

# CITY BOARD OF ZONING APPEALS

Notice is hereby given that the **CITY BOARD OF ZONING APPEALS** will hold a public hearing on **Friday, July 28, 2023**, 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**

**July 28, 2023**

1. Approval of the minutes of the City Board of Zoning Appeals hearing, held October 7, 2022.

### **ADMINISTRATIVE ACTION**

2. BOARD OF ZONING APPEALS 23004, a request for a variance to reduce the required corner yard setback, on a property generally located at 2121 West O 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.

## MEETING RECORD

*Advanced public notice of the City Board of Zoning Appeals meeting was posted on the County-City bulletin board and the Planning Department's website. In addition, a public notice was emailed to the Lincoln Journal Star for publication on Thursday, September 29, 2022.*

**NAME OF GROUP:** CITY BOARD OF ZONING APPEALS

**DATE, TIME AND PLACE OF MEETING:** Friday, October 7, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

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

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

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

McRoy called for a motion approving the minutes of the City Board of Zoning Appeals hearing of August 26, 2022.

Motion for approval made by Edgerton, seconded by McDonald and carried 3-0: Edgerton, McDonald, and McRoy voting 'yes'; Johnson and Miller absent.

Brian Will approached. Will stated that today is being held to vote on one item that was voted on August 26<sup>th</sup> and failed 2-1. Will clarified that there is no public hearing held but discussion can be had amongst members.

**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.**

**ACTION ONLY:** October 7, 2022

Members present: Edgerton, Johnson, McDonald, and McRoy; Miller absent.

There were no ex parte communications disclosed.

**APPEAL NO. 22004**

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

**October 7, 2022**

Edgerton moved to denial, seconded by McRoy.

Edgerton expressed that she understands the applicant's intention but does not see the need for the variance.

Johnson stated that this is a difficult decision, but he agrees with the applicant. Johnson stated that he believes that it is a good concept for the area, but he agrees that it does not meet the requirements for granting a variance.

McDonald stated that after viewing the property, she supports denial.

McRoy expressed her support for her board members.

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

There being no further business, the meeting was adjourned at 1:41 p.m.

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

**CITY BOARD OF ZONING APPEAL #23004**

**DATE SCHEDULED FOR PUBLIC HEARING:**

July 28, 2023

**ADDRESS:** 2121 West O Street

**LEGAL DESCRIPTION:** The remaining portions of Lots 4, 5, and 6 and the north 1/2 of vacated alley adjacent, Block 2, Manchester Heights, all located in the NW 1/4 of Section 28, Township 10 North, Range 6 East, Lincoln, Lancaster County, Nebraska.

**EXISTING LAND USE AND ZONING:**

Commercial H-3 Highway Commercial

**SURROUNDING LAND USE AND ZONING:**

|        |            |     |
|--------|------------|-----|
| North: | Commercial | H-3 |
| South: | Commercial | H-3 |
| East:  | Commercial | H-3 |
| West:  | Commercial | H-3 |

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

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE PER LINCOLN MUNICIPAL CODE 27.72.040(A).

1. Lincoln Municipal Code (LMC) Section 27.72.040(A) - In the H-3 zoning district the minimum corner front yard setback is 20'. This request seeks a variance to reduce the required corner front yard setback from 20' to 13'.

**STAFF FINDINGS:**

1. The subject property is located at 2121 West O Street. It is developed with one 2,665 square foot building surrounded by its associated parking on the north, south and east. The property is zoned H-3 Highway Commercial and is surrounded by the same zoning.
2. The petitioner is requesting a variance to the corner front setback from 20' to 13'. The building was constructed in 2000 and does not provide the required corner front setback. The front yard is adjacent to the north lot line, and the corner front yard is adjacent to the west lot line. By definition, the north lot line defines the front yard given the predominate platting orientation. The west lot line defines the corner front yard.

The Zoning Ordinance 27.02.260 Y states: 'Yard, Required Corner Front - On a corner lot there shall be one required front yard abutting the street frontage with

the predominant platting orientation. All other street frontages shall be a required corner front yard. For the purposes of interpreting this chapter, any instance where front yard is addressed it is understood that corner front yard also applies unless otherwise stated.'

