economic welfare of the city, and to protect the cultural and historic setting of the city;

- (b) Development is highly visible on or about the ridgetop areas of the foothills for great distances and detracts from the overall beauty of the natural environment and adversely impacts the aesthetics of the mountain and foothill vistas as seen from the city;
- (c) Land within the escarpment overlay district is environmentally sensitive due to the presence of steep slopes, erosion problems, drainage problems and other environmental attributes;
- (d) The interest and welfare of the people of the city is to prohibit development on ridgetop areas of the foothills to the extent possible as allowed by law; and
- (e) The interest and welfare of the people of the city is to restrict development in the escarpment overlay district to preserve the aesthetic beauty and natural environment of the ridgetop areas of the foothills and to protect the mountain views and scenic vistas from the city to the extent possible.

V. ESCARPMENT-SPECIFIC VARIANCE APPROVAL CRITERIA

The Escarpment Overlay District includes the following two variance criteria, in addition to criteria applicable to all variances to Chapter 14. Those criteria are (14-5.6(K)):

(1) Where the planning commission finds that extraordinary hardship may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation shall not have the effect of nullifying the intent and purpose of these regulations.

(2) In granting variances or modifications, the planning commission may require such conditions as will, in its judgment, assure substantially the objectives of the standards or requirements so varied or modified.

The intent of the Escarpment Overlay District lists preservation of Santa Fe's aesthetic beauty, mountain views and scenic vistas. Since the project would not be visible except in the immediate vicinity of the property, the proposed addition would not be counter to the protection of those views. Additionally, disturbance of natural vegetation and associated erosion and drainage challenges at the proposed location would be limited to those associated with the 300 sf addition. Other possible siting locations on the site, that would avoid the requested variance, would result in greater disturbance of natural vegetation.

VI. VARIANCE PROCEDURES

The variance process balances reasonable use of the applicant's property against compliance with the letter and intent of adopted regulations. Subsection 14-3.16(C) lists six approval criteria must be met in order to approve a variance request.

Those criteria set up a two-stage review process.

In the first stage of review, the Commission must determine that special circumstances apply to the property that make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14. Special circumstances may include physical characteristics that distinguish the property from others in the vicinity, such as unusual topography. Special circumstances may also include conflicting regulations that prevent development of the property without a variance to one or more of the regulations.

VII. VARIANCE APPROVAL CRITERIA

Criteria in Subsections 14-3.16(C)(1) through (5) are required to grant a variance. The property must be consistent with at least one of the circumstances listed in items 1a through 1d and must meet all of the criteria in items 2 through 5. Staff analysis shows that this application is consistent with item 1a and meets the criteria in items 2 through 5.

(1) One or more of the following special circumstances applies:

(a) unusual physical characteristics exist that distinguish the land or structure from others in the vicinity that are subject to the same relevant provisions of Chapter 14, characteristics that existed at the time of the adoption of the regulation from which the variance is sought, or that were created by natural forces or by government action for which no compensation was paid;

Applicant Response:

This residence was designed as a low profile structure facing the road by the Architect John Gaw Meem in 1958. This building is smaller than [the] majority of the other surrounding area residences with only 2,655 heated square footage [sic]. By adding another structure on the property outside of the Ridge Top boundary would change the character of the house and site by destroying the surrounding landscape. The proposed addition is in scale with the existing residence stepping down from the adjacent structure. The new addition is screened by existing trees from the road and is located on the North [sic] slope going away from the City.

Staff Analysis:

There are unusual physical characteristics that distinguish the land and structure from others in the vicinity that are subject to the Escarpment Overlay Zone. The Escarpment Overlay Zone was created after the existing house was constructed in 1958. The home was constructed consistent with the regulations in effect at that time. In order to create an accessory dwelling unit (guest house) it would require either adding 300 square feet to the existing structure and remodeling of the existing studio or, to construct a

larger detached accessory dwelling unit outside of the Ridgetop Subdistrict. Construction of a detached structure approximately 20 feet north of the existing house could eliminate the variance requirement. A 650 square-foot addition attached to the existing structure would reduce, but not eliminate, the extent of the variance. Either option would increase disturbance of existing natural vegetation both for its construction and to get access to that location from the road, and would require grading on steeper portions of the site.

