

**MINUTES**  
**EVANS ZONING BOARD OF APPEALS**  
Regular Meeting, 5:30 pm  
June 26, 2012

**CALL TO ORDER**

The June 26, 2012, meeting of the Zoning Board of Appeals was called to order at 5:30 p.m. by Board Chair Schanwolf.

**ROLL CALL:**

Present: Board Members Thaden, Schanwolf, Bernardo, Clark, Buck

Absent: None

**APPROVAL OF MINUTES**

Adoption of Minutes from May 3, 2012. It was moved by Board Member Thaden, seconded by Board Member Clark to approve the Minutes. Unanimous consent.

**APPROVAL OF THE AGENDA**

Board member Buck motioned to approve the Agenda and Board member Bernardo seconded. All voted in favor thereof.

**SUBJECT:** Public Hearing —Resolution No. xx-2012 – Variance Request to Section 19.48 of the Evans Municipal Code for Maximum Area Allowed for an Accessory Structure - 4705 Pendleton Avenue, Evans, Colorado - (Matteson Garage)

**PRESENTED BY:** N. Zach Ratkai, Building & Development Manager

**ACTION:** Recommendation to City Council

**CITY COUNCIL DATE:** Tuesday, July 17, 2012 at 7:30 pm

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BACKGROUND INFORMATION		
<b>Location:</b>		4705 Pendleton Avenue
<b>Applicants:</b>		Zac and Stacy Matteson, Owner
<b>Existing Land Use:</b>		R-1e, Single Family Estate Residential
<b>Proposed Land Use:</b>		Same
<b>Surrounding Land Use:</b>	<b>North</b>	Single Family Estate Residential
	<b>South</b>	Single Family Estate Residential
	<b>East</b>	Pendleton Ave. Single Family Estate Residential
	<b>West</b>	Weld County Agricultural Land
<b>Existing Zoning:</b>		R-1e
<b>Proposed Zoning:</b>		Same
<b>Surrounding Zoning:</b>	<b>North</b>	R-1e
	<b>South</b>	R-1e
	<b>East</b>	R-1e
	<b>West</b>	County (Ag)
<b>Future Land Use Designation:</b>		Residential – Rural Neighborhood

**PROJECT DESCRIPTION:** The City has received a building permit application from Mr. and Ms. Matteson, land owners, to construct a garage. The garage, as designed, was determined to be oversized as allowed by Title 19.48.030.B. The land owners have chosen to submit a variance application.

Please see the attached vicinity map and the attached application for the property location, which is 4705 Pendleton Avenue in Evans.

The requested variance include the following:

- Permission to construct a detached garage that is 2,400 square feet (Code allows for 2,100 square feet).

**RECOMMENDATION:** Recommend denial to City Council.

**ANALYSIS:**

**Background:**

The owners of the property submitted for a building permit to construct a detached garage measuring 2,400 square feet. A permit through the Evans Building Department was issued

for the monolithic concrete slab for the garage support and floor, which has been poured and inspected. The garage proposed; however, will not meet the Evans City Code which limits the maximum size of a detached garage to 2,100 square feet.

The garage will meet setback requirements as outlined in Title 18.48 of the Evans City Code.

If approved, the applicants will have to be issued a building permit, and will be required to adhere to all the standards in the Evans Municipal Code.

**Section 19.48 of the Evans Municipal Code (Accessory Structures):**

The entire Section 19.48 has been attached for the review of the Zoning Board of Appeals. The applicable sections that are under consideration for this variance application have been pulled out as follows:

“Garage” shall mean a fully-enclosed structure accessory to a residence or residences and capable of being used for storage of one or more vehicles, i.e., having a garage door. “Garage, front-facing,” shall mean a garage with vehicular doors generally parallel to the front property line.

19.48.030 Accessory uses, structures and buildings. The following provisions shall apply to all garages, carports, accessory uses, structures and buildings:

B. Maximum area. The total footprint area of all detached accessory structures and buildings on any one lot shall not exceed the lesser of 10 percent of the total lot area or 2,100 square feet. This provision shall not apply to structures used for agricultural purposes in the AG – Agricultural – zoning district, or to structures in I – Industrial – zoning districts.

The proposed variance will NOT meet this code as it exceeds the size requirements in Section 19.48.030.

The applicant has submitted a letter to the Zoning Board of Appeals outlining the request and their situation.

**Section 19.58 of the Evans Municipal Code (Variance Criteria):**

Below are the Criteria for approval of a Variance:

**19.58.030 Criteria for Variances.**

A. The City Council must find all of the following circumstances to be true in order to approve a variance:

1. Approval of the variance would not jeopardize the health, safety, or welfare of any person;  
Staff finds the proposed variance would meet this criterion of approval.
2. Denial of the variance would result in a practical difficulty and unnecessary hardship to the applicant;  
Staff finds that this request could not be considered a hardship as there exists a garage on the property already and the addition of a detached garage is an option for the homeowners.

