

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 08073**, from R-3 Residential District to O-3 Office Park District, requested by South Ridge Village, LLC, on property generally located at South 29th Street and Porter Ridge Road.

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUESTS: Special Permit No. 08052 (09R-28) and Use Permit No. 100B (09R-29).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 01/28/09
Administrative Action: 01/28/09

RECOMMENDATION: **Denial** (5-3: Gaylor Baird, Carroll, Cornelius, Francis and Taylor voting 'yes'; Esseks, Larson and Sunderman voting 'no'; Partington absent).

FINDINGS OF FACT:

1. This change of zone request from R-3 Residential to O-3 Office Park was heard before the Planning Commission in association with Special Permit No. 08052 and Use Permit No. 100B for an early childhood care facility for 130 children.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.4, concluding that the change of zone, together with the special permit and amendment to the South Ridge Village use permit, are generally in conformance with land uses at this location and are consistent with the Comprehensive Plan, the Land Subdivision Ordinance and Design Standards. The staff presentation is found on p.6.
3. The applicant's testimony is found on p.6-7. A revised site plan and proposed amendments to the associated special permit and use permit were submitted by the applicant at the public hearing before the Planning Commission, resulting in a reduction of the number of children from 130 to 120 (See Factsheet for Special Permit No. 08052, #09R-28).
4. Testimony in opposition is found on p.7-8, and the record consists of 16 letters in opposition, which are attached to the Factsheet for Special Permit No. 08052, #09R-28. The issues of the opposition include increased traffic and safety; adverse effect on property values and marketability; infringement upon the existing residential homes; availability of other locations for the proposed use; and management expertise.
5. The applicant's response to the opposition is found on p.9.
6. On January 28, 2009, the majority of the Planning Commission disagreed with the staff recommendation, finding that the change of zone results in a more intensive use and that the neighboring residents have a reasonable expectation to not have a more intense zoning use behind them, and voted 5-3 to recommend **denial** (Gaylor Baird, Carroll, Cornelius, Francis and Taylor voting 'yes'; Esseks, Larson and Sunderman voting 'no'; Partington absent).
7. On January 28, 2009, the Planning Commission voted 8-0 to recommend **denial** of the associated Special Permit No. 08052 and Use Permit No. 100B.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: February 13, 2009

REVIEWED BY: _____

DATE: February 13, 2009

REFERENCE NUMBER: FS\CC\2009\CZ.08073+

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for January 28, 2009 PLANNING COMMISSION MEETING

This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

PROJECT #: Special Permit No. 08052
Change of Zone No. 08073
Use Permit No. 100B

PROPOSAL: Approval of a special permit for an early childhood care facility and a **change of zone from R-3 Residential to O-3 Office Park** and an expansion of abutting South Ridge Village Use Permit to include the area of the childhood care facility.

LOCATION: S. 29th Street and Porter Ridge Road

LAND AREA: Special Permit - 1.13 acres more or less
Change of Zone - .98 acres more or less
Use Permit - 8.86 acres more or less

EXISTING ZONING: R-3 Residential and O-3 Office Park

CONCLUSION: The amendment to the Use Permit, Special Permit for an early Childhood Care Facility and Change of Zone are generally in conformance with land uses at this location and are consistent with the Comprehensive Plan, Land Subdivision Ordinance and Design Standards. The child care facility complies with the requirements of the special permits except for the waiver request to be located on an arterial street. The waivers to the setbacks in the use permit are appropriate and consistent with the existing use permit.

RECOMMENDATION:

Change of Zone (R-3 to O-3)	Approval
Special Permit (Early Childhood Care Facility)	Conditional Approval
Use Permit 100B	Conditional Approval
Waivers/modifications:	
<u>Special Permit</u>	
27.63.070 (c) That facilities with thirty-one or more children shall be located on an arterial street.	Approval
<u>Use Permit</u>	
27.27.070 (a) To reduce the side yard setback from 15 feet to 5 feet and to reduce the rear yard from 40 feet to 20 feet.	Approval

GENERAL INFORMATION:

LEGAL DESCRIPTIONS: See attached

EXISTING LAND USE: Vacant

SURROUNDING LAND USE AND ZONING FOR THE CHANGE OF ZONE AND SPECIAL PERMIT:

North: O-3 Office District

South, East, West: R-3 Residential - Single family and attached single family.

