

City Council Introduction: **Monday**, November 18, 2002
Public Hearing: **Monday**, November 25, 2002, at **5:30 p.m.**

Bill No. 02-180

FACTSHEET

TITLE: CHANGE OF ZONE NO. 3379, from R-4 Residential to I-1 Industrial, requested by William Olson on behalf of Marvin and Barbara Armstrong, on property generally located at North 58th Street and 120' north of Ballard Avenue.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/30/02
Administrative Action: 10/30/02

STAFF RECOMMENDATION: Denial

RECOMMENDATION: Approval (5-2: Krieser, Larson, Bills-Strand, Taylor and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Duvall and Steward absent).

FINDINGS OF FACT:

1. The staff recommendation to **deny** this change of zone request is based upon the "Analysis" as set forth on p.3-4, concluding that the industrial district/use encroaches into the residential district and is not in conformance with the goals and objectives of the Comprehensive Plan.
2. The applicant's testimony and testimony in support by the lessee and owner of the property is found on p.5-7. The additional information (Exhibits 1, 1a and 2) submitted by the applicant at the public hearing before the Planning Commission are found on p.19-26.
3. There was no testimony in opposition.
4. The Commission discussion with staff is found on p.7, and the applicant's response is found on p.8.
5. On October 30, 2002, a motion to deny the application failed 2-5 (Carlson and Newman voting 'yes'; Krieser, Larson, Bills-Strand, Taylor and Schwinn voting 'no'; Steward and Duvall absent).
6. On October 30, 2002, the Planning Commission disagreed with the staff recommendation and voted 5-2 to recommend **approval** (Carlson and Newman dissenting). See Minutes, p.8.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: November 12, 2002

REVIEWED BY: _____

DATE: November 12, 2002

REFERENCE NUMBER: FS\CC\2002\CZ.3379

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3379

DATE: October 16, 2002

SCHEDULED PLANNING COMMISSION MEETING:

October 30, 2002

PROPOSAL: To change the zone from R-4, Residential to I-1, Industrial at N. 58th Street and 120' north of Ballard Avenue.

LAND AREA: 0.71 acres, more or less.

CONCLUSION: The Industrial district/use encroaches into the residential district and is not in conformance with the goals and objectives of the 2025 Comprehensive Plan.

RECOMMENDATION:

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1, except a triangle in the NW corner thereof, and Lots 2-4, Block 36 Havelock Addition.

LOCATION: Generally located at N. 58th Street and 120' north of Ballard Avenue.

APPLICANT: Marvin and Barbara Armstrong
HRC 30, Box 22
Warsaw, MO 65355
(660)221-4940

OWNER: Same

CONTACT: William Olson
134 S. 13th Street, Suite 800
PO Box 81617
Lincoln, NE 68501
(402)438-2500

EXISTING ZONING: R-4, Residential

EXISTING LAND USE: A single family dwelling was built in 1910 on Lot 3, Lots 1,2 and 4 are being used for outdoor storage associated with the industrial area which is an illegal use. This has been reported to the Building and Safety Department.

SURROUNDING LAND USE AND ZONING:

North:	LES, commercial	I-1, Industrial, H-3, Highway Commercial
South:	Residential	R-4, Residential
East:	Residential	R-4, Residential
West:	Industrial	I-1, Industrial

HISTORY: The area was zoned B, Two-Family Dwelling district until it was updated to R-4, residential during the 1979 zoning update.

COMPREHENSIVE PLAN SPECIFICATIONS: This area is shown as Urban Residential in the 2025 Comprehensive Plan. (Page F 25)

Guiding Principles for Residential Neighborhoods indicated that “Construction and renovation within the existing urban area should be compatible with the character of the surrounding neighborhood,” (F-18)

The 2025 Comprehensive Plan indicates that Guiding Principles for existing neighborhoods should “Encourage a mix of compatible land uses in neighborhoods, but similar uses on the same block face. Similar housing types face each other; single family faces single family, change to different use at rear of lot” (Page F 69)

General Principles for All Commercial and Industrial Uses indicates that: “Commercial and industrial districts shall be located in sites supported by adequate road capacity” and “in areas compatible with existing or planned residential uses”. (Page F 39)

General Principles for light industrial areas indicates that they “shall be cited in advance in the land use plan in order to ensure the public safety and adequate infrastructure” (Page F 40) and indicates that “centers can be located closer to residential, however, they should be buffered through landscaping, large setbacks and transitional uses, such as office or open space”. (Page F 40)

The 2025 Comprehensive Plan indicates that there should be a “transition of uses; less intensive office uses near residential areas”. (Page F 21)

The 2025 Comprehensive Plan indicates that N 58th Street is a local road. Local roads are “lower order facilities that essentially serve as a conduit between abutting properties and higher order streets. Local streets provide the lowest level of mobility and generally exhibit the lowest traffic volumes” (Page F 105).

