

City of Lincoln

BOARD OF ZONING APPEALS

AGENDA

BOARD OF ZONING APPEALS

Annette McRoy, Chair
Steve Miller, Vice Chair
Tracy Edgerton
David Johnson
Vickie McDonald

November 19, 2021

CITY BOARD OF ZONING APPEALS

Notice is hereby given that the **CITY BOARD OF ZONING APPEALS** will hold a public hearing on **Friday, November 19, 2021**, at 1:30 p.m. in the **City Council Chambers** on the 1st Floor of the County-City Building, 555 South 10th Street, on the following item. For more information, please contact the Planning Department at (402) 441-7491.

Masks are strongly encouraged for our public meetings in this building.

AGENDA

November 19, 2021

1. Approval of the minutes of the City Board of Zoning Appeals hearing, held [October 29, 2021](#).

ADMINISTRATIVE ACTION

2. [BOARD OF ZONING APPEALS 21003](#), requested by NeighborWorks of Lincoln, for a variance to minimum lot width from 40' to 39.9' for a single-family dwelling on property generally located at 30th and S Streets.

* * * * *

The City Board of Zoning Appeals agenda may be accessed on the Internet at

<http://www.lincoln.ne.gov/city/plan/boards/cibza/cibza.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.

MEETING RECORD

NAME OF GROUP: CITY BOARD OF ZONING APPEALS

DATE, TIME AND PLACE OF MEETING: Friday, October 29, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Tracy Edgerton, David Johnson, Annette McRoy, Steve Miller; Vickie McDonald absent. Tim Sieh of the Law Department; Ron Rehtus of the Building and Safety Department; Brian Will and Rhonda Haas of the Planning Department.

STATED PURPOSE OF MEETING: Regular City Board of Zoning Appeals meeting.

Chair McRoy called the meeting to order and acknowledged the Open Meetings Act posted at the back of the room.

The first order of business was election of a new Chair for a 1-year term. Miller nominated Annette McRoy; seconded by Edgerton and carried 4-0: Edgerton, Johnson, Miller and McRoy voting ‘yes’; McDonald absent.

Chair McRoy called for a nomination for Vice-Chair for a 1-year term. Johnson nominated Steve Miller; seconded by Edgerton and carried Edgerton, Johnson, Miller and McRoy voting ‘yes’; McDonald absent.

McRoy called for a motion approving the minutes of the City Board of Zoning Appeals hearing of May 29, 2020. Motion for approval made by Edgerton, seconded by Johnson and carried 3-0: Edgerton, Johnson and Miller voting ‘yes’; McRoy abstained; McDonald absent.

BOARD OF ZONING APPEALS 21002, BY JEROME & KAREN VRTISKA FOR A VARIANCE TO REDUCE THE SIDE YARD SETBACK FROM 10' TO 3' FOR AN ACCESSORY BUILDING, ON PROPERTY GENERALLY LOCATED AT 6009 RAINBOW CIRCLE

PUBLIC HEARING: OCTOBER 29, 2021

There were no ex parte communications disclosed.

Applicant:

Jerome Vrtiska, 6900 Rainbow Circle, came forward and stated that he is asking for a variance on how far from the property line his garage can be placed. Vrtiska stated that he went to Building & Safety to get his building permit the site plan showed that the garage was 53-feet from the

front marker. The side lot was 3-feet, it was 7-feet to the house and 7- or 8-feet to the shed. After Building & Safety reviewed the site plan the department approved his building permit. Vrtiska stated that he started the construction of his garage and when he finished with the framing, he called the inspector who came out to check the portion that had been completed. The inspector listed a couple of items that he needed to fix and then told him that it did not look like he was 60-feet from the front property line. Vrtiska explained to the inspector that it was only 53-feet and the inspector informed Mr. Vrtiska that the required distance has been 60-feet for quite a while. Vrtiska stated that he was not aware of that detail. A lot of time and money has been put into the structure of the garage to get it where it is, and he did not make any errors regarding this. The guidelines were followed, and they were presented with a site plan and that site plan was approved. Vrtiska stated that he feels that he did nothing wrong, because he followed their guidelines, and it was approved. Vrtiska stated that he is just asking that he be allowed to finish the construction of his garage. This would be a large expense to him to tear this down and he is unable to move the structure back. He asked the board to approve the 53-foot front setback.

