

# **Lincoln City - Lancaster County**

## **PLANNING COMMISSION AGENDA**

### **PLANNING COMMISSION**

Tracy Edgerton: Chair  
Cindy Ryman Yost: Vice Chair  
Lorenzo Ball  
Dick Campbell  
Tracy Corr  
Maribel Cruz  
Gloria Eddins  
Cristy Joy  
Richard Rodenburg

### **PLANNING STAFF**

David R. Cary: Director  
Shelli Reid: Administrative Aide  
Alexis Longstreet: Office Specialist

## **June 22, 2022**

**NOTICE:** The Lincoln/Lancaster County Planning Commission will hold a public hearing on Wednesday, June 22, 2022, at 1:00 p.m. in Hearing Room 112 on the first floor of the County-City Building, 555 S. 10<sup>th</sup> St., Lincoln, Nebraska. For more information, call the Planning Department, (402) 441-7491.

**\*\*PLEASE NOTE:** The Planning Commission action is final action on any item with a notation of \*FINAL ACTION\*. Any aggrieved person may appeal Final Action of the Planning Commission to the City Council or County Board by filing a Notice of Appeal with the City Clerk or County Clerk within 14 days following the action of the Planning Commission.

The Planning Commission action on all other items is a recommendation to the City Council or County Board.

The Planning Commission will be allowing testimony on agenda items by videoconferencing. For those who wish to testify by video, you must register with the Planning Department Office to participate by calling 402-441-7491 or emailing [Plan@lincoln.ne.gov](mailto:Plan@lincoln.ne.gov) by 10:00 a.m. the day of the meeting. You will be asked to provide your name, address, phone number and the agenda item(s) you wish to speak on, and your position on this item. On the day of the hearing, you will receive a link via email, which will be needed to join the hearing to provide your testimony.

## **AGENDA**

**WEDNESDAY, June 22<sup>nd</sup>, 2022**

Approval of minutes of the regular meeting held June 8, 2022.

### **1. CONSENT AGENDA (Public Hearing and Administrative Action)**

#### **COMPREHENSIVE PLAN CONFORMANCE AND RELATED ITEMS:**

- 1.1a COMPREHENSIVE PLAN CONFORMANCE 22011, to review as to conformance with the 2050 Comprehensive Plan, a request to declare the property located at approximately 27<sup>th</sup> Street and Woods Boulevard as surplus, on property generally located at South 27<sup>th</sup> Street and Highway 2.

Page 1

**Staff recommendation: In Conformance with the Comprehensive Plan**  
**Staff Planner: Ben Callahan, 402-441-6360, [bcallahan@lincoln.ne.gov](mailto:bcallahan@lincoln.ne.gov)**

- 1.1b STREET AND ALLEY VACATION 22003, to vacate a small portion of ROW (Right-of-Way) along South 27<sup>th</sup> Street between Woods Boulevard and Nebraska Highway 2, adjacent to property generally located at South 27<sup>th</sup> Street and Highway 2.

Page 9

**Staff recommendation: Conforms to the Comprehensive Plan**  
**Staff Planner: Ben Callahan, 402-441-6360, [bcallahan@lincoln.ne.gov](mailto:bcallahan@lincoln.ne.gov)**

## **ANNEXATION AND RELATED ITEMS:**

- 1.2a ANNEXATION 22007, to annex approximately 26.45 acres, more or less, on property generally located at Rokeby Road and Friedman Street.

Page 19 **Staff recommendation: Approval**

**Staff Planner: Brian Will, 402-441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)**

- 1.2b CHANGE OF ZONE 22019, from AG (Agricultural District) to R-3 (Residential District) associated with the Grandview Estates CUP (Community Unit Plan), on property generally located at Rokeby Road and Friedman Street.

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**Staff recommendation: Approval**

**Staff Planner: Brian Will, 402-441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)**

## **TEXT AMENDMENT:**

- 1.3 TEXT AMENDMENT 22004, amending the Lincoln Municipal Code Section 27.72.040(a) Maximum Height and Minimum Lot Requirements for the H Districts to amend the rear yard setback requirement for the H-1, H-2 and H-3 Zoning Districts to allow a 5-foot rear yard setback when not abutting residential.

Page 31

**Staff recommendation: Approval**

**Staff Planner: George Wesselhoft, 402-441-6366, [gwesselhoft@lincoln.ne.gov](mailto:gwesselhoft@lincoln.ne.gov)**

## **CHANGE OF ZONE AND RELATED ITEMS:**

- 1.4a CHANGE OF ZONE 22018, from AGR (Agricultural Residential District) to O-3 (Office Park District), on property generally located at 6601 South 70<sup>th</sup> Street.

Page 37 **Staff recommendation: Approval**

**Staff Planner: Brian Will, 402-441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)**

- 1.4b USE PERMIT 22006, on 4.82 acres, more or less, with waivers to allow cross-parking to meet minimum parking, parking in a side yard, to not require all information for a preliminary plat at time of submittal, internal light trespass, to allow a non-standard termination of a street using a non-standard cul-de-sac, and setbacks, on property generally located at 6601 South 70<sup>th</sup> Street.

Page 37

**Staff recommendation: Conditional Approval**

**Staff Planner: Brian Will, 402-441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)**

## **COUNTY SPECIAL PERMIT:**

- 1.5 SPECIAL PERMIT 22019, to allow for an ADU (Accessory Dwelling Unit), on property generally located at 4822 South 148<sup>th</sup> Street. The Planning Commission action is final.

\*\*\* FINAL ACTION \*\*\*

Page 51 **Staff recommendation: Conditional Approval**

**Staff Planner: Tom Cajka, 402-441-5662, [tcajka@lincoln.ne.gov](mailto:tcajka@lincoln.ne.gov)**

- 1.6 SPECIAL PERMIT 22017, to allow for the sale of firearms, on property generally located at 1840 Olive Creek Road. The Planning Commission action is final. \*\*\* FINAL ACTION\*\*\*

Page 61 **Staff recommendation: Conditional Approval**

**Staff Planner: Tom Cajka, 402-441-5662, [tcajka@lincoln.ne.gov](mailto:tcajka@lincoln.ne.gov)**

## **PRELIMINARY PLAT:**

- 1.7 PRELIMINARY PLAT 22002, for a new Preliminary Plat, on property generally located at Southwest 44<sup>th</sup> and O Streets. The Planning Commission action is final.

Page 69 \*\*\* **FINAL ACTION** \*\*\*

**Staff recommendation: Conditional Approval**

**Staff Planner: Tom Cajka, 402-441-5662, [tcajka@lincoln.ne.gov](mailto:tcajka@lincoln.ne.gov)**

## **SPECIAL PERMIT:**

- 1.8 SPECIAL PERMIT 1873A, to allow for the revision of the antenna array on an existing cell tower, on property generally located at 4700 Antelope Creek. The Planning Commission action is final.

Page 81 \*\*\* **FINAL ACTION** \*\*\*

**Staff recommendation: Conditional Approval**

**Staff Planner: Brian Will, 402-441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)**

- 1.9 SPECIAL PERMIT 22018, to allow for the expansion of a garage with a waiver to the rear yard setback, on property generally located at 4400 High Street. The Planning Commission action is final.

Page 97 \*\*\* **FINAL ACTION** \*\*\*

**Staff recommendation: Conditional Approval**

**Staff Planner: George Wesselhoft, 402-441-6366, [gwesselhoft@lincoln.ne.gov](mailto:gwesselhoft@lincoln.ne.gov)**

## **2. REQUESTS FOR DEFERRAL**

## **3. ITEMS REMOVED FROM CONSENT AGENDA**

## **4. PUBLIC HEARING AND ADMINISTRATIVE ACTION**

### **COMPREHENSIVE PLAN CONFORMANCE:**

- 4.1 COMPREHENSIVE PLAN CONFORMANCE 22008, to review as to conformance with the 2050 Comprehensive Plan, a request to declare the property generally located on the southeast corner of North 27<sup>th</sup> Street and Leighton Avenue as surplus.

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**Staff recommendation: In Conformance with the Comprehensive Plan**

**Staff Planner: Ben Callahan, 402-441-6360, [bcallahan@lincoln.ne.gov](mailto:bcallahan@lincoln.ne.gov)**

### **CHANGE OF ZONE AND RELATED ITEMS:**

- 4.2a CHANGE OF ZONE 22015, from R 2 (Residential District) to R T (Residential Transition District), on property generally located at the southeast corner of North 27<sup>th</sup> Street and Leighton Avenue.

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**Staff recommendation: Approval**

**Staff Planner: Ben Callahan, 402-441-6360, [bcallahan@lincoln.ne.gov](mailto:bcallahan@lincoln.ne.gov)**



4.2b USE PERMIT 22005, to allow for development flexibility for up to 20 residential units and 15,000 square feet of commercial floor area, with waivers to setbacks, minimum lot size, and parking requirements, on property generally located at the southeast corner of North 27<sup>th</sup> Street and Leighton Avenue.

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**Staff recommendation: Conditional Approval**

**Staff Planner: Ben Callahan, 402-441-6360, [bcallahan@lincoln.ne.gov](mailto:bcallahan@lincoln.ne.gov)**

#### **MISCELLANEOUS:**

4.3 MISCELLANEOUS 22010, to allow for Reasonable Accommodation, under the Fair Housing Act and Section 1.28 of the Lincoln Municipal Code, to the zoning code definition Of "family" to allow fourteen unrelated persons to reside together as a family, on property generally located at 1923 B Street.

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**Staff recommendation: Finding in Compliance with Requirements of Fair Housing Act with Conditions**

**Staff Planner: Steve Henrichsen, 402-441-6374, [shenrichsen@lincoln.ne.gov](mailto:shenrichsen@lincoln.ne.gov)**

4.4 MISCELLANEOUS 22009, to allow for Reasonable Accommodation, under the Fair Housing Act and Section 1.28 of the Lincoln Municipal Code, to the zoning code definition of "family" to allow nine unrelated persons to reside together as a family, on property generally located at 5203 Walker Avenue.

Page 155

**Staff recommendation: Finding in Compliance with Requirements of Fair Housing Act with Conditions**

**Staff Planner: Steve Henrichsen, 402-441-6374, [shenrichsen@lincoln.ne.gov](mailto:shenrichsen@lincoln.ne.gov)**

4.5 MISCELLANEOUS 22008, to allow for Reasonable Accommodation, under the Fair Housing Act and Section 1.28 of the Lincoln Municipal Code, to the zoning code definition of "family" to allow nine unrelated persons to reside together as a family, on property generally located at 315 North 35th Street.

Page 175

**Staff recommendation: Finding in Compliance with Requirements of Fair Housing Act with Conditions**

**Staff Planner: Steve Henrichsen, 402-441-6374, [shenrichsen@lincoln.ne.gov](mailto:shenrichsen@lincoln.ne.gov)**

#### **5. CONTINUED PUBLIC HEARING AND ADMINISTRATIVE ACTION**

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**AT THIS TIME, ANYONE WISHING TO SPEAK ON AN ITEM  
NOT ON THE AGENDA, MAY DO SO.**

\* \* \* \* \*

#### **Adjournment**

**PENDING LIST:** *CHANGE OF ZONE 21024, from B-1 (Local Business District) to H-2 (Highway Business District), on property generally located at 4615 Vine Street.*

*PRELIMINARY PLAT 04011A, for a preliminary plat amendment to show a revised street layout, with associated waiver, on property generally located at Waterford Estates Drive and Linwood Lane.*

## Planning Department Staff Contacts:

David Cary, <i>Director</i>	402-441-6364	<a href="mailto:dcary@lincoln.ne.gov">dcary@lincoln.ne.gov</a>
Stephen Henrichsen, <i>Development Review Manager</i>	402-441-6374	<a href="mailto:shenrichsen@lincoln.ne.gov">shenrichsen@lincoln.ne.gov</a>
Paul Barnes, <i>Long Range Planning Manager</i>	402-441-6372	<a href="mailto:pbarnes@lincoln.ne.gov">pbarnes@lincoln.ne.gov</a>
Benjamin Callahan, <i>Planner</i>	402-441-6360	<a href="mailto:bcallahan@lincoln.ne.gov">bcallahan@lincoln.ne.gov</a>
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Tom Cajka, <i>Planner</i>	402-441-5662	<a href="mailto:tcajka@lincoln.ne.gov">tcajka@lincoln.ne.gov</a>
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Brian Will, <i>Planner</i>	402-441-6362	<a href="mailto:bwill@lincoln.ne.gov">bwill@lincoln.ne.gov</a>

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The Planning Commission meeting which is broadcast live at 1:00 p.m. every other Wednesday will be available for viewing on LNK City TV at <https://lnktv.lincoln.ne.gov/CablecastPublicSite/watch/3?channel=1>

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The Planning Commission agenda may be accessed on the Internet at <https://app.lincoln.ne.gov/city/plan/boards/pc/pc.htm>

### **ACCOMMODATION NOTICE**

*The City of Lincoln complies with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 guidelines. Ensuring the public's access to and participating in public meetings is a priority for the City of Lincoln. In the event you are in need of a reasonable accommodation in order to attend or participate in a public meeting conducted by the City of Lincoln, please contact the Director of Equity and Diversity, Lincoln Commission on Human Rights, at 402 441-7624 as soon as possible before the scheduled meeting date in order to make your request.*

## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

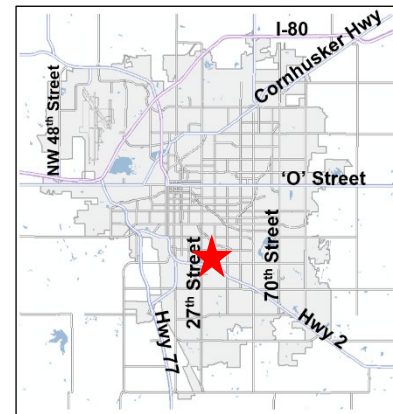
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Comprehensive Plan Conformance #22011	FINAL ACTION? No	DEVELOPER/OWNER City of Lincoln
PLANNING COMMISSION HEARING DATE June 22, 2022	RELATED APPLICATIONS None	PROPERTY ADDRESS/LOCATION Generally located at S. 27 <sup>th</sup> Street and Woods Boulevard

### RECOMMENDATION: IN CONFORMANCE WITH THE COMPREHENSIVE PLAN

#### BRIEF SUMMARY OF REQUEST

This is a request to surplus the City-owned parcel located at approximately South 27<sup>th</sup> Street and Woods Boulevard. The parcel is currently serves as an extension to Woods Boulevard that will be included within the proposed Bishop Heights Planned Unit Development (PUD) boundary. The property is approximately 24,004 square feet (.56 acres) and is currently zoned B-1, Commercial.



#### JUSTIFICATION FOR RECOMMENDATION

The property currently serves as access from Woods Boulevard to the existing County Club Apartments on the north side and to the Bishop Heights Shopping Center on the south. With the proposed redevelopment of the Bishop Heights Shopping Center, the surplus of this property will allow for the private ownership of the parcel with appropriate easements for both utilities and public access to remain. As part of the redevelopment of the Bishop Heights center the developer agreed to take over maintenance and ownership of this street. The City agreed to not charge the developer to purchase the street given all the restrictions and maintenance requirements.

#### APPLICATION/STAFF CONTACT

Michelle Backemeyer  
Urban Development Dept  
(402) 441-8617 or  
[mbackemeyer@lincoln.ne.gov](mailto:mbackemeyer@lincoln.ne.gov)

#### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

This surplus will help facilitate redevelopment of this property under private ownership within the proposed redevelopment area with a commercial and residential uses consistent with the Comprehensive Plan.

## **Introduction Section:** Growth Framework

**Figure GF.b: 2050** - This site is shown as future Commercial on the 2050 Future Land Use Plan.

**Land Use Plan** - Commercial is intended for areas of retail, office, service and residential mixed uses. Commercial uses may vary widely in their intensity of use and impact.

### **Fundamentals of Growth in Lancaster County**

The City of Lincoln's present infrastructure investment should be maximized by planning for well-designed and appropriately-placed residential and commercial development in existing areas of the city with available capacity. This can be accomplished by redeveloping underutilized commercial centers into areas that include a mix of uses, and encouraging higher-density residential redevelopment in appropriate locations, including missing middle housing. New infrastructure investments to serve growth areas can be maximized by encouraging a higher density of both residential and commercial uses in these areas.

### **Existing Neighborhoods**

Infill of housing in existing neighborhoods should respect the existing pattern of development. Infill redevelopment should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.

## **Elements Section**

### **E3: Business, Economy, and Workforce**

#### **Commercial and Industrial Development**

Commercial and Industrial Centers in Lancaster County should be located:

- Where urban services and infrastructure are available or planned for in the near term. In sites supported by adequate road capacity – commercial development should be linked to the implementation of the transportation plan.
- In areas compatible with existing or planned residential uses.
- In areas accessible by various modes of transportation (i.e. automobile, bicycle, transit, and pedestrian).

## **Policies Section**

**P14: Commercial Infill** - Develop infill commercial areas to be compatible with the character of the area.

#### **Action Steps**

1. Implement commercial infill redevelopment principles as discussed in the Business & Economy element.
2. Maintain and encourage businesses that conveniently serve nearby residents, while ensuring compatibility with adjacent neighborhoods.
3. Avoid encroachment into existing neighborhoods during expansion of existing commercial and industrial uses, and take steps to ensure expansions are in scale with the adjacent neighborhood, use appropriate screening, fulfill a demonstrated need, and do not hinder health and safety.

## **ANALYSIS**

1. This is a request to find in conformance with the Comprehensive Plan the surplus of a 24,002 square foot (.56 acre) parcel that currently serves as an extension to Woods Boulevard. The city is intending to surplus this parcel and allow the property to be transferred in the near future to the developer as it is included within the recently proposed Bishop Heights Planned Unit Development.

2. The property presently serves as paved access from Woods Boulevard. Currently the property is zoned B-1, Commercial, but would change if the proposed Bishop Heights PUD is approved as it would be within the PUD boundary. The parcel abuts the County Club Apartments, zoned R-6, Residential, to the north.
3. The existing use of the parcel is intended to remain the same and would continue as access within the proposed PUD boundary.
4. The Urban Development Department distributed a memo to public agencies on May 13, 2022, asking if there was any opposition to the sale or desire for easements. There was no opposition received to the sale of the property. The property will be platted in the future as an outlot for a private roadway with the proposed PUD and will be required to retain public access and easements for existing sanitary sewer and water lines.

**EXISTING LAND USE & ZONING:** Woods Boulevard Access; B-1, Commercial

#### **SURROUNDING LAND USE & ZONING**

North: Vacated Commercial & Country Club Apartments	B-1, Commercial/R-6, Residential
South: Wells Fargo Bank & Bishop Heights Shopping Center	B-1, Commercial
East: Bishop Heights Shopping Center	B-1, Commercial
West: Woods Boulevard, S 27 <sup>th</sup> Street, Single Family	R-1, Residential

#### **APPLICATION HISTORY**

June 2022 Change of Zone #22012 for Bishop Heights Planned Unit Development was approved by the Planning Commission on May 25, 2022, and scheduled to be heard by City Council on June 13, 2022. This PUD is approximately 13.67 acres with a change of zone from R-1 and B-1 to B-1 Planned Unit Development (PUD).

**APPROXIMATE LAND AREA:** Approximately 24,004 square feet (.56 acres)

**LEGAL DESCRIPTION:** A portion of Lot 7, Block 5, Bishop Heights

Prepared by

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Ben Callahan, Planner

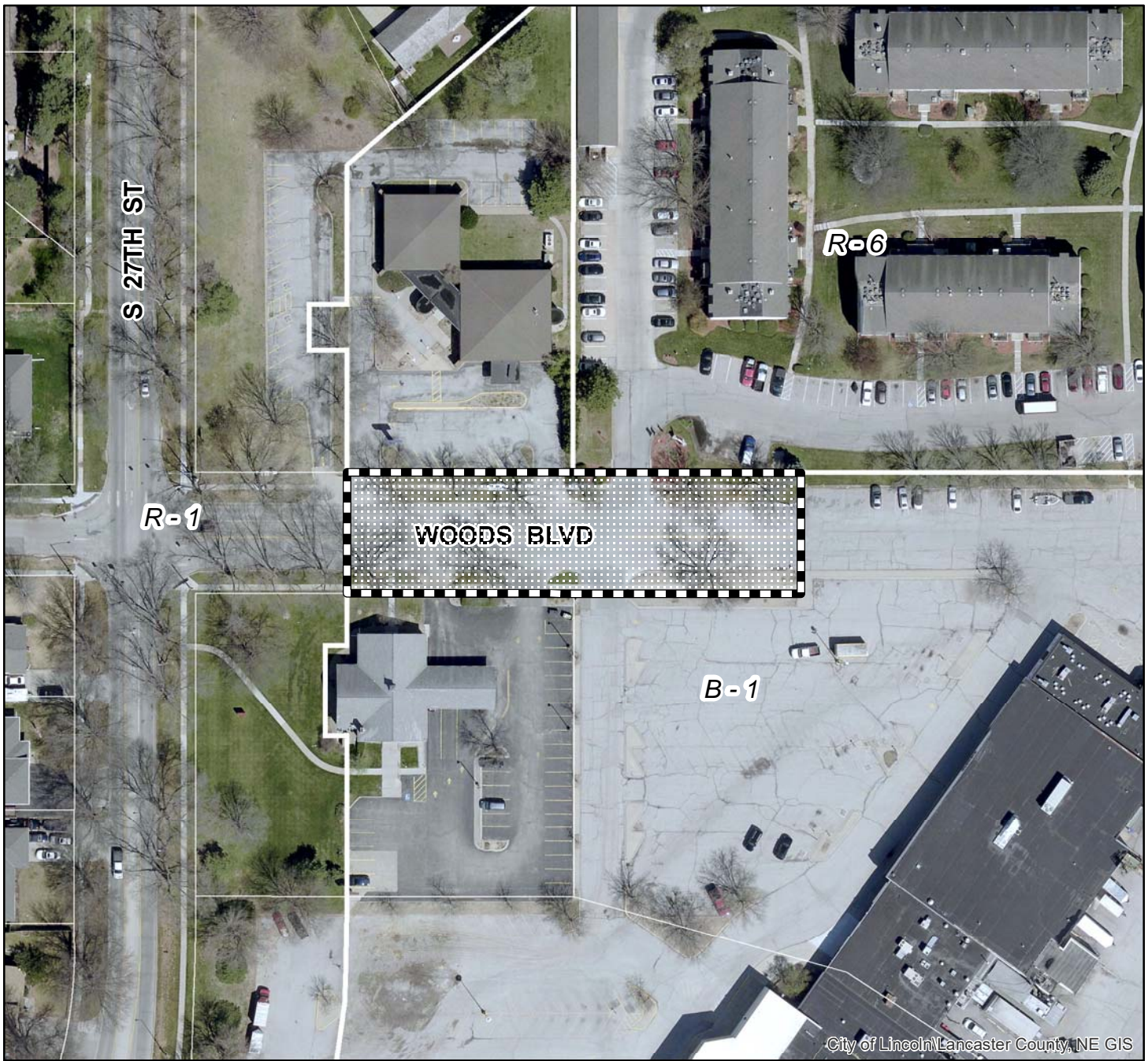
Date: June 9, 2022

Applicant/ Michelle Backemeyer  
 Contact: Urban Development Department  
 555 S 10<sup>th</sup> Street, Suite 205  
 Lincoln, NE 68508  
 (402) 441-8617 or  
[mbackemeyer@lincoln.ne.gov](mailto:mbackemeyer@lincoln.ne.gov)

Owner: City of Lincoln

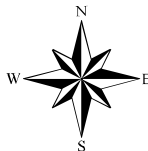
<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/CPC/22000/CPC22011 Woods Blvd Bishop Heights.bmc.docx>





2020 aerial

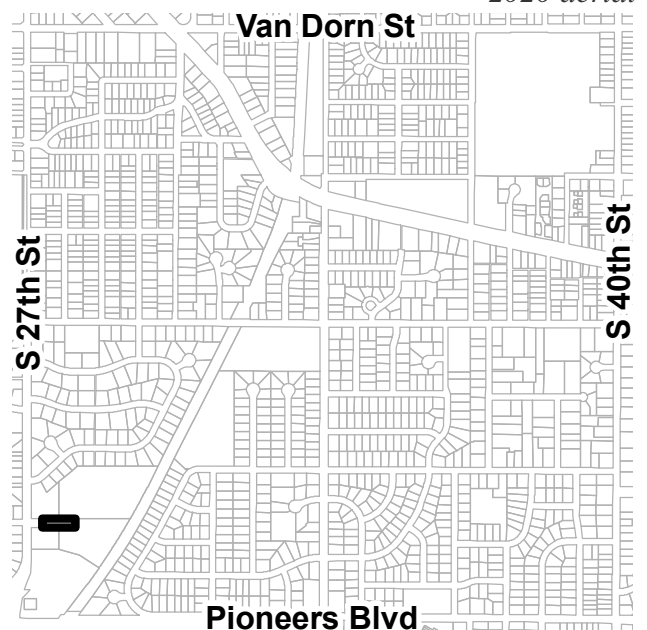
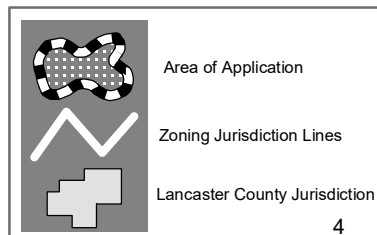
# Comp Plan Conformance #: CPC22011 S 27th St & Woods Blvd



## Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Regional Business District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile:  
Sec.06 T09N R07E









URBAN DEVELOPMENT

555 South 10th Street, Suite 205 | Lincoln, NE 68508  
402-441-7606 | F: 402-441-8711 | [urbandev@lincoln.ne.gov](mailto:urbandev@lincoln.ne.gov)

May 25, 2022

David Cary, Director  
Lincoln-Lancaster County  
Planning Department  
555 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

Dear David:

Enclosed is an application to declare surplus the City property located at approximately 27<sup>th</sup> and Woods Boulevard. The property is currently used as an extension to Woods Boulevard and is proposed to be used in conjunction with the Bishop Heights Redevelopment Plan. An access easement will be retained over the entire property along with easements for water and sewer. Lincoln Transportation and Utilities has no need to continue to maintain this extension of Woods Boulevard, and Lincoln Electric System may still need to respond as to their needs within the property.

Please forward the request to the Planning Commission for their earliest consideration for Comprehensive Plan conformance. My understanding is that the request should be on the June 22, 2022, agenda.

If you have questions or need additional information, please contact me at 441-8617 or at [mbackemeyer@lincoln.ne.gov](mailto:mbackemeyer@lincoln.ne.gov). Thank you.

Sincerely,

A handwritten signature in blue ink that reads 'Michelle R. Backemeyer'.

Michelle R. Backemeyer  
Real Estate and Relocation  
Assistance Agent

JUN 22 2022



interoffice  
MEMORANDUM

*Michelle Backemeyer*

**to:** FIELD(1)  
**from:** Michelle Backemeyer, Urban Development/Administration  
**subject:** Declaration of Surplus Property - A portion of Lot 7, Block 5, Bishop Heights, LLCN  
**date:** May 13, 2022

This memorandum is to notify you that the Urban Development is planning to declare surplus a portion of Lot 7, Block 5, Bishop Heights, which is approximately 80 feet by 300 feet as shown on the attached map. The property is currently used as an extension of Woods Boulevard and if approved for surplus will be used in conjunction with the Bishop Heights Redevelopment Plan.

In order to plan for the eventual transfer or sale of the property, it must first be declared surplus, and this notification is a requirement of the surplus process. Please respond to [mbackemeyer@lincoln.ne.gov](mailto:mbackemeyer@lincoln.ne.gov) or at 441-8617 in 10 days or less as to any comments, including easement requirements, or objections your department or agency may have in declaring this parcel surplus. If we have not received a response during this time period, we will assume you have no objections. Thank you for your prompt attention to this matter.

5 6 8 YAM



## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

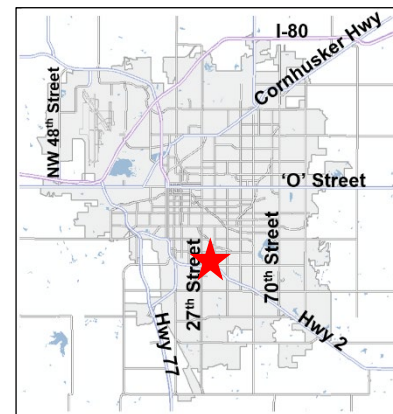
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Street and Alley Vacation #22003	FINAL ACTION? No	DEVELOPER/OWNER RED Bishop Heights JV, LLC
PLANNING COMMISSION HEARING DATE June 22, 2022	RELATED APPLICATIONS Change of Zone #22012 - Bishop Heights Planned Unit Development	PROPERTY ADDRESS/LOCATION Generally located along South 27 <sup>th</sup> Street, between Woods Boulevard and Nebraska Highway 2.

### RECOMMENDATION: CONFORMS TO THE COMPREHENSIVE PLAN

#### BRIEF SUMMARY OF REQUEST

Vacate a portion of existing right-of-way along the east side of South 27<sup>th</sup> Street between Woods Boulevard and Nebraska Highway 2, adjacent to Bishop Heights, Block 5, Lots 3-6 and part of Lot 7. The right-of-way vacation consist of a small, triangular shaped area that abuts the existing Bishop Heights Shopping Center. The vacation is in relation to the recent submittal for the Change of Zone to allow the redevelopment of the site within the Bishop Heights Planned Unit Development (PUD).



#### JUSTIFICATION FOR RECOMMENDATION

This portion of the public right-of-way is currently a landscaped area located along the east side of S. 27<sup>th</sup> Street with no plans to extend or include this small area of land within the existing street. Vacation of the public right-of-way does not include any portion of S. 27<sup>th</sup> Street that currently serves vehicular traffic movement or pedestrian access today. The vacation will accommodate the proposed redevelopment of the area with existing utilities being maintained through easement.

#### APPLICATION CONTACT

Kent Seacrest, (402) 435-6000 or [kent@sk-law.com](mailto:kent@sk-law.com)

#### STAFF CONTACT

Ben Callahan, (402) 441-6360 or [bcallahan@lincoln.ne.gov](mailto:bcallahan@lincoln.ne.gov)

#### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

Vacation of this portion of public right-of-way will not negatively impact the transportation system and subject to the conditions of approval, this request is in conformance with the Comprehensive Plan.

## **Elements Section**

### **Transportation Element**

The street is shown as minor arterial in [Figure 4.23](#) of the Long Range Transportation Plan.

**Minor Arterials:** This class interconnects with and augments principal arterials, distributes traffic to smaller areas, and provides some direct land access. Minor arterial streets are designed to carry moderate to heavy traffic volumes and provide the largest coverage of transit routes within the city.

## **Policies Section**

**P71: Public ROW and Access -** Manage public ROW and access to balance multimodal mobility needs and protect the value of adjacent property.

## **ANALYSIS**

1. This is a request to vacate a portion of right-of-way on the east side of S. 27<sup>th</sup> Street between Woods Boulevard and Nebraska Highway 2. The area to be vacated includes approximately .04 acres or 1,780 square feet. The vacation area currently serves as a landscaped area along S. 27<sup>th</sup> Street and is located within the Bishop Heights PUD, a Planned Unit Development that proposes a mix of commercial, retail, and multifamily uses.
2. RED Bishop Heights JV, LLC owns all property that is abutting the proposed vacation area on the east side of S. 27<sup>th</sup> Street. The area within the vacation request does not currently serve vehicular or pedestrian traffic.
3. The property adjacent to the right-of-way proposed to be vacated is described as Bishop Heights, Block 5, Lots 3-6 and part of Lot 7, located in the southwest quarter section of 6-9-7. The purpose of the request is to transfer ownership of the right-of-way to the adjoining landowner for the future development of the site. The proposed vacation is conditioned upon the City's approval of the Bishop Heights Redevelopment Agreement.
4. The vacation will better align the east side of S. 27<sup>th</sup> Street right-of-way boundary and remove the small indent of unused right-of-way extending into the existing Bishop Heights Shopping Center. Pedestrian traffic will be unaffected by the proposed vacation as the sidewalk will continue to be located within the right-of-way.
5. Lincoln Water System has a wastewater utility within the south end of the vacation area and will need easements to be retained.
6. A drainage easement will need to be retained for the location of a public storm sewer and inlet.
7. There are existing Lincoln Electric System facilities in the vacation area for which easements will be retained.
8. Vacation of the right-of-way will not affect the transportation system and is consistent with the Comprehensive Plan.
9. Lincoln Municipal Code Chapter 14.20 requires the City to establish the proper price to be paid for the right-of-way, as well as any amounts necessary to guarantee required reconstruction within the right-of-way. These values must be established and deposited with the City Clerk prior to scheduling the vacation request with the City Council.

**CONDITIONS OF APPROVAL:** See attached.

## **SURROUNDING LAND USE & ZONING**

North: Bishop Heights Shopping Center/S. 27 <sup>th</sup> Street	R-1, Residential/B-1, Commercial
South: Bishop Heights Shopping Center	B-1, Commercial
East: Bishop Heights Shopping Center	B-1, Commercial
West: S. 27 <sup>th</sup> Street / Sing Family	S. 27 <sup>th</sup> Street / R-1, Residential

**APPROXIMATE LAND AREA:** Approximately 1,780 square feet (.04 acres)

Prepared by

---

Ben Callahan, Planner

Date: June 9, 2022

Owner/Applicant: Scott Wagner  
Red Bishop Heights JV, LLC  
One E Washington Street, Ste 300  
Phoenix, AZ 85004  
[swagner@REDdevelopment.com](mailto:swagner@REDdevelopment.com)

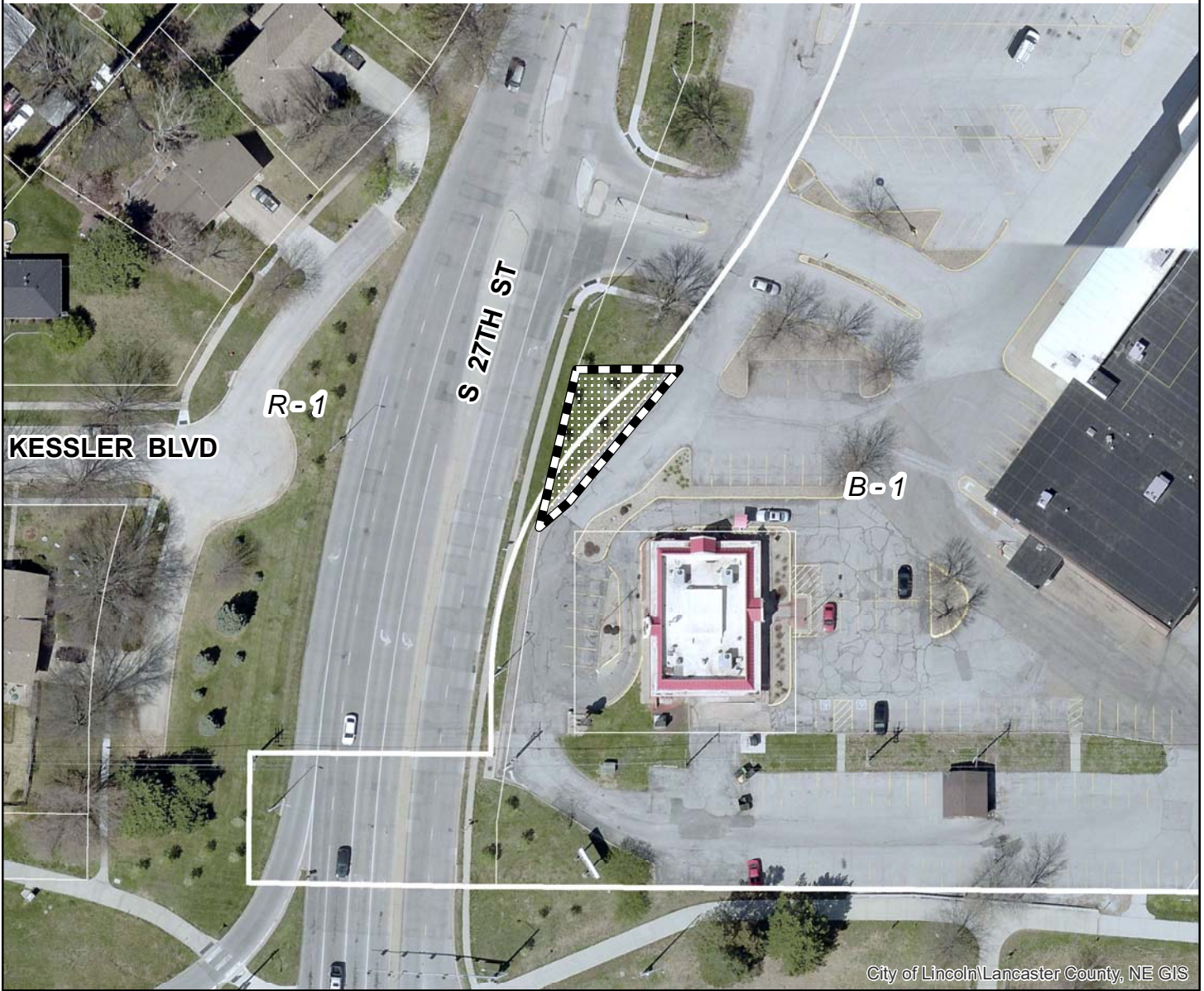
Contact: Kent Seacrest  
1128 Lincoln Mall, Ste 105  
Lincoln, NE 68508  
[kent@sk-law.com](mailto:kent@sk-law.com)

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/SAV/22000/SAV22003 S 27th Street - Bishop Heights.bmc.docx>

**BEFORE THE VACATION REQUEST IS SCHEDULED ON THE CITY COUNCIL AGENDA THE FOLLOWING MUST BE COMPLETED:**

- 1.1 The provisions of Chapter 14.20 of the Lincoln Municipal Code are met.
- 1.2 Include retention of utility easements by City with deed transfer.

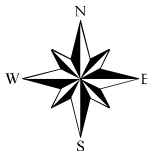




City of Lincoln/Lancaster County, NE GIS

2020 aerial

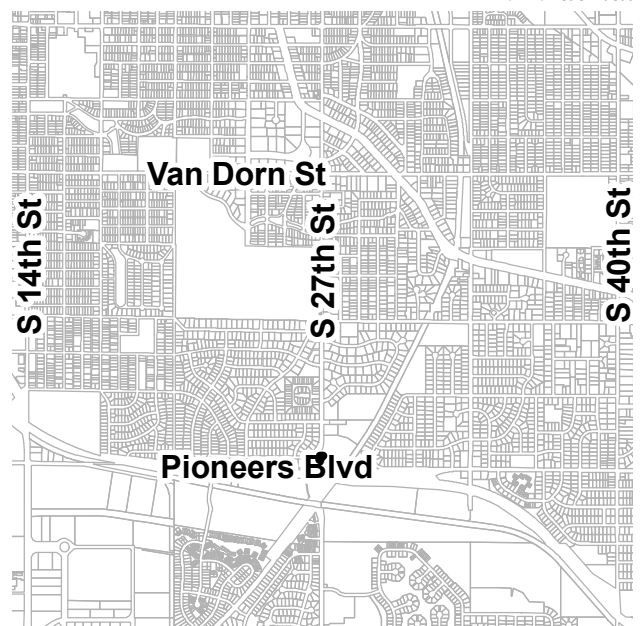
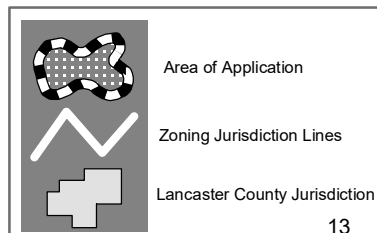
**Street and Alley Vacation #: SAV22003**  
**S 27th St & Hwy 2**



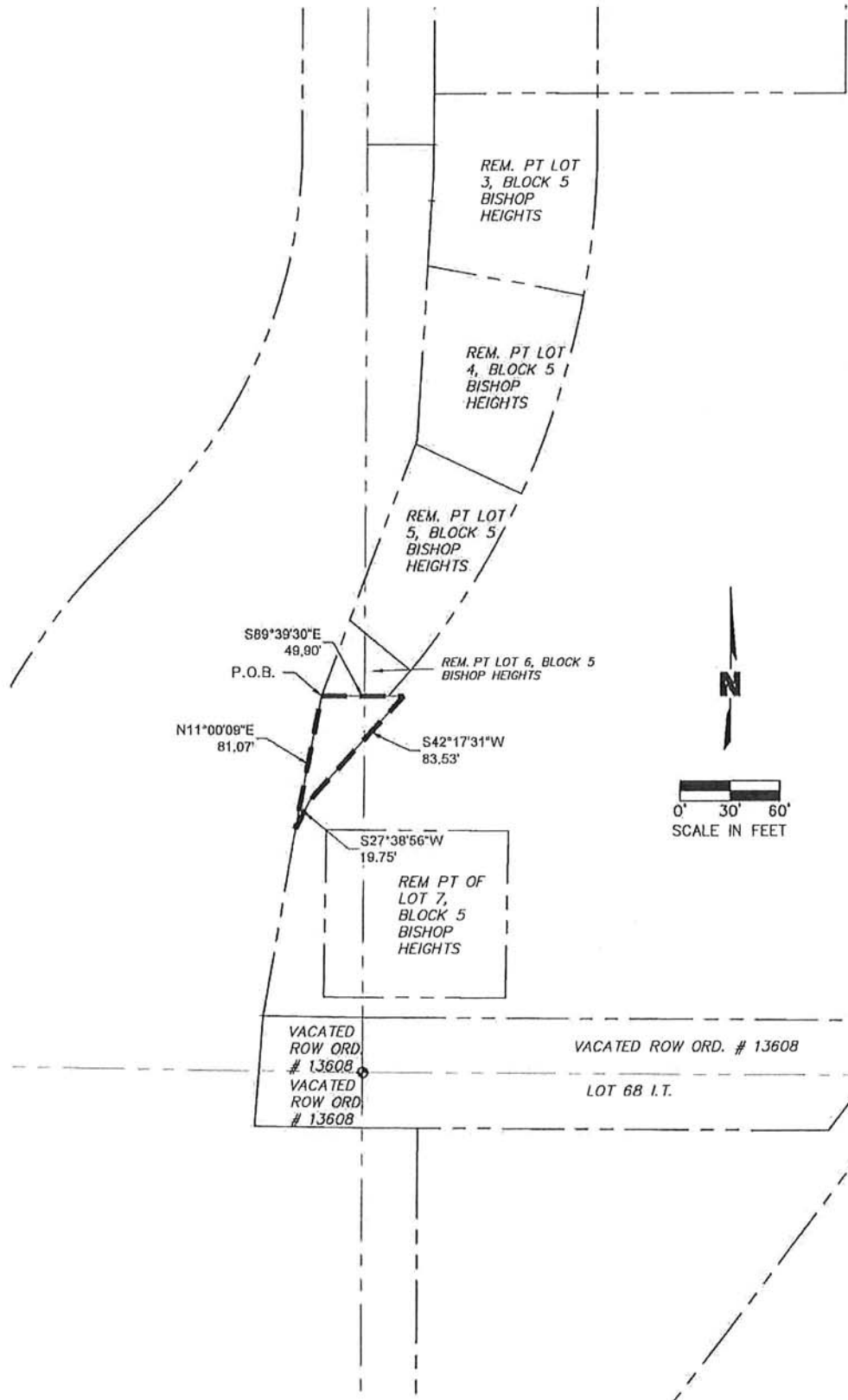
### Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

**Two Square Miles:**  
**Sec.01 T09N R06E**  
**Sec.06 T09N R07E**



DWG: F:\2018\0501-1000\018-0988\40-Design\Survey\SRV\Final\Plot Drawings\18-09880-Bishop Heights\_PUD.dwg  
 DATE: Apr 13, 2022 1:32pm  
 USER: abroeker  
 C:\FP BOUNDARY\_180988



PROJECT NO: 018-00880  
 DRAWN BY: ALB  
 DATE: 4/13/2022

SOUTH 27TH STREET R.O.W VACATION

**olsson**

601 P Street, Suite 200  
 P.O. Box 84608  
 Lincoln, NE 68508  
 TEL: 402 474 6311

EXHIBIT  
 1



Small ROW Triangle:  
(SOUTH 27<sup>th</sup> STREET RIGHT-OF-WAY VACATION)

A TRACT OF LAND COMPOSED OF A PORTION OF SOUTH 27TH STREET RIGHT OF WAY, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., AND A PORTION OF SOUTH 27TH STREET RIGHT OF WAY, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE REMAINING PORTION OF LOT 6, BLOCK 5, BISHOP HEIGHTS, SAID POINT BEING ON AN EAST LINE OF SOUTH 27TH STREET RIGHT OF WAY; THENCE, EAST, ON A SOUTH LINE OF THE REMAINING PORTION OF SAID LOT 6, BLOCK 5, AND ITS EXTENSION, SAID LINE BEING A NORTH RIGHT OF WAY LINE OF SOUTH 27TH STREET RIGHT OF WAY, ON AN ASSUMED BEARING OF S89°39'30"E, DISTANCE OF 49.90' TO A NORTHEAST CORNER OF SAID RIGHT OF WAY; THENCE S42°17'31"W, ON AN EAST LINE OF SAID RIGHT OF WAY, SAID LINE BEING A WEST LINE OF SAID REMAINING PORTION LOT 7, BLOCK 5, A DISTANCE OF 83.53' TO AN EAST CORNER OF SAID RIGHT OF WAY; THENCE S27°38'56"W, ON AN EAST LINE OF SAID RIGHT OF WAY, SAID LINE BEING A WEST LINE OF SAID REMAINING PORTION OF LOT 7, BLOCK 5, A DISTANCE OF 19.75' TO AN EAST CORNER OF SAID RIGHT OF WAY; THENCE N11°00'09"E, A DISTANCE OF 81.07' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 1,779.25 SQUARE FEET OR 0.04 ACRES, MORE OR LESS.

ISSUED 8.1.14AM



SEACREST & KALKOWSKI, PC, LLO

KENT@SK-LAW.COM | DANAY@SK-LAW.COM

May 16, 2022

**HAND DELIVERY**

Robert Simmering  
City Transportation and Utilities Department  
Right of Way Services Manager  
555 South 10<sup>th</sup> Street, Suite 203  
Lincoln, NE 68508

RE: Petition to Vacate Public Way with Release and Waiver of Rights and Title, and  
Quitclaim Deed to City of Lincoln

Dear Bob:

Our office represents RED Bishop Heights JV, LLC ("**RED**"), who is the owner of the building and improvements that comprise the former Bishop Heights Shopping Center. On behalf of RED, we are submitting the Petition to Vacate Public Way with Release and Waiver of Rights and Title, and Quitclaim Deed to City of Lincoln. The proposed vacation entails a small triangle portion of S. 27<sup>th</sup> Street right-of-way located on the east side of said right-of-way and located immediately south of the existing access point to the shopping center approximately 4300 S. 27<sup>th</sup> Street and Kessler Boulevard ("**Small ROW Triangle**").

RED is one of the three redevelopers working with the City Urban Development on the Bishop Heights Redevelopment Project. As part of the Bishop Heights Redevelopment Project, the Urban Development Department would like the City to vacate the Small ROW Triangle and have RED take title to the parcel for one dollar. In turn, RED proposes to add the Small ROW Triangle to the Bishop Heights 1<sup>st</sup> Addition Final Plat so that the City would have no further obligations for the Small ROW Triangle.

The Bishop Heights Redevelopment Project's Project Area abuts the small triangle of right-of-way in South 27<sup>th</sup> Street. Unless the City and RED waive the above Condition, the proposed vacation of the Small ROW Triangle is condition upon the City of Lincoln's approval and execution of a satisfactory Bishop Heights Redevelopment Agreement and related documents with RED (collectively "**Condition**").

We appreciate your assistance in processing the attached vacation request of the Small ROW Triangle. If you have any questions regarding the above, please feel free to give me a call.

SSOS R I YAM

Very truly yours,



KENT SEACREST  
For the Firm

Enclosure

cc (w/ encl.):

Steve Henrichsen  
Brian Will  
Ben Callahan  
Ernie Castillo  
Andy Broeker, Olsson  
Erin Bright, Olsson  
Scott Wagner, RED Bishop Heights JV, LLC

SSOS 8 1 YAM



## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

APPLICATION NUMBER  
Annexation #22007  
Change of Zone #22019

FINAL ACTION?  
No

DEVELOPER/OWNER  
Rokeby Holdings, LLC

PLANNING COMMISSION HEARING DATE  
June 22, 2022

RELATED APPLICATIONS  
None

PROPERTY ADDRESS/LOCATION  
South 84<sup>th</sup> Street and Rokeby Road

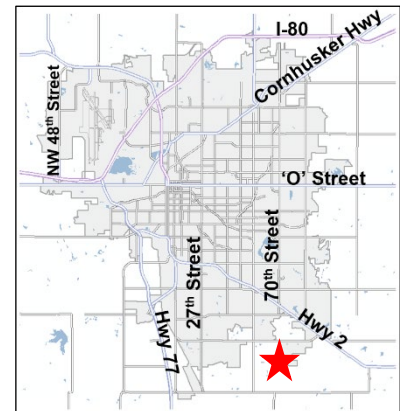
**RECOMMENDATIONS: ANNEXATION #22007  
CHANGE OF ZONE #22019**

**APPROVAL  
APPROVAL**

### BRIEF SUMMARY OF REQUEST

This is a combined staff report for two related applications associated with the Grandview Estates 2<sup>nd</sup> Addition development located southwest of the intersection of South 84<sup>th</sup> Street and Rokeby Road. The submittal brings in a portion of Phase III of the development consistent with the framework established by prior applications for the development of this site. That framework includes zoning overlays for both a community unit plan (CUP) and a planned unit development (PUD).

The area of these applications is previously shown in concept as part of the Grandview Estates 2<sup>nd</sup> Addition Community Unit Plan (CUP). These requests seek to annex and rezone from AG Agriculture to R-3 Residential 26.45 acres for development consistent with the Grandview Estates Community Unit Plan. If approved, the owner will be able to submit final plats to the City to subdivide the land and create saleable lots.



### JUSTIFICATION FOR RECOMMENDATION

The subject property is adjacent to the city limit, and the full range of municipal services can be provided if annexed. A change of zone to R-3 will allow for a third phase of the CUP to be platted and developed. The requests are consistent with the Future Land Use Map and compatible with the previously approved CUP. Both requests comply with the Zoning Ordinance and are consistent with the Comprehensive Plan.

### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The site is designated for future urban density residential land uses on the Future Land Use Map, and these requests comply with the requirements of the Zoning Ordinance and Comprehensive Plan.

### APPLICATION CONTACT

Mike Eckert (402) 434-8494 or  
[meckert@civildg.com](mailto:meckert@civildg.com)

### STAFF CONTACT

Brian Will, (402) 441-6362 or  
[bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)

## KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

### Introduction Section: Growth Framework

Figure GF.b: 2050 - This site is designated for future urban residential land uses on the 2050 Future Land Use Plan.

### **Fundamentals of Growth in Lancaster County**

The City of Lincoln's present infrastructure investment should be maximized by planning for well-designed and appropriately-placed residential and commercial development in existing areas of the city with available capacity. This can be accomplished by redeveloping underutilized commercial centers into areas that include a mix of uses and encouraging higher-density residential redevelopment in appropriate locations, including missing middle housing. New infrastructure investments to serve growth areas can be maximized by encouraging a higher density of both residential and commercial uses in these areas.

New commercial and industrial development should be located in Lincoln and other incorporated communities. Lincoln has ample land area and infrastructure availability for commercial and industrial development. The situation is similar in most incorporated communities in the county. Rural areas of the county do not have access to urban infrastructure, and commercial or industrial development can add significant traffic and maintenance responsibilities to county roads.

Natural and environmentally sensitive areas should be preserved within and between neighborhoods. Conservation areas and open lands should be used to define and connect different neighborhoods. The natural topography and features of the land should be preserved by new development to maintain the natural drainageways and minimize land disturbance.

### Goals Section

G1: Safe, Affordable, and Accessible Housing. Lincoln and Lancaster County will support the development of safe, affordable, and accessible quality housing that meets the diverse needs of the community. PlanForward understands the ongoing need for affordable housing and the development of 5,000 affordable units by 2030.

G2: Complete Neighborhoods. Lincoln and Lancaster County will support complete neighborhoods within both developing and redeveloping areas of Lincoln. A complete neighborhood is one where residents are able to get the goods and services to meet daily needs within 15 minutes of their residence including a variety of housing options, grocery stores and other commercial services, quality public schools, public open spaces and recreational facilities, affordable active transportation options, and civic amenities. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and even small lot single-family.

### Elements Section

#### E3 - Business, Economy and Workforce

##### Commercial Center Design Strategies

8. Encourage commercial development at  $\frac{1}{4}$  or  $\frac{1}{2}$  mile between major intersections in order to create centers that are centrally-located within each square mile to facilitate easier pedestrian access and also allow for vehicular access points that meet the city's Access Management Policy.

##### Neighborhood Centers

These centers typically serve the neighborhood level. Neighborhood Centers should be located approximately  $\frac{1}{2}$  mile apart, depending upon their size, scale, function and the population of the surrounding area. Future Neighborhood Centers are typically not sited on the Future Land Use map in advance but are identified as development plans are approved.

P80 - Annexation: Annexation should be utilized to provide municipal services in a fair and efficient manner.

The City of Lincoln requires that properties receiving municipal services be located within city limits. City annexation should occur before any property is provided with water, sanitary sewer, or other potential City services. In most cases this also means that annexation must occur prior to a property receiving an urban zoning designation. The City routinely annexes land at the request of a developer or landowner as part of the regular development process. This allows properties to be supplied with City services when they are needed, and the City benefits from the property taxes, utilities, and other fees that City residents pay. Some properties along the City's edge may not be interested in further development and thus will not request annexation. In some cases it is necessary for the City to initiate annexation of adjacent properties that are already developed and require a minimal public investment to serve.

#### Action Steps

1. Regularly evaluate for potential annexation all property along the city's edge for which basic infrastructure is generally available or planned for in the near term. The City should annex land in Tier 1 Priorities A and B that is contiguous to city limits and generally urban in character. All land that is engulfed by the City should be annexed.
2. Provide advance notice to properties that may be subject to city-initiated annexation.
3. Properties within the Tier 1 Priority A growth area should be annexed upon approval of final plat.
4. Coordinate the provision of services for areas considered for annexation with the CIP.

#### UTILITIES & SERVICES:

A. Sanitary Sewer: Sanitary sewer was available in Grandview Estates on the north side of Rokeby Road and has been extended by the developer to serve this development.

B. Water: Water is also available in Rokeby Road and has been extended as well.

C. Roads: All internal streets will be local streets and will be constructed by the developer as part of the development. Nearby arterial streets include South 70th Street and Rokeby Road.

South 70th Street is an asphalt county road and will not be improved with this development except for temporary turn lanes installed at the developer's expense.

Rokeby Road was formerly a county gravel road but improvements are completed or underway to coincide with adjacent development.

D. Parks and Trails: An underground crossing of Rokeby Road is proposed at South 81<sup>st</sup> Street. It is shown on the site plan for the CUP and extends south along the drainage adjacent to the eastern boundary of the development.

E. Fire Protection: After annexation, fire protection will be provided by Lincoln Fire Rescue (LFR). A new fire/police station has been built at South 63rd Street and Pine Lake Road and will provide coverage to this development.

#### ANALYSIS

1. The original Grandview Estates 2<sup>nd</sup> Addition CUP (site plan and phasing plans attached as the last exhibits for reference) was approved in 2019 and includes a phased concept plan for the development of approximately 242 acres of land southeast of the intersection of South 70<sup>th</sup> Street and Rokeby Road. Initially, only 77 acres were annexed and re-zoned based upon the plan to provide for development of the first phase. In 2021 the multiple-family portion of the CUP (the area on the west side adjacent to South 70<sup>th</sup> Street) was separated out and rezoned to R-5 PUD. The larger concept plan was also revised to show an approximately 10-acre tract on the south side of Ambrose Drive as future commercial/multiple-family residential with the intent that it would be included in the PUD in the future.
2. Early in 2022 enough land to allow for the second phase of the CUP to be developed and to add the 10-acre commercial/multiple-family tract into the PUD was annexed and rezoned. The 33 acres that were rezoned to R-3 allowed for the development of an additional 125 residential lots. The 10 acres rezoned to R-5 PUD allowed for another 200 apartments or 50,000 square feet of commercial floor area or some combination of both.