3. The survey shows the following current setbacks to the building: Front (north) – 37'; Corner Front (west) – 13'; Side (east) – 44.6'; and Rear (south) – 29.9'. The setbacks for the H-3 zoning district have changed since the original building permit approved in 2000. The setbacks are as follows:

|              | <u>2000</u>            | <u>2023</u>               |
|--------------|------------------------|---------------------------|
| Front        | 25'                    | 20'                       |
| Corner Front | n/a                    | 20'                       |
| Side         | 5'                     | 15' (or 10% of lot width) |
| Rear         | 30' (or 20% lot depth) | 30' (or 20% lot depth)    |

4. The right-of-way immediately adjacent to the west was dedicated to allow for the construction of a frontage road in approximately 1990 to serve multiple properties to the west. Improvements in the intersection of Homestead Expressway and West O Street necessitated moving access points east on West O Street and joint access via the frontage road.
5. The building was constructed in 2000. At that time both the north and west lot lines defined front yards, and both with a 25' setback as there was no corner front yard at that time.

It appears that the right-of-way adjacent to the west lot line was mistakenly assumed to be a private roadway or access easement as the 5' side setback was applied to this yard instead of the required 25'.

6. Since 2000, the Zoning Ordinance has been amended and the setbacks for the H-3 zoning district have changed. As noted in the table above, there is now a 20' corner front yard setback. As a result, the variance request is to adjust the corner front setback from 20' to 13'.
7. 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.

8. This appears to be the result of errors on the part of both the applicant and the City in 2000 when the building permit for the building was applied for and issued. If the variance is approved the petitioner will be allowed to continue the use of the building as configured. If the variance is denied the hardship would be significant as the building must either be reduced in size to meet the required setback, or the building razed entirely as part of a total redevelopment of the property.

Prepared by

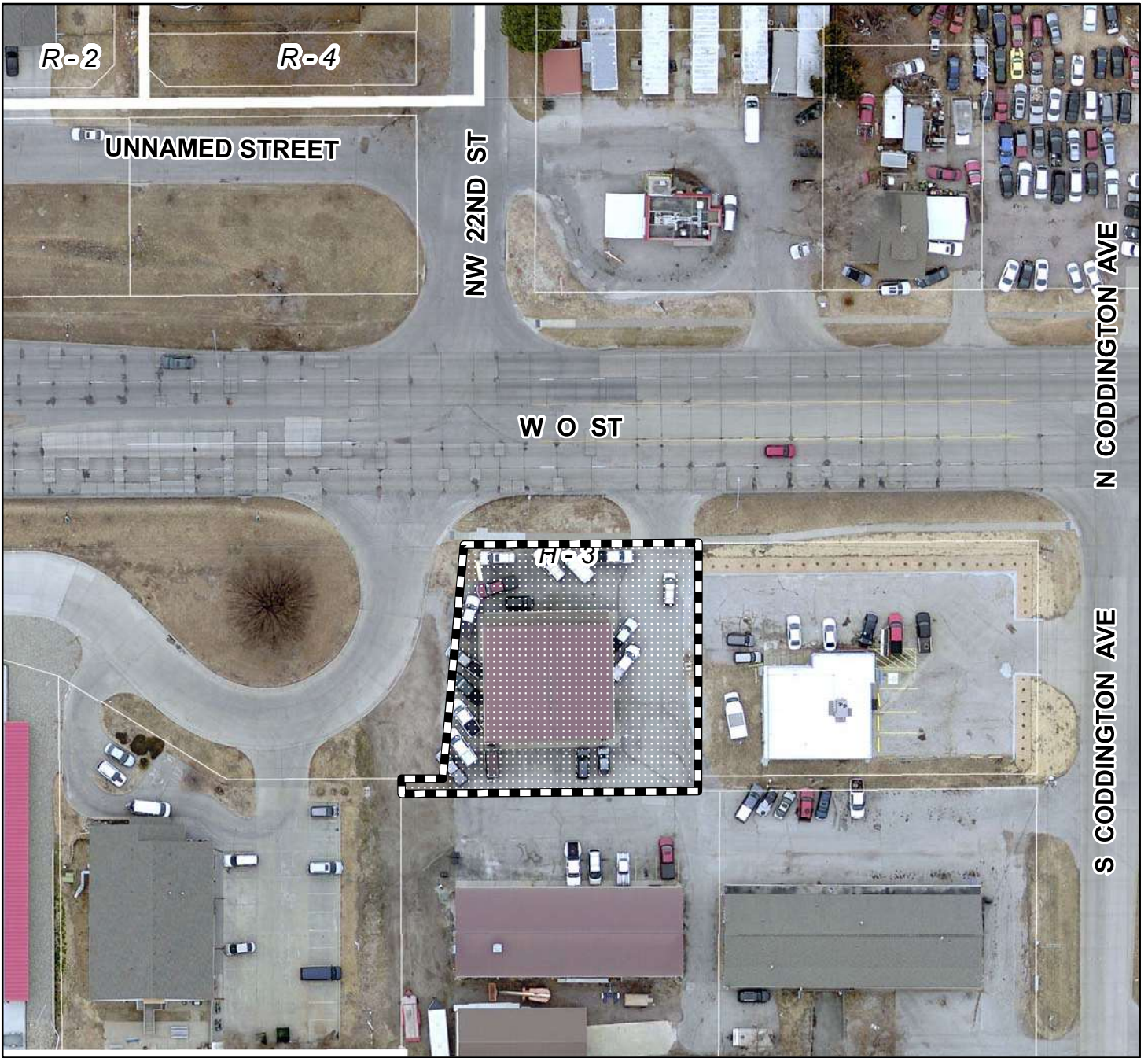
Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner

**APPLICANT/  
CONTACT:**

Don Schleining  
857 South 48<sup>th</sup> Street  
Lincoln, NE 68510  
402-525-6887  
[don@schleiningarchitects.com](mailto:don@schleiningarchitects.com)

**PETITIONER:**

Michelle Bade  
2121 West O Street  
Lincoln, NE 68528  
402-525-6887  
[kyle.flodman@gmail.com](mailto:kyle.flodman@gmail.com)

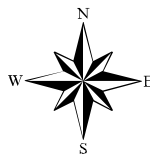


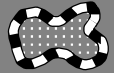


**Board of Zoning Appeals #: BZA23004**  
**SW 22nd St & W O St**

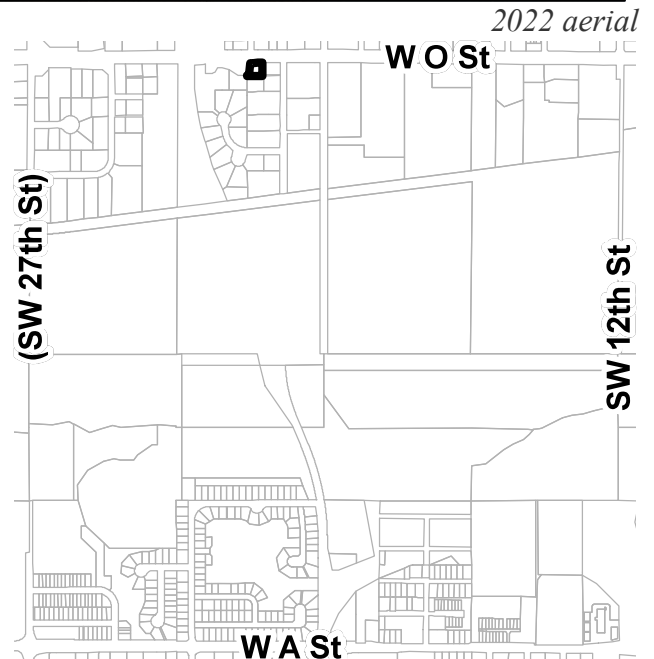
**Zoning:**

- 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.28 T10N R06E**



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





4535 Normal Blvd, Ste. #101  
Lincoln, NE 68503  
(402)423-5202  
(402)423-5211  
www.huskersurveying.com

HUSKER SURVEYING

Survey of the W. 40' of Lot 4, and all of Lots 5 & 6, EXCEPT those tracts conveyed to the State of Nebraska, AND the N. 1/2 of vacated alley adjacent thereto, Block 2, Manchester Heights, City of Lincoln

NW 1/4, Section 28 T. 10 N. R. 6 E. of the 6th P.M.

