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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

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

FROM: Lindsay Darden, Planner II
 Jack Patton, Engineer I
 Craig Dossey, Executive Director

RE: Project File #: BOA-20-003
 Project Name: 7822 Hirshorn
 Parcel No.: 5301401004

OWNER:

REPRESENTATIVE:

Celina Alongi 7822 Hirshorn Point Peyton, CO 80831	Celina Alongi 7822 Hirshorn Point Peyton, CO 80831
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Commissioner District: 2

Board of Adjustment Hearing Date:	12/9/2020
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EXECUTIVE SUMMARY

A request by Celina Alongi for approval of a variance for a rear yard setback of 6 feet where 10 feet is required for a single-family dwelling to legalize an attached pergola that was constructed without approval. The applicant and contractor failed to request approval of a residential site plan from the El Paso County Planning and Community Development Department or a building permit from Pikes Peak Regional Building. The



3,195 square foot property is zoned PUD (Planned Unit Development) pursuant to the Courtyards at Woodmen West PUD and is located approximately 0.2 miles northwest of the intersection of the Woodmen Frontage Road and Quandary Road and is within Section 1, Township 13 South, Range 65 West of the 6th P.M. The subject property is located within the boundaries of the Falcon/Peyton Small Area Master Plan (2008).

A. REQUEST

A request by Celina Alongi for approval of a variance for a rear yard setback of 6 feet where 10 feet is required for a single-family dwelling.

B. APPROVAL CRITERIA

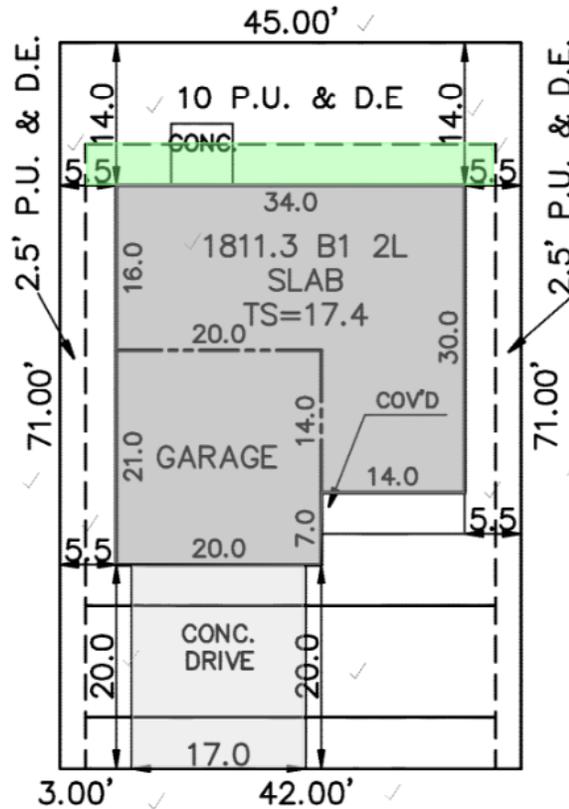
Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Land Development Code (2019), states the following:

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.*

The applicant requests approval of a variance for a rear yard setback of 6 feet where 10 feet is required for a single-family dwelling to legalize an attached pergola that was constructed without approval. The Courtyards at Woodmen West PUD (Planned Unit Development) is a development comprised of 30 individual blocks (hammer-head cul-de-sacs) that include 5 to 9 lots (see attachment that depicts typical block and lot layout). Each block is platted with an exterior 10-foot drainage and utility easement. The exterior setback requirement is also 10 feet to match the width of the easement and prevent any encroachment that would impact drainage or utilities. The subject property is 3,195 square feet in size and is located in the center of the cul-de-sac. The rear setback requirement is 10 feet and the side setback requirements are 2 ½ feet on the east side and 4 ½ feet on the west side. The front setback requirement is 5 feet for the residential structure; however, the front of the garage is required to be a minimum of 16 feet from the front property line.

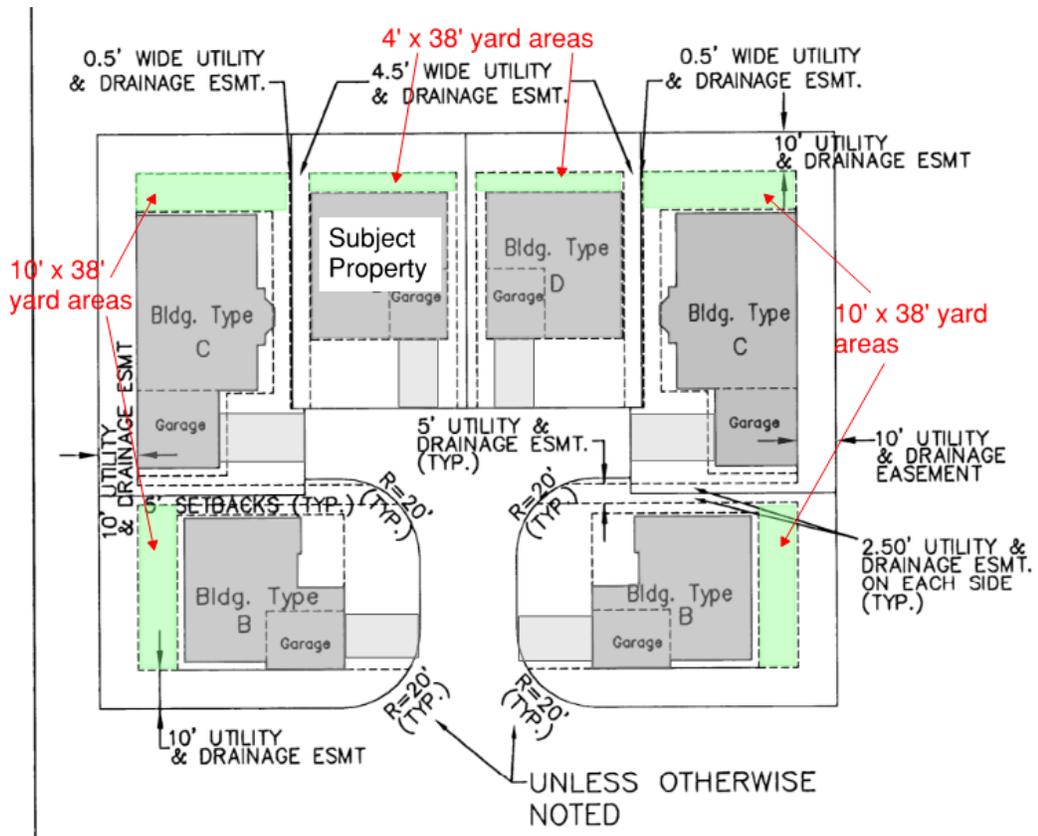
The existing single-family dwelling is located 14 feet from the rear property line, 5 ½ feet from the side property lines, and 20 feet from the front property line. After setbacks are applied, the developable rear yard area is 152 square feet (38 feet in length x 4 feet in width) as depicted in green on the illustrated residential site plan excerpt below:



As you can see above, the typical six (6) foot by six (6) foot square concrete patio supplied by the builder encroached into the rear yard setback. Uncovered patios less than 30 inches in height need not meet the setback requirements. Most patios or shade structures would need to be wider than four (4) feet to serve the intended function. Each block within the PUD includes at least two interior lots with the same limitation as the subject property. These lots have a practical difficulty of having a lot which is exceptionally narrow and shallow which impacts and limits the yard size in a way that prevents any further development beyond the initial construction of the home.

In contrast, the exterior lots on each block are less encumbered by the setbacks and appear to have enough developable yard area (approximately 394 SF) to accommodate a small pergola or other shade structure in the rear

or side yard areas without encroaching into the required setbacks as shown on the illustrated typical block layout below:



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

The subject property does not meet the above criterion.

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 variance provides only reasonably brief, temporary relief; or*

If approved, the variance would be for a permanent structure and would not meet this criterion.

- *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 property owner requests approval of a reduced setback to permit an existing attached pergola within the rear yard setback. There are other homes within the development with similar shade structures, therefore, if the variance is approved, the pergola would not be as visually intrusive in the context of the overall neighborhood as it could have been otherwise.

The pergola encroaches into the required 10-foot setback and also into the 10-foot drainage and utility easement a total of 4 feet. The variance request was reviewed by the El Paso County Engineering division, Colorado Springs Utilities, Mountain View Electric Association, Inc., and Woodmen Hills Metropolitan District. The encroachment of the pergola into the easement was not found to interfere with utilities or drainage for the development as indicated by the review comments received from the agencies. Should the request be approved, the applicant will be required to supply El Paso County with letters of no objection from the utility holders prior to site plan approval. Staff does not anticipate any onsite or offsite impacts greater than what exists on other nearby lots that would be caused by allowing the pergola to remain on the property.

