

FACTSHEET

TITLE: **SPECIAL PERMIT NO. 1909**, requested by Woods & Aitken on behalf of Leonard G. Stolzer, to allow the temporary storage of construction equipment on property located at 5400 South Folsom.

STAFF RECOMMENDATION: Denial.

ASSOCIATED REQUEST: Change of Zone No. 3327 (01-129)

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/18/01; 05/02/01; 05/30/01; and 07/25/01
Administrative Action: 07/25/01

RECOMMENDATION: Conditional Approval (9-0: Krieser, Hunter, Steward, Newman, Carlson, Taylor, Duvall, Schwinn and Bayer voting 'yes').

FINDINGS OF FACT:

1. This special permit and the associated text amendment (Change of Zone No. 3327) were heard at the same time before the Planning Commission.
2. The Planning staff recommendation to deny the proposed special permit is based upon the "Analysis" as set forth on p.3-4 and 6, concluding that a) (without the proposed text amendment) the plumbing business is not acceptable for two reasons: the use is not allowable under the special permit, and, if approved, would create two uses on a single lot; and b) (if the proposed text amendment is approved) plumbing contractors are not allowed to operate under the special permit for temporary storage of construction equipment and materials; approval of this special permit could encourage other construction businesses to seek inexpensive AG zoned land for their operations; and the increasing intensity of use could threaten the character of rural neighborhoods and would generate commercial traffic on roadways designed as farm-to-market roads.
3. This special permit was submitted and deferred at the request of the applicant in order to respond to the staff recommendation; to meet with the Yankee Hill Neighborhood Association and to file an application for a text amendment. (See p.027-029).
4. The applicant's testimony and testimony in support is found on p.8-12 and 15-16. The applicant also submitted a written response to the staff report (p.30-31).
5. On April 18, 2001, two individuals testified in opposition, including a representative of the Yankee Hill Neighborhood Association; however, the applicant did meet with the neighbors and the Yankee Hill Neighborhood Association has submitted a letter in support dated July 25, 2001 (p.32).
6. The testimony of Mike Merwick, Director of Building & Safety, is found on p.14, explaining the reason why this applicant was found to be in violation of the zoning code.
7. The Commission discussion with the applicant and with the staff is found on p.10-11 and 12-16.
8. On July 25, 2001, after approving the proposed text amendment (Change of Zone No. 3327), the Planning Commission disagreed with the staff recommendation and voted 9-0 to recommend conditional approval of this special permit. (See Minutes, p.16-17).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: July 30, 2001

REVIEWED BY: _____

DATE: July 30, 2001

REFERENCE NUMBER: FS\CC\FSSP1909

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.#: Special Permit #1909

DATE: April 5, 2001

PROPOSAL: Richard L. Spangler, on behalf of Leonard G. Stolzer, is requesting a special permit to allow the temporary storage of construction equipment.

GENERAL INFORMATION:

APPLICANT: Leonard G. Stolzer
5400 South Folsom
Lincoln, NE 68523

CONTACT: Richard L. Spangler
301 S. 13th Street, Suite 500
Lincoln, NE 68508
(402) 437-8500

LOCATION: 5400 South Folsom

LEGAL DESCRIPTION: Lot 1, South Folsom Addition, located in the SE 1/4 of Section 10, T9N, R6E of the 6th P.M., Lancaster County, Nebraska.

EXISTING ZONING: AG Agricultural

EXISTING LAND USE: Acreage residence with accessory buildings. In a March 7, 2001 letter, Mel Goddard of Building and Safety indicates that the applicant is operating a plumbing business from the storage garage, which is a violation of the zoning ordinance. A March 13, 2001 letter from the applicant's attorney also identifies the use as a plumbing business.

SURROUNDING LAND USE AND ZONING: The parcel is surrounded by AG zoning, with acreages to the south and fields to the north, east and west.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Map shows this land as Agricultural. The Comprehensive Plan identifies three goals for Agricultural lands:

- Identify, evaluate and prioritize agriculturally productive land for continued agricultural production.
- Preserve highly productive agricultural land for agrarian purposes, as well as allow rural, non-agricultural residences; protect ecological and historic sites in rural Lancaster County.
- Plan and coordinate the development and provision of quality transportation, public-safety, education services, health and human services, water (including quantity), and waste management for the entire rural area.

The Land Use Planning and the Community Vision section of the Comprehensive Plan discusses a continuing commitment to neighborhoods:

Neighborhoods are one of Lincoln's great strengths and their conservation is fundamental to this plan. The health of Lincoln's varied neighborhoods and districts depends on implementing appropriate and individualized policies. In addition, the land use plan is the basis for zoning and other land development decisions. It should guide decisions that will maintain the quality and character of the community's established neighborhoods. (p 36a)

HISTORY:

1979 Zoning Update This land was converted from A-1 Single Family to R-1 Residential.

March 29, 1982 City Council approved Change of Zone #1917, which changed the zoning in the area from R-1, R-3 and B-2 to AG Agricultural.

ANALYSIS:

1. According to the special permit application, the proposed use is “to permit the temporary storage of construction equipment and materials for the conduct of the petitioner’s construction business.”
2. In the March 7, 2001 letter from Mel Goddard, the Department of Building and Safety informed the applicant that a plumbing business is not permitted in the AG zoning district.
3. This review will specifically evaluate the existing uses on the applicant’s property: a plumbing business and a residence.
4. Plumbing businesses are mentioned in several zoning districts:
 - B-1** “Sales and showrooms for the sale at retail of plumbing, electrical, and heating and air conditioning equipment and supplies, including service facilities and rental of equipment” §27.29.030(e)
 - B-3** “...plumbing and water softener service shops.” §27.33.030(e)
 - H-2** “Service facilities, including but not limited to repair and maintenance of home and office equipment, electrical appliances, radio and television sets, and rental equipment; and the places of business of plumbing, electrical, and heating and air conditioning contractors.” §27.41.030(c)
 - H-3** “Contractors’ offices and storage yards, and lumber and coal yards.” §27.43.020(gg)
 - H-4** “Contractors’ offices and storage, including electrical, plumbing, heating, and air conditioning contractors.” §27.45.020(m)

5. Storage of equipment is accessory to the applicant's plumbing business, which is unlawfully operating on the site. This special permit would permit the storage of construction equipment as a primary use.
6. There is no mention of plumbing or contractors' offices in the permitted, conditional, or special uses in the AG Agricultural zoning district. The special permit for temporary storage of construction equipment does not identify plumbing contractors as a use included in the permit. If approved, this special permit would not legitimize the plumbing business.
7. The general zoning regulations state, "Every building hereafter erected or structurally altered shall be located on a lot as herein defined and in no case shall there be more than one main building on one lot except as otherwise provided in Chapters 27.65 and 27.71." §27.81.010(d)
8. Approval of this special permit would create an additional main building on the lot, a situation specifically forbidden by §27.81.010(d) L.M.C.

STAFF CONCLUSION: The plumbing business is not acceptable for two reasons: the use is not allowable under the special permit and, if approved, would create two uses on a single lot.

STAFF RECOMMENDATION:

Denial

If, after holding a public hearing, the Planning Commission decides to grant this special permit, the following conditions should apply:

CONDITIONS:

Site Specific:

1. This approval permits the temporary storage of construction equipment and materials.

General:

2. Before receiving building permits:
 - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department office for review and approval.
 - 2.1.1 A revised site plan showing the following revisions:

2.1.1.1	Replace Scotch Pine with a species less susceptible to Pine Wilt Disease.
2.1.1.2	Identify new landscape materials by common name, botanical name, planting size, and planting method.

- 2.1.1.3 Identify the outdoor storage area and show a fence around it, or add a note indicating that there will be no outdoor storage of construction equipment or materials.
- 2.1.1.4 Add a note to the site plan indicating that the premises shall be used only for storage of construction equipment and materials. There shall be no offices ~~or residences~~ on the premises. (**As revised by staff on July 16, 2001**)
- 2.1.1.5 Provide information regarding the storage of hazardous materials and/or chemicals and fuel on the site, as requested by the Health Department.

