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PLANNING & COMMUNITY DEVELOPMENT

TO: El Paso County Board of Adjustment

FROM: Lekishia Bellamy, Planner I
Carlos Hernandez, Engineer I
Meggan Herington, AICP, Executive Director

RE: Project File #: BOA-22-014
Project Name: 9040 CHIPITA PARK RD
Parcel No.: 83153-00-069

OWNER:

REPRESENTATIVE:

DANIEL WELLER 9040 CHIPITA PARK RD CASCADE, CO 80809-1425	DANIEL WELLER 9040 CHIPITA PARK RD CASCADE, CO 80809-1425
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Commissioner District: 3

Board of Adjustment Hearing Date:	3/22/2023
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EXECUTIVE SUMMARY

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 the R-T (Residential Topographic) zoning district;
2. A front setback of 5 feet from the property line or outside the setback (20' from edge of pavement), whichever is greater, is required for the Carport; and
3. A front setback of 20 feet where 25 feet is required for a single-family detached home.

The 32,670 square-foot property is zoned R-T (Residential-Topographic District) and is located on the north side of Chipita Park Road, 900-ft south of the intersection of Highway 24 and Chipita Park Road. The purpose of this request is to legalize the existing lot size and to correct setback encroachments.



A. APPROVAL CRITERIA

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the El Paso County Land Development Code (2022), states the following:

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.*

This property is exceptionally narrow such that meeting the setbacks of the R-T zoning district may be challenging; however, those features in this area are consistent with those obstacles, and there is no exceptional restriction regarding this property that is not found in the surrounding area.

- 2) The exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.*

The topography of this property is consistent with the area and is no different from many of the surrounding properties located in R-T (Residential Topographic) zoning district which are similar in size to the subject property and are encumbered by similar topographic constraints.

However, Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Code continues by stating the following:

The Board of Adjustment may also grant variances 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;

- 1. The variance provides only reasonably brief, temporary relief; or*



If approved, the variance would provide for permanent relief and would not meet this criterion.

2. *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*

An alternative plan, standard, or condition was not submitted by the applicant with this application.

3. *Some other unique or equitable consideration compels that strict compliance not be required.*

Due to the size of the property, it may be difficult for the applicant to construct a carport that meets the dimensional standards of the R-T zoning district. An analysis of the potential unique and equitable circumstances is provided in the applicant's letter of intent.

B. LOCATION

North:	R-T (Residential Topographic)	Single Family Home
South:	R-T (Residential Topographic)	Single Family Home
East:	R-T (Residential Topographic)	Single Family Home
West:	R-T (Residential Topographic)	Single Family Home

C. BACKGROUND

The property was initially zoned R-T (Residential Topographic) on April 27, 1967, when zoning was first initiated for this portion of El Paso County. The Residential Topographic zoning district accommodates residential use in regions with extreme topographical conditions. This district has specific dimensional standards, they are as follows:

- Minimum Lot area 5 acres
- Minimum Lot Width 200 ft
- Front Minimum Setbacks 25 ft
- Side Minimum Setbacks 25 ft
- Rear Minimum Setbacks 25 ft
- Maximum Lot Coverage 30%
- Maximum Height 30 ft

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OFFICE: (719) 520 – 6300



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PLNWEB@ELPASOCO.COM

This property is 0.75 acres, and the minimum lot size in the R-T Zoning District is 5 acres. The property was created in 1981. All adjacent parcels are developed and under different ownership; therefore, a lot line adjustment will require a combination of lots to create a 5-acre property, which is not feasible.

On July 27, 2022, El Paso County received a Code enforcement complaint. The Complainant reported land development Violations and Setback violations. The description stated, "Carport under construction violating setback restrictions." El Paso County Code Enforcement sent the applicant a notice of violation on August 19, 2022. On October 3, 2022, the applicant submitted a formal request for a dimensional variance. On January 19, 2023, the applicant submitted a revised letter of intent and other documents to meet the March 22, 2023, Board of Adjustment hearing deadline. During the review process, the applicant hired an agency and later decided to represent himself.

