

**ROUTT COUNTY BOARD OF ADJUSTMENT
MINUTES**

NOVEMBER 8 , 2021

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

PUBLIC COMMENT

There was no public comment.

MINUTES - September 13, 2021

Mr. Prowant moved to approve the above cited minutes as written. Mr. Albers seconded. **The motion carried 5 - 0, with the Chair voting yes.**

Since four regular members and two alternate members were in attendance, it was decided that Ms. West would vote on the first petition and Mr. Law would vote on the second.

ACTIVITY: PL-21-163

APPELLANT: Jeanette and Sanford Brook

REQUEST: Property line setback variance to construct additions onto an existing house

Required setbacks : 50 ft. from the property lines

Requested setbacks : 19 ft. 6 in. from the north and south property line for a variance of 30 ft. 6 in.

LOCATION: 32958 McKinnis Creek Rd.

There was a problem with the technology that allows for a hybrid (in-person and remote) meeting. As a result, those participating remotely could not hear the presentation or discussion of the first item on the agenda and could not provide public comment. When this problem was discovered and corrected, Ms. Winser reviewed the remote meeting policy. Mr. Gustafson decided that the hearing should be repeated in its entirety. Ms. Keenan repeated her entire presentation; Mr. Goldich repeated his comments; Board of Adjustment repeated its questions; and public comment was taken.

Ms. Chancy Keenan, an architect with Mountain Architecture Design Group, representing the petitioners, stated that the subject lot is in Fox Estates, a subdivision created in 1970 prior to the adoption of the Routt County Zoning Resolution. The lots in the subdivision vary in size from approximately 0.5 - 2 acres. When zoning was implemented in the County, the Mountain Residential Estates (MRE) zone district was applied to Fox Estates, even though the minimum lot size in the MRE district is 5 acres. The Brook's lot is 1.09 acres in

size, and is located at the toe of a very steep hillside. Ms. Keenan said that the majority of the lot has slopes of greater than 30%. She presented photos of the existing home on the lot and indicated its location on a vicinity map. She stated that of the 26 lots in Fox Estates, 23 have been developed and 21 of those residences encroach to some degree into the required setbacks, which are 50 ft. from all property lines in the MRE zone district. Ms. Keenan stated that the Fox Estates homeowners' association had reviewed the proposal and has stated that it has no objections to the variance request.

Ms. Keenan presented a site plan of the existing structure and the proposed addition on a topographical map. She pointed out that in addition to being small for the zone district, the lot is long and narrow. She noted that the existing home is constructed on a natural bench of gently sloping land that extends across the narrow portion of the lot. She indicated the location of the driveway, the septic system and the leach field, which occupy a significant portion of the area within the required setbacks. Ms. Keenan reviewed the features and obstacles that had been taken into account when designing the proposed addition, including: the slope, the drainage, the vegetation, the existing structure and septic system, and the access. She reviewed the layout plan of the proposed addition. On a topographical map she indicated the areas of slopes over 30%. Ms. Keenan said that multiple options for the addition and the location of the garage had been considered. She noted that an engineer had been consulted regarding options for the driveway and garage, and had concluded that the location of the proposed addition and garage would cause less site disturbance and a smaller encroachment into the setback than any of the other options available. Locating the garage closer to the home would also have a negative impact on ingress and egress.

Ms. Keenan reviewed each of the criteria that must be met for a variance to be approved and discussed the staff comments. She presented photos of the home and indicated the steep slopes of the lot. She stated that the closest residence is on the lot to the north and is located approximately 90 ft. from the Brook's house. The next closest residence is to the south, and is 171 ft. from the Brook's house. There is also a significant elevation difference between the lots. The home to the north is lower and the home to the south is significantly higher and looks down on the Brook's house as well as other homes in the subdivision. Ms. Keenan said that there is a walking trail around the lot to the south that abuts the Brook's property line. She presented photos of the existing house from the trail and from the deck of the house to the south. She stated that in order to accommodate the new garage, 10 - 12 mature aspen trees would need to be removed, which would reduce the visual buffer.

Ms. Keenan stated that Fox Estates is more densely developed than what is normal in the MRE zone district due to the small lot sizes and the topographic constraints that have influenced where the homes have been built. She presented an aerial photo of the subdivision and discussed the character of the neighborhood, which is well established and would not be affected by the

proposed addition. Ms. Keenan said that several letters of support had been submitted by other residents of the subdivision. She added that the variance process is in place to address unusual and challenging properties such as this one.

