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Board of County Commissioners
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BOARD OF ADJUSTMENT

MEETING RESULTS (UNOFFICIAL RESULTS)

(Audio and audio/video copies of the meeting are available at the Office of the Clerk/ Recorder)

Board of Adjustment (BOA) Meeting
Wednesday, March 22nd, 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: STEPHEN CLEMENT, KEVIN CURRY, SEAN LANGLAIS, JOSEPH REXROAD, AND GARY WEBER.

BOA MEMBERS VIRTUAL AND VOTING: KEITH WOOD.

BOA MEMBERS PRESENT AND NOT VOTING: RUSSELL MORTON.

BOA MEMBERS ABSENT: FRANK TANK AND RANDY MCSPARREN.

STAFF PRESENT: JUSTIN KILGORE, CARLOS HERNANDEZ MARTINEZ, RYAN HOWSER, ASHLYN MATHY, LEKISHIA BELLAMY, ELIZABETH NIJKAMP, ED SCHOENHEIT, JOE LETKE, GAYLA BERRY, CRISTEL MADDEN, MIRANDA BENSON, AND EL PASO COUNTY ATTORNEY STEVEN KLAFFKY.

OTHERS SPEAKING AT THE HEARING: NONE.

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

Mr. Kilgore advised the board that PCD would soon be requesting appointments with each member to meet with himself and the new Executive Director of PCD. The next scheduled BOA meeting is Wednesday, April 26th, 2023, which will include an appreciation luncheon.

Mr. Curry requested all board members introduce themselves. This was done. Voting members were established. Hearing procedures were reviewed. He asked Mr. Klaffky if a motion would need to be made regarding officers.

Mr. Klaffky reviewed BOA Bylaws Article IV, Section 1. Officers can be elected from among the four Regular Members only. He also answered that the designation of officers would need a motion, either by slate or individually for each position.

Mr. Rexroad asked for Regular Members of the BOA to be identified.

Mr. Curry answered that Regular Members in attendance are himself and Mr. Wood. The other two Regular Members, absent from this meeting, are Mr. Tank and Mr. McSparren. He asked the board if they would like to elect officers from the 2 Regular Members present or if this item should be tabled until the next meeting?

Mr. Clement moved to table the designation of officers until the next meeting.

Mr. Curry asked Mr. Klaffky if all voting members can vote on officers?

Mr. Klaffky answered that the only restriction on Associate Members voting for officers is that they have served on the board for at least six months.

Mr. Curry clarified that the associate members currently appointed as voting members have served more than six months, so a vote could be made at this hearing. He asked for the other board members opinions.

Mr. Langlais agreed he would like to table the designation.

Mr. Wood agreed.

3. Designation of Officers.

BOA ACTION: CLEMENT MOVED / LANGLAIS SECONDED FOR CONTINUANCE OF ITEM NO. 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 of Regular BOA Meeting held on November 30th, 2022.

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

5. Sunshine Law Statement

Mr. Langlais read the Sunshine Law Statement into the record.

BOA ACTION: LANGLAIS MOVED / CLEMENT SECONDED FOR APPROVAL OF ITEM NO. 5, SUNSHINE LAW. THE MOTION PASSED (5-0).

6. Call for public input for items not on hearing agenda. NONE.

7. 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; and
3. A side setback for the garage and barn 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

Mr. Curry asked if the placement of the proposed structure along with the topography affects the drainage of surrounding properties.

Mr. Hernandez Martinez, EPC Public Works review engineer, answered that he would need to reference the contours to answer that question. He does not currently have that info.

Ms. Nijkamp, EPC Deputy County Engineer and Engineering Review Manager, added that because the proposed structure is so close to the property line, it may affect drainage. She stated it will be the property owner's responsibility to ensure there will be no adverse impacts when constructing.

Mr. Curry asked if the site review process took that into account.

Ms. Nijkamp answered that they do a little bit, but the applicant's letter of intent includes a statement that there shall be no adverse impacts to the adjacent properties. She stated she has been to the subject property. The drainage will go a little offsite but shouldn't create an impact.

Mr. Curry asked if this should be an added condition of approval.

Mr. Klaffky answered that they *could* add the condition, but there is existing regulation to conduct a drainage review whether it be now or at the site plan phase.

Mr. Curry clarified that he wants to make sure there will be no adverse drainage impact on the neighbors. If routine processes will ensure that is the case, then nothing needs to be changed.

Ms. Nijkamp responded that the board could add the condition if they would like, but if the applicant were to create an adverse impact to the adjacent properties, that would be a civil matter. The County would not have a say in that matter.

