

GRAND COUNTY BOARD OF ADJUSTMENT
MEETING MINUTES

Wednesday, February 10th, 2021

MEMBERS PRESENT: Shaun Mullahey Marcus Davis
 Loreta Silverio

MEMBERS ABSENT: George Davis

STAFF PRESENT: Robert Davis Alexander Taft
 Jacob Cote Taylor Schlueter
 Patty Kemper Chris Leahy

The meeting was called to order by Chairman Marcus Davis at 5:41 PM. Roll call was taken.

Minutes from December 9th 2020 were presented. Motion to approve by Marcus Davis. Seconded by Shaun Mullahey. All in favor, “aye”. None opposed, minutes approved.

Chair Marcus Davis discussed Officer Elections with Loreta Silverio. Asked Loreta if she would be interested in Chairing for 2021. Loreta Silverio accepted the position of Chair Person for Grand County Board of Adjustment. Marcus Davis accepted the position of Vice-Chair Person for Grand County for 2021.

There were 2 people present at the WebEx Board of Adjustment Meeting.

Chris Leahy, set the record for Jeffrey Variance – Front Yard Variance – Kelly & Douglas Jeffrey. Lot 6, Stillwater Estates.

JEFFREY VARIANCE – FRONT YARD VARIANCE – KELLY & DOUGLAS
JEFFREY LOT 6, STILLWATER ESTATES
REPRESENTED BY CONNOR TRACY

Presented by: Jacob Cote, Planner 1

CERTIFICATE OF RECOMMENDATION

BOARD OF ADJUSTMENTS FEBRUARY 10, 2021

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| Project Name | Jeffrey PV Array, Lot 6 Stillwater Estates |
| Applicant | <i>Property Owners:</i> Kelly & Douglas Jeffrey <i>Represented by:</i> Connor Tracy, Senior Project Manager, Green Solar Technologies, Inc. |
| Location | 582 GCR 41 (<i>commonly known as Trail Creek Road</i>) |
| Zoning | Residential District (R) |
| Applicable Regulations | Grand County Zoning Regulations, Grand County Board of Adjustment Regulations, Colorado Revised Statutes |
| Attachments | A. Variance Application B. Project Narrative Letter C. Proposed PV Array Plans (including Site Plan) D. Stillwater Estates Final Plat, Reception No. 124937 E. Middle Park Times Public Notice Order Confirmation F. List of Adjacent Property Owners as determined by Grand County GIS G. Public Notice Certified Mailer H. Grand County Board of Adjustment Resolution No. 2006-8-1 |
| Staff Planner | Jacob Cote, Planner I |
| Request | Approval of a Front Yard Variance—from 30' to 2.3' —to allow for the construction of a ground-mounted photovoltaic (PV) (solar panel) array in the most optimal location on the property. |

Background

Kelly and Douglas Jeffrey—herein referred to as the “Owners”—have owned the property at 582 GCR 41 since December of 2016, per Reception No. 2016009358. The property is 2 acres large and contains a single-family dwelling constructed in 2007. Connor Tracy, Senior Project Manager for Green Solar Technologies, Inc.—the company contracted to design and install the photovoltaic array—is the primary contact for the project, herein referred to as the “Applicant”.

The Stillwater Estates subdivision is located west of Lake Granby, roughly halfway between the Towns of Granby and Grand Lake. It was recorded at Reception No. 124937 on October 20th, 1972. A 10' utility easement exists on the front yard lot line, adjacent to GCR 41. All parcels in the Stillwater Estates subdivision are approximately the same size as the Applicant’s parcel, ranging from 2-2.6 acres in size.

The Grand County Board of Adjustments heard an application for this variance request at its October 14th, 2020 hearing. An application has been re-submitted by the Applicant after it was determined that the required front yard was improperly calculated and a more significant variance would be necessary to allow for the construction of this array.

Variance Request

The Applicant's request is to allow for the construction of a 14.49kW photovoltaic (PV) array system (better known as a solar panel array) within the front yard of the Owner's property. The minimum front yard in the Residential Zoning District (*GCZR §IV*) is **30'** (*§4.4*); this variance request is to allow for construction of the solar panel array **2.3'** from the front yard line, rather than the required **30'**. Refer to **Attachment C**, Proposed Array Plans & Site Plan, for a visualization of the proposed PV array's location in relation to the existing house, driveway, front yard, and County Road 41 right-of-way.

The exceptionally wide right-of-way for County Road 41 (100') creates a very small section of yard in which the Applicant may construct the PV array. While the request for a front yard of **2.3'** may give the impression that the PV array would be built nearly on top of County Road 41, it would actually be **37'** from the edge of the county road.

