



Community Planning and Permitting

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BOULDER COUNTY BOARD OF ADJUSTMENT

AGENDA ITEM

Wednesday September 6, 2023 4:00 P.M.

PUBLIC HEARING

STAFF PLANNER: Sam Walker

VAR-23-0003B: Danaher Setback Reductions

Request: Rehearing of a variance request to reduce the required supplemental setback from 110 feet (required) to 86 feet (proposed) to allow a front porch built without permits, and reduce the rear-yard setback from 15 feet (required) to 9’ 6” (proposed) for a windmill also built without permits.

Location: 5745 Jay Road, approximately 300 feet east of the intersection of Jay Road and N. 57th Street.

Zoning: Rural Residential (RR) Zoning District

Agents: Charlie Danaher, Ed Byrne

Property Owners: Danaher & Valentine Living Trust

STAFF RECOMMENDATION:

Staff recommends that the Board of Adjustment uphold the staff recommendation that the proposal be denied.

PACKET CONTENTS:

Item	Pages
○ Staff Memo	1 – 3
○ Board of Adjustment Supplemental Rules and Procedures (Attachment SUP)	SUP1 – SUP8
○ Applicants’ Request for Rehearing (Attachment REQ)	REQ1 – REQ17
○ Board of Adjustment Votes for Rehearing (Attachment VFR)	VFR1 – VFR15
○ Additional Public Comments Received (Attachment APC)	APC1 – APC3
○ Staff Recommendation for June 7, 2023 BOA Meeting	SR1 – SR11
○ Application Materials (Attachment A)	A1 – A20
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SUMMARY AND RECOMMENDATION:

The applicant requests a reduction in the required supplemental setback along Jay Road from 110 feet to 86 feet to allow for the construction of a front porch addition to the main residence, as well as a reduction in the required rear-yard setback from 15 feet to 9 feet 6 inches for the construction of a windmill. Both the front porch and the windmill currently exist on the subject parcel and were constructed without building permits.

At the July 5, 2023 meeting of the Board of Adjustment (BOA), the Board voted 3-2 against a motion to approve the requested variance for the porch, and 4-1 against a motion to approve the requested variance for the windmill. The Applicant then requested a rehearing as allowed by the BOA bylaws and submitted additional arguments for approval. The BOA voted 3-2 in favor of a rehearing for the proposal, which was noticed as VAR-23-0003B and added to the agenda for the September 6, 2023 Board meeting.

After reviewing all additional information submitted by the Applicant, Staff recommends that this variance request be denied because the applicable review criteria in Article 4-1202(B)(2) of the Boulder Country Land Use Code (the Code) cannot be met.

DISCUSSION:

On July 24, 2023, CPP staff received a comment from a nearby property owner expressing concern that their original comments (sent to staff prior to the hearing and included in the staff recommendation packet) had potentially been misinterpreted by the Board and contributed to the denial of the application. These comments were also included and referenced in the Applicants’ rehearing request, and are included with that request as part of Attachment REQ (see pages REQ6-REQ7).

The following day Ed Byrne, on behalf of the applicant, requested that the proposed variance be reheard as allowed by the Board of Adjustment Supplemental Rules and Procedures, which are included with this packet as Attachment SUP. Section V.B of the Supplemental Rules and Procedures indicates that:

*Any decision of the Board may be reheard only if the Appellant / Applicant (or a person opposed to the application who testified at the hearing where the application was granted) files a request for rehearing with the Director, within **20 days** after the date of the hearing at which the decision was made. The request shall state the reasons for which the Appellant / Applicant (or opposing person) seeks a rehearing.*

Because the request for a rehearing was made on July 25, 2023, the 20-day deadline was met and the BOA was polled via email for a decision on whether or not to rehear the proposal per Section V.D. of the Supplemental Rules and Procedures. The BOA voted 3-2 in favor of holding a rehearing, and the proposal was added to the agenda for the September 6, 2023 BOA meeting as VAR-23-0003B.

The applicants’ request for rehearing is included with this packet as Attachment REQ, and includes several arguments, which staff have briefly summarized and responded to below.

First, the Applicant requests that the rehearing only address the requested setbacks for the porch, as Mr. Danaher has already agreed to relocate the windmill sculpture. Section V.D. of the BOA Supplemental Rules and Procedures includes a provision that “The Board shall have the discretion to limit the scope of the rehearing to the matters, which the assenting members determine are appropriate to rehear, based upon their knowledge of the prior hearing and the stated reason for the rehearing request.” In the Board members’ votes for the rehearing (see Attachment VFR) no clarification was made regarding whether or not the scope of the rehearing would be limited, and therefore staff has prepared for the rehearing to address both proposed setback reductions, for the windmill and the porch, though the BOA may choose to limit the rehearing in its discretion. Staff also wish to note that, even if the windmill is relocated outside of the required setbacks, it will still require

a building permit and must meet the height limitation for the Agricultural zoning district where the subject parcel is located, which is 30 feet for residential accessory structures.

The Applicant also argues that the construction of the front porch without permits is not an argument for disqualification of the requested variance, and that the Board should treat the request no differently from a pre-construction application set of drawings. Staff agree that the lack of a building permit is not disqualifying, and that the purpose of the Board's deliberation is to determine whether or not relief from the zoning district requirements should be allowed pursuant to the criteria described in Art. 4-1202.B.2 of the Code.

In addition, the Applicant argues that the lack of a building permit application was due to a good-faith belief by the property owners that no permit was required, despite having previously applied for several other building permits on the parcel. As stated above, staff agree that the lack of a building permit is not a disqualifying issue for the requested variance.

The third argument made by the Applicant is that the 110' supplemental setback has been improperly enacted because the Code states that the "Existing Freeways, Expressways, Principal Arterials, Minor Arterials, and Collectors shall be designated on the Boulder County zoning maps", and that the Zoning Map does not have a legend that labels categorized roads. Staff agree that no legend for roadway categorization is present on the Zoning Map, but note that the roads are illustrated on the map such that they match the legend and delineation that is described on the Boulder County Road Map to show different categories of roads. Supplemental setback requirements are also illustrated in the zoning layer of the [Boulder County Property Search](#).

The Applicant's third argument claims that property owners impacted by the adoption of the 110' supplemental setback were not provided proper notice of its adoption, but does not provide evidence for the claim, and calls into question the purpose behind the supplemental setback's adoption. Staff note that the Board of Adjustment's purview is not to determine the purpose behind the adoption of the supplemental setback, but to determine whether or not a reduction in that required setback can meet the provisions described in Article 4-1202.B.2. of the Code.

The final argument made by the Applicant is that the 110' supplemental setback should be considered a physical characteristic of the parcel that would therefore meet criteria 4-1202.B.2.a of the Code. Both staff and the BOA have consistently found that the presence of a supplemental setback on all or part of a parcel does not constitute a physical circumstance of the parcel. If a Code requirement such as a setback were to constitute a physical characteristic of a parcel, then all parcels would potentially meet this criteria, therefore defeating its purpose.

The conclusion of the rehearing request also states that both the subjective "enhancement of the rural aesthetic" of the existing residence and porch addition resulting in a 10-15% reduction in cooling demand should have been evaluated as positive factors in the BOA's review. Neither aesthetics nor improvements in energy efficiency are reviewable factors under the criteria for variance approval described by the Code.

Staff find that the new arguments provided by the applicant do not change any aspect of the original review of VAR-23-0003: Danaher Setback Reductions. Therefore, staff recommends that the Board of Adjustment **uphold the staff recommendation that VAR-23-0003B: Danaher Setback Reductions be denied.**

**BOULDER COUNTY
BOARD OF ADJUSTMENT**

SUPPLEMENTAL RULES AND PROCEDURES

*As adopted October 29, 1985 and amended December 7, 1993
and January 3, 1996 and February 6, 2019*

I. AUTHORITY, POWERS, AND DUTIES

- A. These Supplemental Rules and Procedures are adopted by the Board of Adjustment of the County of Boulder (“the Board”) pursuant to the authority provided in C.R.S. §§ 30-28-117 and –118, and Article 2, 3, and 4 of Boulder County Land Use Code (“the Land Use Code”).
- B. The powers and duties of the Board shall be as provided in the pertinent sections of Articles 2, 3, and 4 of the Land Use Code, a copy of which is attached to and incorporated into these Rules as Exhibit A.

II. MEMBERSHIP, APPOINTMENTS, AND OFFICERS

A. MEMBERSHIP, SELECTION, and TERM

(See the relevant provisions in Article 2 of the Land Use Code, Exhibit A hereto.)

B. VACANCY

In the event of vacancy on the Board, the Board of County Commissioners shall point a replacement to serve out the unexpired term within 30 days after such vacancy, or as soon as practicable. During any period of vacancy the Chair of the Board shall name an alternate member to fill the vacant seat.

C. REMOVAL

The Board of County Commissioners may remove a member of the Board of Adjustment from office only for cause, upon written charges and after a public hearing. The Board of County Commissioners shall provide notice of written charges and of the public hearing to all members of the Board of Adjustment and to the charging party in advance of the public hearing.

D. OFFICERS

- (1) A Chair and Vice-Chair shall be elected annually by a majority of the membership of the Board. The Chair shall be responsible for conducting all meetings and hearings of the Board. The Vice-Chair shall substitute for the Chair in the absence of the Chair. In the

absence of the Chair and Vice-Chair, a majority of the Board present at the meeting shall vote to appoint an acting Chair for that meeting.

- (2) The County Land Use Director, who also serves as the County Zoning Administrator (“the Director”), shall be the Secretary to the Board. It shall be the Director’s responsibility to prepare necessary forms, received and review applications, schedule meetings and hearings of the Board, publish notice, notify property owners and other interested persons, prepare agendas, keep the official records of the Board, and do such other administrative acts as are required by the Board and these Rules.

III. MEETING AND HEARING PROCEDURES

A. DATE, TIME, AND PLACE

The Board shall meet at least once a month, as necessary to hear requests for variances or appeals of the administrative decisions, or to conduct other appropriate business of the Board. Meetings of the Board should ordinarily be held on the first Wednesday of each month at 4:00 p.m. in the Hearing Room of the Board of County Commissioners, or at such other time and place as is specified in the public notice for the meeting.

B. SPECIAL MEETINGS

Special meetings of the Board may be called by the Chair or the Director at such times as may be necessary, subject to any applicable notice requirements.

C. PUBLIC MEETINGS

- (1) All meetings or hearings of the Board at which three or more members are present, and at which any public business is discussed or any formal action taken, shall be open to the public at all times, in accordance with the Colorado Open Meetings Law, Part 4 of Article 6 of Title 24, C.R.S., as amended. Chance meetings or social gatherings at which the discussion of public business is not the central purpose shall not be required to be noticed or held in public, as provided in the Open Meetings Law.
- (2) Upon the affirmative vote of two-thirds of the members present, the Board may hold an executive session at a regular or special meeting or hearing, for the sole purpose of considering any of the matters set forth in Section 24-6-402(4)(b), (c), or (g) of the Open Meetings Law (receiving legal advice from the attorney for the Board on specific legal questions; considering matters required to be kept confidential by federal or state law or rules and regulations; or

considering any documents protected by the mandatory nondisclosure provisions of the Colorado Open Records Act, Part 2 of Article 72 of Title 24, C.R.S.). The Chair shall announce the general topic of the executive session prior to convening the session. No adoption of any proposal policy, positions, resolution, rule regulation, or formal action shall occur at any executive session, which is not open to the public.

D. RECORD OF PROCEEDINGS

- (1) The Board shall keep a record of its meetings and hearings in accordance with this Section.
- (2) The Secretary to the Board shall make an audio recording of all meetings and hearings, which shall constitute the official record and minutes of the Board's proceedings. The Director shall provide a transcription of such recording or a copy of the recording itself at cost to any person requesting it.
- (3) The Secretary to the Board shall keep the Board's audio recordings, and all other written, photographic, or other materials submitted to the Board as part of the Board's official proceedings, and shall make the record of the Board's proceedings available to the public as required by the Colorado Open Records Act, Part 2 of Article 72 of Title 24, C.R.S.

E. GENERAL MEETING PROCEDURES

- (1) The Secretary to the Board shall be responsible for preparing the agendas for the meetings and hearings of the Board. The Secretary shall provide copies of the agenda to the members and alternate members of the Board, the County Attorney, and any member of the public requesting the agenda.
- (2) At the meeting the Chair shall call the meeting to order and proceed to take a roll call of the members present, noting absent members and any Planning Commission associate members present. The Chair ordinarily will call the items listed for hearing and discussion in the order shown on the agenda. However, the Chair shall have the discretion to alter the order of items shown on the agenda if appropriate considering the relative anticipated length of items, the presence or absence of interested persons, or other reasonable considerations.

- (3) The Board shall have the discretion at any of its meeting to act by majority vote to amend its agenda to consider items not specifically listed, provided that no hearing on an application for an appeal from an administrative decision or for a variance from the terms of Article 4 of the Land Use Code shall be held in this manner.
- (4) Three members of the Board shall be the required quorum to conduct official business of the Board, except for public hearings on variance and appeal applications where at least four members of the Board must be present and vote in favor of the Applicant/Appellant to overturn the decision of the Director or the County Engineer, as applicable.
- (5) When a motion to act upon a variance or appeal application is made, the Chair shall call a roll call vote, with each member identified for the record along with that member's vote. At the close of the vote on the motion, the Chair shall declare the motion adopted or not, with a total of the vote for and against the motion.

F. GENERAL HEARING PROCEDURES

- (1) These procedures shall apply to the Board's hearings on applications for appeals from an administrative decision as authorized under Articles 2 and 4 of the Land Use Code ("Appeals"), and for variances from the terms of Article 4 of the Land Use Code as authorized under Articles 2 and 4 of the Land Use Code ("Variances"). Application and pre-hearing procedures which apply separately to Appeals and Variances are set forth in Article 3 of the Land Use Code (see Exhibit A).
- (2) Four members of the Board shall be the required quorum to conduct any hearing on an application for a Variance or an Appeal. If only four members of the Board are present for a hearing, the Appellant/Applicant may request that the hearing be tabled to the next regular meeting of the Board when five members are expected to be present. Permission to table the hearing under these circumstances shall be freely granted by the Board.
- (3) No member of the Board shall participate in or vote with respect to any matter pending for a hearing before the Board, if that member has a financial, personal, or official interest in, or conflict with, the matter, of such nature that it prevents or may prevent that member from acting on the matter in an impartial manner. Any member having such an interest or conflict shall reveal such fact, to the extent possible, prior to any official Board hearing of or action on the matter, and shall refrain from sitting and participating with the Board in its consideration of and decision on such matter.

Moreover, no such member shall testify before the Board as a member of the public on any such matter, in order to avoid the appearance of undue influence on the other Board members.

- (4) The appellant in an Appeal (“Appellant”) shall have the burden to show that the Director (or County Engineer, as applicable) erred in making the decision or interpretation being appealed. The applicant for a Variance (“Applicant”) shall have the burden to show that all criteria necessary to allow a variance to be granted under Article 4 of the Land Use Code have been met.
- (5) Hearing participants may submit documentary evidence to the Board, in addition to testimony, including but not limited to letters of support or opposition, photographs, surveys, or other relevant information. Any documentary evidence submitted to and accepted by the Board shall be kept by the Director as part of the official record of the Board. Exceptions may be made if the evidence is in a form which is difficult to reproduce for keeping by the Director, in which case the person offering and keeping the evidence must safeguard the evidence, and make it available if needed to complete the record of the Board in the event of a rehearing or judicial review.
- (6) All decisions of the Board shall be made based only on the testimony and evidence presented at the hearing and made part of the official record. Decisions shall be made only on a motion incorporating findings as may be reasonably required either to grant or deny the Appeal (that the Director or County Engineer, as applicable, erred in its order or decision pursuant to Article 4 of the Land Use Code), or to grant or deny the Variance (pursuant to the criteria set forth in Article 4 of the Land Use Code). All decisions to grant an Appeal or Variance shall require the concurring vote of four (4) members of the Board.
- (7) In granting any Appeal or Variance, the Board shall have the discretion to impose appropriate conditions and safeguards in harmony with the purposes and intent of Article 4 of the Land Use Code, and in accordance with the public interest and the most appropriate development of the neighborhood.
- (8) If the Board determines at any hearing that it requires additional information to make a decision, or if the Appellant/Applicant or an opposing member of the public makes a reasonable request to the Board to delay its hearing or decision for additional information for other appropriate reason, the Board shall have the discretion to table its hearing or decision for a reasonable period of time. If the Board tables its hearing or decision to a time and date specified in the tabling motion, no additional public notice of the tabled hearing or decision shall be required. If the Board does not specifically close

the public hearing in its tabling motion, the public hearing, as well as the Board's decision, shall be deemed tabled as stated in the motion.

- (9) Hearings before the Board shall be conducted in an orderly but informal manner, which need not strictly conform to the rules of procedure and evidence required in a judicial proceeding. [See Monte Vista Professional Bldg., Inc. vs. City of Monte Vista, 35 Colo. App. 235, 531 P.2d 400 (1975).]
- (10) The following hearing procedures are guidelines, which can be expected to govern the hearings before the Board. The Chair shall have the discretion to enforce or alter the following procedures as necessary to ensure that the Board conducts its hearings in an efficient manner while observing principles of fundamentals fairness with respect to all interested parties.
 - (a) Ordinarily, the Chair will call for a presentation by the Director (or County Engineer, as applicable), followed by a presentation by the Appellant / Applicant. The hearing will then be opened to the public for comment on any issues relevant to the hearing. Thereafter, the Director (or County Engineer, as applicable), the Appellant / Applicant, and if appropriate, members of the public, will be given an opportunity to respond. Members of the Board may ask questions of these persons testifying at any time. Since the Appellant / Applicant has the burden of proof, the Chair shall ensure that the Appellant / Applicant has a fair and sufficient opportunity to present its case and to respond to adverse comments, within the general time constraints specified below.
 - (b) Ordinarily, the Director's (or County Engineer's, as applicable) opening presentation shall be limited to 5 minutes. The Appellant's / Applicant's opening presentation shall be limited to 10 minutes in the case of a Variance, and 15 minutes in the case of an Appeal. Each member of the public wishing to speak shall be limited to 5 minutes. Response times shall be limited to 5 minutes per person testifying, including the Director (or County Engineer, as applicable) and members of the public, except that the Appellant / Applicant shall be allowed 10 minutes to respond. The Chair may refuse to allow repetitive or irrelevant testimony regardless of allowable time limits.
 - (c) Any Appellant / Applicant or other person wishing to testify who desires more time to speak than is allowed in the preceding Subsection, must request additional time from the Director at least 15 days in advance of the hearing, to allow the Director to prepare the meeting agenda accordingly. The

Director shall allow for additional time if the request is reasonable. If the Director denies the request for additional time, the person requesting additional time may renew its request before the Board at the hearing.

- (d) Ordinarily, cross-examination is not conducted at hearings. However, the Chair in its discretion may allow for cross-examination if the Director (or County Engineer, as applicable), Appellant / Applicant, or an objecting adjacent property owner requests it, and demonstrates to the Chair that cross-examination is necessary to allow that party to develop an adequate factual record before the Board. If cross-examination is allowed, the Chair shall extend the same right to other participants in the hearing as necessary to assure a fair proceeding. Cross-examination shall be limited to 10 minutes per person cross-examined, unless the person desiring to cross-examine requests additional time in accordance with the preceding Subsection.
- (e) Ordinarily, witness oaths will not be administered. All persons testifying at a hearing before the Board shall be truthful in their testimony at all times.
- (f) Ordinarily, the Chair does not compel the attendance of witnesses through subpoenas. However, if an Appellant / Applicant, the Director (or County Engineer, as applicable), or an opposing member of the public, submits a written request which the Chair and the County Attorney receive within 10 days in advance of the hearing, and which demonstrates to the satisfaction of the Chair that a subpoena is necessary to compel attendance of a material witness to the requesting person's case, the Chair may request that the County Attorney apply to the District Court for a subpoena pursuant to C.R.S. § 30-28-117(4). The witness's full name(s), current residence and mailing address, and a statement of the need for and relevance of the witness's testimony, must be submitted with any subpoena request. If the subpoena request is made by an opposing member of the public, that person shall be responsible for timely serving the subpoena once obtained, and for paying any required witness and mileage fees.

IV. VARIANCE AND APPEALS: APPLICATION AND PRE-HEARING REQUIREMENTS

(See the relevant provisions in Article 3 of the Land Use Code, attached as Exhibit A.)

V. REHEARING

- A. In the event the Board denies a Variance request, such request shall not be reconsidered for 12 months after the date of the decision, except as provided below.
- B. Any decision of the Board may be reheard only if the Appellant / Applicant (or a person opposed to the application who testified at the hearing where the application was granted) files a request for rehearing with the Director, within **20 days** after the date of the hearing at which the decision was made. The request shall state the reasons for which the Appellant / Applicant (or opposing person) seeks a rehearing.
- C. If no request for a rehearing is filed, the decision of the Board shall be considered final for purposes of judicial review as of the date of the hearing on which the decision was made. If a request for a rehearing is filed but denied by the Board, the Board's decision shall be considered final for purposes of judicial review on the third day after the date on which the Director mails notice of the Board's denial of the rehearing to the person requesting a rehearing.
- D. The Board may approve a rehearing request on the grounds that the hearing or decision was based on fraud, mistake, or inadequate information; needs clarification; or there is a strong indication that there were procedural problems with the prior hearing. The decision to rehear any matter may be made without public hearing by the assent of three members of the Board who were present at the prior hearing. The Board shall have the discretion to limit the scope of the rehearing to the matters, which the assenting members determine are appropriate to rehear, based upon their knowledge of the prior hearing and the stated reasons for the rehearing request.
- E. Any rehearing shall be treated in all respects as a new hearing. The concurring vote of four members of the Board shall be required to reverse or alter the decision made at the prior hearing.

VI. AMENDMENTS TO SUPPLEMENTAL RULES

The Board may amend these Rules upon an affirmative vote of three regular members.

VII. CONFLICT

Whenever there is any conflict between these Rules and either the Land Use Code or the Colorado State Statutes, the State Statutes and Land Use Code shall prevail.

