



CITY OF LANDER
BOARD OF ADJUSTMENT & PLANNING COMMISSION MEETING

Thursday, February 15, 2024 at 6:00 PM
City Council Chambers, 240 Lincoln Street

MINUTES

Join Zoom Meeting

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Meeting ID: 824 5466 0893

Passcode: 447167

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

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. PLANNING COMMISSION MINUTES of January 4, 2024

Kristin Moved to accept the minutes. Dave seconded. Motion passed

3. BOARD OF ADJUSTMENT - NEW BUSINESS

A. NCU 23.23 690 Evergreen, Zerga

John Schumacher, representative for owner Joan Zerga, and Liz Zerga took the oath. Liz Zerga has the power of attorney for the applicant Joan Zerga.

Schumacher delivered a packet to all members of the commission. He described the location map. They are requesting a Certificate of zoning compliance for exceeding the number of structures allowed on an R-2 lot. stating there is a nonconforming use for all structures of which #5 has an existing nonconforming use from the 1970's.

Kristin said she is not familiar with a Certificate of zoning compliance. Although Certificates were used when the code was first adopted, Adam does not believe John is using a correct interpretation of the code.

John also stated the owner is wanting a nonconforming use for allowing combined water/sewer services to all units and the distance between fire hydrants and structures.

John stated that only #6 does not meet the code required setbacks at this time. They are not requesting a variance, there are not proposing any expansion or new construction on the lot.

Joe asked if the buildings were currently in use. John said they have been recently but are not being used today. However, their position is that they are not abandoned (as the City suggests) and the units are still residential structures for use.

Kristin asked how John's statement of abandonment relates to our code. He believes a supreme court definition can be used to prove that the structures are not abandoned and can still be defined as current residential use in accordance with our code.

Zach confirmed that #5 has a nonconforming use permit for home business.

Liz stated that this property and access road have been in existence since 1930's in its current form. Houses #1-6 were erected/moved in early 1960's prior to the code adoption. Her parents moved in during the 70's and she was raised here. The only change is a minor addition to the main house. She reiterated that each structure needs a nonconforming certificate, including #6 with improper setbacks, according to the current iteration of the codes.

Liz described the uses of all structures on the location map in the exhibits. The Main house is residential, A is a garage, and B is a shop; all uses which precede the adoption of city codes. #1 and 2 were rental buildings up to 2005. After 2005 #1, 2 and 3 were made available to family members for temporary residential uses. #1 and 2 were used for canning up to her father's death in January 2023. #1 and 2 also held the treadmill for exercise. #3 was used on occasion for family. #3 was rented up to about 2000 to renters outside the family. #4 was rented to tenants in the 80's and re-sheet rocked after the last tenant left it damaged. Family members subsequently used #4 for furniture storage. #5 was used as an art studio and supplies are still stored there for use. #6 has not been used for quite sometime.

They have been told by the City that there are not enough parking spaces to meet current codes, but there is gravel use for parking for each structure throughout its history. They ask for nonconforming use for parking if that is possible. Water and Sewer to the best of her knowledge comes from the trailer court. The [pit] meter is located near #1 and 2.

Zach confirmed that all units are on one meter. She thinks so, as it was installed in 1986 by the City. She believes there is also a meter on the fire hydrant.

Liz pays for the utilities of garbage, electrical, water and insurance. She reiterated that all structures have historically and continue to be used a residential uses.

Zach asked about the classification of structures on the tax assessment. She pays property taxes also and does not know how each structure is characterized. Zach noted that some of these structures are characterized as farm or utility buildings and not residential. Zach believes that the abandonment may be tied to the characterization of the building, noting that specifically, they are not taxed as residential structures.

Joe asked Liz what the future use would be. She intends to sell the property to someone for residential rental income property. The property is currently listed for sale.

Kristin confirmed if the mother was able to speak on her own behalf. Liz reported that her memory is failing and not consistent.

Tom verified that there is no water run to #6. John reiterated that their request for nonconforming use as a residence does not include #6.

John noted that a Certificate of zoning compliance request was submitted to the City on 11-8-2024. The City has never requested to enter any of the buildings. John reported that the Assistant Mayor replied to the zoning compliance request and not the building inspector, which is improper as he interprets the code. They interpret that the City denied this zoning compliance due to abandonment of the structures.

John and Liz described that the original response back from the City mentioned that even if a nonconforming use was issued, an "undeveloped subdivision checklist" would still be required for any building permit. Zach stated that this Board does not have any control over the building permit processes so that contention is out of scope of this board. Adam concurred with Zach.

John then showed exhibit 4 proving the legal access for the lot through a district court document. All parties of the district court document and their heirs are responsible for maintenance and shall not widen nor expand nor alter the grade of this easement. A map was shown of the full easement of the district court document.

Kristin asked the purpose of showing the access documents to this board. John replied that the City raised issues of the legal access to the property in City communications.

John discussed exhibit 18, 7, 19, and 17 and asked Liz to confirm that they were the documents submitted and received between the City and the applicant in the application process. Liz replied that there may have been earlier emails that are not shown in the exhibits. She stated that the earlier communications from the City said the same things as the ones in the exhibits presented.

Exhibit 6 was presented for an easement document from 1986 that was through the manufactured trailer park [at 607 Market] for the purpose of installing utilities. Documents were presented that the Water line was subsequently transferred to the City as a 6" cast iron main and the sewer was transferred as a 6-8" sewer main of mixed materials, both through the 607 Market property. Exhibit 20 is the City's water meter installation work order that the City provided to the applicant.

Exhibit 21 showed City building permits on file that were provided by the City at the applicants request. John stated that the City did not acknowledge nor notify the owner of any nonconforming use at the issuance of these building permits.

Exhibit 22 is the nonconforming use permit for the art studio and that was provided to them from the City at the applicants request. The document was titled a "certificate of zoning compliance" at that time.

Exhibits 23-26 showed interior photos of the residential units and art studio.

Additional unnumbered exhibits were presented which contained current photos and proof of recent bills paid. Kristin verified that the power bills were paid in both 2023 and 2024.

Liz reported that there were recent repairs to the buildings.

Joe asked if there were separate addresses for each structure. John verified that there are only two addresses on the property based on the County website.

John explained he would like testimony from other family members being Leah Zerga, daughter, who lived there in 2022, and John Zerga who lived there in 2005. A potential purchaser is interested in using the property for travelling nurses.

Leah Zerga, daughter of the owner, took the oath and spoke of her recent use of the property when she stayed in #1 and 2 to visit or care for her parents. Leah verified for John that stays were at least annually for 10 days or longer. She was planning on living there permanently to care for her parents but did not move in after the death of her father.

Zach confirmed that the last time she stayed in one of these buildings was 2022. She stayed in #1 and 2.

John Zerga, son of the owner, took the oath. Mr. Zerga reported that he and his family moved out of #1 and 2 in 2005. Prior to that he lived in #3. He has spoken with Mr. Bregar who wanted to remodel the apartments for use as rentals to travelling nurses. Zach verified the last time Mr. Zerga lived in one of the structures was 2005, but he stated that he also helped with canning in #1 and 2.

Mary Jarrard, 680 Evergreen Lane, took the oath. Ms. Jarrard stated that she has lived next to this property for over 30 years. Her concern is the nonworking fire hydrant and fire protection along with emergency and daily traffic congestion. The City has marked and bagged the hydrant as non-working and stated to her that the water line may be of inadequate size to provide the needed fire protection.

Zach verified with RaJean that she has had reports from the Water department that the hydrant has been tagged as non-useable.

Zach verified with John that the easement and transfer agreements in the exhibits is this same fire hydrant that Ms. Jarrard is talking about. Zach verified that John interprets the agreement to mean that the City has the responsibility for the maintenance of the water and sewer lines and the hydrant.

Ms. Jarrard read from her written comments into the record and expanded on her writings with descriptions.

Rob verified that all adjacent owners of the access road currently maintain the road.

Joe verified that the access court document does not allow widening. John stated that the County used to maintain the road prior but eventually relinquished the road maintenance as the road was taken into the City limits. John feels the road could be changed to allow improvements if new agreements were enacted.

Ms. Jarrard verified that the water comes through 607 Market for her house just as the owners exhibits state.

Kent Simon 670 Evergreen took the oath. Mr. Simon wants the board to consider that these units are not currently in a condition to be used as rentals. He is concerned that a new owner could tear down the units and increase the density which increases traffic on the access road. It is his opinion that this Board issuing a nonconforming use permit does not address these issues but a new subdivision could require the structures to come into compliance.

Sky Phifer, owner of 607 Market, took the oath. He has owned the manufactured park for about 5 years. He has met with the City to discuss the water service and during his ownership those

services have been operated under the impression that all the lines through his park are private service lines.

Sky agrees that the narrow lane may not be safe for increased traffic should the residential use be allowed.

Kristin verified if Sky has witnessed any recent use. He has seen very little use, by family only, and is surprised that the owner reported new roofs and recent maintenance of the structures. He is concerned about the units being "up to code".

Sky thinks that a nonconforming use permit is not appropriate and will not bring the property into compliance. He restated that he is concerned for the families safety should the rentals be reinstated and also the safety for his rental property.

Tom verified that the park is zoned R-3. Zerga's stated that is it half R-2 and half R-3. Rob stated it is all R-3 according to the City zoning map. RaJean verified that it was recently changed to all R-3 with Sky Phifer's permission as allowed by city code.

John Schumacher is of the opinion that the fire protection concerns are not a concern for a nonconforming use permit. However, Exhibit 7 shows the distance to all working hydrants in the proximity of the property. He interprets that these hydrants meet the City building codes.

John reiterated that the easement was for all residences at that time and feels that documents makes the road adequate for current and future uses. John referred to the meeting packet letter on page 18 which is a City letter that also raises issues about access.

John restated that the idea of them receiving a nonconforming use permit is not to bring everything up to code but to allow prior uses to remain as is. He believes that new construction will terminate the nonconforming use.

John says both a structure and a use can be nonconforming. He contends that the structures are still residential units regardless of their amount of use. There has been no intent to abandon the residential uses as evidenced by the owner maintenance and paying the bills.

The owner is still requesting a nonconforming use permit or Certificate of zoning compliance for the number of structures allowed for #1 through #5. The owner also wants a nonconforming permit to allow shared water/sewer services to each unit in lieu of single services. John stated that the City has never verified for him where individual services are required in the code. The owner recognizes #6 has nonconforming setbacks only and that this unit be allowed to be labeled a storage unit [non-residential]].

John also requested that the Board recognize that the Main, A, and B structures are permitted uses and that the Board recognize #5 as already having a nonconforming use permit for a home business.

John clarified that the main house is currently occupied. He believes that the dates of residential use has been proved and referred to a 5-year state statute proving there is no abandonment. John also said that City has not initiated any actions of abandonment and therefore the structures are not abandoned.

RaJean read the City Staff letter into the record. John noted that the agenda packet online only included one of the three public comments reported in the staff letter.

Rob and Kristin verified the City's interpretation of abandonment with RaJean to be that the structures have not been lived in for more than one year.

Rob feels that art studio and the action of canning are not residential use. He states statutes are in place to show residence is the majority of the year. He is of the opinion that these have been abandoned. John feels residency and the definition of a residence are different stating that the definition of Abandonment by case law must show both intent and action, which he believes has not been proven.

Tom interprets that #5 is a business and not a residence. John stated that it is a home business which is tied to a residential use.

Kara asked the chair if each nonconforming subject could be deliberated separately. Zach defined 2 issues of number of structures and service lines. He stated that the setbacks for 6 should be no issue here and provided by a separate action. RaJean verified that approving nonconforming setbacks for a structure does not come from Commission but is a city administration form.

Zach confirmed the the zoning compliance certificate shown for #5 is home business permit, now called a nonconforming use permit. Tom asked John how he thinks #5 is a home business. John replied that is his interpretation of the codes in place at that time. Zach asked if this zoning compliance is specific to #5 or all buildings at that address.

Joe asked if we could apply conditions to this for current or future owners. Zach and Adam verified that no conditions can be added to a nonconforming permit.

Tom asked what the city definition of abandonment is. Adam noted that there is no definition in the codes. Since there was more testimony tonight about the definition and interpretation of abandonment, he needs some time to review the case law for an answer.

Zach mentioned that new testimony has been given and the board may need more time deliberate. Adam noted that the board can table all matters with a designated date to bring it before the board again. Adam clarified for John that there is no 30-day limit for deliberations as he surmised.

Rob moved to approve NCU 23.23. Kristin seconded. Zach clarified that this singular motion covers all issues brought before the Board. Motion failed unanimously with with Kara and Dave stating that their no vote was in order to address each issue separately.

Kara moved to approve NCU 23.23 for #1 and 2 only, Tom seconded. Discussions: Kara noted that this structure was used more regularly than the other house but still has shared water and sewer service issues. Tom agrees but thinks that the water and sewer issues are not under the purview of this board. Kristin believes that there is no evidence of residential use within one year as the code requires and she has seen no evidence from the owner. Motion failed with Tom as the only yes vote.

Dave moved to table until the regularly scheduled March 7th meeting. Joe seconded. There was some discuss as to exactly what was tabled. Adam clarified that the table will allow new votes even on those two previously voted items that failed. Kara verified that the March 7th meeting will be in public and all discussions will be allowed. Motion passed with 4 ayes being Zach, Tom, Joe and Dave, and 3 nos being Kara, Rob and Kristin.

Zach clarified that public comment will be taken at the next meeting and the Public can do their own research. John was adamant that the public record was closed by the first due date for public comment. Kristin moved to re-open the public record. Kara seconded. Motion passed 5 to 2. Public comment is allowed from both the public and the owner.

There was no more discussion on this matter.

4. BOARD OF ADJUSTMENT - OLD BUSINESS

5. PLANNING COMMISSION - NEW BUSINESS

A. CS 24.01 County Subdivision, 1979 Baldwin Creek Road, Ebbert

Tom Russell was excused. Adam and Hunter left for another meeting.

Dave recused himself as he is the surveyor of record. The client has left the meeting so Dave represented the owner. Dave stated that the City has asked for 30 feet road easement on the west of the property. The applicant agrees to increase the proposed 20' easement to the 30' requested by the City.

Zach asked for clarification if the center road on the plat will have a name. Dave verified that it will be named Ebbert Drive.

Missy wondered why the owner would want two roads on either side of the houses. Dave explained that the center road is already improved prior to the county plat approval. Zach verified that this is not a matter for this board.

Kristin moved to recommend approval of CS 24.01 to City Council contingent on the 30-foot easement on the west lot line being incorporated. Joe seconded. Motion passed unanimously.

Motion was made to adjourn.

6. PLANNING COMMISSION - OLD BUSINESS

A. Update on graphics for Title 4 proposed changes

No action

B. Presentation of Administrative changes

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7. ADJOURNMENT

Adjournment at 8:53 pm.