

Lancaster County

BOARD OF ZONING APPEALS

AGENDA

BOARD OF ZONING APPEALS

Jeff Frack
James Pinkerton
Tai Pleasant
Matthew Warner
Ed Woepfel

August 11, 2023

COUNTY BOARD OF ZONING APPEALS

NOTICE: Notice is hereby given that the County Board of Zoning Appeals will hold a public hearing on Friday, **August 11, 2023** at **2:30 p.m.**, in the City Council Chambers, 555 South 10th Street, County-City Building, Lincoln, Lancaster County, Nebraska, on the following items. For more information, call the Planning Department, 441-7491.

AGENDA

August 11, 2023

1. Approval of minutes of the County Board of Zoning Appeals meeting held March 10, 2023

PUBLIC HEARING AND ACTION:

2. **BOARD OF ZONING APPEALS 23005**, requested by Andre and Erin Orduna, for a variance to lot area and front yard setback, on property legally described as Lot 16, located in the SE1/4 of Section 22-09-08, Lancaster County, Nebraska, generally located at 8401 South 162nd Street.

The County Board of Zoning Appeals agenda may be accessed on the Internet at <http://www.lincoln.ne.gov/city/plan/bdscom/cbza/index.htm>

MEETING RECORD

Advanced public notice of the County Board of Zoning Appeals meeting was posted on the County-City bulletin board and the Planning Department's website. In addition, a public notice was emailed to the Lincoln Journal Star for publication on Thursday, March 2, 2023.

NAME OF GROUP: COUNTY BOARD OF ZONING APPEALS

DATE, TIME AND PLACE OF MEETING: Friday, March 10, 2023, 2:30 p.m., County-City Building, City Council Chambers, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jeff Frack, Jim Pinkerton, Tai Pleasant, Matthew Warner and Ed Woeppel

OTHERS IN ATTENDANCE: Tom Cajka and Teresa McKinstry of the Planning Dept.; Ron Rehtus of Building & Safety; John Ward of County Attorney's Office; Mike Eckert of Civil Design Group; Rodney Koehler; and other interested parties

STATED PURPOSE OF MEETING: Regular County Board of Zoning Appeals meeting

Chair Woeppel opened the meeting and acknowledged the posting of the Open Meetings Act in the room.

Woeppel then called for a motion approving the minutes of the regular meeting held February 10, 2023. Motion for approval made by Warner, seconded by Pinkerton and carried 5-0: Frack, Pinkerton, Pleasant, Warner and Woeppel.

COUNTY BOARD OF ZONING APPEALS 23002

REQUESTED BY RODNEY AND CHERUL KOEHLER FOR A VARIANCE TO REDUCE THE REQUIRED SIDE YARD SETBACK FROM 15 FEET TO 4 FEET FOR A GARAGE, ON PROPERTY GENERALLY LOCATED AT 4140 PRINCETON ROAD

PUBLIC HEARING:

March 10, 2023

Members present: Frack, Pinkerton, Pleasant, Warner and Woeppel.

There were no ex parte communications disclosed.

APPLICANT:

Mike Eckert of Civil Design Group appeared and showed a map of the location. This used to be part of an 80 acre parcel. Lots 36 and 45 are the lots that the Koehlers own. They are trying to get a fourth unit that is allowed in 80 acres. He showed a farmstead split that was submitted to Building and Safety Department. When the parcels that are kept are over ten acres, this goes to Building and Safety for their review. A few acres of Parcel A are being transferred to Parcel B. The issue that has come to hand is making sure all the setbacks are met. There is one building on the western boundary that is within a new setback that would be applied with the final plat. The existing house is on the lot. That it is due to some trees that the applicant wished to remain on their lot. He showed the location of the outbuilding. He referenced the Nebraska State statute that talks about if you are agriculturally zoned and build a building for agricultural purposes, that it does not need to conform to the Lancaster County setbacks. That is how it was done when the building was built. You were allowed to place it within two feet of the property line. He further explained that there is a provision when you have been in a house for more than five years, you can place it on as little as three acres. They want to go down to 18.5 acres. The owner has been in their house for decades. It was in the review process for the farmstead split. At that time, it was noted there was a building in the new setback. The option was to remove the building entirely or move it. They are requesting a variance to the farmstead split due to the fact that this outbuilding has been there for twenty plus years. They believe this is a hardship due to the fact that State law allowed the owner to build it in the location that it sits now. They believe it would be a hardship to dismantle it and move it.

