

CITY BOARD OF ZONING APPEAL #25007

DATE: October 22, 2025

DATE SCHEDULED FOR PUBLIC HEARING: October 31, 2025

ADDRESS: 7050 N 50th Place

LEGAL DESCRIPTION: Lot 2, Northbank Preserve 9th Addition, Lincoln, Lancaster County, Nebraska

APPLICANT: Chris Collins, OnCenter Construction

LOT AREA: .21 acres or 9,323 square feet, more or less

ZONING: R-3 Residential

EXISTING LAND USE: Single Family Dwelling

SURROUNDING LAND USE AND ZONING:

North: Single Family Dwellings	R-3 Residential
South: Single Family Dwellings	R-3 Residential
East: Salt Creek	P Public
West: Single Family Dwellings	R-3 Residential

TYPE OF APPEAL:

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

Chapter 27.72.020 of the Lincoln Municipal Code (LMC) Regulations requires a minimum 5-foot side yard setback for a single family dwelling within the R-3 Residential District. This is a request for a variance to reduce the side yard setback on the south side of the lot to 4.60 feet.

STAFF FINDINGS:

1. The subject property is located at 7050 N 50th Place. The lot is approximately 136' by 67' or 9,318 square feet. The property is zoned R-3 Residential. The single family house on the lot is nearly completed. The lot size is similar to the surrounding single family lots.
2. The applicant is requesting a variance to reduce the minimum side yard setback within R-3 Residential from 5 feet to 4.60 feet on a nearly complete single family home. The R-3 Residential setbacks are as follows:

Front	20'
Side	5'
Rear	20' (or 20% lot depth)

3. The property is within Lincoln city limits, requiring the property to follow city zoning regulations.
4. The property was purchased by the applicant, OnCenter Construction, Inc. in November of 2024. A building permit (B2403284) was then filed to start construction of the single family dwelling.
5. As part of the building permit review, the Lincoln Municipal Code (LMC) 20.12.080 references the International Residential Building Code 109.1.1.1 for setback verification for residential foundation depending on the distance to the property line. If the foundation is less than 6 inches but more than 2 inches from the setback, the Building Official will verify the setback with a string line during the permit inspection. The code states if the foundation is less than 2 inches from meeting the required setback, the contractor must have a licensed surveyor verify the foundation and setback location relative to the property line prior to pouring the concrete walls.
6. For this building permit, the foundation was less than two inches which would require the licensed surveyor to mark the location. This step was not completed by the contractor and concrete was poured in March 2025. To the knowledge of the Building Official, no survey was conducted before the foundation was poured, violating the code requirement and procedure for the foundation being closer than 2 inches from the setback.
7. Since the survey was not conducted prior to pouring the concrete, the foundation permit was denied as the south foundation wall as constructed was located within the setback.
8. The contractor continued construction of the home even though a foundation permit was never approved. The contractor did continue to get approved permits for other construction phases of the home including mechanical, plumbing and electrical, as each permit would have a different inspection process and inspector overseeing the work at that time.
9. The City became aware of the setback concern through a resident complaint in September. The required survey showing the exact location of the foundation was then completed and provided for this application and attached as Exhibit A showing the south side of the home being within the 5-foot side yard setback.

10. The 67' x 136' lot is typical of this residential area and not unusual in any respect. The surrounding lots all appear to be developed with dwellings that meet the required side yard setback for the R-3 district.
11. The property is shown for future urban residential on the 2050 Comprehensive Plan Future Land Use Map.
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.

Denying the variance would require the location of the south foundation wall to be modified and reconstructed to meet the required R-3 Residential 5-foot setback before the dwelling could be considered conforming to the zoning standards. It is unknown what impact this would have on the nearly completed dwelling.

If the variance is approved, the location of the dwelling could remain in place, reducing the required side yard setback and obtaining an approved foundation permit.

13. With the request the applicant submitted a copies of the Lincoln Municipal Code Chapter 26 & 27, the City Board of Zoning Appeals process and regulations and City of Lincoln Design Standards, all which can be access on the Planning and Development Services website under the Planning Division. The applicant submitted previously legal cases with the application; (Eastroads LLC v. Omaha Board of Appeals, Bruning v. City of Omaha Zoning Board of Appeals, Dolezal-Soukup v. Dodge County Board of Adjustment, Hardship and the Granting of Zoning Variances, and Self-imposed Hardship / Self-created Conditions, all which can be access on the Planning Division website under the Planning Application Tracking Services (PATs) by searching the application number "BZA25007".

