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EL PASO COUNTY BOARD OF ADJUSTMENT

MEETING RESULTS (UNOFFICIAL RESULTS)

Board of Adjustment (BOA) Meeting
Wednesday, April 26, 2023
El Paso County Planning and Community Development
2880 International Circle – Second Floor Hearing Room
Colorado Springs, Colorado

REGULAR HEARING, 9:00 A.M.

BOA MEMBERS PRESENT AND VOTING: KEVIN CURRY, SEAN LANGLAIS, AND FRANK TANK.

BOA MEMBERS VIRTUAL AND VOTING: RANDY MCSPARREN AND KEITH WOOD.

BOA MEMBERS PRESENT AND NOT VOTING: JOSEPH REXROAD.

BOA MEMBERS ABSENT: GARY WEBER, RUSSELL MORTON, AND STEPHEN CLEMENT.

STAFF PRESENT: JUSTIN KILGORE, ED SCHOENHEIT, CHARLENE DURHAM, RYAN HOWSER, ASHLYN MATHY, MIRANDA BENSON, AND EL PASO COUNTY ATTORNEY STEVE KLAFFKY.

OTHERS SPEAKING AT THE HEARING: NONE.

- 1. Pledge of Allegiance**
- 2. Report Items** – Planning and Community Development – Justin Kilgore

The next scheduled BOA meeting is May 24th, 2023.

- 3. Designation of Officers**

BOA ACTION: MR. CURRY MOVED / MR. LANGLAIS SECONDED FOR CONTINUANCE OF ITEM 3, THE DESIGNATION OF OFFICERS, UNTIL THE NEXT REGULAR SCHEDULED MEETING OF THE BOARD OF ADJUSTMENT. THE MOTION PASSED (5-0).

4. **Adoption of Minutes** from Regular Meeting held on March 22nd, 2023.

BOA ACTION: THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT (5-0).

5. **Call for public input for items not on hearing agenda.**

6. **BOA2215**

MATHY

**DIMENSIONAL VARIANCE
6145 VESSEY ROAD, GARAGE SHOP ADDITION**

A request by Vincent Pirrone for approval of a dimensional variance to allow:

1. A lot size of 0.49 acres where a minimum lot size of 5 acres is required;
2. A lot width of 165 feet where a minimum lot width of 200 feet is required;
3. A side setback for the garage of 5 feet where a minimum setback of 25 feet is required; and
4. A side and rear setback of 5 feet where a minimum setback of 25 feet is required.

The 0.49-acre, RR-5 zoned property is located on Vessey Road roughly a third of a mile east from Holmes Road. (Parcel No. 5206000051) (Commissioner District No. 1).

STAFF PRESENTATION & APPLICANT PRESENTATION

Mr. Tank asked if it was correct that Ms. Nijkamp stated the applicant could access the property from the west if the current secondary access were closed.

Ms. Mathy answered that Ms. Nijkamp stated the applicant could keep the existing secondary access at this time because there aren't many daily trips along this road. If it must be closed in the future, the applicant would need to discuss alternative access options.

Mr. Tank asked if the applicant could access the proposed structure if the secondary were to be closed in the future.

Mr. Pirrone answered that he might not be able to drive to it, but he could walk to it. The existing secondary access is also the only way they can access their leach field for maintenance. He stated they only use that access point for housework.

Mr. Langlais asked what the neighbors had to say about the proposal.

Mr. Pirrone stated everyone was fine with it. He stated he spoke with Bob to the west, Paul to the east, and Randy behind his property. He also stated he met with the three neighbors across the street from him and everyone was ok with the proposal.

Mr. Rexroad asked if Mr. Pirrone had drawn up any of the alternative options.

Mr. Pirrone stated no alternatives gave him enough distance from the leach field, from the front setbacks, or without cutting down trees. The least adverse option would be to use the back corner of the property which is already clear.

Mr. Rexroad stated that the applicant has alternative options even if they require cutting down trees or moving an existing structure.

Mr. Pirrone reiterated that he doesn't want to cut any of the existing trees on his lot when Black Forest has been losing enough trees already. He stated there are only about 20 trees on his lot. He already worries about losing his trees from beetle-kill.

Mr. Rexroad asked the applicant if he had considered not having such a large shed since his lot is small.

Mr. Pirrone answered that the proposed structure is the requested size so that it can accommodate what he intends to do within it.

Mr. Rexroad asked if the proposed shop would have a permanent foundation.

Mr. Pirrone stated it might. He is going back and forth between options.

Mr. Rexroad stated the proposed structure is large enough to require some type of foundation. He wonders if there will be structural difficulties in that marshy back area.

Mr. Pirrone replied that he had someone look at the area and there shouldn't be an issue. Also, the proposed structure would be about 30 feet from the marshland.

Mr. Curry asked if Mr. Pirrone had considered expanding his existing shed instead of constructing a new building.

Mr. Pirrone answered that he needs 1200 square feet of space, which would still cause limitations around his existing shed. He is considering removing the shed after the new structure is built because he shouldn't need it anymore.

NO PUBLIC COMMENTS & NO FURTHER DISCUSSION

BOA ACTION: LANGLAIS MOVED / TANK SECONDED FOR APPROVAL OF ITEM NO. 6, BOA-22-015, FOR THE DIMENSIONAL VARIANCE, 6145 VESSEY ROAD GARAGE SHOP ADDITION, UTILIZING RESOLUTION NO. 3 WITH THREE (3) CONDITIONS AND TWO (2) NOTATIONS, CITING THAT A UNIQUE OR EQUITABLE CONSIDERATION COMPELS THAT STRICT COMPLIANCE NOT BE REQUIRED; NAMELY, THE SIZE OF THE PARCEL IN RR-5 ZONING AND THE CONSIDERATION OF THE LEACH FIELD AND THE EXISTING WELL. THE MOTION PASSED (5-0).

7. BOA231

MATHY

DIMENSIONAL VARIANCE 13830 OVERLOOK PLACE BOA

A request by LGA Studios for approval of a dimensional variance to allow a side setback for a garage of 1.4 feet where 25 feet is required. The 5.48-acre property is zoned RR-5 (Residential

Rural) and is located at the intersection of Overlook Place and Old North Gate Rd, El Paso County, Colorado. (Parcel No. 6205006003) (Commissioner District No. 1).

STAFF PRESENTATION & APPLICANT PRESENTATION

Mr. Curry noticed that it appears the structure is over the property line in the aerial image.

Ms. Mathy commented that the GIS imaging sometimes looks off, but the structure is 1.4 feet within the property line. The presentation continued.

Mr. Wood (online) asked if there was a previously approved variance for the garage that burned down. If so, do they really need another approval to rebuild the structure if a variance was already in place?

Ms. Mathy indicated that the original building's placement was done in 1992 and may have been an oversight. The requirement was that it meet a 25-foot setback. Any new building must either meet that standard or receive a variance.

Mr. Rexroad asked for more information regarding the easement Ms. Urish (owner) mentioned during her presentation.

Ms. Urish explained that the neighbor, Jack Armstrong, gave her a written document that had been notarized that allows her to be on his land if she needs to work around the existing garage. The neighbor is aware of the garage location.

Mr. Rexroad complimented Ms. Urish's presentation. He stated that he investigated alternative options. He mentioned that they could build the garage in another area and reroute their driveway.

Ms. Urish answered that beyond the economic reasons, they would like to use the existing concrete slab so they don't excavate more of their property or change the drainage.

Mr. Tank disclosed that his kids go to Discovery Canyon Campus School (immediately to the south of this property), so he is a neighbor but he does not know Ms. Urish personally.

Mr. Curry asked Mr. Tank if he could vote objectively on this project. He also asked the other board members if they had objections to Mr. Tank's participation. They did not.

Mr. Tank stated he would be unbiased.

Mr. Curry thanked the applicant for her evaluation of alternatives and review of the criteria.

NO PUBLIC COMMENT

DISCUSSION

Mr. Langlais stated he could see no issue with this request and believes it should be approved.

Mr. McSparren agreed and added that their proposal seems like a “no-brainer” to replace the garage where it previously existed, especially considering the ADA needs.

Mr. Curry agreed.

BOA ACTION: LANGLAIS MOVED / TANK SECONDED FOR APPROVAL OF ITEM NO. 7, BOA-23-001, FOR THE DIMENSIONAL VARIANCE, 13830 OVERLOOK PLACE BOA, UTILIZING RESOLUTION NO. 3 WITH TWO (2) CONDITIONS AND TWO (2) NOTATIONS, CITING THAT A UNIQUE OR EQUITABLE CONSIDERATION COMPELS THAT STRICT COMPLIANCE NOT BE REQUIRED; NAMELY, THE PREVIOUSLY EXISTING GARAGE IN THAT LOCATION HAVING BEEN BURNED DOWN AND THE ADA NEEDS OF THE FAMILY. THE MOTION PASSED (5-0).

8. BOA227

HOWSER

DIMENSIONAL VARIANCE HILL SUBDIVISION

A request by M.V.E., Inc., for approval of a dimensional variance to allow a 1.78-acre parcel where 5 acres is required. The property is currently platted as a tract, which is not eligible for building permits, and the size and geometry of the property is the result of a property acquisition by El Paso County for the future realignment of Black Forest Road. The property is zoned RR-5 (Residential Rural) and is located on the east side of Black Forest Road, approximately one-quarter (1/4) of a mile south of Hodgen Road. If the request for a dimensional variance is approved, the applicant intends to replat the property as a Lot, which may be eligible for building permits. (Parcel No. 51290-09-002) (Commissioner District 1).

STAFF PRESENTATION & APPLICANT PRESENTATION

Mr. Curry reiterated the authority of the BOA is to grant dimensional variance, nothing regarding land-use. The only request the BOA may consider for this project is whether or not to allow a 1.78-acre parcel in the RR-5 zoning district. Subsequent use is considered by another board. The presentation continued.

Mr. Curry asked if the applicant initiated the subdivision and platting of their lot in 2006.

Mr. Howser answered that it's not clear. He did find that the property owner requested a subdivision of their property and at some point, in that review process, the County told the applicant they needed to dedicate land for right-of-way as a requirement for that approval.

Mr. Curry asked if the applicant had agreed to that condition. Was there an agreement at the time that the applicant was to dedicate the land as a tract? Was the applicant okay with it being a tract before and now they want it to be a lot or was this something they didn't agree to that was part of the process?

Mr. Howser answered that he was not able to find a specific agreement in his research. He looked at the plat notes and the conditions of approval but only found that Tract A was to be owned and maintained by the owner of Lot 1. He couldn't find anything else in the staff comments, staff reviews, or other documentation on file to explain why this land was designated as a tract as opposed to a lot that doesn't meet size requirements or remains unplatted for future determination. If he could speculate, he thinks it was designated as a tract because it didn't meet the 5-acre minimum.

Mr. Curry clarified that there was no evidence found in any of the research that would specifically designate that this land should remain as a tract for any particular reason.

Mr. Howser stated that was correct.

Mr. Rexroad asked for an explanation regarding the Letter of Intent's mention that the applicant was not compensated for the loss of that land at right-of-way dedication.

Mr. Howser deferred to the County Attorney or applicant to explain. He thinks that question is relevant to Mr. Curry's inquiry as to whether there was an agreement in place or not.

Mr. Klaffky was not a member of staff at the time the approved subdivision took place but commented that a dedication through a plat is not a "taking" of land so there would not be a just compensation issue. Even if there were, this was done in 2006. If the applicant thought they were wronged at that time, they would have had the opportunity back then to challenge the process. That was not done. He does not believe compensation was owed.

Mr. Wood asked if the owner from 2006 is the same as the current owner.

Mr. Howser stated the owner has changed.

Mr. Curry clarified that the subdivision of this lot was in place when the current owners bought the land and they knew this area was designated as a tract.

Mr. Gorman, with M.V.E. Inc, stated that is correct.

Mr. Rexroad asked for clarification of Mr. Gorman's comment that they are going to request Lot 1 be split into 5-acre lots.

Mr. Gorman explained that is the future intent for Lot 1, not part of the request today. The current request for the BOA regarding Tract A shows the hardship and exceptional situation that needs to be addressed. The presentation continued.

NO PUBLIC COMMENT

DISCUSSION

Mr. Langlais asked Mr. Howser how the process works going forward. If the BOA approves this 1.78-acre lot in RR-5, and it is then sold, how is the next owner affected?

Mr. Howser stated that if dimensional variance is approved, the owner would then be allowed to request replatting of the tract into a lot. Approval of this request would permit that future request. If the current owner were to sell the tract after dimensional variance approval, the future owner would still need to go through the platting process.

Mr. Langlais clarified that the parcel would maintain its zoning of RR-5 if granted approval of the dimensional variance.

Mr. Howser stated that is correct. He added it would legalize the non-conforming lot size.

Mr. Curry clarified that there isn't a limitation on the size of a tract, but the applicant can't get this replatted as a lot because the size is too small.

Mr. Rexroad asked Mr. Klaffky what will happen when the current land of Black Forest Road is vacated (after the redirected Black Forest Road is complete). Will the adjacent landowners receive that land?

Mr. Klaffky explained that there is a process to follow when the County seeks to vacate right-of-way. It will be heard by the Board of County Commissioners. Typically, the adjoining neighbors will each get half of that vacated land. Potentially, the owner of this tract would benefit from that process. He reiterated that the request being considered by the BOA today is for dimensional relief from the size requirements of the RR-5 zoning district only. The parcel would maintain its RR-5 zoning. The applicant believes they will be able to meet all other setback requirements of that zone. This request will legalize the size of the parcel so they can go through the platting process, which designates the parcel as a lot instead of a tract which is a prerequisite for future building permits.

Mr. Curry stated he is not in favor of approving this request. He stated the applicants purchased the property knowing about the tract and the right-of-way. He doesn't see any new hardship or anything that precludes them from the property. They were aware of the tract when they bought the land. He doesn't see anything that would meet the conditions of hardship. He understands the argument that there will be an inability to use the land once the road goes in, but he wouldn't see that as an equitable consideration now. He stated he might be persuaded to change his mind later, once the road is constructed, but he doesn't see it now. He doesn't think this application meets the criteria of approval.

BOA ACTION: LANGLAIS MOVED / WOOD SECONDED FOR DISAPPROVAL OF ITEM NO. 8, BOA-22-007, FOR THE DIMENSIONAL VARIANCE, HILL SUBDIVISION, UTILIZING RESOLUTION NO. 2, CITING THAT THE OWNERS WERE AWARE OF THE LAND DESIGNATED AS A TRACT AND THERE DOES NOT

SEEM TO BE A PRACTICAL HARDSHIP WITH THE CURRENT LAND-USE. STRICT APPLICATION OF APPLICABLE PROVISIONS OF THE LAND DEVELOPMENT CODE WOULD NOT RESULT IN PECULIAR AND EXCEPTIONAL PRACTICAL DIFFICULTIES TO, OR EXCEPTIONAL AND UNDUE HARDSHIP UPON, THE OWNER OF THE PROPERTY. THE MOTION FOR DISAPPROVAL PASSED (4-1).

IN FAVOR: CURRY, LANGLAIS, MCSPARREN, AND WOOD.

IN OPPOSITION: TANK.

COMMENTS: NONE.

9. BOA232

MATHY

**DIMENSIONAL VARIANCE
BARBARICK TRANSFER STATION - BOA SETBACK**

A request by Kimley Horn Associates for approval of a dimensional variance to allow front and side setbacks (north and west sides of the property) of 35 feet each where 100 feet is required to all adjacent properties for the use of "Waste Disposal and Recycling Facilities" in the I-3 (Heavy Industrial) zoning district per section 5.2.59.E.1.g of the Land Development Code. This request is asking for relief from the specific standards of section 5.2.59.E.1.g, not the dimensional standards which they do meet. The 5.29-acre property is located on Cliff Allen Point roughly one-quarter of a mile south from Vollmer Place and Cliff Allen Point intersection, El Paso County, Colorado. (Parcel No. 5233002013) (Commissioner District No. 2).

STAFF PRESENTATION & APPLICANT PRESENTATION

Mr. Rexroad asked if the detention pond served areas outside of this parcel.

Mr. Schoenheit answered that it serves the subdivision overall. It was platted several decades ago. He stated this is an industrial area that planned for drainage where other industrial areas in the County did not.

Mr. Rexroad asked if the paved area of the subject lot were to be further paved, would the detention area be impacted and need to be expanded?

Mr. Schoenheit answered that the applicant would need to provide an updated drainage layer which showed the detention pond would still have the capacity. It would depend on how they developed the lot. The presentation continued.

Mr. Curry clarified that the applicant is meeting the setback requirements in the I-3 zoning district. Due to the specific use they want to do, there are different standards. The applicant is meeting the distance of 175 feet from the residential area.

Ms. Mathy confirmed that was correct. There is residential to the east and south. She referenced the specific setback requirement within LDC 5.2.59(E)(1)(g) for solid waste structure location. The applicant would be meeting the requirement of the zoning district

which is 175 feet from residential; they are requesting to decrease their setback adjacent to industrial zoning which would increase the overall distance from residential to be 200 feet.

Mr. Tank asked about the range of the neighbor notification.

Ms. Mathy answered that the range has expanded up to 500 feet from the property line.

Mr. Tank asked if residents along Sprague Way or White Fish Way had been notified.

Ms. Mathy answered that notices were sent to properties on those streets.

Mr. Rexroad referenced LDC 5.2.59(E)(1)(g) *"All structures where solid wastes are dumped or stored or areas where containerized solid wastes are stored shall be setback at least 100 feet from all property lines, and the facility site shall be fenced, landscaped, or otherwise buffered so as to minimize impacts on neighboring property. Where deemed appropriate, setback requirements may be varied."* He stated that his interpretation is that the LDC is referring to the property that contains the special use, the lease line. He thinks surrounding property would mean the area surrounding the leased boundary, so the mechanic shop would be a separate property.

Ms. Mathy clarified that this is one property. The mechanic shop is not on a separate property.

Mr. Rexroad stated that this section of the LDC is talking about a special use, which is only within the lease line. The mechanic shop on this same property is a different type of use, which is an allowed use in the I-3 zoning type. His question is whether the 100-foot separation apply to the lease line or the total property.

Mr. Kilgore clarified that the special use approval follows the legal description. The lease line would not matter.

Mr. Rexroad asked if the mechanic shop were to change ownership sometime in the future and it becomes a food processing plant, which is an allowed use in I-3, is having a food processing facility 47 feet from a solid waste dumping facility going to be allowed? He thinks the intention of the 100-foot setback was to protect between uses that are incompatible. He asked if his explanation changed the interpretation.

Mr. Kilgore stated that it did not change the interpretation. Those details may be addressed in the special use approval.

Mr. Curry clarified that Mr. Rexroad's question is if the setbacks apply to the property line or the lease line. He asked if this is one property being leased to 4 different tenants.

Ms. Mathy answered that there are two tenants. She showed an image of the lot and clarified the requested setbacks versus the current setback requirements with Mr. Curry.

Mr. Rexroad requested further clarification regarding the language, “all structures where solid wastes are dumped or stored”. He referenced a printed image of the proposed site plan. He stated the dimensions are taken from the proposed enclosed building (shaded in gray). He doesn’t know what is happening in what is labeled as proposed waste removal access, but that seems to be an integral part of the structure. He asked if the setbacks should also apply to that portion of the structure.

Ms. Mathy explained that the area shaded in gray is the part of the structure closest to the property lines and is where they are requesting a 35-foot setback.

Mr. Rexroad clarified that the eastern portion of that facility, the area labeled proposed waste removal access, should still be required to meet the setback requirements from the residential area.

Ms. Mathy replied that the total area would exceed the required distance from residential.

Mr. Wood asked about the letters of opposition from the residential neighbors.

Ms. Mathy explained that the letters were about the setback adjacent to the residential area, but she reminded the board that the distance from residential is going to increase.

Mr. Wood asked if responses were received from the industrial neighbors.

Ms. Mathy stated there was not.

Mr. Curry further clarified that in one letter of opposition they were talking about the 100-foot setback, but that would ultimately be greater than 175 feet. The second letter was about the use, but that is not what is being determined by this board.

Ms. Mathy stated that was correct.

Mr. Wood clarified his understanding that the letters are not pertinent to the board’s decision.

Mr. Tank appreciated the point that what is integral to the applicant’s request to gain an exception includes the operation of the facility and the moving trucks. He thinks trucks entering and leaving the area is a good discussion point. This was a portion of the neighbor’s complaints. He understands that it comes with the use, and stated there wouldn’t be a building there without an operating business.

Ms. Mathy added that by moving the structure further northwest, there is more room for vehicles to safely drive on the property.

Mr. Curry asked if the special use request had already been approved.

Mr. Houk, with Kimley-Horn Assoc., answered that it has not been. That is a later application.

Mr. Tank asked Mr. Houk to expand on the number of larger vehicles that will be visiting the site daily versus weekly.

Mr. Houk answered that they anticipate 10 larger, heavy vehicles visiting weekly.

Mr. Rexroad mentioned that the application states no water or sewer would be coming to the facility. He is worried about fire protection.

Mr. Houk answered that would be addressed on the site development side. The current facility uses extinguishers. There is water going to the other existing building.

Mr. Rexroad asked if there would be restrooms for employees.

Mr. Houk stated that would be part of the lease agreement between the tenant and owner of the existing building.

Mr. Curry reiterated those would be issues addressed during the special use process.

Mr. Tank asked to see the image of the landscape buffer and fencing. He asked for the measured distance of the landscaping.

Mr. Houk answered that he thinks it's at least 30 feet. The presentation continued.

Mr. Rexroad asked if they considered the future residential to the south.

Mr. Richard Graham, the property owner, answered that there is a large berm as well as a detention pond to the south. They anticipate residential to move north up to their southern property line. This was considered when making the decision to locate the building north and west. The setback minimum is 100 feet, but they are proposing 192 feet from the residential. The berm and pond will also act as a shield.

NO PUBLIC COMMENT

DISCUSSION

Mr. McSparren advised the board that he lives in the neighborhood directly to the east of the subject property.

Mr. Curry asked Mr. McSparren if he felt he could vote objectively on the dimensional variance. He did. He asked the other board members if they saw his participation as a conflict. They did not.

BOA ACTION: LANGLAIS MOVED / TANK SECONDED FOR APPROVAL OF ITEM NO. 9, BOA-23-002, FOR THE DIMENSIONAL VARIANCE, BARBARICK TRANSFER STATION - BOA SETBACK, UTILIZING RESOLUTION NO. 3 WITH TWO (2) CONDITIONS AND TWO (2) NOTATIONS, CITING THAT A

UNIQUE OR EQUITABLE CONSIDERATION COMPELS THAT STRICT COMPLIANCE NOT BE REQUIRED; NAMELY, THAT THE APPLICANT IS PROPOSING TO MOVE THE BUILDING AND USE FURTHER FROM THE ADJACENT RESIDENTIAL PROPERTY AND CLOSER TO THE ADJACENT INDUSTRIAL PROPERTY. THE MOTION PASSED (5-0).

10. Non-Action Items

Mr. Kilgore presented Mr. Jay Carlson with a certificate of recognition for his years of service on the Board of Adjustment. Mr. Carlson thanked the BOA members he served with as well as the Planning and Community Development Department and the County Attorney's Office.

MEETING ADJOURNED at 11:58 A.M.

Minutes Prepared By: Miranda Benson