

# ROUTT COUNTY BOARD OF ADJUSTMENT

## FINAL MINUTES

JUNE 11, 2018

The Routt County Board of Adjustment meeting was called to order at 6:00 p.m. with the following members present: Chairman Steve Moore, Jeff Gustafson, Thorne Clark, Don Prowant, John St. Pierre and Planning Commissioner Paul Hebert. Assistant Planning Director Kristy Winsler and staff planner Jillian Ferguson were also present. Sarah Katherman recorded the meeting and prepared the minutes.

### MINUTES - April 9, 2018

Mr. St. Pierre moved to approve the minutes of the April 9, 2018 Board of Adjustment hearing, as written. Mr. Gustafson seconded the motion. **The motion carried unanimously.**

### PUBLIC COMMENT

There was no public comment.

**ACTIVITY: PL-18-129**

**PETITIONER: Terry Thompson**

**REQUEST: Variance from the required setbacks for a detached garage**

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

**Requested setbacks: 1' ft. from the north property line (for a variance of 49**

**ft.)**

**27 ft. from the west property line (for a variance of 23 ft.)**

**LOCATION: 31745 Red Stag Lane ; Lot 5, Steamboat Hills Subdivision**

Mr. Caleb Simon of Steamboat Architectural, representing the petitioner, reviewed the variance request. He noted the small size of the lot, the perennial stream that bisects it and the required setbacks. He presented a site plan indicating the severely limited buildable area on the lot. He stated that there is variance for the existing house. Mr. Simon stated that the petitioner would like to build a detached garage that would be accessed by the same entrance to the lot off of Red Stag Lane. He said that the existing dilapidated shed would be removed. He also stated that the applicant would need to obtain a waterbody setback for the proposed structure and is also seeking a vacation of the utility easements along the north property line

There was no public comment.

Ms. Ferguson referred to the site plan and stated that on the entire lot of 1.34 acres, there is only 450 sq. feet of buildable area that does not encroach into the

property line setbacks or the waterbody setback. She said that although it appears that there may be sufficient buildable space south of the waterbody, this would put the garage on the opposite side of the stream from the house, requiring a separate access off the County Road and likely requiring an additional stream crossing. She stated that it is staff's opinion that this variance could meet the required criteria.

Mr. Gustafson asked about the Waterbody Setback Permit. Ms. Ferguson stated that Waterbody Setback Permit requests are usually reviewed and issued administratively, based on a set of approval criteria. She said that in this case, because the Planning Commission would be hearing the petition for the vacation of the utility easements, the Waterbody Setback Permit request would be heard at the same time as the easement.

Mr. Gustafson stated that his only concern was with the impact on the neighboring property, given that the proposed structure would be located only one foot from the property line. Mr. Simon said that the residence on the lot to the north is located approximately 80 ft. from the property line, directly north of the proposed garage. Ms. Ferguson stated that no comments had been received from the adjacent property owner. Mr. Simon said that the neighbor had been consulted and has no objection to the proposal. In response to a question from Mr. Gustafson, Mr. Simon said that proposed structure would be 22.6 ft. tall. He said they designed the garage to be lower in height than the existing home.

In response to a question from Chairman Moore, Ms. Ferguson confirmed that all utility companies had signed-off on the easement vacation request.

Mr. Hebert asked about the stream. Mr. Simon stated that the perennial stream runs more than 90 days per year.

### **MOTION**

Mr. St. Pierre moved to approve the 49 ft. variance from the north property line (for a setback of 1 ft.) and the 23 ft. variance from the west property line (for a setback of 27 ft.) to accommodate a garage, 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 limited buildable area due to the property line and waterbody setback requirements.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the lot was created in 1969, prior to the adoption of the zoning regulations.
3. The property for which a variance is requested possesses an extraordinary and exceptional situation or condition which does not generally occur in

- other property in the same Zone District because of the narrowness and shallowness of the buildable area created by the property line, septic system, waterbody and setback requirements and the fact that this lot is only 1.34 acres in the MRE 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 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.
3. This approval is specific to the plans submitted in the application. Any change in footprint, size, height or site location will be subject to a new application.
4. A certified survey of the location of the structure must be completed prior to the issuance of a building permit. If the applicant is in need of a foundation permit and unable to provide a survey in a timely manner, the applicant may sign a letter of responsibility stating that they will comply with the setback approved by the Board of Adjustment.
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 shall be obtained prior to the Planning Department signing off on any building permit for the garage.
7. All exterior lighting shall 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.**