(402) 441-6360 or bcallahan@lincoln.ne.gov

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/BZA/25000/BZA25007 7050 N 50th PI Variance.bmc.docx>

Chapter 27.75 BOARD OF ZONING APPEALS

27.75.020 Jurisdiction.

The jurisdiction of the Board of Zoning Appeals shall be limited to the following:

- a. Appellate Jurisdiction. The 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;
- b. Original Jurisdiction.
 1. Powers relative to variances. 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.
 2. Powers relative to exceptions. The Board of Zoning Appeals is authorized, upon petition, to make the following zoning exceptions:
 - i. To permit the reconstruction of a nonconforming building which has been destroyed, or partially destroyed by fire or act of God where the board shall find some compelling public necessity requiring the continuance of the nonconforming use;
 - ii. To interpret the provisions of the title where the street layout actually on the ground varies from the street layout as shown on the map fixing the several districts, which map is attached to and made a part of this title;
 - iii. To reduce the parking requirements in the commercial, business or industrial districts whenever the character of the use of building is such as to make unnecessary the full provisions of parking facilities as required. In permitting a reduction, the board may restrict the use of the building to uses requiring a similar reduced number of parking facilities. The board's granting of a reduction in parking requirements shall not serve as a convenience to the petitioner but shall recognize the varying demands for off-street parking by different uses that cannot reasonably be determined in detail in the zoning ordinance.

27.75.050 Decisions of the Board; Scope and Factors Considered.

In 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. In considering all petitions for variances and exceptions within its jurisdiction under this title, the board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the district map and will not impair an adequate supply of light and air to adjacent property, or increase the congestion in public streets, or increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety,

comfort, morals, and welfare of the City of Lincoln. In making a determination, the board may request information and recommendations from any department of the City of Lincoln. Every decision by the board shall be accompanied by a written finding of fact based on testimony and other evidence, specifying the reason for granting or denying the variation. In the event that the proposed variance or exception is denied by the Board of Zoning Appeals, no new request shall be made for the same or a substantially similar variance or exception within one year of said denial thereof. (Ord. [19886](#) §4; June 17, 2013; prior Ord. 12571 §398; May 8, 1979).



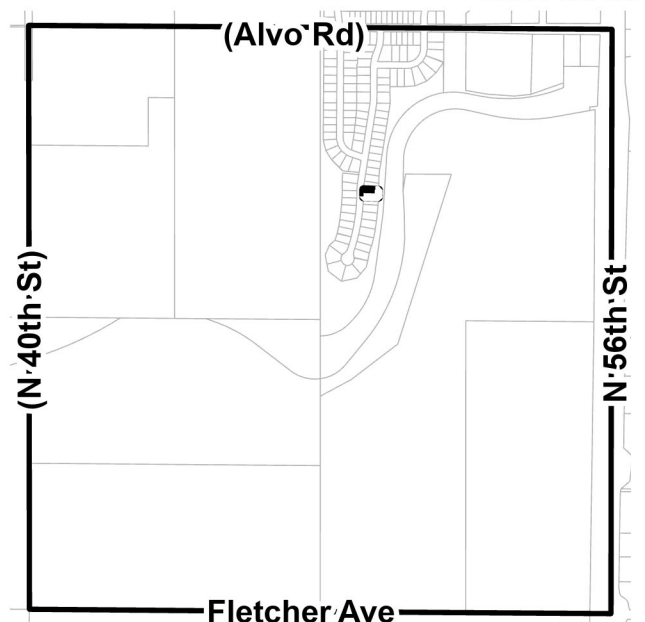
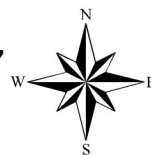
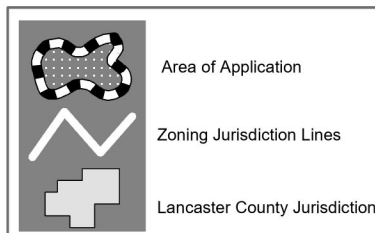
2024 aerial

Board of Zoning Appeals #: BZA25007 **N 49th St & N 50th 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.32 T11N R07E



HILGERS GRABEN

To: City of Lincoln Planning Department
From: 555 S 10th Street, Suite 213, Lincoln, NE 68508
Date: October 10, 2025
Re: Board of Zoning Application – Property 7050 N 50th Street, Lincoln, NE 68514

Dear Members of the City Planning Department,

We hereby write this letter as a request for a variance for the property located at 7050 N 50th Street, Lincoln, NE 68514 (“Property 7050” or the “Property” as context may require), legally described as Lot 2, Northbank Preserve 9th Addition, Located in the Northeast Quarter of Section 32, Lincoln, Lancaster County, Nebraska. This variance is being requested due to a minor, unintentional encroachment resulting from an inaccurate initial survey report and is hereby requesting the minimum necessary relief to meet the requirements of the city’s 5-foot setback and to resolve any and all future disputes with the neighboring property. Furthermore, this application requests a variance to the required South side yard setback to permit an encroachment of approximately 2.8 inches at the rear corner and 4.8 inches at the front right corner of the structure. We hereby state further that this request is being made in good faith and will not adversely affect any risk to public interest or safety.

