

ROUTT COUNTY BOARD OF ADJUSTMENT

FINAL MINUTES

NOVEMBER 5, 2018

The Routt County Board of Adjustment meeting was called to order at 6:00 p.m. with the following members present: Acting Chairman Tom Fox, Brian Fitzgerald, Thorne Clark, and Planning Commissioners (serving as alternates) Roberta Marshall, Geoff Petis and Brian Arel. Assistant Planning Director Kristy Winser and staff planners Chris Brookshire and Alan Goldich were also present. Sarah Katherman recorded the meeting and prepared the minutes.

PUBLIC COMMENT

There was no public comment.

Acting Chairman Fox disclosed that he and Nick Metzler, the applicant in the second item to be heard, are business partners. He said that he would recuse himself from hearing the Metzler request. Brian Fitzgerald offered to act as Chair for that item. The Board of Adjustment (BOA) agreed. Geoff Petis disclosed that he and Mr. Metzler are colleagues at Colorado Group Realty but that they had never discussed the variance request. He said that he felt that he could evaluate the petition without bias. Neither the BOA nor the applicant expressed concern with Mr. Petis hearing the item.

ACTIVITY: PL-18-173 (tabled from October 8, 2018)

PETITIONER: Mark Wellstone

REQUEST: Variance from the required setback for an existing barn

Required setbacks: 50 ft. from all property lines

Requested setbacks: 1 ft. from the east property line (for a variance of 49 ft.)
24 ft. from the south property line (for a variance of 26 ft.)

Mr. Wellstone stated that he had purchased the property, which consisted of two parcels, five years ago. Two of the three structures on the property (the house and the garage) were built in 1970. The barn, which was built across the property line between the two parcels, was constructed in 1978. Mr. Wellstone said that when he sold one of the two lots he had made an agreement with the purchaser (Mr. Kurowski) that the barn could remain until it fell down and that it wouldn't be rebuilt in the setback if it did fall down. He said he uses the barn for storage. He explained that when Mr. Kurowski applied for a building permit in 2017 he was told that the permit could not be issued until the barn was moved off the property. He said that only Mr. Kurowski was in communication with the Planning Department at that time. Mr. Wellstone stated that in order to get the barn off of Mr. Kurowski's lot, the barn was cut in half, and the remaining portion was moved such that it no longer encroached into Mr. Kurowski's property. The building

permit for the Kurowski property was then issued. In the process of moving the pole barn, the structure was compromised and cannot be moved any farther. It currently sits 1 ft. from the east property line and 24 ft. from the south property line. Mr. Wellstone stated that he received a letter from the Planning Department a few weeks after the barn was moved informing him that the barn was in violation of the required setbacks. After discussions with Mr. Goldich broke down, Assistant County Attorney Dan Weinheimer became involved to resolve the impasse. Mr. Wellstone stated that Mr. Weinheimer suggested that he ask the Board of County Commissioners for a reduction in the variance application fee as the \$1,000 fee was more than the barn was worth.

Mr. Wellstone said that his request is for a variance to allow him to leave the barn in its current location. He said that he would agree not to make any alterations or improvements to the structure and would not rebuild it in the setback if it were to fall down.

In response to a question from Mr. Arel, Mr. Wellstone indicated on a site plan the former and current location of the barn. He added that Mr. Kurowski wants the barn to remain where it is, as it provides some screening between his house and Mr. Wellstone's house. In response to a question from Mr. Fitzgerald, Mr. Wellstone stated that the barn was not moved outside of the required setback because the structure could not withstand being moved any farther.

Mr. Fitzgerald asked if Mr. Wellstone would accept a condition of approval to a variance that would not allow for any improvements to be made to the existing structure and that would not allow the barn to be rebuilt once it is gone. Mr. Wellstone said that he would be fine with that, and stated that any replacement structure would meet all setbacks and other requirements. In response to a question from Mr. Clark regarding the condition of the structure, he presented photos of the barn in its current condition and stated that internal braces had been added to the structure to allow for it to be moved and that the back wall was rebuilt where the barn had been cut in half, but that nothing else had been done to the structure.

