City Council Introduction: **Monday**, January 5, 2009
Public Hearing: **Monday**, January 12, 2009, at **1:30** p.m. Bill No. 09R-9

FACTSHEET

TITLE: **WAIVER NO. 08008,** requested by Robert Snell, to waive the requirements of the Land Subdivision Ordinance to install sidewalks along the west side of South 39th Street, abutting Lots 1 and 2, Snell Addition, generally located at South 39th Street and Calvert Street.

STAFF RECOMMENDATION: Denial

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 12/17/08
Administrative Action: 12/17/08

RECOMMENDATION: **Denial** (8-0: Gaylor-Baird, Francis, Partington, Larson, Esseks, Taylor, Sunderman and Carroll voting 'yes'; Cornelius absent).

FINDINGS OF FACT:

1. This is a request to waive the required sidewalks along the west side of South 39th Street abutting Lots 1 and 2, Snell Addition, generally located at South 39th Street and Calvert Street. Lots 1 and 2, Snell Addition, were created in 2007 when the property owner replatted the existing lots. Platting two lots requires the additional dedication of 10' of right-of-way and the installation of sidewalks that abut the adjoining property.

2. The staff recommendation of **denial** is based upon the "Analysis" as set forth on p.3-4, concluding that waiving the required sidewalks at this location is not consistent with the intent and spirit of the Land Subdivision Ordinance or the Comprehensive Plan. The sidewalk can be built and is an important step in completing the sidewalk system incrementally over time. The staff presentation is found on p.5-6.

3. The applicant's testimony is found on p.6, wherein the applicant contends that this is a $4600.00 sidewalk that would go nowhere and serve no one. The applicant also contended that he was advised by a city sidewalk inspector that the sidewalk was neither necessary nor practical.

4. The staff responded, advising that there were written comments from the Public Works & Utilities Department during the final plat process and during the review of this request for waiver indicating that the sidewalk can and should be installed (See Minutes, p.7).

5. There was no testimony in opposition.

6. On December 17, 2008, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend **denial** of the waiver request (See Minutes, p.8-9).

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: December 23, 2008

REVIEWED BY:_____ **DATE**: December 23, 2008

REFERENCE NUMBER: FS\CC\2009\WVR.08008

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for December 17, 2008 PLANNING COMMISSION MEETING

PROJECT #: Waiver of Design Standards #08008

PROPOSAL: To waive the required sidewalks along the west side of S. 39th Street abutting Lots 1 and 2 Snell Addition.

LOCATION: Generally located at S. 39th Street and Calvert Street

CONCLUSION: Waiving the required sidewalks at this location is not consistent with the intent and spirit of the Land Subdivision Ordinance or the Comprehensive Plan. The sidewalk can be built and is an important step in completing the sidewalk system incrementally over time.

RECOMMENDATION: Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 1 and 2, Snell Addition, Lincoln, Lancaster County, NE

EXISTING ZONING: R-4 Residential

EXISTING LAND USE: Single family dwelling

SURROUNDING LAND USE AND ZONING:

North:	R-4 Residential	Duplexes and a vacant lot
South:	R-2 Residential	Single family dwelling
East:	R-4 Residential	Duplexes and a vacant lot
West:	R-4 Residential	Duplexes

HISTORY:

December 19, 2007 Planning Director approved the final plat for Snell Addition, creating 2 lots.

COMPREHENSIVE PLAN SPECIFICATIONS:

RESIDENTIAL -OVERALL GUIDING PRINCIPALS

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. (66)

Interconnected networks of streets, trails and sidewalks should be designed to encourage walking and bicycling and provide multiple connections within and between neighborhoods. (66)

MOBILITY AND TRANSPORTATION - PEDESTRIANS
Walking is an essential part of our daily activities, whether it be trips to work, shop, or play. Often pedestrian facilities are overlooked or merely added onto street improvement projects. However, to preserve and enhance the quality of life for Lincoln, consistent maintenance and rehabilitation of the existing pedestrian system and additional facilities are needed. Planning and developing pedestrian facilities should consider many factors:

- Location of existing and planned activity centers and districts, such as shopping malls, older neighborhood centers, libraries, community centers and schools.
- Programs to retrofit established sections of town with pedestrian amenities.
- Design standards for pedestrian facilities in new residential and mixed-use developments.
- Location of existing and planned multi-use trails.
- Requirements from the Americans With Disabilities Act (ADA).
- Needs of a growing senior population.(89)

TRAFFIC ANALYSIS: S. 39th Street is a local street.

