

DELTA COUNTY BOARD OF ADJUSTMENT

**Administration Building – Board Room
560 Dodge St., Delta, CO 81416
Thursday, May 26, 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. ANNUAL MEETING

1. Election of Officers

- a. Chair
- b. Vice-Chair

2. 2022 Meeting Schedule

B. 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.

C. AGENDA ADDITIONS, DELETIONS, AND CORRECTIONS

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

CERTIFICATION OF POSTING

On May 18, 2022, at 4:00 PM, Kim Henderson did post the above AGENDA as public notice of the May 26, 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.

D. SCHEDULED ITEMS

1. Meeting Minutes

a. April 28, 2022

RECOMMENDATION: Approve the action minutes as presented

2. PLN21-023 (Gash)

Consider a variance to reduce the required lot size for three lots in the A-35 zoning district; from 35 acres minimum to (Lot 1) 15.1-acres (Lot 2) 19.2-acres, and (Lot 3) 25.7-acres. The subject property is a 58.13-acre parcel located on Kiser Creek Road (Parcel: 319513300016), Cedaredge.

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

- a) Consider required variance criteria and findings as they apply to PLN21-023 (Gash);
- b) Provide direction to either Approve, Conditionally Approve, or Deny a lot size variance(s) for three (3) lots in the A-35 zoning designation located at 18151 Kiser Creek Road (Parcel: 319513300016); and
- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

3. PLN21-026 (High Desert Partners)

Consider a variance to reduce the required lot size from 35 acres in the A-35 zoning district to 5.0 acres for Lot 2; Lot 1 would retain 43.577 acres. The subject property is located at 38962 Pitkin Road, Paonia (Parcel: 324302100040).

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

- a) Consider required variance criteria and findings as they apply to PLN21-026/Pitkin Mesa West Subdivision (High Desert Partners);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for one (1) lot (5.0 acres) in the A-35 zoning designation located at 38962 Pitkin Road (Parcel 324302100040); and
- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

4. PLN21-056 (Clark)

Consider a variance reducing the required setback from 15-feet to approximately 7-feet for adjusting an interior property line between two parcels; Parcel #344718300016 and Parcel #344718302002. The property is located at 40270 & 40386 Cottonwood Creek Road, Crawford.

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

- a) Consider the variance findings as they apply to PLN21-056/Clark; and
- b) Provide direction to either Approve, Conditionally Approve, or Deny variance for setback requirements, reducing the required setback from an interior property line from 15-feet to approximately 7-feet; and
- c) Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

CERTIFICATION OF POSTING

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5. PLN22-041 (R. Morris)

Consider a variance to reduce the required lot size for one lot in the A-20 zoning district; from 20 acres minimum to approximately 6.5 acres (Lot 2). The subject property is a 56.90-acre parcel located at 19454, 19444, & 19448 Highway 65 (Parcel: 319308400068), Cedaredge.

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

- a) Consider required variance criteria and findings as they apply to PLN22-041 (R. Morris);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for one (1) lot in the A-20 zoning designation located at 19454, 19444, & 19448 Highway 65 (Parcel: 319308400068); and
- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

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, June 23, 2022 at 5:30 pm in Delta.

CERTIFICATION OF POSTING

On May 18, 2022, at 4:00 PM, Kim Henderson did post the above AGENDA as public notice of the May 26, 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
April 28, 2022

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

ROLL CALL

Board of Adjustments Members in Attendance:

Mike Twamley, District 1
Mark Roeber, District 3

Members Absent:

Brett Hilling, District 2

Planning Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Planning & Community Development Planner I, Angie Kemp

A. PUBLIC COMMENT

None

B. AGENDA ADDITIONS, DELETION, AND CORRECTIONS

None

C. SCHEDULED ITEMS:

Item #1: Meeting Minutes for February 24, 2022.

Mike Twamley moved to approve the Meeting Minutes as presented. Mark Roeber stepped down as Chair and seconded the motion.

Motion carried unanimously.

Item #2

PLN21-005/Klaseen

Consider a variance reducing the required lot size for one (1) lot in the A-35 zone; from 35.0 acres minimum to 5.030 acres (Lot 2). The subject property is a 41.89-acre parcel located on the north side of Redlands Mesa Road in Hotchkiss (Parcel: 324105300019).

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

- Consider required variance criteria and findings as they apply to PLN21-005 (Klaseen);
- Provide direction to either Approve, Conditionally Approve, or Deny a lot size variance for one (1) lot in the A-35 zoning designation located on the north side of Redlands Mesa Road in Hotchkiss (Parcel: 324105300019); and
- Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

Angie Kemp presented the project.

The Board asked questions of staff and the applicants - Bryan & Pamela Klaseen were in attendance,

Mike Twamley moved to approve PLN21-005 with staff recommended findings and conditions. Mark Roeber stepped down as Chair and seconded the motion.

Motion carried unanimously.

Item #3

PLN21-089/Bower



Consider variances reducing the required lot size for two (2) lots in the A-5 zone; from 5.0 acres minimum to 1.21 acres (Lot 1) and 2.16 acres (Lot 2). The subject property is a 3.37-acre parcel located at 3659 & 3663 2000 Road, Delta (Parcel: 345534103002).

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

- Consider required variance criteria and findings as they apply to PLN21-089 (Bower);
- Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for two (two) lots in the A-5 zoning designation located at 3659 & 3663 2000 Road (Parcel: 345534103002); and
- Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

Angie Kemp presented the project.

The Board asked questions of staff and the applicant - Douglas Bower was in attendance,

Mike Twamley moved to approve PLN21-089 with staff recommended findings and conditions. Mark Roeber stepped down as Chair and seconded the motion.

Motion carried unanimously.

Item #4

PLN22-011/Mitchell/Brill-Key

Consider variances reducing the required lot size for two (2) lots in the A-20 zone; from 20.0 acres minimum to 9.289 acres (Lot 1) and 10.173 acres (Lot 2). The subject property is a 20-acre parcel located at 36908 & 36904 M50 Road and 12401 3700 Road (Parcel: 324316400027).

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

- Consider required variance criteria and findings as they apply to PLN22-011 (Mitchell/Brill-Key);
- Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for two (2) lots in the A-20 zoning designation located at 36908 & 36904 M50 Road and 12401 3700 Road (Parcel: 324316400027); and
- Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

Angie Kemp presented the project.

The Board asked questions of staff and the applicant – David Mitchell was in attendance representing the owner,

Mike Twamley moved to approve PLN22-011 with staff recommended findings and conditions. Mark Roeber stepped down as Chair and seconded the motion.

Motion carried unanimously.

D. BOARD COMMENT, REQUESTS AND REFERRALS

Mike Twamley requested the BOA join the Planning Commission work session to discuss the Land Use Code Update.

E. DEPARTMENT REPORT:

Director Holm reported on the following items:

- The Planning Commission and Board of County Commissioners reviewed and approved the Armstrong Cluster Subdivision that the BOA reviewed on January 27, 2022.
- The Director requested to bring the subject of variances to lot size, legacy subdivisions and the possibility of adding a zoning designation of a 1-acre minimum to the Board for discussion and review. It was suggested to hold a joint work session with the Planning Commission on this topic.

Meeting adjourned at 6:25 p.m.



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

295 W 6th Street
Delta, Colorado 81416
planning@deltacounty.com
970.874.2110

The next meeting will be held on Thursday, May 26, 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, May 26, 2022 @ 5:30 p.m.

PLN21-023 (Gash)

Consider a variance to reduce the required lot size for three lots in the A-35 zoning district; from 35 acres minimum to (Lot 1) 15.1-Acres (Lot 2) 19.2-Acres, and (Lot 3) 25.7-acres. The subject property is a 58.13-acre parcel located on Kiser Creek Road (Parcel: 319513300016), Cedaredge.

PROJECT INFORMATION:

Property Owner: Linda K Gash Trust
Applicant: Robert Gash
Site Address(s): 18151 Kiser Creek Road
Parcel ID/Acct: 319513300016/R004382
Parcel Size: 58.13 Acres
Zoning: A-35

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BoA):

- a) Consider required variance criteria and findings as they apply to PLN21-023(Gash);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for three (3) lots in the A-35 zoning designation located at 18151 Kiser Creek Road (Parcel 319513300016); and
- c) Authorize the Director to prepare a resolution reflecting the BoA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY:

Mr. Robert Gash, trustee and applicant, is seeking a 3-lot subdivision (Preliminary Plat) from an approximately 58-acre parcel with frontage on Kiser Creek Road. The site is utilized as Agricultural and residential land. The parcel has irrigation water from Carbon Ditch and Powell Gulch. A shared driveway provides access to the existing Gash residence, as well as two other properties (Pieper and Springer).

The zoning is A-35, so the minimum acreage for subdividing this parcel is 35 acres per lot. 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 (4) and findings (3). The stated purpose of subdividing was for the owner to build a home for his family to on the non-irrigated lot, Lot 3. The applicant wishes to sell Lot 1 with an existing residence and ag land to fund the future family home.

If the BoA finds that this variance request meets the criteria & finding, staff finds that the subdivision is designed to separate irrigated lands from non-irrigated, taking into account the existing driveway, topography and neighboring property. Properties in the surrounding area are mostly large parcels. However, parcels abutting the property are at least 10-acres, and there are properties zoned A-5 to the west along Ward Creek Road and east along Green Valley Road. The primary question is if the BoA finds that the hardship criteria/findings are met, of if allowing the subdivision would relieve a hardship.

The LUC requires unanimous actions by the BoA must be in order to approve a variance. Once a decision has been made by the BOA, the process will either proceed with the Subdivision process if approved, or, if denied, the applicant will have 10 (calendar) days to appeal the BOA's decision to the Board of County Commissioners (BoCC). If the BOA finds that variance(s) can be approved, then staff recommends five (5) conditions. As a 3-lot subdivision, the Preliminary Plat will be considered by the Planning Commission and then the Board of County Commissioners.

DISCUSSION:**BACKGROUND**

On April 19, 2021, Mr. Gash submitted a pre-application form requesting to subdivide 59 acres into three (3) lots and distribute three (3) existing Coalby domestic water taps (one to each lot). A pre-application conference was held on May 17, 2021. A letter summarizing the conference and explaining what is needed to complete an application package was sent on June 2, 2021.

On February 16, 2022, staff sent a notice that the application would expire if the requested materials were not provided, or if the applicant does not express interest in pursuing their request. Planning received an email from Mr. Gash on February 17, 2022 stating he was still interested in pursuing the subdivision.

On April 19, 2022 the applicant submitted a Development Application and updated plat, including the subject variances.