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

Approval of the request may be based on the criteria of unique or equitable consideration where the property owner was unaware that proper permits were not obtained prior to construction. Per the letter of intent, the property owner was advised by her contractor that a permit would not be necessarily due to the size of the proposed pergola. The property owner authorized the construction of the pergola. Then, following construction, the property owner was notified by the Pikes Peak Regional Building Department that a building permit and approval of a site plan would be required, additionally, the contractor was unlicensed. If a building permit had been submitted to the Pikes Peak Regional Building

Department along with a residential site plan depicting the pergola in relation to the property lines and required setbacks, the encroachment of the pergola could have been identified prior to construction and the plan would not have been approved. Staff notified the adjacent property owners and did not receive any response that indicated that the adjacent property owners have a concern or issue with the proposal.

C. BACKGROUND

The subject property was initially zoned A-4 (Agricultural) on September 20, 1965, when zoning was first implemented for this portion of El Paso County. In 2002, the property was rezoned to create the Courtyards at Woodmen Hills West PUD (PCD file no. PUD-02-006). The 3,195 square foot lot was created via final plat (PCD file no. VR-10-003) in 2010, and is known as Lot 3, Block 5 of the Courtyards at Woodmen Hills West. In 2018, a single-family dwelling and a small concrete patio (approximately 6 feet x 6 feet) were constructed on the lot by the developer.

In August of 2018, the property owner hired a contractor to expand the patio to approximately 34 feet x 8 feet and to construct an attached pergola (16 feet x 8 feet) above a portion of the patio to provide shade for the rear patio and the interior of the home. The contractor advised the property owner that a building permit would not be necessary due to the small size of the pergola. After the fact, the property owner received notice from the Pikes Peak Regional Building Department that a permit had not been obtained and would be required to legalize the pergola. The property owner approached the contractor requesting that the issue be corrected; however, the contractor refused to obtain a building permit for the pergola as the contractor was unlicensed.

The property owner submitted a homeowner's building permit application to the Pikes Peak Regional Building Department in an effort to legalize the pergola. During the review process the construction and design of the pergola was found to be compliant with the building code; however, during review of the residential site plan, the pergola was found to encroach 4 feet into the required 10 foot rear yard setback. The concrete patio also encroaches into the required setback; however, Section 5.4.3 of the El Paso County Land Development Code (2019) specifies:

“Open and unenclosed patios, decks, platforms, landings or ramps may extend into required front, side or rear yard setbacks provided the patio,

deck, platform, or landing does not exceed 18 inches in height measured from the finished floor to any adjacent point of the finished grade.”

The encroachment of the pergola exceeds the amount of what may be approved with administrative relief; therefore, the reduced setback requires approval of a dimensional variance from the Board of Adjustment prior to approval of a residential site plan and authorization of a building permit.

D. ALTERNATIVES EXPLORED

There are three (3) alternatives that would not require a dimensional variance request:

1. Removal of the existing 16 foot x 8 foot pergola.
2. Reduce the size of the pergola to meet the required rear yard setback. This would result in a pergola size of 16 feet x 4 feet.
3. Reduce the pergola to a width that could be approved with administrative relief. This would result in a pergola size of up to 16 feet x 6 feet.

E. APPLICABLE RESOLUTIONS

Approval: Resolution 1
Disapproval: Resolution 2

F. LOCATION

North: PUD (Planned Unit Development)	Vacant Tract
South: PUD (Planned Unit Development)	Single Family Residential
East: PUD (Planned Unit Development)	Single Family Residential
West: PUD (Planned Unit Development)	Single Family Residential

G. SERVICE

1. WATER

Water is provided by the Woodmen Hills Metropolitan District. The District was sent a referral and provided the following response: “Woodmen Hills does not oppose the variance.”

2. WASTEWATER

Wastewater is provided by the Woodmen Hills Metropolitan District. The District was sent a referral and provided the following response: “Woodmen Hills does not oppose the variance.”

3. EMERGENCY SERVICES

The parcel is located within the Falcon 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 by staff following a review of the FEMA Flood Insurance Rate Map Panel No. 08041C0553G dated 12/7/2018.

