

City Council Introduction: **Monday**, August 20, 2001
Public Hearing: **Monday**, August 27, 2001, at **1:30 p.m.**

Bill No. 01R-231

FACTSHEET

TITLE: WAIVER OF DESIGN STANDARDS NO. 01016, requested by First Federal Lincoln Bank, to waive the street tree requirement in the First Federal Lincoln Subdivision, generally located at South 13th and Arapahoe Streets.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 08/08/01
Administrative Action: 08/08/01

STAFF RECOMMENDATION: Denial

RECOMMENDATION: Denial (5-4: Taylor, Newman, Carlson, Hunter and Steward voting 'yes'; Schwinn, Duvall, Krieser and Bayer voting 'no')

FINDINGS OF FACT:

1. The Planning staff recommendation to **deny** this waiver request is based upon the "Analysis" as set forth on p.3, concluding that:
 - A. This subdivision is within the City limits and should comply with the City Design Standards and the minimum improvements specified in the Subdivision Ordinance.
 - B. The applicant provided a surety to guarantee the installation of street trees as a condition of this subdivision's approval.
 - C. The photo simulations provided by the applicant do not accurately portray the street trees that would be planted in the subdivision. Actual street trees would be limbed much higher than was depicted. The shapes would also be less massive.
 - D. The applicant has not demonstrated that actual difficulties or substantial hardships will be incurred by the installation of street trees.
2. The applicant's testimony and testimony in support is found on p.5-6.
3. There was no testimony in opposition.
4. The Planning Commission discussion is found on p.5-7.
5. On August 8, 2001, a motion to approve the waiver failed 4-5 (Schwinn, Duvall, Krieser and Bayer voting 'yes'; Taylor, Newman, Carlson, Hunter and Steward voting 'no'). See Minutes, p.6-7.
6. On August 8, 2001, the Planning Commission voted 5-4 to agree with the staff recommendation to **deny** this waiver request and require the installation of the street trees (Taylor, Newman, Carlson, Hunter and Steward voting 'yes'; Schwinn, Duvall, Krieser and Bayer voting 'no'). See Minutes, p.6-7.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: August 13, 2001

REVIEWED BY: _____

DATE: August 13, 2001

REFERENCE NUMBER: FS\CC\FSW01016

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Waiver of Design Standards #01016

DATE: July 25, 2001

PROPOSAL: An “after the fact” request to waive street trees in First Federal Lincoln Subdivision.

GENERAL INFORMATION:

APPLICANT: First Federal Lincoln Bank
PO Box 83009
Lincoln, NE 68501

CONTACT: Larry Small, First Vice President

LOCATION: S. 13th and Arapahoe Street

LEGAL DESCRIPTION: First Federal Lincoln Subdivision, located in the NE 1/4 of Section 2, T9N, R6E, Lincoln, Lancaster County, Nebraska.

SIZE: 1.290 acres, more or less

EXISTING ZONING: B-1 Local Business District

EXISTING LAND USE: Bank and commercial buildings and parking

SURROUNDING LAND USE AND ZONING: Commercial uses to the south, west and north, with a church-owned single family residence to the east across S. 13th Street. The land to the north, west and south is zoned B-1 Local Business; the land to the east is zoned R-5 and R-2 Residential.

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates this area as Commercial.

HISTORY: **December 23, 1994** The Planning Director approved the First Federal Lincoln Subdivision.

December 23, 1998 The date the installation of street trees became overdue.

SPECIFIC INFORMATION:

UTILITIES: Available.

TRAFFIC ANALYSIS: S. 13th Street is designated as a minor arterial in both the Existing and the Future Functional Street and Road Classifications. Arapahoe is designated as a collector street in both the Existing and the Future Functional Street and Road Classifications.

PUBLIC SERVICE: The closest fire station is at S. 17th Street and Van Dorn Street.

ANALYSIS:

The area is inside the city limits and should be developed at city standards in accordance with the City of Lincoln Design Standards.

