


EL PASO COUNTY
COLORADO

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

TO: El Paso County Board of Adjustment
 Kevin Curry, Chair

FROM: Ryan Howser, Planner I
 Elizabeth Nijkamp, PE Engineer Review Manager
 Craig Dossey, Executive Director

RE: Project File #: BOA-20-001
 Project Name: Clutter Fence
 Parcel No.: 6511411028

OWNER:	REPRESENTATIVE:
Teddy Clutter 105 Esther Drive Colorado Springs, CO, 80911	Teddy Clutter 105 Esther Drive Colorado Springs, CO, 80911

Commissioner District: 4

Board of Adjustment Hearing Date:	5/13/2020
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EXECUTIVE SUMMARY

A request by Teddy Clutter for approval of a dimensional variance to legalize a 100 percent opaque fence with a maximum height of 74 inches in the front setback where 30 inches is allowed for a fence more than 25 percent opaque, as well as a front setback of 22 feet where 25 feet is required for an existing addition to 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.



The fence in the front setback is existing and is currently the subject of a Code Enforcement action (CE-19-115). A site plan depicting a porch addition was approved by El Paso County in 2007 (ADD-07-374) based upon invalid setback dimensions provided by the property owner, which effectively allowed the addition to the single-family dwelling to be constructed within the required front setback without prior approval of a dimensional variance.

A. REQUEST

A request by Teddy Clutter for approval of a dimensional variance to legalize a 100 percent opaque fence with a maximum height of 74 inches in the front setback where 30 inches is allowed for a fence more than 25 percent opaque, as well as a front setback of 22 feet where 25 feet required for a single-family dwelling.

B. APPROVAL CRITERIA

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the El Paso County Land Development Code (2019), states the following:

The Board of Adjustment is authorized to grant variances from the strict application of any physical requirement of this Code which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property. Practical difficulties and hardship, in this context, may exist where the legal use of the property is severely restricted due to:

- 1) *The exceptional narrowness, shallowness, or shape of the specific piece of property.*

Table 5-4, Density and Dimensional Standards for Agricultural, Residential and Special Purpose Districts of the Land Development Code provides the zoning district dimensional standards for the RS-5000 (Residential Suburban) zoning district. The minimum lot size is 5,000 square feet and the size of the subject property is 7,200 square feet. The required setbacks are as follows:

- Front: 25 feet
- Rear: 25 feet for principal structure, 5 feet for accessory structures.
- Side: 5 feet

The minimum required width at the front setback line is 50 feet and the property has a width of 60 feet. The lot is a rectangle shape and is not irregularly shaped or unusually narrow.

The principal structure on the property generally meets all these requirements, except for the front porch encroachment of three (3) feet into the 25-foot front setback. Until this porch addition was constructed in 2007, the structures on the property were in compliance with the dimensional standards for the zoning district. Today, both the single-family dwelling (porch addition) and the opaque fence encroach into the front setback. However, the lot is not restricted due to exceptional narrowness, shallowness, or shape of the property.

- 2) *The exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.*

This lot is nearly identical in size and shape to surrounding properties, which also meet the lot dimensional standards for the zoning district and is located in an area where the topography is relatively flat. As such, no exceptional conditions or physical encumbrances affect this property. The property does not include any wetlands, bodies of water, excessive slopes, extraordinary soil conditions, or area within a floodplain. The lot is not restricted due to exceptional topographic conditions or other extraordinary or exceptional situation.

However, Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Code continues by stating the following:

The Board of Adjustment may also grant variances from the strict application of any physical requirement of this Code based upon equitable consideration, finding that the burdens of strict compliance with the zoning requirement(s) significantly exceed the benefits of such compliance for the specific piece of property and;

The applicant has indicated that strict compliance with the Code regarding the height or opacity of the fence would negate its usefulness. The applicant has stated that the fence is used to screen the neighbor's property. The Land Development Code does not address front yard screening in the context of single-family residential neighborhoods. In addition, the Code prohibits the use of such opaque fencing in the front setback. The applicant has stated that the fence is intended to screen against the offensive sights and odors associated with animal waste on the neighbor's property. Excessive animal waste is an actionable Code

Enforcement issue if it is determined that such accumulation rises to the level in which it could be included under the definition of rubbish. Upon receiving initial notices from Code Enforcement, the neighbor has routinely cleaned up the animal waste.

