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Board of County Commissioners
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TO: **El Paso County Board of Adjustment**
Jay Carlson, Chair

FROM: **Matthew Fitzsimmons, Senior Planner**
Carlos Hernandez, Engineer I
Kevin Mastin, Interim Executive Director

RE: **Project File #: BOA-22-009**
Project Name: 11214 SCENIC BRUSH DR
Parcel No.: 52253-07-010

| OWNER: | REPRESENTATIVE: |
|--|--|
| Donald Engelhart 11214 Scenic Brush Drive Peyton, CO 80831 | Rick Amburgey R&B Enterprises, Inc. Colorado Springs, CO 80924 |

Commissioner District: 2

Board of Adjustment Hearing Date

9/28/2022

EXECUTIVE SUMMARY

A request by Donald Engelhart for approval of a dimensional variance to allow a rear setback for a proposed deck of seventeen feet (17'), where twenty-five feet (25') is required. The 6,596 square foot property is zoned RS-5000 (Residential Suburban) and is located at 11214 Scenic Brush Drive, northeast of the intersection of Stapleton Drive and Towner Avenue and is within Section 25, Township 12 South, Range 65 West of the 6th P.M.

A. REQUEST

To allow a rear setback for a proposed deck of seventeen feet (17'), where twenty-five feet (25') is required.

B. APPROVAL CRITERIA

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Land Development Code (2021), 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 property is 6,596 square feet in size, is rectangular shaped, and is approximately 60 feet wide by 110 feet long. The setback requirements for the RS-5000 zone is 25 feet for the front and rear of the lot and 5 feet on either side.

At the time of construction of the house in 2017, the developer determined that the standard plan to allow the rear access of the building onto a concrete pad would not work in this location (and a few other locations in the neighborhood) due to the downward slope in the back yard. As a result, they requested and obtained administrative relief to allow a five-foot-tall deck that projected five feet (20%) into the rear setback (ADR172 – 20-foot setback where 25 feet is required). The letter of intent and plot plan from that application is included as exhibit 1.

According to the applicant, the original deck (2017), was removed due to safety concerns (rotting). Instead of replacing the deck with the exact same size and dimensions that were approved in the administrative relief application, the homeowner expressed interest in constructing a more usable deck by extending it 8 feet into the rear set back (17 feet where 25 feet is required – a 32% reduction). This new request exceeds the 20% allowable relief Staff can offer. As a result, the applicant was required to apply for a variance of dimensional standards and have a public hearing at the Board of Adjustments.

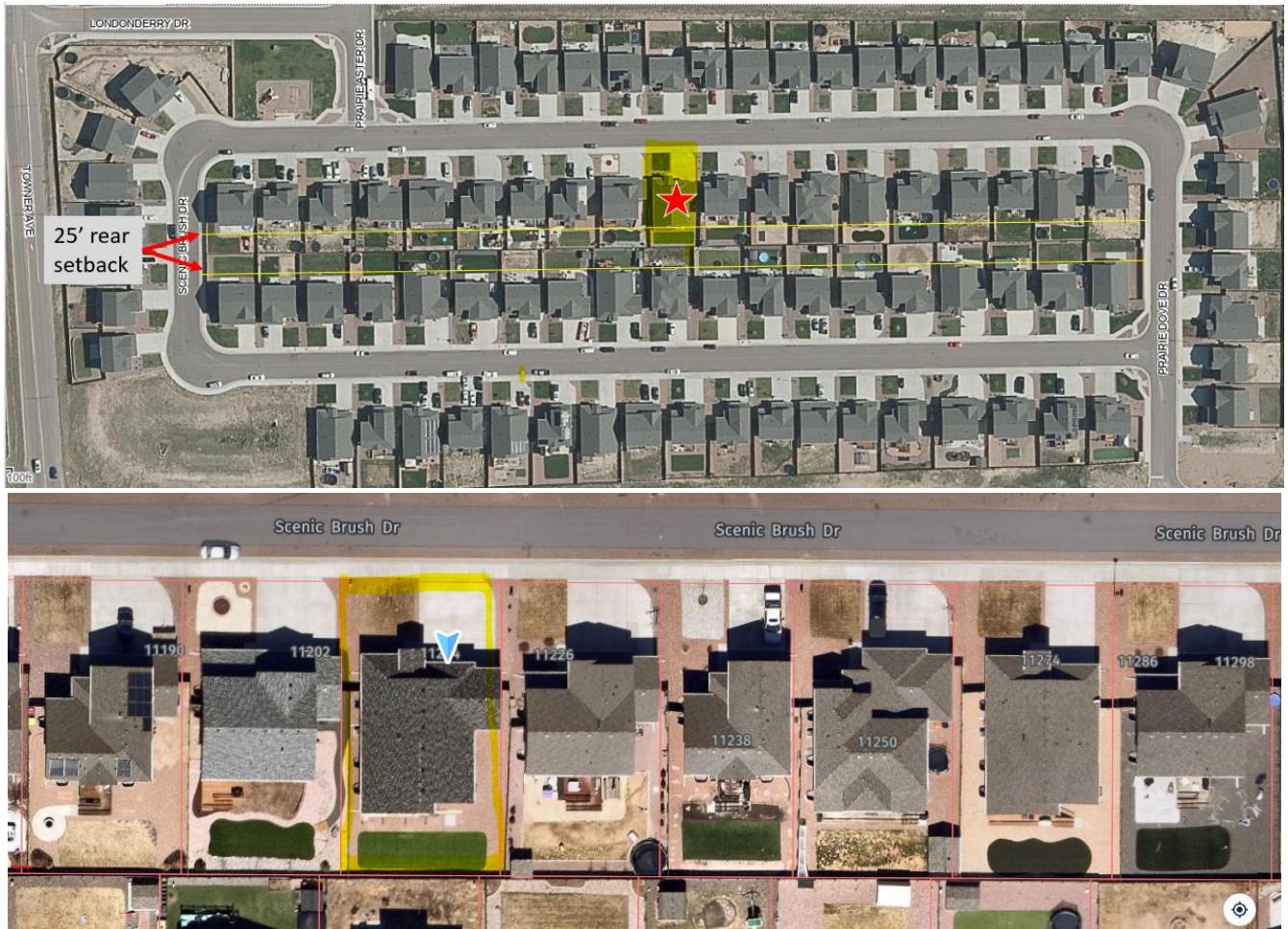
Dimensional standards in the RS-5000 zoning district

