

**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

**May 27, 2022**

# CITY BOARD OF ZONING APPEALS

Notice is hereby given that the **CITY BOARD OF ZONING APPEALS** will hold a public hearing on **Friday, May 27, 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**

**May 27, 2022**

1. Approval of the minutes of the City Board of Zoning Appeals hearing, held November 19, 2021.

### **ADMINISTRATIVE ACTION**

2. BOARD OF ZONING APPEALS 22002, requested by Mike and Cassandra Remmenga, for a variance to the minimum frontage and average lot width requirements for the AG zoning district, on property generally located at 3900 North 112th 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, November 11, 2021.*

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

**DATE, TIME AND PLACE OF MEETING:** Friday, November 19, 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, Vicki McDonald, Annette McRoy, Steve Miller; David Johnson absent. Abigail Littrell of the Law Department; Ron Rehtus of the Building and Safety Department; Brian Will and Rhonda Haas 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 October 29, 2021. Motion for approval made by Miller, seconded by McDonald and carried 4-0: Edgerton, McDonald, Miller and McRoy voting 'yes'; Johnson absent.

**BOARD OF ZONING APPEALS 21003**  
**REQUESTED BY NEIGHBORWORKS OF LINCOLN, FOR A VARIANCE TO MINIMUM LOT WIDTH FROM 40' TO 39.9' FOR A SINGLE-FAMILY DWELLING ON PROPERTY GENERALLY LOCATED AT 30<sup>TH</sup> AND S STREETS**  
**PUBLIC HEARING:** NOVEMBER 19, 2021

There were no ex parte communications disclosed.

**Applicant:**

Charlie Wesche, NeighborWorks, came forward and stated that they are asking for a variance to the minimum lot width from 40 feet to 39.9 feet. Wesche stated that NeighborWorks is a builder for affordable housing in Lincoln. NeighborWorks educates 200 to 300 first time homebuyers on an annual basis. They build 8 to 12 new homes per year and rehab 40 to 60 homes per year for first time homebuyers. Wesche stated that NeighborWorks helps first time homebuyers achieve

their dreams of financial stability with the purchase of their first home. The property at 30<sup>th</sup> and S Streets is a property that NeighborWorks has acquired, and it is 39.9 feet according to the original final plat. A survey was done of this property in 2018, which indicates that the property is slightly over 40 feet. Wesche stated that they are asking this board to allow them to build a single-family home on the site, which would allow a low-income family to own a home.

McRoy asked how NeighborWorks acquired the lot, because the staff findings states that the adjoining neighbor used it as an outlot with an accessory building. Wesche shared that the owner to the west had owned that property and put it on the market and that is when NeighborWorks purchased it. The survey was done by the previous owner who had been using the property but decided to sell it.

McDonald stated that the staff finding say it is a vacant lot with an accessory building partially straddling the common lot line and she asked if there was a shed on the property. Wesche stated that there is a shed on the property that will be removed. The site plan involves putting up a carport that will be off the back of the house and then a new shed will also be placed on the property.

There was no public testimony in support or opposition.

**Staff questions:**

Miller asked if staff had anything to say. **Brian Will, Planning Department, 555 South 10<sup>th</sup> Street**, came forward and stated that this is strait a forward and the petitioner was told that the survey on the lot was 40 feet, but the final plat plotted this lot at 39,9 feet and that is the basis for this application coming forward. Will stated that .10 of a foot does not seem to be detrimental to the other properties of the neighborhood considering the other lots along this side of the plat are the exact same dimension as the one being discussed today. The other lots were developed overtime, but the owner of this lot did not develop this lot and that is the reason for today.

Miller inquired if there was administrative relief for something like this so that staff could just approve it. Will explained that there was no administrative relief for something like this. Will stated that he had noted in the report that there are exceptions to allow for lots less than the minimum of the zoning district, but there is nothing in a case like this to allow them to go below 40-feet because that is the absolute minimum.

**APPEAL NO. 21003**

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

**November 19, 2021**

Edgerton moved to grant the variance for a reduction of the minimum lot width from 40 feet to 39.9 feet, seconded by Miller.