With regard to the front porch encroachment, the applicant originally applied for approval of a residential site plan on June 13, 2007 to allow for construction of the addition. At the time, the existing structure had a front setback of 31 feet before the construction of the porch addition. The site plan showed an incorrect front setback of 45 feet for the existing dwelling and that upon construction of the single-family addition (porch) the structure would comply with the front setback with a proposed setback of 36 feet (see attached 2007 approved site plan for reference). If the above-mentioned site plan was accurate, it would not have been approved without prior approval of administrative relief for the setback encroachment.

- *The variance provides only reasonably brief, temporary relief; or*

At such time that the current tenant is no longer renting the adjacent property, the variance would no longer be needed for purposes described by the applicant. Staff does not have the resources or the legal means to impose conditions on an offsite property other than through the Code Enforcement process and, therefore, cannot continuously review the lease period for the adjacent property. For this reason, staff and the applicant are proposing a five-year restriction on the variance as it applies to the fence. If approved, the requested variance to allow the encroachment of the single-family addition would provide permanent relief.

- *The variance request includes an alternative plan, standards or conditions that substantially and satisfactorily mitigate the anticipated impacts or serve as a reasonably equivalent substitute for current zoning requirements; or*

The variance request does not include an alternative plan, standards or conditions that mitigate impacts or serve as a reasonably equivalent substitute for current zoning requirements. The applicant has chosen not to pursue any of the alternatives listed below.

- *Some other unique or equitable consideration compels that strict compliance not be required.*

The applicant has cited his health issues as creating a unique situation where the burden created by reducing the height or opacity of the fence would exceed the benefit gained. In his letter of intent, the applicant cites the “hazardous living conditions” of his neighbors, including excessive trash, dog feces, aggressive dogs, and verbal attacks from the tenants posing a detriment to his health and creating an unsafe living environment (see attached exhibit from the applicant’s doctor for reference).

C. BACKGROUND

The property was zoned R-2 (Residential) in 1942. Due to changes in the nomenclature of the Land Development Code, the R-2 district has been renamed as the RS-5000 (Residential Suburban) zoning district. The 7,200 square foot parcel was created on June 25, 1955, and is known as Lot 2, Block 8 of the Security Addition No. 6 subdivision. The single-family dwelling was constructed in 1956.

The applicant originally applied for approval of a residential site plan on June 13, 2007 to allow for construction of the addition. At the time, the existing structure had a front setback of 31 feet before the construction of the porch addition. The site plan showed an incorrect front setback of 45 feet for the existing dwelling and that upon construction of the single-family addition (porch) the structure would comply with the front setback with a proposed setback of 36 feet (see attached 2007 approved site plan for reference). Table 5-4 of the Code requires a 25-foot front setback for properties in the RS-5000 zoning district. Currently, the porch is setback 22 feet from the front property line, encroaching three (3) feet into the required front setback.

In November 2016 and again in March 2017, the applicant submitted Code Enforcement complaints regarding the condition of the neighboring property. In both instances, the Code Enforcement cases were closed when the property was cleaned up. In June 2018, the applicant constructed the subject opaque fence in the front setback.

Section 6.2.1(E)(1) of the Code states:

“Fences or walls more than 25% opaque shall not exceed 30 inches in height when located within the front setback area.”

The fence has a minimum height of 36 inches and a maximum height of 74 inches. In order to meet the above requirement, the fence would need to either be 30

inches or less in the front setback area, or would need to be 25 percent or less opaque in the front setback area.

On June 15, 2018, Code Enforcement received an anonymous complaint regarding the fence and issued a notice of violation to the applicant on June 20, 2018. The PCD Director issued an executive determination on October 23, 2018 authorizing the Office of the County Attorney (OCA) to pursue legal remedies for enforcement of the Code, specifically regarding the setback violation for the fence. The executive determination provided the property owner the opportunity to request an appeal of the executive determination within ten (10) days of the executive determination. A request for an appeal was not received and the matter was referred to the OCA; however, legal action has not been pursued pending approval or denial of a dimensional variance for the front yard setback violation.