| Zoning District | Maximum Density (DU/ac) | Minimum Lot Size | | Minimum Setbacks Principal(Accessory) ^{14,3} | | | Maximum Lot Coverage | Maximum Height |
|--|-------------------------|-----------------------------|-------------------------------|---|-------------------------|--------------------|-----------------------|----------------|
| | | Area ¹ | Width (at front setback line) | Front | Rear | Side | | |
| Residential Suburban Zoning Districts | | | | | | | | |
| RS-5000 | | 5,000 sq ft ^{7,13} | 50 ft | 25 ft ¹³ | 25 (5) ft ¹³ | 5 ft ¹³ | 40%/45% ¹⁵ | 30 ft |

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

There are no exceptional topographic conditions to this site, but the original developer expressed in their letter of intent for the administrative relief, that the site required a deck in the rear where they were planning for an at grade concrete slab. This was due to the downward slope from the front yard to the rear that they did not adjust for. All the homes that were developed by Aspen View Homes and of similar design in this subdivision required the same administrative relief. The image below shows the subdivision with the rear setback lines in yellow. The homes of the same design on the two blocks also required an administrative relief

for a rear facing deck at the time of construction. All of these homes were built with 5-foot-wide decks in the back of the house to keep within the 20% that the administrative relief process can approve. As these decks need replacing, the neighbors that received the original administrative relief may request a similar variance so they too can enjoy a more usable deck space like their neighbors.



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 variance provides only reasonably brief, temporary relief; or*

If approved, the variance would provide for permanent relief 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*

An alternative plan, standard, or condition was not submitted by the applicant with this application.

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

Per the applicant's letter of intent for the original administrative relief request in 2017, the builder did not take into consideration the slope of the property when constructing this house type. As a result, they were required to build a 5-foot-tall deck where they expected to have an at-grade concrete slab. This deck mostly functioned as an ingress and egress point for the rear of the house and not a place to spend time. The applicant believes that extending the new deck to be 8 feet wide, 3 feet further than the original deck, will allow them to enjoy the deck like their neighbors do. In that regard, the applicant is looking for an equitable consideration to allow a deck that is similar in size as many of their neighbors.

According to the letter of intent for the current application (2022), the following addresses are all neighbors in the area that have decks that extend out into the rear setbacks. After researching these properties, it was found that two received administrative relief (20%) just like the subject property and the other two did not require any relief.

- 11238 Scenic Brush Drive - No relief requested nor required.
- 11250 Scenic Brush Drive - ADR173 – approved 20-foot setback where 25 feet was required.
- 11274 Scenic Brush Drive - ADR171 – approved 20-foot setback where 25 feet was required.
- 10926 Scenic Brush Drive - ADD17158 shows that is deck is only 18 inches tall and so does not need to meet setback standards.

Exhibit 2 is the compilation of drawings for the four applications listed above.

C. BACKGROUND

The property was originally platted on July 27, 2015 – plat number 13660. The subject property is Lot 61 of the Scenic View at Paint Brush Hills subdivision, which was all zoned RS-5000. This 6,596 square foot (60 feet x 110 feet) lot is an average sized lot in this neighborhood. No Code enforcement items are currently open on this property.

D. ALTERNATIVES EXPLORED

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

1. Design the new deck as a stairway that goes down to a larger deck that does not exceed 18 inches in height and can be built within the setbacks.
2. Keep the current configuration of the deck, which is 5 feet into the rear lot setback.
3. Remove the rear door to the house that is 5 feet above grade and locate it on the side of the house.

