

EL PASO



COUNTY

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Board of Adjustment
Kevin Curry, Chair**

**FROM: Len Kendall, Planner I
Beck Grimm, EI Engineer I
Craig Dossey, Executive Director**

**RE: Project File #: BOA-18-009
Project Name: 121 S Marland BOA
Parcel No.: 75013-00-009**

OWNER:

REPRESENTATIVE:

Robert B. Condie and Kari Lee Hebble
121 South Marland Road
Colorado Springs, CO 80906

Larry Gilland
Larry Gilland & Associates
dba LGA Studios
201 E. Las Animas Street #113
Colorado Springs, CO 80903

Commissioner District: 3

Board of Adjustment Hearing Date:

1/9/2019

EXECUTIVE SUMMARY

A request by Robert B. Condie and Kari Lee Hebble for approval of a dimensional variance to allow a parcel area of 3.37 acres where five (5) acres are required in the A-5 (Agricultural) zoning district. The parcel is split zoned with A-5 (Agricultural) to the south and RS-20,000 (Residential Suburban) to the north. There is a single family dwelling located on the southerly portion of the parcel, which is portion zoned A-5.

The property was zoned in 1942, and a single-family residence was constructed in 1957. The split zoning of the property is due to the area being blanket zoned when the original zoning was put in place which bisected the subject property. The parcel was created in 1957 prior to subdivision regulations which took effect on July 17, 1972, however the parcel was not compliant with the A-2 zoning district (now A-5

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

(Agricultural)) requirement at the time which has required a minimum five (5) acres since 1942. The applicant was in the process of obtaining the appropriate permitting to construct an addition to the dwelling on the property when the split zoning situation was discovered. The proposed addition was approved by the Planning and Community Development Director on the condition that the nonconformity on the parcel is rectified prior to certificate of occupancy sign off. Due to the RS-20,000 zoning district existing on the property, the applicant proposed to rezone the property to a single zoning district, which was heard by the Planning Commission on November 20, 2018. A motion to approve the rezoning of the property failed to pass. A motion to approve that fails is deemed denied. At the Board of County Commissioners hearing on December 11, 2018, the applicant requested to continue the agenda item until February 26, 2019. The proposed dimensional variance, if approved, would rectify the nonconformity on the parcel, and would negate the need for the Board of County Commissioner hearing on February 26, 2019, regarding the rezoning request.

A. REQUEST

A request for a dimensional variance to allow a parcel area of 3.37 acres where 5 acres are required in the A-5 (Agricultural) zoning district. The parcel is split zoned with A-5 (Agricultural) to the south and RS-20,000 (Residential Suburban) to the north.

B. APPROVAL CRITERIA

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Land Development Code (2015), 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.”*

The proposal is a request to allow for a dimensional variance for lot size and not setbacks, therefore, exceptional narrowness, shallowness, or shape are not applicable.

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

The proposal is a request to allow for a dimensional variance for lot size and not setbacks therefore exceptional topographic conditions or other extraordinary or exceptional situation or conditions are not applicable.

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;”

- *“The variance provides only reasonably brief, temporary relief; or”*

The dimensional variance would provide permanent relief as long as the zoning stays as it is currently, which includes being split zoned as A-5 (Agricultural) and RS-20,000 (Residential Suburban).

- *“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”*

The variance does not include 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.

- *“Some other unique or equitable consideration compels that strict compliance not be required.”*

The dimensional variance would legalize a parcel size of 3.37 acres where 5 acres are required in the A-5 (Agricultural) zoning district. The parcel was created prior to adoption of the subdivision regulations but after the area had been zoned, therefore, the parcel is not considered legally nonconforming. Staff recommends that this could be considered a unique or equitable consideration that could justify not requiring strict compliance with the Code.

C. BACKGROUND

The area was zoned in 1942, which was prior to creation of the parcel. The northern extent of the A-2 (now A-5) zoning district ended at the half-section line of Section 1 (see attached exhibit). To the north of that half section line the area was zoned R (Residential), which is currently the RS-20,000 zoning

district. The parcel, which was created in 1957, approximately 15 years after the area was zoned, straddles the half section line which caused the parcel to be split zoned. There is nothing in the historic planning records that indicate that the planning department has had any interaction with past property owners in the 61 years since creation of the parcel that would have resolved the split zoning issue. The current property owners were in the permitting process for an addition to the single family residential home on the southern portion of the property when the split zoning was discovered. Since the parcel was not created in accordance with the zoning requirements at the time, it is not considered a legal nonconforming parcel. If the parcel was created in conformance with each of the zoning districts, the split zoning issue would be concerning, but irrelevant.

