

# Meeting of the Board of Zoning Adjustment

February 24, 2015  
Custer County Courthouse  
Westcliffe, Colorado

## **Present:**

Board of Zoning Adjustment: Ken Patterson, Ken Lankford, Lockett Pitman  
and Dorothy Nepa

Absent: Jean Canterbury

Associate Member: Dale Mullen and Lance Ingram

Absent: Mike Shields

Staff: Jackie Hobby, Chuck Ippolito

The meeting was called to order at 1:04 P.M. by JACKIE HOBBY, Custer County Planning and Zoning Office Director/ Code Enforcement.

Pledge of allegiance recited:

HOBBY: Acting as Chairperson to conduct election of officers. We have two people that are interested in the Chairman and Vice Chairman position, KEN PATTERSON for Chairperson and KEN LANKFORD for Vice-Chairperson. Are there any other members interested in these positions?

Hearing none

All in favor? All opposed?

Motion passed unanimously.

PATTERSON: Moved to the chairpersons' seat to continue the meeting.

PATTERSON: We need to elect a secretary and an official posting place. The posting place has always been the Custer County Courthouse bulletin board. JACKIE would be the official secretary. We no longer do the public notice.

HOBBY: We will remove that from our Zoning Resolution when we amend them.

PATTERSON: I need a motion for the Posting place and the Secretary.

NEPA: I make a motion that we post on the board at the Courthouse and JACKIE is our secretary.

LANKFORD: Seconded the motion

PATTERSON: All in favor? All opposed?

Motion passed unanimously.

PATTERSON: We will need to replace a seated member with an Associate Member.

IPPOLITO: Chose a name from the hat and LANCE INGRAM will replace the seated member.

HOBBY: Introduced the new Associate Members to the boards LANCE INGRAM and MIKE SHIELDS.

PATTERSON: Are there any corrections or additions to the minutes from our last meeting?  
Hearing none the September 2, 2014 minutes are approved.

PATTERSON: We have BLACK HILLS ENERGY present and if you would like to add to their statement at this time.

COCHRAN: My name is CRISTIN COCHRAN. I am the contract agent for Black Hills Energy. I am here today on behalf of Black Hills Energy which is one of the local utility providers. With me today is my boss MARK EVEN who is the Manager of Electrical Engineering, LARRY GRAMMON Electric Operations Manager. Black Hills is the second largest shareholder in public utilities in Colorado. We operate with a certificate of public convenience and necessity issued by the Colorado State Public Utilities. We provide electrical service to about sixteen hundred electrical customers in Custer County. We are here to request your approval for an undersized lot. With the information that JACKIE has given you we seek to acquire four acres out of an eighteen acre lot, along with another adjacent lot owned by the HUDSONS. This area is zoned for a minimum of five acre lots, BLACK HILLS four acre parcel will be used for the development of an Electrical Distribution Sub-Station. The Sub-Station yard itself will be about fifty feet by one hundred and twenty feet or one seventh of an acre. The balance of the land will be a buffer to preserve vegetation and views. On February 3, 2015 we received approval from the Planning Commission and the Board of County Commissioners for a Special Use Permit. Over the last few years we have worked with local land owners and the county to come up with a good site for the Electrical Distribution Sub-Station. The site that has been selected has good access of Oak Creek Grade which is south of intersection Silver Circle. This site is very close to the existing overhead transmission line. This site is zoned a minimum of five acre lots. Which makes sense in a residential context, in this case five acres is more than what is needed for an Electrical Sub-Station. Under Colorado law a public utility rated such as BLACK HILLS ENERGY can apply for exemption from county planning codes, if it can show the request is reasonable. In this case the property owners have agreed to sell four acres of land and were not interested in selling any more and BLACK HILLS ENERGY was not interested in purchasing any more property. We are respectfully requesting a variance to create an undersized lot of four acres in a five acre zone.

PITMAN: You said that that is a nineteen acre lot so that still would leave a remainder of fifteen acres.

COCKRAN: Yes

EVEN: We normally require generally very site demand, relative to the terrain, what will be the ultimate build out to the site might be. I access it on a site to site basis.

NEPA: So potentially there could be other buildings there.

EVEN: We could have a small building enclosure that will protect the batteries and relay. As far as our Special Use Permit was issued to date, it does not allow for any other structures on the site.

PATTERSON: Any further questions?

Hearing none

PATTERSON: I would like to see a deed restriction that they could not have a residence. This is a moot point but would take care of things down the road if they abandon the property.

HOBBY: I don't think this is necessary because if they came into the Zoning Office to apply for a dwelling we would see that it was an undersized lot.

Do I have a motion?

NORDYKE: Made a motion.

PITMAN: Seconded the motion.

PATTERSON: All in favor? All opposed?

Motion passed unanimously.

PATTERSON: The agenda item is an Overheight variance for BRYAN and JENNIFER ANDERSON. The schedule number is 100-92-450 at 2549 Eagle Springs Dr. in Westcliffe. The applicant's statement reads: " *We understood that height was measured from the natural grade. It appears this is incorrect. Height measured to final grade is over limits. We recognized this when we started to set trusses. We have stopped until this is resolved.*

They are asking for a four foot one inch variance. Is there anything that you would like to add at this time?