ANALYSIS:

1. The City Subdivision Ordinance states: *Concrete sidewalks shall be constructed to the specifications set forth in Chapter 14.80 of this code in pedestrian ways and on both sides of all streets and private roadways within the subdivision and on the side of the streets abutting the subdivision*.

2. S. 39th Street was paved in the fall of 1975 with 27' wide paving in a 40' wide right-of-way. Standards have changed over the years including sidewalk requirements for subdivision. Today platting two lots requires the additional dedication of 10' of right-of-way and the installation of sidewalks that abut the adjoining property.

3. Lots 1 and 2 Snell Addition were created in 2007 when the property owner re-platted his existing lots. With the new plat the subdivider was notified in the Director's Letter dated August 7, 2007 that they would be required to complete the sidewalks along the west side of S. 39th Street as shown on the final plat or post a surety in the amount of $750.00 to guarantee the completion of the sidewalks. The Subdivision Ordinance requires that the sidewalks be completed within 4 years following the approval of the final plat. The subdivider posted the surety and the plat was approved. The subdivider is now asking to waive the sidewalk requirement and to have the bond released.

4. Staff does not support the waiver of the required sidewalk on S. 39th Street abutting Lots 1 and 2 Snell Addition.

5. Whenever a lot, tract, or parcel of land is of such unusual size or shape or is surrounded by such development or unusual condition that the strict application of the requirements contained in these regulations would result in actual difficulties or substantial hardship or injustice, the subdivider may request a modification of such requirements. Such request shall be filed with the Planning Director and shall set forth the specific modification requested and all supporting reasons and documentation as to why the modification should be granted, how the public welfare will be preserved, and why the modification will not detract from the intent and spirit of these regulations. The applicant has not shown that the waiver meets any of the above requirements.

6. The subdivider stated in the waiver request that the sidewalk is not necessary or practical. Public Works Staff stated in their comments on the final plat as well as in their comments on this waiver that they would not support a sidewalk waiver at this location because a 4' wide sidewalk can be installed adjacent to the back of the curb. It can not be placed in the standard sidewalk location because of a change of grade and an existing retaining wall.

7. Lots 6,7, and 8 Jenkin's Addition, on the east side of S. 39th Street north of Snell Addition, containing a duplex, has installed sidewalks. There are two other vacant properties on S. 39th Street which will require the installation of sidewalks if they are further subdivided. One of those properties is north of and adjacent to the Snell Addition.
8. There is no reason to waive sidewalks on S. 39th Street. The Comprehensive Plan states that sidewalks should be provided and that they are a key factor in providing access and mobility to provide alternatives and reduce dependence upon the automobile. Sidewalks also promote safety, walking and healthy lifestyles. Sidewalks are required on Cul-de-sacs and dead end streets because they are important for pedestrians. The Subdivision Ordinance promotes and preserves the qualities for a livable environment that the Comprehensive Plan clearly identifies. The Subdivision Ordinance provides for the harmonious development of Lincoln and its environs. It prescribes standards for the laying out of subdivisions in harmony with the comprehensive plan. A waiver to these standards without adequate justification as stated in #5 above would not be in conformance with the Comprehensive Plan or the City of Lincoln Subdivision Ordinance.

Prepared by:

Christy Eichorn
Planner

DATE: December 4, 2008

APPLICANT/CONTACT: Robert T. Snell
3060 Stratford Ave.
Lincoln, NE 68502

WAIVER NO. 08008

PUBLIC HEARING BEFORE PLANNING COMMISSION: December 17, 2008

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

Ex Parte Communications: None

Staff recommendation: Denial.

Staff presentation: **Christy Eichorn of Planning staff** presented the proposal. A year ago today, the Snell Addition final plat was approved, moved the lot lines and created two lots. With any final plat, there are improvements that are required. In this case, one of the requirements was the installation of a sidewalk along South 39th Street or posting of a bond. At that time, Public Works and Planning took a very careful look at the site to determine whether the sidewalk could be constructed. The topography of the area is a little difficult for a sidewalk because of a retaining wall 8' west of the current street. At first the staff thought a sidewalk would not fit. However, upon further examination, it was determined that if the sidewalk were to go against the curb, it could be installed. The applicant was asked to post a bond or construct the sidewalk. The applicant posted a bond for $750.00.

