City Council Introduction: **Monday**, March 12, 2007
Public Hearing: **Monday**, March 19, 2007, at **1:30** p.m. Bill No. 07R-66

FACTSHEET

TITLE: **WAIVER NO. 07002,** requested by Rebecca Cast, to waive the sidewalk requirements associated with the Martin Heights 3rd Addition Final Plat No. 01076, on property located at 4025 and 4045 G Street.

STAFF RECOMMENDATION: Denial.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 02/28/07
Administrative Action: 02/28/07

RECOMMENDATION: Approval of a four-year extension of time to install the sidewalks until February, 2010 (7-0: Cornelius, Esseks, Taylor, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Larson and Strand absent).

FINDINGS OF FACT:

1. The final plat of Martin Heights 3rd Addition was approved on February 13, 2002. The final plat combined three platted lots into two, thereby creating lots large enough for a duplex on each lot. The Land Subdivision Ordinance requires the installation of sidewalks adjacent to the lots in the final plat within four years of its approval. The owner provided the City with a $3,300 bond to guarantee the installation of the sidewalks.

2. The owner is requesting to waive the sidewalk requirements at this time because the property is for sale and there are trees that would have to be removed if the sidewalk were constructed. When the property is sold and a new structure is constructed, the sidewalk would have to be removed and re-installed.

3. The staff recommendation to deny waiver of the sidewalk is based upon the "Analysis" as set forth on p.3-4, concluding that sidewalks are encouraged by the Comprehensive Plan to provide safe and convenient pedestrian access throughout the City. The Subdivision Ordinance requires sidewalks to be installed when existing land is subdivided and final platted. The intent is to provide a paved surface for pedestrians to walk on out of the streets, including those areas that were developed before sidewalks were required.

4. The staff presentation is found on p.5.

5. The applicant's testimony is found on p.5-6. The additional information submitted by the applicant at the public hearing is found on p.12-18.

6. There was no testimony in opposition to the waiver.

7. On February 28, 2007, the Planning Commission disagreed with the staff recommendation and voted 7-0 to extend the period of time for installation of the sidewalks an additional four years from the date of the final plat approval until February, 2010 (Larson and Strand absent). See Minutes, p.6-7

FACTSHEET PREPARED BY: Jean L. Walker **DATE**: March 5, 2007

REVIEWED BY:_____ **DATE**: March 5, 2007

REFERENCE NUMBER: FS\CC\2007\WVR.07002

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for February 28, 2007 PLANNING COMMISSION MEETING

PROJECT #: Waiver #07002

PROPOSAL: Waive sidewalks associated with Final Plat #01076

LOCATION: 4025 and 4045 G Street

LAND AREA: .4 acres

CONCLUSION: Sidewalks are encouraged by the Comprehensive Plan to provide for safe and convenient pedestrian access throughout the city. The Subdivision Ordinance requires them to be installed when existing land is subdivided at the time of final plat. The intent is to provide a paved surface for pedestrians to walk on out of the streets, including those areas that were developed before sidewalks were required.

RECOMMENDATION: Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 1 and 2, Martin Heights 3rd Addition.

EXISTING ZONING: R-4 Residential

EXISTING LAND USE: Residential

SURROUNDING LAND USE AND ZONING:

North:	Residential	R-2
South:	Residential	R-2
East:	Residential	R-2
West:	Residential	R-4

HISTORY:

February 13, 2002 - FPPL#01076, the final plat of Martin Heights 3rd Addition was approved.

May 8, 1979 - The zoning on these lots was changed from D (Multiple Dwelling District) to R-4 Residential with the Zoning Update.

April 24, 1963 - CZ#462 was approve changing the zoning from B (Two-family Dwelling District) to D (Multiple Dwelling District).

July 14, 1959 - The City adopted the Land Subdivision Ordinance which required sidewalks.

COMPREHENSIVE PLAN SPECIFICATIONS:

Pg. 11 - Guiding Principles - Many activities of daily living should occur within walking distance. Neighborhoods should include homes, stores, workplaces, schools and places to recreate. Interconnected networks of streets, trails and sidewalks should be designed to encourage walking and bicycling, reduce the number and length of automobile trips, conserve energy and for the convenience of the residents.

