

Joint Meeting of the Planning Commission, Board of County Commissioner and Board of Zoning Adjustment

April 5, 2011
Custer County Courthouse
Westcliffe, Colorado

Present:

Board of County Commissioners: Lynn Attebery Chairman, Jim Austin Vice Chairman and
Allen Butler Commissioner
Planning Commission: Vic Barnes, Keith Hood, Sherry Rorick ,Bill Donley and Paul
Buckles
Board of Zoning Adjustment: Skip Northcross and Ken Patterson
Associate Members: Dale Mullen, Dorothy Nepa and Ken Lankford
Absent: Pat Bailey, Rod Coker, Cindy Howard, Brad Stam, Lockett
Pitman, Dave Tonsing, Dee Hoag and Gerry Dearborn
County Attorney John Naylor
Staff: Jackie Hobby

The meeting was called to order at 1:04 P.M. by SKIP NORTHCROSS Chairman of the Board of Zoning Adjustment.

Pledge of allegiance recited;

NORTHCROSS: Explained the purpose of both the BZA and the PC to the applicant and the audience and then pointed out the members of each board and the associates. He went over the procedure for the meeting. We need to replace three absent members of the BZA with Associate Members. LEN LANKFORD, DALE MULLEN and DOROTHY NEPA replaced DAVE TONSING, DEE HOAG and GERRY DEARBORN

NORTHCROSS: We need to approve or amend the February 21, and March 1, 2011 minutes.

PATTERSON: I make a motion that we approve the February 21, and March 1, 2011 minutes as distributed.

MULLEN: Seconded the motion.

Motion passed unanimously.

NORTHCROSS: JACKIE, would you please give us the Zoning office report.

HOBBY: In the month of March we did 9 septic inspections, 7 compliance inspections and 3 special conferences. We are up in zoning permits over this time last year. We had 3 septic permits last March and we had 9 septic permits, this March there were 20 zoning permits total for last year and we have 28 so far this year.

NORTHCROSS: The agenda item is a setback variance for RANDY C. and JAN L. LAWSON The legal description for the property is 3.96 acres on the west side of County Road 295 Wetmore Colorado. The applicant states" *that there is a steep drop off on the west side*" History of the property Mr. Lawson obtained a subdivision waiver for this property with the BOCC. Is the applicant present?

LAWSON: Yes, Sir.

NORTHCROSS: JACKIE were the adjoining property owners notified?

HOBBY: Yes, 4 adjoining property owners were notified with no responses.

NORTHCROSS: MR. LAWSON anything that you would like to add to your application?

LAWSON: No. We had an engineer come out and look at the degree of the drop off concerning the foundation request for the variance it is mainly for a porch on the front of the home. Maybe we won't be that close but this is a precautionary measure.

NORTHCROSS: So to make it clear you are planning to build on the property?

LAWSON: Yes

NORTHCROSS: JACKIE please repeat the questions from the site tour.

HOBBY: At the property MR. LAWSON had staked out his proposed house on the lot. His property shape on the north side looks like an H pattern and one of the questions was if he would be too close to the north side and would a variance for that side be needed. The answer to that question was No. The property line does not come inward until you are over the drop off. MR. LAWSON would like to move forward on building his house. He could do some research and see if his property line would go to the center of the county road. Which would mean that he would not need a variance. He does not want to spend time to research this issue now so that he can build quicker.

NORTHCROSS: Are there any questions from the Board?

MULLEN: I understand the lot, I was on the site tour. What I don't see is what you are building. You asked for a 30' variance but I have no clue what you plan to do with the land.

LAWSON: The Zoning office has a document of the floor plan.

HOBBY: Passed document around for the BZA to look at.

MULLEN: The only issue is the 30' setback on the east side of this property for the house.

HOBBY: Yes.

NEPA: I am uncomfortable with this; I believe there should be a site plan on this property.

PATTERSON: Would you be uncomfortable with building in that bottom below the drop off?

LAWSON: Yes

PATTERSON: Would you tell us why?

LAWSON: Because some day there will be more water than we are used to seeing come down the gulch.

NORTHCROSS: Any more questions?

No response.

MULLEN: I move that we approve the 30' variance as requested.

