

Chapter 1.00

REQUEST FOR WAIVER, PROCEDURE

Section 1. PURPOSE

The following design standards are adopted for the purpose of establishing the technical specifications, engineering requirements, and similar matters which property owners, subdividers, and permittees must meet when constructing or installing public and private improvements authorized or required by the various provisions of Chapter 24.38, Title 26, and Title 27 of the Lincoln Municipal Code. All such improvements shall substantially conform to design standards, as determined by the appropriate department, except that the City may approve a deviation from any of the standards as set forth herein upon a satisfactory showing that such deviation will not materially and adversely affect the public welfare and that the general intent and spirit of these design standards are preserved. (*Resolution A-86715, 3-5-12; Resolution A-83782, 3-20-06; Resolution A-81230, 11-16-01*)

Section 2. PROCEDURE

2.1 General

Any request for a deviation from the City of Lincoln Design Standards except as otherwise provided in these regulations shall be filed with the Planning Director. Such request shall set forth the specific modification requested and all supporting reasons and documentation as to why the modification should be granted, how the public welfare will be preserved, and why the modification will not detract from the intent and spirit of these design standards. The Planning Director shall distribute a copy of the requested modification and the applicant's statement and accompanying data to the director of the department designated as primarily responsible for the design standards from which the modification is sought. Such director shall, within fifteen days from receipt of a copy of the requested modification, file with the Planning Director notice of his recommended approval of the requested modification or a report stating why the modification should not be granted. Within thirty days from the filing of the request for modification, the Planning Director shall approve or deny the request in accordance with such director's recommendation and shall notify the applicant in writing of the approval or denial of the request. (*Resolution A-83782, 3-20-06; Resolution A-82320, 9-15-03*).

2.1.1 Appeal to Planning Commission. ~~The Mayor, a~~Any council member or aggrieved person may appeal any approval or denial of the request for modification by the Planning Director to the Planning Commission by filing notice of appeal with the Planning Director within fourteen days following such action by the Planning Director. Upon receipt of the appeal by the Planning Director, the Planning Commission shall hold a public hearing thereon within forty-five days from the date of appeal. In exercising its appellate jurisdiction, the Planning Director's action shall be deemed advisory and the Planning Commission may make such decision as ought to be made. Notwithstanding the above, if the appeal is associated with an application to be heard by the Planning Commission, the appeal shall be scheduled on the Planning Commission agenda

for public hearing and action on the same date as the associated application is scheduled for public hearing and action. (*Resolution A-83782, 3-20-06*).

2.1.2 Appeal to City Council. ~~The Mayor, any~~Any council member or aggrieved person may appeal the action of the Planning Commission on the request for modification to the City Council by filing a notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission. Upon receipt of the appeal by the City Council, the Council shall hold a public hearing thereon within thirty days from the date of appeal. In exercising its appellate jurisdiction, the Planning Commission's action shall be deemed advisory and the City Council may, after public hearing in conformity with the provisions of this title, make such decision as ought to be made.

For public hearings required to be held under this section, notice shall be given as provided in Lincoln Municipal Code Section 27.81.050, subsections (a), (b) and (c), provided that no decision shall be void or invalidated or effected in any way for any irregularity, defect, error or failure on the part of the City Clerk to cause notice to be given as required in subsection (c). The minimum improvements set forth in Chapter 26.27 of the Lincoln Municipal Code shall be required unless specifically and individually waived by the Planning Commission or City Council as provided above. (*Resolution A-83782, 3-20-06; Resolution A-82320, 9-15-03*).

2.2 Capitol Environs and Neighborhood Design Standards

Notwithstanding the above, any request for a deviation of the Capitol Environs Design Standards may be approved by the Nebraska Capitol Environs Commission as provided in said design standards ~~and any request for deviation of the Neighborhood Design Standards may be approved by the Planning Director or the Urban Design Committee as provided in said design standards.~~ (*Resolution A-83782, 3-20-06; Resolution A-83068, 11-1-04; Resolution A-82320, 9-15-03*).

2.3 Design Standards for Driveways Under Chapter 14.75 of the Lincoln Municipal Code
(*Repealed by Resolution A-86715; 3-5-12*)

2.4 Design Standards for On-Site Wastewater Treatment Systems Under Chapter 24.38 of the Lincoln Municipal Code

Any request for a deviation from the Design Standards for On-Site Wastewater Treatment Systems shall be submitted to the Health Director as set forth in Chapter 4.10, "Design Standards for On-Site Wastewater Treatment Systems," Section 3, Variance. (*Resolution A-81230; 11-16-01*)

2.5 Lincoln Downtown, South Haymarket, and Neighborhood Design Standards

Notwithstanding the above, ~~any request for a deviation of the Lincoln Downtown Design Standards may be approved by the Planning Director, the Appeals Board, or the City Council as provided in said design standards.~~the applicant may request the Planning Director to waive strict conformance with the Lincoln Downtown Design Standards, South Haymarket Design Standards, or Neighborhood Design Standards (collectively "Design Standards"). The Planning Director may grant the request upon written finding

that the design enhances its setting and meets the overall intent and spirit of the Design Standards.

A copy of the Planning Director's decision granting the requested waiver shall be sent by the Planning Director by first class mail to the applicant, the City Council, the Mayor, the record owners of property located within 200 feet of the subject property upon which the waiver was granted, and to the Downtown Lincoln Association, the Lincoln Haymarket Development Corporation, or neighborhood associations within ½ mile of the project site as appropriate (collectively "Potentially Aggrieved Parties"). Any Potentially Aggrieved Party may appeal the Planning Director's decision granting the requested waiver to the Design Standards. The appeal shall be to the Urban Design Committee (or if the subject property is already under the jurisdiction of the Capitol Environs Commission or Historic Preservation Commission, to the Commission having such jurisdiction). The applicable body having jurisdiction over the appeal shall hereinafter be referred to as the Appeals Board. The required Notice of Appeal shall be filed with the Planning Director within 14 days of the mailing (postmark) date of the Planning Director's notification mailing to the Potentially Aggrieved Parties.

If the Planning Director has denied the requested waiver, a copy of the Planning Director's decision shall be sent by the Planning Director by first class mail to the applicant. The applicant may appeal the Planning Director's decision denying the requested waiver to the Appeals Board. The required Notice of Appeal shall be filed with the Planning Director within 14 days of the mailing (postmark) date of the Planning Director's notification mailing to the applicant. If the applicant files such an appeal, notice of the hearing before the Appeals Board shall be sent by the Planning Director by first class mail to the Potentially Aggrieved Parties at least 10 days prior to the hearing.

Upon receipt of the appeal, the Planning Director shall cause the appeal to be scheduled for hearing and action on the Appeals Board's agenda within 45 days from the date of the appeal. Notice of the time, place, and purpose of such hearing before the Appeals Board shall be published by the Planning Department in a daily newspaper having general circulation in the City of Lincoln not less than 8 days prior to the date of the hearing. The Appeals Board may also give such other notice as may be deemed desirable and practicable. The Appeals Board shall review the proposed design, the Planning Director's decision, and any additional information provided, and shall make a written finding granting or denying the requested waiver. The Appeals Board shall grant the requested waiver if it finds that the design enhances its settings and meets the overall intent and spirit of the Design Standards. If the decision is not made by the Appeals Board within 45 days of the date of appeal, the waiver shall be deemed to have been approved by the Appeals Board. If the Appeals Board denies the waiver, the Appeals Board may approve the waiver conditioned upon the applicant making changes to the design in order for the application to meet the overall intent and spirit of the Design Standards. If the applicant agrees to make the recommended design changes, the building permit application shall be approved as being in compliance with the Design Standards, subject to appeal to the City Council as provided below.

Any Potentially Aggrieved Party may appeal the decision of the Appeals Board to the City Council. Notice of Appeal shall be filed with the City Clerk within 10 days of the Appeals Board's decision. If a Notice of Appeal is timely received, the City Clerk shall cause the appeal to be scheduled for hearing and action on the City Council agenda not less than 15 days nor more than 30 days after the date of the appeal. The City Council shall review the Appeals Board's recommendations in considering the request to modify or waive any of the Design Standards. If the Council approves a waiver(s) to the Design Standards, the applicant may resubmit the building plans for building permit review. Should Council affirm the recommended changes by staff or the Appeals Board, the applicant shall make such changes prior to resubmitting the building permit application.

Any final action of the Planning Director, Appeals Board, or City Council approving a requested waiver shall be deemed to be consistent with the Design Standards for purposes of issuing a building permit.

(Resolution A-85010; 9-8-08)

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