



office memorandum

TO: Board of Adjustment Commissioners

FROM: Lora Hoggatt, Planning Services Manager

DATE: November 30, 2023

SUBJECT: BOA 2324-8
Appeal an Administrative Decision regarding an administrative official's interpretation of 36-512(d)(4), the minimum 250' frontage requirement; and 36-512(d)(6)(a), the 10-acre lot area requirement in the A-2, Rural Agricultural District, for a tract of land located south of 16900 E. Tecumseh Road and east of 3501 168th Avenue N.E.

APPLICATION:

Through their attorney, Shawn D. Fulkerson, the applicants, Kevin P. and Zion T. Shay, are appealing an administrative decision regarding the administrative interpretation of the zoning requirements in the A-2, Rural Agricultural District, regarding minimum lot size and required street frontage.

BACKGROUND:

The subject tract is a 2.5-acre tract. This 2.5-acre tract was sold off from the 5-acre tract addressed as 16900 E. Tecumseh Road. The 16900 E. Tecumseh Road tract fronts E. Tecumseh Road and the subject tract is located to the south and has no address. The subject tract is located directly east of 3501 168th Ave. N.E., a legal non-conforming 2.5-acre tract of land.

As noted above, the subject tract was part of the 16900 E. Tecumseh Road tract. The 2.5-acre tract was illegally sold at some point in the past.

Staff was told there was a manufactured home on the subject tract, which was demolished to allow for a new manufactured home. City records show no permits issued for the referenced, now demolished, manufactured home on the 2.5-acre subject tract but records do show a permit for construction of a barn on the original 5-acre tract in 1976.

In the fall of 2023, the applicants met with Public Works staff to request an address for the subject tract to locate a new manufactured home on the tract. Public Works staff and Legal informed the applicants that this tract was illegally divided, does not meet the City's Subdivision Regulations, they could not assign an address and that they would need to speak with Planning staff regarding Zoning Ordinance regulations. They were informed they could not receive a building permit for a manufactured home on this subject tract.

On September 5, 2023, Planning staff met with the applicants regarding the zoning requirements. The applicants were informed the tract in question does not meet the 10-acre requirement adopted in the A-2, Rural Agricultural District and does not meet the minimum street frontage requirement of 250'. The applicants were again informed the City could not issue a building permit for a manufactured home because it does not meet the Zoning or Subdivision Regulations and even if they appealed the Planning decision the issue of an illegal lot was still not solved to where they could get an address and building permit.

APPLICABLE CODE REGULATIONS:

ZONING ORDINANCE INFORMATION:

Section 36-512, A-2, Rural Agricultural District, of the Zoning Ordinance requires the following:

Section 36-512(d)(4) Lot width. The minimum lot width shall be 330 feet measured at the front building line, and such lot or parcel on which a dwelling structure is or to be located shall abut on a single public street or road officially opened by action of the City Council a distance of not less than 250 feet.

Section 36-512(d)(6)(a) Intensity of use. For each dwelling unit or other permitted use allowed within the district, and buildings accessory thereto there shall be a lot area of not less than ten acres.

The subject tract contains approximately 2.52 acres and does not have street frontage.

SUBDIVISION REGULATIONS INFORMATION:

30-104 Jurisdiction. This chapter shall apply to the following forms of subdividing and/or developing of land within the corporate limits of the City:

- (a) The dividing of land into two or more tracts, lots, sites, or parcels, any part of which, when subdivided, shall contain less than 40 acres in area.
- (b) The redividing of previously platted land into tracts, lots, sites, or parcels.
- (c) The development of land in a manner not in strict conformance with the plat and plans filed of record.
- (d) The dedicating, vacating, or reserving of any public or private easement through any tract of land regardless of the area involved, including those for use of public and private utility companies.
- (e) The dedicating or reserving of any street or alley or any part thereof through any tract of land regardless of the area involved.
- (f) Planned unit development as defined in this Code.
- (g) The development of any parcel of land classified by zoning district as single-family residential, multifamily residential, commercial, industrial, recreational, or institutional.
- (h) Any tract, lot, site or parcel of land, regardless of size, which is to be developed and on which exists or will exist, because of such contemplated development, any topographic feature or improvement requiring the dedication or reservation of any easement, public or private, under the provisions of this chapter.

30-605 Exception From Platting A Single Tract For Single-Family Residential Development

- (a) A building permit shall not be denied for single-family residential development to be located on a tract of land when all of the following conditions are satisfied:
 - (1) The total area owned by the applicant shall have been conveyed by a single deed prior to June 29, 1973, or prior to annexation as part of the City;
 - (2) All required street rights-of-way shall have been previously dedicated; and
 - (3) All required easements shall have been previously granted.
- (b) In all cases where required public improvements are not in place, the requirement for the construction of said required public improvements shall not be waived but the requirement to post bond shall be waived and the installation of required public improvements may be postponed until such time that an operational project can be accomplished by an improvement district.