Mr. Goldich stated that Ms. Keenan had thoroughly covered the staff comments regarding the criteria. He noted that the request is for two variances: one from the north property line setback and one from the south property line setback. The resulting setbacks on the north and the south would be 19 ft. 6 in. Mr. Goldich reported that in response to comment received by the adjacent property owner, Mr. Gilman, staff had worked with the applicant to redesign the proposal from what had originally been submitted. He said that the current design is more in compliance with the criteria for approval. He acknowledged that the removal of a stand of mature aspen trees would increase the visibility of the structure, but noted the elevation difference between the Brook's home and the neighboring properties and stated that the existing structure can be seen from Mr. Gilman's deck. Mr. Goldich stated that five letters in support of the proposal had been received, along with one letter in opposition. He suggested that the Board of Adjustment focus its discussion on criteria #4.

Mr. Albers asked if a variance would be needed to bring the original existing cabin into conformance. Mr. Goldich said that it would not, as the proposed variances would take care of it. Ms. West expressed concern with the removal of the trees and asked if additional landscaping would mitigate the loss of the mature aspens. Mr. Goldich stated that the removal of the mature trees would be necessary for construction. He said that a vegetative buffer will remain, but that planting additional trees would not mitigate the visibility of the house from the property to the south because the trees would need to be around 40 ft. tall to block the view due to the difference in elevation.

Ms. Lewis said that her concern is with the impact of the proposal on the neighbor to the south. She offered that the reduction of the setback from 50 ft. to 20 ft. was significant and could have a significant impact on Mr. Gilman's enjoyment of his property. She also noted that the Brooks had purchased the property knowing the constraints.

Mr. Law offered that the trees that close to the home could be removed in any case to create defensible space in the event of a fire. Mr. Goldich stated that Routt County makes recommendations regarding defensible space but does not have defensible space requirements. He acknowledged that the trees could be removed even without the construction of the addition.

Public Comment

Mr. Kevin Gilman, the adjacent property owner to the south, offered that the variance was unnecessary because the septic system that prevents construction in the less steep area within the required setbacks could be moved. He said that the Brooks bought the property knowing the existing conditions. He stated that

the vegetative buffer between his property and the proposed addition is only effective half of the year. Mr. Gilman said that his primary concern is with the transformation of the neighborhood from a middle-class neighborhood to one of large vacation homes. He noted that the addition would double the size of the existing structure. He discussed the history of the neighborhood and how it was developed. He also mentioned the increase in rentals and luxury homes. He discussed how the existing home is assessed and what areas should be considered as living spaces. Mr. Gilman offered several suggestions regarding how the addition onto the home could be redesigned and reiterated that the septic system could be moved. He stated his opposition to the proposal, and offered that an alternative would be to approve the variance from the north property line setback and deny the variance from the setback on the south. He stated that with a different design the owners would be able to construct everything they wanted without encroaching into the southern setback.

Ms. Pattie Moon, the adjacent property owner to the north, stated that she had purchased the subject property in 2010 because it was degraded and in disrepair. She said that she owned it until 2015 and that during that time she restored the home and removed many trees to improve the health of the forest. Ms. Moon noted that Mr. Gilman had had no objections to the removal of trees at that time. She stated that the requested variances would allow the Brooks to construct a home that they can live in, and that she welcomes them as neighbors. She stated her strong support for the proposal.

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

Mr. Prowant offered that in a neighborhood this densely populated and with small lots, there is no expectation that residents will not be able to see other houses. He added that many of Mr. Gilman's comments had to do with issues outside the purview of the Board of Adjustment. Mr. Gustafson agreed.

MOTION

Mr. Prowant moved to approve the two requested of 30 ft. 6 in variances from the required 50 ft. setbacks, for setbacks of 19 ft. 6 in. from the north and south property lines to construct an addition. 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 there is only 8.6' between the current structure and the 50' setback line.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconformity was created in 1970 with the platting of this subdivision and in 1972 with the assignment of the Mountain Residential Estate zone district. Both of these occurred prior to the current owner purchasing the property in 2018.

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, and the layout of the lot perpendicular to the slope of the land.
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 other lots in the neighborhood and is the least impactful of the alternatives that were considered.
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 policies in the Routt County Master Plan and, except for the setback variance, would meet all other requirements of the Zoning Regulations.

CONDITIONS that may be appropriate include the following:

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. Albers seconded the motion.

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

ACTIVITY: PL20210012

APPELLANT: John Waddick

REQUEST: Property line setback variance to construct a single family residence in the setback

Required setbacks : 50 ft. from the property lines

Requested setbacks : 20 ft. from the south property line for a variance of 30 ft.

LOCATION: Tract B Elk River Estates Subdivision F2; located at 29235 Elk View Drive

Mr. Waddick stated that he owns both Tract B and Lot 16 in the Elk River Estates Filing 2 Subdivision. He said that he has lived in the house on Lot 16 for 33 years, but that the house has become difficult for him as he has aged. He said that is his intention to build a new home on Tract B, which is across CR 129 from his existing house.

