

Baker/Fraga Lot Line Adjustment Appeal Hearing

BOARD OF SUPERVISORS

MARCH 27, 2018

Project Background

Application: Lot Line Adjustment 17-0024

- Submitted December 19, 2017
- Approved January 19, 2018

- Transfer 1.0 acre of property from Baker property (APN's 38-500-01 & -02) to the Fraga property (APN 38-120-06)
 - Decrease Baker property from 19.62 to 18.62 acres
 - Increase Fraga property from 0.67 to 1.67 acres

Review of Lot Line Adjustment

Standards for Approval Section L-II 4.1.3 E:

- *Boundary Line Adjustments shall not result in conflicts with site development standards...*
 - Review new lot line locations in relation to existing structures
 - Need to verify new lot lines meet setbacks to structures
 - 2 structures without permits
 - Approx. 352 square foot shed (within NID easement)
 - Approx. 520 square foot barn
- Condition #3 was applied to Lot Line Adjustment to remove or permit structures prior to recordation of lot line adjustment

Post Project Approval

Offered to remove condition but note that the owner had 60 days to remove structures or apply for permits.

- After 60 days the issue would be referred to Code Compliance
- Allows LLA to be recorded and structures to be addressed separately

Appeal Points

➤ Remove Condition #3 that requires the structures to be permitted and allow structures to remain unpermitted and direct Planning to not apply conditions of approval to Lot line adjustments.

1. Conflicts with Subdivision Map Act
2. Conflicts with County Land Use and Development Code
3. Conflicts with County policy regarding code violations
4. Other jurisdictions do not condition LLA

Appeal Point #1

➤ Subdivision Map Act Prohibits Conditions on Boundary Line Adjustments

Section 66412(d) of the Subdivision Map Act:

A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local general plan, any applicable specific plan, any coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable coastal plan, and zoning and building ordinances, to require the payment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure or easements.

Appeal Response

Section 66412(d) of the Subdivision Map Act:

A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local general plan, any applicable specific plan, any coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable coastal plan, and zoning and building ordinances, to require the payment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure or easements.

Appeal Response

Building Ordinance Section L-V 2.2 Section 114: Violations

- *The processing of a tentative tract map, parcel map, zoning change, lot line adjustment, or discretionary use permit may be withheld for property on which a violation of the provisions of this Code exists, including work performed not in accordance with approved grading plans, unless conditioned to require such violation to be corrected or mitigated.*

LUDC Section L-II 4.1.3 F Conditions of Approval

- *Approval of a boundary line adjustment shall be conditioned as necessary to ensure compliance with the Nevada County General Plan, and all zoning and building regulations, to require payment of property taxes and to facilitate the relocation of existing utilities, infrastructure or easements.*

Appeal Point #2

➤ Inconsistent with Zoning Ordinance Standards for Approving Boundary Line Adjustments contained in LUDC Section L-II 4.1.3 E Standards for Approval

- Can't conflict with prior conditions of approval
- Can't result in additional density
- Must meet basic General Plan and EH standards
- Need to meet minimum parcel size

Appeal Response

LUDC Section L-II 4.1.3 F Conditions of Approval

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Appeal Point #3

➤ Inconsistent with Code Compliance Policies

- Appellant states that only complaints filed by a citizen can result in a code case and staff is not permitted to refer violations to code compliance

Appeal Response

In this case no code case - only conditioning project to rectify violations

- Code Cases are opened in response to:
 - Citizen Written Complaint
 - Observed Health and Safety violations
 - Referral from other Departments or Agencies
- Addressing unpermitted structures are part of review of all project applications
 - Building Permits
 - Administrative Development Permits
 - Use Permits
 - Subdivision maps

Appeal Point #4

- Other jurisdictions do not apply Conditions of Approval to Lot Line Adjustments
 - Cites comments from local Surveyors, Placer County, Yuba County, Sierra County and City of Grass Valley

Appeal Response

Nevada County Codes contain specific language allowing the conditioning of lot line adjustments

- LUDC Section L-II 4.1.3 F Conditions of Approval
- Building Ordinance Section L-V 2.2 Section 114: Violations

Other jurisdictions do not ignore violations if they are found

- Would not approve LLA with violations
 - Colusa, Yolo, Sacramento, San Benito
- Case by Case and may be referred to Code Compliance
 - San Bernardino, Shasta

Conclusion

- Nevada County Zoning and Building ordinances allows conditioning of Lot Line Adjustments
- Review of structures affected by LLA is consistent with all other permit type review process
- Conditioning of LLA allows owner to address issue without potential Code Compliance fines or holding up approval of LLA

Recommendation

Adopt the Resolution to Deny the Appeal upholding condition of approval #3 that requires the unpermitted structures to be removed or permitted prior to Lot Line Adjustment recordation.

Options

Options for addressing Unpermitted Structures:

- Hold application incomplete until violations are corrected
- Approve LLA and refer to Code Compliance
- Advisory note in Approval Letter giving timeframe to permit structures
- Condition Lot Line Adjustment to correct violations