

DELTA COUNTY BOARD OF ADJUSTMENT

**Administration Building – Board Room
560 Dodge St., Delta, CO 81416
Thursday, February 24, 2022 @ 5:30 p.m.**

**Mark Roeber, Chair
Brett Hilling, Vice-Chair
Carl Holm, Director**

Instructions for Public Participation:

The public can join the meeting remotely by registering in advance of the meeting at:

https://us02web.zoom.us/meeting/register/tZ0ufu6grDliE9LFgFpKEZBzav8fdG_U3gf

After registering, you will receive a confirmation email containing information about joining the meeting.

You can also obtain a copy of the agenda for this meeting at:

<https://www.deltacounty.com/AgendaCenter/Delta-County-Board-of-Adjustment-8>

REGULAR AGENDA

5:30 P.M. – CALL TO ORDER

ROLL CALL

Mike Twamley, District 1
Brett Hilling, District 2
Mark Roeber, District 3

A. PUBLIC COMMENTS

This is time set aside for the public to comment on matters not on the agenda. The Chair may set a time limit for speakers.

B. AGENDA ADDITIONS, DELETIONS, AND CORRECTIONS

The Board of Adjustment Secretary will announce changes to the agenda that arose after posting of the agenda.

C. APPROVAL OF CONSENT AGENDA

If there is no objection, the Consent Calendar can be considered under one single action.

1. Meeting Minutes; January 27, 2022.
RECOMMENDATION: Approve the action minutes as presented.
2. PLN21-021/Cottrell; Adopt a Resolution denying variances to lot size for a 2-lot subdivision (Minor Plat) in the A5 zoning district; Lot 15-A (1.305 acres), Lot 15-B (1.000 acres).

CERTIFICATION OF POSTING

On February 18, 2022, at 9:00 AM, Kim Henderson did post the above AGENDA as public notice of the February 24, 2022 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.

RECOMMENDATION: Approve a resolution with findings and evidence reflecting the 1/27/2022 BOA action to deny the variance for PLN21-021/Cottrell.

3. PLN21-071/Armstrong; Amend the application for a 5-Lot Clustered Subdivision (Preliminary Plat) – No Variance(s) Required.

RECOMMENDATION: Accept a status report for PLN21-071/Armstrong.

D. SCHEDULED ITEMS

1. PLN21-075/Pipher; Consider variance to lot size for a 2-lot subdivision (Minor Plat) in the A-35 zoning district: Lot 1 (3.193 acres), Lot 2 (35.0 acres). The property is located at 42044 Long Gulch Road, Crawford (Parcel: 350320200004).

RECOMMENDATION: Staff recommends that the Board of Adjustment (BOA):

- a) Consider the required variance criteria/findings as they apply to PLN21-075/Pipher;
- b) Provide direction to staff on the BOA's Intent to Approve/Conditionally Approve/Deny a variance for PLN21-075/Pipher, presented as a Minor Plat creating two (2) lots in the A-35 zoning designation located at 42044 Long Gulch Road, Crawford (Parcel: 350320200004).
- c) Continue the matter to February 24, 2022 with direction for staff to prepare a resolution reflecting the BOA decision.

E. BOARD COMMENTS, REQUESTS AND REFERRALS

This is time set aside for the Board of Adjustments to comment, request, or refer a matter that is not on the agenda for future consideration.

F. DEPARTMENT REPORT

This is time set aside for the Director to report on matters affecting the Department.

ADJOURNMENT

Adjourn to a Regular Meeting on Thursday, March 24, 2022 at 5:30 pm in Delta.

CERTIFICATION OF POSTING

On February 18, 2022, at 9:00 AM, Kim Henderson did post the above AGENDA as public notice of the February 24, 2022 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.



REGULAR BOARD OF ADJUSTMENTS MEETING MINUTES
DELTA COUNTY
560 DODGE ST, DELTA, CO 81416
January 27, 2022

Chairman Mark Roeber called the meeting to order at 5:30 p.m. in the Administration Building Commissioner's Meeting Room.

ROLL CALL

Board of Adjustments Members in Attendance:

Mike Twamley, District 1
Brett Hilling, District 2 (via Zoom)
Mark Roeber, District 3

Planning Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Planning & Community Development Planner I, Kate Kelly
Delta County Planning & Community Development Planner I, Angie Kemp
Delta County Planning & Community Development Administrative Assistant, Kim Henderson

Director Holm introduced Angie Kemp who started as Planner I for Delta County this week.

A. PUBLIC COMMENT

None

B. AGENDA ADDITIONS, DELETION, AND CORRECTIONS

Mike Twamley requested Item D "Board Comment, Requests and Referrals" be inserted after item C "Approval of Consent Agenda".

C. APPROVAL OF CONSENT AGENDA

Item #1:

Meeting Minutes for October 21, 2021 (Special Meeting) and October 28, 2021.

Motion/Seconded:

Mike Twamley moved to approve the action minutes as presented. Brett Hilling seconded the motion.

Action:

Motion carried unanimously.

D. BOARD COMMENT, REQUESTS AND REFERRALS

Mike Twamley asked if the Director could clarify the Land Use Code (LUC) as it pertains to overlay zones and where the Board of Commissioner's stands regarding lot size and density.

Director Holm explained Table 2.a LUC refers to lot size a "generally." The purpose statements in Table 2.a for A-35 and A-20 state that parcels of land are generally 35 or 20 acres or more (respectively). "Generally," in this context recognizes that some parcels designated A-35 or A-20 on the zoning map were smaller than what is required when the map was adopted, and they are legal lots per the LUC.