3. These requests seek to annex and rezone an additional 26.45 acres to R-3 Residential consistent with the approved CUP to allow a portion of Phase III to be developed. It will provide enough area for approximately 80 single-family residential lots. The area to be annexed is located within Tier I, Priority B of the Comprehensive Plan. All utilities, including public water and sewer, exist adjacent in the area of these requests and can be extended to serve this development. The development can be served by the full range of city services. A final plat will have to be approved by the City of Lincoln before any lot can be sold.
4. The subject property is located within the Southeast Rural Fire District #1. Under State law the District can petition for compensation from the annexing municipality for lost revenue based upon the amount of service area annexed. For voluntary annexations such as this one, any costs due to the district are to be borne by the developer. In this case, staff has conducted the financial analysis and there should be no funds due to the District.
5. It is also the developer's responsibility to reach an agreement regarding any compensation due the Rural Water District #1 (RWD) as a result of the proposed annexation. That was done in this case and this land has already been released from the Rural Water District #1.
6. This development is already subject to the Rokeby Coalition Agreement, and an amendment to that agreement will not be necessary for these requests. Public sewer and water are available and there are no other major infrastructure improvements required or requested to serve this development.
7. The area proposed for annexation is consistent with the City's policy for annexation as stated in the Comprehensive Plan. The site is designated for future urban density residential land uses on the Future Land Use Map and is consistent with the approved Grandview Estates 2<sup>nd</sup> Addition CUP. These requests comply with the requirements of the Zoning Ordinance and are consistent with the goals of the Comprehensive Plan.

**EXISTING LAND USE & ZONING:** Agriculture; AG      **PROPOSED ZONING:** R-3

#### **HISTORY:**

**May 2019** - AN#19002, CZ#19005 and SP#19006 for Grandview Estates 2nd Addition CUP were approved over approximately 77 acres. The plans for SP#19006 showed a layout for the entire approximately 242 acre development.

**Aug 2021** - AN#21003, CZ#21022 and CZ#21023 were approved to annex and rezone approximately 38 acres to R-5 PUD for multiple-family and commercial.

**Apr 2022** - AN#22001, CZ22003 and CZ#21022A were approved annexing 42.35 acres, rezone 32.89 of those acres to R-3 for the CUP, and rezoned 9.8 acres to R-5 PUD to expand the PUD.

#### **SURROUNDING LAND USE & ZONING**

North: Vacant, Single family residential under development	R-3, R-5 PUD
South: Public High School, Utility Substation	P, AG
East: Agriculture	AG
West: Agriculture	AG, R-3

#### **APPROXIMATE LAND AREA:**

Annexation #22007 - 26.45 acres more or less including adjacent right-of-way in Rokeby Road.

Change of Zone #22019 - 26.45 acres more or less

**PROPOSED CITY COUNCIL DISTRICT ASSIGNMENT:** District #2

**LEGAL DESCRIPTION:** See attached.



Prepared by

---

Brian Will,  
June 7, 2022  
[bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov) or 402-441-6362

Applicant/Contact: Mike Eckert  
Civil Design Group  
8535 Executive Woods Drive  
Lincoln, NE 68512  
(402) 434-8494 or [meckert@civildg.com](mailto:meckert@civildg.com)

Owner: Rokeby Holdings, LLC  
7211 South 27<sup>th</sup> Street  
Lincoln, NE 68512  
402-438-7368

## **CONDITIONS OF APPROVAL**

### **CHANGE OF ZONE #22019**

Annexation #22007 is approved by City Council.

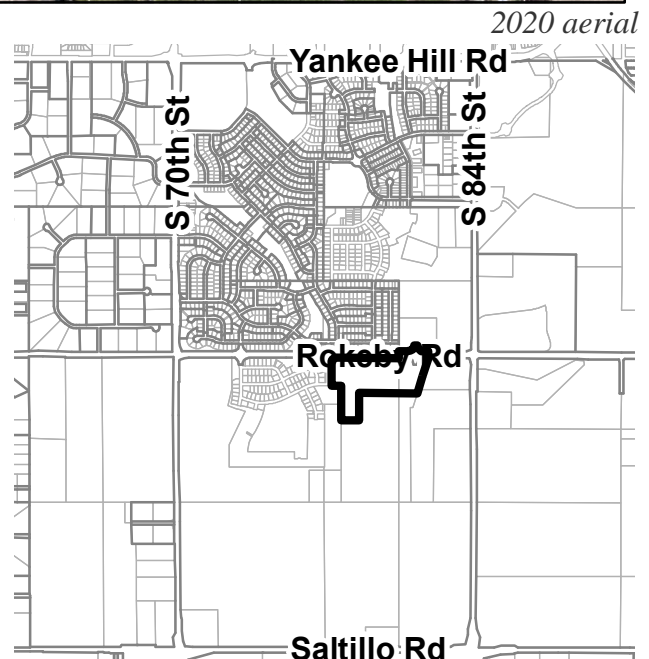
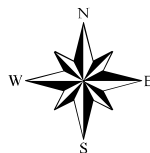
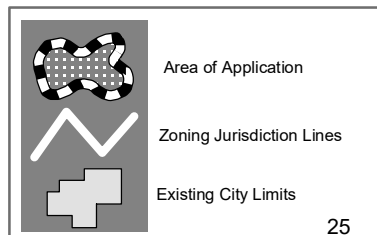


**Annexation #: AN22007 &  
Change of Zone #: CZ22019 (AG - R-3)  
Grandview Estates 2nd Addition  
S 84th St & Rokeby Rd**

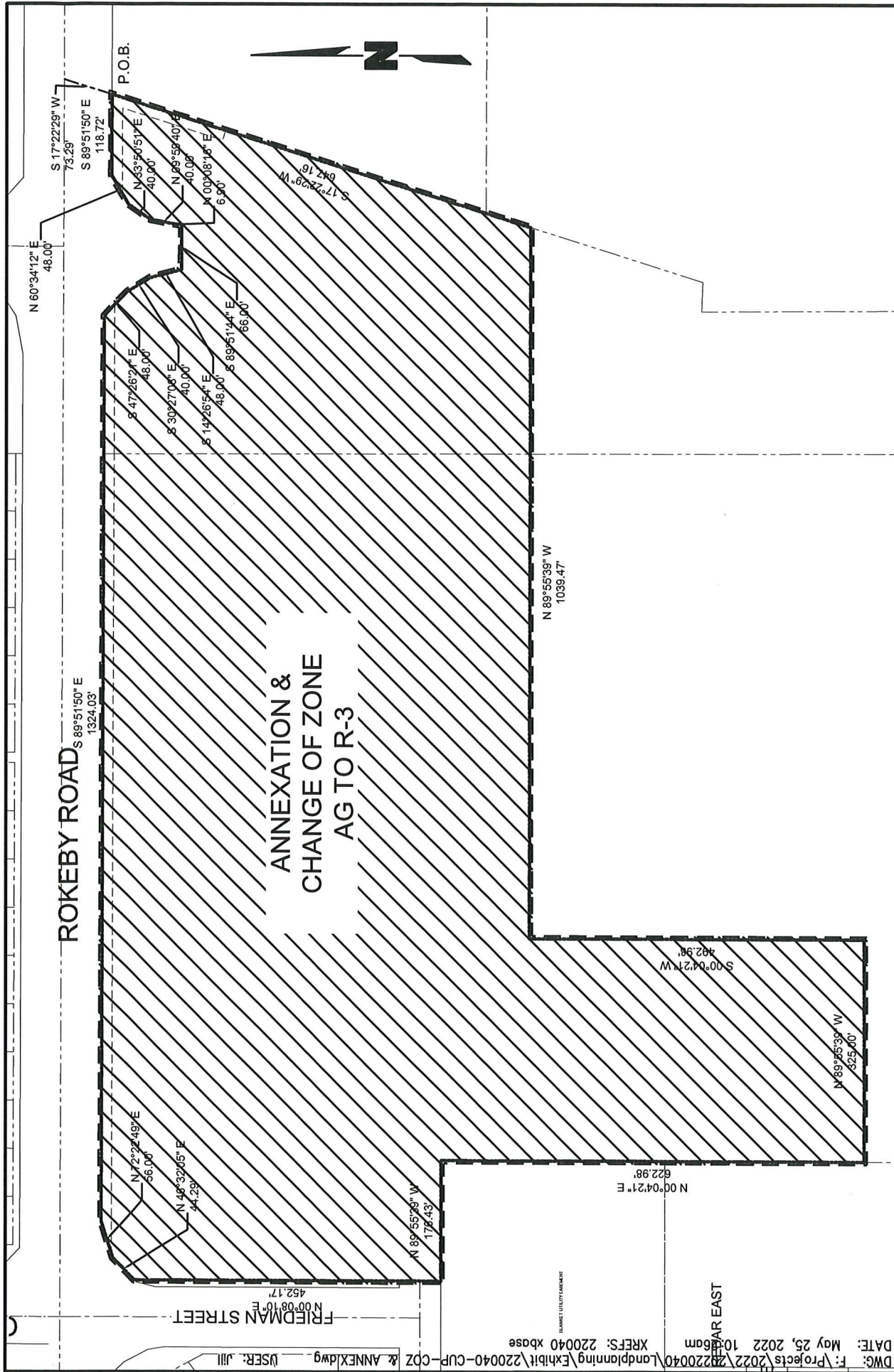
### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

**Two Square Miles:  
Sec.27 T09N R07E  
Sec.34 T09N R07E**







<p>drawn by: jds checked by: - project no.: 2022-0040 date: 05/24/2022</p>	<p><b>ANNEXATION &amp; CHANGE OF ZONE - C.U.P. GRANDVIEW ESTATES 2ND ADDITION LINCOLN, NEBRASKA</b></p>	<p><b>EXHIBIT</b></p> <p><b>1</b></p>
<p>Civil Design Group, Inc. 8535 EXECUTIVE WOODS, DR., SUITE 200 Lincoln, Nebraska 68512 Ph. 402-434-9494 Fax 866-215-8747 www.civildg.com</p> <p><b>Civil Design Group, Inc.</b></p> <p>CONSULTING ENGINEERS • LAND USE PLANNERS CIVIL DESIGN • SITE DEVELOPMENT • PLANNING AND ZONING</p>		

ANNEXATION & CHANGE OF ZONE  
LEGAL DESCRIPTION

A legal description of a part of Lots 26 and 37 Irregular Tracts, located in the Northeast Quarter of Section 34, Township 9 North, Range 7 East, of the 6th P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Referring to the Northeast Corner of Section 34; Thence West, on the North Line of the Northeast Quarter, on an assumed bearing of N 89°51'50" W for a distance of 811.65'; Thence S 17°22'29" W on the Northerly extension of the East Line of Lot 26 Irregular Tracts, for a distance of 73.29' to a point on the Southerly Right-of-way Line of Rokeby Rd., said point being the Northeast Corner of Lot 26 Irregular Tracts, said point also being the **Point of Beginning**:

Thence S 17°22'29" W, on the Easterly Line of Lot 26 Irregular Tracts, for a distance of 647.16'; Thence N 89°55'39" W for a distance of 1039.47'; Thence S 00°04'21" W for a distance of 492.98'; Thence N 89°55'39" W for a distance of 325.00' to a point on the Westerly Line of Lot 37 Irregular Tracts; Thence on the Westerly Line of Lot 37 Irregular Tracts the following 3 courses:

N 00°04'21" E for a distance of 622.98';

Thence N 89°55'39" W for a distance of 176.43';

Thence N 00°08'10" E for a distance of 452.17' to a point on the Southerly Right-of-way Line of Rokeby Road;

Thence on the Southerly Right-of-way Line of Rokeby Rd. and on the Northerly Line of Lot 37 Irregular Tracts the following 12 courses:

N 46°32'05" E for a distance of 44.29';

Thence N 72°22'49" E for a distance of 56.00';

Thence S 89°51'50" E for a distance of 1324.03';

Thence S 47°26'21" E for a distance of 48.00';

Thence S 30°27'08" E for a distance of 40.00';

Thence S 14°26'54" E for a distance of 48.00';

Thence S 89°51'44" E for a distance of 66.00';

Thence N 00°08'16" E for a distance of 6.90';

Thence N 09°59'40" E for a distance of 40.00';

Thence N 33°50'51" E for a distance of 40.00';

Thence N 60°34'12" E for a distance of 48.00';

Thence S 89°51'50" E for a distance of 118.72' to the **Point of Beginning**, and having a calculated area of 26.45 acres more or less.

Subject to any and all easements and restrictions of record.

AND

The adjacent Right-of-Way.



# Civil Design Group, Inc.

Consulting Engineers & Land Use Planners  
Civil Design • Site Development • Planning & Zoning

May 25, 2022

Project No. 2022-0040

Mr. David Cary, Director of Planning  
City of Lincoln /Lancaster County  
555 South 10th Street, Room 213  
Lincoln, NE 68508

**Re: Request for Annexation and Change of Zone for a portion of Grandview Estates  
2<sup>nd</sup> Addition CUP.**

Dear Mr. Cary:

On behalf of Southview, Inc., we submit the enclosed application for a change of zone from AG to R-3 CUP and associated request for annexation of 26.45 acres of land within Grandview Estates 2<sup>nd</sup> Addition CUP. We are also requesting the contiguous annexation of this land as shown on the enclosed exhibits.

With this applications we submit the following items:

Application for a Change of Zone (AG to R-3 CUP)  
Change of Zone fee of \$1,005.00  
Change of Zone & Annexation Exhibit

I hope that this letter in conjunction with the exhibits C.U.P. site plan assists you in reviewing this application. Please feel free to call me at (402) 434-8494 so that I can address any questions you may have.

Sincerely,

Mike Eckert, AICP

cc: Southview, Inc.

## GENERAL NOTES

- THE EXISTING ZONING IS AG. THE PROPOSED ZONING IS R-3 CUP.
- TOTAL USAGE TABLE  
SINGLE FAMILY LOTS 475  
SINGLE FAMILY ATTACHED LOTS 42  
APARTMENT LOT 2  
SCHOOL LOT 1  
OUTLOT 14  
TOTAL BLOCKS 26
- OUTLOTS AND USE  
OUTLOT "A" - DRAINAGE DETENTION CELL/OPEN SPACE/PEDESTRIAN WAY  
OUTLOT "B" - PEDESTRIAN WAY  
OUTLOT "C" - PEDESTRIAN WAY/DRAINAGE DETENTION CELL  
OUTLOT "D" - PEDESTRIAN WAY/DRAINAGE DETENTION CELL  
OUTLOT "E" - DRAINAGE DETENTION CELL  
OUTLOT "F" - DRAINAGE DETENTION CELL  
OUTLOT "G" - DRAINAGE DETENTION CELL  
OUTLOT "H" - DRAINAGE DETENTION CELL  
OUTLOT "I" - FUTURE ACCESS  
OUTLOT "J" - OPEN SPACES EASEMENT  
OUTLOT "K" - PEDESTRIAN WAY  
OUTLOT "L" - OPEN SPACES EASEMENT  
OUTLOT "M" - FUTURE DEVELOPMENT  
OUTLOT "N" - FUTURE DEVELOPMENT
- C.U.P. DENSITY CALCULATIONS  
ZONE TOTAL ACRES 1.0000 PER ACRE NUMBER OF UNITS  
R-3 241.53 6.59 1,681  
TOTAL APPROVED UNITS 1,681  
TOTAL UNITS USED 1,620  
TOTAL UNASSIGNED UNITS 263
- THE PROPOSED UNIT DEVELOPMENT IS LOCATED ON THE CORNER OF S. 27TH STREET AND ROBBY ROAD IS REQUIRING EXCEPT WHERE SHOWN.
- SINGLE FAMILY LOTS MAY BE USED AS AN ATTACHED SINGLE-FAMILY LOT PROVIDED THAT THE LOT MEETS THE MINIMUM LOT AREA REQUIREMENT INCLUDING A MINIMUM WIDTH OF 30 FEET AND SETBACKS FOR A TWO-FAMILY LOT LOCATED IN THE R-3 ZONE.
- LOT DIMENSIONS SHOWN ARE APPROXIMATE AND MAY VARY UP TO 10 FEET.
- ALL DIMENSIONS ALONG CURVES ARE CHORD DISTANCES.
- SANITARY SEWER AND WATER LINES TO BE 8 INCH PIPE AND 6 INCH PUE PIPE RESPECTIVELY UNLESS OTHERWISE SHOWN AND TO BE BUILT TO CITY OF LINCOLN SPECIFICATIONS.
- ALL ELEVATIONS ARE BASED ON NAVD 1988 DATUM.
- FINAL DESIGN FOR GRADING OF THE OPEN AREAS AND DETENTION FACILITIES SHALL CONFORM TO THE CITY OF LINCOLN DESIGN STANDARDS REQUIRING PROGRAMS TO LIMIT DEGRADATION OF THE CHANNEL AND TO MAINTAIN A STABLE SLOPE BASED ON UNBURDENED RUNOFF FROM THE WATERSHED.

- ANY RELOCATION OF EXISTING L.E.S. FACILITIES WILL BE AT THE DEVELOPER'S EXPENSE.
- EVEES, OVERHANGS, WINDOW SHIMMS, DOOR SWINGS, AIR CONDITIONER UNITS ETC. MAY ENCRUSCH OVER THE SETBACK LINES. ENCROACHMENTS ARE NOT ALLOWED OVER PROPERTY LINES AND MUST CONFORM TO BUILDING AND LIFE SAFETY CODES.
- LOTS 14 & 15, BLOCK 22 SHALL HAVE A SIDE YARD SETBACK TO OUTLOT "F" OF 5 FEET.
- PEDESTRIAN EASEMENT CONNECTING LOT 1, BLOCK 14 TO S. 73RD STREET AS SHOWN SHALL BE CONSTRUCTED WHEN LOT 1, BLOCK 14 IS DEVELOPED.
- THE APARTMENT COMPLEX TO BE APPROVED BY ADMINISTRATIVE AMENDMENT PRIOR TO BUILDING PERMITS.
- NO BUILDING ENVELOPES ARE PERMITTED WITHIN THE TRANSMISSION EASEMENTS.
- DETENTION CELLS LOCATED IN LOT 1, BLOCK 14 AND LOT 1, BLOCK 15 MUST BE LOCATED IN A SEPARATE OUTLOT DESIGNATED FOR DETENTION AT THE TIME OF THE FINAL PLAN.

## COMMUNITY UNIT PLAN LEGAL DESCRIPTION

A subdivision composed of Lots 21, 23, 24, 25, 26 and 28 Regular Tracts, located in the North Half of Section 34, Township 9 North, Range 7 East, of the 6th P.M. Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Referring to the Southwest Corner of the Northwest Quarter of Section 34, Thence East along the South Line of the Northwest Quarter to a corner bearing of S 89°52'30" E for a distance of 192.00' to a point on the Eastern Right-of-Way Line of South 73rd Street and point being the Southwest Corner of Lot 24 Regular Tracts and point also being the Point of Beginning.

Thence North along the Eastern Right-of-Way Line of South 73rd Street and on the Westerly Line of Lot 24 Regular Tracts the following courses:

N 17°22'00" W for a distance of 654.45';  
Thence N 0°01'01" W for a distance of 595.16';  
Thence N 0°07'02" E for a distance of 550.45';  
Thence S 89°27'52" E for a distance of 6.25';  
Thence N 0°07'02" E for a distance of 595.16' to a point on the Southern Right-of-Way Line of Robby Road.

Regular Tracts the following courses:

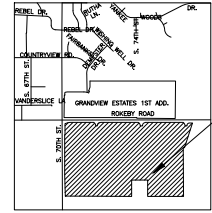
Thence S 77°28'54" E for a distance of 122.00';  
Thence N 77°16'02" E for a distance of 72.00';  
Thence S 81°07'11" E for a distance of 80.00';  
Thence S 89°50'02" E for a distance of 253.20';  
Thence S 70°59'08" E for a distance of 48.00';  
Thence S 12°15'00" E for a distance of 59.00';  
Thence N 88°41'12" E for a distance of 66.00';  
Thence N 87°13'48" W for a distance of 48.00';  
Thence N 27°38'17" E for a distance of 66.00';  
Thence N 68°50'02" E for a distance of 48.00';  
Thence N 77°16'02" E for a distance of 54.87';  
Thence S 89°50'02" E for a distance of 133.67';  
Thence S 48°17'50" E for a distance of 48.00';  
Thence S 27°15'40" E for a distance of 48.00';  
Thence S 58°58'51" E for a distance of 48.00';  
Thence S 89°50'02" E for a distance of 66.00';  
Thence N 0°07'02" E for a distance of 16.14';  
Thence N 17°07'02" E for a distance of 48.00';  
Thence S 48°17'50" E for a distance of 48.00';  
Thence N 22°24'49" E for a distance of 56.00';  
Thence S 89°50'02" E for a distance of 122.00';  
Thence S 47°02'12" E for a distance of 66.00';  
Thence S 32°27'08" E for a distance of 48.00';  
Thence S 11°15'02" E for a distance of 33.00';  
Thence S 89°50'02" E for a distance of 48.00';  
Thence N 0°07'02" E for a distance of 6.25';  
Thence N 0°07'02" E for a distance of 48.00';  
Thence N 32°56'11" E for a distance of 48.00';  
Thence N 92°34'12" E for a distance of 48.00';  
Thence S 89°50'02" E for a distance of 118.17' to the Northwest Corner of Lot 26 Regular Tracts; Thence on the East Line of Lot 26 Regular Tracts the following courses:  
S 17°22'00" W for a distance of 654.45';  
Thence S 0°01'01" E for a distance of 595.16' to the Southwest Corner of Lot 26, said point also being on the South Line of the East Half of the Northwest Quarter of Section 34;  
Thence on the South Line of Lot 26 and on the South Line of the East Half of the Northwest Quarter of Section 34, N 89°50'02" W for a distance of 212.00' to the Southwest Corner of Lot 23 Regular Tracts, said point also being the Southwest Corner of the West Half of the Northwest Quarter of Section 34; Thence on the South Line of Lot 23 Regular Tracts and on the South Line of the West Half of the Northwest Quarter of said Section 34, S 89°50'02" E for a distance of 108.00' to the Southwest Corner of Lot 18 Regular Tracts; Thence N 0°04'25" E on the East Line of Lot 18 Regular Tracts for a distance of 370.00' to the Northwest Corner of Lot 19 Regular Tracts; Thence N 89°50'02" W on the North Line of Lot 19 and 18 Regular Tracts for a distance of 570.00' to the Northwest Corner of Lot 18 Regular Tracts, said point also being on the South Line of the Northwest Quarter of said Section 34;  
Thence N 89°50'02" W on the South Line of Lot 23 and 24 Regular Tracts and on the South Line of the Northwest Quarter of said Section 34 for a distance of 273.00' to the Point of Beginning, and meeting at said Point of Beginning of 271.33 acres more or less.

Subject to any and all easements and restrictions of record

# GRANDVIEW ESTATES SECOND ADDITION ANNEXATION & AMENDED COMMUNITY UNIT PLAN #19002A

## WAIVERS

- DESIGN STANDARDS, CHAPTER 2.00, SECTION 3.3.6 TO ALLOW SANITARY SEWER TO RUN OPPOSITE STREET GRADUES, AND TO ALLOW SANITARY SEWER TO BE INSTALLED TO A DPTH OF 15'.
- DESIGN STANDARDS, CHAPTER 2.15, SECTION 3.4.3 TO ALLOW WINDROWWAY AIRWAY TO BEING 3% OF GRADE WITHIN 10' OF AN INTERSECTING STREET.
- SUBMISSION ORDINANCE 26.23.125, PEDESTRIAN WAY WAIVERS FOR BLOCKS 10 AND 15.
- SUBMISSION ORDINANCE 26.23.140C, TO ALLOW SIDE LOT LINES TO DEVIATE FROM BEING RADIAL AND PERPENDICULAR TO STREET ROW.



VICINITY MAP  
NO SCALE

PROJECT  
LOCATION

CURVE #	RADIUS	ANGLE	TANGENT	LENGTH	CH DIST	CH BRG
C1	1500.00	33°09'24"	297.07	517.03	569.94	N46°17'03"E
C2	1500.00	33°29'28"	300.29	583.37	575.13	N49°17'01"E
C3	150.00	64°23'01"	94.43	168.96	158.83	S50°40'07"E
C4	500.00	25°18'59"	112.14	230.83	218.84	N77°09'45"E
C5	150.00	115°40'48"	238.57	302.85	253.97	S53°12'14"E
C6	500.00	33°09'24"	297.06	404.27	398.66	N46°17'03"E
C7	1500.00	34°09'06"	278.12	547.96	543.93	N45°10'13"E
C8	800.00	42°19'30"	309.70	590.97	571.62	N45°17'07"E
C9	500.00	20°41'37"	81.29	166.59	176.61	S74°48'10"W
C10	375.00	82°26'11"	284.70	467.81	438.30	N48°51'15"E
C11	150.00	89°56'11"	148.83	235.45	212.07	N45°08'15"E
C12	500.00	25°38'59"	113.67	223.55	221.69	N12°44'09"W
C13	500.00	77°48'20"	125.70	242.85	240.28	N48°02'51"E
C14	100.00	21°32'40"	96.64	190.92	186.78	N41°00'14"E
C15	200.00	28°28'28"	50.68	99.28	98.30	N41°03'53"E
C16	480.00	38°43'49"	118.25	225.85	223.29	N44°07'13"W
C17	480.00	14°50'50"	86.25	116.52	116.10	N67°20'49"W
C18	480.00	14°50'50"	86.25	116.51	116.19	N67°20'42"W

## LEGEND

- C.U.P. BOUNDARY
- RIGHT OF WAY DEDICATION
- PROPOSED R.O.W.
- PROPOSED LOT LINE
- PROPOSED STREET CENTERLINE
- PROPOSED EASEMENTS
- EXISTING WATER MAIN
- EXISTING SAN. SEWER
- PROPOSED WATER MAIN
- PROPOSED SANITARY SEWER
- PROPOSED FIRE HYDRANT
- PROPOSED SANITARY MANHOLE
- EXISTING TREE MASS
- EXISTING TREE MASS TO BE REMOVED
- LIMITS OF DETENTION CELL
- FLOODPLAIN BASED ON APPROVED UPPER WOODSON TRAIL WATERSHED MASTER PLAN
- FEMA MAPPED 100 YEAR FLOODPLAIN

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STREET PAVING PROFILES	SHEET 21
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STREET PAVING PROFILES	SHEET 23
STREET PAVING PROFILES	SHEET 24
STREET PAVING PROFILES	SHEET 25
STREET PAVING PROFILES	SHEET 26

## OWNER & DEVELOPER:

ROBBY HOLDINGS LTD.  
7211 S. 27TH STREET  
LINCOLN, NE 68512

## ENGINEER:

CIVIL DESIGN GROUP, INC.  
8888 EXECUTIVE WOODS DRIVE  
SUITE 200  
LINCOLN, NE 68512  
(402)434-5434

## SURVEYOR:

ALLIED SURVEYING & MAPPING  
8888 EXECUTIVE WOODS DRIVE, SUITE 200  
LINCOLN, NE 68512  
(402)434-5434

Civil Design Group, Inc.  
8888 EXECUTIVE WOODS DRIVE, SUITE 200  
LINCOLN, NE 68512  
(402)434-5434  
www.civilgroup.com

CONSULTING ENGINEER & LAND USE PLANNERS  
CIVIL DESIGN & SITE DEVELOPMENT PLANNING AND ZONING

REVISIONS

NO.	DATE	DESCRIPTION
1	10/1/2021	ISSUED FOR PERMIT

GRANDVIEW ESTATES SECOND ADDITION  
ANNEXATION & AMENDED COMMUNITY UNIT PLAN #19002A

COVER SHEET

LINCOLN, NEBRASKA

Drawn by: JH  
Checked by: JH  
Approved by: JH  
Project no.: 2020-0400  
Drawing no.:  
Date: 06/10/2022

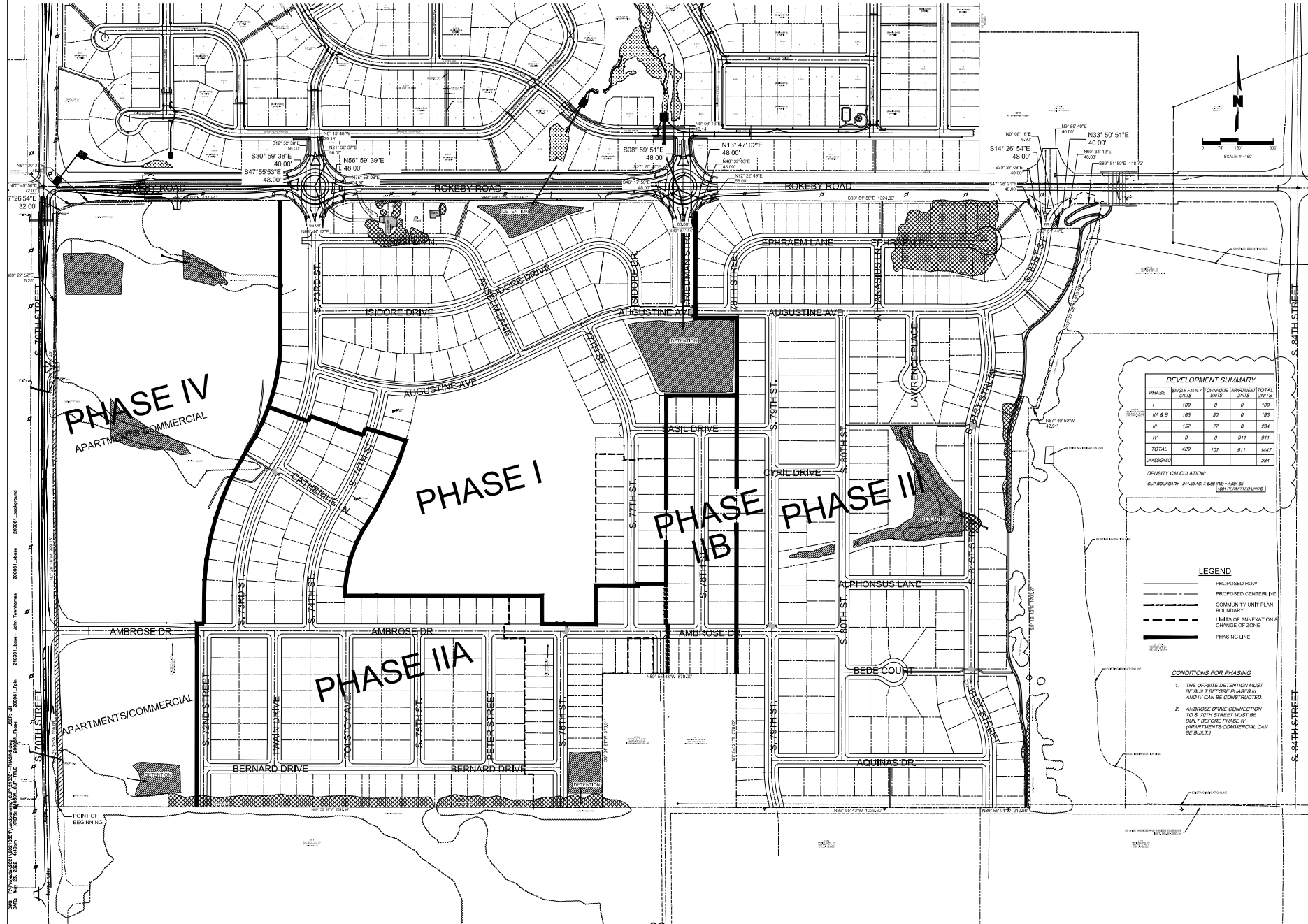
SHEET  
1 OF 26



# GRANDVIEW ESTATES SECOND ADDITION ANNEXATION & COMMUNITY UNIT PLAN #19002

Civil Design Group, Inc.  
1000 N. LINCOLN AVENUE, SUITE 200  
LINCOLN, NE 68502  
PH: 402-464-6464 FAX: 402-464-6467  
www.civilgroup.com

CONSULTING ENGINEERS & LAND USE PLANNERS  
CIVIL DESIGN SITE DEVELOPMENT PLANNING AND ZONING



**DEVELOPMENT SUMMARY**

PHASE	BRIDGE FAMILY UNITS	CONDOMINIUM UNITS	APARTMENT UNITS	TOTAL UNITS
I	109	0	0	109
IIA & B	163	30	0	193
III	157	77	0	234
IV	0	0	911	911
<b>TOTAL</b>	<b>429</b>	<b>107</b>	<b>911</b>	<b>1447</b>
<b>ADDITIONAL UNITS</b>				<b>234</b>

**DENSITY CALCULATION**  
 GROUND COVER: 21.4% NO. 1: 1.44% NO. 2: 1.44% NO. 3: 1.44%  
 TOTAL DENSITY: 1.44% (PER 1000 SQ. FT.)

- LEGEND**
- PROPOSED ROW
  - PROPOSED CENTERLINE
  - COMMUNITY UNIT PLAN BOUNDARY
  - LIMITS OF ANNEXATION
  - CHANGE OF ZONE
  - PHASING LINE

- CONDITIONS FOR PHASING**
- THE OFFSITE DETENTION MUST BE BUILT BEFORE PHASES II, III AND IV CAN BE CONSTRUCTED
  - AMBROSE DRIVE CONNECTION TO S. 70TH STREET MUST BE BUILT BEFORE PHASE IV (APARTMENTS/COMMERCIAL CAN BE BUILT.)

**REVISIONS**

NO.	DATE	DESCRIPTION
1	11/15/2022	ISSUED FOR PERMIT

GRANDVIEW ESTATES SECOND ADDITION  
ANNEXATION & AMENDED COMMUNITY UNIT PLAN #19002A  
PHASING PLAN  
LINCOLN, NEBRASKA

Drawn by: jh  
Checked by: jh  
Designed by: jh  
Project no.: 202142001  
Drawing no.: 011900202  
Date: 11/15/2022

**SHEET**  
26 OF 26



## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER  
Text Amendment #22004

FINAL ACTION?  
No

PLANNING COMMISSION HEARING DATE  
June 22, 2022

RELATED APPLICATIONS  
None

### RECOMMENDATION: APPROVAL

#### BRIEF SUMMARY OF REQUEST

The proposed text amendment was submitted by CL Construction LLC to amend Lincoln Municipal Code (LMC) 27.72.040(a) Maximum Height and Minimum Lot Requirements for the H Districts to allow for a rear yard setback of 5 feet for the H-3 District when not adjacent residential. The current requirement for H-3 is for a rear yard setback of 30 feet or 20% of the lot depth. The Planning Department is recommending also including the H-1 and H-2 Zoning Districts as part of this proposal.

#### JUSTIFICATION FOR RECOMMENDATION

The proposed text amendment allows reduction of rear setbacks for the H-1, H-2 and H-3 zoning districts to match side yard setbacks for where commercial use abuts other commercial or non-residential zoning. No change is proposed for where commercial use abuts residential zoning, therefore, there will be no negative impact to residential neighborhoods. In commercial areas it expands the buildable area without having a significant impact on adjacent properties.

#### APPLICATION CONTACT

Ben Harris  
402-213-1682 or  
[Benh@clnebraska.com](mailto:Benh@clnebraska.com)

#### STAFF CONTACT

George Wesselhoft, Planner  
402-441-6366 or  
[gwesselhoft@lincoln.ne.gov](mailto:gwesselhoft@lincoln.ne.gov)

#### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The proposed text is in conformance with the Comprehensive Plan by allowing flexibility for commercial uses.

#### KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

##### Policies Section

P12: Economic Growth - Promote and foster appropriate, balanced, and focused future economic growth that maintains the quality of life of the community.

##### Action Steps

6. Explore additional opportunities for streamlining the zoning and building permitting processes.

#### ANALYSIS

1. This text amendment is to amend LMC 27.72.040(a) Maximum Height and Minimum Lot Requirements for the H Districts to change the rear setback requirement from 30 feet or 20% of the lot depth to 5 feet or if abutting residential then the smaller of 30 feet or 20% of depth. The proposal is to amend this requirement for the H-1, H-2 and H-3 Zoning Districts.
2. The applicant's letter states the reason for the text amendment is to allow for a proposed building addition with the reduced rear yard setback. Although the applicant is requesting this text amendment for a specific property at 3030 N 33<sup>rd</sup> Street in the H-3 zoning district, the amendment would be throughout the City. Further, staff is

recommending the both the H-1 and H-2 zoning district be added so all three zoning districts have the same rear yard setback requirement.

3. It is important to note that the change to the rear yard setback proposed for the districts would only be for instances where there is “not abutting residential”, meaning residential zoning. If there is abutting residential zoning, the existing requirement for rear yard setback of the smaller of 30’ or 20% of lot depth would still apply.
4. Over time Planning has received complaints from several property owners that the large rear yard setback for a building doesn’t make sense in these types of zoning districts. H-1 and H-2, for example, have a side yard of 5’ but a rear yard generally of 30’. This rear yard area can be paved with parking, so this amendment doesn’t involve green space requirements but rather just building placement. The rear yard setback in the B-2, B-3 and B-5 zoning district is zero when abutting commercial or industrial zoning.
5. The H-2 and H-3 Zoning Districts have a minimum 5-foot setback for side yard/20-foot minimum side yard if abutting residential whereas H-1 is simply 5 feet. The proposed text amendment for the rear yard setback would thus be the same as the side yard setback except when abutting residential.
6. The proposed text amendment aligns with the Comprehensive Plan by providing flexibility for commercial uses without negatively impacting residential neighborhoods.

Prepared by

---

George Wesselhoft, Planner

Date: June 9, 2022

Applicant: CL Construction LLC  
3415 N. 44<sup>th</sup> Street  
Lincoln, NE 68504  
402-440-2212  
[Chris@clnebraska.com](mailto:Chris@clnebraska.com)

Contact: Ben Harris  
3415 N. 44<sup>th</sup> Street  
Lincoln, NE 68504  
402-213-1682  
[Benh@clnebraska.com](mailto:Benh@clnebraska.com)

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/TX/22000/TX22004 revise H-3 setback.gjw.docx>

Benjamin Harris  
CL Construction LLC.  
Phone 402.440.2212  
3415 N. 44<sup>th</sup> Street, Suite #1  
Lincoln, NE 68504  
May 20<sup>th</sup>, 2022

David Cary  
Director of Planning  
City of Lincoln Planning Department  
City Building, 555 S 10<sup>th</sup> Street, #213  
Lincoln, NE 68508

Mr. David Cary

The city code for zone H3 requires a rear yard set back of 30' or 20 percent of the total lot depth. Zones H1 and H2 require a rear yard setback of only 5 feet when abutting a commercial lot at the rear. We would like to propose a text amendment to Zone H3 to mirror zones H1 and H2 allowing only a 5 foot set back when abutting a commercial lot at the rear, and 30' for residential.

We are proposing this change to zone H3 to allow us the ability to modernize and enhance the overall appearance of a property. The project at the center of this amendment is Watson's Auto Service at 3030 N 33<sup>rd</sup> Street Lincoln, NE 68504. We had a lot line survey completed and determined that there is space for a 65' wide building with the current set back rules. Our customer needs to be able to have a 70' wide building in order to install a 4-post vehicle lift. The 4-post lift allows his employees to work on customers bigger vehicles as these types of lifts provide better stability, increasing safety for his employees when working on the longer vehicles. In addition, it also provides a higher degree of efficiency when working under the vehicle on exhaust repairs and replacements, as well as allows them to do vehicle alignments on two lifts at the same time.

The proposed changes will not only benefit our customer but will also benefit other commercial property owners in this zone for future business development. From a commercial development and city planning standpoint. Making these changes will make it easier for current and future Lincoln business owners to enhance their properties and to expand their business it will help bring up the overall appearances of areas of the city and possibly bring new life to areas of the city that haven't seen much for a face lift or modernization in several years.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE amending Lincoln Municipal Code Section 27.72.040 Height and Lot Regulations Highway Commercial Zoning Districts to amend the rear yard setback for H-1, H-2, and H-3 Districts from the smaller of 30 feet or 20% of depth to 5 feet or the smaller of 30 feet or 20% depth in areas abutting residential areas; and repealing Section 27.72.040 as hitherto existing.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. That Section 27.72.040 of the Lincoln Municipal Code be amended to read as follows:

**27.72.040 Height and Lot Regulations Highway Commercial Zoning Districts.**

The maximum height and minimum lot requirements within the H-1, H-2, H-3 and H-4 zoning districts shall be as follows:

a. **General Requirements.** See Table 27.72.040(a) below.

Table 27.72.040(a): Maximum Height and Minimum Lot Requirements for the H Districts					
		H-1	H-2	H-3	H-4
Other Allowed Uses	Average Lot Width	50'	0'	0'	0'
	Lot Area (sq. ft.)	5,000	0	0	15,000
	Frontage	0'	0'	0'	75'
	Front Yard	20'	20'	20'	20'
	Corner Front Yard	20'	20'	20'	20'
	Side Yard / Side Yard Abutting Residential	5'	5'/20'	**	20'/50'
	Rear Yard /Rear Yard Abutting Residential	5' / Smaller of 30' or 20% of depth			20'/50'
	Height	55'*	55'*	55'*	55'*
<p>* In all H zoning districts, if the height of the building is over 45 feet but not more than 55 feet, that portion of the building in excess of 45 feet shall be required to have one additional foot of setback to any required side and/or rear yard abutting an R-1 through R-4 zoning residential district for each one foot of building height in excess of 45 feet.</p> <p>** The side yard shall be the smaller of 15' or 10% of the lot width. Minimum side yard of 5 feet or if abutting residential a minimum side yard of 20 feet.</p>					

1           Section 2. That Section 27.72.040 of the Lincoln Municipal Code as hitherto existing be  
2 and the same is hereby repealed.

3           Section 3.     This ordinance shall be published, within fifteen days after the passage  
4 hereof, in one issue of a daily or weekly newspaper of general circulation in the City, or posted on  
5 the official bulletin board of the City, located on the wall across from the City Clerk's office at  
6 555 S. 10<sup>th</sup> Street, in lieu and in place of the foregoing newspaper publication with notice of  
7 passage and such posting to be given by publication one time in the official newspaper by the City  
8 Clerk. This ordinance shall take effect and be in force from and after its passage and publication  
9 or after its posting and notice of such posting given by publication as herein and in the City Charter  
10 provided.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2022:

\_\_\_\_\_  
Mayor



## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER  
Change of Zone #22018  
Use Permit #22006

FINAL ACTION?  
No

DEVELOPER/OWNER  
Lincoln Family Church

PLANNING COMMISSION HEARING DATE  
June 22, 2022

RELATED APPLICATIONS  
None

PROPERTY ADDRESS/LOCATION  
6601 South 70<sup>th</sup> Street

**RECOMMENDATION: CZ#22018  
UP#22006**

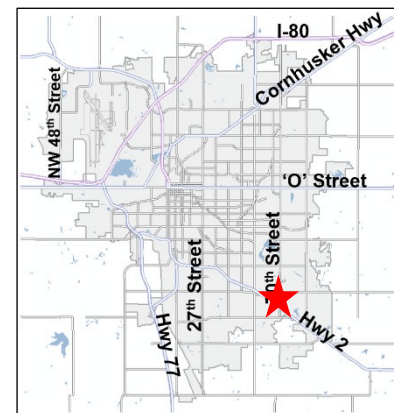
**APPROVAL  
CONDITIONAL APPROVAL**

### BRIEF SUMMARY OF REQUEST

This is a combined request for a Change of Zone from AGR Agricultural Residential to O-3 Office Park, and a Use Permit matching the same boundary for the lot at 6601 South 70<sup>th</sup> Street. The site is located directly across the street from the Willowbrook Shopping Center.

The site plan submitted for the use permit creates four lots and an outlot. Three of the lots are for office buildings, and the fourth is for the existing church. The outlot provides an area for stormwater detention and water quality.

Six waivers are requested which allow for a unified development but do not significantly impact surrounding properties and are appropriate.



### JUSTIFICATION FOR RECOMMENDATION

The proposed O-3 zoning fits the character of the existing development to the south and east while providing a transition to the residential areas to the north and west. The O-3 district is designed to be adjacent to residential zoning and limits uses to help mitigate the impact on the adjacent residential areas.

### APPLICATION CONTACT

Mike Eckert, 402-434-8494  
[meckert@civildg.com](mailto:meckert@civildg.com)

### STAFF CONTACT

Brian Will, 402-441-6362 or  
[bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)

### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan historically has shown this area for future low-density residential uses. While the proposed O-3 zoning is not a residential zoning district, it is limited primarily to residential and office uses and is designed to be a transitional zoning district. In this case it provides a good transition from the adjacent residential uses to the more intensive commercial uses along South 70<sup>th</sup> Street.

### WAIVERS

1. LMC 26.15.020 - To waive preliminary plat information - (Recommend Approval)
2. LMC 26.67.030 - To allow parking in a side yard except when adjacent to residential - (Recommend Approval)
3. LMC 27.72 - Adjust the front yard setback from 20' to 15' - (Recommend Approval)
4. LMC 27.67.030 - To allow cross-parking among lots to meet minimum requirements - (Recommend Approval)
5. Design Standard 3.3.3 - To allow non-standard termination of a roadway - (Approval)
6. Design Standard 3.7.2 - To allow a non-standard cul-de-sac with no curbs - (Approval)
7. Design Standard 3.100 Sec. 9 - To exceed light trespass across internal lot lines - (Approval)



## KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

### Introduction Section: Growth Framework

Figure GF.b: 2050 - This site is designated for future low-density residential uses on the 2050 Future Land Use Plan.

### **Fundamentals of Growth in Lancaster County**

The City of Lincoln's present infrastructure investment should be maximized by planning for well-designed and appropriately-placed residential and commercial development in existing areas of the city with available capacity. This can be accomplished by redeveloping underutilized commercial centers into areas that include a mix of uses, and encouraging higher-density residential redevelopment in appropriate locations, including missing middle housing. New infrastructure investments to serve growth areas can be maximized by encouraging a higher density of both residential and commercial uses in these areas.

### Goals Section

G2: Complete Neighborhoods. Lincoln and Lancaster County will support complete neighborhoods within both developing and redeveloping areas of Lincoln. A complete neighborhood is one where residents are able to get the goods and services to meet daily needs within 15 minutes of their residence including a variety of housing options, grocery stores and other commercial services, quality public schools, public open spaces and recreational facilities, affordable active transportation options, and civic amenities. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and even small lot single-family.

### Elements Section

#### E2: Infill and Redevelopment

##### **Infill and Redevelopment Approach**

PlanForward identifies the potential for 12,000 new dwelling units to be located within the existing built-out portion of the City, roughly 25 percent of the projected 48,000 new dwelling units to be built citywide by 2050.

##### **Neighborhood Edges**

Neighborhood edges present an opportunity for missing middle housing, which can help expand affordable housing options and overall housing choice in the community. Missing middle housing includes "house-scale" buildings that provide typically 3 to 12 units and fit in with the character of single-family neighborhoods.

Criteria to consider when locating and designing neighborhood edge redevelopment should include:

- Provide direct or adjacent access to an arterial street to minimize traffic impacts on neighborhood streets.
- In some cases a transition zone may be needed when creating higher-density redevelopment adjacent to lower density neighborhoods.
- Target legacy commercial sites and abandoned, vacant, or blighted parcels for new missing middle housing.
- Consider the character of adjacent built environment in both the design and location of buildings.

##### **Existing Neighborhoods**

Infill of housing in existing neighborhoods should respect the existing pattern of development. Infill redevelopment should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.

## Commercial Infill

### Figure E3.f: Commercial Infill Design Strategies

1. Encourage additional vehicular access to an arterial street.
2. Encourage a Floor Area Ratio that exceeds to existing/previous commercial uses on the site.
3. Face existing residential uses with new residential uses rather than the backs of commercial buildings unless existing residential faces the opposite direction such as along an alley.
4. Discourage commercial driveways that interrupt the blockface of a residential street, especially when residences face the street.
5. Encourage shared driveways and interconnected parking lots where possible.
6. Orient buildings to the street, especially corners.
7. Maintain or adaptively reuse existing structures (especially historical structures) where possible.
8. Encourage a vertical mix of residential and commercial use types.
9. Encourage shared parking between land uses with different peak demand periods.
10. Maintain or enhance on-street parking resources, especially in established/historic commercial districts

### Priorities Section

P2: Existing Neighborhoods - Continue our commitment to strong, diverse, and complete neighborhoods.

1. Promote the preservation, maintenance, and renovation of existing housing and supporting neighborhood uses throughout the City, with special emphasis on low and moderate income neighborhoods.
2. Maintain and enhance infrastructure and services, commensurate with needs, in existing neighborhoods.
3. Encourage well-designed and appropriately placed density, including within existing apartment and group living complexes and in redeveloping commercial or industrial centers, where there is land available for additional buildings or expansions. Provide flexibility to the marketplace in siting future residential development locations. This includes appropriately placed infill in prioritized Nodes and Corridors, neighborhood edges, and underutilized commercial or industrial sites.
4. Recognize that broad economic diversity within existing neighborhoods encourages reinvestment and improves quality of life for all residents while acknowledging the need for affordable housing.
5. Preserve, protect and promote the character and unique features of urban neighborhoods, including their historical and architectural elements.
6. Promote the continued use of residential dwellings and all types of buildings, to maintain the character of neighborhoods and to preserve portions of our past. Building code requirements for the rehabilitation of existing buildings should protect the safety of building occupants, while recognizing the need for flexibility that comes with rehabilitating existing buildings.

### **ANALYSIS**

1. These requests seek a change of zone from AGR to O-3 along with a Use Permit for up to 28,650 square feet of office floor area and a 9,850 square foot church. The tract is 4.82 acres in area and surrounded by residential uses and AGR zoning to the north and west, commercial uses zoned H-4 to the south, and South 70<sup>th</sup> Street on the east with the Willowbrook Shopping Center which is zoned B-2 beyond that.
2. The use permit creates 4 lots and an outlot. Three of the lots are for office buildings, the fourth is for the existing church, and the outlot provides for detention and water quality improvements. The plan anticipates cross-parking among the various users to meet the minimum parking requirements. Lots 3 and 4 are the two that primarily would use this provision, where the largest office building and the church would at times share parking.
3. Several waivers were requested with the Use Permit, they are as follows:
  - a. LMC 26.15.020 - To waive preliminary plat information - This adjustment is supported, but not as stated. An adjustment to allow this information to be submitted later by an administrative amendment is acceptable, but not a waiver to submitting the information altogether. Therefore, requirement that the

information be provided is not waived, rather the timing of its submission is adjusted to allow it to be submitted later and approved by administrative amendment prior to final plat and building permits.

- b. LMC 26.67.030 - To allow parking in a side yard except when adjacent to residential - This allows parking in the side yard where those side yards exist internal to the development. Parking in a side yard adjacent to residential is still prohibited in keeping with the intent of the O-3 district.
  - c. LMC 27.72 - Adjust the front setback from 20' to 15' - The front setback for the O-3 district is 20' and it is maintained throughout the development with one exception. Additional right-of-way is provided for the termination of Marcus Road, and as a technical matter the yard adjacent to the new right-of-way is a front yard. The adjustment to 15' still provides a separation in excess of 48' to the west property line, 8' more than the required 40' rear setback for the O-3.
  - d. LMC 27.67.030 - To allow cross-parking among lots to meet minimum requirements - The provision primarily affects Lots 3 and 4, the two largest users in the development. Neither have the required parking on their own lot to support the floor area shown, but with cross-parking the minimum standards are achieved. Given the nonconcurrent parking demands of the two users - office use is primarily 7 a.m. to 6 p.m. Monday through Friday and the church is typically evening and weekends - only the amount of parking needed will be built and allows for a more efficient use of the site.
  - e. Design Standard 3.3.3 - To allow non-standard termination of a roadway - Initially, the extension of Marcus Road to South 70<sup>th</sup> Street was the preferred alternative and its design was investigated. After review City staff concluded that such a roadway design would not meet design standards given the amount of curvature required and concluded that termination of the roadway was appropriate. Instead of a typical cul-de-sac an abbreviated hammerhead design is shown. City staff including LFR have concluded it provides adequate space for a turnaround.
  - f. Design Standard 3.7.2 - To allow a non-standard cul-de-sac with no curbs - This matches the existing design of Marcus Road and is appropriate.
  - g. Design Standard 3.100 Sec. 9 - To exceed light trespass across internal lot lines - This will allow light trespass across lot lines internal to the development and is typical of unified developments such as this. It does not extend to the perimeter of the development however, where light trespass must still be contained per the Lighting Design Standards.
4. Access to the site is provided by a single existing driveway now serving the church. Anticipating that this access point would remain into the future a right-of-way stub was dedicated when South 70<sup>th</sup> Street was improved to a four-lane arterial street facility several years ago. Lincoln Transportation and Utilities (LTU) has determined that these stubs are often no longer needed, and in this case recommends that it be vacated. After vacation the land can be purchased by the owner and made part of the development.
5. Marcus Road is currently a temporary dead-end street which abuts the west edge of the subject property. It was anticipated that Marcus Road would likely be extended to South 70<sup>th</sup> Street whenever the church property redeveloped. During the review of several redevelopment options of the site including this one it was determined that the street extension was not desirable. It would require an 'S' curve design over a span of less than 350' and LTU determined it would not be a good a road design and recommended against the connection.
- It is noted that with the permanent termination of Marcus Road it will require renaming the street consistent with the requirements of Subdivision Ordinance. Permanent dead-end streets are named Place, Court, Bay or Circle. As a condition of approval of this use permit the developer will be required to apply to the City for the street name change which requires City Council approval. If approved, the Department of Building and Safety then notifies the five property owners east of the intersection of Anns Court and Marcus Road that their addresses will be changed.
6. A right-turn lane in South 70<sup>th</sup> Street will be necessary per the Access Management Policy due to the intensification of the land use. The turn lane can be accommodated without the dedication of additional right-of-way. There is 120' of right-of-way in South 70<sup>th</sup> Street now, and due to its design where the roadway was off-set to the east the new turn lane along with a relocated sidewalk and all required separation can be accommodated. The site plan needs to be updated to reflect the revised design based upon the cross-section prepared by Civil Design Group.



## CONDITIONS OF APPROVAL - USE PERMIT #22006

This approval permits 28,650 square feet of office floor area and a church (or 16,800 square foot office use) for a total of 46,850 square feet of commercial floor area with waivers to allow preliminary plat information to be approved by separate administrative amendment, allow parking in a side yard except when adjacent to residential, adjust the front setback from 20' to 15' as shown on the site plan, to allow cross-parking among lots to meet minimum requirements, to allow non-standard termination of a roadway, to allow a non-standard cul-de-sac with no curbs, and to exceed light trespass across internal lot lines.

### Site Specific Conditions:

1. The City Council approves associated request:
  - 1.1 Change of Zone #22018
2. The permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 2 copies with all required revisions and documents as listed below before a final plat is approved:
  - 2.1 Delete Notes #7,11 and 16 as they are either redundant or not necessary.
  - 2.2 In several locations on the site plan there is overlapping text to be corrected.
  - 2.3 Provide the dimension for the paving at its termination.
  - 2.4 Revise the site plan to show the required turn lane and relocated sidewalk with all dimensions consistent with Design Standards.
  - 2.5 Remove the parking and drive aisle from the southeast corner of the new right-of-way dedication.
  - 2.6 Update the waiver table to reflect the waivers requested.
  - 2.7 Add a note which states 'Prior to approval of a final plat the applicant will make application to the City requesting a street name change for Marcus Road. The street name change request shall be decided by the City Council.'
  - 2.8 Modify Note #19 to state 'Developer shall petition to vacate the right-of-way stub into the property along South 70<sup>th</sup> Street. The right-of-way stub must be vacated prior to approving a final plat for any office lot.'
  - 2.9 Modify Note #20 to state 'Setbacks area as per the O-3 zoning district except as shown.'
3. Final plat(s) is/are approved by the City.

If any final plat on all or a portion of the approved use permit is submitted five (5) years or more after the approval of the use permit, the city may require that a new use permit be submitted, pursuant to all the provisions of section 26.31.015. A new use permit may be required if the subdivision ordinance, the design standards, or the required improvements have been amended by the city; and as a result, the use permit as originally approved does not comply with the amended rules and regulations.

