

LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

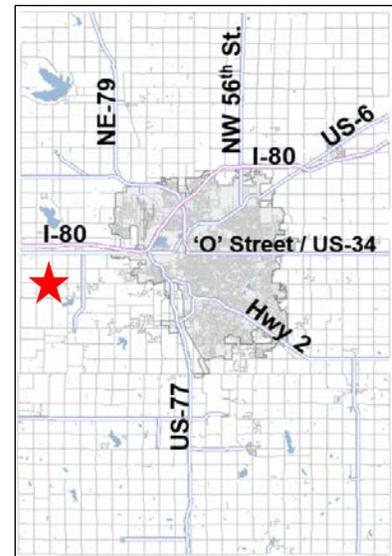
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Special Permit #20015	FINAL ACTION? Yes	DEVELOPER/OWNER Timothy & Linda Aschoff
PLANNING COMMISSION HEARING DATE June 10, 2020	RELATED APPLICATIONS None	PROPERTY ADDRESS/LOCATION 1950 SW 112 th St.

RECOMMENDATION: DENIAL

BRIEF SUMMARY OF REQUEST

This is a request for an Accessory Dwelling Unit (ADU) under Article 13.050 of the Lancaster County Zoning Regulations with waivers for an increase in the permitted size, reduce the side yard setback and to increase the distance between the main house and the ADU. The lot is 22.95 acres. The special permit is for an existing house that was built as a dwelling illegally. The existing ADU is 1,650 sq. ft. An agreement between the owner and Lancaster County Board of Commissioners was reached in 2018 that allowed the house to remain while trying to find a permanent solution.



JUSTIFICATION FOR RECOMMENDATION

The proposed ADU is not in conformance with the zoning regulations. The increase in size is 60 percent over what the allowed 1,000 sq. ft. The proposed ADU does not meet the intent of permitting a small unit that is minor and accessory to the principal dwelling. An ADU is typically a small unit that is 600 to 800 sq. ft. in size. The applicant has another option through the Community Unit Plan (CUP). The CUP allows each house to be on its own lot and provides greater flexibility in the long term. A future owner may not want both houses. The CUP is a solution that does not require demolishing the house.

APPLICATION CONTACT

Marcia Kinning, REGA Engineering
marcia@regaeng.com

STAFF CONTACT

Tom Cajka, (402) 441-5662 or
tcajka@lincoln.ne.gov

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

This application is not in conformance with the Comprehensive Plan. The proposed ADU does not meet proper design standards as developed by the ADU Working Group and listed as a goal in the comprehensive plan.

WAIVERS

1. Increase the maximum size from 1,000 sq. ft. to 1,650 sq. ft.
2. To reduce the side yard setback from 60 feet to 53 feet.

3. Increase the distance between the ADU and the principal dwelling from 200 feet to 251 feet.

KEY QUOTES FROM THE 2040 COMPREHENSIVE PLAN

- P. 7.2 Provide a wide variety of housing types and choices for an increasingly diverse and aging population.
- P. 7.4 The efficiency of our existing housing stock could also be improved by allowing accessory dwelling units (ADU). ADUs allow for multiple generations of a family to live on the same property, provide smaller, more affordable units as a part of an existing neighborhood fabric, and more sufficiently and cost effectively utilize existing infrastructure and resources.
- P. 7.5 An Accessory Dwelling Unit (ADU) is an additional, self-contained housing unit that is secondary to the main residence. ADU's are sometime referred to as "Granny Flats" or "mother-In-Law Units" since many ADUs were initially constructed to provide for family members.
- P.7.5 Examine opportunities to revise the zoning code to legalize new ADUs where appropriate and adopt design standards to facilitate the harmonious implementation of this housing choice.