On January 21, 2020, the applicant met with Planning and Community Development Department staff for an Early Assistance meeting regarding the dimensional variance for the fence. A dimensional variance application was then received and accepted on February 13, 2020.

D. ALTERNATIVES EXPLORED

There are three alternatives that would not require a dimensional variance request with regard to the fence:

1. Reduce the height of the fence within the front setback area to a maximum of 30 inches.
2. Reduce the opacity of the fence within the front setback area to 25 percent or less.
3. Remove the fence.

There are two alternatives that would not require a dimensional variance request with regard to the single-family dwelling addition (porch):

1. Reduce the width of the porch by three (3) feet.
2. Remove the porch addition.

E. APPLICABLE RESOLUTIONS

Approval: Resolution 3 – Unique and Equitable Circumstances

Disapproval: Resolution 4

F. LOCATION

North: RS-5000 (Residential Suburban)

Single-family residential

South: RS-5000 (Residential Suburban)

Single-family residential

East: RS-5000 (Residential Suburban)
West: RS-5000 (Residential Suburban)

Single-family residential
Single-family residential

G. SERVICE

1. WATER

Water is provided by Security Water and Sanitation District.

2. WASTEWATER

Wastewater is provided by Security Water and Sanitation District.

3. EMERGENCY SERVICES

The parcel is located within the Security Fire Protection District. The District was sent a referral and has no outstanding comments

H. ENGINEERING

1. FLOODPLAIN

The site is not located within a defined floodplain as determined from FEMA Flood Insurance Rate Map Panel No. 08041C0763G, dated December 7, 2018.

2. DRAINAGE AND EROSION

This property is located within the West Little Johnson Drainage Basin (FOFO2700). There are no drainage basin planning study improvements associated with this project. No platting action is being requested; therefore, no drainage fees are due at this time.

3. TRANSPORTATION

The site access is directly onto Ester Drive. While the secondary driveway is located adjacent to the fence, there should be no sight-district or other visibility issue given the limited use of this access and the minor amount of traffic on this low volume street. The fence drops to 36 inches as it approaches the ROW, allowing for adequate visibility. The secondary access is an approved access with the condition that at the County Engineer's discretion it may be closed if it ever becomes a safety issue.

I. RECOMMENDED CONDITIONS OF APPROVAL

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a dimensional variance and that the applicant has met the review and approval criteria for granting variances from the applicable standards, staff recommends the following conditions and notation of approval:

CONDITIONS

1. The approval applies only to the plans as submitted. Any expansion or additions to the proposed fence and front porch addition may require separate Board of Adjustment application(s) and approval(s) if the development requirements of the applicable zoning district cannot be met.
2. Approval of a dimensional variance for the height of the fence in the front setback is only valid for a period not exceeding five (5) years. The applicant may petition the Board of Adjustment for an extension of the expiration date prior to such expiration. Any request to extend approval of the variance that is received after the expiration period shall be considered a new dimensional variance application.
3. Approval of the dimensional variance for the porch encroachment shall not be subject to an expiration date and shall hereafter run with the property.

NOTATION

1. The PCD Director may require a survey, certified by a registered surveyor, licensed in the State of Colorado, depicting the improvement in relationship to the lot lines affected to demonstrate compliance with the approval of the dimensional variance.

J. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified eight (8) adjoining property owners on April 20, 2020, for the Board of Adjustment hearing. Any responses received by staff will be provided at the hearing.

K. ATTACHMENTS

Letter of Intent
Vicinity Map
Site Plan
2007 Site Plan
Neighbor Letters
Doctor's Note

Submitted To: El Paso County Board of Adjustment

Submitted By: Teddy D. Clutter

Cell : 719-339-0425

Home: 719-392-5808

Address: 105 Esther DR. Lot 2, blk 8 [Residential]
Security, CO. 80911

Dear El Paso County Board of Adjustment,

I am requesting a variance on an existing fence in the front yard between lots 1 and lot 2 on block 8 in Security, CO. This fence was built on the property of 105 Esther Dr. The fence in question was built on June 18, 2018 by Boos & Sons, Inc. The fence dimensions are found on the attached site map.

