


EL PASO COUNTY
COLORADO

COMMISSIONERS:
 MARK WALLER (CHAIR)
 LONGINOS GONZALEZ, JR. (VICE-CHAIR)

HOLLY WILLIAMS
 STAN VANDERWERF
 CAMI BREMER

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

To: Board of County Commissioners
Mark Waller, Chair

From: Gabe Sevigny, Planner II
Mindy Madden, Code Enforcement Supervisor
Craig Dossey, Executive Director

Re: VA-17-010 -- Mountain Splendor Services Contractor Equipment
Yard (Parcel No. 53080-00-048)

Subject: Revocation of a variance of use pursuant to Section
5.3.4(G) of the El Paso County Land Development Code
(2019)

OWNER:	REPRESENTATIVE:
Dan Combs 7205 Maine Lane Colorado Springs, CO 80923	Dan Combs 7205 Maine Lane Colorado Springs, CO 80923

Commissioner District: 2

Board of County Commissioners' Hearing Date	9/10/2019
---	-----------

Executive Summary

A request by the Planning and Community Development Department (PCD) to revoke approval of a variance of use for a contractor's equipment yard pursuant to Section 5.3.4 (G) of the El Paso County Land Development Code (2019). The applicant has failed to obtain building permits within sixty (60) days as required by Condition No. 2 of the variance of use approval (VA-17-010). The five (5) acre property is zoned A-5 (Agricultural) and is located approximately one-half (1/2) mile southeast of the Woodmen Road and Black Forest Road intersection. Daniel Combs received approval for a variance of use to allow for a



contractor's equipment yard, Mountain Splendor Services, in the A-5 zoning district on February 27, 2018, due to a complaint against the property submitted to Code Enforcement on March 24, 2017, of a residence being converted into an office. The investigation at that time determined there was a contractor's equipment yard in operation without obtaining the appropriate approvals. Approval of the variance of use included multiple conditions of approval. Specifically, Condition of Approval No. 2, which has not been complied with to date, states:

"Within 60 days from the date of approval, the applicant shall submit all necessary applications for each structure located on this property to Pikes Peak Regional Building Department."

Due to the owner's failure to comply with the conditions of approval, staff recommends that Section 5.3.4(G) of the Land Development Code should apply. Section 5.3.4(G) states the following:

"The violation of any applicable requirement or standard of this Code, or of any condition, safeguard or commitments of record of the variance of use permit shall constitute sufficient grounds for suspension or revocation of the variance of use permit by the BoCC, subject to the requirements of Chapter 11."

The BoCC may revoke a variance of use approval if all conditions of approval are not met. The Planning and Community Development Department is requesting the variance of use approval be revoked for failure to comply with Condition of Approval No. 2.

Background

Daniel Combs received approval on February 27, 2018, for a variance of use to allow a contractor's equipment yard, Mountain Splendor Services, in the A-5 zoning district. The County was made aware of the illegal use as a result of a Code Enforcement complaint that was made against the property, which was submitted on March 24, 2017. The complaint stated that a residence had been converted to an office. The investigation at that time determined there was a contractor's equipment yard in operation without obtaining the appropriate approvals. After approval of the variance of use, the applicant satisfied Condition of Approval No. 1 by applying and receiving approval of a site development plan (PPR-18-017), however, the applicant has failed to obtain building permits from Pikes Peak Regional Building Depart (PPRBD).

Another complaint was received on April 25, 2019, after approval of the variance of use, that the property owner was storing equipment and materials in a location not designated as outside storage on the approved Site Development Plan and that building permits had not been obtained for the structures on the property as required by Condition of Approval No. 2 on the variance of use.

PCD staff spoke to the property owner regarding the violations on May 2, 2019. The property owner stated he would move the materials located in the unapproved location, but that PPRBD told him he did not need building permits for the structures onsite. PCD staff informed the property owner that the information received from PPRBD was that building permits were required. Staff confirmed with PPRBD again on July 17, 2019, that building permits were required and that a letter had not been issued for this property stating otherwise.