Before the approval of a final plat, the public streets, private roadway improvements, sidewalks, public sanitary sewer system, public water system, drainage facilities, land preparation and grading, sediment and erosions control measures, storm water detention/retention facilities, drainageway improvements, street lights, landscaping screens, street trees, temporary turnaround and barricades, and street name signs, must be completed or provisions (bond, escrow or security agreement) to guarantee completion must be approved by the City Law Department. The improvements must be completed in conformance with adopted design

Permittee agrees:

to complete the installation of sidewalks along an improved major street as shown on the final plat within two (2) years following the approval of this final plat.

to complete the public water distribution system to serve this plat within two (2) years following the approval of the final plat.

to complete the public wastewater collection system to serve this plat within two (2) years following the approval of the final plat.

to complete the enclosed public drainage facilities shown on the approved drainage study to serve this plat within two (2) years following the approval of the final plat.

to complete land preparation including storm water detention/retention facilities and open drainageway improvements to serve this plat prior to the installation of utilities and improvements but not more than two (2) years following the approval of the final plat

to complete the installation of street trees along South 70<sup>th</sup> Street as shown on the final plat within two (2) years following the approval of this final plat.

to complete the installation of the permanent markers prior to construction on or conveyance of any lot in the plat.

to complete any other public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Land Subdivision Ordinance in a timely manner which inadvertently may have been omitted from the above list of required improvements.

to submit to the Director of Lincoln Transportation and Utilities a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land for approval.

to comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.

to complete the public and private improvements shown on the Use Permit.

to keep taxes and special assessments on the outlots from becoming delinquent.

to maintain the outlots and private improvements in a condition as near as practical to the original construction on a permanent and continuous basis.

to maintain and supervise the private facilities which have common use or benefit in a condition as near as practical to the original construction on a permanent and continuous basis, and to recognize that there may be additional maintenance issues or costs associated with providing for the proper functioning of storm water detention/retention facilities as they were designed and constructed within the development and that these are the responsibility of the land owner.

to retain ownership of and the right of entry to the outlots in order to perform the above-described maintenance of the outlots and private improvements on a permanent and continuous basis. However,

Permittee(s) may be relieved and discharged of such maintenance obligations upon creating in writing a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance subject to the following conditions:

- (1) Permittee shall not be relieved of Permittee's maintenance obligation for each specific private improvement until a registered professional engineer or nurseryman who supervised the installation of said private improvement has certified to the City that the improvement has been installed in accordance with approved plans.
- (2) The maintenance agreements are incorporated into covenants and restrictions in deeds to the subdivided property and the documents creating the association and the restrictive covenants have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds

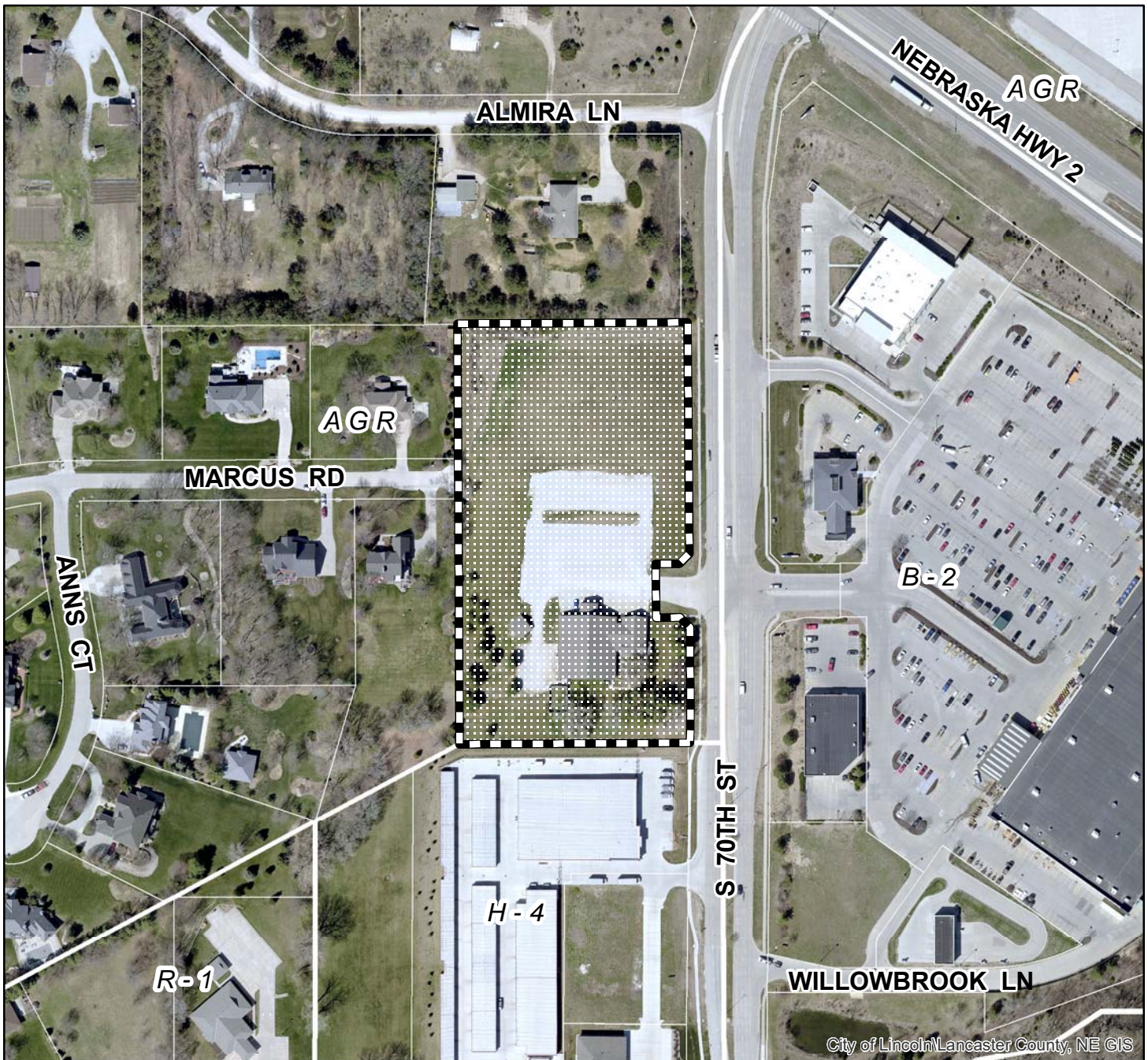
to pay all design, engineering, labor, material, inspection, and other improvement costs.

to relinquish the right of direct vehicular access to South 70<sup>th</sup> Street except as shown.

**Standard Conditions:**

4. The following conditions are applicable to all requests:
  - 4.1 Before occupying the dwelling units / buildings all development and construction is to substantially comply with the approved plans.
  - 4.2 All privately-owned improvements, including landscaping and recreational facilities, are to be permanently maintained by the Permittee or an appropriately established homeowners association approved by the City.
  - 4.3 The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters must be in substantial compliance with the location of said items as shown on the approved site plan.
  - 4.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 4.5 The applicant shall sign and return the letter of acceptance to the City Clerk. This step should be completed within 60 days following the approval of the special permit. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefore to be paid in advance by the applicant. Building permits will not be issued unless the letter of acceptance has been filed.

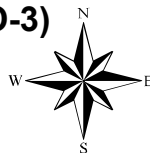




City of Lincoln/Lancaster County, NE GIS

2020 aerial

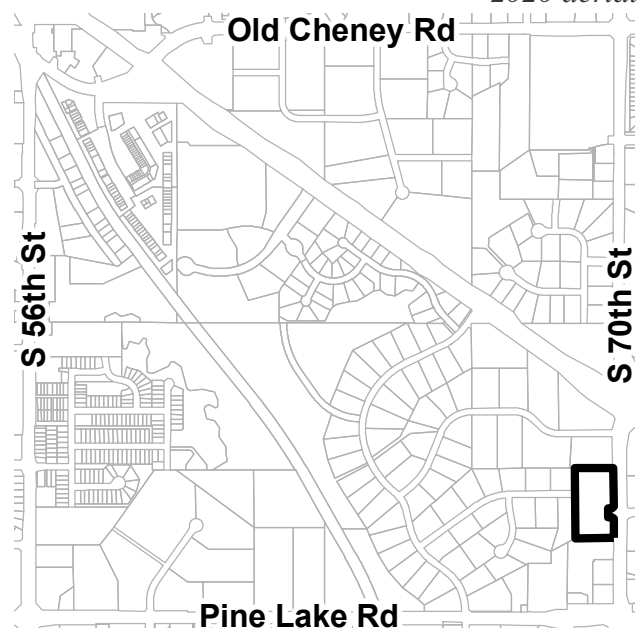
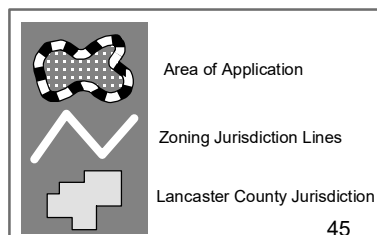
**Change of Zone #: CZ22018 (AGR to O-3)**  
**and Use Permit #: UP22006**  
**S 70th St & Hwy 2**

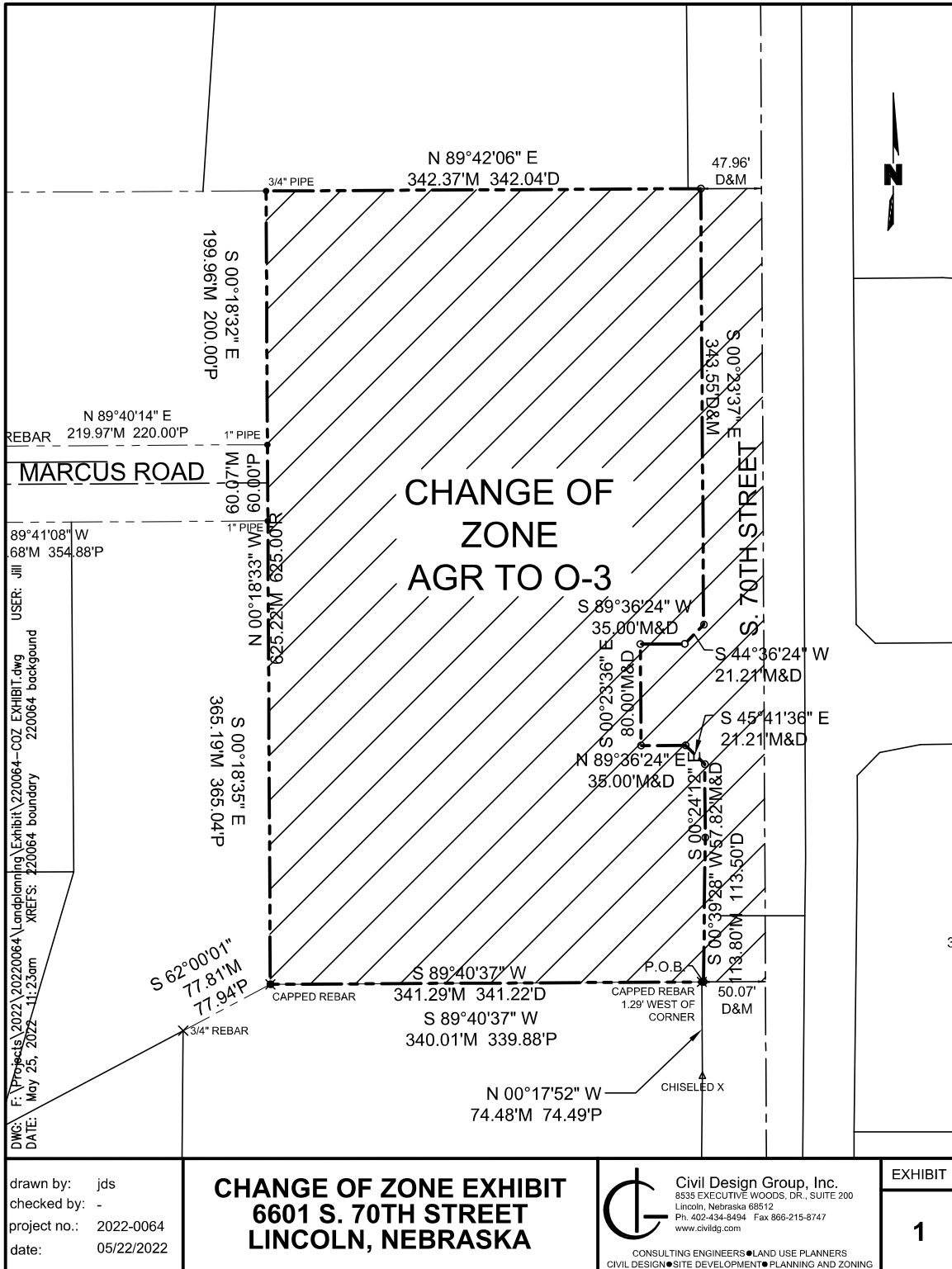


## Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

**One Square Mile:**  
**Sec.16 T09N R07E**









## CHANGE OF ZONE LEGAL

A survey of Lot 162 Irregular Tracts, located in the Southeast Quarter of Section 16, Township 9 North, Range 7 East, of the 6th P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Referring to the Southeast Corner of the Southeast Quarter of said Section 16;  
Thence North, on the East Line of the Southeast Quarter, on an assumed bearing of N 00°17'09" W for a distance of 720.55'; Thence S 89°42'51" W for a distance of 48.78' to the Southeast Corner of Lot 162 Irregular Tracts, said point being on the Westerly Right-of-way Line of S. 70<sup>th</sup> Street, said point also being the Point of Beginning:  
Thence S 89°40'37" W, on the South Line of Lot 162 Irregular Tracts, for a distance of 341.29' to the Southwest Corner of said Lot 162; Thence N 00°18'33" W, on the West Line of Lot 162 Irregular Tracts, for a distance of 625.22' to the Northwest Corner of said Lot 162; Thence N 89°42'06" E, on the North Line of Lot 162 Irregular Tracts, for a distance of 342.37' to the Northeast Corner of said Lot 162, said point being on the Westerly Right-of-way Line of S. 70<sup>th</sup> Street;  
Thence Southerly, on the Easterly Line of Lot 162 Irregular Tracts and on the Westerly Right-of-way Line of S. 70<sup>th</sup> Street, the following 8 courses:  
Thence S 00°23'37" E for a distance of 343.55';  
Thence S 44°36'24" W for a distance of 21.21';  
Thence S 89°36'24" W for a distance of 35.00';  
Thence S 00°23'36" E for a distance of 80.00';  
Thence N 89°36'24" E for a distance of 35.00';  
Thence S 45°41'36" E for a distance of 21.21';  
Thence S 00°24'12" E for a distance of 57.82';  
Thence S 00°39'28" W for a distance of 113.80' to the Point of Beginning, and having a calculated area of 4.82 acres more or less.

Subject to any and all easements and restrictions of record.

AND

The adjacent Right-of-Way of N. 70<sup>th</sup> Street.



# Civil Design Group, Inc.

Consulting Engineers & Land Use Planners  
Civil Design • Site Development • Planning & Zoning

May 25, 2022

Mr. David Cary, Director of Planning  
City of Lincoln /Lancaster County  
555 South 10th Street, Room 213  
Lincoln, NE 68508

**Re: Use Permit Application and request for Change of Zone from AGR to O-3 on 4.82 acres of land located at 6601 S. 70<sup>th</sup> Street. CDG Project 2022-0064.**

Dear Mr. Cary:

On behalf of Brad Alderman we submit the enclosed application for an O-3 Use Permit and associated change of zone from AGR to O-3 on 4.82 acres of land at 6601 S. 70<sup>th</sup> Street. The proposed use permit would contain the existing 9,850 sq ft church on the property and permit the addition of 28,650 sq ft of office space.

In discussion with the neighbors to the west and city staff, we are proposing the permanent termination of Marcus Road as it abuts this property from the west. The ROW needed to terminate the roadway to that satisfaction of the City of Lincoln will be granted with subsequent final plats.

We are requesting the following waivers:

1. To Title 26-Section 26.15.020, to waive the information on or accompanying a preliminary plat. This request is based on the desire to finalize these items after the change of zone is approved to allow for the transfer of land to the applicant.
2. To Title 27-Section 27.67.030 to allow parking in the required side yards except when abutting a residential district and to allow cross parking between the church lots and office lots. This is common waiver for the non-concurrent parking demands of this property due to the existing church on-site.
3. To Title 27-Section 27.72, to adjust the front setback from 20' to 15'
4. To Title 27-Section 27.67.030, to allow cross-parking among lots to meet minimum requirements, this a common waiver for projects containing uses that have opposing parking demands, i.e. churches and offices.
5. To Design Standards 3.3.3, for cul-de sacs, to allow for non-standard termination of a roadway, this will allow for let intrusion on the subject property in terminating Marcus Rd ROW.

6. To Design Standards 3.7.2, for curbs, to provide for the alternative termination of Marcus Rd without curbs to match the existing paving style on Marcus Rd.
7. To Design Standards 3.100 Section 9, to allow light trespass across internal lot lines, this allow platting of church lot and the office lots be a hammer-head style turn-around for EMS vehicles.
8. To Title 27-Section 27.72.030, to reduce the setback abutting the future dedication of Marcus Rd ROW to be 15. This is requested as we dedicating ROW to terminate ROW and would like to reduce the setback to better accommodate the site parking and drive aisles on the site plan.

With this application we submit the following items:

Application for a Change of Zone and Use Permit  
Change of Zone Fee of \$1,005.00  
Use Permit Fee of \$1,814.76  
Site plan sheet, uploaded via Project Dox

I hope that this letter in conjunction with the site plan assists you in reviewing this application. Please feel free to call me at (402) 434-8494 so that I can address any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Eckert", with a stylized flourish at the end.

Mike Eckert, AICP

cc: Brad Alderman  
Epic Church



**LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT**

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER  
Special Permit #22019

FINAL ACTION?  
Yes

DEVELOPER/OWNER  
Tracy Brester

PLANNING COMMISSION HEARING DATE  
June 22, 2022

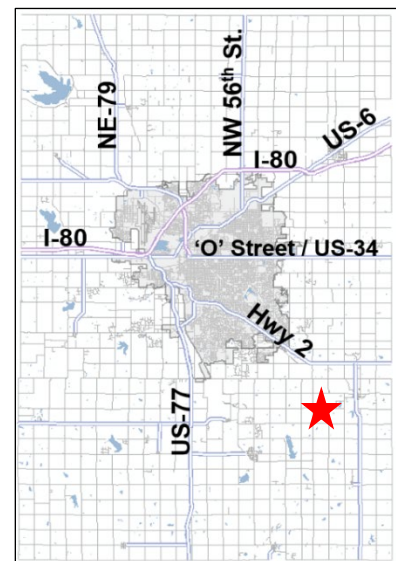
RELATED APPLICATIONS  
None

PROPERTY ADDRESS/LOCATION  
4822 S. 148<sup>th</sup> St.

**RECOMMENDATION: CONDITIONAL APPROVAL**

**BRIEF SUMMARY OF REQUEST**

This is a request for an Accessory Dwelling Unit (ADU) under Article 13.050 of the Lancaster County Zoning Regulations with a waiver for the ADU to be more than 200 feet from the principal house. The ADU will be 270 feet from the house at the furthest point. The lot is 20 acres.



**JUSTIFICATION FOR RECOMMENDATION**

The proposed ADU meets the requirements of Article 13.050 except for one condition. The waiver for the ADU is reasonable due to location of the utility lines and sewage lagoon. Given the lot size, that the ADU and house will share utilities and that the dwelling is in a large accessory building, it is unlikely a future owner would attempt to sell off the ADU separately.

**APPLICATION CONTACT**

Chris & Tracy Brester  
chrisb@bresterconstruction.com

**STAFF CONTACT**

Tom Cajka, (402) 441-5662 or  
tcajka@lincoln.ne.gov

**COMPATIBILITY WITH THE COMPREHENSIVE PLAN**

The proposed ADU meets the goals of the Comprehensive Plan for providing alternative housing choices.

**WAIVERS**

1. To increase the distance from the principal dwelling to the ADU from 200 feet to 270 feet. (Recommend Approval)

## KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

### Goals Section

G1: Safe, Affordable, and Accessible Housing. Lincoln and Lancaster County will support the development of safe, affordable, and accessible quality housing that meets the diverse needs of the community. PlanForward understands the ongoing need for affordable housing and supports development of 5,000 affordable units by the year 2030.

G2: Complete Neighborhoods. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, **accessory dwelling units**, multi-family development, and even small lot single-family.

### Policies Section

P3: Developing Neighborhoods. Action Step #16: encourage a variety of housing types including townhomes, senior living facilities, low/no maintenance condominiums, **accessory dwelling units**, multi-family development, and small lot single-family units.

## ANALYSIS

1. Accessory Dwelling Units (ADU) were added to the Lancaster County Zoning Regulations in December 2018. An ADU is an additional self-contained housing unit that is secondary to the main residence. An ADU can either be attached to the principal dwelling, be part of the principal dwelling, or be a separate building detached from the principal dwelling. The ADU contains its own kitchen, sleeping area and bathroom. ADU's are subordinate in size to the principal dwelling.
2. The following conditions are required for an ADU:
  - A. The lot area shall be 20 acres or larger.  
***The lot area is 20 acres.***
  - B. The total floor area of the ADU shall not exceed the lesser of 1,000 square feet or 40% of the square footage of the principal dwelling, excluding garages, carports and space used for mechanical equipment, such as heating, utilities and water heater or pumps. Any other unfinished space in a basement is included in the square footage to allow it to be furnished in the future. The calculation for the principal dwelling shall be based on the floor area as of the date the special permit is filed.  
***The proposed ADU is 1,000 sq. ft. The principal dwelling is 4,590 sq. ft. per the County Assessors site. The ADU is 21.7% of the square footage of the principal dwelling. The ADU is allowed to be the lesser of 1,000 sq. ft. or 40% of the principal dwelling.***
  - C. No more than 2 bedrooms are allowed in the ADU. Bedroom shall mean any room or space used or intended to be used for sleeping purposes.  
***The floor plan shows that the ADU will have one bedroom.***
  - D. The owner of the lot is required to live on the property in either the principal dwelling or the ADU. The owner of the lot shall file with the Register of Deeds, a deed restriction agreement on the property stating that the accessory dwelling cannot be sold separately from the principal dwelling. The deed restriction agreement must be to the satisfaction of the County Attorney. The deed restriction agreement shall be filed prior to any building permit for the ADU.  
***The owner of the property will live in the principal dwelling.***
  - E. The ADU must share the same access point to the public or private street as the principal dwelling.  
***The site plan shows the ADU sharing the driveway with the principal dwelling.***
  - F. The ADU must meet the same setback requirements as the principal dwelling of the district. The height of the ADU must meet the height limit of the district for a dwelling, but be no higher than the principal dwelling.

*The ADU meets the required setbacks.*

- G. A detached ADU shall be located a distance no greater than 200 feet from the principal dwelling and must not be closer to the street right-of-way than the principal dwelling.

*The site plan shows the ADU 270 feet from the principal dwelling at its furthest point and 215' at the nearest point. The application letter states that the reason for the location is due to utility lines and location of the lagoon. The waiver of the ADU being more than 200 feet from the principal house is acceptable given the topography and these circumstances. The variation is very minor from the 200 foot condition. The arrangement of the ADU, shop and deck could have been revised to meet the 200 foot requirement, but that wouldn't make it any less or more likely to be sold separately. So since there wasn't any value to revising the arrangement, the proposed waiver is acceptable.*

- H. The ADU must share utilities with the principal dwelling unless the owner can demonstrate a practical problem with sharing due to the topography or other unique site considerations.

*The ADU will share utilities with the principal dwelling.*

**CONDITIONS OF APPROVAL:** See attached.

**EXISTING LAND USE & ZONING:** AG-Agriculture Single family dwelling

**SURROUNDING LAND USE & ZONING**

North: AG-Agriculture	Single family homes and farm ground
South: AG-Agriculture	Single family homes and farm ground
East: AG-Agriculture	Farm ground
West: AG-Agriculture	Single family homes and farm ground.

**APPROXIMATE LAND AREA:** 20 acres, more or less.

**LEGAL DESCRIPTION:** Lot 34 I.T. located in the NW ¼ of Section 10, Township 9 North, Range 8 East, Lancaster County, NE.

Prepared by

---

Tom Cajka, Planner

Date: June 9, 2022

Applicant: Chris and Tracy Brester  
4822S. 148<sup>th</sup> St.  
Walton, NE 68461  
chrisb@bresterconstrucion.com

Contact: Mike Eckert  
Civil Design Group  
8535 Executive Woods Dr. Suite 200  
Lincoln, NE 68512  
402-434-8494  
meckert@civildg.com

Owner: Same as applicant

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/SP/22000/SP22019 Brester ADU.tjc.docx>

### **CONDITIONS OF APPROVAL - SPECIAL PERMIT #22019**

Per Article 13.050 this approval permits an Accessory Dwelling Unit (ADU) of up to 1,000 sq. ft. with waivers to allow the ADU to be located approximately 270 feet from the principal house.

#### **Site Specific Conditions:**

1. Before receiving building permits the permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 3 copies with all required revisions and documents as listed below:
  - 1.1 Add the title, "Brester ADU Special Permit #22019" on the site plan.
2. Before receiving building permits provide the following documents to the Planning Department:
  - 2.1 Verification from the Register of Deeds that the letter of acceptance as required by the approval of the special permit has been recorded.
  - 2.2 Agree in writing as part of the building permit that no occupancy permit will be granted for the new dwelling until the stairway and second story bathroom are removed in the ADU. The revisions to existing ADU are necessary to reduce the floor area and limit the ADU to the first floor only. If the owner is living in the ADU during the construction of the new ADU, they can move to the new dwelling and then complete the work prior to the occupancy permit being issued if all other building permit requirements and inspections are complete.

#### **Standard Conditions:**

3. The following conditions are applicable to all requests:
  - 3.1 Before occupying the Accessory Dwelling Unit all development and construction shall substantially comply with the approved plans.
  - 3.2 The terms, conditions, and requirements of this resolution shall run with the land and be binding upon the Permittee, its successors and assigns.
  - 3.3 The applicant shall sign and return the letter of acceptance to the County Clerk. This step should be completed within 60 days following the approval of the special permit. The Permittee shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds. Building permits will not be issued unless the letter of acceptance has been filed.





City of Lincoln/Lancaster County, NE GIS

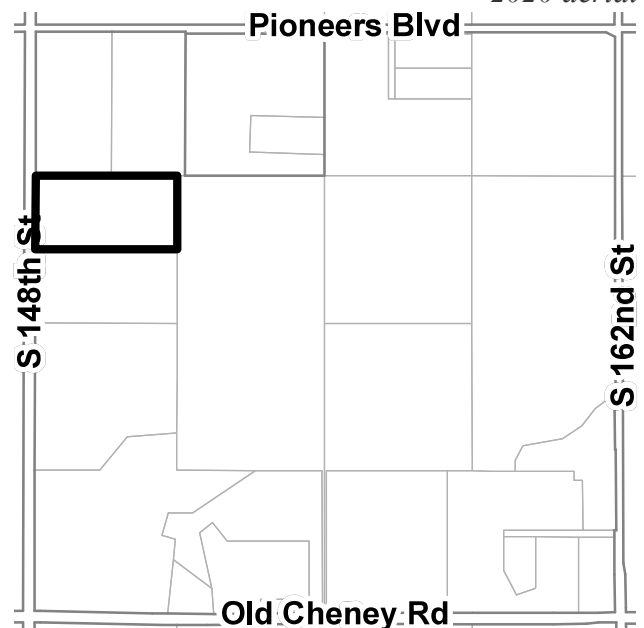
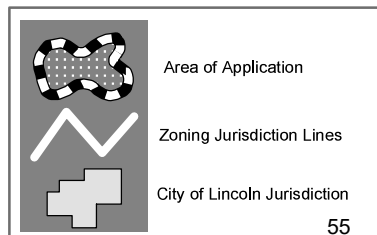
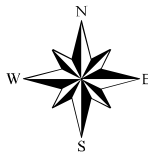
2020 aerial

## Special Permit #: SP22019 S 148th St & Pioneers Blvd

### Zoning:

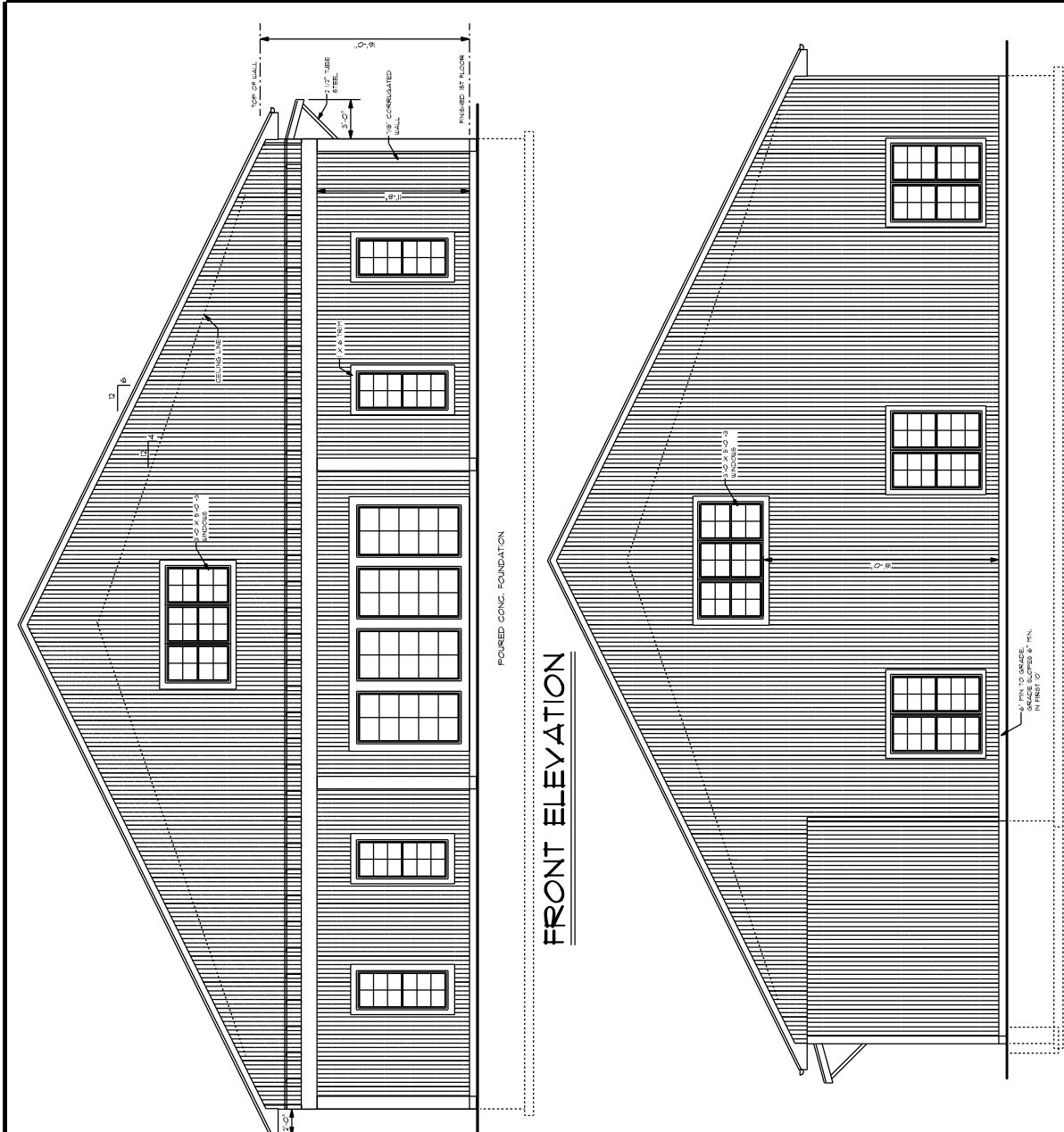
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile:  
Sec.10 T09N R08E



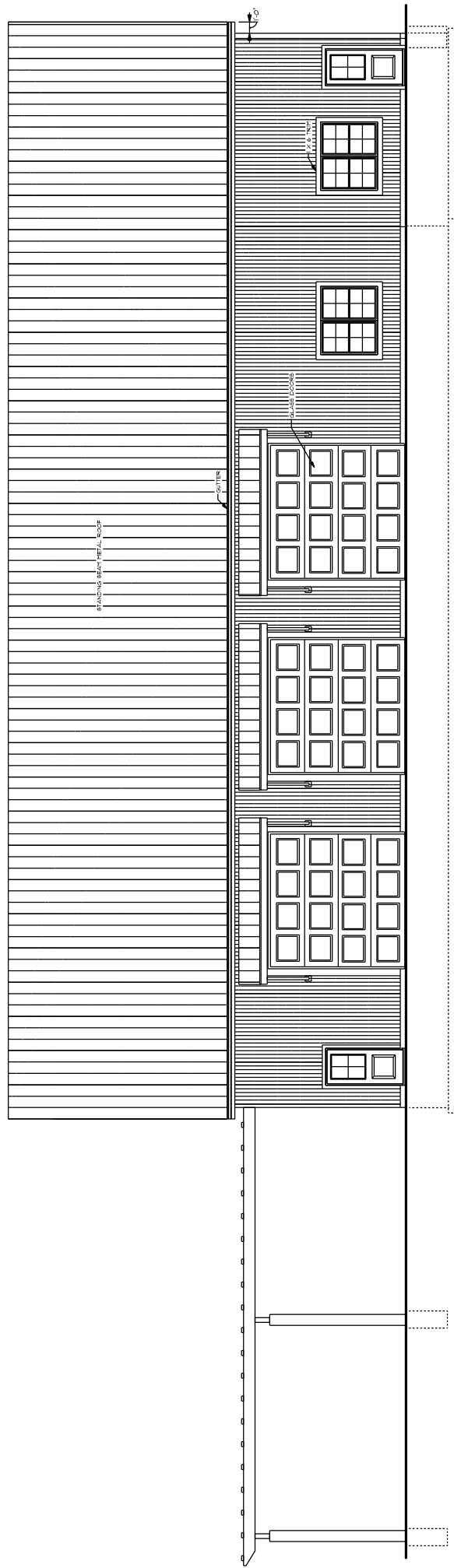




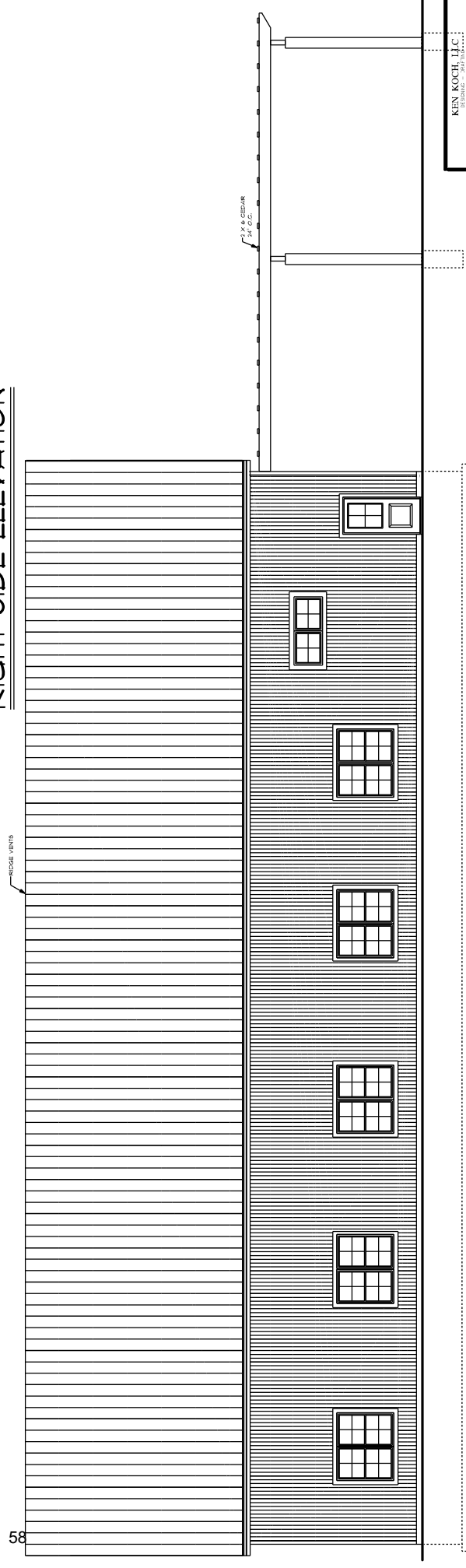


KEN KOCH LLC	
DESIGN & CONSTRUCTION	
BRESTER BARN	
SHEET 3 OF 4	
DATE: 10/23/2021	PROJECT: BRESTER BARN
DATE: 10/23/2021	SHEET: 3 OF 4

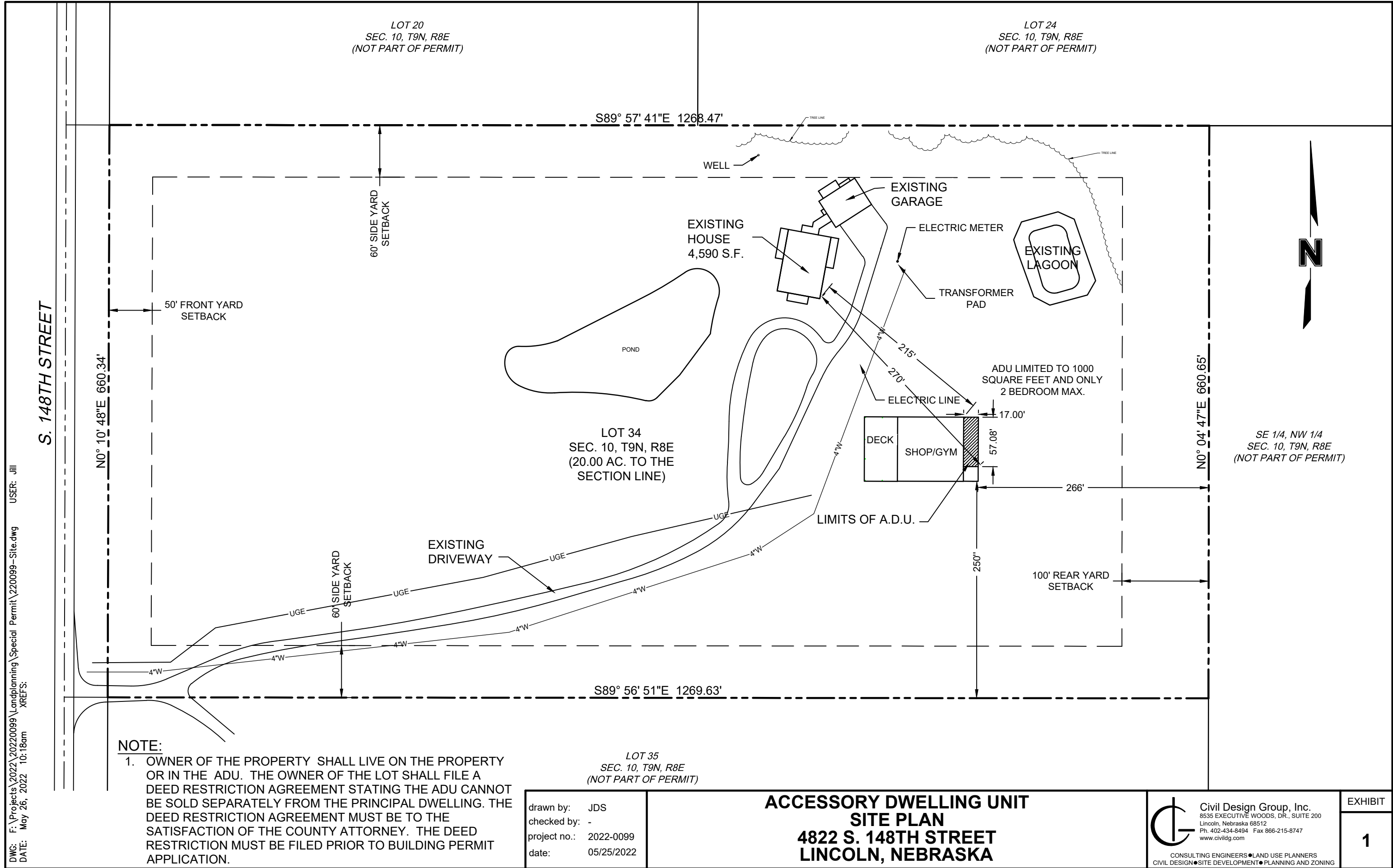
# REAR ELEVATION



## RIGHT SIDE ELEVATION



## LEFT SIDE ELEVATION





# Civil Design Group, Inc.

Consulting Engineers & Land Use Planners  
Civil Design • Site Development • Planning & Zoning

May 25, 2022

Mr. David Cary, Director of Planning  
City of Lincoln /Lancaster County  
555 South 10th Street, Room 213  
Lincoln, NE 68508

**Re: Special Permit Application for an Accessory Dwelling Unit (ADU) located at 4822 S. 148<sup>th</sup> Street, Lancaster County. CDG Project 2022-0099.**

Dear Mr. Cary:

On behalf of Tracy Brester, we submit the enclosed application for an ADU located at 4822 S. 148<sup>th</sup> Street in Lancaster County. The ADU to be permitted would be built as a portion of a proposed outbuilding on the above property.

With this application we are requesting a waiver to Lancaster County Code section 13.050(7) to allow the ADU to be located more than 200 feet, approximately 270', from the principal dwelling unit. This request is due to existing utilities lines (electrical and water) as well as the proximity to the existing lagoon. These items are detailed on the attached site plan along with other provisions on the ADU special permit.

With this application we submit the following items:

Application for a Special Permit for an ADU  
Special Permit Fee of \$1,005.00  
Site plan

I hope that this letter in conjunction with the site plan assists you in reviewing this application. Please feel free to call me at (402) 434-8494 so that I can address any questions you may have.

Sincerely,

Mike Eckert, AICP

cc: Tracy Brester

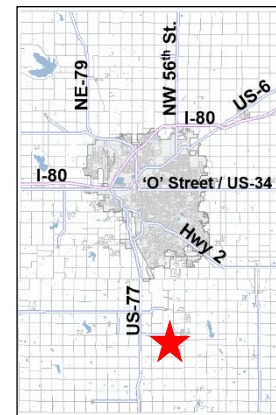
**LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT**  
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Special Permit #22017	FINAL ACTION? Yes	DEVELOPER/OWNER Jonathan Thorne
PLANNING COMMISSION HEARING DATE June 22, 2022	RELATED APPLICATIONS None	PROPERTY ADDRESS/LOCATION 1840 Olive Creek Rd.

**RECOMMENDATION: CONDITIONAL APPROVAL**

**BRIEF SUMMARY OF REQUEST**

This is a request for Expanded Home Occupation under Article 13.032 of the Lancaster County Zoning Regulations to allow firearm sales from the residence and waivers to reduce the minimum lot size from 10 acres to 2 acres and to allow sales of a product not manufactured, processed, treated or assembled on the premise. The area for the home occupation is within the existing house.



**JUSTIFICATION FOR RECOMMENDATION**

The request meets the conditions of Article 13.032, except for selling an item that is not manufactured, processed, treated or assembled on site and the lot being only 2 acres. The selling of firearms will have minimal traffic and the area of the home occupation is a small area in the home. There is no new construction and there should be minimal impact to adjacent property owners. The waivers for this particular use at this location are acceptable.

**APPLICATION CONTACT**

Jonathan Thorne, 402-840-7474  
thornesguns@hotmail.com

**STAFF CONTACT**

Tom Cajka, (402) 441-5662 or  
tcajka@lincoln.ne.gov

**COMPATIBILITY WITH THE COMPREHENSIVE PLAN**

The Comprehensive Plan encourages accessory home businesses.

**WAIVERS**

1. Allow products to be sold that are not grown, manufactures, processed, treated or assembled on the premises. (Recommend Approval)
2. Reduce the minimum lot size form 10 acre to 2 acres. (Recommend Approval)

**KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN**

P. 5.5 Continue to encourage and permit accessory home businesses.

**ANALYSIS**

1. This is a request for special permit for an Expanded Home Occupation. The use is to allow firearm sales out of the residence.

2. The Lancaster County Zoning Regulations were amended in September 2009 to allow Expanded Home Occupation by special permit. The intent was to allow small family owned businesses to operate out of their homes. The business is to be accessory to the residential use of the property and operated by the family occupying the residence. This condition makes it more likely that the business will be a "good neighbor." The business should not detract from the peace and enjoyment of surrounding properties.
3. The proposed business is for selling firearms and related products. The applicant's letter states that he transfers and sells firearms and related products and accessories. The majority of business would be conducted in-person by appointment only. On average he states that there are 2 to 4 customers per week.
4. A previous special permits for Expanded Home Occupation for gun sales were approved in September 2019 and March 2022. This is the third application for this use under Expanded Home Occupation.
5. The applicant has held a Federal Firearms License (FFL) for more than 10 years at various locations and approximately 2 years at this location. A routine check by the ATF discovered that the license issued did not meet local zoning regulations. Mr. Thorne was notified that he would need to apply for the special permit. He has had no issues/complaints with the ATF since the license was issued.
6. The county special permit conditions related to this expanded home occupation are as follows:

a. On-site sales shall be limited primarily to products grown, manufactured, processed, treated or assembled on the premise.

**Most firearms and related products are made off site. It is not a product typically made in a home setting. Due to the nature of the business, a waiver to this condition is needed. Due to minimal traffic and minimal impact on neighbors, the waiver is reasonable for this use at this location.**

b. Except for a Family as defined by this Resolution, no more than two (2) persons may participate in the home occupation on the premises.

**There will be no persons involved in the operation that do not live on site.**

c. The lot area shall be ten (10) acres or larger.

**The lot is 2 acres. A waiver is needed to reduce the minimum size form 10 acres to 2 acres. Due to the small amount of area needed for the business and the minimal number of customers the waiver is reasonable. A different use with more activity and building area should be located on a lot of 10 acres or more in the AG zoning. But this use needs a minimal amount of land and will not generate much vehicle activity.**

d. Driveways and parking areas shall be provided with an all-weather (gravel or rock) surface to minimize dust.

**No parking areas are required. The applicant's letter states that sales made on site would be minimal. The transaction normally involves only one vehicle coming to the house. The existing driveway is gravel. An estimated 2 to 3 delivery vehicles come to the site per week.**

e. No more than 50% of the floor area of the residence may be used for said business when the home occupation is located within the residence.

**The County Assessor lists the house at 998 sq. ft. The area used for the home occupation is not expected to exceed 20% of the floor area of the residence.**

f. The total floor area for all buildings used for said business shall not be more than 10,000 square feet.

**The total floor area used for the business is approximately 200 sq. ft.**

g. Outside area used for work area, storage or other business activity and parking shall not exceed 15,000 square feet.

**There is no outside business related activity.**

h. All outside business related activity shall be located at least 200 feet from all premise property lines and shall be visually screened from public streets and adjacent property lines.

**There is no outside business-related activity.**

i. Dust control of nearby unpaved roads to mitigate the impact of traffic approaching and leaving the premise may be required.



The nearest paved road is approximately one-half mile to the west. Due to the minimal traffic this business would generate, no dust control is required.

**CONDITIONS OF APPROVAL:** See attached.

**EXISTING LAND USE & ZONING:** AG-Agriculture                      Single family residence

**SURROUNDING LAND USE & ZONING**

North:	AG-Agriculture	Farm ground
South:	AG-Agriculture	Farm ground
East:	AGR-Agriculture Residential	Farm ground
West:	AG-Agriculture	Farm ground

**APPROXIMATE LAND AREA:**     2 acres, more or less.

**LEGAL DESCRIPTION:**   Lot 12 I.T. in the SW ¼ of Section 12, Township 7 North, Range 6 East; Lancaster County, NE.

Prepared by

---

Tom Cajka, Planner

Date:                      June 9, 2022

Applicant:              Jonathan Thorne  
                                1840 Olive Creek Rd.  
                                Martell, NE 68404  
                                402-840-7474  
                                thornesguns@hotmail.com

Contact:                Same as applicant

Owner:                  Daniel and Kathy Thorne  
                                2521 S. 77<sup>th</sup> Place  
                                Lincoln, NE 68506  
                                402-525-5533

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/SP/22000/SP22017 expanded home occupation.tjc.docx>

## CONDITIONS OF APPROVAL - SPECIAL PERMIT #22017

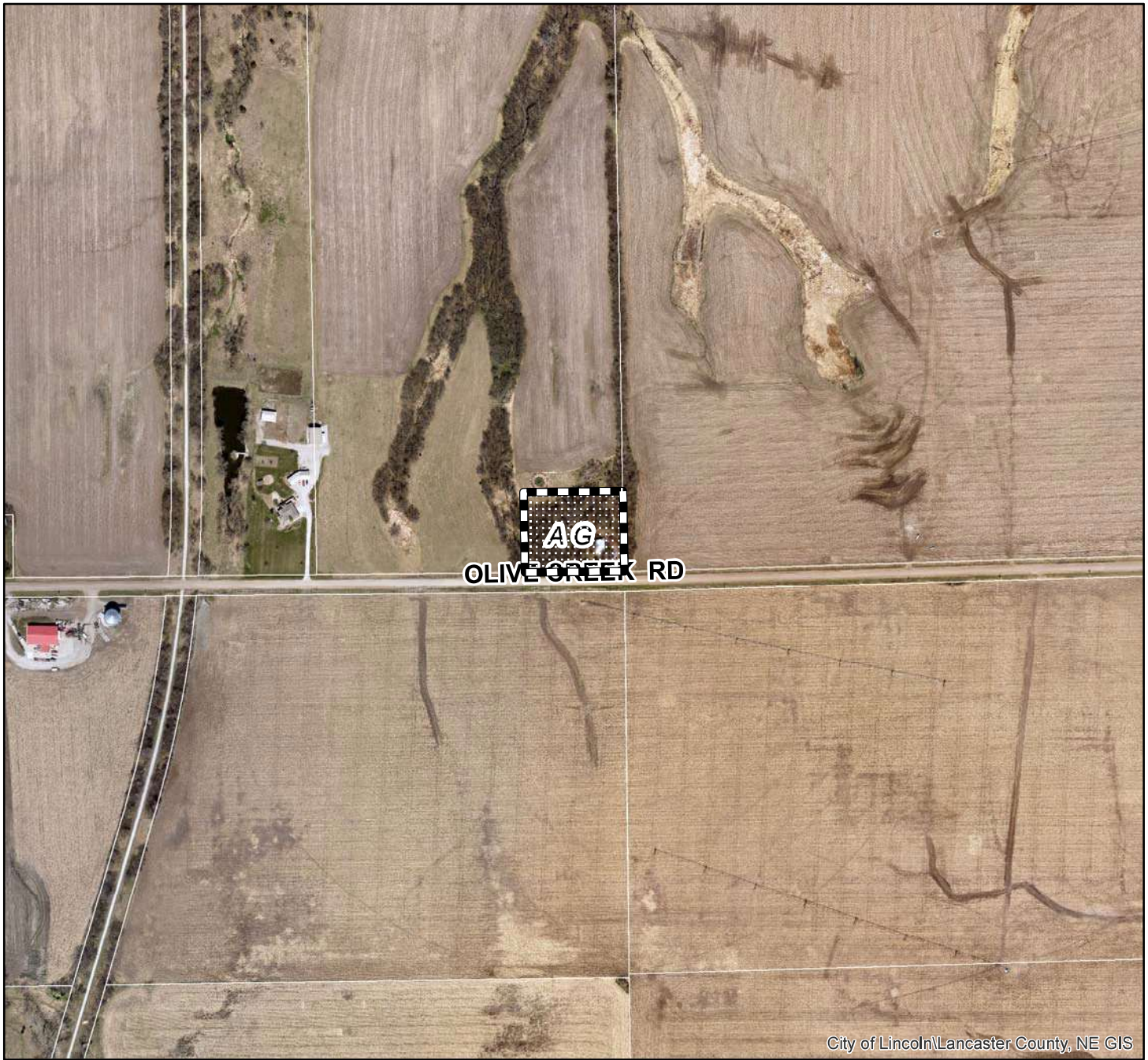
Per Article 13.032 this approval permits Expanded Home Occupation for selling of firearms and related products with a waiver to allow the sale of a product not manufactured, processed, treated or assembled on the premise and reduce the minimum lot size from 10 acres to 2 acres. No show room or display area is allowed.

### Site Specific Conditions:

1. Before beginning operations the permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 3 copies with all required revisions and documents as listed below:
  - 1.1 Label the plan as Site Plan, Special Permit #22017
  - 1.2 Add the legal description and address to the site plan.
  - 1.3 Add a note that no show room or display area is allowed.
2. Before starting the operation provide the following documents to the Planning Department:
  - 2.1 Verification from the Register of Deeds that the letter of acceptance as required by the approval of the special permit has been recorded.

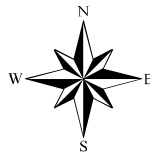
### Standard Conditions:

3. The following conditions are applicable to all requests:
  - 3.1 Before starting the operation all development and construction shall substantially comply with the approved plans.
  - 3.2 The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters be in substantial compliance with the location of said items as shown on the approved site plan.
  - 3.3 The terms, conditions, and requirements of this resolution shall run with the land and be binding upon the Permittee, its successors and assigns.
  - 3.4 The applicant shall sign and return the letter of acceptance to the County Clerk. This step should be completed within 60 days following the approval of the special permit. The Permittee shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds. Building permits will not be issued unless the letter of acceptance has been filed.



2020 aerial

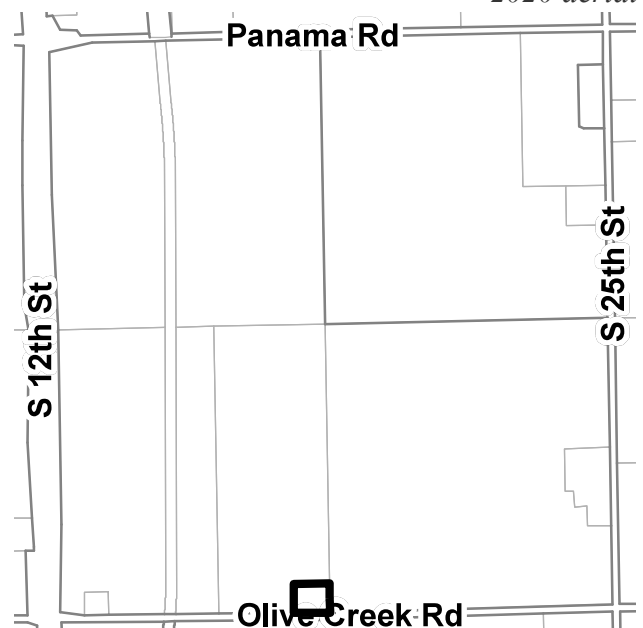
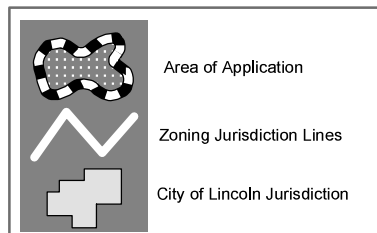
# **Special Permit #: SP22017** **S 25th St & Olive Creek Rd**



One Square Mile:  
 Sec.12 T07N R06E

## **Zoning:**

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District







Printed: 5/17/2022

1: 1,128



**Disclaimer:** The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email [assessor@lanaster.ne.gov](mailto:assessor@lanaster.ne.gov) and you will be directed to the appropriate department.

Thorne's Guns  
1840 Olive Creek Road, Martell NE

402-840-7474

May 12, 2022

Planning Department  
555 S 10<sup>th</sup> St. Ste 213  
Lincoln, NE 68508

**Project Name:** 1840 Olive Creek Road

**Application Type:** Special Permit

**Subtype:** Expanded Home Occupations

**Category:** 13.032

Statement of Application Purpose:

Application is being made to obtain a Special Permit for an Expanded Home Occupation to allow a home-based business that would legally transfer and sell firearms under a Federal Firearms License (FFL) and to sell related products and accessories. We will be a non-stocking dealer, with the exception of 100% receivers with serial numbers. Firearms are not manufactured or assembled for sale. The majority of the business will be transferring firearms.

We are asking for this Special Permit because the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF: they issue FFL licenses) just recently informed us we need to have an Expanded Home Occupations special permit. I have had an FFL for more than 10 years, during which time I transferred and sold firearms. We have received no complaints from neighbors, customers or the ATF.

Business will be conducted in compliance with all State and Federal laws. We will also follow the Lancaster County Zoning Regulations, except we are asking for a waiver since we have two acres of land.

