

**AGENDA ITEM 1
NEW BUSINESS**

JULY 16, 2015

**SUBLETTE COUNTY PLANNING COMMISSION
MEETING**

**VARIANCE APPROVAL TO ALLOW AN EXISTING STRUTURE TO ENCROACH
INTO THE STREET YARD AND REAR YARD SETBACKS**

Applicants: James and Karen Pope

Agent: Rio Verde Engineering

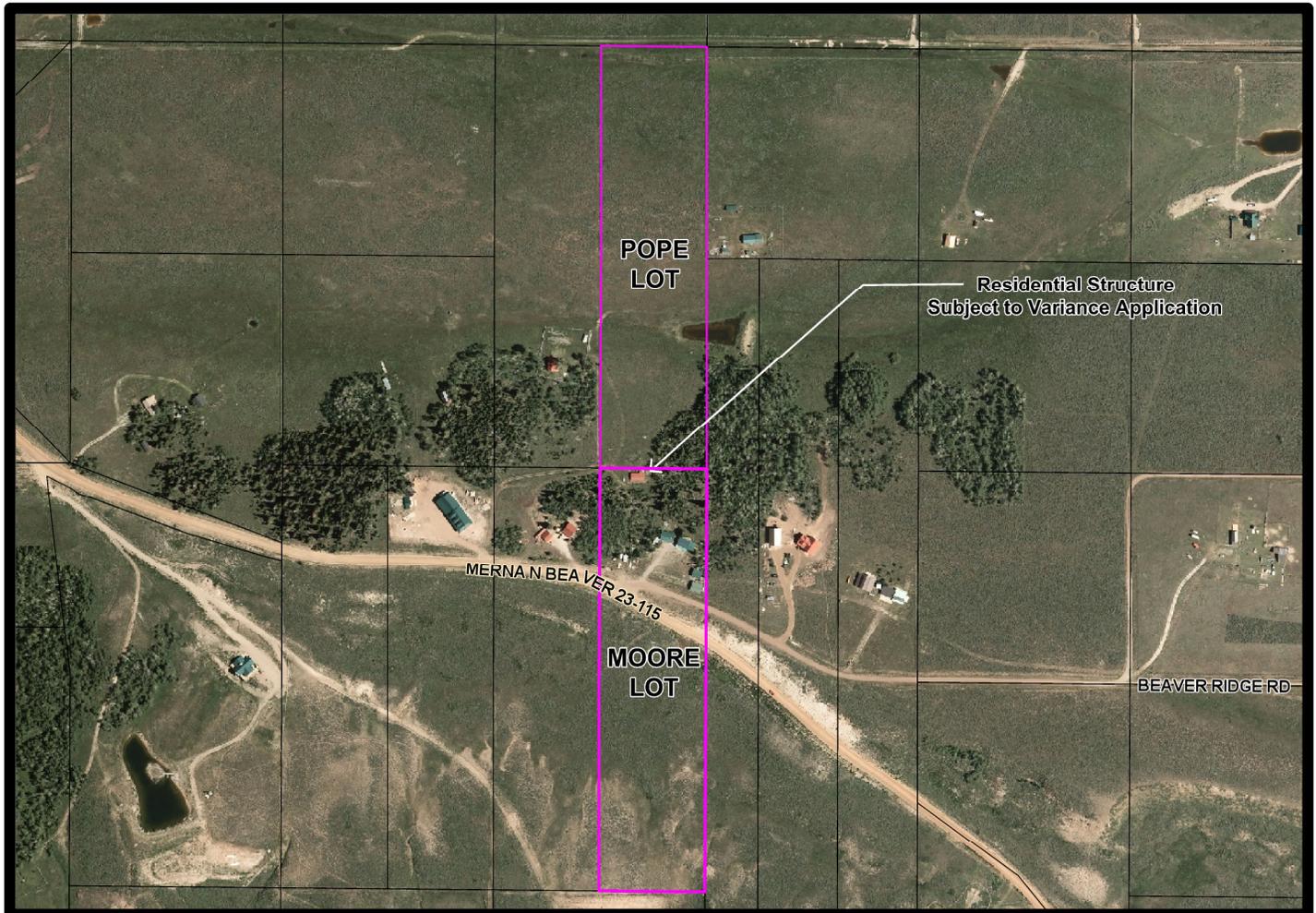
Request: Variance approval, pursuant to Chapter VI of the Sublette County Zoning and Development Regulations, entitled Variances. The application proposes a variance to the standards found in Chapter III, Section 4 of the Sublette County Zoning and Development Regulations, which establish setback requirements for structures. The variance proposed by Mr. Pope is to allow a residential structure to be setback 11 feet from an access easement and 19 feet from the rear yard. The County setback requirements for the Pope property require a setback of 30 feet from the access easement and 40 feet from the rear yard. The variance to the setback distances is requested in order to rectify the encroachment of the existing structure onto an adjacent lot.