- (b) the parcel is a legal nonconforming lot created prior to the adoption of the regulation from which the variance is sought, or that was created by government action for which no compensation was paid;**

Applicant Response:

195 Brownell Howland is a legal nonconforming lot created in 1958. The owner was not aware of the restriction being placed on the house when the lot was split in 2009. The new parcel that was created did have a building site designated outside of the Ridge Top boundary.

Staff Analysis:

The lot split which created the current lot configuration occurred after the regulations were changed in 2005, however, that lot split did not alter the existing condition of the house being located almost entirely within the Ridgetop Subdistrict. The parcel is not technically legally nonconforming, although development in compliance with escarpment and grading regulations would disturb much of the site.

While location of a separate structure outside of the Escarpment Overlay Zone area would avoid the conflict with the prohibition of constructing within the Ridgetop Subdistrict, it would conflict with the purpose of the Escarpment District to "Preserve the natural environment" by disturbing substantially more natural vegetation than the location proposed. The proposed structure would be located on the east side of the existing house. Due to the existing natural vegetation and topography, neither the existing house nor the proposed addition would be visible from any anywhere other than Brownell-Howland Road in the immediate vicinity of the subject property and therefore would be more consistent with the purpose of the Escarpment Overlay District than the alternative siting options.

- (c) there is an inherent conflict in applicable regulations that cannot be resolved by compliance with the more-restrictive provision as provided in Section 14-1.7; or**

Applicant Response:

No response provided.

Staff Analysis:

Although there is no inherent conflict in the specific requirements of regulations, the application involves balancing the purpose and intent of the escarpment and terrain management regulations.

(d) the land or structure is nonconforming and has been designated as a landmark, contributing or significant property pursuant to Section 14-5.2 (Historic Districts).

Applicant Response:

No response provided.

Staff Analysis:

This section does not apply to this property as it is not located in an historic district.

(2) The special circumstances make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14.

Applicant Response:

By adding another structure with the sufficient size as guest house, a minimum of 650 square foot structure on the property outside of the Ridge Top boundary would also change the character of the site by destroying the surrounding landscape. This would not only disturb the area with construction around the new structure and the existing residence, additional disturbance by having to install a new septic system and utilities. This new construction would impact the existing residence by diminishing the existing vegetation and limiting the views from the existing residence. Additional terrain management constraints will have to be met with a larger project.

Staff Analysis:

Staff concurs that by not taking advantage of the existing studio space and locating the proposed guest house outside of the Escarpment Overlay Zone would result in greater disturbance of natural vegetation. Since the site is not visible from anywhere other than Brownell-Howland Road in the vicinity of the subject property, the proposed location would not be contrary to the purposes and intent of the Escarpment Overlay District and could be viewed as being more consistent with the purpose of the Escarpment Overlay Zone by limiting the impact to the natural environment.

(3) The intensity of development shall not exceed that which is allowed on other properties in the vicinity that are subject to the same relevant provisions of Chapter 14.

Applicant Response:

By adding the small addition the intensity of the development is minimal and will have little or no impact on the surrounding properties in the area. All chapter 14 provisions will be met. Stucco colors, details, and window colors will match the existing residence. The location for the proposed addition limits the amount of circulation needed to go from the existing residence to the proposed guest dwelling.

