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**PLANNING & COMMUNITY DEVELOPMENT**

**TO:** El Paso County Board of Adjustment

**FROM:** Ashlyn Mathy, Planner I  
Carlos Hernandez Martinez, Engineer I  
Meggan Herington, Executive Director

**RE:** Project File #: BOA-23-001  
Project Name: 13830 Overlook Place BOA  
Parcel No.: 6205006003

OWNER:	REPRESENTATIVE:
Abigail Urish & Charles Sutton (970) 985 5423 cksutton1981@gmail.com	LGA Studios Joni Zimmerman (719) 635 0880 joniz@LGASTudios.com

**Commissioner District: 1**

<b>Board of Adjustment Hearing Date:</b>	<b>4/26/2023</b>
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**EXECUTIVE SUMMARY**

A request by LGA Studios for approval of a dimensional variance to allow a side setback of 1.4 feet where 25 feet is required in the RR-5 (Rural Residential) zoning district. The 1.4-foot side setback will facilitate the reconstruction of a garage that was destroyed by a fire. The existing foundation is usable. The garage will be the same size as the one destroyed and rebuilt utilizing the existing foundation. The 5.48-acre property is located at the intersection of Overlook Place and Old North Gate Rd, El Paso County, Colorado. (Parcel No. 6205006003) (Commissioner District No. 1).

2880 INTERNATIONAL CIRCLE  
OFFICE: (719) 520 – 6300



COLORADO SPRINGS, CO 80910  
PLNWEB@ELPASOCO.COM

## A. REQUEST

A request by LGA Studios for approval of a dimensional variance to allow a side setback of 1.4 feet where 25 feet is required in the RR-5 (Rural Residential) zoning district. The garage burnt down in February of 2022 and is being rebuilt to match the original footprint due to ADA accessible upgrades that are necessary for family members to get around the property safely. While attempting to rebuild the garage, the homeowners were stopped due to the building encroaching into the setback beyond the 25 feet which is allowed for the RR-5 zoning district (ADD22654).

## B. APPROVAL CRITERIA

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the El Paso County Land Development Code (2022), states the following:

*The Board of Adjustment is authorized to grant variances from the strict application of any physical requirement of this Code which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property. Practical difficulties and hardship, in this context, may exist where the legal use of the property is severely restricted due to:*

- 1) *The exceptional narrowness, shallowness, or shape of the specific piece of property.*

The subject property does not have exceptional narrowness, shallowness, size, or shape. The property is 5.48 acres in size and meets the minimum lot size for RR-5 zoning.

- 2) *The exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.*

The garage was constructed in 1992. Property permits were pulled through the Pikes Peak Regional Building Department. The permit did allow the original construction of the garage at the 1.4-foot setback. The garage was destroyed by fire, but the foundation can be reused. The request will allow the applicant to rebuild the garage in the same location as it had been located for 20 years utilizing its original foundation.

According to the applicant's letter of intent, the property is potentially encumbered by the following conditions:



“Moving the garage outside the setback area on the west side of the property would place it in a way that would interfere with the septic and leach field. It would also block access for the barn and utilities easement road, and would require additional grading, excavation and possibly a retaining wall and removal of vegetation. Building on the eastern side of the house outside the setback area would require removal of dozens of trees, grading, leveling and a retaining wall as well. The eastern side of the house slopes upward and this is necessary to keep the primary land access on Overlook Place. Moving the garage elsewhere on the property would also make it physically difficult for property owner Abigail Urish, who suffers from lifelong physical disabilities, as well as her mother, Anne Urish who is also an occupant of the home, who has multiple sclerosis and requires a walker and occasional wheelchair. It is important for these reasons that the garage be within 100 feet of the main door. The family has worked very hard to update the property with ADA accessible modifications.”

According to the County’s GIS mapping, the property does not appear to be encumbered by steep slopes and roughly 1% of the property contains slopes exceeding 30%. The proposed garage is 1,067 square feet. The garage, in addition to the house and outbuilding, covers 2.4% of the lot, which is less than the maximum 25% lot coverage for the zone district.

