

# EL PASO COUNTY



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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

**Commissioner District: 4**

Board of Adjustment Hearing Date:

7/10/2019

**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.

2880 INTERNATIONAL CIRCLE, SUITE 110  
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127  
FAX: (719) 520-6695

**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

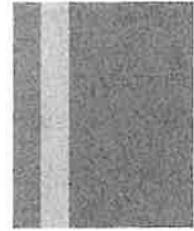


Please report any parcel discrepancies to:  
 El Paso County Assessor  
 1675 W. Garden of the Gods Rd.  
 Colorado Springs, CO 80907  
 (9) 520-6600



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

## **Background**

On January 11, 2019, BA Rodents Ranch LLC filed an application requesting a special use permit to operate a rodent farm on the above described property, under the classification "Livestock Feed Yard."<sup>1</sup> The El Paso County Land Use Code ("LUC") provides that livestock feed yards shall be setback a minimum of 200 feet from all property lines.

The Applicant is using the existing metal building on the property to house its rodent farm operation. The building was constructed by the previous property owners, and is technically a legal structure for agricultural use. However, the east facing side of the building is 144 feet from the east property line and, therefore, is 56 feet short of meeting the setback requirement for a livestock feed yard.<sup>2</sup>

## **Approval Criteria for Dimensional Variance**

Section 5.5.2.B.2.a, Variance to Physical Requirements of the LUC (2018), states that the Board of Adjustment may grant variances from the strict application of any physical requirement of the Code based upon equitable considerations, finding that the burdens of strict compliance with the zoning requirements significantly exceed the benefits of such compliance for the specific piece of property and:

- 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.

## **Justification for Dimensional Variance**

This particular business is not the usual "livestock feed yard." The Applicant's rodents will be completely contained in cages within the metal building. They will not be visible to anyone from outside the building.

The fact that the entire rodent farm operation is contained within the confines of the building mitigates any anticipated impacts. There will be no odors, no dust, no sound, no extra fencing, no exposed waste, no waste going into the ground and very little traffic going in and out of the property or the building.

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<sup>1</sup> On October 31, 2019, the Executive Director issued an Administrative Determination that a rodent farm fits within the classification "Livestock Feed Yard" as defined in the LUC. The former owner of the rodent farm started using the existing building on the property for rodents without first obtaining approval from El Paso County. Upon purchasing the business, the Applicant filed for a special use approval to legalize the use.

<sup>2</sup> The north, west, and south sides of the building all exceed the 200 foot setback requirement.

The above considerations make our rodent farm operation unique and strict compliance with the 200 foot setback requirement unnecessary.

The following description illustrates how the existing metal building will fully contain the intended use:

We at BA Rodents Ranch LLC intend to breed and raise rodents in the metal barn located at 32215 Big Springs Rd. Yoder, CO 80864. The rodents raised by us will be sold wholesale to a distributor who will then deliver them to retail pet stores in Colorado. We will not be open to the public nor will we sell directly to the public. We will be licensed by the Colorado Department of Agriculture under the Pet Animal Care Facilities Act ("PACFA") to operate this business and are in the process of doing that at this time.

PACFA regulations provide a licensing and inspection program dedicated to protecting the health and well-being of pet animals in facilities throughout Colorado. Our facility will be inspected at least once a year by a certified PACFA inspector.

We will breed and raise domestic rodents to supply to reptile and pet stores along Colorado's Front Range. The rodents will be raised in professionally manufactured rodent racks that are the standard for the industry and used around the world by zoos, research centers, colleges and top breeders. Each rack will contain from 4 to 28 escape-proof tubs where the rodents will be kept. Each tub will be supplied with commercial rodent food and water and will be cleaned twice a week.

The rodent racks will be kept inside the barn, which will be climate controlled and equipped with an 11kw backup generator to supply electricity for periods of extended electrical outages. The interior of the building will be designed to keep a rat or mouse inside in the unlikely event one escapes from a rack. For example, 15" metal flashing will be installed along the bottom of the wall perimeter, and will extend 4' up the walls. This will prevent any tunneling through the walls and will prevent any rodents from scaling up the wall to the attic. Additionally, electric traps will be set throughout the interior of the building. The barn will be tightly sealed and if a rodent were to escape it would not be able to get outside the barn.

Unlike most livestock feed yards, waste will be contained and hauled to the landfill on a weekly basis. It will be securely bagged indoors. Until it is removed, we will store it in an area next to the barn that is enclosed and out of site. There is no chance for it to be blown around by wind or for it to contaminate the ground or water. Waste will be contained at all times and will not enter drainage pathways or groundwater. Drainage from the proposed use will not adversely affect the adjacent properties.

There is a temporary porta potty onsite, which will be replaced with an indoor restroom when the special use is approved by the County. The property owner acquired a septic permit for this purpose on February 13, 2019, a copy of which is provided with this application.

