

**Gunnison County Environmental Health Board
Agenda: March 11, 2021**

1:15 p.m. Call to order; determine quorum
Approval of Minutes
Unscheduled citizens

1:30 p.m. Darren Ziegler, Public Hearing, for an OWTS on a parcel less than one acre at 80 Alpine Street.
OWTS-21-00004

Adjourn

Join Zoom Meeting

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ADA ACCOMMODATIONS: Anyone needing special accommodations as determined by the *American Disabilities Act* may contact the Community Development Department prior to the day of the hearing.

**GUNNISON COUNTY ENVIRONMENTAL HEALTH BOARD
MARCH 11, 2021**

The March 11, 2021 Gunnison County Environmental Health Board meeting was conducted by Zoom virtual online meeting, Gunnison, CO 81230.

Present Were:

Ashley Bembenek, EH Board Member
Eddy Balch, EH Board Member
Shea Earley, EH Board Member
Bill Barvitski, EH Board Member
Lynn Cudlip, EH Board Member, Alternate
Corey Bryndal, EH Board Member, Alternate

Crystal Lambert, Building and EH Official
Charlie Dominguez, Building and EH Inspector
Rebecca Ricord, Administrative Assistant III
Cathie Pagano, Community Development Director
Emilee Gaebler, Gunnison County Deputy Attorney

Other attendees as listed in text.

Lambert went over the Gunnison County Environmental Health Zoom meeting protocol.

Call to order: A quorum was determined by Bembenek at 1:18 pm.

Approval of Minutes: **Moved by:** Barvitski, **seconded by** Earley, third by Cudlip to approve the September 3, 2020 meeting minutes as amended. The motion passed unanimously with Board members Bembenek, Barvitski, Earley, Balch, Bryndal and Cudlip voting yes.

Unscheduled citizens: None present.

Member reports:

Lambert reported that she took the revisions for the OWTS revisions to the BOCC and they were approved. The State has also approved the revisions. Lambert will work on making the revisions and take the final to the BOCC for approval.

Lambert reported that the transfer of title program has been a huge success. They have seen identification of systems that were in a state of failure that have been repaired or fixed because of those inspections.

Balch asked that the department provide a list of the systems that were inspected and show which ones required a repair.

Darren Zeigler, OWTS-21-00004: The Gunnison County Environmental Health Board conducted a Public Hearing. Request to install a second OWTS on a parcel less than once acre at 80 Alpine Street.

Barvitski recused himself to represent applicant in public hearing.

The members introduced themselves.

Voting members: Board members Bembenek was seated as the chair. Balch and Earley.

Bembenek confirmed a quorum and opened the public hearing.

Environmental Health Official Crystal Lambert confirmed adequate public notice. The notice was published in the Gunnison Country Times and the Crested Butte News. The applicant submitted the certified mailing receipts, photo and affidavit of posting on the parcel. It was posted at the new posting location on the Gunnison County Community Development website.

Engineer Bill Barvitski, representing applicant, was present by Zoom. Darren Zeigler, applicant, was present by Zoom.

Audience members presented in text.

Application Presentation:

Zeigler stated that they are proposing to get their septic approval for the lot, which is under the one acre minimum.

Barvitski stated that Chair Mountain Ranch 1 Subdivision was plated in Gunnison County prior to the OWTS regulations regarding the minimum parcel size of one acre. Within the subdivision there are 19 lots. All, but one, of the lots in the subdivision are under an acre in size, with most being around or under a half an acre. A handful are even smaller. 16 of the 19 lots have been developed on and he assumes that all of them are served by an OWTS. This property is served with a central water system. All Gunnison County horizontal setbacks requirements can be met, with the exception of the one acre minimum. The State only requires 50 feet from any water body, they are more than 100 feet, which meets the Gunnison County regulations. The State does not have any minimum parcel sizes. On January 1, 1999 a variance request was granted by the EH Board to the owner of Lot 12, Block 5 Chair Mountain Ranch for the same request. There are more lots with similar things being done. In March of 2019 the current Board approved a variance request in the Masden Subdivision, under 1 acre. Based on the soils a gravity system could have been designed but due to the types of soils and the benefits of treating the affluent they designed the system as an equally distributed pressurized system over sand.