Walker, Samuel

From: Ed Byrne <edbyrne@smartlanduse.com>
Sent: Tuesday, July 25, 2023 5:03 PM
To: Walker, Samuel
Subject: [EXTERNAL] Danaher BOZA rehearing, Docket VAR-23-0003

Dear Sam,

Thank you for your call. As we discussed this morning, I represent Charles Danaher and we would like to request a rehearing of the Danaher Board of Adjustments variance application for the following reasons, which I will address in more detail in the next day or so:

1. Building without a permit is not a proper consideration during a BOA setback variance review?
2. The 110' Supplemental Setback for Jay Road was not properly adopted in the Land Use Code.
3. In 1985, when the 110' Supplemental Setback was enacted, virtually all the lots on the north side of Jay Road already had structures within the new setback area. No provision was made for dealing with these existing violations, or proposed appitements like the front porch in this case.
4. In 1986, Elvin and Natalie Bogle conveyed 30' of right-of-way to Boulder County and it is not clear whether the 110' Supplemental Setback was disclosed or dealt with in any way as part of that \$1.00 transaction. RN 00764207, recorded 6/05/1986.
5. Neither the Land Use Code nor the IBC is clear concerning whether a building permit is required for an open front porch built on caissons without electrical, plumbing, mechanical or structural elements.
6. It is not clear that the 110' Supplemental Setback was adopted to protect private residential air quality, as presented by staff during the hearing.
7. One of the neighbors (Barbara Rogers) who opposed the variance because building permits were not obtained in advance has recanted and now supports the Danaher variance request. The other neighbor, Richard Luna, has a personal grudge against the Danahers, and even he only objected at first to the windmill, not the porch.

Thank you for processing this request for a rehearing of VAR-23-0003. If you have any questions, please don't hesitate to contact me.

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

Walker, Samuel

From: Ed Byrne <edbyrne@smartlanduse.com>
Sent: Tuesday, July 25, 2023 6:06 PM
To: Walker, Samuel
Subject: [EXTERNAL] RE: Danaher BOZA rehearing, Docket VAR-23-0003

There was one other reason I forgot to mention: §4-1202(B)(2)(a) requires a finding that "there exist exceptional or extraordinary physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope." One member of the Board stated his opinion that "physical characteristics" may include only geographical or topographical elements of the property, but the impact of a 110' supplemental setback on a developed lot's existing structures, created after the structures were built, is a physical characteristic that may, and by all rights, should have been considered in VAR-23-0003.

Ed Byrne
edbyrne@smartlanduse.com
(303) 478-8075

Walker, Samuel

From: Ed Byrne <edbyrne@smartlanduse.com>
Sent: Wednesday, July 26, 2023 6:10 PM
To: Sanchez, Kimberly; Walker, Samuel; Walker, Samuel
Cc: cadanaher@aol.com; Hoyt, Larry
Subject: [EXTERNAL] FW: DRAFT email to Walker
Attachments: Rogers recant letter 20230724.pdf; boulder-county-zoning-map.pdf; Bogel to BC 30-foot ROW RN00764207 19860605.pdf; BP-86-0549 19860612 reroof Microfiche Card (7).PDF; 5745 Jay Rd_Juhls Drive Neighborhood 110ft setback encroachments 20230711.pdf

Dear Kim and Sam,

Please invite members of the Board of Adjustment (“BOA” or the “Board”) to consider the following additional comments on whether a rehearing of VAR-23-0003 is warranted. Mr. Danaher has already agreed to relocate the windmill “sculpture.” A rehearing only with respect to denial of a variance for the front porch is hereby requested.

Building the Front Porch Without a Building Permit Was Not Disqualifying

Building without a permit is not a proper consideration during a BOA setback variance review. As clarified by the Board’s attorney, Larry Hoyt, Boulder County enforces building permit requirements – it is not the Board’s responsibility. If BWOP is *per se* disqualifying, what was the point of proceeding with a variance application? For purposes of VAR-23-0003, the existence of a completed front porch should not have been treated differently from a pre-construction application set of drawings. The object of the variance hearing is to determine whether relief from a strict application of zoning requirements should be granted based on the review criteria in LUC §4-1202. Although Mr. Hoyt tried to clarify this fundamental principle for the Board, his clarification was not understood or followed by several members of the Board. It’s not their fault. But it colored the outcome and should now justify a rehearing pursuant to BOA Supplemental Rules and Procedures §V.D. because mistakes or erroneous judgments may have been made, resulting in procedural problems with the prior hearing, based upon inadequate information or the need for further clarification of the Board’s role and review criteria.

Applicant In Good Faith Believed a Building Permit Was Not Required for the Front Porch.

Since their purchase of 5745 Jay Road in September of 2000, the Danahers have applied for and obtained several building permits for other projects (BP-03-136, electrical upgrade; BP-03-0199, natural gas connection; BP-03-0470/BP-04-0786, master suite addition and interior remodel). Mr. Danaher, who has been the subject of repeated prior unfounded accusations by Richard Luna, was not seeking to “get away with something” because he knew Mr. Luna would be lying in wait for any such mis-step.

Neither the Land Use Code nor the IBC is as clear as they might be concerning whether a building permit is required for an unconditioned, open front porch built on caissons without electrical, plumbing, mechanical or structural elements. This has been made clear to the Danahers during the course of this process, but their inadvertent error should not have been determinative in this variance case. It should also be noted here that one of the neighbors (whose letter was mentioned by a member of the Board), who tried to withdraw the letter, but was told she couldn’t do so, has written the attached letter to explain why she believed her original e-mail “was

used in part to deny the (variance) request unjustly.” Letter to Dale Case and Sam Walker from Barbara L. Rogers dated July 24, 2023 (attached).

The Danahers’ mistake in not obtaining a building permit for porch was made in good faith because the front porch did not include new conditioned space (International Residential Code [“IRC” Part II, Definitions “REMODEL/RENOVATION”], did not count as a floor area expansion for Site Plan Review purposes (LUC §§18-162A and 18-131A), and included no electrical, plumbing, HVAC or foundation work (Boulder County Residential Plan Check List, Foundation, Basement, and Underfloor Area Requirements, ¶. 6, at p. 2: “Caisson and helical pier foundations will not be inspected by Boulder County. A qualified, Colorado-licensed engineer must perform the placement, drilling, and reinforcement of drilled piers.” Although caisson and helical piers are not inspected by the County, Mr. Danaher is a Colorado licensed engineer who designed and built the front porch addition in compliance with Boulder County’s building Code technical specifications.

LUC §2-600(B)(1) provides that, “(t)he Building Official is responsible for the administration of the Boulder County Building Code, including, but not limited to, the issuance of building permits and conducting the necessary building inspections, the determination of hazardous or life-threatening situations, and the withholding of building permits for the enforcement of zoning violations.” An after-the-fact permit with financial penalty was required and paid, which is the ordinary “penalty” for building without a permit. As noted above, the Board’s votes on the variance application should have been determined by the specific facts concerning the front porch, without reference to whether the porch was built without a permit. However, this point was made so frequently by staff in its memorandum and hearing comments that it is not surprising that several members of the Board indicated they were voting to deny the variance because of the building permit issue.

The 110’ Supplemental Setback for Yards Along Major Roads May Be Improperly Enacted, Property Owners Subject to it Do Not Receive Proper Notice of the Setback’s Existence, and the Setback’s Impact on the Physical Characteristics of the Lots and Existing Structures Subject to it Have Not Been Mitigated

The 110’ Supplemental Setback for Jay Road may not have been properly adopted in the Land Use Code. LUC §7-1403(A) states that “Minor Arterials” Shall be designated on the Boulder County Zoning maps.” However, the Boulder County Zoning Map does not include a legend designating which roads are Minor Arterials. There is a legend designating them on the Boulder County Road Map, but this map is found elsewhere on the County’s website. To be clear, the reference in the Code should have referred to the Boulder County Road Map. I’m not certain this renders the provision ineffective, but it should also be noted that there was no formal recorded notice given to the impacted property owners at the time the supplemental setback was established in 1985.

We are researching the history of the enactment to determine whether such notice was provided and whether the incorrect Map reference has legal significance, but, at the very least, it is a factor the BOA should seriously consider before affirming the setback’s strict application in VAR-23-0003. There are several additional reasons for doing so.

First, in 1985, when the 110’ Supplemental Setback was enacted, virtually all the lots on the north side of Jay Road already had structures within the new setback area, in many cases encompassing more than 50% of the structures’ footprints. No provision appears to have been made for dealing with these existing encroachments, or, for that matter, in anticipation of proposed “appurtenances” like the front porch in this case. Second, in 1986, Elvin and Natalie Bogle conveyed 30’ of right-of-way to Boulder County and it is not clear whether the 110’ Supplemental Setback was disclosed or dealt with in any way as part of that \$1.00 transaction. See Bogel to BC 30-foot ROW RN 00764207 19860605, attached. This transaction may legally estop Boulder County from strictly enforcing the 110’ setback in 2023. Also in 1986, the Bogles applied for and received BP-86-549 to re-roof their 1920 home. There is no reference in the building permit to the 110’ Supplemental Setback.

Finally, it is not clear that the 110' Supplemental Setback was adopted “to protect private residential air quality,” as asserted by staff without further explanation at the hearing (and in a staff comment provided to the Danahers as the hearing commenced, instead of weeks before). Rights-of-way along principal and minor arterials have been established in Boulder County for multitudes of reasons, including to allow for future expansions of road infrastructure (lanes, medians, borrow ditches, sewer/water lines, etc.). They have also been established to preserve the rural character of streets like Jay Road. All of these other reasons can justify flexibility in the strict application of setback requirements by the Board. If air quality is/was the only reason, county staff should provide scientific support for their assessment, while, perhaps, explaining why a bike path has been proposed to run alongside of Jay Road, well within the supplemental setback and far closer to vehicle emissions than the Danahers’ front porch, 86’ away.

The 110’ Supplemental Setback, if Deemed Applicable, Is an Exceptional or Extraordinary Physical Circumstance That May Be Varied by the Board In Order to Prevent Undue Hardship

§4-1202(B)(2)(a) requires a finding that “there exist exceptional or extraordinary physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope.” One member of the Board stated his opinion that “physical characteristics” may include only geographical or topographical elements of the property, but the impact of a 110’ supplemental setback on a developed lot’s existing structures, created after the structures were built, see 5745 Jay Rd_Juhls Drive Neighborhood map (attached), is a physical characteristic that may, and by all rights, should have been considered in deciding whether to approve or deny VAR-23-0003.

Conclusion

Enhancement of the rural aesthetic of the Danaher residence can and should have been evaluated as a positive factor in their review. The energy efficiency improvements of adding a front porch along the south façade of the home, which has reduced the cooling demand by 10-15%, should also have been considered a positive factor. One of the Board’s most important functions is to balance potentially countervailing public purposes, particularly in an imperfect world where all future unintended consequences may be difficult to discern. They are the very reason we appoint people like yourselves to serve in this important capacity.

Your considered judgment, based upon the best available information and clearly articulated review criteria, is critical to the delivery of fair and just outcomes. Based on the foregoing, we hope you will agree that VAR-23-0003 should be reheard.

Respectfully submitted,

Ed Byrne
 ED BYRNE, PC
 2305 Broadway
 Boulder, CO 80304-4106
 Work: (303) 447-2555
 Fax: (303) 449-2198
 Cell: (303) 478-8075
 e-mail: edbyrne@smartlanduse.com
 web site: www.smartlanduse.com

July 24th, 2023

Dale Case, Director of Land Use Department
Sam Walker, Planner II

Dear Dale and Sam,

I am writing about Docket VAR-23-0003: Danaher Setback Reductions and the motion to deny this request.

I sent a letter of public opinion that was used in a manner that I did not intend for it to be used, which was that I opposed the Variance indicated above. That was NOT the intent of my letter. Some of the board members/participants assumed incorrectly that because a public member submitted a letter that referred to the county's process that I did **not** support the porch and windmill, which is categorically false. It appears my letter was used in part to deny the request unjustly.

Unfortunately, when the hearing date was moved from June 7 to July 5, 2023, I could not attend in person OR virtually to clarify my opinion. Below is a timeline of what I did to correct it. I hope this will be considered since I believe the BOA overstepped its position with the matter at hand and I do not support the decision.

Timeline of Communication with Sam Walker:

- April 7, 2023- My e-mail, including my letter was sent to Sam Walker.
- April 10, 2023- Sent at 4:11 PM; Sam reported that my letter is public record and clarified that it **could** mean removing the unpermitted structure and windmill.
- April 10, 2023-Sent at 6:27 PM, I requested my letter to be removed from public record once I received this email clarifying that Charlie and Rose may have to remove the structures. I thought that was unfair and didn't think this was even a consideration when I wrote the letter. I take responsibility for not knowing the exact process and having all the information.

The subject and the point of the hearing was about the approval of the Variance. After viewing the recording of the hearing, I believe the BOA got off track with the process by focusing on something other than the Variance. This can be verified by Larry Hoyt, counsel to the BOA in the hearing on July 5, agreeing with David Marlett that this was indeed different from what the hearing was about.

Now, as I reflect on the process and being informed by Sam that my letter could not be removed from public record once I submitted it, my question to you is, could I have submitted another opinion on the matter after Sam denied my request to remove it and I gained more clarity on the process? If so, I should have been told that I could clarify my view on the public record.

Of significant note, the applicant reports that they did not think permits were needed, and I believe they are now well informed. Please grant the applicants the option to pay for the permits and allow this process to be finalized. I believe the structures compliment the land use as an original farm and the character in this part of unincorporated Boulder. They have only improved their land for themselves, and their neighbors, including me, support these structures.

In conclusion, if Boulder County decides to have the applicant demolish the porch as an extreme measure, isn't this in direct opposition to what Boulder County is trying to achieve regarding being environmentally friendly and "Green"? Requiring the applicant to tear down the structures and add to unwanted landfill and a waste of resources is not moving in the right direction and should be part of the decision.

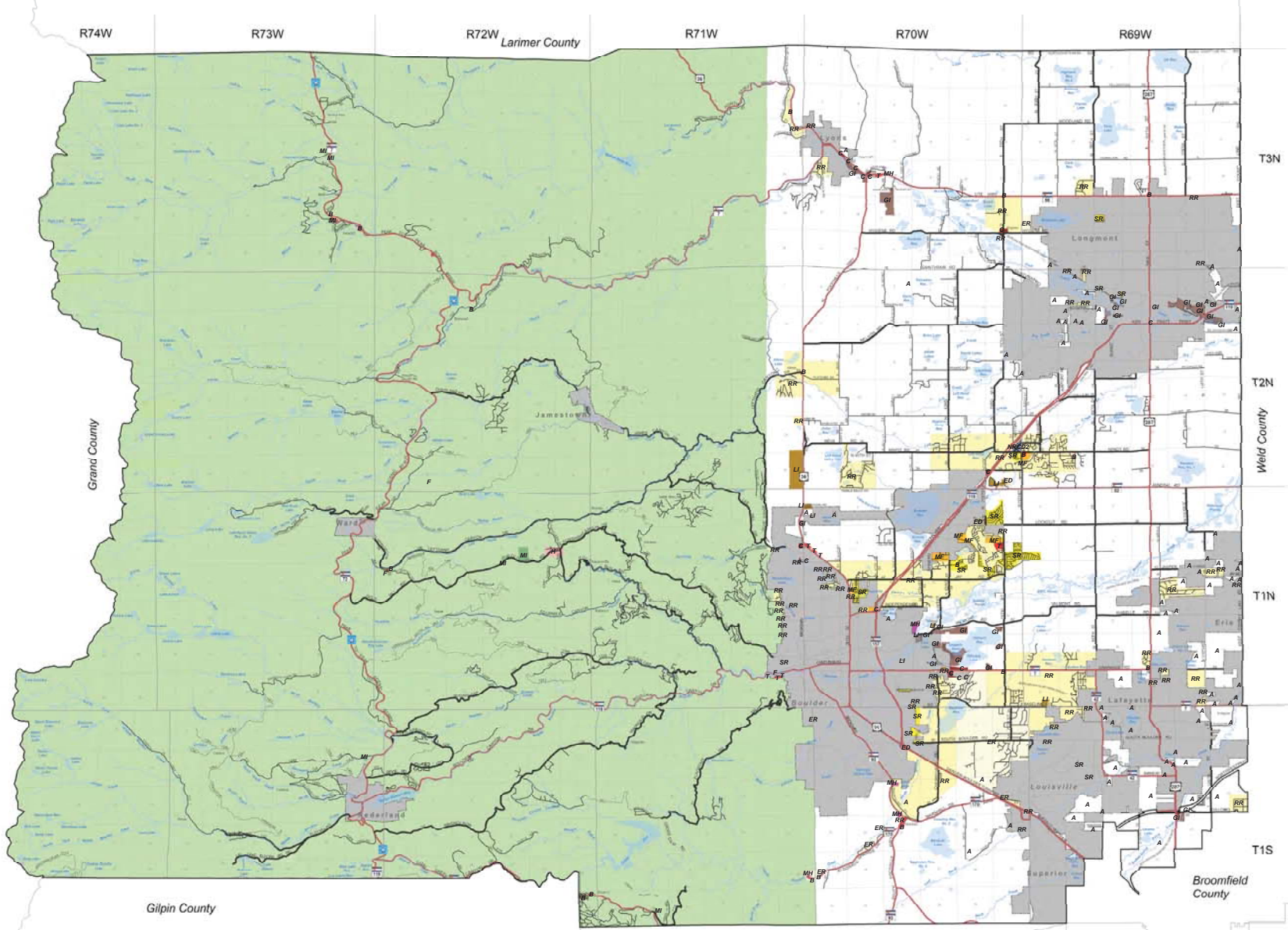
I look forward to hearing from you and am hopeful this matter can be resolved fairly.

Respectfully,

Barbara L. Rogers
Email: sugarxtr@gmail.com
Cell: 303-870-0020



-  Municipalities
-  Agricultural
-  Business
-  Commercial
-  Economic Development
-  Estate Residential
-  Forestry
-  General Industrial
-  Historic
-  Light Industrial
-  Multiple Family
-  Manufactured Home
-  Mountain Institutional
-  Rural Community I
-  Rural Community II
-  Rural Residential
-  Suburban Residential
-  Transitional



Date: 6/26/2023

This map is for illustrative purposes only and the features depicted on it are approximate. More site specific studies may be required to draw accurate conclusions. Boulder County makes no warranties regarding the accuracy, completeness, reliability, or suitability of this map. Boulder County disclaims any liability associated with the use or misuse of this map. In accessing and/or relying on

21

WARRANTY DEED

THIS DEED, Made this 4th day of June
19 86, between Elvin and Natalie A. Bogle

STATE DOCUMENTARY FEE
JUN 5 1986
\$ exempt

of the * County of Boulder
State of Colorado, grantor, and THE COUNTY OF BOULDER

a body corporate and politic ~~XXXXXX~~ organized and
existing under and by virtue of the laws of the State of Colorado , grantee: whose legal address is
P.O. Box 471, Boulder, CO 80306

WITNESSETH, That the grantor, for and in consideration of the sum of (\$1.00) one dollar and other good
and valuable consideration DOLLARS,
the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell,
convey and confirm, unto the grantee, its successors and assigns forever, all of the real property, together with improvements, if any, situate, lying and
being in the County of Boulder and State of Colorado, described as follows:

See Attached Exhibit "A"

also known by street and number as:

TOGETHIER with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and
reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the
grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantee, its successors and assigns
forever. And the grantor, for himself, his heirs and personal representatives, does covenant, grant, bargain and agree to and with the grantee, its successors
and assigns, that at the time of the ensembling and delivery of these presents, he is well seized of the premises above conveyed, has good, sure, perfect,
absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey
the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments,
encumbrances and restrictions of whatever kind or nature soever, except right-of-way and easements of record.
It is agreed the grantor shall be responsible for the 1986 taxes prorated to
date of execution of this deed.

The grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the grantee,
its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, The grantor has executed this deed on the date set forth above.

x Elvin Bogle

x Natalie Bogle

STATE OF COLORADO, } ss.
County of

The foregoing instrument was acknowledged before me this 4th day of June, 19 86
by ELVIN AND NATALIE BOGGE

My commission expires 11-19-88

WITNESS my hand and official seal.

Bob A. Grube
Notary Public
P.O. Box 471
Boulder, Co

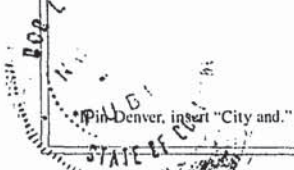


Exhibit "A"

22

LEGAL DESCRIPTION FOR BOGLE

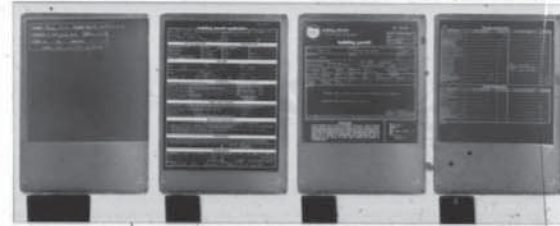
That portion of the Southeast Quarter of the Northwest Quarter of Section 15, Township 1 North, Range 70 West of the 6th P.M., County of Boulder, State of Colorado, described as follows:
Beginning at the West Quarter corner of said Section 15, thence Easterly 1479.17 feet along the South line of the Northwest Quarter of said Section 15, thence continuing along said South line South 89° 34' East 240.83 feet, thence North 00° 06' 30" West 30.00 feet to a point on the North Right-of-Way line of Jay Road, said point being the True Point of Beginning, thence North 00° 06' 30" West 5.00 feet, thence North 89° 34' West 240.72 feet, thence South 00° 04' West 5.00 feet to a point on the North Right-of-Way line of Jay Road, thence along said Right-of-Way line South 89° 34' East 240.74 feet more or less to the True Point of Beginning.

The above described parcel contains 1203.6 Sq. Ft. more or less.

5745 Jay Rd

S15 T1N R70W

86-0549



5745 Jay Rd

S15 T1N R70W

ATTACHMENT REQ

30-0749

REQ12

OWNER	<u>Boggs, E.L.</u>	PERMIT NO.	<u>86 549 (33067)</u>
ADDRESS	<u>5745 Jay Rd.</u>	DATE	<u>6-11-86</u>
LEGAL	LOT _____	BLK. _____	SUBDIVISION _____
SECTION	<u>15</u>	T <u>1 N</u>	R <u>70 W</u>

1980

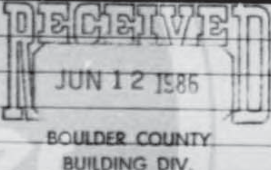
building permit application

PERMIT NUMBER 86-549	DATE JUNE-12
OWNER E.L. Boyle	CONTRACTOR SELF
ADDRESS 5745 SAY Rd	ADDRESS
CITY Boulder Co	PHONE 530-1943

TYPE OF STRUCTURE		STRUCTURE DATA	
<input type="checkbox"/> COMMERCIAL	<input type="checkbox"/> NEW	VALUATION \$ 1000.	AREA (SQ. FT.)
<input checked="" type="checkbox"/> RESIDENCE	<input type="checkbox"/> ADDITION IT	STORIES	
<input type="checkbox"/> GARAGE	<input type="checkbox"/> REMODEL	BEDROOMS	OCCUPANCY
<input checked="" type="checkbox"/> OTHER Rebuild	<input type="checkbox"/> ELECTRICAL	BASEMENT	TYPE OF CONST.

