

DELTA COUNTY BOARD OF ADJUSTMENT
Special Meeting

Administration Building – Board Room
560 Dodge St., Delta, CO 81416
Thursday, October 27, 2022 @ 5:30 p.m.

Mike Twamley, 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>

AGENDA

5:30 P.M. – CALL TO ORDER

ROLL CALL

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

A. PUBLIC COMMENTS

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

B. AGENDA ADDITIONS, DELETIONS, AND CORRECTIONS

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

C. MEETING MINUTES

1. Regular Board of Adjustment meeting of October 13, 2022.
RECOMMENDATION: Approve the action minutes as presented.

CERTIFICATION OF POSTING

On October 20, 2022, at 10:00 AM, Kim Henderson did post the above AGENDA as public notice of the October 27, 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. PLN22-014 (Norell)

Consider variances reducing the minimum lot size from 20 acres in the A20 zoning district located on 2200 Road, south of H Road (Parcel:345513100024), Delta.

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

- a. Consider required variance criteria and findings as they apply to PLN22-014 (Norell);
- b. Provide direction to either Approve, Conditionally Approve, or lot size variance(s) to subdivide a 30-acre parcel into three (3) lots in the A20 zoning designation located off of 2200 Road in Delta (Parcel 345513100024/Norell).
- c. Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

2. PLN22-148 (Kenyon)

Consider to reduce the required lot size form a 5.0 acre minimum in the A5 zoning district located at 24689 Timothy Road (Parcel: 319309100017), Cedaredge.

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

- a. Consider required variance criteria and findings as they apply to PLN22-148 (Kenyon);
- b. Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide a 3-acre lot into two (2) lots in the A5 zoning designation located at 24689 Timothy Road, Cedaredge, (Parcel 319309100017/Kenyon).
- 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

1. Consider a Board of Adjustments meeting in December

ADJOURNMENT

Adjourn to a Special Meeting on Thursday, November 17, 2022 at 5:30 pm in Delta.

CERTIFICATION OF POSTING

On October 20, 2022, at 10:00 AM, Kim Henderson did post the above AGENDA as public notice of the October 27, 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.



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

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

MINUTES
BOARD OF ADJUSTMENTS
SPECIAL MEETING
DELTA COUNTY
560 DODGE ST, DELTA, CO 81416
October 13, 2022

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

ROLL CALL

Board of Adjustments Members in Attendance:

Mike Twamley, District 1

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

Delta County Planning & Community Development Administrative Assistant, Kim Henderson

Delta County Code Compliance Officer, Everett Neil

A. PUBLIC COMMENT

None

B. AGENDA ADDITIONS, DELETION, AND CORRECTIONS

None

C. MEETING MINUTES

a. Regular Board of Adjustment meeting of August 25, 2022

b. Regular Board of Adjustment meeting of September 6, 2022

RECOMMENDATION: Approve the action minutes as presented.

Mark Roeber moved to approve the meeting minutes as presented. Mike Twamley stepped down and seconded the motion.

Motion carried unanimously

D. PUBLIC HEARING ITEMS:

1. 2022 Land Use Code Update

Public Hearing to consider the 2022 Delta County Land Use Code Update (Released 9/21/2022).

RECOMMENDATIONS: Staff recommends that the Board of Adjustment recommend changes to the Planning Commission for inclusion in the certified copy recommended to the Board of County Commissioners.

Planning Director, Carl Holm provided clarification on items noted in the written questions/comments from Wilmore and Company (dated 11 October 2022):

a. Variances/Administrative Modifications. Currently the LUC requires all lots smaller than the minimum to go to the BoA. Proposed changes would create criteria where the Director could approve a variance to lot size. If it does not meet any one of the criteria, it must go to the Board of Adjustments. A Sketch Plan can be submitted for an initial consult (no fee) or with a pre-application (fee) to assess if the applicant wants to move forward.

The Board of Adjustments supports review of the Variance and Minor Plat with a Sketch/Site Plan with enough detail where it would be conditioned for a Final Plat.

b. Boundary Line Adjustments (BLA). It is agreed that BLA is not a subdivision from a surveying perspective, and is not subject to the same level of standard for the survey work as a subdivision. While a BLA does (can) not create a new lot, it revises the configuration of lots by moving at least one property line. As such, it would be subject to development review to assess meeting applicable



development standards such as setbacks and septic. There was discussion what should or shouldn't be required for a BLA specifically for non-habitable (vs non-residential) structures.

The Board of Adjustments recommends the setbacks for all structures remain the same in BLA as they do in the Subdivision Regulations. The applicant can process a Variance if needed.

