

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 12002**, requested by the Director of Planning, to amend Title 27 of the Lincoln Municipal Code, to add and make provisions for "Market Garden" as a special permitted use in the AG and AGR zoning districts.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 02/22/12
Administrative Action: 02/22/12

STAFF RECOMMENDATION: Approval

RECOMMENDATION: Approval (7-0: Gaylor Baird, Lust, Weber, Esseks, Hove, Sunderman and Cornelius voting 'yes'; Butcher and Francis absent).

FINDINGS OF FACT:

1. This proposed text amendment to the City zoning ordinance was heard by the Planning Commission in conjunction with a similar text amendment to the County zoning resolution and a special permit requested by Lakehouse Farms, LLC, for a market garden in Lancaster County jurisdiction. The Director of Planning is proposing this similar text amendment to Title 27 of the Lincoln Municipal Code.
2. This is a proposal to add "Market Garden" as a special permitted use in the AG and AGR zoning districts, including accessory uses and defined as follows:

Market garden shall mean a relatively small scale farming operation (20 to 40 acres in size) where the production of a diversity of fruits, vegetables, herbs and flowers is grown for sales primarily for direct human consumption rather than as feed for animals or for major processing before consumption. Market gardens are distinguished from other types of farming by the inclusion of accessory uses not typically found on farms. These accessory uses may include restaurants, agricultural education and training centers, agricultural tourism, or sales of agricultural products not grown on site.
3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3-4, concluding that adoption of this amendment will support the goals of the 2040 Comprehensive Plan to preserve agricultural land and promote locally grown food. The amendment also establishes appropriate controls on the type and extent of the accessory use. The staff presentation is found on p.6-7.
4. The testimony by the applicant for the text amendment and special permit in the County jurisdiction is found on p.7 and 8. The applicant's statement of purpose for this use in the County is found on p.11.
5. There was testimony in opposition; however, the opposition was not necessarily opposed to the text amendment and concept of a market garden, but had concerns about the specific location of the associated special permit and the impact upon safety due to gravel roads and on-sale alcohol (See Minutes, p.7-8)
6. On February 22, 2012, the Planning Commission agreed with the staff recommendation and voted 7-0 to recommend approval of this text amendment (Butcher and Francis absent).
7. On February 22, 2012, the Planning Commission also voted 7-0 to recommend approval of the similar text amendment to the County Zoning Resolution (County Change of Zone No. 12001), and voted 7-0 to adopt Resolution No. PC-01268, approving County Special Permit No. 12003, with conditions, for a market garden with a restaurant as an accessory use at N. 112th Street and Branched Oak Road, which was appealed to the Lancaster County Board of Commissioners.
8. On March 20, 2012, the Lancaster County Board of Commissioners held public hearing and adopted Resolution No. R-12-0023 approving the text amendment to the County Zoning Resolution, and on March 27, 2012, the Lancaster County Board of Commissioners adopted Resolution No. R-12-0024 approving the associated County Special Permit No. 12003.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: March 27, 2012

REVIEWED BY: _____

DATE: March 27, 2012

REFERENCE NUMBER: FS\CC\2012\CZ12002 Text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for February 22, 2012, PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 12001 (County) & 12002 (City)

Note: This is a combined staff report for related items. This report contains a single background and analysis section for all items.

PROPOSAL: Amendment to the County Zoning Resolution and the City Zoning Ordinance to add Market Garden to the list of specially permitted uses in the AG and AGR zoning districts.

TEXT AMEND: City of Lincoln Zoning Ordinance: 27.03.417 General Definitions, 27.07.040 Permitted Special Uses (AG), 27.09.040 Permitted Special Uses (AGR), 27.63.820 and .680 Special Permits, 27.67.040 Parking Requirements; Special Conditions

Lancaster County Zoning Resolution: 2.008 Definitions, 4.007 Permitted Special Uses (AG), 5.007 Permitted Special Uses (AGR), 13.001.36 Special Permits

CONCLUSION: The requested special permit conforms to the Comprehensive Plan goal of supporting agriculture and also supports the many local food goals and strategies in the plan.

RECOMMENDATION:

Approval

GENERAL INFORMATION:

ASSOCIATED APPLICATIONS: Special Permit 12003 for a Market Garden with a restaurant as an accessory use.