APPLICATION

The application (PLN21-023) includes variances for a 3-lot subdivision (Preliminary Plat):

- Lot 1 (15.1 Ac) consist of irrigated agricultural land, an existing residence (18151 Kiser Creek Road), and ag. buildings.
- Lot 2 (19.2 Ac) consists of vacant, irrigated, agricultural land.
- Lot 3 (25.7 Ac) consists of vacant, non-irrigated land with significant topography.

The southeast corner of the parcel abuts Kiser Creek Road, which is a gravel road, County maintained. A shared driveway (easement) provides access to three properties: 1) 18151 Kiser Creek Rd (Parcel: 319513300016/Gash); 2) 18155 Kiser Creek Rd (Parcel: 319513200014/Springer); and 3) 18159 Kiser Creek Rd (Parcel: 319513200015/Pieper).

Subdivision requires proof of an adequate water supply for all lots/parcels. Coalby Domestic Water has provided a letter stating that there are three (3) water taps owned by the Trust, and located at 18151 Kiser Creek Road, Cedaredge. Water meters must be installed for each parcel before the County accepts a Final Plat.

The parcel has three (3) shares of irrigation water from Carbon Ditch and Powell Gulch. This lot design is intended to avoid impacting the function of irrigation. Because subdivisions of irrigated land inherently have an effect on irrigation operations, an Irrigation Plan is required to describe how it will continue, and how the operation will protect irrigated Ag lands (head gate location, pipe location, direction of flow, where/how irrigation water will be applied, etc.). The BoA can also consider the possibility of requiring building envelopes on Lots 1 and 2 to reduce the impact of future development on irrigated ag land.

In order for a variance to be granted, the Delta County LUC requires that all lots meet the minimum dimension standards for UGA zoning, this includes lot frontage of 30 feet. A 3-lot subdivision would create two additional lots that would share access with two other parcels. Lot 1 (as designed) would have an easement to provide access, but no frontage on Kiser Creek Road.

Delta County Roadway Design and Construction Standards requires the access to meet road standards when it serves 3+ parcels. County address standards require the access to be named when it serves 3+ units. The proposed subdivision would trigger the need for the driveway to be upgraded to County Road standards for a Private Road (privately maintained), and named. The frontage issue is eliminated once the driveway is upgraded to become a road.

County Engineering will have an opportunity to assess the subdivision and may request additional Right-of-Way (ROW) along the frontage of the 58-acre parcel abutting Kiser Creek Road. A Plat is required to illustrate the centerline of the improved road surfaces as well as existing rights-of-way. The County generally requests dedication of right-of-way to the centerline of the roadway, except any land already dedicated and depending on the conditions for that area (e.g., steep slopes). Dedications are to be Fee Simple Title. Any other form (easement, road petition, etc.) requires the underlying land owner to continue paying property taxes even though they are not able to use that land.

PROCESS

The application checklist requested enough detail, professionally drawn, for the BoA to be able to make a fully informed decision on the variance. The Preliminary Plat, with and without an aerial overlay, is attached (**Attachment**).

The PC/BoCC cannot act on the Preliminary Plat until/unless the Variance is approved. The BoCC makes the final decision to approve, conditionally approve or deny a Preliminary Plat. Conditions must be met, including installation of related infrastructure, before the Final Plat and dedication are accepted by the BoCC.

Eventual development of Lot 3 and/or Lot 2 will be subject to a Site Plan Review. That process requires establishing access, address, and septic permits from the County. Electrical and Plumbing permits will be obtained through the State. The Land Use Code 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. These setbacks will be important with the eventual development of Lot 2 or 3.

FINDINGS

The Land Use Code (LUC) 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 with an initial assessment by staff:

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.*

Staff finds that the site can support development that meets the minimum requirements for setbacks. Minimizing impact to irrigated agricultural lands will require a thought-out irrigation plan. There is adequate domestic water to all lots.

In order to subdivide, County Engineering will require upgrading the shared driveway into a private road.

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).*

When the driveway is developed into a Private Road, each of the lots in the subdivision will meet these requirements.

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.*

If the BOA finds that a variance can be approved, then staff recommends establishing building envelope on the Lots where future development would not further impact the irrigated agricultural lands or wildlife habitat, where applicable.

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.*

The question is if the BOA finds that holding to the strict regulations for A35 zoning “*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.*

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. Staff finds that there is no solar on the property to be considered in determining difficulty 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. Lot sizes in this general area are mostly 10+acres.

The variance process affords an avenue to request a smaller lot if required criteria/findings can be justified (e.g., physical constraint, hardship. Staff interprets that the exception for a variation to lot size is to create a single exception to address a unique situation.

This is a critical part in determining if a variance should be approved or denied. As such, staff recommends that the BoA take an action on the intent to approve, conditionally approve, or deny this request for a variance. Based on that direction, staff will create a resolution reflecting the BoA decision. At that point, an aggrieved party could appeal the BoA decision to the BoCC.

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.

CONDITIONS

If the BOA finds that the variance can be approved per the required findings, the BOA could apply conditions to address issues as part of the subdivision review. Staff has identified items that will be addressed as part of the subdivision, prior to accepting the Final Plat:

1. The Minor Plat shall illustrate the centerline of the improved road surface. County Engineer shall determine if Right-of-Way (ROW) is to be dedicated for Kiser Creek Road. Dedications to Delta County require acceptance by the BoCC. Dedications are required to be Fee Simple Title.
2. Roadway and accesses shall be permitted and constructed to County standards.
3. The final plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed. [Pursuant to Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria)].
4. Lots 1 & 2 shall have at least the minimum dimensions set out in the standards for the UGA zoning district (75-foot width, 30-foot frontage). An easement is not frontage, so Lot 2 will need to be revised to meet the minimum criteria. [Pursuant to Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria)].
5. An Irrigation Plan shall be submitted describing the proposed operation of irrigation for Lots 1 and 2, including any easements for access to irrigation headgates across Lot 1 and 2.

OTHER AGENCY INVOLVEMENT

A Pre-application form was submitted on April 19, 2021 and a conference was held with the owner on May 17, 2021. At that meeting, representatives from multiple County departments were present. The purpose of a pre-application conference (meeting) is to inform the applicant of pertinent regulations and identify any potential issues.

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 on May 11, 2022. When/If a subdivision is processed, it will be referred to adjacent property owners and agencies for a 21-day comment period which could affect the subdivision.

Attached material: list, in order as attached

- Application
- Minor Plat
- Minor Plat (with aerial overlay)



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

295 W 6th Street
Delta, Colorado 81416
planning@deltacounty.com
970.874.2110

LAND USE APPLICATION

OVERVIEW

This form provides the basic information for any land use proposal. This form is only one of the items required for a complete application submittal. It is the responsibility of the applicant(s) to ensure that all other required materials listed in the application checklist(s) are submitted. It is also the responsibility of the applicant to clearly demonstrate through narrative, visual representations, and other materials as needed, that the proposed land use complies with the Delta County Land Use Code. Incomplete applications are not considered filed and will be returned. All applications shall include digital copies of all files submitted along with a hard copy, unless otherwise determined by Planning staff.

Applicants must first attend a pre-application meeting with the Planning Department staff **BEFORE** submitting this Land Use Application. Additional materials required in the pre-application letter must be submitted with this application in order for the application to be complete. Incomplete applications will be returned and are not considered filed.

We accept Cash, Check or all major Credit Cards (2.5% fee applied at check out)

Please make checks payable to **DELTA COUNTY**

LAND USE CATEGORY (select all appropriate categories)

TYPE OF LAND USE:

☐ Permitted Use (P)

☐ Limited Use/Public Notice (Lⁿ)

☐ Limited Use (L)

☐ Conditional Use (C)

☒ Subdivision (Minor or Preliminary)

☒ Variance

☐ Adjustment

THIS APPLICATION IS FOR:

☐ Rezoning

☐ Subdivision, Minor Plat (Less than 3 Lots)

☒ Subdivision, Preliminary Plat (3 or more Lots)

☐ Zoning Permit (Site Plan Approval)

☒ Variance

☐ Appeal of Administrative Decision/Determination

☐ Replat (includes minor lot line adjustments)

☐ Lot Line Adjustment

☐ Boundary Adjustment

☐ Conditional Use Permit

☐ Development Agreement

☐ Minor Amendment

☐ Other:

Pre-application Meeting Date was held on: **May 17, 2021**

☒ **CONTACT INFORMATION**

OWNER(S): LINDA K GASH TRUST c/o ROBERT GASH

ADDRESS: _____

PHONE: _____

E-MAIL: _____

APPLICANT(S): SAME

ADDRESS: _____

PHONE: _____

E-MAIL: _____

APPLICANTS INTEREST (Owner, Buyer, Representative):

(If Applicant is not the owner, authorization from owners of all properties associated with this permit is **REQUIRED**)

☒ **SITE INFORMATION**

Site Address: (If applicable) 18151 KISER CREEK ROAD

The Parcel Number and Legal Description can be obtained from your Deed, Tax Notice, or by calling the Delta County Assessor's Office at (970) 874-2120 or website: www.deltacounty.com

A part of the (1/4 Section) _____, Section 13, Township 13S, Range 95W

SUBDIVISION (If applicable) (Name, Lot#, Block #) _____

(ATTACH COPY OF THE RECORDED PLAT)

PARCEL NUMBER (PID#): 3195-133-00-016 Current Zoning District: _____

Existing Use(s): RESIDENTIAL/AG Proposed Use(s): RESIDENTIAL/AG

☐ **REZONING (amendment to the district zoning maps)**

Applicant wishes to amend the Delta County Zoning Maps by changing the above specified parcel from _____ Zone District to a _____ Zone District

☐ **LAND USE CODE AMENDMENT (minor)**

Describe the proposed amendment: _____



SUBDIVISION

Pre-Application Date: MAY 17, 2021 MP -

Plat Name: GASH SUBDIVISION

Total number of acres: 59

Total number of proposed lots (Please reference **Chapter 3, Lots, Buildings, and Structures** for Lot Dimensions by Zoning District): 3

Domestic Water (Domestic water is required for all lots) Attach copies of approved well permits, water tap or certificate, court decrees, or deeded water rights for all lots and list them here:

COALBY DOMESTIC

Irrigation Ditches: If irrigation ditches are located on or adjacent to this property, list their locations, names of owners, water rights, number of shares owned and any proposed division of irrigation water.

CARBON DITCH, ORCHARD DITCH

SEE ATTACHED

Sewage Disposal: No sketch plan, site plan, or preliminary plat shall be approved by the County unless the Colorado Department of Public Health and Environment or Delta County Environmental Health Division has made a favorable recommendation regarding the proposed method of sewage disposal.

Fire Protection: Please list the fire district in which the property is located in.
Fire protection facilities shall be reviewed and approved by the appropriate Fire Protection District for sketch plans or site plans associated with limited or conditional uses, and preliminary plats (or final plats, where a preliminary plat is required prior to final plat approval). An improvements agreement and appropriate collateral shall be required for all fire improvements.

Access: What road or highway will the property have access from? _____

Note: If you have an existing **APPROVED** access permit, please attach a copy with your application. If you do not, you will need to apply for an access permit with the appropriate Department as part of the subdivision process. (All Highway Access Permits are obtained from the Colorado Department of Transportation)



VARIANCE

Please explain the reason(s) for requesting a variance. (No variance shall be authorized unless the Board of Adjustments (BOA) finds all of the requirements laid out in **Chapter 10, Section 2. Variances**, is met)

WE WISH TO SPLIT THE ACREAGE INTO 3 PARCELS AND
CREATE & PRESERVE THE CURRENT AGRICULTURAL USE.



APPEALS

Please refer to **Chapter 12, Appeals**, of the Code.



REPLAT (minor amendments, minor lot line adjustments, plat correction, plat note removal, etc.)

Recorded date of previously approved Plat: _____

Description of replat: _____



LOT LINE AND BOUNDARY ADJUSTMENTS

What is the purpose of the adjustment? _____

Existing Parcel Size(s): _____

Adjusted parcel size(s): _____

Please list all landowners, along with their parcel number, who will be involved in this process:

Applicant/Owner(s) Signature: _____

ROBERT E. GASH, TRUSTEE

Applicant/Owner(s) Signature: _____



ACKNOWLEDGEMENT AND AUTHORIZATION

The undersigned authorizes the Delta County Planning Department to proceed with processing this application under the requirements of the Delta County Land Use Code (LUC).

I hereby certify that the information provided herein is complete and accurate to the best of my knowledge. Also, I hereby certify that I am the property owner or that I, the undersigned, am authorized to act on the property owner's behalf.

OWNER SIGNATURE: _____

ROBERT E. GASH, TRUSTEE

DATE: _____

4/19/2022

APPLICANT SIGNATURE: _____

DATE: _____

NOTES:

1. 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.
2. ALL DEVELOPMENT IN DELTA COUNTY IS SUBJECT TO THE DELTA COUNTY RIGHT TO FARM AND RANCH POLICY, ADOPTED AS RESOLUTION 99-R-020 BY THE BOARD OF COUNTY COMMISSIONERS ON SEPTEMBER 27, 1999.
3. THIS PROPERTY IS LOCATED IN AN AGRICULTURAL AREA. NORMAL AGRICULTURAL ACTIVITIES WILL CONTINUE UNABATED IN THE SURROUNDING AREAS AND MUST NOT BE A BASIS FOR A LAWSUIT, EXCEPT IN CASES OF PROVEN GROSS NEGLIGENCE.
4. ACCESS TO ALL SHOWN OR UN-SHOWN IRRIGATION DITCHES FOR CLEANING AND MAINTENANCE PURPOSES IS PERMITTED.
5. COLORADO IS AN "OPEN RANGE" STATE. IT IS NOT THE RESPONSIBILITY OF A LIVESTOCK OWNER TO FENCE IN LIVESTOCK.
6. 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.
7. EACH LOT OWNER SHALL BE PERSONALLY RESPONSIBLE TO CONTROL UNDESIRABLE, NOXIOUS WEEDS WITHIN THE BOUNDARIES OF THAT LOT, TO PREVENT THE SPREADING OF SUCH WEEDS TO OTHER LANDS AND TO COMPLY WITH THE RECOMMENDATIONS OF THE DELTA COUNTY WEED MANAGEMENT ADVISORY COMMISSION CONCERNING THE CONTROL OF SUCH WEEDS.
8. UNLESS APPROVED OTHERWISE, ALL LOTS WITHIN THIS SUBDIVISION HAVE BEEN APPROVED FOR ONE SINGLE RESIDENTIAL USE ONLY. ANY FURTHER SUBDIVISION OR ANY CHANGE OF USE TO OTHER THAN SINGLE FAMILY RESIDENTIAL OR AGRICULTURAL USE REQUIRES THE LOT OWNER TO PROCESS THE REQUEST IN ACCORDANCE WITH THE REGULATION OF DELTA COUNTY.
9. ALL UTILITIES MUST BE PLACED UNDERGROUND ON ALL PARCELS.

10. 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'

11. SHARES OF IRRIGATION WATER CONVEYED TO LOTS AT THE TIME OF PLAT RECORDING MAY OR MAY NOT BE SOLD SEPARATELY FROM THE PROPERTY AND MAY NOT RUN WITH THE LAND.

12. LOT 1 - An undivided one-half interest in and to the 1.0 c.f.s. decreed to the Carbon Ditch as Priority H-25; an undivided one-fourth interest in and to the 0.60 c.f.s. of water decreed to Carbon Ditch as priority J-26 for domestic and stock water.

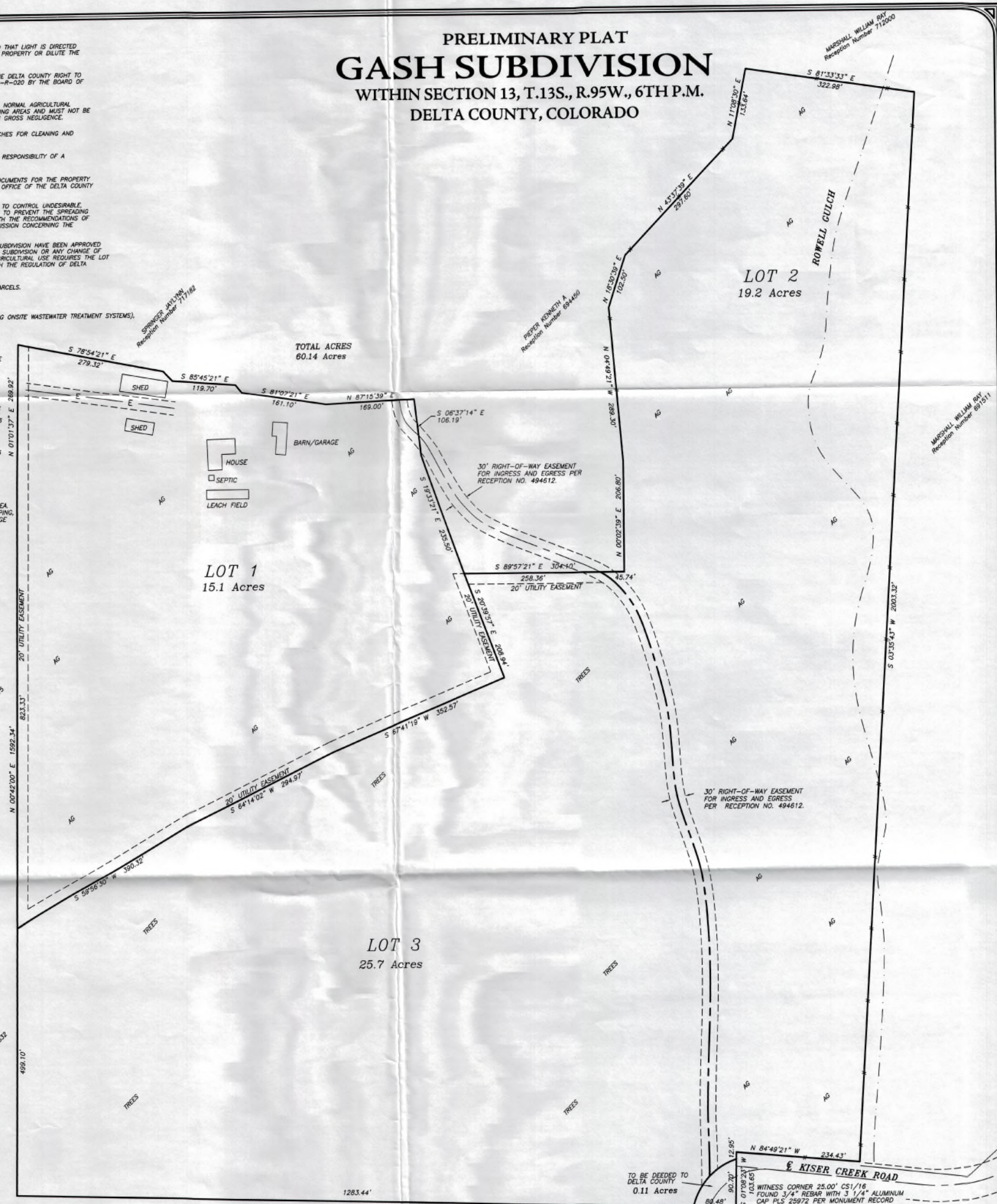
13. LOT 2 - First right of use of that portion of the Orchard Ditch from Rowell Gulch, priority B-8 for 0.625 c.f.s., used on 12 acres in the SE1/4 NE1/4 and NW1/4 SE1/4 of said Section 13.

14. THIS SITE HAS BEEN IDENTIFIED BY THE COLORADO DEPARTMENT OF NATURAL RESOURCES, DIVISION OF WILDLIFE AS BEING IN A CRITICAL WILDLIFE HABITAT AREA. PROPERTY OWNERS MAY SUFFER DAMAGE TO LANDSCAPING, TREES, FENCES, ETC. FROM WILDLIFE AND SUCH DAMAGE SHOULD BE ANTICIPATED.

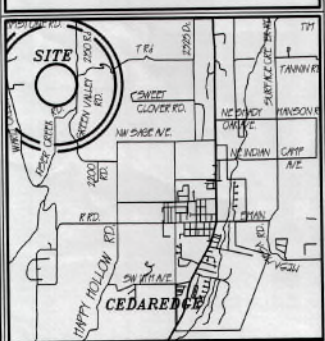
SUMMARY TABLE:

TOTAL AREA OF SUBDIVISION = 60.14 ACRES.
NUMBER OF BUILDABLE LOTS = 2.
NUMBER OF NON-BUILDABLE LOTS = 0.