Miller stated that he offered the second because of the fact that there is no administrative relief and the staff has noted that the impact would be insignificant to the surrounding properties. Miller stated that there are other lots that are historically the same and this lot and it is important to build affordable housing to meet the need of the city.

Edgerton stated that she agrees with her fellow commissioner and that in this circumstance the letter of the law is intended to protect the community, and, in this instance, it would hinder something that is really important. Affordable housing is something that our community really needs, and it would be against our goals, and it makes sense to approve this variance. This is in keeping with the City of Lincoln's new Affordable Action Plan that was just past this year. Edgerton stated that this board need to make sure that minimal zoning or setback issues do not impede the goals of the community.

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

There being no further business, the meeting was adjourned at 1:45 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 #22002**

**DATE SCHEDULED FOR PUBLIC HEARING:**

April 29, 2022

**ADDRESS:** 3900 North 112<sup>th</sup> Street

**LEGAL DESCRIPTION:** Lot 19 I. T. in the N 1/2 of Section 7-10-8, Lincoln, Lancaster County, Nebraska.

**EXISTING LAND USE AND ZONING:**

Agriculture

AG Agriculture

**SURROUNDING LAND USE AND ZONING:**

North:	Residential, Agriculture	AG
South:	Agriculture	AG
East:	Agriculture	AG
West:	Agriculture	AG

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

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE PER LINCOLN MUNICIPAL CODE 27.72.010(A).

1. A. Lincoln Municipal Code (LMC) Section 27.72.010(A) - In the AG zoning district both the Average Lot Width and Minimum Frontage requirements are 550'.

The subject lot was created in 2013 and is only approximately 375' wide. The petition is requesting a variance to adjust the minimum average lot width and frontage requirements to 375' to allow a single-family dwelling to be built on the lot.

**STAFF FINDINGS:**

1. The subject lot, Lot 19 I.T. in the north one-half of Section 7-10-8 is addressed as 3900 North 112<sup>th</sup> Street. It is vacant except for the farming of row crops and a drainageway running diagonally across the eastern one-third of the tract.
2. The petitioners provided a survey which shows the tract to be approximately 375' in width, 2,326' deep, and just over 20 acres in area. This variance request is to adjust the minimum average lot width and frontage requirements from 550' to 375'.
3. The petitioners intend to build a single-family dwelling on the property and use it for residential and continued agricultural purposes. When designing the home

their home builder contacted the City of Lincoln which confirmed the frontage/lot width requirements and that the lot did not comply.

4. The Lancaster County Assessor's records indicate that Lot 19 I.T. was created in 2013 when it was deeded off from a larger holding then owned by Robert and Shirley Christiansen and sold to Jack Christiansen. In 2019 it was sold to the petitioners, Mike and Cassandra Remmenga. There is no local zoning or permit review for such land division beyond recording deeds with the Lancaster County Register of Deeds.
5. The subject tract is zoned AG as are all surrounding properties where the lot area regulators are as follows:

Minimum Lot Area – 20 Acres.

Average Lot Width – 550'

Frontage – 550'

Setbacks - Front – 50'; Side – 60'; Rear – 100.

6. The applicable regulations in Title 27 Zoning Ordinance were adopted in 1979, and with respect to the sections that are applicable in this case they have not changed since then. There is no exception in Title 27 that otherwise applies to this property. The Board of Zoning Appeals is the only remedy for relief from the 550' width and frontage requirements under the Title.
7. While the subject tract is located beyond Lincoln's city limit, it is still within the City's three-mile extraterritorial jurisdiction and has been since before 1979 when the current zoning regulations were adopted. This is significant because all lands within the three-mile are subject to the City's Zoning and Land Subdivision Regulation and not those of Lancaster County.
8. There are parcels beyond the city limit which are zoned AG and were legally created but which do not comply with current regulations, and there are several explanations. First, the minimum lot width, frontage and area standards have changed over time.

Zoning regulations were first adopted in Lincoln in 1953, but there are lots that were created prior to that. Since 1953 the standards have evolved where the minimum lot area was once one acre, was later increased to five acres, and then again later increased to the 20 acre minimum in effect today.