The majority of business will be conducted by in-person customer visits to the property. **Customer Parking**  
Although hours of operation are published, most visits are by appointment only. On average, we will have 2-4 customers per week.

Sincerely,  
**Olive Creek Road**

Jonathan Thorne  
Thorne's Guns





## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

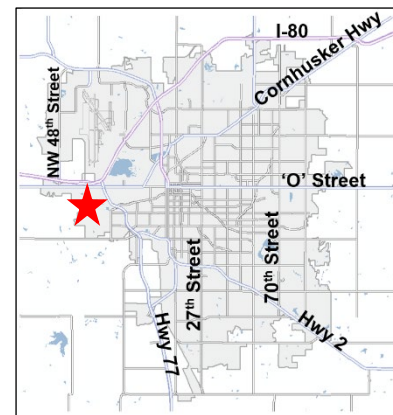
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Preliminary Plat #22002	FINAL ACTION? Yes	DEVELOPER/OWNER GM Holdings LLC
PLANNING COMMISSION HEARING DATE June 22, 2022	RELATED APPLICATIONS SAV22002	PROPERTY ADDRESS/LOCATION th St and West "O" St.

### RECOMMENDATION: CONDITIONAL APPROVAL

#### BRIEF SUMMARY OF REQUEST

This is a request for a preliminary plat to develop two commercial lots on 13.3 acres with waivers to paving, curb & gutter, sidewalk, street lights and street trees for West "M" St and SW 44<sup>th</sup> St. south of W. Monroe St. The project is located southeast of SW 44<sup>th</sup> St. and West "O" St.



#### JUSTIFICATION FOR RECOMMENDATION

The preliminary plat as modified by the proposed conditions and waivers is in conformance with the Zoning Ordinance and subdivision regulations.

#### APPLICATION CONTACT

Eric Munchel, Shive-Hattery  
515-645-9724 or emunchel@shive-hattery.com

#### STAFF CONTACT

Tom Cajka, (402) 441-5662 or tcajka@lincoln.ne.gov

#### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The area is shown for commercial development on the Future Land Use Map.

#### WAIVERS

- Section 26.27.010 street improvements for West "M" St and SW 44<sup>th</sup> St. south of W. Monroe St.  
(Recommend Approval)
- Section 26.27.010 street improvements to allow W. Monroe St to be constructed as a paved rural section roadway.  
(Recommend Approval)
- Section 26.27.020 for sidewalks on West "M" St., W. Monroe St. and SW 44<sup>th</sup> St.  
(Recommend Approval)
- Section 26.27.090 for street trees on West "M" St., W. Monroe St. and SW 44<sup>th</sup> St.  
(Recommend Approval)
- Section 26.27.070 street lighting for West "M" St., SW 44<sup>th</sup> St., and W. Monroe St.  
(Recommend Approval)

## KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

### Introduction Section: Growth Framework

Figure GF.b: 2050 - This site is shown as future commercial on the 2050 Future Land Use Plan.

Commercial uses may vary widely in their intensity of uses and impact.

### **Fundamentals of Growth in Lancaster County**

The City of Lincoln's present infrastructure investment should be maximized by planning for well-designed and appropriately-placed residential and commercial development in existing areas of the city with available capacity. This can be accomplished by redeveloping underutilized commercial centers into areas that include a mix of uses, and encouraging higher-density residential redevelopment in appropriate locations, including missing middle housing. New infrastructure investments to serve growth areas can be maximized by encouraging a higher density of both residential and commercial uses in these areas.

New commercial and industrial development should be located in Lincoln and other incorporated communities. Lincoln has ample land area and infrastructure availability for commercial and industrial development. The situation is similar in most incorporated communities in the county. Rural areas of the county do not have access to urban infrastructure, and commercial or industrial development can add significant traffic and maintenance responsibilities to county roads.

Natural and environmentally sensitive areas should be preserved within and between neighborhoods. Conservation areas and open lands should be used to define and connect different neighborhoods. The natural topography and features of the land should be preserved by new development to maintain the natural drainageways and minimize land disturbance.

### **Land Use Plan**

There is one land use plan for both the City of Lincoln and Lancaster County. The land use plan displays the generalized location of each land use. It is not intended to be used to determine the exact boundaries of each designation.

### Elements Section

#### E3: Business, Economy, and Workforce

##### **Commercial and Industrial Development**

Commercial and Industrial Centers in Lancaster County should be located:

- Within the City of Lincoln or incorporated villages.
- Outside of saline wetlands, signature habitat areas, native prairie and floodplain areas (except for areas of existing commercial and industrial zoning).
- Where urban services and infrastructure are available or planned for in the near term. In sites supported by adequate road capacity – commercial development should be linked to the implementation of the transportation plan.
- In areas compatible with existing or planned residential uses.
- In existing underdeveloped or redeveloping commercial and industrial areas in order to remove blighted conditions and to more efficiently utilize existing infrastructure.
- In areas accessible by various modes of transportation (i.e. automobile, bicycle, transit, and pedestrian).
- In a manner that supports the creation and maintenance of green space as indicated in the environmental resources section of this Plan.

## Commercial Infill

### Figure E3.f: Commercial Infill Design Strategies

1. Encourage additional vehicular access to an arterial street.
2. Encourage a Floor Area Ratio that exceeds to existing/previous commercial uses on the site.
3. Face existing residential uses with new residential uses rather than the backs of commercial buildings unless existing residential faces the opposite direction such as along an alley.
4. Discourage commercial driveways that interrupt the blockface of a residential street, especially when residences face the street.
5. Encourage shared driveways and interconnected parking lots where possible.
6. Orient buildings to the street, especially corners.
7. Maintain or adaptively reuse existing structures (especially historical structures) where possible.
9. Encourage shared parking between land uses with different peak demand periods.
10. Maintain or enhance on-street parking resources, especially in established/historic commercial districts

### Policies Section

P14: Commercial Infill - Develop infill commercial areas to be compatible with the character of the area.

#### Action Steps

1. Implement commercial infill redevelopment principles as discussed in the Business & Economy element.
2. Maintain and encourage businesses that conveniently serve nearby residents, while ensuring compatibility with adjacent neighborhoods.
3. Avoid encroachment into existing neighborhoods during expansion of existing commercial and industrial uses, and take steps to ensure expansions are in scale with the adjacent neighborhood, use appropriate screening, fulfill a demonstrated need, and do not hinder health and safety.
4. Prioritize retaining areas for continued residential development in older sections of the community by maintaining existing housing and supporting infill housing. Prior to approving the removal of housing to provide additional parking for existing centers, alternatives such as reduced parking requirements, shared parking, additional on-street parking, and/or the removal of other commercial structures should be explored. Maintain and encourage ethnically diverse commercial establishments that are beneficial to existing neighborhoods.

P15: Infrastructure and Economic Development - Seek to efficiently utilize investments in existing and future public infrastructure to advance economic development opportunities.

#### Action Steps

1. Continue to provide adequate sites with associated infrastructure to serve the community's economic development needs.
2. Continue the County's support for road improvements that accommodate commercial and other development within the smaller incorporated areas.
4. Continue incentive-based (residential, commercial, or industrial) programs promoting the installation of renewable energy systems. Incentives may include offering rebates on purchasing equipment, attractive net metering pricing, tax incentives, height allowances, setback, and area-based incentives, expedited permitting, and others.

## ANALYSIS

1. This preliminary plat is for 2 lots on approximately 13 acres with associated waivers. The site is southeast of SW 44<sup>th</sup> St. and West "O" St.
2. The lots to the west are zoned AG-Agricultural with single family dwellings on each lot. The area is shown for future commercial in the 2050 Land Use Plan. The property to the east has commercial development and is vacant.

3. Associated with this preliminary plat is an alley vacation. The alley vacation had public hearing at the Lincoln-Lancaster County Planning Commission on June 8, 2022.
4. The project area was originally platted into lots and right-of-way in 1887. The rights-of-way of W. Monroe St, W. "M" St. and SW 44<sup>th</sup> St. were never developed. The preliminary plat replats 15 lots into 2 lots.
5. A change of zone from AG-Agriculture to H-4-General Commercial and I-1-Industrial was approved in December 2021 on this property. A zoning agreement was a condition of the change of zone. The zoning agreement required that a preliminary plat be approved prior to any final plat or building permit. In addition, the zoning agreement established how the streets were to be constructed. SW 44<sup>th</sup> St. from West "O" St. to the south right-of-way line of W. Monroe is to be constructed as a paved rural section roadway twenty-two feet (22') in width. W. Monroe is also to be constructed as a paved rural section roadway twenty-two feet (22') in width.
6. The applicant is requesting a waiver to street improvements for West "M" St. Due to how SW 40<sup>th</sup> was constructed it is not possible for West "M" St. to intersect with SW 40<sup>th</sup> St. There is also flood plain in this location. The applicant agrees that Lot 1 shall not take access to West "M" St. until it is paved. The applicant also agrees to not object to a special assessment district in the future. Due to the constraints and additional conditions the waiver is reasonable
7. The applicant is requesting a waiver to street improvements including sidewalks to SW 44<sup>th</sup> St. south of W. Monroe St. Lot 1 is not taking access to SW. 44<sup>th</sup> St. In the future if Lot 1 was to take access to SW 44<sup>th</sup> St., the street would need to be paved. The applicant also agrees to not object to a special assessment district in the future. With these conditions the waiver is reasonable.
8. The applicant is requesting a waiver to construct SW 44<sup>th</sup> St north of W. Monroe St and W. Monroe St. to City standards. The streets are to be constructed as a paved rural section roadway. This was agreed to with the zoning agreement in Change of Zone #21047.
9. The applicant is requesting a waiver to street lights and street trees on SW 44<sup>th</sup> St., West "M" St., and W. Monroe St. Due to the streets either not being improved or constructed as a paved rural section roadway, it would be difficult to install street lights and street trees. The waivers are reasonable.
10. Water main will need to be extended from West "O" St. to the south boundary of the development in SW 44<sup>th</sup> St. The water main is required to be 12" in SW 44<sup>th</sup> St. There is an existing sanitary sewer main along the east boundary of the property.

**CONDITIONS OF APPROVAL:** See attached.

**EXISTING LAND USE & ZONING:**                      Undeveloped                      H-4, General Commercial and I-1, Industrial

**SURROUNDING LAND USE & ZONING**

North: Undeveloped	H-4, General Commercial
South: Undeveloped	AG, Agricultural
East: Commercial and undeveloped	I-1, Industrial
West: Two single family dwellings	AG, Agricultural

**APPLICATION HISTORY**

Dec 20, 2021: The City Council Approved Change of Zone #21047 from AG to H-4 and I-1.

**APPROXIMATE LAND AREA:** 13.35 acres, more or less

**LEGAL DESCRIPTION:** The remaining portion of Block 3, all of Block 14, Lots 1-12, Block 13 and the remaining portion of Block 13; all in Cushman located in the NE ¼ of Section 30-10-06, Lancaster County, NE

Prepared by

---

Tom Cajka, Planner

Date: June 9, 2022

Applicant: Oleg Stepanyuk  
3901 NW 57<sup>th</sup> St.  
Lincoln, NE 68524  
402-610-2618  
oleg@advantagetruucking.com

Contact: Eric Munchel  
7305 Main St.  
Ralston, NE 68127  
515-645-9724  
emunchel@shive-hattery.com

Owner: GM Holdings LLC  
3901 NW 57<sup>th</sup> St.  
Lincoln, NE 68524  
402-610-2618

## CONDITIONS OF APPROVAL - PRELIMINARY PLAT #22002

Approval of the following waivers:

1. Section 26.27.010 street improvements for West “M” St and SW 44<sup>th</sup> St. south of W. Monroe St.
2. Section 26.27.010 street improvements to allow W. Monroe St. to be constructed as a paved rural section roadway.  

th St., W. Monroe St., and W. “M” St.
4. Section 26.27.090 for street trees on SW 44<sup>th</sup> St., W. Monroe St., and W. “M” St.
5. Section 26.27.070 street lighting for SW 44<sup>th</sup> St., W. Monroe St., and W. “M” St.

### Site Specific Conditions:

1. The subdivider shall complete the following instructions and submits the documents and plans and 2 copies to the Planning Department office: (NOTE: These documents and plans are required by ordinance or design standards.)
  - 1.1 Revise the preliminary plat to show:
    - 1.1.1 Add a note, “Lot 1 agrees to not take access to SW 44<sup>th</sup> St, south of W. Monroe St., until it is paved.
    - 1.1.2 Add a note, “Lot 1 agrees to not take access to W. “M” St. until it is paved.
    - 1.1.3 The west lot line of Outlot A needs to be the same line type as all other lot lines.
    - 1.1.4 Correctly identify the right-of-way width of W. Monroe St. as 66 feet.
    - 1.1.5 Note 33’ of ROW to be dedicated by adjacent property owner.
    - 1.1.6 Show the detention cell in an outlot.
    - 1.1.7 Identify the minimum flood corridor to the satisfaction of Watershed Management.
    - 1.1.8 Revise the grading plan and Storm Water Management Plan to the satisfaction of Watershed Management.
    - 1.1.9 Revise the plan to the satisfaction of the Lower Platte South NRD.
2. Final Plats will be approved by the Planning Director after:

The required improvements are completed or a surety is posted to guarantee the completion of the public streets, private roadway improvements, sidewalks, sanitary sewer system, water system, drainage facilities, land preparation and grading, sediment and erosions control measures, storm water detention/retention facilities, drainageway improvements, street lights, landscaping screens, street trees, temporary turnaround and barricades, and street name signs. **A cash contribution to the City in lieu of a bond, escrow, or security agreement may be furnished for sidewalks and street trees along major streets that have not been improved to an urban cross section. A cash contribution to the City in lieu of a bond, escrow, or security agreement may be furnished for street trees on a final plat with 10 or fewer lots.**



The subdivider has signed an agreement that binds the subdivider, its successors and assigns:

to complete the street paving of public streets, and temporary turnarounds and barricades located at the temporary dead-end of the streets shown on the final plat within two (2) years following the approval of this final plat.

to complete the installation of sidewalks along the south side of West "O" St. as shown on the final plat within two (2) years following the approval of this final plat.

to complete the public water distribution system to serve this plat within two (2) years following the approval of this final plat.

to complete the public wastewater collection system to serve this plat within two (2) years following the approval of this final plat.

to complete the enclosed public drainage facilities shown on the approved drainage study to serve this plat within two (2) years following the approval of this final plat.

to complete land preparation including storm water detention/retention facilities and open drainageway improvements to serve this plat prior to the installation of utilities and improvements but not more than two (2) years following the approval of this final plat.

to complete the planting of the street trees along West "O" St. as shown on the final plat within two (2) years following the approval of this final plat.

to complete the installation of the street name signs within two (2) years following the approval of this final plat.

to complete the installation of the permanent markers prior to construction on or conveyance of any lot in the plat.

to timely complete any other public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Land Subdivision Ordinance which have not been waived but which inadvertently may have been omitted from the above list of required improvements.

to submit to the Director of Lincoln Transportation and Utilities a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land for approval.

to comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.

to complete the public and private improvements shown on the preliminary plat.

to keep taxes and special assessments on the outlots from becoming delinquent.

to maintain the outlots and private improvements in a condition as near as practical to the original construction on a permanent and continuous basis.

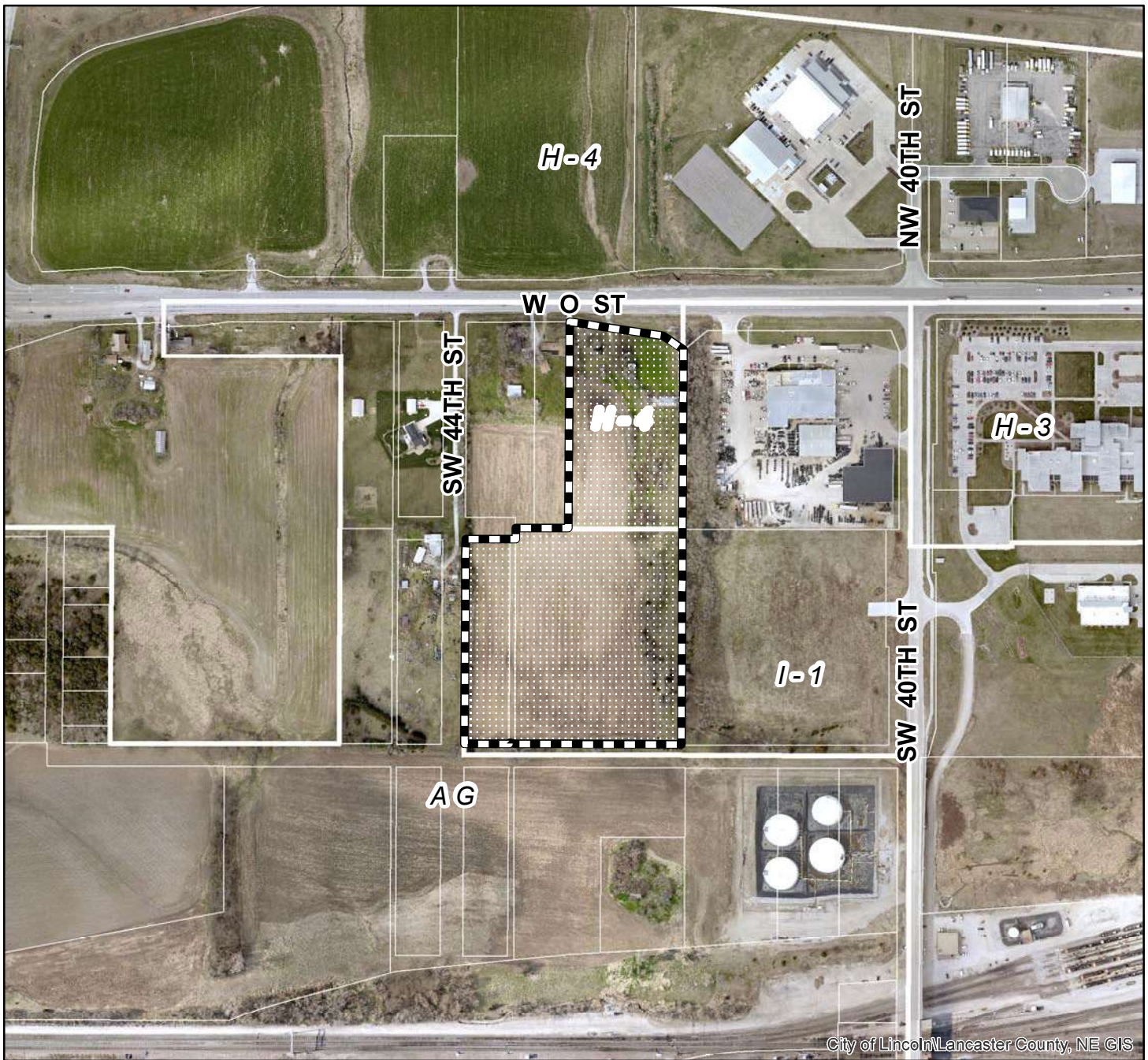
to retain ownership of and the right of entry to the outlots in order to perform the above-described maintenance of the outlots and private improvements on a permanent and continuous basis. However, Subdivider(s) may be relieved and discharged of such maintenance obligations upon creating in writing a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance subject to the following conditions:

- (1) Subdivider shall not be relieved of Subdivider's maintenance obligation for each specific private improvement until a registered professional engineer or nurseryman who supervised the installation of said private improvement has certified to the City that the improvement has been installed in accordance with approved plans.
- (2) The maintenance agreements are incorporated into covenants and restrictions in deeds to the subdivided property and the documents creating the association and the restrictive covenants have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds.

to inform all purchasers and users of land located within the 100 year floodplain that said land is located within the 100 year floodplain and that the grading of the lots and outlots shall be in conformance with the grading plan approved with the Advantage Trucking Preliminary Plat #22002 or as amended by the Director of Planning. The volume of fill material brought into each lot and outlot from outside the floodplain shall not exceed that shown on the approved grading plan accompanying the preliminary plat.

to relinquish the right of direct vehicular access from Lot 2 to West "O" St.

to inform all prospective purchasers and users of land located within the Airport Environs Noise District that the land is located within the Airport Environs Noise District, that the land is subject to an aviation and noise easement granted to Lincoln Airport Authority, and that the land is potentially subject to aircraft noise levels which may affect users of the property and interfere with its use.

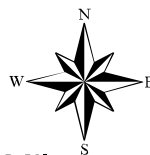


**Preliminary Plat #: PP22002**  
**Advantage Trucking**  
**SW 44th St & W O St**

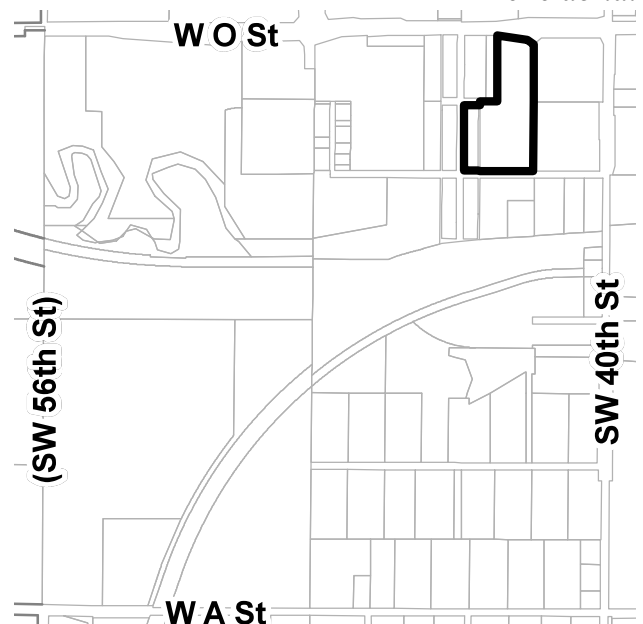
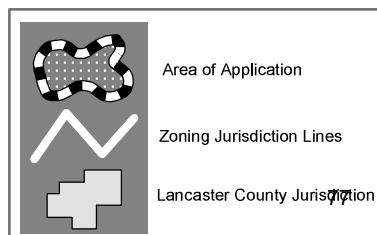
**Zoning:**

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

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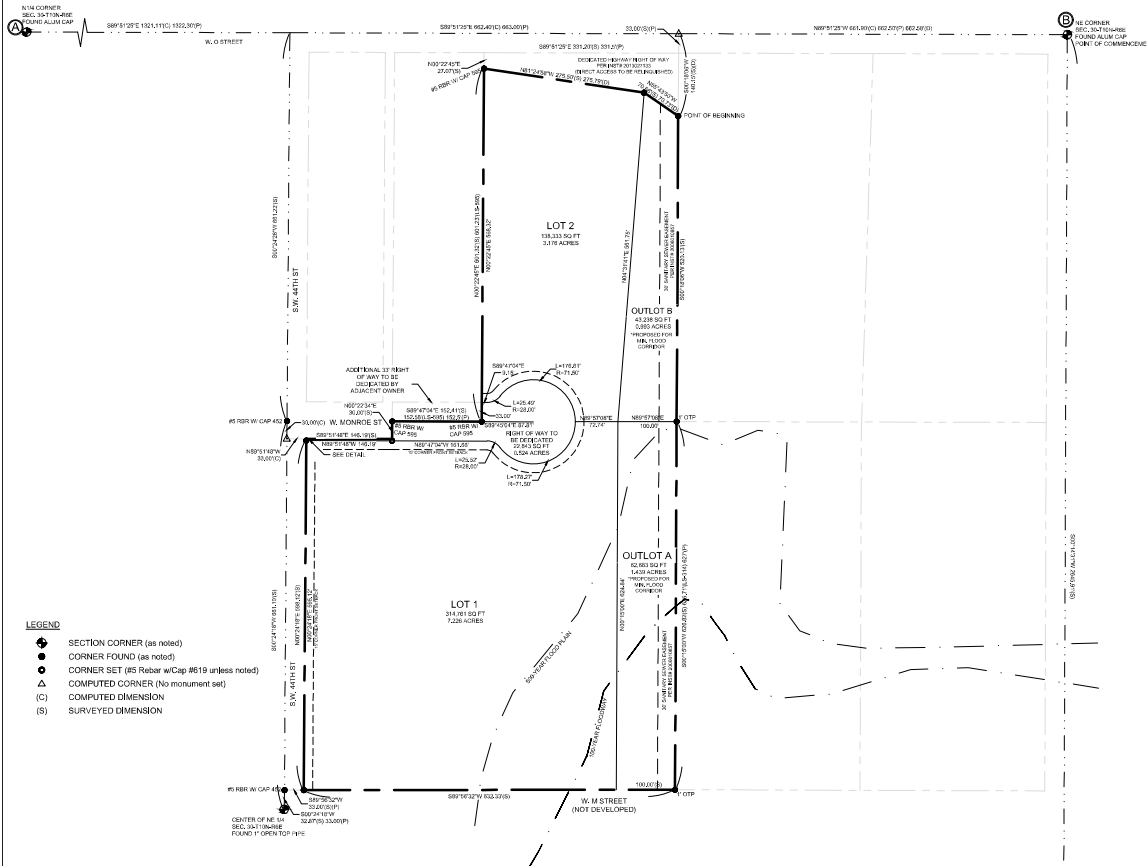


**One Square Mile:**  
**Sec.30 T10N R06E**

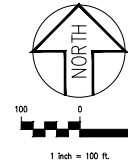
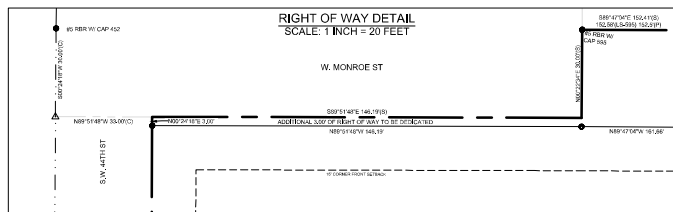


2020 aerial

# ADVANTAGE TRUCKING SUBDIVISION PRELIMINARY PLAT SW 44th & O ST, LINCOLN, NE



- LEGEND**
- SECTION CORNER (as noted)
  - CORNER FOUND (as noted)
  - CORNER SET (85 Rebar w/Cap #619 unless noted)
  - COMPUTED CORNER (No monument set)
  - COMPUTED DIMENSION
  - SURVEYED DIMENSION



OWNER/DEVELOPER  
GM HOLDINGS LLC  
3901 NW 57TH ST  
LINCOLN, NE 68524

SURVEYOR  
CORY J GROSS  
RW ENGINEERING AND SURVEYING  
7525 N 101ST STREET  
OMAHA, NE 68122

ENGINEER  
SHIVE-HATTERY  
4125 WESTOWN PKWY  
SUITE 100  
WEST DES MOINES, IA 50266

Consultant:  
**SHIVE-HATTERY**  
ARCHITECTS & ENGINEERS  
Owner



## LEGAL DESCRIPTION

All of Blocks Three (3), Thirteen (13), and Fourteen (14), Cushman, Lincoln, Lancaster County, Nebraska EXCEPT that part of Block Three (3) conveyed to the Department of Roads and Irrigation of the State of Nebraska by Return of Appraisers recorded October 14, 1942 in Book 341, Page 84; AND EXCEPT that part of Block Three (3) conveyed to The State of Nebraska, Department of Roads by Warranty Deed recorded May 29, 2013 as Inst. No. 2013027133; records of Lancaster County, Nebraska. More particularly described as follows:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 30, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M.; THENCE NORTH 89°51'25" WEST ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, 661.90 FEET; THENCE SOUTH 00°18'06" WEST, 140.15 FEET TO THE SOUTH RIGHT OF WAY OF WEST O STREET AND THE POINT OF BEGINNING; THENCE (3) SOUTH 00°18'06" WEST ON THE EAST LINE OF SAID BLOCK 3, 520.13 FEET; THENCE SOUTH 00°15'00" WEST ON THE EAST LINE OF SAID BLOCK 14, 626.82 FEET TO THE NORTH RIGHT OF WAY LINE OF WEST M STREET; THENCE SOUTH 89°58'32" WEST ON THE NORTH RIGHT OF WAY LINE OF WEST M STREET, 632.33 FEET TO THE EAST RIGHT OF WAY OF SOUTHWEST 44TH STREET; THENCE NORTH 00°24'18" EAST, 598.12 FEET TO THE SOUTH RIGHT OF WAY OF WEST MONROE STREET; THENCE SOUTH 89°51'48" EAST ON SAID SOUTH RIGHT OF WAY LINE, 146.19 FEET TO THE EAST LINE OF THE VACATED NORTH-SOUTH ALLEY OF SAID BLOCK 13; THENCE NORTH 00°22'34" EAST ON SAID EAST LINE, 30.00 FEET; THENCE SOUTH 89°47'04" EAST ON THE NORTH LINE OF SAID BLOCK 13, 152.41 FEET; THENCE NORTH 00°22'45" EAST ON THE WEST LINE OF SAID BLOCK 3, 601.32 FEET; THENCE SOUTH 81°24'58" EAST ON THE SOUTH RIGHT OF WAY LINE OF WEST O STREET, 275.50 FEET; THENCE SOUTH 55°43'50" EAST ON THE SOUTH RIGHT OF WAY LINE OF WEST O STREET, 70.66 FEET BACK TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 13.358 ACRES, MORE OR LESS.

## GENERAL NOTES PRELIMINARY PLAT

- THE LOT LAYOUT IS CONCEPTUAL AND ADJUSTMENTS OF LOT LINES AT THE TIME OF FINAL PLAT IS ACCEPTABLE.
- DIRECT ACCESS TO WEST O STREET IS HEREBY RELINQUISHED.

## SECTION CORNER TIES

- N1/4 CORNER OF SEC.30-T10N-R6E  
FOUND ALUM CAP  
NW 173.26' TO REBAR WITH CAP  
WNW 204.65' TO REBAR WITH CAP  
NW 101.58' TO NAIL IN HEADWALL  
SSE 91.32' TO PK NAIL IN SIGNAL BOX
- NE CORNER OF SEC.30-T10N-R6E  
FOUND ALUM CAP  
WNW 66.55' TO PK NAIL IN ISLAND  
SSW 78.54' TO PK NAIL IN CURB  
ESE 134.11' TO PK NAIL IN SW COR HEADWALL  
NNE 116.08' TO PK NAIL IN CONCRETE NEAR MH
- E 1/4 CORNER OF SEC.30-T10N-R6E  
FOUND ALUM CAP  
N 82.00' TO PK NAIL IN CONC GUARDRAIL  
E 34.37' TO PK NAIL  
S 142.18' TO PK NAIL IN CONC GUARDRAIL  
E -18' TO CL ROAD

## UTILITY WARNING

UNDERGROUND UTILITIES AS SHOWN ARE PER DIGGERS HOTLINE LOCATORS AND AVAILABLE UTILITY COMPANY RECORDS. ADDITIONAL UNDERGROUND UTILITIES MAY BE PRESENT.  
RW ENGINEERING & SURVEYING GIVES NO WARRANTY, EXPRESSED OR IMPLIED, AS TO THE ACCURACY OF THIS UNDERGROUND SITE DATA. RW ENGINEERING & SURVEYING WILL NOT BE RESPONSIBLE FOR ANY DAMAGE TO UNDERGROUND FACILITIES WHICH OCCUR FROM THE USE OF THE INFORMATION PROVIDED.



## ADVANTAGE TRUCKING SUBDIVISION PRELIMINARY PLAT

SW 44th & O ST  
LINCOLN, NE

STAMP

DRAWING INFO

## PRELIMINARY PLAT

## PROJECT INFO

PROJECT NO: 22-2108  
DATE: 01-10-2022  
DESIGNED BY: AJP  
DRAWN BY: AJP  
CHECKED BY: CJC

## REVISION DATE

REV 1 06-18-2022  
REV 2 06-08-2022

SHEET

SHEET 1

May 11, 2022

City of Lincoln  
Planning Department  
555 S 10<sup>th</sup> Street, Suite 213  
Lincoln, NE 68508

**Preliminary Plat Application Letter – Advantage Trucking**

Mr. Cajka:

The provided application is being submitted for the Preliminary Plat of Advantage Trucking. The property is located at the SE intersection of SW 44<sup>th</sup> Street and W O Street. Preliminary platting includes the creation of area for right-of-way dedication for the construction of W Monroe Street, two lots for development, and Outlot A for storm water drainage purposes.

Lot 1 is proposed for initial development including a new office building and maintenance building for Advantage Trucking. Proposed site improvements also include necessary paving area for circulation and parking. Access is provided to Lot 1 through upgrades to the existing SW 44<sup>th</sup> Street and construction of the west segment of W Monroe Street to serve the development. Both roads are proposed as a paved rural roadway section, consistent with previous conversations with City staff and the zoning agreement.

Additional public improvements as part of this project include a deceleration lane along W O Street at the SW 44<sup>th</sup> Street intersection and extension of public water main along SW 44<sup>th</sup> Street. The development will be served by the existing public sanitary sewer located on the east side of the property.

Concurrent with this preliminary plat submittal is a request to vacate public way so as to vacate an existing alley way, more specifically described as Block Thirteen (13) Cushman Subdivision.

Please reach out if you have any questions or require additional information as you complete your review. I can be reached at [emunchel@shive-hattery.com](mailto:emunchel@shive-hattery.com) or by phone at 515-645-9724.

Sincerely:

Shive-Hattery



Eric Munchel, PE  
Civil Engineer







## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER  
Special Permit #1873A

FINAL ACTION?  
Yes

DEVELOPER/OWNER  
Crown Castle USA, Inc.

PLANNING COMMISSION HEARING DATE  
June 22, 2022

RELATED APPLICATIONS  
None

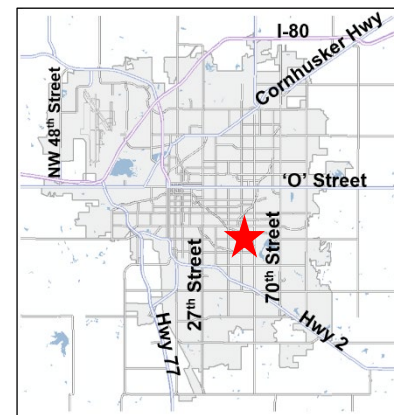
PROPERTY ADDRESS/LOCATION  
4700 Antelope Creek Road

### RECOMMENDATION: CONDITIONAL APPROVAL

#### BRIEF SUMMARY OF REQUEST

This is a request to amend the special permit originally approving a 90'-tall personal wireless facility. It was approved as a 'stealth' application for a flagpole facility which was required to fly a flag at all times.

This request proposes to locate a canister at the top of the facility to house upgraded antennas in order to continue to provide service to customers using the latest technology. With the installation of the canister the facility no longer looks like a flagpole, so the applicant is also proposing that the requirement to fly a flag be eliminated.



#### JUSTIFICATION FOR RECOMMENDATION

With the installation of the canister it is no longer considered a 'stealth' application, but rather a low-profile one. The change in appearance both up close or at a distance will not be great and does not represent a significant impact upon neighboring properties.

Given the appearance of a flagpole is being lost with the installation of the canister, it is consistent that the requirement to fly a flag be eliminated as well. To continue to do so would look out of place and inappropriate.

#### APPLICATION CONTACT

Lisa Alvine, 224-999-5202 or  
[Lisa.Alvine@CrownCastle.com](mailto:Lisa.Alvine@CrownCastle.com)

#### STAFF CONTACT

Brian Will, 402-441-6362 or  
[bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)

#### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan supports expanding wireless technology to all parts of the community finding it is vital to Lincoln's continued economic prosperity. However, it needs to be done in a manner compatible with surrounding uses. Even with the revised cannister array, this facility is still considered a low-profile application with minimal negative impact.

## **Introduction Section:** Growth Framework

**Figure GF.b: 2050** - This site is designated for future commercial land uses on the 2050 Future Land Use Plan.

**Goal 14** - Technology has and will continue to change the way we live, impacting our personal and professional lives. Technology is also continuously evolving which brings new opportunities and challenges - 3D printers are creating new housing opportunities, our appliances are now capable of speaking to each other, and driverless vehicle technology continues to advance. Technological trends will continue to be monitored in all aspects that impact our community. Partnerships will continue to play a significant role, and opportunities will be explored with local resources such as the University of Nebraska and private companies.

The efficient use and expanded access to public wireless resources are fundamental to Lincoln's future economic growth, global competitiveness, and technology equity among its community members. Congestion of the wireless spectrum and scarcities in both licensed and unlicensed bands must be addressed for continued innovation and investment growth. Access to wireless technology in our public spaces for use by residents, visitors, and event businesses has become an everyday expectation and necessity.

In Lancaster County, 88% of households have internet access through an internet subscription. Households with an income less than \$20,000 have internet access through an internet subscription at a rate of 70.8%. The high percentage of residents with an internet subscription speaks to the need and importance of technology for our residents to fully participate in civic functions, employment opportunities, lifelong learning, and access to essential services. In 2015, the City of Lincoln partnered with Allo Communications to complete a fiber optic network, providing faster broadband speeds, including 1-gigabit service available to every home and business in Lincoln. The project was completed in 2018.

The City of Lincoln and Lancaster County promote the integration of information technology throughout the community by their use of technologies in the business of local government. Examples of such activities include:

*Public Internet Terminals:* These terminals provide public access to the Internet for residents and visitors to Lancaster County. High speed lines and free access terminals have been placed in libraries, community centers, recreation centers, and senior centers.

*City and County Websites:* The City and County websites offer expanded opportunities to access government in the areas of employment, health and human services, planning and land development, general information assistance, and access to resources. The ability to conduct various government transactions online saves travel time and resources for citizens and government employees.

*Advanced Audio and Video Equipment:* An array of video equipment is used to broadcast local government meetings over a local cable channel and via the Internet.

*Geographic Information Systems (GIS):* City and County departments, in partnership with other agencies, have created an extensive system of digital geographic information that includes hundreds of layers of information on features such as natural resources, topographic features, land use, structures, floodplains, jurisdictional boundaries, and infrastructure. A broad assortment of digital imagery (i.e., photographs, permit and property information) is also included in this GIS information base.

*Intelligent Transportation Systems:* Information technology offers many opportunities for making better use of transportation facilities and services. Intelligent Transportation Systems (ITS) use computers and digital technology to get the most out of the community's investment in roads and other transportation facilities.

*Decision Lens:* Utilization of the Decision Lens tool has provided an opportunity for robust discussion and consideration for transportation projects through the Lincoln on the Move effort and the prioritization of the Long Range Transportation Plan projects.

*Green Light Lincoln:* The continued deployment of Green Light Lincoln will result in vast improvements to the overall traffic signal system, and numerous projects with high benefit/cost ratios. Key benefits of this initiative are wide reaching and include: reduce the number and severity of crashes; reduce travel times, delays, and stops; reduce vehicle emissions and pollutants; reduce fuel consumption for savings at the pump; smooth traffic flow and reduce driver frustration; and delay the need for major street widening projects.

*Public Wi-Fi and Wireless Internet Access:* The City will partner with private broadband carriers to install outdoor public Wi-Fi systems in public spaces. Exploration of a public Wi-Fi and wireless internet access program for the community should be evaluated for community need and potential costs associated with implementation.

*Educational Internet Access:* The City of Lincoln, Lincoln Public Schools (LPS), Lincoln Libraries, University of Nebraska - Lincoln, and private broadband providers will partner to extend the LPS student internet access into every home and business connected to the Fiber to the Home project. The goal of the Educational Internet Access project is to ensure every student in Lincoln has access to safe and secure high-speed internet regardless of income.

*Cloud-Based Public Infrastructure:* Continued growth in Information Technology applications require the expansion of database storage infrastructure and cloud-based storage. The City and County will continue to migrate from on-premise to cloud-based storage and applications

**Element 6 - Placemaking** - All three of these design boards assist in the process of siting wireless communication antennae and towers within their various jurisdictions. The community values efficient and effective telecommunications while also desiring to minimize adverse impacts of this rapidly evolving infrastructure on our rural and urban environments. Capitol view corridors, historic landmarks and districts, environmentally sensitive areas, and predominantly residential neighborhoods are not preferred locations. Unobtrusive locations on public property; co-locations on existing towers, buildings, and structures; and commercial and industrial areas with minimal impact on residences are preferred.

The City has adopted zoning provisions to state the community's preferences. Combined with guidance from the design review boards, community residents and the telecommunications industry can be well-served.

## ANALYSIS

1. This is a request to amend the original conditions of approval associated with Special Permit #1873. It was approved in 2001 authorizing a personal wireless facility up to 90' in height. It is located next to a small office building approximately one-half block west of South 48<sup>th</sup> Street at 4700 Antelope Creek Road.
2. The original approval included two main criteria - A - The requirement that the facility resemble a flagpole; B - That a flag be flown at all times. As originally approved, the antennas were located inside the pole and a flag was flown from the pole consistent with that design. A waiver to the fall zone, which is a setback from lot lines one-half the height of the tower, was also approved to allow the facility to be located on the small lot.
3. The applicant is requesting that the two original criteria be amended, stating that current technology requires larger antennas which no longer fit inside the pole. Instead, an approximately 18'-tall canister is proposed at the top of the facility to contain the antennas. As a result, this would no longer be considered a 'stealth' facility, rather a low-profile type that is also used in applications near sensitive locations.
4. The original 'stealth' application was suggested due to proximity to Eden Park and to residential areas to the west. In its current location it is surrounded by commercial uses and zoning, where the nearest residential use and zoning is to the southwest on the south side of Antelope Creek Road.
5. A low-profile application can be appropriate near sensitive areas where aesthetics and visual clutter are concerns. Stealth applications though are typically used when located in a historic district or near landmark facilities where appearance standards may apply, or a modern tower is just not appropriate. In this case, located near the edge of a commercial corridor but surrounded by commercial uses the low-profile application is compatible.
6. With the addition of the larger canister the appearance of a flagpole is lost. It is noted that the requirement to fly a flag is unique and not typical for cell towers. In this case, the requirement was added to help enhance its appearance as a flagpole and to help disguise the fact the facility was a wireless tower. Given the appearance of a flagpole is lost with a larger antenna canister it is no longer appropriate to require that a flag be flown.

7. The Comprehensive Plan supports a 'connected' community which has access to the internet and other wireless services, considering such services vital to economic prosperity. This facility helps achieve that goal in a manner with minimal intrusion into the neighborhood and minimal impact on surrounding properties. Subject to the recommended conditions of approval, this request complies with the Zoning Ordinance and is consistent with the Comprehensive Plan.

**CONDITIONS OF APPROVAL:** See attached.

**EXISTING LAND USE & ZONING:** Commercial B-1

**SURROUNDING LAND USE & ZONING**

North: Commercial B-1  
South: Commercial B-1  
East: Commercial B-1  
West: Commercial O-2

**APPLICATION HISTORY**

July 2001 - Special Permit #1873 was approved authorizing a 90'-tall personal wireless facility.

**APPROXIMATE LAND AREA:** Approximately 0.27 acres, more or less.

**LEGAL DESCRIPTION:** Lot 386, I.T., and Outlot B, Prairie Valley, located in the SW 1/4 of Section 32-10-7, Lincoln, Lancaster County, Nebraska.

Prepared by

\_\_\_\_\_  
Brian Will, June 7, 2022  
402-441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)

Applicant/  
Contact: Lisa Levine  
US Cellular  
3025 Highland Pkwy. Ste 400  
Downers Grove, IL 60625  
224-999-5202  
[Lisa.Alvine@CrownCastle.com](mailto:Lisa.Alvine@CrownCastle.com)

Owner: Crown Castle USA, Inc.  
2000 Corporate Drive  
Canonsburg, PA 15316

## CONDITIONS OF APPROVAL - SPECIAL PERMIT #1873A

Per Section 27.63.720 this approval permits a 90'-tall personal wireless facility with a waiver to fall zone with a canister-type antenna array with no requirement that a flag be attached to the facility.

### Site Specific Conditions:

1. Before receiving building permits the permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 2 copies including the following revisions:
  - a. Revise the Elevation Sheet S-4 to show the height of the top of the facility including any appurtenance and which cannot exceed 90'.

### Standard Conditions:

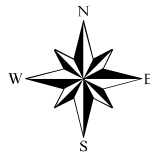
2. The following conditions are applicable to all requests:
  - a. Before installing the antennas all development and construction shall substantially comply with the approved plans.
  - b. All privately-owned improvements shall be permanently maintained by the Permittee.
  - c. The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters be in substantial compliance with the location of said items as shown on the approved site plan.
  - d. The terms, conditions, and requirements of this resolution shall run with the land and be binding upon the Permittee, its successors and assigns.
  - e. The applicant shall sign and return the letter of acceptance to the City Clerk. This step should be completed within 60 days following the approval of the special permit. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant. Building permits will not be issued unless the letter of acceptance has been filed.
  - f. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all prior resolutions approving this permit remain in full force and effect as specifically amended by this resolution.





2020 aerial

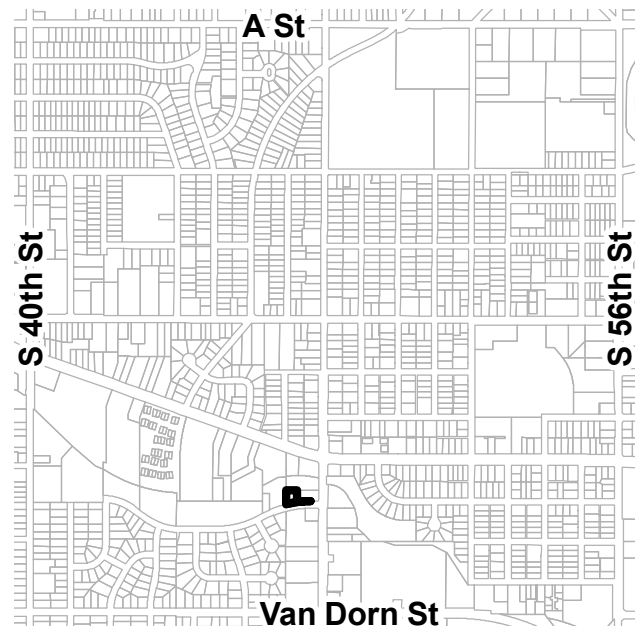
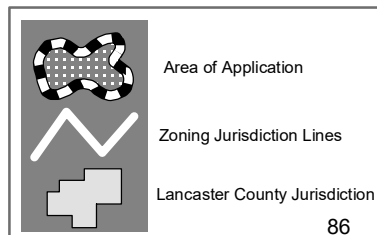
## Special Permit #: SP1873A S 48th St & Antelope Creek Rd



### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile:  
Sec.32 T10N R07E





**EXHIBIT A**

March '00

**Site Name: Dental Office**

## PCS Site Agreement

Site I. D. OM13XC141 G

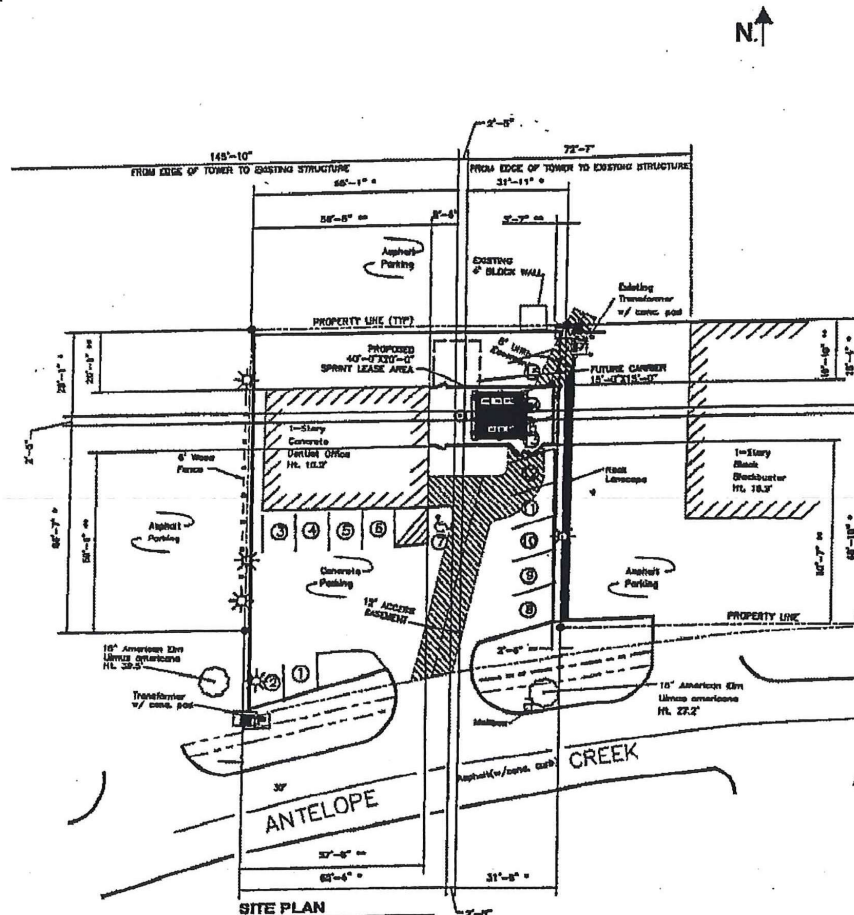
### Site Description

Site situated in the City of Lincoln, County of Lancaster, State of Nebraska commonly described as follows:  
4700 Antelope Creek Drive, Lincoln, NE.

Legal Description: Lot 386 Irregular Tract, and Outlot "B" Prairie Valley, located in the Southwest quarter of Section 32, Township 10 North, Range 7 East, City of Lincoln, Lancaster County, Nebraska.

Parcel Identification Number: 17-32-300-058-000

**Sketch of Site:**



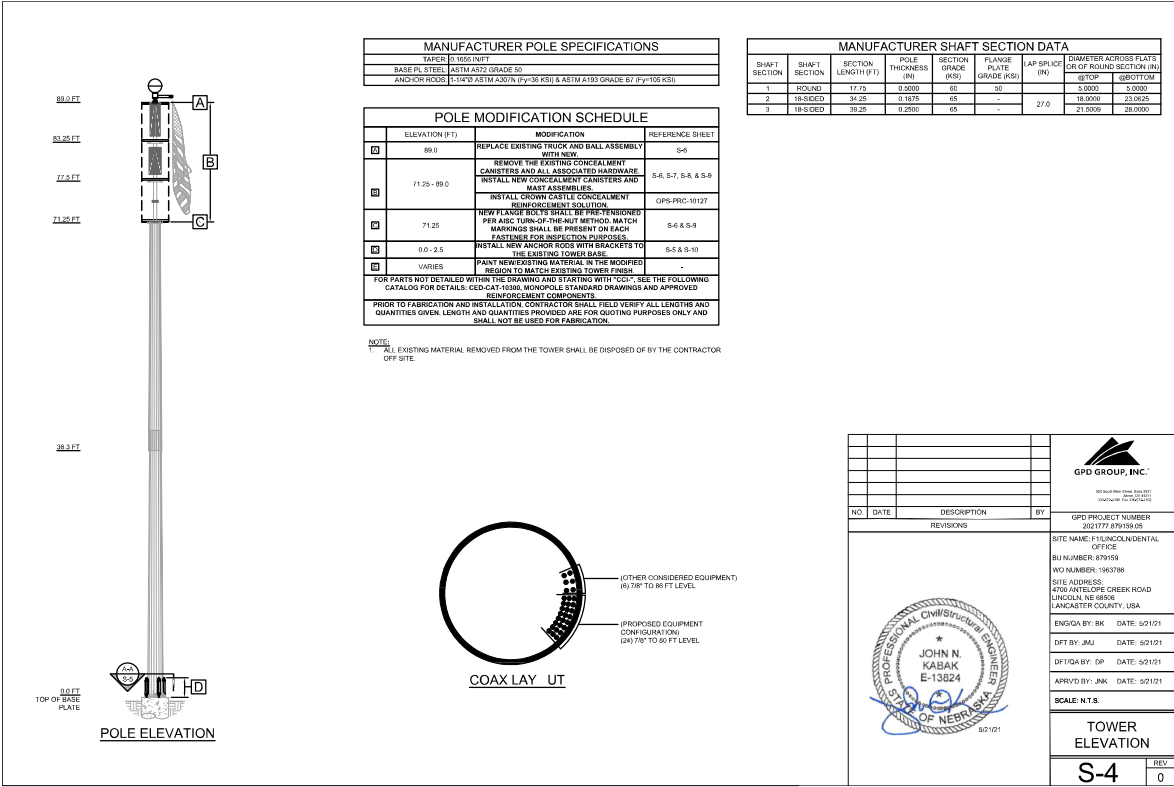
**Owner Initials**

175 6-24-01

**SSLP Initials**

Wage

**Note:** Owner and SSLP may, at SSLP's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.





BILLY WOLFF TRL.

ANTELOPE CREEK RD.

S. 48TH ST.

T-903

T-902

T-901

EXISTING 89' FLAGPOLE;  
GROUND ELEVATION: 1207'

EXISTING FENCED EQUIPMENT COMPOUND

#### PHOTO SIMULATION LOCATION DESCRIPTION:

PHOTO SIMULATION 1 (T-901)  
TAKEN FROM SOUTH SIDE OF ANTELOPE CREEK RD. DUE SOUTH OF EXISTING FLAGPOLE  
DISTANCE TO PROPOSED TOWER: 138'  
GROUND ELEVATION: 1205'

PHOTO SIMULATION 2 (T-902)  
TAKEN FROM WEST SIDE OF TOWER COMPLEX; DUE WEST OF EXISTING FLAGPOLE  
DISTANCE TO PROPOSED TOWER: 135'  
GROUND ELEVATION: 1207'

PHOTO SIMULATION 3 (T-903)  
TAKEN FROM NORTH SIDE OF TOWER COMPLEX; DUE NORTH OF EXISTING FLAGPOLE  
DISTANCE TO PROPOSED TOWER: 109'  
GROUND ELEVATION: 1203'

#### PHOTO SIMULATION NOTES:

- THESE PHOTO SIMULATIONS ARE AN INTERPRETATION OF THE GENERAL APPEARANCE OF THE PROPOSED INSTALLATION. EACH PHOTO SIMULATION IS BASED ON THE SCALING CRITERIA OR ASSUMPTIONS IDENTIFIED
- THE FINAL TOWER DESIGN AND DIMENSIONS WERE NOT AVAILABLE AT THE TIME THE PHOTO SIMULATION WAS PREPARED. THEREFORE, A TYPICAL TOWER/ANTENNA OF SIMILAR SIZE WAS USED FOR SIMULATION PURPOSES
- AN OBJECT OF KNOWN HEIGHT WAS NOT AVAILABLE FOR REFERENCE IN THE DIRECT VICINITY OF THE TOWER LOCATION, LIMITING RELIABILITY OF THE HEIGHT INTERPRETATION
- THE HORIZON LINE AT THE PROPOSED TOWER BASE IS NOT VISIBLE; A HORIZON LINE HAS BEEN ESTIMATED AT THE TOWER BASE FOR THE PHOTO SIMULATIONS
- PHOTO SIMULATIONS GENERATED USING A SIMILAR TOWER OF SIMILAR HEIGHT AT A SIMILAR DISTANCE; ARTISTIC INTERPRETATIONS USED TO ESTIMATE THE APPROXIMATE TOWER SIZE AND APPEARANCE
- THE DIFFERENCE IN ELEVATION BETWEEN THE PHOTOGRAPH LOCATION AND TOWER LOCATION HAS BEEN TAKEN INTO CONSIDERATION
- THE TOPOGRAPHICAL FEATURES BETWEEN THE PHOTOGRAPH LOCATION INTERPRETED AS BEST AS POSSIBLE. THE VISIBILITY OF THE TOWER WILL BE DRASTICALLY REDUCED WITHIN AREAS OF MATURE VEGETATION AND VALLEYS AND INCREASED WITHIN LARGE OPEN FIELDS AND AT HIGHER ELEVATIONS

CONSULTANT:

**Edge**  
Consulting Engineers, Inc.  
624 WATER STREET  
PRAIRIE DU SAC, WI 53578  
608.644.1449 VOICE  
608.644.1549 FAX  
www.edgeconsult.com

CLIENT:

**uscellular**  
U.S. CELLULAR  
8410 W. BRYN MAWR AVE.  
SUITE 700  
CHICAGO, IL 60631

**TITLE SHEET**  
**EDEN PARK (871324)**  
**LINCOLN, NEBRASKA**

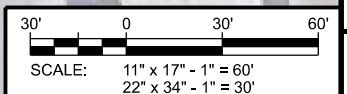
SHEET TITLE:

SUBMITTAL:

INT.	DATE:	DESCRIPTION:
BJN	06/07/22	REV. 0

CHECKED BY:	MRM
PLOT DATE:	6/7/2022
PROJECT NUMBER:	26106
SET TYPE:	PHOTO SIMS.

