

**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

**October 29, 2021**

# CITY BOARD OF ZONING APPEALS

Notice is hereby given that the **CITY BOARD OF ZONING APPEALS** will hold a public hearing on **Friday, October 29, 2021**, at **1:30 p.m.** in the **City Council Chambers** on the 1<sup>st</sup> 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

**October 29, 2021**

1. Election of Chair and Vice Chair
2. Approval of the minutes of the City Board of Zoning Appeals hearing, held May 29, 2020.

### ADMINISTRATIVE ACTION

3. 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.

\* \* \* \* \*

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.

**CITY BOARD OF ZONING APPEAL #21002**

**DATE SCHEDULED FOR PUBLIC HEARING:**

October 29, 2021

**ADDRESS:**

6009 Rainbow Circle

**LEGAL DESCRIPTION:**

Lot 12, Block 2, Colonial Hills Eighth Addition, SW1/4 of Section 9-9-7, Lincoln, Lancaster County, Nebraska.

**EXISTING LAND USE AND ZONING:**

Single-family Residential

R-1 Residential

**SURROUNDING LAND USE AND ZONING:**

North: Residential

R-1

South: Residential

R-1

East: Residential

R-1

West: Residential, Commercial

R-1, B-5

**TYPE(S) OF APPEAL(S):**

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE PER LINCOLN MUNICIPAL CODE 27.72.120(C)(1).

1. A. Lincoln Municipal Code (LMC) Section 27.72.120(C)(1) Accessory buildings may, if located not less than sixty feet from the front lot line, extend into the required side yard though not closer than two feet to the side lot line in the R-1 through R-8, O-1\*, O-2, O-3, B-1\*, B-3\*, B-4, all H, and the I-2 zoning districts, provided that such accessory buildings shall not be more than fifteen feet in height. A reduction in the front setback requirement from 60' to 53' is being requested.

**STAFF FINDINGS:**

1. The property is located at 6009 Rainbow Circle. There is a single-family dwelling and accessory buildings on the lot. This request affects a new garage under construction on the west side of the dwelling as shown on the attached site plan. The property is zoned R-1 residential where the setbacks are as follows: Front – 30'; Side – 10'; Rear – 20' or 20% of the lot depth, whichever is less.
2. Accessory buildings may be located closer to the side lot line than the 10' of the R-1 zoning district provided the provisions of (LMC) Section 27.72.120(C)(1) are met which states "Accessory buildings may, if located not less than sixty feet from the front lot line, extend into the required side yard though not closer than two feet to the side lot line in the R-1 through R-8, O-1\*, O-2, O-3, B-1\*, B-3\*, B-

- 4, all H, and the I-2 zoning districts, provided that such accessory buildings shall not be more than fifteen feet in height.”
3. In this case, the new garage is located 53' from the front lot line. As a result of not being set back 60' from the front lot line it is not eligible to for the reduced 2' side yard setback.
  4. The attached site plan which was approved for a building permit shows the new garage setback 53' from the front lot line, but 3' from the side lot line. The site plan was approved for construction showing these dimensions and the applicant proceeded with building the garage which to this point has been framed.
  5. The applicant contacted the Department of Building and Safety and requested a framing inspection as required. Upon inspection the inspector noted that the new garage did not meet the required setback. He noted that it either needed to be 60' from the front lot line to maintain a 3' side setback or relocated out of the 10' side yard if it stayed at 53' from the front lot line.
  6. The foundation is complete and the building has been framed. Cutting off 7' of the building does not appear viable given the structural issues involved. Also, there does not appear to be a viable alternate location that a variance to either the 60' front setback or the 10' side yard setback would not be required. Moving it back 7' brings it to within 1' of another accessory building which is already less than 6' from the dwelling. The accessory buildings in proximity to one another in that manner (less than 6' from the home and each other) means the setbacks for the dwelling apply including a side setback of 10'.
  7. The subject lot is irregular in shape, but not unusually so for lots located on cul-de-sacs where front yards are typically narrower and rear yards are wider. However, the placement of the home on the lot helps to clearly differentiate between the front yard and rear yard. Due to the narrower front lot line the dwelling largely shields the side and rear yards when compared to a typical rectangular-shaped lot.
  8. The property potentially impacted the most is adjacent to the west. The extent of the shared lot line between the two lots is a side yard. Starting at the 30' required front setback, the neighboring dwelling extends approximately 60' along this side lot line. Whether the new garage is located 53' or 60' from the front lot line would have little impact on this property, it is adjacent to the side of the house in either case.
  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 leave the new garage in its current location. If the request is denied, the petitioner will be required to relocate the garage to comply with the setbacks of the R-1 zoning district.

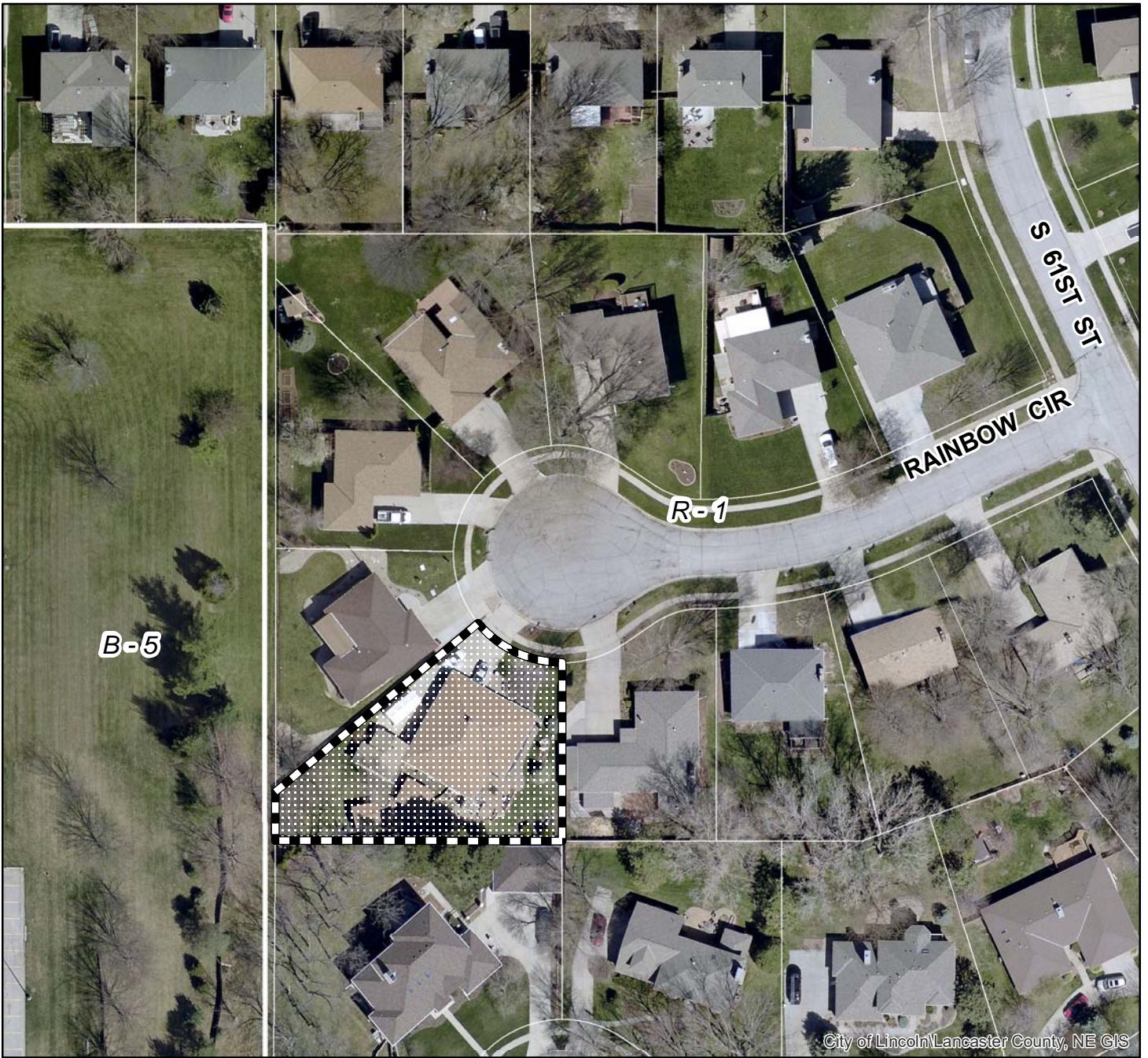
Prepared by

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Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
October 12, 2021

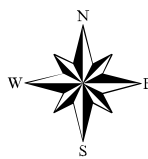
**APPLICANT/  
CONTACT/  
PETITIONER:**

Jerome Vrtiska  
6009 Rainbow Court  
Lincoln, NE 68516  
[mvtiska@neb.rr.com](mailto:mvtiska@neb.rr.com)  
402-328-8814



**Board of Zoning Appeals #: BZA21002**  
**S 61st St & Rainbow Cir**

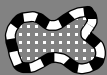


2020 aerial

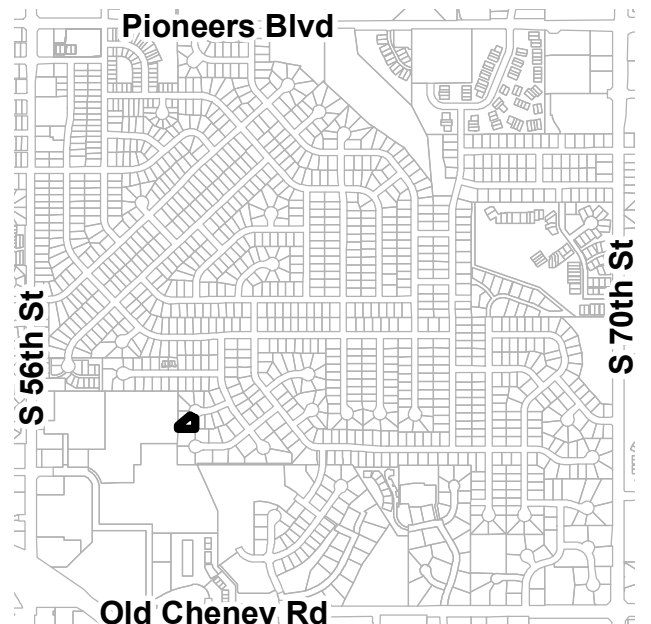


**One Square Mile:**  
**Sec.09 T09N R07E**

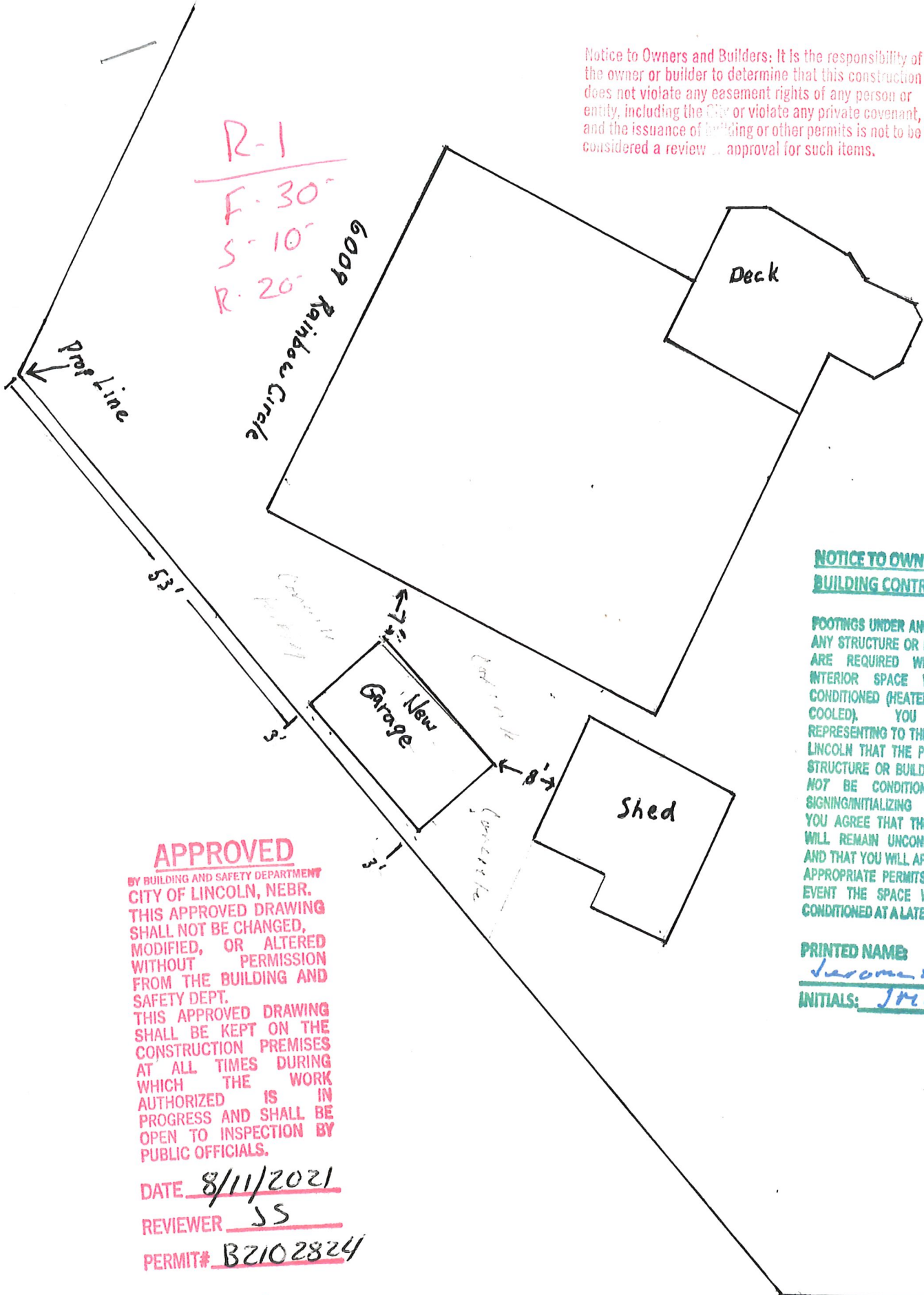
**Zoning:**

- 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

	Area of Application
	Zoning Jurisdiction Lines
	Lancaster County Jurisdiction



Notice to Owners and Builders: It is the responsibility of the owner or builder to determine that this construction does not violate any easement rights of any person or entity, including the City or violate any private covenant, and the issuance of building or other permits is not to be considered a review or approval for such items.



**NOTICE TO OWNERS AND BUILDING CONTRACTORS**

FOOTINGS UNDER AND AROUND ANY STRUCTURE OR BUILDINGS ARE REQUIRED WHEN THE INTERIOR SPACE WILL BE CONDITIONED (HEATED AND/OR COOLED). YOU ARE REPRESENTING TO THE CITY OF LINCOLN THAT THE PROPOSED STRUCTURE OR BUILDING WILL NOT BE CONDITIONED. BY SIGNING/INITIALIZING BELOW, YOU AGREE THAT THE SPACE WILL REMAIN UNCONDITIONED AND THAT YOU WILL APPLY FOR APPROPRIATE PERMITS IN THE EVENT THE SPACE WILL BE CONDITIONED AT A LATER TIME.

PRINTED NAME:

Jacoma Rehtiska

INITIALS: JRV

**APPROVED**

BY BUILDING AND SAFETY DEPARTMENT  
CITY OF LINCOLN, NEBR.  
THIS APPROVED DRAWING SHALL NOT BE CHANGED, MODIFIED, OR ALTERED WITHOUT PERMISSION FROM THE BUILDING AND SAFETY DEPT.  
THIS APPROVED DRAWING SHALL BE KEPT ON THE CONSTRUCTION PREMISES AT ALL TIMES DURING WHICH THE WORK AUTHORIZED IS IN PROGRESS AND SHALL BE OPEN TO INSPECTION BY PUBLIC OFFICIALS.

DATE 8/11/2021

REVIEWER SS

PERMIT# BZ102824

Planning Board Members

The purpose of my application is to get a variance on the distance of my structure from the front property line. As my site plan indicates I am 53' from the front property line and the site plan was approved by Building and Safety. When I called for an inspection after framing was done, I was informed by the inspector that the structure needed to be 60' from front property line.

The structure cannot be moved back as there is no room to move it 7'. I relied on Building and Safety to let me know if my plan was acceptable or not and since they approved the plans I figured everything was good.

I hope you will agree to give me a variance on this structure as I have put a lot of time and money into this project and the permit was approved as submitted.

Thank you



Jerome Vrtiska

## MEETING RECORD

**NAME OF GROUP:**

**CITY BOARD OF ZONING APPEALS**

**DATE, TIME AND  
PLACE OF MEETING:**

Friday, May 29, 2020, 1:30 p.m., City Council Chambers,  
First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln,  
Nebraska

**MEMBERS IN  
ATTENDANCE:**

Tracy Edgerton, David Johnson, Vickie McDonald, Steve  
Miller; Annette McRoy absent. Tim Sieh of the Law  
Department; Ron Rehtus of the Building and Safety  
Department (via broadcast); Brian Will and Rhonda Haas of  
the Planning Department.

**STATED PURPOSE  
OF MEETING:**

Regular City Board of Zoning Appeals meeting.

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

The first order of business was approval of the minutes of the City Board of Zoning Appeals hearing of March 29, 2019. Motion for approval made by McDonald, seconded by Miller and carried 4-0: Edgerton, Johnson, McDonald, Miller and voting 'yes'; McRoy absent.

**BOARD OF ZONING APPEALS 20002**

**REQUESTED BY GLACIER PARK, LLC, FOR A VARIANCE TO HEIGHT OF LINCOLN MUNICIPAL  
CODE AIRPORT ZONING 27.59.040, TO ALLOW INSTALLATION OF TOWERS, WHICH EXCEED  
THE 150-FOOT MAXIMUM ALLOWED HEIGHT ABOVE ELEVATION, ON PROPERTY GENERALLY  
LOCATED AT 4201 NW 70TH STREET**

**PUBLIC HEARING:**

**May 29, 2020**

There were ex parte communications disclosed. Board Member Johnson stated that he personally knows the applicant, and has worked with them in the past, and he further stated they are currently working on a project together; however, the project has nothing to do with what is before him today.

**Ann Post, Baylor Evnen, 1248 O Street, Suite 600**, came forward on behalf of Glacier Park, LLC and Doug Rath. She stated that they are requesting a variance to allow the installation of a 60-foot tower on property just west of Lincoln. She shared that the applicant has acquired two 60-foot towers, which used to stand at the State Fairgrounds Racetrack. The towers originally installed in the 1940s, were used to allow race officials to sit and observe the racing. The towers remained in place, until the grounds were converted into Innovation Campus. The applicant removed the towers in an effort to preserve them as part of Lincoln's history. Post stated the

applicant wants to install a tower on their property in a location that will allow for recreational viewing of the area, and a potential use for hunting. They are limited to where the tower is placed because of the way the tower is enclosed, which only allows for a view from one side. In 2019, a special permit approved and allowed for the installation of the towers at the 60-foot height, which does exceed the 35-foot maximum height of AG zoning. Post stated at that time it was stated that this property also falls within the Airport Zoning Regulations. The Airport Zoning Regulations is another layer of zoning over current zoning to prevent the creation of airport hazards. This property falls within the Turning Zone of the Lincoln Airport Zoning Regulations, which states that structures that are 150-feet above the nearest runway end are not allowed. At the proposed location, the tower would stand 176.9 feet above the nearest runway. Post stated the Lincoln Airport Authority has stated they did not see an issue with this. An application with the Federal Aviation Administration (FAA) for a determination of no airport hazard was submitted. The official letter received stated that the proposed tower would not create an airport hazard, which was included in the board member's packet. Post noted that the request for the variance is not from the general zoning code, but from the Airport Zoning Regulations. There are special circumstances for this application because these towers are part of Nebraska's History. She shared this will honor what the towers were and keep them useful in and around the community.

Johnson asked if they would be installing both towers. Post stated they are just requesting to install one tower. Post added that when they install the second tower it will be in a place where this process is not necessary.

Miller inquired if there were any other stipulations required from the FAA. Post said no, but the applicant is required to inform the FAA when installed.

McDonald asked if they would be installing any type of satellite or monitoring systems for the internet. Post said no.

Miller asked if the property has lower elevations where the tower could be installed and why they selected this location. Post shared the location selected is higher on the property and would provide a nice view of Lincoln. This location is also an ideal spot to view the rest of the property for hunting. Miller asked if the tower would be visible from the adjoining properties. Post could not say for sure that it would not be visible.

McDonald asked about steps leading to the top of the tower. Post explained it would be a ladder and not stairs, and when not in use a section of the ladder will be removed to prevent others from climbing to the top.

Mill stated that this would add a certain degree of security to the tower. Post said yes, they are committed to making this a safe.

There was no public testimony in support or opposition.

**Staff Questions:**

Johnson asked about the criteria that needs to be met by the applicant before approved. **Tim Sieh, City Attorneys' Office**, came forward and stated that the Stated of Nebraska has a State Statute that makes a specific exception for this type of installation. Sieh stated if an application is reviewed and approved, then the written documentation from the FAA, serves as sufficient factual basis to grant a variance of this type.

**APPEAL NO. 20002**

**ACTION BY THE CITY BOARD OF ZONING APPEALS:**

**May 29, 2020**

Miller moved to grant the variance on the height restriction to Glacier Park, LLC for the installation of the tower based on the determination of no hazard from the FAA, seconded by Edgerton and carried 4-0: Edgerton, Johnson, McDonald, Miller and voting 'yes'; McRoy 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.