



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 12, 2020 -- 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, CHAD THURBER, JILLIAN FREELAND, AND ALLAN CREELY**

**BOA MEMBERS PRESENT AND NOT VOTING: PAM PALONE**

**STAFF PRESENT: MARK GEBHART, LINDSAY DARDEN, ELIZABETH NIJKAMP, AND EL PASO COUNTY ATTORNEY LORI SEAGO**

**OTHERS ATTENDING: KENNETH AND BEATRICE FAUCETT, JASON TEXER**

**BOA MEMBERS ABSENT: KEITH WOOD AND LORELLE DAVIES**

#### **1. Pledge of Allegiance**

#### **2. Report Items – Mr. Gebhart**

- a. The next BOA hearing is TBD. No meeting in March.
- b. **Mr. Gebhart** gave an overview of the BOA bylaws and membership.

#### **3. Public Input for Items Not Listed on the Agenda - None**

**4. Sunshine Law Statement - Mr. Carlson** read the statement into the record and made the motion to approve the Sunshine Law acknowledgement. Seconded by **Mr. Thurber**. Motion passed unanimously (5-0).

#### **5. Adoption of the Minutes of the Regular Meetings held October 9, 2019**



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

6. BOA-19-009

DARDEN

**DIMENSIONAL VARIANCE  
5210 SAPPHIRE DRIVE**

A request by Jason Texer for approval of a dimensional variance to allow a 2,100 square foot accessory building in the RR-0.5 (Residential Rural) zoning district. For lots that are smaller than 2.5 acres, the El Paso County Land Development Code (2019) specifies that the accessory structure footprint shall not exceed the size of the building footprint of the primary use. In this case the primary use is a 1,344 square foot single family home with a building footprint of 1384 square feet. The 22,800 square foot parcel is located within the Park Vista Estates Subdivision on the west side of Sapphire Drive approximately 397 feet north of the intersection of Sapphire Drive and Ruby Drive. (Parcel No. 63231-07-021) (Commissioner District No. 5)

**Ms. Darden** gave a brief overview and asked **Ms. Seago** to go over the review criteria for a dimensional variance and then gave her presentation. **Ms. Nijkamp** gave her engineering findings review with regard to the topographic nature of the property as well as the drainage conditions of the site. She indicated that engineering has no issues with the site.

**Mr. Carlson** – The square footage of the home, does that include the detached building? **Ms. Darden** -- It includes the garage but not the detached building.

**Ms. Palone** – Is it on City water and sewer or septic and well? **Ms. Darden** – It's on city water and has septic.

**Mr. Curry** – How many accessory structures are allowed in the RR-5 zoning district? **Ms. Darden** – there is no limit to the number of accessory structures.

**Ms. Darden** introduced the applicant, **Mr. Jason Texer**, to speak to the Board.

**Mr. Carlson** – How tall is the proposed structure? **Mr. Texer** – 18' at top of roof down to 8' at the sides.

**Mr. Curry** – Understanding we look at alternatives that could comply vs. the variance, the size is something that could be adjusted. Did you consider that? **Mr. Texer** -- Yes, but I spent six months coming here and no one said anything. So, I assumed the size would be okay.

**Mr. Carlson** – What is the process for early meetings? **Ms. Darden** – We don't have an early assistance meeting for BOA's. They start at the Regional

Building and look at building codes, and then they come to our department and find that zoning is more restrictive which required the BOA application.

**IN FAVOR: NONE**

**IN OPPOSITION:**

**Mr. Faucett** – The residential zoning allows for accessory buildings within reason. The character of our neighborhood is changing. Business operations and those buildings are making it more commercial than residential. This is larger than it should be in the zone district. I surmise the extra accessory building will allow more commercial business from **Mr. Texer**. I have a petition signed by neighbors and we appeal to you to not approve this variance.

**Mr. Curry** – They could build it with an administrative relief of 1660 so it's not much bigger. Wouldn't that size be a hinderance as well? **Mr. Faucett** – Not as much as the size he's proposing. Also, the septic system would go south. I am opposed to anything that is larger than allowed.

