

**RESOLUTION NO. 2013-013**

**A RESOLUTION OF THE  
BOARD OF ADJUSTMENT OF OURAY COUNTY, COLORADO  
TO APPROVE A VARIANCE FOR A STRUCTURE LOCATED AT  
53 CAMINO SAN JUAN, RIDGWAY**

**WHEREAS**, the Ouray County Board of Adjustment is authorized to hear appeals from any person aggrieved by his inability to obtain a building permit or by the decision of any administrative officer or agency of the county in enforcing the provisions of the Ouray County Land Use Code ("LUC") by Section 30-28-118 of the Colorado Revised Statutes; and

**WHEREAS**, an application by Richard Tucker for a variance from the LUC came before the Board of Adjustment upon the following set of facts:

1. Richard Tucker ("Owner") applied for a building permit for a residence and garage/residence on a lot located in the South Slope Zone, 53 Camino San Juan, Lot 1 - Windfall Subdivision.
2. The subject lot is within the Visual Impact Corridor as defined in Section 9 of the Ouray County Land Use Code.
3. Staff conducted an on-site review of the proposed construction using story poles erected by the builder and determined that although both structures *skylined*, the potential or perceived skyline breaks should fall within the gap rule or allowance as detailed in Section 9.3 C (1)(2).
4. The Land Use Department issued a building permit for the residence and garage/residence in August of 2013.
5. After construction commenced on the garage/residence, the Land Use Department was contacted by a neighboring property owner who informed Staff that the subject structure might be in violation of the Visual Impact Regulations.
6. Staff conducted an on-site inspection of the garage/residence and determined that the structure broke the skyline to a greater degree than expected based upon the story pole review.
7. Staff informed the owner's architect/agent (verbally) that in order to avoid the issuance of a *Stop Work Order*, the owner must agree to immediately apply for a variance, and agree to plant a tree or trees to mitigate the skyline break if a variance was not approved by the Board of Adjustment.
8. The owner applied for a variance for the garage/residence and the application for variance was reviewed by the Visual Impact Review Committee as required by Section 19.8 of the Land Use Code.
9. The Visual Impact Review Committee conducted a properly noticed public hearing on December 5, 2012. At the conclusion of the hearing the Committee recommended denial of the variance as it was the opinion of the committee that "...a variance after the fact, would create a potential negative precedent in regards to Section 9".
10. At the request of the County Planner, the County Attorney provided an analysis and interpretation of Section 19.8, and specifically whether an applicant can apply for a variance from Section 9 – Visual Impact Regulations after a violation of Section 9 has been identified and concluded that "*If you as County Planner have made the determination that the construction does not meet the requirements of Section 9, the landowner can appeal that decision to the Board of Zoning Adjustment.*"

**WHEREAS**, the Board of Adjustment, of Ouray County, Colorado, reviewed all materials regarding the subject variance including a report and recommendation from Staff, minutes and resolution from the Visual Impact Review Committee, memo from the County Attorney, and all materials submitted by the applicant/agent; and

**WHEREAS**, public comments were taken and received at the hearing; and

**WHEREAS**, a member of the Board of Adjustment made a motion to approve the subject variance, and stated in the motion that the reasons for approval were "...based on findings of the narrowness of the lot, the way the lot paralleled County Road 24, the topographical relief, undulating topography, the fact that there was a hundred-foot setback required on a portion of the property and twenty-five-foot setbacks on the uphill portion, also finding that the architect, builder and owner worked diligently with Land Use to come up with building siting and designs that very intentionally blended with the natural surroundings including but not limited to the exterior siding, the roof, the trim, and the window frames all blend with the shadows..."; and

**WHEREAS**, it was further stated in the motion for approval that "this project met the spirit and intent of Section 9 and therefore a variance should be granted."; and

**WHEREAS**, it was implied by additional comments contained in the motion that granting the variance after construction had commenced was not precedent setting because the issue of skyline breakage was not anticipated from a pre-construction site visit, and the ability to determine the compliance with Section 9 pre-construction was "within the margin of human error on all sides."; and

**WHEREAS**, the Board of Adjustment voted unanimously to approve the subject variance.

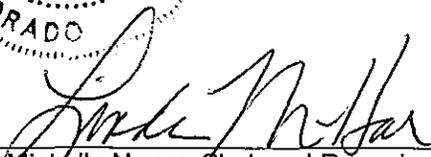
**NOW THEREFORE, BE IT RESOLVED** that the Board of County Commissioners, sitting as the Board of Adjustment, of Ouray County, Colorado, approves the subject application for variance for the garage/residence located in the South Slope Zone on Lot 1 of the Windfall Subdivision, 53 Camino San Juan.

**APPROVED AND ADOPTED THIS** 12<sup>th</sup> **DAY OF MARCH, 2013.**

Voting for: Commissioners Fedel, Padgett and Batchelder  
Voting against: None

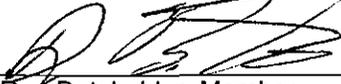
BOARD OF COUNTY COMMISSIONERS OF  
OURAY COUNTY, COLORADO SITTING AS THE  
BOARD OF ADJUSTMENT



  
Michelle Nauer, Clerk and Recorder  
By: Linda Munson-Haley, Deputy Clerk of the Board

  
F. Mike Fedel, Chair

  
Lynn M. Padgett, Vice-Chair

  
Don Batchelder, Member