

BERNALILLO COUNTY

Planning and Development Services
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Planning

APPEAL TO COUNTY COMMISSION

Application Date: _____
Appeal Number: _____
Hearing Date: _____

APPELLANT		PHONE
MAILING ADDRESS	CITY	ZIP

AGENT FOR APPELLANT (if applicable)		PHONE
MAILING ADDRESS	CITY	ZIP

PROPERTY OWNER/APPLICANT FOR REQUEST		PHONE
MAILING ADDRESS	CITY	ZIP

SITE ADDRESS	Case #
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DIRECTIONS/LOCATION

LEGAL DESCRIPTION

ZONE MAP PAGE #	CURRENT ZONE(S)	PROPERTY SIZE IN ACREAGE
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UPC #	PROPOSED ZONE(S)	SUBDIVISION NAME
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EXISTING USE

PROPOSED USE

SCOPE OF APPEAL, INCLUDING CASE NUMBER
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DETAILED INFORMATION (JUSTIFICATION MUST BE PROVIDED PER ZONING CODE REQUIREMENTS, ADDITIONAL INFORMATION MAY BE ATTACHED)
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I hereby acknowledge that I have read this entire application and affirm that all of the provided information is correct. I agree to comply with the requirements of Bernalillo County and the State of New Mexico as outlined in all applicable laws, ordinances and regulations.

Printed Name

Signature

Date

6/2017

BERNALILLO COUNTY LAND USE APPEALS TO THE BOARD OF COUNTY COMMISSIONERS

BERNALILLO COUNTY LAND USE AND APPEAL PROCESS - OVERVIEW

Bernalillo County Land Development Review and Approval Process

Bernalillo County's ordinances, code, and policies require that specific types of proposed land use applications follow a review and approval process through the County Planning Commission (CPC) and the Zoning Administrator (ZA), which include a public hearing. The CPC considers requests for land use changes, including zone changes, Special Use Permits, and Sector Plans. The Zoning Administrator considers applications for Conditional Use Permits, variances and Administrative Amendments. Another decision making body, the County Development Review Authority (CDRA), decides on subdivision requests and street name changes, which may also be subject to appeal.

Appeal Processes

The decisions of the CPC, ZA, and CDRA are all appealable to a higher level. There are two major appeal bodies within the County's land use process: the Board of Adjustment/County Planning Commission (BA/CPC) and the Board of County Commissioners (BCC).

- Decisions of the ZA/CDRA can be appealed to the Board of Adjustment.
- Decisions made by the Board of Adjustment and the County Planning Commission can be appealed to the Board of County Commissioners.

The Board of County Commissioners sustains the decision of the Board of Adjustment or the County Planning Commission without modification unless the decision is appealed.

All BCC decisions can ultimately be appealed to a judicial review (District Court), within a specified time frame.

Appeals to the Board of County Commissioners

Specific procedures for appeals to the County Commission are contained in sections of the Bernalillo County Zoning Code pertaining to land use changes. They include appeal application requirements and criteria for submitting and deciding on the appeals. The Bernalillo County Zoning Code was also recently amended to clarify specific requirements and procedures related to appeals (See Attached Ordinance 2016-32), which is reflected in this application packet. The Board of County Commission has also adopted Rules of Procedure for its hearings that include requirements and procedures for appeal hearings.

20% Rule

Where the CPC/BA has voted on a request and the recommendation/decision is appealed, neighboring property owners have the option to invoke the "20% Rule". This requires an extraordinary vote of BCC members to approve the request, as specified in the Zoning Code and described in Part 3 of this application packet.

This application includes information and forms for appeals to the Board of County Commissioners, including:

1. Appeal Criteria and Application Procedures,
2. BCC Rules of Procedure for Appeals,
3. 20 Percent Rule requirements and forms.

1. APPEALS TO THE BOARD OF COUNTY COMMISSIONERS - CRITERIA AND APPLICATION PROCEDURES (from Ordinance 2016-32)

Persons/organizations eligible to file an appeal

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

- (a) Persons who were parties or could have been parties at the County Planning Commission, but were not present through no fault of their own; or
- (b) Persons who own a property interest within 200 feet of the subject-site (excluding public right-of-way), if the site is less than two acres; or
- (c) Persons who own a property interest within 500 feet of the subject site (excluding public right-of-way) for sites larger than two acres; or
- (d) Any organized neighborhood associations (as provided in § Chapter 62, Article III – Neighborhood Associations) that covers, abuts or is across the public right-of-way from the site; or
- (e) Any person who demonstrates a tangible impact that threatens or adversely impacts the health or safety of the person who appeals; or
- (f) Any person with a financial interest or a property right adversely affected by the decision, which right or interest is more than merely nominal or remote.