- c. Fee Title Split. Can be created by pre-existing conditions or new dedication (provided it is accepted by an entity (e.g., County, US Govt, Railroad, etc.)) If land was (or is) dedicated by Fee Title and accepted, it would effectively split the property and create two legal parcels. This means that we need to be diligent in our review of plats with roads that could create new parcels. If land has been dedicated, and accepted, in Fee Title, it is at the owner's discretion to keep as one parcel or record a Boundary Survey to effectuate separate parcels.
- d. Subdivision Design. Staff explained a change being proposed is specifying where the lots front a collector or arterial road, excluding local roads (as was previously required). The intent is to minimize access on higher capacity roads. If the lots front a local road, they can have direct access. This aligns better with the Road & Bridge standards where access needs to be from the lower classification road. If the lots front a collector or arterial road, a shared access is required. This does not need to be a dedicated public road, can be an easement.
- e. Standard plat notes and signature blocks have been added to the Land Use Code from the Subdivision Regulations. Staff agreed that the Name of the Treasurer being listed on the plat is not needed. The plat note relative to agricultural uses grew longer. Planning spoke with the County Attorney on whether it needs to include the entire list of Right to Farm. The County Attorney stated it does not need to be as long and include the entire list. The Boundary Line Adjustment definition is being revised to remove the "less than 35-acres" off the end of the definition to read clearer.
- f. Clustered Subdivisions. Staff noted the addition of minimum Building Envelope size and a Stewardship Area should be a substantial portion based on projects that we reviewed, recognizing that the update includes more options for rezoning. The BoA agreed with the PC to consider revising Stewardship Area requirements to allow options – not a one-size-fits-all - but that should be a subsequent LUC amendment.
- g. Cisterns for Residential Use are currently prohibited in the Land Use Code. Proposed amendments would allow a cistern in certain circumstances: to use with an established water source (well), or when there is no available domestic water.

E. BOARD COMMENT, REQUESTS AND REFERRALS

Mark Roeber requested Planning follow up on whether a member at-large position can be added to help fill in when BOA members cannot attend.

F. DEPARTMENT REPORT

None

Meeting adjourned at 6:29 p.m.

The next Special Meeting will be held on Thursday, October 27, 2022 at 5:30 pm in the Delta County Administration Building, Delta, CO.

Respectfully submitted by:
Administrative Assistant, Kim Henderson



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

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

Thursday, October 27, 2022 @ 5:30 p.m.

PLN22-014 (Norell)

**Consider variances reducing the minimum lot size from 20 acres in
the A20 zoning district located on 2200 Road, south of H Road
(Parcel: 345513100024), Delta.**

PROJECT INFORMATION:

Property Owner: Ken Norell
Applicant: Ken Norell
Site Address(s): TBD 2200 Road
Parcel ID/Acct: 345513100024/R025729
Parcel Size: 29.98 Acres
Zoning: A20

Report Prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN22-014 (Norell);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide a 30-acre parcel into three (3) lots in the A20 zoning designation located off of 2200 Road in Delta (Parcel 345513100024/Norell):
 1. Lot 1 (13.012 Acres)
 2. Lot 2 (12.772 Acres)
 3. Lot 3 (2.316 Acres) [NOTE: created by dedicating, and accepting, 2200 Road in Fee Title]

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

SUMMARY:

The Norell subdivision consists of subdividing approximately 30 acres into three (3) lots with 2200 Road (County Road, County Maintained) splitting the property:

- Lot 1. Create a 13.012-acre lot with frontage on the west side of 2200 Road and separate individual access. A 25-foot-wide electrical (DMEA) easement splits the lot.
- Lot 2. Create a 12.772-acre lot with frontage on the west side of 2200 Road and separate individual access.
- Lot 3. Effectuate a 2.316-acre lot with frontage on the east side of 2200 Road and separate individual access. This lot would be created by dedicating right-of-way (2200 Road) to Delta County in Fee Title. A 25-foot-wide electrical (DMEA) easement straddles the east property line (12.5 feet wide within Lot 3). In addition, there is a 40-foot-wide easement for the CL GK Lateral meandering through this lot.
- Right of Way. Dedicate 1.88 acres of Right-of-Way for 2200 Road to Delta County in Fee Title.

The subject parcel is currently vacant. None of the proposed lots meet the minimum acreage (20 acres) set forth in the LUC for the A20 zone. Therefore, variances are required. Proof of adequate domestic water will be required for each lot of the subdivision before a Final Plat is accepted/recorded.

Access will need to be improved for each lot of the subdivision before a Final Plat is accepted/recorded. Proposed access has not been assessed by the County Engineer. This will occur as part of the referral period for the subdivision if the variance is approved.

DISCUSSION

Zoning for this parcel is A20 so the minimum acreage for subdividing this parcel is 20 acres per lot. The subdivision has been designed to create two (2) lots, with a third lot created where 2200 Road has been dedicated. The expressed purpose is to split two lots off of a larger family property in order for their kids to build residences.

On September 14, 2022, a Boundary Line Adjustment (BLA) was approved administratively (Reception Nos: 742124-74218). This BLA transferred 10.214 Acres from the subject parcel (Parcel 345513100018, Norell) to an adjacent parcel south of the subject parcel (Parcel 345513100022, Norell, 6687 2200 Road). This resulted in the current subject parcel (345513100024) being reduced from 40.19 acres to 29.98 acres. Parcel 345513100025 to the south (6687 2200 Road) was increased from 70.60 acres to 80.46 acres.

This conveyance occurred to include more land with the family agricultural operation at 6687 2200 Road, where there is irrigation. The subject parcel does not have irrigated agricultural land, so there would be no impact to Ag resulting from development of this subdivision (Lots 1-3).

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.

The applicant has not proposed any development at this time. Staff finds that Lot 3 is significantly encumbered making it difficult to develop and meet setbacks (structure and septic). A ditch easement (CL GK Lateral) meandering through the center of this lot and a DMEA powerline along the east property line. However, this lot exists as a result of 2200 Road alignment, and would now be recognized as a separate legal lot by recording this Plat.

