



Huerfano County Board of Adjustment Staff Report – Permit #23-034 VAR Blue Sky Farms Meeting Type –Public Hearing

Meeting Date: September 7, 2023

Request Summary

With this Application Francisco Bautista of Blue Sky Farms (the Applicant) requests the following:

Variance from LUR §18.3.3 Setbacks for marijuana cultivation to be reduced to 390 feet from the north property boundary and 150 ft from the west property boundary. Setbacks to the East and South of the facility exceed 1,000 ft. The site contains improvements and infrastructure including previously used to cultivate hemp, and operations have been halted since 2019. The site is addressed at 303 CR 504 (Parcel Number 395593).

If this variance is granted, the applicant intends to apply for a Conditional Use Permit pursuant to Section 18 of the

The subject property is zoned Agricultural. Zoning standards for this district are set forth in LUR Section §1.03.

Code References

The following Code Sections are applicable to this application and may be referenced by the Board of Adjustment in their evaluation of the request:

§1.05.62 – Use Table reference: Commercial medical marijuana cultivation operation

§1.05.66 – Use Table reference: Commercial marijuana cultivation facility

In the Agricultural zone, marijuana cultivation is a conditional use. Section 18 of the Land Use Code governs conditional use permits for marijuana.

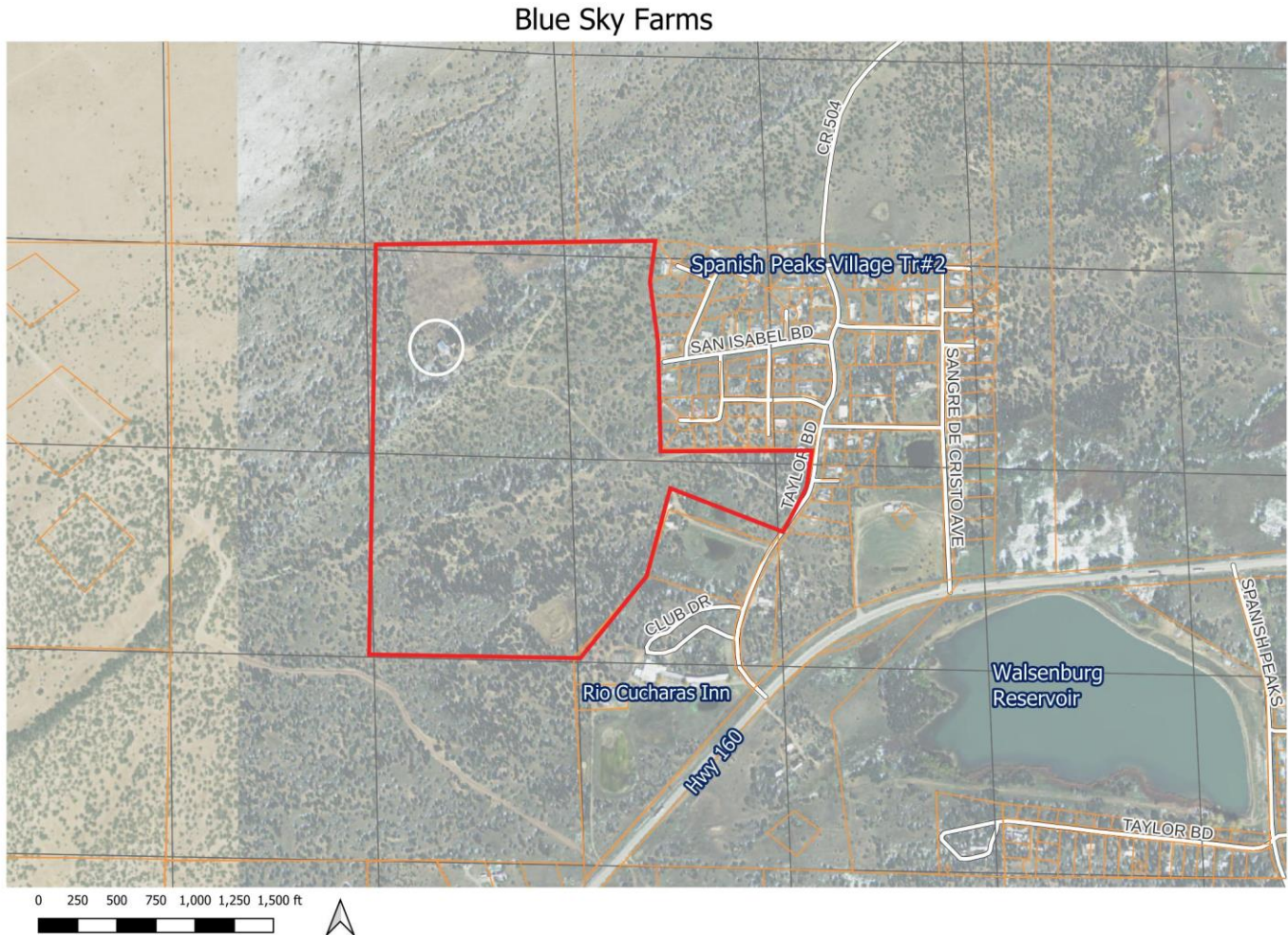
§18.3.3 Setback – Normal. All facilities in the Agricultural Zoning District shall be setback a minimum of one-thousand (1,000) feet from each of the facility’s property lines. For facilities located in the Commercial or Industrial Zoning Districts, existing zoning district setbacks shall apply. Facilities are not permitted in the Rural Residential or Urbanizing Residential Zoning Districts.

