

## **FACTSHEET**

**TITLE: TEXT AMENDMENT NO. 13006**, requested by the Director of Planning, to amend Chapter 27.72 of the Lincoln Municipal Code (Zoning Ordinance) relating to Height and Lot Regulations and the projection of patios, terraces, uncovered decks and ornamental features into a required yard; and to allow administrative approval of minor adjustments to rear yard requirements in the AG, AGR and R-1 through R-8 zoning districts.

**STAFF RECOMMENDATION:** Approval.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 10/30/13  
Administrative Action: 10/30/13

**RECOMMENDATION:** Approval (8-0: Scheer, Beecham, Corr, Hove, Cornelius, Sunderman, Weber and Lust voting 'yes').

### **FINDINGS OF FACT:**

1. This is a request to amend Chapter 27.72 of the Lincoln Municipal Code, Height and Lot Regulations, by amending Section 27.72.020 to reduce the required rear yard in the R-1 through R-4 zoning districts for single- and two-family dwellings as set forth in Table 27.72.020(a); by amending Section 27.72.060 to modify the provisions regarding the projection of patios, terraces, uncovered decks, and ornamental features into a required yard; adding a new section numbered 27.72.190 granting the Planning Director authority to approve minor modifications to the rear yard setback under specified conditions.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-6, concluding that the proposed changes to rear yards in the R-1 through R-4 zoning districts, allowing decks over 3 feet to extend into the rear yard and allowing for minor modifications to rear yard setbacks administratively, will make it easier for more residential property owners to improve their property. These changes will also streamline the development review process and are in conformance with the Comprehensive Plan. This proposal has been reviewed by the Mayor's Neighborhood Roundtable. The staff presentation is found on p.7-8.
3. On October 30, 2013, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval, finding that the ability to improve property, especially in older neighborhoods, should be encouraged, and that this is a good way to encourage reinvestment in the older neighborhoods (See Minutes, p.8).

**FACTSHEET PREPARED BY:** Jean L. Preister

**DATE:** November 7, 2013

**REVIEWED BY:** Marvin Krout, Director of Planning

**DATE:** November 7, 2013

**REFERENCE NUMBER:** FS\CC\2013\TX13006

# LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

## for October 30<sup>th</sup> 2013 PLANNING COMMISSION MEETING

**PROJECT #:** Text Amendment No. TX13006

**PROPOSAL:** Text Amendment for single and two family lots to reduce the rear yard setback in the R-1 through R-4 residential zoning districts, allowing decks to encroach into a portion of the rear yard and allowing for administrative approval of minor adjustments to rear yard requirements in the AG, AGR and R-1 through R-8 zoning districts.

**CONCLUSION:** The proposed changes to rear yards in the R-1 through R-4 zoning districts, allowing decks over 3 feet to extend into the rear yard and allowing for minor modifications to rear yard setbacks, will make it easier for more residential property owners to improve their property. These changes will also streamline the development review process and are in conformance with the Comprehensive Plan.

**RECOMMENDATION:**

**Approval**

### **GENERAL INFORMATION:**

### **COMPREHENSIVE PLAN SPECIFICATIONS:**

The community continues its commitment to strong, diverse neighborhoods. Neighborhoods remain 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. (Page 7.1)

In existing neighborhoods, preservation, maintenance, and rehabilitation of existing housing should continue to be the focus.(Page 7.1)

### **ANALYSIS:**

1. Over the last ten years, the Planning Department has strived to find new ways to streamline the development review process and to provide flexibility to homeowners who want to improve their properties. In 2009, the City Council passed an ordinance that allowed property owners of single and two family dwellings in any residential zoning district to enlarge or reconstruct their dwellings to the setback lines of the existing dwelling, even if those setbacks did not meet the requirements of the district. Although there were certain criteria that had to be met, this new regulation allowed for reconstruction and expansion without having to go through the special permit process to adjust setback requirements. This has reduced the number of steps and length of process for property owners to improve their properties. In addition, this will reduce the amount of time City staff has to spend reviewing applications that are typically approved.
2. The three proposed changes to the Height and Lot Regulations (Chapter 27.72) will continue to help make residential improvements easier. Those proposals include allowing single and two family lots to reduce the rear yard setback in the R-1 through R-4

residential zoning districts, allowing decks to encroach into a portion of the rear yard and allowing for administrative approval of minor adjustments to rear yard requirements in the AG, AGR and R-1 through R-8 zoning districts.

3. There are three purposes for these changes: to make it easier for all property owners to improve their property, to streamline the development review process, and to provide more uniform rules for residential zoning districts. Since 2008, the Planning Department has approved rear yard adjustments to approximately 398 properties in Community Unit Plans (CUP) and Planned Unit Developments (PUD). Most of those adjustments were to allow the expansion or reconstruction of a deck. A few of them were to allow the expansion of a building. The adjustments range from 1 foot to 16 feet. A majority of the adjustments were between 5 and 10 feet. These adjustments could not have been made if these properties had not been in a CUP or PUD.

