

EL PASO



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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

BOARD OF ADJUSTMENT

MEETING RESULTS (UNOFFICIAL RESULTS)

(Audio and audio/video copies of the meeting are available at the Office of the Clerk/ Recorder)

Board of Adjustment (BOA) Meeting
Wednesday, July 12, 2017 -- 9:00 a.m.
El Paso County Development Services
2880 International Circle
Colorado Springs, Colorado 80910

PRESENT AND VOTING: KEVIN CURRY, WAYNE INTERMILL, STEVE KJONAAS, JAY CARLSON, AND CHAD THURBER. JERRY HANNIGAN AND LORELLE DAVIES ARE PRESENT, BUT NOT VOTING MEMBERS FOR TODAY'S MEETING.

STAFF PRESENT: CRAIG DOSSEY, MARK GEBHART, MIKE HREBENAR, LEN KENDALL, GABE SEVIGNY, TOMMY HOFF, AND EL PASO COUNTY ATTORNEY LORI SEAGO.

OTHERS ATTENDING: ROBERT AND KAREN MAGISTRELLI

BOA MEMBERS ABSENT: WILLIAM CAPRE

1. Pledge of Allegiance
2. Report Items – **Mr. Mark Gebhart** reported on new hires for the department. **Mr. Len Kendall and Mr. Gabe Sevigny** are new planners. **Mr. Tommy Hoff** is a new Engineer. He also mentioned that the Board of County Commissioners is having a work session on Tiny Homes on July 18. He further mentioned the EDARP program is continuing to get upgrades and has been populated with archived data to allow for file searching from not only staff but also to the public.
3. Adoption of Minutes of Regular Meeting held May 10, 2017

BOA ACTION: WITH NO CHANGES, THE MINUTES WERE APPROVED UNANIMOUSLY.

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**BOARD OF ADJUSTMENT
MAGISTRELLI REAR YARD SETBACK DIMENSIONAL VARIANCE**

A request by Robert and Karen Magistrelli for a rear yard setback dimensional variance for an existing cabin to allow an 8.8-foot setback where 25 feet is required. The property is zoned A-5 (Agricultural) and is located at 8747 Woodrow Avenue in Crystola, approximately one-quarter (¼) mile north of U.S. Highway 24. (Parcel No. 82323-02-003)

Ms. Seago went over the review approval criteria for a dimensional variance for the Board of Adjustment members.

Mr. Kendall presented the Board with PCD's findings as presented in the staff report and answered questions.

Mr. Carlson – how far is this structure from all sides? Answer – 8.8 feet from the rear and approximately 100 feet on any other side.

Mr. Intermill – Can you give us some history of the other structures? Answer -- The other buildings are legal, non-conforming and are in disrepair. In 2016, as a condition of the site plan approval, improvement was to not exceed 50% of the assessed value, which they have already exceeded.

Mr. Kjonaas – Back in 2016, if the structures were assessed at \$10,000, are we way beyond that number? Answer – I believe the applicants have stated they are well beyond the 50%.

Mr. Carlson – Who else has identified that it is over the 50% value? The Assessor's Office perhaps? Answer – The applicants have stated that they've put more rehabilitation into the remodel. I don't have anything from the Assessor's Office.

Ms. Davies – Do you know the value of the land? Do we have any indication of what the harm has been impacted to the adjacent neighbor? Answer – I don't have what the value of the land is and all we have is the letter that was provided. They were not specific on the harm that they feel is impacting their property.

Mr. Kendall introduced the applicant, **Mrs. Magistrelli**, for their presentation.

Mrs. Karen Magistrelli gave an overview of their request and answered questions. She also provided the recorded survey to show the note stating the primary residence is not subject to the 50% condition.

Mr. Kjonaas – I don't necessarily interpret the survey to include just two of the cabins, but all of them. Answer – I can only tell you what was discussed in our earlier meetings.

Ms. Davies – I'm also interpreting this as they cannot be remodeled beyond the 50%. Do you have the estimations of what you've already spent and what you still have planned? Answer – I did not come prepared to give that information. The special use

application that we will submit soon will allow for all three cabins to be used as a recreational camp.

Mr. Curry – If it's possible for the staff to provide that 2016 site development plan as well as any documentation that supports the value of the property, which would be helpful.

Ms. Seago – I wanted to offer an opinion for your consideration. There appears to be a contradiction in the staff report. It states in one area that because these structures have not been used for more than a year, they have completely lost their legal non-conforming status. The other part of the staff report seemed to say that they are legal non-conforming and because they are, they are subject to condition in the Code they you cannot repair more than 50% of the damages to a legal non-conforming structure. So, after discussing this with Mr. Hrebenar and confirming that the record does reflect that these were abandoned for more than a year, and thus completely lost the legal non-conforming status, it's my advice to you that the issue of the amount of repairs that have or have not been done are not relevant and you can dismiss this from consideration. The issue now is that this Cabin is not a legal non-conforming structure, and it is required to meet the setback requirement; and because it does not, there is a request for a setback variance. Any further discussion of value or amount of repairs being done is not necessary.

SPEAKING IN FAVOR: None

SPEAKING IN OPPOSITION: None

Ms. Magistrelli had an opportunity for final comments. -- Mr. David Vaeth did come to visit us several times to say that he was happy with the progress of the land even though his wife sent in a letter of opposition.

Mr. Kendall stated that the 50% issue is mute. I do have the site development plan from 2016.

DISCUSSION:

Mr. Curry – Are they doing exterior remodel as well? Answer – yes, they are completing interior and exterior remodeling.

Mr. Thurber – We said that the 50% is mute, but if its legal non-conforming, how does a permit get issued? Answer from **Mr. Kendall** – That's where it gets tricky. It's a single family residence and it's an allowed use in the zone and they are allowed one residence. One of the cabins is allowed to be restored.

Mr. Gebhart – There's multiple pieces to the overall puzzle the applicant wants to have. Three cabins were on the property; that's a legal non-conforming use, (use is the key point there), one dwelling allowed. The difference here is we are talking about is the location of the structure is non-conforming (as to setback), not the use. The three cabins lots their non-conformity from abandonment; the structure, and I believe the language is in your staff report, is that reconstruction had to be completed within one year. Whether we approve the remodel at that location, staff may not have considered that properly.

Mr. Intermill – So would this have to do with being grandfathered in and only being setback 8.8 feet? Answer from **Mr. Gebhart** – Yes, that’s correct.

Mr. Thurber -- This cabin was 1954 and the pictures show it being quite dilapidated. How can they fix it and not exceed the 50% rule? RBD is not going to allow you to fix it to just 1954 code. Answer from Mr. Gebhart – I believe the staff said they’d approve the remodel and we don’t know what that looks like but now we find that it has been exceeded.

Mr. Carlson – We seem to be outside our scope today. The 50% discussion is mute. I would be inclined to approve it. It’s adjacent to (national)forest and I don’t see any impact to adjacent neighbors.

BOA ACTION: CARLSON MOVED/THURBER SECONDED TO APPROVE ITEM NO. 4, BOA-17-002, BASED ON USING STANDARD RESOLUTION NO. 3, BASED ON A UNIQUE AND EQUITABLE CONSIDERATION WITH ONE (1) CONDITION AND NO NOTATIONS. MOTION PASSED (5-0).

Adjourn

Approved at the 9/13/17 meeting with no changes.