Pg 66 - Residential - Transit, pedestrian, and bicycle networks should maximize access and mobility to provide alternatives and reduce dependence upon the automobile. Sidewalks should be provided on both sides of all streets, or in alternative locations as allowed through design standards or review process.

Pg 92 - Other Areas - All areas of the community should have safe, secure, and reasonably direct pedestrian connections. Activities of daily living should be available within walking distance. Neighborhoods should include homes, stores, workplaces, schools, and places to recreate. Interconnecting streets, trails, and sidewalks should be designed to encourage walking and bicycling, reduce the number and length of automobile trips, and conserve energy.

Pg 99 - Transportation and Mobility - Effective public transportation service requires good pedestrian connections to and from transit stops, density of activities, and development designs supportive of transit riders. Pedestrian connections to transit must be direct and the sidewalk system must have continuity. Street crossings to transit stops must be safe. Productive transit service requires high-density land development patterns which link residential areas and employment, retail, and service centers. Development design needs to be transit friendly providing convenient access to transit services. The TDP should help recommend a system for transit review of new development designs. This would be important in ensuring that new development contain transit-oriented standards.

<u>ANALYSIS:</u>

1. The final plat of Martin Heights 3rd Addition was approved on February 13, 2002. The final plat combined three platted lots into two, thereby creating lots large enough for a duplex on each lot. The lots created by the final plat are located at the southwest corner of the intersection of South 41st and G Streets.

2. As required by Title 26 - The Land Subdivision Ordinance, the owner was required to install sidewalks along both South 41st Street or G Street adjacent to the lots in the final plat within four years of its approval. As an alternative to installing sidewalks prior to approval of the final plat, owners are allowed to provide a surety to guarantee the installation of the sidewalks. In this case, the owner provided the City with a $3,300 bond to guarantee the installation of the sidewalks.

3. This area was originally developed prior to the time when sidewalks were required by Title 26. As a result, sidewalks are not continuous throughout this area, and there are many lots which do not have them. However, they have been installed along the west edge of the same block, and in all or portions of adjacent blocks to the south, north and northeast.

4. Public Works notes that the Americans With Disabilities Act (ADA) guidelines include the requirement for sidewalks, and not requiring them to be installed would be inconsistent with the Act. It is also noted that the installation of sidewalks along these properties will facilitate the City in constructing sidewalks through the Executive Order process to connect those in the area.

5. The Comprehensive Plan recommends sidewalks in areas like this. Being a requirement at the time of final plat is one way to get them installed in areas where they don't exist, and is consistent with the goal of having sidewalks throughout the city.

Prepared by:

Brian Will
Planner
February 14, 2006

APPLICANT/ OWNER/ CONTACT: Rebecca Cast
4831 Mandarin Circle
Lincoln, NE 68516

WAIVER NO. 07002

PUBLIC HEARING BEFORE PLANNING COMMISSION: February 28, 2007

Members present: Sunderman, Esseks, Krieser, Taylor, Cornelius, Carroll and Carlson; Strand and Larson absent.

Ex Parte Communications: None.

Staff recommendation: Denial.

Staff presentation: **Ray Hill of Planning staff** explained that the sidewalk requirements are contained in the subdivision ordinance. Planning staff still believes that the Comprehensive Plan and the subdivision ordinance are correct in requiring the installation of sidewalks. The staff has reviewed this application to waive the installation of sidewalks at 4025 and 4045 G Street and does not find any unusual circumstances that would warrant modification to the subdivision regulations relating to the installation of the sidewalks.

Esseks inquired whether there is any recent precedent for this type of request. Hill indicated that these waiver requests come up frequently and unless there are unusual circumstances (such as physical conditions, i.e. retaining walls, difference in grade) that would create a problem, the staff has required that the sidewalks should be installed. The existence of grading problems, retaining walls, etc., would be considered a hardship. Hill pointed out that this location is in the public right-of-way. He acknowledged that there are no sidewalks immediately adjacent, but suggested that we will never get sidewalks if this is used as the reason for granting the waiver.

