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PLANNING & COMMUNITY DEVELOPMENT

TO: El Paso County Board of Adjustment
 Kevin Curry, Chair

FROM: Lacey Dean, Associate Planner
 Hao Vo P.E., Engineer
 Meggan Herington, AICP, Executive Director

RE: Project File Number: BOA242
 Project Name: 3120 Mount Herman Rd. - BOA for setback
 Parcel Number: 7122001010

OWNER:	REPRESENTATIVE:
IRVIN & JOAN POLLARD 3120 MOUNT HERMAN RD MONUMENT, CO 80132 joanmpollard@outlook.com	IRVIN & JOAN POLLARD 3120 MOUNT HERMAN RD MONUMENT, CO 80132 joanmpollard@outlook.com

Commissioner District: 3

Board of Adjustment Hearing Date:	7/24/2024
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EXECUTIVE SUMMARY

A request by Irvin and Joan Pollard for approval of a Dimensional Variance to allow a side setback of 5 feet where 25 feet is required in the RR-5 (Residential Rural) zoning district. The 5.34-acre property is located on Mount Herman Road approximately 1.3 miles southeast of the intersection of Interstate 25 and Highway 105, El Paso County, Colorado. (Parcel No. 7122001010).



A. APPROVAL CRITERIA

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Land Development Code (As Amended), states the following:

The Board of Adjustment is authorized to grant variances from the strict application of any physical requirement of this Code which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property. Practical difficulties and hardship, in this context, may exist where the legal use of the property is severely restricted due to:

1. The exceptional narrowness, shallowness, or shape of the specific piece of property.
While the subject property is not "exceptionally" narrow, it is what could be considered narrow, by definition, given that it is approximately five times longer than it is wide.
2. The exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.
The subject property does not have exceptional topographic conditions or any extraordinary or exceptional situations or conditions.

However, Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Code continues by stating the following:

The Board of Adjustment may also grant variances from the strict application of any physical requirement of this Code based upon equitable consideration, finding that the burdens of strict compliance with the zoning requirement(s) significantly exceed the benefits of such compliance for the specific piece of property and;

1. The variance provides only reasonably brief, temporary relief; or
The variance would provide permanent relief.
2. The variance request includes an alternative plan, standards or conditions that substantially and satisfactorily mitigate the anticipated impacts or serve as a reasonably equivalent substitute for current zoning requirements; or
The variance does not include an alternative plan that substantially and satisfactorily mitigates the anticipated impacts or serves as a reasonably equivalent substitute for current zoning requirements.



3. Some other unique or equitable consideration compels that strict compliance not be required.

The applicants followed the advice as provided to them by their contractor in 1990. The structure has been in place for 34 years with no known issues or complaints by neighbors or other entities.

B. BACKGROUND

The subject property was formally platted in September of 1954 as Lot 3 Panoramic Acres which is the current legal description today. Zoning was established in 1955. The main house was built in 1970 and was purchased by the current owners in 1984 and the structure was built in 1990.

In 1990, the property was zoned A-4 (Agricultural District). According to the 1990 Land Development Code Section 35.1, an accessory building “which is clearly incidental to the use of the... land” was allowed in the A-4 zoning district. The structure in question was initially intended to be a pole barn for storage of hay and farm equipment, which would be considered incidental to the use of the land, which was zoned Agricultural. In 1990, a building permit was not required for a pole barn in the A-4 zone, as verified in historic records by 2024 PPRBD staff. As such, Planning and Community Development was likely not asked to review the site plan for zoning/setback compliance. Prior to the construction of the pole barn, the owner received verbal permission from their neighbors to the East, who are their current neighbors today, to build the structure 5 feet from the fence line due to the level ground which made this an ideal location. The owners also received permission from the Subdivision Architectural Committee at the time. The Architectural Committee of this subdivision has since dissolved.

Given the date that the structure was built, the permissions granted to the owner by neighbors and Architectural Committee, and the fact that a permit was not required and, therefore, a review of the project by Planning and Community Development would likely have not been required to verify compliance of the site plans, the argument could be made that setback distances were not known by the owner at the time of construction. The encroachment was only recently discovered upon the owners attempt to obtain permits to fully condition the structure as an Accessory Living Quarters for immediate family members to reside, which prompted a review of the plans by Planning and Community Development for zoning compliance.

