


EL PASO COUNTY
COLORADO

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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-19-003
Project Name: 17725 Hwy 83 Second Dwelling
Parcel No.: 61000-00-369

OWNER:	REPRESENTATIVE:
Herbertson Elmer J Trustee Herbertson Anna F Trustee Herbertson Family Living Trust PO Box 127 Monument, CO 80132	Joni Dreyer PO Box 127 Monument, CO 80132

Commissioner District: 1

Planning Commission Hearing Date:	7/16/2019
Board of County Commissioners Hearing Date	8/6/2019

EXECUTIVE SUMMARY

A request by the Herbertson Family Living Trust for approval of a variance of use for a second dwelling. The 47.55-acre property is zoned RR-5 (Residential Rural) and is located on the east side of US Highway 83, approximately one-third (1/3) of a mile south of the intersection of US Highway 83 and Walden Way. The property is within the boundaries of the Black Forest Preservation Plan (1987).



There are two residential structures on the 47.55-acre property as well as a metal storage building. The principal dwelling is currently in use and the secondary residential structure is vacant. The secondary residential structure was approved as a variance of use (VA-06-004), and a residential site plan (SFD-06-1217) was approved. The second dwelling has been vacant for over a year, rendering the variance of use abandoned, and of no further force and effect. The applicant is proposing the new variance of use for approval of an additional dwelling unit to be able to utilize the additional residential structure as a rental structure. The hardship stated in the applicant's letter of intent includes a financial opportunity for the property owner and the existence of the structure being in good condition. The subject property is surrounded by lots ranging from two and one-half (2.5) acres to five (5) acres in lot area on all sides. The additional dwelling unit, if approved, would increase the density of the subject property to approximately one (1) dwelling unit for every 23 acres of land, causing it to still remain significantly less dense in terms of units per acre than the smaller properties in the area.

A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION

Request: A request by the Herbertson Family Living Trust for approval of a variance of use for an additional dwelling unit. The 47.55-acre property is zoned RR-5 (Residential Rural) and is located on the east side of US Highway 83, approximately one-third (1/3) of a mile south of the intersection of US Highway 83 and Walden Way.

Waiver(s)/Deviation(s): There are no waivers or deviations associated with this request.

Authorization to Sign: 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 (2019), 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)	Residential
South:	PUD (Planned Unit Development)	Residential
East:	RR-5 (Residential Rural)	Residential
West:	PUD (Planned Unit Development)	Residential

E. BACKGROUND

The 47.55-acre parcel was created on March 6, 1969. The property was initially zoned A-5 (Rural) on January 4, 1955, which, due to nomenclature changes is now currently known as the RR-5 (Residential Rural) zoning district. There are two residential structures on the property as well as a metal storage building. The principal residence is currently in use and the secondary residential structure is vacant. The secondary residential structure was approved as a variance of use (VA-06-004), and a residential site plan (SFD-06-1217) was approved. The previous variance of use was applied for to house a family member in need, which, under the current Code, could be applied for as a special use for a guest house with special provisions for extended family housing. The variance of use included two (2) conditions of approval. The conditions of approval limited the variance to a 35-year time frame and disallowed the second dwelling to be rented or leased once the use variance has expired. The second dwelling has been vacant for over a year,

rendering the variance of use abandoned, and of no further force and effect. The applicant is proposing the new variance of use for approval of an additional dwelling unit to be able to utilize the additional residential structure as a rental structure. The hardship stated in the applicant's letter of intent is based on a financial opportunity for the property owner and the existence of the structure being in good condition.

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

Both dwellings on the 47.55-acre property comply with the zoning regulations in the RR-5 zoning district.

The zoning district requirements of the RR-5 zoning district are as follows:

- Minimum lot size: 5 acres
- Minimum width (at front setback line): 200 feet
- Minimum front yard setback: 25 feet
- Minimum rear yard setback: 25 feet
- Minimum side yard setback: 25 feet
- Maximum lot coverage: 25 percent
- Maximum height: 30 feet

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 6.2.11- Encourage compatible physical character, density and scale in existing neighborhoods.

Policy 6.2.12- Ensure that proposed zone changes and/or use variance in established neighborhoods are of compatible scale and physical character.

The surrounding properties in this area are significantly smaller in lot area than the subject 47.55-acre property. The parcels to the north and east are zoned RR-5 (Residential Rural), which requires a minimum of five (5) acres. The lots to the west and south are zoned PUD (Planned Unit Development), and the PUD guidelines specify a minimum lot size of two and one-half (2.5) acres. The density of this parcel, if the request for approval of the second dwelling is approved, would be approximately one dwelling unit per 23 acres.

