

CITY BOARD OF ZONING APPEAL #1201

DATE SCHEDULED FOR PUBLIC HEARING: February 24, 2012

LOCATION: Southeast of the intersection of Brookside Drive and Surfside Drive

ADDRESS: 700 Brookside Drive

LEGAL DESCRIPTION: Lot 19, Block 1, Capitol Beach Manor and Lot 275 I.T., located in the SW 1/4 of Section 22-10-6, Lancaster County, Nebraska, generally located at 700 Brookside Drive

ZONING: R-2 Residential

EXISTING LAND USE: Single-family Residential

SURROUNDING LAND USE AND ZONING:

North:	Single-family Residential	R-2
South:	Single-family Residential	R-2
East:	Capitol Beach Lake	R-2
West:	Single-family Residential	R-2

TYPES OF APPEALS:

1. THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE.

A. Lincoln Municipal Code (LMC) Section 27.13.080(a) requires a rear yard setback of 30' or 20% of the lot depth. A variance from 24.8' to 20.81' is being requested.

BACKGROUND

The home was originally built in 1973. Building permits were approved for a first-floor addition which was added to the rear of the home in 2005. A building permit application is currently under review proposing to add a second-story on top of the 2005 first-floor addition. That building permit application has not been approved as the review noted that the site plan indicated a rear setback of 20.81' rather than the required 24.8'.

APPLICABLE REGULATIONS

LMC 27.11.080 (for the R-2 Zoning District):

- Lot Area - 6,000 square feet
- Avg. Lot Width - 50'
- Front Yard - 25'
- Side Yard - 50'
- Rear Yard - 30' or 20% of Lot Depth

STAFF FINDINGS:

1. The subject property is located at 700 Brookside Drive, southeast of the intersection of Brookside and Surfside Drives near Capitol Beach Lake. The petitioner is seeking to construct a second-story addition onto a prior addition which was built in 2005. This is a request for a variance for the rear setback from 24.8' to 20.81' to allow both the 2005 addition and the addition now under review.
2. The premises consists of two lots and is developed with a detached single-family dwelling. One lot is Lot 19, Block 1, Capitol Beach Manor, and the other is Lot 275 I.T.

Lot 19 was created by the final plat of Capitol Beach Manor which was approved in 1964. It is a typical, rectangular lot approximately 6,450 square feet in area.

Lot 275 I.T. is an irregularly-shaped rectangular lot, approximately 991 square feet in area (see attached Exhibit 97). It was created by a District Court Decree in 1997 which awarded 158 property owners quiet title to additional land through adverse possession. That is, the Court found that the owners had been using the land between the their lots and the lake in an open and knowing fashion for more than 10 years, and as there had been no attempt by the Capitol Beach Homeowners Association to stop the private use of their property, the Court granted all 158 owners quiet title to the lands in question.

The two lots were never formally re-platted and combined into a single lot since the decree creating Lot 275 was ordered in 1997. However, for the purpose of building permits the two lots constitute a premises, and setbacks are measured from the boundary of the premises.

3. The original dwelling was built on Lot 19 in 1973. The home complied with the applicable zoning regulations in effect at that time. In 2005 when the first-story addition was built, the building permit was approved in error. The site plan submitted for the building permit showed a rear setback calculation for the addition which included both Lot 19 and Lot 275. However, the rear setback calculation used to review for compliance with the Zoning Ordinance took only Lot 19 into consideration. As a result, the home is setback 20.81' from the rear lot line, rather than the required 24.8'. The rear setback (30' or 20% of lot depth, whichever is less) calculations using Lot 19 alone versus both lots combined are as follows:

Lot 19 - $110.1' + 105.2' = 215.3' / 2 = 107.6' \times .2 = 21.5'$ rear setback

Lots 19 & 275 - $124.25' + 124.04' = 248.29' / 2 = 124.1' \times .2 = 24.8'$ rear setback