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C. ANALYSIS

1. Land Development Code and Zoning Compliance

As previously discussed, the property was zoned A-4 (Agricultural District) in 1984 when the structure was built. An accessory building used for storing hay and farm equipment was allowed in the A-4 district at the time. Zoning changed from to RR-3 (Residential Rural) in 1991, and then to RR-5 (Residential Rural) in 2007, which is the current zoning today. The RR-5 zoning district is intended to accommodate low-density, rural, single-family residential development. The density and dimensional standards for the RR-5 zoning district are as follows:

- Minimum lot size: 5 acres
- Minimum width at the front setback line: 200 feet
- Minimum setback requirement: front 25 feet, rear 25 feet, side 25 feet
- Maximum lot coverage: 25%
- Maximum height: 30 feet

Apart from the encroachment of the structure in question on the side setback, the property meets all other dimensional requirements of the RR-5 zoning district. Any future proposed structures shall meet all requirements of the RR-5 zoning district and shall obtain approval of a Residential Site Plan prior to construction.

D. ALTERNATIVES EXPLORED

There are two (2) alternatives that would not require a dimensional variance request:

1. The applicant could demolish the structure and reconstruct it 20 feet west of its current location, however, this could create a significant burden on the applicant.
2. The applicant could propose a Map Amendment (Rezoning) request to a zoning district that would support the existing 5-foot side setback, such as RS-5000 or RS-6000 (Residential Suburban). However, staff has determined that this option is not appropriate due to the current zoning of the surrounding properties and the character and density of the neighborhood.



E. LOCATION

North:	RR-2.5 (Residential Rural)	Residential
South:	RR-5 (Residential Rural)	Residential
East:	RR-5 (Residential Rural)	Residential
West:	RR-5 (Residential Rural)	Residential

F. SERVICE

1. WATER

Water is provided by an existing on-site well.

2. WASTEWATER

Wastewater is provided by an existing on-site wastewater treatment system (OWTS).

3. EMERGENCY SERVICES

The parcel is located within the Tri-Lakes Monument Fire Protection District. The district was sent a referral and has no outstanding comments

4. UTILITIES

Mountain View Electric Association, Inc. commented that "Per the plat, there is a 6-foot side lot line utility easement. There is also a MVEA overhead electric line near the existing structure which has a 10-foot easement." Staff reached out to MVEA for more detailed comments regarding their approval or disapproval of this structure and they responded with the following comment: "Per the MVEA site visit on 6/27/2024, there is no objection to the encroachment of the side lot utility easement or the existing overhead electric line over the barn."

G. ENGINEERING

1. FLOODPLAIN

FEMA Flood Insurance Rate Map panel number FIRM Panels 08041C0259G, effective date December 7, 2018, indicates that the site is not located within a regulatory floodplain.

2. DRAINAGE AND EROSION

The proposed project is located within the Monument Rock Basin (FOMO5000), which is covered under the El Paso County Drainage Basin Fee program. However, this project was already platted, so the drainage basin fee is not applicable.

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A drainage report and grading and erosion control plan are not required for this Board of Adjustment application because there will be no impact on existing drainage patterns or new land disturbance.

3. TRANSPORTATION

The project is not expected to result in a significant increase in traffic on County facilities or conflict with the El Paso County 2016 Major Transportation Corridors Plan Update (MTCP). According to Engineering Criteria Manual Section B.1.2.D, a traffic impact study is not required.

The parcel is adjacent to Mount Herman Rd, a county-maintained rural minor collector roadway from which it obtains driveway access permit. The property does not currently have a driveway access permit with the county; therefore, the applicant needs to obtain one. The proposed project is not expected to impact the roadway or generate additional vehicular traffic to the parcel.

Road Impact Fees, as outlined in Resolution 19-471, are not applicable to this application since no additional vehicular traffic is being generated, and there is no change to the existing land use.