4. Small Area Plan Analysis

The property is within the Black Forest Preservation Plan (1987), specifically Planning Unit 5 (Spruce Hill/Highway 83 Corridor).

Planning Unit 5 emphasizes residential development that preserves and compliments the unique landscape features. The Plan further states that densities should be clustered, and kept at or below those of existing developments.

Consistency with the Plan is not a required review criterion for a variance of use request. The current request is to allow an additional dwelling unit on a 47.55-acre property that is surrounded by single-family lots. The two structures are located in the general vicinity of each other which could be considered a small cluster. The parcel is eligible to be subdivided into approximately nine (9) lots based on lot area, however, such subdivision process would require approval of both a preliminary plan and final plat.

5. Other Master Plan Elements

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

The Master Plan for Mineral Extraction (1996) identifies stream terrace deposits in the area of the subject parcels. A mineral rights certification was prepared by the applicant indicating that, upon researching the records of El Paso County, no severed mineral rights exist.

G. PHYSICAL SITE CHARACTERISTICS

1. Hazards

No physical hazards were identified in the review of the variance request.

2. Wildlife

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

3. Floodplain

FEMA Flood Insurance Rate Map (FIRM) panel 08041C0285G, dated December 7, 2018, shows that the property lies within Zone X, an area determined to be outside the 500 year floodplain.

4. Drainage And Erosion

The property is located within the West Cherry Creek (CYCY0400) drainage basin. No drainage or bridge fees are required for a variance of use request. No public drainage improvements will be required

5. Transportation

The property is accessed via State Highway 83. A traffic impact study was not required due to the fact that the 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 request. No public roadway improvements will be required.

H. SERVICES

1. Water

Water is provided by two existing individual wells.

2. Sanitation

Wastewater is provided by two onsite wastewater treatment systems (OWTS).

3. Emergency Services

The property is within the Tri-Lakes Monument Fire Protection District.

4. Utilities

Electrical service is provided by Mountain View Electric Association and natural gas service is provided by Black Hills Energy.

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

Approval Page 51

Disapproval Page 52

J. STATUS OF MAJOR ISSUES

There are no major issues.

K. RECOMMENDED CONDITION 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 (2018), staff recommends the following conditions and notations:

CONDITION

1. Any subsequent addition or modification to the additional dwelling unit beyond that described in the applicant's letter of intent and as shown on the site plan shall be subject to administrative review, and if it is the opinion of the Planning and Community Development Department Director that it constitutes a substantial change, then such addition or modification shall be subject to review and approval by the Board of County Commissioners.

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 24 adjoining property owners on June 26, 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-19-003

PARCEL	NAME
6100000369	HERBERTSON ELMER J TRUSTEE

Zone Map No. --

ADDRESS	CITY	STATE
PO BOX 127	MONUMENT	CO

ZIP	ZIPLUS
80132	0127

Date: June 25, 2019



Please report any parcel discrepancies to:
 El Paso County Assessor
 1675 W. Garden of the Gods Rd.
 Colorado Springs, CO 80907
 (919) 520-6600



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Letter of Intent

Owner: Herbertson Family Trust

Joni Dreyer – Trustee
PO Box 127
Monument, CO 80132
719-641-0175
HFTJLD@yahoo.com

Site Location: 17675/17725 Highway 83, Colorado Springs, CO 80908
1399 square foot guest house zoned RR3