SITE DATA			
LOT	BLOCK	SUBDIVISION	
SECTION 15	TOWNSHIP 1N	RANGE 70	
ADDRESS OF PROPOSED BUILDING (Address will be assigned by county for new sites)			
LOT AREA	ZONING	FRONTAGE	
SET BACKS:	FRONT	SIDE	REAR

ACCESS DATA	
<input type="checkbox"/> DIRECT FRONTAGE ON PUBLIC ROAD	Road Name or Number
<input type="checkbox"/> VIA PRIVATE EASEMENT TO PUBLIC ROAD (Attach Deed)	
<input type="checkbox"/> USE EXISTING DRIVEWAY	
<input type="checkbox"/> CONSTRUCTION OF NEW DRIVEWAY	
<input type="checkbox"/> OTHER	DESCRIBE



WATER SUPPLY SOURCE	
<input type="checkbox"/> MUNICIPALITY, DISTRICT, OR ASSOCIATION (Attach written certification from agency to supply water)	
<input type="checkbox"/> ON SITE WELL (Attach certification from State Engineer)	
<input type="checkbox"/> OTHER	(Describe)
<input type="checkbox"/> SANITATION APPROVAL FROM HEALTH DEPARTMENT (Attach copy)	

PLOT PLAN (Attach Copy)

ALL THE FOLLOWING DATA TO BE SHOWN TO SCALE AND PROPERLY DIMENSIONED

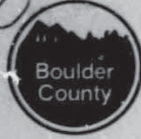
- DEED (COPY) SHOWING OWNERSHIP OF PARCEL AND LEGAL DESCRIPTION, DATE RECORDED AND RECEPTION NO.
- BUILDING LOCATION & APPURTENANCES (Driveways, retaining walls etc.)
- LOT GRADING CONTOURS (Lot grading permit will not be required if sufficient detail is shown on plot plan.)
- SURFACE DRAINAGE PATTERNS AND REQUIRED STRUCTURES.
- LOCATION OF SEPTIC TANK AND LEACH FIELD.

CERTIFICATION

Hereby certify that the above information is correct and agree to construct this building in accordance with the plot, building plans and specifications submitted herewith, and in strict compliance with all the provisions of the Zoning Ordinance, Building Code, Electrical Code, and Health and Plumbing Regulations of the County of Boulder.

X E.L. Boyle
Owner/Agent

RECORD REVIEW							
APPROVED	BY	DATE	DEPT.	APPROVED	BY	DATE	DEPT.
<input type="checkbox"/>			ZONING	<input type="checkbox"/>			PLANS CHECK
<input type="checkbox"/>			ENGINEERING	<input checked="" type="checkbox"/>	GRB	6-19-86	BUILDING
RECEIPT ON NO.	PARCEL I.D. NO.						
772069	250	36743	1463-15-0-00-011				


building division

p.o. box 471 · boulder, colorado 80306

No 33067

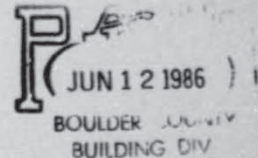
SECTION	TOWNSHIP	RANGE
DATE	6/12/86	
PERMIT NUMBER	86-549	

building permit

OWNER	Bogle, E.L.		ADDRESS	5745 Jay Road, Boulder		PHONE NO.	530-1983	
CONTRACTOR	same		ADDRESS			PHONE NO.		
ADDRESS OF PROPOSED BUILDING			5745 Jay Road		WD# 772069	tax# 36743		
LEGAL DESCRIPTION	Sec. 15, T1N, R70W		ID# 1463-15-0-00-011	253				
PERMIT IS HEREBY ISSUED FOR	<input type="checkbox"/> NEW	<input checked="" type="checkbox"/> REMODEL	<input checked="" type="checkbox"/> RESIDENCE	<input type="checkbox"/> GARAGE	reroof with #2 cedar shingles			
	<input type="checkbox"/> ADDITION	<input type="checkbox"/> ELECTRICAL	<input type="checkbox"/> COMMERCIAL	<input type="checkbox"/> OTHER (Describe):				
ZONING DISTRICT	SETBACKS	FRONT	SIDE	SIDE	REAR	BEDROOMS		
OCCUPANCY GROUP	AREA OF BUILDING	FINISHED FLOOR	BASEMENT	GARAGE	TYPE OF CONST.	STORIES		
VALUATION	PERMIT FEE	TOTAL						
\$ 1000.	\$ 17.00	\$ 17.00						
REMARKS:								
Reroofing only- does not authorize any additional use or activity.								
Inspections done on Mon-Wed-Fri 441-3925								
Gary R. Goodell/zo								
APPROVED BY: Chief Building Inspector								
The approval of plans and specifications does not permit the violation of any section of the Boulder County Building Code or other ordinance or state law.								
FIELD INSPECT TO CODE								

NOTICE

THIS PERMIT NOT VALID WITHOUT OFFICIAL "PAID" STAMP FROM THE BUILDING DIVISION. PERMIT IS VALID FOR EIGHTEEN (18) MONTHS FROM DATE OF STAMP AND SHALL BECOME NULL AND VOID IF CONSTRUCTION IS NOT COMMENCED WITHIN 180 DAYS OR IF WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS AT ANY TIME AFTER THE WORK IS COMMENCED.



Rough Inspection

INSPECTION	DATE APPROVED	INSPECTOR	DATE NOT APPROVED	INSPECTOR
TEMP. ELECT. CONST. POLE				
TRENCHES, FOOTINGS, PADS				
FOUNDATION WALLS AND REINFORCING				
WATERPROOFING OF FOUNDATION WALLS				
ELECTRICAL (UNDERGROUND)				
PLUMBING (UNDERGROUND)				
GAS PIPING (UNDERGROUND)				
ROUGH ELECTRICAL				
ROUGH PLUMBING				
ROUGH GAS PIPING				
ROUGH HEATING AND VENTILATION				
ROUGH FRAMING				
INSULATION WALLS/CEILING/FLOOR				
LATH AND/OR WALLBOARD BEFORE PLASTERING				
OTHER:				

Roof Buckling on rear side

Final Inspection

INSPECTION	DATE APPROVED	INSPECTOR	DATE NOT APPROVED	INSPECTOR
ZONING SETBACKS				
GRADING AND DRAINAGE AROUND BLDG.				
FRAMING				
ELECTRICAL FIXTURES				
PLUMBING FIXTURES				
GAS PIPING (PRESSURE TESTED)				
HEATING AND VENTILATION				
CEILING INSULATION AND WINDOW/DOOR GLAZING				
OTHER				

REMARKS:



Walker, Samuel

From: Robert Ukeiley <RUkeiley@biologicaldiversity.org>
Sent: Thursday, July 27, 2023 9:56 AM
To: Sanchez, Kimberly
Subject: [EXTERNAL] RE: Request for rehearing - Docket VAR-23-0003 - COMPLETE REQUEST INFO

Hi Kim:

I vote not to the request for rehearing. There was no evidence presented to establish that the criteria for rehearing has been meet.

Sincerely,

BOA Member Robert Ukeiley

From: Sanchez, Kimberly <ksanchez@bouldercounty.gov>
Sent: Thursday, July 27, 2023 8:25 AM
To: Sanchez, Kimberly <ksanchez@bouldercounty.gov>
Cc: Hoyt, Larry <lhoyt303@msn.com>; Walker, Samuel <swalker@bouldercounty.gov>; Case, Dale <dcase@bouldercounty.gov>
Subject: Request for rehearing - Docket VAR-23-0003 - COMPLETE REQUEST INFO
Importance: High

BOA members and Cononr:

I've included all rehearing request information in this email, including the additional information provided by the applicant following my initial email to you Wednesday morning, 7/26. Again, please review the request information and reply to me with your vote on whether to rehear the matter. Section D in the BOA Supplemental Rules outlines on what grounds you may approve a rehearing request. (BOA Supplemental Rules: <https://assets.bouldercounty.gov/wp-content/uploads/2019/04/board-of-adjustment-supplemental-rules-and-procedures.pdf>)

Thank you,
 Kim

Kim Sanchez | Deputy Planning Director
Boulder County | Community Planning & Permitting
 Hours of service: M, W, Th, F 8am-4:30pm & Tu 10am-4:30pm
 Open office hours: M, W, Th 8am-3pm & Tu 10am-3pm or by appointment
 Office address: 2045 13th Street, Boulder CO 80302
 Mailing address: PO Box 471, Boulder CO 80306
 Direct: 720-564-2627 | Main: 303-441-3930
 Email: ksanchez@bouldercounty.gov

From: Sanchez, Kimberly
Sent: Wednesday, July 26, 2023 12:19 PM
To: Sanchez, Kimberly <ksanchez@bouldercounty.gov>
Cc: Hoyt, Larry <lhoyt303@msn.com>; Walker, Samuel <swalker@bouldercounty.gov>; Case, Dale <dcase@bouldercounty.gov>
Subject: RE: Request for rehearing - Docket VAR-23-0003

All –
 Because there was some confusion around the applicant’s recourse (whether that be lawsuit or rehearing request), we are allowing the applicant to submit additional information by the end of the day today. I will pass that on once I receive it and you can hold on providing me with your vote until you have opportunity to review the additional information along with what I sent this morning.

As a matter of clarification, Art.4-1201.E of the Land Use Code states “Any party to a proceeding before the Board of Adjustment may appeal the Board of Adjustment’s final decision under C.R.C.P. 106(a)(4).” However, the BOA Supplemental Rules and Procedures Section V. allows for a rehearing if granted by the Board.

Kim

From: Sanchez, Kimberly
Sent: Wednesday, July 26, 2023 9:38 AM
To: Sanchez, Kimberly <ksanchez@bouldercounty.gov>
Cc: Hoyt, Larry <lhoyt303@msn.com>; Walker, Samuel <swalker@bouldercounty.gov>; Case, Dale <dcase@bouldercounty.gov>
Subject: Request for rehearing - Docket VAR-23-0003

Dear Board of Adjustment members and Conor (who subbed from Planning Commission on BOA last month):
 Counsel for the applicant of docket VAR-23-0003 Danaher, which was denied on July 5, 2023, is requesting a rehearing. Please review the attached request and letter from neighbor (provided within 20 days after the hearing), and reply directly to me with your individual vote on whether or not to grant a rehearing. Please refrain from discussing the rehearing request with any other BOA member. Once all five members who were present on July 5 are polled, I will share the final vote and decision with the board, the applicant, and counsel.

Section D in the BOA Supplemental Rules outlines on what grounds you may approve a rehearing request. (BOA Supplemental Rules: <https://assets.bouldercounty.gov/wp-content/uploads/2019/04/board-of-adjustment-supplemental-rules-and-procedures.pdf>)

V. REHEARING

- A. In the event the Board denies a Variance request, such request shall not be reconsidered for 12 months after the date of the decision, except as provided below.
- B. Any decision of the Board may be reheard only if the Appellant / Applicant (or a person opposed to the application who testified at the hearing where the application was granted) files a request for rehearing with the Director, within 20 days after the date of the hearing at which the decision was made. The request shall state the reasons for which the Appellant / Applicant (or opposing person) seeks a rehearing.
- C. If no request for a rehearing is filed, the decision of the Board shall be considered final for purposes of judicial review as of the date of the hearing on which the decision was made. If a request for a rehearing is filed but denied by the Board, the Board’s decision shall be considered final for purposes of judicial review on the third day after the date on which the Director mails notice of the Board’s denial of the rehearing to the person requesting a rehearing.
- D. The Board may approve a rehearing request on the grounds that the hearing or decision was based on fraud, mistake, or inadequate information; needs clarification; or there is a strong indication that there were procedural problems with the prior hearing.** The decision to rehear any matter may be made without public hearing by the assent of three members of the Board who were present at the prior hearing. The Board shall have the discretion to limit the scope of the rehearing to the matters, which the assenting members determine are appropriate to rehear, based upon their knowledge of the prior hearing and the stated reasons for the rehearing request.
- E. Any rehearing shall be treated in all respects as a new hearing. The concurring vote of four members of the Board shall be required to reverse or alter the decision made at the prior hearing.

If you have questions, please contact me and Larry, BOA’s counsel. Otherwise, simply reply to me with your vote.

Thank you,
Kim

Kim Sanchez | *Deputy Planning Director*

Boulder County | **Community Planning & Permitting**

Hours of service: M, W, Th, F 8am-4:30pm & Tu 10am-4:30pm

Open office hours: M, W, Th 8am-3pm & Tu 10am-3pm or by appointment

Office address: 2045 13th Street, Boulder CO 80302

Mailing address: PO Box 471, Boulder CO 80306

Direct: 720-564-2627 | Main: 303-441-3930

Email: ksanchez@bouldercounty.gov

From: [Conor Canaday](#)
To: [Sanchez, Kimberly](#)
Subject: [EXTERNAL] Re: Request for rehearing - Docket VAR-23-0003 - COMPLETE REQUEST INFO
Date: Thursday, July 27, 2023 12:09:56 PM

Hi Kim,

Given the materials submitted I would vote for a rehearing of this docket.

Thanks,
Conor

On Thu, Jul 27, 2023 at 8:25 AM Sanchez, Kimberly <ksanchez@bouldercounty.gov> wrote:

BOA members and Conor:

I've included all rehearing request information in this email, including the additional information provided by the applicant following my initial email to you Wednesday morning, 7/26. Again, please review the request information and reply to me with your vote on whether to rehear the matter. Section D in the BOA Supplemental Rules outlines on what grounds you may approve a rehearing request. (BOA Supplemental Rules: <https://assets.bouldercounty.gov/wp-content/uploads/2019/04/board-of-adjustment-supplemental-rules-and-procedures.pdf>)

Thank you,

Kim

Kim Sanchez | *Deputy Planning Director*

Boulder County | **Community Planning & Permitting**

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Email: ksanchez@bouldercounty.gov

From: Sanchez, Kimberly

Sent: Wednesday, July 26, 2023 12:19 PM
To: Sanchez, Kimberly <ksanchez@bouldercounty.gov>
Cc: Hoyt, Larry <lhoyt303@msn.com>; Walker, Samuel <swalker@bouldercounty.gov>;
Case, Dale <dcase@bouldercounty.gov>
Subject: RE: Request for rehearing - Docket VAR-23-0003

All –

Because there was some confusion around the applicant's recourse (whether that be lawsuit or rehearing request), we are allowing the applicant to submit additional information by the end of the day today. I will pass that on once I receive it and you can hold on providing me with your vote until you have opportunity to review the additional information along with what I sent this morning.

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Kim

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Sent: Wednesday, July 26, 2023 9:38 AM
To: Sanchez, Kimberly <ksanchez@bouldercounty.gov>
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Case, Dale <dcase@bouldercounty.gov>
Subject: Request for rehearing - Docket VAR-23-0003

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Counsel for the applicant of docket VAR-23-0003 Danaher, which was denied on July 5, 2023, is requesting a rehearing. Please review the attached request and letter from neighbor (provided within 20 days after the hearing), and reply directly to me with your individual vote on whether or not to grant a rehearing. Please refrain from discussing the rehearing request with any other BOA member. Once all five members who were present on July 5 are polled, I will share the final vote and decision with the board, the applicant, and counsel.

Section D in the BOA Supplemental Rules outlines on what grounds you may approve a

rehearing request. (BOA Supplemental Rules: <https://assets.bouldercounty.gov/wp-content/uploads/2019/04/board-of-adjustment-supplemental-rules-and-procedures.pdf>)

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If you have questions, please contact me and Larry, BOA's counsel. Otherwise, simply reply to me with your vote.

Thank you,

Kim

Kim Sanchez | *Deputy Planning Director*

Boulder County | **Community Planning & Permitting**

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Open office hours: M, W, Th 8am-3pm & Tu 10am-3pm or by appointment

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Mailing address: PO Box 471, Boulder CO 80306

Direct: 720-564-2627 | Main: 303-441-3930

Email: ksanchez@bouldercounty.gov

Walker, Samuel

From: David Marlett <dmarlett1@me.com>
Sent: Wednesday, July 26, 2023 10:10 AM
To: Sanchez, Kimberly
Cc: Hoyt, Larry; Walker, Samuel; Case, Dale
Subject: [EXTERNAL] Re: Request for rehearing - Docket VAR-23-0003

I am very pleased to see this.

I vote strongly in favor of the rehearing.

I have been troubled since that meeting, confident that we got it wrong... frustrated that I wasn't able to carry the vote.

I believe there is correction needed to your email: As I recall, in addition to me, Conor Canaday also voted in favor of the variance. Thus the Danahers were denied 3-2, not 4-1.

David

David Marlett
dmarlett1@me.com
 720-670-1210
www.DavidMarlett.com



On Jul 26, 2023, at 9:37 AM, Sanchez, Kimberly <ksanchez@bouldercounty.gov> wrote:

Dear Board of Adjustment members and Conor (who subbed from Planning Commission on BOA last month):

Counsel for the applicant of docket VAR-23-0003 Danaher, which was denied by a vote of 4-1 on July 5, 2023, is requesting a rehearing. Please review the attached request and letter from neighbor (provided within 20 days after the hearing), and reply directly to me with your individual vote on whether or not to grant a rehearing. Please refrain from discussing the rehearing request with any other BOA member. Once all five members who were present on July 5 are polled, I will share the final vote and decision with the board, the applicant, and counsel.

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If you have questions, please contact me and Larry, BOA's counsel. Otherwise, simply reply to me with your vote.

Thank you,
Kim

Kim Sanchez | Deputy Planning Director

Boulder County | Community Planning & Permitting

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Direct: 720-564-2627 | Main: 303-441-3930

Email: ksanchez@bouldercounty.gov

<VAR-23-0003 Request for Rehearing.pdf><Rogers Variance Letter 7.24.23.pdf>

Walker, Samuel

From: George Gerstle <gerstleg@gmail.com>
Sent: Friday, July 28, 2023 8:27 AM
To: Sanchez, Kimberly
Cc: Hoyt, Larry; Walker, Samuel; Case, Dale
Subject: [EXTERNAL] Re: Request for rehearing - Docket VAR-23-0003 - COMPLETE REQUEST INFO
Attachments: VAR-23-0003 Request for Rehearing.pdf; Rogers Variance Letter 7.24.23.pdf; ADDITIONAL rehearing request info VAR-23-0003.pdf; Rogers recant letter 20230724.pdf; boulder-county-zoning-map.pdf; Bogel to BC 30-foot ROW RN00764207 19860605.pdf; BP-86-0549 19860612 reroof Microfiche Card (7).PDF; 5745 Jay Rd_Juhls Drive Neighborhood 110ft setback encroachments 20230711.pdf

I see no justification for reconsideration of the Board finding.

No persuasive reason or new information has been provided by the applicant for reconsideration.

George

Sent from my iPhone

On Jul 27, 2023, at 8:25 AM, Sanchez, Kimberly <ksanchez@bouldercounty.gov> wrote:

BOA members and Conor:

I've included all rehearing request information in this email, including the additional information provided by the applicant following my initial email to you Wednesday morning, 7/26. Again, please review the request information and reply to me with your vote on whether to rehear the matter. Section D in the BOA Supplemental Rules outlines on what grounds you may approve a rehearing request. (BOA Supplemental Rules: <https://assets.bouldercounty.gov/wp-content/uploads/2019/04/board-of-adjustment-supplemental-rules-and-procedures.pdf>)

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Email: ksanchez@bouldercounty.gov

Walker, Samuel

From: Scott Rudge <Scott.Rudge@synergiopharma.com>
Sent: Monday, July 31, 2023 12:10 AM
To: Sanchez, Kimberly
Subject: [EXTERNAL] RE: Request for rehearing - Docket VAR-23-0003 - COMPLETE REQUEST INFO

Hi Kim,

Is there a way for the Danaher's to get right with the county before we consider their application for a variance? In the previous hearing, staff did not propose any conditions should we overturn staff's recommendation. I don't think a tear down is the correct remedy, but surely you have other means to force them into compliance with obtaining permits.

If you can't answer these questions, I understand. According to the rehearing procedure, a person who was previously opposed in my view is not withdrawing that opposition and so the Clause V.B mandates the rehearing under those circumstances. So I'm in favor of allowing a rehearing. Best, Scott

Schedule a meeting: <https://rmcavailability.as.me/scottrudge>
synergiopharma.com



Enabling clients in their quest to bring life-saving and life-enhancing products to patients.

CONFIDENTIALITY NOTICE

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From: Sanchez, Kimberly <ksanchez@bouldercounty.gov>
Sent: Thursday, July 27, 2023 8:25
To: Sanchez, Kimberly <ksanchez@bouldercounty.gov>
Cc: Hoyt, Larry <lhoyt303@msn.com>; Walker, Samuel <swalker@bouldercounty.gov>; Case, Dale <dcase@bouldercounty.gov>
Subject: Request for rehearing - Docket VAR-23-0003 - COMPLETE REQUEST INFO
Importance: High

[EXTERNAL SENDER]

This email is from an unusual correspondent. Make sure this is someone you trust.

BOA members and Conor:

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Subject: Request for rehearing - Docket VAR-23-0003

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Email: ksanchez@bouldercounty.gov

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Walker, Samuel

From: William D Bowman <william.bowman@colorado.edu>
Sent: Wednesday, August 30, 2023 9:32 AM
To: LU Land Use Planner
Subject: [EXTERNAL] VAR-23-0003- Danaher setback

Resending this for the rescheduled hearing

Community Planning and Permitting Department
Boulder County

To Whom It May Concern:

We write in support of the variance request of Charlie Danaher and Rose Valentine for reduced required setbacks for porch construction and a windmill. We live north of their house, which is visible from our property (5828 S Orchard Creek Circle).

The setbacks they request are reasonable and will not have any adverse visual or environmental impacts. The Danaher/ Valentine house was constructed prior to the designation of the current required setbacks. The front of the house is too close to Jay road to allow porch construction with the current setback requirement. The proposed porch is the same dimension as the existing porch, and will be 86 feet from the Jay road right of way. The proposed porch will provide an attractive front to the house, and is not visible from the road due to a fence.

The windmill is consistent with the rural context of the area, and provides an attractive feature. We have included the Danaher/ Valentine windmill in photographs of sky elements (e.g. full moon, sunset clouds), and hope to continue to in the future. We understand the windmill can not be re-sited to the setback requirement (15 feet) due to the presence of a leach field.

We support the proposed changes.

William D. Bowman
Jenifer Hall-Bowman

*William D. Bowman
Emeritus Professor
Department of Ecology and Evolutionary Biology
University of Colorado, Boulder*

Walker, Samuel

From: JAN LUND <jjbplund@msn.com>
Sent: Sunday, August 27, 2023 9:24 AM
To: LU Land Use Planner
Cc: Jean lund
Subject: [EXTERNAL] VAR-23-0003B: Danaher Setback Reduction

Dear Planners,

We totally support the Danaher setback reductions variance allowing the described porch and windmill.

The Danaher's have a great job maintaining their 100 year old mini farm thus 'preserving the rural character' along Jay Road. The windmill also complements this 'rural character' along with the multitude of old farm silos sprinkled along Jay Road. In no way does the windmill impose on anyone's mountain view.