D. ALTERNATIVES EXPLORED

There is one alternative that would not require a dimensional variance request:

Due to the lot size, removal of the Carport is the only other option.

E. APPLICABLE RESOLUTION

See attached draft resolution.

F. SERVICE

1. WATER

Water is provided by Colorado Springs Utilities.

2. WASTEWATER

Wastewater is provided by an existing permitted on-site wastewater treatment system (OWTS).

3. EMERGENCY SERVICES

The parcel is located within Green Mountain Falls/Chipita Fire Protection District. The District was sent a referral and did not provide a response.

G. ENGINEERING

1. FLOODPLAIN



The parcel is not located within a flood zone designated by FEMA.

2. DRAINAGE AND EROSION

The parcel is within the Upper Fountain Drainage Basin. This drainage basin does not have a drainage basin planning study therefore is referred to as an unstudied drainage basin. There are no drainage basin fees assessed to projects within the Upper Fountain Drainage Basin. Additionally, drainage basin fees are not collected for non-platting applications in accordance with approved resolutions and the El Paso County Engineering Criteria Manual.

A grading and erosion control plan (GEC) was not required with this Board of Adjustment application due to the minimal amount of land disturbance proposed.

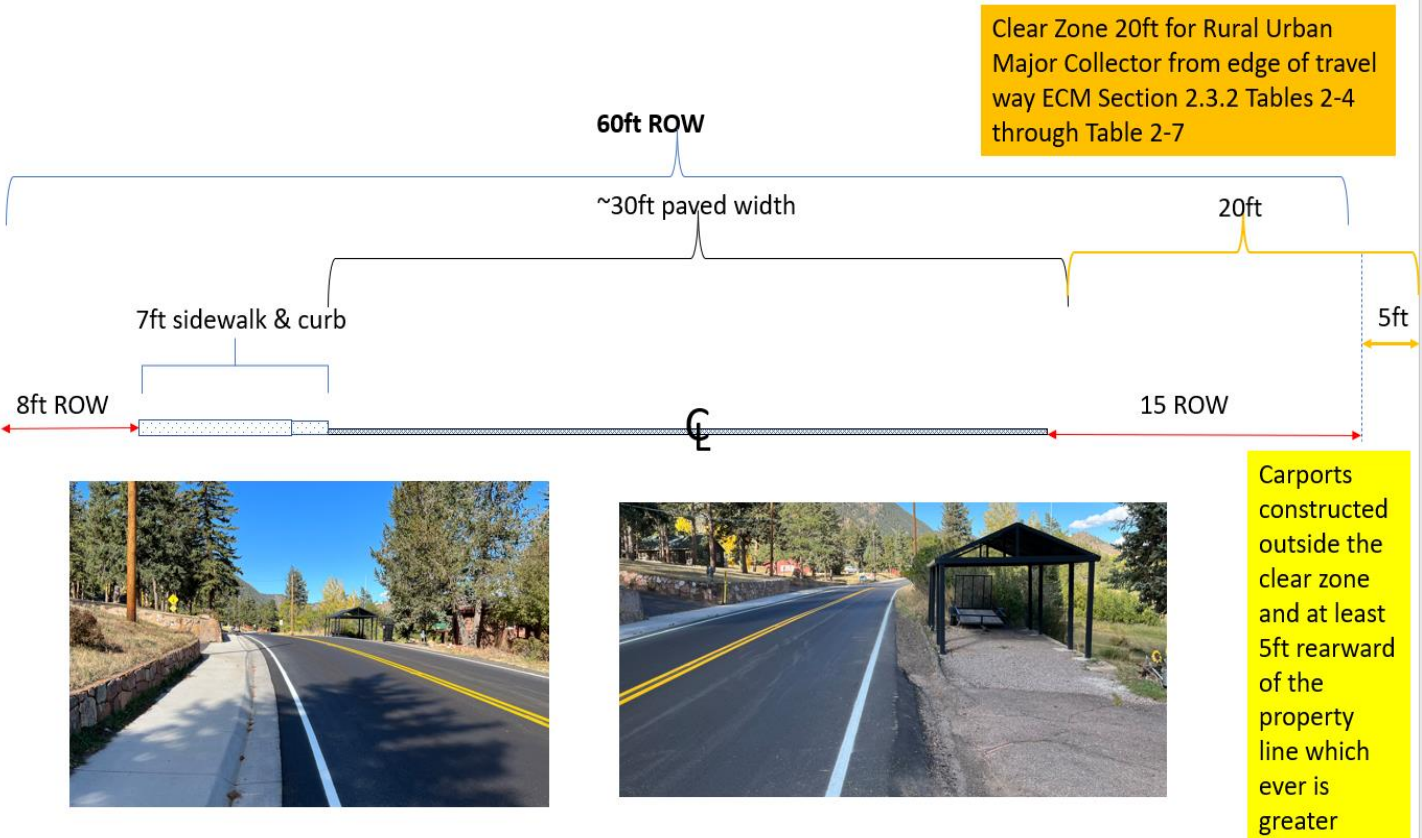
3. TRANSPORTATION

The parcel is adjacent to Chipita Park Road, which is a county-maintained roadway. Chipita Park Road is classified as a Rural Major Collector Road under the El Paso County Road System. Chipita Park Road is currently paved and has a 60-foot right-of-way width.

The parcel does not have an approved driveway access permit on file. The applicant is required to obtain an access/driveway permit from the Planning and Community Development Department. The applicant's carport is within county right-of-way and is within the clear zone. The clear zone is the unobstructed roadside area along a roadway that allows drivers to safely stop or regain control of a vehicle. The specified clear zone width for Chipita Park Road is 20 feet from the edge of pavement per the El Paso County Engineering Criteria Manual Chapter 2 Section 2.3.2 Table 2-4 through Table 2-7.

Due to safety concerns for vehicles traveling on Chipita Park Road it is requested that the applicant's carport be relocated outside of the clear zone or setback 5 feet from the property line, whichever is greater. See exhibit below showing the concept, a survey will be required to determine the exact location of the right-of-way prior to the relocation of the structure.





