

Letter of Intent and Response Letter for Chung Second Residence

August 9, 2017

El Paso County Planning and Community Development Department
ATTN: Nina Ruiz
2880 International Circle, Ste 110
Colorado Springs, CO 80910

RE: Variance of Use Application
13975 Hwy 83
Colorado Springs, CO 80921

Dear Ms. Nina Ruiz:

Thank you for providing comments on our original Letter of Intent, in your letter dated March 8, 2017. Over the past months, we have diligently worked towards completing requests. This is a revised Letter of Intent to incorporate your feedback, and replaces that original Letter of Intent. It also constitutes our response letter to your March 8 comment letter.

This letter begins with responses to your comments and then presents the case for how this request complies with the "Variance of Use Criteria" in Chapter 5 of the Land Use Development Code.

Thank you for the opportunity to make this application.

Sincerely,
Leisle Chung Revocable Trust



By: Leisle Chung, Trustee

Postscript added 09/12/18: Following the submission of this letter, we were informed that the property was non-conforming and needed to go through the subdivision exemption process. We submitted an application for subdivision exemption, which is being considered concurrently with this request.

Owner/Developer

Leisle Chung Revocable Trust
5075 Gibson Lake Court
Colorado Springs, CO 80924
(719)-429-7758

Consultant

James McGrady
McGrady and Associates
2810 Andromeda Drive
Colorado Springs, Co 80906
(719)-494-3782

Location

The site is located at 13975 Highway 83 and consists of 31.8 Acres and is located the North East quarter of the South East Quarter of Section 3 Township 12 South, Range 66 West of the 6th P.M. in El Paso County, Colorado. The Site is generally east of the Intersection of Highway 83 and Northgate Boulevard.

Application Request

Variance of use to construct a second residence on a property that is zoned RR-5 and is comprised of 31.8 acres.

Response to comments

Comment 1: We have received comments from adjacent property owners stating there is a condition in the CDOT access permit that limits the number of homes to be served. Please provide a copy of the CDOT access permit indicating your parcel may have two homes.

Response: We have received an Access Permit from CDOT (attached). It grants permission for an additional home to be serviced by the existing access road. At the time requested by CDOT, we will be restriping Highway 83 to comply with the CDOT requirements.

Comment 2: How large is the proposed outbuilding and what will its purpose be? The variance of use will not include the outbuilding and if the proposal is not consistent with the zoning another action may be necessary.

Response: The intent of the new outbuilding in the original Letter of Intent was to keep outdoor work equipment. We have dropped and hereby withdraw this request since it is out of scope for the variance of use.

Comment 3: There appears to be a discrepancy in the lot size. Please have your surveyor confirm the lot size and add it to the drawings and revise all information accordingly.

Response: *(revised 9/12/18)* The newly submitted drawings that accompany this application reflect a lot size of 31.8 acres. As a result of this comment, we have submitted an application for subdivision exemption seeking to legalize our non-conforming lot.

Comment 4: Clarify that the request is not for an extended family dwelling unit but for a second home. The letter of intent leads the reader to believe the request is different than what you have applied for. Should the request have been for an extended family dwelling of the proposed size a special use would be required.

Response: This request is for a Variance of Use to allow a second home, and it is not for an extended family dwelling unit. The existing home is currently occupied by Leisle Chung's parents and the new home will be initially occupied by Leisle Chung and her husband and children. However, the request is for a Variance of Use to allow for future flexibility, should the applicant's parents no longer reside in the original house or other circumstances change.

Comment 5: The letter of intent does not address the County Policy Plan or Black Forest Preservation Plan. Please include specific citations for how your request is consistent with these plans. The variance of use does not require a finding specific to these plans but it does help support consistency with the surrounding area.