Staff Analysis:

Chapter 14 defines intensity as "The extent of development per unit of area; or the level of use as determined by the number of employees and customers and degree of impact on surrounding properties such as noise and traffic." With regard to the intensity of use, the amount of development on the site, including the house and stable, is, and would continue to be, one of the smallest homes in the surrounding neighborhood. The footprints of the development on other lots in the same subdivision range from 4,800 to 9,300 square feet. The proposed footprint, including the addition, would be 4,412 square feet. This data was taken by analyzing nine homes located partially or completely within the Ridgetop Subdistrict on Circle Drive. The proposed 4,771 square foot footprint would be substantially less than the median footprint size of 5,970 square feet.

Based on this definition, the intensity of development of the home, including the proposed addition, would not exceed developments that are allowed on other similar properties in the vicinity. Noise and traffic will be no different from any other properties in the vicinity. The size of the proposed addition and the extent of proposed grading, are generally consistent with the development of other nearby lots. The addition will comply with all other Escarpment Overlay regulations and the rest of Chapter 14.

(4) The variance is the minimum variance that will make possible the reasonable use of the land or structure. The following factors shall be considered:

(a) whether the property has been or could be used without variances for a different category or lesser intensity of use;

Applicant Response:

No response provided.

Staff Analysis:

The proposal to expand an existing single-family structure and convert an existing studio to create an accessory dwelling unit is consistent with this zoning designation. As noted above, the size of the footprint of the home would not exceed the median footprint size in the surrounding area. Therefore, staff believes the addition represents a reasonable use of the

property.

(b) consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the general plan.

Applicant Response:

As noted above we are trying to limit the visual impact and lot disturbances in the Ridge Top designated area. Another dwelling could be constructed on the site without a variance and would be outside of the escarpment area. By getting the variance for the small addition on the side and North slope of the residence we are limiting the visual impact to the adjacent sites.

Staff Analysis:

The purpose and intent of the Escarpment Overlay District is provided in Section III of this report. While the addition would be contrary to the prohibition of building in the Ridgetop Subdistrict of the Escarpment Overlay Zoning District, it would not be contrary to the purpose and intent of the Subdistrict. It would not impact the City's aesthetic beauty nor cultural or historic setting as it could not be seen from any public areas or rights-of-way. For this same reason it would not impact mountain views or scenic vistas from the City. It would have little impact on environmentally sensitive areas or cause erosion nor drainage problems. It would not be contrary to goals of any other Section of Chapter 14.

(5) The variance is not contrary to the public interest.

Applicant Response:

The request for this variance should not be contrary to the public interest. This small 300 square foot addition is not imposing visually or physically to any of the adjacent sites or from the City.

Staff Analysis:

The public interest in relation to Section 14-5.6 "Escarpment Overlay District" includes protecting, maintaining and enhancing the health safety and general welfare of the citizens. It also includes protecting the visual impact of development and the natural environment of Santa Fe. The proposed addition would not be visible except from Brownell-Howland Road in the vicinity of the project site and ensures sound and orderly development while adhering to the Escarpment Overlay Regulations. Staff does not believe that the proposed request for a variance to the Escarpment Overlay District violates the purpose and intent of the regulations as set forth in Section 14-5.6.

VIII. ATTACHMENTS:

EXHIBIT A: Conditions of Approval

EXHIBIT B: City Staff Memoranda

1. Waste Water Division Engineer Memorandum, Stan Holland
2. Fire Department Memorandum, Rey Gonzales
3. Escarpment and Landscape Memorandum, Somie Ahmed
4. Terrain Management Memorandum, RB Zaxus
5. Water Division Memorandum, Dee Beingessner
6. Traffic Engineering Division Memorandum, Sandra Kassens
7. Metropolitan Planning Organization Memorandum, Keith Wilson

EXHIBIT C: Maps and Photos

1. General Plan Land Use Designation Map
2. Zoning Map
3. Aerial Photo

EXHIBIT D: Applicant Submittals

City of Santa Fe, New Mexico

Planning Commission

Exhibit A

**Escarpment Variance
Conditions of Approval**

Exhibit A
 Conditions of Approval
195 Brownell-Howland Road Escarpment Variance
 Case #2016-17