2.1.2 A final site plan with 5 copies as approved.

2.2 The construction plans comply with the approved plans.

2.3 The required easements as shown on the site plan are recorded with the Register of Deeds.

3. This use shall cease 15 years following the approval of this special permit unless the Director of Planning approves an administrative amendment for its extension.

STANDARD CONDITIONS:

- 4. The following conditions are applicable to all requests:
 - 4.1 Before commencing operations, all development and construction is to comply with the approved plans.
 - 4.2 Before commencing operations, City/County Health Department is to approve the water and waste water systems.
 - 4.4 All privately-owned improvements, including landscaping, are to be permanently maintained by the owner.
 - 4.7 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 4.8 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

- 4.9 The City Clerk is to file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee is to pay the recording fee.

Prepared by

Jason Reynolds
Planner

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ADDENDUM TO SPECIAL PERMIT #1909 STAFF REPORT

If Change of Zone #3327 is approved, there are some minor effects on this report. The staff recommendation remains **denial**.

- Plumbing contractors are not allowed to operate under the special permit for temporary storage of construction equipment and materials.
- If this special permit were approved, it could encourage other construction businesses to seek inexpensive AG zoned land for their operations.
- The increasing intensity of use could threaten the character of rural neighborhoods and would generate commercial traffic on roadways designed as farm to market roads.

If, after holding a public hearing, the Planning Commission decides to grant this special permit, the conditions are as previously suggested, except:

- 2.1.1.4 Add a note to the site plan indicating that the premises shall be used only for storage of construction equipment and materials. There shall be no offices or residences on the premises.

Jason Reynolds
Planner
July 16, 2001

SPECIAL PERMIT NO. 1909

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 18, 2001

Members present: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer; Hunter absent.

Planning staff recommendation: Denial

The applicant has requested a two-week deferral.

Proponents

1. **Craig Strong** appeared on behalf of **Leonard Stolzer** to request a two-week deferral. Duvall moved to defer two weeks, with continued public hearing and administrative action scheduled for May 2, 2001, seconded by Carlson and carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer voting 'yes'; Hunter absent.

Opposition

1. **Laverne Thomas**, 801 W. Calvert, appeared on behalf of the **Yankee Hill Neighborhood**, in opposition. This is no place for it. If you allow one, what about the rest that come along?

2. **Clay Champoux** appeared on behalf of his wife as President of Yankee Hill Neighborhood Association in opposition. This is not appropriate for this area.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 2, 2001

Members present: Duvall, Taylor, Newman, Carlson, Schwinn, Steward, Krieser, Hunter and Bayer.

The Clerk submitted a written request from the applicant for an additional two-week deferral to work with the Yankee Hill Neighborhood Association.

Proponents

1. **Craig Strong** appeared on behalf of the applicant. The applicant is making a good faith effort to come up with alternatives to resolve the issues with the Yankee Hill Neighborhood Association. Strong requested a four week deferral until May 30th.

Schwinn moved to defer four weeks, with public hearing and administrative action scheduled for May 30, 2001, seconded by Hunter and carried 9-0: Duvall, Taylor, Newman, Carlson, Schwinn, Steward, Krieser, Hunter and Bayer voting 'yes'.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 30, 2001

Members present: Krieser, Carlson, Taylor, Duvall, Newman, Schwinn, Steward and Bayer; Hunter absent.

The Clerk announced that the applicant has submitted a written request to defer this application until July 25, 2001, in order to process an associated text amendment.

Duvall made a motion to defer until July 25, 2001, seconded by Schwinn and carried 8-0: Krieser, Carlson, Taylor, Duvall, Newman, Schwinn, Steward and Bayer voting 'yes'; Hunter absent.

CHANGE OF ZONE NO. 3327

and

SPECIAL PERMIT NO. 1909

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 25, 2001

Members present: Krieser, Hunter, Steward, Taylor, Newman, Duvall, Carlson, Schwinn and Bayer.

Planning staff recommendation: Denial.

Jason Reynolds of the Planning staff submitted additional information for the record including a response from the applicant to the staff reports and a letter in support of the special permit from the President of the Yankee Hill Neighborhood Association.

Proponents

1. Bill Austin appeared on behalf of Mechanical Specialties, Inc. (Mr. and Mrs. Leonard Stolzer). This proposed text amendment had its genesis in the special permit which had previously been filed to allow temporary storage of construction equipment in the AG district. Staff had recommended denial in part because the property was the site of the home of the Stolzers as well as the existing storage facility and determined this to be two main buildings on one lot, which is not permissible in the AG district.

Austin stated that the applicant supports and requests that the Commission consider the alternative language for the text amendment as proposed by the City Attorney rather than the original language proposed by the applicant. It is more clear in what we are attempting to accomplish and it also addresses more clearly some of the staff concerns.

Austin also pointed out that the special permit application cannot be considered as final action by the Planning Commission as advertised. Under section 27.63.590, which is the special permit provision for temporary storage of equipment in the AG district, it requires City Council action to set the time limit during which the special permit is to continue and requires City Council action to reduce the acres to 7, which is something this applicant has requested.

Austin further explained that this text amendment seeks to change section 27.71.130 of the code that sets forth when more than one main building may be located on a lot. The language suggested

by the City Attorney would provide that where an existing single family dwelling is located, one additional main building may be located on the tract in conjunction with another permitted use, other than residential, provided that it is either owner/manager occupied and the lot area contains sufficient area to meet the 1-acre requirement for a single family residence plus the minimum lot area required in the AG district for the nonresidential use. In other words, this text amendment seeks for the resident to act as a caretaker. Austin believes there are a number of benefits to this amendment. It would provide more security and less possibility for vandalism of valuable equipment and supplies; it provides efficient use of the ground in the AG district; the large tract could be put to more constructive use in conjunction with the residence in the AG district; and there is some benefit to allow someone to live where they work. This probably will reduce the number of trips on the roads.

In its recommendation of denial, Austin noted that the Planning staff has cited Comprehensive Plan language making reference to a continuing commitment to neighborhoods and pointing out that neighborhoods are fundamental to the plan. They also go on to say that while agriculture changes, rural character remains recognizing that agricultural and agri-business activities are changing and will continue to result in changes of use in the AG district. Austin agrees that these are certainly valid points, but they do not support the conclusion that this change of zone therefore contravenes the character of rural neighborhoods or that it would promote an intensity of use inappropriate for the areas shown as agricultural. Austin is not sure why the neighborhood language has any relevance to this change of zone because this change of zone is limited to the AG district and the AG district is not a residential use. Nor are we proposing an intensification of use that is significantly different than that which is already permitted in the AG district. This proposal requires at least a 1-acre for a residence and, in addition, the amount of acres necessary for the otherwise permitted use. Austin suggested that this is not significantly different than what is already permitted in the AG district where an existing residence can actually be split off now on a one-acre tract with the remainder of the property continuing in agricultural or some other permitted use. This is currently permitted in the situation in which a house is associated with a farm. Austin suggested that from a health, safety or welfare standpoint it does not make a whole lot of difference whether a property was associated with a farm or not if you are going to allow residences on one-acre tracts in the AG district. But, even over and above that, this applicant is not asking to allow a residence on a one-acre tract. We are suggesting that on a larger tract, as long as we have at least one acre to support the residential use, that that should be permitted.

Austin purported that this sort of use is already allowed in the AG district if you are on a farm. It is presumably permitted if you are a church with a parsonage. All this proposed change does is to allow this in conjunction with other uses within the AG district. It requires at least the minimum amount that you would otherwise require to carve out a residence from a farmstead, and, in addition, requires that you have the acreage necessary for the otherwise permitted use.

Austin pointed out that currently in the AG district there are already a variety of uses that are permitted on one, two, ten and twenty acres, but it's the 20-acre general minimum which was presumably decided upon because a farmstead is twenty acres.