STAFF REPORT: Bart Myers

SITE DESCRIPTION

Zoning District: Rural Residential 10
Property Size: Ten Acres
Property Location: Section 28, Township 35N, Range 113W; generally described as between the east half of Lots 13 and 20 of Jim Bridger Estates First Subdivision, being located at 8 Flagg Road

VICINITY MAP



BACKGROUND/HISTORY

The Pope's own the lot subject to this variance application, with the residential structure subject to this variance application being permitted in 1980. When the residential structure was constructed it was built on the lot to the south, described as Lot 10 of Jim Bridger Estates Seventh Subdivision, being located at 1 Booth Drive, and currently owned by Tony and Francine Moore. In addition to the structure being constructed on the Moore lot it also sits within a subdivision road easement. However, the actual road has not been constructed.

The construction of the structure on the neighboring lot has been an issue for decades and the Pope's and Moore's have agreed to adjust the property boundary between their lots in order to get the structure onto the Pope's lot. An application seeking the partial vacation and amendment of the plat has been submitted in conjunction with the variance application. An application for the partial vacation and amendment of a plat does not require a recommendation from the Planning Commission.

With the amended plat the residential structure on the Pope lot will only be setback 11 feet from the realigned subdivision road easement, rather than the required 30 feet. Additionally, the structure will be setback 19 feet from the rear property line, rather than the required 40 feet.

KEY ISSUE

Issue 1: *Is approval of a variance reasonable, given the long standing encroachment onto the neighboring lot?*

Removal of the Structure vs. Allowing for the Setback Encroachment(s)

With the amended plat the setback issue needs to be addressed and is the reason for the variance application. The encroachment of the structure onto the neighboring lot has been at issue for decades, with the two parties coming to an agreement where the Moore’s will sell the Pope’s the portion of the Moore lot necessary to get the structure onto the Pope lot. Obviously the Moore’s have no desire to sell the Pope’s any more of the Moore lot than is absolutely necessary to rectify the encroachment onto the Moore lot.

The amended plat accomplishes the goal of getting the structure onto the Pope lot, without reducing the size of the Moore lot any more than is necessary. Without the amended plat and variance the only other alternative would be for the Pope’s to remove the structure from the Moore lot. Given the fact that a road has never been developed within the subdivision road easement and the Pope’s are the only lot owners utilizing the easement for access the setback from the easement seems reasonable. The Moore’s are the only lot owners impacted by the rear yard setback encroachment and given their cooperation in resolving this matter the rear yard setback is equally reasonable.

RELATIONSHIP TO APPLICABLE LAND DEVELOPMENT REGULATIONS

Compliance with all development standards applicable to a development proposal shall be required. The following standard(s) apply specifically to the variance proposed.

Chapter III-Section 4: Setback Requirements

Setback Requirements Rural Residential	<u>FRONT</u> (Measured from Road Easement)	<u>RIGHT SIDE</u> (Measured from Property Line)	<u>LEFT SIDE</u> (Measured from Property Line)	<u>REAR</u> (Measured from Property Line)
	30 feet	10 feet	10 feet	40 feet
Setbacks for Existing Pope Residential Dwelling	11 feet	42.5 feet	30 feet	19 feet

Chapter III-Section 6: Parking Requirements

A minimum of two parking spaces are required for a single family residential use. Two parking spaces are present on the Pope lot.

