

**ROUTT COUNTY BOARD OF ADJUSTMENT  
FINAL MINUTES**

**MARCH 14, 2022**

The Routt County Board of Adjustment meeting was called to order at 6:00 p.m. with the following members participating: Acting Chairman Don Prowant, Nate Law, Brian Fitzgerald, Gerald Albers, and Joella West. Becky Lewis was absent. 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.

**ACTIVITY: PL20210031**

**APPELLANT: Russell Barron and Tom Townsend**

**REQUEST: 1) Request to approve a structure to be located within a public road setback**

**Required distance : 80 ft. from center line of the public road**

**Requested distance : 35 ft. from center line of the public road  
for a variance of 45 ft.**

**2) Variance from the maximum distance between a primary dwelling unit and a secondary dwelling unit**

**Required distance : 300 ft. maximum separation**

**Requested distance : 1715 ft. separation for a variance of  
1415 ft.**

**LOCATION: 64005 Forest Service Road 490**

Following discussion it was decided to review the two variance requests separately.

Mr. Barron described the property, which is located off of US Forest Service Road 490 (FSR 490). The entrance to FSR 490 from CR 129 is located across from Columbine. Mr. Barron presented an aerial photo of the area with a site plan and indicated that 15 acres of the hourglass shaped property are located on the south side of FSR 490 and 35 acres are located on the north side of FSR 490. He said that winter access to the property is quite challenging and that they need a storage structure to house their snowmobiles, snow removal equipment and snowcat. Mr. Barron presented photos of the structure, which is in progress. The structure is composed of two shipping containers with a stick-built structure on top. Mr. Barron stated that he disagrees with the County's determination that FSR 490 is a County public road. He said that the road is privately maintained and is a 20 ft.-wide easement granted to the Forest Service in 1955 as a truck trail for use by Forest Service agents and the public. He presented photos of the signs at the entrance to the road stating that it is a public right of way across private land. Mr. Barron also noted that the road had been posted all winter with a "road closed" sign. This sign was put up by a private landowner.

Mr. Barron went through the five criteria needed for a variance to be approved. He said that they are asking for a variance for the structure to be located 35 ft. from the center of the road because they maintain the road and the equipment to do so needs to be located near the road. He said that they did not apply for a building permit for the garage because when they had built the barn in 2006 they were told that no building permit was required for an agricultural building, so they assumed that no permit would be required for a storage structure. He added that it would be unreasonable to require them to remove the trees behind the current location of the structure in order to create a space to move the garage further away from the road. Mr. Barron said that the structure would be more visible if it the area were cleared. He noted that the easement was granted in 1955 and the Forest Service does not improve or maintain the road. Regarding the third criterion, Mr. Barron stated that the property is unique because FSR 490 bisects the property and it is not a typical residential roadway. He also noted that there are other buildings along the road that are very close to the road. He said that the neighbors generally support the petition and that the neighbor who had expressed concern with the appearance of the structure has said they are okay with it because it will eventually be sided with wood. Mr. Barron stated that the proposal is in compliance with the Master Plan. He presented sample findings and offered that all five criteria can be met.

Ms. Ebbert described the variance request and noted that the situation had come to the attention of the Planning Department via a code enforcement complaint. She said that she had consulted with the Forest Service and with the County legal department, which determined the road to be a public road and that the required setback regulations apply. Ms. Ebbert stated that the road is listed on the USFS Motor Service Map as being open to the public year around. She stated that the road is open and that the sign was posted by a private party. She stated that there are many public roads, including County-owned roads, that do not receive ongoing maintenance. She said that from a staff perspective, this property is not unique: it is larger than the minimum lot size for the A/F zone district, other properties in the area are subject to the same weather conditions and must all comply with the required setbacks. She said that while there are some steep areas on the property, the topography is not unusual. Ms. Ebbert stated that when the applicants purchased the property there were no structures on it. She said that the applicants had not applied for a building permit prior to beginning construction of the garage, as is required, but if they had they would have been informed that the location was too close to the road. The circumstances creating the need for the hardship are due to the actions of the applicant.