1. Section 26.27.090 of the Subdivision Ordinance states: “Trees shall be planted along both sides of all streets and privates roadways which abut the subdivision... This requirement may be modified or waived in subdivisions outside the corporate limits that are not annexed into the city if all the individual lots are one acre or more in area.”
2. Neither lot in the First Federal Lincoln Subdivision is larger than an acre in size and both lots are well inside the City limits.
3. Section 26.31.010 of the Subdivision Ordinance states: “Whenever the tract to be subdivided is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the requirements contained in these regulations would result in actual difficulties or substantial hardship or injustice, the council may vary or modify such requirements...”
4. The applicant indicates that the addition of street trees would limit the visibility of the First Federal Lincoln bank building and signage, thus causing a hardship. The applicant’s photo simulations depict dense, low foliage blocking views of the building.
5. The Parks & Recreation Department comments that Chapter 12.20 of the City of Lincoln Design Standards requires that all street trees be limbed 10 feet above the sidewalk and 14 feet above the street. This requirement was not applied in the rendering provided by the applicant.
6. Parks & Recreation further notes that the shapes depicted in the applicant’s renderings are erroneous. The street trees for that area are:

Columnar Norway Maple	15' wide x 35' high at maturity; a narrow upright deciduous tree (loses leaves in the winter).
Greenspire Linden	25' wide x 35' high at maturity; deciduous tree (loses leaves in the winter).
7. The Department of Public Works & Utilities comments that granting the waiver would not affect existing Public Works facilities. They question the validity of the argument that street trees interfere with sight lines to the commercial buildings - if valid, it would apply to any commercial lot in the City.

STAFF CONCLUSION:

- This subdivision is within the City limits and should comply with the City Design Standards and the minimum improvements specified in the Subdivision Ordinance.
- The applicant provided a surety to guarantee the installation of street trees as a condition of this subdivision's approval.
- The photo simulations provided by the applicant do not accurately portray the street trees that would be planted in the subdivision. Actual street trees would be limbed much higher than was depicted. The shapes would also be less massive.
- The applicant has not demonstrated that actual difficulties or substantial hardships will be incurred by the installation of street trees.

STAFF RECOMMENDATION:

DENIAL

Prepared by:

Jason Reynolds
Planner

WAIVER OF DESIGN STANDARDS NO. 01016

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 8, 2001

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

Planning staff recommendation: Denial.

Proponents

1. **Larry Small**, representative of the applicant, First Federal Lincoln Bank at 13th & Arapahoe, presented the application and showed pictures of the locations where the street trees are required to be planted. There are no other trees in this particular block. First Federal has planted some trees but not in the area between the sidewalk and the street along the north side. First Federal has also done some minimal landscaping in the area. Some pine trees have been planted along 13th Street in the same general area but away from the bank in an attempt to give some shielding. Small also showed graphic renderings of what this might look like if they did plant the trees as required. Small submitted that the growing cycle would be several years before becoming 8-10' high.

Small testified that First Federal is a bank. Banks get robbed and one of the deterrents is visibility. The bank needs to have the absolute most visibility as possible. This is a 24-hour ATM operation; the facility is already down an embankment; we've tried to do some landscaping to beautify but have specifically stayed away from the bank as far as trees go. A bank right next to this facility has been robbed in the past year and one-half. First Federal does not want to do anything that would pose any kind of a safety hazard to its customers or employees. First Federal does not surround its banks with trees.

Steward assumes that advertising is another objective. Small's response was that visibility to the building and their pole sign is certainly an issue. This is a branch bank built seven to eight years ago. So, Steward suggested that when the bank was built it was known by the owners of this bank what was going to be around it—the proximity of other buildings and trees—it was part of a subdivision. Small agreed that they knew about the area in which they were building. And, Steward suggested that the bank's architects and builders should have known about the street tree requirement. Small indicated that they signed on with a proposal to plant the trees and posted a \$1200 bond. Steward then observed that if the concern about trees providing shelter for potential robberies were followed throughout the city, we would not have any downtown trees because every store is a potential point of robbery. Small agreed, but he would need to see the statistics as to how many stores have been robbed. Steward wondered how many times the robber has hidden behind the tree or the tree has been an asset to the robber—Steward believes this is making a great leap. Small stated that he sees the issue of a tree as landscape and beautification. First Federal has planted trees and bushes in the area and has worked toward keeping it a well-landscaped beautiful area. The bank needs to be conscious about what it is hearing from law enforcement about doing everything they can to keep the bank as open and visible as possible.