Esseks inquired whether such a waiver has been allowed with similar circumstances as this. Hill did not believe there had been in the past year.

Proponents:

1. Rebecca Cast, 4831 Mandarin Circle, testified as the applicant for the waiver. She stated that she appeared before the Planning Commission during the hearing on the 40th and A downzone. The subject property was excluded form that downzone and the properties have remained zoned R-4. They were required to post a bond for the sidewalks and they had planned to remove an old house that had fire damage and develop a duplex. At that time, due to health issues, she and her husband decided not to put the duplex in but to put the property up for sale. It has been for sale since 2002. The owners are seeking this waiver of sidewalk at this time because of the location with respect to the grade and the city trees that are in the way if a sidewalk is installed. When a new structure is put on the property, there will be some grading done and a sidewalk would have to be removed and re-installed. The trees will have to be removed if the sidewalk is constructed.

Cast indicated that she is not opposed to sidewalks. She believes that the Comprehensive Plan does a good job on new subdivisions where there are new properties being built and there is continuity with the sidewalks. Cast then showed a map depicting the location of current sidewalks in the area surrounding the subject property. They are sporadic, with bits and pieces here and there. No sidewalks have been added to any of the existing sidewalks to provide any continuity. The property

is unchanged. She believes it would be beneficial to the owner or future buyers to waive the requirement for the sidewalk at this time and to deal with the sidewalk at the time of a new structure. In addition, Cast does not believe the sidewalks are meeting the ADA requirements. A sidewalk that goes nowhere does no good for anyone.

There was no testimony in opposition.

Staff questions:

Carroll inquired as to the background on the bonding for the sidewalk, time limit, etc. Hill explained that the owner has four years to complete the sidewalk and the bond is 25% of the actual estimated cost. At the end of the bond time, the installation is to take place. The bond is not to be renewed. If the bond does not cover the total cost, the owners would be responsible for the rest of the cost. Hill suggested that if the Planning Commission is willing to make an adjustment to the application, it may a situation where the completion date could be extended another four years as opposed to waiving the sidewalk. Staff does not believe it is appropriate in this situation to waive the sidewalk because once waived all of the burden is on the city to create an assessment district, which becomes difficult politically.

Carroll confirmed that if there is new construction, the sidewalk must be installed at that time. Hill concurred.

Taylor inquired about removing the sidewalk due to additional grading, etc. Hill suggested looking at the big picture. If construction occurs, there will be heavy equipment going across the sidewalk and there may have to be some trenching for services to the property as it is built, but there are ways to get around that. The sidewalk could be replaced at the same time. Staff does not believe there is any reason to waive the sidewalk at this time. An additional four years from the date of the final plat approval could be considered.

But on the positive side, Esseks pointed out that the owners did get the city's permission to make the reconfiguration of the property for two lots suitable for duplexes. Hill agreed, especially since they were left out of the downzoning. They had marketable lots but they could not have been duplexes. They now have two lots.

Response by the Applicant

With regard to existing sidewalks in the area, Cast pointed out that the city has not followed through in making this a workable plan. This is an older neighborhood and unless the city forces the sidewalks to be constructed, they are not going to be installed. She reiterated that she is not opposed to sidewalks and had they constructed the duplex, they would have constructed the sidewalks. The unit on the corner had a fire and is not occupied. The other is a single family home with a tenant.

Carroll asked the applicant whether she would consider an extension versus denying the waiver. That would allow the owners to sell the property in the next three years without constructing the sidewalk. Case agreed that an extension would be better than putting the sidewalk in now. They are still attempting to sell the property.

ACTION BY PLANNING COMMISSION: February 28, 2007

Carroll moved to extend the requirement for installation of sidewalks an additional four years from the date of the final plat approval to February, 2010, seconded by Taylor and carried 7-0: Sunderman, Esseks, Krieser, Taylor, Cornelius, Carroll and Carlson voting 'yes'; Strand and Larson absent. This is a recommendation to the City Council.

2005 aerial

Waiver #07002
S. 41st and 'G' St.