Sincerely,

Jan P. and Jean E. Lund
5669 Juhls Dr
Boulder, CO 80301

Sent from [Mail](#) for Windows

Walker, Samuel

From: kamuran@aol.com
Sent: Tuesday, August 29, 2023 2:24 PM
To: LU Land Use Planner
Subject: [EXTERNAL] VAR-23-0003B

Kamuran Tepedelen
5554 Jay Rd
Boulder, CO. 80301

I continue to support wholeheartedly the addition of a porch and windmill on the Danaher property.

The porch is a beautiful addition which not only fits, and is appropriate on this farm house, but is a welcome addition to the neighborhood. It is aesthetically pleasing, as well as an overall upgrade to our neighborhood. Given the fact that historically, there was at one time a porch attached to the house, I can not understand why, because of a few feet, this addition would be anything but acceptable. Furthermore, I can not see where there would be any safety issues with regards to the set back, or how it could in anyway be detrimental to people of Boulder County. I see it as a win win for our neighborhood, and the people of Boulder county.

As for the windmill, I also see no reason why essentially a 5 1/2 foot difference on the setback for the windmill, which is at the rear of the property should have an impact on whether a variance is granted or not. The position of the windmill is appropriate, and fits in perfectly with the farm house / agricultural feel which Boulder County has been trying to preserve. In my opinion it posses no safety concerns, as it is far enough away from the Danaher residence, and all surrounding neighbors structures. I feel that the windmill is one step closer to continuing to preserve the farm and agricultural feeling of the surrounding properties in this part of the county, and I love the feel it has brought to the neighborhood.

I would think that is this day and age of massive waste, that forcing them to tear down their porch and remove their windmill, because of a few feet of a set back would be highly counter productive to the vision that we all enjoy of Boulder county being responsible when it comes to recycling and composting pretty much everything we can.

I attended the first meeting, and was really disheartened to observe the process. The discussion amongst some of the board members was focused on whether the asked for variance met the "criteria" or not. I can only imagine, that there must be circumstances where the "criteria" just doesn't apply to whats being requested. One size does not fit all. It seemed to me as an observer, that there was not much compassion or real thought from the planner, and some of the board members, about how their denial of the variance based on a few feet would impact really good peoples lives who have contributed positively to the neighborhood, and to this community. I am hopeful that you all receive enough positive input to see your way through to granting this variance.

respectfully,

Kamuran Tepedelen



Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856
 Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

BOULDER COUNTY BOARD OF ADJUSTMENT

AGENDA ITEM

Wednesday June 7, 2023 4:00 P.M.

PUBLIC HEARING

STAFF PLANNER: Sam Walker, Planner II

RECOMMENDATION: Staff recommends denial of the variance request

Docket VAR-23-0003: Danaher Setback Reductions

Request: Variance request to reduce the required supplemental setback from 110 feet (required) to 86 feet (proposed) to allow a front porch built without permits, and reduce the rear-yard setback from 15 feet (required) to 9' 6" (proposed) for a windmill also built without permits.

Location: 5745 Jay Road, approximately 300 feet east of the intersection of Jay Road and N. 57th Street.

Zoning: Rural Residential (RR) Zoning District

Agent: Charlie Danaher

Property Owners: Danaher & Valentine Living Trust

PACKET CONTENTS:

Item	Pages
○ Staff Recommendation	1 – 11
○ Application Materials (Attachment A)	A1 – A20
○ Referral Agency Responses (Attachment B)	B1 – B8
○ Adjacent Property Owner Comments (Attachment C)	C1 – C20

SUMMARY

The applicant requests a reduction in the required supplemental setback along Jay Road from 110 feet to 86 feet to allow for the construction of a front porch addition to the main residence, as well as a reduction in the required rear-yard setback from 15 feet to 9 feet 6 inches for the construction of a windmill. Both the front porch and the windmill currently exist on the subject parcel, and were constructed without building permits. Staff recommends that this variance request be denied

because the applicable review criteria in Article 4-1202(B)(2) of the Boulder County Land Use Code (the Code) cannot be met.

DISCUSSION

The subject property is located on the north side of Jay Road, approximately 300 feet east of the intersection of Jay Road and N. 57th Street. The property is approximately 1.5 acres in size, is located in the Rural Residential zoning district, and is a legal building lot. Access to the parcel is via an existing driveway onto Jay Road.

Research conducted by the Boulder County Historic Preservation Team indicates that the existing residence was originally constructed around 1920, although a specific date could not be determined. By 1949, a covered and enclosed porch had been added to the south side of the residence, although it appears that the porch was removed sometime before 1966.

Because the residence was constructed prior to 1985, it predates the adoption of the supplemental setback that the applicant seeks to reduce. However, the current covered porch does not. Historic aerial photography indicates that the current porch was constructed sometime between 2020 and 2022. Prior to 2020, a covered porch had not been present since at least 1977 (see Figures 1-3, below).



Figure 1: 1977 Aerial photo of subject parcel, no covered porch shown on the south side of the residence.



Figure 2: 2020 Aerial photo, again showing no covered porch on the south side of the residence



Figure 3: 2022 Aerial photo where new covered porch has been added.

The timeline of construction for the windmill is equally unclear. It is not apparently visible in aerial photographs from 2022 or earlier, but appears to have been constructed after the covered porch addition based on Google Streetview imagery as shown in Figures 4 and 5, below.



Figure 4: View north from Jay Road in September 2021, image taken from Google Streetview

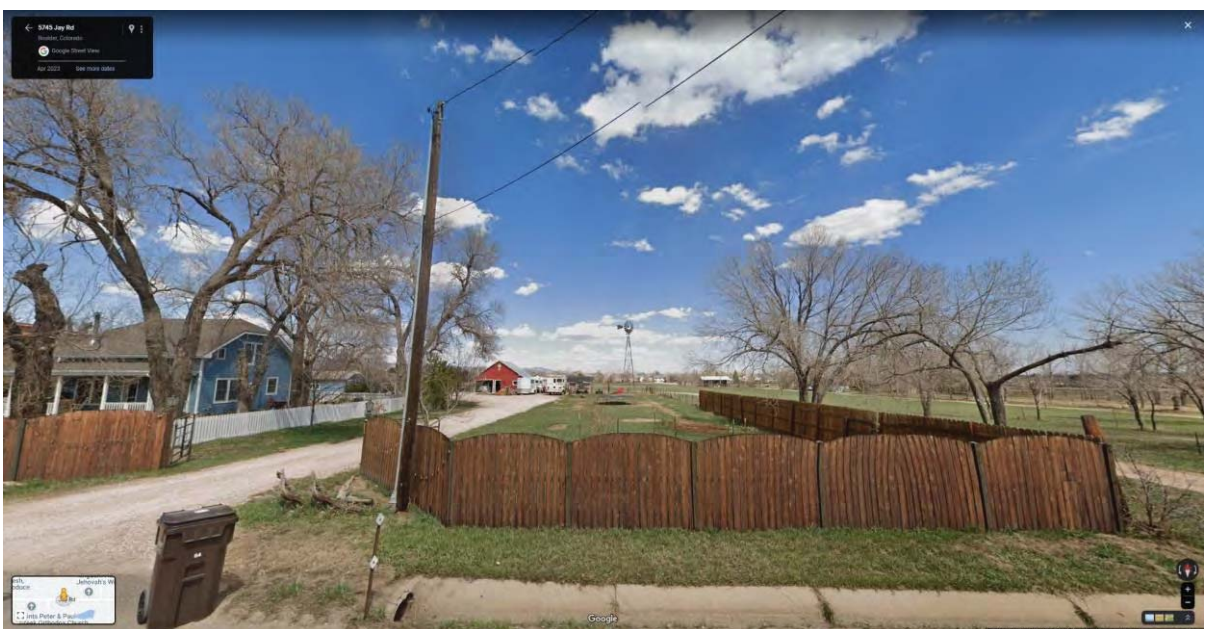


Figure 5: View north from Jay Road in April 2023, image taken from Google Streetview

Both the new covered porch and windmill were constructed without building permits. The applicant's hardship statement indicates that "remodeling the front porch within the current setbacks would be impossible" and that the existing leach field on the parcel prevented construction of the windmill in a location that could meet all required setbacks. Staff contend that characterization of the porch construction as a "remodel" is inaccurate at best. Figures 6-10, below, illustrate changes to the southern façade of the existing residence over the years.



Figure 6: Southern façade of the residence including covered porch, circa 1949



Figure 7: Southern façade of the residence without covered porch, circa 1966



Figure 9: Southern façade of the residence without covered porch, circa September 2018 via Google Streetview



Figure 10: Southern façade of the residence with unpermitted porch addition, staff photo taken April 6, 2023

Staff also contend that there are areas of the subject property where the windmill could have been constructed without encroaching required setbacks while simultaneously avoiding negative impacts to

the leach field that occupies most of the northeastern yard. Figure 11, below, illustrates the current location of the OWTS based on the septic permit records for the subject parcel.

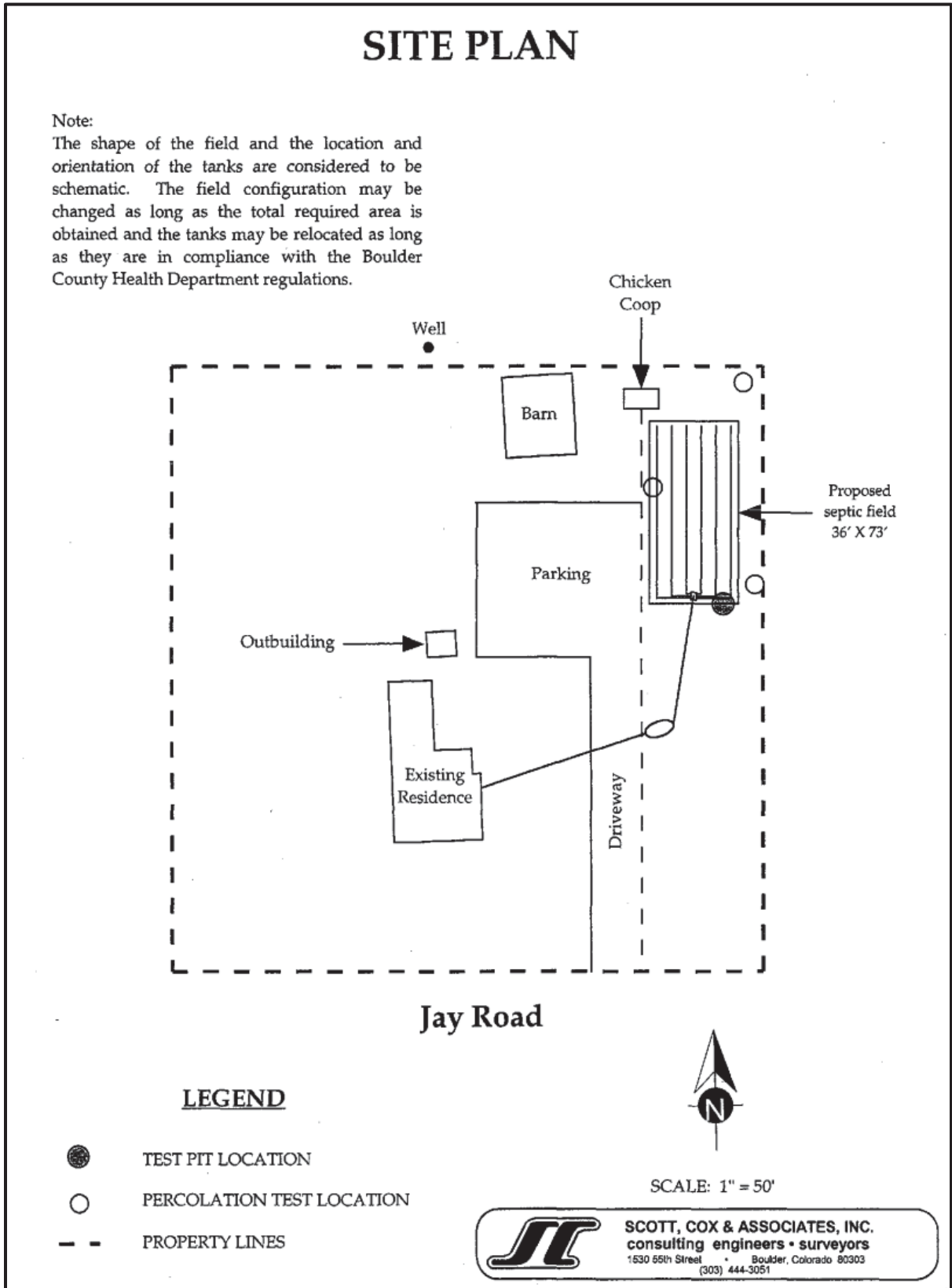


Figure 11: Septic system design for subject parcel

For these reasons, staff find that the proposal cannot meet the Variance criteria described in the Code, and therefore recommend that both requested setback reductions be denied.

REFERRALS

The variance request was sent to property owners within 1,500 feet of the subject property, as well as all applicable referral agencies. Responses received by staff are attached to this staff recommendation (Attachments B and C) and summarized below.

Boulder County Building Safety & Inspection Services Team – This team expressed no concerns with the variance request, and noted requirements for the porch and windmill if approved, including building permits, wind and snow loads, ignition-resistant materials and defensible space, and Plan Review.

Boulder County Development Review Team – Access & Engineering – This team confirmed the property is legally accessed via Jay Road, that no improvements to the access drive would be required as part of the Variance process, and noted no conflicts with the proposed variance.

Xcel Energy – The Xcel referral response noted concerns regarding the placement of the windmill in relationship to overhead powerlines that run along the south side of the property, but indicated no concerns after staff followed up with site images showing the distance between the windmill and powerlines.

Agencies indicating no conflicts: Boulder County Parks & Open Space, Boulder County Conservation Easement Team, Boulder County Public Health, Boulder Rural Fire Protection District.

Agencies that did not respond: Boulder County Long Range Planning, Boulder County Code Compliance, Boulder County Assessor, Boulder County Attorney's Office, Boulder County Sheriff, Boulder County Treasurer, Boulder County Surveyor, Left Hand Water District, Northern Colorado Water conservancy District, City of Boulder Planning & Development Services, History Colorado.

Adjacent Property Owners – 101 referrals were sent to nearby property owners, and staff received seven responses from members of the public.

Two comments raised issues regarding the proposal, expressing concerns that allowing unpermitted work to receive approval after-the-fact is unfair to those that follow the correct process, and would encourage other property owners to avoid proper permitting, as well as that the windmill poses a safety issue for the adjacent property in high winds because its unpermitted installation does not guaranteed that it meets the required wind load.

Five comments expressed support for the proposal, indicating that the proposed improvements would benefit the neighborhood character and aesthetic and that the proposed setback reductions were reasonable.

CRITERIA ANALYSIS

Per Article 3-100.A.18 of the Code the Board of Adjustment (BOA) may approve a variance from the terms of the Code as set forth in Article 4-1200. To grant a variance, the BOA must find that all of the following criteria from **Article 4-1202(B)(2)** of the Code are satisfied:

(a) There exist exceptional or extraordinary physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope;

Staff do not find that the subject parcel is encumbered by extraordinary or exceptional physical circumstances. The subject parcel is completely flat, and is of a similar size and configuration to

other nearby residential parcels along the north side of Jay Road. Although the required 110-foot supplemental setback extends into the parcel, approximately half of the parcel remains outside of this setback and could conceivably be developed without the requested setback reduction. Similarly, the staff do not find that the location of the septic system drain field constitutes an extraordinary physical circumstance of the property. There are areas in the northern and northwestern sections of the parcel where the windmill could have been placed without encroaching on the required setbacks or impacting the septic system.

Therefore, staff finds this criterion is not met.

(b) Because of these physical circumstances, the strict application of the Code creates an exceptional or undue hardship upon the property owner;

Because staff do not find that there are exceptional or extraordinary physical circumstances on the parcel, the strict application of the Code does not create an exceptional or undue hardship on the property owner.

Therefore, staff finds this criterion is not met.

(c) The hardship is not self-imposed;

Staff have not identified a hardship on the parcel that would justify the proposed setback reduction.

Therefore, staff finds this criterion is not met.

(d) The variance, if granted, will not adversely affect the uses of adjacent property as permitted under this code;

Staff do not anticipate that the proposed variance will adversely affect the uses of adjacent properties as permitted under the Code, nor has any referral agency responded with such a concern. One adjacent property owner expressed concern that the windmill poses a fall risk to their driveway, and could limit their access to and from their property in a high wind event. However, staff do not share this concern because the structure could be issued a permit certifying that it meets the appropriate wind load for the area and building it outside of the required setback would not necessarily eliminate the fall risk for the neighboring driveway.

Therefore, staff finds this criterion is met.

(e) The variance, if granted, will not change the character of the zoning district in which the property is located, and is in keeping with the intent of the Code and the Boulder County Comprehensive Plan;

Staff do not have concerns that the variance will change the character of the zoning district in which the property is located if granted. Aerial photographs of the area around the subject parcel indicate that many nearby properties also have development that approaches or possibly encroaches on the required supplemental or rear-yard setbacks.

Therefore, as conditioned, staff finds that this criterion is met.

(f) The variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Boulder County and is in accordance with the Comprehensive Plan and any applicable intergovernmental agreement affecting land use or development.

There is no indication that the proposed setback reductions would adversely affect the health, safety, or welfare of Boulder County citizens, and no referral agency or nearby property owners responded with such concerns.

Therefore, staff finds this criterion is met.

RECOMMENDATION

As discussed above, staff find that three of the criteria for a variance cannot be met. Therefore, Community Planning & Permitting staff recommend that the Board of Adjustment **DENY Docket VAR-23-0003: Danaher Setback Reductions.**



Boulder County Land Use Department

Courthouse Annex Building
2045 13th Street • PO Box 471 • Boulder, Colorado 80302
Phone: 303-441-3930
Email: planner@bouldercounty.org
Web: www.bouldercounty.org/lu
Office Hours: Mon., Wed., Thurs., Fri. 8 a.m. to 4:30 p.m.
Tuesday 10 a.m. to 4:30 p.m.

Shaded Areas for Staff Use Only

Intake Stamp

Planning Application Form

The Land Use Department maintains a submittal schedule for accepting applications. Planning applications are accepted on Mondays, by appointment only. Please call 303-441-3930 to schedule a submittal appointment.

Project Number		Project Name		
<input type="checkbox"/> Appeal <input type="checkbox"/> Correction Plat <input type="checkbox"/> Exemption Plat <input type="checkbox"/> Final Plat <input type="checkbox"/> Limited Impact Special Use <input type="checkbox"/> Limited Impact Special Use Waiver <input type="checkbox"/> Location and Extent	<input type="checkbox"/> Modification of Site Plan Review <input type="checkbox"/> Modification of Special Use <input type="checkbox"/> Preliminary Plan <input type="checkbox"/> Resubdivision (Replat) <input type="checkbox"/> Rezoning	<input type="checkbox"/> Road Name Change <input type="checkbox"/> Road/Easement Vacation <input type="checkbox"/> Site Plan Review <input type="checkbox"/> Site Plan Review Waiver <input type="checkbox"/> Sketch Plan <input type="checkbox"/> Special Use/SSDP	<input type="checkbox"/> Special Use (Oil & Gas development) <input type="checkbox"/> State Interest Review (1041) <input type="checkbox"/> Subdivision Exemption <input type="checkbox"/> Variance <input type="checkbox"/> Other:	
Location(s)/Street Address(es)				
5745 Jay Road, Boulder, Colorado				
Subdivision Name				
Lot(s)	Block(s)	Section(s)	Township(s)	Range(s)
Area in Acres	Existing Zoning	Existing Use of Property		Number of Proposed Lots
Proposed Water Supply		Proposed Sewage Disposal Method		

Applicants:

Applicant/Property Owner		Charlie Danaher & Rose Valentine		Email	cadanaher@aol.com
Mailing Address 5745 Jay Road, Boulder, Colorado					
City	Boulder	State	CO	Zip Code	80301
Phone	303-530-5500				
Applicant/Property Owner/Agent/Consultant				Email	
Mailing Address					
City		State		Zip Code	
Phone					
Agent/Consultant				Email	
Mailing Address					
City		State		Zip Code	
Phone					

Certification (Please refer to the Regulations and Application Submittal Package for complete application requirements.)

I certify that I am signing this Application Form as an owner of record of the property included in the Application. I certify that the information and exhibits I have submitted are true and correct to the best of my knowledge. I understand that all materials required by Boulder County must be submitted prior to having this matter processed. I understand that public hearings or meetings may be required. I understand that I must sign an Agreement of Payment for Application processing fees, and that additional fees or materials may be required as a result of considerations which may arise in the processing of this docket. I understand that the road, school, and park dedications may be required as a condition of approval.

I understand that I am consenting to allow the County Staff involved in this application or their designees to enter onto and inspect the subject property at any reasonable time, without obtaining any prior consent.

All landowners are required to sign application. If additional space is needed, attach additional sheet signed and dated.

Signature of Property Owner		Printed Name	Charlie Danaher	Date	3/5/2023
Signature of Property Owner		Printed Name	Rose Valentine	Date	3/5/2023

The Land Use Director may waive the landowner signature requirement for good cause, under the applicable provisions of the Land Use Code.