Mr. Patrick Waddick, an architect and brother of the applicant, presented a site plan demonstrating that the required setbacks on the parcel, which is only .78 acres in size, leave a buildable area of around 600 sq. ft. He presented a second site plan, showing the requested variance that would reduce the setback from the south property line to 20 ft. and create a buildable area of about 2000 sq. ft. He noted that in addition to being small, the triangular shape of the lot presents challenges. Mr. Patrick Waddick presented a site plan and elevation renderings of the proposed house, which is designed to be energy efficient and all on a single floor.

Ms. Ebbert stated that the Elk River Estates Filing 2 plat was recorded in 1969, before the adoption of the Routt County Zoning Resolution. She said that the parcel was originally designated in the covenants as being available for multifamily housing only. When zoning was implemented in Routt County in 1972, Mountain Residential Estates (MRE) zoning was applied to the Elk River Estates subdivisions. Multifamily residential development is not permitted in the MRE zone district and covenants do not determine zoning, so this parcel, which is a legal non-conforming lot, was determined to be suitable only for a single family residence. Ms. Ebbert described the location of the lot, which is the triangle at the intersection of CR 129 and Elk View Drive.

Ms. Ebbert presented photos of the lot and the adjacent parcels. The nearest neighbor is to the north and significantly above the proposed homesite. She stated that the proposed home would meet the 50 ft. setbacks from CR 129 and Elk View Drive, and would be 80 ft. from the centerline of CR 129.

Ms. Ebbert stated that two neighbors had expressed opposition to the proposal: one cited the scarcity of water in the area and the other felt that this parcel is not suitable for residential development. She said that water is not within the purview of the County. If the Colorado Division of Water Resources determines that the parcel is eligible for a well permit, then it is. Ms. Ebbert stated that the parcel is a legal non-conforming lot in the MRE zone district, so the suitability of the site for a residence is not a question. A single family residence is a use by right.

Ms. Ebbert said that the Public Works Department had been consulted on the sight distance and the potential impact of a structure in this location on road safety. She said that the County uses the federal Highway Administration formulas to calculate sight distance. She presented a site plan with the triangle of visibility at the intersection of CR 129 and Elk View Drive. The proposed homesite will not obstruct the visibility of travelers on the road and the required 50 ft. setbacks from both roads will be met by the proposed structure. Ms. Ebbert stated that all other County regulations must be met. This review is of the setback from the south property line only. Ms. Ebbert stated that staff recommends approval of the request based on the size, shape and narrowness of the lot, which was created in 1969. She noted that the proposed variance would allow the construction of a normal sized home on a very challenging lot.

Ms. West noted that drivers on CR 129 routinely exceed the speed limit. She asked if the sight distance takes into account the actual speed that people drive. Ms. Ebbert explained that the speed would influence the length of the triangle of visibility, but not the width. Regardless of the speed of travelers, the proposed home will not impact the sight distance. Ms. Ebbert added that the setback from CR 129 meets requirement. She added that the Public Works Department does not want anything to be built closer to either road than is allowed by the required 50 ft. setback.

Ms. West asked about the property to the south. Ms. Ebbert presented a vicinity map and stated that the adjacent property to the south is a 103-acre agricultural parcel. She stated that the neighbors to the south do not oppose the proposed home, but are very concerned with drivers speeding on CR 129. She said that discussions regarding improved signage and the use of portable speed measuring equipment are underway.

In response to a question from Mr. Law, Ms. Ebbert indicated on a vicinity map the location of the Wolff property, a 35-acre parcel that is currently vacant. She said that the Wolffs would like to build on their parcel in the future. They also own and currently live on a property a few lots down from the Waddick parcel in Elk River Estates. Ms. Ebbert stated that it does not appear that the proposed house will not have any impact on the desirable light, air, or open space nor will it diminish the use or enjoyment of neighboring properties. She said that the most impact would be to the residence to the north, but that is not the direction of the proposed reduced setback.

Ms. Ebbert noted that the applicant is requesting two-years to begin construction, as reflected in suggested Condition of Approval #2.

There was no public comment.

MOTION

Ms. Lewis to approve the requested variance of 30 ft. from the required 50 ft. setbacks, for a setback of 20 ft. from the south property line. 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 heavily constrained site consisting of a narrow parcel that is small in area.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconformity was created in prior to the adoption of the Routt County Zoning Regulations, which predates when the landowner acquired this lot.
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 physical constraints limiting the building envelope. These physical constraints are 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. The building shall comply with all applicable requirements of the Routt County Building Department.
2. If construction of the building does not commence within 2 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 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.

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. Prowant seconded the motion.

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

ADMINISTRATOR 'S REPORT

Ms. Winser said that a new application has been received, and she would inform the Board of Adjustment if there will be a meeting in December.

Mr. Prowant stated that it is his understanding that all subsequent owners of a property have the same rights regarding development as the original owner, so when a property is purchased should not influence a decision regarding a variance. He said that he would like to hear the County Attorney's opinion on this matter.

The meeting was adjourned at 8:35 p.m.