UTILITIES: The water main in N. 58th Street abutting these lots is a 6" main which is substandard for potential I-1, Industrial uses.

TRAFFIC ANALYSIS: N. 58th Street is built to residential standards in width and thickness with 60' of right-of-way. The other existing streets in the vicinity are also residential in design and are not designed for industrial purposes. Any lot that fronts on a public street has the right to access that street. The right-of-way for Ballard Avenue is 80'.

ANALYSIS:

1. This is an application for a change of zone from R-4, Residential to I-1, Industrial on 4 lots. The Building and Safety Department received complaints about this property and then notified the owner that they were in violation of Title 27, Zoning Ordinance and told them to remove all material being stored from the lots. These lots should be returned to residential uses in conformance with the 2025 Comprehensive Plan, and Title 27 Zoning Ordinance.
2. Once a property is re-zoned, any of the permitted uses of the district are allowed. Permitted uses in the I-1, Industrial district include uses which may have various noise and air pollution incompatibilities with the residential neighborhood. Title 27 indicates that the I-1, Industrial district is for "*light and heavy industrial use and having a relatively high intensity of use and land coverage*". The intensity of use is not compatible with the surrounding residential neighborhood.
3. The I-1, Industrial district is not appropriate in this location as it encroaches into the residential neighborhood. The 2025 Comprehensive Plan is clear that industrial uses should not encroach into residential neighborhoods, should be screened and new areas be buffered by less intensive uses, such as low density office.
4. The only street access to this property is N. 58th Street which serves residential uses. The City of Lincoln Design Standards require 33' of paving (no parking) or 39' of paving (with parking) for industrially used local roads. N. 58th Street is not designed for industrial traffic.
5. The Public Works & Utilities Department indicated that the water main in N. 58th Street is substandard for the intensity of an industrial use.

Prepared by:

Becky Horner
Planner

CHANGE OF ZONE NO. 3379

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2002

Members present: Krieser, Larson, Carlson, Newman, Bills-Strand, Taylor and Schwinn; Duvall and Steward absent.

Staff recommendation: Denial.

Proponents

1. **William Olson**, appeared on behalf of the owners, **Marvin and Bobbie Armstrong**. The applicants have owned these lots since about 1981 or 1982. The previous owner was Cather Construction, which owned the property since 1953. North 58th Street is located on the east side of the lots; the property is bordered on the north by the Havelock Avenue railroad overpass; on the west by an alley that splits that block; and to the west of that alley is I-1 zoned land also owned by the Armstrongs. The business located on adjacent land to the west is leased from the Armstrongs. The Armstrongs sold the business in 1991 to Peggy Shalla.

Olson submitted an affidavit regarding this issue that was submitted to the City in 1996. The issue with regard to use of the land also came up in about 1991-92. In 1985-86, Havelock Avenue was expanded to the west and the road which used to give access to the lot on the west and the lot on the north was closed.

The existing business, All Road Barricades, uses three of the four lots for storage of its barricades, signs and equipment during the season when they have to store things on-site because the barricades are not in use. That storage time is just starting now. Prior to 1981-82, Todd Co.(sp), an Omaha based company, occupied the land to the west and used the lots for the same purpose. In 1985-86, when the City was redoing Havelock Avenue, the city approached the Armstrongs about closing their access to the north. At that time, an agreement was reached with the city, but, unfortunately, it was not put in writing. The city was going to cut off the north access but the owner wanted to continue to be able to use the lots. The city wanted them to fence the lot with a privacy screen fence, but give the city access because of a manhole on the lots. That was the agreement that was reached and it has been this way since 1985-86.

By 1995, the city had come out twice to declare this as a nonconforming use in R-4 zoning and requested that the equipment be removed from the lots and the lots restored to residential use.

Olson clarified that there is one small rental house on Lot 3, the third lot from the north, which is owned by Marvin Armstrong. Just to the south on the same block there is another house and then south of that there is some kind of halfway house that abuts Ballard.

In 1995-96, this issue came up again, an agreement was reached and the complaint was dismissed on the condition that rezoning be requested. The owner talked to the Mayor and it was again worked out at that time without any rezoning. The then Mayor believed the use was grandfathered.

In 2001, the city approached the current lessee, Peggy Shalla of All Road Barricades, about the same problem, which has led to this change of zone request. Olson had agreed with the Building & Safety to apply for a change of zone.

