City Council Introduction: **Monday**, August 6, 2001
Public Hearing: **Monday**, August 13, 2001, at **1:30** p.m. Bill No. 01-129

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3327**, a text amendment to Section 27.71.130 of the Lincoln Municipal Code, requested by William F. Austin on behalf of Leonard G. Stolzer, to allow an additional main building on a lot in the AG zoning district where there is an existing residence.

STAFF RECOMMENDATION: Denial.

ASSOCIATED REQUEST: Special Permit No. 1909 (01R-210)

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/25/01
Administrative Action: 07/25/01

RECOMMENDATION: Approval of alternative language proposed by the City Attorney (5-4: Krieser Taylor, Duvall, Schwinn and Bayer voting 'yes'; Hunter, Steward, Newman and Carlson voting 'no').

FINDINGS OF FACT:

1. This proposed text amendment and Special Permit No. 1909 were heard at the same time before the Planning Commission.

2. The Planning staff recommendation to deny the proposed text amendment is based upon the "Analysis" as set forth on p.3-4, concluding that approval of this text change would contravene the Phasing Plan, could threaten the character of rural neighborhoods, and would promote an intensity of use inappropriate for areas shown as Agricultural in the Comprehensive Plan.

3. The applicant's testimony and testimony in support is found on p.5-9 and 11-12. The applicant also submitted a written response to the staff report (p.23-25), concluding, in part, that this "caretaker" amendment allows "non-agricultural use" lot owners in the AG district to personally provide for the physical security of buildings, material and equipment on their lots. The proposal not only allows for security, it allows for an economical and efficient use of lots in the AG district without adversely affecting the rural character of the AG district.

4. There was no testimony in opposition; however, the testimony of Mike Merwick, Director of Building & Safety, is found on p.11, explaining the reason why this applicant was found to be in violation of the zoning code.

5. The applicant's proposed text is found on p.16-17. The alternative language proposed by the City Attorney is found on p.18. The applicant agreed to accept the alternate language proposed by the City Attorney (See Minutes, p.5).

6. The Commission discussion with the applicant and with the staff is found on p.7-8 and 9-12.

7. On July 25, 2001, the Planning Commission disagreed with the staff recommendation and voted 5-4 to recommend approval of the alternate language proposed by the City Attorney as set forth on p.18. (See Minutes, p.12-13).

FACTSHEET PREPARED BY: Jean L. Walker **DATE**: July 30, 2001

REVIEWED BY:_____ **DATE**: July 30, 2001

REFERENCE NUMBER: FS\CC\FSCZ3327

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3327 **DATE:** July 10, 2001

PROPOSAL: Amend the Zoning Ordinance to allow an additional main building on a lot in the AG zoning district where there is an existing residence.

GENERAL INFORMATION:

APPLICANT: Leonard G. Stolzer
5400 South Folsom Street
Lincoln, NE 68523

CONTACT: William F. Austin
301 South 13th Street - Suite 400
Lincoln, NE 68508
(402) 476-1000

LOCATION: Section 27.71.130 of the Zoning Ordinance

REQUESTED ACTION: Amend the Zoning Ordinance to allow an additional main building on a lot in the AG zoning district where there is an existing residence.

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan identifies three goals for Agricultural lands:

- Identify, evaluate and prioritize agriculturally productive land for continued agricultural production.
- Preserve highly productive agricultural land for agrarian purposes, as well as allow rural, non-agricultural residences; protect ecological and historic sites in rural Lancaster County.
- Plan and coordinate the development and provision of quality transportation, public-safety, education services, health and human services, water (including quantity), and waste management for the entire rural area.

The Land Use Planning and the Community Vision section of the Comprehensive Plan provides the basic principles which provide direction for the community's land use policies:

> **A CONTINUING COMMITMENT TO NEIGHBORHOODS:** Neighborhoods are one of Lincoln's great strengths and their conservation is fundamental to this plan. The health of Lincoln's varied neighborhoods and districts depends on implementing appropriate and individualized policies. In addition, the land use plan is the basis for zoning and other land development decisions. It should guide decisions that will maintain the quality and character of the community's established neighborhoods. (p 36a)

WHILE AGRICULTURE CHANGES, RURAL CHARACTER REMAINS: Changes in agriculture and agribusiness and the increasing demand for rural residential living will result in continuing changes in uses of agricultural land. The plan focuses on the compatibility among the various uses. The recognition of the "right to farm" is an element of the preservation of our underlying culture, and is an inherent part of the environment in Lancaster County. (p 36a)

HISTORY:

March 7, 2001 Mel Goddard from the Department of Building and Safety sent a letter informing Leonard Stolzer that a plumbing business is not permitted in the AG district.

March 21, 2001 Mr. Stolzer applied for Special Permit #1909 to operate his business under a special permit for the temporary storage of construction equipment and materials.

April 18, 2001 Special Permit #1909 had its first public hearing before Planning Commission. Planning staff recommended denial based upon two findings: (1) the use is not allowable under the special permit and, (2) if approved, would create two uses on a single lot.

ANALYSIS:

1. If approved, this text change would permit an existing residence and another main building on a lot or tract in the AG zoning district as long as there is at least one acre for the house and the additional required area for the second use.

2. The applicant's proposed language states:

27.71.130 More Than One Main Building on Agricultural, Business, Commercial, or Industrial Tract.

(a) Where a lot or tract is used for a business, commercial, or industrial purpose, more than one main building may be located upon the lot or tract, but only when such buildings conform to all open space requirements around the lot for the district in which the lot or tract is located.

