

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 06028**, requested by Mark Hunzeker on behalf of B & J Partnership, to change the Building Line District from 50 feet to 40 feet along the north side of "O" Street, east of 33rd Street approximately 200 feet.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: Consent Agenda: 05/24/06
Administrative Action: 05/24/06

STAFF RECOMMENDATION: Approval

RECOMMENDATION: Approval (9-0: Larson, Carroll, Esseks, Strand, Cornelius, Taylor, Sunderman, Krieser and Carlson voting 'yes';).

FINDINGS OF FACT:

1. This is a request to reduce the building line district on the north side of "O" Street from 50 feet to 40 feet east of 33rd Street in order to facilitate the redevelopment of commercial property. Approval of this request means that required parking spaces could be located up to the property line.
2. The staff recommendation of approval is based upon the "*Analysis*" as set forth on p.2-3, concluding that the building line district operates to prohibit the permanent occupation of property adjacent to certain identified streets in order to facilitate potential future right-of-way needs for street expansions. In this case, an agreement has been reached with the abutting property owner providing the conditions under which that portion of the property currently within the district will be transferred to the city when needed for right-of-way (See p.10-15). Therefore, this request conforms to the zoning ordinance.
4. On May 24, 2006, this application appeared on the Planning Commission Consent Agenda and was opened for public hearing. No one came forward to speak.
5. On May 24, 2006, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: May 26, 2006

REVIEWED BY: _____

DATE: May 26, 2006

REFERENCE NUMBER: FS\CC\2006\CZ.06028

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for May 24, 2006 PLANNING COMMISSION MEETING

- PROJECT #:** Change of Zone #06028
- PROPOSAL:** Change the building line district along the north side of "O" Street from 50' to 40'.
- LOCATION:** North side of "O" Street, east of 33rd Street approximately 200'
- CONCLUSION:** The building line district operates to prohibit the permanent occupation of property adjacent to certain identified streets in order to facilitate potential future right-of-way needs for street expansions. In this case, an agreement has been reached with the abutting property owner providing the conditions under which that portion of the property currently within the district will be transferred to the city when needed for right-of-way. Therefore, this request conforms to the zoning ordinance.

RECOMMENDATION:	Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: That portion of the building line district on the north side of "O" Street located adjacent to the remaining portion of Lot 7 and Lots 8-10, Block 17, Ridgeway Addition, located in the SE 1/4 of Section 19 T10N R7E, Lancaster County, Nebraska.

HISTORY: Lincoln's Building Line District has been in use since at least 1953. Until the zoning update of 1979, the ordinance including written descriptions of the locations and widths of each district. During the 1979 update, the written descriptions were replaced with a map showing each district. That map was most recently amended in 1985, which is the map referenced in the current zoning ordinance. There have been several changes to the building line district ordinance over the years, including changes to the text describing what uses are allowed within a district, and changes to the map altering portions of the districts.

TRAFFIC ANALYSIS: There are no street improvement projects for the 33rd and "O" Streets intersection listed in either the Comprehensive Plan or current CIP. However, anticipated traffic volumes on "O" Street suggest there may be a potential need for a northbound right-turn lane from "O" Street onto 33rd Street in the future.

ANALYSIS:

1. This is a request to reduce the building line district on the north side of "O" Street from 50' to 40' east of 33rd Street in order to facilitate the redevelopment of commercial property. Approval of this request means required parking spaces could be located up to the property line.
2. The building line district is an historical tool used by the City of Lincoln to prohibit certain uses in otherwise useable areas, in order to preserve those areas for future right-of-way needs.

Some use of the area may be permitted, such as accessory structures, signs, and non-required parking spaces.

