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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Board of Adjustment**  
**Kevin Curry, Chair**

**FROM: Lindsay Darden, Planner II**  
**Beck Grimm, EI Engineer I**  
**Craig Dossey, Executive Director**

**RE: Project File #: BOA-19-004**  
**Project Name: BA Rodents Ranch LLC**  
**Parcel No.: 13000-00-346**

**OWNER:**

**REPRESENTATIVE:**

David Martin 9330 West 90 <sup>th</sup> Drive Broomfield, CO 80021	Debra Eiland 24 S Weber Street Colorado Springs, CO 80903
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**Commissioner District: 4**

Board of Adjustment Hearing Date:	7/10/2019
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**EXECUTIVE SUMMARY**

A request by BA Rodents Ranch, LLC, on behalf of David Martin (owner) for approval of a dimensional variance to allow a side yard setback of 144 feet where 200 feet is required for a livestock feed yard in the A-35 (Agricultural) zoning district. The livestock feed yard is currently operating out of an existing accessory structure that was built without site plan approval, agricultural exemption, or a building permit by the previous property owner. The accessory structure would ordinarily be required to meet the setbacks of the A-35 (Agricultural) zoning district; however the El Paso County Land Development Code (2019) requires livestock feed yards be setback a minimum of 200 feet from all property lines to minimize potential impacts on adjacent property owners. The establishment of a livestock feed yard in the A-35 (Agricultural) zoning district requires approval of a special use. If the special use is not approved, the proposed variance request would be unnecessary.



**A. REQUEST**

A request by BA Rodents Ranch, LLC, on behalf of David Martin (owner) for approval of a dimensional variance for a side yard setback of 144 feet where 200 feet is required for a livestock feed yard in A-35 (Agricultural) zoning districts.

**B. APPROVAL CRITERIA**

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Land Development Code (2019), states the following:

*The Board of Adjustment is authorized to grant variances from the strict application of any physical requirement of this Code which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property. Practical difficulties and hardship, in this context, may exist where the legal use of the property is severely restricted due to:*

- 1) *The exceptional narrowness, shallowness, or shape of the specific piece of property.*

Development on the property is not limited due to exceptional narrowness, shallowness, or shape of the specific piece of property.

- 2) *The exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.*

There do not appear to be any exceptional topographic conditions or other exceptional situations or conditions that would limit development on this parcel.

However, Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Code continues by stating the following:

*The Board of Adjustment may also grant variances from the strict application of any physical requirement of this Code based upon equitable consideration, finding that the burdens of strict compliance with the zoning requirement(s) significantly exceed the benefits of such compliance for the specific piece of property and;*

- *The variance provides only reasonably brief, temporary relief; or*

The variance does not provide reasonably brief or temporary relief.

- *The variance request includes an alternative plan, standards or conditions that substantially and satisfactorily mitigate the anticipated impacts or*

*serve as a reasonably equivalent substitute for current zoning requirements; or*

The variance request does not include an alternative plan, standards or conditions that substantially and satisfactorily mitigate the anticipated impacts or serve as a reasonably equivalent substitute for current zoning requirements. The basis for the variance request highlights the rodents being housed in an enclosed structure as mitigation for the anticipated impacts. The Code does not differentiate between setback requirements for a livestock feed yard based on whether the livestock is confined in a fence, pen, corral, or contained in a structure.

- *Some other unique or equitable consideration compels that strict compliance not be required.*

There is no unique or equitable consideration compelling that strict compliance not be required.

### **C. BACKGROUND**

The 35.27 acre parcel was legally created on February 20, 1996, via deed and was initially zoned A-35 (Agricultural) on March 25, 1999. The property is located on the south side of Big Springs Road approximately 0.45 mile from the intersection of Big Springs Road and Yoder Road. There is an approval for a mobile home on the parcel and there is an accessory building that was constructed without approval of a residential site plan or a building permit sometime between 2016 and 2018 based on aerial imagery. Within the A-35 (Agricultural) zoning district, El Paso County Board of County Commissioners (BoCC) resolution 12-276 permits accessory buildings or structures which are not classified as habitable; are not for residential occupancy; are not intended to be normally or customarily open to public use; or which are not necessary to support and protect a non-exempted building or structure to be exempt from compliance with the Building Code. However, a site plan approval would have been required to initiate the use and was not obtained from the Planning and Community Development Department.

