

# EL PASO

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# COUNTY

STAN VANDERWERF  
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## PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

October 22, 2018

CRAIG DOSSEY, EXECUTIVE DIRECTOR

Michael Moran  
1230 Sherwood Lane

File: ADM-18-028, 1230 Sherwood Lane

RE: Administrative determination regarding legal nonconforming status of an existing garage  
1230 Sherwood Lane

The property with the schedule number 6503307025 is currently zoned MHS (Mobile Home Subdivision). The MHS zoning district is intended to accommodate mobile/manufactured home subdivisions where individual lots are established and may be conveyed. The mobile home placed on the subject parcel in 1979 has since been removed. The only structure on the subject parcel is a 576 square foot residential garage constructed in 1968. A garage is not an allowed principle use in the MHS zoning district.

The property was originally zoned A-2 in 1945, and was rezoned to C-2 in the early 1960's. At the time of the rezoning the C-2 zoning district allowed for residential uses. The property was then rezoned to the MHS (Mobile Home Subdivision) by a county initiated rezoning on October 24, 1985. The Board of County Commissioner staff report for the 1985 rezone identified all residential uses and associated structures to be considered "legal nonconforming".

Section 5.2.1.K of the El Paso County Land Development Code (2018) limits the size of accessory structures to no greater than the footprint of the principle use. A request for approval of a Tiny House Site Plan has been submitted to allow for a tiny house with a footprint of 408 square feet, which would cause the garage to then be considered nonconforming in terms of the size of the structure.

The garage was constructed prior to the rezoning of the subject parcel to the MHS zoning district. The size of the garage is considered legal nonconforming and is subject to Section 5.6 of the El Paso County Land Development Code, Legal Nonconformities. The use of the garage shall be limited to those uses permitted within the MHS zoning district.

Best Regards,

Nina Ruiz, Planner II  
El Paso County Development Services  
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(719) 520-6313

Enclosures: MHS-85-001 Staff Report  
Section 5.6 of the Land Development Code

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7. MHS-85-1 REZONING: C-2 to MHS  
EL PASO COUNTY

A request by El Paso County to rezone 209 lots in the Stratmoor Valley from C-2 (Commercial) to MHS (Mobile Home Subdivision). The area to be rezoned includes the area where mobile homes are currently located in portions of Stratmoor Valley Filing 1; Stratmoor Valley 5th Filing, Addition 1; Replat of Blocks 5, 7, 8, 9, 10 in Stratmoor Valley Filing #5, Addition 2; Stratmoor Valley Filing Number 5, Addition 2; and Replat of Lots 10-15 including Block 2, Stratmoor Valley Filing 2. The properties are located south of State Highway 85 and east of Interstate 25 in Stratmoor Valley.

PLANNING COMMISSION ACTION: The request was approved unanimously (7-0) at the September 23, 1985, meeting of the Planning Commission.

SPEAKING FOR: Land Use Department.

SPEAKING AGAINST: Cyril Rupp and Mike Gremmer, area residents, who wish to retain the commercial zoning on their property.

PUBLIC NOTICE: The property was posted on October 4, 1985.

PUBLIC NOTIFICATION: Adjoining property owners were notified of this meeting on October 11, 1985.

ADJOINING PROPERTY OWNERS RESPONSES: Two hundred nine (209) residents within the area were notified, with thirty-five (35) responding in favor, six (6) in opposition, and one hundred sixty-eight (168) failing to respond.

Fifty (50) adjoining property owners were notified, with nine (9) responding in favor, four (4) in opposition, two (2) responding but expressing no opinion, and thirty-five (35) failing to respond.

ADJOINING PROPERTY OWNERS COMMENTS: Those against were concerned about the impact on their property values.

LEGAL PUBLICATION: This rezoning request was published in the Gazette Telegraph newspaper on September 23, 1985.

## ADJOINING LAND USE AND ZONING

North	Vacant Park- land/Mobile Homes	C-2 (Commercial) District and (MHS - Mobile Home Subdivision)
South	Residences	R-1 (Residential) District
East	Vacant	A-2 (Agricultural) and C-2 (Commercial) Districts
West	Residences	R-2 (Residential) District

BACKGROUND: Most of the Stratmoor Valley area was platted in the early 1960's. The area was originally zoned A-2 (Agricultural) District in 1945, and subsequently rezoned to C-2 (Commercial) District in the early 1960's. At that time the C-2 zone permitted residential uses with no minimum lot size. The C-2 zone has subsequently been amended and no longer permits residential uses and all existing residential uses are considered "legal nonconforming". The intent of this zone change request is to bring the zoning into conformance with existing uses on the properties.