PATTERSON: Seconded the motion

NORTHCROSS: All in favor raise your hand, 4 in favor

NORTHCROSS: All opposed same sign, 1 against

MOTION: To Grant a 30' variance to the east setback passed.

REASONS:

LANKFORD: Yes, I was at the site tour and it is the only logical place to build if you look at neighbor's property they are all in the same distance from the road. If the applicant did some research on this he might not need a variance.

PATTERSON: Yes, the small window that he has to build on his ground and also the flood issue that is down below on the land.

MULLEN: Yes, I was on the site tour and the road cut his land and created a small parcel. This is a common sense solution and does not harm anyone.

NORTHCROSS: Yes, it is the only place to build and it seems like he has taken the time to look into it and taken advantage of what he had in land use. I was on the site tour and this is the right way to go.

NEPA: I voted No, only because of lack the of a proper site plan and could create problems in the future when the property is sold.

LAWSON: Thank you.

NORTHCROSS: Do I have a motion to adjourn?

PATTERSON: Motion to adjourn.

LANKFORD: Seconded the motion.

Meeting adjourned at 1:24 P.M.

The meeting was called to order at 1:25 P.M. VIC BARNES chairman to the Planning Commission.

COMMISSIONER ATTEBERY: Made a motion that we reconvene the Board of County Commissioners.

AUSTIN: Seconded the motion

Motion passed unanimously

BARNES: We will need to approve or amend the February 21, 2011 minutes .

MULLEN: Made a motion to approve the February 21, 2011 minutes

DONLEY: Seconded the motion.

BARNES: Motion passed unanimously

BARNES: We will need to replace some Board members.

NEPA: I would like to recues myself from the second agenda item for personal reasons.

BARNES: So, do you want to remain as an associate member for the first agenda item.

NEPA: Yes

BARNES: KEN LANKFORD and DALE MULLEN will replace PAT BAILEY and ROD COKER.

BARNES: We have two agenda items and the first agenda item is for a Subdivision Waiver for TWYLA PETERSEN, NATHANIEL BROWN, TIMOTHY BROWN and BENJAMIN BROWN. Located at 1863 county road 389 Wetmore Colorado. The applicant's statement reads "*The family of Edna Branstine wishes to divide the estate consisting of 45.6 acres at 26365 Highway 96, Wetmore Colorado into separate parcels. One parcel being 35.19 acre, the other parcel including the existing house into 10.41 acres. As allow by the Custer County 2002 Zoning Resolution 7.2 Zone III Wet Mountain and Hardscrabble District with minimum lot area of ten (10) acres.*"

BARNES: Is the representative present and do we have a letter of representation in the file?

HOBBY: Yes, COY MYERS will represent the applicants and we have the authorization in the file.

COY MEYERS: I will be representing the PETERSEN and BROWN family.

BARNES: MS HOBBY, were adjoining property owners notified?

BARNES: We received a response, from Division II and I believe that you have a copy of that. In the response they state that the existing well is not registered and will be using the Hull Spring to provide water to the trailer on the other parcel?

MYERS: The only response that we have for our existing well is what JACKIE handed us today. The well had been filed on for the entire property. If the Subdivision Waiver is approved then we would have to re-file the well permit, stating that it is only a ten acre parcel.

HOBBY: Your registration for the well is on the whole parcel?

MYERS: Yes, that is the existing condition and that is what the state is recognizing. So we are just trying to get the well recognized. We have not finalized that. We will need to see what they say.

BARNES: Any further questions?

MULLEN: I would like to clarify what I just heard about the water issue. DWR has no record of well activity on this parcel and yet you are saying you have an intention to do this or, are you saying the actually have a well request with the state for this property?

HOBBY: No, JANET GAROUTTE is stating in her report that they have no record of them filing a request.

MULLEN: There is a gap from what I am reading and what I am hearing.

BUCKLES: COY, is the anticipation that you would file with the state for the well once the ten acre parcel is established?

MYERS: Yes, I believe that would be the case. The application is in the state engineer's office. This well has existed since 1912.

HOBBY: When you sent Division II the paper work on the well, did you ask for the whole parcel or just the ten acre piece?

MYERS: The date of the application was signed on February 28, and submitted to the Denver office.

BARNES: You understand if a waiver is granted the original well would need to be re-submitted.