BACKGROUND

Property 7050 was purchased by OnCenter Construction, Inc., a Nebraska corporation on November 12, 2024, and building permits were pulled and approved on the same day and construction began shortly thereafter. Subcontractor K&M Land Surveying was hired to perform mapping services related to boundary and lot lines of the Property prior to the foundation being laid. Subcontractor R & T Walls conferred with K&M Land Surveying regarding their findings of the property and lot lines and laid the foundation for the Property shortly thereafter. Construction of Property 7050 is currently

HILGERS GRABEN

ongoing. An updated survey was issued on September 23, 2025 (attached hereto as Exhibit A), verifying that Property 7050 was within the appropriate property lines and was not invading the neighboring property or property lines. However, the survey did note that Property 7050 is encroaching on the required setback on the South side of the property by approximately 2.8 inches at the rear corner and 4.8 inches at the front corner of the property. It is noteworthy that the property was built at an angle on the lot due to its size. We hereby request a variance of the South side yard setback, revised by 2.8 inches at the rear corner and 4.8 inches at the front right corner of the property.

GROUND FOR APPLICATION

According to the rules of the City Board of Zoning, a variance may be granted when strict application of the zoning ordinance would cause undue hardship because of special circumstances or physical conditions peculiar to the property, provided that granting the variance will not injure the public welfare, nor impair the purpose and intent of the zoning ordinance. Our request meets this standard for the following reasons:

1. The encroachment is extremely modest (only a few inches) and is the **minimum necessary** relief to resolve the situation.
2. The irregular shape and orientation (angle) of the lot created difficulty in precise compliance with the setback lines.
3. The Property was placed in good faith, relying on professional survey data, and any deviation from the setback requirements was neither intentional nor self-imposed, but rather resulted from reasonable reliance on licensed professional surveying services.
4. Granting the variance poses no threat to public safety, light, air, or neighborhood character.
5. The variance will not confer special privilege inconsistent with other similarly situated lots.

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SUPPORTING DOCUMENTATION

We have included the following materials in support of our application for review:

Exhibit A – Site plan noting the proposed variance request

Exhibit A-1 - Site plan mark up

Exhibit B – Lincoln Municipal Code, Title 27 (Zoning Ordinance)

Exhibit C – City Board of Zoning Appeals (Lincoln)

Exhibit D – Lincoln’s Design Standards & Subdivision Ordinance (Title 26 / Design Standards)

Exhibit E – Comprehensive / Development Plan & Setback Definitions

Exhibit F – Eastroads, L.L.C. v. Omaha Zoning Bd. of Appeals, 261 Neb. 969, 628 N.W.2d 677 (2001)

Exhibit G – Bruning v. City of Omaha Zoning Bd. of Appeals, 303 Neb. 146, 927 N.W.2d 366 (2019)

Exhibit H – Dolezal-Soukup v. Dodge Cnty. Bd. of Adjustment, 308 Neb. 63, 952 N.W.2d 674 (2020)

Exhibit I – Hardship and the Granting of Zoning Variances (Schroetlin, UNL Law Review article)

Exhibit J – “Self-imposed Hardship / Self-created Conditions” in Nebraska Zoning

CONCLUSION

We understand the requirement for a public hearing which is currently scheduled for Friday, October 31, 2025 and we are prepared to present our case in person and answer any questions the board may have. We respectfully submit this application for a variance and request that the board approve the same.