Criteria for filing an appeal to the BCC

Applications for an appeal must clearly articulate the reasons for the appeal and specifically cite and explain one or more alleged errors:

- (a) An error was made in applying adopted county plans, policies, and ordinances in arriving at the decision; or
- (b) A mistake of fact underlying the appealed action or decision as presented; or
- (c) The decision was arbitrary, capricious or a manifest abuse of discretion.

Procedure for filing an appeal to the BCC

Appeal deadline. Appeal of any denial or approval of an application by the County Planning Commission or the Board of Adjustment must be submitted in writing to Board of County Commissioners by noon on the 15th day after the date of determination by the County Planning Commission. The day of determination by the County Planning Commission shall not be included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday, or holiday, the next working day shall be considered as the deadline for filing the appeal. (*The date on the Notice of Decision has been utilized as the date of the determination)

Appeal submittal and fee. Written notice of appeal shall be filed with the Planning & Development Services Department. A filing fee of \$75.00 shall accompany the notice of appeal on lots of one acre or less. A fee of \$100.00 on all other appeals. The appeal must include a complete application and justification for the appeal that addresses the Criteria for filing an appeal to the BCC, as included above. Forms are available from the Planning and Development Services Department.

Public Notification of appeal. Public Notice of any appeal shall be given by legal advertisement in a daily newspaper of general circulation in Bernalillo County at least 15 days before the date of the hearing. Written notice of any appeal, together with notice of the hearing date, shall also be sent to the applicant, a representative of the opponents, and the appellant (if other than the applicant), as well as to any interested party who has requested in writing to be so notified.

2. BCC Rules of Procedure for Appeals

In 2014, the Board of County Commissioners adopted Rules of Procedure Quasi-Judicial Hearings and Regular Zoning Meetings, including appeals, that specify hearing procedures and right, duties and privileges of specific parties in hearings (see attached Rules of Procedure for Appeals).

In summary, as stated in the BCC Rules of Procedure Section 22.J (included below), applicants, agents and those in support or opposition to a request are now required to submit all evidence and presentation materials to the County Planning Commission (CPC) or Board of Adjustment (BA) through the staff at the time the request is considered. When a recommendation is forwarded from the CPC or the BA results in an appeal, the Board of County Commissioners may only accept new evidence if good cause is shown. When an appeal is filed, it is possible that it will be remanded to the CPC/BA for consideration if new evidence is presented to the Board of County Commissioners that was not presented to the CPC/BA. The Board will generally make their decision based solely on the evidence in the record from each CPC/BA hearing.

In summary, the order of presentation and time limits, as set forth in our Rules of Procedure, are as follows:

1. Staff presentation; 5 minutes
2. Appellant's presentation; 10 minutes
3. Opponent(s) presentation; 15 minutes
4. Appellant's summation or rebuttal; 5 minutes
5. Staff Closure; 2 minutes
6. Board questions and discussion
7. Action

Please be aware that the time limits for each side—appellants and opponents—is the total time allowed regardless of the number of persons signed up to speak. So each side will need to decide how to divide the total minutes among the speakers.

Bernalillo County Board of County Commissioners Rules of Procedure Procedure for Quasi-Judicial Hearings (Verbatim).

The BCC procedures to be followed for appeals are generally follows: [VRCI]

- A.** Appeal or Public Hearing Time Limits: A fifteen (15) minute time limit on each party's argument before the Commission may be established with the understanding that the Chair may alter the time limit when the case is unusually complex. Where numerous speakers sign up to present argument, the Chair may assign a time limit of two (2) minutes per speaker, but in any event, each party's argument shall not exceed the total time allowed. In all cases, the maximum time available for proponents should be equal to the maximum time allowed for the opponents. If necessary, a staff person shall be assigned by the County Manager to be the official timekeeper.
- B.** In order to focus the Board of County Commissioners on the issues the party is presenting on appeal, they are encouraged to cite to the facts in the record from the County Planning Commission, and present legal arguments based on the facts in the record. No new

evidence shall be presented on appeal to the Board of County Commissioners except as provided in paragraph 22.J below.

- C. The County Manager or designee shall describe the quasi-judicial item to be considered and make a presentation pertaining to the item. This presentation shall be limited to five (5) minutes. The Chair shall then inquire as to whether any Commissioner has questions for the staff members who made the presentation.
- D. The zoning applicant, or appellant, or his/her representative will [VRCI] make a presentation pertaining to the application or appeal. This presentation shall be limited to ten (10) minutes. The Chair will once again inquire as to whether Commissioners have questions of the applicant/appellant and the applicant's/appellant's representatives.
- E. The opponents will make a presentation pertaining to the application or appeal. The presentation will be limited to fifteen (15) minutes. The Chair will once again inquire as to whether Commissioners have questions of the opponents or the opponent's representatives.
- F. There will be an opportunity for applicant/appellant rebuttal and summation. This presentation shall be limited to five (5) minutes.
- G. Staff will then be provided an opportunity to present closing comments. There shall be a time limit of two (2) minutes for closing comments.
- H. The Chair will then inquire of the Commissioners as to whether they have further questions of staff, the applicant/appellant or the opponents and will recognize Commissioners who wish to question the parties or staff.
- I. The Chair will then inquire of the Commissioners as to whether they are prepared to vote on the issue of the application/appeal before them.
- J. No new evidence shall be presented by the applicant/appellant or the opponents. If a party shows good cause why new evidence is necessary for the Commission to act on the case and why the evidence was not available to be presented to the County Planning Commission, the Board of County Commissioners shall either:
 - i. Remand the case to the County Planning Commission to hear the new evidence and any rebuttal evidence, or;
 - ii. If the proposed new evidence is brief and concise in nature and will not prejudice the other party's opportunity to respond to it the Commission may allow the evidence to be presented and considered; swear any witness; allow the opposing party to rebut the new evidence, and; allow for brief cross examination on the new evidence presented through the Chair.
- K. The Commission shall then take action on the item.