E. APPLICABLE RESOLUTIONS

Approval: Resolution 3

Disapproval: Resolution 4

F. LOCATION

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

Single-Family Dwelling
 Single-Family Dwelling
 Single-Family Dwelling
 Single-Family Dwelling

G. SERVICE

1. WATER

Water is provided by Upper Black Squirrel Creek Ground Water.

2. WASTEWATER

Wastewater is provided by Upper Black Squirrel Creek Ground Water.

3. EMERGENCY SERVICES

The parcel is located within Falcon Fire Protection.

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 layer in GIS.

2. DRAINAGE AND EROSION

There are no considerations regarding drainage and erosion on this application.

3. TRANSPORTATION

There are no considerations regarding transportation on this application.

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 beyond those depicted on the associated site plan 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 prior to construction of the proposed structures.

NOTATION

1. Physical variances approved for a proposed structure (except for lot area variances) are valid only if construction of the structure is 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 administrative relief.

J. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified eight adjoining property owners on September 13, 2022, for the Board of Adjustment meeting. Responses will be provided at the hearing.

K. ATTACHMENTS

Exhibit 1 – Administrative Relief - Letter of Intent & Drawings (2017)

Exhibit 2 – Drawings of neighboring lots

Vicinity Map

Site Plan

Site Photographs

Exhibit 1:

Administrative Relief – Letter of intent and site plan for the original deck in 2017 – ADR172 approved



02.21.2017

Subject: Letter of Intent
Property Address: 11250 Scenic Brush Drive
Tax ID/Parcel Number: 5225307013

Aspen View Homes is requesting Administrative Relief be granted on the above noted property. The allowance of a 20% adjustment, would bring the set back to 20.0' versus the RS-5000 specified 25.0' rear set back.

Initially, the property was planned as a standard plan on what was believed to be a flat enough lot to allow the main level access to come directly out of the back of the house onto one of our standard concrete patios. During the process Aspen View Homes realized that these plans would need to be built as a Garden Level option to accommodate the slope of the property and therefore would not allow access directly into the backyard without installation of a deck. The depth of the proposed deck will be 5.0' therefore bringing the set back for this property to 20.9'.

Please contact Aspen View Homes with any questions or concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "Jennifer Cooper".



Jennifer Cooper

Office Manager

Aspen View Homes

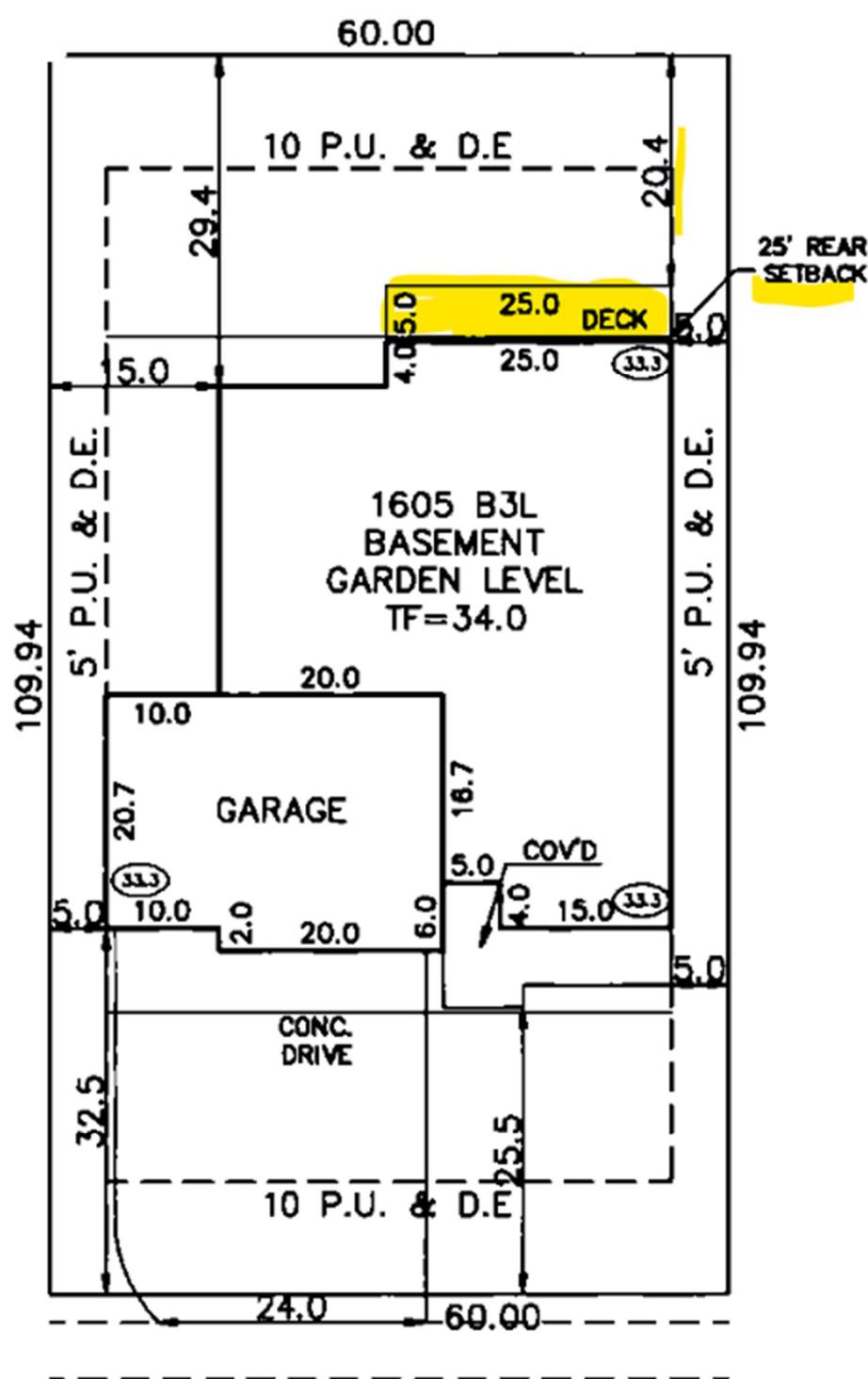
1710 Jet Stream Dr., Suite 100, Colorado Springs, CO 80921