H. RECOMMENDED CONDITIONS OF APPROVAL

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a Dimensional Variance to allow a side setback of 5 feet where 25 feet is required in the RR-5 (Residential Rural) zoning district, and that the applicant has met the review and approval criteria for granting variances from the applicable standards, staff recommends the following conditions and notation of approval:

CONDITIONS

1. The approval applies only to the plans as submitted. Any expansion or additions to the proposed Accessory Living Quarters may require separate Board of Adjustment application(s) and approval(s) if the development requirements of the applicable zoning district cannot be met.
2. Approval of a Residential Site Plan by the Planning and Community Development Department and issuance of a building permit from the Pikes Peak Regional Building

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Department are required prior to the conditioning of the existing building and construction of the addition to the Accessory Living Quarters.

3. Approval of a Special Use permit for permanent occupancy in the proposed Accessory Living Quarters is required prior to the occupancy of said Accessory Living Quarters.

NOTATION

1. Physical variances approved for a proposed structure (except for lot area variances) are valid only if construction of the structure is initiated within twelve (12) months of the date of the Board of Adjustment approval.

I. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified 18 adjoining property owners on 7/3/2024, for the Board of Adjustment meeting. Responses will be provided at the hearing.

J. ATTACHMENTS

Letter of Intent
Site Plan
Public Comment

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El Paso County Planning
And Community Development
2882 International Circle, Ste. 110
Colorado Springs, CO 80910
Re: PCD File #BOA242

*We are seeking a 20' set back variance for property belonging to Irvin and Joan Pollard.

*The contact phone number is (719) 339-9673.

*The contact email address is joanmpollard@outlook.com.

*The property is located at 3120 Mount Herman Rd., Monument, CO 80132.

*The Property Tax Schedule Number is: 7122001010.

*The property is zoned RR 5

*Approximately 30 years ago we built a 24'x 29' pole barn on the site of an old loafing shed that came with the property. The new building was used for hay storage and farm machinery. The building was for agricultural use, and we were told by the builder that it didn't require a permit. Our own research concurred with that information. We did get permission from our neighbors on our east side to locate the building 5 feet from our common fence line. We also got permission from the subdivision architectural committee. The building did not impede our neighbors view because of a large stand of old growth Oak Brush. We did not think to check county set back regulations since no permit was needed to build the structure. The old shed location seemed ideal because it was level, out of the way and not problematic for anyone. There was also a pathway directly from our existing driveway to our hay storage and horse barn. Nobody had objections at the time or in the many following years. In recent years, we have fewer horses, and we use the building as a work and tool shop. By using the old shed site we were able to avoid existing electric and water lines, and our existing livestock facilities. Mountain View Electric Association commented that they have existing overhead lines on the property, and power poles that have a 5 foot easement. These lines were in place when the pole barn was built, and are not impacted by the building. It is more than 10' from the closet overhead power line. The utility easement is also not impacted. Additionally, we are able to easily connect the building to the existing utilities in its current location.

*The building can not be moved because of the pole barn design. The big support poles are anchored in large, deep concrete footings. The building also has a concrete floor. The cost of a new building at today's prices, would be prohibitive.

*The property is long and quite narrow, and our house sits 400' back from the road. No structures are allowed between the home and the road in our sub-division. This characteristic of the property applies to practical difficulty and hardship #1 listed in Section 5.5.2a. In the Land Development Code as "the exceptional narrowness, shallowness or shape of the specific piece of property." Our house is near the center of the property, with a horse barn, corrals, a round pen and small arena in back. The far back, west side and front are *not level and there is some sloping terrain in some areas. These areas are suited for grass pastureland, and we use it to pasture our two horses, and donkey* Our driveway and parking area is along the far east side of the acreage. It was there when we purchased the property in 1984.

*We are in the permitting process to fully condition the building. All of our plans have been approved by El Paso County Regional building, and a permit will be issued when we have approval from Planning and Development. Our intent is to apply to eventually use the building as an ALQ.

* There are no overlay zoning concerns as far as we are aware.