A Plat is required to illustrate the centerline of the improved road surfaces as well as existing rights-of-way. On August 19, 2002 a Quit Claim Deed to Delta County was recorded for a portion of 2200 Road (Reception #557976). Dedications are to be Fee Simple Title. This application includes dedicating 1.88 acres of Right-of-Way for 2200 Road to Delta County. Engineering will have an opportunity to assess Right-of-Way (ROW) along the frontage abutting the County Roads (2200 Road). Dedication in any form other than Fee Title (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

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. Lot sizes of properties in the surrounding area vary broadly, with most being larger acreage with some ag operation neighboring the property, there are also a large number of small acreage residential properties. Therefore, the primary question is if the BOA finds that the hardship criteria/findings are met.

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 four (4) conditions.

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. However, with road dedication, the application will go before the Board of

County Commissioners (BoCC) for acceptance or the dedication and the plat (with dedication shown). Neither the Director nor the BoCC can 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 Plat 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.*

Land Use Code calls for minimizing impact to irrigated ag lands, there is no irrigated land being affected. Proof that adequate domestic water is available to serve all lots will be required for the subdivision. Accesses, as approved by the County Engineer, shall be built to County standards and permitted as 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).*

Lots 1 & 2 conform to the minimum dimension standards:

- Lot 1 will have a minimum width of 349 feet; and
- Lot 2 will have a minimum width of 534 feet.

The frontage on 2200 Road is around 600 feet for each of the lots.

Lot 3 is triangular in shape with 589 feet of frontage on 2200 Road.

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.*

The Land Use Code calls for minimizing impact to irrigated ag lands. All irrigation water rights owned by the Norell family are utilized on a parcel to the south of the subject parcel. This subdivision as proposed, will have no impact on irrigated ag lands.

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 LUC requires a condition that restricts further subdivision. The BoCC has expressed concern with restriction in perpetuity. Staff recommends a plat note *restricting further subdivision* for 15 years where a variance to lot size is required.

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.*”

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 in this immediate area, and there are distinct sections that are irrigated ag land, and other that are adobe dirt with residential uses.

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.

Lot 3 is significantly encumbered (irrigation ditch) making it difficult to develop and meet setbacks (structure and septic). However, this lot exists as a result of

2200 Road alignment. The expressed purpose for Lots 1 & 2 is to create properties from the family ranch for the children to build residences.

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 County Engineer shall determine the amount of Right-of-Way (ROW) to be dedicated for 2200 Road. Dedications to Delta County require acceptance by the BoCC in Fee Simple Title with the Final Plat.
2. The Final Plat shall be annotated such that: "No further subdivision of either lot created by this subsection is allowed for a period of 15 years. [Pursuant to Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria) and direction from the BoCC on how variances shall be handled]."
3. Access for each lot shall be constructed and accepted by the County prior to accepting/recording the Final Plat. The applicant shall submit applications for access. Proposed access points will be assessed for safety and compliance by the County Engineering and/or Road and Bridge. Comments will be provided to the applicant on how/where access shall be constructed.
4. Domestic water (well or tap/meter) shall be installed prior to accepting/recording the Final Plat. The applicant shall provide proof of an adequate domestic water supply for all lots.

OTHER AGENCY INVOLVEMENT

The Pre-Application request form was submitted on April 8, 2022. A letter and checklist, along with supplemental forms and the Development Application were sent to the applicant on March 25, 2022. The completed forms were turned in on April 8, 2022.

A Plat for a Boundary Line Adjustment was submitted to planning on August 3, 2022 and fees for processing the Boundary Line Adjustment were received on August 8, 2022. On September 12, 2022 the final plat and deeds were received for the BLA along with a fee for the variance hearing for the subsequent subdivision.

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

- Plat

SUMMARY TABLE
LOT 1 = 13,012 ACRES / 568806 Sq. Feet
LOT 2 = 12,772 ACRES / 565334 Sq. Feet
LOT 3 = 2,316 ACRES / 100872 Sq. Feet
ROAD DEED TO DELTA COUNTY = 1,880 / 81981 Sq. Feet
TOTAL AREA OF SUBDIVISION = 29,579 ACRES / 1,305894 Sq. Feet
NUMBER OF BUILDABLE LOTS = 3
NUMBER OF NON-BUILDABLE LOTS = 0

COUNTY SURVEYOR'S CERTIFICATE
Approved for completion and form only and not as to the accuracy of survey, computations or drafting pursuant to CRS 38-61-106.

County Surveyor Date

1/4 12 13

CL H ROAD

SEE DETAIL A

LOT 1

DETAIL A

AREA LOCATOR

AUSTIN

SITE

TYPICAL LEGEND

Set 5/8" rebar 30" long w/2" aluminum cap PLS 55972

Set 5/8" rebar 2" aluminum cap as Witness corner or Insign PLS 25972

Found 3/4" rebar with 3 1/4" aluminum cap PLS 55972 or as noted, per monument record

Found 3/4" cap Bureau Reclamation BLM Brass Cap

Found 5/8" rebar with 1 1/2" aluminum cap PLS 55972 or as noted

Found 5/8" rebar 1 1/2" aluminum cap PLS 14821

Found 5/8" rebar with 2" aluminum cap PLS 14821

Found 3 1/4" aluminum cap PLS 34944

Power pole

Fence line

Electric (overhead)

Electric (underground)

Water line

Easement

Centennial Road

Previous R.O.W. to Delta County

New Quit Claim to Delta County

Basin of Bearings:

5.0070832°W FROM THE SECTION CORNER COMMON TO SECS. 7, 12, AND 18 TO THE 1/4 COR. COMMON TO SECS. 12 & 18

QUADRANTIC NORTH, GPS OBSERVATION

SCALE 1"=100 U.S. SURVEY FEET

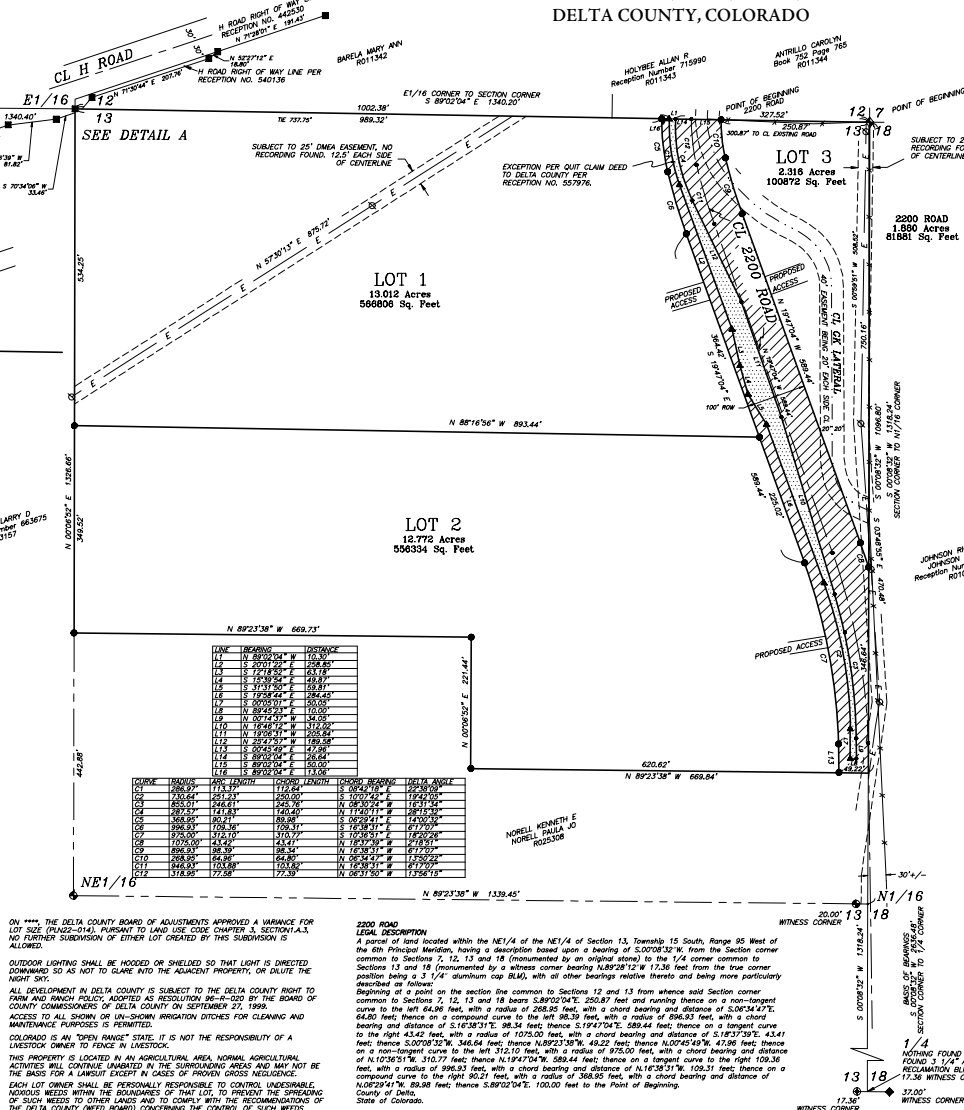
0 50 100 200

NORELL SUBDIVISION

PLN NO. 22-014

WITHIN SECTION 13, T.15S., R.95W., 6TH P.M.

DELTA COUNTY, COLORADO



- 1 ON ***. THE DELTA COUNTY BOARD OF ADJUSTMENTS APPROVED A VARIANCE FOR LOT 3 (PLANS 22-014) PURSUANT TO LAND USE CODE CHAPTER 1, SECTION 1.1.1, NO FURTHER SUBDIVISION OF EITHER LOT CREATED BY THIS SUBDIVISION IS ALLOWED.
- 2 SUBDIVISION LIGHTING SHALL BE HOODED OR SHIELDED SO THAT LIGHT IS DIRECTED DOWNWARD SO AS NOT TO GLARE INTO THE ADJACENT PROPERTY, OR DILUTE THE NIGHT SKY.
- 3 ALL DEVELOPMENT IN DELTA COUNTY IS SUBJECT TO THE DELTA COUNTY RIGHT TO FARM AND RANCH POLICY, ADOPTED AS RESOLUTION 96-R-009 BY THE BOARD OF COUNTY COMMISSIONERS OF DELTA COUNTY ON SEPTEMBER 27, 1998.
- 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 THIS PROPERTY IS LOCATED IN AN AGRICULTURAL AREA. NORMAL AGRICULTURAL ACTIVITIES WILL CONTINUE UNHINDERED IN THE SURROUNDING AREAS AND MAY NOT BE THE BASIS FOR A LAND USE EXCEPT IN CASES OF PROVEN OVERSIGHT.
- 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 LOTS AND TO COMPLY WITH THE RECOMMENDATIONS OF THE DELTA COUNTY (NEED BOARD) 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 NEW UTILITIES MUST BE PLACED UNDERGROUND ON ALL PARCELS.
- 10 THE MINIMUM SETBACKS FOR ALL STRUCTURES (INCLUDING ON-SITE WASTEWATER TREATMENT SYSTEMS) IN THIS SUBDIVISION SHALL BE:

DISTANCE	SETBACK MEASURED FROM THE:
25'	EDGE OF LOT DITCH
25'	EDGE OF ROAD EASEMENT OR RIGHT-OF-WAY (PUBLIC AND PRIVATE)
15'	INTERIOR PROPERTY LINE, OTHER THAN ABUTTING ROAD
100'	TOP OF BANK (DITCH, STREAM, CREEK)

SUBDIVISION DEDICATION

We, Kenneth E. Norrell and Paula Jo Norrell, being the owner of land described as follows:

LEGAL DESCRIPTION

A parcel of land located within the NE 1/4 of the NE 1/4 of Section 13, Township 15 South, Range 95 West of the 6th Principal Meridian, having a description based upon a bearing of S.0070832°W from the Section corner common to Sections 7, 12, 13 and 18 (monumented by an original stone) to the 1/4 corner common to Sections 12 and 18 (monumented by a witness corner bearing N.892338°W 17.36 feet from the true corner position being a 3 1/4" aluminum cap BLM), with all other bearings relative thereto and being more particularly described as follows:

Beginning at said Section corner common to Sections 7, 12, 13 and 18 and running thence along the section line common to Sections 13 and 18 S.0070832°W 1006.80 feet (monumented by a witness corner bearing N.892338°W 35.16 feet from the true corner position being a 2" aluminum cap PLS 25972); thence leaving said section line N.892338°W 669.84 feet (monumented by a 2" aluminum cap PLS 25972); thence N.0070832°E 221.44 feet (monumented by a 2" aluminum cap PLS 25972); thence N.892338°W 669.13 feet to the west line of said NE 1/4 of the NE 1/4 (monumented by a 2" aluminum cap PLS 25972); thence along said west line N.0070832°E 883.77 feet to the NW corner of the NE 1/4 of the NE 1/4, also being the E 1/16 corner common to Sections 12 and 13 (monumented by a 1 1/2" aluminum cap PLS 14821); thence along the north line of said NE 1/4 of the NE 1/4 S.8920204°E 1002.38 feet to that portion of subject property as shown on deed recorded August 18, 2002 Under Reception No. 557976 (monumented by a 1 1/2" aluminum cap PLS 14821); thence along that portion of subject property as shown on deed recorded August 18, 2002 Under Reception No. 557976 the following fifteen (15) courses: (1) on a non-tangent curve to the left 113.37 feet, with a radius of 286.87 feet, with a chord bearing and distance of S.0826718°E 113.64 feet (monumented by a 1 1/2" aluminum cap PLS 14821); (2) thence S.0070122°E 258.85 feet (monumented by a 1 1/2" aluminum cap PLS 14821); (3) thence S.121852°E 63.18 feet (monumented by a 1 1/2" aluminum cap PLS 14821); (4) thence S.1070842°E 48.87 feet (monumented by a 1 1/2" aluminum cap PLS 14821); (5) thence S.1313130°E 59.81 feet (monumented by a 1 1/2" aluminum cap PLS 14821); (6) thence S.192544°E 284.45 feet (monumented by a 1 1/2" aluminum cap PLS 14821); (7) thence on a tangent curve to the right 251.23 feet, with a radius of 750.64 feet, with a chord bearing and distance of S.1070742°E 250.00 feet (monumented by a 1 1/2" aluminum cap PLS 14821); (8) thence S.0070501°E 50.05 feet (monumented by a 1 1/2" aluminum cap PLS 14821); (9) thence N.894532°E 10.00 feet; (10) thence N.0071437°W 34.05 feet; (11) thence on a tangent curve to the left 246.81 feet, with a radius of 855.01 feet, with a chord bearing and distance of N.0230224°W 245.76 feet; (12) thence N.164612°W 312.02 feet; (13) thence N.7006317°W 205.84 feet; (14) thence N.254757°W 189.58 feet; (15) thence on a tangent curve to the right 141.83 feet, with a radius of 287.57 feet, with a chord bearing and distance of N.1740711°W 142.40 feet to the section line common to Sections 12 and 13, thence along said section line S.8920204°E 327.52 feet to the Point of Beginning, said parcel containing 29.88 acres, more or less.

County of Delta, State of Colorado.

In Delta County, Colorado, under the name of NORELL SUBDIVISION, have laid out, platted and/or subdivided the corner as shown on this plat and as hereby dedicated to the public to 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 Kenneth E. Norrell and Paula Jo Norrell have subscribed their names(s) this ____ day of ____, A.D. 20__.

By: Kenneth E. Norrell a.k.a Ken Norrell By: Paula Jo Norrell

NOTARIAL:

State of Colorado) ss.
County of Delta)

The foregoing instrument was acknowledged before me this ____ day of ____, A.D. 20__, by Kenneth E. Norrell a.k.a Ken Norrell and Paula Jo Norrell

My commission expires: ____

My address is: ____

Witness my hand and official seal.

