

City Council Introduction: **Monday**, December 1, 2008
Public Hearing: **Monday**, December 8, 2008, at **5:30** p.m.

Bill No. 08-166

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 08056**, requested by Mark Hunzeker, to amend Title 27 of the Lincoln Municipal Code to allow domiciliary care facilities, elderly or retirement housing, and group homes as permitted uses in the O-3 Office Park District.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: Consent Agenda: 11/19/08
Administrative Action: 11/19/08

STAFF RECOMMENDATION: Approval.

RECOMMENDATION: Approval (9-0: Carroll, Cornelius, Esseks, Taylor, Larson, Gaylor Baird, Francis, Partington, and Sunderman voting 'yes').

FINDINGS OF FACT:

1. This is a request by Mark Hunzeker to amend Section 27.27.020 to allow domiciliary care facilities, elderly or retirement housing, and group homes as permitted uses in the O-3 Office Park District.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3-4, concluding that allowing domiciliary care facilities, group homes and elderly or retirement housing as permitted uses may make it easier or more attractive for these types of uses to locate in the O-3 district, since no special permit process beyond compliance with the underlying use permit would be required, unless adjustments such as parking, increased density or yard reductions are requested.
3. On November 19, 2008, this application appeared on the Consent Agenda of the Planning Commission and was opened for public hearing. No one came forward to speak.
4. On November 19, 2008, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval.
5. This change is intended to substitute for a broader application (Change of Zone No. 08045) which proposed to allow domiciliary care and elderly housing as permitted uses in the R-5 through R-8 districts as well as the O-3 district. The City Attorney asked the Council to place that application on pending, as it might have raised questions about equal protection for group homes. The City Council should act to withdraw Bill #08-131 on pending if this new application is approved.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: November 24, 2008

REVIEWED BY: _____

DATE: November 24, 2008

REFERENCE NUMBER: FS\CC\2008\CZ.08056 text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT
for NOVEMBER 19, 2008 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 08056

PROPOSAL: Allow domiciliary care facilities, group homes, and elderly housing as permitted uses in the O-3 Office Park District.

CONCLUSION: The proposal would allow domiciliary care facilities, group homes, and elderly or retirement housing as permitted uses in the O-3 Office Park District.

RECOMMENDATION:	Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Amend Section 27.27.020 of the Lincoln Municipal Code. See attached draft ordinance.

HISTORY:
September 29, 2008: Change of Zone #08045, a text amendment which, among other things, proposes to add domiciliary care facilities and elderly or retirement housing to the O-3 Office Park District was placed on pending after the public hearing at City Council. The concern raised was not related to allowing these uses as permitted uses in the O-3 District, but as permitted uses in R-5 to R-8 Residential Districts.

COMPREHENSIVE PLAN SPECIFICATIONS

A second demographic trend of significance is the continuing growth in the area's senior population. Issues relating to an aging population will increase in importance as more and more individuals reach the age of 65 and above. Over the next twenty five years, this segment of the community will similarly grow in number and as a percent of the overall population base. This will place greater emphasis on the unique transportation, housing, economic, and recreational needs of this expanding demographic segment. (p. 2)

A safe residential dwelling should be available for each citizen: the efficiency apartment and the country estate, the small single family "starter" home and the large downtown apartment suite, the most affordable and the most expensive dwelling unit, completely independent living and living within the care of others. Provision of the broadest range of housing options throughout the community improves the quality of life in the whole community. (p. 65)

Create housing opportunities for residents with special needs throughout the city that are compatible with residential neighborhoods. (p. 66)

Plan for sufficient and varied choices for the location of elderly housing. Encourage elderly housing to locate in areas designated for mixed-uses where the elderly housing would serve as a transitional use to less intensive residential development. (p. 72)

There are notable differences between elderly housing and traditional multiple-family residential developments. Typically, elderly housing will have fewer occupants per unit and will generate less traffic than housing built for the general marketplace. Thus, a location that is deemed appropriate for elderly housing may not be deemed appropriate for other types of higher-density housing such as multiple-family or town homes. (p. 72)

REGIONAL ISSUES: In general, the population of Lincoln and the United States as a whole is aging and people are also living longer. There is a likelihood that the demand for domiciliary care facilities, group homes, and elderly or retirement housing will increase over the next few decades.

ZONING DEFINITIONS FOR REFERENCE:

27.03.175: Domiciliary Care Facility.

