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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Planning Commission**  
**Brian Risley, Chair**

**FROM: Len Kendall, Planner I**  
**Beck Grimm, EI Engineer I**  
**Craig Dossey, Executive Director**

**RE: Project File #: VA-18-004**  
**Project Name: 12843 Peyton Highway - Variance**  
**Parcel No.: 32080-01-002**

<b>OWNER:</b>	<b>REPRESENTATIVE:</b>
Rodney and Cecilia Norvell 18436 Main Street Peyton, CO 80831	Rodney Norvell 18436 Main Street Peyton, CO 80831

**Commissioner District: 2**

Planning Commission Hearing Date:	6/18/2019
Board of County Commissioners Hearing Date	7/9/2019

**EXECUTIVE SUMMARY**

A request by Rodney Norvell for approval of a variance of use for three (3) dwelling units on a single parcel where one dwelling unit is allowed in the RR-5 (Residential Rural) zoning district. The property has received approval for four (4) previous variances for this use. The previous variance of use expired on July 13, 2016. The current variance application includes a request to allow the use indefinitely.

**A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION**

**Request:** A request by Rodney Norvell for approval of a variance of use variance of use for three (3) dwelling units on a single parcel where one dwelling unit is allowed in the RR-5 (Residential Rural) zoning district.



**Waiver(s)/Deviation(s):** There are no waivers or deviations as part of this request.

**Authorization to Sign:** There are no documents associated with this application that require signing. There are no documents associated with this application that require signing.

## **B. PLANNING COMMISSION SUMMARY**

**Request Heard:**

**Recommendation:**

**Waiver Recommendation:**

**Vote:**

**Vote Rationale:**

**Summary of Hearing:**

**Legal Notice:**

## **C. APPROVAL CRITERIA**

Pursuant to Section 5.3.4 of the Land Development Code, the Planning Commission and Board of County Commissioners may consider the following criteria in approving a variance of use:

- The strict application of any of the provisions of this Code would result in peculiar and exceptional practical difficulties or undue hardship.
- The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and County;
- The proposed use will be able to meet air, water, odor or noise standards established by County, State or federal regulations during construction and upon completion of the project;
- The proposed use will comply with all applicable requirements of this Code and all applicable County, State and federal regulations except those portions varied by this action;
- The proposed use will not adversely affect wildlife or wetlands;
- The applicant has addressed all off-site impacts;
- The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
- Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed variance of use as designed and proposed.

**D. LOCATION**

North:	RR-5 (Residential Rural)	Two single-family dwellings
South:	A-35 (Agricultural)	Single-family residential
East:	A-35 (Agricultural)	Vacant/agricultural
West:	A-35 (Agricultural)	Single-family residential

**E. BACKGROUND**

The property was zoned A-4 (Agricultural) on July 28, 1983 (P83-009Z) to facilitate a minor subdivision request to create two approximately 10 acre lots. At the time of the zoning, the property contained a hog farm. The minor subdivision (MS-83-005) was approved by the Board of County Commissioners on August 23, 1983 and the plat was recorded on September 28, 1983. Over time, the A-4 (Agricultural) zoning district was reclassified to the RR-3 (Rural Residential) zoning district, which, due to nomenclature changes has been renamed the RR-5 (Residential Rural) zoning district.

In 1991, the subject parcel was in violation of the A-4 (Agricultural) zoning district by having three (3) dwellings (mobile homes) located on it where only one (1) dwelling was allowed. The property owners were the same property owners that initially zoned and subdivided the property, and they were aware of the restrictions on the use of the property. A violation came about via a septic inspection by El Paso County Health Department for four (4) mobile homes. In an attempt to legalize the use, the property owner submitted the variance of use (VA-91-006) application, which proposed to allow four mobile homes on the property. The variance of use was approved due to hardship, but the approval included a condition that limited the use to three mobile homes. The applicant’s letter of intent included the following as a statement of hardship:

“The three mobile homes are occupied and provide a much needed inexpensive, very comfortable housing in the area and would create an undue hardship if it was required that these homes be abandoned”.

