

City Council Introduction: **Monday**, September 29, 2003
Public Hearing: **Monday**, October 6, 2003, at **1:30 p.m.**

Bill No. 03R-272

FACTSHEET

TITLE: SPECIAL PERMIT NO. 643E, an amendment to the Briarhurst West Community Unit Plan, requested by Pat McGrane, to reduce the rear yard setback for an unenclosed deck on Lot 22, Block 5, Briarhurst West 4th Addition, located at 5433 So. 31st Street Court.

STAFF RECOMMENDATION: Conditional approval.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: Consent Agenda: 09/17/03
Administrative Action: 09/17/03

RECOMMENDATION: Conditional Approval (8-0: Carlson, Duvall, Krieser, Larson, Marvin, Steward, Bills-Strand and Taylor voting 'yes').

FINDINGS OF FACT:

1. The purpose of this request to reduce the rear yard setback to 13' is to allow an uncovered deck to extend into the rear yard setback.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.3-4, concluding that the reduction to the setback is acceptable.
3. On September 17, 2003, this application appeared on the Consent Agenda of the Planning Commission and was opened for public hearing. No one came forward to speak.
4. The record consists of seven letters from neighboring property owners and the Briarhurst West Neighborhood Association Board of Directors in support (p.15-21).
5. On September 17, 2003, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend conditional approval, as set forth in the staff report dated September 4, 2003. The conditions of approval are found on p.4-5.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: September 22, 2003

REVIEWED BY: _____

DATE: September 22, 2003

REFERENCE NUMBER: FS\CC\2003\SP.643E

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for September 17, 2003 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #643E

PROPOSAL: To reduce the rear yard setback for an unenclosed deck to 13' on Lot 22, block 5, Briarhurst West 4th Addition.

LOCATION: 5433 S. 31st Street Court.

WAIVER REQUEST:

1. Reduce the rear yard setback for an unenclosed deck to 13'.

LAND AREA: Approximately 10,578 square feet, more or less.

CONCLUSION: The reduction in the setback is acceptable.

RECOMMENDATION: Reduce the rear yard setback for unenclosed decks to 13' on Lot 22, block 5, Briarhurst West 4 th Addition	Conditional Approval Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 22, block 5, Briarhurst West 4th Addition

EXISTING ZONING: R-1, Residential

EXISTING LAND USE: Single Family Residential

SURROUNDING LAND USE AND ZONING:

North:	Residential	R-1, Residential
South:	Residential	R-1, Residential
East:	Residential	R-1, Residential
West:	Residential	R-1, Residential

ASSOCIATED APPLICATIONS: Board of Zoning Appeals #2363.

HISTORY:

Special Permit #1022C, Old Cheney Place 1st Addition allowed open decks in the rear yard to be constructed at a height more than three feet above the ground was approved by the City Council on July 5, 1998.

Special Permit #1022B, Old Cheney Place 1st Addition CUP added dwelling units, allowing a total of 180 units (84 two family and 96 multifamily) and to split off from the Briarhurst Commons CUP was approved by the City Council in 1987.

Special Permit #643D added 222 dwelling units to the Briarhurst West CUP and was approved on October 19, 1981.

Changed from A-1 and A-2, Single Family to R-1 and R-3, Residential during the 1979 zoning update.

Special Permit #643C for Briarhurst West 5th Addition CUP to add multifamily buildings was approved August 8, 1977.

Special Permit #643B for Briarhurst West 4th Addition CUP multifamily area was approved February 14, 1977.

Special Permit #643A amending Briarhurst West CUP was approved in 1974.

Special Permit #643 amending Briarhurst West CUP was approved in 1973.

Special Permit #616 for Briarhurst West CUP for 916 dwelling units was approved in 1972.

COMPREHENSIVE PLAN SPECIFICATIONS:

This area is shown as Urban Residential in the Comprehensive Plan (F-25).

The appropriate Guiding Principles for existing neighborhoods indicates: (F-69)

- "Require new development to be compatible with character of neighborhood and adjacent uses (i.e., parking at rear, similar setback, height and land use)."

TRAFFIC ANALYSIS: S. 31st Street Court is classified as a local road.

