



**COUNTY OF LOS ALAMOS
BEFORE THE LOS ALAMOS COUNTY COUNCIL**

**IN THE MATTER OF AN APPEAL OF)
PLANNING AND ZONING) APL-2025-0024
COMMISSION DENIAL OF)
VARIANCE REQUEST VAR-2025-0014)
2339 35TH STREET,)
LOS ALAMOS COUNTY, NEW MEXICO)**

**JOINT MOTION TO REMAND TO PLANNING AND ZONING COMMISSION FOR
REHEARING AND DECISION**

The Community Development Department (“CDD”), through the undersigned attorney, jointly with Jacoby and Heather Baker, Appellant, respectfully requests that the Los Alamos County Council (“Council”) remand Case Number VAR-2025-0014 to the Planning and Zoning Commission for rehearing and decision, pursuant to Section 16-72(g)(5)(d)(5) of the County’s Code of Ordinances (“Code”).

As grounds for this request, CDD and Appellant assert:

1. Appellant, Jacoby and Heather Baker, are the owners of certain real and personal property at 2339 35th Street, Los Alamos County, New Mexico.
2. Pursuant to Section 16-69(b)(2)(g), the Planning and Zoning Commission (“Commission”) has review and final decision authority to approve, conditionally approve, or deny development applications for variances. Review and decision-making procedures for variance applications are prescribed in Section 16-74(g)(2) and require the Commission to conduct a public hearing on the application’s conformity with the decision criteria of Section 16-74(g)(3).
3. A decision on an application requires a motion and affirmative vote of a majority of the Commission members present, and no less than four (4) affirmative votes of the members present. Failure of the Planning and Zoning Commission to reach a decision prior to the close of

the hearing constitutes a denial of the application by operation of law pursuant to Section 16-72(f)(5)(b)(9) of the County Code.

4. On October 22, 2025, the Commission held a properly noticed public hearing on Appellant's variance application. CDD staff and Appellant presented evidence and testimony that Appellant's application satisfied the decision criteria in Section 16-74(g)(3), and staff recommended the Commission approve the Appellant's variance application. No parties came forward to present evidence or testify in opposition to the application. After taking a vote of the members present, the Commission voted 3-2 to approve Appellant's variance application. Because the hearing closed without a majority of at least four (4) votes to approve, Appellant's application was denied by operation of law.

5. The Commission's *Final Written Order denying Appellant's Application for a Variance*, filed on November 13, 2025, confirmed that the basis for the denial was the Commission's failure to issue a final decision or recommendation on a motion and affirmative vote of at least four (4) members prior to the close of the hearing.

6. The denial of Appellant's variance application was not based on the merits of Appellant's application.

7. Section 16-72(g)(5)(d)(5) gives the County Council the authority to, without full hearing, remand this matter back to the Planning and Zoning Commission for rehearing and decision if the appellate body finds that the rehearing would be likely to resolve the matter.

8. Vacancies on the Commission have been very recently filled, and attendance among active members has consistently improved in an effort to prevent default denials created when there is a quorum to conduct business, but not enough members to constitute a decision, as defined in Section 16-72(f)(5)(b)(9). This change in circumstances will most likely allow the

Commission to review Appellant's application and render a decision on the merits of the application.

WHEREFORE, the parties respectfully request that Council, without a full hearing, remand Case Number VAR-2025-0014 to the Planning and Zoning Commission for rehearing and decision.

Submitted this the 13th day of January 2026.



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Joining in this request:



Jacoby Baker, Appellant



Heather Baker, Appellant