EL PASO COUNTY
COLORADO

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

TO: **El Paso County Board of Adjustment**
Kevin Curry, Chair

FROM: **Nina Ruiz, Planning Manager**
Craig Dossey, Executive Director

RE: **Project File #: APP-20-003**
Project Name: Disler Appeal Request
Parcel Nos.: 61284-02-039, 61284-02-038, 61284-02-034, 61284-02-035

REPRESENTATIVE:

Edith Disler
2009 S 2nd St, Apt A
Austin, TX 78704

Commissioner District: 1

Board of Adjustment Hearing Date:	12/9/2020

EXECUTIVE SUMMARY

A request by Edith Disler to appeal a determination by the Planning and Community Development Department Executive Director that a parcel be considered legal nonconforming in regards to lot size after merger by contiguity. The parcels in question are included within the Black Forest Park Subdivision, approximately one-half (1/2)mile northeast of the Roller Coaster Road and Evergreen Road intersection. The parcels are included within the Tri-Lakes Comprehensive Plan (1999).

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The appeal is based upon the opinion that the Planning Department improperly authorized a merger by contiguity of two lots, upon which a single family dwelling has since been constructed, and made an erroneous determination regarding the parcel being considered legal nonconforming. The appellant, Ms. Disler, asserts that these errors were made under the 2017 Land Development Code. For this reason, all analysis will be based upon the Code in place at that time.

A. REQUEST

A request by Edith Disler to appeal a determination by the Planning and Community Development Department Executive Director that parcel(s) be considered legal nonconforming in regards to lot size.

B. APPROVAL CRITERIA

Section 5.5.2.B.1 of the Land Development Code, Appeal of Administrative Determinations or Decisions, states the following (emphasis added):

The Board of Adjustment shall have the power to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or refusal made by the PCD pertaining to the application or enforcement, under this Code, of:

- *A zoning district's development requirements or a use standard relating to physical dimension, structural location, or bulk limitation;*
- *Nonconforming building provisions;*
- *Nonconforming lot or parcel or merger by contiguity provisions;*
- *Parking and development requirements;*
- *Landscape requirements;*
- *On-premise signs (dimensional, location, and number requirements only) provisions, and off-premise sign separation distances;*
- *Distance separation requirements required for daycare applications;*
- *Appeal of an action regarding administrative relief;*
- *Determination of wildfire hazard or zoning district boundary;*
- *Any other matter appealable to the Board of Adjustment under the provisions of this Code.*

C. BACKGROUND

El Paso County Subdivision and Zoning

El Paso County was established in 1861 before Colorado became a state in 1876. Zoning in El Paso County was then established in stages between the years of 1942 and 1999. Prior to El Paso County adopting subdivision regulations on July 17, 1972 pursuant to Senate Bill 35, subdivision regulations

did exist but contained numerous exemptions through which many new divisions of land need not complete a formalized process. The initial implementation of zoning in the County occurred in large chunks of land, generally without the more detailed evaluation on how existing parcels fit with the proposed zoning. Land that was platted prior to establishment of zoning resulted in establishing numerous nonconformities.

Land Development Code Background

The Land Development Code has historically included a section on nonconformities, thus acknowledging the creation of non-conforming parcels, uses, and dimensional standards by County zoning actions. Prior to 1992, all parcels which did not meet the zoning standards for lot size were required to apply for approval of a dimensional variance before the Board of Adjustment (BOA) in order for a building permit to be authorized. The principal areas where nonconforming lots existed prior to zoning include Ute Pass, Highway 115, Black Forest and Tri-Lakes.

To reduce the number of BOA applications and to combine parcels to achieve a reduced density, revisions to the section on nonconformities of the Land Development Code were approved in 1992, and merger by contiguity standards were established. Two categories were established: 1) those parcels with central services and 2) those parcels served by well and septic systems. Following the approval of the 1992 amendments to the Code, to be recognized as a legal nonconforming lot served by well and septic required the merger of all contiguous parcels up to 2.5 acres in size. The intent of the original authors of the Code was to require lots to be merged up to the minimum size required by the provisions of the section on nonconformities, not that all lots under the same ownership be merged. This intent was expressed within the Board of County Commissioners Resolution (see attached BOCC Resolution No. 92-334).

In the 2006 Code, implemented in 2007, the merger and nonconforming standards were amended once again to reduce the minimum lot size to be considered conforming for lots served by well down to one (1) acre in size, provided all other applicable review criteria could be met, such as meeting separation distances for well and septic.

For the purposes of this appeal, all Code references will be based upon the 2016 Code, which was the Code in place at the time of the alleged initial error by the PCD Executive Director.

Prior Land Use Actions in Black Forest Park

Individual lots in the Black Forest Park subdivision range in lot size from 24,500 to 30,000 square feet in size (.56- .68 acres). A total of 104 lots were created with the recordation of the Black Forest Park Subdivision in 1926. Prior to 1992, construction on a parcel with less than 5 acres typically required BOA approval. Within the subdivision there are a total of 26 singe family dwellings on either a single parcel or on merged parcels. Please see the attached Assessor's Map sheet for additional information regarding the current parcel configuration for the Black Forest Park subdivision.

Parcel Creation and Zoning

The subject parcels were created by the recordation of the Black Forest Park plat in 1926. The plat created 104 lots ranging from 24,500 to 30,000 square feet in size. Zoning was later established on January 3, 1955, at which time the Black Forest Park subdivision and the western portion of Black Forest were zoned A-1. Due to changes in the nomenclature of the Code, the A-1 zoning district was renamed as the RR-5 (Residential Rural) zoning district

Merger & Single-Family Home Construction

In 2015, the owner [Matt Pickett] of Lots 9, 10, 11, 12, 13, 14, and 20 of Block 3, Black Forest Park requested information regarding separating these lots, which had been combined for tax purposes, into zoning lots for purposes of building permit issuance. The Planning and Community Development Department (PCD), then known as the Development Services Department (DSD), provided the property owner with information regarding merger by contiguity and nonconforming lots made conforming and explained that it was possible to separate the parcels as long as a parcel size of one (1) acre was achieved.

Mr. Pickett initially constructed a home at 15955 Park Avenue (Lots 11 & 12 Block 3) in 2015. Another home was later constructed and sold at 15995 Park Avenue (Lots 13 & 14 Block 3) in 2018 following a merger by contiguity and determination (PCD file nos. MER-18-001, COR-17-001). A new home is under construction at 15915 Park Avenue (Lots 9 & 10 Block 3) following a merger and determination (PCD file nos. MER-20-001, ADM-20-012). The remainder parcel, Lot 20 Block 3, remains vacant and undeveloped at this time. This remainder parcel was determined to not to be considered legal non-conforming in 2019 (PCD file no. ADM194) and would need to be either merged with an adjacent parcel or receive approval of a variance request from the Board of Adjustment. The remainder parcel (Lot 20 Block 3) was then sold by Mr. Pickett in 2019.

D. APPEAL ANALYSIS

1. Decision Being Appealed

The appellant is appealing an administrative determination for 15995 Park Avenue made by the Planning and Community Development Department Executive Director on January 22, 2018 in regard to the legal nonconforming status following approval of a merger by contiguity of two (2) platted lots. It was the determination of the PCD Director that the lot size of 1.38 acres for the two merged parcels be considered legal pursuant to Section 5.6.7.B.2 of the Land Development Code (2016). At the conclusion of the appeal letter, the appellant asserts that the 2018 determination was utilized as the basis for the approval of 15955 Park Avenue and 15915 Park Avenue but has not specifically included these lots in the appeal, therefore, staff will not include those lots in the analysis.

2. Applicable Code Provisions

The PCD Director made the administrative determination that the nonconforming lots be considered conforming based upon Section 5.6.7.B.2 of the 2016 Code, which states:

> "**Nonconforming Lots Made Conforming.** Where a legal lot does not meet the above requirements to be exempted from the minimum lot size requirements, contiguous legal lots under the same ownership shall be combined through a merger by contiguity process to create a zoning lot and the resulting parcel shall be considered conforming with respect to the minimum lot size requirement where:
>
> - Central water is provided, but not central sewer, and the resulting zoning lot after any required merger is at least 10,000 square feet; or
>
> - No central water or central sewer is provided and the resulting parcel after any required merger is one acre or more in area.
>
> A remainder nonconforming lot or parcel not required to meet the minimum lot size requirement for the subject property to be considered a conforming zoning lot shall be considered conforming provided the owner requests and receives a zoning lot determination from the PCD Director, and files the determination for recording with the Clerk and Recorder within 30 days of the date of the determination."

The "Nonconforming Lots Made Conforming" Section does not require the lots zoned RR-5 become five (5) acres in size as the appellant states. This Section requires the lot to become at least one (1) acre in size through merger. The merger by contiguity provisions themselves, found in Section 7.2.2.(E)(2) of the

Code, have a stated purpose of combining parcels to create a parcel *that more closely approximates* the lot size requirements of the applicable zoning district…" (emphasis added). The appellant also incorrectly asserts that a nonconforming lot must be created by using all available contiguous lots under the same ownership; that requirement is not contained in the Code. Finally, contrary to the appellant's argument, only those lots created by merger that *still* cannot be considered conforming under the Code's standards must apply for a variance to the BOA. See Section 5.6.7 (B)(3)(b):

> **Requirement for Variance.** A nonconforming lot or parcel or zoning lot resulting from a merger by contiguity that fails to comply with the minimum lot size requirements to be considered conforming shall be required to obtain a lot size variance from the Board of Adjustment. In reviewing the variance request the BOA may also consider the density of the surrounding area, compliance with the Master Plan, the suitability of the parcels for the proposed construction, and the size and location of the proposed structures on the property in making their decision.

3. Application of Code Provisions in Administrative Determination

a. To obtain a determination that a conforming zoning lot has been created, Section 5.6.7 (B)(2) first requires that contiguous legal lots under the same ownership be combined through a merger by contiguity process. Mr. Pickett owned Lots 13 and 14, Black Forest Park, and such lots are contiguous.
b. Mr. Pickett completed a merger by contiguity process for Lots 13 and 14. That process is governed by Section 7.2.2 (E)(2)(f) of the Code:

   The PCD Director, in approving a merger by contiguity, shall find:

   - The lots or parcels being merged are legal lots or parcels;
   - The merger will not adversely affect access, drainage or utility easements or rights-of-way serving the property or other properties in the area;
   - The merger will not result in a nonconformity not otherwise existing prior to the merger;
   - The merger is necessary to achieve compliance with the nonconforming lot or record provisions of this Code, or will accomplish a similar purpose;
   - All separation distances for an OWTS can be met; and

• The extraction of areas designated as 100-year floodplain, major drainageways and slopes in excess of 30 percent leaves a single buildable area of at least 30 percent of the lot or parcel's total net area.

As discussed above, the lots being merged were contiguous, under the same ownership, and legal lots created by a plat. The lots being merged together had no adverse impacts upon access, easements, or rights-of-way. The result of the merger decreased the nonconformity due to substandard lot size and did not result in a new nonconformity that would not have existed prior to the merger. The merger was required in order for the parcel to comply with the nonconforming lot provisions. A septic permit was approved by El Paso County Public Health, demonstrating that all separation distances for the OWTS were met. Per GIS data, the parcel in question does not contain a floodplain, drainageway, or slope in excess of 30 percent.

c. The parcel resulting from the merger is served by well and septic and is greater than one acre in size.

4. <u>Zoning Lot Determination to Obtain Building Permit</u>

Section 5.6.7.B.6, Zoning Lot Determination Required Prior to Building Permit Authorization, also provides standards for the Director to make a zoning lot determination:

Zoning Lot Determination Required Prior to Building Permit Authorization. A zoning lot determination shall be required prior to authorization of a building permit for a dwelling or habitable addition for any property subject to merger by contiguity. Upon request, the PCD Director shall provide a zoning lot determination after confirmation of the following:

- Merger has been accomplished in accordance with the merger by contiguity requirements;
- For existing dwellings, verification provided by the EPCPH that there is no evidence of sewage problems or that any sewage problems are being remedied;
- For a new dwelling that the OWTS permit has been issued by the EPCPH all isolation distances have been met, including a 100-foot radius for the well providing water on the property being located entirely on the property;
- For a new dwelling confirmation of water availability in the form of a well permit, water tap, or water commitment; and

- At least 30% of the zoning lot is considered buildable after exclusion of land identified as containing 100-year floodplain and 30% slopes."

The merger was completed and recorded in accordance with the merger by contiguity requirements, the septic permit has been issued, the well permit has been issued, and the parcel is not encumbered by any floodplain or slopes in excess of 30%. The criteria for making the zoning lot determination to authorize the building permit were met.

E. OTHER ISSUES RAISED BY APPELLANT

The appellant has provided nine (9) specific reasons why they believe the determinations by the PCD Director were made in error (see attached appeal letter). The following analysis will review each of those claims and reference the above analysis where applicable:

1. *"The PCD Director's administrative determination allowed the owner of the property to abandon his ¾ acre non-conformity, and re-establish a 1.3 acre nonconformity, in violation of 5.5.1 of the BLC, which does not allow the re-establishment of nonconformity once it has been abandoned."*

The appellant cites 5.5.1, which is the Administrative Relief Section of the Land Development Code. This section does not contain any language regarding establishment of a nonconforming use. Staff believes the appellant citation is incorrect and instead should be a citation of Section 5.6.1, Purpose, Legal Nonconformities (emphasis added):

> "This Section governs uses, structures and lots that were legally established prior to the adoption of this Code and do not comply with one or more requirements of the Code. The County seeks to allow nonconforming uses, structures, and lots to continue to exist and be maintained and put to productive use and to encourage as many aspects of the uses, structures, and lots to be brought into conformance with this Code as is reasonably practical. This Section is intended to recognize the interests of the property owner in continuing the nonconformity but also to preclude the extension, expansion, or change in character of the nonconformity or the reestablishment of the nonconformity after it has been abandoned."

The lots were created in 1926 prior to the establishment of zoning for this portion of the County in 1955. Although the lots were all under common ownership and under one tax schedule number, the lots were never combined for zoning

purposes by a merger, combination agreement, or vacation of interior lot lines. The lots being combined for tax purposes does not constitute an abandonment of a nonconformity.

