

MORGAN COUNTY BOARD OF ADJUSTMENTS AND APPEALS
August 15, 2022 MINUTES

The Morgan County Board of Adjustments met on Monday, August 15, 2022, at 5:30 p.m. in the Assembly Room of the Morgan County Administration Building. The meeting was called to order by Chairman Allyn Wind.

Vice Chairman Allyn Wind read the procedural rules for tonight's meeting.

Board of Adjustment Members Chairman Allyn Wind, Viola Johnson, Charles Ruyle, Jason Enfante and Julie Padilla attended in person. Also present were Nicole Hay, Planning Administrator, Cheryl Brindisi, Planning Technician, Jenafer Santos, Planning Clerk, Morgan County Attorney Jeff Parker and Karol Kopetzky, Morgan County IT Administrator.

It is noted that this Board of Adjustments meeting for August 15, 2022 was held in person with an option to attend remotely through the Zoom platform.

APPROVAL OF MINUTES: July 18, 2022

It was moved by Jason Enfante and seconded by Julie Padilla to approve the July 18, 2022 minutes as presented. Viola Johnson objected to the July 18th, 2022 minutes stating that she was ill and attempted to call the county building that day. Roll call vote. Motion carried 5-0 to approve the minutes.

OLD BUSINESS:

Variance to the Morgan County Zone Bulk Requirements continued and also amended from June 21, 2022 and July 18, 2022 hearing.

NEW BUSINESS:

Landowner: Charlene Holzworth

Applicant: Parallel Infrastructure

APPLICATION OVERVIEW:

Nicole Hay, Planning Administrator, read her file summary as follows:

Parallel Infrastructure has submitted an amended application for variances from the following dimensional standards to build a telecommunications tower:

1. To increase the current height restriction of 100 feet to 135 feet plus a 3-foot lightning rod;
2. To decrease the front setback from 138 feet to 123 feet;
3. To decrease the side yard setback from 138 feet to 100 feet; and
4. To decrease the rear setback from 138 feet to 91 feet.

The applicant is requesting to construct and install a new wireless communications tower. The wireless services provider (AT&T) would like to improve existing coverage along Interstate 76 north-east of the City of Brush through the construction of this new tower.

This amended application relates to previous application filed by the same parties for a variance from the height restrictions only. You conducted a public hearing on the original application for the height restrictions on June 22, 2022 and was continued to July 18, 2022. A quorum was not present for the July 18th hearing and it was

continued to August 15, 2022. At the continued public hearing, you will consider all four variance requests. In response to the amended application, the County Planning and Zoning Department has published and mailed new notices in accordance with the requirement of the Zoning Regulations. 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.

The subject parcel of land is located in the NE¼NE¼ of Section 21, Township 4 North, Range 55 West of the 6th P.M., Morgan County, Colorado, North of Interstate 76, aka 32784 Co Rd V, Brush, Colorado 80723 and is located in the Ag zone.

Maximum height

Maximum height restrictions are addressed in Section 4-720(A)(1)(d) of the Zoning Regulations:

Notwithstanding any height limitations in Table 1 of Appendix B, a freestanding WSF, including antennae, shall comply with all FAA regulations and requirements, and shall not interfere with any airport approach zones.

The property is subject to 100-foot height restriction pursuant to Table 1, Appendix B.

Parallel Infrastructure contacted the Federal Aviation Administration for comment on the project and the FAA has issued a “DETERMINATION OF NO HAZARD TO AIR NAVIGATION” finding.

Minimum setbacks – Property Lines

Minimum setbacks from all property lines are addressed in Section 4-720(A)(1)(d) of the Zoning Regulations:

Freestanding WSF shall meet the greater of the following minimum setbacks from all property lines:

- (a) The setback for a principal structure within the applicable zone district;
- (b) Twenty-five percent (25%) of the WSF facility height including antenna; or
- (c) The WSF facility height if the facility is adjacent to a residentially zoned parcel or if the WSF facility is within two hundred fifty (250) feet of an existing residential structure.

In this case, the proposed tower is within 250 feet of an existing residential structure and therefore, subsection c applies. As such, the setback for all property lines must be at least 138 feet, if the proposed height variance to 138 feet is granted.

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:
 - (a) Exceptional narrowness, shallowness, or shape of the property at the time of the enactment of the regulation; or
 - (b) Exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property; and
- (2) The hardship is not self-imposed;

- (3) The variance, if granted, will not adversely affect the use of adjacent property as permitted under these Regulations;
- (4) That the variance, if granted, is in keeping with the intent of the Morgan County Zoning Regulations and the Morgan County Comprehensive Plan; and
- (5) That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Morgan County.