	DRT Conditions of Approval	Department	Staff
1	<p>The subject property is not accessible (within 200 feet) to the City public sewer system. Prior to any new construction on the lot, the owner shall obtain a septic system permit from the State of New Mexico Environment Department.</p>	Wastewater Management Division	Stan Holland
2	<ol style="list-style-type: none"> 1. All Fire Department access shall be no greater than a 10% grade throughout. 2. Fire Department Access shall not be less than 20 feet width. 3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turn-around that meets the IFC requirements shall be provided. 4. Fire Department shall have 150 feet distance to any portion of the building on any new construction. 5. Shall have a water supply that meets fire flow requirements as per IFC. 6. Must meet all fire protection requirements set forth by IFC 2009 edition for its classified occupancy. 	Fire Marshal	Reynaldo Gonzales
3	<ol style="list-style-type: none"> 1. Height of addition being proposed must meet the height requirements of Article 14-5.6(F)(4) "Architectural & Site Standards" in the Ridgetop subdistrict. 2. Building color, exterior lighting & exterior glazing shall comply with Article 14-5.6(F) "Architectural & Site Standards." 3. Chimneys may exceed the max height by not more than 3' above the immediately adjacent roof as per Article 14-5.6 (F)(4) "Architectural & Site Standards." 4. Landscaping shall comply with Article 14-5.6(G) "Landscaping." . 	Escarpment + Landscaping	Somie Ahmed
4	No comment	Terrain Management	RB Zaxus

Exhibit A
 Conditions of Approval
195 Brownell-Howland Road Escarpment Variance
 Case #2016-17

5	No Comment	Water Division	Dee Beingessner
6	No Comment	Traffic Engineering	Sandra Kassens
7	No Comment	Metropolitan Planning Organization	Keith Wilson

City of Santa Fe, New Mexico

Planning Commission

Exhibit B

Development Review Team Memoranda



MEMO

Wastewater Management Division DEVELOPMENT REVIEW COMMENTS

E-MAIL DELIVERY

Date: February 29, 2016

To: Kathrine Mortimer, Case Manager

From: Stan Holland, P.E.
Wastewater Management Division

Subject: Case 2016-17 195 Brownell Howland Road Escarpment Variance

The subject property is not accessible (within 200 feet) to the City public sewer system. Prior to any new construction on the lot, the owner shall obtain a septic system permit from the State of New Mexico Environment Department.

The Wastewater Division has no other conditions required for the granting of the variance.

EXHIBIT B-1

City of Santa Fe, New Mexico

memo

DATE: March 14, 2016

TO: Katherine Mortimer, Case Manager

FROM: Reynaldo Gonzales, Fire Marshal 

SUBJECT: Case #2016-17-18 195 Brownell Howland

I have conducted a review of the above mentioned case for compliance with the International Fire Code (IFC) Edition. If you have questions or concerns, or need further clarification please call me at 505-955-3316.

Prior to any new construction or remodel shall comply with the current code adopted by the governing body due to a change of use occupancy.

1. All Fire Department access shall be no greater than a 10% grade throughout.
2. Fire Department Access shall not be less than 20 feet width.
3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turn-around that meets the IFC requirements shall be provided.
4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.
5. Shall have a water supply that meets fire flow requirements as per IFC.
6. Must meet all fire protection requirements set forth by IFC 2009 edition for its classified occupancy.

EXHIBIT B-2

City of Santa Fe, New Mexico

memo

DATE: March 3, 2016
TO: Katherine Mortimer, Planner Supervisor
FROM: Somie Ahmed, Planner Technician Senior
SUBJECT: Comments for Case #2016-17, 195 Brownell Howland Road Escarpment Variance

Below are staff's final comments for 195 Brownell Howland Road Escarpment Variance. These comments are based on documentation and plans dated February 22nd, 2016:

1. Height of addition being proposed must meet the height requirements of Article 14-5.6(F)(4) "Architectural & Site Standards" in the Ridgetop subdistrict.
2. Building color, exterior lighting & exterior glazing shall comply with Article 14-5.6(F) "Architectural & Site Standards."
3. Chimneys may exceed the max height by not more than 3' above the immediately adjacent roof as per Article 14-5.6 (F)(4) "Architectural & Site Standards."
4. Landscaping shall comply with Article 14-5.6(G) "Landscaping."