Olson then addressed the staff recommendation of denial. He pointed out that except for Lot 3, these lots have never been used for residential purposes. They have always been used for commercial and/or industrial use, first by the city as part of the old turnaround for the street car system. Returning the property to residential use does not make sense.

In addition, Olson pointed out that there is industrial zoning to the north and to the west, and the access to this land is through the alley across existing I-1 zoned property. This business does not use 58th Street for access, thus there is not a traffic issue. Any access for this property is as it is now--across the alley, going onto the west property and then down off of Ballard.

Olson then displayed photographs of some of the surrounding uses and what is stored on the property.

Olson agrees that No. 58th is not designed for industrial traffic, but this business does not want to use No. 58th Street.

Olson pointed out that the adjacent property is and has been zoned I-1. There is not a fire hazard there. This applicant is not asking for utility access. This is a request for zoning to conform to the current use.

Carlson sought confirmation that the applicant owns the house on Lot 3. Olson responded in the affirmative, indicating that the house is rented. There are two properties north of Ballard that are not owned by this applicant.

2. Peggy Shalla, 7611 Roose, President of **All Road Barricades**, located at 5700 Ballard, testified in support. She leases three of the four lots for equipment storage. She purchased the business from Armstrong. All Road Barricades is a traffic control company providing equipment to the city, Lancaster County, private companies and other agencies. As the road construction season winds down at this time of year it is necessary to have space available for storage of the equipment. The subject lots are fenced on the east and south with a 6' privacy fence; the property is bordered on the north by the overpass and railroad tracks; the block is split by the north/south alley and the lots abut the alley on the west. All Road Barricades abuts the alley. Shalla has used the lots continuously as commercial since she purchased the business. She was told that the property had been used for commercial purposes for many years. She has experienced periodic problems with the city over the use of the lots. It was her understanding that the problem was solved in 1996. The original suggestion for rezoning came from the city. Shalla has never had a complaint from a neighbor. The business does not use 58th Street for access. If Shalla is not allowed to continue to use these lots, she will have to move the business.

3. Marv Armstrong, owner of the property, testified in support. At the time that the access was closed off, the fence was installed at the request of the city. He also made sure the city had access to the manhole. He does not believe the city has ever used the gate that he put in for them off of 58th Street. The city used the access through the parking lot. He has never been told what the complaint was.

There was no testimony in opposition.

Carlson noted that this is a request for I-1 zoning. He inquired of staff as to whether there is other zoning that allows storage of materials. Becky Horner of Planning staff did not know; however, she believes the commercial districts allow it. Carlson wondered about special permitted uses for storage in a residential zone. Ray Hill of Planning staff does not believe there is a provision for open storage of commercial uses in a residential area. The closest thing would be like a parking lot.

Carlson then inquired about the potential to relinquish access to No. 58th. Hill believes this would be a problem because all lots are to front upon and have access to a public street.

Taylor referred to the Comprehensive Plan and asked whether the Comprehensive Plan designates this as residential in the year 2025. Horner indicated that it is identified as residential in the Comprehensive Plan. It was also identified as residential in the 1994 Comprehensive Plan and was not changed in the new Plan.

Horner clarified that this is not a “nonconforming” use as stated by the applicant. The property’s nonconforming use status was relinquished in 1981. Open storage in these districts was to be discontinued within 2 years after the 1979 zoning update.

Taylor believes the areas to the north and west are I-1 areas. Horner clarified that the I-1 zoning allows a higher intensity use, and if the property is zoned I-1, the city cannot regulate it if it is a permitted use and it could require a larger water main or greater thickness of the road system. This change of zone would permit any I-1 use if the property were sold in the future. Taylor asked whether I-1 zoning would make it necessary for this owner to make a change in the drainage pipe. Buff Baker of Public Works believes the question is whether the 6" water system can handle the use that exists. The answer would be yes; however, design standards state that for industrial uses, the 8" water main and the oversized paving are a requirement of those design standards. Taylor then asked whether Public Works would require that this owner make adjustments to the water main if this change of zone is approved. Baker indicated that would be the Public Works recommendation so that if the use did change to another I-1 usage, the facilities and utilities would be in place to handle that use change.

Newman asked for a list of the I-1 uses. Horner indicated that the I-1 zoning code does not provide a list of permitted uses. But rather, it lists those uses that are not allowed, i.e. a church, library, school, indoor theater or residence, except for resident watchmen and caretakers or supervisory personnel employed and residing on the premises.

Schwinn queried whether the change to I-1 would require them to stop using the house as a residence. Horner offered that dwellings existing on the effective date will be considered nonstandard; however, she does not know when the house was built. Schwinn believes that they can continue to use the house as long as it doesn’t burn down. Horner agreed.

