

City of Lincoln

BOARD OF ZONING APPEALS

AGENDA

BOARD OF ZONING APPEALS

Annette McRoy, Chair
Steve Miller, Vice Chair
Tracy Edgerton
David Johnson
Vickie McDonald

October 7, 2022

CITY BOARD OF ZONING APPEALS

Notice is hereby given that the **CITY BOARD OF ZONING APPEALS** will hold a special public hearing on **Friday, October 07, 2022, at 01:30 p.m.** in the **City Council Chambers** on the 1st 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

October 07, 2022

1. Approval of the minutes of the City Board of Zoning Appeals hearing, held August 26, 2022.

ADMINISTRATIVE ACTION

2. BOARD OF ZONING APPEALS 22004, a request for a variance to the minimum lot area requirement, on property located at 240 North 33rd Street.

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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

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, August 18, 2022.

NAME OF GROUP: CITY BOARD OF ZONING APPEALS

DATE, TIME AND PLACE OF MEETING: Friday, August 26, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Tracy Edgerton, Vickie McDonald, and Annette McRoy; David Johnson and 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 May 27, 2022.

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

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 55TH STREET.
PUBLIC HEARING: August 26, 2022

There were no ex parte communications disclosed.

Applicant:

Tory Baker, 620 South 55th Street, stated that this is his personal residence and gave background on the property structure. Baker stated that he recently discovered that the permit submitted by the contractor was not for an attached garage although it was supposed to be for an attached garage to the dwelling. Baker stated that his neighborhood association supports his decision.

Staff questions:

McDonald asked for clarification that if the board does not approve the variance, will he be responsible for demolition if the existing structure that was not completed by the contractor. Baker answered yes.

McRoy asked if the contractor was aware of the applicant's desires for the structure. Baker answered yes.

Opposition:

No one appeared in opposition

Neutral:

No one appeared for neutral

Support:

No one appeared in support

Applicant Rebuttal

Applicant did not appear for rebuttal.

APPEAL NO. 22003

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 26, 2022

Edgerton moved to close public hearing, seconded by McRoy.

Edgerton moved approval of variance, seconded McDonald.

Edgerton expressed her support for granting the variance. Edgerton reiterated that the neighborhood association submitted a letter stating their support for the garage being built.

Motion carried 3-0: Edgerton, McDonald, and McRoy voting 'yes'; Miller and Johnson absent.

BOARD OF ZONING APPEALS 22004, A REQUEST FOR A VARIANCE TO THE MINIMUM LOT AREA REQUIREMENT, ON PROPERTY LOCATED AT 240 NORTH 33RD STREET.

PUBLIC HEARING:

August 26, 2022

There were no ex parte communications disclosed.

Applicant:

Wayne Mortensen, NeighborWorks Lincoln, 2530 Q Street, Lincoln, NE, approached and gave history and background on the property associated with the project. Mortensen stated that the plan for the existing property is to develop a duplex and two (2) single family dwellings for

affordable housing. Mortensen stated that the two single family units fit the area and the duplexes help assist in meeting the city's goal for housing. Mortensen referenced the site plan to show that the setbacks, heights, and widths comply. Mortensen stated that they are five percent (5%) short of the lot requirement. Mortensen stated that the lots are going to be a part of the NeighborWorks Lincoln Land Trust which deems them permanently affordable. Mortensen would like to zone from R-4 to R-5. Mortensen reiterated his request and stated that if the variance is not granted, then two (2) duplexes will most likely be built.

Edgerton reiterated the plan to have the two-duplex option versus two-single family plus the duplex option and asked if there was another location in which two duplexes next to one another exist. Wayne stated that in a forty (40) mile radius, there are single family homes but there aren't any side-by-side duplexes in the vicinity.

McRoy asked if they will be marketed as townhomes or will they be rent options. Wayne answered that the duplexes would have HOA agreement and they are for sale as single family homes.

McRoy noted that in the staff report, it addresses some infrastructure issues and asked how they would be addressed. Wayne answered that they are able to accommodate the easement request along the west side of the property. Wayne stated that a rear-loaded access drive to run the utility or they will work with the city on other solutions.

Edgerton stated that she understands that there are smaller lots within the area and relatively the same size. Edgerton asked for clarification if there are larger lots in the area. Wayne answered yes and stated this site is one of larger lots.

McRoy addressed Wayne's comment regarding the alternative to building two sets of duplexes if the variance was not granted and asked if four single family homes could be built. Wayne answered no and stated that the lots sizes would not comply with the R-4 zoning.