Additionally, parcels over 10 acres in area can be legally created without any oversight or government approval. The intent is to allow the transfer of farm land from one owner to another. State Statutes exempt the creation of parcels in excess of 10 acres from local subdivision regulation. Problematic though is that while such parcels can be created and don't violate subdivision law, they do not

comply with the Zoning Ordinance which has a 20-acre minimum lot area for the AG zoning district. While there is no violation of Title 26 Land Subdivision, such sub 20-acre parcels are not eligible for building permits or other zoning approval and can only be used for agricultural purposes.

9. This parcel is divided by a drainageway in the eastern portion of the parcel. This part of the lot along the drainageway is in the 100 year floodplain and floodway. The property on either side of the drainageway appears to have been in grassland use in the past according to air photos. The western portion has been farmed according to air photos. An air photo from 1957 shows farm land use for the property.
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.

If the variance is approved the petitioner will be allowed to build a detached single-family dwelling on the lot. If the variance is denied the lot could remain for agricultural and grassland use as it has for decades.

Prepared by

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

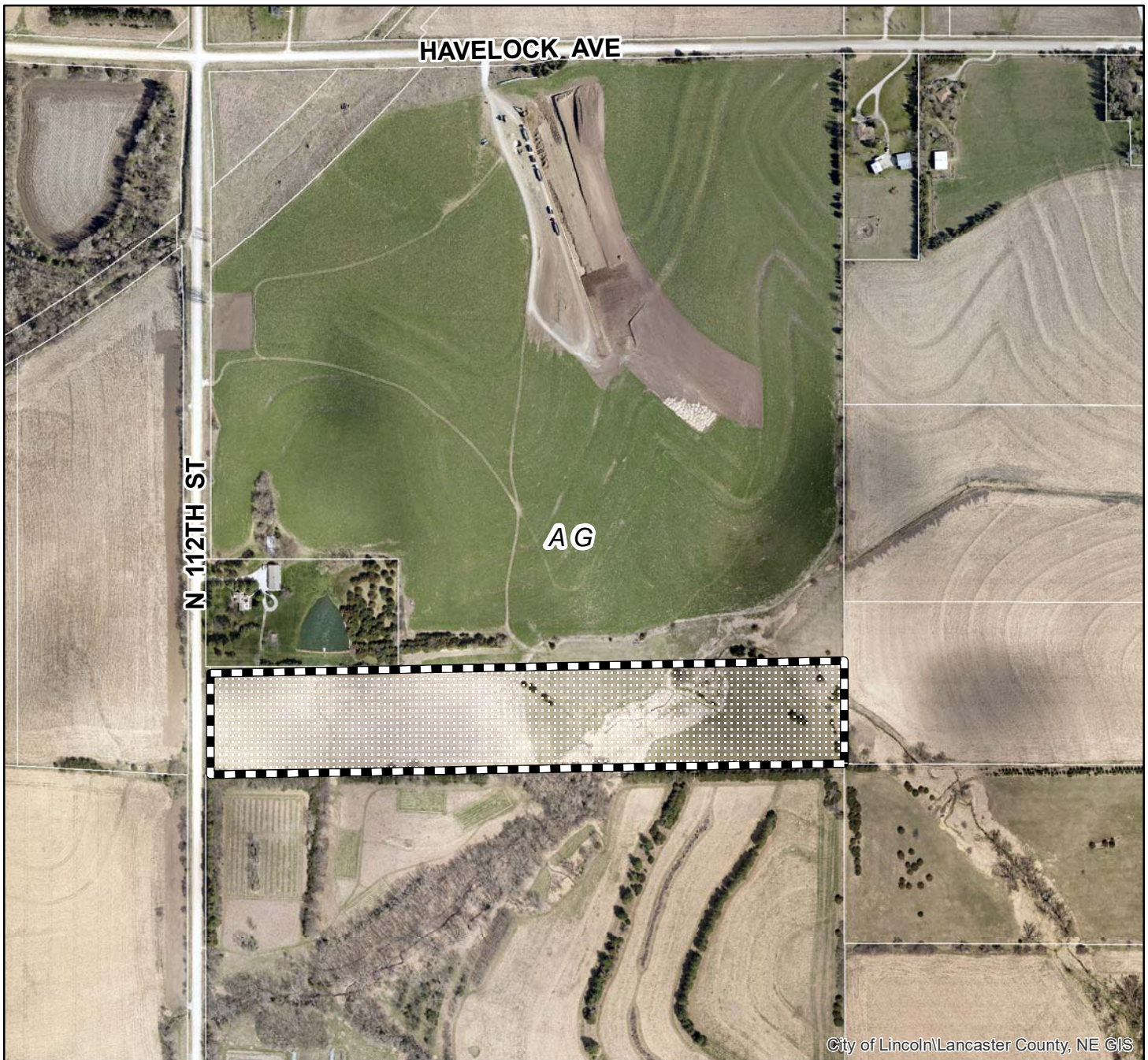
Planner

April 20, 2022

**APPLICANT/  
CONTACT/  
PETITIONER:**

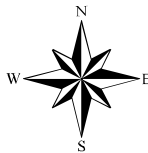
Mike and Cassandra Remmenga  
18414 Farnam Street  
Omaha, NE 68022  
816-446-5389  
[Mike.remmenga@gmail.com](mailto:Mike.remmenga@gmail.com)





2020 aerial

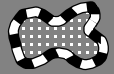


**Board of Zoning Appeals #: BZA22002**  
**N 112th St & Havelock Ave**

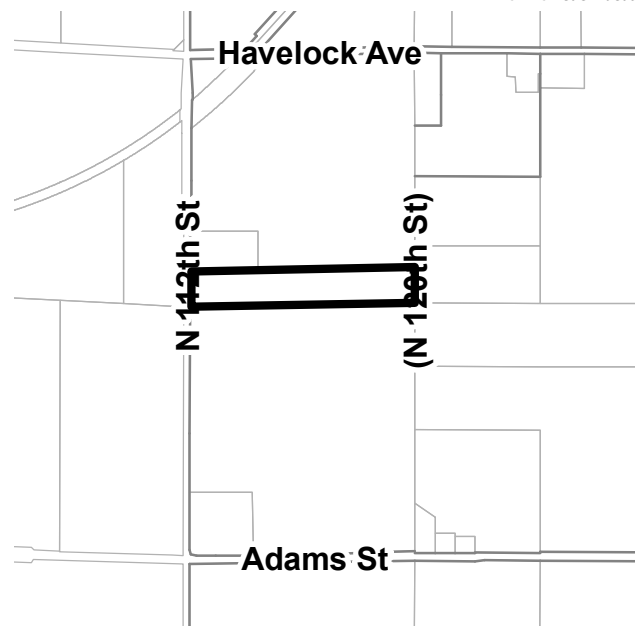


**One Square Mile:**  
**Sec.07 T10N R08E**

**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



6811 SOUTHFORK CIRCLE  
LINCOLN, NE 68516  
(402) 476-3020  
(402) 476-3138 FAX

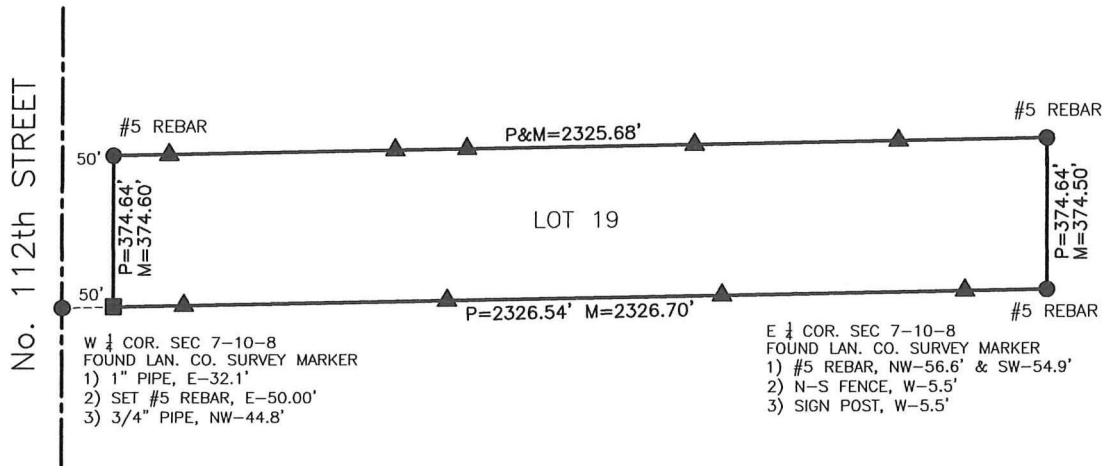
**SURVEY RECORD**  
**K & M inc.**  
**Land Surveying**

