

City Council Introduction: **Monday**, May 14, 2012  
Public Hearing: **Monday**, May 21, 2012, at **5:30** p.m.

Bill No. 12-49

## **FACTSHEET**

**TITLE:** **CHANGE OF ZONE NO. 12006**, from O-2 Suburban Office District to B-1 Local Business District, requested by Enterprise Company, Inc., on property generally located at North 35<sup>th</sup> Street and "O" Street.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 05/02/12  
Administrative Action: 05/02/12

**STAFF RECOMMENDATION:** Approval, subject to conditional zoning agreement.

**RECOMMENDATION:** Approval, subject to a conditional zoning agreement (7-0: Lust, Sunderman, Francis, Hove, Butcher, Esseks and Gaylor Baird voting 'yes'; Weber and Cornelius absent).

**ASSOCIATED REQUESTS:** Conditional Zoning Agreement (12R-96)

### **FINDINGS OF FACT:**

1. This is a request to change the zoning of the former post office at North 35<sup>th</sup> Street and "O" Street from O-2 Suburban Office District to B-1 Local Business District.
2. The staff recommendation of approval, subject to a conditional zoning agreement, is based upon the "Analysis" as set forth on p.3, concluding that the proposed change of zone would enable an existing building to be used for retail and other uses allowed in the B-1 district, except those more intensive commercial uses prohibited by the proposed zoning agreement (See Analysis #4, page 3). The new uses allowed should have minimal impact on the surrounding neighborhood and Wyuka Cemetery.
3. On May 2, 2012, this application appeared on the Consent Agenda of the Planning Commission and was opened for public hearing. No one came forward to speak.
4. On May 2, 2012, the Planning Commission agreed with the staff recommendation and voted 7-0 to recommend approval, subject to a conditional zoning agreement with the terms and provisions as set forth in the staff report on p.4 (Cornelius and Weber absent).

**FACTSHEET PREPARED BY:** Jean L. Preister

**DATE:** May 7, 2012

**REVIEWED BY:** \_\_\_\_\_

**DATE:** May 7, 2012

**REFERENCE NUMBER:** FS\CC\2011\CZ12006+

**LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**

**for MAY 2, 2012 PLANNING COMMISSION MEETING**

- PROJECT #:** Change of Zone No.12006
- PROPOSAL:** From O-2, Suburban Office District to B-1, Local Business District
- LOCATION:** N. 35<sup>th</sup> St. and "O" St.
- LAND AREA:** 49,438 sq. ft., more or less
- EXISTING ZONING:** O-2, Suburban Office District
- CONCLUSION:** The proposed change of zone would enable an existing building to be used for retail and other uses allowed in the B-1 District, except those more intensive commercial uses prohibited by the zoning agreement. The new uses allowed should have minimal impact on the surrounding neighborhood and Wyuka Cemetery.

<b>RECOMMENDATION:</b>	Conditional approval
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**GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** The west 15' of Lot 3; Lots 4-9, except the southwest corner of Lot 9 taken for a street; the west 15' of Lot 10; and all of the vacated east-west alley adjacent thereto, Block 19, Ridgeway and that portion of vacated P Street zoned O-2 abutting Lot 4-6 and the west 15' of Lot 3, Block 19, Ridgeway; located in the SE 1/4 of Section 19-10-7, Lancaster County, Nebraska.

**EXISTING LAND USE:** Vacant building

**SURROUNDING LAND USE AND ZONING:**

North:	P, Public	Parking lot (owned by Wyuka)
South:	O-2, Suburban Office District	Residential and office
East:	P, Public	Wyuka cemetery
West:	O-2, Suburban Office District	Offices
	R-4, residential	Single-family and two-family dwellings

**HISTORY:**

The property changed from F-Restricted Commercial District to P-Public in the 1979 zoning update.

**COMPREHENSIVE PLAN SPECIFICATIONS:**

Seek to efficiently utilize investments in existing and future public infrastructure to advance economic development opportunities. (p. 5.2)

Develop infill commercial areas to be compatible with the character of the area. (p. 5.14)

Maintain and encourage businesses that conveniently serve nearby residents, while ensuring compatibility with adjacent neighborhoods. (p. 5.14)

Detailed Strategies for Commercial Infill; "Maintain or adaptively reuse existing structures." (p.5.15)

The 2040 Lincoln Area Future Land Use Plan identifies this area as commercial. (p.12.3)

**TRAFFIC ANALYSIS:**

"O" St. is a principal arterial in the Existing Functional Classification map in the 2040 Comprehensive Plan.