Opposition:

No one appeared in opposition

Neutral:

No one appeared for neutral

Support:

No one appeared in support

Staff questions:

Edgerton asked for clarification about the zoning surrounding the parcel was R-4.

Brian Will, Planning Department, 555 South 10th Street, stated that it is all R-4 zoning. Will stated for clarification that each unit sits on individual lots which would classify the duplex as individual attached single-family dwellings.

McRoy asked if the language could be updated in the ordinance between duplex and townhomes. Will stated that townhomes are three or more attached.

Edgerton asked if Will agreed with the applicant testimony that the only issue is regarding width and square footage. Will answered yes and stated that the only issue is the lot area.

Edgerton asked about the applicants' perspective of viewing the community as a whole and placing the development there. Will stated that from a staff perspective, there aren't any issues regarding altering the neighborhoods existing structures.

McRoy asked Will to address the area item #9 in the staff report. Will stated that the zoning ordinance for R-4 has established standards and stated that the variance would allow greater density being proposed that what is allowed in R-4. Will clarified that they aren't against the development.

Edgerton expressed her confusion and stated that there is not higher density.

Will stated that there are four single family attached with three separate structures and clarified that it is higher density due to the size of the lots compared to other R-4 zoning.

Edgerton expressed her confusion that the development is addressing the City's goals in the Comprehensive Plan but density as a concern. Will stated that the applicant is not being denied use of the property due to the density in R-4.

Edgerton stated for clarification that it is difficult to balance understanding the zoning ordinance is in place to protect the neighborhood.

Will stated that it's the applicant's preference that they do not meet the requirements and want to propose an alternative. Will stated that when staff reviewed the plan, they did not have an issue with the proposed use.

Applicant Rebuttal

Wayne approached for rebuttal. He suggested that using density to refer to the property makes the understanding difficult. Wayne reiterated that the variation to the minimum lot area requirement because it's not being met by five percent (5%). Wayne explained the structure of the dwellings parking, floor plan and square footage. Wayne addressed the Comprehensive Plan

and reiterated that the four (4) units fall into the affordable housing category.

APPEAL NO. 22004

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 26, 2022

Edgerton moved to close public hearing, seconded by McRoy.

McDonald motioned approval, seconded by Edgerton.

McRoy stated that the discussion for affordable housing is viable, but the strict enforcement of the zoning ordinance is important. McRoy stated that she does not see a need for a variance. McRoy stated that they can carry out their plan just not with their preference and stated that she is not in support.

Edgerton state that she is torn and agreed with McRoy regarding the standards by which a variance is granted. Edgerton stated that the applicant can still develop in a way that is within zoning ordinance and stated that she will not be supporting.

McDonald asked if there was room for three dwellings. Edgerton answered no and stated the square footage would vary. McDonald asked what would be more desirable regarding the home type. Edgerton stated that it would be for the developer to decide.

McRoy stated for clarification that the applicant would have to apply for a different variant.

Edgerton and McRoy voting 'no', McDonald abstained; Miller and Johnson absent.

Tim Sieh, Assistant City Attorney, stated that McDonald has to vote since she made the motion.

McDonald voting 'yes'; Edgerton and McRoy voting 'no'; Miller and Johnson absent. Motion failed 1-2

Sieh stated that a vote will be done, for the members absent at the August 26th hearing, at the next Board of Zoning Appeals meeting for action only, no public hearing will be held.

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.

PUBLIC HEARING:

August 26, 2022

There were no ex parte communications disclosed.

Applicant:

Shirley Peng, 10011 Blue Water Bay Road, stated that she is owner of the property associated with this property. Peng stated that the property was just replated to a half-acre. She stated that the business use is strictly e-commerce and storage and doesn't require parking. The zoning ordinance requires fourteen (14) stalls and stated that the request is to waive the fourteen (14) stalls to four (4).

McRoy asked for clarification what type of business Peng's husband owns. Peng stated that her husband sells cast iron products and that there would not be any public foot traffic.

McRoy asked what kind of traffic the property would expect. Peng stated that they are not anticipating any traffic from customers, mainly from delivery transportation.

Edgerton stated that one of the concerns is that the current use may change based on future owners use. Peng stated that she is a realtor and that it would be disclosed, if the parking was never put in, it would be disclosed.

McRoy stated for clarification that the information regarding parking would be disclosed but future owners wouldn't be required to have parking.

McDonald asked if it is decided that the applicant wants the fourteen (14) parking spots, could they possibly rent them to nearby entities. Peng stated the requirement is asphalt and not rocking. Peng stated that rocking would be cheaper but is not an option if they did have to develop the parking spots.

