

**LINCOLN CITY PLANNING COMMISSION  
MINUTES  
April 5, 2022**

**1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL**

Chair Blackerby called the April 5th Lincoln City Planning Commission meeting to order at 6:01 pm, offering the gavel to former Chair Baker. All stood for the Pledge of Allegiance, and roll was called.

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
Glenn Johnson	Commissioner	Present	
Mellissa Sumner	Commissioner	Present	
Marci Baker	Commissioner	Present	
Robert Vincent	Commissioner	Present	
Kim Blackerby	Chair	Present	
Miles Schlesinger	Commissioner	Excused	

**2. AGENDA CHANGES OR REVISIONS**

There were no changes to the agenda, other than those already published.

**3. MINUTES**

**3.1. Planning Commission - Regular Meeting - March 15, 2022 @ 6:00 PM**

<b>MOTION:</b>	Approve the minutes from the March 15th Planning Commission meeting with a minor change to capitalize the title of President for speaker Janet Knipe
<b>MOVER:</b>	<b>Vincent</b>
<b>SECONDER:</b>	<b>Sumner</b>
<b>AYES:</b>	Johnson, Sumner, Baker, Vincent, Blackerby
<b>EXCUSED:</b>	Schlesinger
<b>RESULT:</b>	<b>Passed as Amended</b>

**4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**

**4.1. FO 2022-03 for VAR 2022-02 Olson**

Chair Blackerby introduced Final Order 2022-03 for the Olson natural resource variance.

<b>MOTION:</b>	<b>Approve FO 2022-03 for VAR 2022-02 Olson</b>
<b>MOVER:</b>	<b>Vincent</b>
<b>SECONDER:</b>	<b>Johnson</b>
<b>AYES:</b>	Johnson, Sumner, Baker, Vincent, Blackerby
<b>EXCUSED:</b>	Schlesinger
<b>RESULT:</b>	<b>Passed</b>

## 5. PUBLIC HEARINGS/DELIBERATIONS

### 5.1. VAR 2022-01 6604 NE Logan Rd Variance for Street Side Setback

Chair Blackerby made the required opening statements, including instructions for deliberations, reminders of the public hearing held two weeks prior and the closing of the record, and asked if anyone had any conflicts of interest. No conflicts of interest were expressed.

Director Skinner provided an updated staff report. Director Skinner stated that after considering additional written materials received from the applicant during the seven days following the close of the public hearing, staff were compelled to change the recommendation from denial to approval of the variance. The applicant asserted that the previous senior planner had not only reviewed and approved the site plan, but had also issued the permit, performed the setback inspection, and approved the setback inspection. Quoting testimony from the public, she also emphasized that "we must be able to trust staff" when consulting with the City. Staff agreed with the applicant's assertion that the mistakes made at the initial, intermediate, and final levels of approval represented an exceptional circumstance, meeting Criterion #1. She added further that although the owner had initially stated that they couldn't obtain a Certificate of Occupancy for the completed dwelling and that this was the property right being violated, the owners provided written testimony wherein they acknowledged that a Certificate of Occupancy could be obtained and that the property right being violated was not being able to use the completed dwelling without incurring fines pursuant to LCMC 17.04. Staff agreed that not being able to use a completed dwelling that meets all building code requirements, without incurring fines due to a street side setback encroachment, is the property right being violated; thus, Criterion #2 is met. The previous staff report included the findings that Criterion #3 and Criterion #4 were met.

Chair Blackerby asked Director Skinner to clarify the revised staff findings, and cited previous land use cases involving staff error that had not resulted in decisions favoring the applicants. He did not agree with the new findings regarding Criterion #1. Director Skinner emphasized that the Planning Commission did not need to agree with staff's recommendation and must make its own determination. Responding to a question from Commissioner Johnson, Director Skinner stated that the size of the encroachment was a factor in the decision-making process. Commissioner Baker questioned whether or not the 50' x 90' lot met the minimum lot size required in the R1RE zone. Director Skinner stated that the lot was created prior to the City's zoning code and is a nonconforming lot, noting that the zoning code allows construction on legal nonconforming lots. Responding to a question from Commissioner Sumner, Director Skinner stated that the adjacent building also constructed by 3G's Construction met the building and zoning codes. Mr. Appicello clarified that although it was the position of Director Skinner that the variance was necessary to preserve the applicant's property rights, the Planning Commission needed to make its own determination.

