

## MORGAN COUNTY PLANNING COMMISSION

### November 9, 2020 MINUTES

The Morgan County Planning Commission met on Monday, November 9, 2020, at 7:00 pm in the Assembly Room of the Morgan County Administration Building. The meeting was called to order by Chairman Nathan Troudt.

Mike Bailey, Robert Pennington, and Allyn Wind were present. Nathan Troudt, Mike Erker and Clayton Miller attended remotely via the Zoom platform. Also present were Pam Cherry, Planning Administrator, and Ahna Raygoza, Planning Clerk. Morgan County Attorneys Kathryn Sellars and Katie Vera attended via the Zoom platform. Also present via Zoom, was Karol Kopetsky, Morgan County IT Administrator.

It is noted that this Planning Commission Meeting for November 9, 2020 was held in person with an option to attend remotely through the Zoom platform.

#### **Approval of Minutes:** October 13, 2020

**It was moved by Clayton Miller and seconded by Vice Chairman Robert Pennington to approve the October 13, 2020 minutes as presented. Motion carried 4-0. Allyn Wind and Mike Erker abstained from the vote as they were absent from the meeting on October 13, 2020.**

#### **Approval of Agenda:**

**It was moved by Vice Chairman Robert Pennington and seconded by Mike Erker to approve the Agenda as presented. Motion carried 6-0.**

Vice Chairman Robert Pennington read the review process for tonight's meeting.

#### **NEW BUSINESS:**

##### **1. Proposed Amendments to the Morgan County Zoning Regulations regarding setback provisions.**

#### **Amendments Overview**

Pam Cherry presented a summary of Proposed Amendments to Morgan County Zoning Regulations Amendments to setbacks provisions as follows:

1. Eliminate the use of the term "yard" for the term setback. The regulations currently use the terms interchangeably but for clarity, only one term is needed.
2. Redefine "setback" to eliminate the reference to the inclusion of any projections in the setback which is currently a source of conflicting language in the Regulations. This change also removes the terminology that refers to setback as minimum "yard" requirements or just simply yards.
3. Provide more detail on how a setback is measured. The current regulations provide little guidance on measuring setbacks, especially for front setbacks on parcels of property that are not platted and the abutting road is not owned in fee. Setbacks are measured from a property line. In the case of parcels that front a road which is an easement, arguably that true property line is underneath the road easement. However, if a 25 foot setback is measured from a property line under a road easement, it may result in the setback being less than the road easement and would technically allow building within the road easement. Alternatively, it may allow a building to be built very close to a county road. Neither of these scenarios are what is intended by setback regulations. Setback regulations are intended to appropriate space for

different uses of land. In this case, a road and a structure. To address this issue, the draft amendments establish a point of measurement from the easement's centerline and add the standard width of the road to the calculation of the setback. Depending on the type of road, ½ of its standard width is added to the required setback from Table 1 in Appendix B. For instance, for a parcel that fronts a local county road which has a standard width of 60 feet, the front setback would be 25 feet (the required setback from Table 1) plus 30 feet. This total measurement of 55 feet would be measured from the centerline of the road easement. So, there is no increase to the required setback but just an established point of measurement which ensures that the structure is setback appropriately from the road. In addition, the draft amendments also address section lines which have not been open to the public but also not vacated. The point of measurement would be from the second line and adding an additional 30 feet to the required setback.

4. Like roads, there are proposed provisions regarding streams and creeks and irrigation ditches.

5. There is a section on allowed projections within the setback. Most of these provisions currently appear in the zoning regulations. However, these provisions should be reviewed and a determination of whether revisions might be warranted.

6. Proposed is a short provision regarding items that are exempt from setback such as fencing, buffering, and the like. There is also a list at the end of the document of suggested amendments to Table 1, Appendix B. Currently, there is not linking language between the Table and Sec. 3-360 of the Zoning Regulations (which addresses setbacks) and has been suggested so it is more clear to the public where the setback requirements are located.

7. Lastly, you will see several items that are highlighted. These are distances and widths we need direction on.

Kathryn Sellars- introduced Attorney Katie Vera from their firm who will be aiding with land use items in the County.

The proposed setback amendments started out due to a conflict with current regulations as to what is allowed to encroach in those setbacks. Also being addressed are issues with roads which are easements, but not dedicated County owned right of ways, where the property line lies underneath the road easement.

-Especially in rural areas, the section lines are designated as road easements. The property lines generally go to the centerline of each road. This means the buildings that follow setbacks off of the property line would end up being on the edge of the road if those roads were ever constructed. In urban areas municipalities are usually fee owners. In the county it is a mix, but more often it is an easement.

-The general rule is that setbacks are measured from the property line to the structure.

For Example: If someone has a front setback of 25 feet, and they built a structure 30 feet back from their property line and they have an easement of 30 feet from the centerline- they would be building 5' into the easement.

To address that issue the County needs regulations in how to measure the setbacks:

3-360 A, B & C are all concerning roads.

A- Addresses how to measure, where the setback is measured from

In 1908 a law was declared and Morgan County claimed all section lines in the county. Some have never been opened, never been vacated, never been used. Since they are not vacated, the county does not want someone

building in the 60 foot easement, 30 feet on either side of centerline. There are methods to measure from those centerlines to protect the counties section line road easements.

- B- Setbacks from state and federal highways- 75 feet from right of way centerline
- C- Additional setback added onto easement from Table 1, Appendix B

For Example- If an applicant has a county road in front of their home, in the RCR zone, with a 30 feet easement and are building a structure – the applicant would add 30’ to the zone setback which is 25’ which would give a total of 55 feet from the centerline of the county road.

Intent is to establish point of measurement but not increase setbacks from road.

- D- Setbacks from irrigation ditches 75 feet from centerline of ditch. Includes streams, rivers and creeks.
  - a. Currently no regulations on this.
- E- Cleaned up regulations that didn’t apply to Morgan county but more of an urban area.
  - a. Took out open fire escapes etc...
  - b. 3 and 5 foot encroachments-
- F- Exceptions to Setbacks: can be built right up to the property line
  - a. Fence, screening, buffering

Stating “setback measured from edge of road easement” or “setback is x number of feet from the road” could be clearer than what was suggested in the packet. The concern was given that on a four lane highway 75 feet from the right of way centerline might not be enough. It was pointed out that landowners will have to find the centerline to measure and find the edge of the easement and setback regardless. It does not make great difference from a legal standpoint so whatever is easiest for applicants and the county can be done.

Few of the section lines have been vacated so there are a large number in the county. We have had a few issues come up with access not necessarily structures since many of the section lines are on grazing land or similar but the legal department wanted to include that before any issues come up in the future. Road books are checked when investigating which roads have been vacated.

Section D- Ditches, canals, creeks, and rivers

Irrigation ditches should be different from creeks and rivers. Rivers and creeks can be 40 feet wide at the top end and 7 feet wide at the bottom end depending on the body of water. 75 feet from centerline may not be enough for rivers and creeks in some areas.

Alternatively, using the bank high water line may be more appropriate than the centerline. For example, giving a minimum of 50 feet from edge or the bank, high-water line, on canals and ditches due to varying widths.

Any pre-existing, non-conforming structures are allowed to stay there until they are destroyed, however, all new structures/construction must follow the regulations.

Currently, if an existing, encroaching structure is destroyed more than 50% they have 24 months to either start rebuilding or complete a rebuild of a destroyed structure. She did not recall the exact time allowed per current regulations. This topic is being reviewed by County Commissioners and Planning Commission will review it at a later date this year.

There was discussion about small properties where encroachments maybe could be allowed, with neighbor permission, where doing so would not affect neighbors, visibility or line of sight at a corner. Applicants should have a reasonable way to have a variance if their lot is small. Also it was discussed whether or not the county was required to allow encroachments or whether they could disallow all encroachments.

It was pointed out that state statute requires applicants to prove hardship in order to receive a variance. In cities or municipalities small variances can be done without showing hardship, but by law counties do not have as much flexibility. Regulations could be changed to say that uncovered porches could encroach with a conditional use permit although it is not usually done in other counties.

Fences- The way regulations are written right now, fences could technically be built right up to the centerline or right of way of a road that is not built yet. The language will be clarified to state that fences, screening, and buffering cannot be built in any road easement or in a vision corridor or in a way that creates a public hazard. Screening was defined as bushes or trees.

#### PUBLIC COMMENT:

No public comments were made.

#### DISCUSSION

Summarized Planning Commission recommendations-

1. Setbacks measured from edge of easement, rather than right of way centerline
2. Subsection D- Setbacks on irrigation ditches 50 feet from bank high water line as well as on streams, creeks and river
3. No encroachments should be allowed into the setback
4. Clarify that exemptions to setbacks cannot be built into road easement, line of sight must be maintained and not present any public safety hazards.

There was discussion on the difficulty of identifying the “high water mark” on streams, rivers, dry stream beds and abandoned or rarely used ditch canals. The point of ditch easements is to ensure historic irrigation ditch easement is preserved without a structure, including ditches that are not being used.

Three suggestions were discussed for clarity on D:

1. 75 feet from centerline from ditches not in use and 50 feet from high water mark from ditches in use, putting
2. Giving irrigation ditches a minimum setback of 50 feet from high water line or any distance given by irrigation company
3. Separating dry ditches in a 3<sup>rd</sup> provision.

#### MOTION

Motion by Pennington to accept Setback Amendments with all recommendations discussed along with changes suggested by Sellars seconded by Wind. Roll call vote- Motion passes 6-0.

#### 2. Nuisance Provisions Amendments

This is a technical amendment. Nuisance regulations were placed with zoning regulation, adopted by ordinance and regulations but this process is to make sure they are adopted correctly by Commissioners to avoid issues when the County goes to court to enforce them. There were a few changes made on enforcement time periods for consistency to provide more clarity.

The resolution was not included in the packet but was sent in a memo from Kathryn.

There was discussion on the current enforcement and inspections of Nuisance Regulations.

Morgan County has complaint driven abatement process. The Planning and Zoning receives a complaint, the Building Inspector inspects and reviews, after which the Planning and Zoning Administrator prepares Notice of Violation if complaint appears valid. Time to abate for nuisances is 30 days currently and these amendments would lower that to 10 days. After 10 days additional time can be given, and if Commissioners choose, a lawsuit can be filed. It was acknowledged that extenuating circumstances are considered and some properties simply take more time.

It is State statute that nuisance complaints, such as junk and inoperable vehicles do not apply to Agricultural land, currently in use as agriculture land, if more than 10 acres. Also Industrial tracts of 10 acres or more are exempt. If it is classified as Ag by the assessor's office and in use as agricultural land and has more than 10 acres the sections would not apply. It was suggested that it not be a requirement that the assessor's office.

The concern of equality, fairness, and consistency of a complaint driven enforcement process was discussed. One landowner could be sent to court due to a neighbor's complaint and another citizen with the same issues could have no violations with the county if their neighbors are more tolerant and do not complain.

Ordinance Officer(s) would be needed if process changed. Planning Department does not have the staff to go looking for violations. It was suggested that if they cannot be enforced fairly with an enforcement officer rather than just complaint driven, perhaps there should not be any regulations.

Many of the properties in violation are small properties.

#### PUBLIC COMMENT

No public comments made.

#### MOTION

Motioned by Mike Erker seconded by Clayton Miller to adopt as presented

Motion passed 4-2. Robert Pennington and Mike Bailey.

#### ADJOURN:

Motion by Mike Bailey, seconded by Mike Erker. Motion passed 6-0