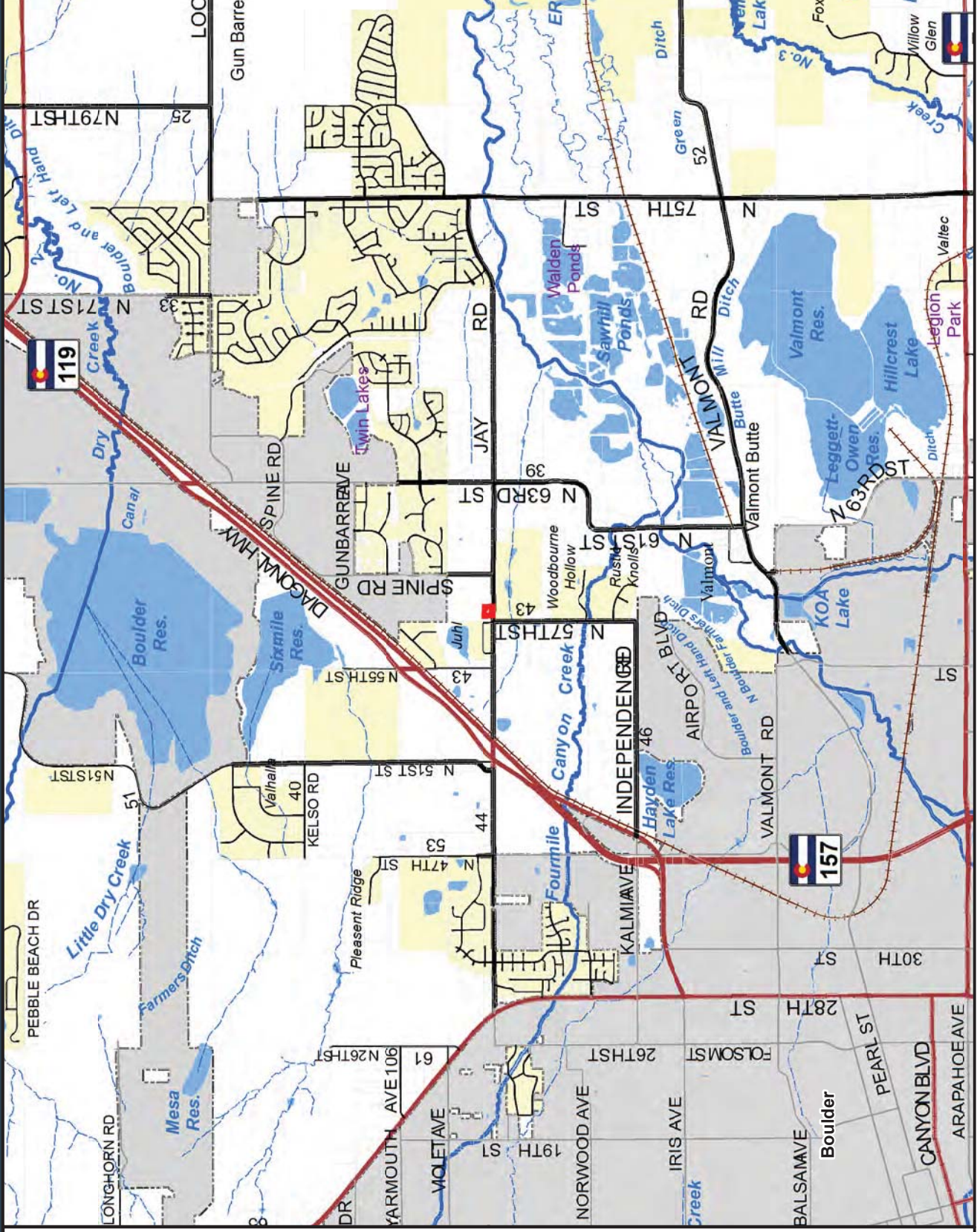


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Vicinity

5745 JAY RD

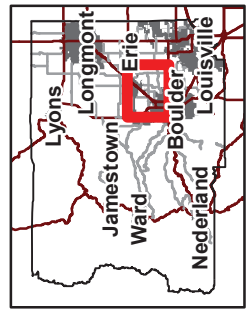


-  Subject Parcel
-  Municipalities
- Subdivisions**
-  Subdivisions



0 0.35 0.7 Miles

Area of Detail Date: 6/24/2022



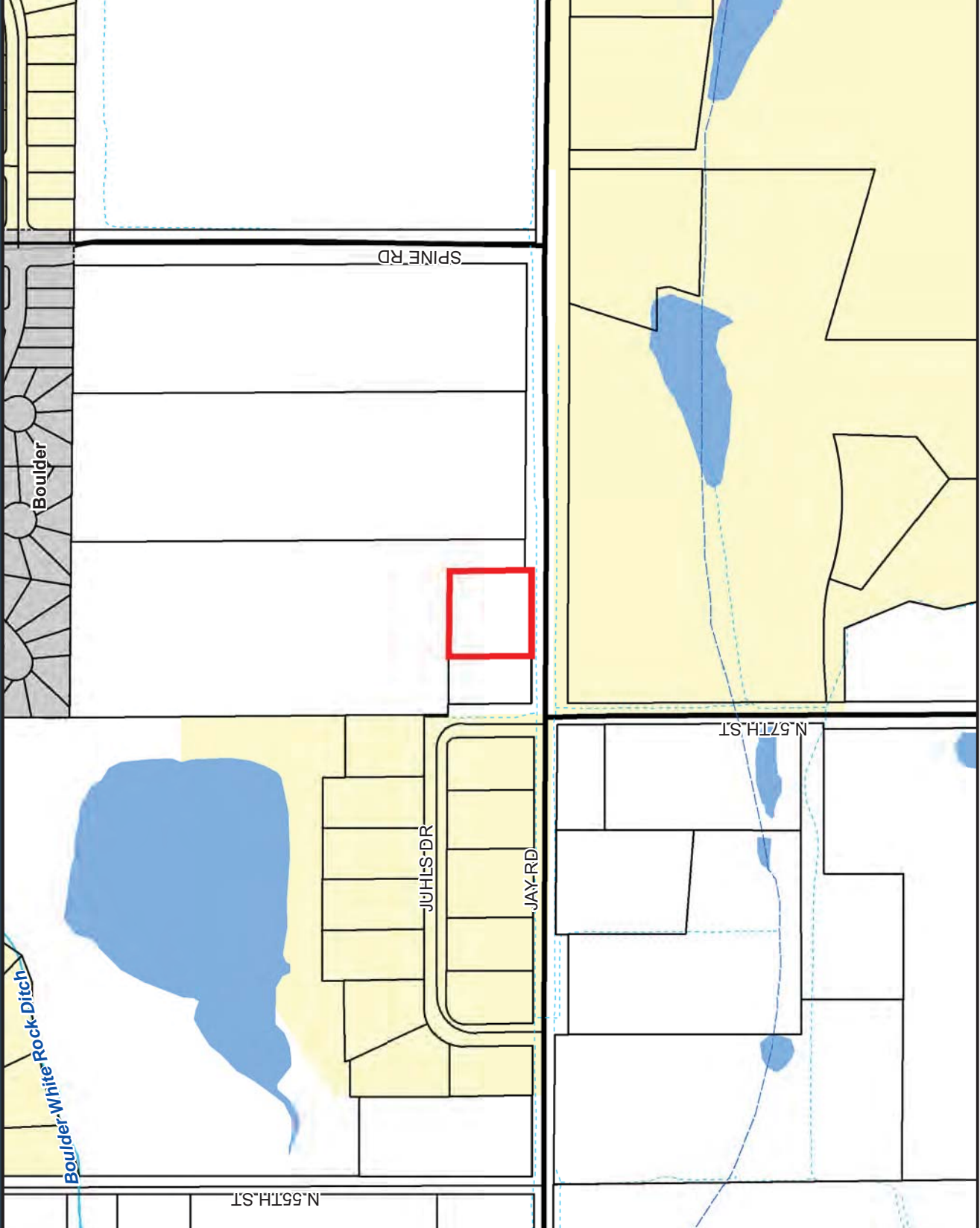
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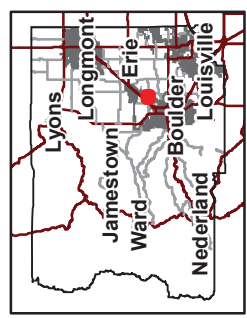
Location
5745 JAY RD



- Subject Parcel
- Subdivisions**
- Subdivisions



Area of Detail Date: 6/24/2022



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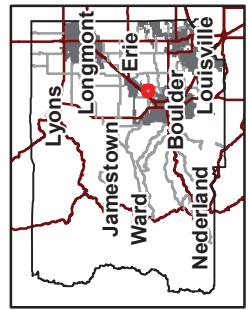
Aerial
5745 JAY RD

 Subject Parcel



0 0.025 0.05 Miles

Area of Detail Date: 6/24/2022




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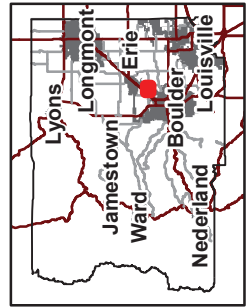
Aerial
5745 JAY RD

 Subject Parcel



0 0.05 0.1 Miles

Area of Detail Date: 6/24/2022



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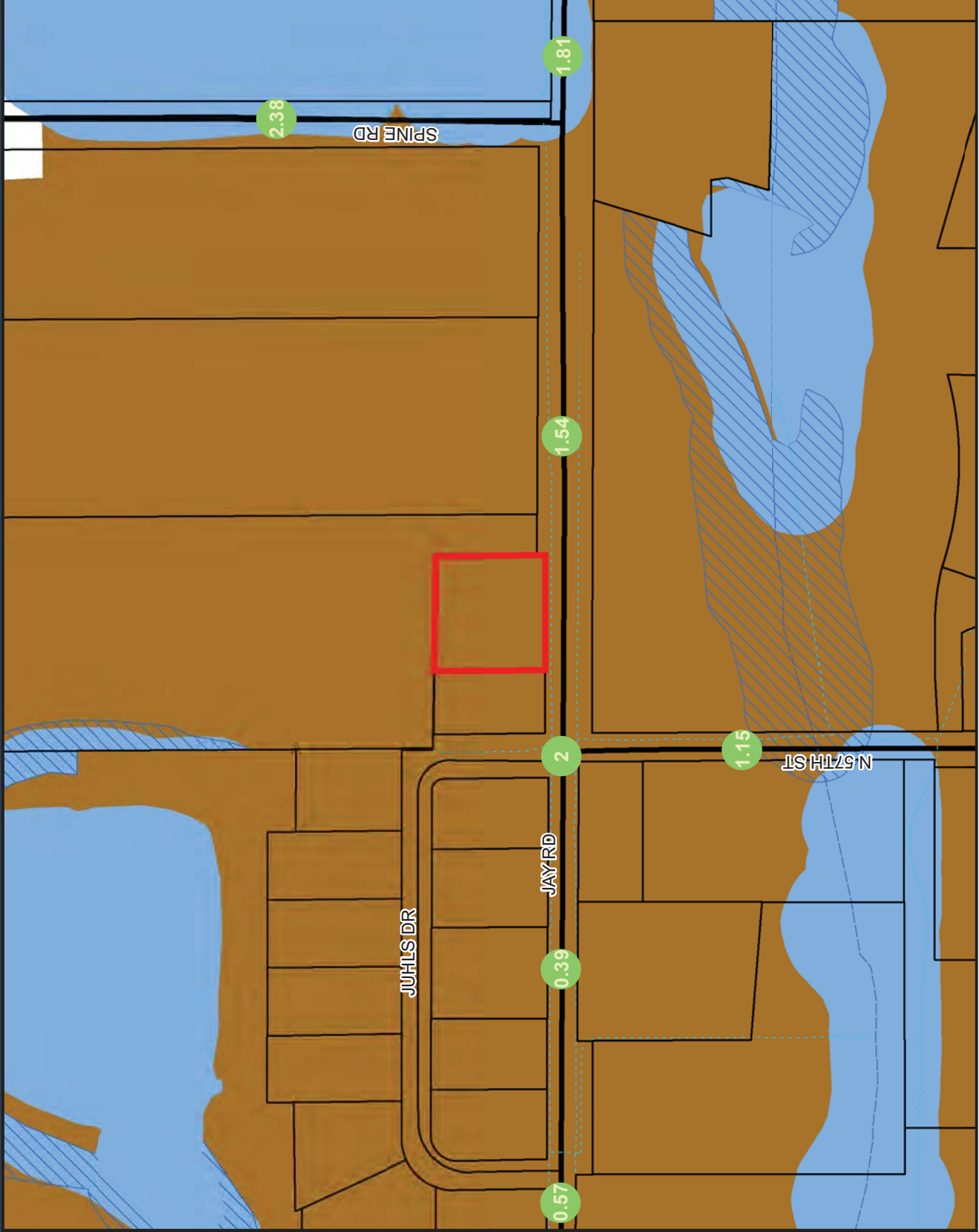


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Comprehensive Plan

5745 JAY RD

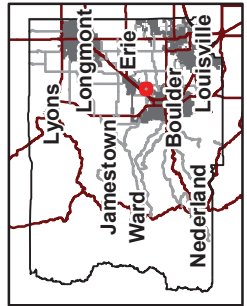


- Subject Parcel
- Riparian Areas
- Wetlands
- Significant Agricultural Land**
- Ag of Statewide Importance



0 0.025 0.05 Miles

Area of Detail Date: 6/24/2022



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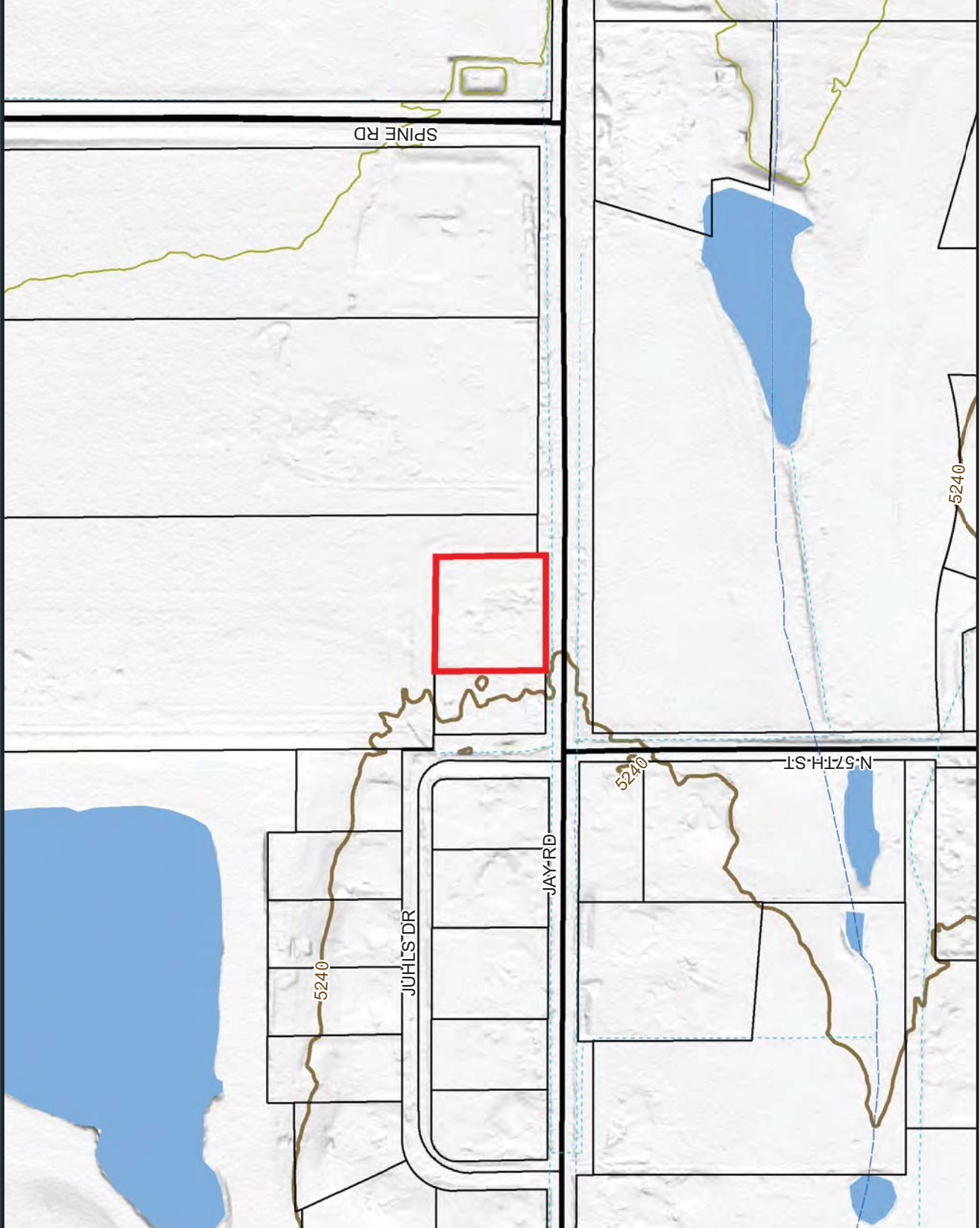


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Elevation Contours

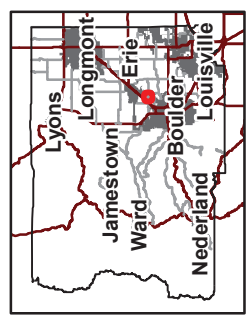
5745 JAY RD



- Subject Parcel
- Contours 40'
- Contours 20'



Area of Detail Date: 6/24/2022



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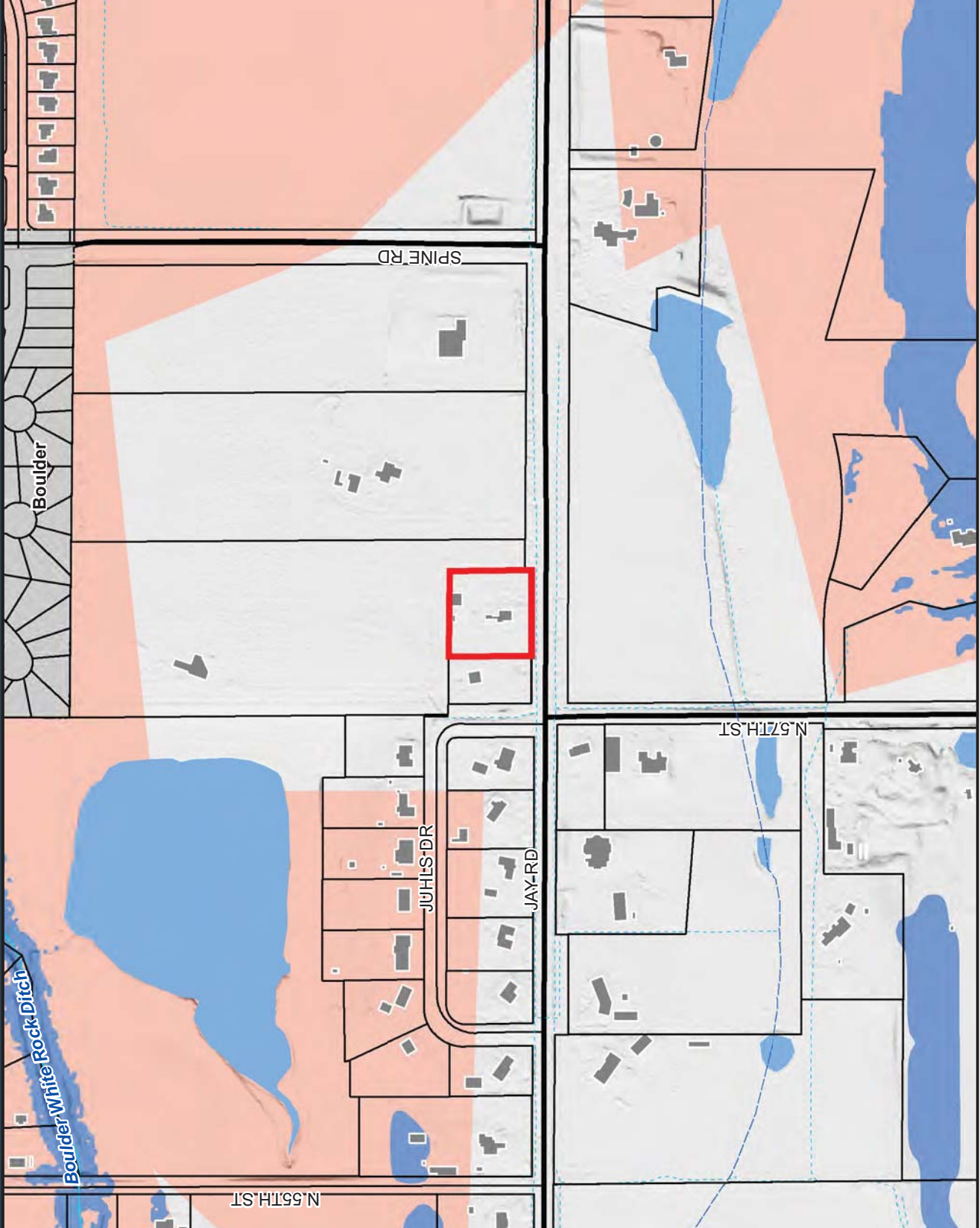




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Geologic Hazards

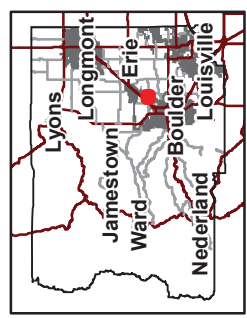
5745 JAY RD



-  Subject Parcel
-  High Swelling Soil Potential



Area of Detail Date: 6/24/2022



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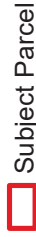


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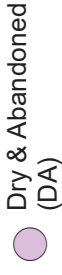
Oil & Gas Facilities

5745 JAY RD



Subject Parcel

Oil & Gas Well

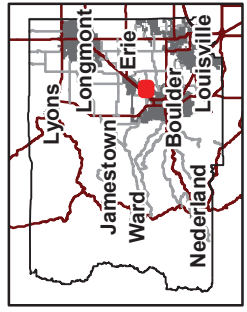


Dry & Abandoned (DA)

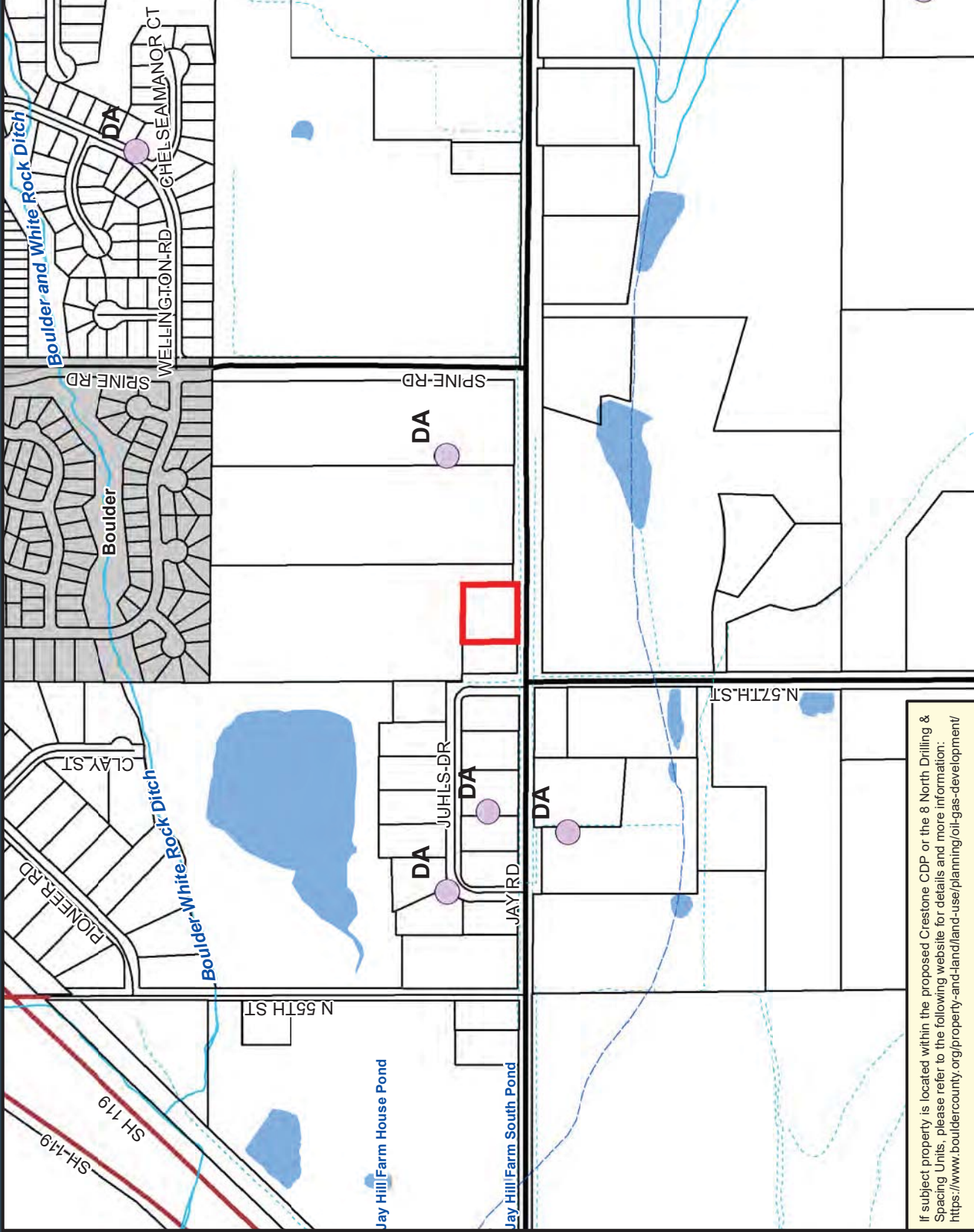


0 0.05 0.1 Miles

Area of Detail Date: 6/24/2022



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If subject property is located within the proposed Crestone CDP or the 8 North Drilling & Spacing Units, please refer to the following website for details and more information: <https://www.bouldercounty.org/property-and-land/land-use/planning/oil-gas-development/>

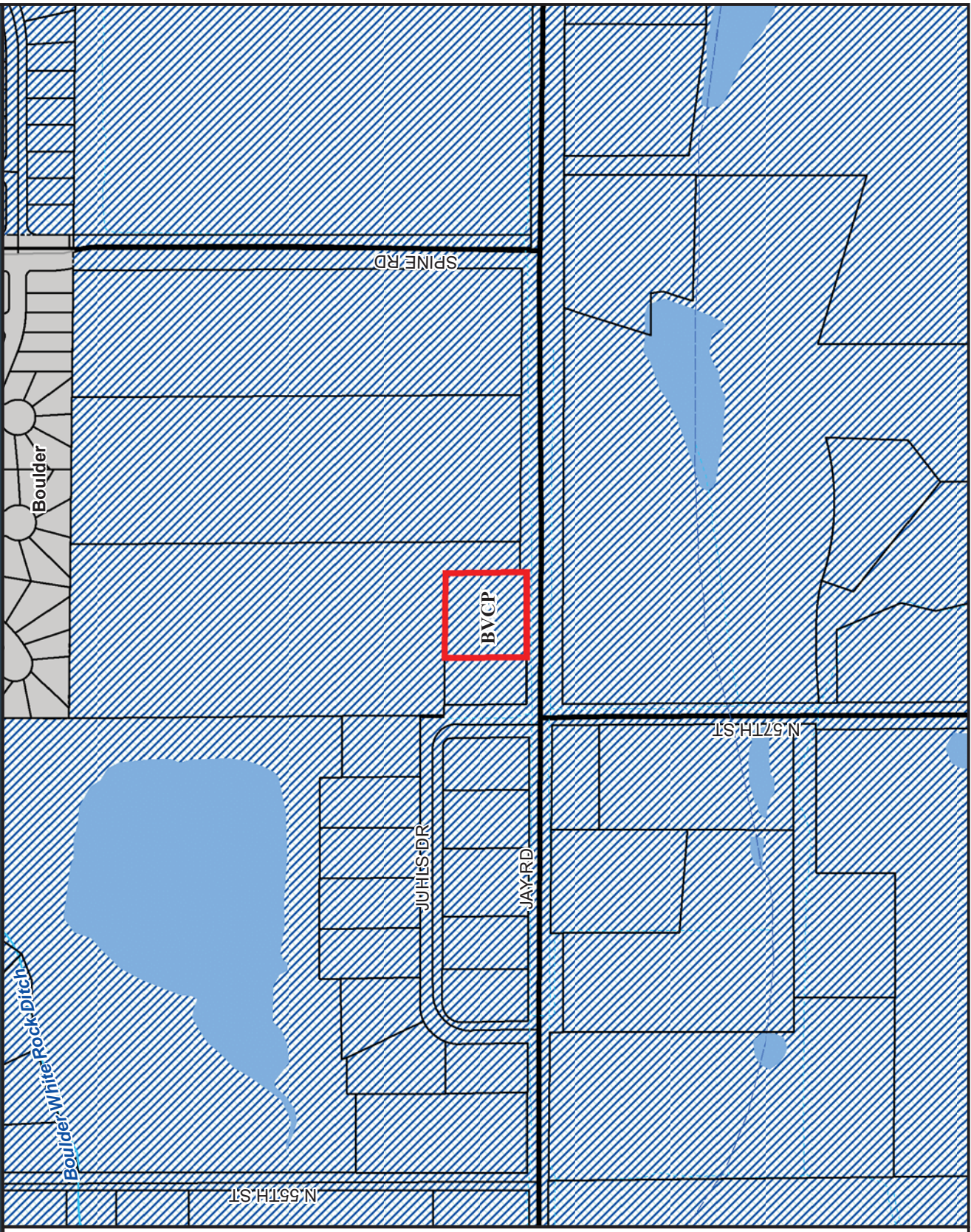


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Planning Areas

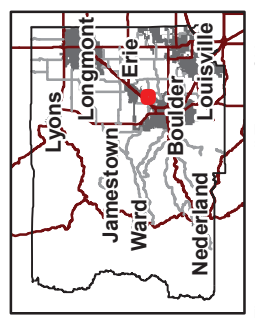
5745 JAY RD



-  Subject Parcel
-  Airport Influence
-  Airport Influence
-  Active IGA Boundary
-  Active IGA Designation
-  BVCP



Area of Detail Date: 6/24/2022



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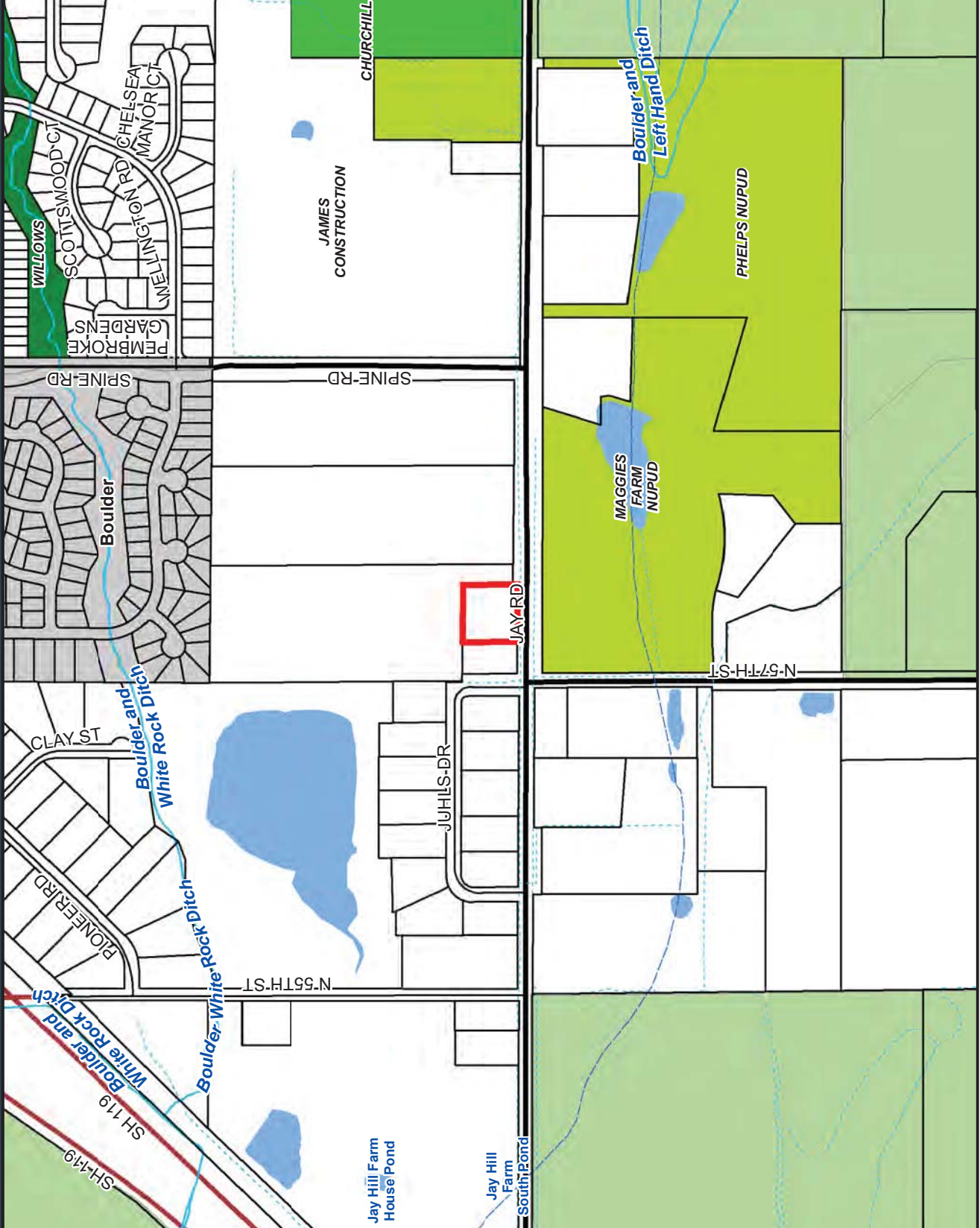


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Public Lands & CEs

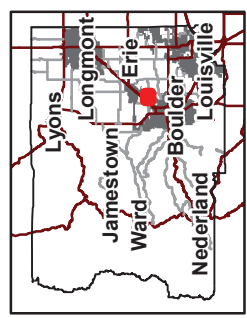
5745 JAY RD



- Subject Parcel
- Boulder County Open Space**
- County Open Space
- Joint
- County/Municipal Open Space
- County
- Conservation Easement
- OSMP Properties



Area of Detail Date: 6/24/2022



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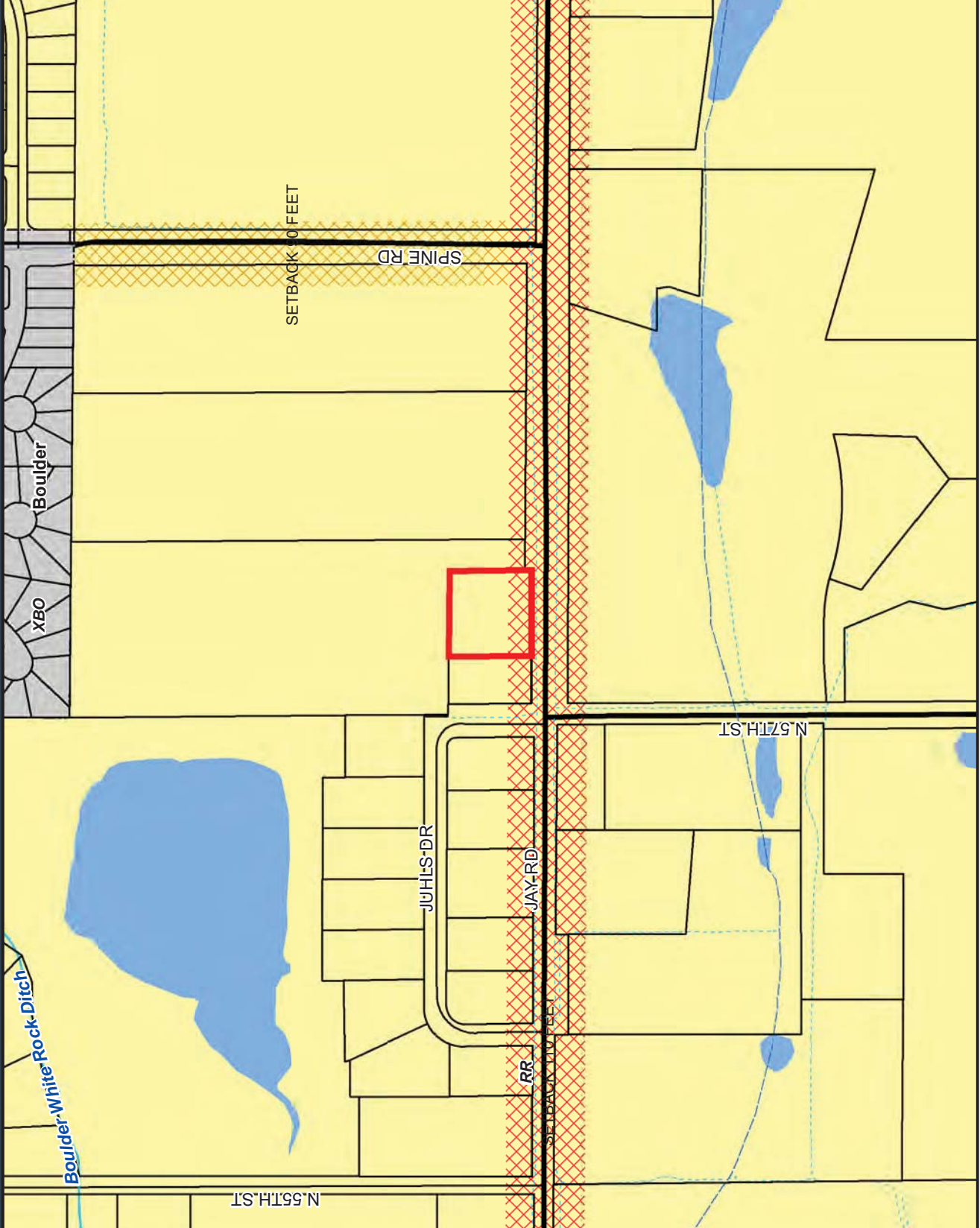


Community Planning & Permitting

2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

Zoning

5745 JAY RD



Subject Parcel

Major Road Setbacks

90 feet

110 feet

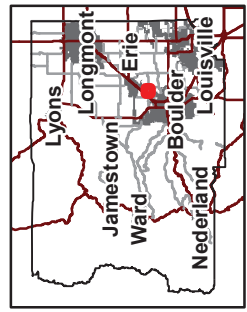
Zoning Districts

Rural Residential



0 0.035 0.07 Miles

Area of Detail Date: 6/24/2022



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Boulder County Land Use Department

 Courthouse Annex Building • 2045 13th Street • PO Box 471
 Boulder, Colorado 80302

 Phone: 303-441-3930 • Fax: 303-441-4856
 Email: planner@bouldercounty.org
<http://www.bouldercounty.org/lu/>

Office Hours: Monday — Friday 8:00 AM to 4:30 PM

Intake Stamp:

Docket #:

Board of Adjustment (BOA) Hardship Statement

Explain how the following hardship criteria for granting a variance have been satisfied. Please feel free to attach your statements using a separate piece of paper.

- A. There exists exceptional or extraordinary physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope.

The house was built in 1920, long before the current setbacks existed. Remodeling the front porch within the current setbacks would be impossible. Regarding the windmill, the location of the existing leach field prevented the construction to take place further from the back property line.

- B. Because of these physical circumstances, the strict application of this Code would create an exceptional or undue hardship up the property owner.

It seems that the only way to remodel the front porch within the current (extended) setback would entail moving the house to be further from the Jay Road right-of-way. Application of the rear setback would prevent the construction of the windmill.

- C. The hardship is not self-imposed.

At some point between 1920 and now, the setbacks, both front and rear, were extended to the point where initial construction of the house would have been precluded. At some point the rear setback was extended so as to make the current location of the old barn to be impossible. The current location of the windmill is about twice as far from the back line as is the old barn.

- D. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this Code.

The additions to the property do not adversely affect the adjacent properties. On the front, the house looks pleasing to passersby. The windmill is located as far from the road and the neighbors houses as feasible, resulting in >200', >300' & >600'. It was our intention to place the windmill in the most appropriate and pleasing location possible.

- E. That the variance, if granted, will not change the character of the zoning district in which the property is located, and is in keeping with the intent of this Code and the *Boulder County Comprehensive Plan*; and,

The addition of the front porch and the windmill enhance the character of the area in general, and the farm specifically. In determining the location of the windmill, we chose the location that was as far from the road and all neighboring homes. In this manner, we believe that the character of the area is best preserved. It has been noted that a windmill existed previously.

- F. That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Boulder County.

The granting of a variance for the front porch and the windmill definitely does not adversely affect the citizens of Boulder County. It is our goal that the granting of the variance would actually enhance the safety and welfare of the citizens of Boulder County. The addition of the covered front porch improves the quality of life of the residents as well as regular elderly visitors.

Applicant or Agent Signature:

Charlie Daraker

Date:

Nov 11, 2022

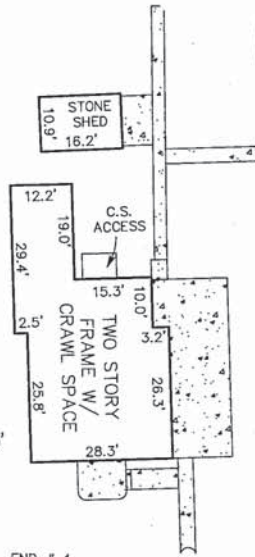


FLATIRONS SURVEYING, INC.

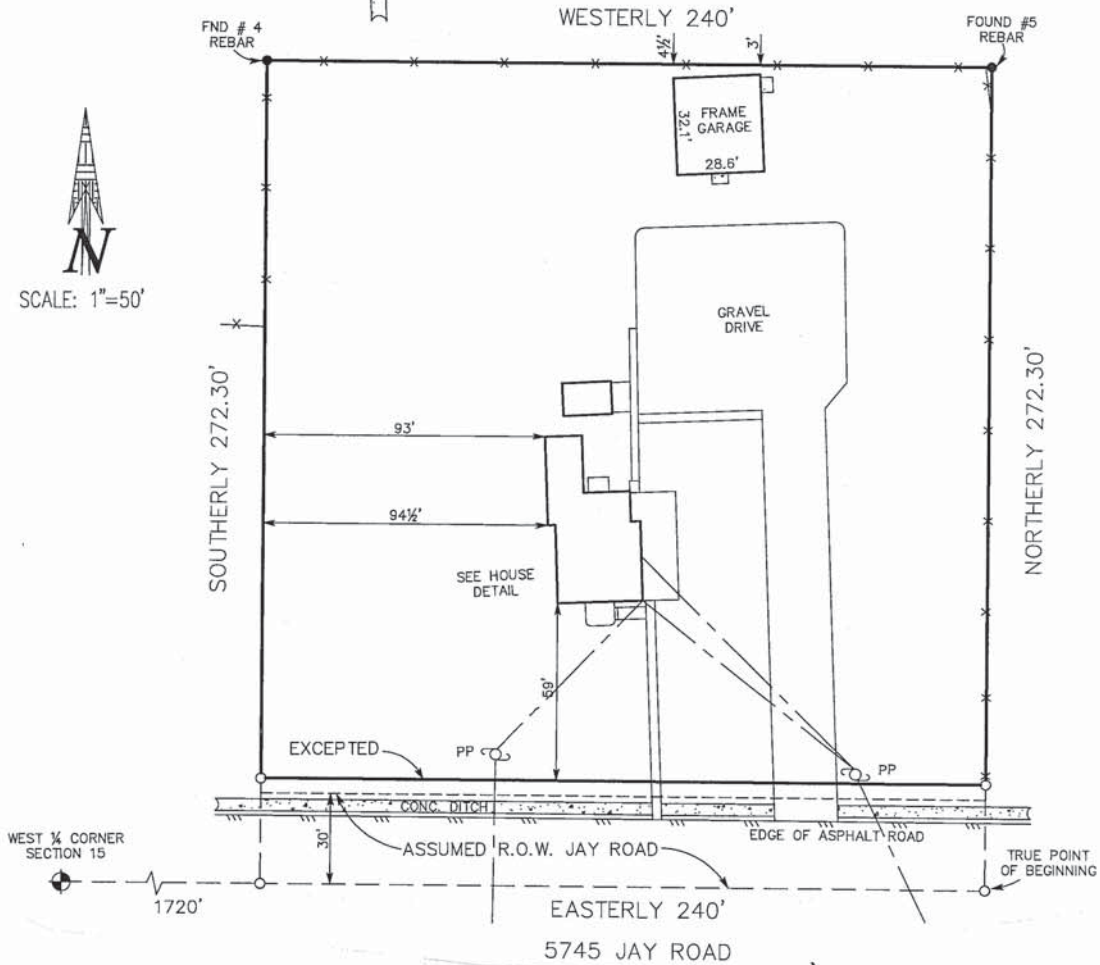
5717 Arapahoe Road
 Boulder, Colorado 80303
 (303) 443-7001

Sheet 1 of 2: Lot Overview
 See Sheet 2 for LEGAL DESCRIPTION
 and NOTES.

