

EL PASO



COUNTY

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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, February 13, 2019 -- 9:00 a.m.
El Paso County Planning and Community Development
2880 International Circle
Colorado Springs, Colorado 80910

BOA MEMBERS PRESENT AND VOTING: KEVIN CURRY, JAY CARLSON, LORELLE DAVIES, CHAD THURBER, AND KEITH WOOD

BOA MEMBERS PRESENT AND NOT VOTING: JERRY HANNIGAN AND JILLIAN FREELAND

STAFF PRESENT: CRAIG DOSSEY, MARK GEBHART, LEN KENDALL, BECK GRIMM, AND EL PASO COUNTY ATTORNEY LORI SEAGO

OTHERS ATTENDING: DAVID HAMMER, MARK FRANCIS, MR. GOEBEL

BOA MEMBERS ABSENT: NONE

1. Pledge of Allegiance

2. Report Items

a. The next hearing is scheduled for March 13, 2019.

3. Adoption of Minutes of Regular Meeting held January 9, 2019

BOA ACTION: THURBER MOVED/ DAVIES SECONDED TO APPROVE THE MINUTES AS PRESENTED. THE MOTION PASSED UNANIMOUSLY.

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**DIMENSIONAL VARIANCE
2036 MAHAFFIE COURT**

A request by Dave Hammer for approval of a dimensional variance to allow a front yard width at the front setback line of 130 feet where 200 feet are required in the RR-2.5 (Residential Rural) zoning districts. The 2.51-acre parcel is located approximately one-quarter (1/4) of a mile north of the intersection of Higby Road and Jackson Ranch Court. (Parcel No. 61210-06-024)

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

Mr. Kendall gave his presentation and answered questions from the Board.

Mr. Carlson – What is the width at the street line? **Mr. Kendall** – 44 feet

Mr. Curry – Does the property slope back towards the back of the property? **Mr. Kendall** – Yes, that's correct.

Mr. Hannigan – Are the two responses from directly adjacent owners? **Mr. Kendall** – Yes, they were adjacent.

Mr. David Hammer – Property owner – I have physical ailments and the allowance would offer less snow plowing, and I will have more accessibility due to the slope and lack of walk out to the house. In addition, the van/ramp vehicle would have more clearance closer to the front of the property.

Mr. Curry – Were you aware of the limits when you bought the property? **Mr. Hammer** – I found out after my due diligence period was over. The adjacent property owners had no issue with me building closer knowing the land and my disability.

Ms. Davies – Could you address the creek bed and where you would be building? **Mr. Hammer** – It's more of a berm, there is no drainage impact whatsoever.

Mr. Wood – What is the concern of this property and how does it impact emergency vehicles? **Mr. Hammer** – An average driveway is about 25 feet and mine is 70 feet. It's less snow removal and better access to the home in the event of an emergency.

Mr. Kendall – There is a letter on file from the fire district in favor of the move closer to the road.

SPEAKING IN FAVOR: None

SPEAKING IN OPPOSITION: None

DISCUSSION:

BOA ACTION: CARLSON MOVED/WOOD SECONDED TO APPROVE ITEM NO. 4, BOA-18-010, BASED ON USING STANDARD RESOLUTION NO. 1 DUE TO A HARDSHIP BASED ON TOPOGRAPHY, WITH TWO (2) CONDITIONS AND ONE (1) NOTATION. MOTION PASSED UNANIMOUSLY (5-0).

5.BOA-18-008

KENDALL

**DIMENSIONAL VARIANCE
13980 BLACK FOREST ROAD**

A request by Goebel Construction, Inc., for approval of a dimensional variance to allow for a lot area in the creation of two (2) 2.5 acre lots in the RR-5 (Residential Rural) zoning district where five (5) acres are required. The five (5) acre parcel is located at the northwest corner of the Black Forest Road and Jicarilla Drive intersection. (Parcel No. 52060-01-008)

Ms. Seago went over the review approval criteria for a dimensional variance for the Board of Adjustment members. The BOA approval will not create the two lots, it approves the lot sizes. This will then need to go to the Planning Commission for a minor subdivision.

Mr. Hannigan – Essentially this decision may eliminate a rezoning action? **Mr. Curry** – If we were to deny, the applicant could still apply for a rezone. **Ms. Seago** – That’s correct. The zoning would remain RR-5.

Mr. Kendall gave his presentation and answered questions from the Board.

Ms. Davies – Who owns the plat or lot 5 and what is the intended purpose of that? **Mr. Kendall** – The intent for lot 5 is to comply with the zoning district and have one residential structure. It would be a legal non-conforming lot.

Ms. Davies – Who initiated the division? **Mr. Kendall** – The property owner at the time initiated the division.

Mr. Wood – This seems like it fairly straight forward. There’s really no way to get this to 5 acres, correct? **Mr. Kendall** -- Lot 5 was a legally created lot, so there’s no way to get it to 5 acres unless merged with adjacent properties.

Mr. Curry – Do we have the Black Forest Land Use Committee and NEPCO inputs available? **Mr. Kendall** – It's cited in the staff report; however, I can get a copy need be.

Mr. Mark Francis spoke on behalf of the applicant and gave his presentation to the Board.