**ACTIVITY: PL-18-126**

**PETITIONER :** Pete & Lisa Meyer  
**REQUEST:** Variance to exceed the maximum separation permitted between a primary unit and secondary unit  
**LOCATION:** 39000 Cougar Trail; located approximately 0.25 miles northeast of CR 32

Mr. Moore stated that the Board of Adjustment (BOA) has been directed by staff to make an initial decision about whether this variance request should be heard. He stated that the applicant submitted an application under the “maximum separation permitted between a Secondary Dwelling Unit and a Primary Dwelling Unit” as stated in Section 3.4.4.D of the Routt County Zoning Regulations. He stated that the Zoning Regulations allow for Secondary Dwelling Units (SDUs) in the Agricultural/Forestry (A/F) zone district, but on parcels smaller than 35 acres, the SDU must be attached to the primary dwelling unit. He stated that the issue is whether asking for a detached unit when the zoning allows only for an attached unit qualifies as a request for a variance from the maximum allowed separation between units.

Ms. Winser acknowledged that this a different sort of question than is usually asked of the BOA. The initial decision concerns regulatory compliance, and whether the requested variance is in conformance with Section 3.4.4.D, which list the items that may be considered for variances and that are, therefore, within the purview of the BOA. She stated that it is staff’s opinion that a request for a detached SDU when the regulations do not allow for detached SDUs is not the same as a request for a variance from the maximum allowed separation. The question is whether this request can be heard by the BOA. Ms. Winser stated that if the BOA decides that it is not able to hear the petition, then there should be no discussion of the particulars of the request. If the BOA disagrees with staff’s position, and decides to hear the petition, then it must make a motion with findings of fact that support the decision to hear the case and why the request is in conformance with Section 3.4.4.D.

Mr. Gustafson offered that the issue is one of zoning, not of separation between units.

Ms. Winser reviewed the list of what can be requested through a variance from the strict application of the regulations, as stated in Section 3.4.4.D. She stated that detached SDUs are allowed in the A/F zone district only on parcels 35 acres or larger.

Mr. Prowant cited the meeting materials that include an agreement that was entered into between Routt County and the applicant stating that the old log house would no longer be used as a dwelling unit. He added that it seems the old cabin has been used as a dwelling unit despite this agreement.

Mr. Moore offered that the BOA may not be the appropriate body to make the decision regarding whether the request should be heard. Mr. Hebert suggested

that it might be a question for Planning Commission. Ms. Winser noted that if the BOA decides to hear the request, it would be making a policy decision regarding SDUs in the County. Mr. Hebert said that this would set a difficult precedent. Ms. Winser noted that if the BOA agrees with staff's opinion, a sample motion has been provided in the staff report.

Mr. Clark stated that he agrees with staff that the request does not fall under Section 3.4.4.D of the Zoning Regulations, and added that there is insufficient information in the packet to make a decision on the request in any case.

Mr. Moore stated that his concern with considering the case is that the BOA would effectively be changing the zoning, and treating this parcel as if it were a 35 acre parcel. He stated that the BOA could table this question for more information, but said he is not sure what that additional information would be.

Following discussion, it was decided that public comment on the initial question could be taken. Mr. Moore stated that all public comment at this time must be related to the initial determination of whether the request can be heard, and should not address the particulars of the variance request itself.

#### **Public Comment**

Mr. Joe Robbins, representing the petitioners, stated that they had consulted an attorney regarding the applicability of the request under Section 3.4.4.D. He stated that it was the attorney's position that the long, run-on sentence that makes up Section 3.4.4.D allows the BOA to hear requests beyond the setbacks, lot width, height restrictions and separation between units cited at the beginning of the section. He read the entirety of Section 3.4.4.D.

