

EL PASO  **COUNTY**
COLORADO

COMMISSIONERS:
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CAMI BREMER (VICE-CHAIR)

LONGINOS GONZALEZ, JR.
HOLLY WILLIAMS
CARRIE GEITNER

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Board of County Commissioners
Stan VanderWerf, Chair**

**FROM: Nina Ruiz, Planning Manager
Craig Dossey, Executive Director**

**RE: LDC-21-003 Land Development Code Amendment -
Variance of Use - to Chapter 5 of the El Paso County Land
Development Code (2021) to add additional review criteria for a
Variance of Use regarding Master Plan consistency**

Commissioner District: All

Planning Commission Hearing Date	8/5/2021
Board of County Commissioners Hearing Date	8/10/2021

EXECUTIVE SUMMARY

A request by the El Paso County Planning and Community Development Department to amend Chapter 5 of the El Paso County Land Development Code (2021) to add an additional review criteria for a Variance of Use regarding Master Plan consistency. The proposed revisions, in their entirety, are on file with the El Paso County Planning and Community Development Department.

The proposed amendments include:

- Amending Section 5.3.4, Variance of Use, review criteria to add “The application is consistent with the El Paso County Master Plan.”

A. PLANNING COMMISSION SUMMARY – PC information not available at time of required posting.

Request Heard:
Recommendation:
Waiver Recommendation:
Vote:

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



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

Vote Rationale:
Summary of Hearing:
Legal Notice:

B. APPLICABLE RESOLUTIONS:

Approval Page 7
Disapproval Page 8

C. REQUEST

A request by the El Paso County Planning and Community Development Department to amend the El Paso County Land Development Code (2021) to include:

- Amending Section 5.3.4, Variance of Use, review criteria to add “The application is consistent with the El Paso County Master Plan.”

D. BACKGROUND

The El Paso County Land Development Code is routinely amended to respond to current land use trends, recurring issues, changes in legislation, and errors/oversights. The Planning and Community Development Department staff maintains a running list of necessary and recommended revisions to the Code as issues arise. Chapter 14 of Your El Paso Master Plan (2021), which is titled Implementation, includes specific discussion regarding the Master Plan being a necessary review criteria for any land use application:

“The Master Plan should be relied upon for guidance when considering land use applications and determining consistency with the Plan should be added to the Land Development Code as one of the criteria for approval when taking formal action to approve or deny a land use application.”

The proposed revision to the Variance of Use criteria is recommended and supported by the recently adopted Master Plan. Page 143 of the Master Plan discusses how “one off” uses should be handled in El Paso County:

“The County should also continue to perform detailed review of land use related requests by comparing the proposed land use with the regulations outlined in the Land Development Code, including determining whether the proposed use could have significant adverse impacts on nearby properties resulting in negative use-to-use compatibility issues. Some requests may include a proposed use that was not identified or otherwise anticipated within the respective Master Plan Placetype. In this instance, the proposal should not be immediately discounted as inconsistent with the Master Plan, but instead should be evaluated based upon the merits of the proposal for overall consistency with the Plan, compatibility with the surrounding land uses, and whether the use supports the overall character of the area. Considering this, the

County should remain open-minded and adapt-able to “one-off” uses, which may include necessary but locally questionable uses. It may prove to be vitally important that the County seize opportunities that benefit the economic vitality and development potential of the community but do so while responsibly managing natural resources and preserving the overall character of each Placetype. Since it is not possible to know or predict all potential future uses or opportunities, the Master Plan should serve as a guide to assist the County in evaluating each and every land use proposal.”

These “one off” type of uses are likely to only be allowed with approval of a variance of use. In order to implement the Master Plan the Code should be revised to require that Master Plan consistency be included as one of the potential findings.

The proposed revisions were sent to 20 outside agencies. There are no outstanding comments from the outside agencies.

E. RECOMMENDED AMENDMENTS

A request by the El Paso County Planning and Community Development Department to amend the El Paso County Land Development Code (2021) to include:

- Amending Section 5.3.4, Variance of Use, review criteria to add “The application is consistent with the El Paso County Master Plan.”

F. APPROVAL CRITERIA

The statutory role of the Planning Commission and Board of County Commissioners is identified below:

30-28-116. Regulations may be amended.

From time to time the board of county commissioners may amend the number, shape, boundaries, or area of any district, or any regulation of or within such district, or any other provisions of the zoning resolution. Any such amendment shall not be made or become effective unless the same has been proposed by or is first submitted for the approval, disapproval, or suggestions of the county planning commission. If disapproved by such commission within thirty days after such submission, such amendment to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment, the board of county commissioners shall hold a public hearing thereon, and at least fourteen days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county.

G. PUBLIC COMMENT AND NOTICE

A summary of the proposed Code amendments and the date of the Board of County Commissioner hearing will be published in The Fountain Valley News pursuant to Colorado Revised Statute 30-28-116. A copy of this publication will be included in the backup materials for the Board of County Commissioners hearing. All the stakeholders were notified of the hearing date via EDARP.

H. ATTACHMENTS

Proposed Amendments to the Land Development Code (2021) (redline version)
All Comments Received
Board of County Commissioners' Resolution

5.3.4.C

Criteria. In approving a variance of use, the following criteria may be considered:

- The strict application of any of the provisions of this Code would result in peculiar and exceptional practical difficulties or undue hardship.
- The variance of use is generally consistent with the applicable Master Plan;
- 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 County;
- 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;
- The proposed use will comply with all applicable requirements of this Code and all applicable County, State and federal regulations except those portions varied by this action;
- The proposed use will not adversely affect wildlife or wetlands;
- The applicant has addressed all off-site impacts;
- The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
- 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.

RESOLUTION NO. 21-

EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS, STATE OF COLORADO

APPROVAL OF AMENDMENT TO THE LAND DEVELOPMENT CODE (LDC-21-003) – Variance of Use – to Chapter 5 of the El Paso County Land Development Code (2021) to add additional review criteria for a Variance of Use regarding Master Plan consistency

WHEREAS, the Planning and Community Development Department of El Paso County requests approval of Amendment to Chapter 5 of the Land Development Code as herein described, to add an additional review criteria for a Variance of Use regarding Master Plan consistency. The proposed revisions, in their entirety, are on file with the El Paso County Planning and Community Department

WHEREAS, a public hearing was held by the El Paso County Planning Commission on August 5, 2021, upon which date the Planning Commission did by formal resolution recommend approval of the proposed amendments, and

WHEREAS, a public hearing was held by this Board on August 10, 2021; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the master plan for the unincorporated area of the County, 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, comments by the El Paso County Planning Commission Members, and comments by the Board of County Commissioners during the hearing, this Board finds as follows:

1. The proposed amendment(s) to the El Paso County Land Development Code Choose an item. properly submitted for consideration by the Planning Commission.
2. Proper publication and public notice were provided as required by law for the hearing before the Planning Commission.
3. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested persons were heard at that hearing.
4. All data, surveys, analyses, and studies, as are required by the State of Colorado and El Paso County have been submitted, reviewed, and were received into evidence and found to meet the intent of the Introductory Provisions of the Land Development Code.

5. For the above-stated and other reasons, the proposed Amendment(s) are in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED the El Paso County Board of County Commissioners hereby approves the amendment to Chapter 5 of the El Paso County Land Development Code, including other conforming amendments throughout the Code, as represented on the attached Exhibit "A" by underlining (additions) and strike-through (deletions):

AND BE IT FURTHER RESOLVED that the Executive Director of Planning and Community Development is hereby authorized and directed to develop procedures for the provision of public notice of and opportunity to submit comments on applications for administrative plat approval and for the appeal of administrative plat approval or denial to the Board of County Commissioners.

AND BE IT FURTHER RESOLVED the record and recommendations of the El Paso County Planning Commission be adopted, except as modified herein.

DONE THIS 10th day of August 2021 at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: _____
Chair

By: _____
County Clerk & Recorder

EXHIBIT A

See attached.