



October 17, 2024

Notice is hereby given of a Regular Meeting of the Zoning Board of Adjustments to be held at 4:00 p.m., via videoconference, in the Council Chambers to consider the following agenda items. All agenda items are subject to action.

Some Board Members may attend via videoconference but a quorum of the Board and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items in person in Council Chambers.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. Introduction of Executive Director of Development and Public Infrastructure, Mike Neu.
4. **CONSENT AGENDA**
 - A. Approval of Minutes: Consider approval of minutes from the August 15, 2024, Zoning Board of Adjustment meeting.
5. **REGULAR AGENDA**
 - A. Recognition of Olivia Kiritsy for her dedication and service as a Board Member and Chairperson for the Zoning Board of Adjustment.
 - B. Consideration and possible action to appoint two Zoning Board of Adjustment Board Members to the newly formed City of Nacogdoches Zoning Ordinance Amendment Committee.
6. **WORKSHOP**
 - A. Welcome and introductions (Planning Consultant)
 - B. Presentation and discussion regarding the Zoning Board of Adjustment roles and responsibilities, terms of appointment, tentative meeting dates, meeting procedures, and general Planning and

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Home of Stephen F. Austin State University □ www.sfasu.edu



Zoning departmental policies and procedures (Planning Consultant).

- C. Presentation and discussion regarding conflict of interest provisions (City Attorney).
- D. Presentation and discussion regarding the Texas Open Meetings Act (City Attorney)
- E. Discuss proposed revisions to the Zoning Board of Adjustment Rules and Procedures as requested by Board Member Forbes:
 - (a) Discuss Board Members' responsibilities and lawsuits, specifically served lawsuits as Board Members, and the timing and impacts on the meeting outcome. Additionally, discuss how to handle such actions in the future.
 - (b) How to propose agenda items - who decides what is submitted and how to submit proposed items.
 - (c) Order of alternates - what the procedure is and add it to the Rules and Procedures.
 - (d) New state laws - Chapter 211. Review how the new state laws may impact the Board's rules and procedures as well as discuss if the ordinance and state law are not in agreement
- F. Discuss the possibility of outside Counsel for the Zoning Board of Adjustment as requested by Board Member Forbes including:
 - (a) Potential conflict of interest using the City Attorney
 - (b) Does the Zoning Board of Adjustment have a budget that can be used for consultation with an independent attorney.
 - (c) When is an independent attorney needed to be used in.
- G. Discussion and establishment of guidelines regarding participation via ZOOM (Chairwoman R. Ward).

7. ADJOURN.

Aimee Cloutier

Aimee Cloutier, Planning Coordinator

The City Council Chambers is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Planning Department at (936) 559-2574 or FAX (936) 559-2910 for further information.



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact the Attorney General of Texas at 1-800-252-8011; the City Secretary at (936) 559-2506 or visit the City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

I certify the notice of the meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on October 14, 2024, at 4 p.m. and remained posted until the meeting convened.

Aimee Cloutier, Planning Coordinator

**MINUTES TO THE
ZONING BOARD OF ADJUSTMENT
August 15, 2024, 4:00 p.m. Hybrid Meeting**

All Present: Charles “Ed” Pool; Rhonda Ward; Jacqueline Pierre; David Shofner;

Members Absent: John Sloane;

Members Who Recused: Margaret Forbes; Larry King;

Staff Present: Planning Coordinator, Aimee Cloutier; Planning Consultant, Nathan Dietrich; Interim City Planner, Juan Pollette; City Attorney, Jerry Baker; Assistant City Engineer, Jason Vickery;

Guests: Phillip Blackburn; Mario Perica; Jorge Cuarenta; Heather Holland; Adam Myatt; Susand Shindler; Richard Massey; Dan LaClari; Mitzi Blackburn; Brad Maule; Julie; M.M.;

Call to Order: Chairwoman Rhonda Ward called the meeting to order at 4:00 p.m.

Pledge of Allegiance: Chairwoman Ward led the pledge of allegiance.

Consent Agenda: Approval of the Minutes: July 18, 2024, Regular Meeting.

