

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, February 10, 2021
El Paso County Planning and Community Development
200 S. Cascade Avenue
Colorado Springs, Colorado

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

BOA MEMBERS PRESENT AND NOT VOTING: NONE

STAFF PRESENT: CRAIG DOSSEY, MARK GEBHART, NINA RUIZ, TRACEY GARCIA, ELENA KREBS, JOHN GREEN, AND EL PASO COUNTY ATTORNEY LORI SEAGO

OTHERS ATTENDING: JOHNNY KARLS, EDITH DISLER, BARBARA FAULKENBERRY, GREG O'BOYLE

BOA MEMBERS ABSENT: CHAD THURBER AND PAM PALONE

1. Pledge of Allegiance

2. Report Items – Mr. Dossey

- a. The next BOA hearing is TBD. There is no hearing in March.
- b. The Master Plan is in process. The public report will be made available in March.
- c. **Mr. Dossey** will present his PCD Annual Report at the next hearing.
- d. **Public Input for Items Not Listed on the Agenda – None**

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Mr. Curry announced that BOA-20-004 will be heard before the Appeal Reconsideration.

3. Sunshine Law Statement – Mr. Carlson read the statement into record as a motion to accept the Sunshine Law Statement. **Mr. Creely** seconded the motion. The motion passed unanimously (5-0).

4. Adoption of the Minutes of the Regular Meetings held December 9 and 21, 2020

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

5. Reconsideration of Disler Appeal APP-20-001

Mr. Curry – As a review, the PCD Executive Director made a determination to merge lots by contiguity. The appeal applicant filed an appeal of that decision. At the last meeting the BOA heard the item and approved the appeal. We have been asked to reconsider or rescind that motion. If the motion fails to rescind that passes, then we would essentially be back to where we were. We could entertain a new motion on the matter. We can hear testimony on only the rescinding of the matter and not on everything we heard before.

Ms. Seago – Following the BOA’s last hearing, I was contacted by a BOA member to see they could rescind or reconsider the motion. I did some research and I’m providing that information. The first document is the BOA bylaws. I did not find any particular reference on rescinding or reconsidering a vote. However, I did find in Article 10 Meetings, under Section 9 “In the absence of any provision of the Colorado Revised States, THE LDC, or these Bylaws, Robert’s Rules of Order shall govern the procedures of the BOA.”

In the Robert’s Rules of Order, the Motion to Reconsider section, the first paragraph says it would not be made available, only on the day or next day succeeding the action. So, clearly, we were passed that timeframe. Unlike a motion to rescind, a motion to reconsider must be made by one who voted with the prevailing side. A motion to rescind states that “Any vote taken by an assembly, except those mentioned further on, may be rescinded by a majority vote, provided notice of the motion has been given at the previous meeting or in the call for this meeting.” That is why you see the item on your agenda today. We were provided notice that this issue would be raised at this meeting, so we provided the notice to the Board and to the public; and therefore if a motion is made to rescind after this discussion and in order for it to pass, it requires a majority vote, not the 2/3 or 4/5 vote that other actions would require.

The item was provided as notice on the agenda to this Board and to the public. A majority vote is required. Nothing has been done in reliance of that past decision that can’t be undone. If a motion to rescind is made and it passes, then

we would be back to where we were before. It does not open it up to public testimony.

Mr. Curry – For clarification, if a motion is made to rescind, the vote on that motion only requires 3 of the 5 voting members, but if a new motion is made, it goes back to requiring 4 of the 5 for approval. Can you recap for the record what is relative to a contract? **Ms. Seago** – That is correct. Votes cannot be rescinded after something has been done as a result of that vote that the assembly cannot undo; or where it is in the nature of a contract and the other party is informed of the fact.

Mr. Carlson – I'd like to provide some explanation. It's after consideration of the BOA hearing that I asked for this to be rescinded. I want to be sure everyone made the decision they meant to make. I respect all decisions made at the BOA hearing. **Mr. Creely** made a motion to deny the appeal, then after it failed, he made a motion to approve the appeal. After the last meeting The Chair asked **Mr. Creely** why he made that motion, and he stated it was the quickest way to a resolution. I want to be sure the board members made the motions and votes they intended to.