Mr. Arel asked if Mr. Wellstone had been contacted by Planning Department staff when the barn was moved. Mr. Wellstone stated that Mr. Kurowski had submitted a photo of the barn demonstrating that it no longer encroached into his property, after which the building permit was issued. He said that Mr. Kurowski was not told that the barn needed to be moved outside of the 50 ft. setback, but rather only that it could not encroach into Mr. Kurowski's lot. He said that if they had known that the barn needed to be moved that far, they probably would not have made the effort to move it.

Mr. Arel asked about the meeting with the Board of County Commissioners. Mr. Wellstone stated that he had offered to pay \$100 in fees (instead of the \$1,000 usually charged) for the variance application, but that Commissioner Hermacinski

moved to waive the entire fee. The motion was approved and the meeting was over.

Mr. Clark asked if Mr. Wellstone had pulled a permit to alter the barn and move it. Mr. Wellstone said that they did not.

Mr. Goldich confirmed that Mr. Wellstone's account of the events leading up to the issuance of Mr. Kurowski's building permit was correct. He said that once the Planning Department was aware of the location of the barn within the required 50 ft. setback from the materials submitted in relation to the Kurowski building permit, staff sent a letter to Mr. Wellstone informing him of the violation. Mr. Goldich stated that the meeting with the Board of County Commissioners was a fee waiver request and did not concern the variance request.

Mr. Wellstone stated that the Board had asked for a full explanation of the situation. He complained about how the situation was handled by the Planning Department staff.

Mr. Goldich reviewed the application for two variances that would allow the barn to remain in its current location 1 foot from the east property line and 24 feet from the south property line. Mr. Goldich noted that the barn was constructed in 1978, after zoning had been adopted and property line setbacks were in place. He stated that for this reason, the variance request for the structure should be considered as if the structure were not there. He clarified that multiple times over the years the Board of County Commissioners have confirmed that this is how variance requests should be treated when structures were built in violation of the regulations that were in place at the time. Mr. Goldich said that no "sunset" provision for structures built after 1972 has ever been supported by the Board, because they do not want to encourage people to build in the setbacks and then ask for forgiveness for the violation after the structure has been in place for a certain number of years.

Mr. Fitzgerald asked for an official opinion stating the position of the Board of County Commissioners regarding existing structures. In response to a question from Mr. Fitzgerald, Mr. Goldich confirmed that if the variance request is denied, the applicant would be required to tear down or move the barn.

Ms. Marshall asked if the barn could be moved. Mr. Wellstone stated that the barn had been compromised when it was cut in half and moved to its current location, He said that he did not think the barn could withstand another move.

Mr. Arel said that the applicant should have been informed that the barn would need to be moved to a location outside of the required 50 ft. setback, and not just "off the property line."

Chairman Fox asked what the barn was sitting on. Mr. Wellstone described the barn structure, which does not have a foundation. He also described how the

move was accomplished and how the structure had been braced. He clarified that nothing had been added to the structure other than the bracing and the back wall. In response to a question from Chairman Fox, Mr. Goldich confirmed that the barn meets the definition of a structure and is required to meet the setbacks.

There was no public comment.

Mr. Goldich noted that the suggested findings of fact for criterion #1 and criterion #3 included in the staff report have been left blank. He stated that if the BOA decides to approve the variance request, the motion maker will need to provide findings that demonstrate how the request meets these two criteria.

Chairman Fox asked when the barn would need to be moved if the request is denied. Mr. Goldich stated that the standard condition that allows an approval to expire if the project is not acted up within one year” applies to proposed construction. He stated that there is no set amount of time that the structure would be allowed to remain in its current location.

Mr. Arel offered that there seems to have been a miscommunication regarding how far the barn needed to be moved. He suggested that Mr. Wellstone might have acted differently if he had known how far the barn would need to be moved.

Mr. Petis asked if the BOA’s decision could be appealed if the variance request were denied. Mr. Goldich stated that all appeals of BOA decisions go directly to the district court. If the request is denied and the barn is not moved or removed, Planning staff would initiate an enforcement action.