Miller asked if he has talked with the neighbors, and they are okay with the garage. Vrtiska said that he has not talked with the neighbors, but they are aware that the garage is being built and they have not mentioned any objections.

Edgerton inquired when he first contacted Building & Safety about a building permit. Vrtiska stated that it was August 11. Edgerton asked if he then contacted them again for the framing inspection. Vrtiska said yes and when he went to Building & Safety to talk with them about this the employee said that he had made a mistake.

There was no public testimony in support or opposition.

Staff Questions:

Edgerton stated that she would like to hear staff's thoughts, recommendations and what other options that there would be on this that would be equitable for this homeowner. **Brian Will, Planning Department, 555 South 10th Street**, came forward and stated that the options are limited with one of them being to grant the request that is before this board or relocating the garage. The relocating the garage with the majority of the structure already there is not an option and reducing the size is not an option, because this is just a single stall garage. Will stated that he noted in the report that both of these options would be a hardship by definition.

McRoy stated that initially this was approved by Building & Safety and that is why the applicant proceeded to move forward on its construction. McRoy inquired if this was a new employee or if there was something about the initial plans that were missed like setback requirements. **Ron Rehtus, Building & Safety Zoning Coordinator, 555 South 10th Street**, came forward and stated this employee is relatively new, and has only been with Building & Safety for a few months. McRoy asked if the department accepts that there was a mistake made. Rehtus said yes that the error should have been seen at the plan review and the employee should have requested that the site plan be revised to have the front setback to 60-feet, but he missed it. The employee had

thought that they had measured plans and that there was more than the 60-feet required, but they did not, and it was not noticed that applicant site plan had a dimension of 53-feet that should have requested that it be revised. Rehtus stated that it was missed, and the permit was issued in error.

Rehtus stated that he wanted to clarify that the variance that the applicant is asking for is a reduction in the front setback from 60 feet to 53 feet.

Will stated that there are two ways to look at this, and one is that it encroaches too far on the side yard and the other is that it encroaches too far into the front yard. Will stated that originally when the applicant came in the legal ad was written for the side yard, but with the way the staff analysis was written it characterized it as an adjustment to the front setback from 60 to 53 feet. Will stated that of the two the way that it is written in the staff report with the front setback from 60 to 53 feet would be the proper variance to use.

Rehtus inquired if when an application is made to Board of Zoning Appeals a notification went out. Will said that notifications were sent to neighbors and signs were posted. Rehtus stated that the neighbors were notified and had the opportunity to come in. Will said correct. Rehtus stated that he just wanted to make sure that the board knew that the neighbors were notified.

Applicant Rebuttal:

Vrtiska asked for the boards approval because he felt that he did everything the correct way.

APPEAL NO. 21002

ACTION BY THE CITY BOARD OF ZONING APPEALS:

October 29, 2021

Edgerton moved to grant the variance on the reduction of the setback, seconded by Johnson.

Edgerton feels like this is the only proper remedy given the circumstances. This homeowner had followed the rules and reached out and a mistake was made to no fault of the homeowner. There has been opportunity for neighbors to express concerns and that has not happened. Any other result would be unfair to the homeowner in this circumstance.

McRoy agreed with her fellow commissioner.

Motion carried 4-0: Edgerton, Johnson, Miller and McRoy voting 'yes'; McDonald absent.

There being no further business, the meeting was adjourned at 1:50 p.m.

Note: These minutes will not be formally approved by the City Board of Zoning Appeals until their next regular meeting.

CITY BOARD OF ZONING APPEAL #21003

DATE SCHEDULED FOR PUBLIC HEARING:

November 19, 2021

ADDRESS:

Near North 30th & S Streets

LEGAL DESCRIPTION:

Lot 8, Block 22, Pecks Grove, SW1/4 of Section 19-10-7,
Lincoln, Lancaster County, Nebraska.

EXISTING LAND USE AND ZONING:

Single-family Residential

R-4 Residential

SURROUNDING LAND USE AND ZONING:

North: Residential

R-4

South: Residential

R-4

East: Residential

R-4

West: Residential

R-4

TYPE(S) OF APPEAL(S):

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE PER LINCOLN MUNICIPAL CODE 27.72.020(C)(1).

1. A. Lincoln Municipal Code (LMC) Section 27.72.020(C)(1) In the R-1 through R-4 zoning districts, if a vacant lot or tract of land has less area or width or both less area and width than herein required but is at least 40 feet wide and was legally created prior to November 2, 1953, such lot or tract of land may be used for a single-family dwelling.