Austin suggested that there is no more real possibility of significant intensification of use based upon this request than there is of all the farmers wanting to carve off their homes from their 20+ acre

lots on a wholesale basis. The applicant is puzzled by the staff comments that there would be any real intensification of use. The applicant is also puzzled by the Building & Safety comments that ask why the tract should only meet the area requirements of 27.07.080(h), relating to carving off of the farm residence. If this applicant met 27.07.080(h), they would not be here today. Aside from that, what this applicant is intending to do by making a reference to that was simply to point out that there is an existing and established minimum lot for a residence and we're trying to key into that; however, that language is no longer in the proposal as drafted by the City Attorney's office.

Austin also noted that the Building & Safety report expressed some concern about non-permitted uses being permitted. If this proposal was in any way unclear about that, it should be cleared up by the City Attorney's draft of the language, which specifically says that all you can have with the residence is another permitted use in the AG district.

The staff suggests that this change will not promote preservation of the rural character of the area. Frankly, Austin believes that the special permit this applicant is seeking in conjunction with this text will actually assist in preserving the rural character to the extent that it exists in that location now. We are asking for a temporary use of the premises for storage of equipment. With regard to the rural character of the area, Austin passed around some photographs showing activities that are occurring within a mile of the applicant's own home including existing construction and equestrian activities with residences. Austin was not trying to point the finger at anyone else, but if Mr. Stolzer can find these three examples which exist within one mile, it probably is occurring to a fairly large extent around the city where there are already residences in conjunction with other permitted uses.

Austin does not believe that this is something that needs to be outlawed or eliminated, but it is something that needs to be recognized and addressed. A sensible approach is to recognize the utility of having someone have their residence almost as an accessory use in conjunction with other permissible uses already allowed in the AG district.

Carlson clarified with Austin that it is his opinion that the other uses shown on the map are currently unlawful uses. Austin believes they stand in the same position as Mr. Stolzer. Carlson understands that this text amendment would benefit Stolzer, but one concern he has is that it is a text change and therefore city-wide/county-wide. What's the benefit to the County? Austin responded that first of all, to some extent zoning has to be practical and recognize what people do and want to do in these sorts of districts. The three examples are very much a tip of the iceberg as to what is occurring. A lot of people on these large lot acreages in the AG district have a residence and often you find people slowly accreting to some extent their business there and it is not an unreasonable use of the ground. In contrast, the benefit is that if we recognize something that is in the nature of a caretaker type of activity (someone who is residing on the premises and making use of the premises in what is an otherwise permitted use in the district), that is probably beneficial from the standpoint of security and reducing vandalism.

Carlson noted the applicant's assumption that the area, if not in transition, is probably headed for transition because of its proximity to the city, and that this would lay the groundwork for a potential special permit that would have a time limit. That raises a concern to Carlson. He asked for the applicant's rationale as to why the application is justified if it is just a temporary situation in a transitional area. Austin replied that insofar as the change of zone is concerned, the benefit is a little different than with the specific special permit being requested here. He believes that the change of zone has a benefit separate and apart from the special permit simply because it will recognize a reasonable use of large lots in the AG district where there is an existing residence and someone wants an otherwise permitted use and has enough area to do that but for the fact that they cannot have two main buildings on the lot. For the special permit, that is a little different because the specific permit has a maximum limit on it of 15 years, and because of where Stolzer is located (abutting up against the proposed Optimist fields with the Wright YMCA fields about a block or two to the north), he does not think this is going to be agricultural for a long time if we continue to encroach with things such as ballfields. Speaking of intensifying the use of the roads and ground out there, those ballfields are doing it.

Austin pointed out that the applicant is not seeking a change of zone, but this at least allows Mr. Stolzer a reasonable use of his property and the existing structures on his ground for a limited period of time.

Steward is concerned about enforcement of the language, "Either the owner or resident manager of the nonresidential use shall live in the single family dwelling as his or her permanent residence." Steward's concern is, what's to prohibit this applicant or an adjacent property owner or anyone in the county from building that second house and leasing it? Austin clarified that there will not be a second home that would be allowed on the premises. There would be one home and one business. Bayer then inquired how you make sure the home is occupied by the business owner. Austin suggested that there would be ways to check that through the business records and as to where that individual is obtaining their mail--the various ways in which they would verify occupancy by someone in any building. Steward commented that it's like many of our ordinances--there is a way to do it but the cost and the effectiveness becomes onerous to the county or city. Austin agrees that there are enforcement problems, but by the same token, a farmer could rent out his house and you wouldn't know it.

Hunter sought clarification of the minimum lot area requirements. Austin explained that with this change, you could have the second main building if you have the one-acre for the residence and then whatever the other permitted use is (most of the time it is going to be 20 acres, so you would have to have 21 acres to make this permissible). In some circumstances it's 10 acres plus the one acre. This special permit is one acre plus seven acres. There are 8.62 acres in the subject property.

Bayer noted that it seems this is an ordinance that would allow home based businesses in AG. Is that it? Or a business on a person's land? Austin believes it is close to that. They are looking more to allow them to provide the caretaker sort of function.

2. Craig Strong appeared on behalf of Leonard Stolzer and discussed the special permit application. He showed a photo of Stolzer's lot, showing the storage building in question and

storage area and the residence. As far as the long term effect, Strong reiterated that it is within a permitted use already in the AG area. This is unique to the extent that it is a very constricting permit in that there are parameters to meet to qualify. Temporary storage has to be within one-mile of the future urban area.

Strong gave a brief history. In May of 1997, Stolzer built the storage building after receiving a building permit from the city. Being on Folsom Street, he built it for security reasons. This allows him to be the caretaker of his construction materials. He uses the building to store materials for his mechanical construction business and has used the building for four years without any complaints. In March of 2000, the city informed Stolzer that his building was not proper for the AG area and that is the reason for this special permit. Stolzer meets the criteria of the special permit. His land amounts to 8.62 acres, meeting the minimum requirement of 7 acres; the area of the indoor and outdoor storage does not exceed the 2-acre maximum; the site is located within one-mile of the future urban area, bordering the Optimist ballfield.

Strong noted that the staff report characterizes Stolzer as a plumber, which is correct; however, the intent or the requirements of the temporary storage is if someone is engaged in the construction industry. Stolzer is engaged in the mechanical construction trade.

Stolzer has neighborhood support from the Yankee Hill Neighborhood Association. He met with members of the community and attended the neighborhood association meetings and the Mayor's Neighborhood Roundtable. Stolzer submitted signatures from the immediate neighbors in support.

Strong agreed with the proposed conditions of approval set forth in the staff report should the Commission approve the special permit.

This special permit cannot be final action by the Planning Commission because the City Council must decide the minimum 7 acre use and determine the period of time for the permit.

3. Lynn Ostrem, owner of the property immediately south of Stolzers, testified in support. She has lived there for 1.5 years and has had no problems whatsoever with the storage of the equipment. Their back yards are adjacent There is no noise. There is no disruption. Everything is neat and well kept. She has no concerns being the closest neighbor. With regard to traffic, there is a significant amount of traffic on Folsom from the soccer fields and the potential Optimist Club ballfields, so the statement of excessive traffic from the storage is not a valid point to consider in this case.

There was no testimony in opposition.

Staff questions

Steward's concern is the change of text and the fact that we set up circumstances which are going to be even more difficult to police. He would like to know why we cannot simply approve this as a special permit as it stands without changing the text. Reynolds explained that it would create a situation where you have more than one main use on a lot, which is not permissible in the AG district. Steward asked how different that is from someone continuing to use the property for

agricultural purposes and has outbuildings besides their residence. Reynolds further explained that if someone used this as a farmstead, for example, and had some building for storage of a tractor, in that case agriculture is a permitted use and in some ways a single family dwelling is almost an accessory to the agriculture.

Rick Peo, City Attorney's office, clarified that that is the most confusing aspect of the AG district—when does a single family dwelling become the main use and when is it accessory? In a farmstead of 20 acres or more, the dwelling is definitely the accessory use. When we get to some of the smaller uses, the single family dwelling is a permitted use by right so it is in a sense a separate and distinct use. It is already existing on this property. If you want to add a second use, you can't count the same lot area twice for each required minimum lot area. We could say we are going to allow two main uses with certain criteria to add the second main use when you have a residence. It is an awkward situation.