2. DRAINAGE AND EROSION

This property is located within the Falcon Drainage Basin (CHWS1400). This is a studied basin, and 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. Staff does not anticipate any impacts or additional grading or erosion due to the encroachment of the pergola and patio into the 10-foot drainage and utility easement.

3. TRANSPORTATION

In accordance with Resolution 19-472, the proposed dimensional variance would not be assessed any fees through the El Paso County Road Impact Fee program. The proposed development will not affect the County's transportation network and there is no change to the access to the property being proposed.

I. RECOMMENDED CONDITIONS OF APPROVAL

Should the Board of Adjustment determine that the application is consistent with the criteria of approval for a dimensional variance for approval of a rear yard setback of six (6) feet where ten (10) feet is required for an attached pergola, 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 pergola 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 site plan by the Planning and Community Development Department and issuance of a building permit from the Pikes Peak Regional Building Department are required to legalize the existing pergola.
3. Should the variance request be approved, the applicant will be required to supply El Paso County with letters of no objection from the utility holders prior to site plan approval.

NOTATIONS

1. Physical variances approved for a proposed structure (except for lot area variances) are valid only if a building permit and residential site plan are initiated within twelve (12) months of the date of the Board of Adjustment approval.
2. 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 variance.

J. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified seven (7) adjoining property owners on November 16, 2020 for the Board of Adjustment meeting. Responses will be provided at the hearing.

K. ATTACHMENTS

Letter of Intent

Vicinity Map

Courtyards at Woodmen Hills West Typical Block and Lot Layout

Approved Residential Site Plan

Site Plan and Elevation Drawings for Pergola

September 23, 2020

Celina M. Alongi
7822 Hirshorn Pt.
Peyton, CO 80831-8656
(719) 396-1107
celina.alongi@aol.com

RE: Variance Request for Existing Attached Pergola Setback Encroachment

Parcel #: 5301401004
Legal Description: Lot 3 BLK 5 Courtyards at Woodmen Hills West
Lot Size: 3195 SQFT
Zoning: PUD

Project Description:

Existing attached pergola that encroaches on rear setback by 4'

Therefore I am requesting a setback variance from 10' to 6'

Background:

Presently I have an existing 36' x 8' concrete patio and a small 16' x 8' attached pergola on the back of my home to provide for shade relief. In August of 2018 I hired a contractor for this project who advised he was licensed and that a permit was not required due to the dimensions of the pergola being under 200 sq. ft. I was recently contacted by the Pikes Peak Regional Building Department (PPRBD) advising that they had been notified a permit was not pulled for the project and in fact one was required. I had contacted the contractor and requested he pull the proper permit for the project and he refused. After researching the contractor, I discovered he was not licensed as he had assured me he was. I then submitted the necessary paperwork to pull the permit through PPRBD myself and although my building plans for the pergola were approved by PPRBD, my application was denied by the EPC Planning & Community Development Department. I was advised the denial was based on the fact that the rear setback requirement for my lot is 10' based on the Courtyards at Woodmen Hills West 1A PUD (10-002). The distance between the property line and the back of my home is 14', therefore the 8' depth of the pergola encroaches into the rear setback by 4'.

The home is located on a parcel that backs to an open space where there are no homes. With the area behind my home being designated as open space, the pergola would not encroach upon any homes to the backside (north) of the property and in addition is well within the side setback requirements as to not encroach on the two side properties. There are similar pergolas within my community that have been constructed which also encroach on the required setbacks.

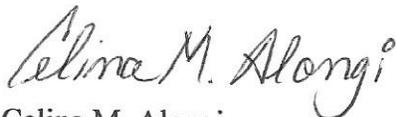
Reason & Purpose:

The reason and purpose for the variance request is that the pergola provides for the use of the rear yard/outside to be enjoyed by my family and our pets. It provides shaded areas of relief from the hot sun while outside. The pergola prevents direct sunlight from entering the north facing window and sliding glass door in the kitchen which provides protection and allows for longevity of the wood flooring within the kitchen while also keeping the house cooler, reducing the use of natural resources and energy. The pergola provides an area to hang plants and bird feeders directly benefiting our ecosystem. It also provides for additional lighting to be hung, adding an additional measure of security to the back of my home where there are no outside perimeter lighting sources.