PRELIMINARY PLAT GASH SUBDIVISION WITHIN SECTION 13, T.13S., R.95W., 6TH P.M. DELTA COUNTY, COLORADO



AREA LOCATOR



TYPICAL LEGEND

- Set Mag Nail in Asphalt
- Set 5/8" rebar 30" long w/2" aluminum cap PLS25972
- Set 5/8" rebar 12" aluminum cap as witness corner or linepin PLS25972
- Set 3/4" rebar 30" long w/3-1/4" aluminum cap PLS25972 or as noted, per monument record.
- Found 3-1/4" cap Colorado Department Of Transportation right-of-way monument RLS 1456
- Found 5/8" rebar w/1 1/2" aluminum cap RLS 11530
- Found 5/8" rebar 1 1/2" aluminum cap PLS 12766
- ORIGINAL USGLO SURVEY CAP
- Fencelines
- Electric (overhead)
- Electric (underground)
- Water line
- Easement
- Draw
- New Quit Claim to Delta County
- Previous R.O.W. to Delta County

BASIS OF BEARINGS:

N.01°35'20"E. FROM THE SECTION CORNER COMMON TO SEC. 11, 12, 13 & 14 TO THE S1/16 COR. COMMON TO SEC. 11 & 12 GEODETIC NORTH GPS OBSERVATION

SCALE 1"=100 U.S. SURVEY FEET

SUBDIVISION DEDICATION

I, The Linda K. Gash Trust, being the owner of land described as follows:

In Delta County, Colorado, under the name of GASH SUBDIVISION, 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 those portions of land labeled as easements for the installation and maintenance of public utilities as shown hereon.

In witness whereof The Linda K. Gash Trust have subscribed their names this _____ day of _____, A.D. 20____.

The Linda K. Gash Trust

By _____
Richard E. Gash as trustee

NOTARIAL:

State of _____ } ss.
County of _____ }
The foregoing instrument was acknowledged before me this _____ day of _____, A.D. 20____, by Richard E. Gash as trustee of The Linda K. Gash Trust
My commission expires: _____
My address is _____
Witness my hand and official seal.

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

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

Planning Staff

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within plat of GASH SUBDIVISION is approved this _____ day of _____, A.D. 20____, 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 _____
Attest _____

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 are paid in full. Dated this _____ day of _____, A.D. 20____.

Treasurer of Delta County, Colorado

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

SURVEYOR'S CERTIFICATION

I, Randy A. Wilmore, 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 #25972

NOTE: According to Colorado law any legal action based upon a defect in this survey must be commenced within three years after such defect is discovered. In no event may any action based upon any defect in this survey be commenced more than ten years from the date shown on the certification hereon.



WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

406 Grand Avenue 970.527-4200 PHONE
P.O. Box 1652 970.527-4202 PHONE
Paonia, Colorado 81428 www.wilmoreandsurveying.com
EMAIL: randy@wilmoreandsurveying.com

FIELD CREW:
RAW, CW

DRAFTER:
RAW

CHECKED BY:
KC

GASH SUBDIVISION
WITHIN SECTION 13, T.13S., R.95W., 6TH P.M.
DELTA COUNTY, COLORADO

J21196FINAL 23 JULY 2021

NOTES:

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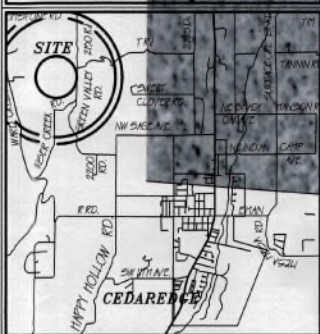
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GEODETIC NORTH
GPS OBSERVATION
SCALE 1"=100 U.S. SURVEY FEET

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In witness whereof The Linda K. Gash Trust have subscribed their names this ____ day of _____, A.D. 20____.

The Linda K. Gash Trust

By: _____
Richard E. Gash as trustee

NOTARIAL:

State of _____ } ss.
County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, A.D. 20____, by Richard E. Gash as trustee of

The Linda K. Gash Trust

My commission expires: _____
My address is: _____

Witness my hand and official seal.

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

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

Planning Staff

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within plat of GASH SUBDIVISION is approved this ____ day of _____, A.D. 20____, 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 _____
Attest _____

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 are paid in full. Dated this ____ day of _____, A.D. 20____.

Treasurer of Delta County, Colorado

COUNTY SURVEYOR'S CERTIFICATE

Approved for content and form only and not as to the accuracy of survey, computations or drafting, pursuant to CRS 38-51-108.

County Surveyor _____

Date _____

SURVEYOR'S CERTIFICATION

I, Randy A. Wilmore, 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 #25972

NOTE: According to Colorado law any legal action based upon a defect in this survey must be commenced within three years after such defect is discovered. In no event may any action based upon any defect in this survey be commenced more than ten years from the date shown on the certification hereon.



WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

406 Grand Avenue P.O. Box 1662
Paonia, Colorado 81428
970.527-4200 PHONE
970.527-4202 PHONE
www.wilmorelandsurveying.com
EMAIL: randy@wilmorelandsurveying.com

FIELD CREW:
RAW, CW

DRAFTER:
RAW

CHECKED BY:
KC

GASH SUBDIVISION
WITHIN SECTION 13, T.13S., R.95W., 6TH P.M.
DELTA COUNTY, COLORADO
J21196FINAL 23 JULY 2021



STAFF REPORT

Board of Adjustment

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

Thursday, May 26, 2022 @ 5:30 p.m.

PLN21-026/Pitkin Mesa West Subdivision (High Desert Partners)

Consider a variance to reduce the required lot size from 35 acres in the A-35 zoning district to 5.0 acres for Lot 2; Lot 1 would retain 43.577 acres. The subject property is located at 38962 Pitkin Road, Paonia (Parcel: 324302100040)

PROJECT INFORMATION:

Property Owner: High Desert Partners LLC
Applicant: William Tyler Norris
Site Address(s): 38962 Pitkin Road, Paonia
Parcel ID/Acct: 324302100040/R007119
Parcel Size: 48.58 Acres
Zoning: A-35

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN21-026/Pitkin Mesa West Subdivision (High Desert Partners);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for one (1) lot (5.0 acres) in the A-35 zoning designation located at 38962 Pitkin Road (Parcel 324302100040); and



- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY:

On March 31, 2022, a Land Use Application was submitted with a Site Plan reflecting a 2-Lot Subdivision (Minor Plat). The subdivision is designed to separate approximately 5-acres (Lot 2) from the eastern portion of the parcel. Lot 1 would consist of the remaining 43+ acres. Zoning for the parcel is A-35, which requires a minimum parcel size of 35 acres. A variance is required to reduce the minimum lot size required for Lot 2.

When this project was first presented to the County (pre-application) the plan included subdividing the 49-acre parcel into three (3) Lots (Preliminary Plat). Staff expressed concern for the proposed configuration where all three lots were less than the 35 acres required in the A35 zone. Multiple ditches/easements were also discussed, along with access to the property. Staff noted that Pitkin Road is a private road, privately maintained, west of the Fire Mountain Canal bridge.

Properties in the surrounding area consist of A-20 to the east and A-35 to the north and west of the subject property; a majority of the parcels in the A-35 zone are 40-acre parcels; there are numerous parcels within the A-20 zone that are less than the 20-acre minimum required for subdivision. Therefore, the primary question is if the BOA finds that the hardship criteria/findings are met.

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 (4) and findings (3). Staff finds there are no unique physical conditions; however, the parcel could be subdivided if the BOA finds that it meets the required criteria and findings.

The 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 proceed with the Subdivision process if approved, or, if denied, the applicant will have 10 (calendar) days to appeal the BOA's decision to the Board of County Commissioners (BoCC). If the BOA approves the variance, the Minor Plat could be handled Administratively by the Director of Planning.

DISCUSSION:

On March 31, 2022, a Land Use Application was submitted with a Site Plan reflecting a 2-Lot Subdivision (Minor Plat). High Desert Partners, LLC, the property owner and Tyler Norris (Sole shareholder in the LLC) applicant, is seeking a 2-lot subdivision (Minor Plat) from an approximately 49-acre parcel with frontage on Pitkin Road. The site includes Agricultural use utilizing irrigation water with shares from both the Robbins Ditch and the Overland Ditch and Reservoir Company, and currently consists of a cabin with numerous outbuildings.



Zoning for the parcel is A-35, which requires a minimum parcel size of 35 acres. The subdivision is designed to separate approximately 5-acres (Lot 2) from the eastern portion of the parcel, which does not meet the minimum acreage; therefore, a variance is required. Lot 1 would consist of the remaining 43+ acres, so no variance is required for that lot.

BACKGROUND

On April 26, 2021, Tyler Norris, managing member of High Desert Partners, LLC, submitted a pre-application form requesting to subdivide the 48.5-acre parcel into three lots (Preliminary Plat) with two of those lots requiring a variance, as they did not meet the 35-acre minimum for the zoning designation. A pre-application meeting was held on May 3, 2021 with the applicant (managing partner of the LLC), two other partners of the LLC (Vanna, 20% interest), attorney representing the applicant (Mr. Charles Stewart), and county staff from Planning, Engineering, and GIS.

On May 14, 2021, Staff sent a letter informing the applicant of the process, including documents that would be needed to process the Variances and the Subdivision. Staff expressed concern for the proposed configuration, specifically related to Lot 2, and also the basis for Lot 3 being presented with less than the 35-acre minimum. A sketch of the pre-application and associated plan is **Attached** for reference.

Access was discussed with the County Engineering department. Pitkin Road is classified as a Local Service Road with a 60-foot ROW width, which is County-maintained east of the Fire Mountain Canal Bridge. The portion of Pitkin Road west of the Fire Mountain Canal Bridge is a private road, privately maintained. This property takes access from Pitkin Road west off the bridge. If the County were to ever take over maintenance, ROW dedication would be required and the road must be constructed to County standards.

Mr. Stewart asked for confirmation of Pitkin Road ROW, to which the County Engineer noted that the ROW road petition recorded under Book C, Page 65 calls out a 40-foot ROW for Pitkin Road. Mr. Stewart asked if the County would require 60-feet of ROW beyond the bridge as a condition of approval; District #3 Road & Bridge Foreman stated that there are no intentions of the County taking over maintenance for this portion of Pitkin Road; therefore, 60-feet of ROW would not be required as a condition of approval.

There is a secondary access in place that runs along the eastern property line. This access was determined to be an allowed-by-right road and will be the primary access for Lot 2, per the LLC. County Engineering stated an access easement would need to be shown on the Final Plat.

Ditch easements were also discussed. Fire Mountain Canal runs to the south and east of the property, tying into Roatcap Creek. The Robbins Ditch runs in an easterly direction from the Roatcap Creek to the northwest corner of the property. The Overland



Ditch also runs water to/through the property; there are existing easements in place for both Ditches.

It was also noted that any new easements, including access, would need to be accurately shown on the Final Plat. Any existing easements would need to be shown on the Final Plat with the appropriate recording information. The applicant was informed that subdivisions are required to prove an adequate (domestic) water supply for each lot created (Chapter 8, Section 3 LUC). To which it was stated, that the property has a tap from Pitkin Mesa Water and there is an existing (domestic) well.

CURRENT APPLICATION

On March 31, 2022, Mr. Charles Stewart (Attorney) submitted a completed application packet to the Permit Center (Planning Department) on behalf of Tyler Norris. Staff determined the application to be complete.