H. RECOMMENDED CONDITIONS OF APPROVAL

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a dimensional variance for the existing house, and carport, and that the applicants has met the review and approval criteria for granting variances from the applicable standards, staff recommends the following conditions and notation of approval:

CONDITIONS

1. The approval applies only to the plans as submitted. Any expansion or additions to the proposed carport require separate Board of Adjustment application(s) and approval(s) if the development requirements of the applicable zoning district cannot be met.
2. Approval of the carport by the Planning and Community Development Department and issuance of a building permit from the Pikes Peak Regional Building Department is required prior to an addition or expansion of a residential property.

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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), whichever is greater. 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. Approval of an application for site plan shall occur within 30 days of special use approval by the Planning and Community Development Department. 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.

NOTATIONS

1. Physical variances approved for a proposed structure (except for lot area variances) are valid only if construction of the structure is initiated within twelve (12) months of the date of the Board of Adjustment approval.
2. The PCD Director may require a survey, certified by a registered surveyor, licensed in the State of Colorado, depicting the improvement in relationship to the lot lines affected to demonstrate compliance with the approval of the administrative relief.

I. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department mailed notice to 16 adjoining property owners on 2/24/2023 for the Board of Adjustment meeting. Responses will be provided at the hearing.

J. ATTACHMENTS

Letter of Intent
Vicinity Map
Site Plan



**Weller Carport
Dimensional Variance
Letter of Intent**

September 6, 2022

PREPARED FOR:

Daniel Weller
9040 Chipita Park Road
Cascade, CO 80809

PREPARED BY:

Vertex Consulting Services
455 E. Pikes Peak Ave Suite 101
Colorado Springs, CO 80903

Owner/ Applicant: Daniel Weller
9040 Chipita Park Road
Cascade, CO 80809

Planner: Vertex Consulting Services
455 E Pikes Peak Avenue, Suite 101
Colorado Springs, CO 80903
719-733-8605

