

ROUTT COUNTY BOARD OF ADJUSTMENT

FINAL MINUTES

SEPTEMBER 9, 2019

The Routt County Board of Adjustment meeting was called to order at 6:00 p.m. with the following members present: Acting Chairman Brian Fitzgerald, Rohail Abid, Don Prowant and County Planning Commissioners Greg Jaeger and John Merrill. Planning Director Chad Phillips and staff planner Tegan Anderson were also present. Sarah Katherman recorded the meeting and prepared the minutes.

MOTION

Mr. Prowant nominated Mr. Fitzgerald to act as Chair of the meeting. John Merrill seconded the motion. **The motion carried unanimously.**

PUBLIC COMMENT

There was no public comment.

APPROVAL OF MINUTES - August 12, 2019

Mr. Merrill moved to approved the minutes of the August 12, 2019 Board of Adjustment hearing, as written. Mr. Prowant seconded the motion. **The motion carried 5 - 0, with the Chair voting yes.**

ACTIVITY: PL-19-154

PETITIONER: Sarah and Scott Burg

REQUEST: Variance from required setbacks to accommodate an accessory structure

Required setbacks : 50 ft. from all property lines

Requested setbacks : 17 ft. from south property line (for a variance of 33 ft.)

LOCATION: Lot 3 Dakota Ridge Subdivision; located at 35925 Agate Creek Rd.

Mr. Scott Burg reviewed the petition to construct an open air structure over an existing patio to house an outdoor kitchen. Mr. Peter Patten, of Patten Associates, representing the petitioner, joined the meeting via conference call. Mr. Steve Dressen of Pinnacle Construction presented slides. Mr. Patten indicated the proposed location on an aerial photo of the site. He stated that the adjacent property is the Remainder Parcel of the Humble Ranch LPS. Mr. Dressen presented photos of the existing patio, man-made ponds and surrounding area. Mr. Patten noted that the patio area is 12' - 15' below the grade of the driveway. He noted that the area surrounding the driveway to the south is very steep. The proposed structure could not be moved closer to the drive. The proposed structure is 18' x 28' internally; with the roof overhand the total footprint is 22' x 31'. Mr. Patten stated that the corner of the structure would be 19' from

the property line setback. He indicated the location of the leach field, the septic tank and the cistern that helps to keep the ponds full.

Mr. Patten presented elevation drawings of the proposed structure. He noted that the structure would have no walls. It would provide shelter over an outdoor kitchen on an existing patio, which would be renovated to accommodate the roof structure. He stated that in the proposed location the structure would have no visual impact on any of the neighbors. Mr. Patten stated that none of the neighbors have objected to the project.

Ms. Anderson confirmed that two emails in support of the proposal had been received from the adjacent property owners.

Mr. Patten reviewed the homeowners' association (HOA) covenants that require screening of property improvements from the neighbors. He stated that if the proposed structure had been sited closer to the road, it would not have been approved by the HOA.

Mr. Patten reviewed the five criteria that need to be met for a variance to be granted. He reviewed the reasons, as stated on pages 9 - 11 of the fact packet, that the applicant believes the proposal meets the criteria. He emphasized that the patio must remain where it is, and that 50' setbacks on a parcel of 2.5 acres severely constrict the buildable area.

Mr. Fitzgerald asked about the use of the ponds. Mr. Burg confirmed that they were man-made. Mr. Dressen said that the ponds are lined and that the cistern helps to keep them full.

Mr. Burg said that the proposal had been presented to the HOA, which had approved it. In response to a question from Mr. Fitzgerald, Mr. Burg said that no other locations had been presented to the HOA, noting that he had been under the impression that the property line setbacks were 15' not 50'. Mr. Burg said that the structure only works in the proposed location and that if the variance is not approved, he wouldn't build it. Mr. Dressen said that if the structure were to be located on the other side of the pond it would be close to the cistern or the leach field and would be visible from the road.

Mr. Prowant offered that the Humble Ranch open space was a concern, as it could be developed in the future. Ms. Anderson stated that no comments had been received from Humble Ranch.

In response to a question from Mr. Jaeger, Mr. Burg said that any proposal could be requested from the HOA. He said that the HOA had rejected his earlier proposal for a shed to be located behind the house, so he knows they are quite strict regarding visual impacts.

There was no public comment.

Mr. Merrill stated that he disagreed with staff's assessment that the parcel does not possess exceptional narrowness, shallowness, shape or topography. He cited the steepness of the area between the driveway and the proposed location of the structure.

