

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

BOARD OF ADJUSTMENT

MEETING RESULTS (UNOFFICIAL RESULTS)

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

Board of Adjustment (BOA) Meeting
Wednesday, September 13, 2017 -- 9:00 a.m.
El Paso County Planning and Community Development
2880 International Circle
Colorado Springs, Colorado 80910

PRESENT AND VOTING: KEVIN CURRY, WAYNE INTERMILL, JAY CARLSON, JERRY HANNIGAN, AND LORELLE DAVIES

STAFF PRESENT: CRAIG DOSSEY, MARK GEBHART, NINA RUIZ, TOMMY HOFF, AND EL PASO COUNTY ATTORNEYS LORI SEAGO AND KENNETH HODGES.

OTHERS ATTENDING: DIANE COX

BOA MEMBERS ABSENT: STEVE KJONAAS, WILLIAM CAPRE, AND CHAD THURBER

1. Pledge of Allegiance
2. Report Items – **Mr. Mark Gebhart** reported that there shouldn't be an October BOA meeting.
3. Adoption of Minutes of Regular Meeting held July 12, 2017

BOA ACTION: WITH NO CHANGES, THE MINUTES WERE APPROVED UNANIMOUSLY.

**BOARD OF ADJUSTMENT
COX GARAGE**

A request by Diane and Clifford Cox for approval of a dimensional variance to allow a 6000 square foot detached garage that exceeds the standard of two times the size of the house. The property is zoned RR-5 (Residential Rural) and is located on Dodge Circle east of Highway 24 and south of Garrett Road. (Parcel No. 53240-02-004)

Ms. Seago went over the review approval criteria for a dimensional variance for the Board of Adjustment members.

Ms. Diane Cox, applicant/owner, gave her presentation to the BOA and answered questions.

(Answers from Ms. Cox)

Mr. Carlson – Are you running a business there now? Answer – No, my husband restores cars for himself, takes them to shows and then sells them.

Mr. Intermill – Isn't that still a business? Answer – No, we consider it a hobby. He doesn't advertise to bring in the business. He finds the junk cars and restores them.

Ms. Davies – What would you perceive the annual income being? Answer – Some years it's basically we live off of what I make from two jobs and then when he does sell a car after a two-year restoration, we might profit \$20,000. There is no more than one car sold per year.

Mr. Hannigan – Can you speak to other properties in the neighborhood and speak to other accessory buildings and the size of those relative to their homes and what would their uses be compared to yours? Answer – When we first moved there, we only put up a building that size because all the other properties are similar in size. There's one that is even larger. Some do have horses in their accessory buildings, another is used for wrestling training, and there are other types of businesses.

Mr. Intermill – Can you give us some background from 2007 as to who came to the County for a site plan when it was denied. Answer – I brought in our building plans after we received a notice that nothing had been filed for the zoning. It was after the citation/violation that we came to know we were not in compliance. We were told by the builder that we didn't need it because it was an agricultural barn.

Mr. Intermill – Is it your belief that your contractor came in and had the plans denied unknown to you? Answer – yes, that's correct. The building was already built when we received the violation.

Ms. Davies – Did you ever receive the actual building permit? Answer – Not to my knowledge.

Mr. Intermill – Are you still in contact with the contractor? Answer – absolutely not.

Mr. Curry – The reasons the questions are coming up about the usage is because if it is a non-agricultural building, I presume we wouldn't be here. You indicated that it had been put up as a barn, but it was specifically used as a garage. Answer – It was mainly to be used for storage, but I also had intentions of using it as dog rescue.

Mr. Curry – The main purpose is for restoring hotrods and not for agricultural. You are still using it for that purpose. When the application for the building permit was denied, did the contractor tell you it was denied? Answer – no, he did not tell me it was denied.

Mr. Curry – There are alternatives listed that may be considered. One is to tear it down, another to reduce the size, and the last is to extend the dwelling unit so that the accessory building is in compliance. Can you talk to the feasibility of those options? Answer – No, none of those are feasible. My house is already 3,000 sf, so to increase the size is not an option. To tear down such a beautiful building would not be an option for us either. We are not doing anything that our neighbors do not have as well. The original complaint was because of three cars parked there.

Mr. Curry – One of the proposed conditions of approval is that there can be no commercial operations. Since you indicated your primary intent was to do that, you understand that condition will prohibit that? Answer – From what I understand he can do his hobby but not operate a business there.