Staff Comments:

Lambert stated that the variance request submittal has been received and all of the required items for a variance request submittal have been verified. Lambert went through the Variance Request Submittal Analysis:

Variance request submittals shall include the following items:	Applicant Submittal Summary	Staff Comments
Site-specific request identifying the specific criteria from which a variance is being requested. Section 3.M.1.b(1)	The variance is being requested for an OWTS to be permitted to be installed on the referenced parcel which is less than one acre in size.	Per Section 3.A.9 of the Gunnison County OWTS Regulations, an OWTS shall not be permitted to be installed on a parcel of land less than one acre in size. This is a local County requirement above the State minimum. The State of Colorado OWTS Regulations do not contain a requirement for minimum parcel size.
Technical justification by a professional engineer or professional geologist, which indicates the specific conditions which exist and/or	All the horizontal setback requirements between components of the OWTS and water, physical and health impact features are	Though this is a small parcel, less than one acre, all of the required setback distances from system components to waterbodies and pertinent physical features can be met with the proposed plan. The water service to this

<p>the measures which will be taken that support a finding that the variance shall result in no greater risk than that associated with compliance with the requirements of the OWTS Regulations. Section 3.M.1.b(2)</p>	<p>proposed to be met and there should be no greater risk to public health and safety. Gunnison County has more stringent horizontal distance requirements than the State Regulations and those more stringent setback distances will be met with the proposed system. The proposed system design includes pressurized distribution to an unlined sand bed.</p>	<p>parcel, and other parcels in the Subdivision is by a State permitted public water system which eliminates concerns regarding setback distances to water wells.</p>
<p>A discussion of alternatives considered in lieu of the requested variance. Section 3.M.1.b.(3)</p>	<p>There are no alternatives known. The subdivision and this parcel were created prior to creation of the Gunnison County OWTS Regulations.</p>	<p>No known feasible alternatives. The subdivision and parcel predate modern septic regulations and surrounding parcels are developed.</p>
<p>Technical documentation for selected alternative, which may include a testing program, which confirms that the variance does not increase the risk to public health and to the environment. Section 3.M.1.b.(4)</p>		<p>N/A-the applicant is not proposing an alternative system design. The proposed system meets the technical requirements of the OWTS Regulations.</p>
<p>A statement of the hardship that created the necessity for the variance. Section 3.M.1.b.(5)</p>		<p>The small, less than one acre, parcel was created prior to modern septic regulations requiring a minimum of one-acre.</p>

<p>Section 3.M.2.: Prohibitions on the granting of variance requests</p>	
<p>Prohibitions on the granting of variance requests:</p>	<p>Staff comments:</p>
<p>No variance shall be issued where the property can accommodate a conforming OWTS. Section 3.M.2.a.</p>	<p>The OWTS will conform to the technical, design and setback distance requirements of the OWTS Regulations. The variance request is for a system on a parcel less than one acre.</p>
<p>No variance shall be issued to mitigate an error in construction involving any element of property improvements. Section 3.M.2.b.</p>	<p>N/A</p>
<p>No variance shall be allowed on the grounds of cost of compliance. Section 3.M.2.c.</p>	<p>N/A</p>

<p>No variance shall be issued if it will result in a setback reduction to an offsite physical feature that does not conform to the minimum setbacks defined in Table 7-1 of this regulation without proof of compliance of Section 3.M.5. Section 3.M.2.d.</p>	<p>The minimum setbacks to on-site and off-site physical features appear to be met with the proposed development plan.</p>
<p>No variance shall be issued if it reduces the separation to ground water or bedrock based on the level of treatment in Table 7-2. Section 3.M.2.e.</p>	<p>N/A</p>
<p>No variance from the horizontal setback from a well shall be issued unless it also meets the variance requirements of the Board of Examiners of Water Well Construction and Pump Installation Contractors. Section 3.M.2.f.</p>	<p>N/A</p>
<p>No variance shall be issued for the installation of a higher level treatment system based on sizing or separation reductions without the Department having a maintenance and oversight program. Section 3.M.2.g.</p>	<p>N/A</p>

Staff Recommendation on the application for a variance to the *Gunnison County OWTS Regulations*:

It appears that the proposed OWTS design meets the design criteria and setback distance requirements of the Gunnison County OWTS Regulations. The existing public water service eliminates concern regarding setback distances to water wells. Staff recommends approval of the Ziegler application for a variance to the Gunnison County OWTS Regulations, Section 3.A.9, to install the proposed OWTS on Lot 19, Block 5 of the Chair Mountain Ranch Subdivision.