Mr. Creely – When we first heard the testimony, I was able to better understand the information after hearing the staff and **Dr. Disler's** presentations. I denied the appeal because it was so close for me, 49.1 to 50.1%. The verbal arguments are what swayed that decision mostly from **Ms. Ruiz**. I understood **Dr. Disler** as well. I didn't get to hear other perspectives before I said what I did. Then I heard other perspectives, and I was more unsure than I was sure. It wasn't to end quickly, but more to have a positive resolution. I understand the bylaws. We had five voting members, and we need four to approve it. I have great empathy for **Dr. Disler**.

Mr. Curry – This is an odd process. We have five members and every opinion matters. I respect the process.

IN FAVOR: NONE

IN OPPOSITION:

Mr. Greg O'Boyle - I am **Dr. Disler's** attorney. Are all five of the members of the BOA present? **Mr. Curry** – Yes, all members who voted and are present are here today. **Mr. Wood** was with us as a non-voting member, but he heard the testimony and is able to vote. **Ms. Seago** – Everyone that is present here today is here and can vote. **Mr. Wood** was present at the previous meeting but was not a voting member, so he may vote today. **Mr. O'Boyle** – We would object due to **Ms. Palone** not being here today to vote on the reconsideration. **Mr. Curry** – Do we proceed with the objection in place? **Ms. Seago** – There is no legal basis in the bylaws or Robert's Rules of Order.

Mr. O'Boyle – I would also object on the grounds that what was precisely considered. The agenda does not give the grounds for what the reconsideration or rescinding the vote. We were not able to prepare or research since no specifics were given. I think that **Mr. Creely** made it clear that **Mr. Carlson's** reasons for asking for a revote are not well founded. He considered his vote; he considered other statements, and he knew how he was voting. There is no reason for a revote today.

Ms. Seago – With respect to legal notice, legal notice was made according to the requirements. It is my opinion that sufficient notice was made.

Dr. Disler – I was told I probably wouldn't get a chance to speak today. I would like to express appreciation. I thought there might have been some outside influence. I'm glad **Mr. Carlson** clarified that point. I did see that in the bylaws, the appearance of impropriety is discouraged so that gave me comfort. I don't know if I'm allowed to say this, but it came in your comments. In July I saw the third building coming up; in September I requested a meeting with PCD. In the discussion with PCD, which involved the County attorney, the planner. The LDC makes references to the spirit of the intent. The County Attorney's reply was she was not interested in the spirit but the context of the Code. The interpretation changes.

Ms. Barbara Faulkenberry – I was at the other BOA hearing, and it was very complicated. After the meeting, there was a vote taken and the vote was in support of **Dr. Disler's** appeal. Some time followed. Were there further discussions? **Ms. Seago** – I would advise the Board to not answer that question.

Ms. Faulkenberry – There was a give and take and a sharing of information. And now there is a reconsideration without the pros and cons from other people's views. I find that concerning.

CARLSON MADE A MOTION TO RESCIND THE DECISION MADE BY THE BOA ON DECEMBER 21, 2020. CREELY MADE A SECOND TO THAT MOTION.

Mr. Carlson – Again, we get back to the vote on the original appeal and all of us vote how we intend to vote.

Mr. Creely – I am in favor of doing this correctly today.

Mr. Curry – From my perspective, I have the utmost respect for the members of this Board. It is my opinion that people vote with intent and know what they are doing at the time. I could support a motion to rescind if it had come from the person who originally made the motion. I am not in favor of the reconsideration.

This is a vote to rescind the motion to appeal. A nay vote is to not rescind that action.

**Carlson – Aye
Wood – Nay
Davies – Nay
Creely – Aye
Curry – Nay**

Ms. Seago – The action to approve the appeal stands.

6. BOA-20-004

GREEN

**DIMENSIONAL VARIANCE
KARLS**

A request by Johnny Karls for approval of a dimensional variance to:

1. Reduce the minimum width at the front setback line to 100 feet where the minimum lot width at the front setback line is 200 feet in the RR-2.5 (Rural Residential) zoning district; and
2. Allow a side yard setback of 6 feet where 15 feet is required for an attached garage addition within the RR-2.5 (Rural Residential) zoning district.

The 3.11-acre property is located one-quarter of a mile southeast of the Old Ranch Road and Voyager Parkway intersection on the north side of Delta Road. (Parcel No. 62290-07-023) (Commissioner District No. 1)

Mr. Green gave a brief overview and **Ms. Seago** went over the review criteria for a dimensional variance. **Mr. Green** then gave his full presentation.