The subject lot is 39.9' wide and was legally platted in 1886. The petition is requesting a variance to adjust the 40' minimum lot width exception to 39.9' to allow a single-family dwelling to be built on the lot.

STAFF FINDINGS:

1. The subject lot, Lot 8, Block 22, Pecks Grove has no address but is located between 3041 and 3055 S Street. It is vacant with the exception of an accessory building partially straddling the common lot line with 3041.
2. Pecks Grove subdivision was recorded in 1886, and Lot 8, Block 22 was platted as 39.9' wide. The petitioner is NeighborWorks whom is seeking to locate a single-family dwelling on the lot.

3. The property, as are all surrounding properties, is zoned R-4 residential where the lot area regulators are as follows:

Minimum Lot Area – 5,000 square feet.

Average Lot Width – 50'

Setbacks - Front – 25'; Side – 5'; Rear – 20' or 20% of the lot depth, whichever is less.

4. For R-4 Residential lots, the minimum average lot width for a detached, single-family dwelling is 50', but there is an exception. LMC Section 27.72.020(C)(1) states:

In the R-1 through R-4 zoning districts, if a vacant lot or tract of land has less area or width or both less area and width than herein required but is at least 40 feet wide and was legally created prior to November 2, 1953, such lot or tract of land may be used for a single-family dwelling.

5. According to the Department of Building and Safety, no permits have ever been approved for a building on Lot 22. Building and Safety concluded the lot has been vacant over time and used in conjunction with an adjacent lot for yard and open space. This fact also precludes the use of another exception in the Zoning Ordinance, Section 27.72.020(C)(4) which states:

If an existing lot or tract of land in a residential zoning district lawfully occupied by a single-family or two-family dwelling on the effective date of this title or on the effective date of a change in district boundaries from another zoning district to the existing residential district has less area or width or both less area and width than herein required, such lot or tract of land shall not be considered nonstandard due to this condition.

6. Lot 8, Block 22 was legally platted prior to 1953, and according to records has never been developed. If it were 40' wide it could be developed using the exception under Section 27.72.020(C)(1) as it otherwise meets the criteria. However, at 39.9' it is one-tenth of a foot under the allowed minimum.

7. The final plat of Pecks Grove was recorded in 1886. Most of the lots remain today as originally platted. That is, they haven't been divided and deeded to separate owners. Oddly, the west boundary of the final plat extends through the middle of the block as it is developed today (see exhibit of Pecks Grove final plat). All of the lots along the western edge of the final plat were platted at 39.9' in width. A survey of the neighborhood shows that all of the 39.9' lots except for the subject lot have been developed with dwellings.

8. The subject lot is 1/10th of a foot short of meeting the minimum requirement exception which allows lots as narrow as 40' in width to be developed with a

single-family dwelling. The amount of shortfall is insignificant and unnoticeable. Other lots of the exact same width have been developed and they are part of the character and fabric of this neighborhood. A single-family dwelling being built on this lot is a benefit to the neighborhood with no negative impact.