SURROUNDING LAND USE AND ZONING FOR THE USE PERMIT:

North, West: H-4 Planned Service Commercial - Retail

South, East: R-3 Residential - Single family and attached single family

HISTORY:

September 11, 2000 City Council approved and amendment to the South Ridge Village Use Permit # 100 which adjusted the boundaries of the use permit to align with the O-3 Office Park District boundary lines, and adjust the location of the required landscape screen from the office park property to the residential property to the south.

December 9, 1996 City Council approved Change of Zone No. 2952 which located the zoning district boundaries on the north side of Porter Ridge Road.

On February 28, 1994 City Council approved Change of Zone No. 2740 over this area which established the general areas of the R-3, O-3, and H-4 Districts.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page 10 - The Urban Environment - Residential Neighborhoods - Child care centers should be located within neighborhoods and near schools and parks when possible

Page 48 - Buildings and land uses at the edge of the center should be compatible with adjacent residential uses. Examples of compatible land uses include offices or child care centers. Buildings should be compatible in terms of height, building materials and setback.

Page 48 - Centers should contain a mix of residential, office, service and retail uses. In addition, other "residential" uses such as multi-family, single family attached, child care centers, and recreational facilities should be integrated within the development.

UTILITIES: Existing

TRAFFIC ANALYSIS: S. 29th Street and Porter Ridge Road are Local Streets.

ALTERNATIVE USES: Remain R-3 Residential

ANALYSIS:

1. This application has 3 distinct parts in order to develop one new building for a new child care center. There is an application for a special permit for an early childhood care facility, an application for a change of zone from R-3 Residential to O-3 Office Park District, and an expansion of the abutting South Ridge Use Permit to include the area of the change of zone and special permit.
2. The daycare is proposed to be 11,000 square feet and will have 130 children and 26 employees.
3. An early childhood care facility with thirty-one or more children is required to be located on an arterial street. The applicant is asking for a waiver to this requirement. The proposed facility is located directly adjacent to an existing commercial area which is directly adjacent to Pine Lake Road and arterial street. Although S. 29th Street is a local street, it functions as a collector street and is appropriate for the traffic from the center.
4. The O-3 Zoning District is “ a district intended to provide a developing or redeveloping area primarily consisting of a mixture of office and other types of compatible and complementary commercial uses, and residential uses in suburban areas. This district is intended to be located on arterial streets in close proximity to commercial uses. This district is intended to provide an appealing atmosphere, stressing the quality of the environment” per the Lincoln Zoning Ordinance. Adding the early childhood care facility is consistent with the intent of this zoning district.
5. Staff is in support of the requested waivers. If the lot was not being re-zoned to O-3, the use of an early childhood care facility would be allowed under special permit in the existing R-3 Residential District with an allowed side yard of 5 feet and a rear yard of 30 feet or 20% of the depth of the lot. The proposed building shown on the site plan sits five foot from the side lot line to the south. The building will act as a buffer between the adjacent residential property and the activity of the childcare facility. The existing use permit was granted a waiver of the rear yard along the east side of the use permit to 20 feet. The waiver to reduce the the rear yard to 20 feet will be consistent with the existing use permit. The rear yard for the childhood care facility will be used as open space and play area.
6. If the child care facility goes away this lot could be used for any use permitted in the O-3 Zoning District.
7. This property will be required to meet both minimum landscape and screening requirements of the of the O-3 as well as those for early childhood care facilities.
8. The maximum number of parking stalls that can be allocated to the daycare facility from the shared parking area is 39 stalls. If the daycare requires more than 39 stalls, additional parking stalls will have to be constructed.