Table 3.a LUC specifically establishes the minimum lot area, width, and frontage required. For A-35 the minimum lot size is 35 acres, A-20 is 20 acres, etc. Subdivision where any lot does not meet this minimum standard requires a variance. New lots created with a variance to lot size are required to meet standards for the UGA zoning district.

Recently, the Board of County Commissioners has had discussions regarding the Land Use Code in regards to the zoning and density matter. They have discussed adding a Residential zoning



designation that will allow for higher density, to be considered in areas where the County wants to have the ability to have more lots under the 5-acre minimum. That would be a change to the LUC for possible future consideration, and the BOA might want to provide input.

SCHEDULED ITEMS:

Item #1 PLN21-021/Cottrell

Consider variances to lot size for a 2-lot subdivision (Minor Plat) in the A-5 zoning district: Lot 15A (1.305 acres), Lot 15B (1.0 acre). The property is located at 16627 2500 Road, Cedaredge (Parcel: 319238101010).

RECOMMENDATION: Staff recommends that the Board of Adjustment (BOA):

- Consider the required variance criteria/findings as they apply to PLN21-021/Cottrell;
- Provide direction to staff on the BOA's intent to Approve/Conditionally Approve/Deny a variance(s) for the lot size of two parcels (PLN21-021/Cottrell), presented as a Minor Plat creating two (2) parcels in the A-5 zoning designation as part of a 2-Lot subdivision located on the west side of 2500 Road north of Cedar Mesa Road and Q25 Road, Cedaredge; and
- Continue the matter to February 24, 2022 and direct staff to prepare a resolution reflecting the BOA direction.

Motion/Second: Mike Twamley moved to deny PLN21-021/Cottrell Minor Plat. Brett Hilling seconded the motion. The Commissioners expressed concern with setting a precedent for this neighborhood. By allowing the smaller lots, it could affect the property values in the area as the subdivision was created for 2+-acre lots.

Action: Motion carried unanimously.

Director Holm explained that the final action will be when the BOA adopts a resolution (next meeting). At that point, the applicant has 10 days to file an appeal.

Item #2:

PLN21-071/Armstrong

Consider variances to lot size for a 5-lot subdivision (Preliminary Plat) in the A-20 zoning district; Lot 1 (2.286 acres), Lot 2 (2.162 acres), Lot 3 (1.227 acres), Lot 4 (0.863 acres), Lot 5 (31.048 acres). The property is located at 15627-15767 Bull Mesa Road, north of Hamilton Road (Parcel: 3195-362-00-013), Cedaredge.

RECOMMENDATION: Staff recommends that the Board of Adjustments (BOA):

- Consider the required variance criteria/findings as they apply to PLN21-071/Armstrong;
- Provide direction to staff on the BOA's intent to Approve/Conditionally Approve/Deny variance(s) for the lot size of four parcels (PLN21-071/Armstrong), presented as a Preliminary Plat creating five (5) parcels in the A-20 zoning designation located at 15627-12767 Bull Mesa Road, north of Hamilton Road, Cedaredge; and
- Continue the matter to February 24, 2022 and direct staff to prepare a resolution reflecting the BOA direction.

Motion/Second: Brett Hilling moved to approve PLN21-071/Armstrong 5-lot subdivision with staff recommendations and Scenario 1 provided Lot 4 be increased to a minimum of 1.0 acre and, if necessary, setback variance(s) to allow existing buildings on Lots 4 & 5 to remain. Mike Twamley seconded the motion.

Commissioners expressed concern with precedent but recognized this was developed prior to the Land Use Code and settling a family estate could be decided by the court with no County input.

Action: Motion carried unanimously.

E. DEPARTMENT REPORT:

Director Holm reported on the following items:

- The Board of County Commissioner's held a workshop relative to updating the Land Use Code. One item of discussion will be the Density issue.



- b. The Board of County Commissioners approved an appeal of the Board of Adjustments decision regarding PLN21-020/Becker-Beeson where the Board of County Commissioners removed a condition requiring a building envelope on the large remaining lot.

Meeting adjourned at 7:20 p.m.

The next meeting will be held on Thursday, February 24, 2022 at 5:30 pm in the Delta County Administration Building, Delta, CO.

Respectfully submitted by:
Administrative Assistant, Kim Henderson

DRAFT



STAFF REPORT

**Board of Adjustment
Board Room
560 Dodge Street, Delta, CO 81416**

Thursday, February 24, 2022 @ 5:30 p.m.

PLN21-021/Cottrell Subdivision

Adopt a Resolution denying variances to lot size for a 2-lot subdivision (Minor Plat) in the A5 zoning district; Lot 15-A (1.305 acres), Lot 15-B (1.000 acres). The property is located at 16627 2500 Road, north of Cedar Mesa Road (Parcel: 3192-381-01-010), Cedaredge.

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA) approve a resolution reflecting the BOA action to deny the variance for PLN21-021/Cottrell on 1/27/2022.

SUMMARY/DISCUSSION:

On January 27, 2022, the Board of Adjustment (BOA) held a public hearing on PLN21-021/Cottrell. Based on information and testimony presented, the BOA voted to deny the variance(s). Staff has prepared a resolution for the BOA to consider that reflects findings for this action (**Attached**).

Attached material: list, in order as attached

- Resolution

**RESOLUTION
OF THE
BOARD OF ADJUSTMENT
OF THE COUNTY OF DELTA,
STATE OF COLORADO**

PLN21-021/COTTRELL

RESOLUTION DENYING VARIANCES TO CREATE TWO (2) LOTS OF 1.000 – 1.305 ACRES IN THE A-5 ZONING DISTRICT AS PART OF A 2-LOT (MINOR PLAT) SUBDIVISION OF A 2.30-ACRE PARCEL LOCATED AT 16627 2500 ROAD, CEDAREGE (PARCEL: 319238101010/ARNOLD R. COTTRELL).