Steward suggested that the logic should be, if we want to retain the agricultural quality to these acreage environments, that we be lenient on standard agricultural uses but every other use would be inspected or at least show cause that it is a use that does not in visual, in traffic and other ways show detrimental effect on that general environment intent. Steward stated that he is looking for a way to be able to approve this use because it doesn't seem to be intrusive; however, he does not want to open the entire county up to uses. Peo clarified that this does not expand the uses in the district. Any use that comes forward has to be a use that is already permitted in the AG district. Both uses have to be permitted in the district. By changing the language to a caretaker situation, Peo was really attempting to acknowledge that we are trying to make it accessory to the business or they are a merged type of product so that there is continuity and unity between the two uses. Steward clarified that the use factor still controls to begin with. Peo concurred.

Carlson asked how varied the minimum lot requirements are for the permitted uses. Reynolds stated that they vary from 20 acres down to 1 acre. There are specific conditions under which a farmstead can be split off down to 1 acre—it has to be a primary residence associated with the farm--the remaining acres have to exceed 20. In addition, the Health Department and Building & Safety must sign off on the application. The Health Dept. does not sign off unless it is 3-acres, which is the Health Dept. recommendation for minimum size for a septic system. In this case, the remaining acres would be seven.

Carlson inquired about subdividing these uses under two separate lots, but presumed they could not meet the minimum lot size requirements for the two uses. Reynolds concurred, although it meets the requirements for a residence. It works as a single family residential lot.

Peo attempted to further clarify. The lot in question is a pre-existing legal size lot for a single family dwelling. In order to add the temporary storage of construction equipment, they need to have a 20-acre parcel unless Council reduces it down to a smaller size, i.e. to the minimum of 7 acres. Because your typical size for a single family dwelling is the 20-acre minimum, your nonstandard size may be 13. To add another use, you're going to have to have another 20-acres for that use. They don't have that. This ordinance is not creating different lots and subdividing the property.

Carlson was attempting to find an alternative way to do this. Peo clarified that it is not a permitted use in AGR. The City Council does not have discretion on the acreage size. They would, however, be able to reduce the minimum lot size required for temporary storage of construction equipment from 20 acres to 7.

Newman was curious as to what is a permitted use in the AG district that we may be shooting ourselves in the foot by approving the text amendment. Reynolds believes the applicant is engaged in a construction trade as a plumbing contractor, which is specifically called out in the H-3 and H-4 zoning districts. Those would be appropriate locations for someone to store their plumbing equipment. If this is approved, it raises the question as to what else is a construction business, i.e. electrical work, storing paint, etc.

Newman was not worried about this particular use. She wanted to know what other permitted uses could be slipped in somewhere else by the text amendment. Reynolds pointed to the storage of toxic and flammable materials; other typical permitted uses are garden centers, stables and riding academies, kennels, farming, etc.

Bayer suggested that if Mr. Stolzer had 20 acres, he would not be here today. Reynolds disagreed. They would still need the special permit for the type of use. The citation they received from Building & Safety is that they are operating a use not permitted in the AG district. There is a special permit to store in AG if they were 20 acres. A farmer could store fertilizer for his own use but he could not store fertilizer for sale to other farmers.

Bayer asked whether there are other dangerous uses. He believes that people want this to happen but he is confused why the staff doesn't want it to happen. What can they do here? What are we afraid of?

Mike Merwick, Director of Building & Safety, addressed the Commission. For the past few years, we have been trying to maintain AG as spelled out in the zoning code--no commercial businesses. We've shut hundreds of them out. We just went through a deal where a person had 7 employees and was running a business. There are a lot of people that have tried this same thing. They've gone out in AG and as we find them, we shut them down. In this specific situation, Merwick stated that it is more than storage--there are employees reporting there and working there and then going out from there.

Bayer clarified that the proposed text amendment does not allow the employee activity. Peo concurred, stating that if you approve the temporary storage, people are going to have to come out, pick it up and move it, so employees will be going and coming from the site.

Merwick pointed out that if this is where Stolzer's office is located, it is more than storage.

Carlson asked staff whether there is zoning other than AG that would accomplish the intent. Reynolds suggested that there are certain provisions in the I-1 that talk about having a resident caretaker.

Response by the Applicant

Austin agreed that the AG district is set up to some extent to be more lenient toward agricultural uses, but what he would suggest is that they have been more than lenient to farm uses, particularly when 27.07.080(h) allows what used to be a farm residence to be carved off to be used for a residence in and of itself. That takes it outside of agricultural use under certain conditions. Austin suggested that “we ain’t pure right now” in the AG district and we’re not trying to say be less pure but there are some of these things that should be recognized as sort of a different type of lifestyle. If they are shutting down hundreds of these every year, there must a lot of demand for doing this. If there are hundreds of them, they must not have overloaded the roads just yet. We’re not really opening this up. Let’s look at the permitted uses in the AG district—there is agriculture, confined feeding facilities, breeding and raising management of fur bearing animals, dog breeding establishments and kennels, stables and riding academies, public use of single family dwellings and churches. Permitted conditional uses include cemeteries, pet cemeteries, roadside stands, group homes, wind energy systems, greenhouses, early childhood facilities, permitted special uses, private schools, recreational facilities, dwellings for members of religious orders, broadcast towers and stations, campgrounds, veterinary facilities, bigger confined feeding facilities, sale barns, garden centers, facilities for the commercial storage or sale of fertilizer, church steeples, expansion of nonconforming use, historic preservation, public utility, private land strips, limited landfills, race tracks, temporary storage of construction equipment, early childhood facilities, clubs, dwellings for domestic employees in accessory buildings, heritage centers and community halls. Austin believes there is a limited number of potential uses that would be combined with a residence. You need a caretaker with a cemetery use or with a greenhouse. Austin believes that this applicant would still be here even if they had 20 acres because of the interpretation that it is more than one main building on the premises.

Hunter asked if Stolzer is a plumber. Austin stated, “yes, he is a plumber--he has a master plumbers license.” Hunter asked whether he has employees. Austin stated, “yes, but not on the premises.” Hunter then asked if he stores plumbing equipment used in the business. Austin stated, “yes”. She also asked if Stolzer’s office is located there. Austin stated that he has some area in his home where he does his computer work. Austin elaborated that Stolzer’s plumbing business promotes a lot of different things—he has been a subcontractor to Sampson Construction on UNL campus; subcontractor to Kingery on the Hartley School reconstruction; and in Crete he has been subcontractor on the science building at the Doane campus. We think that what he is doing is very legitimate storage of equipment and supplies because of the nature of his work.

Bayer clarified with Peo the final action issue. Peo agreed that the Planning Commission cannot take final action on the special permit. The ordinance does say it is the City Council’s decision to establish the timeline for the duration of the temporary permit and reduction of the acreage down to 7.

Steward asked what position it puts the city in if the text amendment is denied and the special permit is approved. Peo stated that the applicant would have the choice of abandoning the

dwelling if he wants to keep the special permit. He would have two main uses on the property which is not permissible. He would have to decide which one to keep. That is the reason we are here.

Public hearing was closed.

CHANGE OF ZONE NO. 3327

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 25, 2001

Duvall moved approval, using the City Attorney's proposed language, seconded by Taylor.

Duvall's comments were that anybody can be a general contractor--just because it is a trade does not say he has no right to be a contractor. He is trying to make an income. He has storage near his dwelling and to make his property conforming he has to go through this.