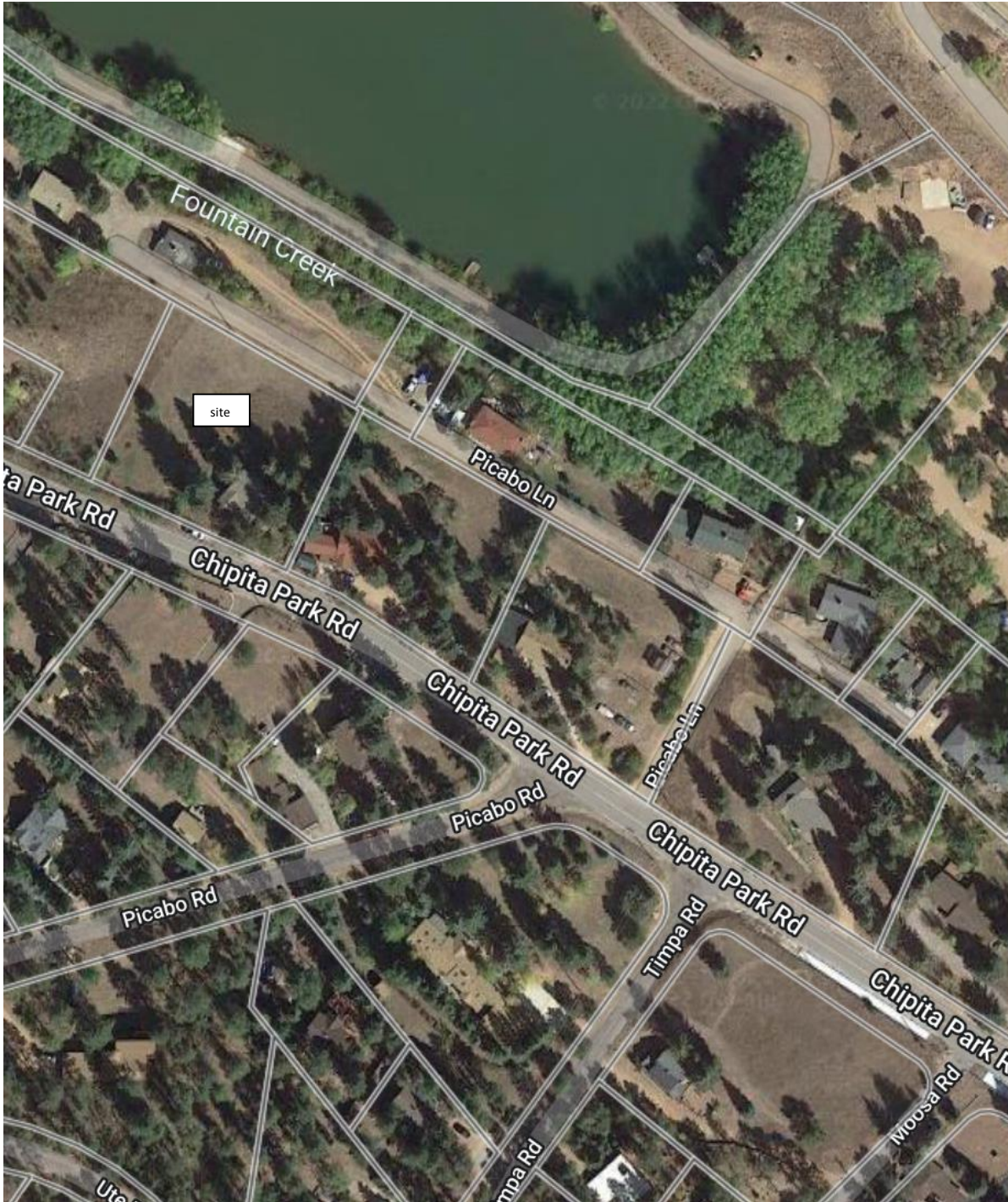
Tax Schedule No: 831530-0-069

Acreage: 32,670 square feet

Site Location, Size, Zoning:

Vertex Consulting Services, on behalf of Daniel Weller, is respectfully submitting a request for approval of a dimensional variance. The property is located approximately 900 feet south of the Chipita Park Road and Highway 24 intersection. The 0.75 acre property is zoned R-T and is located within the neighborhood commonly referred to as Chipita Park.

The property is surrounded by other nonconforming parcels and structures within the R-T Zoning District:



Request:

The applicant requests approval from the Board of Adjustment for a dimensional variance to:

1. Legalize a front setback of 1 foot for a carport where 25 feet is required,
2. Legalize a front setback of 20 feet where 25 feet is required for a single-family detached dwelling,

3. Legalize a lot size of 0.75 acres (32,670 square feet), where 5 acres is the minimum lot size within the R-T (Residential Topographic) zoning district.

Justification:

The dimensional variance request meets the criteria for approval included within Section 5.5.2 of the El Paso County Land Development Code. Each one of the requests will be analyzed separately for compliance with the following review criteria:

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

The Board of Adjustment may also grant variances 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.*

Lot Size

The Chipita Park neighborhood was largely developed at the time of the initial zoning by El Paso County to the R-T Zoning District on April 27, 1967. When the County zoned this area R-T it created nonconforming parcel sizes. The property is 0.75 acres in size, where the R-T Zoning District requires 5 acres. All immediately adjacent parcels are developed and nonconforming, therefore, a lot line adjustment or combination of lots to create a 5-acre parcel is not possible. The dimensional variance requests for the lot size meets the following review criteria:

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... or other extraordinary or exceptional situation or condition of the piece of property.

Some other unique or equitable consideration compels that strict compliance not be required.

Single-Family Dwelling Setback

As discussed above, the Chipita Park neighborhood was largely developed at the time of the initial zoning by El Paso County to the R-T Zoning District on April 27, 1967. When the County

zoned this area R-T it created nonconforming setbacks. The home was constructed in 1957, ten years prior to the initial zoning. The setback of the home may be considered legal nonconforming; however, no formal determination has been made. Section 5.6 of the Land Development Code further describes the circumstances whereby a legal nonconforming structure may lose its legal status. Should the property be damaged to exceed 50% of the structure, it would no longer be considered legal, and the new structure would be required to meet the setback requirements. As there is no other suitable location for the home due to the drainage and slope issues described further below, the applicant requests to legalize the structure to allow for reconstruction in the event of a catastrophe.

The dimensional variance requests for the setbacks meets the following review criteria:

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... or other extraordinary or exceptional situation or condition of the piece of property.

Some other unique or equitable consideration compels that strict compliance not be required.

Carport

The carport is not nonconforming and was constructed in 2022 in violation of the Land Development Code. However, a retaining wall was constructed numerous years ago to allow for this location to be utilized for the purposes of parking vehicles as there is no other location on the property that allows for the parking of vehicles.

The climate of Chipita Park can be more extreme at times. It is reasonable for a property owner to desire covered parking for their vehicle. There is a single car attached garage onsite, however, the garage is not large enough to park a vehicle inside. The only laundry facilities are located within the garage, which is 18 feet deep, leaving only 13 feet of clearance from the laundry facility to the garage door. Please see the image of the garage interior which illustrates how constrained this area is:



Should the applicant choose to construct a garage or carport elsewhere on the site, the garage would have to be abandoned due to the County limiting the points of access to one for all lots less than 2.5 acres in size.

Finding a suitable building location meeting the setback requirements would be impossible. The home and carport are constructed on the only level portion of the parcel. The land slopes significantly beyond the home. In addition to the slope, a major drainageway traverses the western half of the lot.

Construction within the 25-foot setback would require regrading most of the site to channelize the drainageway and to create a flat area for the garage.

