

**CITY PLANNING COMMISSION AGENDA**

**ITEM NO.: E.1**

**STAFF: RYAN TEFERTILLER**

**FILE NO:**  
**AR NV 15-00413(AP) – QUASI-JUDICIAL**

**PROJECT: 5675 MAJESTIC**

**APPLICANT/OWNER: ROBERT-SCOTT GENERAL CONTRACTORS, INC.**

**APPELLANTS: BARBARA & HENRY KOZIOL AND MARIA KOZIOL-PETKASH**



**PROJECT SUMMARY:**

1. Project Description: This request represents an appeal by Barbara Koziol, Henry Koziol, and Maria Koziol-Petkash, property owners of 5673 Majestic Dr., regarding the administrative approval for a nonuse variance site plan to 5675 Majestic Dr. The approved plan allowed a 2.3 foot side yard setback where 5 feet are required on the lot. The site plan was approved on July

14, 2015, (**FIGURE 1**) and the appeal was filed within the requisite ten days. The appeal is based on several issues raised in the documentation submitted by the appellant. The property is 4,095 square feet in size, is zoned PUD/HS (Planned Unit Development with the Hillside Overlay) and is located northeast of the intersection of Flying W Ranch Rd. and Majestic Dr.

2. Applicant's Project Statement: (**FIGURE 2**)
3. Planning & Development Department's Recommendation: Reaffirm the administrative approval of the nonuse variance site plan.

#### **BACKGROUND:**

1. Site Address: 5675 Majestic Dr.
2. Existing Zoning/Land Use: PUD/HS (Planned Unit Development with the Hillside Overlay) / The lot is under construction for a new single-family home
3. Surrounding Zoning/Land Use:  
North: PUD/HS (Planned Unit Development with the Hillside Overlay) / single-family homes  
South: PUD/HS (Planned Unit Development with the Hillside Overlay) / single-family homes  
East: PUD/HS (Planned Unit Development with the Hillside Overlay) / single-family homes  
West: PUD/HS (Planned Unit Development with the Hillside Overlay) / single-family homes
4. Comprehensive Plan/Designated 2020 Land Use: General Residential
5. Annexation: Flying W Addition #1 (1971)
6. Master Plan: Mountain Shadows
7. Subdivision: Parkside at Mountain Shadows Filing No. 1 (1984)
8. Zoning Enforcement Action: n/a
9. Physical Characteristics: The 4,095 square foot lot is relatively flat and contains no significant vegetation. The lot included a single-family home that was destroyed by the Waldo Canyon Fire in 2012; a new home in under construction.

#### **STAKEHOLDER PROCESS AND INVOLVEMENT:**

Due to the applicant's desire for an expedited review and the fact that the proposed variance only impacts the adjacent owner to the east, a customized notice process was utilized. Postcards were not mailed and a poster was not posted on the site after application submittal. However, Planning Staff contacted the neighboring property owner (the appellant) and the Home Owner Association representative via phone shortly after the application was submitted. The request was explained in detail to both stakeholders and both were informed that Planning Staff would be approving the application in the coming days. Both parties were also notified via email of Staff's administrative approval and they were provided information on the appeal process and deadlines. **FIGURE 3** includes a number of communications with the owner and the appellant, as well as a few other stakeholder communications pertaining to the project. The standard notification process will be used prior to the City Planning Commission meeting.

#### **ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES:**

The subject property is a 4,095 square foot lot in the Parkside at Mountain Shadows neighborhood. In June of 2012 the neighborhood was devastated by the Waldo Canyon Fire destroying 140 of the 171 homes within the neighborhood. The 2-story, single-family home that existed on the site prior to the fire was destroyed, and after the lot changed hands twice, a plan was approved to build a ranch home on the site. The approved plan (**FIGURE 1**) illustrated a 37 foot wide home on the 47 foot wide lot, which leaves five foot sideyard setbacks to the east and west. However, when construction began in June of 2015 a decision was made by the owner's contractors to install the foundation at a slight angle to avoid some neighborhood infrastructure (e.g. cable, phone, and irrigation) on the northern portion of the lot. Unknowingly to the contractors, this decision resulted in the foundation encroaching into the eastern sideyard setback. As soon as the encroachment was verified by the owner's surveyor, discussions with City Planning were initiated, and a non-use variance application was submitted. Work on the new home has ceased during the application and appeal process.

One of the contributing factors that resulted in the home's foundation encroaching into the sideyard setback was the fact that the lot to the east is a flag lot with an extremely narrow flag stem which is approximately 10 feet wide (**FIGURE 4**). This fact, taken together with the fact that the development plan for the neighborhood has always illustrated shared driveways that span multiple lots, resulted in the

driveway for 5673 Majestic (the home just to the east) consuming a significant portion of the front yard for 5675 Majestic (the subject property).

A meeting was held with City Staff immediately after the owner confirmed the encroachment into the setback to discuss options and the procedures for review of a variance request. While City Staff conveyed that support was likely the owner was strongly encouraged to communicate with the Parkside HOA and the adjacent property owner. The owner initiated those conversations with mixed results. The HOA generally supported the request for relief, but the owner of 5673 Majestic did not.

To help mitigate the impact of the encroachment, Planning Staff required that the patio at the northeast corner of the home remain uncovered, even though the original plan called for a patio cover. This would decrease both the bulk and scale of the encroachment as well as the significance of the request; if the patio had remained covered the request would have been for a 1.6 foot setback as opposed to the 2.3 foot setback with the uncovered patio.

Planning Staff provided the approval documents to the appellant and the HOA on the same day as the administrative approval. The appeal application was received on the 10<sup>th</sup> day just prior to the closing of the appeal window and includes a lengthy appeal statement (**FIGURE 5**). While the appeal statement discusses a wide range of issues, the primary concerns appear to be that the requested sideyard setback encroachment will negatively impact the current and future owners of 5673 Majestic, that the appellant believes the required criteria were not met, and that the owner's self-imposed mistake should not be rewarded with approval of the variance.

The appeal package was provided to the owner as soon as it was received by the City. In response to many of the statements within the appeal statement the owner prepared a rebuttal document (**FIGURE 6**). That document specifically counters many of the statements found within the appeal statement including: the amount of preconstruction preparation completed by the owner; drainage concerns; the size of the home under construction; building code issues; and others.

#### Appeal Provisions

Section 7.5.906.A.4 of the Code indicates:

Criteria for Review of an Appeal of an Administrative Decision: In the written notice, **the appellant must substantiate the following:**

- a. Identify the explicit ordinance provisions which are in dispute.
- b. Show that the administrative decision is incorrect because of one or more of the following:
  - 1) It was against the express language of this zoning ordinance, or
  - 2) It was against the express intent of this zoning ordinance, or
  - 3) It is unreasonable, or
  - 4) It is erroneous, or
  - 5) It is clearly contrary to law.
- c. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

The appellant's justification for the appeal is found within **FIGURE 5**.

After substantial analysis and consideration, Planning Staff has concluded that the original non-use variance approval was appropriate and met the required variance criteria, and that the appellant failed to substantiate the required appeal criteria.

#### **STAFF RECOMMENDATION:**

**ITEM NO.: E.1 AR NV 15-00413(AP) – APPEAL OF ADMINISTRATIVE DECISION**

**Deny the Appeal and reaffirm the administrative approval** of the nonuse variance site plan to 5675 Majestic Dr., based upon the findings that the application complies with City Code Section 7.5.802.B, and that the Appellant has failed to substantiate the appeal criteria found in Section 7.5.906.A.4 of City Code.

**CITY OF COLORADO SPRINGS LAND USE REVIEW DIVISION  
RECORD-OF-DECISION FOR A NON-USE VARIANCE**

**FILE: AR NV 15-00413**

**DECISION DATE: JULY 14, 2015**

**INFORMATION**

Name of Applicant: Robert-Scott G.C., Inc.  
Address of Premises Involved: 5675 Majestic  
Zone District: PUD/HS  
Tax Schedule Number: 73154-03-007

**REQUEST** To allow a 2.3 foot side setback on the east side of the lot where 5 feet are required.

**STAFF ANALYSIS**

**CITY CODE CRITERIA TO GRANT A NON-USE VARIANCE**

**CRITERIA MET OR NOT MET**

- |   |   |     |
|---|---|-----|
| 1. 7.5.802 (B.1)  | Exceptional or Extraordinary Conditions   | Met |
| The lot is extremely small at just over 4,000 square feet and narrow at only 47 feet wide. The approved plan for the neighboring lot to the east included a driveway that consumed much of the subject property's front setback and forcing the home at 5675 to be pushed toward the rear of the lot; this adjustment resulted in the foundation being constructed within the required 5 foot setback.  |   |     |
| 2. 7.5.802 (B.2)  | No Reasonable Use of Property             | Met |
| The limited building envelop, presence of the neighbor's driveway on the front of the subject property, and existing foundation that has already been poured in place results in this criterion being met.  |   |     |
| 3. 7.5.802 (B.3)  | No Adverse Impact to Surrounding Property | Met |
| The home on the lot to the east is constructed at an angle with a significant setback from the shared property line. The requested encroachment will not negatively impact the adjacent property owner. The owner/builder of the subject property has agreed to keep the patio uncovered to reduce the extent of the encroachment (if the patio were covered as originally planned the setback would only be 1.6 feet, not 2.3 feet as approved). The HOA supports the request. |   |     |

**STAFF DECISION**

**APPROVED:** Staff approves the non-use variance request due to the required criteria being met.

July 14, 2015  
DATE OF DECISION

  
STAFF MEMBER

**APPLICANTS:** THE DECISION PERTAINS ONLY TO THE APPLICATION YOU SUBMITTED. YOU MUST COMPLY WITH ALL OTHER APPLICABLE REQUIREMENTS OF THE CITY OF COLORADO SPRINGS AND THE REGIONAL BUILDING DEPARTMENT. A COPY OF THE RECORD-OF-DECISION AND APPROVED SITE PLAN SHALL BE SUBMITTED IN CONJUNCTION WITH A BUILDING PERMIT APPLICATION. THIS VARIANCE DOES NOT SUPERSEDE OR NULLIFY PRIVATE COVENANTS THAT MAY LAWFULLY IMPOSE OTHER RESTRICTIONS ON THE USE OF YOUR PROPERTY.

\*\*\*\*\*IMPORTANT\*\*\*\*\*

**THE VARIANCE SHALL BE VOID IF ALL REQUIRED PERMITS ARE NOT OBTAINED WITHIN TWELVE (12) MONTHS OF THE FINAL APPROVAL DATE.**



July 14, 2015

Robert-Scott G.C., Inc.  
2760 Brogans Bluff Dr.  
Colorado Springs, CO 80919  
Attn: Scott Hente

Re: 5675 Majestic Non-Use Variance  
AR NV 15-00413

Dear Mr. Hente,

Planning Staff has approved the requested non-use variance on July 14, 2015. This approval is subject to the following conditions:

1. The approved non-use variance allows a 2.3 foot setback from the proposed home to the eastern property line where 5 feet are required by the Parkside at Mountain Shadows PUD plan.
2. The patio shown at the northeastern corner of the home is to be uncovered per this approval. Covering the patio in the future would require a new non-use variance.
3. The non-use variance shall be void if required permits are not obtained within twelve (12) months of the final approval date.

Copies of the approved documents are enclosed. Please attach one (1) copy of the approved Site Plan to each of the two (2) sets of construction drawings submitted to the Regional Building Department in conjunction with the building permit application.

As previously discussed, all administrative approvals are subject to a 10 day appeal window. I will inform you if an appeal of this decision is filed within the necessary timeframe.

Please feel free to contact me at 385-5382 if you have any questions regarding this approval.

Sincerely,

Ryan Tefertiller, AICP  
Planning Manager

Cc: Development Review CAB Office Files (AR NV 15-00413)  
Development Review Enterprise Office

Enclosure: Record of Decision

Supplemental information a Nonuse Variance at 5675 Majestic:

B. Criteria For Granting: The following criteria must be met in order for any nonuse variance to be granted:

1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and

**The adjoining property at 5673 Majestic has a driveway that significantly crosses onto the property (see attached Approved Site Plan). Because of this driveway encroachment, the house at 5675 Majestic had to be “pushed” farther back on the lot. However, due to the positioning of telephone, cable TV, and landscape irrigation that was placed at the back of the lot after the Waldo Canyon Fire, an angled excavation had to be performed. (See the attached photo showing “old” irrigation lines – the new ones were placed immediately adjacent to these). As a result, the foundation was angled which pushed the eastern edge of the new foundation into the side setback (See the attached Foundation Asbuilt).**

2. That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief;

**The dimensions of the lot, combined with the driveway that encroaches from the other lot and the location of new utilities does not permit the house to be built per the approved site plan (attached).**

3. That the granting of the variance will not have an adverse impact upon surrounding properties.

**The house that is adjacent to the eastern edge of this property (5673 Majestic) angles away from the property and at the rear has 34 feet from its corner to the edge of the property. In addition, there are no public or private utilities that are in the setback for 5675 Majestic.**

#### **Attachments**

- 1. Approved Site Plan for 5673 Majestic**
- 2. Photo showing eastern edge of 5675 Majestic**
- 3. Foundation Asbuilt for 5675 Majestic**
- 4. Approved Site Plan for 5675 Majestic**

## Tefertiller, Ryan

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**From:** Tefertiller, Ryan  
**Sent:** Tuesday, July 14, 2015 4:46 PM  
**To:** 'Koziol-Petkash, Maria'  
**Subject:** RE: Variance for 5675 Majestic - Ref: File Number AR NV 15-000413  
**Attachments:** Buttress Picture.pdf; Scanned from a Xerox multifunction device.pdf; Scanned from a Xerox multifunction device.pdf

Hello Maria,

Thanks for the revised photos; that is helpful. Scott Hente also provided a photo showing his interpretation of the property line relative to the buttress wall – it is obviously close to the property line (see attached). Regardless, after much discussion with Scott and with the Parkside HOA, I have issued an approval to Scott's variance application. However, please note that I did require that the patio at the rear corner of the building remain uncovered; this reduces the encroachment by over half a foot. I've attached the approval documents so you have them for your records. Please let me know if you have any questions about my approval or your options going forward. As we've discussed previously, you have a 10 day appeal window that will expire on July 24<sup>th</sup>.

Thanks for your patience and understanding on this process,  
Ryan

\*\*\*\*\*

Ryan Tefertiller, AICP – Planning Manager  
City of Colorado Springs  
Land Use Review Division  
719-385-5382

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**From:** Koziol-Petkash, Maria [mailto:maria.koziol@verizon.com]  
**Sent:** Monday, July 13, 2015 7:17 PM  
**To:** Tefertiller, Ryan  
**Cc:** Wolf, Dennis; mkpetkash@gmail.com  
**Subject:** RE: Variance for 5675 Majestic - Ref: File Number AR NV 15-000413

Ryan,

Attached are two new photos of the property showing the surveyor stake in the foreground and the tape running to the stake at the back. If you have any concerns about the accuracy of these photos I would ask again, as I did on Friday when we first spoke, that you would come out and take a look at the property.

To answer your other question, the stake with an orange flag to the right of the tape is not a surveyor stake. I believe that was put in place to let the excavator know how far he could dig in that corner. The surveyor stakes recently placed by JR Engineering are tall with pink tape and are clearly marked "Lot 7" which is our lot. Mr. Hente admitted to making an error in his assumption as to where the north east property corner was. The first time I spoke with him he and his excavator insisted it was the green electrical box which you can see in the photo's is to the far right of the property stake.

Furthermore we are discussing property boundary adjustments with Mr. Hente and his partner.

Thank you,



Maria Koziol-Petkash  
719-648-3416

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**From:** Tefertiller, Ryan [mailto:RTefertiller@springsgov.com]  
**Sent:** Monday, July 13, 2015 11:56 AM  
**To:** Koziol-Petkash, Maria  
**Cc:** Wolf, Dennis  
**Subject:** RE: Variance for 5675 Majestic - Ref: File Number AR NV 15-000413

Hello Maria,  
Thanks for following through with expedited comments to this application. While I know the builder was hoping your support his request, I also know that he appreciates the timely input. One question I have for you regarding your photos... is that a surveyor stake with an orange flag a couple feet to the right of the tape? While I see the surveyor stake at the back corner of the property, the photo would be more helpful if it clearly included the stake in the foreground, near the photographer, so the viewer could be sure the tape is correctly run along the property line. You're right that the buttress wall should not cross the property line onto your lot, but we have often approved these type of sub-surface elements in setbacks in the past, especially in neighborhoods like Parkside that have such tight lots. The intent of building setbacks is to mitigate bulk and scale and provide adequate light and air to surrounding properties; subsurface elements like foundations buttresses and window wells, do not impact the intent of our setback standards. Thanks again and let me know your thoughts on my photo questions,  
Ryan

\*\*\*\*\*

Ryan Tefertiller, AICP – Planning Manager  
City of Colorado Springs  
Land Use Review Division  
719-385-5382

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**From:** Koziol-Petkash, Maria [mailto:maria.koziol@verizon.com]  
**Sent:** Monday, July 13, 2015 11:43 AM  
**To:** Tefertiller, Ryan  
**Cc:** Wolf, Dennis  
**Subject:** Variance for 5675 Majestic - Ref: File Number AR NV 15-000413

Ryan,

We are strongly opposed to this variance. A 1.6 foot setback is not acceptable. In addition, you can see in the attached photo's a portion of the buttress of his foundation is clearly on our property.

Please update me as soon as possible.

Thank you,  
Maria Koziol-Petkash  
719-648-3416

On Fri, Jul 10, 2015 at 10:12 AM, Tefertiller, Ryan <[RTefertiller@springsgov.com](mailto:RTefertiller@springsgov.com)> wrote:

Hello Maria,

Thank you for your time this morning to discuss the variance at 5675 Majestic next door to your home. As promised, I'm following up with a number of documents that will help inform your opinions and decisions on this issue:

- I've attached two PDFs of the variance submittal for 5675 Majestic. The file number is AR NV 15-000413. This is an administrative application which means that I, as the project planner, can take formal action to approve or deny the request. While I know you have concerns about the request and are opposed to approval, it would be helpful to get your thoughts and concerns in writing for the project file.
- Appeal application – I've also attached the form that is used for appeal of administrative decisions. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> pages of the document provide information about the submittal requirements, the process, and the criteria for an appeal application. Feel free to write or call if you have questions about those items.
- I've also attached a checklist for a property boundary adjustment. Obviously, this application requires the coordination and cooperation of both property owners. I just wanted you to have an idea of what goes into an application like a PBA.

Thanks again for your thoughts and consideration on this; I'll look for your response on Monday.

Ryan

\*\*\*\*\*

Ryan Tefertiller, AICP – Planning Manager

City of Colorado Springs

Land Use Review Division

719-385-5382

## Tefertiller, Ryan

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**From:** Knight, Don  
**Sent:** Thursday, July 16, 2015 7:08 PM  
**To:** Tefertiller, Ryan; Wysocki, Peter; Gaebler, Jill  
**Subject:** RE: Issue in Mountain Shadows

Ryan,

Thanks for the history. Could you make sure this e-mail gets in the formal packet if the 5763 Majestic owner decides to appeal as this becomes a quasi-judicial issue if she does?

Don Knight  
Colorado Springs City Council, District 1  
107 N Nevada Ave, Ste 300  
Colorado Springs, CO 80901  
719-385-5487  
719-368-0729 (cell)

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**From:** Tefertiller, Ryan  
**Sent:** Thursday, July 16, 2015 7:21 AM  
**To:** Wysocki, Peter; Gaebler, Jill  
**Cc:** Knight, Don  
**Subject:** RE: Issue in Mountain Shadows

Hi Jill and Don,

I've been working closely with both property owners over the last couple weeks to address the situation. The builder, Scott Hente, of Robert Scott General Contractors was approved to build a home at 5675 on the 5' side setbacks for both sides of the lot (it is fairly narrow at only 47' wide). However, when the foundation was poured, an error was made; the foundation is slightly skewed which caused the back corner of the home to encroach into the sideyard setback leaving a 2.3 foot setback where 5' are required. The next door neighbor at 5673 Majestic owns a home that has a significant setback from that same property line (roughly 15' to 20' toward the rear of the lot) since her home was built at an angle. I've communicated with the neighbor a couple times and she is opposed to allowing the foundation to stay as it for a few reasons. That said, I approved the variance to allow the foundation to stay as is, but required what had been a covered patio at the rear corner of the house to remain uncovered (if covered the variance would have been for a 1.6 foot setback instead of a 2.3 foot setback). The Parkside at Mountain Shadows HOA supports this compromise. The neighbor was informed of my actions on Tuesday (see attached) and she has the opportunity to appeal that decision to Planning Commission (or potentially City Council after that).