The suitability of a location for a facility shall be determined at the time of CUP application. Changes in the neighborhood that occur after the application that might render the site unsuitable for a facility under this Section shall not be grounds to revoke or deny renewal of a permit for such facility so long as the permit for the facility remains in effect. (See Sec. 18.5 for MIP manufacturing setbacks.)

§18.2.2 Variances. When a provision of this regulation would result in peculiar and exceptional hardship, the applicant may request a waiver from that provision. The Planning Commission shall have the authority to recommend relief from the provision to the BOCC, providing granting the request does not produce a substantial detriment to the public good.

18.4.2 Odor. Odor from a cultivation facility must not be detected by an Olfactometer after the odorous air has been diluted with seven (7) or more volumes of odor-free air at the property line of the facility.

Site Map/Vicinity Map



Background

This application was completed on August 18, 2023. The applicant has owned this 107-acre property since 2017 and grew hemp on the property until 2019, at which point operations were shut down due to changes in the market. Applicant claims to have never received a complaint from farming hemp at the same location. The site contains a greenhouse that would be used for cultivation and a shed that would be used for storage.

The 1000-foot setback rule was adopted in 2018. Since then, the following requests for variances have been made:

20-011 Monte Fiore was granted a variance to continue operations permitted in Permit 17-001 as setbacks were imposed after original CUP approval.

20-019 Green Leaf Growers was granted a variance to continue operations permitted in Permit 17-019 as setbacks were imposed after original CUP approval. Application included proposed expansion of operation.

22-20 Hurtado was denied a request for a variance from setbacks to convert a hemp operation into a marijuana operation. Public hearing revealed significant opposition from nearby property owners.

Submittal Requirements

1. Land Use Application.
2. Letter of Intent: include from what regulation a variance is requested, why a variance should be granted, and all relevant property history, deeds, surveys, permits, topography or other documentation.
3. A full and accurate legal description of the land involved in the appeal action.
4. A plot plan showing the existing and proposed location of all structures, uses, zoning district boundaries and setbacks on the land involved in the variance request.
5. Proof of ownership: Current deed to the property, and if applicant is not the owner, written evidence of authority to act on behalf of the lawfully demonstrated owner of the property.
6. List of adjacent property owners and mineral rights holders/lessees.

Criteria/Findings

Section 9.02.02 of the Land Use Code establishes powers of the Board of Adjustment, which serve to guide decisions. The Board of Adjustment may grant a variance based on the following considerations and criteria when considering an appeal for a variance:

1. Due to conditions of a piece of property, including: exceptional narrowness, shallowness, shape, topographic conditions or other extraordinary or exceptional physical characteristics or conditions of property not created by the applicant;
2. The strict application of any zoning regulation or provision therein would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property;
3. That the requested variance would pose no substantial detriment to the public good;
4. The requested variance does not alter or impair the intent and purpose of the zoning regulations and other provisions contained within State or County regulations;
5. The requested variance does not permit a use prohibited or allowed conditionally by special review for the zoning district involved.

Analysis

The conditions of the property allow for a 1000 setback from the adjacent residential subdivision of Spanish Peaks Village Tract #2, and the topography further contributes to a sense of separation as there is a dyke between the facility and residential properties. The property was previously used to grow hemp, which has a similar impact on nearby land owners to marijuana, therefore the proposed use is similar to a previous use, which, according to the applicant did not generate any complaints from neighbors.

The facility is less than 1000 ft from the northern and western property boundaries, which border on vacant agricultural land owned by the Bar Spear Bar Ranch LLC in the north and Michael Blaudendistel in the west. Because these parcels do not contain homes or businesses, the likely impact on these neighbors whose property is less than 1000 ft from the property line is likely to be minimal.

Noticing:

Hearing was posted in the World Journal on 8/24/23 and letters were sent to adjacent property owners on 8/22/23.

Staff Analysis/Recommendation

Staff finds that the impacts of granting this variance would be similar to impacts of previous uses of the facility. Since the facility is currently not being used, putting it into production to grow commercial or medical marijuana

would allow a dormant property to be put to productive use and would have a positive economic impact on the County. Section 18.4.2 gives the County the ability to enforce the spread of odor at the property line. Staff recommends approval of this request to grant a variance from the requirement for a 1000 foot setback to allow the applicant to pursue a Conditional Use Permit to use the existing facility for marijuana cultivation.

Potential Conditions

Limit variance from setback requirements to the north and west property boundary.

Commission Action Options:

1. **Approval** without any special conditions.
2. **Conditional** Approval with a description of the special conditions.
3. **Denial**, indicating for the record the reason(s) for such action.
4. **Continuation** until a future date to gather more information or obtain clarification or for any other relevant cause.

Enclosures

- Land Use Application.
- Letter of Intent.
- Plot plan.
- Deed to property.
- List of adjacent property owners and mineral rights holders/lessees.