

City of Santa Fe, New Mexico

memo

DATE: May 20, 2016, for the June 2, 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 #2016-46. 102 Montoya Circle Escarpment Variance. JenkinsGavin Design and Development, agent for Robin K. Laughlin request approval of a variance to allow a four foot high coyote fence within the Ridgetop Subdistrict of the Escarpment Overlay District. The 0.13 acre property is zoned R-21 (Residential – 21 unit per acre) and is within the Historic Districts Overlay Zone. (Katherine Mortimer, Case Manager)

RECOMMENDATION

If the Commission determines the proposed 4 foot coyote fence meets the variance criteria outlined below, the Commission may **APPROVE WITH CONDITIONS**. Appropriate conditions are provided in Exhibit A of this report.

I. EXECUTIVE SUMMARY

The applicant proposes to build a four-foot high coyote fence, and requests a variance to Section 14- 5.6(D)(1) "Escarpment Overlay District – 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]

The lot was created in 2001 through a lot split, and the entire lot is located within the

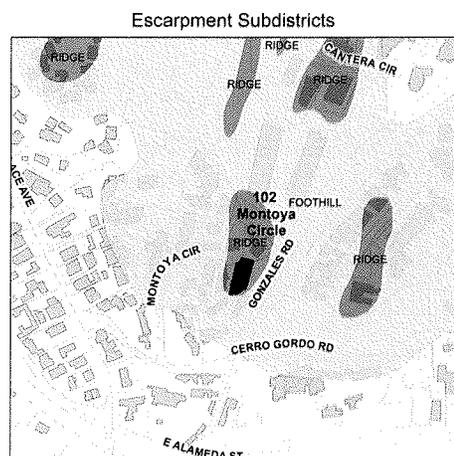
Ridgetop Subdistrict. Therefore, a variance is required for any further development on the lot, including a fence or any other type of structure.

If the Commission approves the variance, the fence would be limited to the location and height as shown on the plans submitted with this application. The fence would have to comply with all other requirements of the Escarpment Overlay District and Chapter 14.

The analysis shows that the proposed fence appears to meet all of the variance criteria.

II. 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 and other structures 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.



The purpose of the Escarpment Overlay Zoning District per Subsection 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.

III. 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.

Applicant Response:

The intent of the Escarpment Overlay is to preserve Santa Fe's aesthetic beauty, mountain views, and scenic vistas. Since the fence will be significantly lower than the elevation of the existing residence, and the property has limited visibility from both Montoya Circle and Gonzales Road, it will not be counter to the protection of the local views. The fence will be constructed on or adjacent to the existing retaining wall; therefore, finishing the fence will not cause disturbance of natural vegetation, steep slopes, or associated erosion and drainage challenges at the proposed location.

The proposed fence will not detract from the aesthetic beauty of the neighborhood. The applicant performed a field count to ascertain how many of the surrounding properties have coyote fencing and/or yardwalls on their

property. Out of 29 residences on Montoya Circle and the southern portion of Gonzales Road (see attached map), 13 residences have coyote fences, 8 have yardwalls, and 8 have both yardwalls and fences. Upon a visual assessment, all of the coyote fences appeared to be equal to or higher than the 4' height of the applicant's proposed fence. All of the properties are fully or partially within the Escarpment Overlay, and six of the properties are fully or partially within the Ridgetop Sub-district.

As demonstrated above, every property in the surrounding neighborhood has a fence, a yardwall, or both. Thus, granting the requested variance will allow the applicant to enjoy a similar use of her property. Given the prevalence of coyote fencing in the neighborhood, the proposed fence will harmonize with the existing architectural style. Granting the variance for construction of the fence will not adversely affect the aesthetic beauty of the Ridgetop Sub-district.

Staff Analysis:

Staff concurs with the applicant's response.

IV. 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.

V. 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 subject parcel and structure shares similar physical characteristics with surrounding properties.

Staff Analysis:

Not applicable.

(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:

The parcel is a legal nonconforming lot that was created via a family transfer in 2001. A parcel located completely within the Ridgetop Sub-district of the Escarpment Overlay District would not be permissible under the current City code.

Staff Analysis:

Staff concurs that 102 Montoya Circle is a legal nonconforming lot, since there is no buildable site that would comply with the prohibition to build in the Ridgetop Subdistrict.

(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:

There is an inherent conflict between the building prohibition in the Ridgetop Sub-district and the International Residential Code ("IRC"). The Ridgetop Sub-district regulations prohibit construction, which is inconsistent with the IRC requirement to provide a "guard" against potential falls.

Staff Analysis:

Staff concurs. The drop in elevation from the yard of the subject property

to the adjacent driveway surface would necessitate a guard to prevent risk of falling per the City-adopted building code (IRC R312). The proposed coyote fence at 4 feet high would meet the requirements of that code, which requires a minimum barrier height of 36 inches.

- (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:

Staff concurs. The Historic Division staff has determined that the proposed fence is eligible for an administrative approval to the Historic District Overlay Zone regulations.

- (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 complete the coyote fence in compliance with the standards of Chapter 14, as all construction is prohibited in the Ridgetop Sub-district. Construction of the fence is therefore infeasible without the requested variance.

Staff Analysis:

As all of the property is located within the Ridgetop Subdistrict, any new construction would violate the standards of Chapter 14.

- (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:

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." The granting of this variance will not increase the intensity of development in the vicinity. The neighborhood is already developed, and as detailed above, many of the adjacent and nearby properties are improved with coyote fencing similar to, or higher than, that proposed by the applicant. The construction of a 4' high fence will not increase the level of use as defined above. In fact, the fence is lower than several of the other coyote fences in the vicinity.

Staff Analysis:

Staff concurs that construction of a fence would not increase the intensity of development as defined in 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:**

Applicant Response:

None provided.

Staff Analysis:

To determine reasonable use of a property we look to other properties in the neighborhood. Nearly all of the properties developed as single family on Montoya Circle and near the property along Gonzalez Road have either coyote fences or stucco walls that appear to range from 4 to 6 feet tall.

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

Applicant Response:

The property is residentially zoned and fully developed, and therefore cannot be used for a different category or lesser intensity of use. Moreover, development of any kind on the subject property is prohibited per SFCC §14-5.6(D)(1). Therefore, the property cannot be used without variances for a different category or lesser intensity of use. As stated in (3) above, the granting of the variance will not increase the intensity of use.

Staff Analysis:

Staff concurs that the property cannot be used for a different category of use and that the proposed fence would not intensify the 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:

The granting of this variance is consistent with the purpose and intent of the Escarpment Overlay, as detailed in SFCC §14-5.6(A). While construction of the fence would be contrary to the prohibition of construction in the Ridgetop Sub-District of the Escarpment Overlay, it would not be contrary to the purpose and intent of the Sub-district, as it

would not be contrary to the general welfare of the people of the City, nor would it be counter to the harmonious, orderly, and efficient growth and development of the City. The proposed fence will be in keeping with the neighborhood architectural style and will have minimal visual impact from Gonzales Road or Montoya Circle. The property is already developed with a single family residence, which is consistent with development throughout the neighborhood. Construction of a 4' high coyote fence will not detract from the overall beauty of the natural environment, nor will it adversely impact mountain views or scenic vistas as seen from the City. Moreover, it will not adversely affect the environmental sensitivity of the Ridgetop Sub-district.

Staff Analysis:

Staff concurs that the proposed fence would be consistent with the general purpose and intent of the Escarpment Overlay Subdistrict as noted in Section II of this report. The proposed fence would not be seen from any public areas or major rights-of-way. For this same reason it would not impact mountain views or scenic vistas from the City. It would have no 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:

The public interest in relation to SFCC §14-5.6, "Escarpment Overlay District," means "protecting, maintaining and enhancing the health, safety and general welfare of the citizens." Providing a 4' high coyote fence around the subject property will not be contrary to the public interest.

Staff Analysis:

Staff concurs.

VI. 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. Solid Waste Memorandum, Eric Lucero

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
Conditions of Approval

Exhibit A
 Conditions of Approval
102 Montoya Circle Escarpment Variance
 Case #2016-46

	DRT Conditions of Approval	Department	Staff
1	No Comments	Wastewater Management Division	Stan Holland
2	Shall not impede Fire Department access or block any egress easements.	Fire Marshal	Reynaldo Gonzales
3	All structures in the Ridgetop and Foothills Subdistrict are to comply with the standards listed in Article 14-5.6 "Escarpment Overlay District."	Escarpment + Landscaping	Somie Ahmed
4	No Comments	Terrain Management	RB Zaxus
5	No Comments	Water Division	Dee Beingessner
6	No Comment	Traffic Engineering	Sandra Kassens
7	No Comment	Solid Waste	Eric Lucero

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Planning Commission

Exhibit B
City Staff Memoranda

MORTIMER, KATHERINE E.

Subject: FW: Possibility of Early DRT Comments?

Katherine
I do not have any comments to address for this variance.

Stan Holland, P.E.
Wastewater Division
73 Paseo Real
Santa Fe, New Mexico 87507
505-955-4637
tsholland@santafenm.gov

From: MORTIMER, KATHERINE E.
Sent: Tuesday, May 03, 2016 3:46 PM
To: BEINGESSNER, DEE; HOLLAND, TOWNSEND S.; GONZALES, REYNALDO D.
Subject: Possibility of Early DRT Comments?

Case #2016-46. 102 Montoya Circle Escarpment Variance. JenkinsGavin Design and Development, agent for Robin K. Laughlin request approval of a variance to allow a four foot high coyote fence within the Ridgetop Subdistrict of the Escarpment Overlay District. The 0.13 acre property is zoned R-21 (Residential – 21 unit per acre) and is within the Historic Districts Overlay Zone.

Cheers!

*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 B1

City of Santa Fe, New Mexico

memo

DATE: April 29, 2016

TO: Katherine Mortimer, Case Manager

FROM: Reynaldo Gonzales, Fire Marshal 

SUBJECT: Case #2016-46 102 Montoya Circle Escarpment Variance

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.

1. Shall not impede Fire Department access or block any egress easements.

EXHIBIT B2

City of Santa Fe, New Mexico

memo

DATE: May 9, 2016
TO: Katherine Mortimer, Land Use Planner Supervisor
FROM: Somie Ahmed, Planner Technician Senior
SUBJECT: Comments for Case #2016-46, 102 Montoya Circle Escarpment Variance

The following conditions of approval apply to 102 Montoya Circle Escarpment Variance:

1. All structures in the Ridgetop and Foothills Subdistrict are to comply with the standards listed in Article 14-5.6 "Escarpment Overlay District."

EXHIBIT B3

MORTIMER, KATHERINE E.

From: ZAXUS, RISANA B.
Sent: Monday, May 09, 2016 10:17 AM
To: MORTIMER, KATHERINE E.
Subject: Case # 2016-46, 102 Montoya Circle Escarpment Variance

Ms. Mortimer,

I have no terrain management comments on the above-referenced case.

Ms. Ahmed will provide escarpment comments.

Risana B "RB" Zaxus, PE
City Engineer

EXHIBIT B4

MORTIMER, KATHERINE E.

Subject: FW: Possibility of Early DRT Comments?

Katherine,

I don't have any comments on this variance.

Dee

From: MORTIMER, KATHERINE E.
Sent: Tuesday, May 03, 2016 3:46 PM
To: BEINGESSNER, DEE; HOLLAND, TOWNSEND S.; GONZALES, REYNALDO D.
Subject: Possibility of Early DRT Comments?

Case #2016-46. 102 Montoya Circle Escarpment Variance. JenkinsGavin Design and Development, agent for Robin K. Laughlin request approval of a variance to allow a four foot high coyote fence within the Ridgetop Subdistrict of the Escarpment Overlay District. The 0.13 acre property is zoned R-21 (Residential – 21 unit per acre) and is within the Historic Districts Overlay Zone.

Cheers!

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



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EXHIBIT B5

MORTIMER, KATHERINE E.

From: KASSENS, SANDRA M.
Sent: Monday, May 02, 2016 3:56 PM
To: MORTIMER, KATHERINE E.
Cc: ROMERO, JOHN J
Subject: 102 Montoya Circle variance for a 4 ft. coyote fence

Katherine,
I have no comments on the request for a variance for a 4 ft. coyote fence at 102 Montoya Circle, case number 2016-46.

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

MORTIMER, KATHERINE E.

From: LUCERO, ERIC J.
Sent: Friday, May 06, 2016 1:31 PM
To: MORTIMER, KATHERINE E.
Subject: DRT Comments

Katherine,

In regards to Case #2016-46. 102 Montoya Circle Escarpment Variance, I have no comments at this time.