2. Where an existing residence is located upon a lot or tract in the AG district, an additional main building may be located upon the lot or tract in conjunction with another use permitted in the district, other than a residential use, provided that:

1. the residence shall be occupied only by an individual, and his or her family, actually employed and living on the premises; and
2. the lot or tract contains sufficient area to meet the combined area requirements of Section 27.07.080(h) and the proposed use to be located on the premises.

3. Building and Safety, the department responsible for interpretation and enforcement of the zoning ordinance, objects to the proposed language: "Proposed Section 27.71.130(b)(2)

appears to require a minimum lot area to meet the combined area requirements of Section 27.07.080(h) and the proposed use. Why should the tract only meet the area requirement of 27.07.080(h) with no reference to satisfying all other requirements of that section? How would the minimum area requirements of the 'proposed use' be determined? How would 'sufficient area' be determined under this language?" They also note that if the second, nonresidential use involved a nonpermitted use of the property then such use would not become a permitted use.

4. The City Attorney's office has submitted alternate language for the amendment. The alternate language should not be construed as an endorsement of this application - it is merely the preferred language if the proposed change is adopted.

5. Public Works & Utilities states, "The second building on a lot for a second use may allow construction of a use that driveways and existing roadways are not designed to handle. If the second main use can be sufficiently controlled so that required standards for that use are met, Engineering has no objections to this change of zone."

6. The applicant states that it is not uncommon for parcels in the AG district to be too small for economical agricultural use and too large for efficient use as a single family residence. The Comprehensive Plan identifies very low density residential (ranging from one dwelling unit per five acres to over 160 acres) as *an appropriate use of land in those areas designated Agricultural* provided the use meets specified criteria such as compatibility with rural character (emphasis added). (p 75)

7. This proposal, if approved, effectively doubles the potential intensity of use throughout the AG zoned lands within the City's jurisdiction. Such an event would not promote the preservation of rural character. Furthermore, much of the area in Lincoln's three mile extraterritorial jurisdiction is zoned AG and is designated as "Phase IV" in the Phasing Plan - the "Balance of City of Lincoln's land use jurisdiction shall be held as an urban reserve." Increased intensity could impair urban development as Lincoln expands. It could also strain roadways designed primarily as farm to market roads.

STAFF CONCLUSION: Approval of this text change would contravene the Phasing Plan, could threaten the character of rural neighborhoods, and would promote an intensity of use inappropriate for areas shown as Agricultural in the Comprehensive Plan.

STAFF RECOMMENDATION: Denial

Prepared by:

Jason Reynolds
Planner

CHANGE OF ZONE NO. 3327
and
SPECIAL PERMIT NO. 1909

PUBLIC HEARING BEFORE PLANNING COMMISSION: July 25, 2001

Members present: Krieser, Hunter, Steward, Taylor, Newman, Duvall, Carlson, Schwinn and Bayer.

Planning staff recommendation: Denial.

Jason Reynolds of the Planning staff submitted additional information for the record including a response from the applicant to the staff reports and a letter in support of the special permit from the President of the Yankee Hill Neighborhood Association.

Proponents

1. Bill Austin appeared on behalf of Mechanical Specialties, Inc. (Mr. and Mrs. Leonard Stolzer). This proposed text amendment had its genesis in the special permit which had previously been filed to allow temporary storage of construction equipment in the AG district. Staff had recommended denial in part because the property was the site of the home of the Stolzers as well as the existing storage facility and determined this to be two main buildings on one lot, which is not permissible in the AG district.

Austin stated that the applicant supports and requests that the Commission consider the alternative language for the text amendment as proposed by the City Attorney rather than the original language proposed by the applicant. It is more clear in what we are attempting to accomplish and it also addresses more clearly some of the staff concerns.

Austin also pointed out that the special permit application cannot be considered as final action by the Planning Commission as advertised. Under section 27.63.590, which is the special permit provision for temporary storage of equipment in the AG district, it requires City Council action to set the time limit during which the special permit is to continue and requires City Council action to reduce the acres to 7, which is something this applicant has requested.

Austin further explained that this text amendment seeks to change section 27.71.130 of the code that sets forth when more than one main building may be located on a lot. The language suggested by the City Attorney would provide that where an existing single family dwelling is located, one additional main building may be located on the tract in conjunction with another permitted use, other than residential, provided that it is either owner/manager occupied and the lot area contains sufficient area to meet the 1-acre requirement for a single family residence plus the minimum lot area required in the AG district for the nonresidential use. In other words, this text amendment seeks for the resident to act as a caretaker. Austin believes there are a number of benefits to this amendment. It would provide more security and less possibility for vandalism of valuable equipment and supplies; it provides efficient use of the ground in the AG district; the large tract could be put to more constructive use in conjunction with the residence in the AG district; and there is some benefit to allow someone to live where they work.

This probably will reduce the number of trips on the roads.

In its recommendation of denial, Austin noted that the Planning staff has cited Comprehensive Plan language making reference to a continuing commitment to neighborhoods and pointing out that neighborhoods are fundamental to the plan. They also go on to say that while agriculture changes, rural character remains recognizing that agricultural and agri-business activities are changing and will continue to result in changes of use in the AG district. Austin agrees that these are certainly valid points, but they do not support the conclusion that this change of zone therefore contravenes the character of rural neighborhoods or that it would promote an intensity of use inappropriate for the areas shown as agricultural. Austin is not sure why the neighborhood language has any relevance to this change of zone because this change of zone is limited to the AG district and the AG district is not a residential use. Nor are we proposing an intensification of use that is significantly different than that which is already permitted in the AG district. This proposal requires at least a 1-acre for a residence and, in addition, the amount of acres necessary for the otherwise permitted use. Austin suggested that this is not significantly different than what is already permitted in the AG district where an existing residence can actually be split off now on a one-acre tract with the remainder of the property continuing in agricultural or some other permitted use. This is currently permitted in the situation in which a house is associated with a farm. Austin suggested that from a health, safety or welfare standpoint it does not make a whole lot of difference whether a property was associated with a farm or not if you are going to allow residences on one-acre tracts in the AG district. But, even over and above that, this applicant is not asking to allow a residence on a one-acre tract. We are suggesting that on a larger tract, as long as we have at least one acre to support the residential use, that that should be permitted.