2. *"The PCD Director allowed the owner of 15995 Park Avenue to use an inapplicable provision under the subject line of "Nonconforming Lots Made Conforming". In an RR-5, only a lot enlarged to the zoning requirement – 5 acres in this case – is considered "Made Conforming." Enlarging from ¾ acre to 1.25 or 1.3 acres does not "make" the lot conforming to an RR-5."*

Please see the above analysis regarding legal nonconforming lots made conforming which requires a minimum lot size of one (1) acre as well as the merger by contiguity provisions referenced in the legal nonconforming section of the Code.

3. *"When the PCD Director gave the owner of 15995 Park Avenue "Administrative Relief" and declared a 1.3 acre lots to be a "zoning lot" following a merger by contiguity, he exceeded his authority according to BLC 5.4.1 (D) which only allows the PCD Director to authorize relief equal to a 20% reduction of the minimum lot size required in the zoning, i.e., authorization to permit a 4 acre nonconforming lot in an RR-5, but certainly not one as small as 1.3 acres."*

The appellant cites Section 5.4.1(D) of the Code, which does not exist. Staff believes the intent of the appellant is to cite Section 5.5.1.B which allows for an administrative reduction of the lot area of up to 20%. As cited above under item Number 2, the merger by contiguity negates the requirement of a dimensional variance or administrative relief for substandard lot size. The authority granted under this section of the Code is in addition to, not in place of, that granted under Section 5.6.

4. *"BLC 5.5.7 (B) requires merger of as many contiguous lots as possible to avoid a variance, and requires that any "merger by contiguity" which does not create a conforming lot (i.e. 5 acres) be submitted to the BOA for a variance. Because of the PCD Director's erroneous declaration that a 1.38 acre lot was a "nonconforming lot made conforming" the owner failed to comply with this requirement and did not properly seek a variance from the BOA for the subject lot as required by code. Further, Mr. Dossey's determination overlooked the fact that Mr. Pickett owned 7 contiguous lots, comprising 4.7 acres. Note that this provision of the code requires merger of as many contiguous lot as possible to avoid a variance. Mr. Dossey's authorization to subdivide a 4.7 acre parcel using*

"merger by contiguity" to create 1.3 acre parcels violates this provision of the code."

The appellant cites Section 5.5.7.B of the Code which does not exist. Staff believes the intent of the appellant is to cite Section 5.6.7.B.3, Nonconforming Lots Subject to Board of Adjustment Review. Please see the analysis above regarding this subject. The Merger by Contiguity process is not a subdivision action.

5. *"When the PCD Director authorized a 1.38 acre zoning lot, he set up a public health problem in neglecting the provision of the land code which states that lots for homes requiring On-Site Water Treatment Systems (OWTS), i.e. septic fields, be at least 2.5 acres in size and contain a minimum of two available sites for septic fields per BLC 8.4.3.C.3.f.f.i."*

Although no citation is included, Staff believes the Section the appellant refers to is Section 8.4.8.B.1.a, which states (emphasis added):

> "A central wastewater system is the required method of wastewater collection and treatment in all new subdivisions or zoning districts with a density greater than one dwelling unit per 2½ acres or where lot sizes are less than 2½ acres. Every reasonable effort shall be made to provide a central wastewater system."

As discussed above, this subdivision was created in 1926, therefore, this provision does not apply. Please see the above discussion of the merger by contiguity provisions, which include specific criteria regarding septic systems (OWTS). The Merger by Contiguity process is not a subdivision action.

6. *"The 1.3 acre lots created by the PCD Director's erroneous approval of a 1.38 acre lot created through "merger by contiguity" as "made conforming" through merger actions violates the 1972 standards for Rural Density, which calls for a 2.5 acre minimum in an RR-5. Per the BLC, even the 2.5 acre size requires BOA approval in an RR-5. This creation of urban density in turn impacts the county's requirements for road construction and maintenance and other considerations, of which the County Attorney seems unaware."*

Mr. Pickett's actions did not create urban density. As discussed above, the Nonconforming and Merger by Contiguity Sections of the Code allow for utilization of these preexisting smaller lots, provided all applicable review criteria

are met and that the PCD Director determines the lot(s) and lot sizes are to be considered conforming. Additionally, the County Attorney is aware of the Land Development Code provisions and previously provided a detailed analysis of the provisions discussed herein in 2017 (see attached PCD file no. COR171).

7. *"The PCD Director erroneously granted a "nonforming [sic] lot made conforming" regarding the merger by contiguity in question, when a merger does not guarantee the parcel is "buildable." This fact is stated right on the "Merger by Contiguity" form, to which the owner of 15995 Park Ave legally affixed his signature on three separate occasions."*

El Paso County cannot guarantee that any lot is "buildable" due to many factors outside the purview of the Planning and Community Development Department, and a finding that a particular lot is "buildable" is not a factor or criterion considered for merger by contiguity, nonconforming lot or zoning lot actions. As discussed in Section D.4 above, however, the PCD Director can determine that a conforming zoning lot has been created, a necessary step for obtaining a building permit.

8. *"By approving 1.3 acres as a "Nonconforming lot made conforming" Mr. Dossey created a public safety problem by approving urban density at the end of a private, unpaved, narrow, dead-end road where emergency vehicles, particularly fire trucks and tenders, do not have room to turn around and where there are no fire hydrants, cisterns or dry hydrants. This endangers first responders, as well as the other residents of the community. I consulted Chief Burns of the Wescott Fire District regarding this situation. He is well aware of the conditions in Black Forest Park and concurs that this sort of density on these narrow, private, unpaved roads is dangerous."*

The public safety concerns asserted by the appellant are not established criterion in the Code that need to be considered for merger by contiguity, nonconforming lot or zoning lot actions. As discussed above, these roadways were platted in 1926 prior to current County subdivision regulations and roadway standards. This is not an uncommon occurrence in the forested areas of the County. Please review a detailed analysis provided by Senior Assistant County Attorney Cole Emmons in 2017 regarding the roadways (PCD file no. COR171). Presumably, purchasers knew these limitations when they chose to purchase land/homes in this subdivision. The addition of one additional residence in the area is not anticipated to create adverse impacts to the roadways.

9. *"The owner of 15995 Park Ave has used Mr. Dossey's determination for 15995 Park Ave, lots 13 and 14 of Block 3 in Black Forest Park, to build on two other illegal lots without separate determinations: 15955 Park Ave (lots 11 and 12) and 15915 Park Ave (lots 9 and 10).*"

Any merger by contiguity, nonconforming lot, zoning lot, or building permit action other than those applicable to 15995 Park Avenue are not the subject of this appeal.

F. ACTIONS

If the Board of Adjustment decides to uphold the administrative determination and deny the appeal, then the zoning lot created by the merger of Lots 13 and 14 may be used for any use allowed within the RR-5 (Residential Rural) zoning district without the need for application of a dimensional variance, subdivision, or rezone.

If the Board of Adjustment approves the appeal, thereby negating the prior determination of legal nonconformities for the zoning lot, an action would be necessary to address the existing home. The state statutes have provisions for an involuntary merger, after public notice and hearing. The appellant is requesting that the home be demolished, and the parcels merged together to create one zoning lot.

Alternatively, the property owners may request approval of a map amendment (rezone) to allow for the current configuration. Applications for a map amendment (rezone) action will require payment of the associated application review fees:

- Early Assistance application- $427
- Map Amendment (Rezone)- $3537

G. APPLICABLE RESOLUTIONS

Approval: see attached
Disapproval: see attached

H. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified ten (10) adjoining property owners as well as the property owners of the parcel in question on November 18, 2020 of the Board of Adjustment hearing. Any responses received by staff will be provided at the hearing.

I. ATTACHMENTS

Non-Conforming Section of the Code (2016)
CRS 30-28-139 Regarding Merger
Merger by Contiguity(s)

Administrative Determination(s)
Correspondence
Assessor Map
Appeal Letter
Appeal Exhibit
Original Plat
BoCC Resolution Implementing the Nonconforming Section of the Code
Board of Adjustment Resolution for Approval
Board of Adjustment Resolution for Denial

All required landscaping shall be provided in conjunction with either of the changes described above.

(2) **Extension**

Nonconforming landscaping or parking spaces shall not be enlarged, expanded, extended or increased, except as provided in this Code. Additional parking may be required whenever the DSD Director determines that it is necessary to avoid congestion on public roads and to provide for the general safety and convenience of County residents.

5.6.7. Nonconforming Lot or Parcel

(A) General Nonconformity

(1) **Request for Conformity**

Upon request, any lot or parcel shall be recognized as nonconforming provided:

- The creation of the lot or parcel was in conformance with all applicable regulations at the time of its creation;
- The lot or parcel is currently in compliance with all use regulations and conditions and restrictions of any applicable special use or variance of use; and
- The lot or parcel complies with the requirements and criteria of the merger by contiguity provisions of this Code.

(2) **Compliance with Development Standards**

Nonconforming lots or parcels shall comply with development standards of the applicable zoning district, except the lot frontage requirements, unless otherwise indicated in this Code. Lots or parcels subject to the merger by contiguity provisions of this Code shall have setbacks applied only along the exterior boundaries of the merged properties.

(3) **Recognition Not Basis for Subdivision**

Recognition of nonconforming lots shall not be a basis or justification for new subdivision development. New subdivisions shall comply with the applicable zoning requirements.

(B) Nonconforming Lot or Parcel Due to Lot Size

A lot or parcel that is nonconforming due to lot size shall be subject to the following provisions when a building permit for a dwelling or habitable addition is requested. A non-habitable addition or accessory improvement (e.g., a garage, deck, or tool shed) on a lot or parcel where a dwelling already exists is not subject to the requirements of this Section. An existing dwelling, located on a lot or parcel that is nonconforming due to lot size that is destroyed or partially destroyed by fire shall be subject to the restoration provisions of this Code.

(1) **Nonconforming Lots Considered Conforming**

A legal lot or zoning lot that is nonconforming as a result of the minimum lot size requirement within the applicable zoning district shall be considered to be exempt from the minimum lot size requirement where:

- Central water and sewer are both provided and the area of the legal lot is at least 60% of the minimum lot area required by the applicable zoning district; or
- Central water is provided and the area of the legal lot is at least 20,000 square feet; or
- No central water or central sewer is provided and the area of the legal lot or zoning lot is at least 2.5 acres.

(2) **Nonconforming Lots Made Conforming**

Where a legal lot does not meet the above requirements to be exempted from the minimum lot size requirements, contiguous legal lots under the same ownership shall be combined through a merger by contiguity process to create a zoning lot and the resulting parcel shall be considered conforming with respect to the minimum lot size requirement where:

- Central water is provided, but not central sewer, and the resulting zoning lot after any required merger is at least 10,000 square feet; or
- No central water or central sewer is provided and the resulting parcel after any required merger is one acre or more in area.

A remainder nonconforming lot or parcel not required to meet the minimum lot size requirement for the subject property to be considered a conforming zoning lot shall be considered conforming provided the owner requests and receives a zoning lot determination from the DSD Director, and files the determination for recording with the Clerk and Recorder within 30 days of the date of the determination.

(3) **Nonconforming Lots Subject to Board of Adjustment Review**

(a) Requirement to Use Merger by Contiguity as Alternative to Variance

When applying for a building permit or seeking any land use approvals, or when requesting a determination of nonconformity under this Code, the nonconforming lots or parcels due to lot size are subject to a merger by contiguity and shall submit to the DSD a signed and completed merger agreement, provided by the DSD, acknowledging consent to the legal combination of the nonconforming contiguous lots or parcels. No nonconforming lot or parcel due to lot size shall be determined to be eligible for a lot size variance if a contiguous lot or parcel under the same ownership is available to be merged to the nonconforming lot or parcel.

(b) Requirement for Variance

A nonconforming lot or parcel or zoning lot resulting from a merger by contiguity that fails to comply with the minimum lot size requirements to be considered conforming shall be required to obtain a lot size variance from the Board of Adjustment. In

reviewing the variance request the BOA may also consider the density of the surrounding area, compliance with the Master Plan, the suitability of the parcels for the proposed construction, and the size and location of the proposed structures on the property in making their decision.

(4) **Common Ownership**

For the purposes of a merger by contiguity, contiguous lots or parcels owned by a husband and wife, individually or by joint or common ownership shall be considered common ownership. Any property owner disputing whether this common ownership provision should be applied to the property may appeal to the Board of Adjustment.

(5) **Appeal of Merger Determination**

Where merger is required by this Section in order to receive authorization of a building permit the applicant may request a Merger Hearing with the BoCC in accordance with the requirements of C.R.S. §30-28-139. The result of a merger hearing shall not obviate the requirement to comply with the nonconforming lot standards of this Code.

(6) **Zoning Lot Determination Required Prior to Building Permit Authorization**

A zoning lot determination shall be required prior to authorization of a building permit for a dwelling or habitable addition for any property subject to merger by contiguity. Upon request, the DSD Director shall provide a zoning lot determination after confirmation of the following:

- Merger has been accomplished in accordance with the merger by contiguity requirements;
- For existing dwellings, verification provided by the EPCPH that there is no evidence of sewage problems or that any sewage problems are being remedied;
- For a new dwelling that the OWTS permit has been issued by the EPCPH all isolation distances have been met, including a 100 foot radius for the well providing water on the property being located entirely on the property;
- For a new dwelling confirmation of water availability in the form of a well permit, water tap, or water commitment; and
- At least 30% of the zoning lot is considered buildable after exclusion of land identified as containing 100 year floodplain and 30% slopes.

C.R.S. 30-28-139

Copy Citation

Current through all laws passed during the 2020 Legislative Session

CO - Colorado Revised Statutes Annotated > TITLE 30. GOVERNMENT - COUNTY > COUNTY PLANNING AND BUILDING CODES > ARTICLE 28. COUNTY PLANNING AND BUILDING CODES > PART 1. COUNTY PLANNING

30-28-139. Merger of lots - notice - hearing - assessment of merged parcels

(1) Notwithstanding any other provision of law, where a county ordinance, regulation, or resolution provides for the merger of two or more parcels of land for the purpose of eliminating interior lot lines, obsolete subdivisions, or otherwise, the ordinance, regulation, or resolution shall provide that:

(a) Prior to the completion of the merger, the county shall send notice of the county's intent to complete the merger to each owner of the affected parcels by certified mail. The notice shall also specify that each such owner may request a hearing on the proposed merger pursuant to paragraph (b) of this subsection (1), and shall specify action to be taken by such owner to request such hearing, including, without limitation, the requirement that said owner shall request the hearing within one hundred twenty days of the date the notice required by this paragraph (a) is received by said owner.