COMPREHENSIVE PLAN SPECIFICATIONS:

Chapter 1 Vision and Plan - Vision for Environmental Stewardship and Sustainability

- *Local food production is encouraged, building a stronger relationship between city and rural communities and greater security for our food supplies. (p. 1.4)*

Chapter 2 The Community - Employment

Agriculture is still a major factor in Lancaster County's economy with about 78% of the land area of the county being used for agricultural production. Niche farms have seen strong growth over the past decade and are expected to continue to grow as more local food is demanded by the growing population. (p. 2.6)

Chapter 3 Environmental Resource - Local Food

Production of food closer to the urban center, if not within it, reduces the distance food must be transported, increases the freshness of food available, supports the local agricultural economy, and provides nutritious food to those who might not otherwise be able to obtain it.

Local food may be produced in the rural area of the county, or counties nearby; or it may also be produced within the urban area itself. In any case, the preservation of land for food production both nearby and within the city is integral to local food opportunities.

Strategies for Local Food

- *Promote more community gardens.*
- *Allow community gardens in all zoning districts at appropriate locations and with appropriate standards.*
- *Encourage increased points of sale of local foods. (p. 3.12)*

Chapter 5 Business and Economy - Lancaster County, Outside of Lincoln

Farms are an important part of the history and economy of the region. While agriculture is no longer the primary occupation or major source of income in the County, agricultural production is still important to the community. It provides opportunities for produce to be sold at the local level and for large scale operations with sales worldwide. Farmers, while working year round, often support their families with accessory home occupations. (p. 5.5)

Strategies for Lancaster County, Outside of Lincoln

- *Continue efforts to preserve the viability of the county's agriculture industry through zoning, easements, and other means. (p. 5.6)*

Chapter 7 Neighborhoods and Housing - Strategies for Neighborhoods and Housing

- *Make available opportunities for individuals and/or organizations to raise local food. (p. 7.4)*

ANALYSIS:

1. Lancaster County has a long tradition of planning for the preservation of farmland. Near the city of Lincoln, this tradition supports the reservation of land for urban growth. In the more distant areas of the county, this tradition supports agriculture as an important part of the economy.
2. Agriculture in Lancaster County has traditionally involved row crop farming, livestock production, hay and dairying. Over the past several decades niche farms that produce grapes, nursery plants, Christmas trees and other non-traditional crops have played a larger part in county agriculture.
3. Current zoning allows the sale of agricultural products in a roadside stand as a conditional use in the City and County AG and AGR, for 180 days per year.
4. The local food movement has at its base a desire to produce food close to those who will consume it, delivering fresher, more nutritious food over a shorter distance. There is a growing network of farmer's markets, restaurants, and supermarkets that are joining this movement in Lincoln and surrounding towns.
5. Growing local food adds to the agricultural base of Lancaster County's economy. Growers are often small operations including family members and a few employees. These operations tend to be less mechanized than some other farming operations and so can be quite labor intensive. These operations are currently allowed uses in the AG and AGR districts in both the City and County jurisdictions.
6. This is an application to support this type of niche farming by creating a special permit to allow for activities that support those farms. These accessory uses support the primary agricultural use by creating an additional point of sale for agricultural products and promoting

local food as a part of the agricultural economy of the county. The value added to the agricultural products provides additional income to the agricultural operation which may make it more economically viable for the operator.

7. Market gardens are unique in the type and variety of crops grown. Crops are generally grown for direct consumption by humans, rather than animals. They can include vegetables, fruits, herbs, nuts or flowers, for example. They do not typically include crops grown for animal feed, except that some trimmings and byproducts may be fed to animals. They also do not include crops that are harvested and sent offsite for major processing before consumption. Some processes, such as drying, canning, cooking or preserving, may be conducted on or offsite.
8. Other uses and products may be included such as dairy processing, honey, eggs, fish, raising of poultry and meat animals, but are not necessarily part of the market garden and do not remove the required presence of the aforementioned crops.
9. The agricultural products of the market garden must be the major feature of the accessory use. This maintains the link between the accessory use and the primary agricultural use.
10. The area covered by all market garden accessory uses is limited to 10% of the area of the special permit, limiting any of these uses to no greater than 4 acres (on a 40 acre special permit area). The Planning Commission may limit the size of market garden accessory use buildings. Special permit requests on gravel roads may also be limited by the anticipated traffic generation. All of these controls act to limit market garden accessory uses in impact to the surrounding properties.
11. The Market Garden special permit would allow accessory uses that are not normally a part of an agricultural operation, but which are supportive of these local food growing businesses. These accessory uses promote local food through training, education, year round retail sales, and serving for consumption on site. These activities are intended to increase the availability and presence of locally grown foods in the market.
12. There were no negative comments received from any reviewing departments or agencies. Lincoln Fire and Rescue notes that access points will need to be reviewed for special permits in order to ensure emergency access. The Airport Authority notes that market gardens that fall within specified areas will be required to incorporate acoustical features as part of the building permit process per Chapter 27.58.050 of the Lincoln Municipal Code.
13. This special permit supports the 2040 Comprehensive Plan goals of preserving agricultural land and promoting locally grown food. This special permit will provide additional opportunities for niche farming in the County. Appropriate controls on the type and extent of the accessory use are provided in the special permit language.