Steward does not think this is about the plumbing business. It is about conforming to the Comprehensive Plan, and the regulations were set up to follow the Comprehensive Plan to protect a character of agricultural landscape and land use. All of the permitted uses that have been read conform in Steward's mind to that general character. And special permits are to be inspected and approved or disapproved based upon the adverse effect on that character. So, he will vote against the motion because he believes it opens up the commercial and industrial in an agricultural zone of the entire county, especially if we do it on the precedence of this particular use. We will not be in a position to deny other commercial industrial permits as easily as we can now if we pass this. Steward does not have a problem with the current condition as a special permitted circumstance. It seems that this applicant is satisfying his neighbors in conducting activities on the property. But Steward does have a huge problem with approving the text amendment for whatever else can happen in the AG zone.

Carlson thinks there should be a different way to do this. What they are trying to accomplish at that particular location won't have that big of an impact, but the text amendment as a whole could have an impact.

Bayer suggested that the text amendment is much bigger than what is in front of the Commission today. He was glad to hear the uses in the AG district. He would be excited about allowing businesses to be set up next to a person's residence and he believes the country is an okay place to do that given the appropriate amount of space. Bayer is not opposed to having a business in the rural setting.

Hunter cannot support this because she thinks the way to accomplish this is to add the use to the special permit for properties under that limitation. The acreage is the problem. The better approach is to amend the specific portion of the problem that would allow this to be done on a special permit basis. It opens the door for so many other things in this way. She would like to see it come back with a change in another manner.

Taylor fails to see the difficulty in approving this. Without being able to see that difficulty, he does not see why we should not approve this. The argument in favor is too compelling to him.

Hunter commented that there are a lot of trades and businesses that don't function in their location. They do their business everywhere else but a centralized location. But if you have the ability for storage in a large storage shed, what would prevent you from storing your dump trucks out there? You don't use them on site and the business is conducted off-site, but she believes this text amendment is an opening for that sort of thing to happen. None of the regulations are built for the conscientious business person that does not abuse the system. They are always designed for the instances that come in and try to use the loophole to create a different situation and that is why she is opposed.

Motion to approve carried 5-4: Krieser, Taylor, Duvall, Schwinn and Bayer voting 'yes'; Hunter, Steward, Newman and Carlson voting 'no'.

SPECIAL PERMIT NO. 1909

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 25, 2001

Duvall moved approval, with conditions, seconded by Schwinn and carried 9-0: Krieser, Hunter, Steward, Taylor, Newman, Duvall, Carlson, Schwinn and Bayer voting 'yes'.



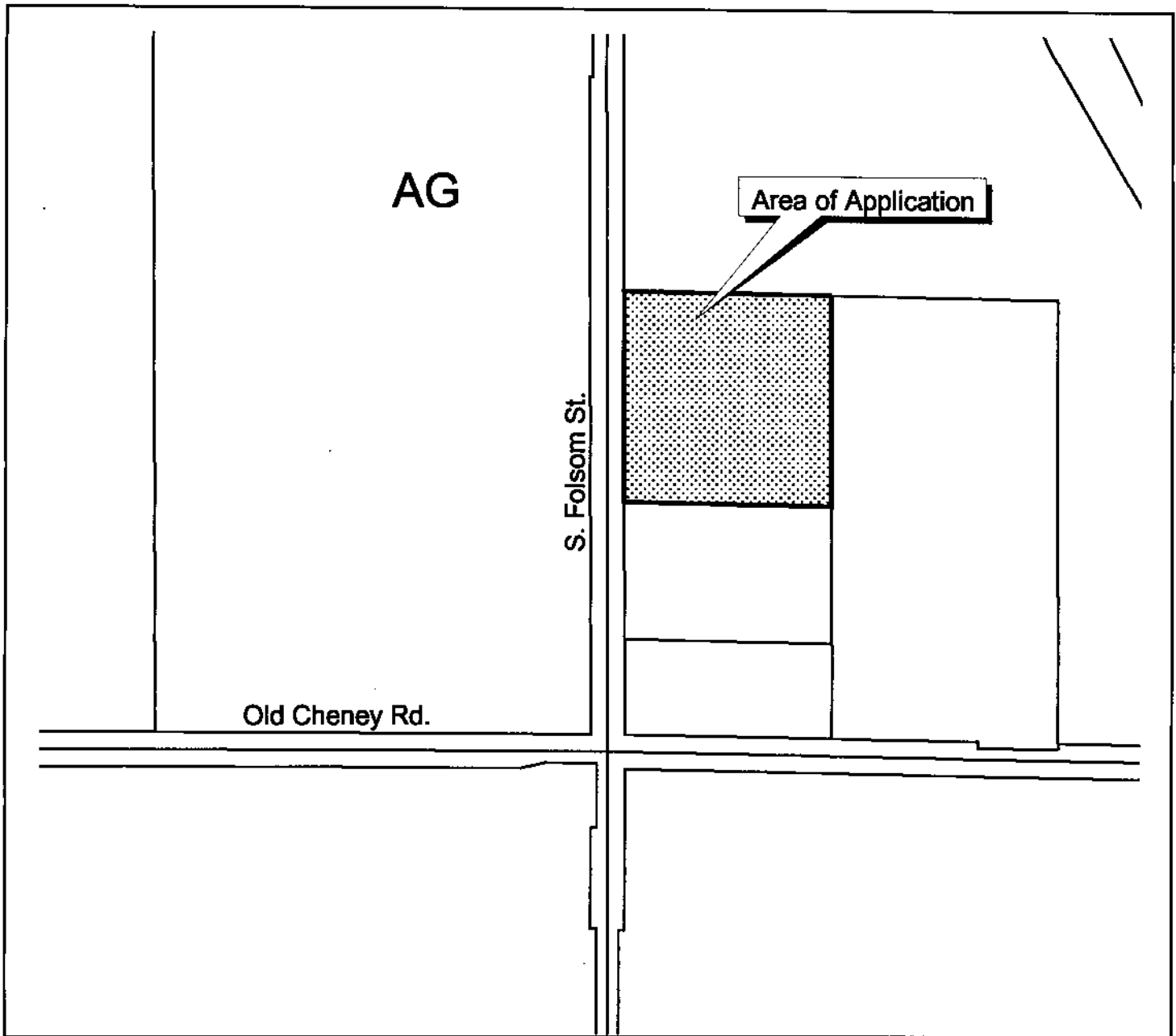
Special Permit #1909
5400 S. Folsom



Date: 4-5-01 018

Photograph Date: 1997

Lincoln City - Lancaster County Planning Dept.

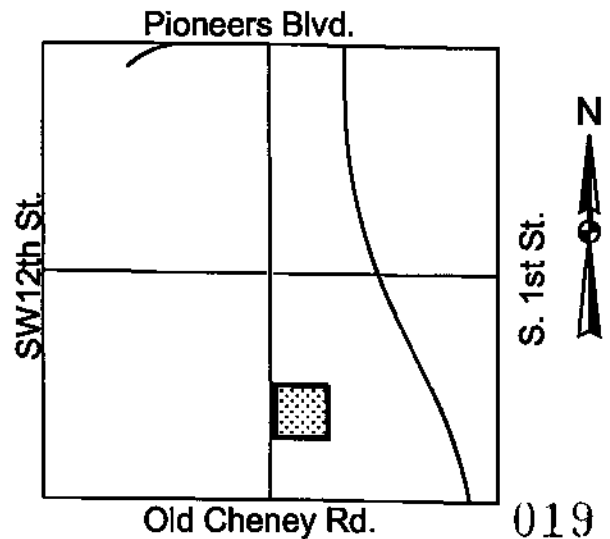
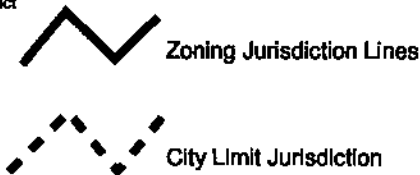


Special Permit #1909
5400 S. Folsom

Zoning:

- | | |
|------------|--|
| R-1 to R-8 | Residential District |
| AG | Agricultural District |
| AGR | Agricultural Residential District |
| R-C | Residential Conservation 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. 10 T9N R6E