(b)

(I) Prior to the completion of the merger, where each owner of an affected parcel has timely requested a hearing on the proposed merger satisfying the requirements of paragraph (a) of this subsection (1), a public hearing on said merger shall be held before the board of county commissioners of said county. The hearing shall be conducted for the purpose of allowing the board to discuss with the owner of each affected parcel its reasons for proceeding with the merger and to give each owner the opportunity to submit any basis provided under law for challenging the merger. In such case, notice of the time, place, and manner of the hearing shall be provided to each owner of the affected parcels and also published in a newspaper of general circulation in the county in a manner sufficient to notify the public of the time, place, and nature of said hearing.

(II) Where the owner of each affected parcel fails to timely request a hearing on the proposed merger satisfying the requirements of paragraph (a) of this subsection (1), no such hearing is required, and the affected parcels shall be merged in accordance with the requirements of this subsection (1).

(c) In order to give the owner of the parcels the opportunity to take whatever remedial action is allowed under law, the hearing authorized by paragraph (b) of this subsection (1) shall take place no sooner than ninety days following the date of the notice required by paragraph (a) of this subsection (1).

(2) No merger of parcels that is the subject of a hearing pursuant to subsection (1) of this section shall be effective unless:

(a) The owner of the parcels has given his, her, or its consent to the merger of said parcels; and

(b) The merger has been approved by a majority of the board of county commissioners.

(3) Upon completion of any merger of parcels in accordance with the requirements of this section, the county shall:

(a) For purposes of the levying and collection of the tax on real and personal property, assess the merged parcels as one parcel of real property; and

(b) File of record a notice of merger in the office of the clerk and recorder of deeds for the county in which the merged parcels of real property are located, and such notice shall constitute prima facie evidence that all of the requirements of subsection (1) of this section have been satisfied.

(4) Notwithstanding any other provision of this section, the requirements of subsections (1) and (2) of this section shall not apply to any merger of parcels of land that is requested in writing by each owner of an affected parcel.

(5) Nothing in this section shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under article 68 of title 24, C.R.S., pertaining to vested property rights.

Chuck Broerman
01/24/2018 03:17:51 PM
Doc $0.00 2
Rec $18.00 Pages

El Paso County, CO
218009340

MERGER BY CONTIGUITY
OF PROPERTIES SITUATED
WITHIN UNINCORPORATED EL PASO COUNTY

By this document, it is hereby acknowledged that the properties listed below are merged together pursuant to Section 35.2 K., Nonconforming Lot or Parcel and Merger by Contiguity, of the El Paso County Land Development Code.

****

12-19-00: PLEASE NOTE: *(PLEASE TYPE)*
THIS MERGER FORM WILL NOT BE PROCESSED UNLESS IT IS TYPED.

The property owner(s) formalizing the merger by contiguity are:
Matthew D. Pickett

Location of merged property: 15995 Park Avenue Colorado Springs, CO 80921

Current Tax Schedule number(s): 6128402035

Legal Description: Lots 13 & 14 BLK 3 Black Forest Park Sub

The properties described above have merged together pursuant to Section 35.2 K. of the El Paso County Land Development Code and are considered as one (1) parcel for purposes of zoning administration as the properties do not contain the required minimum lot area as specified within the El Paso County zoning district which is applicable to this property.

No portion of this merged property shall be sold or conveyed away individually or separately unless said portion and/or remaining portion:

1) Is brought into compliance with the zoning on the property, or
2) Is otherwise approved by El Paso County in accordance with applicable regulations.

****

Property Owner(s) signature:

X _____ Date: 1-10-2018

_____ Date: _____

NOTE: Merger does not relieve the property of compliance with regulations or criteria of other agencies or departments or of other applicable sections of the Land Development Code, except as otherwise expressly provided for in subsection K.

Merger does not eliminate lot lines or any easements associated with the property.

Merger does not guarantee that the affected parcel will be considered as a "buildable parcel."

SUBMITTED IN CONFORMANCE WITH SECTION 35.2 K.
OF THE EL PASO COUNTY LAND DEVELOPMENT CODE

1/22/18
Date

_____
Director, El Paso County Planning Department

Exhibit A: Merger Map

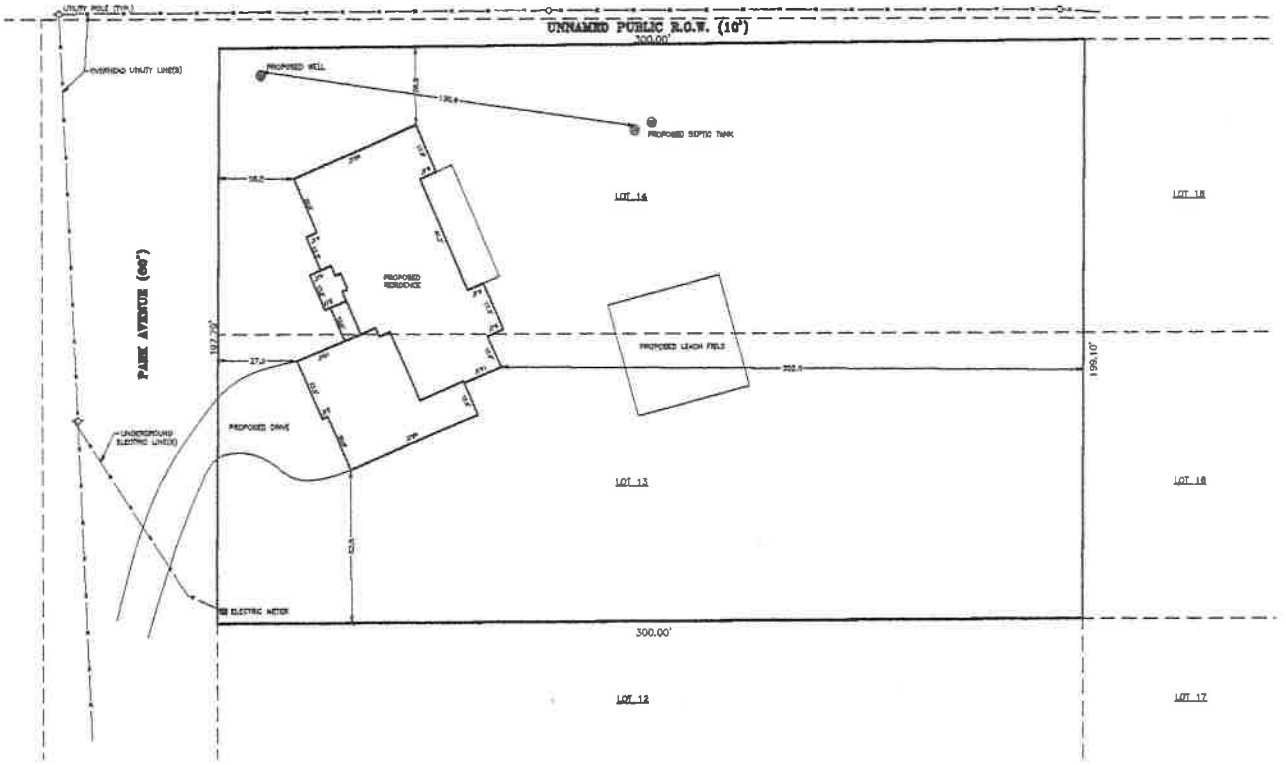
Exhibit "A"

SITE PLAN

A PORTION OF THE SOUTHEAST QUARTER OF
SECTION 28, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH P.M.
COUNTY OF EL PASO, STATE OF COLORADO

N

1" = 20'



LEGAL DESCRIPTION

Lots 13 & 14, Block 3, Black Forest Park Subdivision, County of El Paso, State of Colorado.

PARCEL DETAILS

Address of Record: 13885 Park Avenue, Colorado Springs, CO 80921

TSN: 9128402035

Zoning District: RR-5 (Rural Residential)
Front Setback 25 feet
Side Setback 25 feet
Rear Setback 25 feet
Max Height: 30 feet

SURVEYOR'S NOTES

1. NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

2. Any person who knowingly removes, alters or defaces any public land survey monument or land boundary monument or accessory commits a class 2 misdemeanor pursuant to the Colorado Revised Statute 18-4-508.

3. The linear units used in this drawing are U.S. Survey Feet.

4. This survey was performed in the field on October 26, 2017.

5. El Paso County Assessor's Office calculated area is 1.38 acres of land, more or less.

6. This is not a boundary survey.

7. The Federal Emergency Management Agency, Flood Insurance Rate Map No. 08041C0388F and 08041C0278F, effective date March 17, 1997, indicates the parcel of land to be located in Zone X (Areas determined outside the 500-year floodplain).

8. Any underground or above ground utilities shown hereon have been located from field survey information. Barron Land, LLC does not guarantee said underground utilities to be shown in their exact location and that said underground utilities are shown in their entirety. Barron Land, LLC did not physically enter any manholes or mains to verify size and material. Where additional or more detailed information is required, the client is advised that excavation may be necessary.

SURVEYOR'S STATEMENT

The undersigned Colorado Registered Professional Land Surveyor does hereby state and declare to Matt Flowers, that the accompanying Site Plan was surveyed and drawn under his direct responsibility and supervision and to the normal standard of practice by surveyors in the State of Colorado and accurately shows the described tract of land thereof, and that the requirements of Title 38 of the Colorado Revised Statutes, 1973, as amended, have been met to the best of his professional knowledge, belief and opinion.

38141
10/29/2017
REGISTERED LAND SURVEYOR
COLORADO U.S.A.

Spencer J. Barron
State of Colorado Professional Land Surveyor No. 38141
For and on behalf of Barron Land, LLC

DATE: 10/29/2017	REVISIONS		
No.	Remarks	Date	By

BARRON LAND
ENGINEERING • SURVEYING • PLANNING
2790 N. Academy Blvd., Suite 211
Colorado Springs, CO 80917
P: 719.360.6927
F: 719.466.6627
www.BarronLand.com

PROJECT NO.: 17-246 SHEET 1 OF 1

EL PASO COUNTY

COMMISSIONERS:
DARRYL GLENN (PRESIDENT)
MARK WALLER (PRESIDENT PRO TEMPORE)

STAN VANDERWERF
LONGINOS GONZALEZ
PEGGY LITTLETON

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

January 22, 2018

Matthew Pickett
15995 Park Avenue
Colorado Springs, CO 80921

Chuck Broerman
01/24/2018 03:17:51 PM
Doc $0.00 2
Rec $18.00 Pages

El Paso County, CO
218009341

RE: Administrative Determination regarding lot size pursuant to Section 5.6.7.B.2 of the Land Development Code (2016)

Parcel ID: 61284-02-035

To Whom It May Concern:

The subject parcel located at 15995 Park Avenue can be legally described as Lots 13 & 14 Black Forest Park Subdivision. The Black Forest Park subdivision was recorded on November 18, 1920. Zoning was initiated for this portion of the county in 1955 when the property was zoned A-1. Due to changes in the nomenclature of the El Paso County Land Development Code (2016), the A-1 zoning district was renamed as the RR-5 (Rural Residential) zoning district.

The RR-5 (Residential Rural) zoning district requires a minimum lot size of 5 acres. A request has been made for a merger by contiguity to combine Lots 13 & 14 of the Black Forest Park Subdivision. These parcels will be considered one zoning lot following the recording of the completed merger by contiguity form. Section 5.6.7.B.2, Nonconforming Lots Made Conforming, of the Land Development Code (2016) states:

> Where a legal lot does not meet the above requirements to be exempted from the minimum lot size requirements, contiguous legal lots under the same ownership shall be combined through a merger by contiguity process to create a zoning lot and the resulting parcel shall be considered conforming with respect to the minimum lot size requirement where:
>
> - Central water is provided, but not central sewer, and the resulting zoning lot after any required merger is at least 10,000 square feet; or
> - No central water or central sewer is provided and the resulting parcel after any required merger is one acre or more in area.
>
> A remainder nonconforming lot or parcel not required to meet the minimum lot size requirement for the subject property to be considered a conforming zoning

lot shall be considered conforming provided the owner requests and receives a zoning lot determination from the DSD Director, and files the determination for recording with the Clerk and Recorder within 30 days of the date of the determination.

This letter is to inform you that the Planning and Community Director has determined that the lot size of 1.38 acres for parcel no. 61284-02-035 is considered legal pursuant to Section 5.6.7.B.2, Nonconforming Lots Made Conforming, of the El Paso County Land Development Code (2016).

Should you have any questions, please contact the planner at (719) 520-6313.

Sincerely,

Craig Dossey, Executive Director
El Paso County Planning and Community Development Department

EL PASO COUNTY
COLORADO

COMMISSIONERS:
MARK WALLER (CHAIR)
LONGINOS GONZALEZ, JR. (VICE-CHAIR)

HOLLY WILLIAMS
STAN VANDERWERF
CAMI BREMER

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

March 4, 2019

Chuck Broerman
03/12/2019 11:55:55 AM
Doc $0.00 2
Rec $18.00 Pages
El Paso County, CO
219025424

Matthew Pickett
15995 Park Ave
Colorado Springs, CO 80921

Re: ADM-19-004, 15910 Fools Gold Lane & 15915 Park Ave
Parcel No: 6128402036, 6128402033

Dear Mr. Pickett,

You have requested a determination of legal nonconformity concerning lot size requirements for 15910 Fools Gold Lane (Parcel No. 6128402036). The property is zoned RR-5 (Rural Residential). The platted lot, Lot 20, Block 3 of the Black Forest Park Subdivision is 30,000 square feet (0.69 acres) in size. The RR-5 zoning district has a minimum lot size requirement of five (5) acres.