Zoning:

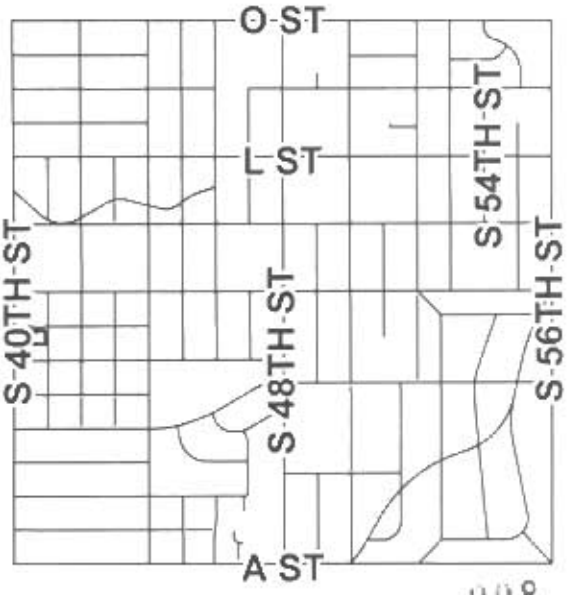
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business 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. 29 T10N R7E

N

Zoning Jurisdiction Lines

City Limit Jurisdiction



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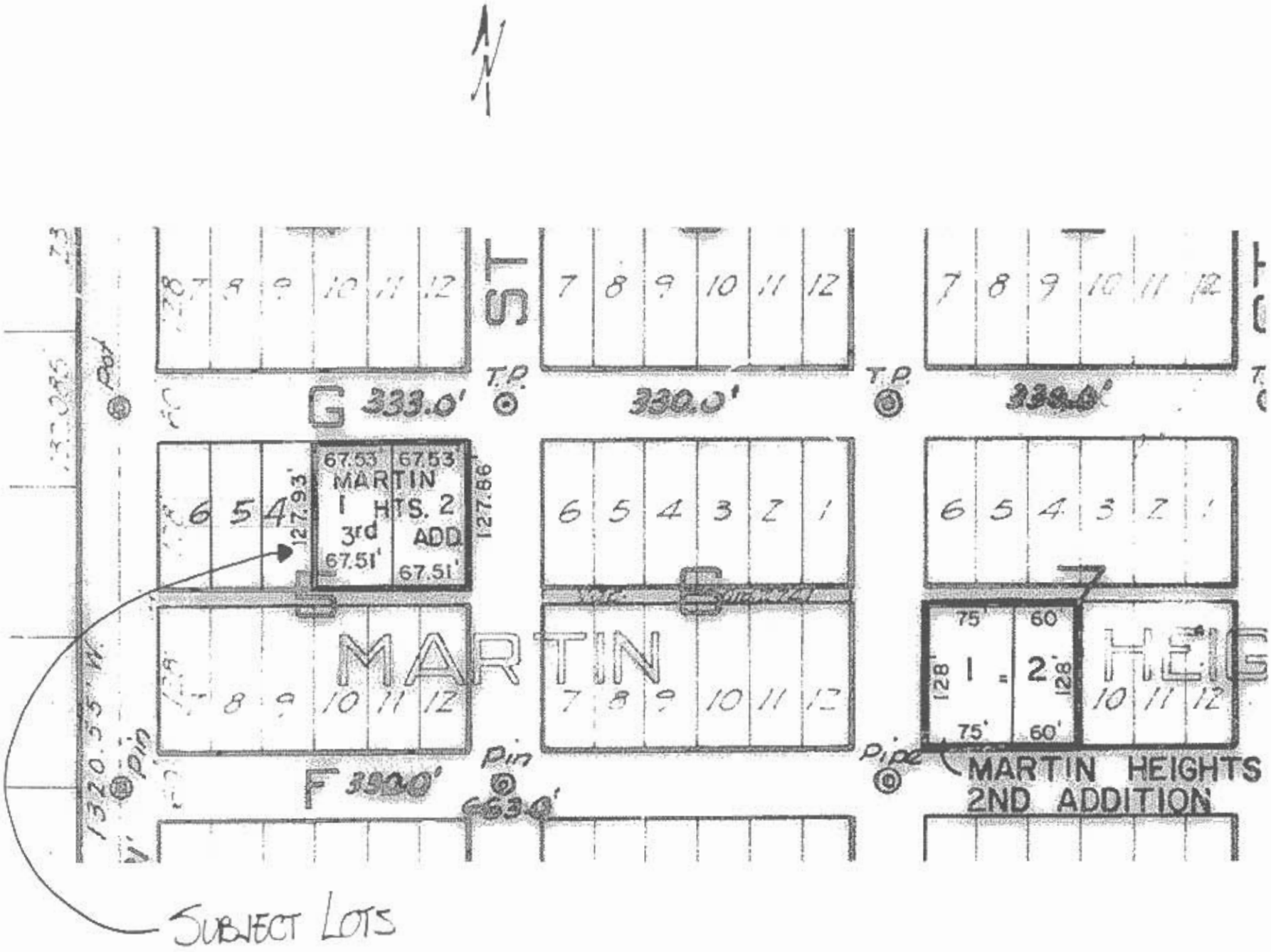
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MARTIN
1 HTS. 2
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127.93'
127.86'
MARTIN
F 330.0'
Pin
Pipe
MARTIN HEIGHTS
2ND ADDITION
75'
60'
128'
1
2
SUBJECT LOTS