Austin purported that this sort of use is already allowed in the AG district if you are on a farm. It is presumably permitted if you are a church with a parsonage. All this proposed change does is to allow this in conjunction with other uses within the AG district. It requires at least the minimum amount that you would otherwise require to carve out a residence from a farmstead, and, in addition, requires that you have the acreage necessary for the otherwise permitted use.

Austin pointed out that currently in the AG district there are already a variety of uses that are permitted on one, two, ten and twenty acres, but it's the 20-acre general minimum which was presumably decided upon because a farmstead is twenty acres.

Austin suggested that there is no more real possibility of significant intensification of use based upon this request than there is of all the farmers wanting to carve off their homes from their 20+ acre lots on a wholesale basis. The applicant is puzzled by the staff comments that there would be any real intensification of use. The applicant is also puzzled by the Building & Safety comments that ask why the tract should only meet the area requirements of 27.07.080(h), relating to carving off of the farm residence. If this applicant met 27.07.080(h), they would not be here today. Aside from that, what this applicant is intending to do by making a reference to that was simply to point out that there is an existing and established minimum lot for a residence and we're trying to key into that; however, that language is no longer in the proposal as drafted by the City Attorney's office.

Austin also noted that the Building & Safely report expressed some concern about non-permitted uses being permitted. If this proposal was in any way unclear about that, it should be cleared up by the City Attorney's draft of the language, which specifically says that all you can have with the residence is another permitted use in the AG district.

The staff suggests that this change will not promote preservation of the rural character of the area. Frankly, Austin believes that the special permit this applicant is seeking in conjunction with this text will actually assist in preserving the rural character to the extent that it exists in that location now. We are asking for a temporary use of the premises for storage of equipment. With regard to the rural character of the area, Austin passed around some photographs showing activities that are occurring within a mile of the applicant's own home including existing construction and equestrian activities with residences. Austin was not trying to point the finger at anyone else, but if Mr. Stolzer can find these three examples which exist within one mile, it probably is occurring to a fairly large extent around the city where there are already residences in conjunction with other permitted uses.

Austin does not believe that this is something that needs to be outlawed or eliminated, but it is something that needs to be recognized and addressed. A sensible approach is to recognize the utility of having someone have their residence almost as an accessory use in conjunction with other permissible uses already allowed in the AG district.

Carlson clarified with Austin that it is his opinion that the other uses shown on the map are currently unlawful uses. Austin believes they stand in the same position as Mr. Stolzer. Carlson understands that this text amendment would benefit Stolzer, but one concern he has is that it is a text change and therefore city-wide/county-wide. What's the benefit to the County? Austin responded that first of all, to some extent zoning has to be practical and recognize what people do and want to do in these sorts of districts. The three examples are very much a tip of the iceberg as to what is occurring. A lot of people on these large lot acreages in the AG district have a residence and often you find people slowly accreting to some extent their business there and it is not an unreasonable use of the ground. In contrast, the benefit is that if we recognize something that is in the nature of a caretaker type of activity (someone who is residing on the premises and making use of the premises in what is an otherwise permitted use in the district), that is probably beneficial from the standpoint of security and reducing vandalism.

Carlson noted the applicant's assumption that the area, if not in transition, is probably headed for transition because of its proximity to the city, and that this would lay the groundwork for a potential special permit that would have a time limit. That raises a concern to Carlson. He asked for the applicant's rationale as to why the application is justified if it is just a temporary situation in a transitional area. Austin replied that insofar as the change of zone is concerned, the benefit is a little different than with the specific special permit being requested here. He believes that the change of zone has a benefit separate and apart from the special permit simply because it will recognize a reasonable use of large lots in the AG district where there is an existing residence and someone wants an otherwise permitted use and has enough area to do that but for the fact that they cannot have two main buildings on the lot. For the special permit, that is a little different because the specific permit has a maximum limit on it of 15 years, and because of where Stolzer is located (abutting up against the proposed Optimist fields with the Wright YMCA fields about a

block or two to the north), he does not think this is going to be agricultural for a long time if we continue to encroach with things such as ballfields. Speaking of intensifying the use of the roads and ground out there, those ballfields are doing it.

Austin pointed out that the applicant is not seeking a change of zone, but this at least allows Mr. Stolzer a reasonable use of his property and the existing structures on his ground for a limited period of time.

Steward is concerned about enforcement of the language, "Either the owner or resident manager of the nonresidential use shall live in the single family dwelling as his or her permanent residence." Steward's concern is, what's to prohibit this applicant or an adjacent property owner or anyone in the county from building that second house and leasing it? Austin clarified that there will not be a second home that would be allowed on the premises. There would be one home and one business. Bayer then inquired how you make sure the home is occupied by the business owner. Austin suggested that there would be ways to check that through the business records and as to where that individual is obtaining their mail--the various ways in which they would verify occupancy by someone in any building. Steward commented that it's like many of our ordinances--there is a way to do it but the cost and the effectiveness becomes onerous to the county or city. Austin agrees that there are enforcement problems, but by the same token, a farmer could rent out his house and you wouldn't know it.

Hunter sought clarification of the minimum lot area requirements. Austin explained that with this change, you could have the second main building if you have the one-acre for the residence and then whatever the other permitted use is (most of the time it is going to be 20 acres, so you would have to have 21 acres to make this permissible). In some circumstances it's 10 acres plus the one acre. This special permit is one acre plus seven acres. There are 8.62 acres in the subject property.

