EL PASO COUNTY BOARD OF ADJUSTMENT

MEETING RESULTS (UNOFFICIAL RESULTS)

Board of Adjustment (BOA) Meeting

Wednesday, May 28th, 2025

El Paso County Planning and Community Development

2880 International Circle – Second Floor Hearing Room

Colorado Springs, Colorado 80910

REGULAR HEARING, 9:00 A.M.

BOA MEMBERS PRESENT AND VOTING: KEVIN CURRY, DEAN JAEGER, RUSSELL MORTON, FRANK TANK, AND KEITH WOOD.

BOA MEMBERS PRESENT AND NOT VOTING: JOSEPH REXROAD AND LUIS YBARRA.

BOA MEMBERS ABSENT: RANDY MCSPARREN AND RUSSELL FELLERS.

STAFF PRESENT: JUSTIN KILGORE, ERIKA KEECH, MEGGAN HERINGTON, LACEY DEAN, RYAN HOWSER, ED SCHOENHEIT, AND JESSICA MERRIAM.

OTHERS SPEAKING AT THE HEARING: CHRISTOPHER DAVLIN AND MARK GRISSOM.

1. PLEDGE OF ALLEGIANCE

2. REPORT ITEMS

Mr. Kilgore advised the board that the next BOA Hearing is Wednesday, July 23rd, at 9:00 A.M.

3. ADOPTION OF MINUTES

Adoption of Minutes for meeting held on April 23rd, 2025.

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

IN FAVOR: (5) Curry, Jaeger, Morton, Tank, and Wood.

IN OPPOSITION: (0) None.

4. ANNUAL ELECTION OF OFFICERS – CHAIR, VICE-CHAIR, AND 2ND VICE-CHAIR

BOA ACTION: WOOD MOVED / TANK SECONDED TO NOMINATE CURRY AS CHAIR OF THE BOARD OF ADJUSTMENT. THE MOTION PASSED (5-0).

IN FAVOR: (5) Curry, Jaeger, Morton, Tank, and Wood.

IN OPPOSITION: (0) None.

BOA ACTION: CURRY MOVED / MORTON SECONDED TO NOMINATE WOOD AS VICE-CHAIR OF THE BOARD OF ADJUSTMENT. THE MOTION PASSED (5-0).

IN FAVOR: (5) Curry, Jaeger, Morton, Tank, and Wood.

IN OPPOSITION: (0) None.

BOA ACTION: WOOD MOVED / CURRY SECONDED TO NOMINATE TANK AS SECOND VICE-CHAIR OF THE BOARD OF ADJUSTMENT. THE MOTION PASSED (5-0).

IN FAVOR: (5) Curry, Jaeger, Morton, Tank, and Wood.

IN OPPOSITION: (0) None.

5. PUBLIC COMMENT FOR ITEMS NOT ON THE HEARING AGENDA

(NONE)

6. AGENDA ITEM

APP251 **DEAN**

APPEAL OF ADMINISTRATIVE APPROVAL OF DIMENSIONAL VARIANCE

1410 TRUMPETERS COURT – SETBACK RELIEF

A request by Robinson and Henry, P.C., representatives of Jeffrey and Stacie Werschky, to appeal the approved Administrative Relief allowing an 82-foot side setback where 100 feet is required on the neighboring property to the east (ADR253). The 2.56-acre property is zoned PUD (Planned Unit Development) and is located approximately 1 mile northwest of the intersection of Highway 105 and Highway 83. If approved, the Appeal would revoke the approval of Administrative Relief granted on said property, returning the side setback requirement back to 100 feet as required in the PUD. (Parcel No. 6109006010) (Commissioner District No. 1)

STAFF & APPLICANT PRESENTATIONS

DISCUSSION: Mr. Curry clarified that the purpose of this hearing is not to evaluate the appropriateness of the 83-foot setback itself, but rather to consider an appeal of an administrative decision made by the Planning and Community Development Director. The Board's role is to determine whether the Director correctly applied the criteria outlined in Section 5.5.1(D) of the Land Development Code when granting administrative relief. If the criteria were met, the appeal must be denied; if not, the appeal is upheld and the 100-foot setback applies. **Ms. Erika Keech**, County Attorney's Office, confirmed that the burden of proof lies with the appellant. Per Code Section 5.5.1(D), all of the following criteria must be met to justify administrative relief:

1. The standard is unreasonable or unnecessary given the proposal, or the site has unique physical conditions not common to nearby properties;
2. The intent of the Code and regulation is preserved;
3. No adverse impact to surrounding properties will result; and
4. Relief will not increase the number of dwelling units on the parcel.

Ms. Keech advised that it is the Board's responsibility to determine whether the Director's decision met these standards.

Mr. Tank asked what documentation was required to be submitted during the review process. **Mr. Kilgore** responded noting that when the Administrative Relief (ADR) was submitted, the applicant provided a letter of intent analyzing the applicable criteria. That document is available in the EDARP file (ADR253) and contains both applicant analysis and staff review comments. **Mr. Curry** emphasized that when the Planning Director signs the ADR approval letter, it affirms that all required criteria have been met; however, the Director is not required to provide a written rationale. The burden lies with the appellant to prove otherwise. **Mr. Wood** inquired whether, if the appeal were upheld, the Board could later reconsider and reapprove the design based on its merits. **Ms. Herington**, Planning Director, explained that the decision was not made perfunctorily, she personally reviewed the materials with staff. If the Board upholds the appeal, the application is denied, and the applicant's next recourse would be a Rule 106 appeal to District Court. There is no process to "reapprove" the same application once denied via appeal.

PUBLIC COMMENTS: Mr. Mark Grissom, resident at 1410 Trumpeters Court, stated that he and his wife submitted the administrative dimensional relief request (ADR253) following a prior variance request (BOA244) that was denied in November 2024, that sought a two-car garage. In response to board feedback, they redesigned the proposal to reduce the garage to one car, narrowing the width from 28' to 18' and reducing total square footage. The new design was shifted east, aligning the eastern wall with the 100-foot setback, resulting in a reduced encroachment of 18 feet (requested 82-foot setback). The west edge is now 234 feet from Lot 20 at its furthest corner (217 feet at its closest). Mr. Grissom noted that the revised design is 6 feet behind the existing well, avoiding the significant expense of relocating it. He also cited existing tree coverage, 80–90 trees, between the proposed garage and the neighboring property, minimizing any visual impact. He referenced a realtor's written opinion stating that the garage would have no impact on adjacent property values, countering a previous opinion presented in opposition. He clarified that his home was built on the western edge of the lot due to topography and drainage challenges on the east side, not arbitrarily. Mr. Grissom argued that the 100-foot

setback is unnecessary in this case, given that homes to the east were built with setbacks of 30 to 75 feet. He emphasized that the design maintains the intent of the code (privacy, aesthetic standards) and would not adversely impact surrounding properties.

APPLICANT REBUTTAL: Mr. Christopher Davlin, representative for Jeffrey and Stacie Werschky, argued that the administrative dimensional relief did not meet the required criteria and should not have been granted. He emphasized that substantial professional real estate opinions, specifically from the top local agent and a neighbor who is also a realtor, both concluded that the proposed garage would negatively affect property values and neighborhood expectations. He contested Mr. Grissom's claims that alternative garage placements were not feasible, noting that the applicant offered no evidence demonstrating why other proposed locations (to the north or east) were unsuitable. Mr. Davlin cited Colorado Supreme Court precedent that a self-inflicted hardship, such as placing the home 10 feet from the setback line, cannot justify a variance. He stated that the hardship was avoidable and thus invalid as a justification. He argued that the intent of the 100-foot setback (privacy and curb appeal) is not preserved, as placing a garage closer to the neighboring property, with accompanying noise and visual impact, undermines that goal. He further noted that the nearby lots referenced by the applicant (with 30' setbacks) are in a different section of the development and not comparable to the subject lot, where 150' setbacks are typical. Lastly, Mr. Davlin asserted that the design does have an adverse impact, citing realtor letters expressing concern about property value. He reiterated that the four required criteria were not met and encouraged the Board to uphold the appeal, rejecting the administrative relief.