Ms. Anderson said that the only exceptional topography on the site is between the driveway and the pond. Ms. Anderson reviewed the site plan of the property. She noted that there are other flat areas where the structure could be located that do not encroach into the setback, noting in particular an area to the north of the house near the outdoor fire pit. She noted that this area of the property has no site constraints. She stated that the Humble Ranch LPS will become eligible for an amendment that could result in potential development of the Remainder Parcel in 20 years.

Ms. Anderson stated that a parcel of 2.5 acres is not uncommon in the Mountain Residential Estates (MRE) zone district and that the shape is not unusual. She offered that the lot contains a fairly sizeable building area. Regarding the existing patio, which does encroach into the setback, Ms. Anderson stated that on-grade patios are allowed in the setback area. Mr. Phillips added that the setback is for structures, and any patio under 30" high is not considered a structure. No building permit would have been required for the patio. Ms. Anderson stated that small structures (under 120 sq. ft.) are allowed to encroach into the setback. The proposed structure, however, is over 600 sq. ft.

Mr. Jaeger offered that there would be no hardship if the variance were not granted, as there are other areas on the lot that could accommodate the structure without encroaching into the setback. Mr. Prowant agreed, noting that the County regulations are very clear. He said that the proposal does not meet criterion #1. Mr. Abid also agreed that the proposal does not meet criterion #1. Mr. Fitzgerald noted that the Board of Adjustment is constrained by state statute, and only when all five criteria are met can a variance be granted. He said that he did not see how criterion #1 could be met, given that there are other areas on the parcel that could accommodate the structure. He noted that the Board of Adjustment is not constrained by the covenants or policies of the HOA.

MOTION

Mr. Jaeger moved to deny the requested variance to accommodate an accessory structure. This denial is based on the finding of fact that because there are other areas on the property without site constraints that the proposed structure could be built without encroaching into the setback, the first criterion is not met.

Mr. Abid seconded the motion.

The motion to deny the variance request carried 4 - 1, with the Chair voting yes.

ACTIVITY: PL-19-156

PETITIONER: Jackie Brown

REQUEST: Request to exceed the maximum separation between primary dwelling unit and secondary dwelling unit

Maximum distance : 300 ft.

Requested distance : 475 ft

LOCATION: 24535 CR 27, Oak Creek

Ms. Jackie Brown stated that she and her husband are under contract to purchase the property.

Ms. Anderson reported that Mr. Prowant, Mr. Merrill and Mr. Jaeger had visited the site with staff prior to the meeting at the request of the applicant. Mr. Jaeger described the site, stating that when coming from the road the barn is visible, but the house is not. On a site plan he noted the circle indicating a 300 ft. radius around the house. He stated that much of the area within that circle is steep and/or wooded with mature trees. He stated that the driveway is also very steep. He stated that the barn was located in its current location because hauling a trailer up the driveway would be extremely difficult. Mr. Merrill agreed with Mr. Jaeger's assessment. He stated that the ground is much steeper than it appears in the photos of the site. Mr. Prowant stated that there is no question why the barn was located at the bottom of the hill. He offered that the question is whether there are areas within 300 ft. of the house where the secondary dwelling unit (SDU) could be located.

Mr. Fitzgerald asked if the property is going to be subdivided. Ms. Anderson reviewed that the current owner, Mr. Russ Garrity, is proposing to subdivide the property into several parcels. The Browns are under contract to purchase the subject parcel, a portion would be deeded to Oak Creek as a park, another portion would be annexed into Oak Creek, and a portion would be deeded to Routt County. She stated that the Garritys have allowed the public to use the existing trails on their property for many years. Regarding whether the property will be re-platted, Mr. Phillips stated that that issue has not yet been decided, since the subdivision of the land will be at least in part for public purposes.

Ms. Brown stated that she would like to utilize the existing SDU in the barn so that a new structure will not have to be built for an SDU. She offered that since the existing structure has all the characteristics of an SDU, including utilities, it would be unreasonable to build a third structure on the property. She said that there is not an area within 300 ft. of the house that is both flat enough and accessible enough to allow for the construction of an SDU. Access was the primary reason that the barn was built where it is. Ms. Brown noted the location of the leach field that lies between the barn and the house, as well as the location of the underground utilities. She added that creating a new building site and constructing an access to it would cause unnecessary erosion and degradation of the land. Ms. Brown cited the Routt County Subdivision Regulations Sections

3.1.G and 3.1.F, and added that constructing a third structure on the parcel would increase sprawl, because the barn would remain, so there would be three rather than two structures on the property.

Ms. Brown stated that the barn was built in the most logical location, and because it was originally constructed as an exclusively agricultural building, the location of the future SDU was not taken into account.