In 1996, the original variance of use was set to expire so the property owner applied for a renewal the variance of use (VA-96-005) citing a similar hardship. The variance of use was extended on April 11, 1996, for five (5) additional years. On January 25, 2001, the Board of County Commissioners approved a renewal of the variance of use for a second time, based on the same hardship as above. The variance of use was approved for an additional five (5) years. On July 13, 2006, the Board of County Commissioners once again approved a variance of use renewal, citing the same hardship as all of the prior variances. However, with this approval the use was conditioned with an expiration date of ten (10) years, which reset the expiration of

the use for July 13, 2016. The applicant did not apply for a renewal of the variance of use prior to the expiration date; therefore, the use variance is expired. El Paso County Code Enforcement found the zoning violation during an annual check on all approved variances of use in the County. The current property owner is the son of the previous property owner, and of the same family who originally zoned and subdivided the property and who received approval of all four (4) previous variances of use.

Site visits by Planning and Community Development staff verified that there are currently three mobile homes on the 10 acre parcel. The property owner does not reside on the property.

## **F. ANALYSIS**

### **1. Land Development Code Analysis**

The El Paso County Land Development Code (2019) allows one single-family residence per parcel in the RR-5 (Residential Rural) zoning district. The requested use is not consistent with the RR-5 zoning district without approval of a variance of use.

### **2. Zoning Compliance**

All of the structures on the property meet the dimensional standards within the RR-5 (Residential Rural) zoning district, which are as follows:

Front yard setback: 25 feet  
Rear yard setback: 25 feet  
Side yard setback: 25 feet

Height maximum: 30 feet

Lot coverage maximum: 25 percent

### **3. Policy Plan Analysis**

The El Paso County Policy Plan (1998) has a dual purpose; it serves as a guiding document concerning broader land use planning issues, and provides a framework to tie together the more detailed sub-area elements of the County Master Plan. Relevant policies are as follows:

**Policy 6.2.12:** Ensure that proposed zone changes and or use variances in established neighborhoods are compatible scale and physical character.

The property has had multiple mobile homes on the parcel since 1991 and there has not been much new development in this area during that time. Four (4) variances have been approved for the property. The Code Enforcement violation was generated when the property owner failed to submit for a renewal of the variance of use. There have been no zoning complaints against the property.

#### **4. Small Area Plan Analysis**

The 10.83 acre property is located within the boundaries of the Falcon/Peyton Small Area Master Plan (2008). The property lies within an area of the Plan that is planned for rural residential development with future development potential along a corridor of activity (Peyton Highway). Relevant goals and policies are as follows:

**3.1.3** – Preserve the core rural character of the area.

**3.1.4** – Provide a variety of different densities of development options.

**3.3.1** – Encourage diversity and variety in housing types, sizes, locations, and prices to meet the needs of existing and new residents.

**3.3.3** – Prevent poorly executed, land-consuming development patterns by promoting compact growth and planned development.

**3.3.4** – Meet the housing needs of as many existing and new residents of differing ages, incomes, and desired living accommodations.

The Falcon/Peyton Plan defines rural density as parcel sizes at least 10 acres and typically greater than 35 acres. This parcel is 10 acres in size, and the County considers parcels greater than 2.5 acres to be rural, so in this regard the parcel meets the intent of the small area plan, however only one (1) dwelling is allowed on a parcel in the RR-5 zoning district. Based on the applicant's letter of intent, the three (3) mobile homes are occupied and provide much needed inexpensive, very comfortable housing in the area and would create an undue hardship to the current tenants if the homes were required to be vacated. The goals and principles of the Plan include preserving the core rural character of the area, which this application does not meet. The goals and principles also encourage meeting the housing needs of as many existing and new residents as possible, which the request would continue to support if approved.

#### **5. Other Master Plan Elements**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential.

The Master Plan for Mineral Extraction (1996) identifies alluvial fan deposits and upland deposits in the area of the subject parcel. A mineral rights certification was prepared by the applicant indicating that, upon researching the records of El Paso County, severed mineral rights exist. The mineral rights owner has been notified of the application and hearing date.

## **G. PHYSICAL SITE CHARACTERISTICS**

### **1. Hazards**

There are no known environmental hazards, such as steep slopes, rock fall, subsidence, shrink-swell soils, etc., on this site.

### **2. Wildlife**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential.

### **3. Floodplain**

FEMA Flood Insurance Rate Map (FIRM) panel number 08041C0375G dated December 7, 2018, shows that the property lies within the zone X area, which is determined to be outside the 500-year floodplain.

