IN RE:
The Application was a variance to setback standards in an A-1 Zone on a parcel owned by Lowe Revocable Trust C/O Rob Lowe. Appeal was filed by Rob Lowe.

(FINDINGS OF FACT, CONCLUSIONS AND DECISION)

This matter was before the Bonneville County Planning and Zoning Commission for the purpose of a variance request to the setback standards for a home in an A-1 Agricultural Zone. The request was made by Lowe Revocable Trust C/O Rob Lowe on property located at 7965 S. 3rd E. The Board of Adjustments heard this matter on April 27, 2016 and recommended denial of the request on a vote of 3-2. An appeal was filed against the decision made by the Board of Adjustments by Rob Lowe. A subsequent hearing was held by the County Commissioners on July 12, 2016. After having reviewed the testimony of both hearings, the report from the Board of Adjustments, the County Zoning Ordinance, the County Comprehensive Plan and all the reference information and affidavits submitted for the hearings the Bonneville County Commissioners make the following findings.

1. That the property is designated as an area for Agricultural development on the county's comprehensive map.

2. That the parcel is irregular in shape and is currently designated as an A-1 Agricultural area on the zoning map of Bonneville County.

3. That the parcel has no road frontage on an approved maintained county road. It is accessed via a privately maintained lane with access easements on the adjacent properties.

4. A building permit was issued for the home on this parcel in 1971 without requiring the property to have road frontage. In addition there was no plat required by the issuing official nor was the dedication of a frontage road required.
5. Upon review of the record, the private lane has not been identified as a public right of way after having checked multiple inventory maps. Specifically the GLO map, the 1952 road inventory map as well as the 1977, 2009 and 2014 road inventory maps.

6. That the parcel is used for limited agricultural purposes because of its small and irregular configuration.

7. That the parcel is near to other residentially used properties.

8. The applicant produced recorded deeds showing the existence of the access easement and that it also binds the adjacent property owners as to its use.

9. The adjacent property owners were not opposed to the granting of the variance allowing the new garage to be built within 5' of the existing private roadway and within 25' of the adjacent property line.

10. The land owners were notified that if the road were to be converted to a public road right of way in the future that either the road or the garage would have to be relocated to comply with the 30' setback standard.

CONCLUSIONS

In that the appeal is filed by Rob Lowe of an action denied by the Bonneville County Planning and Zoning Commission, he must bear the burden of showing that the Planning and Zoning decision was inappropriate.

The Zoning Ordinance of Bonneville County provides a procedure for the granting of a variance. A variance may be granted, provided the applicant can justify compliance with the items listed in Section 1-511 of the ordinance.

1. "The Planning and Zoning Commission shall hear and decide appeals in cases where it is alleged that there is error in any order, requirement, decision, or determination made by the zoning administrator or other administrative officers in the enforcement of this ordinance,"...

The Board of County Commissioners finds as was noted above that there is not a dedicated roadway either public or private on the property at this time. At the time that the original building permit was issued on the property the issuing authority should have required a subdivision plat to have been recorded and have required a dedicated roadway be provided and built. The applicant cannot be held responsible for that error. In that there is only recorded easements for access to the properties the lot owners are only prohibited from obstructing those. Whereas the zoning ordinance
requires the setback of 30' be required from a road and there is not one on the property then the only required setback is a side yard setback which is 20' from the property line. The proposed site plan indicates that both of these requirements would be met.

The property owners are on notice that no new permits for residences can be issued unless a plat is filed and a roadway dedicated. At such time either the road would need to be relocated adjacent to the new garage or the garage would need to be removed to comply with setback standards from a roadway.

2. "The Planning and Zoning Commission may grant variances from the strict letter of this ordinance where a property owner can show that:

(a) Because of unusual narrowness, shallowness or shape of a specific lot or parcel of land, or

(b) By reason of peculiar topographical features or other special circumstances peculiar to the particular lot or parcel of land, the strict application of the terms of this ordinance would prohibit the use of the applicant's property in a manner reasonably similar to that of other lots in the same zone."

It is the Board's opinion as was noted above that this is a peculiar situation involving the issuance of the original building permit without having required a plat to be recorded and a roadway dedicated to provide frontage for the home. That because of the actions of the previous owner and actions by the issuing authority this property is peculiar and complies with this section of the ordinance.

3. Before a variance can be granted, the Planning and Zoning Commission must find upon the evidence before it that:

(a) Special circumstances do actually attach to the particular property covered by the application, which do not apply generally to the other properties in the same zone.

Once again, it is because of the actions of the previous owner and the issuing authority that there is now an unusual lot condition created.

(b) Because of some special circumstances the appellant's property is deprived of privileges possessed by the properties in the same zone.

Because of the actions of the previous owner and the issuing authority there is now an unusual lot condition created that makes the lot difficult to comply with setback standards.
(c) The granting of such variance will not substantially affect the comprehensive plan of zoning in the county.

In that this case is so unique and peculiar it will not affect the comprehensive plan for zoning in that the circumstances involved will most likely seldom be seen again.

(d) Adherence to the strict letter of the ordinance will cause difficulties and hardships, the imposition of which is unnecessary in order to carry out the purposes of the zoning plan.

As was stated above in that this case is so unique and peculiar it will not affect the comprehensive plan for zoning in that the circumstances involved will most likely never be seen again.

(e) The hardship is not the result of any action by the property owner taken after the effective date of this ordinance.

As has been mentioned above the hardship was created by the previous owner and the issuing authority.

Based on the testimony and the evidence submitted it is the opinion of this Commission that the findings of the Planning and Zoning Commission were improper and that the variance was improperly denied.

DECISION

Based upon the above facts it is the decision of the Bonneville County Commissioners that the request be approved for variance to setback standards. The Zoning Administrator is to hereby notify the applicant of the decision of this board.

Dated this 24th day of August 2016.

BONNEVILLE COUNTY COMMISSIONERS

Roger S. Christensen - Chairman

Lee Staker - Member

Dave Radford - Member