Response by the Applicant

Olson assured that this property would not be used for something like a meat packing plant. He cannot see anyone doing anything even similar to a meat packing plant because the property is not big enough to accommodate a smokestack type industry. It would have to be something low intensity in terms of use. The purpose of this request is to bring the zoning into conformance with the existing use. He agreed that the 1979 zoning update required getting rid of open storage in 2 years. However, in 1985, when the city inspected the site, they asked the owner to build the fence around it and it would be okay. Again in 1996, the Mayor's office said the owner was grandfathered. This property has been in commercial use since 1953. The water main issue is not an issue right now. If the use changes, something may have to be done about it. The roads are not an issue. 58th Street is not an issue. It is not used for access and they do not intend to use it in the future. The natural access is off the lot to the west across the alley and onto Ballard Avenue anyway. As a practical matter (maybe not as a legal matter), the use of that property is limited as to what you can do with the I-1 zoning.

Schwinn observed that there is a "great big factory out there called Goodyear", right across the street to the west.

Taylor again referred to the Comprehensive Plan designation of the whole area as residential. Horner clarified that the existing industrial uses are shown as industrial in the Comprehensive Plan.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 30, 2002

Carlson moved to deny, seconded by Newman.

Carlson stated that he is sympathetic to the storage use, but he doesn't believe the zone should be changed.

Taylor will vote against the motion. He has been in the area and with Goodyear and the railroad track, he cannot feature the area being upgraded from what it is. The use in that area appears to be very practical.

Larson agreed with Taylor.

Schwinn agreed with Taylor, also. As far as the concern about the water main, he does not believe any user would take the property knowing that the water was not available.

Motion to deny failed 2-5: Carlson and Newman voting 'yes'; Krieser, Larson, Bills-Strand, Taylor and Schwinn voting 'no'; Duvall and Steward absent.

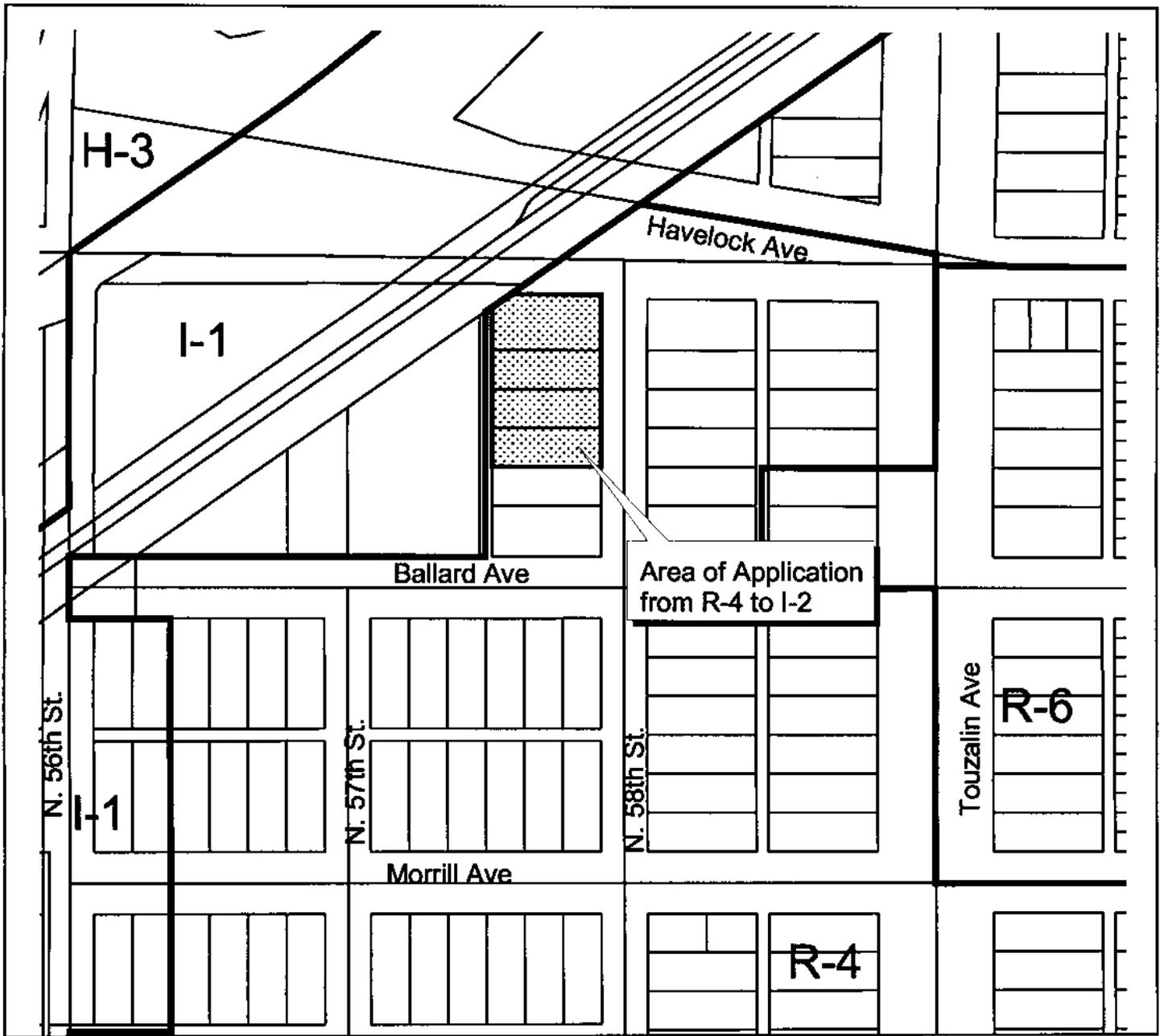
Taylor moved approval, seconded by Larson and carried 5-2: Krieser, Larson, Bills-Strand, Taylor and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Duvall and Steward absent.



