



EL PASO COUNTY

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

October 25, 2019
ATTN: Mr. Peter Soderlund
14050 Davis Rd, Falcon, CO, 80831

RE: Administrative Determination for 14050 David Rd

File: ADM1934
Parcel ID: 4333000004

Mr. Soderlund:

You have requested an Administrative Determination with regards to the above referenced property to confirm that the four (4) structures located on your property, including one (1) additional dwelling unit, are determined to be legally nonconforming to authorize construction of a building addition on the property. Authorization of building permit or zoning permit issuance is contingent upon a parcels' compliance with both the subdivision regulations as defined in Chapter 7 and the zoning regulations as defined in Chapter 5 of the El Paso County Land Development Code (2019).

Compliance with Subdivision Regulations:

In order to allow further building permits to be issued on the property, parcel no. 4333000004 must be confirmed as a legal lot and therefore not subject to the El Paso County subdivision regulations as described in Section 7.2.1 of the Land Development Code.

Section 1.15 of the 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."

A warranty deed (Book 2344, Page 14) for the parcel recorded on May 15, 1970, demonstrates that the parcel was legally created prior to the subdivision regulations that went into effect on July 17, 1972.

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Compliance with Zoning Regulations:

The property was zoned A-4 (Agricultural) on April 14, 1983, when zoning was first established for this area of the County. Due to changes of nomenclature, the A-4 zoning district has been renamed as the RR-5 (Residential Rural) zoning district. The RR-5 zoning district allows for one (1) single-family detached dwelling per lot or parcel and does not allow for an additional dwelling unit to be placed on the same lot.

Section 1.15 of the Code defines a nonconforming use as:

“Any legally existing use, whether within a structure or on a piece of land, which does not conform to the use regulations of the zoning district in which the use is located, either at the effective date of this Code or as a result of subsequent amendments which may be incorporated into this Code.”

The use is considered non-conforming because there are two occupied dwelling units located on the property. However, the County Assessor’s data indicates existence of the structures prior to the date zoning restrictions became applicable to this property. According to the Assessor’s records, the primary residence was constructed in 1980 and the two modular structures were constructed in 1982. The fourth structure was legally permitted in 2007 through El Paso County as an accessory structure for a storage shed and is considered conforming, provided it is being used as a storage shed and not as a dwelling unit.

Section 5.6.2(C) of the Code sets forth a specific determination regarding the ongoing nature of a use as nonconforming:

Interruption of Nonconforming Use. If a nonconforming use is abandoned for a period of one year, the structure and land where the nonconforming use previously existed shall be occupied and used only by a conforming use. Intent to resume active operation of the nonconforming use shall not affect the foregoing. The burden of proof that a nonconforming use has been continuously maintained rests with the property owner or operator of the use. The evidence that an operation has been continuous shall be clear and conclusive. Any nonconforming use may be deemed abandoned after a period of less than one year if the property owner expressly states intent to abandon the use, or engages in action which unambiguously expresses intent to abandon.

The applicant has indicated that two of the three dwellings are currently occupied. If the unoccupied dwelling has remained unoccupied for a period greater than one year, it shall be deemed abandoned. The use can also be deemed abandoned if the property owner declares the dwelling to be abandoned, thereby forfeiting the nonconforming status of the use.

Discussion and Conclusion:

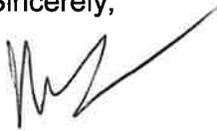
While the parcel is considered a legal lot due to its creation date, it is considered nonconforming due to the additional residences located on site. However, because the structures in question were permitted prior to the adoption of zoning regulations as outlined in Chapter 5 of the Code, the property is therefore considered legal nonconforming. However, should any of these nonconforming uses cease for a period greater than one (1) year, they shall be determined as abandoned and the use shall permanently cease. The structures may be repurposed to a conforming use.

The Applicant has indicated that at least one of the dwellings is unoccupied; should the structure have been unoccupied for a period greater than one (1) year, it shall be removed prior to approval of any additional building permits. The house and other occupied mobile home are considered nonconforming and the pole barn was approved by the Planning and Community Development Department in 2007 as an accessory structure to the principal residence. Should any of the nonconforming structures be restored, enlarged, or altered, they will be required to conform to Sections 5.6.3, 5.6.4, and 5.6.5 of the Code, as applicable. Any replacement structure will require a new permit and will be required to meet all current codes and regulations.

Any proposed development shall comply with all 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 'Mark Gebhart', with a long, sweeping horizontal stroke extending to the right.

Mark Gebhart
Deputy Director
El Paso County Planning and Community Development Department

Enclosures:
Timeline of Property
Aerial Imagery
INT-06-003
AG-06-018