* The neighborhood would not be impacted by this setback relief as the structure has been on site for over thirty years. There has been no known impact to anyone including Paul and Nageeba Davis, who are our neighbors to the east. We have talked to many of our neighbors, and they are very supportive. El Paso County Engineering commented concerning possible drainage impacts to downstream properties, and traffic impacts. There are no downstream drainages on the property, and no other properties would be impacted in any way. There would be no traffic impacts because the structure is for our family use only. Our daughter and grandson live with us now, and we hope they can eventually occupy the ALQ.

* We became aware of the set back issue when we applied for a building permit. The building permit is for conditioning the structure, and adding a small 6'X12' bath to the west side. Our engineering, electrical, mechanical, and plumbing plans were all approved, but when we started to purchase the permit, Planning and Development came up for the first time. I went to El Paso County Planning and Development Department expecting to get approval, and we discovered the set back problem. I was then made aware of the Board of Adjustment as a helpful resource for situations like this one.

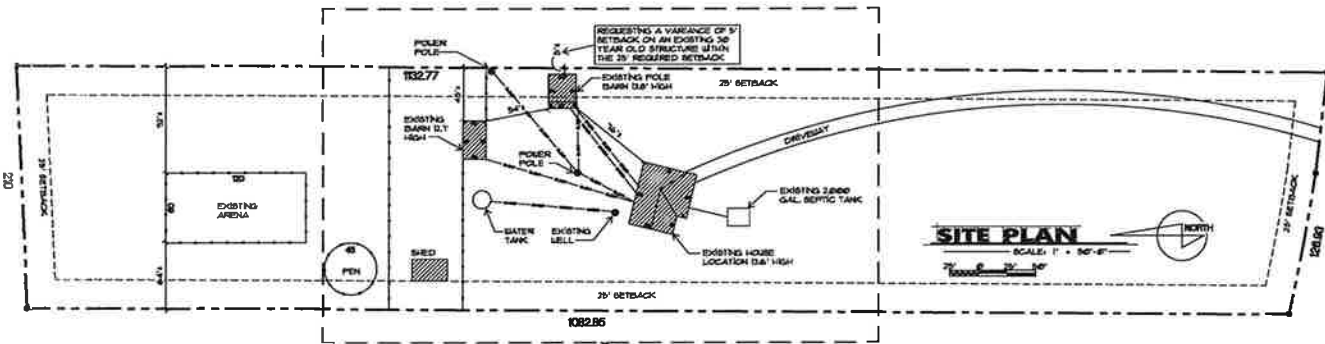
*We believe we have sufficiently addressed the Variances to Physical Requirements as stated below.

5.5.2

B

2

(a)Variances to Physical Requirements. The Board of Adjustment is authorized to grant variances from the strict application of any physical requirement of this Code which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property. Practical difficulties and hardships, in this context, may exist where the legal use of the property is severely restricted due to (1) the exceptional narrowness, shallowness or shape of the specific piece of property, or (2) the exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.