EXHIBIT B-3

MORTIMER, KATHERINE E.

From: ZAXUS, RISANA B.
Sent: Tuesday, March 29, 2016 4:02 PM
To: MORTIMER, KATHERINE E.
Subject: RE: Comments on Cases for Planning Commission

Katherine -

I have no review comments on these cases.

RB

From: MORTIMER, KATHERINE E.
Sent: Tuesday, March 29, 2016 4:01 PM
To: ZAXUS, RISANA B.
Subject: Comments on Cases for Planning Commission

RB:

Do you have any comments on the following three escarpment variance cases?

- 2016-13 – 451 Circle Drive Escarpment Variance
- 2016-17 - 195 Brownell Howland Road Escarpment Variance
- 2016-18 - 165 Brownell Howland Road Escarpment Variance

Thank you.

*Katherine Mortimer
Land Use Department
City of Santa Fe, NM
(505) 955-6635*



There is no path to peace, peace is the path. -Gandhi

EXHIBIT B4

MORTIMER, KATHERINE E.

From: BEINGESSNER, DEE
Sent: Wednesday, March 02, 2016 2:34 PM
To: MORTIMER, KATHERINE E.
Subject: Cases 2016-17, 2016-18, and 2016-19

Katherine,

I don't have any comments on any of the three subject cases listed above.

Dee

MORTIMER, KATHERINE E.

From: KASSENS, SANDRA M.
Sent: Tuesday, March 08, 2016 10:40 AM
To: MORTIMER, KATHERINE E.
Cc: ROMERO, JOHN J
Subject: 195 Brownell-Howland Road

RE: 195 Brownell-Howland

Katherine,
The Traffic Engineering Division has no comments on the Escarpment Variance at 195 Brownell-Howland Road, case # 2016-17.

Sandra Kassens
Engineer Assistant
Engineering Division
Public Works Department
City of Santa Fe
505-955-6697

EXHIBIT B-6

MORTIMER, KATHERINE E.

From: WILSON, KEITH P.
Sent: Wednesday, March 02, 2016 12:18 PM
To: MORTIMER, KATHERINE E.
Subject: Request for Additional Submittals

Hi Katherine:

I have no comments on the following cases:

- Case #2016-13. 451 Circle Drive Escarpment Variance.
- Case #2016-17. 195 Brownell Howland Road Escarpment Variance.
- Case #2016-18. 165 Brownell Howland Road Escarpment Variance.

Keith P. Wilson
MPO Senior Planner
Santa Fe Metropolitan Planning Organization

Mailing: P.O. Box 909
Santa Fe, NM 87504-0909
Office: 500 Market St, Suite 200 (Above REI Store)
Santa Fe, NM
Map: <http://tinyurl.com/l6kejeg>
Directions & Parking: <http://www.railyardsantafe.com/north-railyard/>
Phone: 505-955-6706
Email: kpwilson@santafenm.gov
santafempo@santafenm.gov

Please Visit Our Website at: www.santafempo.org



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City of Santa Fe, New Mexico