This approval permits a change of zone from R-3 Residential to O-3 Office Park District, the expansion of the South Ridge Village Use Permit by approximately .98 acres and an 11,000 square foot early childhood care facility or any other use permitted in the O-3 zoning district.

Prepared by
Christy Eichorn
Planner

DATE: January 15, 2009

APPLICANT/ OWNER: South Ridge Village LLC
8200 Cody Dr., Suite F
Lincoln, NE 68512

CONTACT: Marcia Kinning
ESP
601 Old Cheney RD., Suite A
Lincoln, NE 68512

**CHANGE OF ZONE NO. 08073,
SPECIAL PERMIT NO. 08052
and
USE PERMIT NO. 100B**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 28, 2009

Members present: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor; Partington absent.

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone, conditional approval of the special permit and use permit.

Staff presentation: **Christy Eichorn of Planning staff** explained that two of the major issues are traffic and noise. Staff attempted to address the noise in the staff report. With regard to traffic, the lot in question will have access to S. 29th St. which functions as a collector street. The applicant requested waivers for reduction in setback for side and rear yard along with the requirement that a day care be located on an arterial street. She will let the applicant address those issues.

Proponents

1. **Rick Krueger**, manager of South Ridge LLC, the applicant, presented the proposal and submitted a revised site plan for consideration. This is for a child care center. Except for home day care, all day care facilities requires a special permit. He originally looked at doing the day care center under the existing R-3 zoning, but thought it best to extend the O-3 zoning. The elevation has been designed to look similar to the office buildings that are there now. After the neighborhood meeting, he made changes to the parking on the site plan and the original waiver for side yard setback is no longer needed. South Ridge Village originally had a 20 foot setback abutting the existing residential. The proposed building has been designed to be at least 30 feet from the lot line. It is 40 foot in areas. The approach to the parking lot driveway is on 29th St. It is a one-way access point. He believes most traffic will come off Pine Lake Rd.

Day care, along with other uses, are called for in the Comprehensive Plan as transitional uses.

There are three things that were adjusted after the neighborhood meeting. 1) The side yard was adjusted from 5 feet to 15 feet; 2) the number of children was changed from 130 to 120; and 3) the dumpster location was moved.

Francis would like the outdoor playground area outlined. Krueger replied that buffering will be as required in the zoning code. There will be a six foot fence. The square footage of the

outdoor play area is about four times what is required. He believes outdoor activity is important for kids.

Gaylor Baird inquired about the height of the proposed building. Krueger stated that the height of this building will be lower than some of the neighbors. The back side of the building is a walk-out basement. The footprint of the building will be less than the building immediately to the north.

Esseks noted there is a lot of concern about traffic on 29th St. Krueger believes that the traffic to the day care will be mostly from Pine Lake Rd. The market will be much greater than the immediate neighborhood. He thinks that people will take the most convenient route.

Esseks inquired as to how many cars can be parked in front of the building because that is always an issue at a day care center, from his experience. Krueger stated that there are two drop-off stalls and 10 diagonal stalls.

Esseks inquired if there is information to indicate how many parking stalls would be needed for 120 children. Krueger advised that the proposed design meets the State of Nebraska standards for day care.

Carroll questioned what would happen if this day care would not be successful. Krueger replied that they would most likely look for another day care provider.

Opposition

1. Jaime Frey, 7530 Brummond Drive, representing Porter Ridge Neighborhood, testified in opposition. They are concerned with the amount of traffic that this business will generate. They are concerned that the stop light at 29th St. and Pine Lake Rd. being a slow light. The proposed waivers are an infringement of privacy to the neighbors. They feel this will reduce property values.

