

GUNNISON COUNTY BOARD OF ADJUSTMENT
AGENDA: May 22nd, 2024

Blackstock Government Center 221 N. Wisconsin, Suite D
In Person and Zoom

- 1:30 p.m.
- **Call to order; determine quorum.**
 - **Approval of minutes from the April 23rd, 2024, Board of Adjustment meeting**

Unscheduled citizens: A brief period in which the public is invited to make general comments or ask questions of the Board or Planning Staff about items which are not scheduled on the day's agenda.

1:35 p.m. **APPEAL-24-00004 | Snowmelt Variance request for Crested Butte Fire Protection District**

Pursuant to *International Energy Conservation Code (IECC), 2021 edition, Section C110: Board of Appeals* amended and adopted under Gunnison County Resolution 23-22, the CBFPD has submitted an appeal of the decision by the Gunnison County Building Office to deny a building permit under the *IECC, Section C403.13.2*, as amended, which prohibits snow- and ice-melt systems.

2:15 p.m. **APPEAL-24-00002 | Appeal of Decision relative to the development of a triplex on Lot 8, Block 9, Crested Butte South, Filing 2**

Susan Tyzzer, Craig Maestro, Norman Dumas, Rebecca J. Bell Dumas, and Andrew Tyzzer are appealing the Gunnison County Assistant Manager for Community and Economic Development's Decision from April 4, 2024 relative to the development of a triplex approved on Lot 8, Block 9, Crested Butte South Filing 2.

Adjourn

Join on Zoom:

https://us06web.zoom.us/j/86970942444?pwd=kV9BCuhVATYTH4DyTH1cEdGqAh3VeQ.HciwECstGjrF_jM

NOTE: Unless otherwise noted, all meetings are conducted in the Blackstock Government Center Meeting Room at 221 N. Wisconsin St. in Gunnison, across the street from the Post Office. This is a preliminary agenda; agenda times may be changed by the staff up to 24 hours before the meeting date. If you are interested in a specific agenda item; you may want to call the Planning Department (641-0360) ahead of time to confirm its scheduled time. Anyone needing special accommodations, please contact the Planning Department before the meeting.

**GUNNISON COUNTY BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
Tuesday, April 23, 2024**

The Gunnison County Board of Adjustment conducted a regular meeting in the Planning Commission Meeting Room in the Blackstock Government Center, 221 N. Wisconsin, Gunnison, Co. and on Zoom

Present:

Chairperson-Laura Puckett Daniels Vice-Chairperson- Liz Smith BOCC – Jonathan Houck Board of Adjustment Member - Julie Baca Board of Adjustment Member – Andy Tocke	Assistant County Manager for Community and Economic Development-Cathie Pagano Planning Director – Hillary Seminick Building and Environmental Health official – Crystal Lambert County Attorney – Matthew Hoyt Deputy County Attorney – Alex San Filippo-Rosser Planning Technician – Jena Greene Others present as listed in text
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Absent: None

Recused: None

Zoom: Julie Baca

With a quorum present Chair Laura Puckett Daniels opened the April 23, 2024, meeting of the Board of Adjustment at 1:25 pm.

Appellant Drew Fink was present at the meeting. His legal representation attorney Daniel Spivey, also present at the meeting, and attorney James Silvestro, who joined the meeting on Zoom.

Chair Puckett Daniels noted that the approval of the minutes would need to be tabled. At 1:53 pm on April 22, 2024, the appellant had asked that Commissioner Puckett Daniels recuse herself due to conflict of interest. Puckett Daniels cited Board of Adjustment bylaws section 6.C. which stated that this instance of conflict of interest fell outside of the categories listed in the bylaws and, per the bylaws, would be referred to the County Attorney for evaluation. No action could be taken on the February 27, 2024, minutes since Puckett Daniels was present at that meeting and the discussion was related to the subject at hand; and Puckett Daniels would need to remove herself from the discussion until a finding was received. Puckett Daniels exited the room and Vice Chair Liz Smith resumed the meeting.

County Attorney Hoyt requested that the Board ask the appellant to provide further information in order for him to perform a thorough analysis of the conflict of interest. Hoyt asked for clarification concerning Commissioner Puckett Daniel’s participation in the previous meeting in the determination of standing to appeal and the decision to hold a public hearing. Hoyt also requested that the appellants clarify if they waived their claim since they were aware of the evidence from the CORA request done before the February 27 meeting. Further, Hoyt stated that once he had the information from the appellant that he get 30 days to review.