719-382-9433 • jcooper@aspenviewhomes.net



RECEIVED VERSION

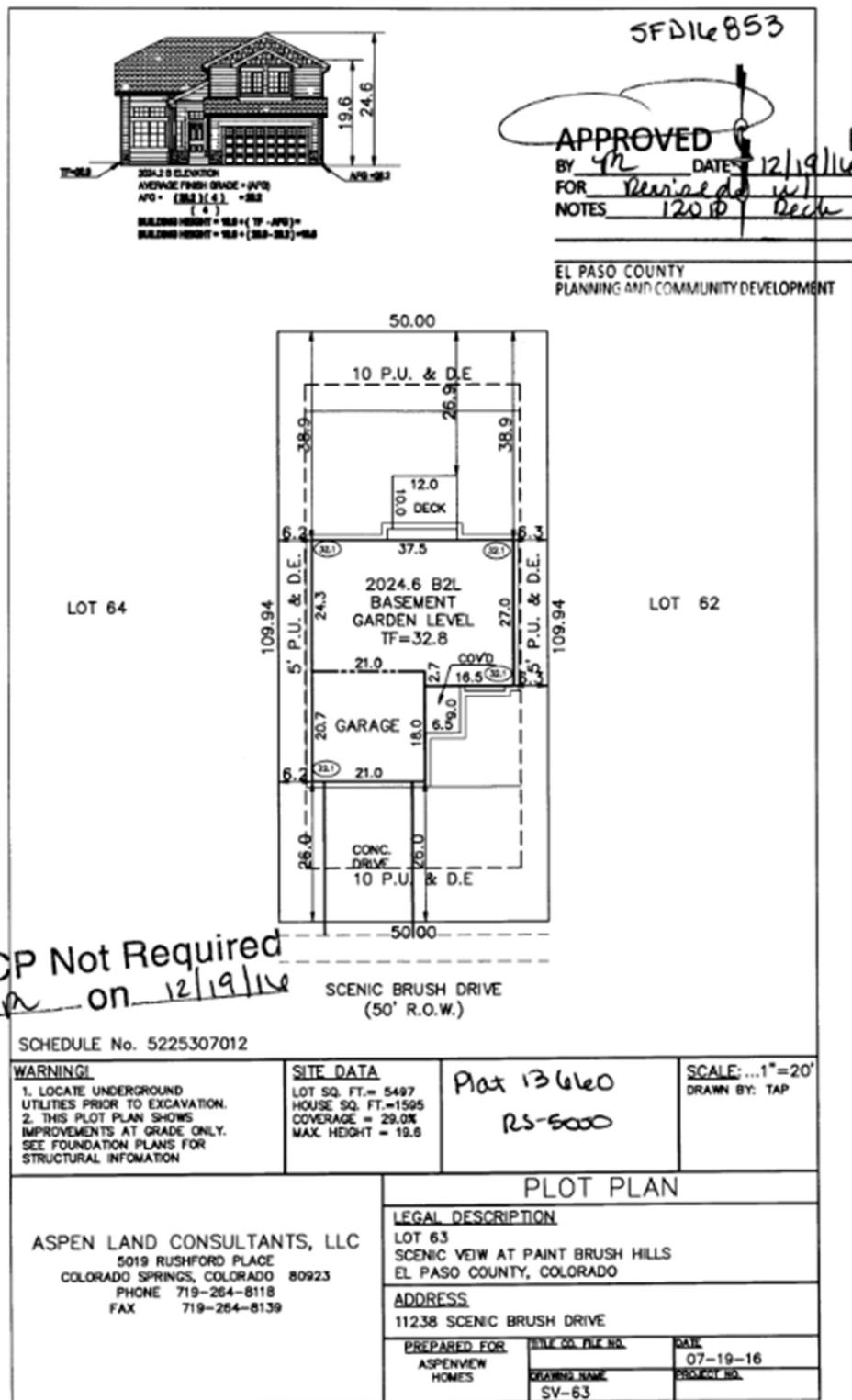
FEB 21 2017 1



**SCENIC BRUSH DRIVE
(50' R.O.W.)**

Exhibit 2 – Past applications in the neighborhood for rear setbacks.

