



Huerfano County Board of Adjustment Staff Report – Permit #23-09 Variance McMahon Meeting Type – Public Hearing - Continuation

Meeting Date: April 20, 2023
Continued on August 17, 2023

Continuance of a public hearing

Aprin 20 Board of Adjustment Decision:

On April 20th the Board of Adjustment decided unanimously to continue the Public Hearing once a survey by a professional surveyor was completed. The Applicant had already scheduled a professional surveyor for July 7th, 2023.

Request Summary

With this Application Theresa McMahon (the Applicant) requests the following:

A Variance from §13.03.02 in which the minimum lot area in the Agricultural Zone is 35 acres. A variance may be requested pursuant to §9.02 of the Land Use Code to allow the right to develop a non-conforming parcel. §1.16 (8) of the Land Use Code defines conditions by which lots are to be considered conforming or non-conforming. The parcel measures two (2) acres and is located near the intersection of 550 and 570, slightly over 5.5 miles southwest of Gardner (Parcel Number 26330).

The subject property is zoned Agriculture. Zoning standards for this district are set forth in LUR Section §1.03 and require a minimum lot size of 35 acres.

Property History

This parcel was first recorded in its current form in 1972.

In 1945, the parcel was part of a much larger parcel, including one-eighth of section 30. Ownership of this parcel by Cleo Marion Denton and Sherman J Denton is recorded as an Indenture under Reception No. 167694.

In 1948, all of section 30 is described in a warranty deed as part of a larger parcel, under the same name as the indenture in 1945.

A search of book-page numbers listed in the legal description reveals that the legal description has not changed since the first record in October of 1972. Senate Bill 72-35, which required counties to pass regulations to require an approval process for the creation of parcels smaller than 35 acres was passed on May 5, 1972. Huerfano County adopted subdivision regulations on September 11, 1972. The deed for this property was notarized on October 5, 1972; it is, therefore, assumed that this represents a non-conforming lot.

These regulations were never properly recorded and only a fragment of a paper copy could be found. This fragment did not contain regulations specific to lot sizes, thus there is some uncertainty about whether a two-acre parcel would, in-fact, have been allowed when the parcel was created in October of 1972.

Creation of current parcel recorded in Book 331 Page 830 – September (no date on deed, notarized October 5), 1972 Quitclaim Deed, Cleo Marion Denton and Sherman J Denton sold the parcel in its current form to Alma R Kimbrel and John N Kimbrel.

Site Map/Vicinity Map

Section 30, Township 26, Range 70



23-09 VAR Vicinity Map

Based on the legal description of this parcel, it is a rectangular-shaped parcel with north-south sides measuring 290.2 ft and east-west sides measuring 300.2 ft., implying that a portion of this parcel is on the south side of 550, and its appearance is not as it is depicted on the Assessor’s map above. The parcel outlined in white approximates the legal description. It is possible that both 550 and 570 intersect this parcel, making the area of the parcel outside the right-of-way less than the two acres described in the legal description, which does not mention the County roads.

The nearest dwellings to this property are to the southeast – one at approximately 450 ft from the intersection of 550 and 570, the other approximately 1400 ft. from the intersection. To the southwest, there is another residence approximately 2,400 ft from the intersection. To the northeast, there is another dwelling approximately 1200 ft. away.

Code References

The following Code Sections are applicable to this application and may be referenced by the Huerfano County Board of Adjustment in their evaluation of the request:

§ 1.03.02 Agricultural District

This district is created for the purpose of protecting the productive agricultural lands of Huerfano County and preserving the visual and cultural values, historical and archeological features and critical wildlife habitat associated with the scenic vistas, natural topography and agricultural lifestyles in rural, unincorporated areas of Huerfano County.

Minimum lot area: 35 acres

§ 1.16 (8) Use of Conforming and Non-Conforming Lots.

01. Lots and parcels of record that were non-conforming prior to the day of adoption of this zoning regulation may be built upon or used provided that: a) the setback, floor area and bulk requirements and other provisions for the zoning district within which the lot is located are adhered to, b) the lot was not created by private conveyance or in violation of the County subdivision regulations and c) approval in the form of a variance is granted by the Board of Adjustment.

02. Lots and parcels of record that were conforming prior to the day of adoption of this zoning regulation are hereby declared to be conforming and shall henceforth continue to be legal conforming lots and parcels of record.

03. No lot which was conforming in size on the day of adoption of this zoning regulation may be subdivided according to the subdivision procedures contained herein in such a manner that it would become non-conforming nor cause any structure or use to become nonconforming.

§ 9.02.02 Powers and Duties of the Board

The Board of Adjustment shall have the following powers and duties, which shall be exercised in accordance with the laws of the State of Colorado and the provisions of these regulations and in harmony with the public interest and the most appropriate uses of the land:

...

2. To provide applicants with an opportunity to apply for variances from zoning setback requirements and other circumstances for which a variance may be deemed appropriate.

...

4. Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property existing at the time of enactment of these regulations, or by reason of exceptional topographic conditions or other extraordinary or exceptional physical characteristics or conditions of such piece of property not created by the applicant subsequent to the adoption of these regulations or previously adopted County zoning regulations, the strict application of any zoning regulation or provision therein would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, then the Board of Adjustment shall have the authority, upon an appeal relating to said property, to authorize a variance from such strict and literal application so as to relieve such difficulties or hardship. Such relief shall be granted, however, without substantial detriment to the public good and without altering or impairing the intent and purpose of the zoning regulations and other provisions contained within State or County regulations. The Board shall not, however, have the power to grant variances from the uses prohibited or allowed conditionally by special review for the zoning district involved.

Referral Comments

No Issues/questions from the Las Animas/Huerfano County Health Department or the Spanish Peaks Regional Health Center.

Staff Recommendation: A survey of the property has been conducted. Staff finds that the granting of this variance would have a minimal impact on neighbors or the character of the neighborhood. The creation of this parcel so close to the date at which it may have become non-conforming and the lack of certainty as to lot size

restrictions in place in October of 1972 should be taken into consideration in deciding this case. The strict application of the zoning rules would make this parcel unbuildable, and it is, therefore, within the purview of the Board of Adjustment to consider granting a variance to the minimum lot size requirements. Board of Adjustment should examine the survey to ensure that required setbacks would not make the proposed project infeasible.

Commission Action Options:

1. **Approval** without any special conditions.
2. **Conditional** Approval with a description of the special conditions.
3. **Denial**, indicating for the record the reason(s) for such action.
4. **Continuation** until a future date to gather more information or obtain clarification or for any other relevant cause.