

FACTSHEET

TITLE: CHANGE OF ZONE NO. 15017
(H-2 to B-3) - 222 North 44th Street

BOARD/COMMITTEE: Planning Commission

APPLICANT: Laura Kilmer

RECOMMENDATION: Approval (8-0): Hove, Sunderman, Corr, Cornelius, Beecham, Lust, Weber, and Scheer voting 'yes'; Harris absent.

STAFF RECOMMENDATION: Approval

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: None appeared at hearing.

REASON FOR LEGISLATION:

To rezone approximately 2 acres from H-2 Highway Business District to B-3 Commercial District to meet off-street parking requirements for commercial uses for an indoor dog park/daycare/kennel, on property generally located at 222 North 44th Street.

DISCUSSION/FINDINGS OF FACT:

1. This change of zone request was heard before the Planning Commission on July 8, 2015.
2. The staff recommendation to approve the change of zone request is based upon the "Analysis" as set forth on p.4-5, and the staff presentation is found on p.6.
3. The testimony on behalf of the applicant is found on p.7.
4. There was no testimony in opposition.
5. On July 8, 2015, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval.

FACTSHEET PREPARED BY: Geri Rorabaugh, Administrative Officer

DATE: July 15, 2015

REVIEWED BY: David R. Cary, Acting Director of Planning

DATE: July 15, 2015

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LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for July 8, 2015 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone 15017

PROPOSAL: To rezone approximately 2 acres from H-2, Highway Business District to B-3, Commercial District

LOCATION: Southeast corner of N. 44th Street and Q Street

LAND AREA: 2 acres, more or less

EXISTING ZONING: H-2, Highway Business District

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

RECOMMENDATION:

Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1 and Lot 2, Meginnis Addition, Lincoln, Lancaster County, Nebraska.

EXISTING LAND USE: Vacant/Former Sports Courts

SURROUNDING LAND USE AND ZONING:

North: Office; O-3
South: Office; H-2
East: Undeveloped; H-2
West: Multi-family Residential; R-4

HISTORY:

March 1971 The City Council approved a special permit #534 to construct a parking lot on the north and east sides of the property.

March 1976 The City Council approved a special permit # 749 to construct a private recreational facility.

April 1977 The City Council approved special permit #749A to adjust the boundary of the special permit and increase the size of the existing building.

This property was rezoned from single-family and local business to H-2 Highway Commercial and R-4 Residential with the 1979 Zoning Update.

January 1982 The Board of Zoning Appeals approved BZA#1311 to adjust the R-4 and H-2 zoning line to match the property line. The property was then all zoned H-2.

February 1995 The Board of Zoning Appeals approved BZA#2053 to reduce the setback between the two buildings to 3.95 feet. This is a side yard setback for Lot 2 and a rear yard setback for Lot 1.

September 1996 The Meginnis Addition final plat was approved that created the two lots.

COMPREHENSIVE PLAN SPECIFICATIONS:

P. 1.9 - The 2040 Future Land Use Map shows this area as Commercial.

P. 5.7 - Develop smaller stores next to larger anchor stores in centers to encourage small businesses and to provide a variety of goods and services for customers utilizing the centers.

P. 5.12 - Develop infill commercial areas to be compatible with the character of the area.

P. 5.16 - Encourage efforts to find new uses for abandoned, under-utilized or "brownfield" sites that are contaminated, through redevelopment and environmental mitigation.

P. 6.8 - Encourage shared driveways and interconnected parking lots where possible.

P. 6.11 - Revise the Zoning Ordinance to provide more flexibility, particularly in commercial districts. Provide a mechanism for adjustments in older zoning districts to lot area, height, setbacks and parking standards, similar to the provisions already available for newer districts.

UTILITIES:

Lot 2, Meginnis Addition is served by existing public utilities. Lot 1, Meginnis Addition does not have independent connections to the public utilities and is served by private utilities that cross Lot 2.

TRAFFIC ANALYSIS:

N. 44th Street is shown as a minor arterial street.

ANALYSIS:

1. The applicant is requesting this change of zone from H-2 Highway Business District to B-3 Commercial District on Lot 1 and Lot 2 Meginnis Addition in order to meet off-street parking requirements for commercial uses. The applicant owns Lot 2 which is the southern lot and is proposing an indoor dog park/daycare/kennel. The B-3 zoning is needed in order to meet parking requirements. The properties are currently zoned H-2 and are vacant. Both properties were previously operated together as Sports Courts.
2. A special permit was originally approved for one indoor recreational facility. The two buildings were on one property and together were treated as one premises under the special permit. The recreational facility was later platted onto two separate lots, and the Board of Zoning Appeals reduced the setbacks for each individual lot. The two buildings are now separately owned properties and are considered separate premises.
3. The properties do not conform to the minimum parking requirements of the H-2 district today. The existing H-2 zoning district requires 1 parking space per 300 square feet of floor area and the proposed B-3 district requires 1 parking space per 600 square feet of floor area. The B-3 zoning district will support reuse of the existing buildings for the proposed indoor dog park/daycare/kennel and future uses for both properties as well.
4. Smaller, less intensive retail uses are found in B-3 commercial areas and do not require as much parking per square foot as major national retailers found on larger commercial 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.

H-2 zoning is intended for properties oriented to major arterial streets. In addition to neighborhood business uses, H-2 also allows mini-warehouses, truck wash facilities and a few other manufacturing and processing uses that are not permitted in the B-3 district. The B-3 district is more appropriate at this location given its proximity to existing residential development and given that it is not oriented to a major arterial street.
5. The nearest residential area is to the west across N. 44th Street in the Tanglewood Apartment complex. The Tanglewood Apartment complex has access off N. 44th Street and has self-contained parking and circulation. 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. The owner of Lot 2 (south property) is proposing to use the building for an indoor dog park/daycare/kennel. The proposal includes use of the existing outdoor area on the east side of the property for the animals. As a conditional use in the B-3 district,

the outdoor area for a kennel must be no closer than 200 feet from a residentially zoned property and cannot have more than 3 animals in the outdoor area at any one time. The closest residentially zoned property is across N. 44th Street and is greater than 200 feet from the outdoor area. This facility does not need to apply for a special permit as long as the number of outdoor animals remains at 3 or less at any given time. If the owner of the facility would like to have more than 3 animals in the outdoor area then they will need to apply for a special permit.

7. Additional B-3 zoned properties are located near the subject site and can be found at 5010 O Street (Hy-Vee), 4811 O Street (Wal-Greens and restaurants) and 366 N. 48th Street (retail store). The property at 366 N. 48th Street was rezoned from H-2 to B-3 in 2013 in order to bring the existing off-street parking into conformance. This is a similar circumstance for the subject site and will allow appropriate commercial reuse by meeting the parking regulations of the district. There is also B-1 zoning nearby for Target, Super Save, Westlake Hardware and other retailers.

Prepared by:

Paul Barnes, Planner
402-441-6372
pbarnes@lincoln.ne.gov

DATE: June 25, 2015

APPLICANT: Laura Kilmer
1531 Kingston Road
Lincoln, NE 68506

OWNER: Paws 4 Fun, LLC
1531 Kingston Road
Lincoln, NE 68506

CONTACT: Christie Schroff
300 N. 44th Street, Suite 116
Lincoln, NE 68503

CHANGE OF ZONE NO. 15017

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 8, 2015

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

Staff Recommendation: Approval.

There were no ex parte communications disclosed.

Staff Presentation: **Steve Henrichsen of the Planning Department filling in for Paul Barnes**, provided an overview of this application, which is located on the southeast corner of 44th and “Q” Streets. The proposed B-3 zoning request is one in a series of change of zone applications submitted in the 48th & “O” Street area, which has a mix of zoning types – B-1, B-2, I-2, O-2, O-3, R-4 and R-5 in the area. This includes some apartments, highway commercial and a series of redevelopments. Most of the change of zones from H-2 to B-3 have been to take advantage of the fact that B-3 has a lower parking ratio – from 1:300 to 1:600. This site has the distinction of needing the change of zone H-2 to B-3 regardless of the use on this site. This site was originally Sports Court and this building has been split between two different owners and needs to be separated from each other. They will share one parking lot which is now divided by a lot line. This application covers both parts of the building and both lots. The parking ratio is determined by the former use – a recreational facility. As this site gets redeveloped into retail or the proposed kennel use, they would not meet the H-2 zoning requirements with the floor area of this building. Thus, they are requesting the change of zone, similar to what was done for the HyVee at 50th & O, as well as Walgreen’s, and West Gate Bank, etc. – these were all rezoned to B-3 in order to handle the parking requirement. Henrichsen noted that the kennel use that is proposed on the south part of the building is an allowed used in both H-2 or B-3 zoning district; however, it is conditional and requires a 200 -foot separation to residential. There is more than 200 feet between the building and the residential use to the west. In addition, it requires that there be no more than three animals outside at any one time, which is typical of all kennels within the city. The main concern of the applicants is that they cannot meet the parking requirement for a kennel or for any other retail use on this site.

Staff Questions: None.

Proponents:

1. Christy Schwartzkopf Schroff, 300 North 44th Street, Suite 116, representing the applicant - Paws 4 Fun, LLC, came forward. Schroff indicated that her office is located across the street from the proposed project. The applicant is in agreement with the staff report for this change of zone. A copy of a letter from the other property owner, David Meisinger, supports the change of zone. The Planning Staff reports identifies the reasons for supporting this change of zone. Schroff indicated that this is a family-owned business and one of the owners of the Paws 4 Fun is present to discuss their plan.

2. Leon Kilmer, 1531 Kingston Road, one of the owners of Paws 4 Fun, LLC, came forward and stated that they are a family-owned and operated business. They have a long-term commitment. He indicated that his father-in-law and mother-in-law were not able to attend today's meeting but stated that they were born and raised in Lincoln, and he and his wife don't plan on leaving Lincoln. Paws 4 Fun provides a needed service to Lincoln. He has visited with all the neighbors in a 4- to 5-block radius, including the business employees and owners. They were extremely excited about the proposed use of this building, which has been empty for the past four years. He was also involved in the "I Love My Dog Show" at the Lancaster County Event Center. The neighbors across the street at Tanglewood are excited that they will have a place to go that isn't in south Lincoln. This is a central location with easy access onto 48th Street and O Street. This will help to revitalize the area and they are excited to be providing a service to the community.

Hove asked about the location of the outdoor facility. Kilmer referenced a site plan and identified the location close to where the existing pool is. He indicated that they don't plan to use this area for at least a year until they can revitalize the pool.

ACTION BY PLANNING COMMISSION:

July 8, 2015

Hove moved to recommend approval of this application; seconded by Scheer.

Corr indicated that she is excited about this project, as she has a hyper dog and would love to take him to a doggy daycare but there is currently nothing on her way to work.

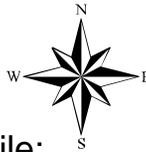
Beecham stated that she appreciates that the applicant talked to the neighbors, and she believes that this is a really good use for this property. She supports that motion.

The motion to recommend approval carried 8-0; Lust, Scheer, Weber, Cornelius, Sunderman, Corr, Hove, and Beecham voting 'yes'; Harris absent.



2013 aerial

**Change of Zone #: CZ15017 (H-2 to B-3)
N 44th & Q St**



One Square Mile:
Sec.20 T10N R07E

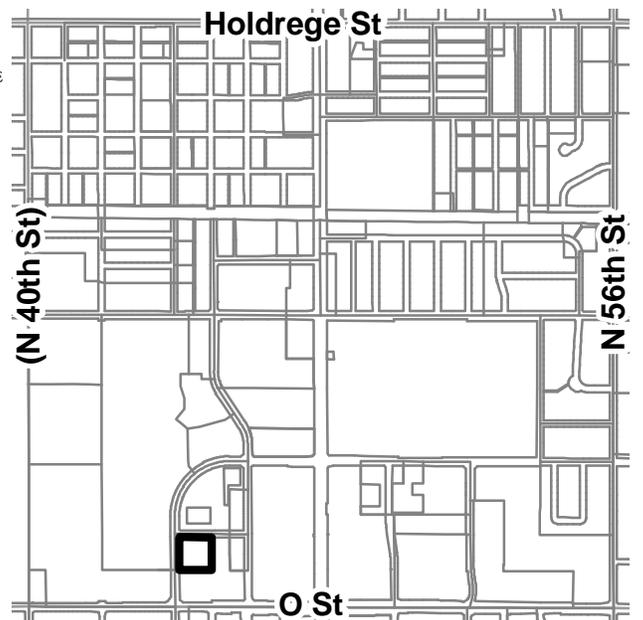
Zoning:

- 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

Area of Application

Zoning Jurisdiction Lines

Lancaster County Jurisdiction





Schwartzkopf Schroff & Tricker, LLP

Attorneys at Law

June 9, 2015

HAND DELIVERED

Planning Department
ATTN: Paul Barnes, Planner
555 S. 10th St., Ste. 213
Lincoln, NE 68508

RE: 222 N. 44th Street, Lincoln, NE (Property)
Application for Change of Zone from H-2 to B-3
Paws 4 Fun LLC, Laura Kilmer, managing member (Applicant)

Ladies and Gentlemen:

This letter accompanies the application of our client, Paws 4 Fun LLC, for a Change of Zone from H-2 to B-3. This Change of Zone application replaces the May 6, 2015 Application for Waiver of H-2 zoning requirements by the same Applicant (the "Waiver Application"). We respectfully request that the Waiver Application be withdrawn, and that the \$330 filing fee paid be credited to the \$792 filing fee for this Change of Zone application. A \$462 check for the difference is enclosed.

The former "Sports Courts" facility at 222 N. 44th Street has been vacant for nearly four years. Applicant purchased the Property (Lot 2) on May 12, 2015 to develop as a dog park/kennel/pet day care facility (herein, "Dog Park"). Before it ceased operating as a recreational facility, Sports Courts comprised 2 buildings located on 2 Lots (Lots 1 & 2, Meginnis Addition). See plat of Meginnis Addition, attached. Both Lots 1 and 2 are the subject of this Change of Zone application.

Lots 1 and 2 have different owners. The main building, on Lot 2, is the Property owned by the applicant and the site of the proposed Dog Park. Lot 1 is owned by David Meisinger; the Lot 1 building is currently vacant.

The primary reasons for this application are:

- (i) to obtain some relief from excessive parking requirements. The current H-2 zoning requires **1 stall per 300** square feet of building. The proposed B-3 zoning requires **1 stall per 600** square feet of building.
- (ii) to propose a zoning district for this Property that better suits the area as it exists now.

300 North 44th Street, Suite 116 / Lincoln, NE 68503

Phone (402) 466-0026 / Fax (402) 464-1161

www.sst-neb.com

Planning Department
ATTN: Paul Barnes
June 9, 2015
Page 2 of 2

Strict application of the H-2 zoning ratio would require nearly 100 stalls on Lot 2. That is an excessive requirement that Applicant cannot satisfy on its Property. In fact, the prior user, Sports Courts could not satisfy that requirement either. Sports Courts operated under a Special Permit for a private recreational facility that permitted fewer parking stalls than required by strict application of H-2 zoning. The size of the existing building in this H-2 zone would require parking modifications or waivers for almost ANY proposed use.

The B-3 zoning ratio of **1 stall per 600** square feet of building is a requirement that Applicant believes can be satisfied on its Property (and, accordingly, no waivers are being requested as a part of this Application).

Applicant believes that B-3 zoning is a better fit for this Property in any event. It is difficult to imagine, for example, a truck wash facility (allowed in H-2) on this Property. The Applicant's proposed use revives an existing building located in the center of Lincoln to a use that truly serves the community. B-3 zoning for this site facilitates a productive use for this commercial area, compatible with the character of the area.

It is my understanding that no Site Plan is required to accompany this application. Thank you for your thoughtful review and consideration of this Zone Change request.

Yours Truly,



Christie Schwartzkopf Schroff

Attachments:

- City of Lincoln Planning Department Application Request Form (with \$462 check)
- Plat of Meginnis Addition