Ms. Marshall asked if there are other places on the property where the barn could be located. Mr. Goldich said that the terrain slopes gently, but that there are areas outside the setback that could accommodate the barn. He added, however, that he agrees with Mr. Wellstone that the barn might not be able to survive another attempt to move it.

Mr. Fitzgerald offered that the applicant would suffer a substantial hardship if the variance is denied, in that he would lose his storage area. He added that if the variance is approved, it could be conditioned such that the barn could not be rebuilt in its current location if it is destroyed or falls down, and that no new improvements to the barn would be allowed.

Mr. Petis stated that as unfortunate as it sometimes is for individuals that are not themselves at fault, the BOA’s job is to apply the five criteria. He stated that he did not think the application meets all five criteria, whether the structure is existing or not. He noted that the barn was built after regulations were in place, but that this was not the fault of the applicant. He expressed concern, however, regarding criterion #3, noting that the barn could be located elsewhere on the property. Mr. Petis offered that there is nothing in the statute regarding the BOA that gives it the ability to negotiate outside the five criteria.

Regarding criterion #1, Mr. Fitzgerald stated that having to tear down the barn would constitute an unreasonable hardship. He stated that this is an interpretation that the BOA is allowed to make. He acknowledged that criterion #3 was more difficult, given that there are other locations in which a new barn could be built. He stated that the barn exists in its current location, however, and cannot be moved. He stated that it was impossible to pretend that the barn does not exist when it does.

Regarding criterion #3, Chairman Fox noted that in 1978 some landowners were still building structures wherever they wanted, particularly agricultural structures. He offered that these particular circumstances do not occur generally in the MRE zone district. He said that he has never heard of a comparable situation. He said that he agrees that allowing people to defy the regulations and then wait 20 years in order to make the violation go away is not something that the County should encourage, but added that he could support the application if a condition were added that the barn must be removed within a certain period of time.

MOTION

Mr. Fitzgerald moved to grant the variance of 49 ft. (for a setback of 1 ft. from the east property line) and the variance of 26 ft. (for a setback of 24 ft. from the south property line) for an existing barn. 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 barn exists, all agree that it cannot be moved and it would be an unreasonable hardship to have to remove it.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the structure was built on the property line by a previous landowner in 1978.
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 property includes that barn. The fact that the barn exists and was built across a property line is a circumstance that does not generally occur 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 approval is subject to the following conditions:

1. The building shall comply with all applicable requirements of the Routt County Building Department.
2. This approval is specific to the dimensions of the existing structure that is detailed in the project description. Any change in footprint, size, height or site location that increases the level on non-conformance will be subject to a new application. This approval is for the existing structure as it stands. The existing barn shall not be enlarged or improved, and if it falls down or is destroyed, it may not be rebuilt in its current location.
3. The appellant shall have the existing barn inspected by a structural engineer to ensure that it is structurally sound. Proof of this inspection shall be submitted to the Planning Department.

Mr. Arel seconded the motion.

Discussion and Friendly Amendments

Ms. Marshall noted that the property is only 1.67 acres in size in the MRE zone district which has a 5-acre minimum lot size. The 50 ft. setback, therefore, generally applies to parcels of at least 5 acres. She added that when the barn was built and subsequently until Mr. Wellstone sold one of the lots, both lots had been owned by one person.

Mr. Goldich explained that Steamboat Hills was platted in 1969. When zoning was adopted in 1972, MRE zoning with a 5-acre minimum lot size was applied because it was the zone district that fit best for the existing lots. Ms. Marshall stated that she was struggling with criterion #1 because if the structure did not already exist it would not be difficult to place it in a different location on the lot.

Mr. Petis said that if it were up to him alone, he would not have a problem with leaving the barn where it is, but added that the BOA is bound by the law. He said he could not identify a significant hardship if the regulations were strictly enforced. Mr. Wellstone stated that the barn is not empty, and it would be a hardship to lose the use of the structure.

Noting the compromised condition of the structure, Chairman Fox proposed a friendly amendment that would require the applicant to have the barn inspected by an engineer to ensure that it is structurally sound. This amendment was accepted, as indicated above.

Mr. Fox cited the recent relocation of the Arnold barn, and said that there is likely a way for this structure to be moved.

Hearing no further discussion, Chairman Fox called for a vote.

The motion carried 4 - 2, with the Chair voting yes.

In explanation of his dissenting vote, Mr. Petis stated that the application cannot meet criterion #1 or #3, adding that the barn could be located elsewhere on the property. Mr. Clark stated that he voted no for the same reason, and added that it was the responsibility of those moving the barn to move it where it needed to go to meet the regulations.

Mr. Fox left the meeting.

ACTIVITY: PL-18-174 (tabled from October 8, 2018)

PETITIONER: Nick Metzler

REQUEST: Variance from the required setbacks to enclose a deck to combine two buildings to bring a legal non-conforming structure into conformance

Required setbacks: 50 ft. from all property lines

**Requested setbacks: 14.7 ft. from the north property line (for a variance of 35.3 ft.)
42.92 ft. from the north property line (for a variance of 7.08 ft.)**

LOCATION: 41300 CR 36, Steamboat Springs, CO

Tr. In N2SW4NE4SW4 Section 33, T6N, R84W - 3.5 acres

Mr. Metzler reviewed the variance request, described the property and presented a site plan. He pointed out the existing structures, including a small hay meadow, the drainages and the areas vegetated with large cottonwoods. Mr. Metzler said that he had had the buildings inspected by an engineer, who confirmed that structures are all sound and very well-built. He said that he is proposing to connect the existing buildings to make one single family home that would accommodate their family. He described the variance request that would enable them to connect two of the buildings. Mr. Metzler stated that the second variance request would bring the existing legal, non-conforming structure into conformance so that if it were to burn down, it could be rebuilt in its current location.

Mr. Metzler said that he had discussed the proposal with all four of the surrounding neighbors, all of whom were supportive of the concept. He stated that there would be no way to connect the buildings without encroaching into the 50 ft. setback. He said that if the buildings cannot be repurposed, the only alternative would be to construct a new home in the hay meadow, which would be very visible to the neighbors. The existing buildings would then have to be removed or left in their current location and abandoned.

Mr. Metzler presented elevation sketches of the proposed combined structure. He stated that the neighbors will not be able to see the house. He said that the connection between the buildings would house a stairwell, and would be no higher than the existing buildings. The two buildings are currently connected by a

deck, and the combined structure will not exceed the existing footprint. Some dormers will be added to allow more light. Mr. Metzler said that some minor aesthetic variations from the drawings may be made, but the height and footprint will be as presented.

Ms. Brookshire stated that the request is exactly the same as it was originally presented at the last hearing. She said that the BOA had requested elevations and plans, as any variance would be specific to the plans presented, as required by Section 3.4.6.D of the regulations. Ms. Brookshire said that the BOA needs to determine if the request meets the five criteria and if the sketches presented are adequate.

In response to a question from Mr. Arel about how close the final plans would be to the sketches, Mr. Metzler added that the architect and an engineer had visited the site and have stated that they would be able to construct the building as presented in the sketches. Ms. Brookshire stated that minor aesthetic changes could be approved administratively.

Mr. Petis stated that he felt the staff had accurately applied the five criteria in the comments included in the staff report.

There was no public comment.

MOTION

Mr. Arel moved to grant a variance of 35.29 ft. from the required 50 ft. setback for a setback of 14.71 ft. from the north property line to bring an existing legal non-conforming building into conformance, and a variance of 7.08 ft. for a 42.92 ft. setback from the north property line for the enclosed deck, 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 only way to connect the two structures is with the application of a variance.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present nonconformity was created in the early to mid 1970s.
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 existing structures located on the site.
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. 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. Due to the future change of the west side of the structure and that draft sketch plans are part of the approval, this variance is specific to the applicant and cannot be transferred to a new owner. Minor variations that do not increase the level of non-conformance can be approved administratively, without notice.
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 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.
9. This building shall not be used as a single-family dwelling until all current zoning regulations are met.

Mr. Clark seconded the motion.

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

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