3. Such practical difficulty and unnecessary hardship are due to an irregular, narrow, or steep lot, or other physical situation or condition of the building or land;  
Staff finds that this criterion cannot be met as property does not exhibit any irregular shape, size or topography that affects the placement of the proposed garage.
4. Such practical difficulty and unnecessary hardship have not been unreasonably self-imposed by the applicant.  
Staff finds that the applicant could reasonably limit the size of the garage to conform to the Evans City Code and therefore cannot meet this criterion.

**Issues:**

The main concern with the application is that the applicant could meet the code as it stands by limiting the size of the garage.

Notice of this public hearing was provided in accordance with Chapter 19.64 of the Municipal Code.

**FINDINGS OF FACT AND CONCLUSIONS**

After reviewing the Matteson's variance application for construction of a garage; the following findings of fact and conclusions have been determined:

The variance criteria in Section 19.58 of the Evans Municipal Code cannot be appropriately and sufficiently met.

**STAFF RECOMMENDATION:**

I recommend that the Zoning Board of Appeals forward a recommendation of denial of the requested variance with the findings and conclusions listed above.

Before the Public Hearing was opened, Mr. Clark recused himself due to being a friend and neighbor of the applicant.

Zach Ratkai gave the staff report. The proposed garage will not meet code due to 2400 sq ft size.

Pictures were shown of the monolithic slab and site plan.

Chairperson Schanwolf then asked for questions of staff.

Chairperson Schanwolf first wanted to know if it met rear and side setbacks?

Mr. Ratkai indicated that it did.

Mr. Buck wanted to know if all the items were approved altogether, the structure, the slab, and the inspection.

Mr. Ratkai let them know the City made two separate Permits; one for the slab and one for the structure. The structure had not yet been through the approval process.

Mr. Thaden wanted to know if there had been approval from the HOA at Neville's Crossing. Mr. Ratkai said yes and the City was just waiting for the ARC committee to sign off.

Chairperson Schanwolf asked if the HOA had a restriction on size? Yes, the HOA does have a restriction to 2000 square feet, but on this application they granted 2400 square foot design. Approval letter was already received.

Chairperson Schanwolf wanted to know if the City had the letter available and if it indicated that 2000 square feet

was approved.

Mr. Ratkai pulled the letter and told the Board that keeping the structure at 2000 square feet is the hope of the HOA.

Chairperson Schanwolf was curious if the property to the west is all zoned Ag? Mr. Ratkai said yes, and there are no plats or annexations.

Chairperson Schanwolf asked if there were any further questions of the Board to Staff. There were none.

Chairperson Schanwolf had applicant come forth.

Zac and Stacy Matteson approached the Board.

Mr. Matteson said there was some information missing from the Staff Report.

Mr. Matteson indicated that neighbors have larger garages than the one he had proposed. Stacy said that had Evans not verbally approved the plan, then they wouldn't have spent \$12,000 to have it poured; she believes this to be a hardship. Mr. Matteson said that if they would have been told about variance he wouldn't have gone through with the concrete pour.

Chairperson Schanwolf asked the applicant if they could have got by with smaller structure.

Mr. Matteson indicated they could have, if needed, but they have a 5th wheel and truck and they need that larger size to back out safely.

Mr. Buck asked if the City inspector came out to approve the monolithic pour? Mr. Matteson responded with yes, that Dave Tilley came inspected and approved the slab.

Mr. Buck wanted to know when was concrete was poured. Mrs. Matteson said on April 14, 2012.

Mr. Thaden asked if the applicant had permission from their HOA before pouring. Mr. Matteson said yes. Mr. Thaden then asked if the applicant had a copy of the bylaws? Mr. Matteson indicated they did not have one with them presently.

City Attorney, Russ Anson said the HOA regulations would not be applicable to this hearing. HOA only applies to appearance, not planning or zoning.

Chairperson Schanwolf wanted to know if there were any more questions of the applicant. There were none.

Chairperson Schanwolf asked if there was any one in the audience in support of this item.

Donni Clark of 5101 Dry Creek Rd, Evans, CO stepped forward. She is a neighbor to the applicant.

Ms. Clark supports the construction of the structure because it isn't very visible and that it will appear nice and have good usefulness.

Chairperson Schanwolf wanted to know if there were any other audience members that wished to speak in support of this. No one else came forth.

Chairperson Schanwolf asked if there was in the audience that was in opposition. No one came forth.

Chairperson Schanwolf then asked if there was any additional information the applicant wished to share.