The application (PLN21-026) is for a 2-lot subdivision (Minor Plat) with frontage on Pitkin Road which is a private gravel road, privately maintained.

- Lot 1 (43.577 Acres). Currently the lot consists of a cabin, multiple sheds and a hay barn. About 25-acres of the property is irrigated agricultural land. Robbins Ditch flows from Roatcap Creek to the northwest corner of Lot 1. The ditch is owned by multiple parties, including the applicant, and the water is runoff water. Subject to an Irrigation Agreement, the applicant proposes to convey 91% of its interest in Robbins Ditch to Lot 1. The lot will also consist of eighteen (18) shares of the Overland Ditch and Reservoir Company. There is also an existing well (Permit #186808) that provides domestic water, fire protection and limited irrigation (1-acre of lawns, home gardens and watering of domestic animals) for three (3) Single-Family Dwellings.
- Lot 2 (5.000 Acres). Currently the lot is vacant, irrigated, agricultural land. There will be a Pitkin Mesa water tap assigned to the lot once the upgrade to the pipeline is completed; once the meter pit, meter and associated parts are installed the line can be extended to the Lot. The applicant proposes to convey 9% of its interest in Robbins Ditch to Lot 2. The lot will also consist of two (2) shares of the Overland Ditch and Reservoir Company.

There is a deed restriction on Lot 1 (a 3.89-acre portion located at the southern most point of the property) that restricts any building or maintaining of any structure on the property within this area. This restriction shall run with the land and is binding. The Minor Plat, with and without an aerial overlay, is attached (**Attachment**).

Records show the parcel to be 48.58 acres, and the parcel has been zoned per the Delta County Land Use Code as A-35. The minimum acreage for subdividing this parcel is 35 acres per lot. The application proposes to subdivide one parcel into two (2) lots where one (1) lot would be less than the 35-acre minimum. Because Lot 2 does not meet the minimum requirements per the zoning designation, a variance is required to create the lot.



The proposed Site Plan illustrates splitting the property and irrigated land into two parcels; existing easements for access, ditches and irrigation have been illustrated for both Lots. The LUC requires a minimum frontage of 30-feet for lots requiring a variance. As proposed, Lot 2 would have approximately 467-feet of frontage along Pitkin Road.

Creating the 5-acre lot, as proposed, would impact irrigated land. The applicant has supplied information about existing irrigation for the entire 48.5-acre parcel. According to the application the Robbins Ditch is owned by the applicant, the owner of Lot 1 of the Kinney Subdivision, and the owner of 39091 Pitkin Road. Robbins Ditch is a decreed right of 3.1 c.f.s. The water is runoff water and usually ends in the late spring or early summer. Subject to an irrigation agreement, applicant proposes to convey 91% of its interest in Robbins Ditch with Lot 1 and 9% of its interest with Lot 2. The applicant also owns twenty (20) shares of the Overland Ditch and Reservoir Company. Subject to an irrigation agreement, the applicant proposes to convey eighteen (18) shares of Overland Ditch and Reservoir Stock along with Lot 1 and two (2) shares along with Lot 2. The applicant will be required to submit an Irrigation Plan for the Lots (Condition).

Subdivisions require proof of an adequate water supply for all lots created. The applicant has demonstrated that they have the ability to supply domestic water to both Lots 1 & 2 through both a well, and a Pitkin Mesa Water Tap. The Final Plat will need to reflect the well Permit # and the Water Tap number, as well a Plat Note for the well as it is not allowed to be used for both Lots (SB20-155) (Condition).

The Land Use Code 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.

PROCESS

Pursuant the LUC, Minor Plat (2-lot subdivisions) are handled Administratively, which means that the Director of Community Development and Natural Resources makes the final decision. The Director cannot act 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 Land Use Code (LUC) 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 with an initial assessment by staff:

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.*



Staff finds that the site can support development as it meets the minimum requirements for County setbacks. The subdivision would impact approximately 5-acres of irrigated lands, according to the application. The proposed subdivision has adequate access and easements for all utilities; access will need to be built to County Standards. Pitkin Mesa Pipeline Co. has stated that once the upgrades to the pipeline are completed (meter pit, meter and associated parts), the applicant is able to extend the line anywhere within the service area. They also stated that if the applicant needs to boost the pressure in the line, it must be done with a tank or cistern and pump; hooking a pump directly to a service line is not allowed as it's not safe for the pipes or the potability of the water.

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).*

Lot 2, as proposed, has an existing 65-foot access easement (Reception #491170) for access to Pitkin Road; lot frontage is approximately 476-feet. Other minimum dimensions are met, as the southern lot line measures 236.52-feet (at the narrowest part) while the width measures approximately 559-feet.

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.*

If the BOA finds that a variance can be approved, then staff recommends establishing a building envelope on Lot 2 where future development would not further impact the irrigated agricultural lands or wildlife habitat (Condition).

4. *The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed.*

If a variance is 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.*

The applicant presented the following information in their application as their justification for requesting a variance:



Although the property has been zoned A-35, the adjacent properties consist of two smaller lots (5.0 – 6.6 acres). There are numerous small acreage parcels on Pitkin Mesa, 5-acre lots seem appropriate in this area.

Although zoned agricultural, the property has limited agricultural use; until recently, the only irrigation water associated with the property, was a 3.1 c.f.s. decree from Robbins Ditch; this ditch seems substantial, but it is not. What water is runoff water and when the snowmelt into Roatcap Creek ends, there is no Robbins Ditch water. Further, Robbins Ditch was an open ditch cut into a hillside, running just over a mile from its headgate on Roatcap Creek to the subject property; water loss and erosion issues were substantial. Due to the limited water right and issues with the Robbins Ditch, the property was left uncultivated for decades.

In 2012, High Desert Partners, LLC was formed, and the property was transferred to the LLC. Mr. Norris (applicant) owned 80% of the LLC and his two partners owned 20%. The LLC was formed to develop the property for agricultural and residential purposes. Specifically, the LLC was formed to provide irrigation improvements, experiment with native grasses and specialty crops, provide wildlife protection, and oversee weed and fire abatement. In 2014, ditch improvements were made; most of the money was spent piping Robbins Ditch. Piping the ditch reduced water loss and reduced the risk of erosion or washout. In 2018, permaculture development occurred and in 2019, soil conservation measures were taken.

Piping Robbins Ditch made it possible to bring Overland Ditch and Reservoir water to the property. The applicant now owns twenty (20) shares of Overland Ditch. The applicant is in the process of obtaining irrigation water tanks and other irrigation system improvements. The applicant intends to plant 50 fruit and other trees on the property, along with 100 berry and other bushes. The pasture is currently producing alfalfa and cover crop.

Until recently, the property could not be subdivided because of the lack of domestic water. In 2017, the applicant purchased a Pitkin Mesa Pipeline Tap. In 2020, the Pitkin Mesa Pipeline expanded its service area to include the applicant's property.

On June 24, 2021, Mr. Norris purchased his partners' interest in the LLC.

2. *A variance from strict application of the regulations at issue would relieve such difficulties or hardship.*

The applicant refers to the Master Plan stating; *"Protecting agricultural lands, especially those lands with quality soil and irrigation, that remain largely intact is a high priority. Protection of agricultural lands means ensuring the economic viability of agricultural producers. Agricultural producers expressed concerns that*



future land use and development regulations do not impair their ability to adapt and innovate so they can remain economically viable.” They argue that to be economically viable, the property must also include some residential development. Mr. Norris has had an ownership interest in this property for twenty-one years, and his plan has always been to develop the property’s agricultural and residential use. Over the years, the applicant has spent a significant amount of time, money and energy transforming the subject property into a small-scale agricultural property. As such, the applicant feels that denying the ability to subdivide the property is an exceptional and undue hardship for them. Subdivision of the property would allow the applicant to recoup a portion of his investment and provide needed housing while furthering the intent and purpose of the code.

Staff has provided information for what constitutes a hardship below.

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. Most of the abutting properties to the west have at least 35 acres, while the abutting properties to the east have anywhere from 9.5 to 30-acres and are zoned A-20. The subject property is approximately 0.6 miles from the Urban Growth Area (UGA) and directly east about ½ a mile are properties zoned A-5. There is a handful of properties in the A-35 zone that have less than 20-acres.

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 impact an estimated 5-acres of agricultural land; however, the intent is to keep the agricultural and residential uses together for each Lot. Supporting stakeholders like the applicant, that is restoring agricultural lands, clearly furthers the intent of the Code and is clearly in the public good.

This is a critical part in determining if a variance should be approved or denied. As such, staff recommends that the BOA take an action on the intent to approve, conditionally approve, or deny this request for a variance. Based on that direction, staff will return with a resolution for the BOA to adopt. At that point, an aggrieved party could appeal the BOA decision to the BoCC.

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

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners 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 which could affect the subdivision.

Attached material: list, in order as attached

- Pre-Application Sketch Plan
- Site Plan (Minor Plat)
- Site Plan (Minor Plat) with Aerial

SKETCH PLAN OF
HIGH DESERT PARTNERS SUBDIVISION
PREPARED FOR TYLER NORRIS

LINE	BEARING	DISTANCE
L1	S 88°58'00" E	256.66'
L2	N 58°58'19" E	102.05'
L3	S 00°00'00" E	305.01'
L4	S 39°26'19" W	111.00'
L5	S 23°17'27" W	65.53'
L6	S 44°44'39" W	180.43'
L7	S 11°09'21" E	67.82'
L8	S 11°43'05" W	135.50'
L9	S 00°00'00" E	15.97'

L10	N 90°00'00" W	30.01'
L11	S 22°59'16" W	268.35'
L12	S 58°55'55" W	100.51'
L13	S 21°33'50" W	151.22'
L14	N 86°16'38" W	196.43'
L15	S 02°23'37" W	30.01'
L16	N 48°17'45" W	215.23'

KOLACHOV, NICHOLAS
REC. NO. 682288

CAREY, DAVID
REC. NO. 712936

CAREY, DAVID
REC. NO. 679020

10' NON-EXCLUSIVE UTILITY
& MAINTENANCE EASEMENT

30' RIGHT-OF-WAY
FOR PITKIN ROAD
PER ROAD PETITION
BK C, PG 65

S 89°03'17" E 2591.52'

1491.55'

N 02°57'39" E 139.80'

CENTERLINE OF 15'
IRRIGATION EASEMENT
FOR ROBINSON DITCH

CENTERLINE OF ACCESS 15'
EASEMENT FOR ROBINSON
DITCH MAINTENANCE

ELECTRIC
TRANSFORMER

CABIN

SHED

WELL

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REC. NO. 682288
KOLACHOV, NICHOLAS

L10	N	90°00'00"	W	30.01'
L11	S	22°59'16"	W	268.35'
L12	S	58°55'55"	W	100.51'
L13	S	21°33'50"	W	151.22'
L14	N	86°16'38"	W	196.43'
L15	S	02°23'37"	W	30.01'



EMAIL: kris@wilmorelandsurveying.com

J2002 SITE 28 MARCH 2022 DRAWN BY: KC

Defining Boundaries

SITE PLAN OF
PITKIN MESA WEST SUBDIVISION SUB20-011
PREPARED FOR TYLER NORRIS

LINE	BEARING	DISTANCE
L1	S 88°58'00" E	256.66'
L2	N 58°58'19" E	102.05'
L3	S 00°00'00" E	305.01'
L4	S 39°26'19" W	111.00'
L5	S 23°17'27" W	65.53'
L6	S 44°44'39" W	180.43'
L7	S 11°09'21" E	67.82'
L8	S 11°43'05" W	135.50'
L9	S 00°00'00" E	15.97'

L10	N 90°00'00" W	30.01'
L11	S 122°59'16" W	268.35'
L12	S 58°55'55" W	100.51'
L13	S 21°33'50" W	151.22'
L14	N 86°16'38" W	196.43'
L15	S 02°23'37" W	30.01'



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J20022 SITE 28 MARCH 2023 DRAWN BY: KC





STAFF REPORT

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

Thursday, May 26, 2022 @ 5:30 p.m.