Vice Chair Smith offered to the appellants to speak to the timing of the complaint. Spivey stated that the appellants did not dispute that they had the text at the time of the meeting. They didn’t raise the complaint because they were expecting that nothing substantive would be presented

that day, and that substantive information was to be presented at the public hearing. The request was made late because they decided to notify County Attorney Hoyt ahead of the meeting instead of raising the issue during the meeting.

Spivey asked the Board of Adjustment for 5 minutes to confer with Fink.

BREAK

After discussing with Fink, Spivey stated that while they did have concerns, in the interest of time they determined that they were agreeable to waiving their reasons for the request for Commissioner Puckett Daniels to recuse herself from the present and future hearings.

Vice Chair Smith requested another recess to inform Puckett Daniels and bring her back into the room.

BREAK

At 1:52 pm Puckett Daniels rejoined the meeting.

Approval of the Minutes:

Tocke made a motion to approve the February 27, 2024, Board of Adjustment minutes with the insubstantial change as noted by Smith. Seconded by Smith. The motion passed unanimously in support.

Unscheduled Citizens - None

Public Hearing: APPEAL-24-00003: Law of the Rockies representing McCloud Placer LLC

At 1:57, Chair Puckett Daniels opened the public hearing.

Confirmation of Adequate Public Notice: Planning Technician Jena Greene confirmed adequate public notice for the Public Hearing.

Appellant Presentation: The appellant asked for an hour to present, Puckett Daniels agreed to a 45-minute presentation; and was agreeable to allowing the appellants to present again if the meeting was continued if there was new material.

Spivey introduced himself, James Silvestro, co-council, and Drew Fink, owner of the property in question. Stated that Fink was unable to use his home for himself and family as a result of a and that he had received aggressive and unfair treatment from the County.

Fink short term rented his home sometimes when he wasn't using the home, and that Campfire Ranch was the company that handled the property management of the home. Spivey argued that the home was a residential use, citing Houston v. Wilson Mesa Ranch Homeowners association, and not a commercial business even though it was short term rented. He added

that house bill 10-33 which gave counties the authority to regulate short-term rentals, which many counties in Colorado had passed since the bill, noting that Gunnison was not one of those counties.

Spivey asked that the Board of Adjustment reverse the decisions from December 2023 notices of violation and stop work orders. He gave examples of language of online rentals from unidentified locations in the county that had direct access to recreation opportunities, which had similar seasonal access situations to the appellants.

He noted that the County concerns stemmed from the offerings of concierge services, which Spivey noted were not provided by Campfire but were coordinated by Campfire. Gave examples of concierge services offered from other property management companies including Iron Horse Property Management, Alpine Getaways, and Crested Butte Property Management. Stating that the property was not being used as commercial property but for residential purposes. Spivey gave other examples of short-term rental properties listed on the TAAP website.

Spivey spoke to the use of the term hut, which he argued was similar to using the term Lodge and gave comparison of Harmels Resort to argue the difference of a single-family residence vs. a commercial use, and further arguing that the Planning stop work order should be reversed, since it attempted to regulate a commercial use instead of a residential use.

Spivey spoke to the Building code issues violations and alleged that the county cited the wrong building code. The violation was issued under the 2021 building code, but since the home was built in 2019, that it should have been subject to the 2015 building code and made the argument that the building code in charge would be the 1994 UBC.

Spivey stated that the County had singled out Mr. Fink and treated him unfairly from the timing of the letter delivery being so close to the holidays and upcoming reservations for short term rentals for the home. He further added that the December 28 letter and the April 15 staff report cited different building codes and that new violation letters should be issued. Further, since the 1994 UBC didn't address occupancy limits, that the County violations concerning occupancy didn't apply.

Silvestro joined the meeting to discuss Mr. Fink's Constitutional claims. The Colorado and US constitutions both stated that a property owner could not be deprived of property rights without due process. HE noted that there were OWTS issues were not being discussed due to a separate lawsuit, and that he would consolidate claims into OTWS lawsuit which were: 1) timing of notice; there was evidence that the county was aware of issues in the fall of 2023. 2) the suspended certificate of occupancy, followed by the stop order without any other notice on 12/28, during a holiday week, and 3) the County's refusal to stay enforcement.

Silvestro stated that the County hadn't focused on any actual evidence of wrongful use and that this exercise was determined to find an issue. He stated there were 71 similar short term rentals that the county hadn't gone after, and that he would submit a written submission of arguments.