January 25, 2007
4831 Mandarin Circle
Lincoln, NE 68516

RECEIVED
JAN 26 2007
PLANNING DEPARTMENT

Planning Department
555 South Tenth Street
Lincoln, NE 68508

WAIVER OF SIDEWALK REQUIREMENT FOR MARTIN HEIGHTS 3RD ADDITION.

- Martin Heights 3rd Addition, Lot 2 - 4045 G Street
- Martin Heights 3rd Addition, Lot 1 - 4025 G Street

My husband and I own two properties located at 4045 and 4025 G Street, Lincoln, Nebraska. We purchased 4045 G Street in 1958. When we purchased 4025 G Street in 1989, there was a vacant lot attached to the property. All three lots were zoned R-2 at the time of purchase.

In 2000 the house at 4045 G Street sustained minor fire damage. Because it was an original old farm house, we opted not to have it repaired but to sell it as a duplex-zoned lot. In the course of trying to sell 4045 G Street, we found that it no longer met the requirements of a duplex-zoned lot. We then decided to subdivide the three lots and make two lots which would meet the R-4 zoning requirements for a duplex.

During the process of rezoning these lots, we found we were required to put a sidewalk on these properties. Until this was done, we had to invest in a sidewalk bond.

The property at 4045 G Street has been for sale since 2002 and has still not sold even though we have had numerous persons inquire about purchasing it. Therefore, rather than renew the sidewalk bond again, we are requesting a sidewalk waiver primarily because there are no other sidewalks on the block from 40th to 41st Street on either side of G Street or on 41st Street between F and G Streets. Installation of sidewalk would create a problem for persons wishing to walk on the sidewalk because it would end on our property lot lines. At that point walkers would have to enter the street or continue walking on the lawns of the neighboring homes.

Rebecca J. Cast Trustee

REBECCA J. CAST, (Trustee)

RECEIVED
JAN 26 2007
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

Memorandum

To: Brian Will, Planning Department

From: Charles W. Baker, Public Works and Utilities

Subject: Waiver of Sidewalks WVR #07002

Date: February 7, 2007

cc: Randy Hoskins
Harry Kroos
Barnie Blum

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the Waiver of Sidewalks WVR #07002 request located 41st and "G" Streets. Public Works has the following comments:

- Public Works cannot support the requested waiver of the sidewalk requirement associated with the subdivision of the lots located at 4025 and 4045 "G" Streets. Public Works understands that there will be no connecting sidewalks when these are constructed. However in light of the requirements and under ADA guidelines, for Public Works to support this request, we would be in direct violation.

- The installation of the sidewalks along these properties will facilitate the City in constructing the adjoining sidewalks by the Executive Order process to the west and south to meet existing sidewalks.