**ANALYSIS:**

1. This application is for a change of zone from O-2 to B-1 for the former post office at N. 35<sup>th</sup> St. and "O" St.
2. Since the building was built in 1967 it has always been used as a post office. Currently the building could be office use, but only very limited retail. Retail in O-2 includes barber shops, tailor shops, shoe repair shops, photocopying shops or other similar businesses. According to the applicant's letter they have had no success in selling or leasing the building as office.
3. The applicant's letter states that they had a meeting with the Board of Trustees for Wyuka on February 6, 2012 and held a neighborhood meeting on March 2, 2012.
4. To help lessen traffic, protect the neighborhood and Wyuka Cemetery the applicant has agreed to limiting uses through a zoning agreement. The zoning agreement prohibits the following uses; service stations, restaurants, ambulance services, and automobile wash facility, motels and hotels, social hall, drive-up ATM, banks with drive thru and sale of alcoholic beverages. The zoning agreement is attached to this report.
5. With this property abutting Wyuka Cemetery it is important to protect the cemetery through limiting more intensive uses allowed in the B-1. Wyuka Cemetery was listed on the National Register of Historic Places in 1982. This cemetery was intended to serve not only as a burial ground, but also as a park-like open space, a source of civic pride and an open-air archive of community history.
6. The O-2 and B-1 to the west of this property are one-half block deep from "O" Street. The application area is a full block deep and thus has more impact into the neighborhood. Traffic to access this site will enter off of N. 35<sup>th</sup> St. at "P" St. This will have a greater impact on the residential properties than those businesses that front "O" St. The limiting of the more intensive commercial uses is designed to help alleviate impacts to the neighborhood.
7. Signs would be restricted to what is allowed in the O-2 District. The O-2 District has more limited size and height standards, and does not allow off-premise signs (billboards), electronic changeable copy signs, mobile signs or center signs.
8. This change of zone would allow the reuse of an existing building for more than just office.

**CONDITIONS OF APPROVAL:**

**Site Specific Conditions:**

1. The Developer signs an annexation and/or zoning agreement before the City Council approves the change of zone. (The zoning agreement includes uses prohibited as defined in the staff report)
2. Revise the street tree plan with all required revisions as listed below. The street tree plan shall be attached to the zoning agreement.
  - 2.1 Remove the 2 eastern street trees along "O" St. due to topography.
  - 2.2 Remove the street tree along N. 35<sup>th</sup> St. located north of the southern most driveway due to existing tree.
  - 2.3 Identify the existing pine trees along N. 35<sup>th</sup> St. by the parking lot and add a note stating if the pine trees are removed they shall be replaced with 2 new street trees.
  - 2.4 Show all new street trees between the sidewalk and curb in line with the existing street trees.

Prepared by:

Tom Cajka  
Planner

**DATE:** April 16, 2012

**APPLICANT:** Enterprise Company, Inc.  
1240 "O" St.  
Suite 550  
Lincoln, NE 68508  
402-441-5800

**OWNER:** Enterprise Company, Inc.  
1240 "O" St.  
Suite 550  
Lincoln, NE 68508  
402-441-5800

**CONTACT:** Larry Albers  
6710 "L" St.  
Lincoln, NE 68510  
402-438-4421

# CHANGE OF ZONE NO. 12006

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

May 2, 2012

Members present: Gaylor Baird, Butcher, Esseks, Francis, Hove, Lust and Sunderman; Cornelius and Weber absent.

The Consent Agenda consisted of the following items: ***CHANGE OF ZONE NO. 12006, CHANGE OF ZONE NO. 12007, SPECIAL PERMIT NO. 12011, SPECIAL PERMIT NO. 12012, PRE-EXISTING SPECIAL PERMIT NO. 28C and STREET AND ALLEY VACATION NO. 12003.***

Ex Parte Communications: None

**Item No. 1.4, Special Permit No. 12012**, was removed from the Consent Agenda and scheduled for separate public hearing.

Lust moved approval of the remaining Consent Agenda, seconded by Esseks and carried 7-0: Gaylor Baird, Butcher, Esseks, Francis, Hove, Lust and Sunderman voting 'yes'; Cornelius and Weber absent.

Note: This is final action on Special Permit No. 12011 and Pre-Existing Special Permit No. 28C 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.



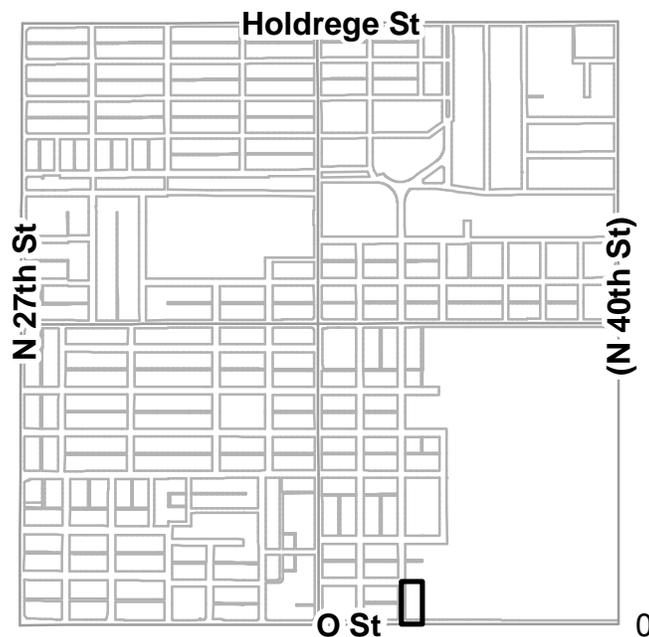
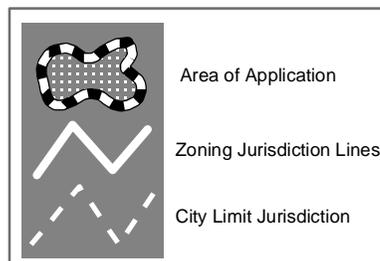
2010 aerial

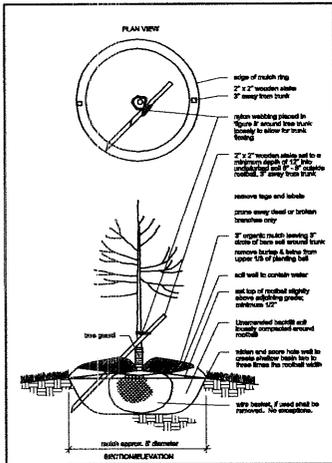
**Change of Zone #12006  
O-2 to B-1  
N 35th & O St**

**Zoning:**

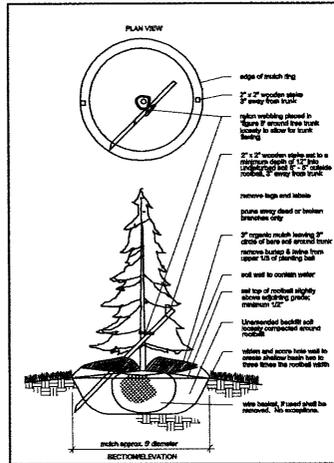
- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial 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

One Square Mile  
Sec. 19 T10N R07E



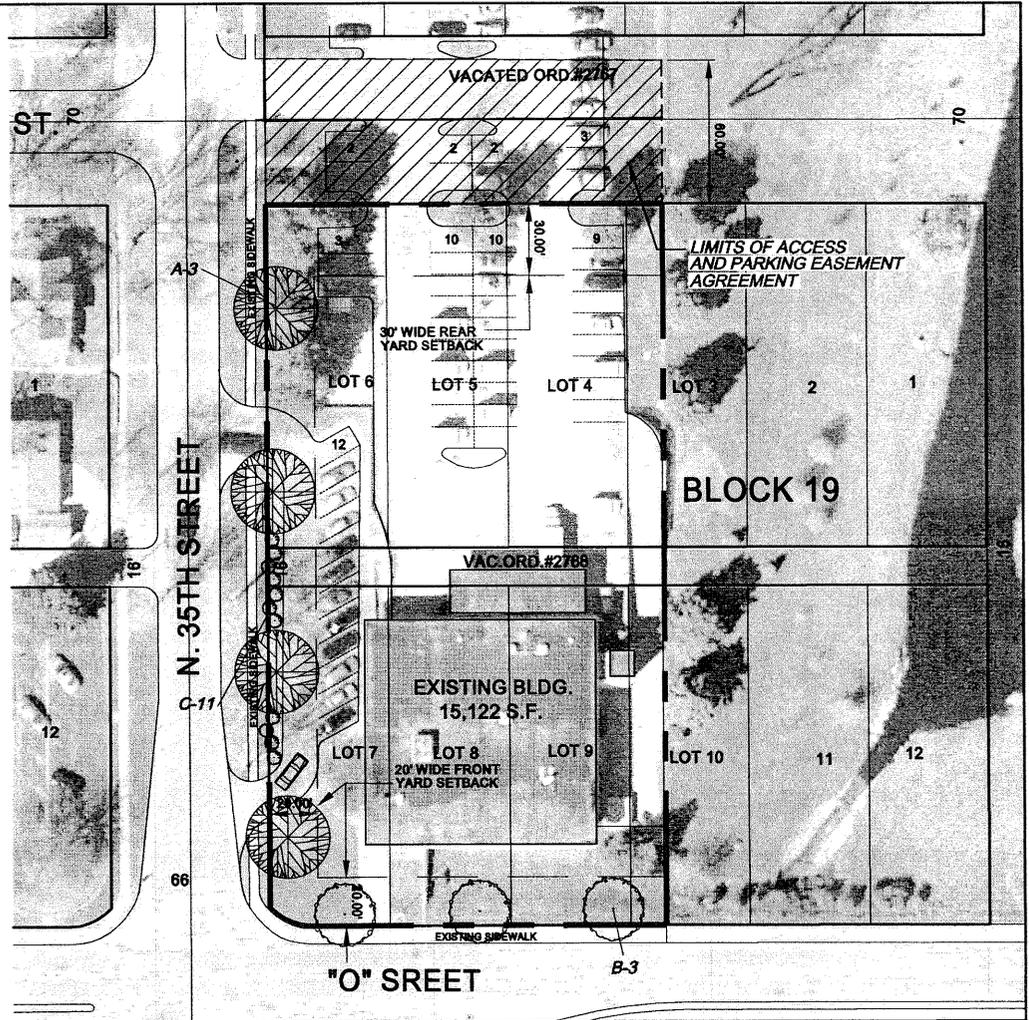


1 DECIDUOUS TREE PLANTING DETAIL FOR STREET TREES  
Not to scale



2 EVERGREEN TREE PLANTING DETAIL  
Not to scale

N  
SCALE: 1"=50'



LANDSCAPE SCHEDULE

KEY	LOCATION	COMMON NAME	BOTANICAL NAME	SIZE @ PLANTING	PLANTING METHOD	DESIGN SPRD.	DESIGN HT.	PROPOSED QUANTITY		ARTERIAL	
								LANDSCAPE	STREET	IMPROVED	UNIMPROVED
A	N. 35TH STREET	AUTUMN BLAZE MAPLE	ACER RUBRUM "AUTUMN BLAZE"	1 1/2" cal	B&B	35'	45'		4		
B	O STREET	REDMOND LINDEN	TILIA EUCLORA "REDMOND"	1 1/2" cal	B&B	25'	40'		3	X	
C	PARKING LOT	EUONYMUS, WINGED (BURNING BUSH)	EUONYMUS ALATA	2' - 3'	B&B	6'	10'	11			

drawn by: jds  
checked by: -  
project no.: 2012-0006  
date: 04/03/2012

COZ - SITE EXHIBIT  
110 N. 35TH STREET  
LINCOLN, NEBRASKA

Civil Design Group, Inc.  
8636 EXECUTIVE WOODS DR., SUITE 200  
LINCOLN, NEBRASKA 68612  
PH: 402-438-8484 FAX: 402-215-8747  
www.cdmg.com

EXHIBIT  
1

**Larry V. Albers**  
*Attorney*

April 4, 2012

Tom Cajka, Planner  
City of Lincoln  
Planning Department  
555 South 10th, Room 213  
Lincoln, NE 68508

RE: Zoning Application

Dear Tom:

With this letter, I enclose the following on behalf of the Applicant, Enterprise Company, Inc.:

1. Zoning Application for the property located at 110 N 35<sup>th</sup> Street, Lincoln, NE.
2. Check in the amount of \$890.00 (Application Fee).

Mike Eckert is submitting the Site Plan electronically using ePlan.

**Purpose of Application.** The purpose of the Application is to change the zoning for the property at 110 N 35<sup>th</sup> Street from O-2 to B-1, subject to agreed upon Restrictions. The legal description for the property appears below.

Since the late 1960s when the property and the existing Building was built, the property has continually been occupied by the U.S. Post Office as its Station A. The Lease by the U.S. Postal Service terminated in February of this year. Rather than extend the Lease, the U.S. Postal Service elected to vacate the property.

The property is managed by NAI FMA Realty. Since the Fall of last year, NAI FMA Realty has advertised the property for either lease or sale. The only interest shown has been by prospects wanting to use the property for a light retail purpose. No interest was shown for an office use within the authority of the O-2 classification. In early March, Enterprise Company, Inc. entered into a purchase agreement with a Buyer intending to use the property for a light retail use. The closing for the sale of the property is anticipated shortly after final approval of the enclosed Application.

**Neighborhood Review.** To gather responses to what retail uses should be restricted under a B-1 zone for the property, the Applicant met with the Board of Trustees for Wyuka Cemetery and held a neighborhood meeting following notice to local residents.

The meeting with the Board of Trustees for Wyuka was held on February 6, 2012. Following discussion, the Board of Trustees concurred with the B-1 Restrictions identified

below. The Applicant and the Board of Trustees have also agreed to an Access Easement permitting continued ingress and egress from the existing entrance to the Wyuka property off of 35<sup>th</sup> Street.

The Applicant held a neighborhood meeting in the Building on March 2, 2012 from 4:30 to 6:30 p.m. Notice of the neighborhood meeting was given by NAI FMA Realty through a letter mailed to 193 individuals from a list providing by Planning Department Staff. Nine individuals signed a sign-in sheet, with probably another three to five individuals attending without signing in. Those attending were given a copy of the proposed B-1 Restrictions. While there were questions, Applicant did not receive any requests for additional restrictions.

**B-1 Restrictions.** Applicant proposes the following restrictions be imposed as a condition to the approval of its Application. Those Restrictions identified as the “Urban Development Restrictions” were confirmed as approved by Earnesto Castillo with the Urban Development Department on February 22, 2012.

*B-1 Zoning Code Restrictions:*

1. 27.29.020 Permitted Uses:
  - (j) ~~Service stations;~~
  - (p) ~~Restaurants;~~
  - (v) ~~Ambulance services;~~
  
2. 27.2.030 Permitted Conditional Uses.
  - (a) ~~Automobile wash facility.~~

*Urban Development Restrictions:*

- (1) any outdoor off-premise advertising, specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such Lot for sale or lease by the owner thereof; except nothing contained herein shall (a) prevent or limit the owner, tenant and/or subtenant to advertise the business operating on such Lot or the products or services offered by such business operating on such Lot; or (b) prevent or limit the use of off-premise advertising for the benefit of an adjoining parcel if otherwise approved by the City of Lincoln.
  
- (2) a gas station or convenience store (such as a 7-Eleven, Casey’s, Kwik Shop, or Kadredlos), with or without gasoline pumps;
  
- (3) any business whose predominant operation is the retail sale of alcohol beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the premise);
  
- (4) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises);

(5) any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;

(6) any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any services station, salvage or recycling operations, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit a dry cleaning pickup facility, the sale of household and automotive cleaners and other chemicals (including motor oil) in standard retail containers as are commonly sold by supermarkets, discount stores, and/or drugstores, ~~or~~ the use of household cleaners and chemicals to maintain the Lot, additional chemicals to perform on-site photo-processing, or any other similar uses or sales in strict compliance with all applicable laws;

7) any business involving gambling or wagering even if otherwise permitted by law, including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutuel wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;

8) any business whose predominant operation is warehousing or storage of goods, materials or merchandise; and

9) any business involving a residential use, sale or display of weapons, self-service laundry, industrial manufacturing, cell tower, radio telecommunication or other communication tower, illegal activities, or sale of any illegal goods or products. The foregoing restriction shall not prohibit the installation and operation of satellite dishes and related equipment used in connection with the permitted use of the Lot.

**Legal Description.** The most current legal description for the property follows:

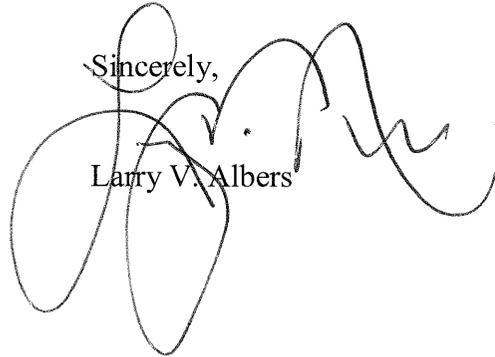
The W 15' of Lot 3, and Lots 4 through 9, except for the Southwest corner of Lot 9 taken for a Street, and the West 15' of Lot 10, and all of the vacated East-West Alley adjacent thereto, in Block 19, Ridgeway, City of Lincoln, Lancaster County, Nebraska. [Lancaster County Parcel No: 17-19-418-001-000]

If there are questions relative to the Site Plan, please contact Mike Eckert at 402.434.9494 or by email at: [meckert@civildg.com](mailto:meckert@civildg.com). Please direct any other questions or comments to me.

Thank you.

Sincerely,

Larry V. Albers

A handwritten signature in black ink, consisting of several large, overlapping loops and a trailing flourish on the right side.

cc: Mike Eckert  
Drew Stange  
Marc Snow