RECITALS

WHEREAS, Arnold R. Cottrell owns Parcel 319238101010 (Account R003191) which is Lot 15 of the Sage and Cedars Subdivision (Reception #336138). The subject property, according to Assessor records, is 2.30 acres; and

WHEREAS, in 1971, the subject property was created as part of the Sage and Cedars Subdivision (Reception #336138); and

WHEREAS, covenants and restrictions were recorded September 7, 1971 under Reception #376747 in the County Clerk and Recorder's Office; and

WHEREAS, on January 5, 2021, Delta County Board of County Commissioners adopted the Delta County Land Use Code (LUC). Resolution No 2021-R-001 repealed regulations regarding land use and subdivision and adopted a new land use code (including zoning maps); and

WHEREAS, the subject property is zoned per the Delta County Land Use Code as Agriculture (5-acre) or A-5, which requires a minimum acreage of 5 acres per lot; and

WHEREAS, on April 19, 2021, Arnold Cottrell submitted a pre-application form requesting "splitting off approximately 1-acre from an existing 2.30 acres" (PLN21-021); and

WHEREAS, on April 26, 2021, a pre-application conference was held with representatives from the County Planning, County Engineering, and GIS departments; and

WHEREAS, the application consists of a 2-lot subdivision (Minor Plat) from an approximately 2.30-acre parcel with frontage on the western boundary of 2500 Road; and

WHEREAS, Minor Plats are issued by the Director upon a finding of compliance with the applicable requirements of the Land Use Code; and

WHEREAS, because of the proposal of a 1 (+/-) acre lot being subdivided from the 2.30-acre parcel, a variance is required that must meet criteria set forth in the Land Use Code; and

WHEREAS, on November 2, 2021, Mr. Arnold Cottrell submitted an application requesting consideration of the variance prior to submitting materials for consideration of the subdivision; and

WHEREAS, a variance requires posting and public notice sent to adjacent property owners at least 14 days prior to the public hearing; and

WHEREAS, on January 13, 2022, notice was posted on the property and sent to adjacent property owners informing the public of the date, time and place for the Board of Adjustment hearing this matter; and

WHEREAS, the application (PLN21-021/Cottrell) came on for a hearing before the Delta County Board of Adjustment (BOA) on January 27, 2022 where the BOA voted unanimously to deny the variance(s).

DECISION

NOW, THEREFORE, BE IT RESOVLED, having considered all the written and documentary evidence, the administrative record, and other evidence presented, the Delta County Board of Adjustment hereby:

- A. Finds, based on evidence presented in the staff report and this resolution, that the project does not meet criteria for variation to lot size (Chapter 3, Section 1.A.3 Land Use Code):
 - 1. The subdivision conforms to all other requirements of the Delta County Land Use Code.
 - 2. The new lots have at least the minimum dimensions set out in the standards for the UGA zoning district (75-foot width, 30-foot frontage).
 - 3. As such, the size and configuration of the new lot minimizes disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat.
 - 4. The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed. Condition #3 requires adding a plat note restricting further subdivision and requires a zoning overlay to illustrate this on the zoning map.

FINDINGS:

A physical address is required for a water tap and for a septic system for wastewater. There is an existing access/address that serves Lot 15-A. Lot 15-B would need to apply for a new access/address to be located along the north property line (extending westerly). A letter from Upper Surface Creek Domestic Water Users Association (USCDWUA), dated January 2, 2021, states that there is the ability to obtain a water tap to the property from USCDWUA.

Lot 15-A has frontage of approximately 326 feet of frontage along 2500 Road. The narrowest width for Lot 15-A and Lot 15-B appear to be more than 75 feet. In order to meet the minimum frontage (30 feet), Lot 15-B would need to be revised as a flag lot with a shared access easement in favor of Lot 15-A.

- B. Further finds, based on evidence presented in the staff report and this resolution, that the project does not meet findings for a variance (Chapter 10, Section 2.A.2 Land Use Code):
1. Due to the exceptional narrowness, shallowness, or shape of the subject property on the effective date of this Code, or exceptional topographic conditions, or other extraordinary and exceptional situation or condition of the subject property, the strict application of a regulation in this Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.
 2. A variance from strict application of the regulations at issue would relieve such difficulties or hardship.
 3. The requested variance would not create substantial detriment to the public good or substantially impair the intent and purpose of this Code.

FINDINGS:

The stated purpose for this variance is to create a second lot for a relative (son) to build a garage/workshop with an apartment above so he can get separate financing for the project.

Zoning for the properties around the subject site is generally A-5. Assessor records show the parcel to be 2.30 acres, consistent with lots created by the Sage and Cedars Subdivision. A couple properties in the area have added a secondary unit on the property. Holding to the strict regulations for A-5 zoning would not result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property. There is reasonable use of the land, building or structure without granting a variance.

There is no hardship peculiar to the subject property, not general to the neighborhood or the applicant's personal circumstances. Granting a variance in this case would create special privilege to this property that would not be granted to another property with similar conditions (size, shape) in the same zoning designation, or it would set a precedence that would change the character of this neighborhood.

Pursuant to the Land Use Code, adequacy to sunlight for solar energy devices installed after January 1980 can be a possible consideration in determining difficulty or hardship. There is no solar on the property to be considered in determining difficulty or hardship.

- C. Denies PLN21-021/Cottrell consisting of a variance to create two (2) lots of 1.000 and 1.305 acres in the A-5 zoning district as part of a 2-lot (Minor Plat) subdivision located on the west side of 2500 Road north of Cedar Mesa Road, Cedaredge (Parcel: 319238101010).

ADOPTED AS SET FORTH ABOVE on this 24th day of February, 2022 upon motion of Board member _____, seconded by Board member _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

COUNTY OF DELTA
STATE OF COLORADO

Carl P. Holm, AICP
Board of Adjustment Secretary

Dated: _____

NOTE: Decisions of the Board of Adjustment may be appealed to the Board of County Commissioners by an aggrieved party. The hearing before the Board shall be of record. In order to initiate an appeal, an aggrieved party must submit a complete appeal application and filing fee within 10 calendar days from the date of this resolution. Said application shall include, but not be limited to, information about how the appellant is aggrieved.



STAFF REPORT

**Board of Adjustment
Board Room
560 Dodge Street, Delta, CO 81416**

Thursday, February 24, 2022 @ 5:30 p.m.

PLN21-071/Armstrong Subdivision

Amend the application for a 5-Lot Clustered Subdivision (Preliminary Plat) – No Variance(s) Required. The property is located at 15627-15767 Bull Mesa Road (Parcel: 3195-362-00-013), Cedaredge.

RECOMMENDATION:

Accept a status report for PLN21-071/Armstrong. As a Clustered Subdivision, a Resolution by the Board of Adjustment relative to the four (4) variances for PLN21-071 is not necessary.

SUMMARY/DISCUSSION:

On January 27, 2022, the Board of Adjustment (BOA) held a public hearing to consider PLN21-071/Armstrong. It was presented as a 5-Lot Subdivision consisting of 4 variances to create 5-lots, four (4) of those lots requiring a variance as they do not meet the minimum criteria for lot size (20 acres) for the zoning designation A-20. The BOA voted 3-0 to approve all four variances to create a 5-Lot Subdivision with the following direction:

- Lot 4 shall be a minimum of 1.0 acres
- If necessary, setback variance(s) will be presented to the BOA to allow existing buildings on Lots 4 & 5 to remain in place

Upon further review of the Land Use Code (LUC), the Director determined that this project would qualify as a clustered subdivision (LUC Chapter 4, Section 1.D). Clustered subdivisions can generally allow for smaller lot configuration and may allow for more



lots than the minimum allowed by zoning in exchange for a layout designed to protect significant agricultural, natural, scenic, or archaeological resources on the subject property. Clustered subdivisions shall have a defined stewardship objective such as protecting irrigated agricultural lands with a mechanism that ensures irrigation will continue. Stewardship areas shall be identified and mapped.

On February 7, 2022, Planning Staff met with Mr. Armstrong to follow-up with him in regards to his proposed subdivision and to discuss an alternative option to process his application as a Clustered Subdivision. Staff explained to Mr. Armstrong that with his proposal of preserving the majority of irrigated Ag lands (30+ acres) while splitting off sites for four established homesteads, his application could be processed as a Clustered Subdivision. In that case, there would be no need for any variances unless a building was not able to meet the required setbacks.

This meeting included discussion of setbacks, Right-of-Way (ROW) dedication for Bull Mesa Road, and septic. Mr. Armstrong presented a revised lot layout such that Lot 4 would have at least 1.0 acres. It was confirmed that all buildings would meet County required setbacks with the new lot configuration and that the septic for each proposed lot is well outside the setbacks.

Previous comments from Engineering stated that Bull Mesa Road is classified as a Local Access Road, which has a 60-foot right-of-way where the County seeks dedication of 30-feet from the centerline. Based on County records, the Engineer had requested 10-feet of *additional* ROW along the frontage of Bull Mesa Road as part of this subdivision; however, the Preliminary Plat illustrates dedication of 40-50 feet. Staff recommended that Mr. Armstrong have his project surveyor confirm the ROW dedication with the County Engineer.



STAFF REPORT

**Board of Adjustment
Board Room
560 Dodge Street, Delta, CO 81416**

Thursday, February 24, 2022 @ 5:30 p.m.

PLN21-075/Pipher Subdivision

Consider one (1) variance to lot size for a 2-lot subdivision (Minor Plat) in the A-35 zoning district; Lot 1 (3.193 acres), Lot 2 (35.00 acres). The property is located at 42044 Long Gulch Road, Crawford (Parcel: 350320200004).

PROJECT INFORMATION:

Property Owner: Andrew Luce Pipher Revocable Trust, Alexander Pipher & Luther Pipher, (Co-Trustees)
Applicant: Alexander "Curely" Pipher
Site Address: 42044 Long Gulch Road, Crawford
Parcel ID/Acct: 350320200004/R016448
Parcel Size: 40 Acres
Zoning: A-35

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider the required variance criteria/findings as they apply to PLN21-075/Pipher;
- b) Provide direction to staff on the BOA's Intent to Approve/Conditionally Approve/Deny variance for PLN21-075/Pipher, presented as a Minor Plat creating two (2) lots in the A-35 zoning designation located at 42044 Long Gulch Road, Crawford (Parcel: 350320200004).



SUMMARY:

Mr. Alexander “Curley” Pipher, Co-Trustee/applicant, is seeking a 2-lot subdivision (Minor Plat) from a 40-acre parcel with frontage on Long Gulch Road and Clear Fork Road. There is one existing residence and the property is utilized as residential and agricultural. Zoning for this parcel is A-35 so the minimum acreage for subdividing this parcel is 35 acres per lot.

The subdivision has been designed to create two (2) lots:

Lot 1 (3.193 Acres) – Includes an existing residence (42044 Long Gulch Road) and a portion of the irrigated agricultural land in the northeast corner of the property. Septic/Leach Field information will be required for the subdivision (Minor Plat) in order to certify that all existing structures (including septic systems) meet the required setbacks.

