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November 1, 2022

ATTN: Tom Hahn

RE: Fools Gold Way

File: ADM-22-031

Parcel ID: 61284-02-016 & 61284-02-020

Dear Mr. Hahn:

A request has been made for an interpretation regarding the above referenced parcel to confirm that the property is considered legally conforming with regards to lot size pursuant to the El Paso County Land Development Code (2022). In order to determine if the property is considered conforming, the parcel must first be confirmed as a legal lot.

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."

The property was legally platted in 1926 as lots 25 and 26 of the Black Forest Park (Plat No. 869). The lots have been legally combined through the merger by contiguity process (PCD File No. MER-22-005). Therefore, the resulting parcel is considered a legal lot.

Compliance with Zoning Regulations for Conformity:

Section 1.15 of the Code defines a “Lot, Nonconforming” 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 property was zoned A-4 (Agricultural) on January 3, 1955, when zoning was first initiated for this portion of the County. Due to changes in the nomenclature of the Code, the A-4 zoning district has been renamed as the RR-5 (Residential Rural) zoning district. The RR-5 zoning district has a minimum lot size of five acres, and the subject property has a lot size of 60,000 square feet (approximately 1.38 acres) after completion of the merger. Therefore, the lot size is considered nonconforming.

Section 5.6.7 of the Code sets forth specific review criteria in order to determine the conformity of a lot:

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 criterion due to its creation size meeting the requirements of the code at the time.
- 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 criterion 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 criterion 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 currently no dwelling present on the property. Prior to construction of a new dwelling, the applicant will be required to obtain a permit for an onsite wastewater treatment system.
- 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;
The applicant is not currently proposing to construct a dwelling. Prior to construction of a new dwelling, the applicant will be required to demonstrate sufficient area 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;
The applicant is not currently proposing to construct a dwelling. Prior to construction of a new dwelling, the applicant will be required to provide a copy of an approved well permit.
- At least 30% of the zoning lot is considered buildable after exclusion of land identified as containing 100 year floodplain and 30% slopes;
Per GIS data, the property does not have any lands containing the 100-year floodplain or any 30% slopes.
- 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 lot is 60,000 square feet (1.38 acres); therefore, this criterion is met.

The above criteria is met; therefore, the nonconforming lot can be considered as conforming.

Discussion and Conclusion:

The parcel is considered a legal lot due to it being created prior to the subdivision regulations and is considered conforming.

Any proposed new 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, AICP, Planner III, at (719) 520-6049 or ryanhowser@elpasoco.com.

Sincerely,



Kevin Mastin
Interim Executive Director
El Paso County Planning and Community Development Department