Prepared by:
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DATE: February 6, 2012

APPLICANT: Lakehouse Farms LLC (for County text amendment)
Jerry and Renee Cornett
11928 Iva Street
Gretna, NE 68028

OWNER: Cornett, Jerry D. Revocable Living Trust, et.al.
10405 Branched Oak Road
Waverly, NE 68462

CONTACT: Renee Cornett
10405 Branched Oak Road
Waverly, NE 68462

**COUNTY CHANGE OF ZONE NO. 12001
CITY CHANGE OF ZONE NO. 12002,
and
COUNTY SPECIAL PERMIT NO. 12003**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 22, 2012

Members present: Gaylor Baird, Lust, Weber, Esseks, Hove, Sunderman and Cornelius; Butcher and Francis absent.

There were no ex parte communications disclosed.

Staff recommendation: Approval of the text amendments and conditional approval of the special permit.

Staff presentation: **Sara Hartzell of Planning staff** explained the proposed text amendments to add a definition for “market garden” in both the city and county zoning codes and to allow as special permitted use in AG and AGR zoning districts in both the city and county, and providing conditions therefor.

Hartzell explained that market gardens are primarily made up of a variety of different vegetation – fruits, nuts, vegetables, herbs, flowers – things sold primarily for human consumption, although there could be some animal consumption of by-products, but not food crop for animals. It could include crops that are grown for consumption by humans in raw or slightly processed form, and not having been sent off to a processing such as potato chips, tortilla chips, etc. This represents an expansion of the existing ability to have a market garden in the County now where produce can be taken to a farmers market or have a road-side stand or even an expanded home occupation where you could have a 16-seat family dining center, with up to two employees, and serve dinner at your home. The market garden concept takes the idea of agricultural use of market garden and provides accessory uses of showing the product of the garden and to provide a stream of income to the operators to help support the market garden.

Hartzell stated that the staff worked with this applicant as well as representatives from community gardens and another possible applicant in the city jurisdiction to develop a list of accessory uses. The application on today’s agenda is for a restaurant; however, other accessory uses might be bedding plant sales, educational and training centers, agricultural tourism uses, and then also being able to sell the products of the market garden as well as products of other local growers in a permanent retail site, rather than the road-side stand which is limited to 180 days per year. This would be a year-round use.

In addition, Hartzell pointed out that the city code has a special permit for sale of alcoholic beverages on-site and it is assumed that a restaurant would want to include alcoholic beverages. The legislation has been written such that the market garden is a use that does not have to meet the separation requirement from residential uses because is in the AGR district, the same as is the case for golf courses, country clubs and farm wineries.

Hartzell pointed out that the parking requirements are pretty broad with calculations based on the use to determine the appropriate parking.

Hartzell advised that local food is a very strong piece of the Comprehensive Plan. This legislation supports and promotes local food.

As far as processing, the market garden legislation does not encourage major processed crops, but processing such as cooking, canning, preserving and making jelly would be allowed. It would also allow bringing in cheese, e.g., from another site to sell but it would not necessarily be part of the market garden.

Hartzell also pointed out that the accessory uses are limited to 10% of the overall area, which is 20 to 40 acres. With some of the AGR lots being 3 acres, the decision was made that allowing the market gardens on 20-acre parcels would provide a buffer. The 10% clearly gives us a use that is not dominating the site, and it would be done by area. The Planning Commission would also have the option to limit the size of any of the buildings.

Esseks inquired about assurance that the restaurant would provide safe food. Hartzell indicated that the restaurant would have to meet all Health Department and commercial codes for food and the codes to acquire a building permit.

Hartzell then discussed the proposed special permit for a specific site on Branched Oak Road between 98th and 112th Streets, about 4.5 miles north of Waverly. The site is 39.98 acres. There is a lake on the site that is about 6 acres, and they have already begun the garden portion of this use. There are some mature pine trees already in place that provide some visual screening. The existing house on the site of the restaurant is planned to be removed. The building on the adjoining property is a metal building, with no residential home. The surrounding zoning is all AG. There is an acreage on the west side. There are a few other farm houses that are nearby but not within 1/4 mile. The accessory use is a restaurant of 2600 sq. ft., which will be open five evenings of the week (Wednesday through Saturday) and noon to 6:00 p.m. on Sunday. The parking requirement is 13 parking spaces (1/200 sq. ft. of the restaurant). This applicant is actually provided 24 parking spaces with three ADA spaces on-site, and they have designated area for overflow parking. The restaurant will have a total of 100 seats, 68 indoors and 32 outdoors on a patio.