Ms. Ruiz presented the Board with PCD's findings as presented in the staff report and answered questions. She answered some questions raised. Regarding running a business, we are not considering this a business. The vehicles are all owned by the Cox's. With regard to whether it is a barn or an accessory structure, we have an agriculture permit to determine the use and purpose. From the exterior it may appear as a barn, but from a zoning and land use perspective, it could be an accessory structure if it is not used for agricultural purposes. As far as the size and surrounding structures, (showing the aerial map) these structures were legally built before Land Development Code limited the size of an accessory structure.

Mr. Intermill – Do we know who the applicant was in 2007? Answer from Ms. Ruiz – the only thing we have is a receipt was from Strane and Dad, LLC. It doesn't list Diane Cox as the person making the payment.

Mr. Hannigan – The building was built before the Code stated it couldn't be more than two times the main dwelling? Answer from **Ms. Ruiz** – No, the LDC revision was effective April 2, 2007 and the site plan for the garage was denied April 9, 2007. Violation letters were sent in November and December 2007. The summer 2007 aerial map did not show the building.

Mr. Hannigan – Can you speak to an accessory structure being two times and not a different number. Why 2 times? Why not 2.5 times? – Answer from **Mr. Gebhart** – Prior to the 2006 LDC approval, implementation in 2007, there was not an accessory size limit. As part of the revision to the Code, there was an issue of accessory buildings dominating the landscape. The first code revision said it can't be larger. The BoCC actually asked for a revision to expand that because they felt it was too restrictive, and that's when it became two times the size in 2008. The number came from discussions about what would be normal relative to size of the house.

Mr. Hannigan – You could have an accessory building that is just shy of the two times the house and another - accessory building just shy of two times the house. Answer from **Mr. Gebhart** – yes, that's correct.

Mr. Curry – Would another alternative potentially be submittal and approval that lead to it being agricultural and it be in compliance? Answer from **Ms. Ruiz** – there has to be an agricultural use on site and we record an affidavit and they are limited to using it just for those uses. This limitation would apply to future owners as well.

Mr. Curry – Regarding Condition #2 it is not in control of the applicant. What if it takes longer? 60 days or 90 days? Answer from **Ms. Ruiz** – That's correct, but we can revise that condition to give the Executive Director the authority to give an extension if a good faith effort is made.

Ms. Cox – Regarding one of the alternatives, could I use part of the accessory building for an agricultural use for my chickens and ducks and that square footage not be counted against me? Answer from Ms. Ruiz – The entire structure would have to be for agricultural purposes for them as well as future owners.

Mr. Carlson – What happens if we deny this request? Answer from Ms. Ruiz – They would still be in violation and have to do one of the alternatives.

Mr. Carlson – Could they separate the structure to make it two structures, like a 3 ft gap in between the two? Answer from **Ms. Ruiz** – She would have to get a building permit from Regional Building, but yes that would bring it in to compliance.

SPEAKING IN FAVOR: None

SPEAKING IN OPPOSITION: None

DISCUSSION:

Mr. Hannigan – There are many times we get to a place like this where there is confusion about how things get where they are. The building does not meet the standard. According the aerial there are others similar. If the building is not being used for commercial purposes, then its existence doesn't seem to be any detriment to the neighborhood. We have no one here to complain. None of the alternative solutions seem suitable. I see no problem with approving the variance as it is.

Mr. Curry – I'm concentrating on the size issue and I look at the other structures around and there isn't a compatibility issue. The only alternative is that it be used as agricultural purposes. I personally don't see a compatibility issue, but I am somewhat reluctant to approve a request for bad behavior.

Ms. Seago – I wanted to remind the members that if a motion of approval is made, the member should state in their motion the unique or equitable consideration for the request.

Mr. Curry – I am going to reopen the Board discussion for any concerns you may have prior to a motion. No discussion.

BOA ACTION: DAVIES MOVED/HANNIGAN SECONDED TO APPROVE ITEM NO. 4, BOA-17-003, BASED ON USING STANDARD RESOLUTION NO. 3, BASED ON A UNIQUE AND EQUITABLE CONSIDERATION THAT THE BURDEN OF COST TO THE OWNER WITH FIVE (5) CONDITIONS AND NO NOTATIONS. MOTION PASSED (4-1). MR. INTERMILL GAVE THE NAY VOTE.

Adjourn

Minutes approved at the November 8, 2017 meeting.