Bayer noted that it seems this is an ordinance that would allow home based businesses in AG. Is that it? Or a business on a person's land? Austin believes it is close to that. They are looking more to allow them to provide the caretaker sort of function.

2. Craig Strong appeared on behalf of Leonard Stolzer and discussed the special permit application. He showed a photo of Stolzer's lot, showing the storage building in question and storage area and the residence. As far as the long term effect, Strong reiterated that it is within a permitted use already in the AG area. This is unique to the extent that it is a very constricting permit in that there are parameters to meet to qualify. Temporary storage has to be within one-mile of the future urban area.

Strong gave a brief history. In May of 1997, Stolzer built the storage building after receiving a building permit from the city. Being on Folsom Street, he built it for security reasons. This allows him to be the caretaker of his construction materials. He uses the building to store materials for his mechanical construction business and has used the building for four years without any complaints. In March of 2000, the city informed Stolzer that his building was not proper for the AG area and that is the reason for this special permit. Stolzer meets the criteria of the special permit.

His land amounts to 8.62 acres, meeting the minimum requirement of 7 acres; the area of the indoor and outdoor storage does not exceed the 2-acre maximum; the site is located within one-mile of the future urban area, bordering the Optimist ballfield.

Strong noted that the staff report characterizes Stolzer as a plumber, which is correct; however, the intent or the requirements of the temporary storage is if someone is engaged in the construction industry. Stolzer is engaged in the mechanical construction trade.

Stolzer has neighborhood support from the Yankee Hill Neighborhood Association. He met with members of the community and attended the neighborhood association meetings and the Mayor's Neighborhood Roundtable. Stolzer submitted signatures from the immediate neighbors in support.

Strong agreed with the proposed conditions of approval set forth in the staff report should the Commission approve the special permit.

This special permit cannot be final action by the Planning Commission because the City Council must decide the minimum 7 acre use and determine the period of time for the permit.

3. Lynn Ostrem, owner of the property immediately south of Stolzers, testified in support. She has lived there for 1.5 years and has had no problems whatsoever with the storage of the equipment. Their back yards are adjacent There is no noise. There is no disruption. Everything is neat and well kept. She has no concerns being the closest neighbor. With regard to traffic, there is a significant amount of traffic on Folsom from the soccer fields and the potential Optimist Club ballfields, so the statement of excessive traffic from the storage is not a valid point to consider in this case.

There was no testimony in opposition.

Staff questions

Steward's concern is the change of text and the fact that we set up circumstances which are going to be even more difficult to police. He would like to know why we cannot simply approve this as a special permit as it stands without changing the text. Reynolds explained that it would create a situation where you have more than one main use on a lot, which is not permissible in the AG district. Steward asked how different that is from someone continuing to use the property for agricultural purposes and has outbuildings besides their residence. Reynolds further explained that if someone used this as a farmstead, for example, and had some building for storage of a tractor, in that case agriculture is a permitted use and in some ways a single family dwelling is almost an accessory to the agriculture.

Rick Peo, City Attorney's office, clarified that that is the most confusing aspect of the AG district–when does a single family dwelling become the main use and when is it accessory? In a farmstead of 20 acres or more, the dwelling is definitely the accessory use. When we get to some of the smaller uses, the single family dwelling is a permitted use by right so it is in a sense a separate and distinct use. It is already existing on this property. If you want to add a second use,

you can't count the same lot area twice for each required minimum lot area. We could say we are going to allow two main uses with certain criteria to add the second main use when you have a residence. It is an awkward situation.

Steward suggested that the logic should be, if we want to retain the agricultural quality to these acreage environments, that we be lenient on standard agricultural uses but every other use would be inspected or at least show cause that it is a use that does not in visual, in traffic and other ways show detrimental effect on that general environment intent. Steward stated that he is looking for a way to be able to approve this use because it doesn't seem to be intrusive; however, he does not want to open the entire county up to uses. Peo clarified that this does not expand the uses in the district. Any use that comes forward has to be a use that is already permitted in the AG district. Both uses have to be permitted in the district. By changing the language to a caretaker situation, Peo was really attempting to acknowledge that we are trying to make it accessory to the business or they are a merged type of product so that there is continuity and unity between the two uses. Steward clarified that the use factor still controls to begin with. Peo concurred.

Carlson asked how varied the minimum lot requirements are for the permitted uses. Reynolds stated that they vary from 20 acres down to 1 acre. There are specific conditions under which a farmstead can be split off down to 1 acre–it has to be a primary residence associated with the farm--the remaining acres have to exceed 20. In addition, the Health Department and Building & Safety must sign off on the application. The Health Dept. does not sign off unless it is 3-acres, which is the Health Dept. recommendation for minimum size for a septic system. In this case, the remaining acres would be seven.

Carlson inquired about subdividing these uses under two separate lots, but presumed they could not meet the minimum lot size requirements for the two uses. Reynolds concurred, although it meets the requirements for a residence. It works as a single family residential lot.

Peo attempted to further clarify. The lot in question is a pre-existing legal size lot for a single family dwelling. In order to add the temporary storage of construction equipment, they need to have a 20-acre parcel unless Council reduces it down to a smaller size, i.e. to the minimum of 7 acres. Because your typical size for a single family dwelling is the 20-acre minimum, your nonstandard size may be 13. To add another use, you're going to have to have another 20-acres for that use. They don't have that. This ordinance is not creating different lots and subdividing the property.

Carlson was attempting to find an alternative way to do this. Peo clarified that it is not a permitted use in AGR. The City Council does not have discretion on the acreage size. They would, however, be able to reduce the minimum lot size required for temporary storage of construction equipment from 20 acres to 7.