Chair Puckett Daniels stated that she would welcome the written submission of the comments so they could be studied.

Mr. Fink spoke last. He explained some of his work rehabilitating historic buildings around the state. He had been coming to the valley for five years and wanted to make it a more permanent part of his and his family's lives. Worked with various groups and organizations throughout the valley. He wanted to find a home that was secluded and remote, that he could have in his family for a long time. He explained how he wanted to share the location when it wasn't being used and that they worked with Campfire as their property manager. The County was aware they were short term renting the property and had never expressed concerns about building code before the CO was suspended, and "evicted" from the home on new year's eve.

BREAK

Staff Comments

Puckett Daniels gave the County 52 minutes to present since that's the amount of time the appellants used.

Pagano gave further explanation for why the CO was revoked and noted that it was reinstated after they demonstrated that the appliances were in compliance with the building code. Pagano added that the appellant was never evicted, but that they were told to be within the occupancy limits of the OWTS.

Lambert presented. She wanted to emphasize the environmental health regulations and building code. Spoke to the timing of the issuance of the notice, noting the time that can be needed to write a notice of violation. Clarified that the building permit was issued in 2001 under 1994 uniform building code. The 1998 septic permit for private residence for 3 bedrooms or 6 people. While the appellants current intended use and occupancy was for 12 guests in a transient capacity.

Lambert explained the building code violations including unvented fuel gas heating units installed in 3 location in the units, which could produce carbon monoxide and can cause death; and were prohibited to be installed in any building of any occupancy. The heaters in the past had been required to be removed in order to issue the certificate of occupancy. A video was supplied showing that the units were uninstalled, inspection took place, and CO was reissued. Lambert explained that the increase in the number of occupants and change in the nature of occupancy triggers the need for a building code and official approval, citing the IBC for change in occupancy as: Any change in the occupancy, classification of a building or structure; Any change in the purpose of or level of activity; change in use. Lambert explained the increase in occupant load required greater degree of safety, egress, and sanitation, and that once a building was occupied, any change in occupant load qualified as a change in use. The IRC and UBC dwelling definitions, and code commentary. Lambert spoke to the Lodging house definition comparison 1994 vs 2021 and explained how the bed-and-breakfast definition had been updated to lodging house from 1994 to 2021. The increase in the number of occupants from 6 to 12 would trigger upgraded safety requirements. This is why the violation was issued, there were upgrades needed to meet the requirements for safety. Staff had intended for the appellants to work with their office to make the needed changes.

Seminick presented on the LUR violations, citing section 1.11 for the determination concerning the commercial use. Seminick noted that the owner is responsible for what happens on their property, not the property manager. The stop order was issued a stop order for operating resort use based on definitions from the Gunnison County Land Use Resolution (LUR). Commercial use under the LUR, resort is a type of commercial use, is applied and interchangeable. LUR allows for Community Development to issue stop work orders based on reasonable cause. Seminice noted some of the services offered that fell under a commercial use: shuttling of equipment by snowmobile(required permit from USFS); 24-hour site rental fee; retreats; offering backcountry weddings; video and photo shoots, for a fee; family supper event; ad for a Hut keeper.

Seminick explained that the distinction of resort use was important. The use of the property constitutes a resort since it gave closer access to backcountry skiing, and was a featured hut in local beacon guidebooks, noting that the only other listing was the RMBL huts, which had a commercial use; and allowed guests to stay multiple days in a row in a backcountry setting.

Pagano added that the appellants had advertised the home as a wedding site, which per LUR 6-103, commercial wedding sites required a land use change permit. Pagano noted that staff had corresponded with the property owner, and that they had been in contact since before the spring of 2023, concerning the size of the septic system. Pagano noted that staff usually tried to take a soft approach when it comes to enforcement, and that they were sometimes successful in identifying how violators can come into compliance. The venting of gas appliances was of great concern, which caused the revocation of the certificate of occupancy, as the mission of the department is to protect public health, safety and welfare. Staff gave the appellants the opportunity to operate in compliance with a limit of 6 in occupancy or 12 if they didn't do laundry onsite. Addressed multiple letters from staff, building code violations was a pressing life safety issue; land use violations took more time. Last, Pagano noted that she could see a path to compliance for the owner, there were ways to meet location standards for commercial use, and that they could come through the process in a timely manner.