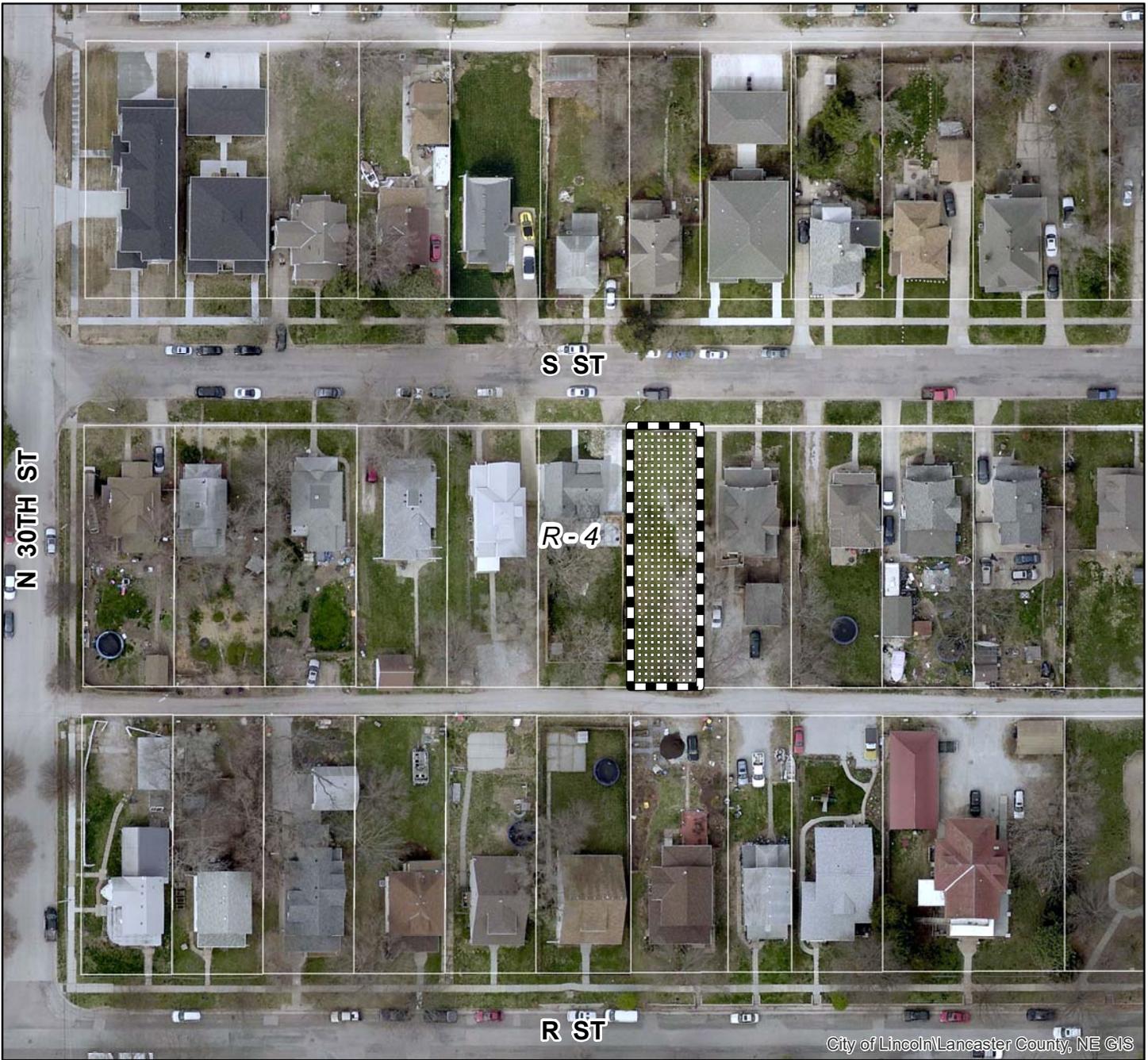
9. The Board of Zoning Appeals is authorized to grant this variance per Section 27.59.110 and Neb. Rev. Stat. Section 3-312. Specifically, it shall allow variances where a literal application or enforcement of the regulations would result in a practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations.
10. If the variance is approved the petitioner will be allowed to build a detached single-family dwelling on the lot. If the variance is denied the lot is undevelopable and will remain vacant.

Prepared by

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner
November 4, 2021

**APPLICANT/
CONTACT/
PETITIONER:**

Wayne Mortensen
NeighborWorks Lincoln
2430 Q Street
Lincoln, NE 68503
Wayne.mortensen@nwlincoln.org
402-477-7181



City of Lincoln/Lancaster County, NE GIS

2020 aerial

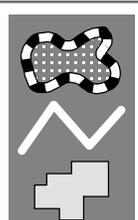
Board of Zoning Appeals #: BZA21003
N 30th St & S St

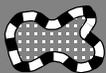


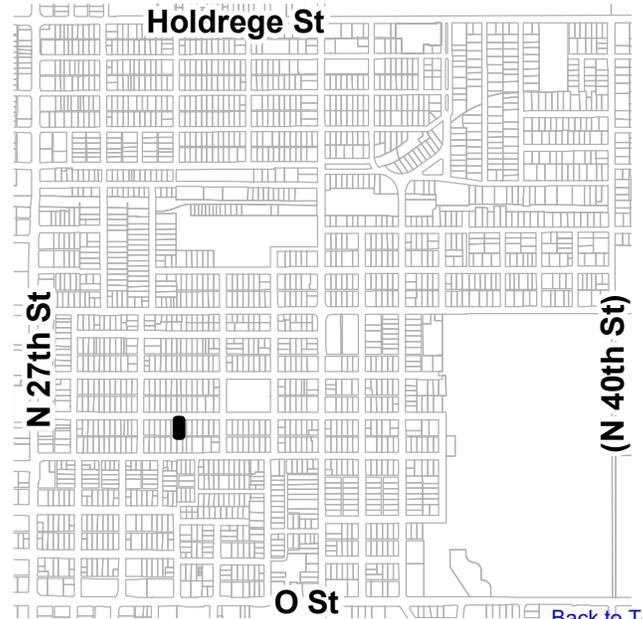
Zoning:

- 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



-  Area of Application
-  Zoning Jurisdiction Lines
-  Lancaster County Jurisdiction



S STREET

LOT 8: BLOCK 22: PECKS GROVE ADDITION
LINCOLN, LANCASTER COUNTY, NEBRASKA
ZONE R4

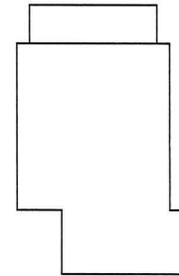
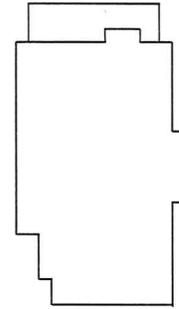
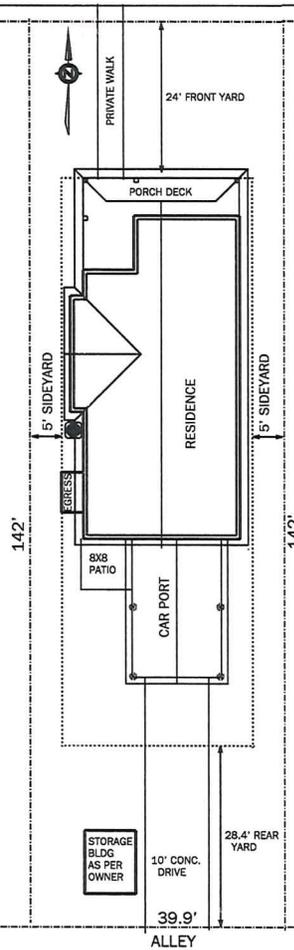
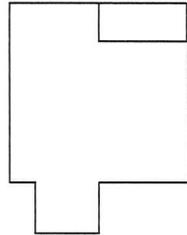
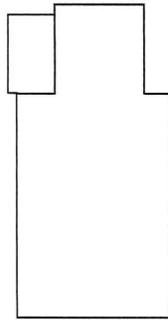
PUBLIC WALK

3029

3041

3055

3065



Plot
SCALE: 1" = 30'-0"

NeighborWorks
LINCOLN NEBRASKA

LOT 8 S STREET
1.215 RANCH

APPROVED BY



DATE:
Tuesday, June 1, 2021

Plot

PAGE:
1/1

A AA-30761

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

SURVEY RECORD

K & M inc.