Public notice of the variance request was published in the Middle Park Times on January 21, 2021 (**Attachment E**), as required. Adjacent property owners, as determined by Grand County GIS, were notified by Certified Mail via a Public Notice dated January 15, 2021 (**Attachments F and G**). Staff has received no public comment on the variance request.

The proposed location of the photovoltaic array would infringe upon a 10' wide utility easement corresponding to the front lot line. Because the PV array will be attached to the ground by removable hardware, utility providers accessing the easement will be able to request temporary removal of the array while work is conducted in the easement. Should the Board of Adjustments wish for a full vacation of the utility easement, the Applicant will be required to submit an application for utility easement vacation to be heard by the Grand County Planning Commission and Board of County Commissioners.

Purpose of Request

The Owners' energy usage in the winter months peaks at over \$400/month. This PV system is designed to offset as much of that winter utility bill as possible while also generating "credits" in the summer to offset the high winter bills. The Owners have observed continuously increasing utility bills; to mitigate future financial hardships resultant of high energy bills, the Owners would like to take advantage of renewable energy technology that creates long-term affordability and expense predictability.

The PV array cannot be placed anywhere else on the Owners' property due to a number of existing conditions. The Owners' property is bisected by an irrigation ditch, and the neighbors own a portion of the property's water rights. The location of the property's leach field further restricts the amount of viable space for the PV array. The remaining area of the property in which the PV array would comply is sloped and shaded in such a way that the solar array system would be rendered either unsound or ineffective.

While the possibility of a roof-mounted system was explored by the Applicant and Owners, it was determined that there is not enough roof area for a system capable of meeting the Owners' needs.

2006 Variance

In 2006, the former owners of the property—Judy and Damian Kubick—requested a variance from the Board of Adjustment to allow for a front yard variance of 15', resulting in a front yard of 15'. Grand County Board of Adjustment Resolution No. 2006-8-1 (Reception No. 2006009188) approved the variance request. The

reasons for the 2006 request are similar to the reasons for this request: the property's buildable area is limited by the presence of an irrigation ditch and the allocation of water rights to a neighboring property owner, and the acute triangular shape of the lot creates a buildable area that is very long and narrow.

Per Resolution No. 2006-8-1, Grand County Road and Bridge Department had no objections to the granting of a front yard variance of 15', as it was determined that the reduced setback would not infringe upon any Road and Bridge operations along County Road 41. There is a 10' utility easement also along the south property line; at the time of the 2006 variance request, no area utility providers objected to the reduction of the front yard requirement. There was one public comment filed for the hearing: a neighbor, through a telephone conversation with staff, voiced their support for the variance request.

The 2006 variance granted the request to create a 15' setback for the single-family residence. Because this request is 14 years subsequent to the original variance, and the variance approval was, per Resolution 2006-8-1, "good for one (1) year from the date of this public hearing", a second variance hearing is being requested of the Board of Adjustment.

Compliance with Zoning Regulations

Section IV - Residential District

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| §4.1 Uses Permitted | While the Grand County Zoning Regulations do not address PV arrays as an allowed—or disallowed—use, C.R.S. 38-32.5-100.3 allows for "solar easements" and "solar energy devices" in Colorado. C.R.S. §40-2-123 emphasizes the General Assembly's finding that "it is in the best interests of the citizens of Colorado to develop and utilize solar energy resources in increasing amounts." The proposed PV array is therefore in compliance with State of Colorado law and is in the best interest of the citizens of Colorado. |
| §4.2 Minimum Area of Lot | The lot is 2.0 acres (87,120 ft. ²) large and is in compliance (§4.2.4). |
| §4.3 Minimum Lot Width | The lot is triangular; the front yard is adjacent to County Road 41, the rear lot is the north lot line, and the side lot is perpendicular to GCR 41. The property is approximately 130' deep at the east end of the house and 260' deep at its widest. It is over 800' wide from east to west. The lot is in compliance (§4.3.4). |
| §4.4 Minimum Front Yard | The minimum front yard in the Residential District is 30'. A variance for a front yard was granted in 2006 by the Grand County Board of Adjustments, creating a 15' front yard for the single-family dwelling constructed on the property in 2007. |
| §4.5 Minimum Side Yard | Required side yards are 5'. The proposed array will be in compliance. |
| §4.6 Minimum Rear Yard | Required rear yard is 20'. The proposed array will be in compliance. |
| §4.7 Maximum Building Height | Maximum allowed building height is 35'. The proposed array will be in compliance. |

Section XVI - Board of Adjustment

§16.2 Powers and Duties (1) *To hear and decide appeals taken by any person aggrieved by his inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of these regulations.*

Applicant has requested a variance to the required Front Yard of 30' in the Residential (R) Zoning District. If approved, the Applicant will be permitted to construct a grid-tied 14.49kW solar PV system on their property partially within their front yard.

