

Lancaster County

BOARD OF ZONING APPEALS

AGENDA

BOARD OF ZONING APPEALS

Jeff Frack
James Pinkerton
Matthew Warner
Ed Woeppel

February 10, 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, **February 10, 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

February 10, 2023

1. Approval of minutes of the County Board of Zoning Appeals meeting held December 9, 2022

PUBLIC HEARING AND ACTION:

2. **BOARD OF ZONING APPEALS 23001**, requested by Chris Roth for a variance to reduce the required rear yard setback from 100 feet to 60 feet, on property generally located at 7601 West Waverly Road.

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>

COUNTY BOARD OF ZONING APPEAL #23001

DATE SCHEDULED FOR PUBLIC HEARING: February 10, 2023

LOCATION: Generally located at NW 70th Street and W. Waverly Road

ADDRESS: 7601 W. Waverly Road

LEGAL DESCRIPTION: Lot 1, in the NE ¼ of Section 14-11-05, Lancaster County, NE

APPLICANT: Chris Roth,

LOT AREA: 9 acres, more or less

ZONING: AG-Agriculture

EXISTING LAND USE: Single family dwelling

SURROUNDING LAND USE AND ZONING:

North:	Acreage lots and farm ground	AG-Agriculture
South:	Farm ground and 2 dwellings	AG-Agriculture
East:	Farm ground and 2 dwellings	AG-Agriculture
West:	Farm ground and 3 dwellings	AG-Agriculture

TYPE OF APPEAL:

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO

Article 4.017(a) of the Lancaster County Zoning Regulations requires a 100 foot rear yard setback for parcels in the AG Agricultural District. This is a request to reduce the rear yard setback from 100 feet to 60 feet.

STAFF FINDINGS:

1. The subject property, Lot 1 is addressed as 7601 W. Waverly Road. It is developed with one single-family dwelling. The lot is approximately 9 acres.
2. The applicant is proposing to demolish the existing house and build a new house in the southeast portion of the lot. The applicant is seeking a variance to reduce the rear yard setback from 100 feet to 60 feet.
3. The applicant wants to place the new house on the higher ground to the south to have a walk-out basement and maximize the pasture ground. The applicant

states that the existing house is too close to the road and presents an unsafe condition. The existing house is approximately 130 feet from W. Waverly Rd.

4. The lot is approximately 490 feet deep. The AG-Agriculture District requires a 100' rear yard setback. This still allows the house to be 320 feet or more from the street depending on the depth of the house. The contours on the lot does allow for a house to meet the 100 feet setback and have a walk-out basement.
5. The Building and Safety Department received a complaint on this property that a hole had been dug and ground-work plumbing had been installed. An inspection on December 27, 2022 noted that the hole appeared to be less than 100 feet from the rear property line. It did not appear that any underground plumbing had been installed. No permits for the plumbing or basement were applied for with Building and Safety. A building permit was filed on December 29, 2022 and was denied partly due to the house location not meeting the rear yard setback.
6. Article 19.003(b)(1) states that the Board of Zoning Appeals is authorized:

“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 with the locality or neighborhood concerned.”
7. There are not any peculiar, exceptional or unusual circumstances in regard to this property. The lot is rectangular in shape and has 9 acres of land. There is plenty of depth and width to accommodate a house and follow the setbacks. There are hundreds of lots in the County that are 9 to 10 acres or so in area. Most lots are rectangular in shape. A lot depth of 490 provides plenty of depth to accommodate a house and is not unusual or peculiar.
8. The 100 year floodplain is not found on this site. There is an elevation change of 20 feet or so, dropping from north to south, but that does not restrict the use of the land. The applicant didn't state there were any pipelines or easements that restrict development over the majority of the site.
9. Even with a few lower spots or drainage areas on the property, there is still a substantial portion of the site that is outside of the lower areas and outside of the required setbacks that allow for many options for placing a house in conformance with the zoning.
10. The house can be placed on the site, using the existing driveway and saving the existing trees while meeting the setbacks. The property has approximately 397,800 square feet of land, according to the Assessor's Office. Even a house of 2,000 or 3,000 square feet would leave plenty of land for pasture or other uses.

11. There is no demonstrated hardship associated with this request. Nor is the owner denied a reasonable use of the land if the request is denied, as the property has plenty of depth to accommodate the 100 feet rear yard setback.
12. The fact that the applicant already began to dig basement in the wrong location without building permits is not ground to justify a financial hardship. If the owner would have applied for the proper permits ahead of the work, they would have known that the house location did not meet the rear yard setback.
13. There is not anything exceptional to the application that is not found in the neighborhood or throughout Lancaster County. In the County other property owners have conformed to the rear yard setback.
14. Placing the house 100 or 200 feet from the front yard setback doesn't create a safety hazard to the property owner. The site has numerous trees in the front 100 feet or so of the lot. There is not a demonstrated safety hazard from a house being 100 or 200 feet from the front property line. Even if the owner voluntarily placed the house 200, 250 or 300 feet from the front property line, there would still be room for a house and meeting the rear yard setback of 100 feet. This would also place the house on a slope allowing a walk out basement on one side.
15. The personal preference of a property owner is not listed as grounds for the Board of Zoning Appeals for granting a variance.