In order to meet this criterion, the applicant would be required to provide sufficient evidence that the proposed use cannot be relocated elsewhere on the property to an area that meets the dimensional standards. The applicant has stated that this is a more ideal spot due to the ADA related needs of the family members and the foundation of the original garage being intact.

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Code continues by stating the following:

*The Board of Adjustment may also grant variances from the strict application of any physical requirement of this Code based upon equitable consideration, finding that the burdens of strict compliance with the zoning requirement(s) significantly exceed the benefits of such compliance for the specific piece of property and;*

- *The variance provides only reasonably brief, temporary relief; or*

If approved, the variance would provide for permanent relief.



- *The variance request includes an alternative plan, standards or conditions that substantially and satisfactorily mitigate the anticipated impacts or serve as a reasonably equivalent substitute for current zoning requirements; or*

An alternative plan, standard, or condition was not submitted by the applicant. However, that is because the applicant is replacing the garage like for like. The applicant has also stated that moving the garage would negatively impact access and cause significant disturbance to the property.

- *Some other unique or equitable consideration compels that strict compliance not be required.*

The applicant states in their letter of intent that rebuilding the garage in the same place reduces the need for landscaping, grading, and additional changes to the property. Additionally, the applicant has family with medical needs and the garage being rebuilt in the same place with not require moving the ADA modifications already set in place.

#### **C. LOCATION**

North: RR-5 (Residential Rural)	Single-family Residential
South: A (City of COS)	Political Subdivision
East: RR-5 (Residential Rural)	Single-family Residential
West: RR-5 (Residential Rural)	Vacant

#### **D. BACKGROUND**

On March 9, 1960, these lots were created by a plat, plat number 1963. This plat is known as "Overlook Estates". This was recorded July 8, 1960 with book B-2 and page 73.

The garage was constructed in 1992 with a building permit that was provided by the Pikes Peak Regional Building department. Due to a fire at the property in February of 2022, the garage burnt down. The foundation is still intact and viable for a rebuild. This rebuild is essential to the safety and everyday functionality for the family.

#### **E. ZONING ANALYSIS**

The subject parcel is zoned RR-5 (Rural Residential). The RR-5 zoning district is intended to accommodate low-density, rural, single-family residential development. The density and dimensional standards for the RR-5 zoning district are as follows:

- Minimum lot size: 5 acres\*
- Minimum width at the front setback line: 200 feet
- Minimum setback requirement: front 25 feet, rear 25 feet, side 25 feet\*
- Maximum lot coverage: 25%
- Maximum height: 30 feet

\* In the event that the land to be partitioned, platted, sold or zoned abuts a section line County road, the minimum lot area for lots abutting the road shall be 4.75 acres and minimum lot width shall be 165 ft.

\* Agricultural stands shall be setback a minimum of 35 feet from all property lines.

The lot meets the lot size and width zoning minimums. This lot was created by a plat prior to subdivision standards of July 17, 1972. The garage does encroach in the side setback 23.6 feet.

## **F. ALTERNATIVES EXPLORED**

There are two (2) alternatives that would not require a dimensional variance request:

1. The applicant could cease further development on the property.
2. The applicant could relocate the use to elsewhere on the property so that it meets the applicable setback requirements. Due to the family needing the garage to have ADA accessibility and there need to reuse the existing foundation, it will be difficult to relocate the garage.

## **G. SERVICE**

### **1. WATER**

Water is provided by an existing permitted well located on the property.

### **2. WASTEWATER**

Wastewater is provided by an existing permitted on-site wastewater treatment system (OWTS).

### **3. EMERGENCY SERVICES**

The parcel is located within Donald Wescott Fire Protection. The District was sent a referral and has no outstanding comments.



## **H. ENGINEERING**

### **1. FLOODPLAIN**

The parcel is not located within a floodplain. The parcel is defined as being in Flood Zone X, which represents an area outside of a defined floodplain having minimal flood hazard concern.

