
Fox Estates Lot 21

Variance

ACTIVITY #: PL20220071

BOARD OF ADJUSTMENT HEARING DATE: September 12, 2022 at 6:00 pm

PETITIONER: John C. Skovgaard

PETITION: Request to reduce setbacks from the east and west property lines to construct an addition

LEGAL: Lot 21 Fox Estates Filing 1

LOCATION: 32818 McKinnis Creek Road

ZONE DISTRICT: Mountain Residential Estates (MRE)

AREA OF PARCEL: 0.59 acres

PROPOSED SETBACK Required: 50' from all property lines

VARIANCE: Proposed: 22' from east property line

36.5' from west property line

STAFF CONTACT: Michael Fitz mfitz@co.routt.co.us

ATTACHMENTS:

- Applicant narrative
 - Vicinity map
 - Planset (Site Plan & Construction Drawings)
 - Fox Estates Filing 1 Plat
 - Site visit photos
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History:

Fox Estates Filing No. 1 was platted May of 1970 and of the 26 platted lots, Lot 21 is the smallest in area. The existing single family residence on the parcel was constructed in 1976 and was granted a Variance by the Routt County Board of Adjustments on May 10, 1976 to be constructed within the west and east property setbacks due to the shallowness of the parcel. A more recent Variance, granted on August 12, 2019, approved a garage and addition. The garage was constructed, but the addition was not. The extended approval for this addition expired on August 12, 2019.

Site Description:

Lot 21 is 0.59 acres in area and under 90' in width at the widest section from west to east and approximately 420' from north to south. The parcel is surrounded on three sides by public roadways. The parcel is also characterized by its steep slope from east to west and is heavily

treed. The northern third of the parcel is the location of the leech field for the onsite waste water system. The parcel currently has driveways accessing the home from both McKinnis Creek Way to the east and from McKinnis Creek Road to the west, however the applicant proposes to close the east access at a later date, retaining the pavement as a patio.

Project Description:

The applicant is requesting a Variance for the ability to construct an addition to his existing single family residence. A previous Variance, approved under project PL-19-140, was granted for a garage and a similar addition in the same location, but only the garage was constructed. A building permit, PRAD220582, was applied for while the previous approval was still vested, but the proposed design has since changed, requiring a new Variance approval. The addition, if approved would bring the structure within 36.5' of the west property line and within 22' of the east property line. The proposed addition will be 24'x18' in area. This is larger than the previous 20'x16' proposal, but is in the same location and requires the same justification as the previous proposal.

Setbacks for Agricultural / Forestry District

Property Line Setback	Proposed	Required	Variance
East Addition:	22'	50'	28'
West Addition:	36.5'	50'	13.5'

Section 3.4.6 – Standards for Grant of Denial of Variances

- B. Under no circumstances shall a variance be granted on the sole basis of personal convenience, profit or special privilege to the applicant.
- C. Under no circumstance shall the BOA grant a variance to allow a use not permissible under the terms of this Resolution in the appropriate Zone District.
- D. Variances shall be granted with respect to specific plans or within defined parameters. Unless otherwise specified by the BOA, a variance may be transferred to successive owners prior to construction if no changes are made to the approved plan. Variances shall run with the land after the construction of any authorized structures and only for the life of such structures.
- E. The BOA may condition the granting of a variance on the issuance of a building permit within a specific time period and may require the applicant to pursue completion of the construction with due diligence. If such conditions are not satisfied, the variance shall become null and void.
- F. In order to insure that the protection of the public good and the intent and purpose of these Regulations are preserved, the BOA may impose any other condition upon the granting of a variance, including those categories of conditions which may be placed upon Land Use Approvals under Section 3.2.6.

Applicable Regulations – Routt County Zoning Resolution

3.4.6 The Board may grant such variance if all of the following are found to exist:

- 3.4.6.A.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.

Petitioner Comments: Due to the irregular shape of the lot, the side setbacks are not an issue. The lot is extremely narrow, but long in width.

Staff Comments: The setbacks on a parcel zoned Mountain Residential Estates (MRE) are 50' from all property lines. This parcel is less than 90' wide at its widest point making it entirely unbuildable if the Routt County Zoning Regulations are to be strictly enforced.

3.4.6.A.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.

Petitioner Comments: The subdivision was established prior to the adoption of the 1972 Zone Regulations.

Staff Comments: The Fox Estates subdivision was platted in 1970 which is prior to the adoption of the Routt County Zoning Regulations. The parcel remains in its original size and configuration as it was platted in 1970.

3.4.6.A.3 That 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.

Petitioner Comments: The lot is extremely narrow, but long in width.

Staff Comments: Typical parcels zoned MRE are a minimum of five acres in size however the subject parcel is 0.59 acres. Further, the narrowness of the parcel makes any development impossible to comply with the required 50' setback.

3.4.6.A.4 That 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.

Petitioner Comments: The variance, if granted, will not have a negative impact on adjacent properties. The variance will allow benefits not only to the petitioners (including wheelchair access), but also aesthetic benefits to the adjacent property owners as the structure will look more streamlined. The variance will also bring the property up to 'existing standards' within the subdivision and enhance the overall appeal of the subdivision.

Staff Comments: The subject parcel is in a densely treed subdivision that makes it difficult to see any home sites from surrounding areas. This parcel is not skylined. The proposed addition will be a second story addition, however the roofline is lower in elevation than the roofline of the existing house. No comment was received from the adjacent property owners or members of the public.

3.4.6.A.5 The variance, if granted, will not be directly contrary to the intent and purpose of this Resolution or the Routt County Master Plan.

Petitioner Comments: It is believed that the granting of this variance will not be in contradiction to the intent and purpose of the Zoning Regulations nor the Master Plan for Routt County.

Staff Comments: The Master Plan does not specifically mention variances. Property line setback variances are in place to ensure adequate spacing between structures and neighboring properties; however this parcel was sized in a way that is incompatible with the setbacks required in the MRE Zone District. The subdivision is zoned MRE because it is the densest zone district that does not require water/sewer service or vaults, neither of which were implemented in Fox Estates. The parcel will continue to be used as a single

family residential parcel and in a manner that is appropriate for its size and zoning if this Variance is approved.

Board of Adjustment Options:

Approve the variance if the above noted tests are met.

Approve conditionally if the above noted tests are met or can be met by the application of certain conditions, or if certain conditions are necessary to mitigate concerns.

Table for specific reasons; e.g. more information, site review, etc.

Deny the variance if it does not meet the criteria stated above or if the variance would create a health or safety hazard or would negatively impact public welfare.

STAFF RECOMMENDATION

Staff recommends **approving** the variance as requested with conditions of approval, based on the following findings of fact.

FINDINGS OF FACT that may be appropriate if the **Variance** is **APPROVED**:

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 size and configuration of the property that makes adhering to the required setbacks unreasonable and the lot unbuildable.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconformity was created in 1970 when Fox Estates Subdivision was platted.
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 of the parcel.
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.

CONDITIONS that may be appropriate include the following:

1. If construction is not commenced within 1 year, this variance shall be subject to another review with full submittal. A 12 month extension may be approved administratively without notice.

2. 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.
3. 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.
4. The shed in the right-of-way shall be moved within the property boundaries, no closer than 5' to the property lines, or demolished prior to Certificate of Approval.
5. Best Management Practices (BMP's) shall be utilized during construction to prevent erosion and drainage flow onto adjacent properties, drainage to the west of the parcel and the county road right of way.
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.