

**ROUTT COUNTY BOARD OF ADJUSTMENT  
FINAL MINUTES**

**April 10, 2023**

The Routt County Board of Adjustment meeting was called to order at 6:00 p.m. with the following members participating: Chairman Don Prowant, Brian Fitzgerald, Jerry Albers, and Lyle Krug. Planning Director Kristy Winser and staff planner Michael Fitz were also present. Sarah Katherman prepared the minutes.

**PUBLIC COMMENT**

There was no public comment.

**MINUTES - September 12, 2022**

Mr. Fitzgerald moved to approve the minutes of the above cited Board of Adjustment hearing, as written. Mr. Albers seconded the motion. **The motion carried 4 - 0, with the Chair voting yes.**

**ACTIVITY:** PL20220105

**APPELLANT:** Kent Werner

**REQUEST:** Request for a variance from the required property line setback for an existing garage

**Required setbacks :** 5 ft. from front and back property lines  
(adjusted from 15 ft. by Planning Director)

**Requested setback :** 0 ft. from north (front) property line for a variance of 5 ft.

**Requested setback :** 0 ft. from south (rear) property line for a variance of 5 ft.

**LOCATION:** 21455 2<sup>nd</sup> Ave., located on the southwest corner of 2<sup>nd</sup> Ave. and Mud Alley in Milner

Mr. Kent Werner reviewed his petition for a zero setback from the front and back property lines for his garage. He said that this will not have any effect on his neighbors, as the existing conditions have been as they are for the past 15 years without problems. He said that he is just trying to bring the existing situation into conformance. Mr. Werner stated that a prior owner of the property had built the garage about 5 ft. over the property line in the front. In the back, the porch overhang also extends over the property line slightly. Mr. Werner said that these conditions were in existence when he purchased the property, and that it is his understanding that the previous owner reached out to the neighboring property owners and they did not have any concerns. He said that he intends to remove part of the garage to bring the front of it back to the property line, which is more than 20 ft. back from the existing dirt road.

Mr. Fitz reviewed the history of the property. He said that the existing home, which was built in 1986, was granted a variance to allow 5 ft. setbacks from the front and back property lines, but that the home had been improperly sited toward

the north (front). He stated that the home received a certificate of occupancy, so it is deemed legal non-conforming, regardless of its placement. The garage and additions were built sometime subsequently without permits. These illegally constructed additions were only discovered during the sale of the property to the current owner. Mr. Fitz noted that the reduction of the required setbacks from 15 ft. to 5 ft. had been administratively approved by the Planning Director, which is allowed in Milner, Phippsburg and Hahn's Peak Village when similar to the surrounding properties. He stated that this property is similar to the surrounding properties. Mr. Fitz stated that the applicant is requesting a variance to allow a zero setback that would allow him to keep as much of the existing garage as possible. The County requires that none of the structures may extend into the County right of way. He said that building permits would be issued retroactively for the existing structures. Mr. Fitz indicated on a site plan the portion of the garage and the porch that would be removed. He presented photos of the site.

In response to a question from Mr. Fitzgerald, Ms. Winser explained that proposed condition of approval #5, requiring downcast and shielded lighting, is a standard condition based on the County's Zoning Regulations.

Mr. Fitz reviewed the criteria for approval of a variance and the proposed conditions of approval.

In response to a question from Mr. Krug, Mr. Fitz reviewed the site plan and stated that the property is in conformance with the parking requirements. He stated that all adjacent property owners had been notified of the variance request. No comments have been submitted.

Mr. Werner indicated the vehicle entry on a site plan. He said that in addition to using the garage for cars and storage, the structure contains a workshop. He said that if he is required to remove more than 5 ft. of the garage it will render the workshop unusable and increase the cost of the work. Mr. Fitz presented photos of the structure and indicated its supports.

There were no further questions for the applicant.

There was no public comment.

Mr. Prowant stated that because there are only four Board members present, the vote must unanimous for approval. The applicant has the option to request a tabling at any time to a date when a full board can be present.

