

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Ozark MHP, LLC,
2464 Cedar Lane
Arnold, Missouri 63010,

Plaintiff,

vs.

City of Arnold, Missouri,
Serve: Mayor Ron Counts
City Hall
2101 Jeffco Blvd
Arnold, Missouri 63010,

Defendant.

CASE NO. 4:24-cv-248

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Ozark MHP, LLC (“Ozark”) for its causes of action against Defendant City of Arnold, Missouri (“City”), states and alleges:

INTRODUCTION

1. Ozark owns a manufactured home community in Arnold, Missouri, which has existed and operated as a manufactured home park since at least the 1960’s, before the City was incorporated and adopted its zoning ordinances. As such, the manufactured home park is a legal non-conforming use. Yet, despite its status as a legal non-conforming use, and the fact that manufactured home parks such as Ozark’s provide affordable housing to many of its residents, the City has adopted and applied ordinances designed and intended to do indirectly what the City cannot do directly—that is, eliminate the manufactured home park, or, in the words of its Building Commissioner, “bulldoze” it. In so doing, the City has deprived, and threatens to further deprive, Ozark of a host of rights secured by the Constitution. Most egregiously, the City occupancy and

inspection ordinances require Ozark to consent to warrantless searches and inspections of all homes in the manufactured home park (whether owned by Ozark or not) in order for Ozark to replace a single existing home, in violation of the Fourth Amendment. The City enforces this inspection ordinance discriminatorily against manufactured home parks, as compared to what the City views as “more desirable” housing such as single-family homes, in violation of the equal protection guarantees of the Fourteenth Amendment. Accordingly, Ozark brings this action for a declaration that the subject City ordinances, on their face and as applied, are unconstitutional, for injunctive relief preventing their enforcement, for damages as may be appropriate; for its costs, and fees under Section 42 USC §1983 and §1988.

THE PARTIES

2. Plaintiff Ozark MHP, LLC is a Missouri limited liability company, with its registered office located at 2464 Cedar Lane, Arnold, Jefferson County, Missouri 63010.

3. Defendant City of Arnold is a municipal corporation located in Jefferson County and organized under the laws of the State of Missouri. The City can be served through its Mayor, Ron Counts, under Mo.R.Civ.P. 54.13.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Fourth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. §§ 1983 and 1988.

5. Venue is proper in the Eastern District of Missouri, Eastern Division pursuant to 28 U.S.C. § 1391 and E.D.Mo. L.R. 2.07 because the City is located in this District, a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District, and the property at issue is situated in this District.

FACTUAL ALLEGATIONS

The Park Exists and Operates as a Legal Non-Conforming Use

6. Ozark owns an approximately 13-acre property in the City located at 2464 Cedar Lane, Arnold, MO 63010, known as Ozark MHP (manufactured home park) (the “Park”).

7. There are 135 lots in the Park for the placement of manufactured homes. The lots include a concrete pad for placement of the home.

8. The Park has operated continuously and without interruption as a manufactured home park or manufactured home community from at least the 1960’s to date.

9. Ozark purchased the Park in February 2022.

10. Ozark owns and leases manufactured homes within the Park, and also leases pad sites for occupant-owned manufactured homes located in the Park.

11. The purchase of the Park did not include purchase of occupant-owned manufactured homes in the Park.

12. The City was incorporated in 1972.

13. The City adopted a zoning code in or around June 1977.

14. The zoning of the Park in 1977 was identified as MHD – Manufactured Home District.

15. The present zoning of the Park Property is MHD – Manufactured Home District.

16. When the City adopted a zoning code in 1977, the entire Park, inclusive of its lots and their configuration on which manufactured homes are or can be situated, was a legal non-conforming use.

17. As a legal non-conforming use, the use of the Park for manufactured homes is a vested property right.

The City Code – Inspections and Occupancy Permits

18. The City adopted and discriminatorily applies ordinances that purport to require Ozark to consent to a warrantless government search of the entire Park, including all lots and homes located therein, in order to bring new manufactured homes into the community or replace an existing home.

19. At the time Ozark purchased the Park in February 2022, Section 540.010 of the City Code, styled “Issue of Certificates of Compliance, Occupancy Permits,” provided:

C. It shall be unlawful for the owner of any structure to sell, transfer, mortgage, lease or otherwise dispose of said structure or any part thereof to another until he/she shall have secured a certificate of compliance for the entire structure and premises from the Community Development Department and advised the grantee or lessee that said grantee or lessee must secure an occupancy permit if he/she is to occupy the premises, except as provided in Subsection **(F)** of this Section; and except that in the case of existing duplexes and multi-family structures, as well as individual units within non-residential structures, the owner shall secure a certificate of compliance for the interior of the individual unit to be disposed and the entire exterior of the structure and premises.

D. It shall be unlawful for any person, firm or corporation to hereinafter occupy, or for any owner or agent thereof to permit the occupancy of any structure, or part thereof, for any purpose until an occupancy permit shall have been issued by the Community Development Department.

E. Upon written request from the owner of an existing building or structure, the Community Development Department shall issue a certificate of compliance, provided that inspection of the structure and premises reveals no violations of this Chapter nor the codes adopted herein and that no orders of the Community Development Department are pending.

20. The City views and had applied this ordinance Section 540.010 as requiring an inspection of the entire Park and every manufactured home located therein prior to the sale of the Park to Ozark in February 2022.

21. Subsequent to Ozark’s purchase of the Park, in January 2023, the City amended the inspection/occupancy permit ordinance, now codified at City Code section 500.030(C)(5)(a), as

follows:

Section 114.1 Occupancy Permit Required.

It shall be unlawful for any person, owner, agent, or tenant thereof, both jointly and severally, to, in whole or in part, purchase, transfer, mortgage, lease, or acquire, occupy or use, manage, or to permit occupancy or use of the premises for any purpose, including the movement of furniture, equipment or other personal property into said premises, until a permit to occupy has been issued by the code official stating that the premises, including all real and personal property there located, and all uses thereon complies with the provisions of this technical code and the provisions of the Arnold Municipal Code of Ordinances. Manufactured home parks and individual manufactured homes shall comply with the requirements of this section.

Section 114.4 Action on an application.

No action shall be taken to issue a permit until there is an inspection of the premises, including the interior and exterior of all property, both real and personal, located thereon, and a property maintenance inspection report less than ninety (90) days old on file with the City.

22. As shown below, under Section 500.030(C)(5)(a) the City requires Ozark's consent to a warrantless search and inspection of the entire Park, including every manufactured home within the Park, as a condition for obtaining an occupancy permit and also for obtaining a manufactured home placement permit to bring a single new home into the Park to fill a vacant pad site, or to replace an existing home. This includes inspections of not only manufactured homes owned by Ozark, but also owner-occupied homes that Ozark does not own, and homes for which occupancy permits have already been issued.

23. On information and belief, the City selectively, disproportionately and discriminatorily applies these pre-sale inspection ordinances against manufactured home parks as compared to other types of residential housing.

The City Attempts to Force Ozark to Consent to Warrantless Inspections of all Homes

24. As set forth above, in addition to owning the Park itself, Ozark owns some

individual homes in the Park, which it leases to tenants. Other homes in the Park are owner-occupied, and the homeowner leases the pad site from Ozark. Ozark has no ownership interest or property rights in the owner-occupied homes in the Park.

25. Prior to Ozark's purchase of the Park, the City had granted occupancy permits for homes located in the Park.

26. Following Ozark's purchase of the Park, the City Building Commissioner notified Ozark that, in order to receive manufactured home placement permits to bring in new homes into the community (either to fill vacant pad sites or to replace existing homes in poor condition), Ozark was required to obtain an occupancy permit for the Park by consenting to an inspection of the entire Park for property maintenance compliance, including every home located therein, including homes owned and leased by Ozark as well as owner-occupied homes in the Park, and homes for which the City had already granted a valid occupancy permit.

27. During a phone conversation in or about August 2022, the Building Commissioner instructed the Park owner that the City was "going to inspect every unit in the park" and Ozark would need to "remove all violations."

28. During that same conversation, Ozark's owner informed the Building Commissioner that Ozark could not require the owner of an owner-occupied home to make their home available for a City inspection. To that, the Building Commissioner threatened that if Ozark failed to do so, the City would require that home to be removed from the Park, stating: "Well, you're going to have to coordinate that or we're going to red tag and make you move the trailer out of the park."

29. The Building Commissioner instructed Ozark to "send out a notice and say this is the date of our inspection window or the dates and [please] make your unit available" and inform

the owners that their home “must be inspected by the City before [it] can be occupied due to the sale of the park.”

30. When Ozark’s owner emphasized that Ozark had no ability to force homeowners to allow City inspections, and questioned the legality of the City’s position, the Building Commissioner further responded, “You know, it’s not a big deal for you to put a little sticker on everybody’s unit that says the occupancy inspection is scheduled for this date three weeks from now or whenever.”

31. The Building Commissioner opined that such inspections would likely result in the loss of 30-50 homes in the Park and an adjacent manufactured home community under common ownership.

32. Ozark has not voluntarily allowed, invited or consented to City inspections or notified tenants or homeowners in the Park that their homes must be inspected.

City’s Denial of Ozark Applications to Place New Manufactured Homes in the Park

33. On July 10, 2023, Ozark submitted eight manufactured home placement permit applications to the City for new homes to be located within the Park, either to fill vacant pad sites or replace existing homes.

34. On July 26, 2023, the City Planner sent a Notice to Ozark stating that each of the eight applications “will be archived due to the Ozark Manufactured Home Park ... not holding a valid City Occupancy Permit.” A true and correct copy of the July 26, 2023 Notice is attached hereto as **Exhibit A**.

35. The City Code does not contain any provision for “archiving” of the home placement permit applications.

36. Ozark notified the City that it would allow inspection of the new homes subject to

the applications, but would not consent to searches of all other homes in the Park as a condition for granting the home placement permits.

37. Nevertheless, the City refused to process the applications unless and until Ozark consented to and facilitated warrantless inspections of all homes in the community and obtained an occupancy permit for the entire Park.

38. Notwithstanding the City's "archiving" of the home placement permit applications, the City Planner undertook a "cursory review" of the applications and incorrectly found that certain of the proposed homes violated Section 405.070(G)(1)(d)(2) ("Mobile home pads may not be expanded, and larger mobile homes may not be placed in the mobile home park."), when in fact the proposed homes were the same size or smaller than the existing home or vacant pad site.

39. On August 3, 2023, Ozark filed an appeal with the City Administrator pursuant to City Code § 110.020, and asked the City Administrator to issue the home placement permits. A true and correct copy of the August 3, 2023 Appeal Letter is attached hereto as **Exhibit B**.

40. Ozark advised the City in its August 3, 2023 letter that the City's inspection/occupancy permit ordinances, both on their face and as applied to Ozark, were unconstitutional, including for the following reasons among others:

- a. The City's inspection/occupancy permit ordinances violate the Fourth Amendment by requiring warrantless searches of the Park and all homes therein;
- b. The City's disparate treatment of manufactured home parks as compared to other similarly situated property owners in the City (e.g., single family homes, multi-family homes, condominiums) violates the Equal Protection and Due Process guarantees of the Fourteenth Amendment; and
- c. The City's ordinances violate the unconstitutional conditions doctrine by withholding permits for new homes unless and until Plaintiff consented to an unconstitutional search of the Park and the homes therein.

41. On August 10, 2023, the City Administrator responded to Ozark's appeal stating

he was “disinclined to grant any relief.” A true and correct copy of the August 10, 2023 letter is attached hereto as **Exhibit C**.

42. On August 24, 2023, Ozark filed an appeal to the City Zoning Enforcement Officer and the Board of Adjustment pursuant to City Code § 405.240.G. A true and correct copy of the August 24, 2023 Appeal Letter is attached hereto as **Exhibit D**.

43. Ultimately, Ozark selected three of the eight manufactured home placement applications to proceed to a hearing before the Board, as those applications exemplified certain of the constitutional issues presented by the City’s ordinances. The subject addresses were:

- a. 509 C Street
- b. 2493 Cedar Street
- c. 2491 Birch Lane

44. On November 29, 2023, the Board held a hearing on Ozark’s appeal.

45. Prior to the November 29, 2023 hearing, City Staff issued a Report to the Board. A true and correct copy of the November 29, 2023 Staff Report is attached hereto as **Exhibit E**.

46. Staff reported that “[o]ccupancy permits were not completed at the time of sale” of the Park to Ozark in February 2022 and, as a result, Ozark’s eight permit applications were not processed due to “Ozark lacking valid City occupancy permits.” **Ex. E** at p. 1.

47. Staff explained that “[t]o obtain an occupancy permit, property maintenance inspections must be completed”, meaning “**the entire park is to be inspected for compliance with adopted building codes, including but not limited to dwelling units, utilities, and street infrastructure.**” **Ex. E** at pp. 1-2 (emphasis added).

48. The Staff Report confirmed that following the February 2022 sale of the Park to Ozark, the City Building Commissioner notified Ozark that it was required to obtain an occupancy

permit by allowing an inspection of the entire Park and all homes therein for property maintenance compliance. **Ex. E** at p. 2.

49. The Staff Report confirmed the City's position that to place a new home on a vacant lot, or replace an existing home, Ozark must consent to a search of *every single* home in the entire Park.

50. The City attorney at the Board hearing reiterated and emphasized the City's position, stating, "we want to inspect all homes, as much as possible."

51. On November 30, 2023, the City Senior Planner sent a letter to Ozark stating that the Board denied Ozark's appeal. A true and correct copy of the November 30, 2023 letter is attached hereto as **Exhibit F**.

52. In its November 30, 2023 letter denying Ozark's three applications, the Senior Planner stated that "[t]his concludes the City's appeal process."

53. The City through its Staff, the Building Commissioner, and the BOA has left no doubt about how the inspection/occupancy regulation will be applied to the Park.

54. The City through its Staff, the Building Commissioner, and the BOA reiterated and committed to its position that all homes within the Park must be inspected.

55. The City's "mere enactment" of the inspection/occupancy regulation, which mandates inspection of "the interior and exterior of all property, real and personal," itself is facially invalid and unconstitutional.

56. The City's application of the inspection/occupancy regulation is unconstitutional, all as set forth further below.

Count I – Declaratory Judgment/Injunction
(Violation of Fourth Amendment)

57. Plaintiff incorporates by reference each of the above allegations as though fully set

forth herein.

58. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, “any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

59. The Fourth Amendment provides in relevant part that the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

60. The Amendment establishes a simple baseline: When “Government obtains information by physically intruding” on persons, houses, papers, or effects, “a ‘search’ within the original meaning of the Fourth Amendment” has “undoubtedly occurred.”¹

61. The Supreme Court has declared warrantless searches “*per se* unreasonable.”²

62. The basic purpose of the Fourth Amendment “is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.”³

63. The Supreme Court has held that warrantless searches of residential property by municipal code inspectors violate the Fourth Amendment.⁴

64. Section 500.030(C)(5)(a) of the City Code does not require a warrant or probable cause as a prerequisite to a government inspection of the Park or residential homes within the Park.

65. On its face, Section 500.030(C)(5)(a) of the City Code purports to require the property owner to consent to a warrantless search and inspection of “the interior and exterior of all

¹ *United States v. Jones*, 132 S.Ct. 945, 950–951, n. 3 (2012).

² *Katz v. U.S.*, 389 U.S. 347, 357 (1967).

³ *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528 (1967).

⁴ *Id.*

property” located on the “premises” as a condition precedent to issuance of an occupancy permit and to any permit.

66. Under Section 500.030(C)(5)(a), the occupancy permit, which may be issued only following the warrantless search and inspection, is required before “any person, owner, agent, or tenant thereof” may (1) purchase the property; (2) transfer the property; (3) mortgage the property; (4) lease the property; (4) acquire the property; (5) occupy the property; (6) use the property; (7) manage the property; (8) permit occupancy of the property; (9) permit use of the property “for any purpose.”

67. Thus, under the City Code in order for the owner of property to take any of the above actions such as selling, leasing, mortgaging or even “using” his or her property, the owner is required to consent to a warrantless search and inspection of the property.

68. As applied to Ozark, this means the City requires a warrantless search and inspection of the entire Park and every home therein, before Ozark may place a single new home in the community.

69. Violations of the City’s Building Code, including 500.030(C)(5)(a), are subject to criminal prosecution and penalties under the City’s ordinances.

70. The City’s inspection under Section 500.030(C)(5)(a) of the “the interior and exterior of all property” located on the “premises” as a condition precedent to issuance of an occupancy permit (or any permit) is a “search” as contemplated by the Fourth Amendment.

71. Section 500.030(C)(5)(a) and its predecessor, Section 540.010, violate the Fourth Amendment guarantees against warrantless search and seizure and are unconstitutional on their face through their mere enactment and as applied, for the reasons set forth above.

WHEREFORE, Plaintiff Ozark MHP, LLC respectfully requests a judgment in its favor

and against Defendant City of Arnold, Missouri declaring that Section 500.030(C)(5)(a) of the City Code, and its predecessor, Section 540.010, are unconstitutional, both facially and as applied to Plaintiff, and permanently enjoining Defendant from enforcing said ordinances against Plaintiff, for its costs and reasonable attorney's fees incurred herein, and for such other relief including damages as the Court deems just and proper.

Count II – Declaratory Judgment/Injunction
(Unconstitutional Conditions Doctrine)

72. Plaintiff incorporates by reference all of the above allegations as though fully set forth herein.

73. Under the Supreme Court's unconstitutional conditions doctrine, the government may not deny a benefit to a person on a basis that infringes a constitutionally protected right, even if the person has no entitlement to that benefit.⁵

74. The Supreme Court of the United States has confirmed in a variety of contexts that "government may not deny a benefit to a person because he exercises a constitutional right."⁶

75. The "unconstitutional conditions doctrine . . . vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up."⁷

76. Here, the City presented Ozark with a choice between (a) agreeing to a warrantless search and inspection of the entire Park and all homes therein, and facilitating warrantless searches and inspections of owner-occupied homes in the Park, or (b) being denied permits to place new homes in the Park or make repairs to existing homes in the Park.

