

## **ROUTT COUNTY BOARD OF ADJUSTMENT MINUTES**

**November 9 , 2020**

The Routt County Board of Adjustment meeting was called to order via Zoom at 6:00 p.m. with the following members participating: Chairman Brian Fitzgerald, Don Prowant, Jeff Gustafson, Becky Lewis and Joella West. Gerry Albers was absent. Planning Director Kristy Winser and staff planners Alan Goldich and Tegan Ebbert were also present. Sarah Katherman prepared the minutes.

### **PUBLIC COMMENT**

Chairman Fitzgerald stated that the Gooding variance request was tabled at the November 9, 2020 Board of Adjustment (BOA) meeting, and that the public comment portion of that hearing had been closed. He stated that additional comment on this petition would be accepted during general public comment.

There was a discussion of a chain of emails that as circulated among staff, the BOA and several members of the public.

Mr. Craig Tolliver stated that because the subject lots are so small that no uses can be accommodated on them, these lots should be re-zoned to a more appropriate zone district rather than going through the BOA for variances. He offered that the zoning was a matter for the Board of County Commissioners, not the BOA. Mr. Tolliver also stated that while the current application is for retaining walls, it is clear that the final project will include houses, which will also need variances. He said that no decisions should be made regarding the property without seeing the whole development plan. He said that variances should not be granted in an incremental, piecemeal fashion. Mr. Tolliver offered that several issues, including traffic impacts, would need to be considered prior to the approval of residential development on the property, and that the BOA should know what is really being requested. He suggested that the BOA was being asked to effectively override the existing zoning.

Ms. Claudia Droel stated that she had also seen the emails, but had not responded. She said that she has still not seen any assurance that someone is taking responsibility for the safety of the construction activities on the site. She added that she shares the concern that the final plan for the property remains unknown.

Mr. Ken Brenner expressed his agreement that the complete plan for the project should be made available prior to any variances being granted. He urged the BOA to table the petition and not make any decisions until the complete plan has been reviewed.

Mr. Louis Raphael agreed that no decisions should be made without seeing the complete project plan, and that variances should not be granted in a piecemeal fashion.

Mr. Rodger Droel offered that an approval could be granted contingent upon the approval of a zone change. He stated that appropriate zoning should be in place prior to any further development.

Seeing no further comment, Chairman Fitzgerald closed public comment.

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**MOTION**

Ms. Lewis moved to approve the above cited sets of minutes, as written. Mr. Gustafson seconded the motion. **The motion carried 5 - 0.**

**ACTIVITY: PL-20-176 (tabled from November 9, 2020)**

**APPELLANT: Marsh Gooding**

**REQUEST: Property line setback variance to allow for the construction of retaining walls**

**Required setbacks : 50 ft. from the property lines**

**Requested setbacks :**

| <b>Parcel B2</b> | <b>Proposed</b> | <b>Variance</b> |
|------------------|-----------------|-----------------|
| North:           | 0'              | 50'             |
| East:            | 0'              | 50'             |
| West:            | 0'              | 50'             |

| <b>Parcel B3</b> | <b>Proposed</b> | <b>Variance</b> |
|------------------|-----------------|-----------------|
| North:           | 5'              | 45'             |
| East:            | 0'              | 50'             |
| West:            | 0'              | 50'             |

| <b>Parcel C</b> | <b>Proposed</b> | <b>Variance</b> |
|-----------------|-----------------|-----------------|
| North:          | 15'             | 35'             |
| South:          | 0'              | 50'             |
| East:           | 10'             | 40'             |
| West:           | 0'              | 50'             |

**LOCATION: CR 34 across Amethyst Drive from E Maple Street; the Spring Creek Trailhead**

Chairman Fitzgerald stated that this variance request had been tabled to allow the applicant to provide details of the exact scope, appearance and location of the proposed retaining walls. He cited the additional materials that had been provided by the applicant. He stated that the current request is for variance to

allow for the construction of two retaining walls that meet Routt County's definition of structures. Any retaining walls that do not exceed 4 ft. in height would not require a variance. No variances for houses or change of zoning has been requested. He asked if the BOA had any additional questions that were not addressed in the materials provided by the applicant.