2. Bruce Hahn, 7307 S. 30th St., testified in opposition. He stated five major concerns: 1) the right to enjoy his property; 2) property values; 3) increased traffic; 4) availability of other locations; and 5) management expertise. The lots that back up to the proposed development are not deep lots. At the developer's meeting, Mr. Krueger compared this project to the office buildings to the north. He does not believe they compare. He believes that homeowners wanting to use their decks will not have any privacy. There is the noise issue. He believes that homes that are near busy streets, hospitals, commercial buildings, and schools take longer to sell. Home sales decreased 12.4 percent in Lincoln in 2008. He believes there would be a stigma attached to a home that backs up to a child care facility. There is a concern for safety with increased traffic. There are many other desirable locations where this day care center could be developed. The person seeking to run this facility is currently running a child care out of her home. This will require the management of a large staff and many children. If the business fails, there will be an empty shell that affects market values. Mr. Krueger told the neighbors that there is a critical need for child care facilities, yet there are other facilities in the area that are not completely full.

3. Steve Goosic, 7301 S. 30th St., testified in opposition on his own behalf and submitted two letters in opposition from other neighbors which list concerns with traffic and infringement of property rights. Mr. Krueger talked about the existing setback from the current office buildings and that there is additional buffer created by parking spaces. Those who are directly south of the day care will have a view of a six foot fence and the roof of the day care. There will be lack of a view

and lack of sunshine. They will have to deal with the effects of the operation. The buffer zone between a residential area and the office area is currently there. 120 children creates a small school in the middle of a residential area. There is a lot of traffic in front of a school. Based on the developer's proposal, he believes the layout is not suitable to handle that type of traffic pattern. There are only twelve parking stalls nearby. The others will park on the side streets. There is a tremendous amount of traffic that already goes down this street. When he purchased his property, he was assured that this property was zoned R-3.

4. Doug Deboer appeared in opposition on behalf of his father, **Clifton Deboer**. His father goes to Phoenix every winter. There is a lot of traffic on S. 29th St. He doesn't believe there is enough parking available. He believes this will affect the market value of his father's home and the view.

5. Steve Moeller, 7300 S. 30th St., testified in opposition. He has lived at his property for approximately 15 years. S. 29th St. is a very busy street. Kids get dropped off at the school. There is a potential for 140 cars in addition to what is already there. This was labeled as a collector road. Porter Ridge Rd. empties onto S. 29th St. He has two small children himself. On a cold day, cars will want to park as close to the front door of the day care center as possible. This is going to create problems. Cars will be parked all along the road. He does not see where there is nearly enough parking for this business. There is a Starbucks at the end of the road that generates a lot of traffic by itself. He was told at the neighborhood meeting that the latest traffic study is ten years old. He would like to see a current traffic study. He and his family are opposed to this application.

Staff questions

Esseks noted that Public Works appears to have no objection. Dennis Bartels of Public Works stated that his comments are based on traffic numbers and commonly used traffic generation methods. S. 29th St. is signalized at Pine Lake Rd. The streets themselves are able to handle the traffic. He believes traffic will enter this site from Porter Ridge Rd. or S. 29th St. He could not comment on what is an acceptable level of traffic in a neighborhood but he can give data if the street widths can handle the traffic and if the required parking is being met.

Esseks questioned how many lanes are on S. 29th St. in front of this property. Bartels replied that this is a typical 39 foot wide commercial street. It is typically wide enough to park on both sides of the street and still have room for 2 cars.

Francis questioned what could be built with the existing zoning. Eichorn replied that with R-3 zoning, someone could request a special permit for a day care for 120 children as long as they met the requirements. Parking requirements are 1 stall for every 10 children and 1 stall for every employee.

Gaylor Baird questioned the parking stalls. Eichorn replied that the maximum amount of parking could be reached for this development with 130 children.

Carroll wondered what else could be built under O-3 zoning. Eichorn stated that banks are the highest traffic generator. Tailor shops and group homes could be done by right without a special permit.

Gaylor Baird inquired about the buffer to the north. Eichorn replied that most of the buildings are set back 40 feet from the lot line. With a day care facility, a six foot high fence will be required.