Today, the applicant is requesting a waiver of that sidewalk and return of the $750.00. Today, the staff has determined that it is still possible to install a sidewalk. There is very limited amount of sidewalks on S. 39th Street. It T's off into an alley so it does not make any connection to another street besides Calvert on the south. The Comprehensive Plan talks about connectivity and pedestrian circulation, and we have ADA guidelines to help set precedent for establishing a sidewalk pattern for those who have difficulty driving or need wheelchair accessible paths.

Eichorn added that the Comprehensive Plan, the zoning ordinance and the design standards talk about sidewalks on both sides of all streets, including cul-de-sacs and dead-end streets. In this case a sidewalk can be constructed. Although it will not complete the sidewalk system on this street, it is an incremental way for the city to try to achieve its ultimate goal of connectivity throughout the city. On the east side of S. 39th Street there are three duplexes with sidewalk in front of them. The only way to achieve the goal to have sidewalks on both sides of the street, or at least connectivity, is to use the tool to get those sidewalks, which is through the final plat. The staff sees no reason or justification to waive this sidewalk requirement.

Larson inquired as to what is on the north side where 39th terminates. Eichorn advised that there is an alley running east/west at the north side of South 39th Street. Larson inquired about the sidewalks that are missing on the east side of South 39th Street. Eichorn explained that this is an older area of town and sidewalks were not required when this area was developed. The street was repaved in the late 70's and the requirement for sidewalks did not exist at that time. The builder of the duplexes put the sidewalks in of their own will.

Esseks noted that there is another lot north of this property that could potentially be subdivided in the future. If that happens, they would also be required to install sidewalks. There is a vacant lot on the east side and if it were subdivided, they would be required to install sidewalks.

Taylor clarified that the sidewalk going north would in effect go nowhere. It would serve the people living on S. 39th Street. Is there a connection going south? Eichorn stated that there are sidewalks on Calvert Street and this sidewalk would connect to Calvert Street.

Taylor inquired as to the frequency of pedestrian traffic on that street. Is there any record or concept of pedestrian traffic on that street? Eichorn does not believe this question can be answered. There is no sidewalk now. She does not know if that is a deterrent for pedestrians in this area or not. She also does not know how much traffic goes up and down this street, but there are multiple families living in a close area.

Eichorn pointed out that sidewalks are for everyone in the community and not just for the people abutting the right-of-way. If we are going to look at it city-wide, we have to figure out a way to have a sidewalk for everyone. We are charged with the overall plan of connectivity.

Taylor stated that he is in favor of sidewalks, but he is not sure who will use this sidewalk.

Proponents

1. Bob Snell, 3060 Stratford Avenue, formerly residing at 3880 Calvert Street, the applicant, stated that he is requesting this waiver because Harry Kroos from Public Works inspected the site and stated that in his judgment sidewalks were neither necessary nor practical. South 39th Street is a dead-end street, less than 500 feet in length. He lived there for three years and, from his observation living on the corner for three years, there is no pedestrian traffic on 39th Street. He did subdivide the property, subsequent to purchasing it, cutting a 60' lot off the back. These sidewalks will cost $4600.00.

At the time he subdivided, communication to him and the surveyor was that the requirement for the sidewalk would be on the 60' lot and not on the 185' of the entire property. He paid the $750.00 bond. He was anxious to get the subdivision approved so he could sell the lot to make the property affordable. He believed that the requirement was for 60' of sidewalk in front of the subdivided lot. When it came time to close on the property, the city had indicated that there were no encumbrances or contingent liabilities for that property. Then the people who purchased the property were told that the sidewalk would be necessary on the entire 185'. This is the first time Snell knew there was a requirement for 185' of sidewalk versus 60' of sidewalk.

The property immediately to the north is the back yard of a house that fronts upon a street one block to the east. So this sidewalk would go from Calvert Street to someone's back yard. The rest of the north side of 39th Street is fully developed and there are no sidewalks. This would be a $4600.00 sidewalk that would go nowhere and serve no one.

The lot on the east side of 39th Street is already planned to be developed with additional duplexes. Those sidewalks do not connect to Calvert.

There was no testimony in opposition.

Staff questions

Partington stated that he would normally consider this a simple question such as upholding an agreement that was made in the beginning. However, it appears that the applicant was advised by the city that the sidewalks are not necessary or practical and that is a concern to him. Eichorn clarified that there are written comments from Public Works during the final plat process that indicate the sidewalk can and should be constructed. There may have been some miscommunication. After the applicant applied for this waiver, Public Works also provided written comments that the sidewalk is needed.

