

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.

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.

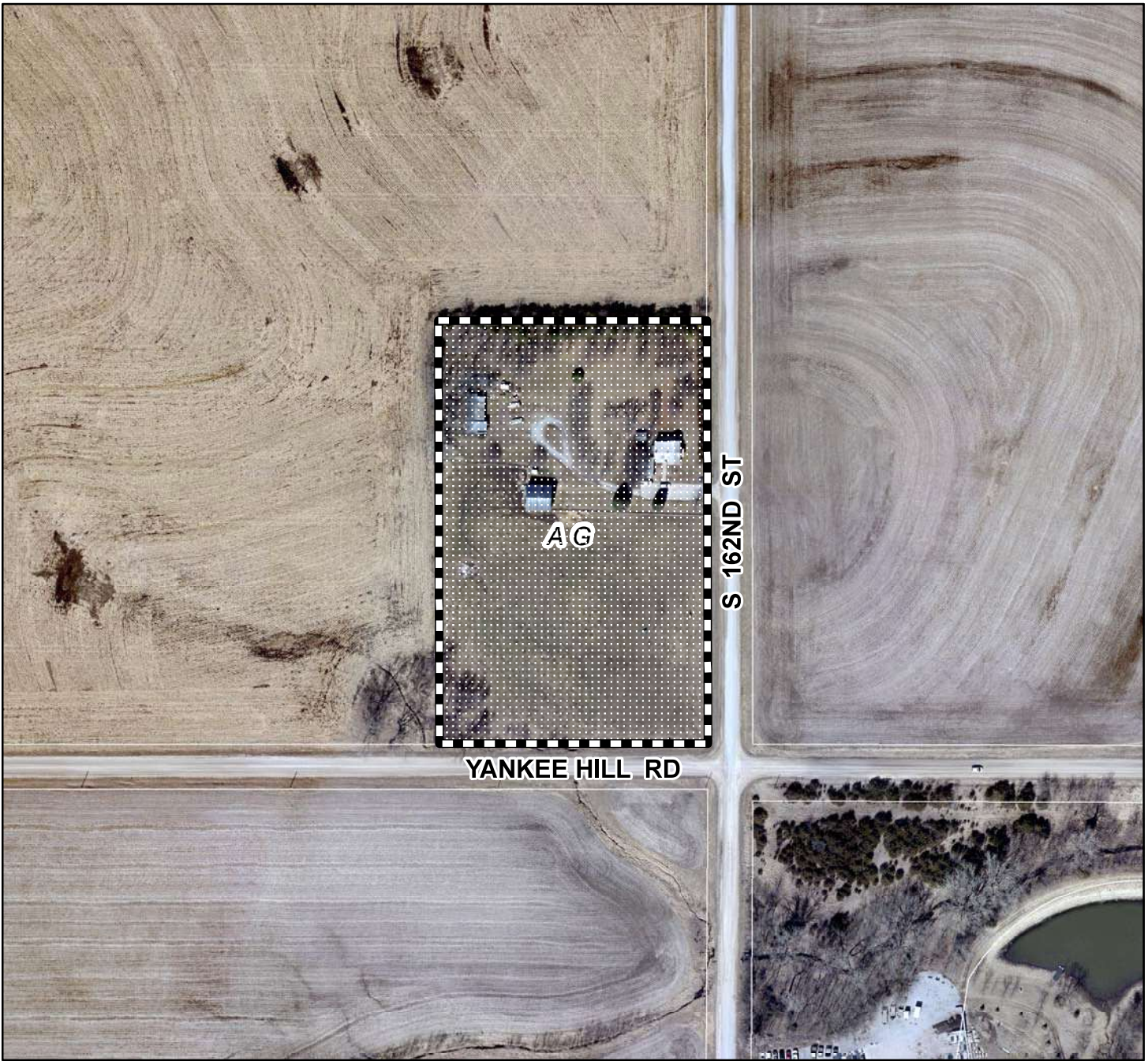
Erin Orduna first contacted the Planning Department by phone on October 19, 2022 to inquire about building permits for accessory structures. She was informed during the phone conversation that the lot appeared to be unbuildable. After consulting with County Engineering and County Assessor it was determined 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 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.

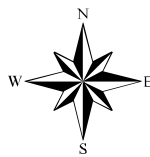
Prepared by

Tom Cajka
Planner



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

2022 aerial



One Square Mile:
 Sec.22 T09N R08E

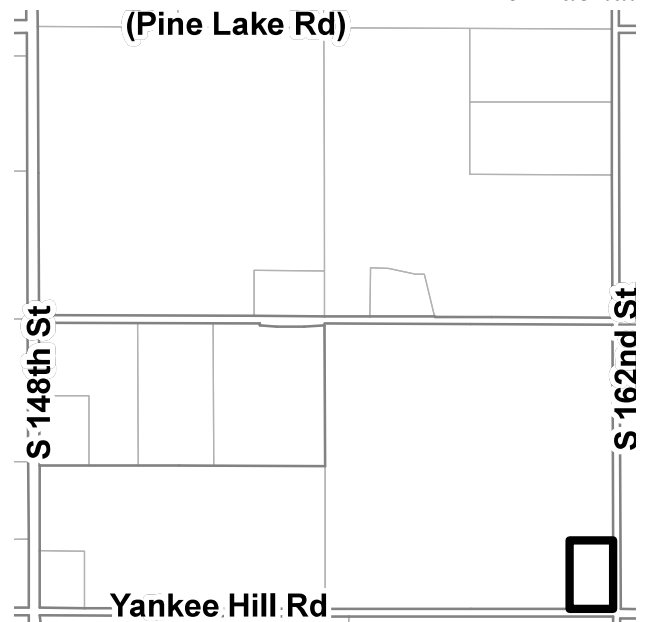
Zoning:

- 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



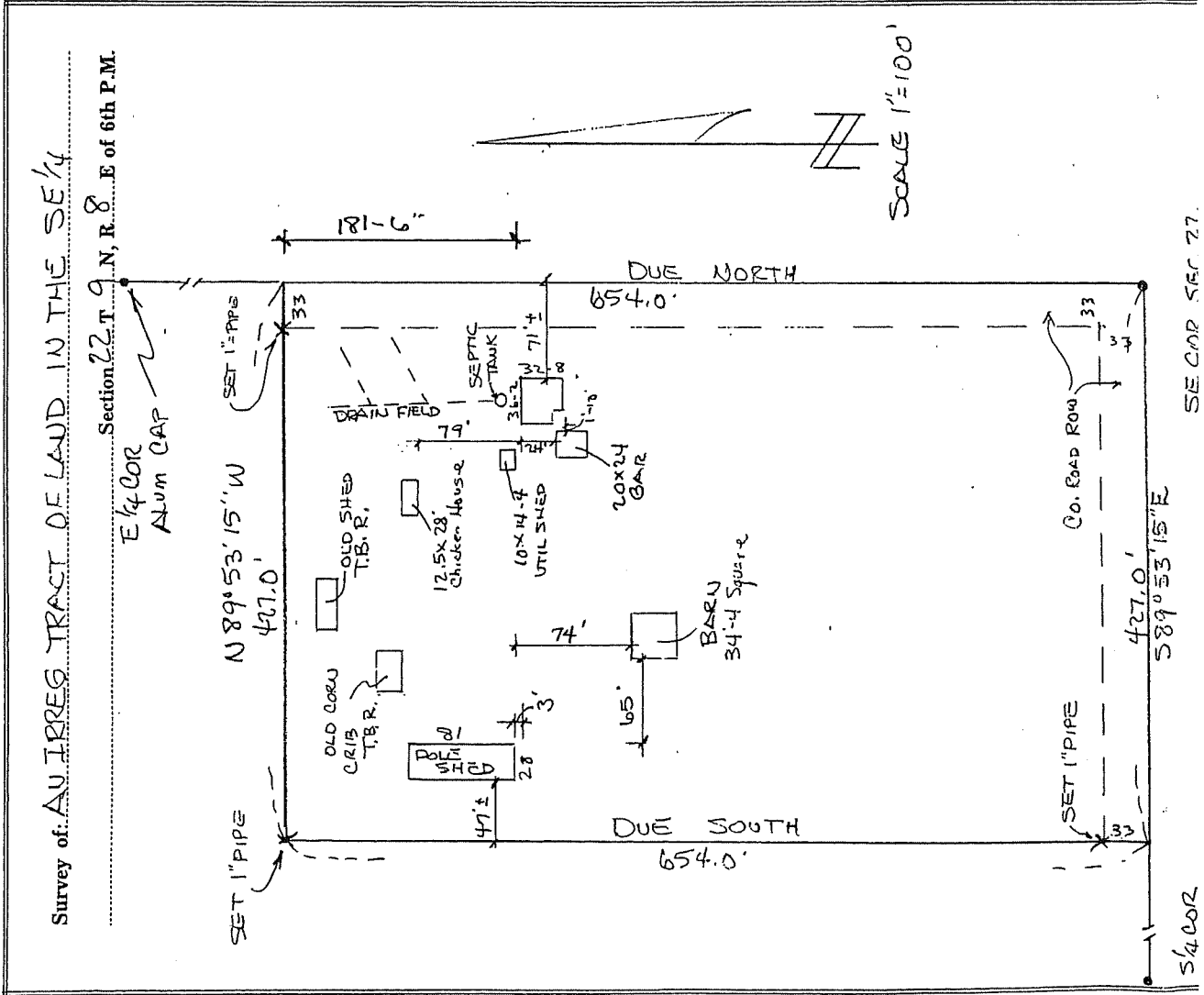
Survey Record

88-035
JOB NO.

LAUCASIER COUNTY, NEBRASKA

BATES AND ASSOCIATES
911 ADAMS - LINCOLN, NEBRASKA

PHONE 432-3724



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