Esseks believes you need a lot of space in front of the building for parents to drop off their children, especially in the winter. Eichorn stated that to the best of her knowledge, the site plan was created to maximize the space and have a large play area.

Response by the Applicant

Krueger believes it is better to have a larger playground than more drive area and parking spaces. He believes this is the best use for this property. He has agreed to reduce the number of children from 130 to 120 and has revised the site plan to have less impact. The floor area ratio is about 19 percent of the lot.

Esseks questioned the drop-off lane. He would like to see it be longer for more parents to drop off their kids. Krueger expressed willingness to take another look at that.

Larson inquired whether the south side is the only entrance to the building. Krueger replied that it is not the only exit, but day care facilities like to control the entrance.

Gaylor Baird questioned why O-3 zoning was not originally sought for this area. Krueger could not recall specifically. Porter Ridge was done first and everything else added to it. Gaylor Baird wondered if this could be developed with homes. Krueger responded that the lot has some odd dimensions.

Krueger stated that he has been a big proponent for more access points to arterial streets. In December, 2008, parking in the front yard in R-3 zoning was eliminated. Setbacks for R-3 would make it hard to obtain required parking for the day care center.

CHANGE OF ZONE NO. 08073

ACTION BY PLANNING COMMISSION:

January 28, 2009

Larson moved approval, seconded by Sunderman.

Francis believes what the applicant is trying to achieve can be done without a change of zone and by downsizing their plans. From her experience as a realtor, people do not like to live next to a child care center.

Esseks noted that the ridge line of this building is not any taller than is allowed under R-3 and he thinks the noise will be relatively reduced due to the fact that not all the children will be there at the same time. People testifying noted that they would not have built their existing homes had it been next to a day care, but this use could be a special permit under the existing R-3 zoning.

Cornelius noted that this is an increase in zoning to a more intensive use. The current neighbors have a reasonable expectation to not have a more intense zoning use behind them. They have less deep lots and already have a challenge.

Sunderman noted that he likes the office area flowing into this area. The applicant has created a larger setback.

Carroll believes the protection should be there for the residents who built their houses with R-3 zoning behind them. He is against a change of zone.

Motion for approval failed 3-5: Esseks, Larson and Sunderman voting 'yes'; Gaylor Baird, Carroll, Cornelius, Francis and Taylor voting 'no'; Partington absent.

Francis moved denial, seconded by Gaylor Baird and carried 5-3: Gaylor Baird, Carroll, Cornelius, Francis and Taylor voting 'yes'; Esseks, Larson and Sunderman voting 'no'; Partington absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 08052

ACTION BY PLANNING COMMISSION:

January 28, 2009

Cornelius moved denial, seconded by Francis.

Cornelius suggested that the whole package needs to be revisited with the recommendation of denial on the change of zone.

Francis has issues with the traffic. It is too congested already. A day care would add to this.