Newman was curious as to what is a permitted use in the AG district that we may be shooting ourselves in the foot by approving the text amendment. Reynolds believes the applicant is engaged in a construction trade as a plumbing contractor, which is specifically called out in the H-3 and H-4 zoning districts. Those would be appropriate locations for someone to store their plumbing equipment. If this is approved, it raises the question as to what else is a construction business, i.e. electrical work, storing paint, etc.

Newman was not worried about this particular use. She wanted to know what other permitted uses could be slipped in somewhere else by the text amendment. Reynolds pointed to the storage of toxic and flammable materials; other typical permitted uses are garden centers, stables and riding academies, kennels, farming, etc.

Bayer suggested that if Mr. Stolzer had 20 acres, he would not be here today. Reynolds disagreed. They would still need the special permit for the type of use. The citation they received from Building & Safety is that they are operating a use not permitted in the AG district. There is a special permit to store in AG if they were 20 acres. A farmer could store fertilizer for his own use but he could not store fertilizer for sale to other farmers.

Bayer asked whether there are other dangerous uses. He believes that people want this to happen but he is confused why the staff doesn't want it to happen. What can they do here? What are we afraid of?

Mike Merwick, Director of Building & Safety, addressed the Commission. For the past few years, we have been trying to maintain AG as spelled out in the zoning code--no commercial businesses. We've shut hundreds of them out. We just went through a deal where a person had 7 employees and was running a business. There are a lot of people that have tried this same thing. They've gone out in AG and as we find them, we shut them down. In this specific situation, Merwick stated that it is more than storage–there are employees reporting there and working there and then going out from there.

Bayer clarified that the proposed text amendment does not allow the employee activity. Peo concurred, stating that if you approve the temporary storage, people are going to have to come out, pick it up and move it, so employees will be going and coming from the site.

Merwick pointed out that if this is where Stolzer's office is located, it is more than storage.

Carlson asked staff whether there is zoning other than AG that would accomplish the intent. Reynolds suggested that there are certain provisions in the I-1 that talk about having a resident caretaker.

Response by the Applicant

Austin agreed that the AG district is set up to some extent to be more lenient toward agricultural uses, but what he would suggest is that they have been more than lenient to farm uses, particularly when 27.07.080(h) allows what used to be a farm residence to be carved off to be used for a residence in and of itself. That takes it outside of agricultural use under certain conditions. Austin suggested that "we ain't pure right now" in the AG district and we're not trying to say be less pure but there are some of these things that should be recognized as sort of a different type of lifestyle. If they are shutting down hundreds of these every year, there must a lot of demand for doing this. If there are hundreds of them, they must not have overloaded the roads just yet. We're not really opening this up. Let's look at the permitted uses in the AG district–there is agriculture, confined feeding facilities, breeding and raising management of fur bearing animals, dog breeding establishments and kennels, stables and riding academies, public use of single family dwellings and churches. Permitted conditional uses include cemeteries, pet cemeteries, roadside stands, group homes, wind energy systems, greenhouses, early childhood facilities, permitted special uses, private schools, recreational facilities, dwellings for

members of religious orders, broadcast towers and stations, campgrounds, veterinary facilities, bigger confined feeding facilities, sale barns, garden centers, facilities for the commercial storage or sale of fertilizer, church steeples, expansion of nonconforming use, historic preservation, public utility, private land strips, limited landfills, race tracks, temporary storage of construction equipment, early childhood facilities, clubs, dwellings for domestic employees in accessory buildings, heritage centers and community halls. Austin believes there is a limited number of potential uses that would be combined with a residence. You need a caretaker with a cemetery use or with a greenhouse. Austin believes that this applicant would still be here even if they had 20 acres because of the interpretation that it is more than one main building on the premises.

Hunter asked if Stolzer is a plumber. Austin stated, "yes, he is a plumber--he has a master plumbers license." Hunter asked whether he has employees. Austin stated, "yes, but not on the premises." Hunter then asked if he stores plumbing equipment used in the business. Austin stated, "yes". She also asked if Stolzer's office is located there. Austin stated that he has some area in his home where he does his computer work. Austin elaborated that Stolzer's plumbing business promotes a lot of different things–he has been a subcontractor to Sampson Construction on UNL campus; subcontractor to Kingery on the Hartley School reconstruction; and in Crete he has been subcontractor on the science building at the Doane campus. We think that what he is doing is very legitimate storage of equipment and supplies because of the nature of his work.

Bayer clarified with Peo the final action issue. Peo agreed that the Planning Commission cannot take final action on the special permit. The ordinance does say it is the City Council's decision to establish the timeline for the duration of the temporary permit and reduction of the acreage down to 7.

Steward asked what position it puts the city in if the text amendment is denied and the special permit is approved. Peo stated that the applicant would have the choice of abandoning the dwelling if he wants to keep the special permit. He would have two main uses on the property which is not permissible. He would have to decide which one to keep. That is the reason we are here.

Public hearing was closed.

CHANGE OF ZONE NO. 3327
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: July 25, 2001

Duvall moved approval, using the City Attorney's proposed language, seconded by Taylor.

Duvall's comments were that anybody can be a general contractor--just because it is a trade does not say he has no right to be a contractor. He is trying to make an income. He has storage near his dwelling and to make his property conforming he has to go through this.

Steward does not think this is about the plumbing business. It is about conforming to the Comprehensive Plan, and the regulations were set up to follow the Comprehensive Plan to protect a character of agricultural landscape and land use. All of the permitted uses that have been read conform in Steward's mind to that general character. And special permits are to be inspected and approved or disapproved based upon the adverse effect on that character. So, he will vote against the motion because he believes it opens up the commercial and industrial in an agricultural zone of the

entire county, especially if we do it on the precedence of this particular use. We will not be in a position to deny other commercial industrial permits as easily as we can now if we pass this. Steward does not have a problem with the current condition as a special permitted circumstance. It seems that this applicant is satisfying his neighbors in conducting activities on the property. But Steward does have a huge problem with approving the text amendment for whatever else can happen in the AG zone.