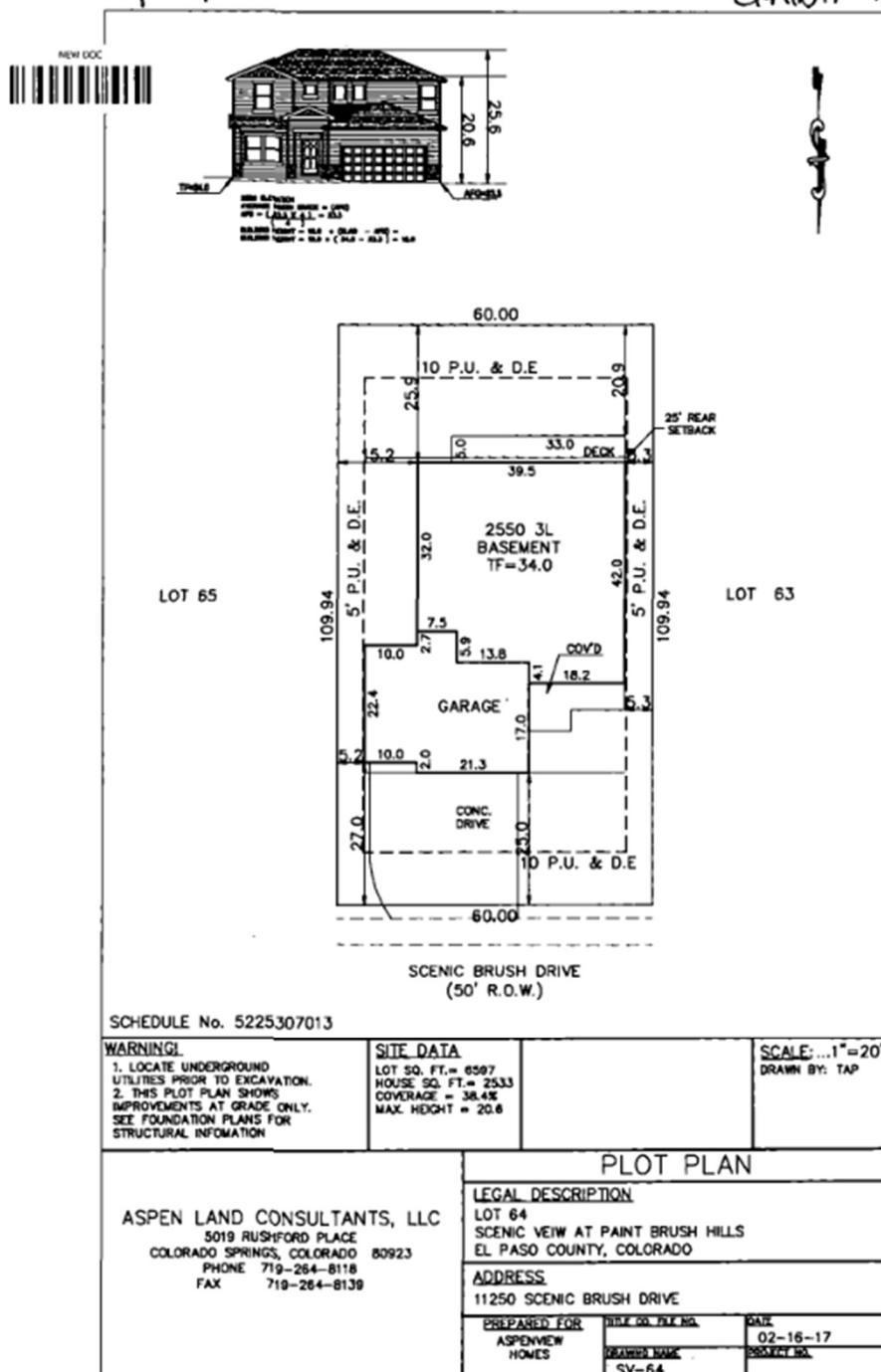
11238 Scenic Brush Dr.: SFD16853 – no relief requested nor required.



