



Los Alamos County
Community Development Department

**PLANNING & ZONING COMMISSION
STAFF REPORT**

Public Hearing Date: May 28, 2025
Subject: Variance; Case No. VAR-2024-0005
Applicant/Owner: Sonja Martinez on behalf of 2439 46th Condos
Case Manager: Desirae J. Lujan, Senior Planner

Professional Background:

Associates Architectural & Civil Drafting; 17 years in Planning and Land Use, Local Government, with six years in Case Management of Development Applications.

Case No. VAR-2024-0005: Sonja Martinez, on behalf of 2439 46th Condos, property owner, is requesting a variance from the Development Code dimensional standards to place a 192 sq. ft. accessory structure 5-ft from the rear property line, where 15-ft is minimum. The Property, NC1A1240, addressed at 2439 46th Street, Los Alamos, NM, is within the North Community 1 Subdivision and zoned Multi-Family Residential-Low Density (MFR-L).

See Attachment A: Application Submittal



Figure 1: Location Area Map, Google Airbus

LOCATION AND EXISTING CONDITIONS

The subject property ("Property"), located at 2439 46th Street, is approximately 0.24 acres in size and contains three units of a fourplex (Units A–C). The lot has an irregular shape with about 56.49 feet of frontage along 46th Street. It is bounded by 2439 D 46th Street to the north, a fourplex at 4788 A–D Yucca Street to the west, a 32-ft street-side frontage at Yucca Street, and a single-family home at 2437 46th Street to the south.

Figure 2: Vicinity Map



The Property is jointly owned by the unit owners of 2439 46th Street Condos. Although the applicant owns Unit A, the requested variance and proposed improvements affect the entire property. According to the recorded condominium declaration within Attachment A, portions of the

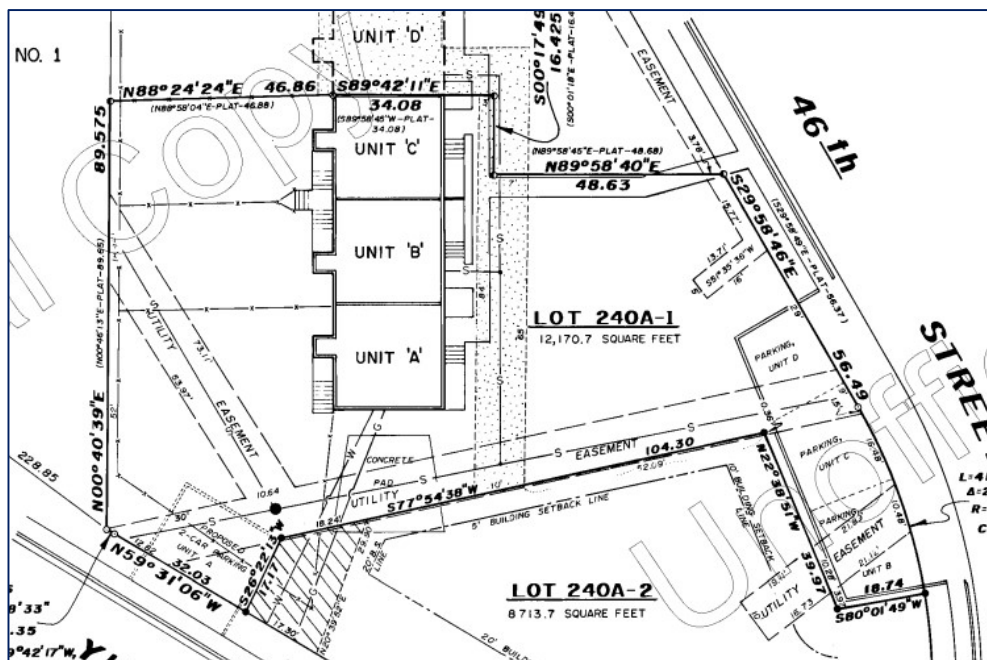


Figure 3: A Subdivision of Lot 240, North Community 1, recorded 2/23/1995.

common area are designated as "limited common elements," granting each unit owner exclusive use of specific areas as shown in Figure 3: A Subdivision of Lot 240, North Community 1, recorded 2/23/1995.

