

City of Santa Fe, New Mexico

memo

DATE: March 29, 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 #2016-18. 165 Brownell Howland Road Escarpment Variance. JenkinsGavin Design and Development, agent for B & L Land, LLC., request approval of a variance to allow an addition to an accessory structure within the Ridgetop Subdistrict of the Escarpment Overlay District. The 5.46 acre property is zoned R-1 (Residential – 1 unit per acre). (Katherine Mortimer, Case Manager)

RECOMMENDATION

If the Commission determines the proposed 738 square-foot addition to the existing stable building 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 an escarpment 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]

Since the lot was resubdivided in 1995 (a lot line adjustment), a variance is required for any development in the Ridgetop portion of the lot. A lot split was recently approved for the property, but has not been recorded at the time this report is prepared.

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 to demolish 904 square feet of an existing stable and add 783 on a different side of the building, keeping 606 square feet, to convert it into a garage. All of the existing structure and the proposed addition are within the Ridgetop Subdistrict of the Escarpment Overlay District. The application represents a reduction in square footage of development over the existing condition.

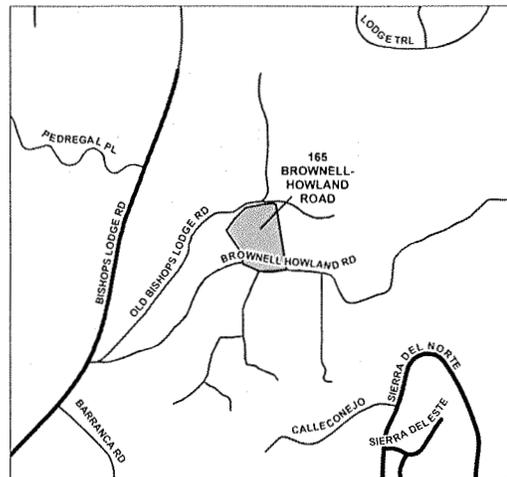
There is a narrow strip of the subject property along the road that is within the less-restricted Foothill Subdistrict, ranging from zero to 24 feet wide. However, that strip is too narrow to locate a garage, which has a 20-foot setback requirement. North of the Foothill strip is a large area of Ridgetop Subdistrict, where the existing buildings are located. The land north of that that is not within the Escarpment Overlay District, but consists of slopes steeper than 30% slopes.

The Summary Committee on March 3rd approved a lot split, which will create a separate lot of record for each of the principal dwelling units on the property. (Exhibit C) The lot split does change the process or approval criteria for the variance application.

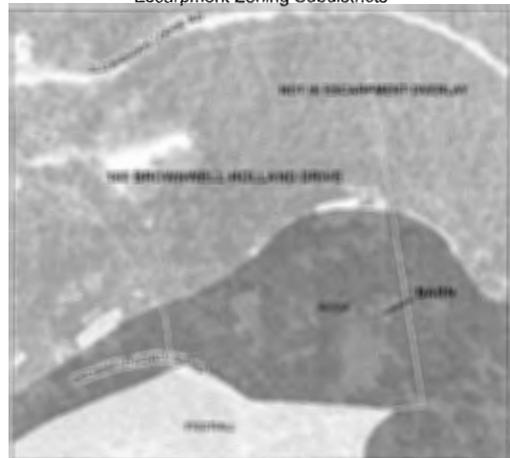
III. ESCARPMENT OVERLAY ZONING DISTRICT

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.

Site Location Map



Escarpment Zoning Subdistricts



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 Zoning 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.

IV. 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 there would be no disturbance of natural vegetation, steep slopes, and associated erosion and drainage challenges at the proposed location as opposed to other possible locations on the subject property.

V. 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 the criteria which 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.

If the Commission determines that there are special circumstances that make it infeasible to develop the property, the second stage involves a determination of the minimum variance that would be needed to permit reasonable use of the property.

VI. 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 1b 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:

The stables were constructed decades prior to the creation of the Escarpment Overlay. Originally, construction in the Ridgetop was permitted if no other buildable site was available. However, the Escarpment Ordinance was amended in 2006, which prohibited all development in the Ridgetop. Typically properties in the Escarpment Overlay are within the Foothills Sub-district, in which development is permissible, or within both the Foothills and the Ridgetop. The subject parcel is unique in that it lies only in the ridgetop, which comprises the vast majority of the property's buildable area.

Staff Analysis:

Unique physical characteristics do exist that distinguish the land from others in the vicinity that are subject to the escarpment overlay district. Due to the unique topography of the site there are no buildable sites on the property that are accessible from the road that are not within the Ridgetop Subdistrict. The portion of the site that is not within the Escarpment Overlay District is on the north side of the property, where the property sharply slopes down away from the street access with slopes greater than 30%. The applicant wishes to reuse an existing stable and convert it into a garage, with a net reduction in square footage, reducing the current amount of development within the Ridgetop Subdistrict.