Review Body Comments:

Cudlip asked if there are any wetlands or waters that possibly aren't regulated on the property and asked what the grade on the site is. Lambert stated that she did a site visit to see if there are any indications of wetlands and there aren't any. Took photos of the site and shared them with the department's in-house wetland expert review and she said there are not any and it is not a concern. Cudlip asked if the drainage on the property has a bed, a bank and a scour line in it or is it vegetated with what could grow in that area. Lambert asked if she saw that on the parcel itself and Cudlip said it looks like it is on the parcel. Lambert stated that she observed that Highway 133 is up above. Between Highway 133 and County Road 33 is the subdivision, Chair Mountain Ranch 1 and generally it slopes down towards the Crystal River. There is a significant amount of snow melt and stormwater drainage. She observed that there is a lack of storm water controls that could be implemented to improve drainage throughout the entire subdivision.

Barvitski stated that the higher end of the, at the top, of the property it is flatter and it drops down quite a bit towards the corner of the intersection by County Road 3. They are designing the system to be up higher in the flatter area and the house would be north of that. There doesn't seem to be any wetlands or any abnormal plant growth in that drainage area. He believes it looks more like a bar ditch, a stormwater structure. They have a minimum requirement of 25 feet setback from the soil treatment area to the stormwater structure. They can still meet that and can put it in the plans to make sure that is met. The grade is not out of the ordinary of Gunnison County. It isn't so steep that they need a topo. They are proposing to put the house in a relatively flat area as well.

Bryndal asked if the correct slope is approximately going from 133 towards County Road 3 and potentially the intersection, left to right. Barvitski said that it is directly east to west. It comes down from the upper highway, drops into the leveler area of the subdivision, drops again a little bit to County Road 3 and then steely drops into the Crystal River. Bryndal asked that if in the event that there was a problem with the system gravity would take it towards County Road 3 instead of towards Alpine Street or the waterline.

Balch asked if the central water system is a well and where it is located. Lambert stated that she looked into the State of Colorado and it is an approved State public water supply. It's a well in good standing, in a shared location. She has a letter from the HOA on a previous application that *the subdivision provides water from a community well water system.... Every lot in the subdivision has water tap rights to the subdivision water system. No fee is charged, other than yearly dues.* As far as the location she is not sure where it is. Before they issue the building and septic permits they will require that the applicant provide proof that the tap fees have been paid. Balch thinks it would be good to have the location of the well on the map so they know exactly where it is. Bembenek agrees.

Bembenek asked how big the residence will be. Zeigler stated that it will be two bedrooms, they don't have anything set in stone about the size. It will be right on the line of the minimum requirements. It will not be large. Bembenek asked if it will be a primary residence. Zeigler stated that it will be a second residence. They live primarily in Glenwood Springs. They would not be there full time.

Public Comments and Responses:

Kim Cassady, who's family owns 104 Alpine Street, stated that back in the 90s Richard Stenson of the Environmental Health Board said that the particular lot was not buildable due to the runoff, drainage and wetlands located on the property. She believes that map needs to be topo'd. There have been many times they have had to pull people out due to how steep the area is. You are only able to access that neighbor in the winter time by four-wheel drive and you have to drop in off Hwy 133, at the top of McClure Pass into the neighborhood. Cars are not able to get up the bottom part of the neighborhood due to the four-wheel drive issues with it being so steep. There are a lot of times that cars try to get up it and they end up sliding back down. The location where the leach field is proposed there are a lot of vehicles that end up there. That is why there is usually a large snow berm there, that is a kind of bumper effect to keep people from landing in that lot as often. If you look on the plat for aerial photography you can see what looks like an alluvial flow at the very bottom that runs through that lot. There is visible running water over that lot at least three months out of the year. You can see it on aerial photography historically over time. That is a real cause for concern, that they are saying there are no wetlands there. She is curious why a former board member for the Gunnison county Environmental Health Board would tell them all that it is not developable due to the runoff drainage and wetlands on the property and now they are saying that there isn't any of that there anymore. It is extremely concerning to them. They have also had issues with the well in that area and said that the State and/or HOA could provide that to them.