Hartzell then pointed out that the combined total of all the accessory uses is about .93 acres, only about 2.3% of the entire site. The estimated traffic for this site with maximum of 100 guests, is about 50 vehicles at full occupancy, with about 5 employees, resulting in 110 trips per day. The County Engineer has reviewed the traffic estimates, road conditions and traffic counts and has not expressed any concerns.

Proponents

1. Jerry and Renee Cornett, owners of the property in question and the applicants for the special permit, testified. Mr. Cornett recently retired from the military and Mrs. Cornett attended culinary school. They have decided to start an organic farm, and their expertise would be a restaurant. This is a beautiful site and they are purposely proposing a relatively small restaurant to maintain the uniqueness of the property and the agricultural tie. The I-80 corridor study supports this type of use. Activities like this are a positive sign of keeping the rural economy healthy.

The applicants have submitted an organic system plan, and their goal is for certification in April. The food served in the restaurant won't be entirely organic due to the price they want to offer.

Esseks believes this is a wonderful opportunity for the community.

Opposition

1. Jerry Minchow, 8181 Davey Road, 1 ½ mile from the proposed property, testified in opposition with concerns about the traffic and safety on the gravel roads. The customers will come up Hwy 77 and turn on Branched Oak Road, traveling on a gravel road 3.5 miles to the site, passing over 70th, 84th and 98th Street, which are all dangerous gravel roads. He has family members who died

in traffic accidents on these gravel roads. He is concerned with the County Engineer thinking the traffic will not reach the threshold. His property is between 70th and 84th Street, with five driveways onto Branched Oak Road. His farm implements are 60' in length and must be transported on these roads. Some of the accidents have been the result of people driving in the country who are not familiar with driving on gravel. He believes more traffic is going to cause more accidents, and the customers may not be familiar with these gravel roads.

Other than the traffic issue, Minchow did acknowledge that the proposal is a fine concept with a restaurant and garden in the country.

Hove wondered whether a lower speed limit would help. Minchow said that speed had nothing to do with the accidents to which he referred. It has to do with the gravel. It's just awareness and experience.

2. Beverly Neth, 17100 N. 98th, who lives one mile from the proposed site and her son lives right across from the property, testified in opposition to the alcohol use being allowed. She also agreed with Mr. Minchow's testimony about traffic. Otherwise, this restaurant will be welcomed in the community with open arms. She would be more in support without the liquor permit.

Gaylor Baird inquired whether her concerns about the liquor are related to drinking and driving. Neth responded, "yes". One does not know what their driving habits are going to be once they have been imbibing.

Response by the Applicant

Esseks observed that frequently, there may be people visiting the market garden because they are really interested in agriculture. They want to interact and perhaps take a tour of the farm. He is wondering if this would then give the applicant the opportunity to influence the visitors about the care they take driving to and from the farm. Cornett acknowledged that he knew traffic was going to be a potential concern. They plan to use technology and have a Web site for reservations and could show potential driving routes and road conditions to make this the best experience for the customers. They have discussed potential alternate routes. They have considered being closed all of January and part of February due to weather conditions, growing seasons, etc. Cornett suggested that the speed limit may indeed be an issue. If you are not experienced, 50 mph on a gravel road can be a problem. The Web site will be a primary focus and they will remind the customers that it is a gravel road.

In regard to on-sale alcohol, Cornett stated that he does not believe the restaurant would be successful without the opportunity to serve wine and beer with dinner. They do not intend to have a bartender. The primary focus will be beer and wine. Having an inventory of hard liquor would not be cost-effective. They will be required to get a liquor license and must comply with all of those regulations.

Hove inquired whether the applicants envision any kind of expansion in the future if the business is successful. Cornett indicated that they do not have any plans to expand. One of the reasons you attract people to a restaurant in the country on the market garden site is the intimacy of the property. Their growth strategy is more in reservations on-line, creating a full house, and then potential for special events.

It was clarified that traffic can go directly from Hwy 77 down Branched Oak Road. There is not a reason why anyone would take 70th, 84th or 98th to the property, except that they are alternative routes.

COUNTY CHANGE OF ZONE NO. 12001

ACTION BY PLANNING COMMISSION:

February 22, 2012

Lust moved approval, seconded by Esseks.