77. The City required Ozark as a condition precedent to a) obtaining an occupancy permit and b) obtaining a manufactured home placement permit that Ozark allow and

⁵ *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006).

⁶ *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595, 604 (2013) (citations omitted).

⁷ *Id.*

accommodate warrantless searches, in effect, a Hobson's choice.

78. The City therefore violated the unconstitutional conditions doctrine by withholding a certificate of occupancy for the Park and conditioning permits to place new manufactured homes in the Park on Ozark's forfeiting Fourth Amendment rights against unreasonable searches of its property and on Ozark's forcing its tenants to allow warrantless searches.

WHEREFORE, Plaintiff Ozark MHP, LLC respectfully requests a judgment in its favor and against Defendant City of Arnold, Missouri declaring that Section 500.030(C)(5)(a) of the City Code, and its predecessor, Section 540.010, are unconstitutional, both facially and as applied to Plaintiff, and permanently enjoining Defendant from enforcing said ordinances against Plaintiff, for its costs and reasonable attorney's fees incurred herein, and for such other relief including damages as the Court deems just and proper.

Count III – Declaratory Judgment/Injunction
(Violation of Equal Protection; Fourteenth Amendment)

79. Plaintiff incorporates by reference all of the above allegations as though fully set forth herein.

80. "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."⁸

81. "A plaintiff who does not claim to be a member of a constitutionally protected class may bring an Equal Protection claim on one of two theories: selective enforcement or 'class of one.'"⁹ Ozark brings claims under both theories.

⁸ *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (citations and internal quotation marks omitted).

⁹ *Komondy v. Gioco*, 253 F. Supp. 3d 430, 440 (D. Conn. 2017) (citations omitted).

82. The City has singled out manufactured home communities and its Building Commissioner expressed verbally what the City desires—to “bulldoze” them, i.e., to rid itself of manufactured home parks through overreaching regulation, disparate treatment and selective code enforcement.

83. To that end, the City intentionally treats manufactured home communities and their owners, including Plaintiff, differently from other property owners similarly situated, such as single-family homes, duplexes and similar residential communities.

84. There is no meaningful difference between a community of single-family homes or duplexes and a mobile home community. Each is a community comprised of lots upon which single structures are located.

85. Yet, when Plaintiff requests a permit to place a new manufactured home in the Park, the City claims that its inspection/occupancy permit ordinances, Section 500.030(C)(5)(a), and its predecessor, Section 540.010, require a codes inspection of the entire Park and all homes therein, not just the new home to be placed in the Park.

86. Likewise, the City claims that its inspection/occupancy permit ordinances would require a codes inspection of the entire Park and all homes therein any time a single home is leased or sold, not just the home at issue.

87. The City further claims that the “entire Park” must have an occupancy permit, rather than just the actual structures occupied—the homes within the Park.

88. The City does not enforce its inspection/occupancy permit ordinances in the same manner with respect to other residential communities.

89. For example, the City does not require a codes inspection of an entire subdivision and all homes therein anytime a single home therein is leased or sold.

90. On information and belief, the City does not require a codes inspection of an entire duplex structure (or the duplex community and all structures therein) anytime one duplex unit is sold or leased.

91. There is no rational basis for the City's disparate and discriminatory treatment of manufactured home parks as compared to similarly situated properties.

92. There is no rational basis for the City to single out a manufactured home park by requiring a park-wide and individual home inspection of each and every home in the Park in order to simply bring in one new home or replace an older manufactured home when such replacement home can be inspected.

93. There is no rational basis to condition the issuance of one single manufactured home placement permit on inspections of other homes in the Park, such condition not being related to the public health, welfare or safety.

94. The City's disparate and discriminatory treatment of manufactured home parks as compared to similarly situated properties is not the product of a mistake—it is an intentional act designed and intended to regulate manufactured home parks out of existence. Indeed, the City's attorney made it clear that in the case of manufactured homes the City wants “to inspect all homes, as much as possible.”

WHEREFORE, Plaintiff Ozark MHP, LLC respectfully requests a judgment in its favor and against Defendant City of Arnold, Missouri declaring that Plaintiff's disparate and discriminatory treatment of Plaintiff with respect to the City's application and enforcement of its inspection/occupancy permit ordinances, Section 500.030(C)(5)(a), and its predecessor, Section 540.010, is a violation of the Equal Protection guarantees of the Fourteenth Amendment, permanently enjoining Defendant from enforcing said ordinances against Plaintiff, for its costs and

reasonable attorney's fees incurred herein, and for such other relief including damages as the Court deems just and proper.

Count IV– 42 U.S.C. § 1983

95. Plaintiff incorporates by reference all of the above allegations as though fully set forth herein.

96. 28 U.S.C. § 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

97. 28 U.S.C. § 1988 provides, in relevant part:

In any action or proceeding to enforce a provision of . . . 1983 . . . of this title . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs

98. The City is a "person" within the meaning of 42 U.S.C. § 1983.

99. As set forth above, the City has caused the deprivation of Ozark's rights and privileges guaranteed under the Constitution, including violations of the Fourth and Fourteenth Amendments.

WHEREFORE, Plaintiff Ozark MHP, LLC respectfully requests a judgment in its favor and against Defendant City of Arnold, Missouri, awarding such damages as will compensate Plaintiff for the City's violation of constitutional rights as set forth above, awarding Plaintiff its reasonable attorney's fees and costs incurred herein, and for such other relief as the Court deems just and proper.

Respectfully submitted,

ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.

By: /s/ Brett C. Randol

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ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ozark MHP, LLC

(b) County of Residence of First Listed Plaintiff Jefferson
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rouse Frets White Goss Gentile Rhodes, P.C.
5250 W. 116th Pl., Suite 400, Leawood, KS 66211

DEFENDANTS

City of Arnold, Missouri

County of Residence of First Listed Defendant Jefferson
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☒ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USA 1983 and 1988

Brief description of cause:

The City enforces this inspection ordinance discriminatorily against manufactured home parks in violation of the equal protection of 14 Amendment.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

February 16, 2024

/s/ Brett C. Randol

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

The City is in receipt of the above-referenced applications. Let this letter serve as formal notice that the eight (8) Manufactured Home Unit (MHU) Placement Permit request applications will be archived due to the Ozark Manufactured Home Park (Ozark MHP) not holding a valid City Occupancy Permit.

For your convenience, we have completed cursory reviews of the plans for compliance with the City of Arnold's Zoning Ordinance. For comments on each individual permit, please refer to the following:

- Permit #23-001105 (540 Meadowlark Lane) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.
- Permit #23-001106 (2491 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001107 (2491 Birch Lane) – The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001108 (2482 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).

EXHIBIT

A

City Hall
2101 Jeffco Blvd.
Arnold, MO 63010
636/296-2100

Parks and Recreation
1695 Missouri State Rd.
Arnold, MO 63010
636/282-2380

Public Works
2900 Arnold Tenbrook Rd.
Arnold, MO 63010
636/282-2386

exhibiticker.com



City of Arnold

Ron Counts, Mayor

- Permit #23-001109 (2493 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001110 (544 Meadowlark Lane) – The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001111 (2495 Aspen Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001112 (509 C Street) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.

The comments above pertain solely to Staff's preliminary compliance review with the Zoning Ordinance and relevant sections therein, including but not limited to §405.070(G)(1), *Non-Conforming Manufactured Home Parks Within "MHD" Manufactured Home Districts*. To bring the parks into conformance with the "MHD" Manufactured Home District, please refer to the options discussed during the April 6, 2023 meeting with your legal counsel and City Staff.

Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sarah", with a long horizontal line extending to the right.

Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

**ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.**

PATRICIA R. JENSEN
pjensen@rousepc.com
816.502.4723

August 3, 2023

VIA FED EX & EMAIL (brichison@arnoldmo.org)

Bryan Richison, City Administrator
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

**Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 110.020.C**

Dear Mr. Richison:

This firm received the City of Arnold's July 26, 2023, letter ("Notice") regarding the above mobile home placement permit applications submitted by Ozark MHP, LLC ("Ozark"). A copy of that Notice is attached here as **Exhibit A**. Please note, notwithstanding the parties to whom the City addressed the Notice, the Lots described in the eight applications are located within the Ozark Mobile Home Park (the "Park") and owned solely by Ozark.

Pursuant to City Code § 110.020.C, "Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services," this letter serves as an appeal of the archiving by Sarah Turner, Senior City Planner, of the eight permit applications ("Applications") for the purpose of investigating the Notice errors and disputes.

In general, the City's archiving of the Applications functions as an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City's reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner's constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section I below relates to Lot-specific responses. Section II addresses constitutional violations. The Applications should be processed promptly and approved.

{34359 / 72062; 997537. }

EXHIBIT

B

Bryan Richison
August 3, 2023
Page 2

I. Lot-Specific Responses; Permit Application Drawings Attached as Exhibit B

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use. As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-conforming use. The Park was established in the 1960's. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as **Exhibit C**, and as included in the permit applications materials submitted to the City. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size

Bryan Richison
August 3, 2023
Page 3

of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12’ x 58’. This is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the “street right-of-way, road easement, or street setback.” Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).”

Pursuant to the submitted **Exhibit C**, the Table, the proposed home is 28’ x 60’. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted **Exhibit C**, the proposed home is 12’ x 60’. This is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – “The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted **Exhibit C**, the proposed home is 12’ x 50’. This is not an expansion violation.

See also response to #1.

Bryan Richison
August 3, 2023
Page 4

7. Permit #23-001111 (2495 Aspen Lane – Ozark Park) - “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Table C, the proposed home is 12’ x 56’. This is not an expansion violation.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

II. Application-Wide Responses

A. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park’s Mobile Home Use

The City was incorporated in 1972. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960’s and has done so continuously to date.

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters–Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

As the Park’s use predates the City and its Zoning Ordinance, the Park use is an LNCU, and not subject to use regulations and non-life/safety regulations enacted following its establishment.

The City’s application of its Code provisions, including the claimed occupancy and inspection requirements, operates so that the Park and its lots are effectively being amortized out

Bryan Richison
August 3, 2023
Page 5

of existence. In Missouri, amortization of LNCUs is forbidden. *See Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. 1965) (holding unconstitutional a six-year amortization of LNCUs). This is so because amortization “would validate a taking presently unconstitutional by the simple expedient of postponing such taking for a ‘reasonable’ time.” *Id.*

B. Regulatory Taking / Inverse Condemnation

The City attempts through regulations to disable and dismantle Ozark’s Park operation. “Archiving” the Applications on the basis that inspections Park wide are first required overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with mobile homes. This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a “Catch 22”, preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

Manifestly, where a person is lawfully conducting a business in a certain area, he has a vested right to continue, even though such business use has become, by reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring and then denying him a license, could destroy such vested right and put him out of business, would be absurd and unreasonable. Such is not the law.

State ex rel. Capps v. Bruns, 353 S.W.2d 829, 831 (Mo. App. 1962). The US Supreme Court comes to the same conclusion:

“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go-and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle....

[W]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1965). The City’s regulations go too far.

Bryan Richison
August 3, 2023
Page 6

C. Equal Protection; Disparate and Discriminatory Treatment – Undue Burden -- Targeted and Selective Code Application

Mobile home parks provide affordable housing. But the City has threatened to “bulldoze” the Park by communicating as much to certain residents. This type of conduct, along with the City’s selective enforcement of its Code, violates Ozark’s rights.

On information and belief, other similarly situated property owners in the City – single-family homes, multi-family homes, condominiums – have not been subject to the same regulatory treatment as Ozark. This violates the Equal Protection and Due Process clauses of the U.S. Constitution. It is also likely that the City’s treatment of Ozark will unduly burden protected classes of citizens including seniors and non-white persons.

D. Occupancy Permit and Inspection Requirement Warrantless and Invalid Warrant Search in Violation of Fourth Amendment

The City’s Occupancy Permit and inspection requirements under section 520.010 1) do not apply under City Code to Ozark, 2) even assuming applicability violate LNCU rights, 3) overreach by forcing Park wide inspections and forcing individual mobile homeowners to give up privacy rights, 4) violate the Fourth Amendment prohibiting search and seizure, 5) are impermissibly vague and confusing regulations, 6) are unevenly applied.

E. Unconstitutional Conditions

The City’s Code provisions as applied to the Park collectively infringe on and burden the basic rights of the Park’s owner. The City “may not deny a benefit to a person on a basis that **infringes a constitutionally protected right**, even if the person has no entitlement to that benefit.” *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006). The Supreme Court has explained that the “unconstitutional conditions” doctrine “vindicates the Constitution’s enumerated rights by **preventing the government from coercing people into giving them up.**”

Thompson v. City of Oakwood, Ohio, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

Bryan Richison
August 3, 2023
Page 7

For all of the reasons set forth here, Ozark urges the City to process and approve the eight placement permit Applications.

Very truly yours,



Patricia R. Jensen

PRJ:nrh
enclosures

cc: Sarah Turner, Senior Planner (sturner@arnoldmo.org)
David Bookless, Community Development Director (dbookless@arnoldmo.org)
Robert Sweeney, City Attorney (rks@robertsweeneylaw.com)

Exhibit A – City’s Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

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City of Arnold

Ron Counts, Mayor

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The comments above pertain solely to Staff's preliminary compliance review with the Zoning Ordinance and relevant sections therein, including but not limited to §405.070(G)(1), *Non-Conforming Manufactured Home Parks Within "MHD" Manufactured Home Districts*. To bring the parks into conformance with the "MHD" Manufactured Home District, please refer to the options discussed during the April 6, 2023 meeting with your legal counsel and City Staff.

Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,

Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

City Hall
2101 Jeffco Blvd.
Arnold, MO 63010
636/296-2100

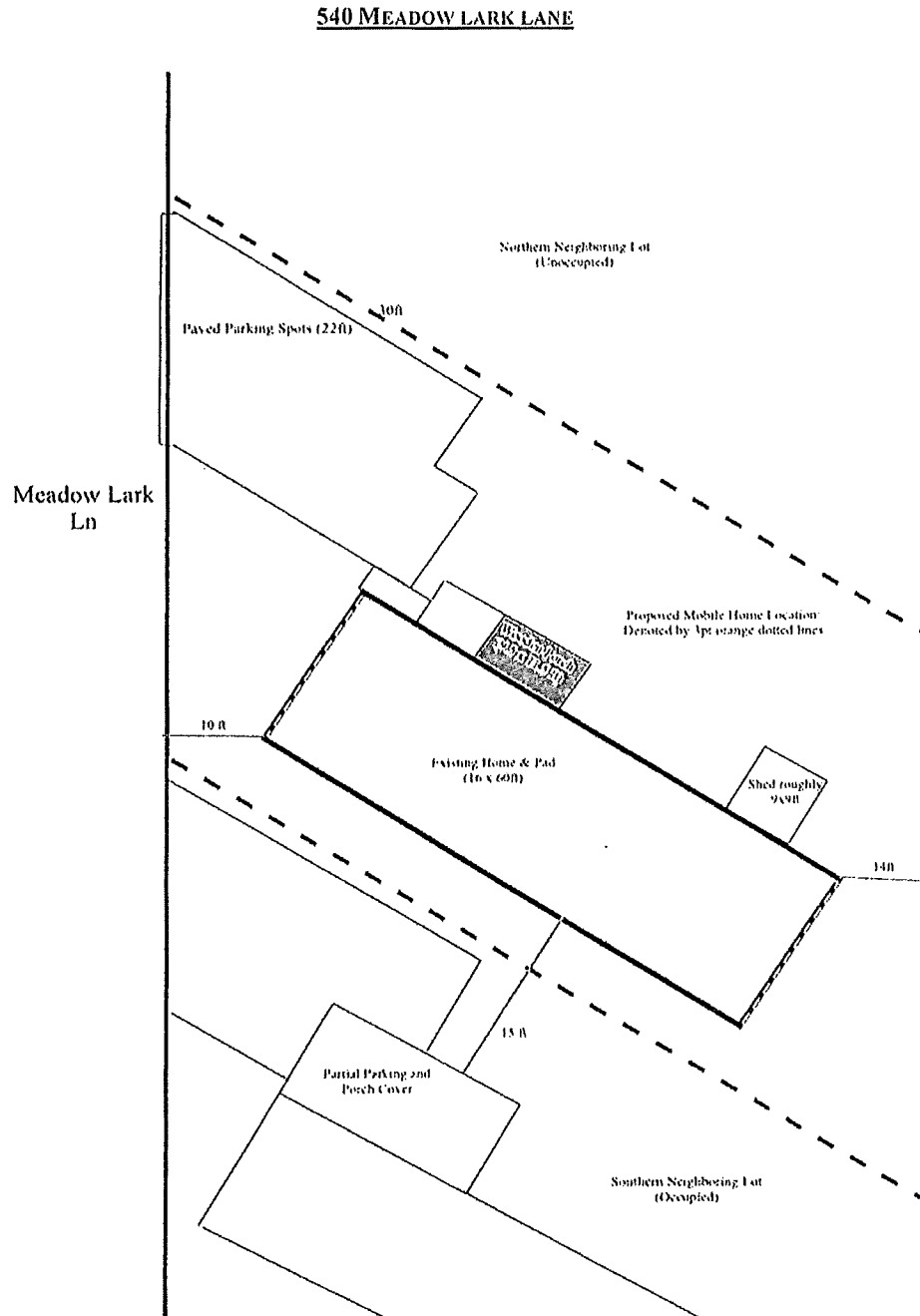
Parks and Recreation
1695 Missouri State Rd.
Arnold, MO 63010
636/282-2380