### **4. Drainage And Erosion**

The property is located within the Upper Bracket Creek (CHBR0600) drainage basin, which is a no fee basin. No drainage or bridge fees are required for a variance of use. There are no drainage or erosion issues identified with this request. No public drainage improvements will be required.

### **5. Transportation**

The subject property is accessed via Peyton Highway. No access changes are proposed. A traffic impact study was not required due to staff determining that the proposed variance of use is not expected to generate 100 daily vehicle trips more than the property would be expected to generate without the approval of the variance of use. No public roadway improvements will be required.

The El Paso County Road Impact Fee (Resolution 18-471) does not apply to this variance of use request.

## **H. SERVICES**

### **1. Water**

Water is provided by an individual private well. In a letter dated March 5, 1991, and included with the variance of use request, VA-91-006, the State Engineer indicated that the existing well (Permit No. 68260) can and will legally serve three (3) single-family homes.

### **2. Sanitation**

Wastewater treatment is provided by an onsite wastewater treatment system (OWTS) from 1991 for two (2) of the three (3) mobile homes on the property. These two homes are connected to a common septic tank and soil treatment area (STA). El Paso County Public Health does not have an OWTS record on file for the 3-bedroom

mobile home that is located closest to Peyton Highway on the west side of the property. Per El Paso County Public Health comments, if a record is known for the third OWTS, the applicant is to contact their office directly.

**3. Emergency Services**

The property is within the Peyton Fire Protection District.

**4. Utilities**

Mountain View Electric Association (MVEA) provides electrical service to the property. Black Hills Energy provides natural gas service to the property.

**5. Metropolitan Districts**

The property is not located within a Metropolitan District.

**6. Parks/Trails**

Land dedication and fees in lieu of park land dedication are not required for a variance of use application.

**7. Schools**

Land dedication and fees in lieu of school land dedication are not required for a variance of use application.

**I. APPLICABLE RESOLUTIONS**

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**J. STATUS OF MAJOR ISSUES**

There are no major issues associated with this application.

**K. RECOMMENDED CONDITIONS AND NOTATIONS**

Should the Planning Commission and Board of County Commissioners find that the request meets the criteria for approval outlined in Section 5.3.4 of the El Paso County Land Development Code (2019) staff recommends the following conditions and notations:

**CONDITIONS**

1. Variance of use approval is limited to the dwelling units discussed and depicted in the applicant's letter of intent and site plan drawing on file.
2. The applicant must provide proof that the third mobile home has an approved onsite wastewater treatment system (OWTS) permit on file with the El Paso County Public Health Department and El Paso County Planning and Community Development. If the applicant cannot provide such proof, then a new permit for an OWTS shall be applied for and approved by El Paso County Public Health Department within 6 months of the date of approval of this variance request (VA-18-004).

## **NOTATIONS**

1. Variance of use approval includes conditions of approval and the accompanying site plan and elevation drawings. No substantial expansion, enlargement, intensification or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or variance of use conditions/standards are being violated, preceded by notice and public hearing.
3. If the variance of use is discontinued or abandoned for two (2) years or longer, the variance of use shall be deemed abandoned and of no further force and effect.

## **L. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified five (5) adjoining property owners on May 29, 2019, for the Planning Commission meeting. Responses will be provided at the hearing.