McRoy asked if the business is a part of the Havelock Business Association. Peng stated that she does not believe so. McRoy stated that the Havelock Business Association is active and one of their main concerns have been parking.

Peng stated that in the letter addressed to the board, in the last section, states that there is parking to the west and north of the property given ample parking space, if needed.

Opposition:

No one appeared in opposition

Neutral:

No one appeared for neutral

Support:

No one appeared in support

Staff questions:

Edgerton asked for clarification that parking requirements in B-3 is paving not rock. Will answered yes and due to the size of the lot, paving is a requirement. Edgerton noted that in the staff report, there have been parking requirements in previous years. Will stated that those were mentioned in fairness and stated that the scale regarding parking and the property were greatly different. Will addressed that the comments to the board from the public regarding parking as an issue.

McRoy reiterated the question regarding ownership change and asked for clarification that the city cannot force the future owner to abide by the zoning use. Will stated that at the time of a change of use, he does not see it being a requirement.

Ron Rehtus, Zoning Coordinator, 555 South 10th Street, stated that if the use was to change, e-commerce is classified as retail sales when a building permit is applied for so the occupancy would not change therefore not requiring future owners to expand parking.

McRoy stated for clarification that retail would be simply retail in B-3 zoning. Rehtus agreed. Rehtus stated the B-3 is one of zoning classifications that allow for residential as well. Rehtus stated that as long as occupancy does not change from retail, the future owners are not required to increase parking.

McDonald asked if in the future, could the parking lot be sold. Will answered no and the applicant would have to final plat the property which would not be approved.

Applicant Rebuttal

Peng stated that paving the parking stalls is the concern. Peng stated that they aren't wanting to pave the open space due to expense. She reiterated that there are other spaces for parking on the west and north.

APPEAL NO. 22005

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 26, 2022

Edgerton moved to close public hearing; Seconded by McDonald.

Edgerton moved to deny request for exception, seconded by McRoy.

Edgerton stated that the ordinance states paving.

Edgerton discussed that the request is addressing this specific business and not the possibility of future owners. Edgerton stated that the requirement of parking does not deprive the applicant of use of their property as this is the lowest parking requirement in the ordinance.

McRoy agreed and expressed her concern for changing the property's parking.

McDonald agreed with her fellow board members.

Motion carried 3-0: Edgerton, McDonald, and McRoy voting 'yes'; Miller and Johnson absent.

**BOARD OF ZONING APPEALS 22006, AN APPEAL OF AN ADMINISTRATIVE OFFICIAL'S DECISION,
ASSOCIATED WITH PROPERTY GENERALLY LOCATED AT 4575 SOUTH 1ST STREET.**

PUBLIC HEARING:

August 26, 2022

There were no ex parte communications disclosed.

Tim Sieh approached and stated that the city is requesting to defer this application until September 30, 2022.

Applicant:

Staff questions:

Opposition:

No one appeared in opposition

Neutral:

No one appeared for neutral

Support:

No one appeared in support

Applicant Rebuttal

APPEAL NO. 22006

ACTION BY THE CITY BOARD OF ZONING APPEALS:

August 26, 2022

Edgerton moved to approve deferral, seconded by McDonald.

Motion carried 3-0: Edgerton, McDonald, and McRoy voting 'yes'; Miller and Johnson absent.

There being no further business, the meeting was adjourned at 2:51 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 #22004

DATE SCHEDULED FOR PUBLIC HEARING:

August 26, 2022

ADDRESS: 240 North 33rd 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 33rd 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.

