

EL PASO



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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
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## **BOARD OF ADJUSTMENT**

### **MEETING RESULTS**

(Audio and audio/video copies of the meeting are available at the Office of the Clerk/Recorder)

Board of Adjustment (BOA) Meeting  
Wednesday, August 11, 2021  
El Paso County Planning and Community Development  
200 S. Cascade Avenue  
Colorado Springs, Colorado

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

**BOA MEMBERS PRESENT AND NOT VOTING: NONE**

**STAFF PRESENT: MARK GEBHART, NINA RUIZ, MINDY MADDEN, ELENA KREBS, MERCEDES RIVAS, LUPE PACKMAN, RYAN HOWSER, CARLOS HERNANDEZ, AND EL PASO COUNTY ATTORNEY MARY RITCHIE**

**OTHERS SPEAKING AT THE HEARING: SARA FREAR, JAMES MURPHY AND TOM SILVAS**

**BOA MEMBERS ABSENT: CHARLES DICKSON AND LORELLE DAVIES**

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

#### **2. Report Items – Ms. Ruiz**

- a. The next BOA hearing is **September 8, 2021** at 9 a.m.
- b. Recommended the Board consider amending the bylaws to change the location of the hearing to RDC and to the fourth Wednesday of every month, beginning January 2022
- c. **Ms. Ruiz** asked **Mary Ritchie** to go over the Robert's Rules.

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**Ms. Ritchie** – I just wanted to remind everyone that the merits of the case should only be heard after a proper motion to approve or deny has been heard.

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

**4. Adoption of Minutes of Regular Meeting held July 14, 2021**

**BOA ACTION: THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT. (5-0)**

**5. BOA-21-004**

**RIVAS**

**DIMENSIONAL VARIANCE  
PIXLAR EXISTING GARAGE**

A request by Russel and Brienne Mallery for approval of a dimensional variance to legalize an existing rear setback of 1.34 feet where 25 feet is required in the RR-5 (Residential Rural) zoning district for a detached garage. The 9.09-acre property is located north of Pinery Circle, approximately 0.6 miles northeast of the Swan Road and Black Forest Road intersection and within Section 5, Township 12 South, Range 65 West of the 6th P.M. (Parcel No. 52054-00-007) (Commissioner District 1)

**Ms. Rivas** gave a brief overview of the project and then asked **Ms. Ritchie** to go over the review criteria for a dimensional variance. **Ms. Rivas** then gave her full presentation.

**Mr. Carlson** – There seems to be a plan to expand one of the buildings. Is it the house or the barn? **Ms. Rivas** – I believe it is the house.

**Ms. Rivas** then introduced the applicants' representative, **Sara Frear**, to give their presentation.

**Ms. Ritchie** – I didn't hear from the applicant regarding specific criteria, involving a hardship and or unique equitable considerations.

**Ms. Frear** – The barn has already been built since 2016, having to tear down the barn I don't believe is equitable under the circumstances. The barn was constructed with County approval. This was a mistake at the county level and at the applicant level by relying on the 2016 site plans that were lied on by professionals. As far as addressing the equitable considerations. We understand setbacks are set in place for good reasons. We respect that. In this case though the Mallery's did speak to their neighbor when they discovered the problem, explained the issue to him and was granted an easement from their neighbor to rectify the issue, the fact that a little bit of the sidewalk is on his lot and the fact that

the barn is within the setback. He has granted permission to be in that setback. The neighbor that is affected the most has given their permission.

**Mr. Carlson** - It looks like the property has been used with that 30-foot fence line for quite a while. Was this in place prior to the applicant owning the home?

**Mr. Mallery**- When we bought the property in 2016, we were told everything fenced was ours by both realtors. I built the barn based on what the County gave me. To be honest with you, the house is not in the correct spot based on the setback line. It's supposed to be 102 feet, it's only 72 feet from our property line. I thought I was doing the right thing. We're trying to build a mother-in-law suite for my mother-in-law, and this came up.