Questions from the Board of Adjustment

Smith asked staff if opportunities to come into compliance were offered to the appellants? Was lower occupancy discussed? Were alternative solutions offered? Pagano replied that staff had offered that they could not do laundry onsite (to comply with septic) and still have a max occupancy of 12. Hoyt added that the normal process is to work with applicants to come into compliance, but since there was litigation, all communication went through attorneys.

Smith asked the appellant if they had appropriate insurance. Fink replied yes.

Smith asked the appellant about commercial filming and photography onsite, since the USFS required permits when a profit was to be made as a result. Were those permits required of guests? Fink responded that acquiring permits were under the responsibility of the individual.

Smith asked if the Beacon guide book similarly advertised STRs. Fink was unsure.

Smith inquired about the property's relationship to Gunnison river properties LLC (Campfire ranch. Noted that these were separate properties and uses.

Baca asked staff if there were policy implications around other short-term rentals in the valley? Pagano noted that the county did not currently regulate short term rentals as a land use. Building code and OWTS regulations did apply, and they were still required to comply. Lambert, spoke to instances of working with other people that were short renting their renting their property.

Puckett Daniels clarified the appellants argument with commercial use vs. STR use. Hoyt explained that the example situations presented by appellant may also be in violation. Spivey added that many communities were grappling with short term rentals, and that policies were being passed. That was the appellant's argument Colorado law designated STRs as a residential use, not a commercial use, and there was no STR policy in Gunnison County.

Tocke asked about the building code issues, and asked for clarification of the application of 2015 building code vs. 1994 building code vs. 2015. Lambert explained that for existing structures, change in use/change of occupancy is addressed under the current adopted code. The increase in occupancy triggered the need for additional safety measures which was considered a change in use and must comply with the current code.

Puckett Daniels asked how much would need to change in order to trigger a change in use and therefore the new building code. Lambert revisited the change of occupancy and change of use definitions.

Smith asked if conversations had taken place with the appellants concerning options to reduce occupancy limits. Lambert stated that she had not had a conversation with the appellant, due to the lawsuit. Pagano added that staff didn't mention coming into compliance with sprinkler, WUI code, or other codes.

Tocke asked about primary and secondary uses designations. Lambert stated that guidance comes from the building code to comply with the LUR.

Tocke asked if the appellant felt that the county had purposefully discriminated against him. Fink replied yes, and that staff didn't provide him with a way to move forward. Spivey noted that the letters received weren't inviting and engaging. Further, Mr. Fink was allowed to do all of the things he had engaged in on his property. Fink added that conversations had happened through attorneys. Further, he had no interest in a land use change for a commercial use since he considered the property to be his home.

Tocke made the comparison to other huts that you ski to and asked Fink how this was different. Fink replied that his family used the hut as a home/second home.

Tocke asked about the removal of brand experiences and micro weddings. Fink stated that those uses were removed as a show of good faith.

Houck stated that he wanted Fink and his family to be able to enjoy their property, and that he was a cheerleader for Campfire ranch. He supported the work that Fink and campfire ranch were doing, but they disagreed on what a commercial use was.

Houck elaborated on the back and fourth before December 28, 2023 suspended of CO. Fink responded quickly, the CO was reinstated when they came into compliance. From January 8, 2024, onward, even though there were pending resolutions of violations, there was still use of the property allowed. Asked the BOA, where do you draw the line between property management and concierge service. In comparison with other property management companies was that the property management company was there to turnover the property, “not handing you a fly rod”, or providing a level of service beyond management. Houch Emphasized that he didn't see anything with the issues that couldn't be resolved. This was a case of a properties being utilized different than what they were built for. Added that the county wasn't singling the property out since it “came to us” through advertising and email lists. Stated that he was yet to be convinced that that element wasn't commercial because how were activities that were brought to you doorstep different from a commercial use.

Baca spoke to traveling with a large family. Further, stated that she stayed in STR's and used concierge services. Didn't feel that was considered a commercial use.

After consulting with the attorney, and apologizing to the public that Public Comment would not happen at this time due to time constraints, Puckett Daniels noted that the meeting would need to be continued.

Hock made a motion to continue the public hearing to June 6th at 1:30 pm seconded by Smith.

