

**ROUTT COUNTY BOARD OF ADJUSTMENT
FINAL MINUTES**

JANUARY 10 , 2022

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

PUBLIC COMMENT

There was no public comment.

MINUTES - November 8 , 2021

Mr. Lewis moved to approve the above cited minutes as written. Mr. Law seconded. **The motion carried 6 - 0, with the Chair voting yes.**

SUNSHINE LAW RESOLUTION

Mr. Fitzgerald moved to approve the Sunshine Law Resolution, as presented. Mr. Albers seconded the motion. . **The motion carried 6 - 0, with the Chair voting yes.**

ACTIVITY: PL20210024

APPELLANT: Collette and Gerald Burris

REQUEST: Variance from the maximum distance between a primary dwelling unit and a secondary dwelling unit

Required distance : 300 ft. maximum separation

Requested distance : up to 600 ft. separation for a variance of up to 300 ft.

LOCATION: 25325 Paradise Valley Ln.

Ms. Collette Burris presented an aerial photo of the property and indicated the location of the residence, garage, and historic structure, all clustered together at one end of the property and the barn, workshop, storage structure, chicken coop and hay shed at the other end of the property. She described the plan to improve the fencing for their agricultural operation. Ms. Burris said that the proposed secondary dwelling unit (SDU), to be located in the barn, would be used to house a ranch hand or caretaker. She said that a septic system would be installed and the dwelling would be brought up to code. Elements of a dwelling unit were constructed in the barn by the previous owner. Ms. Burris presented a series of photos of the property, taken from the primary residence. Taken together, the photos presented a 360* view of the area within 300 ft. of the primary dwelling. She described each photo, noting what could be seen by the neighbor, the vegetation, the existing historic structure and the location of the septic system

and utility lines. Ms. Burris offered that there was no appropriate location for an SDU within a 300 ft. radius of the house.

Ms. Burris stated that it would be a financial burden for them to construct a new structure to serve as an SDU. She said that although new construction would be easier than modifying what had already been done in the barn, it would be much more expensive. She added that the area behind the primary residence is very rocky, making it difficult to build there. She also cited drainage issues. The barn area has neither of these issues.

Ms. Ebbert stated that the staff report had mistakenly stated the proposed distance between the primary residence and the SDU as 575 ft. She said that this should have said "up to 600 ft." She said that the variance request had been noticed with the correct language.

Ms. Ebbert reviewed the SDU regulations that specify that an SDU must be within 300 ft. of the primary dwelling unit. She said that staff is recommending denial of the variance request because they have been unable to identify any findings that would satisfy criteria 1, 2 or 3 of the five criteria that must be met for a variance to be granted. Ms. Ebbert presented an aerial photo of the property and indicated the area within 300 ft. of the residence. She noted that square-shaped 35-acre parcel is gently sloping and that the area around the house contains no physical constraints that would make building an SDU difficult. Regarding the impact on the neighbors, Ms. Ebbert stated that there is no guarantee that a neighbor will not see the structures on an adjacent property. An SDU in the vicinity of the primary residence might be visible to the neighbor, but would not obstruct their views or interfere with the use of their property. Ms. Ebbert said that financial considerations cannot be considered in evaluating the development potential of a property. The variance request must be evaluated on the basis of the physical properties of the lot, not on the financial circumstances of the owner. Ms. Ebbert said that while she understands the reason that the applicant would like to use the barn for the proposed SDU, the required criteria for a variance cannot be met.

Ms. West asked about the rationale for setting a maximum distance between the primary residence and the SDU. Ms. Ebbert stated that the maximum distance was set by the Board of County Commissioners. She said that while she cannot speak for the Board, her understanding is that the rationale for limiting the distance between residential structures is to minimize sprawl through clustering development. She noted that for properties of less than 35 acres, the maximum distance is set at 200 ft. Ms. Winser added that prior to 2016 a SDU on a 35 acre parcel would have been required to be attached to the primary residence. A detached SDU would have required 50 acres or more. In 2016 the SDU regulations were relaxed to allow detached SDU on 35-acre parcels with a maximum separation of 300 ft.

Ms. West offered that the best solution to address the concern regarding sprawl would be to allow the variance, as this would mean that no new structure would

be built. She said that the regulation was intended to minimize sprawl, so granting the variance is within the spirit of the regulation.

Ms. Ebbert said that there is no record of a building permit being issued for the barn, but that the Assessor's records indicate that it was constructed in 2000. In 2000, a building permit would not have been required for a structure that was to be used solely for agricultural purposes. Ms. Burris noted that the Chief Building Official, Todd Carr, had said that the electrical service to the barn had been permitted.

In response to a question from Ms. West, Ms. Burris stated that the barn has a water supply, but does not have a septic system. The structure is not being used as a dwelling; it is used for storage and for other uses.

Mr. Law asked if the owners had looked into building an SDU in the large garage near the house. Ms. Burris said that they use the garage for vehicle and equipment storage and that there would be no room for an SDU and for their equipment. Mr. Burris added that it would be useful to have the ranch hand's quarters at the barn to be closer to the agricultural activities and to the cattle during calving season.

Mr. Fitzgerald asked how this application was submitted. Ms. Burris stated that they had contacted the Building Department regarding bringing the property into conformance. Chief Building Official Carr then referred them to the Planning Department. Mr. Fitzgerald asked when the partial dwelling area in the barn was constructed. Ms. Ebbert stated that the barn was constructed in 2000 likely exclusively as a barn, and although there is no record of the installation of the dwelling unit elements, the Assessor's records regarding the barn was changed to add an area of "finished space" in 2008. No permits were issued for the installation of the finished space. She noted that the barn without an SDU would be in conformance.

