

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>

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, and Herschel Staats. (Matthew Warner and 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.

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.

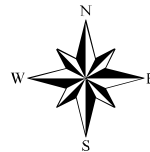
11. There is no demonstrated hardship associated with this request. Nor is the owner denied a reasonable use of the land if the request is denied, as the property has plenty of depth to accommodate the 100 feet rear yard setback.
12. The fact that the applicant already began to dig basement in the wrong 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



2022 aerial

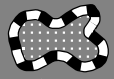


Board of Zoning Appeals #: BZA23001
NW 70th St & W Waverly Rd

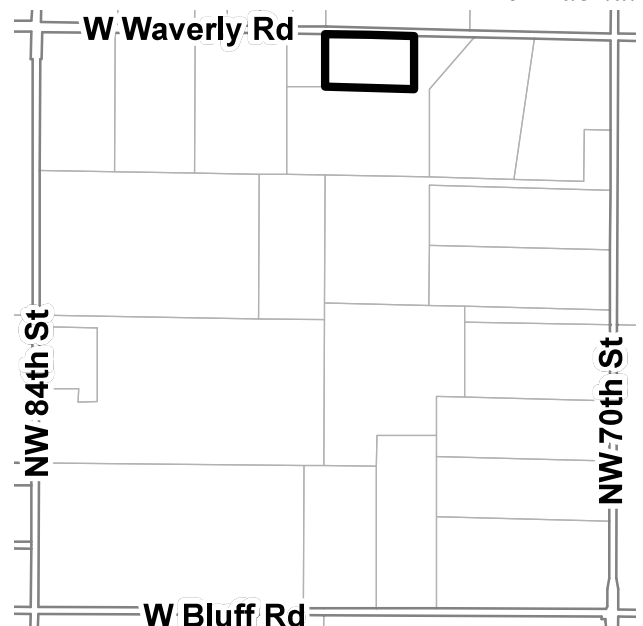


Zoning:

- 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