Mr. Moore offered that after listing the four requests that the BOA can hear, Section 3.4.4.D goes on to discuss the criteria on which BOA decisions must be based. He stated that if the BOA decides to hear the request, the request would be for an increase to the maximum separation. He offered that the application is flawed, because there is no maximum separation allowed in the first place. He said the request is for separation when none is allowed, and for an increase in the maximum size allowed for an SDU. Ms. Winser noted that there no provision for a variance to allow an increase in the maximum size of an SDU.

Mr. Robbins stated that the County changed the regulations regarding SDUs since the Dwelling Unit Removal Agreement was made. When the agreement was signed, SDUs were not allowed at all on parcels of this size. The garage that was built was done so illegally by the prior owner. In order to complete what is now the main house, the agreement to discontinue use of the cabin as a dwelling unit was required. Under the current regulations, SDUs are allowed on parcels of this size.

Ms. Winser agreed, but stated that SDUs on parcels of this size must be attached to the primary dwelling.

Mr. Doug Thomas, a neighbor and owner of the land the applicants cross to reach their parcel, stated that while he is generally in support of allowing the status quo, which includes two separate dwelling units on the property, he is concerned about the precedent that allowing detached SDUs would set. He stated that allowing this unit to be used as a dwelling would effectively change the rules, and would lead to others requesting additional detached units on their less than 35-acre lots. He expressed concern that a proliferation of such units would change the character of the neighborhood. Mr. Thomas also questioned what hardship would result if the detached SDU were not allowed. He stated that there is a solution, which is for the applicant to construct an attached caretaker unit.

Hearing no further comment, Mr. Moore closed public comment.

Mr. St. Pierre offered that the initial question should be referred to Planning Commission.

Mr. Prowant expressed concern that there is an agreement in place that states the cabin is not to be used as a dwelling unit. He offered that it is not within the purview of the BOA to override that agreement.

Mr. Clark stated that there is not enough information to move forward, and agreed that the BOA is not the body that should be making this decision.

Mr. Gustafson agreed with the previous comments.

Mr. Hebert said that Section 3.4.4.D is open to interpretation, but agreed that how to interpret the stated language should not be decided by the BOA. He cited the issues of timing, of the change in regulations and the Dwelling Unit Removal Agreement as problems with the request. He suggested that the Planning Commission might be the appropriate body to make the decision.

Ms. Winser stated that there are regulations in place regarding SDUs. She said that to consider this application would be to make a policy change regarding those regulations. She said that what the applicant is requesting is strictly not allowed by the regulations. No separation between units is allowed.

Mr. Moore agreed that there is no maximum separation to be considered. He offered that the question regards zoning and is not within the purview of the BOA.

### **MOTION**

Mr. Gustafson moved to deny the processing of this application due to non-conformance with Section 3.4.4.D of the Routt County Zoning Regulations with the finding of fact that the application is not considered to be defined as maximum separation permitted between a Secondary Dwelling Unit and a

Primary Dwelling Unit therefore may not be considered by the Board of Adjustment.

Mr. Clark seconded the motion.

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

**ACTIVITY: PL-18-109**

**PETITIONER: Tamara Morton Johnson & Grant Johnson**

**REQUEST: Two variances from required setbacks for an addition to an existing structure**

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

**Requested setbacks : 4.5 ft. setback from the west property line (for a variance of 45.5 ft.)**

**23.5 ft. setback from the east property line (for a variance of 26.5 ft.)**

**Required height limit: 40 ft.**

**Requested height: 52.9 ft. (for a variance of 2.9 ft.)**

**LOCATION: 31125 CR 64 (Seedhouse Road), Clark, CO**

Mr. Moore recused himself from this variance request, as he is working with applicant. He left the meeting. The BOA chose Mr. Gustafson to serve as Acting Chair.

Mr. Gustafson noted that this petition had been tabled at the April meeting.

Ms. Johnson reviewed the revised petition. She stated that much of the request was the same, but that a request for a variance from the east property line had been added and that the request for a variance from the maximum height had been reduced. She added that the new application includes the renderings, detailed site plan and survey requested by the BOA at the last hearing. Ms. Johnson noted that the exact locations of the existing well and septic system are included on the site plan.

Mr. Prowant asked why the proposed addition could not be constructed to the north of the existing home. Ms. Johnson stated that adding to the existing house on the east and the west would be far less obtrusive than putting the addition in front. She noted that the slope of the lot rises to the north and pointed out the large trees that would screen the proposed addition.