Planning Commission

Exhibit C
Maps and Photos

General Plan Future Land Use Designation Map

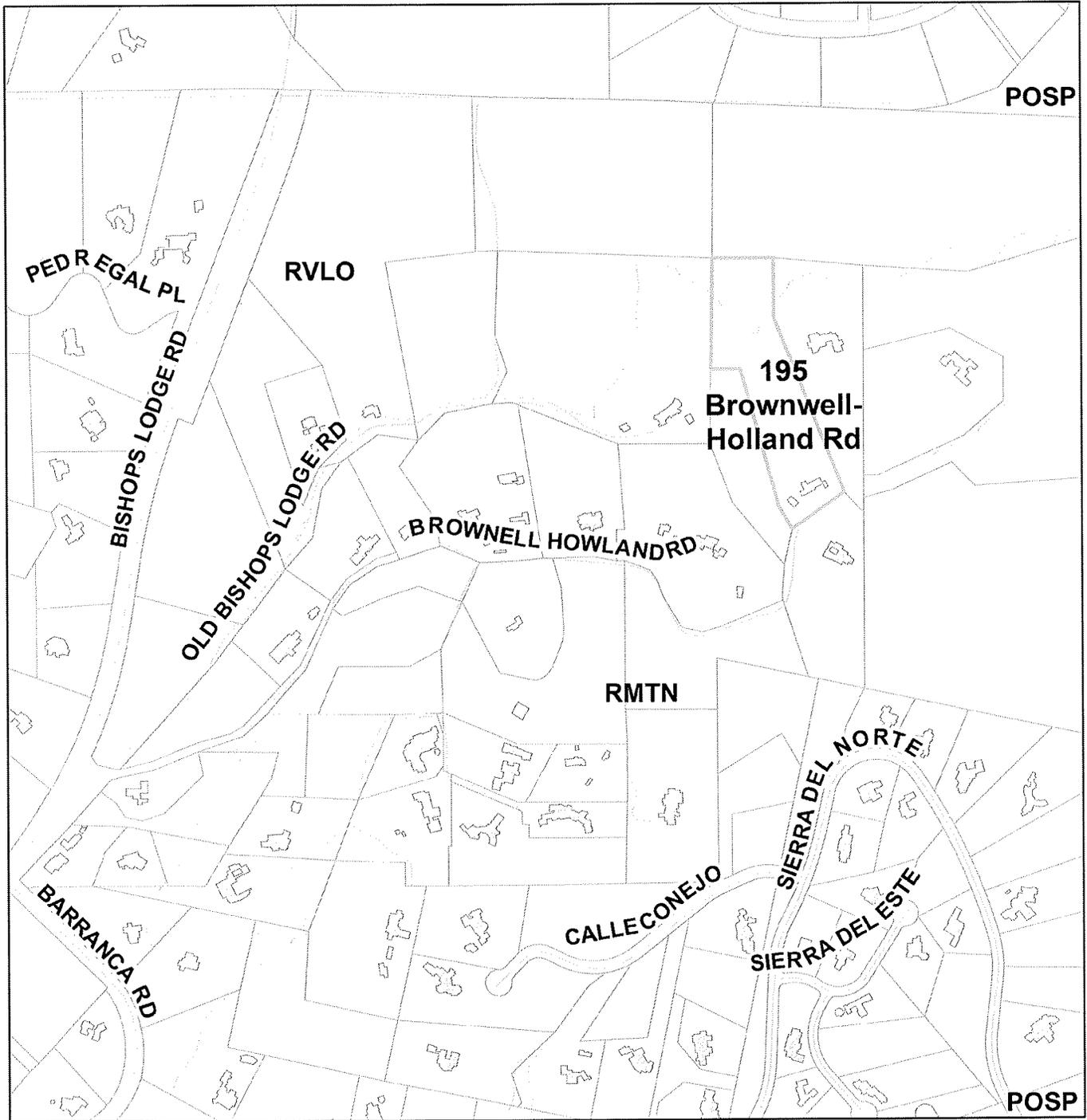


EXHIBIT C1

Zoning Map