3. A building line district refers to a distance measured from the centerline of a street, in which main buildings and required parking cannot be placed. The width of the district varies by location, and generally exceeds the width of the otherwise required front yard setback. By exceeding the front yard setback, the district is intended to allow street widening to occur such that required setbacks would still be maintained after the widening is complete.
4. At this location, the "O" Street right-of-way is 80', and the property line on the north side is 40' from centerline of the street. The zoning on the north side is B-1, which requires a 20' front yard setback. Therefore, given the right-of-way width and required setback, buildings may not be erected closer to the centerline of "O" Street than 60'. The current 50' building line district does not affect the location of buildings on this site.
5. The B-1 district allows required parking to be placed in the front yard. Applicant has proposed a site plan that would place their parking up to the property line. However, required parking is prohibited within the building line district so that if the area is later used as public right-of-way, the required number of parking spaces would still be available on the remainder of the property.
6. Since the building line district here is 50', and the right-of-way is 40', required parking spaces cannot be placed within the front 10' of the property.
7. As part of Applicant's redevelopment plans, they have petitioned for and received the vacation of the east/west alley between 33rd and 34th Streets located just north of their property. Also, Applicant and the City have negotiated an agreement (attached exhibit A) addressing the future transfer of the area now within the building line district to the City when needed for right-of-way. Applicant has also prepared site plans showing how the site would work now, and how the site would work after the transfer (attached exhibits B and C).
8. The site plans used in the agreement (exhibits B and C) do not meet current zoning requirements, and must be revised. The agreement does not officially approve the site plans, but merely accepts them as concepts. Prior to development, the plans will be required to meet all zoning ordinance provisions.
9. Nothing in the alley vacation, the agreement itself, or this change of zone proposal, if approved, will waive or modify any City regulation, except for reducing the building line district from 50' to 40' on the north side of "O" Street adjacent to this property.

Prepared by:

Greg Czaplewski
441-7620, gczaplewski@lincoln.ne.gov

Date: May 11, 2006

Applicant: B&J Partnership
and PO Box 81906
Owner: Lincoln, NE 68501

Contact: Mark Hunzeker and Shanna Cole
Pierson, Fitchett, Blake, Hunzeker, & Katt
1045 Lincoln Mall
Lincoln, NE 68508
402.476.7621

CHANGE OF ZONE NO. 06028

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

May 24, 2006

Members present: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06028**; **SPECIAL PERMIT NO. 06032**; **ANNEXATION NO. 06009**; **CHANGE OF ZONE NO. 05002A**, an amendment to **The Links at Lincoln Planned Unit Development**; and **STREET AND ALLEY VACATION NO. 06002**.

Ex Parte Communications: None.

Strand moved to approve the Consent Agenda, seconded by Carroll and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 06032 unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.



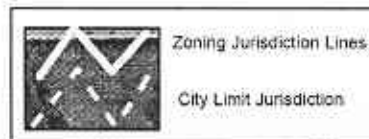
Change of Zone #06028 33rd & O Streets

2005 aerial

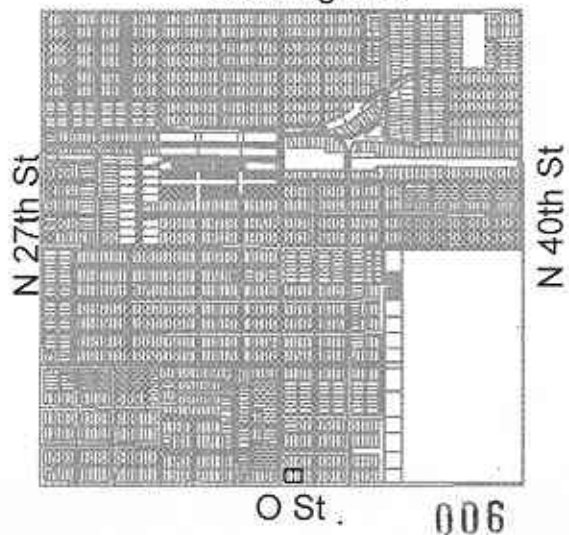
Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation 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 R7E



Holdrege St



Pierson|Fitchett
LAW FIRM

1045 Lincoln Mall
Suite 200
P.O. Box 95109
Lincoln, NE 68509
(402) 476-7621
fax (402) 476-7465
www.pierson-law.com

Thomas J. Fitchett
Mark A. Hunzeker
William G. Blake
Peter W. Katt
William C. Nelson
David P. Thompson
Patrick D. Timmer
Randy R. Ewing
Shanna L. Cole
Jason L. Scott

Gary L. Aksamit
of Counsel

April 26, 2006

Marvin Krout, Director
Planning Department
555 S. 10th Street
Lincoln, NE 68508

Re: B & J Partnership Change of Zone Application

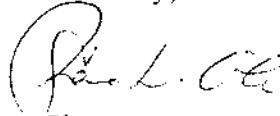
Dear Mr. Krout:

This letter is to certify that B & J Partnership is the owner of the following described property: Lot 7 except that part deeded to the City of Lincoln, Nebraska, in Warranty Deed filed May 12, 1961, in Book 629 at Page 35, and in Warranty Deed filed May 9, 1961, in Book 628 at Page 179, and all of Lots 8, 9 and 10, Block 17, Ridgeway Addition, Lincoln, Lancaster County, Nebraska.

