



Land Use and Building Department

Findings of Fact, and Conclusions of Law

Application: Variance 2024-05

Hearing Date: November 21, 2024

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

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|---|---|---------------------|
| In the matter of a Variance application to |) | VAR-2024-05 |
| operate a Confined Animal Feeding Operation |) | |
| within the one and one-half mile floodplain |) | FINDINGS OF FACT, |
| setback for three (3) parcels with an operation |) | CONCLUSIONS OF LAW, |
| area totaling approximately 410 acres (Parcels |) | AND ORDER |
| RP05S04E053030, RP05S04E080010, |) | |
| and RP05S04E070010 |) | |
| |) | |

In Re: Variance VAR-2024-05 (“**Application**”): This matter having come before the Planning and Zoning Commissioners of Elmore County, Idaho (the “**Commission**”), on November 21, 2024, for a public hearing held pursuant to public notice as required by law, on a request for a Variance VAR-2024-05 (the “**Variance**”) to operate a Confined Animal Feeding Operation (“**CAFO**”) within the one and one-half (1 ½) mile floodplain setback for Parcels RP05S04E053030, RP05S04E080010, and RP05S04E070010 (“**Site**”) owned by J.R. Simplot Land and Livestock (“**Applicant**”). The Site operations consist of 410 acres and are zoned General Agriculture (AG). The Commission heard from the Applicant’s representatives, J.R. Simplot staff, Scott McNeley, and David Modde in support of the Application and Elmore County Land Use and Building Department (“**Department**”) staff recommending the Commission recommend denial of the request. No one signed up to testify in support, in neutral, or opposition to the proposal. After public testimony, upon conclusion of the public hearing, the Commission closed the record to additional evidence and commenced deliberations. After making findings and conclusions in accordance with the applicable law, the Commission recommended approval of the variance to the Board of County Commissioners (the “**Board**”), as hereafter defined.

FINDINGS OF FACT

If any of the Findings of Fact are deemed to be Conclusions of Law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the analysis and recommendations of the Department , and the record.

1) The Commission finds that the Application is comprised of:

- a) Application form, neighborhood meeting documents, narrative, supplemental documents, and deed, prepared and submitted by David Modde, representative of the Applicant.
- b) Payment of Application Fees in the amount of \$400.00 as required by the Land Use and Building Department’s Fee Schedule.

2) The Commission finds that the applicant is:

David Modde
J.R. Simplot Land and Livestock
1301 Highway 67
Grand View, Idaho 83624

3) The Commission finds the following facts as to the procedural matters pertaining to the Application:

- a) In accordance with § 7-3-13 (A) of the Elmore County Zoning and Development Ordinance (“**Zoning Ordinance**”), on September 4, 2024, the Applicant completed a pre-application conference with the Department in the Land Use and Building Department office prior to the submission of the application
- b) In accordance with §7-3-3 of the Zoning Ordinance, the Applicant mailed out Neighborhood Meeting Letters on September 4, 2024, to neighboring property owners within one and one-half (1 ½) miles as deemed appropriate by the Director, giving notice of the time, date, and location of the meeting.
- c) In accordance with §7-3-3 of the Zoning Ordinance, the Applicant conducted the required neighborhood meeting on September 14, 2024 at 10:00 a.m.
- d) On September 16, 2024, the Department received the Variance application and the required fees per §7-3-3 of the Zoning Ordinance. Upon review, on October 1, 2024, the Department requested that additional information be provided by the Applicant to deem the Application complete.
- e) On October 10, 2024, the Applicant provided additional documents requested by the Department.
- f) On October 14, 2024, the Department deemed the Application complete and set a Public Hearing for November 21, 2024.
- g) In accordance with §7-3-4 of the Zoning Ordinance, the Department mailed Public Hearing Notices to agencies on November 6, 2024.
- h) In accordance with § 7-3-5 (A) of the Zoning Ordinance, the Public Hearing Notice was published in the Mountain Home News (“newspaper”) on November 6, 2024.
- i) In accordance with §7-3-5 (B) of the Zoning Ordinance, the Public Hearing Notice was posted on the property on November 6, 2024.
- j) In accordance with §7-3-5 (C) of the Zoning Ordinance, the Department mailed Notice of the Public Hearing to landowners within one and one-half (1 ½) mile radius of the subject properties on November 6, 2024.
- k) The Commission opened the public hearing on November 21, 2024, and received verbal and written information regarding the application.
- l) At the conclusion of the testimony, the Chairperson closed the public hearing.
- m) The Commission commenced deliberations on the Application.