W07002 tdq.wpd

SUBMITTED AT PUBLIC HEARING
BEFORE PLANNING COMMISSION
BY THE APPLICANT: 02/28/07

WAIVER NO. 07002

February 28, 2007
4831 Mandarin Circle
Lincoln, NE 68516

Lincoln-Lancaster County
Planning Commission
555 South 10th Street
Suite 213
Lincoln, NE 68508

REQUEST FOR WAIVER OF SIDEWALKS ON LOTS 1 AND 2, MARTIN HEIGHTS, THIRD ADDITION, 4045 AND 4025 G STREETS, LINCOLN, NEBRASKA

I recently appeared before the Planning Commission at the time the 40th and A Street Association applied for down-zoning of the area to request that you leave these two properties duplex-zoned, R-4. They were excluded from the application and remain zoned R-4. If you recall, we had to divide three lots into two lots to meet the requirements to build a duplex on the lot at 4045 G Street. The old house that is currently located at 4045 G Street sustained fire damage several years ago, and it was our intent at that time to place a duplex on this lot. In fact, we had plans drawn up for a duplex; but because of health issues, we elected to put the property up for sale instead. We have had this house/lot for sale since 2002 and have had numerous inquiries on the property. Unfortunately, the property remains unsold.

At the time of the subdivision, we were required to take out a Surety Bond to install sidewalks on the two lots. Had we built a duplex on this lot, we would have installed sidewalks at that time. But because we have been trying to sell this property at 4045 G Street, we did not install sidewalks primarily because the lot will have to be graded and trees will have to be removed if and when the house is demolished and a new structure is built. This means that if a sidewalk were put in at this time, it would have to be removed and reinstalled to meet the grade of the new lot. **(I have included pictures showing the current grade of the properties at 4045 and 4025 G Street and location of the city-owned trees located on city property that would have to be removed when sidewalks are installed.)**

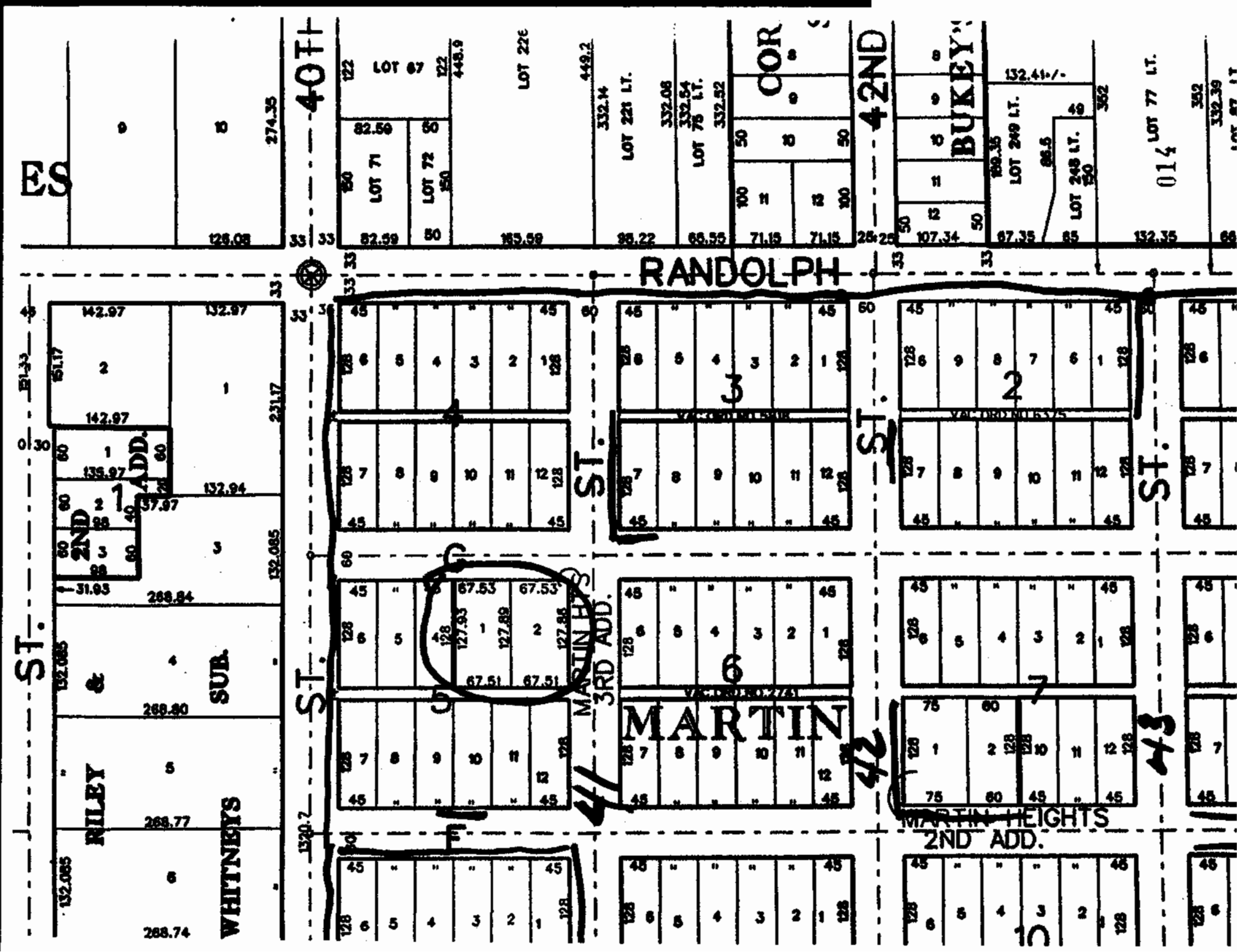
Since there are currently no sidewalks that abut our properties and the lots remain the way they have been for the past 70-80 years, it only makes sense to wait until a new structure is built to put in the sidewalk to fit the lot.