Ms. Ebbert agreed that removing the trees and moving the structure will be inconvenient, but inconvenience is not a hardship. She said that some tree removal is to be expected when developing a heavily wooded site, and that there is nothing that would have prevented the structure from being located 80 ft. from the center of the road.

In response to a question from Mr. Albers, Mr. Barron stated that they began construction of the garage in 2019. Mr. Law stated that the USFS has cleared trees on FSR 490 to keep the road open, but it does not provide other maintenance. In response to a question from Mr. Fitzgerald, Ms. Ebbert stated that the original complaint about the structure was submitted by a person who lives in the area and frequently uses the road, but is not an adjacent landowner. Regarding the other structures that are within the setback along the road, she said that one was constructed well before there were zoning regulations and she is not sure about the other one. Mr. Barron noted that one of the structures near the road belongs to the person who submitted the complaint.

In response to a question from Mr. Fitzgerald, Mr. Townsend described the garage structure and the foundation it sits on. The total footprint is 1280 sq. ft. He said that the building will not be heated or have power. The structure on top will be used as changing area. He said that beyond this structure the road is only accessible via snowmobiles in the winter.

Mr. Fitzgerald stated that he was having trouble getting past the fact that the circumstances were created entirely through the actions of the applicant. Mr. Law agreed, noting the need for a permit. He stated that he also does not feel there would be any hardship in locating the structure outside the setback. He added that the tree removal would be recommended for fire mitigation in any case. Mr. Law stated that FSR 490 is heavily used in the summer. Ms. West said that there is no question but that FSR 490 is a public road. She said she owns a similar property that is also accessed via a Forest Service road. She agreed that locating the structure outside the required setback would not cause an undue hardship.

### **MOTION**

Mr. Fitzgerald moved to deny the variance request for a structure to be located within the required setback from a public road with the following findings of fact:

1. Circumstances creating the hardship were created by the applicant since this structure was built by the applicant without knowledge of the required setbacks in the A/F zone district.
2. The property in which the variance is requested does not possess any extraordinary and exceptional condition that does not occur generally in the A/F zone district.

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

Regarding the second variance request, Mr. Barron stated that they would like to use an existing barn as a secondary dwelling unit (SDU). He noted the location of the barn and the existing primary dwelling unit on an aerial photo and site plan. He stated that the barn was constructed in 2006 and was located where it is because that area is flat area and allows for trucks and livestock trailers to turn

around. He said that the barn is served by electricity, a well and a septic system. He said that rather than build another structure for an SDU near the primary dwelling, they would like to use the existing structure.

Mr. Barron said that the cabin (primary dwelling) was constructed on the site of an old placer mine, but that the area surrounding the cabin is steep. He noted the 40 ft. contour lines on the site plan. He also indicated the stream and wetlands area near the cabin. He stated that the septic system is located behind the cabin and the area in front is used as a vehicle turnaround. He said that there was not an appropriate location for another structure within 300 ft. of the primary dwelling unit. Mr. Barron noted that the property is oddly shaped and that because it has two distinct areas was issued two well permits and two electrical services. He presented sample findings of fact to support the variance.

Ms. Ebbert presented photos of the property in the vicinity of the primary dwelling unit. She indicated the drainage and wetland area but stated that there are several locations within a 300 ft. radius of the house that are not steep and would be suitable for construction. She noted that when the barn and the house were constructed by the applicants on opposite sides of the property the regulation was in place restricting the distance between a primary and a secondary dwelling unit to a maximum of 300 ft. There would be no undue hardship or practical difficulty preventing the construction of an SDU within 300 ft. of the house. Ms. Ebbert acknowledged that it would be convenient for the applicants to use the existing barn as a secondary dwelling unit, but personal convenience cannot be considered in evaluating a variance application. She added that the 50-acre property is not unique or exceptional compared to other properties in the A/F zone district. She stated that the parcel is currently being used as if it were two separate parcels, but it is not; the 50-acre parcel only has the development potential of a single lot.