(2) *To authorize, upon appeal in specific cases, variances to the:*

[...]

(c) *minimum front yard*

[...]

Regulations where, by reason of exceptional shape, size or topography of lot, or other exceptional situation or condition of the building or land, practical difficulty or unnecessary hardship would result to the owners of said property from a strict enforcement of these regulations.

The existing irrigation ditch, the water rights allocated to a neighboring property owner, the slope of the rear/side yard, and the number of trees in the rear/side yard all make construction of a PV array on any other part of the property infeasible, creating an unnecessary hardship for the Owners who would otherwise be unable to address their increasingly unaffordable utility bills.

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- (3) *Where, by the reason of [...] exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any provisions of this regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, the Board of Adjustment, upon an appeal relating to said property, may grant a variance from the strict application of these regulations so as to relieve such difficulties or hardships if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and these regulations.*

Because the proposed PV array location is, as photo evidence shows, several feet lower than the grade of GCR 41, the array will not be easily visible from the public right-of-way. It will therefore not be a substantial detriment to the public good, nor will it impair the intent and purpose of these regulations. To deny this variance request would be to place an undue financial hardship on the Owners, who seek a means of creating more affordable electricity for their home.

Staff Recommendation

Staff recommends approval of the variance to allow for the construction of a grid-tied 14.49kW solar PV system within the front yard of the Owners' property, reducing the front yard from 30' to 2.3'. The existing conditions of the lot—including its peculiar shape, a bisecting irrigation ditch, allocated water rights, inappropriate slope, and excessive tree coverage—make the construction of a PV array elsewhere on the property within the allowed yards infeasible. The grade of the property, which slopes down from GCR 41 to the proposed site of the array, will also conceal a significant portion of the proposed array from GCR 41 traffic.

The 100' wide right-of-way for GCR 41 encroaches significantly into the perceived "front yard" of the Owners' property, resulting in the seemingly-dramatic request for a 2.3' front yard. In reality, the array would still be located at least **37'** from the edge of the road, providing enough room for snow storage while minimizing its aesthetic impact on the neighborhood. No changes have been made to the proposed location for the photovoltaic array: the distance from the road will not change, only the measurement from the front yard lot line to the edge of the array will be altered.

Solar energy technology is permitted and encouraged by the State of Colorado and is an effective means of reducing energy costs for a household. Approval of this proposed location for a PV array would allow the

Applicant to build an array large enough to meet the Owners' needs, alleviating future financial burdens consequent of rising utility costs.

Jacob, Planner noticed a date on the cover page is incorrect. The Public Notice, in the Middle Park Times should be January 21st, 2021.

Chris Leahy, stated that will be added as "Exhibit K".

Commissioner Silverio asked the applicant's representative, Connor Tracy, if they had any questions or comments.

Connor Tracy stated, there has been 1 change that Jacob had not been updated on. Jacob showed a slide with concrete piers, we are updating that to earth anchors. It is easier to do the instillation and easier to move on any semi-permanent structure. Earth anchors are more viable for the Rocky Mountain area.

Commissioner Mullahey asked, he was not present for a 2020 meeting, was a decision made to deny the variance or was it deferred until this meeting?

Jacob replied, a decision was made to approve the variance request, however, due to a different front yard measurement, it was decided that the variance would be brought back before the Board of Adjustments.

Commissioner Mullahey asked what is the difference between the prior approval and this request in terms of what is required?

Jacob replied, 17.7 feet difference in measurement. No change in location just in measurements.

Commissioner Davis stated that this set up is even more semi-private than the original proposal. Solar array is something that if you need to move, will be easier than something on a foundation, like a house. What was different with the survey, a different person?

Connor Tracy replied, the difference was we measured from a different metric. The original measurement was done from the middle of the road, then we realized we should have measured from the edge. Our starting point was incorrect.

Commissioner Davis asked if there was a true surveyor who measured?

Connor Tracy replied, yes.

Commissioner Davis continued, the road has no bearing on location at all. It has to be measured from a corner pin.

Connor Tracy stated he understood this.

Commissioner Davis asked, this measurement is accurate and was done by a surveyor. We need to ensure that the Resolution states that this is a variance granted only for the solar array and no other structures.

Jacob stated he will make a note to include in the Resolution.

