



DEPARTMENT OF PLANNING AND ZONING

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CERTIFICATE OF RECOMMENDATION

TO: Grand County Board of Adjustment

FROM: Department of Planning and Zoning

DATE: March 12, 2014

RE: Unicume Variance Request (Boathouse)

APPLICANT: Mark Unicume (owner) and GLBEAR LLC (prospective purchaser)

LOCATION: Lot B of the Appleman Outright Exemption located in a part of Government Lot 9, Section 4, Township 3 North, Range 75 West of the 6th P.M., off Grand Avenue near Grand Lake.

ZONING: Residential

APPLICABLE SECTION OF CODE: Grand County Zoning Regulations

EXHIBITS: Letter of Application, Aerial Map, and Supporting Documents.

STAFF CONTACT: Kristen Manguso

REQUEST: The Applicant is requesting a variance to Section 14.5 of the Grand County Zoning Regulations to allow for a boathouse on a parcel that does not contain a single family dwelling.

DISCUSSION

Mark Unicum is the current owner of Lot “B” Appleman Outright Exemption by Warranty Deed recorded at Reception No. 99004961 and a 1.373 acre metes and bounds parcel by Warranty Deed recorded at Reception No. 97008100.

The Applicant purchased a 1.373 acre metes and bounds parcel on September 15, 1997 from John S. Toll. This was part of a larger pre-existing parcel that was originally deeded at Book 95, Page 626, and was determined to be a legal parcel by this Department based on a memo dated September 9, 1997.

The metes and bounds parcel currently contains a single family residence permitted in 1999 and a boatdock that was permitted in December of 2009. Existing Parcel B has a garage and a boathouse that was permitted to be constructed on the metes and bounds property in 1999.

The history behind this situation is there were two (2) building permits issued on the metes and bounds property in 1999 – one was for a single family residence (B99-0011) and the second was for a boathouse (B99-0012). In 2001, it was found that the boathouse was actually constructed on Parcel B of the Appleman Outright Exemption instead of the metes and bounds property as allowed within the building permit, and a zoning violation was issued. The staff member that issued the violation left this department shortly after, and there was no follow-up done.

In 2009, Mr. Unicum applied for another building permit for a boatdock to be located on the metes and bounds parcel. This permit was issued in December of 2009, and complies with current zoning regulations which allow for one (1) boathouse OR boatdock per single-family dwelling.

In 2013, Mr. Unicum approached Planning and Zoning stating that there was a buyer interested in both of his properties – the metes and bounds property as well as Parcel B of the Appleman Outright Exemption. When the prospective buyer’s attorney contacted this department to ensure both properties were compliant with zoning regulations, they were informed there was a zoning violation on Parcel B of the Appleman Outright Exemption. Staff informed the applicant that he could cure the zoning violation by simply constructing a single-family dwelling on top of the existing garage located on the Appleman parcel. In response, the applicant applied for a building permit. In November of 2013, building permit number B13-0473 was issued to construct a home above the existing garage on the Appleman Parcel B.

However, there is an old private covenant dating back to 1959 which applies to a 2.4 acre property in a portion of Lot 9 which includes both Parcel A and B of the Appleman Outright Exemption. This covenant limits that 2.4 acre property to one (1) single family dwelling only, and reads in part, as follows:

That these covenants will run with the land and will bind all parties and all persons claiming under them until January 1, 1966, at which time they shall be automatically extended for successive 10 year periods unless by a vote of the then owners of all lots and parcels of that certain plat identified as

Preliminary Plat of Toll Subdivision prepare in August 1955 by Kurt O. Linn No. 5508-23, said covenants are then changed in whole or in part.”

As this covenant is private in nature, it is not enforceable by Grand County. In any case, this covenant has made the buyers uncomfortable constructing a home on Parcel B. The only way to cure the violation is either for this Board to legalize the boathouse, or for the boathouse to be removed.

GRAND COUNTY ZONING REGULATIONS

The property is zoned Residential according to the Grand County Zoning Map. The setbacks for this zone district are thirty (30) foot front, twenty (20) foot rear, and five (5) foot side.

According to the zoning regulations, The Board of Adjustment shall have the following powers and duties, all of which shall be exercised subject to the laws of the State of Colorado and subject to appropriate conditions and safeguards, in harmony with the purpose and intent of these regulations and in accordance with the public interest and the most appropriate development of the area. A variance is allowed for consideration and approval under the following criteria:

1. To hear and decide appeals taken by any person aggrieved by the Grand County Zoning Regulations:
2. To authorize upon appeal in specific cases, variances to the:
 - a. *Minimum area of lot*
 - b. *Minimum lot width*
 - c. *Minimum front yard*
 - d. *Minimum side yard*
 - e. *Minimum rear yard*
 - f. *Maximum height of building*

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.

3. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of these regulations or by reason of exceptional situation or condition of such piece of property, the strict application of any provisions of these regulations 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.

4. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district

involved, or any use expressly or by implication prohibited by the terms of these regulations in said district.

This request is to allow for a variance to legalize the existing boathouse on Parcel B of the Appleman Outright Exemption. In 1999 when the building permit was approved for this boathouse, it was considered an accessory structure, and was only allowed on property that contained a single family dwelling. At that time, there was no size limitation and the boathouse with attached boatdock was compliant with regulations if it had been built on the metes and bounds property. As stated above, a zoning violation was issued by this department, although it was never followed up on.

The letter from Ecological Resource Consultants, Inc. reviews the potential environmental disturbances associated with removal of the boathouse and associated dock. In their letter, they state that any road constructed to the boathouse site would cause the most significant disturbance and potential threat to the lake environment.

The other alternative proposed by Big Valley Construction would involve demolition by hand and haul off by a barge. This would involve removal of the piers and removal of concrete along the shoreline, disturbing the existing vegetation and would also be intrusive to the shoreline.

STAFF COMMENTS

Taking into consideration the fact that Planning and Zoning failed to pursue the violation in 2001 combined with all the evidence presented by the buyer's attorney, including the letter by Ecological Resource Consultants, Inc., and the fact that a boathouse and boatdock is an allowed use on the lake and within this zone district, staff is of the opinion that allowing the boathouse to remain would not result in substantial detriment to the public good nor would it substantially impair the intent or purpose of the zone plan or the zoning regulations.

PUBLIC NOTICE

Public notice was made in the Middle Park Times on February 20, 2014 as required. In addition, all adjacent property owners have been notified by certified mailing, return receipt requested. No comments have been received.

STAFF RECOMMENDATION

Considering the fact that the boathouse and associated dock have been in existence on the property for 14 years and the fact that no additional impacts are proposed, staff recommends that the Grand County Board of Adjustment approve the requested variance to allow for the boathouse as permitted by building permit B99-0012 with the following conditions to be included in any resolution of approval.

1. The boathouse and associated dock are to remain as is. No enlargement of any kind shall be allowed, although maintenance is permitted.
2. All representations made by the owner, the prospective purchase and/or their attorney are deemed conditions of approval.