Due to the hazardous living conditions of the tenants of 101 Esther Dr. (tenants), I was forced to build a fence to ensure my health and safety. The decision to build this fence did not come without attempts to rectify the situation with the property owner and renter at 101 Esther Dr. Security, CO prior to building the fence. Over the course of 5 years, I have made multiple requests to the property owner and tenants to ensure a clean yard and limit odor pollution. In addition to attempting to work with the property owner and tenants, I have made a minimum of three (3) complaints with El Paso County on the following dates: 11/15/2016, 3/27/2017, 1/27/2020. Due to no action taken by the property owner, tenants and El Paso County, I have been left with no other option but to build a fence between my property and 101 Esther Dr. Please note that prior to the fence installation the property owner of 101 Esther Dr was notified of the intended action. He verbally agreed to this action and offered to trim the trees to make room for the fence.

Over the course of the past 5 years, I have been exposed to the following living conditions due to the tenants of 101 Esther Dr.

- Excessive dog feces in the front yard, resulting in a constant foul odor coming from their yard at all times.
- Excessive trash and rubbish left in front and back yard at all times.
- Numerous police visits and arrests of the tenants
- Many verbal attacks by the tenants (using threats and foul language)
- Aggressive dogs

As a result of the above actions of the tenant, it is in the best interest of my well-being and health to ensure that the fence that I built stays in place. The above has resulted in a decline of my health due to diagnosed COPD. My doctor has advised that the odor coming from 101 Esther Dr inflames my bronchial and respiratory system, making it difficult to breathe. Please see the attached letter from my physician. In addition to diagnosed COPD, I also suffer from benign concentric angular dystrophy, which means that I am legally blind. Due to my visual limitations, it is essential that my surrounding living conditions are safe. Rubbish and violent dogs create a un-safe living condition for me. To ensure that I am able to maintain a healthy lifestyle, it is essential for my health that you grant a variance to keep the fence in my front yard in place.

I believe that it is important to notate that within the direct neighborhood of my residence (105 Esther Dr), there are 23 homes with similar privacy fences in the front yard, please see attached photos. Building privacy fences in the front yard is a common practice among all of my direct neighbors. I have spoken with many of these neighbors and they have never experienced any adverse action in regards to the fences that they own, which I am being called into question.

Please consider my request on the variance on my existing fence in the front yard between lots 1 and lot 2 on block 8 in Security, CO (105 Esther Dr.). Thank you for preserving my health and well-being in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Teddy D. Clutter". The signature is fluid and cursive, with a large initial "T" and "C".