Meeting recessed at 5:02 pm

To: Gunnison County Board of Adjustment

Date: May 3, 2024

Meeting Date: May 22, 2024

RE: APPEAL-23-00004 Crested Butte Fire Protection District (CBFPD) request for snowmelt system

Pursuant to *International Energy Conservation Code (IECC), 2021 edition, Section C110: Board of Appeals* amended and adopted under Gunnison County Resolution 23-22, the CBFPD has submitted an appeal of the decision by the Gunnison County Building Office to deny a building permit under the *IECC, Section C403.13.2*, as amended, which prohibits snow- and ice-melt systems. The purpose of this memo is to provide an outline of the recently adopted and amended appeal criteria as it relates to the Board of Adjustment (“BOA”) decision-making and to provide a staff analysis of the proposed plan and a recommendation of approval of the appeal request.

1. Review of Applications for Appeal in accordance with the *IECC, Section C110: Board of Appeals*

Applications for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply or an equally good or better form of construction is provided.

2. Building Office staff analysis on the request for relief from the *International Energy Conservation Code (IECC), 2021 edition, as amended*

The *2021 edition* of the building codes including the *IECC* were adopted under Gunnison County Board of County Commissioners Resolution 23-22 and became effective on January 1, 2024. *Section C403.13.2* of the *IECC* addresses snow- and ice-melt systems for buildings and this section was adopted with an amendment that prohibits exterior heated walking surfaces, parking areas and driveways. Unamended, *Section C403.13.2* states the following:

Snow- and ice-melting systems shall include automatic controls configured to shut off the system when the pavement temperature is above 50°F and precipitation is not falling, and an automatic or manual control that is configured to shut off when the outdoor temperature is above 40°F.

The CBFPD is proposing to comply with *Section C403.13.2: Snow- and ice-melt system controls* as provided in the code and as intended by the International Code Council. Staff recommended the *IECC* be amended to prohibit outside heated driveways, among other items, to support achievement of the Board’s strategic climate goals. Before adoption of the codes, meetings with the Planning Commission and the Board of County Commissioners included consideration for an appeal process for situations where public safety may necessitate the need for a snowmelt system.

The proposed snowmelt areas shown on the CBFPD application are limited to 8-foot-wide strips in front of emergency vehicle bay doors (approximately 2,405 square feet total) and an occupant egress pathway in between the proposed fire station building and the Search and Rescue building that is 12.5 feet wide (approximately 980 square feet total). For comparison, the driveways, parking, and walking path areas shown on the proposed plan are approximately 40,500 square feet combined.

With the exception of the amended *Section C403.13.2*, the proposed plan demonstrates compliance with the *IECC, 2021 edition* as adopted including all other amendments in addition to compliance with all other recently adopted building codes.

Staff recommends approval of the CBFPD request for relief from *Section C403.13.2* of the *IECC, 2021 edition* as amended in order support the safety of emergency responders, working at any given hour during winter weather, so that they can provide efficient and rapid emergency services to the community.

3. Record on Appeal

The record for this appeal consists of the following documents:

- a. CBFPD application to request a variance from the Gunnison County Board of Adjustment
April 16, 2024



CRESTED BUTTE FIRE PROTECTION DISTRICT

306 MAROON AVENUE • P.O. Box 1009

CRESTED BUTTE, CO 81224

(970) 349-5333

ADMINISTRATION FAX: (970) 349-3420 • OPERATIONS FAX: (970) 349-0438

WEBSITE: WWW.CBFPD.ORG

April 16, 2024

Crystal Lambert
Gunnison County | Building & Environmental Health Official
221 N Wisconsin St. Suite D
Gunnison, CO 81230

Subject: Application to Request A Variance from the Gunnison County Board Of Adjustment.

Ms. Lambert:

On behalf of the CBFPD, thank you for your continued assistance with the subject project.

We are submitting this request in response to the early plan review comments we received on 3/28/2024 (attached) regarding the prohibition of exterior heated walking surfaces, parking areas and driveways.

Introduction

The Crested Butte Fire Protection District (CBFPD) applied for a building permit through Gunnison County for the construction of new district headquarters (HQ) and search and rescue (SAR) buildings located immediately north of the Town of Crested Butte. Early plan review comments we received on 3/28/2024 (Attachment 01) addressed the prohibition of exterior heated walking surfaces, parking areas and driveways (Amended Section C403.13.2 of the IECC, 2021 edition). These exterior heated surfaces were deleted from the Construction Documents in the interest of an efficient permit approval process.

This letter is requesting a variance to Gunnison County's Amendment Section C403.13.2 to the IECC, 2021 edition for CBFPD's new facility.