The purpose Section 5.6.1, Legal Nonconforming, of the El Paso County Land Development Code states that:

> "This Section governs uses, structures and lots that were legally established prior to the adoption of this Code and do not comply with one or more requirements of the Code. The County seeks to allow nonconforming uses, structures, and lots to continue to exist and be maintained and put to productive use and to encourage as many aspects of the uses, structures, and lots to be brought into conformance with this Code as is reasonably practical. This Section is intended to recognize the interests of the property owner in continuing the nonconformity but also to preclude the extension, expansion, or change in character of the nonconformity or the reestablishment of the nonconformity after it has been abandoned."

Section 5.6.7(B)(2) includes the following language:

> **"Nonconforming Lots Made Conforming.** Where a legal lot does not meet the above requirements to be exempted from the minimum lot size requirements, contiguous legal lots under the same ownership shall be combined through a merger by contiguity

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300
COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695
WWW.ELPASOCO.COM

process to create a zoning lot and the resulting parcel shall be considered conforming with respect to the minimum lot size requirement where:

- Central water is provided, but not central sewer, and the resulting zoning lot after any required merger is at least 10,000 square feet; or

- No central water or central sewer is provided and the resulting parcel after any required merger is one acre or more in area.

A remainder nonconforming lot or parcel not required to meet the minimum lot size requirement for the subject property to be considered a conforming zoning lot shall be considered conforming provided the owner requests and receives a zoning lot determination from the PCD Director, and files the determination for recording with the Clerk and Recorder within 30 days of the date of the determination." (Emphasis added)

Section 5.6, Legal Nonconformities, of the Code contemplates and limits when a dimensional variance before the Board of Adjustment may be applicable:

"When applying for a building permit or seeking any land use approvals, or when requesting a determination of nonconformity under this Code, the nonconforming lots or parcels due to lot size are subject to a merger by contiguity and shall submit to the PCD a signed and completed merger agreement, provided by the PCD, acknowledging consent to the legal combination of the nonconforming contiguous lots or parcels. No nonconforming lot or parcel due to lot size shall be determined to be eligible for a lot size variance if a contiguous lot or parcel under the same ownership is available to be merged to the nonconforming lot or parcel."

Staff notes that you are also the owner of record of Lots 9 and 10, Block 3 of the Black Forest Park Subdivision. These lots are adjacent to the subject parcel, Lot 20.

Per the requirements of the El Paso County Land Development Code you are required to merge those contiguous parcels that are under the same ownership. Therefore, pursuant to Section 5.6.7(B)(2) of the Code, the Planning and Community Development Department Director cannot make a positive finding regarding Lot 20, Block 3 of the Black Forest Park Subdivision as a legal nonconforming lot that is eligible for building permit authorization.

Sincerely,

Craig Dossey
Executive Director
El Paso County Planning and Community Development Department

EL PASO COUNTY

OFFICE OF THE COUNTY ATTORNEY
CIVIL DIVISION

Amy R. Folsom, County Attorney

First Assistant County Attorney
Diana K. May

Assistant County Attorneys
M. Cole Emmons
Lori L. Seago
Kenneth R. Hodges
Lisa A. Kirkman
Steven A. Klaffky
Peter A. Lichtman

MEMORANDUM

TO: Gregory M. O'Boyle, Esq.
Alpern Myers Stuart, LLC

FROM: M. Cole Emmons, Senior Assistant County Attorney M.C.E.

CC: Amy Folsom, County Attorney; Lori Seago, Senior Assistant County Attorney; Planning and Community Development Department: Craig Dossey, Executive Director; Mark Gebhart, Deputy Director; Raimere Fitzpatrick, Project Manager/Planner II

DATE: September 27, 2017

RE: Merger by Contiguity Issues Regarding Tommy Query and Matt Pickett Properties, Black Forest Park Subdivision

Dear Greg:

This is in response to your e-mail inquiry to Lori Seago on August 25, 2017. You are representing an old friend of mine, Tommy Query. I have had several discussions and e-mail exchanges with Mr. Query as well as discussions with the El Paso County Planning and Community Development Department ("PCD") since spring. Your e-mail prompted further discussion and analysis; however, our conclusions have not changed. We believe that Matt Pickett is operating within the boundaries of the regulations in the El Paso County Land Development Code ("LDC"). The following is our analysis—some of which Mr. Query may have already shared with you.

History

Both Mr. Query and Mr. Pickett own real property in Black Forest Park Subdivision. Mr. Pickett owns lots in Block 2 and Block 3. The Subdivision was platted in 1926. There were no County subdivision regulations when the lots were created in 1926. It appears that in 1939, the Board of County Commissioners ("BoCC") was given authority to provide for the physical development of the unincorporated area of the county (zoning), and in 1972, the legislature enacted S.B. 35 (§§ 30-28-101, *et seq.*, C.R.S.) addressing subdivision regulations for counties, which El Paso County implemented on July 17, 1972.

200 S. CASCADE AVENUE
OFFICE: (719) 520-6485
COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

25 Lots on Dead-End Road

You asked why Mr. Pickett has been allowed to construct a home that should have been prohibited by § 8.4.4.D.1, LDC. As you noted, that provision states: "[t]he maximum number of lots fronting and taking access from a dead-end road is 25." Subparagraph 2 goes on to state "[w]here more than 25 lots would front and take access to a dead-end road, a second means of access shall be provided." These provisions would apply to subdivisions established after these provisions were adopted, but not to pre-existing subdivisions.

The Black Forest Park Subdivision Plat shows 24 lots in Block 2 and 28 lots in Block 3, and a total of 52 lots fronting Pine Avenue and 52 lots fronting Park Avenue. The Plat states that roads are dedicated to public use; however, we have no evidence the County accepted the roads as County roads, and they are not built to County standards. The County's position is that the roads in this subdivision are built as private roads in public—not County—right-of-way. It looks like that is also your understanding.

The limitation of 25 lots on a dead-end road is a newer subdivision concept related to the need to get emergency vehicles in and out of residential developments. Section 8.4.4.D.1, is in the subdivision regulations of the LDC. Chapter 8 applies to ". . . divisions of land including subdivisions, replats, subdivision exemptions, rural land use plans, and other actions resulting in the creation of new lots, parcels, or tracts or the reconfiguration of existing lots, parcels, or tracts, unless specifically exempted." § 8.1.2, LDC.

Mr. Pickett's building permit was issued pursuant to the Merger by Contiguity ("merger") provisions of the LDC (§ 5.6.7, LDC), which is a zoning action, not a subdivision action. Chapter 5 involves "uses", which is zoning. Planning staff interprets § 8.4.4.D.1 as applying to the creation of new lots in the subdivision process—not to merger. The lots in Black Forest Park Subdivision were created in 1926, so new lots are not being created. Merger does not create new lots and does not reconfigure (or redraw) existing lots but simply combines existing nonconforming legal lots for zoning purposes to achieve zoning lots. A zoning lot results ". . . where an owner merges or combines one or more lots or parcels using a merger by contiguity or combination agreement in conformance with Chapters 5 and 7 where the merged or combined lots or parcels shall be considered a zoning lot." § 1.5, Definitions, Lot, Zoning, LDC. Section 5.6.7.A.3, LDC, states that "Recognition of nonconforming lots shall not be a basis or justification for new subdivision development." In order for the 25 lots on a dead-end road to apply, subdivision would have to be triggered, but this says that merger (an "aspect of recognition of nonconforming lots") does not trigger subdivision—it is not a "basis or justification for new subdivision development."

Arguendo, even if § 8.4.4.D.1 applied here, there are second accesses that would allow more than 25 lots on a dead-end road. I assume the argument for application of the limitation would be that both Fools Gold Lane and Park Avenue are dead-end roads, both obtaining their access from Evergreen Road. There would be 52 lots fronting on Fools Gold Lane (Pine Avenue on the Plat) including the lots in Block 4 and half of the lots in Blocks 2 and 3. Likewise there would be 52 lots fronting on Park

Avenue including the lots in Block 1 and the other half of the lots in Blocks 2 and 3. Middle Road, which separates Blocks 2 and 3, provides a second access for the lots on Fools Gold by allowing them to cross over and exit off of Park Avenue, and similarly, provides a second access for the lots on Park Avenue to cross over via Middle Road and exit off of Fools Gold Lane. There is also a lane—Benet—toward the north end of Fools Gold Lane that could provide another second access both to lots on Park Avenue (via Middle Road) and lots on Fools Gold Lane.

Under either the merger provisions or the second access by arguendo analysis (even if it were applicable), the County does not believe that Mr. Pickett's ability to merge lots to create zoning lots and obtain building permits for residences violates § 8.4.4.D.1.

Merger by Contiguity

You also asked why Mr. Pickett is able to construct houses on smaller lots than allowed by the zoning without obtaining a variance. Much of the answer here I have already given to Mr. Query in e-mails I had sent him, so if he shared those with you, some of this will be repetitive. Mr. Pickett is able to do so through the merger provisions.

Black Forest Park Subdivision is now zoned RR-5, and the lots are nonconforming lots. RR-5 is a residential rural zoning district with a 5 acre minimum lot area requirement intended to accommodate low-density, rural, single-family residential development. The lots were legally created by the 1926 Plat, and the zoning was created in January 1955 so that the lots which previously had no minimum area requirements do not meet the current minimum lot area requirement of the zoning district. Further, pursuant to LDC definition, the lots are nonconforming legal lots because they were created by a pre-July 17, 1972 subdivision.

Because the lots are nonconforming legal lots due to lot size, in order to obtain building permits, the lots are subject to the merger provisions in § 5.6.7, LDC. Merger requires a progressive analysis whereby if the lot(s) cannot meet the requirements of step 1, then you go to step 2, and if they cannot meet those requirements, you go to step 3. So the following is the analysis applied to Mr. Pickett's lots.

Step 1 is § 5.6.7.B.1—Nonconforming Lots Considered Conforming. A nonconforming legal lot is considered exempt from minimum lot size requirements where:

- there are both central water and central sewer and the area of the legal lot is at least 60% of the minimum lot area required by the zoning district; or
- there is central water and the area of the legal lot is at least 20,000 square feet; or
- there is no central water or central sewer and the area of the lot is at least 2.5 acres.

None of Mr. Pickett's lots meets these requirements because there is neither central water nor central sewer and none of the lots meet the size requirements; therefore, the analysis moves to step 2.

Step 2 is § 5.6.7.B.2—Nonconforming Lots Made Conforming. "Where a legal lot does not meet the above requirements to be exempted from the minimum lot size requirements, contiguous legal

lots under the same ownership shall be combined through a merger by contiguity process to create a zoning lot and the resulting parcel shall be considered conforming with respect to the minimum lot size requirement where:

- Central water is provided, but not central sewer, and the resulting lot after any required merger is at least 10,000 square feet; or
- No central water or central sewer is provided and the resulting parcel after any required merger is one acre or more in area."

Mr. Pickett can combine any 2 of his lots in Block 2 or any 2 of his lots in Block 3 and meet the 1 acre requirement of § 5.6.7.B.2; therefore the analysis does not proceed to step 3.

Also within step 2 is the related provision addressing remainder lots:

> "A remainder nonconforming lot or parcel not required to meet the minimum lot size requirement for the subject property to be considered a conforming zoning lot shall be considered conforming provided the owner requests and receives a zoning lot determination from the [PCD] Director, and files the determination for recording with the Clerk and Recorder within 30 days of the date of the determination."

The remainder provision would apply in this case. Mr. Pickett owns Lots 13-17, Block 2. He obtained approval from the PCD Director to merge by contiguity Lots 13 and 14 on March 9, 2017, which was recorded the same day at Reception No. 217027463. He can obtain a building permit and put a single family residence on this zoning lot. He also could submit a request to merge Lots 16 and 17 or 15 and 16, and if approved, he could obtain a building permit and put a single family residence on this zoning lot. If he merges some combination of these 3 lots, then Lot 15 (or Lot 17 if he merged Lots 15 and 16) would be a remainder lot and he could request a zoning lot determination from the PCD Director and, if approved, obtain a building permit and put a single family residence on this lot.

Mr. Pickett also owns Lots 9-14 and Lot 20, Block 3. The same type of merger and remainder lot analysis would apply to these lots, which would result in his ability to obtain building permits for up to 4 single family residences if the merger by contiguity applications are approved for 3 mergers of 2 lots each and 1 lot is a remainder lot that would be subject to the zoning lot determination process.

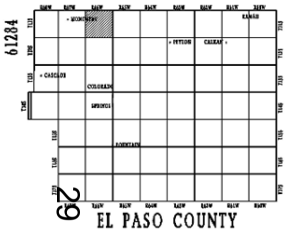
Step 3 would be the variance process under § 5.6.7.B.3. If a nonconforming legal lot cannot meet the requirements under either step 1 or step 2, than a person would have to obtain a lot size variance from the Board of Adjustment. This process would not apply to Mr. Pickett because he qualifies for merger under step 2.

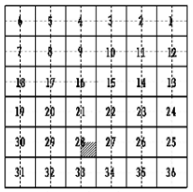
Based on the above, it is County PCD staff's opinion, and my legal opinion based on information I have obtained from PCD and my analysis of the regulations, that Mr. Pickett has not violated the limitation of 25 lots on a dead end road and he has obtained the necessary approval to merge his Lots 13 and 14, Block 2 to obtain a building permit and put a single family residence on the zoning lot. I am

glad to talk this further with you as you may wish; however, I will want to have PCD staff participate as they are the experts and interpreters of the Land Development Code.

I have attached the following for your reference:

1. Plat 869 Black Forest Park
2. Assessor's Sheet 61284 showing Black Forest Park
3. § 8.4.4.D.1 & 2, LDC
4. § 5.6.7, LDC
5. Merger by Contiguity approval for Lots 13 and 14, Block 2



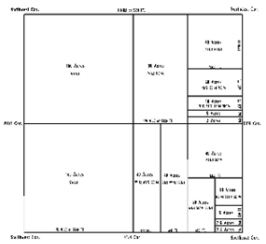


ASSESSOR

CIS

Geographic Information System

El Paso County Colorado



Rectangular Survey of One Section

61284

ADJOINING 61281

ADJOINING 61000

ADJOINING 61270

ADJOINING 61330

ASPEN WOODS

PLAT #5362

PROBST SUB.