BOARD OF ADJUSTMENT DISCUSSION: Mr. Curry asked whether the Supreme Court case cited by the appellant's representative, Levy v. Board of Adjustment 149 Colo. 493, precludes consideration of variances when hardship is self-inflicted. He clarified his understanding that while self-imposed hardship may not justify a variance alone, it may not completely prohibit one either. **Ms. Keech** confirmed that the Levy case did not establish that self-inflicted hardship is an absolute bar to variances. However, she emphasized that the case involved a Board of Adjustment decision, not administrative relief, and therefore is not controlling in this instance.

She further clarified that under Section 5.5.1.D of the El Paso County Land Development Code, hardship is not a required criterion for granting administrative dimensional relief. Therefore, the Board's role is not to evaluate hardship, but instead to determine whether the PCD Director erred in applying the administrative relief criteria at the time the decision was made. Ms. Keech also reminded the Board that considerations such as aesthetics, views, and wildlife corridors are not relevant to the decision under current code. While they may consider the realtor letters regarding potential property value impacts, such information would only be relevant if it was presented to the PCD Director at the time of the original decision.

Mr. Morton emphasized the importance of evaluating whether the Planning and Community Development (PCD) Director appropriately applied the required criteria when granting administrative relief, not whether the variance itself is justified. He acknowledged difficulty separating this from a typical BOA variance case and suggested future staff presentations include more transparent documentation of their due diligence.

Ms. Herington clarified that staff conducted a full review and all documentation, including the applicant's letter of intent and justification, is publicly available in the EDARP system. These materials were reviewed prior to her decision.

Ms. Keech reiterated that the Board's role is not to determine whether staff exercised due diligence, but whether the Director erred in applying the applicable criteria. She clarified that the Director is not required to outline the rationale in the approval letter; the signature affirms that all criteria were reviewed and met. She also reminded the Board that views, aesthetics, and wildlife corridors are not valid considerations, and that hardship is not a criterion for administrative relief. The Board may consider property value impacts only if relevant evidence was submitted during the original review.

Mr. Rexroad noted that the two relevant criteria, whether the standard was "unreasonable or unnecessary" and whether there would be "adverse impact", are both subjective. He stated the 18-foot encroachment appeared minimal, and unlikely to cause significant impact on neighboring properties or property values.

Mr. Tank indicated support for denying the appeal, noting the Director was within her authority to grant a 20% reduction and that the intent of the code to provide flexibility was met. He emphasized that the applicants revised their proposal following an earlier BOA denial, and the administrative relief process had functioned appropriately.

Mr. Wood agreed, stating the process had worked as intended. Although there were concerns raised about noise from the garage, he viewed these as enforcement issues and found no evidence of staff wrongdoing. He opposed the appeal.

Mr. Curry stated that for him, the criteria regarding intent of the code were clearly met. While acknowledging differing opinions on whether the relief was "unnecessary" and whether there was "adverse impact," he found the appellant did not provide convincing evidence that the PCD Director erred. He noted the original zoning and administrative relief provisions intentionally included flexibility, and the evidence presented was not sufficient to overturn the Director's decision.

BOA ACTION: MORTON MOVED / WOOD SECONDED FOR DISAPPROVAL OF ITEM NO. 6, APP251, FOR THE APPEAL OF ADMINISTRATIVE APPROVAL OF DIMENSIONAL VARIANCE, 1410 TRUMPETERS COURT – SETBACK RELIEF, THAT THE APPEAL BE DEINED DUE TO THE LACK OF BURDEN OF PROOF PROVIDED BY THE APPEALING PARTY. THE MOTION PASSED (5 - 0).

IN FAVOR: (5) Curry, Jaeger, Morton, Tank, and Wood.

IN OPPOSITION: (0) None.

7. NON-ACTION ITEMS

(NONE)

MEETING ADJOURNED at 11:24 A.M.

Minutes Prepared By: Jessica Merriam