**Change of Zone #3379
N. 58th St. & Havelock Ave.**



009

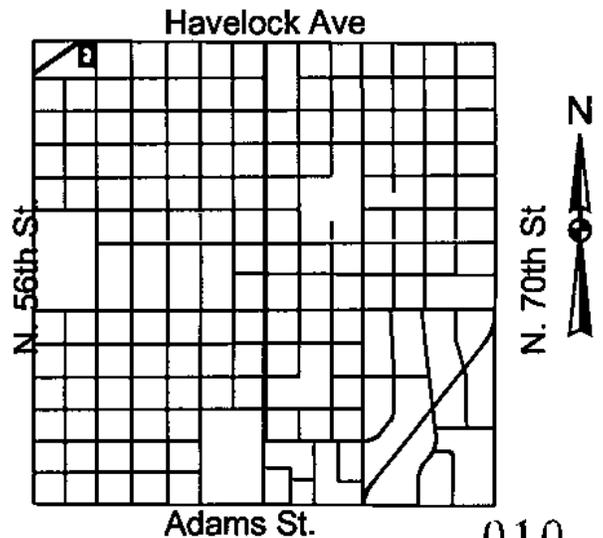
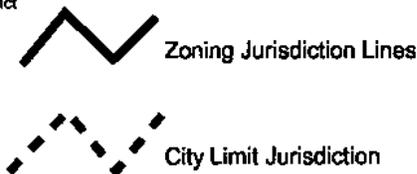


Change of Zone #3379 N. 58th St. & Havelock Ave.

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. 9 T10N R7E





Law Offices
134 South 13th Street, Suite 800
Post Office Box 81607
Lincoln, Nebraska 68501-1607

Phone: (402) 438-2500
Fax: (402) 438-6329

James J. DeMars
James E. Gordon
William E. Olson, Jr.
James C. Zalewski
Nancy R. Wynner

(via facsimile transmittal)
(402/441-6377)

October 3, 2002

Ms. Becky Horner
Lincoln Lancaster County Planning Department
555 So. 10th Street
Lincoln, NE 68508

RE: Application for Change of Zone for Armstrong Property
Located at Approximately 58th & Ballard Street

Dear Ms. Horner:

Please correct the Application for Change of Zone previously submitted to indicate that the zoning application should be changed to I-1.

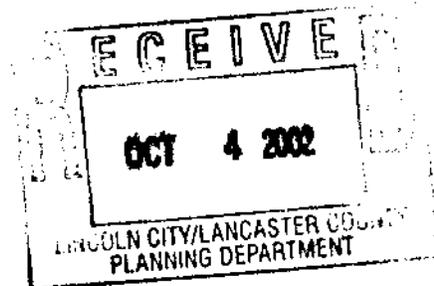
Thank you for your continued cooperation.

Very truly yours,

William E. Olson

WEO:sks

cc: Marvin & Barbara Armstrong



M e m o r a n d u m

To: Becky Horner, Planning
From: Dennis Bartels, Public Works and Utilities
Subject: Change of Zone #3379, 58th and Havelock
Date: October 1, 2002
cc: Randy Hoskins
Nicole Fleck-Tooze

Engineering Services recommends denial of the change of zone from R4 to I1 for the property south of Havelock, west of 58th Street. The existing 58th Street is built to residential standards in width and thickness. The other existing streets in the vicinity are also residential in design. The water main in 58th Street abutting these lots is a 6" main which is also substandard for potential I1 uses.

