

MONSON, CUMMINS, SHOHEI & FARR, LLC

ATTORNEYS AT LAW

CHRIS D. CUMMINS*
DAVID M. SHOHEI
RYAN W. FARR
W. JAMES TILTON
PAUL J. RAYMOND^Δ
SEDONA E. CHAVEZ

TELEPHONE: (719) 471-1212
FAX: (719) 471-1234
www.cowaterlaw.com
cdc@cowaterlaw.com

Of Counsel: STEVEN T. MONSON

** Also licensed in Wyoming*
Δ Also licensed in New Mexico

November 14, 2024

To: El Paso County Board of Adjustment

RE: Request Number BOA244: 1410 Trumpeters Court request for setback relief; Comments of Neighbors Jeff and Stacie Werschky in Opposition

Board of Adjustment Members:

Our firm represents Jeff and Stacie Werschky. We provide this letter in opposition to the variance request made by Mark and Jerri Grissom at 1410 Trumpeters Court, seeking an approximately 40% variance in the side setback for construction of an additional 2-car detached garage. The Werschkys' home and property are directly adjacent to the setback for which the Grissoms seek a variance, they would be adversely affected thereby, and for the reasons set forth below, this variance request must be denied.

Land Development Code Requirements.

The El Paso County Land Development Code ("LDC") Section 5.5.2(B)(2) specifically authorizes the Board of Adjustment to grant variances, but only upon satisfaction of specifically set forth conditions. To wit, 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, or

13511 NORTHGATE ESTATES DRIVE
SUITE 250
COLORADO SPRINGS, COLORADO
80921



211 EAST MAIN STREET
SUITE 1
OAK CREEK, COLORADO 80467

(2) the exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.

The Board of Adjustment may further approve a variance 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;

- The variance provides only reasonably brief, temporary relief; or
- 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
- Some other unique or equitable consideration compels that strict compliance not be required.

The Grissoms' variance request fails to meet the standards set forth above. As clearly set forth County Staff Report, the Grissoms' property has no exceptional dimensional characteristics, nor any exceptional topographic or other exceptional situations, at least not which are not of their own making. The Staff Report further clearly acknowledges that the variance sought is of a permanent nature, not the "reasonably brief" or temporary nature required by the LDC, and that the variance sought contains no material mitigation efforts, nor alternative locations. All such alternative locations have been discounted or eliminated by the Grissoms based upon the Grissoms' own preferences, not upon actual feasibility, and regardless in the absence of any exceptional circumstance. The Staff Report seemingly suggests that existing grading and relief from the existing setbacks, established for cause in the PUD governing the subject property, somehow represent sufficient "equitable considerations", despite the Grissoms failure to meet all other conditions of Section 5.5.2(b)(2) of the LDC. The Werschkys respectfully disagree, and assert that there are no equitable considerations supporting the necessity of the variance, rather the equities favor the Werschkys. Regardless, as acknowledged by County Staff, the Grissoms' variance request fails to meet at least four of the five requirements set forth in Section 5.5.2(B)(2) of the LDC. The variance request must therefore be denied.

The Grissoms' proposed location for their detached garage is not, contrary to the Grissoms' representation, the only feasible location on the Grissom's property where the proposed structure could be located. Rather, it is the Grissoms' *preferred* location which, due to the selected location of the Grissoms' existing home, would simply be more convenient for the applicant, and less intrusive upon the applicant's views and enjoyment of their property. See, **Exhibit A**, attached, which is also page 12 of the Staff Report, where Mr. Grissom acknowledges "[t]he aesthetics of a detached 2 car garage in the front yard of the home and blocking much of the home from street view are unacceptable to us". There are multiple other locations on the applicant's property where the structure could be built, none of which present "peculiar or exceptional practical difficulties" nor "undue hardship" upon the applicant. See, attached **Exhibit B**, examples. Such alternate locations, while "unacceptable" to the Grissoms, are largely within the various setbacks provided in the PUD, and technically feasible to construct – the assertions in the variance application that the front yard of the Grissoms' property lies 6.4 to 8.4 feet below the driveway (see **Exhibit A**) may be suspect. See, attached **Exhibit C** (photographs of elevations in front of the Grissoms' home). The Grissoms, however, notwithstanding the impacts to the Werschkys' use and enjoyment of their property, wish to avoid construction of the detached

garage in any location where it would be viewable from the windows of *their* residence or affect *their* aesthetics. See, **Exhibit A**. Instead, the applicant desires to construct the structure directly outside the windows of the Werschkys' home. The Grissoms, as the builders of their home, selected the design and location for the construction of the house on the Grissoms' property, and any alleged hardship now resulting therefrom is simply a hardship of their own making. As acknowledged by Staff, there are no unique or extraordinary factors that require such location and the variance it would require, and the equities in this instance support the Werschkys, not the Grissoms.