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

The within plat of the above subdivision has been checked for compliance in accordance with Case No. PLN22-014.

Dated this ____ day of ____, A.D. 20__

Planning Director

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within plat of NORELL SUBDIVISION is accepted by the Delta County Board of County Commissioners. 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 any 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.

Dated this ____ day of ____, A.D. 20__

Chairman, Delta County Board of County Commissioners

Attest:

County Clerk of Delta County, Colorado

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 (Account No. R018523 and R019204) are paid in full.

Dated this ____ day of ____, A.D. 20__

Treasurer of Delta County, Colorado

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 the date of the survey. A professional seal is required on all surveys. The seal must be placed on the date shown on the certification herein.

WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.
408 Grand Avenue
P.O. Box 1402
Palm, Colorado 81428
970.577-4200 PHONE
970.268-1300 PHONE
www.wilmorelandsurveying.com

RECORDS
17 AUG. 2022
REVISED PER DELTA COUNTY ENGINEER REDLINE AUG. 11, 2022
FIELD CREW: RAW
DRAFTER: RAW
CHECKED BY: KC
NOTARIAL: KC
DATE: 2/20/22
SUBMITTAL: 2/20/22

NORELL SUBDIVISION
PLN NO. 22-014
WITHIN SECTION 13, T.15S., R.95W., 6TH P.M.
DELTA COUNTY, COLORADO
J22022 SUB FINAL 21 JULY 2022



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

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

Thursday, October 27, 2022 @ 5:30 p.m.

PLN22-148 (Kenyon)

Consider to reduce the required lot size from a 5.0 acre minimum in the A5 zoning district. The subject property is a 3-acre parcel located at 24689 Timothy Road (Parcel: 319309100017), Cedaredge.

PROJECT INFORMATION:

Property Owner: Stanley and Stacey Kenyon
Applicant: Stanley and Stacey Kenyon
Site Address(s): 24689 Timothy Road, Cedaredge
Parcel ID/Acct: 319309100017 / R001917
Parcel Size: 3.00 Acres
Zoning: A5

Report prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN22-148 (Kenyon);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide a 3.0-acre lot into two (2) lots in the A5 zoning designation located at 24689 Timothy Road, Cedaredge (Parcel 319309100017/Kenyon):
 - a. Lot 1 (2.87 Acres)
 - b. Lot 2 (1.13 Acres)

- 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. Kenyon, owners, are seeking a 2-lot subdivision (Minor Plat) from an approximately 3-acre parcel with frontage on Timothy Road (County Road, County maintained). The site is used for residential purposes and the expressed reasoning for a subdivision is for family purposes, the owner wishes to allow their son to own Lot 2 and build a residence there.

The zoning is A5, so, the minimum acreage for subdividing this parcel is 5 acres per lot. The subdivision has been designed to create two (2) lots;

Lot 1 (2.87 Acres) includes frontage on Timothy Road with an existing residence (24689 Timothy Road).

Lot 2 (1.13 Acres) A shared access is proposed, and Lot 2 has no frontage onto a roadway, so an easement will need to be provided for legal access.

The site has not developed in a way that is conducive to splitting the lot. Lot 1 has a variety of structures, vehicles, and septic on both sides of the existing driveway. As a result, access to Lot 2 would require meandering through Lot 1 in order to access the future home. A 30-foot-wide easement using the existing driveway alignment would be difficult or impossible to achieve given the configuration of existing development (septic, existing home, etc.). Staff has received a neighbor comment stating they are not in favor of this proposal (**Attached**).

Prior to submittal, Planning staff explained, informally, concerns with the proposed design and that staff does not support/recommend this project because splitting off the back portion without frontage or good/clean access is not good planning. In addition, staff finds that splitting this lot would not be consistent with the surrounding properties. The proposed design does not meet the minimum dimensions for a variance without a 30-foot road frontage.

DISCUSSION:

Neither lot meets the minimum acreage set forth in the LUC for the A5 zone so variances are required before a subdivision can be processed. There is an existing residence that would remain on Lot 1. Environmental Health was unable to locate a septic permit so the current system will need to be permitted, regardless of the subdivision.

The application notes that a public water tap # 2971 serves the residence, but documentation from the water purveyor has not been submitted. Proof of water will need to be provided for the new lot, and the tap/meter installed, prior to recording a Plat.

There is an existing access from Timothy Road that is proposed to serve both lots. If approved, the access will need to meet shared driveway standards. Easements for access will need to be established, and future prospective landowners will need to be made aware of the difficult configuration being created. Based on criteria in the Land Use Code, staff offered an alternative to obtain an access easement following the domestic waterline shown along the east property line where an existing access is on a neighboring property. The neighbor would need to grant an easement for access in this case.

Engineering will have an opportunity to assess the subdivision and may request additional Right-of-Way (ROW) along the frontage abutting Timothy Road (County Road, County maintained). A Plat is required to illustrate the centerline of the improved road surfaces as well as existing rights-of-way. 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. Should dedication be required, the lot size will be affected for Lot 1 causing difficulty for any future redevelopment or relocation of septic, should a replacement be necessary in the future.

PROCESS

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 that the parcel could be subdivided if the BoA finds that it meets the required criteria and findings. Lot sizes of properties in the surrounding area vary broadly. Therefore, the primary question is if the BoA finds that the hardship criteria/findings are met.