Dennis Bartels of Public Works believes that the sidewalk inspector did inspect it. There is 60' of dedicated right-of-way. If the sidewalk is installed 3' from the property line with the retaining wall also being in that 60' of right-of-way, Public Works did have a concern at that time about curb sidewalks due to snow removal. When the waiver was submitted, Public Works revisited the site and determined that it would be better to have a curb sidewalk as opposed to no sidewalk. Sidewalks are routinely required on cul-de-sacs that are dead-end streets. The City Council could order the rest of the sidewalks constructed. It is assumed that a curb sidewalk could be built north to get transition past the retaining wall.

It was confirmed that the final plat includes the sidewalk as a required improvement.

Esseks inquired whether the bond specifies how the money is to be used. Bartels stated that at that time, the cost to construct the sidewalk was estimated to be $3000.00. The applicant is required to post 25%, which was the $750.00.

Francis sought to confirm that at the time the bond was set, it was for the entire 185'. Eichorn stated that it was for both lots.

Response by the Applicant

Snell stated that the $3000.00 estimate was never shared with him. The way the bond was computed was not shared with him. It was just presented to him to post a $750.00 bond. As far as he knew it was a bond for a sidewalk.

Snell also advised that there is a picket fence along what was the north boundary of the subdivided property. He put the picket fence there to divide the two lots. He wanted to continue the picket fence to replace the 4' high unattractive ugly fence with rusty metal stakes and chicken wire. He wanted to replace that with the picket fence in complete conformity with all requirements. At the time he wanted to do that he had someone from Public Works come out and look at it because he had to dedicate 10' to the city for the 60' of right-of-way. He was asking to replace the unattractive fence on the now city property. He was told he never should have had to give up the 10' considering how 39th Street has developed and that it will never be lengthened. He was also told he should not have had to put up a bond for the sidewalk.

ACTION BY PLANNING COMMISSION: December 17, 2008

Sunderman moved to deny, seconded by Esseks.

Francis stated that she has mixed feelings. When a person subdivides, there are some guidelines about sidewalks, etc., and it is the owner's responsibility to find out the facts and not just take one department's word for it and seek more information. On the other hand, it appears to be a waste of concrete and money to put in a sidewalk to nowhere. It is not going to join another sidewalk continuing on that street.

Esseks sees one lot newly created by the applicant that fronts on South 39th Street. He sees three duplexes that front on South 39th Street. The applicant mentioned that there is another parcel on the east side that also fronts on South 39th Street. So, we're looking at at least 7 homes and he thinks there should be sidewalks on both sides. If we approve this waiver, there is never gong to be a opportunity for a sidewalk going down the west side of the street. He does not see how to maintain the policy of connectivity if this exception is granted.

Larson inquired whether the waiver of the sidewalk at this time is irrevocable. Carroll suggested that if this waiver is granted, the owner would not be required to put in the sidewalk. Marvin Krout, Director of Planning, suggested that it might be overstating to say "irrevocable" because the City Council does have the authority to order in sidewalks in certain locations where they think necessary. If the Planning Commissioner were to recommend granting the waiver, it means that the sidewalks would not be required to be built through the subdivision process.

Taylor indicated that he definitely understands that we need the connectivity. But here he sees a sidewalk that really leads to nowhere. He does not think we will accomplish any good end by completing a sidewalk to nowhere.

Esseks suggested that we certainly want the residents to be able to walk around. Calvert is a major street. He does not see it as a sidewalk leading to nowhere.