Lot 2 (35.000 Acres) – Retains the majority of irrigated agricultural lands and an area identified as critical wildlife area.

Lot 2 meets the standards for acreage set forth in the LUC for the A-35 zone. Lot 1 does not meet the standards for acreage set forth in the LUC for the A-35 zone so a variance is required.

Staff identified some options for the lot design to mitigate potential impact to irrigated lands. The applicant rejected all of the options except what is being proposed based on language in a family Trust, and how the ranch currently operates with the family.

Criteria for a variance to lot size require proposed lots to meet minimum lot dimensions for the A-35 zone. Variances are presented at a public hearing to the Board of Adjustments (BOA) for either Approval, Approval with Conditions, or Denial considering the required criteria and findings. Approval of a variance requires the concurring vote of three (3) members of a 3-member BOA. If there is one dissenting vote, the variance is not approved. Once a decision has been made by the BOA the process will either precede with the Subdivision application or the applicant has 10 days to appeal the BOA’s decision to the Board of County Commissioners (BoCC).

DISCUSSION:

Introduction

The application (PLN21-075/Pipher) is for a 2-lot subdivision (Minor Plat) at the southeast corner of Long Gulch Road and Clear Fork Road. The property has about 1260 feet of frontage along the south side of Long Gulch Road and 1040 feet along the east side of Clear Fork Road. Both roads are County maintained roads (according to County records), generally located southeast of the Town of Crawford.

This parcel has been zoned A-35 per the Delta County Land Use Code. The minimum acreage for subdividing this parcel is 35 acres per lot. The surrounding area consists of larger lots and irrigated parcels with some residential homes.



Assessor records show the parcel to be 40 acres, surrounding properties include many 35+ acres, but also a cluster of three 5-acre parcels just to the east of the subject property. A Site Plan illustrates splitting this lot as follows:

- Lot 1/42044 Long Gulch Road (3.193-acres) Retains an existing residence with utilities and services, garage, sheds, stall, and a section of irrigated agricultural fields.
- Lot 2 (35.000 acres) Retains agricultural and the area along Clear Fork that the Colorado Department of Natural Resources Division of Wildlife has deemed a Critical Wildlife Habitat Area
- Deeded roads (right-of-way for Long Gulch and Clear Fork Roads) total 1.62 acres.

Because proposed Lot 1 does not meet the minimum requirements per the zoning, a variance is required to create the lot that does not meet the 35-acre minimum.

Background

Applicant Alexander "Curely" Pipher (son and co-trustee with Luther Pipher) submitted an application to subdivide a 40-acre property at 42044 Long Gulch Road, Crawford on September 26, 2021, following the death of Andrew Luce Pipher, their father. A family Trust (First Amendment of Andrew Luce Pipher Trust, signed by Andrew Luce Pipher as Settlor and Trustee) states upon his death, the Trust estate shall be distributed. Section 3.02.h. states that, "4.3+/- acres at 42044 Long Gulch Road, Crawford, Colorado in the northwest corner of the SW1/4 NW1/4 of Section 20 Twp. 51 North, Range 6 West N.M.P.M., enclosed in a fence, with all its appurtenances, including the domestic water tap, to Rinda Jean Pipher (daughter), if she is living at the time of my death. Trustee shall petition the probate court to allow the transfer of this property. The exact legal description shall be that parcel bounded by the existing fence".

Assessment:

The Land Use Code (LUC) requires minimum setbacks (all structures, including septic) of 25-feet from the edge of ROW for all roads (public and private) and 15-feet from all interior property lines. In addition, a setback of 25-feet is required from the edge of any ditch, and 50-feet from the top of bank of a river, stream, or creek. Staff is primarily looking at new property lines meeting the required setbacks.

Where a structure and/or septic system would not meet the setback from a proposed lot line, there are three options: 1) Require lot lines to meet setbacks, or deny the subdivision as designed if that is not possible; 2) Remedy the non-conforming condition (relocate, remove); or 3) Consider a variance for creating a condition that does not meet current standards. Generally, staff would not recommend Option #3 (in any case) because with granting a variance the non-conforming condition is allowed to remain. The intent of the Land Use code is to bring things into compliance with the current standards over time.

As part of the application, staff requested the applicant identify the location of the septic/leach fields, which has not yet been provided.



The Final Plat will be required to provide tap numbers and irrigation shares, if any. The plat will also need to accurately illustrate any easements for water ditches/lines affected by this project. Easements will be required where irrigation, utility and/or access cross property lines to serve another lot.

Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria) states: “***The final plat is annotated such that no further subdivision of either lot created by this subsection is allowed.***” The Oxford definition of “either”: “used before first of two (or occasionally more) alternatives that are being specified...” Staff noted in the report for PLN21-010 that we interpret the LUC to implicitly limit property owners to one lot that does not meet the minimum lot size, and not multiple variances that effectively circumvent the zoning for a larger subdivision.

Options:

The applicant explained that the entire property is utilized for agricultural purposes, and given the access to water, they do irrigate most of the property and use it as pasture. The applicant (Curly, Lot 2) will continue irrigation of the field whenever water is available.

Lot 1 in the northwest corner with 3.193-acres is intended to be deeded to Rinda Jean Pipher (daughter of Andrew Luce Pipher) pending this variance and subsequent subdivision. The application says that no division of irrigation water will take place, meaning no water would be assigned to Lot 1. However, about 1-acre of the proposed Lot 1 is currently irrigated agricultural land, and Rinda Jean Pipher (Lot 1) has horses she intends to pasture on that land.