TAX SCHEDULE NO.
102600040

PROPERTY OWNER/APPLICANT:
RYAN & JUDAN POLLARD

ADDRESS:
3120 MT. HERMAN ROAD
MONUMENT, CO 80132

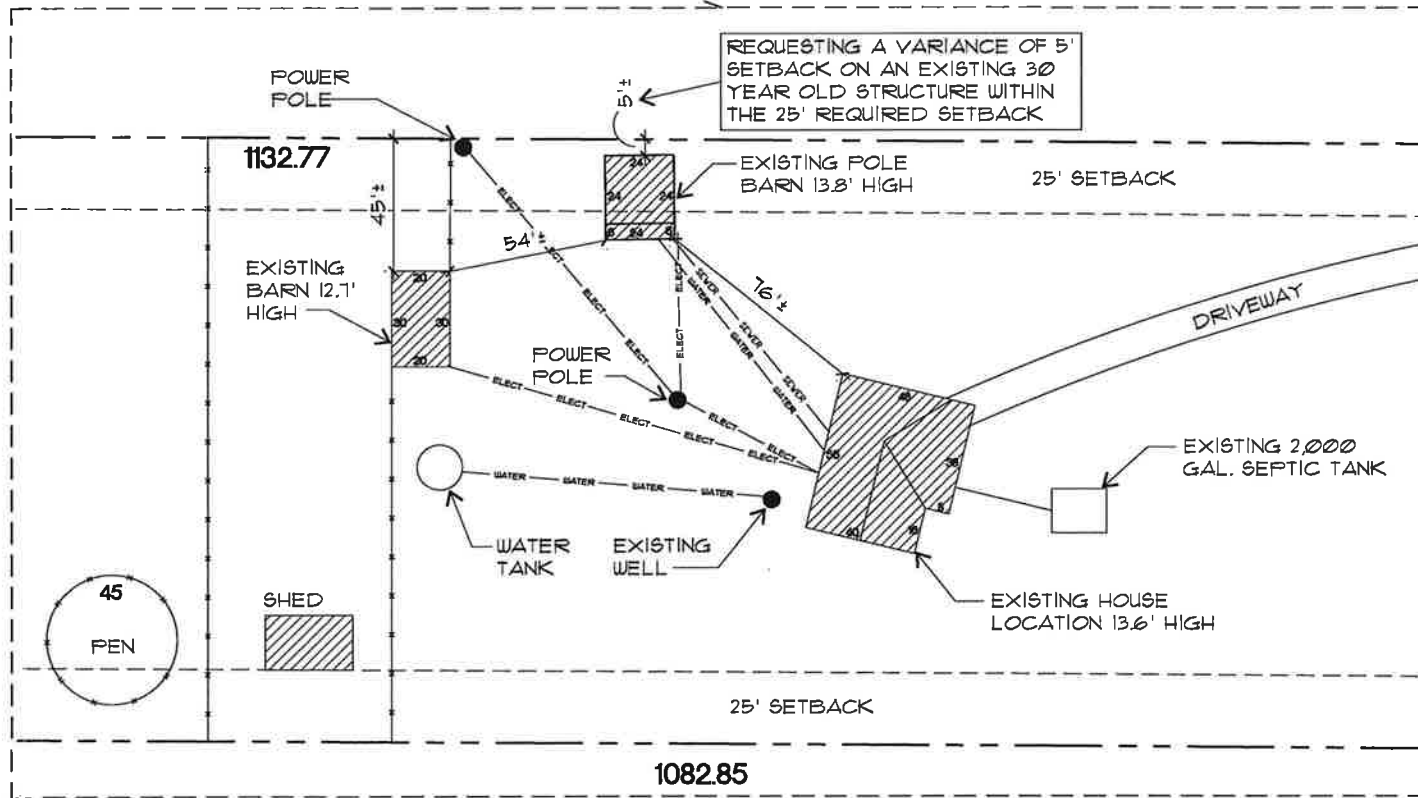
ZONE:
RR-5

LEGAL DESCRIPTION:
TRACT 3 PANORAMIC ACRES

LOT SIZE:
3.34 ACRES

SETBACKS:
FRONT - 25'-0"
SIDE - 25'-0"
REAR - 25'-0"

FCD file #BOA 242



SITE PLAN
SCALE: 1" = 30'-0"
NORTH

CONTRACTOR:

CLIENT:
Site Plan
3120 Mount Herman Road
Monument, CO
80132

DATE:
6-12-24

JOB NO:
2024-00

SHEET: **1** OF **1**

3rd Dimension Graphics liability concerning anything presented on these drawings is limited to correction of the drawings and nothing more. All construction, craftsmanship and/or installation is the sole responsibility of the owner / contractor.

1:49

Signal strength icon, Wi-Fi icon, and battery level 87.



Irv >

Text Message
Today 1:49 PM

**To: El Paso County
Planning and Community
Development
Department**

**My name is Paul Davis
and I live to the east of
my neighbor Irv Pollard.
The structure that is in
question has been there
for over 3 decades and
has never been an issue
or concern of ours. If
there are any questions
or need for clarification,
please feel free to reach
out to me.**

**Paul Davis
3070 Mt. Herman Rd
Monument, CO**