Prepared by
Tom Cajka, County Planner
402-441-5662, tcajka@lincoln.ne.gov
January 26, 2023

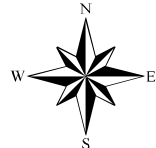


W WAVERLY RD

AG

2022 aerial

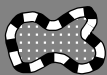


Board of Zoning Appeals #: **BZA23001**
 NW 70th St & W Waverly Rd

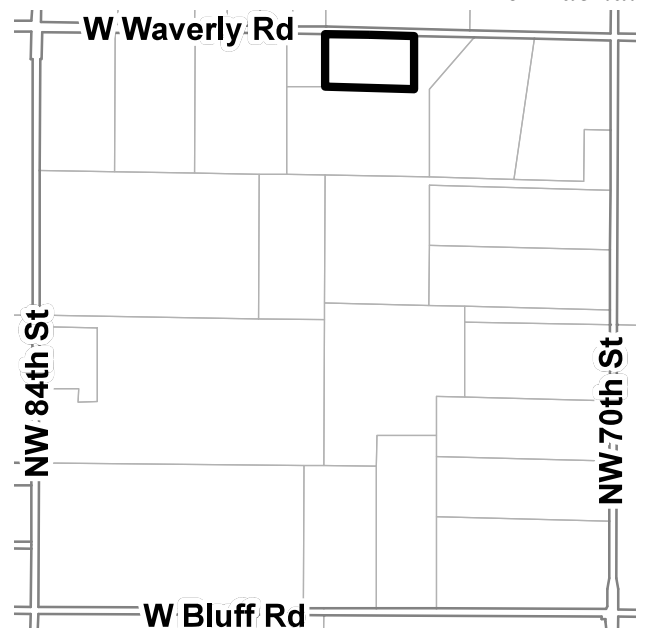


Zoning:

- 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

One Square Mile:
 Sec.14 T11N R05E

	Area of Application
	Zoning Jurisdiction Lines
	City of Lincoln Jurisdiction



December 30, 2022

Regarding 7601 West Waverly Road

To Whom It May Concern:

We bought the property at 7601 West Waverly Road in September 2016 as a place for our daughter to live while she attended the University of Nebraska for both her undergraduate and veterinarian degree programs. It was a perfect place for her as it had 9 acres that she could keep her two horses on. When we acquired the property it was a real mess. The modular home was not even discussed on the listing as it was in such poor shape. It does not have a basement. The property had quite a few dead or dying trees and approximately half of the property was overrun with noxious weeds including poison hemlock. Additionally, the individual that owned the property previously was a hoarder and we hauled out numerous roll-offs of trash.

We got the house to a place good enough for a college kid to live in. We also cut down the dead and dying trees, got the noxious weeds under control, planted good pasture grass from seed from Miller Seed Company and fixed the fencing. The property is in much better shape than it was when we acquired it.

Our daughter is now graduating in May 2023 with her veterinarian degree, has a job and wants to move back onto the property as she really likes it there. The existing house might have been good enough for a college kid but it really needs to be removed and replaced. The ground increases in elevation as you move to the south from where the current house sits. The entire property has elevation changes within it. There is a low spot that runs pretty much straight through the middle of the property from the south to the north. This is to the west of where the current house sits and where we would like to position the new house. When it rains it gets a little muddy in that low area and really would not be conducive to try and place a home or driveway. The current house sits very close to the road. Too close for parents. Placing the new house further south not only gets it to higher ground but it also provides us as parents with some comfort as she will be further off of the road and the new house will be built into the ground so she will have a good, built in storm shelter.

Additionally, we will be able to use part of the existing driveway which will save both money and we can keep the current vegetation intact. Given the elevation changes on the property placing the new home on the southeast part of the property will allow the home to have a walkout basement. The underground plumbing had been put in by the previous owners most of the way up the hill already and we wanted to position the new home in a way to take advantage of that while also taking the driveway into consideration. There is a mature tree to the northwest of where the new home would be placed that we would like to save and make part of the landscape. All of this was taken into account when trying to figure out where to put the new home. The existing driveway, plumbing, lay of the land and the mature tree.

We believe that with the work we have already done to the property along with the removal of the old house and the placing of a new home that this property will be greatly improved. We appreciate your consideration.

Sincerely,



Chris C. Roth
Manager, Machines LLC

January 5, 2023

Regarding 7601 West Waverly Road

To Whom It May Concern:

My name is AJ Jeffery. I am asking for a variance on the rear yard setback that is presently at 100' to take it down to 60'. The reason I am asking it to maximize the pasture ground and also the value of the ground and the view from the higher elevation. I have also included a letter in regards to hardship why we would like to set the new house on this spot on the acreage. Feel free to contact me with any questions, concerns or if you need more information. Thanks for taking the time to look at this letter and application. It will be great doing business with you.

Sincerely,

AJ Jeffery/ Owner of Jeffery Consulting (308)-991-4527