



## Legislation Text

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**File #:** AR NV 18-00679, **Version:** 2

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An appeal of City Planning Commission's decision to deny a nonuse variance for 28 Polo to allow a 67 foot lot width at the rear setback line for Lot 1 and a 59 foot lot width at the rear setback line for Lot 2 where 100 feet of lot width is required at the front and rear setback line located at 28 Polo Drive.

(Quasi-Judicial)

Related Files: AR NV 17-00123, AR NV 17-00124, AR PFP 17-00122

**Presenter:**

Peter Wysocki, Director Planning and Community Development  
Lonna Thelen, Principal Planner, Planning and Community Development

**Summary:**

Applicant/Owner: 28 Polo LLC  
Consultant Representative: 28 Polo LLC  
Location: 28 Polo Drive

This is an appeal of City Planning Commission's denial of a preliminary and final plat and two nonuse variances. The preliminary and final plat application is for dividing an existing 38,460 SF single-family residential lot into 2 lots. The nonuse variances are for lot size and lot width. The property is zoned R (Estate Single-Family Residential) which requires that a new lot created be a minimum of 20,000 SF and a minimum of 100 feet in width. The lot size variance allows two, 19,230-square foot lots. The lot width variance allows a 67 foot lot width at the rear setback line for Lot 1 and a 59-foot lot width at the rear setback line for Lot 2. The appeal is attached as FIGURE 1.

Please note that "approval of the appeal" results in approval of the applications; whereas "denial of the appeals" results in denial of the applications.

**Previous Council Action:**

Similar applications for preliminary and final plat, nonuse variance for lot size and nonuse variance for lot width were submitted in 2017 and administratively approved by staff on June 5, 2017. The applications were then appealed (by an opposing neighbor) to City Planning Commission. The City Planning Commission denied the appeal and upheld the administrative approval on July 20, 2017 with a 6-3 vote (Aye: Fletcher, Graham, McDonald, Markewich, Satchell-Smith, Smith, No: Henninger, Raughton, Walkowski). The applications were then appealed (again by opposing neighbor) to City Council. The City Council heard the appeal on August 22, 2017. City Council and voted 9-0 to approve the appeal, thus denying the project (Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand).

**Background:**

The original home addressed as 28 Polo was constructed in 1951. At the time of the first review of the project, the original home was still on the property. After the denial of the original application, the current owner tore down that structure and built a new single-family home on the east half of the lot. The owner is applying to plat the property into two lots and build a new single-family home on the to-be-created west lot. As was outlined in the project summary section above, the applicant previously submitted and received administrative approval for a preliminary and final plat to subdivide the lot into two lots and two nonuse variances. That administrative approval was appealed to City Planning Commission and the administrative approval of the applications upheld. Upon an appeal of the City Planning Commission decision to City Council, the Council upheld the appeal and denied the applications.

Per City Code 7.5.105, the current applications are permitted to be approved or denied administratively; however, given the history of this project, staff made the decision to defer the applications to City Planning Commission for approval or denial. The rationale for forwarding the applications was due to the large response from the neighborhood primarily in opposition to the project and opposing decisions on the appeals by the Planning Commission and City Council.

Variance 1 - A nonuse variance to allow 19,230 square foot lots where 20,000 square feet is required. The proposed lot size is 770 square feet less than the required lot size, which equates to 3.85% of the required lot area.

Normally, if the percent of the requested deviation is less than 15%, the applicant could apply for an “administrative relief” (which is a “simplified” variance allowed by City Code). However, the applicant was required to submit a “nonuse variance” instead of an administrative relief due to the creation of a new lot, which meant that he could not comply with the review criteria for granting administrative relief.

7.5.1102D - The granting of the administrative relief will not allow an increase in the number of dwelling units on a parcel. Administrative relief shall not be used to create or modify lots to the extent that they no longer meet the minimum lot size for the zone district in which they are located

Variance 2 - A nonuse variance to allow 67-foot lot width at the rear setback line for Lot 1 and a 59-foot lot width at the rear setback line for Lot 2 where 100 feet of lot width is required at the front and rear setback line.

The major neighborhood concerns raised included a change to neighborhood character, drainage patterns from the new homes, and geologic hazard concerns. These concerns along with additional rationale for the recommendations on the project are addressed in detail in the City Planning Commission staff report.

The City Planning Commission staff report includes additional maps and documentation to supplement the City Council memo.

The project supports the City’s Strategic plan of building community and collaborative relationships. It is an infill development that increases the number of homes in the Broadmoor area and encourages further development in the Broadmoor community. The project will support the future creation of

employment opportunities and maintain prospects for strengthening the Colorado Springs economy.

**Financial Implications:**

N/A

**Board/Commission Recommendation:**

At their meeting on January 17, 2019 the Planning Commission, as part of their new business calendar, voted 6-2 to deny the applications (Aye: Graham, Eubanks, Raughton, McMurray, Almy, Hente No: McDonald and Smith). The commissioners voting for the denial of the project cited the variance criteria not being met. These commissioners believed that there was reasonable use of the property (with just one lot) and that a precedent would be set if the nonuse variances were approved.

Please reference the minutes from the hearing for a detailed record.

**Stakeholder Process:**

The public process involved with the review of these applications included posting the site and sending postcards to 131 property owners within 1000 feet for internal review and a neighborhood meeting held on October 23, 2018. Approximately 40 people attended the meeting. Comments were received during internal review and are documented as part of the City Planning Commission staff report. The site was also posted and postcards sent for the City Planning Commission meeting to 131 property owners within a 1,000 foot buffer of the site.

The major areas of concern documented by the neighborhood are that this item was already heard by City Planning Commission and City Council and ultimately denied by City Council. They also stated that the new applications should also be denied as the previous applications were and reiterated that the major neighborhood concerns raised previously still apply. These concerns include a change to neighborhood character, drainage patterns from the new home, and geologic hazard concerns.

Staff sent plans to the standard internal and external review agencies for comments. All comments received from the review agencies are addressed. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City Fire, Police, Enumerations, Floodplain, Real Estate Services, Comcast, School District 12 Colorado Geologic Survey and E-911. This site is not within the Airport Overlay and was not seen by the Airport Advisory Committee and is outside of the buffer for review by USAFA.

Please see the Planning Commission staff report for more details.

**Alternatives:**

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Grant the appeal and reverse the action of the City Planning Commission - granting of the appeal will essentially deny the project as proposed; or
4. Refer the matter back to the City Planning Commission for further consideration Uphold the action of the City Planning Commission;

**Proposed Motion:**

AR NV 17-00124

Uphold the appeal, overturning the City Planning Commission's decision, and approve the nonuse variance allowing a 67-foot rear yard lot width for Lot 1 and a 59-foot rear yard lot width for Lot 2 where 100 feet is required, based upon the finding that the appellant meets the review criteria contained in City Code Section 7.5.906.B and that the nonuse variance request complies with the review criteria in City Code Section 7.5.803.B.

OR

Deny the appeal, upholding City Planning Commission's decision to deny the nonuse variance allowing a 67-foot rear yard lot width for Lot 1 and a 59-foot rear yard lot width for Lot 2 where 100 feet is required, based upon the finding that the appellant did not meet the review criteria contained in City Code Section 7.5.906.B and that the nonuse variance request does not comply with the review criteria in City Code Section 7.5.803.B.

N/A