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COLORADO

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

February 11, 2022
ATTN: Briana Dodson

RE: Administrative Determination for 19725 Draco Drive

File: ADM-21-060
Parcel ID: 71030-06-002

Dear Ms. Dodson:

A request has been made for an interpretation regarding the above referenced parcel to confirm that the structures located on the property are considered nonconforming 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."

The property was legally platted on November 23, 1956 as Tract 33 of the Colorado Estates Subdivision No. 1 (Plat No. 1618). The legal description and acreage of the parcel has remained unchanged since the creation date; therefore, the parcel is considered a legal lot.

Compliance with Zoning Regulations:

The property was zoned A-5 (Farming) on January 4, 1955, when zoning was first initiated for this portion of the County (Reception #946669). In 1991, due to changes in the nomenclature of the Code, the A-5 zoning district was renamed as RR-3 (Rural Residential) and renamed again in 2007 to RR-5 (Residential Rural). At the time of the lot creation, the property was zoned A-5, which had a minimum lot size of five (5) acres. The subject property has a lot size of 4.97 acres

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according to the assessor's data, however, the plat states that all tracts are five (5) acres or more in area. The size of the lot does meet the minimum lot size in the current zoning district.

Analysis of Nonconforming Lot:

Section 1.15 of the Code defines a "Nonconforming Lot" 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 lot was legally created prior to the adoption of the modern subdivision regulations. However, at the time of lot creation, the lot did not meet the minimum lot size requirement. Therefore, the lot size cannot be considered nonconforming.

Analysis of Nonconforming Structure:

Section 1.15 of the Code defines a "Structure, Nonconforming" as:

"Any legally existing structure which does not conform to the "location and bulk" regulations of this Code, either at the effective date of this Code or as a result of subsequent amendments which may be incorporated into this Code."

In order to be considered a nonconforming structure, the structure on this property would either need to have been constructed prior to the establishment of zoning or complied with the applicable regulations at the time of construction.

The structure on the property in question is an existing residential structure which was built in 1972. According to a site plan provided by the owner, the existing residential structure is located approximately 5.5 feet from the east property line. In 1972, when the structure was constructed, the side setback requirement within the A-5 zoning district was 25 feet. The structure encroaches 19.5 feet into the required side setback. Because the structure did not meet the setback requirements at the time of construction, it cannot be considered a nonconforming structure. In addition, there are no records of an approved dimensional variance legalizing the setback encroachment.

Discussion and Conclusion:

The structure cannot be considered nonconforming and, therefore, the setback encroachment is considered illegal. A request for dimensional variances before the Board of Adjustment (BOA) will be required to legalize the setback encroachment. No building permits may be authorized until the property is brought into compliance.

Any proposed 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 Kylie Bagley, Planner II, at (719) 520-6323 or kyliebagley@elpasoco.com.

Sincerely,

A handwritten signature in black ink that reads "Craig Dossey". The signature is written in a cursive, flowing style with a large initial "C" and a prominent "D".

Craig Dossey
Executive Director
El Paso County Planning and Community Development Department