Basis for the Appeal

The Crested Butte Fire Protection District (CBFPD) understands and supports the County in the general prohibition of heating exterior surfaces as a critical energy conservation measure causing minimal inconvenience. However, the proposed use at this new emergency services campus is both limited and directly related to our mission to provide rapid, efficient and effective emergency response to the community. In particular, we have identified the minimum heated area necessary to facilitate the egress and ingress of responders at all hours. This installation will otherwise meet all of the requirements of the IECC and the concept is to only clear snow and ice immediately adjacent to our buildings where and when necessary. This approach will prevent our personnel from needing to clear snow prior to a response and prevent the buildup of packed ice and snow near garage exits that have historically caused delay and/or damage to our emergency vehicles and buildings at our current locations. The vast majority of our snow removal activity, however, will be conducted away from our buildings without supplemental heating.

Relief Request

The Crested Butte Fire Protection District (CBFPD) hereby requests an exception to Section C403.13.2 of the Amendments to the International Energy Conservation Code, 2021 Edition prohibiting exterior heated walking surfaces, parking areas and driveways. An exception for the following areas of the campus are considered critical to the district performing its services and life safety for the community and the campus.

Requested exterior surfaces to receive heating.

- 1) Yellow shaded area – Emergency vehicles (Apparatus and Ambulance)
 - a. An 8'-0" wide band in front of bay doors where emergency vehicles leave the building.
 - b. NW facing and receive little assistance from solar melting.
- 2) Green shaded area – Emergency vehicles (Apparatus and Ambulance) entrance and exit.
 - a. An 8'-0" wide band in front of bay doors that are primarily for entrance but where emergency vehicles could exit because bays are double-loaded.
- 3) Blue shaded area – Emergency vehicles (SAR)
 - a. An 8'-0" wide band in front of bay doors where emergency vehicles leave the building.
- 4) Purple shaded area – Emergency vehicles (SAR).
 - a. An 8'-0" wide band in front of bay doors that are primarily for entrance but where emergency vehicles could exit because bays are double-loaded.
 - b. NE facing and receive little assistance from solar melting.
- 5) Red shaded area – Occupant egress.
 - a. The 12'-6" wide space between the two buildings.
 - b. Increased snow drift potential.
 - c. Part of the egress system for both buildings and must remain clear.
 - d. Will receive very little solar assistance to melting.

Thank you for your consideration and feel free to contact myself or project manager, Todd Goulding at tgoulding@gda-co.com or (970) 331-1732.

Sincerely,



Sean Caffrey, MBA, NRP, CEMSO, FACPE
Chief Executive Officer & Commissioner
Crested Butte Fire Prevention District

Enclosures: Shaded Site Map
Attachment 01 – Referenced Letter

To: Gunnison County Board of Adjustment

Date: May 16, 2024

Meeting Date: May 22, 2024

RE: APPEAL-24-00002

On January 24, 2024, Andrew and Susan Tyzzer, Craig Maestro, Rebecca J. Bell-Dumas, and Norman Dumas (the Appellants) submitted an appeal to Gunnison County Community Development of the decision to approve the development of a triplex on parcel owned by South Butte, LLC (the applicant) and legally described as Lot 8, Block 9, Crested Butte South, Filing 2.

On February 27, 2024, the Board of Adjustment (BOA) held a work session on APPEAL-24-00002 for the triplex on the subject parcel. At the February 27, 2024 BOA meeting, the BOA determined that the appellants have standing to appeal and did agree to hold a public hearing on the matter.

After the February BOA meeting, Noah Klug, attorney for Andrew and Susan Tyzzer, in an email dated March 4, 2024 stated in an email to County Attorney Matt Hoyt:

"...that the Tyzzers have requested that the Planning Department hear their appeal (as required by the CAMP and further requested by South Butte), so they are certainly not going to oppose that happening. (Although they continue to oppose the unaccountable POA being involved in the land use process at all). They did not appeal to the BOA, so they take no position on whether the County should leave open the BOA matter while the Planning Department hears the appeal. To the extent that the matter before the BOA proceeds without the Planning Department first hearing the appeal, they would continue to object to that on procedural grounds. And, to the extent that the Planning Department decides against South Butte in any appeal, they maintain that any further appeal to the BOA would need to be by South Butte, as the appellant, not by them."