4. The site plan approved for the 2005 addition indicated a 26.5' rear setback, which was found in compliance when compared to the assumed 21.5' rear setback calculated above. However, the survey submitted as part of this variance petition shows the home actually setback from between 20.81' to 21.14' from the rear lot line.
5. The building elevation provided shows how the addition will look if constructed. The second-story addition is shown to comply with the required 24.8' setback, as there is a 4.5' balcony as part of the addition. However, a balcony is not allowed to project into a required yard, so a variance is also required for it to be allowed.
6. Approximately one-half of the frontage onto Capitol Beach Lake, including the lake itself, are part of the Capitol Beach Community Unit Plan (CUP). However, this lot is among the lots which front onto the lake but that are not included in the CUP. Multiple adjustments to front, side and rear setbacks have been adjusted over the years via the CUP. Adjustments to setbacks deemed to be internal to the development can now be approved administratively by the Planning Director. A significant factor in determining whether a rear setback adjustment will be approved is whether the lot backs onto common open space so the impact upon other property is minimized. Given the 2005 addition has been occupied for years, the setback adjustment is minimal, and the rear yard abuts the lake and significant open space, this rear setback adjustment is one the Planning Director would approve administratively if the lots in this area were part of the larger CUP.
7. Without a variance, the second-story addition is not allowed. Further, the addition built in 2005 was built in error and is not allowed either. Without a variance, the owner will be required to remove the addition built in 2005, and the second-story addition now under review will not be allowed.

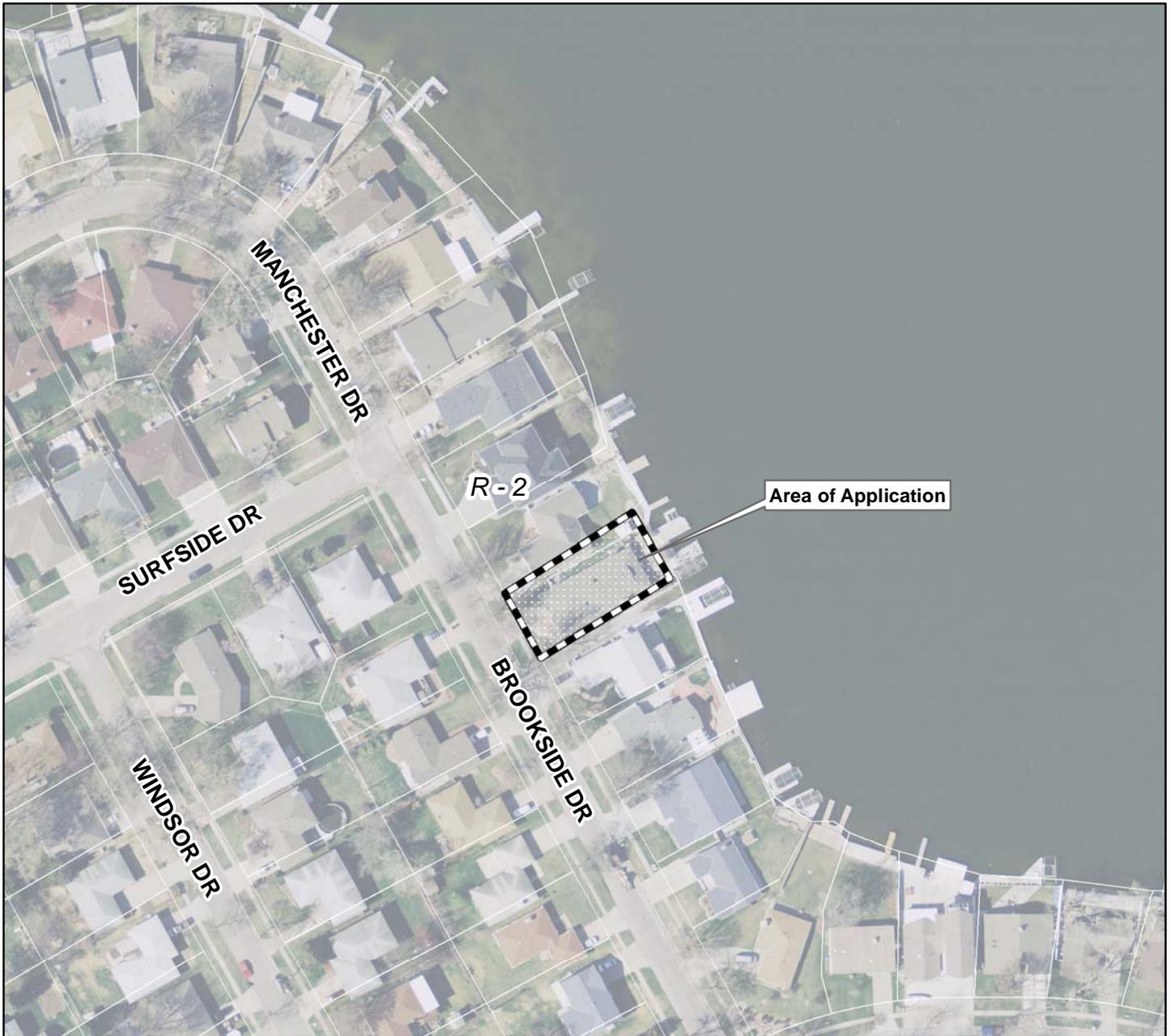
8. The Board of Zoning Appeals is empowered to grant variances “to the extent necessary to permit the owner a reasonable use of the land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.”

