

From: Edith A. Disler, PhD, MBA, Lt Col (Ret), USAF

30 Oct 2020

To: The El Paso County Board of Adjustment

Dear BOA Members:

Between 2015 and 2020, developer Matthew Pickett illegally subdivided, and built 3 single family homes, on a 4.7 acre parcel comprised of seven contiguous  $\frac{3}{4}$ -acre nonconforming lots (platted in 1926) listed at the address 15915 Park Ave in Black Forest Park, an unincorporated area of El Paso County which is zoned RR-5. As you know, RR-5 requires 5 acre minimum lot sizes, unless the lots existed prior to 1972 (which these did) and are “grandfathered” as nonconforming. He purchased all 7 lots together in a single deed. There is no evidence that he paid taxes on 7 separate lots.

Another neighbor, Tommy Query, appealed to the county regarding his illegal subdivision of this and other parcels, but the Planning Department’s and County Attorney’s clear misinterpretation of code caused EPC to abet Mr. Pickett’s violations.

My home at 15930 Fools Gold Lane is adjacent the illegally subdivided lot which used to carry the address 15915 Park Avenue but now carries the addresses 15915, 15955 and 15995 Park Ave. I tolerated a second house going up where there should be one. I tolerated the unpermitted clearing of at least 75 Ponderosa Pines and grading of a  $\frac{3}{4}$  acre lot on my southern property line at what is now the address 15910 Fools Gold Lane – actions which ruined, for my lifetime, the view from the entire south side of my home and the land’s original topography and drainage. But when I saw a third house going up on a 4 acre parcel, further ruining what I had invested in and planned for, I couldn’t stand it any longer, and embarked on the process which brings us to this meeting.

I have scrubbed every line of the Building and Land Code and the Black Forest Preservation Plan, only to find that Mr. Pickett has committed one violation after another, while the county looked on. Those violations are outlined and documented in the attached slide presentation. In brief:

- 1) EPC allowed Mr. Pickett to abandon his  $\frac{3}{4}$  non-conformity, and re-establish a 1.3 acre nonconformity, in violation of 5.5.1 of the BLC, which does not allow the re-establishment of nonconformity once it has been abandoned.
- 2) EPC allowed Mr. Pickett to use an inapplicable provision under the subject line of “Nonconforming Lots Made Conforming”. In an RR-5, only a lot enlarged to the zoning requirement – 5 acres in this case – is considered “Made Conforming.” Enlarging from  $\frac{3}{4}$  acre to 1.25 or 1.3 acres does not “make” the lot conforming.
- 3) When the PCD Director gave Mr. Pickett “Administrative Relief” and declared 1.3 acre lots to be “zoning lots” he exceeded his authority according to BLC 5.4.1 (D) which only allows the PCD Director to authorize relief equal to a 20% reduction of the minimum lot size required in the zoning, i.e., authorization to permit a 4 acre nonconforming lot, but certainly not one as small as 1.3 acres.
- 4) BLC 5.5.7 (B) requires merger of as many contiguous lots as possible to avoid variance, and requires that any “merger by contiguity” which does not create a conforming lot (i.e. 5 acres) be submitted to the BOA for a variance. Mr. Pickett did not comply with this requirement, and the County Attorney does not seem to be aware of the requirement.

5) Mr. Pickett has created a public health problem per his violation of the BLC which states that lots for homes requiring On-Site Water Treatment Systems (OWTS), i.e. septic fields, be at least 2.5 acres in size and contain a minimum of two available sites for septic fields. There are now 3 septic fields on 4 acres, all 3 of which are adjacent to my western property line and all 3 of which, because of the soils in this neighborhood, will likely need to eventually be doubled in size. He has created other 1.3 acre lots in Black Forest Park which utilize OWTS, perpetrating the public health issue on other sites in the neighborhood.

6) The ¾ acre and 1.3 acre lots Mr. Pickett created through his merger actions violates the 1972 standards for Rural Density, which calls for a 2.5 acre minimum in an RR-5. Per the BLC, even the 2.5 acre size requires BOA approval in an RR-5. This creation of urban density in turn impacts the county's requirements for road construction and maintenance and other considerations, of which the County Attorney seems unaware.

7) Mr. Pickett employed "Merger by Contiguity" but a merger does not guarantee the parcel is "buildable." This fact is stated right on the "Merger by Contiguity" form, to which Mr. Pickett legally affixed his signature on three separate occasions. For the many reasons listed above, 1.3 acres is not a buildable lot in RR-5, yet Mr. Pickett and the COA equate the merger with the ability to build and the county erroneously issued him the necessary permits.

8) Mr. Pickett has created a public safety problem by building at urban density at the end of a private, unpaved, narrow, dead-end road where emergency vehicles, particularly fire trucks and tenders, do not have room to turn around and where there are no fire hydrants, cisterns or dry hydrants. This endangers first responders, as well as the other residents of the community. I consulted Chief Burns of the Wescott Fire District regarding this situation. He is well aware of the conditions in Black Forest Park and concurs that this sort of density on these narrow, private, unpaved roads is dangerous.

Mr. Pickett's motivation is greed. He has no regard for the sanctity, safety, or health of the people in Black Forest Park. He knew perfectly well he would require a variance, but wanted to avoid that process. So, he thought he had found a way around it, engaging in no diplomacy with neighbors, hoping he wouldn't be caught, and counting upon topcover from his allies within the county government, who have, knowingly or unknowingly, abetted his illegal actions.

I am coming to you to ask that you hold him accountable, not just for me, but especially because he has committed these same violations elsewhere within Black Forest Park, and has sold several homes built on illegally subdivided properties to several unwitting purchasers within Black Forest Park, and affecting the property values and solitude of the law-abiding property owners of the subdivision. I am well aware that you have many remedies available to you, to include that you require him to bring the properties into conformity, even if that means removing structures, and vacating land and home sales. Fines and jail time are also legal options per state statute.

If you put any stock at all in the county's Building and Land Code, this case is airtight. However, if you have any questions, I look forward to answering them during our meeting on December 9<sup>th</sup>, 2020.

With respect,

Edith A. Disler