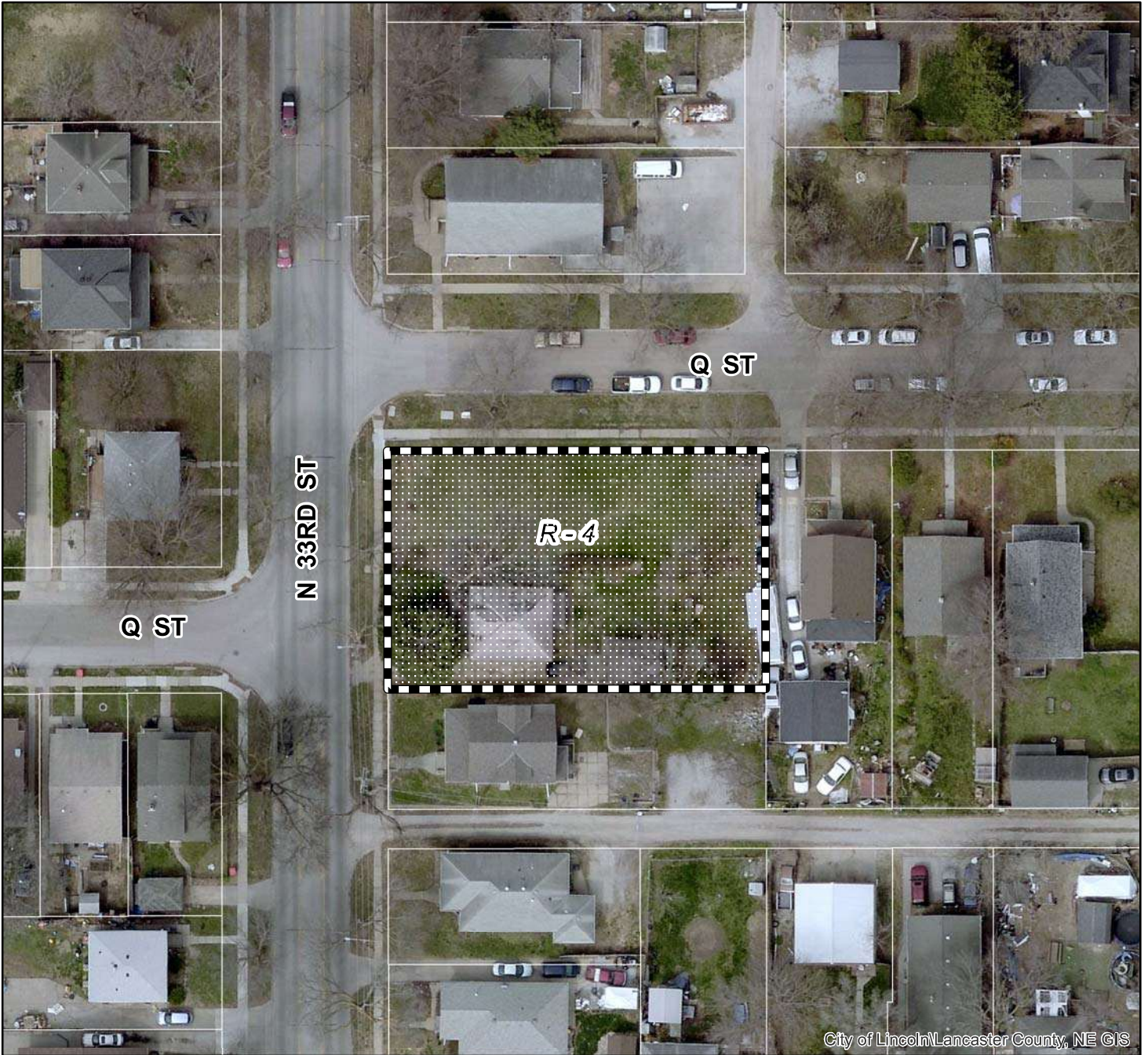
If the variance is approved the petitioner will be allowed to replat to build two detached single-family dwellings and two attached single-family dwellings on the property. If the variance is denied redevelopment must occur consistent with the requirements of the R-4 zoning district.

Prepared by

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner
August 17, 2022

**APPLICANT/
CONTACT/
PETITIONER:**

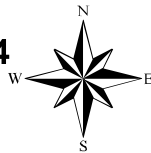
Wayne Mortensen
NeighborWorks Lincoln
2530 Q Street
Lincoln, NE 68503
402-444-7181
Wayne.mortensen@nwlincoln.org



City of Lincoln/Lancaster County, NE ©IS

2020 aerial

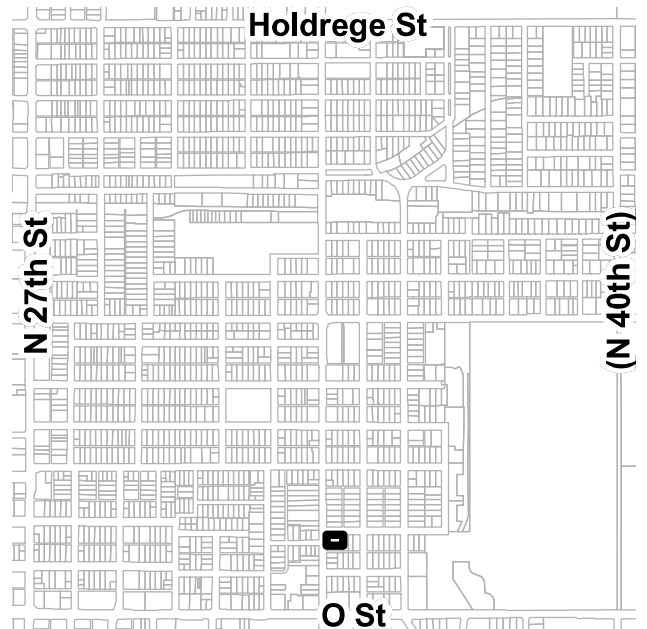
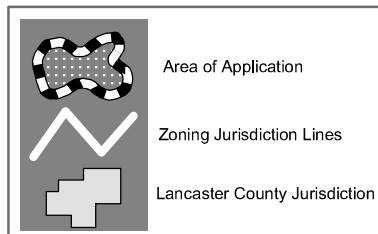
Board of Zoning Appeals #: BZA22004
N 33rd St & Q St