Chair Blackerby added that he did not feel the applicant had met Criterion #3, and that the variance was detrimental to the neighborhood and the unique characteristics of Road's End in that the variance would specifically be counter to the intent of the agreed upon code for Road's End. Commissioner Baker concurred and stated that while the staff errors were extraordinary, they did not place an undue hardship on the applicant, and they did not eliminate the applicant's burden to perform his own due diligence. She also recalled past Planning Commission decisions that had been very difficult and burdensome, but that the need to uphold the City's code was the primary responsibility before the commission.

A motion was made by Commissioner Sumner to deny VAR 2022-01, seconded by Commissioner Baker, citing that the application failed to meet Criterion #1, #2, and #3. The motion passed four votes to one, with Commissioner Vincent voting against the motion and supporting the staff's recommendation to approve.

<b>MOTION:</b>	<b>Deny VAR 2022-01 6604 NE Logan Rd Variance for street side setback</b>
<b>MOVER:</b>	<b>Sumner</b>
<b>SECONDER:</b>	<b>Baker</b>
<b>AYES:</b>	Johnson, Sumner, Baker, Blackerby
<b>NAYS:</b>	Vincent
<b>EXCUSED:</b>	Schlesinger
<b>RESULT:</b>	<b>Passed</b>

**5.2. ZOA 2022-07 R1RE Street Side Setback – WITHDRAWN**

**5.3. VAR 2022-03 Weston 6245 NW Logan Rd CONTINUED TO MAY 17, 2022, AT THE REQUEST OF THE PROPERTY OWNER'S REPRESENTATIVE**

**5.4. ZOA 2022-06 R1RE Front Setback**

Chair Blackerby opened the public hearing for ZOA 2022-06 at 6:44 pm, introduced the application, read the required statements, and explained the order of proceedings. No Commissioners were excused for conflicts of interest.

Director Skinner presented the staff report. The applicants, Jay and Helen Weston, are requesting a zoning code text amendment to 17.17.070.D to clarify averaging for setbacks on Logan Road, and to decrease the front setback from 20' to 15' for decks. Public agency comments were received from North Lincoln Fire & Rescue District #1 and citizen comments were received from more than 20 Roads End property owners, all of which were included in the public hearing packet. Several provided additional comments that were not included in the packet, including Debbie Newhouse, David Jamieson, Andrew Lafrenz, Patti Kroen, Terry Newhouse, and Janet Knipe. Director Skinner read these comments into the record, as well as newly-received comments from Rob Allen and Gay Linfoot. All comments received were in opposition to the proposed request to reduce the front setback requirement.

In addition to consideration of the applicant's text amendment, Director Skinner requested that the Planning Commission consider removing the component of averaging altogether, as it places unnecessary burdens on staff to interpret, and measurements are based on inexact GIS data. Further, if the averaging language is to remain, she requested that the code be made more exact and include a requirement that the applicant submit a valid survey of the setback measurements completed by a licensed land surveyor.

Following a question from Commissioner Baker, Director Skinner responded that the front setbacks in all other residential zones are the same for all parts of the building. The difference between Roads End and other residential zones is that the standard front setback is 5 feet for single-story buildings and 7.5 feet for two-story buildings. Following a question from Chair Blackerby, Director Skinner clarified that the proposed amendment is not relevant to the variance request discussed earlier in the meeting, as that variance was specific to the street side setback in Roads End not the front setback.

Responding to a question from Chair Blackerby regarding the Fire Marshall's concerns about the allowance of posts, Director Skinner stated that review from the Fire Department is included in the building permit process in order to address life safety issues.

Chair Blackerby invited those signed up to comment to do so, beginning with the applicant. Christopher Koback spoke on behalf of the applicants, Jay and Helen Weston. He clarified the applicable code and the relevant criteria and provided context for the proposed text amendment. The applicants purchased the home after the decks were removed, and believed that they would be able to reconstruct them. Mr. Koback stated that they began working with City staff in order to craft a text amendment that addressed both private and public interests, and that the application successfully met the required criteria. In response to concerns regarding public input, Mr. Koback stated that the public hearings required by the code meet the public process goals.