This change of zone is really an application for modification of a building line district. The current building line district for this property is 50 feet from the center line district from "O" Street. We are requesting that this be reduced to 40 feet. The purpose of this application is to construct a Starbucks as shown on the site plan attached to this application. This property abuts 33rd and "O" Streets and we are requesting that the change be made only to the "O" Street side of the property.

If you have any questions or would like further information, please feel free to contact Mark Hunzeker of this office.

Sincerely,



Shanna L. Cole
For the Firm
scole@pierson-law.com

SLC:la

Enclosures

(G:\AF\5800-5899\5844.005 B & J Partnership--33rd & O Street\Krout 4-26-06 ltr.wpd)

Pierson, Fitchett, Hunzeker, Blake & Katt

RECEIVED
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT
007

**Review Comments for
Application #: CZ06028
BLDG LINE DIST FROM 50 TO 40**

Comments as of: Friday, May 12, 2006

Status of Review: No Rev Req

Reviewed By Building & Safety

Terry Kathe

Comments:

Status of Review: Active

Reviewed By Planning Department

GREG CZAPLEWSKI

Comments:

Status of Review: Routed

Reviewed By Planning Department

COUNTER

Comments:

Status of Review: Complete

Reviewed By Planning Department

RAY HILL

Comments:

Status of Review: Complete

05/01/2006 11:54:51 AM

Reviewed By Public Works - Development Services

SIETDQ

Comments: Memorandum

To: Greg Czaplewski, Planning Department
From: Dennis Bartels, Engineering Services
Subject: Change of Zone #06028
Date: April 28, 2006
cc: Randy Hoskins
Roger Figard

Public Works has reviewed the request to reduce the building line district along the north side of "O" Street east of 33rd Street from 50' to 40'. A site plan is attached to the application. This site plan is not sufficient to determine if it complies with design standards and zoning requirements. Public Works does not object to the reduction of the building line district. A complete set of plans for building plan approval has not been submitted or reviewed. This commendation does not imply approval of waivers to any other design standard or zoning requirement.

008

Status of Review: Active

Reviewed By Public Works - Long Range Planning

ANY

Comments:

EXHIBIT "A"

AGREEMENT

This Agreement is entered into between B & J Partnership, Ltd., (Developer) and the City of Lincoln, Nebraska, a municipal corporation (City).

RECITALS:

A Developer has requested vacation of the east-west public alley in Block 17, Ridgeway Addition, Lincoln, Lancaster County, Nebraska, and has submitted to the City of Lincoln a petition signed by all abutting property owners requesting the same. The purpose of the vacation is to enable Developer to demolish existing improvements and construct a new building upon Lots 7, 8, 9 and 10, Block 19, Ridgeway Addition, (Property) to pave a portion of the alley abutting said lots, and to continue to maintain the alley for public access for its entire distance.

B. In its review of the alley vacation petition and the proposed plans for development of the Property, the City has determined that it has a need for future right-of-way in "O" Street, abutting the south side of the Property.

C. Developer is willing to agree to dedicate 10.5 feet of additional right-of-way for future improvements of "O" Street upon the terms set forth below.

THEREFORE, the parties agree:

1. ALLEY VACATION: City agrees to vacate the entire east-west alley in Block 17, Ridgeway Addition, Lincoln, Lancaster County, Nebraska. City shall retain a public utility and public access easement over the entire 16-foot width of the alley lying east of the Property. City shall retain a public utility and public access easement over the north 12 feet of the vacated alley abutting the Property.

