

**ROUTT COUNTY BOARD OF ADJUSTMENT  
FINAL MINUTES**

**September 14 , 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, Gerry Albers, Don Prowant and Planning Commission members Andrew Benjamin and Brian Kelly. Interim Planning Director Kristy Winser and staff planners Alan Goldich and Tegan Ebbert were also present. Sarah Katherman prepared the minutes.

**PUBLIC COMMENT**

There was no public comment.

**MINUTES - July 20, 2020 & August 10, 2020**

**MOTION**

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

**ACTIVITY: PL-20-126**

**APPELLANT: 2RCC, LLC (Eric Rogers)**

**REQUEST: Property line setback variance for three existing structures  
Required setbacks : 50 ft. from the property line s  
Requested setbacks : 6.2 ft., 13.2 ft., and 41.5 ft. from the  
west property line for variances of 43.8 ft.,  
36.8 ft., and 8.5 ft., respectively**

**LOCATION: Approximately 1.25 miles north of Hahn 's Peak  
Village**

Chairman Fitzgerald reviewed that the application is for three existing structures: a loafing shed, a pole barn, and a hay barn. Mr. Goldich clarified that the loafing shed, which is 6.2 ft. from the property line, and the hay barn, which is 41.5 ft. from the property line, were constructed by the previous landowner. The pole barn, which is 13.2 ft. from the property line, was constructed by the applicant, who is the current landowner. Mr. Goldich stated that staff is recommending approval of the variance requests for the loafing shed and hay barn based on compliance with the five criteria that must be met for a variance to be approved. Staff is recommending denial of the variance request for the pole barn because the circumstances creating the hardship are due to the actions of the current landowner. Mr. Goldich stated that the applicant cites the difficulty and expense of removal and relocation of the pole barn as the hardship to fulfill criterion #1. He stated that criterion #2 cannot be met, and noted that it is the responsibility of the landowner to know the restrictions that apply to the property. He stated that staff agrees that criteria #3, #4, and #5 can be met.

Mr. Goldich stated that the parcel contains 23.4 acres and is surrounded on all sides by land owned by public agencies with no publicly accessible improvements. He reviewed the site plan and indicated the location of the improvements. He stated that although building permits are not required for structures used solely for agricultural purposes, such structures are not exempt from Zoning Regulations. If heat, electricity, plumbing, etc. are installed in an agricultural structure, the appropriate permits are required. Mr. Goldich added that because no building permit was required, the Planning Department did not have an opportunity to review the plans and ensure that the building was properly sited. Mr. Goldich stated that Planning staff is now working with the Building Department to ensure that new agriculture buildings are reviewed for compliance with the Zoning Regulations.

Mr. Albers asked why this application is being heard by the Board of Adjustment. Mr. Goldich stated that the applicant applied for a building permit for a remodel of the residence on the property, and through the Planning Department review of the site the setback encroachments were discovered. He said that if the variance request is denied, staff would work with the applicant to ensure that the structures are brought into conformance.

Mr. Kelly noted that the pole barn is twice the distance from the property line than the hay barn and loafing shed. He added that although he is a professional surveyor that has worked in Routt County for a long time, he did not know that pole barns were required to meet setbacks. Mr. Prowant stated that he had inquired about the requirements prior to constructing his own pole barn, but that he understands the applicant's mistake, given that there were existing buildings closer to the property line.

In response to a question from Mr. Kelly, Mr. Rogers described the construction of the pole barn, which is built on timbers with drilled caissons 24 in. apart. He said that including the apron, the structure required approximately 40 yds. of concrete. He stated that he believes he did everything in good faith. He stated that he had obtained an electrical permit from the Building Department and does not recall if anyone ever mentioned that the structure would need to meet zoning requirements. Mr. Prowant stated that it is unfortunate that the Building Department and Planning Department do not move in lock step. Mr. Rogers said that he does not believe this sort of mistake is allowed to occur now.

Chairman Fitzgerald stated that staff's recommendation is based on the concern that applicants will attempt to avoid compliance with the regulations by building first and asking forgiveness after the fact.

Mr. Kelly cited his experience with the City Board of Adjustment and stated that one of the basic principles of variances is that one cannot create one's own hardship. He said that the process needs to be corrected to ensure that agricultural structures are placed where they need to be. He noted, however, that

the pole barn encroaches into the setback far less than the other structures along that property line.

Mr. Prowant asked if a variance would have been approved for the pole barn if it had been requested in advance. Mr. Goldich stated that staff believes there are other locations on the property where the structure could have been located without encroaching into the setback. He indicated a possible location on the site plan. Mr. Rogers said stated that the area indicated by staff has been built up with bad fill material over an old ditch. He said that 20 ft. deep caissons would have been needed for construction on that site. He said that they located the barn where they found good soils.

There was no public comment.

Mr. Benjamin stated that he cannot figure out how criterion #2 can be met. He said that ignorance of the regulations is not a justifiable reason.

Chairman Fitzgerald stated that no variance request would have been submitted if the property had not been reviewed in conjunction with the application for a building permit for a remodel of another structure. He stated that he would have difficulty requiring the applicant to tear down the building when he had gone to the Building Department to get the appropriate permits for the structure and had not been informed of the setback requirements. He noted the other circumstances that had created the hardship, including the existence of the other buildings on the site. He added that it is not common knowledge that agricultural building must comply with setback regulations, although he is mindful of the concerns of staff regarding property owners "bootstrapping" structures in order to avoid regulations. He offered that the circumstances in this case go beyond the fact that ignorance of the law is no excuse.