Mr. Francis -- Regarding the concerns from the Black Forest Land Use Committee, the Plan is not a controlling mandate. It is to continue the promotion of an average of 5 acres, not the exact number of 5. The density should (a permissive word) allow one dwelling per 5 acres. 4 out of 10 lots are below the 5 acre size. Regarding NEPCO's recommendation for disapproval, NEPCO itself represents lots that are smaller than 5 acres. They have thousands of lots that are 10,000 or 20,000 square feet. Many standard size subdivision homes are much smaller than the 2 ½ acre lots that this project will entail. It is contradictory to what they have already allowed. Mr. Goebel plans to build two ranch style homes, approximately 2,500 square feet each. There is a school located just two lots away. There would be the opportunity to have the close proximity to this school for two families rather than just one. The planned ranch homes will be not impede views being that they are built at lower elevations and also because of the ranch style vs. two-story.

Mr. Carlson – When did the applicant purchase the property? **Mr. Francis** – approximately one year ago.

Mr. Carlson – Why are we here today? **Mr. Francis** – Because it is a 5 acre lot, and we need to come before the BOA to make it two 2 ½ acre lots. The Black Forest Plan is a guiding document but also provides flexibility.

Mr. Curry – I think you spoke on the equitable considerations, but we must find that the burdens of compliance exceed the benefits. Can you speak of what the burdens of compliance are and what the benefits are that would matter and not just the economic ones? **Mr. Francis** – The equitable considerations really do bear upon the benefits. The burdens would be only having one home on that lot would not offer the best use of that lot. The strict compliance portion is that he could build one house on a 5 acre lot, but that burden to him and to the community does significantly take away from the benefits. There is the opportunity to create something better. The detriment to Mr. Goebel is worse as well as to the community. The burden is harder to justify with respect to the equitable considerations.

Mr. Hannigan – I can appreciate the comments, but given that there's a weight of evidence there for having 2 ½ acre sites, why not go through the rezoning and then subdivision? **Mr. Francis** – It is a different course of action to take, but having the variance would give us a more streamlined process.

Mr. Wood – I see the list here of the properties that have similar lot sizes, do all these have improvements on them or are they vacant? I feel like that affects the visual character. **Mr. Francis** – The majority do have improvements, probably around 2/3 of those lots.

The NEPCO and Black Forest letters were displayed via EDARP for the Board but were not reviewed pending inputs from the County attorney on a procedural matter.

Ms. Seago – We are recommending a continuance at this time. The reason is to correct the public notice and the agenda. It is posted as a request for two 2 ½ acres. Due to the roadway expansion to be reflected in the subdivision, these lots will actually be less than that. The Code recognizes that legal lots remain legal if reduced by the County for such road expansions. However, these lot sizes would not meet the lot size requirements. To avoid that, we are recommending a continuance to determine what the end result of lot sizes will be and to post the action accordingly. I would leave the public portion open so to give an opportunity for others who may attend (the continued hearing) to be able to speak.

Mr. Carlson – Your reasoning for continuance is assuming that we would approve this item. **Ms. Seago** – The fundamental basis for the continuance is that the notice is improper. Whether its approval or denial, the notice needs to be correct.

Mr. Carlson – The objections that we've received to date won't make a difference as to the size of the lots.

Mr. Curry – I would not be inclined to call a special meeting. If it is continued, we could hear it at the next scheduled meeting.

Mr. Francis – One of the questions we have is procedurally, if we need to give notice to the neighbors, we did in our letter to the neighbors reflect the actual lot size. **Ms. Seago** – There is a public notice as far as the agenda, and then it has gone out to other public entities. So, it needs to be correct to adjacent property owners as well as those entities.

Mr. Carlson – Is the applicant's request to move forward today? **Mr. Francis** – The request that we received from the planning department said that we should note it is 2.5 acre, so we did that. The initial request was for the actual size after the road extension amount is taken away. We did that as a comment from the planning department. However, we also don't want to make a mess out of what we accomplish today that goes against the advice of the County Attorney because we didn't have the right notice to the public.

Mr. Hannigan – If this was approved and moves forward, it has to go to the minor subdivision process and the road dedication would then be required. Those lots are going to be less than 2.5 acres. It may be safer to continue because those dedications will occur very soon.

DISCUSSION:

Mr. Wood – I agree with the sentiments expressed by the others. It seems like putting the cart before the horse. It seems like the continuance puts us in a situation that it may not get approved. I'd like to hear other opinions.

Ms. Davies – I'd like to see it move to continuance. If we are denying or approving the property then are we creating a hardship to lot number 5? I'm looking for more information. **Mr. Curry** – As sensitive as the issue may be, we have to base it on this property and not others.

Mr. Carlson – We came here today to take care of this issue, and I think we should take care of it today.

Mr. Curry – I think the continuance may not help in our decision. But I would encourage staff to put the NEPCO and Black Forest letters a part of the staff report for the next meeting.

DAVIES MOVED/THURBER SECONDED TO CONTINUE THE ITEM TO MARCH 13, 2019. THE MOTION PASSED 4-1; CARLSON GAVE THE NAY VOTE.

Adjourn