Hardship:

The exceptional shallowness of the backyard provides a practical hardship for construction of a small standard sized pergola. By staying within the current setback requirements the size of the pergola would be restricted to a depth of 4' feet from the house and would not provide an area that would be functional for shade relief and would defeat the purpose of what a pergola is designed for. It would limit the size and quantity of seating that would allow my family to benefit from the intended shade relief. Based on the orientation of my home and the direct sunlight in my rear yard during the afternoon hours allowing this slight setback variance will allow for the maximum shade benefit during the hottest times of the day, where reducing the size of the pergola would inhibit that.

Sincerely,



Celina M. Alongi

El Paso County Parcel Information

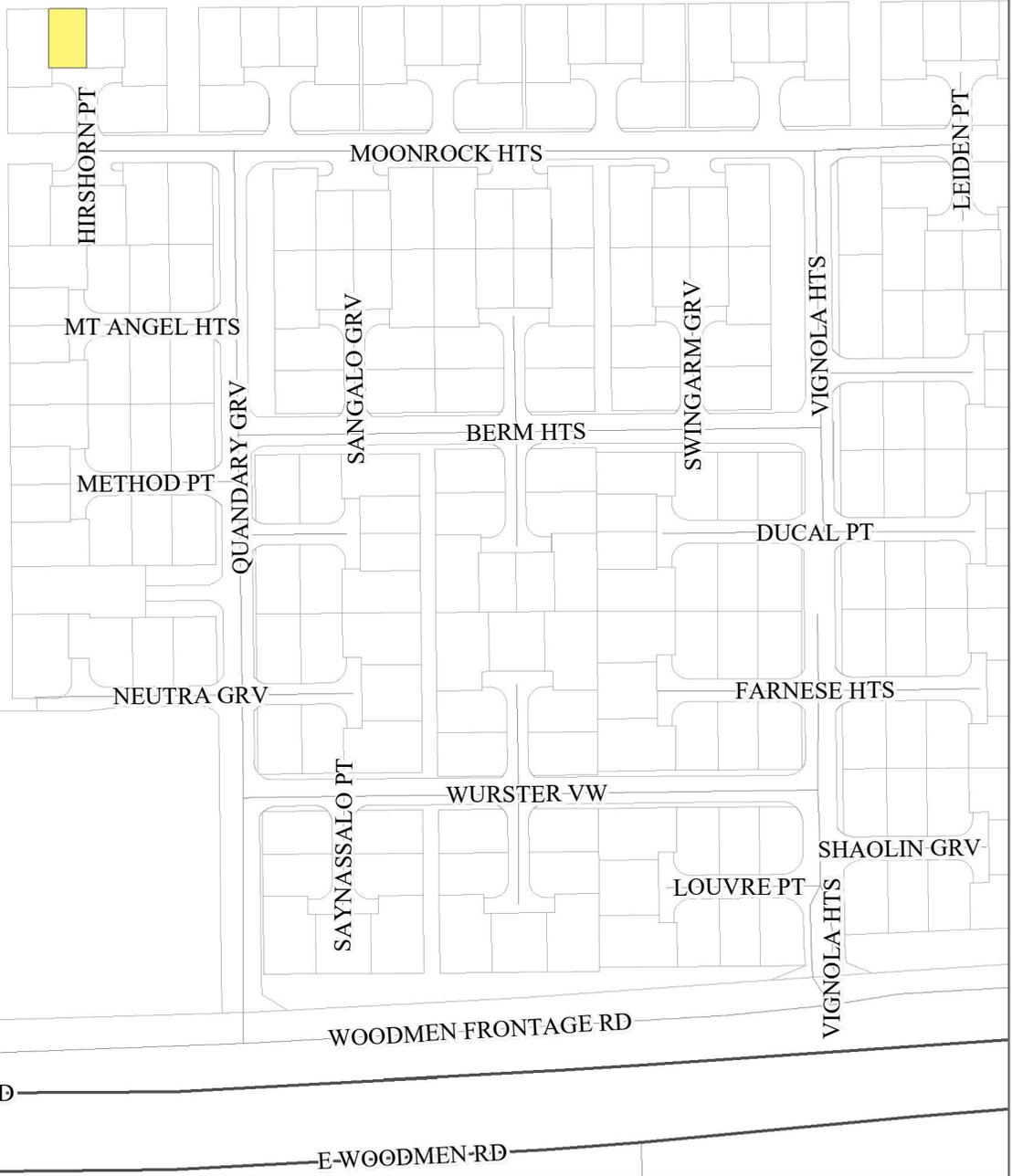
File Name: BOA-20-003

PARCEL	NAME
5301401004	ALONGI CELINA MARIE

Zone Map No. --

Date: November 16, 2020

SITE

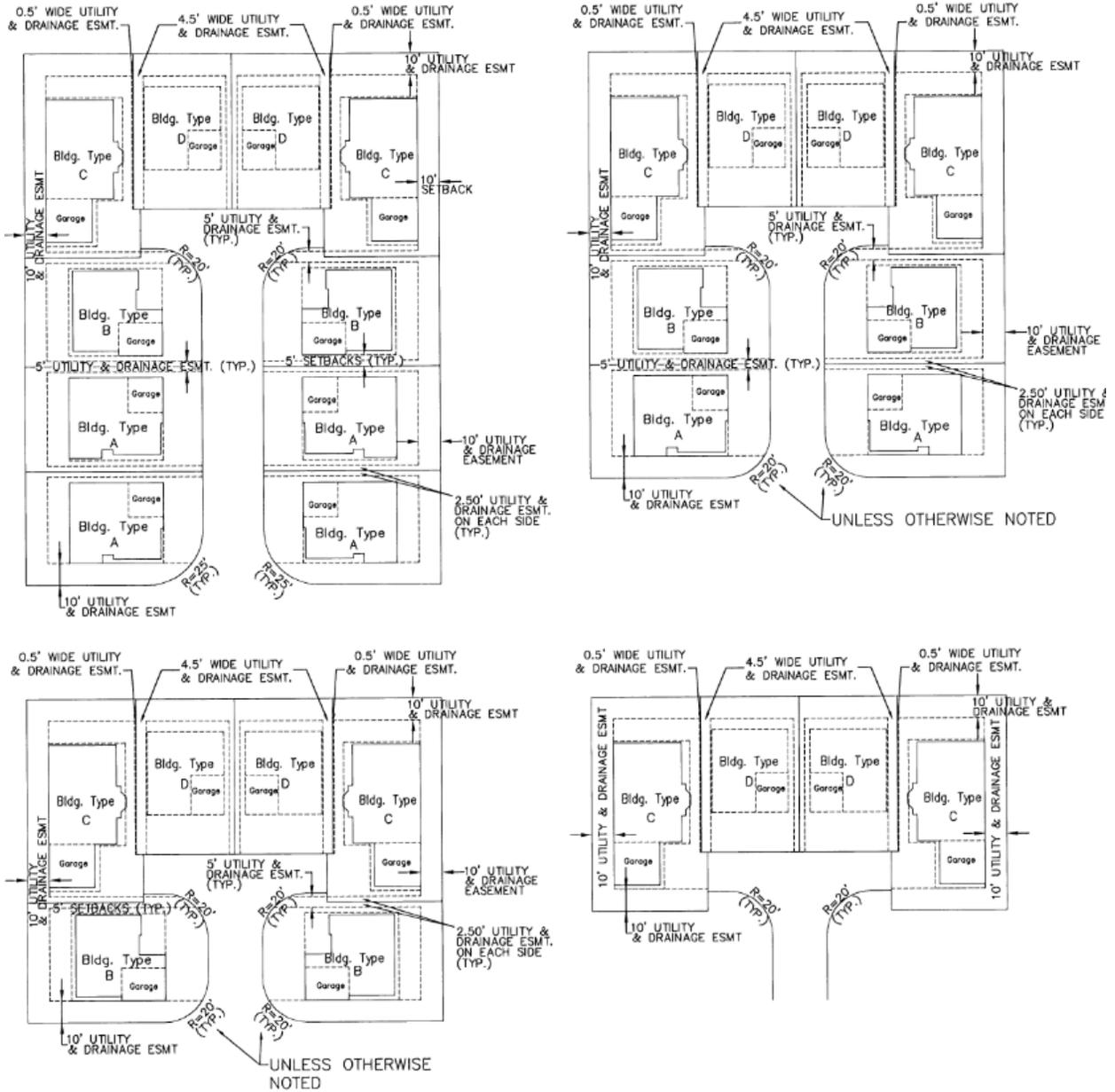


Please report any parcel discrepancies to:
 El Paso County Assessor
 1675 W. Garden of the Gods Rd.
 Colorado Springs, CO 80907
 (719) 520-6600



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Typical Block and Lot Layout: Courtyard at Woodmen Hills West



SFD18289



1811 B1 ELEVATION
 AVERAGE FINISH GRADE = (AFG)
 $AFG = \frac{(16.7)(4)}{(4)} = 16.7$
 BUILDING HEIGHT = 18.8 + (TF - AFG) =
 BUILDING HEIGHT = 18.8 + (17.4 - 16.7) = 19.5

Released for Permit

03/02/2018 1:07:28 PM



ENUMERATION

**APPROVED
Plan Review**

03/08/2018 11:09:16 AM

dsdrangel

EPC Planning & Community
Development Department



ANY APPROVAL GIVEN BY
EL PASO COUNTY
DOES NOT OVIATE THE NEED
TO COMPLY WITH APPLICABLE
FEDERAL, STATE, OR LOCAL
LAW AND/OR REGULATION

Planning & Community Development Department
approval is contingent upon compliance with all
applicable notes on the recorded plat.

An access permit may be granted by the
Planning & Community Development Department
prior to the establishment of any driveway onto a
County road.

Diversion of blockage of any drainage way
is not permitted without approval of the
Planning & Community Development Department

**APPROVED
BESQCP**

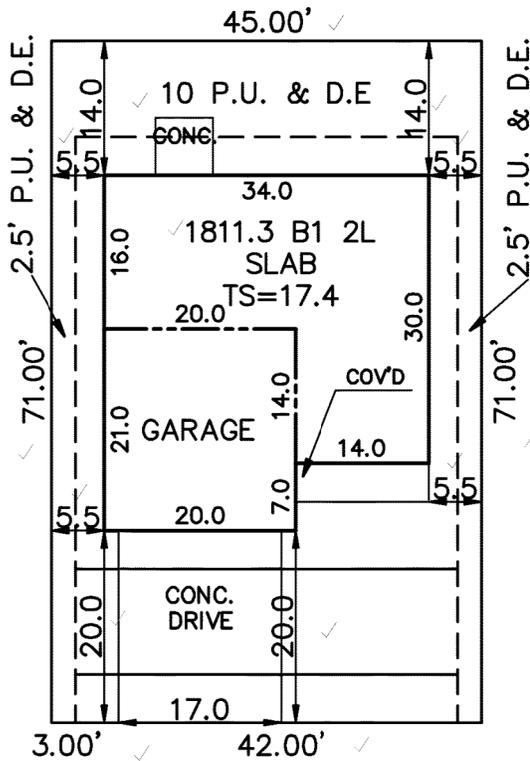
03/08/2018 11:09:28 AM

dsdrangel

EPC Planning & Community
Development Department

LOT 2

LOT 4



SCHEDULE No. 5301401004

HIRSHORN POINT

WARNING!

1. LOCATE UNDERGROUND UTILITIES PRIOR TO EXCAVATION.
2. THIS PLOT PLAN SHOWS IMPROVEMENTS AT GRADE ONLY. SEE FOUNDATION PLANS FOR STRUCTURAL INFORMATION

SITE DATA

LOT SQ. FT. = 3195
 HOUSE SQ. FT. = 1216
 COVERAGE = 38.1%
 BLDG. HEIGHT = 19.5

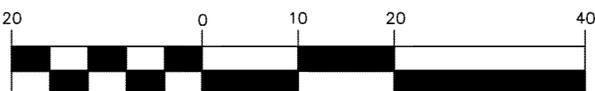
PLAT 11733
 PUD

SCALE: ...1"=20'
 DRAWN BY: TAP

PLOT PLAN

ASPEN LAND CONSULTANTS, LLC
 5019 RUSHFORD PLACE
 COLORADO SPRINGS, COLORADO 80923
 PHONE 719-264-8118
 FAX 719-264-8139

(IN FEET)
 1 inch = 20 ft.



LEGAL DESCRIPTION

LOT 3 BLOCK 5
 COURTYARDS AT WOODMEN HILLS WEST
 EL PASO COUNTY, COLORADO

ADDRESS

7822 HIRSHORN POINT

PREPARED FOR
 CHALLENGER
 HOMES

TITLE CO. FILE NO.

DRAWING NAME

CW-3-5

DATE

03-01-18

PROJECT NO.