Teddy D. Clutter

El Paso County Parcel Information

File Name: BOA-20-001

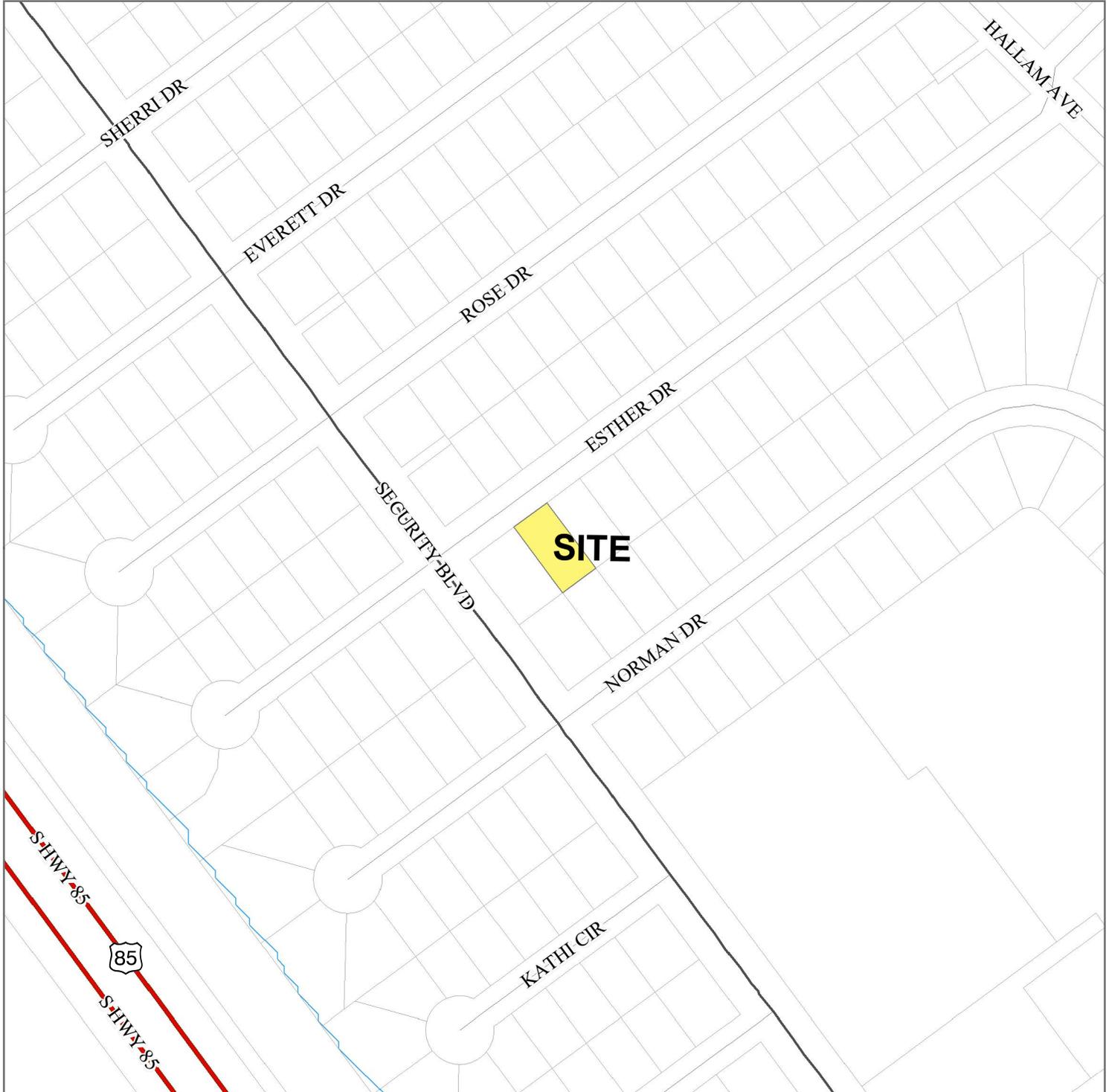
PARCEL	NAME
6511411028	CLUTTER TEDDY D

Zone Map No. --

ADDRESS	CITY	STATE
105 ESTHER DR	COLORADO SPRINGS	CO

ZIP	ZIPLUS
80911	1429

Date: April 14, 2020



Please report any parcel discrepancies to:
 El Paso County Assessor
 1675 W. Garden of the Gods Rd.
 Colorado Springs, CO 80907
 (919) 520-6600