The proposed addition was approved by the Planning and Community Development Director on the condition that the zoning on the parcel be rectified prior to County authorization of the certificate of occupancy. In an attempt to resolve the zoning issue, the applicant proposed to rezone the property to a single zoning district, that being RS-20,000, which was heard by the Planning Commission on November 20, 2018. At the hearing, a motion to approve the rezoning of the property failed to pass. A motion to approve that fails is deemed denied. At the Board of County Commissioners hearing on December 11, 2018, the applicant requested to continue the agenda item until February 26, 2019. The applicant has since applied for a dimensional variance for the lot area of the parcel to allow for a 3.37-acre parcel in the A-5 zoning district where 5 acres is required. Colorado Springs Utilities provides water, electric, and natural gas services to the property. Wastewater service is provided via an onsite wastewater treatment system (OWTS).

D. ALTERNATIVES EXPLORED

There are two (2) alternative options for the applicant to come into compliance that would not require a dimensional variance request:

- Continue with the rezoning request to the RS-20,000 (Residential Suburban) zoning district, which would bring the entire parcel into compliance with the zoning district lot area requirements, or
- Apply for a rezoning to zone the parcel pursuant to the RR-2.5 (Rural Residential) zoning district, which would bring the entire parcel into compliance with the zoning district lot area requirements.

E. APPLICABLE RESOLUTIONS

Approval: Resolution 3 – Unique and Equitable Circumstances
Disapproval: Resolution 4

F. LOCATION

North:	City of Colorado Springs	Single Family Residential
South:	City of Colorado Springs	Single Family Residential
East:	City of Colorado Springs	Single Family Residential
West:	City of Colorado Springs	Single Family Residential

G. SERVICE

1. WATER

Water is provided by Colorado Springs Utilities.

2. WASTEWATER

Wastewater is provided by an onsite wastewater treatment system (OWTS).

3. EMERGENCY SERVICES

The parcel is located within the Broadmoor Fire Protection District. The District was sent a referral and has not responded to the request for comment.

H. ENGINEERING

1. FLOODPLAIN

FEMA Flood Insurance Rate Map (FIRM) panel 08041C0738G shows that the site lies within Zone X, an area determined to be outside of the 500-year floodplain.

2. DRAINAGE AND EROSION

The site is located within the Fishers Canyon drainage basin. Although the Fishers Canyon drainage basin is a fee basin, no drainage or bridge fees will be required with this rezoning request since there is no platting action. No public improvements are required with this rezoning request

3. TRANSPORTATION

The site is accessed off of South Marland Road, which is within the City of Colorado Springs. No public roadway improvements will be required with this rezoning request.

I. CONDITION AND NOTATION

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a dimensional variance for a lot area of 3.37 acres where five (5) acres is required in the A-5 (Agricultural) zoning district, and that the applicant has met the review and approval criteria for granting variances from the applicable standards, staff recommends the following condition and notation:

CONDITIONS

1. The approval applies only to the plans as submitted. Any expansion or additions to the proposed residential addition may require separate Board of

Adjustment application(s) and approval(s) if the development requirements of the applicable zoning district cannot be met.

NOTATION

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.

J. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified seven (7) adjoining property owners on December 26, 2018, for the Board of Adjustment hearing. Responses will be provided at the hearing.

K. ATTACHMENTS

- Vicinity Map
- Letter of Intent
- Site Plan (Existing and Proposed)
- Section Line Exhibit (Zoning Map)

El Paso County Parcel Information

File Name:

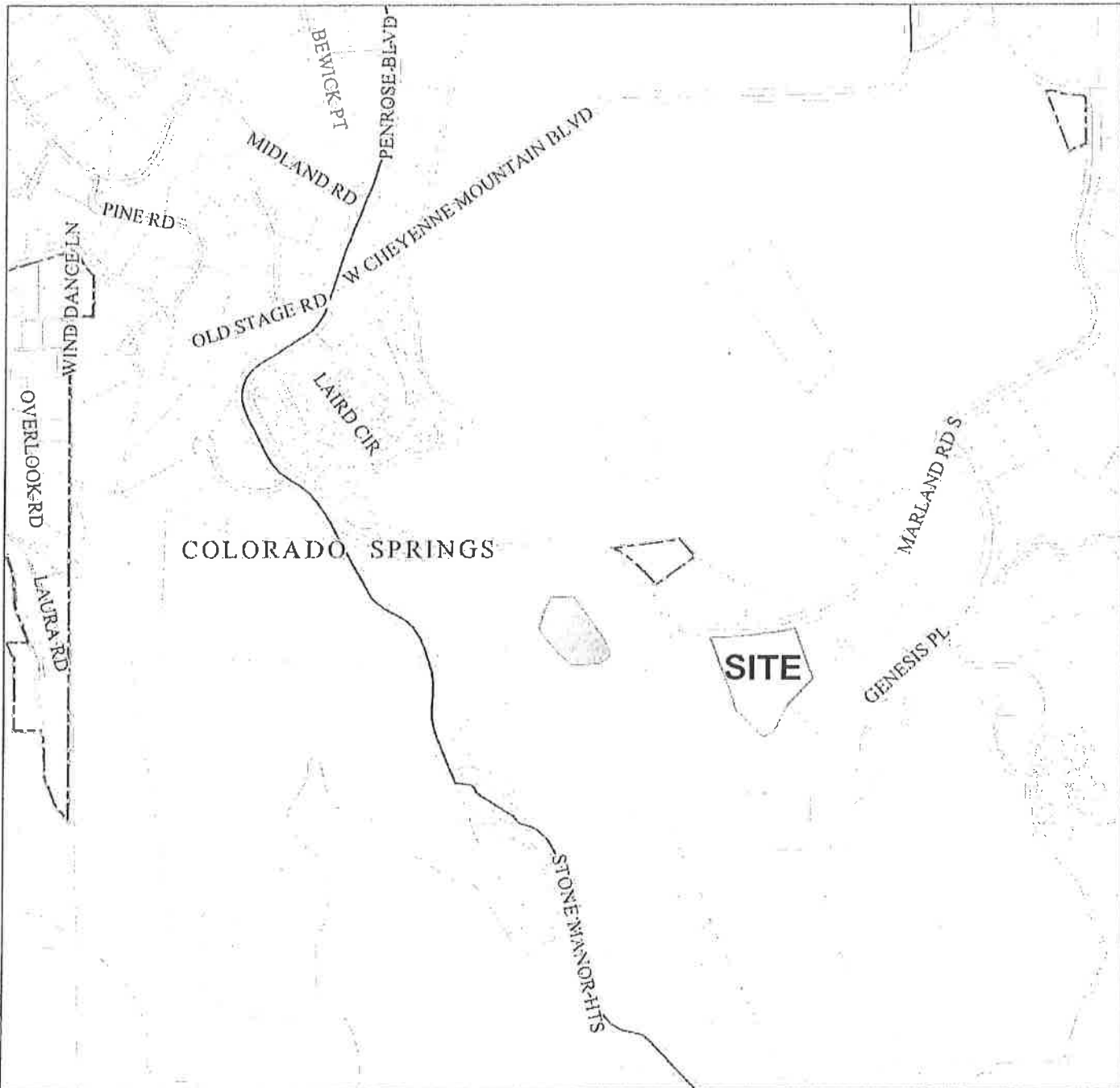
PARCEL	NAME
7501300009	CONDIE ROBERT BRUCE

Zone Map No.

ADDRESS	CITY	STATE
121 S MARLAND RD	COLORADO SPRINGS	CO

ZIP	ZIP PLUS
80906	4350

Date:



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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LETTER OF INTENT:

December 13, 2018

Board of Adjustment
El Paso County
2880 International Circle, Suite 110
Colorado Springs, Colorado 80910-3127

Owners/Applicants: Robert B. Condie
Kari Lee Hebble
1337 NW Eagle St.
Camas, WA 98607
393-877-5656

Representative: Larry Gilland
Larry Gilland & Assoc. Inc.
dba LGA Studios
201 E. Las Animas St. Suite 113
Colorado Springs, CO 80903
719-635-0880

Location: 121 Marland Rd., South
3.37 Acres
Zoning – A5 and RS-20000

Re: Lot Area Variance – 121 Marland Road

Ladies and Gentlemen:

We, Robert B. Condie and Kari Lee Hebble would like to request a variance from the strict application of the five acre minimum lot size of the A-5 Agricultural Zoning District, Chapter 5, Section 5.1, Use and Dimensional Standards, El Paso County Land Development Code.

The background leading up to this request is unique. We purchased the 3.37 acre parcel and existing house in December of 2017 with the intent to remodel the house before moving in. In the process of requesting the necessary permits for the remodeling, we were advised that the parcel was split pretty much down the middle with the A-5 Agricultural and RS-20,000 Zone Districts. This was done in 1942 by the County in its original zoning. In researching the history of the parcel, it appears to have been created in 1957 when it was purchased from the Broadmoor. All of the immediately adjoining land was subsequently annexed to the City of Colorado Springs in 1981 but this parcel was not annexed and remains in the unincorporated area of the County. It has been on a central water system since 1957 and utilizes an individual wastewater system.

At the time of our remodeling request, we were asked by County staff to rezone the portion of the parcel zoned A-5 to RS-20,000 in order to have one uniform RS-20,000 zone on the entire parcel. The RS-20,000 zoning seemed to staff to be the County zone district most consistent with the surrounding PUD City zoning which generally allows one home per acre. However, several neighbors objected to the RS-20,000 zoning based upon a perceived potential for the re-subdivision of our parcel into six or seven lots and the County Planning Commission denied the RS-20,000 request. As a practical matter, our lot

cannot be re-subdivided unless it obtains a water commitment from the City of Colorado Springs which in turn means the annexation of our parcel into the City with an entirely new City zoning classification. However, the possibility of re-subdivision is still of concern to several neighbors.

As an accommodation, it was agreed yesterday at the Board of County Commissioner hearing on the rezoning application to put that request on hold and, in the alternative, request a Board of Adjustment variance from the five acre minimum lot size in the portion of the property zoned A-5. This variance would apply to the existing house and any additions to the existing house. Given the location of the house on this parcel, no setback or height variances are necessary or requested.

In view of the above, the granting of the requested variance can be done without substantial detriment to the public good and without substantially impairing the intent and purpose of the County's zoning plan. Based on all of the above, we believe that the strict application of the zoning regulations would result in peculiar and exceptional difficulties and undue hardship.

We thank you for your consideration of our request.

SITE NOTES:

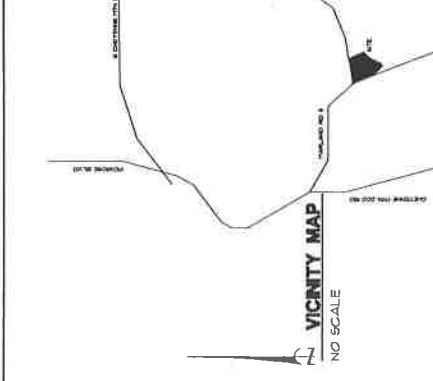
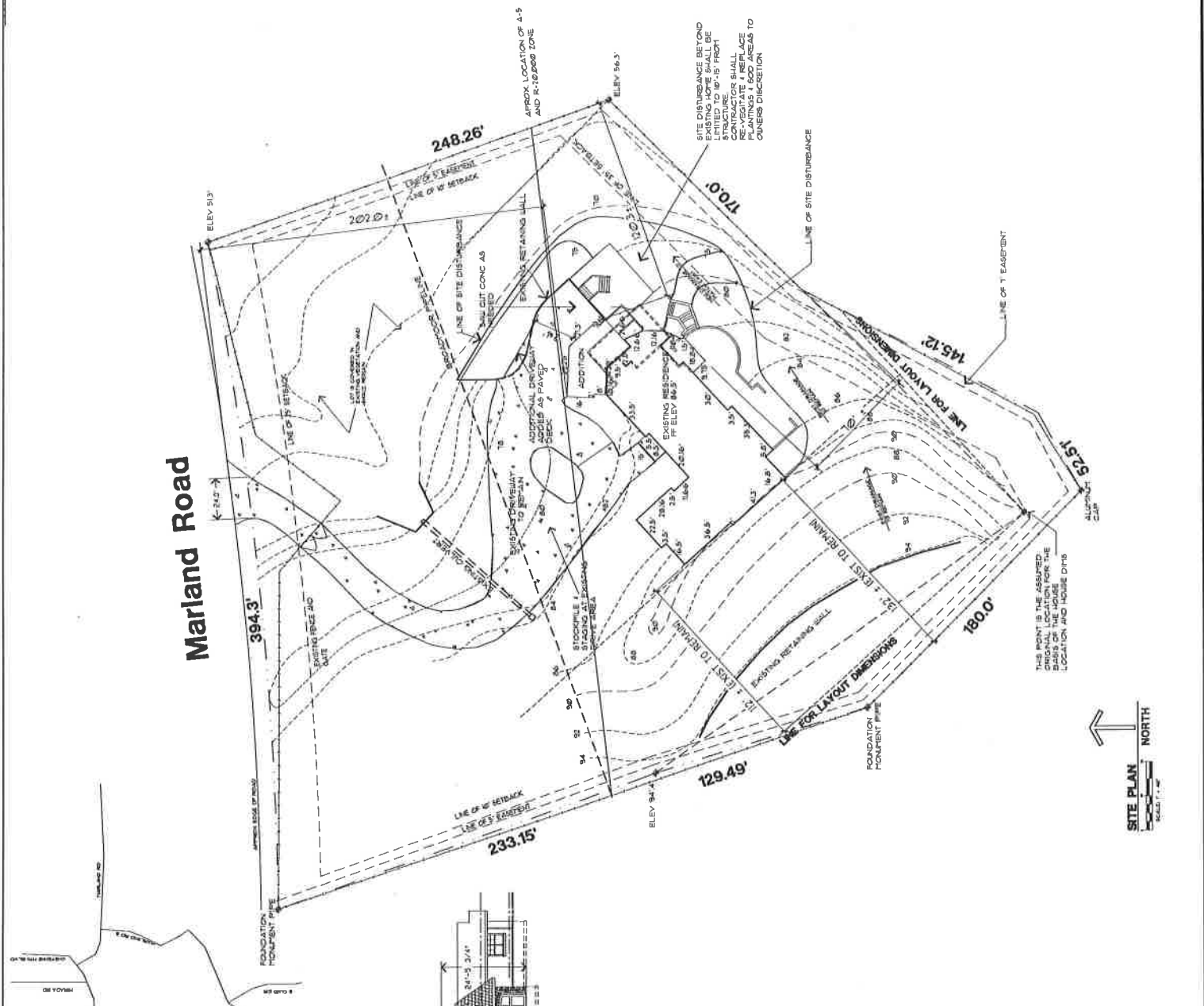
- 1) Topographic information is from original site as approved by RSDO.
- 2) Elevation contours are shown at 2-foot intervals. Solid lines indicate proposed contours.
- 3) Contractor to verify easements, utility lines, and other site conditions and limit material and vehicle storage to the building area in order to minimize disturbance to the site.
- 4) All existing structures shall be removed, including but not limited to: Disturbance to existing trees shall be minimized.
- 5) The "Limit of Disturbance" line shall be established by the contractor in accordance with the RSDO rules and regulations.
- 6) Final landscaping to be determined by the contractor and approved by the City of Denver.
- 7) All landscaping to be completed by the contractor.
- 8) Erosion control measures shall be implemented during construction. And also stabilize areas with seeded biomass for erosion control.
- 9) Earth materials are not to be stockpiled on streets or sidewalks, but positive drainage away from and around the site.
- 10) Any boulder retaining walls shall be 48" max high and 48" max top width with a 1:1 slope. Retaining walls shall be engineered by a licensed civil engineer.
- 11) General Contractor, Subcontractor, Suppliers and Owner's shall maintain the site in accordance with the RSDO rules and information on a regular basis during construction. It shall be the responsibility of the contractor to ensure any changes or other contractors to the site are approved by the City of Denver.
- 12) Questions regarding these drawings, notes, scale and other similar questions shall be brought to the attention of the designer immediately. The designer shall retain the design of any errors, omissions or changes not noted in writing to this plan.