- n) Thereafter, the Commission moved to recommend approval of the Variance Application with recommended conditions to reduce the floodplain setback to 0.75 miles for the subject properties.

4) The Commission finds the proposed request as follows:

The submitted Variance Application is to allow a CAFO to operate within the one and one-half (1 ½) mile floodplain setback standard per §7-12-7(C)(9), in the General Agriculture (AG) base zone in Elmore County.

5) The Commission finds the following facts and circumstances pertaining to the Site:

- a) **Site Description:** 5S3E and 5S4E Sections 1, 6, 5, and 4.
- b) **Parcel Numbers:** RP05S04E053030, RP05S04E80010, and RP05S04E070010.
- c) **The “Owner” of the Site is:** J.R. Simplot Land and Livestock.
- d) **Site Characteristics:**

Property Size: 847 acres.

Operation Acreage: 410 acres.

Existing Structures: Solar panels and outbuilding on approximately 270 acres on parcel RP05S04E053030.

Existing Vegetation: Vegetation consists of desert species including but not limited to sagebrush and rabbitbrush.

Slope: The proposed site is not on slopes greater than 15%.

Flood Zone: The proposed site is within 1.5 miles of Flood Zone A.

Irrigation/Water: The project will be served through water rights issued by Idaho Department of Water Resources (IDWR).

6) The Commission finds the current zoning of the Site and surrounding area is as follows:

Based on the officially adopted Elmore County Zoning Map (as amended by subsequent Zoning Map Amendments adopted by the Board of County Commissioners), and the Comprehensive Plan and the Zoning Ordinance, the surrounding zoning and land uses for the Site are as follows:

- a) Site: AG zone with solar operation and agriculture uses.
- b) North: AG zone with agriculture and rangeland uses.
- c) South: AG zone with agriculture and rangeland uses.
- d) East: AG zone with rangeland uses.

e) West: AG zone with solar operation and rangeland uses.

7) The Commission finds the existing services and access to the site are as follows:

Based on the officially adopted Elmore County Zoning Map (as amended by subsequent Zoning Map Amendments adopted by the Board of County Commissioners), the following facts concerning services and infrastructure, are not in dispute and are adopted as findings of fact in the Commission's Findings of Fact, Conclusions of Law, and Order (FCO):

- a) Access Street and Designation: Frederick Road is the primary access street for the CAFO operations, as required by the approval of CUP-2024-08 Condition 13, subject to the approval of a private road application.
- b) Highway District: Mountain Home Highway District.
- c) Fire Protection: The subject properties are within the Grand View Rural Fire District.
- d) Sewage Disposal: N/A.
- e) Water Service: N/A.
- f) Irrigation District: N/A.
- g) Drainage District: N/A.

The Application and

8) The Commission finds the following are among the relevant and applicable statutes, ordinances, and land use regulations for consideration of the Application:

- a) Elmore County Zoning Ordinance, adopted as Ordinance 2018-03 on May 18, 2018, and all amendments thereof; and
- b) The Local Land Use Planning Act, Idaho Code § 67-6501; 67-516 et seq.
- c) Other applicable local, state, and federal laws and regulations.

9) The Commission finds the following regarding the Comprehensive Plan.

- a) That the Comprehensive Plan Future Land Use Map (Map 4) designates the subject properties as General Agriculture.
- b) The Application is in conformance with the Comprehensive Plan vision and policies for property owner rights.

10) The Commission finds the following regarding the Zoning Ordinance.

- a) The Elmore County Zoning Ordinance is the document governing the Site.
- b) In order to approve a Variance application, the Zoning Ordinance provides that the Planning and Zoning Commission make a recommendation to the Board of County Commissioners. The Variance standards are found in §7-3-13 of the Zoning Ordinance.

REQUIRED FINDINGS FOR IDAHO CODE 67-6516. VARIANCE – DEFINITION – APPLICATION – NOTICE – HEARING.

Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section 21-501, Idaho Code. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

Commission Finds:

The State of Idaho Local Land Use Planning Act (LLUPA), Title 67, Chapter 65 provides for variance in setbacks only upon showing undue hardship. The Applicant would like to operate the CAFO within the one and one-half mile floodplain setback since the topography of the area would likely prevent contamination of water within the floodplain or floodplain impacts on the CAFO. Approval of this Variance would allow the CAFO to operate within one and one-half miles of the Canyon Creek Flood Zone A. A ridge exists between the site and the floodplain. Thus, the topography between the CAFO and the floodplain is such that it would be virtually impossible for flow from the CAFO to reach the floodplain, or vice versa. In addition to the characteristics of the area, the Commission finds that the Applicant has demonstrated undue hardship due to the inability to relocate the CAFO to the west to maintain one and one half miles from the floodplain. The landownership adjacent to the property to the west prohibits expansion in this direction. In addition, reducing the CAFO in size to remain out of the one and one half mile setback from the floodplain would result in undue financial hardship making the facility essentially economically infeasible.