540 W. INDUSTRIAL LAKE DR.,
 SUITE 1 · LINCOLN, NE 68528
 (402) 476-3020
 (402) 476-3138 FAX

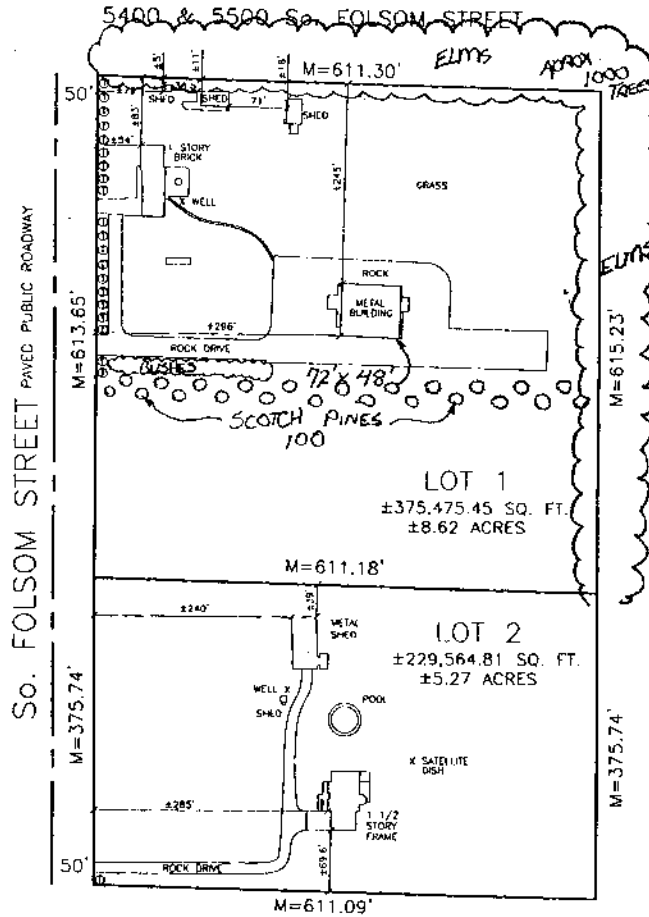
SURVEY RECORD
K&M Inc.
 Land Surveying

PLANNING DEPARTMENT

PROJECT # 9911014A
 DATE: 11-16-99 6/P: 86-117

Survey Of: LOTS 1 & 2, SOUTH FOLSOM ADDITION, (PROPOSED), LOCATED NE 1/4 OF

Section: 10, T 9 N, R 6 E, of the 6th P.M. LANCASTER County, Nebraska



RECEIVED
 MAR 2
 LINCOLN CITY/LAI
 PLANNING D

⊕ = TREE
 NOTE: NO SIDEWALKS ALONG SOUTH FOLSOM STREET

Subject property apparently falls within the confines of Zone " C " as determined by the FEMA-FIA Flood Rate Map community 315273, panel 0040 C, revised 3-18-86.

- P = Plotted
- M = Measured
- = Found as noted
- = Set #5 Rebar & L.S. #483 Cap.
- ▲ = Set Temp. Point

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 _____, 19____

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



Date: 4-5-01





CORRECTED COPY OF LETTER SENT March 6, 2001

March 7, 2001

CERTIFIED MAIL

Mr. Len Stolzer
Mechanical Specialties, Inc.
5400 South Folsom Street
Lincoln, NE 68523

Dear Mr. Stolzer:

The Building & Safety Department has received a complaint regarding the use of your premises at 5400 South Folsom Street for the operation of your plumbing business from the storage garage.

The AG-zoned district in which you live does not permit a plumbing business. I ask your cooperation in relocating your business to a properly zoned location by May 1, 2001. Any further business use of the premises after that date shall cause the matter to be referred to the city attorney's office for further action.

Any questions you have may be referred to me at 441-6423.

Sincerely,

BUILDING & SAFETY DEPARTMENT

✓ Mel Goddard
Chief Building Inspector

Cf. Mike Merwick, Director
Ron Peery, Manager
Chuck Zimmerman, Manager
File

ebbtr-stolzer

021

J. TAYLOR GREER
RICHARD L. SPANGLER, JR.
ALLEN L. OVERCASH
PAUL M. SCHUDEL
EDWARD H. TRICKER
WM. LEE MERRITT
JOSEPH H. BADAMI
KERRY L. KESTER
ROBERT B. EYVEN
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TERRY C. DOUGHERTY
JENNIFER J. STRAND
CRAIG C. DIRRIM
BRUCE A. SMITH
KRISTA L. KESTER
KENT E. ENDACOTT
SHANNON L. DOERING
CRAIG W. STRONG
LÉNA A. LUCAS

WOODS & AITKEN

L • L • P

THOMAS C. WOODS (1895-1958)
WILLIAM I. AITKEN (1896-1978)
PHILIP M. AITKEN (1902-1998)

OF COUNSEL
BERT L. OVERCASH
RICHARD W. SMITH

March 13, 2001

SUITE 500
301 SOUTH 13TH STREET
LINCOLN, NEBRASKA 68508-2578
FAX (402) 437-8558

TELEPHONE (402) 437-8500

E-Mail-RSpangler@woodsaitken.com
Direct Dial - (402) 437-8506

Mr. Mel Goddard
Chief Building Inspector
Building & Safety Department
City of Lincoln
555 South 10th St.
Lincoln, Nebraska 68508

RECEIVED

MAR 14 2001

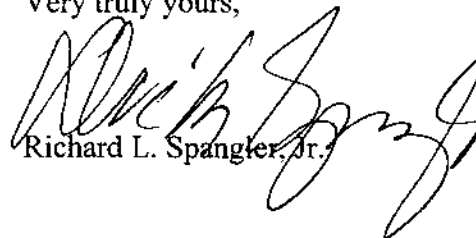
CITY BUILDING & SAFETY

Dear Mr. Goddard:

This will acknowledge receipt of your letter dated March 6, 2001, addressed to Mr. Len Stolzer regarding the use of his premises at 5400 South Folsom Street for the operation of his plumbing business from a storage garage.

Mr. Stolzer will be filing shortly an application for a special permit pursuant to the provisions of Section 27.63.590 of the Lincoln Municipal Code which permits temporary storage of construction equipment and materials in the AG Zoning District in that he complies with subparagraphs (a)-(e). Since it takes time for the application to wind its way through the various City departments, the Planning Commission and the City Council, it does not appear likely that this process can be completed by the "drop dead" date of May 1, 2001. I would request your cooperation in not enforcing such "drop dead" date since we will be pursuing this actively, otherwise, you will effectively be putting Mr. Stolzer out of business.

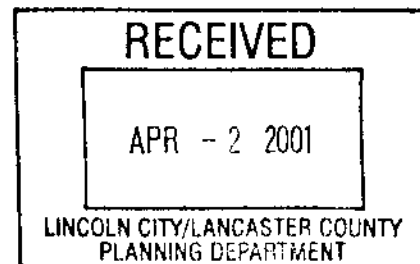
Very truly yours,


Richard L. Spangler, Jr.

RLS:sm

cc: Len Stolzer

#172206/1



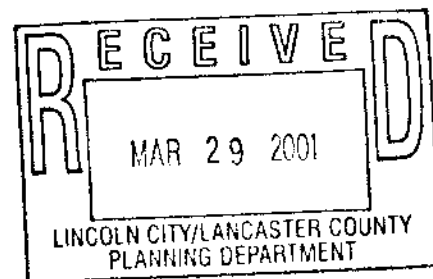
022

Memorandum

To: Ray Hill, Planning
From: Rachel Martin, Parks and Recreation
Date: March 29, 2001
Re: 5400 S. Folsom SP#1909

Parks and Recreation Department staff have reviewed the above-referenced proposal and have no comments.

Please phone me at 441-7936 with any questions.



City of Lincoln, Nebraska

IMPORTANT

All revisions to plans must include Building Permit # and Job Address.

Return this report with two sets of corrected plans. The corrections noted below are required to be made to the plans prior to issuance of a permit. Please indicate under each item where the correction is made by plan sheet number or plan detail number.