### **2. DRAINAGE AND EROSION**

The parcel is within the Monument Branch Drainage Basin. This drainage basin has drainage and bridge fees associated with it. However, drainage basin fees are not assessed with non-platting applications in accordance with approved resolutions and the El Paso County Engineering Criteria Manual Appendix L.

A grading and erosion control plan (GEC) was not required with this Board of Adjustment application because the site does not meet the 1-acre threshold to require a GEC plan. The applicant states in their Letter of Intent there will be no impact to existing drainage patterns or new land disturbance.

### **3. TRANSPORTATION**

The parcel obtains access from Overlook Place which is a county-maintained roadway. Overlook Place is classified as a rural-local roadway under the El Paso County Road System. Overlook Place is currently a gravel road and has a 60-foot right-of-way width.

The parcel does not have a driveway access permit on file currently. The applicant submitted a driveway access permit application but was denied per LDC Section 6.3.3(C)(3)(j) requiring fire district approval first for driveways exceeding 300 feet in length. The applicant will be required to submit a driveway access permit application with recommendations from the fire district.

Road Impact Fees are not applicable to this project per Resolution 19-741 no new trips are being generated with the rebuilding of the burnt down garage.

## **I. RECOMMENDED CONDITIONS OF APPROVAL**

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a dimensional variance for a side setback of 1.4 feet where 25 feet is required, and that the applicant has met the review and approval



criteria for granting variances from the applicable standards, staff recommends the following conditions and notation of approval:

#### **CONDITIONS**

1. The approval applies only to the plans as submitted. Any expansion or additions beyond those depicted on the associated site plan may require separate Board of Adjustment application(s) and approval(s) if the development requirements of the applicable zoning district cannot be met.
2. Approval of the garage by the Planning and Community Development Department and issuance of a building permit from the Pikes Peak Regional Building Department is required prior to an addition or expansion of a residential property.

#### **NOTATIONS**

1. Physical variances approved for a proposed structure or use (except for lot area variances) are valid only if construction of the structure is initiated within twelve (12) months of the date of the Board of Adjustment approval or if the use of the property in the approved location does not cease for a continuous period of greater than twelve (12) months.
2. The PCD Director may require a survey, certified by a registered surveyor, licensed in the State of Colorado, depicting the improvement in relationship to the lot lines affected to demonstrate compliance with the approval of the dimensional variance.

#### **J. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified 9 adjoining property owners on 4/5/2023, for the Board of Adjustment meeting. Responses will be provided at the hearing.

#### **K. ATTACHMENTS**

Letter of Intent  
Vicinity Map  
Site Plan  
Public Comments







February 27, 2023

El Paso County Planning Department  
2880 International Circle, Suite 110  
Colorado Springs, CO 80910

RE: Letter of Intent for Board of Adjustment Variance Request for Setbacks at 13830 Overlook Place

Gentlemen:

This letter serves as our Letter of Intent for the above referenced Board of Adjustment Variance request. Detailed information on this request is as follows:

**Applicant:**

Joni Zimmerman, LGA Studios, 201 E. Las Animas St., Suite 113, Colorado Springs, CO 80903.  
719-635-0880, [joniz@lgastudios.com](mailto:joniz@lgastudios.com)

**Owner(s):**

Charles K. Sutton and Abigail Urish, (970) 985-5423, email is [cksutton1981@gmail.com](mailto:cksutton1981@gmail.com)

Site Location: 13830 Overlook Place, Colorado Springs, Colorado 80921

Property Tax Schedule Number: 6205006003

Property Size: 5.48 acres, Zoned RR-5

**Proposed Request:**

Our client for the above referenced address is looking to rebuild a 1067 square foot garage in the same location as they had prior to a catastrophic fire on their property. The previous garage was burned except for a viable foundation and all concrete footings. The existing foundation has been checked and verified by a Colorado licensed structural engineer. The location and previous garage were reviewed by Pikes Peak Regional Building Department in 1992 and no mention was made at that time regarding the setbacks for the property. A building permit was applied for, there was an inspection at that time, with no mention of the structure being in the setback area. Now that our client is trying to rebuild the garage in the same location, we have been informed that the encroachment into the setbacks is an issue that requires a variance. The setback for this property is 25 foot and the existing foundation sits 1.4' from the property line (see attached site plan). Our client does have an easement from the neighbors to the north acknowledging the garage foundation and providing use to access space around it but is unable to sell that portion of the property to our clients due to a covenant restriction in Overlook Estates.