Chair Blackerby clarified that the deck was already built and represented an encroachment into the setback. Mr. Koback stated that the text amendment request arose from the City and applicant dispute regarding the process of averaging. Director Skinner added that staff has historically only measured one side of the street when using the averaging option, and therefore supported the proposed language to specifically state use of one side of the street. She also emphasized that there needs to be an accurate determination, and the only way to do this would be to require a survey.

The first speaker, Patti Kroen, questioned why the owner didn't simply pursue a variance, as there was no clear public benefit. She disagreed with the owners' assertion that consistency with other residential zones is a benefit, as the Roads End area has worked hard to maintain its unique character. She stated that this text amendment would negatively impact the entire neighborhood, and fundamentally change the entire Roads End area. She urged the Planning Commission and the City Council to deny the application.

Next the Commission heard from Janet Knipe, in her role as both a local resident and as President of the Roads End Improvement Association (REIA). She stated that REIA is strongly opposed to this application. REIA's role is to monitor the work of builders and developers in the area and to ensure compliance with all applicable rules and regulations. She reiterated that the Roads End zoning requirements were deliberately established to be different from those in other areas in order to maintain the look and character of this unique area. Ms. Knipe added that there was no compelling need expressed by the neighborhood that these changes are necessary or desired. The specific comprehensive plan criterion impacted negatively by this proposal is found within the Aesthetics Goal. Ms. Knipe closed by requesting the Planning Commission and the City Council consider the adequacy of the public involvement process as defined by current code.

Chair Blackerby asked for clarification on the current requirements for public involvement, citing language from Ms. Knipe's written testimony. Director Skinner clarified that there was no difference between a City-initiated and a citizen-initiated text amendment application in regards to requirements for public involvement.

Catherine Wetterling spoke against the proposed text amendment. She and her family are long-time Roads End residents, and cited concerns regarding the applicants' behavior and their lack of respect for the neighborhood.

Lastly, the Commission heard from Stacey Baird. He opposes the application, and suggested that the proposal was really a zone change and not a simple text amendment.

Mr. Kobak, the applicant's representative, was given time for a rebuttal. He reaffirmed that the decks had already existed prior to annexation of Roads End into the city limits, and thus were consistent with the historic nature of the neighborhood, and that the application met the applicable criteria as supported by staff.

Commissioner Sumner moved to close the public hearing and the record, seconded by Commissioner Vincent.

Responding to a question from Commissioner Vincent, Director Skinner stated that discussion of the side setback requirement and decks was immaterial to the code text amendment at hand.

Commissioner Baker stated that the zone text amendment was the wrong path for a single property owner. Director Skinner requested Commissioners articulate the applicable criteria for any denial of the amendment, and to include that in the recommendation to the City Council.

Chair Blackerby disagreed that the comprehensive plan goal for public involvement should be considered met by simply holding a public meeting, but that it also should include being responsive to comments received. Chair Blackerby also identified the comprehensive plan goal of Urbanization as a possible area where the application criteria might be discussed. Director Skinner clarified that Urbanization is simply defined by what is inside and what is outside of the City. All areas within the City limits are considered as urbanized. She added that there are no design standards in the Lincoln City Municipal Code for single-unit dwellings, except a requirement for inclusion of two design features from a list of possible design features such as dormers, recessed porches, gables, and bay windows. She noted that these two design features are required for all single-unit dwellings in the entire city, not just Roads End.

Commissioner Sumner proposed a motion to remove the language for averaging, and to maintain the full 20-foot front setback. Commissioner Blackerby seconded the motion. In response, Commissioner Baker suggested that the averaging language was part of the initial recommendations by the Roads End neighborhood, and likely an important tool for allowing homeowners some flexibility with development on their properties. Staff noted that there were no public comments in opposition to the process of averaging.

Planning Commissioners and staff discussed a variety of options for responding to the text amendment, considering whether or not to include the ability for property owners to use the averaging method at all, and if included how it would be measured, and who would be required to establish the measurements.

<b>MOTION:</b>	<b>Recommend approval of ZOA 2022-06 R1RE Front Setback averaging clarification to averaging on the same side of the street of the building and requiring a survey by a licensed land surveyor to take the measurements, with the cost being the burden of the applicant</b>
<b>MOVER:</b>	<b>Sumner</b>
<b>SECONDER:</b>	<b>Vincent</b>
<b>AYES:</b>	Johnson, Sumner, Baker, Vincent, Blackerby
<b>EXCUSED:</b>	Schlesinger
<b>RESULT:</b>	<b>Passed</b>

On the issue of decreasing the front setbacks for decks from 20 feet to 15 feet, Chair Blackerby proposed a motion to recommend striking the requested reduction and leaving the 20-foot-front setback requirement for all portions of the structure. Commissioner Baker seconded. The motion passed unanimously. Director Skinner requested clarification of the rationale supporting the denial. The issues of aesthetics as they related to the specific codes established upon annexation and citizen involvement were cited by the Commission.

<b>MOTION:</b>	<b>Recommend denial of ZOA 2022-06 R1RE Front Setback reduction from 20 feet to 15 feet for decks</b>
<b>MOVER:</b>	<b>Blackerby</b>
<b>SECONDER:</b>	<b>Baker</b>
<b>AYES:</b>	Johnson, Sumner, Baker, Vincent, Blackerby
<b>EXCUSED:</b>	Schlesinger
<b>RESULT:</b>	<b>Passed</b>

### 5.5. ZOA 2022-05 Code Corrections

The public hearing for ZOA 2022-05 was opened at 8:52 pm.

A 5-minute break was called by Chair Blackerby.

Director Skinner presented the staff report, providing an overview of the various corrections to the Zoning Code. The intent of these corrections is to improve the code, eliminate inconsistencies, and locate all definitions within the specific section reserved for definitions. Examples of specific changes include changing the term single or multi-family to single or multi-unit, the term home to dwelling, replacing all references to yards with the term setback, and replacing site plan review with development review. Other changes included incorporating Visitor Center as a permitted use to the Park zone and expanding the notification distance from 250' to 500' for Type III procedures.

One member of the public provided comment. Stacey Baird requested that the Planning Commission not move forward on the amendment, and to keep the public record open to allow further review and comment. One concern he had was the elimination of language within the Recreation Residential zone that appeared to allow for septic if no public sanitary sewer or water

is available. This is not an allowed option in any zone, regardless of its present in Title 17, so the elimination of the obsolete and inaccurate language in the code does not impact the status quo.

Staff emphasized that the Planning Commission is simply a recommending body, and that an additional public hearing will be held with the City Council. Responding to a question from Chair Blackerby, Director Skinner stated that notice of the public hearing was published twice in the newspaper as required.

Commissioner Sumner moved to close the public hearing and the record, and Commissioner Vincent seconded. The motion passed unanimously.

<b>MOTION:</b>	<b>Recommend approval of ZOA 2022-05 Code Corrections</b>
<b>MOVER:</b>	<b>Baker</b>
<b>SECONDER:</b>	<b>Sumner</b>
<b>AYES:</b>	Johnson, Sumner, Baker, Vincent, Blackerby
<b>EXCUSED:</b>	Schlesinger
<b>RESULT:</b>	<b>Passed</b>

**6. OLD BUSINESS**

There was no old business to discuss.

**7. NEW BUSINESS**

There was no new business.

**8. PLANNING COMMISSION TRAINING**

No training took place.

**9. REPORTS AND COMMENTS**

There were no reports or comments.

**10. FUTURE AGENDA ITEMS & NEXT MEETINGS**

Responding to a question from Commissioner Sumner, Director Skinner stated that the Planning Commission would be holding a meeting on May 17, 2022, which is Election Day.

**11. ADJOURN**

Chair Blackerby adjourned the meeting at 9:29 pm.

Respectfully submitted,

---

Anne Marie Skinner  
Planning & Community Dev. Director

---

Kim Blackerby  
Chair