A separate set of plans for review and and final approval must be submitted by the licensed installing contractor/s if fire suppression systems, sprinklers, dry powder, fire alarm systems or underground tanks are installed.

Plan Review Comments

Permit # **DRF01036**

Address

Job Description: 5400 S FOLSOM

Location: 5400 S FOLSOM

Special Permit: Y 1909

Preliminary Plat: N

Use Permit: N

CUP/PUD: N

Requested By: RAY HILL

Status of Review: No Rev Req

3/23/2001 12:29:30 PM

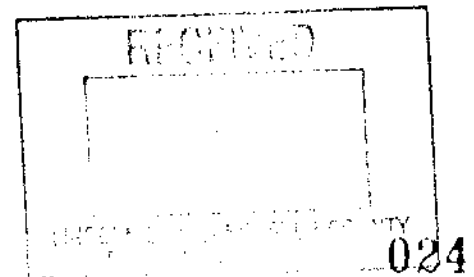
Reviewer: FIRE PREVENTION/LIFE SAFETY CODE

BOB FIEDLER

Comments: Out of city limit

Current Codes in Use Relating to Construction Development in the City of Lincoln:

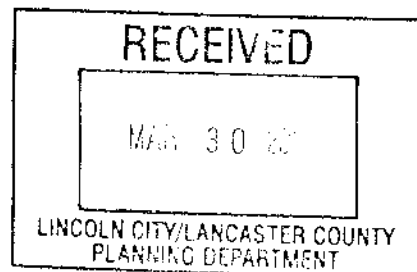
- 1997 Uniform Building Code and Local Amendments
- 1994 Nebraska Accessibility Guidelines (Patterned after and similar to ADA guidelines)
- 1989 Fair Housing Act As Amended Effective March 12, 1989
- 1979 Zoning Ordinance of the City of Lincoln as Amended including 1994 Parking Lot Lighting Standards
- 1992 Lincoln Plumbing Code (The Lincoln Plumbing Code contains basically the 1990 National Standard Plumbing Code and local community Amendments.)
- 1999 National Electrical Code and Local Amendments
- 1997 Uniform Mechanical Code and Local Amendments
- 1994 Lincoln Gas Code
- 1994 NFPA 101 Life Safety Code
- 1997 Uniform Fire Code and Local Amendments
- Applicable NFPA National Fire Code Standards



Memorandum

To: Ray Hill, Planning Department -- *JASON*
From: Charles W. Baker, Public Works and Utilities *Bill*
Subject: Special Permit # 1909, Temporary Storage of Construction Equipment
Date: March 29, 2001
cc: Roger Figard, Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the request for Special Permit #1909, the temporary storage of construction equipment at 5400 S Folsom and has no objections.



**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Ray Hill

DATE: 4/03/2001

DEPARTMENT: Planning

FROM: Chris Schroeder

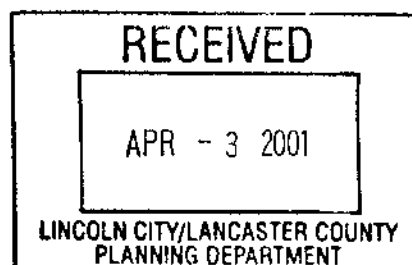
ATTENTION:

DEPARTMENT: Health

CARBONS TO: Leon F. Vinci, MPH
EH File
EH Administration

SUBJECT: 5400 S. Folsom
SP #1909

- The materials included with the application do state that, "to permit the temporary storage of construction equipment and materials for the conduct of petitioner's construction business...". The LLCHD does have concerns regarding the storage of fuel or the re-fueling of equipment that may take place on the project site. If these activities will occur on the project site, LLCHD requests a letter stating what methods will be utilized for secondary containment.
- The LLCHD has concerns regarding the storage of hazardous materials and/or chemicals on this site. Additional information is requested regarding the types and quantities of materials that will be stored on-site to construct more specific recommendations.



ITEM NO. 3.5: SPECIAL PERMIT NO. 1909
(p.85 - Public Hearing - 4/18/01)

J. TAYLOR GREER
RICHARD L. SPANGLER, JR.
ALLEN L. OVERCASH
PAUL M. SCHUDDEL
EDWARD H. THICKER
WM. LEE MERRITT
JOSEPH H. MADAMI
KERRY L. KESTER
ROBERT B. EVNEN
JOEL D. HEUSINGER
TERRY C. DOUGHERTY
JENNIFER J. STRANO
CRAIG C. DITTRIM
BRUCE A. SMITH
KRISTA L. KESTER
KENT B. ENDACOTT
SHANNON L. DOERING
CRAIG W. STRONG
LENA A. LUCAS
JEFFERY T. PEETZ

WOODS & AITKEN

L.L.P.

THOMAS C. WOODS (1896-1958)
WILLIAM I. AITKEN (1896-1978)
PHILIP M. AITKEN (1902-1998)

OF COUNSEL
BERT L. OVERCASH
RICHARD W. SMITH

April 17, 2001

SUITE 500
301 SOUTH 15TH STREET
LINCOLN, NEBRASKA 68508-2578
FAX (402) 437-8558

TELEPHONE (402) 437-3500

VIA FACSIMILE
(402) 441-6377

Ms. Jean Walker
Administrative Officer
Lincoln-Lancaster County Planning Department
575 South 10th Street, Suite 213
Lincoln, Nebraska 68508.

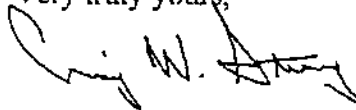
Re: Special Permit No. 1909
5400 S. Folsom

Dear Ms. Walker:

On behalf of Leonard G. Stolzer, I respectfully request to defer public hearing testimony on the above-captioned matter until the next scheduled meeting of the Planning Commission scheduled for May 2, 2001. Based on the Staff Recommendation regarding Mr. Stolzer's special permit application, additional time will be needed in order to prepare for the public hearing.

I appreciate your understanding on this request. If you have any questions feel free to contact me at (402) 437-8534.

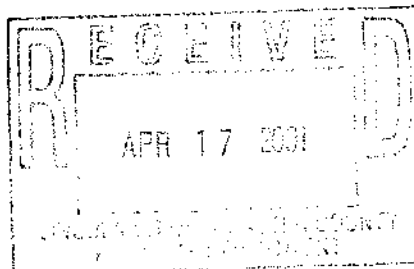
Very truly yours,



Craig W. Strong

CWS\nt

cc: Mr. Leonard Stolzer



ITEM NO. 4.1: SPECIAL PERMIT NO. 1909

(p.85 - Cont'd Public Hearing - 5/02/01)

THOMAS C. WOODS (1895-1955)
WILLIAM I. AITKEN (1896-1979)
PHILIP M. AITKEN (1902-1998)

WOODS & AITKEN

L • L • P

J. TAYLOR GREER
RICHARD L. SPANGLER, JR.
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EDWARD H. TRICKER
WM. LEE MERRITT
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SHANNON L. DOERING
CRAIG W. STRONG
LENA A. LUCAS
JEFFERY T. PEETZ

OF COUNSEL
BERT L. OVERCASH
RICHARD W. SMITH

SUITE 500
301 SOUTH 18TH STREET
LINCOLN, NEBRASKA 68508-2578
FAX (402) 437-8558

April 30, 2001

TELEPHONE (402) 497-8500

VIA FACSIMILE

(402) 441-6377

Ms. Jean Walker
Administrative Officer
Lincoln-Lancaster County Planning Department
575 South 10th Street, Suite 213
Lincoln, Nebraska 68508.

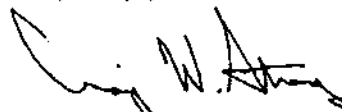
Re: Special Permit No. 1909
5400 S. Folsom

Dear Ms. Walker:

On behalf of Leonard G. Stolzer, I respectfully request to defer public hearing testimony on the above-captioned matter until the next scheduled meeting of the Planning Commission scheduled for May 16, 2001. Mr. Stolzer is currently involved in discussions with the Yankee Hill Neighborhood Association for the purposes of addressing the Association's concerns.