PROJECT # 1910078  
DATE: 11/6/2019

Survey Of: LOT 19 IRREGULAR TRACT, LOCATED IN THE NORTH HALF OF

Section: 7 , T 10 N, R 8 E, of the 6th P.M. LANCASTER County, Nebraska

No. 112th STREET



P = Platted      ■ = Set #5 Rebar & L.S. #483 Cap  
M = Measured    ▲ = Temporary/computed Point  
● = Found as noted

**SURVEYOR'S CERTIFICATE**

I hereby certify that I have accurately surveyed the property in the above plat. All dimensions are in feet and decimals of a foot.

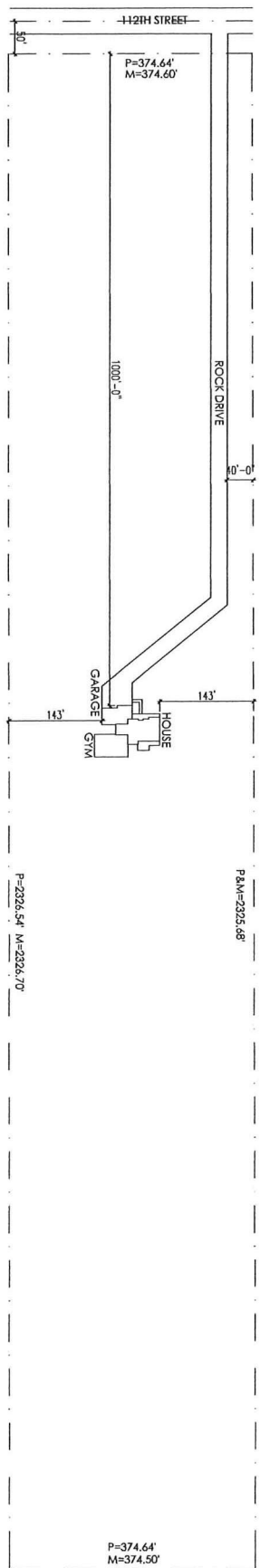
Signed this day of 11-6-2019

*Billy Joe Kerr*  
Billy Joe Kerr, L.S. #483





SCALE 1" = 80'



City of Lincoln Board of Zoning Appeals,

Mike and Cassandra Remmenga purchased 20 acres of land located at 3900 N 112<sup>th</sup> St., Lincoln, NE 68527 (between Adams and Havelock) in November of 2019. The land is a long, skinny parcel of land boarded on the south by Prairie Pines Nature Preserve, on the west by 112<sup>th</sup> street, on the north by a 6.38 acre homestead and farmland, and on the east by farmland (see attached satellite view of the property). The unique parcel of land measures 373' wide and 2,325 feet long, as diagramed in the attached land survey performed by K&M Land Surveying on November 6, 2019.

The intended use of this land since purchase by Mike and Cassandra has been to build a home for their family (Wade – 7, Lizzy 4, and their Greyhound, Luka). They selected this parcel of land because of its proximity to Prairie Pines which seeks to be “a refuge for all living things”. Mike and Cassie envision expanding on that mission by planting fruit trees and prairie grass and having bees on their land.