I hope I didn't go into too much detail for you. Feel free to contact me if you have additional questions,  
Ryan

\*\*\*\*\*

Ryan Tefertiller, AICP – Planning Manager  
City of Colorado Springs  
Land Use Review Division  
719-385-5382

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**From:** Wysocki, Peter  
**Sent:** Wednesday, July 15, 2015 10:35 PM  
**To:** Gaebler, Jill  
**Cc:** Knight, Don; Tefertiller, Ryan  
**Subject:** RE: Issue in Mountain Shadows

Hi Jill,

Planning is aware of the situation. The builder has applied for a variance. I am copying Ryan Tefertiller as he is working on this issue and can give you an update. Thanks.

Sent from my T-Mobile 4G LTE Device

----- Original message -----

From: "Gaebler, Jill" <[jgaebler@springsgov.com](mailto:jgaebler@springsgov.com)>  
Date: 07/15/2015 8:41 PM (GMT+01:00)  
To: "Wysocki, Peter" <[PWysocki@springsgov.com](mailto:PWysocki@springsgov.com)>  
Cc: "Knight, Don" <[dknight@springsgov.com](mailto:dknight@springsgov.com)>  
Subject: Issue in Mountain Shadows

Hi Peter,

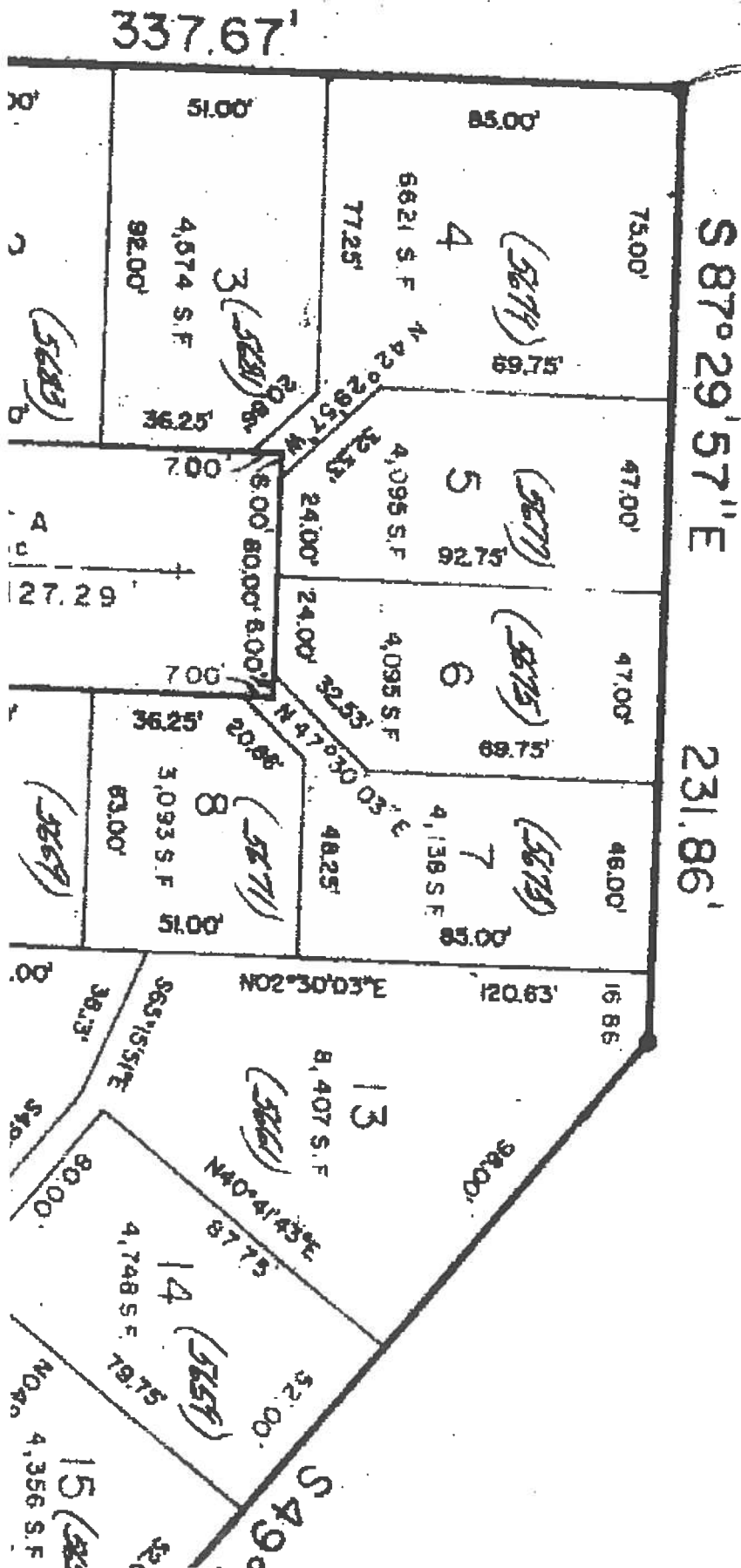
I have been contacted by a friend whose mother-in-law lives at 5665 Majestic. It seems the house being built next door has placed its foundation too close or actually on her property. The property in question is 5675 Majestic. They have been trying to reach a settlement with the owner to no avail and have been told by the city, according to my friend, that the offending property can just get a variance.

I'm not sure what the facts are but would like to see if the City is aware of this issue and if there is any recourse for the property owner. I would appreciate any assistance you can provide. I am also copying Don Knight on this email as both of these properties lie in his council district.

Thanks,

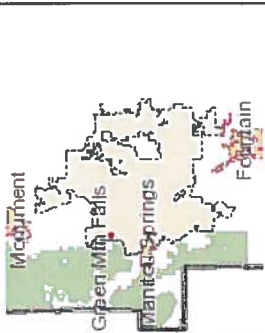
Jill Gaebler  
President Pro Tem  
Council Member – District 5  
City of Colorado Springs  
719-685-6364 - cell

D (EXISTING 80' R.O.W.)  
 NY LOT IS  
 ING W RANCH



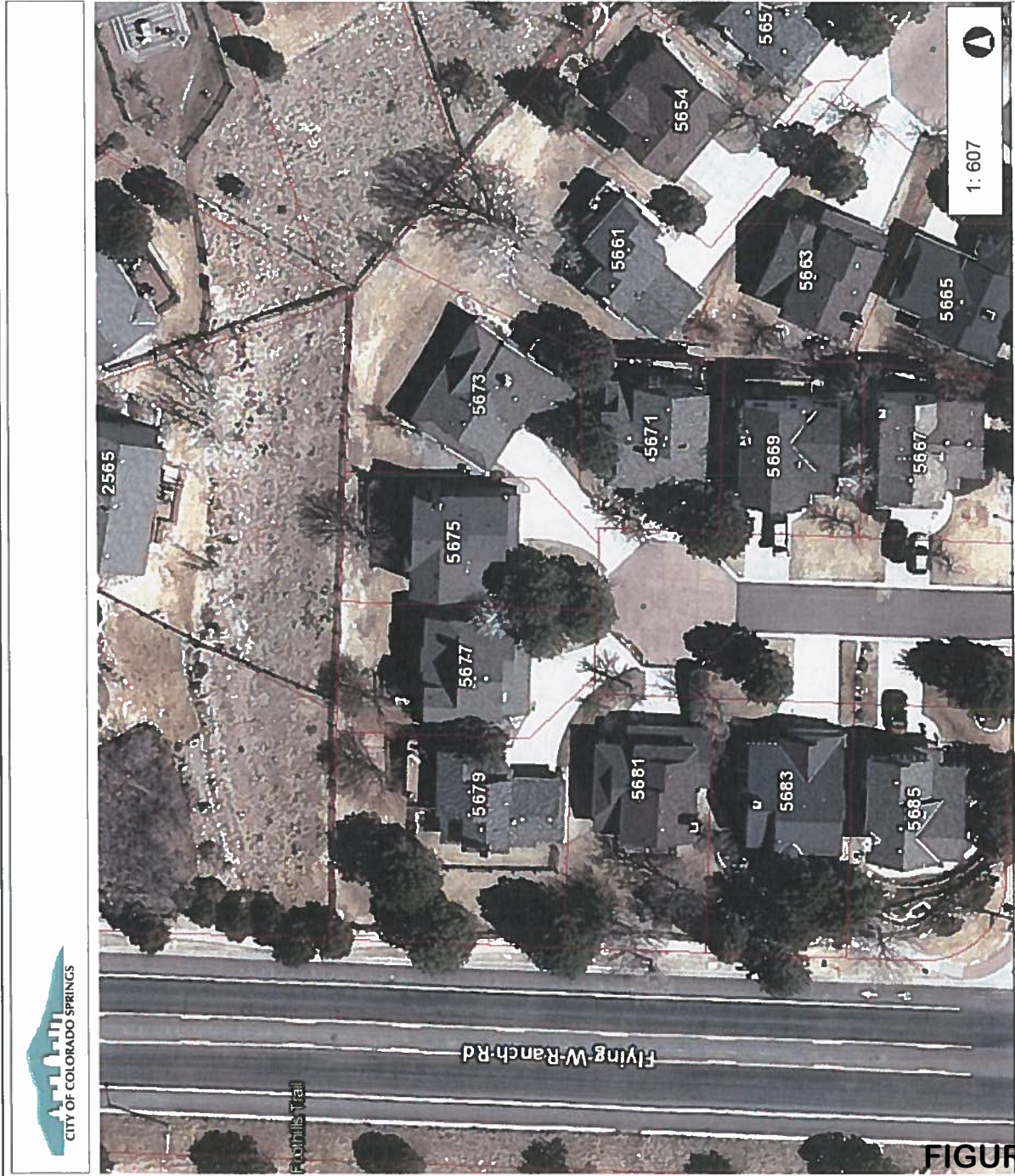
I. U. D.  
 NW cor. The Meadows  
 Sub F. I. No. 1

FIGURE 4



- Legend**
- Parcels
  - National Forest
  - Parks
  - Military
  - Towns
  - County Boundary
  - Place Labels
  - Bus Stops
  - Hospitals
  - Schools
  - Streets
  - Interstate
  - Major Roads
  - Local Roads
  - Ramps
  - Trails\_Parks
  - Trails\_Urban\_Paved
  - Trails\_Urban\_Gravel
  - Trails\_Urban\_Natural
  - Creeks
  - Railroads
  - Portals
  - Golf Fairways
  - Streams
  - Parks
  - Lakes

**Notes**



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**FIGURE 4**

D:\1983\_StatePlane\_Colorado\_Central\_FIPS\_0502\_Feet  
© Latitude Geographics Group Ltd.

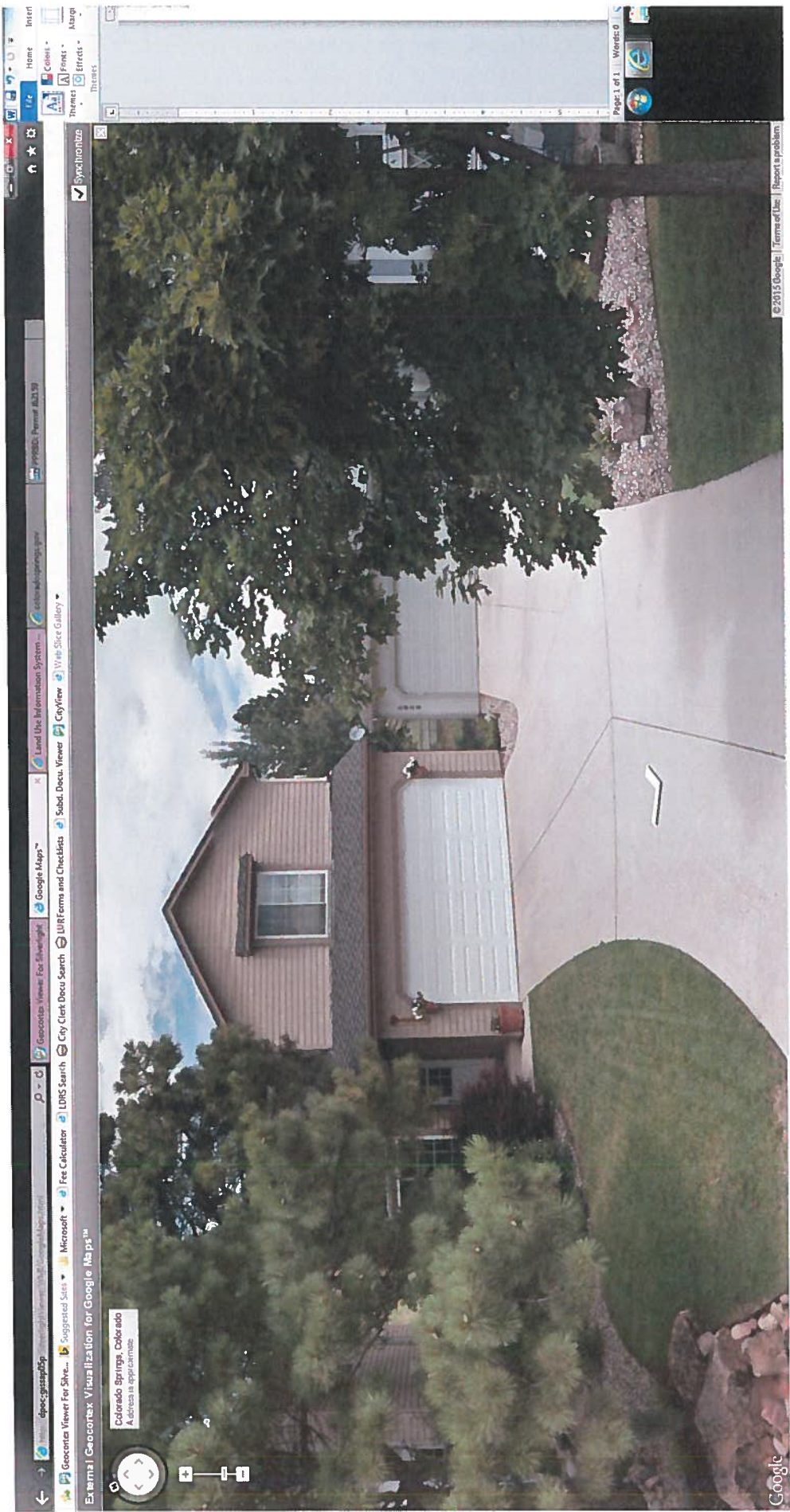


FIGURE 4

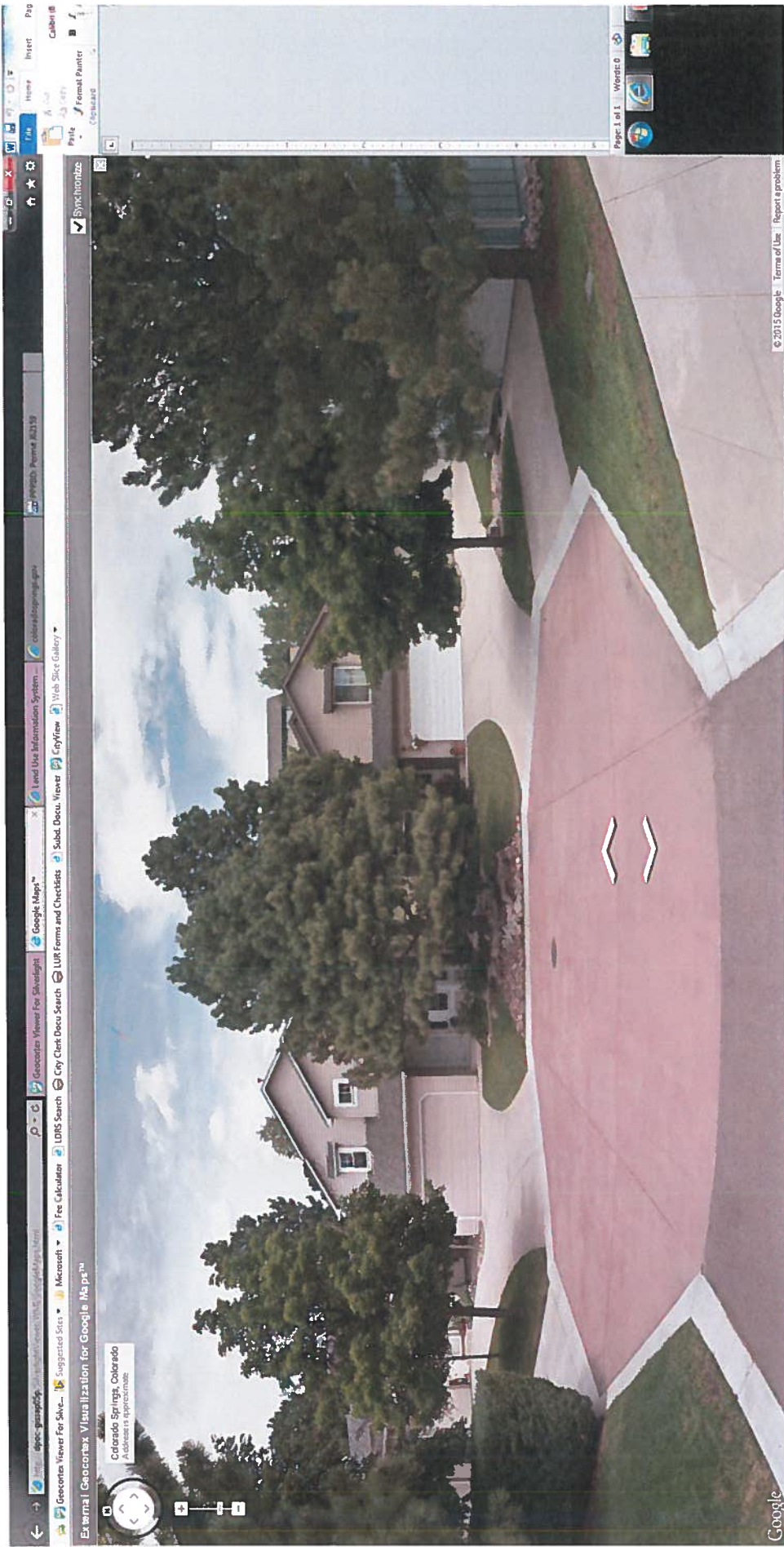


FIGURE 4





**APPLICATION FORM FOR APPEAL OF ADMINISTRATIVE DECISION**

Appellant: Barbara Kozioł Henry F. Kozioł  
Maria Kozioł-Petkash Telephone 719-648-3416 Fax \_\_\_\_\_  
Address: 5673 Majestic Dr. Zip Code 80919 e-mail mkpetkash@gmail.com

**Premises Involved:**

City Planning File Number (if applicable): AR NV 15-00413  
Address: 5675 Majestic Dr.  
Direction from nearest street intersection \_\_\_\_\_

Tax Schedule No. 73154-03-007 Acreage \_\_\_\_\_  
(The tax schedule number can be obtained from the El Paso County Tax Assessor located at 27 E. Vermijo Avenue on the 2<sup>nd</sup> Floor; phone: 520-6600 or at their web site <http://www.land.elpasoco.com>)

Date of Receipt of Notice and Order or Date of Final Administrative Decision 7-14-15

**Appeal of Decision Regarding:**

- Development/Landscape Plan \_\_\_\_\_ Subdivision Plat \_\_\_\_\_ Notice and Order \_\_\_\_\_
- Hillside Site Plan \_\_\_\_\_ Administrative Relief \_\_\_\_\_ Non-Conforming Use \_\_\_\_\_
- Sexually Oriented Business \_\_\_\_\_ Temporary Use Permit \_\_\_\_\_ Relocation payments \_\_\_\_\_
- Similar Use Determination \_\_\_\_\_ Property Boundary Adjustment \_\_\_\_\_
- Preservation Area Boundary Adjustment \_\_\_\_\_ Building Permit to Unplatted Land \_\_\_\_\_
- Building Permit prior to Platting \_\_\_\_\_ Historic Preservation Board Determination \_\_\_\_\_
- Home Occupation Permit \_\_\_\_\_ Human Service Establishment \_\_\_\_\_
- Other: variance to allow encroachment to side setback

**OFFICIAL CITY PLANNING USE:**

Fee Receipt # <u><del>26241</del> 26921</u>	Date Application Accepted <u>7/24/15</u>
Completed Form <input checked="" type="checkbox"/>	Intake Staff <u>Rym Tefertiller</u>
Appeal Statement (2) <input checked="" type="checkbox"/>	Vicinity Map <input checked="" type="checkbox"/>
Authorization <input checked="" type="checkbox"/>	Copy of Notice and Order (if applicable) _____
Applicant informed of Poster Pickup Date? Yes <input type="checkbox"/> No <input type="checkbox"/>	If Yes, Date of Poster Pickup _____
Notification Options: Waive Notification _____	Adjacent _____ 500' _____ 1,000' _____
Assigned to: <u>Rym Tefertiller</u>	(Notice to be sent at time of CPC/CC Hearing only)

**OWNER/APPLICANT AUTHORIZATION:**  
The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

Barbara Kozioł  
Maria Kozioł-Petkash 7-24-15  
Signature of Appellant \_\_\_\_\_ Date \_\_\_\_\_

**PRE-APPLICATION CONFERENCE:**

A pre-application conference with the planning staff is not mandatory for these applications. However, if you would like a pre-application meeting, please call 385-5905 and one will be scheduled for you.