*The garage to be rebuilt is 1,067 square feet, as shown on the uploaded site plan. Because the foundation is existing and viable, there is no new land disturbance, no additional grading around the garage foundation and no impact to the existing drainage patterns. Again, we are simply rebuilding the garage on top of the existing foundation.*

We believe that requiring our client to move the location of the garage at this point will cause a hardship for a number of reasons:





- As per Land Development Code (LDC) 5.5.2B (2)a, “Grant of Variance of Specific Development Standards, Variances to Physical Requirements” and specifically the last bullet point of this code standard, i.e., “Some other unique or equitable consideration compels that strict compliance not be required”, the existing layout of the landscape would make moving the garage anywhere else near the house difficult due to exceptional topographical conditions. Moving the garage outside the setback area on the west side of the property would place it in a way that would interfere with the septic and leach field. It would also block access for the barn and utilities easement road, and would require additional grading, excavation and possibly a retaining wall and removal of vegetation. Building on the eastern side of the house outside the setback area would require removal of dozens of trees, grading, leveling and a retaining wall as well. The eastern side of the house slopes upward and this is necessary to keep the primary land access on Overlook Place. Moving the garage elsewhere on the property would also make it physically difficult for property owner Abigail Urish, who suffers from lifelong physical disabilities, as well as her mother, Anne Urish who is also an occupant of the home, who has multiple sclerosis and requires a walker and occasional wheelchair. It is important for these reasons that the garage be within 100 feet of the main door. The family has worked very hard to update the property with ADA accessible modifications.
- We believe that this situation falls under the PPRBD ordinance that allows for exceptions to rebuild existing structures when there has been fire damage up to 50% of the cost of the structure, even if the structure previously did not meet building code requirements. Please reference LDC 5.6.3 “A nonconforming structure 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 the damage or destruction, provided...”
- The cost will increase significantly to demo the existing foundation and start over with the buildout of a new garage in a different location.

We are not aware of any overlay zoning.