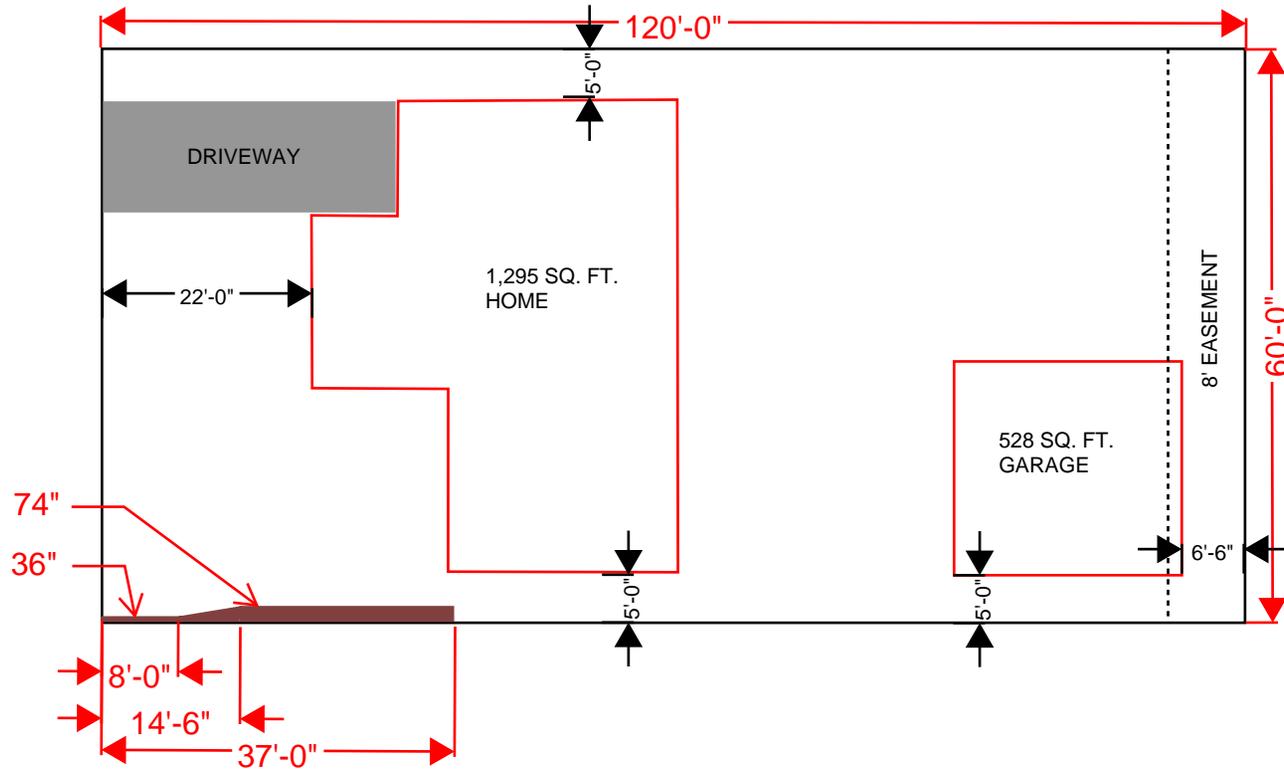
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105 Esther Dr
PID: 6511411028
Owner: Teddy D Clutter

Legal Description: LOT 2 BLK
8 SECURITY, COLO, ADD 6

ESTHER DR



Zoning: RS-5000

Setback:
Front - 25'
Side - 5'
Rear - 25' (5')

Scale: 1" = 20'

BESQCP Not Required

by 36 on 6/13/07

RS5000/RZ

65114-11-028

AJ007 374

ANY APPROVAL GIVEN BY EL PASO COUNTY DOES NOT OBIVIATE THE NEED TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAWS AND/OR REGULATIONS

ted clutter
105 esther dr
security co. 80911

Lot 2 Blk 8 Security Colo, Add 6

PALD
#137.50

Development Services approval is contingent upon compliance with all applicable notes on the recorded plat.

An access permit must be granted by the Development Services Engineering Division prior to the establishment of any driveway onto a County Road.

Diversion of blockage of any drainageway is not permitted without the approval of the Development Services Engineering Division.