SHEET NUMBER **G-001**







PROPOSED CANISTER EXPANSION;  
18' TALL x 58" O.D.

EXISTING 89' FLAGPOLE

EXISTING FENCED COMPOUND

K:\2610026108\Photo Sims\T-901.dgn

A

ACTUAL PHOTO BEFORE SIMULATION

CONSULTANT:

**Edge**  
Consulting Engineers, Inc.  
624 WATER STREET  
PRAIRIE DU SAC, WI 53578  
608.644.1449 VOICE  
608.644.1549 FAX  
www.edgeconsult.com

CLIENT:

**uscellular**  
U.S. CELLULAR  
8410 W. BRYN MAWR AVE.  
SUITE 700  
CHICAGO, IL 60631

**PHOTO SIMULATION 1**  
**EDEN PARK (871324)**  
**LINCOLN, NEBRASKA**

SHEET TITLE:

SUBMITTAL:

INT.	DATE:	DESCRIPTION:
BJN	06/07/22	REV. 0

CHECKED BY:	MRR
PLOT DATE:	6/7/2022
PROJECT NUMBER:	26106
SET TYPE:	PHOTO SIMS.
SHEET NUMBER:	<b>T-901</b>

**PHOTO SIMULATION 2**  
**EDEN PARK (871324)**  
**LINCOLN, NEBRASKA**

SHEET TITLE:

[illegible]

**ACTUAL PHOTO BEFORE SIMULATION**



**PHOTO SIMULATION 3**  
**EDEN PARK (871324)**  
**LINCOLN, NEBRASKA**

**SHEET TITLE:**

SUBMITTAL:		
INT.	DATE:	DESCRIPTION:
BJN	06/07/22	REV. 0
CHECKED BY:	MRM	
PLOT DATE	6/7/2022	
PROJECT NUMBER	26106	
SET TYPE	PHOTO SIMS.	
SHEET NUMBER	<b>T-903</b>	



**ACTUAL PHOTO BEFORE SIMULATION**

PROPOSED CANISTER EXPANSION;  
18' TALL x 58" O.D.

— EXISTING 89' FLAGPOLE

EXISTING FENCED  
COMPOUND





3025 Highland Pkwy, Ste 400  
Downers Grove, IL 60515

Phone: (224) 999-5202  
www.crowncastle.com

May 25, 2022

NE - CITY OF LINCOLN 2014  
Planning Department  
Brian Will, Planner  
555 S. 10TH STREET, ROOM 203  
LINCOLN, NE 68508

Via Electronic

\*\*\*\*\*NOTICE OF SUBMISSION\*\*\*\*\*

RE: Request for Minor Modification to Existing Wireless Facility – Section 6409  
Site Address: 4700 Antelope Creek Rd, Lincoln, NE 68506  
Crown Site Number: 879159 / Crown Site Name: F1/LINCOLN/DENTAL OFFICE  
Customer Site Number: 871324 / Application Number: 554021

Dear Brian Will, Planner:

On behalf of USCOC of Greater Iowa, LLC ("US Cellular" or "Applicant"), Crown Castle USA Inc. ("Crown Castle") is pleased to submit this request to modify the existing wireless facility noted above through the collocation, replacement and/or removal of the Applicant's equipment as a request for a modification.

These changes are proposed with the goal of bringing 5G service on-air. Low-band in this area will improve both coverage and data speeds significantly, increase the number of users that the site can accommodate, and improve the quality of the service offered. This will also increase the LTE carriers and add spectrum on low-band and mid-band, which will increase the coverage footprint and capacity. Finally, these changes will also lead to a decrease in call failures.

Below is a table demonstrating the level to which signal transmission and reception will improve (leading to improved signal quality and data speeds).

5G	600 MHz NRAFCN	129400
	600 MHz BW	10
LTE	700 MHz EARFCN	5070 --> 5070 + 5145
	700 MHz BW	10 --> 10 + 5
	2100 MHz EARFCN	2000 --> 2000 & 2175
	2100 MHz BW	10 --> 10 + 5

The Foundation for a Wireless World

CrownCastle.com



3025 Highland Pkwy, Ste 400  
Downers Grove, IL 60515

Phone: (224) 999-5202  
www.crowncastle.com

Radio Configuration	<b>700 MHz (all sectors)</b>	2T2R --> 4T4R
	<b>2100 MHz (Gamma)</b>	2T2R --> 4T4R

To accomplish these goals, US Cellular must install new antennas that are 19.6" wide. The new antenna span is too large to fit inside the current canister. These new antennas are larger due to additional multiple ports, which will support more data/text/talk. This in turn requires more jumpers and coax, which require room for connection. Larger mounts are also required in order to safely support the added weight.

We are also proposing that the requirement to fly the flag be removed from the tower. The addition of the larger canister means that this will no longer look like a flagpole, so the requirement for a flag is no longer as useful an addition as in the original install.

To this end, US Cellular requests that the City of Lincoln consider their request for tower upgrades. It will change the look of the tower, but only in the interest of improved service for all in the area.

The proposed scope of work for this project includes:

Add or replace antennas, ancillary equipment and ground equipment as per plans for an existing carrier on an existing wireless communication facility.

At the end of this letter is a checklist of the applicable substantial change criteria under Section 6409. This request is not an eligible facilities request under this section. Additionally, please find enclosed the following information in support of this request:

- (1) City of Lincoln Planning Department Application Request Form, with legal description;
- (2) Two Photosimulations of Proposed Designs;
- (3) US Cellular Company Narrative;
- (4) Construction Drawings – Total Scope;
- (5) Construction Drawings – Expansion Design;
- (6) Structural Analysis; and
- (7) Section 6409 Substantial Change Checklist.

Our goal is to work with you to obtain approvals earlier than the deadline. We will respond promptly to any request for related information you may have in connection with this request. Please let us know how we can work with you to expedite the approval process. We look forward to working with you on this important project, which will improve wireless telecommunication services in your community using collocation on existing infrastructure. If you have any questions, please do not hesitate to contact me.

**The Foundation for a Wireless World**

CrownCastle.com



3025 Highland Pkwy, Ste 400  
Downers Grove, IL 60515

Phone: (224) 999-5202  
[www.crowncastle.com](http://www.crowncastle.com)

Regards,

*Lisa Alvine*

Lisa Alvine  
Site Acquisition Specialist  
Crown Castle  
Agent for Applicant  
(224) 999-5202  
[Lisa.Alvine@crowncastle.com](mailto:Lisa.Alvine@crowncastle.com)



3025 Highland Pkwy, Ste 400  
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**Section 6409 Substantial Change Checklist  
Towers Outside of the Public Right of Way**

The Federal Communications Commission has determined that a modification substantially changes the physical dimension of a wireless tower or base station under 47 U.S.C. § 1455(a) if it meets one of six enumerated criteria under 47 C.F.R. § 1.6100.

**Criteria for Towers Outside the Public Rights of Way**

YES/NO <b>NO</b>	Does the modification increase the height of the tower by more than the greater of: (a) 10% (b) or, the height of an additional antenna array plus separation of up to 20 feet from the top of the nearest existing antenna?
YES/NO <b>YES</b>	Does the modification add an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater?
YES/NO <b>NO</b>	Does the modification involve the installation of more than the standard number of new equipment cabinets for the technology involved or add more than four new equipment cabinets?
YES/NO <b>NO</b>	Does the modification entail any excavation or deployment outside the current site by more than 30 feet in any direction, not including any access or utility easements?
YES/NO <b>YES</b>	Does the modification defeat the concealment elements of the eligible support structure?
YES/NO <b>NO</b>	Does the modification violate conditions associated with the siting approval with the prior approval the tower or base station other than as specified in 47 C.F.R. § 1.6100(c)(7)(i) – (iv)?

If all questions in the above section are answered “NO,” then the modification does not constitute a substantial change to the existing tower under 47 C.F.R. § 1.6100.

**LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT**

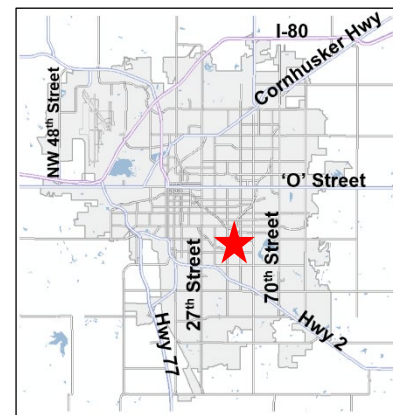
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Special Permit #22018	FINAL ACTION? Yes	DEVELOPER/OWNER Todd L Cuddy
PLANNING COMMISSION HEARING DATE June 22, 2022	RELATED APPLICATIONS None	PROPERTY ADDRESS/LOCATION 4400 High Street

**RECOMMENDATION: CONDITIONAL APPROVAL**

**BRIEF SUMMARY OF REQUEST**

A request per Section 27.63.280 for Expansion of a Nonconforming Use to accommodate a garage addition for a single-family home. The existing rear yard setback is 14'7". A 19' 11" rear yard setback is required. The proposal is for 9' by 19' garage addition that will have a rear yard setback of 5'7". A waiver is requested to allow the structure to extend into the rear yard.



**JUSTIFICATION FOR RECOMMENDATION**

The nonconforming condition is caused by the existing garage attached to the house not meeting the required 19'11" rear yard setback. The proposal is for a 9' by 19' garage addition. The proposed garage addition should not significantly impact surrounding properties. The addition will still be approximately 25' from the neighbor's garage to the east. The requested waiver will allow for an addition to an existing house that will still maintain a setback comparable to a side yard setback. The property in question is a corner lot, and in this case the location of the addition functions as a side yard.

**APPLICATION CONTACT**

Willet Construction, (402) 434-8006,  
[jonathan@willetconstruction.com](mailto:jonathan@willetconstruction.com)

**STAFF CONTACT**

George Wesselhoft, (402) 441-6366,  
[gwesselhoft@lincoln.ne.gov](mailto:gwesselhoft@lincoln.ne.gov)

**COMPATIBILITY WITH THE COMPREHENSIVE PLAN**

The Comprehensive Plan encourages maintaining appropriate density and a variety of housing types. This proposal permits the expansion of a necessary housing feature within an established neighborhood.

**WAIVERS**

1. Reduction of the rear yard from 19' 11" to 5' for the garage addition. (Recommend Approval)



[Figure GF.b: 2050](#) - This site is shown as future urban residential on the 2050 Future Land Use Plan.

[Land Use Plan](#) -Urban Residential. Residential uses in areas with varying densities ranging from more than fifteen dwelling units per acre to less than one dwelling per acre. All types of housing are appropriate here, from detached single family, duplex and missing middle, to higher density multi-family. Undeveloped areas shown as Urban Residential may also include neighborhood-scale commercial and other compatible uses that will be added to the map after approval of development plans.

## **Elements Section**

### **E1: Complete Neighborhoods and Housing**

#### **Existing Neighborhoods**

The diversity of architecture, housing types and sizes are central to what make existing neighborhoods great places to live. New construction should continue the architectural variety, but in a manner that is sensitive to the existing neighborhoods.

P2: Existing Neighborhoods - Continue our commitment to strong, diverse, and complete neighborhoods.

#### **Action Steps**

6. Promote the continued use of residential dwellings and all types of buildings, to maintain the character of neighborhoods and to preserve portions of our past. Building code requirements for the rehabilitation of existing buildings should protect the safety of building occupants, while recognizing the need for flexibility that comes with rehabilitating existing buildings.

## **ANALYSIS**

1. This is an application to allow a garage addition to an existing single-family home. The existing home has a single-stall garage with the proposal to expand it to a two-stall garage. The property is located at the northeast corner of S. 44<sup>th</sup> Street and High Street.
2. This legal nonconforming property contains a single-family dwelling on one platted lot. The house is located on a corner lot and is zoned R-2 Residential. The house has the same functional orientation as the neighboring houses to the east, with the front door and garage facing High Street.
3. The building is a permitted main use. The building is nonconforming because the attached garage is part of the main structure and would otherwise need to conform to the setbacks of the main structure including the rear yard on the east side. The property is a corner lot, and in such instances, you can choose which is the side or rear yard. In this case, the east side was determined to be the rear yard because it was greater distance from the property line to the house, so it because the rear yard and the shorter distance was the side yard. The required rear yard is 20' or 20% of the lot depth whichever is less. In this case, the lot depth is 99' so the required setback is 19' 11". The existing attached garage setback is 14' 7". The rear yard reduction to 5 feet should not negatively affect surrounding properties.
4. A nonstandard use is defined by LMC §27.02.150 as a lot or use that existed prior to the effective date of the zoning ordinance or due to a change in the zoning ordinance or district boundaries and no longer complies with the minimum requirements for the district in which it is located. This house was built in 1949 and became nonstandard when the City adopted revised zoning regulations.
5. LMC §27.63.280 provides the following criteria shall be given specific consideration:

#### **(a) Effects on adjacent property, traffic, city utility service needs;**

There will be no significant impact. The garage addition will have a setback of 5 feet from the east lot line, and it

**(b) Density of land use zoning for the subject property and adjacent property;**

There will be no significant impact. No additional buildings or dwellings are proposed with this application. All current building codes would apply with the proposed garage addition.

**(c) The degree of hardship upon the applicant which would be caused by failure to grant.**

This garage addition would allow for additional use of the home in an existing neighborhood. If the special permit were not approved, the property owner could not proceed with the improvements as proposed. The property owner could conduct routine maintenance on the garage as it exists today, but the garage addition could not be done.

6. The special permit is warranted because: 1) the garage addition is to allow additional use for a home in an older, existing neighborhood; 2) the footprint and massing of the garage addition will not be such that neighboring properties would be negatively affected; 3) it would allow for the expansion of the garage in such a way that effectively still matches the pattern of the nearby homes; and 4) the new addition will meet current building codes.

**CONDITIONS OF APPROVAL:** See attached.

**EXISTING LAND USE & ZONING:** Single family dwelling; R-2

**SURROUNDING LAND USE & ZONING:** Single family dwelling; R-2

**APPROXIMATE LAND AREA:** 0.14 acres

**LEGAL DESCRIPTION:** W ½ Lot 10, Block 8, Woods Brothers Thompson Summit, Lincoln, Lancaster County, Nebraska.

Prepared by

---

George Wesselhoft, Planner

Date: June 9, 2022

Applicant/Owner: Todd L Cuddy  
4400 High Street  
Lincoln, NE 68506  
(402) 617-9478, [tcuddy1@unl.edu](mailto:tcuddy1@unl.edu)

Contact: Willet Construction (Jonathan)  
5143 S 48<sup>th</sup> Street, Suite B  
Lincoln, NE 68516  
(402) 434-8006, [jonathan@willetconstruction.com](mailto:jonathan@willetconstruction.com)

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/SP/22000/SP22018 Cuddy Garage Addition.gjw.docx>

## CONDITIONS OF APPROVAL - SPECIAL PERMIT #22018

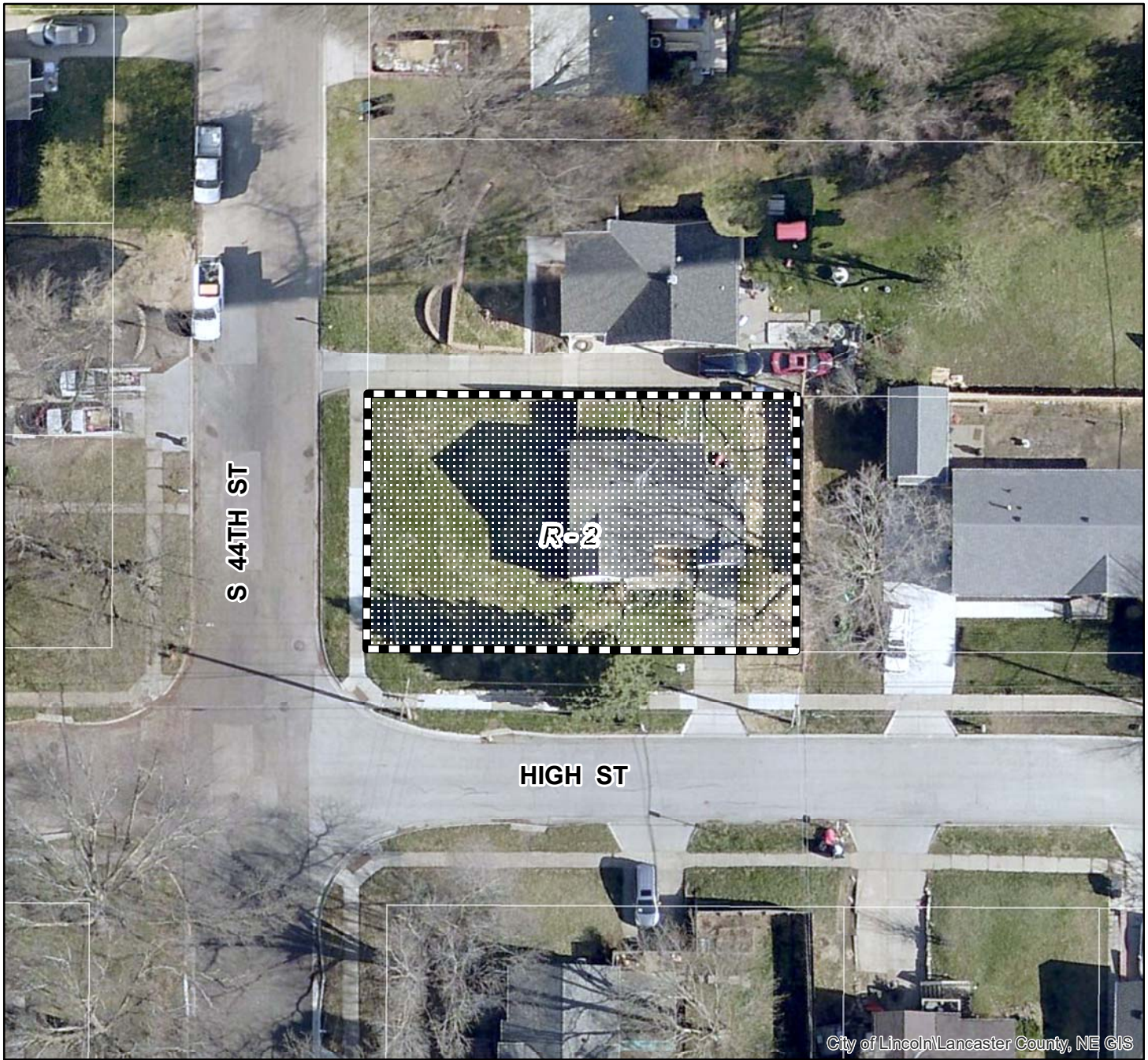
Per Section 27.63.280 this approval permits the expansion of the existing single-family home, with waivers to reduce the rear yard from 19' 11" to 5' for an attached garage addition.

### Site Specific Conditions:

1. Before receiving building permits the permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 2 copies.

### Standard Conditions:

2. The following conditions are applicable to all requests:
  - 2.1 Before occupying the buildings all development and construction shall substantially comply with the approved plans.
  - 2.2 The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters be in substantial compliance with the location of said items as shown on the approved site plan.
  - 2.3 The terms, conditions, and requirements of this resolution shall run with the land and be binding upon the Permittee, its successors and assigns.
  - 2.4 The applicant shall sign and return the letter of acceptance to the City Clerk. This step should be completed within 60 days following the approval of the special permit. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant. Building permits will not be issued unless the letter of acceptance has been filed.



City of Lincoln/Lancaster County, NE GIS

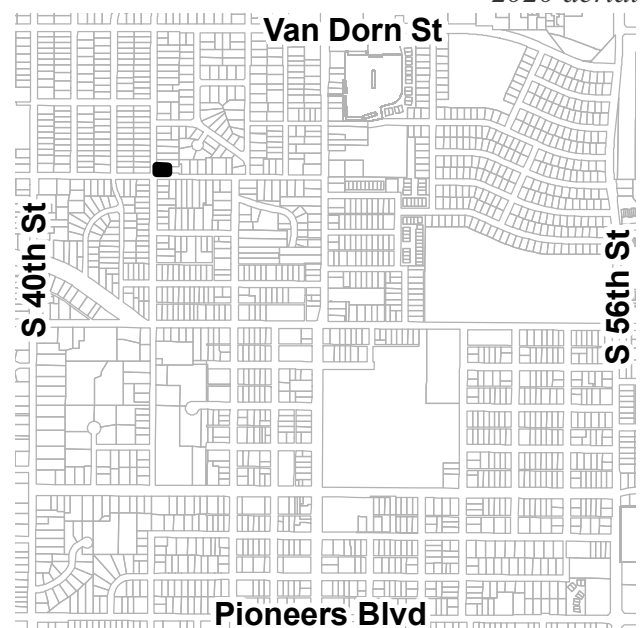
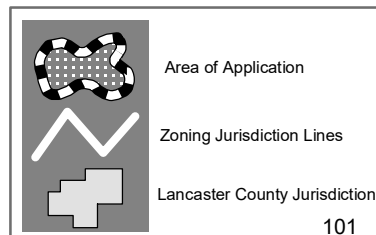
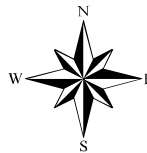
2020 aerial

**Special Permit #: SP22018**  
**S 44th St & High St**

**Zoning:**

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

**One Square Mile:**  
**Sec.05 T09N R07E**





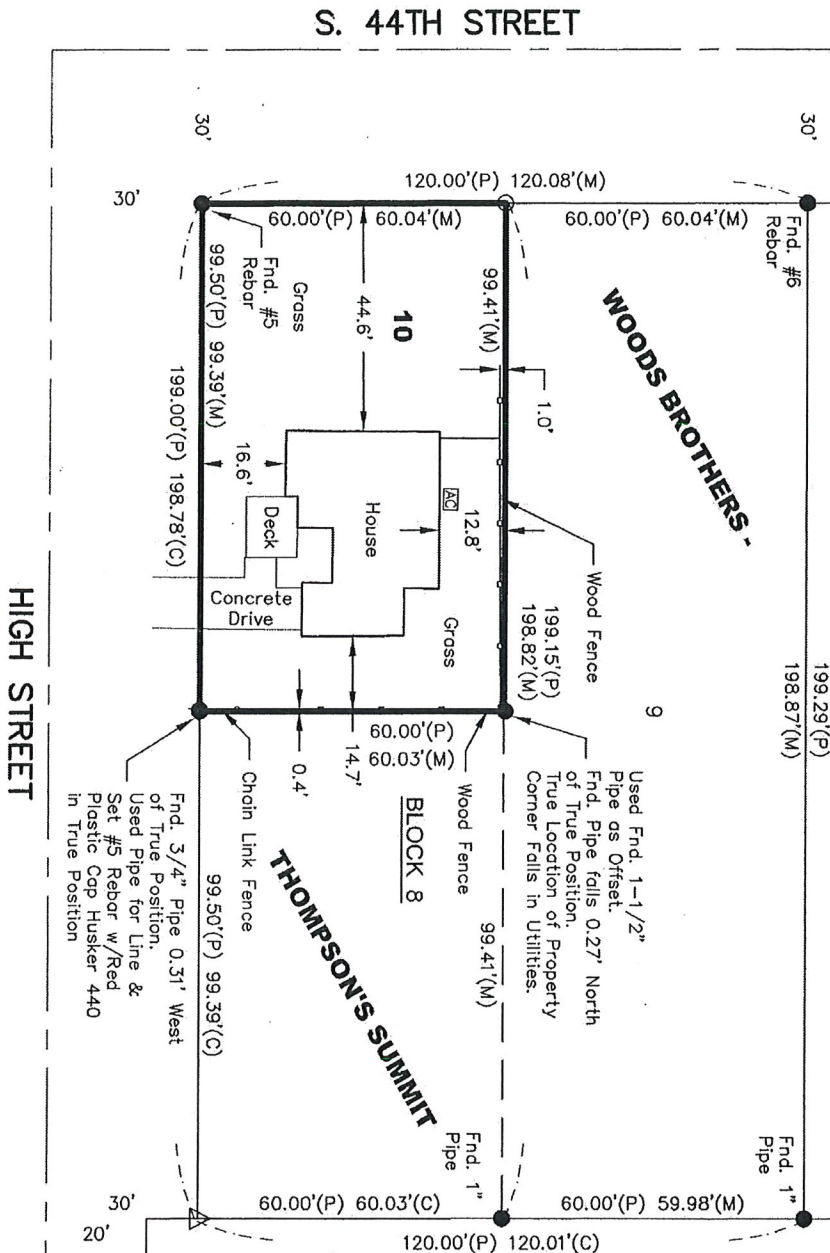


**HUSKER SURVEYING**  
4535 Normal Blvd, Ste #101  
Lincoln, NE 68506  
(402) 423-5202  
(402) 423-5211  
www.huskersurveying.com

Survey of West Half of Lot 10, Block 8, Woods Brothers  
Thompson Summit, City of Lincoln.

NW1/4, Section 5 T. 9N. R. 7 E. of the 6th P.M.  
Lancaster County, Nebraska  
Date of Survey 04/06/2022 Job No. 7026

**SURVEY RECORD**  
Survey for: Willett Construction  
4400 High Street  
Lincoln, NE, 68506



Lot 17,  
Wild's Add. to  
College View



- Legend:  
△ = Air Conditioning Unit  
● = Temporary Point  
○ = Cor. Fnd  
○ = Cor. Set #5  
○ = Rebar w/cap #440  
(M) = Meas. Dist.  
(P) = Plat Dist.  
(D) = Deed Dist.  
(C) = Calculated Dist.

Scale: 1"=30'

### Surveyor's Certificate

I, Joyne M. Malone, a Professional Registered Land Surveyor under the laws of the State of Nebraska, certify the above survey was executed by me, on the date shown. Permanent monument corners as described in the survey drawing were placed at all missing or remonumented corners. Distances shown are measured in feet and decimals of a foot.

Signed this 21st day of April, 2022

Joyne M. Malone  
Professional Registered Land Surveyor  
No. LS440 Joyne M. Malone





5143 S. 48TH ST.  
LINCOLN, NE  
68516  
402-434-8008

REP:  
Jonathan Goertzen

SHEET TITLE:  
Garage  
Addition

SCALE:  
1/4" = 1'  
103

CLIENT:

Todd Cuddy  
4400 High St  
Lincoln, NE 68506

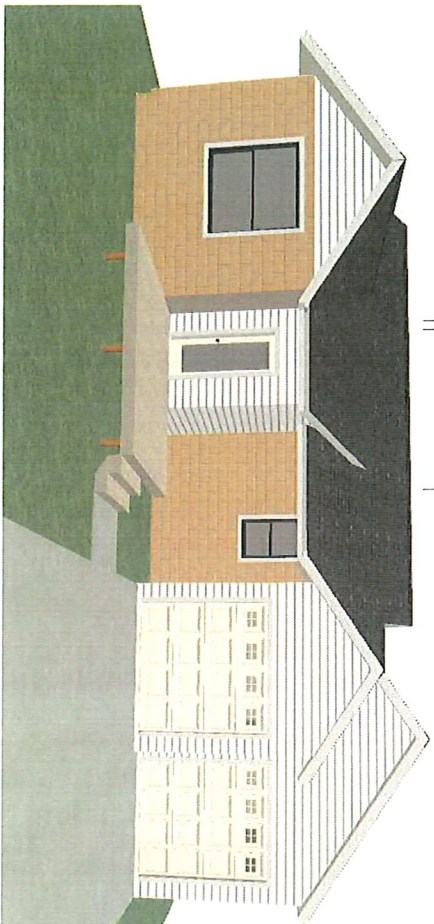
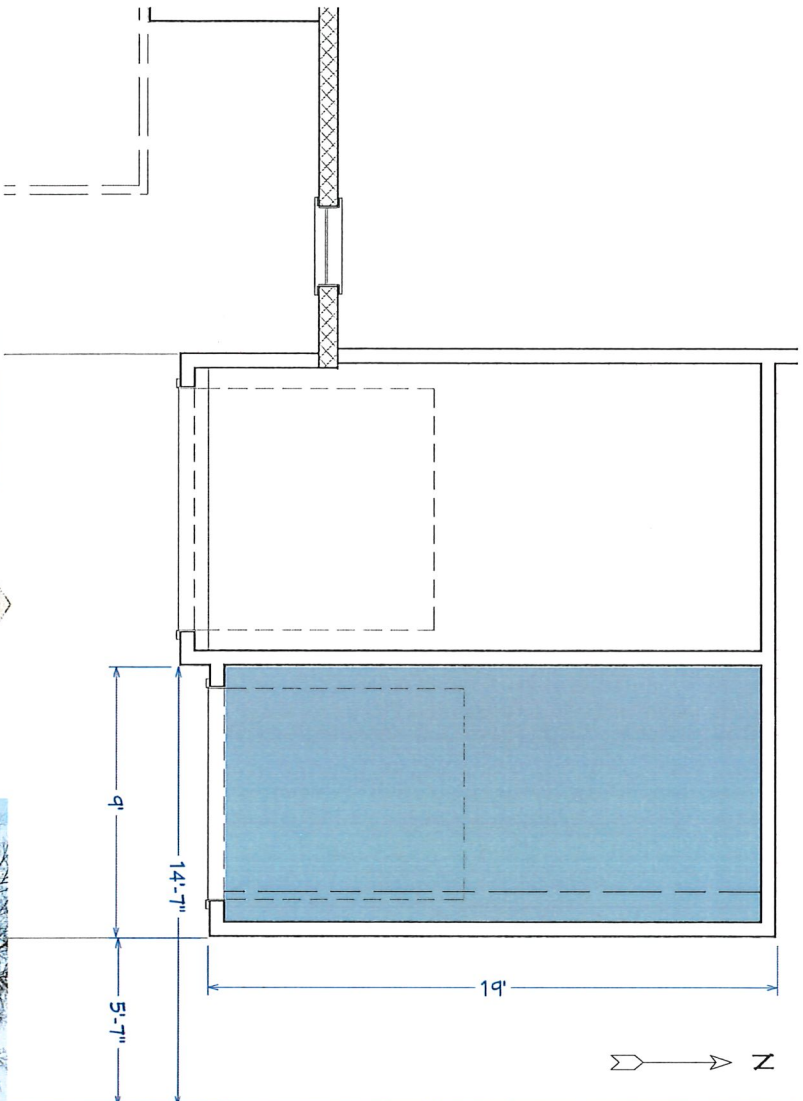
REVISION DATE:

05/20/2022

SHEET NUMBER:

01

Current Side Yard Setback: 14'7"  
New Proposed Side Yard Setback: 5'7"  
Addition Shaded in Blue



Todd Cuddy  
4400 High Street  
Lincoln, NE 68506  
402/617-9478  
[tcprimary@gmail.com](mailto:tcprimary@gmail.com)

May 21, 2022

City of Lincoln  
Planning Department  
555 S. 10<sup>th</sup> Street  
Ste. 213  
Lincoln, NE 68508

Dear Planning Department Team Member:

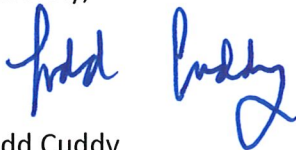
My name is Todd, and I am writing to you about a home addition. I would like to add a garage addition to the east side of my home at 4400 High Street.

This garage addition is important to me because:

1. My current garage is too narrow to house my car
2. My home is small, and I would like to add more working room and space for my tractor
3. I live on a corner lot and have nowhere else to expand
4. I would like to add resale value to my home

I hope you will consider my request. Feel free to contact me if you have questions.

Sincerely,



Todd Cuddy

## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER  
Comprehensive Plan Conformance #22008

FINAL ACTION?  
No

DEVELOPER/OWNER  
City of Lincoln

PLANNING COMMISSION HEARING DATE  
June 22, 2022

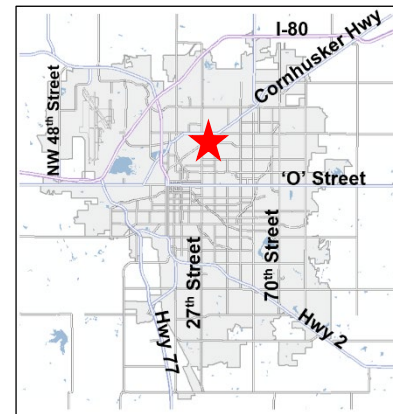
RELATED APPLICATIONS  
Change of Zone #22015  
Use Permit #22005

PROPERTY ADDRESS/LOCATION  
Southeast corner of N. 27<sup>th</sup> Street and  
Leighton Avenue

### RECOMMENDATION: IN CONFORMANCE WITH THE COMPREHENSIVE PLAN

#### BRIEF SUMMARY OF REQUEST

This is a request to surplus the City-owned property which consists of 22 vacant lots at the southeast corner of N. 27<sup>th</sup> Street and Leighton Avenue. The surplus area is approximately 1.20 acres and currently zoned R-2, Residential. The associated Change of Zone #22015 and Use Permit #22005 address allowed uses, easements, floodplain restrictions, and access for private development of the land in the future.



#### JUSTIFICATION FOR RECOMMENDATION

The parcels within this surplus are currently vacant with no intent for use by the City in the future. There has been no opposition to the sale of the property by any department or public agencies. The request for surplus will allow the property to be sold and developed privately.

#### APPLICATION/STAFF CONTACT

Michelle Backemeyer  
Urban Development Dept  
(402) 441-8617 or  
[mbackemeyer@lincoln.ne.gov](mailto:mbackemeyer@lincoln.ne.gov)

#### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The City has been contacted about the potential sale and availability of developing this property. This surplus will help facilitate redevelopment of this property under private ownership either with an office or residential use consistent with the Comprehensive Plan while providing protections for the neighboring properties through the change of zone and use permit. .

## **Introduction Section:** Growth Framework

Figure GF.b: 2050 - This site is shown as future Light Industrial and Urban Residential on the 2050 Future Land Use Plan.

### **Fundamentals of Growth in Lancaster County**

The City of Lincoln's present infrastructure investment should be maximized by planning for well-designed and appropriately-placed residential and commercial development in existing areas of the city with available capacity. This can be accomplished by redeveloping underutilized commercial centers into areas that include a mix of uses, and encouraging higher-density residential redevelopment in appropriate locations, including missing middle housing. New infrastructure investments to serve growth areas can be maximized by encouraging a higher density of both residential and commercial uses in these areas.

#### **Existing Neighborhoods**

Infill of housing in existing neighborhoods should respect the existing pattern of development. Infill redevelopment should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.

## **Elements Section**

### **E3: Business, Economy, and Workforce**

#### **Commercial and Industrial Development**

Commercial and Industrial Centers in Lancaster County should be located:

- Where urban services and infrastructure are available or planned for in the near term. In sites supported by adequate road capacity – commercial development should be linked to the implementation of the transportation plan.
- In areas compatible with existing or planned residential uses.
- In areas accessible by various modes of transportation (i.e. automobile, bicycle, transit, and pedestrian).

## **Policies Section**

P14: Commercial Infill - Develop infill commercial areas to be compatible with the character of the area.

#### **Action Steps**

1. Implement commercial infill redevelopment principles as discussed in the Business & Economy element.
2. Maintain and encourage businesses that conveniently serve nearby residents, while ensuring compatibility with adjacent neighborhoods.
3. Avoid encroachment into existing neighborhoods during expansion of existing commercial and industrial uses, and take steps to ensure expansions are in scale with the adjacent neighborhood, use appropriate screening, fulfill a demonstrated need, and do not hinder health and safety.

### **P25: Open Space with Development**

Action Step 4: Designate areas for future urban development outside of the floodplain and floodway in order to mitigate the impacts of flooding and preserve natural flood storage. Floodplain in public ownership should remain in public ownership. However, where it is determined that there is public benefit to releasing floodplain property to private ownership, flood storage capacity should be maintained through easements, deed restrictions, or other tools.

#### Action Steps

1. Land uses with vulnerable populations should not be located within pipeline planning areas. For large high-pressure pipelines, pipeline planning areas are established based upon pipeline metrics or the United States Department of Transportation's Emergency Response Guidebook. Most high-pressure pipelines have a planning area of approximately 150-250 feet from either side of the pipeline.
2. Land uses with vulnerable populations should not be located within 300 feet of an industrially-zoned district or heavy industrial use such as a rail line. Even if a given industrial site does not include hazardous materials at present, a hazardous use could be added in the future.
3. Do not support expansion of existing residential uses currently located within a pipeline planning area or within 300 feet of an industrial zoning district unless the pipeline is decommissioned, or downzoning is planned for the industrial area.

#### ANALYSIS

1. This is a request to find in conformance with the Comprehensive Plan the surplus of a 1.20-acre area consisting of 22 lots located at North 27<sup>th</sup> Street and Leighton Avenue. Nineteen of the vacant lots are located along the N. 27<sup>th</sup> Street access road, with 3 lots located across the alleyway to the east, abutting Leighton Avenue and N. 28<sup>th</sup> Street. The City-owned property is not needed for a public use and did not receive any objection from departments or public agencies. The designation as surplus will allow the properties to develop privately and help provide commercial and residential uses in an existing neighborhood.
2. The properties within the surplus area are currently vacant and zoned R-2, Residential. The land is surrounded by R-2, Residential to the south and east, along with P, Public zoning for the LES substation on the east. To the north across Leighton Avenue is I-1, Industrial zoning and railroad tracks. North 27<sup>th</sup> Street is located to the west which includes a small access road abutting the west side of the parcels. R-4, Residential is located to the south.
3. The properties are currently restricted in development due to extensive utility easements located within the area, and a portion of the area within the floodplain. The future development of the property will be required to maintain the existing easements. A proposed Change of Zone request with an associated Use Permit is intended to assist with future development on this property including allowed uses and flexibility with reduced setbacks.
4. Currently, existing I-1, Industrial zoning and railroad lines are located to north, across Leighton Avenue. The Comprehensive Plan discourages placing vulnerable populations including residential uses within 300 feet from both the I-1 zoning and railroad lines. Within the associated Use Permit, a 210-foot buffer will be added and extend south from the existing I-1 zoning district over a portion of the properties currently allowing residential uses. This buffer will restrict this area to nonresidential uses. This distance was reviewed and deemed appropriate as the location of the existing grain elevator and railroad lines are not located directly across Leighton Avenue, with a majority of the I-1, property directly north serving as a driveway entrance and access to the site. It was also found unlikely that additional railroad lines or expansion of the grain elevator operation would extend into the western portion of the lot, closest to the subject property.
5. The Urban Development Department distributed a memo to public agencies on March 16, 2022, asking if there was any opposition to the sale or desire for easements. There was no opposition to the sale received. Easements will need to be retained as requested by LES, along with a 5-foot easement requested by LTU Traffic Engineering for city utilities. A future trail easement will be needed with a future final plat for redevelopment.
6. A portion of the surplus area is within the 100-year floodplain and will require floodplain permitting when developed. As per City policy, no fill will be permitted in the floodplain when land is declared surplus. This restriction is covered in the Use Permit.

**CONDITIONS OF APPROVAL:** The conditions of approval are covered in Use Permit 22005.



**EXISTING LAND USE & ZONING:** Vacant; R-2, Residential

**SURROUNDING LAND USE & ZONING**

North: Aurora Cooperative Elevator Company	I-1, Industrial
South: Centeroaks Apartments	R-4, Residential
East: Single Family, LES Substation	R-2, Residential; P, Public
West: N. 27 <sup>th</sup> Street Bridge, Matt Talbot Kitchen & Outreach	H-3, Highway Commercial

**APPROXIMATE LAND AREA:** 1.20 acres more or less

**LEGAL DESCRIPTION:** Lots 1-3, Block 4, and the remaining portions of Lots, 12-22, Block 4, Lots 15-22, Block 5, Junction Place and vacated Merrill Street.

Prepared by

---

Ben Callahan, Planner

Date: June 9, 2022

Applicant/ Contact: Michelle Backemeyer  
Urban Development Department  
555 S 10<sup>th</sup> Street, Suite 205  
Lincoln, NE 68508  
(402) 441-8617 or  
[mbackemeyer@lincoln.ne.gov](mailto:mbackemeyer@lincoln.ne.gov)

Owner: City of Lincoln

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/CPC/22000/CPC22008 N 27th St & Leighton Avenue.bmc.docx>

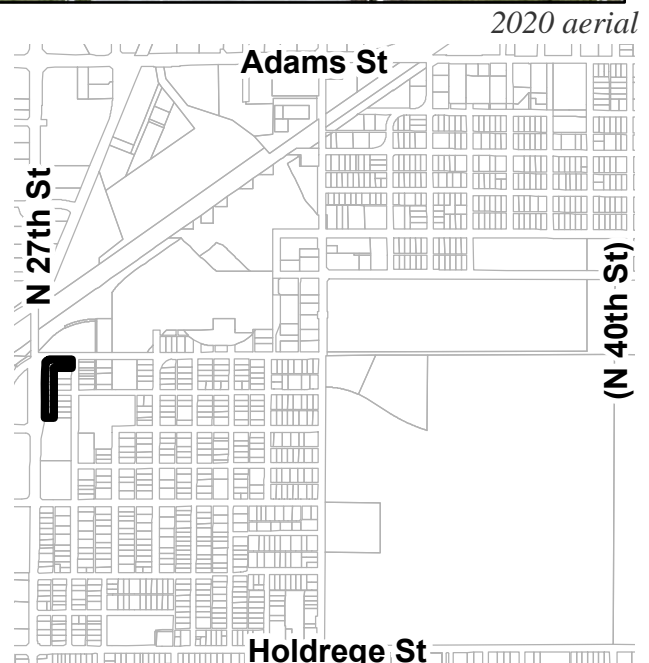
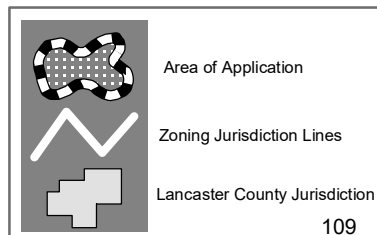


**Comp Plan Conformance #: CPC22008,  
Change of Zone #: CZ22015 (R-2 to R-T)  
and Use Permit #: UP22005  
N 27th St & Leighton Ave**

### Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile:  
Sec.18 T10N R07E







# Official Survey Record

Lancaster County, Nebraska

Phone (402) 434-2686  
Fax (866) 215-8747

ALLIED SURVEYING AND MAPPING, INC.

8535 Executive Woods Drive - Suite 200 - Lincoln, Nebraska 68512

Survey Lots 1, 2 and 3 AND the remaining portion of Lots 12 thru 22, Block 4 AND the remaining portion of Lots

15 thru 22, Block 5, All in Junction Place Addition AND the vacated portion of Merrill Street (vac. ord. 14381)

Located in Southwest Quarter of Section 18 T. 10 N. R. 7 E. of the 6th P.M.

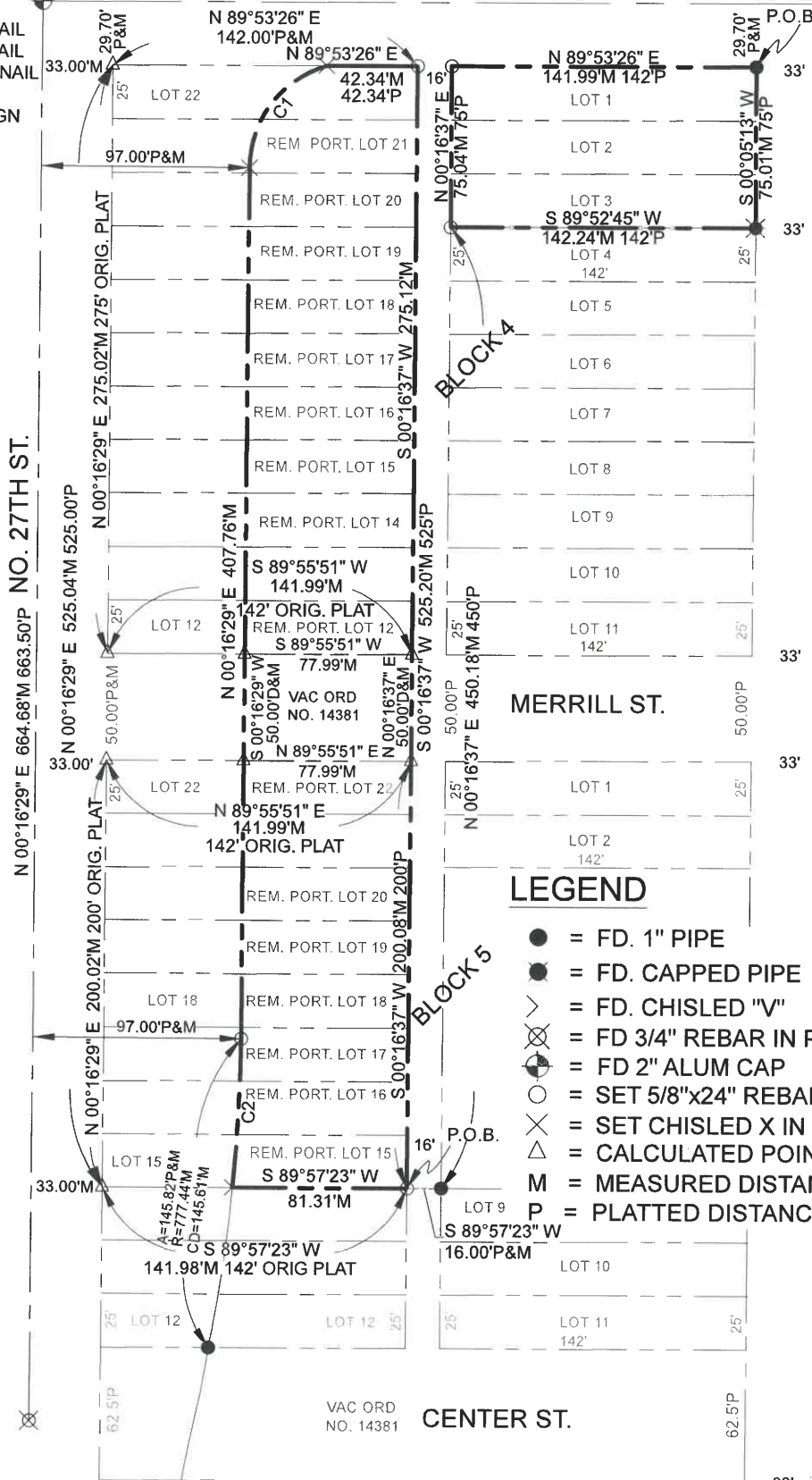
Job No. 2021-0036

July 2021

W1/4 SEC 18-10-7E  
FD. 2" ALUM CAP

S 9.95' TO MAG NAIL  
SSE 9.97' TO MAG NAIL  
SSW 89.84' TO MAG NAIL  
N 3' TO SURVEY  
MARKER SIGN

LEIGHTON AVE.



CURVE	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	50.00'M	73°19'38"	37.22'M	63.99'M	59.71'M	N 36°56'30" E
C2	777.44'M	5°08'43"	34.93'M	69.81'M	69.79'M	N 03°00'42" E

## LEGEND

- = FD. 1" PIPE
- = FD. CAPPED PIPE
- > = FD. CHISLED "V"
- ⊗ = FD 3/4" REBAR IN POT
- = FD 2" ALUM CAP
- = SET 5/8"x24" REBAR W/ 595 PLASTIC CAP
- ⊗ = SET CHISLED X IN SIDEWALK
- △ = CALCULATED POINT
- M = MEASURED DISTANCE
- P = PLATTED DISTANCE FROM CITY PLAT

## SURVEYORS CERTIFICATE

I hereby certify that I have accurately surveyed the property in the above plat. Capped rebar were set at points marked "o". All dimensions are chord measurements unless otherwise shown, and are in feet and decimals of a foot.

Signed this 2nd day of July 2021

NAME

*Richard Kingman*  
RICHARD KINGMAN

Surveyor's License #

595

Nebraska L.S.

July 2021

LS-595



## LEGAL DESCRIPTION

Meets and Bounds description of the remaining portion of Lots 12 thru 22, Block 4, Junction Place Addition AND the remaining portion of Lots 15 thru 22, Block 5, Junction Place Addition AND the vacated portion of Merrill Street abutting (vac. Ord. 14381), All located in the Southwest Quarter of Section 18, Township 10 North, Range 7 East, of the 6th P.M., Lincoln, Lancaster County, Nebraska, and more particularly described as follows:

Beginning at the Southeast corner of Lot 15, Block 5, Junction Place Addition as originally platted; thence in a Westerly direction on the South line of said Lot 15 and on an assumed bearing of S 89°57'23" W, for a distance of 81.31' to the Southwest corner of the remaining portion of said Lot 15;

Thence in a Northerly direction on a curve turning to the left with an arc length of 69.81', a radius of 777.44', a chord bearing of N 03°00'42" E, for a chord length of 69.79' to a point located 97.00' East of the West line of the Southwest Quarter of said Section 18;

Thence N 00°16'29" E on a line 97.00' East of and parallel to the West line of the Southwest Quarter of said Section 18, for a distance of 407.76';

Thence in a Northeasterly direction on a curve turning to the right with an arc length of 63.99', a radius of 50.00', a chord bearing of N 36°56'30" E, for a chord length of 59.71' to a point located on the North line of said Lot 22, Block 4 as originally platted and on the Southerly 29.70' Right-of-Way line of Leighton Street;

Thence N 89°53'26" E on the North line of said Lot 22, Block 4 as originally platted and on the Southerly 29.70' Right-of-Way line of Leighton Street, for a distance of 42.34' to the Northeast corner of said Lot 22, Block 4, said point also being located on the West line of the 16.00' wide public alley;

Thence S 00°16'37" W on the West line of the 16.00' wide public alley and on the East line of said lots 12 thru 22, Block 4 and the East line of the said vacated portion of Merrill Street and the East line of said Lots 15 thru 22, Block 5, for a distance of 525.20' to the **POINT OF BEGINNING** and containing a calculated area of 0.93 acres, more or less.

Together with and subject to covenants, easements, and restrictions of record.



URBAN DEVELOPMENT

555 South 10th Street, Suite 205 | Lincoln, NE 68508  
402-441-7606 | F: 402-441-8711 | [urbandev@lincoln.ne.gov](mailto:urbandev@lincoln.ne.gov)

April 27, 2022

David Cary, Director  
Lincoln-Lancaster County  
Planning Department  
555 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

Dear David:

Enclosed is an application to declare surplus the City property located at approximately 27<sup>th</sup> and Leighton Avenue. The City has been contacted by an entity interested in purchasing this area for residential uses. The Lincoln Transportation and Utilities has no plans for the excess right of way adjacent to the North 27<sup>th</sup> Street overpass, and a survey was created to include only those parts that are surplus. The City also has fiber conduit that services ITS equipment on the bridge and they are requesting an easement for that purpose along with LES who has facilities that will need easements to be executed by any potential purchaser.

Please forward the request to the Planning Commission for their earliest consideration for Comprehensive Plan conformance. My understanding is that the request should be on the May 25, 2022, agenda.

If you have questions or need additional information, please contact me at 441-8617 or at [mbackemeyer@lincoln.ne.gov](mailto:mbackemeyer@lincoln.ne.gov). Thank you.

Sincerely,

A handwritten signature in blue ink that reads 'Michelle R. Backemeyer'.

Michelle R. Backemeyer  
Real Estate and Relocation  
Assistance Agent



## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER  
Use Permit #22005  
Change of Zone #22015

FINAL ACTION?  
No

DEVELOPER/OWNER  
City of Lincoln

PLANNING COMMISSION HEARING DATE  
June 22, 2022

RELATED APPLICATIONS  
CPC22003 - City Surplus Request

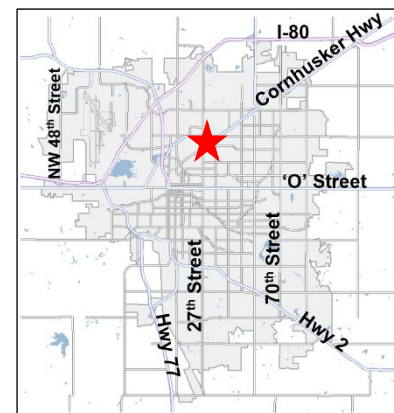
PROPERTY ADDRESS/LOCATION  
Southeast corner of N. 27<sup>th</sup> Street and  
Leighton Avenue.

### RECOMMENDATION: CHANGE OF ZONE APPROVAL USE PERMIT: CONDITIONAL APPROVAL

#### BRIEF SUMMARY OF REQUEST

This is a combined request for a Change of Zone from R-2, Residential to R-T, Residential Transition, and a Use Permit following the same boundary at the southeast corner of North 27<sup>th</sup> Street and Leighton Avenue.

Both applications are proposed over 22 vacant lots to assist with the future development concerns regarding existing easements, access, and floodplain, along with providing suitable permitted uses due to the close proximity of I-1, Industrial zoning to the north. The proposed R-T, Residential Transition zoning would allow for low density residential uses such as single family or two-family dwellings, with multifamily not permitted. The associated Use Permit details modifications allowing waivers to minimum lot size and setback requirements, and identifying the area that is not appropriate for residential uses.



#### JUSTIFICATION FOR RECOMMENDATION

The proposed R-T zoning fits the character of the existing abutting neighborhood zoned R-2 to the east. The Use Permit will help guide development as portions of the property are restricted for certain uses do to surrounding zoning, easements, and floodplain. The Use Permit also prohibits fill in the floodplain. The Use Permit is conceptual with more details required to be submitted prior to final plat and building permit.

#### APPLICATION/STAFF CONTACT

Ben Callahan, (402) 441-6360 or  
[bcallahan@lincoln.ne.gov](mailto:bcallahan@lincoln.ne.gov)

#### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan historically has shown this area for future industrial uses. A future Comprehensive Plan Amendment will be submitted in the near future to update the future land use map, as an industrial use does not provide the best future use for this area due to the close proximity of existing residential uses.

#### WAIVERS

1. To reduce Area A minimum lot size to 300 square feet for Single Family and 600 square feet for Two-Family dwelling units. (Recommend Approval)
2. To reduce frontage to 0' per table 27.72.030(a). (Recommend Approval)
3. To reduce side yard setback to 5' per table 27.72.030(a). (Recommend Approval)

4. To reduce the parking requirement to one parking space per dwelling unit and allow cross parking access within the Use Permit boundary. (Recommend Approval)

## **KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN**

### **Introduction Section:** Growth Framework

#### **Fundamentals of Growth in Lancaster County**

The City of Lincoln's present infrastructure investment should be maximized by planning for well-designed and appropriately-placed residential and commercial development in existing areas of the city with available capacity. This can be accomplished by redeveloping underutilized commercial centers into areas that include a mix of uses, and encouraging higher-density residential redevelopment in appropriate locations, including missing middle housing. New infrastructure investments to serve growth areas can be maximized by encouraging a higher density of both residential and commercial uses in these areas.

#### **The Community in 2050**

The following assumptions provide the framework for growth in the 2050 plan.

Lancaster County is projected to add approximately 53,000 households by 2050, with 48,000 of those new households in Lincoln (roughly 1,600 new households per year).

25 percent of all new dwelling units in Lincoln will be infill, meaning they will be located within the existing city. This equates to roughly 12,000 infill units over the next 30 years.

New growth areas will have an average gross residential density of 4.0 du/acre.

The population age 65 and above is projected to increase from 45,600 (14.2 percent of total) in 2020 to 74,900 (17 percent of total) in 2050.

### **Goals Section**

G1: Safe, Affordable, and Accessible Housing. Lincoln and Lancaster County will support the development of safe, affordable, and accessible quality housing that meets the diverse needs of the community. PlanForward understands the ongoing need for affordable housing and supports development of 5,000 affordable units by the year 2030.

G2: Complete Neighborhoods. Lincoln and Lancaster County will support complete neighborhoods within both developing and redeveloping areas of Lincoln. A complete neighborhood is one where residents are able to get the goods and services to meet daily needs within 15 minutes of their residence including a variety of housing options, grocery stores and other commercial services, quality public schools, public open spaces and recreational facilities, affordable active transportation options, and civic amenities. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and even small lot single-family.

### **Elements Section**

#### **E2: Infill and Redevelopment**

##### **Infill and Redevelopment Approach**

PlanForward identifies the potential for 12,000 new dwelling units to be located within the existing built-out portion of the City, roughly 25 percent of the projected 48,000 new dwelling units to be built citywide by 2050.