4. Proposal #1 – Reduce Rear Yard to 20 Feet

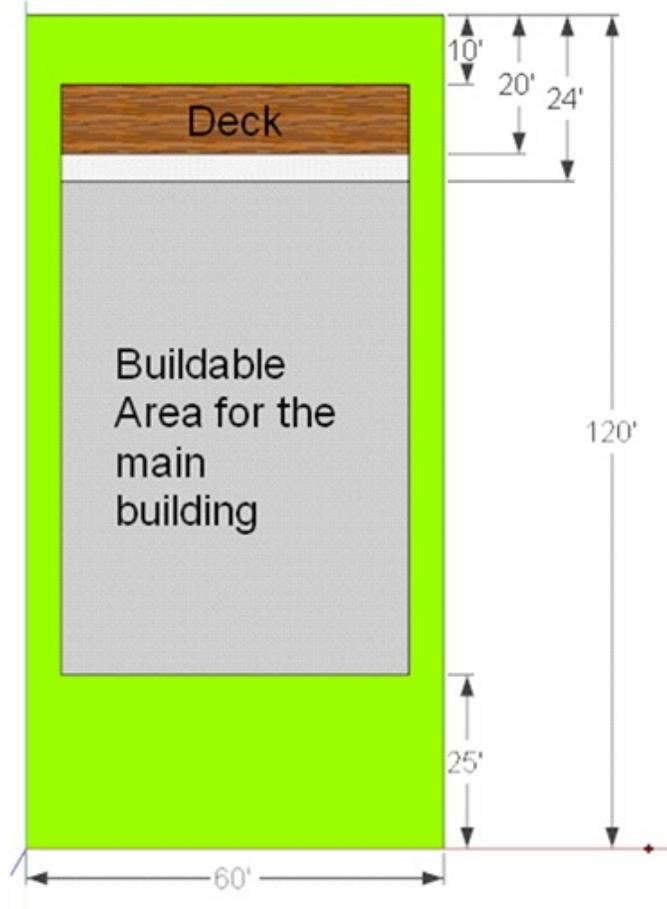
The first change would be to reduce the rear yard setback on single and two family lots in the R-1 through R-4 zoning districts. Today, the required rear yard is **30** feet or 20% of the lot depth, whichever is less. The proposal is to reduce the rear yard to **20** feet or 20% of the lot depth, whichever is less. For example, a lot that is 120 feet deep is currently required to have a 24 foot rear yard. This proposal would reduce that rear yard to 20 feet. Lots 100 feet deep or less would not be affected by this change. The following are some examples of the difference in the rear yard between today’s setback and the proposal.

Lot depth	Today	Proposal
150	30	20
142	28.4	20
120	24	20
105	21	20
90	18	18

5. Proposal #2 – Allow decks further in rear yard

In the second proposal, decks would have more flexibility to expand into the rear yard. Today's code allows an uncovered deck or patio that is less than 3 feet tall to be constructed up to 2 feet from the rear and side property lines. If the deck is over 3 feet tall or it is covered it may not encroach into the rear yard. Since a majority of the Administrative Amendments regarding rear yard reductions involves decks and a majority of them allow the deck to be constructed up to 10 feet away from the rear property line, this proposal would allow uncovered decks, taller than 3 feet, located no higher than the 1<sup>st</sup> story of a house, to expand or be reconstructed up to 10 feet from the rear lot line regardless of lot depth.

PROPOSED OUTCOME



6. Proposal #3 – Establish New “Minor Modification” Process to allow further case by case reduction up to 5 feet in the rear yard

Third, some lots not in CUPs or PUDs have unique circumstances that would warrant a minor reduction in a rear yard requirement. Such adjustments might include, but would not be limited to: a change in topography making an improvement in one direction very difficult; minor correction of a footing not in conformance with a building permit; or preservation of an existing element of a structure. Currently, there is no way to evaluate and grant such minor modifications without going through the Board of Zoning Appeal (BZA) process. In most cases, unless there is some very unique circumstances for a site the BZA is not likely an option for a minor adjustment.

Under this proposal, the Planning Director would have to follow specific criteria for granting the modification. Such criteria could include:

- (a) The premises is located in the AG, AGR, or R-1 through R-8 zoning district;
- (b) The premises is used for a single- or two-family dwelling;
- (c) The requested modification is for no more than five (5) feet;
- (d) The modification will have no significant adverse impact on existing or reasonably anticipated future uses in the surrounding area;
- (e) The modification shall keep with the intent and spirit of the Zoning Code

This would be an administrative process, meaning it is approved or denied by the Planning Director and would not have a public hearing process. As part of the review, adjacent property owners would be notified. There is already an administrative review process for properties included in a CUP, PUD or Use Permit so this new process would not apply to those areas.