30-606 Exception To Allow Norman Rural Certificates of Survey As Plats In A-1 And A-2 Zoning Districts

(a) It is the purpose of this exception to allow lots of ten acres or more to be developed and sold adjacent to public or private roadways in the A-1 and A-2 Agricultural Districts; however, private roadways should be constructed and maintained in such a manner that said roadways may be traversed and used by police, fire and other official vehicles of all municipal, county, State and federal agencies. Lots created under this process shall be designated as "City rural certificate of survey subdivisions" and may be permitted under the following procedures:

- (1) Any applicant contemplating a certificate of survey may voluntarily request a pre-development meeting, subject to the same filing requirements. The purpose of the meeting is to allow surrounding neighbors to meet with the applicant in an informal setting and share information about the proposed application. In order for the meeting to occur, the following items must be submitted to the Public Works Department:
 - a. A copy of the deed to the property.
 - b. A written description of the proposed development which provides details of the proposal that can be mailed to neighbors. The narrative should be as detailed as practicable, without being lengthy or technical. It should describe the proposed type of homes contained in the development, any proposed open space or parks, and connections to nearby major roads and subdivisions.
 - c. Because this is a preliminary meeting, a fully finished certificate of survey is not required, however, three full-sized drawing are required, as well as an 8 1/2-inch by 11-inch reduction, generally showing lots, roads, topography, floodplains, existing easements and structures, physical features (such as ponds, creeks, and large stands of trees), and proposed open spaces and greenbelts.
 - d. A certified ownership list for all property within a 350-foot radius of the exterior boundary of the subject request.
 - e. A filing fee, as provided in the City fee schedule, which will be credited against any filing fee charged for a future rural certificate of survey application for the same property. This fee is nonrefundable and must be paid each time a separate meeting is requested.

A complete application packet must be received in the Public Works Department by 4:00 p.m. 17 days before the regularly scheduled pre-development meeting. Such meetings will be held on an as-needed basis and are anticipated to occur at least once a month. Staff will notify all persons identified on the certified ownership list and will include a copy of the written description of the proposed project as well as any reduced drawings.

- (2) An accurate survey of the lot, prepared by a land surveyor registered in the State, and the proposed subdivision thereof shall be submitted to the Public Works Department and shall show the same information required for a preliminary plat as referenced in NCC 30-303, except the ground contours may be drawn at five-foot intervals in such cases where the average ground slope is three percent or greater.
- (3) The following information shall be included for every oil or gas well, existing, inactive, or abandoned, as shown by the records of the Oklahoma Corporation Commission (OCC) and/or permitted by the City, according to the records of the City Oil and Gas Inspector's office:

- a. The location of the well bore with an accuracy of one foot;
 - b. All buildings shall be a minimum of 125 feet from the well bore of an active or unplugged well, or a plugged well not meeting the then current specifications of the Oklahoma Corporation Commission and City Oil and Gas ordinance;
 - c. All buildings shall be a minimum of 45 feet from the well bore of a plugged well meeting the then current specifications of the Oklahoma Corporation Commission and the City Oil and Gas ordinance.
- (4) Planning and community development department and public works department staffs shall review and prepare a written report on the proposed City rural certificate of survey Subdivision to ensure compliance with the applicable provisions of the City's Standard Specifications and Construction Drawings and Engineering Design Criteria (NCC 26-101(a)). The applicant shall also submit for such review a certified copy of all instruments for the granting and maintenance of any required private easements and, by separate instrument, a duly executed roadway and utility easement for all adjoining public or section line roadways as reflected in the adopted City transportation plan. Staff's written report will be submitted to Planning Commission for their recommendation of approval or disapproval.
- (5) The City rural certificate of survey will be forwarded to the City Council for final action. If the application is approved by the City Council, it shall be certified by the signature of the Mayor and attested by the City Clerk. Upon approval the developer shall guarantee the proper construction of the proposed development by providing the City with an acceptable performance bond with surety as required in NCC 30-314. All street and drainage easements and improvement plans as well as provisions for their maintenance shall be approved by the City Development Committee prior to the filing of the City rural certificate of survey with the County Clerk, to ensure compliance with all standards referenced herein. Provisions for maintenance will be required through the establishment of a property owner's association and the deposit of a two-year, 15 percent maintenance bond in the name of the property owner's association.
- (6) Whenever the tract is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the private road standard contained in Standard Drawing No. ST28 of the Standard Specifications and Construction Drawings would result in substantial hardship or inequity, the City Council may vary or modify, except as otherwise indicated, the minimum street standard, provided that no more than four lots or residences are served by said private roadway so that the applicant may develop said property in a reasonable manner, but so, at the same time, the public welfare and interests of the City are protected and the general intent and spirit of this article are preserved. Such modification may be granted upon written request of the applicant or the applicant's engineer, stating the reason for waiver of the private road standard, and may be approved by majority vote of the regular membership of the City Council. It is not intended for this waiver procedure to be applied to anything other than the width of private road standard required by this section.
- (7) The following additional requirements shall apply to all land containing subdivisions defined above which create private streets:
- a. Prior to the sale of any land within said subdivision, the subdivider shall erect, at all entrances to the subdivision, within the private drive and street rights-of-

way, in a clearly conspicuous location, an enameled metal sign, no less than 18 inches by 24 inches in dimension, with lettering thereon of no less than two inches per letter in height, bearing the words: "CITY MAINTENANCE ENDS HERE." The sign shall be firmly affixed to a metal post no less than two inches in diameter by two metal bolts, which post shall be permanent set into the ground as required by the Public Works Department. Said sign shall be no less than four feet above the surface of the ground and shall be maintained in good repair by the subdivider and by the owners of the property within said subdivision.

- b. No deed of conveyance shall ever be filed of record conveying any land within said subdivision until such time as the owner thereof has Stated on the face of the deed, prior to its delivery to the prospective purchaser, the following language: "The property herein conveyed abuts on a private street which shall not be maintained by the City." Prior to the recording of any such deed, it must first be presented to and approved by the Director of Public Works and the Director of Planning and Community Development, or their designee, and no building permits shall be issued for the improvement of any such land until such departmental approval has been granted.

BOARD OF ADJUSTMENT POWERS:

The Zoning Ordinance gives the Board of Adjustment the following power in Section 36-570(c)(1):

Upon proper application, to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official, as well as the Historic District Commission, in the enforcement of this chapter or any other ordinance adopted pursuant thereto.

Section 36-570(d) Decisions of the Board of Adjustment states:

- (1) In exercising the above-mentioned powers, the Board of Adjustment shall reverse or affirm, wholly or in part, shall modify the order, requirement, decision, or determination appealed from, shall make such order, requirement, decision, or determination as ought to be made, so long as such action is in conformity with the terms of this chapter, and to that end shall have the powers of an administrative official from whom the appeal is taken.
- (2) The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the administrative official, to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to affect any variation in the application of this chapter.

The applicant was informed prior to applying for the appeal that the Board of Adjustment only has the power to hear an appeal to decisions regarding the Zoning Ordinance. The Board of Adjustment cannot vary or waive the requirements of the Subdivision Regulations. The reversal of an administrative decision in this particular case will not grant the applicant a building permit because the Subdivision Regulations cannot be met.

APPLICATION SUBMITTALS:

Mr. Shawn D. Fulkerson, attorney for the applicant, submitted an application packet that included several exhibits. Staff reviewed the packet submitted and has the following comments:

Exhibit A: Warranty Deed filed of record with Cleveland County on April 6, 2010 for the 2.5-acre tract that was illegally sold off from the property fronting 168th Ave. NE., purchasers Billy & Mary McCoy and Kevin & Jamie Shay.

Exhibit B: Quit Claim Deed filed of record with Cleveland County on January 16, 2018 for the subject 2.5-acre tract of land deeding the property to Kevin & Jamie Shay.

Exhibit C: A survey proposing the two 2.5-acre tracts of land, 3501 168th Avenue N.E. and the subject tract, not addressed, be surveyed as one tract. This survey is not approved or adopted by Norman City Council.

Exhibit D: Quit Claim Deed filed of record with Cleveland County on January 30, 2023 filed for the subject 2.5-acre tract of land deeding the property to Kevin P. Shay and Zion T. Shay.

Exhibit E: A survey proposing the two 2.5-acre tracts of land, 3501 168th Avenue N.E. and the subject tract, not addressed, be surveyed as two tracts. This survey is not approved or adopted by Norman City Council.

DISCUSSION:

To be clear, this is a puzzling chain of events in this general location. Who first sold off/purchased the 2.5-acre subject tract is unknown. Bottom line, for the Board of Adjustment review, there is one tract in question for this appeal. The one tract in question is the 2.5-acre tract illegally sold off the original 5-acre tract that fronts Tecumseh Road, 16900 E. Tecumseh Road. The tract to the west of this subject tract, 3501 168th Avenue N.E. (fronting 168th Avenue N.E.) is a legal non-conforming 2.5-acre tract, with a house dating from the 1950's.

Staff has not seen a deed that provides legality of the subject tract. To be a legal tract of land, the tract is required to have been in the existing 2.5-acre condition prior to the June 1973 deadline (30-605 (1)). The subject tract does not front a public street, without frontage there is no ingress/egress as defined by the applicant's attorney.

CONCLUSION:

Staff forwards this request for an appeal of an administrative decision regarding an administrative official's interpretation. The disputed codes are: 36-512(d)(4), the minimum frontage requirement in the A-2, Rural Agricultural District; and 36-512(d)(6)(a), the lot area requirement, for the subject tract located south of 16900 E. Tecumseh Road and east of 3501 168th Avenue N.E. to the Board of Adjustment as BOA 2324-8.