In the Lincoln/Lancaster County Planning Staff Report that was sent to me, they cite portions of the Comprehensive Plan Specifications. In reading over these specifications, I can see where they certainly pertain to areas in which new structures are being built and where continuous sidewalks will meet these specifications. However, in canvassing the blocks surrounding our properties, (**See attachment with sidewalks noted in red**.) there are bits and pieces of sidewalks installed. Most of them are in front of newly (within the past 15-20 years) constructed homes. But there is no continuity of these sidewalks and no indication that sidewalks will be built to make these sidewalks continuous through the block. That, in my opinion, defeats the very purpose of the specifications that are laid out. The Americans With Disabilities Act (ADA) is not being met because continuous sidewalks are not being built. Since this is an older neighborhood, sidewalks will never be built unless they are forced in by the city. Apparently this is not currently being done.

I am not opposed to having a sidewalk on our properties; but until a new structure is placed on the property at 4045 G Street, I feel it would be a waste of money to construct a sidewalk that will have to be replaced when a new structure is built. As I have stated in my request for a waiver, a sidewalk that goes nowhere is of no benefit to anyone.

Therefore, I am requesting a waiver of sidewalk installation at this time.

REBECCA J. CAST, TRUSTEE


RANDOLPH
40TH
42ND
BUKEY'S
COR
LOT 67
LOT 22E
LOT 71
LOT 72
LOT 221 LT.
LOT 75 LT.
LOT 249 LT.
LOT 248 LT.
LOT 77 LT.
ES
ST.
ADD.
2ND
RILEY & SUB.
WHITNEY'S
MARTIN HTS 3RD ADD.
MARTIN
MARTIN HEIGHTS 2ND ADD.

Shows the grade of the lot as it currently stands.

Looking across the front of both lots showing the grade and the location of the city-owned trees on the lots.

Looking across the street to the north indicating there is no sidewalk installed on G Street.

Looking across the street to the north indicating there is no sidewalk installed on 41st Street.

Across the street to the east, looking south indicating no sidewalk installed on South 41st Street.

Looking east, indicating no sidewalks installed on G Street.

Close up showing the grade and location of a city-owned tree where the sidewalk would be installed.

Looking down the side on 41st Street showing the location of the city-owned trees in relation to sidewalk installation.