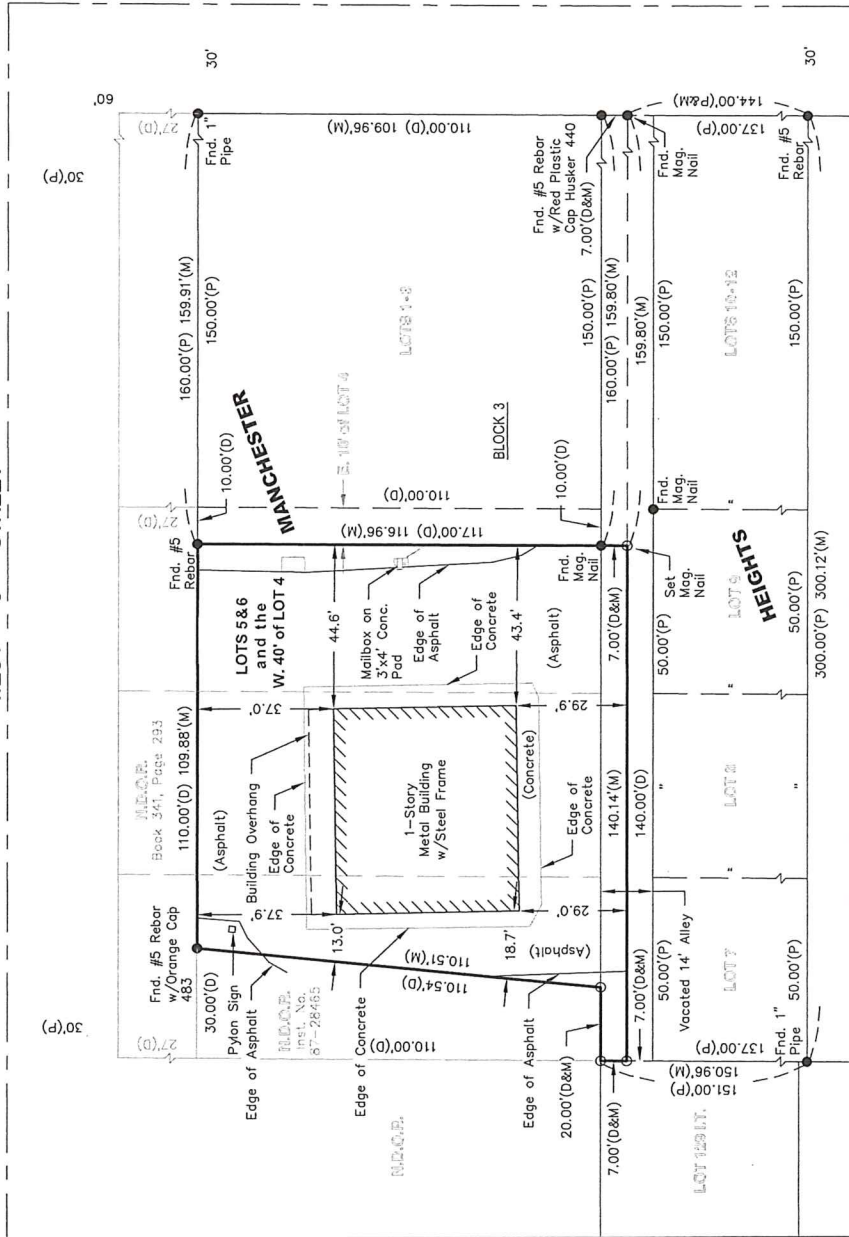
Lancaster County, Nebraska

Date of Survey May 25, 2023 Job No. 7457

# SURVEY RECORD

Surveyed by: Schleining Architects  
Surveyed Address:  
2121 West "O" Street  
Lincoln, Nebraska 68528

WEST "O" STREET



SOUTH CODDINGTON AVENUE



Scale 1"=30'

- = Cor. Found
- = Cor. Set
- = 5/8" Rebar w/Orange Cap
- = 1/2" Rebar w/Plastic Cap
- = Husker 440
- (M) = Meas. Dist.
- (P) = Plat Dist.
- (D) = Deed Dist.
- (R) = Record Dist.

## Surveyor's Certificate

I, Jayme M. Malone, a Professional Registered Land Surveyor under the laws of the State of Nebraska, certify the above survey was executed by me, or under my direct supervision and complies with the standards of the Nebraska Board of Standards. The plat shows the monument placed as described on the survey drawing were placed at all missing or re-monumented corners. Distances shown are measured in feet and decimals of a foot.

Signed this 25th day of May, 2023

Jayme M. Malone  
Professional Registered Land Surveyor  
LS-440



# SCHLEINING ARCHITECTS

June 21, 2023

City of Lincoln Planning Commission  
555 South 10<sup>th</sup> Street  
Lincoln NE 68510

RE: BZA front yard variance – 2121 West O Street

Dear Planning Commission Members:

The attached Board of Zoning Appeals application requests a variance of the west 20' front yard setback, revised to a 13.0' front yard setback. The existing building on this property has been located by a licensed surveyor, a copy of that survey is attached to this application. The front yard setback along West O Street would remain at 20'.

The original lot configuration (150'x127') was modified during ROW acquisition for the State of Nebraska "West Rose to I-80" project in 1990.

The existing building was constructed in 2000. Building Permit B0003588 review defined the west property line as a side yard, allowing a smaller yard setback. An Occupancy Permit was issued for Auto Cleaning/Detailing October 9, 2000.

In 2020 B2000034 Building Permit review identified the west property line as requiring a front yard setback, which is adverse with Building Permit B0003588 from 2000.

We ask the Planning Commission to approve this variance so the owner may comply with the Lincoln Municipal Code setback. Upon your approval the owner intends to submit for a building permit changing the use from Auto Detailing to Auto Sales and Repair.

Respectfully submitted,



Donald Schleining  
Architect A-2260 Nebraska