

EL PASO



COUNTY

COMMISSIONERS:
DARRYL GLENN (PRESIDENT)
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STAN VANDERWERF
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PEGGY LITTLETON

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

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

FROM: Nina Ruiz, Project Manager/Planner II
Tommy Hoff, Engineer I
Craig Dossey, Executive Director

RE: BOA-17-003: Cox Garage Dimensional Variance
Assessor's Schedule No: 53240-02-004

OWNER:

REPRESENTATIVE:

Diane and Clifford Cox
11130 Dodge Circle
Peyton, CO 80831

PJ Anderson
31 N Tejon Street, Suite 500
Colorado Springs, CO 80913

Commissioner District: 2

Board of Adjustment Hearing Date:

9/13/2017

EXECUTIVE SUMMARY

A request by Diane and Clifford Cox for a dimensional variance to allow a detached garage to exceed the standard of two (2) times the size of the house within the RR-5 (Residential Rural) zoning district. The property, known as Lot 4 of the D-Cross-D Subdivision, is located east of Highway 24 and south of Garrett Road and within Section 24, Township 13 South, Range 65 West of the 6th P.M. The parcel is located within the Falcon/Peyton Small Area Master Plan (2007).

A site plan for the 6,000 square foot detached garage was originally denied by the Planning and Community Development Department on April 9, 2007, because the structure was larger than allowed in the RR-5 (Residential Rural) zoning district (ADD-07-158). After investigation of an advertisement for an automobile restoration business, a notice of violation was sent to the property owner in December of 2007 for operating a business and construction of the garage without site plan or building permit approval (C-07-199). The file was closed in 2009 after information was received that the business was no longer being operated, and an Early Assistance meeting was held regarding a variance application for the garage. No action was apparently taken by Pikes Peak Regional Building Department (RBD). After another complaint was received, a second notice of violation was issued December 14, 2016, citing the same violations (C-16-

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



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

254). The applicant no longer runs a business out of the structure but a dimensional variance is required in order to legalize the size of the garage.

A. REQUEST

A request for approval of a dimensional variance to allow a 6,000 square foot detached garage, which exceeds the standard of two times the size of the home. The residence on the property is 1,664 square feet in size, which would therefore allow for an accessory structure up to 3328 square feet.

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.”*

Legal use of the property is not severely restricted due to any exceptional narrowness, shallowness, or shape of the property.

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

Legal use of the property is not severely restricted due to any exceptional topographic conditions or other extraordinary or exceptional situation or conditions.

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”*

Approval of the variance would provide permanent relief.

- *“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”

There are no anticipated impacts that would require an alternate plan, standard, or condition.

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

Section 5.2.1.K of the Land Development Code states:

The building footprint of accessory structures which are not classified as agricultural structures and accessory uses in all residential zoning districts shall not exceed the building footprint of the primary use (residence) to which they are subordinate, except that when the parcel size is 2.5 acres or greater the accessory structure building footprint may be two (2) times the building footprint of the primary use.

Size limitations for accessory structures first came into place with the adoption of the Land Development Code in October of 2006 and effective April 2, 2007, which provided that the size of an accessory structure (excluding barns) could not exceed the size of the primary use (residence). This was revised in 2008 as presently worded above. The residence on the property is 1,664 square feet in size, which would therefore allow for an accessory structure up to 3328 square feet. The garage is 6,000 square feet in size. Apparently, the garage was constructed in 2007 without approval by El Paso County Planning and Community Development Department or Pikes Peak Regional Building Department. The applicant's contractor provided the owners a construction bid in February of 2007, which anticipated obtaining a building permit. However, no such permit was ever obtained. The contract does not specify when construction was to commence or when the building was to be completed. The aerial photograph taken between May and June of 2007 shows that the garage was not yet constructed.

If the garage would have been legally constructed with a building permit prior to the April 2, 2007, which is the effective date of the Land Development Code, then the detached garage would have been considered legal nonconforming. A site plan for the garage was denied on April 9, 2007, because the garage exceeded the size of the home. Per the applicant's letter of intent, they believed the builder had obtained a building permit for the structure.

Approval of the request may be based on the criteria of unique or equitable consideration where the property owner was unaware that proper permits were not obtained prior to construction.

