

**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

**August 26, 2022**

# CITY BOARD OF ZONING APPEALS

Notice is hereby given that the **CITY BOARD OF ZONING APPEALS** will hold a public hearing on **Friday, August 26, 2022**, at **01:30 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.

## **AGENDA**

**August 26, 2022**

1. Approval of the minutes of the City Board of Zoning Appeals hearing, held May 27, 2022.

### **ADMINISTRATIVE ACTION**

2. BOARD OF ZONING APPEALS 22003, a request for a variance to the side yard setback for a garage attached to a dwelling, on property located at 620 South 55<sup>th</sup> Street.
3. BOARD OF ZONING APPEALS 22004, a request for a variance to the minimum lot area requirement, on property located at 240 North 33<sup>rd</sup> Street.
4. BOARD OF ZONING APPEALS 22005, a request for an exception to reduce the parking requirement in the B-3 zoning district, on property located at 6101 Platte Avenue.
5. BOARD OF ZONING APPEALS 22006, an appeal of an administrative official's decision, associated with property generally located at 4575 South 1st Street

\* \* \* \* \*

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.

F:/Boards/CityBZA/Agendas/2021/102921.wpd

**CITY BOARD OF ZONING APPEAL #22003**

**DATE SCHEDULED FOR PUBLIC HEARING:**

August 26, 2022

**ADDRESS:** 620 South 55<sup>th</sup> Street

**LEGAL DESCRIPTION:** The north 55' of Lot 14, Randolph Acres, located in the NE 1/4 of Section 29-10-7, Lincoln, Lancaster County, Nebraska.

**EXISTING LAND USE AND ZONING:**

Residential

R-2 Residential

**SURROUNDING LAND USE AND ZONING:**

North: Residential

R-2

South: Residential

R-2

East: Residential

R-2

West: Residential

R-2

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

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE PER LINCOLN MUNICIPAL CODE 27.75.020(B)(1).

1. Lincoln Municipal Code (LMC) Section 27.72.020(A) - In the R-2 zoning district the side yard setback for primary buildings is 5', and the side yard setback for accessory buildings is 3'. If an accessory building is connected to a primary building or located less than 6' away, then the setback of the primary building applies.
2. Lincoln Municipal Code (LMC) Section 27.72.120(B) – Accessory buildings which are attached to or not located more than (1) six feet from the main building in the R-1 through R-8, O-1\*, B-1\*, and B-3\* zoning districts and (2) 10 feet from the main building in the AG, AGR, O-2, O-3, B-4, B-5, all H, and I-2 zoning districts shall be considered a part of the main building and shall comply with the height, front, side, and rear yard requirements of the main building, except that an accessory building attached to the main building by an unenclosed deck or walkway shall not be considered part of the main building, nor subject to the height and yard requirements of the main building.
3. Lincoln Municipal Code (LMC) Section 27.72.120(C) - Accessory buildings which are not a part of the main building: a - 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; b - May be located in the required rear yard, provided that such accessory buildings shall not be nearer than two feet to the side or rear lot line in the AG, AGR, R-1 through R-8, O-1\*, O-2, O-3, B-1\*, B-3\*, B-4, B-5, all H, and the I-2 zoning districts.

#### **STAFF FINDINGS:**

1. The subject property is the north 55' of Lot 14, Randolph Acres in the northeast ¼ of Section 29-10-7, addressed as 620 South 55<sup>th</sup> Street. It is developed with a single-family dwelling and an attached garage still under construction.
2. The petitioner is requesting a variance to the side yard setback from 5' to 4.68' to allow the attached garage which is still under construction to remain. As constructed, the applicable side yard setback is 5'.
3. LMC 27.72.020(A) requires a 5' side yard setback for primary structures in the R-2 zoning district. The side yard setback for detached accessory structures is 2' provided it is both located more than 6' away from the primary structure and not attached to it. If the accessory does not comply with those criteria the required side yard setback becomes that of the primary structure, which is 5'.
4. It should be noted that the 2' side and rear setback of the Zoning Ordinance is only permitted by the Uniform Building Code if the walls adjacent to the side and rear lot lines are both fire-rated and have no openings. If not, the setback is increased to 3' and this is commonly used as the typical setback from side and rear lot lines. Providing the additional 1' of setback is the preference of most permittees as opposed to having to fire-rate the walls and have no openings such as doorways and windows.
5. The petitioner applied for a building permit for a detached accessory building that complied with the applicable 3' side yard setback and was approved for construction. That site plan submitted to the Department of Building and Safety did not show the garage attached to the home with a covered breezeway. Upon inspection after construction had commenced it was noted that the garage was attached to the dwelling by a covered patio structure which was not shown on the building permit plans. The setback was questioned and a survey of the property confirmed that the partially complete garage was set back only 4.68' and not the 5' required when attached to the dwelling.
6. The building permit would not have been approved had the plans submitted shown the garage attached to the dwelling and set back less than 5' from the side lot line. Removal of the attaching covering brings the garage into compliance with the Zoning Ordinance and Building and Safety will remove the hold on the building permit and allow the garage to be completed.

7. The error is regrettable but ultimately it is a self-imposed hardship as the covered breezeway was not approved for construction by Building and Safety. It does not meet the requirements of the Zoning Ordinance and coming into compliance does not deprive the petitioner a reasonable use of the property. The single-family dwelling will remain and can be used for that purpose, and if the breezeway is removed the garage can be completed and used as such.
8. 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.

If the variance is approved the petitioner will be allowed to retain the covered breezeway attaching the garage to the dwelling. If the variance is denied the covered breezeway must be removed but the garage can be completed and used for that purpose.

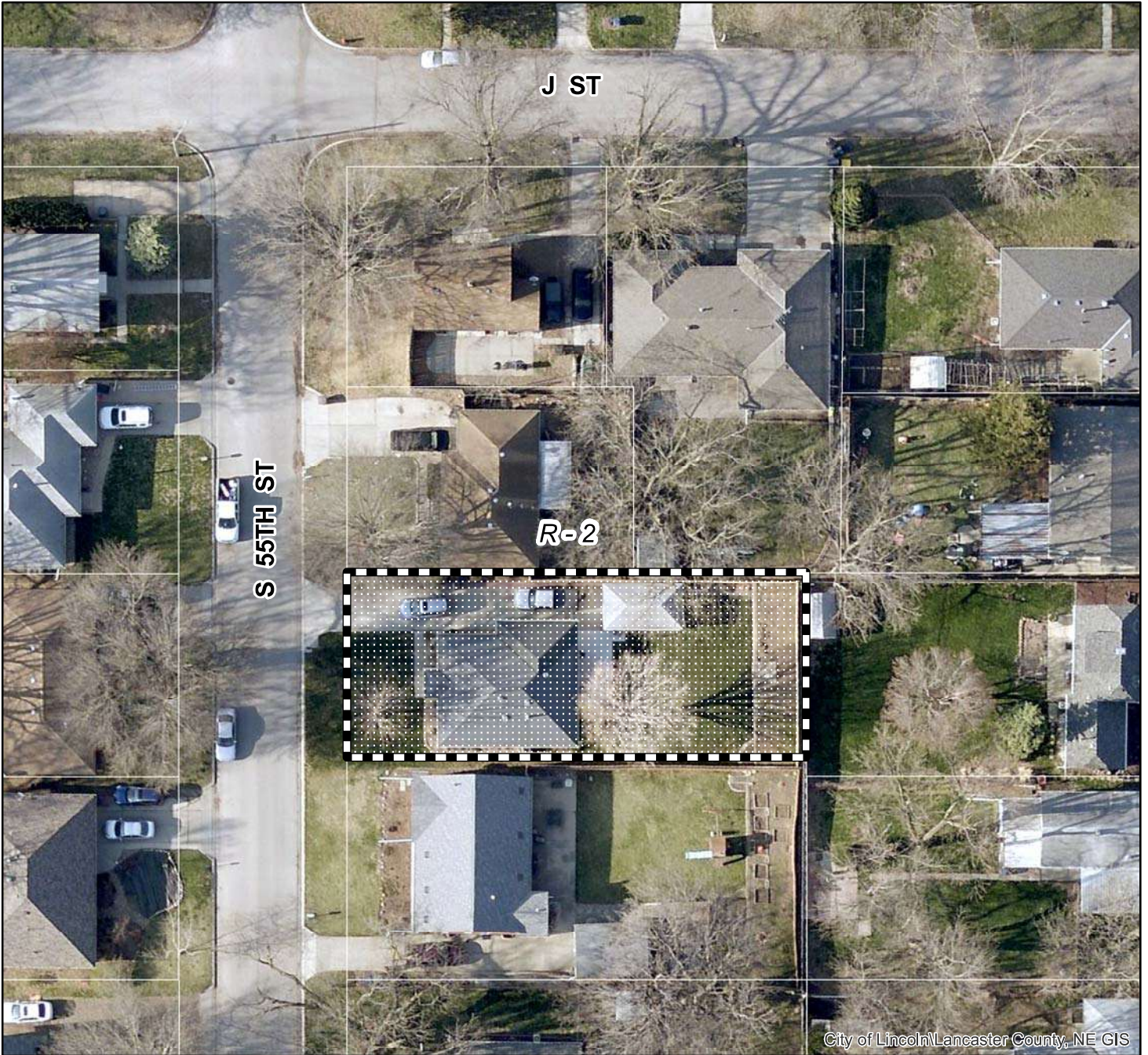
Prepared by

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Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
August 16, 2022

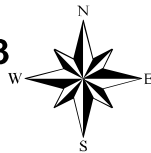
**APPLICANT/  
CONTACT/  
PETITIONER:**

Torrey Baker  
620 South 55<sup>th</sup> Street  
Lincoln, NE 68510  
402-304-4018  
[Torrey.baker@doane.edu](mailto:Torrey.baker@doane.edu)



2020 aerial

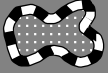


**Board of Zoning Appeals #: BZA22003**  
**S 55th St & J St**

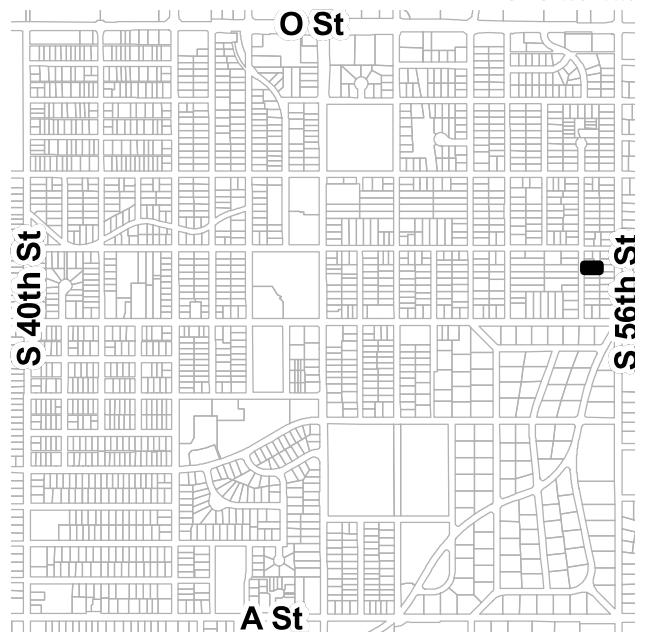


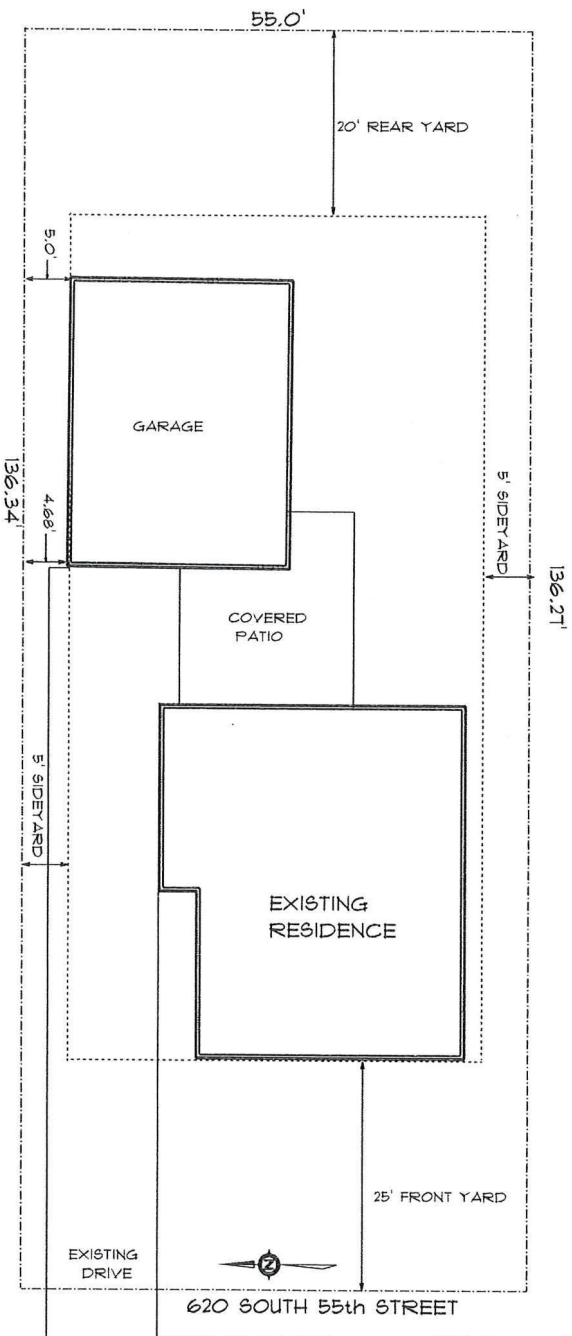
**Zoning:**

- 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.29 T10N R07E**

	Area of Application
	Zoning Jurisdiction Lines
	Lancaster County Jurisdiction





NORTH 55' OF LOT 14  
 RANDOLPH ACRES  
 LINCOLN, LANCASTER COUNTY,  
 NEBRASKA

ZONE R2

# PLOT

SCALE: 1" = 20'-0"

*Garage - Patio Cover*

Project: 620 South 55th Street  
 Address: Lincoln, NE

APPROVED BY: \_\_\_\_\_

**SAYER**  
 DRAFTING  
 AND  
 DESIGN

By Paul Sayer 402-560-8016

THESE PLANS ARE THE PROPERTY OF THE OWNER LISTED ABOVE. OWNER TO SIGN ALL EXCHANGES TO THESE PLANS PRIOR TO CONSTRUCTION. DANGER ASSUMES ALL LIABILITIES OF DESIGN AND CONSTRUCTION. OWNER TO BE SAFE CONSTRUCTION. CONFORMS TO ALL BUILDING CODES.

Plot

DRAWN BY: \_\_\_\_\_

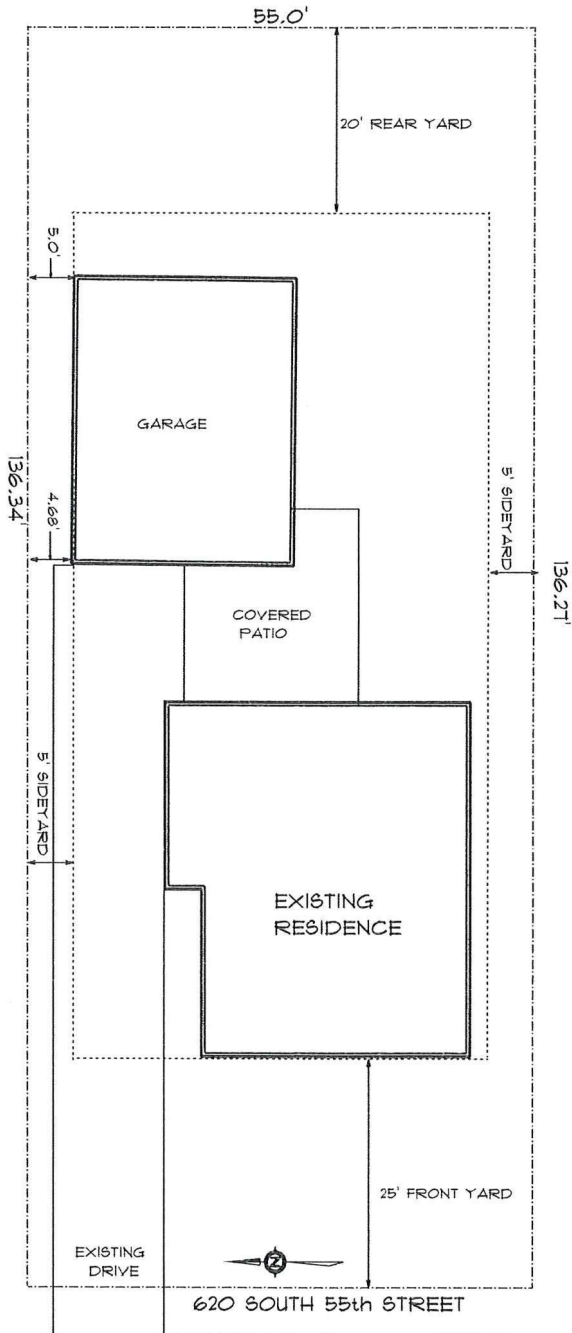
SCALE: As Noted

DATE: Tuesday, July 12, 2022

PAGE: 3 / 3

# PLOT

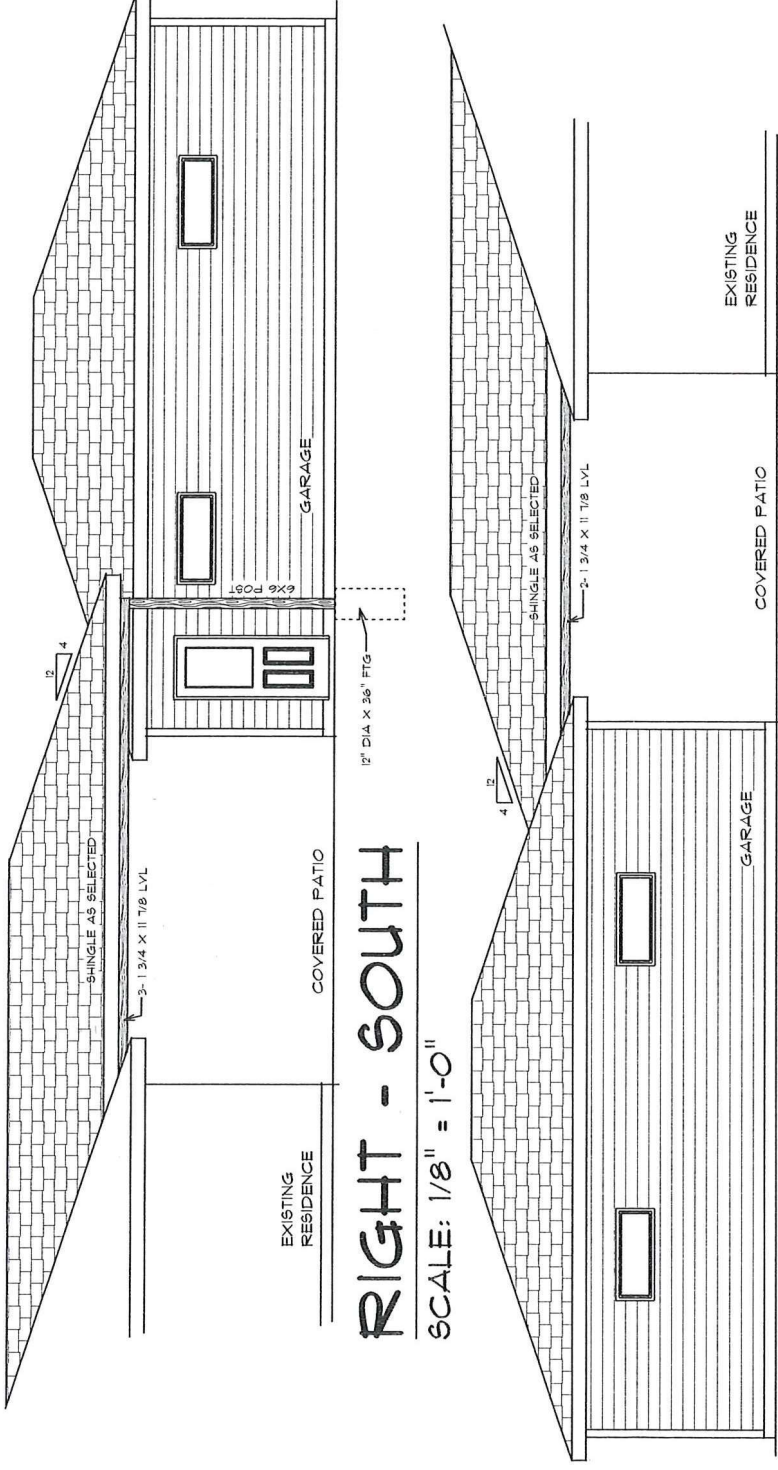
SCALE: 1" = 20'-0"



NORTH 55' OF LOT 14  
 RANDOLPH ACRES  
 LINCOLN, LANCASTER COUNTY,  
 NEBRASKA

ZONE R2

<p><b>TOMMY SANDER</b>  <i>Lincoln, Nebraska</i></p> <p>Project: 620 South 55th Street          Address: Lincoln, NE</p> <p>Garage - Patio Cover</p> <p>APPROVED BY: _____</p>		<p><b>SAYER DRAFTING AND DESIGN</b></p> <p>By Paul Sayer 402-560-6016</p> <p>THESE PLANS ARE THE PROPERTY OF THE OWNER LISTED ABOVE. OWNER TO VERIFY ALL DIMENSIONS AND SPECIFICATIONS PRIOR TO CONSTRUCTION. OWNER ASSUMES ALL LIABILITIES OF DESIGN AND CONSTRUCTION. OWNER TO BE SAFE CONSTRUCTION ACCORDING TO ALL NEBRASKA CODES.</p>	
<p>Plot</p>		<p>DRAWN BY: _____</p> <p>SCALE: As Noted</p> <p>DATE: Tuesday, July 12, 2022</p>	
<p>PAGE: 3 / 3</p>			

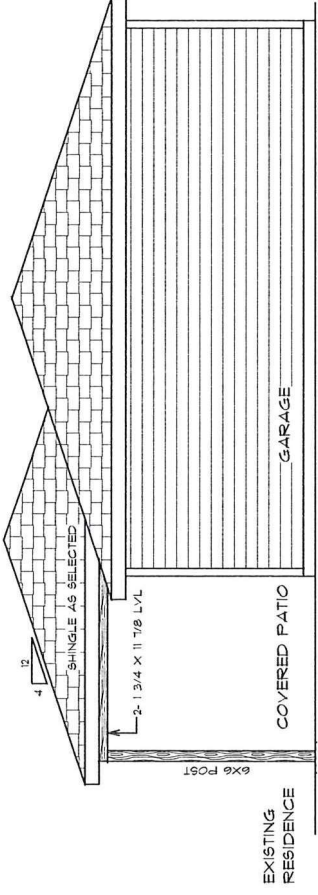


# RIGHT - SOUTH

SCALE: 1/8" = 1'-0"

# LEFT - NORTH

SCALE: 1/8" = 1'-0"



# REAR - EAST

SCALE: 1/8" = 1'-0"

Project: 620 South 55th Street  
 Address: Lincoln, NE  
 Garage - Patio Cover  
 APPROVED BY:

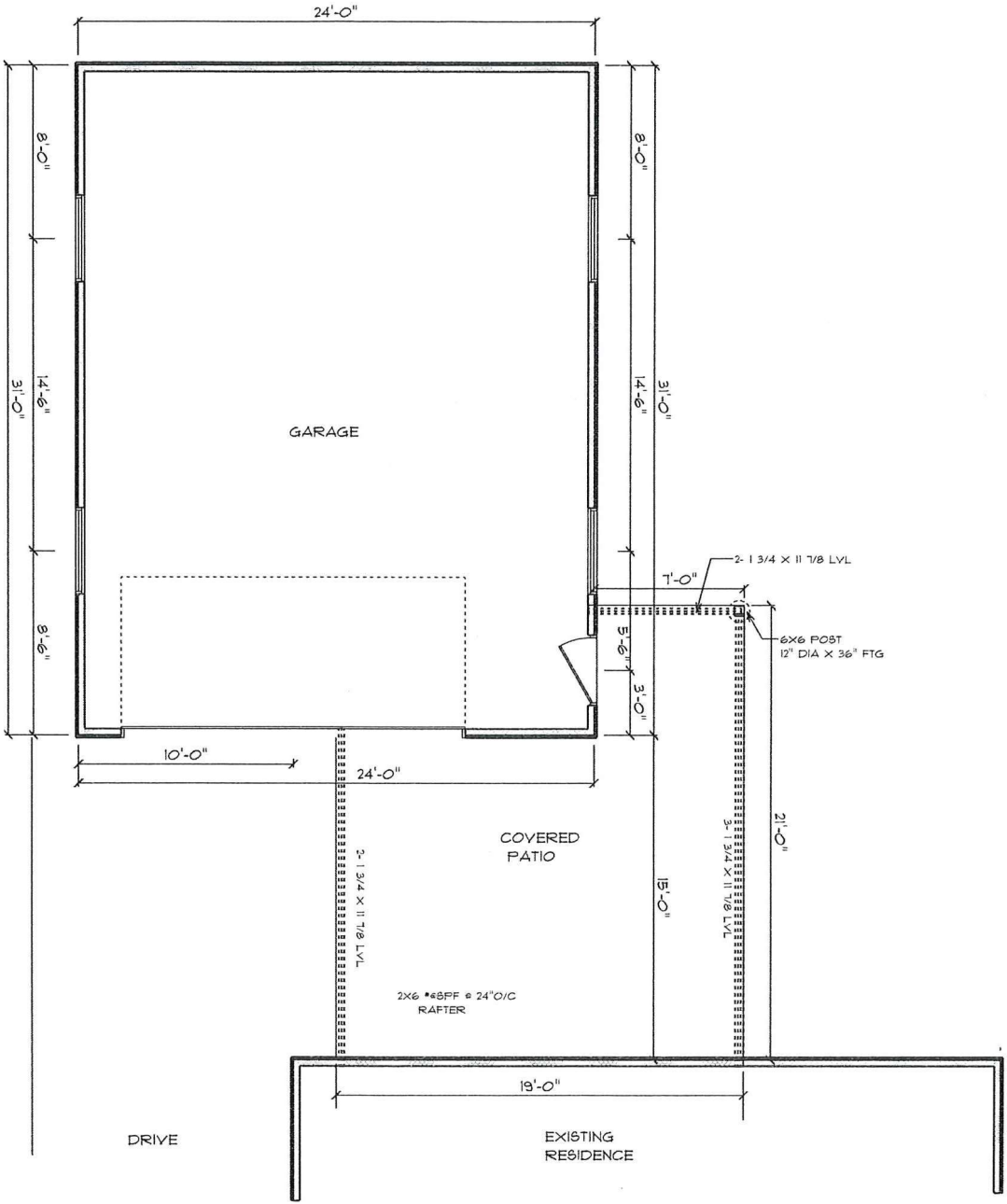
SAYER  
 DRAFTING  
 AND  
 DESIGN  
 402.950.0119

DRAWN BY:  
 SCALE: As Noted  
 DATE: Tuesday, July 12, 2022  
 PAGE: 1 / 3

Elevation

# FIRST FLOOR

SCALE: 1/8" = 1'-0"



Approved By: \_\_\_\_\_  
 Project: 4520 South 85th Street  
 Address: Lincoln, NE  
 Garage - Patio Cover

**SAYER**  
 DRAFTING  
 AND  
 DESIGN  
By Paul Sayer 402.560.5016  
THESE PLANS ARE THE PROPERTY OF THE OWNER LISTED ABOVE. OWNER TO VERIFY ALL DIMENSIONS AND SPECIFICATIONS PRIOR TO CONSTRUCTION. OWNER ASSUMES ALL LIABILITIES OF DESIGN AND CONSTRUCTION. THEREOF, OWNER TO BE SURE CONSTRUCTION CONFORMS TO ALL BUILDING CODES.

**First Floor**  
 DRAWN BY: \_\_\_\_\_  
 SCALE: As Noted  
 DATE: Tuesday, July 12, 2022  
 PAGE: **2 / 3**

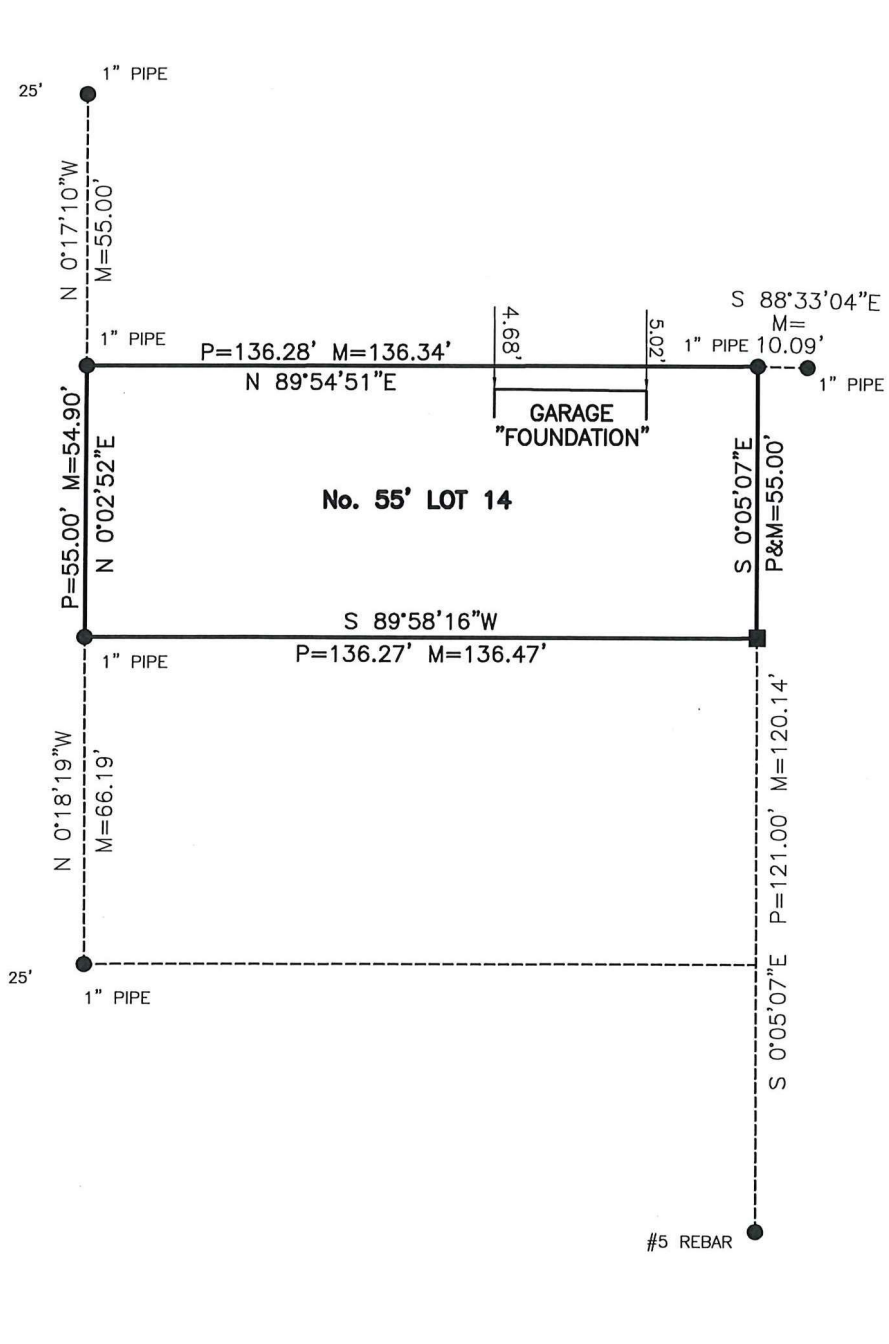
Survey Of: THE NORTH 55' OF LOT 14, RANDOLPH ACRES, LOCATED IN THE NORTHEAST QUARTER OF

Section: 29 , T 10 N, R 7 E, of the 6th P.M. LINCOLN, LANCASTER County, Nebraska

620 So. 55th STREET

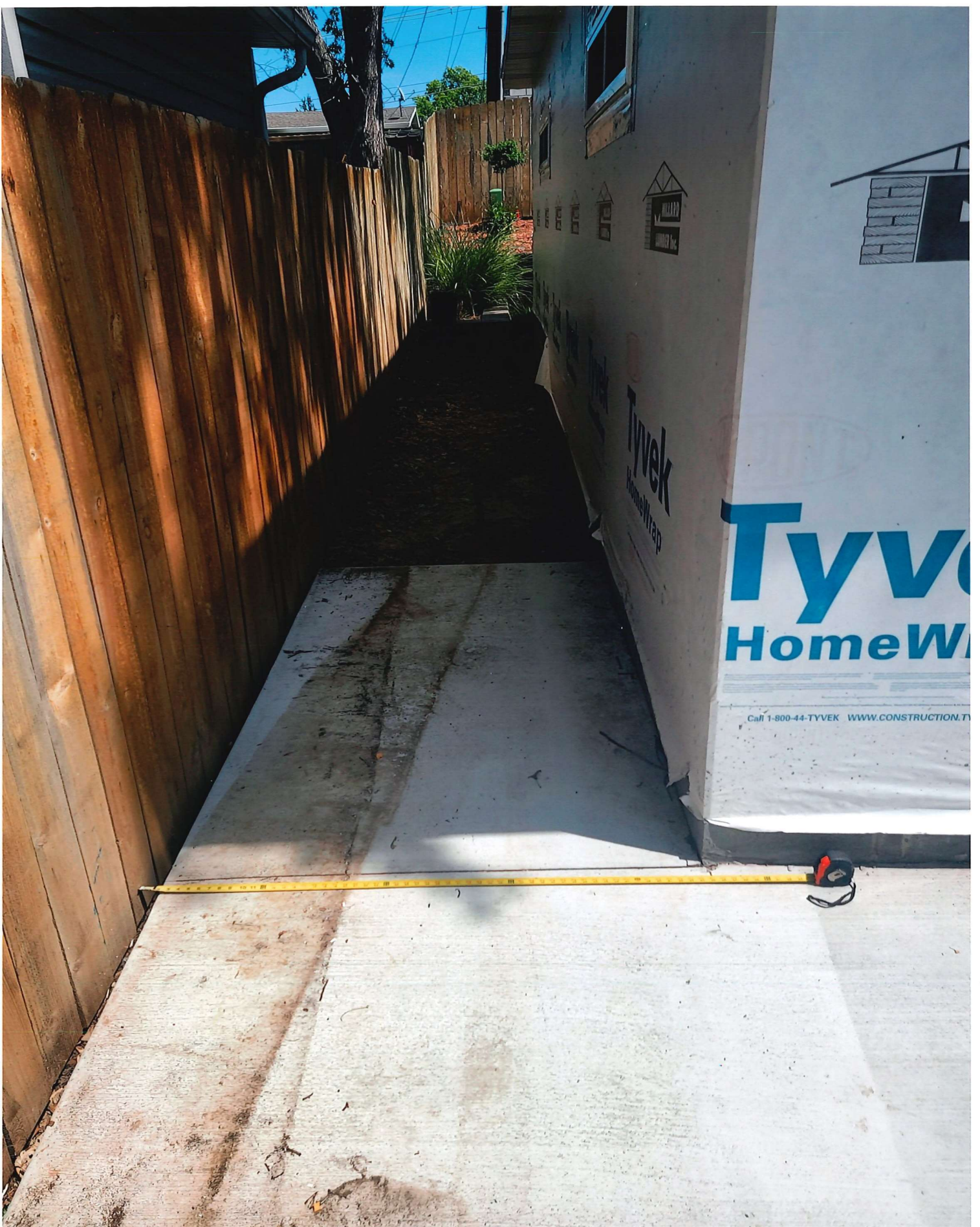


So. 55th STREET

















Torrey Baker  
620 S.55<sup>th</sup> St  
Lincoln, NE 68510  
8/4/22

City Board of Zoning Appeals  
555 S 10<sup>th</sup> St, Ste 213  
Lincoln, NE 68508

Members of the Board:

I am requesting a variance regarding the offset for the north side of the new garage-patio structure connected to my house which was built by my contractor at less than five feet. Currently, the garage's NE corner is five feet from my north property line while the NW corner is only at 4.68 feet. Unknown to me, Goings Homes, the company I hired to build this structure, input a building permit for only the garage without the patio attachment included on the plans. Goings Homes has since gone bankrupt and no longer responds to my calls or emails. The garage-patio is fully framed, sheeted, and shingled with electrical fully installed.

For a distance of less than four inches on the garage's NW corner, I am requesting a variance so I can amend my current building permit or request a new permit so I can finish this project without removing the patio connecting the house and garage. It would come at great monetary cost and time to tear down the patio structure. I truly had no idea the garage was not constructed to meet zoning regulation, as I had contracted Goings Homes for major remodeling projects in the past and trusted them to input the building permit properly and build the structure to meet all city zoning regulations. The neighbors on my north property line have no issues with the current configuration of the garage-patio nor do they object to where the garage currently sits. The present condition of the garage's NW corner is imperceptible from the street and does not present an eyesore for the neighborhood.

I have enclosed copies of a land survey for my property, new design plans for the garage-patio, the garage's truss design plans, the original garage design plans submitted by Goings Homes for the building permit, and photographs of the structure as it stands right now.

Thank you for your time and consideration regarding this request.

City Board of Zoning Appeals

8/4/22

Page 2

Sincerely,



Torrey J. Baker

Enclosure:

Property Land Survey - created 6/8/22

Garage-Patio Design Plans – created 7/12/22

Garage truss design plans – created 2/3/21

Goings Homes garage plans submitted 10/21/20 for Building Permit #B2003704

Photographs taken 8/2/22

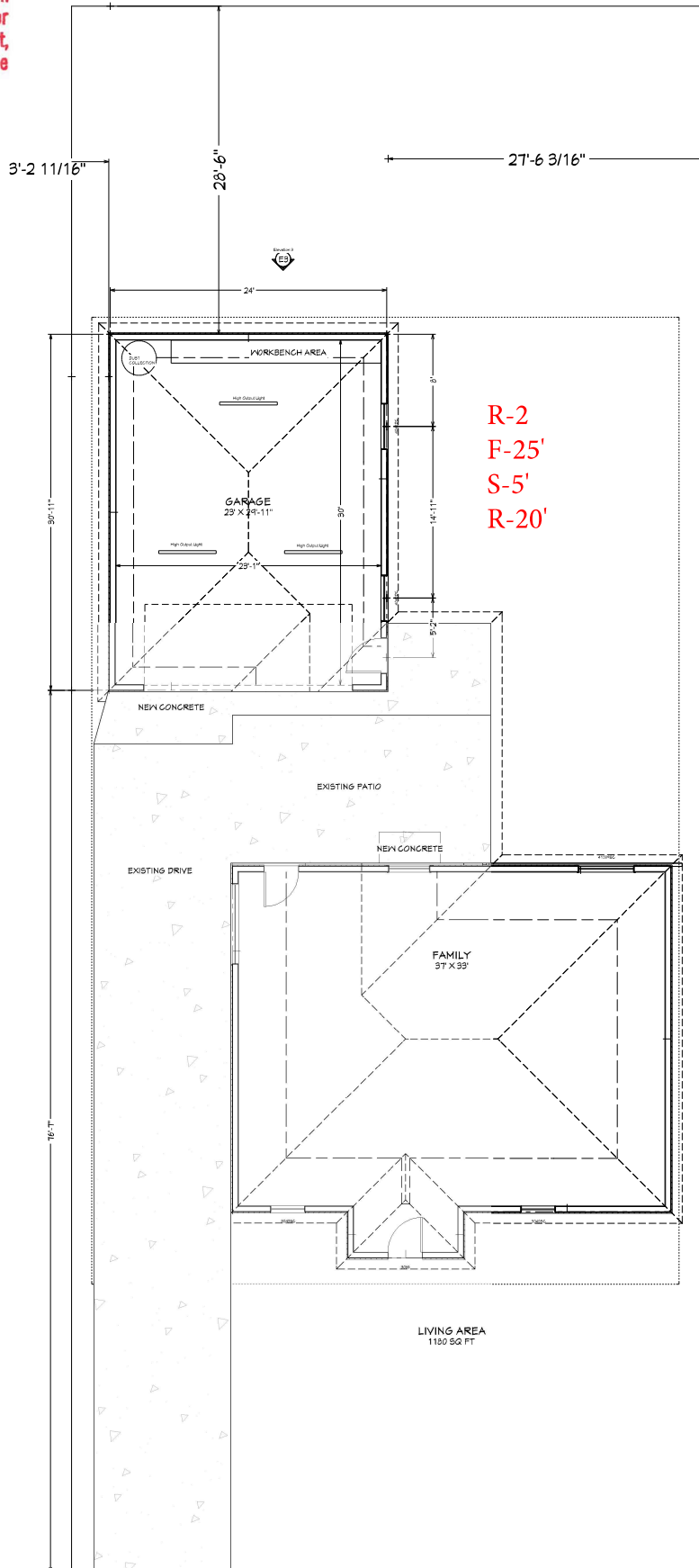
Notice to Owners and Builders: It is the responsibility of the owner or builder to determine that this construction does not violate any easement rights of any person or entity, including the City or violate any private covenant, and the issuance of building or other permits is not to be considered a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

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 IN PROGRESS AND SHALL BE OPEN TO INSPECTION BY PUBLIC OFFICIALS.

DATE \_\_\_\_\_  
REVIEWER \_\_\_\_\_  
PERMIT # \_\_\_\_\_

10/21/20  
JS  
B2003704



# SOUTH 55TH ST

**CITY BOARD OF ZONING APPEAL #22004**

**DATE SCHEDULED FOR PUBLIC HEARING:**

August 26, 2022

**ADDRESS:** 240 North 33<sup>rd</sup> Street

**LEGAL DESCRIPTION:** Lot A-B, Folsoms Subdivision, Lincoln, Lancaster County, Nebraska.

**EXISTING LAND USE AND ZONING:**

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 27.75.020(A).

1. Lincoln Municipal Code (LMC) Section 27.72.020(A) - In the R-4 zoning district the minimum lot area for a detached single-family dwelling is 5,000 square feet, and 2,500 square feet for attached single-family dwellings.

**STAFF FINDINGS:**

1. The subject property, Lot A-B, Folsoms Subdivision is addressed as 240 North 33<sup>rd</sup> Street. It is developed with one single-family dwelling.
2. The petitioner is proposing to replat and subsequently redevelop the property into four lots. Two of the lots are proposed to be 4,750 square feet in area, and two of the lots are 2,375 square feet in area. The petition is seeking a variance to the minimum lot area of the R-4 zoning district from 5,000 to 4,750 square feet for detached single-family dwellings, and from 2,500 to 2,375 square feet for attached single-family dwellings.
3. The site plan shows two lots intended for detached single-family dwellings that are 4,750 square feet in area, and two lots that are 2,375 square feet in area for two attached single-family dwellings. The total lot area of the parcel involved is 14,750 square feet, 750 square feet short of the total required for the dwelling types shown.

4. A 'duplex' is labeled for Lots 3 and 4, but to clarify definitions a duplex is not the same as attached single-family. A duplex is two dwelling units located on the same lot where they must remain under common ownership because they are located on a single lot and cannot be sold separately. Attached single-family dwellings are units which also share a common wall, but each dwelling unit is located on a separate lot and therefore can be sold and held under separate ownership.

Different building codes also apply to the different housing types, where attached single-family dwellings have separate water meters and sewer service – they are treated as separate single-family dwellings where a duplex isn't. Attached single-family dwellings are also commonly referred to as 'townhouses', but according to the Zoning Ordinance they are not. Townhouses are defined as three or more attached dwelling units.

5. At 14,750 square feet, the parcel is more than large enough to allow for four attached single-family dwellings (2,500 sq. ft. per unit x 4 = 10,000 sq. ft.) where each dwelling unit is located on its own lot and also enables separate ownership. In this scenario there are two pairs of attached single-family dwellings, with each pair sharing a common wall.
6. During the review of the petition, it was noted by the Lincoln Transportation and Utilities/Engineering Services Division that the property lacks water and sanitary sewer lines abutting all four proposed lots. This will require a non-abutting service agreement at the time of final plat to be developed as shown. Additionally, there is also a north-south sanitary sewer line on the eastern-most lot. It will likely require a 10 or 15'-wide utility easement where only a 5'-wide easement is shown, but this requires further investigation. This may impact the lot configuration and perhaps even this BZA request if reconfiguration is required.
7. The application notes that the variance is requested to 'provide a diversity of housing types and to respond more appropriately to the historic scale and rhythm of the surrounding neighborhood'. This property is located within a very large area zoned R-4, and any replatting and redevelopment has been done consistent with the R-4 requirements dating back to the adoption of the Zoning Ordinance in 1979. The R-4 zoning allows a duplex on one lot of 50 feet in width. There are many other duplexes in the neighborhood, so two attached units is consistent with the neighborhood character.

The minimum lot area requirements are designed to both allow for appropriate density while providing adequate area depending on the dwelling type. With the adoption of the Zoning Ordinance in 1979 attached single-family dwellings were not intended to require the same amount of area as a detached single-family dwelling. This is designed to both preserve the character of an area and to also provide an overall appropriate density with respect to dwelling units.

It is noted there are a few cases of smaller lots in the area. However, the vast majority of the lots in the neighborhood are 142' x 50' with 7,100 square feet of area. The smaller lots are the exception and don't create the development pattern for the neighborhood, the standard 7,100 square foot lots do.

8. There is no demonstrated hardship associated with this request. The petitioner is seeking to develop four dwelling units for separate ownership, something easily achievable with four attached single-family dwelling units consistent with the underlying zoning district. Nor is the petitioner denied a reasonable use of the land if the request is denied, as the property can be developed with same number of dwelling units if done consistent with the Zoning Ordinance.
9. Approving this request would in fact allow development which exceeds the maximum density allowed under the R-4 zoning district and would not be consistent with surrounding neighborhood. There are no unique circumstances associated with this property that justify a variance and development not compatible with the larger neighborhood and in compliance with the R-4 zoning district. While it may not be the petitioner's preference, redevelopment of the subject tract consistent with the R-4 zoning district is easily achievable without any exceptions or variances to the Zoning Ordinance. An owner's preference which does meet the requirements of the Zoning Ordinance is not a basis for granting a variance.
10. 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.

In this case, the Board's Original Jurisdiction - Powers Relative to Variances applies. The Board of Zoning Appeals is authorized, upon petition, to vary the strict application of the height, area, parking, density or sign requirements 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.

If the variance is approved the petitioner will be allowed to replat to build two detached single-family dwellings and two attached single-family dwellings on the property. If the variance is denied redevelopment must occur consistent with the requirements of the R-4 zoning district.

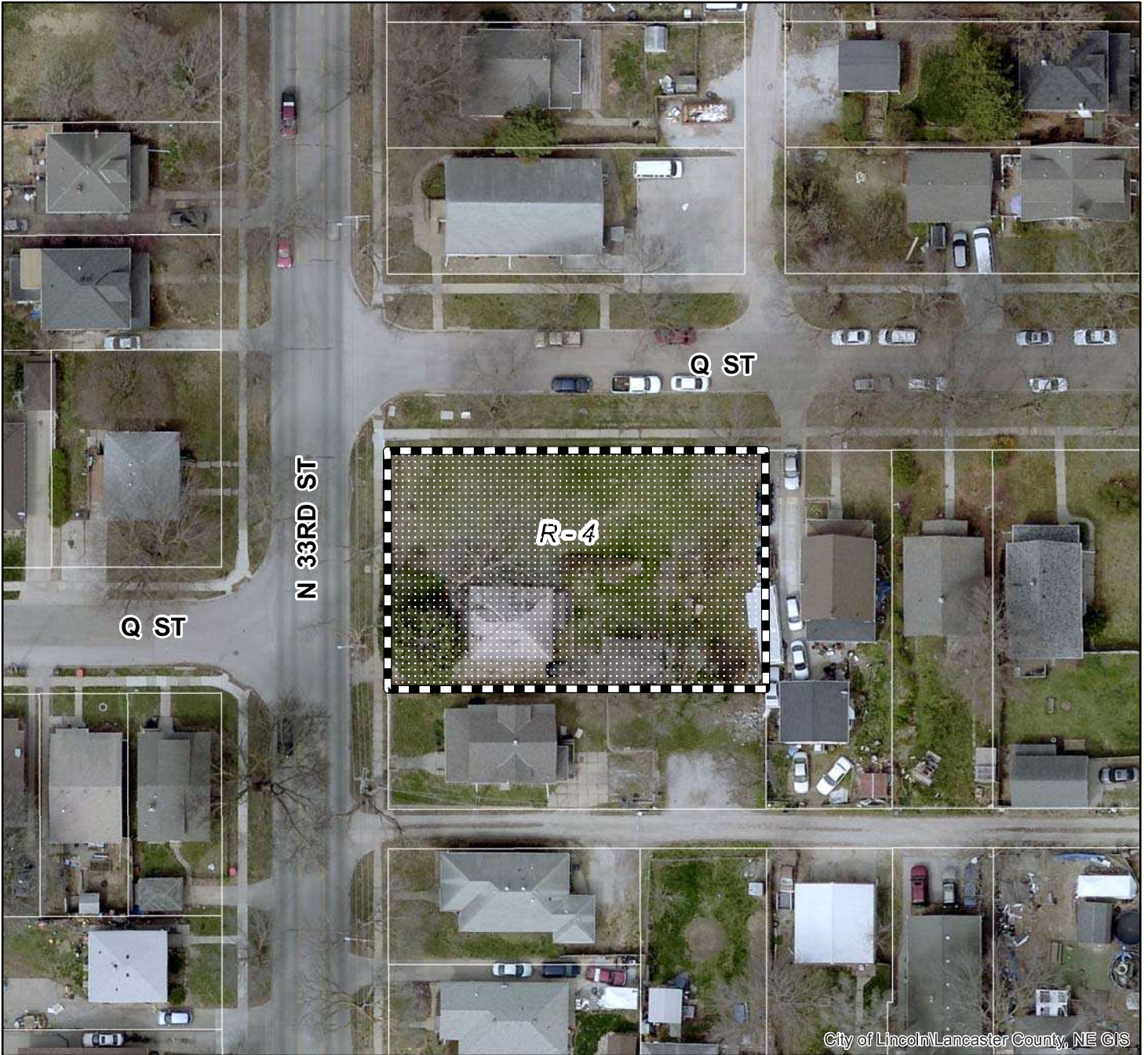
Prepared by

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Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
August 17, 2022

**APPLICANT/  
CONTACT/  
PETITIONER:**

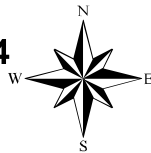
Wayne Mortensen  
NeighborWorks Lincoln  
2530 Q Street  
Lincoln, NE 68503  
402-444-7181  
[Wayne.mortensen@nwlincoln.org](mailto:Wayne.mortensen@nwlincoln.org)



City of Lincoln/Lancaster County, NE ©IS

2020 aerial

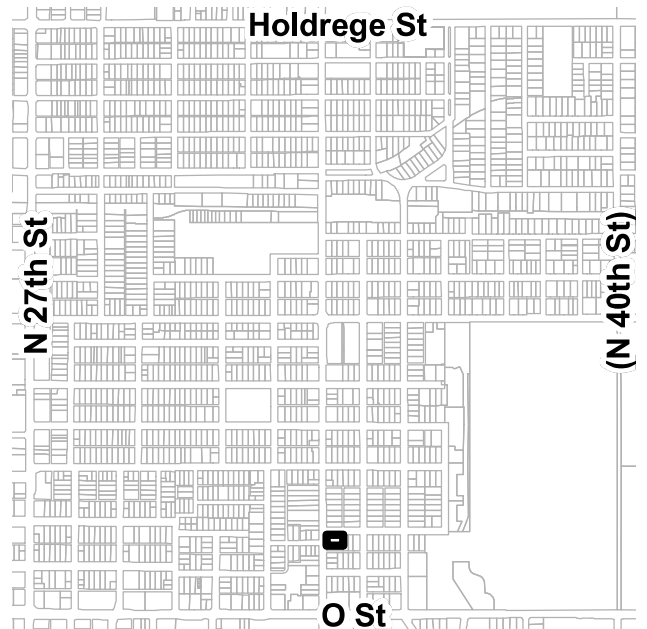
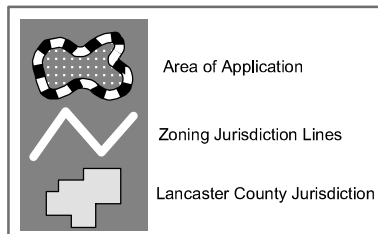
**Board of Zoning Appeals #: BZA22004**  
**N 33rd St & Q St**



**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

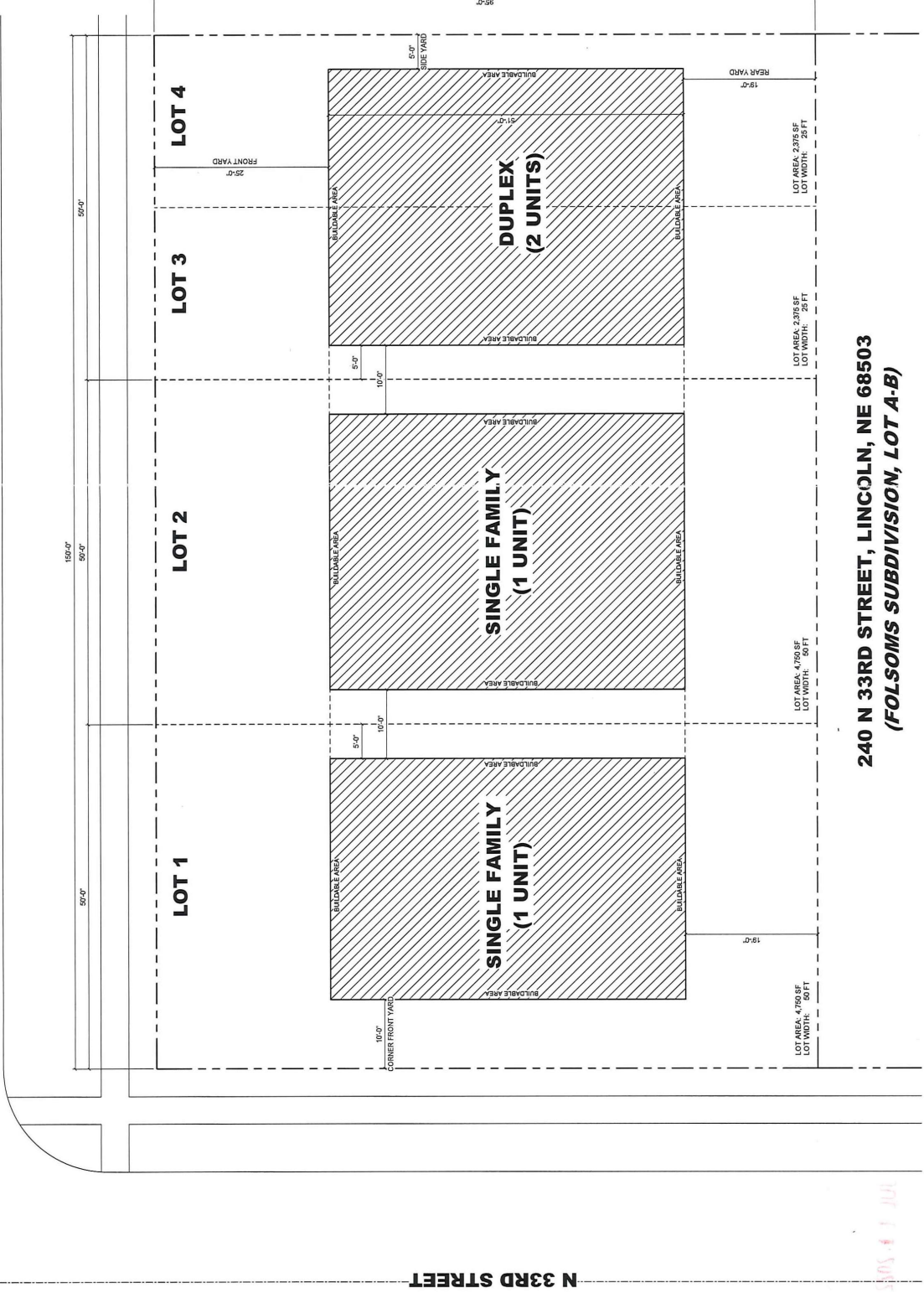
**One Square Mile:**  
**Sec.19 T10N R07E**



**ZONING INFORMATION:**

SITE ADDRESS: 240 N 33RD STREET, LINCOLN, NE 68503  
LEGAL DESCRIPTION: FOLSOMS SUBDIVISION, LOT A-B  
PARCEL ID: 17-15-411-004-000  
CURRENT ZONING: R-4 (RESIDENTIAL)

'Q' STREET



REVISIONS SCHEDULE		
MARK	DATE	DESCRIPTION

240 N 33RD STREET

PROJECT: 222403 DATE: 07/10/2022

DRAFT

SITE PLAN



A1.0

240 N 33RD STREET, LINCOLN, NE 68503  
(FOLSOMS SUBDIVISION, LOT A-B)



July 8, 2022

Board of Zoning Appeals  
City of Lincoln  
555 S 10th St, Ste 213  
Lincoln, NE 68508

Distinguished Board Members:

NeighborWorks Lincoln aspires to develop four (4) affordable housing units on a large parcel at 240 N 33rd Street (PPN: 17-19-411-004-000). The site is zoned R-4 and occupies the corner of N 33rd and 'Q' Streets. In the interest of providing a diversity of housing types and to respond more appropriately to the historic scale and rhythm of the surrounding neighborhood, NeighborWorks plans to construct two (2) detached single-family structures and one (1) two-family structure (duplex) on this parcel. We believe this approach will complement the context of the neighborhood and lessen any stigma associated with the affordable units (and their first-time owners). Attached, please find a schematic site plan illustrating the proposed replatting.

Current zoning would allow us to develop, by-right, two (2) two-family structures on the site, but disallows our approach due to minimum lot area requirements associated with the R-4 designation. Despite our proposed lot widths surpassing that required by LMC 27.72.020, each of the four lots are 5% shy of meeting minimum lot area requirements—the single family lots are 250SF shy or the 5,000SF minimum and the duplex parcels are 125SF shy of the required 2,500 SF threshold. NeighborWorks Lincoln has a long track record of designing home (and site) plans responsive to unique and nuanced infill sites and are confident that we will be able to construct homes that fit comfortably on these proposed lots and are assets to both their owners and the neighborhood. The designs for all four units will observe all required setbacks and requirements of the Neighborhood Design Standards and complement the scale and rhythm of their context.

We humbly request a waiver(s) to the minimum lot area requirements on this parcel to allow for the construction of four affordable homes. Per the advice of planning staff, we are aware of our ability to develop two (2) two-family structures without such a waiver, but feel this only further illustrates the fact that developing the parcel as proposed will have no negative impacts on neighborhood congestion or crowding (i.e. granting our request will not result in the parcel being developed to a unit density beyond what is currently allowed). The proposed project will ensure a diversity of housing types with more enduring value to the neighborhood and a broader array of homebuyers over the next several decades.

Thank you for your consideration in this matter and please let me know if I can provide any further information.

Best,  
  
Wayne A. Mortensen, AIA  
Chief Executive Officer



**CITY BOARD OF ZONING APPEAL #22005**

**DATE SCHEDULED FOR PUBLIC HEARING:**

August 26, 2022

**ADDRESS:** 6101 Platte Avenue

**LEGAL DESCRIPTION:** Lot 1, Pengs Havelock Addition, Lancaster County, Nebraska.

**EXISTING LAND USE AND ZONING:**

Vacant B-3 Commercial District

**SURROUNDING LAND USE AND ZONING:**

North:	Utility Facility	I-1
South:	Commercial	B-3
East:	Residential	B-3
West:	Residential	B-3

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

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO AN EXCEPTION PER LINCOLN MUNICIPAL CODE 27.75.020(b)(2)(iii).

1. Lincoln Municipal Code (LMC) Section 27.67.020 – The parking requirement for Office/Commercial/Retail uses in the B-3 zoning district is one parking space per 600 square feet of floor area.

**STAFF FINDINGS:**

1. The subject property, Lot 1, Pengs Havelock Addition, is addressed as 6101 Platte Avenue. The property was recently replatted combining six former lots from the original Havelock Addition into one lot. A single-family dwelling located on the western edge of the property has since been removed but the detached garage remains.
2. The petitioner is proposing to construct an 8,250 square foot building for a mail order sales business (e-commerce). The parking requirement for the this use in the B-3 zoning district is one space per 600 square feet of floor area. Based upon the proposed floor area, 14 off-street parking spaces are required.
3. The petitioner describes the proposed use as ‘e-commerce’ which sells hardware and home goods. As opposed to customers coming to the building, orders are processed and mailed to customers via online purchasing.

4. The owner is the only full-time employee, with two part-time employees who may work 10 hours a week. Instead of the 14 required parking spaces four are being proposed. Two are located in the garage which remains on the lot, and two will require paving a driveway and two parking spaces. These spaces would accommodate those times when all three employees are present and allow a fourth space for the occasional visitor or delivery driver.
5. The site plan shows the site is large enough for a parking lot large enough to accommodate the required number of spaces if counting the garage. While the proposed parking arrangement may accommodate the proposed use, there will be no oversight on the part of the City if the use changes. That is, a more intensive retail or commercial use allowed in the B-3 zoning district could occupy the building and the required parking would not be provided.

Additionally, the garage could also be removed at any time eliminating two of the parking spaces. While it is not shown however, the potential parking lot may be capable of being extended to the south to provide two additional spaces. An extension of the parking lot would be needed to accommodate two additional spaces and the setback from the lot line 6' to provide for required screening.

6. Exceptions to required parking have been granted in the past, but they typically have been for larger users where the use and the parking requirement were not well defined. In all cases however, area for the required parking based upon the applicable standard was available so the required parking could be provided at the time of a change in use.
7. In this case, the use is mail order sales (or e-commerce) by the Zoning Ordinance. However, should this user leave and a more 'typical' user such as a retail sales move in, it is not considered the kind of change in use that would require an occupancy permit according to Building and Safety. As a result, there is no regulatory mechanism to require the necessary parking spaces to be installed.
8. The B-3 zoning district has one of the lowest parking requirements in the Zoning Ordinance. At one space per 600 square feet, it is one-half the typical commercial parking requirement for most commercial zoning districts at one space per 300 square feet. It does not appear to be a significant hardship to install the required parking using the B-3 standard per the Zoning Ordinance.
9. The Board of Zoning Appeals is authorized to grant this exception per Section 27.59.110 and Neb. Rev. Stat. Section 3-312. Specifically, it shall allow exceptions 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.

If the exception is granted the petitioner will be allowed to build the proposed building and provide four parking spaces to satisfy the parking requirement. If the exception is denied the required number of parking spaces will be required to constructed at the time of building permits.

Prepared by

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Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
August 16, 2022

**APPLICANT/  
CONTACT/  
PETITIONER:**

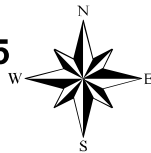
Shirley Peng  
10011 Blue Water Bay Road  
Lincoln, NE 68527  
714-595-3068  
[zhirley@gmail.com](mailto:zhirley@gmail.com)



City of Lincoln/Lancaster County, NE GIS

2020 aerial

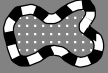


**Board of Zoning Appeals #: BZA22005**  
**N 61st St & Platte Ave**

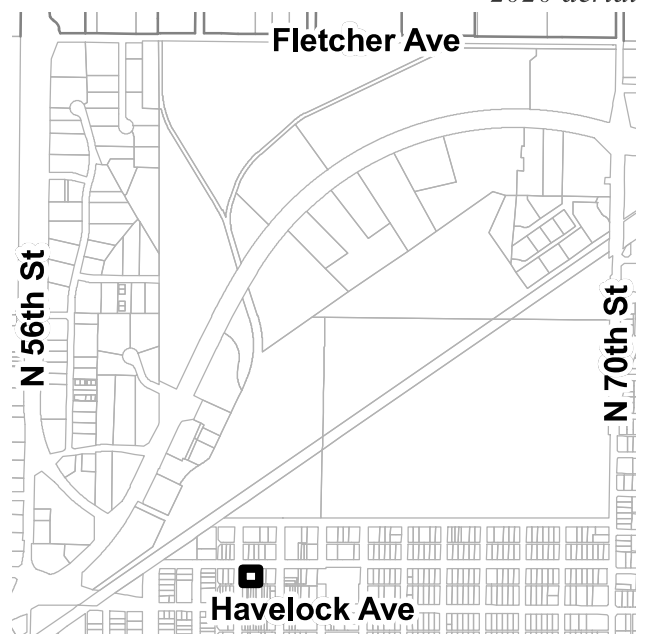


**One Square Mile:**  
**Sec.04 T10N R07E**

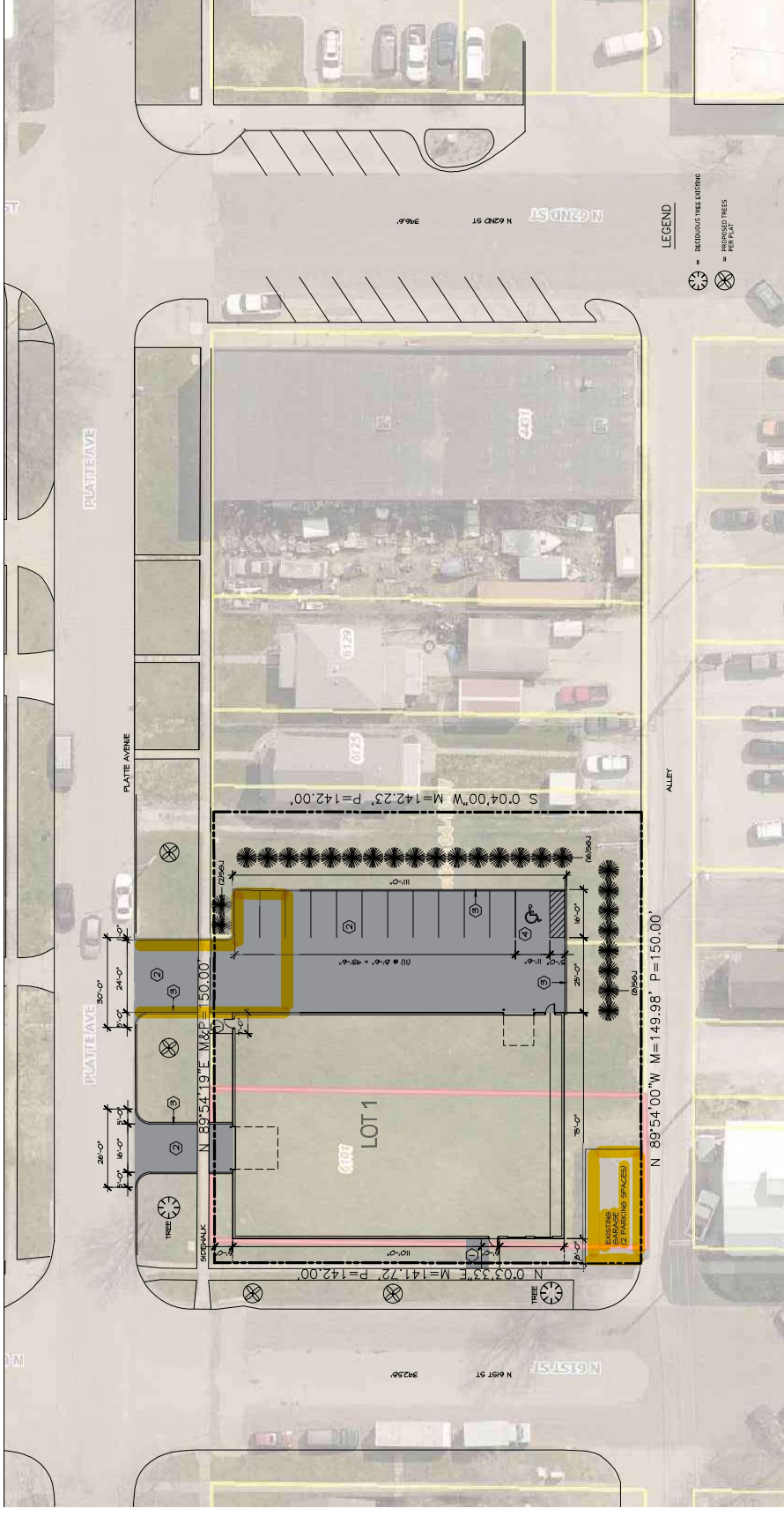
**Zoning:**

- 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



Constructing 1 story 8250sf warehouse  
 Required Parking: 1 space/600sf (B-3 mail order sales)  
 8250sf/600 = 13.75  
 14 stalls required  
 4 stalls proposed (highlighted below)



**1. SITE PLAN**  
 SCALE: 1" = 20'-0"

- GENERAL SITE NOTES:**
1. CONTRACTOR SHALL VERIFY ELEVATION OF ADJACENT SURFACES AND SET BUILDING AND PAVING HEIGHT TO MAINTAIN POSITIVE SLOPE AWAY FROM THE BUILDING.
  2. ALL PARKING LOT STRIPINGS SHALL BE 4" WIDE WHITE TRAFFIC GRADE PAINT.
  3. CONTRACTOR SHALL IMPLEMENT EROSION CONTROL BASED ON INDUSTRY BEST PRACTICES TO PREVENT RAINOFF.
  4. STREET TREES ARE TO BE INSTALLED PER PLAT LANDSCAPE REQUIREMENTS.

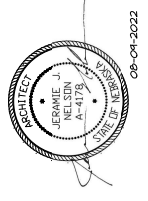
- KEYED PLAN NOTES:**
- ① 4" CONCRETE SIDEWALK 4000 PSI
  - ② 6" CONCRETE PAVING 4000 PSI
  - ③ 6" CONCRETE CURB & GUTTER PER CITY OF LINCOLN STANDARD DETAILS
  - ④ STRIPE HANDICAP STALL & ACCESS. INSTALL ADA HANDICAP IV VAN SIGNAGE

**LANDSCAPE SCHEDULE:**

QTY	COMMON NAME	SCIENTIFIC NAME	HEIGHT	SPREAD	METHOD	SIZE
14	SEA GREEN CHINESE JUNIPER	JUNIPERUS X PHITZERIANA 'SEA GREEN'	5'-6"	6'-8'	GALLON	#5

**SITE PLAN**

SPSF  
 MAIL ORDER SALES  
 6101 PLATTE AVE.  
 LINCOLN, NEBRASKA



**AI Architectural Innovations**  
 620 NORTH 40TH STREET SUITE #102  
 LINCOLN, NEBRASKA 68504  
 PHONE: (402) 461-4330  
 WWW.AILINCOLN.COM

REVISIONS  
 DATE  
 NO.

Project: 18-12114  
 Date: 09 AUG 2022  
 Revision Date:

**A1.0**

Board of Zoning Appeals Narrative

I am writing to formally appeal the minimum amount of parking spaces for a new build located at 6101 Platte Avenue. I am in the process of building an **8250** square foot warehouse located at this location for my husband's business, Midwest Craft House. Midwest Craft House is an entirely e-commerce business selling hardware and home goods. He is the only full-time employee of the business. He also has two part-time employees who currently work when needed, but rarely over ten hours each week.

Current parking restrictions would require the business to construct **14** onsite parking spaces for the building. We would request a special waiver to have **four** parking spaces instead. The garage on the lot fits two vehicles. We would then construct two more paved parking spots next to our proposed warehouse. We have additional space to pave the other **10** parking spots in case we transfer ownership to the warehouse and/or the business purpose changes.

If the additional 10 parking spaces were to be put in place, these parking spaces would go unused. Spaces needed to accommodate for any onsite parking are not needed, as the business model and this warehouse is only used for an online business and do not have foot traffic. Midwest Craft House is not adding staff or opening a physical retail space. Adding the additional 10 parking spaces would also place a financial burden on the build and the business.

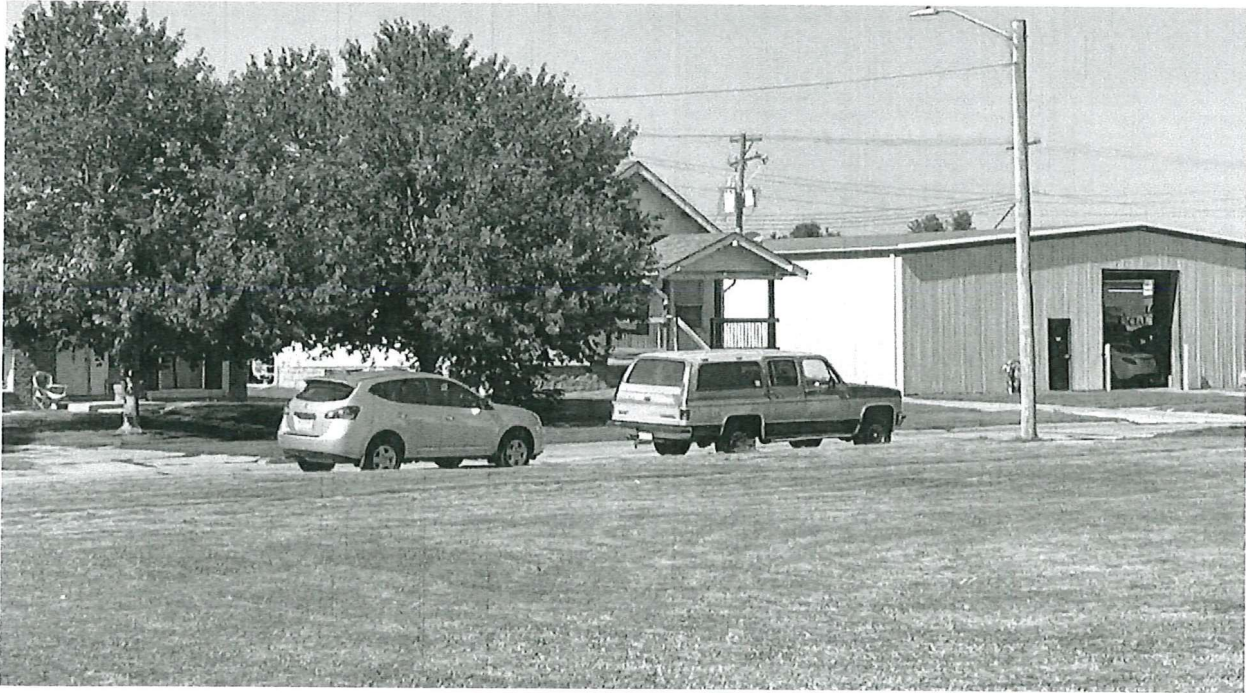
Furthermore, the location currently provides sufficient parking space for the neighborhood and local businesses. Since purchasing the vacant land at this location, it has become apparent that several of the street-based parking spots are being used as long-term parking storage for covered trailers, horse trailers, and moving trucks owned by individuals who do not reside next to this lot, or in the local neighborhood.

On two occasions, my husband has reported the infractions to parking enforcement. Unfortunately, not all of the trailers or vehicles were moved. Vehicles that moved when notified, were moved overnight but returned to the original street-based parking and continued to be used in the original location for long-term parking. When viewing the pictures provided, you will see the issues I have outlined. Viewing the area first hand, you would also notice foliage has begun to grow around these vehicles and trailers indicating the extended length of time the vehicles and trailers have been stored at these locations without movement. Even with these issues, there has continued to be ample parking for the neighborhood and present businesses.

Respectfully Submitted,



Shirley Peng  
Managing Member, SPSF LLC





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## MEMORANDUM

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**TO:** Lincoln Board of Zoning Appeals  
**FROM:** Brian Will, Planner  
**SUBJECT:** BZA#20006 – Wilderness Development Project  
**DATE:** August 18, 2022  
**CC:** file

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The staff report on this appeal to the Board of Zoning Appeals (BZA) was not available at the time of publication of the agenda for the August 26, 2022 hearing.

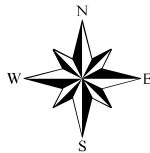
When it is ready it will be made available to the BZA and the public.



City of Lincoln \ Lancaster County, NE GIS

2020 aerial

**Board of Zoning Appeals #: BZA22006**  
**S 1st St & Pioneers Blvd**

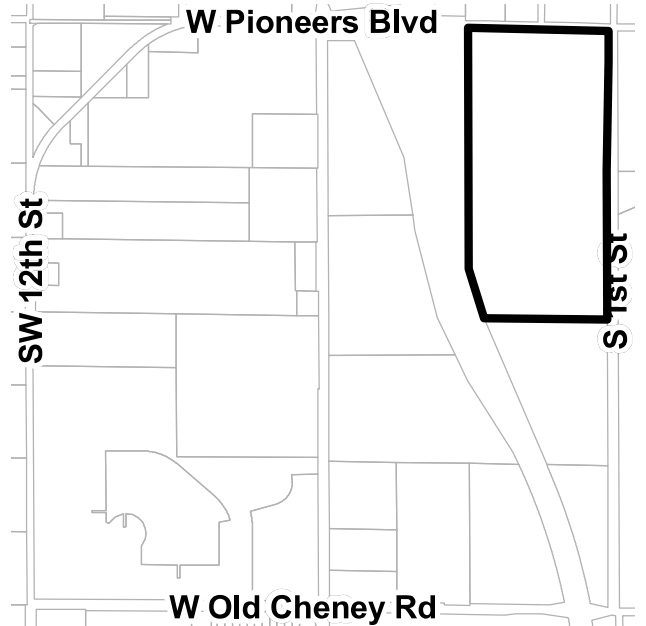


**Zoning:**

- 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.10 T09N R06E**

	Area of Application
	Zoning Jurisdiction Lines
	Lancaster County Jurisdiction



**IN THE BOARD OF ZONING APPEALS  
CITY OF LINCOLN, NEBRASKA**

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	)	<b>CASE NO:</b>
	)	
INDIAN CENTER INC.,	)	
KEVIN ABOUREZK, ERIN POOR,	)	<b>NOTICE OF APPEAL</b>
RENEE SANS SOUCI,	)	<b>&amp; REQUEST FOR STAY OF</b>
and KATHLEEN DANKER,	)	<b>DEVELOPMENT</b>
	)	
Appellants.	)	

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NOW COMES Indian Center Inc., Kevin Abourezk, Erin Poor, and Renee Sans Souci, joined by Landowner Kathleen A. Danker (“Appellants”), by and through Counsel, appealing the May 4, 2022 approval by Mayor Leirion Gaylor Baird—an administrative official charged with the enforcement of Lincoln’s Municipal Zoning Title—of Comprehensive Plan Amendment 22001, Annexation 21013, ordinance number 21262, Zoning Change 21057, ordinance number 21263, and the Annexation and Change of Zone Agreement for Wilderness Crossing, LLC (hereinafter referred to collectively as “Amendments, Zoning Changes, and Annexations”), allowing for development of property located at 4575 South 1<sup>st</sup> Street, Highway 77 and West Pioneers Boulevard, pursuant to LINCOLN, NEB., MUNICIPAL CODE ch. 27, §§ 75.020(a) and 75.030(a).

**JURISDICTION**

This appeal is brought pursuant to LINCOLN, NEB., MUNICIPAL CODE ch. 27, §§ 75.020(a), which provides that “[t]he Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, decision, or determination made by an administrative official in the enforcement of this title.” Mayor Leirion Gaylor Baird is an administrative official according to the plain language of LINCOLN, NEB., CITY CHARTER art. IV, § 12, which provides that the mayor is “fully responsible for the proper conduct of the executive and administrative

work and affairs of the city.”

## **BACKGROUND**

On January 5, 2022, the Lincoln-Lancaster County Planning Department (“Planning Department”) submitted an application to amend the Lincoln-Lancaster County 2050 Comprehensive Plan (“Comprehensive Plan”). *See Exhibit A.* The application requested revisions to the Comprehensive Plan’s Future Land-Use Map, Growth Tiers Map, and Future Service Limit to include a new commercial area to the east of Highway 77 near Pioneers Boulevard and to change the existing Commercial area on the west side of Highway 77 to Urban Residential, thereby allowing for the Wilderness Crossing Planned Unit Development (“Wilderness Crossing”).

Simultaneously with and reliant upon the request for the Comprehensive Plan Amendment, the Planning Department requested the annexation of 140 acres, including Appellant Kathleen Danker’s property, into the City of Lincoln, as well as a change of zone for those 140 acres from AG (Agricultural District) to R-3 (Residential District) Planned Unit Development for Wilderness Crossing. Wilderness Crossing is set to include up to 575 residential units, including approximately 162 single-family homes, 134 townhomes, and 205 apartment units.

## **THE PARTIES**

Appellant Kathleen Danker is the owner of real property located at 4700 South 1<sup>st</sup> Street in Lincoln, Nebraska. Her property is commonly referred to as “Fish Farm.”

In 1979, the Fish Farm was established as sacred land for members of Lincoln’s Native American<sup>1</sup> communities when Chief Leonard Crow Dog constructed two Sweat Lodges on the property. Chief Crow Dog’s visit to and consecration of this lodge is historically significant

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<sup>1</sup> The terms “Native” and “Native American” are used interchangeably to refer to any indigenous person or group of the Americas.

because it occurred shortly after the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996, was codified, essentially decriminalizing Indigenous spirituality, and bringing Native American ceremony back "above ground."

Native American religious practitioners currently hold at least two Sweat Lodge ceremonies per week on the Fish Farm property. The Fish Farm property directly abuts and will be adversely affected by the Wilderness Crossing. There are no other sweat lodges or sacred lands of this type for members of Lincoln's Native communities in the City of Lincoln or surrounding geographic areas.

Appellant Indian Center Inc. is a community organization located in Lincoln, Nebraska, that promotes the interests and values of the region's Native American community and works to empower Native individuals and families. Appellants Kevin Abourezk, Erin Poor, and Renee Sans Souci (collectively "Niskithe Prayer Camp") are Native American religious practitioners and members of the Rosebud Sioux, Cherokee, and Omaha tribal nations, respectively, and residents of the City of Lincoln, Nebraska. Appellants regularly attend spiritual ceremonies at the Fish Farm Sweat Lodges. Despite the Niskithe Prayer Camp's efforts to reach a compromise, City of Lincoln officials and Wilderness Crossing developers actively ignored their concerns. Mayor Gaylor Baird approved the Amendments, Zoning Changes, and Annexations on May 4, 2022 without regard for the cultural violence Wilderness Crossing will enact on and adversely affect Lincoln's Native American community and religious practitioners, including the Niskithe Prayer Camp.

## APPELLANTS' GRIEVANCES

The Mayor's order, decision, and determination enforcing part of the Municipal Zoning title was in error on the following grounds:

**I. City of Lincoln Mayor Gaylor Baird's Approval of the Amendments, Zoning Changes, and Annexations May Be Properly Appealed to the Board of Zoning Appeals.**

The Board of Zoning Appeals is authorized and *required* to “hear and decide upon appeals from any decision or order of the building inspector or *other officers charged with the enforcement of the zoning ordinance* in those cases where it is alleged that such decision or order is in error.” LINCOLN, NEB., CITY CHARTER art. IX-B, § 10 (emphasis added); Neb. Rev. Stat. § 15-1106 (emphasis added). Furthermore, “[t]he Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, decision, or determination made by **an administrative official in the enforcement of this title.**” LINCOLN, NEB., MUNICIPAL CODE ch. 27, § 75.020(a) (emphasis added); *see also* LINCOLN, NEB., MUNICIPAL CODE ch. 27, § 75.030(a).

The Mayor is vested with the administrative power of the city, is fully responsible for the proper conduct of administrative affairs, and is required to enforce the provisions of the city charter, city ordinances, and all applicable laws. First, the “administrative power of the city shall be vested in and exercised by a mayor.” LINCOLN, NEB., CITY CHARTER art. IV, § 12. Second, “the [M]ayor shall be fully responsible for the proper conduct of the executive and administrative work and affairs of the city.” *Id.* Third, the Mayor is required to “[e]nforce the provisions of this charter, city ordinances, and all applicable laws.” LINCOLN, NEB., CITY CHARTER art. IV, § 12(2). Thus, it is unquestionable that the Mayor is an administrative official pursuant to the plain language of the City Charter.

Clearly, Mayor Gaylor Baird is an administrative official “charged with the enforcement of the zoning ordinance” whose decisions may be appealed to the Board of Zoning Appeals. LINCOLN, NEB., CITY CHARTER art. IX-B, § 10; Neb. Rev. Stat. § 15-1106. Mayor Gaylor Baird is both “an officer charged with enforcement of the zoning ordinance” and “an administrative official”, and in this capacity and as further described below, she has made decisions regarding code enforcement in error.

**II. Mayor Gaylor Baird’s Approvals of the Amendments, Zoning Changes, and Annexations Were Procedurally Defective.**

Mayor Gaylor Baird’s approvals of the Comprehensive Plan Amendment 22001, Zoning Change 21057, and Annexation 21013 are ineffective because they were made outside of the required procedural timeline required for such approvals to be effective. Per the Lincoln City Charter:

Within forty-eight hours after the adjournment of any council meeting, the city clerk shall present to the mayor all ordinances and resolutions adopted at the meeting. The mayor, within seven days after the receipt of an ordinance or resolution, shall return it to the city clerk with [her] approval, or with [her] veto.

LINCOLN, NEB., CITY CHARTER art. IV, § 13. In instances where the mayor does not approve an ordinance or resolution, the matter must be reconsidered at the city council’s next regular meeting.

*Id.*

Here, the Lincoln City Council adopted Comprehensive Plan Amendment 22001 by and through Resolution No. A-93302 at its meeting on April 25, 2022. Lincoln Comp. Plan Amend. No. 22001, Res. No. A-93302. The Lincoln City Council similarly adopted Resolution No. A-93303 on that date, authorizing the Mayor to execute the Annexation and Change of Zone Agreement for Wilderness Crossing and to concurrently approve Annexation 21013 and Zoning Change 21057. Res. No. A-93303; *Annexation and Change of Zone Agreement for Wilderness*

*Crossing.*

The Lincoln City Charter provides (1) the city clerk a full forty-eight hours to present Resolutions to the Mayor and (2) the Mayor with an additional seven days to approve or veto the Resolutions. LINCOLN, NEB., CITY CHARTER art. IV, § 13. Under any calculation of time, the absolute latest date on which the Mayor could have validly approved Resolutions No. A-93302-03 was May 4, 2022, a full nine days after the City Council's decisions were made.

**The Mayor undoubtedly failed to meet the required approval deadline with respect to Resolution No. A-93303, having signed and approved the Resolution on May 5, 2022. See Exhibit B.** As a result, Resolution A-93303—including Annexation 21013 and Zoning Change 21057—**has not been effectively approved** pursuant to the timeline prescribed in LINCOLN, NEB., CITY CHARTER art. IV, § 13. Therefore, the Resolution must be treated as having been vetoed, and must be reconsidered by the Lincoln City Council.

Whether Resolution No. A-93302 was validly approved pursuant to the timeline prescribed in LINCOLN, NEB., CITY CHARTER art. IV, § 13 is dependent upon the date on which the Mayor received the Resolution from the city clerk. Mayor Gaylor Baird's approval of Resolution No. A-93302 is dated May 4, 2022, the last day for valid approval **only if** the City Clerk took the full forty-eight hours to present the Resolution to the Mayor. *See Exhibit C.* However, it is most likely that the City Clerk gave the Mayor the Resolution prior to the expiration of those forty-eight hours. If the City Clerk presented the Resolution No. A-93302 immediately after the meeting or on April 26, this approval also falls outside the seven-day period required by the Lincoln City Charter. As a result, the Mayor's approval of the Comprehensive Plan Amendment 22001 is invalid and its authorizing Resolution has been rendered ineffective.

**III. The Amendments, Zoning Changes, and Annexations Approved by Mayor Gaylor Baird Are Substantively Invalid Due to Their Failure to Comply with Lincoln-Lancaster County 2050 Comprehensive Plan.**

All ordinances under the zoning title of the Lincoln Municipal Code must be made in accordance with the Comprehensive Plan. LINCOLN, NEB., MUNICIPAL CODE ch. 27, § 01.010; *see* Comprehensive Plan. The following key components of the Comprehensive Plan have been violated through the purported mayoral approvals of Resolutions A-93302 and A-93303:

A. Goal 9 of the Comprehensive Plan states: “[e]quitable civic participation will require broad efforts that reach the entire community while actively seeking engagement from historically underrepresented groups.” Lincoln City-Lancaster County Planning Department, *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 2.30. The Amendments, Zoning Changes, and Annexations do not comply with Goal 9 of the Comprehensive Plan in that civic participation for development of these Amendments, Zoning Changes, and Annexations was inequitable, and there was insufficient participation in planning and consultation with historically underrepresented groups, including but not limited to Native Americans and practitioners of indigenous religions. The Salt Creek Basin and the Fish Farm Sweat Lodges, located adjacent to the proposed developments of the Amendments, Zoning Changes, and Annexations are of significant historical, cultural, and religious importance to underrepresented communities, particularly, the Native American community, that have been historically marginalized and overlooked by the Zoning Board, City Council and Mayor of the City of Lincoln (hereinafter referred to as “Administrators”), and are threatened by the Mayor’s approved changes. The Administrators have again failed to consult with marginalized and underrepresented groups, including but not limited to Appellants.

B. Goal 11 of the Comprehensive Plan states: “[i]t is important that critical natural

features like native prairie, wetlands, and riparian corridors are protected. Such features need to be valued and sustained as part of the overall planning process...” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 2.34. The Amendments, Zoning Changes, and Annexations do not comply with Goal 11 of the Comprehensive Plan in that they do not protect critical natural features like the native prairie, wetlands, and riparian corridors and will not sustain such features, including but not limited to the Salt Creek Basin.

C. Goal 12 of the Comprehensive Plan States: “[the Comprehensive Plan] encourages the continued use and maintenance of historic and cultural resources, including properties not formally designated as landmarks.” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 2.36. The Amendments, Zoning Changes, and Annexations do not comply with Goal 12 of the Comprehensive Plan as they prevent the continued use and maintenance of historic and cultural resources, including but not limited to the Salt Creek Basin and the Fish Farm Sweat Lodges.

D. Policy 24 of the Comprehensive plan requires action “to consider the relationship among environmental resources . . . and the adjacent land uses for appropriate management and resource protection.” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 4.45. The Amendments, Zoning Changes, and Annexations do not comply with Policy 24 of the Comprehensive Plan in that Administrators have not considered how to protect the environmental resources of the City against the negative impacts of development, including but not limited to the Salt Creek Basin.

E. Policy 37 of the Comprehensive Plan requires action to “encourage continued use and maintenance of historic resources, including properties not formally designated as landmarks.” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 4.67. The Amendments,

Zoning Changes, and Annexations do not comply with Policy 37 of the Comprehensive Plan in that it burdens the Native American community's use and enjoyment of the land's historical and cultural resources, including but not limited to the Salt Creek Basin and the Fish Farm Sweat Lodges.

F. Policy 47 of the Comprehensive Plan requires action to “actively engage with cultural groups so they can provide ideas for planning and public policy, as well as to encourage developers with planning proposals to make early contact with interested parties to allow time to seek resolution of contentious items.” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 4.83. The Amendments, Zoning Changes, and Annexations do not comply with Policy 47 of the Comprehensive Plan as the Administrators that planned and developed the Amendments, Zoning Changes, and Annexations did not actively engage with cultural groups to provide planning and policy input, nor was there any encouragement by the Administrators to the developers, Manzitto, Inc., with planning proposals to make early contact with interested parties, including but not limited to Native Americans, land owners, those that use and operate cultural and historical sites, and practitioners of indigenous religions, to allow time to seek resolution of contentious items. The Amendments, Zoning Changes, and Annexations will negatively impact property owned by Kathleen A. Danker and used by the Niskithe Prayer Camp in that natural resources, cultural and historical sites, and places of religious significance will be damaged, destroyed, or rendered unusable.

G. Element 4 of the Comprehensive Plan requires environmental resources such as native prairies, basins, streams, and riparian areas to be valued and sustained in the planning process. *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 3.53-57. The Amendments, Zoning Changes, and Annexations do not comply with Element 4 of the

Comprehensive Plan in that sufficient consideration has not been taken to protect the environmental resources of the City, including but not limited to the Salt Creek Basin.

H. Element 6 of the Comprehensive Plan asserts an intention to “preserve and enhance the community’s unique character . . . through preservation of cultural and historic resources...” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 3.75. The Amendments, Zoning Changes, and Annexations do not comply with Element 6 of the Comprehensive Plan in that it burdens the community’s, including that of the Niskítthe Prayer Camp’s, use and enjoyment of historical and cultural resources, including but not limited to the Salt Creek Basin and the Fish Farm Sweat Lodges.

In addition, the Mayor’s approval of Resolutions A-93302 and A-93303 also violates the Lincoln Municipal Code and the intentions and policies encompassed in the same. The Amendments, Zoning Changes, and Annexations will constitute a change in the district map and will impair an adequate supply of light and air to adjacent property, increase the congestion in public streets, increase the public danger of fire and safety, materially diminish and impair established property values within the surrounding area, and otherwise impair the public health, safety, comfort, morals, and welfare of the City of Lincoln, in violation of LINCOLN, NEB., MUNICIPAL CODE ch. 27, § 01.010 and will negatively impact the use and enjoyment for all purposes, including but not limited cultural, historic, and religious purposes of the property of Kathleen A. Danker, the Salt Creek Basin and the Fish Farm Sweat Lodges, as well as other locations throughout the City.

In approving the Amendments, Zoning Changes, and Annexations, the Mayor failed to promote dialogue and conversation between indigenous religious practitioners, Native American communities, the Niskítthe Prayer Camp, Kathleen A. Danker, and any and all developers to

facilitate alternatives and resolutions to accommodate and protect community historical, cultural, and environmental resources in ways consistent with the Comprehensive Plan within the plans of the developer.

By approving the Amendments, Zoning Changes, and Annexations, sweeping in their scope and impact, the Mayor prevented the meaningful participation of the public in the planning process, forestalling any chance for the development of meaningful alternatives, and preventing the substantive involvement of underrepresented communities that have been historically marginalized and overlooked by the Administrators of the zoning laws of the City of Lincoln, including but not limited to Native Americans, the Niskítthe Prayer Camp, and Indigenous religious practitioners.

It was error for the Mayor to determine and approve these sweeping Amendments, Zoning Changes, and Annexations for any of the above reasons and the cumulative impact of these errors accrues to a violation of the professed values of the City and undermines the long-term City goals of preserving cultural, historical, and environmental resources that are significant to all parts of the community, especially those that have been historically excluded and underrepresented. The Zoning Board of Appeals has the responsibility to ensure the City lives up to its professed values by requiring meaningful consultation with underrepresented communities and the opportunity to develop accommodations to protect the cultural and historical resources of Lincoln while providing for reasonable development of residential and commercial resources.

#### **IV. A Stay in Development Proceedings Should Be Granted for the Duration of This Appeal**

It is hereby requested that any and all related development and development proceedings following the Mayor's approval of the Amendments, Zoning Changes, and Annexations be stayed during the pendency of this appeal. The Municipal Code provides that "[i]n exercising its appellate

jurisdiction, the board may in conformity with the provisions of this title reverse or affirm, wholly or partially, or may modify the order, requirement, decision, or determination appealed from and may make such decision as ought to be made.” LINCOLN, NEB., MUNICIPAL CODE ch. 27, §§ 75.050. This provision makes clear that the Board of Zoning Appeals has authority to modify the immediate applicability of an administrative official’s decision—temporarily or permanently—to provide the opportunity for a meaningful hearing on the appeal.

Stays pending the final decision on administrative appeals in other jurisdictions are routinely granted.<sup>2</sup> Moreover, Appellants’ right to appeal this administrative decision cannot be protected, and in fact would be effectively denied, in the absence of such a stay.

The proposed development would permanently damage or destroy significant and vulnerable environmental, cultural, and historic sites and resources, including but not limited to the Salt Creek Basin and use of the Fish Farm Sweat Lodges. Therefore, the Board should issue an immediate stay during the pendency of this administrative action to ensure Appellants’ meaningful right to administrative appeal.

### **REQUEST FOR RELIEF**

For all the above-described reasons, the Appellants request:

1. An immediate stay prohibiting any further development proceedings pursuant to the Amendments, Zoning Changes, and Annexations while this appeal is under consideration;
2. An order finding the Mayor’s approvals were untimely, and therefore, have rendered the actions of the City Council unapproved or vetoed and otherwise, ineffective;


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<sup>2</sup> Section 14-410 of Nebraska’s revised statute—although not applicable in this jurisdiction—states that “an appeal [to the zoning board of appeals] stays all proceedings in furtherance of the action appealed from,” with an exception only in cases where such a stay would “cause imminent peril to life or property.” NEB. REV. STAT. § 14-410. Moreover, courts upholding these statutes have found that appellants’ right to appeal of administrative decision cannot be protected, and in fact would be effectively denied, in the absence of a stay. *Lamar Co. of Nebraska, L.L.C. v. Omaha Zoning Bd. of Appeals*, 271 Neb. 473, 480 (2006).

3. Modification to the Amendments, Zoning Changes, and Annexations that are consistent with the City of Lincoln's previous Comprehensive Plan, including but not limited to its goals, values, and policies for the protection of private property, cultural and historical sites, and the delicate environment, and include the input of historically underrepresented communities including Appellants; and
4. Any other relief this Board of Zoning Appeals deems just and proper.

Respectfully submitted this 2nd day of August 2022,

By:   
\_\_\_\_\_  
Nikki Ducheneaux  
Olivia Lehman  
Big Fire Law & Policy Group, LLP  
1905 Harney Street, Suite 300  
Omaha, NE 68102  
Phone: (531) 466-8725  
[nducheneaux@bigfirelaw.com](mailto:nducheneaux@bigfirelaw.com)  
[olehman@bigfirelaw.com](mailto:olehman@bigfirelaw.com)

  
\_\_\_\_\_  
Rose Godinez #25925  
Mindy Rush Chipman #24499  
American Civil Liberties Union of  
Nebraska  
134 South 13<sup>th</sup> Street #1010  
Lincoln, NE 68508  
Phone: (402) 476-8091  
[rgodinez@aclunnebraska.org](mailto:rgodinez@aclunnebraska.org)  
[mrushchipman@aclunnebraska.org](mailto:mrushchipman@aclunnebraska.org)

*Attorneys for Indian Center Inc., Kevin  
Abourezk, Erin Poor, and Renee Sans  
Souci*

By: 

Kenneth C. Winston #16961  
1327 H St. Ste 300  
Lincoln, NE 68508  
Phone: (402) 212-3737  
[kwinstonne@gmail.com](mailto:kwinstonne@gmail.com)

*Attorney for Kathleen A. Danker*

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 2nd day of August 2022, a true and correct copy of the foregoing document was filed with the Lincoln/Lancaster County Planning Department by certified mailing with U.S.P.S. and by email submission to [plan@lincoln.ne.gov](mailto:plan@lincoln.ne.gov). Also on this day, a true and accurate copy of the foregoing was sent via email to the following individuals as indicated below:

Brian Will  
[bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)

Yohance Christie, City Attorney  
[ychristie@lincoln.ne.gov](mailto:ychristie@lincoln.ne.gov)

Tim Sieh, Assistant City Attorney  
[tsieh@lincoln.ne.gov](mailto:tsieh@lincoln.ne.gov)

/s/Samantha Holland  
Samantha Holland, Paralegal

EXHIBIT

A

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## MEMORANDUM

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**TO:** File

**FROM:** Lincoln-Lancaster County Planning Department

**SUBJECT:** FLU Update at Hwy 77 & W Pioneers

**DATE:** January 5, 2022

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This is an application to amend the Future Land Use Plan of the Lincoln-Lancaster County 2050 Comprehensive Plan. This proposed amendment involves moving a commercial area from the west side of Hwy 77 to the east side in order to reflect proposed development plans with CZ21055/AN21011 (Foxtail Meadows) and CZ21057/AN21013 (Wilderness Crossing). A map of the proposed change is attached.

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Lincoln City-Lancaster County Planning Department  
555 S. 10th St., Rm. #213 • Lincoln NE 68508  
Phone: (402) 441-7491 • Fax: (402) 441-6377

# CITY OF LINCOLN

## Planning Department Application Request Form

Planning Department / 555 S 10th St, Ste 213 / Lincoln, NE 68508  
 Phone 402-441-7491 / Fax 402-441-6377  
 plan@lincoln.ne.gov

Date 1/5/2022

			Office Use Only	
	Application Type	Subtype	File #	PC Final Action
+ -	Comprehensive Plan Amendment		CPA22001	<input type="checkbox"/>

Project Name FLU Update at Hwy 77 & W Pioneers

Address/General Location Hwy 77 & W Pioneers

Legal Description  
*(Attach legal if necessary.)* \_\_\_\_\_

Parcel ID Number(s) (PID) 0910200006000, 0910200003000

Number of Acres 17      Number of lots being platted                           App # Being Amended                       
*(Not outlots)*

**THE FOLLOWING INFORMATION IS NECESSARY TO HAVE A COMPLETE APPLICATION:**

1. **LETTER** stating purpose of application. This statement should include information concerning the reason for the request(s), any associated applications, projects or other information related to the application. This letter should include a list of waivers associated with an application and justifications for those waivers. If no waivers are requested state "no waivers are requested."
2. **FEE** ([View Fee Schedule](#)) Note: Make checks payable to the City of Lincoln.
3. **SITE PLAN** The site plan shall be submitted electronically using e-plan. ([View instructions on eplan submittal](#))

**NOTE:** See [Forms & Fees](#) section of Planning Department website for checklists with specific requirements for each type of project.

\*\*\* This application may be returned as incomplete if all requested information is not provided. \*\*\*  
 The City reserves the right to ask for additional information to process this application.

**Property Owner Name** Catholic Bishop of Lincoln      Phone                     

Address 3400 SHERIDAN BLVD      Email                     

City Lincoln      State Nebraska      Zip 68506

**Applicant Name** Lincoln-Lancaster County Planning Department      Phone                     

Address 555 S 10th Street, Suite 213      Email                     

City Lincoln      State Nebraska      Zip 68508

**Contact Name** Andrew Thierolf      Phone                     

Address 555 S 10th Street, Suite 213      Email athierolf@lincoln.ne.gov

City Lincoln      State Nebraska      Zip 68508

**ProjectDox Contact** Andrew Thierolf      **ProjectDox Email** athierolf@lincoln.ne.gov

Applicant Signature: 

\* Property Owner Signature: \_\_\_\_\_

\* NOTE: If application is for a special permit or a use permit and the applicant is not the owner of the property, the property owner must sign the application or the applicant must attach written permission of the owner authorizing the applicant to sign on behalf of the owner. By signing this application request form or granting the applicant permission to sign on the owner's behalf, the owner hereby grants all authorized city/county personnel to access the property for purposes of review of this application.

EXHIBIT

B

22R-132



A93303

Introduce: 4-11-22

RESOLUTION NO. A- 93303

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the Annexation and Change of Zone Agreement for Wilderness Crossing which is  
3 attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City  
4 of Lincoln, and Wilderness Crossing, LLC, ("Developer") for the annexation of the property  
5 generally located west of South 1<sup>st</sup> and south of Pioneers Boulevard and re-zoning the property  
6 from AG Agricultural District to R-3 Residential with a Planned Unit Development, as set forth in  
7 the Agreement, is hereby approved and the Mayor is authorized to execute the Annexation and  
8 Change of Zone Agreement on behalf of the City.

9 BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this  
10 Agreement to Abigail Littrell, Assistant City Attorney, for distribution to the Developer.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to file the Annexation and  
12 Change of Zone Agreement for Wilderness Crossing with the Lancaster County Register of Deeds  
13 with the recording fees to be paid in advance by the Developer.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this  
15 Agreement to Michaela Dugan, Impact Fee Administrator.

See further Council  
Proceedings on next page.

Introduced by:

AYES: Beckius, Bowers, Meginnis, Shobe, Ward,  
Washington; NAYS: Raybould.

Approved as to Form & Legality:

  
City Attorney

**ADOPTED**  
**APR 25 2022**  
**BY CITY COUNCIL**

Approved this 5<sup>th</sup> day of MAY, 2022:  
  
Mayor

**22R-132**

04/25/22 Council Proceedings:

RAYBOULD Verbal Motion to Delay Bill No. 22R-132 for 3 weeks.

Seconded by Washington & carried by the following votes: AYES: Raybould, Washington;  
NAYS: Beckius, Bowers, Meginnis, Shobe, Ward.

**ANNEXATION AND CHANGE OF ZONE AGREEMENT  
FOR WILDERNESS CROSSING**

This Annexation Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **Wilderness Crossing, LLC**, a Nebraska limited liability company ("Wilderness Crossing"), hereinafter also referred to as the "Developer".

**RECITALS**

1. Wilderness Crossing controls and intends to acquire fee simple title to and to develop a tract of the real property generally located west of South 1<sup>st</sup> Street and south of Pioneers Boulevard, Lancaster County, Nebraska. The Property is shown on Exhibit A and is legally described as:

S10, T9, R6, 6<sup>th</sup> Principal Meridian, Lot 59 NE, Lancaster County, Nebraska  
(the "Developer Property").

Wilderness Crossing desires to cause the urban development of the Developer Property.

2. Wilderness Crossing has requested that the City annex the Developer Property into the corporate limits of the City as part of AN21013. AN21013 includes additional property not owned by Developer. The entire annexation area for AN21013 is shown on Exhibit B.

3. Wilderness Crossing has requested that the City rezone that portion of the Developer Property from AG to R-3 Residential with a Planned Unit Development zoning overlay which is shown also on Exhibit "A" (CZ21057).

4. The Lincoln-Lancaster County Planning Department has made application for a Comprehensive Plan Amendment to the Lincoln-Lancaster County 2050 Comprehensive Plan to designate a small portion in the northwest corner of the Developer Property as Commercial (CPA22001).

5. The City's approval of the Annexation, Change of Zone, and Comprehensive Plan Amendment are collectively referred to herein as "Governmental Actions".

6. The City is willing to approve the Governmental Actions and subsequently consider approving the use permits, special permits, preliminary plats, and final plats for the balance of the Developer Property pursuant to the Comprehensive Plan (collectively "Subsequent Governmental Actions"); provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area. All preliminary plats, final plats, and other land use applications concerning the Developer Property shall be considered pursuant to the City's Comprehensive Plan, land development ordinances, applicable design standards, and the terms and conditions of this Agreement.

7. This Agreement identifies the Developer's and City's responsibilities regarding the construction of infrastructure improvements necessitated by the development of the Developer Property.

NOW, THEREFORE, in consideration of the mutual covenants established herein, the parties to this Agreement do hereby agree as follows:

**I.**

**DEFINITIONS**

1. Defined Terms. The following are defined terms to this Agreement. Other paragraphs of this Agreement contain numerous refinements and exceptions which qualify the provisions of this Paragraph 1; all other defined terms are as shown in other provisions of this Agreement.

- a. "Construct" or "construction" means installation of the infrastructure components according to the City's standard specifications and shall also include proper drainage, utility relocation (electric, cable, phone, communication, fiber optic, gas, water, rural water, and sediment) and erosion controls and measures.
- b. "Cost", "cost and expense", "expense" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing and inspection expenses, acquisition of right-of-way or easements from a party other than the Developer, construction costs, publication costs, financing costs, and related miscellaneous costs.

**II.**

**CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS;**

**CONDITIONAL APPROVAL**

**A. Concurrent Approval**. The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:

1. Annexing the Property shown on Exhibit “B”; and
2. Amending the Lincoln zoning district maps to adopt the Change of Zone of the Property on Exhibit “A”.
3. Approving CPA22001.

**B. Conditional Approval.** Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Developer Property; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

### III.

#### STREET IMPROVEMENTS

**A. South 1<sup>st</sup> & Pioneers Boulevard.**

1. Developer will, at a minimum, design and construct temporary left and right turn lanes at the intersection of South 1<sup>st</sup> Street & Pioneers Boulevard as a requirement of the first final plat within the Phase I development as described in the PUD. Developer acknowledges that construction of temporary turn lanes at this intersection will not entitle Developer to impact fee reimbursement.
2. In the alternative, Developer may construct permanent left and right turn lanes at this intersection. Turn lane improvements will only be eligible for impact fee

reimbursement if they conform to the future grade elevation as determined by Lincoln Transportation and Utilities (LTU).

**B. Southwest 2<sup>nd</sup> & Pioneers Boulevard.**

1. Prior to application for building permits for any commercial uses (not including exclusive multifamily use) on the Developer Property, Developer shall, at a minimum, design and construct temporary left and right turn lanes at the intersection of Southwest 2<sup>nd</sup> & Pioneers Boulevard. Developer acknowledges that construction of temporary improvements at this intersection will not entitle Developer to impact fee reimbursement.
2. In the alternative, Developer may construct permanent improvements in the form of round-about at this intersection.

**C. Arterial Street Impact Fees:**

1. City agrees that the Arterial Street Intersection Improvements described in subsections A.2 and B.2 of this Article are considered Impact Fee Facility Improvements as that term is defined in LMC §27.82.040. Therefore, if Developer elects to construct permanent intersection improvements, City agrees that it shall reimburse Developer for the South 1<sup>st</sup> & Pioneers Boulevard and Southwest 2<sup>nd</sup> & Pioneers Boulevard Street Intersection Improvements from the arterial street impact fees generated by development of the Developer Property, and by development of:

- Lot 29 NW, S11, T9, R6, 6<sup>th</sup> P.M. Lancaster County, Nebraska; and
- Lot 60 SE, S10, T9, R6, 6<sup>th</sup> P.M., Lancaster County, Nebraska (“Other Impact Fee Properties”),

which are all benefited by the Arterial Street Intersection Improvements. Said reimbursement from arterial street impact fees generated by development of the

Developer Property and Other Impact Fee Properties shall be paid quarterly as arterial street impact fees are received. The foregoing notwithstanding, any reimbursement to be paid from the arterial street impact fees shall not constitute a general obligation of the City.

2. Should Developer elect to construct impact fee ineligible temporary improvements, City shall use the arterial street impact fees generated from development of the Developer Property and Other Impact Fee Properties as permitted by Lincoln Municipal Code. City shall reserve arterial street impact fees generated from the Developer Property and Other Impact Fee Properties, and not expend on other arterial street projects in the area, until the intersections at both South 1<sup>st</sup> & Pioneers Boulevard and Southwest 2<sup>nd</sup> & Pioneers Boulevard are improved with either temporary or permanent improvements.

**D. Local Streets/ Driveways**

1. The Wilderness Crossing Development, as described in the PUD, requires relocation of South 1<sup>st</sup> Street. Said relocation will necessitate the extension or relocation of the driveways for the properties located at 4700 & 4800 South 1<sup>st</sup> Street. Developer agrees to pay any and all costs to relocate or extend both driveways.
2. If Developer elects to extend the driveway at 4800 South 1<sup>st</sup> Street and the extended driveway is less than 250 feet (measured as the distance from the property line to the new South 1<sup>st</sup> Street right of way), the extended driveway may remain surfaced with gravel. If the driveway distance between the property line and the new South 1<sup>st</sup> Street right of way is more than 250 feet, the newly constructed driveway shall be surfaced in asphalt.

- E. Dedication of Street Right-of-Way.** At the time of final platting or prior to construction of the intersection improvements described in subsections A and B above, Developer agrees to dedicate, at no cost to City, additional right-of-way to the satisfaction of the Lincoln Transportation and Utilities Department (LTU). Wilderness Crossing shall dedicate and convey to City the necessary right of way for the construction and operation of turn lanes at South 1<sup>st</sup> & Pioneers Boulevard and for the construction and operation of a roundabout at Southwest 2<sup>nd</sup> & Pioneers Boulevard. Developer shall dedicate and convey, at no cost to the City, the necessary right of way for Internal Streets located within the Developer Property.
- F. Vacation.** At such time as relocated S. 1<sup>st</sup> Street is completed, City agrees to vacate South 1<sup>st</sup> Street from Pioneers Blvd to the southern end of the development as shown in the PUD and deed the west approximate 67 feet of vacated South 1<sup>st</sup> Street to Developer in exchange for Developer's dedication of a new South 1<sup>st</sup> Street right of way within the PUD at final plat.

### III.

#### PUBLIC WATER INFRASTRUCTURE

- A. Public Water Mains:** Developer shall design and construct twelve (12) inch water mains (i) from Old Cheney Road to Pioneers Blvd; and (ii) from relocated S. 1<sup>st</sup> Street to the western property line in the mid-section of the Developer Property. City agrees that if a future adjacent property owner taps the water main from Old Cheney Road constructed by Developer, City shall collect connection fees from said future property owner and reimburse Developer for its water main construction costs associated with constructing a typical 6-inch water line as permitted by Lincoln Municipal Code 17.10.110.

**B. Oversizing:** City shall be responsible for all costs attributable to oversizing the water mains with pipe, valves, fitting and all other accessories that are larger than 6-inches. If required, the Water Lines shall be publicly bid and awarded as provided by law.

**IV.**

**SANITARY SEWER**

Developer shall design and construct an eight (8) inch sanitary sewer main from Old Cheney Road to the Developer Property at its own cost. City agrees that if a future adjacent property owner taps the sanitary sewer main constructed by Developer, City shall collect connection fees from said future property owner and reimburse Developer for its sanitary sewer construction costs as permitted by Lincoln Municipal Code 24.52.010.

**NOTICE**

**A. Notice.** Any notices required to be forwarded to a Party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor  
555 South 10th Street  
Lincoln, Nebraska 68508

with a copy to:

City Attorney  
575 South 10<sup>th</sup> Street  
Lincoln, NE 68508

(2) If to Wilderness Crossing, LLC:

Wilderness Crossing, LLC  
Sam Manzitto, Jr.  
4400 Lucile Drive, Suite 201  
Lincoln, NE 68516

with a copy to:

DaNay Kalkowski  
Seacrest & Kalkowski, PC, LLO  
1128 Lincoln Mall, Suite 105  
Lincoln, NE 68508

Any Party hereto may change its address for notification purposes by written notice to all Parties hereto in the manner and method set forth within this paragraph.

## VI.

### MISCELLANEOUS

**A. Release of Platted Lot.** Notwithstanding any contrary provisions herein, any Platted Lot shall automatically be deemed released from all of the terms of this Agreement without further written release. A "Platted Lot" shall mean a lot as defined by the City subdivision ordinances that has been lawfully included within a final plat of the Developer Property, or portion thereof.

**C. Contribution to Rural Fire Protection District.** Wilderness Crossing understands and acknowledges that the City's annexation of the Developer Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Developer Property or any portion thereof being annexed.

**D. Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

Exhibit "A"                      Developer Property Map

Exhibit "B"                      AN21013 Annexation Area Map

**D. Amendments.** This Agreement may only be amended or modified in writing signed

by the Parties to this Agreement.

**E. Further Assurances.** Each Party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the Parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

**F. Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

**G. Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either Party because such Party prepared any portion of this Agreement but shall be interpreted according to the application of rules of interpretation of contracts generally.

**H. Construction.** Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

**I. Relationship of Parties.** Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any Party shall be deemed or construed by the City, Developer, or by any third person to create the relationship of partnership or of joint venture or of any association between the Parties other than the contractual relationship stated in this Agreement.

**J. Assignment.** In the case of the assignment of this Agreement by any of the Parties, prompt written notice shall be given to the other Parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release

in writing is given and signed by the other Parties to this Agreement or unless otherwise stated herein.

**K. Default.** In the event the Developer defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Developer may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

**L. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Developer Property.

**M. Recordation.** This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.

**N. Cooperation.** Whenever a Party's approval or consent shall be required under this Agreement, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. A Party whose approval or consent is requested under the terms of this Agreement shall either provide the approval requested to the requesting party within fourteen (14) days of receiving the request for such approval or consent or notify the requesting Party that the receiving Party is denying such approval or consent within fourteen (14) days of receiving the request. Any refusal must state the reasonable ground for the refusal to grant such approval or consent. Each undersigned Party will whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants and agreements herein provided.

**O. Authority.** The City has the authority to engage in the reimbursements to

Developer described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Developer described in this Agreement will comply with all applicable laws.

“CITY”

**CITY OF LINCOLN, NEBRASKA,**  
a municipal corporation

By: *Leirion Gaylor Baird*  
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of May, 2022, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

(Seal)



*Brandi Lehl*  
Notary Public



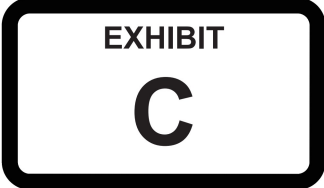
EXHIBIT A  
DEVELOPER PROPERTY



S10, T9, R6, 6<sup>th</sup> Principal Meridian, Lot 59 NE, Lancaster County, Nebraska

EXHIBIT B  
AN21013 Entire Annexation Area





22R-131  
Comprehensive Plan Amendment No. 22001

Introduce: 4-11-22

RESOLUTION NO. A- 93302

1 WHEREAS, the Lincoln-Lancaster County Planning Department has applied to amend the  
2 2050 Lincoln-Lancaster County Comprehensive Plan to amend the Lincoln-Lancaster Area Future  
3 Land Use Map and Growth Tiers Map to reflect recent development interest and provide more  
4 refined boundaries, on property generally located at Highway 77 and West Pioneers, and shown  
5 on Exhibit “A”; and

6 WHEREAS, the Lincoln City-Lancaster County Planning Commission has recommended  
7 approval of the changes.

8 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln,  
9 Nebraska that the 2050 Lincoln-Lancaster County Comprehensive Plan be and the same is hereby  
10 amended in the following manner:

- 11 1. Amend the 2050 Future Land Use Plan (Figure GF.b 2050) and to reflect a change  
12 in future land use designation for those portions of Highway 77 and Pioneers  
13 shown on Exhibit A.
- 14 2. Amend the 2050 Priority Growth Area (Figure GF.c: 2050) as shown on Exhibit B  
15 and add Wilderness Park to the 2050 Future Service Limit as shown on Exhibit C;

16 BE IT FURTHER RESOLVED that all other maps, figures, and plans where the  
17 2050 Lancaster County Future Land Use Plan, are displayed and other references in said plan  
18 which may be affected by the above-specified amendment be, and they hereby are amended to  
19 conform with such specific amendments.

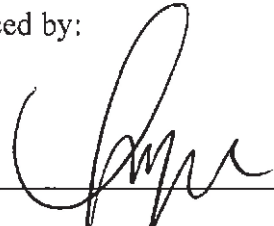
20  
21

See further Council  
Proceedings on next page.


Approved as to Form & Legality:

  
City Attorney

Introduced by:



AYES: Beckius, Bowers, Meginnis, Shobe, Ward,  
NAYS: Raybould, Washington.

Approved this 4<sup>th</sup> day of MAY, 2022.  
  
Mayor

-----  
**ADOPTED**

APR 25 2022 -----

**BY CITY COUNCIL**

**22R-131**

04/25/22 Council Proceedings:

RAYBOULD Verbal Motion to Delay Bill No. 22R-131 for 3 weeks.

Seconded by Washington & carried by the following votes: AYES: Raybould, Washington;

NAYS: Beckius, Bowers, Meginnis, Shobe, Ward.

WASHINGTON Verbal Motion to Delay Bill No. 22R-131 for 1 weeks.

Seconded by Raybould & carried by the following votes: AYES: Raybould, Washington;

NAYS: Beckius, Bowers, Meginnis, Shobe, Ward.












BECKIUS Moved Motion to Amend Bill No. 22R-131 introduced on April 11, 2022, by adopting the substitute resolutions and attachments.

Seconded by Shobe & carried by the following votes: AYES: Beckius, Bowers, Meginnis Raybould, Shobe, Ward, Washington; NAYS: None.

CPA # 22001  
 Hwy 77 & W Pioneers Blvd

## Proposed Land Use Change

### Legend

- Proposed Land Use Changes**
-  Proposed Land Use Changes
- Future Land Use**
-  AG
  -  AG STREAM
  -  Commercial
  -  Environmental Resources
  -  Green Space
  -  Industrial
  -  Public/Semi-Public
  -  RES-LOW
  -  Residential - Urban Density
  -  Lakes & Streams

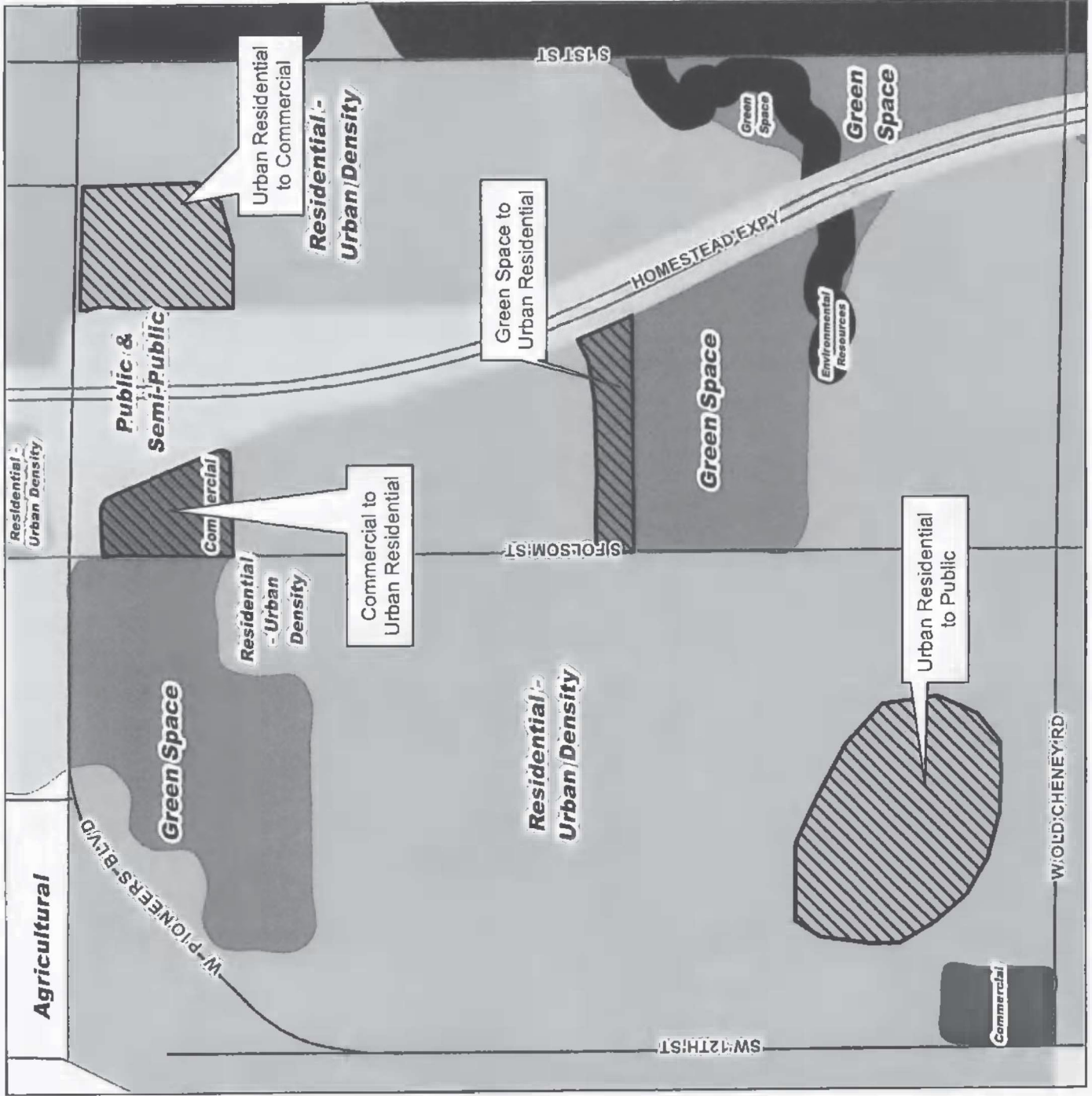


EXHIBIT "A"





\\gis\gisarcview\CompPlan\Amendment.mxd  
 (CPA22001)

EXHIBIT C

CPA # 22001  
Hwy 77 & W Pioneers Blvd

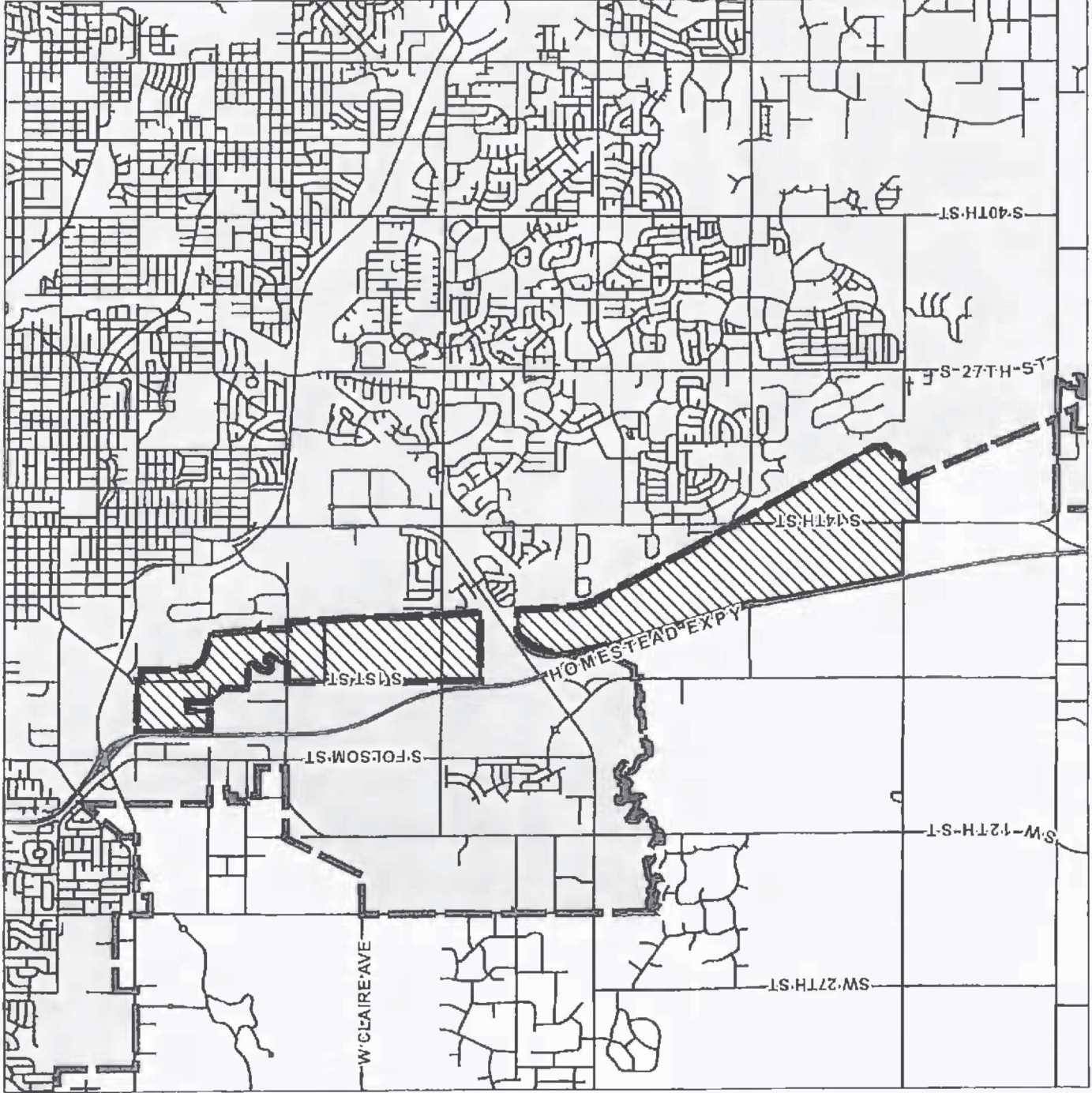
**Proposed Future  
Service Limit**

**Legend**

-  Area to Add to Future Service Limit
-  2050 Future Service Limit



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(CPA22001)



CPA # 22001  
 Hwy 77 & W Pioneers Blvd

## Proposed Growth Tiers

### Legend








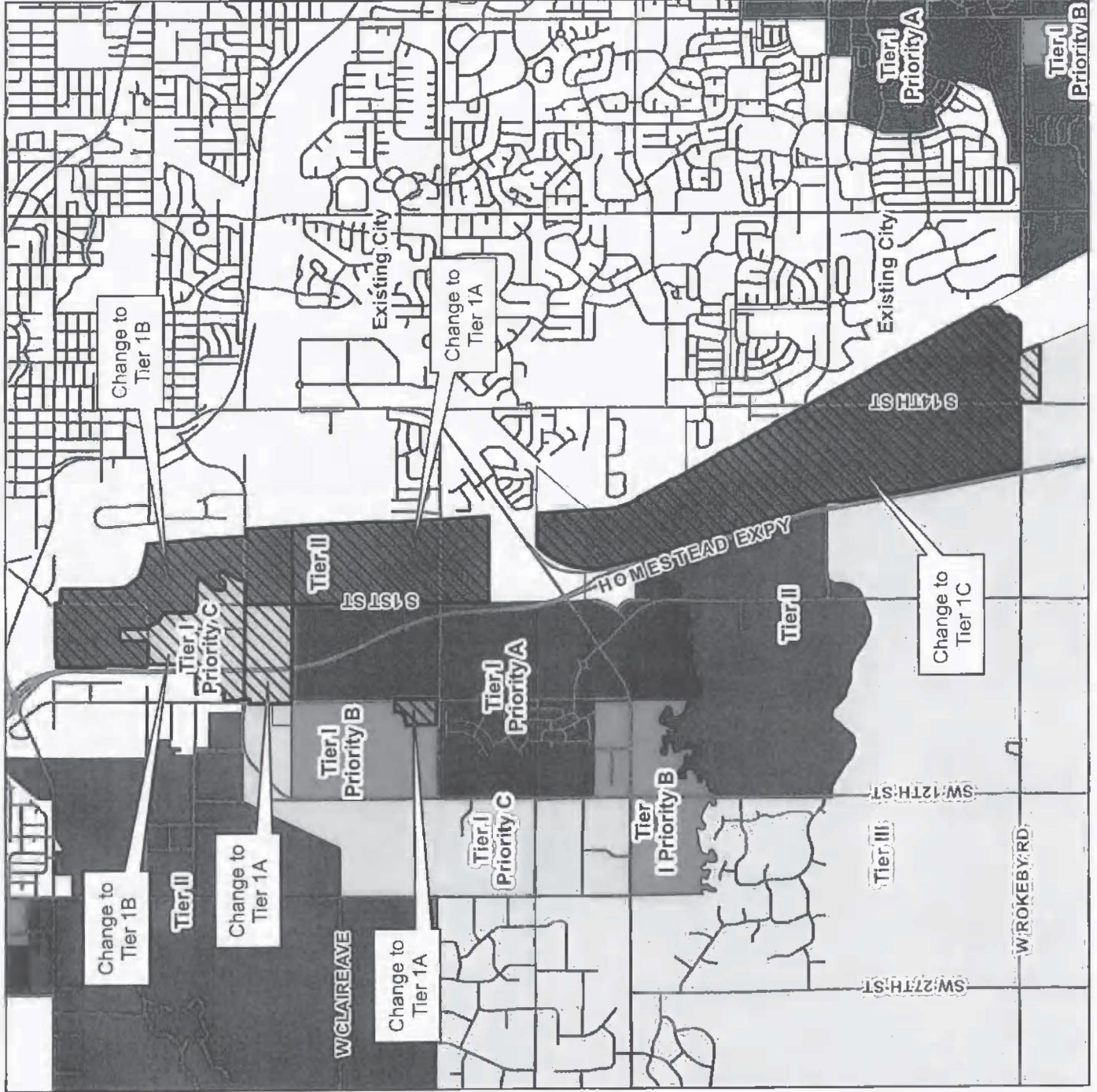
-  Proposed Growth Tier Changes
-  Existing City
-  Tier I Priority A
-  Tier I Priority B
-  Tier I Priority C
-  Tier II
-  Tier III

EXHIBIT "B"



0 1,950 3,900 7,800  
 Feet

f:\gis\arcview\CompPlanAmendment.mxd  
 (CPA22001)




22R-131

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 22R-131 introduced on April 11, 2022, by adopting the Substitute Resolutions and Attachments attached hereto.

Introduced by:



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Approved as to Form and Legality:



---

City Attorney

Requested by: Law Department

Reason for Request: To include the Future Service Limits Map amendment to the Comprehensive Plan Amendment.

**ADOPTED**

**APR 25 2022**

**BY CITY COUNCIL**

# VOID

22R-131  
Comprehensive Plan Amendment No. 22001

Introduce: 4-11-22

## RESOLUTION NO. A-\_\_\_\_\_

1           WHEREAS, the Lincoln-Lancaster County Planning Department has applied to amend the  
2           2050 Lincoln-Lancaster County Comprehensive Plan to amend the Lincoln-Lancaster Area Future  
3           Land Use Map and Growth Tiers Map to reflect recent development interest and provide more  
4           refined boundaries, on property generally located at Highway 77 and West Pioneers, and shown  
5           on Exhibit "A"; and

6           WHEREAS, the Lincoln City-Lancaster County Planning Commission has recommended  
7           approval of the changes.

8           NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln,  
9           Nebraska that the 2050 Lincoln-Lancaster County Comprehensive Plan be and the same is hereby  
10          amended in the following manner:

- 11           1.       Amend the 2050 Future Land Use Plan (Figure GF.b 2050) and to reflect a change  
12                   in future land use designation for those portions of Highway 77 and Pioneers  
13                   shown on Exhibit A.
- 14           2.       Amend the 2050 Priority Growth Area (Figure GF.c: 2050) as shown on Exhibit B.

15           BE IT FURTHER RESOLVED that all other maps, figures, and plans where the  
16           2050 Lancaster County Future Land Use Plan, are displayed and other references in said plan  
17           which may be affected by the above-specified amendment be, and they hereby are amended to  
18           conform with such specific amendments.

19

20

Introduced by:

Benn Stobe

Approved as to Form & Legality:

*Thomas Priddy*  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2022:

\_\_\_\_\_  
Mayor











CPA # 22001  
 Hwy 77 & W Pioneers Blvd

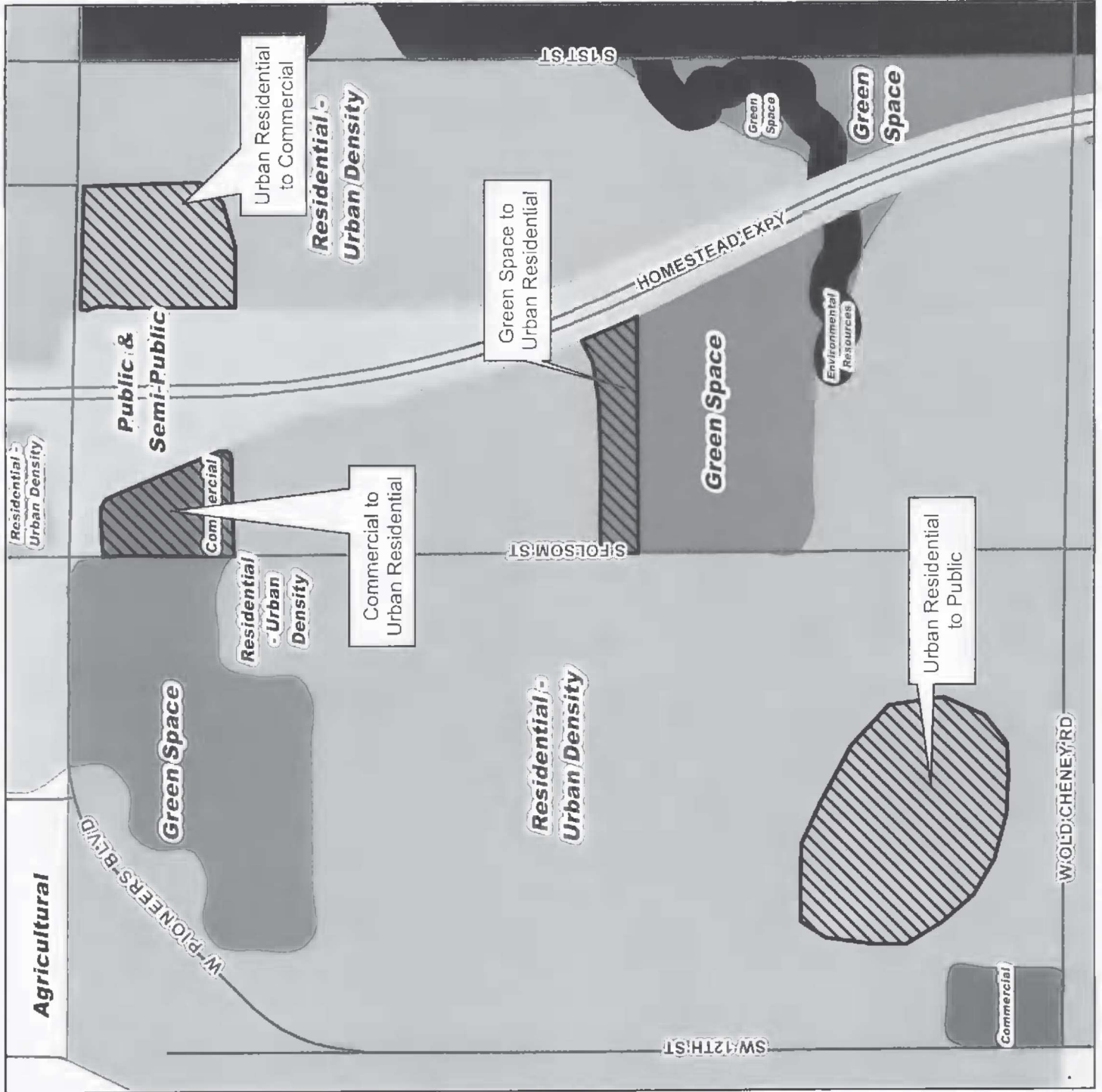
# Proposed Land Use Change

## Legend

 Proposed Land Use Changes

## Future Land Use








-  AG
-  AG STREAM
-  Commercial
-  Environmental Resources
-  Green Space
-  Industrial
-  Public/Semi-Public
-  RES-LOW
-  Residential - Urban Density
-  Lakes & Streams



UNION-LANCASTER COUNTY  
 PLANNING DEPARTMENT  
 20000 Union Deposit Road  
 Union Deposit, PA 17048  
 Phone: 717.328.1234  
 Fax: 717.328.1235  
**GIS**

# Proposed Growth Tiers

## Legend

-  Proposed Growth Tier Changes
-  Existing City
-  Tier I Priority A
-  Tier I Priority B
-  Tier I Priority C
-  Tier II
-  Tier III

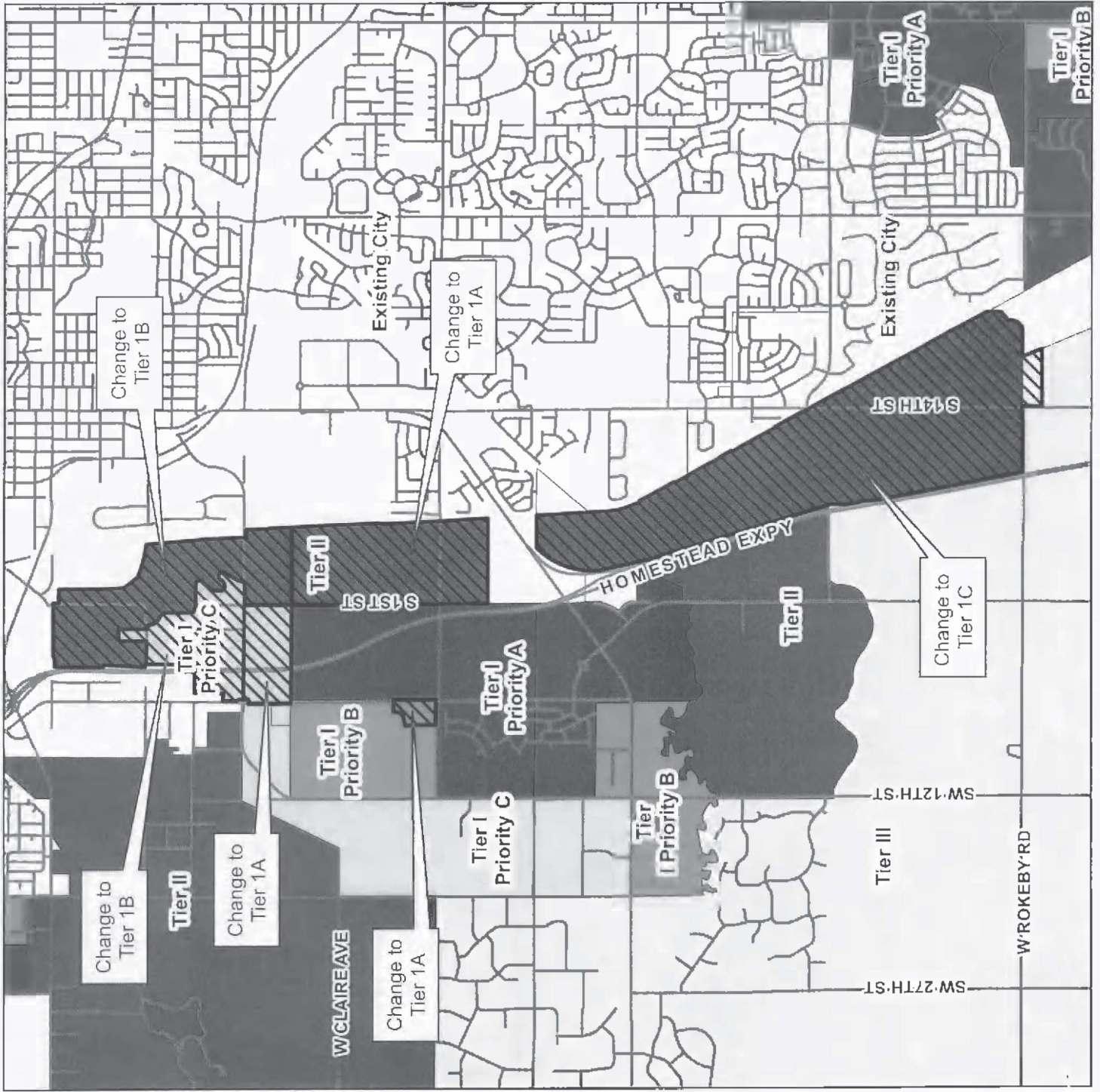


EXHIBIT "B"



LINCOLN LANCASTER COUNTY  
 PLANNING DEPARTMENT  
 215 W. 10th Street, Suite 200  
 Lincoln, NE 68502  
 Phone: 402.441.2200  
 Fax: 402.441.2201