Access to the property is from a well maintained public road (Big Springs Road). The business is a wholesale business, and will not be open to the public and will make no sales to the public. No signage or other advertising will be installed on the premises. The business will have 3.5 employees, and has sufficient parking for 4 employees, all of which is ADA accessible. Employee vehicles will enter the property daily, usually from 8:00 am to 5:00 pm, 5 days a week, with one vehicle per day on Saturday and Sunday for about 30 minutes to an hour each of those days. The only trucks or commercial vehicles that will enter the property will be a pickup size truck pulling a flatbed trailer, a small delivery van, and occasionally service vans. The pickup with trailer will be there approximately 2 times a week. Service vans will enter the property only when there is an issue needing repair or service. A small delivery van will be there 2 times a week.

To help alleviate the concerns of our neighbors, we agree to restrict the special use approval at 32215 Big Springs Road to a rodent farm only with no other type of livestock feed yard allowed, and a further condition that if BA Rodents Ranch closes or moves, the special use permit will terminate.

The existing metal building is constructed on a concrete foundation, and is currently the only structure on the property. Moving the building 56 feet to meet the 200 foot setback requirement would be cost prohibitive for this small business as it would, at a minimum, require engineering, soils tests, building permits, the building to be dismantled, the concrete foundation to be removed and re-poured in the new location, re-construction at the new location, and relocation of the existing well, water lines, propane tank, and propane lines.

Because the rodent farm operation will be fully contained in the building as described herein, requiring the applicant to move the building 56 feet to be in compliance with the 200 foot setback requirement would provide no greater or additional benefit to adjoining landowners than permitting the operation to proceed where the building stands now at 160' from the east property line.

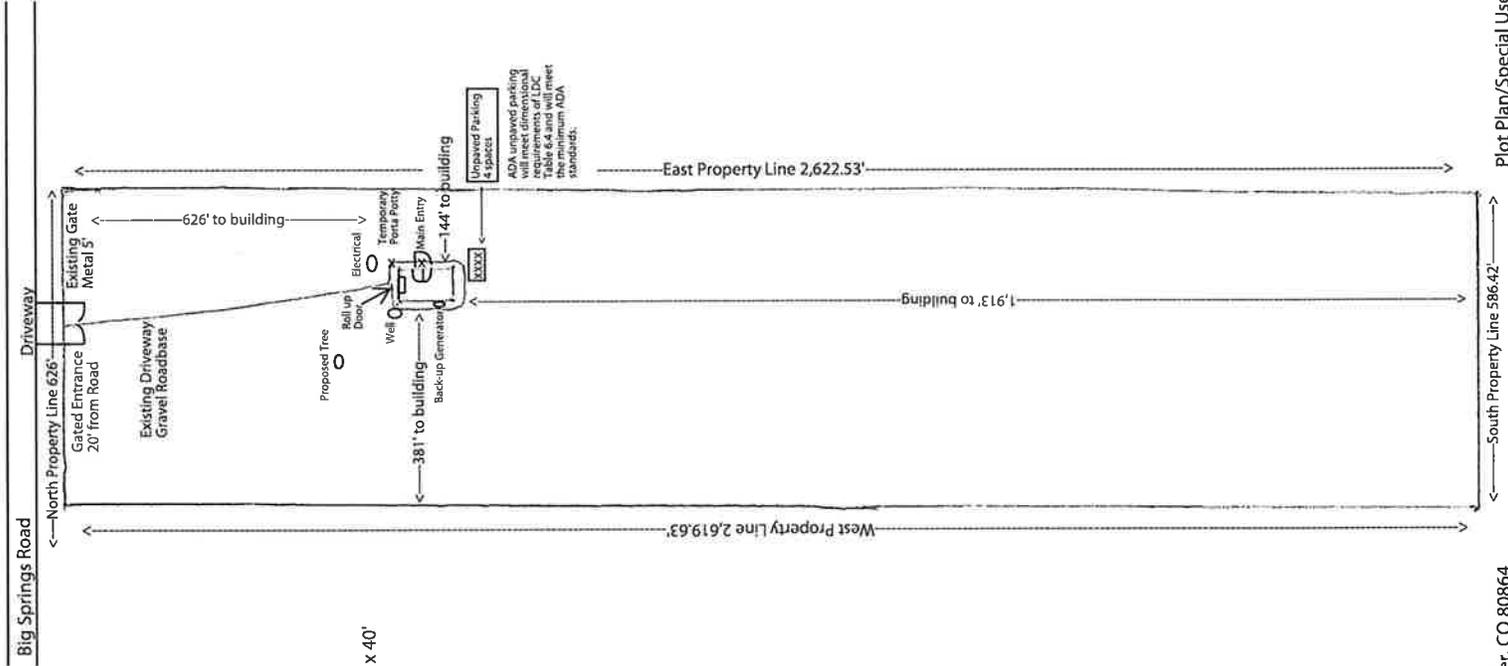
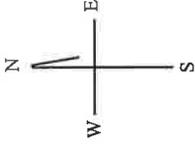
The Applicant respectfully requests that the BOA grant its request for variance of the setback requirement because the alternative standards and conditions of operation described herein substantially and satisfactorily mitigate any anticipated impacts of a traditional livestock feed yard, and the burdens of strict compliance with the zoning requirements significantly exceed the benefits of such compliance for this specific piece of property.

Sincerely,

*Kathrine M. Mische*

Kathrine M. Mische, Manager  
BA Rodents Ranch, LLC

Scale 1" = 307'



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