Lust believes this is absolutely an excellent idea for both the city and the county. It fits into the Comprehensive Plan; it encourages more local food, which is not only good for the local economy but also good for the environment and the people. She is encouraged to see the change of zone in both the county and the city.

Esseks commented that if we want a healthy agriculture, we have to allow the farmer/entrepreneur to diversify. This appears to be a reasonable path. This is a modest-sized operation. Organic certification would be quite an achievement. He thinks we should try this out as a model for other operators.

Sunderman expressed appreciation for the testimony about the danger of driving on gravel roads when you are not used to them. However, he will vote in favor.

Gaylor Baird expressed that she is pleased to see that the applicant is taking the traffic issue seriously, and that they will promote a greater awareness with their technology, Web site and phone inquiries to have opportunity to educate the people.

Cornelius agreed with everything that has been said. In particular, he is pleased about the opportunity for the diversification that this will allow in the agricultural economy with relatively low impact to the areas that are designated for agricultural use.

Motion for approval carried 7-0: Gaylor Baird, Lust, Weber, Esseks, Hove, Sunderman and Cornelius voting 'yes'; Butcher and Francis absent. This is a recommendation to the Lancaster County Board.

CITY CHANGE OF ZONE NO. 12002

ACTION BY PLANNING COMMISSION:

February 22, 1012

Lust moved approval, seconded by Esseks and carried 7-0: Gaylor Baird, Lust, Weber, Esseks, Hove, Sunderman and Cornelius voting 'yes'; Butcher and Francis absent. This is a recommendation to the Lincoln City Council.

COUNTY SPECIAL PERMIT NO. 12003

ACTION BY PLANNING COMMISSION:

February 22, 2012

Lust moved to approve the staff recommendation of conditional approval, seconded by Esseks.

Lust stated that she is very satisfied that the applicant is taking the concerns of the neighbors about traffic very seriously. It appears they are on top of it -- they have thought about it and they are designing this restaurant to be able to respond to technology and will be able to respond to road conditions. She thinks it is important for the neighbors to bring issues forward like driving on gravel roads and she appreciates that testimony, but this particular application is a good project and the applicants have been very thoughtful about their concerns.

Esseks sees this as an opportunity for the restaurant to have a special relationship with customers and consumers – to engage in some teaching about the dangers of driving on these rural roads.

Gaylor Baird stated that she is hopeful that this market garden/restaurant will be successful and can be a model for other forms of entrepreneur activity in the County – it is good for the local economy and good for local farmers.

Cornelius stated that he appreciates that this project represents actual concrete steps in support of the goals set forth in the new Comprehensive Plan. With regard to the issue of alcohol sales, he submitted that the licensing of establishments to serve alcohol is a matter taken seriously by state and local agencies. He pointed out that the alcohol is intended for sale on-site only. It is an unlikely source of alcohol to minors. With regard to traffic, he agrees that the applicant seems to take this matter very seriously. This is a site specific matter. We do have the endorsement of the County Engineer. He also agrees that 50 mph on those gravel roads is very fast, but he intends to support this special permit.

Motion for conditional approval carried 7-0: Gaylor Baird, Lust, Weber, Esseks, Hove, Sunderman and Cornelius voting 'yes'; Butcher and Francis absent. This is final action, unless appealed to the Lancaster County Board by filing a letter of appeal with the County Clerk within 14 days.

Lakehouse Farm LLC
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Purpose Statement

We currently own property at 10405 Branched Oak Rd, Waverly, NE that is zoned AG and we are beginning to cultivate 6-8 acres with diverse vegetables, fruits, and flowers in rotation with cover crops. We anticipate receiving organic certification for our market garden in late spring/summer 2012.

To compliment our agricultural endeavor, we would like to propose a secondary use of the property. We hope to construct a farm-to-table restaurant on the site that would be the primary user of produce from the market garden. Additional items for the restaurant that are not produced in our market garden will be sourced primarily from other Nebraska small farmers and regional suppliers as much as possible (for example: meat, dairy products, and eggs).

The proposed language is somewhat broad to allow applications for other complimentary uses that support market garden use of AG-zoned land in the county. Some of the additional benefits that would be provided by addition of these articles are:

- increased potential for financial viability of smaller farms through additional markets for their products.
- opportunities for additional tourist destinations and hands-on education of the next generation of small farmers.
- maintaining a personal connection between eaters and growers outside of farmers markets to allow smaller farms to generate income and continue to produce an abundant selection of fresh and healthy food.
- increased public awareness of the regional food system through patronage of on-farm facilities.
- keeping local food dollars circulating in Nebraska.