Prepared by

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner

February 15, 2012

APPELLANT: Kenneth Hughes
700 Brookside Drive
Lincoln, NE 68528
402-690-9761



2010 aerial

**Board of Zoning Appeals #1201
700 Brookside Dr**

Zoning:

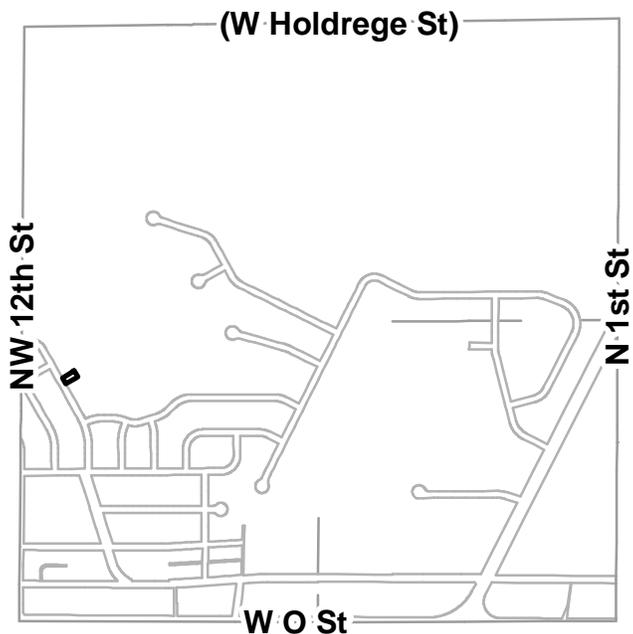
- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial 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. 22 T10N R06E

Area of Application

Zoning Jurisdiction Lines

City Limit Jurisdiction



5120221

PLANNING DEPT. EM DATE OF HEARING 2-24-12 BOARD OF APPEALS NO BZA1201
Fee 300- Receipt No. _____ Date FEB 3, 2012

APPEAL TO BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS, City of Lincoln, Nebraska

On February 1st, 2012, the undersigned applied for a building permit to _____
Add a second floor addition on the existing single story home.

Located on Lot 19 Block 1 Addition Capitol Beach Manor

Address 700 Brookside Drive, Lincoln, NE Have you met with the neighboring properties? X Yes ___ No

TO BE FILLED IN BY BUILDING OFFICIAL: This permit was denied because _____

The above decision(s) of the Building Official is hereby appealed on the grounds that (check and complete all that apply):

- The Administrative Official erred by _____
- A Variance to (height, area, parking, density, sign) is necessary because the property is peculiar, exceptional, and unusual in the following ways: The previous owner was issued a permit to put an addition on and when I went for a permit it was found that the last permit was in violation of the backyard setback by around 3ft. (Please see reverse side for further information.)
- An exception is necessary to:
 1. Reconstruct a non-conforming building for a compelling public necessity because: _____
 2. Correct a mapping error due to: _____
 3. Reduce the parking requirements due to the use of the building is such as to make unnecessary the full provisions of the parking because: _____

Contact Person: Kenneth Hughes Address: 700 Brookside Drive, Lincoln, NE 68528

Phone #: 1-402-690-9761 E-mail (if applicable) khughes@midmechinc.com

Staff will post a notification sign in the yard of the property and other officials may visit the site prior to the hearing. Signing this form hereby grants permission to the staff to enter onto property for purposes related to this application.