**Mrs. Faucett** – The zoning does not allow for this size of structure. We feel that the integrity of the neighborhood will be lost. We are getting more and more industrial buildings. I am submitting my letter of opposition with regard to this project.

**DISCUSSION:**

**Mr. Curry** – I spoke with the attorney during the break. The applicant had an opportunity to review the materials as well. I want to give the applicant a chance for rebuttal since reviewing the materials submitted.

**Mr. Texer** – The building view from the house will be blocked by the tree. It won't be visible from the road either. The south side will see it a little, and there's a vacant lot on the other side.

**Ms. Palone** – Were the other buildings in the area given a variance? **Ms. Darden** -- The parcel to the north has a large detached building, the site plan and building footprint numbers are inconsistent. There was no variance given for that property. Depending on whether the house is one level or multilevel and what that bottom level square footage is, we do add the footprint of the garage being that it is one level. If there is a larger ranch home, they could have a larger accessory building footprint based on the primary. The groundfloor dictates the square footage used.

**Mr. Carlson** – Could we look at the view to the north? The picture appears to show 2 structures. **Ms. Darden** – There are two buildings.

**Mr. Curry** – Looking at the staff report, and what I'm struggling with is that the burden outweighs the benefit. I ask did the applicant or the system fail here?

The applicant stated he came in six months ago and was never told the building would be too big. **Ms. Darden** – Sometimes they don't understand the process and assume because Regional Building is okay with their codes, that that's all that is required. Zoning is a different situation.

**Mr. Carlson** – Shouldn't there be some indication to applicants at Regional Building that you'll have to show compliance with County zoning as well? **Ms. Darden** – Unfortunately, there can be a breakdown in that information.

**Mr. Creely** – It seems like the system is broken. We talk about the applicants doing due diligence, but there are situations that they don't know the system well enough. I am dismayed that it got to where money had to be spent.

**Ms. Freeland** – I concur that the system let the applicant down. He has already gone through hardship and we can see other buildings next door of the same size. The argument of having more buildings the same size in the neighborhood doesn't seem valid.

**Mr. Carlson** – I feel bad for the applicant and the expenses he's had to incur. There is a reason why it's set up the way it is. I think there are other ways of doing what you want to do. You could expand your current garage or replace the existing outbuilding and make it bigger. It seems there are ways of doing this, I think the zoning rules are there for a reason. I'm disinclined to approve it because of the burden.

**Mr. Curry** – I'm torn; I really am. One the one hand, there is the right thing to do according to the Code, but then there is the issue of the applicant going through the system and was not given the right information. You can't ignore the opposition. It strikes me that the objections were about the character of the neighborhood. I am having a hard time with the burden issue and I see that the applicant tried to go the right route. However this turns out, I appreciate all the input.

**Ms. Palone** – Would the decision be different had he not purchased the building already? There's still a chance to convert those plans to a smaller building. The leach field concerns me. I see too many times that being damaged in my career as a real estate agent. I also wonder will the trees remain or will they be taken down. There is a possibility that you could add on to the existing structures. I'm not voting today, but I do have concerns.

**BOA ACTION: CARLSON MADE A MOTION TO DISAPPROVE INVOLVING A HARDSHIP DUE TO THE STRICT APPLICATION OF APPLICABLE PROVISIONS OF THE LAND DEVELOPMENT CODE WOULD NOT RESULT IN PECULIAR AND EXCEPTIONAL PRACTICAL DIFFICULTIES TO, OR EXCEPTIONAL AND UNDUE HARDSHIP UPON, THE OWNER OF THE PROPERTY, AND THE VARIANCE WILL SIGNIFICANTLY IMPAIR THE**

**INTENT AND PURPOSE OF THE ZONING REGULATIONS, AND THAT THE VARIANCE WILL CAUSE A SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD. THURBER SECONDED IT. THE MOTION PASSED (4-1). CREELY WAS THE NAY VOTE.**

**Adjourn**