### **Neighborhood Edges**

Neighborhood edges present an opportunity for missing middle housing, which can help expand affordable housing options and overall housing choice in the community. Missing middle housing includes “house-scale” buildings that provide typically 3 to 12 units and fit in with the character of single-family neighborhoods. Criteria to consider when locating and designing neighborhood edge redevelopment should include:

- Provide direct or adjacent access to an arterial street to minimize traffic impacts on neighborhood streets.
- In some cases a transition zone may be needed when creating higher-density redevelopment adjacent to lower density neighborhoods.
- Target legacy commercial sites and abandoned, vacant, or blighted parcels for new missing middle housing.
- Consider the character of adjacent built environment in both the design and location of buildings.

### **Existing Neighborhoods**

Infill of housing in existing neighborhoods should respect the existing pattern of development. Infill redevelopment should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.

## **Policies Section**

P1: Housing Affordability - Make available a safe residential dwelling for all residents.

### **Action Steps**

1. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated and Annual Action Plans and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
2. Distribute and preserve affordable housing throughout the community to be near job opportunities and public transit and to provide housing choices within existing and developing neighborhoods.
3. Encourage public/private partnerships with housing entities such as Lincoln Housing Authority, Affordable Housing Initiatives, Habitat for Humanity, and NeighborWorks Lincoln.
4. Provide for more education of the public about affordable housing and code enforcement.
5. Promote the preservation, maintenance and renovation of existing housing and neighborhoods throughout the city, with special emphasis on low and moderate income neighborhoods.
6. Preserve the existing affordable housing stock, increase the supply of affordable owner and renter units, and add more variety in housing types.

P2: Existing Neighborhoods - Continue our commitment to strong, diverse, and complete neighborhoods.

### **Action Steps**

1. Promote the preservation, maintenance, and renovation of existing housing and supporting neighborhood uses throughout the City, with special emphasis on low and moderate income neighborhoods.
2. Maintain and enhance infrastructure and services, commensurate with needs, in existing neighborhoods.
3. Encourage well-designed and appropriately placed density, including within existing apartment and group living complexes and in redeveloping commercial or industrial centers, where there is land available for additional buildings or expansions. Provide flexibility to the marketplace in siting future residential development locations. This includes appropriately placed infill in prioritized Nodes and Corridors, neighborhood edges, and underutilized commercial or industrial sites.
4. Recognize that broad economic diversity within existing neighborhoods encourages reinvestment and improves quality of life for all residents while acknowledging the need for affordable housing.
5. Preserve, protect and promote the character and unique features of urban neighborhoods, including their historical and architectural elements.
6. Promote the continued use of residential dwellings and all types of buildings, to maintain the character of neighborhoods and to preserve portions of our past. Building code requirements for the rehabilitation of

existing buildings should protect the safety of building occupants, while recognizing the need for flexibility that comes with rehabilitating existing buildings.

7. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated, Annual Action Plans, and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
8. Retain and encourage a mix of housing in existing and new neighborhoods in order to provide a mix of housing types at a variety of price points.
9. Implement elements of Complete Neighborhoods for existing neighborhoods.
10. Develop and utilize a measurement tool to evaluate neighborhoods in terms of how well they achieve PlanForward's goals for design, sustainability, and Complete Neighborhoods goals.
11. Encourage public and private investment in neighborhood infrastructure and services to support economic diversity that improves the quality of life for all residents.
12. Balance expanding housing options and neighborhood character. Infill development should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.
13. Preserve areas designated for multi-family and group living housing in approved plans to support a distributed choice in affordable housing.
15. Develop and propose zoning text amendments that will allow platted, nonconforming lots to be buildable.
17. Promote neighborhood and community design that supports healthy and active lifestyles.
20. Examine current residential zoning districts and propose modifications to encourage 'missing middle' units (single-family attached, cottage courts, townhomes, live-work, and a variety of three- and four-plex configurations), including affordable units, to people with a range of incomes. Neighborhood edges in particular present an opportunity for missing middle housing.
21. Encourage a variety of housing types including townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and small lot single-family units.

P17: Predictability - Strive for predictability for neighborhoods and developers.

#### Action Steps

1. Continue to make updates as needed to zoning and subdivision ordinances, along with design standards, to support economic development, complete neighborhoods, and other PlanForward initiatives.
2. Support timely and efficient implementation of the growth tiers framework through the Capitol Improvement Program and other coordinated infrastructure enhancements.

P61: Industrial Zoning and Pipelines - Discourage residential land uses and buildings with vulnerable populations from locating near high-pressure pipelines and industrial zoning districts. Provide adequate separation between vulnerable populations and hazardous materials to protect and promote the public's health.

#### Action Steps

1. Land uses with vulnerable populations should not be located within pipeline planning areas. For large high-pressure pipelines, pipeline planning areas are established based upon pipeline metrics or the United States Department of Transportation's Emergency Response Guidebook. Most high-pressure pipelines have a planning area of approximately 150-250 feet from either side of the pipeline.
2. Land uses with vulnerable populations should not be located within 300 feet of an industrially-zoned district or heavy industrial use such as a rail line. Even if a given industrial site does not include hazardous materials at present, a hazardous use could be added in the future.
3. Do not support expansion of existing residential uses currently located within a pipeline planning area or within 300 feet of an industrial zoning district unless the pipeline is decommissioned, or downzoning is planned for the industrial area.

## ANALYSIS

1. These requests are for a Change of Zone from R-2, Residential to R-T, Residential Transition and a Use Permit allowing a mix of office, single family and two-family residential units with associated waivers to the lot area, setbacks, and parking requirements. R-T zoning is proposed as an alternative to the existing R-2 zoning as it would allow for lower density residential units where deemed appropriate by the Use Permit, allowing for non-residential uses such as office or neighborhood support services within the north portion of the property. R-T does not allow multifamily uses and will be compatible with the existing R-2 zoned neighborhood.
2. The Use Permit designates Area A and B that vary in permitted uses and development standards within R-T zoning. Area A and B were created due to the existing I-1, Industrial zoning to the north of this area. Area A will allow for a maximum of 20 single family or two-family residential units, with reductions to lot size standards and setbacks. The minimum lot size would be reduced to 300 square feet for single family and 600 square feet for two-family, allowing for the development of smaller units as Area A is limited by easements, access, and buildable land area. The Use Permit also includes a reduction to the frontage, front yard setback and rear yard to allow greater flexibility for the location of smaller residential units.
3. Currently, existing I-1, Industrial zoning and railroad lines are located to north, across Leighton Avenue. The Comprehensive Plan discourages placing vulnerable populations including residential uses within 300 feet from both the I-1 zoning and railroad lines. Within the associated Use Permit, Area B was designated to serve as a 210-foot buffer extending south from the existing I-1 zoning district. This buffer will allow Area B to have up to 15,000 square feet of nonresidential uses allowed in R-T zoning. Uses such as dwellings, residential health care facilities, early childhood care facilities and private schools are prohibited. This distance was reviewed and deemed appropriate as the location of the existing grain elevator and railroad lines are not located directly across Leighton Avenue, with a majority of the I-1, property directly north serving as a driveway entrance and access to the site. It was also found unlikely that additional railroad lines or expansion of the grain elevator operation would extend into the western portion of the lot, closest to the subject property.
4. Future development will require all properties within the Use Permit boundary to relinquish access to North 27<sup>th</sup> Street and take access from the rear alleyway. Area A will require 1 parking space per dwelling unit, while Area B will comply with current R-T parking standards set within the Lincoln Municipal Code. Cross access parking will be allowed as extensive utility easements within the Use Permit boundary will limit areas allowed for structures and may provide more options for parking and green space.
5. Waivers to setbacks and lot size are requested. The waivers are supported on the basis that they are regulated by the Use Permit and will provide greater flexibility for future development and also provide a distance buffer for future residential units from existing industrial zoning, they are as follows:
  - a. To reduce Area A minimum lot size to 300 square feet for Single Family and 600 square feet for Two-Family dwelling units. This waiver was approved as it will allow for Area A to be developed with smaller lots for one and two-family dwellings.
  - b. To reduce Area A frontage to 0' per table 27.72.030(a). This waiver will allow for flexibility for developing smaller lot sizes and layout within Area A, as smaller lots will not meet the standard frontage requirement.
  - c. To reduce Area A side yard setback to 5' per table 27.72.030(a). This waiver was approved to decrease the required side yard setback as the size and footprint for the dwelling units may be intended for smaller units.
  - d. To reduce the parking requirement within Area A to one parking space per dwelling unit and allow cross parking access within the Use Permit boundary. This waiver is approved with the intent the development of smaller units will not require the standard needed parking for an average dwelling unit size. This provides flexibility for the location of parking by allowing it to be located within Area A or B.
6. The subject area has a portion of land located within the floodplain and existing easements located throughout the property. Area B has the largest amount of area within the 100-year floodplain and will require floodplain permitting when developed. As per City policy, no fill will be permitted in the floodplain when land is declared surplus. Within the Use Permit, provisions will require any future development to submit a site plan for review by the Planning Director before building permits can be obtained. This requirement will ensure that floodplain concerns, future access, easement locations, and connection to city utilities are reviewed and approved.



**CONDITIONS OF APPROVAL:** See attached.

**EXISTING LAND USE & ZONING:** Vacant; R-2, Residential

**SURROUNDING LAND USE & ZONING**

North: Aurora Cooperative Elevator Company	I-1, Industrial
South: Centeroaks Apartments	R-4, Residential
East: Single Family, LES Sub Station	R-2, Residential; P, Public
West: N. 27 <sup>th</sup> Street Bridge, Matt Talbot Kitchen & Outreach	H-3, Highway Commercial

**APPROXIMATE LAND AREA:** 1.20 acres more or less

**LEGAL DESCRIPTION:** Lots 1-3, Block 4, the remaining portions of Lots, 12-22, Block 4, Lots 15-22, Block 5, Junction Place, and vacated Merrill Street.

Prepared by

---

Ben Callahan, Planner

Date: June 9, 2022

Applicant/ Ben Callahan  
Contact: Lincoln-Lancaster County Planning Department  
555 S. 10<sup>th</sup> Street, Suite 213  
Lincoln, NE 68508

Owner: City of Lincoln

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/UP/22000/UP22005 CZ22015 N 27th St & Leighton Ave.bmc.docx>

## **CONDITIONS OF APPROVAL - USE PERMIT #22005**

This approval permits 15,000 square feet of commercial space and up to 20 residential single family or two-family dwelling units, with waivers to reduce the minimum lot area to 300 square feet for single family and 600 square feet for two-family; frontage requirements to zero; side yard setback to 5 feet; and reduce the parking requirement to 1 stall per residential unit with Area A and allow cross parking access within the Use Permit boundary.

### **Site Specific Conditions:**

1. The City Council approves associated request:
  - 1.1 Change of Zone #22015

### **Standard Conditions:**

2. The following conditions are applicable to all requests:
  - 2.1 Before occupying the dwelling units / buildings all development and construction is to substantially comply with the approved plans.
  - 2.2 All privately-owned improvements, including landscaping and recreational facilities, are to be permanently maintained by the Permittee or an appropriately established homeowners association approved by the City.
  - 2.3 The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters must be in substantial compliance with the location of said items as shown on the approved site plan.
  - 2.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.



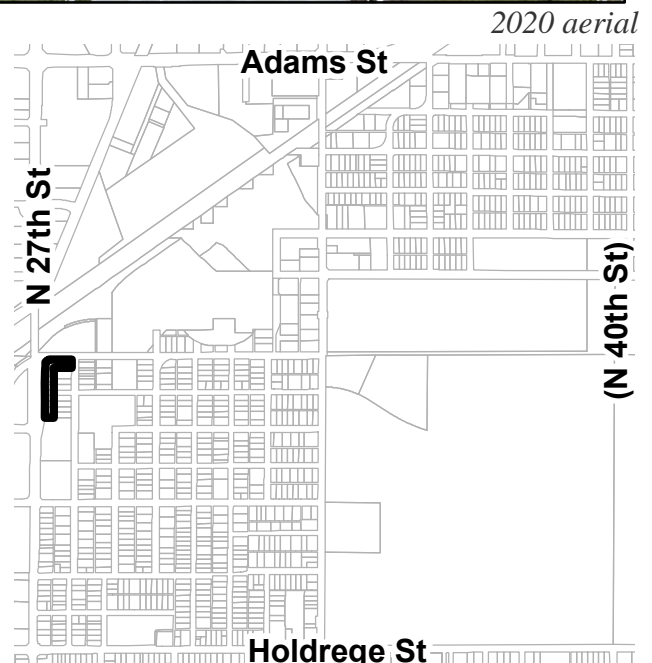
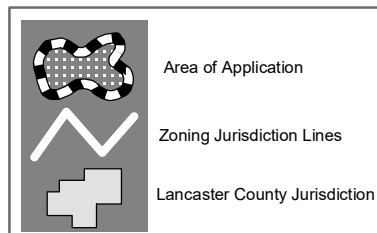
**Comp Plan Conformance #: CPC22008,  
Change of Zone #: CZ22015 (R-2 to R-T)  
and Use Permit #: UP22005  
N 27th St & Leighton Ave**

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

PDF: F:\Boards\PC\Internet\out\

One Square Mile:  
Sec.18 T10N R07E



## **North 27<sup>th</sup> Street & Leighton Avenue Use Permit Requirements**

In association with the attached exhibit, the Use Permit boundary is divided into two separate areas, Area A and B, shown on the attached exhibit. Area B includes all properties within 210 feet from existing I-1, Industrial zoning property boundary to the north. Area A and B are subject to the following regulations:

### **Area A:**

There shall be no more than 20 residential units allowed within Area A. All residential uses allowed within Area A shall follow uses permitted within the R-T, Residential Transition zoning district per LMC 27.06.070 with the following minimum requirements:

- Minimum Lot Size – 300 SF for Single Family / 600 SF for Two-Family
- Frontage – 0'
- Front Yard – 10'
- Corner Front Yard – 10'
- Side Yard – 5'
- Rear Yard – 10'
- Height – 28'

### **Area B:**

Area B consists of all property within the Use Permit located within 210 feet from the property line of the existing I-1 Industrial zoning district. All Residential Uses within LMC 27.06.070 and 27.06.080, Early Childhood Care Facilities, and Private Schools, are not permitted within Area B. The maximum amount of commercial floor area allowed within Area B shall be 15,000 square feet. All permitted uses shall follow the R-T district height and lot regulations except:

- Front Yard – 10'
- Front Yard Along Leighton Avenue – 15'

### **Parking & Access:**

All properties within Area A & B within the Use Permit boundary shall relinquish access to North 27<sup>th</sup> Street. Properties will be accessed from the existing rear alleyway. Cross parking within Area A & B is permitted to meet parking standards.

**Area A:**

Residential uses within Area A shall provide 1 parking space per dwelling unit. Upon request, the Director may review and reduce the parking requirement to .75 parking spaces per unit based on unit size and impact to adjacent properties. Any portion of unpaved alleyway that is desired for access to abutting lots within Area A will be required to be paved before building permits can be obtained.

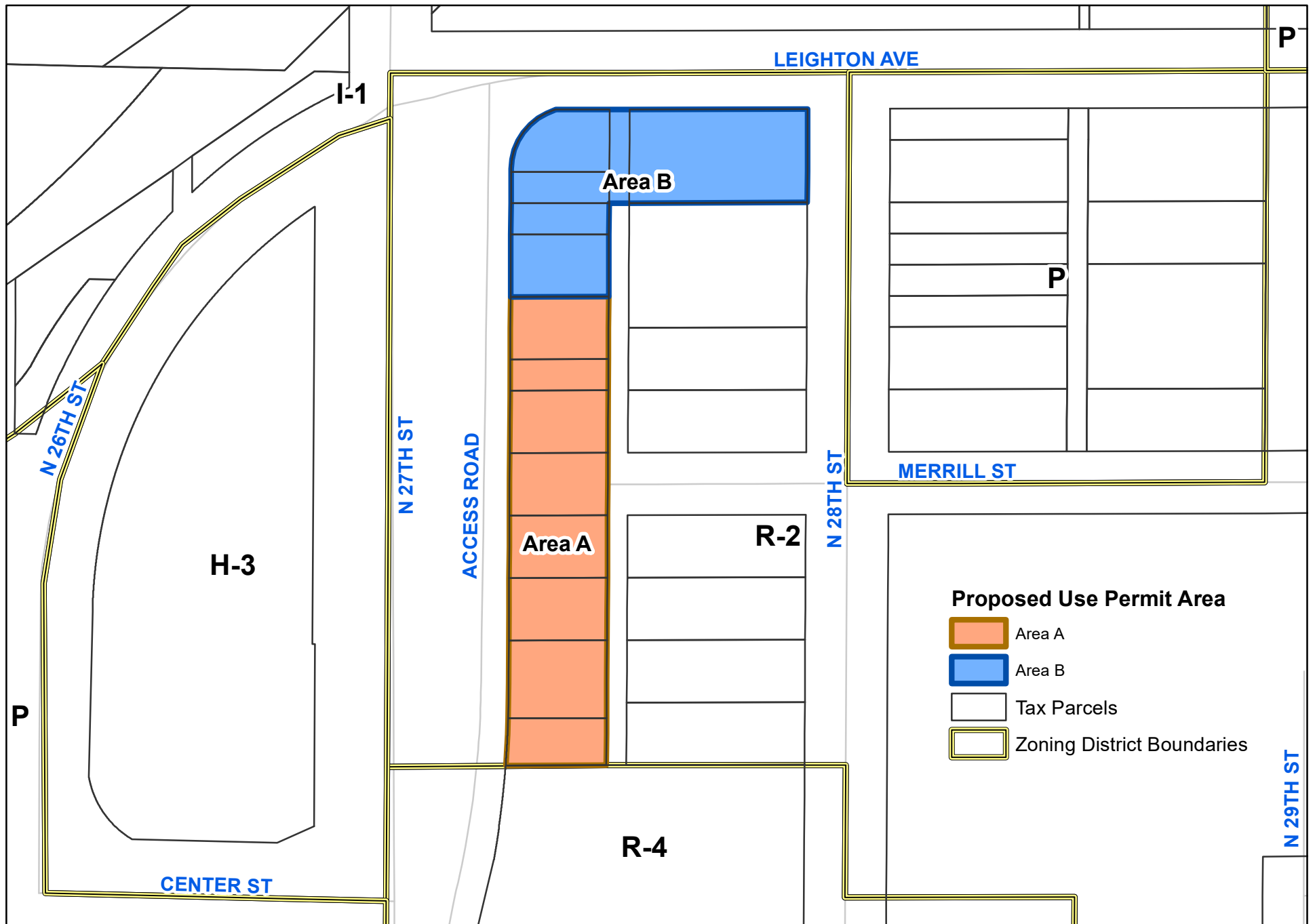
**Area B:**

Uses within Area B of the Use Permit shall comply with LMC 27.67 for R-T, Residential Transition Parking standards.

**Development Notes:**

- For Area A and B, before building permits can be obtained, a site plan including a grading and drainage plan will be required for review by the Planning Director along with an approved final plat. No fill shall be allowed in the floodplain within Lots 1-3 and Lots 20-23, Block 4. Any lot platted for a residential use within Area A will be required to grade above the floodplain.
- Due to the condition of the 10-inch sanitary sewer line located in the alley, any new development must coordinate tap locations with Lincoln Transportation & Utilities wastewater division.
- At the time of final plat, a 15-foot pedestrian way easement will be required per the Parks & Recreation Department along the south side of Leighton Avenue.





**Proposed UP22005 Area Map**





# Official Survey Record

Lancaster County, Nebraska

Phone (402) 434-2686  
Fax (866) 215-8747

ALLIED SURVEYING AND MAPPING, INC.

8535 Executive Woods Drive - Suite 200 - Lincoln, Nebraska 68512

Survey Lots 1, 2 and 3 AND the remaining portion of Lots 12 thru 22, Block 4 AND the remaining portion of Lots

15 thru 22, Block 5, All in Junction Place Addition AND the vacated portion of Merrill Street (vac. ord. 14381)

Located in Southwest Quarter of Section 18 T. 10 N. R. 7 E. of the 6th P.M.

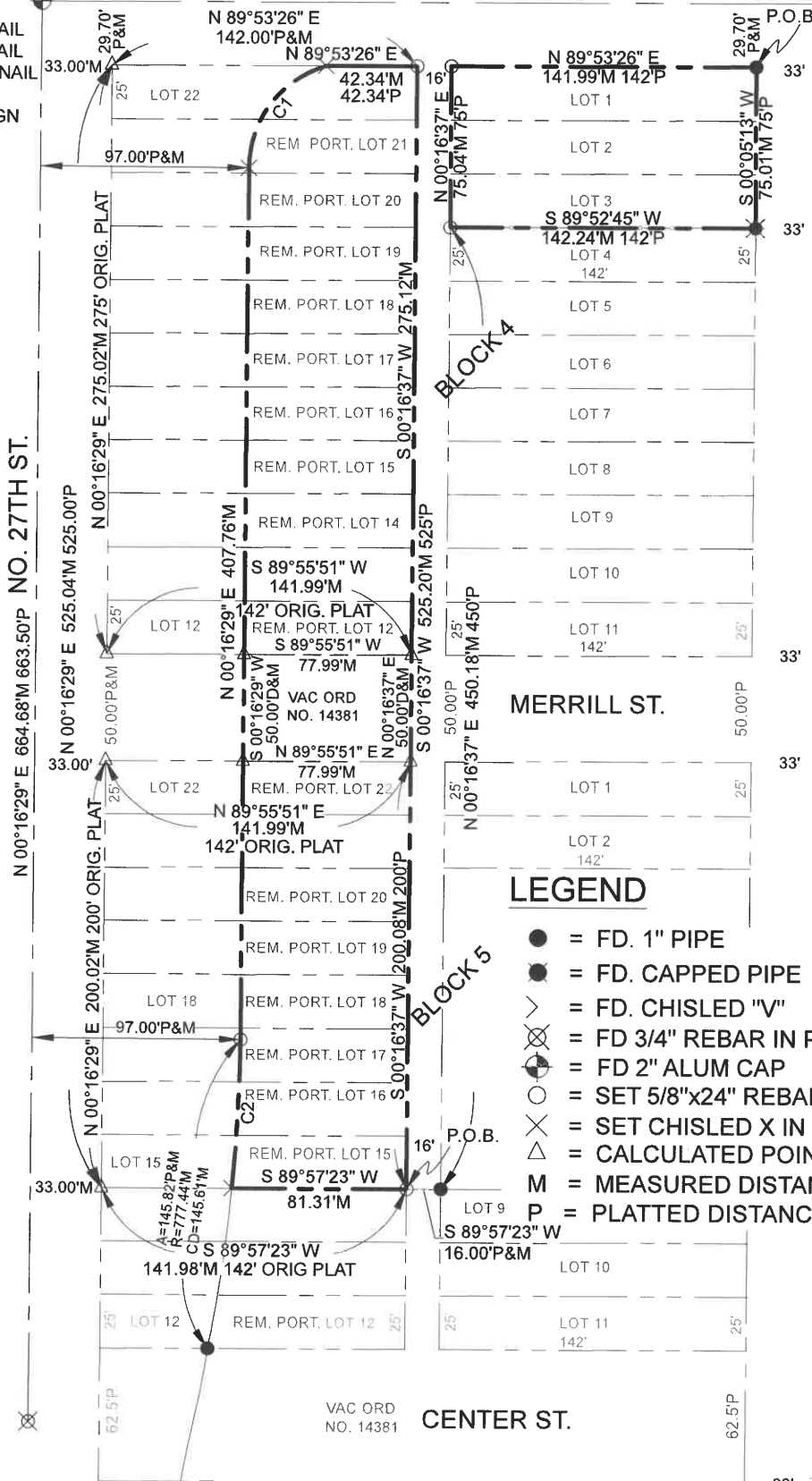
Job No. 2021-0036

July 2021

W1/4 SEC 18-10-7E  
FD. 2" ALUM CAP

S 9.95' TO MAG NAIL  
SSE 9.97' TO MAG NAIL  
SSW 89.84' TO MAG NAIL  
N 3' TO SURVEY  
MARKER SIGN

LEIGHTON AVE.



CURVE	RADIUS	DELTA ANGLE	TANGENT	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	50.00'M	73°19'38"	37.22'M	63.99'M	59.71'M	N 36°56'30" E
C2	777.44'M	5°08'43"	34.93'M	69.81'M	69.79'M	N 03°00'42" E

## LEGEND

- = FD. 1" PIPE
- = FD. CAPPED PIPE
- > = FD. CHISLED "V"
- ⊗ = FD 3/4" REBAR IN POT
- = FD 2" ALUM CAP
- = SET 5/8"x24" REBAR W/ 595 PLASTIC CAP
- ⊗ = SET CHISLED X IN SIDEWALK
- △ = CALCULATED POINT
- M = MEASURED DISTANCE
- P = PLATTED DISTANCE FROM CITY PLAT

## SURVEYORS CERTIFICATE

I hereby certify that I have accurately surveyed the property in the above plat. Capped rebar were set at points marked "o". All dimensions are chord measurements unless otherwise shown, and are in feet and decimals of a foot.

Signed this 2nd day of July 2021

NAME

*Richard Kingman*  
RICHARD KINGMAN

Surveyor's License #  
Nebraska L.S.

595



Planning Department

555 S 10<sup>th</sup> Street

Ste 213

Lincoln, NE 68508

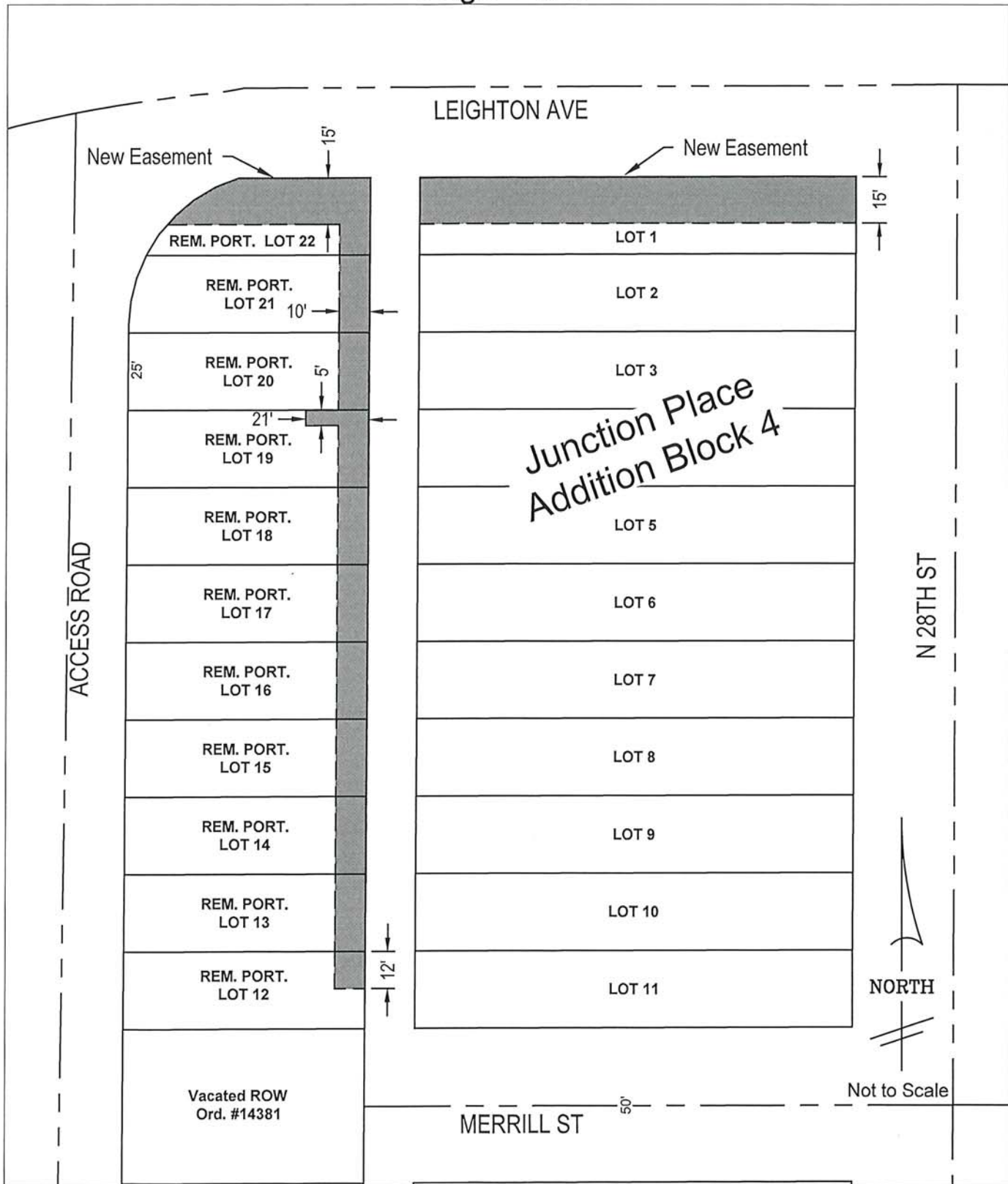
May 23, 2022

On behalf of the Planning Department, this letter is associated to the attached application for both the Change of Zone and Use Permit for properties located at the southeast corner of North 27<sup>th</sup> Street and Leighton Avenue, as shown on the attached exhibit. The Planning Department is requesting a Change of Zone from R-2, Residential, to R-T, Residential Transition with an associated Use Permit for an area totaling approximately 1.20 acres. This area includes 13 vacant parcels between North 27<sup>th</sup> Street and North 28<sup>th</sup> Street, south of Leighton Avenue. The properties are currently owned by the City of Lincoln and an associated application has been submitted for the surplus properties with the future intent to sell them for private development. The associated Change of Zone and Use Permit request are intended to assist with development of the property in the future due to the close proximity of I-1, Industrial zoning to the north, existing utility easements, and vehicle access to the properties.

The request for the Change of Zone will match the same boundary as the associated Use Permit. The Use Permit designates two areas shown as Area A and Area B, within the boundary that specify use and setback restrictions. Area B is limited to uses allowed in R-T but prohibits all residential uses along with Early Childhood Care Facilities, as Area B is within 210 feet from the existing I-1, Industrial property boundary to the north. Area A is located outside the 210' required buffer from the I-1 zoning property boundary and will allow residential uses permitted in the R-T zoning district with reduced lot size and setbacks listed in the Use Permit. The Use Permit also addresses the reduced standards for parking within Area A. All properties abutting North 27<sup>th</sup> Street will relinquish access as access will be permitted from the rear alley.

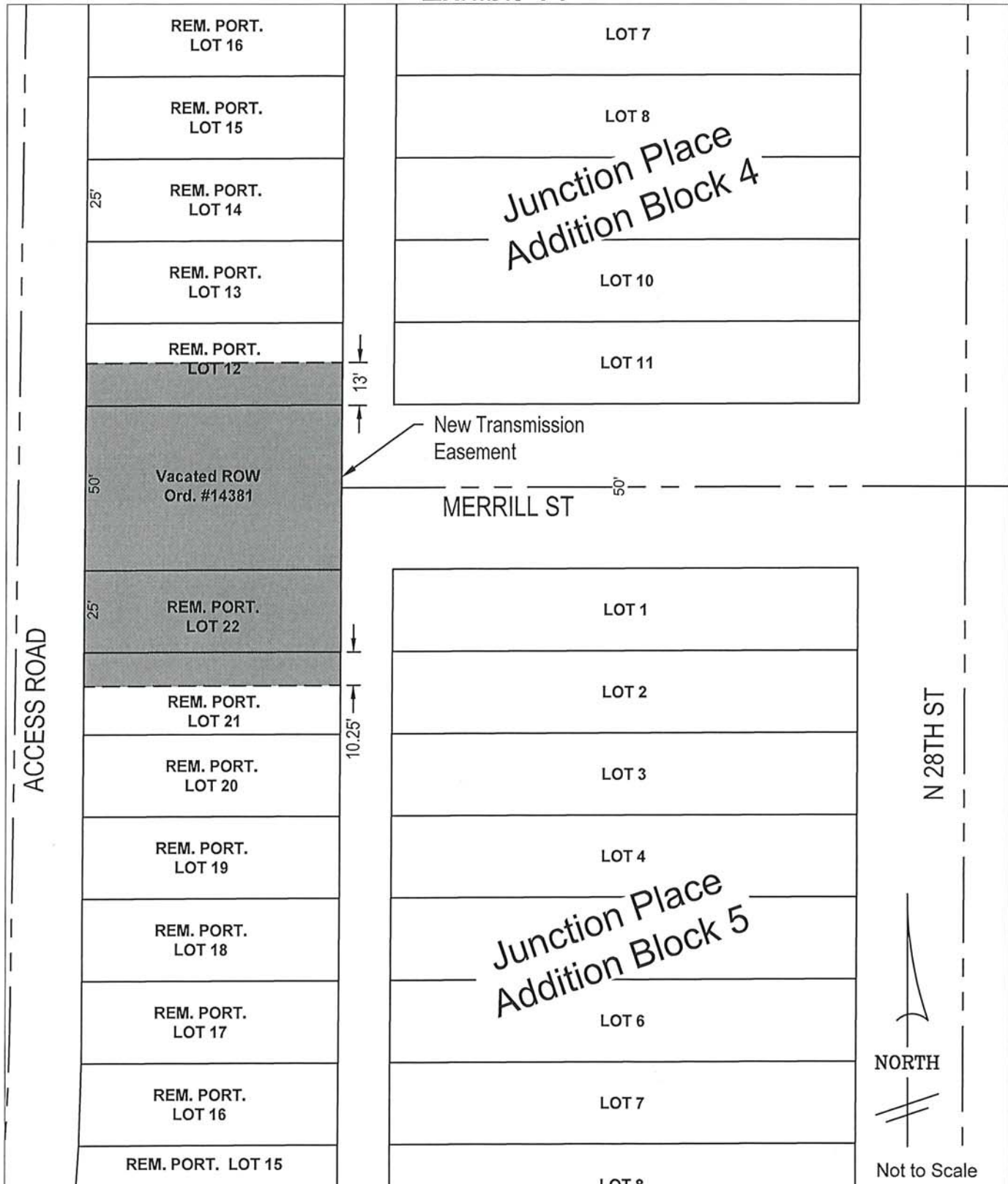
If you have questions or need additional information, please contact Ben Callahan at (402) 441-6360 or at [bcallahan@lincoln.ne.gov](mailto:bcallahan@lincoln.ne.gov)

L.E.S. EASEMENT  
Exhibit "A"  
Page 1 of 2



Location of a Lincoln Electric System utility easement lying within Lot 1 and the remaining portions of Lots 12-22, Block 4, Junction Place Addition, in the SW 1/4, Section 18, Township 10 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.

# L.E.S. TRANSMISSION RIGHT OF WAY EASEMENT Exhibit "A"



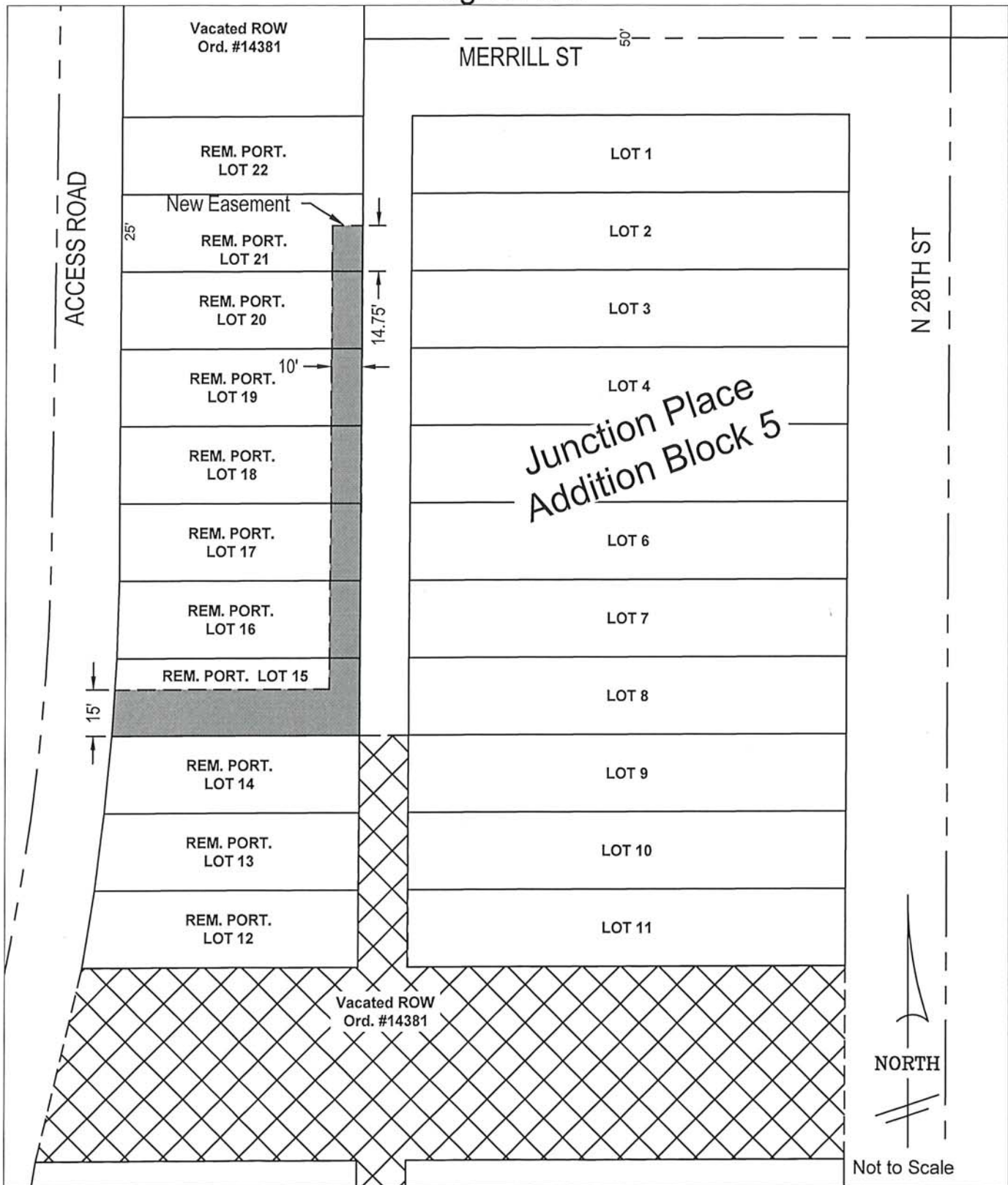
Location of a Lincoln Electric System Transmission Right of Way easement lying within the remaining portions of Lot 12, Block 4, & Lots 21-22, Block 5 Junction Place Addition, and the adjacent vacated Merrill St in the SW 1/4, Section 18, Township 10 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.



# L.E.S. EASEMENT

## Exhibit "A"

Page 2 of 2



Location of a Lincoln Electric System utility easement lying within the remaining portions of Lots 15-21, Block 5, Junction Place Addition, in the SW 1/4, Section 18, Township 10 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.

## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

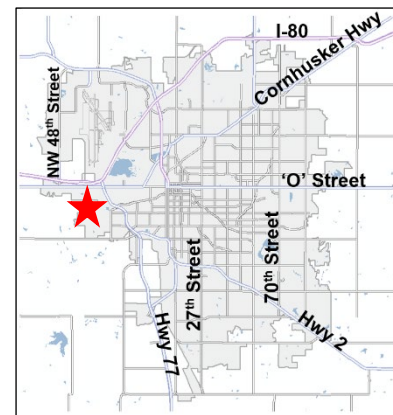
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Miscellaneous #22010	FINAL ACTION? No	DEVELOPER/OWNER Oxford House Inc./ JDB Properties LLC
PLANNING COMMISSION HEARING DATE June 22, 2022	RELATED APPLICATIONS None	PROPERTY ADDRESS/LOCATION 1923 B Street

**RECOMMENDATION:** Finding of compliance with requirements of Fair Housing Act with conditions

### BRIEF SUMMARY OF REQUEST

A request for reasonable accommodation under Chapter 1.28 of the Lincoln Municipal Code, the Nebraska Fair Housing Act (Neb. Rev. Stat. 20-301 etc.) and the Federal Fair Housing Act (FHA) (Title VIII of the Civil Rights Act of 1968, as amended) to make an accommodation the definition of family as provided in Chapter 27.02.070 to include fourteen unrelated individuals with disabilities to reside in the dwelling known as the Oxford House- Lyoncrest at 1923 B Street. If approved, the accommodation will allow fourteen individuals with disabilities to reside in a single family dwelling. If the accommodation were not approved, the use with fourteen persons could be defined as a group home which is a conditional use. However, this location doesn't meet the conditions for a group home per Chapter 27.62.050 (b).



### JUSTIFICATION FOR RECOMMENDATION

The FHA requires City make reasonable accommodations to the zoning code when the requested accommodation will ensure equal opportunity to individuals with disabilities to live in the neighborhood they choose. Requests for accommodation are not reasonable when the accommodation imposes on City an undue financial or administrative burden. The applicant has demonstrated it is entitled to a reasonable accommodation under the FHA and City has not, at this time, identified evidence that the accommodation is unreasonable.

### APPLICATION CONTACT

Steven G Polin  
3034 Tennyson St NW  
Washington, DC 20015  
(202) 331- 5848

### STAFF CONTACT

Stephen Henrichsen, (402) 441-6374  
[shenrichsen@lincoln.ne.gov](mailto:shenrichsen@lincoln.ne.gov)

### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan encourages a variety of housing types within a neighborhood. In order to ensure a mix of housing types, but with compatible within a neighborhood, the zoning ordinance establishes conditions and requirements for different housing types such as group homes or transitional living facilities. This request would make an accommodation to those regulations to permit this use to be treated as a family.

### KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

#### Goals Section

G1: Safe, Affordable, and Accessible Housing. Lincoln and Lancaster County will support the development of safe, affordable, and accessible quality housing that meets the diverse needs of the community. PlanForward understands the ongoing need for affordable housing and supports development of 5,000 affordable units by the year 2030.

G2: Complete Neighborhoods. Lincoln and Lancaster County will support complete neighborhoods within both developing and redeveloping areas of Lincoln. A complete neighborhood is one where residents are able to get the goods and services to meet daily needs within 15 minutes of their residence including a variety of housing options, grocery stores and other commercial services, quality public schools, public open spaces and recreational facilities, affordable active transportation options, and civic amenities. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and even small lot single-family.

**Figure E1.b: Strategies for Design, Sustainability and Complete Neighborhoods in Existing Areas**

1. Encourage a mix of compatible land uses to develop more complete neighborhoods:
  - a. Similar uses on the same block face: residential faces residential.
  - b. Similar housing densities developed near each other: single-family and “missing middle” residential (3-12 units) scattered throughout with higher density residential (more than 12 units) near the neighborhood edge or clustered near commercial centers.
  - c. Non-residential uses, including parking lots, should be screened from residential areas.
  - d. Locate mixed-use centers so as residents can safely access essential goods and services (i.e. not located across arterial streets) and no more than a 15-minute walk from all residences.
  - e. Support existing Commercial Centers and encourage inclusion of essential goods and services.
  - f. Infill and redevelopment projects should meet or exceed Neighborhood or Commercial Design Standards.

**Existing Neighborhoods**

The diversity of architecture, housing types and sizes are central to what make existing neighborhoods great places to live. New construction should continue the architectural variety, but in a manner that is sensitive to the existing neighborhoods.

Infill and redevelopment is supported and must respect the street pattern, block sizes, and development standards of the area, such as parking at the rear and porches, windows, and doors on the front street side.

The City’s primary strategy for residential infill and redevelopment outside of the Greater Downtown is to encourage the redevelopment and reuse of sites and buildings in commercial areas in order to create new mixed use centers that are compatible and complementary to adjacent neighborhoods.

Modest opportunities for redevelopment may also be appropriate along “neighborhood edges.” Neighborhood edges include arterial streets and transition zones between lower density residential and commercial areas.

**Policies Section**

P1: Housing Affordability - Make available a safe residential dwelling for all residents.

**Action Steps**

1. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated and Annual Action Plans and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
2. Distribute and preserve affordable housing throughout the community to be near job opportunities and public transit and to provide housing choices within existing and developing neighborhoods.
3. Encourage public/private partnerships with housing entities such as Lincoln Housing Authority, Affordable Housing Initiatives, Habitat for Humanity, and NeighborWorks Lincoln.
4. Provide for more education of the public about affordable housing and code enforcement.
5. Promote the preservation, maintenance and renovation of existing housing and neighborhoods throughout the city, with special emphasis on low and moderate income neighborhoods.
6. Preserve the existing affordable housing stock, increase the supply of affordable owner and renter units, and add more variety in housing types.

**P2: Existing Neighborhoods - Continue our commitment to strong, diverse, and complete neighborhoods.**

**Action Steps**

1. Promote the preservation, maintenance, and renovation of existing housing and supporting neighborhood uses throughout the City, with special emphasis on low and moderate income neighborhoods.
3. Encourage well-designed and appropriately placed density, including within existing apartment and group living complexes and in redeveloping commercial or industrial centers, where there is land available for additional buildings or expansions. Provide flexibility to the marketplace in siting future residential development locations. This includes appropriately placed infill in prioritized Nodes and Corridors, neighborhood edges, and underutilized commercial or industrial sites.
4. Recognize that broad economic diversity within existing neighborhoods encourages reinvestment and improves quality of life for all residents while acknowledging the need for affordable housing.
5. Preserve, protect and promote the character and unique features of urban neighborhoods, including their historical and architectural elements.
6. Promote the continued use of residential dwellings and all types of buildings, to maintain the character of neighborhoods and to preserve portions of our past. Building code requirements for the rehabilitation of existing buildings should protect the safety of building occupants, while recognizing the need for flexibility that comes with rehabilitating existing buildings.
7. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated, Annual Action Plans, and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
8. Retain and encourage a mix of housing in existing and new neighborhoods in order to provide a mix of housing types at a variety of price points.
11. Encourage public and private investment in neighborhood infrastructure and services to support economic diversity that improves the quality of life for all residents.
12. Balance expanding housing options and neighborhood character. Infill development should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.
13. Preserve areas designated for multi-family and group living housing in approved plans to support a distributed choice in affordable housing.
20. Examine current residential zoning districts and propose modifications to encourage ‘missing middle’ units (single-family attached, cottage courts, townhomes, live-work, and a variety of three- and four-plex configurations), including affordable units, to people with a range of incomes. Neighborhood edges in particular present an opportunity for missing middle housing.
21. Encourage a variety of housing types including townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and small lot single-family units.

**FACTS, LAW, AND ANALYSIS**

1. This is a request for the Oxford House- Lyoncrest at 1923 B Street. This is a single family detached house zoned R-2 Residential. The applicant is seeking an accommodation to the definition of “family” to include up to 14 residents with disabilities at this location. The letter from the attorney for Oxford House- Lyoncrest states that Oxford House is a “self run, self supported residence for persons recovering from alcoholism and substance abuse...” He notes the Oxford House concept “provides an opportunity for recovering alcoholics and substances abusers to maintain their sobriety in a supportive living environment that does not require the provision of treatment or counseling services.” He also notes that “Oxford House, Inc. the national organization, assists in establishing housing for recovering addicts and alcoholics that is financially self-supported, democratically run ... there is no paid staff, counseling or therapy, or house manager involved in the operation of the house.”
2. JDB Properties LLC purchased this house in December 2021. The Assessor’s Office lists this house as five bedrooms with 3,202 square feet of living space on three levels and 1,416 square feet in the basement.
3. The applicant’s position appears in the attached application materials and letter from legal counsel.
4. The Lincoln Municipal Code (LMC) defines in 27.02.070 (F) a family as:

**‘Family** One or more persons immediately related by blood, marriage, or adoption and living as a single housekeeping unit in a dwelling shall constitute a family. A family may include, in addition, not more than two persons who are unrelated for the purpose of this title. The following persons shall be considered related for the purpose of this title:

- a. A person residing with a family for the purpose of adoption;
- b. Not more than six persons under nineteen years of age, residing in a foster home licensed or approved by the State of Nebraska;
- c. Not more than four persons nineteen years of age or older residing with a family for the purpose of receiving foster care licensed or approved by the state or its delegate;
- d. Any person who is living with a family at the direction of a court.”

5. Under the FHA, it is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability. 42 U.S.C. § 3604(f)(1).

The FHA defines a person with a disability as any 1) individual with a physical or mental impairment that substantially limits one or more major life activities; 2) individual with a record of such impairment; or 3) individual who is regarded as having such an impairment. 42 U.S.C. § 3602(h).

6. It is well established that individuals recovering from drug or alcohol addiction are disabled under the FHA. *United States v. Southern Management Corp.*, 955 F.2d 914, 917–23 (4th Cir.1992); *Elliott v. City of Athens*, 960 F.2d 975, 977 n. 2 (11th Cir.1992), cert. denied, 506 U.S. 940, 113 S.Ct. 376, 121 L.Ed.2d 287 (1992); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F.Supp. 450, 458–60 (D.N.J.1992); *United States v. Borough of Audubon*, NJ, 797 F.Supp. 353, 358–59 (D.N.J.1991).
7. The FHA requires Cities make reasonable accommodations to rules, policies, laws, and practices to afford people with disabilities and equal opportunity to live in a dwelling. 42 U.S.C. § 3604(f)(3)(B)
8. LMC 27.02.050 (D) then defines a disability as:

“**Disability** or handicap shall mean, with respect to a person:

- a. A physical or mental impairment which substantially limits one or more of such person's major life activities;
- b. A record of having such an impairment; or
- c. Being regarded as having such an impairment.”

Disability shall not include current, illegal use of or addiction to a controlled substance as defined by state law.

9. If the reasonable accommodation request were denied, then when more than three unrelated persons live together, one residential option is a group home. This is defined in 27.02.080 (G) as:

**“Group Home** Group home shall mean a building or structure licensed or approved by the State or an appropriate agency, if required, used as any one of the following:

- a. A facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care;
- b. A facility engaged in the service of exercising 24-hour daily care, supervision, custody, or control over more than three but less than sixteen children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home.”

10. Group Homes are allowed in residential zoning districts as a conditional use. LMC 27.62.050 (b) states:



“Group homes are allowed in the AG, AGR, R-T and all residential zoning districts under the following conditions:

1. Such use shall be permitted only so long as the facility continues to be validly licensed by the State of Nebraska.
2. The distance between the proposed use and any existing group home measured from lot line to lot line is not less than:
  - i. One-half mile in the AG, AGR, R-1, R-2, R-3 and R-T zoning districts;
  - ii. 1,200 feet in the R-4, R-5, R-6, R-7 and R-8 zoning districts.”

11. In the case of 1923 B Street, it does not meet the spacing requirement of the R-2 Zoning district. So, this is not an option. The attorney for the residents at 1923 B Street states they are not engaged in therapy or counseling, a component of the “group home” definition under LMC 27.02.080. The applicant has not met with staff to see if there are any other options. Their request is for reasonable accommodation to the family definition.

### **Reasonable Accommodation Process & Findings**

12. The Lincoln Municipal Code in Chapter 1.28.020 provides the process for a person with a disability, or entity on their behalf, to request the City Council make reasonable accommodations to laws such as building codes, fire or safety codes, or zoning code to allow those individuals with disabilities to enjoy equal opportunity to use of a dwelling. The Planning Commission is the “Reviewing Authority” for reasonable accommodation requests involving the zoning code. The Commission must hold a public hearing on the request and make a recommendation to City Council.

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#### **1.28.020 Applicability.**

“A request for reasonable accommodation may be made by any person with a disability or handicap, as defined in the Acts, or by an entity acting on behalf of a person or persons with disabilities or handicaps to provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. The provisions of this chapter do not apply to the City’s Bureau of Fire Prevention’s application of any code or regulation adopted by the State Fire Marshal pursuant to its delegated authority from the State Fire Marshal. As defined in the Acts, a person with a disability or handicap is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment.

A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs or activities provided by the City. Requests for reasonable accommodation shall be made in the manner prescribed by Section [1.28.030](#).”.

13. The history of prior reasonable accommodation requests is summarized below. Three requests were withdrawn, three were denied and only one was approved. Enactment of section 1.28 was spurred by federal litigation and denial of certain requests appearing below resulted in an adverse federal court judgment against the City.
14. Chapter 1.28 provides 8 factors for the City Council to consider when evaluating a request for reasonable accommodation. The Planning Commission role is to make a recommendation on these findings. This report will review each factor with commentary in *italics*.

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#### **1.28.050 Decision.**

“Upon receiving the report from the Reviewing Authority or upon failure of the Reviewing Authority to timely submit its report, the City Council after public hearing shall take final action upon the application and may grant,

grant with modifications, or deny the request for reasonable accommodation consistent with the Acts and based upon the following findings:

1. Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts.

*The residents of the house are disabled under the FHA because they are in recovery from addiction to alcohol or other substances.*

2. Whether the accommodation requested is financially, therapeutically, or otherwise necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.

*The applicant describes the necessity of communal sober living in their application materials.*

3. Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit.

*City staff, at this time, has not explored whether there is an alternative reasonable accommodation available that would provide an equal level of benefit.*

4. Whether alternative accommodations would be suitable based on the circumstances of this particular case.

*The reasonable accommodation request identifies the circumstances and necessity of the accommodation under the circumstances. City staff have not explored whether an alternative accommodation would be suitable.*

5. If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.

*The Comprehensive Plan designates this area as Urban Residential. The Comprehensive Plan encourages a variety of housing types in neighborhoods. This specific request wouldn't be contrary to the Plan.*

6. Whether the requested reasonable accommodation substantially affects the physical attributes of the property.

*No changes are proposed, but the approval doesn't limit the owner to making changes to alter the house in the future. The house at 1923 B Street has five bedrooms and two bathrooms. It is a 2 and ½ story house with a total of 3,202 square feet on the three floors and 1,416 square feet in the basement. No information was provided on how fourteen people would be accommodated in a five bedroom house. The Building and Safety Department advises that 14-person occupancy would not exceed building code maximum occupancy for the dwelling.*

*The property is in the Mount Emerald Local Landmark Historic District. The purpose of the district is to preserve, protect and enhance the structures within the district. The regulations focus on the structures themselves and don't specifically address land use.*

7. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

*City has identified no financial or administrative hardship resulting from this particular accommodation. Activity at this address was reviewed by the Lincoln Police Department. They had no concern. They noted there has only been one call for service this year to this address and that was for a medical transport.*

8. Whether the requested reasonable accommodation would require a fundamental alteration to the zoning, building, fire, or safety codes of the City.

*Although a proliferation of communal living dwellings in a concentrated area may perhaps result in a fundamental alteration to certain residential zones, this accommodation, on its own, will not.*

“In granting a request for reasonable accommodation, the City may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would be consistent with the Acts and the findings required above.”

### **Conclusion:**

Applicant is entitled, under Lincoln Municipal Code and the Federal Fair Housing Act to make application to City of Lincoln for a reasonable accommodation to the definition of “family” under LMC Title 27 to allow up to 14 unrelated individuals with a disability to reside as a family at 1923 B Street. Applicant has demonstrated individuals residing at 1923 B Street are disabled under the FHA. Applicant asserts that the accommodation is financially and therapeutically necessary. Unless City can demonstrate an undue financial or administrative burden or a fundamental alteration of the zoning code resulting from the reasonable accommodation requested, the request should be approved.

**EXISTING LAND USE & ZONING:** Single family detached house and R-2 Residential zoning

### **SURROUNDING LAND USE & ZONING**

North:	Single and two family dwelling units;	R-2
South:	Primarily Single and two family dwelling units	R-2
East:	Primarily single family dwelling units	R-2
West:	Primarily single family with some multi-family units	R-2

### **REASONABLE ACCOMMODATION APPLICATION HISTORY (does not include any legal cases or determinations)**

Application Number	Action Date	Council Action	Location	Applicant	Staff Recomm.	PC Recomm.	Planning Dept. Notes
MISC05011	N/A	N/A	3912 S. 20 <sup>th</sup> Street	Developmental Services of Nebraska	Withdrawn	N/A	Request to allow 4 residents with developmental disabilities in a residential home.
MISC05012	8/19/05	Approved (CC)	4000 Lindsey Circle	Developmental Services of Nebraska	Not noted	Planning Commission Recommended Approval	Allow 4 residents with developmentally disabilities under a group home not meeting the spacing.