11250 Scenic Brush Dr.: ADR173 – approved 20-foot setback where 25 feet was required.

proposed -ADMIN. Relief

Exhibit "A"

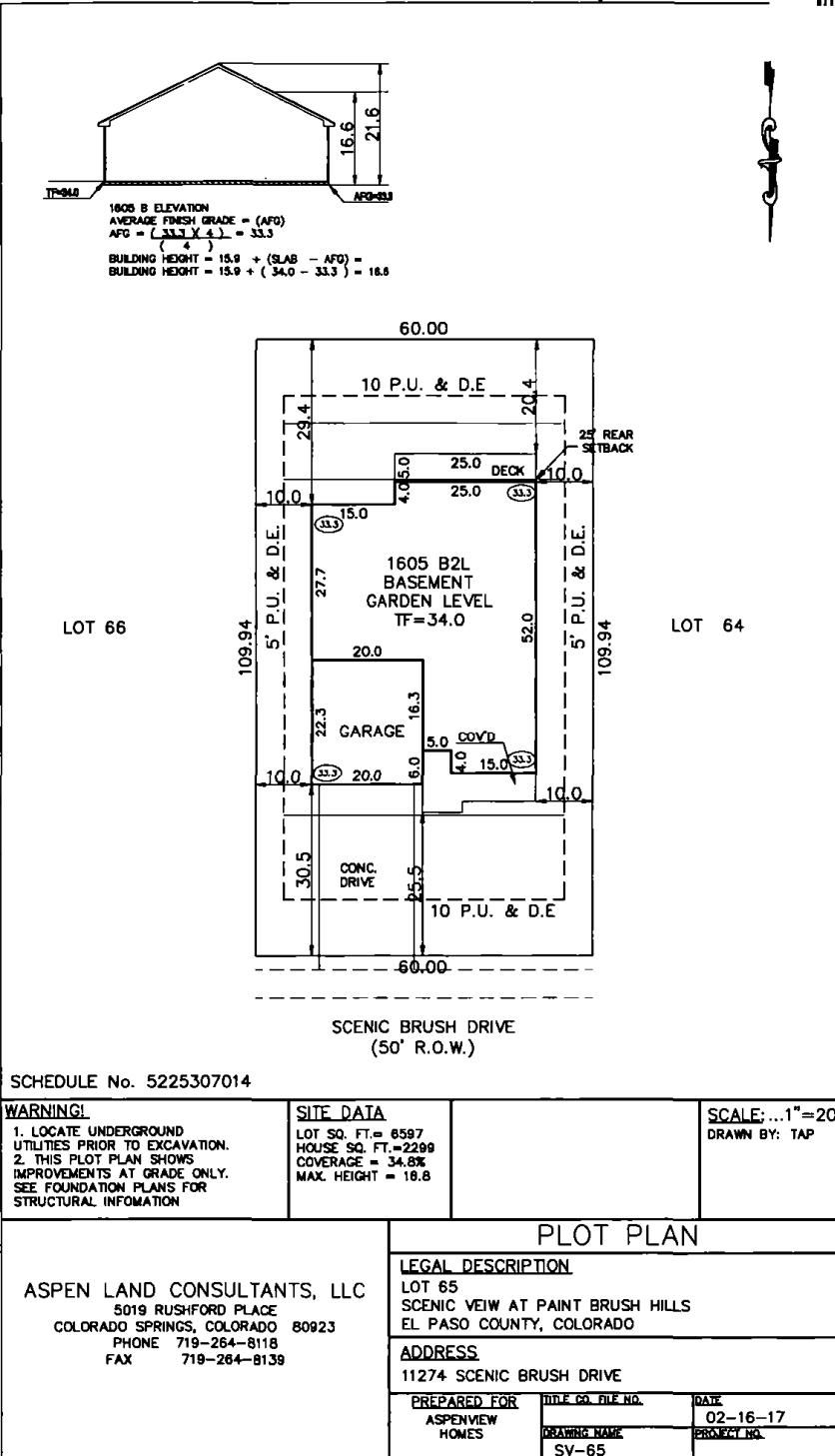


11274 Scenic Brush Dr: ADM171 – approved 20-foot setback where 25 feet was required.

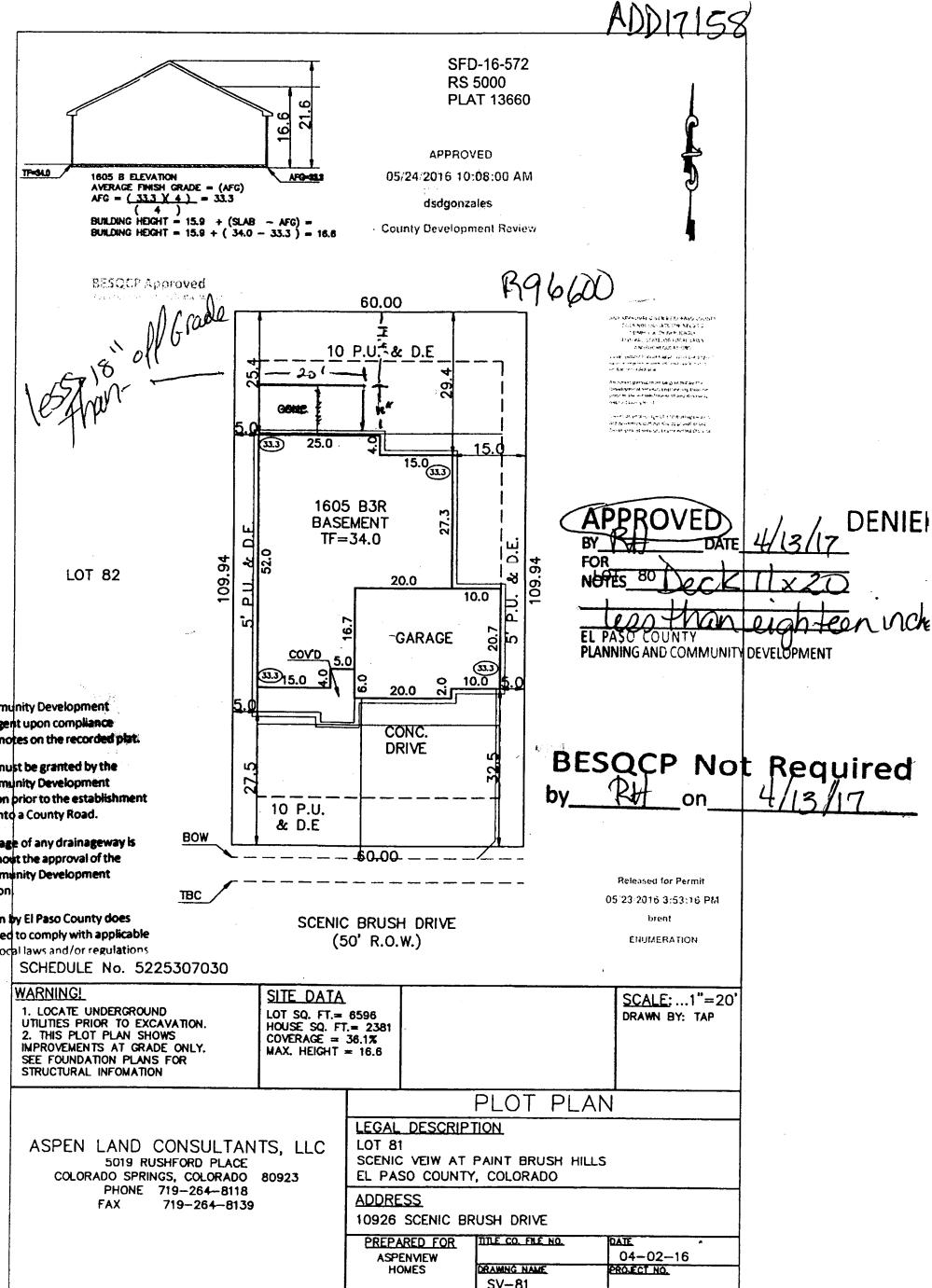
Proposed: Admin. Relief

Exhibit "A"

NEW DOC



10926 Scenic Brush Drive -ADD17158 shows that is deck is only 18 inches tall and so does not need to meet setback standards.



El Paso County Parcel Information

File Name:

Date:

| PARCEL | NAME | ADDRESS |
|--------|------|---------|
|--------|------|---------|



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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Planning and Community Development Department - SITE PLAN

Use for Additions to Property/Residence or Placement of Manufactured Homes/Mobile Homes

| | | | |
|--------------------------|--|-------------------|---|
| Applicant Name | R & B Enterprises, Inc | 719-650-3121 | rick@rbwindows.com |
| Contractor Name | R & B Enterprises, Inc | 719-650-3121 | rick@rbwindows.com |
| Property Address | 11214 Scenic Brush Drive, Peyton, CO 80831 | | |
| Zoning | RS-5000 | Parcel Number | 13660 |
| | | Legal Description | Lot 61 Scenic View at Paint Brush Hills |
| Proposed Structure & Use | | Replacement Deck | New Structure sq. ft. |
| Lot sq. ft. | | 6600 sf | Existing + new structure sq. ft. |
| 5' | | 2630 sf | % Lot coverage |
| | | 39.98 | New Structure height |

All Site Plans MUST include the following LEGIBLE minimum standards and drawn to a scale determined by applicant:

- | | |
|---|---|
| <input type="checkbox"/> Lot configuration and boundary measurements | <input type="checkbox"/> Building setbacks, highways or rights-of-way |
| <input type="checkbox"/> All streets, roads, or highways adjoining the property | <input type="checkbox"/> Location of easements, driveway(s), well and septic system |
| <input type="checkbox"/> Dimensions & square footage of existing and proposed structures | <input type="checkbox"/> Contours if slope is greater than 10% |
| <input type="checkbox"/> Building location with reference to distance from property lines | <input type="checkbox"/> Building coverage calculation (% of lot coverage) |
| <input type="checkbox"/> Location of NO-BUILD areas, watercourses, drainage facilities | |

Any approval given by El Paso County does not obviate the need to comply with applicable Federal, State or Local Laws or regulations. Planning and Community Development Department approval is contingent upon compliance with all applicable notes on the recorded plat. An access permit must be granted by the Planning and Community Development Engineering Division prior to the establishment of any Driveway onto a County road, or a waiver granted for access to a private road. Diversion or blockage of any drainage way is not permitted without the approval of the Planning and Community Development Engineering Division.