DETAIL SCALE: 1"=30'



SCALE: 1"=50'



John B. Guyton

John B. Guyton, Colorado L.S. #16406

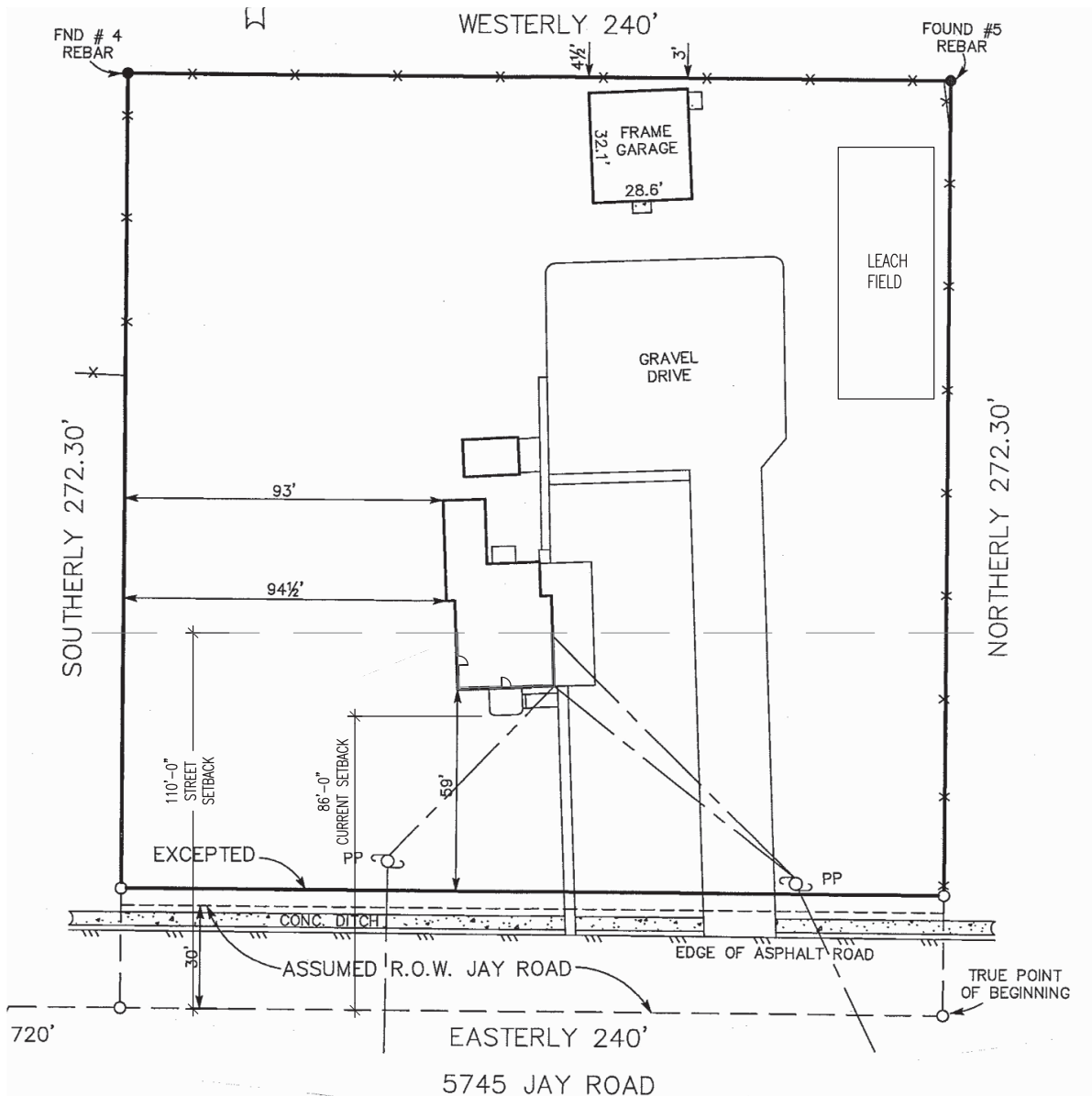
IMPROVEMENT LOCATION CERTIFICATE

I hereby certify that this improvement location certificate was prepared for BOULDER WEST FINANCIAL SERVICES and COMMONWEALTH LAND TITLE INS. CO., that it is not a land survey plat or improvement survey plat, and that it is not to be relied upon for the establishment of fence, building or other future improvement lines. I further certify that the improvements on the above described parcel on this date, September 5, 2000, except utility connections, are entirely within the boundaries of the parcel, except as shown, that there are no encroachments upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.

NOTICE: This Improvement Location Certificate is prepared for the sole purpose of use by the parties stated hereon. It is not a Land Survey Plat as defined by C.R.S 38-51-102(12) or an Improvement Survey Plat as defined by C.R.S 38-51-102(9). It does not establish property corners. A more precise relationship of the improvements to the boundary lines can be determined by a Land Survey or Improvement Survey. The improvements are generally situated as shown and only apparent (visible at the time of fieldwork) improvements and encroachments are noted. Flatirons Surveying, Inc. and John B. Guyton will not be liable for more than the cost of this Improvement Location Certificate, and then only to the parties specifically shown hereon. Acceptance and/or use of this Improvement Location Certificate for any purpose constitutes acknowledgement and agreement to all terms stated hereon.

Title Co. No. K122740
 Flatirons No. 00-37,195

Borrower Danaher & Valentine
 Cost \$175.00



5745 JAY ROAD - EXISTING SITE PLAN

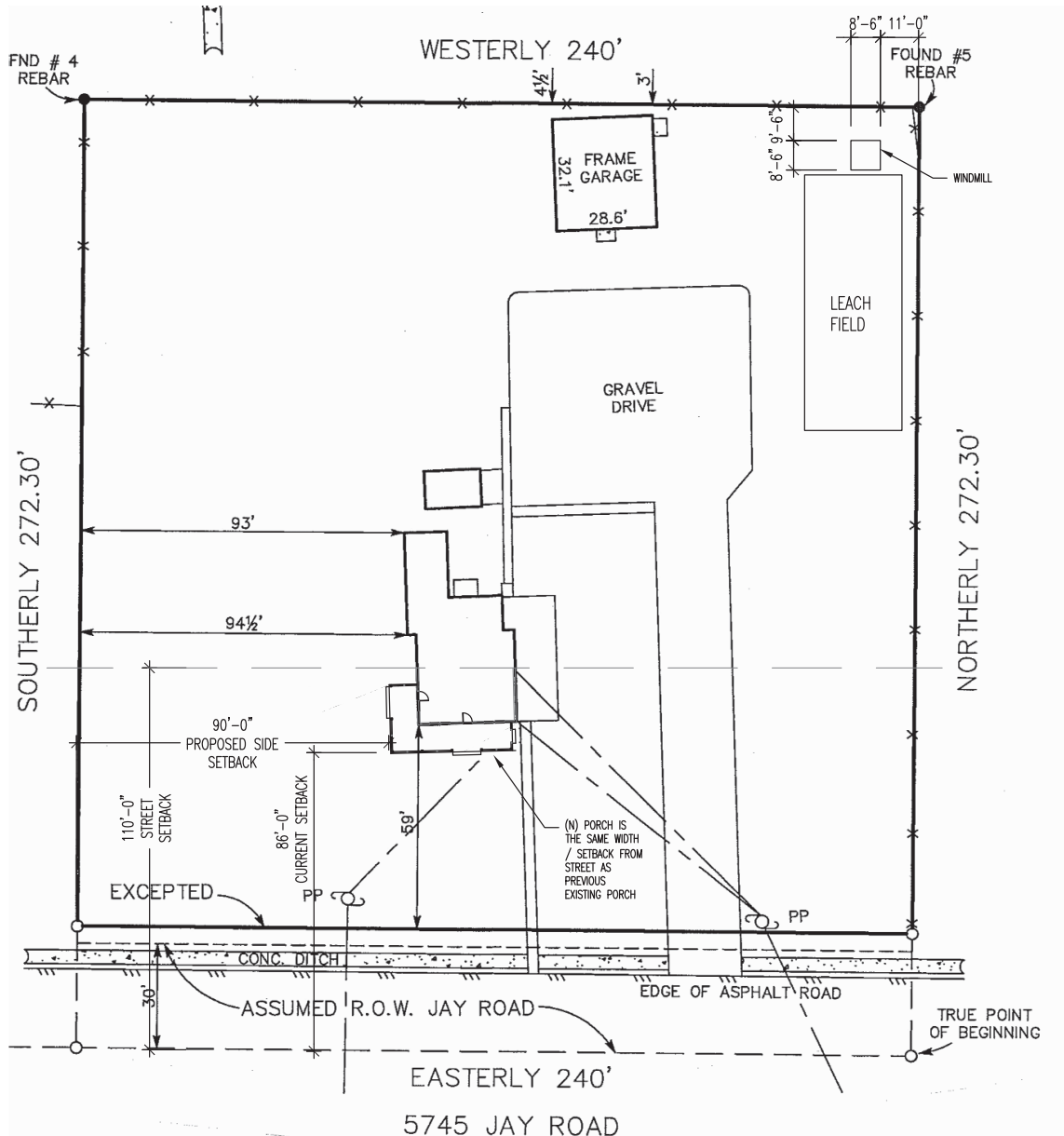
1"=400'-0"



Blue Creek Design

8831 SNOWBUNTING CT.
LITTLETON, COLORADO 80126
PH: 303.472.1311

EM: bluecreekdesign@gmail.com



5745 JAY ROAD - PROPOSED SITE PLAN

1"=400'-0"



Blue Creek Design

8831 SNOWBUNTING CT.
LITTLETON, COLORADO 80126
PH: 303.472.1311

EM: bluecreekdesign@gmail.com





ST. JOHNS

ST. JOHNS



Walker, Samuel

From: Carden, Timothy
Sent: Friday, March 31, 2023 10:57 AM
To: Walker, Samuel
Cc: Northrup, Elizabeth (Liz)
Subject: RE: Referral packet for VAR-23-0003: Danaher Setback Reductions project at 5745 Jay Road

Hi Sam,

Thank you for the opportunity to review VAR-23-0003. I have completed my review of the referral packet and as proposed this project should not impact the nearby conservation easements.

Best,

Tim Carden | Conservation Easement Stewardship Specialist
 Boulder County Parks & Open Space
 Pronouns: he/him/his
 5201 St. Vrain Road
 Longmont, CO 80503
 303-413-7533 (office)
tcarden@bouldercounty.org
[Boulder County Open Space Website](#)



New: Boulder County has a new website: [BoulderCounty.gov!](https://www.bouldercounty.gov/) Bookmark it today. Email addresses will transition at a later date.

From: Milner, Anna <amilner@bouldercounty.org>
Sent: Friday, March 31, 2023 8:58 AM
To: Historic <historic@bouldercounty.org>; #CodeCompliance <codecompliance@bouldercounty.org>; #AssessorReferral <AssessorReferral@bouldercounty.org>; #CAreferral <CAreferral@bouldercounty.org>; #CEreferral <CEreferral@bouldercounty.org>; Johnson, Curtis <cjohnson@bouldercounty.org>; Allshouse, Alycia <aallshouse@bouldercounty.org>; Stadele, Lee <leestadele@bouldercounty.org>; Stadele, Lee <leestadele@flagstaffsurveying.com>; Stadele, Lee <leestadele@bouldercounty.org>; Stadele, Lee <leestadele@flagstaffsurveying.com>; Steve Buckbee <sbuckbee@lefthandwater.org>; chrissmith@lefthandwater.org; jstruble@northernwater.org; bflockhart@northernwater.org; BDRCO@xcelenergy.com; Donna.L.George@xcelenergy.com; RanglosC@bouldercolorado.gov; hc_filesearch@state.co.us; drogers@brfr.org; Abner, Ethan <eabner@bouldercounty.org>; Hippely, Hannah <hhippely@bouldercounty.org>; Sheehan, Jack <jsheehan@bouldercounty.org>; Vaughn, Andrea <avaughn@bouldercounty.org>; Atherton-Wood, Justin <jathertonwood@bouldercounty.org>; Moline, Jeffrey <jmoline@bouldercounty.org>; Flax, Ron <rflax@bouldercounty.org>; Frederick, Summer <sfrederick@bouldercounty.org>; Goldstein, Andrew <agoldstein@bouldercounty.org>; HealthWaterQuality-EnvironmentalBP LU <HealthWQ-EnvironBPLU@bouldercounty.org>; Huebner, Michelle <mhuebner@bouldercounty.org>; Northrup, Elizabeth (Liz) <enorthrup@bouldercounty.org>; Sanchez, Kimberly <ksanchez@bouldercounty.org>; Transportation Development Review <TransDevReview@bouldercounty.org>; West,

Ron <rowest@bouldercounty.org>

Cc: Walker, Samuel <swalker@bouldercounty.org>

Subject: Referral packet for VAR-23-0003: Danaher Setback Reductions project at 5745 Jay Road

Please find attached the referral packet for **VAR-23-0003: Danaher Setback Reductions** project at **5745 Jay Road**.

Please return responses and direct any questions to [Sam Walker](#) by **April 17, 2023**. (Boulder County internal departments and agencies: Please attach the referral comments in Accela.)

Best Regards,

Anna

Anna Milner | Admin. Lead Tech.

Boulder County Community Planning & Permitting

Pronouns: she/her/hers

Physical address: 2045 13th St., Boulder CO 80302

Mailing address: PO Box 471, Boulder, CO 80306

(720) 564-2638 (Direct)

amilner@bouldercounty.org

Service hours are 8 a.m.-4:30 p.m. Monday, Wednesday, Thursday, Friday, and 10 a.m.-4:30 p.m. Tuesday

*My core working hours are 7am-5:30pm Tues - Fri

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www.bouldercounty.gov



**Right of Way & Permits**

1123 West 3rd Avenue
Denver, Colorado 80223
Telephone: **303.571.3306**
Facsimile: 303.571.3284
Donna.L.George@xcelenergy.com

April 17, 2023

Boulder County Community Planning and Permitting
PO Box 471
Boulder, CO 80306

Attn: Sam Walker

Re: Danaher Setback Reductions, Case # VAR-23-0003

Public Service Company of Colorado's (PSCo) Right of Way & Permits Referral Desk has determined there is a **possible conflict** with the above captioned project. How far away will the proposed windmill be from the existing overhead electric structures? It is not made clear on the drawings where the windmill is to be located.

Bear in mind that per the National Electric Safety Code, a minimum 10-foot radial clearance must be maintained at all times from all overhead electric distribution facilities including, but not limited to, construction activities and permanent structures; a 3-foot clearance must be maintained away from service lines.

Donna George
Right of Way and Permits
Public Service Company of Colorado dba Xcel Energy
Office: 303-571-3306 – Email: Donna.L.George@xcelenergy.com

Walker, Samuel

From: Dean Rogers <drogers@brfr.org>
Sent: Sunday, April 9, 2023 3:06 PM
To: Walker, Samuel
Subject: [EXTERNAL] VAR-23-0003

Sam,
Boulder Rural has no recommendations regarding LU-23-0003, the Danaher Setback Reductions Project at 5745 Jay Road.
Thank you,

Dean Rogers, Engineer

Boulder Rural Fire Rescue
6230 Lookout Road, Boulder, CO 80301
Office: 303-530-9575 | Cell: 720-498-0019
drogers@brfr.org | www.brfr.org





Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856
 Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.gov

Building Safety & Inspection Services Team

MEMO

TO: Sam Walker, Planner II
 FROM: Michelle Huebner, Plans Examiner Supervisor
 DATE: April 3, 2023

RE: Referral Response, VAR-23-0003: Danaher Setback Reductions. Variance request to reduce the required supplemental setback from 110 feet (required) to 86 feet (proposed) for construction of a new front porch and reduce the rear-yard setback from 15 feet (required) to 9' 6" (proposed) for a windmill.

Location: 5745 Jay Road

Thank you for the referral. We have the following comments for the applicants:

1. **Building Permit.** A building permit, plan review, and inspection approvals are required for the proposed front porch addition. A separate building permit is required for the windmill

Please refer to the county's adopted 2015 editions of the International Codes and code amendments, which can be found via the internet under the link:

2015 Building Code Adoption & Amendments, at the following URL:

<https://assets.bouldercounty.org/wp-content/uploads/2017/03/building-code-2015.pdf>

2. **Design Wind and Snow Loads.** The design wind and ground snow loads for the property are 155 mph (Vult) and 40 psf, respectively.
3. **Ignition-Resistant Construction and Defensible Space.** Please refer to Section R327 of the Boulder County Building Code for wildfire hazard mitigation requirements, including ignition-resistant construction and defensible space.
4. **Plan Review.** The items listed above are a general summary of some of the county's building code requirements. A much more detailed plan review will be performed at the time of building permit application, when full details are available for review, to assure that all applicable minimum building codes requirements are to be met. Our Building Safety publications can be found at: <https://assets.bouldercounty.org/wp-content/uploads/2017/03/b24-residential-plan-check-list.pdf>

If the applicants should have questions or need additional information, we'd be happy to work with them toward solutions that meet minimum building code requirements. Please call (720) 564-2640 or contact us via e-mail at building@bouldercounty.org



Parks & Open Space

5201 St. Vrain Road • Longmont, CO 80503
303-678-6200 • POSinfo@bouldercounty.org
www.BoulderCountyOpenSpace.org

TO: Sam Walker, Community Planning & Permitting Department
FROM: Ron West, Natural Resource Planner
DATE: April 5, 2023
SUBJECT: Docket VAR-23-0003, Danaher, 5745 Jay Road

Staff has no natural resource concerns with the proposed variances.



Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306
303-441-3930 • www.BoulderCounty.gov

February 27, 2023

TO: Sam Walker, Planner II; Community Planning & Permitting, Development Review

FROM: Ian Brighton, Planner II; Community Planning & Permitting, Access & Engineering

SUBJECT: Docket VAR-23-0002: Stevenson Variance

32050 Coal Creek Canyon Drive

The Development Review Team – Access & Engineering staff has reviewed the above referenced docket and has the following comments:

1. The subject property is accessed via State Highway 72 (SH72), also known as Coal Creek Canyon Drive, a Colorado Department of Transportation (CDOT) owned and maintained right-of-way (ROW). Legal access has been demonstrated via adjacency to this public ROW.
2. No site improvements have been proposed as part of the Variance Request. Future improvements to the access drive may require a Land Use review process.
3. Staff has reviewed the proposed variance and has no concerns.

This concludes our comments at this time.

Walker, Samuel

From: Barb Rogers <sugarxtr@gmail.com>
Sent: Friday, April 7, 2023 9:17 AM
To: LU Land Use Planner
Subject: [EXTERNAL] VR-23-0003

Hi Sam,

I am writing in response to docket # VR-23-0003 indicated in subject line. I am not clear why this is being requested now rather than not requiring them to be compliant after the fact? The porch has been completed and the Windmill has been erected some time ago, obviously without going through the process and paying for the proper permits and this was brought to your attention over a year ago.

The consistency or lack thereof with the Planning and Permitting department here is simply unacceptable and will create a big problem within our communities. The small remodel we just completed and paid thousands for, NOT just for the proper permits but thousands more to be able to even apply for the permits. There are several similar situations with current neighbors where we all had to "jump through" Boulder's over the top hoops.

It is your job to ensure that any variance and planning requests are approved not overlooked when brought to your attention. This sets an unfair precedent for those of us who go through the proper channels while others do not and then hope to not get caught.

Favoritism and looking the other way should not be accepted by our community planners. Be consistent so we have trust in what you are deciding to approve or not.

Best,

BR

Walker, Samuel

From: jessica brooks <jeccabrooks12@yahoo.com>
Sent: Monday, April 17, 2023 2:41 PM
To: LU Land Use Planner
Subject: [EXTERNAL] Docket VAR-23-0003

Dear Boulder County Planning and Permitting,

Reference Docket # VAR-23-0003

I am writing in support of my neighbors at 5745 Jay RD. They have requested a variance to reduce the required setback. Any upgrades to a neighbor's house helps the whole neighborhood. I have no concerns with their variance request.

Sincerely,

Jessica and Jim Hammerstone

5617 Jay Rd

Boulder CO, 80301

720-422-6436

Walker, Samuel

From: kamuran@aol.com
Sent: Friday, April 14, 2023 6:13 AM
To: LU Land Use Planner
Subject: [EXTERNAL] docket #VAR-23-0003

Dear Planner,

Please let this communication serve to support the upgrades made reference docket #VAR-23-0003 for the following reasons.

The house and property in question is in a pocket of unincorporated Boulder County. It is an old farm house, that we believe has been there for more than 50 years, when Jay rd was still a dirt road, and most of the surrounding properties were actively Ag properties. The constructed wrap around porch in my opinion totally upgrades the farm house look, and in no way impacts any of the neighbors either in a physical sense or visual sense. In our opinion, it compliments the look of the old farm house. The porch can't even be viewed from Jay rd, as there is a privacy fence blocking the view. Most of the adjacent properties are still active Ag properties, growing hay, and raising livestock. We see no safety, or health hazards occurring to any adjacent neighbors, and we feel it keeps within the Rural Residential look of unincorporated Boulder County.

We feel the same way about the windmill. It compliments the look of a rural farmhouse, in a time when we are losing too many adjacent properties to tear downs and modern houses while abandoning the rural Ag feel. Because of the windmills location, it doesn't appear to be a health or safety issue. Nor do we see it physically impacting neighboring or adjacent properties. We enjoy seeing the windmill, and hope you will allow it to stay.

In summary, we are totally supportive of both of the items in question, and feel it has upgraded the look of their property, while keeping with the rural residential and agricultural feel that we would like preserved in our neighborhood.

respectfully,

Kamuran Tepedelen
Sheri Marks
5554 Jay Rd
Boulder, CO 80301

Walker, Samuel

From: Kent Campbell <kentling@alumni.rice.edu>
Sent: Sunday, April 9, 2023 5:52 PM
To: LU Land Use Planner
Subject: [EXTERNAL] Docket # VAR-23-003

Docket # VAR-23-003

April 9, 2023

We wholeheartedly support the variance requests and improvements made to 5745 Jay Road.

The house at 5745 Jay Rd is one of the few remaining original “homes of the neighborhood”, built in 1920 along what one can presume was once a 2 rut, graveled at best, farm road. Allowances should be made to allow this house, built close to a century before the 110’ setback regulations were enacted, to have a viable front door and historically accurate windmill.

Previously, the house had no useable front door; the front door was a set of deteriorating concrete steps with no shelter from the elements. To be blunt, the front door was inhospitable and uninviting, and we’d visit through the back door, via a mudroom, which was less exposed to the elements. The current front door and porch is protected and inviting. This porch is 100% authentic and in alignment with the character of the original farmhouse in what was once an agricultural ‘neighborhood’ filled with hard working families. The front porch poses no threat to anyone from a safety perspective, and it’s unlikely any maintenance will be conducted in this arbitrary 110’ foot offset area as this would require working inside the house’s kitchen, living room and perhaps upstairs bedroom. What the current porch provides is a sense of community, family, and openness. It is so neat to see the family on the porch sitting and enjoying the company of what I presume are family, friends, or guests. When the future LOBO trail is established countless ‘slow travelers’ will look over and likely see the same thing – a cute original farmhouse filled with family and all of the associated life and excitement on the front porch and an inviting front door.

The variance requests at hand are quite equivalent to the implicit variance request being asked of the Boulder White Rock irrigation lateral owners on the south side of Jay. Here, BOCO is requesting encroachment onto the historical BWR lateral for the development of the future BOCO trail at a great, real imposition to the lateral owners/neighbors’ quality of life.

The messaging of a variance denial is that it’s better to tear down artifacts of the historical agricultural and rural nature of BOCO and build ‘sustainable’ monstrosities that have no character nor sense of place than to make improvements for quality of life even if it perhaps puts oneself at odd with modern regulations. I could have sworn the mandate of the county was sustainability and denial of the variance would require the improvements to be taken to the landfill. 7426 Jay Rd not

too long ago had the original farmhouse, now, it could be any house, anywhere. There is nothing inviting about this new build, though it's clearly 100% in zoning compliance (at the expense of a farmhouse's worth of landfill waste and the energy and resource consumption to build the new house.)

As to the windmill's offset, our property, not the complainant's, is the most impacted by its placement and we 100% fully love it. Our house is the closest structure of any nature to this location.

The windmill's site placement has no impact on the adjacent property. The windmill resides in a corner/elbow location and the impact of it being 1.2' from the property line or 12' or 25' has no impact. It's clearly congruent in style and siting with what are 'grandfathered' structures. For 100's of feet is a field and there will never be any future structures sited even remotely close to this spot – the current owner or future owners would have to block their only road access to this property to pursue such an improvement. The complainant who initiated this clearly has no objection to the 0' offset of a different neighbor with a likely unpermitted structure.