Carlson thinks there should be a different way to do this. What they are trying to accomplish at that particular location won't have that big of an impact, but the text amendment as a whole could have an impact.

Bayer suggested that the text amendment is much bigger than what is in front of the Commission today. He was glad to hear the uses in the AG district. He would be excited about allowing businesses to be set up next to a person's residence and he believes the country is an okay place to do that given the appropriate amount of space. Bayer is not opposed to having a business in the rural setting.

Hunter cannot support this because she thinks the way to accomplish this is to add the use to the special permit for properties under that limitation. The acreage is the problem. The better approach is to amend the specific portion of the problem that would allow this to be done on a special permit basis. It opens the door for so many other things in this way. She would like to see it come back with a change in another manner.

Taylor fails to see the difficulty in approving this. Without being able to see that difficulty, he does not see why we should not approve this. The argument in favor is too compelling to him.

Hunter commented that there are a lot of trades and businesses that don't function in their location. They do their business everywhere else but a centralized location. But if you have the ability for storage in a large storage shed, what would prevent you from storing your dump trucks out there? You don't use them on site and the business is conducted off-site, but she believes this text amendment is an opening for that sort of thing to happen. None of the regulations are built for the conscientious business person that does not abuse the system. They are always designed for the instances that come in and try to use the loophole to create a different situation and that is why she is opposed.

Motion to approve carried 5-4: Krieser, Taylor, Duvall, Schwinn and Bayer voting 'yes'; Hunter, Steward, Newman and Carlson voting 'no'.

SPECIAL PERMIT NO. 1909
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: July 25, 2001

Duvall moved approval, with conditions, seconded by Schwinn and carried 9-0: Krieser, Hunter, Steward, Taylor, Newman, Duvall, Carlson, Schwinn and Bayer voting 'yes'.

CHARLES THONE
DONALD H. ERICKSON
DANIEL D. KOUKOL
WM. E. MORROW, JR.
SAM JENSEN
DANIEL B. KINNAMON
THOMAS J. GUILFOYLE
VIRGIL K. JOHNSON
CHARLES V. SEDERSTROM
CHARLES D. HUMBLE
MICHAEL C. WASHBURN
ALAN M. WOOD
WILLIAM F. AUSTIN
JOHN C. BROWNRIGG
THOMAS J. CULHANE
RICHARD J. GILLOON
SAMUEL E. CLARK
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ROLAND J. SANTONI

OMAHA OFFICE

10330 REGENCY PARKWAY DRIVE,
SUITE 100
OMAHA, NEBRASKA 68114-3761

June 20, 2001

Kathleen Sellman
City County Planning Director
555 South 10th Street
Suite 213
Lincoln, NE 68508

Re: Requested Text Change
Our File No. 16874.42555

Dear Kathleen:

On behalf of my client, Mr. Leonard G. Stolzer, I am submitting the enclosed petition to amend the zoning ordinance to initiate a text change to Section 27.71.130 relating to more than one main building on the lot. Also enclosed is a check for the filing fee, in the amount of $195. If anything further is needed to process this request, please feel free to give me a call.

Sincerely,

William F. Austin

Enclosure
c: L. Stolzer
C. Strong
R. Peo

Petitioner is the owner of Lot 1, South Folsom Addition, located in the Southeast Quarter of Section 10, Township 9 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska containing approximately 8.62 acres. Petitioner's home is located on the property along with a storage garage in which Petitioner stores equipment and materials for the conduct of Petitioner's mechanical construction business. Petitioner has previously filed for a special permit to continue to use the storage garage for temporary storage of construction equipment pursuant to Section 27.63.590 of the Lincoln Municipal Code. The Planning Department reported to the Planning Commission that the issuance of such a permit would allow more than two main buildings on the premises contrary to Section 27.71.130 of the Lincoln Municipal Code.

Petitioner is proposing an amendment to Section 27.71.130 which would permit an existing residence and another main building as long as the lot or tract in question has at least one acre for the residence and the additional area needed for a second use. Petitioner believes that the situation of Petitioner is not uncommon in Lancaster County and that lots in the AG District, which are not large enough to be used economically for agriculture, yet are so large that limiting them simply to residential use for an existing residence is impractical and an uneconomical use of the land.

Introduce:

Change of Zone No.

ORDINANCE NO. _____

AN ORDINANCE amending Section 27.71.130 of the Lincoln Municipal Code relating to the location of more than one main building on a lot to permit more than one main building on a lot or tract on the in AG District which contains an existing residence under certain conditions; and repealing Section 27.71.130 of the Lincoln Municipal Code as hitherto existing.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. That Section 27.71.130 of the Lincoln Municipal Code be amended to read as follows:

27.71.130 More than one main building on agricultural, business, commercial, or industrial tract.

(a) Where a lot or tract is used for a business, commercial, or industrial purpose, more than one main building may be located upon the lot or tract, but only such buildings conform to all open space requirements around the lot for the district in which the lot or tract is located.

(b) Where an existing residence is located upon a lot or tract in the AG district, an additional main building may be located upon the lot or tract in conjunction with another use permitted in the district, other than a residential use, provided that:

(1) the residence shall be occupied only by an individual, and his or her family, actually employed and residing on the premises; and

(2) the lot or tract contains sufficient area to meet the combined area requirements of Section 27.07.080 (h) and the proposed use to be located upon the premises.