In October 2018, Debra Eiland, on behalf of the property owner and the applicant Robert Shewfelt, LLC (the previous owner of the rodent breeding operation), requested an administrative determination from the Planning and Community Development (PCD) Director to categorize the proposed use of rodent farm as “animal keeping.” Based on the scope of the proposed use submitted by the applicant describing that the rodents are to be raised and sold to pet stores for the purpose of feeding reptiles, the PCD Director issued an administrative determination (ADM 18-023) that rodents raised for profit are considered as livestock, as defined in the Code:

“Cattle, sheep, llamas, goats, swine, mules, poultry, horses, alternative livestock as defined by Colorado statutes (e.g. elk), and such domesticated animals as fox, mink, chinchilla, beaver, and rabbits, and all other animals raised or kept for profit, except dogs and cats, that are used for working purposes on a farm or ranch and any other animal designated by the State Agricultural Commissioner, which animal is raised for food or fiber production.”

The administrative determination also specified that the proposed use most closely fit the definition of Livestock Feed Yard, which is defined in the Code as:

“A place of confinement (whether by structure, fence, pens, or corrals) for cattle, goats, swine, or other livestock for the purposes of concentrated feeding operation for meat or milk production where crop or forage growth or production is not sustained in the area of confinement. This definition specifically excludes educationally agricultural projects (hobby farm) and horses as defined under stable.”

In November 2018, Debra Eiland and the previous owner of the rodent operation attended an early assistance (EA) meeting (EA-18-322) with Planning and Community Development staff to determine next steps for initiating the proposed livestock feed yard use on the subject property. During the EA meeting, staff discussed the requirement of special use approval to establish a livestock feed yard in the A-35 (Agricultural) zoning district and additionally informed the applicant that a site development plan would also be required to initiate the use. On January 8, 2019, staff received a complaint from Jessica Hanson, PACFA Inspector for the Colorado Department of Agriculture, that the livestock feed yard use had been established on the subject property without approval and it was referred to the code enforcement officer for that area of the County. If the applicant is unable to obtain special use approval from the BoCC, code enforcement action from the County will proceed. Code Enforcement will also coordinate with the Colorado Department of Agriculture in case their approval is contingent upon approval from the County.

On January 11, 2019, an application was submitted by the current owner of the rodent operation, BA Rodents Ranch, LLC, to request approval of a special use for the livestock feed yard. During the review of the special use application, it was determined that the existing building housing the proposed use did not meet the setback requirement for a livestock feed yard required in Table 5-4, footnote 9, of the Code which specifies:

“Livestock feed and sales yards shall be setback a minimum of 200 feet from all property lines, except that loading facilities may be

located adjacent to a road right-of-way where loading/unloading of animals takes place.”

The current side setback on the east side of the building (not adjacent to the road right-of-way) is 144 feet which does not comply with the required 200 foot setback. The 56 foot encroachment into the 200 foot setback exceeds the allowable amount (20 percent) that is eligible to request approval of administrative relief from the PCD Director; therefore, the applicant is now requesting approval of a variance from the Board of Adjustment.

**D. ALTERNATIVES EXPLORED**

There are three (3) alternative options for the applicant to come into compliance that would not require a dimensional variance request:

1. Relocate the structure so that it meets the required 200-foot side-yard setback requirement.
2. Apply for administrative relief of 20 percent of the required 200-foot side-yard setback and relocate the structure to meet the adjusted 160-foot side-yard setback.
3. Cease use of the structure as a livestock feed yard and construct a new structure that complies with the 200 foot setback requirement from all property lines.

**E. APPLICABLE RESOLUTIONS**

Approval: Resolution 1  
Disapproval: Resolution 2

**F. LOCATION**

North (west): A-35 (Agricultural)	Single Family Residential
North (east): A-35 (Agricultural)	Farm/Single Family Residential
South (east): A-35 (Agricultural)	Single Family Residential
South (west): A-35 (Agricultural)	Vacant Land
East: A-35 (Agricultural)	Single Family Residential
West: A-35 (Agricultural)	Single Family Residential

**G. SERVICE**

**1. WATER**

Water is provided by a private individual well.

**2. WASTEWATER**

Wastewater is provided by a private onsite wastewater treatment system (OWTS).

**3. EMERGENCY SERVICES**

The parcel is located within the Tri-County Fire Protection District. The District was sent a referral and they have not responded.

## **H. ENGINEERING**

### **1. FLOODPLAIN**

FEMA Flood Insurance Rate Map (FIRM) panel 08041C0650G, dated December 7, 2018, shows that the property lies within Zone X, an area determined to be outside the 500 year floodplain.

### **2. DRAINAGE AND EROSION**

The property is located within the Upper Big Springs Creek (CHBG0400) and Upper Pond Creek (HOPO0600) drainage basins. No drainage or bridge fees are required for a dimensional variance request. No public drainage improvements will be required.

### **3. TRANSPORTATION**

The property is accessed via Big Springs Road. A traffic impact study was not required due to the fact that the dimensional variance is not expected to generate 100 daily vehicle trips more than the property would be expected to generate without the approval of the dimensional variance. No public roadway improvements will be required.

