

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, December 1, 2022.

NAME OF GROUP: COUNTY BOARD OF ZONING APPEALS

DATE, TIME AND PLACE OF MEETING: Friday, December 9, 2022, 2:30 p.m., County-City Building, City Council Chambers, 555 S. 10th Street, Lincoln, NE.

MEMBERS IN ATTENDANCE: Jeff Frack, Jim Pinkerton, Herschel Staats and Matthew Warner. (Ed Woepfel absent).

OTHERS IN ATTENDANCE: Tom Cajka and Alexis Longstreet of the Planning Dept.; Ron Rehtus of Building & Safety; John Ward of County Attorney's Office; Andre and Erin Orduna and other interested parties.

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

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

Acting Chair Frack called for a motion approving the minutes of the regular meeting held November 21, 2021. Motion for approval made by Staats, seconded by Pinkerton and carried 3-0: Frack, Pinkerton, and Staats voting 'yes'; Warner and Woepfel absent.

COUNTY BOARD OF ZONING APPEALS NO. 22007, REQUESTED BY ANDRE AND ERIN ORDUNA, TO WAIVE THE MINIMUM LOT SIZE REQUIREMENT, ON PROPERTY GENERALLY LOCATED AT 8401 SOUTH 162ND STREET.

PUBLIC HEARING:

December 9, 2022

Members present: Frack, Pinkerton, and Staats; Warner and Woepfel absent.

There were no ex parte communications disclosed.

APPLICANT

Andre Orduna, 324 South 55th Street, stated that he recently purchased a property at 8401 South 162nd Street. He stated that before closing date, Erin Orduna called into the department to discuss the property's use and Tom raised the concern that the property associated was non-buildable meaning that no permits could be applied for associated with the property. Ron Rehtus, Building and Safety, confirmed that permits could not be taking out for this property. Orduna stated that the property had visible structural concerns. He stated that they were looking to make the home livable. Orduna stated that Tom stated the only way that could be possible by finalizing a new plat or going before the County Board of Zoning Appeals. They decided to come before the board in hopes to make the property livable.

Pinkerton stated that in the letter, the applicant stated that he was advised that the closing date could not be delayed and asked who advised him of that? Andre answered that the realtor and applicant reached out to the title company. The title company stated that the title was legal therefore, there weren't any legal precedent for delaying closing. The realtor let them know that there would be legal action needed if they wanted to delay the closing.

Pinkerton asked for clarification that it was the relator that advised him not to delay.

Orduna answered that it was the realtor and title company as well.

STAFF QUESTIONS

Frack asked about an ASP that was filed in the past but there is not a record available.

Tom Cajka, Planning Department, stated that it was applied for but never completed. There is a file created but no documentation. Cajka checked with the county engineering and accessors office and Register of Deeds, but no one has any documentation of it being approved. Cajka stated that there are no records of the ASP being approved. He stated the ASP was dated August and the deed was created in October.

Pinkerton asked how there could be a deed if the ASP was never approved.

Cajka stated that the county will file a deed without verifying that it follows zoning or subdivision regulations. Cajka stated that there was a legal description created for the 5.6-acre parcel. Cajka stated that a survey was conducted but it may not have been with the state then because county engineering has no record of the survey being done.

Pinkerton clarified there is a deed. Cajka stated that the issue is that the 5.6-acre lot is legal although it's not buildable per zoning regulations because it does not meet the 20-acre minimum.

Pinkerton asked if you do away with the ASP, is there anything other request related to the property.

Cajka answered no and stated the ASP is deemed expired.

Pinkerton asked that no other form of approval was replacing the ASP.

Cajka stated that's correct. He stated that in order for the lot to be deemed buildable, the variance will need to be granted or the adjacent property owner to agree to a final plat following current regulations and allow for a farmstead split in order for the property. Cajka stated that he advised the applicant the likelihood of getting the neighboring property owner to agree would be minor because the other lot doesn't have any issues and its buildable.

Pinkerton stated that with current regulations, the applicant can't replat to a 5.6-acre lot. Cajka stated that is correct unless the adjacent property owner agreed to be a part of the final plat and stated that the 5.6-acre lot is not allowed, a final plat has to be apart of a larger lot.

Cajka clarified that the issue at hand is how to make the lot buildable under current zoning regulations and the only way to do that is to either get the variance to reduce the minimum lot size or convince the neighbor to do a final plat.

John Ward, County Attorney's Office, addressed Pinkertons question regarding the neighbor's involvement and stated that the neighbor would need to be involved in the farmstead split because of the 20 acre requirement in which the Orduna property does not have.

Pinkerton asked if the neighbor would have to surrender acres from their property.

Ward answered no but they would need to sign off on it and the 5.6-acre lot was split off from the neighboring property in the late 80's.

Frack asked for clarification if the minimum lot size was waived, then it will be deemed a buildable lot.

Ward agreed.

Pinkerton asked for clarification that it does not need to be replated.

Ward answered that it doesn't need replated and it is a one-time fix. Cajka stated that the legal will remain the same.

Pinkerton asked if the surveyor was still in business.

Cajka stated he is unsure and unfamiliar.

Pinkerton addressed that the staff report stated 5.6 acres and 6.4 acres.

Ward stated for clarification that includes the Right-of-way (ROW).

Cajka stated that it's common in the county, owners own up to the center line of the road, but the county has an easement over it.

Pinkerton asked that the owners are paying taxes to the center line.

Ward stated the owners are assessed 10% of the total tax.

Cajka stated that he noted 5.6 instead of the 6.4 so that there were no complications with Building and Safety.

Ward state that if it was waived for 6 instead of 5 then there would be another meeting to discuss the farmstead split.

SUPPORT

No one appeared in support.

OPPOSITION

No one appeared in opposition.

APPLICANT REBUTTAL

Applicant did not appear for rebuttal.

APPEAL NO. 22007

ACTION BY THE COUNTY BOARD OF ZONING APPEALS:

December 9, 2022

Staats moved the approval variance, seconded by Pinkerton, and carried 3-0: Frack, Pinkerton, and Staats voting 'yes'; Warner and Woepfel absent.

There being no further business, the meeting was adjourned at 2:51 p.m.