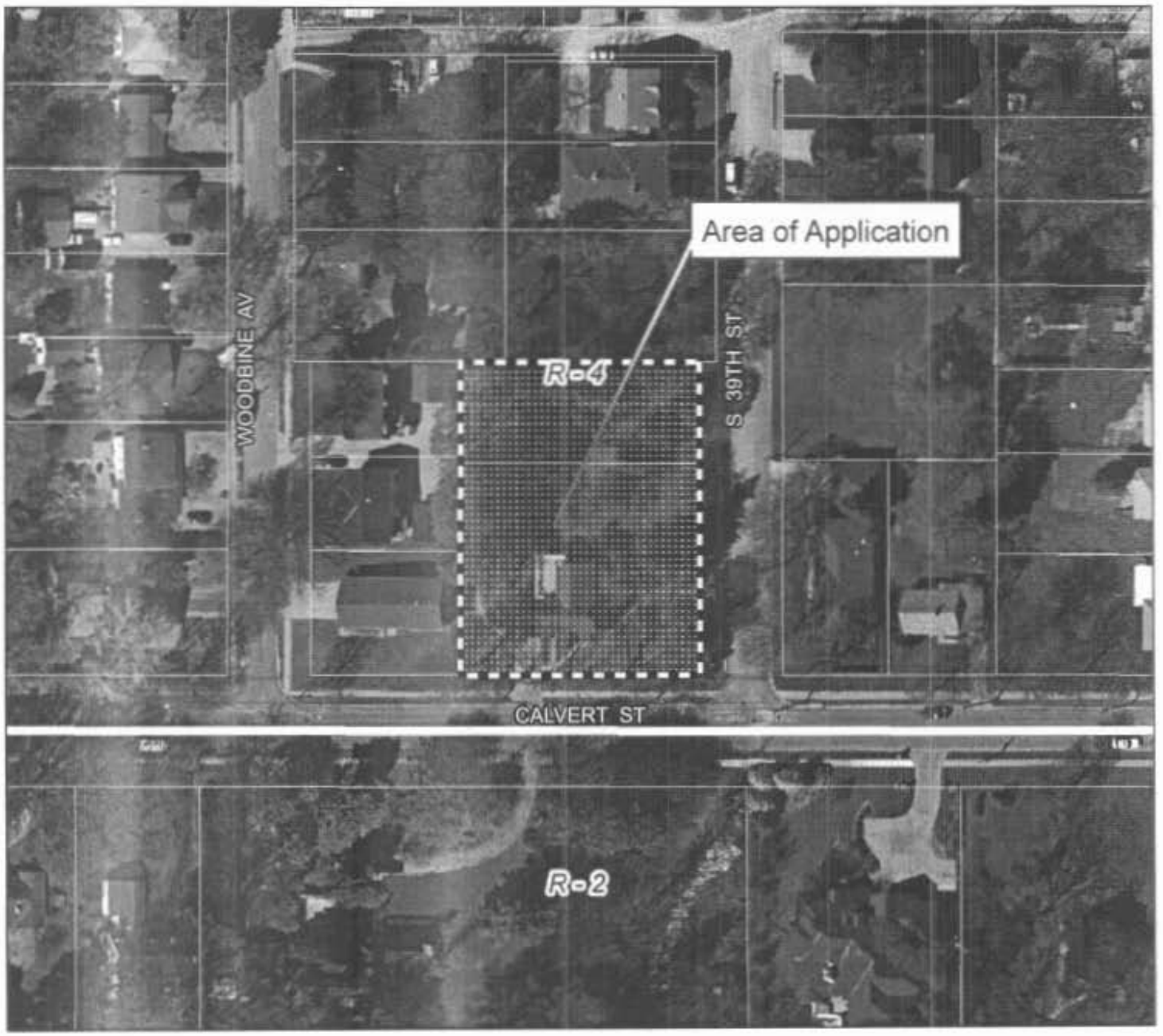
Gaylor Baird suggested that it heads out to a very major road with sidewalks to other sidewalks. She is sorry the applicant has had such a frustrating experience working with the city. $4600.00 is a sizable sum, but one aspect of sidewalks is pedestrian safety for pedestrians and children who ride their bikes and are outside. $4600.00 becomes a relatively nominal figure compared to the price of an injury or accident to a child or adult.

Partington questions the safety of a sidewalk that runs all the way to the curb if you have children riding bicycles. Gaylor Baird stated that she would rather have them on the sidewalk than the street. It is still a safer spot.

Carroll observed that, as the staff has said, the subdivision agreement states that the sidewalk must be installed the whole length of the two lots. Whenever you sign a bond for a sidewalk it explains clearly what you are signing, percentage of the bond and what it is for and it would list

the length of the sidewalk. He believes that the documents are in place to show that the sidewalk was to be built. He believes in the connectivity for safety reasons. We need to have people on the sidewalk and not in the street. It is important to have these sidewalks.

Motion to deny carried 8-0: Gaylor Baird, Francis, Partington, Larson, Esseks, Taylor, Sunderman and Carroll voting 'yes'; Cornelius absent. This is a recommendation to the City Council.



2007 aerial

Waiver #08008
S 39th St & Calvert St

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential 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

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One Square Mile
Sec. 06 T09N R07E

N

Zoning Jurisdiction Lines

City Limit Jurisdiction

Review Comments for Application #: WVR08008

SIDEWALK WAIVER [illegible] ST

Status of Review: Complete

Reviewed By: Building & Safety — Terry Kathe

Comments:

Status of Review: Approved — 11/25/2008 2:20:54 PM

Reviewed By: Health Department — ANY

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

□□ TO:□Christy Eichorn□□□DATE:□□November 25, 2008

DEPARTMENT:□Planning□□□FROM:□□Chris Schroeder
□□□□□□ □□□□
□ATTENTION:□□□□ □DEPARTMENT:□Health

CARBONS TO:□EH File□□□SUBJECT:□□Sidewalk Waiver
□□□EH Administration□□□□WVR #08008□
□□□□□□□□□

The Lincoln-Lancaster County Health Department has reviewed the waiver application and does not object to waiving the sidewalk requirement because these properties are located in an established development.

Status of Review: Active

Reviewed By: Law Department — ANY

Comments:

Status of Review: Active

Reviewed By: Planning Department — CHRISTY EICHORN

Comments:

Status of Review: Routed

Reviewed By: Planning Department — COUNTER

Comments:

011

Status of Review: Complete 11/24/2008 2:57:35 PM

Reviewed By: Public Works - Development Services SIETDQ

Comments: Memorandum□□
□

To:□Christy Eichorn, Planning Department
From:□Charles W. Baker, Public Works and Utilities
Subject:□Snell Addition Sidewalk Waiver #08008
Date:□November 24, 2008
cc:□Randy Hoskins
□
The City Engineer's Office of the Department of Public Works and Utilities has reviewed the Snell Addition Sidewalk Waiver #08008. Public Works has the following comments:

•□After further review of the site, Public Works cannot support the requested waiver of the sidewalk along the west side of 39th Street north of Calvert.

•□A 4' wide sidewalk can be installed adjacent to the back of the curb and allow a 3' to 5' area behind the back of the sidewalk to the top of the retaining wall that was installed on the old 20' property line. The property line is now 30' from the center of the street that was established with the new platting of Lots 1 and 2 to meet subdivision requirements.

•□39th Street was paved in the fall of 1975 with 27' wide paving in a 40' wide right-of-way. Standards have changed over the years and as with the sidewalk requirements for this subdivision, creating the two lots which now required the additional dedication of 10' of right-of-way and the installation of sidewalks that abut the adjoining property.

•□Lots 6,7, and 8 on the east side of 39th Street at the north end for the duplex development have installed their sidewalks, and as the Critchfield Properties in the middle of the block develop, they will be required to install sidewalks.

012

Robert T. Snell

3060 Stratford Avenue
Lincoln, NE 68502
402.328.9386
bobsnell3880@yahoo.com

November 19, 2008

Ms. Christy Eichorn
City Planning Department
City-County Building
555 South 10th Street
Lincoln, NE 68508

RE: Request for waiver of Public Sidewalk Requirement on South 39th Street, along the side of 3880 Calvert Street and fronting 3505 South 39th Street, properties legally described as Lots 1 & 2, Snell Addition.

Dear Ms. Eichorn:

Enclosed is a completed application for the above reference request, a copy of my original letter regarding this matter, and my check in the amount of $150.00 for the Application Fee.

I look forward to hearing from you regarding any appearance I need to make in support of this request. Please let me know if there is anything else you require.

Thank you for your help.

Sincerely,

Robert T. Snell

RECEIVED
NOV 19 2008
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

013

OCT 28 2008

October 17, 2008

Mr. Marvin Krout, Director
Lincoln-Lancaster County Planning Department
City-County Building
555 South 10th Street
Lincoln, NE 68508

RE: 3880 Calvert Street, and 3505 South 39th Street, Lots 1 & 2, Snell Addition, LLCN
Request to waive sidewalk requirements

Dear Mr. Krout:

We were the owners of the property referenced above which has recently sold to new owners as of October 15, 2008.

We were advised by the City Sidewalk engineer that after inspection, the sidewalks are not necessary nor practical, and to request a waiver of the sidewalk requirements on these two lots.

We are requesting the sidewalk requirements be waived as soon as possible and our $750.00 performance bond be refunded as well. Please let us know what we can do to facilitate this waiver process. Thank you very much for your consideration.

Sincerely,

Robert & Jo Anne Snell
3060 Stratford Avenue
Lincoln, NE 68502
402/328-9386

CC: Harry Kroos, City of Lincoln Public Works Department

West side of S. 39th Street looking south.

West side of S. 39th Street

Existing sidewalk on the north east side of S. 39th Street