2. RIGHT-OF-WAY DEDICATION: Developer shall dedicate 10.5 feet of additional street right-of-way along the south line of the Property at such time as:

- a. City has approved, in its one year Streets and Highways Capital Improvements Program, a project for the total reconstruction/widening of "O" Street, design of which includes at least 3 through lanes in each direction from 28th Street to at least 34th Street, plus at least one left turn lane in each direction at the 33rd and "O" Street intersection, and City has acquired all necessary right of way on both sides of "O" Street for such project, and City has executed a contract for construction of such project.
- b. Fifteen (15) years have passed from the date of this Agreement, and the City has designed, taken bids and contracted for construction of a

westbound to northbound right turn lane at the intersection of 33rd and "O" Streets,

whichever first occurs (Trigger Events).

3. DEVELOPMENT PLAN: Developer intends to redevelop Lots 7, 8, 9 and 10, Block 17, Ridgeway Addition, in accordance with the attached Site Plan "A". City agrees that the access points shown on Site Plan "A" are approved and may remain as shown on Site Plan "A" until such time as City implements either of the "O" Street improvements contemplated in paragraph 2 above. The drive location on "O" Street is approved subject to required sight distance being met. If Developer is unable, after using best reasonable efforts, to obtain easements/permission from the property owner to the east to make sight distance improvements, the drive may be moved west to meet sight distance requirements; provided that the drive shall not be required to move further west than the drive which exists on the site as of the date of this Agreement. The "O" Street drive shall remain in the same location after dedication of right of way in accordance with 2 above, and shall be reconstructed in accordance with paragraph 6 below.

4. PARKING: Parking in the front yard along 33rd Street will be eligible for use as required parking pursuant to requirements of the B-1 Zoning District, both before and after a Trigger Event. Parking in the front yard along "O" Street will be eligible for use as required parking only upon approval by the City Council and Mayor of a modification of the existing Building Line District for "O" Street abutting the Property from 50 feet to 40 feet. City agrees that both the Planning Department and Public Works Department will recommend approval of such modification to the Planning Commission and City Council.

5. NOTICE OF TRIGGER EVENTS: City shall notify Developer in writing upon the occurrence of either of the Trigger Events set forth in paragraph 2 above. Developer shall execute and deliver a Quitclaim deed to the City, conveying the 10.5 feet of additional right-of-way within 10 business days of receipt of such notice.

6. CITY IMPROVEMENTS: City shall, at City's sole cost and expense, as part of the actual construction of either of the Trigger Events set forth in paragraph 2 above, reconfigure the parking lot upon the Property, as shown on Site Plan "B" attached, including removal of the 33rd Street drive, reconstruction of the "O" Street drive, regrading, reconstruction of curbs, moving the 33rd Street drive to the north end of Lot 7, and restriping the parking lot, together with any other miscellaneous work necessary to accomplish reconfiguration of the site, as shown on Site Plan "B".

7. CONVEYANCE OF VACATED ALLEY AND PAYMENT TO DEVELOPER: As a part of the alley vacation petition, Developer has agreed to purchase the east-west alley. The parties agree that the value of the east-west alley, burdened with utility and public access easements as contemplated by this Agreement, is substantially less than the value of the proposed 10.5 feet of additional "O" Street right-of-way contemplated by this Agreement. City agrees to pay to Developer the sum of \$19,999.00 as boot, in full

satisfaction of the purchase price of the additional 10.5 feet of "O" Street right-of-way, whenever it is conveyed to the City pursuant to the terms of this Agreement. Upon approval of the alley vacation by the City Council and Mayor, City will process payment of the boot through its regular process. City further agrees to convey one-half of the east-west alley to each of the abutting property owners, subject to the public utility and public access easements contemplated by this Agreement for \$1.

8. This Agreement shall constitute approval of Site Plans "A" and "B", subject to Developer applying for and receiving permits for the construction of the building in accordance with the building codes of the City of Lincoln, Nebraska.

Dated: _____, 2006

B & J Partnership, Ltd, a Nebraska limited partnership

By: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____, general partner on behalf of B & J Partnership, Ltd., a Nebraska limited partnership.

Notary Public

Attest:

The City of Lincoln, Nebraska
a municipal corporation

City Clerk

By: _____
Coleen J. Seng, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

(G:\AF\5800-5899\5844.005 B & J Partnership-33rd & O Street\Agreement R5 4-18-6.wpd)