The proposed lot line does not follow existing fence lines (as stated in the Trust), and would potentially impact about 1-acre of land that is currently irrigated, leaving a small area between the new property line and a fence line to the south. Therefore, staff prepared options for the Board to consider, recognizing that the plat shows what is the most ideal to meet the applicant’s desire/objective. These options take into account more of a bigger picture planning perspective when/if this family does not own one or both of the lots.

Option 1. Proposed Subdivision.

Consider a variance with lot lines as proposed.

Option 2. Fence Line.

Consider a variance for subdividing the property at the fence line as described in the family Trust. The east line of Lot 1 could be moved out a bit to provide some space for existing structures to meet setbacks. This would leave Rinda Jean with an approximate 2-acre lot in the northwest corner of the property, albeit smaller than her father wanted.

Option 3. Lot 1 Revised (South)

Lot 1 can include 3.193 +/- acres but instead of extending east, extend south to the area above Clear Fork Creek. Clear Fork Creek runs south of the residence and through the



40-acre parcel. The applicant expressed that the area is utilized by their ranching operation and the animals on their land, so moving the lot line lower toward the creek would impact some of this area for his grazing (cattle) purposes - versus horse grazing on Lot 1.

Option 4. Two Variance

Group the western-most irrigated hay field east of the residence with the residence making Lot 1 larger. This would keep the field contiguous, but provide more land to Lot 1, leaving Lot 2 less than the required 35 acres for A-35 zoning. This may impact the cattle ranching operation, especially if Lot 1 is sold outside the family.

Process

Variances are presented at a public hearing to the Board of Adjustments (BOA) for either Approval, Approval with Conditions, or Denial. Chapter 1, Section 6.C.4 LUC requires the concurring vote of three members of a 3-member BOA, meaning actions by the BOA must be unanimous in order to pass. Once a decision has been made by the BOA the process will either precede with the Subdivision application or the applicant has 10 days to appeal the BOA's decision to the Board of County Commissioners (BoCC).

Subdivisions consisting of 2 lots are subject to a Minor Plat which is processed under an Administrative Action (approval by the Planning Director); no public hearing is required. However, the Director cannot take final action on the Minor Plat until/unless the Variance is approved. The application checklist requested enough detail, professionally drawn, for the BOA to be able to make a fully informed decision on the variance. The Minor Plat, with and without an aerial overlay, is attached (**Attachment**).

The Land Use Code includes four (4) criteria that must ***all*** be met for granting a variation of lot size. In addition, there are three (3) findings that must ***all*** be met to allow a variance of land use regulation. These criteria/findings are listed below.

Variation to Lot Size (Criteria): Chapter 3, Section 1.A.3 of the LUC states that the County may approve the creation of new lots that do not conform to the size requirements provided they meet four (4) criteria:

1. ***The subdivision conforms to all other requirements of the Delta County Land Use Code.***
2. ***The new lots have at least the minimum dimensions set out in the standards for***
3. ***The size and configuration of the new lot minimizes disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat.***
4. ***The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed.***



If variance(s) is/are approved, the BOA could apply a condition that requires including a Plat note reflecting this restriction.

Variance (Findings): Chapter 10, Section 2 of the LUC states that no variance shall be authorized unless the Board of Adjustment (BOA) makes three findings:

1. ***Due to the exceptional narrowness, shallowness, or shape of the subject property on the effective date of this Code, or exceptional topographic conditions, or other extraordinary and exceptional situation or condition of the subject property, the strict application of a regulation in this Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.***
2. ***A variance from strict application of the regulations at issue would relieve such difficulties or hardship.***
3. ***The requested variance would not create a substantial detriment to the public good or substantially impair the intent and purpose of this Code.***

Zoning is applied broadly, but we recognize that it may not fit every situation. Zoning for the properties around the subject site is generally A-35.

The variance process affords an avenue to request a smaller lot if required criteria/findings can be justified (e.g., physical constraint, hardship). The proposed layout would not impact agricultural operations and the site has been developed with multiple structures.

Assessing how/if the project meets the required criteria and findings is critical in determining if a variance should be approved or denied. The BOA could approve the variance, approve the variance conditionally, continue the matter to allow time for the applicant to redesign and resubmit a Plan that complies, or deny the variance.

Findings/Hardship

The ability to approve any variance depends largely on defining ***unnecessary/undue*** hardship. There is no simple formula for determining, what is enough. Hence, the BOA holds a quasi-judicial hearing and renders a decision based on evidence presented.

Hardship should be more than mere inconvenience or a preference for a more lenient standard. An applicant should demonstrate how their situation compares to others subject to the same restriction in the vicinity of their project. For example, 1) does strict compliance with the Code totally prevent improvement of the property in a manner which is reasonable, customary and consistent with other properties in the area; or (2) are there conditions peculiar to the property that cause practical difficulty in strict compliance with the ordinance, due to significant or unjustified expense in light of the



scope of the project, destruction or demolition of attractive features of the property, or similar reasons.

An unnecessary hardship should be peculiar to the subject property, not general to the neighborhood or the applicant's personal circumstances. A hardship should not result from actions taken by the applicant or property owner (self-created). For example, the alleged practical difficulty was not created as a result of any action taken by the applicant or predecessors in interest of the property which was unlawful, or which could have been reasonably foreseen to create difficulty in complying with the ordinance for future improvements.