Newman asked how many trees this involves. Small indicated that it would be six trees--four along the 13th Street property and 2 along Arapahoe. One would be directly north of the bank building and another is directly in front of a building to the west that is also owned by First Federal.

Newman asked whether there is an entrance on the 13th Street side. Small stated that there is not an entrance on the 13th Street side. All of the traffic comes in from the north, parks in front of the building and circles around to go through the drive-through and the ATM.

2. Sarah Porto, Security Director for First Federal Lincoln Bank, testified in support. The bank immediately next to them has been robbed twice in the last year and the police and FBI have told First Federal Lincoln that its open location is probably the reason they have not been robbed. The office is set down from 13th Street so it is a little different from any other location where there might be trees where the entrance is level. The growing trees would make it more difficult to see. The area that would be covered by the trees is an ATM. ATM vandalism is becoming very prevalent. There is not an entrance on 13th Street but there is an employee entrance that would be shielded because of the trees. On a personal level, she lives in the area and this is a very attractive branch. It has added a great deal to the area and is far more attractive than anything else in the neighborhood. The lack of trees in front is more than compensated for by the shrubbery and other landscaping that has been done.

3. Mary Irvin, Branch Manager of the First Federal Lincoln Bank, testified in support. Because of the number of robberies that have occurred in Lincoln, all of the employees have been required to have extra training. The training as specifically indicated that the openness of the branch is very important. If there are areas where they cannot see into the windows, that is a prime target for a robbery. Trees would just make it so much more of a target.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 8, 2001

Schwinn moved to approve the waiver, seconded by Duvall.

Schwinn drives by this branch often and he doesn't even notice that it is there. He believes the reasons given for security are compelling enough and this is something that we should pay attention to.

Steward believes it is a mistake to grant this waiver. It is a mistake for the community to get into a defensive design mode. He believes the advice given was probably given with good reason and cause, but there has been evidence throughout this country's history that defensive community design only promotes defensive behavior. It does not promote community. If you take this far enough, we would have every bank on a high hill with razor wire around it and limited access. Where do you stop? You're just one step away from a very impossible situation and he believes our principles for city welfare are large enough, definitive enough and defensible enough that this waiver is not necessary.

Hunter has a problem relating to the concept of the robbery being overly enhanced by the lack of trees because she knows a branch which has been robbed twice in the last year that has zero landscaping.

The consistency that the city intends to have with landscaping and the purpose is so that we don't have building after building with parking lots being our landscape. We all point to No. 27th as an example. The design standard is there for the purpose of consistency.

