

MORGAN COUNTY BOARD OF ADJUSTMENTS AND APPEALS
NOVEMBER 23, 2020
MINUTES

The Morgan County Board of Adjustments met on Monday, November 23, 2020, at 5:33 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call was: Allyn Wind, Charlie Ruyle, and Viola Johnson were present in person and Jason Enfante, Julie Padilla were present using the Zoom platform. Also present were Pam Cherry, Planning Administrator, Ahna Raygoza, Planning Clerk, Madeline Hagan, Planning Clerk, and Karol Kopetzky, Morgan County IT Dept. Administrator, and Kathryn Sellars, County Attorney via Zoom.

The meeting was called to order by Chairman Allyn Wind.

MINUTES:

Motion was made by Viola Johnson and seconded by Charles Ruyle to approve the minutes of the July 20, 2020 hearing. Motion carried 5-0.

AGENDA:

It was moved by Charles 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:

OWNER: WESTERN SUGAR COOPERATIVE
APPLICANT: MIKE SKEANS
ROBERT ZIMMERMAN ATTENDED IN PLACE OF MIKE SKEANS

Robert Zimmerman, Senior Engineer at Western Sugar Cooperative was in attendance to present this Variance Application.

Pam Cherry read her file summary as follows:

Mike Skeans on behalf of Western Sugar Cooperative has submitted this application for a variance to Section 3-650 Table 1 of Appendix B, Zone District Bulk Requirements of the Morgan County Zoning Regulations regarding maximum height of a fence in the Heavy Industrial zone district. The maximum height in the district is eight (8') feet. The property is addressed as 18317 Highway 144, Fort Morgan, CO 80701 with parcel numbers of 1039-310-00-008 located in the SW¹/₄ of Section 31, Township 4 North, Range 57 West of the 6th P.M. North of Interstate 76 and 1041-364-00-001 located in the SE ¹/₄ of Section 36, Township 4 North, Range 58 West of the 6th P.M., Morgan County, Colorado.

Western Sugar Cooperative is requesting to increase the maximum height for fencing from 8 feet to 25 feet to allow for the construction of wind fencing as required by the Colorado Department of Public

Health and Environment to reduce the wind that causes precipitated calcium carbonate dust (PCC) created by truck loading operations. Limestone is used in the processing of sugar beets, the PCC is basically finely ground limestone; a byproduct of processing.

Approximately seventeen adjacent landowners were identified and notified of this request. Section 5-200(B) of the Morgan County zoning regulations states that adjacent owners shall be notified of the request prior to the hearing.

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:

Strict application of the regulations will result in peculiar or exceptional hardship. Western Sugar is requesting this variance in response to a requirement by the Colorado Department of Public Health and Environment.

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

The Colorado Department of Public Health and Environment is requiring Western Sugar to install this fence to reduce dust from leaving the site.

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

The hardship is due to requirements of the Colorado Department of Public Health and Environment.

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

If granted, the variance will not adversely affect the use of adjacent property.

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

Morgan County Zoning regulations recognize the need to increase maximum heights in the Heavy Industrial Zone district.

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 growth of Western Sugar which provides employment opportunities for residents of 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 sugar beet industry in numerous counties.

c. Improve Morgan County's image by dealing with community design issues in relation to land use.

Morgan County is cooperating with citizens, Western Sugar and the Colorado Department of Public Health and Environment to address design issues related to the sugar operation.

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

The variance for the construction of a new dust fence, if granted, will improve the health safety and welfare of the citizens of Morgan County.

This variance request meets the criteria for granting the variance.

Robert Zimmerman, Senior Engineer at Western Sugar Cooperative spoke on behalf of Mike Skeans for this application.

PUBLIC COMMENT OPEN

No one present from the public to speak in favor or opposition of application.

PUBLIC COMMENT CLOSED

The chairman asked if the Board had any further questions.

Charles Ruyle asked if the proposed wind fence will help with the regulations required by the State. Robert Zimmerman responded that the increased height in the proposed wind fence is due to the height of the trucks and wind speeds. He stated that an approximate 50% reduction in wind associated problems and/or issues is expected from the proposed wind fence, thus, the wind fence will help with the regulations required by the State.

Viola Johnson commented on the attention to detail with the construction of the fence in consideration to the high wind speeds present in the area. She stated that she was in favor of the proposed Variance Application.

MOTION:

It was moved by Viola Johnson and seconded by Charles Ruyle to approve this application from Western Sugar Cooperative for the variance as requested.

Roll call vote was taken. Motion carried 5-0.

OWNER: WAGON WHEEL HOMES, LLC
APPLICANT: RICHARD AND HELEN MIGCHELBRINK

Richard and Helen Migchelbrink of Wagon Wheel Homes, LLC were in attendance to present this Variance Application.

Pam Cherry read her file summary as follows:

Richard and Helen Migchelbrink, Wagon Wheel Homes, LLC have submitted this application for a variance to Section 3-650 Table 1 of Appendix B, Zone District Bulk Requirements of the Morgan County Zoning Regulations regarding setback requirements in the Agriculture Production zone district. The request is to reduce the front setback from 30' to 12.00', and the side setback from 25' to 24.00', and the rear setback from 20' to 14.00'. The property is addressed as 21589 County Road R. with a parcel number of 1229-030-00-012 located in SW¹/₄ of the SE¹/₄ of Section 3, Township 3 North, Range 57 West of the 6th P.M. Morgan County Colorado.

The Wagon Wheel Homes parcel is 2.38 acres that has 16 mobile homes, one stick built home and one shed that is planned to be another residence. Reduction of the setback will allow the same number of mobile home units on the property. The applicant purchased the property as a legal, non-conforming use. The applicant plans to improve the property by renovating and/or replacing units on the property.

In order to improve the parcel, the applicant was required to apply for a special use to allow mobile homes on the property. The special use was granted by the Board of County Commissioners on October 13, 2020 subject to the granting of this variance and other conditions.

Another condition of the special use approval is that no additional homes be repaired, replaced or sold until the update/upgrade of the waste water management system is completed. The variance will allow the same number of homes to be on the property once all conditions have been met.

Five adjacent landowners were identified and notified of this request. Section 5-200(B) of the Morgan County zoning regulations states that adjacent owners shall be notified of the request prior to the hearing.

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:

Strict application of the regulations will result in peculiar or exceptional hardship. This property has been a mobile home park for approximately 50 years. In order to upgrade the property the variance is needed.

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

The homes on the property currently do not meet setbacks, granting this variance will not increase the amount of variance required.

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

The hardship is a result of the property having been used as a mobile home park for many years and had been anticipated to remain.

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

If granted the variance will not adversely affect the use of adjacent property. Granting of the variance will allow the applicant to improve the park by replacing and renovating units, which will improve the area.

- (5) That the variance, if granted, is in keeping with the intent of these Zoning Regulations and the Morgan County's Comprehensive Plan; and 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 economic growth and provide affordable housing options for the work force in the area.

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

c. Improve Morgan County's image by dealing with community design issues in relation to land use.

Morgan County is cooperating with the owners of Wagon Wheel who desire to improve the park, improving Morgan County's image.

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

The variance to the setbacks, if granted, will improve the health safety and welfare of the citizens of Morgan County. Prior to any new home placement on the property, the septic system shall be

upgraded or replaced in coordination and with oversight by the Colorado Department of Public Health and Environment.

The South Side Lateral Company provided comments that are included in your packets. They object to the granting of the variance because of the need for sufficient space to maintain the canal.

Pam Cherry introduced Kathryn Sellars of Hoffman, Parker, Wilson & Carberry, P.C. to comment via the Zoom platform.

Helen Migchelbrink spoke on the possibility of showing a PowerPoint with pictures of the Wagon Wheel Homes, LLC property and ditch in relation to the neighboring ditch. She also commented on the intent of Wagon Wheel Homes, LLC to improve the existing mobile home park by replacing the current mobile homes with homes of similar dimensions in the exact same location which they currently reside. There was also a comment made that the South Side Lateral Company has been able to maintain the ditch while the mobile home park has been there, since pre-1973 approximately.

PUBLIC COMMENT OPEN

IN FAVOR OF:

Kim Wildrick of 204 Ash Street in Fort Morgan, CO, 80701 spoke in favor of the application. He commented that he has worked with Richard Migchelbrink in the past on other mobile home parks which the Migchelbrinks own, and that the Migchelbrinks take property improvement and management very seriously. He also commented that he has noticed improvements in the Wagon Wheel Homes, LLC property since the Migchelbrinks purchased it, and that there is a need for more affordable housing in Morgan County.

IN OPPOSITION:

Steve Griffith, representing Griffith Land Company of 16841 CR 26 in Brush, CO 80723 spoke in opposition of the application. He stated that historically ditch companies are supposed to have a 50 foot easement on each side of the ditch in order to maintain the ditch and canal. He spoke of the difficulty in accessing and maintaining the ditch from only one side. He also spoke of his concerns on increasing encroachment on the ditch and canal companies, and that newer mobile homes are larger than older mobile homes, which may possibly cause a violation of the existing setbacks which do not respect the 50 foot easement requirement.

Viola Johnson replied that per the application, the new mobile homes should be approximately the same square footage as the existing mobile homes.

Jason Enfante asked exactly how the existing setbacks restrict ditch and canal maintenance. Steve Griffith responded that all maintenance must be worked from their side of the ditch, and that the encroaching trees on the Wagon Wheel Homes, LLC side make it difficult to do so. Additionally, he commented that bigger pieces of equipment must be rented or used to maintain the ditch from the other side.

Charles Ruyle inquired regarding the dimensions of the ditch and if the ditch company would like to remove the trees. Steve Griffith responded that it is 6 to 8 feet across the top, but 10 to 12 feet with more moisture, and ranges anywhere from 2 to 3 feet deep. He stated that each tree is dealt with as it falls or becomes a nuisance.

Pete Bolinger, President of the Southside Lateral Company, of 16184 CR 25 in Brush, CO 80723 spoke on the concern regarding maintenance of the ditch, especially with further encroachment, and the lack of the required 50 foot easement. Allyn Wind asked for clarification on the boundaries and operations of the ditch. Pete Bolinger responded that the Southside Lateral Company operates the ditch on the Wagon Wheel Homes, LLC property.

PUBLIC COMMENT CLOSED

DISCUSSION:

The chairman asked if the Board had any further questions.

Richard Migchelbrink presented a PowerPoint with pictures of the Wagon Wheel Homes, LLC property and ditch in relation to the neighboring ditch and property (Steve Griffith). Richard Migchelbrink made comments that it was clear there never was a 25 foot easement on the property, as the older mobile homes placed are approximately 14 feet from the ditch. Helen Migchelbrink spoke on the fact that the applicants cannot replace the current mobile homes with homes that are bigger and/or would encroach on the existing setbacks, and that even without the variance approved, the current homes will continue to exist as they are, where they are, and that the Southside Lateral Company and Steve Griffith will continue work as is on the ditches and canals.

Allyn Wind inquired if the homes are currently leased or owned. Helen Migchelbrink responded that they are currently leased. However, it is the intention of the applicant to sell some of the new mobile homes.

There was discussion between Charles Ruyle and Kathryn Sellars regarding the current state of the setbacks and mobile homes. It was determined that without the variance granted, the applicant cannot place new mobile homes on the property, and that the existing structures and setbacks will remain as is, and that any new mobile homes placed will honor the existing setbacks. There was discussion regarding the possibility of the Board of Adjustments requesting further setbacks from 14 feet to 18 feet, and possibly to 20 feet. It was decided that it would be beneficial to both the Southside Lateral Company and Steve Griffith to have increased setbacks to maintain the ditch, but Helen Migchelbrink spoke regarding that this is not a possibility per existing site plans and structures.

Allyn Wind confirmed with Pam Cherry that the Migchelbrinks will have to apply for permits to replace each mobile home. Viola Johnson commented that some of the dead trees and brush should be removed from the ditch if possible.

There was discussion regarding the property lines and history of the ditch. It was determined from discussion with Pete Bolinger of the Southside Lateral Company that the ditch was taken around the property initially to supply the original farmstead with water on the North side of the property, and that

the property line varies from in the ditch to outside of it. It was confirmed that there is no easement on record for ditch and canal maintenance, and that the legality of the ditch and easement, or lack thereof, is beyond the scope of this hearing.

Charles Ruyle commented that he is in favor of the application, given the circumstances, and that a 14 foot setback should be enough to maintain a small ditch and an agreement should be continued between the Migchelbrinks and Southside Lateral Company and Steve Griffith regarding ditch and canal maintenance.

MOTION:

It was moved by Charles Ruyle and seconded by Viola Johnson to approve this application from Wagon Wheel Homes, LLC for the variance as requested.

Roll call vote was taken. Motion carried 5-0.

ADJOURN:

It was moved by Charles Ruyle and seconded by Viola Johnson to adjourn at 6:54 p.m. Motion carried 5-0.

Respectfully submitted,

Madeline Hagan