(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:

N/A

Staff Analysis:

165 Brownell Howland is a legal nonconforming lot, since there is no buildable site that would comply with escarpment and slope standards.

(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:

SFCC § 14-10.3(A) states the following:

(A) No increase in Nonconformity

A legal nonconforming structure shall not be enlarged or altered in a way that increases the degree or extent of its nonconformity. This Section 14-10.3 is not intended to prohibit additions or alterations that do not increase the nonconformity.

The proposed alterations to the stable building will reduce the nonconformity and, therefore, is clearly in conformance with this section. However, this provision is in direct conflict with SFCC § 14.5.6(D)(1), which prohibits all development in the Ridgetop, even development that reduces nonconformities.

Staff Analysis:

Staff concurs that the proposed demolition of part of the nonconforming structure would decrease the extent of nonconformity, but does not concur that reconstruction would constitute an inherent conflict in applicable regulations. Because the application meets the criteria in (1)(a) and (1)(b), however, it is not required to meet the (1)(c) criterion.

(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:

N/A

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:

It is infeasible to convert the stables into a garage, because all new construction is prohibited in the Ridgetop Sub-district.

Staff Analysis:

Staff concurs that the fact that the stable structure is completely within the Ridgetop Subdistrict makes conversion of that structure infeasible without a variance. Similarly, locating the proposed garage elsewhere on the site would be infeasible due to the steep slopes outside of the Ridgetop Subdistrict.

(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:

Accessory structures, such as garages, studios, and guest houses are common in the area. The stables building is the only accessory structure on the property, so there is not excessive development.

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 in the surrounding neighborhood. The footprints of the development on other lots around the subject lot range from 1,527 to 9,290 square feet. The proposed footprint, including the reconfigured stable/garage, would be 4,597 square feet. This data was taken by analyzing nine homes located adjacent to, or within 2 lots, of the subject property. Most are either partially or completely within the Ridgetop Subdistrict. The proposed 4,597 square foot footprint would less than the median footprint size of 5,070 square feet.

Based on this definition, the intensity of development 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 attached 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:

The granting of this variance will actually result in a reduction in use intensity on the property. A stables building has a much greater impact on the neighborhood than a garage, with the odors, dust, and flies associated with horses, as well as the impact of horse trailers regularly utilizing Brownell Howland Road. The proposed garage is a significantly less

intensive use.

Staff Analysis:

The site is zoned R-1, one residential dwelling unit per acre, and the applicant has taken steps to reduce impacts by using an existing structure and replacing less square footage than the existing building. The proposal 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, and the addition will be in the same area as the existing structure. 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:

This variance promotes health, safety, and the general welfare by terminating the stables activity and reducing the impact of a legal, nonconforming building. Furthermore, the following purposes of the escarpment Overlay are specifically fulfilled by this request:

- (1) Conserve the value of building and land; and (2) Encourage the most appropriate use of land.*

Allowing reasonable alterations to the stables building preserves the value of the subject property. Furthermore, elimination of the stables activities preserves neighboring property values, as well.

Staff Analysis:

The purpose and intent of the Escarpment Overlay District is provided in Section III of this report. While the addition to the stable building 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, because the proposed addition would 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 nor cause erosion or drainage problems. It would not be contrary to purpose or intent of any other Section of Chapter 14.

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

Applicant Response:

This variance is in the public interest by reducing the square footage and height of an existing nonconforming structure.

Staff Analysis:

The proposed addition would not be contrary to the public interest. 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 building reconfiguration would not be visible except from the driveway entry on Brownell-Howland Road 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.

VII. 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
4. Street View Photo from Circle Drive at center of property line
5. Street View Photo from Circle Drive at driveway entry

EXHIBIT D: 2016 Lot Split Plat (Approved, but not yet filed)

EXHIBIT E: Applicant Submittals

City of Santa Fe, New Mexico

Planning Commission

Exhibit A

**Escarpment Variance
Conditions of Approval**

Exhibit A
 Conditions of Approval
165 Brownell-Howland Road Escarpment Variance
 Case #2016-18

	DRT Conditions of Approval	Department	Staff
1	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.	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 to any new/remodel construction or automatic sprinkler systems may be required. 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. If this cannot be met an automatic sprinkler system may be required. 4. Fire Department shall have 150 feet distance to any portion of the building on any new construction. 5. Shall have water supply that meets fire flow requirements as per IFC 	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 Ridgeway 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
165 Brownell-Howland Road Escarpment Variance
 Case #2016-18

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 2016-18 165 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 18, 2016

TO: Katherine Mortimer, Case Manager

FROM: Reynaldo Gonzales, Fire Marshal *RDG*

SUBJECT: Case #2016-18 165 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 the current code adopted by the governing body would need to be met.