Mr. Kelly noted that with 5 ft. deep caissons on 24 in. centers, the pole barn is a very substantial structure. He asked why such a structure should not require a building permit. Ms. Winser stated that the intent was to support the agricultural community by providing a streamlined process that does not require permits for traditional agricultural structures. However, such structures are still applicable to setback requirements. Ms. Winser acknowledged it is an issue that County staff is trying to address and amendments are currently under way. She stated that agricultural buildings that come in for any sort of permit are now referred to the Planning Department for setback and zoning review. These structures would not have been exempt. Regarding how this violation was discovered, Ms. Winser stated that the Board of County Commissioners had directed staff to look at the entire site when conducting a review to ensure that all improvements on a parcel are in conformance.

Following a discussion of whether to separate the variance into two parts, one to address the structures built by the prior owner and another to address the pole barn, Chairman Fitzgerald called for a non-binding straw poll, which indicated

that four Board of Adjustment members would support granting all three variances. Mr. Benjamin stated that he could not support a variance for the pole barn because he did not think it could meet criterion #2 or #5. He offered that findings of fact would have to be provided. Mr. Rogers stated that criterion #5 refers to the intent of the Zoning Regulations and the Master Plan, which is to protect the neighbors and to preserve the rural character of the County. This parcel has no neighbors, and the buildings are in keeping with rural character.

Mr. Benjamin reiterated his concerns regarding findings of fact, and added that he is also concerned with the precedent that an approval of the pole barn variance would set. Mr. Kelly agreed that the pole barn cannot meet criterion #2, but offered that there was a larger set of circumstances that led to the situation. Mr. Rogers stated that the circumstances include his visit to the Building Department to ask what would be required and that he was not referred to the Planning Department. Mr. Fitzgerald added that the size and shape of the parcel, the fact that the pole barn does not encroach further into the setback than the other structures, and the impossibility of moving the building without tearing it down contribute to the circumstances. In response to a question from Mr. Benjamin, Mr. Goldich stated that the Board of Adjustment is the only body with the authority to grant variances.

### **MOTION**

Mr. Albers moved to approve the requested variances cited above for all three structures: the hay barn, the loafing shed, and the pole barn. This approval is based on the following findings of fact:

1. An unnecessary and unreasonable hardship will be imposed on the property owner if the provisions of this Resolution are strictly enforced because removal of the structures will create a financial hardship for the landowner.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the loafing shed and hay barn were constructed by the previous landowner and the pole barn is equal to these two structures (it does not encroach further into the setback than the existing hay barn or loafing shed).
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 neighboring properties (Steamboat Lake State Park and the US Forest Service) do not have improvements in close proximity to these structures.

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. This approval is specific to the site plan 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.
2. All exterior lighting will be downcast and opaquely shielded.
3. 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. Kelly seconded the motion.

### **Discussion**

Mr. Albers added to the proposed findings of fact in support of the variances for the hay barn and loafing shed also apply to the pole barn, which is equal to the other structures and not encroach further into the setback than these existing structures. This additional finding was added to the findings of fact, as indicated above.

**The motion carried 4 - 1, with Mr. Benjamin dissenting.**

**ACTIVITY: PL-20-158**

**APPELLANT: Eli and Erin Campbell; representative Brian Adams**

**REQUEST: Property line setback variance to bring an existing house into conformance and a setback variance for a second story addition to the existing house**

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

**Requested setbacks : 28 ft. from the south property line for a variance of 22 ft.**

**LOCATION: 34725 Country Green Road**

Ms. Ebbert reviewed the request for a variance to bring an existing house in the Country Green subdivision into conformance, and for a variance to allow the construction of a second-story addition over the existing attached garage. She stated that previous owners of the property had received a variance to construct the house 40 ft. from the property line, but the house had actually been built somewhat closer to the property line. Ms. Ebbert stated that the parcel is small for the Mountain Residential Estates (MRE) zone district, has a triangular shape, and difficult topography. She suggested that the house may have been sited where it

is to push it further onto the only flat area of the lot. Ms. Ebbert said that staff recommends approval of both variances. She stated that the proposed addition over the garage will not increase the existing encroachment into the setback. The roof of the addition will match the height of the existing roof of the house. Ms. Ebbert presented photos of the house and the property.

Mr. Brian Adams of Apex Architecture, representing the petitioner, stated that he had little to add. Referring to a photo of the house, he noted that only the prow-shaped end of the living room extends into the 40 ft. setback granted in 1990.

There was no public comment, and there were no questions from the Board of Adjustment.

### **MOTION - existing structure**

Mr. Benjamin moved to approve the requested 22 ft. variance (for a setback of 28 ft.) to bring the existing house 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 this Resolution are strictly enforced because the existing location of the structure was influenced by site constraints upon its construction in 1990.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconforming lot that contributed to the site constraints was created in 1972.
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, the narrowness of the parcel, the topography, and the access point to the lot.
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.

Mr. Kelly seconded the motion. **The motion carried 5 - 0.**

### **MOTION - addition over the garage**

Mr. Benjamin moved to approve the requested variance of 22 ft. (for a setback of 28 ft.) to allow for the construction of a second story addition to the existing home. 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 the existing location of the structure was influenced by site constraints upon its construction in 1990.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconforming lot that contributed to the site constraints was created in 1972.
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, the narrowness of the parcel, the topography, and the access point to the lot.
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:

4. The building shall comply with all applicable requirements of the Routt County Building Department.
5. 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.
6. 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.
7. 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.
8. A Grading and Excavation Permit will be required if necessary.
9. All exterior lighting will be downcast and opaquely shielded.

10. 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.**

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

Ms. Winser stated that a meeting is scheduled for October 12, 2020. She reported that interviews for new Board of Adjustment members would be held this week, and that there should be a full board in October.

**The meeting was adjourned at 7:30 p.m.**