

MINUTES

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

**Monday, May 13, 2019
7:30 pm**

**Courthouse Plaza East
Commission Meeting Room
115 North 4th Street**

Members Present: Dr. Tom Taul, Chair
Diane Hoobler, Vice-Chair
Nathan Larson
Joe Gelroth

Members Absent: John Wienck

Staff Present: Monty Wedel – Director, Bob Isaac – Planner and Lisa Daily -
Administrative Assistant

Others Present: Tony and Regina Nelson, Nancy Drumm, Shirley Evans and Juan Omar
Ochoa

OPEN PUBLIC COMMENTS

None

CONSENT AGENDA

The minutes of the April 8, 2019 meeting were presented and approved. The Report of Fees for the month of April (\$3,644.00) presented and approved.

Joe Gelroth moved to approve the consent agenda as presented. Diane Hoobler seconded.
Carried 4-0.

Diane Hoobler moved to adjourn the joint meeting of the Riley County Planning Board/Board of Zoning Appeals and reconvene as the Board of Zoning Appeals. Joe Gelroth seconded.
Carried 4-0.

BOARD OF ZONING APPEALS

Ochoa – Variance (front yard)

Chairman Taul opened the public hearing at the request of Juan O. Ochoa, Petitioner, and Juan O. Ochoa and Hilda Ochoa-Lopez, owners.

Bob Isaac presented the request stating the property owner is requesting a variance to reduce the front yard (setback) requirement from 25 feet to 21 feet and a separate variance to reduce the side yard (setback) requirement along the south property line from 7.5 feet to zero (0) feet. He stated the Certificate of Survey includes both the front and side yard dimensions as they relate to the location of the house on the lot; he recommended that each variance be heard separately.

Mr. Isaac stated if the request to reduce the front yard setback requirement from 25 feet to 21 feet is approved, it would bring his home into compliance with the Riley County Zoning

Regulations. Mr. Isaac stated the subject property was rezoned from “G-1” (General Agricultural) to “A-2” (Single Family Residential) in October 1983 and later platted as Lot 45 of Flinthills Valley (subdivision), recorded February 1984. He said in March 1987, the subject property was replatted as Lot 15 of Autumn Ash (subdivision). He explained that the site is located within 1,000 feet of a city fire hydrant.

He explained that although the original request was for a reduction of the south side yard requirement to build a single car garage, the Certificate of Survey also shows the front yard dimensions, indicating a need for separate variance. He stated the house predates the plat, as the house was there before the plat. He stated the applicant purchased the property as shown on the survey and has made structural improvements to the porch while improving the entire home.

Mr. Isaac stated the 25-foot front setback is right at the front elevation of the house. He said Mr. Ochoa purchased the property with the porch already built. He explained the request was reviewed with the county engineer and he had no transportation or site distance issues, as the porch structure has been in place for several years without any negative impact on traffic.

Staff recommended approval of the requested variance based on the evaluation of variance criteria listed in the staff report.

Chairman Taul asked if the variance request is due to the front porch.

Mr. Isaac replied yes, the porch is located within the 25-foot setback, thus the request in reduction.

Diane Hoobler asked if the concrete pad was there prior to Mr. Ochoa making improvements.

Mr. Isaac replied he thought the porch was made of wood, which was structurally failing. He said Mr. Ochoa made improvements without increasing the size of the porch.

Monty Wedel stated the nonconformity was discovered when variance for the side yard was received.

Chairman Taul asked if there were any proponents or opponents within 1,000 feet of the request.

There were none.

Diane Hoobler moved to close the public hearing. Nathan Larson seconded. Carried 4-0.

Diane Hoobler moved to approve the request for a variance authorization to reduce the front yard (setback) requirement from 25 feet to 21 feet for Lot 15, Autumn Ash.

Nathan Larson seconded. Carried 4-0.

Ochoa – Variance (side yard)

Chairman Taul opened the public hearing to reduce the side yard (setback) requirement along the south property line from 7.5 feet to zero (0) feet.

Bob Isaac stated the zoning district in which the subject property is located has a side yard requirement (setback) of 10% of the lot width, not to exceed 10 feet. Mr. Isaac stated, in order to build a single car garage, the entire area between the house and the

property line is needed. He explained that the garage will wrap around the back of the house to include a Safe Room that can be accessed from inside the house.