It is the Applicant's intent to maintain the unique environmental and residential character of the planning area through strict compliance with any density guidelines. The subject property is located within the Northgate Visual Unit Boundary, as defined in the Black Forest Preservation Plan, and is immediately east of Highway 83 and Northgate Road. This parcel of land has an area of over 31 acres. The proposed variance seeks to construct a second home on the 31+ acre parcel. The owner does not anticipate subdividing the parcel and is requesting that two homes be allowed to be built on the parcel and is therefore requesting a variance of use to do so.

The existing home and out buildings are generally located in the northeast corner of the parcel. It is anticipated that the second home will be located near the existing home as shown on the enclosed plot plan in the northeast corner of the parcel. In addition to this, the property is subject to deed restrictions which dictate where a second home could be constructed. These restrictions have been plotted on the deed restriction drawing.

The Black Forest Preservation Plan

The Black Forest Preservation Plan was completed in 1974 and a full update created in 1987 to provide an advisory planning tool for this specific sub-area of the county. Chapter 3 is "meant to function as the primary applied portion" of the plan, as a guide in the review, administration and implementation of land use decisions.

The following are the critical issues identified by the plan and the impacts, if any, of the Applicant's request on those issues.

- *History:* Applicant's request does not impact any historic sites or structures.
- *Socioeconomic:* Applicant's request will not reduce the socioeconomic mix.

- *Natural systems:* Applicant appreciates the natural systems which exist on the property and hopes to maintain them. Applicant's request will not affect the Ponderosa Pines which are located throughout the property. The building envelope is intentionally located in an open area. Applicant will adhere to all requirements on septic recharge. Applicant's request does not include the grazing of livestock on the property. Applicant's request will not exacerbate dust problems because no new unpaved roads will be created. No impact on wildlife has been identified.
- *Groundwater:* Please see the discussion in other sections below regarding well and septic.
- *Community services and public facilities:* Applicant's variance of use is for a second home on a property already serviced by public facilities. Applicant's property is between Cathedral Pines and Flying Horse, both neighborhoods with higher density.
- *Transportation:* No new roads will be created. The only alteration will be at the request of the Colorado Department of Transportation to restripe a portion of Hwy 83, which Applicant will accomplish upon approval of the Variance of Use and at the time requested by CDOT in conjunction with construction of the second home.
- *Visual Analysis:* Applicant's property is not visible from any public access roads. Applicant's second home is intended to be a beautiful residence that will be consistent with the themes desired in Black Forest. All on site electric lines serving the second home will be underground and will not impact the view shed of the surrounding homes.

If the Variance of Use is approved, the applicant will have two homes on a parcel that is >31 acres which is sufficient for two homes. With this density, it would still be considered rural (lots >10 acres), in line with the goal to "Retain the Black Forest Planning area as a primarily rural residential community." It adheres to the policy of promotion of "an overall average minimum lot area of 5 acres."

The design and location of the second home will preserve the sensitive natural environment and unique community character of the Black Forest Planning Area. Beyond what has been outlined above:

- The Applicant is adhering to existing deed restrictions which impact the height and location of the building. The home will be 28 feet in height.
- The second home will follow the guideline of being a "safe and attractive dwelling unit." The home will be constructed of building materials, designs, and façade treatments which allow the structures to blend into or accent the natural environment.
- The second home will be clustered near the existing home and existing out buildings thereby minimizing the appearance of sprawl and generally preserving the open spaces which exist on the property.

The second home will perpetuate the rural character of the Black Forest Planning Area by maintaining open space across the majority of the lot. The second home will be built within planned building areas as defined by deed restrictions. The homes will be served by two septic systems and one well that is decreed for multiple homes. The septic systems will be built within the allowable areas for construction. The homes will not impede the views of Pikes Peak and/or the Front Range from other homes located in the area.

The County Policy Plan

The County Policy Plan functions as the overall policy element of the county master plan. Small Area Plans, such as the Black Forest Preservation Plan, are incorporated as elements of the master plan. As such, the following include only the portions not already addressed by the preceding section on the Black Forest Preservation Plan.

Addressed in previous section under Black Forest Preservation Plan, as well as in following sections of this letter.