**IN FAVOR: NONE**

**IN OPPOSITION: NONE**

**BOA ACTION: CURRY MOVED/ LANGLAIS SECONDED TO APPROVE ITEM NO. 5, BOA-21-004, FOR A DIMENSIONAL VARIANCE FOR THE PIXLAR EXISTING GARAGE, UTILIZING RESOLUTION PAGE NO. 3, WITH ONE (1) CONDITION AND ONE (1) NOTATION UNDER THE CRITERIA THAT THE BURDEN OF STRICT COMPLIANCE WILL SIGNIFICANTLY EXCEED THE BENEFIT OF COMPLIANCE THAT THE VARIANCE DOES IN FACT INCLUDE AN ALTERNATIVE PLAN, STANDARDS OR CONDITIONS THAT SUBSTANTIALLY AND SATISFACTORILY MITIGATE THE ANTICIPATED IMPACTS AND SERVE AS A REASONABLY EQUIVALENT SUBSTITUTE FOR CURRENT ZONING REQUIREMENTS. THE MOTION PASSED (5-0).**

**DISCUSSION:**

**Mr. Curry** – We look at the information today and when someone has done everything they are supposed to do and legitimately did all they could have done, those are the kind of conditions that I find acceptable in granting this kind of thing.

**Mr. Wood** – Going back to the mother-in-law suite that is slated to be added in the future. I want to make sure that is staying in the allowed setback of that new addition so whichever party doesn't need to do another hearing.

**Mr. Carlson** – That item is not in before of us today. I believe if there is an issue with that, it would need to come up another time.

**Mr. Wood** – Understood.

**6. BOA-21-002**

**HOWSER**

**DIMENSIONAL VARIANCE  
708 HACKBERRY DR.**

A request by Thomas & Janet Silvis, for approval of two dimensional variances to allow:

1. A front setback of zero (0) feet where twenty-five feet is the minimum required for a detached carport.
2. A side setback of six (6) inches, where five (5) feet is the minimum required for a detached carport.

The 0.178-acre property is within the RS-6000 (Residential Suburban) zoning district and is located on the west side of Hackberry Drive, approximately one-half (1/2) of a mile east of the Main Street and Security Boulevard intersection and within Section 12, Township 15 South, Range 66 West of the 6th P.M. (Parcel No. 65123-17-007) (Commissioner District 4).

**Mr. Howser** gave a brief overview of the project and then asked **Ms. Ritchie** to go over the review criteria for a dimensional variance. **Mr. Howser** then gave his full presentation.

**Mr. Carlson** – What are those curb structures on each side of the driveway? **Mr. Howser** – I would defer that question to the applicant. **Mr. Carlson** – Will the roof structure come to the sidewalk? **Mr. Howser** – The aerial shows the sidewalk in the right of way. I don't believe it would extend out over the sidewalk, again I would want to make sure from the applicant.

**Mr. Curry** – If the applicant were to build a tandem garage, deeper into the property would that comply with the setbacks and lot coverage zoning requirements? **Mr. Howser** – The property to the north has something similar to that. **Mr. Curry** – I can see the rear setback requirement is 25 feet. They could theoretically extend it back 25 feet.

**Mr. Howser** then introduced the applicants' representative, **James Murphy** to give their presentation.

**Mr. Silvas** – The concrete barriers have been there for several years. When we decided to put his thing up, we were concerned about not overlapping their property. We would still have a clear eight feet; it would not hang over the sidewalk. From center to center it would be 18 feet. What we don't show in this picture is a third vehicle. Hail damage has affected all of us. My wife insisted we start looking into getting a carport when our newer vehicle got hit with hail. I live across the street from a house whose carport got blown off and rolled down the street and wrapped around a tree. I would like to have a strong and sturdy, OSHA approved carport because I don't want anything to get blown by the weather. We cannot approach from the backyard because that is Widefield School District property, on top of that the backyard is at a 40-degree slant. The garage is used for storage.