Domiciliary care facility shall mean an institution, facility, place, building, or structure in which there is provided for a period exceeding twenty-four consecutive hours:

- (a) Accommodations and supervision to four or more persons sixty years of age or older who are unrelated by blood, marriage, or adoption and who are essentially capable of managing their own affairs, but who are in need of supervision, including supervision of nutrition, on a regular and continuing basis but not necessarily on a consecutive twenty-four hour basis; or
- (b) Accommodations, board, and care, such as personal assistance in feeding, dressing, and other essential daily living activities, to four or more persons sixty years of age or older who are unrelated by blood, marriage, or adoption who by reason of illness, disease, injury, deformity, disability, or physical or mental infirmity are unable to sufficiently or properly care for themselves or manage their own affairs, but who do not require the daily services of a licensed, practical, or registered nurse.

Domiciliary care facilities may include accessory uses such as beauty parlors, pharmacies, gift shops, ice cream parlors, banks, or similar uses provided for the convenience of the residents. However, such accessory uses shall be located entirely within the facility and shall not have any separate entrance, but shall be accessible through an interior lobby, corridor, or passageway of the facility. No accessory use shall have any sign which is visible from the exterior of the facility. The total floor area occupied by all such accessory uses shall not exceed five percent of the floor area of the facility or 2,000 square feet, whichever is less, and each use shall not exceed 300 square feet.

27.03.214: Elderly or Retirement Housing.

Elderly or retirement housing shall mean a housing project which incorporates specific features designed to alleviate access problems commonly experienced by the elderly, and in which each occupied dwelling unit is occupied by at least one person of sixty years of age or more, except as provided in Section 27.63.210.

27.03.300: Group Home.

Group home shall mean a building or structure licensed or approved by the State or an appropriate agency, if required, used as any one of the following:

- (a) A facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care;
- (b) A facility engaged in the service of exercising 24-hour daily care, supervision custody, or control over more than three but less than sixteen children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home.

ANALYSIS:

1. Domiciliary care facilities, elderly housing, and retirement housing are somewhat similar in building mass, footprint, and intensity of use. A special permit is still required for domiciliary care facilities and elderly or retirement housing if any adjustments such as parking, increased density, and yard reductions are requested. Adjustments requested for these types of uses may also be handled by the use permit in the O-3 district.
2. Allowing domiciliary care facilities, group homes, and elderly or retirement housing as permitted uses may make it easier or more attractive for these types of uses to locate in the O-3 district since no special permit process besides complying with the underlying use permit would be required unless they request adjustments.

3. Domiciliary care facilities, elderly housing, and retirement housing likely have a comparable or lesser parking and traffic impact to a development than typical offices or medical clinics. Office uses typically are used to buffer residential uses from commercial or industrial types of uses. The text amendment provides an additional buffering opportunity to transition from residential to domiciliary/elderly, to more intensive commercial uses.
4. Change of Zone #08045 proposed to apply these uses to the R-5 to R-8 Residential Districts as well. The City Attorney placed the application on pending at City Council and advised that adding these uses to the R-5 to R-8 districts could raise questions of equal protection for group homes. This application is now limited to O-3 and has added group homes as permitted uses as well. Upon approval of this text amendment, Change of Zone #08045 will be withdrawn.

Prepared by:

Brandon M. Garrett, AICP
Planner

DATE: November 13, 2008

APPLICANT: Mark Hunzeker
Baylor, Evnen, Curtiss, Gritmit, & Witt, LLP
600 Wells Fargo Center
1248 O Street
Lincoln, NE 68508
402-475-1075

CHANGE OF ZONE NO. 08056

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

November 19, 2008

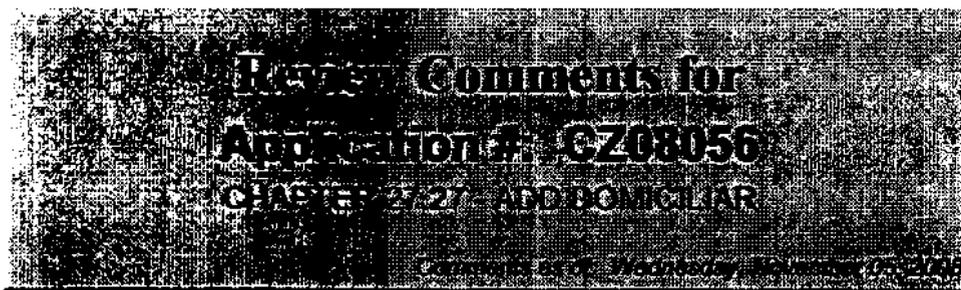
Members present: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Larson, Partington, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 08054, CHANGE OF ZONE NO. 08055, CHANGE OF ZONE NO. 08056, COUNTY SPECIAL PERMIT NO. 08047 and SPECIAL PERMIT NO. 08048.**

Ex Parte Communications: None

Item No. 1.4, County Special Permit No. 08047, was removed from the Consent Agenda and scheduled for separate public hearing.

Taylor moved to approve the remaining Consent Agenda, seconded by Francis and carried 9-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Larson, Partington, Sunderman and Taylor voting 'yes'.