7. Recent Rear Yard Reduction Example :

In the exhibit on the next page, a property owner was adding on to an existing house. During the building permit process they found out that an existing enclosed gazebo encroached 5 feet into the required rear yard. The gazebo was built over 30 years ago and there was no evidence that it was allowed to encroach. If the property owner wanted to continue with their building permit they would have to tear down the gazebo and reconstruct it to the zoning district setbacks. The adjacent neighbors did not object to the gazebo being enclosed. Because this property was in a CUP, the Planning Department was able to work with the property owners to give them an adjustment to keep the gazebo structure and to enclose it. If this property had not been in a CUP then the gazebo would have to have been torn down.



8. The Planning Department sent out a letter to the development community and neighborhood associations on August 15, 2013 asking for feedback. The proposal was also presented to the Mayor's Neighborhood Roundtable on three separate occasions since June of 2013. Several adjustments based on these comments have been made and the proposal has generally received positive feedback.

Prepared by:

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**DATE:** October 17th, 2013

**APPLICANT:** City of Lincoln Planning Department  
Marvin Krout, Planning Director  
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Lincoln, NE 68508  
402-441-7491

## TEXT AMENDMENT NO. 13006

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2013

Members present: Scheer, Beecham, Corr, Hove, Cornelius, Sunderman, Weber and Lust.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Christy Eichorn of Planning staff** pointed out that the Planning Commission has had two briefings on this proposed text amendment prior to this hearing. The staff has also talked with the Mayor's Neighborhood Roundtable three times since June. A mailing was sent in August to all of the neighborhood and homeowner associations for which the Planning Department has contacts, as well as the development community.

Eichorn explained that the proposed changes are to rear yards and reduction for decks as well as minor modifications.

With regard to changes in the rear yard, Eichorn explained that today 30 feet or 20% of the depth of the lot is allowed, whichever is less. The proposed change is for the rear yard to be 20 feet or 20% of the depth of the lot, whichever is less. For example, for a lot 150' deep, the rear yard would go from 30' to 20' by this amendment. As the lot depth gets smaller to below 100' deep, this change would not affect the lot. This amendment applies only to R-1 through R-4 zoning districts and applies only to single- and two-family dwellings.

With regard to decks in the rear yard, Eichorn explained that today, if you have a deck attached to house taller than 3' off the ground, it can only be within the buildable area of the lot (not in front, side or rear yard setback). Usually the house does not take up the entire buildable lot; the house can be placed anywhere on the lot; some houses are placed toward the rear of the lot with larger front yards giving very little room for decks. Today, you can have a deck in your rear yard as long as it is 3' off the ground and it could cover almost the entire rear yard, except 2' of side lot line and 2' of rear lot line. It does not matter how big the back yard is. This proposed change reduces the rear yard on a standard lot to 20' or 20% of the depth of the lot. The deck could go within 10' of the rear lot line. If you have a lot with a rear yard that is less than 20' deep, you can still only go within 10' of the rear lot line. This applies to uncovered decks -- no higher than the first story, and must maintain a 5' side yard.

The proposal for "minor modifications" is only allowed in the R-1 through R-4 Residential Districts; only for single- and two-family residential; and a 5' encroachment into the rear yard only. These minor modifications can be approved by the Planning Director as opposed to the public hearing process through Planning Commission or City Council. This would be kept track of on a lot-by-lot basis, put on the Development Viewer and advertised like our other administrative approvals; there would be an appeal process, allowing appeal to the Planning Commission.

Eichorn stated that the purpose of all of these changes is to provide some flexibility in older neighborhoods; flexibility for those parts of community not already governed by a community unit plan, planned unit development or use permit. Minor modifications are made in those three areas administratively today. There are no provisions for these adjustments today other than the Board of Zoning Appeals, which requires an undue hardship finding.

Beecham asked for an example of how this would work on a lot where there is a walkout basement. Eichorn explained that for decks, if you have a walkout, the first floor will be considered to be the main floor that is parallel or at grade with the street. Beecham confirmed then that the first floor level trumps the 3' off the ground rule in that case. Eichorn responded that today, that deck could not encroach into the rear yard because it is more than 3' off the ground. The first floor could encroach into the rear yard with this amendment.

Lust asked for a definition of "minor modification". Eichorn stated that there are six specific findings set forth in the ordinance that are required to be found by the Planning Director in approving a minor modification.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

October 30, 2013

Beecham moved approval, seconded by Corr.

Scheer stated that he will support the proposal; however, he reiterated his thoughts previously shared, i.e. he still has some minor concerns about some of this in that he does believe that in some of our older established neighborhoods, this could have the potential of changing the character of the neighborhood if it were done a lot. But, he does not believe it is going to occur a lot, so he will support it.

Corr stated that she will support the proposal because it equals out some differences between older housing stock and newer housing stock since not everyone is in a planned unit development.

Lust commented that she will support the proposal because, especially in older neighborhoods, modifications like this and the ability to improve property should be encouraged, not discouraged. This is a good way to encourage reinvestment in the older neighborhoods.

Motion for approval carried 8-0: Scheer, Beecham, Corr, Hove, Cornelius, Sunderman, Weber and Lust voting 'yes'. This is a recommendation to the City Council.