

MORGAN COUNTY BOARD OF ADJUSTMENTS AND APPEALS
Corrected October 21, 2019
MINUTES

The Morgan County Board of Adjustments met on Monday, October 21, 2019, at 5:30 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call was: Allyn Wind, Charlie Ruyle, Mike Erker, Julie Padilla and Viola Johnson. Also present were Pam Cherry, Planning Administrator, and Jody Meyer, Planning Assistant and Shannon Shields, Planning Clerk.

The meeting was called to order by Chairman Allyn Wind.

Minutes: 09-16-19

Motion was made by Viola Johnson and seconded by Charles Ruyle to approve the minutes of the September 16, 2019 hearing. Motion carried 5-0.

Agenda:

It was moved by Charlie Ruyle and seconded by Viola Johnson to accept the agenda as presented. Motion carried 5-0.

Allyn Wind read the procedural rules for this hearing.

NEW BUSINESS:

OWNERS and APPLICANTS: Glenn and Maria Deiker

Glenn Deiker was present to represent this application.

Pam Cherry, Planning Administrator, read her File Summary as follows:

This application is for a variance from Section 3-650 Table 1, Appendix B of the Morgan County Zoning Regulations. The Deiker's own lots 135 and 136 and plan to build a two story garage on the property. The property is located in the W½ of the NW¼ of Section 27, Township 5 North, Range 60 West of the 6th P.M., Morgan County, Colorado. The lots have been combined to eliminate the property line between the two. The property is addressed as 135 Indian Way, Weldona, Colorado 80653.

The Deiker's have received approval of their plans from the Jackson Lake Village HOA. There is also a conditional use application in process for the garage and covered patio which will likely be reviewed administratively. The variance request is to reduce the front setback from the required 25 feet to 15 feet due to the irregular shape of the lots in Jackson Lake Village. The rear and side setbacks proposed are in compliance with zoning regulations.

Agency referrals and neighbor notification were completed, there were no objections received.

Criteria for review of a Variance:

- (1) The application requirements of Section 5-185 have been met; the application was complete and represents a clear picture of the requested variance.
- (2) There are no off-site impacts of the requested variance which would require additional infrastructure (utilities, drainage, or roads) by the County or Special Districts.
- (3) The variance proposed is compatible with surrounding uses and is adequately buffered as necessary.

(4) The general intent and purpose of these Regulations and the Morgan County Comprehensive Plan would be served by granting the variance.

(5) The granting of this variance would prevent undue hardship in the application of the requirements of these Regulations and would be in the best interests of public health, safety, and welfare.

Pam Cherry recommended approval of this application subject to:

1. Quit claim deeds showing same name ownerships will be executed and recorded for the properties prior to a resolution being recorded for this variance request.

PUBLIC TESTIMONY OPENED:

Those in favor – no one present

Those in opposition – no one present

PUBLIC TESTIMONY CLOSED

Mike Erker asked about Jackson Lake Zoning Regulations and whether they should be changed. Pam Cherry stated that the County would not initiate changes to the zoning regulations but that Jackson Lake HOA could request the changes. Pam Cherry said the County will not regulate an HOA nor regulate covenants.

Viola Johnson said it was noted in Pam Cherry's file summary in her recommendation that "Quit Claim Deeds showing the same name ownerships shall be executed" in order to join these two lots together. Has that been done? Pam Cherry said it has not been done – that is why the condition is there. They did submit a lot combination agreement back in June or July; however name initials were in one deed and not the other. They can't combine the lots until the proper deeds are recorded to make ownership the same. Pam wrote the Resolution showing "aka" (also known as) to cover the Resolution wording also.

PUBLIC TESTIMONY OPENED:

Those in favor – no one present

Those in opposition – no one present

PUBLIC TESTIMONY CLOSED

Charlie Ruyle asked about parking situation as he did not think there was very much room. Glenn Deiker stated he would park in garage and also noted it was 19' on one end. There will be additional parking on the side of the garage. Allyn Wind asked about pins. Pam answered hopefully they have not been moved.

It was moved by Mike Erker and seconded by Viola Johnson to recommend approval of this Application for a Variance to front setbacks from 25' to 15' to place a 2 story garage, Section 3-650 Table 1, as presented subject to the following condition:

1. **Quit claim deeds showing same name ownerships and Lot Combination Agreement will be executed and recorded for the properties prior to a resolution being recorded for this variance request.**
2. **Approval Resolution 2019 BOA 06**

Roll call vote was made and Motion carried 5-0.