## **I. CONDITIONS OF APPROVAL**

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a dimensional variance for a livestock feed yard setback, and that the applicant has met the review and approval criteria for granting variances from the applicable standards, staff recommends the following conditions and notation of approval:

### **Conditions**

1. The approval applies only to the plans as submitted. Any expansion or additions to the proposed livestock feed yard may require separate Board of Adjustment application(s) and approval(s) if the development requirements of the applicable zoning district cannot be met.
2. Approval by the Board of County Commissioners of a special use application is required to legalize the existing livestock feed yard use on the subject parcel.
3. Approval of a site development plan is required by the Planning and Community Development Department to legalize the establishment of the use.

### **Notation**

1. If the special use application is not approved by the BOCC, the land use remains non-compliant and is subject to the Code Enforcement process.
2. The applicant has the option of applying for an Agricultural Exemption with the Planning and Community Development Department or for issuance of a

building permit from the Pikes Peak Regional Building Department to retroactively legalize the construction of the existing accessory structure.

**J. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified six (6) adjoining property owners on June 13, 2019, for the Board of Adjustment meeting. Responses will be provided at the hearing.

**K. ATTACHMENTS**

Letter of Intent

Vicinity Map

Site Plan

# El Paso County Parcel Information

File Name: BOA-19-004

PARCEL	NAME
1300000346	MARTIN DAVID

Zone Map No. --

ADDRESS	CITY	STATE
9330 W 90TH DR	BROOMFIELD	CO

ZIP	ZIPLUS
80021	4416

Date: June 13, 2019

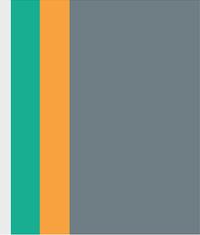


Please report any parcel discrepancies to:  
 El Paso County Assessor  
 1675 W. Garden of the Gods Rd.  
 Colorado Springs, CO 80907  
 (919) 520-6600



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BA Rodents Ranch LLC  
32215 Big Springs Rd  
Yoder, CO 80864  
719-440-7906  
katmh@earthlink.net



June 4, 2019

Letter of Intent to El Paso County Board of Adjustment  
Request for Dimensional Variance for 32215 Big Springs Rd., Yoder, CO

Owner of Property: David Martin  
9330 W 90<sup>th</sup> Dr.  
Broomfield, CO 80021-4416

Applicant: BA Rodents Ranch LLC  
32215 Big Springs Rd.  
Yoder, CO 80864  
719-440-7906  
[katmh@earthlink.net](mailto:katmh@earthlink.net)

Consultant: Debra Eiland, Esq.  
Law Offices of Debra Eiland, P.C.  
24 South Weber Street, Suite 300  
Colorado Springs, Colorado 80903  
telephone (719) 471-1545  
facsimile (719) 471-1663  
[edebra@qwest.net](mailto:edebra@qwest.net)

Property is located at: Tract of Land in N2 Sec 33-13-61, Assessor's Schedule No. 1300000346

35 acres, zoned A35

The property has a driveway and a metal agricultural building, and is completely fenced with an access gate.

**This Application is to request approval of a dimensional variance to allow a property line setback of 144 feet where 200 feet is required for a livestock feed yard.**







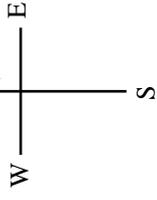
Big Springs Road

Driveway

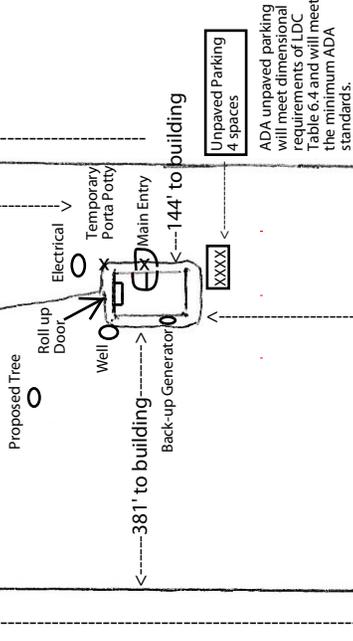
North Property Line 626'

Existing Gate Metal 5'  
Gated Entrance 20' from Road

Existing Driveway Gravel Roadbase



Building Dimensions 80' x 40'  
Building Height 52'  
x = Outdoor Lighting  
No Outdoor Storage



ADA unpaved parking will meet dimensional requirements of LDC Table 6.4 and will meet the minimum ADA standards.

East Property Line 2,622.53'

West Property Line 2,619.63'

South Property Line 586.42'