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

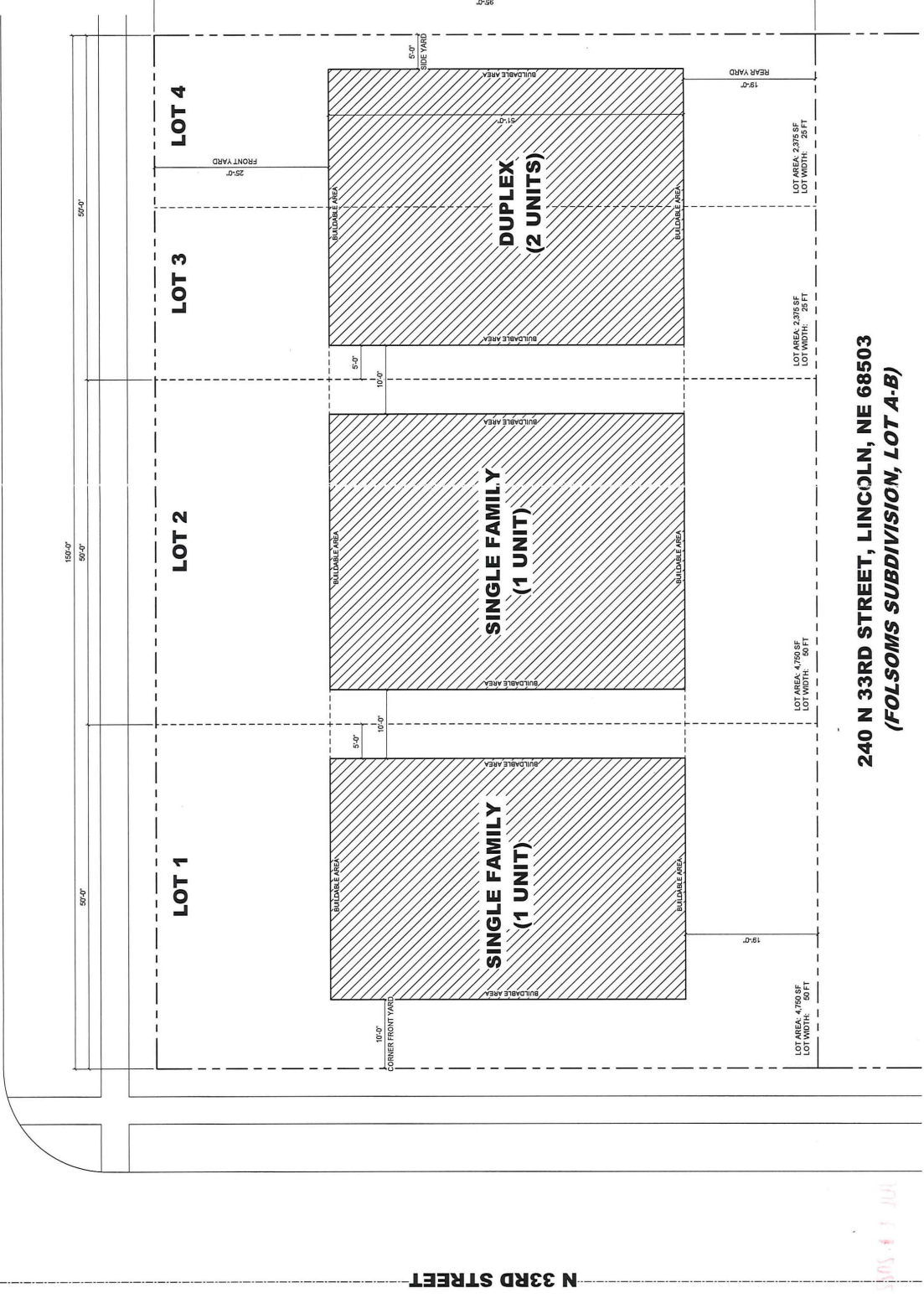
One Square Mile:
Sec.19 T10N R07E



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