PLAT #5277

EVERGREEN SUB.

PLAT #9451

SPREIER SUB.

PLAT #5019

BLACK FOREST PARK

(909 – 522)

(2492 – 312)

(2492 – 620)

(847 – 153)

(5312 – 870)
RES. NO. 86 – 315

ROLLER RD.

COASTER RD.

AVE.

PARK

MIDDLE RD.

GOLD LANE

FOOLS

EVERGREEN

RD.

61284

From: Edith A. Disler, PhD, MBA, Lt Col (Ret), USAF 30 Oct 2020

To: The El Paso County Board of Adjustment

Dear BOA Members:

I am writing to appeal Mr. Craig Dossey's Administrative Determination regarding lot size for Parcel ID: 61284-02-035. Mr. Dossey declared in Document 218009341 that the merger by contiguity of two nonconforming .75 acre parcels into a lot of 1.38 acres "is considered legal pursuant to Section 5.6.7.B.2, Nonconforming Lots Made Conforming." This was an erroneous Administrative Determination for the following reasons:

1) The PCD Director's administrative determination allowed the owner of the property to abandon his ¾ acre non-conformity, and re-establish a 1.3 acre nonconformity, in violation of 5.5.1 of the BLC, which does not allow the re-establishment of nonconformity once it has been abandoned.

2) The PCD Director allowed the owner of 15995 Park Avenue to use an inapplicable provision under the subject line of "Nonconforming Lots Made Conforming". In an RR-5, only a lot enlarged to the zoning requirement – 5 acres in this case – is considered "Made Conforming." Enlarging from ¾ acre to 1.25 or 1.3 acres does not "make" the lot conforming to an RR-5.

3) When the PCD Director gave the owner of 15995 Park Avenue "Administrative Relief" and declared a 1.3 acre lots to be a "zoning lot" following a merger by contiguity, he exceeded his authority according to BLC 5.4.1 (D) which only allows the PCD Director to authorize relief equal to a 20% reduction of the minimum lot size <u>required in the zoning</u>, i.e., authorization to permit a 4 acre nonconforming lot in an RR-5, but certainly not one as small as 1.3 acres.

4) BLC 5.5.7 (B) requires merger of as many contiguous lots as possible to avoid a variance, and requires that any "merger by contiguity" which does not create a conforming lot (i.e. 5 acres) be submitted to the BOA for a variance. Because of the PCD Director's erroneous declaration that a 1.38 acre lot was a "nonconforming lot made conforming" the owner failed to comply with this requirement and did not properly seek a variance from the BOA for the subject lot as required by code. Further, Mr. Dossey's determination overlooked the fact that Mr. Pickett owned 7 contiguous lots, comprising 4.7 acres. Note that this provision of the code requires merger of as many contiguous lot as possible to avoid a variance. Mr. Dossey's authorization to subdivide a 4.7 acre parcel using "merger by contiguity" to create 1.3 acre parcels violates this provision of the code.

5) When the PCD Director authorized a 1.38 acre zoning lot, he set up a public health problem in neglecting the provision of the land code which states that lots for homes requiring On-Site Water Treatment Systems (OWTS), i.e. septic fields, be at least 2.5 acres in size and contain a minimum of two available sites for septic fields per BLC 8.4.3.C.3.f.f.i.

6) The 1.3 acre lots created by the PCD Director's erroneous approval of a 1.38 acre lot created through "merger by contiguity" as "made conforming" through merger actions violates the 1972 standards for Rural Density, which calls for a 2.5 acre minimum in an RR-5. Per the BLC, even the 2.5 acre size requires BOA approval in an RR-5. This creation of urban density in turn impacts the county's requirements for road construction and maintenance and other considerations, of which the County Attorney seems unaware.

7) The PCD Director erroneously granted a “nonforming lot made conforming” regarding the merger by contiguity in question, when a merger does not guarantee the parcel is “buildable.” This fact is stated right on the “Merger by Contiguity” form, to which the owner of 15995 Park Ave legally affixed his signature on three separate occasions.

8) By approving 1.3 acres as a “Nonconforming lot made conforming” Mr. Dossey created a public safety problem by approving urban density at the end of a private, unpaved, narrow, dead-end road where emergency vehicles, particularly fire trucks and tenders, do not have room to turn around and where there are no fire hydrants, cisterns or dry hydrants. This endangers first responders, as well as the other residents of the community. I consulted Chief Burns of the Wescott Fire District regarding this situation. He is well aware of the conditions in Black Forest Park and concurs that this sort of density on these narrow, private, unpaved roads is dangerous.

9) The owner of 15995 Park Ave has used Mr. Dossey’s determination for 15995 Park Ave, lots 13 and 14 of Block 3 in Black Forest Park, to build on two other illegal lots without separate determinations: 15955 Park Ave (lots 11 and 12) and 15915 Park Ave (lots 9 and 10).

If you put any stock at all in the county’s Building and Land Code, this case is airtight. However, if you have any questions, I look forward to answering them during our meeting on December 9th, 2020.

With respect,

Edith A. Disler

From: Edith A. Disler, PhD, MBA, Lt Col (Ret), USAF 30 Oct 2020

To: The El Paso County Board of Adjustment

Dear BOA Members:

Between 2015 and 2020, developer Matthew Pickett illegally subdivided, and built 3 single family homes, on a 4.7 acre parcel comprised of seven contiguous ¾-acre nonconforming lots (platted in 1926) listed at the address 15915 Park Ave in Black Forest Park, an unincorporated area of El Paso County which is zoned RR-5. As you know, RR-5 requires 5 acre minimum lot sizes, unless the lots existed prior to 1972 (which these did) and are "grandfathered" as nonconforming. He purchased all 7 lots together in a single deed. There is no evidence that he paid taxes on 7 separate lots.

Another neighbor, Tommy Query, appealed to the county regarding his illegal subdivision of this and other parcels, but the Planning Department's and County Attorney's clear misinterpretation of code caused EPC to abet Mr. Pickett's violations.

My home at 15930 Fools Gold Lane is adjacent the illegally subdivided lot which used to carry the address 15915 Park Avenue but now carries the addresses 15915, 15955 and 15995 Park Ave. I tolerated a second house going up where there should be one. I tolerated the unpermitted clearing of at least 75 Ponderosa Pines and grading of a ¾ acre lot on my southern property line at what is now the address 15910 Fools Gold Lane – actions which ruined, for my lifetime, the view from the entire south side of my home and the land's original topography and drainage. But when I saw a third house going up on a 4 acre parcel, further ruining what I had invested in and planned for, I couldn't stand it any longer, and embarked on the process which brings us to this meeting.

I have scrubbed every line of the Building and Land Code and the Black Forest Preservation Plan, only to find that Mr. Pickett has committed one violation after another, while the county looked on. Those violations are outlined and documented in the attached slide presentation. In brief:

1) EPC allowed Mr. Pickett to abandon his ¾ non-conformity, and re-establish a 1.3 acre nonconformity, in violation of 5.5.1 of the BLC, which does not allow the re-establishment of nonconformity once it has been abandoned.

2) EPC allowed Mr. Pickett to use an inapplicable provision under the subject line of "Nonconforming Lots Made Conforming". In an RR-5, only a lot enlarged to the zoning requirement – 5 acres in this case – is considered "Made Conforming." Enlarging from ¾ acre to 1.25 or 1.3 acres does not "make" the lot conforming.

3) When the PCD Director gave Mr. Pickett "Administrative Relief" and declared 1.3 acre lots to be "zoning lots" he exceeded his authority according to BLC 5.4.1 (D) which only allows the PCD Director to authorize relief equal to a 20% reduction of the minimum lot size <u>required in the zoning</u>, i.e., authorization to permit a 4 acre nonconforming lot, but certainly not one as small as 1.3 acres.

4) BLC 5.5.7 (B) requires merger of as many contiguous lots as possible to avoid variance, and requires that any "merger by contiguity" which does not create a conforming lot (i.e. 5 acres) be submitted to the BOA for a variance. Mr. Pickett did not comply with this requirement, and the County Attorney does not seem to be aware of the requirement.

5) Mr. Pickett has created a public health problem per his violation of the BLC which states that lots for homes requiring On-Site Water Treatment Systems (OWTS), i.e. septic fields, be at least 2.5 acres in size and contain a minimum of two available sites for septic fields. There are now 3 septic fields on 4 acres, all 3 of which are adjacent to my western property line and all 3 of which, because of the soils in this neighborhood, will likely need to eventually be doubled in size. He has created other 1.3 acre lots in Black Forest Park which utilize OWTS, perpetrating the public health issue on other sites in the neighborhood.

6) The ¾ acre and 1.3 acre lots Mr. Pickett created through his merger actions violates the 1972 standards for Rural Density, which calls for a 2.5 acre minimum in an RR-5. Per the BLC, even the 2.5 acre size requires BOA approval in an RR-5. This creation of urban density in turn impacts the county's requirements for road construction and maintenance and other considerations, of which the County Attorney seems unaware.

7) Mr. Pickett employed "Merger by Contiguity" but a merger does not guarantee the parcel is "buildable." This fact is stated right on the "Merger by Contiguity" form, to which Mr. Pickett legally affixed his signature on three separate occasions. For the many reasons listed above, 1.3 acres is not a buildable lot in RR-5, yet Mr. Pickett and the COA equate the merger with the ability to build and the county erroneously issued him the necessary permits.

8) Mr. Pickett has created a public safety problem by building at urban density at the end of a private, unpaved, narrow, dead-end road where emergency vehicles, particularly fire trucks and tenders, do not have room to turn around and where there are no fire hydrants, cisterns or dry hydrants. This endangers first responders, as well as the other residents of the community. I consulted Chief Burns of the Wescott Fire District regarding this situation. He is well aware of the conditions in Black Forest Park and concurs that this sort of density on these narrow, private, unpaved roads is dangerous.

Mr. Pickett's motivation is greed. He has no regard for the sanctity, safety, or health of the people in Black Forest Park. He knew perfectly well he would require a variance, but wanted to avoid that process. So, he thought he had found a way around it, engaging in no diplomacy with neighbors, hoping he wouldn't be caught, and counting upon topcover from his allies within the county government, who have, knowingly or unknowingly, abetted his illegal actions.

I am coming to you to ask that you hold him accountable, not just for me, but especially because he has committed these same violations elsewhere within Black Forest Park, and has sold several homes built on illegally subdivided properties to several unwitting purchasers within Black Forest Park, and affecting the property values and solitude of the law-abiding property owners of the subdivision. I am well aware that you have many remedies available to you, to include that you require him to bring the properties into conformity, even if that means removing structures, and vacating land and home sales. Fines and jail time are also legal options per state statute.

If you put any stock at all in the county's Building and Land Code, this case is airtight. However, if you have any questions, I look forward to answering them during our meeting on December 9th, 2020.

With respect,

Edith A. Disler

Appeal to the El Paso County Board of Adjustment Regarding Violations of RR-5 Zoning in the Black Forest Park Subdivision of Unincorporated El Paso County

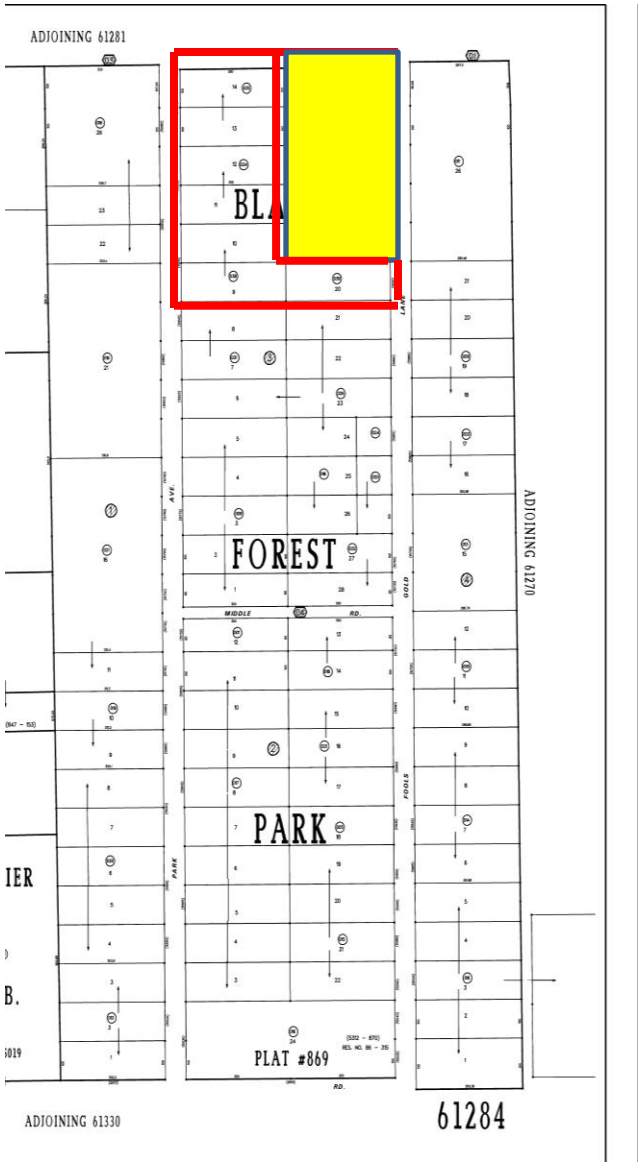
Appeal Brought by Edith A. Disler, PhD, Lt Col (Ret) USAF

Against Mr. Matthew Pickett

Black Forest Park was platted in 1926 according to the ¾ acre lots shown. It was zoned RR-5 – 5 acre minimum -- in 1972, with many lots nonconforming.

In the plat to the right, my lot is depicted in yellow. I bought it in 1993 and built my home on it in 2005, expecting a quiet retirement in the Black Forest in 2022.

