

Kevin Mastin, Interim Executive Director
El Paso County Planning & Community Development
O: 719-520-6300
KevinMastin@elpasoco.com
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Board of County Commissioners
Holly Williams, District 1
Carrie Geitner, District 2
Stan VanderWerf, District 3
Longinos Gonzalez, Jr., District 4
Cami Bremer, District 5

August 9, 2022

ATTN: Lenore Raff

RE: 9420 Arroya Lane – Determination of Nonconforming Use

File: ADM-21-002

Parcel ID: 52220-00-018

To Whom It May Concern:

A request has been made for an interpretation regarding the above referenced parcel to confirm that the existing commercial stable use on the property is considered a nonconforming use pursuant to the El Paso County Land Development Code (2021). The property 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.”

According to data obtained from the El Paso County Property Assessor’s office, the property was created on March 9, 1981 (El Paso County Public Records, Book 3411, Page 4). Due to the parcel’s date of creation occurring after July 17, 1972, the parcel cannot be considered a legal division of land. Prior to issuance of any additional building permits on the property, the division of land must be formally legalized through the subdivision process.

Compliance with Zoning Regulations:

The property was zoned RR-5 (Residential Rural) on September 20, 1965, when zoning was first initiated for this portion of the County. According to Section VIII of the Land Development Code at the time (adopted in 1963), a commercial stable was not recognized as an allowed use in 1965 in the RR-5 zoning district.

Section 1.15 of the Code defines a “Use, Nonconforming” 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 the subsequent amendments which may be incorporated into this Code.”

A commercial stable is not an allowed use in the RR-5 zoning district, pursuant to Table 5-1 of the Code. In order for the commercial stable use to be considered a nonconforming use, it would either need to have met the applicable zoning regulations at the time the use was initiated or would need to have been initiated prior to the initiation of zoning regulations.

According to the applicant’s administrative determination request letter, the owner has been using the property for a commercial stable since 1992. According to Section 5.6.2.C of the Code, the following provision must be met in order for a use to be considered a legal nonconforming use:

“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 El Paso County Planning and Community Development Department has not received evidence from the applicant indicating that the use has been continuously maintained since 1992 and therefore, the use cannot be confirmed as a legal nonconforming use. Additionally, in order to be considered a legal nonconforming use, evidence that the use has been continuously maintained since prior to the initiation of zoning in 1965 would be required.

Discussion and Conclusion:

It is the determination of the Planning and Community Development Department Director that the commercial stable use cannot be considered nonconforming due to a lack of evidence indicating that the use has been continuously maintained prior to the initiation of zoning.

A commercial stable is identified as an allowed use pursuant to special use in the RR-5 zoning district, pursuant to Table 5-1 of the Code. In order to legalize the use of the property for a commercial stable, the applicant is required to obtain approval of a special use permit. In order to obtain any building permits in the future, the applicant will be required to subdivide the property.

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

Sincerely,



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