MYERS: Yes, it will be re-submitted.

BARNES: This would have to be an in-house well.

COY: Twenty five percent of the water rights would be retained with the ten acres for irrigation purposes. My perspective is that the property owners would have rights to the spring for irrigation and an in-house use only well.

BARNES: Any questions from the Planning Commission?

NEPA: I know at one time that we would not allow this trailer in Custer County because of the age?

NAYLOR: That is correct; you cannot bring a trailer in Custer County that is manufactured before 1977. If they were already here they are grandfathered in.

NEPA: If use changes with this trailer does that affect this?

HOBBY: August 12, 1977 they received a variance from the Board of Zoning Adjustment to allow a second dwelling on this property and the trailer would need to be removed in one year after MRS. BRANSTINES death.

BUCKLES: That 1977 date is that because of the wiring.

HOBBY: Yes, I believe so.

NEPA: Can that be a condition, that it needs to be re-inspected again.

NAYLOR: I would say no, it was inspected and met the conditions at that time.

HOBBY: We are not concerned about the septic or the permits for the trailer.

BUCKLES: Can we supersede what the Board of Zoning Adjustment did with the deadline for removal of the trailer one year after the owners passing? If we allow approval of the Subdivision Waiver then that would be void. Do we have the power to do that?

NAYLOR: Yes, because that takes it away. Your action takes away their requirement. It does not make sense to me to tell someone you got to take it down then apply for it and put it back up.

BARNES: Doe's the County Commissioners have any questions?

No response

DONLEY: Is there someplace in writing where you state how the Hull spring will be divided?

MYERS: There is an existing pipe that would be relocated and place an easement across for it at a later date.

DONLEY: I am not worried about the access for the water, I worried about the amount of water that is going to go to each location and that be in writing.

MYERS: This point I am not sure about the water rights to the spring would be in writing. If the waiver is approved we would distribute the water rights along with the property.

DONLEY: So a quarter would go to the ten acres and the remainder to the 35 acre parcel?

MYERS: Yes, that would be up to them.

DONLEY: So that is none of our business.

NAYLOR: Right

BARNES: Any questions from the audience?

No response

MULLEN: I am struggling with BILL'S response. We are struggling whether to approve a subdivision waiver. There would need to be water on both sides of this property division. Are there no guidelines, if the state doesn't care we don't care. The water needs to sort itself out? It seems you would sort the water out before you come before us.

HOOD: We are addressing the existing well and as far as irrigation water goes they will need to sort that out. When he was talking about the spring, unless the spring is adjudicated, we don't have anything to do with the spring.

BARNES: Another thing with the spring you do not entirely own all that spring is that correct? Lone Pines has rights to that spring also.

TWYLA PETERSEN: I am EDNA's oldest granddaughter. The well was adjudicated in the 60's and there are three parties that own the water. The Lone Pine has approximately five percent of the flow the other was a Hurly which is Mr. West now, and has a four percent flow. We have the remaining ninety one percent.

BARNES: Thank you

MYERS: The well on the ten acres is a county concern the well on the thirty five acres is controlled by the state. At this point we file on the existing well located on the ten acres so that they can have a legal water right, and get this well registered.

BARNES: This subdivision waiver is an exception to our Zoning Regulations and it should not be taken for granted. We try to minimize density and I understand that this is in Wetmore. We do not have a minor subdivision waiver at this point in time. If this Subdivision Waiver were granted I would not want the owners to go under the presumption that the remaining acres could be parceled out in three ten acre parcels with the same process. They would probably be required to do a full subdivision process.

BARNES: Planning Commission, any questions.

MULLEN: This is not a simple lot 1, lot 2 subdivide. We heard there are a number of issues that need to be correct. We have two dwellings on lot 1.

BARNES: Yes, they need to come into compliance and we can place conditions upon this prior to approval. One of them is the two residences on one lot, and another is to transfer of title.

MS. PETERSEN as I understand it, will own the ten acre parcel. The BROWN family would own the other thirty five acres.

MYERS: Yes, if it's approved, upon filing paper work one of the conditions would be that they would need to quick claim deed to the description of the plat.

BUCKLES: Question for JACKIE is there any time line for this on the permits?

HOBBY: My only concern is that they will need to apply for the well on the ten acre parcel.