Chapter III-Section 9: Maximum Building Height

The existing structure is well under the maximum height of 30 feet allowed in the Rural Residential 10 zoning district.

Chapter III-Section 4: Minimum Site Area

This Chapter and Section establishes a minimum lot size of 10 acres for parcels in the Rural Residential 10 zoning district. The size of the Pope lot will increase to 10.19 acres with the lot line reconfiguration and the Moore lot will decrease in size to 9.92 acres. With respect to the Moore lot decreasing to slightly under 10 acres, the subdivision regulations provide that in certain situations 10 to 9.5 acres shall be considered a full ten acres in the Rural residential 10 zoning district. Therefore, staff finds it acceptable for the Moore lot to decrease in size to 9.92 acres.

Subdivision Regulations - Chapter IV-Section 1: Vacations/Modifications to Filed Plats

In order to accomplish the boundary line adjustment between the two lots, compliance with the Chapter and Section of the subdivision regulations is required. An application to accomplish the lot line adjustment has been submitted in conjunction with the variance application. Applications for vacations/modifications to filed plats go directly to the County Commissioners, with a public hearing and recommendation from the Planning Commission not being required.

STANDARDS FOR APPROVAL OF VARIANCES

Pursuant to Chapter VI, Section 6 of the Sublette County Zoning and Development Regulations the following standards shall apply to all variance applications:

- a. The granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to other properties in the vicinity;*

Statutory authority to impose development standards is granted to the County in order to protect the public health, safety and welfare. Because the encroachment into the street yard setback is for a subdivision road that has not been and most likely will never be developed staff is able to find that the requested street yard setback variance is not detrimental to the public health, safety and welfare or materially injurious to other properties in the vicinity. Staff is able to make the same finding with respect to the rear yard setback encroachment, as the only impacted property owner would be the Moore's, who are a party to this matter.

- b. The granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on use of other properties in the vicinity;*

Staff is not aware of any other properties in the vicinity where a structure has been built on a neighboring lot, therefore the Pope's are not being granted a special privilege that would not be available to other properties in the vicinity.

- c. The hardship which is the basis for the variance application was non self-inflicted by the applicant;*

The building permit issued for the structure which encroaches onto the neighboring lot was not granted to Pope's. Absent a property boundary survey, which is uncommon in Sublette County, the applicant was not aware of the encroachment. These circumstances lead staff to conclude that the basis for the variance is not self-inflicted.

- d. The granting of the variance is justified for one or more of the following reasons:*
 - (1) Strict interpretation or enforcement of the development standards would result in practical difficulty or unnecessary physical hardship inconsistent with the purpose of this resolution;*
 - (2) Exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same district;*
 - (3) Strict interpretation or enforcement of the development standard would deprive the applicant of privileges enjoyed by other property owners in the same district.*

Staff finds that the first two standards (1 and 2) apply to this request. First, strict interpretation and enforcement would result in the removal of the structure from the Moore's lot. This would result in practical difficulty and unnecessary hardship not consistent with the applicable regulations, because the two lot owners impacted have worked out an agreement to rectify the situation. Further, extraordinary conditions and circumstances do apply to this request. Those circumstances and conditions are a result of a structure being built on a neighbor's property, which is not generally the

case. Additionally, after decades those two neighboring property owners have worked out a solution to the circumstances and conditions surrounding the encroachment.

PUBLIC COMMENT

This application was published as a legal advertisement in the Pinedale Roundup and sent to all neighboring property owners within a 1,000-foot radius of the subject property. As of the date of this staff report no neighbor comments have been received.

STAFF RECOMMENDATION

Planning Staff recommends that the Planning Commission take the following action:

Recommend that the Board of County Commissioners **APPROVE** the requested variance to allow encroachments into the street and rear yard setbacks for the east half of Lots 13 and 20 Jim Bridger Estates First Subdivision.

ATTACHMENTS

- 1) Plat for the vacation and modification (boundary line adjustment) between the east half of Lots 13 and 20 Jim Bridger Estates First Subdivision and Lot 10 Jim Bridger estates Seventh Subdivision