MISC05013	N/A	N/A	2440 SW 18 <sup>th</sup> Street	Developmental Services of Nebraska	Withdrawn	N/A	Allow 4 residents with developmental disabilities in a residential home.
MISC05017	11/14/05	Denied 5-2	424 N. Coddington Avenue	Developmental Services of Nebraska	Conditional Approval	Denial - found applicant had not sufficiently demonstrated financial and therapeutic necessity and recommended denial.	Staff recommended withdrawing neighboring application to allow spacing and application to be met as a group home.
MISC05018	11/14/05	Denied	1661 Timber Ridge Road	Developmental Services of Nebraska	Approval	Denial - found applicant had not sufficiently demonstrated financial and therapeutic necessity and recommended denial.	Allow 4 residents with developmental disabilities in a residential home.
MISC05019	11/14/05	Denied	5516 Hunts Drive	Developmental Services of Nebraska	Approval	Denial	Same circumstances as MISC05018.
MISC05020	N/A	Withdrawn	416 N. Coddington Avenue	Developmental Services of Nebraska	Conditional Approval	N/A	Same circumstances as prior two applications. Withdrawn by the applicant at PC hearing.

**APPROXIMATE LAND AREA:** 11,280 square feet, (62.5 feet by 180.5 feet)

**LEGAL DESCRIPTION:** Lot 43 and the western 12.5 feet of Lot 42, Mount Emerald, Lincoln, Nebraska

Prepared by

\_\_\_\_\_  
Stephen Henrichsen, Development Review Manager

Date: June 15, 2022

Applicant/  
Contact: Steve G Polin

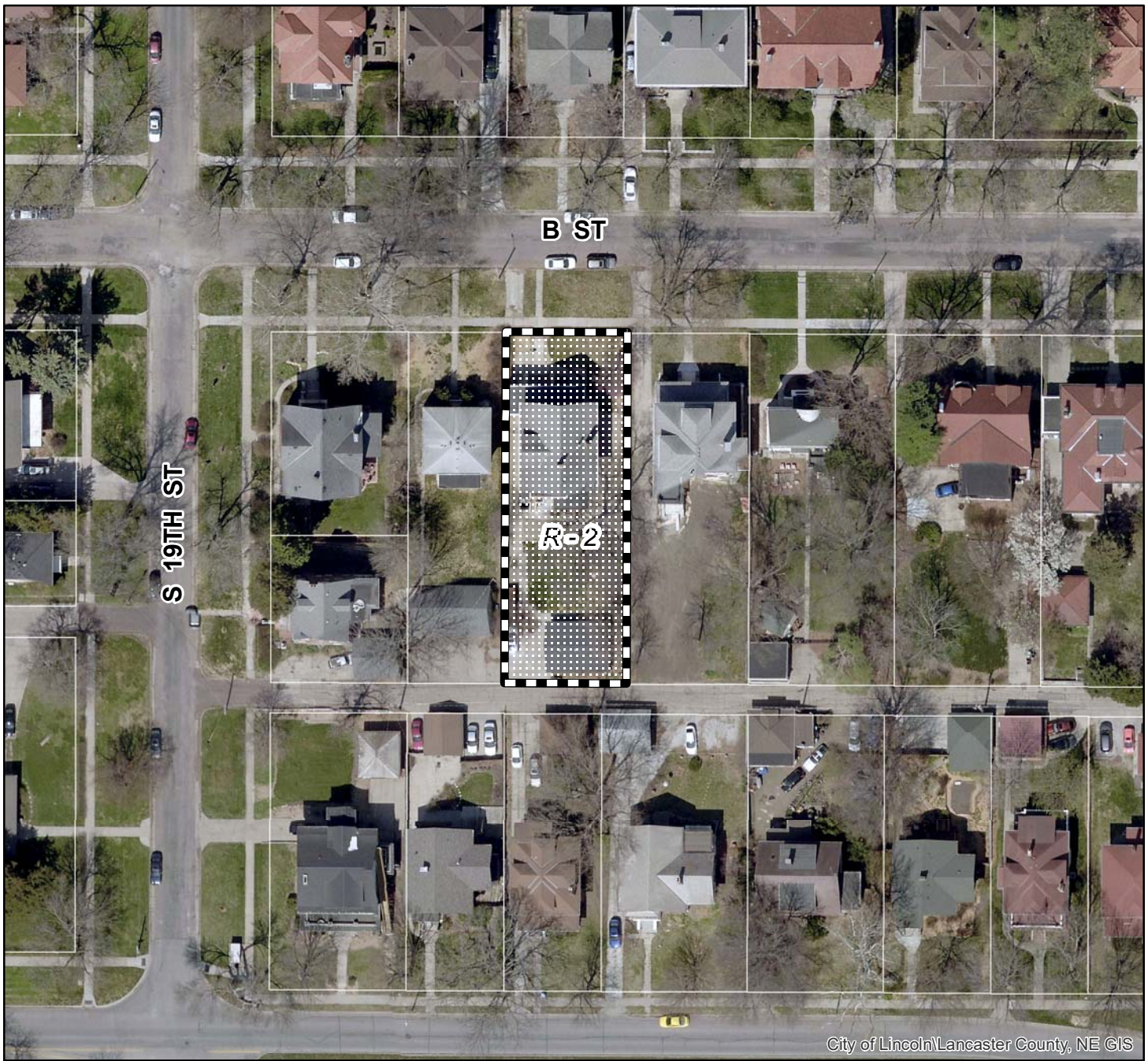
Owner: JDB Properties LLC  
1923 B Street  
Lincoln, NE 68502

**FINDING OF COMPLIANCE WITH REQUIREMENTS OF FAIR HOUSING ACT WITH CONDITIONS -  
MISCELLANEOUS #22010**

Per the Fair Housing Act, the City agrees to permit Oxford House- Lyoncrest to have fourteen unrelated persons to reside as a single family provided that all residents have a disability and operate as Oxford House-Lyoncrest. The Oxford House-Lyoncrest approval is subject to the following conditions:

- a. Applicant shall notify Planning Director if dwelling ceases to be used as sober-living home where, at all times, all residents are in recovery from alcohol or other substance abuse.
- b. Reasonable accommodation is granted only to 1923 B Street, and only to "Oxford House-Lyoncrest." Reasonable accommodation is granted only as to this address and this operator for the purposes of sober-living, is not transferable, and does not run with the land.

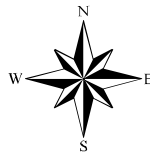




City of Lincoln/Lancaster County, NE GIS

2020 aerial

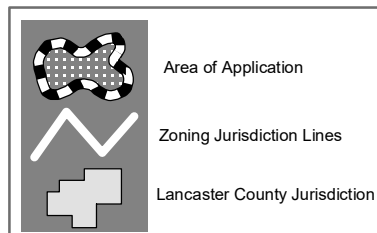
**Miscellaneous #: MISC22010**  
**S 19th St & B St**



### Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

**One Square Mile:**  
**Sec.25 T10N R06E**





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SPOLIN2@EARTHLINK.NET

May 19, 2022

**SENT VIA ELECTRONIC MEANS AND FIRST CLASS MAIL**

Sean Stewart  
Chief Housing Inspector  
City of Lincoln  
555 South 10<sup>th</sup> Street, Suite 203  
Lincoln, NE 68508

RE: Federal Fair Housing Act  
Oxford House-Lyoncrest  
1923 B Street  
CT220201

Dear Mr. Stewart:

I am General Counsel for Oxford House, Inc. I am responding to the inquiries you have made concerning the use of 1923 B Street as an Oxford House, a self run, self supported residence for persons in recovery from alcoholism and substance abuse that it is violation of the City of Lincoln's zoning code for having more than three (3) unrelated persons residing in it. As persons in recovery from alcoholism and substance, the residents of Oxford House-Lyoncrest are protected class under the Federal Fair Housing Act, 42 U.S.C. §3601, et seq. Therefore, on behalf of the Oxford House-Lyoncrest residents, Oxford House, Inc. and the owner of the property, I am making a reasonable accommodation request pursuant to the Federal Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B), to the City of Lincoln by requesting the following: that the City treat the use of Oxford House as the functional equivalent of a family; that the City treat the use of Oxford House-Lyoncrest as a single family use; and, that the City grant a waiver on the limitations of the maximum number of unrelated persons who can reside together as a family under the City's definition of family.

In order to assist the City in granting Oxford House, Inc.'s reasonable accommodation request, please consider the following explanation of the Oxford House concept, as well as the Federal Fair Housing Act as it applies to Oxford House and its residents.

Based on the information provided me, it is the position of the City that the City is classifying Oxford House-Lyoncrest as something other than a single family use. . The Courts have consistently treated the use of a single-family residence by Oxford House and its residents as the functional equivalent of a family.

The Lincoln Municipal Code defines family as follows:

***"Family:***

***One or more persons immediately related by blood, marriage or adoption and living as a single housekeeping unit in a dwelling shall constitute a family. A family may include, in addition, not more than two (2) persons who are unrelated for the purpose of this title:***

***A person residing with a family for the purpose of adoption;***

***Not more than six (6) persons under 16 years of age, residing in a foster home licensed as such by the State of Nebraska;***

***Not more than four (4) persons 16 years of age or older residing with a family for the purpose of receiving foster care;***

***Any person who is living with a family at the direction of a court.***

**I. THE OXFORD HOUSE CONCEPT**

Oxford Houses provide an opportunity for recovering alcoholics and substances abusers to maintain their sobriety in a supportive living environment that does not require the provision of treatment or counseling services.

Oxford House-Lyoncrest provides safe and sober housing for persons in recovery from alcoholism and substance abuse. Oxford House-Lyoncrest will accommodate up to fourteen (14) residents. In this regard, Oxford House, Inc., the national organization, assists in establishing housing for recovering addicts and alcoholics that is financially self-supported, democratically run, and immediately expels anyone who uses drugs or alcohol, inside or outside the house. There is no paid staff, counseling, therapy, or house manager involved in the operation of the house. In Oxford House, the group behaves like any family and makes group decisions based on democratic procedures. Oxford House is nothing more than a single-family residence.

Oxford House residents are encouraged to rent single-family dwellings located in good neighborhoods. This means Oxford Houses are usually located in areas zoned for single-family dwellings.

Oxford Houses are not substance abuse centers, halfway houses, shelters nor community care facilities. There is no treatment, counseling, therapy, or any type of health care service provided.



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Oxford Houses are not licensed by the State of Nebraska, nor are they required to be licensed. In an Oxford House, as opposed to a halfway house, residents live there by choice. There is no house manager, paid staff or other type of institutional personnel involved in the supervision or management of the house. All decisions relating to the functioning of an Oxford House are made democratically. An Oxford House manages its own finances and has its own bank account. Oxford Houses are not halfway houses, nor are they a substitute for halfway houses.

Oxford Houses are neither rooming nor boarding houses. The residents of Oxford House rent the entire premises rather than a single room. All residents have access to the entire house and all of the household facilities, and live in the house as any other group of unrelated persons functioning as a single housekeeping unit. The residents of the house share all household responsibilities, including financial responsibility for the rent and utilities, which they pay out of a single household checking account. They also share in the cooking, shopping, cleaning and general care of the premises. The residents live together purposefully to create a "family" atmosphere, where the residents share all aspects of domestic life. There are no individual locks on the doors of the bedrooms. There is no staff, paid or otherwise, living in the house or overseeing the house, and no treatment or professional services provided at the premises. Oxford House, Inc. plays no role, whatsoever, in how the house functions.

Physically, the house is no different from any other single-family home in the neighborhood. It is simply a single-family dwelling that is being rented by a group of individuals. The lease is between the landlord and the residents of Oxford House-Lyoncrest. Oxford House-Lyoncrest is in effect, an unincorporated association composed of the residents who reside there. Thus, there is a direct landlord-tenant relationship between the actual residents of the premises and the landlord. As the lease clearly indicates, there are no other persons or organizations, other than the residents who are living in the house, responsible for paying the rent or utilities for this rental property.

More important, there is no third party making any decisions regarding the way these houses operate, who resides in the house or how the houses are to be run. On the contrary, the residents themselves make all of these decisions. Moreover, there is no owner or operator at the premises who makes decisions regarding who lives in the premises and how the premises would function. Further, all of the household expenses, including rent, utilities and basic household supplies, are paid for only by the residents. The payments are all equal, regardless of the size of the room, since each resident is leasing the entire house, not just a room. The landlord is paid one monthly check for rent, which reflects the rent for the entire house. Finally, if there is a vacancy, the residents decide whether to fill it, and if so, the identity of the new occupant.

Not only is there no "operator" making decisions regarding the running of the premises, but rather the owner has absolutely nothing to do with the identity of the new individuals residing at the house, or how long the individuals stay at the house (other than simply establishing the lease for the



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entire property). All of these decisions are made exclusively by the tenants who are renting the premises.

For the same reasons asserted, we submit that the use of Oxford House-Lyoncrest, (which is based on the same model of self-run, self-supported shared living as an intentional "family") is likewise not a community care center, rooming or boarding house, group home or halfway-house under any applicable definition. *See Oxford House - Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D. N.J. 1991)(Oxford House is not a halfway house. Residents share more than "household responsibilities" and meals. The residents make all house decisions in a democratic fashion. But even more important, the support they lend each other is therapeutic, in the same manner as that of a well-functioning family. The relationship is not analogous to that between residents of a boarding house).<sup>1</sup>

Oxford House residents are considered to be the "functional equivalent" of a family for several reasons. First, all the residents have access to the entire house. Second, all the residents participate equally in the housekeeping functions of the house, i.e. house chores and house finances. Each resident, however, is responsible for her own food and cooking. Third is the quality of the relationship among the residents. The emotional and mutual support and bonding given Oxford House residents in support of their recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. Finally, the living arrangement is not

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<sup>1</sup>Also, *See Oxford House, Inc., et al. v. Township of Cherry Hill*, 799 F. Supp. 450 , 452 (D.N.J. 1992), wherein the Court stated:

Oxford Houses are not health care facilities, rehabilitation centers, or supervised halfway houses. They are simply residential dwellings rented by a group of individuals who are recovering from alcoholism and drug addiction . . . No professional treatment, therapy, or paid staff is provided. Unlike a boarding house, where a proprietor is responsible to run and operate the premises, at Oxford House, the residents are responsible for their own food and care as well as for running the home. Because the house must be self-supporting, each of the residents needs a source of income to pay his or her fair share of the expenses.

*See, United States v. Borough of Audubon*, 797 F. Supp 353, *aff'd* 968 F.2d 14 (3d Cir. 1992)(Oxford Houses are not health care facilities, rehabilitation centers, or supervised halfway houses. Unlike those facilities, no professional treatment or paid staff are provided. Instead, such houses are simply residential dwellings that are rented by a group of individuals who are recovering from alcoholism or drug addiction.). The Court also held that Oxford House residents are handicapped under the Federal Fair Housing Act, and that the residents drug and/or alcohol addictions did substantially impair one or more of their major life activities.



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based upon a profit motive. It has been found that individuals who decide to live in programs such as that offered by Oxford House-Lyoncrest are allowed to engage in the process of recovery from alcoholism and substance abuse at their own pace, which enhances their ability to advance and succeed in the recovery process. By living with other persons who are in recovery, the residents should never have to face an alcoholic's or addict's deadliest enemy: loneliness and isolation. It is necessary that 1923 B Street be able to have a maximum of fourteen (14) residents in order for the residents to ameliorate the effects of the diseases of alcohol and drug addiction. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. Fla. 2008).

In addition, residents live in an Oxford House-Lyoncrest by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use again after that individual has "bottomed out," i.e., lost jobs, home or family. It is also motivated by the desire that one must change their lifestyle, the manner in which they conduct their affairs, and the need to become a responsible, productive member of society. The final factor in determining that Oxford House-Lyoncrest residents are the "functional equivalent" of a family is the fact that there is no limit as to how long a resident can stay in Oxford House-Lyoncrest. Conceivably, an individual can stay in Oxford House-Lyoncrest for a lifetime if he/she does not relapse. The Surgeon General of the United States has recognized the Oxford House model as a leading example of "Recovery Housing." *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health*. 2016.; <https://addiction.surgeongeneral.gov/>. In order to assist the City in granting Oxford House, Inc.'s reasonable accommodation request, please consider the following explanation of the Oxford House concept, as well as the Federal Fair Housing Act as it applies to Oxford House and its residents.

The residents of Oxford House are considered "handicapped" under the 1988 amendments to the Federal Fair Housing Act (FFHA). See 42 U.S.C. 3600 et seq. Recovering addicts and alcoholics are specifically included within the definition of "handicapped individual." See, 42 U.S.C. 3602(h) and 24 C.F.R. 100.201(a)(2). See, also, *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725(1995). The Fair Housing Act was amended to include handicapped individuals within its parameters, and to guarantee the ability of these individuals to live in the residence of their choice within the community. *Tsombanidis v. City of West Haven*, 180 F.Supp. 2d 262, 282 (D. Conn. 2001), *aff'd in part, rev'd in part*, 352 F.3d 565 (2d Cir. 2003); *Oxford House - Evergreen v. City of Plainfield, supra*. (noting that residents of an Oxford House in Plainfield, New Jersey "are part of a nationally recognized program which, through peer pressure and strict conditions of abstinence, successfully maintains freedom from addiction and improves the lives and opportunities of its participants."); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450, 454 ( D.N.J. 1992)("There is a shortage of adequate housing in New Jersey for recovering substance abusers and alcoholics. Interfering with the use of the aforementioned residences as Oxford Houses and forcing the residents to leave would be extremely detrimental to their recovery and would substantially increase the likelihood of relapse"). As recovering alcoholics and addicts who cannot presently live independently or with their natural families, Oxford House residents are individuals with handicaps within the meaning of the Fair Housing Act. *City of Plainfield*, at 1342.



## **II. REASONABLE ACCOMMODATION REQUEST TO BE TREATED AS A FAMILY**

Under the FFHA, it is a discriminatory housing practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B); *Groome Resources, Ltd. v. Parish of Jefferson*, 234 F.3d 192 (5th Cir. 2000) *Smith & Lee Assocs. v. City of Taylor*, 102 F.3d 781, 790 (6th Cir. 1996); *Wisconsin Correctional Serv. v. City of Milwaukee*, 173 F. Supp. 2d 842 (E.D. Wisc. 2001); *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775, 787 (7th Cir. 2002); *ReMed Recovery Care Centers v. Township of Willistown*, 36 F. Supp. 2d 676, 683 (E.D. Pa. 1999); *Tsombanidis v. City of W. Haven*, 180 F. Supp. 2d 262, 283, *rev'd other grounds*, 352 F.3d 565 (2nd Cir. 2003).

Under Fair Housing Amendments Act of 1988, the City may not act to prevent those with handicaps from living in recovery housing within its boundaries. A reasonable accommodation in this instance would be for the City to accept the residents of Oxford House as the functional equivalent of a family and waive the limitation on the number of unrelated persons who may reside together under the City's zoning code, and apply all code provisions in the same manner as it applies to single family dwellings for single family purposes. In other words, Oxford House is seeking to be treated as a family under the express terms of the City's definition of family. *See, Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683, 693 (M.D. La. 2013) (finding that the proposed use of the Oxford Houses is similar to the uses already permitted by the zoning, and that it is reasonable to treat the uses as a family).

The reasonable accommodation requirement of the Fair Housing Act draws no distinction between "rules," "policies," and "practices" that are embodied in zoning ordinances and those that emanate from other sources. All are subject to the "reasonable accommodation" requirement. Thus, when a municipality refuses to make a reasonable accommodation in its zoning "rules," "policies," or "practices," and such an accommodation may be necessary to afford handicapped persons an equal opportunity to use and enjoy a dwelling, it violates the reasonable accommodation provision of the act, 42 U.S.C. 3604(f)(3)(B). *See United States v. Village of Marshall*, 787 F. Supp. 872, 877 (W.D. Wis. 1991) (Congress in enacting the Fair Housing Amendments Act "anticipated that there were rules and regulations encompassing zoning regulations and governmental decisions about land use")

The Courts have interpreted reasonable accommodation in cases involving zoning ordinances to mean that a municipality must change, waive or modify a rule that is generally applicable to everyone so as to make its burden less onerous on the person with disabilities. *Township of Cherry Hill* at 465, n. 25. *See, Casa Marie, Inc. v. Superior Court of Puerto Rico for the District of Arecibo*, 752 F. Supp. 1152, 1169 (D.P.R. 1990), *rev'd on other grounds*, 988 F.2d 252 (1st Cir. 1993) (noting that a court hearing a reasonable accommodation claim under the Fair Housing Act may "adjudge whether compliance with the zoning ordinances may be 'waived'"); *Horizon House Development*



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*Services v. Township of Upper Southampton*, 804 F.Supp. 683, 699-700 (E.D. Pa. 1992), *aff'd mem.*, 995 F.2d 217 (3d Cir. 1993) ("affirmative steps are required to change rules or practices if they are necessary to allow a person with a disability to live in a community"). A request for a reasonable accommodation may even encompass as request for non enforcement of a zoning ordinance. *Proviso Association of Retarded Citizens v. Village of Westchester*, 914 F. Supp 1555, 1561-62 (N. D. Ill. 1996); *Tsombanidis, supra*.

One of the purposes of the reasonable accommodations provision is to address individual needs and respond to individual circumstances. In this regard, courts have held that municipalities that municipalities must change, waive, or make exception to their zoning rules to afford people with disabilities the same access to housing as those who are without disabilities. *Town of Babylon*, 819 F. Supp. at 1192; *Horizon House*, 804 F. Supp. at 699; *Township of Cherry Hill* 799 F. Supp. at 461-63; *Village of Marshall*, 787 F. Supp at 878; *Commonwealth of Puerto Rico*, 764 F. Supp. at 224; *Tsombanidis, supra*.

The Fair Housing Act places an affirmative duty on the municipality to accommodate the needs of persons with disabilities. The Act demands that local governments such as the City of Lincoln change the manner in which its zoning ordinances are applied to afford the disabled the same opportunity to housing as those who are not disabled. *City of Plainfield*, 769 F. Supp. at 1344 (accommodation reasonable where it "would not cause undue financial burden to the City").

Permitting Oxford House to exist would not significantly compromise the policies reflected in any of the land use ordinances that the City would apply or enforce. Nor is there any significant evidence that such an accommodation would significantly compromise the City's legitimate interests in the protecting the residential character of the surrounding neighborhood. The City of Lincoln is not being asked to build housing; rather, it is being requested to remove an obstacle to housing. *See, Town of Babylon, supra; Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 936 (2d Cir), *aff'd* 488 U.S. 15 (1988).

If need be, Oxford House can demonstrate that the proposed accommodation is reasonable, for the Fair Housing Act requires a showing that the accommodation "may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B). *See, Parish of Jefferson v. Allied Health Care, Inc.*, 1992 U.S. Dist. Lexis 9124 (E.D. La.) (The proper inquiry on a request for a reasonable accommodation is the number of unrelated persons who can reside together is to reasonableness of the request.) If the City classifies Oxford House as something other than a single family use, it is actually enforcing its definition of family in its zoning ordinance by utilizing more stringent requirements on groups of unrelated disabled individuals wishing to live together in a rental property than on individuals related by blood or marriage. *Parish of Jefferson, supra* (zoning ordinance limiting the number of unrelated persons residing together as a family to four found to be in violation of the Fair Housing Act since it has the effect of discriminating against groups of handicapped persons by unnecessarily restricting their ability to live



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in residences of their choice in the community.) *Tsombanidis v. City of West Haven*, 180 F. Supp. 2d 262 (D.Conn. 2003) (stringent enforcement of the City's three person rule has a greater adverse impact on disabled persons than non-disabled persons). *Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683 at 691 (request to be treated as a family is reasonable.)

Reasonable accommodation requests are necessary to achieve an opportunity for the disabled residents of Oxford House to live in a residential area of the City of Lincoln. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1226 (11th Cir. 2008)(Section 3604(f)(3)(B)(requires only accommodations necessary to ameliorate the effect of the plaintiff's disability so that the resident may compete equally with the non-disabled in the housing market.) Absent the group-home setting, the individual residents of the plaintiffs' programs would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. *See also Oconomowoc Residential Prog.*, 300 F.3d at 784 ("When a zoning authority refuses to reasonably accommodate these small group living facilities, it denies disabled persons an equal opportunity to live in the community of their choice."); *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514, 524-25 (W.D. Pa. 2007) (holding that request for accommodation to definition of "family" was necessary for a resident "to enjoy the housing of his or her choice"). *Groome Resources, Ltd. supra*; *Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683 at 693(residency in Oxford House has been shown to ameliorate the effects of alcoholism and drug addiction).. *See also, Oxford House, Inc. v. Browning*, 266 F. Supp. 3d 896, 915 (M.D. La. 2017)(The residents of Oxford House comport themselves like a family and does not require additional fire safety requirements).

The Oxford House residents are individuals who are handicapped by alcoholism or drug abuse. It can demonstrate that the ability of recovering alcoholics and drug addicts to live in a supportive drug free environment in a quiet residential area is critical to their recovery as enhances the recovery process.<sup>2</sup>

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<sup>2</sup>Other programs similar to Oxford House have successfully demonstrated the need of recovering individuals to reside in quiet residential areas in order to enhance the recovery process. *See Borough of Audubon*, 797 F. Supp at 360 ("Based on the testimony, we find that the OH-Vassar residents' addictions substantially limit their ability to live independently and to live with their families. Accordingly, we find that the residents are "handicapped" under the Act, and are entitled thereby to the protections of the Act. We do not think that the list of major life activities set forth in the regulation was meant to be all-inclusive. Even if it were, the residents would still satisfy the definition because their inability to live independently constitutes a substantial limitation on their ability to 'care for themselves.'"); *City of Plainfield*, 769 F. Supp at 1339-40. ("In addition to losing their residence, which may in itself be an irreparable injury, plaintiffs would also lose the benefit of their therapeutic and supportive living environment, and may relapse. . . For a non-handicapped individual, the disintegration of a family unit is traumatic for recovering alcoholics and drug addicts, it may be devastating.")



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The residents of Oxford House are individuals who are handicapped by alcoholism or drug abuse and who cannot live independently without the risk of relapse. They cannot live with their families, friends or in the neighborhoods that contributed to their use of drugs and alcohol. Oxford House can demonstrate that the ability of recovering alcoholics and drug addicts to live in a supportive drug free environment in a quiet residential area is critical to their recovery since they are not able to live independently at this time without the fear of relapse. These individuals are more likely to need a living arrangement such as provided by Oxford House, wherein groups of unrelated individuals reside together in a residential neighborhood for mutual support during the recovery process so as to prevent the possibility of resumption of the use of drugs and/or alcohol. This type of living arrangement provides the tools to the residents to enable them at a future time to be a sober responsible, productive member of society. *Township of Cherry Hill*, 799 F. Supp. at 450. "When that home is also a therapeutic environment critical to maintaining continued recovery from alcohol or drug addiction, eviction is life threatening. Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery." *See City of Plainfield*, 769 F. Supp at 1345.

Each resident of Oxford House is a recovering alcoholic and/or substance abuser. The Oxford House residents' status as persons in recovery from alcoholism and/or substance abuse limits one or more major life activities as that term is defined under both the Fair Housing Act, 42 U.S.C. § 3602(h), and the Americans with Disabilities Act, 42 U.S.C. § 12102(2). Major life activities have been limited because they are unable to live independently without the fear of relapse; that they need to live in a structured sober living environment; their inability to reside with their families or significant others leads to the risk of relapse; their lack of knowledge and ability to live without the use of drugs and alcohol; the lack of a stable living environment; the possibility of becoming homeless or incarcerated; and, the need to be surrounded with other women who are learning to live productively without the use of drugs or alcohol. *See, Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683, 689 (M.D. La. 2013); *Reg'l Econ. Cmty. Action Program v. City of Middletown*, 294 F.3d 35, 47-48 (2d Cir. 2002); *McKivitz v. Twp. of Stowe*, 769 F. Supp. 2d 803, 821-822 (W.D. Pa. 2010).



Sean Stewart  
May 19, 2022

It is our desire to work with the City to allow Oxford House to provide quality sober housing in the City. If, however, the City seek to interfere with the opening of the Oxford House, we will not hesitate to take appropriate legal action to insure that housing is not denied to a persons who need safe and sober housing.

Please do not hesitate to contact me at 202-390-0238 to discuss.

Sincerely yours,



Steven G. Polin

cc: Oxford House, Inc.

## **Oxford House Lyoncrest Residential Lease**

**BY THIS AGREEMENT**, made and entered into on 20 January 2022 between JDBproperties LLC, herein referred to as Lessor and Oxford House Lyoncrest, herein referred to as Lessee. Lessor leases to Lessee the premises situated at 1923 B St. Lincoln, NE 68502 for a term of Three (3) years to commence on 1 February 2022 and to end on 31 January 2025 at 12 o'clock PM.

**1. Rent.** Lessee agrees to pay, without demand to Lessor as rent for the demised premises the sum of Three thousand one hundred dollars (\$3,100) per month in advance on the 1st of each calendar month beginning 1 March 2022 at such place as the Lessor may designate.

**2. Security Deposit.** Lessee will pay Lessor Zero (\$0.00) on execution of this lease and authorizes Lessor to keep it on deposit as a security deposit, receipt of which is acknowledged by Lessor, as security for the faithful performance by Lessee of the terms hereof, to be returned to Lessee, without interest, on the full and faithful performance by the Lessee of the provisions hereof.

Lessor understands, despite no deposit being collected, that they are still responsible for any damages, above normal wear and tear of the property and can be charged for the repair or replacement of said damages upon end or termination of the lease.

**3. Quiet Enjoyment.** Lessor covenants that on paying the rent and performing the covenants herein contained, Lessee shall peacefully and quietly have, hold, and enjoy the demised premises for the agreed term.

**4. Use of Premises.** The demised premises shall be used and occupied by Lessee exclusively as a private single family residence, and neither the premises nor any part thereof shall be used at any time during the term of this lease by the Lessee for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family residence in accordance with the concept and system of operations of an Oxford House as described in the attachment entitled "Oxford House and Landlords: The Legal and Policy Reasons Underlying Oxford House Leases" and acknowledge that both Lessor and Lessee have read the attachment. Lessee shall comply with all the sanitary laws, ordinances, rules and orders of appropriate governmental authorities, affecting the cleanliness, occupancy, and preservation of the demised premises, and the sidewalks connected thereto, during the term of this lease.

**5. Condition of Premises.** Lessee stipulates that he has examined the demised premises, including the grounds and all building and improvement, and that they are, at the time of this lease, in good order, repair, and a safe, clean, and tenantable condition.

**6. Assignment and Subletting.** Without the prior written consent of Lessor, Lessee shall not assign this lease, or sublet or grant any concession or license to use premises or any part thereof. Consent by Lessor to one assignment, subletting, concession, or license shall not be deemed to be consent to any subsequent

assignment, subletting, concession, or license. An assignment, subletting, concession, or license without the prior written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, a Lessor's option terminate this lease.

**7. Alterations and Improvements.** Lessee shall make no alterations to the buildings on the demised premises or construct any building or make other improvements on the demised premises without the prior written consent of Lessor. All alterations, changes, and improvements built, constructed, or placed on the demised premises by Lessee, with the exception of fixtures removable without damage to the premises and movable personal property, shall, unless otherwise provided by written agreement between Lessor and Lessee, be the property of Lessor and remain on the demised premises at the expiration or sooner termination of this lease.

**8. Damage to Premises.** If the demised premises, or any part thereof, shall be partially damaged by fire or other casualty not due to Lessee's negligence or willful act or that of his employee, family, agent, or visitor, the premises shall be promptly repaired by Lessor and there shall be an abatement of rent corresponding with the time during which, and the extent to which, the leased premises may have been untenable; but, if the leased premises shall be damaged other than by Lessee's negligence or willful act or that of his employee, family, agent or visitor to the extent that Lessor shall decide not to rebuild or repair, the term of this lease shall end and the rent shall be prorated up to the time of the damage.

**9. Dangerous Materials.** Lessee shall not keep or have on the leased premises any article or thing of a dangerous, inflammable, or explosive character that might unreasonable increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

**10. Utilities.** Lessee shall be responsible for arranging for and paying for all utility services required on the premises. Including trash

**11. Right of Inspection.** Lessor and his agents shall have the right at all reasonable times during the term of this lease and any renewal thereof to enter the demised premises for the purpose of inspecting the premises and all building and improvements thereon.

**12. Maintenance and Repair.** Lessee will keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease and any renewal thereof and pay for any repair up to one hundred dollars (\$100). In particular, Lessee shall keep the fixtures in the house or on or about the leased premises in good order and repair; keep the furnace clean, keep the electric bills in order; keep the walks free from dirt and debris; and shall make all required repairs to plumbing, range, heating, apparatus and electric and gas fixtures whenever damage thereto shall have resulted from Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor. Major maintenance and repair of the lease premises, not due to lessee's misuse, waste or neglect or that of his employee, family, agent or visitor shall be the responsibility of Lessor or his assigns. Major expenditures shall include any expenditure over one hundred dollars (\$100) for plumbing, electrical or appliances needing repair not caused by the Lessee's

neglect, misuse, or waste. Lessee is responsible for landscape upkeep, mowing, and snow removal. Lessee agrees that no signs shall be placed or painting done on or about the leased premises by Lessee or at his direction without the prior written consent of Lessor.

**13. Animals.** Lessee shall keep no domestic or other animals on or about the leased premises.

**14. Display of Signs/Sale of Premises.** During the last 30 days of this lease, Lessor or his agent shall have the privilege of displaying the usual "For Sale" or "For Rent" or "Vacancy" signs on the demised premises and of showing the property to prospective purchasers or tenants and may sell premises with 90-day-notice to Lessee. Upon the purchase of premises by another individual or entity this lease shall become void 90 days following the transfer of title to the demised premises.

**15. Subordination of Lease.** This lease and Lessee's leasehold interest hereunder are and shall be subject, subordinate, and inferior to any liens or encumbrances now or hereafter placed on the demised premises by Lessor, all advances made under any such liens or encumbrances, the interest payable on any such liens or encumbrances, and any and all renewals or extensions of such liens or encumbrances.

**16. Holdover by Lessee.** Should Lessee remain in possession of the demised premises with the consent of Lessor after the natural expiration of this lease, a new month-to-month tenancy shall be created between Lessor and lessee which shall be subject to all the terms and conditions hereof but shall be terminated on thirty (30) days' written notice served by either Lessor or Lessee on the other party.

**17. Surrender of Premises.** At the expiration of the lease term, Lessee shall quit and surrender the premises hereby demised in as good state and condition as they were at the commencement of this lease, reasonable use and wear thereof and damages by the elements excepted.

**18. Default.** If any default is made in the payment of rent, or any part thereof, at the times hereinbefore specified, or if any default is made in performance of or compliance with any other term or condition hereof, the lease, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the premises and remove all persons there from. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the lease shall not result if, within 10 days of receipt of such notice, Lessee has to correct the default or breach or has taken action reasonable likely to affect such correction within a reasonable time.

**19. Abandonment.** If at any time during the term of this lease Lessee abandons the demised premises or any part thereof, Lessor may, at his option enter the demised premises by any means without being liable for any prosecution therefore, and without becoming liable to Lessee for damages or for any payment of any kind whatever, and may, at his discretion, as agent for Lessee, relet the demised premises, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and at Lessor's option hold Lessee liable for any difference between the rent that would have been payable under this lease during the balance of the unexpired term, if this lease had continued in force, and the net rent for such period realized by Lessor by means of such reletting. If

## **Landlords**

### **The Legal and Policy Reasons Underlying Oxford House Group Leases**

In 1988, Congress established the requirements that every State in the country establish a revolving fund to help start houses based on the Oxford House model (P.L. 100-690). Since that time, Oxford House, Inc., has organized a national headquarters to help individuals throughout the United States open Oxford Houses. The purpose of this paper is to assist new groups, landlords, rental agents and local officials understand how Oxford House leases residential single-family houses in good neighborhoods.

In 1975, Oxford House leases were pathfinders in the landlord-tenant arena. Today, they have become the norm for the thirty-nine states and two hundred-nineteen cities in which Oxford House operates. The leases are exactly the same as a lease to a single family but with certain important distinctions.

#### **Who Signs the Lease**

The signatory of the lease is the individual Oxford House; for example, Oxford House - Main Street. The effect of this commitment by the group to the landlord is important because of the nature of Oxford House and the application of local landlord-tenant laws.

Oxford House works because an individual resident who returns to using alcohol or drugs—in or outside of the house—must be immediately expelled from the house. If the individual is a signatory to the lease the immediate eviction becomes difficult, if not impossible, because of local landlord-tenant rights. In many jurisdictions it takes up to ninety days to evict a tenant even for non-payment of rent. Since no individual is a signatory to a Oxford House lease, the relapsing individual who is being evicted has no legal rights to delay his or her departure. There is no way to accomplish this result without the signature on the lease being in the name of the particular Oxford House group.

The landlord gets additional benefit from this type of agreement. The landlord deals with duly constituted officers of the group and can expect accountability for all matters concerning the occupancy. Individuals come and go, but officers will always be duly authorized to act for the group. Moreover, the landlord does not have to worry about the accountability of particular individuals. He or she is dealing with an established organization that, of necessity, takes pride in preservation of its good name and reputation.

#### **Who is Responsible**

The particular group house is responsible to the landlord. An important part of why Oxford House has been so successful is that accountability and responsibility is placed on the recovering individuals themselves. As a group they behave responsibly and out of the "group responsibility" individuals develop a new responsible lifestyle free of alcohol and drug use.

Oxford House, Inc., plays an important part in making certain that individual groups behave responsibly through the use of the "Charter" mechanism. Each individual group is given an Oxford House Charter which makes it a part of the network of Oxford House recovery houses. That charter carries with it certain privileges; for example, the individual house is (1) brought under the tax exempt status of Oxford House, Inc. (2) given support and education about the operation of self-run, self-supported recovery houses, (3) provided assistance in filling vacancies and enforcing sobriety and financial responsibility and (4) monitored to assure quality control. It becomes important to every house that it keep its charter.

Oxford House, Inc., monitors the activities of each house in a number of ways. It has on-site support by dedicated members of Alcoholics Anonymous and Narcotics Anonymous. Individuals active in those programs have the Oxford House toll-free telephone number and call Oxford House headquarters if a



particular house is not strictly carrying out its responsibilities under its charter. Getting sober and staying sober is serious business for these recovering individuals and their dedication to helping others achieve sobriety is unsurpassed.

Oxford House, Inc., keeps in touch with the members of each house on a regular basis. This involves weekly reports, periodic phone calls and the maintenance of continuous contact to keep track of vacancies and assure financial responsibility. It also enforces the Oxford House system of operations.

Oxford House, Inc., does not guarantee payments of rent. That would defeat the whole principle of establishing a system that teaches recovering individuals themselves to be responsible. However, it does the next best thing by utilizing and enforcing its charter concept. Unlike the normal group house situation, for which there is no assurance of quality control, the Oxford House concept provides the landlord with the assurance of a dedicated partner in making certain that every Oxford House in the country is run in a responsible manner.

### **Zoning**

Oxford Houses are considered single family residences for purposes of zoning. This has always been true in practice and since March 12, 1989, the effective date of the 1988 Amendments to the Federal Fair Housing Act, it has been a matter of law. Those amendments make it unlawful for any jurisdiction to discriminate against congregate living for the disabled. Recovering alcoholics and drug addicts are within the scope of the term "disabled". Therefore, Oxford Houses are not subject to zoning laws regulating the number of unrelated individuals who may live in a single-family dwelling. An Oxford House is not a treatment facility. It is simply an alcohol and drug free living environment which provides an opportunity for recovering individuals to live as a family unit focused on the need to change their individual lifestyle to one absolutely free of alcohol and drug use.

Oxford House, Inc., will legally defend any claim of zoning violation made by localities still unfamiliar with the Federal Fair Housing Act.

### **For more Information**

The Fair Housing Amendments Act of 1988 and Group Homes for the Handicapped

Judicial Enforcement of Fair Housing Amendments



## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

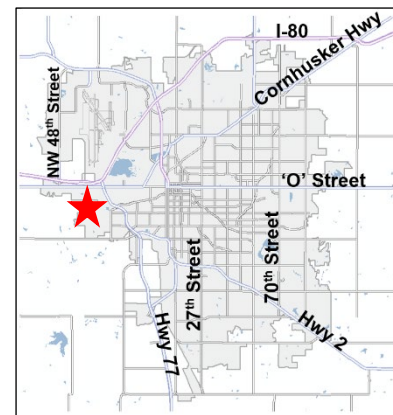
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Miscellaneous #22009	FINAL ACTION? No	DEVELOPER/OWNER MAK Development LLC
PLANNING COMMISSION HEARING DATE	RELATED APPLICATIONS None	PROPERTY ADDRESS/LOCATION 5203 Walker Avenue

**RECOMMENDATION:** Finding of compliance with requirements of Fair Housing Act with conditions

### BRIEF SUMMARY OF REQUEST

A request for reasonable accommodation under Chapter 1.28 of the Lincoln Municipal Code, the Nebraska Fair Housing Act (Neb. Rev. Stat. 20-301 etc.) and the Federal Fair Housing Act (FHA) (Title VIII of the Civil Rights Act of 1968, as amended) to make an accommodation the definition of family as provided in Chapter 27.02.070 to include nine unrelated individuals with disabilities to reside in the dwelling known as the Michael House at 5203 Walker Avenue. If approved, the accommodation will allow nine individuals with disabilities, including a live-in manager with a disability, to reside in a single family dwelling. If the accommodation were not approved, the current use with nine persons could be defined as a group home which is a conditional use. This location appears to meet the conditions for a group home per Chapter 27.62.050 (b).



### JUSTIFICATION FOR RECOMMENDATION

The FHA requires City make reasonable accommodations to the zoning code when the requested accommodation will ensure equal opportunity to individuals with disabilities to live in the neighborhood they choose. Requests for accommodation are not reasonable when the accommodation imposes on City an undue financial or administrative burden. The applicant has demonstrated it is entitled to a reasonable accommodation under the FHA and City has not, at this time, identified evidence that the accommodation is unreasonable.

### APPLICATION CONTACT

Michael Corrado, for the  
"Michael House"  
6607 Maple Street  
Omaha, NE 68104  
402-917-0926

Ryan Watson  
Wagner, Meehan, & Watson, LLP  
11515 S. 39<sup>th</sup> St., Ste 202  
Bellevue, NE 68123  
(402)592-9869

### STAFF CONTACT

Stephen Henrichsen, (402) 441-6374  
[shenrichsen@lincoln.ne.gov](mailto:shenrichsen@lincoln.ne.gov)

### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan encourages a variety of housing types within a neighborhood. In order to ensure a mix of housing types, but with compatible within a neighborhood, the zoning ordinance establishes conditions and requirements for different housing types such as group homes or transitional living facilities. This request would make an accommodation to those regulations to permit this use to be treated as a family.

## KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

### Goals Section

G1: Safe, Affordable, and Accessible Housing. Lincoln and Lancaster County will support the development of safe, affordable, and accessible quality housing that meets the diverse needs of the community. PlanForward understands the ongoing need for affordable housing and supports development of 5,000 affordable units by the year 2030.

G2: Complete Neighborhoods. Lincoln and Lancaster County will support complete neighborhoods within both developing and redeveloping areas of Lincoln. A complete neighborhood is one where residents are able to get the goods and services to meet daily needs within 15 minutes of their residence including a variety of housing options, grocery stores and other commercial services, quality public schools, public open spaces and recreational facilities, affordable active transportation options, and civic amenities. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and even small lot single-family.

#### **Figure E1.b: Strategies for Design, Sustainability and Complete Neighborhoods in Existing Areas**

1. Encourage a mix of compatible land uses to develop more complete neighborhoods:
  - a. Similar uses on the same block face: residential faces residential.
  - b. Similar housing densities developed near each other: single-family and “missing middle” residential (3-12 units) scattered throughout with higher density residential (more than 12 units) near the neighborhood edge or clustered near commercial centers.
  - c. Non-residential uses, including parking lots, should be screened from residential areas.
  - d. Locate mixed-use centers so as residents can safely access essential goods and services (i.e. not located across arterial streets) and no more than a 15-minute walk from all residences.
  - e. Support existing Commercial Centers and encourage inclusion of essential goods and services.
  - f. Infill and redevelopment projects should meet or exceed Neighborhood or Commercial Design Standards.

#### **Existing Neighborhoods**

The diversity of architecture, housing types and sizes are central to what make existing neighborhoods great places to live. New construction should continue the architectural variety, but in a manner that is sensitive to the existing neighborhoods.

Infill and redevelopment is supported and must respect the street pattern, block sizes, and development standards of the area, such as parking at the rear and porches, windows, and doors on the front street side.

The City’s primary strategy for residential infill and redevelopment outside of the Greater Downtown is to encourage the redevelopment and reuse of sites and buildings in commercial areas in order to create new mixed use centers that are compatible and complementary to adjacent neighborhoods.

Modest opportunities for redevelopment may also be appropriate along “neighborhood edges.” Neighborhood edges include arterial streets and transition zones between lower density residential and commercial areas.

### Policies Section

P1: Housing Affordability - Make available a safe residential dwelling for all residents.

#### **Action Steps**

1. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated and Annual Action Plans and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
2. Distribute and preserve affordable housing throughout the community to be near job opportunities and public

transit and to provide housing choices within existing and developing neighborhoods.

3. Encourage public/private partnerships with housing entities such as Lincoln Housing Authority, Affordable Housing Initiatives, Habitat for Humanity, and NeighborWorks Lincoln.
4. Provide for more education of the public about affordable housing and code enforcement.
5. Promote the preservation, maintenance and renovation of existing housing and neighborhoods throughout the city, with special emphasis on low and moderate income neighborhoods.
6. Preserve the existing affordable housing stock, increase the supply of affordable owner and renter units, and add more variety in housing types.

P2: Existing Neighborhoods - Continue our commitment to strong, diverse, and complete neighborhoods.

#### Action Steps

1. Promote the preservation, maintenance, and renovation of existing housing and supporting neighborhood uses throughout the City, with special emphasis on low and moderate income neighborhoods.
3. Encourage well-designed and appropriately placed density, including within existing apartment and group living complexes and in redeveloping commercial or industrial centers, where there is land available for additional buildings or expansions. Provide flexibility to the marketplace in siting future residential development locations. This includes appropriately placed infill in prioritized Nodes and Corridors, neighborhood edges, and underutilized commercial or industrial sites.
4. Recognize that broad economic diversity within existing neighborhoods encourages reinvestment and improves quality of life for all residents while acknowledging the need for affordable housing.
5. Preserve, protect and promote the character and unique features of urban neighborhoods, including their historical and architectural elements.
6. Promote the continued use of residential dwellings and all types of buildings, to maintain the character of neighborhoods and to preserve portions of our past. Building code requirements for the rehabilitation of existing buildings should protect the safety of building occupants, while recognizing the need for flexibility that comes with rehabilitating existing buildings.
7. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated, Annual Action Plans, and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
8. Retain and encourage a mix of housing in existing and new neighborhoods in order to provide a mix of housing types at a variety of price points.
11. Encourage public and private investment in neighborhood infrastructure and services to support economic diversity that improves the quality of life for all residents.
12. Balance expanding housing options and neighborhood character. Infill development should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.
13. Preserve areas designated for multi-family and group living housing in approved plans to support a distributed choice in affordable housing.
20. Examine current residential zoning districts and propose modifications to encourage 'missing middle' units (single-family attached, cottage courts, townhomes, live-work, and a variety of three- and four-plex configurations), including affordable units, to people with a range of incomes. Neighborhood edges in particular present an opportunity for missing middle housing.
21. Encourage a variety of housing types including townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and small lot single-family units.

#### FACTS, LAW, AND ANALYSIS

1. This is a request for the Michael House at 5203 Walker Avenue. This is a single family detached house zoned R-2 Residential. The applicant is seeking an accommodation to the definition of "family" to include up to 8 residents with disabilities at this location with a live-in manager who also has a disability. The stated mission for the residents of the Michael House is "To provide a structured program to allow you to succeed in sobriety allowing you to be more financially independent, self-sufficient and excel in your next phase in life."
2. MAK Development LLC purchased this house in December 2019. The Assessor's Office lists this house as five bedrooms with 1,648 square feet of living space on the first and second level and 400 square feet in the basement.



3. The applicant's position appears in the attached application materials and letter from legal counsel.

4. The Lincoln Municipal Code (LMC) defines in 27.02.070 (F) a family as:

**'Family** One or more persons immediately related by blood, marriage, or adoption and living as a single housekeeping unit in a dwelling shall constitute a family. A family may include, in addition, not more than two persons who are unrelated for the purpose of this title. The following persons shall be considered related for the purpose of this title:

- a. A person residing with a family for the purpose of adoption;
- b. Not more than six persons under nineteen years of age, residing in a foster home licensed or approved by the State of Nebraska;
- c. Not more than four persons nineteen years of age or older residing with a family for the purpose of receiving foster care licensed or approved by the state or its delegate;
- d. Any person who is living with a family at the direction of a court."

5. Under the FHA, it is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability. 42 U.S.C. § 3604(f)(1).

6. It is well established that individuals recovering from drug or alcohol addiction are disabled under the FHA. *United States v. Southern Management Corp.*, 955 F.2d 914, 917–23 (4th Cir.1992); *Elliott v. City of Athens*, 960 F.2d 975, 977 n. 2 (11th Cir.1992), cert. denied, 506 U.S. 940, 113 S.Ct. 376, 121 L.Ed.2d 287 (1992); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F.Supp. 450, 458–60 (D.N.J.1992); *United States v. Borough of Audubon*, NJ, 797 F.Supp. 353, 358–59 (D.N.J.1991).

7. The FHA requires Cities make reasonable accommodations to rules, policies, laws, and practices to afford people with disabilities and equal opportunity to live in a dwelling. 42 U.S.C. § 3604(f)(3)(B)

8. LMC 27.02.050 (D) then defines a disability as:

**"Disability** or handicap shall mean, with respect to a person:

- a. A physical or mental impairment which substantially limits one or more of such person's major life activities;
- b. A record of having such an impairment; or
- c. Being regarded as having such an impairment."

Disability shall not include current, illegal use of or addiction to a controlled substance as defined by state law.

9. If the reasonable accommodation request were denied, then when more than three unrelated persons live together, one residential option is a group home. This is defined in 27.02.080 (G) as:

**"Group Home** Group home shall mean a building or structure licensed or approved by the State or an appropriate agency, if required, used as any one of the following:

- a. A facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care;
- b. A facility engaged in the service of exercising 24-hour daily care, supervision, custody, or control over more than three but less than sixteen children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home."

10. Group Homes are allowed in residential zoning districts as a conditional use. LMC 27.62.050 (b) states:

“Group homes are allowed in the AG, AGR, R-T and all residential zoning districts under the following conditions:

1. Such use shall be permitted only so long as the facility continues to be validly licensed by the State of Nebraska.
2. The distance between the proposed use and any existing group home measured from lot line to lot line is not less than:
  - i. One-half mile in the AG, AGR, R-1, R-2, R-3 and R-T zoning districts;
  - ii. 1,200 feet in the R-4, R-5, R-6, R-7 and R-8 zoning districts.”

11. In the case of 5203 Walker Avenue, it does meet the spacing requirement of the R-2 Zoning district. So, this option is a possibility. It is unknown whether the residents at 5203 Walker Avenue are engaged in therapy or counseling, a component of the “group home” definition under LMC 27.02.080, The applicant has not met with staff to see if there are any other options. Their request is for reasonable accommodation to the family definition.

#### **Reasonable Accommodation Process & Findings**

12. The Lincoln Municipal Code in Chapter 1.28.020 provides the process for a person with a disability, or entity on their behalf, to request the City Council make reasonable accommodations to laws such a building codes, fire or safety codes, or zoning code to allow those individuals with disabilities to enjoy equal opportunity to use of a dwelling. The Planning Commission is the “Reviewing Authority” for reasonable accommodation requests involving the zoning code. The Commission must hold a public hearing on the request and make a recommendation to City Council.

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#### **1.28.020 Applicability.**

“A request for reasonable accommodation may be made by any person with a disability or handicap, as defined in the Acts, or by an entity acting on behalf of a person or persons with disabilities or handicaps to provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. The provisions of this chapter do not apply to the City’s Bureau of Fire Prevention’s application of any code or regulation adopted by the State Fire Marshal pursuant to its delegated authority from the State Fire Marshal. As defined in the Acts, a person with a disability or handicap is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment.

A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs or activities provided by the City. Requests for reasonable accommodation shall be made in the manner prescribed by Section [1.28.030](#).”.

13. The history of prior reasonable accommodation requests is summarized below. Three requests were withdrawn, three were denied and only one was approved. Enactment of section 1.28 was spurred by federal litigation and denial of certain requests appearing below resulted in an adverse federal court judgment against the City.

14. Chapter 1.28 provides 8 factors for the City Council to consider when evaluating a request for reasonable accommodation. The Planning Commission role is to make a recommendation on these findings. This report will review each factor with commentary in *italics*.

---

#### **1.28.050 Decision.**

“Upon receiving the report from the Reviewing Authority or upon failure of the Reviewing Authority to timely submit its report, the City Council after public hearing shall take final action upon the application and may grant, grant with modifications, or deny the request for reasonable accommodation consistent with the Acts and based upon the following findings:

1. Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts.

*The residents of the house are disabled under the FHA because they are in recovery from addiction to alcohol or other substances.*

2. Whether the accommodation requested is financially, therapeutically, or otherwise necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.

*The applicant describes the necessity of communal sober living in their application materials.*

3. Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit.

*City staff, at this time, has not explored whether there is an alternative reasonable accommodation available that would provide an equal level of benefit.*

4. Whether alternative accommodations would be suitable based on the circumstances of this particular case.

*The reasonable accommodation request identifies the circumstances and necessity of the accommodation under the circumstances. City staff have not explored whether an alternative accommodation would be suitable.*

5. If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.

*The Comprehensive Plan designates this area as Urban Residential. The Comprehensive Plan encourages a variety of housing types in neighborhoods. This specific request wouldn't be contrary to the Plan.*

6. Whether the requested reasonable accommodation substantially affects the physical attributes of the property.

*No changes are proposed, but the approval doesn't limit the owner to making changes to alter the house in the future. The house at 5203 Walker Avenue has five bedrooms and two bathrooms. It is a 1 and ½ story house with a total of 1,648 square feet on the first and second level and 400 square feet in the basement. No information was provided on how nine people would be accommodated in a five bedroom house. The Building and Safety Department advises that 9-person occupancy would not exceed building code maximum occupancy for the dwelling.*

*The property is in the Charles Creighton Local Landmark Historic District. The purpose of the district is to preserve, protect and enhance the structures within the district. The regulations focus on the structures themselves and don't specifically address land use.*

7. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

*City has identified no financial or administrative hardship resulting from this particular accommodation. Activity at this address was reviewed by the Lincoln Police Department. They had no concern. They noted there has been six calls for service in 2021-2022 to this address: three calls for transport (typically for probation or parole,) one mental health call, one disturbance and one theft from a vehicle.*

8. Whether the requested reasonable accommodation would require a fundamental alteration to the zoning, building, fire, or safety codes of the City.

*Although a proliferation of communal living dwellings in a concentrated area may perhaps result in a fundamental alteration to certain residential zones, this accommodation, on its own, will not.*

“In granting a request for reasonable accommodation, the City may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would be consistent with the Acts and the findings required above.”

### **Conclusion:**

Applicant is entitled, under Lincoln Municipal Code and the Federal Fair Housing Act to make application to City of Lincoln for a reasonable accommodation to the definition of “family” under LMC Title 27 to allow up to 9 unrelated individuals with a disability, to include a manager with a disability, to reside as a family at 5203 Walker Avenue. Applicant has demonstrated individuals residing at 5203 Walker Avenue are disabled under the FHA. Applicant asserts that the accommodation is financially and therapeutically necessary. Unless City can demonstrate an undue financial or administrative burden or a fundamental alteration of the zoning code resulting from the reasonable accommodation requested, the request should be approved.

**EXISTING LAND USE & ZONING:** Single family detached house and R-2 Residential zoning

### **SURROUNDING LAND USE & ZONING**

North: Single and two family dwelling units; apartment, parking lot and NWU campus R-2 with R-6 on next block

South: Primarily Single and two family dwelling units R-4

East: Primarily single and two family dwelling units R-2

West: Multi-family, single and two family dwelling units R-4

### **REASONABLE ACCOMMODATION APPLICATION HISTORY (does not include any legal cases or determinations)**

Application Number	Action Date	Council Action	Location	Applicant	Staff Recomm.	PC Recomm.	Planning Dept. Notes
MISC05011	N/A	N/A	3912 S. 20 <sup>th</sup> Street	Developmental Services of Nebraska	Withdrawn	N/A	Request to allow 4 residents with developmental disabilities in a residential home.
MISC05012	8/19/05	Approved (CC)	4000 Lindsey Circle	Developmental Services of Nebraska	Not noted	Planning Commission Recommended Approval	Allow 4 residents with developmentally disabilities under a group home not meeting the spacing.

MISC05013	N/A	N/A	2440 SW 18 <sup>th</sup> Street	Developmental Services of Nebraska	Withdrawn	N/A	Allow 4 residents with developmental disabilities in a residential home.
MISC05017	11/14/05	Denied 5-2		Developmental Services of Nebraska	Conditional Approval	Denial - found applicant had not sufficiently demonstrated financial and therapeutic necessity and recommended denial.	Staff recommended withdrawing neighboring application to allow spacing and application to be met as a group home.
MISC05018	11/14/05	Denied	1661 Timber Ridge Road	Developmental Services of Nebraska	Approval	Denial - found applicant had not sufficiently demonstrated financial and therapeutic necessity and recommended denial.	Allow 4 residents with developmental disabilities in a residential home.
MISC05019	11/14/05	Denied	5516 Hunts Drive	Developmental Services of Nebraska	Approval	Denial	Same circumstances as MISC05018.
MISC05020	N/A	Withdrawn	416 N. Coddington Avenue	Developmental Services of Nebraska	Conditional Approval	N/A	Same circumstances as prior two applications. Withdrawn by the applicant at PC hearing.

**APPROXIMATE LAND AREA:** 7,100 square feet, (50 feet by 142 feet)

**LEGAL DESCRIPTION:** Lot 6, Block 108, University Place, Lincoln, Nebraska

Prepared by

\_\_\_\_\_  
Stephen Henrichsen, Development Review Manager

Date: June 15, 2022

Applicant/

Contact: Michael Corrodo  
Ryan Watson

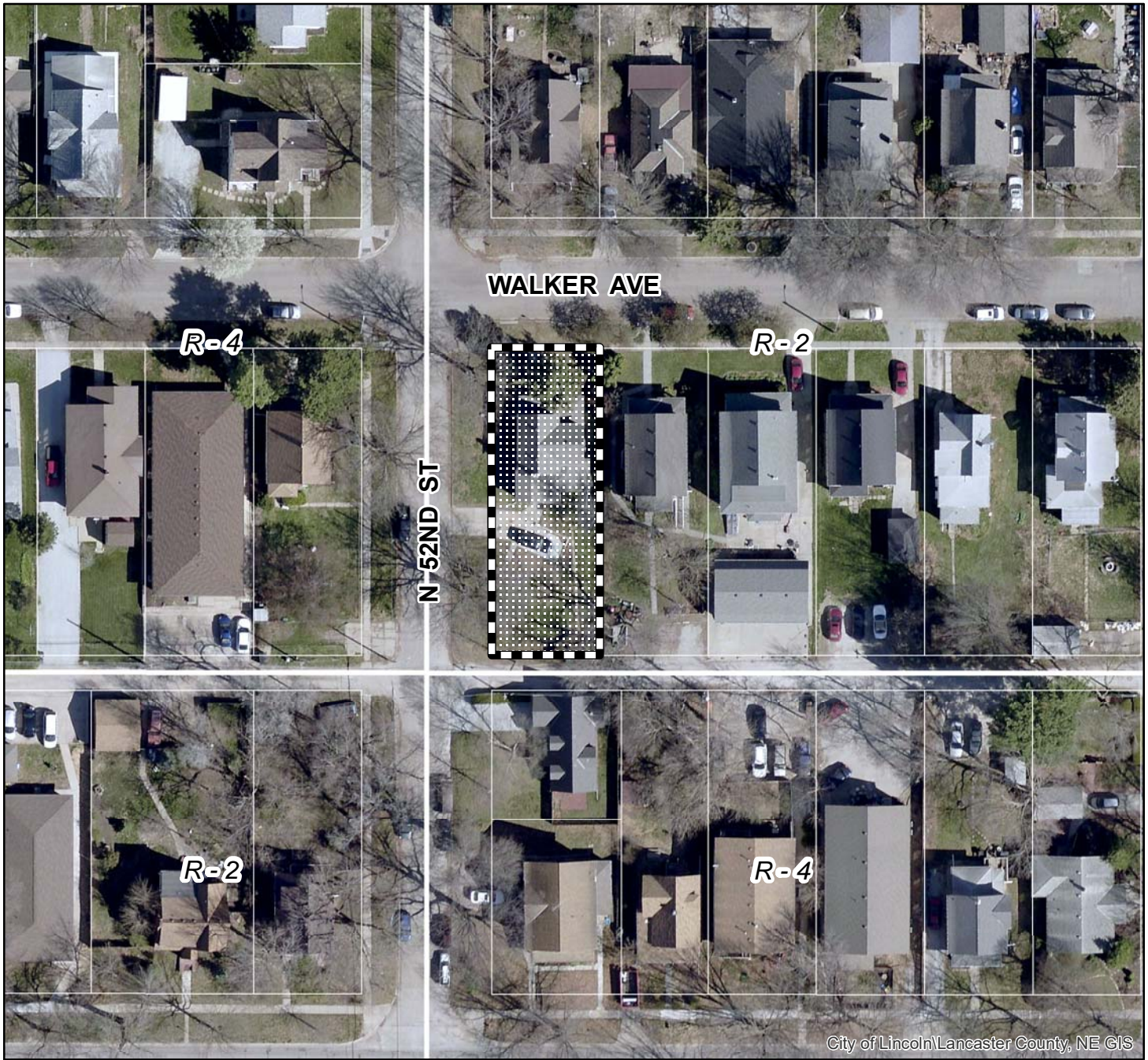
Owner: MAK Development LLC  
6607 Maple Street  
Omaha, NE 68104



**FINDING OF COMPLIANCE WITH REQUIREMENTS OF FAIR HOUSING ACT WITH CONDITIONS -  
MISCELLANEOUS #22009**

Per the Fair Housing Act, the City agrees to permit Michael House to have nine unrelated persons to reside as a single family provided that all residents have a disability and operate under the provisions of Michael House. The Michael House approval is subject to the following conditions:

- a. Applicant shall notify Planning Director if dwelling ceases to be used as sober-living home where, at all times, all residents are in recovery from alcohol or other substance abuse.
- b. Reasonable accommodation is granted only to 5203 Walker Avenue, and only to MAK Development, LLC operating as "Michael House." Reasonable accommodation is granted only as to this address and this operator for the purposes of sober-living, is not transferable, and does not run with the land.



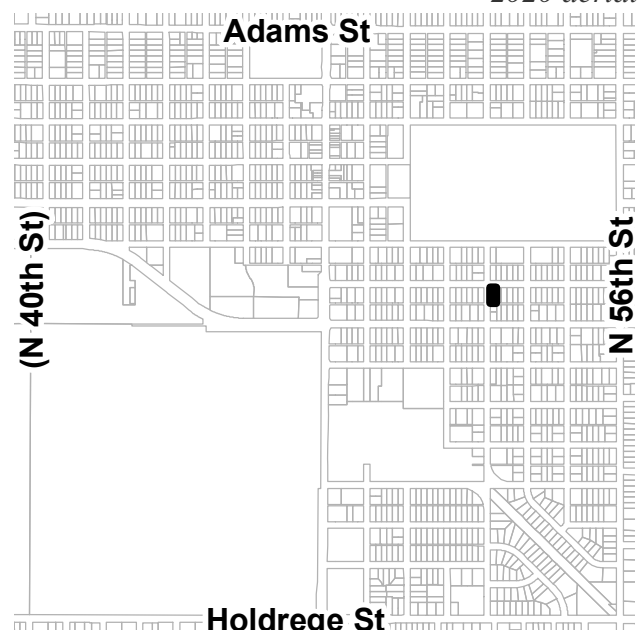
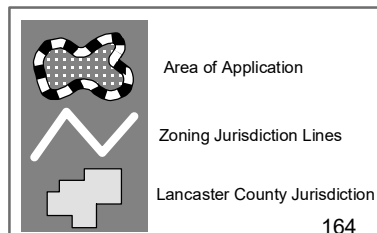
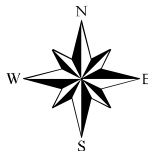
2020 aerial

**Miscellaneous #: MISC22009**  
**N 52nd St & Walker Ave**

### Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile:  
Sec.17 T10N R07E





# WAGNER MEEHAN & WATSON, LLP

Jeffrey A. Wagner, PC LLO  
Liam K. Meehan, PC LLO\*  
Ryan P. Watson, PC LLO  
Joshua W. Padzerka  
Benjamin L. Bramblett

\*Also admitted in Iowa

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11515 S. 39th St., Ste. 202, Bellevue, Nebraska 68123 | P. 402.592.2800 | F. 402.592.9869

May 2, 2022

Abigail Littrell  
Assistant City Attorney  
City of Lincoln  
555 S. 10<sup>th</sup> St., Ste 300  
Lincoln, Nebraska 68508

RE: MAK Development, LLC Reasonable Accommodation Request:  
315 N 35<sup>th</sup> St.  
5203 Walker Ave.

Dear Mrs. Littrell,

Thank you for the opportunity to submit additional information in pursuit of MAK Development, LLC's ("MAK") request. MAK provides a bridge of services for those suffering from substance abuse who are re-entering the world from a structured living setting, but are still sensitive and susceptible to the pressures, burdens, and expenses of completely independent living.

The properties at 315 N 35<sup>th</sup> St. and 5203 Walker Ave are occupied by approximately 8-10 persons who are seeking a mutually beneficial sober living environment. We do have residents who are on probation because they are often ordered to refrain from drugs and alcohol and refrain from associating with those who are actively using. None of the residents are Court ordered to reside with us in lieu of incarceration. Both properties are zoned as R5 residential. Each resident has their own room and then share communal living spaces, a kitchen, and bathrooms.

Initially, a Complaint was issued to MAK on July 2<sup>nd</sup>, 2020, regarding the property at 5203 Walker Ave. The letter indicted there were violation of Title 21 and 27 of the Lincoln Municipal Code ("LMC"). Specifically, the letter cited the following violations:

27.02.070 – Definition of Family  
27.03.030 – Unknown  
27.11.050 – R1 Accessory Use  
27.13.050 – R2 Accessory Use

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Pg 1 of 5

Visit us at [wmwlegal.com](http://wmwlegal.com)



27.15.050 – R3 Accessory Use

27.17.050 – R4 Accessory Use

27.19.050 – R5 Accessory Use

27.23.050 – R7 Accessory Use

27.24.050 – R8 Accessory Use

### **Problems with Classifications**

Without specifically stating as much, the letter implied the dwellings were not within the definition of a single-family home and were instead determined to be a “transitional living house.” The issue really falls into the precise definition and classification of these properties. The LMC does not provide any definition for “transitional living house” under Title 27. The LMC does provide a definition for “Group Home” under LMC 27.02.080 as:

**“Group Home.** Group home shall mean a building or structure licensed or approved by the State or an appropriate agency, if required, used as any one of the following:

- a. A facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care;
- b. A facility engaged in the service of exercising 24-hour daily care, supervision, custody, or control over more than three but less than sixteen children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home. (Ord. 20373; August 29, 2016; prior Ord. 20372 §4; August 29, 2016: Ord. 19733 §1; June 25, 2012).

Neither of these homes fall into this category because MAK does not provide “therapy or counseling” as described in subpart “A” and while it does provide supervision, it does not house minors and does not provide supervision “normally exercised by parents in their own home” as described in subpart “B.”

Additionally, for purposes of zoning classification, it is difficult to determine whether these properties would fall under the a “Household Living Use Group” under LMC 27.06.070 or a “Group Living Use Group” under LMC 27.06.080. The characterizations suggest the property use should be classified as a “Group Living Use Group.”

Compare LMC 27.06.070 “Household Living Group Use”:

“Characteristics: The Household Living Use Group is characterized by the residential occupancy of a dwelling unit by a household living independently. Tenancy is generally arranged on a month-to-month basis, or for a longer period. Such uses include, but are not limited to, single- and two-family dwellings, townhouses, and multifamily dwellings units. Housing with paid supervision or care for residents is included under the Group Living Use Group.”

With LMC 27.06.080 “Group Living Use Group”:

“Characteristics: The Group Living Use Group is characterized by the residential occupancy of a structure by a group of people who do not meet the characteristics of Household Living. Tenancy is generally arranged on a month-to-month basis, or for a longer period. Group Living may have common eating and social areas for residents. The residents may receive any combination or duration of care, counseling, training, or treatment. Such uses include but are not limited to dwellings for members of religious orders, convalescent home, nursing home, domestic shelters, assisted living facilities, fraternities and sororities, group homes and temporary shelters for the homeless.”

Due to the shared common facilities, it would appear the best use classification would be as “Group Living.” Assuming that classification is used, LMC 27.06.080 would conditionally permit “Group homes” and specially permit “Dwellings for non-related persons.” As noted above, the classification as a “group home” would not apply. The definition of “Dwellings for Non-Related Persons” under LMC 27.02.050 limits them to “four to six persons” and would not apply.

Conditional use permits for “Group Living Use Groups” specifically allow for “group homes” under LMC 27.62.050(b) however it is restricted to those facilities “validly licensed by the State of Nebraska.” The operations of MAK require no license by the State of Nebraska. It would appear this provision would not apply to MAK either. Notably, the definition for “group home” under LMC 27.02.080 includes state licensing “if required.” The “if required” language is absent under LMC 27.62.050(b). There does not seem to be a clear spot to pigeonhole MAK’s operations for these properties.

### **Accommodation Request**



MAK would request an accommodation for the definition of “family” found in LMC 27.02.070. We think an accommodation to ignore the language “immediately related by blood, marriage, or adoption and” from that provision would suffice to allow MAK to continue to operate the referenced properties as an R5 zoned property without unreasonable modification to its operations or property. This would allow the properties to be treated as a single-family dwelling and fall under the “Household Living Use Group” per LMC 27.06.070.

### **Legal Support**

It is fairly settled law that addiction and alcoholism is an impairment to constitute a disability under the FHA and ADA. See *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 (2d Cir. 2002) (collecting cases). Our request seeks to avoid the strict application of “family” as requiring the persons to be “related by blood, marriage, or adoption.” Multiple federal courts have repeatedly found in favor of Plaintiffs seeking reasonable accommodations where the restrictions have hinged on the definition of “family.”

“In case after case, courts have concluded that the FHA has been violated where municipalities have attempted to prevent or restrict persons with disabilities from living in the single family-zoned homes of their choice, even when the number of residents exceeds the number of unrelated people permitted to live together under the applicable zoning ordinances. *Developmental Services of NE v. City of Lincoln*, 504 F. Supp. 2d 714 - Dist. Court, D. Nebraska 2007(citing *Dr. Gertrude A. Barber Center, Inc. v. Peters Township*, 273 F.Supp.2d 643, 651 (W.D.Pa.2003))

The residents of MAK’s properties are entitled to fair housing regardless of their impairment. Their needs are unique in that their impairments are minimized when residing with other mutually disadvantaged persons. MAK provides an opportunity for these persons to pool not only their financial resources, but also their willpower, to lead their lives as unobstructed as possible.

The social stigma of ostracizing these individuals into undesirable corners of the community promotes relapse. The problem of substance abuse affects all families, small and large, rich and poor, religious or agnostic. Your accommodations will serve not only our clients but also the community at large.

We thank you for your consideration.

On behalf of MAK Development, LLC,



Ryan P. Watson, NSBA #25597

[ryan@wmwlegal.com](mailto:ryan@wmwlegal.com)

To the City of Lincoln:

Please see below for additional information requested on “Request for Reasonable Accommodation to Housing” Application:

*A statement from the applicant describing the basis for the claim that the individual (or group of individuals, if application is made by an entity acting on behalf of a person or persons with disabilities or handicaps) is considered disabled or handicapped under the Acts:*

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin.

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

Our residents are recovering from substance abuse, are not engaged in current illegal use, and therefore, are also considered to have a disability under the FHAA.

(<https://www.justice.gov/opa/file/912366/download>, 73, pg 6)

*A statement as to why the requested accommodation is financially, therapeutically, or otherwise necessary to afford a handicapped or disabled person equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs provided by the City.*

Claim: Our residents should get an apartment or rent a single-family home:

- Because of our resident’s disability, it is difficult to have good credit history, good rental history, good employment history and afford one months rent and deposit up front. Because of these difficulties, these residents will often be homeless and revert to their old habits and addictions.

- We accept individuals regardless of credit, rental history or employment. We offer low rental rates. We provide our residents with employment within 1 week of entry. We assist them with obtaining birth certificates, identification. We assist them to get them to counseling and other community resources.
- We also provide them with mentors and fellowship with other individuals for a support system. Our ultimate goal is to transition these residents into a fully independent and permanent housing so that they live a healthy, productive life.

Claim: Group Homes requires a special permit:

- “Examples of state and local land use and zoning laws or practices that may violate the Act include: Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes. “(<https://www.justice.gov/opa/file/912366/download>, #2, pg 3)
- We request no special permits due to reasonable accommodation.

Claim: Ordinance does not allow for more than 2 unrelated individuals to live in the same residence:

- “Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city’s zoning ordinance defines a “family” to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.” (<https://www.justice.gov/opa/file/912366/download>, #13, pg 10)
- “A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly

against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.”

(<https://www.justice.gov/opa/file/912366/download>, #13, pg 10)

- The city of Lincoln allows single families without a limit for related persons and the same should be extended to unrelated persons with disabilities.

I would be happy to answer any questions or concerns you may have. Please contact me below.

Michael Corrado

[Mjc.michaelhouse@gmail.com](mailto:Mjc.michaelhouse@gmail.com)

402-917-0926



## REQUEST FOR REASONABLE ACCOMMODATION TO HOUSING

*per Lincoln Municipal Code Chapter 1.28, The Rehabilitation Act,  
The Americans with Disabilities Act, the Federal Fair Housing Amendments Act  
& The Nebraska Fair Housing Act*

### Purpose:

To provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs or activities provided by the City.

**RETURN APPLICATION TO:** City Clerk's Office, 555 S. 10<sup>th</sup> St., Suite 103, Lincoln NE 68508.  
**Questions Contact:** Sony Phan, 402-441-7347, [sphan@lincoln.ne.gov](mailto:sphan@lincoln.ne.gov)

APPLICANT				
NAME:	Michael House dba MAK Development			
STREET ADDRESS:	6607 Maple Street			
CITY:	Omaha	STATE:	NE	ZIP: 68104
EMAIL ADDRESS:	mjc.michaelhouse@gmail.com		PHONE #:	402-830-1175

PROPERTY REQUEST IS BEING MADE FOR	
STREET ADDRESS:	5203 Walker Ave
LEGAL DESCRIPTION:	UNIVERSITY PLACE, BLOCK 108, Lot 6
ASSESSOR'S PARCEL #:	R87927

CURRENT ACTUAL USE OF THE PROPERTY
Small Group Living - 6-8 residents with disabilities with a live-in manager with a disability.

LAW, PROVISION, REGULATION OR POLICY FROM WHICH REASONABLE ACCOMMODATION IS BEING REQUESTED:
Fair Housing Act

## ATTACHMENTS

The following items *must* be ATTACHED to the application. Please put a Check (✓) mark next to those items you have attached.

ITEM	ATTACHED
A statement from the applicant describing the basis for the claim that the individual (or group of individuals, if application is made by an entity acting on behalf of a person or persons with disabilities or handicaps) is considered disabled or handicapped under the Acts.	✓
A statement as to why the requested accommodation is financially, therapeutically, or otherwise necessary to afford a handicapped or disabled person equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs provided by the City.	✓
Documentation supporting the financial, therapeutic, or other necessity for the accommodation.	✓

Dated this 3rd day of June, 2021.

Michael Corrado  
Printed Name of Applicant

  
Signature of Applicant

**NOTE:**

Upon the filing of the application, together with all information required above, the City Council shall refer a request for reasonable accommodation from a zoning law or other land use regulation policy or practice to the Planning Commission. If the request is for reasonable accommodation from a building code, fire code, or safety code, the City Council shall refer the request to the Board of Appeals established under said code to hear appeals of orders, decisions, determinations, made by the code official relative to the application or interpretation of such code. The Planning Commission or such Board of Appeals are hereinafter referred to in this chapter as the Reviewing Authority.

## LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

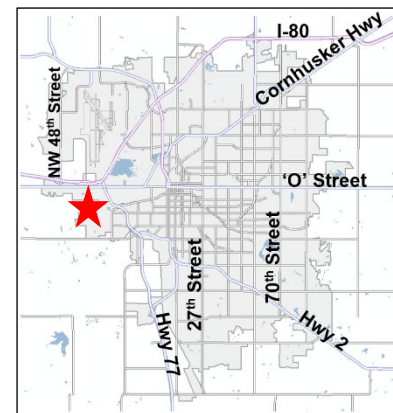
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Miscellaneous #22008	FINAL ACTION? No	DEVELOPER/OWNER MAK Development LLC
PLANNING COMMISSION HEARING DATE June 22, 2022	RELATED APPLICATIONS	PROPERTY ADDRESS/LOCATION 315 N 35 <sup>th</sup> Street

**RECOMMENDATION:** Finding of compliance with requirements of Fair Housing Act with conditions

## BRIEF SUMMARY OF REQUEST

A request for reasonable accommodation under Chapter 1.28 of the Lincoln Municipal Code, the Nebraska Fair Housing Act (Neb. Rev. Stat. 20-301 etc.) and the Federal Fair Housing Act (FHA) (Title VIII of the Civil Rights Act of 1968, as amended) to make an accommodation the definition of family as provided in Chapter 27.02.070 to include nine unrelated individuals with disabilities to reside in the dwelling known as the Michael House at 315 N 35<sup>th</sup> Street. If approved, the accommodation will allow nine individuals with disabilities, including a live-in manager with a disability, to reside in a single family dwelling. If the accommodation were not approved, the current use with nine persons could be defined as a group home which is a conditional use. However, this location doesn't meet the conditions for a group home per Chapter 27.62.050 (b).



### JUSTIFICATION FOR RECOMMENDATION

The FHA requires City make reasonable accommodations to the zoning code when the requested accommodation will ensure equal opportunity to individuals with disabilities to live in the neighborhood they choose. Requests for accommodation are not reasonable when the accommodation imposes on City an undue financial or administrative burden. The applicant has demonstrated it is entitled to a reasonable accommodation under the FHA and City has not, at this time, identified evidence that the accommodation is unreasonable.

## APPLICATION CONTACT

Michael Corrado, for the  
"Michael House"  
6607 Maple Street  
Omaha, NE 68104  
402-917-0926

Ryan Watson  
Wagner, Meehan, & Watson, LLP  
11515 S. 39<sup>th</sup> St., Ste 202  
Bellevue, NE 68123  
(402)592-9869

## STAFF CONTACT

Stephen Henrichsen, (402) 441-6374  
[shenrichsen@lincoln.ne.gov](mailto:shenrichsen@lincoln.ne.gov)

## COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan encourages a variety of housing types within a neighborhood. In order to ensure a mix of housing types, but with compatible within a neighborhood, the zoning ordinance establishes conditions and requirements for different housing types such as group homes or transitional living facilities. This request would make an accommodation to those regulations to permit this use to be treated as a family.

## KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

### Goals Section

G1: Safe, Affordable, and Accessible Housing. Lincoln and Lancaster County will support the development of safe, affordable, and accessible quality housing that meets the diverse needs of the community. PlanForward understands the ongoing need for affordable housing and supports development of 5,000 affordable units by the year 2030.

G2: Complete Neighborhoods. Lincoln and Lancaster County will support complete neighborhoods within both developing and redeveloping areas of Lincoln. A complete neighborhood is one where residents are able to get the goods and services to meet daily needs within 15 minutes of their residence including a variety of housing options, grocery stores and other commercial services, quality public schools, public open spaces and recreational facilities, affordable active transportation options, and civic amenities. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and even small lot single-family.

#### **Figure E1.b: Strategies for Design, Sustainability and Complete Neighborhoods in Existing Areas**

1. Encourage a mix of compatible land uses to develop more complete neighborhoods:
  - a. Similar uses on the same block face: residential faces residential.
  - b. Similar housing densities developed near each other: single-family and “missing middle” residential (3-12 units) scattered throughout with higher density residential (more than 12 units) near the neighborhood edge or clustered near commercial centers.
  - c. Non-residential uses, including parking lots, should be screened from residential areas.
  - d. Locate mixed-use centers so as residents can safely access essential goods and services (i.e. not located across arterial streets) and no more than a 15-minute walk from all residences.
  - e. Support existing Commercial Centers and encourage inclusion of essential goods and services.
  - f. Infill and redevelopment projects should meet or exceed Neighborhood or Commercial Design Standards.

#### **Existing Neighborhoods**

The diversity of architecture, housing types and sizes are central to what make existing neighborhoods great places to live. New construction should continue the architectural variety, but in a manner that is sensitive to the existing neighborhoods.

Infill and redevelopment is supported and must respect the street pattern, block sizes, and development standards of the area, such as parking at the rear and porches, windows, and doors on the front street side.

The City’s primary strategy for residential infill and redevelopment outside of the Greater Downtown is to encourage the redevelopment and reuse of sites and buildings in commercial areas in order to create new mixed use centers that are compatible and complementary to adjacent neighborhoods.

Modest opportunities for redevelopment may also be appropriate along “neighborhood edges.” Neighborhood edges include arterial streets and transition zones between lower density residential and commercial areas.

### **Policies Section**

P1: Housing Affordability - Make available a safe residential dwelling for all residents.

#### **Action Steps**

1. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated and Annual Action Plans and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
2. Distribute and preserve affordable housing throughout the community to be near job opportunities and public

transit and to provide housing choices within existing and developing neighborhoods.

3. Encourage public/private partnerships with housing entities such as Lincoln Housing Authority, Affordable Housing Initiatives, Habitat for Humanity, and NeighborWorks Lincoln.
4. Provide for more education of the public about affordable housing and code enforcement.
5. Promote the preservation, maintenance and renovation of existing housing and neighborhoods throughout the city, with special emphasis on low and moderate income neighborhoods.
6. Preserve the existing affordable housing stock, increase the supply of affordable owner and renter units, and add more variety in housing types.

P2: Existing Neighborhoods - Continue our commitment to strong, diverse, and complete neighborhoods.

#### Action Steps

1. Promote the preservation, maintenance, and renovation of existing housing and supporting neighborhood uses throughout the City, with special emphasis on low and moderate income neighborhoods.
3. Encourage well-designed and appropriately placed density, including within existing apartment and group living complexes and in redeveloping commercial or industrial centers, where there is land available for additional buildings or expansions. Provide flexibility to the marketplace in siting future residential development locations. This includes appropriately placed infill in prioritized Nodes and Corridors, neighborhood edges, and underutilized commercial or industrial sites.
4. Recognize that broad economic diversity within existing neighborhoods encourages reinvestment and improves quality of life for all residents while acknowledging the need for affordable housing.
5. Preserve, protect and promote the character and unique features of urban neighborhoods, including their historical and architectural elements.
6. Promote the continued use of residential dwellings and all types of buildings, to maintain the character of neighborhoods and to preserve portions of our past. Building code requirements for the rehabilitation of existing buildings should protect the safety of building occupants, while recognizing the need for flexibility that comes with rehabilitating existing buildings.
7. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated, Annual Action Plans, and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
8. Retain and encourage a mix of housing in existing and new neighborhoods in order to provide a mix of housing types at a variety of price points.
11. Encourage public and private investment in neighborhood infrastructure and services to support economic diversity that improves the quality of life for all residents.
12. Balance expanding housing options and neighborhood character. Infill development should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.
13. Preserve areas designated for multi-family and group living housing in approved plans to support a distributed choice in affordable housing.
20. Examine current residential zoning districts and propose modifications to encourage 'missing middle' units (single-family attached, cottage courts, townhomes, live-work, and a variety of three- and four-plex configurations), including affordable units, to people with a range of incomes. Neighborhood edges in particular present an opportunity for missing middle housing.
21. Encourage a variety of housing types including townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and small lot single-family units.

#### FACTS, LAW, AND ANALYSIS

1. This is a request for the Michael House at 315 N 35<sup>th</sup> Street. This is a single family detached house zoned R-4 Residential. The applicant is seeking an accommodation to the definition of "family" to include up to 8 residents with disabilities at this location with a live-in manager who also has a disability. The stated mission for the residents of the Michael House is "To provide a structured program to allow you to succeed in sobriety allowing you to be more financially independent, self-sufficient and excel in your next phase in life."
2. MAK Development LLC purchased this house in September 2020. The Assessor's Office lists this house as three bedrooms with 1,326 square feet of living space on the first and second level and 744 square feet in the basement.



3. The applicant's position appears in the attached application materials and letter from legal counsel.
4. The Lincoln Municipal Code (LMC) defines in 27.02.070 (F) a family as:

**'Family** One or more persons immediately related by blood, marriage, or adoption and living as a single housekeeping unit in a dwelling shall constitute a family. A family may include, in addition, not more than two persons who are unrelated for the purpose of this title. The following persons shall be considered related for the purpose of this title:

- a. A person residing with a family for the purpose of adoption;
  - b. Not more than six persons under nineteen years of age, residing in a foster home licensed or approved by the State of Nebraska;
  - c. Not more than four persons nineteen years of age or older residing with a family for the purpose of receiving foster care licensed or approved by the state or its delegate;
  - d. Any person who is living with a family at the direction of a court."
5. Under the FHA, it is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability. 42 U.S.C. § 3604(f)(1).

The FHA defines a person with a disability as any 1) individual with a physical or mental impairment that substantially limits one or more major life activities; 2) individual with a record of such impairment; or 3) individual who is regarded as having such an impairment. 42 U.S.C. § 3602(h).

7. The FHA requires Cities make reasonable accommodations to rules, policies, laws, and practices to afford people with disabilities and equal opportunity to live in a dwelling. 42 U.S.C. § 3604(f)(3)(B)

8. LMC 27.02.050 (D) then defines a disability as:

**"Disability** or handicap shall mean, with respect to a person:

- a. A physical or mental impairment which substantially limits one or more of such person's major life activities;
- b. A record of having such an impairment; or
- c. Being regarded as having such an impairment."

Disability shall not include current, illegal use of or addiction to a controlled substance as defined by state law.

9. If the reasonable accommodation request were denied, then when more than three unrelated persons live together, one residential option is a group home. This is defined in 27.02.080 (G) as:

**"Group Home** Group home shall mean a building or structure licensed or approved by the State or an appropriate agency, if required, used as any one of the following:

- a. A facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care;
- b. A facility engaged in the service of exercising 24-hour daily care, supervision, custody, or control over more than three but less than sixteen children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home."

10. Group Homes are allowed in residential zoning districts as a conditional use. LMC 27.62.050 (b) states:

“Group homes are allowed in the AG, AGR, R-T and all residential zoning districts under the following conditions:

1. Such use shall be permitted only so long as the facility continues to be validly licensed by the State of Nebraska.
2. The distance between the proposed use and any existing group home measured from lot line to lot line is not less than:
  - i. One-half mile in the AG, AGR, R-1, R-2, R-3 and R-T zoning districts;
  - ii. 1,200 feet in the R-4, R-5, R-6, R-7 and R-8 zoning districts.”

11. However, in the case of 315 N 35<sup>th</sup> Street, it does not meet the spacing requirement of the R-4 Zoning district. So this option is not available. It is unknown whether the residents at 315 N. 35<sup>th</sup> street are engaged in therapy or counseling, a component of the “group home” definition under LMC 27.02.080, The applicant has not met with staff to see if there are any other options. Their request is for reasonable accommodation to the family definition.

#### **Reasonable Accommodation Process & Findings**

12. The Lincoln Municipal Code in Chapter 1.28.020 provides the process for a person with a disability, or entity on their behalf, to request the City Council make reasonable accommodations to laws such a building codes, fire or safety codes, or zoning code to allow those individuals with disabilities to enjoy equal opportunity to use of a dwelling. The Planning Commission is the “Reviewing Authority” for reasonable accommodation requests involving the zoning code. The Commission must hold a public hearing on the request and make a recommendation to City Council.

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#### **1.28.020 Applicability.**

“A request for reasonable accommodation may be made by any person with a disability or handicap, as defined in the Acts, or by an entity acting on behalf of a person or persons with disabilities or handicaps to provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. The provisions of this chapter do not apply to the City’s Bureau of Fire Prevention’s application of any code or regulation adopted by the State Fire Marshal pursuant to its delegated authority from the State Fire Marshal. As defined in the Acts, a person with a disability or handicap is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment.

A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs or activities provided by the City. Requests for reasonable accommodation shall be made in the manner prescribed by Section 1.28.030.”.

13. The history of prior reasonable accommodation requests is summarized below. Three requests were withdrawn, three were denied and only one was approved. Enactment of section 1.28 was spurred by federal litigation and denial of certain requests appearing below resulted in an adverse federal court judgment against the City.

14. Chapter 1.28 provides 8 factors for the City Council to consider when evaluating a request for reasonable accommodation. The Planning Commission role is to make a recommendation on these findings. This report will review each factor with commentary in *italics*.

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#### **1.28.050 Decision.**

“Upon receiving the report from the Reviewing Authority or upon failure of the Reviewing Authority to timely submit its report, the City Council after public hearing shall take final action upon the application and may grant, grant with modifications, or deny the request for reasonable accommodation consistent with the Acts and based upon the following findings:

1. Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts.

*The residents of the house are disabled under the FHA because they are in recovery from addiction to alcohol or other substances.*

2. Whether the accommodation requested is financially, therapeutically, or otherwise necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.

*The applicant describes the necessity of communal sober living in their application materials.*

3. Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit.

*City staff, at this time, has not explored whether there is an alternative reasonable accommodation available that would provide an equal level of benefit.*

4. Whether alternative accommodations would be suitable based on the circumstances of this particular case.

*The reasonable accommodation request identifies the circumstances and necessity of the accommodation under the circumstances. City staff have not explored whether an alternative accommodation would be suitable.*

5. If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.

*The Comprehensive Plan designates this area as Urban Residential. The Comprehensive Plan encourages a variety of housing types in neighborhoods. This specific request wouldn't be contrary to the Plan.*

6. Whether the requested reasonable accommodation substantially affects the physical attributes of the property.

*No changes are proposed, but the approval doesn't limit the owner to making changes to alter the house in the future. The house at 315 N 35<sup>th</sup> Street has three bedrooms and two bathrooms. It is a 1 and ½ story house with a total of 1,326 square feet on the first and second level and 744 square feet in the basement. No information was provided on how nine people would be accommodated in a three bedroom house. The Building and Safety Department advises that 9-person occupancy would not exceed building code maximum occupancy for the dwelling.*

7. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

*City has identified no financial or administrative hardship resulting from this particular accommodation. Activity at this address was reviewed by the Lincoln Police Department. They had no concern. They noted there has only been one call for service this year to this address and that was for a medical transport.*

8. Whether the requested reasonable accommodation would require a fundamental alteration to the zoning, building, fire, or safety codes of the City.

*Although a proliferation of communal living dwellings in a concentrated area may perhaps result in a fundamental alteration to certain residential zones, this accommodation, on its own, will not.*

“In granting a request for reasonable accommodation, the City may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would be consistent with the Acts and the findings required above.”

### **Conclusion:**

Applicant is entitled, under Lincoln Municipal Code and the Federal Fair Housing Act to make application to City of Lincoln for a reasonable accommodation to the definition of “family” under LMC Title 27 to allow up to 9 unrelated individuals with a disability, to include a manager with a disability, to reside as a family at 315 N. 35<sup>th</sup> Street. Applicant has demonstrated individuals residing at 315 N. 35<sup>th</sup> Street are disabled under the FHA. Applicant asserts that the accommodation is financially and therapeutically necessary. Unless City can demonstrate an undue financial or administrative burden or a fundamental alteration of the zoning code resulting from the reasonable accommodation requested, the request should be approved.

**EXISTING LAND USE & ZONING:** Single family detached house and R-4 Residential zoning

### **SURROUNDING LAND USE & ZONING**

North: Single and two family dwelling units R-4  
 South: Single and two family dwelling units R-4  
 East: Single and two family dwelling units R-4

### **REASONABLE ACCOMMODATION APPLICATION HISTORY (does not include any legal cases or determinations)**

<b>Application Number</b>	<b>Action Date</b>	<b>Council Action</b>	<b>Location</b>	<b>Applicant</b>	<b>Staff Recomm.</b>	<b>PC Recomm.</b>	<b>Planning Dept. Notes</b>
MISC05011	N/A	N/A	3912 S. 20 <sup>th</sup> Street	Developmental Services of Nebraska	Withdrawn	N/A	Request to allow 4 residents with developmental disabilities in a residential home.
MISC05012	8/19/05	Approved (CC)	4000 Lindsey Circle	Developmental Services of Nebraska	Not noted	Planning Commission Recommended Approval	Allow 4 residents with developmentally disabilities under a group home not meeting the spacing.

MISC05013	N/A	N/A	2440 SW 18 <sup>th</sup> Street	Developmental Services of Nebraska	Withdrawn	N/A	Allow 4 residents with developmental disabilities in a residential home.
MISC05017	11/14/05	Denied 5-2		Developmental Services of Nebraska	Conditional Approval	Denial - found applicant had not sufficiently demonstrated financial and therapeutic necessity and recommended denial.	Staff recommended withdrawing neighboring application to allow spacing and application to be met as a group home.
MISC05018	11/14/05	Denied	1661 Timber Ridge Road	Developmental Services of Nebraska	Approval	Denial - found applicant had not sufficiently demonstrated financial and therapeutic necessity and recommended denial.	Allow 4 residents with developmental disabilities in a residential home.
MISC05019	11/14/05	Denied	5516 Hunts Drive	Developmental Services of Nebraska	Approval	Denial	Same circumstances as MISC05018.
MISC05020	N/A	Withdrawn	416 N. Coddington Avenue	Developmental Services of Nebraska	Conditional Approval	N/A	Same circumstances as prior two applications. Withdrawn by the applicant at PC hearing.

**APPROXIMATE LAND AREA:** 7,100 square feet, (50 feet by 142 feet)

**LEGAL DESCRIPTION:** Lot 16, Block 12, Ridgeway, Lincoln, Nebraska

Prepared by

\_\_\_\_\_  
Stephen Henrichsen, Development Review Manager

Date: June 15, 2022

Applicant/

Contact: Michael Corrodo  
Ryan Watson

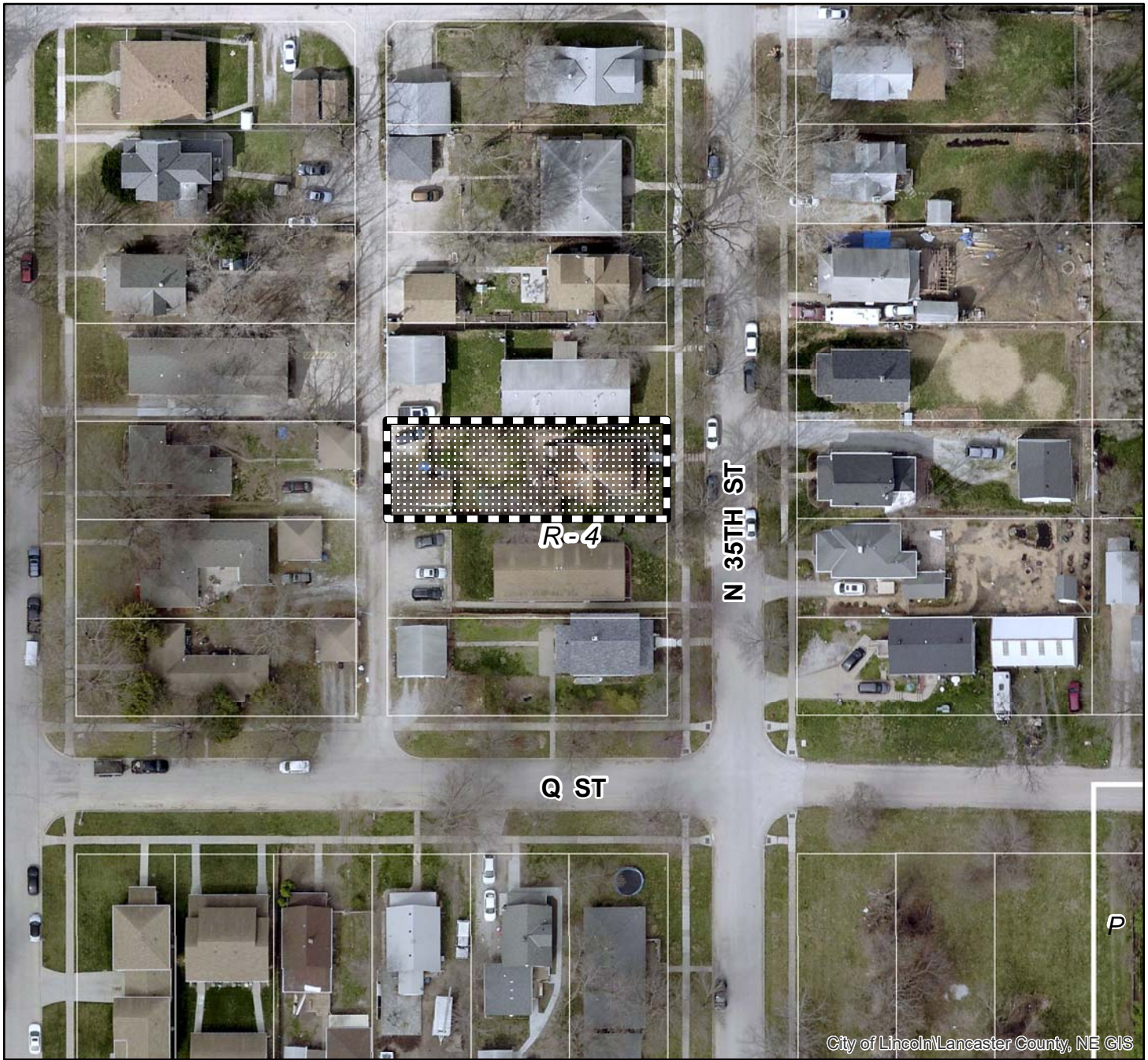
Owner: MAK Development LLC  
6607 Maple Street  
Omaha, NE 68104



**FINDING OF COMPLIANCE WITH REQUIREMENTS OF FAIR HOUSING ACT WITH CONDITIONS -  
MISCELLANEOUS #22008**

Per the Fair Housing Act, the City agrees to permit Michael House to have nine unrelated persons to reside as a single family provided that all residents have a disability and operate under the provisions of Michael House. The Michael House approval is subject to the following conditions:

- a. Applicant shall notify Planning Director if dwelling ceases to be used as sober-living home where, at all times, all residents are in recovery from alcohol or other substance abuse.
- b. Reasonable accommodation is granted only to 315 N. 35<sup>th</sup> Street, and only to MAK Development, LLC operating as "Michael House." Reasonable accommodation is granted only as to this address and this operator for the purposes of sober-living, is not transferable, and does not run with the land.



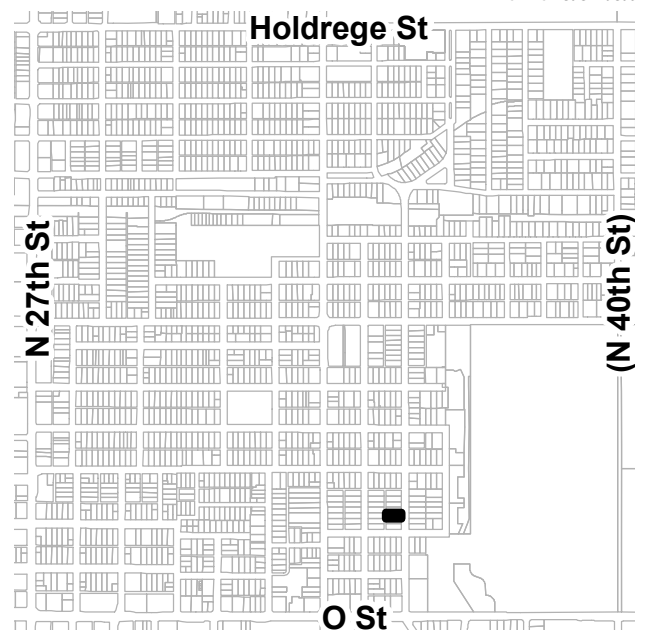
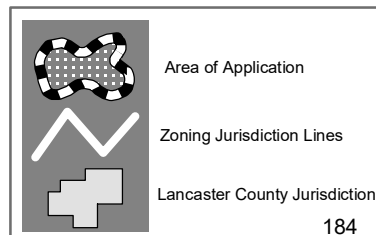
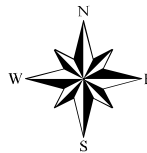
2020 aerial

**Miscellaneous #: MISC22008**  
**N 35th St & Q St**

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

**One Square Mile:**  
**Sec.19 T10N R07E**





## WAGNER MEEHAN & WATSON, LLP

Jeffrey A. Wagner, PC LLO  
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11515 S. 39th St., Ste. 202, Bellevue, Nebraska 68123 | P. 402.592.2800 | F. 402.592.9869

May 2, 2022

Abigail Littrell  
Assistant City Attorney  
City of Lincoln  
555 S. 10<sup>th</sup> St., Ste 300  
Lincoln, Nebraska 68508

RE: MAK Development, LLC Reasonable Accommodation Request:  
315 N 35<sup>th</sup> St.  
5203 Walker Ave.

Dear Mrs. Littrell,

Thank you for the opportunity to submit additional information in pursuit of MAK Development, LLC's ("MAK") request. MAK provides a bridge of services for those suffering from substance abuse who are re-entering the world from a structured living setting, but are still sensitive and susceptible to the pressures, burdens, and expenses of completely independent living.

The properties at 315 N 35<sup>th</sup> St. and 5203 Walker Ave are occupied by approximately 8-10 persons who are seeking a mutually beneficial sober living environment. We do have residents who are on probation because they are often ordered to refrain from drugs and alcohol and refrain from associating with those who are actively using. None of the residents are Court ordered to reside with us in lieu of incarceration. Both properties are zoned as R5 residential. Each resident has their own room and then share communal living spaces, a kitchen, and bathrooms.

Initially, a Complaint was issued to MAK on July 2<sup>nd</sup>, 2020, regarding the property at 5203 Walker Ave. The letter indicted there were violation of Title 21 and 27 of the Lincoln Municipal Code ("LMC"). Specifically, the letter cited the following violations:

27.02.070 – Definition of Family  
27.03.030 – Unknown  
27.11.050 – R1 Accessory Use  
27.13.050 – R2 Accessory Use

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Pg 1 of 5

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27.15.050 – R3 Accessory Use

27.17.050 – R4 Accessory Use

27.19.050 – R5 Accessory Use

27.23.050 – R7 Accessory Use

27.24.050 – R8 Accessory Use

### **Problems with Classifications**

Without specifically stating as much, the letter implied the dwellings were not within the definition of a single-family home and were instead determined to be a “transitional living house.” The issue really falls into the precise definition and classification of these properties. The LMC does not provide any definition for “transitional living house” under Title 27. The LMC does provide a definition for “Group Home” under LMC 27.02.080 as:

**“Group Home.** Group home shall mean a building or structure licensed or approved by the State or an appropriate agency, if required, used as any one of the following:

- a. A facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care;
- b. A facility engaged in the service of exercising 24-hour daily care, supervision, custody, or control over more than three but less than sixteen children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home. (Ord. 20373; August 29, 2016; prior Ord. 20372 §4; August 29, 2016: Ord. 19733 §1; June 25, 2012).

Neither of these homes fall into this category because MAK does not provide “therapy or counseling” as described in subpart “A” and while it does provide supervision, it does not house minors and does not provide supervision “normally exercised by parents in their own home” as described in subpart “B.”

Additionally, for purposes of zoning classification, it is difficult to determine whether these properties would fall under the a “Household Living Use Group” under LMC 27.06.070 or a “Group Living Use Group” under LMC 27.06.080. The characterizations suggest the property use should be classified as a “Group Living Use Group.”

Compare LMC 27.06.070 “Household Living Group Use”:



“Characteristics: The Household Living Use Group is characterized by the residential occupancy of a dwelling unit by a household living independently. Tenancy is generally arranged on a month-to-month basis, or for a longer period. Such uses include, but are not limited to, single- and two-family dwellings, townhouses, and multifamily dwellings units. Housing with paid supervision or care for residents is included under the Group Living Use Group.”

With LMC 27.06.080 “Group Living Use Group”:

“Characteristics: The Group Living Use Group is characterized by the residential occupancy of a structure by a group of people who do not meet the characteristics of Household Living. Tenancy is generally arranged on a month-to-month basis, or for a longer period. Group Living may have common eating and social areas for residents. The residents may receive any combination or duration of care, counseling, training, or treatment. Such uses include but are not limited to dwellings for members of religious orders, convalescent home, nursing home, domestic shelters, assisted living facilities, fraternities and sororities, group homes and temporary shelters for the homeless.”

Due to the shared common facilities, it would appear the best use classification would be as “Group Living.” Assuming that classification is used, LMC 27.06.080 would conditionally permit “Group homes” and specially permit “Dwellings for non-related persons.” As noted above, the classification as a “group home” would not apply. The definition of “Dwellings for Non-Related Persons” under LMC 27.02.050 limits them to “four to six persons” and would not apply.

Conditional use permits for “Group Living Use Groups” specifically allow for “group homes” under LMC 27.62.050(b) however it is restricted to those facilities “validly licensed by the State of Nebraska.” The operations of MAK require no license by the State of Nebraska. It would appear this provision would not apply to MAK either. Notably, the definition for “group home” under LMC 27.02.080 includes state licensing “if required.” The “if required” language is absent under LMC 27.62.050(b). There does not seem to be a clear spot to pigeonhole MAK’s operations for these properties.

### **Accommodation Request**



## Legal Support

It is fairly settled law that addiction and alcoholism is an impairment to constitute a disability under the FHA and ADA. See *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 (2d Cir. 2002) (collecting cases). Our request seeks to avoid the strict application of “family” as requiring the persons to be “related by blood, marriage, or adoption.” Multiple federal courts have repeatedly found in favor of Plaintiffs seeking reasonable accommodations where the restrictions have hinged on the definition of “family.”

“In case after case, courts have concluded that the FHA has been violated where municipalities have attempted to prevent or restrict persons with disabilities from living in the single family-zoned homes of their choice, even when the number of residents exceeds the number of unrelated people permitted to live together under the applicable zoning ordinances. *Developmental Services of NE v. City of Lincoln*, 504 F. Supp. 2d 714 - Dist. Court, D. Nebraska 2007(citing *Dr. Gertrude A. Barber Center, Inc. v. Peters Township*, 273 F.Supp.2d 643, 651 (W.D.Pa.2003))

The residents of MAK’s properties are entitled to fair housing regardless of their impairment. Their needs are unique in that their impairments are minimized when residing with other mutually disadvantaged persons. MAK provides an opportunity for these persons to pool not only their financial resources, but also their willpower, to lead their lives as unobstructed as possible.

The social stigma of ostracizing these individuals into undesirable corners of the community promotes relapse. The problem of substance abuse affects all families, small and large, rich and poor, religious or agnostic. Your accommodations will serve not only our clients but also the community at large.

We thank you for your consideration.

On behalf of MAK Development, LLC,



Ryan P. Watson, NSBA #25597

[ryan@wmwlegal.com](mailto:ryan@wmwlegal.com)

To the City of Lincoln:

Please see below for additional information requested on “Request for Reasonable Accommodation to Housing” Application:

*A statement from the applicant describing the basis for the claim that the individual (or group of individuals, if application is made by an entity acting on behalf of a person or persons with disabilities or handicaps) is considered disabled or handicapped under the Acts:*

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin.

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

Our residents are recovering from substance abuse, are not engaged in current illegal use, and therefore, are also considered to have a disability under the FHAA.

(<https://www.justice.gov/opa/file/912366/download>, 73, pg 6)

*A statement as to why the requested accommodation is financially, therapeutically, or otherwise necessary to afford a handicapped or disabled person equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs provided by the City.*

Claim: Our residents should get an apartment or rent a single-family home:

- Because of our resident’s disability, it is difficult to have good credit history, good rental history, good employment history and afford one months rent and deposit up front. Because of these difficulties, these residents will often be homeless and revert to their old habits and addictions.

- We accept individuals regardless of credit, rental history or employment. We offer low rental rates. We provide our residents with employment within 1 week of entry. We assist them with obtaining birth certificates, identification. We assist them to get them to counseling and other community resources.
- We also provide them with mentors and fellowship with other individuals for a support system. Our ultimate goal is to transition these residents into a fully independent and permanent housing so that they live a healthy, productive life.

Claim: Group Homes requires a special permit:

- “Examples of state and local land use and zoning laws or practices that may violate the Act include: Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes. “(<https://www.justice.gov/opa/file/912366/download>, #2, pg 3)
- We request no special permits due to reasonable accommodation.

Claim: Ordinance does not allow for more than 2 unrelated individuals to live in the same residence:

- “Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city’s zoning ordinance defines a “family” to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.” (<https://www.justice.gov/opa/file/912366/download>, #13, pg 10)
- “A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly

against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.”

(<https://www.justice.gov/opa/file/912366/download>, #13, pg 10)

- The city of Lincoln allows single families without a limit for related persons and the same should be extended to unrelated persons with disabilities.

I would be happy to answer any questions or concerns you may have. Please contact me below.

Michael Corrado

[Mjc.michaelhouse@gmail.com](mailto:Mjc.michaelhouse@gmail.com)

402-917-0926



# REQUEST FOR REASONABLE ACCOMMODATION TO HOUSING

*per Lincoln Municipal Code Chapter 1.28, The Rehabilitation Act,  
The Americans with Disabilities Act, the Federal Fair Housing Amendments Act  
& The Nebraska Fair Housing Act*

## Purpose:

To provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs or activities provided by the City.

**RETURN APPLICATION TO:** City Clerk's Office, 555 S. 10<sup>th</sup> St., Suite 103, Lincoln NE 68508.  
**Questions Contact:** Sony Phan, 402-441-7347, [sphan@lincoln.ne.gov](mailto:sphan@lincoln.ne.gov)

APPLICANT			
NAME:	Michael House dba MAK Development		
STREET ADDRESS:	6607 Maple Street		
CITY:	Omaha	STATE:	NE
		ZIP:	68104
EMAIL ADDRESS:	mjc.michaelhouse@gmail.com		PHONE #:
			402-830-1175

PROPERTY REQUEST IS BEING MADE FOR	
STREET ADDRESS:	315 N 35th Street
LEGAL DESCRIPTION:	RIDGEWAY, BLOCK 12, Lot 16
ASSESSOR'S PARCEL #:	R91363

CURRENT ACTUAL USE OF THE PROPERTY
Small Group Living - 6-8 residents with disabilities with a live-in manager with a disability.

LAW, PROVISION, REGULATION OR POLICY FROM WHICH REASONABLE ACCOMMODATION IS BEING REQUESTED:
Fair Housing Act

## ATTACHMENTS

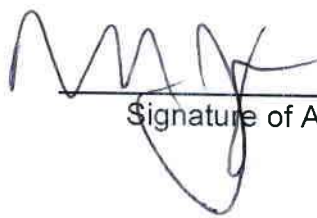
The following items *must* be ATTACHED to the application. Please put a Check (✓) mark next to those items you have attached.

ITEM	ATTACHED
A statement from the applicant describing the basis for the claim that the individual (or group of individuals, if application is made by an entity acting on behalf of a person or persons with disabilities or handicaps) is considered disabled or handicapped under the Acts.	✓
A statement as to why the requested accommodation is financially, therapeutically, or otherwise necessary to afford a handicapped or disabled person equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs provided by the City.	✓
Documentation supporting the financial, therapeutic, or other necessity for the accommodation.	✓

Dated this 3rd day of June, 2021.

Michael Corrado

Printed Name of Applicant



Signature of Applicant

**NOTE:**

Upon the filing of the application, together with all information required above, the City Council shall refer a request for reasonable accommodation from a zoning law or other land use regulation policy or practice to the Planning Commission. If the request is for reasonable accommodation from a building code, fire code, or safety code, the City Council shall refer the request to the Board of Appeals established under said code to hear appeals of orders, decisions, determinations, made by the code official relative to the application or interpretation of such code. The Planning Commission or such Board of Appeals are hereinafter referred to in this chapter as the Reviewing Authority.