SITE LEGEND:

- PROPERTY LINES & CORNERS
- EXISTING CONTOURS
- PROPOSED CONTOURS
- EXISTING FENCE LINE
- PROPOSED BOLLARD RETAINING WALL
- EXISTING VEGETATION
- LINE OF LIMITS OF DISTURBANCE AT SITE
- TREE
- NATURAL GRADE
- FINISH GRADE
- NO ROCK OUT CROPPING EXIST AT SITE

SITE TERMS:

- ABBREVIATIONS:**
 BOTTOM OF RETAINING WALL (E) EXISTING TO RETAIN
 ML MAIN LEVEL
 (N) NEW CONSTRUCTION
 (R) REMOVE
 (S) SQUARE FEET
 TOP-TOU OF FOUNDATION
 TOP-TOU OF RETAINING WALL
 UL-UPPER LEVEL
- THIS POINT IS THE ASSUMED ORIGINAL LOCATION FOR THE LOT CORNER AND HOUSE DIMS



SITE INFO:
 ADDRESS: 1718 MARLAND RD
 LEGAL: TRACT IN S1/4 NW1/4 SEC 01-16-97 AS FOLLS BEG AT PT ON SLY BDRY OF MARLAND RD FROM WHICH WA COR OF SEC 1 BEGNS S71°44'W 413.03 FT FOR POB. TH S 18°40' E 160.0 FT TO CORNER OF SEC 16-97. TH S 65°45'W 62.61 FT N 28°00'01" E 145.12 FT N 44°11'30" E 170.9 FT N 19°27'03" W 248.26 FT TO A PT ON SLY BDRY LN OF MARLAND RD. TH SLY ALG SD B/W LN OF MARLAND RD ON CUR TO R WITH AN ARC DIST OF 384.30 FT TO POB
 EL. P480 COUNTY, COLORADO.

SITE DATA:
 LOTS: 13.31 ACRES
 EXISTING BUILDING FOOTPRINT: 1315 SQFT
 EXISTING HOUSE/GARAGE: 1315 SQFT
 EXISTING LOT COVERAGE: 5.31%
 NEW BUILDING FOOTPRINT: 1978 SQFT
 NEW HOUSE/GARAGE: 1978 SQFT
 NEW LOT COVERAGE: 5.31%
 ZONING: R-1.5 (1.5 A/C 1)
 DISTRICT: 1718 AC 1 J
 TAX SCHEDULE: 1501500003
 BUILDING HEIGHT: 14.5'
 Owners:
 Robert Beards Condit
 1718 Marland Rd
 Denver, Colorado 80202

Zone Map 751.01 - El Paso County - Development Services Department

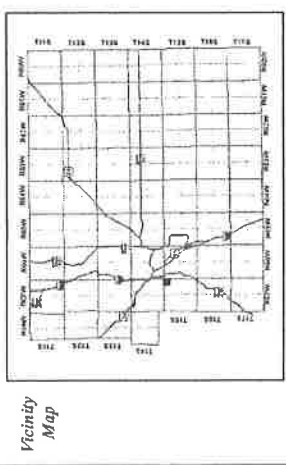
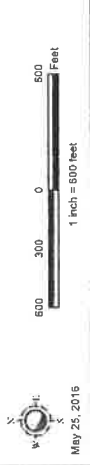
Zoning Designations

RS-30000 Residential Suburban (20,000 sq. ft.)	F-S Forest & Recreation (5 acres)
RS-6000 Residential Suburban (6,000 sq. ft.)	PUD Planned Unit Development
RS-6000 Residential Suburban (6,000 sq. ft.)	CC Commercial Community
RM-12 Residential Multi-Dwelling (12 D.U./acre)	CR Commercial Regional
RM-32 Residential Multi-Dwelling (32 D.U./acre)	CS Commercial Service
RR-4.5 Residential Rural (0.5 acres)	LI Limited Industrial
RR-2.5 Residential Rural (2.5 acres)	HI Heavy Industrial
RR-5 Residential Rural (5 acres)	AI Agricultural (5 acres)
R-T Residential - Topographic	A-35 Agricultural (35 acres)
MHP Mobile Home Park	C-1 Commercial
MHP-R Mobile Home Park, Rural	C-2 Commercial
MHS Mobile Home Subdivision	I Industrial
RVP Recreational Vehicle Park	P-4 Planned Development

— Indicates an obsolete designation

Supporting Data

Highways	Sections	Incorporated Cities
Major Roadways	Parcels	Zone Map Boundary
Creeks - Perennial	Military	Zoning Overlay
Creeks - Intermittent	Paleo National Forest	Special Uses
Section Corner Nodes		



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