- 2.0 Natural Systems
- 4.0 Historic Resources
- 9.0 Transportation
- 10.0 Water and Wastewater
- 11.0 Drainage and Flood Protection

Other sections:

- 3.0 Water Resources. The second home will be served from an existing well that currently serves the existing home. The well is permitted for fire protection, ordinary household purposes, inside for not more than three homes. The well is also permitted for the irrigation of not more than one acre of gardens and lawns. Based on the Applicant's current intent for the well, approximately 90% of the water pumped will return to Black Squirrel Creek through the alluvium. More detail regarding the water resources are found in later sections of this letter.
- 5.0 Economic Development: Does not apply to the Applicant because this is a residence. No economic harm is expected.
- 6.0 Growth and Land Use: The Variance of Use would not contradict any of the goals outlined for appropriate growth and land use. The policy is to encourage new development that is consistent with Small Area and other adopted plans.
- 7.0 Special and Unique Land Uses: Does not apply
- 8.0 Parks, Trails, and Open Space: The Variance of Use does not contradict these goals.
- 12.0 Other Services and Utilities: The building site has access to a well. Electricity already runs to the proposed building site, and comment from MVEA indicates that it is a certificated service area that it will continue to serve. A propane tank will likely be installed. A well already exists to service another home.
- 13.0 Housing: Most policies in this section relate to affordable and low-income housing, as well as housing alternatives for special populations.

Comment 6: Please consider revising the letter of intent to eliminate statements without supporting evidence or basis for the conclusions.

Response: Revisions have been made throughout, and this Letter of Intent replaces the prior Letter of Intent.

Comment from Enumerations: The proposed residence will require an address separate from the existing residence. The property owner should contact Enumerations to establish this address prior to submitting plans for permit.

Response: The property owner will contact Enumerations and secure an address prior to issuance of building permit.

Comment from Mountain View Electric Association: This area is within MVEA certificated service area. MVEA will continue to serve this area according to our extension policy. Information concerning connection requirements, fees and upgrades under MVEA line extension policy can be obtained by contacting the Engineering Department of MVEA.

MVEA has no objection to the approval of this variance of use request.

MVEA has existing facilities near and within this parcel of land. If there is any removal or relocation of facilities it will be at the expense of the applicant and a review of easements will be required in order to serve.

Response: The property owner will adhere to MVEA comments.

The following had no comments: Floodplain

The following have not issued comments: BFLUC, Black Forest Fire, Black Hills, EPC Health, Engineering Division.

Compliance with “variance of use criteria” in Section 5.3.4(C) of Chapter 5 of the Land Use Development Code

The RR-5 zoning allows for one single family residence as indicated on the uses chart. There is no allowance for a duplex, additional dwelling, attached home, etc. A mother-in-law residence is allowed if it is no greater than 1,500 sft and does not have a kitchen.

This application asks that a second single family residence be allowed to be constructed. All other applicable County Codes shall be adhered to.

According to 5.3.4.(C), in approving a variance of use, the following criteria may be considered. All criteria are in blue with a response to each.

Criteria: The strict application of any of the provisions of this Code would result in peculiar and exceptional practical difficulties or undue hardship.

The property is zoned RR-5 which allows for one home as a use by right. The land use code also allows for the construction of a second home, as a Variance of Use. The existing home is currently occupied by Leisle Chung’s parents, and the applicant desires to build a second home on the property to be initially occupied by Leisle Chung, her husband, and children. Living next to Leisle Chung’s parents, and being able to more easily care for them as they age, is important to Leisle Chung and her family.

It would cause practical difficulties and hardship for the Chungs to live with her parents in the single existing home, or to live in a mother-in-law type dwelling. Living away from the subject property as is currently the situation makes looking after them more difficult and causes practical difficulties and hardship for the Chungs, which will likely increase as her parents age.

The applicant requests a variance of use, not an extended family dwelling, to allow for future flexibility, should the applicant's parents no longer reside in the original house or other circumstances change.