ANALYSIS:

1. This is a request to allow an uncovered deck to extend into the rear yard setback. The applicant indicated that they would like to build a deck 6' above grade, which is not allowed to extend into the rear yard setback. The applicant feels their lots is unusual because it is on the curve of a cul-de-sac.
2. The applicant requested a variance through the Board of Zoning Appeals, however, the assistant city attorney indicated that the applicant must first request an amendment to the special permit since the special permit may modify setbacks.
3. Because the lot is on a curve of the cul-de-sac, the lot does have a shorter depth on one side, which is unusual, but not inconsistent with other cul-de-sac lots in the neighborhood. It is, however, unusual when compared to lots platted in newer neighborhoods. There is a subdivision requirement that all lot lines be right angles to the centerline of the street or radius.
4. Deck height is restricted to three feet above grade because a structure higher than three feet becomes obtrusive to neighboring properties and a privacy issue, regardless of the opinion of the current neighbors. The reduction of the rear yard still leaves 13' of space in the rear

yard to maintain privacy issues. Given the calculation of the rear yard setback and the unusual nature of this lot layout, this seems appropriate.

5. The applicant requested the modification only to his lot, however, the Planning Department staff is not opposed to allowing the modification for the entire community unit plan. Granting the modification to the entire community unit plan at this time will avoid further requests. There has not been correspondence from the neighborhood association indicating they would like to pursue this modification to the entire community unit plan, and the Planning Department decided not to make this a condition. If the neighborhood shows interest in this possibility the Planning Department would gladly meet with them.
6. The Public Works & Utilities, Fire, Building and Safety Fire Prevention, Police, Parks, and Lincoln-Lancaster County Health Departments do not object to the request.

CONDITIONS:

Site Specific:

1. This approval permits a reduction of the rear yard setback for an unenclosed deck to 13' on Lot 22, Block 5, Briarhurst West 4th Addition.

General:

2. Before receiving building permits:
 - 2.1 The construction plans shall comply with the approved plans.

STANDARD CONDITIONS:

3. The following conditions are applicable to all requests:
 - 3.1 Before occupying the new deck all development and construction shall have been completed in compliance with the approved plans.
 - 3.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
 - 3.3 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.
 - 3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 3.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of

acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Becky Horner
Planner

DATE: September 4, 2003

**APPLICANT,
OWNER &
CONTACT:** Pat McGrane
5433 S. 31st Street Court
Lincoln, NE
(402)416-1961

SPECIAL PERMIT NO. 643E
An Amendment to the
BRIARHURST WEST COMMUNITY UNIT PLAN

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

September 17, 2003

Members present: Carlson, Duvall, Krieser, Larson, Marvin, Steward, Bills-Strand and Taylor.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 572F, *SPECIAL PERMIT NO. 643E*, SPECIAL PERMIT NO. 1939B, COUNTY MISCELLANEOUS NO. 03011, COMPREHENSIVE PLAN CONFORMANCE NO. 03009, STREET AND ALLEY VACATION NO. 03009 and WAIVER NO. 03011.**

Item No. 1.3, Special Permit No. 1939B, and Item No. 1.7, Waiver No. 03011, were removed from the Consent Agenda and scheduled for separate public hearing.

Bills-Strand moved to approve the remaining Consent Agenda, seconded by Krieser and carried 8-0: Carlson, Duvall, Krieser, Larson, Marvin, Steward, Bills-Strand and Taylor voting 'yes'.

Note: This is final action on Comprehensive Plan Conformance No. 03009 and Waiver No. 03011, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

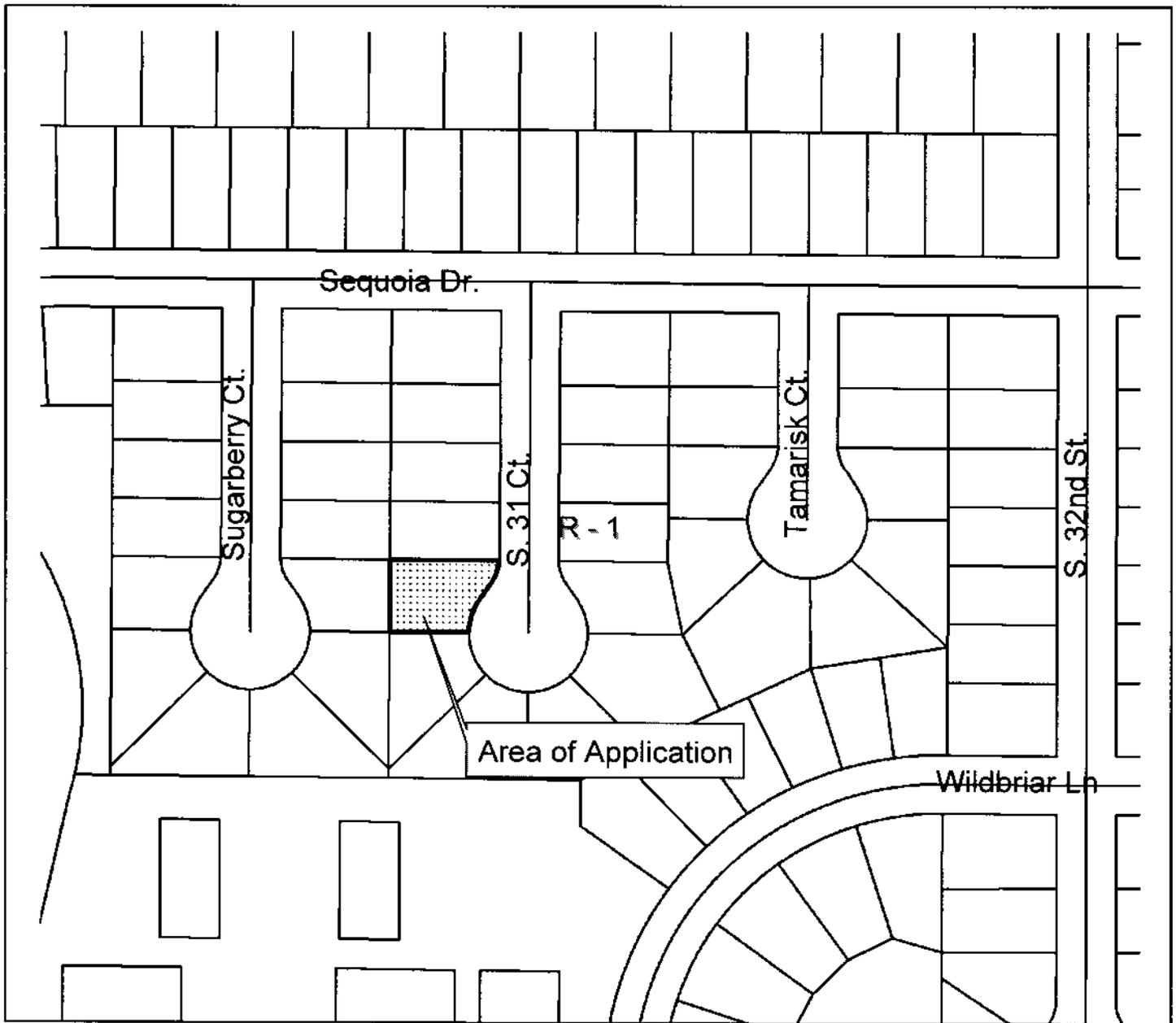


**Special Permit #643E CUP
S. 27th & Old Cheney Rd.**



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Lincoln City - Lancaster County Planning Dept.
2002 aerial

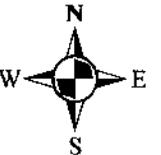
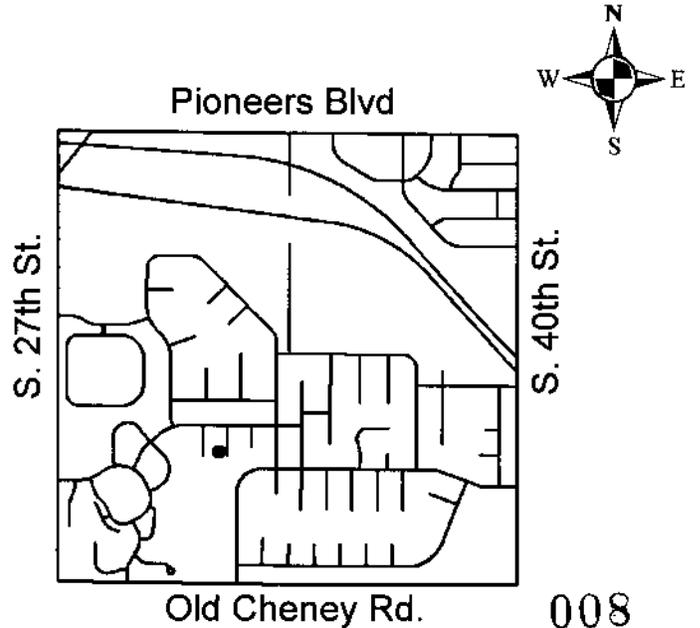
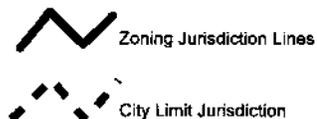


Special Permit #643E CUP S. 27th & Old Cheney Rd.

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. 7 T09N R7E



To: Marvin Krout, Planning Director
City Planning Department
555 S. 10th (Suite 212)
Lincoln, NE

Aug. 21, 2003

This letter is my request to amend the community unit plan for Briarhurst West to waive the rear yard set back for deck height to be higher than three feet. I understand this request will go to the Planning Commission, and if approved, to the City Council.