Respectfully submitted,

Michael G. Kuzma

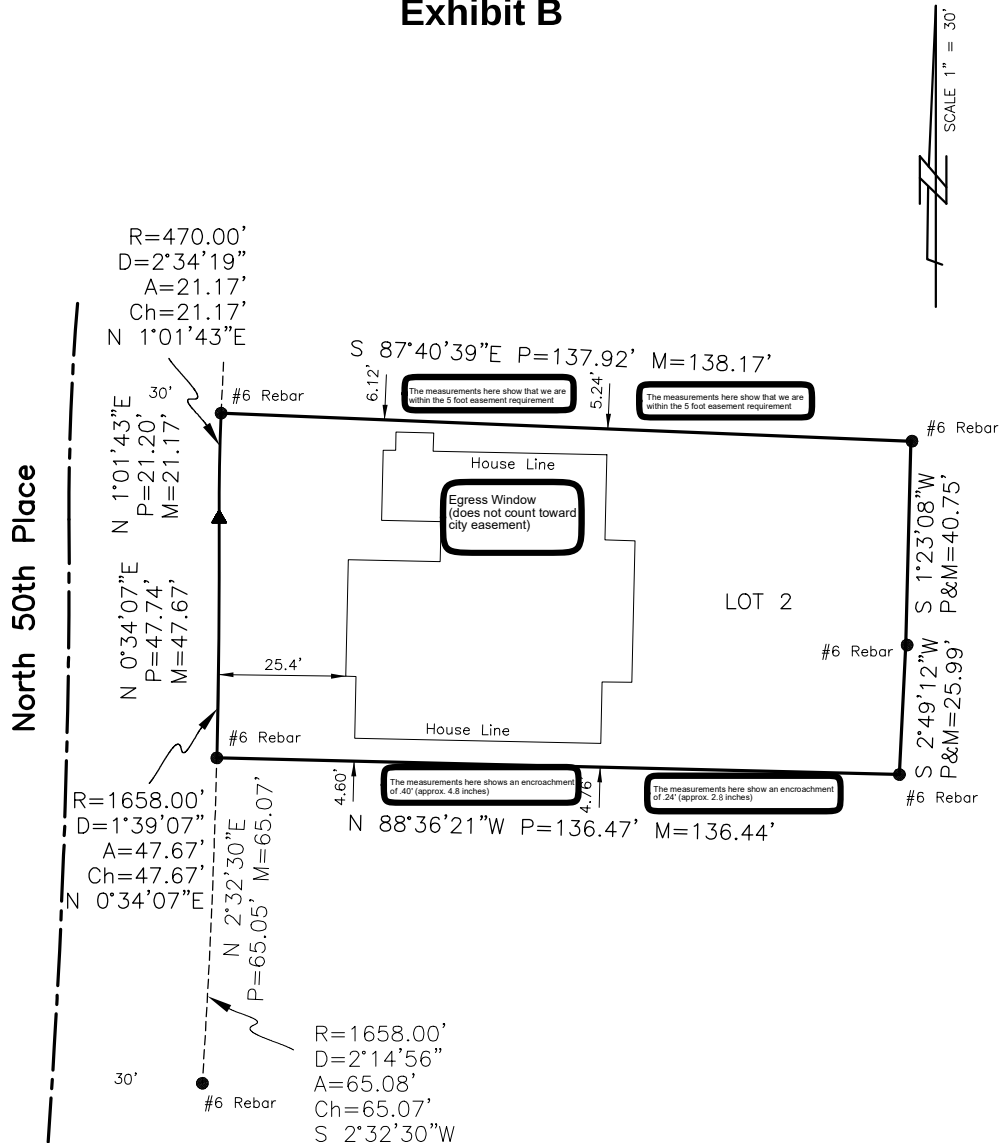
Attorney for OnCenter Construction, Inc.

Legal Description: LOT 2, NORTHBANK PRESERVE 9th ADDITION, LOCATED IN THE
NORTHEAST QUARTER OF

Section: 32, T 11 N, R 7 E, of the 6th P.M. LINCOLN, LANCASTER County, Nebraska

7050 North 50th Place

Exhibit B

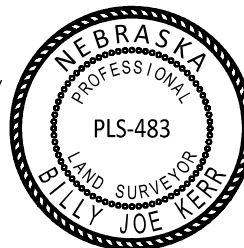


SURVEYOR'S CERTIFICATE

I, Billy Joe Kerr, Nebraska Professional Land Surveyor No.483, duly registered under the Land Surveyor's Regulation Act, do hereby state that I have performed a survey of the land depicted on the accompanying plat; that said plat is a true delineation of said survey performed personally or under my direct supervision; that said survey was made with reference to known and recorded monuments marked as shown, and to the best of my knowledge and belief is true, correct and in accordance with the Minimum Standards for Surveys in Nebraska in effect at the time of this survey.