Mr. Hebert asked about the Waterbody Setback Permits that would be required. Ms. Ferguson confirmed that two Waterbody Setback Permits would be needed: one from the Elk River for the addition on the west side, and one from Hinman Creek to the east. She indicated the line on the site plan marking the required 50

ft. waterbody setback. She stated that if the variance(s) are approved by the BOA, the Waterbody Setback Permit applications would be processed administratively.

Ms. Johnson added that the desire is to build a building that will last. She said that she wants the new construction to match the existing structure. She also said that it would be preferable to build on flat ground. Mr. Johnson cited the snowfall in North Routt and stated that it is important for the ground floor level of the addition to match the level of the existing house. She stated that she does not want to build a house that will flood.

### **Public Comment**

Mr. Ken Bomberski stated that he is the contractor working with the applicant. He stated, in response to a prior question from Mr. Prowant, that putting the addition uphill to the north of the existing cabin would be unfeasible due to the location of the septic system. He stated that it would not be possible to move the septic system any closer to the Elk River or to Hinman Creek.

Hearing no further comment, Mr. Gustafson closed public comment.

In response to a question from Mr. Gustafson, Ms. Ferguson reviewed the Waterbody Setback Permit process and regulations. Ms. Winser added that the criterion for issuing a Waterbody Setback for a structure is that the encroachment is unavoidable. She offered that the proposed encroachment would most likely not be considered unavoidable. She noted that the suggested conditions of approval state that prior to final approval of the variance, a Waterbody Setback Permit must be obtained. Ms. Winser added that consideration of the waterbody is not part of the BOA application. The BOA can only consider the variance from the two property lines and the height.

Ms. Ferguson reviewed the changes that had been made to the request since the BOA last saw the application. She noted that the letter submitted by the architect states that if the variances are granted, the final project would conform to the setbacks and height, and would conform to the massing and layout provided in the application, but that the final house might vary somewhat in appearance from the renderings submitted. Ms. Ferguson noted that the architect's letter requests a 5 ft. height variance (for a total height of 45') to accommodate any gradient changes that may occur. The staff report states that the request is for a 2.9 ft. variance. She stated that it is staff's opinion that this modification in the request from what is listed in the staff report could be considered by the BOA because the exact variance request was not advertised to the public. Ms. Ferguson corrected a few typos in the staff report.

Mr. Gustafson expressed concern with reducing the required setback from the west property line by 90% due to the potential impact on the current and future neighbors, although he recognized that the lot is small for the A/F zone district.

Ms. Ferguson stated that staff had received a letter from the adjacent property owners to the west, who expressed support for the variance request.

Mr. Hebert noted that there are no neighbors to the east due, as the land across Hinman Creek is National Forest. He asked why staff recommends denial of the setback variance to the east. Ms. Ferguson stated that the recommendation is based on the likelihood that the necessary Waterbody Setback Permit will be denied.

Ms. Johnson stated that the height variance request has been reduced from the original application. She stated that the interior ceiling heights had been reduced from 12 ft. to 9 ft. She added that maintaining the level of the ground floor is important. She noted that the proposed location of the addition will place the house closer to the garage. Ms. Johnson stated that she had created a mock-up of the proposed addition and had presented to the neighbors, who are okay with the proposal. She also clarified that the variance granted in 1977 is for the existing structure. It is not for a neighboring parcel, as stated in the staff report.

Mr. Ian Wagner, the architect on the project, noted that the lot is a legal non-conforming lot, and is very small for the zone district.

#### **MOTION**

Mr. Hebert moved to approve the 45.5 ft. variance from the required setback for a total setback from the west property line of 4.5 ft. 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 limited buildable area due to the property line and septic system setback requirements, and waterbody setbacks.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconformity was created during 1945.
3. The property for which a variance is requested possesses an extraordinary and exceptional situation or condition which does not generally occur in other property in the same Zone District because of the narrowness and shallowness of the buildable area created by the property lines and further reduced by the septic system, waterbody setbacks, and the fact that this lot is only 0.92 acres 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 the configuration and size of the structure is generally in conformity with the adjacent properties and neighborhood and has existed since 1945.

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 final site plan and all construction drawings must be consistent with the site plan and construction drawings approved by the Board of Adjustment.
2. The building shall comply with all applicable requirements of the Routt County Building Department.
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. In the event that the height variance request is denied, modifications to the plans may be approved by the Planning Director if proven to be substantially similar to the approved plans.
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. Prior to final issuance of the Board of Adjustment approval, a waterbody setback permit shall be obtained.
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. St. Pierre seconded the motion.

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

Following discussion of the recommendation, which is based on the waterbody, Mr. Gustafson suggested that an approval recommendation could be based on the same findings of fact cited in the approval of the variance on the west side.

#### **MOTION**

Mr. St. Pierre moved to approve the 26.5 ft. variance from the required setback for a total setback from the east property line of 23.5 ft. 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 limited

- buildable area due to the property line and septic system setback requirements, and waterbody setbacks.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconformity was created during 1945.
  3. The property for which a variance is requested possesses an extraordinary and exceptional situation or condition which does not generally occur in other property in the same Zone District because of the narrowness and shallowness of the buildable area created by the property lines and further reduced by the septic system, waterbody setbacks, and the fact that this lot is only 0.92 acres 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 the configuration and size of the structure is generally in conformity with the adjacent properties and neighborhood and has existed since 1945.
  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 final site plan and all construction drawings must be consistent with the site plan and construction drawings approved by the Board of Adjustment.
2. The building shall comply with all applicable requirements of the Routt County Building Department.
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 on 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. In the event that the height variance request is denied, modifications to the plans may be approved by the Planning Director if proven to be substantially similar to the approved plans.
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. Prior to final issuance of the Board of Adjustment approval, a waterbody setback permit shall be obtained.
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. Prowant seconded the motion.

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

Ms. Johnson said that she would be fine with 2.9 ft. variance to the height requirement as stated in the staff report. In response to a question from Mr. Hebert, Ms. Johnson said that the height variance is needed to accommodate a 12 x 12 pitched roof to match that of the existing house and the historical character. She stated that the interior wall height had been reduced from the 12 ft. originally planned to 9 ft. She added that the foundation is raised above ground level to accommodate snowfall, and to match the existing home. Ms. Johnson added that the height of the addition measured from the front grade would comply with the required setback. She said that the grade falls away toward the river, making the overall height of the structure larger. There was a discussion of the grade difference between the front of the house and the back. Ms. Johnson noted that the deck on the back is well over her head.

There was a clarification of how overall height is measured.

Ms. Ferguson stated that the staff recommends denial of the request because it is based purely on the design of the proposed addition, not on any physical constraint. She referred to the comments in the staff report. She stated that the proposal is not in keeping with the character of the historical character of the neighborhood because structures over 40 ft. high are very uncommon in rural Routt County.

Ms. Johnson stated that they have requested slightly more than may be necessary due to the uneven nature of the grade and uncertainty regarding what will be encountered when excavation occurs. She stated that they want to disturb as little of the ground as possible, and do not want to add fill behind the house near the river.

### **MOTION**

Mr. Clark moved to recommend denial of the requested variance from the maximum height, based on the following findings of fact:

1. Proof of peculiar and exceptional practical difficulties or an unnecessary and unreasonable hardship that will be imposed on the property owner if the provisions of this Resolution are strictly enforced. Such cannot be proved based on a lack of evidence supporting possible site constraints. In addition, this requested hardship appears to be self-imposed, by the design chosen by the applicant.
2. Circumstances creating the hardship are limited due to a lack of substantive evidence supporting the proposed addition. Moreover, the

proposed addition request for greater than 40' is purely based on the design chosen by the applicant.

3. The property for which a property line setback variance is requested, does not appear to have development constraints uncommon elsewhere 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 cannot be supported due to dwellings greater than 40' found in the county. Any proposed addition in excess of 40' is not in keeping with the character of the neighborhood or the area.

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.

Mr. Prowant seconded the motion.

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

Mr. Hebert cast the dissenting vote.

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

Ms. Winser stated that nothing was scheduled for July.

**The meeting was adjourned at 7:45 p.m.**