All developed lots within the area proposed to be rezoned are used for mobile home residential purposes. Because of the "legal nonconforming" status of the mobile home uses the replacement of an existing mobile home with a larger one necessitates a review process (expansion of nonconforming use) that requires approval by the Board of County Commissioners. This process takes in excess of 60 days. Three requests for expansion of nonconforming uses in the mobile home park are currently being processed by the Land Use Department.

The prime benefit of the proposed rezoning is a significantly reduced processing time for replacement of existing mobile homes with larger units. If this rezoning is approved, plot plan approval can be processed on a same-day basis, providing setbacks can be maintained.

When the lots were platted, mobile homes typically were less than the current standard of 14 feet wide and 70 feet long. Most lots in the subdivision are 60 feet wide by 90 feet deep, and are adequate in size to accommodate a 14' x 70' single wide or a 24 foot double wide mobile home and still meet the Mobile Home Subdivision District setbacks. Replacement of mobile homes on lots where the 10 foot front, side, and rear yard setbacks cannot be met will require application for a Board of Adjustment setback variance.

Twenty (20) lots will not meet the 5,000 square foot minimum lot size of the District. Should replacement of the mobile homes on those lots occur, Board of Adjustment lot area variances will be required.

The majority of lots proposed to be rezoned are located in the 100-year floodplain of Fountain Creek. Application of the mobile home tie-down standards included in the National Flood Insurance Program is required for replacement of mobile homes in the floodplain areas through the plot plan approval process.

ENCLOSURES:

Vicinity Map  
Reduced Plat  
Planning Commission Resolution

Prepared by:  
Mark Gebhart  
10/16/85

## 5.6. - LEGAL NONCONFORMITIES

### 5.6.1. Purpose

This Section governs uses, structures and lots that were legally established prior to the adoption of this Code and do not comply with one or more requirements of the Code. The County seeks to allow nonconforming uses, structures, and lots to continue to exist and be maintained and put to productive use and to encourage as many aspects of the uses, structures, and lots to be brought into conformance with this Code as is reasonably practical. This Section is intended to recognize the interests of the property owner in continuing the nonconformity but also to preclude the extension, expansion, or change in character of the nonconformity or the reestablishment of the nonconformity after it has been abandoned.

### 5.6.2. General Provisions

- (A) **Continuation of Use.** A nonconforming use may be continued and a nonconforming building may continue to be occupied, except as otherwise provided for in this Section. A pre-existing, nonconforming use which would require the approval of a special use shall be presumed to have the required special use permit.
- (B) **Change of Building or Use.** A nonconforming building or use may be changed to any conforming building or use, but may not be later changed back to any nonconforming building or use. A legal nonconforming use shall not be changed to a different nonconforming use. Any change of a nonconforming use to another use shall immediately terminate the right to continue the nonconforming use.
- (C) **Interruption of Nonconforming Use.** If a nonconforming use is abandoned for a period of one year, the structure and land where the nonconforming use previously existed shall be occupied and used only by a conforming use. Intent to resume active operation of the nonconforming use shall not affect the foregoing. The burden of proof that a nonconforming use has been continuously maintained rests with the property owner or operator of the use. The evidence that an operation has been continuous shall be clear and conclusive. Any nonconforming use may be deemed abandoned after a period of less than one year if the property owner expressly states intent to abandon the use, or engages in action which unambiguously expresses intent to abandon.
- (D) **Default of Title.** If the title to any property changes by reason of tax delinquency, and the property is not redeemed as provided by law, the future use of the property shall be in conformity with this Code.

### 5.6.3. Restoration

- (A) **Damage to Structure.** A nonconforming structure damaged or partially destroyed by fire, explosion or natural occurrence may be restored to the condition in which it was immediately prior to the occurrence of the damage or destruction, provided:

- The value of the damage is less than 50% of the County Assessor's assessed value of the improvements damaged;
- The restoration or reconstruction does not extend beyond the original limits of the structure in setback, lot area coverage, height, floor area, and number of bedrooms or bathrooms; and
- All restoration or reconstruction is started within one year from date of the damage and is completed within two years.

- (B) **Intentional Damage by Property Owner or Agent.** The right to continue a nonconforming use terminates immediately when the structure containing a nonconforming use is destroyed by an intentional act of the property owner or their agent.
- (C) **Restorations Exempt for Site Development Plan Review.** Restorations meeting the requirements of this provision are not required to undergo a site development plan review.

#### 5.6.4. Enlargement of a Nonconforming Use

- (A) **Within an Existing Building.** A nonconforming use when located within a structure may be extended throughout the existing structure devoted to the use at the time of the adoption of the provisions of this Code causing the use to become nonconforming, provided that any structural alteration conforms to the requirements of this Code.
- (B) **Expansion of Use as Variance of Use or Special Use.** A nonconforming use of land shall not be extended or enlarged; provided, however, an extension or enlargement may be approved as a Variance of Use. Where the use is a special use in the zoning district, a special use permit shall be obtained for an extension or enlargement of the use.
- (C) **Expansion of Use as Variance of Use or Special Use.** A nonconforming use of land shall not be extended or enlarged; provided, however, an extension or enlargement may be approved as a Variance of Use. Where the use is a special use in the zoning district, a special use permit shall be obtained for an extension or enlargement of the use.

#### 5.6.5. Alteration of a Nonconforming Structure

- (A) **Structural Alterations Limited.** A nonconforming structure may be structurally altered, repaired, or enlarged in any way allowed by this Code; however, no alterations, repairs, or enlargements shall be made in a nonconforming building which would increase the degree of nonconformity with the density and dimensional standards of this Code. Additions or extensions may be made to a structure that is legally nonconforming as to height, area or setbacks provided the addition and the use of the addition conforms to all the requirements for the zoning district in which it is located.
- (B) **Maintenance.** Normal repairs and maintenance of a nonconforming structure are allowed. A nonconforming structure, however, cannot be repaired or altered in a manner that increases its nonconformity with this Code.
- (C) **Unsafe Buildings.** Any structure containing a nonconforming use or any nonconforming building declared unsafe by the Building Department may be strengthened or restored to a safe condition.
- (D) **Movement of Nonconforming Structure.** Should a nonconforming structure be moved, it shall conform to the provisions of the zoning district in which it is located after the move.
- (E) **Replacement of a Mobile Home in a Nonconforming Mobile Home Park.** Within a nonconforming mobile home park, a mobile home may be replaced with a post-1976 mobile home meeting the requirements of the Building Code on a unit by unit basis provided the setbacks as identified in the MHP District are met.

#### 5.6.6. Lots and Specific Facilities and Uses

- (A) **Nonconforming Signs.**
  - (1) **Termination of Right to Maintain Nonconforming Sign.** The right to maintain a nonconforming sign shall be terminated by one or more of the following events or activities:

- Abandonment of the nonconforming sign for a continuous period of one year;

- Increase of any sign dimension;
  - Damage to or destruction of the nonconforming sign from any cause whatsoever, where the cost of repairing the damage or destruction exceeds 50% of the replacement cost of the sign on the date of the damage or destruction. In determining the replacement cost of a nonconforming sign, the cost of the land, the cost of renting land, or any factor other than the cost of the sign itself shall not be considered; or
  - Failure of the nonconforming sign to comply with this Code at time of construction.
- (2) **Change of Copy, Orientation or Trim.** The copy, orientation or trim on the sign and supporting structure may be changed on a nonconforming sign.
  - (3) **Maintenance.** Nonconforming signs shall be maintained in good repair and any damaged sign, however caused, shall be repaired, except as otherwise limited by this Section.
  - (4) **Replacement of Nonconforming Signs.** Where the number of signs on a lot or parcel exceeds the number of signs allowed by this Code, 2 nonconforming signs shall be removed for every new or replacement sign to be erected. The maximum size of the new sign shall not exceed the maximum size allowed by this Code.
- (B) **Nonconforming Telecommunications Towers.** For nonconforming telecommunications towers there shall be no increase in the number of antennas located on a tower, or an increase in the height or weight bearing capacity of the tower beyond that necessary to conform to safety regulations adopted by the County, State or federal government, except that the following shall be allowed:
- (1) **Replacement of Antennas.** Antennas may be maintained, or replaced, with another antenna intended to provide the same service.
  - (2) **New Antennas Added to Tower.** New antennas may be added to a tower where the tower and antennas do not exceed 200 feet in height above the base of the tower, and the new antenna does not exceed 25 feet in length and 8 inches in diameter, and does not extend above the height of the existing tower.
  - (3) **Maintenance and Repairs.** Maintenance, repairs or alterations to legal nonconforming telecommunication towers may be performed that are necessary to maintain the tower in good condition and repair. The weight bearing capacity and wind loading capacity of a tower may only be increased to the extent necessary to maintain the tower in conformance with State or national standards for weight bearing capacity and wind loading capacity for the number of antennas otherwise allowed on the tower as set forth in this Section.
  - (4) **Removal of Unused Nonconforming Tower.** If there are no antennas on a nonconforming telecommunications tower or if a nonconforming telecommunications tower has been abandoned for a period of one year, the tower and any accessory structures, structures or equipment shall be removed within one year from the expiration of the one year period or it shall be brought into conformity with this Code.
- (C) **Nonconforming Sexually-Oriented Businesses.**
- (1) **Subsequent Location of Use or Change in Zoning District Boundary.** A sexually-oriented business lawfully operating at the time of adoption of this Code is not in violation of this Code by the subsequent location of a religious institution, school, park, residence, or residential district, within 1000 feet of the sexually-oriented business.
  - (2) **Nonconforming as a Result of Change to this Code.** A sexually-oriented business lawfully operating at the time of adoption of this Code and rendered nonconforming by any modification of this Code shall comply with all requirements included in this Code, but shall not be subject to the distance separation requirements.

- (D) **Nonconforming Mineral Resource Extraction.** Mineral and natural resource extraction operations that are sought to be conducted on property owned by or under lease or contract by the operator of a nonconforming mineral extraction operation and that is located on land contiguous to the nonconforming mineral extraction operation may be undertaken as an extension of the nonconforming mineral extraction operation.
- (E) **Nonconforming Pre-1976 Mobile Homes.** Existing pre-1976 mobile homes are considered nonconforming uses and may only be replaced with a dwelling conforming to the requirements of the Building Code or a pre-1976 mobile home which has been certified in accordance with the building code. Within the A-35 zoning district only, existing pre-1976 mobile homes may be converted to accessory structures for use as storage and other non-habitable uses with the removal of the kitchen and any related appliances.
- (F) **Nonconforming Landscaping and Parking.**
- (1) **Continuation.** Landscaping or parking areas legally existing at the time this Code became effective which have become nonconforming because they no longer meet current requirements, may be continued until either of the following changes occur:

- Any new construction or addition of building floor area consisting of 50% or more of the existing gross building floor area of the development project; or
- Any change from a residential use to a non-residential use (or vice versa) consisting of 50% or more of the existing gross building floor area of the development project.

All required landscaping shall be provided in conjunction with either of the changes described above.

- (2) **Extension.** Nonconforming landscaping or parking spaces shall not be enlarged, expanded, extended or increased, except as provided in this Code. Additional parking may be required whenever the PCD Director determines that it is necessary to avoid congestion on public roads and to provide for the general safety and convenience of County residents.

#### 5.6.7. Nonconforming Lot or Parcel

(A) **General Nonconformity.**

- (1) **Request for Conformity.** Upon request, any lot or parcel shall be recognized as nonconforming provided:

- The creation of the lot or parcel was in conformance with all applicable regulations at the time of its creation;
- The lot or parcel is currently in compliance with all use regulations and conditions and restrictions of any applicable special use or variance of use; and
- The lot or parcel complies with the requirements and criteria of the merger by contiguity provisions of this Code.

- (2) **Compliance with Development Standards.** Nonconforming lots or parcels shall comply with development standards of the applicable zoning district, except the lot frontage requirements, unless otherwise indicated in this Code. Lots or parcels subject to the merger by contiguity provisions of this Code shall have setbacks applied only along the exterior boundaries of the merged properties.