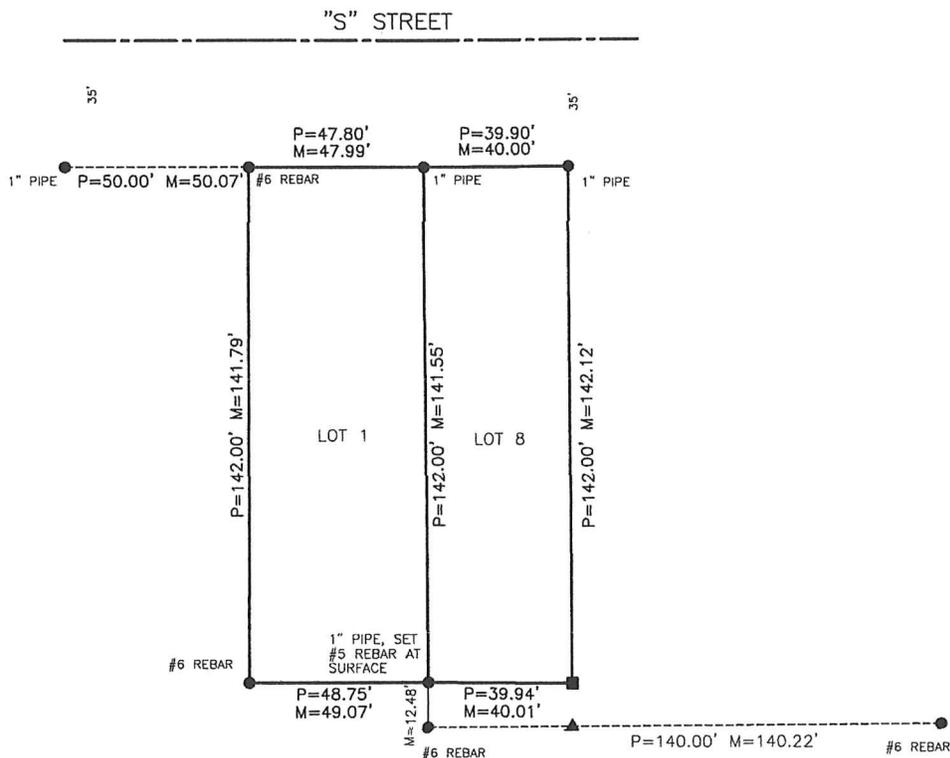
Land Surveying

PROJECT # 1808056
DATE: 9/10/2018

Survey Of: LOT 1, BLOCK 8, PITCHER & BALDWINS SUBDIVISION & LOT 8, BLOCK 22,
PECKS GROVE, LOCATED IN THE SOUTHWEST QUARTER OF

Section: 19 , T 10 N, R 7 E, of the 6th P.M. LINCOLN, LANCASTER County, Nebraska

3041 "S" STREET



SCALE 1" = 40'

RECEIVED

MAR 11 2019

LANCASTER COUNTY
ENGINEERING DEPT.

- P = Platted
- M = Measured
- = Found as noted
- = Set #5 Rebar & L.S. #483 Cap
- ▲ = Temporary/computed Point

SURVEYOR'S CERTIFICATE

I hereby certify that I have accurately surveyed the property in the above plat. All dimensions are in feet and decimals of a foot.