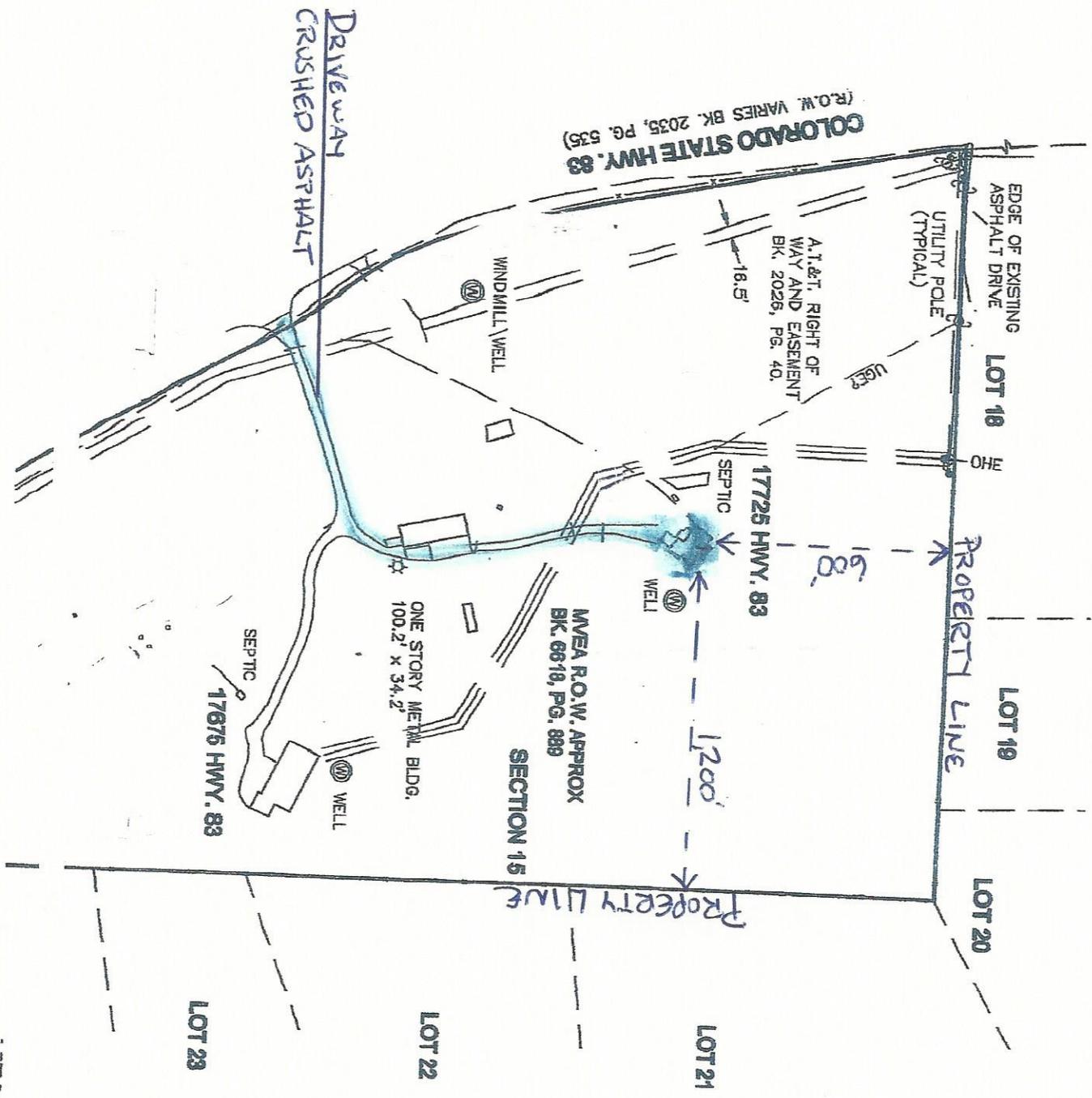
Request:

A guest house was built in 2006 on an existing 47.55-acre property. A variance of use was issued on November 9, 2006 allowing this structure as the second residence limited to 35 years and not allowed to be leased or rented. We are requesting the Board of County Commissioners to allow the structure to stay on the property indefinitely and to allow the second house to be leased or rented.

Justification:

The structure was built to code and is in good condition. The structure is located in a place that does not interfere with any other parts of the property and has its own drive up through the main entrance. It was used as a residence for the owner's son. That person is no longer living in the house and has been vacant for a year. Renting the property will help offset the cost of property taxes and maintenance of the 47.55 acres. The cost of property taxes and maintenance is approximately \$21,000.00 per year. Keeping the structure and renting it would not impact the area or add any additional congestion to Highway 83. We have spoken with Arthur Gonzalez with CDOT who is processing a permit for there being no impact to Highway 83.

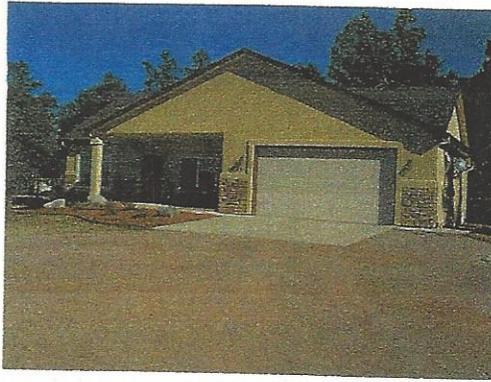
Existing facilities, structures, roads, etc.: There are two existing houses on the property currently. The request does not add any other facilities, structures or roads. We are only asking that the variance issued November 9, 2006 is deleted.



WALDEN III
 PLAT BK. H-2, PG. 19



Schedule Number: 6100000369



Property Location 17725 HWY 93, COLORADO SPRINGS

2/12/2019

El Paso County, CO - Community

El Paso County - Community: Property Search

Schedule Number: 6100000369