Chairwoman Ward called for a motion to approve the minutes as written. Board Member Pool moved to approve the minutes as written with Board Member Shofner seconding. The minutes were approved as presented unanimously (4-0).

Regular Agenda:

6. A Public Hearing: Consider a request for an appeal of the City Planner’s decision as it applies to the approval of a building permit and site plan for the construction of a duplex on Lot 2 of the Johnson’s Martinsville Street Subdivision, as described in a plat filed April 10, 2023, recorded in Clerk’s Document Number 2023-2530 of the Real Property Records of Nacogdoches County, Texas. The property is located on the south side of Martinsville Street, approximately 220 feet from the intersection of Logansport Street and Martinsville Street. This request has been submitted by Phillip Blackburn. Case File ZBA2024-05.

Planning Consultant (PC), Nathan Dietrich addressed the Board stating that the Zoning Board of Adjustment does not have the jurisdiction to hear the appeal on the agenda or any appeals over the subdivision ordinance and then explained the timeline of events up to the current requested appeal.

There was discussion among the Commission and PC Dietrich regarding the Ordinance and the Zoning Board of Adjustment Rules and Procedures and what type of cases and appeals can be heard by the Board. PC Dietrich stated that City Staff has reached out to the Texas Municipal League (TML) legal department and in their opinion, ZBA did not have jurisdiction or authority over the current appeal.

PC Dietrich stated that Section 90-217(b) of the Subdivision Ordinance states that side lot lines shall be perpendicular or radial to street frontage unless otherwise noted. In regards to the subject lot, two of the lot lines are the original lines, and the third lot line was created by the Johnson Martinsville Subdivision plat approved in April 2023. PC Dietrich stated the third lot line was 96.17 degrees and fairly close to being perpendicular at 90 degrees. PC Dietrich explained that in his opinion, the property was subdivided this way due to a storage building being on the existing lot. PC Dietrich explained the second part of Applicant Blackburn’s appeal pertains to the

ETJ section of the subdivision ordinance and the zoning ordinance prevails for any lots inside the city limits. PC Dietrich expressed that the building currently being built on the subject property will meet all building setbacks and building codes.

There was discussion amongst the Board and PC Dietrich in regards to the response forms in which seven people were in favor of the appeal and one against.

There was discussion amongst the Board and Staff regarding the subdivision plat being re-platted or being a new subdivision and the appeal process for an administrative plat.

Chairwoman Ward asked where in the ordinance did it state the administrative plat process. City Attorney (CA), Jerry Baker responded by reading Section 90-122(m) of the Subdivision Ordinance regarding subdivision plat approval.

Applicant, Phillip Blackburn addressed the Board stating that the Zoning Board of Adjustment does in fact have jurisdiction and authority to hear the appeal under sections 118-99 and 118-100 of the Zoning Ordinance.

Mr. Blackburn read the outline of those sections and read Section 90-3 of the Subdivision Ordinance stating the chapter applies to all lots inside the city limits and does not limit to the ETJ. Mr. Blackburn read section 90-217(b) of the Subdivision Ordinance and stated the lot lines shall be perpendicular or radial to the street unless otherwise noted. Mr. Blackburn expressed that the subject lot is required to have a variance approved by the Planning & Zoning Commission under Section 90-8 of the Subdivision or the non-perpendicular lot lines be rectified before a building permit is supposed to be issued and in the current case, neither has happened. Mr. Blackburn also explained to the Board that in order to receive a variance, all conditions shall be met and went through the details of each required condition. Mr. Blackburn expressed his concerns with the Planning Department and asked the Board to grant his appeal as the Ordinance allows them to hear the appeal.

Chairwoman Ward opened the meeting for Public Comment at 5:01 p.m.

Public Comment for Appeal:

Mario Perica

Mr. Perica stated he was in favor of the appeal as he would like to purchase the lot if the property owner would like to sell it. Mr. Perica stated the duplex building was already in the process when he purchased his property and does not like the two-story building plans and is in favor of the Board granting Mr. Blackburn's appeal.

Richard Massey

Mr. Massey stated he was in favor of the appeal.

Public Comment Against the Appeal:

Adam Mayatt-

Mr. Mayatt stated he is the owner of the property in question and he has done nothing wrong. Mr. Mayatt stated he purchased the home in 2023 and has already put over \$52,000 into the property. Mr. Mayatt expressed that Sections 118-99 and 118-100 pertain to the Zoning Board of Adjustment's authorities and they do not have the jurisdiction to hear the appeal according to the Local Government Code.

Mario Wesley

Mario stated that this same case/same thing was heard in June and the Board denied the appeal and now it's being heard again. Mr. Wesley stated the first denial should have been appealed to a higher court.

Vice Chairwoman closed the Public Hearing at 5:14 p.m.

Applicant Blackburn addressed the Board and stated the actual code over subdivisions is in Chapter 90 and went over the timeline of events leading up to the appeal. He expressed again that the Board does have jurisdiction and authority to hear his appeal and make a determination and he intends on speaking with the City Council to revoke the ability for City Staff to approve subdivision plats. Mr. Blackburn stated that the Board should have their own personal attorney instead of the City Attorney.

Board Member Pool asked City Attorney, Jerry Baker if ZBA had jurisdiction over this appeal in his professional opinion to which Mr. Baker replied no.

Chairwoman Ward read 118-99 in the Zoning Ordinance regarding the authority of ZBA hearing cases and asked why in his opinion they did not have the authority to hear this case.

City Attorney Baker explained that in 4.1 of the Zoning Board of Adjustment Rules and Procedures that this Board adopted states the Board shall only consider requests authorized under Section 211-009 of the Texas Local Government Code and may be amended and under the Zoning Ordinance.

There was further discussion amongst Chairwoman Ward and City Attorney Baker regarding the adopted ZBA Rules and Procedures.

Board Member Pierre stated that she was concerned about the people living in the subdivision because the building is not congruent with the neighborhood.

After being called on by the Board, PC Dietrich addressed her concern stating that what is being discussed is not a land use issue and the hearing is regarding the minimum lot size and lot lines as stated in the appeal.

Mr. Blackburn after being called on by the Board addressed the Board stating the subdivision has been required to get a variance from the beginning and if that had happened, there would have been public hearings and the neighborhood would have been previously notified.

There was additional discussion between the City Attorney and the Board regarding the authority to hear the appeal and what their options were.

Board Member Pool moved to deny the appeal due to lack of jurisdiction with Board Member Shofner seconding.

Chairwoman Ward called for a final vote. The appeal was denied (3-1) with the following votes:

Chairwoman Ward- For
Board Member C. Pool- Against
Board Member- D. Shofner - Against
Board J. Pierre- Against

Adjourn: Chairwoman Ward adjourned the meeting at 5:44 p.m.

Chairwoman, Rhonda Ward

Attest: Aimee Cloutier, Planning Coordinator



Zoning Board of Adjustments

Date: October 17, 2024

Case No:

PRESENTER: Aimee Cloutier, Planning Coordinator

ITEM/SUBJECT: Consideration and possible action to appoint two Zoning Board of Adjustment Board Members to the newly formed City of Nacogdoches Zoning Ordinance Amendment Committee.

TYPE OF REQUEST:

BACKGROUND INFORMATION:

The City of Nacogdoches Zoning Ordinance serves as a critical regulatory tool for guiding land use, zoning, and development within the city. At times, it becomes necessary to amend the ordinance to address changes in city planning, community feedback, and new state or federal regulations.

In recent months, there have been workshops with recommendations to amend the zoning ordinance with an abundance of changes which has become overwhelming. To facilitate this process, it has been suggested to put a committee together with two representatives from the City Council, Planning & Zoning Commission, Zoning Board of Adjustment, and City Staff to successfully amend specific changes within the zoning ordinance. Having different stakeholders from various boards will ensure that the committee's work aligns with the broader goals and maintains transparency in decision-making.

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED):

N/A

STAFF RECOMMENDATION:

Staff recommends appointing two (2) Zoning Board of Adjustment Members to the City of Nacogdoches Zoning Ordinance Amendment Committee. At this time, there has not been any dates/times determined for future meetings.

NOTICES:

N/A

ATTACHMENTS: