

City Council Introduction: **Monday**, July 22, 2013
Public Hearing: **Monday**, July 29, 2013, at **5:30** p.m.

Bill No. 13-86

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 13013**, from H-2 Highway Business District to B-3 Commercial District, requested by Armstrong Properties, on property generally located at 366 North 48th Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/10/13
Administrative Action: 07/10/13

STAFF RECOMMENDATION: Approval

RECOMMENDATION: Approval (5-0: Corr, Beecham, Hove, Sunderman and Cornelius voting 'yes'; Lust, Scheer and Weber absent).

FINDINGS OF FACT:

1. This change of zone request from H-2 to B-3 will allow the applicant to meet the off-street parking requirements for a commercial use. The existing H-2 zoning district requires 1 parking stall per 300 sq. ft. of commercial floor area, thus requiring 80 parking stalls for 24,000 sq. ft. of floor area. The proposed B-3 zoning district requires 1 parking stall per 600 sq. ft. of commercial floor area, thus 40 parking stalls for 24,000 sq. ft. of floor area.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3-4, concluding that the proposed change of zone is in conformance with the Comprehensive Plan, which states that existing commercial centers should be reused and alternatives such as reduced or shared parking should be explored. If this change of zone is approved, the existing building will be allowed to be reused for commercial uses while meeting the parking regulations set forth in the Zoning Ordinance. Further, the B-3 zoning is consistent with the 2040 Lincoln Area Future Land Use Plan which shows this area as commercial. The staff presentation is found on p.6-7.
3. The applicant's testimony is found on p.7.
4. There was no testimony in opposition.
5. On July 10, 2013, the Planning Commission agreed with the staff recommendation and voted 5-0 to recommend approval.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: July 15, 2013

REVIEWED BY: Marvin Krout, Director of Planning

DATE: July 15, 2013

REFERENCE NUMBER: FS\CC\2013\CZ13013

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JULY 10, 2013 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 13013
PROPOSAL: From H-2 Highway Business District to B-3 Commercial District
LOCATION: 366 N. 48th Street
LAND AREA: 0.85 acres, more or less
EXISTING ZONING: H-2 Highway Business District

CONCLUSION: The proposed change of zone is in conformance with the Comprehensive Plan. Specifically, the Comprehensive Plan states that existing commercial centers should be reused and alternatives such as reduced or shared parking should be explored. If approved the change of zone will allow the existing building to be reused for commercial uses while meeting the parking regulations set forth in the Zoning Code. Further, the B-3 zone is consistent with the 2040 Lincoln Area Future Land Use Plan which shows this area as commercial.

RECOMMENDATION:	Approval
------------------------	----------

GENERAL INFORMATION:

LEGAL DESCRIPTION:

The north 125' of the west half of Lot 20, J.G. Miller's Subdivision, except the right-of-way adjacent to 48th Street on the west side of Lot 20, except that portion deeded to the City of Lincoln, located in the SE1/4 of Section 20-10-7, Lancaster County, Nebraska that is zoned H-2 Highway Business District to B-3 Commercial District.

EXISTING LAND USE: Commercial

SURROUNDING LAND USE AND ZONING:

North:	Commercial	B-2
South:	Commercial	H-2
East:	Commercial	I-2 (PUD)
West:	Commercial	H-2

HISTORY:

November 1963 The Board of Zoning Appeals approved a waiver of parking requirements to reduce the required off-street parking requirements from 120 parking stalls to 40. The approval required that the property owners reserve undeveloped land to meet the parking requirements of the zoning district, should the use change.

This property was converted from H-1 Highway Business District to H-2 Highway Business District in the 1979 Zoning Update.

COMPREHENSIVE PLAN SPECIFICATIONS:

The 2040 Lincoln Area Future Land Use Plan identifies this area as commercial (p. 1.9).

Focus primarily on retention and expansion of existing businesses; attracting new businesses should also be encouraged (p. 5.1).

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

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).

TRAFFIC ANALYSIS: 48th Street and R Street are classified as minor arterials in the Existing Functional Classification map.

ALTERNATIVE USES: Continue to lease parking spaces on the adjacent property or reduce the floor area of the businesses to meet parking requirements.

ANALYSIS:

1. The applicant is requesting this change of zone from H-2 Highway Business District to B-3 Commercial District in order to meet off-street parking requirements for a commercial use. The property is currently zoned H-2 and is occupied by two retail businesses. The upper level business is a consignment shop and the lower level business is a home improvement store that sells reclaimed building products.
2. The existing H-2 zoning district requires 1 parking space per 300 square feet of commercial floor area. The building area is roughly 24,000 square feet thus requiring 80 parking stalls. The proposed B-3 zoning district requires 1 parking space per 600 square feet of commercial floor area. Given 24,000 square feet of floor area, 40 parking stalls would be required.
3. The Board of Zoning Appeals approved a reduction of parking requirements in 1963 for Armstrong Furniture from 120 spaces to 40 spaces. The approval also required Armstrong Furniture to maintain undeveloped land in reserve so when the use changed additional parking could be accommodated. The undeveloped land for future parking spaces is no longer available.

The Board of Zoning Appeals approved the reduction specific to the operation of a furniture store. Since Armstrong Furniture is no longer in operation and the existing uses are not furniture stores, the Board of Zoning Appeals action does not apply.

4. After Armstrong Furniture closed a business opened in the basement level of the building. Given the upper level was vacant the business was able to meet the parking requirements on site. Shortly thereafter a seasonal Halloween store signed a lease for the upstairs space but could not meet parking requirements. In order to meet the parking requirements, a temporary parking agreement was developed which allowed the seasonal Halloween store to use 26 parking spaces on the lot located immediately to the south. The parking lease was temporary and expired in November 2012. The property owner is now seeking a permanent solution to the parking issue.
5. The closest residential property is located approximately two blocks east at the Lions Gate Apartments. It does not appear that this change of zone would have a significantly negative impact on the residential property by causing spillover parking onto residential streets.
6. reForm: Zoning reForms for a New Chapter of City Building, currently underway by the Planning Department, is a package of proposed code revisions to realign standards and processes to be more consistent with the vision described in the Comprehensive Plan. reForm proposes amendments to current zoning and design standards to encourage more infill and redevelopment and more attractive, pedestrian-oriented commercial developments.

The future reForm effort designates N. 48th Street as a Corridor. The draft reForm document defines Corridors as linear commercial and mixed-use areas adjoining neighborhoods and along arterial streets, and are predominantly found in older parts of the City. The draft reForm document recommends the Corridor designation be extended along N. 48th Street from East Campus to M Street and that the proposed B-3 zoning district is appropriate for Corridors.

Additional B-3 zoned properties are located near the subject site and can be found at 5010 O Street (Hy-Vee) and 4811 O Street (Wal-Greens). reForm also designates this portion of O Street as a Corridor and recommends maintaining the existing B-3 zoning at these locations. The attached map shows the B-3 and H-2 zoning in each direction from the intersection of 48th and O Streets.

7. The B-3 zoning district is the designation for 338 acres across the City and is typically found in older areas and on small lots, similar to this property. B-3 zoning can be found in the Havelock Commercial area, College View and the commercial area at S. 33rd and A Streets. The smaller, less intensive retail uses found in these commercial areas do not require as much parking per square foot as major national retailers found on larger sites.

With the exception of allowing residential uses and the lesser parking requirement, the B-3 zoning district is more restrictive than the existing H-2 zoning district. Further, the existing uses are permitted in the B-3 zoning district.

Prepared by:

Paul Barnes
Planner

DATE: June 28, 2013

APPLICANT: Peter W. Katt
1248 O Street, Suite 600
Lincoln, NE 68508

OWNER: Armstrong Properties
Nancy Johnson
1250 N. 37th Street
Lincoln, NE 68503

CONTACT: Same as applicant

CHANGE OF ZONE NO. 13013

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 10, 2013

Members present: Corr, Beecham, Hove, Sunderman and Cornelius; Lust, Scheer and Weber absent.

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **Paul Barnes of Planning staff** explained that this is request for a change of zone at the intersection of N. 48th Street and R Street, i.e. 366 N. 48th Street. The two-story, 24,000 sq. ft. building was previously used as the Armstrong Furniture Store, and is currently zoned H-2 Highway Business. The parking requirements were reviewed by the Board of Zoning Appeals before the building was constructed in 1963, at which time the Board of Zoning Appeals approved the reduction of required parking spaces from 120 to 40. That approval was in connection and specific to use of the property for a furniture store. So when Armstrong Furniture closed, the reduced parking was no longer applicable unless there is a furniture store at this site.

Barnes stated that later, there was a business located in the lower level occupying 12,000 sq. ft. and able to meet the parking requirements of the district. A seasonal business opened in the upper level but could not meet the parking requirements of H-2, i.e. 1 space per every 300 sq. ft. or a total of 80 parking spaces. In order to meet those requirements for the seasonal business, there was a temporary lease agreement approved for use of parking to the south. That lease expired in November of 2012.

Thus, we are back to the situation of how to encourage business to reuse this existing structure and meet the parking requirements. Therefore, the applicant is requesting a change of zone to B-3, which requires 1 parking space for every 600 sq. ft. of retail area. With the 24,000 sq. ft. building, the total parking required for both the upper and lower levels would be 40 spaces.

Barnes then referred to the draft reFORM document which is currently a work-in-progress in the Planning Department. This section of N. 48th Street and east and west along O Street are recommended to be designated as corridors by the draft reFORM document. The "corridors" are essentially mixed-use areas in older parts of the city that should be encouraged for redevelopment and infill, adding pedestrian-oriented facilities and more attractive development. The draft reFORM document does recommend that B-3 is appropriate zoning for corridors. This request would be supported by that draft reFORM document.

Barnes also pointed out that typically, the B-3 zoning district is located throughout the community in older retail corridors or centers such as Havelock and College View. The B-3 zoning is appropriate for the smaller retail businesses rather than the larger footprint big box stores.

Barnes advised that this change of zone application is supported by the Comprehensive Plan, which does suggest and recommend reuse of existing commercial buildings and also adjustments to parking requirements or exploring shared parking. Staff is recommending approval.

Hove inquired about the zoning on the property where the old Schaefer's building is located. Barnes stated that it is H-2.

Cornelius observed that it appears that this potential rezoning creates a narrow strip of H-2 just to the north of the property in question. Is that important? Barnes referred to the exhibit in the staff report. It may be a difference between the parcel line and where the zoning district meets the centerline of the right-of-way. If approved, the B-3 would go to the centerline of the street.

Cornelius wondered whether it is anticipated that as time passes, the rest of this H-2 will evolve in similar direction. Barnes stated that the reFORM effort is still in draft form and is being presented to different groups at this time. It may evolve over the next year or so, but having North 48th designated as a corridor, not only is B-3 stated as appropriate for corridors, but H-2 is also stated as appropriate. There will be a number of recommended zone changes that would take place if reFORM is adopted. In this case, though, most of the H-2 at this location would remain H-2.

Proponents

1. **Peter Katt** appeared on behalf of the owner, **Armstrong Properties**, and agreed with the staff presentation. With the termination of the furniture business, the property owner needs to find something to do with the building. Last year they did a temporary fit while the Planning Director was coming up with the reFORM proposal. If time were not a factor, this change could probably wait for adoption of reFORM but this is a property that needs to be reused, and with the adoption of the Comprehensive Plan and with this type of adaptive reuse, making existing properties viable is important. He believes that the staff is supportive of this change coming prior to the adoption of the reFORM package. This is the type of change that the community needs to support if we want to support productive reuse of existing commercial areas. This is appropriate, particularly in locations such as this where there is no impact on residential areas.

Katt also pointed out that when the City did its redevelopment projects on O Street, the zoning district selected was B-3. This is appropriate zoning for the property that will allow for continued revitalization and reuse of that building which is important for our community.

Beecham inquired about the "temporary fix" and whether the two driveways connect to each other. Katt responded that there is a long-standing relationship between the owners of those properties and they have several cross-easements, access and drives. In terms of long term, the agreements are not viable. That is why they are looking for a permanent solution. The good relationship between the long standing neighbors is anticipated to continue.

Corr inquired as to how many parking stalls are in the front and how many are in the back. Katt believes it is split about half and half.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

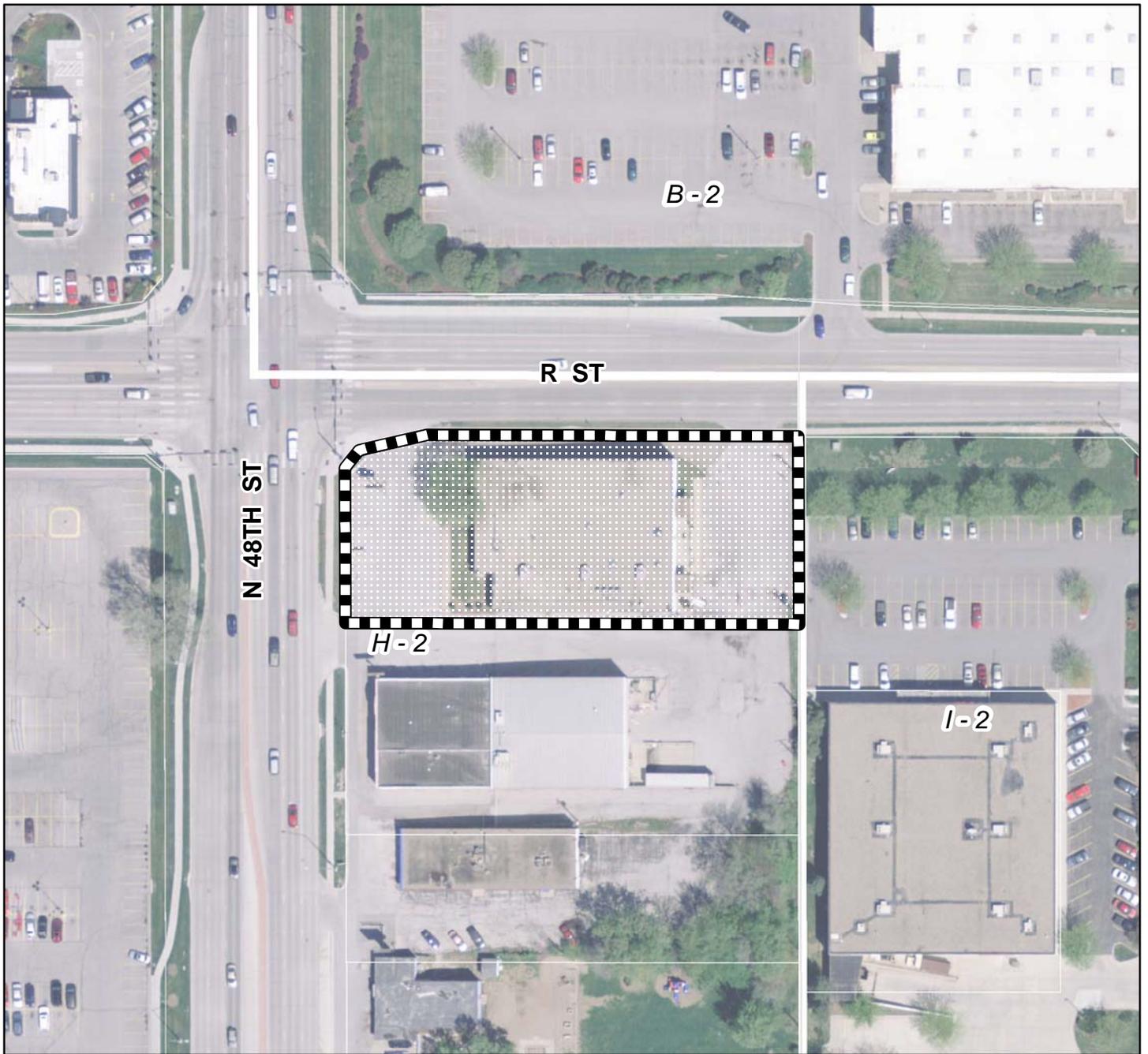
July 10, 2013

Hove moved approval, seconded by Beecham.

Corr stated that she will support this change of zone. It is kind of a no-brainer in that new development in the area has been zoned the same. This is a great fix to reutilize that building and make sure viable businesses stay in there.

Cornelius agreed. We heard that with our intended potential future use, B-3 is appropriate and it solves the problem of the current owner.

Motion for approval carried 5-0: Corr, Beecham, Hove, Sunderman and Cornelius voting 'yes'; Lust, Scheer and Weber absent. This is a recommendation to the City Council.



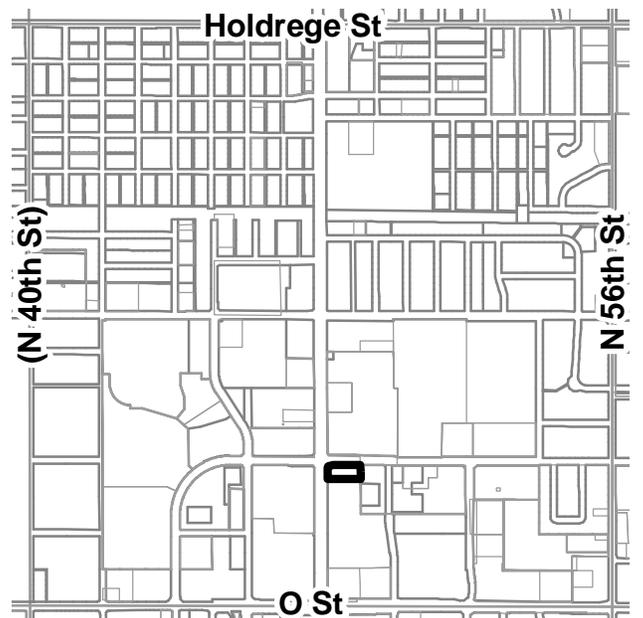
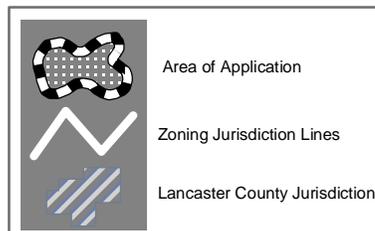
2010 aerial

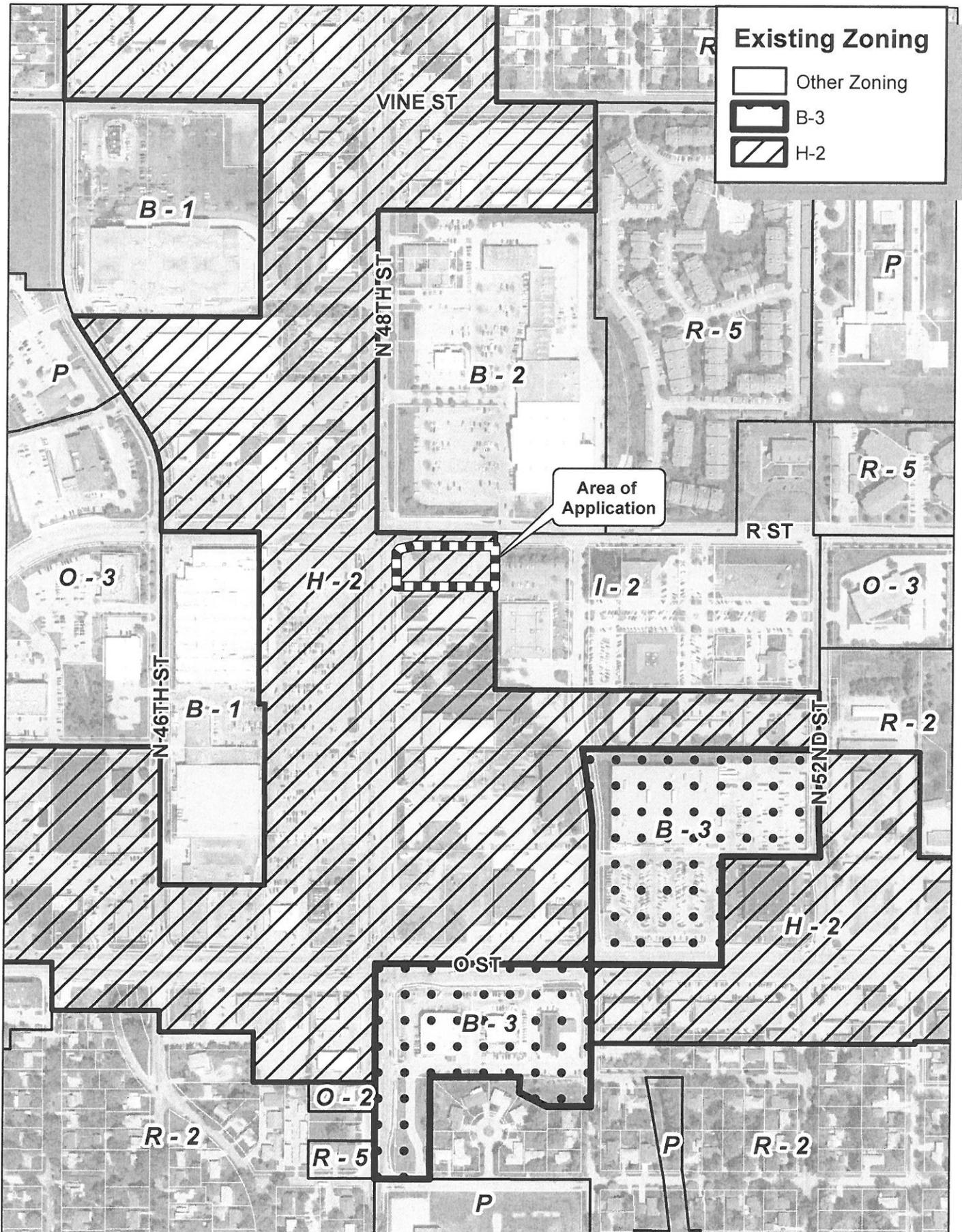
Change of Zone #: CZ13013
N 48th & R St
H-2 to B-3

Zoning:

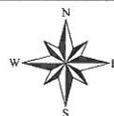
- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial 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.20 T10N R07E





**Existing H-2 and B-3 Zoning
Surrounding CZ13013 Application Area**





Randall L. Goyette*
Stephen S. Gealy
Gail S. Perry
Dallas D. Jones
Jill Gradwohl Schroeder
David A. Dudley
Brenda S. Spilker
W. Scott Davis
Mark A. Hunzeker
William G. Blake

Peter W. Katt
Darla S. Ideus
Jarrod S. Boitnott
Timothy E. Clarke*
Andrew M. Loudon
Christina L. Ball**
Jenny L. Panko
Caroline M. Westerhold*
Jarrod P. Crouse
Andrea D. Snowden

Derek C. Zimmerman
Paul T. Barta*
Colin A. Mues*
Torrey J. Gerdes
Christopher M. Reid
Robert B. Seybert *

Of Counsel
Walter E. Zink II
Donald R. Witt
Robert T. Grit
J. Arthur Curtiss

Also Admitted in:
*Iowa
**Kansas

June 11, 2013

Marvin Krout
Planning Department
555 South 10th Street - #213
Lincoln, NE 68508

RE: 366 N. 48th Street Change of Zone

Dear Mr. Krout:

On behalf of the property owner, Armstrong Properties, LP, I am requesting a Change of Zone from H-2 to B-3. The property for many years operated successfully as the Armstrong Furniture store. That business has closed and the building has struggled to find a viable long term use for the property. One of the reasons for this difficulty is the parking requirement in the H-2 district which is one stall per 600 square feet. When the building was operated as a furniture store, the parking was sufficient due to a BOZA parking waiver granted on December 10, 1963. While the waiver is not definitive as to the full scope of the waiver, i.e. 'in view of the type of business proposed' they City has interpreted and applied it to mean it only applies for a furniture store. While the Nebraska Furniture Mart in Omaha has been able to demonstrate the breadth of what may be sold in a furniture store, that same interpretation has not been applied to the City of Lincoln's application of the waiver.

Last Fall, the property owner was able to utilize a temporary parking easement generously granted by the owner of the property to the south; however, that is cumbersome and provides no long term certainty.

The recent rezoning in the area on several parcels on "O" street changed those districts to B-3. The B-3 district provides for a parking requirement of one stall per 300 square feet. This ratio, if approved, would allow for the complete utilization of the existing building without the need for temporary easements or waivers of any kind. This change of zone will facilitate the ability of the property to be recycled for use by those presently in the market, much like the change of zone on "O" street facilitated the redevelopment of those areas.

Lastly, the Department's recently announced ReForm proposal would appear to be supportive of this type of rezoning request for all of the good reasons you are out talking about it in the community.

011

Should you or your department require anything further, please do not hesitate to contact me.

Sincerely,



Peter W. Katt
For the Firm
pkatt@baylorevnen.com

MAH/sjones

780692

59

APPEAL TO BOARD OF ZONING APPEALS

13 November 1962, 1963

Board of Zoning Appeals
City of Lincoln, Nebraska

Gentlemen:

On 13 November, 1963, the undersigned applied for a
building permit to build a new furniture store

Located on Lot _____, Block 20, Addition North 125 FT. of Block
and West 60 FT. thereof of J.G. Miller's Subdivision 20 Except East 302 FT.
Address: 48th and R. Streets SE $\frac{1}{4}$ S 20--T10N-R 7 E

In the Highway Business Zoning District.

This permit was refused because zoning ordinance requires off-street

(To be filled in by Building Inspector) parking for one car for each 200 square feet of floor space if one
floor only is used it would require 60 stalls. If both basement and
first floor are used then 120 stall are required.

The above decision of the Building Inspector is hereby appealed on the
grounds that It is un-necessary to provide one parking space for every
200 square feet of commercial space in the building in the operation of
furniture store. We can see no possibility of it being used for any other
purpose and if so that matter can be taken up then.

Very truly yours,

Paul V. Armstrong
Paul V. Armstrong

Fee Paid 20⁰⁰ *ink*

Receipt No. 1189

Date of Hearing (Board of Zoning Appeals) Dec 4-1963-2:30 PM

Date of Hearing (City Council) City 12-16-63 Applicant's Phone No. 466-2061

Posted 11-27-63 *ink*

(This form is to be prepared in triplicate)

*Posted
11-27-63
ink*