The LUC requires a unanimous vote of the BoA 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 six (6) conditions (listed below).

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.*

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.

Staff finds that the site has existing structures that must meet the setback requirements to the proposed boundary lines, and not encroach into an access easement for Lot 2. Access shall be built to County standards and permitted as a shared 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).*

Both lots conform to the minimum dimension standards for width. However, Lot 2 does not meet the minimum standard of 30 feet of road frontage, there is no frontage as designed. Access to Lot 2 would require a meandering easement through Lot 1 in order to access their future home. A 30-foot-wide easement using the existing driveway alignment would be difficult or impossible to achieve given the configuration of existing development (septic, existing home, etc.).

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.*

The Land Use Code calls for minimizing impact to irrigated ag lands. This is residential and wooded land; no irrigation water exists.

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 LUC requires a condition that restricts further subdivision. Staff recommends a plat note *restricting further subdivision* in this case, where variances to lot size are required.

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 A5 zoning “*would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.*” There are no physical constraints restricting use of this lot. The challenge is created by wanting to subdivide a property that was not developed with subdivision in mind.

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. Splitting this lot as proposed and designed would not be consistent with the surrounding properties.

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. 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. Easements for access would need to be established, and future prospective landowners would need to be made aware of the difficult configuration being created.

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 Timothy Road. Dedications to Delta County require acceptance by the BoCC in Fee Simple Title.
2. 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)]."
3. The owners shall obtain a permit for the existing wastewater treatment system from Environmental Health. Said system shall be illustrated on the Minor Plat. Review will be conducted by County Environmental Health in order to better understand the feasibility of this subdivision given the location of the septic system. Revisions may be required that significantly affect the subdivision design.
4. Domestic water (well or tap/meter) shall be installed prior to accepting/recording the Final Plat. The applicant shall provide proof of an adequate domestic water supply for all lots.
5. An access easement must be granted through Lot 1 for Lot 2. Access shall be constructed and accepted by the County prior to accepting/recording the Final Plat. The applicant shall submit an application for access. The County Engineer will assess access options and the access shall be built to shared access standards.
6. A shared access maintenance agreement will need to be created and recorded with the County Clerk and Recorder along with the Final Plat.

OTHER AGENCY INVOLVEMENT

The Development Application form was submitted on August 30, 2022. Variance fees were submitted September 9, 2022. A letter and checklist were sent to the applicant on September 23, 2022.

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.

PUBLIC COMMENT

Joe Schlaefer 24810 Timothy Road, Cedaredge; Not in favor of the Subdivision. Concerns were noted about traffic on the dead-end street, lot size being too small to fit in the area (in A5), adverse effects on other properties in the area, safety hazards for neighbors with increases in traffic.

Doris McGuire 24810 Timothy Road, Cedaredge; Not in favor of the Subdivision. Concerns were noted about traffic on the dead-end street, lot size being too small to fit in the area (in A5), adverse effects on other properties in the area, safety hazards for neighbors with increases in traffic.

Attached material: list, in order as attached

- Variance Application Materials
- Site Plan
- Public Comments

Is the adjustment intended for use by multiple owners: YES ☐ NO ☐ Illustrate boundary lines where all resulting lots are 35+ acres in size, not part of a prior subdivision, and not intended for development (drawing of professional quality):

- a. Total land area proposed to be adjusted
- b. Existing parcel/lot configuration with pre-adjusted land area
- c. Proposed parcel/lot configuration with pre-adjusted land area
- d. Placement and location of all streets, easements, rights-of-way on the subject lands and those abutting said land
- e. All existing structures are setback from proposed property lines
- f. Illustration of existing water supply and location, including fire hydrants
- g. Illustration of drainage and irrigation

Surveyor's Statement is a certification by surveyor that no new lots are being created. Certification of Compliance with State Statute and Delta County Land Use Code. Form provided by Delta County.

Please list all landowners (as shown on title), along with their parcel number, who will be involved in this process:

Owner #1: _____ PARCEL: _____

Owner #2: _____ PARCEL: _____

Attach additional sheet(s) if necessary to represent ownership of additional parcels.

4. VARIANCE. Complete this section if requesting lots that do not meet the minimum size or to reduce development standards (e.g., setbacks) See LUC or request a *Variance Criteria and Findings* handout from the Planning Department.

Provide justification on how the requested Variation to Lot Size meets the required criteria (Chapter 3, Section 1.A.3 LUC):

- New lots have at least the minimum dimensions set out in the UGA zoning district (Table 3.a LUC):
 - Lot Size (7,500 square feet min.): Proposed: 1.13 Acre
 - Lot Width (75 feet min.): Proposed: 110 yards 269 feet
 - Lot Frontage (30 feet min): Proposed: 44 yards 183.1 feet
- Minimize disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat.

Explain the reason(s) for requesting a variance (Findings):

Describe unique conditions of the property: My Son wants to build a house.

Explain the hardship created by not approving a variance (special circumstances):

He and his family will be homeless

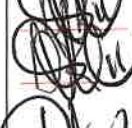
Describe how the variance would not create a detriment to the public: It wouldn't disturb anyone if we share our driveway.

Attach additional sheet(s) if necessary to explain/justify meeting the required criteria and findings.