I appreciate your understanding on this request. If you have any questions feel free to contact me at (402) 437-8534.

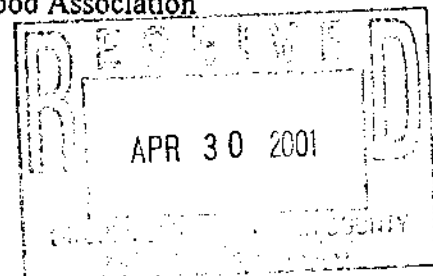
Very truly yours,



Craig W. Strong

CWS:ml

cc: Mr. Leonard Stolzer
Mrs. Joyce Champoux, President, Yankee Hill Neighborhood Association



ITEM NO. 4.1: SPECIAL PERMIT NO. 1909
(p.187 - Cont'd Public Hearing 5/30/01)

THOMAS C. WOODS (1896-1969)
WILLIAM I. AITKEN (1896-1978)
PHILIP M. AITKEN (1902-1996)

WOODS & AITKEN

L . L . P

J. TAYLOR GREER
RICHARD L. SPANGLER, JR.
ALLEN L. OVERCASH
PAUL M. SCHUDEL
EDWARD H. TRICKER
WM. LEE MERRITT
JOSEPH H. RADAMI
KERRY L. KESTER
ROBERT B. EVNEN
JOEL D. HEUSINGER
TERRY C. DOUGHERTY
JENNIFER J. STRAND
CRAIG C. DIRUM
BRUCE A. SMITH
KRISTIA L. KESTER
KENT E. ENDACOTT
SHANNON L. DOERING
CRAIG W. STRONG
LENA A. LUCAS
JEFFERY T. PERTZ

OF COUNSEL
BERT L. OVERCASH
RICHARD W. SMITH

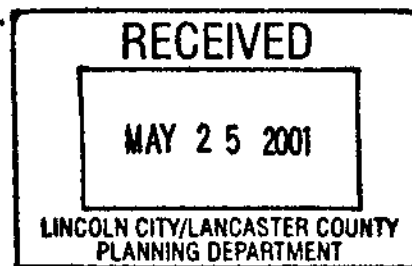
SUITE 500
301 SOUTH 13TH STREET
LINCOLN, NEBRASKA 68508-2578
FAX (402) 437-8558

May 25, 2001

TELEPHONE (402) 437-8500

VIA FACSIMILE
(402) 441-6377

Ms. Jean Walker
Administrative Officer
Lincoln-Lancaster County Planning Department
575 South 10th Street, Suite 213
Lincoln, Nebraska 68508.



Re: Special Permit No. 1909
5400 S. Folsom

Dear Ms. Walker:

On behalf of Leonard G. Stolzer, I respectfully request a deferment on public hearing testimony on the above-captioned matter until the July 25, 2001 Planning Commission meeting. Mr. Stolzer is proposing a text change to the city code in order to address the planning staff's report on Mr. Stolzer's special permit application. This proposal would permit, under limited circumstances, a main building in addition to an existing residence on property located in the AG district. This proposal was recently submitted to the city attorney for review. The requested deferment will allow for proper legal and planning staff review of this proposal. Mr. Stolzer intends to bring both his proposal and his special permit application before the Commission on July 25, 2001.

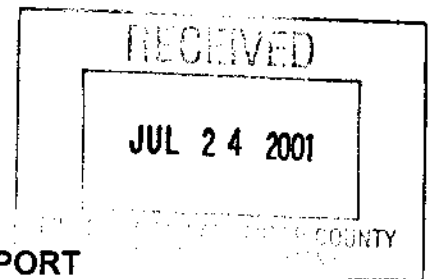
Again, I appreciate your understanding on this request. If you have any questions feel free to contact me at (402) 437-8534.

Very truly yours,

Craig W. Strong

CWS\nm

cc: Mr. Leonard Stolzer
Mrs. Joyce Champoux, President, Yankee Hill Neighborhood Association



RESPONSE TO:

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Special Permit #1909

PROPOSAL: Leonard G. Stolzer requests a special permit to allow the temporary storage of construction equipment on his AG lot.

APPLICANT: Leonard G. Stolzer, Jr.
5400 South Folsom Street
Lincoln, NE 68523

CONTACT: Craig W. Strong
301 South 13th Street – Suite 500
Lincoln, NE 68508
(402) 437-8500

LOCATION: 5400 South Folsom

BACKGROUND

In May of 1997, Mr. Stolzer built a storage building on his acreage after receiving a building permit from the City. For security reasons, Mr. Stolzer uses the building to store material and equipment for his mechanical construction business. Mr. Stolzer has used his storage building for this purpose for almost 4-years without a single complaint from his neighbors; however, in March of 2001 the City informed Mr. Stolzer that that his storage building was improper for the AG district. Thus, Mr. Stolzer seeks a special permit for temporary storage of his construction equipment and materials.

The purpose of the response below is to address the Planning Staff's report and recommendation regarding Mr. Stolzer's special permit application.

RESPONSE TO PLANNING STAFF ANALYSIS

1. **Mr. Stolzer uses his storage building for a permitted special use under the Code.**

Mr. Stolzer's lot contains approximately 8.62 acres, which meets the minimum seven-acre requirement for his requested special permit. In addition, the combined area of indoor and outdoor storage on his site does not exceed the allowed two-acre maximum. Furthermore, contrary to the staff report's characterization, Mr. Stolzer is engaged in the construction business. Mr. Stolzer is not in the retail plumbing business but, instead, performs mechanical construction work on various construction sites. Mr. Stolzer's work is directly

associated with construction projects that exist miles from his lot. The purpose of Mr. Stolzer's storage building is to safely secure construction equipment and material that may be used at these construction sites.

The Code expressly provides for the temporary storage of *construction* equipment and materials with no exclusions based upon the *type* of construction work the applicant is engaged in. The Code provision simply states "construction." Nonetheless, the staff report dismissively labels Mr. Stolzer as being in the "plumbing business," not the construction business. The end result is to prohibit Mr. Stolzer from engaging in a permitted special use in the AG district - - storing his construction equipment and material.

Mr. Stolzer asks that the Commission reconsider the staff report in light of the fact that Mr. Stolzer is engaged in the construction business and he is using his building for temporary storage of construction equipment and materials as allowed by the Code.

2. Mr. Stolzer meets the area requirements for his special permit.

Contingent on Mr. Stolzer's proposed text change, the staff report's concern over two uses on a single lot is rendered moot. Under the proposed text change, Mr. Stolzer's personal family residence is allowed as the caretaker residence for his storage building. Mr. Stolzer's 8.62 lot is large enough to cover the seven-acre special permit area requirement as well as the one-acre single-family residence area requirement.

3. Mr. Stolzer will comply with the Planning Staff's conditions for approval.

The staff report outlines a number of conditions that should apply if the special permit is granted (pages 3-5). Mr. Stolzer is willing to comply with those stated conditions.¹

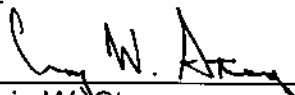
CONCLUSION

For the reasons stated above, Mr. Stolzer respectfully requests the Commission grant his special permit application.

Dated: July 23, 2001

Respectfully submitted,

Leonard G. Stolzer, Jr., Applicant
By:



Craig W. Strong

¹ Mr. Stolzer requests further explanation regarding the need to replace his Scotch Pines with a species less susceptible to Pine Wilt Disease. (page 4, paragraph 2.1.1.1) On this point, Mr. Stolzer will make all reasonable efforts to accommodate the concerns surrounding this condition.

IN SUPPORTITEM NO. 3.1b: SPECIAL PERMIT NO. 1909
(p.113 - Public Hearing - 7/25/01)July 25, 2001
Lincoln, NE

To Planning Commission:

After reviewing Mr. Stolzer's
Property at 5400 So. Falcon, we see
no reason to oppose this. We feel he
should be granted the special permit.

Sincerely,

Joyce Champoux Pres.
Yankee Hill Neighborhood
Assoc.