**PROJECT TRACKING**

City Planning maintains an internet-based project tracking system (LUIStrack) that reflects all significant processing benchmarks associated with each development application. Go to <http://www.springsgov.com/luispublic/luispublic.asp> to search for your application in LUIStrack project tracking.

**PUBLIC NOTICE:**

The following public notice requirements will be imposed in conjunction with the review of these applications:

- Written notification to the adjoining property owners within 500 or 1,000 feet (at planner’s discretion) of the property site will be required. City Planning will coordinate with the applicant on the required postage amount with the postage amount required to be paid when the applicant picks up the public notice poster.
- A public notice poster will be provided to the applicant a minimum of ten (10) days prior to the public hearing date. The proposed project site must be posted, by the applicant for a minimum of ten (10) consecutive days. The poster should be posted in a very visible location on the site, which can be viewed by passing motorists and/or pedestrians without trespassing. The applicant is required to complete the affidavit (a copy will be attached to the poster) attesting to the specific dates that the site was posted. The applicant must check the site occasionally to confirm that the property continues to be posted throughout the posting period. If the poster is no longer in good shape or has disappeared from the site, please contact the City Planning Office at 385-5905 for a replacement poster.

**FEES:**

An application review fee will be required to accompany these applications (checks payable to City of Colorado Springs). The fee schedule is as follows:

<b>Appeal of Administrative Decision to Planning Commission</b>	<b>\$176</b>
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If you are indigent, your fee may be waived; please ask the planning staff for an Indigent Fee Waiver form if you wish to apply for this fee waiver.

**APPLICATION REQUIREMENTS:**

This application should be submitted to the City of Colorado Springs-Planning Office at 30 South Nevada Avenue, Suite 301. All applications must be completed in full and accompanied by the following information:

**APPLICANT**

**PLANNER**

- |   |  |  |
|---|--|--|
| <p><u>MKP</u></p> <p><u>MKP</u></p> <p><u>MKP</u></p> | <ol style="list-style-type: none"> <li>Two (2) copies of an <b>APPEAL STATEMENT</b> identifying the following: <ul style="list-style-type: none"> <li>• A clear <b>DESCRIPTION</b> of the appeal. The file number, ordinance and/or provision must be identified and a brief summary of facts.</li> <li>• A <b>JUSTIFICATION</b> based on the review criteria as set forth in Section 7.5.906 Justifying why the appeal should be approved.</li> </ul> </li> <li>A <b>VICINITY MAP</b> showing the parcel outlined with the adjacent streets within the neighborhood noted on a separate 8½” x 11” page.</li> <li>A copy of the <b>NOTICE and ORDER</b> from the issuing agency (if applicable).</li> <li>City Planning, City Planning Commission and/or the City Council may require other <b>ADDITIONAL INFORMATION</b> for this application as needed.</li> </ol> | <p>_____</p> <p>_____</p> <p>_____</p> |
|---|--|--|

**INFORMATION REGARDING APPEAL OF A NOTICE and ORDER:**

If you are appealing a Notice and Order issued by an official of the City of Colorado Springs, you are stating that one or both of the following are true:

1. You are not in violation of City Code and you believe the official is in error; and,
2. The abatement period is unreasonable and should be lengthened.

**INFORMATION REGARDING APPEAL OF A NOTICE AND ORDER, continued:**

A perfected appeal shall operate as a stay of the enforcement process unless the City Agency which issued the Notice and Order certifies in writing that the condition giving rise to the decision constitutes an imminent hazard to the public health, safety and welfare or the violation is of such a short term nature that by the time an appeal hearing is held, the violation will have been terminated or moved to another site. You should take no further action regarding the alleged violation during this stay of proceedings. Do not continue construction, add on or otherwise modify your property or buildings. If you do, it is at your own risk and a completed project will not guarantee automatic approval. In no event will a variance be granted upon appeal from any order, requirement, decision or determination. Any variance will require the filing of a separate application and payment of applicable fees.

**INFORMATION REGARDING AN APPEAL OF AN ADMINISTRATIVE DECISION:**

An individual aggrieved by a decision made by an administrative officer of the City may appeal such a decision by filing a written notice specifying briefly the grounds of the appeal within ten (10) days from the date of mailing, posting, or personal service of notice of the decision. City Planning shall place the appeal on the Planning Commission agenda at the next regularly scheduled meeting occurring at least twenty-one (21) days but not more than forty-eight (48) days thereafter. After the public hearing, the Planning Commission shall have the power to affirm, reverse, or modify such decisions.

In accordance with the Zoning Code, individuals filing appeals of an administrative decision made by City Planning staff must substantiate the following in written form:

1. Identify the explicit ordinance provisions which are in dispute.
2. Show that the administrative decision is incorrect because of one or more of the following:
  - a) It was against the express language of the Zoning Ordinance, or
  - b) It was against the express intent of the Zoning Ordinance, or
  - c) It is unreasonable, or
  - d) It is erroneous, or
  - e) It is clearly contrary to law.
3. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

**Investigation:** City Planning shall investigate the application and the facts bearing on the case to provide the information necessary for action consistent with the intent, purpose and requirements of the Zoning Code. City Planning shall report the findings to the Planning Commission.

**Appearance:** If making an appearance of record, the following persons, are hereby defined as parties and shall be entitled by themselves or through a representative to participate in a public hearing before the Planning Commission:

1. The applicant or the appellant;
2. Either the owner or lessee of property of agent for the owner or lessee which is directly affected by the matter which is before the reviewing authority;
3. Any person, organization, group or governmental entity who demonstrate to the Planning Commission that they have a significant interest in the subject matter of the hearing;
4. Any member of the City administration.

The "appearance of record" shall mean either:

1. An oral statement sufficiently identifying the person making the same or by his representative made at the hearing, or
2. A written statement giving the name and address of the person making the appearance signed by their representative and filed with the Planning Commission either prior to the beginning of the hearing or when permitted by the Planning Commission.

**FINAL DISPOSITION:**

In consideration of an appeal, the Planning Commission may affirm, reverse or modify an administrative decision under their jurisdiction in accordance with of the Zoning Code. After receiving testimony, the Planning Commission shall announce its decision at the conclusion of the public hearing. The decisions shall set forth the findings of fact together with conditions of approval considered necessary to mitigate impacts and protect the public health, safety and welfare. The Planning Commission may recommend conditions, which are necessary and reasonable in order to further, the purpose of the Zoning Code. Such conditions may include, but are not limited to, setbacks, from adjacent uses or property lines, landscaping, screening, placement and size of signs, placement and amount of parking and access restrictions.

**Appealing a Decision of the Planning Commission:**

The decision of the City Planning Commission to approve or deny an application may be appealed to the City Council within ten days from the date of the public hearing decision. The appeal must be in writing and should be submitted to the City Clerk at 30 South Nevada Avenue, Suite 101 along with a \$175.00 non-refundable fee. The appeal must include the file number of the item and specify briefly the grounds for the appeal. If a perfected appeal is filed within this ten-day period, the decision to approve or deny will be suspended until the appeal process is finalized.

Upon receipt of the subsequent appeal, the City Clerk shall schedule a public hearing before the City Council at the next meeting occurring at least thirteen (13) days thereafter. City Council has the power to refer any matter appealed back to Planning Commission for further consideration or affirm, reverse or modify the action of the Planning Commission. In all matters before the City Council relating to the actions of the Planning Commission, the entire file from City Planning pertaining to such matters shall be made a part of the record of the City Council. The file shall include but not be limited to Planning Commission minutes, maps, drawings, departmental reports and application. If the appellant wants to submit additional exhibits to Council to include in the record, the original of such exhibit and twelve (12) copies must be submitted to the City Clerk. If the exhibits are electronic, a disk must be given to the City Clerk. All exhibits are kept for a maximum of ten (10) working days after the time of appeal has expired.

At the public hearing, City Planning staff will summarize their recommendation and the Planning Commission's recommendation for the record. The appellant may present an argument in support of their position. An individual who has not appealed may present an argument in support of the appellant's position. A short rebuttal by the applicant shall be limited to issues raised during the preceding argument. Final comments from the applicant and all other parties are allowed only by permission of the Mayor. Final comments from City staff and staff's recommendation shall conclude the hearing. All questions will be directed through the Mayor who will then direct the question to the appropriate person. Council may then make a decision on the matter or delay the decision. If final action is not taken at the public hearing, the Mayor will advise the audience when the matter will be considered.

**Appealing a Decision of the City Council:**

Once City Council has made a final decision to grant or deny an appeal, the administrative process shall be deemed to be exhausted. Any subsequent appeal must be made to the court.

**DO NOT REMOVE THIS PAGE – IT MUST BE KEPT WITH THE ORIGINAL APPLICATION FORM!**

*The City of Colorado Springs-Planning Group is committed to ensuring that all of our services are accessible to those with disabilities. We encourage participation by all individuals. If you have a disability, advance notification of any special needs will help us better serve you. Please call City Planning at 385-5905 to request any special service that you may require. A one (1) week advance notice to allow us to accommodate your request is appreciated.*

## APPEAL STATEMENT

Nonuse Variance Approval for 5675 Majestic (Schedule number 73154-03-007)

Appellants: Barbara Koziol, Henry F. Koziol, and Maria Koziol-Petkash

Reviewer: Ryan Tefertiller

Preparer: Barbara Koziol, Henry F. Koziol, and Maria Koziol-Petkash

As you know we own the property located at 5673 Majestic Drive. We are appealing the non-use variance granted on July 14, 2015, to Robert-Scott G.C., Inc., for the property identified above. The variance cannot be allowed to stand because it fails in every possible respect to comply with the legal requirements for a grant of a non-use variance.

This situation is simple. Mr. Hente and his excavator excavated a hole for the foundation in the wrong place. After the foundation was in we began questioning the proximity of it to the driveway and I pointed out there could be a problem with the back north east corner of the foundation as well. Mr. Hente and his excavator asserted they were within the boundary at the front by the driveway and claimed the rear boundary was located where the phone box was located (it was not). The excavator was very nasty in his communications even though he was relying on a totally wrong boundary marker. Mr. Hente acknowledged he had made a mistake regarding the rear property corner the next day, after obtaining a copy of the Site Plan of our lot from Vantage Homes. He should have known he was building the house in the wrong location before he excavated and before he placed forms and before he poured the foundation. Non-Use variances are simply not allowed in cases where the variance is being sought due to pure negligence and bad building practices. Mr. Hente is building a house in the wrong spot and is blaming everyone else for his mistake.

When reading this, please remember that the variance as stated as a “2.3 foot side yard setback where 5 feet are required” is misleading. The foundation set back is 2.3 feet, the home’s roof, gutters, and downspouts will be much closer to our property than 2.3 feet and may be closer to 12-15 inches. That is unacceptable for the reasons stated herein.

### The Variance Fails to Meet the Intent and Purpose of the Colorado Springs Zoning Code

In pertinent part, the expressly stated intent and purpose of the Colorado Springs Zoning Code is “to protect property values, to preserve neighborhoods and to protect private property from adjacent nuisances such as noise, excessive traffic, [and] incompatibility of uses. See section 7.2.102 “Intent and Purpose of Zoning Code.”

The Zoning Code’s objective is to address land use questions “with reasonable consideration to the character of each zone district and . . . with a view to encouraging the most appropriate use of land throughout the City.” It is also intended to provide safety from dangers, “to improve housing standards; . . . and in general to promote health, safety and general welfare” of City residents. See Section 7.2.102.

The purpose of variances is to grant relief in the absence of which an owner would have an inability to reasonably utilize property due to exceptional or extraordinary circumstances or conditions which are applicable to the property in question that do not generally apply to similarly located properties. See City Zoning City section 7.5.801.

Based on these broad and sweeping objectives, it is clear that the Zoning Code is meant to be applied to address truly unique circumstances and protect all property owners, not just address mistakes by unprepared builders.

The Zoning Code should therefore be applied in a manner that complies with its overall intent and objectives to achieve betterment for the City rather than elevating one individual's isolated error over my property rights and value. That is especially true when that error could have been easily avoided with the simple use of the customary building technique of actually locating property corners before digging holes and before installing foundations based on a belief that a phone box is located at a property corner and when the error is shown to that builder before any permanent work is done. Mr. Hente could have confirmed the property boundaries before setting forms, and could have confirmed the property boundaries before completing the foundation and before waterproofing it. He only confirmed property boundaries after we started asking questions about the location of his foundation and his error in not doing this validation before installing the foundation is not related to any of the variance approval criteria. It is gross negligence. Variances are not intended to cure gross negligence. This is the exact circumstances a variance is not allowable by law.

Colorado Springs City Code section 7.5.802: NONUSE VARIANCES states in paragraph B that the following criteria must each be met in order for any nonuse variance to be granted. This is not permissive, but mandatory. Each of the conditions must be met as each condition is followed with the conjunctive word "and".

1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district.

The planner erroneously stated this condition was met because he stated the lot dimensions were small. That is not enough. Builders build on small lots all the time and still keep their construction well within the boundaries and the setbacks. This is not an "extraordinary or exceptional physical condition that does not generally exist in nearby properties" as many adjoining lots in that subdivision are similarly "small". The surrounding lots are of the following sizes:

- Lot 5 - 4095 Sq feet.
- Lot 6 - 4095 Sq feet. (Lot at issue)
- Lot 8 - 3104 Sq feet.
- Lot 9 - 3212 Sq feet.
- Lot 10 - 3559 Sq feet.

Compared to some of the surrounding lots, Mr. Hente's lot is actually very large, not extremely small. There is plenty of room for him to build in the lot setbacks without this variance. This does not meet the criteria.

The planner stated that our driveway consumed much of the property and forced the home to be pushed back. That may be partially true, but that did not force the home to be angled improperly on the lot which caused the encroachment. The home would have fit within the setbacks and this variance would be maybe unnecessary if the builder had placed the side foundation walls parallel with the lot boundaries and not angled the home on the property under the mistaken belief that the telephone box was the lot corner. The lot is 47 feet wide. The planned house is 37 feet wide. It would have fit if the builder used the correct property boundary.

The planner stated our driveway consumed much of the property and forced the home to be pushed back but that the driveway was part of an “approved plan”. The “approved plan” for our property includes a driveway that the builder (Vantage Homes) installed partially on Mr. Hente’s property. The plat map does state that lots 6 and 7 have shared common access, but just how it is “shared” was nowhere stated in any recorded documents nor any documents given to us at the time of purchase. The driveway was apparently installed without Mr. Hente’s permission and he could have done anything he liked with the driveway so long as he did not prohibit our access. If he felt it was an encroachment or hindrance to construction, Mr. Hente could have removed or relocated it. Had Mr. Hente done any pre-construction staking or investigation, he would have seen this problem and been able to address it with Vantage or us. He chose not to investigate anything, just to start building. The driveway is not a permanent feature that had any effect on the location of the house and the house could have been located anywhere on the lot without regard to the driveway. Once again, Mr. Hente’s mistaken belief about the driveway is not an “extraordinary or exceptional physical condition” because it is easily remedied. This removable driveway encroachment does not meet the criteria.

Contrary to the planner, the now existing foundation did not have to be constructed within the 5 foot setback by Mr. Hente for a number of reasons. First, Mr. Hente and his excavator chose the wrong boundary line and went ahead building in the wrong place on the lot. Second, had the builder used the correct boundary line and not the phone box they thought was on the boundary to determine the location of the boundary and the building envelope 5 feet inside the lot line, they could have had the side walls parallel the boundary line and the foundation would not be a problem. That would have solved all the problems. Third, they could have removed part of the driveway and used the front part of the lot. Fourth, they could have designed a smaller home for the rather large lot that would have fit on it, like a two story design. Whatever home was built there before the fire, fit on the lot just fine. Pushing the foundation back because of the encroaching driveway does not meet the criteria.

As you know, various guidelines exist for applying any of the criteria for nonuse variance applications. These can be considered to see if circumstances “have been established by the evidence in determining whether the applicable criteria have been met”. For this section these are as follows:

1. Extraordinary or Exceptional Physical Conditions:
  - a. The physical conditions of the property shall not be conditions general to the neighborhood or surrounding properties - Not met, all the physical conditions of this site are general to the neighborhood or surrounding properties.

b. The unique physical conditions of the property may be its size, shape, location, topography, soils - Not met, the lots size, shape, location, topography, soils are general to the neighborhood or surrounding properties.

c. The unique physical conditions of the property may be the size or location of existing structures on the property if such structures are not self-imposed conditions - Not met, the problem being complained of in terms of the location of an existing structure is purely a self-imposed condition. They built the foundation in the wrong place. Period.

d. The unique physical conditions may be certain on site or off site environmental features which may positively or negatively affect the property in question, including, but not limited to, adjacent land uses, traffic, noise, views and location of significant natural, architectural or historic features - Not met, there are no unique physical conditions, on site or off site, that weigh in favor of a variance. This was a flat building lot that used to have a house on it and the current house would have fit had the builder not angled it on the lot. Nothing unique at all about it.

2. That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief.

There are no “extraordinary or exceptional physical condition of the property” that prevent reasonable use. The planner claims this criteria was met because of the limited building envelope size (refuted above - it is just like surrounding lots and the house would have fit in the building envelope if not angled on the lot), the driveway location (refuted above - it can be removed or relocated and the plat clearly showed that to be true) and the existing foundation had been poured (shown to be the builder’s own mistake - a self imposed condition). There are plenty of reasonable uses of the lot without the variance. The foundation can be removed and a smaller home built within the setbacks. The foundation can be modified on this one side to allow it to stay within the setbacks or even on both the sides and back. In this case, the idea that there is no “reasonable use” without this variance is completely refuted. It may cost Mr. Hente and his excavator money to solve the problem, but that alone is not a consideration for a variance. See below. This criteria is not met.

For this section, the various guidelines for applying the criteria to see if circumstances “have been established by the evidence in determining whether the applicable criteria have been met” are as follows:

2. No Reasonable Use:

a. The demonstrated extraordinary or exceptional physical conditions of the property must directly relate to the inability to reasonably use the property in conformance with the applicable zoning ordinance regulations - Not met, there are no “demonstrated extraordinary or exceptional physical conditions of the property that directly relate to the inability to reasonably use the property in conformance with the applicable zoning ordinance regulations”. The property is a relatively flat building lot. It can very easily be used for a building a home (again) without the variance by using a foundation that has a smaller footprint. The existing foundation



can be modified. The existing foundation can be removed and replaced and the lot used for any number of reasonable uses. There is no inability to use this lot without the variance.

b. The concept of less reasonable use may be considered if a neighborhood standard exists and if it is demonstrated that the property in question has a less reasonable use by comparison with proximate and similar properties in the same zoning district - Not met, the lot can be built upon with a home that will meet the neighborhood standard even without the variance and such other construction will not be a less reasonable use by comparison with proximate and similar properties, such as ours. Other smaller lots are in the neighborhood and are built on or are being built on, one by Mr. Hente himself (being lot 8 containing 3104 square feet, almost 1,000 square feet less than this lot). A two story home can be built that could be much larger than the existing home and would be in the same zoning district because it is next door to our home. The home would have fit if it was not angled due the builder's mistake.

c. The purchase price of the property, the desire for greater economic return on investment or mere inconvenience do not constitute, by themselves, evidence of no reasonable use - This one is met and weighs against the variance, the inconvenience to the builder to have to fix his problem and the cost involved with doing so, which will reduce his return on investment, do not eliminate reasonable use of the lot and do not support the variance. This is a self-imposed problem caused by the builder's lack of preparation.

d. Self-imposed conditions such as prior voluntary rezoning, platting, or building in violation of City codes and ordinances do not constitute evidence of no reasonable use - This one is met and weighs against the variance, the variance is being sought to correct a self-imposed condition, being a violation of City codes and ordinances for putting the foundation in the wrong spot. This is as discussed above.

e. Knowledge, or lack of knowledge, of zoning restrictions and physical site constraints at the time the property is purchased is immaterial to evidence of no reasonable use of the property - this one is met and weighs against the variance, Mr. Hente's lack of knowledge concerning physical site constraints does not support the variance.