BRYAN ANDERSON: Thank you very much to this office and committee for coming out to the property on the thirty first, and looking at the situation and for your consideration today. As we request this variance it was our full intent all along to comply with the rules. We contracted with a firm to draw up the plans and submit those plans for a Zoning permit. JENNIFER and I were under the impression that we were following the guidelines. Once we found out that the structure appeared to be over height we went back to the building manager and construction team and requested that they cease any building activity so that we could work through the process. We, JENNIFER and I believed all along that our contractor was doing the right thing with all the rules. I would like to read one paragraph of the contract in 6.4 in reads in part " *The consultant managing contractor shall give all notices and comply with all laws and ordinances, rules, regulations and orders of any public authority having jurisdiction over and bearing on the performance of the work*". It was JENNIFER and my impression that we were going to follow the law and when we found out our contractor had not we stopped the process and worked through the Zoning office to request a variance.

PATTERSON: Thank you, JACKIE was the adjoining property owners notified and did you receive any responses?

HOBBY: Yes, four adjoining property owners were notified with no response.

ANDERSON: We also have contacted the HOA and the Architectural Review Committee and advised them of this, we want to comply with the county and our HOA. The contact is Mr. BOB SENDERHAUF who helped with the HOA and Architectural Committee.

PATTERSON: Are there any questions from the Board?

PLANNING COMMISSION: Commented on where the four foot variance was measured from, is the contractor local and if not is he licensed and who filed the variance request.

PATTERSON: Any other questions or comments?

BOB SENDERHAUF: Thank you Mr. Chairman, my name is BOB SENDERHAUF owner of Custer County Realty. I have been asked by the owner and developer of the Ranch MR.

ROOKE we were notified of this issue as far as the Homeowners Association and the Architectural Review Committee on the third of July and we were invited over to take a look at the property. From our stand point, MR. ROOKE has gone ahead and to give you a little background. He is very proud of this project that he has put together. This particular project all

the roads are up to county standards and are maintained privately, there are two water storage tanks for fire protection. MR. ROOKE is very proud of this development and at the beginning of the meeting I handed the Chairman copies of these letters which I would like to read out loud at this time.

# Eagle Springs Ranch

P.O. Box 7  
Woodsboro, TX 78393



July 25, 2014

Custer County Planning and Zoning Office  
PO Box 203  
Westcliffe, CO 81252

To Whom It May Concern,

I am the owner and manager of Eagle Springs Ranch LLC, the developer of Eagle Springs Ranch. It has come to my attention that Bryan and Jennifer Anderson, who are building a home at 2549 Eagle Springs Road, have through no fault of their own, been determined to be in violation of the height restrictions in place governing their lot. It is my understanding that this issue is entirely accidental, and occurred on the part of their builder.

After review of the current situation, including such factors as location of the structure, slope of the hillside, and ability to view the home from other lots on the ranch, or elsewhere, and after consulting with the other members of architectural review committee, which I chair, I have determined that granting the Andersons a waiver, and allowing them to proceed with construction is in the best interest of everybody involved.

As the developer, and also the current owner of numerous lots, I do not feel the granting of a height variance, will detrimentally affect any other lots, or their value. Nor will the structure once completed, do anything except add to the quality and positive nature of the development.

As such, I strongly recommend for approval of the variance, and express hope that you will agree.

Please feel free to contact me with any questions you may have, or for any clarification on my position as needed.

Sincerely,

Robert E. Rooke Jr. Developer  
Manager Eagle Springs Ranch, LLC

# Eagle Springs Ranch

P.O. Box 7  
Woodsboro, TX 78393



July 25, 2014

Custer County Planning and Zoning Office  
PO Box 203  
Westcliffe, CO 81252

To Whom It May Concern,

I am the chair of the Eagle Springs Ranch HOA architectural review committee.

The committee has reviewed the current situation with Bryan and Jennifer Anderson, and their building of a home at 2549 Eagle Springs Road.

The committee is in unanimous agreement that the granting of a height variance to the Andersons, will not detrimentally affect the character of Eagle Springs Ranch. Their situation is unique, and in no way should be viewed as setting a precedent for other such variances.

Due to the remoteness of the structure, and the slope of the lot, it is not felt that the structures, by being over height, will even be noticeable by other residents or visitors to the ranch. Nor is it felt that it will in any way diminish the quality or value of ranch or other properties there.

Please feel free to contact me, or any of the other committee members with any questions you may have, or for any clarification on my position as needed.

Sincerely,

Handwritten signature of Robert E. Rooke, Jr.

Robert E. Rooke Jr.  
Chairman of Eagle Springs Ranch  
Architectural Review Committee

SENDERHAUF: Those are the two letters that he has asked me to read and the other comment that did come to me. After the HOA meeting we went over and met with the ANDERSONS and as far as the committee is concerned and all of us that is involved with the development and ownership, felt as though they are stand up people that recognized the fact that there was an issue and stopped all construction for five to six weeks. All the lumber and supplies everything is laying out on the ground and absorbing all the moisture. I am also asking for a positive approval of this variance under these conditions and that if you had passed the new Zoning Regulations this would not be coming before you.

PATTERSON: Are there any questions?

Hearing none

PATTERSON: Do we have a motion?

MULLEN: I move that we approve the variance as requested of four feet one inch.

LANKFORD: Seconded the motion.

PATTERSON: All in favor? All opposed?

Motion passed unanimously.

REASONS:

LANKFORD: I voted in favor, the homeowner did not do this on purpose and contacted the Zoning Department as soon as he discovered the situation and stopped building.

INGRAM: I voted in favor and agree the homeowner did all the correct steps to come into compliance.

PITMAN: I voted in favor and agree with all the reasons stated.

NEPA: I voted in favor and agree with all the reasons.

PATTERSON: I voted in favor, homeowner stopped building on his home and contacted the Zoning office and found out what he needed to do.

PATTERSON: Your overheight variance is approved.

LANKFORD: Made a motion to adjourn

PITMAN: Second the motion