## **M. ATTACHMENTS**

Vicinity Map  
Letter of Intent  
Site Plan

# El Paso County Parcel Information

File Name: VA-18-004

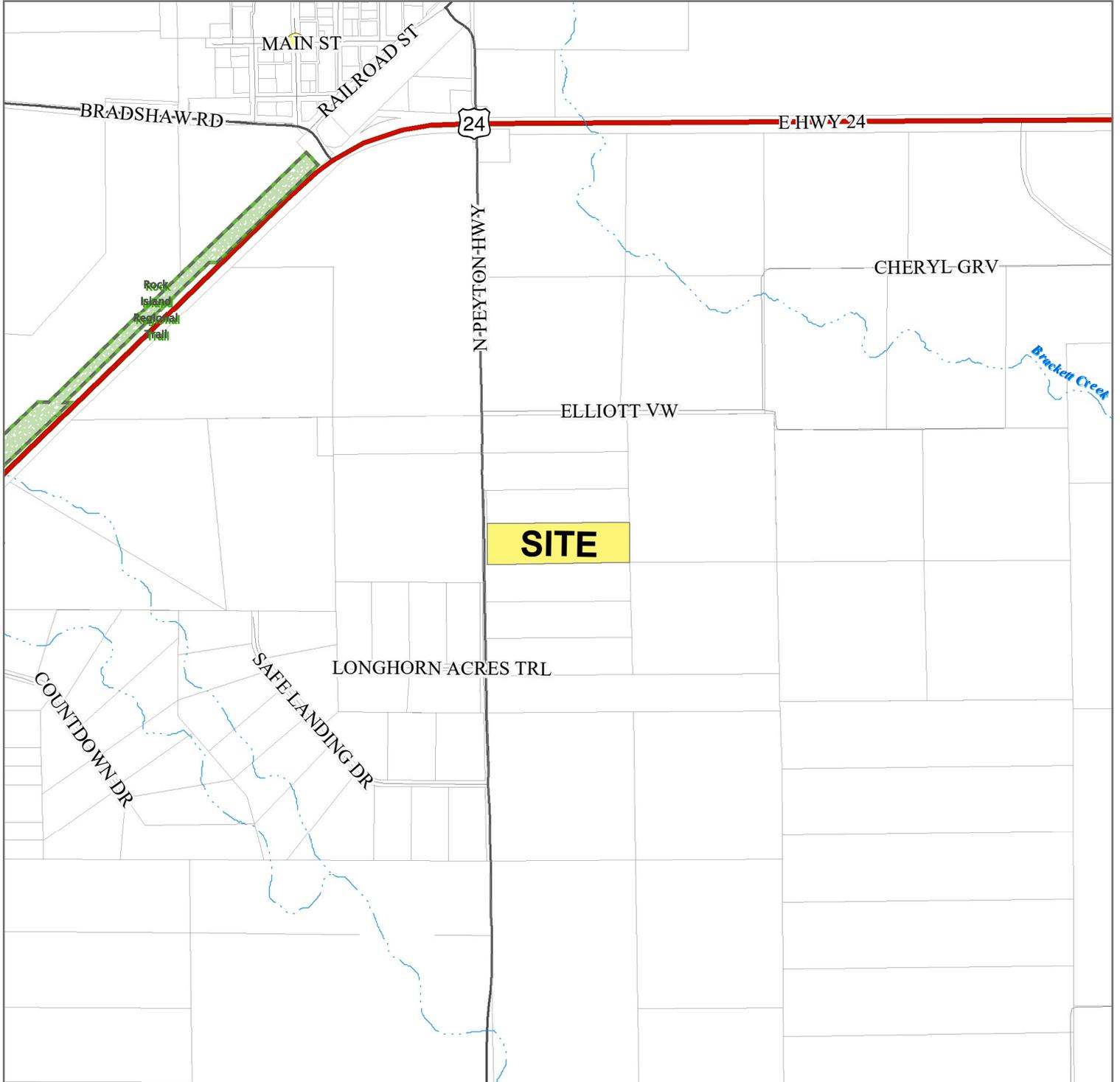
PARCEL	NAME
3208001002	NORVELL RODNEY JAMES

Zone Map No. --

ADDRESS	CITY	STATE
18436 MAIN ST	PEYTON	CO

ZIP	ZIPLUS
80831	

Date: May 29, 2019



Please report any parcel discrepancies to:  
 El Paso County Assessor  
 1675 W. Garden of the Gods Rd.  
 Colorado Springs, CO 80907  
 (970) 520-6600



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Rodney Norvell  
18436 Main Street  
Peyton, CO 80831

June 25, 2018

Letter of intent:

I am requesting a permanent variance of land use for the following property Lot 2 Norvell subdivision, 12845 Peyton Highway Peyton Colorado. This consists of 10.4 acres and zoned RR-4. Please note that there has been temporary variances for over 30 years.

It is requested that the variance be approved to keep the three mobile home residents on the afore mentioned property. These homes are on permanent foundations and are provided with insulated skirting. All residents are served with a water system from a deep well on the property and with adequate internal and access roads. A central septic system was installed and approved by El Paso county health department.

As stated the three mobile homes are occupied and provide much needed inexpensive, very comfortable housing in the area and would create an undo hardship to the current tenants if it was required that these homes be abandoned. It is also to be noted that that the drainage from the proposed us will not adversely affect the adjacent properties.

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Rodney Norvell