Ms. Lewis stated that the applicant had fully answered the questions and that she did not have any additional questions about the retaining walls, but offered that the concerns raised by the public regarding the lack of a complete project plan are legitimate. She said that while she understands that the current application is limited to two retaining walls, the BOA should not pretend that additional variance requests for this property would not be coming in the future. She suggested that the application should be tabled until a full project plan has been submitted. Ms. Lewis expressed her agreement that the variances should not be considered incrementally, which would amount to changing the zoning through other means.

### **MOTION**

Ms. Lewis moved to table the petition until a complete plan has been submitted.

The motion died for lack of a second.

Mr. Prowant stated that he thought the property owners had a right to build on these parcels based on the age and history of the subdivision. Mr. Goldich clarified that the lots are legal, non-conforming lots because they were subdivided prior to the adoption of zoning and subdivision regulations. When Routt County adopted zoning, the Agricultural/Forestry (A/F) zone district was applied to this area. A single family residence is a use by right in the A/F zone district. Mr. Goldich stated that there are many small, legal non-conforming lots in the County that are also zoned A/F. He added that the BOA had granted similar variances on similar lots often in the past. Ms. Winser offered that circumstances such as these are the reason there is a variance process: to allow property owners to build a structure, which is a use by right, on a parcel even though the required setbacks cannot be met. She stated that if in the future the property owners choose to build a house, it is likely they would need additional variances.

Chairman Fitzgerald reiterated that the current variance request is for two retaining walls, and that the applicants had complied with BOA's request that they provide renderings of the proposed walls and details regarding their location and the materials to be used.

Mr. Gustafson stated that although BOA often sees this type of request for variances on legal non-conforming lots in the A/F zone district, it is unusual to see requests only for walls. He said that he understands Ms. Lewis' desire to see a full development plan. He said that any residential development of these lots would require additional variances.

Ms. Lewis stated that it would be unfair to the applicants to approve this variance for the walls only, when such approval would not guarantee that future variances would be granted. She said that the whole project should be considered as a single application.

Mr. Gates (? Or was it Marsh?) Gooding stated that he understands the concerns regarding the piecemeal applications. He explained that the urgency to request a variance at this time is that a driveway has been constructed on slopes that need to be retained. He said that it is a safety issue to stabilize these slopes. Mr. Gooding said that they own 8 legal, non-conforming lots, but that the City has granted them 4 out-of-district sewer taps, so it is most likely that there would eventually be 4 homes built. He said that at this time they have no specific plans to build homes, so a complete plan could not be provided. Mr. Gooding acknowledged that in future, as finances allow, he and his brother would like to build houses for themselves on the property. He stated that they are fully aware of the risk that additional variance requests may not be granted.

Mr. Goldich noted that the variance request had been tabled at the prior hearing for specific information related to compliance with criteria #4 and #5. He stated that the requested information had been submitted, and offered that a decision on the current application should be based on the information provided.

#### **MOTION**

Mr. Prowant moved to approve the variances from the required property line setbacks, as listed above, with 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 this Resolution are strictly enforced because the size of the lots, it is impossible to meet the required setbacks.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the lots were created in the 1890's, before the adoption of zoning.
3. The property for which a variance is requested possesses an extraordinary and exceptional situation or condition which does not occur generally in other property in the same Zone District in that the site has a physical constraint limiting the building envelope. This physical constraint is the small acreage size and the narrowness and shallowness of the parcel. In addition, parcels of this size are extremely rare in the A/F zone district.
4. The variance, if granted, will not diminish the value, use or enjoyment of the adjacent properties, nor curtail desirable light, air and open space in the neighborhood, nor change the character of the neighborhood because of the large distances to the existing neighboring structures and the existing urban style development in the immediate vicinity.

5. The variance is not directly contrary to the intent and purpose of this Resolution or the Routt County Master Plan as there are no apparent conflicts with RCZR standards or RCMP policies.

This approval is subject to the following conditions

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1. This approval is contingent upon any required state and local permits being obtained and complied with, including, but not limited to, the Building Department, Environmental Health, and the Steamboat Rural Fire District.
2. If construction of the building does not commence within 12 months, this variance shall be subject to another review with full submittal. Extensions of up to 12 months may be approved administratively.
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. A foundation only building permit will initially be signed off on by the Planning Department. Prior to Planning signing off on the full building permit, a certified survey of the location of the foundation of the walls must be submitted.
5. 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.
6. All exterior lighting shall 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.
8. If applicable, the applicant shall submit documentation showing that they have obtained a temporary construction easement from the City of Steamboat Springs for any activity associated with construction of the residence.