LINCOLN



BUILDING AND SAFETY

NEBRASKA'S CAPITAL CITY

MIKE JOHANNIS, MAYOR

April 4, 1996

Donald L. Dunn
Rembolt Ludtke & Berger
1201 Lincoln Mall, Suite 102
Lincoln, NE 68508

Re: Marvin Armstrong - 58th & Havelock Avenue

Dear Mr. Dunn

This letter is in reference to the commercial storage use of property near 58th and Havelock Ave. More particularly the property involved is described as Lots 1, 2, 3, and 4, Block 36, Havelock, Lincoln, Lancaster County, Nebraska. This property is located within the R-4 Residential zoning district and abutting property on the west which is with the I-1 Industrial zoning district. A portion of the described property is currently use as commercial open storage. Another portion of the described property appears to be occupied by a single family dwelling.

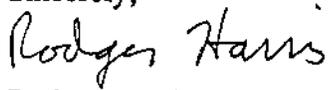
Initially, we contacted Mr. Armstrong about the use of the property and were advised that the use had been continuously used for a commercial activity since before 1953. In order to establish a nonconforming use, Mr. Armstrong was advised that two affidavits, from persons who would be expected to have knowledge of the area and describing the use of the land, were necessary.

However, we may have inadvertently guided Mr. Armstrong in the wrong direction in view of the requirements of Section 27.61.070 of the Lincoln Municipal Code. This section on open storage in R-1, R-2, R-3 and R-4 Districts provides for the discontinuance of open storage uses. Please discontinue the open storage use of the appropriate portions of the above described property. A copy of Section 27.61.070 LMC is enclosed.

013

Please contact this department if you have any questions concerning this matter.

Sincerely,



Rodger Harris
Zoning Coordinator

pc: Marvin Armstrong
Ernest Peo III
Chuck Zimmerman
Roy Bretthorst

4319N_58.CPL



January 23rd, 2001

CERTIFIED MAIL

All Road Barricades
5700 Ballard Avenue
P. O. Box 29196
Lincoln, NE. 68529

is your RETURN ADDRESS completed on the reverse side

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

RECEIVED
JAN 25 2001

- I also wish to receive the following services (for an extra fee):
- Addressee's Address
 - Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to: <i>Peggy Shalla - CITY BUILDING & SAFETY all Road Barricades P O Box 29196 5700 Ballard Ave Lincoln, NE 68529</i>	4a. Article Number <i>7000 05200017 05916120</i>
5. Received By: (Print Name) <i>Fred Miller</i>	4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
6. Signature: (Addressee or Agent) <i>X Fred Miller</i>	7. Date of Delivery <i>1-24-01</i>
PS Form 3811, December 1994	8. Addressee's Address (Only if requested and fee is paid)

102595-97-B-0179 Domestic Return Receipt

Thank you for using Return Receipt Service.

Attn: Peggy Shalla

Dear Ms. Shalla:

Inspection of the premises along North 58th Street between Ballard & Havelock Avenue, found that you are using Lot. 1 and a portion of Lot. 2, plus Lot. 4 of Block 35, Original Havelock for storage of equipment. (See enclosed maps.) Our records indicate that the lots have always been zoned for only residential uses. You mentioned in our telephone conversation of 01/19/2001, that the owner, Marvin Armstrong, stated he has some sort of legal non-conforming status for the current use. Our records do not indicate any such deviation from the existing residential zoning.

I ask that you either permanently vacate the R-4 zoned area and the platted alley between the R-4 & I-1 zoning by February 25th, 2001, or have on file with the city, a change of zone request for these lots.

A reinspection will be made after February 25th, 2001, to see that the violation has been resolved. Any questions may be directed to me at 441-6403.

Sincerely,

BUILDING & SAFETY DEPARTMENT

Mel Goddard

Mel Goddard
Chief Building Inspector

cc: Mike Merwick, Director
Ron Peery, Inspections & Enforcement Manager
Chuck Zimmerman, Building Services Manager
File

DC526

015

Lincoln



Nebraska's Capital City

CERTIFIED MAIL

August 5, 2002

Mr. Marv Armstrong
HCR 30, Box 22
Warsaw, Missouri 65355

Dear Mr. Armstrong:

Re: 5700 Ballard Avenue in Lincoln, Nebraska

On January 23, 2001, a notice was sent to your tenant, All Road Barricades, Inc., to vacate Lot 1, a portion of Lot 2 and Lot 4, Block 35, Havelock Addition, which is being used to store equipment for their business. These lots (zoned R-4) can not be used for commercial purposes.