Barvitski responded that he understands that coming up that entranceway into the subdivision can be steep off of County Road 3 but where the proposed entranceway is for the driveway and the house is coming off of the other drive up above, not off the County Road, right next to the Cassady property. It is relatively flat up there. The septic system is relatively flat up there. It does drop again as you get closer down towards the bottom of County Road 3, that is not where they are not proposing to install the septic system.

Lambert stated that she was looking through the variance that was given to the parcel that was less than one acre was right across the street from this parcel and was checking to see if Richard Stenson had any notes. He seemed to have more concern about the potential avalanche danger for the sites. She stated that he made no notes of any questionable vegetation or wetlands, but then again it is across the street so it could be different. She knows that Stenson was pretty thorough and careful when it came to any potential wetlands because he didn't have the advantage of having a wetlands delineator on site like currently.

Barvitski stated that Gunnison County's setback requirements from wetlands is 100 feet and if there was a neighboring property that had been an issue he would have noted that he believes. Lambert stated she was looking through the site plans of the older variance but they didn't locate the location of the community well. They show water lines, water tap coming down Alpine Street, but not the actual source well location. Lambert stated that they she went through each of the built parcels in the area and found that 13 of them are vintage 1970 systems. They have not received any repair or replacement permits on any of the systems in the subdivision. Most of the subdivision's builds have 1970 septic technology. There is one 1992 construction and then there is the 2006 development across the street. She believes that as the transfer of title program continues to develop they will start getting inspections for those systems in that area when they start getting turned over. Lambert thinks that the system that the applicant is proposing, the unlined sand bed, 3 feet of sand, is above and beyond what the regulations call for the soil type and would call that a very modern system.

Cassady asked if all of the comments from the neighbors were received. Lambert reported that the department has received four comments. They received comments from Kim Cassady at 104 Alpine Drive, Kreiling at 23 Gulch Way, that is across the street that received variance from the EH Board and Light and Waddick- both at 99 Alpine Street. Cassady asked if there will be new plans with the driveway location and the top map. Lambert reported that the driveway access would have to be approved by the Gunnison County Public Works Department for location and development. That approval will have to be received before issuing any septic or building permits.

Bembenek asked what their options are in respect to properly identify the public water supply and including it in their evaluation. Lambert stated that the applicant can contact the HOA president to determine where the community well for the public water supply is located and then the applicant will indicate it on their site plan. Barvitski stated that the letter from the HOA identifying the water source and the well and that all properties have to have an OWTS, the 100-foot requirement of the well location is protected by all lots in the subdivision. Bembenek stated that she hopes that is the case since they designed the entire subdivision to have an OWTS. Lambert stated that they will require that the well location be identified in the OWTS application and that it meets the setback requirements of Gunnison County. The applicant may want to do some additional water treatment. Balch stated that he is good with that as long as it is reviewed before the permit is issued.

Earley stated that one of the public comments raises concern of a seasonal runoff stream running through the property and wanted to know if they could require that proper stormwater management will occur on the site. Barvitski stated that they can meet the minimum requirements from the horizontal setback in the OWTS Regulations between a stormwater structure and this septic system soil treatment area of 25 feet. Lambert stated that the runoff seems to be surface runoff, not subsurface and it is largely due to seasonal snow melt and like everything else in Gunnison County the existing systems are under the cover of snow and runoff most of the year. Lambert believes that a good site plan, drainage plan, Public Works reviewing it, the Building Department looking at proposed design plans and grading away from structures will be will be key for developing this parcel. Including, flow away from all of the important features of development and common sense site practices for development, along with the applicant maintaining the stormwater features. Developing a drainage plan for the subdivision will also be key.

Balch asked about surface runoff and if Lambert is talking about just that lot. Lambert stated that it is coming off Highway 133 and McClure pass. Balch stated that the HOA should be responsible for runoff.

Lambert stated that Bembenek, Early and Balch will vote to approve, deny or vote to approve with certain conditions.

Barvitski turned off his video and left the room.