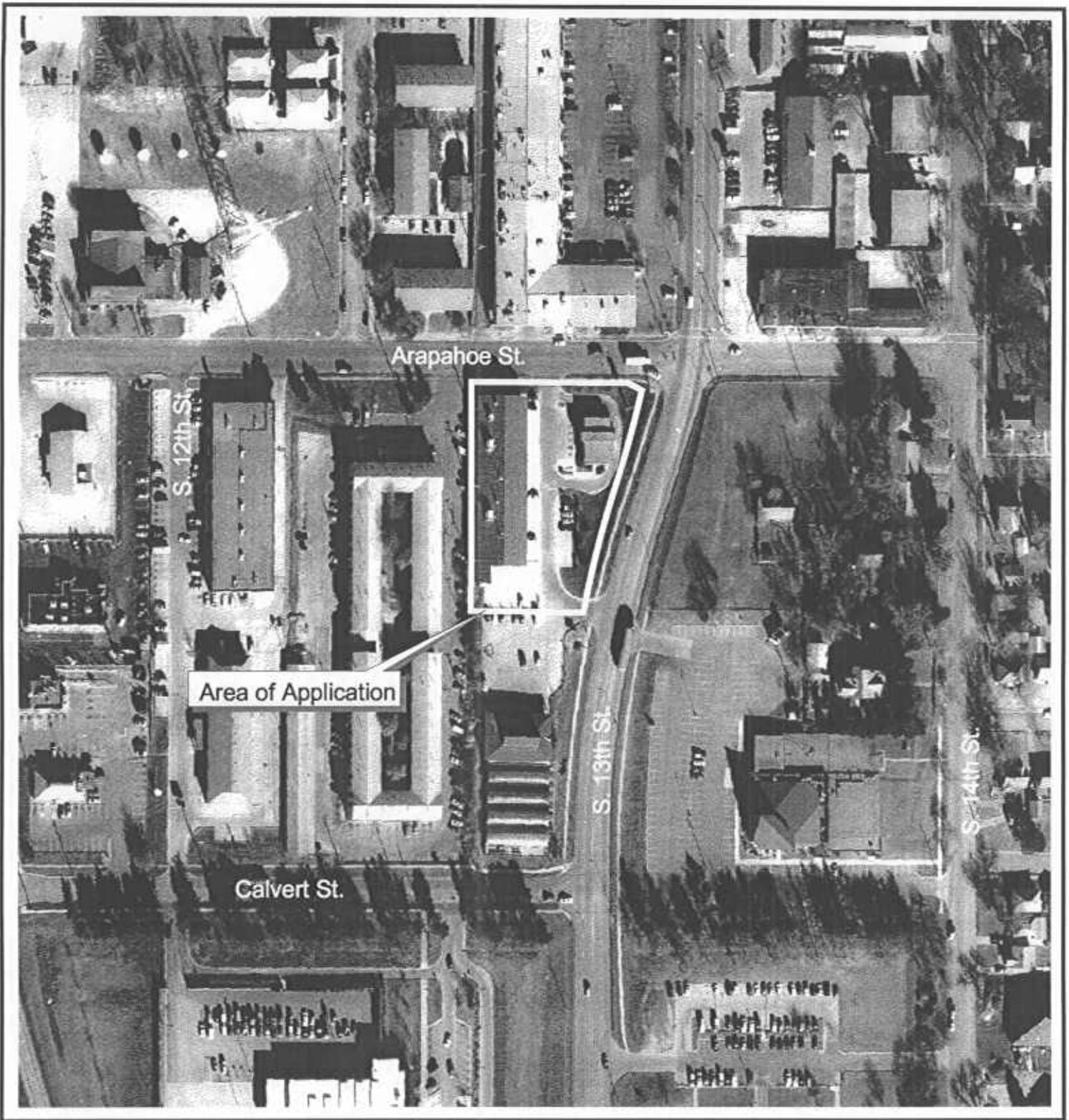
Carlson commented that First Federal Lincoln built the bank in 1994 and knew the standards. There was a preliminary plat and final plat that were signed and agreed upon by the bank. At the same time, the bank agreed to put in the trees by 1998. The bank agreed to put them in so he believes they should be planted.

Taylor stated that he is sensitive to the needs of our community being safe. But we do have design standards as well. Then, when he hears the argument by Hunter stating that it is negligible whether trees would have anything to do with the safety because of banks that are robbed that do not have any barriers to reduce visibility, he must agree to deny the waiver.

Bayer stated that when he landscaped his home, he was told not to plant big trees next to the house for security purposes, so he is not going to argue with the applicant's reasons.

Motion for approval failed 4-5: Schwinn, Duvall, Krieser and Bayer voting 'yes'; Taylor, Newman, Carlson, Hunter and Steward voting 'no'.

Hunter moved to deny, seconded by Newman and carried 5-4: Taylor, Newman, Carlson, Hunter and Steward voting 'yes'; Schwinn, Duvall, Krieser and Bayer voting 'no'.