Signed: Kenneth Hughes 700 Brookside Drive 1-402-690-9761
Appellant Appellant's Address Phone #

Board of Zoning Appeals
Written Decision
LMC Chapter 27.75

02/07/2012
Date

Dale Stertz
Staff Member

Department of Building & Safety
City of Lincoln
555 South 10th Street, Room 203
Lincoln, Nebraska 68508-2803

Contact Person Kenneth Hughes

Address 700 Brookside Drive

This Department has reviewed your submission regarding the property located
at: (address) 700 Brookside Drive
and legally described as: (legal description) Lot 19, Block 1, Capitol Beach Manor
or an alleged error regarding _____

The result of this review found noncompliance with the following zoning requirements of the Lincoln Municipal Code.

1. Section 27.13.080(a) LMC requires a rear yard setback of 24.8 feet.
***A variance to reduce the rear yard setback from 24.8 feet to 20.81 feet is
requested.

Note: Any appeal to the Board of Zoning Appeals must be filed within 60 days.

Received 2-8-2012
(Date)

By Kenneth Hughes
(Signature)

6811 SOUTHFORK CIRCLE
 LINCOLN, NE 68516
 (402) 476-3020
 (402) 476-3138 FAX

SURVEY RECORD

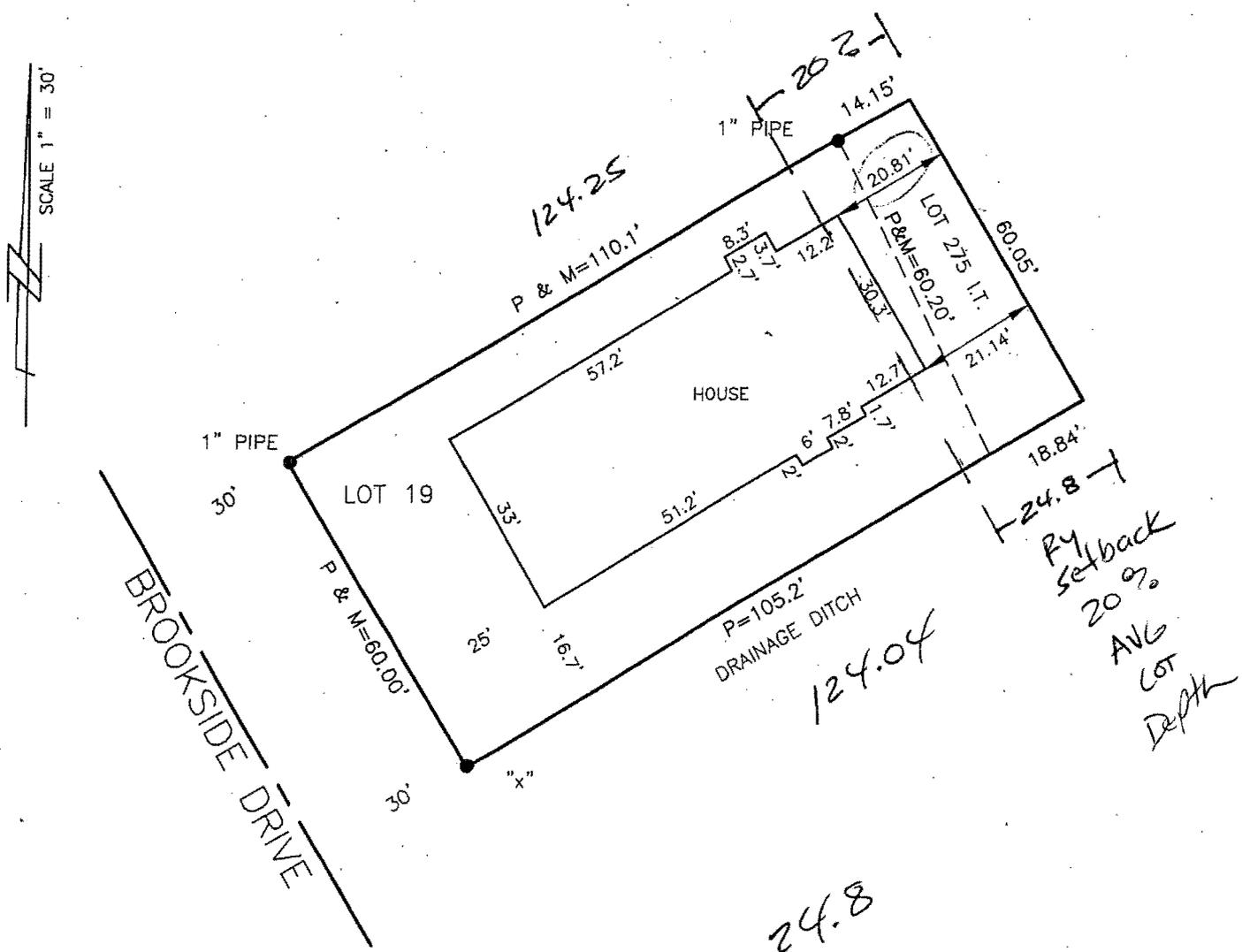
K&M *inc.* Land Surveying

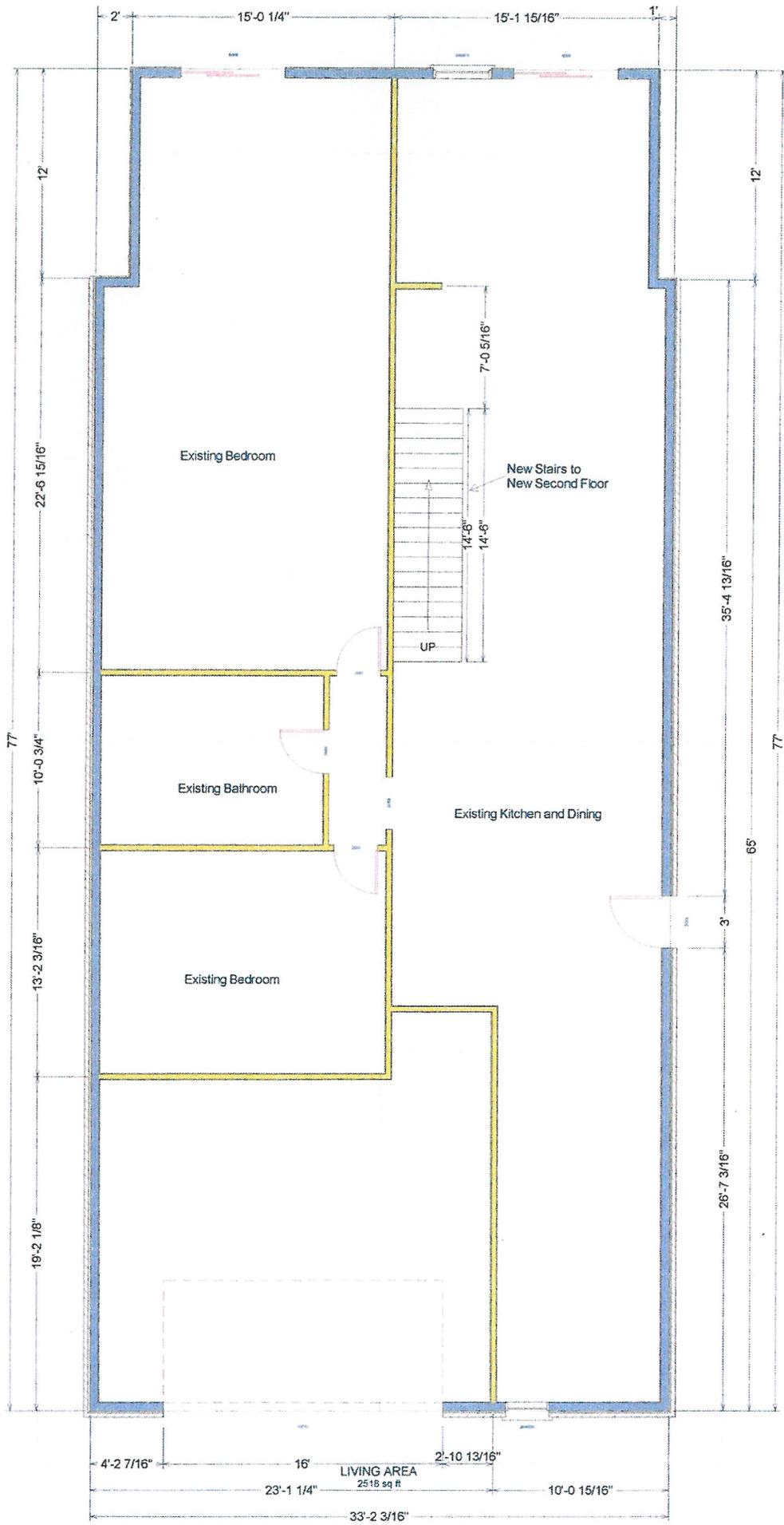
KENNETH HUGHES	
PROJECT #	1110047
DATE: 10/28/11	B/P:

Survey Of: LOT 19, BLOCK 1, CAPITOL BEACH MANOR AND LOT 275 IRREGULAR TRACT
 LOCATED IN THE SOUTHWEST QUARTER OF

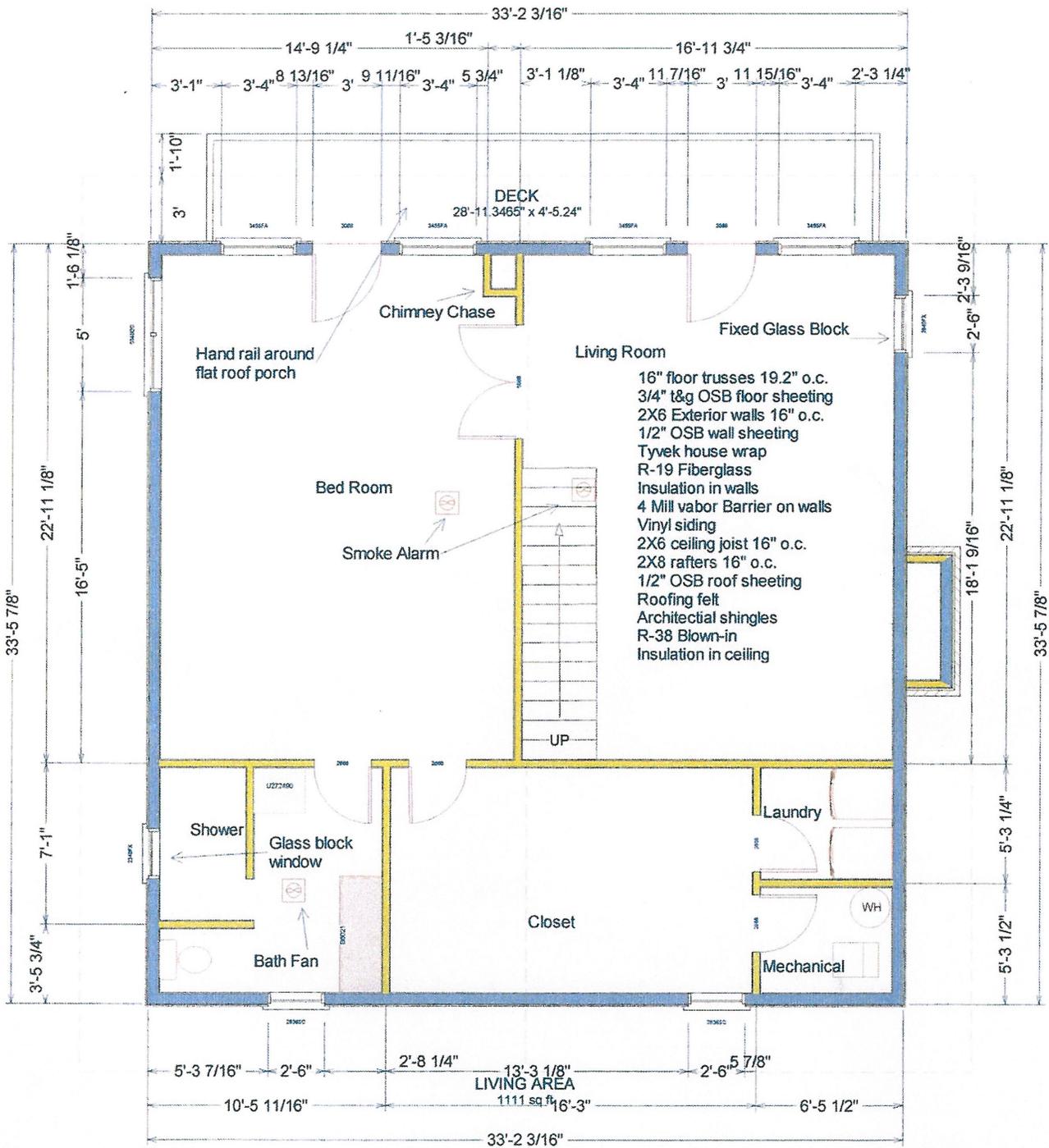
Section: 22, T 10 N, R 6 E, of the 6th P.M. LINCOLN, LANCASTER County, Nebraska