ANALYSIS

1. Accessory Dwelling Units (ADU) were added to the Lancaster County Zoning Regulations in December 2018. An ADU is an additional self-contained housing unit that is secondary to the main residence. An ADU can either be attached to the principal dwelling, be part of the principal dwelling, or be a separate building detached from the principal dwelling. The ADU contains its own kitchen, sleeping area and bathroom. ADU's are subordinate in size to the principal dwelling.
2. The applicant's lot was created in 1997. The parent tract was a 33 acre parcel that was then divided into a 22.57 acre parcel (Lot14) and 10.43 acre parcel (Lot 15). This was done without a final plat. Lot 14 was then further changed in 2018 by adding 0.34 acres, so it is now known as Lot 20. A house was built in 1990 on the 33 acre parcel which is now Lot 15.
3. The principal house on Lot 20 I. T. (the lot in question) was built in 1998 without a building permit. At that time building permits were not required if the lot was zoned AG and was at least 20 acres. Per the AG zoning, only one house is allowed on 20 acres. The house requested to be approved as an ADU was built in 1998 without building permits. The second house violated the zoning regulations by having two dwellings on a lot of only 22.5 acres.
4. In November 2017 the County Attorney's office concluded that to be a dwelling it must be **designed and used exclusively for residential purposes**. If the dwelling was only used occasionally, it could be considered a "guest house" and allowed to stay.
5. Timothy and Linda Aschoff entered into an agreement with Lancaster County on November 21, 2017 and again on May 29, 2018. The agreement in 2018 was necessary because the November 21, 2017 agreement expired after one year. The agreement in 2018 stated that the accessory building would not be used as a dwelling. (See attached agreement.)
6. The following conditions are required for an ADU:
 - A. The lot area shall be 20 acres or larger.
The lot area is 22.95 acres.
 - B. The total floor area of the ADU shall not exceed the lesser of 1,000 square feet or 40% of the square footage of the principal dwelling, excluding garages, carports and space used for mechanical equipment, such as heating, utilities and water heater or pumps. Any other unfinished space in a basement is included in the square footage to allow it to be furnished in the future. The calculation for the principal dwelling shall be based on the floor area as of the date the special permit is filed.
The ADU is 1,650 sq. ft. The principal dwelling is 3,948 sq. ft. on the main floor and 2,650 sq. ft. of finish basement for a total of 6,598 sq. ft. per Lancaster County Assessor's website. The ADU is only 25% of the principal dwelling. This is secondary in size to the principal dwelling. A recent special permit for

an ADU was approved that allowed the ADU to be 46% of the principal dwelling, but it was 970 sq. ft.

- C. No more than 2 bedrooms are allowed in the ADU. Bedroom shall mean any room or space used or intended to be used for sleeping purposes.

The Assessor list it as one bedroom and the site plan notes it as having one bedroom.

- D. The owner of the lot is required to live on the property in either the principal dwelling or the ADU. The owner of the lot shall file with the Register of Deeds, a deed restriction agreement on the property stating that the accessory dwelling cannot be sold separately from the principal dwelling. The deed restriction agreement must be to the satisfaction of the County Attorney. The deed restriction agreement shall be filed prior to any building permit for the ADU.

The owner of the property will live in the principal dwelling.

- E. The ADU must share the same access point to the public or private street as the principal dwelling.

The site plan shows the ADU sharing the driveway with the principal dwelling.

- F. The ADU must meet the same setback requirements as the principal dwelling of the district. The height of the ADU must meet the height limit of the district for a dwelling, but be no higher than the principal dwelling.

The ADU does not meet the 60' required setback. The applicant is requesting a waiver to reduce the setback from 60 feet to 53 feet. This is a minor variation and is acceptable as an existing condition.

- G. A detached ADU shall be located a distance no greater than 200 feet from the principal dwelling and must not be closer to the street right-of-way than the principal dwelling.

The site plan shows the ADU is 251 feet from the principal dwelling and is closer to the street than the principal dwelling. In this case the lot has no street frontage.

- H. The ADU must share utilities with the principal dwelling unless the owner can demonstrate a practical problem with sharing due to the topography or other unique site considerations.

The ADU and principal dwelling share the same well and sewage lagoon.

- 7. In May of 2018 a working group was formed to look at Accessory Dwelling Units (ADU). The group met from May to July 2018. After much discussion the group proposed the conditions for an ADU that was subsequently adopted and are in the zoning regulations today. With this being only the 2nd ADU special permit in the county, the conditions should not be waived unless there is a very unusual condition. In Lincoln the maximum size for an ADU is 800 sq. ft. A typical ADU throughout the country ranges from 600 to 800 SF. The final result was 1,000 SF and two bedroom which is a substantial amount of floor area.
- 8. An alternative to the ADU would be a Community Unit Plan (CUP). A CUP requires a minimum of 75 acres. The applicant also owns the property to the north. The 2 lots combined would be approximately 82 acres. The density on 82 acres would permit 5 dwelling units. This would allow the principal house and the proposed ADU to be on their own lots with the potential for 3 additional lots in the future. It should be allowed per the CUP and not by trying to fit into the ADU special permit for such a large house.
- 9. Approval of this special permit may lead to other applications for large houses that do not meet the intent of a ADU. It could also lead to people building an ADU over the size limit illegally and then asking for the special permit to legalize the ADU.

