



Archuleta County
Development Services—Planning Department
1122 HWY 84
P. O. Box 1507
Pagosa Springs, Colorado 81147
970-264-1390
Fax 970-264-3338

MEMORANDUM

TO: Archuleta County Board of Adjustment

FROM: John C. Shepard, AICP; Planning Manager

DATE: June 21, 2016

RE: Candelaria Appeal of the Cole's Meat Processing Administrative Determination in the Commercial (C) zone, 457 US Highway 84

EXECUTIVE SUMMARY

Patrick Candelaria, representing Cole's Meat Processing, 457 US Highway 84, has filed an appeal to an Administrative Determination that "meat processing" is a Light Industrial Use as defined in the *Archuleta County Land Use Regulations*, and that proposed construction is enlarging a non-conforming use. Applicant's property is described as Lots 7 & 8, Mountain View Subdivision, which is zoned Commercial (C).

REVIEW PROCEDURE

The *Archuleta County Land Use Regulations* (Section 1.2.4) provides that the Board of Adjustment (at this time the Board of County Commissioners sits as the BOA) may hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, decision or refusal made by an administrative official or agency in the enforcement of the regulations, as provided by CRS 30-28-118(2). Section 1.2.4.5(3) provides that if the Board of County Commissioners acts as the BOA, decisions shall require a two-thirds concurring vote. CRS 30-28-118(3) states that the concurring vote of all three members of a three member board is necessary to reverse a decision of an administrative official.

Public notice was published in the *Pagosa Springs Sun* prior to this hearing.

DISCUSSION

Cole's Meat Processing occupies the property at 457/457A US Highway 84, on Lots 7&8 of Mountain View Subdivision. This property was zoned Commercial (C) when the official zoning map was adopted in 2006. A variety of uses such as Retail stores or Offices are permitted in the Commercial zone, listed in Table 3 of the *Archuleta County Land Use Regulations*.

On 23 March 2016, Mr. Pat Candelaria, provided information on the historical use by Cole's Meat Processing, in preparation for submittal of a commercial building permit. On 30 March

2016, Archuleta County's Planning Manager (as zoning administrator) made an Administrative Determination:

...this property has been used for game processing since prior to adoption of the Land Use Regulations. Preparation of food products is defined in the Land Use Regulations as a **Light Industrial Use**, which is only permitted in an Industrial (I) zone. Therefore, your existing use would be considered a Non-Conforming Use, which may not be enlarged.

In Section 11, the *Archuleta County Land Use Regulations* define "Light Industrial Use" as:

Industrial, Light: Uses engaged in the manufacturing, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales or distribution of such products. Further, light industrial shall mean uses such as the manufacture of electronic instruments, preparation of food products, pharmaceutical manufacturing, research and scientific laboratories or the like.

A Light Industrial Use at this location would require a rezoning to the Industrial (I) zone, or amendment of the Land Use Regulations to make this a permitted use in the Commercial (C) zone.

Section 1.1.5 of the Land Use Regulations provides that in Interpretation of the Regulations, the most restrictive or higher standards or requirements shall govern. In practice, we must first look for any mention of the use in the Regulations (as a permitted use or not).

- No other use listed in Table 3 or in the Definitions includes "meat processing", game processing or a slaughter house, and as noted in Table 3, "Any unlisted use is prohibited."
- Taking the meaning of the words literally, "meat processing" can only be considered "preparation of food products", which is included in the specific definition of Light Industrial Use.
- The only alternative is to consider this a prohibited use.

It could also be noted that the federal government classifies meat processing and specifically small game and poultry processing with manufacturing NAICS codes (311615).

The burden is on the party challenging an administrative agency's action to overcome the presumption that the agency's acts were proper (*City and Co. of Denver v. Bd. Of Adjustment 55 P.3d 252 (2002)*). Appellant has provided the attached Applicant's Narrative. The Narrative asks for a Variance to proceed with expanding the existing meat processing use, and plans are provided; however, no alternate classification is proposed that is a permitted use in the Commercial (C) zone, and a Use Variance is prohibited by Sec. 1.2.4.4(3) of the Land Use Regulations. No building permit has been denied; however, the Building Official would not accept a commercial building permit without Site Plan or Conditional Use Permit review. As a non-conforming Light Industrial Use in a Commercial zone, Section 1.3.3.5 of the Land Use Regulations would prohibit enlarging the use.

RECOMMENDATION AND FINDINGS

Based on evidence provided, staff recommends the Board of Adjustment finds that:

- a. The application does NOT meet the burden to overturn an Administrative Determination, as required in Section 1.2.4.5 of the *Archuleta County Land Use Regulations*, and

That the Board affirms the Administrative Determination and does DENY the request by Patrick Candelaria for appeal of the Cole's Meat Processing Administrative Determination in the Commercial (C) zone, 457 US Highway 84.

PROPOSED MOTION

I move to affirm the Administrative Determination and DENY the Candelaria Appeal for Cole's Meat Processing.

ATTACHMENTS.

Attachment 1: Area Maps

Attachment 2: Planning Manager's Administrative Determination Letter

Attachment 3: Applicant's Narrative

Attachment 4: Proposed Building Plans