

BERNALILLO COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. _____

1 An ordinance amending ordinance #213, Bernalillo County Code, Appendix A intended to
2 clarify existing language within the ordinance and add language to the appeals sections of the
3 zoning code.

4 **Section 18. – Special Use Permit Regulations.**

5 G. Appeals. Appeal of any denial or approval of an application by the County Planning
6 Commission must be submitted in writing to Board of County Commissioners by noon on the
7 15th day after the date of determination by the County Planning Commission. The day of
8 determination by the County Planning Commission shall not be included in the 15-day period
9 for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday, or holiday, the next
10 working day shall be considered as the deadline for filing the appeal. A building permit or
11 Certificate of Occupancy shall not be issued until any appeal is decided, or the time for filing
12 such appeal has expired.

13 1. ~~Written notice of appeal shall be filed with the Zoning, Planning and Building~~
14 ~~Department. A filing fee of \$75.00 shall accompany the notice of appeal on lots of one~~
15 ~~acre or less. A fee of \$100.00 on all other appeals.~~

16 The following persons shall have the right to file an appeal:

17 (a) Persons who were parties or could have been parties at the County Planning
18 Commission, but were not present through no fault of their own; or

19 (b) Persons who own a property interest within 200 feet of the subject-site
20 (excluding public right-of-way), if the site is less than two acres; or

21 (c) Persons who own a property interest within 500 feet of the subject site
22 (excluding public right-of-way) for sites larger than two acres; or

23 (d) Any organized neighborhood associations (as provided in § Article III –
24 Neighborhood Associations) that covers, abuts or is across the public right-of-way
25 from the site; or

ZONING CODE AMENDMENTS TO ADD AND MODIFY LANGUAGE TO THE APPEALS SECTIONS OF THE ZONING CODE. CONTINUATION PAGE 2,

1 (e) Any person who demonstrates a tangible impact that threatens or adversely
2 impacts the health or safety of the person who appeals; or

3 (f) Any person with a financial interest or a property right adversely affected by the
4 decision, which right or interest is more than merely nominal or remote.

- 5
6 2. ~~Public Notice of any appeal shall be given by legal advertisement in a daily newspaper of~~
7 ~~general circulation in Bernalillo County at least 15 days before the date of the hearing.~~
8 ~~Written notice of any appeal, together with notice of the hearing date, shall be sent to the~~
9 ~~applicant, a representative of the opponents, and the appellant (if other than the applicant)~~

10
11 Applications for an appeal shall clearly articulate the reasons for the appeal; appellants
12 shall specifically cite and explain one or more alleged errors:

13 (a) An error was made in applying adopted county plans, policies, and ordinances in
14 arriving at the decision; or

15 (b) A mistake of fact underlying the appealed action or decision as presented; or

16 (c) The decision was arbitrary, capricious or a manifest abuse of discretion.

- 17
18 3. ~~When an appeal is withdrawn after scheduling and advertising for public hearing by the~~
19 ~~Board of County Commissioners, the filing fee shall not be refunded to the appellant.~~

20 ~~When the Planning Commission has voted on a request for a special use permit and this~~
21 ~~action is appealed to the Board of County Commissioners, a four member extraordinary~~
22 ~~majority vote of the members of the Board of County Commissioners is required to effect~~
23 ~~the change in zoning regulation where a written protest of the action is signed by each of~~
24 ~~the equitable owners of record of land comprising at least:~~

25 ~~1. 20 percent of the land proposed for the special use permit; or~~

26 ~~2. 20 percent of the land not proposed for the special use permit but within 100~~
27 ~~feet, excluding right of way, of the land proposed for the special use permit.~~

28 ~~Where the appellant does not present clear and convincing evidence of having met the~~
29 ~~criteria listed in 1. and 2. immediately above, a three member majority vote of the Board~~
30 ~~of County Commissioners is required to reverse or modify a determination of the Planning~~

ZONING CODE AMENDMENTS TO ADD AND MODIFY LANGUAGE TO THE APPEALS SECTIONS OF THE ZONING CODE. CONTINUATION PAGE 3,

1 ~~Commission. When affirming a decision of the Planning Commission, a simple majority~~
2 ~~of the quorum is required. Protests from neighboring property owners seeking to invoke~~
3 ~~the extraordinary majority requirement shall be submitted on forms prescribed by the~~
4 ~~County Manager or his designee at least seven days prior to the scheduled Board of~~
5 ~~County Commissioners' hearing on the appeal.~~

6 3. Written notice of appeal shall be filed with the Planning & Development Services
7 Department. A filing fee of \$75.00 shall accompany the notice of appeal on lots of one
8 acre or less. A fee of \$100.00 on all other appeals.

9
10 4. Public Notice of any appeal shall be given by legal advertisement in a daily
11 newspaper of general circulation in Bernalillo County at least 15 days before the date of
12 the hearing. Written notice of any appeal, together with notice of the hearing date, shall
13 be sent to the applicant, a representative of the opponents, and the appellant (if other
14 than the applicant).

15
16 5. When an appeal is withdrawn after scheduling and advertising for public hearing by
17 the Board of County Commissioners, the filing fee shall not be refunded to the
18 appellant.

19
20 6. When the Planning Commission has voted on a request for a special use permit and this
21 action is appealed to the Board of County Commissioners, an extraordinary majority vote
22 of the members of the Board of County Commissioners is required to approve the Special
23 Use Permit where a written protest of the action is signed by each of the equitable owners
24 of record of land comprising at least:

25 20 percent of the land within 100 feet, excluding right-of-way, of the land
26 proposed for the special use permit.

27
28 7. Protests from neighboring property owners seeking to invoke the extraordinary majority
29 requirement shall be submitted on forms prescribed by the County Manager or his designee

ZONING CODE AMENDMENTS TO ADD AND MODIFY LANGUAGE TO THE APPEALS SECTIONS OF THE ZONING CODE. CONTINUATION PAGE 4,

1 at least seven days prior to the scheduled Board of County Commissioners' hearing on the
2 appeal.

3
4 8. When an extraordinary majority vote is invoked, the following composition of the
5 Bernalillo Board of County Commission shall be required:

- 6 a. Four (4) votes are required when Five (5) commissioners are present;
7 b. Three (3) votes are required when Four (4) commissioners are present;
8 c. Three (3) votes are required when Three (3) commissioners are present.

9 9. Where the appellant does not present clear and convincing evidence of having met the
10 criteria listed in 6. above, a majority of the quorum of the Board of County
11 Commissioners is required to affirm, reverse or modify a determination of the Planning
12 Commission.

13 **Section 24. - Administration.**

14 4. Appeals:

15 f. The decision of the Board of Adjustment upon the appeal shall be in writing,
16 concurred in by a majority of the members present of the Board of Adjustment,
17 which shall forthwith transmit a copy thereof to the appellant and to the Zoning
18 Administrator. Any such decision may be appealed to the Board of County
19 Commissioners as prescribed in the following subsections:

20 (2) Upon hearing of the appeal, said Board of County Commissioners may
21 affirm, deny, change, or modify the ruling, decision or determination of the
22 Board of Adjustment, or in lieu thereof, make such other or additional
23 determination as it shall deem proper.

24 a. When the Board of Adjustment has voted on an appeal regarding a
25 request for a variance or conditional use, and this action is appealed to the
26 Board of County Commissioners, ~~an four member~~ extraordinary majority
27 vote of the members of the Board of County Commissioners is required to
28 effect the change in zoning regulation approve a variance or conditional

ZONING CODE AMENDMENTS TO ADD AND MODIFY LANGUAGE TO THE APPEALS SECTIONS OF THE ZONING CODE. CONTINUATION PAGE 5,

1 use where a written protest of the action is signed by each of the equitable
2 owners of record of land comprising at least:

3 1. ~~—20 percent of the land proposed for the variance or conditional~~
4 ~~use, or~~

5 ~~{2.} 20 percent of the land not proposed for the variance or~~
6 ~~conditional use but~~ within 100 feet, excluding right of way, of the
7 land proposed for the variance or conditional use.

8
9 b. When an extraordinary majority vote is invoked, the following
10 composition of the Bernalillo Board of County Commission shall be
11 required:

12 1. Four (4) votes are required when Five (5) commissioners are
13 present;

14 2. Three (3) votes are required when Four (4) commissioners are
15 present;

16 3. Three (3) votes are required when Three (3) commissioners are
17 present.

18 ~~e. When considering a conditional use request, where the appellant does~~
19 ~~not present clear and convincing evidence of having met the criteria listed~~
20 ~~in 1. and 2. immediately above, a three member majority vote of the~~
21 ~~Board of County Commissioners is required to reverse or modify a~~
22 ~~determination of the Board of Adjustment. When affirming a decision of~~
23 ~~the Board of Adjustment, a simple majority of the quorum is required.~~

24
25 c. When considering a variance or a conditional use request, where the
26 appellant does not present clear and convincing evidence of having met
27 the criteria listed in a. above, a majority of the quorum of the Board of
28 County Commissioners is required to affirm, reverse or modify a
29 determination of the Board of Adjustment.