CONDITIONS OF APPROVAL: See attached.

EXISTING LAND USE & ZONING: AG-Agriculture Single family dwelling and farm land.

SURROUNDING LAND USE & ZONING

North: AG-Agriculture
South: AG-Agriculture

Single family dwellings and farm ground.
Single family dwellings and farm ground.

East: AG-Agriculture Farm ground.
West: A-1- Agriculture (Raymond) Single family dwellings and farm ground.

APPROXIMATE LAND AREA: 20.69 acres, more or less.

LEGAL DESCRIPTION: Lot 11 I.T. located in the SW ¼ of Section 4, Township 11 North, Range 6 East, Lancaster County, NE.

Prepared by

Tom Cajka, Planner

Date: May 28, 2020

Applicant: REGA Engineering Group
601 Old Cheney Rd. Suite A
Lincoln, NE 68512
402-484-7342

Contact: Marcia Kinning
REGA Engineering Group
601 Old Cheney Rd. Suite A
Lincoln, NE 68512
402-484-7342
marcia@regaeng.com

Owner: Timothy and Linda Aschoff
1950 SW 112th Street
Lincoln, NE 68532
402-525-7064

F:\DevReview\SP\20000\SP20015 Aschoff ADU.tjc.docx

CONDITIONS OF APPROVAL - SPECIAL PERMIT #20015

If the Planning Commission or County Board desire to approve the special permit, then the following conditions are recommended:

Per Article 13.050 this approval permits an Accessory Dwelling Unit (ADU) with waivers to reduce the side yard setback to 53 feet for the ADU, allow the ADU to be 251 feet from the principal dwelling and allow the floor area of the ADU to be 1,650 square feet.

Site Specific Conditions:

1. Before receiving building permits the permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 3 copies with all required revisions and documents as listed below:
 - 1.1 Revise Note#3 on the site plan to read, "No more than 2 bedrooms are allowed in the accessory dwelling unit."
2. Before receiving building permits provide the following documents to the Planning Department:
 - 2.1 Verification from the Register of Deeds that the letter of acceptance as required by the approval of the special permit has been recorded.

Standard Conditions:

3. The following conditions are applicable to all requests:
 - 3.1 Before occupying the Accessory Dwelling Unit all development and construction shall substantially comply with the approved plans.
 - 3.2 The terms, conditions, and requirements of this resolution shall run with the land and be binding upon the Permittee, its successors and assigns.
 - 3.3 The applicant shall sign and return the letter of acceptance to the County Clerk. This step should be completed within 60 days following the approval of the special permit. The Permittee shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds. Building permits will not be issued unless the letter of acceptance has been filed.



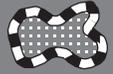
2018 aerial

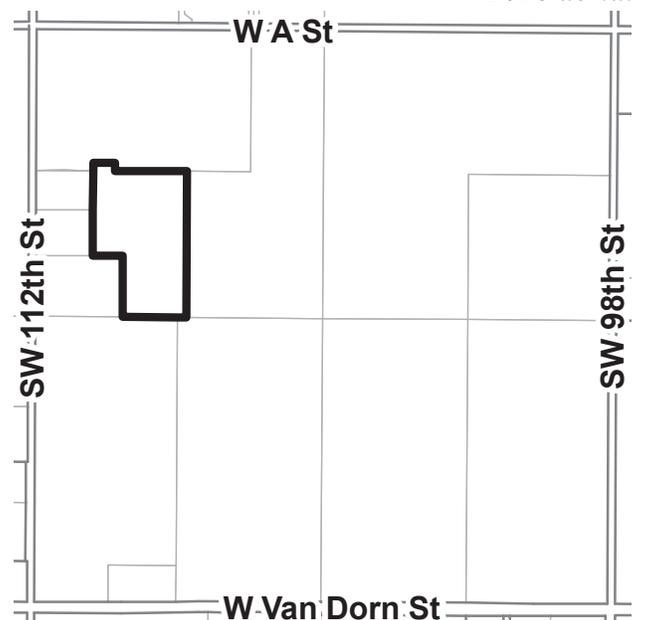
Special Permit #: SP20015
Aschoff ADU
SW 112th St & W A St

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

Two Square Miles:
 Sec.33 T10N R05E

	Area of Application
	Zoning Jurisdiction Lines
	City of Lincoln Jurisdiction



NO.	REVISIONS		
	DESCRIPTION	DATE	BY

PROJECT
201059

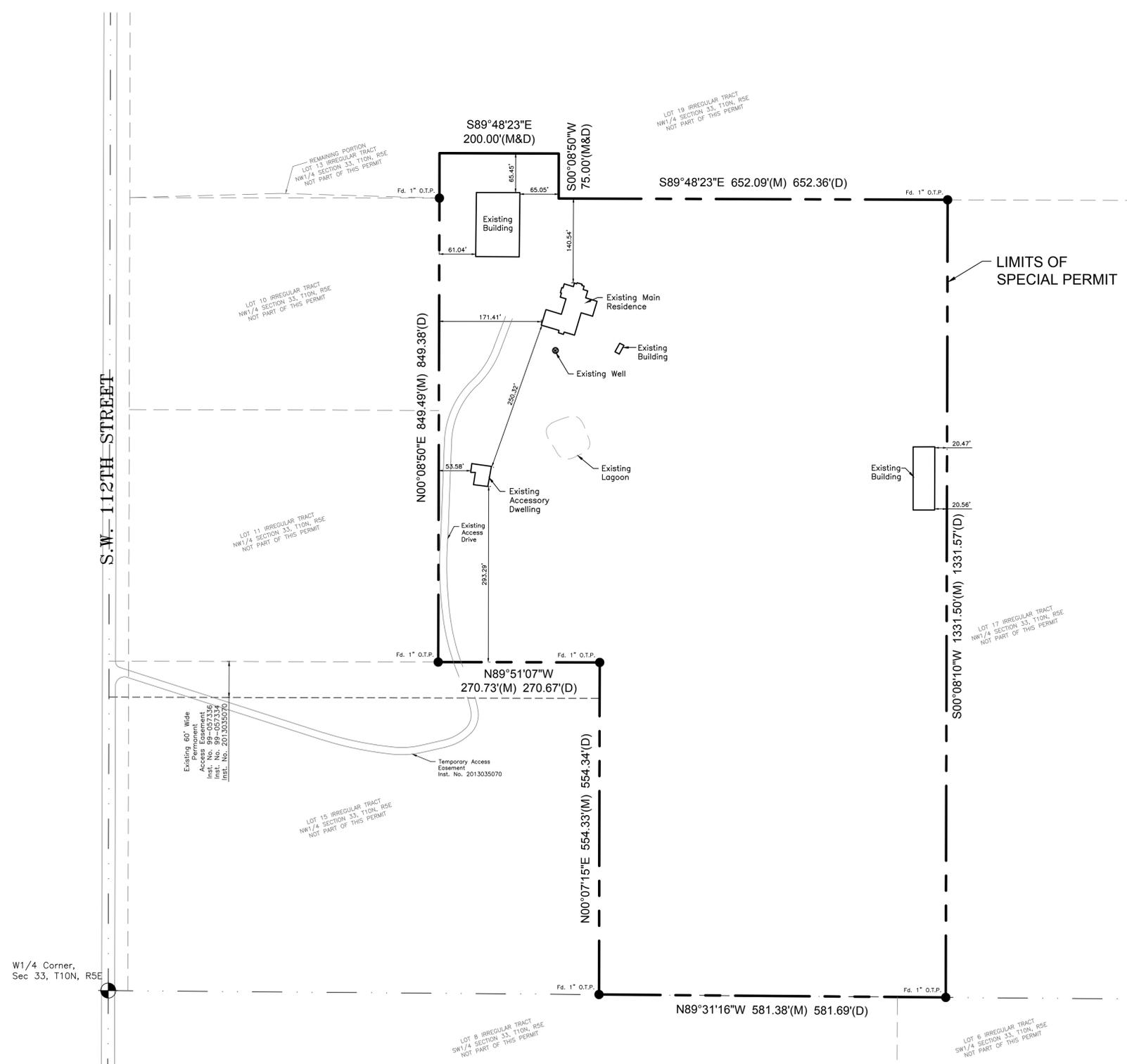
REGA
ENGINEERING GROUP, INC.

