

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, May 13, 2020 -- 9:00 a.m.
El Paso County Planning and Community Development
200 S. Cascade Avenue
Colorado Springs, Colorado

BOA MEMBERS PRESENT AND VOTING: KEVIN CURRY, JAY CARLSON, PAM PALONE, KEITH WOOD (VIA REMOTE ACCESS), AND ALLAN CREELY

BOA MEMBERS PRESENT AND NOT VOTING: NONE

STAFF PRESENT: MARK GEBHART, NINA RUIZ, RYAN HOWSER (VIA REMOTE ACCESS), AND EL PASO COUNTY ATTORNEY COLE EMMONS (VIA REMOTE ACCESS)

OTHERS ATTENDING: TEDDY CLUTTER

BOA MEMBERS ABSENT: CHAD THURBER, JILLIAN FREELAND, AND LORELLE DAVIES

1. Pledge of Allegiance
2. Annual Meeting and Election of Officers

BOA ACTION: CARLSON MOVED/CREELY SECONDED TO NOMINATE CURRY AS THE CHAIR OF THE BOARD OF ADJUSTMENT. NOMINATIONS WERE DEEMED CLOSED. MOTION PASSED UNANIMOUSLY (5-0). CURRY MOVED/CREELY SECONDED TO NOMINATE CARLSON AS VICE CHAIR. NOMINATIONS WERE DEEMED CLOSED. MOTION PASSED UNANIMOUSLY (5-0). A SECOND VICE CHAIR MAY BE NOMINATED ACCORDING TO THE BYLAWS. A MOTION WAS MADE BY CARLSON/SECONDED BY CREELY TO NOT ELECT A VICE CHAIR AT THIS TIME. THE MOTION DID NOT PASS. (3-2).

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WOOD, CREELY, AND CURRY WERE THE NAY VOTES. THE MOTION WAS MADE BY CREELY TO DELAY THE NOMINATION OF SECOND VICE CHAIR/SECONDED BY WOOD. THE MOTION PASSED UNANIMOUSLY (5-0)

3. Report Items – Mr. Gebhart

- a. The next BOA hearing is TBD.
- b. The County Master Plan process is continuing. Placetypes and key areas have been defined. Growth areas will be determined at the next phase. A link is located on the department's website if you want to see more information.
- c. **Public Input for Items Not Listed on the Agenda - None**

4. Adoption of the Minutes of the Regular Meetings held February 12, 2020

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

5. BOA-20-001

HOWSER

**DIMENSIONAL VARIANCE
CLUTTER FENCE**

A request by Teddy Clutter for approval of a dimensional variance to legalize a one hundred percent (100%) opaque fence with a maximum height of 74 inches in the front setback where a height of 30 inches is allowed for a fence more than twenty five percent (25%) opaque, as well as a front setback of 22 feet where 25 feet is required for a single-family dwelling. The 7,200 square foot lot is located within the RS-5000 (Residential Suburban) zoning district on the south side of Esther Drive approximately one-quarter (1/4) of a mile west of the intersection of Esther Drive and Main Street. (Parcel No. 65114-11-028) (Commissioner District No. 4)

Mr. Howser gave a brief overview and went over the review criteria for a dimensional variance and then gave his presentation.

Mr. Carlson – This variance is just for the front fence and not for the side or rear fence, correct? **Mr. Howser** – Yes, that's correct.

Mr. Wood – Why are they submitting this for the fence and the porch on the same request? **Mr. Howser** – It was found that there was an error on the porch dimension in the review of the site plan submitted for the fence, so it was decided by staff to include it in on the same request instead of requiring a separate dimensional variance or administrative relief.

Mr. Wood – This is presented as a single item for BOA and we are asked to approve two separate things. Do we tackle each item separately or treat as one

vote. **Mr. Emmons** – It is my recollection that you are essentially dealt the hand that the applicant brings you to deal with. It's up to the applicant as to how they frame their request. So, the action today has to be for both items in the same motion.

Mr. Clutter gave his presentation to the BOA and answered questions.

Mr. Wood – Were the complaints with pikes peak regional building regarding the porch for structural reasons or because of the encroachment? **Mr. Clutter** – it was structural then and that's why I added another post.

