

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for April 26, 2006 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone #06019

PROPOSAL: Amend Lincoln Municipal Code Sections 27.61.090 and 27.63.280 to allow for the enlargement, extension, or reconstruction of buildings and structures located upon a premises the use of which constitutes a nonstandard use by special permit.

CONCLUSION: A nonstandard use is a subset of the category nonconforming use. However, the ordinance has treated rebuilding these uses different from one another. This change will treat otherwise similarly situated properties the same, and make enforcement of the zoning ordinance more consistent.

RECOMMENDATION:

Approval

ANALYSIS:

1. The term nonconforming use is commonly used in zoning ordinances to identify uses that, due to a change in the zoning ordinance or district boundaries, no longer comply with the list of allowed uses in that district.
2. Nonconforming uses are disfavored because they represent potential conflicts with surrounding uses, ranging from increased traffic, extended hours of operation, or noise, odor, and light pollution.
3. When a use becomes nonconforming, it is allowed to remain, but cannot be enlarged or expanded nor restored after damage by right, and if the nonconforming use is discontinued or abandoned for two years, the use is lost. Any future use of the property must then comply with the existing zoning regulations.
4. LMC §27.63.280 allows the reconstruction of a nonconforming use that allows the buildings to be placed back on their previous footprint, even if located beyond the currently required setbacks, by special permit.
5. In an effort to reduce the impact of being classified as nonconforming due to a zoning ordinance or district boundary change, Lincoln created a new classification called nonstandard use. Nonstandard use does not apply to the use of property, but rather to a lot or structure that does not comply with zoning regulations concerning lot area, density, width, setbacks, height, open space, or parking.

6. Nonstandard uses differ from nonconforming uses in that they may be rebuilt or expanded by right, as long as they comply with the currently required setbacks. However, there is no special permit provision that allows a nonstandard use to be rebuilt to its footprint if it is located beyond the currently required setbacks. This proposed change will include nonstandard uses in the special permit provision, allowing them to also be rebuilt to their footprint.
7. The proposed language revisions are attached.

Prepared by:

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Date: April 12, 2006

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ORDINANCE NO. _____

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code relating to the
2 Zoning Code by amending Section 27.61.090 relating to Continuation of Nonstandard Uses, and
3 Section 27.63.280 relating to Special Permits; Expansion of Nonconforming Uses, to allow for the
4 enlargement, extension, or reconstruction of buildings and structures located upon a premises the
5 use of which constitutes a nonstandard use by special permit; and repealing Sections 27.61.090 and
6 27.63.280 of the Lincoln Municipal Code as hitherto existing.

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

8 Section 1. That Section 27.61.090 of the Lincoln Municipal Code be amended to read
9 as follows:

10 **27.61.090 Continuation of Nonstandard Uses.**

11 Nonstandard uses existing immediately prior to the effective date of this title and uses
12 becoming nonstandard through a change in the zoning ordinance or district boundaries may be
13 continued, although such uses do not conform to the provisions hereof.

14 ~~Nonstandard s~~Structures and buildings located upon a premises the use of which constitutes
15 a nonstandard use may be enlarged, extended, or reconstructed, as follows:

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

18 (b) Enlargements, extensions or reconstruction of buildings or structures may be made
19 if authorized under the provisions of Section 27.63.280 or 27.63.540;

1 (b) (c) Enlargement, extension, or reconstruction of buildings or structures may otherwise
2 be made if such changes comply with the minimum requirements as to front yard, side yard, rear
3 yard, height, and unobstructed open space for the district in which they are located.

4 Section 2. That Section 27.63.280 of the Lincoln Municipal Code be amended to read
5 as follows:

6 **27.63.280 Special Permits: Expansion of Nonconforming and Nonstandard Uses.**

7 In all zoning districts, except the B-5 zoning district, a special permit may be granted to
8 authorize the issuance of a building permit to permit the enlargement, extension, conversion,
9 reconstruction or structural alteration of any building located upon premises, the use of which
10 constitute a nonconforming use. In all zoning districts, a special permit may be granted to authorize
11 the issuance of a building permit to permit the enlargement, extension, or reconstruction of any
12 building or structure located upon a premises the use of which constitutes a nonstandard use.

13 In consideration of applications for ~~such~~ the above special permits, the following criteria shall
14 be given specific consideration:

- 15 (a) Effects on adjacent property, traffic, city utility service needs;
- 16 (b) Density of land use zoning for the subject property and adjacent property;
- 17 (c) The degree of hardship upon the applicant which would be caused by failure to grant
18 such a permit.

19 Signs permitted in the most restrictive zoning district in which the nonconforming use is
20 allowed as a permitted or a conditional permitted use may be approved as part of the enlargement,
21 extension, conversion, reconstruction, or structural alteration of any building located upon premises,
22 the use of which constitutes a nonconforming use; provided, that the total sign area permitted by the

1 underlying district in which the nonconforming use is located shall not be exceeded unless the
2 Planning Commission finds that:

3 (1) The sign or signs and their illumination, if any, will not adversely affect the
4 surrounding area; and

5 (2) The sign or signs are necessary for the expansion of the nonconforming use.

6 Section 3. That Sections 27.61.090 and 27.63.280 of the Lincoln Municipal Code
7 as hitherto existing be and the same are hereby repealed.

8 Section 4. That this ordinance shall take effect and be in force from and after its
9 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2006: _____ Mayor