Status of Review: FYI

10/27/2008 9:22:15 AM

Reviewed By: Building & Safety

Terry Kathe

Comments: is this conditional and what are the conditions?

Status of Review: Approved

10/31/2008 11:34:58 AM

Reviewed By: Health Department

ANY

Comments: LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT INTER-OFFICE COMMUNICATION

TO: Brandon Garrett DATE: October 31, 2008

DEPARTMENT: Planning FROM: Chris Schroeder

ATTENTION: DEPARTMENT: Health

CARBONS TO: EH File SUBJECT: O-3 Domiciliary Care

EH Administration CZ #08056

The Lincoln-Lancaster County Health Department has reviewed the change of zone application and does not object to the proposed text changes.

Status of Review: Active

Reviewed By: Law Department

ANY

Comments:

Status of Review: Active

Reviewed By: Planning Department

RAY HILL

Comments:

Status of Review: Active

Reviewed By: Planning Department

BRANDON GARRETT

Comments:

Status of Review: Routed

Reviewed By: Planning Department

COUNTER

Comments:

Status of Review: Complete

10/27/2008 3:08:17 PM

Reviewed By: Public Works - Development Services

SIETDQ

Comments: Memorandum

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To: Brandon Garrett, Planning Department
From: Charles W. Baker, Public Works and Utilities
Subject: Change of Zone #08056 O-3 Domiciliary Care
Date: October 27, 2008
cc: Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the Change of Zone #08056 to add Domiciliary Care in the O-3 Office Park District. Public Works has no objections.

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DONALD R. WITT
M. DOUGLAS DEITCHLER
WALTER E. ZINK II
RANDALL L. GOYETTE
STEPHEN S. GEALY
GAIL S. PERRY
DALLAS D. JONES
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DAVID D. ZWART

*ALSO ADMITTED IN KANSAS

October 22, 2008

Marvin Krout
555 S. 10th Street, Suite 213
Lincoln, NE 68508

RE: Domiciliary care facilities text amendment

Dear Marvin:

Attached is an application for an amendment to the text of the Zoning Ordinance to add Domiciliary care facilities as a permitted use in the 0-3 Office Park District. We have previously discussed the possibility of making this use a permitted use in districts which allow multi-family dwellings. Your attempt to process that text change has been held up at the City Council. This will isolate the issue for my client who desires to place a facility in an 0-3 Office Park District.

You indicated a willingness to waive the application for this application; therefore, no application fee is included. Thank you very much for your cooperation in this matter.

Sincerely,

Mark A. Hunzeker
For the Firm
mhunzeker@baylorevnen.com

MAH/ame

253639

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Add a new paragraph (o) to section 27.27.020: (o) Domiciliary care facilities



MEMORANDUM

TO: Planning Commission
FROM: Brandon Garrett
RE: Change of Zone #08056
DATE: 11-18-08
CC: file

Dear Planning Commission:

The following is some additional information at the request of Planning Commissioner Gaylor Baird:

The purpose statement at the beginning of the O-3 chapter in the zoning ordinance (27.27) states:

"This district is intended to provide a developing or redeveloping area primarily consisting of a mixture of office and other types of compatible and complementary commercial uses, and residential uses in suburban areas. This district is intended to be located on arterial streets in close proximity to commercial uses. This district is intended to provide an appealing atmosphere, stressing the quality of the environment."

This broad purpose statement does a good job at describing the common use for the O-3 district. It has often been used as a buffer zone between a more intense commercial zoning district and a residential district. Traditionally, I think this district was viewed as primarily for office uses, but I believe the broad purpose statement at the beginning of the chapter does allow for a mix of residential use types. Group homes, domiciliary care facilities, and elderly or retirement housing are all residential in character, but may also have a medical or health care component involved. Some of these seem to be a cross between a health care facility and a multiple-family dwelling. These use types are compatible with single family dwellings and they may be an even more-appropriate "buffer" between commercial/office uses and a residential neighborhood.

In regards to your next question on the previous text amendment at pending at City Council:

The previous text amendment was placed on "pending" indefinitely by the City Attorney. The concern was that the text amendment would have treated domiciliary care facilities and elderly or retirement housing more favorably than group homes (a question of equal protection). The current amendment proposed by CZ#08056 only includes the O-3 zoning district and includes all of the above-mentioned uses as "permitted uses".

Where these uses are allowed today:

Group Homes:
AG, AGR, R-1 to R-8, O-1, O-2, R-T, and B-1 to B-5, H-3

Domiciliary Care Facilities:
R-1 to R-8 and B-4

Elderly or Retirement Housing:
R-1 to R-8 and B-4

Thank you,



Brandon Garrett, AICP
441-6373 or bgarrett@lincoln.ne.gov