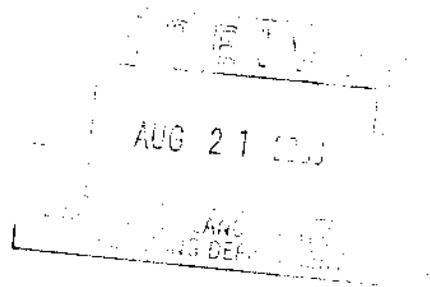
I understand from the Planning Department staff there is a similar waiver already approved for the "Old Cheney Place" neighborhood immediately adjacent on the west edge of the Briarhurst Addition. I am seeking this same variance.

I understand that present plotting of neighborhood lots on cul-de-sac's are required to be of equal length on each side of the house. Had this design requirement been in effect in 1986 when my house was built I would not have the backyard handicap I'm facing today. This action would not have been necessary. Hopefully, this process can rectify the situation and bring this situation up to today's standard with the variance.

Documents of home ownership, support from my neighbors, construction drawings, and my reasons for this variance are provided.

Please let me know if there is other information needed.

Pat McGrane
Patrick B. McGrane, homeowner
5433 S. 31st Street Court



August 20, 2003

TO: Lincoln Planning Commission

I am requesting a variance to the Lincoln building policy on how high I can build a deck in regards to the backyard property line due to the handicap of the location of my house on the property.

I live at 5433 S. 31st Street Court. I am on the circle portion of a cul-de-sac. As I learned from the city building permit staff, houses are set back a certain distance from the curb. Since my property line is on the curve of the curb, that setback is measured from the nearest point from the house to the curb.

This has left me with a really small backyard, which at the time of purchase I thought was OK but now I've learned handicaps my use of the yard. Neither the selling realtor nor my purchasing realtor pointed out the property line issue.

There are several handicap complications adding to the issue. Those are:

- 1) At present, there is only 25 feet from the back of the house to the back property line. When I purchased the house three years ago there was and still is a 10 ft. by 10 ft. deck on the back of the house. Apparently this deck already encroaches on the height issue. Again, neither realtor pointed out this defect (exceeding city building codes) to me.
- 2) The irregular shape of the lot is a contributing factor. (I always wondered why my house set so far back from others along the street!) One side of my lot is 110 feet deep. The "short" side is only 80 feet deep. This short side is apparently what caused the house to be set so far back on the lot.
- 3) The land, from the front yard to the back yard drops an estimated 12 feet in elevation. This has resulted in an a daylight basement (windows only, no walkout). Therefore the deck extends out from the patio door on the main level and the floor of the deck is six feet off the ground. The house directly behind me sits at this lower level so their patio door is at ground level. Most of the use of my backyard comes from being on the deck.
- 4) I mentioned the present deck is 10x10 foot even though it is apparently "illegal". I believe it to be the original deck when the house was built in 1986. Even with its extra size, there has never been a problem with any of the neighbors, so it is not intrusive in any way.
- 5) I plan to put a hot tub on this new 12 foot deck. The extra two feet would allow a safer condition for people to walk around the hot tub down the stair that exit to the side. I'm a big guy at 6' 3" and weigh more than I should! But because of my height, the size of the hot tub is eight foot square. I should mention that I have already ordered the hot tub (with deposit) because I was unaware of this building restriction. Not one of the three contractors who gave me a bid for deck construction mentioned this height (can't be over 36" high if in the 20' setback) restriction. As a

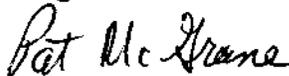
consumer, I expected these folks to know the rules. Only in later discussions with your staff about the deck construction itself to hold the weight of the hot tub, did the backyard property line issue arise. There would still be 13 feet from the edge of the deck to the property line. My backyard neighbor already has 20-foot cedar trees along the fence line for further privacy.

6) The low backyard landscape, and no basement entry, would further handicap the use of my yard if the deck is built at a lower level. Hot tubs are gravity drained and need to be drained about 3-4 times per year. If built at a lower level, my only choice would be to drain the 450 gallons downward into my back yard. If the new deck is built at the same level as the present deck my plan is to drain the water down the kitchen sink.

Putting the hot tub off the deck, at yard level, would take up additional limited yard space and interfere with optimum use of the hot tub, which is primarily in cooler months. I find it interesting that if I built a deck 36-inches off the ground I could extend it to within two feet of the property line. Why should the deck height difference matter? I also have a six foot privacy fence around my property.

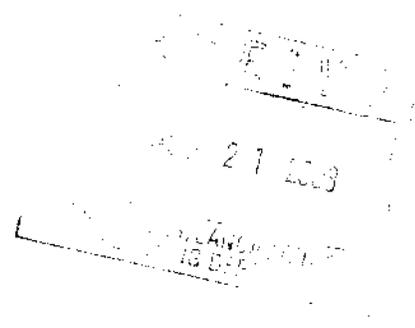
I have included letters of support from my neighbors, to permit the deck to extend out from the house 12 feet at the same level as the deck is now, for your review. They do not oppose your granting this variance.

Please permit me to have a height variance of a 12-foot wide deck that will enhance the house and neighborhood.

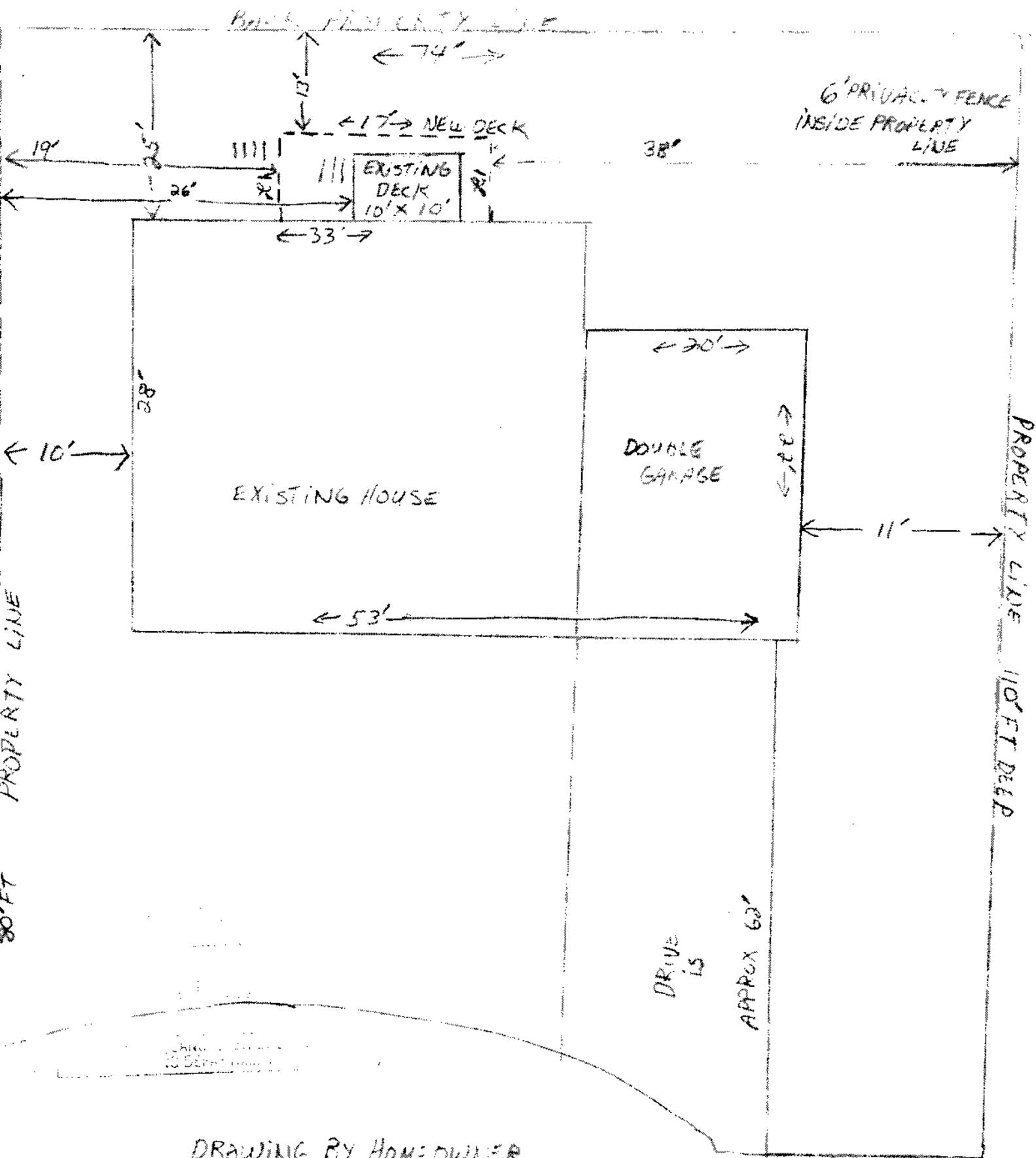


Patrick B. McGrane, homeowner
5433 S. 31st Street Court
Lincoln, NE

P.S. I understand the same variance has already been grant to the Old Cheney Place neighborhood which is next to my neighborhood on the west. That establishes this variance as a valid option. I am requesting the same variance be granted to me.