Pinkerton inquired if the building is used for agriculture. Eckert responded that it has been used as agricultural. There is paving and a roof on it now.

Pleasant wondered why this is being reduced from less than 20 acres to 18 acres. Eckert stated that what we have today is the applicant's other lot is less than 20 acres and there is no house on it. If you wanted to build on this lot, you couldn't get a building permit. You have to have 20 acres to build a house. The parcel the owner is on now is 20.49 acres. When you have been in the house for more than five years, you can reduce the lot. He would take a few acres off and give it to the other lot.

Pinkerton asked if the applicant desires to build a new house. Eckert responded that the applicant would like to build a new house or sell it.

Rodney Koehler, 4140 Princeton Road stated that he bought the first lot, and the second lot at a later point.

Pinkerton asked if the 20 acres was already split off. Koehler stated that he bought 20 acres, then bought 39 acres and sold 20 acres to a neighbor who lives there now.

Warner wondered what the applicant wants to do with the property. He pointed out that what the applicant is going to do with the property isn't our job to figure out. You can plant apples and say you call it a farm. He tried to remember things that were voted on in the past. He remembers in 2016, there was an application in Roca, Nebraska where something similar to this was allowed to happen. He wondered if the applicant had spoken with his neighbor. He looked at previous setbacks and when he looked at this property, he doesn't believe it would affect the neighbor in his opinion. He wondered if there is anyone that should be notified. It is always good to be a good neighbor. Koehler stated that he has talked to his neighbor.

Warner is leaning toward approval. He doesn't believe there would be an impact to the neighbors.

Woepfel would like the applicant to talk about his business. Koehler had a farm in Johnson County. It was a cow and calf operation. They have always had cows and goats. The stock tank is still there. He is retired and was a landscaper as well.

Pleasant pointed out that the neighbor appears to have just trees. He aligns with Warner's thinking. He doesn't believe there would be an impact to the neighbors.

Eckert pointed out that on the five acre lot to the east, their setback for the rear yard is about 50 feet.

Frack is still unclear about the swapping of acres. Eckert stated this procedure goes to having lived in the house for five years and having the ability to lower the number of acres. In case of a disaster, there is a plat and the house could be rebuilt. It is a more formal process this way. This creates a less than 20 acre lot, but a legal lot in Lancaster County opinion.

No one came forward in support or opposition.

STAFF QUESTIONS:

Tom Cajka, Planning Dept. stated that there is a Nebraska State statute that speaks to a farm. Under State law, it is defined as at least 20 acres and produces at least \$1,000.00 of product a year. It also says if you are on a farm, that agricultural buildings are exempt from zoning and don't require a building permit. When this was built, it didn't need to meet zoning and setbacks. Going from 20 acres to 18 acres means it is no longer exempt. The variance will only reduce the side yard setback for this building, not the entire lot line. The question regarding why it is being reduced, they want to make the adjacent lot up to 20 acres so it is a buildable lot. State statute

says any time you parcel off land where all the parcels are over ten acres, you cannot require them to do a final plat. They have to go through this process at Building and Safety. This would create two buildable lots. The lot with the existing house is being reduced to 18 acres.

Pinkerton asked if they could build a shed. Cajka replied yes. They just have to meet the 15 foot sideyard setback. You can have accessory buildings in the rear setback.

Warner moved to close the public hearing, seconded by Pinkerton and carried 5-0: Frack, Pinkerton, Pleasant, Warner and Woeppel.

ACTION:

Warner moved approval of the variance to reduce the required side yard setback from 15 feet to 4 feet on Lot 38, I.T. for a garage, as shown on Parcel A of the submitted site plan, seconded by Frack and carried 5-0: Frack, Pinkerton, Pleasant, Warner and Woeppel.

Pleasant made a motion to adjourn, seconded by Frack and carried 5-0: Frack, Pinkerton, Pleasant, Warner and Woeppel.

There being no further business, the meeting was adjourned at 3:05 p.m.

BZA #23005

COUNTY BOARD OF ZONING APPEAL #23005

DATE: August 1, 2023

DATE SCHEDULED FOR PUBLIC HEARING: August 11, 2023

LOCATION: Generally located at S. 162nd St. and Yankee Hill Rd.

ADDRESS: 8401 S. 162nd St.

LEGAL DESCRIPTION: Lot 16 Irregular Tract, SE ¼ of Section 2, Township 9, North, Range 8 East, Lancaster County, NE

APPLICANT: Andre and Erin Orduna

LOT AREA: 5.6 acres

ZONING: AG-Agriculture

EXISTING LAND USE: Dwelling with accessory structures.

SURROUNDING LAND USE AND ZONING:

North:	AG-Agriculture	farm ground
South:	AG-Agriculture	farm ground and acreage lots
East:	AG-Agriculture	farm ground
West:	AG-Agriculture	farm ground

TYPE OF APPEAL:

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO

Article 4.017(a) of the Lancaster County Zoning Regulations requires a minimum of 20 acres for parcels in the AG Agricultural District. This is a request to waive the minimum lot size from 20 acres to 5.6 acres.

STAFF FINDINGS:

1. The applicant is requesting the minimum lot size be reduced from 20 acres to 5.6 acres and reduce the front yard setback along S. 162nd St. from 50 feet to 32 feet to allow Lot 16 to be a buildable lot.
2. BZA #22007 to reduce the minimum lot area from 20 acres to 5.6 acres was approved by the Lancaster County Board of Zoning Appeals on December 9, 2022. A condition in the resolution required the owner to file the resolution with the Register of Deeds within 60 days of approval. If it is not filed within 60 days, the resolution is null and void. The resolution was never filed and there for a new application is required.

BZA #23005

3. The house encroaches into the required 50 feet front yard setback on S.162nd Street. The house was built prior to the county having zoning regulations. The house is considered non-standard. To remove the non-standard and remove any issues concerning the front setback in the future, the variance to reduce the setback is also requested.
4. Lot 16 I.T. was split off from the East half of the SE quarter of Section 22-9-8. This created a 6.4-acre lot and a 73.6-acre lot. A deed was filed with Register of Deeds for the 6.4-acre lot on October 12, 1988. Lot 16 has a house and accessory structures on the property. The house was built around 1900. The house needs repairs.
5. An Administrative Subdivision Permit (ASP) was submitted to the Planning Department in August 1988. The ASP proposed to create the 2 lots as they are today. There is no approved ASP in the Planning Department file. Neither Lancaster County Engineering nor Lancaster County Assessor had any records of the ASP being approved. The ASP process no longer exists, and any unfinished permits were expired if they were not approved.
6. The only options to make the lot buildable are either to go to Board of Zoning Appeals or do a new final plat. A final plat would require the cooperation of the adjacent Lot 17 property owner. The adjacent property (Lot 17) is no longer owned by the original person who did the lot split. As there is no issue with Lot 17 being buildable, there is no reason for the owner to participate in a final plat.
7. Lot 16 was first sold October 31, 1988, by lola Finke, the applicant of the ASP. The parcel was then sold to the current owner in October 2022. Although Andre and Erin Orduna were aware of the lot not meeting zoning regulations, their letter states that they were told they could not delay the closing due to there being a clean title on the property.

Erin Orduna first contacted the Planning Department by phone on October 19, 2022 to inquire about building permits for accessory structures. She was informed during the phone conversation that the lot appeared to be unbuildable. After consulting with County Engineering and County Assessor it was determined that the lot was unbuildable due to being created without an ASP.

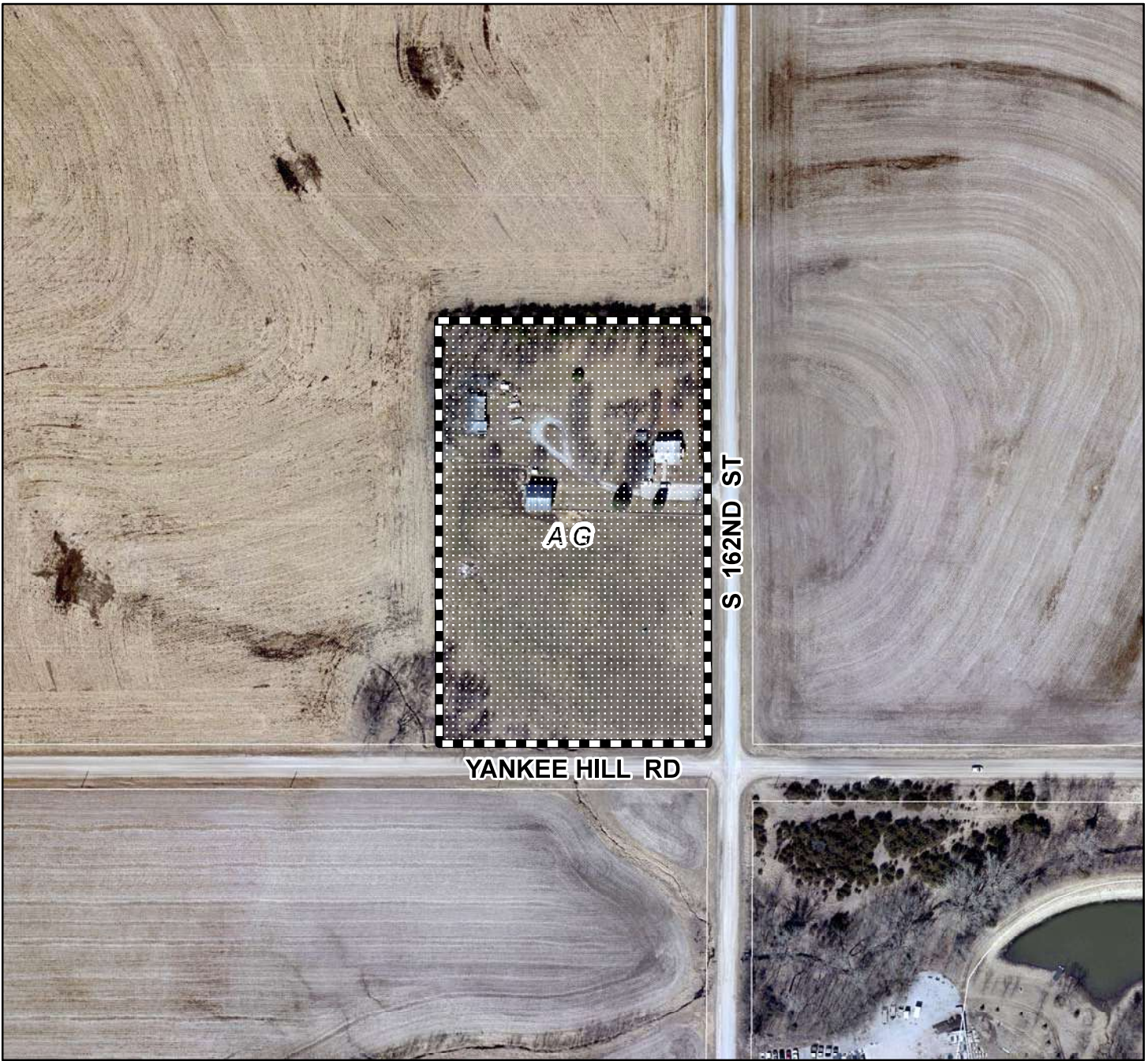
8. The applicant's letter states that per the previous owner a survey was done. A survey was done, but it appears that the survey was never filed with the State or County Engineering (see attached). A survey on its own would not make Lot 16 buildable. The ASP would have needed to be approved to make the lot buildable.
9. Section 19.003 (2) Powers Relative to Variances. The Board of Zoning Appeals is authorized, upon petitions for variances, to vary the strict application of the height, area, parking or density requirements to the extent necessary to permit

BZA #23005

the owners a reasonable use of their land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.