3. That the granting of the variance will not have an adverse impact upon surrounding properties.

The planner claims this criteria was met because our house is "built at an angle with a significant setback" from this property. This is not true. In fact, at the front corner of our house, there is less than the minimum ten feet from our house to Mr. Hente's house. That is not a "significant setback" and is less than the required set back. Our house meets the 5 foot setback, Mr. Hente's does not. This has an adverse effect on us.

The planner claims, without any support whatsoever, that the variance will not negatively impact the adjacent property owner, us. That is not true. The proximity of the new home to our home will negatively impact us because the new home is too close to our home and that decreases our property value. Further, part of the foundation buttress wall actually intrudes into our property and is legally a continuing trespass. That negatively impacts us. Agreeing to not cover a patio so that the setback is an additional 8 inches does not reduce the negative impact on

our property as the patio will, at ground level be just over 27 inches from our property line, not the 60 inches required. That is another huge detriment.

Further, the variance cannot be allowed to stand because it allows the new foundation buttress wall to actually encroach past the property boundary into our property. That is a continuing trespass that would be cured by overturning the grant of the variance and forcing the builder to build a home within the setbacks on a lot that is easily buildable with proper design and care.

The perimeter drain around the new foundation buttress wall will also be a continuing trespass on our property and that legally cannot remain on our property but would be resolved if the variance was overturned.

With only about a 27 inch setback from the property line at the back corner of the foundation, the house drainage cannot meet general engineer's recommendations for 5 feet or more of positive drainage away from the house so as to protect the foundation from being flooded or damaged by water accumulating along the foundation wall and entering the basement. We all know how water can harm basements especially if it encounters expansive soils so close to the foundation. If the foundation is damaged by water, it will hurt the new owners.

It appears from the drawing attached to AR NV 15-00413 that the back patio or back structure of the home will be much closer than 27 inches to the boundary line and may be more like 18 inches away. That is very troubling for all the reasons stated herein and that adversely impacts us.

With the variance granted, water from the new roof may sheet flow onto our property since the roof will be much closer to our property than the foundation located a mere 27 inches or so from our property. Given even a small roof overhang of say 12", the roof will be may 15" off of our property. That is unacceptable. Also, the water from the gutters and downspouts may be directed in concentrated flows onto our property and that can cause significant damage to our landscaping and even our home. Winter ice build-up can also be a problem when there is only that small a space between properties and the roof overhang is very close to our property line. Water and ice can also be a nuisance or a continuing trespass on our property, all of which negatively impacts our property because of the variance.

The window well for the basement window at the back of the basement wall will also most likely continue to encroach onto our property as a continuing trespass, and if it is made smaller to avoid the trespass, it may not meet the safety requirements for egress in the case of an emergency or fire. We believe that the building code requires a minimum of 30" and more likely 36-40 inches for the safety window well. Finally, even if the window well does not encroach and is not a safety hazard, if left in place, and based on future landscaping growth on our lot, no one may be able to access our property to get out of the window well, meaning it will remain an ongoing fire / safety hazard to occupants of the new home. The clearly does not support a variance.

The proximity of the new home to the boundary line will increase fire hazards as it provides very limited space for fire fighting and very close proximity between the combustible materials in our home and landscaping and the new home. Remember, the foundation is 27 inches or so off the boundary the actual roof may be much closer at the back corner by the patio, maybe 15” away.

The entire length of the home itself, not just a porch or a roof overhang, also literally encroaches on the easement platted along the side lot line. That is the dashed line on the drawing stamped “approved”. Those easements cannot be used to their full potential by public utility providers, placing more risk and burden on our home easement area if the other side lot line cannot be used for utility line extensions. How the title companies or utility provides will deal with that is to be seen. It will affect the new owners and us alike.

We also question how the home will be constructed and maintained by the new owners. The extreme proximity to the lot line does not allow the builder to have his men and equipment on that side of the house to finish building it. The variance does not allow for continued construction of the home as the back corner of the foundation is under two feet from the property line. That means that all construction workers and their equipment must stay within that small area to work on the house. That is not enough room for safe scaffolding, ladders, or people and equipment. The builder cannot safely erect scaffolding or safely use ladders as they will trespass on our property. Overturning the variance will solve these problems too.

We are not sure how Mr. Hente will back fill the foundation with equipment without trespassing.

Also, the future owners will have to try to maintain the house and its landscaping in an area almost too small to walk in without trespassing. The new owners will not be able to safely maintain that side of their home without trespassing. It is impossible for the home to remain in its current location which makes it very harmful to our property both during construction and after it is sold.

The HOA support does not matter in the variance process. The HOA is a legal entity. The HOA does not own our home or any other home. It owns common areas that are not at all impacted by this variance. The variance has no detrimental impact on the HOA. It is easy for the HOA to support a request that doesn’t hurt it but adversely affects us.

For this section, the various guidelines for applying the criteria to see if there is “no adverse impact upon surrounding properties” are as follows:

a. The granting of a variance shall not be detrimental to public health, safety and welfare or injurious to surrounding properties - Not met, the variance will be significantly detrimental to our health and safety and welfare as well as that of the occupants of the new home.

b. The granting of a variance shall not be inconsistent with any plans adopted by the City - Not met, the variance is inconsistent with the city code provisions cited herein, the City’s master plan objectives for safe environments, and building code safety requirements.

c. The granting of a variance shall not weaken the general purpose of this Zoning Code or its regulations - Not met, this is very epitome of what is not allowed by a variance. This is a builder who created a wholly self-imposed problem he will not take responsibility for and which he blames on others. There are significant safety and legal issues that will continue and have to be resolved in court if the variance is allowed to stand and those issues contravene the very purpose of the Zoning Code which is to provide for safe housing and protect all residents, not just builders. The Zoning Code has the intent and purpose to “protect property values”, protect citizens from “dangers”, “improve housing standards . . . and in general to promote health, safety and general welfare” of City residents. The variance contravenes this.

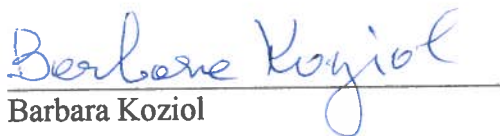
d. The variance, if granted, shall only be to the extent necessary to afford a reasonable use of property - Maybe met, the variance was seemingly as limited as possible but improperly granted when none of the criteria were met.

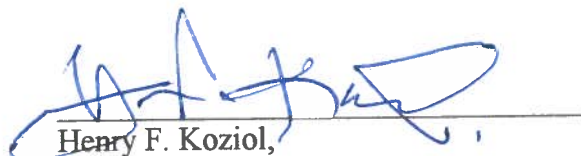
The variance approval in the face of the arguments shown above shows evident partiality and a refusal to apply the approval criteria as mandated by the City Code. The City Code mandates that all of the approval criteria “must” be met. In reality none of the criteria have been met in this case. You can see that the variance was improperly granted and was granted in direct contravention of the approval criteria.

For all of these reasons, the Appellants respectfully request that you reverse the decision to approve the nonuse variance and deny the variance as not meeting the criteria, harming our property, creating significant future safety issues, and generally forcing us to address all of these concerns in litigation that can be avoided by your proper application of the code provisions discussed herein.

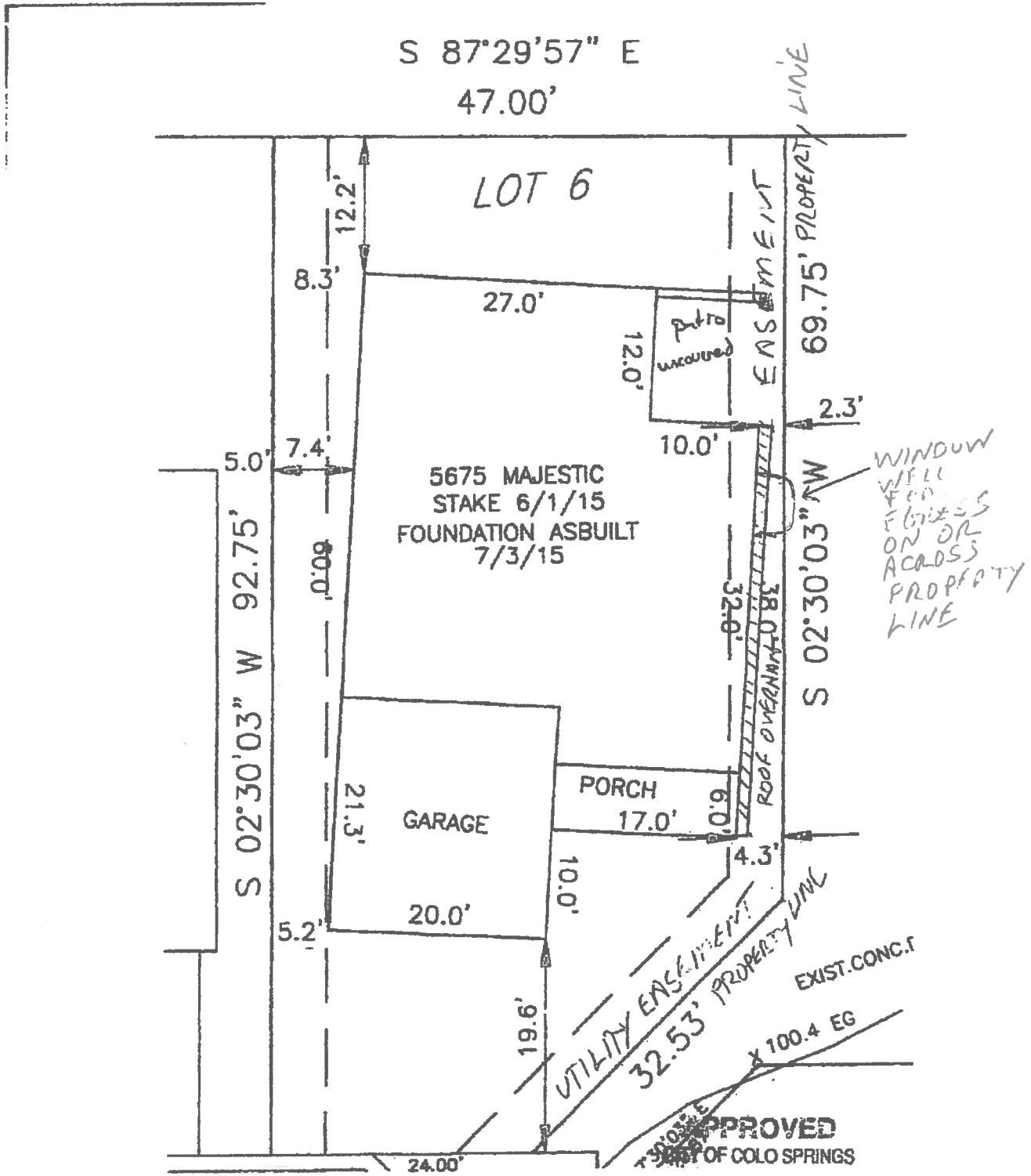
We have attached various documents to assist in your review process and we are happy to answer any questions or provide more information.

Thank you for your consideration.

  
Barbara Koziol

  
Henry F. Koziol,

  
Maria Koziol-Petkash



JUL 14 2015

SCALE: 1" = 10'

BY CITY PLANNING

Owner/Applicant: Robert-Scott General Contractors, Inc

TSN: 73154-03-007

Address 5675 Majestic

Legal Description: Lot 6, Block 1, Parkside @ Mountain Shadows #1

Zone: PUD/H5

Variance - 2.3' sideyard setback where 5' are required

AR NU 15-00413

FIGURE 5



July 14, 2015

Robert-Scott G.C., Inc.  
2760 Brogans Bluff Dr.  
Colorado Springs, CO 80919  
Attn: Scott Hente

Re: 5675 Majestic Non-Use Variance  
AR NV 15-00413

Dear Mr. Hente,

Planning Staff has approved the requested non-use variance on July 14, 2015. This approval is subject to the following conditions:

1. The approved non-use variance allows a 2.3 foot setback from the proposed home to the eastern property line where 5 feet are required by the Parkside at Mountain Shadows PUD plan.
2. The patio shown at the northeastern corner of the home is to be uncovered per this approval. Covering the patio in the future would require a new non-use variance.
3. The non-use variance shall be void if required permits are not obtained within twelve (12) months of the final approval date.

Copies of the approved documents are enclosed. Please attach one (1) copy of the approved Site Plan to each of the two (2) sets of construction drawings submitted to the Regional Building Department in conjunction with the building permit application.

As previously discussed, all administrative approvals are subject to a 10 day appeal window. I will inform you if an appeal of this decision is filed within the necessary timeframe.

Please feel free to contact me at 385-5382 if you have any questions regarding this approval.

Sincerely,

Ryan Tefertiller, AICP  
Planning Manager

Cc: Development Review CAB Office Files (AR NV 15-00413)  
Development Review Enterprise Office

Enclosure: Record of Decision

**CITY OF COLORADO SPRINGS LAND USE REVIEW DIVISION  
RECORD-OF-DECISION FOR A NON-USE VARIANCE**

**FILE: AR NV 15-00413**

**DECISION DATE: JULY 14, 2015**

**INFORMATION**

Name of Applicant: Robert-Scott G.C., Inc.  
Address of Premises Involved: 5675 Majestic  
Zone District: PUD/HS  
Tax Schedule Number: 73154-03-007

**REQUEST** To allow a 2.3 foot side setback on the east side of the lot where 5 feet are required.

**STAFF ANALYSIS**

**CITY CODE CRITERIA TO GRANT A NON-USE VARIANCE**

**CRITERIA MET OR NOT MET**

- |   |   |     |
|---|---|-----|
| 1. 7.5.802 (B.1)  | Exceptional or Extraordinary Conditions   | Met |
| The lot is extremely small at just over 4,000 square feet and narrow at only 47 feet wide. The approved plan for the neighboring lot to the east included a driveway that consumed much of the subject property's front setback and forcing the home at 5675 to be pushed toward the rear of the lot; this adjustment resulted in the foundation being constructed within the required 5 foot setback.  |   |     |
| 2. 7.5.802 (B.2)  | No Reasonable Use of Property             | Met |
| The limited building envelop, presence of the neighbor's driveway on the front of the subject property, and existing foundation that has already been poured in place results in this criterion being met.  |   |     |
| 3. 7.5.802 (B.3)  | No Adverse Impact to Surrounding Property | Met |
| The home on the lot to the east is constructed at an angle with a significant setback from the shared property line. The requested encroachment will not negatively impact the adjacent property owner. The owner/builder of the subject property has agreed to keep the patio uncovered to reduce the extent of the encroachment (if the patio were covered as originally planned the setback would only be 1.6 feet, not 2.3 feet as approved). The HOA supports the request. |   |     |

**STAFF DECISION**

**APPROVED:** Staff approves the non-use variance request due to the required criteria being met.

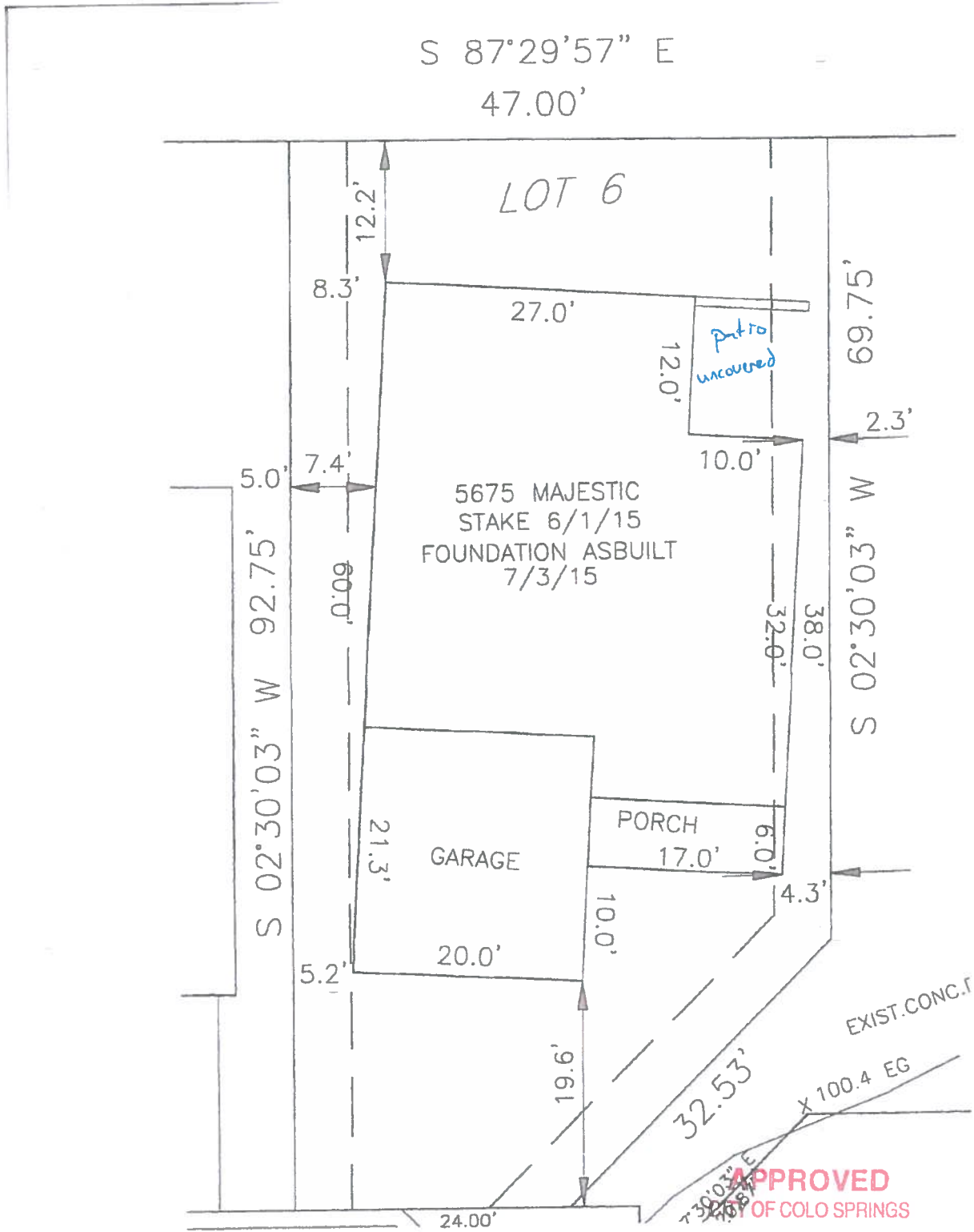
July 14, 2015  
DATE OF DECISION

  
STAFF MEMBER

**APPLICANTS:** THE DECISION PERTAINS ONLY TO THE APPLICATION YOU SUBMITTED. YOU MUST COMPLY WITH ALL OTHER APPLICABLE REQUIREMENTS OF THE CITY OF COLORADO SPRINGS AND THE REGIONAL BUILDING DEPARTMENT. A COPY OF THE RECORD-OF-DECISION AND APPROVED SITE PLAN SHALL BE SUBMITTED IN CONJUNCTION WITH A BUILDING PERMIT APPLICATION. THIS VARIANCE DOES NOT SUPERSEDE OR NULLIFY PRIVATE COVENANTS THAT MAY LAWFULLY IMPOSE OTHER RESTRICTIONS ON THE USE OF YOUR PROPERTY.

\*\*\*\*\*IMPORTANT\*\*\*\*\*

**THE VARIANCE SHALL BE VOID IF ALL REQUIRED PERMITS ARE NOT OBTAINED WITHIN TWELVE (12) MONTHS OF THE FINAL APPROVAL DATE.**



SCALE: 1" = 10'

Owner/Applicant: Robert-Scott General Contractors, Inc  
 TSN: 73154-03-007  
 Address: 5675 Majestic  
 Legal Description: Lot 6, Block 1, Parkside @ Mountain Shadows #1  
 Zone: PUD/H5  
 Variance - 2.3' sideyard setback where 5' are required

AR NU 15-00413 **FIGURE 5**



**GENERAL INFORMATION**

Printed: 11/11/15

Project Name: Partiside Re-Build Existing Zone: PUD/Hs Acreage: 408 sq ft  
 Site Address: 5675 Majestic Direction from Nearest Street Intersection: Northeast of Majestic + Flying W Ranch Road  
 Tax Schedule Number(s): 73154-03-007

**TYPE OF PLAN(S)** - Check all that apply.

<input type="checkbox"/> 2020 Land Use Map Amendment	<input type="checkbox"/> Master Plan <input type="checkbox"/> New <input type="checkbox"/> MJ <input type="checkbox"/> MN <input type="checkbox"/> MM
<input type="checkbox"/> Administrative Relief	<input checked="" type="checkbox"/> Nonuse Variance
<input type="checkbox"/> Amendment to Plat Restriction	<input type="checkbox"/> Preservation Easement Adjustment
<input type="checkbox"/> Annexation	<input type="checkbox"/> Property Boundary Adjustment
<input type="checkbox"/> Building Permit to Unplatted Land	<input type="checkbox"/> Street Name Change
<input type="checkbox"/> Building Permit Prior to Platting	<input type="checkbox"/> Subdivision Plat <input type="checkbox"/> PP <input type="checkbox"/> FP <input type="checkbox"/> PFP
<input type="checkbox"/> CMRS No. <input type="checkbox"/>	<input type="checkbox"/> Subdivision Waiver (Design/Process)
<input type="checkbox"/> Concept Plan <input type="checkbox"/> New <input type="checkbox"/> MJ <input type="checkbox"/> MN <input type="checkbox"/> MM <input type="checkbox"/> PUP	<input type="checkbox"/> Use Variance <input type="checkbox"/> New <input type="checkbox"/> MJ <input type="checkbox"/> MN <input type="checkbox"/> MM
<input type="checkbox"/> Conditional Use <input type="checkbox"/> New <input type="checkbox"/> MJ <input type="checkbox"/> MN <input type="checkbox"/> MM	<input type="checkbox"/> Vacation of Plat
<input type="checkbox"/> Development Agreement (PUD Zone)	<input type="checkbox"/> Vacation of Public Right-of-Way
<input type="checkbox"/> Development Plan <input type="checkbox"/> New <input type="checkbox"/> MJ <input type="checkbox"/> MN <input type="checkbox"/> MM <input type="checkbox"/> PUD	<input type="checkbox"/> Waiver of Replat
<input type="checkbox"/> Landscape Plan <input type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Irrigation	<input type="checkbox"/> Zone Change <input type="checkbox"/> PUZ Proposed Zone: <input type="checkbox"/>

Note: MJ = Major Amendment; MN = Minor Amendment; MM = Minor Modification

**PROJECT SUMMARY:** Briefly describe the proposed project, including commercial, office and industrial square footage and/or residential lots or dwelling units.

variance to allow an encroachment into the site setback on the eastern edge of the property (see attached criteria)

**OWNER/APPLICANT ACKNOWLEDGEMENT OF RESPONSIBILITIES:**

The signature(s) hereby certify that the statements made by myself and constituting part of this application are true and correct. I am fully aware that any misrepresentation of any information on this application may be grounds for denial of this application. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval. The applicant/owner by his or her signature understands and agrees that he or she is responsible for the completion of all on-site and off-site improvements as shown and approved on the final plan (including landscaping, paving, lighting, etc) prior to receiving a Certificate of Occupancy.

I, as the owner, wish to receive copies of all correspondence regarding this project.

Robert Scott 6 July 2015 Robert Scott 6 July 2015  
 Signature of Owner Date Signature of Applicant Date

**CONTACT INFORMATION**

Applicant: Robert-Scott G. Co., Inc. Phone: 719-499-6752 Fax: 719-599-3770  
 Address: 2760 Brogans Blatt Dr City: Colorado Springs State: CO  
 Zip Code: 80917 E-Mail: rshomes@comcast.net  
 Owner: same as applicant Phone:  Fax:   
 Address:  City:  State:   
 Zip Code:  E-Mail:

**PLANNER AUTHORIZATION TO SUBMIT PROJECT: (CITY USE ONLY)**

Applicable Checklists  Administrative (AR)  Project blurb  
 Distribution Bucksliip Attached  Planning Commission (CPC)  
 Application Assigned to: Ryan Teffertiller Date: 7/7/15  
 Payment \$ 221.00 Newly Assigned File No(s): AR NV 15-00413  
 Receipt No.: 20856

# APPLICATION REQUIREMENTS



5/4/2010

## Nonuse Variance

**REVIEW CRITERIA:** Applications for nonuse variances must meet all of the criteria listed in the Zoning Code before an application can be approved. As a guide to applying any of the criteria for nonuse variance applications, the applicant may consider any or all of the following circumstances in determining whether the applicable criteria have been met:

### 1. Extraordinary or Exceptional Conditions:

- The physical conditions of the property shall not be conditions general to the neighborhood or surrounding properties.
- The unique physical conditions of the property may be its size, shape, locations, topography, soils; or,
- The unique physical conditions of the property may be the size or location of existing structures on the property if such structures are not self-imposed conditions; or
- The unique physical conditions may be certain on-site or off-site environmental features which may positively or negatively affect the property in question, including but not limited to, adjacent land uses, traffic, noise, views and location of significant natural, architectural, or historic features.

### 2. No Reasonable Use:

- The demonstrated extraordinary or exceptional physical conditions of the property must directly relate to the inability to reasonably use the property in conformance with the applicable zoning ordinance regulations.
- The concept of less reasonable use may be considered if a neighborhood standard exists and if it is demonstrated that the property in question has a less reasonable use by comparison with proximate and similar properties in the same zoning district.
- The purchase price of the property, the desire for greater economic return on investment or mere inconvenience do not constitute, by themselves, evidence of no reasonable use.
- Self-imposed conditions such as prior voluntary rezoning, platting, or building in violation of City codes and ordinances do not constitute evidence of no reasonable use.
- Knowledge, or lack of knowledge, of zoning restrictions and physical site constraints at the time the property is purchased is immaterial to evidence of no reasonable use of the property.

### 3. No Adverse Impact:

- The granting of a variance shall not be detrimental to public health, safety and welfare or injurious to surrounding properties.
- The granting of a variance shall not be inconsistent with any plans adopted by the City.
- The granting of a variance shall not weaken the general purpose of the Zoning Ordinance or its regulations.
- The variance, if granted, shall only be to the extent necessary to afford a reasonable use of property.

Code Section/Plan Number to be varied:  Code/Plan Requirement:

Request:

Code Section/Plan Number to be varied:  Code/Plan Requirement:

Request:

Code Section/Plan Number to be varied:  Code/Plan Requirement:

Request:

**SUBMITTAL CHECKLIST:** The following items will need to be included in any Nonuse Variance review submittal.

Applicant

Planner

General Development Application Form

A Project Statement identifying the following: (# TBD by Planner)

- A clear description of the proposed development. If this is an amendment, describe the changes proposed from the currently approved plan; and
- A Justification based on the review criteria addressing why the proposed project should be approved.

1 copy of a **Black Line** of the proposed project, reduced to 11" x 17", or a .pdf

A **legal description** of the proposed project

A **vicinity map** showing the parcel outlined with the adjacent streets within the neighborhood noted on a separate 8 1/2" x 11" page.

**FIGURE 5**

**PLAN CONTENT REQUIREMENTS:** The content of the development plan must include the following information.

Applicant	Planner
<input type="checkbox"/> Indication of the scale (i.e. 1" = 20') and a bar scale	<input type="checkbox"/>
<input type="checkbox"/> North arrow	<input type="checkbox"/>
<input type="checkbox"/> Property lines and dimensions	<input type="checkbox"/>
<input type="checkbox"/> Size and location of all existing easements	<input type="checkbox"/>
<input type="checkbox"/> Existing and proposed structures and dimensions	<input type="checkbox"/>
<input type="checkbox"/> Setbacks of all existing and proposed structures from property lines	<input type="checkbox"/>
<input type="checkbox"/> Other improvements (i.e. driveways, parking areas, sidewalks, curblines, fences, etc.)	<input type="checkbox"/>
<input type="checkbox"/> Height of all existing and proposed structures	<input type="checkbox"/>
<input type="checkbox"/> Elevation drawing of proposed structure for any height variance request	<input type="checkbox"/>
<input type="checkbox"/> Type, dimension and size of signage (if applicable)	<input type="checkbox"/>
<input type="checkbox"/> Elevation drawing of proposed sign for any sign variance	<input type="checkbox"/>
<input type="checkbox"/> Number of existing and proposed off-street parking spaces and parking ratio used (if applicable)	<input type="checkbox"/>
<input type="checkbox"/> Legend in the lower right-hand corner which must contain the following information:	<input type="checkbox"/>
<input type="checkbox"/> Name, address and phone number of both applicant and owner	<input type="checkbox"/>
<input type="checkbox"/> Property address	<input type="checkbox"/>
<input type="checkbox"/> Lot size in square feet	<input type="checkbox"/>
<input type="checkbox"/> Square footage of each structure, both existing and proposed	<input type="checkbox"/>
<input type="checkbox"/> Lot coverage of each structure, both existing and proposed and a total amount of lot coverage	<input type="checkbox"/>

Supplemental information a Nonuse Variance at 5675 Majestic:

B. Criteria For Granting: The following criteria must be met in order for any nonuse variance to be granted:

1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and

**The adjoining property at 5673 Majestic has a driveway that significantly crosses onto the property (see attached Approved Site Plan). Because of this driveway encroachment, the house at 5675 Majestic had to be “pushed” farther back on the lot. However, due to the positioning of telephone, cable TV, and landscape irrigation that was placed at the back of the lot after the Waldo Canyon Fire, an angled excavation had to be performed. (See the attached photo showing “old” Irrigation lines – the new ones were placed immediately adjacent to these). As a result, the foundation was angled which pushed the eastern edge of the new foundation into the side setback (See the attached Foundation Asbuilt).**

2. That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief;

**The dimensions of the lot, combined with the driveway that encroaches from the other lot and the location of new utilities does not permit the house to be built per the approved site plan (attached).**

3. That the granting of the variance will not have an adverse impact upon surrounding properties.

**The house that is adjacent to the eastern edge of this property (5673 Majestic) angles away from the property and at the rear has 34 feet from its corner to the edge of the property. In addition, there are no public or private utilities that are in the setback for 5675 Majestic.**

**Attachments**

- 1. Approved Site Plan for 5673 Majestic**
- 2. Photo showing eastern edge of 5675 Majestic**
- 3. Foundation Asbuilt for 5675 Majestic**
- 4. Approved Site Plan for 5675 Majestic**



### City of Colorado Springs Planning Department Fee Receipt

[Return to Worksheet List](#)

<u>Application</u>	<u>Department</u>	<u>Amount</u>	<u>Applicant</u>	<u>AnnexDisc</u>
Non-Use Variance-Residential; Land Use Review Only	Land Use Review	\$221.00		
<b>Total Fees</b>		<b>\$221.00</b>		

**Planner:**  
**Date:** 7/8/2015  
**Intake Staff:** Ryan Tefertiller  
**Receipt Number:** 26856  
**Check Number:** 7460  
**Amount:** \$221.00  
**Received From:** Robert Scott General Contractors

# Planning and Development Distribution Form

**Directions:** Planners select at least one check box under each section to determine the application distribution.

Planner Intake Date: 7/7/15

Admin Receive Date: 7-8-15

Project Name: 5675 Majestic

**1. PUBLIC NOTICE:**

- 150 feet   
  500 feet   
  1,000 feet   
  modified (attach modified buffer) *Ryan to communicate with neighbor + HOA*  
 No public notice

2. Date buckslip comments are due (14 calendar days after submittal): N/A

**3. HOA ( ):**

6 - Ryan to contact    HOA number or numbers - note HOA number or write N/A

- Check for full-size plan to be sent to HOA  
 Check for Traffic, Drainage or Geo-Hazard reports to be sent to HOA

**4. STANDARD DISTRIBUTION:** Choose one application – delete all other applications under #4.

**Waiver of Replat**

*Hard Copy Full sized plans*

	<input type="checkbox"/> None	
85	<input type="checkbox"/> Utilities Development Services	2 copies
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	

**Non Use Variance**

*Full sized plans*

	<input checked="" type="checkbox"/> None	
85	<input type="checkbox"/> Utilities Development Services	2 copies
9	<input type="checkbox"/> Fire Prevention	
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	
3	<input type="checkbox"/> CONO – Electronic Distribution ONLY	rhoover.cos@comcast.net

**Amendment to Plat Restriction**

*Full sized plans*

	<input checked="" type="checkbox"/> None	
85	<input type="checkbox"/> Utilities Development Services	2 copies
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	

**Building Permit Prior to Platting**

*Full sized plans*

	<input type="checkbox"/> None	
23	<input type="checkbox"/> Flood Plain / Enumerations	
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	

### Building Permit to Unplatted Land

**Full sized plans**

	<input type="checkbox"/> None	
23	<input type="checkbox"/> Flood Plain / Enumerations	
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	

### Land Use Map Amendment

**Full sized plans**

	<input type="checkbox"/> None	
85	<input type="checkbox"/> Utilities Development Services	<b>2 copies</b>
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	
67	<input type="checkbox"/> Comprehensive Planning	

**Electronic plans**

45	<input type="checkbox"/> Traffic Engineering	
13	<input type="checkbox"/> Parks & Recreation	
3	<input type="checkbox"/> CONO – Electronic Distribution ONLY	rhoover.cos@comcast.net

### Property Boundary Adjustment

**Full sized plans**

	<input type="checkbox"/> None	
85	<input type="checkbox"/> Utilities Development Services	<b>2 copies</b>
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	
66	<input type="checkbox"/> Real Estate Services	

### Preservations Boundary Map Area Adjustment

**Full sized plans**

	<input type="checkbox"/> None	
29	<input type="checkbox"/> Wildlife Office	
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	

### Street Name Change

**Full sized plans**

	<input type="checkbox"/> None	
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	

**Electronic plans**

11	<input checked="" type="checkbox"/> CSPD
23	<input type="checkbox"/> Flood Plain / Enumerations
33	<input type="checkbox"/> USPS
48	<input type="checkbox"/> Street Division

FIGURE 5

**Waiver of Subdivision Ordinance & Subdivision Ordinance Procedure Waiver**

**Full sized plans**

	<input type="checkbox"/> None	
85	<input type="checkbox"/> Utilities Development Services	2 copies
9	<input type="checkbox"/> Fire Prevention	
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	
19	<input type="checkbox"/> Qwest	

**Electronic plans**

48	<input type="checkbox"/> Street Division
25	<input type="checkbox"/> County Health Department

**Vacation**

**Full sized plans**

	<input type="checkbox"/> None	
85	<input type="checkbox"/> Utilities Development Services	2 copies
24	<input type="checkbox"/> DR&S	
65	<input type="checkbox"/> Zaker Alazzeh/Steve Kuehster, Traffic Eng (MC 460)	
19	<input type="checkbox"/> Century Link	

**Electronic plans**

48	<input type="checkbox"/> Street Division
23	<input type="checkbox"/> Flood Plain / Enumerations

**5. SCHOOL DISTRICT:**

**Electronic plans**

	<input checked="" type="checkbox"/> None	
36	<input type="checkbox"/> School District #2	
68	<input type="checkbox"/> School District #3	
37	<input type="checkbox"/> School District #11	
38	<input type="checkbox"/> School District #12	
39	<input type="checkbox"/> School District #20	
69	<input type="checkbox"/> School District #22	
41	<input type="checkbox"/> School District #49	

**6. MILITARY INSTALLATION (if within 2 mile buffer):**

**Electronic Version**

	<input checked="" type="checkbox"/> None	
84	<input type="checkbox"/> Fort Carson	
46	<input type="checkbox"/> NORAD	
26	<input type="checkbox"/> USAFA	
75	<input type="checkbox"/> Peterson	



**7. OPTIONAL DISTRIBUTION (Depending on Location of Site):**

**Hard Copy Full sized plans**

	<input checked="" type="checkbox"/> None	
27	<input type="checkbox"/> CDOT (adjacent to CDOT ROW)	Traffic Report, Drainage Report
34	<input type="checkbox"/> Colorado Geological Survey	Geo-Hazard Report, Drainage Report, Development Plan
18	<input type="checkbox"/> Streamside Area Overlay	
15	<input type="checkbox"/> Hillside Overlay	
42	<input type="checkbox"/> Historic Preservation Area Overlay	
44	<input type="checkbox"/> Development Review Enterprise	Coordinated Sign Plans to Kurt if Submitted
67	<input type="checkbox"/> Comprehensive Planning	Corridor Plans in progress

**Electronic plans**

20	<input type="checkbox"/> Airport Overlay	
63	<input type="checkbox"/> El Paso County Dev. Services Division	Review of plans within 1/2 mile of a County/City boarder
43	<input type="checkbox"/> Wescott Fire District (adjacent only)	
70	<input type="checkbox"/> Woodmen Road Metro District	
71	<input type="checkbox"/> Falcon Fire Protection District	
72	<input type="checkbox"/> Black Forest Fire Protection District	
81	<input type="checkbox"/> Broadmoor Fire Protection District	
80	<input type="checkbox"/> CSURA - Urban Renewal	
70	<input type="checkbox"/> Woodmen Heights Metro District	
92	<input type="checkbox"/> Forestry	
3	<input checked="" type="checkbox"/> CONO	rhoover.cos@comcast.net

**8. LAND USE REVIEW:**

**Hard Copy Full sized plans**

<input checked="" type="checkbox"/> Planner	Traffic Report, Drainage Report, Geo-Hazard Report
---	--

**Total # of Plans:** 2

**Special notes or instructions:**

S 87°29'57" E  
47.00'

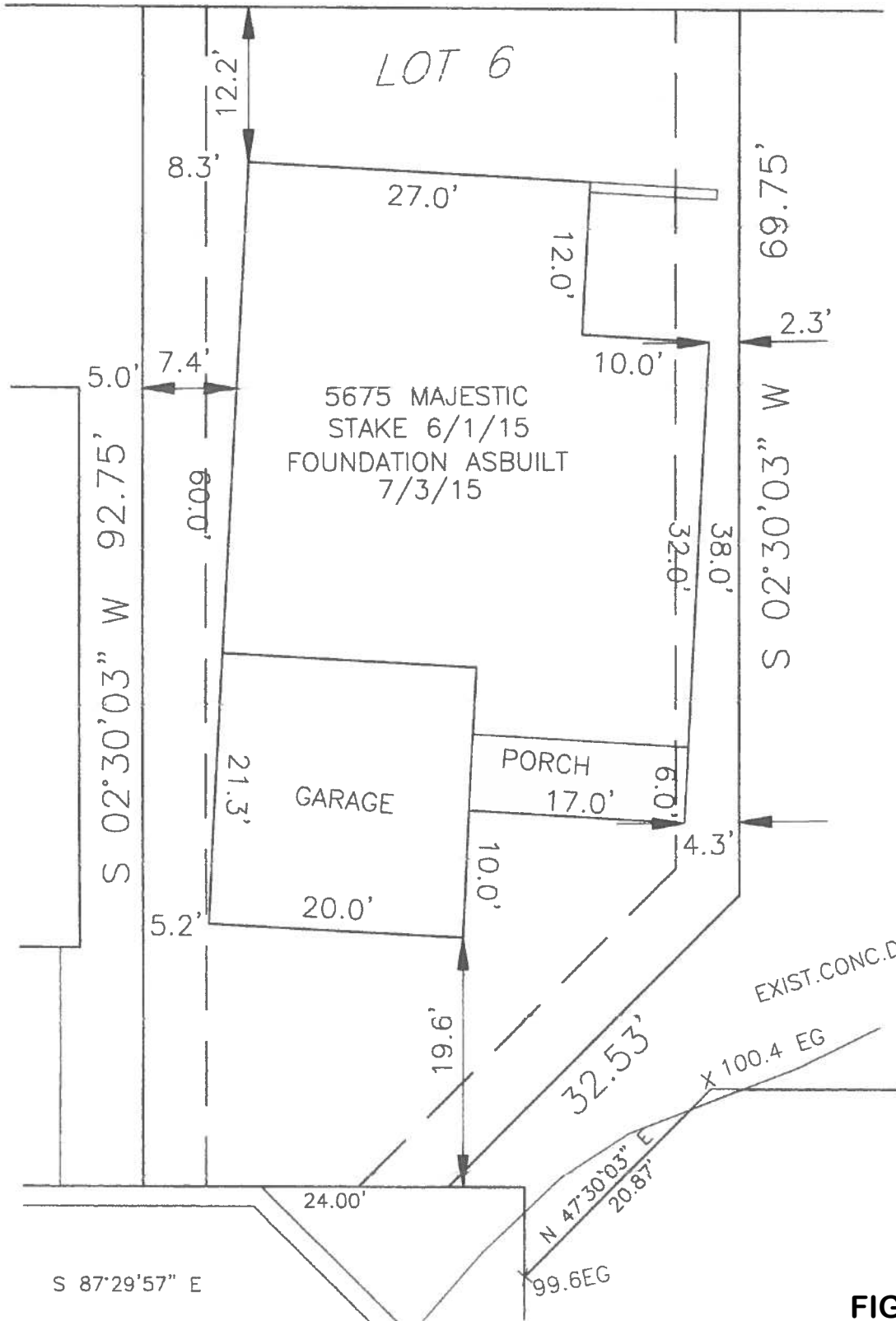
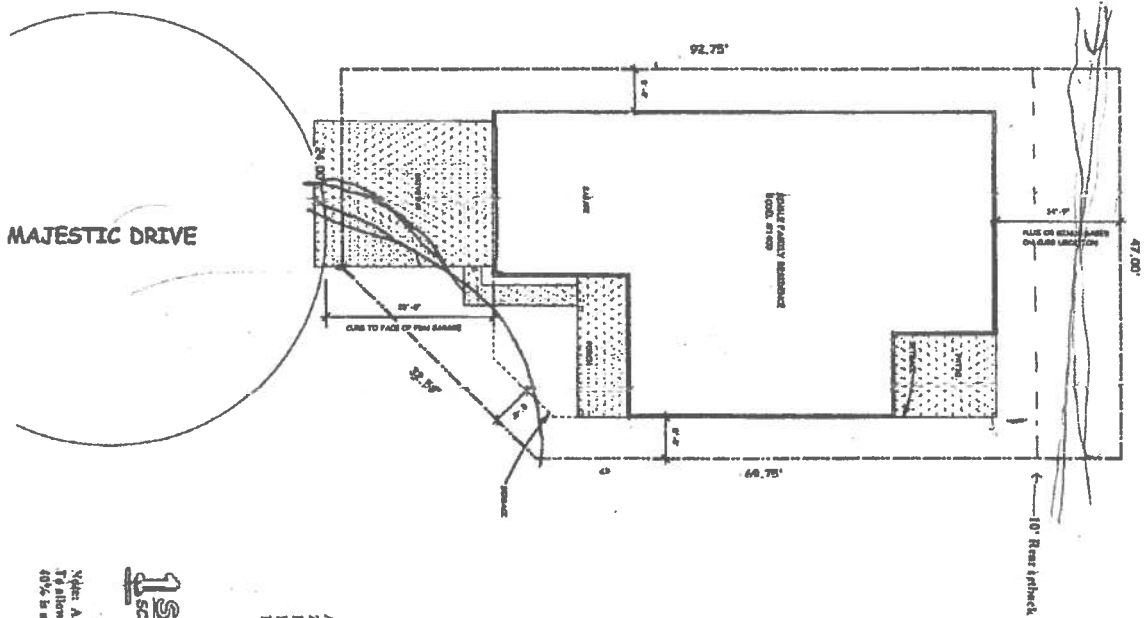


FIGURE 5



MAJESTIC DRIVE

Notes: All B15-0176 was approved to allow 45% lot coverage to meet 40% is allowed

# 1 SITE PLAN

SCALE: 1" = 10'-0"

Address: 5675 Majestic  
 Zone: TUD IIS  
 Plat: Plat 11800 sq ft  
 Lot Coverage: 45%  
 Lot Size: 4050 sq ft

LOT COVERAGE:  
 Maximum: 45%

TAX ID:  
 7114-d-007

### LEGAL DESCRIPTION:

Approx. or about from plat(s) refer to  
 plat(s), a portion of lot 11, section 1 and lot 1, section 2  
 city of Colorado, county of El Paso, Colorado

Letty, Sila, Rangel de Murrain  
 SWANSON FIRE DEPARTMENT  
 PLAN REVIEW

APPROVED  
 APR 17 2015  
 APR 17 2015  
 N/A  
 1800 Examination  
 200 Professional

2015-0333 HS-1

APPROVED  
 CITY OF COLO SPRINGS  
 APR 13 2015  
 BY CITY PLANNING

WALDO CANYON FIRE RECONSTRUCTION - "MOUNTAIN SHADOWS"



**GENERAL DRAWING**  
 Description and Specifications  
 This drawing is a general drawing and is not to be used for construction purposes. It is intended for informational purposes only. The contractor is responsible for obtaining all necessary permits and approvals. The drawing is not to be used for any other purpose without the written consent of the architect.

MODEL # 1055

**FIGURE 5**

ROBERT SCOTT GENERAL CONTRACTORS  
 2760 BIRDANS BLUFF DRIVE  
 COLORADO SPRINGS, CO. 80919  
 719-599-3770  
**Site MAJESTIC DRIVE**  
 COLORADO SPRINGS, COLORADO 80919

**TJH**  
 TJM HAMILTON, ARCHITECT  
 (719) 322-5742  
 email: tjh@tjhamilton.com

REVISIONS	TITLE	SHEET NO.
	SITE PLAN	1 of 1

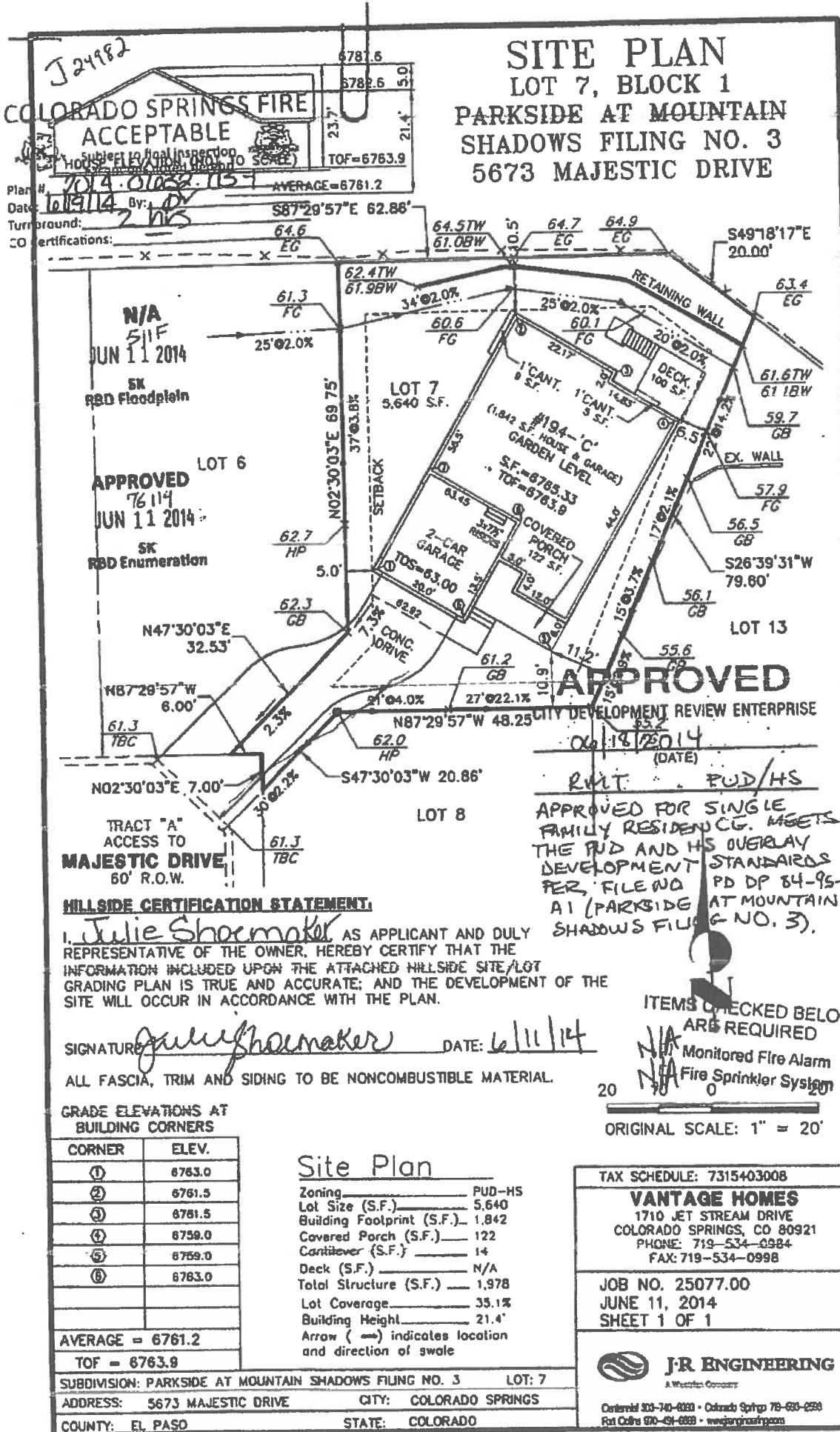


FIGURE 5

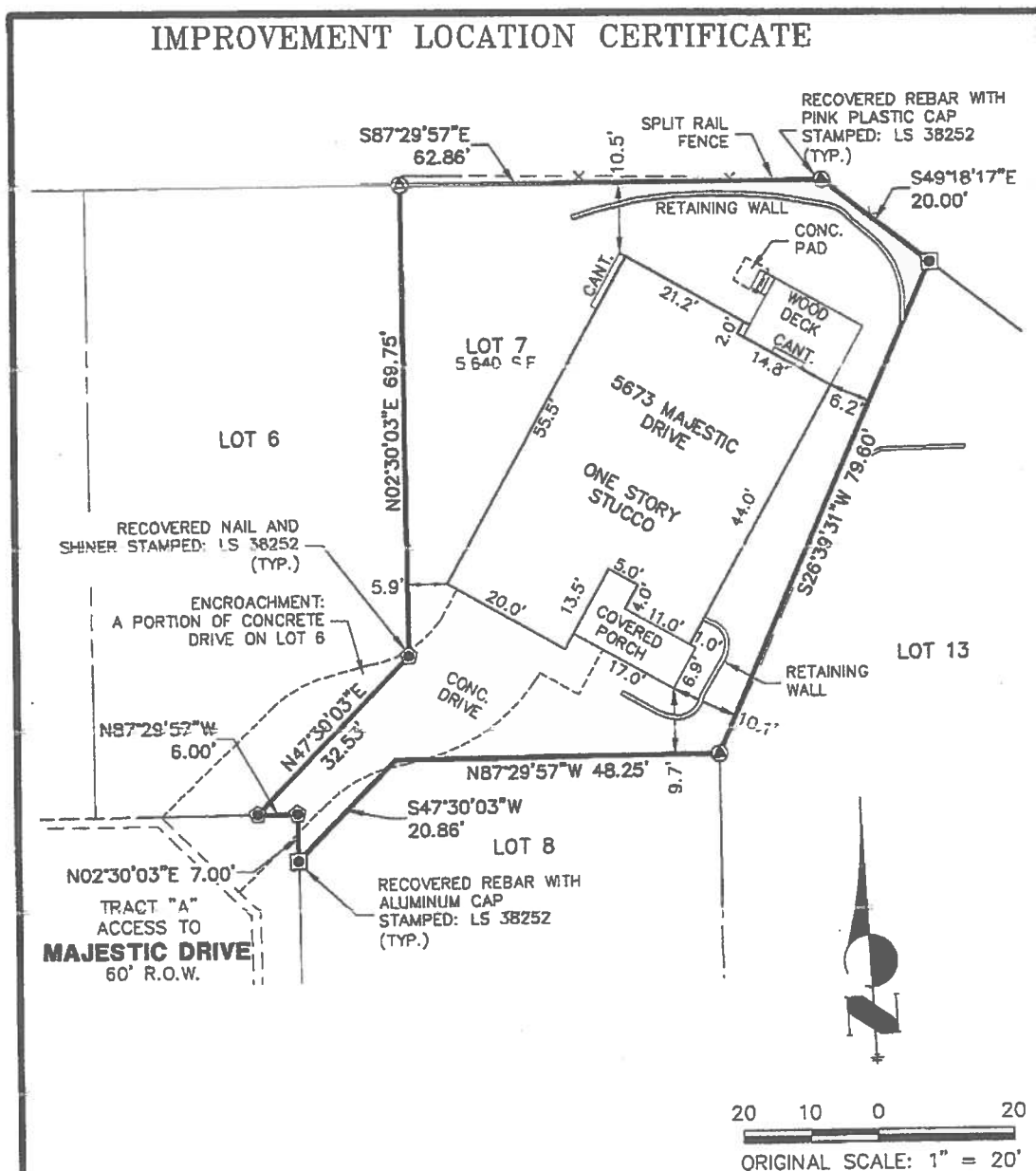


FIGURE 5



FIGURE 5

# IMPROVEMENT LOCATION CERTIFICATE



### IMPROVEMENT LOCATION CERTIFICATE

I HEREBY CERTIFY THAT THIS IMPROVEMENT LOCATION CERTIFICATE WAS PREPARED FOR VANTAGE HOMES OF THE PROPERTY DESCRIBED AS:  
 LOT 7, BLOCK 1, PARKSIDE AT MOUNTAIN SHADOWS FILING NO. 3, RECORDED UNDER RECEPTION NO. 1203898, EL PASO COUNTY, COLORADO. DESCRIBED PROPERTY KNOWN AS: 5673 MAJESTIC DRIVE.

**FLOODPLAIN STATEMENT:**  
 THIS SITE, LOT 7, BLOCK 1, PARKSIDE AT MOUNTAIN SHADOWS FILING NO. 3, IS NOT WITHIN A DESIGNATED F.E.M.A. FLOODPLAIN AS DETERMINED BY THE FLOOD INSURANCE RATE MAP, PANEL NUMBER 08041C0511F, EFFECTIVE DATE: MARCH 16, 1997.

THIS PROPERTY MAY BE IMPACTED BY NOISE AND OTHER SIMILAR SENSORY EFFECTS OF FLIGHT BY AIRCRAFT USED BY THE UNITED STATES AIR FORCE ACADEMY'S AIRMANSHIP PROGRAM. THIS NOTICE SHALL REMAIN IN EFFECT UNTIL THE AIR FORCE ACADEMY SHALL CEASE TO BE USED FOR FLIGHT TRAINING PURPOSES. THIS NOTICE SHALL RUN WITH THE LAND.

AND THAT IT IS NOT A LAND SURVEY PLAT OR IMPROVEMENT SURVEY PLAT, AND THAT IT IS NOT TO BE RELIED UPON FOR THE ESTABLISHMENT OF FENCE, BUILDING, OR OTHER FUTURE IMPROVEMENT LINES. I FURTHER CERTIFY THAT IMPROVEMENTS ON THE ABOVE DESCRIBED PARCEL ON THIS DATE 6/30/2015, EXCEPT UTILITY CONNECTIONS, ARE ENTIRELY WITHIN THE BOUNDARIES OF THE PARCEL, EXCEPT AS SHOWN, THAT THERE ARE NO ENCROACHMENTS UPON THE DESCRIBED PREMISES BY IMPROVEMENTS ON ANY ADJOINING PREMISES, EXCEPT AS INDICATED, AND THAT THERE IS NO APPARENT EVIDENCE OR SIGN OF ANY EASEMENT CROSSING OR BURDENING ANY PART OF SAID PARCEL, EXCEPT AS NOTED. EASEMENTS ARE SHOWN PER SUBDIVISION PLAT UNLESS NOTED OTHERWISE.

BY: \_\_\_\_\_  
 JARROD ADAMS, REGISTERED LAND SURVEYOR  
 COLORADO P.L.S. NO. 38252  
 FOR AND ON BEHALF OF JR ENGINEERING, LLC



CLIENT: VANTAGE HOMES  
 JOB NO. 25077.00  
 DATE: JULY 2, 2015

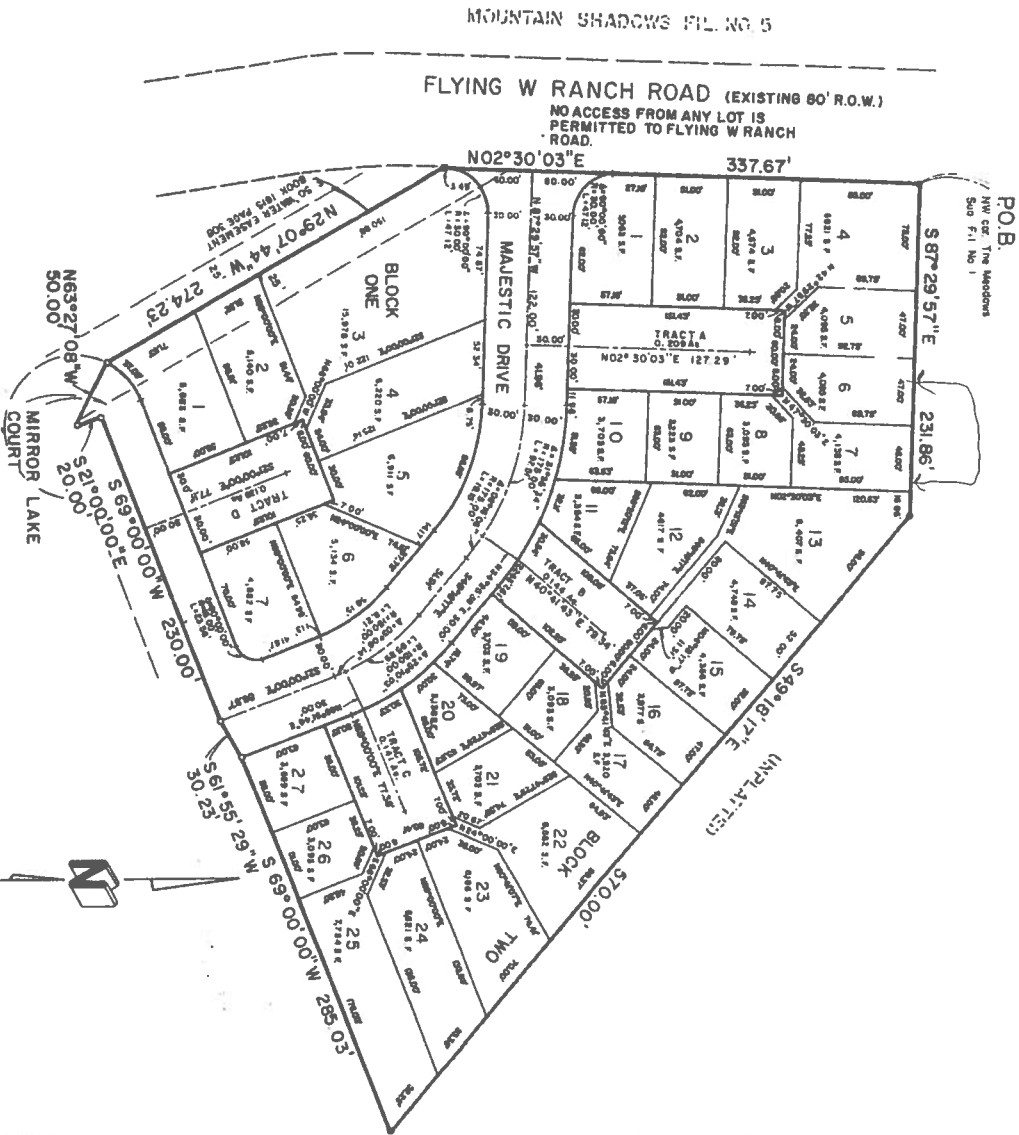


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 303-740-9393 • Fax: 303-721-9019 • www.jrengineering.com

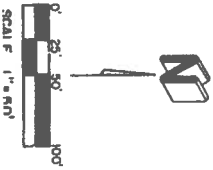
**FIGURE 5**

# PARKSIDE AT MOUNTAIN SHADOWS FILING NO. 1

A REPLAT OF LOT 11 BLOCK 1 AND LOTS 1-10 BLOCK 2,  
THE MEADOWS SUBDIVISION FILING NO. 1  
CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO.



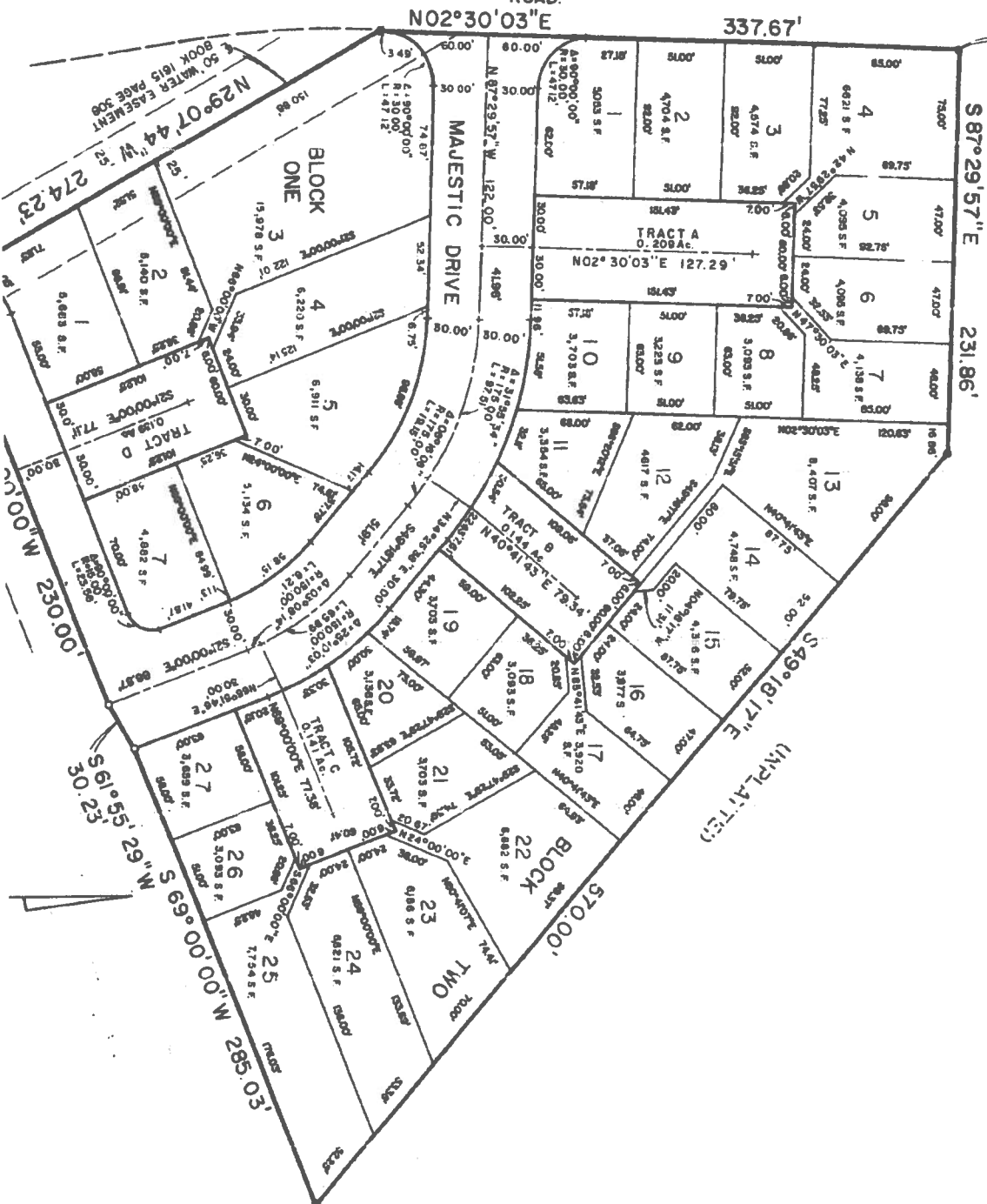
- NOTES:**
1. NOTICE - According to Colorado law, you must commence any legal action based upon any defect in this survey within six years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced unless you can prove from the date of the establishment shown hereon.
  2. Bearings shown between any plat and a bearing 180°±0.15' or the same line of the southeast quarter section 15 Township 13 South, Range 67 West of the 6th Principal Meridian, El Paso County, Colorado.
  3. All lot lines are parallel or perpendicular to the boundary lines unless otherwise noted.
  4. ● Indicates found rebar and cap L.S. No. 11669.
  5. ○ Indicates set rebar and cap L.S. No. 6169.
  6. All interior lot corners set rebar and cap L.S. No. 6169.
  7. Tracts A-D shall be designated as a utility and 'Improve and Egress easement.' Ownership and maintenance shall be vested in the Homeowner's Unitowners Association.
  8. The approval of this replat vacates all prior plats for the easements:
- Unless shown greater in width, both sides of all plat lot lines are hereby placed with a five (5) foot easement for public utilities only, and both sides of all easements for drainage and public utilities only, with the sole responsibility for easements being vested with the property owners.



Greiner Engineering	
Greiner Engineering & Surveying, Inc.	
1000 North Academy Avenue, Suite 1000, Colorado Springs, CO 80909	
Phone: (719) 520-1100 Fax: (719) 520-1101	
www.greinereng.com	
PROJECT NO.	2185501
DATE	7/2/04

FIGURE 5





P.O.B.  
NW cor. The Meadows  
Sub. File No. 1

- NOTE:
1. NOTICE - According to Colorado law, you must commence a legal action based upon any defect in this survey within 11 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. Bearings shown hereon are relative to a bearing, N89°20'15" on the south line of the southeast quarter of Section 15 Township 13 South, Range 67 West of the 6th Principal Meridian, El Paso County, Colorado.
  3. All lot lines are parallel or perpendicular to the boundary lines unless otherwise noted.
  4. ● indicates found rebar and cap L.S. No. 17669.
  5. ○ indicates set rebar and cap L.S. No. 6169.
  6. All interior lot corners set rebar and cap L.S. No. 6169.
  7. Tract A-D shall be designated as a utility and ingress and egress easement. Ownership and maintenance shall be vested in The Homeowner's Maintenance Association.
  8. The approval of this replat vacates all prior plats for the area described by this replat.

EASEMENTS:  
Unless shown greater in width, both sides of all side lot lines are hereby platted with a five (5) foot easement for public utilities only, and both sides of all rear lot lines are hereby platted with a seven (7) foot easement for drainage purposes and public utilities only, with the sole responsibility for maintenance being vested with the property owners.

## **Analysis and Rebuttal of an Appeal to an Administrative Decision on a Nonuse Variance to Allow an Encroachment on a Side Setback at 5675 Majestic**

**Introduction:** The design and initial development of the Parkside neighborhood has created numerous challenges to its rebuilding in the wake of the Waldo Canyon Fire. The neighborhood was designed and developed, in the early 1980's, in a manner that would never be allowed under current criteria. Houses were sited, in some cases, without due regard to existing property lines or setbacks; public and private utilities were routed in an inconsistent manner; and significant encroachments were made with regards to landscaping and drainage items.

In spite of these obstacles, there has been a great sense of cooperation between the City of Colorado Springs, builders, the Parkside Homeowners Association, and most of the residents in attempting to rebuild the 141 homes lost in the fire. All of these entities have had to deal with the colliding aspects of modern design criteria applied to outdated and inconsistent development standards, all while coping with the issues surrounding the rebuilding of a neighborhood that was devastated by a natural disaster.

Robert Scott General Contractors, Inc. is very familiar with the nuances and difficulties of rebuilding in Parkside. Robert Scott has obtained 15 Building Permits in Parkside, 12 of which have been completed; Robert Scott intends to build an additional seven homes in Parkside. As a result of our experience in the neighborhood, we have had to deal with issues unlike any we have ever had in building in any other neighborhood in Colorado Springs.

**5675 Majestic:** This address was not unique in Parkside in that there were obstacles that had to be overcome. The most significant obstacle with this particular house was the fact that the adjoining house (5673 Majestic) was allowed to place an extensive amount of their driveway on our property. So much of the driveway was placed on the property that it prohibited the building of our City approved site plan. Instead of raising this driveway as an issue, Robert Scott General Contractors made the decision to push the house at 5675 Majestic back a couple of feet (while still staying within all approved setbacks) so that no part of the existing driveway would have to be removed. We have dealt with other issues like this in Parkside and have always felt that the need to be a "good neighbor" was the proper approach in rebuilding the neighborhood.

In moving the house back, both our excavator and foundation crew discovered that the recently installed cable TV, phone lines, and irrigation system were placed along the back of the property at an angle to the property line. So as not to damage those lines, the foundation was angled to match those lines. However, this "angling" of the foundation caused the eastern boundary of the property to encroach into the normal 5 foot setback.

After the foundation was installed, we suspected that there might be an issue with the setback. We contacted our surveyor who verified that there was an encroachment and he completed an "asbuilt" drawing (Atch 1) to accurately depict what was the actual condition. We immediately contacted the City Planning staff, the adjoining property owner, and the Parkside HOA. While the City and the HOA have been understanding and are supportive of our request for a variance,

the adjoining property owner has rebuffed all of our attempts to arrive at a mutually beneficial compromise and has filed the appeal to the City's Administrative Decision. The various attempts to arrive a compromise solution will be discussed during the Planning Commission presentation.

In their appeal, the adjoining property owners have made several misstatements. The following is a discussion and rebuttal of those misstatements:

1. **Several comments regarding using wrong property corners and not following the “customary building technique of actually locating property corners before digging...”**

The house was staked in accordance with “customary building techniques” and the attached staking notes (Atch 2), dated June 1, 2015, which was accomplished at the time of the staking, shows all property corners and the siting of the house within all setbacks. It was these staking notes, along with research done prior and subsequent to the staking, that showed the significant effect that the driveway had on our property.

2. **“The home’s roof, gutter, and downspouts will be much closer to our property than 2.3 feet...”**

Both the City’s development codes and the local building codes allow the roof, gutters, and downspouts to intrude into the setback, the same as they do on the adjoining property owner’s house. As a matter of fact, one of the gutters on the other side of the appellants’ house had to be extended with its drainage lines coming onto another property that we own, without our permission. See the picture at Atch 3. But we realized the extenuating circumstances of Parkside and didn’t contest this trespass.

3. **“The planner stated that our driveway consumed much of the property and forced the home to be pushed back. That may be partially true, but that did not force the home to be angled improperly...”**

The very fact that the driveway “consumed much of the property” is the genesis of the problem. If the driveway had been installed solely within the boundaries of the adjoining property, none of the subsequent issues would have been encountered.

4. **Several comments regarding building a smaller home or building a two-story.**

There has been much publicity, all widely reported in the media (see Atchs 4 & 5) regarding the building of two story’s versus ranches in Parkside. 5675 Majestic is specifically approved, per the original development plan, as a “Ranch Plan”. While we could have applied for a variance to build a two story, we have encountered significant opposition from adjoining property owners when we have suggested doing this on other lots in the neighborhood. We made a conscious decision to build the style of house that was already approved for the lot.

5. **Comments regarding not meeting certain circumstances for the issuance of a nonuse variance, specifically,**

a. **“The unique physical conditions of the property may be the size or the location of existing structures on the property if such structures are not self-imposed conditions.**

This is most certainly the case. As previously mentioned, the adjoining property owner’s driveway on our property is the cause of this issue. And we didn’t build their driveway.

b. **“The unique physical conditions...may positively or negatively affect the property in question, including...adjacent land uses...”**

Again, this applies. The utility lines in the back of the property, that service adjoining properties, are the reason the house was angled, after it was pushed back on the lot.

6. **“The proximity of the new home to our home will negatively impact us because the new home is too close to our home...”**

Even with the encroachment of the setback, the average distance between the two houses along the adjoining property line is approximately 22.5 feet. This greatly exceeds the separation between houses in most of the rest of Parkside.

7. **“...part of the foundation buttress wall actually intrudes into our property...”**

No, it does not. See the picture at Atch 6.

8. **“...the (uncovered) patio will...be just over 27 inches from our property line, not the 60 inches required”**

Uncovered patios and decks, at or near ground level, are not required to be outside the setback area. Even the appellant’s own ground level deck was approved so as to encroach into their side setback. See Atch 7.

9. **“We all know how water can harm basements especially if it encounters expansive soils so close to the foundation. If the foundation is damaged by water, it will hurt the new owners”**

Any future liability with a new owner is the responsibility of Robert Scott General Contractors, Inc. and is a contractual relationship between us and our customer. Simply stated, it is not the concern of an adjoining property owner. But to this point, all soils testing and open excavations were done in strict accordance with State Law and local building regulations. No expansive soils were detected on site.

**10. Comments regarding window wells and building codes.**

The required egress window wells (minimum of 36 inches in depth) are located on the back of the property and do not affect the appellant's property to the side. The side window wells are just for light and ventilation purposes and are only 24 inches in depth.

**11. Comments regarding the use of the setback for public utilities.**

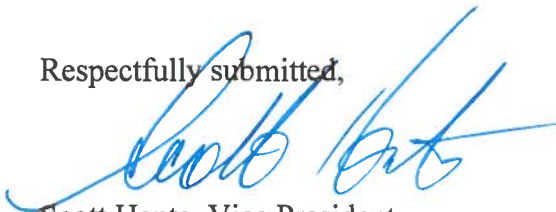
All public utilities in that specific area of Parkside are already installed and not located within the setback area.

**12. "The HOA support does not matter in the variance process"**

With regards to Parkside, it most certainly does. All landscaping that will be installed between the two houses will be maintained by the HOA and any liability associated with maintaining the area between the houses will be the responsibility of the HOA.

On another significant note, the support of the HOA is very telling. The HOA is very cognizant of the unique characteristics of Parkside and is understanding of the compromises that have to be made by all parties to see the area rebuilt.

Respectfully submitted,



Scott Hente, Vice President  
Robert Scott General Contractors, Inc.

**7 Attachments**

1. Depiction of the "Asbuilt" Foundation
2. June 1, 2015 Staking Notes
3. Picture of Appellant's Drainage
4. Colorado Springs Gazette Article of December 8, 2014
5. Colorado Springs Independent Article of September 17, 2014
6. Picture of Buttress Wall w/Property Line Superimposed
7. Approved Site Plan for 5673 Majestic

S 87°29'57" E  
47.00'

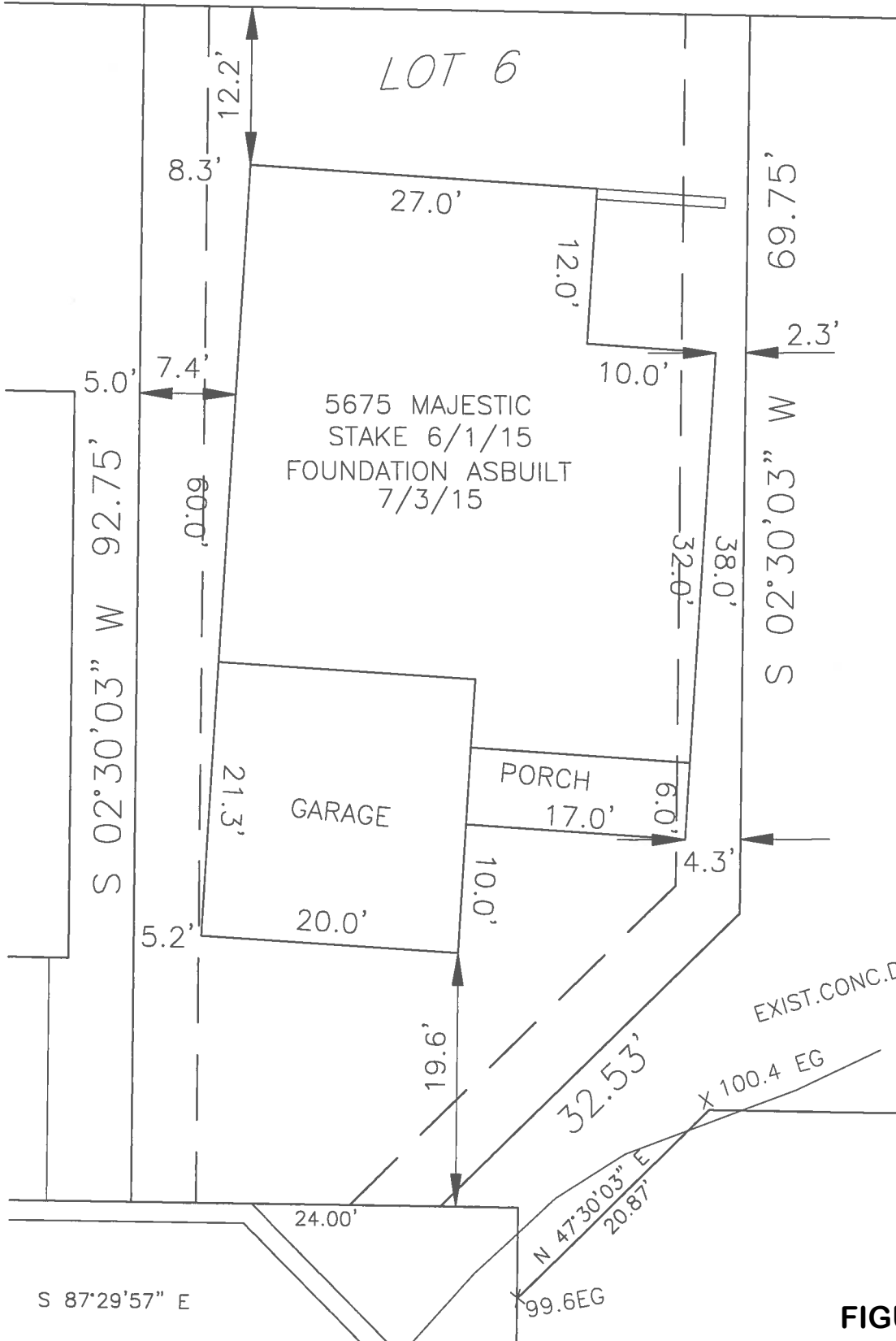


FIGURE 6  
*Atch 1*

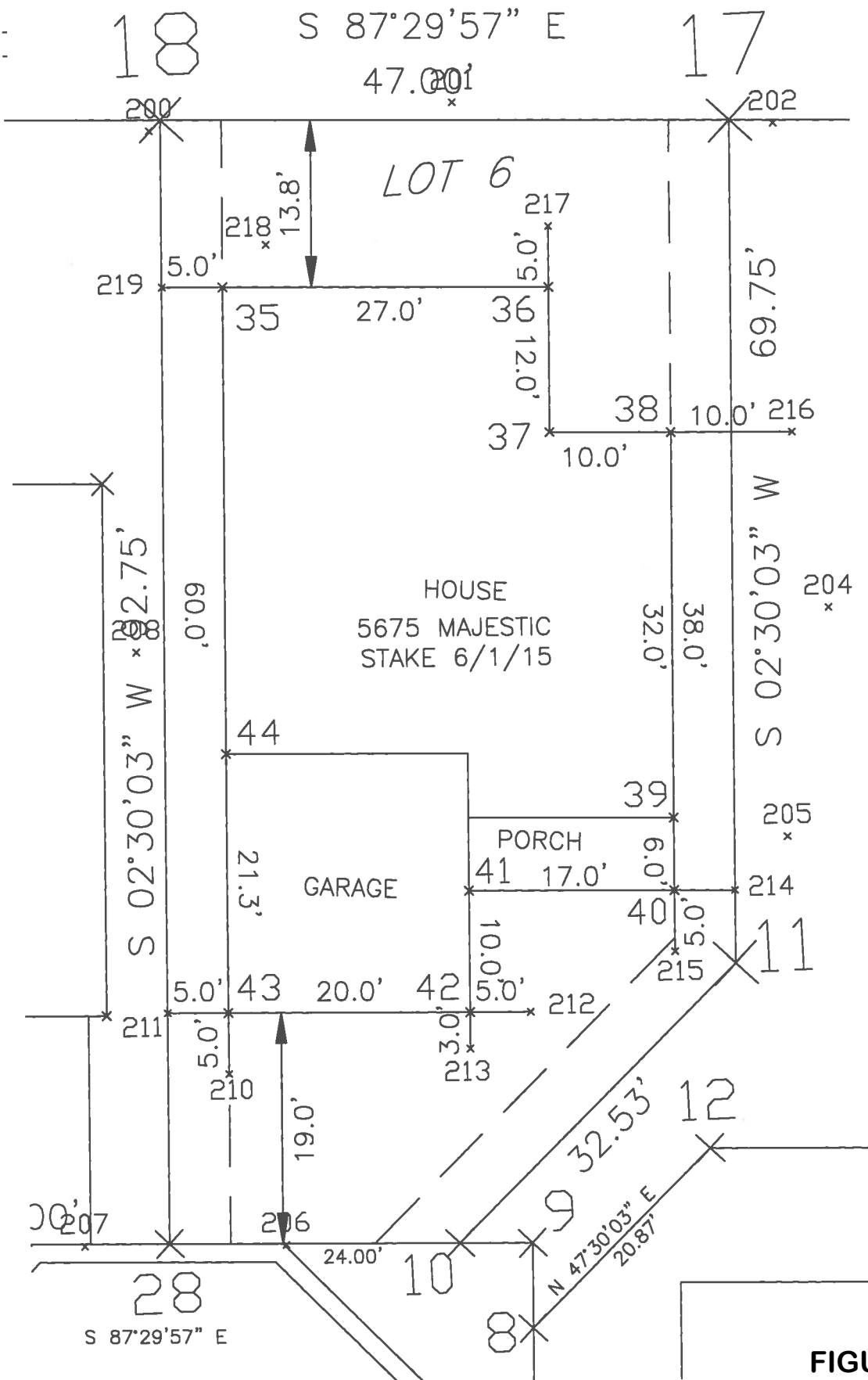


FIGURE 6  
 Attach 2



Atch 3

FIGURE 6



COLORADO SPRINGS NEWS, SPORTS & BUSINESS

HELLO, SCOTT

## Long forgotten development plan raises rebuilding issues for Waldo Canyon fire victims

By [Ryan Maye Handy](/author/ryan-maye-handy) ( /author/ryan-maye-handy ) • [✉ \(mailto:ryanmaye.handy@gazette.com\)](mailto:ryanmaye.handy@gazette.com) Updated: December 8, 2014 at 10:30 am • 3



For more than 20 years, Parkside resident Donald Meaney's house had a view of the hillsides west of Mountain Shadows. After the Waldo Canyon fire destroyed most of his neighborhood, Meaney designed and rebuilt a new home - one that preserved the best of the old: the view.