Ms. West seconded the motion.

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

The dissenting vote was cast by Ms. Lewis.

**ACTIVITY: PL-20-182**

**APPELLANT: John Michaels**

**REQUEST: Property line setback and height variance s to construct a garage**

**Required setbacks : 15 ft. from the property lines**

**Requested setbacks : 3'10" from the north property line  
(variance of 1'2")**

**Maximum overall height: 40'**

**Requested overall height : 43'3"**

**LOCATION: 36898 Tree Haus Drive**

Mr. Michels reviewed the proposal. He stated that he and his wife purchased the property 14 years ago and hope to soon be able to retire there. He said that the existing garage is too small to accommodate a full-size vehicle, so it used primarily for storage. He said that the existing driveway is so steep that it is dangerous, and that they would like to make these changes to allow the home to be more useful as a permanent residence.

Mr. Ryan Malone of SEAD, representing the applicant, noted that the request for a variance from the overall height of the structure does not mean that the existing structure will increase in height. He said that the overall height does not apply to any continuous wall, but rather is measured from the lowest point at the entrance to the garage to the highest point of the existing house. Mr. Malone stated that the existing driveway exceeds 20% grade in multiple spots. He said that the proposed driveway would comply with current emergency vehicle access requirements.

Ms. Ebbert stated that the variances requested would allow for the construction of a garage. She stated that the lot is extraordinarily steep and under current regulations would not be platted for occupancy. She presented photos of the existing house as well as a site plan and elevation drawings of the proposed driveway and garage. Ms. Ebbert noted that the existing driveway would be excavated and the garage would be built in the excavated area, with the roof of the garage designed to meet the existing deck.

Ms. Ebbert said that the garage could not be built on other areas of the lot because the steep terrain would make any driveway unsafe. Referring to a topographical map of the lot, Ms. Ebbert indicated the steepness of the property. She noted that the retaining walls needed for the excavated driveway are under 4 ft. in height, so would not require a variance.

In response to a question from Ms. Lewis, Mr. Michels stated that the existing driveway is often inaccessible, and stated that since a full-sized vehicle will not fit in the garage, it is used for storage.

Ms. West asked for an explanation of how the height of the structure is measured. Ms. Ebbert explained that the garage would be built into an excavated area, so the overall height would be measured from the new, lower finished

grade. She clarified how the overall height of a structure is measured. She noted that the proposed structure is not 43 ft. tall at any one point.

There was no public comment.

### **MOTION**

Ms. Lewis moved to approve the requested variances from the north property line setback and from the maximum structure height to allow for the construction of a garage. 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 this Resolution are strictly enforced because **of the steep slope of the parcel.**
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconformity was created in the early to mid 1970s.
3. The property for which a variance is requested possesses an extraordinary and exceptional situation or condition which does not occur generally in other property in the same Zone District in that the site has a physical constraint limiting the building envelope. **This physical constraint is the steep slope of the parcel and the location of the existing access point.**
4. The variance, if granted, will not diminish the value, use or enjoyment of the adjacent properties, nor curtail desirable light, air and open space in the neighborhood, nor change the character of the neighborhood because the configuration and size of the structure is generally in conformity with the adjacent properties and neighborhood.
5. The variance is not directly contrary to the intent and purpose of this Resolution or the Routt County Master Plan as there are no apparent conflicts with RCZR standards or RCMP policies.

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. A foundation only building permit will initially be signed off on by Planning. Prior to Planning signing off on the full building permit, a certified survey of the location of the foundation forms must be submitted.
5. 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.
6. A Grading and Excavation Permit will be required if necessary.
7. All exterior lighting will be downcast and opaquely shielded.
8. 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. Gustafson seconded the motion.

**The motion carried 5 - 0, with the Chair voting yes.**

#### **ADMINISTRATOR 'S REPORT**

Ms. Winser reviewed the agenda for the January meeting and said that applications for variances continue to be submitted regularly.

Ms. Winser announced that she had been selected as the permanent Planning Director. She reviewed the plan to hire additional staff and perhaps a contract consultant to assist with the workload during Ms. Ebbert's maternity leave.

Ms. Winser said that she would be coordinating with the County Attorney's office to schedule a training session with the BOA.

Mr. Fitzgerald reminded all to be careful with email communications to avoid ex parte contacts.

**The meeting was adjourned at 7:00 p.m.**