Commissioner Silverio asked if this is a brand-new variance or an addition to the variance. Back in October, Marcus added a clause that if there was any damage from snow removal, because it is closer to the road, that it would not be the responsibility of the county. I would like this added to the current variance as well, since it is moving closer to the road.

Jacob replied that he can add this condition as well.

Commissioner Silverio asked if there were any public comments? Hearing none, she asked for a motion.

Motion to recommend approval by Marcus Davis for the Jeffrey Variance – Front Yard Variance at 2.3 feet as presented, plus 2 conditions requested by the board. Seconded by Shaun Mullahey. No further discussion. All in favor "aye", none opposed. Motion carries.

Motion to close this hearing. So, moved by Marcus Davis. Seconded by Shaun Mullahey.

Chris Leahy, set the record for Wright Variance – Height Variance – Kenneth Wright, Lot 3 Aspen Pines Estates, Filing 1.

**WRIGHT VARIANCE – HEIGHT VARIANCE – KENNETH WRIGHT LOT 3,
ASPEN PINE ESTATES FILING 1**

Presented by: Jacob Cote, Planner 1

CERTIFICATE OF RECOMMENDATION

BOARD OF ADJUSTMENTS **OCTOBER 14, 2020**

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| Project Name | Wright Height Variance, Lot 3 Aspen Pine Estates Filing 1 |
| Applicant | Kenneth Wright |
| Location | 491 GCR 4911 |
| Zoning | Forestry & Open District (F/O) |
| Applicable Regulations | Grand County Zoning Regulations, Grand County Board of Adjustment Regulations |
| Attachments | B. Development Application C. Project Narrative D. Vicinity and Detail Maps E. Height Verification Certification F. Aspen Pine Estates Filing no. 1 Final Plat, Reception no. 98001697 G. Public Notice documentation H. Warranty Deed Reception no. 2016-006825 |
| Staff Planner | Jacob Cote, Planner I |
| Request | Approval of a Height Variance—from 35' to 38.95' —to bring into compliance a chimney built above the allowed height in the Residential Zoning District. |

Background

Kenneth Wright, herein referred to as “Applicant”, has owned Lot 3, Aspen Pine Estates Filing 1 since 2016 per Warranty Deed recorded at Reception No. 2016006825. The property is 2.09 acres large and contains a single-family dwelling completed in 2017.

The Aspen Pine Estates, Filing No. 1 was recorded February 25th, 1998 at Reception No. 98001697. The subdivision is located in the Kawuneeche Valley, immediately west of the Sun Valley Ranch subdivision and adjacent to the Arapaho National Forest & Never Summer Mountains. Building envelopes have been designated for each lot, including the property subject to this variance request. Lots in the subdivision range in size from 0.45 acres (smaller parcels to the east) to 3.15 acres (larger parcels to the north and west).

Variance Request

The Applicant’s request is for a variance to retroactively approve an existing chimney that violates the Grand County maximum height regulations. The maximum allowed height of a building, measured ten feet away from the structure, may not exceed 35’ if a grade change of less than five feet within the building footprint is present. The current height of the chimney (including the chimney pipe) is 38.95’ high, measured from ten feet away from the structure. This height measurement was conducted by Tim Shenk, P.L.S. on December 23rd, 2020.

Public notice of the variance request was published in the Middle Park Times on January 21st, 2021 (**Attachment G**), as required. Adjacent property owners, as determined by Grand County GIS, were notified by Certified Mail via a Public Notice dated January 15th, 2021 (**Attachments G**). Staff has received no public comment on the variance request.

Purpose of Request

The single-family residence at 491 County Road 4911 was constructed between 2017 and 2019 (the roof was done in fall 2018, the chimney completed in 2019). The building plans submitted by the Applicant in 2017 showed the finished height of the chimney to be 34’ 7” per Building Permit No. B17-0422. This height would be in compliance with Grand County Maximum Height Regulations, and would be verified via a Height Verification Certification completed by a professional land surveyor.

The chimney height was altered at the discretion of the contractor hired to complete the fireplace and chimney. In an email sent by the contractor to the Applicant, the reason for a taller chimney was explained (emphasis added by staff):

*I recommend the height of the two direct vent pipes to be as tall as they are **due to the excess snow accumulations that can occur at your location**. Shorter termination caps can be covered with snow thereby blocking the intake and exhaust function of the fireplace and causing them to malfunction. **The additional height allows the termination caps to stay above the snow accumulation thereby allowing the fireplaces to work properly.***

The chimney was redesigned to handle the substantial snowfalls in the Kawuneeche Valley after it was determined by the professional contractor that the original design was insufficient and hazardous. Because the house’s design was already close to the maximum allowed height, this alteration to the design is what resulted in a non-conforming structural height.

Compliance with Zoning Regulations

Section VI - Forestry and Open District

- §6.1 Uses Permitted** The existing use of the property is a single-family dwelling. This variance would not alter the use of the property, so this project is compliant (§6.1.1).
- §6.2 Minimum Area of Lot** The lot is 2.09 acres large, but it is not located in a designated Urban Growth Area, meaning the minimum required lot area is five acres. This lot is pre-existing non-conforming (§6.2.1)
- §6.3-6.6 Minimum Lot Width & Yards** This lot complies with minimum lot width requirements. The structure on the property is in compliance with front, side, and rear yard requirements.
- §6.7 Maximum Building Height** Maximum allowed building height is 35' when measured 10' away from the structure if less than a 5' change in finish grade within the building footprint. The building plans submitted to Grand County Community Development Department showed the finished structure height to be 34'7", but the Height Verification Certification shows the finished height of the chimney pipes to be 38.95'.

Section XVI - Board of Adjustment

- §16.2 Powers and Duties** (4) *To hear and decide appeals taken by any person aggrieved by his inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of these regulations.*

Applicant has requested a variance to the required Maximum Height of Building of 35' in the Forestry and Open (F/O) Zoning District when the finish grade within the building footprint changes less than five feet across the footprint. If this variance application were to be approved, the Applicant will be permitted to keep his existing chimney as built.

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- (5) *To authorize, upon appeal in specific cases, variances to the:*
[...]
(f) *minimum height of buildings*
[...]
Regulations where, by reason of exceptional shape, size or topography of lot, or other exceptional situation or condition of the building or land, practical difficulty or unnecessary hardship would result to the owners of said property from a strict enforcement of these regulations.
Applicant was unaware of the plan alterations at the time of the fireplace and chimney construction, when the maximum allowed height regulations were violated to construct a chimney system for the sake of safety and function. The chimney's construction has been completed; without a granted variance to permit the chimney and vent pipes as they have been built, the Applicant will be required to demolish the chimney and vents and reconstruct a chimney that may be susceptible to damage or malfunction due to high snow accumulation on the roof.
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- (6) *Where, by the reason of [...] exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any provisions of this regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, the Board of Adjustment, upon an appeal relating to said property, may grant a variance from the strict application of these regulations so as to relieve such difficulties or hardships if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and these regulations.*

Because the chimney system has already been constructed and is a part of the existing property (along with the rest of the house), the Applicant would face an exceptional practical difficulty, being required to demolish and rebuild a chimney system that may be unsafe or ineffective.

Staff Recommendation

Staff recommends approval of the variance to allow for a final building height of 38.95' for the single-family residence at 491 County Road 4911. The divergence from the original building plans submitted to Grand County Community Development was intended to improve the safety and functionality of the chimney and chimney pipes, as excessive snow accumulation on the roof of a structure can block the fireplace exhaust and render the fireplace ineffective or hazardous. The crest of the roof is still in compliance with the 35' maximum allowed height, meaning the chimney pipes and a small portion of the stone section of the chimney (approximately 8 inches) are the only structural elements.

Commissioner Silverio asked if the applicant was on the line and if he had any questions or comments regarding the Certificate?

Kenneth Wright, the applicant is present and has no questions or comments.

Commissioner Mullahey asked if the alteration between the approved plan and the final structure was altered without the homeowner's knowledge?

Kenneth Wright, the applicant stated correct. I did not know the chimney was above the roofline until after it had been installed by the contractor. I then contacted my contractor to ask why it had been installed like this? They presented the reason of the safety and the snow load etc.

Commissioner Davis stated the house itself did not change from as presented. The chimney stack and extensions are a little higher and I have no issues with that. At least they did not surround the stone work all the way up, which would have caused it to be really dramatic.

Commissioner Silverio agreed with Marcus regarding the stone work going all the way up. The pipes almost fade into the background. It is not obtrusive, just seems like a design oversight.

Commissioner Silverio asked if the public had any comments, hearing none she asked for a motion.

Motion to recommend approval by Marcus Davis for Wright Height Variance as presented. Seconded by Shaun Mullahey. No further discussion. All in favor "aye", none opposed. Motion carries.

Motion to close the hearing by Marcus Davis and seconded by Shaun Mullahey. All in favor "aye", none opposed. Hearing is closed.

Motion to adjourn by Marcus Davis. Seconded by Shaun Mullahey. All in favor "aye", none opposed. Motion carries.

Meeting adjourned at 6:26 pm.