Mr. Fitzgerald stated that he does not agree that applications should be reviewed as if the existing structure were not there. He asked what would happen to the structure if the variance request is denied. Ms. Ebbert said that the barn could remain as it is currently, but would not be able to be used as a dwelling unit. It could be used as an office, for example. She explained that plumbing is allowed in non-dwelling accessory and agricultural structures, provided that the property owner sign a Plumbing Agreement confirming that the structure is not used as a dwelling.

Ms. Winser offered that the issue in this case is one of precedent. If approved, the message would be sent that property owners could construct agricultural barns wherever they want on their property and then later install an SDU, and ask that it be approved "because the structure was already there."

There was a discussion of the timing of the construction of the finished space. Ms. Burris noted that the electrical service at the barn may have been permitted. Ms. Winser stated that the installation of the finished space would have required a building permit, but none was issued.

Mr. Prowant asked about the foundation of the finished space. Ms. Burris described the different parts of the barn, stating that the finished space is situated on a 410 sq. ft. concrete slab.

There was no public comment.

Roundtable Discussion

Ms. Lewis said that she appreciates the analysis provided by staff in the staff report. She said that the County has regulations for a purpose and that the variance process is also in place for a purpose. She said that it is the job of the BOA to apply to the facts of the case to the five criteria in order to determine if the variance should be granted. Ms. Lewis said that she agrees with staff's analysis and stated that the facts do not support criteria 1, 2 or 3.

Ms. West stated that if the barn were located within 300 ft. of the house, this would not be an issue. She offered that the intent of the regulation should supersede the rule, and that intention is to minimize sprawl. She added that the SDU could be considered affordable housing and that allowing it to be located in an existing structure is the more sustainable option.

Mr. Law offered that the SDU could be located in the existing garage, or an addition could be added to the existing garage, such that no new structure would have to be built. He stated that there are many alternatives for an SDU on the property that would not require a variance. He said that he could not support the request.

Ms. Lewis said that while she understands Ms. West's argument, it is not the job of the BOA to interpret the regulation, but rather to apply the facts to the criteria. She said that all the criteria must be met, and in this case they cannot be. She added that all the information and regulations were available to the property owners when they purchased the property.

Mr. Fitzgerald noted that the five criteria match the state statute, but offered that there is nothing in the statute that says that the expense and difficulty of building a new structure cannot be taken into account as a hardship, and that nothing in the statute states that the existing structure cannot be considered. He said he would not vote against granting the variance.

Mr. Albers stated that he cannot get around the first three criteria, and said he was leaning toward denial.

Mr. Prowant stated that the BOA has considered similar cases, but that in each of those there was a physical constraint such as the size or shape of the lot, steep slopes, drainages, etc. that would prevent a new structure or addition from being built. He agreed that it is the job of the BOA to apply the facts to the criteria, not interpret the intent of the regulation. Mr. Prowant said that the only real constraint is the expense, but offered that the savings of improving the barn, which has only a 410 sq. ft. slab, might not be that much over starting from scratch. He said he would be hard pressed to identify findings to meet all of the criteria.

Following discussion, it was determined that as first alternate, Ms. West would be voting; Mr. Law would not be.

Ms. West began to make a motion to approve the variance based on the finding that rehabilitating the barn was the most sustainable option and would minimize sprawl, but acknowledged that she did not have findings to support all of the criteria. Ms. Winser confirmed that according to state statute, all five criteria must be met for a variance to be granted.

MOTION

Mr. Fitzgerald moved to approve the requested variance to the maximum distance between a primary dwelling and a secondary dwelling unit 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 applicant would have to construct an additional structure in order to create a bunkhouse for staff.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because staff cannot state for sure that the dwelling portion of the barn was not create prior to the applicant's purchase of the property.
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 that the improvements to the barn already exist and that these improvements include some, but not all aspects of a dwelling unit.
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 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 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.

Ms. West seconded the motion.

The Chair called for a roll-call vote.

Ms. West - Yes

Mr. Fitzgerald - Yes

Ms. Lewis - No

Mr. Albers - No

Mr. Prowant - No

The motion failed 3 - 2, with the Chair voting no.

MOTION

Ms. Lewis moved to deny the variance from the maximum separation between a primary dwelling and a secondary dwelling unit based on the findings of fact that not all five criteria can be met.

Mr. Albers seconded the motion.

Ms. West - No

Mr. Fitzgerald - No

Ms. Lewis - Yes

Mr. Albers - Yes

Mr. Prowant - Yes

The motion to deny the request carried 3 - 2, with the Chair voting yes.

ADMINISTRATOR 'S REPORT

Ms. Winser stated that the officer elections could be held tonight, or electronically via email if preferred.

MOTION

Mr. Fitzgerald moved to appoint Mr. Gustafson as Chair and Mr. Prowant as Vice-Chair. Mr. Albers seconded the motion. **The motion carried 6 - 0.**

Ms. Winser said that she would contact Mr. Gustafson to confirm his willingness to serve as Chair.

Ms. Winser asked the BOA members to let her know if there are elements of the regulations that the BOA would like to have reconsidered through input from the community in the course of the Master Plan update outreach process. She stated that following the update of the Master Plan, the regulations would be reviewed and revised, if necessary to be brought into alignment with the Master Plan.

Ms. Ebbert said that no meeting would be held in February, but that a March meeting is likely. All public hearings are virtual until further notice.

The meeting was adjourned at 8:00 p.m.