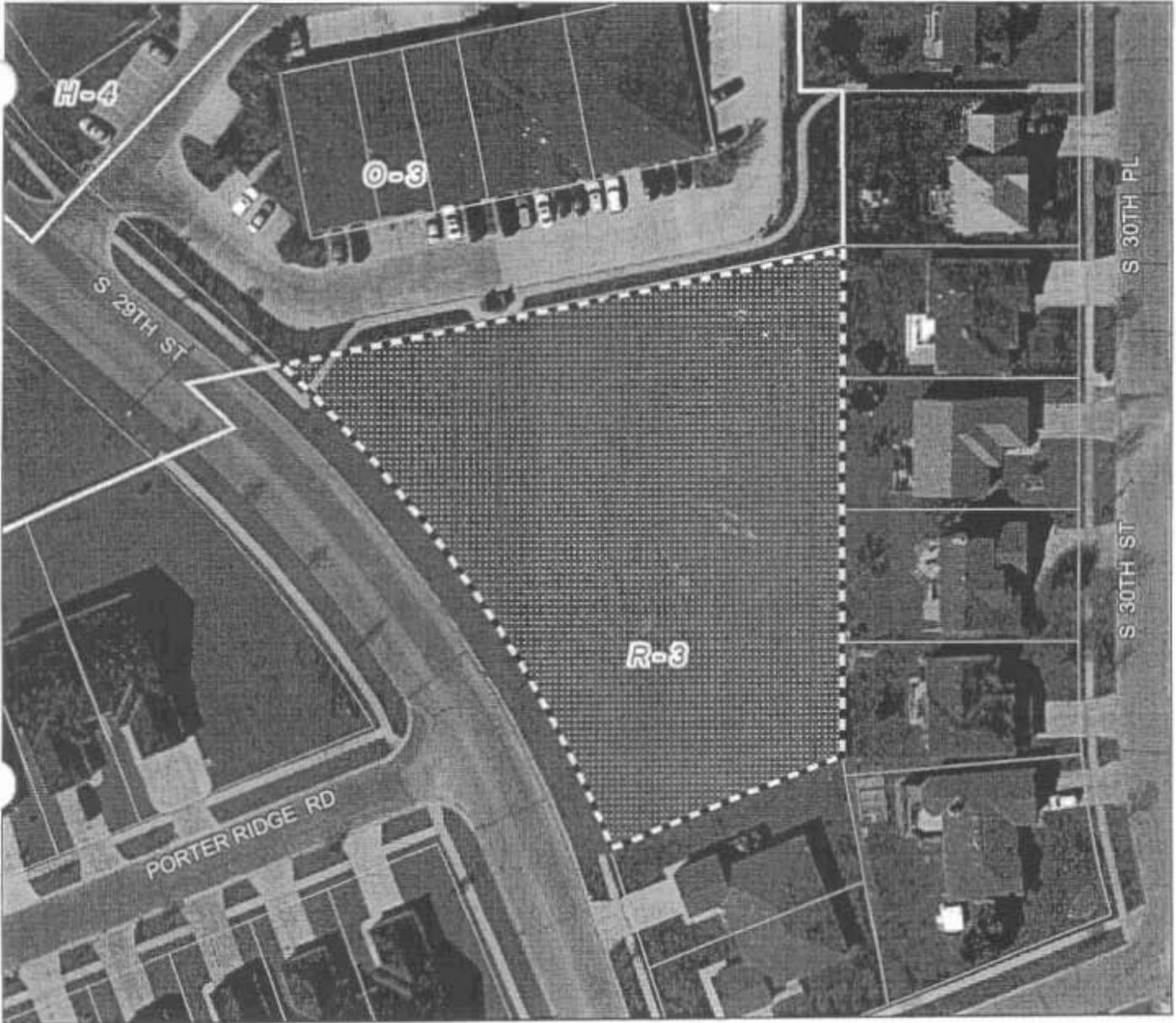
Motion for denial carried 8-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor voting 'yes'; Partington absent. This is a recommendation to the City Council.

USE PERMIT NO. 100B

ACTION BY PLANNING COMMISSION:

January 28, 2009

Cornelius moved denial, seconded by Francis and carried 8-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor voting 'yes'; Partington absent. This is a recommendation to the City Council.



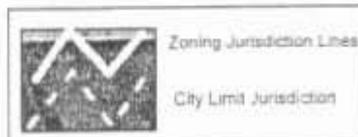
2007 aerial

**Change of Zone #08073
S 29th St & Porter Ridge Rd**

Zoning:

One Square Mile
Sec. 19 T09N R07E

- 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
- E-1 Employment Center District
- P Public Use District





LYLE L. LOTH, P.E./L.S.