In 2015, Mr. Pickett, a developer, purchased the parcel outlined in red. Now referred to as “Master parcel 61284-02-028”



Subdivision of the Master Parcel

- Subsequently, Mr. Pickett, without the proper BOA variance, subdivided the lot into 4 parcels, specifically parcel numbers:
  - 61284-02-033
  - 61284-02-034
  - 61284-02-035
  - 61284-02-036
- The BLC defines “subdivision” as the division of one parcel into “two or more parcels” which is, according to the county’s own language above, what was done: the “master parcel” became four lots, listed according to “parcel number.”
- Pickett did not submit this subdivision of the lot he purchased for variance or with appropriate site planning, therefore neighbors had no notification of variance. Trees started falling, houses started going up, and appeals to the county were flippantly brushed aside with misinterpretation and ignorance of the full code.

Now There are Three Houses Where There Should Be One. Does This Look Like RR-5?

COA Argues “Merger by Contiguity”

- The Planning Division and the County Attorney argue that Mr. Pickett did not subdivide, rather he used “Merger by Contiguity” to merge 2 lots at a time, to enlarge the 3/4 acre lots into 1.25 and 1.3 acre lots. Further, they argue that the 1.3 acre mergers constitute “zoning lots.” They are incorrect.
- In the following slides are 8 reasons the “Merger by Contiguity” argument does not “hold water” and the subdivision/mergers creating 1.3 acre lots do not override the RR-5 Zoning. There are more reasons, but I have kept it to these 8.

Reason 1 – Nonconformity Abandoned and Improperly Re-Established

- Mr. Pickett **abandoned the ¾ acre nonconformity and re-established nonconformity** in the form of 1.3 acre lots in an RR-5, which violates this provision in BLC 5.5.1:
- "The County seeks to allow nonconforming uses, structures, and lots to continue to exist and be maintained and put to productive use and to encourage as many aspects of the uses, structures, and lots to be brought into conformance with this Code as is reasonably practical. This Section is intended to recognize the interests of the property owner in continuing the nonconformity but also to preclude the extension, expansion, or change in character of the nonconformity or the **reestablishment of the nonconformity after it has been abandoned**."

Reason 2 – COA Misinterpreted the term “Made Conforming”

- The section of BLC the COA refers to in substantiating 1.3 acre lots – 5.5.7 (B) (1) -- does not apply in this case. COA is applying section “5.5.7 (B) (1) Nonconforming Lots Made Conforming.” This section does not apply, because the only way a lot is “Made Conforming” is if it is, in the case of an RR-5, enlarged to 5 acres, or, with BOA approval, made at least 2.5 acres or greater.

An Interpretation of 5.5.7 (B) (1) That Works

5.5.7 (B) (1) Nonconforming Lots Made Conforming. Where a legal lot does not meet the above requirements to be exempted from the minimum lot size requirements, contiguous legal lots under the same ownership shall be combined through a merger by contiguity process to create a zoning lot and the resulting parcel shall be considered conforming with respect to the minimum lot size requirement where:

- Central water is provided, but not central sewer, and the resulting zoning lot after any required merger is at least 10,000 square feet; or
- No central water or central sewer is provided and the resulting parcel after any required merger is **one acre or more in area.**

THIS is the "Nonconforming Lot Made Conforming"

THIS is the merger by contiguity

= 1.5 acres "merger by contiguity" = "**one acre or more in area**"

Now: "Nonconforming Lot is Made Conforming" by addition of the 1.5 acres created by "Merger by Contiguity" to "Make Conforming" a (3.8+1.5)=5.3 acre lot in the RR-5

Clarification from the Black Forest Preservation Plan

- From page 79 of the plan (85/106 in the online pdf):
  - 3.c In existing small lot subdivisions in designated low density areas, **the consolidation of as many lots as possible should be strongly encouraged in order to attempt to meet current minimum lot size requirements**.
  - 3.d Minimum lot area criteria should be developed for nonconforming subdivisions in cooperation with property owners.
  - 3.e **The granting of lot area variances or the creation of additional small lots in designated low density residential areas should be discouraged except in the clear case of hardship.**
- PCD and COA clearly did not "strongly encourage" consolidation of lots to meet minimum lot size requirements and, clearly, a variance was required.

Clarification from Nearby Castle Pines, CO; A Better Explanation of Merger by Contiguity

- **212.01 Parcels Described By Metes and Bounds**
  - When two or more contiguous, nonconforming parcels come under single ownership and are described in the same deed, after May 5, 1972, these parcels shall be deemed one parcel.
  - The subsequent division of such land into two or more parcels/lots shall be in accordance with the City of Castle Pines Subdivision Ordinance, even if the land is to be divided as previously described or conveyed.
- Castle Pines is one community that has clarity on the disposition of contiguous, nonconforming parcels under single ownership.

Reason 3 – PCD Director Exceeded His Authority

- COA argues that the PCD Director Granted Administrative Relief to Zoning IAW 5.5.7, declaring the 1.3 acre lots as "zoning lots."
- This exceeds the PCD Director's authority IAW 5.4.1 (B) which states "The PCD Director may only grant relief in accordance with the following standards:
  - (1) Reduction in Lot Area, Setbacks, and Lot Width. **A maximum of a 20% reduction in lot area, setbacks and lot width from the amount required in the zoning district** in which the subject property is located may be approved."
- Doing the math, the PCD Director may only grant administrative relief for a lot as small as 4 acres in the RR-5 zoning district – anything smaller, as in this case, requires BOA approval, which Mr. Pickett and the county did not seek.

Reason 4a – Violator Purchased a Parcel Comprised of 7 Contiguous Lots and Divided Them Up Anyway

- Per BLC 5.5.7 (B) (3) (a) : Requirement to Use Merger by Contiguity as Alternative to Variance.
  - (a) No nonconforming lot or parcel due to lot size shall be determined to be eligible for a lot size variance **if a contiguous lot or parcel under the same ownership is available to be merged to the nonconforming lot or parcel**.
- COA will argue no variance was required. COA is incorrect. See next slide:

Reason 4b – Lots Still Nonconforming After A Merger Require A Variance

- Per 5.5.7 (B) (3)
  - (b) Requirement for Variance. A nonconforming lot or parcel or **zoning lot** resulting from a **merger by contiguity** that fails to comply with the minimum lot size requirements to be considered conforming [i.e. > 2.5 acres in an RR-5, see BLC 5.5.7 (B) (1)] **shall be required to obtain a lot size variance from the Board of Adjustment**.

Reason 5 – Public Health

- According to the Building and Land Code 8.4.3 (C) (3) (f) (f) (i), lots requiring septic fields require 2.5 acres minimum and 2 septic field locations.
- The lots in question are in a zone which the BFPP describes as having "Severe Constraints" for septic suitability.
- Due to Mr. Pickett's zoning violations, there are now 3 septic fields on less than 4 acres adjacent to my western property line. Because of the soils, they may all 3 need to be doubled, as has happened with my septic field and my neighbor's. That is essentially 6 septic fields on 4 acres, all within 100 yards of my home.
- COA argues this parameter does not apply, because it is in Chapter 8, which governs "Subdivision."
  - A) As shown on slide 3, Mr. Pickett did, by the County's own terminology, engage in "Subdivision"
  - B) The COA's argument is silly on its face as it implies that we get to pick and choose what we shall comply with in the BLC

Reason 6 – Violation of Rural Density

- There is no dispute that the lots/parcels in question are zoned RR-5, or Rural Residential – 5, which is defined in Table 5-4 as having a minimum lot size of 5 acres; 200 foot minimum width at front setback; minimum front, rear, and side setbacks of 25 feet; and 25% maximum lot coverage
- Further, Rural Residential zoning, per BLC definition, consists of lots of 2.5 acres or greater; anything less than that density is Urban Residential density

THIS, is Rural Density in Black Forest Park – the Home Due East of Mine

49

Does This Look Like Rural Density?

50

Reason 7 – Merged ≠ Buildable

- The fact of a merger by contiguity does not equate to the right for an owner to build if other considerations of the zoning are not met. This is stated quite clearly on the very Merger by Contiguity Forms to which Mr. Pickett legally affixed his signature on three separate occasions.
- See for example, document 218009340 which says, **"NOTE: Merger does not relieve the property of compliance with regulations or criteria of other agencies or departments or of other applicable sections of the Land Development Code, except as otherwise expressly provided for in subsection K…Merger does <u>not guarantee</u>** [emphasis on the form] **that the affected parcel will be considered as a 'buildable parcel.'"**

Reason 8 – Public Safety

- The roads in the subdivision are all narrow, dead end, dirt roads and are not county maintained. The roads are therefore not the appropriate width for emergency vehicles including EMS vehicles, fire trucks, and tenders which have no place to turn around on the dead end street on which Mr. Pickett has increased density to 3 houses per 4 acres. This thoughtlessly endangers the lives of the residents of these homes, the lives of first responders, and the lives of other residents in Black Forest Park and other areas served by the Wescott Fire District.

Additional Concerns

- This area is defined as Timberland. Mr. Pickett removed over 3 acres of timber for all of this construction, including nearly ¾ acres of timber at 15910 Fools Gold for which there is no record of him having a driveway permit, a clearing permit, or a grading permit, and on an unbuildable site.
- Mr. Pickett cleared this 3/4 acre lot and leveled it for no reason at all and without permits to do so. Even though it is unbuildable, he listed it for sale for $120,000.00. The 30 year old, and older, Ponderosa Pines he removed are irreplaceable.

¾ Acre Lot on Fools Gold Pickett Cleared and Graded without Permits – Mature Ponderosa Pines Destroyed; View, Drainage and Topography Severely Affected

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Additional Concerns (cont'd)

- I filed a Code Violation complaint regarding the violation of the 2.5 acre minimum lot requirement for OWTS. The code violation complaint was refused and remains uninvestigated.
  - It turns out that the same people who approved Mr. Pickett's code violations are the ones who inspect code violations. This is a severe conflict of interest the county must address.

What I Seek

- The Board of Adjustment has many options, including the latitude to require Mr. Pickett to restore the master parcel to its original condition and, per state statute, fines and jail time for every day that these zoning violations have persisted. I will not pretend to have your experience and expertise in terms of mitigation and restoration, but I beg that you exercise them to the fullest.
- I ask that my rights be protected as the aggrieved citizen. In 1993 I purchased a lot in 5-acre zoning, trusting that the forest and privacy and quiet would be there upon my retirement. I was wrong.
- We in Black Forest Park have watched the county put a developer's interests ahead of the individual property owners'. We have lost trust and confidence in El Paso County's ability to guard our rights, health, safety, and property value. You can begin to restore a modicum of confidence by doing the right thing at this juncture.
- In my lifetime, I will never again see the forest I loved to my west or my south. It has been destroyed. But structures can be removed, and trees replanted so that perhaps one of my children can see, well after I am gone, what I loved about my homesite for so long, before Mr. Pickett destroyed it.

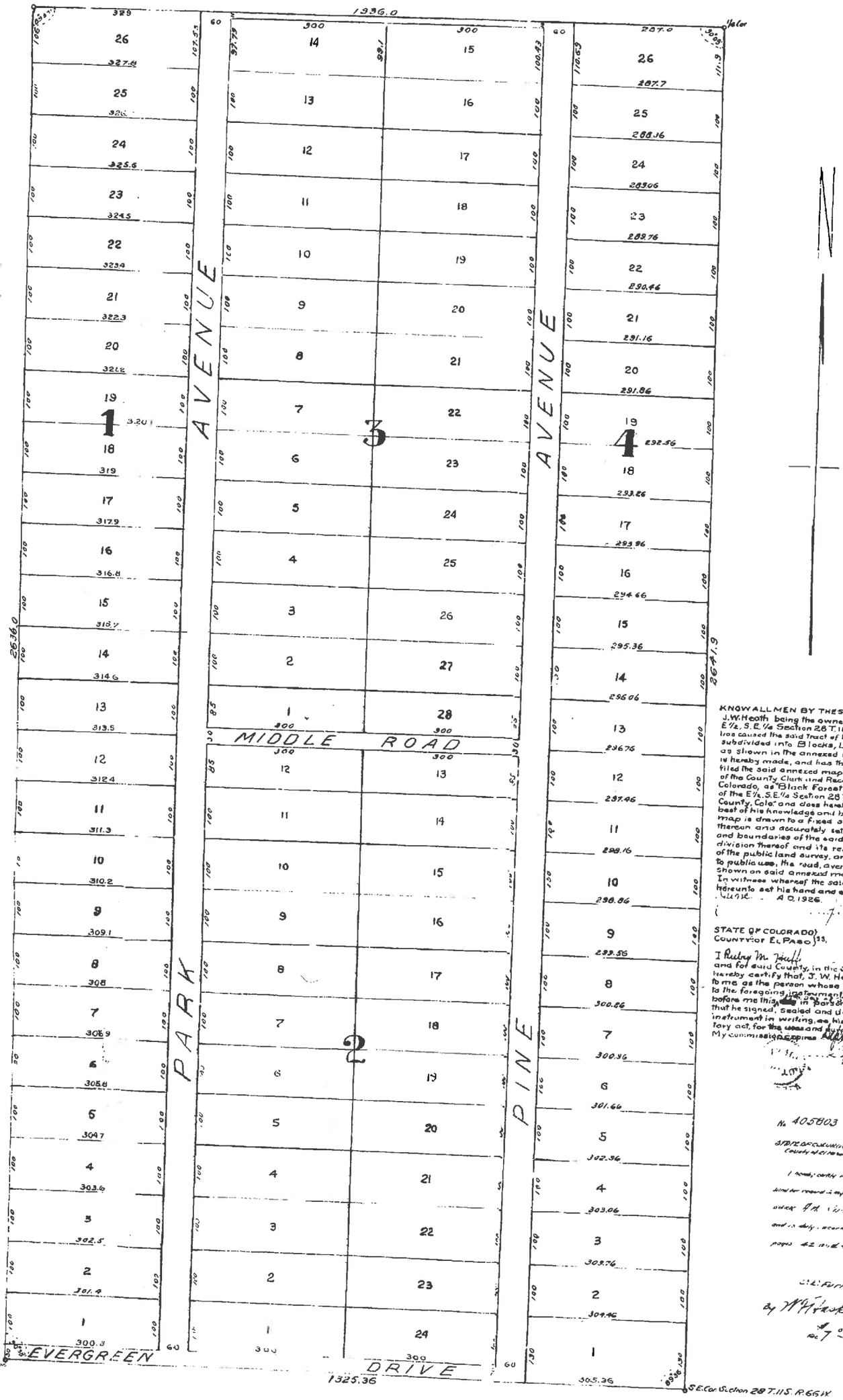
BLACK FOREST PARK 869

A SUBDIVISION OF THE E½ S.E. ¼ SECTION 28 T 11 S. R 66 W.