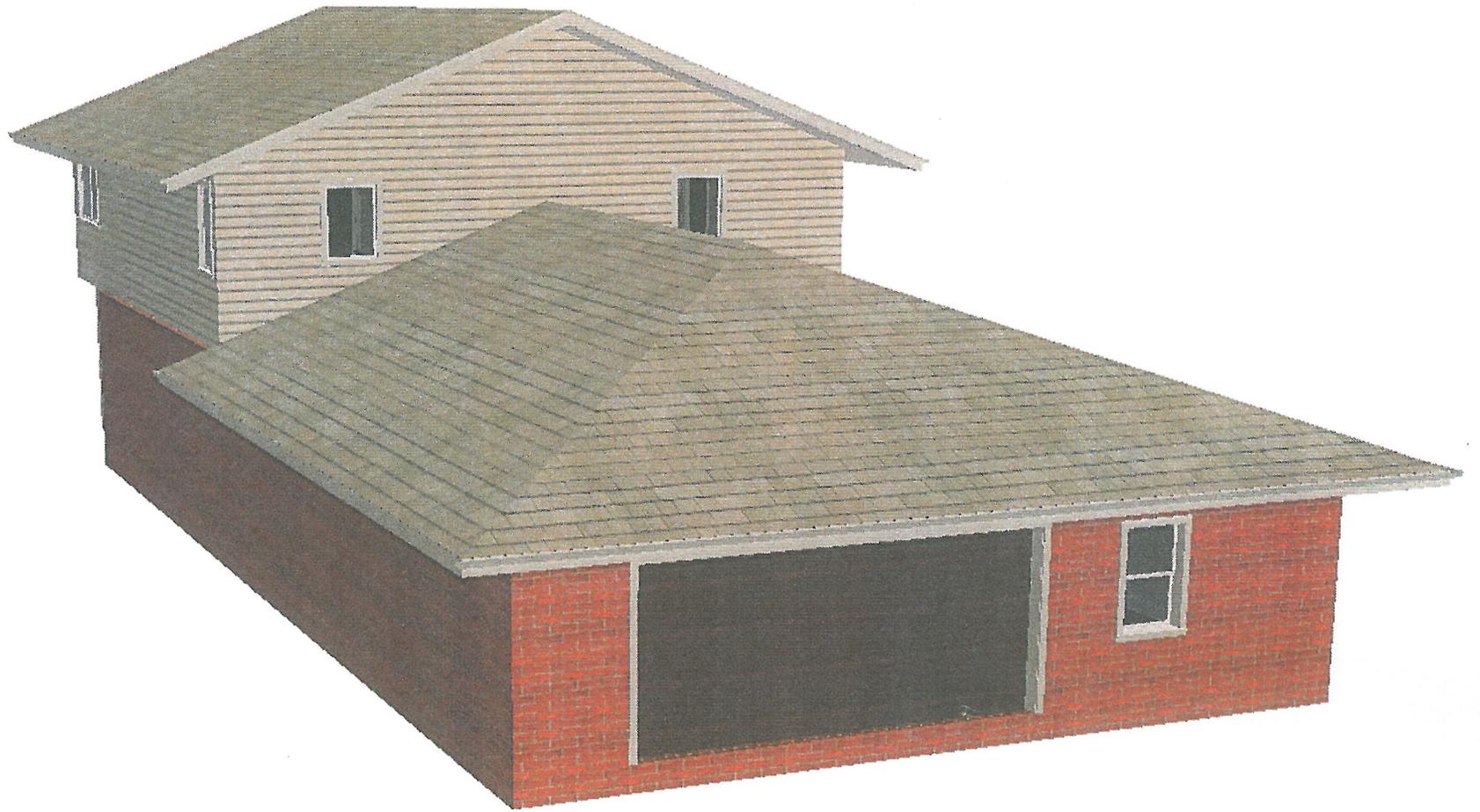
700 BROOKSIDE DRIVE

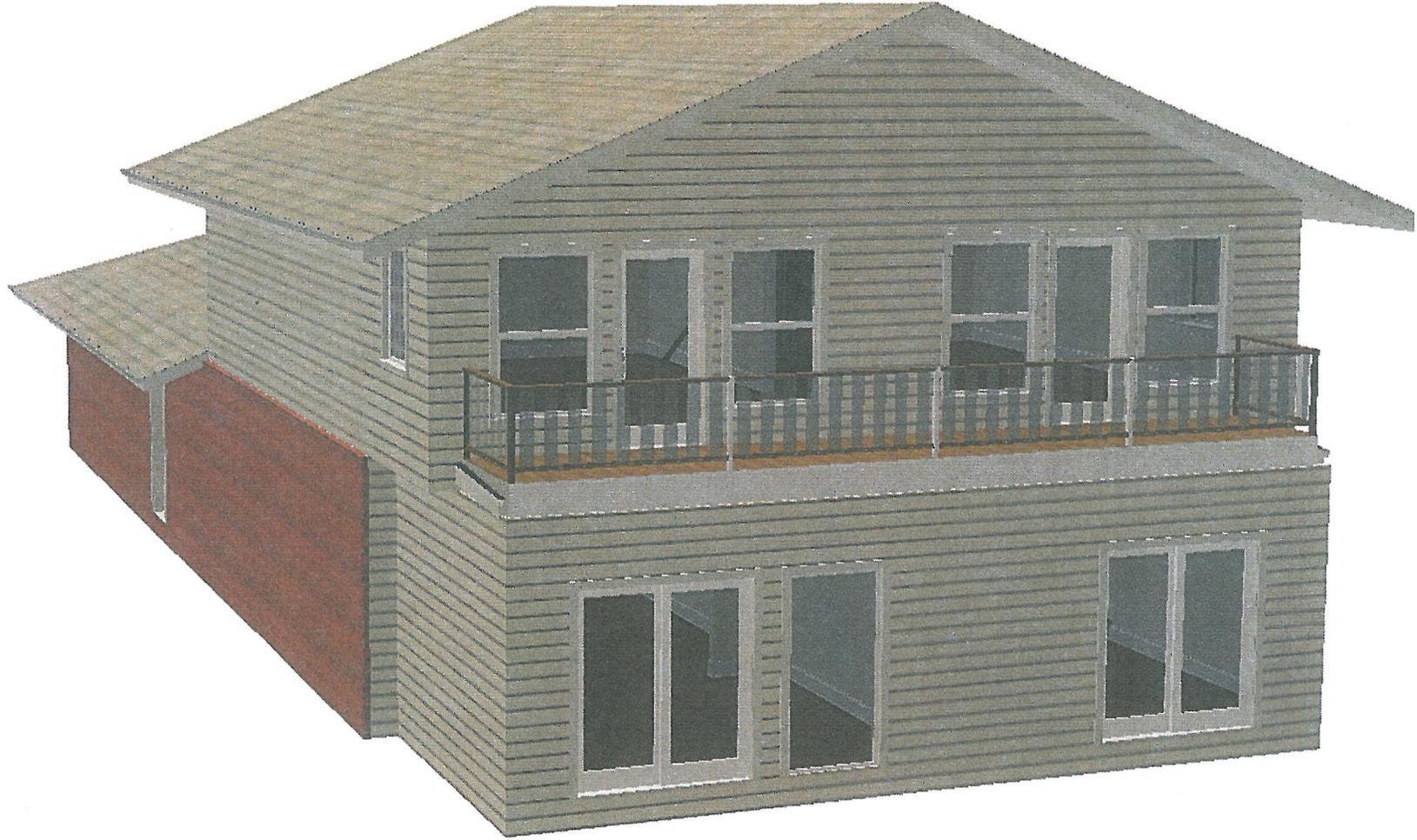




EXISTING STRUCTURE







1/02/2012

To Whom It May Concern Kenneth and Karen Hughes residing at 700 Brookside drive in Lincoln, NE will be requesting a zoning change so as to allow a second story addition on the existing single story home.

We are requesting permission from our side yard neighbors for this variance and have shown them the proposed plans for their review.

We have reviewed the plans and have no objection the building addition.

Signature:

Kenneth D. Inman

Linda Inman

Address:

02/02/12

710 Brookside Dr.

1/02/2012

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Signature:

[Handwritten Signature]

[Handwritten Signature]

Address:

640 Brookside Dr.