Thanks,

Eric J Lucero
City of Santa Fe
Environmental Services
Operations Manager
505-955-2205 office
505-670-6562 cell
ejlucero@santafenm.gov

City of Santa Fe, New Mexico

Planning Commission

Exhibit C
Maps and Photos

Future Land Use Designation Map

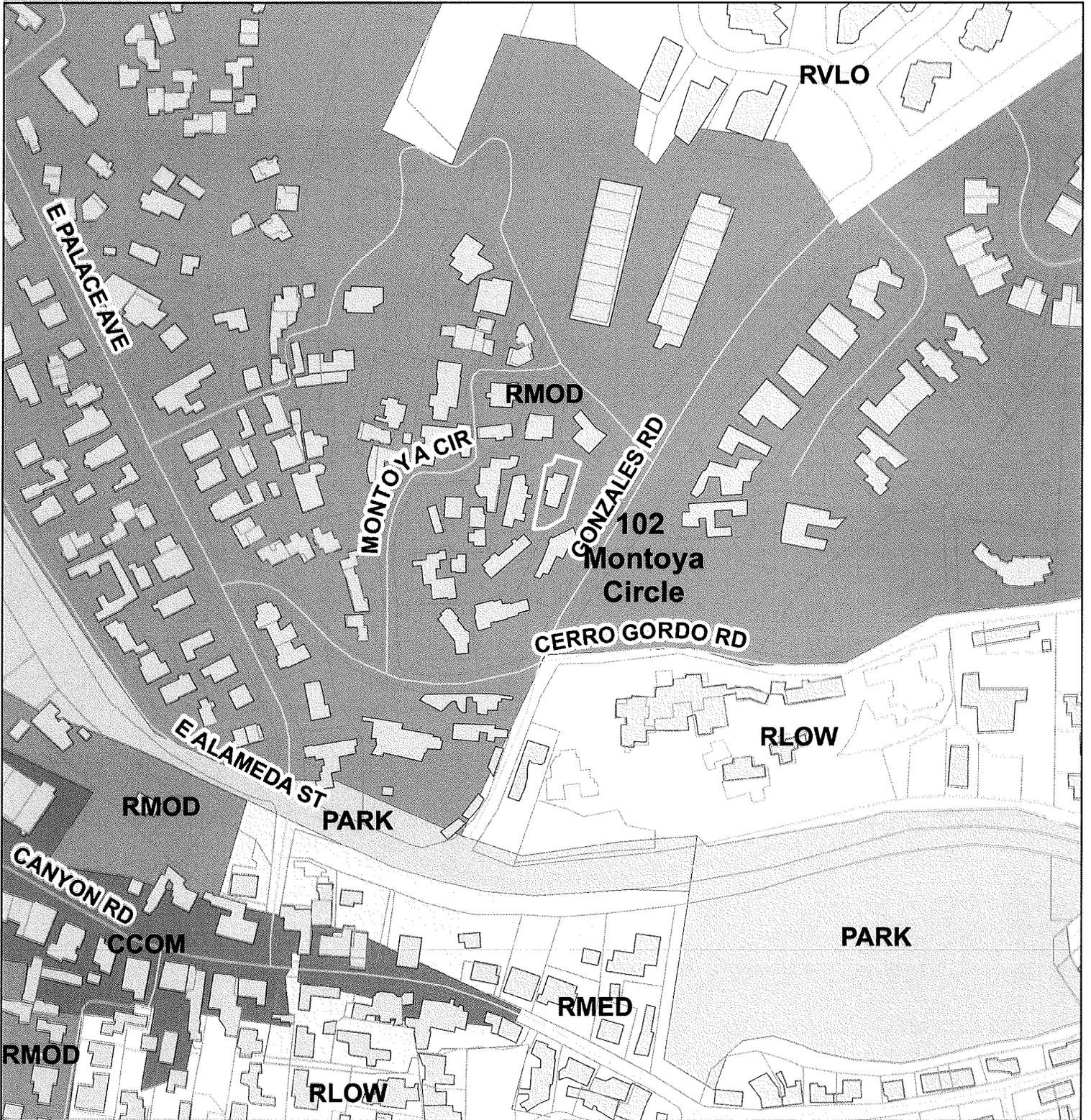


EXHIBIT C1

Zoning Map

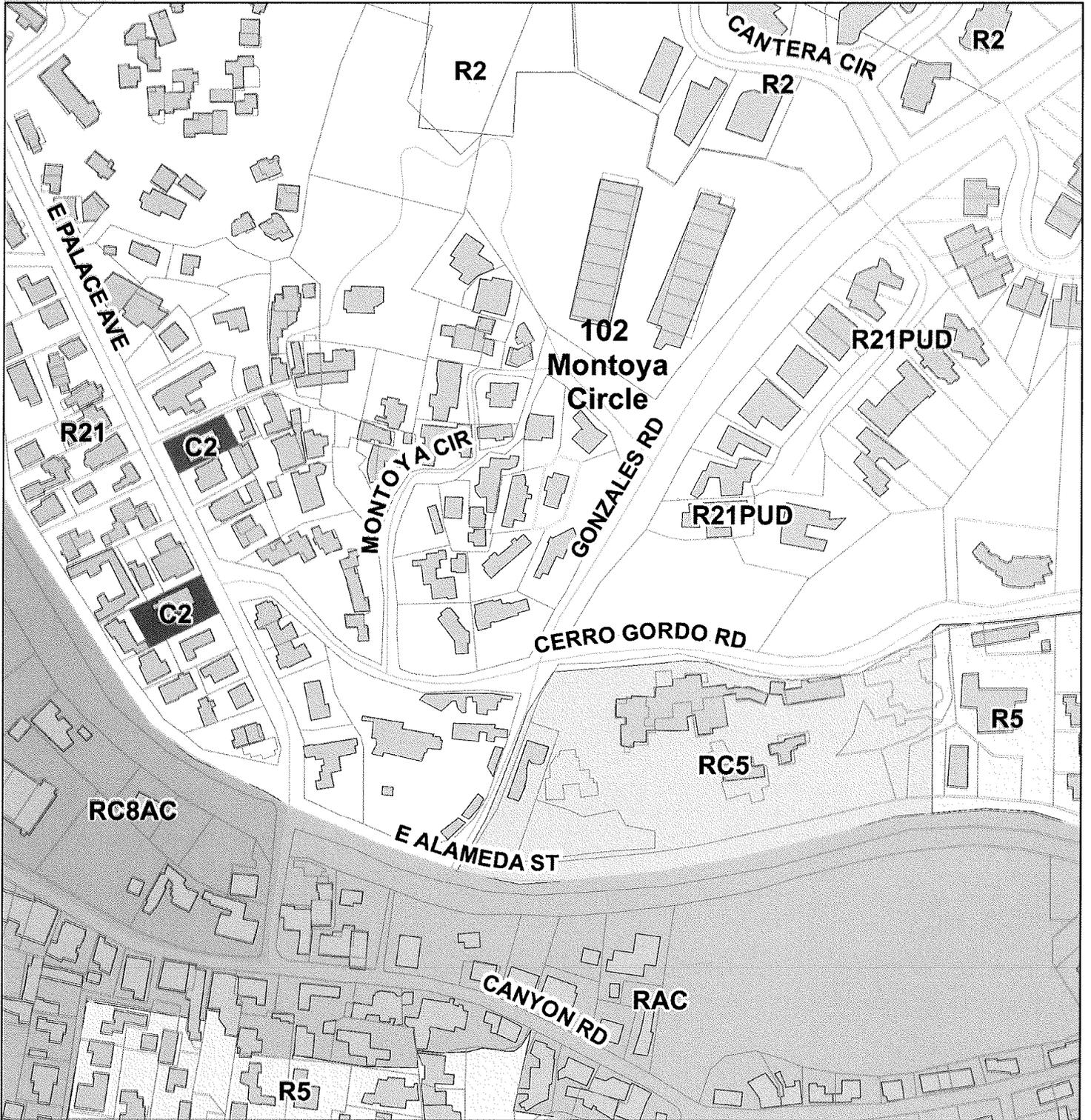


EXHIBIT C2

102 Montoya Circle Aerial Photo



Legend

EXHIBIT C3



City of Santa Fe, New Mexico

Planning Commission

Exhibit D
Applicant Submittals