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 to any new/remodel construction or automatic sprinkler systems may be required.
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. If this cannot be met an automatic sprinkler system may be required.
4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.
5. Shall have water supply that meets fire flow requirements as per IFC

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 #2016-18, 165 Brownell Howland Road Escarpment Variance

Below are staff's final comments for 165 Brownell Howland Road Escarpment Variance:

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 10:46 AM
To: MORTIMER, KATHERINE E.
Cc: ROMERO, JOHN J; Jenkins Jennifer (jennifer@jenkinsgavin.com)
Subject: 165 Brownell-Howland

Re: 165 Brownell-Howland Rd. Escarpment Variance.

Katherine,
The Traffic Engineering Division has no comments on the request for escarpment variance at 165 Brownell-Howland Road, case # 2016-18.

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

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: kwilson@santafenm.gov
santafemppo@santafenm.gov

Please Visit Our Website at: www.santafemppo.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

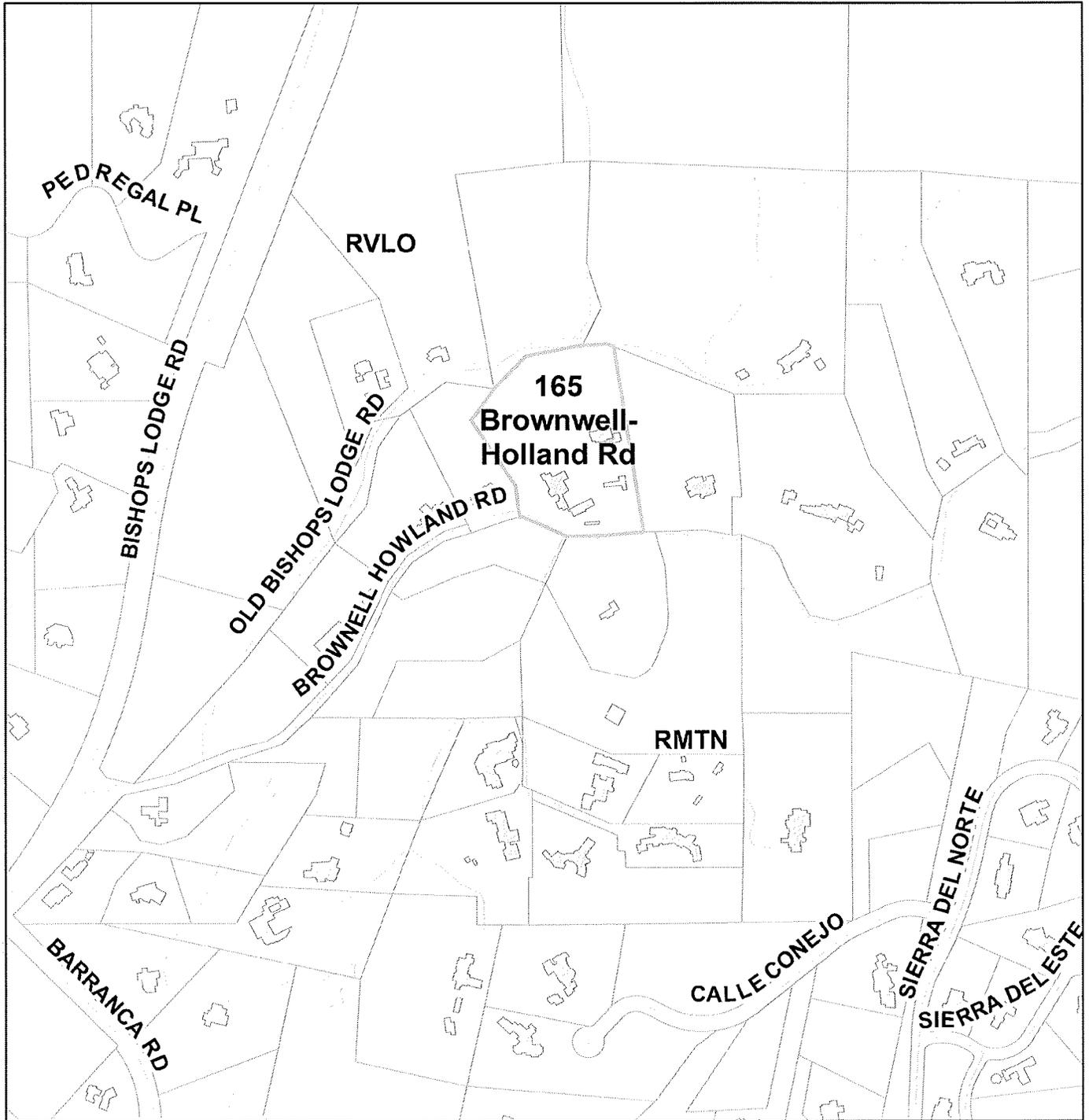


EXHIBIT C1

Zoning Map

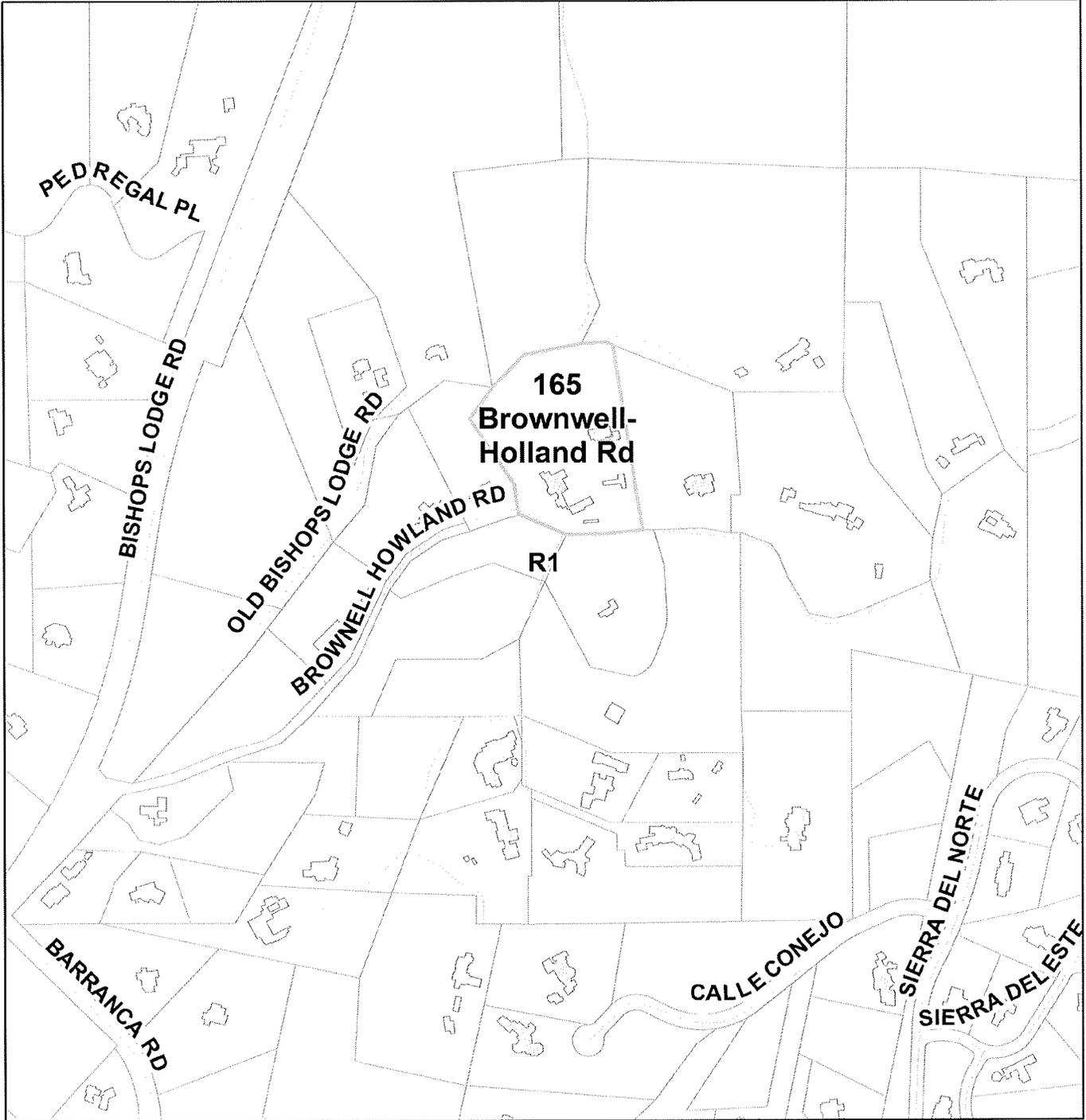


EXHIBIT C2

Aerial Photo



EXHIBIT C3

City of Santa Fe, New Mexico

Planning Commission

Exhibit D

**2016 Lot Split Plat
(Approved, but not yet filed)**

City of Santa Fe, New Mexico

Planning Commission

Exhibit E

Applicant Submittals