The following conditions are recommended if the variance application is approved:

- (1) If, after completion of construction, the Wireless Service Facility ceases operation for any reason for twelve (12) consecutive months that the owner or operator shall remove the WSF within ninety (90) days of the end of the twelve-month period.
- (2) Upon completion of construction, the applicant shall submit engineered as-built drawings to confirm the dimension standards required by the Zoning Regulations and approved by BOA as part of the application.

Nicole Hay
Morgan County Planning Administrator

William Castanares with 5CPROC Corporation, Reno Nevada, Christy Cooke, and Bryan Mullen, Portland Oregon spokesman for Parallel Infrastructure, were present to represent applicant Charlene Holzworth and this variance application.

DISCUSSION:

Applicant: Representative, William Castanares presented his objectives;

There was discussion on the behalf of Parallel Infrastructure by representative William Castanares about the height of the Variance. He also discussed that this tower is an allowed use due to its Ag Zoning and the Morgan County Regulations. He wanted to remind the Board of Adjustments that this was a Variance to be heard concerning the additional height of the tower and the additional setbacks requested. He mentioned the benefits of the coverage to 1st Responders as well as Interstate 76 and the general public if this tower were to be placed in this location. There is a need for a microwave to be installed on this tower due to the lack of available fiber in this rural area and the terrain. Parallel Infrastructure has submitted this information to staff along with the application and feel that they have met all the criteria based on Morgan County's codes. Health and Safety are addressed by Morgan County, FCC, Public Works Department and they all have codes that specifically relate to wireless communications facilities. Parallel Infrastructure is planning on submitting a Building permit for this tower. They will have engineered plans that address the fall zone of the tower. AT&T has a mandate from the FCC to provide continuity of coverage to 1st Responder Network Services that they are trying to meet. Mr. Castanares concluded that this tower is needed to make coverage available to everyone. He asked if there were any questions for him at that time.

Charles Ruyle, Board Member, wanted to show the exact location of the proposed tower location on the screen to the meeting attendees. He wanted to know why this location was chosen and feels that it is a fall zone hazard. He asked if Charlene Holzworth's home was on the same parcel as the proposed tower and what the distance to all of the property lines were. He was also concerned about if the tower would potentially land on a home, shed or roadway if it were to fall. The tower's fall zone appears to include another person's property. Charles was concerned about the potential of a weather event such as a tornado causing the tower to fall. He asked to clarify if

the tower was being placed in a hole or lowest point on the land and why? If land is higher around this location, then Parallel Infrastructure would not need a Variance for height. Why can't this tower be placed closer to the highway on higher ground? If the tower were placed there and has the potential to fall, how much will it devalue the neighbor's property? If the neighboring owner wants to place something on his property in the future, this tower would limit him in what he wants to do.

William Castanares stated that within the fall zone of the towers 138 feet, there are no residential structures. Only what appears to be a storage shed to the east of the tower. Due to the applicant not having any other Ag land available to place a tower, this is the highest and best use of Mrs. Holzworth's property, while giving her the opportunity to generate income. It was tricky to meet the setbacks as best as the company could given the willing applicants property availability, septic location and overhead power lines. The setbacks considered are from Residential homes. William clarified that the tower is slated to be placed in the lowest area of Charlene's land due to this being the only acceptable location to meet criteria and specifications for placement of this tower. Several variables come together when choosing a tower placement location. Due to no fiber availability in the area is the cause for the need for a height exemption of the proposed tower. William agrees that due to this tower being an allowed use on this property, the other landowners also can do what they want on their property that is an allowed use.

Viola Johnson added that it seems with all the problems that this site has, it is an inappropriate building that Parallel Infrastructure is proposing. Surely another location that can meet all of the requirements without a Variance is available. The setbacks, the height, property lines, fall zone on roadway. Parallel Infrastructure is requesting a lot of Variances from our zoning rules and regulations.

William Castanares added that several factors beyond property location have to come together to make this tower location work. He doesn't believe that the tower would fall on the roadway due to their being quite a bit of distance from the fence to the roadway. In the unlikely event of the tower falling you are asking to address the fall zone? Engineers will meet the codes for all of the standards of building this tower, such as the concerns of wind load, structural loading, grounding. The FCC will meet the Health and Safety portion of this. A collapsible tower can be looked at to possibly meet requirements of setbacks. Unprecedented weather events happen and can still cause a tower, power lines, etc. to be destroyed. No code can prevent this.

Christy Cooke, representing Parallel Infrastructure, has Charlene Holzworth, applicant, online with her via Zoom platform. Christy adds that the tower has a collapse point of 67 feet added into its design.

Bryan Mullen, from Portland Oregon, also representing Parallel Infrastructure, responded via Zoom platform. He added that he has worked with several communications companies and communities across the western United States trying to establish the E911 network for any company large or small to have an emergency system that will allow any individual to have the opportunity to access the emergency system. Bryan stated, "This location specifically, in your community, is one that met our obligations to the FCC, AT&T and our own business to be able to put this into service." The tower has been engineered to collapse at 67 feet. Statistically this tower has the ability to not put any adjoining neighbors or neighborhoods in jeopardy. Several objectives have to be met for a tower location. The setbacks are very negligible and Parallel Infrastructure feels confident that nobody would be in harm's way if the tower were to fall.

Charles Ruyle, asked Bryan Mullen if he has ever had one of these towers subjected to a tornado? Charles added that he is not against any kind of communications for 1st responders, but he is against the location of this tower on such a small parcel of property.

Bryan Mullen, answered, "Charles, we went through Katrina. We've went through so many natural disasters across this country and I can tell you without any uncertainty that what we put up and what we service and what we continue to provide coverage for, has been an instrumental force in helping people in emergency conditions with helping people get reception." The emergency system is desperately needed. In this Ag zone, Parallel Infrastructure doesn't want to take usable, productive land to put this service in place. This tower can be

engineered so that the setbacks that you are worried about will be facilitated. With a collapsible tower design, it will not intrude on the properties around it.

Chairman Allyn Wind asked Bryan Mullen what his level of authority for this procedure that we are having tonight?

William Castanares stated that he reports to Bryan Mullen and that they both represent Parallel Infrastructure.

Bryan Mullen AT&T engages with 3rd party vendors to facilitate the installation of this network. Parallel Infrastructure is involved with AT&T to help build this network. Parallel Infrastructure employs 5CPRO (William Castanares) to help identify and execute the need to build this network. The FCC and United States Government has deemed this a critical infrastructure. This network will allow first responders to react, recover and implement strategic programs for communities affected by natural disasters and emergencies. It will also help any individual in a time of crisis.

Charles Ruyle asked Bryan Mullen if he has any dead spots in coverage in that area right now? He also asked William Castanares the location of the next available tower to this one?

Bryan Mullen The need for this location would integrate the existing coverage. I don't have that detailed information in front of me right now.

William Castanares was sure that there was no tower for Parallel Infrastructure within 25 miles. He couldn't begin to speculate. He was sure it followed I-76 but we are addressing the Hillrose area coverage. Several factors such as terrain, hills, trees, buildings all affect the signal. The highest sight is not always the best. Bringing coverage closer to the users is what they are trying to achieve.

Bryan Mullen Parallel Infrastructure represents AT&T in this application. They are a multi-user developer and are tasked and focused with helping the local jurisdictions to have a structure that is co-locatable. They want other carriers to be able to provide service to the neighborhood as well. The main focus is the First Responder network availability with the added benefit of other carriers that can utilize the tower as well in this location.

Chairman Allyn Wind asked if there were any further comments or any questions from the board.

PUBLIC COMMENT OPEN:

Todd Cooke, adjacent neighbor to the west side of Charlene Holzworth's property, handed out copies of his Open Records Request from the Northeast Colorado Health Department to the board members. He spoke about 2 septic systems with leach fields on Charlene Holzworth's land where the proposed tower is to be placed. The septic system is away from the tower, however, the leach fields are in this area. If a crane were to be used to place the tower it would compromise the leach fields and cleanouts for the sewer if a crane drove in that area. He said in the last 6 months that fiber has been installed along the Interstate. Also, in the last year, 3 neighbors have been approached by the company to put a system on their properties. 2 of the neighbors said no. Todd also stated, "The 3rd person that was approached, he gave them permission to go ahead and put it on his property, but out by the Interstate area away from the residences. They never showed back up again." Power is available near the Interstate. It is not REA but is Xcel Energy.

John Crothswait added that he did not get notified about this application and has land approximately 800 feet away from the proposed tower.

(5-210 Administrative Variances (A). Adjacent landowners are to be notified, not landowners within 1,320 ft.

John Crothswait went on to state that there are available utilities in the area. He was approached about a year and a half ago at his place. A guy came and walked around and then he never heard anything from him. He states both Excel and REA are available in the area near the Interstate. He feels that the tower near the Johnson's residence would be, "A highly negotiable negative factor to their property.", if someone was looking to buy the property. An extreme weather event from a previous year, with wind speeds that exceeded 123 miles per hour, caused several telephone poles to be knocked down and \$191,000 damage done to his house. He feels sorry for the Johnson's because it is close to their property. Mr. Crothswait stated, "The applicant really, and I apologize to the attorney, this is Attorney language. They have an obligation to prove beyond a reasonable doubt to you as the governing board to make a decision. That without a reasonable doubt that they are going to be irreparably harmed by not granting these variances. This is a mega operation. They do not just do one, they have probably thousands of these towers." There is buried fiber on the west side of County Road 33 but it may be "dark as far as service goes." He feels sorry for the Johnson's because it is right beside their home.

Chairman Allyn Wind asked if there was anyone else that wished to speak.

Jackie Danielson, adjacent neighbor to Charlene Holzworth, stated that the hole that they are referring to and the incline coming up near the proposed tower is her property. What kind of protection does the lightning rod actually have if the tower is to be placed down in the hole? She has spoken to Charlene and feels that this tower would be an undue hardship to her with all the things that it entails. Fiber optic is available in the area. She is concerned about her animals getting hit by lightning She added that she is totally against the proposed tower placement and feels that they are trying to take advantage of Charlene.

Don Leonard, adjacent neighbor to Charlene Holzworth, stated to get into this property you will have to take the trees out. Doesn't like the location of this tower due to visibility, fall hazards and possible harmful effects to the human body. He doesn't want to live near one nor will he buy a property near one. He would like to see the tax paying area residents benefits looked out for as well as AT&T.

Chairman Allyn Wind asked if there was anyone else that wished to speak in opposition or in favor of the application.

There were no more comments in opposition.

No one spoke in favor of the application except the applicant.

PUBLIC COMMENT CLOSED:

APPLICANT TO ADDRESS ANY COMMENTS OR ISSUES:

William Castanares commented in regards to a few things that were said; as far as other people contacted, some say no. That is part of the criteria to find a location that has a willing owner, as to an owner that is willing but wanting it moved 600 feet. That is not always viable as well. That doesn't meet the objectives that are trying to be reached. As far as septic location, these are constructability issues that can be addressed through engineering and rerouting. Fiber availability doesn't necessarily mean that it is available for use. Growth in power and infrastructure is coming to this area. Emergency Services, Connectivity and cutting the cord, a lot of agriculture is going Broadband. The Federal Government has a lot of initiatives to implement this and get more efficiencies.

Chairman Allyn Wind asked if there were any further comments or questions from the Board, County Attorney or Planning Administrator.

County Attorney Jeff Parker commented: He wanted to make clear on the legal standpoint that is being reviewed. "Mr. Crosthwait said that it was beyond a reasonable doubt that they would be irreparably harmed. That's actually not the standard just so you're clear. It was in the staff report in Section 5-220 of your codes subsection B as in the staff report, for the criteria that you're looking at, just so you apply the correct criteria."

Chairman Allyn Wind asked for any further comments or questions from the Board or Administrator.
None.

Allyn Wind closed the public comment and asked for any discussion among the Board with the application and proceeded with the motion.

No further discussion was made.

MOTION:

Charles Ruyle motioned to deny the applicant, Parallel Infrastructure, for the construction of a tower in a parcel of land located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 4 North, Range 55 West of the 6th P.M., Morgan County, Colorado, North of Interstate 76 Highway, aka 32784 CR V in Brush, CO 80723. Reason for denial is for the request for four different variances to fit this project on a smaller parcel of land, which include to increase the 100-foot maximum height to 135 feet plus a 3-foot lightning rod. To decrease the front setback from 138 feet to 123 feet. To decrease the side yard setback from 138 feet to 100 feet and to decrease the rear setback from 138 feet to 91 feet.

Viola Johnson seconded that motion.

ROLL CALL VOTE:

Motion carried 5-0, with Jason Enfante, Charles Ruyle, Allyn Wind, Viola Johnson and Julie Padilla in favor of the denial.

Variance has been denied.

Chairman Allyn Wind, asked if there were any further comments from the County Attorney or Planning Administrator.

There were no further comments.

ADJOURN:

It was moved by Viola Johnson and seconded by Jason Enfante to adjourn this meeting. Motion carried 5-0.
Meeting adjourned at 6:54 p.m.

Respectfully Submitted,
Cheryl Brindisi, Planning Technician