C. BACKGROUND

The property was platted as Lot 4 of the D-Cross-D subdivision on July 24, 1973. The 1,664 square foot home was constructed in 1996. A site plan for the 6,000 square foot garage was denied by the Planning and Community Development Department on April 9, 2007, because the structure exceeded the zoning standards of the RR-5 (Residential Rural) zoning district (ADD-07-158). After a complaint was received, a notice of violation was sent to the property owner in December of 2007 for operating an automobile restoration business out of the garage as well as construction of the garage without site plan or building approval (C-07-199). After another complaint was received, a second code enforcement file was created on December 14, 2016, citing the same violations and a notice of violation was mailed to the property owner on December 21, 2016 (C-16-254). The applicant no longer operates a business out of the structure but desires a dimensional variance to legalize the size of the garage.

D. ALTERNATIVES EXPLORED

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

1. Demolish the structure.
2. Demolish a portion of the structure so that it does not exceed two times the size of the home (3328 square feet).
3. Add additional square footage to the principal structure (residential dwelling) to bring it up to a minimum of 3,000 square feet.

E. 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 size of the garage, and that the applicant 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 garage may 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 a site plan by the Planning and Community Development Department and issuance of a building permit from the Pikes Peak Regional Building Department for the garage are required within 60 days of the date of approval. .
3. The applicant shall submit completed versions of both pages of the application.

4. The applicant shall submit a revised site plan that addresses the redline revisions requested of the applicant on August 10, 2017.
5. The garage shall not be used for commercial purposes unless the applicant has received approval from the Planning and Community Development Department or the Board of County Commissioners for the use.

F. APPLICABLE RESOLUTIONS

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

G. LOCATION

North: RR-5 (Residential Rural)	Residential
South: RR-5 (Residential Rural)	Residential
East: RR-5 (Residential Rural)	Residential
West: RR-5 (Residential Rural)	Residential

H. SERVICE

1. WATER/WASTEWATER

Water is provided by an onsite groundwater well.

2. WASTEWATER

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

3. EMERGENCY SERVICES

The site is located within the boundaries of the Falcon Fire Protection District. The District was sent a referral and had no concerns.

I. ENGINEERING

1. FLOODPLAIN

FEMA Flood Insurance Rate Map (FIRM) panel number 08041C0575 shows that the property is located outside of the 500- year Floodplain (Zone X).

2. DRAINAGE AND EROSION

The property is located within the Jimmy Camp Creek drainage basin (FOMO2000), which is an unstudied basin. No drainage or bridge fees were required for the variance. No public drainage improvements are required.

3. TRANSPORTATION

The property is accessed by Dodge Circle. A traffic impact study was not required because the variance is not expected to generate 100 daily vehicle trips more than the property would be expected to generate without the approval of the variance. No traffic improvements are required.

J. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified six (6) adjoining property owners on 8/24/2017, for the Board of Adjustment meeting. Responses will be provided at the hearing.

K. ATTACHMENTS

Letter of Intent

Vicinity Map

Site Plan

ADD-07-158 (Denied site plan)

Land Development Code Citation

2007 Aerial

June 29, 2017

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

Re: Variance – 11130 Dodge Circle

Ladies and Gentlemen:

My husband and I would like to request a variance from the strict application of Section 5.2.1 (K) of the El Paso County Land Development Code which restricts the size of the footprint of certain accessory structures to two times the building footprint of the primary use on lots larger than 2.5 acres.

The background leading up to this request is generally as follows. We purchased our five acre lot in 2005. At that time it had a house and a two car detached garage. In February of 2007, we hired a contractor to construct a pole barn with all wood framing and a dirt floor. The main purpose of the pole barn was for my husband's hobby of restoring hot rods. At that time, this same Section 5.2.1 (K) was written to state: "All accessory uses in all residential zoning districts cannot exceed the square footage of the primary use (residence) to which they are subordinate (*excluding barns*)". The Land Development Code, however, did not define "barn" in 2007 nor does it do so today. It was our understanding at the time that our pole barn met all applicable zoning requirements. Many, if not most, of our immediate neighbors were constructing pole barns on their lots.

We have since been advised that if pole barns were not to be used exclusively for agricultural purposes, a building permit was required. Although our contractor agreed to pull a building permit at the time (see attached contract) he apparently did not do so. Therefore, while our pole barn is nonconforming from a zoning standpoint, having met the size requirements for accessory structures at the time, staff has advised us that it is not "legally" nonconforming because a building permit was never issued. It is our intent to apply for a building permit now but we are advised that your variance is necessary as a first step.