Suite A - 601 Old Cheney Road
Lincoln, NE 68512

Phone (402) 421-2500
Fax (402) 421-7096

Email: lyle@espeng.com

December 31, 2008 (Revised)

Mr. Marvin Krout, AICP
Director of Planning
Christy Eichorn, Planner
City of Lincoln/ Lancaster County
555 South 10th Street
Lincoln, NE 68508

**RE: SOUTH RIDGE VILLAGE - South 27th Street & Pine Lake Road
AMENDMENT TO USE PERMIT #100A
SPECIAL PERMIT - Early Childhood Daycare Facility
CHANGE OF ZONE - From 'R-3' to 'O-3'**

Dear Marvin,

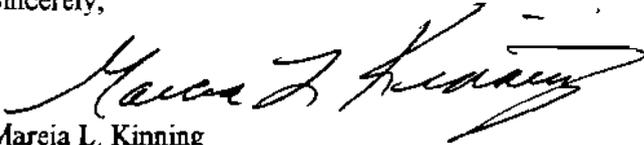
On behalf of South Ridge Village LLC, we are submitting several applications to South Ridge Village located in the southeast corner of South 27th Street and Pine Lake Road. The applications include an Amendment to Use Permit #100A, a Special Permit for an Early Childhood Daycare Facility and a Change of Zone from 'R-3' to 'O-3' to match the zoning of the existing Use Permit.

The amendment to the approved Use Permit #100A of South Ridge Village revises the boundary of the use permit to include approximately 0.98 acres. The additional area will include an Early Childhood Care Facility of 11,000 square feet. The total square footage of the approved General Office space will remain the same, 100,000 square feet. The waivers approved with the original Use Permit have been listed on the Site Plan. An additional waiver to reduce the side yard setback from 15' to 5' is being requested as well as extending the existing 20' rear yard setback to the revised south property line. The Trip Generation Chart has been modified to reflect the additional trips. The combined PM Peak Trips from Use Permit #100A and Special Permit #1629G has exceeded the approved total of 1,694 trips by 112 trips.

The proposed Early Childhood Care Facility shall consist of a two-story building with 11,000 square feet. The facility shall contain a maximum of 130 children and 26 employees. In addition to the waiver listed above, we are also requesting a waiver of the facility having access to an arterial street. A list of the mentioned waivers are enclosed with designations and explanations.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