Lambert went through the staff draft decision. The Board members agreed they supported the staff requirements as stated.

EH Determination of Application:

Moved by Bembenek, seconded by Earley to approve the application with the conditions that have been listed in the draft decision from staff, for Darren Ziegler (OWTS-21-00004) before the Gunnison County Environmental Health Board. The motion passed unanimously, with Board members Earley, Balch, and Bembenek voting yes.

Moved by: Balch, **seconded by** Bembenek to close the public hearing.

ENVIRONMENTAL HEALTH BOARD VARIANCE REQUEST ACTION

APPLICANT: Darren Ziegler

DATE: March 11, 2021

SITE LOCATION: 80 Alpine Street, Lot 19 Block 5 Chair Mountain Ranch 1 Sub.

ACTION: Request for a variance to the Gunnison County OWTS Regulations for an OWTS on a parcel less than one-acre

PREPARED BY: Crystal Lambert, Building and Environmental Health Official

PROPOSED PROJECT:

The applicant is requesting a variance to the Gunnison County OWTS Regulations for an OWTS on a parcel less than one acre to serve a future residence. The parcel is currently vacant.

GUNNISON COUNTY ENVIRONMENTAL HEALTH OFFICE ACTION:

The application and proposed design plans have been reviewed by the Environmental Health Office for compliance with the OWTS Regulations and the land use requirements of the County. The proposed septic design meets the design criteria of the Gunnison County OWTS Regulations and the minimum horizontal distance requirements from water features, pertinent physical features and property lines are met.

The OWTS application was denied by the Environmental Health Office because *Section 3.A.9.* of the *Gunnison County OWTS Regulations* states that an OWTS shall not be permitted to be installed on a parcel of land less than once acre in size.

APPLICANT’S REQUEST FOR A VARIANCE:

A request for a Public Hearing with the Environmental Health Board for the consideration of a variance to *Section 3.A.9* of the *Gunnison County OWTS Regulations* has been received and was prepared by the applicant’s representative and system design engineer, Bill Barvitski, PE of Trout Creek Engineering, LLC.

PUBLIC HEARING:

On March 11, 2021, the Gunnison County Environmental Health Board conducted a Public Hearing on this request for a variance.

FINDINGS:

Based on a review of all the information included with the OWTS application, the request for a variance, and staff reports for this project and consideration of any and all testimony and public input received relative to this application, the Gunnison County Environmental Health Board finds that:

1. Action on this request for a variance from the *Gunnison County OWTS Regulations* is property-specific and limited to the circumstances unique to this application.

2. The applicant has demonstrated that the requested variance from the *Gunnison County OWTS Regulations* is warranted by unique and existing site-specific configuration and site size that make compliance with the Regulations technically infeasible.
3. The applicant has provided justification through specific conditions that exist which support a finding that approval of the requested variance will result in no greater risk than that associated with compliance with the requirements of the *Gunnison County OWTS Regulations*.
4. The applicant has demonstrated that approval of the requested variance will not be in violation of any minimum standards established in any other applicable federal or state rule or regulation.
5. The applicant has demonstrated that the proposed OWTS will not be a nuisance or injurious to public health, safety or welfare. The proposed development meets minimum horizontal distance requirements from water features, pertinent physical features and property lines.
6. The applicant has demonstrated that no substantial injury will result from the granting of the requested variance.
7. This review and decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Department file relative to this application; including all exhibits, references and documents.

DECISION:

The Gunnison County Environmental Health Board, having reviewed the proposed application and supporting documentation, site observations and public testimony does approve the requested variance to Section 3.A.9 of the *Gunnison County OWTS Regulations* for Darren Ziegler at his parcel, 80 Alpine Street, Lot 19, Block 5 Chair Mountain Ranch 1 Subdivision, under OWTS application 21-00004, with the following conditions:

1. The OWTS shall be designed and installed in accordance with the *Gunnison County OWTS Regulations* and the *Gunnison County Land Use Resolution*, including but not limited to setback requirements, design standards, requirements for system components and general technical standards.
2. This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.
3. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.
4. Approval of this use is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.

Adjourn: Bembenek closed the meeting of the Environmental Health Board at 2:28 P.M.

/S/ Rebecca Ricord
Administrative Assistant
Gunnison County Community Development Department