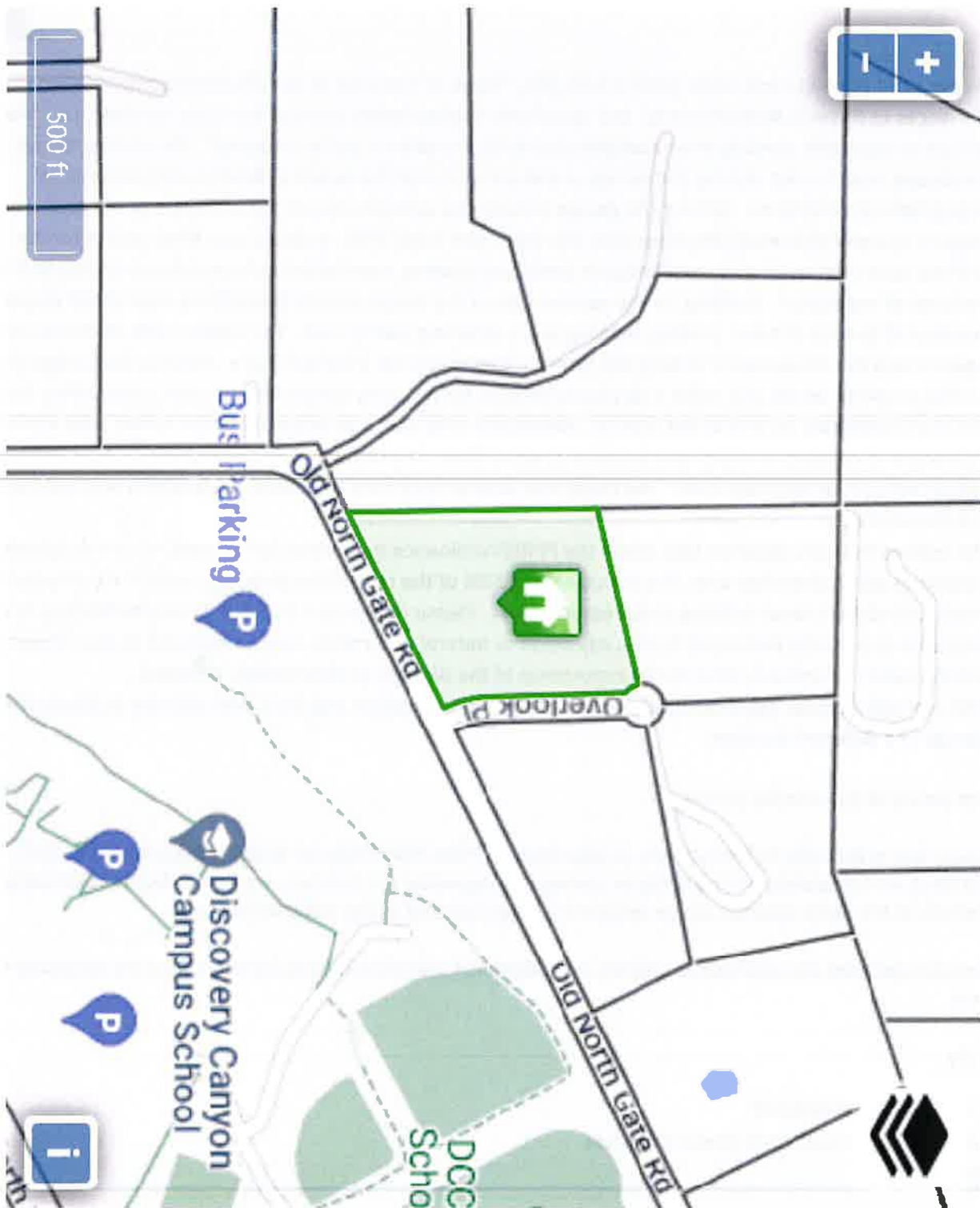
As the garage was previously in this location, as approved by Pikes Peak Regional Building Department in 1992, and there have been no complaints by neighbors or community regarding the location, we do not feel that allowing the new build to remain in the same location would impact the neighborhood in any negative manner.

Both client and applicant are available to address any additional questions or requirements that are necessary to review this request.

Respectfully,

A handwritten signature in black ink that reads "Joni A. Zimmerman".

Joni A. Zimmerman, CSI CDT LEED Green Associate  
Operations Manager



# El Paso County - Community: Property Search

Schedule Number: 6205006003



- |   |                         |                |                                  |             |
|---|-------------------------|----------------|----------------------------------|-------------|
| 1 | Academy School District | TSN 6205000043 | 1810 + 1840 North Gate Blvd.     | Zoning A    |
| 2 | Norman Henderson        | TSN 6205006005 | 1610 Old North Gate Blvd         | Zoning RR-5 |
| 3 | Jack + Susan Armstrong  | TSN 6205006002 | 13890 Overlook Pl.               | Zoning RR-5 |
| 4 | Corey + Susan Nakai     | TSN 6205006001 | 13885 Overlook Pl.               | Zoning RR-5 |
| 5 | Samuel + Kimberly       | TSN 6205006004 | Kimberly Ling 13825 Overlook Pl. | Zoning RR-5 |





**March 12, 2023**

**Board Of Adjustments, El Paso County**

**To whom it may concern:**

**My name is Jack Armstong. My address is 13890 Overlook Place, Colorado Springs, CO 80921. I neighbor the Abigail Urish, Ken Sutton property on my southern property line. We are advised that they wish to rebuild their garage that burned last year. I have no issue whatsoever regarding their rebuild on the existing garage foundation. Please allow for them to move forward for the completion of their project.**

**Sincerely,**

A handwritten signature in cursive script that reads "Jack Armstrong". The signature is written in black ink and is positioned above the printed name.

**Jack Armstrong**

**13890 Overlook Place**

**Colorado Springs, CO 80921**