Ms. Brown stated that this parcel is unique in that it was the former site of an oil & gas operation, and the only level areas on the otherwise steep property are the previously graded areas. The driveway was in existence prior to the construction of either the house or the barn.

Ms. Brown stated that because the barn will remain, even if this variance is not granted, the neighborhood will not change. Building an SDU in a different location would increase the visual impact.

Mr. Russ Garrity, the current owner of the property, indicated on a site plan the larger property of just under 200 acres that will be subdivided. He indicated the existing trails and proposed park area and the smaller parcels that would be deeded to Oak Creek and Routt County. The parcel under contract by the Browns includes 35.61 acres.

Mr. Garrity stated that the barn was built 8 years after the house. He said that after living in the house for eight years, they knew that the steep driveway could not accommodate a horse trailer. The access to the existing barn is completely flat. He added that soils tests conducted on the meadow area across from the house had indicated the presence of expansive soils, which would make building there more difficult. He said that they had sited their home in the best spot on the top of the hill to avoid it being skylined. He said that any structure built on the meadow across from the house would be very visible.

In response to a question from Mr. Prowant, Mr. Garrity stated that the barn is served by a separate septic tank and leach field. He stated that the septic tank that serves the house does not have additional capacity to accommodate another structure.

Mr. Jaeger asked about the disparity between the slopes report provided by the County and that provided by the applicant. Ms. Brown stated that she would not question the accuracy of the County GIS Department. She said that her research indicated steeper slopes, but that she did not have the wherewithal to hire additional professionals to perform a complete analysis.

Mr. Garrity reviewed the particulars of the proposed subdivision of his property, noting that it had been in the works for years.

Mr. Fitzgerald asked if a building permit had been issued for the barn. Mr. Garrity said that it had not, as it was originally constructed for agricultural use only. The septic system had been installed to allow for a bathroom in the barn. The SDU was added in 2011 when a friend needed a place to live.

Public Comment

Ms. Patricia Stewart, a resident of Oak Creek, stated that she is very excited about every aspect of the proposed project for the Garrity property except the small triangle of land to be annexed into Oak Creek. She stated that she would prefer that this portion of the property be included in the conservation easement.

Ms. Tamara Berezna, a resident of Oak Creek, indicated the location of her lot on a site plan. She said she had no concerns regarding the requested variance for the SDU. She said that is also opposed to the annexation of the triangle of land into Oak Creek.

Seeing no further public comment, Mr. Fitzgerald closed public comment.

Ms. Anderson stated that proposal had been well-explained by the applicant. She stated that in its assessment of the property, staff only considered the area within 300 ft. of the primary dwelling unit. She indicated the areas within that circle where construction of an SDU would result in skylining or would require clearing stands of mature trees. She also indicated the areas with slopes over 30% and the area near the drainage. She stated that the only area potentially suitable for building is the area across from the house. Ms. Anderson said that staff is recommending denial because this area is under 30% slope. She stated that the soils have not been taken into account because no professional evidence was provided. She added, however, that the applicant had described the reasons the barn had been built where it is.

Mr. Fitzgerald asked what the remedy would be if the variance were denied. Ms. Anderson said that the components that make the space a dwelling would have to be removed. Mr. Phillips offered that this generally means that the kitchen (stove) is removed. He said the area could be used as a studio, office, etc. but not as a dwelling. He clarified that a dwelling is defined as both a use and a structure, so even if there were no stove it would not be allowed to be used as a dwelling.

Mr. Jaeger expressed concern that criterion #3 could not be met because he did not find anything exceptional about the lot. He suggested that the application be tabled to allow for soils testing. He said that based on the evidence available, he believes there is an alternate building area.

Mr. Merrill said that his concern is with criterion #2, given that the hardship was created by Mr. Garrity, who is currently the owner. He said that he thinks the other criteria could be met.

Mr. Prowant agreed with Mr. Jaeger that more data is needed to ensure that the level area across from the house is buildable. He said that he could not evaluate the slope, but agreed that finding another accessible spot within the 300 ft. radius would be difficult.

Mr. Abid agreed that criterion #3 was problematic without soils testing. He stated that he would support tabling the petition.

Ms. Brown noted that she had only received the staff report four days prior to the meeting, and that she had already paid \$1300 for the variance application. She stated that soils testing is expensive. She added that the steep driveway and the other constraints on the lot are not going to change. She stated that the slopes, the location of the leach field and the difficult access would make locating an SDU anywhere within 300 ft. of the house difficult.