BACKGROUND

On May 8, 2024, Los Alamos County Code Compliance observed unpermitted construction of an accessory structure on the subject property. On the same day notification was given to stop work, instructing the property owner to obtain the required permit. The subsequent sequence of events is as follows:

- **May 9, 2024:** The applicant submitted a permit application (BLDR-2024-07173) for placement of a small accessory structure. The Planning Division denied the application the same day, citing noncompliance with Section 16-18(b)(2), specifically a 5-ft rear setback where 15-ft is required in the MFR-L zone. Staff recommended revising the site plan to meet the dimensional and development standards.
- **June 2024:** Permit Technicians sent multiple reminders requesting revised plans. Due to 30 days of inactivity, the application was voided. Raymond Martinez, the applicant's father, inquired about the variance process and was provided with the variance application.
- **October 15, 2024:** A pre-application meeting for a variance was scheduled but not attended by Mr. Martinez. A follow-up meeting was later held with him and Sonja Martinez.
- **December 19, 2024:** A variance application was submitted but deemed incomplete.
- **January 15, 2025:** A revised variance application was submitted but deemed incomplete.
- **February 24, 2025:** A complete variance application was received.
- **March 27, 2025:** The Interdepartmental Review Committee reviewed the application and postponed the public hearing due to concerns over a wastewater line.
- **April 9, 2025:** A coordination meeting was held with County staff and the Martinezes. James Alarid, DPU Deputy Engineering Manager, outlined options to either relocate the wastewater line or remove the structure. A site visit was scheduled.
- **April 22, 2025:** Following the site inspection, Mr. Alarid confirmed the conflict was minor and recommended approval of the variance without conditions. The case was scheduled for the next available public hearing.

SUMMARY

The Property is in the Multi-Family Residential, Low Density (MFR-L) zone district. According to the Development Code, this district supports a range of low- to medium-density housing types, including single-family homes, duplexes, fourplexes, townhouses, and small-scale multi-family dwellings.

Accessory structures are allowed in all residential and mixed-use zone districts. These are defined as detached structures whose tops are more than 30 inches above ground and located on the same lot as the main building. Common examples include sheds, gazebos, and pergolas. A permit is required for all accessory structures—regardless of size—to ensure compliance with Exhibit 1: Section 16-18(b), Accessory Structures.

Exhibit 1: Article II, Division 2. Base Zone Districts establishes dimensional and development standards for each zone district. In Single-Family Residential zones (SFR 1–6), Residential Mixed (RM-1 and RM-2), and Manufactured Home Community (MHC), accessory structures may be placed within the rear setback area. However, they must:

- Maintain the required side setback,
- Be at least 5-ft from the rear property line, and

- Occupy no more than 25% of the required setback area.

In contrast, the Residential Agriculture (RA), Residential Estate (RE), Multi-Family Residential (MFR-L, MFR-M, and MFR-H), and Mixed-Use zone districts do not allow accessory structures in the required rear setback area. These zones require accessory structures to meet the same setbacks as the main building.

The 12' X 16' shed was constructed on a concrete foundation shown in Attachment A to be located 5-ft from the rear property line, and within the limited common area of Unit A. According to Exhibit 1: Section 16-5(e), the minimum rear setback is 15-ft. The request is for approval for a 10-ft variance to allow the shed to be permitted and remain at its location.

INTERDEPARTMENTAL REVIEW COMMITTEE (IDRC) REVIEW

The IDRC reviewed the application on March 27, 2025, and unanimously agreed to postpone it due to concerns about a wastewater line. James Alarid, Deputy DPU Engineering Manager, recommended a coordination meeting to present options to the applicant, including relocating the line at their expense or removing the shed. Following the meeting, DPU conducted a detailed site inspection and determined the conflict to be minor, with no impact on sewer line maintenance. As noted in Attachment B, DPU recommended approval of the variance without conditions.

See Attachment B: Email by James Alarid dated 4/22/2025

PUBLIC NOTICE

The *Los Alamos County Code of Ordinances, Chapter 16 – Development Code, Sec. 16-72(c) Notifications*, sets forth the requirements for proper notice to the public for a public hearing:

- *Published and Posted Notice [16-72(c)(4)]:*
 - Notice published in a newspaper of general circulation within the County at least 14-calendar days before the meeting or hearing. **Published May 8, 2025**
 - The posting of at least one sign on a street abutting the property that is the subject of the application – visible from the street – for at least 14-calendar days before the public meeting or hearing. **Posted May 12, 2025**
- *Mailed Notice [16-72-(c)(5)]:*
 - Mailed notice 14 days prior to the public hearing to all owners of record as identified in the records of the County Tax Assessor or occupants of properties within 300 ft., excluding public rights-of-way, of exterior lot lines of the subject property. **Mailed May 6, 2025**

See Attachment C: Public Notices

VARIANCE DECISION CRITERIA: Section 16-74(g) of the Los Alamos County Development Code states that a Variance shall be approved if it meets all the following criteria:

a. The variance will not be contrary to public safety, health, or welfare.

Applicant Response: No other location is suitable based on code compliance for how far the shed must be from home. The location of the shed is approximately 40 feet from any structure at 4788 Yucca and 2439 D 46th St. Affidavits obtained from neighbors support the variance.

Staff Response: In the staff's expert opinion, this criterion has been met because the proposed variance poses no identifiable health or welfare risks. Its placement is within the limited common

area designated for Unit A. The location does not interfere with privacy, nor create sight visibility issues for the neighboring properties.

b. The variance will not undermine the intent of this Code, the applicable zone district, other county adopted policies or plans or violate the building code.

Applicant Response: The shed is a Tuff Shed Millcreek 12' x 16' model and is zoned for the location. The building code does not apply because it is less than 200 square feet. The specifications and plans for the shed are attached. There was a miscommunication and misunderstanding of processes, which were unintentional.

Staff Response: In the staff's expert opinion, this criterion has been met because the purpose of the Development Code, as outlined in Exhibit 1: Article 1, Division 4, supports the request in the following ways:

- As stated in Criterion A, the shed does not negatively affect the health, safety, and welfare of the county.
- The shed is proposed to be located within the same provisions offered to other residential zone districts, making reasonable use of the limited common area assigned.
- The shed is less than 200 sq. ft., which placing it outside of the Building Safety Divisions review and application of the building code. However, it is positioned more than 10-ft from the main structure and other structures on the lot, an appropriate distance, causing no concern for fire.
- Placing a shed in the rear yard is aligned with accessory structure standards and is a logical use for a residential area, making itself visually compatible with the surrounding neighborhood.
- Allowing the variance provides a reasonable flexibility of regulations which encourages compatible, creative, and efficient use of land that is permitted by other residential zoned districts.

Except for the proposed, all MFR-L zone district and use-specific standards of 16-18(b) are presented to be met as shown below:

	Standard	Proposed	Variance
Front, min.	15'	N/A	N/A
Rear, min.	15'	5'	10'
Interior Side, min.	7.5'	7.5'*	0
Street Side, min.	15'	42.5'	0
Proximity to other structures, min.	10'	24'	0
Height, max	15'	10'	0
Total Lot Coverage	40%	31%	0
Max. # of Accessory Structures/lot	3	1	0

* Proposed next to limited common area.

Table 1: Dimensional and Development Standards comparison to proposed

Applicant Response: The existing sewer easement is active; however, according to a consultation in December 2024 with Casey Aumack, from the Utilities Department, there is currently no issue with placing the shed over the easement. The current easement and sewage pipe existed before newer pipes were installed after Cerro Grande.

d. The variance request is caused by unusual physical characteristic or a hardship inherent in the lot or lot improvements and the peculiarity or hardship has not been self-imposed.

Staff Response: In the staff's expert opinion, this criterion has been met because as shown in Figure 4, utilities and easements create limitations for most of the designated rear area. The lot is further constrained with sloping from the east-west, and its irregular shape which creates a

street-side in the rear yard increasing setback requirements. Below Figure 5 illustrates the area –within the limited common area– where a small accessory structure would be compliant with dimensional and development standards.

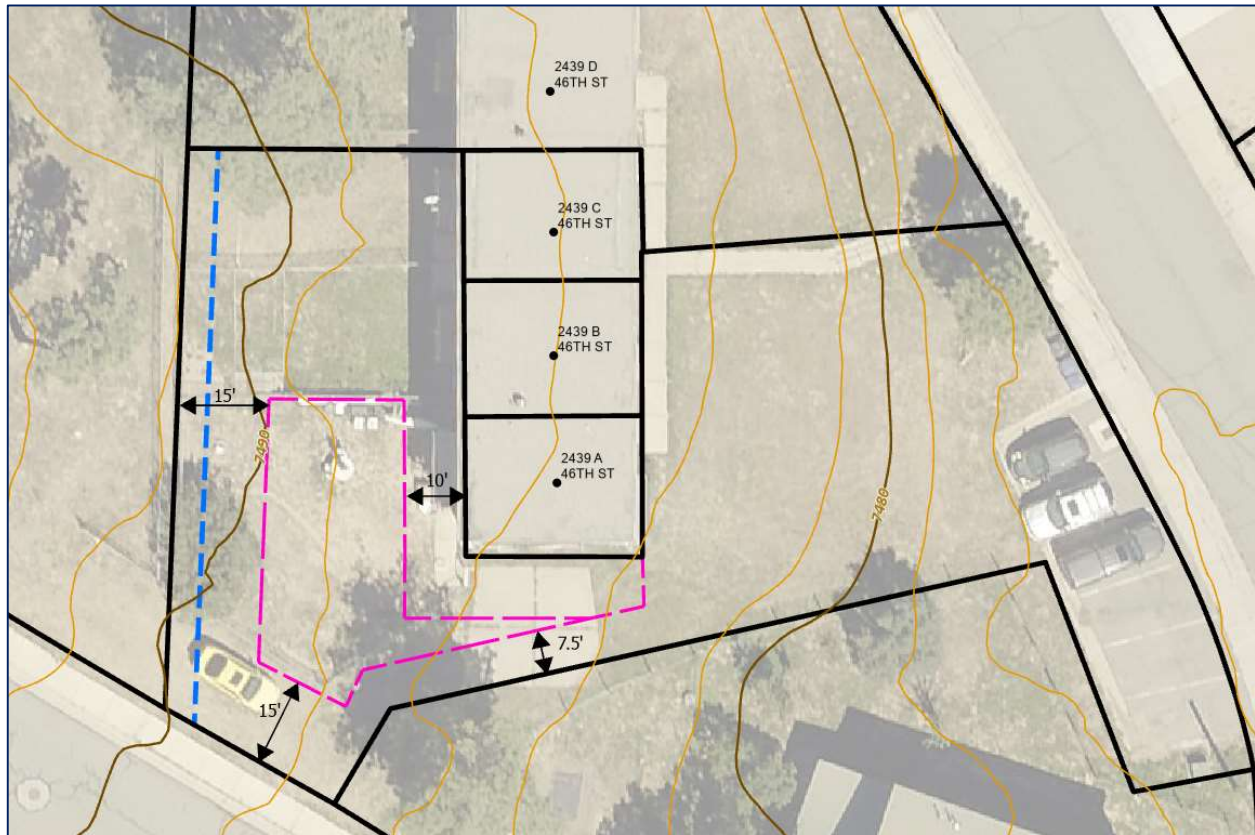


Figure 5: Rear yard area compliant with dimensional and development standards, with 2' contours

e. The variance will not create any significant adverse impacts on properties within the vicinity.

Applicant Response: Affidavits received from Condo Association owners (see attached documents) indicate no objections. Although the property appears large and wide open, it is also on a slope. This slope would make it difficult to construct a shed in the front yard; there are also code constraints that disallow the placement of a structure in the front yard. During heavy rain there is significant drainage through the front yard, which would make the front yard a dangerous location for a structure regardless of constraints. The side of the quad would also be an obstructive location since it is utilized by tenants and owners for ingress and egress when it is necessary to move in heavy furniture or boxes.

Staff Response: In the staff's expert opinion, this criterion has been met because locating the shed 5-ft from the rear property line, instead of 15-ft, does not significantly impact properties within the vicinity. The size and character of the shed is aligned with existing neighborhood conditions. Its distance from the street-side property line does not create visibility issues for traffic or pedestrians. Drainage resulting from the structure must be addressed during the permitting process by submitting a drainage plan, which will be reviewed and approved by Los Alamos County Engineering.

- f. **Granting of the approved variance is the minimum necessary easing of the Code requirements making possible the reasonable use of the land, structure, or building.**

Applicant Response: The location was selected to be unobtrusive. The slope in the corner of the property was used as the base for the platform of the shed, as shown in the drawing. The shed sits on the platform. No other location is suitable based on code compliance regarding how far the shed must be from the home.

Staff Response: In the staff's expert opinion, this criterion has been met because the variance allows a reasonable use of the structure consistent with residential character, while requiring only the minimum adjustment necessary to do so. Many lower-density multi-family zones share similar structures and lot sizes with single-family zones, and allowing comparable accessory placement ensures reasonable and practical use of the property without compromising the intent of the zone district, or the accessory structure standards.

DRAFT MOTION

Recommended Motion, Approve:

I move to **approve** Case No. VAR-2024-0005, a request for a 10-ft variance from the Multi-Family Residential-Low Density (MFR-L) zone district standards for the placement of a 192 sq. ft. accessory structure to be 5-ft from the rear property line, where 15-ft is minimum at 2439 46th Street, Los Alamos, NM.

Approval is based on the Findings of Fact established at the hearing and the determination that the Applicant has met the decision criteria for Variance per Section 16-74(g)(3) of the Los Alamos County Development Code. The Commission acts under the authority of Section 16-72(f)(2)(a) of the Development Code.

I further move to authorize the Chair to sign a Final Order approving the application, as well as the Findings of Fact and Conclusions of Law for this case. This document will be prepared by county staff based on this decision.

Alternative Motion 1, Approve with Conditions:

I move to **approve** Case No. VAR-2024-0005, a request for a 10-ft variance from the Multi-Family Residential-Low Density (MFR-L) zone district standards for the placement of a 192 sq. ft. accessory structure to be 5-ft from the rear property line, where 15-ft is minimum, at 2439 46th Street, Los Alamos, NM, with the following **condition(s)**:

1. ...

Approval is based on the Findings of Fact established at the hearing and the determination that the Applicant has met the decision criteria for Variance per Section 16-74(g)(3) of the Los Alamos County Development Code. The Commission acts under the authority of Section 16-72(f)(2)(a) of the Development Code.

I further move to authorize the Chair to sign a Final Order approving the application, along with the Findings of Fact and Conclusions of Law, as prepared by county staff based on this decision.

Alternative Motion 2, Deny:

I move to **deny** Case No. VAR-2024-0005, a request for a 10-ft variance from the Multi-Family Residential-Low Density (MFR-L) zone district standards for the placement of a 192 sq. ft. accessory structure to be 5-ft from the rear property line, where 15-ft is minimum at 2439 46th Street, Los Alamos, NM.

Denial is based on the Findings of Fact established at the hearing and the determination that the Applicant has failed to meet the decision criteria for Variance per Section 16-74(g)(3) of the Los Alamos County Development Code. The Commission acts under the authority of Section 16-72(f)(2)(a) of the Development Code.

I further move to authorize the Chair to sign a Final Order approving the application, along with the Findings of Fact and Conclusions of Law, as prepared by county staff based on this decision.

EXHIBITS:

1 – Los Alamos County, Chapter 16, Development Code: <https://lacnm.com/MunicipalCode>