

VARIANCE OF USE (Approved)

Commissioner Lucia-Treese moved that the following Resolution be adopted:

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

**RESOLUTION NO. VA-19-002
Pete Lien and Sons Batch Plant**

WHEREAS, Pete Lien and Sons, LLC, did file an application with the Planning and Community Development Department of El Paso County for approval of a variance of use within the Choose an item. zoning district to permit a permanent where such use is not permitted; and

WHEREAS, a public hearing was held by this Commission on June 2, 2020; and

WHEREAS, based on the evidence, testimony, exhibits, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, and comments by the Planning Commission Members during the hearing, this Commission finds as follows:

1. That the application was properly submitted for consideration by the Planning Commission.
2. That proper posting, publication and public notice were provided as required by law for the hearing before the Planning Commission.
3. That the hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested persons and the general public were heard at that hearing.
4. That all exhibits were received into evidence.
5. That the proposed land use does not permit the use of any area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.
6. That the proposed variance of use conforms to Chapter 5, Use and Dimensional Standards, Section 5.3.4, Variance of Use, of the El Paso County Zoning Resolutions.

7. That for the above-stated and other reasons, the proposed variance of use is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County, and

WHEREAS, pursuant to Section 5.3.4 of the El Paso County Land Development Code, as amended, in approving this variance of use, the Planning Commission considered one or more of the following criteria:

1. The strict application of any of the provisions of the Land Development Code would result in peculiar and exceptional practical difficulties or undue hardship on either the owner or the contract purchaser of the property;
2. The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and the County;
3. The proposed use will be able to meet air, water, odor or noise standards established by County, State or Federal regulations during construction and upon completion of the project;
4. The proposed use will comply with all applicable requirements of the Land Development Code and all applicable County, State and Federal regulations except those portions varied by this action;
5. The proposed use will not adversely affect wildlife or wetlands;
6. The applicant has addressed all off-site impacts;
7. The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
8. Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed variance of use as designed and proposed.

NOW, THEREFORE, BE IT RESOLVED that the application of Pete Lien and Sons, LLC for a variance of use within the A-35 (Agricultural) zoning district to permit a permanent concrete batch plant where such is not a permitted use for the following described unincorporated area of El Paso County be approved:

See Exhibit A

AND BE IT FURTHER RESOLVED that the Planning Commission recommends the following condition(s) and notation(s) shall be placed upon this recommendation:

CONDITIONS

1. Approval of a site development plan by the Planning and Community Development Department shall be required to establish the proposed use on the subject parcel.
2. Screening and landscaping shall be installed prior to the initiation of the use and be in general conformance with the landscape plan submitted with the variance of use request.
3. Prior to approval of the site development plan, documentation shall be submitted identifying that an Air Pollution Emissions Notice (APEN) has been reviewed and approved by the Colorado Department of Public Health and Environment Air Pollution Control Division.
4. Prior to approval of a site development plan proposing any land disturbing activities, documentation from the United States Fish and Wildlife Services (USFWS) authorizing such activity shall be received.
5. An on-site wastewater treatment (OWTS) is required for this project and shall be obtained from El Paso County Public Health.
6. The project is subject to the El Paso County Road Impact Fee Program (Resolution 19-471), as amended. Traffic impact fees shall be paid in full at the time of site development plan
7. Prior to the approval of the site development plan, the applicant shall enter into a haul route agreement with the El Paso County for the variance of use. The Board of County Commissioners has authorized that the haul route agreement be approved administratively by the ECM Administrator. The haul route agreement shall identify the impacts on the County roads for this variance of use that will cause extraordinary damage or accelerated deterioration to County roads in accordance with the EPC ECM. The haul route agreement shall include requirements to address pavement/structure impacts to County Roads, provide for an annual fee to be paid to the El Paso County Road and Bridge Fund, provide for annual adjustments for applicable construction costs, provide for a fee structure that is based upon actual annual site traffic counts, include provisions for payment requirements, and include an allowance for the required annual fee to be administratively adjusted by the County Engineer upon the adoption of a (countywide) haul route fee by the El Paso County Board of County Commissioners.
8. The submitted Traffic Impact Study assumes an average vehicle trip and related trip distribution that will be generated by each land use for the proposed variance of use. The applicant shall install a traffic counter at its access/driveway to Stapleton Road which shall at a minimum record the actual trip distribution, daily trips and peak hour

volumes by vehicle type. The traffic counts shall be provided annually as outlined in the proposed haul route agreement or within 15 business days when requested by El Paso County. The actual traffic counts will be utilized to determine: the annual haul route fee, required amendments to the County driveway/access permit in accordance with the EPC ECM, any obligations to the El Paso County Road Impact Fee Program as a result of amendments to the El Paso County driveway/access permit, and required to amendments by the applicant to the County access permits with CDOT. Note that amendments to the County and CDOT driveway/access permits could trigger the need for updated traffic impact studies and related roadway improvements in accordance with the EPC ECM and/or CDOT driveway/access permit criteria.

9. Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed species.
10. The applicant shall complete two Colorado Department of Transportation access permits for the intersections of State Highway 24 and Stapleton Drive, and State Highway 24 and Judge Orr prior to site development plan approval.
11. The applicant shall complete an escrow agreement with the Colorado Department of Transportation in the amount of \$70,833.00 to be applied towards the construction of a traffic signal at State Highway 24 and Stapleton Drive prior to site development plan approval.
12. Vertical structures greater than 35 feet in height shall require Federal Aviation Administration (FAA) Form 7460-1 Notice of Proposed Construction for Obstruction Evaluation.

NOTATIONS

1. Variance of Use approval includes conditions of approval and the accompanying site plan and elevation drawings. No substantial expansion, enlargement, intensification or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The applicant shall coordinate with CDOT to determine the fair share contribution and/or construction necessary to bring the intersection of Highway 24 and Stapleton Road to a satisfactory level of service with the site development plan application.

3. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or Variance of Use conditions/standards are being violated, preceded by notice and public hearing.
4. If the Variance of Use is discontinued or abandoned for two (2) years or longer, the Variance of Use shall be deemed abandoned and of no further force and effect.

AND BE IT FURTHER RESOLVED that this Resolution and recommendations be forwarded to the El Paso County Board of County Commissioners for its consideration.

Commissioner Brittain Jack seconded the adoption of the foregoing Resolution.

The roll having been called, the vote was as follows:

Commissioner Risley	aye
Commissioner Bailey	nay
Commissioner Lucia-Treese	aye
Commissioner Fuller	nay
Commissioner Brittain Jack	aye

The Resolution was adopted by a vote of 3 to 2 by the Planning Commission of the County of El Paso, State of Colorado.

DATED: June 2, 2020



Brian Risley, Chair

EXHIBIT A

Legal Description for Judge Orr Property

FROM THE COUNTY

S2SW4, W528.0 ft of SW4SE4 SEC 34-12-64, EX PT TO COUNTY BY REC #215041107 & 2015041108

FROM THE WARRANTY DEED

THE SOUTH HALF OF THE SOUTHWEST QUARTER AND THE WEST 528 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, EXCEPTING THEREFROM THOSE PARCELS CONVEYED TO EL PASO COUNTY RECORDED APRIL 28, 2015 UNDER RECEPTION NOS. 215041107 AND 215041108