



## Legislation Details (With Text)

**File #:** AR NV 17-00123      **Version:** 2      **Name:**  
**Type:** Planning Case      **Status:** Passed  
**File created:** 6/22/2017      **In control:** City Council  
**On agenda:** 8/22/2017      **Final action:** 8/22/2017

**Title:** An appeal of the Planning Commission decision to approve a nonuse variance to allow two 19,230 square foot lots where 20,000 square feet is required in the R zone district located at 28 Polo Drive.

(Quasi-Judicial)

Related Files: AR NV 17-00024, AR PFP 17-00122

**Presenter:**  
Lonna Thelen, Principal Planner, Planning & Community Development  
Peter Wysocki, Planning and Community Development Director

**Sponsors:**

**Indexes:** Appeals, Polo Drive

**Code sections:**

**Attachments:** 1. FIGURE 1 - Preliminary Plat, 2. 7.5.802 Nonuse Variance, 3. 7.5.906 (A)(4)

Date	Ver.	Action By	Action	Result
8/22/2017	2	City Council	approved	Pass
7/20/2017	1	Planning Commission	approved	Pass

An appeal of the Planning Commission decision to approve a nonuse variance to allow two 19,230 square foot lots where 20,000 square feet is required in the R zone district located at 28 Polo Drive.

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**Summary:**

Applicant: 28 Polo LLC  
Owner: 28 Polo LLC  
Location: 28 Polo Drive

This project includes an application for a preliminary and final plat for 28 Polo Drive to subdivide a 38,460 square-foot lot into two single-family lots and two nonuse variances for lot size and lot width.

**Previous Council Action:**

There are no previous council actions.

**Background:**

This application is for a preliminary and final plat and two nonuse variances. The applications were approved administratively on June 5, 2017 and subsequently appealed and heard by city planning commission. City planning commission heard the appeal on July 20, 2017 and approved the project with a 6-3 vote for all three applications. Mr. Gerald McLaughlin, who is a nearby neighbor, appealed the project to city council (exhibit a)

The subject property currently contains a single-family home, which was constructed in 1951. The current owner is proposing to demolish the existing home, plat the property into two lots and build two new single-family homes. The applicant has submitted and received approval for a preliminary and final plat to subdivide the lot into two lots and two nonuse variances. The nonuse variance approvals are detailed below.

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 require 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.

City Planning Commission used the appeal criteria listed in 7.5.906 (a)(4) to make the decision on the appeal. This appeal criteria is specific for an appeal of an administrative decision and shall be reviewed by the City Council, see below for the code criteria.

7.5.906 (a)(4) : criteria for review of an appeal of administrative decision:

4. 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.

**Financial Implications:**

N/A

**Board/Commission Recommendation:**

At their meeting on July 20, 2017 the Planning Commission, as part of their new business calendar, voted 6-3 to approve of the applications. The dissenting votes included Commissioners Henninger, Raughton, and Walkowski. The commissioners voting against 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 129 property owners within 1000 feet for internal review and a neighborhood meeting held on March 15, 2017 . Approximately 41 people attended the meeting. Multiple rounds of public comments were received during the internal review. Finally, the site was also posted and postcards send for the City Planning Commission appeal meeting to 129 property owners within a 1,000 foot buffer of the site.

The major areas of concern documented by the neighborhood are compatibility with neighborhood character, drainage concerns, and geologic hazard concern. These areas of concern and staff analysis is addressed in detail within the City Planning Commission staff report.

Staff sent plans to the standard internal and external review agencies for comments. All comments received from the review agencies were addressed; hence, the project was approved administratively. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City Fire, Police, Enumerations, Floodplain, Real Estate Services, Comcast, School District 12 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.

**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

**Proposed Motion:**

Deny the appeal and uphold the City Planning Commission's decision to approve the nonuse variance allowing two 19,230 square-foot lots where 20,000 square feet is required, based upon the

finding that the appellant did not meet the review criteria contained in City Code Section 7.5.906.A.4. and that the nonuse variance request complies with the review criteria in City Code Section 7.5.803.B.