ZONING CODE AMENDMENTS TO ADD AND MODIFY LANGUAGE TO THE APPEALS SECTIONS OF THE ZONING CODE. CONTINUATION PAGE 6,

1 **Section 25. - Amendments.**

2 E. Appeals. Appeal of any denial or approval of an application by the Bernalillo County
3 Planning Commission must be submitted in writing to the Board of County Commissioners
4 by noon of the 15th day after the date of determination by the Bernalillo County Planning
5 Commission. The day of determination by the Bernalillo County Planning Commission
6 shall not be included in the 15-day period for filing an appeal, and if the 15th day falls on a
7 Saturday, Sunday, or holiday, the next working day shall be considered as the deadline for
8 filing the appeal. A building permit or Certificate of Occupancy and Compliance shall not
9 be issued until any appeal is decided, or the time for filing such appeal has expired.

10

11 1. The following persons shall have the right to file an appeal:

12 (a) Persons who were parties or could have been parties at the County
13 Planning Commission, but were not present through no fault of their own; or

14 (b) Persons who own a property interest within 200 feet of the subject-site
15 (excluding public right-of-way), if the site is less than two acres; or

16 (c) Persons who own a property interest within 500 feet of the subject site
17 (excluding public right-of-way) for sites larger than two acres; or

18 (d) Any organized neighborhood associations (as provided in § Article III –
19 Neighborhood Associations) that covers, abuts or is across the public right-
20 of-way from the site; or

21 (e) Any person who demonstrates a tangible impact that threatens or
22 adversely impacts the health and safety and general welfare of the person
23 who appeals; or

24 (f) Any person who demonstrates a financial interest or a property right
25 adversely affected by the decision, which right or interest is more than
26 merely nominal or remote.

27

28 2. Applications for an appeal shall clearly articulate the reasons for the appeal.

29 Appellants shall specifically cite and explain one or more alleged errors:

ZONING CODE AMENDMENTS TO ADD AND MODIFY LANGUAGE TO THE APPEALS SECTIONS OF THE ZONING CODE. CONTINUATION PAGE 7,

1 (a) An error was made in applying adopted county plans, policies, and
2 ordinances in arriving at the decision; or

3 (b) A mistake of fact underlying the appealed action or decision as
4 presented; or

5 (c) The decision was arbitrary, capricious or a manifest abuse of discretion.
6

7 F. When the Planning Commission has voted on a request for a change to the official zone
8 map and this action is appealed, ~~an four-member~~ extraordinary majority vote of the
9 members of the Board of County Commissioners is required to effect the change in
10 zoning regulation where a written protest of the action is signed by each of the equitable
11 owners of record of land comprising at least:

12
13 ~~1. 20 percent of the land proposed for the change in zone, or~~

14 ~~2. 20 percent of the land not proposed for the change in zone but within 100 feet,~~
15 ~~excluding right of way, of the land proposed for the change in zone.~~

16 ~~Where the appellant does not present clear and convincing evidence of having met the~~
17 ~~criteria listed in 1. and 2. immediately above, a three-member majority vote of the Board~~
18 ~~of County Commissioners is required to reverse or modify a determination of the County~~
19 ~~Planning Commission. When affirming a decision of the Planning Commission, a simple~~
20 ~~majority of the quorum is required. Protests from neighboring property owners seeking to~~
21 ~~invoke the extraordinary majority requirement shall be submitted on forms prescribed by~~
22 ~~the County Manager or his designee at least seven days prior to the scheduled Board of~~
23 ~~County Commissioners' hearing on the appeal.~~

24 G. Protests from neighboring property owners seeking to invoke the extraordinary majority
25 requirement shall be submitted on forms prescribed by the County Manager or his designee
26 at least seven days prior to the scheduled Board of County Commissioners' hearing on the
27 appeal.

28

ZONING CODE AMENDMENTS TO ADD AND MODIFY LANGUAGE TO THE APPEALS SECTIONS OF THE ZONING CODE. CONTINUATION PAGE 8,

1 H. When an extraordinary majority vote is invoked, the following composition of the
2 Bernalillo Board of County Commission shall be required:

- 3 1. Four (4) votes are required when Five (5) commissioners are present;
4 2. Three (3) votes are required when Four (4) commissioners are present;
5 3. Three (3) votes are required when Three (3) commissioners are present.

6
7 I. Where the appellant does not present clear and convincing evidence of having met the
8 criteria listed in F. above, a majority of the quorum of the Board of County
9 Commissioners is required to affirm, reverse or modify a determination of the County
10 Planning Commission.

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DONE this ____ day of _____, 2016.

17 **APPROVED AS TO FORM**

BOARD OF COUNTY COMMISSIONERS

18 _____
19 W. Ken Martinez, County Attorney

Art De La Cruz, Chair

20 _____
21 _____

Wayne A. Johnson, Vice Chair

22 _____
23 _____

Maggie Hart Stebbins, Member

24 **ATTEST:**

Debbie O'Malley, Member

26 _____
27 Maggie Toulouse Oliver, County Clerk

Lonnie C. Talbert, Member