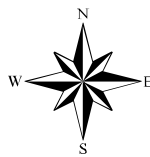
Prepared by

Tom Cajka
Planner



Board of Zoning Appeals #: BZA23005
S 162nd St & Yankee Hill Rd

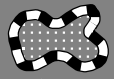


2022 aerial

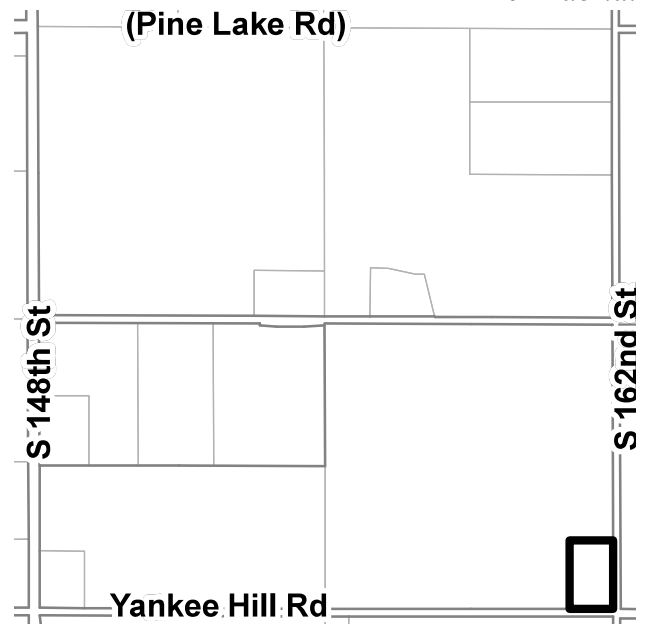


One Square Mile:
 Sec.22 T09N R08E

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

	Area of Application
	Zoning Jurisdiction Lines
	City of Lincoln Jurisdiction



Andre and Erin Orduna
8401 S 162nd St
Bennet NE 68317
402-730-5417
erin.orduna@gmail.com
andre.orduna@me.com

July 13, 2023

2nd Board of Zoning Appeals

Subject: Request for Clarification on Unfiled Deed

To whom it may concern:

We are writing to address a recent misunderstanding regarding the filing of a deed and seek clarification on the matter.

Upon the approval of our case in December 2022, we were informed that there was no further action required on our part regarding our property and the “non buildable” lot would no longer be in the description of our property. Once the committee voted on approval and the meeting adjourned, we clarified with multiple individuals present that there was no further action required on our part. One gentleman even went so far as to say “you can go pull a permit right now if you’d like!” . It has recently come to our attention that a deed, which apparently needed to be filed as part of the approved process, was not completed. We apologize for any confusion or oversight on our part, as we were unaware of this requirement. Directly following the conclusion of the appeal in person, we no longer received any correspondence from anyone regarding the case.

To resolve this issue and ensure that all necessary steps are taken, we kindly request additional information regarding the deed filing process. Specifically, we would appreciate clarification on the following:

- Why the need for filing the deed was not communicated earlier or included in the instructions provided upon case approval.
- The current status of the unfiled deed, including any potential consequences or implications of the delay.
- Any steps that need to be taken to rectify the situation and fulfill the requirement.

Considering the significant time delay that has already occurred, we kindly request to forego the formal appeal in front of the board if at all possible. We would be grateful for your support in resolving this misunderstanding. Neither Tom Cajka (planning commission) nor us have any new information to present and therefore do not wish to waste anyone else’s valuable time in

this very unorthodox matter. We hope we can clarify any misunderstandings, determine the necessary course of action, and explore possible solutions to rectify the situation promptly rather than attending another board of zoning meeting. However, may we please be put on the agenda for the August 2023 meeting in the event that this is unavoidable. We do not wish to delay our building process any longer and will plan to attend the August meeting if this situation cannot be rectified outside of the hearing.

Thank you for your understanding and cooperation. We look forward to hearing from you and the opportunity to resolve this matter amicably.

Sincerely,

Andre and Erin Orduna

November 3, 2022

Board of Zoning Appeals,

We are writing to you today to request a waiver that would allow us to pull permits and make necessary renovations to the home which currently is described as a “non buildable” lot.

On 10/21/2022 our family closed 8401 S. 162nd St. in Bennett, NE. A 5.62 acre property with an existing home, barn, and 3 outhouse structures.

In preparation for closing, Erin called Tom Cajka (planning commission) to inquire about how we might be able to use the land in the future and make the necessary improvements needed. During the phone call Tom informed us that this land was a “non buildable” lot which meant when we would go to pull permits in the future, we would be declined. Additionally, Ron Rehtus (Zoning coordinator) confirmed he cannot issue permits for this property until it becomes a buildable lot. We were advised we were unable to delay the closing due to there being a clean, legal title.

Per Steve Hettenbaugh (previous owner of 8401 S 162nd St) a survey was completed when he purchased the land in 1993; however, we have been unable to locate this record. It appears there were multiple documentation errors and/or incorrect procedures followed in filing the documents when the original homestead was split up. Because not all of the paperwork was filed by the previous owners correctly, our property is considered a “non buildable” lot. There are several safety concerns and liabilities with the current home. It is old, run down, and has not been maintained well over the years. Windows are broken and leaks can be visibly seen to the outside around the windows and doors, additions have been added on without permits in the past, wiring and electrical is not up to code, heating and air-conditioning are outdated and not efficient, and the home and garage foundations both have significant structural problems.

We bought this property with the intention of being able to create an updated and safe home for our family, and we hope you can help us accomplish this.

Sincerely,

The Orduna Family