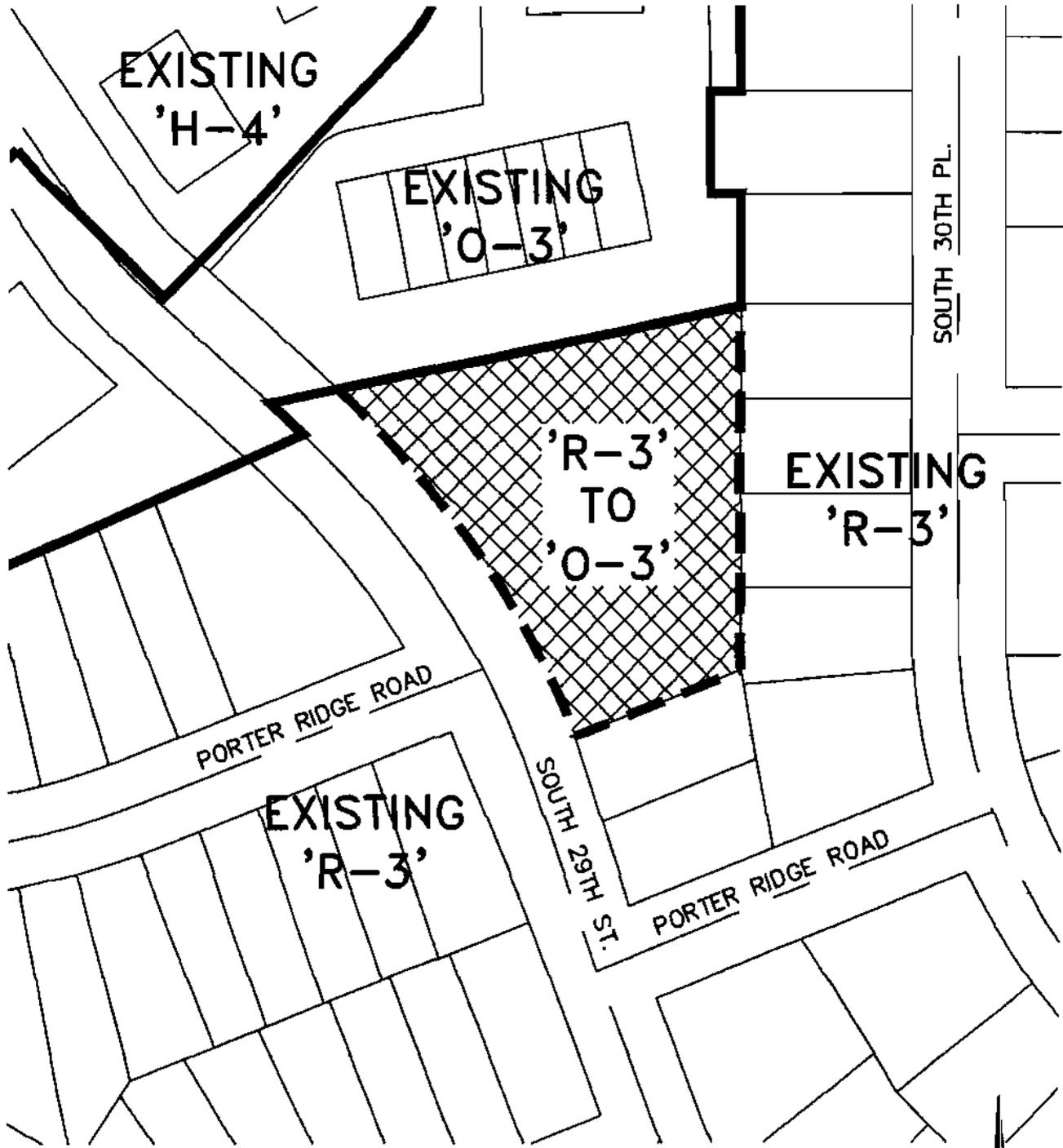


Marcia L. Kinning

Ce: South Ridge Village LLC

Enclosures: Application for Amendment to Use Permit, Special Permit and Change of Zone
Amendment Fee of \$960.00
6 Sets of Sheets 1 through 4 of 4
Legal Description
1 - 8 ½ x 11
Special Permit Fee of \$890.00
10 Sets of Sheets 1 & 2 of 2
Legal Description
List of Requested Waivers
1 - 8 ½ x 11
Change of Zone Fee of \$440.00
Exhibit
Legal Description

CHANGE OF ZONE FROM 'R-3' TO 'O-3'



DEC 31 2008
LINCOLN CITY
PLANNING DEPARTMENT



SCALE: 1" = 180'

**SOUTH RIDGE VILLAGE
CHANGE OF ZONE
FROM 'R-3' TO 'O-3'**

LEGAL DESCRIPTION

Lot 14, South Ridge Village Addition, located in the Northwest Quarter of Section 19, Township 9 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, more particularly described as follows;

Commencing at the Northwest Corner of Lot 2, Block 1, Porter Ridge 3rd Addition; Thence on the West line of said Lot 2, South 00°06'19" West, a distance of 71.19 feet to the POINT OF BEGINNING;

Thence continuing on said bearing South 00°06'19" West, a distance of 230.81 feet to the southeast corner of Lot 14, South Ridge Village Addition;

Thence on the South line of said Lot 14, South Ridge Village Addition, South 69°18'11" West, a distance of 115.80 feet;

Thence on a circular curve to the left, having a radius of 561.00 feet, a central angle of 27°50'50" and whose chord (269.98 feet) bears North 34°49'51" West;

Thence on the arc of said circular curve 272.66 feet;

Thence North 79°12'30" East, a distance of 267.69 feet to the POINT OF BEGINNING and containing a calculated area of 42,519.14 square feet or 0.98 acres.

Also include the adjacent right-of-way.