601 OLD CHENEY RD., SUITE A
LINCOLN, NEBRASKA 68512
(402).484.7342

OWNER:
TIMOTHY G. & LINDA E. ASCHOFF
1950 SW 112TH STREET
LINCOLN, NE 68532

SURVEYOR:
LYLE L. LOTH
REGA ENGINEERING GROUP, INC.
601 OLD CHENEY ROAD, SUITE 'A'
LINCOLN, NE 68512 (402)484-7342

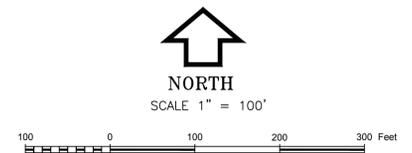
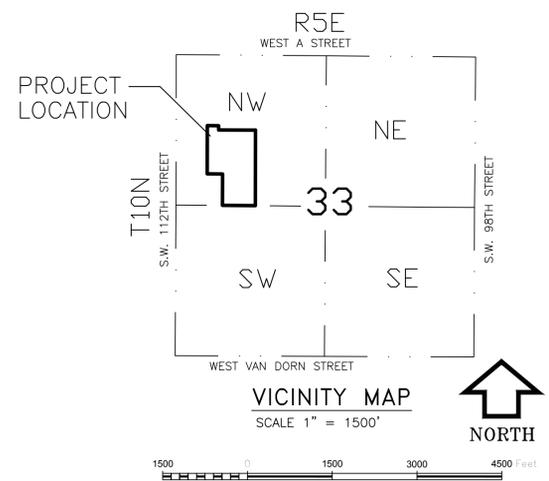
ENGINEER:
NATHANIEL P. BURNETT
REGA ENGINEERING GROUP, INC.
601 OLD CHENEY ROAD, SUITE 'A'
LINCOLN, NE 68512 (402)484-7342



LEGAL DESCRIPTION:
LOT 20 OF IRREGULAR TRACTS LOCATED IN THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 10 NORTH, RANGE 5 EAST OF THE SIXTH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA.

- GENERAL NOTES**
1. THIS SPECIAL PERMIT IS FOR AN ACCESSORY DWELLING UNIT.
 2. ZONING IS AG.
 3. THE ACCESSORY DWELLING UNIT HAS ONE BEDROOM.
 4. A SHARED DRIVEWAY FOR THE EXISTING MAIN RESIDENCE AND EXISTING ACCESSORY DWELLING UNIT IS LOCATED THROUGH THE ADJACENT PROPERTY TO THE SOUTH (LOT 15 I.T.)
 5. THE SEPTIC SYSTEM AND WATER ARE SHARED BETWEEN THE MAIN RESIDENCE AND THE ACCESSORY DWELLING UNIT.

- WAIVERS**
1. ACCESSORY DWELLING UNIT TO EXCEED 1,000 SQUARE FEET WITH A MAXIMUM OF 1,650 SQUARE FEET.
 2. SIDE YARD SETBACK FOR ACCESSORY DWELLING UNIT FROM 60 FEET TO 53 FEET.
 3. DISTANCE BETWEEN MAIN RESIDENCE AND ACCESSORY DWELLING UNIT FROM 200 FEET TO 251 FEET.



1950 SW 112TH STREET
SPECIAL PERMIT #20015
SITE PLAN

DATE: 5/13/2020
DESIGNED BY: MLK
DRAWN BY: MLK
CHECKED BY: DR/NPB

SHEET NO.
1 of 1

REGA

ENGINEERING GROUP, INC.

REGA No. 201059
May 13, 2020

Mr. David Cary
Planning Director
Tom Cajka, Planner
Lincoln/Lancaster County Planning Department
555 S. 10th Street,
Lincoln, NE 68508

RE: 1950 SW 112th STREET
Special Permit – Accessory Dwelling Unit

Dear David:

On behalf of Timothy and Linda Aschoff we are submitting a County Special Permit for an accessory dwelling unit. The property consists of 22.95 +/- acres and has an existing main residence, which the owners live in, and an existing dwelling unit that is separate from the main residence.

The separate 2 bedroom dwelling was constructed in 1999 and was built in compliance with applicable ordinances and regulations at that time. Since then the dwelling has been known by the County and assessed as a residential dwelling. The current owners are requesting for the dwelling to be allowed to remain and are willing to file a deed restriction agreement stating that the accessory dwelling unit cannot be sold separately from the main dwelling unit.

The main residence and the accessory dwelling acquire access to S.W. 112th Street with a temporary access easement on an existing drive located within Lot 15 of Irregular Tracts located southwest of this application. A permanent 60 foot wide access easement is existing on the adjacent property for a future access to be created at the time the temporary access is removed.

The adjacent landowners neighboring this property are the same landowners from when the accessory dwelling was constructed.

Water and septic for both existing dwellings within the special permit application share a well and lagoon system within the property.

Page 2

The following waivers are being requested with this application:

1. Accessory dwelling unit to exceed 1,000 square feet with a maximum of 1,650 square feet (Lancaster County Zoning Regulations, Article 13.050(1))
The existing separate dwelling has 824 square feet on the main floor and 824 square feet for the basement which equals 1,650 square feet. This request is accounting for the area that is unfinished in the basement to allow it to be finished in the future. The dwelling was built prior to the adoption of this article and the required square footage was unknown when constructed.
2. Side yard setback for accessory dwelling unit from 60 feet to 53 feet.
(Lancaster County Zoning Regulations, Article 13.050(6))
The existing separate dwelling was constructed approximately 53 feet from the property line.
3. Distance between main residence and accessory dwelling unit from 200 feet to 251 feet.
(Lancaster County Zoning Regulations, Article 13.050(7))
The dwelling was built prior to the adoption of this article and the required distance was unknown when constructed.

All of these waivers are permissible under the applicable zoning regulations. We appreciate the Planning Departments consideration and request your support for this application. If you have any questions regarding this application, please contact me at (402) 484-7342 or Tim Aschoff at (402) 525-7064.

Sincerely,



Marcia L. Kinning

Cc: Tim Aschoff

Enclosures: County Application Special Permit
Application Fee of \$988.00

ACCESSORY BUILDING AGREEMENT

This Agreement is entered into by and between Timothy G. Aschoff & Linda E. Aschoff ("Owners") and Lancaster County, Nebraska, a political subdivision of the State of Nebraska ("County"), for the purpose of clarifying the legal status and establishing certain restrictions on the use of a building located upon the following described real estate:

Lot 20, located in the northwest quarter of Section 33, Township 10, Range 5 East of the 6th Principal Meridian, Lancaster County, Nebraska ("Property").

The parties to this Agreement agree:

1. Owner is the titleholder, and in possession, of the Property.
2. As depicted in Exhibit A, a copy of which is attached hereto and hereby incorporated herein by this reference, there is a building located on the Property ("Accessory Building"). The Accessory Building includes bathroom, kitchen cabinets and rec room that are commonly included in a dwelling unit, together with spaces which could be used as sleeping quarters.
3. Owner warrants and agrees that the Accessory Building is not, and will not be, occupied as a dwelling unit. Owner agrees that the Accessory Building shall not be served by separate electrical service from that which is metered to the dwelling on the Property, and shall not be connected to septic or other sanitary sewer disposal facilities other than that which serves the dwelling on the Property.
4. Owner hereby consents to reasonable inspection of the Accessory Building by the City of Lincoln Building and Safety Department, for the sole and exclusive purpose of monitoring and enforcing this Agreement, upon no less than seventy-two (72) hours' written notice. There shall be no more than two (2) inspections of the Accessory Building during any twelve (12) month period pursuant to this Agreement. Notice shall be made in writing to the Owner's address provided below:

1950 SW 112th Street
Lincoln, NE 68532

Notice shall be deemed to have been received by Owner (a) when delivered in person; (b) one (1) business day after being deposited with a reputable overnight air courier service; or (c) three (3) business days after being deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre-paid and return receipt requested.

Either party may from time to time change the notice address set forth herein by delivering thirty (30) days advance notice to the other party in accordance with this section setting forth the new address and the date on which it will become effective.

For purposes of his section, the address for the County shall be:

City of Lincoln
Department of Building and Safety
555 S. 10th Street, Suite 203
Lincoln, Nebraska 68508

5. Owner acknowledges and agrees that occupancy of the Accessory Building as a dwelling unit would be a violation of the Lancaster County Zoning Resolution.
6. County agrees that the Accessory Building may remain on the Property in its current configuration and may be used as an accessory building by Owner.
7. The County agrees to issue to Owner, upon execution of this Agreement being recorded in the Office of the Register of Deeds for Lancaster County, Nebraska, a Building Permit No. BC180078.
8. The parties to this Agreement hereby agree this Agreement shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

EXHIBIT A



A2

DRAWING REVISIONS

DISCLAIMER:
THESE PLANS ARE TO
BE READ BY DIMENSIONS
ONLY. DO NOT SCALE.
PLEASE CALL FOR
DIMENSION ASSISTANCE.

TIM ASCHOFF
FLOORPLAN
DENTON, NE



86360 HWY 121
Osmond, Nebraska 68765
COMMERCIAL-AGRICULTURAL
WE ARE PROUD TO BE A PART OF SO MANY QUALITY PROJECTS ALL ACROSS
NEBRASKA. Phone: 669-743-3531

Drawn by:
t.schultze
Date: 2-20-18
File no: