



## PLANNING AND ZONING COMMISSION MEMORANDUM

**FROM:** Planning & Zoning Department **DATE:** February 6, 2025

**SUBJECT:** Consideration of a request from Scott Hoberer for an exception to Section 110-41 of the Subdivision Ordinance to waive the requirement to plat the property for construction of an accessory structure at 8900 Amundson Drive, being 0.73 acres described as Tract 2N, Tandy K Martin Survey, Abstract 1055. (CONTINUED FROM THE JANUARY 16, 2025, PLANNING AND ZONING COMMISSION MEETING)

**PRESENTER:** Clayton Comstock, Managing Director of Development Services

### **SUMMARY:**

Scott Hoberer is requesting a waiver of the requirement to plat the property for construction of an accessory structure at 8900 Amundson Drive.

This request is continued from the January 16, 2025, Planning and Zoning Commission meeting due to the applicant's absence from the meeting.

### **GENERAL DESCRIPTION:**

#### ***Background***

On July 5, 2024, the Permits & Inspections Division received an application for an accessory structure (carport) from the property owner at 8900 Amundson Drive. Building permit staff emailed the property owner on July 8, 2024, indicating the need to zone and plat the property prior to the permit being issued.

At the time, the property was zoned AG (Agriculture). The property is also an unplatted tract of land. In order for building permits to be issued, the property would be required to be rezoned to a single family residential zoning district and be platted.

The carport was subsequently installed without issuance of the permit. The City was made aware of the violation by a complaint received into the Permits & Inspections Division on September 9, 2024. Staff reached out to the owner that day to discuss the need for rezoning and platting. The owner applied for a zoning change to R-2 (Single-Family Residential) on October 4, 2024.

The zoning case was advertised for public hearings at the November 7, 2024, Planning and Zoning Commission meeting and November 11, 2024, City Council meeting. Starting about one week prior to the Commission meeting, phone calls and emails to the property owner went unanswered. The property owner ultimately did not attend the meeting, but



to keep the process moving forward to accommodate the property owner's desire to permit the carport, staff recommended that the Commission take action and approve the zoning change even though the applicant was not present. The item was recommended for approval.

On November 10, 2024 (Sunday), the owner sent an email requesting to withdraw the zoning application and be granted an exception to the platting and zoning requirements. Staff responded on November 11 explaining the applicability of the codes and requested a call or meeting to discuss prior to that night's City Council meeting. The meeting did not occur, and the owner attended the City Council meeting. Staff spoke with the owner at the meeting to explain the zoning and subdivision code requirements and advised him to either rezone the property or ask to continue the public hearing to the December 9, 2024, City Council meeting. He chose the latter, and the public hearing was continued.

After emails to the owner on November 22 and November 26, he met with staff on November 27 to discuss the options available to him regarding the situation. Those options included the following:

1. Proceed with rezoning the property and submit a one-lot minor plat to be approved by staff. Then the carport permit can be issued. The owner contends that the cost of a surveyor to prepare a plat is too much.
2. Proceed with rezoning the property on December 9, then request an exception to the subdivision ordinance requirement to plat a property to receive a building permit for an accessory structure on agriculturally zoned property.
3. Withdraw the zoning change application, but BOTH the Planning and Zoning Commission approval of a subdivision ordinance exception AND a Zoning Board of Adjustment approval for a permit for nonconformity would be required.
4. Remove the carport.

Staff requested a decision by 2:00pm Monday, December 2, to be able to proceed with a plan for the City Council meeting. On Sunday, December 1, staff received the attached letter requesting a waiver of the requirement to plat the property.

At the December 9 City Council meeting, staff and the owner discussed the options above and explained the conversations held after the hearing was continued from the previous meeting. Ultimately, City Council approved the zoning change to R-2 (Single-Family Residential), with the understanding that the owner's request for a waiver of the platting requirements would be considered separately by the Planning and Zoning Commission.

### ***Subdivision plat***

[Section 110-71 of the Subdivision Regulations](#) requires that properties be platted prior to development. This is intended to ensure that property is developed in accordance with the comprehensive plan for the city and that provisions have been made for public facilities to serve the property, including water, sewer, drainage, transportation, and other public utility services.



[Subdivision Regulations Section 110-41](#) requires that a plat be approved and filed of record before a building permit for a primary structure can be issued for the property. This section provides several exceptions, one of which relates to accessory structures on properties zoned AG (Agriculture).

At the time the permit application described above was submitted, the property was zoned AG (Agriculture). [Section 110-41\(a\)\(3\) of the Subdivision Regulations](#) states that “a building permit for an accessory structure may be issued on an unplatted lot on agriculturally zoned property provided regulations of section 118-293 have been met.”

[Section 118-293 of the Zoning Ordinance](#) is the lot and area requirements for the AG (Agricultural) zoning district. Properties in this district require a lot size of at least two acres. However, the subject property is 0.73 acres in size, and City Council approved a zoning change for the property to the R-2 (Single-Family Residential) district.

Additionally, [Section 118-294\(9\)](#) of the zoning ordinance does not permit property zoned AG to be subdivided or developed for any purpose other than agricultural use without an approved zoning change. In order for the applicant to plat the property, it must be rezoned to an appropriate residential zoning district.

The owner is requesting a waiver of the requirement to plat the property for the purpose of a building permit for an accessory structure (carport), as described in the attached letter.

As permitted in [Section 110-42 \(Modifications, waivers, and exceptions\)](#), the Planning and Zoning Commission may grant modifications, waivers, or exceptions to the Subdivision Regulations. In approving a request, the Commission must find that extraordinary hardships or practical difficulties may result from strict compliance with these regulations, or the purposes of these regulations may be served to a greater extent by an alternative proposal.

Further, this section states that the Planning and Zoning Commission may not approve modifications, waivers, or exceptions unless it makes findings based upon the evidence presented to it in each specific case that:

- (1) The conditions upon which the request for a modification, waiver, or exception is based are unique to the property and are not applicable generally to other properties;
- (2) A tract has peculiar physical surroundings, severe topographical conditions, or unique environmental qualities worthy of protection;
- (3) Where a hardship to the owner would result rather than a mere inconvenience; or
- (4) The modification, waiver, or exception will not have an adverse effect on the intent of these provisions or the comprehensive land use plan.

If the request is disapproved, the applicant has the right to appeal the disapproval to the City Council.



**RECOMMENDATION:**

Consider the exception request.