- (3) **Recognition Not Basis for Subdivision.** Recognition of nonconforming lots shall not be a basis or justification for new subdivision development. New subdivisions shall comply with the applicable zoning requirements.
- (B) **Nonconforming Lot or Parcel Due to Lot Size.** A lot or parcel that is nonconforming due to lot size shall be subject to the following provisions when a building permit for a dwelling or habitable addition is requested. A non-habitable addition or accessory improvement (e.g., a garage, deck, or tool shed) on a lot or parcel where a dwelling already exists is not subject to the requirements of this Section. An existing dwelling, located on a lot or parcel that is nonconforming due to lot size that is destroyed or partially destroyed by fire shall be subject to the restoration provisions of this Code.
- (1) **Nonconforming Lots Considered Conforming.** A legal lot or zoning lot that is nonconforming as a result of the minimum lot size requirement within the applicable zoning district shall be considered to be exempt from the minimum lot size requirement where:
- Central water and sewer are both provided and the area of the legal lot is at least 60% of the minimum lot area required by the applicable zoning district; or
  - Central water is provided and the area of the legal lot is at least 20,000 square feet; or
  - No central water or central sewer is provided and the area of the legal lot or zoning lot is at least 2.5 acres.
- (2) **Nonconforming Lots Made Conforming.** Where a legal lot does not meet the above requirements to be exempted from the minimum lot size requirements, contiguous legal lots under the same ownership shall be combined through a merger by contiguity process to create a zoning lot and the resulting parcel shall be considered conforming with respect to the minimum lot size requirement where:
- Central water is provided, but not central sewer, and the resulting zoning lot after any required merger is at least 10,000 square feet; or
  - No central water or central sewer is provided and the resulting parcel after any required merger is one acre or more in area.

A remainder nonconforming lot or parcel not required to meet the minimum lot size requirement for the subject property to be considered a conforming zoning lot shall be considered conforming provided the owner requests and receives a zoning lot determination from the PCD Director, and files the determination for recording with the Clerk and Recorder within 30 days of the date of the determination.

(3) **Nonconforming Lots Subject to Board of Adjustment Review.**

- (a) **Requirement to Use Merger by Contiguity as Alternative to Variance.** When applying for a building permit or seeking any land use approvals, or when requesting a determination of nonconformity under this Code, the nonconforming lots or parcels due to lot size are subject to a merger by contiguity and shall submit to the PCD a signed and completed merger agreement, provided by the PCD, acknowledging consent to the legal combination of the nonconforming contiguous lots or parcels. No nonconforming lot or parcel due to lot size shall be determined to be eligible for a lot size variance if a contiguous lot or parcel under the same ownership is available to be merged to the nonconforming lot or parcel.

- (b) **Requirement for Variance.** A nonconforming lot or parcel or zoning lot resulting from a merger by contiguity that fails to comply with the minimum lot size requirements to be considered conforming shall be required to obtain a lot size variance from the Board of Adjustment. In reviewing the variance request the BOA may also consider the density of the surrounding area, compliance with the Master Plan, the suitability of the parcels for the proposed construction, and the size and location of the proposed structures on the property in making their decision.
- (4) **Common Ownership.** For the purposes of a merger by contiguity, contiguous lots or parcels owned by a husband and wife, individually or by joint or common ownership shall be considered common ownership. Any property owner disputing whether this common ownership provision should be applied to the property may appeal to the Board of Adjustment.
- (5) **Appeal of Merger Determination.** Where merger is required by this Section in order to receive authorization of a building permit the applicant may request a Merger Hearing with the BoCC in accordance with the requirements of C.R.S. § 30-28-139. The result of a merger hearing shall not obviate the requirement to comply with the nonconforming lot standards of this Code.
- (6) **Zoning Lot Determination Required Prior to Building Permit Authorization.** A zoning lot determination shall be required prior to authorization of a building permit for a dwelling or habitable addition for any property subject to merger by contiguity. Upon request, the PCD Director shall provide a zoning lot determination after confirmation of the following:
- Merger has been accomplished in accordance with the merger by contiguity requirements;
  - For existing dwellings, verification provided by the EPCPH that there is no evidence of sewage problems or that any sewage problems are being remedied;
  - For a new dwelling that the OWTS permit has been issued by the EPCPH all isolation distances have been met, including a 100 foot radius for the well providing water on the property being located entirely on the property;
  - For a new dwelling confirmation of water availability in the form of a well permit, water tap, or water commitment; and
  - At least 30% of the zoning lot is considered buildable after exclusion of land identified as containing 100 year floodplain and 30% slopes.

#### 5.6.8. Decisions and Appeals

- (A) **Authority with PCD Director.** All decisions concerning nonconformities will be made by the PCD Director.
- (B) **Appeals of PCD Director Decision.** All decisions of the PCD Director concerning nonconformities in this Code may be appealed to the Board of Adjustment, except that appeals regarding non-conforming use determinations are heard by the BoCC.
- (C) **Property Owner Responsible for Evidence.** The property owner is responsible for providing evidence regarding the establishment and continuation of a nonconforming use.