A notice of violation was sent to the property owner on May 30, 2019, after the property owner failed to correct the violations identified on his property. On June 17, 2019, Code Enforcement was able to confirm that the property owner removed the materials from the prohibited area, but did not apply for building permits for the structures on the property. As a result of this inspection, an executive determination was issued on June 17, 2019 by the PCD Director after the property owner failed to bring the property into compliance within the fourteen (14) days provided for on the notice of violation.

A request for an appeal of the executive determination was not received within ten (10) days of the date of the executive determination. The PCD Director's decision to issue an executive determination is now final and the Office of the County Attorney is authorized to pursue litigation. In addition to pursuing legal action, the Land Development Code provides another option when a violation of a development application approval has occurred. Section 11.3.2 (B) of the Land Development Code states:

“If an alleged violator is in violation of the terms and conditions of a development application approval or development permit that was issued by the PCD without review by the Planning Commission or the BoCC, the PCD Director may revoke the development permit or development application approval. Notice of the revocation may be sent via first class mail to the property owners mailing address as listed in the records of the Assessor's Office and to the mailing address of the property if one exists. Appeals of revocations may be taken to the BoCC pursuant to the procedures set forth in the Procedures Manual.”

Recommendation:

The owner has had 20 months to obtain building permits from PPRBD and bring the subject property into conformance with the conditions of approval for the variance. For this reason, staff recommends revocation of the variance of use approval as permitted in Section 11.3.2 (B) of the Land Development Code rather than pursuing legal action to remedy the violation.

If the Board of County Commissioners revokes the variance of use approval, the applicant may submit a new variance of use application if he chooses to continue the operations onsite. If the request to revoke the variance of use is authorized, the Office of the County Attorney may proceed with litigation. The zoning violation file will not be closed unless the applicant obtains the necessary building permits and applies for a variance of use or the commercial operation is discontinued on the property.

Attachments:

Vicinity map

Resolution No. 18-079

Board of County Commissioners Resolution Revoking the Special Use

Vicinity Map





RESOLUTION NO. 18-079

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

APPROVE VARIANCE OF USE TO LEGALIZE AN EXISTING CONTRACTOR'S
EQUIPMENT YARD ASSOCIATED WITH A LANDSCAPING BUSINESS
(VA-17-010)

WHEREAS, Dan Combs did file an application with the Planning and Community Development Department of El Paso County for approval of a variance of use within the A-5 (Agricultural) zoning district to legalize an existing contractor's equipment yard associated with a landscaping business where such is not permitted for property located within the unincorporated area of the County, more particularly described in Exhibit A, which is attached hereto and incorporated by this reference; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on February 6, 2018, upon which date the Planning Commission did by formal resolution recommend approval of the subject variance of use VA-17-010; and

WHEREAS, a public hearing was held by this Board on February 27, 2018; and

WHEREAS, based on the evidence, testimony, exhibits, recommendations of the El Paso County Planning Commission, 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 County Commissioners during the hearing, this Board finds as follows:

1. That the application for the variance of use was properly submitted for consideration by the Board of County Commissioners.
2. That proper posting, publication and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners.
3. That the hearings before the Planning Commission and Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted, and that all interested persons and the general public were heard at those hearings.
4. That all exhibits were received into evidence.

5. That the proposed land use does 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 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.

