

MORGAN COUNTY BOARD OF ADJUSTMENTS AND APPEALS
August 20, 2018
MINUTES

The Morgan County Board of Adjustments met on Monday, August 20, 2018, at 5:30 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call was: Charles Ruyle, Allyn Wind, Julie Padilla and Viola Johnson. Also present were Pam Cherry, Planning Administrator, Jody Meyer, Planning Assistant and Andrea Hill Planning Clerk.

The meeting was called to order by Chairman Allyn Wind.

Motion was made by Charles Ruyle and seconded by Allyn Wind to table the approval of the minutes of the March 20, 2017 meeting due to a quorum not being available to vote on minutes. There are 2 new members of the Board of Adjustments and Appeals unable to vote on minutes. Motion carried 4-0.

Approval of Agenda

Motion was made by Viola Johnson and seconded by Charles Ruyle to approve the agenda. Motion carried 4-0.

Election of Officers

Motion was made by Viola Johnson to nominate Allyn Wind as chairman. Charles Ruyle seconded. Allyn accepted the nomination. Motion carried 4-0.

Allyn Wind read the procedural rules for this hearing.

NEW BUSINESS:

PUBLIC HEARING IS OPEN

APPLICANT: Hyrum and Amy Prince

LANDOWNER: Same

Application for a Variance to Section 5-105(B)(4) and 2-235 of the Morgan County Zoning Regulations to reduce the side setback requirement from 10 feet to 4 feet to allow for the previous placement of the workshop.

Hyrum and Amy Prince were present to represent this application.

Pam Cherry, Planning Administrator presented the file as follows:

This application is for a Variance to Morgan County Zoning Regulations Section 3-650 Appendix B Table 1, Line 3 for side setback to allow for a pre-constructed workshop. The property is zoned Moderate Density Residential which requires a 10 foot side setback. The property is on Lot 64 of the Winslow Subdivision, Second Addition, a subdivision in the N½ or the NW¼ of Section 25, T4N, R58W of the 6th P.M. Morgan County, Colorado. The property is 1.47 acres and addressed as 64 Bachar Drive, Fort Morgan, Colorado 80701.

Section 5-210 of the Morgan County Zoning regulations permits the Planning Administrator to grant variances that are no more 10% of the bulk requirements. This application is for a 60% reduction of the required 10 foot

side setback so requires a public hearing before the Board of Adjustment. The applicant desires to obtain the variance to allow a workshop that was not constructed in compliance with the regulations or the plan submitted for the Zoning Permit.

The applicant hired a surveyor to verify the property line and the variance from setback that is required. That surveyor confirmed that the building is 4' from the property line. Ten feet is required in the Moderate Density Residential zoning district.

Adjoining property owners and agency referrals were completed. There have been a number of inquiries regarding the proposal and some objections.

The Board of Adjustment shall 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 not result in peculiar or exception hardship. The applicant was aware of the setback issue as shown on the plan submitted at the time of application for the zoning permit to build the workshop.
- (2) Exceptional narrowness, shallowness, or shape of the property at the time of the enactment of the regulation; or
The property is 1.47 acres and is not limited due to narrowness, shallowness of the shape of the property.
- (3) Exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property; and
The parcel is fairly flat; topography does not cause limitations on the placement of the workshop.
- (4) The hardship is not self-imposed;
The applicant was aware of the setback requirement which is indicated on the plan submitted when obtaining the Zoning Permit.
- (5) The variance, if granted, will not adversely affect the use of adjacent property as permitted under these Regulations;
If the adjacent property is ever developed it could potentially cause difficulty on the placement of any structures.
- (6) That the variance, if granted, is in keeping with the intent of these Zoning Regulations and the Morgan County's Comprehensive Plan; and
If granted, the variance is not in keeping of the intent of the Zoning Regulations or the Comprehensive Plan.
- (7) That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Morgan County.
The variance, if granted, will not adversely affect the health, safety and welfare of the citizens of Morgan County.

I recommend disapproval of this variance request.

Planning Administrator wanted to remind everyone that this hearing was regarding the setback variance only. Ms. Cherry also wanted to remind speakers that this hearing was not hearing testimony on anything else related to the property.

Hyrum Prince stated that he did get a permit to build the workshop. The original plans depicted the workshop with a notch out on the corner to meet the side setback. Mr. Prince stated that when the Morgan County Building Inspector, Dustin Heid, came out for a setback inspection Mr. Prince spoke with Dustin about the possibility of building without the notch cut out. Mr. Prince stated that he believed Dustin gave him the go ahead to build the workshop without the notch cut out. Mr. Prince did not submit a redrawing of the structure for his accessory structure permit.

Mr. Prince stated that his hardship was that the building was already built and the side that does not meet setbacks is next to open land. Mr. Prince doesn't believe the 4 foot setback is affecting anyone.

OPEN PUBLIC TESTIMONY

Speaking in Favor:

Alice Tawney, Fort Morgan 80701 was present in favor of Mr. Prince. She stated that Mr. Prince had permits. Why tear down the building when no one is affected?

Hyrum Prince spoke to reiterate that he did not place any blame on the Building Inspector. Mr. Prince accepts responsibility for not changing the permit.

Morgan County Building Inspector, Dustin Heid, came up to the podium to speak at this time. Mr. Heid stated that he did go out for the setback inspection. At that time the site was staked according to the accessory structure permit and was in compliance with setbacks.

Viola Johnson asked Mr. Heid when the setback issue was discovered. Mr. Heid stated that he was not sure. Mr. Heid remembers there being an issue with the permit not having the appropriate Architectural Control Committee letter submitted with the permit application. Then it was found that the building had been built without the notch cut out, and did not meet the 10 foot setback.

Allyn Wind asked Mr. Heid when he did the setback inspection. Mr. Heid stated that he wasn't sure, but believes it was at the end of June 2016.

Julie Padilla wondered why the required setbacks were filled in, but the actual setbacks weren't. Mr. Heid stated that often with accessory structures the setbacks can change. A homeowner could decide to move it a few feet in any direction, as long as the setback requirements were met, it didn't really matter.

Charles Ruyle asked if a final inspection was done after the building was built. Mr. Heid stated that the only inspection done for Accessory Structures/Zoning Permits was the setback inspection.

Hyrum Prince asked Dustin Heid if the complaints that were made to Morgan County Planning and Zoning were in regards to the setbacks or activities going on inside the workshop. Mr. Heid stated that he believes that the complaints were in regards to setbacks and the lack of Architectural Control Committee letter for the permit application.

Amy Prince stated that they weren't notified of the setbacks being noncompliant until after the complaints about the workshop.

Speaking in Opposition:

Dave Rebol of Morgan Heights Water and Sewer had 3 issues he would like to discuss.

1. The Architectural Control Committee is supposed to approve of all of the structures going in at Morgan Heights. Morgan County failed to get that approval letter from the ACC.
2. Morgan Heights Covenants state that 1 house and 1 3 car garage are allowed to be constructed. The workshop is not a 3 car garage, it is a commercial building.
3. Morgan Heights Water and Sewer believe that there may be water and sewer lines under the building. Morgan Heights Water and Sewer would like to see a survey at least.

Mr. Rebol is concerned about the possibility of the water and sewer lines in the right-of-way along that property line. Mr. Rebol stated that it is not reasonable that the building was built over the lines and that the workshop appears to be a commercial operation.

Hyrum Prince stated that he was unaware at that time that he needed approval. Mr. Prince stated that he never signed any form and that the Architectural Control Committee are just volunteers and not paid. Mr. Prince understands they are trying to protect the property owners. Mr. Prince worries that this is because they believe the workshop is a commercial property, but he has never made any money. Mr. Prince stated that he did have a survey done by Jack Odor. Mr. Prince stated that he spent \$20,000 on this building and it is beautiful.

Allyn Wind stated that this was regarding the 10 foot to 4 foot setback, not about the value of the building. Dollars are not a board problem.

Charles Ruyle asked Mr. Prince if he knowingly built the workshop too close to the property line.

Hyrum Prince stated that he did not. He just used a visual line and that he wasn't aware of the non-compliance until he saw the survey by Jack Odor.

Rick Bailey Fort Morgan 80701 is a member of the Architectural Control Committee. Morgan Heights was created years ago and covenants were also created that are beholden to all property owners. Mr. Bailey stated that the covenants do not allow for a giant building. The covenants allow for one house and 1 3 car garage only. Mr. Bailey provided the board with a packet with some information including pictures and a few of the covenants. Mr. Bailey is concerned that the building is on top of or over water and sewer lines. Mr. Bailey is asking that Mr. Prince be responsible for getting a survey of the property.

Charles Ruyle asked Mr. Bailey when he was made aware of the setback issue. Mr. Bailey stated that he was told it was only a 3 car garage.

Charles Ruyle asked Mr. Bailey if they did any follow up. Mr. Bailey stated that they have no authority to stop any construction and that the inspector only does one inspection.

Charles Ruyle asked Mr. Bailey if they are to enforce the covenants, why didn't you enforce. Mr. Bailey stated that he has been to the building department numerous times and they approved a building that didn't get built.

Charles Ruyle asked Hyrum Prince if he submitted the permit application with the notch cut out. Mr. Prince stated that yes he did. Mr. Prince stated the inspector told him that he had room and that he built on an existing concrete pad.

Charles Ruyle asked Mr. Prince where his survey was. Allyn Wind asked why Mr. Prince had not gotten certified survey. Mr. Prince stated that he did have a survey. Allyn Wind stated that the survey would tell the board where the water and sewer lines are. Mr. Prince stated he would get that survey.

Charles Ruyle asked Mr. Bailey where Morgan Heights Sewer and Water's survey is. Mr. Bailey stated that there were several recorded, but that they believe Mr. Prince should be responsible for paying for any new surveys. Allyn Wind stated that the board has no control over who pays for the survey, just that both parties need a survey done.

Charles Ruyle made a motion to continue the hearing until September 18, 2018 to allow for Mr. Prince and Morgan Heights Water and Sewer to get surveys completed. Viola Johnson seconded. Motion carried 4-0.

Meeting adjourned: 6:27pm

There being no further business, the meeting was adjourned.

Respectfully submitted,

Andrea Hill, Planning Clerk