County Attorney Matt Hoyt responded in an email dated March 4, 2024:

"...the appeal to the Planning Department will be reviewed by Planning staff on the record in APPEAL-24-00002 as of February 27, 2024, employing the standards set forth in Section 6.3(B)(11) of the 2020 CAMP. There will not be a hearing before the Planning Department because neither the CAMP nor Section 3-112 of the LUR allow for a hearing at the Department level. Nor is there any provision in either CAMP or Section 8-103 of the LUR that expressly provides that the Department review is de novo. Thus, it would invite error to accept appellants' contention that a hearing or a de novo review before the Department is warranted."

- *The BOA has already voted to conduct a public hearing in this matter, so if appellants are concerned about a lack of a hearing before the Department or desire a de novo review, and also find themselves dissatisfied with the Department’s decision, they may avail themselves of a hearing before the BOA by asking the Board to lift the stay and conduct the hearing that the BOA has already approved. Note also that per LUR 8-103(2)(d), “If the BOA determines that a public hearing shall be conducted on the appeal, the BOA shall make its decision de novo based on consideration of the record of the initial decision-making body and any evidence presented at the public hearing.” Therefore, and again, if appellants want a public hearing and de novo review, that would occur before the BOA, not the Department.*
 - *The appellants would dismiss their stayed appeal before the BOA if they are satisfied with the result before the Planning Department.*
 - *If applicant is dissatisfied with the result before the Planning Department, it may appeal the Department’s decision to the BOA per Section 8-103 of the LUR.”*

The Gunnison County Planning Department (aka Community Development Department) reviewed the January 24, 2024 appeal submitted by the Appellants and rendered a decision on April 4, 2024. On April 18, 2024, pursuant to Gunnison County *Land Use Resolution* (LUR) Section 8-103: *Appeals*, Susan Tyzzer, Craig Maestro, Norman Dumas, Rebecca J. Bell-Dumas, and Andrew Tyzzer (the Appellants) appealed the decision of the Planning Department relative to the development of a triplex on the subject parcel.

The Planning Department Appeal Decision (the Decision) was rendered on April 4, 2024. Staff reviewed the entirety of the record related to the Appeal, the submittals by the appellants, applicant, and Crested Butte South Property Owners Association. The Decision review the following matters identified in the appellants’ January 24, 2024 appeal:

1. Violation of application requirements
2. Violation of requirements requiring notice; Violation of Crested Butte South Special Area permit process; and Failure to correct application constitutes withdrawal
3. Violation of parking space requirement
4. Violation of driveway requirements
5. Violation of zoning restrictions for multifamily building in filing 2
6. Violation of open space requirement
7. Non-compliance with architectural regulations
8. Conflicting regulations regarding multifamily residences
9. Failure of the Crested Butte South Property Owners Association (POA) to establish the procedural process for the development of multifamily projects.
10. Notification failure

The Planning Department analyzed each matter for compliance with the standards of Section 8-104: 3.1.a. and found that:

“...the Department finds that appellants have failed to meet their burden to demonstrate that a reversal or modification of the decision by Crested Butte South is warranted. Appellants’ arguments are either precluded by the exhaustion or standing doctrines, not supported by the facts in the record, inconsistent with the SAR and other governing documents for Crested Butte

South (including but not limited to the LUR), or otherwise invite error by this Department. The Department further notes that appellants' arguments are, at best, hyper technical, immaterial and lacking in substance in relation to the subject application such that none of them meet the standard for reversal or modification. Stated another way, even if appellants were correct with regard to every issue set forth above – and the Department finds they are not -- the issues that occurred before the DRC and BOD constitute harmless error and provide no proper basis for reversal or modification. For the reasons set forth in this memorandum, the decision of the Crested Butte South Property Owners Association is affirmed for the proposed triplex on Lot 8, Block 9, Crested Butte South, Filing 2.

Should appellants wish to further appeal this matter before the BOA, they are instructed to so inform the Department within 15 days so that a meeting with the BOA can be schedule to ask it to 1) lift the stay and 2) schedule the public hearing on the appeal. This decision memo shall be included as part of the record for this appeal, but it is not a final decision for purposes of any judicial review."

The Appellants submitted an appeal of the Planning Department Decision on April 18, 2024, in compliance with the required timeframe. At the February 27, 2024 BOA meeting, the BOA voted to hold a public hearing on the subject appeal and the Community Development Department has noticed the hearing for APPEAL-24-0002 for May 22, 2024.