Fees are payable at the time of submittal and are NON-REFUNDABLE, regardless of approval or denial.
Site Plans may be delayed or denied if information is omitted. APPLICANT IS RESPONSIBLE FOR ACCURACY OF SITE PLAN

Signature Rick Amburgey for R & B Enterprises, Inc. Date 06/12/2022

Office Use

Plat No. _____ Note: _____

HOMEOWNER: DONALD ENGELHARD

ADDRESS: 11214 SCENIC BRUSH DRIVE
PEYTON, CO 80831

LEGAL DESCRIPTION: LOT 61 SCENIC VIEW AT PAINTBRUSH HILLS

PLAT No: 134060

ZONING: RS-5000

CONTRACTOR:

REPLACEMENT DECK

R&B ENTERPRISES, INC.
719-650-3121

COVERAGE

House Footprint: 1590sf 24%

Ground Footprint: 160sf 10%

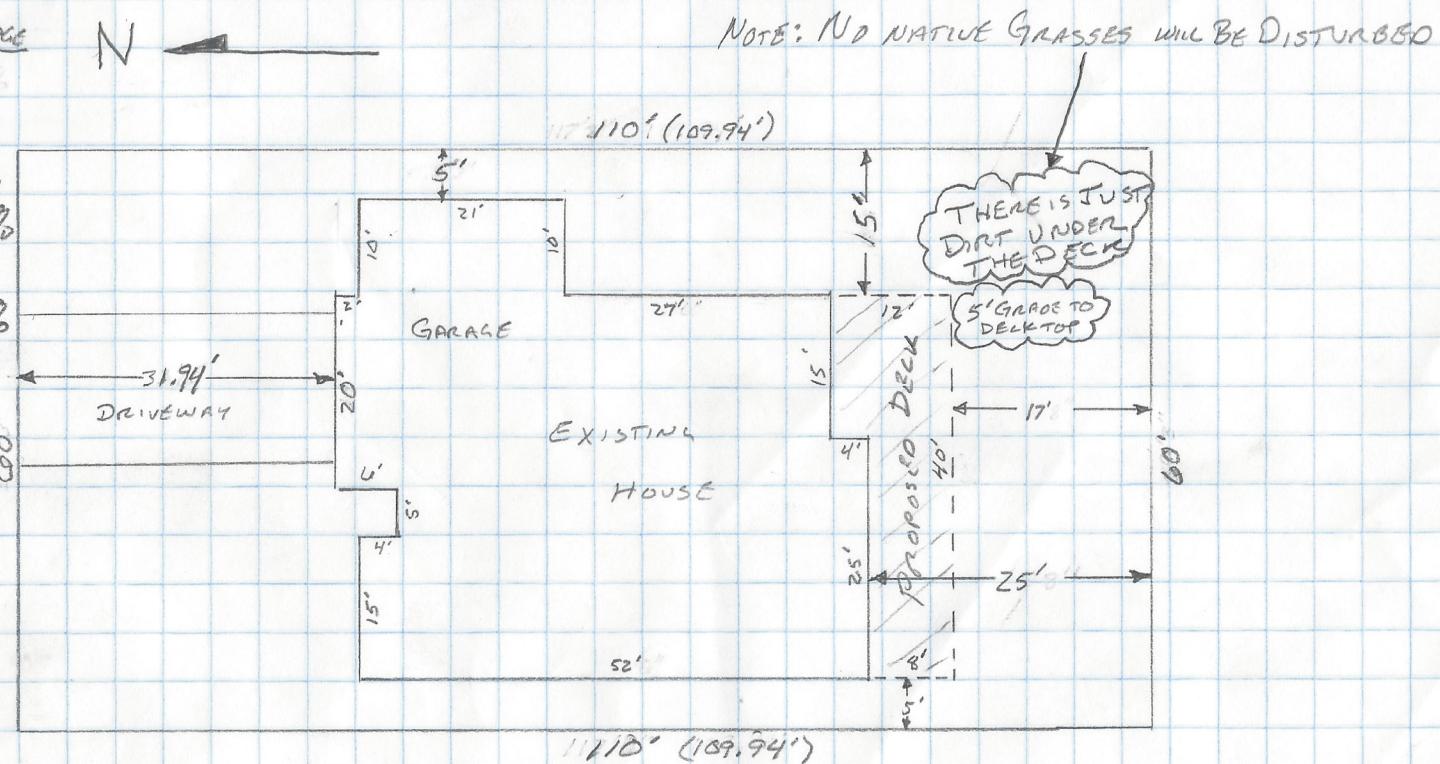
TOTAL HOUSE/GARAGE: 225 O.S.F. 34%
FOOTPRINT

NEW DECK: 380sf. 5.8' ²
FOOTPRINT
(LESS THAN 5' OFF GROUND)

TOTAL: House/Garage / NEW DECK
FOOTPRINT
= 2630 sf

$$= \frac{39.98\%}{\text{TOTAL LOT COVERAGE}}$$

Technic Brush Dr.



SCALE: 1" = 20'



Scenic Brush Drive – Deck Variance

BOA229 11214 Scenic Brush Drive