Inclosed is a copy of a letter from Rodger Harris, in this office, to your attorney, Donald Dunn, dated April 4, 1996. This letter notified you that this use was to cease in accordance with Section 27.61.070 of the Lincoln Municipal Code.

All Road Barricades, Inc. is to permanently vacate the area zoned R-4 by September 1, 2002. The fence surrounding the 2 areas must also be removed. The business premises must stay within the boundaries of the I-1 zoned district.

Questions concerning this matter may be directed to me at 402-441-6423.

Sincerely,

Building & Safety Department

Mel Goddard
Chief Building Inspector

Pc: Mike Merwick, Director
Ron Peery, Manager
Chuck Zimmerman, Manager
Rodger Harris, Zoning Administrator
Peggy Shalla, All Road Barricades, Inc., 5700 Ballard Ave, Lincoln, NE 68507
File

ebbtr-armstrong

016

27.61.070 Open Storage.

Where land within the R-1, R-2, R-3, and R-4 Districts contains no main buildings as distinguished from accessory buildings and fences, and where said land was used solely for open storage immediately prior to the effective date of this title, use of such land for open storage shall be discontinued within two years.

Where land is used for a nonconforming or nonstandard use in conformance with the provisions of this chapter and where such land contains a main building or structure in addition to open storage, said open storage shall be brought in conformance with the area, front yard, side yard, rear yard, height, unobstructed open space, and parking requirements for the district in which it is located within the period of one year from the effective date of this title. (Ord. 12571 § 301; May 8, 1979).

27.61.080 Effect on Use Which Is Illegal Under Prior Law.

Nothing in this title shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect immediately prior to the effective date of this title. (Ord. 12571 § 302; May 8, 1979).

27.61.090 Continuation of Nonstandard Uses.

Nonstandard uses existing immediately prior to the effective date of this title may be continued, although such uses do not conform to the provisions hereof.

Nonstandard structures and buildings may be enlarged, extended, or reconstructed, as follows:

(a) Enlargements, extensions, or reconstructions may be made as required by law or ordinance or ordered by the Director of Building and Safety to secure the safety of the structure;

(b) Enlargement, extension, or reconstruction of buildings or structures may otherwise be made if such changes comply with the minimum requirements as to front yard, side yard, rear yard, height, and unobstructed open space for the district in which they are located. (Ord. 12894 § 23; April 7, 1980; prior Ord. 12571 § 303; May 8, 1979).

CITY OF LINCOLN ZONING APPLICATION

Honorable City Council

Date September 3, 2002

City of Lincoln, Nebraska

City Application No. _____

Under the provisions of Title 27 of the Lincoln Municipal Code, the undersigned hereby applies for a:

<input checked="" type="checkbox"/> Change of zone from <u>R 4</u> to <u>R I-1</u> <input type="checkbox"/> Change of zone, (text) 27. <small>*NOTE: City policy requests that text amendments be presented to the Mayor's Neighborhood Roundtable</small> Presentation Date _____ <input type="checkbox"/> Use Permit <input type="checkbox"/> Pre-Existing Use Permit _____ <input type="checkbox"/> Waiver of Design Standards	<input type="checkbox"/> Special Permit <input type="checkbox"/> Administrative County Special Permit (Wireless) SP Pre-application Conference Date _____ <input type="checkbox"/> Pre-Existing Special Permit # _____ <input type="checkbox"/> Administrative Amendment to SP _____; UP _____; PUD _____ <input type="checkbox"/> Miscellaneous
--	---

To Change zoning on 4 lots which have been used as industrial and are adjacent to same to I 1 zoning as per Section 27.

(Indicate purpose of application)

Property Owner Marvin L. Armstrong and Barbara Armstrong

(660) 221-4940
Telephone

Address HCR 30, Box 22, Warsaw, MO 65355

Email

Applicant (Permittee) Name William E. Olson, Attorney for Owner

(402) 438-2500
Telephone

Address Suite 800, 134 S. 13th Street, P.O. Box 81607, Lincoln, NE 68501

wolson@demarsgordon.com
Email

Contact Name William E. Olson, Attorney

(402) 438-2500
Telephone

Address Suite 800, 134 S. 13th Street, P.O. Box 81607, Lincoln, NE 68501

wolson@demarsgordon.com
Email

Project Legal Description: Lot(s) Lot 1, Except a triangle in the NW Block(s) 36

corner thereof, Lot 2, Lot 3 & Lot 4

Havelock
Addition, _____ Section, _____ T _____ N, R _____ E

See attached Legal Description (hard copy and digital if available)

Project Address/Location West side of N. 58th Street, 4300 Block, North from 4319 N. 58th

Applicant's (Permittee's) Signature William E. Olson, Attorney

Property Owner's Signature _____

* NOTE: If applicant is not owner of the premises, the owner's signature (or written permission of the owner authorizing the applicant to sign on behalf of the owner) must be affixed to this application. The applicant and owner's signatures (or owner's written permission) certifies that permission is granted by the owner to all authorized city/county personnel to enter the premises for the purpose of review of this application.