They have acted in good faith since they started pursuing the property. All involved parties led them to believe there would not be an issue with building a home. First, the property description (also attached) states “Premium 20-acre parcel on the edge of city Lincoln city limits. NO covenants.” The description even covers the school districts the land sits on (Waverly and Eagle). In addition, the property has a 60' easement on the south side of the property that was agreed to in the sale that allows for a road to be built in to access an additional 40 acres of property owned by a 3<sup>rd</sup> party to the southeast which was communicated to Mike and Cassandra for use by a future potential neighbor. At the time of sale, Mike and Cassandra talked to the current neighbor to the north of the property about well water and they were told that there is sufficient and easy to access well water. Also, at the time of sale, all real estate agents involved also assured the buyers that there were no issues with building a home on the land.

Throughout the end of 2021 and the beginning of 2022, Mike and Cassandra engaged Ironwood Builders (see attached note from Ironwood) to plan and design their future home. Plans were finalized and contracts were signed, but on March 11, 2022, they were notified through their builder of the existence of Municipal code 27.72.010(a) which sets the general requirements for lot requirement for AG District properties. The current minimum requirement for frontage is 550'. At 373' of frontage, 3900 N 112<sup>th</sup> street does not meet this requirement.

Mike and Cassandra are seeking an exception to this code to allow for a home to be built on this property. First, the couple acted in good faith during the purchase process, asking multiple qualified people along the way if there was any issue with building a home, and were assured there was nothing preventing them from building. Second, the property itself is situated between a 145-acre University-endowed nature preserve and a homestead which are likely to remain. This will limit the use for the 20-acre plot in the future as Lincoln grows east. Third, currently only ten of the 20-acres has viable farmland with the remaining 10-acres limited to hay. The highest and best use of the property is residential real estate. Lastly, Mike and Cassandra have spent years planning and dreaming of owning a home outside of Lincoln where they can blend their love of the beautiful Nebraska land and all the fun of the city, we appeal to the board to help us reach that goal.

Sincerely,

Mike and Cassandra Remmenga



Date: 3-31-22

To: City of Lincoln Board of Appeals

From: Roger Bumgarner, Owner of Ironwood Builders

Re: Mike and Cassandra Remmenga Property at 3900 N 112<sup>th</sup> St.

My name is Roger Bumgarner, owner of Ironwood Builders. Ironwood Builders is a custom homebuilder located here in Lincoln and have been in business since 2007. I met Mike and Cassandra about 1 year ago. Late last year, we began meticulously designing and planning their home. After about 6 months of careful planning, we all agreed to begin the building process a few weeks ago. It was only upon applying for a building permit that we discovered the minimum lot-width Municipal Code. This was disappointing to Mike and Cassandra, as well as me.

I can attest to the fact that Mike and Cassandra Remmenga had absolutely no idea of the minimum lot-width Municipal Code when they purchased the land. It should also be noted that Mike and Cassandra did not create this parcel. They purchased it from another party, who advertised and implied that the lot would accommodate a single-family home. Mike and Cassandra were 100% unknowing and unsuspecting of any issues when they purchased this land and designed their dream home. Unfortunately, I also had no knowledge of this code.

The lot that was created at 3900 N 112<sup>th</sup> is situated between a single-family home on 6.38 acres to the north, and a large nature preserve to the south. The Remmenga land is essentially landlocked between these two parcels, creating a uniquely sized piece of land. The only two real options for this uniquely shaped 20-acre parcel would be a small amount of farm ground (much of the land is not farmable), or a single-family home. It is my strong opinion that the highest and best use for this land is for a single-family home. A single-family home will add value to the area, the city, and the county. It will increase property tax revenue for our local government. Building the home will add and create jobs to our local workforce and businesses. I, personally, cannot find any downside to allowing a variance in this unique situation.

The City of Lincoln wants to attract out of town workers to our great city (Mike and Cassandra are coming from Elkhorn). Lincoln also desperately needs to add to our limited quantity of housing. Lincoln needs people. Lincoln needs housing. Why not accomplish both goals with a simple variance to the code? Let's move the needle in the right direction for the city we all love.

Sincerely,

Roger Bumgarner  
Owner, Ironwood Builders