The land use code contemplates second homes, and this situation and property are a very good example of circumstances that support the issuance of a Variance of Use to allow a second home.

Criteria: 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 property is located in Black Forest, where homes exist on minimum lots of 5 acres. The property has more than sufficient acreage (31+ acres) to accommodate an additional home. Please also see response above regarding how this request is consistent with the advisory guidelines of the Black Forest Preservation Plan. The second home would be 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 or the County.

Criteria: 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.

Applicant will work with a reputable builder to ensure that construction and completion are in accordance with the air, water, odor or noise standards established by County, State or federal regulations. The second home will be able to meet applicable air, water, odor and noise standards established by the County, State or federal regulations.

Criteria: 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, a second single family home, will adhere with all other requirements outlined in this Code and applicable regulations. Applicant will work with a reputable builder, obtain all required permits, and adhere to regulations except those portions varied by the Variance of Use.

The proposed use will not adversely affect wildlife or wetlands.

No adverse effects of wildlife have been identified by applicant or commenting agencies. The building area is in a location used by prior owners to graze cattle, horses, and had an RV over an extended period of time. The proposed building area is not located in wetlands. The second

home will be located near the existing home, and will not impact the majority of this large parcel.

The applicant has addressed all off-site impacts.

No off-site impacts have been identified by applicant or commenting agencies. As stated above, Applicant will comply with any and all requirements of the CDOT Access Permit.

The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping.

The site plan incorporates all elements above, where necessary. Sufficient parking will exist for the home occupants and visitors. The Applicant has addressed road impacts through the Access Permit. The second home is clustered to retain open space on the property. The property does not affect open spaces designated by the county. No additional fencing is planned as part of this Application. The second home will not affect neighbor's views of the mountains. Landscaping will exist for at least 5 feet around the boundary of the home.

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

The second home will not require public facilities and services greater than presently available. Sewer, water, stormwater drainage, fire protection, police protection, and roads are available and adequate to serve the second home.

Sewer & septic

The applicant will provide to the El Paso County Planning Department an approved application for a septic service permit, to serve the second home. Each home will be served by separate on site waste systems. The applicant intends to build a second onsite waste disposal system that complies with the requirements set for in well permit number.

Water

The well permit issued by the State of Colorado's Office of the State Engineer Division of Water Resources allows serving up to three homes from the existing well permit number 212373.

Both the existing home and the second home will be served Well permit Number 212373 issued September 1, 1998. Said well was drilled in the NE ¼ SE ¼ of Section 3 Township 12 South Range 66 West of the 6th P.M. The well was approved pursuant to CRS 37-92-602(3)(b)(II)(A) as the only well on the tract of land described as that portion of the SE ¼ Section 3 Township 12 South, Range 66 West 6th P.M., El Paso County.

The use of the ground water from this well is limited to fire protection, ordinary household purposes inside not more than three single family dwellings, the irrigation of not more than one acre of home gardens and lawns, and the watering of domestic animals.

Plain casing was installed and properly sealed to a minimum of 100 feet. The total depth of the well does not exceed 460 feet, which corresponds to the base of the Dawson Aquifer.

The maximum pumping rate shall not exceed 15 gallons per minute.

The return flow from the use of the well must be through individual waste water disposal system(s) of the non-evaporative type whereby the water is returned to the same stream in which the well is located.

Fire & Police protection

Fire and police protection exist for the area in question.

Road

The property is accessed by an existing driveway that has been in place for over 50 years. Applicant has a legally deeded right to the access based on the acquisition deed describing the property and access easement, as described in the original 1959 deed. Applicant's title insurance also insures its ownership of the property and the easement rights.

The applicant has secured an access permit from CDOT for an additional home. Upon approval of the Variance of Use and at the time required by CDOT, applicant will proceed with CDOT's requirement to restripe Hwy 83 for the second home.

A traffic impact study is not required as the anticipated trip generation is less than 100 trips per day and less than 10 trips during the peak hour.