Section 2. That Section 27.71.130 of the Lincoln Municipal Code as hitherto existing be and the same is hereby repealed.

Section 3. That this ordinance shall take effect and be in force from and after its passage and publication according to law.

Introduced by:

_____

Approved as to Form & Legality:

_____
City Attorney

Staff Review Completed:

_____
Administrative Assistant

INTER-DEPARTMENT COMMUNICATION

TO	Jason Reynolds	**DATE**	June 28, 2001
DEPARTMENT	Planning	**FROM**	Rick Peo
ATTENTION		**DEPARTMENT**	City Law
COPIES TO		**SUBJECT**	Change of Zone 3327

I suggest that subsection (b) of Section 27.71.130 be revised to read as follows:

(b) Where an existing single-family dwelling is located upon a lot or tract in the AG district, one additional main building may be located upon the lot or tract in conjunction with another use permitted in the AG district, other than a residential use, provided that:

(1) Either the owner or resident manager of the non-residential use shall live in the single-family dwelling as his or her permanent residence; and

(2) The lot or tract contains sufficient area to meet the combined area requirements of one acre for the single-family dwelling plus the minimum lot area required in the AG district for the non-residential use.

ERP/ce

Rodger P Harris

06/29/01 04:23 PM

To: Ray F Hill/Notes@Notes
cc: Chuck A Zimmerman/Notes@Notes, Mel E Goddard/Notes@Notes
Subject: CZ 3327, Sec. 27.71.130 LMC.

We have reviewed this proposed text change and have the following comments to offer:

1. Proposed Section 27.71.130(b)(2) appears to require a minimum lot area to meet the combined area requirements of Section 27.07.080(h) and the proposed use. Why should the tract only meet the area requirement of 27.07.080(h) with no reference to satisfying all other requirements of that section? How would the minimum area requirements of the "proposed use" be determined? How would "sufficient area" be determined under this language?

2. If the second, nonresidential use of the lot involved a nonpermitted use of the property, such as employee's coming to this location to start and end a work day, such use would not be a permitted use, notwithstanding this proposed language or variation of this language.

M e m o r a n d u m

[redacted]

To: Ray Hill, Planning Department

From: Dennis Bartels, Public Works & Utilities

Subject: Amend Zoning Ordinance Sec. 27.71.134

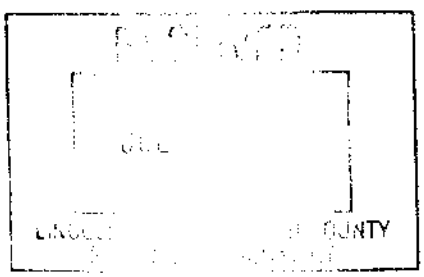
Date: June 29, 2001

cc: Roger Figard, Nicole Fleck-Tooze

Engineering Services has reviewed the request to amend 27.71.134 to allow more than one main building on an AG zoned lot and has the following comments:

1. The second building on a lot for a second use may allow construction of a use that driveways and existing roadways are not designed to handle.

2. If the second main use can be sufficiently controlled so that required standards for that use are met, Engineering has no objections to this change of zone.



jaj Ord27.71.134 ddb

ITEM NO. 3.1: . CHANGE OF ZONE NO. 3327
(p.101 - Public Hearing - 7/25/01)

LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-DEPARTMENT COMMUNICATION

TO:	Ray Hill	**DATE:**	July 17, 2001
DEPARTMENT:	Planning	**FROM:**	Jerrold C. Hood, REHS
ATTENTION:		**DEPARTMENT:**	Health
CARBONS TO:	Administration Scott E. Holmes File	**SUBJECT:**	CZ 3327

The Lincoln-Lancaster County Health (LLCHD) has reviewed the proposed amendment to Section 27.71.130 of the Lincoln Municipal Code (LMC). Based on this review the the Department recommends that the Lincoln Municipal Code (LMC) remains the same or that the minimum lot size be no less than three acres.

The Nebraska Department of Environmental Quality (NDEQ) requires a minimum of three acres for residences that have or will install sewage lagoons. This lot size provides sufficient area for a replacement lagoon if the original system fails.

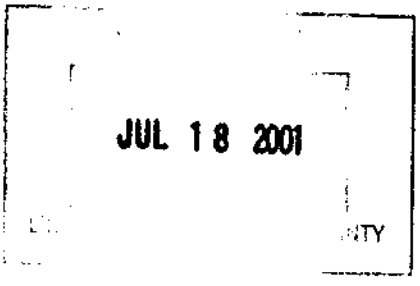
Traditional septic systems must meet setback requirements from the property line, the well, and the neighbors well and their residence. NDEQ now also requires a reserve area to be established that can be used as a replacement area if the original systems fails.

The LLCHD has found over the years minimum lot size of at least three acres is needed to accommodate the installation, operation and maintenance of a septic system or lagoon.

If there are any questions please contact me at 441-8029.

JCH/dl

Planning.Memo



Lancaster County Engineering Department

DON R. THOMAS - COUNTY ENGINEER

DEPUTY - LARRY V. WORRELL
COUNTY SURVEYOR

JUL 18 2001

DATE: July 17, 2001

TO: Jason Reynolds
Planning Department

FROM: Larry V. Worrell
County Surveyor

SUBJECT: CHANGE OF ZONE 3327

Upon review, this office would have the following comments:

1) Access location could become a possible conflict with road improvements that may be proposed.

2) Storage of equipment is one thing; would not expansion eventually lead to commercial or industrial use of the property? This generally would end up being a base for operations.