WHEREAS, pursuant to Section 5.3.4 of the El Paso County Land Development Code, as amended, in approving this variance of use, the Board of County Commissioners 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 the Board of County Commissioners of El Paso County, Colorado, hereby approves the application by Dan Combs for a variance of use to legalize an existing contractor's equipment yard associated with a landscaping business within the A-5 (Agricultural) zoning district where such is not a permitted use for the unincorporated area of El Paso County as

described in Exhibit A, which is attached hereto and incorporated herein by this reference;

BE IT FURTHER RESOLVED the following conditions and notations shall be placed upon this approval:

CONDITIONS

1. Within 60 days from the date of approval, the applicant shall submit a site development plan for review and approval by the Planning and Community Development Department. The site development plan shall provide a detailed depiction of existing and proposed structures and improved surfaces associated with the approved variance of use permit.
2. Within 60 days from the date of approval, the applicant shall submit all necessary applications for building permitting for each structure located on this property to Pikes Peak Regional Building Department.
3. In lieu of a 6' opaque privacy fence, the applicants will plant within 120 days fifteen (15) 10' tall Austrian pines along the southern property boundary as visual screening.
4. No vehicular traffic and/or parking or storage of construction equipment, materials, or supplies shall occur over the existing onsite wastewater treatment system components.
5. Any contractor related mechanical equipment that is maintained onsite must have fluids collected and stored to either be recycled or disposed of per all State and Federal regulations related to the storage of such fluids.
6. Security lighting shall be limited to that in existence at the time of approval of the variance of use. No additional lighting, excluding standard wall-mounted entryway lighting, shall be installed without prior approval by the Board of County Commissioners of an amended variance of use application.

The due dates may be administratively extended by the Planning and Community Development Department Director if the Director determines that the applicant is making a good faith effort to obtain the approval listed above.

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 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.
3. 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 the record and recommendations of the El Paso County Planning Commission be adopted, except as modified herein.

DONE THIS 27th day of February, 2018, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: Charles D. Broerman
County Clerk & Recorder

The seal of El Paso County, Colorado, is circular with a double-line border. The outer ring contains the text "EL PASO COUNTY, COLORADO" at the top and "1875" at the bottom. The inner circle features a central emblem, likely the state seal of Colorado, surrounded by the words "SEAL OF EL PASO COUNTY, COLORADO".

By: [Signature]
President

EXHIBIT A

THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST
QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 13
SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY
OF EL PASO, STATE OF COLORADO.

RESOLUTION NO. 19-

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

APPROVE REVOCATION OF A VARIANCE OF USE PURSUANT TO SECTION 5.3.4 (G) OF THE EL PASO COUNTY LAND DEVELOPMENT CODE WITHIN THE A-5 (AGRICULTURAL) ZONE DISTRICT (VA-17-010).

WHEREAS, Daniel Combs did file an application with the Planning and Community Development Department of El Paso County for approval of a variance of use for a contractor's equipment yard on a 5 acre lot within the A-5 (Agricultural) Zone District; and

WHEREAS, the Board of County Commissioners approved the variance of use request on February 27, 2018 with 6 conditions and 3 notations attached hereto as Exhibit B; and

WHEREAS, Daniel Combs has not complied with the conditions of approval for the variance of use; and

WHEREAS, the Planning and Community Development Department has requested revocation of the variance of use approval pursuant to Section 5.3.4 (G) of the El Paso County Land Development Code for noncompliance; and

WHEREAS, a public hearing was held by this Board on August 27, 2019; and

WHEREAS, based on the evidence, testimony, exhibits, comments of the El Paso County Planning and Community Development Department, comments of public officials and agencies, and comments from all interested parties, this Board finds as follows:

1. The variance of use for a contractor's equipment yard on a 5 acre lot within the A-5 (Agricultural) Zone District shall be revoked.

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of El Paso County, Colorado, hereby revokes approval for a variance of use for Daniel Combs to allow a contractor's equipment yard on a 5 acre lot within the A-5 (Agricultural) Zone District for property located within the unincorporated area of El Paso County more particularly described in Exhibit A, which is attached hereto and incorporated by reference;

DONE THIS 27th day of August, 2019 at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

ATTEST:

By: _____
Chair

By: _____
County Clerk & Recorder

Resolution No. 19-
Page 3

Resolution No. 17-
Exhibit A

SE4SW4 EX S 30.0 FT THEREOF DEDICATED AS A R/W FOR COUNTY RD