Mr. Klaffky stated that would be correct without an added condition. If there was a condition added upon the approval of this application and then it was determined that

there were adverse impacts to neighbors, it would then be a code enforcement complaint because it is tied to a land-use approval. Staff Presentation continued.

Mr. Clement asked for clarification on the difference between urban local and urban collector classifications.

Mr. Hernandez Martinez answered that they each have different right-of-way widths which means there will be widening to the road with road improvements.

Mr. Clement asked how much more anticipated traffic would be on that road and how much more urban density is coming to that area.

Mr. Hernandez Martinez asked if Mr. Clement was asking for exact ADT (average daily trips) numbers.

Mr. Clement stated he would like to know an idea of the difference between the two types of road classifications.

Ms. Nijkamp answered that she would be able to provide broad numbers. She thinks local roads have an ADT of approx. 36,000 while a collector road has approx. 230,000 ADT. She added that she agrees with what Mr. Hernandez Martinez stated earlier regarding secondary access. It would be okay to leave that access for now due to the topography changes on this lot. The applicant may have some challenges accessing the proposed garage without secondary access, but it wouldn't be impossible. Currently, the secondary access is in a safe location. If that situation changes later due to the widening of the road, the allowance of secondary access may be reevaluated.

Mr. Clement stated the property is currently zoned RR-5 and is a 0.49-acre lot. He asked if the applicant would have had to request this dimensional variance if they had been in a different zoning district.

Ms. Mathy answered that they would have to be zoned RR-0.5. Even then, they are smaller than the 0.5-acre requirement and would still have been required to seek a dimensional variance for size. With RR-0.5, the setback requirements would change for accessory structures, but they would still have needed a variance.

Mr. Clement commented that when looking at the aerial image, this does not appear to be the only property under the lot size minimums in the area.

Ms. Mathy stated that is correct. The RR-5 zoning type was established in 1969. Many of these lots were created around that time or before. There is a hardship that these lots are trying to meet standards established after they were created. This lot is one of the smaller ones, but there are several small parcels around it.

Mr. Clement stated any of those landowners that are under 5 acres in this area would need to come before the BOA before doing anything on their property.

Ms. Mathy stated that is correct. This applicant was stopped during the building permit phase because their lot is under the minimum size requirement for their zoning district. The same circumstance happens frequently with the R-T zoning district.

Mr. Rexroad asked why no alternatives were proposed. He stated that when he looks at the aerial image, he can see multiple places the proposed structure could have been placed.

Ms. Mathy stated she was not presented with any alternatives. When looking at the aerial image, slope needs to be considered. The topography would require additional grading. Also, building sites cannot be within a certain number of feet from the existing leach field or well.

Mr. Rexroad stated he thinks an attempt could have been made by the applicant. He stated he found 3-4 alternative locations in 90 seconds. He stated the septic tank has a 5-foot requirement and the leach field has a 10-foot requirement. He stated the detached garage being 5 feet from the property line is an issue to him when he thinks the applicant could move structure to be within setbacks elsewhere – even in the front of the lot, replacing the existing 12x16 shed. He asked if those options were evaluated, and if so, why weren't they recommended.

Ms. Mathy stated she would defer to the applicant regarding that topic as no alternatives were presented to the County.

Mr. Curry asked if the addition of the proposed structures would cause the applicant to exceed the maximum 25% lot coverage for the RR-5 zoning district.

Ms. Mathy responded that the applicant's site plan shows lot coverage of 17.32%.

Mr. Curry asked if the proposed structure is allowed to be built 5 feet from the property line, does that limit what a neighbor could build on their own property due to minimum distances between buildings.

Ms. Mathy answered that there is typically a 10-foot utility easement. She pulled up an aerial image of the area. The neighbor to the west's house is not built along the property line. The parcel to the east is vacant. If a neighbor wanted to build something, they would need to meet the 25-foot setbacks of the RR-5 zoning district.

Mr. Curry clarified that if the owners of the vacant parcel to the east wanted to build, and there's a 25-foot setback (assuming they do not get a variance), that would result in the buildings being 30 feet apart from one another. Is that okay?

Ms. Mathy answered that if the neighbor wanted to build closer to the property line, they would be to come before the board.

Ms. Nijkamp added that Mr. Curry's question is a Regional Building Department matter, not part of zoning criteria. She does not know of a requirement to keep buildings apart by any certain amount. She knows of a project with structures only 7 feet apart. There may be

a fire code, but that it outside PCD's realm. For zoning districts with 5-foot setbacks, that would result in houses 10 feet apart.

At this time, it was discovered that the applicant was not present for the meeting.

BOA ACTION: LANGLAIS MOVED / CLEMENT SECONDED FOR CONTINUANCE OF ITEM NO. 7, BOA-22-015, FOR THE DIMENSIONAL VARIANCE FOR 6145 VESSEY ROAD GARAGE SHOP ADDITION, TO A DATE-CERTAIN OF APRIL 26, 2023, DUE TO THE APPLICANT'S ABSENCE. THE MOTION PASSED (5-0).

8. BOA2214

BELLAMY

**DIMENSIONAL VARIANCE
9040 CHIPITA PARK ROAD, CARPORT SETBACK**

A request by Daniel Weller for approval of a dimensional variance to allow:

1. A lot size of 0.75 acres (32,670 square feet), where 5 acres is the minimum lot size within R-T zoning (Residential-Topographic District);
2. A front setback of 5 feet from the property line or outside of the clear zone, whichever is greater, for a carport where a setback of 25 feet is required; and
3. A front setback of 20 feet for an existing single-family dwelling unit where a setback of 25 feet is required.

The property is zoned R-T (Residential-Topographic District) and located on the north side of Chipita Park Road, southeast of the intersection of West Highway 24 and Chipita Park Road. Associated Case Number: (CE22664) (Parcel No. 8315300069) (Commissioner District No. 3).

STAFF PRESENTATION

Mr. Curry reiterated that the BOA is held to the criteria of approval and a resolution will be adopted. Presentation continued.

Mr. Curry referenced a PCD staff document. He asked for clarification. It was mentioned that there are no alternatives. It was presented that the dimensional variance was allowed or the applicant would need to remove the carport. A condition of approval states the carport shall be moved away from the clear zone. These statements conflict.

Ms. Bellamy clarified that there were no alternatives that did not require the applicant appearing before the board. The condition of approval was a compromise with the Public Works' Engineering Department.

Mr. Wood (virtual) added that the applicant's letter of intent seems to suggest they expect to move the carport.

Mr. Curry stated he would wait for clarification from the applicant.

Ms. Bellamy stated the property has topographical challenges.

Mr. Kilgore clarified that the current location of the carport must change. The applicant is at the BOA requesting a variance so they don't need to move it as far as they would have to if

they were to meet setbacks. If the applicant does not receive a variance, it would be very difficult to move the carport elsewhere due to topography. Presentation continued.

Mr. Curry reiterated that it is typical for houses in this area to not have driveway access permits. He pointed out a neighboring property in a photo from the presentation. The neighbor's driveway slopes down. He asked if there was an engineering reason that the applicant couldn't do something similar.

Mr. Hernandez Martinez stated that he is not aware of an engineering reason the applicant couldn't do the same. He showed a picture of the applicant's driveway and pointed out the area is more level than the neighbors.

Mr. Rexroad declared that he lives near this property but has no association with the owner or financial interest in the project. He clarified that the house is 20 feet from the pavement, so moving the carport 20 feet from the pavement would make it very close to the house. Trees are in that area. Is there a site plan showing the proposed location?

Mr. Curry asked if Mr. Rexroad would be affected by a decision on this application. He asked if he could be fair and impartial.

Mr. Rexroad stated he would not be affected and he can be fair and impartial.

Mr. Curry asked if other members thought Mr. Rexroad should recuse himself. They did not.

Ms. Nijkamp explained that the reason there is no site plan showing the proposed location of the carport is because the applicant requested that they not do a survey until after the results of this hearing. She doesn't know whether the carport will conflict with the trees, fence, or garage. By 20 feet from pavement, she means 20 feet from the inside of the white line. The carport should not be in public right-of-way. If 20 feet from pavement is not yet within their property line, the carport will need to move closer to their house. The request is worded the way it is to ensure the carport clears to public right-of-way and is within their property line.

Mr. Rexroad mentioned that on the opposite side of the street, there is a stone retaining wall about 8 feet from the pavement and approximately 3 feet tall. He asked if there was a way to make this applicant's request equitable to what is occurring on the opposite side of the road.

Ms. Nijkamp stated that she could find several code violations if she were to drive along Chipeta Park Road. It would not be in the County's best interest to have a carport this close to the right-of-way. The carport is currently along the outside of a curve, in the direction someone would go if they were to lose control. She stated she would need to consult with the County Attorney regarding a request to allow the carport within the 20 feet from pavement. She and her staff make recommendations based on the ECM.

Mr. Kilgore added that PCD staff is working on a potential LDC amendment regarding carports that will be heard informally at the 4/6/2023 Planning Commission (PC) meeting. After PCD receives feedback, the potential amendment will formally go before the PC and BOCC.