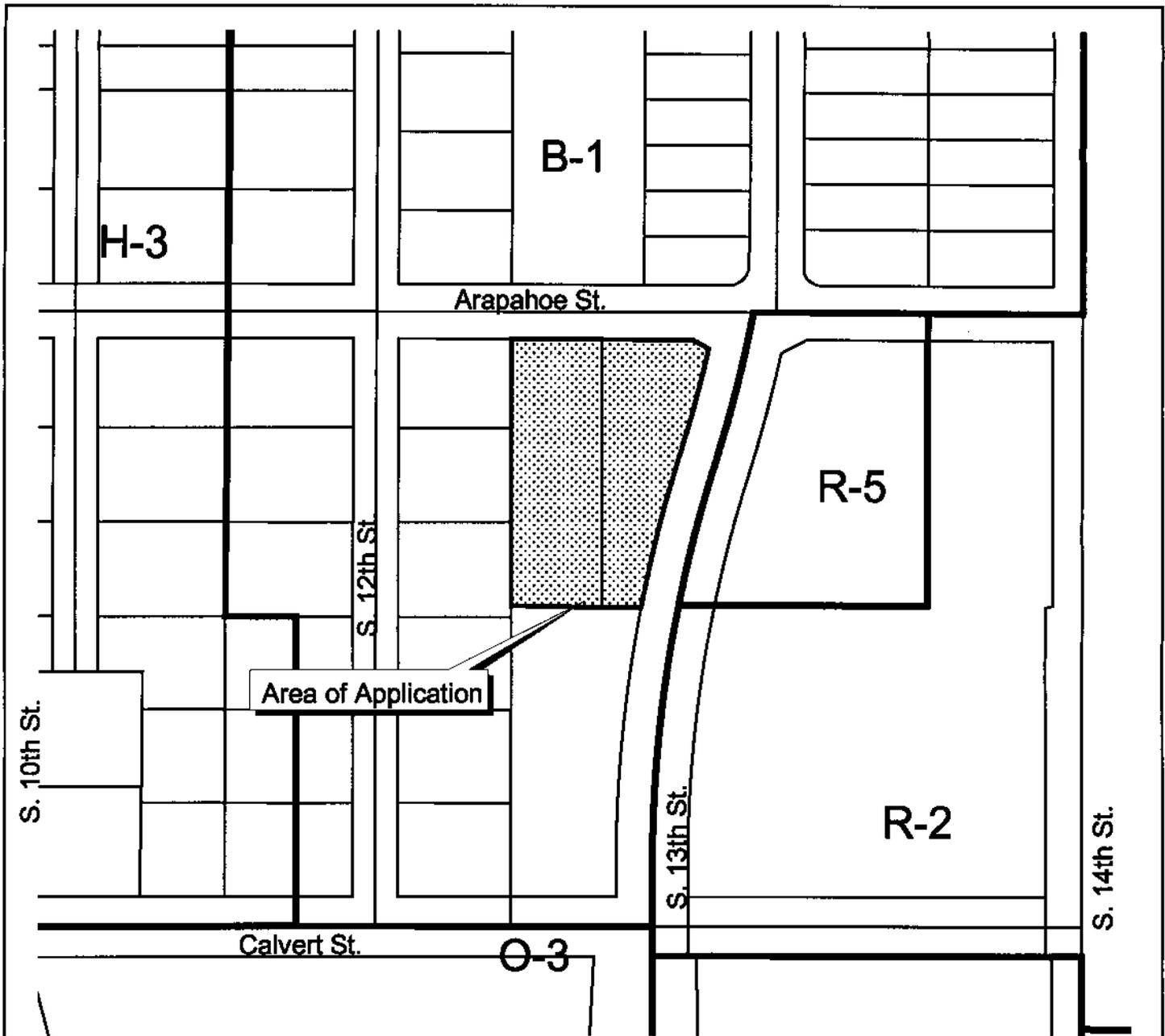
**Waiver of Design Standards #01016
13th & Arapahoe St.**



7-25-01 008

Photograph Date: 1997

Lincoln City - Lancaster County Planning Dept.

