

ORDINANCE NO. _____

1 AN ORDINANCE amending Section 26.31.010 of the Lincoln Municipal Code
2 relating to modification of requirements to grant the Planning Director authority to extend the time
3 for installation of required subdivision improvements and to provide a procedure for appeals of such
4 approvals by the Planning Director; and repealing Section 26.31.010 of the Lincoln Municipal Code
5 as hitherto existing.

6 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7 Section 1. That Section 26.31.010 of the Lincoln Municipal Code be amended to
8 read as follows:

9 **26.31.010 Modification of Requirements.**

10 Whenever a lot, tract, or parcel of land is of such unusual size or shape or is surrounded by
11 such development or unusual condition that the strict application of the requirements contained in
12 these regulations would result in actual difficulties or substantial hardship or injustice, the
13 subdivider may request a modification of such requirements. Such request shall be filed with the
14 Planning Director and shall set forth the specific modification requested and all supporting reasons
15 and documentation as to why the modification should be granted, how the public welfare will be
16 preserved, and why the modification will not detract from the intent and spirit of these regulations.
17 The Director shall distribute copies of the requested modification and the subdivider's statement and
18 accompanying data to other City departments and governmental agencies who are directly concerned
19 with the proposed modification. Each department or governmental agency which is directly
20 concerned with the proposed modification shall, within fifteen days from receipt of a copy of the
21 requested modification, file with the Planning Director notice of its approval of the requested
22 modification or a report stating why the modification should not be granted. Within thirty days from
23 the filing of the request for modification, the Planning Director shall notify the subdivider in writing
24 of the recommended approval or disapproval of the request. The request for modification will then
25 be scheduled on the Planning Commission agenda for public hearing and action as provided below.

26 (a) (1) The Planning Commission, after holding at least one public hearing on the requested
27 modification, may, upon a finding that a lot, tract, or parcel of land is of such unusual size or shape
28 or is surrounded by such development or unusual condition that the strict application of the
29 requirements contained in these regulations would result in actual difficulties or substantial hardship
30 or injustice, vary or modify such requirements so that the subdivider may develop the land in a
31 reasonable manner, but so that at the same time, the public welfare and interests of the city and
32 surrounding area are protected and the general intent and spirit of these regulations are preserved.

1 (2) Any aggrieved person or council member may appeal any action of the Planning
2 Commission to the City Council by filing a notice of appeal with the City Clerk within fourteen days
3 following the action of the Planning Commission. Upon receipt of the appeal by the City Council,
4 the Council shall hold a public hearing thereon within thirty days from the date of appeal. Notice
5 of the public hearing shall be given as provided in Section 26.11.036. In exercising its appellate
6 jurisdiction, the action appealed from shall be deemed advisory and the City Council may, after
7 public hearing in conformity with the provisions of this title, make such decision as ought to be
8 made.

9 (3) The minimum improvements set forth in Chapter 26.27 shall be required unless
10 specifically and individually waived by the Planning Commission or City Council as provided
11 above.

12 Notwithstanding any provision to the contrary, the Planning Director may grant an extension
13 of time to install improvements as provided below:

14 Any request for an extension of time to install improvements (Extension of Time) as
15 required in Title 26 shall be filed by the subdivider with the Planning Director. Such request shall
16 set forth the specific improvement and length of time requested and all supporting reasons and
17 documentation as to why the Extension of Time should be granted, how the public welfare will be
18 preserved, and why the Extension of Time will not detract from the intent and spirit of the Land
19 Subdivision Ordinance. The Planning Director shall distribute a copy of the requested Extension of
20 Time and the applicant's statement and accompanying data to other City departments who are
21 designated as primarily responsible for the improvement for which the Extension of Time is sought.
22 Such department shall, within fifteen days from receipt of a copy of the requested Extension of
23 Time, file with the Planning Director notice of its director's recommended approval of the requested
24 Extension of Time or a report stating why the Extension of Time should not be granted. Within
25 thirty days from the filing of the request for the Extension of Time, the Planning Director shall
26 approve or deny the request and shall notify the subdivider in writing of the approval or denial of

1 the request. If the Planning Director approves the request, the Extension of Time shall not exceed
2 two years. The duration of the Extension of Time shall begin on the approval date. Prior to
3 approval of the Extension of Time, the appropriate City department shall estimate the current cost
4 to complete the improvement and the subdivider shall provide a new bond, escrow or security
5 agreement in accordance with the requirements of Section 26.11.039(g) to guarantee the installation
6 of the required improvement.

7 The Planning Director's approval shall be posted on the Planning Department's webpage.
8 The Planning Director shall further submit a weekly report to the City Clerk of Extensions of Time
9 approved by the Planning Director to be placed on the City Council agenda under Report of City
10 Officers.

11 Any council member or aggrieved person may appeal any approval or denial of an Extension
12 of Time by the Planning Director to the Planning Commission by filing a notice of appeal within
13 fourteen days following the date the action being appealed was approved by the Planning Director.

14 Any aggrieved person or any person or group officially designated to participate in the
15 administration of this title or any council member may appeal any action of the Planning
16 Commission approving or denying an Extension of Time renewal for any defect, error or irregularity
17 on the Planning Director to cause notice to be given as required in subsection (c) of Section
18 26.11.036 to the City Council by filing a notice of appeal with the City Clerk within fourteen days
19 following the action of the Planning Commission.

20 Upon receipt of an appeal as provided above, the Planning Commission or City Council, as
21 appropriate, shall hold a public hearing thereon within thirty days from the date of the appeal.
22 Notice of public hearing shall be given as provided in Section 26.11.036. No decision of the
23 Planning Commission or City Council shall be void or invalidated or affected in any way for any

1 irregularity, defect, error, or failure on the part of the Planning Director to cause notice to be given
2 to each owner of record.

3 In exercising its appellate jurisdiction, the action appealed from shall be deemed advisory
4 and the Planning Commission or City Council, as appropriate, shall take final action on the
5 application.

6 Section 2. That Section 26.31.010 of the Lincoln Municipal Code as hitherto existing
7 be and the same is hereby repealed.

8 Section 3. That this ordinance shall take effect and be in force from and after its passage
9 and publication in one issue of a daily or weekly newspaper of general circulation in the City
10 according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2009: _____ Mayor