Another way of looking at variances is if granting it would create special privilege to this property that would not be granted to another property with similar conditions (size, shape) in the same zoning designation. Also, that because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

Arguments that tend to be legally successful include the following:

1. That the particular physical surroundings, shape or topographical condition of the specific property involved would bring particular hardship upon the owner (not just a mere inconvenience), if the strict letter of the zoning regulation were to be carried out;
2. That the conditions upon which the petition for variance relates would not be applicable generally to other property within the same zoning district;
3. That the purpose of the variance is not based exclusively upon a desire to make more money out of the property;
4. That the alleged difficulty or particular hardship has not been created by any person presently having an interest in the property or by the applicant;
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
6. That the proposed variance will not:
 - a. Impair an adequate supply of light and air to adjacent property;
 - b. Substantially increase the hazard from fire or other dangers to said property or adjacent property;
 - c. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of the Town/City;
 - d. Diminish or impair property values within the neighborhood;
 - e. Unduly increase traffic congestion in the public streets and highways;
 - f. Create a nuisance; or
 - g. Result in an increase in public expenditures.
7. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.



OTHER AGENCY INVOLVEMENT

A Land Use application was submitted on September 26, 2021. On November 30, 2021 a cover letter and checklist were provided to the applicant that identified materials required with the subject application. On December 22, 2021, County staff met with the applicant to go over the checklist of what items they would need to submit, and what items the surveyor would need to submit. On January 19, 2021 Delta County Planning and Community Development Department sent a letter that deemed the application as incomplete and outlined what was needed to continue the Minor Plat and variance. The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners, interested parties, and posted on the subject property. When/If a subdivision is processed, it will be referred to adjacent property owners and agencies for a 21-day comment period.

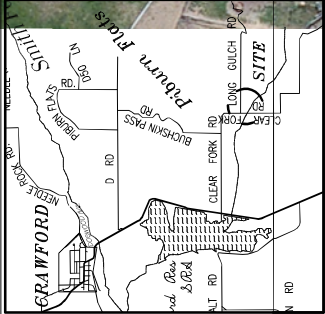
Attached material: list, in order as attached

- Site Plan
- Site Plan w/Aerial

PIIPHER MINOR SUBDIVISION PLN#21-075
WITHIN THE SW1/4 NW1/4 OF SECTION 20, T.51N., R.6W., N.M.P.M.
DELTA COUNTY, COLORADO



AREA LOCATOR



TYPICAL LEGEND

- Set Mag Nail in Asphalt
- Set 5/8" rebar 30" long with 2" aluminum cap PLS38255
- Set 5/8" rebar 30" long with 2" aluminum cap as Witness corner or linepin PLS38255
- Found 3/4" rebar 30" long with 8-1/4" aluminum cap PLS28972
- Found 5/8" rebar with 1 1/2" aluminum cap RLS 1456 or as noted
- Telephone Pedestal
- Water Meter
- Power Pole
- Centerline Road
- Irrigation Ditch
- Fencelines
- Electric (overhead)
- Electric (underground)
- Water line
- Easement
- Previous Parcel Boundary
- New Quit Claim to Delta County

BASIS OF BEARINGS:

N.89°42'13"N. FROM THE CHW/16
CORNERS OF SECTION 14
AND 20
GEODEIC NORTH
GPS OBSERVATION

SCALE 1"=100 U.S. SURVEY FEET



SURVEYOR'S CERTIFICATION
I, Kris Crawford, do hereby certify that the above described parcel has been surveyed by me and under my direct supervision and that such survey is accurately represented hereon, and is based upon my knowledge, information and belief, and is in accordance with applicable standards of practice and is not a guaranty or warranty, either expressed or implied.

Date: _____ Signed: _____
COLORADO PROFESSIONAL LAND SURVEYOR #38255

ACREAGE SUMMARY:
TOTAL AREA = 39.835 ACRES/1325025.8 SQ. FT.
ACREAGE OF BULLDOZE REMOVED PARCELS = NONE
LOT 1 = 1161 ACRES/139070.0 SQ. FT.
LOT 2 = 35.000 ACRES/1524612.8 SQ. FT.
DEEDED ROADS = 1.642 ACRES/71523.0 SQ. FT.
LAND USE ZONING = A-35

PLAT REFERENCES:
LONG GULCH MINOR SUBDIVISION #MS07-011*-
RECORDED FEBRUARY 5, 2008 UNDER RECEPTION NO. 622677

COUNTY SURVEYOR'S CERTIFICATE:

Approved for content and form only and not as to the accuracy of survey, computations or drafting, pursuant to CRS 38-51-106.

County Surveyor _____ Date _____

DELTA COUNTY CLERK AND RECORDER'S ACCEPTANCE

This plat was accepted for filing in the office of the Clerk and Recorder of Delta County, Colorado, on this _____ day of _____, A.D. 20_____.
Reception Number _____, Time _____, Date _____

County Clerk _____

CERTIFICATE OF TAXES PAID

I, the undersigned, do hereby certify that the entire amount of taxes and assessments due and payable as of _____ upon all parcels of real estate described on this plat, under Tax Account #R016448 are paid in full.
Dated this _____ day of _____, A.D. 20_____.
Treasurer of Delta County, Colorado _____

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

This plat of the above subdivision PLN21-075 has been checked for compliance by _____ on this _____ day of _____.

PLANNING DIRECTOR

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within plat of PIPHER MINOR SUBDIVISION PLN21-075 is approved this _____ day of _____, A.D. 20_____.
This plat and the roads and other public areas are hereby accepted provided, however, that such acceptance shall not in any way be considered as an acceptance for maintenance purposes.

Maintenance of, or snow removal from, the subject roads shall be only upon a separate resolution of the Board of County Commissioners passed in accordance with such policies, resolutions or regulations in effect at that time.