Mr. Fitzgerald stated that although he would like the County to reconsider the maximum separation between an SDU and a primary dwelling, the Board of Adjustment (BOA) is constrained by the existing regulations and by state statute. Ms. Ebbert stated that on parcels that are 70 acres or larger, there is no maximum distance between SDUs and primary dwelling units. In response to a question from Mr. Fitzgerald about the definition of a dwelling unit, Ms. Ebbert stated that a dwelling unit is defined by physical characteristics of the facilities needed to accommodate living, sleeping, eating, cooking and sanitation. She said that dwelling unit is also defined by the use of the structure. She reviewed that an accessory structure could go through the building permit process and would be allowed to have a kitchen and a bathroom, for instance, but could not be used for occupancy if it has not been permitted as a dwelling unit. She reviewed the Plumbing Agreement that would be required for such a structure. Ms. Ebbert noted that a building permit was not obtained for the barn (which was agricultural at the time of construction) or for its conversion to an SDU. She said that to be used in any way other than agricultural, a building permit would be required to ensure safety. Mr. Goldich reviewed the Plumbing Agreement

process. He said that even if the kitchen were to be removed, the Planning Department could not sign off on the building permit for an alternate use of the accessory structure without an executed Plumbing Agreement.

In response to a question from Mr. Fitzgerald, Mr. Townsend confirmed that the structure is stick-built on a foundation. He said that with the exception of the stalls, the structure has a concrete floor. Ms. West asked about the original use of the building. Mr. Barron said that the barn was used for horses. Mr. Prowant asked about the size of the structure. Mr. Townsend said that the footprint of the barn is 36' x 40' and that the dimensions of the upstairs unit is 20' x 40'. Mr. Prowant asked about the road to the barn. Mr. Barron stated that the road, the septic system and all utilities are in place. No new impacts would be created if the variance is approved.

There was no public comment.

### **Roundtable Discussion**

Mr. Fitzgerald stated that although he wished that the 300 ft. maximum separation did not exist, it does. He stated that he it is troublesome that the applicant is not allowed to use a structure that already exists, but that he did not think the application could meet all five criteria needed for a variance from the regulations.

Mr. Albers concurred with Mr. Fitzgerald's comments.

Ms. West noted the similarity between this request and the previous application, and stated that the circumstances cannot meet all five criteria. She said that if the maximum separation regulation is intended to reduce sprawl, people should be able to re-purpose existing structures, but that is not currently allowed.

Mr. Law agreed that the application cannot meet all five criteria.

Mr. Prowant agreed, adding that the BOA is constrained by the regulations and by the five criteria. He stated that the County should revisit the regulations regarding the use of existing structures.

### **MOTION**

Mr. Albers moved to deny the variance from the maximum separation between a primary dwelling and a secondary dwelling unit based on the following findings of fact:

1. Circumstances creating the hardship were created by the applicant since this structure was built by the applicant without knowledge of the required setbacks in the A/F zone district.
2. The property in which the variance is requested does not possess any extraordinary and exceptional condition that does not occur generally in the A/F zone district.

Mr. Fitzgerald seconded the motion. **The motion carried 4 - 1, with the Chair voting no .**

Ms. Ebbert stated that if there are elements of the regulations that the BOA would like to have reconsidered they should submit their comments and they would be added to the input being gathered through 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.

### **ADMINISTRATOR 'S REPORT**

Ms. Ebbert said that there would not be a BOA meeting in April.

Ms. Winser stated that Mr. Gustafson had resigned from the BOA. The BCC will decide whether Ms. West or Mr. Law will become the new primary member, then the open alternate position will be advertised. Ms. Winser noted that there is also an open position for a representative of Yampa on Planning Commission.

Ms. Winser reviewed the Master Plan update process. She said that there has been discussion of the adaptive re-use of existing structures. Ms. West said that adaptive re-use of structures as an alternative to building something new should be considered.

Mr. Prowant said that he would be willing to serve as Chair, and offered that the BOA should wait until there is full board in place before voting on the Vice-Chair.

Ms. Winser stated that she would be scheduling BOA training with representatives of DOLA, probably in early summer.

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