

City Council Introduction: **Monday**, August 30, 2004
Public Hearing: **Monday**, September 13, 2004, at **1:30 p.m.**

Bill No. 04R-229

FACTSHEET

TITLE: SPECIAL PERMIT NO. 04004A, an amendment to the **Stone Bridge Creek Community Unit Plan**, requested by Dan Byers of Meyer Homes, Inc., to reduce the rear yard setback to allow the construction of a deck, on property located at 7310 Whitewater Lane.

STAFF RECOMMENDATION: Conditional Approval, as revised on August 18, 2004.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 08/18/04
Administrative Action: 08/18/04

RECOMMENDATION: Conditional Approval, as revised on August 18, 2004 (6-2: Marvin, Krieser, Sunderman, Carlson, Carroll and Bills-Strand voting 'yes'; Pearson and Taylor voting 'no'; Larson absent).

FINDINGS OF FACT:

1. This application seeks the authority to construct a deck higher than three feet to extend up to eight feet into the rear yard setback at 7310 Whitewater Lane.
2. The staff recommendation of conditional approval, as revised on August 18, 2004, is based upon the "Analysis" as set forth on p.3-4, concluding that provided the reduction of the setback is limited to an unenclosed deck to project no more than eight feet into the rear yard setback, the request is reasonable. Similar waivers have been granted in other neighborhoods with community unit plans.
3. The applicant's testimony is found on p.5. The applicant admitted that the construction of the house to the rear of the buildable area was a mistake by the subcontractor that installed the foundation.
4. There was no testimony in opposition; however, the record consists of one letter in opposition from the property owner behind this house at 7339 Silverthorn Drive (p.12).
5. On July 7, 2004, the majority of the Planning Commission agreed with the staff recommendation and voted 6-2 to recommend conditional approval, as revised on August 18, 2004 (Pearson and Taylor dissenting).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: August 23, 2004

REVIEWED BY: _____

DATE: August 23, 2004

REFERENCE NUMBER: FS\CC\2004\SP.04004A

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for August 18, 2004 PLANNING COMMISSION MEETING

P.A.S. Special Permit 04004A, Stone Bridge Creek Community Unit Plan

PROPOSAL: To allow a deck higher than 3' to extend up to 8' into the rear yard setback.

LOCATION: 7310 Whitewater Lane.

WAIVER REQUEST:

Reduce the rear yard setback for a deck.

LAND AREA: 5,500 square feet, more or less.

CONCLUSION: Provided the reduction of the setback is limited to an unenclosed deck to project no more than 8' into the rear yard setback the request is reasonable. Similar waivers have been granted in other neighborhoods with community unit plans.

RECOMMENDATION:

Reduce the rear yard setback for a deck.

Conditional Approval

Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached legal description.

EXISTING ZONING: R-3, Residential

EXISTING LAND USE: Undeveloped.

SURROUNDING LAND USE AND ZONING:

North:	Residential	R-3, Residential
South:	Residential	R-3
East:	Residential	R-3
West:	Residential	R-3

HISTORY: Special Permit 04004, Stone Bridge Creek was approved by the City Council on May 17, 2004.

Special Permit #643E, Briarhurst West CUP to reduce the rear yard setback fro a deck, was approved by the City Council October 6, 2003. (For one lot)

Special Permit #1845, Stone Bridge Creek CUP for 437 dwelling units, Change of Zone # 3265 from AG to R-3 and I-3, Industrial Park was approved by the City Council on August 27, 2001.

Special Permit #1022C, Old Cheney Place 1st Addition allowed open decks in the rear yard to be constructed at a height more than three feet above the ground was approved by the City Council on July 5, 1998. (For the entire subdivision)

The area was zoned A-A, Rural and Public Use until 1979 when the zone was updated to AG, Agricultural.

COMPREHENSIVE PLAN SPECIFICATIONS: This area is shown as Urban Residential(F-25).

ANALYSIS:

1. This is a request to reduce the rear yard setback for an 8' x 16' deck approximately 9' above grade.
2. The applicant had originally applied to the Board of Zoning Appeals but chose to request to amend the special permit since state statute requires all other means be exhausted prior to making application to the Board of Zoning Appeals. A request to vary the setback is usually reviewed by the Board of Zoning Appeals, however, since the lot is included in a community unit plan an adjustment to the yard requirements may be granted by the City Council.
3. The applicant indicates that due to an error in the installation of footings, the rear of the house is located at the rear yard setback line. The applicant would like a deck off the dining room. Decks are allowed in the rear yard setback if they are less than 3' above grade. This deck will be approximately 9' above grade.
4. The lot backing onto this property would be most greatly impacted by the reduction. The applicant indicated they had spoken to the owner who did not object to the request. A letter is to be submitted prior to the public hearing.
5. Provided the neighbor does not oppose the reduction, planning staff does not object to the request. The CUP allows the reduction of setbacks and is consistent with deck variances in other CUP subdivisions.
6. Several CUP's have been granted reduced yards to allow decks higher than 3' into the standard rear yard setback, for individual lots and entire subdivisions. A couple of these are noted in the "History" portion of this report.

CONDITIONS:

Site Specific:

~~1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda: (**As revised by staff on August 18, 2004**)~~

1. This approval permits an 8'x16' deck higher than 3' to project 8' into the required rear yard setback.

STANDARD CONDITIONS:

2. The following conditions are applicable to all requests:
 - 2.1 This resolution's terms, conditions and requirements bind and obligate the permittee, its successors and assigns.
 - 2.2 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant.

(As revised by staff on August 18, 2004**)**

Prepared by:

Becky Horner, 441-6373, rhorer@lincoln.ne.gov
Planner

DATE: July 29, 2004
Revised: August 18, 2004

APPLICANT: Dan Byers
Meyer Homes, Inc.
130 S. 46th Street
(402)486-0404

OWNER: Same

CONTACT: Same

**SPECIAL PERMIT NO. 04004A,
AN AMENDMENT TO THE
STONE BRIDGE CREEK COMMUNITY UNIT PLAN**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 18, 2004

Members present: Marvin, Pearson, Krieser, Sunderman, Carlson, Carroll, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Conditional approval, as revised on August 18, 2004.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted revised conditions of approval from the staff and a letter in opposition from the neighbor at 7339 Silverthorn Drive.

Proponents

1. Dan Byers, with Meyer Homes, presented the application on behalf of the property owners and addressed the letter in opposition. He never stated that the Planning Commission would pass this automatically. He does not have that kind of experience to know. With regard to falling from the deck onto the neighbor's fence, Byers stated that the deck will still be 13 feet from the neighbor's fence. When he talked to the homeowner he said he would work with them to reduce the width of the deck to accommodate him and the property owners building the deck. Carlson noted that the deck is still a significant distance from the rear. Byers pointed out that the deck is 13' from the back fence -- the requirement is 20', so it is only encroaching 7'. Byers does not see it as inhibiting to the property owner in the rear who is objecting.

Pearson believes that the builder (Meyer Homes) had the opportunity to build the house further toward the front of the property. Byers acknowledged that it was a mistake made by the person who installed the foundation. When asked whether he had gone to the Board of Zoning Appeals, Byers stated that he is before the Planning Commission to exhaust all other measures before going to Board of Zoning Appeals. Pearson believes the Board of Zoning Appeals requires a hardship and she is trying to imagine the hardship. Byers then stated that it is a walk-out lot with a sliding door that would come out the back of the home. If they had built the house to the front of the buildable area, they would not be here today. Pearson believes there should be empathy with the neighbor. Byers indicated that he is willing to work with them and could hopefully negotiate something.

There was no testimony in opposition.

Carroll clarified that the approval of this amendment is for the deck only and does not change any other setback requirements other than for the deck. Horner agreed that it is specific to the deck. They could not cover the deck or enclose the deck without applying for another amendment.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 18, 2004

Pearson moved to deny. Motion failed for lack of a second.

Carroll moved to approve, with conditions, as revised, seconded by Sunderman.

Carroll noted that it was an error by the subcontractor of the builder, but he does not believe it is going to inflict any large harm on any property owners around it. It is only for the deck. It is a small encroachment into the setback requirements but not a major one. In order to allow the deck, he agrees to approve it.

Motion for conditional approval, as revised, carried 6-2: Marvin, Krieser, Sunderman, Carlson, Carroll and Bills-Strand voting 'yes'; Pearson and Taylor voting 'no'; Larson absent. This is a recommendation to the City Council.



2002 aerial

Special Permit #04004A
7310 Whitewater Lane

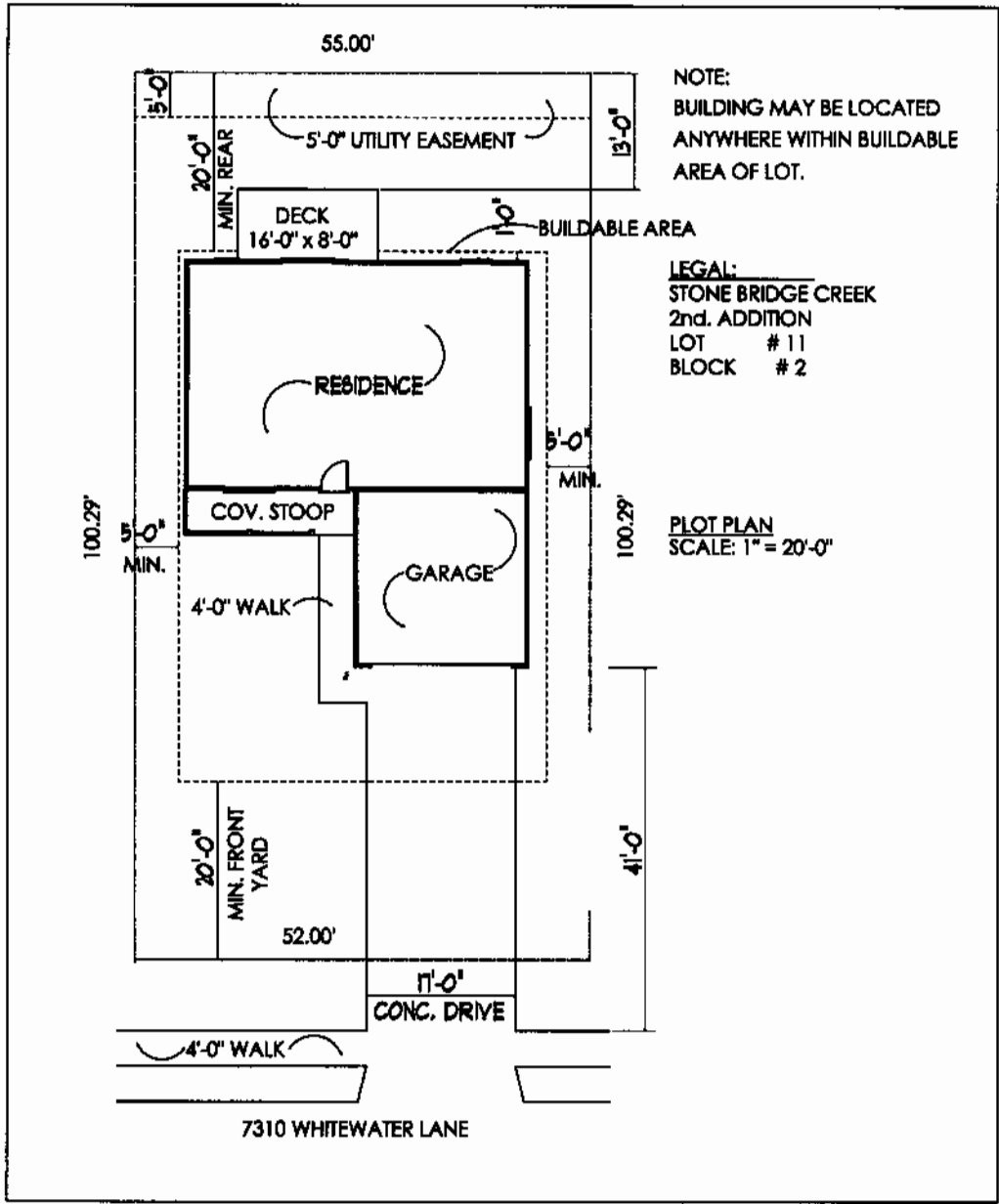
Zoning:

- 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 Planning 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. 36 T11N R6E



Lincoln City - Lancaster County Planning Dept

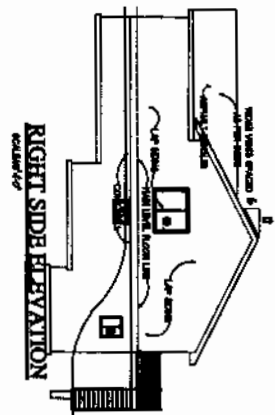
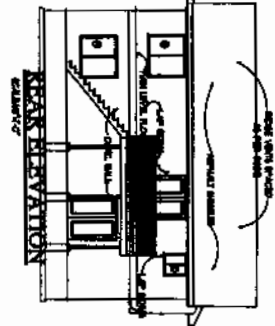
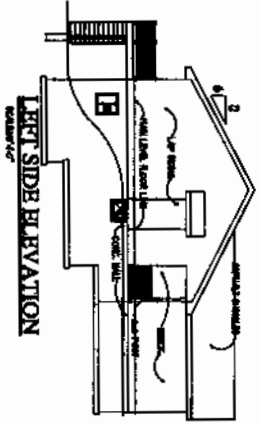


RECEIVED

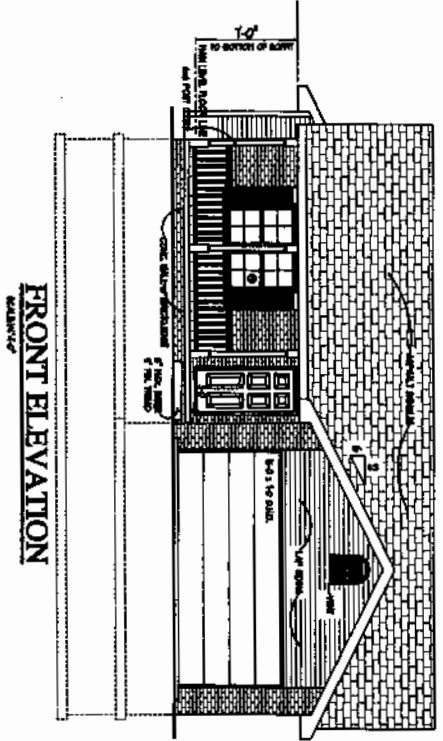
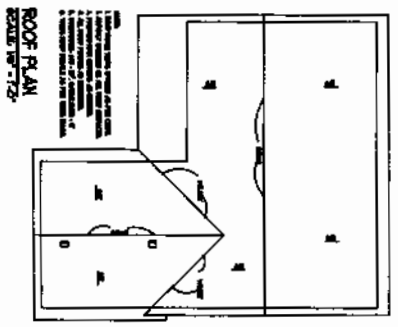
JUL 2 2004


PLANNING DEPARTMENT

JUL 22 2004
 JUL 22 2004
 JUL 22 2004



DESCRIPTION	QTY	UNITS	PRICE	TOTAL	NO.	DATE
FOUNDATION	1	SQ. FT.	100.00	100.00	1	1/22/04
FLOOR	1	SQ. FT.	100.00	100.00	1	1/22/04
CEILING	1	SQ. FT.	100.00	100.00	1	1/22/04
ROOF	1	SQ. FT.	100.00	100.00	1	1/22/04
WALLS	1	SQ. FT.	100.00	100.00	1	1/22/04
DOORS	1	EA.	100.00	100.00	1	1/22/04
WINDOWS	1	EA.	100.00	100.00	1	1/22/04
STAIRS	1	EA.	100.00	100.00	1	1/22/04
CHIMNEY	1	EA.	100.00	100.00	1	1/22/04
PAINT	1	SQ. FT.	100.00	100.00	1	1/22/04
LANDSCAPE	1	SQ. FT.	100.00	100.00	1	1/22/04
TOTAL						




Meyer Home Inc.
 130 South 46th Street
 Lincoln, NE 68510
 phone: (402) 486-0404
 fax: (402) 484-0104

Architect - [Name]
Interior - [Name]
Structural - [Name]
MEP - [Name]

Foundation, Roof Plan, & Window Schedule
A203

Dan Byers
Meyer Homes, Inc.
130 S. 46th St.
Lincoln, NE 68510
July 22, 2004

RE: Amendment to the CUP

To whom it may concern:

The home being built at 7310 Whitewater Lane, Block 2 Lot 11, Stone Bridge Creek 2nd Addition, has an issue to bring before you, the City Planning Commission.

Due to a miscommunication between Meyer Homes, Inc. and the foundation contractor, the home has a set back of thirty-three feet from the lot pin, not thirty-three feet from the approximate location of the sidewalk as is on our plan.

We are petitioning the City Planning Commission for permission to build a deck off the rear of the home higher than the allowable thirty-six inch limit permitted within the non-buildable area as defined by the site map for Stone Bridge Creek 2nd Addition. The built deck would be sixteen feet wide by eight feet deep at a height of about nine feet.

We thank you in advance for your time and consideration in this matter. Should you have any questions about this issue, please contact Dan Byers at (402) 525-9955 anytime.

Daniel Byers
Meyer Homes, Inc.



OWNERSHIP CERTIFICATE

FILE NO: 6014110

**TO: Dan
Meyer Homes Inc**

Nebraska Title Company, authorized to engage in the business of abstracting in the State of Nebraska under Certificate of Authority No. 56, hereby certifies that the records of LANCASTER County, Nebraska have been carefully examined with referenced to the following described property, and from such examination finds as follows:

LEGAL DESCRIPTION:

Lot Eleven (11), Block Two (2), Stone Bridge Creek 2nd Addition, Lincoln, Lancaster County, Nebraska

Address: 7310 Whitewater Ln, Lincoln, NE

OWNER OF RECORD:

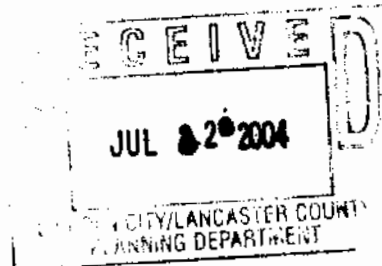
Meyer Homes, Inc., a Nebraska Corporation

Effective Date: July 19, 2004 at 8:00 am

Nebraska Title Company

By: Joan F. Journey
Vice-President
Registered Abstractor

Please direct inquiries to: Joan Journey



IN OPPOSITION

ITEM NO. 1.6: SPECIAL PERMIT NO. 04004A
(p.65 - Consent Agenda -8/18/04)

City Council Hearing Room/ Special Permit #04004A
County-City Building
555 S. 10th Street
Lincoln NE
First floor at 1:00pm on August 18, 2004

Dear Planning Commission,

There is a public hearing today about a deck that they want to build on Lot 11, Block 2, Stone Bridge Creek 2nd addition, located in the NW ¼ of section 36-11-6, Lancaster County, Nebraska, located at 7310 Whitewater Lane. I talked to a Dan Byers of Home Real Estate about the matter that I do not want their deck to encroach my property. First of all it would hurt the resale value of my house and if they build the deck closer to my fence and there would be an accident that someone fell on my fence who's fault would it be. It would be my fault because it is my fence. All because they wanted to put a deck closer to my fence it would be a hazard to me and anyone that would be on the deck. Another thing that got to me is that when I talked to Dan Byers of Home Real Estate is that he told me that he didn't want to sound like an ass when he said that the Planning Commission would pass it for them anyway because they do it all the time. He pretty much told me that it don't matter what I think about it and that they (Planning Commission) would pass it anyway. Now what would you think of that? All I know is that I am against this build and that hopefully my say is worth something to the Planning Commission. I would like to say thanks to the Planning Commission for listening to what I had to say.

Thanks,
Martin R. Geschke
7339 Silverthorn Dr.
Lincoln NE, 68521