Chairman _____

Altest _____

County Clerk _____

By: _____
Alexander Luce Pipher, Trustee

NOTARIAL:

State of _____ } ss.
County of _____ }

The foregoing instrument was acknowledged before me this _____ day of _____, A.D. 20_____, by Alexander Luce Pipher, Trustee

My commission expires: _____

My address is: _____

Witness my hand and official seal. _____

In witness whereof the Andrew Luce Pipher Revocable Trust has subscribed its name this _____ day of _____, A.D. 20_____.
Andrew Luce Pipher Revocable Trust
Alexander Luce Pipher, Trustee

SUBDIVISION DEDICATION

The Andrew Luce Pipher Revocable Trust, being the owner of land described as follows:
THE SW1/4 OF THE NW1/4 OF SECTION 20, TOWNSHIP 51 NORTH, RANGE 6 WEST OF THE N.M.P.M.,
County of Delta,
State of Colorado.

in Delta County, Colorado, under the name of PIPHER MINOR SUBDIVISION PLN21-075, have laid out, platted and/or subdivided the same as shown on this plat and do hereby dedicate to the public at large the streets, alleys, roads and other public areas as shown hereon and these portions of land be used as easements for the installation and maintenance of public utilities as shown hereon.

NOTES:

- OUTDOOR LIGHTING SHALL BE HOODED OR SHIELDED SO THAT LIGHT IS DIRECTED DOWNWARD SO AS NOT TO GLARE ONTO THE ADJACENT PROPERTY OR DILUTE THE NIGHT SKY.
- ALL DEVELOPMENT IN DELTA COUNTY IS SUBJECT TO THE DELTA COUNTY RIGHT OF FARM AND RANCH POLICY, ADOPTED AS RESOLUTION 89-R-020 BY THE BOARD OF COUNTY COMMISSIONERS ON SEPTEMBER 27, 1999.
- THIS PROPERTY IS LOCATED IN AN AGRICULTURAL AREA. NORMAL AGRICULTURAL ACTIVITIES WILL CONTINUE UNIMPACTED IN THE SURROUNDING AREAS AND MUST NOT BE A BASIS FOR A CLAIM OF ADEQUATE PROVISION OF PROVEN GROSS REVENUE.
- ACCESS TO ALL SHOWN OR UN-SHOWN IRRIGATION DITCHES FOR CLEANING AND MAINTENANCE PURPOSES IS PERMITTED.
- COLORADO IS AN "OPEN RANGE" STATE. IT IS NOT THE RESPONSIBILITY OF A LIVESTOCK OWNER TO FENCE IN LIVESTOCK.
- IF THERE ARE COVENANTS, RESTRICTIONS OR OTHER DOCUMENTS FOR THE PROPERTY IN THIS SUBDIVISION, THEY WILL BE RECORDED IN THE OFFICE OF THE DELTA COUNTY CLERK AND RECORDER.
- EACH LOT OWNER SHALL BE PERSONALLY RESPONSIBLE TO CONTROL UNDESIRABLE, NOxious WEEDS AND INVASIVE SPECIES THAT MAY BE INTRODUCED INTO THE LOT BY THE LOT OWNER. THE DELTA COUNTY NEED MANAGEMENT ADVISORY COMMISSION CONCERNING THE CONTROL OF SUCH WEEDS.
- UNLESS APPROVED OTHERWISE, ALL LOTS WITHIN THIS SUBDIVISION HAVE BEEN APPROVED FOR SINGLE-FAMILY RESIDENTIAL USE. THIS SUBDIVISION IS NOT TO BE USED FOR OTHER THAN SINGLE-FAMILY RESIDENTIAL OR AGRICULTURAL USE. THE LOT OWNER TO PROCESS THE REQUEST IN ACCORDANCE WITH THE REGULATION OF DELTA COUNTY.
- ALL UTILITIES MUST BE PLACED UNDERGROUND ON ALL PARCELS.
- THE MINIMUM SET BACKS FOR ALL STRUCTURES (INCLUDING ONSITE WASTEWATER TREATMENT SYSTEMS), IN THIS SUBDIVISION SHALL BE:
ANY PUBLIC ROAD ROW 25'
INTERIOR PROPERTY LINE 15'
- SHARES OF IRRIGATION WATER CONVEYED TO LOTS AT THE TIME OF PLAT RECORDING SHALL BE SOLD SEPARATELY FROM THE PROPERTY AND MAY NOT RUN WITH THE LAND.
Shares of irrigation water shall be assigned as follows:
Lot 1 - NO irrigation shares
Lot 2 - 1/16th Interest in Dike Ditch and its decreed rights
10 statutory acres in Virginia Ditch
10 acre feet or exchange water from the Smith Fork Reservoir and Cathedral Water Co.
- THIS SITE HAS BEEN IDENTIFIED BY THE COLORADO DEPARTMENT OF NATURAL RESOURCES DIVISION OF WILDLIFE AS BEING IN A CRITICAL WILDLIFE HABITAT AREA. ANY DEVELOPMENT ON THIS SITE SHALL BE IN ACCORDANCE WITH THE DELTA COUNTY WILDLIFE AND SUCH DAMAGE SHOULD BE ANTICIPATED.

WILMORE & COMPANY

PROFESSIONAL LAND SURVEYING, INC.

408 Grand Avenue
P.O. Box 1652
Pueblo, Colorado 81428
970.537-4200 PHONE
970.260-4130 PHONE
www.wilmorelandsurveying.com
Deftining Boundaries EMAIL: randy@wilmorelandsurveying.com

FIELD CREW:

KC

DRAFTER:

KC

CHECKED BY:

RAW

PIIPHER MINOR SUBDIVISION PLN#21-075
WITHIN THE SW1/4 NW1/4 OF SECTION 20, T.51N., R.6W., N.M.P.M.
DELTA COUNTY, COLORADO

121333 25 JANUARY 2022

ALEXANDER LUCE PIPHER
ANDREW LUCE PIPHER REVOCABLE TRUST
81658 HIGHWAY 92, CRAWFORD, CO 81415