My husband restores and sells one or two hot rods per year in this barn. There is no advertising or signage on the property, no outside storage of vehicles and no visual impacts other than the barn itself associated with his activities. Visitation by customers is rare. As such, 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. We are attaching photos of the neighborhood which show that pole barns in this area are very common and customary. Based on all of the above, we believe that the strict application of the zoning regulations (having to tear down the pole barn or more than doubling the house size) would result in peculiar and exceptional difficulties and undue hardship.

We thank you for your consideration of our request.

ALL SPECIALTY BUILDINGS
CONTRACT

OWNER: DIANNE COX
BILLING
ADDRESS: 11130 DODGE CIRCLE
PEYTON, CO. 80831

PHONE: 683-8403

DATE: 2-21-07
JOB
ADDRESS: 11130 DODGE CIRCLE
PEYTON, CO. 80831

PHONE:

48' x 125' x 14'

BUILDING TO BE OF POST FRAME CONSTRUCTION. BUILDING TO BE SHEETED WITH 29 ga.
PAINTED METAL AND TRIM. BUILDING TO INCLUDE THE FOLLOWING:

3 - 10' x 10' INSULATED OVERHEAD DOORS
1 - WALK DOOR
BUILDING PERMIT

FOR THE TOTAL SUM OF \$ 45,382.00

THANK YOU,
ALL SPECIALTY BUILDINGS
9994 ELLICOTT HWY.
CALHAN, CO. 80808
(719) 683-4386

TERMS:
30% DEPOSIT PRIOR TO START
40% DUE UPON COMPLETION OF FRAMEING
REMAINDER DUE UPON COMPLETION OF BUILDING

NOTE:
BUILDING TO BE BUILT ON YOUR LEVEL SITE.
PRICE DOES NOT INCLUDE COSTS OF LEVELING
IF NEEDED.

COLORS:
ROOF -
SIDEWALLS -
TRIM -


OWNER


AUTHORIZED SIGNATURE

2-23-07
DATE OF ACCEPTANCE

El Paso County Parcel Information

File Name: BOA-17-003

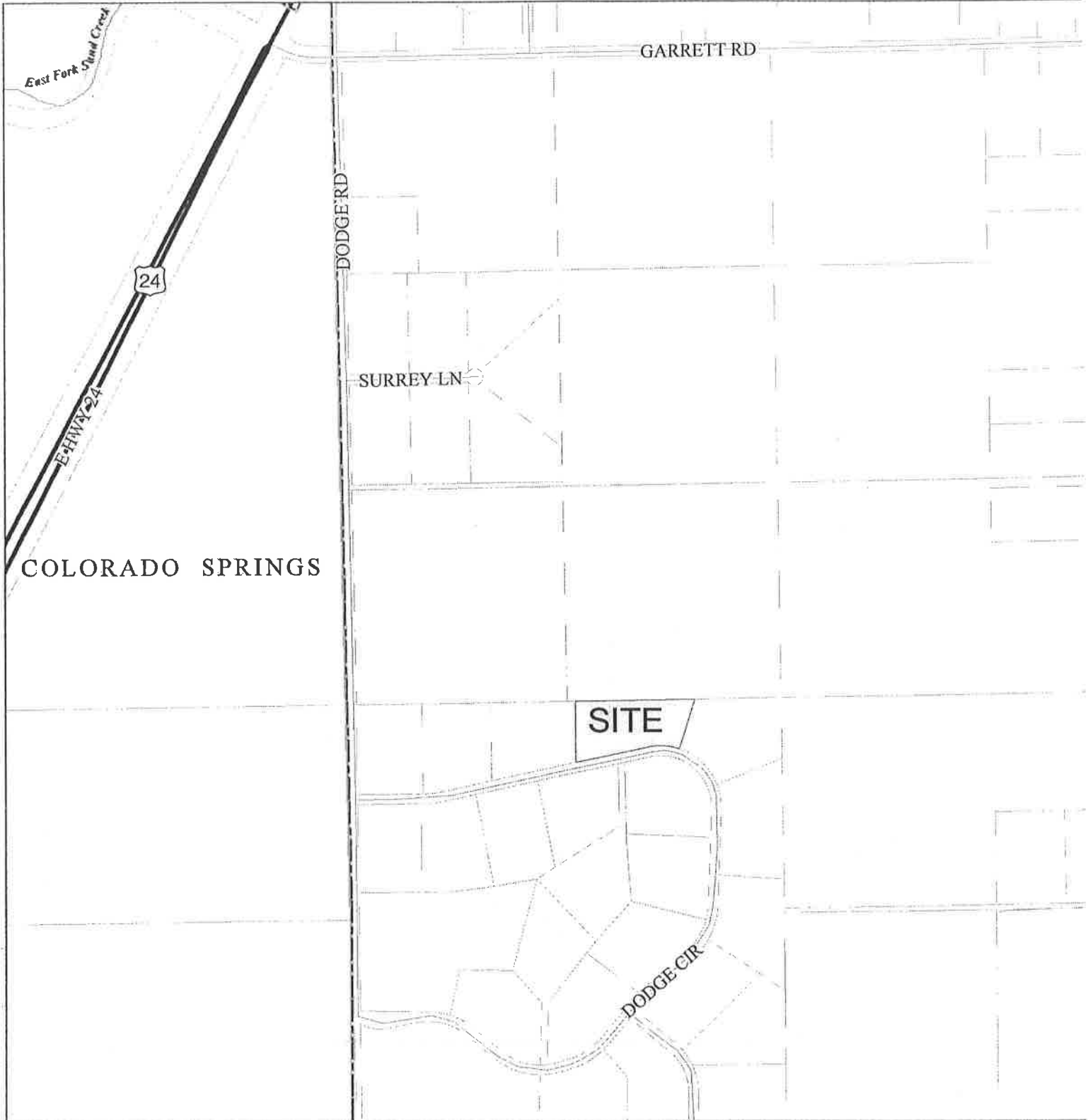
PARCEL	NAME
5324002004	COX DIANE M

Zone Map No.: --

ADDRESS	CITY	STATE
11130 DODGE CIR	PEYTON	CO

ZIP	ZIP+4
80831	7712

Date: August 23, 2017



ALL SPECIALTY BUILDINGS
CONTRACT

OWNER: DIANNE COX
BILLING
ADDRESS: 11130 DODGE CIRCLE
PEYTON, CO. 80831

PHONE: 683-8403

DATE: 2-21-07
JOB
ADDRESS: 11130 DODGE CIRCLE
PEYTON, CO. 80831

PHONE:

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40% DUE UPON COMPLETION OF FRAMEING
REMAINDER DUE UPON COMPLETION OF BUILDING

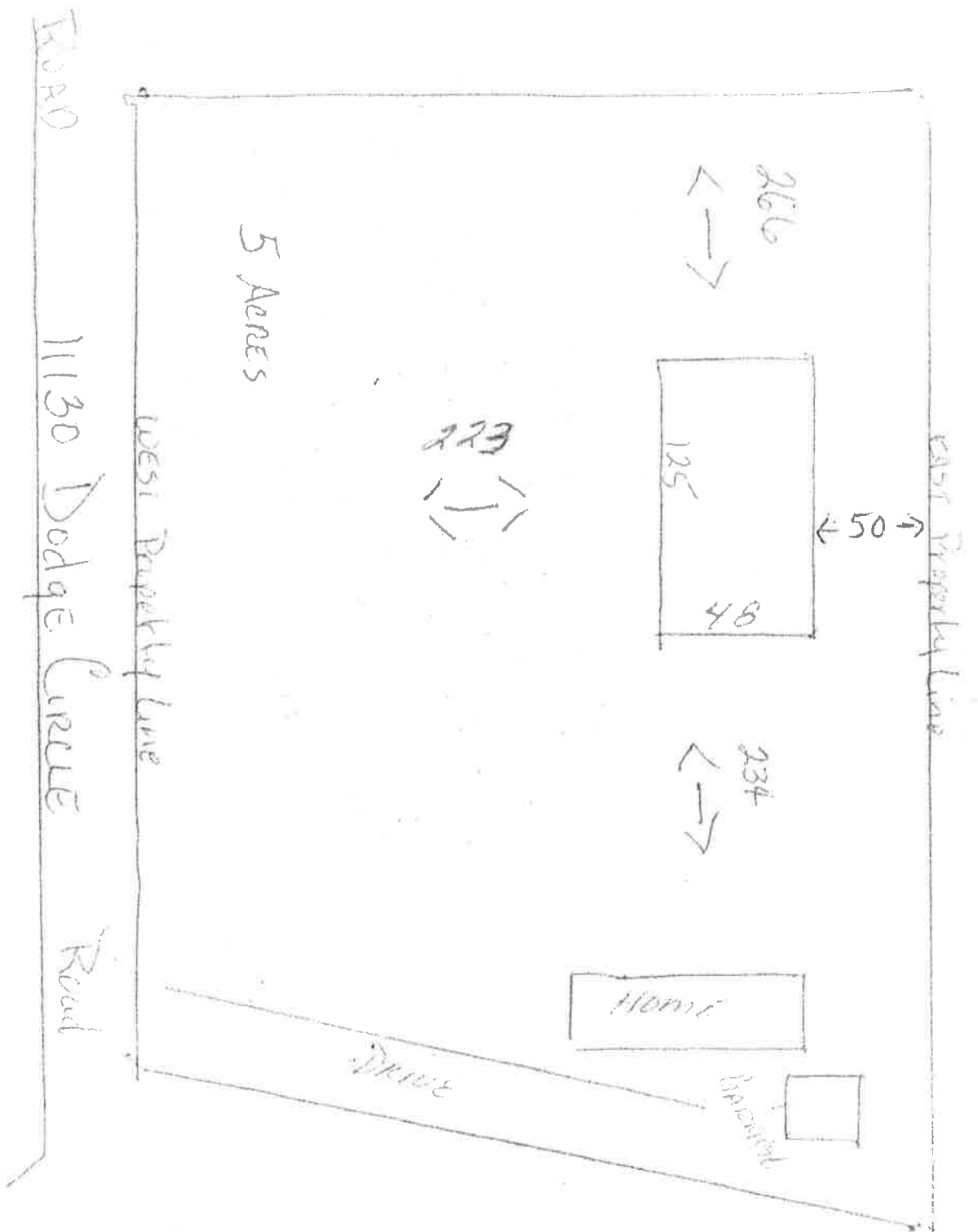
NOTE:
BUILDING TO BE BUILT ON YOUR LEVEL SITE.
PRICE DOES NOT INCLUDE COSTS OF LEVELING
IF NEEDED.

COLORS:
ROOF -
SIDEWALLS -
TRIM -

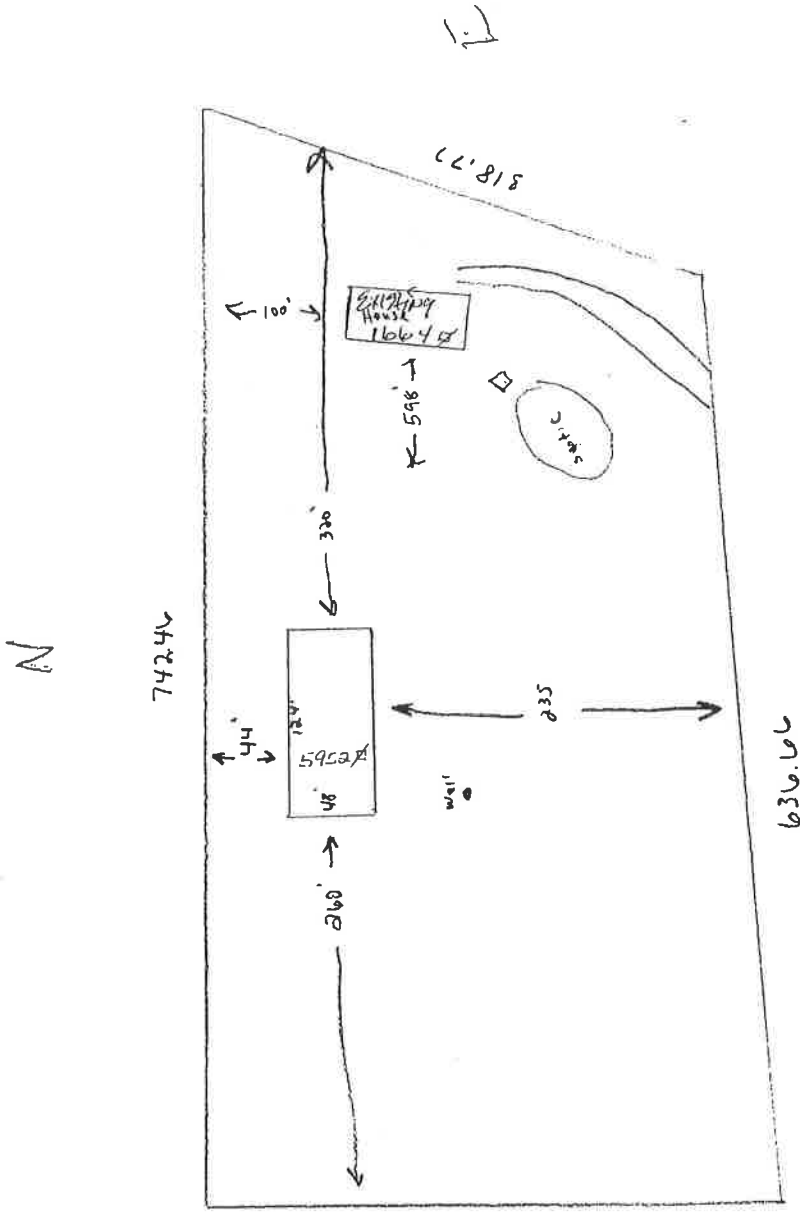
Dianne Lupa Cox
OWNER

Subie Castner
AUTHORIZED SIGNATURE

2-23-07
DATE OF ACCEPTANCE



ADD-07-158
 53240-02-004
 1130 DODGE CIR.
 D. CROSSD SUBDIVISION
 EL PASO COUNTY
 RR-3 (RR-5)
 Denied - accessory
 building too large.



PAID
4-09-07



INTAKE RECEIPT

El Paso County Development Services Department
2880 International Circle, Colorado Springs, Colorado 80910
719-520-6300

Ver. 2007

Receipt #	B45983	Payment Type:	Check: <input checked="" type="checkbox"/>
Date:	04/09/07		Check # 2800
Processed by:	Cathy Spaulding		Cash: <input type="checkbox"/>
Project Name:	11130 DODGE CIR		
Name:	STRAIN AND DAD CONSTRUCTION LLC		
Address:	16947 EASTONVILLE RD		
City:	ELBERT	State:	CO
Phone:	494 2223	Fax:	X
E-Mail:	X	Zip:	80106

PROCESS	FEE	Qty	TOTAL
Administrative Plot Plan (Residential)	\$100.00	1	\$ 100.00
Surcharge	\$37.50	1	\$ 37.50
	TOTAL		\$ 137.50

Comments

used as storage buildings in conformance with County rules and regulations on the effective date of this Code shall be considered nonconforming uses.

(J) Structures or Uses Not Considered Accessory Uses a Violation

Any building, structure or use that does not qualify as an accessory structure or use and that is not identified as an allowed use, approved as a special use, or granted a use variance is a violation of this Code and subject to zoning enforcement.

(K) Square Footage of Accessory Structure and Use Limited

The building footprint of accessory structures which are not classified as agricultural structures and accessory uses in all residential zoning districts shall not exceed the building footprint of the primary use (residence) to which they are subordinate, except that when the parcel size is 2.5 acres or greater the accessory structure building footprint may be two (2) times the building footprint of the primary use.

5.2.2. Child Care Centers, Family Care Homes, and Group Homes

The following standards apply, subject to the provisions and limitations of the County and State Department of Human Services and Department of Public Health and Environment.

(A) Separation Requirements

No family care homes, child care centers, or group homes, excluding group homes for handicapped or disabled persons, shall be located on an adjacent lot or parcel or within 500 linear feet along the same road from the lot or parcel boundary lines as another family care home, child care center, or applicable group home except for those facilities that: (1) qualify as a single-family dwelling and have an occupancy in the family care home, child care center, or group home of fewer than 6; or (2) where the family care home, child care center, or group home is located within a commercial zone district.

(B) Parking, Screening and Buffering

The facility shall comply with the parking standards of the Land Development Code. All commercial components, such as parking lots and playgrounds, shall be screened and buffered from neighboring residences and uses. For family care homes, child care centers, or group homes, excluding group homes for handicapped or disabled persons, the County may request a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility. The sufficiency of the transportation plan may be considered by the County in reviewing an application but may not, by itself, constitute grounds for denying the application. See, C.R.S. § 30-28-115(2.5).

(C) Facility Allowances and Applicable Review Processes

- (1) A family care home, child care center, or group home shall be considered an allowed use or may require a special use permit depending on the specific facility type and number of residents/enrollment as shown in Table 5.3 when located within a forestry, agricultural, and residential zone district, and shall not be considered a second principal use when operated in conjunction with or within a residence on the property. Additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons are allowed.

2007 Aerial