PLN21-056/Clark

Consider a variance reducing the required setback from 15-feet to approximately 7-feet for adjusting an interior property line between two parcels; Parcel #344718300016 and Parcel #344718302002. The property is located at 40270 & 40386 Cottonwood Creek Road, Crawford.

PROJECT INFORMATION:

Property Owner: Arlie B and Sharon Kay Clark
Applicant: Kay Clark
Site Address(s): 40270 & 40386 Cottonwood Creek Road, Crawford
Parcel ID/Acct: 34471830016/R019121 & 344718302002/R019325
Parcel Size: 3.00 Ac (R019325) & 52.27 Ac (R019121)
Zoning: A-35

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider the variance findings as they apply to PLN21-056/Clark; and
- b) Provide direction to either Approve, Conditionally Approve, or Deny variance for setback requirements, reducing the required setback from an interior property line from 15-feet to approximately 7-feet; and
- c) Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).



SUMMARY:

Mr. and Ms. Clark (owners/applicant) own two parcels (Parcel #34471830016 & Parcel #344718302002). They submitted an application for a Boundary Line Adjustment between these parcels with the intent to accommodate the grazing operation for the existing farm/homestead located at 40386 Cottonwood Creek Road, Crawford. The proposed adjustment would move a property line such that it follows the main irrigation lines on the Clark property (Parcel A). This would allow the applicants to transfer land for grazing and exercising animals while retaining the irrigated pasture.

Under the Land Use Code, a Boundary Line Adjustment is handled administratively without notice required. However, land use standards such as setbacks for existing structures must be met when moving a property line. In this case the applicable setbacks would be 15-feet from interior property lines, 50-feet from top of bank of Cottonwood Creek. Through the review process, it was discovered that a barn (under construction, not illustrated on the plat) would not meet the required setback where the adjusted property line was proposed to be located. The applicants have applied for a variance that would reduce the required setback from 15 feet to about 7 feet between the barn and the adjusted property line.

After review of the proposed adjustment, staff determined that the proposed property lines are logical given the existing development pattern on the property (topography, parcel lines, etc.) are unique; and therefore, support findings for a variance to reduce the required setback for an existing barn in this particular case. As part of the Boundary Line Adjustment, staff requests the Plat illustrate: 1) existing structures (barn); and 2) Cottonwood Creek in relation to these proposed boundary lines (setbacks shown and dimensioned).

Variances are presented at a public hearing to the Board of Adjustments (BOA) for either Approval, Approval with Conditions, or Denial considering the required findings. The 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 Boundary Line Adjustment application (Administrative) or the applicant has 10 days to appeal the BOA's decision to the Board of County Commissioners (BoCC).

DISCUSSION:

On June 4, 2021, Shannon Kay Clark and Arlie B Clark (owners/applicant) submitted a pre-application form to the Planning Department for a Boundary Line Adjustment. This request is to adjust the parcel boundaries between two existing parcels (Parcel #34471830016 & Parcel #344718302002), where the applicants own both parcels.

The intent is to accommodate the grazing operation for the existing farm/homestead located at 40386 Cottonwood Creek Road, Crawford. The proposed line would follow the main irrigation lines on the Clark property (Parcel A) where the applicants can transfer land for grazing and exercising animals while retaining the irrigated pasture.



These subject parcels have been zoned Agriculture (35-acre) or “A-35”, which requires a minimum parcel size of 35 acres. Under the Land Use Code, a Boundary Line Adjustment is handled administratively without notice required. The Director interprets the Land Use Code that no variance is required to adjust property boundaries between two existing parcels, provided the adjustment does not create non-conforming setbacks for existing septic and/or structures. However, land use standards such as setbacks for existing structures must be met when moving a property line.

On July 8, 2021, staff sent a letter informing the applicant of the process, including documents that would be needed to process the Boundary Line Adjustment. A Land Use Application was submitted on September 27, 2021. Through the review process, it was discovered that a barn (under construction) was not illustrated on the plat and that the structure would not meet the required setback where the adjusted property line was proposed to be located.

Staff conducted a technical review of the Plat and all supporting documents and sent a redline version to the project surveyor, along with the applicant, with recommended revisions of Staff (Chapter 7, Section 2.D, *Recommended Revisions*). Initially staff questioned the configuration of the proposed boundary lines in this location as there was a “jog” that was not aligning with aerial imagery. It was unclear why the “jog” was there as staff felt (from a planning perspective) that it should be a straight line from an existing corner. The applicant noted their reasoning was based on an existing structure (barn) located in the northeast corner of the property and the configuration was designed to accommodate this structure. It was noted that moving this structure would impact irrigated fields.

This structure was not reflected on the Plat, so staff requested that the Plat illustrate the existing structure so that required setbacks could be checked for compliance. The Land Use Code requires minimum setbacks (all structures, including septic) of 25-feet from the edge of right-of-way (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/adjusted property lines meeting the required setbacks from existing structures.

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; 2) Remedy the non-conforming condition by relocating/removing the structure; or 3) Consider a variance for creating a condition that does not meet current standards. Generally, staff starts with Options 1 or 2 because with granting a variance the non-conforming condition is allowed to remain.

Numerous communications were exchanged with the applicants and the project surveyor in regards to the proposed boundary lines as the existing structure had still not been included in the Plat and setbacks were not shown either. As such, staff was unable to verify compliance of County setbacks at this point.



Staff conducted a site visit on April 27, 2022 with the applicant. It was discussed at this visit that the best way to address the concerns for the boundary lines in relation to the existing structure (barn) was to apply for a variance to the County setback requirements. Staff noted that we could recommend supporting a setback variance in this particular case given the unique site conditions, and no place to relocate a barn without impacting irrigated fields. Ms. Clark agreed with this determination and submitted a letter (attached) explaining the reason for applying for the variance on April 28, 2022.

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 Boundary Line Adjustment application or the applicant has 10 days to appeal the BOA's decision the Board of County Commissioners (BoCC).

Boundary Line Adjustments are subject to Administrative Review (Director Approval). No further notice is required for this project. The application checklist requested enough detail for the BOA to be able to make a fully informed decision on the variance. The Boundary Line Adjustment, with an illustration, is attached (**Attachment**).

The Land Use Code (LUC) includes three (3) findings that must *all* be met to allow a variance of land use regulation (i.e., setbacks). These findings are listed below with an initial assessment by Staff:

Variation (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.*

The stated purpose for this variance is that the topography of the land is narrow along the northeast portion of the properties due to the Cottonwood Creek that runs westerly-easterly through both parcels. Lot 2's (40270 Cottonwood Creek Road) existing configuration is oddly shaped and leaves little room for building due to the Creek. The property line that is going to be adjusted (moved) is approximately 126-feet wide; with the required setback from the top of bank of Cottonwood Creek, this leaves only a minimal area for building without impacting



irrigated Ag fields. County policy is to try to protect irrigated lands as much as possible.

2. *A variance from strict application of the regulations at issue would relieve such difficulties or hardship.*

An existing structure (barn) has been in place since before the Boundary Line Adjustment was submitted. The foundation (concrete) has been set and the steel poles that are being used to support the structure are set in the foundation; the poles are approximately 20-feet tall. Placement of this structure is in the best location for Parcel A, to support the grazing and farming operations, without impacting the irrigated Ag lands. If the boundary line was to be moved further north to meet the 15-foot setback for the interior property line it would then put the applicants out of compliance with the required 50-foot setback from top of bank of Cottonwood Creek.

3. *The requested variance would not create a substantial detriment to the public good or substantially impair the intent and purpose of this Code.*

The variance process affords an avenue to request a variation to setbacks if required findings can be justified (e.g., physical constraint, hardship). The proposed layout would not impact agricultural operations, but rather it preserves them. This site has been developed with multiple structures and a majority of the property is irrigated Ag land.

Staff finds that the exception for a variation to a County required setback is to create a single exception to address a unique situation for this particular application. If the BOA finds that this variance can be approved, then staff recommends establishing a Plat Note on the Final Plat of the Boundary Line Adjustment for Parcel A reflecting the variance approving a modified setback for the barn but that future development, including addition to this barn is required to meet setbacks (Condition).

OTHER AGENCY INVOLVEMENT

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners (within a 200-foot radius), and posted on the subject property.

Attached material: list, in order as attached

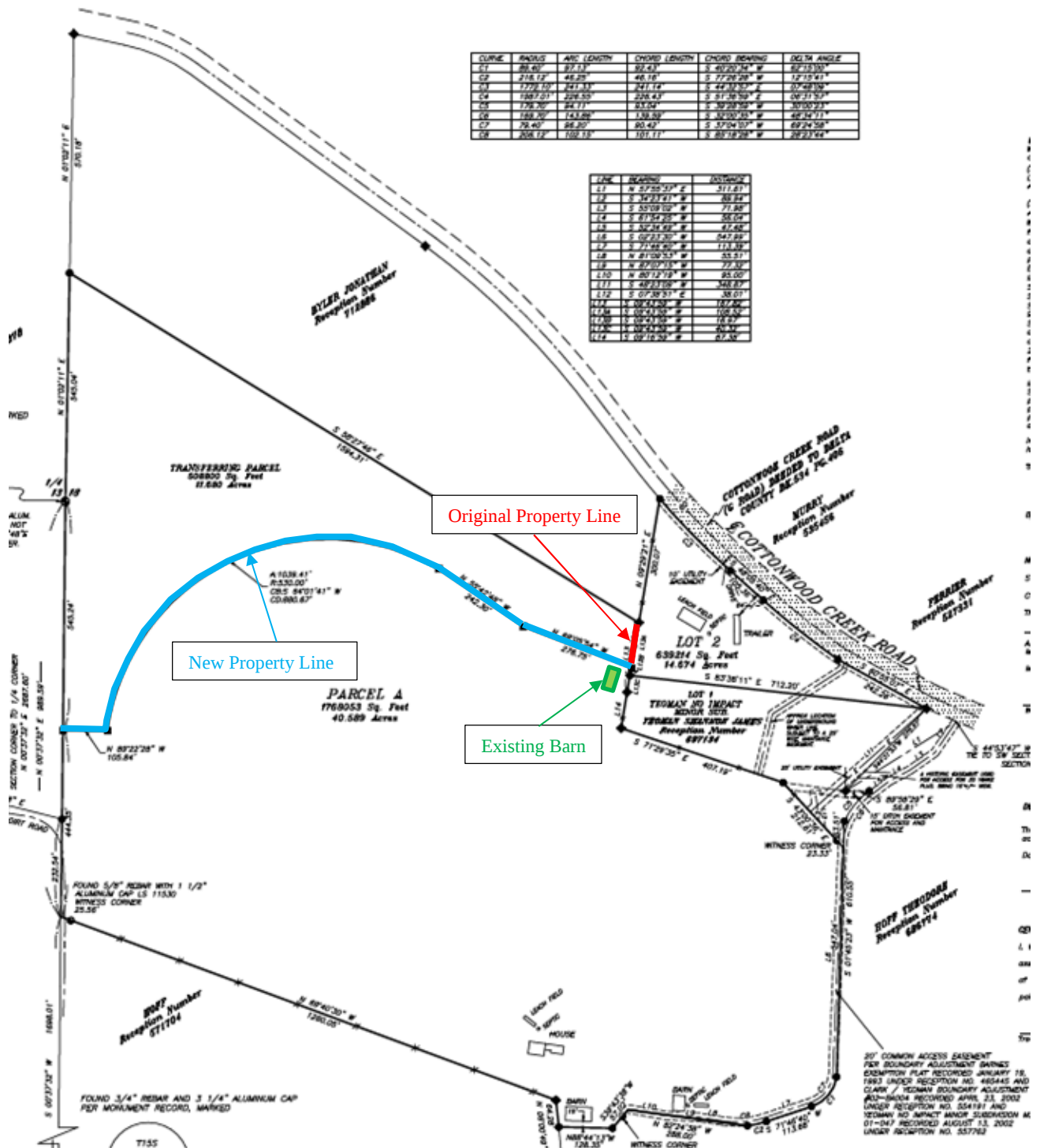
- Boundary Line Adjustment (PLN21-056/Clark) with illustration



EXHIBIT A
Conditions of Approval
PLN21-056/Clark

1. The Final Plat for the Boundary Line Adjustment, for Parcel A, shall include a Plat note stating the following: "STRUCTURES ARE SUBJECT TO COUNTY SETBACK REQUIREMENTS. ON MAY 26, 2022, THE DELTA COUNTY BOARD OF ADJUSTMENTS APPROVED A VARIANCE FOR SETBACK (PLN21-056) FOR THE BARN ON PARCEL A. ANY FUTURE DEVELOPMENT, INCLUDING ANY ADDITION TO THE BARN, IS REQUIRED TO MEET COUNTY SETBACKS."

Site Map





DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

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

Thursday, May 26, 2022 @ 5:30 p.m.

PLN22-041 (R. Morris)

Consider a variance to reduce the required lot size for one lot in the A-20 zoning district; from 20 acres minimum to approximately 6.5 acres (Lot 2). The subject property is a 56.90-acre parcel located at 19454, 19444, & 19448 Highway 65 (Parcel: 319308400068), Cedaredge.

PROJECT INFORMATION:

Property Owner: Robert E. and Roxie V. Morris
Applicant: Loree Gutierrez
Site Address(s): 19454, 19444, & 19448 Highway 65
Parcel ID/Acct: 319308400068 /R021327
Parcel Size: 56.90 Acres
Zoning: A-20

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN22-041 (R. Morris);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for one (1) lot in the A-20 zoning designation located at 19454, 19444, & 19448 Highway 65 (Parcel 319308400068/R. Morris); and
- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY:

Mr. and Mrs. Morris, the property owners, are seeking a 2-lot subdivision (Minor Plat) from an approximately 56.90-acre parcel with frontage on T50 Road, Highway 65 (State/CDOT), and 2375 Road. The site is utilized as Agricultural land. The parcel has

irrigation, established orchards, agricultural outbuildings, and residences including 19454, 19448, and 19444 Highway 65 (Parcel 319308400068/R. Morris).

The zoning is A-20, so, the minimum acreage for subdividing this parcel is 20 acres per lot. The subdivision is designed to separate approximately 6.5-acres (Lot 2) from the northeastern corner, an area of orchard where trees died due to a hard freeze.

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 (4) and findings (3). Staff finds there are no unique physical conditions and the parcel could be subdivided if the BOA finds that it meets the required criteria and findings. Properties in the surrounding area vary broadly, the subject property and the property north of it are some of the largest in the area. Therefore, the primary question is if the BOA finds that the hardship criteria/findings are met.

The 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 proceed with the Subdivision process if approved, or, if denied, the applicant will have 10 (calendar) days to appeal the BOA's decision to the Board of County Commissioners (BoCC). If the BOA finds that variance(s) can be approved, then staff recommends five (5) conditions.

DISCUSSION:

Records show the parcel to be about 57 acres, though there is a note that it has not been surveyed. The last recorded plat involving this property was recorded as a Boundary Adjustment in 2005 (Reception #599453) which created an approximate 57 acres (the subject parcel 319308400068/R. Morris) and a 19.37-Acre parcel to the south (Account: R021326 Parcel Number:319308400069/Ammons). Tax records show the acreage as 56.90 acres.

The application proposes to subdivide one 57-acre parcel into two (2) lots where one (1) lot would be less than the 20-acre minimum. Because Lot 2 does not meet the minimum requirements per the zoning designation, a variance is required to create the lot. Creating the 6.5-acre lot, as proposed, would result in a split of irrigated land. An irrigation plan will be required to explain how the ag. will continue on the property, functioning as two lots instead of one.

Subdivision requires proof of an adequate water supply Prior to accepting a Final, the applicant must install a water meter for Lot 2, a potential condition if this variance is approved.

Engineering will have an opportunity to assess the subdivision and may request additional Right-of-Way (ROW) along the frontage abutting the two (2) County Roads (T50 and 2375 Road). Highway 65 is a State road that will need to be assessed by CDOT. A Plat is required to illustrate the centerline of the improved road surfaces as well as existing rights-of-way. The County generally requests dedication of right-of-way to the centerline of the roadway, except any land already dedicated and depending on the conditions for that area (e.g., steep slopes). Dedications are to be Fee Simple Title. Any other form (easement, road petition, etc.) requires the underlying land owner to continue paying property taxes even though they are not able to use that land.

There is an existing agricultural access that is proposed to be intensified to residential use for Lot 2. The eventual development of Lot 2 will be subject to a Site Plan Review. That process requires establishing access, address, and septic permits from the County. Electrical and Plumbing permits will be obtained through the State.

The Land Use Code 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. These setbacks will be important with the eventual development of Lot 2 and in regards to newly created lot lines with existing structures (such as the barn near the proposed southwest corner).

PROCESS

Pursuant the LUC, Minor Plat (2-lot subdivisions) are handled Administratively, which means that the Director of Community Development and Natural Resources makes a final decision. If there is road dedication, however, the application will go before the Board of County Commissioners (BoCC) for acceptance or the dedication and the plat (with dedication shown). The Director nor the BoCC cannot act 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 Site Plan is attached. (**Attachment**).

FINDINGS

The Land Use Code (LUC) 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 with an initial assessment by staff:

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.*

Staff finds that the site can support development that meets the minimum requirements for setbacks. Minimizing impact to irrigated ag. lands will require a thought-out irrigation plan and that shares of irrigation water be assigned to Lot 2. The water purveyor must provide proof that adequate domestic water is available to serve the new residence/lot. Access will need to be built to County standards and permitted as a residential access.

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. *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.*

If the BOA finds that a variance can be approved, then staff recommends establishing a building envelope on Lot 2 where future development would not further impact the irrigated agricultural lands or wildlife habitat, where applicable.

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.*

The question is if the BOA finds that holding to the strict regulations for A20 zoning “*would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.*”

The applicant also stated, “Having our son on site to tend the property would benefit the ability to utilize the property more efficiently.”

2. *A variance from strict application of the regulations at issue would relieve such difficulties or hardship.*

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. Staff finds that there is no solar on the property to be considered in determining difficulty 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. Lot sizes vary greatly in this immediate area.

The variance process affords an avenue to request a smaller lot if required criteria/findings can be justified (e.g., physical constraint, hardship). Staff interprets that the exception for a variation to lot size is to create a single exception to address a unique situation.

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 Code 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.

CONDITIONS

If the BOA finds that the variance can be approved per the required findings, the BOA could apply conditions to address issues as part of the subdivision review. Staff has identified items that will be addressed as part of the subdivision, prior to accepting the Final Plat:

1. The Minor Plat shall illustrate the centerline of the improved road surface. County Engineer shall determine if Right-of-Way (ROW) is to be dedicated for T-50 or 2375 Road. Dedications to Delta County require acceptance by the BoCC in Fee Simple Title.
2. Driveway and access for Lot 2 shall be permitted and constructed to County standards.
3. The final plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed. [Pursuant to Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria)].
4. An Irrigation Plan shall be submitted describing your proposed operation of irrigation for Lots 1 and 2, including any easements for access to irrigation headgates across neighboring lots.
5. Prior to accepting a Final Plat, a domestic water tap shall be installed for Lot 2, and the applicant shall provide written proof of an active domestic water taps for Lot 1 (installed).

OTHER AGENCY INVOLVEMENT

Sections I-III of the Development Application form were submitted on March 17, 2022 and a conference was held with the owner on April 4, 2022. At that meeting, representatives from Delta County Planning were present. The purpose of a pre-application conference (meeting) is to inform the applicant of pertinent regulations and identify any potential issues.

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 which could affect the subdivision.

Attached material: list, in order as attached

- Development Application + Sketch

SECTION I: GENERAL INFORMATION

Applicant/Representative must complete this entire section

SITE/PROJECT INFORMATION

SITE ADDRESS

CITY/STATE

ZIP

Cedarvale, CO

81413

NEAREST PUBLIC ROAD

T-50 Rd & 2375 Rd

ASSESSOR'S PARCEL NUMBER(S)

319308400068

DESCRIPTION (Please describe what you would like to do with this property):

Build a home.

OWNER(S) INFORMATION

NAME

Robert & Lexie Morris

MAILING ADDRESS

CITY/STATE

ZIP

APPLICANT(S) INFORMATION (If different from Owner)

NAME

PHONE

MAILING ADDRESS

CITY/STATE

ZIP

E-MAIL

APPLICANTS INTEREST (e.g. Owner, Buyer, Representative) [NOTE: If Applicant is not the owner of property affected, authorization from all property owners associated with this application is **REQUIRED** as part of Section II]

SECTION II. ACKNOWLEDGEMENT AND AUTHORIZATION

Applicant/Representative and Owner must complete this section

The undersigned authorizes Delta County to proceed with processing this application under the requirements of the applicable Delta County codes/regulations, and to access the property as needed to verify/assess information related to this application.

I hereby certify that the information provided herein is complete and accurate to the best of my knowledge. Also, I hereby certify that I am the property owner or that I, the undersigned, am authorized to act on the property owner's behalf.

Applicant Signature: _____ DATE: _____

If other than the Owner

Owner Signature: Robert E. Morris _____ DATE: 3-16-22

Separate letter(s) with owner(s) authorization is acceptable.

SECTION III: PROJECT INFORMATION

For all applications, please provide information requested in this section as accurately as possible.

A. SITE PLAN. An aerial view showing structures, development, major vegetation and topographical data of the subject property including information about how the subject conditions relate to adjacent properties, including distances. Please provide a Site Plan illustrating the applicable information listed below (Drawn to scale, Examples attached):

- North Arrow*
- Dimensions.* All dimensions to the nearest 0.01 foot, to scale no smaller than 1:200. Provide bearings & distances on all right of way and easement lines (existing and proposed).
- Parcel.* Illustrate and dimension property lines of the entire parcel, including all rights-of-way and easement lines. Existing and proposed easement lines (utility, slope, conservation, other).
- Roads.* Identify the primary road where the site takes access as well as any secondary roads/access. Indicate if roads are public or private - provide documentation of access/rights from the appropriate authority for private, State, Federal roads. Label all roads included on the plan with names. Include: existing right-of-way boundary and centerline (existing and proposed); aliquot lines, curve data on centerline. Submit a Road Name application for all interior roads (if applicable). Illustrate proposed right of way lines.
- Access.* Illustrate all existing and proposed accesses/driveways. Identify any bridge, culvert, or intersection/at-grade crossing (existing or proposed).
- Utilities.* Illustrate and label all existing overhead and underground utility lines (water, sewer, electricity, gas, phone, cable, etc.) serving the property, include connection point(s) to main lines even if not located on the subject property. Identify existing utility pole locations. Illustrate proposed utility lines, including an easement if required – utility easements are encouraged to be located within or along access roads.
- Irrigation Ditches/Pipelines.* Illustrate and label the location and ownership of all irrigation ditches and pipelines. Identify areas where irrigated agricultural land is located.
- Existing/Proposed Features.* Illustrate the location of all existing and proposed structures (buildings, fences, pump house, etc.), building envelopes/no build areas, setbacks, landscaped areas, service lines, drainage structures and features, wells and distribution lines, and septic systems.

NOTE: Please provide Copies of any agreements with notarized signatures (access, road maintenance, ditch company, domestic water, subdivision improvements, etc.)

ACKNOWLEDGEMENTS - Please initial the following to acknowledge that you have read, understand and agree with these terms:

PLM

A complete and accurate Site Plan is necessary to ensure accurate review, if you have questions on whether this applies to what you are proposing, please contact the Delta County Planning Department.

PLM

For a more detail explanation of requirements for the site plan, please reference Chapter 4, *Site Design and Environmental Stewardship* in the Delta County Land Use Code.

PLM

For all Sight Distance requirements, please reference Chapter 5, *Public Facilities, Infrastructure, and Services* in the Delta County Land Use Code.

B. GENERAL QUESTIONS: For all applications, please answer the following questions as best you can: [Contact Delta County Planning Department if you are unsure how to answer a question.]

1. PLANNING (Land Use, Subdivision)

Does the request include adjusting a property line or creating a new parcel? ☒ YES ☐ NO

Please identify the type(s) existing use(s) on the property (check all that apply): ☐ Residential ☒ Agriculture

☐ Commercial/Services ☐ Other: _____

Would new structures be developed or installed? ☒ YES ☐ NO

Are you demolishing or removing any existing structures? ☐ YES ☒ NO

Is this property currently part of a Homeowners Association or subject to recorded covenants/restrictions?
☐ YES ☒ NO

Are there any existing residences on the property? ☐ YES ☒ NO If yes, how many? _____

Are there any manufactured homes on the property? ☐ YES ☒ NO If yes, how many? _____

Are any Recreational Vehicles or Mobile Homes used as a residence on-site? ☐ YES ☒ NO

Are they intended for permanent residence? ☐ YES ☒ NO *N/A*

Would proposed improvement(s) be located in any area currently irrigated and/or used for agriculture?
☒ YES ☐ NO

2. ENGINEERING (Rights-of Way, Access, Utilities)

Please identify where vehicle access is, or would be, taken from: ☒ County Road ☐ State Highway

☐ Easement (Private) ☐ Other: _____

Do you plan any activity that might involve digging or blocking any portion of a roadway, including shoulders and ditches? ☐ YES ☒ NO

Do you plan to install a new access? ☐ YES ☒ NO

3. GIS (Address, Road Name)

Do all habitable structures have addresses assigned by Delta County? ☐ YES ☒ NO

4. ENVIRONMENTAL HEALTH (Septic, Floodplain)

Does the project include grading, soil importation, soil removal, and/or drainage modifications?
☐ YES ☒ NO

Would the development result in affecting more than 1.0 acre of land/dirt? ☐ YES ☒ NO

Is there any natural waterway (creek, stream, river) within or adjacent to the property? ☐ YES ☒ NO

What type of wastewater system services the property? ☐ Septic ☐ Sewer *NONE AT THIS TIME*
we will put in a septic system

Does the project include construction, enlargement, improvement or removal of a septic tank/system?

☒ YES ☐ NO

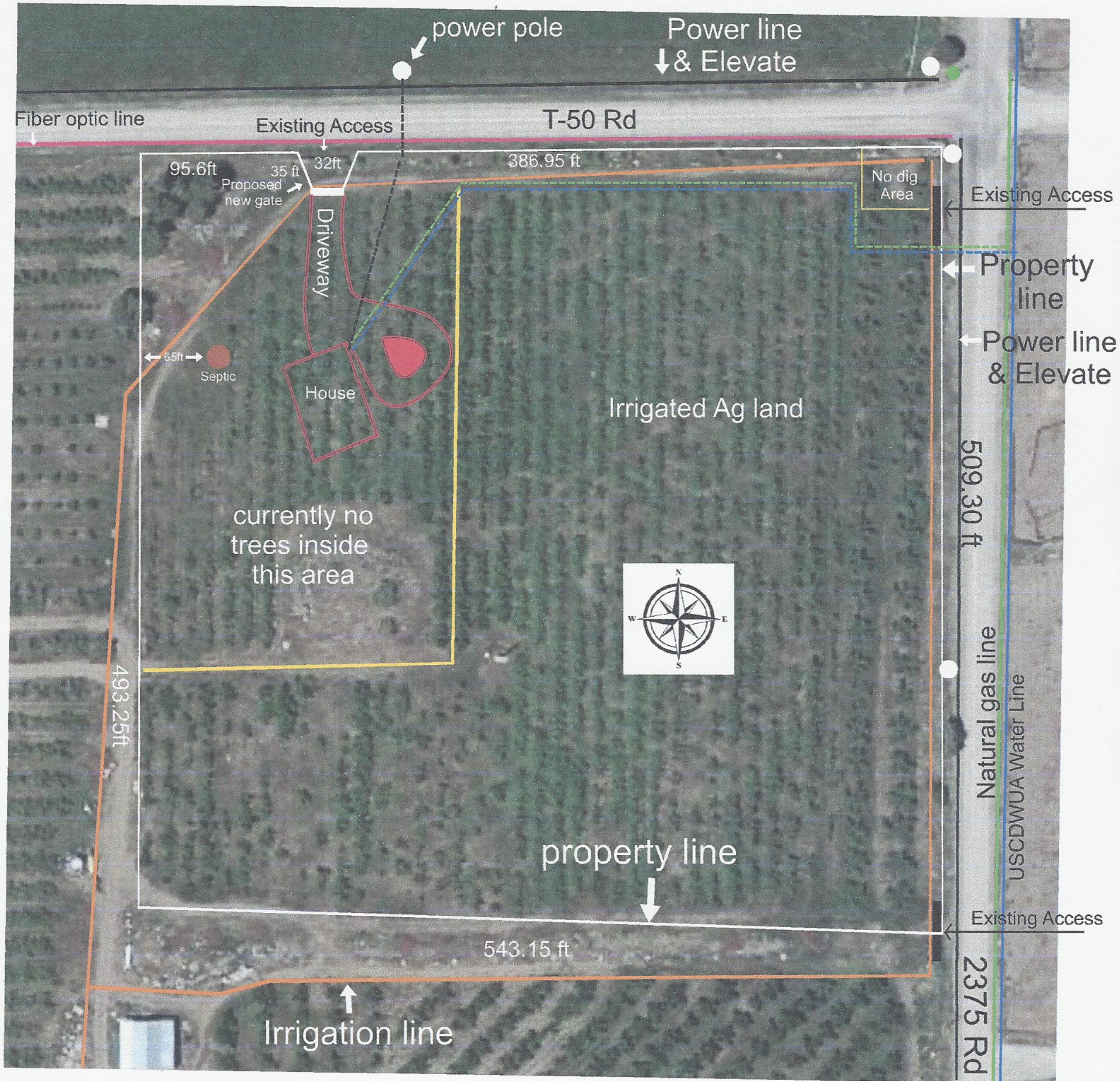
How is domestic water provided? ☒ Public Water/Tap ☐ Well ☐ Cistern

For cisterns, please identify the water source: ☐ Spring (On-Site) ☐ Well (On-Site) ☐ Hauled (Off-Site) ☐

Other: _____

For hauled water (from off-site), please identify where the water is from: _____

NOTE: Additional information may be requested based upon review of these materials.



KEY

- White - Property line
- Orange - Irrigation line
- Black - Power line & Elevate
- Red - Fiber optic line
- Blue - USCDWUA water line
- Green - Natural gas line
- Solid line - Existing
- Dotted line - Proposed

Site Map

Parcel #319308400068