Mr. Prowant asked if the Board would approve this variance if the garage were not already there. Mr. Fitzgerald stated that he has never been able to identify any statute or regulation that requires the Board of Adjustment to act as if an existing structure were not there. He offered that it is remarkable that the applicant is voluntarily removing portions of the existing structures. Ms. Winser stated that there is a difference between a non-conforming situation that was

created by the applicant and one that was created due to no fault of the applicant. She noted that staff is recommending approval based on the historical setbacks in the area. She added that she did sign off on the reduction of the setback to 5 ft., but that is all that she could do administratively. The applicant has agreed to remove the portion of the structure that is in the County right of way.

Mr. Albers (?) asked how far the garage extends into the street beyond other structures in the neighborhood. Mr. Fitz said that it is not very noticeable and added that the paved road is not centered in the right of way. He presented an aerial view of the neighborhood.

### **MOTION**

Mr. Fitzgerald moved to approve the requested variances 5 ft. from the adjusted front and back property line setbacks for an existing garage. 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 property owner will not be able to fit a garage of reasonable size onto the property. Given the size, orientation, and configuration of the lot, it would be difficult to locate the existing uses and improvements. The applicant has agreed to reduce the structures to remove any encroachment into the County right of way.
2. Circumstances creating the hardship were created subsequently through no fault of the appellant because the present property configuration/orientation was in existence prior to the adoption of the Routt County Zoning Regulations. The MDR zoning was also put in place prior to the current owner taking possession 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 the unusual broad-sided access from Second Street, which results in an exceptionally wide front/rear yard and a very shallow building envelope. The vacation of Oak Street along the western boundary also prohibited accessing this property from its originally-intended western frontage, forcing access to be taken from the broad side from Second Street.
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. There is historical precedent for zero lot lines in Milner and other small communities.

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. This variance approval is valid for 1 year. If all necessary building and demolition permits are not obtained within this timeframe, this variance shall be subject to another review with full submittal. A 12-month extension may be approved administratively without notice. This approval timeline does not modify any required code enforcement deadlines for submission of any necessary building or demolition permits, which may be sooner than 1 year from this approval.
2. 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.
3. Prior to Planning signing a full Certificate of Occupancy or Certificate of Approval, a certified survey of the location of the garage must be submitted.
4. Best Management Practices (BMP's) shall be utilized during construction to prevent erosion and drainage flow onto adjacent properties.
5. All exterior lighting will be downcast and opaquely shielded.

Mr. Albers seconded the motion.

Under discussion, Mr. Albers added to finding of fact #4 that there is historical precedent for zero setback lot lines in Milner and other small communities. This amendment was accepted, as indicated above.

**The motion carried unanimously.**

There was discussion of the historical building patterns in Milner, Hahn's Peak Village, and Phippsburg that have created the need for many variances. Ms. Winser said that there have been agreements to allow existing structures built within County rights of way on unconstructed road to remain unless the road is ever needed. She said that Road and Bridge is working on formalizing a process to handle such situations. Mr. Fitz reviewed the history of Milner's zoning.

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

Ms. Winser reviewed the status of the Zoning and Subdivision Regulation update process. She said that the criteria of Board of Adjustment approvals will be evaluated and some of the language that has historically caused difficulties may be rewritten and clarified. She added that the zone districts and their setbacks will also be evaluated. Ms. Winser stated that on Thursday, April 27 there would be a joint meeting of the Board of County Commissioners, Planning Commission with

the consultants (Design Workshop) on the project. She invited the Board of Adjustment to attend. She said that in addition to this meeting there will be a separate discussion to discuss items specific to the Board of Adjustment. Ms. Winser noted that one of the issues to be considered is the reuse of historical structures.

### **Election of Officers**

#### **MOTION**

Mr. Albers moved to elect Don Prowant as Chair and Brian Fitzgerald as Vice-Chair. Mr. Krug seconded the motion. **The motion carried unanimously.**

**The meeting was adjourned at 7:05 p.m.**