3. The 20% Rule Option (to require an extraordinary majority vote)

A. Zoning Code Requirements for '20% Rule'

1. Pursuant to Sections 18.G.6-8, 24.4.f (2), and 25.F-I of the County Zoning Code, a protest to invoke the 20% Rule may be submitted in opposition to a CPC/BA recommendation, to require an extraordinary majority vote by the BCC to uphold the CPC or Board of Adjustment recommendation (rather than a simple majority vote).
2. When an extraordinary majority is invoked, the following composition of the Bernalillo Board of County Commission is required:
 - a. Four (4) votes are required when Five (5) commissioners are present;
 - b. Three (3) votes are required when Four (4) commissioners are present;
 - c. Three (3) votes are required when Three (3) commissioners are present.
3. The 20% rule requires a written petition signed by each of the equitable owners of record of land comprising at least:

20 percent of the land within 100 feet, excluding right-of-way, of the land proposed for the proposed application.
4. Protests from neighboring property owners seeking to invoke the extraordinary majority requirement shall be submitted on forms prescribed by the County Manager or his designee at least seven days prior to the scheduled Board of County Commissioners' hearing on the appeal.
5. The 20% rule may be invoked **only for appeals** filed before the Board of County Commissioners.
6. Two forms must be submitted to invoke the 20% Rule—the Certification of Protest under the 20% rule and the Petition Invoking 20% Rule form (Included in this packet). The forms must be submitted to the Bernalillo County Planning & Development Services Department no later than one week prior to the scheduled BCC appeal hearing. The department will then verify the information presented for the protest and make a determination prior to the hearing date as to whether the 20% rule applies to the appeal.

B. 20% Rule submittal requirements include the following:

1. Certification of Opposition to Proposed Land Use Application Form, including the contact person and the case number.
2. Petition Protesting Land Use Application form(s) with requested information, including name, address, and signature for each land owner asking to be included in the appeal.
3. A copy of the Zone Atlas Page (with properties indicated) for the property under consideration for the land use application and highlighting each of the properties included in the form submitted as part of this protest. The properties should be numbered to match the listings of property owners in the attached forms.
4. A copy of the Notice of Decision for the request that is under appeal

CERTIFICATION OF OPPOSITION FOR APPEALS TO COUNTY COMMISSION
(Form to be submitted with 20% Rule Request)

Case number _____

Contact person for protest:

Name _____

Address _____

Phone Number: Work: _____ Home: _____

Submittal requirements:

- A copy of the notice of decision for the case under appeal.
- Forms with name, address, and signature for each owner asking to be included in the protest (included in this packet).
- A copy of the zone atlas page for the area indicating the property under consideration for land use application and highlighting each of the properties included in the form submitted as part of this protest. The properties should be numbered to match the listings of property owners in the attached forms.

Note: The 20% rule applies to appeals filed before the Board of County Commissioners only, not the County Planning Commission. Certification of protest under the 20% rule must be submitted to the Bernalillo County Planning and Development Services no later than one week prior to the scheduled BCC appeal hearing. The department will verify the information presented for the protest and make a determination prior to the hearing date as to whether the 20% rule applies to the appeal. If the 20% rule does apply to the case, the proposed land use application must be approved by an extraordinary vote of the Board of County Commissioners, as specified in the County Zoning Code.

For Planning and Development Services Use:

Hearing Date: _____ 20% Rule applies: Yes _____ No _____

Received By: _____ Verified by: _____

Date Submitted: _____

PETITION INVOKING 20% RULE (for appeals to the County Commission)

Site of Proposed Change: _____ Case Number: _____

Action Being Protested: _____

THIS SECTION FOR OFFICIAL USE

#	Name of Equitable Owner (Not Tenant) <i>(Please Print)</i>	Address of Parcel	Signature	Legal Description	UPC Code	Size of Property
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						

THIS SECTION FOR OFFICIAL USE

#	Name (Print)	Address of Parcel	Signature	Legal Description	UPC Code	Size of Property
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						
21.						
22.						
23.						
24.						
25.						
26.						