14' APPROVED
EPC Development Services

This 13 day of 20 07
by 36 for Deck 9x18
Notes _____

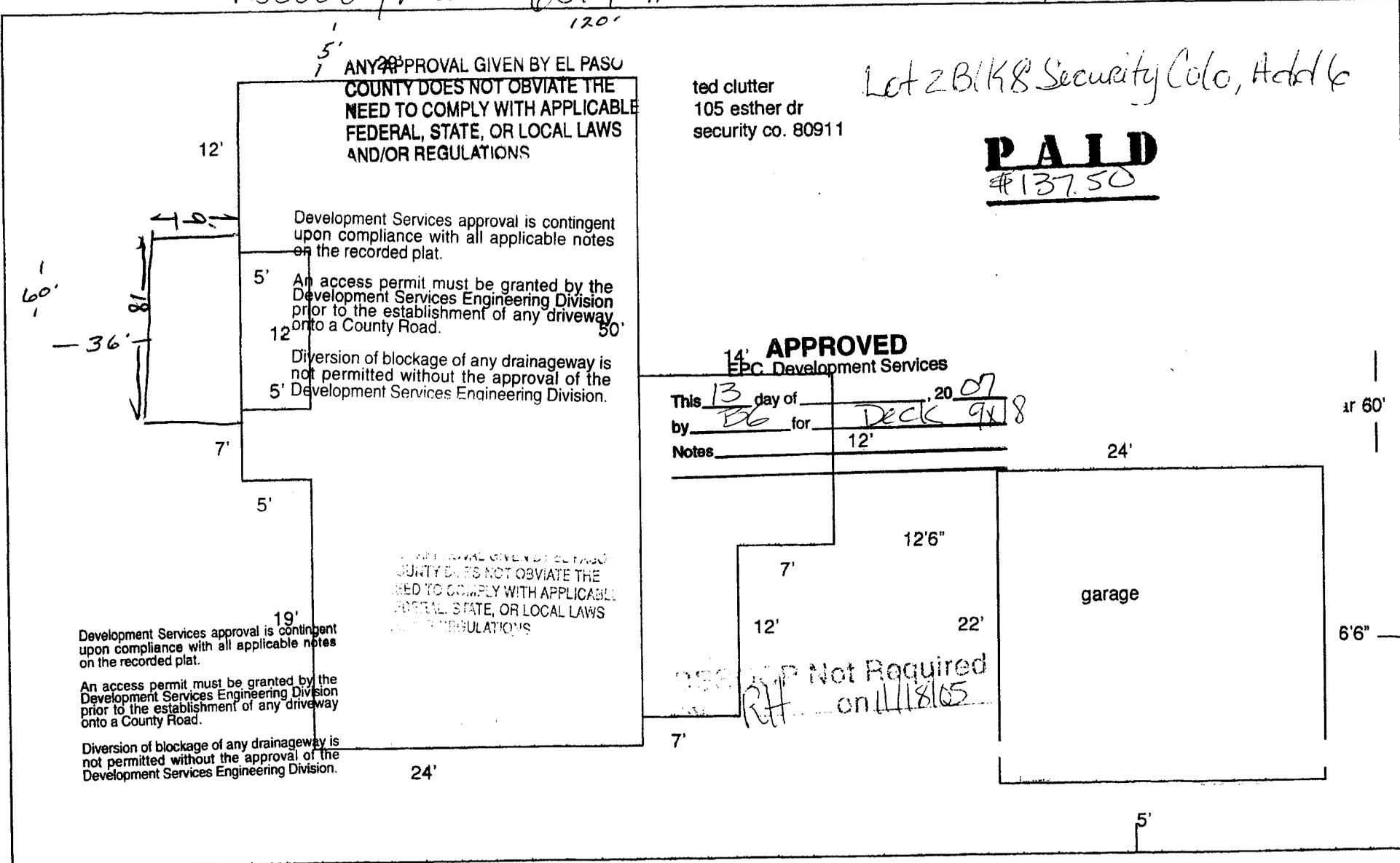
Development Services approval is contingent upon compliance with all applicable notes on the recorded plat.

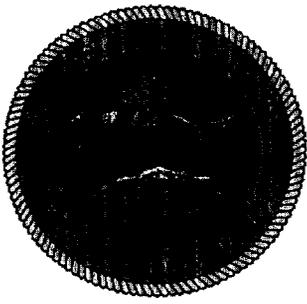
An access permit must be granted by the Development Services Engineering Division prior to the establishment of any driveway onto a County Road.

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ANY APPROVAL GIVEN BY EL PASO COUNTY DOES NOT OBIVIATE THE NEED TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAWS AND/OR REGULATIONS

BESQCP Not Required
RH on 11/18/05





INTAKE RECEIPT

El Paso County Development Services Department
2880 International Circle, Colorado Springs, Colorado 80910
719-520-6300

Ver. 2007

Receipt #	B46559	Payment Type:	Check: <input checked="" type="checkbox"/>
Date:	06/13/07		Check # 2459
Processed by:	Rose Hollis		Cash: <input type="checkbox"/>
Project Name:	_____		
Name:	TEDDY CLUTTER		
Address:	105 ESTHER DR		
City:	SECURITY	State:	CO
Phone:	X	Zip:	80911
E-Mail:		Fax:	

PROCESS	FEE	Qty	TOTAL
Administrative Plot Plan (Residential)	\$100.00	1	\$ 100.00
Surcharge	\$37.50	1	\$ 37.50
	TOTAL		\$ 137.50

Comments

105 ESTHER DR.

For the Board of adjustment

When Mr. Clutter lost most of his vision I would take him fishing at least four or five times a month. We would leave early morning and return late afternoon. When I would drop Teddy off at his house, the smell of old moldy dog droppings was very high. On one occasion, I remember saying "bet you Don't leave your front door open very often."