REQUIRED FINDINGS FOR VARIANCES PER ZONING ORDINANCE §7-3-13:

- 1. The variance shall not grant a right or special privilege that is not otherwise allowed in the base zone; and**

Commission Finds: The base zone of the subject properties is Ag (Agriculture), in which a CAFO may be permitted through a Conditional Use Permit (CUP). Any property owner within an Ag zone is allowed the right to submit a Conditional Use Permit (CUP) application to site a CAFO and request a variance of the CAFO setbacks outlined in Elmore County Zoning Ordinance. Based on the Elmore County Comprehensive Plan Future Land Use Map, the area is intended to remain as Agriculture. The approval of this variance request would not grant a right or special privilege that otherwise would not be available in the Ag zoning district.

2. The variance relieves an undue hardship due to the characteristics of the site; and

Commission Finds: The Applicant has shown an undue hardship. As explained in the staff report and application materials, the area where the subject properties are located has a unique topography that prevents water runoff from the site from entering the flood zone, as well as makes it improbable that, in the event of a 100-year flood, water within the flood zone could reach the site. The Commission finds that, as explained by the Applicant, 50% of the site falls within the floodplain setback, due to the Bureau of Land Management owning properties to the west, the Applicant is unable to shift the operations to the west to be out of the floodplain setback and therefore to meet the one and one-half (1 ½) mile floodplain setback the operation would have to be reduced by 50% which would substantially reduce or eliminate the economic viability of the CAFO on the subject properties and creates a financial undue hardship. The Commission finds that reducing the floodplain setback to 0.75 miles, added as Condition 1, relieves the undue hardship.

3. The variance shall not be detrimental to the public health, safety, and welfare.

Commission Finds: No evidence has shown that a variance from the floodplain setback would be detrimental to public health, safety, and welfare. As explained in Finding Two (2), the area around the site has unique features that cut the site off from the Canyon Creek floodplain and, as conditioned, will not be detrimental to public health, safety, and welfare

CONCLUSIONS OF LAW

Based on the aforementioned findings of fact, the Commission concludes that the proposed VAR-2024-03 has complied with the following legislative documents governing the proposal:

- A. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 14, 2014; and
- B. Zoning Ordinance adopted as Ordinance 2018-03 on May 18, 2018, and all amendments thereof; and
- C. The Local Land Use Planning Act, Idaho Code § 67-6501 et seq.; and
- D. Other applicable local, state, and federal laws.

ORDER

Based on evidence presented at the November 21, 2024, public hearing, the Commission recommended that the Board of County Commissioners approve VAR-2024-05 with the following conditions of approval:

- 1. Variance (VAR-2024-05) shall be granted on parcel numbers RP05S04E053030, RP05S04E80010, and RP05S04E070010 for the Angel Farm CAFO operated by J.R. Simplot Company Land and Livestock to reduce the floodplain setback to 0.75 miles.
- 2. Prior to the commencement of construction, engineered drawings shall be provided showing that all storm and wastewater shall be contained on-site.

3. The Applicant shall comply with all CUP-2024-08 Conditions of Approval as approved by the Planning and Zoning Commission on August 22, 2024.
4. The Applicant shall keep the property up to date with all taxes related to the uses of the property.
5. Failure to comply with any of the above conditions of approval shall result in the revocation of the approval of the Variance (VAR-2024-05).

Dated this 19th day of December, 2024

COMMISSION VOTE:

| | | |
|-----------------------------|-------|-------|
| CHAIRPERSON PATTI OSBORN | VOTED | _____ |
| VICE CHAIRMAN JEFF BLANKSMA | VOTED | _____ |
| SUSAN FISH | VOTED | _____ |
| ED OPPEDYK | VOTED | _____ |
| K.C. DUERIG | VOTED | _____ |
| MITCH SMITH | VOTED | _____ |

Patti Osborn, Chairperson

ATTEST:

Mitra Mehta-Cooper, Director

NOTICE PURSUANT TO IDAHO CODE §67-6519(5)(c)

The Applicant shall have the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. An applicant denied an application or aggrieved by a final decision concerning matters identified in Idaho Code § 67-6521(1)(a) may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by Title 67, Chapter 52, Idaho Code.