**Mr. Curry** – What is to prevent you from building a tandem garage?

**Mr. Murphy-** On the backside of the house is a kitchen.

**Mr. Curry-** So the back of the house wraps around the garage?

**Mr. Murphy** – Correct.

**Mr. Silvas** – I really did try to prevent my footprint from overlapping with anyone. We're not going to mess with anyone's property in any way. All of the overhangs will be on my property, not the neighbors.

**Mr. Wood** – Looking at the gap behind the existing cars and comparing it with the drawing going all the way out to be flush to the sidewalk. Is your intent to protect the two cars in the driveway or pull the third in as well?

**Mr. Silvas** – Just the two.

**Mr. Carlson** – From the photograph and the applicants' explanation, it sounds like the carport is going to end where its curving on each side of the vehicles. **Mr. Murphy** – In front of those curbs is the property line. The actual footprint of the structure sits back five feet from that curb. Does the structure go out to the sidewalk? **Mr. Carlson-** Staff is that correct?

**Mr. Howser** – We didn't require a survey for this type of application so at this time we can't verify where the property line ends versus where those curbs are constructed.

**Mr. Carlson** – Your understanding is that your property line ends at the end of the curbs you've put in on either side.

**Mr. Silvas** – We originally went in from across the sidewalk up to the driveway, that would have been twelve feet. From the seam of the sidewalk, I was told should be at least five feet, we measured eight feet.

**Mr. Carlson** – The front of this overhang will be eight feet from the sidewalk? **Mr. Silvas** – Yes.

**Mr. Wood** – I can't tell from the illustration what direction the roof is slanting, and they were saying that one of the approval criteria of this is that it has to drain toward the sidewalk to prevent any rainwater from going into the neighbor's yard, is that correct?

**Mr. Murphy** - The gutter will be on the back side of the carport and that will prevent any water from going on to the neighbor's property.

**Mr. Carlson** - Am I understanding this correctly that between the eave of the new carport that there will be a 3-foot opening? **Mr. Murphy** – Correct.

**Mr. Howser-** We have verified that eight feet appears to be accurate.

**Mr. Silvas** – There is no way around it, if we want to protect our vehicles from hail damage we have to try and put something across the existing two car driveway.

**IN FAVOR:NONE**

**IN OPPOSITION: NONE**

**BOA ACTION: CURRY MADE A MOTION/SECONDED BY WOOD TO DISSAPROVE ITEM NO. 6, BOA-21-002, DIMENSIONAL VARIANCE FOR 708 HACKBERRY DRIVE, UTILIZING STANDARD RESOLUTION NO. 4, THE BURDEN OF STRICT COMPLIANCE DOES NOT SIGNIFICANTLY OUTWEIGH THE BENEFITS. THE MOTION PASSED (5-0).**

**DISCUSSION:**

**Mr. Curry** – We are required to find difficulties of strict compliance outweigh the benefits. In my view they don't, this problem has existed for 38 years. You used the garage at one time, there are alternatives for the storage issue. It hasn't been a burden to date, and I am having a hard time personally that now all of a sudden it is a problem. That's why in my mind I don't think it meets the first mandatory requirement.

**Ms. Palone** – I struggle with this one because I can see the need for it, but it is true a lot of people move to a new property that does work for them. There are other solutions, like you said storage in the back yard. The temporary structure would work.

**Mr. Wood** – Declining this application doesn't necessarily say they can't build anything there; it's just saying they can't build what they are proposing in this proposal. There isn't really anything stopping the applicant coming back with a different structure that is more conducive with their existing setback. It is a significant build, and I am not sure that the benefits are there like **Mr. Curry** was saying.

**Mr. Carlson** - Just because the garage is full of other items doesn't mean it can't be used as a garage. Our codes are here for a reason and I think there are other ways the applicant can accomplish what he is looking to accomplish.

**Mr. Langlais-** I agree

**Adjourn**

**Minutes were approved as presented at the September 8, 2021 hearing.**