To any outside perspective the windmill could have been there for the last 100 years. I'd venture a guess there was once a windmill on the original farm.

What this windmill does provide is a reminder of what Boulder Valley once was. The view of the setting sun through this is so striking, it should be a movie scene with an original barn and farmhouse below. The rural viewshed is only improved by adding this authentic piece of history. It's humorous that the complainant initiating this zoning violation is using a viewshed argument provided by someone else's property as a selling point but finds this historical improvement a detriment. [And the 'selling' viewshed contains several illegal structures the County has known about for several years and yet refuses to act upon.]

So, how do neighbor properties impact property values? Either by sale prices or improvements. This is a case of 5745 Jay Rd's improvements providing a beautiful improvement, sense of history, community and authentic viewshed. These actions are only positive influencers on all our property's values. These owners have the option of selling their property, scraping the house, or staying and making improvements on this historical property. They've chosen to stay and improve. Kudos to them!

To summarize, we wholeheartedly support this neighbor and anyone else in their attempt to preserve the historical nature and character of what was once an agricultural and family centric 'neighborhood'. Both improvements will only improve the neighborhood regarding a sense of history and community and also property values.

Common sense would dictate compromise. Charge a permit fee, maybe a penalty, and move on.

Thanks,

5801 Jay Rd Neighbors

Walker, Samuel

From: Richard Luna <rjluna51@gmail.com>
Sent: Friday, April 14, 2023 12:16 PM
To: Walker, Samuel
Subject: Re: [EXTERNAL] Fwd: 5745 Jay Rd. - Windmill, Bus, Etc.

Mr. Walker,

I'd like to submit the following comments for the record (I'm OK with also including the email chain after these comments):

Dear Boulder County Planning:

I filed the complaint(s) regarding the windmill and porch addition at 5745 Jay Rd. and I received the notification of the Public Hearing Notice taking place on May 5 (and have seen the info. that appears on the Boulder County website) and think that the description ('Proposal' in the letter and online) is misleading, it states:

Project Description as Proposed:

Danaher Setback Reductions

Variance request to reduce the required supplemental setback from 110 feet (required) to 86 feet (proposed) for construction of a new front porch, and reduce the rear-yard setback from 15 feet (required) to 9' 6" (proposed) for a windmill.

This suggests that Mr. Danaher is requesting the variances to construct "a new front porch" and put up "a windmill." **Both of these were constructed over a year ago without permits - these are not 'new' to be built structures.**



photo 5:37pm 11/6/2021

The windmill was installed over the weekend of November 6, 2021 and, to the best of my recollection, the porch was completed in the spring of 2022 - well over a year ago.

It appears that Mr. Danaher made the decision that he didn't need permits (even though there's a significant history of permits for his property during the time he's owned it) - a visit to the County website or call to the Planning Department would have answered any questions. Instead he appears to have decided to go with the odds that he could escape being noticed and thereby avoid the: applications, conditions, inspections, current setbacks, fees and and re-assessment of the value of his property (and likely increase in property taxes) that would come with getting a permit. It seems he rolled the dice with the hope that he wouldn't get reported. He took the chance that in the worst case he'd ask for 'forgiveness instead of permission' because the structures are already built and would the County *really* require him to remove them because of no permits and a few feet of encroachment into current setbacks?

If the County is not prepared to require Mr. Danaher to remove and/or relocate the windmill and new porch then, I believe that you're giving him preferential treatment that's not given to all other applicants who play by the rules and live with the County's decisions; see the recent County denial of a variance of the same 110' setback - to 90' not 86' - to build a garage at 4189 57th St. - about 200' yards to the W of Mr. Danaher's property.

Regarding the windmill specifically:

- Mr. Danaher concludes that since the setback of the barn is allowed to be 3' because it is a non-conforming structure, then that means that new structures (i.e. the windmill) can also be 3' from the back property line. If you concur with that reasoning, then the 15' setback is never going into effect as long as there's non-conforming barn, chicken coop, etc., that remains standing along 5745's back property line.
- The height limit according to what I find in the County regulations is 30', has the County obtained its own measurement of how tall the windmill is?
- In his narrative he mentions: "we recently installed (Nov. 6 of 2021) an antique Aemotor windmill." What condition is it in? What does the tower and windmill weigh? How was it installed and should the County have inspected the foundation before it was buried?
- And even though far-fetched (until you see it on the 10pm news); we get strong winds and if the windmill tower were to fail and topple over it would likely be toward the E and likely land on our driveway. I think having some assurance as to the integrity of the windmill and how it was installed would be prudent.

Thank you for your time and I'd be happy to respond to any questions.

Richard Luna
5775 Jay Rd.
303-931-5625
rjluna51@gmail.com

On Tue, Mar 28, 2023 at 2:00 PM Walker, Samuel <swalker@bouldercounty.org> wrote:

Good afternoon Richard,

As Dale said, I'm the planner assigned to conduct the review for Mr. Danaher's request for a zoning Variance at 5745 Jay Road. I'd like to incorporate your comments into the record for the application, and I can do so by including the

email chain below or a distilled version of it from your perspective. All comments are publicly available, and are included in the packet sent to the applicant as well as the Board of Adjustment one week prior to the public hearing (the packet is also made available to the public at the same time).

Currently, I'm anticipating that this item will be heard by the Boar of Adjustment on May 5th unless it's delayed for some reason. I have begun (but not yet completed) the application review, and anticipate conducting a site visit sometime within the next two weeks. Please let me know if you have any questions in the meantime.

Sam Walker

Planner II | Boulder County Community Planning & Permitting

2045 13th Street, Boulder, CO 80302

Ph: 720-564-2738

swalker@bouldercounty.org



From: Case, Dale <dcase@bouldercounty.org>
Sent: Tuesday, March 28, 2023 11:26 AM
To: Richard Luna <rjluna51@gmail.com>
Cc: Walker, Samuel <swalker@bouldercounty.org>; Frederick, Summer <sfrederick@bouldercounty.org>
Subject: RE: [EXTERNAL] Fwd: 5745 Jay Rd. - Windmill, Bus, Etc.

Hi Richard,

The application was submitted and Sam Walker is the assigned planner. I have copied him on this e-mail. He can help you with timing of referral and hearing questions. Thanks.

Dale Case

From: Richard Luna <rjluna51@gmail.com>
Sent: Monday, March 27, 2023 11:07 AM
To: Case, Dale <dcase@bouldercounty.org>
Subject: Re: [EXTERNAL] Fwd: 5745 Jay Rd. - Windmill, Bus, Etc.

Mr. Case,

Hope you are well. I'm checking in regarding the status of the windmill at 5745 Jay Rd.; in your last email of Feb. 7 you mentioned that "The application for their variance is on our submittal schedule for March 13." Since that was 2 weeks ago should I expect to see a 'variance request' sign in front of 5745 and a postcard in the mail in the near future?

Thank you for your time.

Richard Luna

On Tue, Feb 7, 2023 at 1:56 PM Case, Dale <dcase@bouldercounty.org> wrote:

Richard,

Variances are a very high bar to get in the County. A proposal must meet all the variance criteria in 4-1202 of the code to be granted a variance. That said, I don't have the ability to approve or deny variances. That power rests with the Board of Adjustment, and Mr. Danaher has the ability and is on the schedule to apply for that process. During that review the proposal will be fully evaluated based on the criteria, a sign will be posted on-site, and neighbors will be notified of the process. Public comment will be taken both during the review and at a public hearing held by the Board of Adjustment. The application for their variance is on our submittal schedule for March 13. We will continue to stay enforcement until the process is complete. Feel free to check back on the progress and if we have received an application.

Thank you

Dale Case

From: Richard Luna <rjluna51@gmail.com>
Sent: Thursday, February 02, 2023 7:03 PM
To: Case, Dale <dcase@bouldercounty.org>
Subject: [EXTERNAL] Fwd: 5745 Jay Rd. - Windmill, Bus, Etc.

Mr. Case,

I'm sure there are extensive demands on your time in the new year, in case you overlooked it, I'm forwarding the email that I sent to you on January 12.

As I have consistently stated: I object to any variance to the setbacks for Mr. Danaher's **spontaneous and unpermitted installation** of the windmill at the NE corner of his property. By my measurements it is 5' into the 15' back setback and I suspect might be taller than the stated limit of 30'. **As I mentioned in my email of Jan. 12: on 3 occasions I was told that there are no variances for setbacks, 2 times by Mr. Rounds and once by the Planner on call - she indicated the answer is no except in situations with extenuating circumstances (physical obstacles, terrain....) of which I don't think Mr. Danaher's project has.**

Below are the notes I took of each conversation: (VT = Voicemail To) (VM = Voicemail) (TT = Telephone Call To)

Contact details

irounds@bouldercounty.org • Work

[303-441-3984](tel:303-441-3984) • Work

[2045 13th St](#)
[Boulder, CO 80302-5201](#)
[US](#)

[Add birthday](#)

2022-06-06 VT: I was under the impression that he was leaving this post - maybe even BoCo; but since his name is on the VM greeting: I want to talk about 5745 Jay Rd. - letter to comply was sent end of March, they had 30 days to come to some agreement/resolution, it is now more than 2 months. **In 2 past conversations he confirmed that the rear setback is 15' and the windmill is 10' and he also indicated variance aren't granted for that. I also talked with a planner on 5/26 (don't remember her name) and she confirmed setbacks and also that variances would only be in unusual circumstances like a steep slope, etc.** I'd like to talk and I think you know where I'm going with this.

2022-05-26 TT: Planner on Call - confirmed that setbacks are: 25' front, 7' side, 15' back. Jesse Rounds is leaving so Scott Weeks will take over this file and he's out of the office until June 6. Verified that the County doesn't care if a license plate is from out of state?!

2022-05-06 TT:(Had left him VM) Wanted to follow up on Danaher's violations; particularly the windmill. I recapped that I recall during our earlier conversation: I asked what setbacks applied to the windmill and he paused to confirm them and told me that they are 7' from the side lot line and 15' from the back. And also asked if there were variances granted to setbacks? He had said no. On this conversation he confirmed that was correct. I told him that I measured it to be 10+/- from the side and the back both. Told him as I understood it they had 30 days to respond to the letter of complaint dated the end of March (3/31/22); he seemed to suggest that he wasn't sure of the date and sort of implied that there was some wiggle room. I told him the 30 days was up the end of April. I told him that based on the 'no variance' statement, then the windmill has to be moved, correct? He said or removed. He said that they have a heavy workload and try to prioritize matters of a more serious nature. I told him that my complaints about the unlicensed bus go back years (to at least 2018). He said the bus is licensed and operational - I told him that it doesn't have a CO license plate as vehicles are required to have after 90 days by Colorado law. He said that the bus is operational, has a license plate and the County doesn't enforce the state law, just that it has a license plate!? Told him that regarding the windmill I'd be 'squealing like a pig' if BoCo doesn't require it to be moved or removed. Thanked him for his time and apologized if it got a little excited.

2022-04-22 TT: (His name was on the form from the online complaint that I submitted about 5745's windmill on 11/8/2021). Asked about status of my complaint? Waiting for 30 day notice to respond to expire (end of April). Do you need permit for windmill? Yes. Does application notice need to be posted and can neighbors have input? No. Are there setbacks? Yes, 7' from the side (I measured 10'+/-) and 15' from the back (I measured 10'+/-). Can you get a variance from setbacks? No. Are inspections of the installation required? Yes (sounded not certain). Do you make him dig up foundation to make sure it meets requirements? No necessarily - engineer could certify that it is OK.

I'd appreciate a response and an update on what's happening with my complaints regarding Mr. Danaher's violations. It seems to me that there's been ample time for this to be resolved.

Thank you for your time.

Richard Luna

----- Forwarded message -----

From: **Richard Luna** <rjluna51@gmail.com>
 Date: Thu, Jan 12, 2023 at 11:34 AM
 Subject: RE: 5745 Jay Rd. - Windmill, Bus, Etc.
 To: Dale Case <dcase@bouldercounty.org>

Mr. Case,

I hope that you, your family and friends had a nice holiday season and that your new year is off to a good start and has interesting possibilities to look forward to.

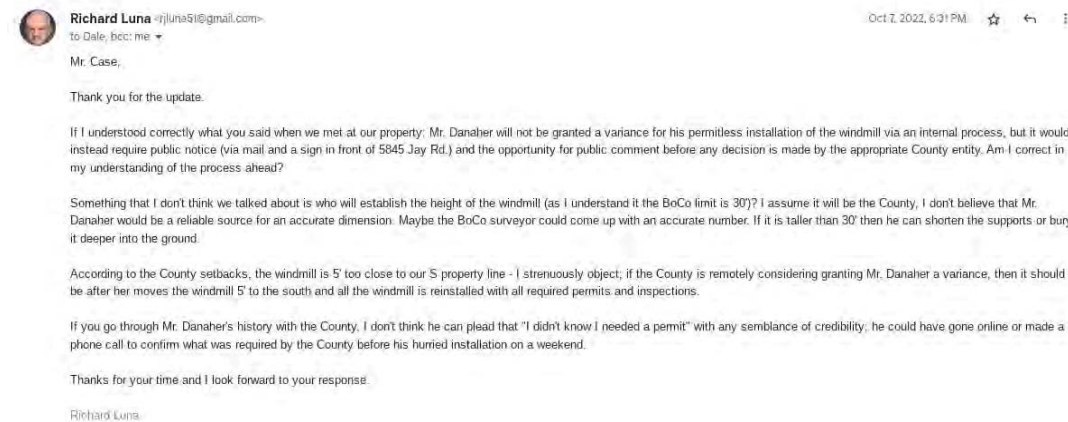
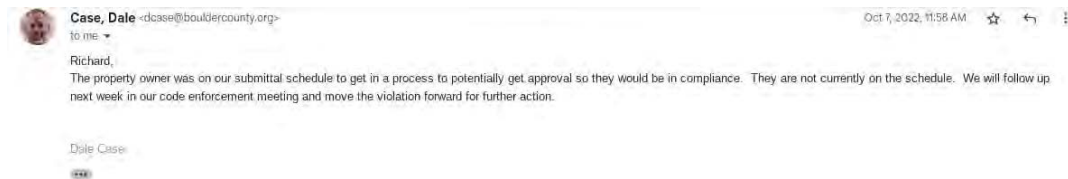
I purposely waited until after the first of the new year to touch base.

As you may recall, we first met on August 3 when you came to our property (5775 Jay Rd.) and I went over my complaints regarding Mr. Danaher's activities: the unlicensed vehicles, improvements/additions to his home without permits and the installation of 'the windmill' in early November of 2021. I filed complaints (some items more than one) via the BoCo website, and before filing a complaint I always talked to someone to verify that what I was complaining about was indeed a violation of BoCo regulations.

During that meeting I walked away with the understanding that Mr. Danaher would have to make application(s) for the work that he'd done and the installation of the windmill and the process would include requesting any variances needed - namely the rear setback violation for the windmill and possibly the height of it. And I, and any nearby and/or interested parties, would be notified via mail and the somewhat common signs placed in front of properties notifying the public of a variance request.

On October 4, 2022 I followed up with you to get an update on the status of Mr. Danaher's violations; the emails between us follow:

5745 Jay Rd. - Windmill, Bus, Porch and Siding Additions Update?



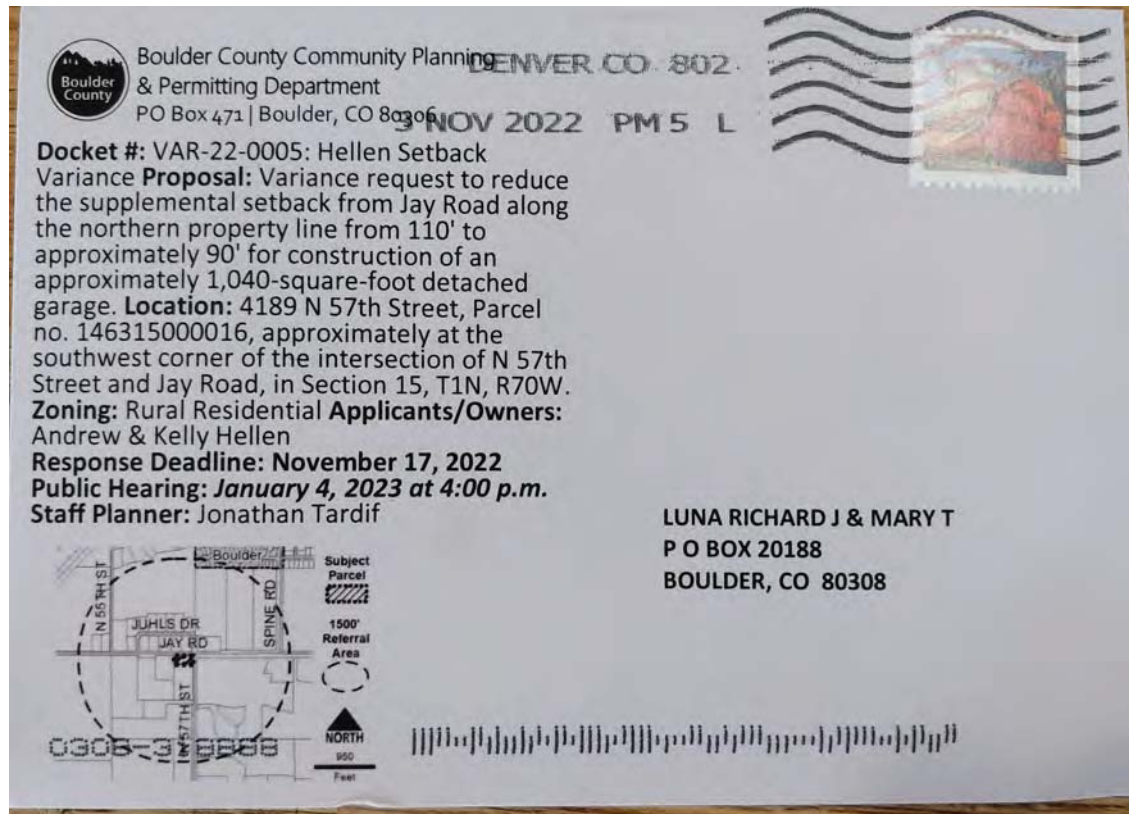
I've never heard anything since then, not via notification of a variance request via mail or sign in front of Mr. Danaher's property or from you or someone in your department.

I can see that getting a building permit for the siding and new porch might be appropriate via an internal process (and I would hope that there would be some financial penalty to discourage future violations) but not for the installation of the windmill and its violation of the rear setback and possibly its height. In my notes of conversations with members of your staff I was told 3 separate times that setback variances are not granted (told that 2 times), or only granted for unusual circumstances about a particular location, elevation variations, etc. (told that once) - things that don't apply to Mr. Danaher's property.

Here's a photo that I took of Mr. Danaher's windmill on 11/1/22 a couple of days after I noticed that they had brought in soil enhancements as though a tulip bed was being prepared for next spring. You wouldn't ordinarily do that if there's any chance that you might have to move your windmill 5' to the south because you're in violation of the rear setback. Did Mr. Danaher know something that I don't?



Here's a typical BoCo postcard that I've gotten a number of times about a requested variance or other issue regarding a nearby property, I received this one around 11/4/22 regarding a variance for a to-be-built garage at 4189 N 57th St. - less than 150 yards to the W from the entrance 5745 Jay's driveway.



Would these applicants have been smarter to have done 'a Danaher' and have poured a pad for their garage (the work would take place behind an existing fence and would be unlikely to be noticed or complained about by someone casually driving or walking past the property) and then on a weekend (like Mr. Danaher did with his windmill) have their garage installed from pre-built wall sections and wait to see if they could escape the variance and permitting process and related costs and revision to the assessed value of their property and subsequent increase in property taxes?

Except for the the cheating part, my wife and I had a structure built in Denver in the span of 2 days:



Feb. 22, 2011



Feb. 24, 2011

Correct me if I'm wrong, but given the time that's elapsed and the 'tulip bed' preparation, I suspect that you (your department) have cut a deal with Mr. Danaher and the terms and extent of that deal are not intended for dissemination to the public. If I'm wrong, then when can I expect to see a 'variance' sign in front of 5745 and to get a postcard from Boulder County notifying me? After all, the windmill was installed 14+ months ago.

If what I suspect has taken place - or is in the process of taking place - then it is evidence that not all citizens are treated equally and adds fuel to the belief that corruption and 'good 'ol boy' agreements are sometimes a part of how our government agencies operate. If I'm right, then what does this say about the future of our society and country and the integrity of the laws and agencies that we pay for and rely on? My wife and I have 7 grandchildren, this is not the kind country that I want to pass on to them.

If Mr. Danaher's windmill is not over 30' high and is located in accordance with BoCo *setbacks* and any required permits, inspections and public input, then I don't care. But if that's not the case and 'a deal' has been made, who should I contact next in the hierarchy of Boulder County to air my grievance?

Thank you for your time.

Richard Luna

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5775 Jay Rd.

Boulder, CO 80301

(Mail to: PO Box 20188, Boulder, CO 80308)
303-931-5625

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Walker, Samuel

From: Tracy White <twtracywhite@gmail.com>
Sent: Monday, April 17, 2023 8:12 AM
To: LU Land Use Planner
Subject: [EXTERNAL] Docket VAR-23-0003;Danaher Setback Reductions

Dear Planner,

I would like to support the upgrades made to Var 23-0003.

The porch and windmill are aesthetically pleasing. It is nice to have original architecture with subtle updates.

Regards,

Tracy White

Walker, Samuel

From: William D Bowman <william.bowman@colorado.edu>
Sent: Sunday, April 16, 2023 12:04 PM
To: LU Land Use Planner
Subject: [EXTERNAL] VAR-23-0003- Danaher setback

Community Planning and Permitting Department
Boulder County

To Whom It May Concern:

We write in support of the variance request of Charlie Danaher and Rose Valentine for reduced required setbacks for porch construction and a windmill. We live north of their house, which is visible from our property (5828 S Orchard Creek Circle).

The setbacks they request are reasonable and will not have any adverse visual or environmental impacts. The Danaher/ Valentine house was constructed prior to the designation of the current required setbacks. The front of the house is too close to Jay road to allow porch construction with the current setback requirement. The proposed porch is the same dimension as the existing porch, and will be 86 feet from the Jay road right of way. The proposed porch will provide an attractive front to the house, and is not visible from the road due to a fence.

The windmill is consistent with the rural context of the area, and provides an attractive feature. We have included the Danaher/ Valentine windmill in photographs of sky elements (e.g. full moon, sunset clouds), and hope to continue to in the future. We understand the windmill can not be re-sited to the setback requirement (15 feet) due to the presence of a leach field.

We support the proposed changes.

William D. Bowman
Jenifer Hall-Bowman

*William D. Bowman
Emeritus Professor
Department of Ecology and Evolutionary Biology
University of Colorado, Boulder*