

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, April 10, 2019 -- 9:00 a.m. (rescheduled from March 13, 2019)
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, JERRY HANNIGAN, AND JILLIAN FREELAND

BOA MEMBERS PRESENT AND NOT VOTING: KEITH WOOD

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

OTHERS ATTENDING: MARK FRANCIS, GREG HOWLAND, LINDA HOWLAND, KIM GIAMBALVO, AND CHRIS GROSKINSKY

BOA MEMBERS ABSENT: CHAD THURBER

1. Pledge of Allegiance

2. Report Items

a. We do not anticipate a hearing for May 8, 2019.

3. Adoption of Minutes of Regular Meeting held February 13, 2019

BOA ACTION: WITH NO CHANGES, THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT.

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4.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) 2.35 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)

Mr. Kendall gave a brief overview of the project. **Ms. Seago** went over the review approval criteria for a dimensional variance for the Board of Adjustment members.

Mr. Kendall then gave his presentation.

Mr. Mark Francis, the applicant's representative, gave his presentation.

Mr. Carlson – How long has the owner owned the property? **Mr. Francis** – He's owned it for about a year.

SPEAKING IN FAVOR: None

SPEAKING IN OPPOSITION: None

DISCUSSION:

Mr. Hannigan – As much as I've gone back and forth over this, I come back to the conclusion that if the Board were to approve the variance, then two lots would be created. They are not in conformance with the zoning. This is really an issue that should be decided by the Planning Commission and the Board of County Commissioners and go through the subdivision process. Mr. Carlson said that the owner was aware of the fact at the time of purchase, so there really is not a hardship in my opinion. I'll be voting against this item.

Mr. Carlson – I concur with his comments. I would not be in favor of approval of this item.

Mr. Wood – I voted in favor of the continuance to give the neighbors more time at the last hearing but new developments have not happened. I would not be voting for this if I was voting today.

**BOA ACTION: DAVIES MOVED/CARLSON SECONDED TO DISAPPROVE
ITEM #4 BOA-18-008 FOR A DIMENSIONAL VARIANCE FOR 13980 BLACK
FOREST ROAD UTILIZING RESOLUTION 4 CITING THE BURDENS OF**

STRICT COMPLIANCE WITH THE ZONING REQUIREMENT(S) DO NOT SIGNIFICANTLY EXCEED THE BENEFITS OF THE COMPLIANCE FOR THE SUBJECT PROPERTY. CARLSON AMENDED/DAVIES SECONDED THE MOTION TO INCLUDE THAT THE VARIANCE WILL SUBSTANTIALLY OR PERMANENTLY INJURE OR INTERFERE WITH THE USE OF ADJACENT PROPERTIES OR PUBLIC EASEMENTS OR RIGHTS OF WAY. THE MOTION PASSED 4-1. MS. FREELAND GAVE A NAY VOTE WITH THE REASONING OF THE OTHER SMALLER PARCELS IN THE AREA. ADDITIONALLY, THE TWO HOMES WOULD HAVE BEEN A BENEFIT TO THE AREA AND ACCESS TO LOCAL SCHOOLS.

5. BOA-19-001

KENDALL

**DIMENSIONAL VARIANCE
HOWLAND BARN**

A request by Gregory and Linda Howland for approval of a dimensional variance to allow a side yard setback of 5 feet where 25 feet is required in the RR-5 (Residential Rural) zoning districts. The 5.01-acre parcel is located at the southeast corner of the Cumbres Road and Cumbres Court intersection. (Parcel No. 31190-04-004)

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

Mr. Hannigan – What process should the owners have done before building the structure? **Mr. Kendall** – before the agricultural building is built, the owner would need to apply for an agricultural permit and signed affidavit that it is being used as agricultural purposes.

Ms. Davies – In the letter from the opposing property owner, they say that it will impact their access or cul de sac. **Mr. Kendall** – I had the same question and responded that the structure is not on the cul de sac and access is not impacted.

Mr. and Mrs. Howland, property owners, had an opportunity to give their presentation and answer questions.

Mr. Carlson – You said you had an amateur surveyor do the property, and you believe they missed the mark. Could you describe your understanding? **Mr. Howland** – (map shown) We believed the line to be further away.

Mr. Carlson – What is the process if we approve or deny? **Mr. Kendall** – This BOA action would allow this building to be in the location with an approval today. If it is disapproved, then they could appeal and the process continues.

SPEAKING IN FAVOR: None

SPEAKING IN OPPOSITION:

Mr. Chris Groskinsky and **Ms. Kim Giambalvo** – We live adjacent to the south. Where the barn sits in that area is where we access our well pit. We go across that variance area. We are asking that this not be approved. The slope does not allow us to go around it.

Ms. Davies – So you cannot access your well through your own property? **Ms. Giambalvo** – That is correct. There are slope areas of concern. We could access it before the barn was built, but we can't now.

Mr. Hannigan – Prior to the barn being built, you had to use their property to access your well pit? **Mr. Groskinsky** – Yes, that's correct. It was never a problem.

Mr. Carlson – Could a road be cut in? **Ms. Giambalvo** – No, because of slope.

Ms. Davies – It looks like there's a post on the bottom left corner. It's not as much of a direct route but couldn't you cut a road in there? **Ms. Giambalvo** – It's all sloped.

Ms. Seago – The property owner has no legal right to be on the other property owner's property. There needs to be an easement to be able to access that property. This is not a consideration for the Board of Adjustment to consider. This is a civil matter between the two parties.

The applicants had a chance for rebuttal. **Mr. Howland** stated that he didn't think it's much of an issue to still get to their well pit. I would be willing to remove a cluster of trees so that they can have better access to it. They would take steps to allow the adjacent property owners to access through our property through an easement.

DISCUSSION:

Mr. Hannigan – I happen to be a land surveyor. I would like to comment that the County should require surveys. It strikes me that the neighborly solution is to provide an easement. It's just a shame.

Mr. Carlson – I typically don't like being asked forgiveness on things. I would also not like to see the structure torn down. To me, it looks like the neighborly thing to do would be to grade a small access road in to give them a way to get in to the well pit.

Mr. Curry – I am mindful of the attorney's advice that the access does not come into our decision. To me, I'm looking at the review criteria, and I think it meets our criteria.

BOA ACTION: HANNIGAN MOVED/DAVIES SECONDED TO APPROVE ITEM NO. 4, BOA-19-001, BASED ON USING STANDARD RESOLUTION NO. 1 DUE TO A HARDSHIP BASED ON BUILDING PHYSICALLY EXISTING ON THE PROPERTY, WITH TWO (2) CONDITIONS AND ONE (1) NOTATION. MOTION PASSED UNANIMOUSLY (5-0).

Adjourn

The minutes were approved as presented at the June 12, 2019 hearing.