MYERS: Yes, we will fill out a new application.

HOBBY: The plat will need to reflect the water on it.

BARNES: Planning Commission, questions?

MULLEN: The trailer was a live action by the Board of Zoning Adjustment to remove by the 28th of May. If we approve this subdivide that will negate that action. I believe I heard the Attorney say that regardless they can continue to live there minus any codes and is not an issue in our decision.

HOBBY: As a whole parcel as it stands now, the trailer will need to be removed. Then they have a violation of another dwelling, so the kitchen stove would need to be removed out of it and permitted as a bunkhouse. If this action is approved, then the trailer could stay, as it would be the only dwelling on that parcel.

BUCKLES: Made a motion to table this issue.

MULLEN: Seconded the motion

PETERSEN: The structure with the stove has been removed.

HOBBY: I have not inspected it.

BUTLER: COY is the one that said there was a stove in it and said that they would remove the stove.

BARNES: All in favor of the motion please raise your hand.

Two in favor

BARNES: All opposed

BARNES: Motion did not pass

DONLEY: Can we put conditions on our recommendations to the Commissioners?

BARNES: Yes.

DONLEY: I make a motion that we recommend to the County Commissioners that we approve this with conditions.

DONLEY: I have a list,

1. Eliminate the second dwelling on Lot 1 (removal of Kitchen stove)
2. Comply with Division of Water Resources current regulations policy 2011-1 concerning requirements for well permits.
3. Well information and description of lots 1 and 2 must be on final plat.
4. Documentation of Hull Spring submitted to the Planning and Zoning Office.
5. Copy of the approved well permit must be submitted to the Planning and Zoning Office.
6. All conditions must be complied with in one year from date of action.

RORICK: Seconded the motion.

BARNES: Any discussion?

BARNES: All in favor please raise your hands.

All voted yes.

BARNES: All against please raise your hands.

No response

REASONS

RORICK: Yes, I was on the site tour and a few things that needed to be taken care. We have addressed them with our conditions. Also, I will need to leave I have another appointment.

BUCKLES: Yes, I was on the site tour. I wasn't opposed to the subdivision waiver. I reluctantly voted in favor with all the conditions with respect to my colleague BILL DONLEY.

MULLEN: Yes, I was on the site tour. I left the site tour opposed to the subdivision waiver but, with the conditions that were placed on this, I voted in favor.

LANKFORD: Yes, with the exact same reasons as stated. I was on the site tour and the only issues we have or covered with the conditions.

HOOD: Yes, I think with the conditions in place.

DONLEY: Yes, for all the reasons stated.

BARNES: Yes, I was on the site tour also. I believe that the condition take care of it and is a common sense approach to this problem.

BARNES: Our recommendation will now go to the County Commissioners.

BUTLER: I move that we accept the recommendation of the Planning Commission.

AUSTIN: Seconded the Motion.

ATTEBERY: Any discussion.

AUSTIN: Would we better off not to quote a statute, in case it changes in some time.

NAYLOR: We are not quoting a statute, we are quoting a particular regulation and we want to make that regulation applicable regardless if it changes. We can do that.

ATTEBERY: Any other discussion?

No response

All in Favor say I

MOTION Passed

REASONS

BUTLER: My first subdivision waiver was very confusing; we boiled it down to some conditions. Water keeps coming up; we don't have a lot to say about water. The wells situation and augmentation of this is where I believe that District II is going to tighten up on the water. I believe you did a good job. I voted for it and with the conditions in place they will take care of it.

AUSTIN: I like the process, and I second on the reasons. Some of these issues, you don't know if there are issues when it comes to water. A lot of this stuff we do not have control over this needs to be in a discussion. I second your reasons and you did a good job.

ATTEBERY: I went along with the recommendation of the Planning Commission. It is a land use issue and the density comes to mind, water issues and the applicant has to apply for the well. For the most part the Planning Commission did a good job. That is the end of my reasons; I would like to make another comment. If you are giving reasons and the County was ever in a law suit over these things, it would be better if everyone would not say I agree with so and so.

BARNES: Thank you for your application and patience.

MYERS: I am concerned that this application may be postponed up to a year. Would the trailer house be in violation?

ATTEBERY: No, you are fine.