Mr. Phillips reviewed that criterion #3 only applies to the area within 300 ft. of the house. He pointed out the areas that are skylined, the drainage, the areas of mature vegetation, and the location of the leach field. He noted the potential for expansive soils northwest of the house and the difficulties of providing access to that area from the existing steep driveway.

Mr. Fitzgerald stated that he would support the request because the structure is already there and would not be removed if the variance is denied.

Ms. Brown noted that the location of the trailhead for the trail system had been relocated to be closer to town and so the public would not have to go up the steep drive to access the trails.

Mr. Fitzgerald called for a straw poll to determine if a tabling would be necessary. A straw poll indicated that the variance request had the support of the majority of Board members.

MOTION

Mr. Powant moved to approve the variance of 175 ft. from the maximum separation between a primary dwelling and a secondary dwelling to bring an existing SDU into conformance. This approval is based on the following findings of fact:

1. Peculiar and exceptional practical difficulties or an unnecessary and unreasonable hardship will be imposed on the property owner if the provisions of the Zoning Regulations are strictly enforced.

The unit above the barn is intended to house a caretaker for livestock. The barn was built in 2007 under the agricultural exemption from requiring a building permit, though mechanical and electrical permits were pulled. In 2010, the sellers finished the upstairs storage floor to house a caretaker. Great hardship would be imposed by moving the barn to within 300 feet of the primary dwelling, or building a separate SDU on the site within 300 feet of the primary dwelling because of the

exceptionally steep topography and septic field, which is why the location of the barn is located where it is.

2. Circumstances creating the hardship were in existence on the effective date of the regulations from which a variance is requested or created subsequently through no fault of the appellant.

The septic and steep terrain were in existence prior to the building of the barn, and the SDU being finished. Additionally, the secondary unit was used prior to the effective date of the current SDU guidance, without knowledge of the zoning regulations. The application is requested now because regulations have come to the applicant and property owner's attention during the purchase process.

3. The property for which a variance is requested possesses exceptional narrowness, shallowness, shape or topography or other extraordinary and exceptional situation or condition which does not occur generally in other property in the same Zone District. The property is located on a steep hillside. The steep terrain and location of the primary dwelling septic and leach field pose a hardship. The road grade is over 50% in some places. In 2007, when the barn and secondary unit were built, the current location was, and remains, the ideal location. It is the closest location to the primary dwelling possible that is flat enough for a barn, paddocks, stalls, and trailer/ equipment turn-around accessed by the main road.

4. The variance, if granted, will not diminish the value, use or enjoyment of the adjacent properties, nor curtail desirable light, air or open space in the neighborhood, nor change the character of the neighborhood. The 172 foot variance to the 300 foot separation standard will not change the location of the barn where the secondary unit is located. The purpose of the standard is to reduce the incident of sprawl and encourage clustering. The barn is visible from some areas of the neighborhood, but the house is not.

5. The variance, if granted, will not be directly contrary to the intent and purpose of the Zoning Regulations or the Routt County Master Plan. The development of the property should be designed to meet the regulations, not the criteria or wishes of the applicant. The applicant, after reading the Master Plan, understands the variance requested to reinforce the intent and goals of the Plan by supporting a rural homestead operation. Specifically, the Routt County Master Plan is "structured to respect the rights of private property owners while considering the best ways to solve problems of future county growth and development. The Master Plan outlines policies that will guide future development in the unincorporated portions of the County. The general goal of the Plan is to ensure the rural character while accommodating appropriate development".

This approval is subject to the following conditions:

1. The building shall comply with all applicable requirements of the Routt County Building Department.
2. If construction of the building does not commence within 1 year, this variance shall be subject to another review with full submittal. A 12 month extension may be approved administratively without notice.
3. This approval is specific to the plans submitted in the application. Any change in footprint, size, height or site location that increases the level of non-conformance will be subject to a new application. Minor variations that do not increase the level of non-conformance can be approved administratively, without notice.
4. Best Management Practices (BMP's) shall be utilized during construction to prevent erosion and drainage flow onto adjacent properties, drainage to the east of the parcel and the county road right of way.
5. A Grading and Excavation Permit will be required if necessary.
6. All exterior lighting will be downcast and opaquely shielded.
7. Revegetation of disturbed areas shall occur within one growing season with a seed mix which avoids the use of aggressive grasses. See the Colorado State University Extension Office for appropriate grass seed mixes.

Mr. Merrill seconded the motion.

The motion carried 4 - 1, with the Chair voting yes.

ADMINISTRATOR 'S REPORT

Mr. Phillips stated that no Board of Adjustment hearing have been scheduled at this time.

The meeting was adjourned at 8:00 p.m.