James Nonko

 1-6-2019

December 27, 2018

To: El Paso County Code Enforcement
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Re: 105 Esther Dr
Security, CO 80911

To Whom it May Concern:

This letter is written in reference to 105 Esther Dr. Security, CO 80911, this property is owned and occupied by Teddy Clutter.

As Teddy Clutter's daughter, I have frequently visited my father (Teddy Clutter). Over the past few years, the tenants that occupy 101 Ester Dr Security, CO 80911 (southern neighbors to 105 Ester Dr.) have neglected to properly maintain the property. The property is kept in unsanitary and unsightly conditions. The most alarming and disruptive aspect of the disgusting conditions of this home is the front yard is littered with dog feces. The tenants of this property do not clean up the dog feces, this creates an overwhelming sent of feces outside and inside of 105 Esther Dr. Above and beyond, the tenants of 101 Esther Dr. do not maintain their property and a well-maintained order, have loud and disruptive parties and are verbally abusive toward my father- including making verbal threats.

The fence that was built by my father in 2018, creates a barrier between my father's property and these problematic neighbors. Since the construction of this fence, the odor has decreased, he can enjoy his well-maintained property in peace without the disruption and frustration of a poorly maintained neighboring home, reduced noise pollution and verbal threats.

Please grant my father the ability to keep the fence that he had constructed to maintain a home without the scent of dog feces and the difficulties of having unsightly and unsanitary neighbors.

Best Regards,



Reanna L. Werner, MBA, SPHR, SHRM-SCP

Daughter of Teddy Clutter

To the Board of Adjustment,

When I go by to visit or when my brother is out of town I go by his house at 105 Esther Dr. too check his mail and chickens. There has been many times that I have smelt a strong odor of rotten dog dung . I could see through the chine link fence the many piles of dog feces. No one should be subjected to this kind of smell specially if you have breathing problems.

Terry G. Clutter

Handwritten signature of Terry G. Clutter and the date 1-5-19.

To whom it concerns,

I have known Teddy for over fifty years. I know him to be honest and fair. When I have a service call in the Security area, I go by his house and we go to lunch. There has been a number of times when the strong smell of dog feces is highly noticeable.

Michael Whitehead

A handwritten signature in cursive script that reads "Michael Whitehead". The signature is written in dark ink and is positioned below the printed name.

To the Board of Adjustment

El Paso County, Colorado

I have been a frequent visitor of Teddy Clutter (105 Esther Dr., Security, Colorado) for many years. The odor emanating from the yard at 101 Esther Dr. during the past 5-6 years has been vile and overwhelming to say the least. Particularly in the hot summers when they water their feces, as weeds do not constitute a yard. Odor control does not stop by picking up the excrement on occasion, but requires diligence on a daily basis, especially with 3 plus dogs, that all relieve themselves in the same location. Odor control also involves disinfecting the area and turning over the ground to alleviate saturation. The offensive odor has subsided with the installation of the privacy fence. In addition, I have witnessed the larger dog jump the previous dividing fence to relieve himself in Teddy's front yard in spite of the fact that the animals cannot be outside without supervision or they jump the fence and bolt.

Mr. Clutter remains a very active person in spite of being legally blind. As his vision deteriorates, his other senses have become heightened to compensate for the lack of sight. Breathing issues are another concern that requires constant monitoring.

He has lived at this location for over 50 years and should be allowed to protect his well being, his property and his health from the carelessness and irresponsibility of others.

Maile A. Tunnell



DEPARTMENT OF VETERANS AFFAIRS
PFC Floyd K. Lindstrom Clinic
3141 Centennial Blvd
Colorado Springs, CO 80907

January 9, 2020

To Whom it May Concern,

Mr. Teddy D. Clutter has a medical condition that is triggered and sensitive to environmental odors. When triggered he develops an increase in the mucus that is in his airways, which thickens and causes coughing. This veteran may benefit from a barrier from these triggers and sensitivities.

A handwritten signature in cursive script, appearing to read "Elizabeth Erickson".

Dr. Elizabeth Erickson, MD.
719-327-5660