



**CITY OF LANDER**  
**BOARD OF ADJUSTMENT & PLANNING COMMISSION MEETING**

Thursday, March 07, 2024 at 6:00 PM  
City Council Chambers, 240 Lincoln Street

**MINUTES**

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Attendance: Chair Zach Mahlum, Members, Kara Colovich, Kristin Yannone, Rob Newsom, and Joe Henry. City Attorney Adam Phillips, Council Liaison Missy White, Assistant Public Works Director Hunter Roseberry, Recording Secretary RaJean Strube Fossen

Dave Fehringer is excused for travel. Tom Russell was absent.

**1. CALL TO ORDER / PLEDGE OF ALLEGIANCE**

This meeting is being recorded electronically. All petitioners to the Board of Adjustments will receive a written decision and order within thirty (30) days of this hearing. The decision will be clearly stated with findings of fact and conclusions of law. Anyone wishing to appeal against a decision and order may do so through District Court.

Anyone wishing to speak tonight, must first be recognized, come to the podium, take the oath, and state your name prior to speaking.

**2. APPROVAL OF MINUTES**

**A. BOARD OF ADJUSTMENT and PLANNING MINUTES of February 15, 2024**

Kristin moved to accept minutes as presented. Seconded by Rob. Motion carried.

**3. BOARD OF ADJUSTMENT - NEW BUSINESS**

**4. BOARD OF ADJUSTMENT - OLD BUSINESS**

**A. Take off the table NCU 23.23 690 Evergreen, Zerga**

Kristin moved to take NCU 23.23 off the table. Seconded by Kara. Motion carried.

**B. Approve NCU 23.23 690 Evergreen, Zerga**

Attorney Phillips clarified the table of the motion made at the last meeting according to Robert's rules. The Board must make motions for a combination or consider each independent structure of 1&2, 3,4,5, or 6. Rob asked for clarification if a property could have 5 nonconforming uses and Adam confirmed that is allowed.

The Chair opened the matter by having the City read their additional Staff comments dated March 2, 2024, into the record.

Mr. Schumacher took the oath. John presented supplemental exhibits 28 - M Frey public comment, exhibit 29 - complete record of email exchange between city client and realtor, and exhibit 30 - affidavit of Liz Zerga. Supplemental proposed motions were submitted to City

Administration and not distributed in the members packets. Subsequently Adam allowed the motions as drafted and they were printed and handed out to the members.

John contends that the City has not agreed to their requests for the existing structures to have a Certificate of Zoning Compliance. All structures existed in 1977 and therefore must be determined to be abandoned to address them as a nonconforming use. The owner still contends that the structures have not been abandoned and therefore a nonconforming permit is not the appropriate mechanism for their request.

John handed out printed City code sections for the Board's use. On page 10 Item F, to illustrate where he interprets that our code allows this specific nonconforming use to continue as they exist now just as they did in 1977, and again on Page 23 of his printed code handout, he interprets that nonconforming use can continue as is.

Page 8 of the printed Code handout is where John illustrated that the responsibility of City is and was to record all nonconforming uses at time of code adoption in 1977. John contends that the City has not generally performed this task and when asked there was no evidence from the City that this was ever done.

Zach clarified that John believes section 4-4-1 of the City Code is interpreted to mean that the City is responsible for defining nonconforming uses at that time.

Zach believes that the Zerga's were aware of the nonconforming use requirement because they followed the nonconforming use permit rules for the home business in 1980. John stated he does not know the full facts of the 1980 certificate.

John represented that his draft for the proposed motions include all issues so that going forward there is no confusion as to what is agreed on.

John referred to Exhibit 2 from the previous meeting to show where he believes that the Building Inspector is responsible for issuing zoning compliance certificates. He believes that proper procedure was not followed by the City for the certificate request, and this should not be in front of this Board. He says the City declared that all 6 structures are inhabitable and that was inappropriate. John referred to the definition of the code for both a dwelling and a structure. He reaffirmed that each structure on the property meets our definition of dwelling with full residential use. John wants the board to clarify that the existing home business be retained as an existing nonconforming use.

John presented Exhibit 2 page 8 from the previous meeting stating there are 3 forms of nonconforming use being lots, structures, and uses. He believes their application is for nonconforming structures and not use or lot.

John referred to Exhibit 3 - the City's December response to the original application. He states that the owner directed the application to the Building Inspector and got a letter from the Assistant Mayor that all structures are abandoned, and a meeting was set to appear before this Board. He reported that the balance of the letter describes how many issues are noncompliant base solely because of the City's interpretation that the structures are abandoned. The owner contends that this is a lot by definition. Now John stated he believes that this really is a nonconforming lot or not a lot at all but just a parcel of land within the City. Zach clarified that John thinks this land is exempt from the code because this is not a lot and if the owner is seeking a nonconforming permit for the lot. John stated that is a possibility.

John presented more testimony about his interpretation that the City Inspector should have identified all the noncompliance when the code was adopted. John restated that the City could not provide documentation that identification ever happened when the code was adopted nor since.

John contends that the Undeveloped Checklist that was presented in the City's original communication is not valid nor allowed in the City Code and the owner wants clarification on how to get a building permit. He does not believe that the code section for R-2 residences requires separate water and sewer service is necessary for all structures and thinks it only relates to a duplex being sold separately. John believes the City is inconsistently and erroneously applying the code and his draft motions are aimed at making everything on common ground and agreed to by both parties.

John reports that the City original letter talks about fire flow and contends that since they don't have a subdivision that requirement should not apply.

Kristen asked for clarification of what the owner wants. John started to explain his draft motions for each individual structure. Kristin stopped John to say she believes that the drafted motions ask the Board to determine permissions on items that are not part of the application and may not be under the purview of this Board. Adam clarified that the board can make any motion, however, it may be contested if it is not appropriate.

Zach clarified that the the owner thinks the City erroneously denied a Zoning Compliance Certificate and that the Board would only be involved if there was an owner's appeal of that zoning compliance decision. John agrees that the Board should act only if the certificate is not awarded. Adam agreed that what John said is a literal interpretation of the code.

Kristin clarified that John wants to remand the application back to City Staff and then start over. John said this Board has the right to remand matters back to City Staff in accordance with the Boards guiding documents. At that time City staff researched both the online City codes and the Board's bylaws and did not find any reference to this right to remand matters back to City Staff.

Joe asked if the Board remands the matter to Staff, then will the City Staff inspect the property and then report the findings to this board.

John stated that he is still interpreting that our rules put the burden of proof for of abandonment to be determined by the City. There was discussion on our codes because the Board members interpret that the burden of proof of abandonment is on the owner as stated in 4-11-1. 4-11-1 was then displayed on the screen and read to all present.

Adam asked for clarification on what the owner wants to do and what the Board wants to do. He interprets that it is a simple nonconforming use permit to be determined by the Board.

John asked for a short recess so he could call his client (owner Liz Zerga). There was a motion to recess by Kara and seconded by Rob. Motion passed.

Rob moved to come back from recess Kara seconded. Motion passed.

After a consultation with John off the record, Adam stated some options for the Board.

1. approve the nonconforming permit for each structure individually, or
2. the Board can remand the matter back to City Staff even though it is not specifically spelled out in the

rules. Adam also made the point that if the owner chooses to withdraw the application this deliberation ends tonight.

Zach asked if the City could appeal a Board decision. The City has no right to appeal the Board as the Board is a duly designated arm of the City.

John stated that Liz Zerga is not willing to withdraw the application and she requests that it be remanded back to City Staff. Kristin is not comfortable with remanding back to staff as it is not written in any rules and there is no specific purpose with that request. Kristin wonders if tabling the matter and asking for more information is more appropriate. Adam stated if the matter is tabled there must be a specific date or completion of a specific action like pending the completion of further investigation.

Kristin moved to table NCU 23.23 to give staff the additional opportunity to perform an investigation if the owner agrees. Joe seconded.

Hunter Roseberry is not sure what the exact investigation scope is. John posited that the City should direct staff to identify the facts of what is conforming and what is nonconforming about this property. Missy asked how that investigation would be different from what was already done. Adam clarified that the building department would submit findings instead of RaJean.

Kristin amends her motion to include 2 months until the Board meeting on May 2 for the building department investigation and findings. Joe re-seconded. Amendment passed. Kara clarified that both the owner and the building department will be able to submit new information during this process. Amended Motion to table for 2 months passed.

There was no more deliberation on the matter.

## **5. PLANNING COMMISSION - NEW BUSINESS**

## **6. PLANNING COMMISSION - OLD BUSINESS**

### **A. Review all Title 4 changes proposed to date**

Kara has concerns with some of the height restrictions we chose. She believes that 45' allows for a 4-story structure and she wants to confirm with the other members that is what was intended. She showed some illustrations which were discussed briefly. The consensus was to consider the comments as illustrated and Kara will bring suggested wording for next meeting.

Kristin moved to adjourn; Kara seconded.

No further action was taken.

### **B. Review Council Actions for Z 23.01, Z 23.02, S 24.08, CS 24.01**

The meeting was adjourned so no action was taken.

## **7. ADJOURNMENT**

Adjournment at 7:45 Pm