

## **CITY BOARD OF ZONING APPEAL #24001**

### **DATE SCHEDULED FOR PUBLIC HEARING:**

February 23, 2024

### **ADDRESS:**

1140 Calvert Street

### **LEGAL DESCRIPTION:**

The West 79' of Lots 4-6, and Lots 7-9 except the West 50', all in Block 5, Southview, located in the NE 1/4 of Section, 02-09-06, Lancaster County, Nebraska

### **EXISTING LAND USE AND ZONING:**

Commercial

H-3 Highway Commercial

### **SURROUNDING LAND USE AND ZONING:**

North: Commercial

B-1, H-3

South: US Post Office\

B-2

East: Multiple-family Residential

B-1

West: Commercial

H-3

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

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE PER LINCOLN MUNICIPAL CODE 27.69.040(Table 3).

1. Lincoln Municipal Code (LMC) Section 27.69.040(Table 3) - In the H-3 zoning district freestanding signs are limited to a maximum height of 25' and 100 square feet of sign area when located outside the required 20' front yard setback. This request seeks a variance to increase the required height limit from 25' to 65' for a freestanding sign.

### **STAFF FINDINGS:**

1. The subject property is located at 1140 Calvert Street. The property is developed with a two-story hotel and associated parking lot surrounding the building. According to the Lancaster County Assessor, it is a 47-unit hotel that was built in 1987.
2. The subject property upon which the hotel is located is a combination of portions of 6 lots comprising one larger, rectangular tract of approximately 52,000 square feet in area. The tract is rectangular and not unusually shaped. It is adjacent to commercial zoning in all directions occupied by commercial uses to the west and north, and apartments to the east and the US Post Office to the south across Calvert Street.

3. The petitioner is requesting a variance to the allowed maximum height for a freestanding sign from 25' to 65'. Zoned H-3 Highway Commercial, the applicable sign regulations are as follows:

Sign Type	# of Permitted Signs	Max Height Inside Front Yard	Max. Height Outside Front Yard
Freestanding	1 per business per frontage	50 sq. ft. sign area up to 15' tall	100 sq. ft. sign area up to 25' tall
	<b>OR</b>		
Center	1 per frontage	N/A	150 sq. ft. sign area up to 35' tall
	<b>AND</b>		
Interstate (only if within 660' of interstate)	1	150 sq. ft sign area up to 15' tall	300 sq. ft. sign area up to 80' tall

4. The application states there is a 55'-tall sign pole on the property today, which at some point had a sign at the top resulting in a maximum height of 65'. The sign permit history for the property includes a 50'-tall sign was approved by permit #S9800363 in 1998. In 2008 sign permit #S0800106 was approved allowing the sign face to be replaced.
5. Most recently the owner contacted Building and Safety about replacing the sign but was told it was not possible. The applicant was informed that since 2009 the 50'-tall sign was considered nonconforming, but since the sign was removed more than two years ago that status is lost. It became nonconforming when the sign code was amended in 2009 and the maximum allowed freestanding sign height in the H-3 zoning district was lowered from 50' to 25' as part of a larger overhaul of the sign code.

Lincoln Municipal Code (LMC) 27.69.320 allows face changes on nonconforming signs. However, LMC also states that once a use has been discontinued for more than two years it is no longer nonconforming and any subsequent use must comply with the requirements of the Zoning Ordinance. The sign has been gone from the pole for more than two years so the nonconforming status was lost, and the new sign must conform to code requirements in effect today.

6. In 1988 the owner of the property at that time applied to the Board of Zoning Appeals for BZA#1732 to exceed the allowed sign height. That request sought a variance to the maximum height from 35' to 50'. Prior to the 1979 zoning update, the maximum sign height was 35'. This was approximately the same time the hotel was built according to the County Assessor's records. By a unanimous vote the Board denied the variance request.

7. The current Zoning Ordinance was adopted in 1979 where the maximum allowed height for a sign in the H-3 zoning district was increased from 35' to 50'. However, the applicant states the pole is 55' tall and had a sign on top of that for a maximum height of 65'. A 65'-tall sign was not allowed in the H-3 zoning district at this location since the adoption of the updated zoning ordinance in 1979, and a variance to the maximum height was never granted.
8. The appellant states the 'request for a variance is based upon exceptional and extraordinary circumstances whereby a locally owned business is unable to adequately advertise the existence and location of its business.' There is nothing extraordinary or unique about this location as there are many businesses around the city located mid-block and not fronting onto a major street. The status as a locally owned business is not unique and is not a consideration in the adoption or implementation of zoning regulations.
9. Appellant states that the 'strict application of the zoning regulations would produce an undue hardship given there is no other reasonable method to advertise the location of the business.' It is noted that a 25'-tall sign is still allowed and is very visible, and wall signs are allowed as well. The role technology plays today in locating businesses continues to diminish the need for sign visibility from great distances.