APPLICANT'S PRESENTATION

Mr. Curry stated that he understands there are other property owners who are not in compliance with the Code, but this application must be evaluated within the context of the rules. His understanding is that the applicant is requesting the carport to stay exactly where it is, but if that's not possible, the applicant will move the carport to behind the pine trees.

Mr. Weller, the applicant, stated that is correct.

Mr. Curry then asked Mr. Klaffky for clarification regarding the request for a 5-foot setback from the property line or a 20-foot setback from the pavement, whichever is greater. He stated neither of those matches what the applicant states is his request. He asked if the board is to consider the applicant's verbal request or the request that is in the staff report.

Mr. Klaffky answered that the board should consider the applicant's verbal request. PCD staff can modify the conditions of approval to reflect the board's decision.

Mr. Curry clarified that the request to approve a lot size of 0.75 acres where 5 is required remains unchanged. The second part of the request should be ignored in favor of the verbal request that he leave the carport where it is currently. Alternatively, the applicant is agreeable to placing the carport by the pine trees, approximately 10 feet from its current location.

Mr. Rexroad noted that the current location of the carport is outside of the property line, so it cannot remain where it is. The applicant's alternative of moving the carport within his property line is what is worth considering.

Mr. Clement agreed with Mr. Rexroad's statement.

Mr. Langlais asked the applicant if he would like to change his request since leaving the carport in its current location is not an option.

Mr. Weller stated he would like to change his request. If the carport cannot remain where it is currently, he would like to request additional time to have it moved to a location beyond the pine trees, within the setbacks noted in the engineering documents.

Ms. Nijkamp added that the condition of approval can be modified to say something along the lines of, "*per the ECM Administrator's approval*". She discussed the topic with Mr. Klaffky, and the BOA does not have the authority to amend the ECM. The BOA's authority lies with the LDC. She stated that she has the authority as the ECM Administrator's designee, but she will not approve the location where it currently stands. She did not approve of the other structures that do not meet the criteria. If the alternative location mentioned by the applicant is beyond 20 feet from the pavement, there will be no problem. If the applicant is concerned it may be less than 20 feet, then "*upon ECM Administrator's approval of a deviation*" should be added. She asked that the applicant let her know that information today.

Mr. Curry clarified that if the board were to make a motion of approval, adding verbiage along the lines of, "*approval in the alternate location as described by the applicant, behind the trees,*

consistent with ECM Administrator's approval of a deviation from the ECM, if required." He asked if Ms. Nijkamp would be comfortable with that change.

Ms. Nijkamp stated she would be comfortable with that language if the applicant thinks the new location might be within 20 feet of the pavement or within 5 feet of his property line. She stated the PCD Department would need to address the deviation to the LDC.

Mr. Curry asked if Ms. Nijkamp would be willing to work with PCD staff and the County Attorney to modify the request/conditions of approval. He asked the applicant if he would be willing to assist in that modification. All confirmed.

Mr. Wood added that he would like to make sure that the modified request/condition of approval be specific enough that it is enforceable while also being lenient enough that the applicant would not have to return before the board if a significant deviation is required.

RECESS

Mr. Klaffky presented the rewritten proposal: *"3. The carport shall be relocated to either five (5) feet from the south property line, or outside of the clear zone for Chipita Park Road (20' from edge of pavement), or as otherwise approved by the ECM Administrator. Approval of a site plan by the Planning and Community Development Department is required prior to the continued use of the carport on the property. Application for site plan, including a surveyed depiction of the property, shall occur within 30 days of Board of Adjustment approval. The deadline may be extended by the PCD Director, at his or her discretion, if the Director finds that the applicant has made a good faith effort to secure such approval."* He stated the condition of approval is as close to the original as possible with a couple clean-up revisions. The third part is meant to capture the discussion which occurred earlier in the meeting. The addition that a surveyed depiction of the property must be submitted within 30 days of BOA approval is new.

Mr. Curry asked if this modified condition should be split into two.

Ms. Nijkamp asked Mr. Klaffky and Mr. Kilgore what would happen if she could meet the 20-foot minimum but cannot meet the 5-foot minimum. Does it need to be added that the PCD Department would need to approve that as well?

Mr. Klaffky stated that his interpretation of this condition is that if the applicant is approved by Ms. Nijkamp, they're good.

Ms. Nijkamp asked if the applicant would need further approval for a setback less than 5 feet?

Mr. Klaffky stated they would not.

Mr. Curry stated the third part of the condition allows quite a bit of latitude.