Mrs. Matteson said they are in an equestrian community and they are ready to spend a lot of money to make it look nice.

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City Attorney, Mr. Anson, wanted to know about the applicant's conversations with Mr. Ratkai and Ms. Trent about setbacks. The variance only has to do with the size of the building. What was the Planning Department's opinion of variance? Did they state the reasoning for the denial? Mr. Anson wanted to know the applicant's responses to meeting the four criteria to allow the variance. How did they meet each one?

Mr. Matteson agreed that it would not be a health or safety issue.

Mr. Matteson feels that when it comes to criteria number 2, denial of the variance would result in a practical difficulty and unnecessary hardship to the applicant, he feels it is a hardship because of the money they have already put into the monolithic slab. Mrs. Matteson felt that it is a physical hardship to have their assets sitting in the weather because there is no shelter without the addition of a garage.

Mr. Anson said they mentioned they needed the 2400 sq. ft. size and wanted to know why they would need on that large. Mr. Matteson stated it is because they own a 36 ft trailer (fifth wheel) with a truck.

Mr. Anson asked about the physical condition of layout of property. Mr. Matteson indicated the dirt is fine and there is no irregular shape to the property itself.

Chairperson Schanwolf wanted to know if the grade drop is steep. Mr. Matteson said it was a gradual drop and this is the only open space the garage could go on.

Mr. Anson asked about criteria 4, "Such practical difficulty and unnecessary hardship have not been unreasonably self-imposed by the applicant." Mrs. Matteson said they did not self-impose the hardship.

Mr. Anson asked the applicants if they understood the responses of the planning dept? Mrs. Matteson said they should have known about the building size issue from the beginning, not after the slab was poured. The applicants remarked that they tried to design it smaller, but it would not conform to their needs.

Chairperson Schanwolf asked: before closing the public hearing, does anyone have any items that have to be clarified.

Mr. Buck asked Mr. Anson: would this application and process constitute a contract? Anson replied that it would not.

Chairperson Schanwolf: Are there guidance packets for codes and buildings?

Mr. Ratkai: - yes, we have various packets that say what you need. Working on getting easier packets.

Chairperson Schanwolf: Do the packets address zoning code, sizing issues?

Mr. Ratkai: Not necessarily

Mr. Thaden: When the Mattesons applied, was it for the slab or the complete package.

Mr. Ratkai: It was for the entire building, but the permit was separated to issue the slab first. The slab covered 2,400 square feet and the building plans covered the same amount. Yes, he issued it mistakenly. The plan review has occurred and the building meets all other regulations for structural codes.

Chairperson Schanwolf asked for any other questions. There were none.

Public hearing closed at 6:12

The ZBA then commenced discussion among themselves.

Mr. Thaden: The city messed up and this would be taken to court by other people. He thinks it should be approved and that the applicants did it properly.

Mr. Buck mentioned indemnification...we need to have the parties work who make it work and resolve this. In his

opinion, they have meet all the criteria. He opposes denying this variance request.

Chairperson Schanwolf: Asked for further questions.

Mr. Buck then moved to overturn the staff recommendation and forward an approval recommendation to the City Council.

Mr. Thaden the seconded, the motion carried unanimously

Official Recommendation:

"Mr. Chairman, on the issue of the Matteson Garage Variance for construction of a garage, I move that the Zoning Board of Appeals forward a recommendation of approval because it meets the criteria outlined in Sections 19.58 of the Municipal Code."

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### **GENERAL DISCUSSION**

Sheryl Trent, Community Development Director wanted to go over what they just experienced. You've just presented us with a difficult position, the bulk of the decision was based on our error.

Mr. Bernardo says we need to do whatever takes to help the owners...it should be a win/win situation. City needs to do better job...do whatever it takes.

Mr. Buck: we need to be focusing on scope. He read the code and he said it is 2 plus acres...to him the 300 sf didn't seem unreasonable based on lot size or the ag land behind him.

Sheryl Trent this will go to City Council. ZBA can't testify, but can attend.

Russ Anson added that the staff has to stick by code. We have no choice.

Chairperson Schanwolf says the staff needs to give more info to applicants and their areas.

Russ Anson hardship refers to size and shape of lot, not the applicants financial situation.

Discussion on the matter ended

Mr. Ratkai then gave the mid-year report for NHS.

### **AUDIENCE PARTICIPATION:**

(This portion of the Agenda is provided to allow members of the audience to provide comments to the Planning Commission on items that were not considered on the current Agenda.) There were no comments from the audience.

### **ADJOURNMENT**

Mr. Bernardo moved to adjourn, Mr. Thaden Seconded

The June 26, 2012, meeting of the Zoning Board of Appeals was adjourned at 6:33 p.m. by Board Chair Schanwolf.