Mr. Carlson – Can we look at the aerial again please? (shown) How far is the house to the west from its lot line? **Mr. Green** – It's approximately 100 yards from house to house.

Mr. Carlson – It appears that there is a vehicle parked to the west. Does the elevation drop off where that car is parked? What is the drop off? **Mr. Green** – Yes, it's approximately 15 feet.

Mr. Curry – In looking at alternatives, couldn't it be a narrower addition on that side? **Mr. Green** – It is an option to consider a more-narrow addition. It would be 13 feet.

Mr. Johnny Karls and Ms. Kathleen Karls, the applicants, gave their presentation.

Mr. Carlson – The house to the west is how far? I believe **Mr. Green** gave us 100 feet but I think he meant on the east side. **Mr. Karls** – About 30 feet on our side and 15 feet on his side.

Mr. Curry – It seems there's some room to build on the east side and stay within the setback. Have you considered that? **Mr. Karls** – We were told we could get the 20% easily which would get us to 13 feet. For the amount of money we are proposing to spend, it's probably a deal breaker to build it there.

Mr. Creely – A stand-alone house was discussed. Is that a thought? **Mr. Karls** – It would be way down the hill, but it would be way beyond the current house because of the topography. It doesn't solve the living on one level issue as we get older.

Mr. Curry – As I look at this, is the house currently considered legal non-conforming? **Mr. Green** – Based on our research there was never an approval of the current layout of the house.

Mr. Curry – When I look at the staff report and letter of intent, they want both items, the reductions of the 200' as well as a dimensional variance of the setback. If they get the variance of the 100', do they need an additional variance to be 25' behind that setback? **Mr. Green** – it's a 25' setback. The 100' would be the setback and it would not require the additional 25' feet.

Mr. Curry – Do we need separate motions to address the house?

Ms. Seago – The house is legal as it stands. There is no evidence that the zoning required a 200' front setback. That requirement does not apply. Now that the 200' is required and they want to build an addition inside that area, that is what has triggered the 200' setback. **Ms. Ruiz** – We agree with **Ms. Seago's** analysis with the structure being considered legal as it stands. Additionally, if there is a discussion about legal non-conforming, keep in mind they are held to keeping to the footprint. The house is legal but it does not meet today's standards. If they do any work to the existing home, then there are limitations to the types of improvements they can do and are held to less than 50% of improvements. **Mr. Dossey** – The interpretation of legal, non-conforming is something that the Executive Director determines.

Mr. Carlson – We are going to potentially approve this 100' setback and it puts the 25' setback in that as well. **Mr. Green** – It would be 100' without an additional 25'.

IN FAVOR: NONE

IN OPPOSITION: NONE

DISCUSSION:

Mr. Curry – We were instructed on a previous application where there were two items in the same applications that we had to consider both items together as one application.

Mr. Carlson – After seeing the plans, I'm enthused to see the garage doesn't encroach into the setback. It seems to me there are other ways build the addition, but I'm also a firm believer the property owner should be able to build how they want as long as the neighbors are in support. I'll be in favor of this.

Mr. Creely – I see no other way of letting them build the house they need without approving this.

BOA ACTION: CREELY MADE A MOTION TO APPROVE THE MINIMUM SETBACK FROM 200' TO 100', SECONDED BY CARLSON. CREELY MADE A MOTION, SECONDED BY CARLSON TO APPROVE THE SIDE SETBACK FROM 15' TO 6' FOR BOA-20-004, A DIMENSIONAL VARIANCE FOR KARLS, DUE TO HARDSHIP AND TOPOGRAPHICAL RESTRICTIONS. APPROVED WITH TWO (2) CONDITIONS AND TWO (2) NOTATIONS. THE MOTION PASSED (5-0).

7. APP-20-003

RUIZ

**APPEAL
DISLER APPEAL REQUEST**

A request by Edith Disler to appeal the determination by the Planning and Community Development Department Executive Director that specific remainder parcel(s) be considered legal nonconforming within the Black Forest Park Subdivision. The parcels are located approximately one-half (1/2) mile northeast of the Roller Coaster Road and Evergreen Road intersection and within Section 28, Township 11 South, Range 66 West of the 6th P.M. (Parcel Nos. 61284-02-039, 61284-02-038, 61284-02-034, and 61284-02-035) (Commissioner District 1)

Adjourn