Mr. Klaffky answered Mr. Curry's earlier question and stated that if the board would like to split the condition into two separate items, they are free to do so.

Mr. Rexroad agreed that the condition should be split.

Mr. Langlais stated either way was fine with him so long as it remains clear that the condition is reliant upon Ms. Nijkamp's approval.

Mr. Curry stated that it does not appear to be necessary to split the condition. He asked Mr. Rexroad if he would be agreeable to leaving it as one. He was.

Mr. Curry asked Mr. Weller if he had anything to add to his presentation. He did not.

DISCUSSION

Mr. Clement asked Mr. Klaffky for clarification that the condition should read *"either"* part 1, 2, or 3. The applicant will have multiple ways of achieving the proposal.

Mr. Klaffky confirmed and stated that was the intent behind the condition.

Mr. Curry further clarified that the original proposal was whichever is greater, but this proposal is either/or.

Mr. Klaffky confirmed and added it was replaced with the ECM Administrator's approval.

Ms. Nijkamp stated she is very uncomfortable with that. She stated she thinks the *"or"* should be changed to *"and"*. The carport cannot exist within 5 feet of the property line and within 15 feet of the road. As the condition reads now, that has a possibility of happening.

Mr. Curry asked if the *"whichever is greater"* verbiage needed to be reinserted.

Ms. Nijkamp stated she thinks the first *"or"* should be *"and"* to read, *"5 feet from the south property line and outside the clear zone"*.

Mr. Klaffky agreed with the change and stated it would solve Ms. Nijkamp's concern.

Mr. Curry added that the word *"either"* should be removed so that it reads *"3. The carport shall be relocated to five (5) feet from the south property line and outside of the clear zone for Chipita Park Road (20' from edge of pavement), or as otherwise approved by the ECM Administrator."*

Mr. Klaffky agreed with that change.

Ms. Nijkamp agreed with the change and added that it is her understanding that PCD is willing to be flexible with the 5-foot setback. She stated that if 20 feet outside the clear zone meets the property line, they may be willing to allow that.

Mr. Curry clarified that would be approvable with this condition under the verbiage *"or as otherwise approved by the ECM Administrator."*

Ms. Nijkamp stated that is correct but she's not sure if she has the authority to approve a waiver from the LDC. She will make sure to get approval from Mr. Kilgore or the Planning Director, Ms. Herington.

Mr. Curry asked the applicant if he understood the changes. He affirmed. Mr. Curry asked the applicant if he would like to add any comments. He did not. He read the final version of the condition into the record: *"3. The carport shall be relocated to five (5) feet from the south property line and outside of the clear zone for Chipita Park Road (twenty (20) feet from edge of pavement), or as otherwise approved by the ECM Administrator. Approval of a site plan by the Planning and Community Development Department is required prior to the continued use of the carport on the property. Application for site plan, including a surveyed depiction of the property, shall occur within 30 days of Board of Adjustment approval. The deadline may be extended by the PCD Director, at his or her discretion, if the Director finds that the applicant has made a good faith effort to secure such approval."* He added that the request to approve the lot size variance remains the same.

Mr. Rexroad clarified that the condition requires a surveyed depiction of the property. He asked if that meant a licensed surveyor would go to the property and mark the boundaries.

Mr. Curry confirmed.

Mr. Wood requested clarification on the applicant's next steps. His understanding is that the applicant will need to work with PCD to complete a site plan to implement the proposed conditions. He asked what happens years in the future. Can this document be referenced? If a future property owner were to consult with a different ECM Administrator than the one in office currently, could they change what has been discussed and approved?

Mr. Curry answered that it is his understanding that this approval is only for this application. If a future property owner wanted to make changes, they would need to apply.

Mr. Kilgore added that all correspondence pertaining to this application's approval will be available in the project's file.

Mr. Curry further clarified that condition number one approves only to the plans as submitted.

BOA ACTION: CLEMENT MOVED / LANGLAIS SECONDED FOR APPROVAL OF ITEM NO. 8, BOA-22-014, FOR THE DIMENSIONAL VARIANCE FOR 9040 CHIPITA PARK ROAD CARPORT SETBACK, UTILIZING RESOLUTION NO. 3 BASED ON THE UNIQUE CONFIGURATION OF CHIPITA PARK ROAD, THE BEND, AND MAINTAINING SAFETY IN THE AREA, WITH 3 CONDITIONS AS AMENDED AND 2 NOTATIONS. THE MOTION PASSED (5-0).

MEETING ADJOURNED at 11:06 A.M.

Minutes Prepared By: Miranda Benson