The hardship is entirely self-imposed as a sign which complies with the requirements of the Zoning Ordinance can be permitted and erected. The fact that the allowed sign is not as tall as the appellant desires is not a hardship.

Further, the appellant is not denied a reasonable use of the land as it is developed with a hotel, a permitted use in the H-3 zoning district which is allowed to continue. A freestanding sign is also allowed, albeit one which complies with the Zoning Ordinance. These would be the identical conditions under which any other owner seeking to use the property would face.

10. The purpose of defining 'nonconforming uses' in the Zoning Ordinance is to allow uses which were legally created to continue should the applicable zoning regulations change. As a result, property owners are not required to make changes to comply simply because the regulations have changed.

However, at such time as the use ceases to exist for more than two years then subsequent development must comply with the current codes. The effect of defining nonconforming uses provides a 'grace period' for owners with respect to complying with changed regulations, but the overall intent is for nonconforming development to eventually come into compliance with current zoning regulations.

11. The property, building and location are all typical with no unique characteristics and there is no hardship. Complying with the current sign code is the expectation for anyone applying to Building and Safety for a sign permit today.

12. 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.

13. There is nothing unique or unusual about this property and the development otherwise can meet the requirements of the Zoning Ordinance.

Denying the variance does not deny the owner a reasonable use of the property as the hotel can remain as originally constructed, and a sign which complies with the Zoning Ordinance can be erected. A hotel and a sign are permitted uses in the H-3 zoning district.

This petition is without justification. Granting this variance would serve as a basis for those seeking relief from the BZA instead of coming into compliance with the Ordinance.

If the variance is approved the sign permit can be issued for a sign 65' in height provided the appellant obtains a building permit and passes inspections. If denied the new sign can be permitted in compliance with the Zoning Ordinance.

Prepared by

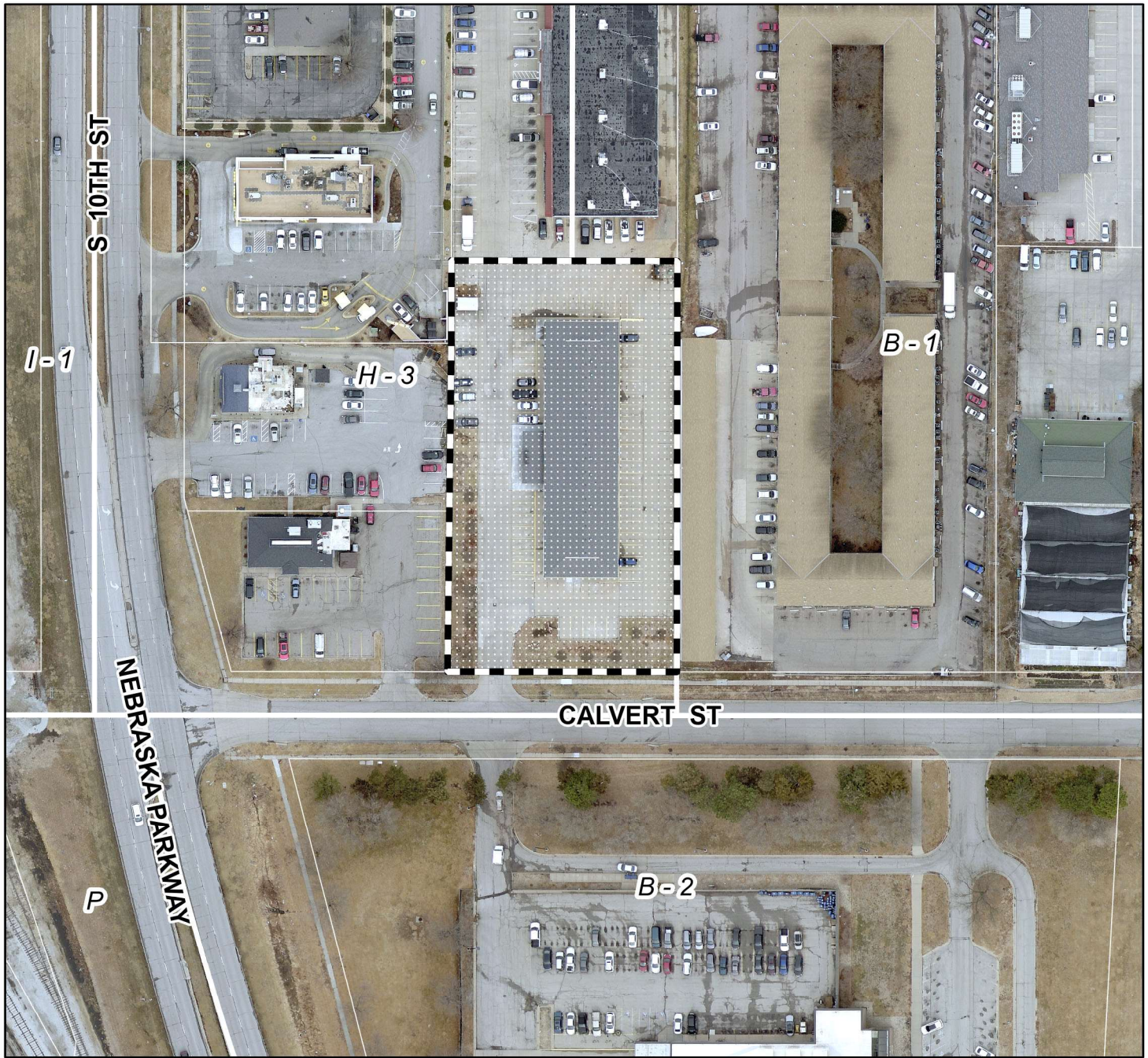
Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
February 13, 2024

**PETITIONER/  
CONTACT:**

Liam Wakeman  
4200 West Milton  
Lincoln, NE 68528  
402-802-4213  
[pm2@futuresone.com](mailto:pm2@futuresone.com)

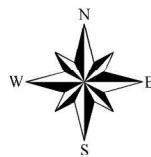
**OWNER:** Lincoln Inn Hotel, LLC  
700 R Street, Suite 313  
Lincoln, NE 68508  
402-304-0200  
[pm2@futuresone.com](mailto:pm2@futuresone.com)





2020 aerial

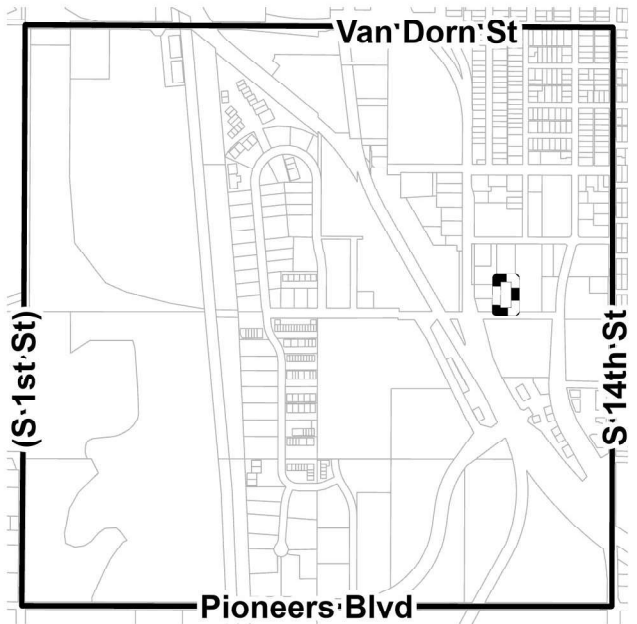
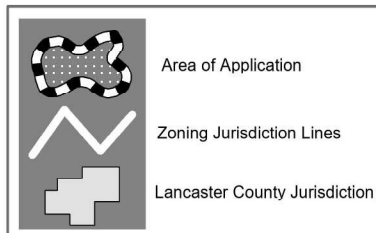
## Board of Zoning Appeals #: BZA24001 S 10th St & Calvert



### 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.02 T09N R06E







1140

APPROX 75'

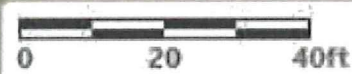
APPROX 36'