EL PASO COUNTY, COLO.

SCALE: ONE INCH = 100 FEET

WILLIAM GARSTIN, ENGR.



KNOW ALL MEN BY THESE PRESENTS: That J.W. Heath being the owner in fee simple of the E½, S.E. ¼ Section 28 T. 11 S. R 66 W. of the 6th P.M. has caused the said tract of land to be surveyed and subdivided into Blocks, Lots and Roadways as shown in the annexed map to which reference is hereby made, and has the date below given, filed the said annexed map for record in the office of the County Clerk and Recorder of El Paso County Colorado, as "Black Forest Park, A Subdivision of the E½ S.E. ¼ Section 28 T. 11 S. R 66 W. El Paso County, Colo." and does hereby declare that to the best of his knowledge and belief, the said annexed map is drawn to a fixed scale as indicated thereon and accurately sets forth the dimensions and boundaries of the said tract and this subdivision thereof and its relation to existing corners of the public land survey, and does hereby dedicate to public use, the road, avenues and drive as shown on said annexed map.

In witness whereof the said J.W. Heath has hereunto set his hand and seal this 17th day of June A.D. 1926.

J.W. Heath

STATE OF COLORADO)
County of El Paso) ss.

I Ruby M. Tuff a notary public in and for said County, in the State aforesaid, do hereby certify that, J. W. Heath, personally known to me as the person whose name is subscribed to the foregoing instrument in writing, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument in writing, as his own free and voluntary act, for the uses and purposes therein set forth.

My commission expires [illegible]

Ruby M. Tuff
Notary Public

No. 405803

STATE OF COLORADO)
County of El Paso) ss.

I hereby certify that this instrument was filed for record in my office at 11:17 o'clock A.M. this 19th day of July A.D. 1926 and is duly recorded in Book P. pages 42 and 43.

C.L. Farrow, Recorder
By W.H. Hawkins Deputy
Fee $7.00

LDC-91-005 (Rick

Commissioner Campbell moved adoption of the following Resolution:

Free

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION NO. 92-334, Land Use-61

WHEREAS, El Paso County Planning Department requests approval of Amendments to Section 11, R-T (Residential-Topographic) District, and Section 35.2, Nonconforming Buildings and Nonconforming Uses, of the El Paso County Land Development Code as herein described, as well as conforming amendments throughout the Code; and

WHEREAS, informational hearings were held with the residents of Ute Pass, Black Forest, Tri-Lakes and Falcon areas in order to take public comment; and

WHEREAS, the Regulatory Review Committee, on September 2, 1992, recommended approval of these proposed amendments; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on September 15, 1992, upon which date the Planning Commission did by formal resolution recommend approval of the subject Amendments; and

WHEREAS, a public hearing was held by this Board on November 12, 1992; and

WHEREAS, based on the evidence, testimony, exhibits, recommendations of the El Paso County Planning Commission, comments of the El Paso County Planning Department, comments of public officials and agencies, and comments from all interested parties, this Commission finds as follows:

1. That proper publication and public notice was provided as required by law for the hearings before the Planning Commission and Board of County Commissioners of El Paso County.

2. That the hearings before the Planning Commission and the Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard at those hearings.

3. That all data, surveys, analyses, and studies, as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet the intent of the General Provisions of the El Paso County Land Development Code.

4. That the proposal shall hereby amend the Land Development Code for El Paso County.

5. That for the above-stated and other reasons, the proposed Amendments are in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED that the Amendments to Section 11, R-T (Residential-Topographic) District, and Section 35.2 Nonconforming Buildings and Nonconforming Uses, of the Land Development Code of El Paso County, as well as conforming amendments throughout the Code, more particularly described in Exhibit A which is attached hereto and incorporated by reference, be approved;

BE IT FURTHER RESOLVED that the aforementioned revisions to the Land Development Code are represented on the attached Exhibit A by underlining (additions) and strike-through (deletions);

AND BE IT FURTHER RESOLVED that the amendment shall be effective as of this date;

AND BE IT FURTHER RESOLVED that the record and recommendations of the El Paso County Planning Commission be adopted;

AND BE IT FURTHER RESOLVED that, in the case of any inconsistency with these amendments and any previous Zoning Regulations, these revisions shall prevail.

DONE THIS 12th day of November, 1992, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By _____
Chairman

_____
Deputy County Clerk

Commissioner Howells seconded the adoption of the foregoing Resolution. The roll having been called, the vote was as follows:

Commissioner Shupp	aye
Commissioner Campbell	aye
Commissioner Whittemore	aye
Commissioner Howells	aye

The Resolution was unanimously adopted by the Board of County Commissioners of the County of El Paso, State of Colorado.

SECTION 35.2

NONCONFORMING BUILDINGS, USES, LOTS OR PARCELS AND MERGER BY CONTIGUITY

A. DEFINITIONS

1. A "nonconforming use" shall include any legally existing use, whether within a building or other structure or on a tract of land, which does not conform to the "use" regulations for the zoning district in which such "nonconforming use" is located, due to subsequent amendments of the Zoning Regulations or due to the zoning or rezoning of the property on which the use is situated.

2. A "nonconforming building" shall include any legally existing building which does not conform to the structural lot coverage, height and/or setback regulations for the zoning district in which such "nonconforming building" is located, due to subsequent amendments of the Zoning Regulations or due to the zoning or rezoning of the property on which the building is situated.

3. A "nonconforming lot or parcel" is a legally created lot or parcel of land which, due to subsequent amendments of the Zoning Regulations or due to the zoning or rezoning of the lot or parcel, does not conform with the minimum lot area requirement of the zoning of the lot or parcel. Said nonconforming lot or parcel shall be benefited and burdened by the privileges and restrictions of the applicable zoning district, except as otherwise provided in subsection K. below.

E. RESTORATION

A nonconforming building damaged or partially destroyed by fire, explosion or natural occurrence may be restored to the condition in which it was immediately prior to the occurrence of such damage or destruction, provided:

1. The restoration or reconstruction shall not extend beyond the original limits of the structure in setback, lot area coverage, height, floor area, and number of bedrooms or bathrooms (if applicable).

2. All restoration or reconstruction shall be started within one (1) year from date of damage and shall be completed within two (2) years.

K. NONCONFORMING LOT OR PARCEL AND MERGER BY CONTIGUITY

PART I. - NONCONFORMING LOT OR PARCEL

PURPOSE

The purpose of this Part I of subsection K. is to establish a new mechanism for recognizing the nonconforming status of certain substandard-sized lots or parcels which heretofore were all subject to a variance review process by the Board of Adjustment. Based upon reasonable health, safety, environmental and land use factors, the following four (4) category approach has been structured to address substandard-sized lots or parcels in El Paso County.

Recognition of nonconforming lots shall not be a basis or justification for new subdivision development. New subdivisions shall comply with the applicable zoning requirements.

REGULATIONS AND CRITERIA

Upon request, any lot or parcel shall be recognized as nonconforming provided, a) the creation of the lot or parcel was in conformance with all applicable subdivision and zoning regulations at the time of its creation, b) the lot or parcel is currently in compliance with all zoning use regulations and/or conditions and restrictions of any applicable Special Use or Use Variance approval, and c) the lot or parcel complies with the requirements and criteria of this subsection K.

1. Lot size and water and sewer status

   a. For any lot or parcel in which domestic water and sewer are provided by central water and sewer systems, the lot shall contain at least eighty percent (80%) of the lot area as required by the zoning district.

   b. For any lot or parcel in which domestic water is provided by a central system but sewer is not provided by a central system, a nonconforming determination shall be subject to the review/ process/criteria as illustrated in Table 1 and provided for in paragraph 2. of this subsection K. below.

Table 1
(This table applies only to lots on central water)

Category	Dwelling Status/ Lot Size	Review/Process/Criteria Required*	Subject to Merger (See Part II)
Category 1	Vacant lot(s) with less than 10,000 square feet of lot area Lot(s) of less than 10,000 square feet with residence undergoing habitable** addition	See subparagraph 2.a.	Yes
Category 2	Vacant Lot(s) of 10,000 up to, but not including, 20,000 square feet Lot(s) of 10,000 up to, but not including, 20,000 square feet with existing residence undergoing habitable addition**	See subparagraph 2.b.	Yes
Category 3	Lot(s) of less than 10,000 square feet with an existing residence; determination for nonconformity "as is" Lot(s) of 10,000 up to, but not including, 20,000 square feet with an existing residence; determination for nonconformity "as is"	See subparagraph 2.c.	Yes
Category 4	Lot(s) of 20,000 square feet or greater	No review necessary	No

* The numbers noted identify a specific review/process/criteria provided under paragraph 2. of this subsection K.

** Habitable space is that area located inside a dwelling consisting of bathrooms, bedrooms, living rooms, dining rooms, kitchens, dens, lofts or similar space.

c. For any lot or parcel in which neither central water or sewer is available, a determination of nonconforming can be made subject to the review/process/criteria, as illustrated in Table 2 and provided for in paragraph 2. of this subsection K.

Table 2
(This table applies only to lots utilizing wells)

Category	Lot Size	Review/Process/Criteria Required***	Subject to Merger (See Part II)
Category 1	Lot(s) less than one acre	See subparagraph 2.a.	Yes
Category 2	Lot(s) of one acre up to, but not including, 4.75 acres	See subparagraph 2.b.	Yes
Category 4	Lot(s) of 4.75 acres or greater	No review necessary	No

2. Review/Process/Criteria Requirements

a. **Category 1 requirements:**

Submittal to, review and approval by the Board of Adjustment is required as provided in section 4.B. and section 34 of the Land Development Code.

b. **Category 2 requirements:**

1) Standards

The following performance standards must be demonstrated in accordance with the procedures and submission requirements of this subparagraph 2.b.

a) All isolation distances of an Individual Sewage Disposal System (ISDS), including a one hundred foot (100') radius for the well providing water on the property, shall be designed and located entirely on the lot or parcel. Verification must be provided from the Department of Health and Environment noting

*** The numbers noted identify a specific review/process/criteria provided under paragraph 2. of this subsection K.

that these requirements are in compliance with the ISDS regulations.

b) The extraction of areas containing a Federal Emergency Management Act (FEMA) designated one hundred (100) year floodplain, major drainageways and/or slopes in excess of thirty (30) percent leaves a single buildable area of at least fifty (50) percent of the lot or parcel's total net area. In the instance where properties are merged, the parcel after merger shall contain a single buildable area of at least thirty percent (30%) of the parcel's total net area.

2) Procedures:

a) Any applicant desiring to establish the nonconforming status of their lot or parcel as provided in this subparagraph 2.b. may seek an administrative determination by making application to the County Planning Department. All documentation, information and/or site or plot plans necessary to satisfy the performance standards contained in this subparagraph 2.b. shall be attached to the application.

b) Within ten (10) working days following receipt of a complete application, the Planning Director or his/her designee shall complete his/her review, which may include consultation with the County Department of Health and Environment, and render a decision of approval or disapproval on the application. Specific findings shall be made in support of this decision. The decision shall be considered "rendered" by mailing a first-class letter of the decision to the applicant. The Planning Director or his/her designee may incorporate reasonable conditions and restrictions deemed necessary to assure that the performance standards are adequately satisfied.

c) Any party aggrieved by the decision of the Planning Director or his/her designee may appeal the decision to the Board of Adjustment by submitting to the Planning Department a completed application provided by the Planning Department and paying the applicable fee within thirty (30) days of the date of the decision letter. An applicant may also request a lot area variance through the Board of Adjustment. Such appeal or variance request will be processed as

provided in Section 34 of the Land Development Code.

3) Application Requirements

a) A letter of intent (subsection 36.A.) requesting a nonconforming lot or parcel determination, legal description, and a site/plot plan (subsection 37.A.) of the property.

b) Verification from the El Paso County Department of Health and Environment of the adequacy of the ISDS [refer to K.2.b.1) a)].

c) A completed merger by contiguity form, if subject to the Merger by Contiguity as provided in Part II of this subsection K.

If the lot or parcel would otherwise be subject to the merger criteria and the applicant(s) do not own contiguous property, then the applicant(s) shall provide a statement acknowledging that he/she/they do not own or otherwise have an interest in any contiguous property at the time of submittal.

d) Other relative information as may be requested by the Planning Department in order to make a determination concerning drainageways, floodplains and slopes.

c. **Category 3 requirements:**

1) An "as is" determination means the existing residence in its current external configuration, i.e., without any habitable additions. Any future habitable additions would be subject to review/process/criteria under **Category 1 or 2**, as applicable. Nonconforming status for a lot or parcel under **Category 3** is valid *only* while the existing residence remains in its present exterior configuration.

2) Notwithstanding the restrictions contained in sub-subparagraph 1) above, if the residence is damaged or partially destroyed, it may be restored or reconstructed as provided in subsection 35.2 E. above. Otherwise, any other construction must comply with the provisions of this subsection K.

3) Upon request, an administrative determination of nonconformity will be made, provided the request includes a) a site plan with boundary dimensions, lot size, all existing buildings and structures, easements, setbacks and roads, fully dimensioned; b) legal description; c) letter requesting the determination; and d) verification provided by the El Paso County Department of Health & Environment that there is no evidence of a sewage problem or that any sewage problem is being properly remedied.

3. Within five (5) working days of receipt of a request for an administrative determination, the Planning Department shall notify all adjoining property owners by regular mail of the applicant's intent to seek an administrative determination of nonconformity under this subsection K. Said notice shall indicate that the aggrieved party can appeal the decision to the Board of Adjustment within thirty (30) days following any approval made by the Planning Department. The grounds for appeal shall be limited to those standards and issues identified in this subsection K. for administrative determinations.