Billy Joe Kerr
Billy Joe Kerr, PLS #483

Date: 9-23-2025



6811 SOUTHFORK CIRCLE
LINCOLN, NE 68516
(402) 476-3020
(402) 499-6580 text
kmsurvey.com

LEGEND

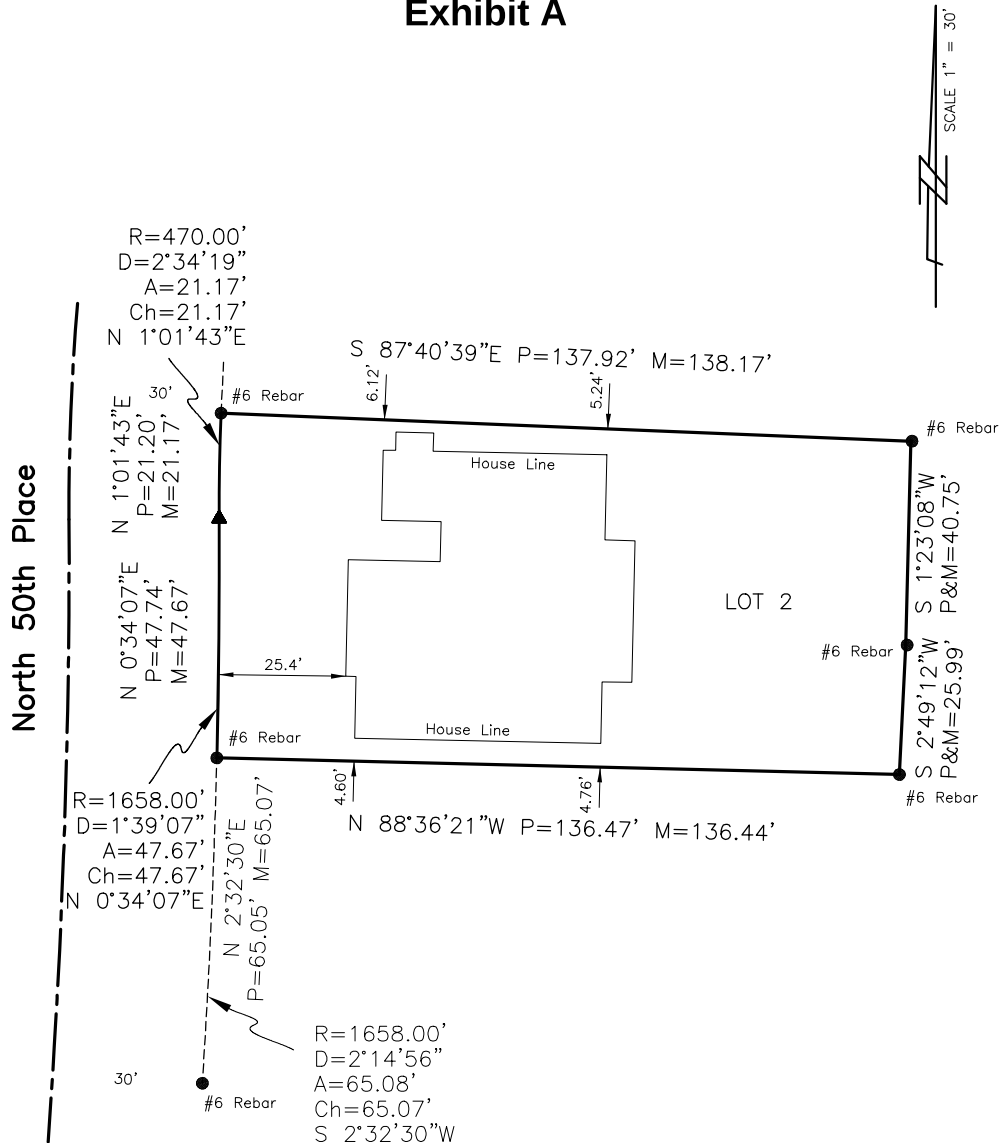
P = Platted
R = Record
M = Measured
● = Found Monument as noted
○ = Set #5 Rebar & LS 483 cap
▲ = Temporary/computed Point

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7050 North 50th Place

Exhibit A

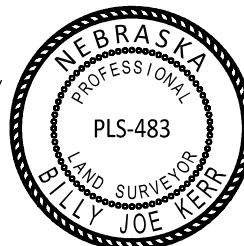


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Billy Joe Kerr
Billy Joe Kerr, PLS #483

Date: 9-23-2025



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LEGEND

P = Platted
R = Record
M = Measured
● = Found Monument as noted
○ = Set #5 Rebar & LS 483 cap
▲ = Temporary/computed Point