SIGN LOCATION

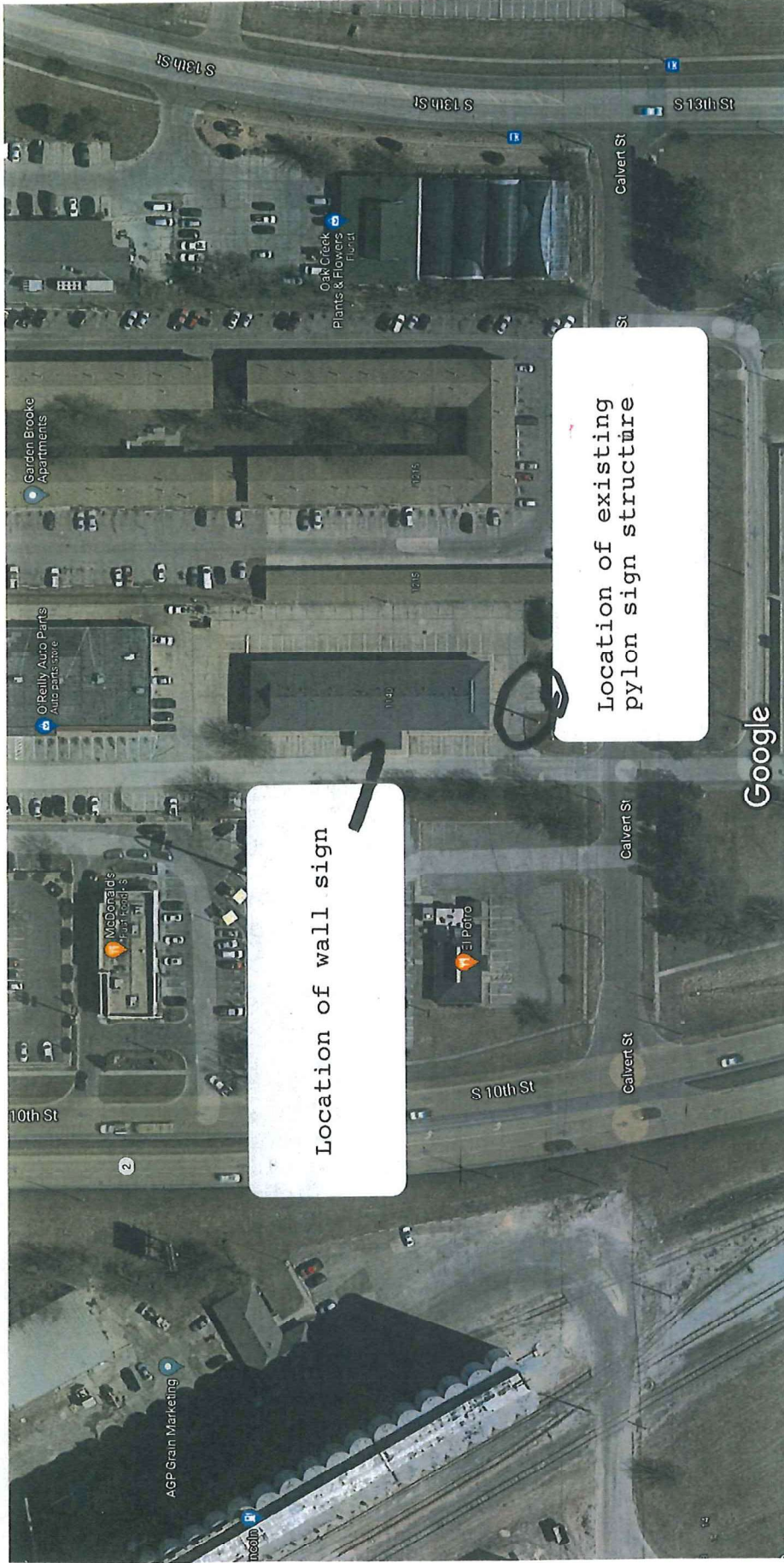
2002

2020

2020



Lincoln Lane





Building & Safety Department  
City of Lincoln - Lancaster County  
Room 203, 555 S 10TH ST., Lincoln, NE 68508-3995

**SIGN PERMIT**

Inspection Line 441-8213  
For Technical Questions,  
Call Plan Reviewers at 441-7882 - 8:00 a.m. to 4:00 p.m.  
Call Building Inspectors at 441-7061

*6609  
Days Inn*

NEBRASKA NEON SIGN CO  
1140 N 21ST ST  
LINCOLN, NE  
68503

Permission is hereby granted to construct the following stationary sign as described per application and listed hereon:

PERMIT #: S0800106  
STATUS: ISSUED

APPLIED: 02/28/2008  
APPROVED: 03/07/2008  
ISSUED: 03/13/2008  
FINALED:  
TO EXPIRE: 07/11/2008

**JOB ADDRESS: 1140 CALVERT ST L**

LEGAL DESC: SOUTH VIEW, BLOCK 5, W79' LOTS, 4, 5 & 6 & LOTS 7, 8 & 9 EX  
OWNER: DAYS INN

**WORK DESCRIPTION: FACE CHANGE ILLUMINATED POLE SIGN, 46" X 17' & 9'5 1/2" x 5' = 100 SQ FT, HEIGHT = 65', DAYS INN**

Zoning: H-3      Setback: 20'  
Sign Size: 46'x17' + 9-5x5'  
Sign Height: 65'  
Total Area(SQ FT): 100 SF

DESCRIPTION	TOT FEE	PAID
Face Change	15.00	15.00
	TOTAL FEES:	\$15.00

TOTAL PAYMENT: \$15.00  
BALANCE DUE: \$0.00



SAFETY DEPT.  
THIS APPROVED DRAWING  
SHALL BE KEPT ON THE  
CONSTRUCTION PREMISES  
AT ALL TIMES DURING  
WHICH THE WORK AUTH-  
ORIZED IS IN PROGRESS  
AND SHALL BE OPEN TO  
INSPECTION BY PUBLIC  
OFFICIALS.

DATE 3-11-08

REVIEWER BAC

PERMIT # 50800106





On Behalf of Lincoln Inn Hotel, L.L.C.  
1140 Calvert St.  
Lincoln, NE 68502  
01/03/2023

City of Lincoln Planning Department  
555 S 10<sup>th</sup> St., Ste 213  
Lincoln, NE 68508

**RE: Planning Department Application Request for Variance of Sign Height**

Lincoln Inn Hotel, L.L.C. is requesting a variance to Lincoln Municipal Code § 27.69.040 Table 3. Specifically, a variance to the requirement that Freestanding Signs within Zoning District H-3, must not be more than 25 ft. tall when placed outside the front yard.

**Background:**

Lincoln Inn Hotel, L.L.C. (the "Hotel") is operating as a Travelodge by Wyndam at 1140 Calvert St. which is located approximately 100 yards to the West from Nebraska Parkway. Several businesses separate the Hotel from Nebraska Parkway; including, McDonalds, Long John Silvers, and El Potro. The McDonald's business has two signs that are outside the allowed height and make it more difficult for passerbys to view the Hotel's signage unless it is allowed a variance.

The Hotel has a pole on the south side of the property with a height of approximately 55 ft. Historically, this pole held an illuminated Days Inn hotel sign and sign cabinet. The face change permit was issued on March 13, 2008, providing for a 100 sq. ft. sign with a height of 65 ft.

The Hotel purchased 1140 Calvert St. On April 14, 2021. The business has invested over \$1,000,000 in the purchase and improvements to the property. At this point, the Hotel proceeded to remodel the premises and pursued buying a new sign and sign cabinet to mount to the existing pole unaware that there was a time requirement for face change permits or the existing height restriction on signs within Zoning District H-3. The Hotel is no longer able to pursue obtaining a Face Change Permit due to the fact that sign cabinet is no longer attached to the top of the pole and therefore seeks to obtain a variance in order to utilize the existing sign pole to advertise its business.

The Hotel believes that this variance will aid the City of Lincoln in its goal of redeveloping and improving the area located to the North and West of the property at 1140 Calvert St. This improvement of 1140 Calvert St. will be in line with the City's goal of improving the substandard and blighted areas surrounding the property pursuant to Resolution No. A-93742. Overall, the

Hotel is a locally owned small business that caters to the needs of the Lincoln community and has increased the value of its property and the properties located nearby through its improvements.

Further, the Hotel believes that its request for a variance is based upon exceptional and extraordinary circumstances whereby a locally owned small business is unable to adequately advertise the existence and location of its business. A sign remaining within the standards of Lincoln Municipal Code § 27.69.040 Table 3 would not be visible to vehicles traveling along Nebraska Parkway. However, a taller sign, such as one allowed through this variance, would grant the Hotel the ability to advertise to passerbys along Nebraska Parkway.

A strict application of the zoning sign regulation would produce undue hardship in this circumstance because there is no other reasonable method to advertise the location of this business given that it is located behind other businesses with signs that are likely variances to Lincoln Municipal Code § 27.69.040 Table 3. Given the nature of the location of this business, the hardship is not shared by others in the same zoning district and vicinity. Further, the approval of this variance will very likely not produce a substantial detriment to the adjacent properties. Instead, this variance will very likely generate increased business to businesses in the vicinity. The approval of this variance is based upon reason of demonstrable and exceptional hardship as distinguished from variation for purpose of convenience, profit or caprice.

For the foregoing reasons the Hotel believes it should be granted a variance for sign height, allowing it mount a sign cabinet on the existing sign pole and maintain a permitted freestanding sign with a maximum height to grade of 65' and less than or equal to 100 square feet as allowed under § 27.69.040 Table 3.

Sincerely,

Liam Wakeman

On Behalf of Lincoln Inn Hotel, L.L.C.

Enclosure

City of Lincoln - Planning Department Request Form

Site Maps

Sign Permit #S0800106