When the BOA has determined that it will conduct a public hearing, the following procedure applies to the meeting pursuant to *LUR* Section 8-103: C.2.d:

"BOA CONSIDERATION OF RECORD AND NEW EVIDENCE; PUBLIC HEARING CONDUCTED. If the BOA determines that a public hearing shall be conducted on the appeal, the BOA shall make its decision de novo based on consideration of the record of the initial decision-making body and any evidence presented at the public hearing."

Exhaustion of Administrative Remedies.

In Gunnison County Board of Commissioner Resolution 2008-38 recorded in the office of the Gunnison County Clerk and Recorder at Reception No. 586264 states in the "Appendix Special Area Regulations 1 provides in Section 111 the following:

"Exhaustion of Administrative Remedies

Each person with standing to initiate an appeal must, as a prerequisite to each appeal, have made an objection or appeal at the preceding review and approval process. No issue may be raised at an appeal unless it has been raised at each preceding review and approval process."

Even though Resolution 2008-38 was superseded by Resolutions 2020-14 and 2023-8, the exhaustion doctrine remains a part of Colorado law and is therefore applicable to this appeal.

Appeal Decision Criteria

The BOA shall make a decision based on the following standards of the Crested Butte South Special Area Regulations, dated March 21, 2023 or dated April 7, 2020 which describe the review criteria in Section 6.3: B.11:

Modification or Reversal of Original Action. The original action shall only be modified or reversed if the appellant establishes, by a preponderance of the evidence based on the record of the review body, that:

- a. **No Credible Evidence.** There is no credible evidence in the record to support the original decision; and/or
- b. **Original Action Inconsistent with CAMP.** The original action was inconsistent with the applicable requirements of the CAMP, Covenants and Restrictions or other regulating documentation for Crested Butte South; or
- c. **Review Body Action Inappropriate.** The review body exceeded its jurisdiction or abused its discretion.

April 18, 2024 APPEAL

Staff has reviewed the April 18, 2024 recent appeal submitted by the appellants. The appellants have introduced two new arguments/appeals that were not previously raised in the appeal to the Crested Butte South Board of Directors (BOD) nor in the appeal submitted to the County. LUR Section 8-104: C.1. requires that an appeal of a decision shall be submitted no more than 15 days after the decision was made. In accordance with LUR Section 8-104: C.2.d., "...the BOA shall make its decision de novo based on consideration of the record of the initial decision-making body and any evidence presented at the public hearing," however the appellants cannot raise new issues for appeal that were not previously identified. Those matters that are not timely and have not exhausted administrative remedies are:

1. The application has not been approved by Crested Butte Fire Protection District
2. The proposed driveway does not meet the required setback requirements

In light of the above, staff recommends that the BOA conclude that the appellants have not exhausted their administrative remedies for the above matters nor were they submitted in the required timeframe to be considered. Section 8-104: C.1. mandates that an appellant state, "the basis" for their appeal and therefore provides no procedure for amendment or supplementation of the statement of appeal or to raise new issues. Staff therefore recommends that the BOA not consider these matters in their appeal decision.

Attorney Nancy Essex, representing Andrew and Susan Tyzzer submitted a letter dated May 13, 2024 regarding the April 18, 2024 appeal; a "Motion to Gunnison County Board of Adjustment to Postpone Hearing and Suspend Consideration of Appeal-24-00002," and Exhibit 1, an email from Ric Ems, Fire Marshal, Crested Butte Fire Protection District, dated January 23, 2024. The motion to postpone argues that the appeal decision and hearing should be postponed because the applicant's project has not been approved by the Crested Butte Fire Protection District. The LUR contains no provision that allows such motions. The County building permit review process informs applicants that they are required to obtain approval from the Crested Butte Fire Protection District as part of their permit review process, that review and approval is verified prior to issuance of the Certificate of Occupancy or final inspection.

Attorney Elizabeth Appleton representing the Crested Butte South Property Owners Association submitted a response to the appeal dated May 10, 2024:

Attorney Daniel Spivey, representing the applicant, South Butte, LLC submitted a response to the appeal dated May 10, 2024.

The remaining items listed in the appeal have been previously raised and reviewed by the prior decision-making bodies (the BOD and Planning Department). These matters are to be decided by the BOA and include:

- A. Driveway width required by LUR violated
- B. Insufficient open space
- C. Multi-family housing is not allowed in proposed location
- D. Triplex does not meet architectural design requirements (i.e. mountain modern design, etc.)

The record for this appeal consists of the all items in the APPEAL-24-00002 permit file available online.