BARNES: We need to seat another member and KEN PATTERSON, a seated member of the Board of Zoning Adjustment, is in the audience. Would you please come up and replace SHERRY RORICK.

BARNES: We have another agenda item for a Subdivision waiver for ALLAN MILBERGER at 50380 Hwy 69 I will read the applicants statement. " *Break out 5 acre plot to place addl. Home and well and septic. Same owner.*

BARNES: Have adjoining property owners been notified?

HOBBY: Yes, three adjoining property owners were notified with one response in favor. There were two interested parties and one of the interested parties was Division II water.

BARNES: Mr. MILBERGER will you please come up to the podium.

MILBERGER: I am ALLAN MILBERGER the applicant for the variance. Our purpose for the request is that presently we have a three story house and I have ms and it is progressing rapidly right now. It is getting harder to maneuver through the house. We own forty plus acres. We would like to break out a five acre parcel and we would sell it as a combined unit and it can't be separated out. The place we picked out is on the property line to make it easier to access from the road that exists. It also gives us an ultimate view of the valley. This will probably be the last house I build. We have family members that live here and they will occupy the house that we live in and take care of us.

BARNES: Planning Commission any comments?

BUCKLES: MR. NAYLOR, is the method described to be a separate property to make it bundle with the other property? Is that a possibility and is that legally done?

HOBBY: No, it would actually be two parcels.

MILBERGER: We would do whatever needed to be done so that it could not be sold separately.

BUCKLES: We would be creating them as separate properties.

MILBERGER: Yes

BUCKLES: There is no way you can say that.

MILBERGER: My understanding is that if the deed reflected that then they could not be sold individually.

NAYLOR: We have in the past had applicants that describe another parcel but it is still part of the whole parcel. What that would do with the water wells with the new regulations, I have no idea. I am getting the impression with what I have read that you may end up with two in-house only use wells.

MILBERGER: It applies to the regulations that are already in place. That piece of property even after we take out the five acre piece will still be thirty five acre plus parcel.

HOBBY: When you applied for the original well, you applied to the state on the whole parcel so you would need to re-apply to the state for the domestic well and the well on the five acre parcel. The way we are reading the information, we concur that they might just give you two in-house use only wells for your property.

MILBERGER: That gives me some problems that you are now dictating how I will live.

NAYLOR: Welcome to the real world.

HOBBY: This is coming from the state.

MILBERGER: Yes, I understand.

BUTLER: I want to bring this water thing up, it's changed. We do not control it Division II. It is not like it was.

HOBBY: When we got the water report on page 3, when you applied for the original domestic well you applied using the whole 43.33 acres. Now that you are splitting off five acres you will need to contact the Division II about the well.

BARNES: When MR. NAYLOR and I looked at this, we believe you would end up with two in-house use only wells. If we grant this sub-division waiver the domestic well would need to be re-submitted and it would become an in-house use only well. Is that correct JOHN?

NAYLOR: Yes, you are right. We are not regulating this but if we grant this, there could be some serious situations with your water. If you are more comfortable to go to Division II and speak with them. We believe we are reading it right. Then you make the decision and we could continue this application.

BARNES: Is that your desire to continue this at a later date?

MILBERGER: Yes, we will find out with the state.

HOOD; The way I am reading, it there is a possibility that they might not be granted the second well permit. All wells are deemed to cause injury if they are not at least on thirty five acres.

DONLEY: There are other avenues to pursue like build an addition on your present home.

Single level or breezeway not more than 90' long, and connect the two homes.

MULLEN; I was on the site tour and the applicant stated that it was a privacy issue. This really gets down to it's a water issue. They can come back to us.

DONLEY: I move that we table this for not more than ninety days.

BUCKLES: Seconded the motion

BARNES: Any discussion?

No response

All in favor motion passed unanimously

ATTEBERY: I make a motion that we accept the recommendation of the Planning Commission to table this for not more than ninety days.

BUTLER: Seconded the motion.

All in favor, unanimously

ATTEBERY: Because of the time frame I need to reconvene the Board of County Commissioner meeting in the other room.

BARNES: We have a final draft of subdivision regulations. We will go over them and send them out to you all and the Commissioners and County Attorney. The Planning Commission will be adjourned.

Adjourned at 3:14 P.M.