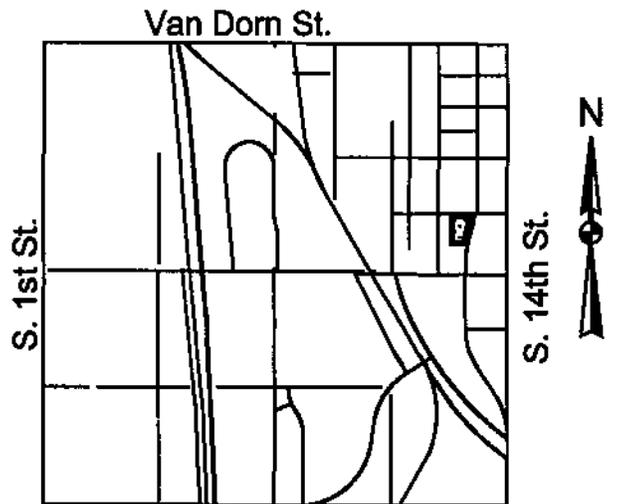
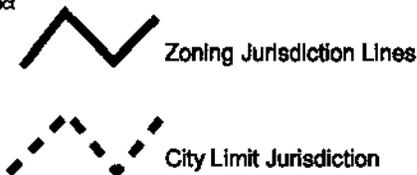


Waiver of Design Standards #01016 13th & Arapahoe St.

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. 2 T9N R6E



7-30-01

009



Memo

To: Jason Reynolds
From: Mark Canney, Parks & Recreation
Date: July 25, 2001
Re: First Federal Lincoln Bank WDS 01016 - Waiver of Street Trees

Staff members of the Lincoln Parks and Recreation Department have conducted a plan review of the above-referenced application/proposal and have compiled the following comments:

1. Need to submit plan with appropriate street trees. No waiver is granted. According to Chapter 12.20 of the City of Lincoln Standards all street trees are to be limbed 10 feet above the sidewalk and 14 feet above the street. This requirement was not applied to the rendering accompanying the request for waiver.
2. Street tree selections have the following characteristics in contrast to the images provided:

Columnar Norway Maple	15' wide x 35' high at maturity, a narrow upright deciduous tree (looses leaves in the winter).
Greenspire Linden	25' wide x 35' high at maturity, deciduous tree (looses leaves in the winter).

If you have any additional questions, comments or concerns, please feel free to contact me at 441-8248.

M e m o r a n d u m

JUL 23 2001

SECURITY

To: Jason Reynolds, Planning

From: *D* Dennis Bartels, Engineering Services

Subject: Waiver of Street Trees, First Federal Lincoln Subdivision

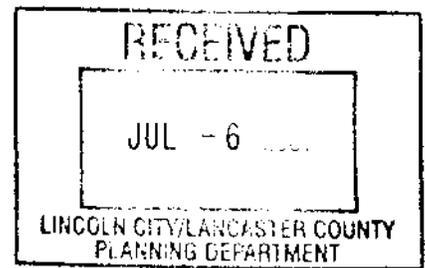
Date: July 19, 2001

cc: Roger Figard

The waiver of street trees for this subdivision does not affect existing Public Works facilities. However, justifying the waiver because of sight line concerns does not appear to be good justification since any commercial lot could make this argument.

Home Office

MAILING ADDRESS / P.O. BOX 83009
13TH AND N STREETS
LINCOLN, NE 68501-3009
402-475-0521



July 5, 2001

Planning Director
Planning Department
City of Lincoln
555 South 10th Street
Lincoln, NE 68508

Dear Sir or Madam:

First Federal Lincoln Bank is requesting a complete waiver of the design standards for the street trees within the administrative plat of First Federal Lincoln Subdivision, located on the southwest corner of 13th and Arapahoe Streets. We are enclosing some graphic enhanced photos that show the area with mature trees. As you can see from the photos, our building and signage would no longer be visible with these trees in place. If you would like to discuss this further please feel free to contact me, otherwise I anticipate First Federal Lincoln Bank to be released from any further requirements. You can reach me at (402) 473-6157.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Small".

Larry Small
First Vice President
Facilities & Services Manager

Cc: Nina Vejnovich, Law Department

LS/ct





Before



After

RECEIVED
JUL 6 2001
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT



Before



After

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LINCOLN CITY, LANCASTER COUNTY
PLANNING DEPARTMENT



Before



After