It was moved by Mike Erker and seconded by Charlie Ruyle to have Chairman Allyn Wind sign the Resolution 2019 BOA 06 when finalized for this application. Roll call vote was taken. Motion carried with a vote of 5-0.

Chairman Wind called the second hearing:

OWNER and APPLICANT: Jennifer Lyons

Jennifer Lyons and Rodney Townley were present to represent this application.

Pam Cherry, Planning Administrator, read her File Summary as follows:

This application is for a Variance to setbacks to build a covered patio on the double wide modular home that was permitted by a Conditional Use in May 2019. The property is addressed as 75 Chippewa Circle, Weldona, CO 80653. The property previously completed a lot combination agreement for what were lots 73, 74 and 75 of Jackson Lake Village. The assessor's parcel number for the property is 0971-272-01-074.

The variance request is to reduce the setback of 25' required by Section 3-650 Table 1 to of the zoning regulations in the Jackson Lake Village zone district. The request is for a 15' reduction to a 10' front setback. The property is located in the W¹/₂ of the NW¹/₄ of Section 27, Township 5 N, Range 60W of the 6th P.M., Morgan County, Colorado.

Adjoining property owners and referral agencies were notified, with no comments received as of the date of this report.

All criteria for approval of a variance have been satisfied:

Criteria for review of a Variance:

- (1) The application requirements of Section 5-185 have been met; the application was complete and represents a clear picture of the requested variance.
- (2) There are no off-site impacts of the requested variance which would require additional infrastructure (utilities, drainage, or roads) by the County or Special Districts.
- (3) The variance proposed is compatible with surrounding uses and is adequately buffered as necessary.
- (4) The general intent and purpose of these Regulations and the Morgan County Comprehensive Plan would be served by granting the variance.
- (5) The granting of this variance would prevent undue hardship in the application of the requirements of these Regulations and would be in the best interests of public health, safety, and welfare.

All appropriate notice requirements have been completed with no comments received in favor and no comments in opposition.

Pam Cherry recommended approval of the variance request.

Ms. Lyon stated that she cares for people with special needs and disabilities, including Rodney, and this variance would permit those she cares for to be able to use the outdoor porch if it was covered being sheltered from weather.

PUBLIC TESTIMONY OPENED:

Those in favor – no one present

Those in opposition – no one present

PUBLIC TESTIMONY CLOSED

Viola asked if she was covering the concrete slab. Jennifer stated yes. Allyn Wind noted they have approval from the HOA.

It was moved by Mike Erker and seconded by Viola Johnson to approve this Application for a Variance to front setbacks from 25' to 15' to build a covered patio over a cement pad as presented becoming Resolution 2019 BOA 07. Roll call vote was taken. Motion carried with a vote of 5-0.

Chairman Wind called the third hearing:

**OWNER: Four X Ranch, LLC
APPLICANT: Cody Millar**

Cody Millar was present to represent this application.

Pam Cherry, Planning Administrator, read her File Summary as follows:

Four X Ranch, LLC represented by Cody Millar has submitted this application for a variance to Section 3-650 Table 1, Note (d) of Appendix B, Zone District Bulk Requirements of the Morgan County Zoning Regulations regarding minimum setback for a residential structure to a confined animal feeding operation in the Agriculture Production zone district. The minimum setback from an animal confinement facility to an occupied structure is 1,320 feet. There is an existing home that is approximately 700 feet from the proposed footprint for the feeding operation. The variance request is to reduce the setback 620 feet from the regulation requirement.

The property is located immediately south of County Road W and west of County Road 22, Fort Morgan, CO 80701 with a parcel number of 1039-15-000-0001 located in the N½ of the NE¼ of Section 15, Township 4 North, Range 57 West, of the 6th P.M. Morgan County, Colorado.

Ten property owners were identified within the notification area of the application and hearing. As of the date of this report, no comments have been received.

In reviewing this application the Board of Adjustment is required to make a finding that the criteria for granting a variance in Section 5-220(B) of the Morgan County Zoning Regulations have been satisfied:

- (1) The strict application of the applicable regulation results in peculiar and exceptional practice difficulties or exception and undue hardship on the owner due to:

The varying elevations of the property engineers assisted in determining the best location on the eighty acres that would meet the requirements of the property owner.

- (2) Exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property; and

There is an exceptional situation; due to the topography of the property.

- (3) The hardship is not self-imposed;
- (4) The variance, if granted, will not adversely affect the use of adjacent property as permitted under these Regulations;

The variance will not adversely affect the use of adjacent property; this property is currently a shooting range that will no longer be used once the feeding operation commences.

- (5) That the variance, if granted, is in keeping with the intent of these Zoning Regulations and the Morgan County's Comprehensive Plan; and

The zoning regulations provide for variance requests to the required 1,320 foot setback for feeding operations.

The Comprehensive Plan encourages the growth of the agriculture industry in the county.

Goals of the Morgan County Comprehensive Plan:

a. Diversify the economy in Morgan County to broaden business employment opportunities for residents and to further economic growth.

If approved, this variance will support the continuance of agriculture business in the county.

b. The county will encourage the preservation of agriculture production lands in balance with pressures for land use changes to higher intensity development.

If approved, this variance will encourage the preservation of the agriculture industry in the county.

- (6) That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Morgan County.

The variance to permit a variation from setback for the feeding operation, if granted, will not adversely affect the health, safety and welfare of the citizens of Morgan County.

- (7) Provide a written, notarized statement with no objection to variance request.

Pam Cherry recommended approval of this variance request with the following Condition:

1. Receiving a notarized letter from neighbors, Tim and Marva Bellendir, saying that a 1080' front setback variance is okay with them, from closest distance of feedlot footprint to the corner of their shop located on the north side of Co Rd W, see diagram.

A written notarized statement from property owner (Tim and Marva Bellendir) to the northwest about 1080 ft. away from the boundary with no objection to the variance request.

Allyn Wind said the building Pam Cherry pointed out earlier at the beginning of the hearing (belonging to Robert and Karla Delandsheer) – Pam said this variance request is for the building that is 788 ft. away (Delandsheer) and then when we received this site map, there was another structure that is only 1080 ft. away (Bellendirs) that is within the 1320 ft. setback.

Cody Millar from Four X Ranch stated that Four X Ranch feeds 3500 head of Holsteins as replacement Holsteins for a dairy. They currently rent a few corrals in the neighboring area and they are at a point where they need a little extra space to hold those animals; something that he can put an investment into that is going to last for their operation as opposed to renting. They own this property and they have gotten more and more complaints about the shooting range that is out there. Four X Ranch decided to put corrals in to hold dairy heifers and get rid of the shooting range. The occupant that lives within the 788 ft., J.R. Delandsheer, is here tonight to speak in support of this variance application and Cody has also spoken with Bellendirs who own land and a shop to the west is approximately 1080 ft. away. Cody Millar thought the setback was from a residence not a business and did not

consider it originally. He said Bellendirs are in support of this request and it will be no problem to get a signed statement from Tim Bellendir saying they are in support of this variance. Cody said there will simply be 4 corrals there with about 800-900 head on site. Pam Cherry said he also has a Special Use Permit in the process for a Board of County Commissioners hearing and one of the conditions would be approval of this Variance Permit.

Mike Erker asked Cody about numbers of animals for this parcel. Cody Millar stated Four X Ranch has a CAFO permit for 3500 head of heifers, which number includes the 800+ head for this parcel. Cody stated they are not increasing their herd, just corral space to move the 800 head to spread them out. They will keep it under 1000 head so they don't have to involve the State. They are requesting to add corrals to this parcel. Allyn Wind asked if feed will be moved or fed by truck. Cody said they feed once a day and would use about 3 truckloads. Cody stated no feed storage will be on site.

Julie Padilla asked if any new residents wanted to come in and build would they have to go through a Special Use or Variance. Pam Cherry said yes anything new would need to go through a process.

PUBLIC COMMENT OPEN:

Not in favor nor opposed to Variance:

Neil Schoemaker, 21347 Co Rd W, Fort Morgan, CO. Neither for nor against. He wanted more information and asked to see the map which was supplied. No other questions.

Brian Whitney: Stated his name. Address: 21415 CO Rd 22, Fort Morgan, CO 80701. He lives south of Four X Ranch's parcel. Mr. Whitney was neither for this application nor opposed to this application. Had some questions: If they want to build an occupied structure, would they have problems? What are the setbacks? Pam answered 1320' from Four X Ranch's property as they have been defined for their livestock feedlot boundary (the footprint of your new building to what Four X has defined as their cattle boundary) and their boundary does not cover the entire 80 acres. He was also concerned if a survey of their property showed any disparity, he did not want to have problems. Pam advised them to go to the Special Use hearing in front of the Planning Commission on November 12, 2019 and the Board of Commissioners will be about 3 weeks after that.

In Favor:

Robert Delandsheer: Stated his name. Address: 21967 CO Rd W, Fort Morgan, CO 80701. Stated he was in favor of the project and that he was located closest to the proposed facility, didn't see any problems with it and was in support.

Opposed: No one present spoke in opposition to this application.

PUBLIC TESTIMONY CLOSED

It was moved by Mike Erker and seconded by Viola Johnson to approve this Application for a Variance regarding minimum setback for 2 occupied residential structures to a confined animal feeding operation, as presented, including the following condition:

- 1. Applicant/Landowner must get a notarized signature from the Bellendir's in support of this Variance, becoming Resolution #2019 BOA 08.**

In discussion Pam Cherry said she will have to make a revision to that Resolution because that condition appeared this afternoon.

Allyn Wind wanted to know if the new landowner (Bellendir's) would be part of the Resolution. Pam said she would have to do some work on the Resolution to make sure she mentions the second structure also. But we will wait to do that until we get that signed statement from Bellendir's. It might be a good idea not to approve that Resolution right now as there are a number of changes that need to be made to it; so withdraw that motion for approval of that motion and Pam with redraft it based on this information. Allyn Wind wanted to make that very clear, that the condition was that a statement from Bellendirs was received. Allyn Wind said - so the motion will be to approve the Variance but not the Resolution. Pam said we will bring them to you next month for review.

It was moved by Mike Erker and seconded by Viola Johnson to approve this Application for a Variance regarding minimum setback for 2 occupied residential structures to a confined animal feeding operation, as presented, including the following condition:

- 1. Applicant/Landowner must get a notarized signature from the Bellendirs in support of this Variance**

Roll call vote was taken. Motion carried with a vote of 5-0.

Question by Cody Millar. Can he draft the letter? Pam said yes but both parties need to sign it in front of a notary.

Chairman Wind called the fourth and final hearing of the evening:

**OWNER: T&M Limited Partnership
APPLICANT: Shannon Toomery - AGPROfessionals**

Tim Naylor of AgPro was present to represent the application.

Pam Cherry read her file summary as follows:

T&M Limited Partnership, represented by Tim Naylor of AGPROfessionals has submitted this application for a variance to Section 3-650 Table 1, Note (d) of Appendix B, Zone District Bulk Requirements of the Morgan County Zoning Regulations regarding minimum setback for a residential structures to a confined animal feeding operation in the Agriculture Production zone district. The property is located in the NE¼ of Section 8, Township 3 North, Range 59 West of the 6th P.M. Morgan County Colorado.

The minimum setback from an animal confinement facility to an occupied structure is 1,320 feet. There is an existing home on the same parcel as the feed yard and does not require a variance. There is a home on an adjacent parcel #1225-090-00-006 owned by T&M parcel that does not meet the 1,320 foot setback requirement so requires this variance but it is not clear the distance from that home to the feed yard footprint. In addition, there is a structure on parcel #1225-080-00-010 the use of which is not clear from the provided materials.

The property is located on the south side of Interstate 76, one-half mile east of County Road 7. An amendment to a Use by Special Review is also in the planning process to expand the footprint of the feed yard.

Property owners within 1,320 feet of the feeding operation were notified of this application, as of the date of this report, no comments have been received.

In reviewing this application the Board of Adjustment is required to make a finding that the criteria for granting a variance in Section 5-220(B) of the Morgan County Zoning Regulations have been satisfied:

- (1) The strict application of the applicable regulation results in peculiar and exceptional practice difficulties or exception and undue hardship on the owner due to:

The variance is requested for a residence owned by T&M Limited which if not granted would result in a hardship upon the applicant.

- (2) Exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property; and

There is an exceptional situation; the residence requesting the variance is owned by the feedyard.

- (3) The hardship is not self-imposed;

- (4) The variance, if granted, will not adversely affect the use of adjacent property as permitted under these Regulations;

The variance will not adversely affect the use of adjacent property; T&M owns the adjacent property to the north, south and east. There is landlocked property on the north side of the feedyard that will be resolved through the Special Use process.

- (5) That the variance, if granted, is in keeping with the intent of these Zoning Regulations and the Morgan County's Comprehensive Plan; and

The zoning regulations provide for variance requests to the required 1,320 foot setback for feeding operations.

The Comprehensive Plan encourages the growth of the agriculture industry in the county.

Goals of the Morgan County Comprehensive Plan:

a. Diversify the economy in Morgan County to broaden business employment opportunities for residents and to further economic growth.

If approved, this variance will support the continuance of agriculture business in the county.

b. The county will encourage the preservation of agriculture production lands in balance with pressures for land use changes to higher intensity development.

If approved, this variance will encourage the preservation of the agriculture industry in the county.

- (6) That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Morgan County.

The variance to permit a feeding operation, if granted, will not adversely affect the health, safety and welfare of the citizens of Morgan County.

Pam Cherry recommended approval of this variance request subject to:

- 1.) The Use by Special Review is approved by the Board of County Commissioners.

Tim Naylor of AGPRO is requesting variance for an existing residence within 1320' of a CAFO. The residence is inhabited by a farm employee of T&Ms. It sits on a separate parcel from the CAFO and it makes sense to do this variance now. The residence is 1160' to T&M Limited CAFO. Allyn Wind asked if the house is owned by T&M. Tim answered yes. There is no intention to get rid of employee housing. Tim explained T&M owns Q Ranch and Front Range Dairy. They milk 60,000-70,000 head. There will be no increase in heifers, just more pens. Pam

Cherry asked about clarification for feed storage area. Pam Cherry has seen other CAFOs where feed storage was part of the footprint. Tim Naylor said hay storage does not have to be part of a CAFO; he doesn't believe hay storage fits in a Special Use Permit. Hay is not a structure; they can always move the hay. Julie Padilla asked where the manure storage is. They are denoting where the pens will be located. Tim stated they pile manure in the pens and then truck it out; that's why they need more pens to help with the cleaning process. Discussion of property lines for T&M. The house they are requesting a variance for sits on a separate parcel. They don't want to sell it as it provides a buffer for the CAFO.

PUBLIC TESTIMONY OPENED:

Those in favor – no one present

Those in opposition – no one present

PUBLIC TESTIMONY CLOSED

Mike Erker questioned item 4 in Pam's file summary regarding the landlocked property on the north side. Pam replied it will be resolved by the Special Use by the BCC. Tim Naylor said Co Rd 8 on the north side of Co Rd Q was vacated. This left two parcels landlocked – one being US 76 Property/Krehmeyer whose parcel was split when I-76 came through; the second parcel belonging to a Melinda Smith. Tim Naylor said he can talk to US Property/Krehmeyers about a possible purchase of this land. Pam Cherry said she did talk to the Krehmeyers who also were wondering how to resolve this access issue. Tim Naylor said the US Property is still tied to the bigger parcel of US Property lying north of I-76. Mike Erker suggested taking out condition #4 of the file summary. Allyn Wind wanted to know what the 5 acres north had to do with CAFO. Pam said it has nothing to do with this variance. Board of Adjustment asked about taking out Pam Cherry's recommendation regarding approval of the Board of Commissioners for the Special Use. Pam said they could take that out. Pam said the variance would still be in place regardless what would happen with the Special Use.

It was moved by Charlie Ruyle and seconded by Mike Erker to approve this Variance Application with the exception that item #4 of the file summary stating: "There is landlocked property on the north side of the feedyard that will be resolved through the Special Use process" be stricken from Pam Cherry's file summary. They BOA did not approve the recommended condition made by Pam Cherry – they did not vote on that. Roll call was vote taken. Motion carried 5-0.

As there was no more business to come before the board, it was moved by Mike Erker and seconded by Viola Johnson to adjourn the meeting at approximately 6:45 P.M. Motion carried 5-0.

Respectfully submitted,

Jody Meyer, Planning Assistant