LVW/rln
DOCS\ZONE\Change of zone 3327.wpd

FAX # (402) 441-8692 444 CHERRYCREEK ROAD, BLDG. C LINCOLN, NEBRASKA 68528 (402) 441-7681

ITEM NO. 3.1a: CHANGE OF ZONE NO. 3327
(p.101 - Public Hearing - 7/25/01)

RESPONSE TO:

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3327

PROPOSAL: Amend the Zoning Ordinance to permit a single family dwelling ("caretaker residence") and another main building on the same lot, as long as the lot or tract in question has at least one acre for the single family dwelling residence and the additional area needed for the other permitted use.

APPLICANT: Leonard G. Stolzer, Jr. & Lynette M. Stolzer
5400 South Folsom Street
Lincoln, NE 68523

CONTACT: William F. Austin
301 South 13th Street – Suite 400
Lincoln, NE 68508
(402) 476-1000

LOCATION: Section 27.71.130 of the Zoning Ordinance.

BACKGROUND

The Applicants seeks to amend the Zoning Ordinance to permit a single family dwelling ("caretaker residence") and another main building on the same lot, as long as the lot or tract in question has at least one acre for the single family dwelling and the additional area needed for the other permitted use. The intent of this amendment is to allow "non-agricultural use" lot owners in the AG district with a practical means of providing for the physical security of their property.

The general zoning regulations state, "every building hereafter erected or structurally altered shall be located on a lot as herein defined and *in no case shall there be more than one main building on one lot* except as otherwise provided in Chapters 27.65 and 27.71." §27.81.010(d) (emphasis added). However, in the AG district a lot owner is allowed to have more than one main building if they are engaged in agriculture (i.e., single family dwelling and agriculturally related accessory buildings). This rule is very reasonable because farmers are able to live next to their farm equipment and serve as the on-site caretaker for their property and equipment and provide for its needed security. The security concerns in question are even more critical in a sparsely populated rural setting.

On the other hand, lots with other permitted uses in the AG district are prohibited from having a caretaker residence on the same lot. For example, a lot

owner with a dog breeding establishment, a greenhouse, or a veterinary facility may not have a separate single family dwelling on the same lot. Therefore, this AG lot owner is prohibited from providing similar security for his or her property and equipment as those lot owners who are engaged in agriculture. This situation should be corrected.

The purpose of the response below is to address the Planning Staff's report and recommendation on this text change.

RESPONSE TO PLANNING STAFF ANALYSIS

1. This amendment will not adversely affect the preservation of the area's rural character.

The area requirements of the proposal are consistent with current guidelines for the AG district. The Code currently contemplates and allows family dwelling lots of one acre in the AG district. *See* §27.07.080 (h). Moreover, this one-acre family dwelling lot is then *added* to the minimum area requirements of the other use (i.e., twenty acres for a greenhouse or ten acres for a stable). This results in an eventual lot area that is completely compatible with the intent of preserving the area's rural character.

Nonetheless, the planning staff's analysis states, without explanation, "[t]his proposal, if approved, effectively doubles the potential intensity of use throughout the AG zoned lands within the City's jurisdiction." (page 3, paragraph 7). In other words, the planning staff analysis improperly contemplates that *every* lot owner in the AG district could, or would, add a second use to their lot. This statement is unrealistic and misleading. The planning staff's analysis fails to appreciate that the vast majority of lot owners could not, or would not, avail themselves of this change.

For example, contrary to the planning staff's analysis, the only increase in intensity that could possibly occur is if "non-agricultural use" lot owners elected to personally move to their lot as a caretaker. Moreover, the vast majority of "non-agricultural use" lot owners are single-family dwelling lot owners who will be unable to add a caretaker residence *in addition* to their personal residence.

Thus, the actual impact of this proposal will only affect a small number of "other use" lot owners who must: 1) elect to personally live on the lot in question as their permanent family residence, and 2) meet all of the minimum acreage requirements.

2. The City Attorney's alternate language for the amendment properly addresses concerns raised by the Building and Safety Department.

The Building and Safety department have raised questions that are easily answered and are further clarified by the City Attorney's alternate language for the amendment. (page 3, paragraphs 3-4). To begin with, the City Attorney's alternate language eliminates the reference to Section 27.07.080(h) and simply sets a one-acre minimum for the single-family dwelling. Next, in response to

Building and Safety's question on minimum area requirements for the lot's non-residential use, the City Attorney's alternate language clarifies that the minimum area requirements of the non-residential use are set by the Code's "minimum lot area required in the AG district for non-residential use." Thus, in order to properly address the questions of Building and Safety, the Applicant offers the City Attorney's alternate language as the proposed amendment language.

Finally, Building and Safety has stated, "if the second, non-residential use involved a non-permitted use of the property then such use would not become a permitted use." This statement is irrelevant considering the fact that the proposal itself does not allow a "non-permitted" use for the property. The amendment language clearly states that the additional main building is in conjunction with another use *permitted* in the AG district.

CONCLUSION

This "caretaker" amendment allows "non-agricultural use" lot owners in the AG district to personally provide for the physical security of buildings, material and equipment on their lots. The impact on the AG district will be limited to those lots where the lot owner elects to personally live on the lot in question as his or her permanent family residence and the lot is able to meet all of the minimum area requirements. The proposal not only allows for security, it allows for an economical and efficient use of lots in the AG district without adversely affecting the rural character of the AG district.

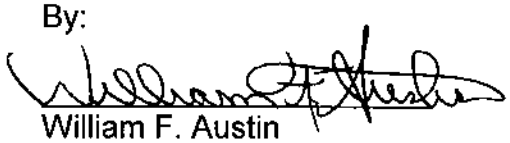
Therefore, the Applicant respectfully requests the Commission approve its petition to amend the Zoning Ordinance.

Dated: July 23, 2001

Respectfully submitted,

Leonard G. Stolzer, Jr. & Lynette M. Stolzer, Applicant

By:



William F. Austin

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