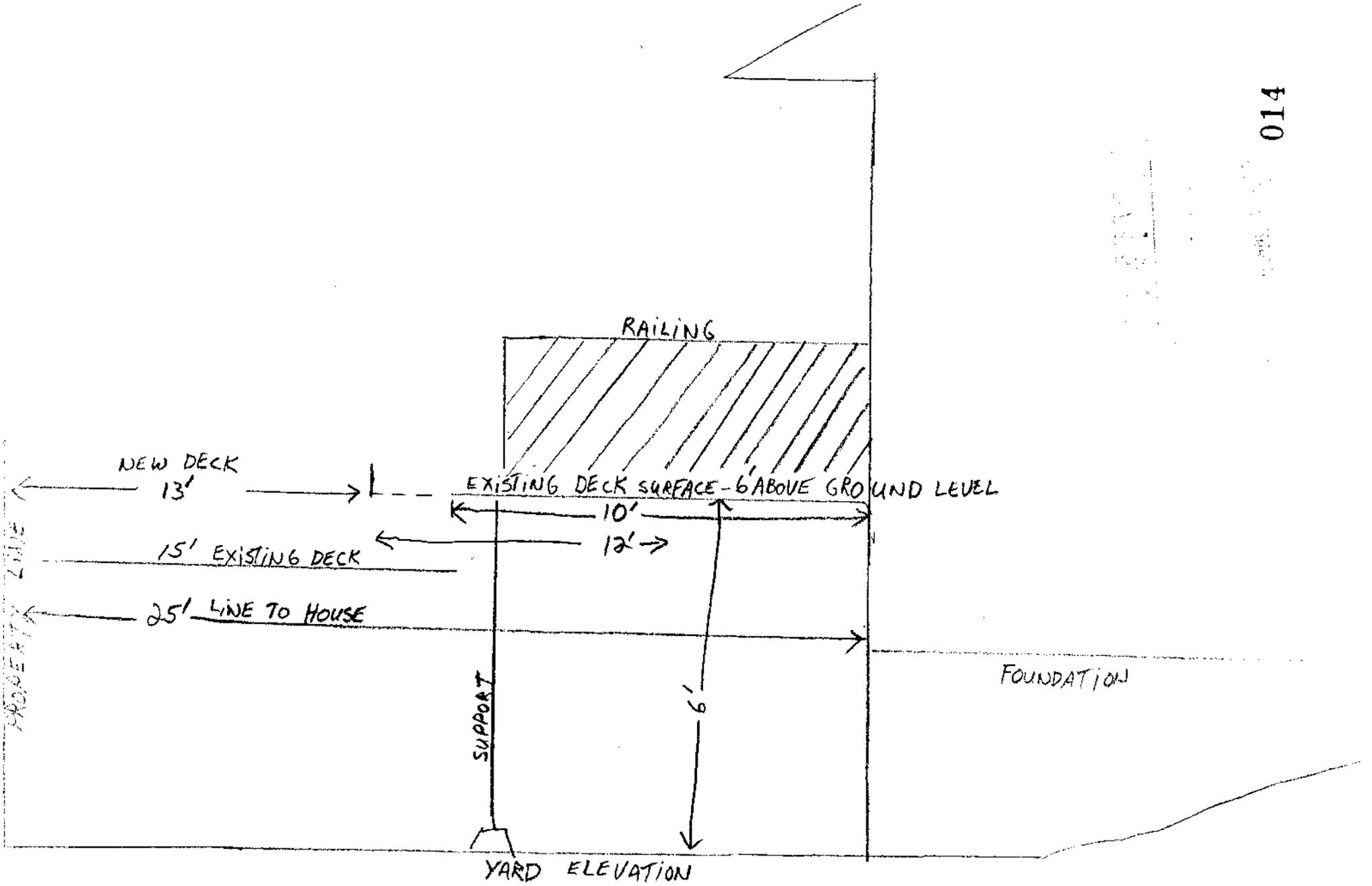




DRAWING BY HOMEOWNER

5433 S. 21ST COURT

013
N →



DRAWING BY HOMEOWNER
 6' PRIVACY FENCE AROUND BACK YARD

5433 S. 31st COURT

014

July 16, 2003

To Whom It may Concern on
The City Building Permit Appeals Committee

I understand that my neighbor next to me on the south, Pat McGrane, of 5433 S. 31st Court, is appealing to you for an exception to build a 12 foot deep (out from the house) deck in his back yard. I understand that encroaches on the property line rules.

As his next door neighbor, I hope you approve his request. I have no objection to a deck of that size being built. There is a 10-foot deck on his house at present that was built years ago, before Pat lived in the house. There has never been a problem because of its size. Replacing the old deck and building a new one out two feet further will not hurt anything. In fact, a new deck will enhance the appearance of the backyard scenery.

I see Pat on his deck quite frequently. He uses it a lot and seems to really enjoy barbecuing. If this will allow him to enjoy his backyard even more, then he should be allowed to extend the deck. Yes, I understand he wants to put a hot tub on the new deck. That is also fine with me.

Please grant him this exception. Thank you for this chance to be heard.



Mrs. Helen Seuss
5425 S. 31st Court



July 16, 2003

To Building Permit Appeals Review Committee

I understand my next door neighbor to the north, Pat McGrane of 5433 S. 31st Court, is appealing to you for an exception to build a 12-foot deck (extending out from the back of the house) into his back yard. I also understand this encroaches on the city rules on how close a person can build to the backyard property line.

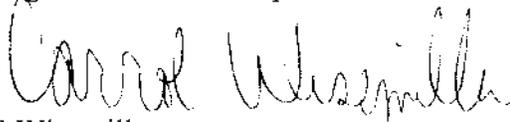
The present deck on the house extends out 10 feet and has been there for a number of years, long before Pat moved in almost three years ago. I've noticed that Pat uses his deck nearly year round, barbecuing or just visiting with friends.

I am in favor of allowing him to replace his old deck with a new one that extends outward from the house 12 feet. This minor extension from what presently exists will have no impact on me. In fact, Pat has just removed some rather ugly hedge that grew along this same edge of the deck, that the previous homeowner had let grow as tall (over 8 feet) as the deck. This new deck will not extend out further than the present deck and ugly hedgerow did.

The new deck should improve the property and enhance the neighborhood as well. I do understand part of the reason for this extension is to put a hot tub on the new deck. I have no problems with this change either.

Because of being on the curved part of a cul-de-sac, Pat has a really small backyard. This exception will allow him efficient use of the space.

Please grant him this exception to build a new 12 foot deep deck.



Carol Wisemiller
5441 S. 31st Court

July 17, 2003

TO Lincoln Building Permit Division
ATTN: Citizen committee for policy exemptions

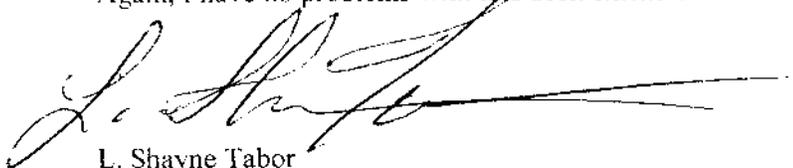
I understand my neighbor directly behind my house, Pat McGrane of 5433 S. 31st Court, is applying to you for an exemption to build a deck on his house closer to the back property line than city policy allows.

He wants to build a deck that will extend 12 feet out from his house. I have no problem with this deck extension, which is just two feet more than the present deck. I encourage you to approve his request.

I realize this will encroach on the "20-foot" building limit from the back property line, however this will not interfere with me. Pat and I both have shallow back yards since we are on cul-de-sacs. My patio door exits at ground level from the main floor. Pat's home however is built into the "hillside" so his patio door is six feet above the backyard. He uses his deck a lot and in the three years he has lived there we have had no problems.

As a realtor, I understand the reasons for these policies. However this is one case where an exemption should be granted.

Again, I have no problems with this deck extension and recommend you approve his request.



L. Shayne Tabor
5432 Sugarberry Court

SEARCHED
SERIALIZED
INDEXED
FILED

017



Briarhurst West Neighborhood Association

P.O. Box 6761
Lincoln, NE 68506

August 20, 2003

To: City Board of Zoning Appeals
Re: Appeal No. 2363 by Patrick McGrane, 5433 S. 31 St. Court

Mr. Patrick McGrane, 5433 S. 31 St. Court, contacted me concerning his deck project. He indicated that he is seeking approval to replace his existing 10' X 10' deck with a 12' X 17' deck. He submitted drawings and explanations of his project.

After reviewing the Briarhurst West Neighborhood Association Declaration of Covenants, Conditions, and Restrictions, I find no restrictions that would prevent Mr. McGrane from building said deck.

Sincerely,

A handwritten signature in cursive script that reads "Gregg Aksamit". The signature is written in black ink and is positioned above the printed name and title.

Gregg Aksamit
Treasurer

Dean and Terri Dietz
5432 South 31 Street Court
Lincoln, NE 68516
(402) 423-0606

September 7, 2003

Mr. Marvin S. Krout
Ms. Becky Horner
Lincoln-Lancaster County Planning Department
555 South 10th Street, Suite 213
Lincoln, NE 68508

RE: Special Permit No, 643E

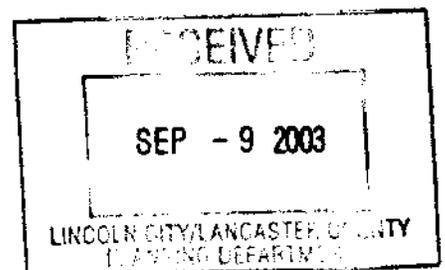
Dear Mr. Krout and Ms. Horner;

Mr. Patrick McGrane, our neighbor, has recently requested a variance to waive the rear yard setback and to allow him to construct a new deck higher than 3' on property legally described as Lot 22, Block 5, Briarhurst West 4th Addition located in the SW ¼ of Section 7-9-7, Lancaster County, Nebraska, generally located at S. 27th Street and Old Cheney Road.

We hope this request will be granted to Mr. McGrane, plus we request approval of this variance for our entire neighborhood. As owners of a similar lot, we would face the same process as Mr. McGrane, if and when we elect to rebuild our deck. Please amend the Briarhurst West Community Unit Plan for the entire neighborhood at this time. The construction of Mr. McGrane's new deck will only increase the value his property and that of the entire neighborhood.

Please feel free to contact us if you have any questions. Thank you in advance for your help and assistance in this effort.

Dean and Terri Dietz
Dean and Terri Dietz
Lot 27, Block 5, Briarhurst West 4th Addition

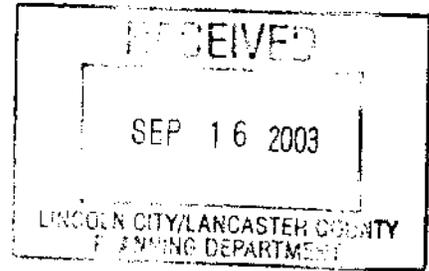




Briarhurst West Neighborhood Association

P.O. Box 6761
Lincoln, NE 68506

September 15, 2003



Mr. Marvin Krout
Planning Director
Lincoln Planning Commission
555 South 10 Street
Lincoln, NE68508

RE: Special Permit #643E

Dear Mr. Krout:

The Briarhurst West Neighborhood Association Board of Directors met September 8, 2003 and discussed the height and setback variance to the property at 5433 S. 31 Street Court owned by Mr. Patrick McGrane. We received several letters from his neighbors urging us to allow this variance for the entire neighborhood.

The vote was unanimous to allow this variance in the community unit plan for the entire neighborhood. This would comprise of all lots similar to and including Mr. McGrane's.

We are requesting that you grant this "height variance" for the entire Briarhurst West Neighborhood.

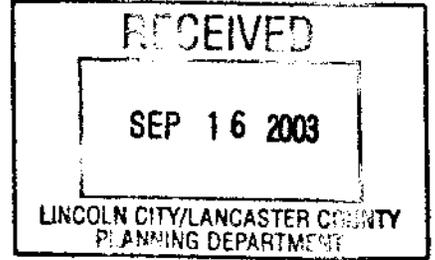
If you have any questions, please contact me at my office, 423-7330 or at home, 423-5927.

Sincerely,

A handwritten signature in black ink that reads "Gregg Aksamit".

Gregg Aksamit
Treasurer

cc: Becky Horner



5448 S. 31st St. Ct.
Lincoln, NE 68516
September 13, 2003

Marvin Krout
Planning Director
Lincoln Planning Commission
555 S. 10th
Lincoln, NE 68508

RE: Request for Height Variance
Pat McGrane, 5433 S. 31st St. Ct.

Dear Mr. Krout,

Our neighbor, Pat McGrane, 5433 S. 31st St. Ct., in preparation for building a deck, has asked the city for a height variance which would allow him to build his deck out more than the five feet currently limited by the city code.

We are very supportive of his request, and it is our understanding that there are other properties in our neighborhood with the same limitations. For that reason, we are asking that this height variance be granted for the entire neighborhood.

Thank you for giving serious consideration to this request for a blanket height variance for our entire neighborhood, as you deliberate Pat's request for his property.

Most sincerely,

A handwritten signature in cursive script that reads "Al & Pat Taft". The signature is written in black ink and is positioned above the printed name.

Al and Pat Taft