Lastly, the applicant is a 100% disabled veteran. Walking across the property, or up a steep slope, proves to be challenging at times. Here is a statement from the property owner that further describes the disability:

“I was in a helicopter accident when training in the United States Army. As a result, I was medically retired from service after my first 4-year contract. My disability status with the VA is 100% permanently disabled (as bad as it gets). I have physical issues with my knees, elbow, shoulder, spine and neck. I also have PTSD but that has nothing to do with the carport. The issue that causes the most trouble for me physically is my back; it can go out at any time causing severe pain. The pain has been so severe that I have passed out. This has happened three times in the last 5 years. The last time was getting out of my car when I got home, and I ended up passing out partially in the road. My wife and children were so concerned when they heard this happened that my wife

bought a carport and my children came out and built it for me. The idea was to put a wall along the carport on the side which is closest to the road. This would ensure that I would not fall into the road again if my back went out entering or exiting my vehicle. However, the wall is no longer possible as rules dictate that carports cannot have walls anymore. Now I back in to the spot to ensure that when I am exiting the vehicle I am on the side farthest from the road.

The carport still provides me with a safe area to enter, exit, load, unload and work on my vehicle. There is not other place to put the carport on my property except for where it is, on the established parking pad. Our garage does not fit a car and my wife parks in the driveway as she is also a disabled veteran and needs that area more than I do. This leaves me with no other place to park except where the carport is. Keeping this carport has more to do with my safety than anything else.”

The site does not allow for a carport to be constructed elsewhere on the site. The dimensional variance requests for the setbacks meets the following review criteria:

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

Some other unique or equitable consideration compels that strict compliance not be required.

Alternatives Explored:

Lot Size

1. Purchase Additional Land to Meet Setbacks

The surrounding parcels are all developed and substandard and do not meet the minimum lot size of five acres within the R-T zoning district. This is not an option as it would create new nonconformities.

2. Rezone the property

The surrounding area is within the R-T zoning district. Rezoning this individual parcel to RR-0.5 could be considered “spot zoning”. Additionally, rezoning the property to the RR-0.5 zoning district would not resolve the nonconforming setback issues that are present onsite as the front setback requirement in this zoning district is 25 feet.

Home

1. Relocate the Home

The home is site built and cannot be easily moved. The home would likely be damaged if it were to be moved. Additionally, there is no other level location on the property out of the drainageway, therefore, there is no other suitable building site.

Carport

1. Remove the carport.

This area of the county has historically experienced extreme weather patterns. It is necessary to have a covered area for vehicles. Additionally, the applicant is disabled, and it is challenging at times to navigate in inclement weather.

2. Construct the carport meeting the setback requirements.

As discussed above, there are no level areas outside of the drainageway that meet the setback requirements. Constructing the carport within the setbacks would require regrading the majority of the site.

3. Expand the existing garage to allow for parking a vehicle.

If the existing garage were to be expanded, it would result in a further encroachment of the home into the front setback.

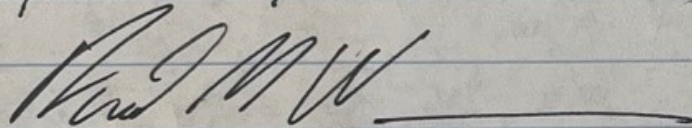
Please see below for photographs which further illustrate the physical hardship:





Letter of Intent.

Our intentions are to move the Carport to the Front left Sideyard in order to meet all requirements set forth by the County. We plan to move the Carport as soon as weather allows it. This will most likely be in the beginning of spring. We also intend to extend our driveway some 100 Ft to make the Carport accessible. There is no other location on my property to re-locate the Carport to, so this is our only option.



Daniel Weller

9040 Chipita park Rd.

Cascade CO 80809.

El Paso County Parcel Information

File Name:

Date:

PARCEL

NAME

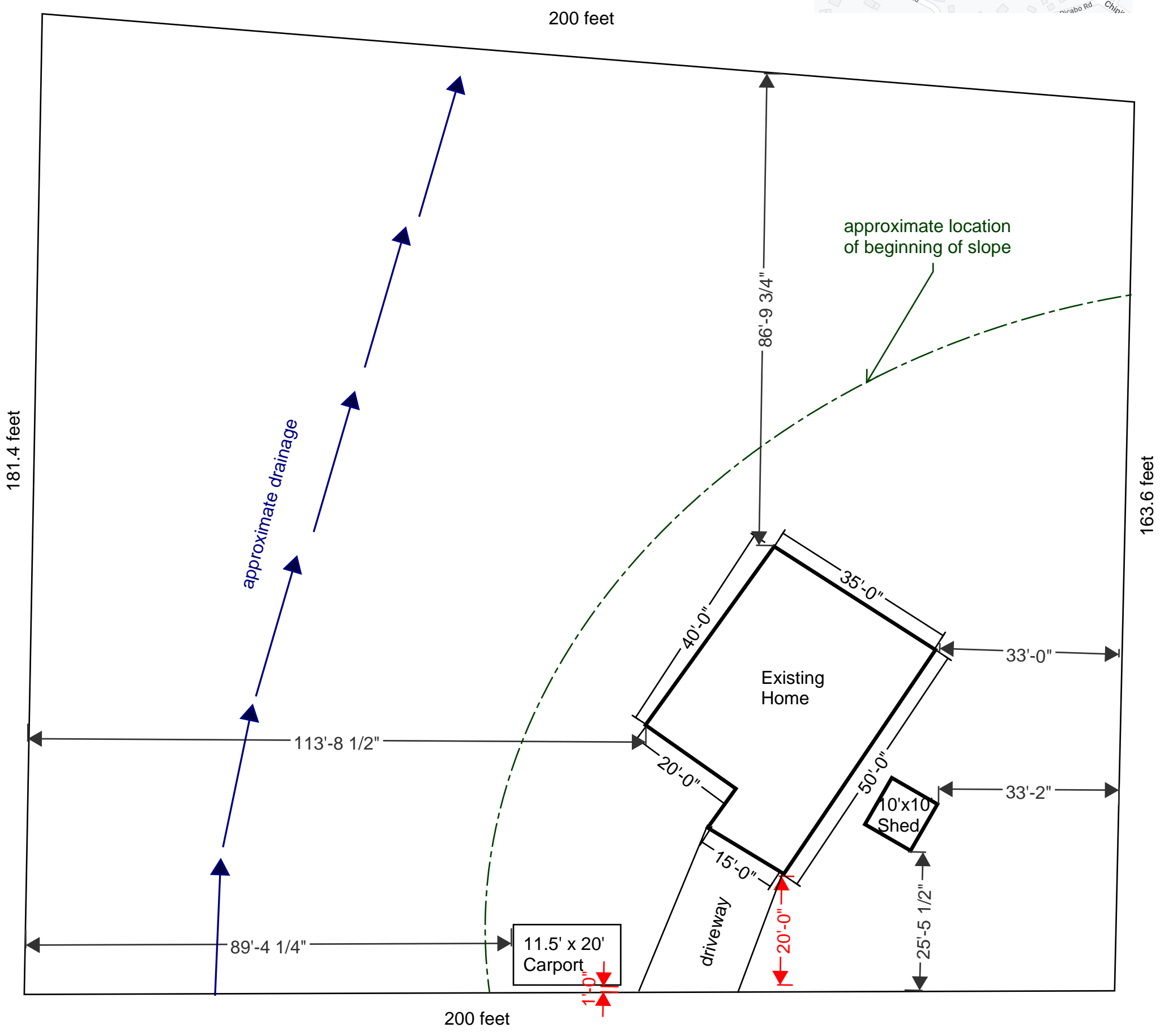
ADDRESS



Please report any parcel discrepancies to:
El Paso County Assessor
1675 W. Garden of the Gods Rd.
Colorado Springs, CO 80907
(719) 520-6600



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Chipita Park Road (60 feet)

Land Use: Single-Family Residential
 Parcel Size: 32,670 square feet
 Zoning: R-T

The applicant requests approval from the Board of Adjustment for a dimensional variance to:

1. Legalize a front setback of 1 foot for a carport where 25 feet is required,
2. Legalize a front setback of 20 feet where 25 feet is required for a single-family detached dwelling,
3. Legalize a lot size of 0.75 acres (32,670 square feet), where 5 acres is the minimum lot size within the R-T (Residential Topographic) zoning district.

Scale: 1"=20' N