

EL PASO COUNTY
COLORADO

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May 11, 2022

ATTN: Angela Jenkins

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El Paso County, CO



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RE: 23355 Highway 94 Determination of Nonconforming Use

File: ADM-22-004

Parcel ID: 34130-00-006

To Whom It May Concern:

A request has been made for an interpretation regarding the above referenced parcel to confirm that the existing restaurant use on the property is considered a nonconforming use pursuant to the El Paso County Land Development Code (2021). The property must first be confirmed as a legal lot.

Section 1.15 of the Code defines a "Legal Lot" as:

"A lot, parcel or tract of land created by a legal conveyance of the lot, parcel or tract prior to July 17, 1972; a lot, parcel or tract shown on a subdivision plat which was approved and recorded prior to July 17, 1972, according to the subdivision regulations in effect at the time of approval; a lot, parcel or tract created by legally prepared survey dated prior to July 17, 1972; a lot, parcel or tract created by approval of the County commissioners in conformance with the subdivision regulations in effect at the time of approval; a lot, parcel or tract created by a contract for deed or signed but unrecorded deed, each dated prior to July 17, 1972; a parcel exempted from subdivision by the Board of County Commissioners (BoCC), or any parcel of 35 acres or more, which, when created, did not cause a parcel of less than 35 acres to remain; a parcel created by any court pursuant to the law of eminent domain, operation of law, or by order of any court if the BoCC has been given timely notice and opportunity to join in the action; a parcel

modified or reduced in size due to land acquisition by a governmental entity.”

The property was created by warranty deed on May 16, 1979 (El Paso County Public Records, Book 3176, Page 233, Reception No. 556066). In an administrative determination dated February 10, 2022, staff observed that the parcel was not considered a legal division of land due to its date of creation occurring after July 17, 1972.

On May 10, 2022 the property was legally combined with the adjacent property to revert back to the original parcel configuration prior to July 17, 1972. The parcel is now greater than 35 acres and is considered a legal lot.

Compliance with Zoning Regulations:

The property was zoned A-35 (Agricultural) on March 25, 1999, when zoning was first initiated for this portion of the County (BoCC Resolution No. 99-101).

Section 1.15 of the Code defines a “Use, Nonconforming” as:

“Any legally existing use, whether within a structure or on a piece of land, which does not conform to the use regulations of the zoning district in which the use is located, either at the effective date of this Code or as a result of the subsequent amendments which may be incorporated into this Code.”

A restaurant is not an allowed use in the A-35 zoning district, pursuant to Table 5-1 of the Code. In order for the restaurant use to be considered a nonconforming use, it would either need to have met the applicable zoning regulations at the time the use was initiated or would need to have been initiated prior to the initiation of zoning regulations.

According to tax records from El Paso County Assessors the property has been classified as a “Neighborhood Shopping Center” since prior to zoning. The Land Development Code defines a shopping center as “A group of retail and service establishments located in a complex which is planned, developed, owned or managed as a unit, with off-street parking provided on the property.” The applicant has proposed to repurpose one commercial building for a restaurant. A restaurant is included as a permitted use within a shopping center.

Discussion and Conclusion:

It is the determination of the Planning and Community Development Department Director that the “Neighborhood Shopping Center” use can be considered nonconforming due to it being in existence prior to the initiation of zoning.

Any proposed new development shall comply with all other applicable County, State, and Federal Regulations.

If you have any questions or concerns regarding this determination, please contact myself or Kylie Bagley, Planner II, at (719) 520-6323 or kyliebagley@elpasoco.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Mastin', with a long horizontal stroke extending to the right.

Kevin Mastin
Interim Executive Director
El Paso County Planning and Community Development Department