Ms. Palone – Does the building department show the building as final in the permit process? -- **Mr. Howser** – I have requested that information and it is being researched with Pikes Peak Regional Building. Follow up by **Mr. Howser** -- Yes, The building permit was final.

Mr. Curry – What year was the porch finished? **Mr. Clutter** – 2007

Mr. Curry – Could you discuss the porch issue and how that came about?

Mr. Howser – In my review, I noted the setback issue with the porch. It was something that the applicant was not aware of. He was in agreement that it should be added to the request. We could administratively approve the porch if the applicant chose to separate the two issues, but he chose to combine them.

Mr. Curry – The attorney stated that we must vote on the application in its entirety.

IN FAVOR: NONE

IN OPPOSITION: NONE

DISCUSSION:

Mr. Creely – I have a great deal of empathy for this applicant. We find a very complex set of rules known to only a few. Those rules are complex for our residents. If he were the only one with a fence, that's one thing; but there are many residents that have fences and it has been done well.

Mr. Carlson – The smell issue is more of a code issue. I don't think it's in our purview to take care of an issue that code can deal with. I am also sensitive to the fact that others have fences similar but there are rules for a reason. I will be in favor of disapproval.

Ms. Palone – If we have to include both, I feel that the porch you did have a final building permit approval. I can't disapprove the porch. He did everything he should have. I would be in favor of approval. I think it's to Mr. Clutter's benefit that the two items were thrown in together as one application.

Mr. Wood – I would say that I would be more likely to approve the fence. If were done poorly, I would have issue. I agree that Code Enforcement should pursue those complaints with regard to dogs and their mess.

Mr. Curry – I also wish these were separate. The porch has been there and no complaints. The fence is a much tougher issue. I don't see how a taller fence helps with odor. The fence issue is not permanent, it has a five-year time limit.

Ms. Ruiz – We need clarification from Mr. Emmons as to if you choose to deny the request today if that would preclude the applicant from pursuing an administrative relief request in the future. I believe we need that clarification on the record.

Mr. Emmons – Yes, it could be still considered administratively.

Mr. Curry – If the vote is negative today then it would deal with both issues, but does not disallow the applicant from applying for administrative relief.

Mr. Curry – I am comforted by the condition of the fence. The owner has responsibilities to adhere to laws and rules.

Ms. Palone – Would it be possible to modify the five years or until such time that Mr. Clutter sells the property? **Mr. Curry** – We have the ability to modify conditions. **Mr. Emmons** – You can shorten that time from five years to three if you so choose as an example. **Ms. Ruiz** – Just from a staff perspective, it is difficult to enforce those time frames based on sale of a property and staff would prefer that it be limited to a certain timeframe and not to the sale of the land.

Mr. Carlson – It's a very nice fence, but the community is set up to not have those fences.

BOA ACTION: CREELY MADE A MOTION TO CHANGE THE CONDITION TIME PERIOD FROM FIVE YEARS TO THREE. SECONDED BY PALONE. APPROVED UNANIMOUSLY (5-0). CURRY MADE A MOTION, SECONDED BY CREELY TO APPROVE BOA-20-001, A DIMENSIONAL VARIANCE FOR CLUTTER FENCE AND PORCH 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, AS WELL AS THE AMOUNT OF TIME THAT HAS PASSED SINCE THE PORCH WAS INSTALLED. CREELY SECONDED IT. THE MOTION PASSED (4-1). CARLSON WAS THE NAY VOTE.

6. APP-20-001

SEVIGNY

**APPEAL
CIRCLE A MINOR SUBDIVISION
ADMINISTRATIVE RELIEF APPEAL REQUEST**

A request by Daniel Andres to appeal the determination by the Planning and Community Development Department Executive Director to deny a request for approval of administrative relief to allow three (3) proposed lots with a minimum lot size of 4.95 acres where five (5) acres is required within the RR-5 (Residential Rural) zoning district. The 14.897 acre property is located on the east side Goshawk Road, approximately 0.5 miles north of Hodgen Road. (Parcel No. 51230-00-015) (Commissioner District 1)

BOA ACTION: NO ACTION REQUIRED AS THE APPLICANT WITHDREW THEIR APPLICATION.

Adjourn

The minutes were approved as presented at the June 10, 2020 hearing.