Mr. Isaac stated the Certificate of Survey was done to accurately depict dimensions as they relate to existing and proposed structures and the property boundary lines. He explained that it was important to show the location of home, the well and its 50-foot setback requirement, and the buried gas and power lines. Mr. Isaac explained all of these serve the home but are obstructions which make it difficult and expensive to utilize the back yard as an alternate location for the proposed garage.

Staff recommended that the Board of Zoning Appeals consider the unique conditions and constrictions of the property (which were not created by an action of the applicant), the difficulty of locating the accessory structure elsewhere on the lot (other than the proposed location) or the realistic functionality of garage/safe room if detached from the home, and finally, the fact that the proposed addition (garage) will border an existing garage (neighboring property). Mr. Isaac said, regarding access to the rear of the home for fire suppression, a firetruck, if necessary, could drive around the north end of the lot. He said the space between the home and north property line is nearly the same distance between the home and south property line. Mr. Isaac stated that, notwithstanding, the Board should also consider the consequences of how the neighboring lot *could* redevelop in the future. He said speculatively, if the owners of the neighboring property decided to clear the lot and build a new house (right at the required side yard setback) and assuming the current variance was approved allowing the proposed garage to be built at zero lot line setback, there would only be approximately seven (7) feet between the neighboring structures. He said that each variance request has to be evaluated on its own merits. He said conditions vary greatly from property to property and should dictate the outcome of the decision; thus, just because a variance is approved or denied for one property does not necessarily set a precedent by which the Board must approve or deny all other similar variance requests.

Diane Hoobler asked to review the photos of the property again and asked if the tree located in the back yard was on the property line.

Mr. Isaac replied the tree is exactly on the property line. Mr. Isaac pointed out the well in the photos. He explained that the Sanitary Code requires any structure that could be treated for termites be located at least 50 feet from the well. He said due to the setback, the property owner would not be able to build a wood accessory structure to match his house.

Chairman Taul asked if the applicant would like to speak.

Omar Ochoa stated he would like to attach the garage to the house to include the Safe Room. He said he has children and doesn't want to exit the house and go through backyard to get to the Safe Room. Mr. Ochoa stated he would not be able to build the garage close to the house in backyard due to the buried utility lines.

Diane Hoobler asked the applicant if he could drive into this backyard.

He replied yes.

Diane Hoobler asked if the garage was placed in the backyard, could he drive into the garage.

Mr. Ochoa said when it rains, the backyard gets very saturated and he would get his truck stuck.

Joe Gelroth asked if the safe room could be separated from the garage.

Nathan Larson asked if the safe room could be attached to the house.

Mr. Ochoa said due to the buried utility lines and meters on the outside of the house, the safe room needs to be located on the south end of the home.

Chairman Taul asked the applicant if he would consider just building the safe room and not the garage.

Mr. Ochoa replied he would like to build the garage with the safe room inside of it. He said he could make a door so they do not have to go outside.

Chairman Taul if he could attach the safe room where the door to the outside is located without having a garage.

Mr. Ochoa said the safe room could be located anywhere but would like to do it in the location of the door to the outside.

Diane Hoobler asked if he planned on any other uses for the garage such as mechanical work or wood working.

Mr. Ochoa replied no.

Diane Hoobler asked if he considered a carport.

Nathan Larson stated his concern was the maintenance aspect of the garage wall and a zero lot line setback. He said the applicant would have to be in the neighbor's yard to do it and if a fence were to be built, there would be no access to that side of the garage.

Mr. Larson said there is already gravel up to the house. He asked, to get away from the neighbors, couldn't gravel be put in the back yard for a garage?

Diane Hoobler asked if there was enough distance behind the house and electrical line to place the garage.

Mr. Ochoa showed pictures of his property to the Board showing an orange flag at the 50-foot well setback. He said the blue line was supposed to be the garage location but it would end up in the well setback. He said, if he moved it, he would run into the utility meter and AC unit.

He said he knows the neighbor has concerns about drainage but he will do everything he can to prevent water going onto the neighbor's property.

Nathan Larson suggested angling the garage in the back yard.

Chairman Taul asked if there any proponents within a 1000 feet.

There were none.

Chairman Taul asked if there any opponents within a 1000 feet.

Shirley Evans stated she lives next door and has been there since 1993. She said everything has been very satisfactory and nobody has bothered her. She said we never infringed on anyone's property and never needed to. She said she is concerned about finding construction materials such as nails on her property.

Chairman Taul asked if she owned the adjacent property with the garage.

She said yes.

Diane Hoobler asked how many feet between Mrs. Evans's garage and the property line.

Bob Isaac replied approximately 15 feet.

Nancy Drumm, sister of Shirley Evans, stated the property line in question is a natural drainage area. She said Mr. Ochoa built his driveway up and it didn't affect the drainage; however, if he builds a garage right to the property line, it will direct the drainage onto Mrs. Evans's property. Ms. Drumm said another concern is during the construction phase and any maintenance of that side of the garage would have to be done from on Ms. Evans's property.

Chairman Taul asked if there were any other comments from the public. There were none.

Joe Gelroth said he had read in the staff report that Emergency Management had a concern with adequate fire protection if the variance was granted.

Bob Isaac stated the specific concern was the inability to get a firetruck around the back of house; however, he explained a very large truck was able to access the backyard along the north side of the house to install the power pole. Mr. Isaac pointed out there is no alley. He said the backyard is accessible and is also within 1,000 feet of a fire hydrant.

Joe Gelroth moved to close the public hearing. Diane Hoobler seconded. Carried 4-0.

Chairman Taul stated he understood the need for a garage but he is not okay with the side yard zero lot line setback. He said he felt there would be times when children, friends and family will want to walk around the garage and to do that, they will be walking through the neighbor's property. He said he experiences the same thing with the neighbor kids walking through his yard.

Chairman Taul said to construct that side of the garage, future maintenance such as painting would have to be done from the neighbor's property. He said he wouldn't want that in his own yard.

Diane Hoobler stated she echoes what Chairman Taul said. She said she lives at the end of a dead end road and drivers come onto their property all the time. She said the narrow setbacks bother her. She did commend Mr. Ochoa for all the improvements he has made to the property.

Joe Gelroth stated his biggest issue was setting a precedent if the Board approves a zero lot line setback.

Nathan Larson said if the Board approves a zero lot line setback, what would stop the other neighbor from requesting the same thing and have two structures up against each other.

Mr. Ochoa said there are other property owners in the subdivision that have built to the property line.

Staff was not aware of approving any variances for zero lot line setbacks for side yards in the subdivision.

Mr. Ochoa said he would put up a fence to keep people from walking on the neighbor's yard.

Diane Hoobler said you would still have to stand on the neighbor's property to build the garage. Mr. Ochoa said he would build the garage from the inside and would not be on the neighbor's property.

Diane Hoobler replied you would have to put siding on the outside.

Nathan Larson asked, what if, sometime, you wanted to paint the outside of the garage after it is constructed or there is storm damage on the outside? Mr. Larson stated you would have to do it from the outside.

Mr. Ochoa said he would obtain permission from the neighbor.

Bob Isaac stated that a carport would not substitute for the garage due to security reasons.

Chairman Taul stated all the Board has compassion for what the property owner wants to do and that he has made great improvements. Chairman Taul noted that an investment has been made to the home and he would like to find a way to help but can't support a zero lot line setback.

Nathan Larson suggested building a metal building in the backyard which would allow the structure to be closer to the well. He stated he could not support building to the property line.

Joe Gelroth moved to deny the request for a variance authorization to reduce the side yard (setback) requirement from 7.5 feet to 0 feet for Lot 15, Autumn Ash.

Diane Hoobler seconded. Carried 4-0.

Joe Gelroth moved to adjourn the Board of Zoning Appeals meeting and reconvene as the Riley County Planning Board. Diane Hoobler seconded. Carried 4-0.

RILEY COUNTY PLANNING BOARD

Discussion for amending zoning regulations to allow for a second Residential Use Designator – Extraneous Farmstead per parent tract

Chairman Taul opened the discussion.

Monty Wedel said in the memo to the Board, staff contacted Mr. Nelson informing him of the Board's decision to not amend the zoning regulations and that there were limited options at this point. Wedel explained that Mr. Nelson asked what options were available and staff suggested one option would be for Mr. Nelson to come visit with the Board.

Tony Nelson introduced his wife Regina and youngest daughter, Jenna. He stated he and his dad have always farmed and had a truck line together. Mr. Nelson said his dad sold the farm without giving him a chance to purchase some of the acreage where his house is located. His dad wanted to sell all of the acreage which has put him and his family in a situation that they don't know what to do.

Mr. Nelson said he doesn't know what his options are and as staff has indicated, only one home per tract is allowed. He explained his parents built a new home, the second house and his family moved into the first house, which was a manufactured home. He said he eventually replaced the original manufactured home with another manufactured home. Mr. Nelson said everything was permitted and legal.

Mr. Nelson said the original manufactured home had a standard wastewater system which had failed. He said he had to replace it with a wastewater stabilization pond, which was permitted by Riley County. He said to be straight and blunt, he really can't afford to move his house. He said he spent \$7,000 on the lagoon and now he's just supposed to walk away from all of this?

Nathan Larson asked Mr. Nelson if the new owner has offered to let him purchase the land around the two homes.

Mr. Nelson replied no, not yet.

Mr. Larson said you don't own the land that your home is sitting on and the new owner hasn't approached you about buying the land?

Mr. Nelson said in the beginning, yes, the new owner approached him and he told him he was interested in purchasing some of the land. He said that's when he came to the Planning and Development Department to find out what his options were.

Monty Wedel explained the tract of land and both homes were sold. He said the new owner is not interested in keeping either home but wants to keep the farm buildings. He said staff is trying to figure out how to subdivide off each house separately.

Mr. Wedel said the regulations only allow for one extraneous farmstead. Staff suggested to the Board to allow two extraneous farmsteads if both were legitimately permitted and were exempted for an agricultural operation. He said staff approved an Agricultural Exemption for Tony Nelson's home back in 2014 and we believe it is reasonable to amend the regulations. He explained there are other tracts in Riley County that have a second home, which were permitted for agricultural purposes. He said eventually staff will experience this situation again.

Chairman Taul asked Mr. Nelson what his intentions were when the property was sold.

Mr. Nelson said he visited with the person bidding on the land, explaining to him that he wanted to keep his house and, at one time, his oldest daughter and husband were going to purchase the other house. He said the price of the other home, however, had increased and now the military is relocating them. He explained all he wants is his home and a few acres.

Monty Wedel said if there was a mechanism available, the new owner may be willing to sell each home separately. He said staff is not positive about this, but at this time, Tony can't approach the owner until there is a resolution.

Staff then showed the Board a slideshow presentation documenting other properties with the same or similar situation. Mr. Wedel stated that although with most of those examples the property owner owns both houses, there are a few that are the same as the Nelson situation, whereby the property owner owns one of the houses and a family member owns the second house only - but not the land that it sits on.

Diane Hoobler asked Mr. Nelson if there was an option to move to the other house on the property.

Mr. Nelson replied he could not afford it and is still paying on his current home. He asked what he is hurting by purchasing three acres to keep his house. He said everyone is getting their money and everyone is still doing the exact same thing.

Monty Wedel stated there will still be two houses and, with the amendment in place, they will be covered by the Agricultural Protection Easement.

Chairman Taul said first you have to purchase the land.

Mr. Wedel said he can't purchase the land until he has a zoning option to do it.

Chairman Taul said the problem is, when the property was sold there was no provision made for you to purchase the land.

Nathan Larson said the problem is the County allows a second home on a tract for agricultural use, which is fine for the time that it is being used; but then later they want to split the property and the two houses are no longer together, seems to be getting around the rules. He said technically the new owner could build a house and then there would be three houses.

Bob Isaac stated we are taking the houses out of agricultural, which by our subdivision regulations, cannot occupy the same tract or lot. He also stated that a farmer who wants to build their own house can do that anywhere, anytime, anyhow.

Nathan Larson said but when it was allowed, it was agricultural and now you want to take it out of agricultural and maybe shouldn't necessarily be allowed.

Monty Wedel said an agricultural exemption was granted to build a second house so long as the house was occupied by someone involved in an agricultural operation. Mr. Wedel asked what happens when the home is no longer connected to an agricultural operation. He explained it becomes a nonconformity and we are not going to make them tear it down. Mr. Wedel asked the Board what is wrong with letting it be sold as an extraneous farmstead, because that is what it is.

Nathan Larson stated there should be a provision that if you split off a home that another home can't be built.

Diane Hoobler said the reason this was done was so there wouldn't be a bunch of houses.

Mr. Wedel reminded the Board of the Parker situation where one house was a rental and he wanted to build a house for himself. He explained that he was legitimately agricultural and didn't want to split off the rental as an extraneous farmstead. He said Mr. Parker was required to file an Agricultural Protection Easement and agreed that another house would not be allowed.

Nathan Larson said the second home that was approved last month (conditional use for a secondary dwelling), we should have made a provision that if it is ever split off another home wouldn't be allowed.

Bob Isaac said the conditional use addressed that the second house could not be sold separately from the principal residence.

Nathan Larson stated going forward a conditional use should be done.

Mr. Isaac reminded Mr. Larson that the discussion is about agriculture use and agricultural buildings which are exempt from zoning regulations. Mr. Isaac asked what happens when the farmer retires or passes away. He said, for example, what if the farmer does own both homes and decides to retire. He explained those houses are no longer associated with the agricultural operation; what does staff do with this situation that will comply with current regulations, meeting the requirement of "one principal structure per tract"? He explained that one large lot

with two houses creates that problem so it has to be divided into two separate lots, preferably keeping the land zoned agricultural under a residential use designator with an agricultural protection easement. Mr. Isaac said he doesn't believe the situation was created to circumvent the regulations.

Monty Wedel asked the Board what would be wrong with being a little bit more flexible and letting staff consider more than one extraneous farmstead, given the situation, on a case-by-case basis.

Chairman Taul said what if two houses are split off, each having 10 acres. Then down the road one of them wants to split off 5 acres to build another house and their reasoning was their house was originally part of an agricultural exemption.

Monty Wedel replied the current property owner would have to apply for another agricultural exemption.

Nathan Larson stated the property owner who is involved in an agricultural operation, but split off the two houses when the tract was purchased, could potentially build a house on the remaining tract creating a third house.

Monty Wedel asked if it could be limited to just two extraneous farmsteads since two homes are allowed.

Chairman Taul asked in the current situation being discussed, is the property owner selling off the agricultural buildings? He asked is there anything that would prevent one of those buildings from being turned into a house?

Mr. Wedel explained the current property owner who has an agricultural operation wants to keep the agricultural buildings. He said the property owner only wants to sell off the two houses. Mr. Wedel explained that a residential use designator only allows one house.

Diane Hoobler asked Mr. Nelson how long his house has been located on this property.

Mrs. Nelson replied they replaced the existing manufactured home with their current manufactured home in 2001.

Monty Wedel suggested another option would be to take this discussion to the Board of County Commissioners for feedback, as they will eventually have to approve the regulation amendment.

Nathan Larson said he felt the Planning Board could make a decision prior to going to the Board of County Commissioners.

Mr. Wedel said staff can't go forward with anything for Mr. Nelson until a regulation amendment is made.

Joe Gelroth said he felt he had more information from this discussion than he did a month ago. He said he understands the bind that the County is in and thinks the Board owes the citizens of Riley County an option that is viable for them. He said staff is telling us the only thing that can be done is to amend the regulations to allow a second extraneous farmstead.

Monty Wedel brought up on the screen the regulation amendment language from the last meeting.

After some discussion, Nathan Larson moved to direct staff to proceed with an amendment of the regulations as shown in italics below:

A residential use designator for an extraneous farmstead is limited to one per original parent agricultural tract. One additional residential use designator for an extraneous farmstead may be permitted when it has been determined by the Planning and Development Department that the additional residence on the original parent tract has been supporting the agricultural operation on such tract.

Joe Gelroth seconded. Carried 4-0.

Update on Zoning and Subdivision Regulations Re-write

Monty Wedel stated there was no update.

Joe Gelroth moved to adjourn. Diane Hoobler seconded. Carried 4-0.

The meeting was adjourned at 9:26 P.M.