ACKNOWLEDGEMENTS - Please initial each of the following acknowledging that you have read, understand and agree with these terms:

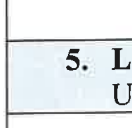
 The subdivision must conform to all other requirements of the Delta County Land Use Code (LUC)

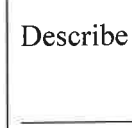
 The size and configuration must be designed to minimize disturbance or development of irrigated agricultural portions of the property. To make this finding, a condition may be applied to limit development through application of a building envelope.

 The Final Plat must note that no further subdivision of either lot will be allowed.

 A variance for lot size is limited to a Minor Plat creating one additional lot.

 No variance shall be authorized unless the Board of Adjustments (BOA) finds all of the requirements laid out in Chapter 10, Section 2. Variances, and Chapter 3, Section 1.A are met

 Lots involved with granting a variance may not be subdivided further pursuant to Land Use Code Chapter 3, Section 1.A.3.d.

 The County may consider creation of new lots that do not conform provided specific findings are met: unique conditions (e.g., shape or topography), special circumstances (e.g., hardship), and conforms to other land use standards.

5. LAND USE CODE AMENDMENT. Complete this section if requesting an amendment to the Land Use Code (text)

Describe the proposed amendment: _____

6. APPEALS. Complete this section if appealing a decision/determination by the Director or Board of Adjustments.

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

1. How did the action lack clear evidence to support the decision/determination?

2. How was action beyond the authority of the Director? _____

7. VACATION. Complete this section if requesting to vacate public Right-of-Way or a phased plat.

Explain the reason(s) for the proposed vacation: _____

Have any public monies been spent on any portion of the right-of-way to be vacated: YES ☐ NO ☐ Would any property be left without proper access: YES ☐ NO ☐

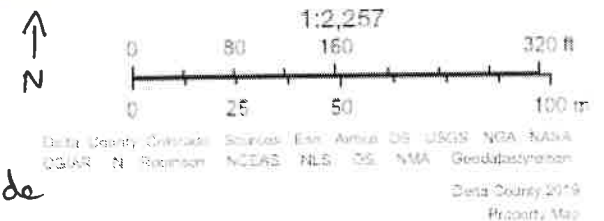
24689 Timothy Rd Delta County, Colorado



9/6/2022, 3:43:01 PM

- Override 1
- Override 1
- Town Boundaries
- DELTA COUNTY
- Roads in Delta Co.
- Private
- Rivers, Streams & Ditches
- Lakes
- Tax Parcels NEW

Labels for parcels
- Utilities would follow along side the shared road.



public notice PLN22-148/Kenyon Subdivision

1 message

Joe Schlaefer [REDACTED]
To: planning@deltacounty.com

Mon, Oct 17, 2022 at 3:11 PM

Joe Schlaefer

 **Timothy Road**
Cedaredge, CO 81413-8156

Angie Kemp, Planner I

[295 W. 6th Street](#)[Delta, Co 81416](#)

Dear Ms. Kemp:

I am writing concerning the Board of Adjustment Hearing on Case PLN22-148 Kenyon Subdivision. **I am not in favor of this proposed property adjustment.**

Currently the project site is zoned Agriculture 5-acre. However, since the described parcel is 3 acres I would assume there has already been a zoning change. And since PLN22-148 is less than the minimum 5 acres limit I am not in favor of a further division.

This change will adversely affect the property value in the area.

In addition to the decrease in the value of the homes and property, because of our close proximity to the property I believe we would be negatively affected by the additional population and traffic. Based on current traffic and density of population I recommend that the project site **not be reduced to two lots of 1.13 acres and 2.87 acres.**

There are 17 households that currently reside on and use Timothy Road. Timothy Road is not a thru road and as a dead end we receive a lot of traffic going each way. There are multiple driveways already near where the proposed property would be.

In addition, there are a number of families with children who enjoy riding their bicycles, scooters and four-wheelers on Timothy Road and I believe the increased traffic would present an additional safety hazard.

I plan to attend the hearing on October 27 and would be happy to answer any questions that you might have at that time.

Thank you.

Sincerely,

Joe Schlaefer

Doris McGuire
[REDACTED] Timothy Road
Cedaredge, CO 81413-8156

Angie Kemp, Planner I
295 W. 6th Street
Delta, Co 81416

Dear Ms. Kemp:

I am writing concerning the Board of Adjustment Hearing on Case PLN22-148 Kenyon Subdivision. **I am not in favor of this proposed property adjustment.**

Currently the project site is zoned Agriculture 5-acre. However, since the described parcel is 3 acres I would assume there has already been a zoning change. And since PLN22-148 is less than the minimum 5 acres limit I am not in favor of a further division. This change will adversely affect my property value. We purchased land and built a house on Timothy Road because of the acreage requirements.

In addition to the decrease in the value of my home and property, because of our close proximity to the property I believe we would be negatively affected by the additional population and traffic. Based on current traffic and density of population I recommend that the project site not be reduced to two lots of 1.13 acres and 2.87 acres.

There are 17 households that currently reside on and use Timothy Road. Timothy Road is not a thru road and as a dead end we receive a lot of traffic going each way. There are multiple driveways already near where the proposed property would be. In addition, there are a number of families with children who enjoy riding their bicycles, scooters and four-wheelers on Timothy Road and I believe the increased traffic would present an additional safety hazard.

I plan to attend the hearing on October 27 and would be happy to answer any questions that you might have at that time.

Thank you.

Sincerely,



Doris McGuire