**NOTE: Change of Zone applications do not require the property owner's signature.

Planning Department Use Only:

Permit Name & Location: <u>N. 58th + Havelock</u>	PAS No. <u>62-3379</u>
Date: <u>9/10/02</u>	Fee Paid \$ <u>1290.00</u>
Applicant: <u>Becky Herber</u>	Receipt No. <u>159093</u>

LPCF 09/02 Zoning - City App. Form.wpd

SUBMITTED AT PUBLIC HEARING
BEFORE PLANNING COMMISSION: 10/30/02
BY THE APPLICANT

CHANGE OF ZONE NO. 3379
22909.001

REMBOLT LUDTKE & BERGER
ATTORNEYS AT LAW

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DAVID A. LUDTKE
PENNY J. BERGER
ALAN D. SLATTERY
ROBERT L. NEFSKY
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RICK D. LANGE
DANIEL E. KLAUS
CARL J. SJULIN
STANLEY J. ANDERSEN
TIMOTHY F. CLARE
TIMOTHY L. MOLL
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1201 LINCOLN MALL, SUITE 102
LINCOLN, NEBRASKA 68508

JOHN S. PIERCE
(1946-1995)

OF COUNSEL
DAVID R. PARKER
JOHN H. BINNING

TELEPHONE
(402) 475-5100
TELECOPIER
(402) 475-5087

March 12, 1996

Roy Bretthorst
Building and Safety Administration
555 South 10th Street
Lincoln NE 68508

RE: Marvin Armstrong - 58th and Havelock Avenue

Dear Mr. Bretthorst:

Enclosed please find an Affidavit which was submitted to your office in June of last year relating to a complaint that a portion of a property known as Lots 1, 2, 3, and 4, Block 36, Havelock, Lincoln, Lancaster, Nebraska was being used in violation of the zoning ordinance.

The Affidavit, which relates back to 1953 substantiates that the property in question has been continuously used for commercial activity since prior to the adoption of Lincoln's zoning code.

I will appreciate you review of this matter at an early date. If you have questions regarding the enclosure of the matter generally, please do not hesitate to give me a call.

Sincerely,

Donald L. Dunn

Enclosure
cp: Marvin Armstrong
DLD/rmr/armstrong.lt

Exhibit 1

489-7200

AFFIDAVIT

STATE OF NEBRASKA)
COUNTY OF LANCASTER) ss.

Howard Cather, being first duly sworn upon oath, deposes and states as follows:

1. I am currently and have been for the last 73 years, a resident of Lancaster County, Nebraska.

2. I am generally familiar with the property legally described as follows:

Lots 1, 2, 3 and 4, Block 36, Havelock, Lincoln, Lancaster County, Nebraska (the "Property").

3. A portion of the Property was owned and used by business entities which were owned and/or controlled by me.

4. A portion of the Property was used in our business activities for storage of products and equipment. A portion of the Property has been utilized continuously since prior to November 2, 1953 for such purposes.

5. At no time during the period I was in control of a portion of the Property, were there any complaints or objections to the use of a portion of the Property for storage purposes.

6. I provide this Affidavit freely, voluntarily and based upon my own personal knowledge.

Further affiance sayeth not.

Howard Cather
Howard Cather

Subscribed and sworn to before me this 5th day of June, 1995.

Exhibit 1a angela@carra.com
Notary Public

DL5\skh\cather.all



22909

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April 24, 1996

Marvin Armstrong
14201 "O" Street
Lincoln NE 68520

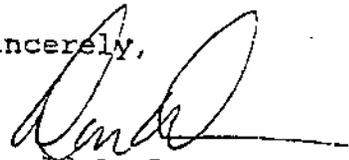
RE: City of Lincoln - Zoning Citation

Dear Marv:

The City Attorney has dismissed the citation which was filed against you. To encourage her to dismiss the citation, I agreed that in the event it becomes necessary to refile the charge that I would accept service of summons on your behalf. In other words, the city is not obligated to try and find you and serve you with the summons, it can simply serve me as your agent.

Although Roger Harris has never gotten back to me, in visiting with the City Attorney it is my understanding that the City wants you to file an application for a zoning change. I am out of the office Thursday and Friday of this week. Please give me a call on Monday so we can decide on a plan of action.

Sincerely,



Donald L. Dunn

DLD/tmz/armstrong.lc3

Exhibit 2