But a year after Meaney moved in, the picture window in his upstairs art studio faces the brown stucco wall of a home that Meaney thinks should never have been built.

Meaney's view is just one casualty of the complexities of rebuilding Parkside, the neighborhood most devastated by the 2012 Waldo Canyon fire. When the fire decimated nearly 90 percent of the 178-home neighborhood, it also laid bare a garbled 1987 development plan that had significant differences to what developers built.

But, per city ordinance, that plan was the template for re-creating Parkside. After an unexpected disaster, an otherwise normal city planning protocol has had an unforeseen consequences: Builders could reconstruct homes that never existed. Although different from the home that burned, the two-story home next to Meaney sailed through the city permitting process without amendments or alerts to neighbors, unlike other homes that changed elevation in Parkside.

The new home follows all city requirements, city officials say, and there is no appeals process for Meaney or his fellow disgruntled neighbor, Debby Zawacky, who has yet to rebuild her home. Both say their personal recovery from the fire will be stymied as long as the house stands.

"We lost everything, and we wanted to come back to our prior environment," Meaney said. "You don't buy into a neighborhood and expect a natural disaster."

### Parkside peculiarities

Arch 4  
FIGURE 6

7/28/2015 3:14 PM

When Parkside residents talk about being "close" to their neighbors, they mean more than neighborhood familiarity and sharing house keys. Constructed in the mid-1980s, the homes in Parkside were built sometimes mere feet apart, a careful mix of two-story and ranch-style homes.

After its main developer North American Homes went bankrupt before the subdivision was finished, a new developer took over.

The fire prompted an examination of Parkside's development plan that had never been done. Planners found that homes had been built over property lines. Ranch-style homes were built where the development plan called for a two-story home. Ultimately, when it came to rebuilding, the city of Colorado Springs turned to the last record of what Parkside was meant to look like - a development plan from 1987.

The city pays little attention to the details of development plans - style of homes, for instance - as long as they follow setback and height regulations, said Peter Wysocki, director of the city's Planning Department. Although the 1987 plan was submitted after much of Parkside had been built, it shows some two-story homes where single-story homes had been built and cul-de-sacs with six houses where only five were built.

Meaney believes the discrepancies were a copier error made more than 30 years ago, an error that cost him his view.

"The 1987 plans were changed by accident to accommodate a fence . and those plans were made official," Meaney said. "But the changes in homes were never made official."

Because the city has no way of knowing how or why the plan changed, the mystery of the differences in the 1987 plan that replaced a 1984 plan is likely to endure, Wysocki said.

"We have no reason to believe there was a discrepancy," Wysocki added. "We have no evidence that it was erroneously approved by the city, that it was a mistake.

"And we have followed that plan since 1987."

### **The consequences**

The different plan likely would have gone unnoticed, as it had for decades, had it not been for the Waldo Canyon fire.

As a strictly organized homeowners association, Parkside residents were told they could rebuild their former homes or change their layouts. But since many homeowners and contractors were rebuilding Parkside - instead of just one developer - a careful balance had to be struck to avoid blocking views.

Like their neighbors, Meaney and Zawacky relied on submitted permits to guide their rebuilding.

When Jim Howery, owner of Synergy Homes, was approved in August 2013 to rebuild a single-story home next to Meaney's at 5623 Majestic Drive, both he and Zawacky planned accordingly. But by March, the home had been changed to a two-story, according to records obtained by Meaney. Howery did not return calls from The Gazette requesting information about the change.

The home built by Howery, now listed for sale, wasn't the only one that changed in Parkside. At least three homes in the neighborhood rebuilt with two stories required an amendment to the development plan, Wysocki said. All the neighbors in those cases were notified of the changes to the plan, per city code. But not every change required a notice.

Meaney and Zawacky said they first realized the change to their neighbor's home as it was being built. While the home was different from its predecessor, the 1987 development plan allowed Howery to build the two-story home without an amendment, Wysocki said.

"If the proposed home meets the city's building height standards (and) building setbacks, we review the permit or application and approve. And actually regional building issues the building permit," Wysocki said.

"What's getting lost in this discussion is that the homebuilder obviously is relying on that 1987 plan as well," he added.

The loss of a mountain view is a hazard of living on the west side, particularly in Parkside, a suburban neighborhood unlike any other in Mountain Shadows, said James Mayerl, a former city senior planner for west of Interstate 25.

"The problem with Parkside is, it's not spread out," Mayerl said. "It's very tight with good-sized homes. On the west side, you want spaciousness and separation, and Parkside isn't quite like that."

Also, the city has never required what planners call an "as-built" record of the development plan; even after it has been rebuilt, Parkside will not have a new plan on city record, Wysocki said. Instead, the Pikes Peak Regional Building Department keeps records of zoned properties and permits.

Decades after the change to Parkside's plan, Mayerl, who started working at the city in the mid-1980s, also can't recall how it happened.

"I don't think we did anything wrong," he said. "We followed the process and somehow the plans got changed 27 years ago to allow a two-story home on the property."

Mountain Shadows is among many west-side areas - Broadmoor Bluffs to the south and Peregrine to the north, for example - that face fire hazards. It's not impossible, then, that another neighborhood could find itself facing a similar conundrum as Parkside when it comes to development plans, Mayerl said.

#### **What's next**

After months of meeting with Wysocki, probing Parkside's development history and being told they can't appeal the two-story house, Meaney and Zawacky have found a sympathetic ear in City Councilman Don Knight.

On Monday, the City Council will discuss in executive session the city's refusal to allow Meaney and Zawacky to appeal.

Since the matter would be considered a semijudicial one, Knight said he does not know the specifics of Meaney and Zawacky's complaint. But he does not understand why they can't appeal the construction of Howery's home.

Knight said the city attorney won't discuss the issue at the council.

"There is no process for them to appeal an issuance of a building permit for a single-family home," Wysocki said. "Those, of course, are reviewed administratively, and they are what we consider a 'use by right.' Use by right means that if it meets city standards, that the city has no justification or authority to deny the building permit."

Knight disagrees and thinks that appeals of administrative decisions - such as approving building permits - should go through the City Council, according to city code.

"If we deny them the right of appeal, the only option they have is to take it to court," Knight said.

Meanwhile, the two Parkside neighbors do not intend to take "no" for an answer.

"There is something broken in (the process). How can you say that's fair to either Don or myself when we lost everything in the fire?" Zawacky said. "I am positive that Don and I feel strong enough about this that we will keep going."



NEWS » LOCAL NEWS

September 17, 2014

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# Attack of the monster homes

## Parksiders say their subdivision's being overrun with towering houses

By [Pam Zubeck](#) [@PZubeck](#)

When Don Meaney rebuilt his home in Parkside at Mountain Shadows, after the Waldo Canyon Fire destroyed it in June 2012, he included a big window in his second-story art studio. But now his view of the foothills is gone.

"I'm going to be looking at a stucco wall," he says, because of a neighboring house under construction.

On the other side of that house, Deb Zawacky will gaze out her kitchen window into a master bedroom.

Although both are 20-year returning residents who have paid attention in the fire's aftermath, they're powerless. City officials say the builder is entitled to erect a two-story home to replace the one-story that burned.

The issue underscores the dramatic change underway in Parkside, where the Waldo fire claimed about 140 of 178 homes. Since then, 77 lots have changed hands, records show, meaning some are moving in without a sense of the cottage feel that once defined Parkside. And homes up to 50 percent bigger than those destroyed by the fire are emerging in boxy designs that have left longtime residents unsettled.

### No appeal

Meaney and Zawacky say they should have been notified that the house next to them, at 5625 Majestic Drive, would have two stories. Zawacky says she's attended nearly every homeowners meeting since the fire and recalls being assured by the city that if major changes occurred in reconstruction, neighbors would be asked for feedback.

In some cases, that's happened. But not for her and Meaney. The two-story Majestic house will double in size, to 2,125 square feet — yet city planning director Peter Wysocki says in an email that's not a change worthy of triggering the notification of neighbors.

That's because when Parkside's original 1984 development plan was amended in 1987, one change was to allow a two-story home there, Wysocki says. When the fire occurred and the home's owner sold the lot to Synergy Homes LLC, the builder was entitled to rebuild with two stories, he says; it doesn't matter that a one-story house had been there since two years before the 1987 amendment was approved.

As for a 10-day appeal period, Wysocki says that lapsed after the building permit was issued March 17.

Meaney and Zawacky, who were expecting a one-story ranch to be built, say they weren't even aware a building permit had been issued until construction began in July.

Meaney says that when he tried to speak with Jim Howery with Synergy, Howery shrugged and said the taller home is allowed. Synergy Homes didn't return calls seeking comment, and the office address listed in state business filings has a "by appointment only" sign on its door.

### Bigger, but better?

Arch 5  
FIGURE 6

Parkside was initially built as a subdivision of clustered homes on lots of 4,500 square feet or less — some are only 3,100 square feet — where residents rely on a homeowners association to handle landscaping and other services.

Because the development plan limits height to 30 feet and the footprint to 40 percent of the lot, builders are replacing some other single-story homes with two-story houses. On Hot Springs Court, half of the six homes bordering the cul-de-sac have grown in square footage by more than 30 percent. One is 51 percent bigger. A pair of big square homes on another Majestic Drive cul-de-sac have been rebuilt up to 54 percent larger than their predecessors, prompting some residents to call them "the twin towers."

Terry Rector, who rebuilt his home, says the sizes are exaggerated by the small lots. "Because they're so compact, it really stands out," he says. "So what you end up with is big, boxy high-risers. ... It's goofy."

Sandy and Jack Morgan lived in Parkside years ago, left, and then decided to build there after the fire. Unlike homes around them, theirs replicates a ranch destroyed in the fire. The Morgans' builder was former City Council president Scott Hente, a partner in Robert Scott Custom Homes.

Hente is building his eighth and ninth houses in Parkside and has purchased another 12 lots. He says Parkside has lost its neighborhood feel, but it's not all bad. The new homes are more diverse than the old, he says, due to the large number of builders involved. And those builders are merely responding to a market demand for bigger homes.

Aware of the 5625 Majestic controversy, Hente says he probably would have consulted neighbors. "The last thing I want to do is have a new homeowner be at odds with his neighbors the day he moves in for no fault of his own," he says. "I would never want to put one of my potential customers in that situation."

Meaney and Zawacky, meanwhile, say what's especially hard to swallow is that the new home at issue reportedly is being built on speculation, meaning there's no buyer yet.

"This spec house," Zawacky says, "should not have more rights than two 20-year returning residents."

— [zubeck@csindy.com](mailto:zubeck@csindy.com)

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How Older Women Are Losing Weight



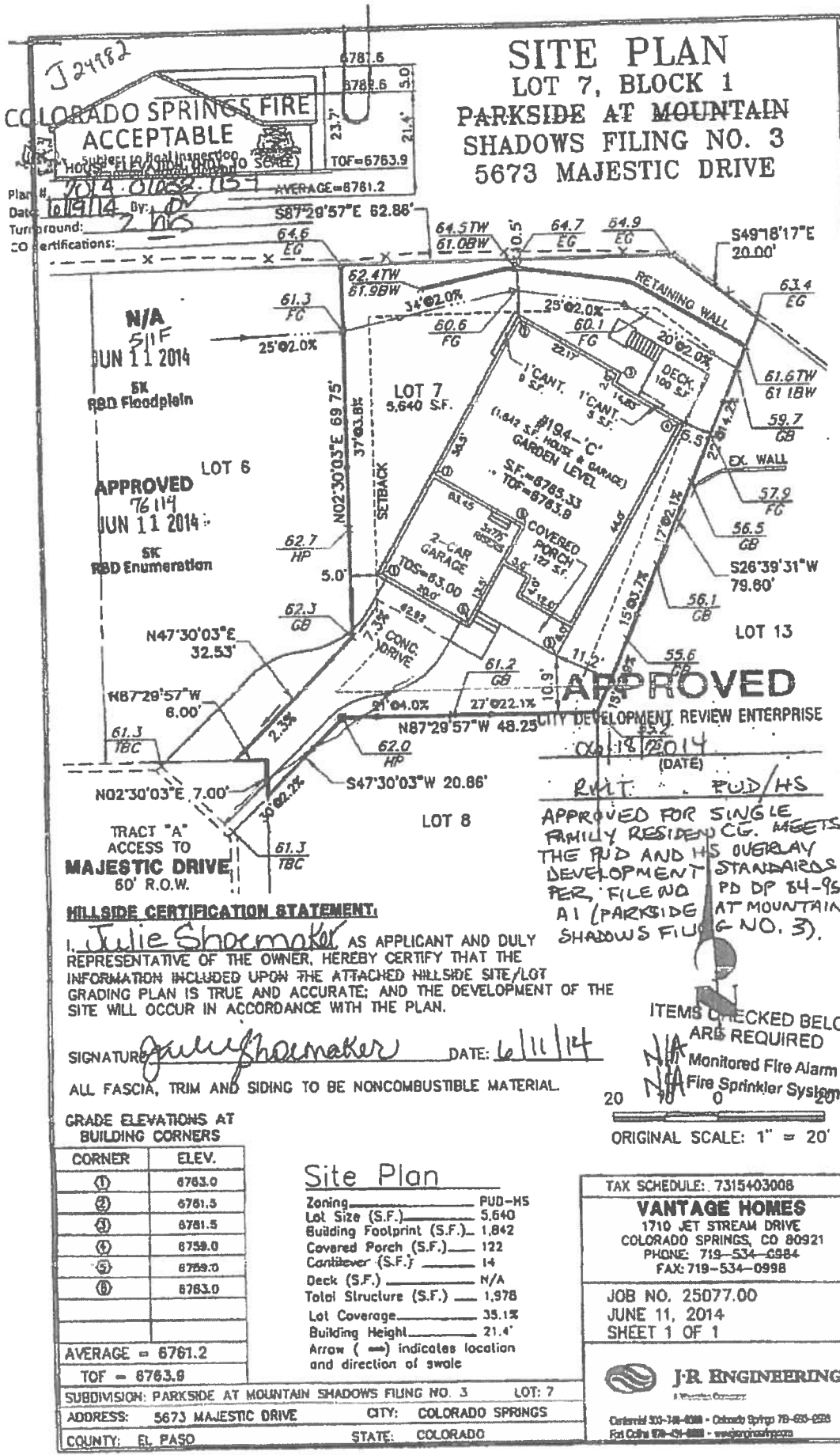
Ever Googled Yourself? This Site Reveals All, Take a Look



New "Limitless Pill" Takes Internet by Storm



FIGURE 6  
Atch 6



**SITE PLAN**  
**LOT 7, BLOCK 1**  
**PARKSIDE AT MOUNTAIN**  
**SHADOWS FILING NO. 3**  
**5673 MAJESTIC DRIVE**

J24982  
 COLORADO SPRINGS FIRE  
 ACCEPTABLE  
 SUBJECT TO FINAL INSPECTION  
 HOUSE (FILING NO. 3) TO SCHEMATIC  
 Plan # 2014-01032-157  
 Date: 10/19/14 By: [Signature]  
 Turnaround: 2 WKS  
 CO Certifications: [Signature]  
 AVERAGE=8781.2  
 S87°29'57"E 62.88'

N/A  
 511F  
 JUN 11 2014  
 5K  
 RBD Floodplain

APPROVED  
 76114  
 JUN 11 2014  
 5K  
 RBD Enumeration

**APPROVED**

CITY DEVELOPMENT REVIEW ENTERPRISE  
 06/18/2014  
 (DATE)

RMT: PUD/HS  
 APPROVED FOR SINGLE  
 FAMILY RESIDENTIAL USES  
 THE RUD AND HS OVERLAY  
 DEVELOPMENT STANDARDS  
 PER FILE NO PD DP 84-95-  
 A1 (PARKSIDE AT MOUNTAIN  
 SHADOWS FILING NO. 3).

**HILLSIDE CERTIFICATION STATEMENT:**

I, Julie Shoemaker, AS APPLICANT AND DULY REPRESENTATIVE OF THE OWNER, HEREBY CERTIFY THAT THE INFORMATION INCLUDED UPON THE ATTACHED HILLSIDE SITE/LOT GRADING PLAN IS TRUE AND ACCURATE; AND THE DEVELOPMENT OF THE SITE WILL OCCUR IN ACCORDANCE WITH THE PLAN.

SIGNATURE: Julie Shoemaker DATE: 6/11/14

ALL FASCIA, TRIM AND SIDING TO BE NONCOMBUSTIBLE MATERIAL.

ITEMS CHECKED BELOW ARE REQUIRED

- N/A Monitored Fire Alarm
- N/A Fire Sprinkler System

20  
 ORIGINAL SCALE: 1" = 20'

**GRADE ELEVATIONS AT BUILDING CORNERS**

CORNER	ELEV.
①	8783.0
②	8781.5
③	8781.5
④	8759.0
⑤	8759.0
⑥	8783.0

**Site Plan**

Zoning \_\_\_\_\_ PUD-HS  
 Lot Size (S.F.) \_\_\_\_\_ 5,640  
 Building Footprint (S.F.) \_\_\_\_\_ 1,842  
 Covered Porch (S.F.) \_\_\_\_\_ 122  
 Cantilever (S.F.) \_\_\_\_\_ 14  
 Deck (S.F.) \_\_\_\_\_ N/A  
 Total Structure (S.F.) \_\_\_\_\_ 1,978  
 Lot Coverage \_\_\_\_\_ 35.1%  
 Building Height \_\_\_\_\_ 21.4'  
 Arrow (→) indicates location and direction of swale

AVERAGE = 8761.2  
 TOF = 8763.9

SUBDIVISION: PARKSIDE AT MOUNTAIN SHADOWS FILING NO. 3 LOT: 7  
 ADDRESS: 5673 MAJESTIC DRIVE CITY: COLORADO SPRINGS  
 COUNTY: EL PASO STATE: COLORADO

TAX SCHEDULE: 7315403008  
**VANTAGE HOMES**  
 1710 JET STREAM DRIVE  
 COLORADO SPRINGS, CO 80921  
 PHONE: 719-534-6984  
 FAX: 719-534-0998

JOB NO. 25077.00  
 JUNE 11, 2014  
 SHEET 1 OF 1

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