

RESOLUTION 2023-012

A resolution conditionally approving Boulder County Community Planning & Permitting Docket SE-22-0003: Butler Lot Recognition

Recitals

A. Cynthia Butacan (the “Applicant”) applied to Boulder County for a Subdivision Exemption under Article 9 of the Boulder County Land Use Code (the “Code”) to recognize 790 Newland Court (the “Property”) as a legal Building Lot.

B. The Property is located on the north side of Baseline Road and is accessed via a private driveway that is shared with the adjacent parcels at 795 Newlands Court and 6685 Baseline Road. The private drive intersects with Baseline Road approximately .05 mile east of its intersection with Lakeview Drive, in Section 35, Township 1 North, Range 70 West, in an Estate Residential zoning district in unincorporated Boulder County.

C. The County Assessor identifies one single-family residence on the Property. However, the Applicant indicates that the residence on the Property is actually a duplex and has functioned as such for decades. The Property was identified as a non-legal building lot in a determination issued on January 25, 2021 (BLD-20-0090), because it does not meet the definition of a legal building lot as described in Article 9-100 of the Code. The Property’s current configuration was created in 2020 when the Property (also known as Parcel B) was improperly subdivided by deed.

D. The relevant history of the Property is as follows:

- a. On July 15, 1960, a 2.87-acre parcel was sold via deed (reception number 90655587) which encompassed what are currently three separate parcels (the Property and two separate parcels).
- b. On July 15, 1960, a building permit (“BP-60-4743”) was issued to the new owner of the 2.87-acre parcel for the construction of a single-family residence. The residence constructed under this permit is now the duplex located on the Property. No inspections have ever been performed for BP-60-4743 and no Certificate of Occupancy has been issued for the structure.
- c. Between October 16, 1961 and December 21, 2020, the 2.87-acre parcel was divided and recombined into several configurations. On December 21, 2020, the parcel was improperly subdivided by deed, which resulted in the current configuration of the resulting 0.87-acre Property.

E. The Property is currently developed with a structure identified by the Assessor as a single-family residence, although the building permit for this structure has not been finalized nor does it have a Certificate of Occupancy. No permits for conversion of the structure into a duplex or construction of a duplex exist in the Property record. The Applicant asserts that the structure was a duplex when the Property was originally purchased by the Butlers, although this statement

is not supported by the permitting history. Historic aerial photography also appears to indicate the construction of an approximately 350-square-foot structure on the Property sometime after 2013, for which no permitting records could be found.

F. The Applicant requests that the Property be recognized as a legal building lot and as a result, be eligible for the issuance of building permits. In support of this request, the Applicant points to the fact that the existing dwelling unit has existed for approximately 60 years, its continuous use as a separate residence, and the fact that the owners have paid separate taxes for the Property since 1963.

G. The above-described request was processed and reviewed as Boulder County Community Planning & Permitting Docket SE-22-0003 (the “Docket”), as further described in the memorandum and written recommendation to the Board of County Commissioners (the “Board”) by Boulder County Community Planning & Permitting Department planning staff dated October 27, 2022, together with its attachments (the “October 27, 2022 Staff Recommendation”). The October 27, 2022 Staff Recommendation found that the Docket does not meet the criteria for a Subdivision Exemption, and therefore, recommended that the Board deny the Docket.

H. At an online public hearing on the Docket held on October 27, 2022, the Board considered the October 27, 2022 Staff Recommendation as well as the documents and testimony presented by Community Planning & Permitting Department planning staff. The Board also heard testimony from Applicant Cynthia Butacan and her attorney Ed Byrne. Four members of the public spoke at the public hearing.

I. At the October 27, 2022 hearing, the Board ultimately agreed with the Applicant that the land use impacts of potential development of the lot could be sufficiently mitigated with conditions of approval. The Board therefore determined that the Property should be recognized as a legal building lot but expressed concerns that limiting the allowed residential floor area on the parcel to 2,500 square feet, as recommended by Community Planning & Permitting staff, would not accurately account for an unpermitted shed located on the property and was smaller than most homes in the surrounding neighborhood. Based on this reasoning, the Board voted to recognize the Property as a legal building lot subject to staff’s recommended conditions with an amendment to Condition 3 to restrict the floor area to the size presumed to be compatible with the surrounding area on the date of the hearing.

J. Following the hearing, Community Planning & Permitting staff discovered that incorrect information was presented at the hearing regarding the size presumed to be compatible with the surrounding area, which staff mistakenly identified as approximately 2,600 square feet. In fact, the size presumed to be compatible with the surrounding area for the Property on October 27, 2022, was 4,910 square feet. Due to this mistake, the Board scheduled a subsequent hearing on the Docket for further consideration.

K. The Board again heard the Docket during a duly noticed online public meeting on December 13, 2022, and considered an amended memorandum and written recommendation to

the Board by Boulder County Community Planning & Permitting Department planning staff dated December 13, 2022, together with its attachments (the “December 13, 2022 Staff Recommendation”), and documents and testimony presented by Community Planning & Permitting Department planning staff. The Board also heard testimony from Applicant Cynthia Butacan and her attorney, Ed Byrne. Public comments were not accepted at the public meeting.

L. Based on the public hearing and the public meeting, the Board finds that with the recommended conditions of approval, the Docket meets the criteria for a Subdivision Exemption to recognize the Property as a legal Building Lot under Article 9-400 of the Code.

M. Therefore, the Docket can be approved, subject to the conditions stated below.

Therefore, the Board resolves:

Docket SE-22-0003 is approved on the basis and terms set forth in this Resolution, above, and subject to the following conditions:

1. The duplex must be converted back to the single-family residence as applied for as part of BP-60-4743.
2. Within one year of approval, the single-family residence must be inspected, BP-60-4743 must be closed, and a Certificate of Occupancy issued for the residence.
3. Development on the Property is limited to 2,700 square feet of residential floor area.
4. Prior to the issuance of a Certificate of Occupancy, the unpermitted shed must be deconstructed or permitted.
5. Prior to the issuance of a Certificate of Occupancy, the Applicant must obtain an Onsite Wastewater Treatment System (“OWTS”) permit for the existing septic system or obtain a permit for a new OWTS.
6. Prior to the issuance of a Certificate of Occupancy, the Applicant must submit evidence to the Community Planning & Permitting Department that the Property has an adequate water supply.
7. The Applicant shall be subject to the terms, conditions, and commitments of record and in the file for SE-22-0003: Butler Lot Recognition.

[Signature Page to Follow]

A motion to approve the Docket was made by Commissioner Matt Jones, seconded by Commissioner Marta Loachamin, and passed by a 2-1 vote. Commissioners Matt Jones and Marta Loachamin voted in favor, and Commissioner Claire Levy, voted in opposition.

This Resolution adopts the approval of Docket SE-22-0003: Butler Lot Recognition in substantially the same form and subject to the same terms and conditions as voted by the Board at the December 13, 2022 public meeting. Due to the expiration of his term of Office on January 10, 2023, Matt Jones is not a signatory to this Resolution. The Resolution is approved by the signatories below as the current sitting Board.

ADOPTED as a final decision of the Board on this _____ day of February 2023.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**

Claire Levy, Chair

Ashley Stolzmann, Vice Chair

Marta Loachamin, Commissioner

ATTEST:

Clerk to the Board