Further, under Section 5.5.2(B)(3), the granting of this request by the Board of Adjustment may be prohibited by the LDC: "*The Board of Adjustment shall not take any action which would result in any of the following: ... Substantial modification to any PUD or Special Use allowed or approved by the BoCC*". In granting this variance, the Board of Adjustment would be diminishing the BoCC-approved PUD setback by nearly 40%. Such a significant modification to a BoCC-approved setback would, without question, constitute a "substantial" modification of the PUD and is thereby a prohibited Board of Adjustment action. While the Grissoms, and to a lesser extent County Staff, imply that the PUD-imposed setbacks are somewhat arbitrary and inconsistent with the 2.5-acre lots within the Hilltop Pines community and other R5 or R2.5 zoned properties, the Werschkys through counsel have conferred with the planning consultants responsible for the subdivision design platted by the PUD, NES, Inc. NES advises that the varying setbacks platted were specifically customized, lot by lot, to protect trees and provide the privacy desired by the developer between lots. Such a substantial deviation from the PUD-platted setbacks, setbacks relied upon by the Werschkys in electing to purchase their home in Hilltop Pines, is beyond the authority of the Board of Adjustments, and for this reason alone, the variance request cannot be approved.

Equities.

Were the other requirements of the LDC actually met by the Grissoms' variance request, the Board of Adjustment would be tasked with examining equitable considerations in support of, or in opposition to, the requested variance. Equities in this case likewise require that the request be denied. The Grissoms proposed location represents a hardship they have brought upon themselves and one for which they have other, more equitable solutions. The Grissoms chose the design of their home, chose to build that home as close as they could to the existing setbacks, and now choose to not build their detached garage on the other portions of their property not requiring a setback variance. Nothing prevents the Grissoms from building the proposed garage elsewhere on the Grissoms' lot, nothing but the Grissoms' own preferences. But the Grissoms have, instead, opted to foist the burdens of their proposed garage onto their neighbors. Should the detached garage be constructed in the location proposed, it will result in diminished views from multiple rooms of the Werschkys' home, as well as from the outdoor living areas which the Werschkys have lovingly invested untold amounts of time and resources to construct. The proposed location will diminish the large-lot feel of the Werschkys' home, bringing their neighbors structures greater than 50 feet closer than at present, and nearly 40 feet closer than the PUD setbacks upon which the Werschkys relied in purchasing their property would allow.

Mitigation Conditions.

Should the Board of Adjustment elect, despite the material defects of the Grissoms' variance request described herein, to approve such request, both the LDC and a balance of the equities demand that further mitigation be required as a condition of any such approval, to at least partially insulate the Werschkys from the adverse effects such a variance would create.

Specifically, should the Board of Adjustment approve the Grissoms' requested variance, the Werschkys expressly request an additional condition be added to such approval requiring the Grissoms, at their sole cost and expense, to cause a minimum of 10 mature coniferous trees, of a type and species to provide effective screening of the detached garage (i.e. spruce or similar) be planted, maintained, and as necessary in perpetuity, replaced, so as to reduce the visibility of the Grissoms' detached garage from all indoor and outdoor living spaces on the Werschky property. Such mitigation should be the absolute minimum required.

Conclusion.

The Board of Adjustment must not approve the Grissoms' variance request. Not only does the El Paso County LDC prohibit the Board of Adjustment from approving the variance request as a substantial deviation from the BoCC-approved PUD, and not only does the Grissoms' variance application fail to satisfy at least four of the five requirements for such an application under the LDC, but further the equities demand that the request be denied. At the very least, should the Board of Adjustment somehow deem the Grissoms' application satisfactory, and approval must be conditioned upon the Grissoms' mitigation of the impacts to the Werschkys' use and enjoyment of their property, through substantial vegetative screening and other appropriate methods. We respectfully request that the Board of Adjustment duly consider these arguments and deny the Grissoms' variance request. The Werschkys expressly reserve all rights of reconsideration and appeal should the Board of Adjustment elect to approve the Grissoms' variance request.

Sincerely,

MONSON, CUMMINS, SHOHET
& FARR, LLC

/s/ Chris D. Cummins and
Paul J. Raymond

Encl.

"Behind" house on west side:

- This location blocks Werschky's and Pepper's views of trees and houses to the east. Whereas the proposed location is completely within Werschky's view of west side of existing garage and house (in other words, the proposed location blocks nothing east of house) and is not a factor for Peppers. (See "Properties/Sight Lines.doc" drawing).
- Requires additional 40' of asphalt to extend the driveway and 4' of fill dirt the entire length.
- 18 more trees would be removed.
- Harder to access than our desired location.
- Input from builder: "All of those are definitely less than ideal and not really options in my opinion."

East side:

- Totally blocks the two windows of the two bedrooms on the east side.
- 11.8' drop from front of house to entry of garage; much harder to access.
- 5.8' drop from east side of house, only 33' between septic drain access near house and septic tank access. Not enough room for garage.
- Front of garage would be over 90' from existing garage; this is unacceptable as the purpose of the proposed garage is reasonable access to tools and equipment in the garage.
- Any location on the east side of existing home would require a new driveway from the street and would block drainage from rear of house to street (See "Elevations/Slopes document). Lastly, the aesthetics of a garage in front of our home and over 90' from the existing garage is unacceptable to us.
- Input from builder: "All of those are definitely less than ideal and not really options in my opinion."

Front of house east of driveway:

- The front yard is 8.4' below the front of the house; this location would require excessive fill dirt for entirety of 688 sq. ft. of footprint of garage.
- Blocks 1/3 to 1/2 of front of house from street view.
- Nearer to driveway: The front yard is 6.4' below driveway; this location would require excessive fill dirt and would block a third of front of house from street view. See "Elevations/Slopes.pdf".
- Given the PUD 50' setback from Trumpeters Ct., the NW corner of the garage would be 2' from the corner of the existing garage and block view of the existing home.
- With a 10' variance from PUD 50' setback from Trumpeters Ct., NW corner of garage would still be 12' from corner of existing garage and block view of the existing home.
- The aesthetics of a detached 2 car garage in the front yard of the home and blocking much of the home from street view are unacceptable to us.

- Input from builder: “All of those are definitely less than ideal and not really options in my opinion.”



LOT 21

LOT 29
2.557 AC.

Drainage
Symbol

PROPOSED
GARAGE
(688 SF)

EXISTING RESIDENCE

Leach
Field
70'X30'

LOT 20

17°02' W 155.82'

16°00'00" E 213.97'

S 64°45'00" W 138.20'

160.2' to
property line

62' to
property line

62' VARIANCE SETBACK

100' SETBACK

50' SETBACK

129.9' to
property line

17°05'40" E 319.48'

28.0' 16'
10.97'

ASPH DRIVE

Alternate
Proposed
Location 3

Alternate
Proposed
Location 2

Alternate
Proposed
Location 1

TRUMPETERS COURT
(60' R.O.W.)

10' PUBLIC UTIL & DRNG ESMT
L=233.57' Δ=25°14'59" R=530.00'

DATE: 10/03/23
REVISED 2 DATE: 7/23/24

1410 TRUMPETERS COURT
MONUMENT, COLORADO
LEGAL DESCRIPTION: LOT 29
HILLTOP PINES FILING NO. 1
EL PASO COUNTY, CO
SCHEDULE NO. 6109006010

LOT AREA:
2.557 ACRES
TOTAL FOOT
PRINT: 4819 SF
COVERAGE:
4.3%

GRISSOM RESIDENCE

POLAR
1902
COLL
(719)44





From: [Michael Turner](#)
To: [Chris Cummins](#)
Cc: [Paul Raymond](#)
Subject: 1360 TRUMPETERS CT
Date: Thursday, September 5, 2024 11:26:20 PM
Attachments: [Outlook-10yrd0mf.png](#)

Good evening Chris and Paul!

I visited 1360 Trumpeters Court in person this week to view the outdoor living space of the subject property, lot lines, set backs and distance of the proposed neighboring outbuilding build site. To provide some additional background of my professional experience I specialize in selling acreage and homes on acreage in north El Paso County. I have been the #1 real estate broker in Black Forest for the last 9 years, the #1 luxury broker in north El Paso County for the last 2 years and the #1 broker in north El Paso County acreage properties for the past 5 years. I am a 6th generation Black Forest resident. I am with the top luxury real estate firm in the State of Colorado and I hold an Employing Broker Real Estate License.

Developers create covenants and set back requirements to ensure future home values, protect the overall look of the community, ensure construction standards for all property owners in the development. Property purchasers rely and put their faith on a strong homeowner's association to ensure that the guidelines of the covenants and set back requirements are followed so that their property values are not diminished. Buyers that purchase in acreage communities do so in order to achieve privacy and space between homes. The Werschky family has a gorgeous outdoor entertaining space and it is apparent that they have invested a significant amount of money to create this amazing deck, waterfall, pond and fireplace entertaining area. At my visit to the Werschky's residence I noted the neighboring home (1410 Trumpeters Court) is built close to the lot line and had an area roped off over the set back requirements set forth by the covenants. I was told this roped off area is the potential site for the proposed detached garage for 1410 Trumpeters Court. This location is very visible at the Werschky's residence from the primary bedroom suite, great room, deck, pond and fireplace. If this proposed outbuilding was allowed to be built it would diminish the desirability and marketability of the Werschky's property and ultimately diminish their market value. The build location of this detached building would undermine the large investment made in the Werschky's outdoor entertaining space and devalue it. The proposed building location could reduce the desirability of the Werschky's home in a future sale to a new buyer. Allowing the proposed building to be built that close to the lot line encroaches on the Werschky's acreage and would make their lot seem smaller in size as a future buyer would not expect to see a neighboring building built that close to a lot line.

Please let me know if I can be of assistance.

Thank You!

Michael Turner | Broker Associate
LIV Sotheby's International Realty
michael@homesbyturner.com
Mobile 719.434.0199
www.homesbyturner.com
www.livsothebysrealty.com

**#1 Ranked Realtor for number of sold properties in Black Forest 2015-2024 ytd based on
MLS sales**

My family has lived in Black Forest since 1878, I am a 6th generation resident



This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>