Signed this day of 3-1-2019

Billy Joe Kerr
Billy Joe Kerr, L.S. #483



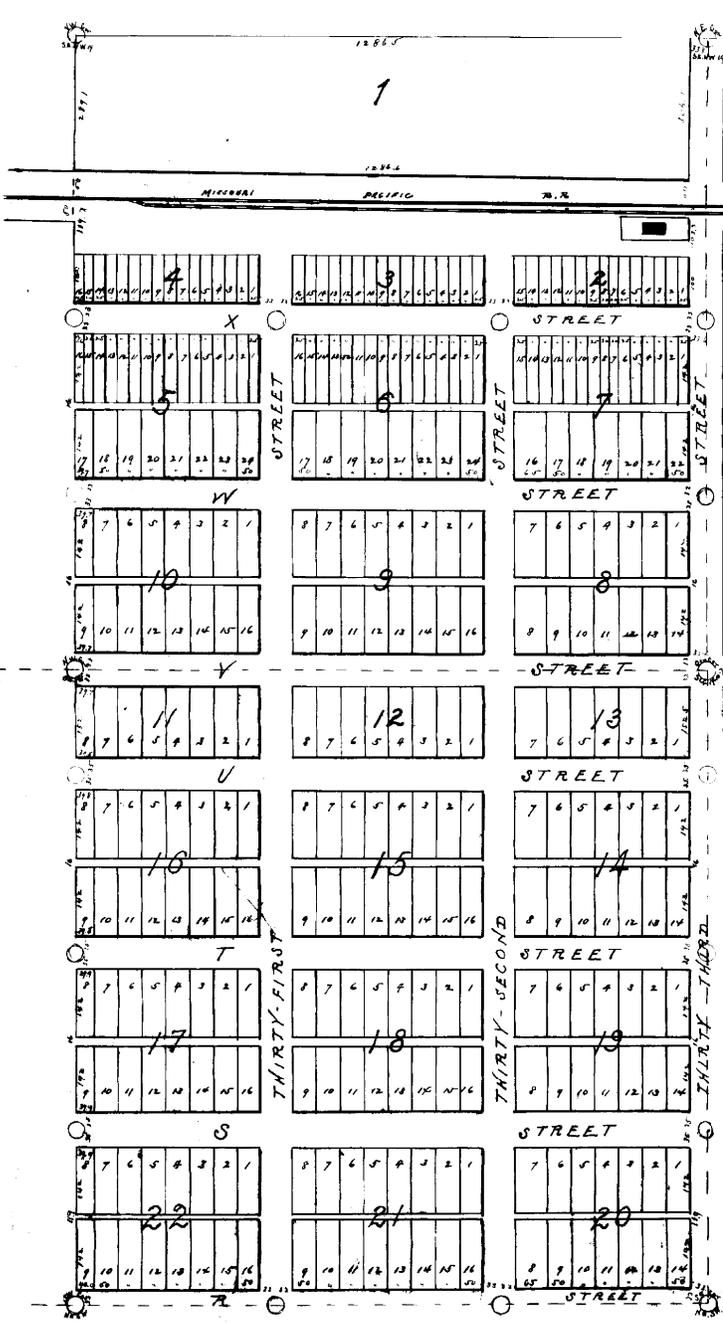
PECK'S GROVE

LANCASTER CO. NEB.

Scale, one inch = 200 feet.

LANCASTER COUNTY, NEB.
 Subscribed and sworn to before me
 and filed for record in
 Lancaster County, Neb.
 July 13 1886
 J. P. Matton
 County Clerk

DeBell
 Clerk



LEGEND.
 Peck's Grove, Lancaster, Co. Neb. comprises the S.E. 1/4 of the N.W. 1/4 and the N.E. 1/4 of the S.W. 1/4 of Section 19 T. 10 N. 7 E. of the S. 23 R. 7 E.
 T. Street is 33 feet wide.
 S, T and U Streets are each 70 feet wide.
 V, W, X, Thirty-first and Thirty-second streets are each 66 feet wide.
 Thirty-third street has dimensions as marked on the plat.
 Alleys are 16 feet wide except the alleys in blocks 20, 21 and 22 which are 11 1/2 feet wide.
 All streets and alleys are parallel with or at right angles to the south line of the T. 6 1/4 S.W. 1/4 of Section 19 T. 10 N. 7 E.
 All lots have dimensions as indicated in feet and decimals by red figures on the plat.
 Block figures indicate the lot's block number.
 Oak stakes are driven to the ground at the front corners of all lots and at the alley corners on the block lines. Stones are set at points marked 2 and 3.
 July 10th 1886.
 J. P. Matton
 Co. Surveyor.

Therefore, subdivision of the S.E. 1/4 N.W. 1/4 and the N.E. 1/4 S.W. 1/4 of Section 19 T. 10 N. 7 E. as appears on this plat is with the free consent and in accordance with the desire of the undersigned owner and proprietor.
 Signed this twelfth day of July A.D. 1886
 In presence of
 Patrick, Attorney
 Trustee

The State of Nebraska On this twelfth day of July
 Lancaster County A.D. 1886 before me the undersigned
 a Notary Public duly commissioned and qualified for
 and residing in said county personally came Frederick
 A. Hovey trustee to me personally known to be the
 identical person who executed the foregoing instru-
 ment and he acknowledged the same to be his voluntary
 act and deed.
 Witness my hand and Notarial Seal of Lincoln in said
 county the day and year last above written
 Kellover, Notary Public.



02 November 2021

To the City of Lincoln Board of Zoning Appeals,

Lincoln has a projected deficit of 17,123 housing units, including 5,465 that need to be affordable to low and moderate-income families. This proposed three-bedroom unit will be a welcome addition to the street and to the community as a whole. NeighborWorks Lincoln is adept at building high quality homes that fit into tight infill lots. NeighborWorks Lincoln homes not only respect their context but add value to neighbors and this project will be no different. The design will complement the historic rhythm and scale of the street and observe all required setbacks.

The plat enclosed shows the recorded width* of the parcel being just three inches (0.6%) shy of 40'-0", thus we humbly ask for a BZA waiver to the minimum required lot width in order to build a single family home on this site. At 24' wide, the one-story home will not feel crowded nor will it crowd the neighbors (especially since it is bordered by a side yard and a driveway on its east and west borders, respectively). The home will benefit from both a generous backyard and a pedestrian oriented front yard/porch. Most importantly, it will be an affordable single-family homeownership opportunity in a very difficult residential market.

Thank you for your consideration in this matter.

Best,



Wayne Mortensen, AIA
NeighborWorks Lincoln CEO

(402.541.9210)

*Included within our documentation is a recent survey that suggests the legal width may need to be revised, but are confident in our ability to address any lot width concerns regardless of actual dimension.

