

EL PASO COUNTY

COLORADO

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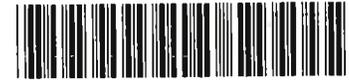
December 23, 2019
ATTN: April DeNio

RE: Administrative Determination for 19230 Mountain Road

File: ADM1947
Parcel ID: 8316419008

Chuck Broerman
12/23/2019 02:29:09 PM
Doc \$0.00 4
Rec \$28.00 Pages

El Paso County, CO



219163012

Dear Ms. DeNio:

A request has been made for an interpretation regarding the above referenced parcel to confirm that the property is considered legally nonconforming with regards to lot size pursuant to the El Paso County Land Development Code (2019).

Compliance with Subdivision Regulations:

In order to determine if the property is considered nonconforming, it must first be confirmed as a legal lot.

Section 1.15 of the Land Development Code defines a "Legal Lot" as:

"A lot, parcel or tract of land created by a legal conveyance of the lot, parcel or tract prior to July 17, 1972; a lot, parcel or tract shown on a subdivision plat which was approved and recorded prior to July 17, 1972, according to the subdivision regulations in effect at the time of approval; a lot, parcel or tract created by legally prepared survey dated prior to July 17, 1972; a lot, parcel or tract created by approval of the County commissioners in conformance with the subdivision regulations in effect at the time of approval; a lot, parcel or tract created by a contract for deed or signed but unrecorded deed, each dated prior to July 17, 1972; a parcel exempted from subdivision by the Board of County Commissioners (BoCC), or any parcel of 35 acres or more, which, when created, did not cause a parcel of less than 35 acres to remain; a parcel created by any court pursuant to the law of eminent domain, operation of law, or by order of any court if the BoCC has been given timely notice and opportunity to join in the action; a parcel modified or reduced in size due to land acquisition by a governmental entity."

The property was legally created by subdivision on May 14, 1921 as Lot 46 of the Ute Pass Summer Homes Subdivision Filing No. 1. The legal description and acreage of the parcel has not changed since the creation date; therefore, the parcel is considered a legal lot.

Compliance with Zoning Regulations:

The property was zoned A-2 (Agricultural District) and F (Forest and Recreation District) on July 28, 1967 when zoning was first initiated for this portion of the County. In 1991, the R-T (Residential Topographic) zoning district was created and applied to this property. The R-T

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zoning district has a minimum lot size of five (5) acres and the subject property has a lot size of 0.96 acres (41,817 sq. ft.).

Section 1.15 of the Code defines a "Nonconforming Lot" as:

"A nonconforming lot is a legally created lot or parcel of land which due to subsequent amendments of this Code, right-of-way acquisition by a government entity, or to the zoning or rezoning of the lot or parcel, does not conform with the minimum lot area requirement of this Code."

The lot size is considered nonconforming because it was legally created prior to the subdivision regulations and was legally existing when zoning was implemented.

Section 5.6.7 of the Code sets forth specific review criteria in order to determine if a nonconforming lot may be considered conforming:

Determination of Conformity. To determine a nonconforming lot as conforming, all the following criteria shall be met, as applicable:

- The creation of the lot or parcel was in conformance with all applicable regulations at the time of its creation;
The lot meets this criteria due to its creation date preceding the adoption of subdivision regulations.
- The lot or parcel is currently in compliance with all use regulations and conditions and restrictions of any applicable special use or variance of use;
No special use or variance of use approval has been issued for the parcel and the applicant has not indicated an intent to initiate a new one.
- The lot or parcel complies with the requirements and criteria of the merger by contiguity provisions of this Code;
This criteria does not apply as the applicant does not own any adjacent property.
- All contiguous legal lots under the same ownership have been combined through a merger by contiguity process to create a zoning lot unless the PCD Director has authorized a remainder lot or parcel to be considered nonconforming;
This criteria does not apply as the applicant does not own any adjacent property.
- For existing dwellings, verification provided by an El Paso County Certified Inspector that there is no evidence of wastewater related issues or that any wastewater issues are being remedied;
There is no existing dwelling on this property.
- For a new dwelling, a soils test has been submitted demonstrating sufficient area for the onsite wastewater treatment system and a private well to be installed meeting all internal and external lot minimum horizontal setback requirements;
This criteria has not been met. A soils test will need to be completed to show sufficient area for a wastewater treatment system and private well to be installed, as well as a site plan showing all setback requirements can be met. If central water is provided to the subject property, the soils

test will only need to address sufficient area and setbacks for the onsite wastewater treatment system.

- For a new dwelling, documentation of water availability, including but not limited to, a copy of the well permit, evidence of a water tap, or a copy of a water commitment letter has been provided;
This criteria has not been met. Neither a copy of a well permit, evidence of a water tap, or a utility commitment letter have been provided for review.
- At least 30% of the zoning lot is considered buildable after exclusion of land identified as containing 100 year floodplain and 30% slopes;
Per County GIS data, the property does not have any lands containing the 100-year floodplain. Slopes exceeding 30% appear to comprise approximately 20% of the property per GIS data, leaving approximately 80% of the property as buildable.
- The lot or parcel meets one of the following lot size requirements:
 - Central water and sewer are both provided, and the area of the zoning lot is at least 20,000 square feet, or is 60% of the minimum lot area required by the applicable zoning district, whichever is less, or;
 - Central water is provided, but central sewer is not provided, and the area of the zoning lot is at least 20,000 square feet, or;
 - No central water or central sewer is provided and the area of the zoning lot is one acre or more.

The property does not meet any of these requirements. The area of the lot is less than one acre and no evidence has been provided ensuring that central water or sewer services are available. A letter from the utility provider was issued indicating that water service to the property is not currently available, but that service may be made available in the future if the property owner pays to construct the water line extension.

Discussion and Conclusion:

The parcel is considered a legal lot due to it being a platted lot and is considered nonconforming in regard to lot size. As outlined in the analysis above, the property does not meet three of the required criteria for the Planning and Community Development Director to make a determination of conforming lot size per Section 5.6.7, Nonconforming Lot or Parcel, of the Code. Therefore, the lot cannot be considered conforming.

However, the property may be re-evaluated and determined to be conforming if the applicant provides the following documentation:

- Evidence that the applicant has extended a water line to the property and conducted a soils test indicating sufficient area for an onsite wastewater treatment system to be installed; or
- A soils test indicating sufficient area for both a private well and an onsite wastewater treatment system to be installed.

If the applicant wishes to obtain a waiver of these requirements to consider the lot as conforming, they may request a waiver from the Board of County Commissioners of the three criteria identified above in Section 5.6.7.

In order to initiate an application for a waiver, the applicant must first apply for an Early Assistance (EA) meeting. The fee for an EA meeting is \$427.00 and may be requested online at <http://epcdevplanreview.com>. In the meeting, the applicant will meet with staff who will explain the process and requirements for the waiver request. The fee for the waiver request is \$2,337.00. The applicant will be required to justify the waiver request in a public hearing before the Board of County Commissioners.

Any proposed development shall comply with all other applicable County, State, and Federal Regulations.

If you have any questions or concerns regarding this determination, please contact myself or Ryan Howser, Planner I, at (719) 520-6049 or ryanhowser@elpasoco.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Dossey". The signature is written in a cursive style with a large, looped "C" and "D".

Craig Dossey
Executive Director
El Paso County Planning and Community Development Department