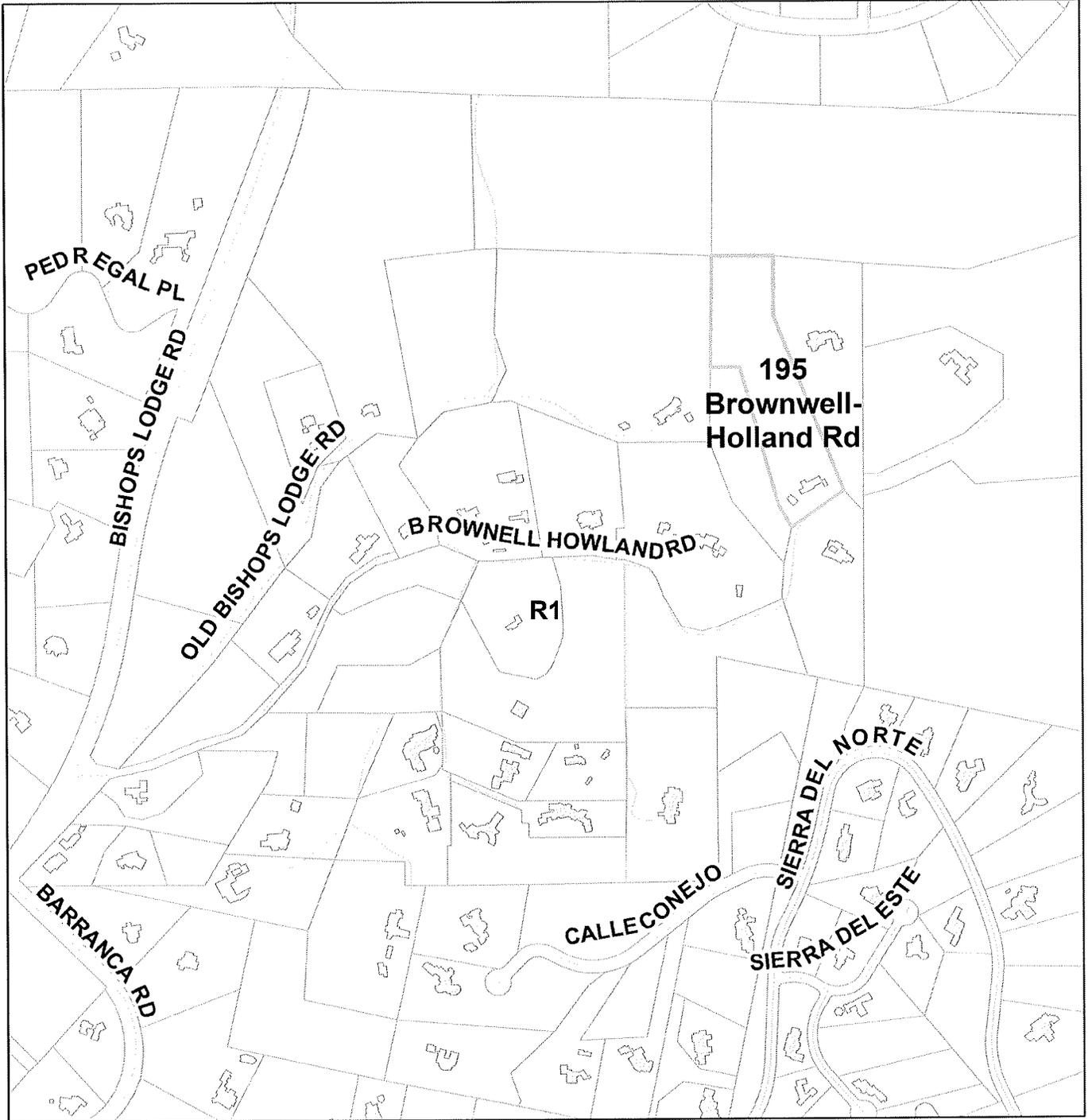
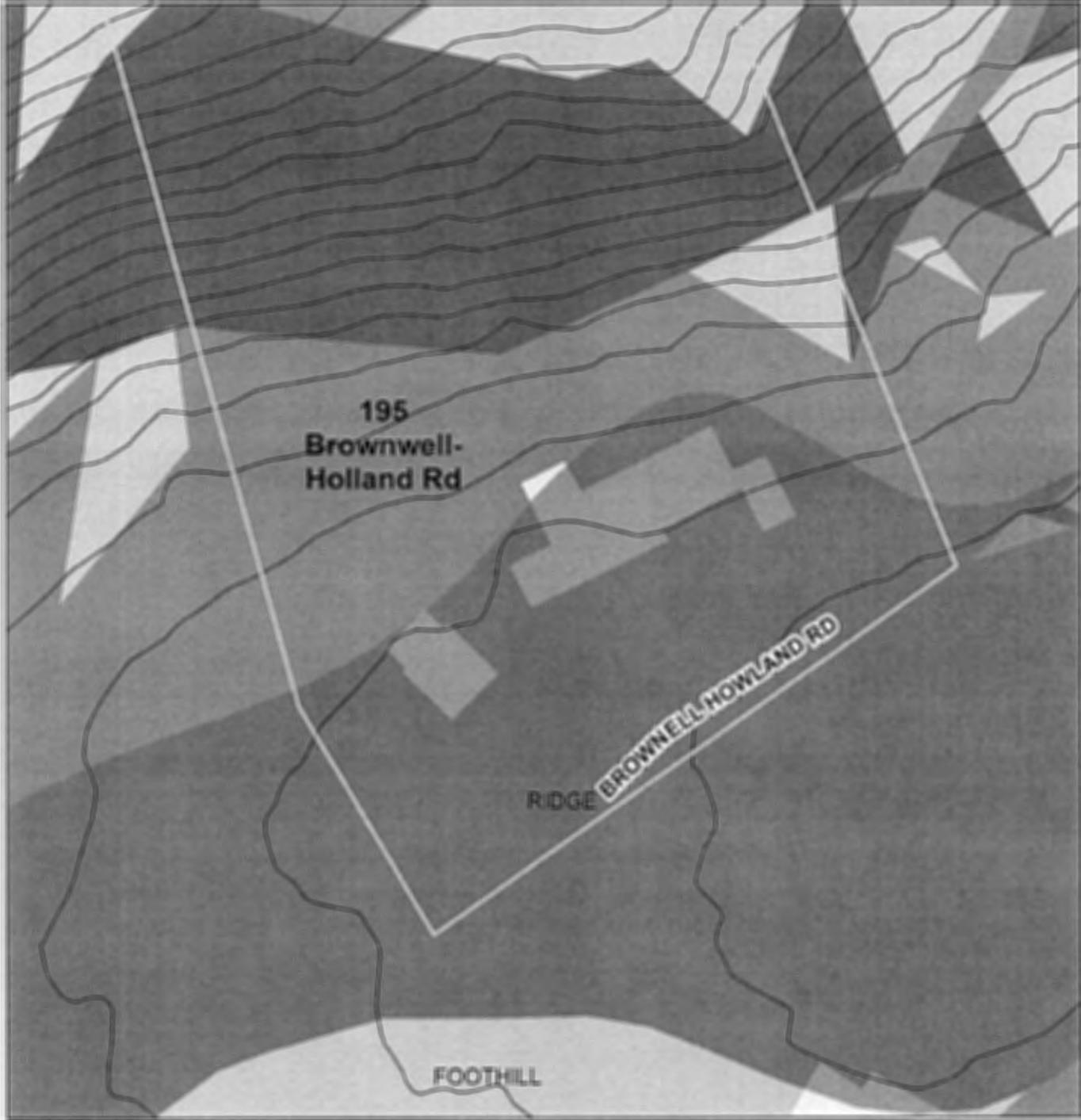


EXHIBIT C2

Slope Analysis with Escarpment Subdistricts



Legend

—	4 Ft. Contours	Slopes
	FOOTHILL	 0% to 10%
	RIDGE	 10% to 20%
		 20% to 30%

EXHIBIT C3

City of Santa Fe, New Mexico

Planning Commission

Exhibit D

Applicant Submittals