4. Prior to the Planning Department's authorization for the issuance of a building permit for a new residence or for a habitable addition to an existing residence located upon a nonconforming lot or parcel, an applicant must provide and satisfy the following:

a. Verification of existing Individual Sewage Disposal System or permits for new Individual Sewage Disposal System from the El Paso County Department of Health & Environment, if not on a central sewer system, establishing the acceptability and/or adequacy of the system; and

b. Verification of the water source for a new residence or structure utilizing water, in the form of a water tap, an absolute commitment of water service from an established water provider, or well permit, as applicable.

5. The Planning Department can authorize the issuance of a building permit for a non-habitable addition or improvement (e.g., a garage, deck, tool shed) without any determination of nonconformity.

6. Multiple lots or parcels under the same ownership may be subject to Merger by Contiguity as provided in Part II of this subsection K.

7. Nonconforming lots or parcels shall comply with all development requirements of the applicable zone district unless otherwise indicated in this subsection K. Lots or parcels subject to the Merger by Contiguity provision shall have setbacks applied only along the exterior boundaries of the merged properties. Lot frontage requirements shall not apply to nonconforming lots or parcels.

8. Disclaimer - In the event that a lot or parcel is determined to be a nonconforming lot of record, such determination does not relieve the property of compliance with regulations or criteria of other agencies or departments or of other applicable sections of the Land Development Code, except as otherwise expressly provided in this subsection K. Recognition as a nonconforming lot or parcel does not warrant that the parcel or lot will be a "buildable lot" or that an ISDS permit will be issued.

PART II: MERGER BY CONTIGUITY

PURPOSE

The purpose of this Part II of subsection K. is to establish a mechanism whereby the number of substandard-sized lots or parcels is reduced to the maximum extent possible and re-formed into lots or parcels more closely sized to the lot size requirements of the applicable zoning districts. The combination of lots or parcels under this provision is based upon the common ownership of contiguous lots or parcels which existed, or is existing, one hundred twenty (120) days prior to or any time subsequent to the date of enactment of this Part II.

9. APPLICATION

a. Certain nonconforming lots or parcels as provided for in subsection K. of Part I above may be subject to merger by contiguity as provided for within this Part II. The merger requirement applies to any two (2) or more contiguous lots and/or parcels of land subject to the requirements of this Part II. Upon merger, the combined lots shall be considered as one (1) parcel of land for the purposes of County zoning and subdivision administration.

The merger provision shall apply to:

- all lots and/or parcels of less than 2.5 acres without central water and sewer

OR

- all lots and/or parcels of less than twenty thousand (20,000) square feet if central water is provided

when all of the following conditions or circumstances occur:

1) Not more than one (1) residential dwelling is situated on the lots and/or parcels.

2) All of the lots and/or parcels are within the same zoning district,

3) All of the lots and/or parcels are owned, in whole, by the same person, persons or entity****

b. After any required merger which combines lots to satisfy the minimum requirements specified in subparagraph K.9.a., a remaining remnant parcel may exist. The remnant parcel may be considered as an independent nonconforming parcel provided it satisfies the applicable criteria of Part I.

10. CONTIGUITY

a. Lots and/or parcels shall be regarded as contiguous when not less than one-sixth (1/6th) of the perimeter of either property is shared by both properties or if the lots and/or parcels share a common boundary of at least fifty (50) feet, whichever is less.

b. Severance of Contiguity:

1) The contiguity of lots and/or parcels shall not be considered severed by the existence, along their common boundaries, of a private road, road easement, driveway or alley; a public or private transportation or utility easement or utility right-of-way; a river, creek, stream, or other natural or artificial waterway; any geologic condition that naturally or artificially divides property; or an intersecting mining claim.

11. RECORDATION

Upon applying for a building permit or seeking any land use approvals, or requesting a determination of nonconformity, the property owner(s) of all lots and/or parcels subject to these merger by contiguity requirements

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**** Any conveyance of title of any contiguous lot or parcel coming under this paragraph within one hundred twenty (120) days prior to the effective date or after the effective date of this Part II shall be presumed to be an attempted evasion of the merger by contiguity requirements, which will ordinarily result in the application of this Part II. Merger shall occur, in accordance with this Part II, where contiguous lots and/or parcels are owned by a husband and/or wife, individually or by joint or common ownership. Any property owner(s) disputing whether this "common ownership" provision applies to his/her or their property may appeal to the Board of Adjustment following a determination of applicability by the Planning Director in accordance with paragraph 11. below.

shall submit to the Planning Department a signed and completed form, provided by the Planning Department, acknowledging the legal combination of these contiguous lots and/or parcels. Said executed form shall be immediately recorded against the title(s) of the properties in the office of the El Paso County Clerk and Recorder.

12. VARIANCE

a. Any property owner aggrieved by the application of the merger by contiguity requirements of this Part II to his/her property must first request, in writing, a determination by the Planning Director or his/her designee as to its applicability. Such a request must include all information necessary for an accurate and complete determination.

b. If the property owner receives an adverse determination from the Planning Director or does not receive any determination within ten (10) work days following the Planning Department's receipt of a complete request, he/she may apply to the Board of Adjustment for a variance, upon forms provided by the Planning Department. Any decision to grant a variance shall be made only upon a finding in the evidence presented to the Board, that an unusual hardship or exceptional practical difficulty exists on the part of the property owner in complying with the merger by contiguity requirements. The conveyance of lots and/or parcels out of common ownership on or after the effective date of this Part II shall not, by itself, constitute adequate grounds for granting a variance.

The effective date of this Subsection K. is November 12, 1992.

AMENDMENT TO LAND DEVELOPMENT CODE
SECTION 11
R-T (RESIDENTIAL-TOPOGRAPHIC) DISTRICT

Paragraph E.

5. Maximum percentage of structural coverage of lot: Thirty (30) percent.

6. Maximum structural height: Thirty (30) feet.

7. Minimum width of lot at front building setback line: Two-hundred (200) feet.

8. Setback requirements:
   a. Front yard: Twenty-five (25) feet.
   b. Side yard: Twenty-five (25) feet for lots of five (5) acres or greater in area; five (5) feet for lots less than five (5) acres in area.
   c. Rear yard: Twenty-five (25) feet.
   d. Stables and Corrals: Fifty (50) feet from all property lines.

SUPPLEMENTAL PACKET

OCTOBER 22, 1992

BOARD OF COUNTY COMMISSIONERS

LDC-91-008

AMENDMENT TO THE EL PASO COUNTY LAND DEVELOPMENT CODE SECTION 35.2, NONCONFORMING LOTS & MERGER BY CONTIGUITY

A request by the El Paso County Planning Department to amend Section 35.2 creating provisions, procedures, criteria and standards for nonconforming lots and merger by contiguity; and to amend Section 11, R-T (Residential-Topographic) District, to allow for a five (5) foot side yard setback for lots of less than five (5) acres in area.

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PLANNING COMMISSION ACTION: The request was approved unanimously (5-0) at the September 15, 1992, meeting of the Planning Commission.

Ms. Shapiro said this is a perfect example of *caveat emptor* and she suspects those in the audience, when they purchased their homes, did not look at the 20, 30 or 40 year history of the area to determine what had happened previously. The issues which have been raised are very legitimate and the Planning Commission shares the concerns. Unfortunately the property rights and laws are a preexisting situation, but the Planning Department is trying to work with a less than desirable situation and do what they can. She said she appreciates those who have taken the time to appear at this meeting and who are trying to understand the situation. Ms. Shapiro said she commends the Planning Department and feels these regulations are a step in the right direction. In the event those in opposition to these regulations have occasion to ameliorate a problem in the future, she knows they will appreciate working with the Planning Department.

SPEAKING FOR: Phil Hosmer, Chairman of the Black Forest Land Use Committee, who said they support the revisions subject to changes he outlined at the Planning Commission meeting.

SPEAKING: Don Jackson, President of the Chipita Park Homeowners Association, who said their position was outlined in the letter contained in the Comment Agenda.

SPEAKING AGAINST: Elmo Edwards who has two parcels and said he purchased them with the intent of constructing a dwelling on each.

Josephine Jones, Joseph Jones, Barbara Propp, Sylvia Lehmpuhl, who objected to lack of notification when a property is to receive administrative recognition as a nonconforming lot/parcel, possible increase in density and resulting impact on water supply; impact on the ecosystem; infringement on their rights when they have purchased five acres and others will be allowed to construct on smaller parcels. They urged the five-acre minimum lot size be retained.

LEGAL PUBLICATION: This proposed revision was published in the El Paso County News & Advertiser on September 16, 1992.

HISTORY/PROCESS: This request was initially presented to the Planning Commission in November 1991. After considerable discussion it was decided that the Planning Department would seek additional input prior to proceeding with the proposal.

The Planning Department met approximately four (4) times with a committee of the Chipita Park Homeowners Association in an effort to develop a concept that would accommodate most concerns. After development of the draft, the Planning Department held two (2) public meetings in Ute Pass. Notification was provided at the two (2) post offices, to the newspapers, to interested individuals, as well as through the Homeowners Association. The Homeowners Association took a formal position to support the concept as proposed (see letter of support dated August 20, 1992, and included as an attachment).

One (1) additional public meeting was held in the Black Forest after similar notification. This public meeting was published to include people in the Tri-Lakes and Falcon areas. Subsequent to the Black Forest meeting, staff met with members of the Black Forest Land Use Committee to discuss issues and concerns brought out at the prior meeting. The comments from the Black Forest represent a desire to make the criteria more stringent than what is being proposed by the Planning Department. The Planning Commission endorsed the option provided by the Black Forest Land Use Committee. The Planning Department is not opposed to the Black Forest Land Use Committee option and also can support it.

Notification for the Planning Commission includes notices to the newspapers, notification to interested property owners, published Planning Commission agenda in the Gazette-Telegraph, and personal contact.

Notification for the Board of County Commissioners is similar to the Planning Commission notification as noted above.

BACKGROUND: The Land Development Code does not recognize lots that do not meet the minimum lot area requirements of the zone district. There is no "grand-fathering" of preexisting small lots that may have been created prior to zoning.

This creates a problem for both individuals who must seek Board of Adjustment approval of a substandard lot as well as the County in dealing with such a large number of undersized lots.

The problems associated with substandard lots have been further amplified with lending institutions requiring, as a part of sale, proof that a house can be rebuilt if destroyed. At present this proof can only be obtained with the approval of a lot area variance by the Board of Adjustment.

The following represents the major areas within El Paso County where substandard lots exist:

Ute Pass (10,000 square feet plus lots, where the R-T District requires 5 acre minimum lot size)

Rock Creek Mesa (10,000 square feet plus lots, where the F District requires five acre minimum lot sizes)

Woodmen Valley, Ponderosa Pines, Park Forest Estates, Red Rock Valley Estates (2½-acre-plus lots where the A-1 or RR-3 requires 5 acre minimum lot size)

Brentwood (10,000 square foot lots where the RR-3 requires 5 acre minimum lot size)

Townsite of Falcon (4,000 square foot lots where the RR-3 requires 5 acre minimum lot size)

Other areas also exist within the County, where substandard lots exist, yet the above represents those areas where the greatest activity has occurred.

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Two areas specifically analyzed are the Ute Pass area and the Black Forest area which includes the Brentwood Country Club & Cabin Sites Subdivision. Both these areas had plats recorded in the early 1920s.

Ute Pass Area

In the Ute Pass area there are approximately 1,050 tax schedule numbers which include approximately 1,450 parcels that do not meet the minimum lot size of five acres.

A chronological history of the R-T zoning is included as an attachment. Early R-T zoning, initially established in 1965 and applied to the Ute Pass area in 1967, allowed for 10,000 square foot lots. After 1980, 10,000 square foot lots were allowed only if both central water and central sewer exists (there is not and has not been central sewer in the Ute Pass area). While the area does utilize, for the most part, central water, there is concern pursuant to the effects of small lots and Individual Sewage Disposal System and the proper siting of said systems.

Black Forest Area

The Brentwood Country Club & Cabin Sites (in the Black Forest) was initially platted in 1926 as a 584-lot subdivision on 160 acres. The initial lots ranged in size from 8,700 to 13,000 square feet. Today, there are approximately 472 lots which represents a reduction of several lots that have been combined. These lots must utilize both individual wells and Individual Sewage Disposal System (no central water is available). A specific study was conducted by the Planning Department for the Brentwood area in 1987. Upon presentation to the Board of Adjustment, Planning Commission and Board of County Commissioners in 1987, the preferred alternative was to implement nonconforming lot of record requiring a minimum one (1) acre standard and the merger by contiguity concept should be utilized, through amendments to the Land Development Code.

Excluding Brentwood and Park Forest Estates, there are approximately 350 additional lots that are substandard (those that have received prior lot area variances from the Board of Adjustment are now classified as conforming lots).

Concepts

In their simplest form, the two (2) concepts that are being proposed are as follows:

For lots between 10,000 - 20,000 square feet, merger would combine between 41 and 130 parcels.

In Brentwood the percentages are greater. Past Board of Adjustment approvals have generally required the combination of four to five lots, constituting approximately one (1) acre in size.

The lot breakdown for the Ute Pass and Black Forest is included as an attachment.

APPROACH BY OTHERS:

Many entities recognize nonconforming lots as any lot legally created prior to zoning. This approach creates problems in the long term. For example, many of the lots in Brentwood are 100' x 100' or 10,000 square feet. Wells must be a minimum 100 feet from any part of septic system. By utilizing a preexisting 100' x 100' lot, it would be impossible to locate both the Individual Sewage Disposal System and well on the same property. More individual lots with more wells and septic systems will adversely impact other properties. There is great potential to sterilize other properties with the isolation or separation distances.

Boulder and Pueblo Counties have merger by contiguity provisions in their regulations, along with a nonconforming lot of record provision.

With the diversity in El Paso County, the "blanket" recognition of all preexisting substandard lots does not seem to be the prudent approach because of potential health and pollution problems. Other concerns such as drainage and erosion become greater with increased density, especially in hilly terrain. The higher the density, the greater potential for these problems. It is recognized that the roads and drainage in areas such as Brentwood and Ute Pass would not meet current County standards, and in many instances it would not be economically feasible to bring the roads and drainage to existing standards. Therefore, the impacts can be lessened if less density occurs.