Public Works
2900 Arnold Tenbrook Rd.
Arnold, MO 63010
636/282-2386

Exhibit B - Permit Application Drawings

Completed by: A. Bhagat

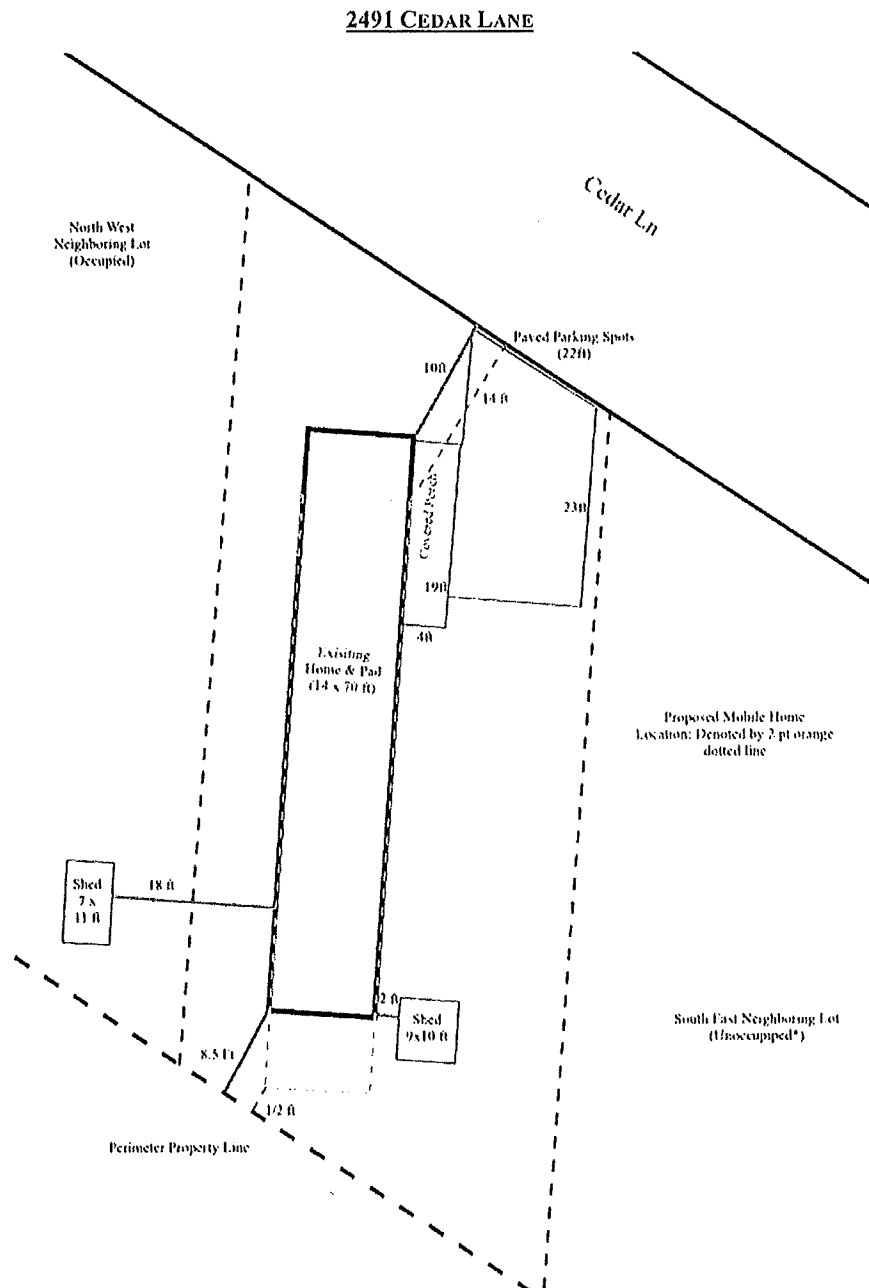
10/21/2022



9

Completed by: A. Bhagat

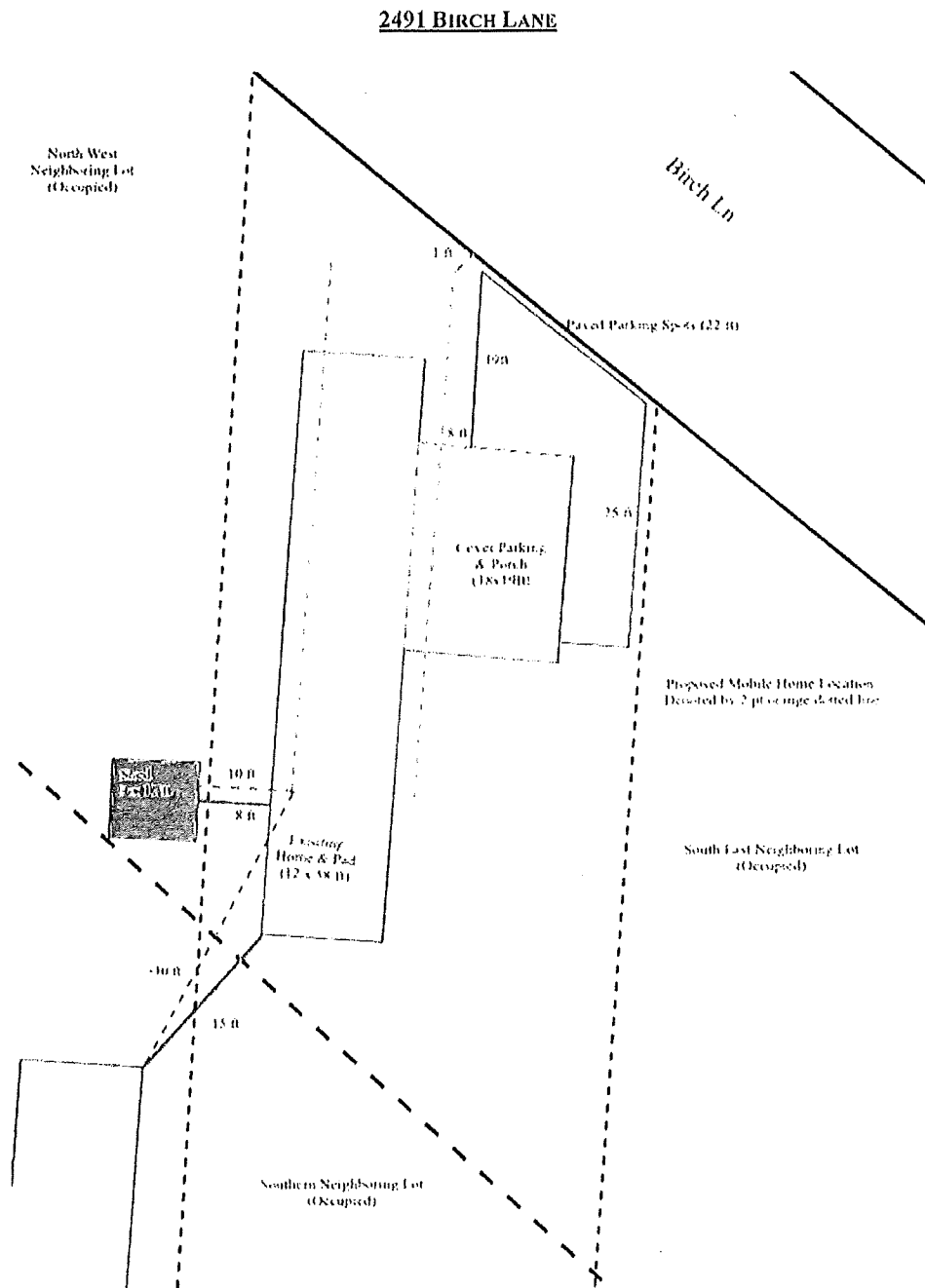
10/21/2022



10

Completed by: A. Bhagat

10/21/2022

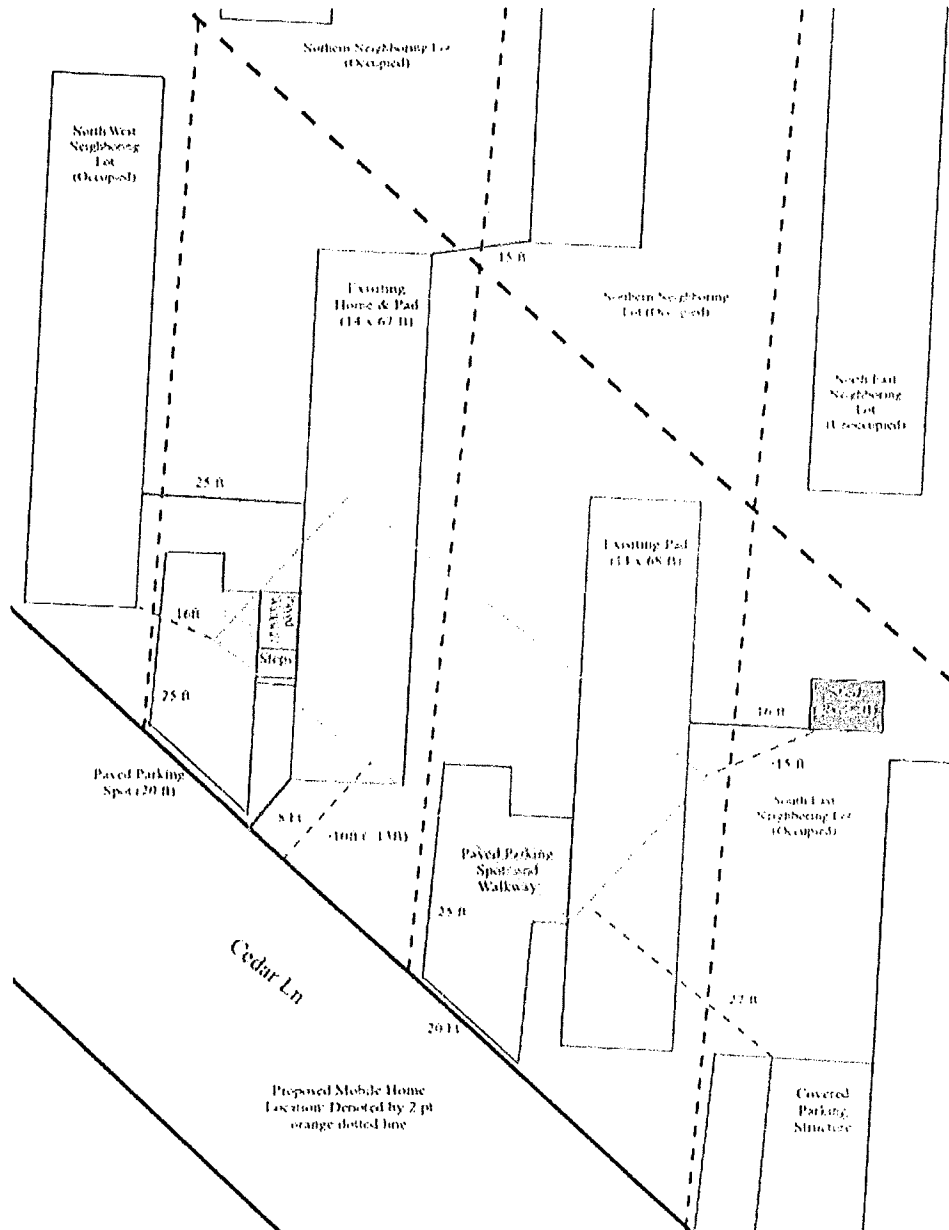


11

Completed by: A. Bhagat

10/21/2022

2482 CEDAR LANE

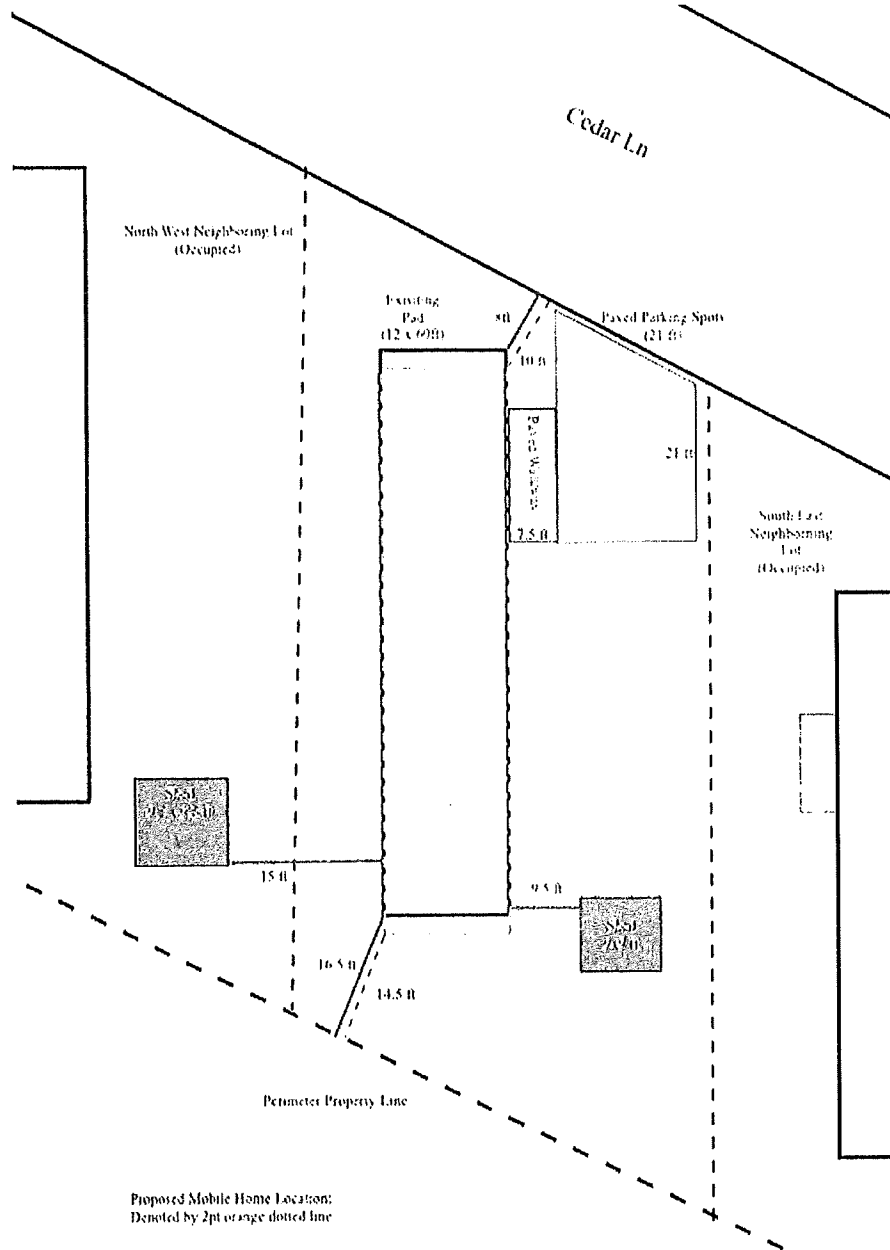


12

Completed by: A. Bhagat

10/21/2022

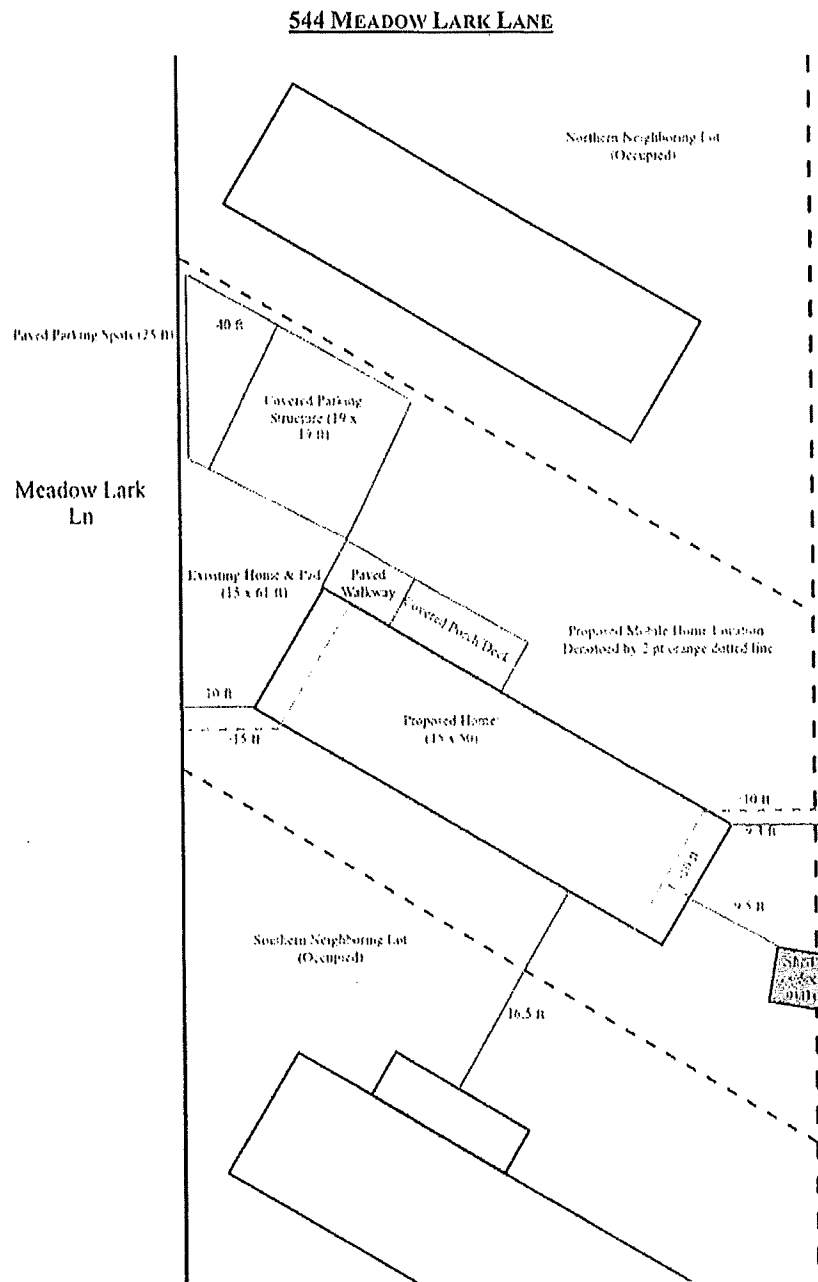
2493 CEDAR LANE



13

Completed by: A. Bhagat

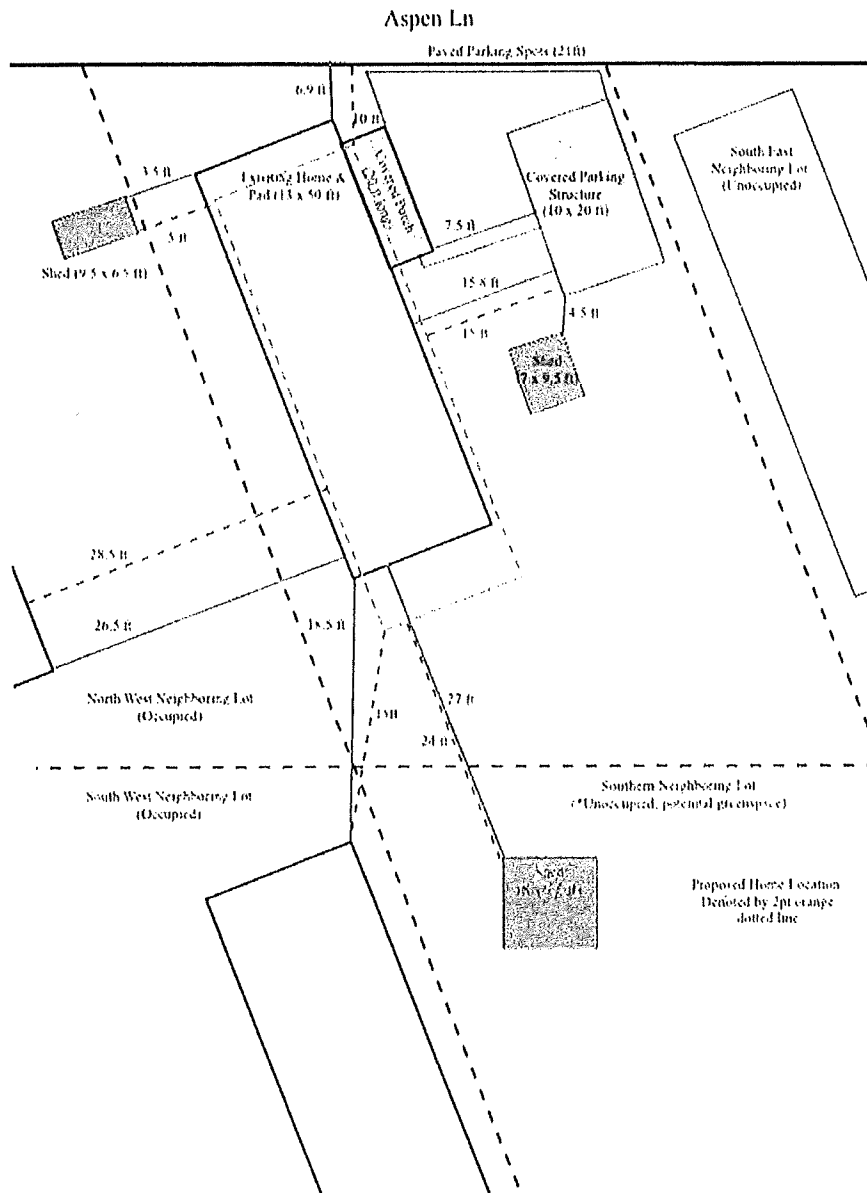
10/21/2022



Completed by: A. Bhagat

10/21/2022

2495 ASPEN LANE



15

Completed by: A. Bhagat

10/21/2022

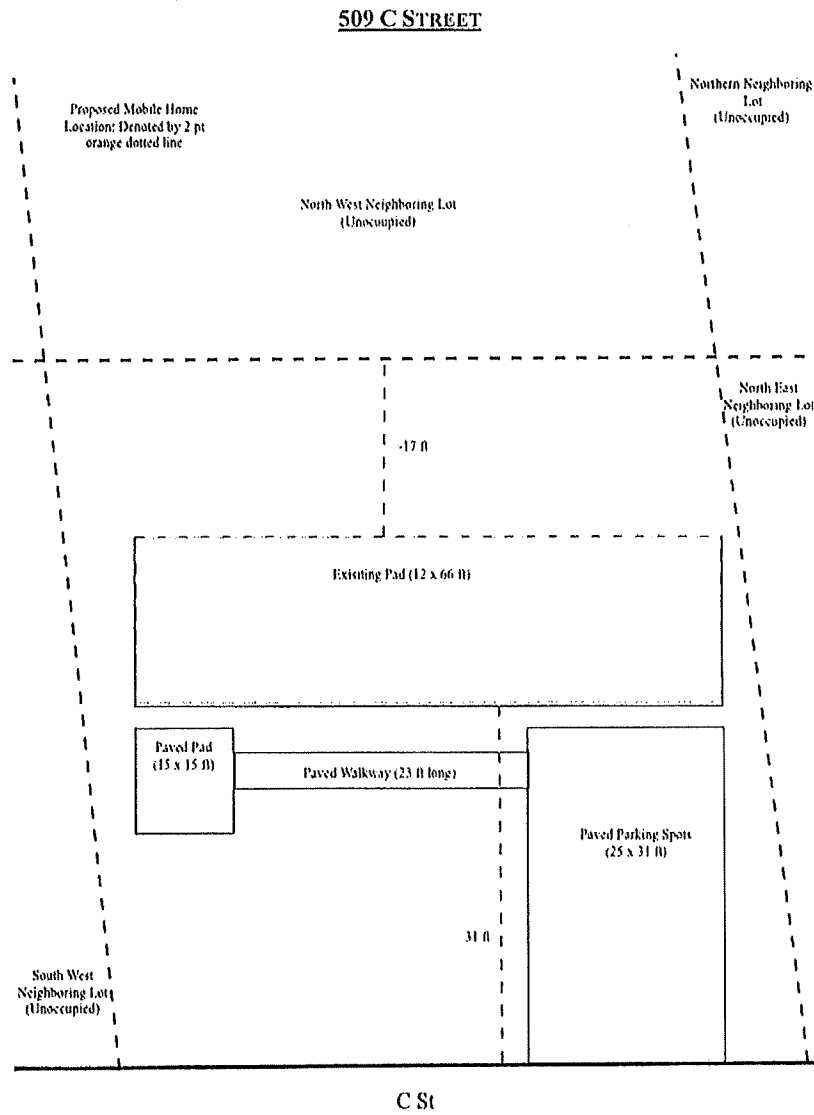


Exhibit C – Home Dimensions

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
1	540 Meadowlark Lane	16X60
2	2491 Cedar Lane	14X60
3	2491 Birch Lane	12X58
4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56



City of Arnold

Ron Counts, Mayor

Re: Ozark MHP, LLC Permit Applications/Appeal

Dear Ms. Jensen,

As I previously indicated, I received your appeal. While my response should not be taken as an acceptance of your interpretation that the archiving of the applications at issue is commensurate with a denial, in an effort to move this matter forward, please accept this as my response.

When an applicant believes it has been wrongly denied certain services, processes or permits, Section 110.020 (c) of the Code of Ordinances of the City of Arnold grants me the authority to review the denial and take certain actions. Those actions include ordering the service, process, or permit or conditionally ordering the service, process, or permit. Under the current circumstances, I am disinclined to grant any relief. It is the position of the City of Arnold ("City") that the compliance obligations referenced in City's July 26, 2023 letter do not infringe on your client's right to operate a legal non-conforming use, that the status as a legal non-conforming use does not excuse or shield the use from any and all regulations, and that the regulations with which you take issue are life/safety regulations.

As previously mentioned, the City desires to ensure the continued availability of a variety of housing stock within the corporate limits of the City, including your client's mobile home park. That desire, however, is not unconditional. Housing, including your client's park, must be safe and meet modern health and safety regulations. City staff remains available and willing to work with your client to ensure its continued operation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan Richison".

Bryan Richison
City Administrator - Arnold

Cc: Robert Sweeney, City Attorney
David Bookless, Community Development Director
Sarah Turner, Senior Planner

EXHIBIT

C

**ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.**

PATRICIA R. JENSEN
pjensen@rousepc.com
816.502.4723

August 24, 2023

VIA FEDERAL EXPRESS

City of Arnold, Missouri, Board of Adjustment
c/o Mr. Jonathan Giallanzo, Chairman
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

Mr. David B. Bookless, AICP, Community Development Director, Zoning Enforcement Officer¹
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

**Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 405.240.G**

Application No., Property ID, and Address:

#23-001112 - MHU (Trailer) Placement, 01502104001030, 509 C St
#23-001111 - MHU (Trailer) Placement, 01502104001030, 2495 Aspen Ln
#23-001110 - MHU (Trailer) Placement, 01502104001030, 544 Meadowlark Ln
#23-001109 - MHU (Trailer) Placement, 01502104001030, 2493 Cedar Ln
#23-001108 - MHU (Trailer) Placement, 01502104001030, 2482 Cedar Ln
#23-001107 - MHU (Trailer) Placement, 01502104001030, 2491 Birch Ln
#23-001106 - MHU (Trailer) Placement, 01502104001030, 2491 Cedar Ln
#23-001105 - MHU (Trailer) Placement, 01502104001030, 540 Meadowlark Ln

Messrs. Giallanzo and Bookless,

I. History and Appeal Process

On July 10, 2023, Ozark MHP, LLC (“Ozark”) submitted the above mobile home placement permit applications (“Applications”) to the City of Arnold regarding homes located within the Ozark Mobile Home Park (“Park”). In response, this firm received the City’s July 26,

¹ Pursuant to City Code § 405.230 the Community Development Director shall be the Zoning Enforcement Officer, and shall enforce the provisions of City Code Chapter 405, Zoning. Pursuant to City Code § 405.240.G, appeals to the Board of Adjustment shall be taken by filing with the Zoning Enforcement Officer and with the Board a notice of appeal.

{34359 / 72062; 998320.3 }

Attorneys at Law || 4510 Belleview Avenue, Suite 300 || Kansas City, MO 64111 ||

EXHIBIT

D

exhibitmaker.com

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 2

2023, letter (“Notice”; attached hereto as Exhibit A) from the City’s Senior Planner, Sarah Turner, effectively denying the Applications by filing them as “archived” in the City’s permit portal.

The Applications remained “archived” in the portal, with no further action taken until approximately July 26, 2023, immediately following the date on which Ozark appealed the City’s decision to deny the above Applications. At this point the Applications’ statuses were changed to “In review,” but contained the City’s note that “This Project has been archived with the status “Other” on July 26, 2023....” Again, effectively denying the Applications’ requests.

Pursuant to City Code § 110.020.C, “Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services,” Ozark appealed Ms. Turner’s denials to the City Administrator, Bryan Richison. A copy of Ozark’s appeal letter is attached hereto as Exhibit B. In response, Mr. Richison, by letter dated August 10, 2023, attached hereto as Exhibit C, upheld Ms. Turner’s decisions (“Administrator Decision”).

This letter serves as an appeal to the City’s Board of Adjustment (“Board”) of (i) the Administrator Decision and (ii) Ms. Turner’s decision as documented in the Notice, for the purpose of investigating grievances, errors, and disputes, and for any other purpose(s) authorized under the City Code, Missouri law, and Federal law.

Firstly, the lack of Board appeal rules and regulations must be addressed. City Code § 405.240.C, “Board Shall Adopt Rules And Regulations,” states, “The Board shall adopt from time to time such rules and regulations as may be necessary to carry into effect the provisions of this Chapter.” However, no rules, regulations, or procedures (“Rules”) have been published. City Code § 405.240, “Board of Adjustment” includes no Board Rules. And while Mr. Giallanzo “read the Board of Adjustment procedures” at the Board’s January 11, 2023, meeting, there is no record of what procedures were read.

The lack of adopted Rules confuses the appeal process and rights. For example, the Code requires that an appellant must submit an appeal to the Board “upon forms provided for that purpose and shall show the minimum information as prescribed on the forms.” City Code § 405.240.H. However, compliance with this requirement is impossible given the lack of Rules or forms. Notwithstanding the above, Ozark’s appeal is submitted by this letter and all attached Exhibits.

This appeal is authorized under City Code § 405.240.G.² “Appeals”: “Appeals to the Board may be taken by any person aggrieved...affected by any decision of the Zoning

² Further authority for this appeal is set forth in City Code § 405.240.K.1: “The Board of Adjustment shall have the following duties... To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Enforcement Officer in the enforcement of this Chapter.”

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 3

Enforcement Officer. Such appeal shall be taken within reasonable time as prescribed by the Board by general rule, by filing with the Zoning Enforcement Officer and with the Board a notice of appeal specifying the grounds thereof.” Note that although the term “reasonable time” has not been defined, the Board previously heard an appeal made 97 days after a Zoning Enforcement Officer’s decision. Accordingly, it has been established that only an appeal made later than 97 days from a City-decision can be considered outside a reasonable appeal time.

II. Basis for Appeal

In general, the City’s archiving of the Applications functions is an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City’s reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner’s constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section III below relates to Lot-specific responses. Section IV addresses constitutional violations. The Applications should be processed promptly and approved.

III. Lot-Specific Responses; Permit Application Drawings (Attached as Exhibit D)

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use (“LNCU”). As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 4

conforming use. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960's and has done so continuously to date. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as Exhibit E, and as included in the permit applications materials submitted to the City. The current home, based on aerial imagery, is approximately 14' x 70'. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12' x 58'. The current home, based on aerial imagery, is approximately 12' x 58'. Accordingly, this is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the “street right-of-way, road easement, or street setback.” Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 5

exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Exhibit E, the Table, the proposed home is 28’ x 60’. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Exhibit E, the proposed home is 12’ x 60’. The current pad, based on aerial imagery, is approximately 12’ x 60’. Accordingly, this is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – “The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Exhibit E, the proposed home is 12’ x 50’. The current home, based on aerial imagery, is approximately 15’ x 64’. This is not an expansion violation.

See also response to #1.

7. Permit #23-001111 (2495 Aspen Lane – Ozark Park) - “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 6

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

IV. Application-Wide Responses

a. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park's Mobile Home Use

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters–Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

As the Park's use predates the City and its Zoning Ordinance, the Park use is an LNCU, and not subject to use regulations and non-life/safety regulations enacted following its establishment.

The City's application of its Code provisions, including the claimed occupancy and inspection requirements, operates so that the Park and its lots are effectively being amortized out of existence. In Missouri, amortization of LNCUs is forbidden. *See Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. 1965) (holding unconstitutional a six-year amortization of LNCUs). This is so because amortization "would validate a taking presently unconstitutional by the simple expedient of postponing such taking for a 'reasonable' time." *Id.*

b. Regulatory Taking / Inverse Condemnation

The City attempts through regulations to disable and dismantle Ozark's Park operation. "Archiving" the Applications on the basis that Park-wide inspections are required in advance overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with manufactured homes (often referred to as mobile homes). This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a "Catch 22", preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

Manifestly, where a person is lawfully conducting a business in a certain area, he has a vested right to continue, even though such business use has become, by

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 7

reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring and then denying him a license, could destroy such vested right and put him out of business, would be absurd and unreasonable. Such is not the law.

State ex rel. Capps v. Bruns, 353 S.W.2d 829, 831 (Mo. App. 1962). The US Supreme Court comes to the same conclusion:

“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go-and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle....

[W]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1965). The City’s regulations go too far.

c. Equal Protection; Disparate and Discriminatory Treatment – Undue Burden -- Targeted and Selective Code Application

Mobile home parks provide affordable housing. But the City has threatened to “bulldoze” the Park by communicating as much to certain residents. This type of conduct, along with the City’s selective enforcement of its Code, violates Ozark’s rights.

On information and belief, other similarly situated property owners in the City – single-family homes, multi-family homes, condominiums – have not been subject to the same regulatory treatment as Ozark. This violates the Equal Protection and Due Process clauses of the U.S. Constitution. It is also likely that the City’s treatment of Ozark will unduly burden protected classes of citizens including seniors and non-white persons.

d. Occupancy Permit and Inspection Requirement Warrantless and Invalid Warrant Search in Violation of Fourth Amendment

The City’s Occupancy Permit and inspection requirements under section 520.010 1) do not apply under City Code to Ozark, 2) even assuming applicability violate LNCU rights, 3) overreach by forcing Park wide inspections and forcing individual mobile home owners to give up privacy rights, 4) violate the Fourth Amendment prohibiting search and seizure, 5) are impermissibly vague and confusing regulations, 6) are unevenly applied.

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 8

e. Unconstitutional Conditions

The City's Code provisions as applied to the Park collectively infringe on and burden the basic rights of the Park's owner. The City "may not deny a benefit to a person on a basis that infringes a constitutionally protected right, even if the person has no entitlement to that benefit." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006). The Supreme Court has explained that the "unconstitutional conditions" doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up."

Thompson v. City of Oakwood, Ohio, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

For all of the reasons set forth here, Ozark urges the Board to approve the eight placement permit Applications and provide such other relief as it proper.

Based upon schedules, we request that the hearing related to this appeal be scheduled for the week of October 2, 2023.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Patricia R. Jensen". The signature is fluid and cursive, with the first name "Patricia" being the most prominent part.

Patricia R. Jensen

Enclosures

cc: Robert Sweeney, City Attorney (rks@robertsweeneylaw.com w/ encl.)

Exhibit A – City’s Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

The City is in receipt of the above-referenced applications. Let this letter serve as formal notice that the eight (8) Manufactured Home Unit (MHU) Placement Permit request applications will be archived due to the Ozark Manufactured Home Park (Ozark MHP) not holding a valid City Occupancy Permit.

For your convenience, we have completed cursory reviews of the plans for compliance with the City of Arnold's Zoning Ordinance. For comments on each individual permit, please refer to the following:

- Permit #23-001105 (540 Meadowlark Lane) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.
- Permit #23-001106 (2491 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
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- Permit #23-001108 (2482 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).

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City of Arnold

Ron Counts, Mayor

- Permit #23-001109 (2493 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
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- Permit #23-001111 (2495 Aspen Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001112 (509 C Street) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.

The comments above pertain solely to Staff's preliminary compliance review with the Zoning Ordinance and relevant sections therein, including but not limited to §405.070(G)(1), *Non-Conforming Manufactured Home Parks Within "MHD" Manufactured Home Districts*. To bring the parks into conformance with the "MHD" Manufactured Home District, please refer to the options discussed during the April 6, 2023 meeting with your legal counsel and City Staff.

Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sarah Turner".

Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

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Exhibit B – Ozark Appeal to City Administrator

ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.

PATRICIA R. JENSEN
pjensen@rousepc.com
816.502.4723

August 3, 2023

VIA FED EX & EMAIL (brichison@arnoldmo.org)

Bryan Richison, City Administrator
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

**Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 110.020.C**

Dear Mr. Richison:

This firm received the City of Arnold's July 26, 2023, letter ("Notice") regarding the above mobile home placement permit applications submitted by Ozark MHP, LLC ("Ozark"). A copy of that Notice is attached here as **Exhibit A**. Please note, notwithstanding the parties to whom the City addressed the Notice, the Lots described in the eight applications are located within the Ozark Mobile Home Park (the "Park") and owned solely by Ozark.

Pursuant to City Code § 110.020.C, "Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services," this letter serves as an appeal of the archiving by Sarah Turner, Senior City Planner, of the eight permit applications ("Applications") for the purpose of investigating the Notice errors and disputes.

In general, the City's archiving of the Applications functions as an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City's reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner's constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section I below relates to Lot-specific responses. Section II addresses constitutional violations. The Applications should be processed promptly and approved.

{34359 / 72062; 997537. }

Attorneys at Law || 4510 Belleview Avenue, Suite 300 || Kansas City, MO 64111 || rousepc.com

{34359 / 72062; 998320.3 }

Bryan Richison
August 3, 2023
Page 2

I. Lot-Specific Responses; Permit Application Drawings Attached as Exhibit B

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use. As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-conforming use. The Park was established in the 1960's. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as **Exhibit C**, and as included in the permit applications materials submitted to the City. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size

{34359 / 72062; 997537. }

{34359 / 72062; 998320.3 }

Bryan Richison
August 3, 2023
Page 3

of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12' x 58'. This is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the "street right-of-way, road easement, or street setback." Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the Table, the proposed home is 28' x 60'. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the proposed home is 12' x 60'. This is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – "The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the proposed home is 12' x 50'. This is not an expansion violation.

See also response to #1.

{34359 / 72062; 997537. }

Bryan Richison
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Page 4

7. Permit #23-001111 (2495 Aspen Lane – Ozark Park) - “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Table C, the proposed home is 12' x 56'. This is not an expansion violation.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

II. Application-Wide Responses

A. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park's Mobile Home Use

The City was incorporated in 1972. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960's and has done so continuously to date.

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters–Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

As the Park's use predates the City and its Zoning Ordinance, the Park use is an LNCU, and not subject to use regulations and non-life/safety regulations enacted following its establishment.

The City's application of its Code provisions, including the claimed occupancy and inspection requirements, operates so that the Park and its lots are effectively being amortized out

{34359 / 72062; 997537. }

Bryan Richison
August 3, 2023
Page 5

of existence. In Missouri, amortization of LNCUs is forbidden. *See Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. 1965) (holding unconstitutional a six-year amortization of LNCUs). This is so because amortization “would validate a taking presently unconstitutional by the simple expedient of postponing such taking for a ‘reasonable’ time.” *Id.*

B. Regulatory Taking / Inverse Condemnation

The City attempts through regulations to disable and dismantle Ozark’s Park operation. “Archiving” the Applications on the basis that inspections Park wide are first required overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with mobile homes. This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a “Catch 22”, preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

Manifestly, where a person is lawfully conducting a business in a certain area, he has a vested right to continue, even though such business use has become, by reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring and then denying him a license, could destroy such vested right and put him out of business, would be absurd and unreasonable. Such is not the law.

State ex rel. Capps v. Bruns, 353 S.W.2d 829, 831 (Mo. App. 1962). The US Supreme Court comes to the same conclusion:

“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go-and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle....

[W]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1965). The City’s regulations go too far.

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Page 6

C. Equal Protection; Disparate and Discriminatory Treatment – Undue Burden – Targeted and Selective Code Application

Mobile home parks provide affordable housing. But the City has threatened to “bulldoze” the Park by communicating as much to certain residents. This type of conduct, along with the City’s selective enforcement of its Code, violates Ozark’s rights.

On information and belief, other similarly situated property owners in the City – single-family homes, multi-family homes, condominiums – have not been subject to the same regulatory treatment as Ozark. This violates the Equal Protection and Due Process clauses of the U.S. Constitution. It is also likely that the City’s treatment of Ozark will unduly burden protected classes of citizens including seniors and non-white persons.

D. Occupancy Permit and Inspection Requirement Warrantless and Invalid Warrant Search in Violation of Fourth Amendment

The City’s Occupancy Permit and inspection requirements under section 520.010 1) do not apply under City Code to Ozark, 2) even assuming applicability violate LNCU rights, 3) overreach by forcing Park wide inspections and forcing individual mobile homeowners to give up privacy rights, 4) violate the Fourth Amendment prohibiting search and seizure, 5) are impermissibly vague and confusing regulations, 6) are unevenly applied.

E. Unconstitutional Conditions

The City’s Code provisions as applied to the Park collectively infringe on and burden the basic rights of the Park’s owner. The City “may not deny a benefit to a person on a basis that **infringes a constitutionally protected right**, even if the person has no entitlement to that benefit.” *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006). The Supreme Court has explained that the “unconstitutional conditions” doctrine “vindicates the Constitution’s enumerated rights by **preventing the government from coercing people into giving them up.**”

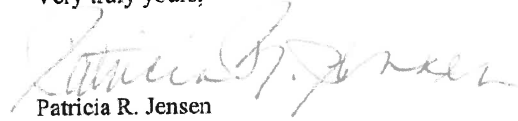
Thompson v. City of Oakwood, Ohio, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

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Bryan Richison
August 3, 2023
Page 7

For all of the reasons set forth here, Ozark urges the City to process and approve the eight placement permit Applications.

Very truly yours,



Patricia R. Jensen

PRJ:nrh
enclosures

cc: Sarah Turner, Senior Planner (sturner@arnoldmo.org)
David Bookless, Community Development Director (dbookless@arnoldmo.org)
Robert Sweeney, City Attorney (rks@robertsweeneylaw.com)

{34359 / 72062; 997537. }

Exhibit A – City’s Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

The City is in receipt of the above-referenced applications. Let this letter serve as formal notice that the eight (8) Manufactured Home Unit (MHU) Placement Permit request applications will be archived due to the Ozark Manufactured Home Park (Ozark MHP) not holding a valid City Occupancy Permit.

For your convenience, we have completed cursory reviews of the plans for compliance with the City of Arnold's Zoning Ordinance. For comments on each individual permit, please refer to the following:

- Permit #23-001105 (540 Meadowlark Lane) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.
- Permit #23-001106 (2491 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001107 (2491 Birch Lane) – The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001108 (2482 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).

City Hall
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Public Works
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A-1

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B-8



City of Arnold

Ron Counts, Mayor

- Permit #23-001109 (2493 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001110 (544 Meadowlark Lane) – The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001111 (2495 Aspen Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001112 (509 C Street) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.

The comments above pertain solely to Staff's preliminary compliance review with the Zoning Ordinance and relevant sections therein, including but not limited to §405.070(G)(1), *Non-Conforming Manufactured Home Parks Within "MHD" Manufactured Home Districts*. To bring the parks into conformance with the "MHD" Manufactured Home District, please refer to the options discussed during the April 6, 2023 meeting with your legal counsel and City Staff.

Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,


Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

City Hall
2101 Jeffco Blvd.
Arnold, MO 63010
636/286-2100

Parks and Recreation
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Arnold, MO 63010
636/282-2380

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Arnold, MO 63010
636/282-2386

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A-2

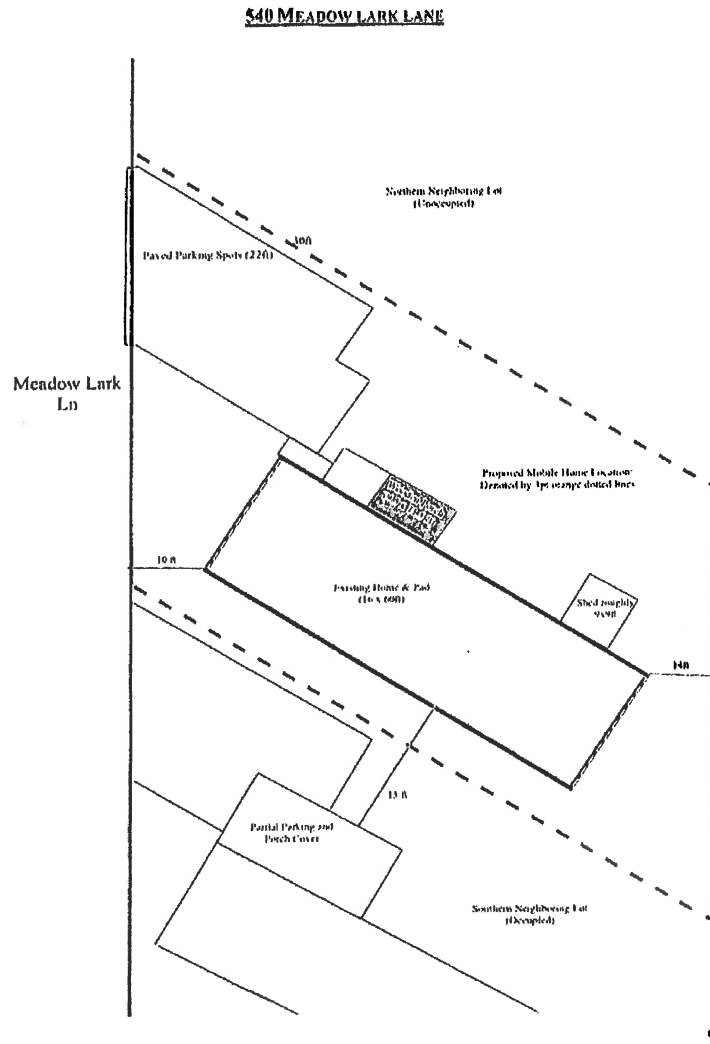
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B-9

Exhibit B - Permit Application Drawings

Completed by: A. Bhagat

10/21/2022



9

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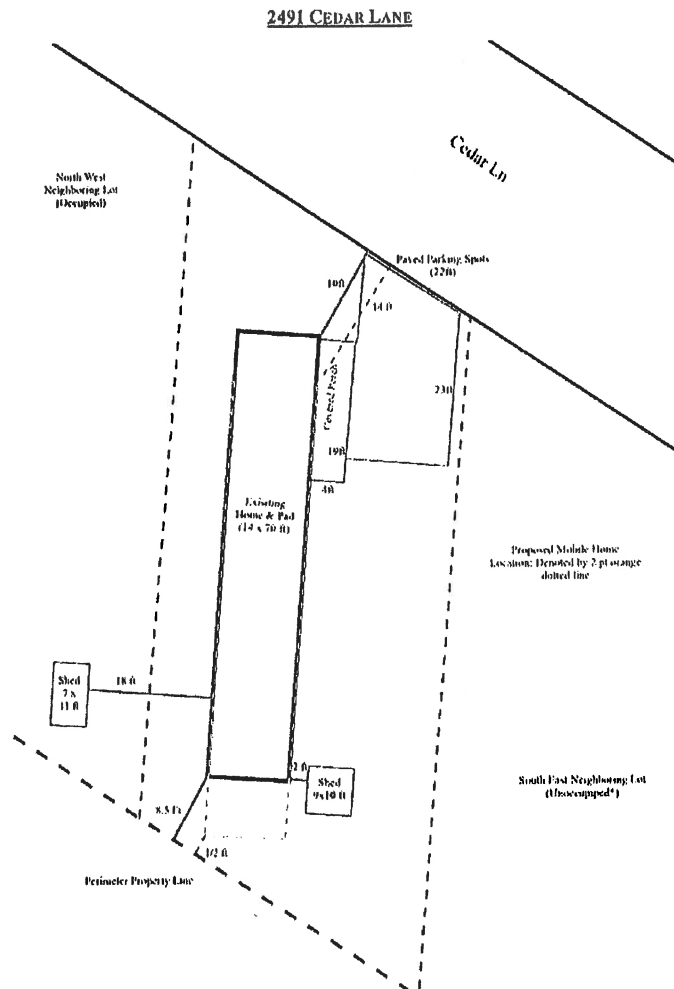
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B-10

Completed by: A. Bhagat

10/21/2022



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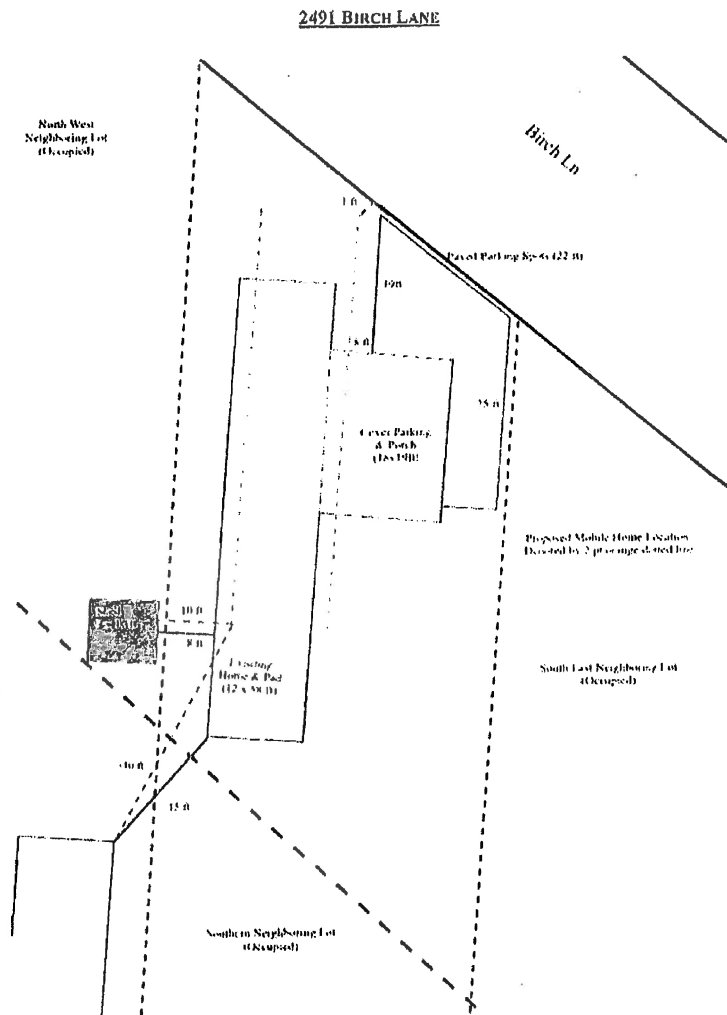
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B-11

Completed by: A. Bhagat

10/21/2022



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B-3

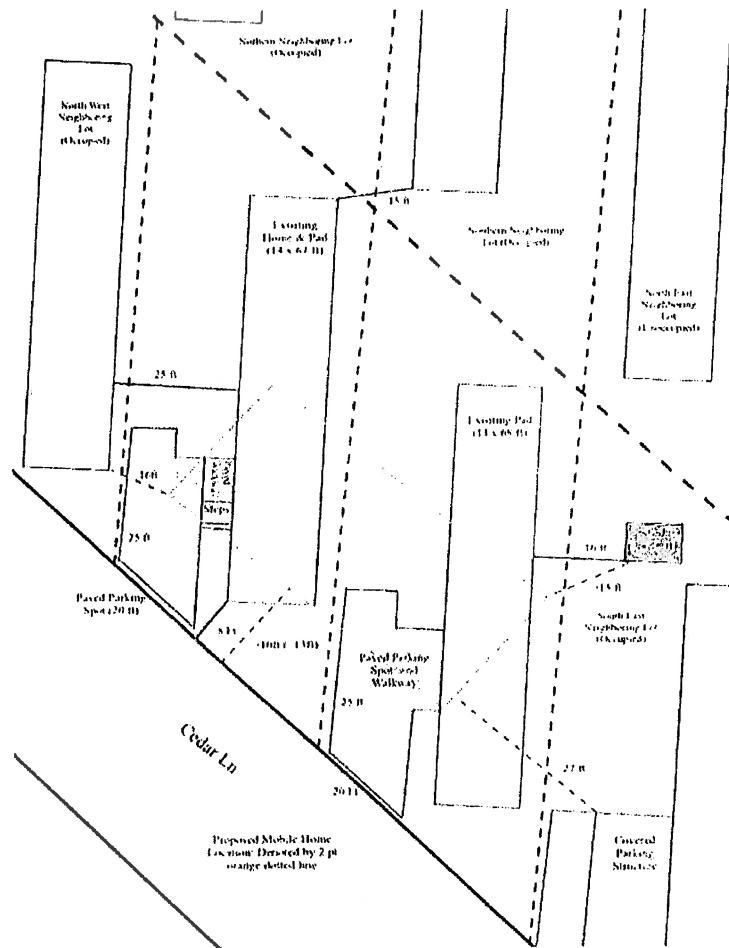
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B-12

Completed by: A. Bhagat

10/21/2022

2482 CEDAR LANE



12

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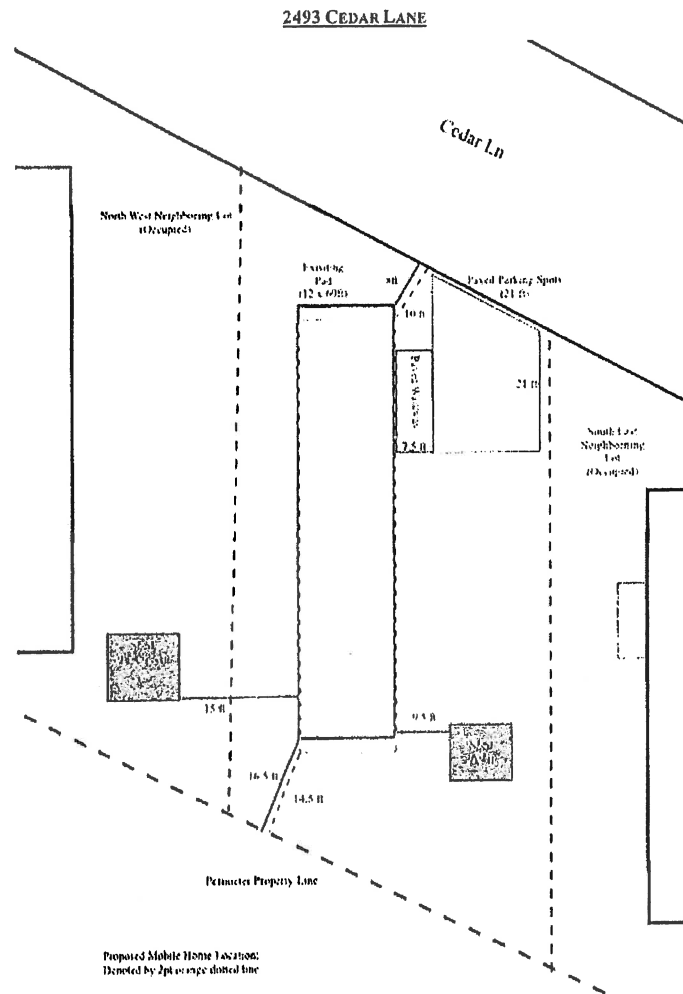
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B-13

Completed by: A. Bhagat

10/21/2022



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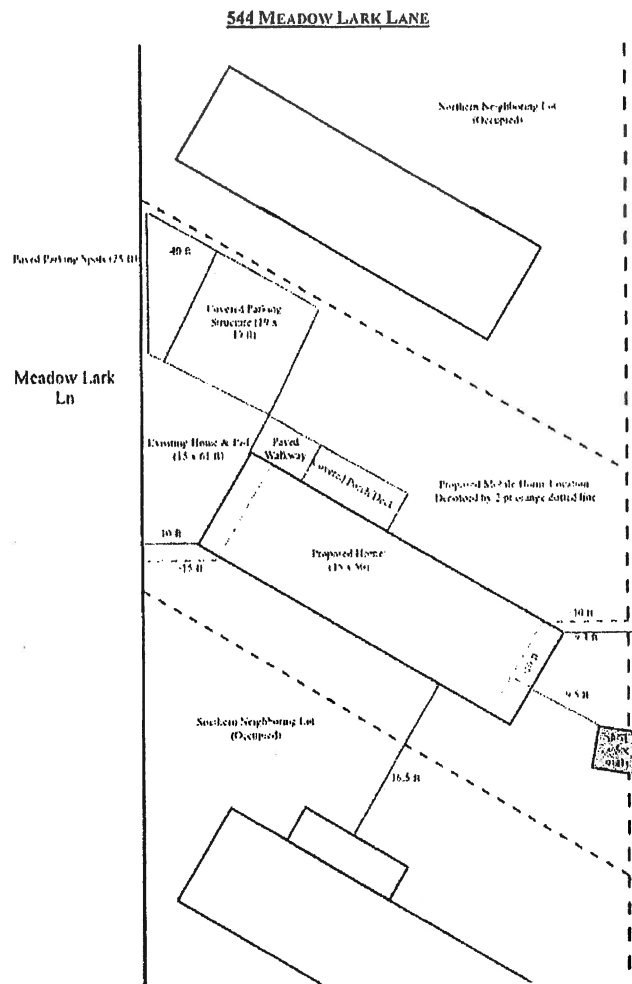
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B-14

Completed by: A. Bhagat

10/21/2022



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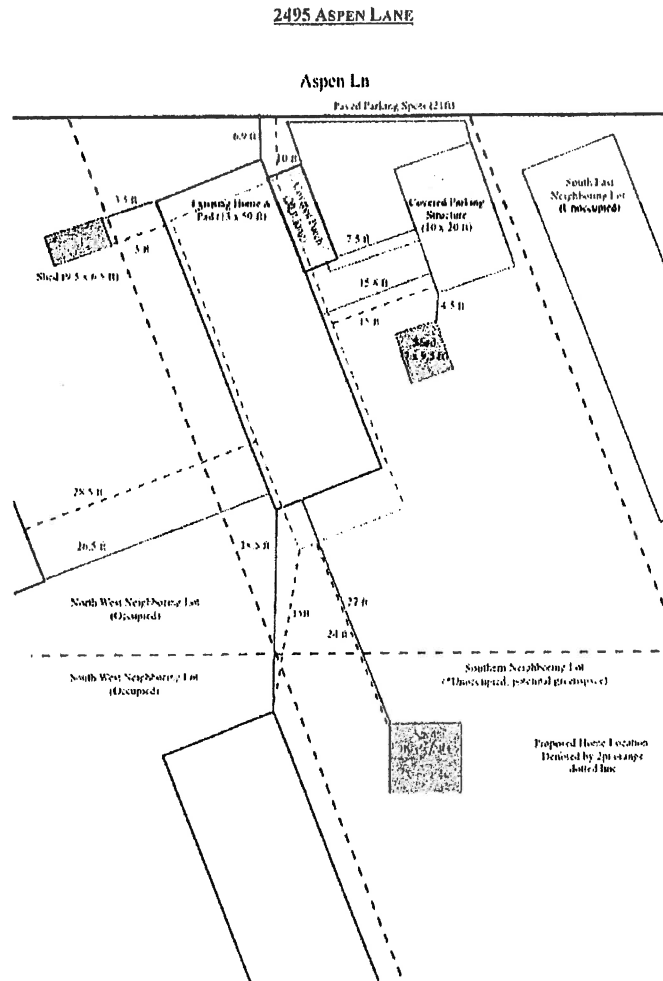
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B-15

Completed by: A. Bhagat

10/21/2022



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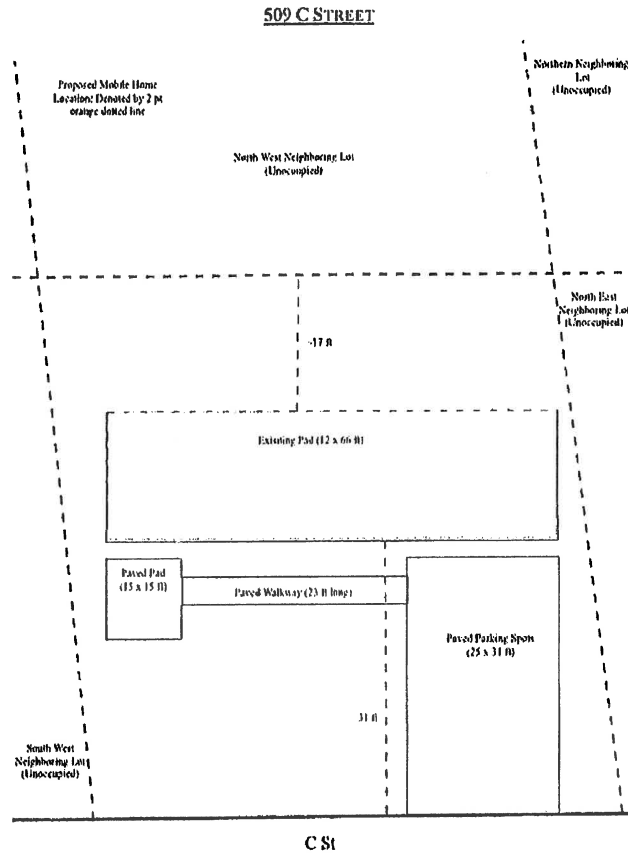
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B-16

Completed by: A. Bhagat

10/21/2022



16

{34359 / 72062; 997537. }

B-8

{34359 / 72062; 998320.3 }

B-17

Exhibit C – Home Dimensions

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
1	540 Meadowlark Lane	16X60
2	2491 Cedar Lane	14X60
3	2491 Birch Lane	12X58
4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56

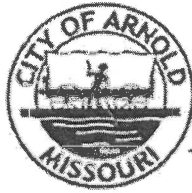
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C-1

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B-18

Exhibit C – Administrator Decision



City of Arnold

Ron Counts, Mayor

Re: Ozark MHP, LLC Permit Applications/Appeal

Dear Ms. Jensen,

As I previously indicated, I received your appeal. While my response should not be taken as an acceptance of your interpretation that the archiving of the applications at issue is commensurate with a denial, in an effort to move this matter forward, please accept this as my response.

When an applicant believes it has been wrongly denied certain services, processes or permits, Section 110.020 (c) of the Code of Ordinances of the City of Arnold grants me the authority to review the denial and take certain actions. Those actions include ordering the service, process, or permit or conditionally ordering the service, process, or permit. Under the current circumstances, I am disinclined to grant any relief. It is the position of the City of Arnold ("City") that the compliance obligations referenced in City's July 26, 2023 letter do not infringe on your client's right to operate a legal non-conforming use, that the status as a legal non-conforming use does not excuse or shield the use from any and all regulations, and that the regulations with which you take issue are life/safety regulations.

As previously mentioned, the City desires to ensure the continued availability of a variety of housing stock within the corporate limits of the City, including your client's mobile home park. That desire, however, is not unconditional. Housing, including your client's park, must be safe and meet modern health and safety regulations. City staff remains available and willing to work with your client to ensure its continued operation.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Richison".

Bryan Richison
City Administrator - Arnold

Cc: Robert Sweeney, City Attorney
David Bookless, Community Development Director
Sarah Turner, Senior Planner

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2101 Jeffco Blvd.
Arnold, MO 63010
636/286-2100

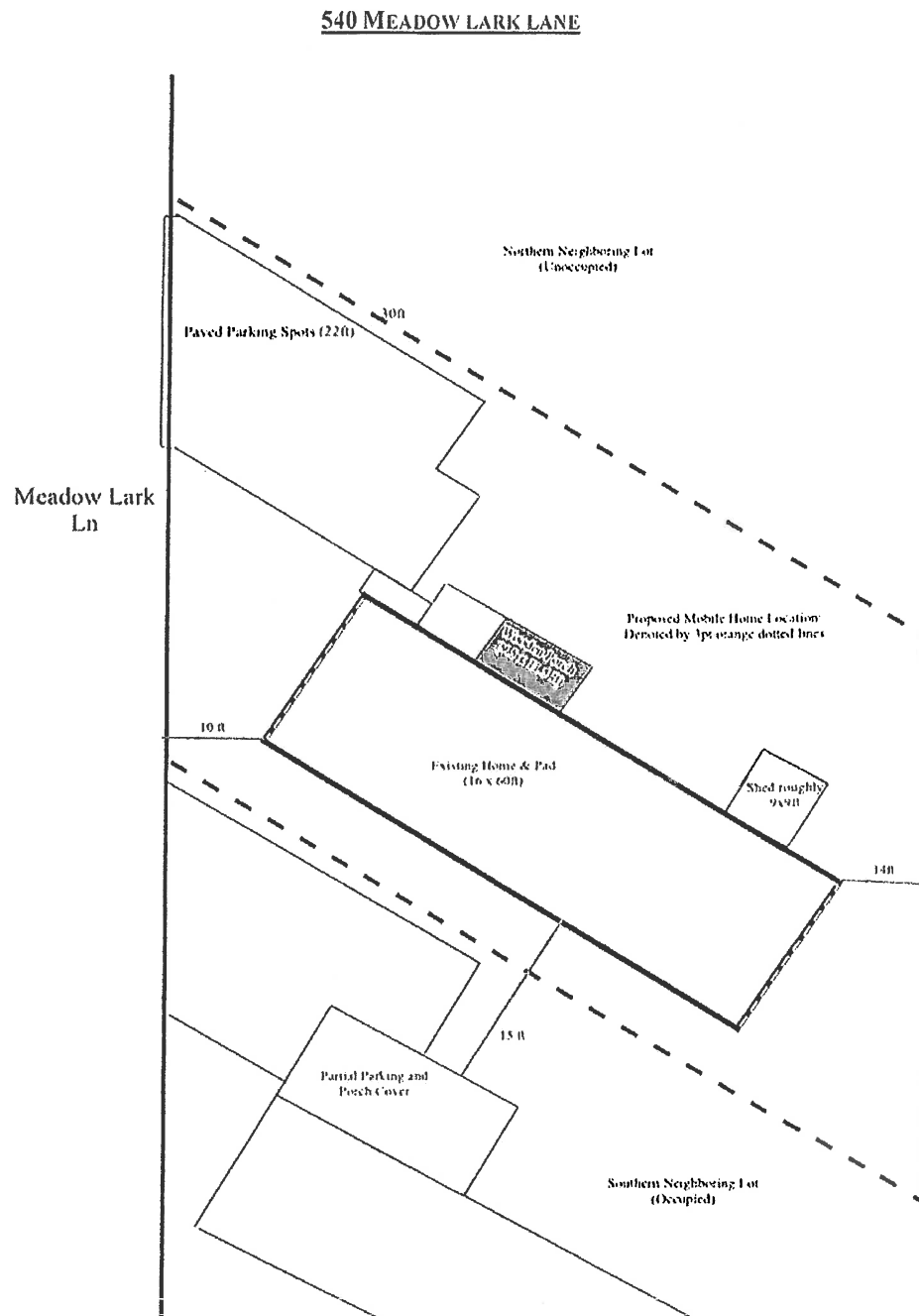
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Exhibit D - Permit Application Drawings

Completed by: A. Bhagat

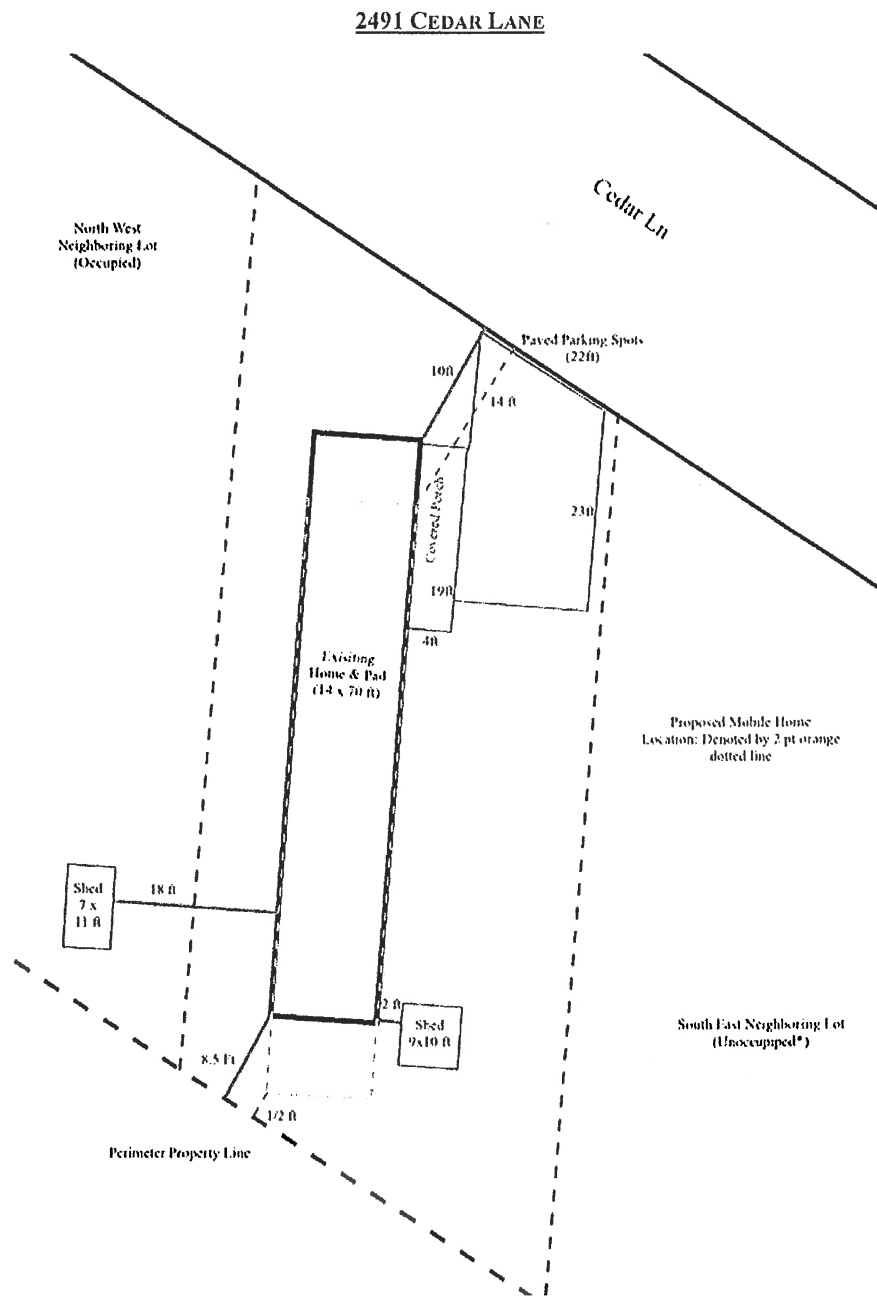
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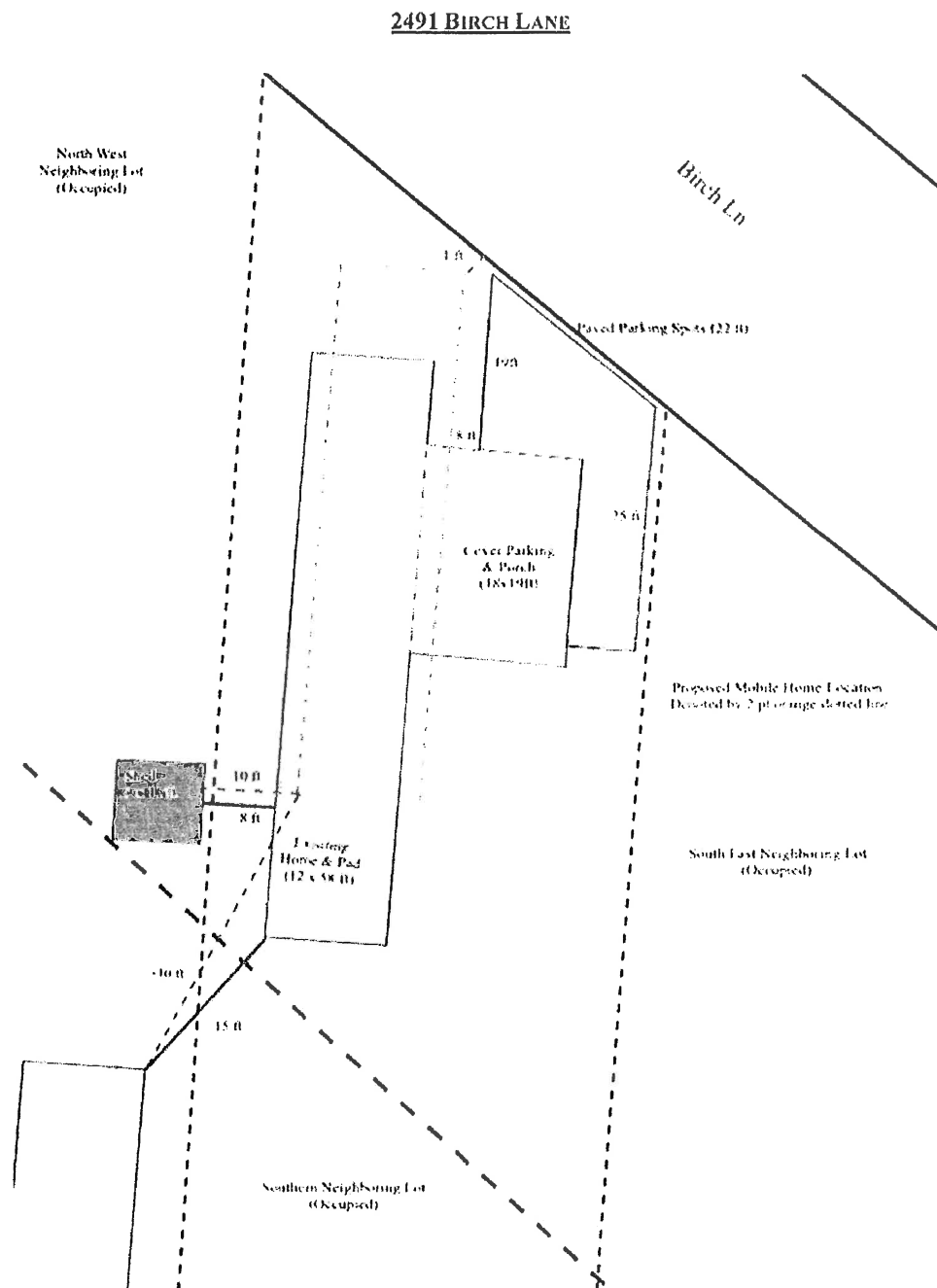
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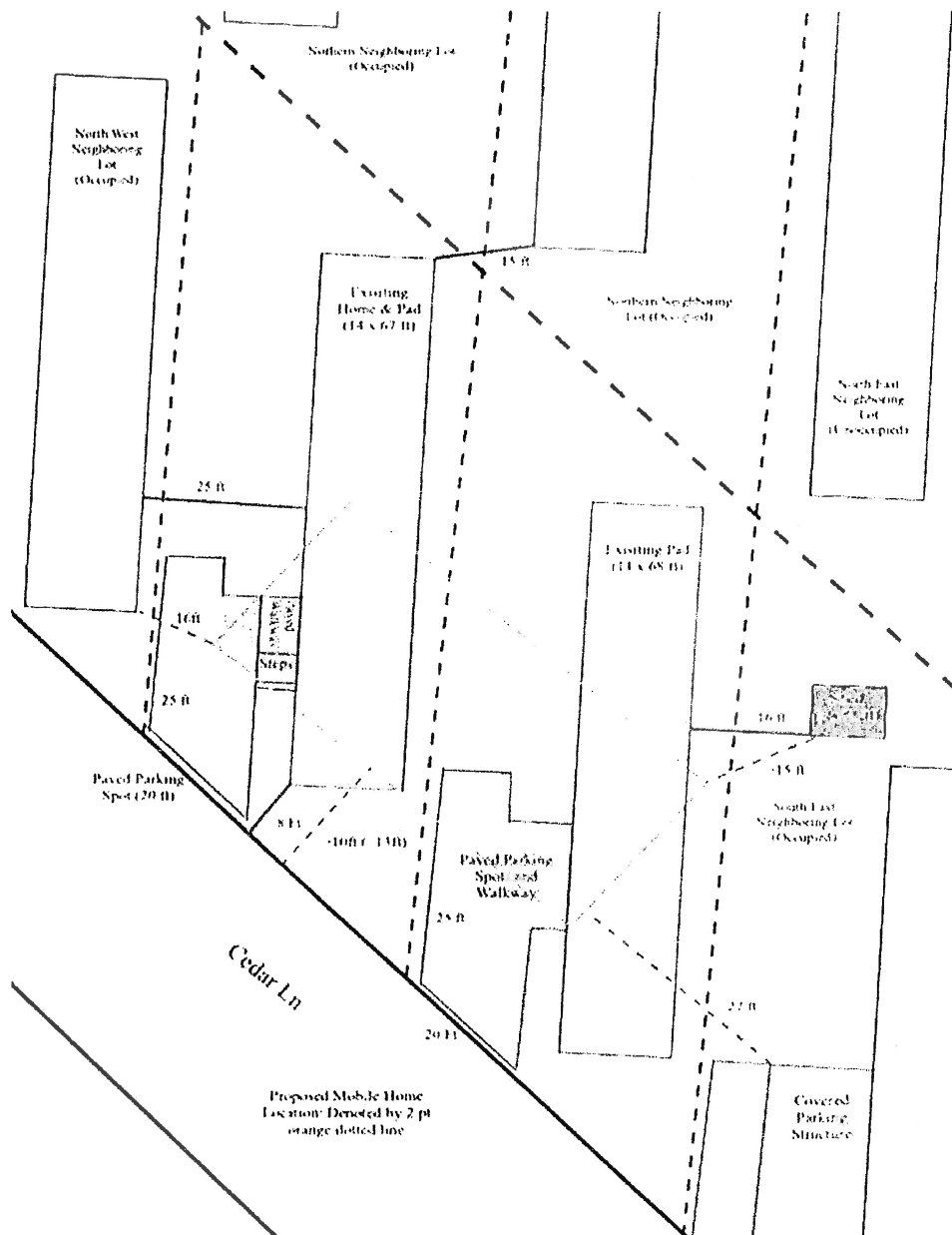


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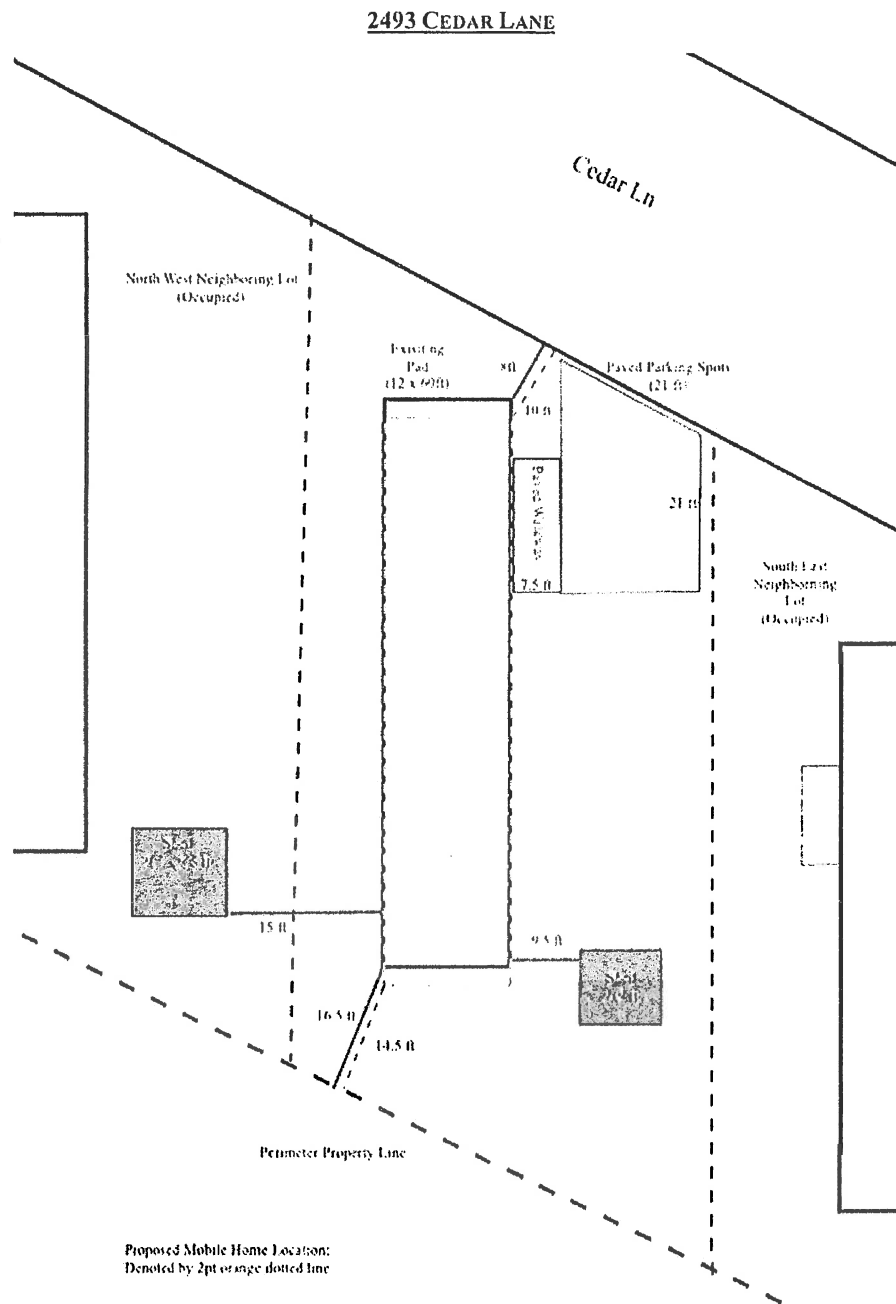
2482 CEDAR LANE



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Completed by: A. Bhagat

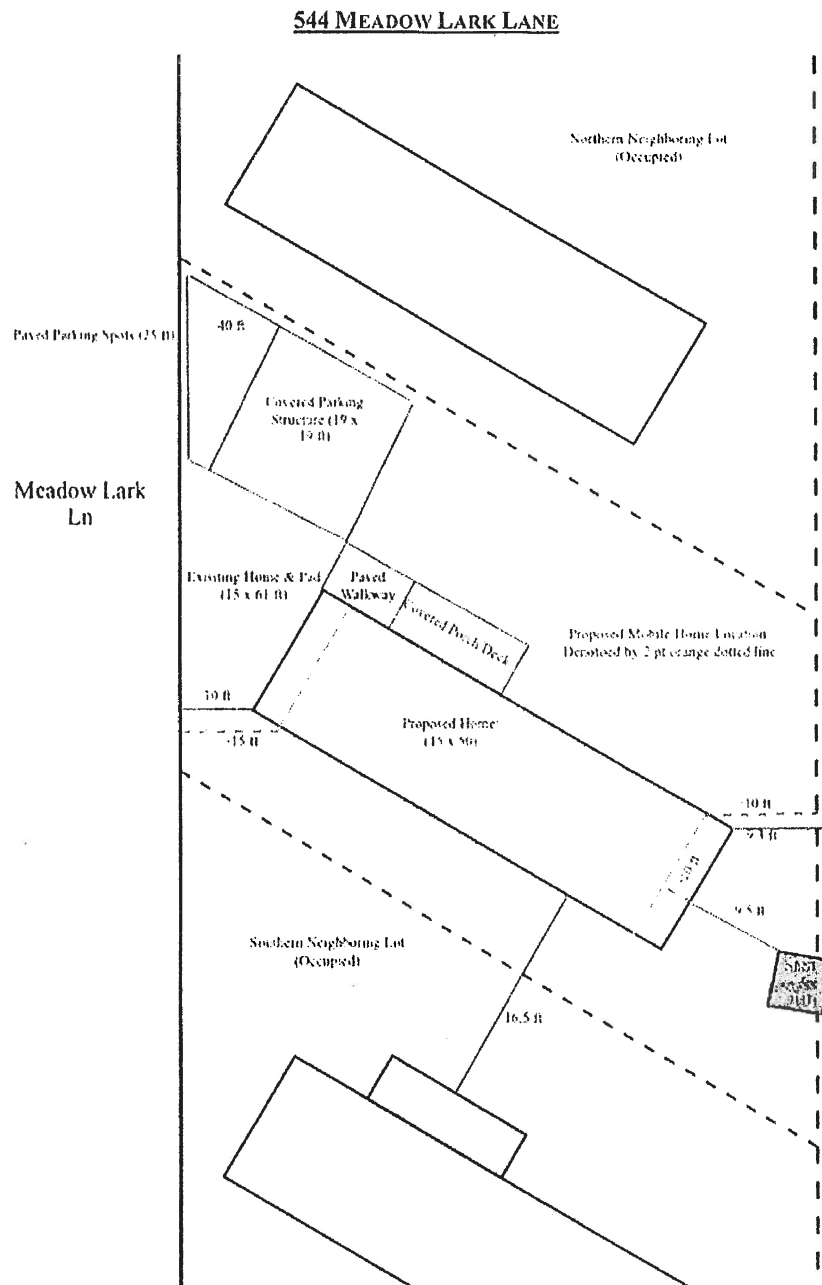
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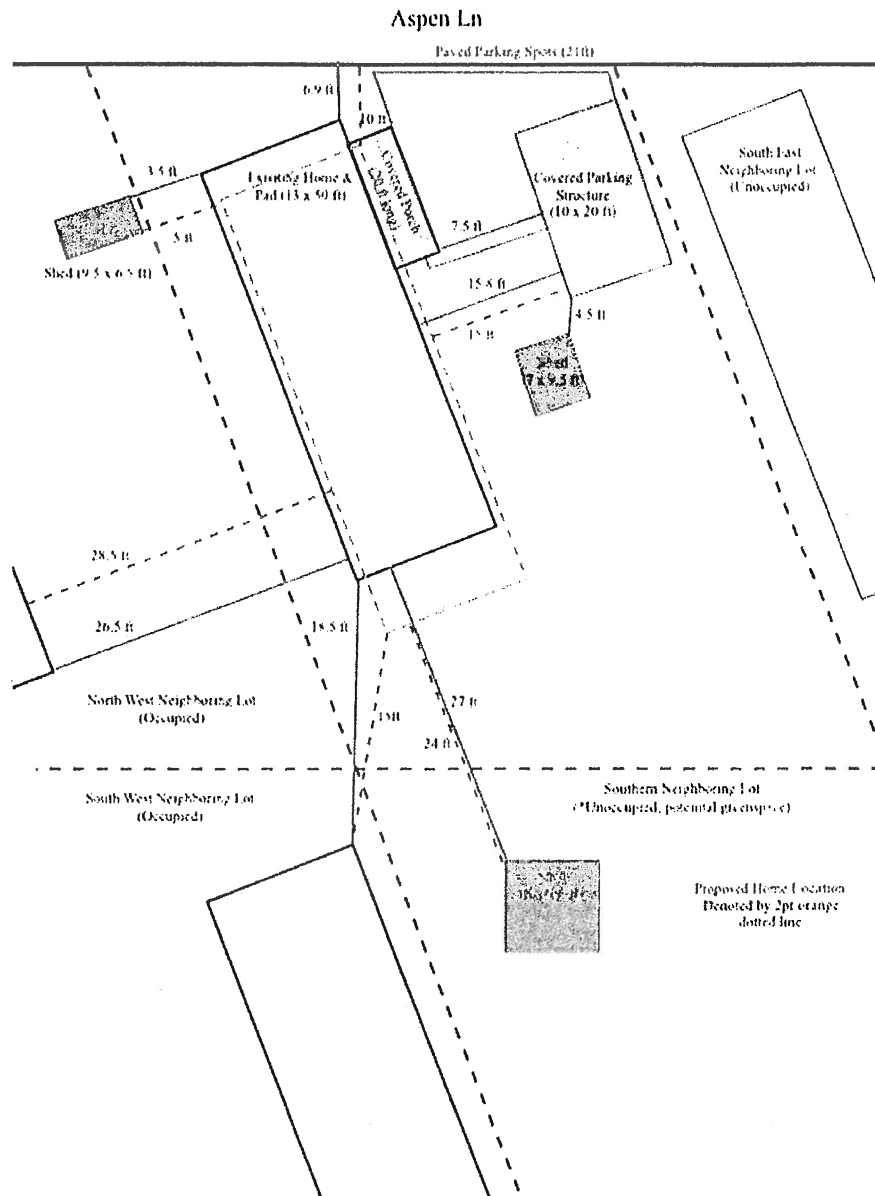
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2495 ASPEN LANE



15

Completed by: A. Bhagat

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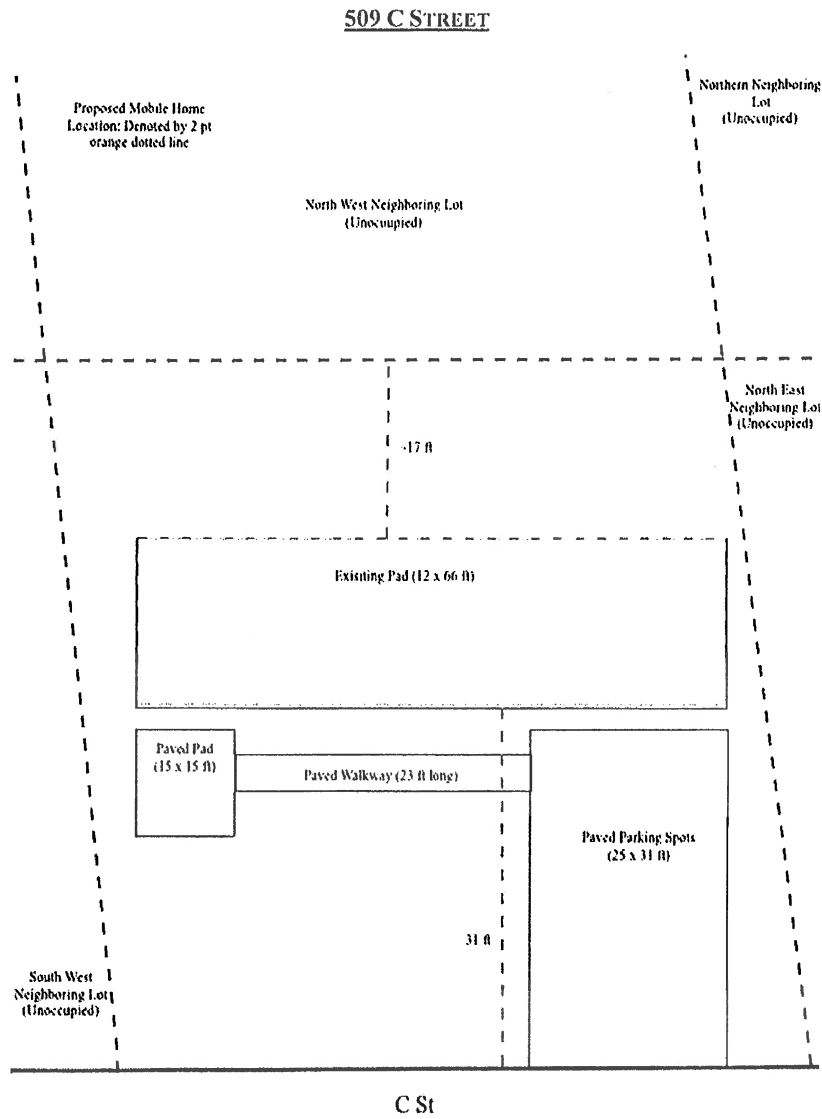


Exhibit E – Home Dimensions Table

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
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4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56



**BOARD OF ADJUSTMENT
CITY HALL – COUNCIL CHAMBERS – 2101 JEFFCO BLVD
WEDNESDAY, NOVEMBER 29, 2023 | 5:30PM**

MEMBERS: Jonathan Giallanzo (Chair), Joseph Hendrickson, Robert Lindsley, David McCreery (Alternate), Joan Boyles (Alternate), Jennifer Kammien (Alternate). **STAFF:** Allison Sweeney (City Attorney), David Bookless (Community Development Director), Sarah Turner (Senior Planner)

REGULAR SESSION

1. CALL TO ORDER
2. ROLL CALL
3. READING OF THE PROCEDURES
4. PUBLIC HEARING(S):
 - a. **BA-2023-03 Ozark MHP (Appeal):** Three (3) requests by Patricia Jensen to appeal decisions made by the Zoning Enforcement Officer for the purpose of seeking zoning approval of manufactured home placement permits for 509 C St., 2493 Cedar Ln., and 2491 Birch Ln. within the Ozark Mobile Home Park located at 501 A St, as provided in the Arnold Zoning Ordinance.
5. OTHER BUSINESS: *None*
6. ADJOURNMENT OF REGULAR SESSION

EXECUTIVE SESSION

7. NEW BUSINESS: (Note: *The Board of Adjustment may vote on these items tonight.*)
 - a. **BA 2023-03 Ozark MHP (Appeal)**
8. APPROVAL OF MINUTES: *November 8, 2023*
9. ADJOURNMENT OF EXECUTIVE SESSION

The Public is welcome to comment on any item on this agenda following presentations by the Staff and petitioner. Comments concerning items not on the agenda should be made during the Public Comment section of the agenda, near the beginning of the meeting. When you address the Board of Adjustment, please come forward and state your name and address into the microphone. Unless otherwise directed by the Chairperson, individuals may speak for three minutes, while those representing a group may speak for six minutes.

NOTE: You may also attend this meeting virtually via Zoom by following the link and instructions below:

- To join by computer, tablet, smartphone, etc. (video and/or audio): <https://zoom.us/join>
- To join by telephone (audio only): **1-312-626-6799**

Meeting ID: 827 6053 6209

Passcode: 564104

EXHIBIT

E

Upon request, reasonable accommodations will be provided. Contact Tammi Casey, City Clerk, Arnold City Hall, 2101 Jeffco Boulevard, Arnold, Missouri 63010. Phone: 636-296-2100.



**BOARD OF ADJUSTMENT MEETING
CITY HALL – COUNCIL CHAMBERS – 2101 JEFFCO BLVD.
NOVEMBER 8, 2023**

MINUTES

REGULAR SESSION

1. **CALL TO ORDER:** The regular meeting of the Arnold Board of Adjustment was called to order by Chairman Jonathan Giallanzo at 7:00 p.m. The Board, Staff, and members of the public recited the Pledge of Allegiance.
2. **ROLL CALL OF BOARD MEMBERS:** Jonathan Giallanzo, Joseph Hendrickson, Robert Lindsley, David McCreery (Alternate), Joan Boyles (Alternate, Excused), Jennifer Kammien (Alternate). **STAFF PRESENT:** Allison Sweeney (City Attorney), Sarah Turner (Senior Planner).
3. **READING OF THE PROCEDURES:** Giallanzo read the Board of Adjustment procedures.
4. **PUBLIC HEARING(S):**
 - a. **BA-2023-02 Above and Below Fence (Setback Variance):** Motion by Lindsley to open the public hearing. Second by McCreery. *Voice vote:* Approved 5-0. Ms. Turner presented the Staff's report on the applicant's request for relief from front/street yard requirements, to allow for the construction of a fence, from 50 feet to 30 feet. Giallanzo asked when the surrounding properties were developed and why the fence could not be code-compliant. Ms. Turner said the surrounding area has been developed over time since the 1970's, and that the applicant could speak to the location of the fence. Carol Onest (Govero Land Services) spoke on behalf of the applicant, Above and Below Contracting LLC, reiterating the applicant's claims. Lindsley asked about the security claims of the requested variance. Greg Currington (Above and Below representative) provided context for the security concerns. Hendrickson asked what the impact would be if the fence was on the code-compliant line. Mr. Currington clarified that the contractor's large equipment requires additional area to properly maneuver, and the shape of the site means that this area encroaches on the front setback. Mr. Currington also explained security and safety concerns that the proposed fence location alleviates. McCreery commented in support of the variance. The Board did not have further questions for the applicant. Motion by Lindsley to close the public hearing. Second by Hendrickson. *Voice vote:* Approved 5-0.
5. **ADJOURNMENT OF REGULAR SESSION:** Adjourned by Giallanzo 7:25 p.m.

EXECUTIVE SESSION

6. **NEW BUSINESS:**
 - a. **BA-2023-02 Above and Below Fence (Setback Variance):** Lindsley asked if Arnold Tenbrook was going to expand. Ms. Turner reiterated that Arnold Public Works and the City Engineer have no plans to expand the roadway and were in support of the request. There was no further discussion. Giallanzo made a motion in the affirmative for the variance request with the findings and recommendations of Staff. Second by Lindsley. *Roll call vote:* Giallanzo, Yes; Hendrickson, Yes; Lindsley, Yes; McCreery, Yes; Kammien, Yes. 5 yeas, 0 nays. Variance approved.
7. **APPROVAL OF MINUTES:** Motion by McCreery to approve the minutes from the January 11, 2023 meeting. Second by Lindsley. *Voice vote:* Approved 5-0.

8. **ANNOUNCEMENTS:** Ms. Sweeney explained the nature of the upcoming Board meeting on November 29th, 2023 at 5:30pm. There were no other announcements.
9. **ADJOURNMENT:** Motion by McCreery to adjourn. Second by Lindsley. Meeting adjourned at 7:33 p.m.

Respectfully submitted,

Sarah Turner
Acting Board Secretary

DRAFT



BOARD OF ADJUSTMENT STAFF REPORT

MEETING DATE:	November 29, 2023
TITLE:	BA-2023-03 Ozark MHP (Appeal)
REQUESTED ACTION:	Denial of Appeal
PROJECT MANAGER:	Sarah Turner, Senior Planner
ATTACHMENTS:	(1) Appeal Submittal Packets a. 2493 Cedar Ln b. 2491 Birch Ln c. 509 C St

REQUEST:

Patricia Jensen, of Rouse Frets White Goss Gentile Rhodes, P.C. on behalf of the property owner Ozark MHP LLC, has filed three (3) applications to appeal decisions made by the Zoning Enforcement Officer (City Staff) for the purpose of seeking zoning approval of manufactured home placement permits for 2493 Cedar Ln., 2491 Birch Ln., and 509 C St. within the Ozark Mobile Home Park located at 501 A St (Jefferson County Parcel No. 01-5.0-21.0-4-001-030). The applicant's petitions for appeal, which includes copies of all referenced communications between City Planning Staff and the applicant, can be found in the Attachments.

EXECUTIVE SUMMARY:

The Ozark and Starling Mobile Home Parks were purchased by the current property owner in February 2022. Occupancy inspections were not completed at the time of sale or afterwards, including at the time of this report, and therefore the parks do not hold valid occupancy permits with the City of Arnold. In July 2023, eight (8) "Mobile Home Unit (MHU) (Trailer) Placement" permits for addresses within Ozark Mobile Home Park (referred to as "Ozark") were requested through the City's online permitting software MyGov. The permits were not processed due to Ozark lacking valid City occupancy permits. City Planning Staff archived the permits. "Archiving" a permit request means to complete or close out the request at its current step.

In August 2023, the applicant filed an appeal with Bryan Richison, Arnold's City Administrator, stating that for various reasons the archival of the 8 permit requests was wrongful denial of City services, processes, and permits. As described later in this report, Mr. Richison did not grant the requested relief. In September 2023, the applicant filed an appeal for each MHU Placement permit request, stating that Staff's determination to archive the permit requests is unlawful. The applicant is requesting the Board approve the requested MHU Placement permits. The applicant has requested the Board of Adjustment review three (3) of the eight (8) submitted appeal requests: 2493 Cedar Ln, 2491 Birch Ln, 509 C St. The other five (5) appeal requests will be brought to the Board at future meeting(s).

ANALYSIS – LACK OF OCCUPANCY PERMIT

The City of Arnold requires up-to-date and valid occupancy permits prior to the use of a structure or property. The need for a new occupancy permit triggers when there is a change of ownership and/or a change of occupant in a rental property. To obtain an occupancy permit, property maintenance inspections



BOARD OF ADJUSTMENT STAFF REPORT

must be completed. These inspections ensure that the property is safe for occupancy and meets modern health and safety regulations. Once inspections are complete and any deficiency items have been abated, the property is issued a valid occupancy permit.

The occupancy permit and inspection requirements described above apply to all residential dwellings, including but not limited to single-family houses, duplexes/villas, quadplexes, multi-family structures, apartment complexes, and mobile/manufactured home parks. This means that at the time of sale for a manufactured home park within the City, the entire park is to be inspected for compliance with adopted building codes, including but not limited to dwelling units, utilities, and street infrastructure.

The following is a timeline of events related to the subject appeal requests, with the relevant excerpts of code:

When the current property owner was in the process of purchasing the subject park in February 2022, a title company sent a notification to the City Clerk in the normal course of business to check the property for liens or other restrictions prior to closing. City Planning Staff reached out to the soon-to-be new owner, Justin Donald, to discuss the new property acquisition and applicable zoning and building codes. Staff did not receive a response. At the time of sale, the City had the following code and had most recently adopted the 2015 International Property Maintenance Codes (Section 540.010(D), Occupancy Permits and Inspections):

"It shall be unlawful for any person, firm or corporation to hereinafter occupy, or for any owner or agent thereof to permit the occupancy of any structure, or part thereof, for any purpose until an occupancy permit shall have been issued by the Community Development Department."

In 2022, following the sale, the property owner was notified by Arnold Building Commissioner Randy Noland of the City's requirements to obtain an occupancy permit by way of inspecting the park for property maintenance compliance. There was communication between Mr. Noland and Ryan White of The MHP Law Firm, other counsel of the property owner, that appears to have been ineffective.

In January 2023, the City of Arnold adopted the 2021 International Property Maintenance Codes and updated the relevant occupancy permit regulations as follows (Section 500.030(C)(5)(a), International Property Maintenance Code Amendments):

"Section 114 Permit to Occupy, Section 114.1 Occupancy Permit Required.

It shall be unlawful for any person, owner, agent, or tenant thereof, both jointly and severally, to, in whole or in part, purchase, transfer, mortgage, lease, or acquire, occupy or use, manage, or to permit occupancy or use of the premises for any purpose, including the movement of furniture, equipment or other personal property into said premises, until a permit to occupy has been issued by the Code Official stating that the premises, including all real and personal property there located, and all uses thereon complies with the provisions of this technical code and the provisions of the Arnold Municipal Code of Ordinances. Manufactured home parks and individual manufactured homes shall comply with the requirements of this Section."

In July 2023, the property owner applied for the eight (8) MHU Placement permits through MyGov. The purpose of these permits was to place new dwelling units on existing or altered pads within Ozark. **Due to the lack of a valid occupancy permit, the City could not verify whether Ozark meets modern health and safety regulations. To prevent harm to the public welfare, City Planning Staff did not move the applications forward through the review process and chose to archive the permits.** The



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City's archival notice letter provided guidance on how to move forward with acquiring occupancy permits. As of this report, occupancy inspections at Ozark have not been requested.

In August 2023, the applicant filed an appeal to City Administrator Bryan Richison based on Section 110.020, Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services:

"A. In any instance where any individual, person, corporation, partnership, joint venture, business, association, firm, organization, or entity is found to be in violation of the City codes in the areas of weeds; junk; litter; storm water management and erosion control; floodplain management; zoning; subdivision regulations; completion of subdivision improvements in accordance with improvement plans approved by the City Council; or the terms and conditions of subdivision improvement escrow agreements, the following services, processes, and permits shall be withheld until compliance with the City codes has been achieved:

- 1. Building permits, plumbing permits, electrical permits shall not be issued or renewed.*
- 2. Certificates of compliance shall not be issued.*
- 3. Excavation permits shall not be issued or reissued.*
- 4. Driveway permits shall not be issued.*
- 5. Floodplain permits shall not be issued or reissued.*
- 6. Rezoning and conditional use permits shall not be processed.*
- 7. Subdivision of land shall not be processed."*

The applicant's claim and Mr. Richison's reasons to deny the requested appeal are included in the attachments. The City's position on this appeal is copied as follows: **"The compliance obligations [to hold a valid occupancy permit] do not infringe on [Ozark MHP LLC]'s right to operate a legal non-conforming use, that the status as a legal non-conforming use does not excuse or shield the use from any and all regulations, and that the regulations with which [the applicant] take[s] issue are life/safety regulations."**

In September 2023, the applicant submitted eight (8) appeals for relief from the Board of Adjustment, which includes the subject three (3) appeals. Staff encourages the Board to refer to the applicant's petitions attached to this report for the applicant's claims and bases for appeal. City Staff's position remains as stated by Mr. Richison above.

ANALYSIS – NON-CONFORMITY (GENERAL)

The Ozark Mobile Home Park, located at 501 A St, is an approximately 13-acre parcel and is zoned "MHD" Mobile Home District. A floodway bisects the property and some portions are in a "FP" Floodplain District. The current use of the property as "Mobile homes" is permitted by right within the "MHD" District. According to historic satellite imagery, the park and use was established between 1960 and 1971, prior to the incorporation of the City of Arnold. The zoning designation as "MHD" was present on the original 1977 Arnold Zoning Map.

In addition to listing permitted and conditional uses within the district, the "MHD" District Regulations, contained in Section 405.090(E), provide requirements for lot size, structure setbacks, landscaping, parking, and other such characteristics. Among other regulations, the "MHD" regulations require 5,000 square feet for each mobile home space (or a minimum of 50-foot-wide and 100-foot-long spaces) and structures to be setback 20 feet from any street. These example provisions are not met at Ozark. Staff has determined the lot sizes, structure setbacks, and other such characteristics of Ozark are non-conforming



BOARD OF ADJUSTMENT STAFF REPORT

with the requirements of the "MHD" Mobile Home District. As a non-conforming mobile home park within the "MHD" Mobile Home District, Section 405.070(G) applies to new MHU Placement permit requests at Ozark:

G. Non-Conforming Mobile Home Parks And Non-Conforming Mobile Homes. All non-conforming mobile home parks and other non-conforming mobile homes lawfully existing at the effective date of the adoption of this Chapter that would not be allowed in the zoning district or under the terms of this Chapter may be continued so long as they remain otherwise lawful, subject to the following special provisions:

- 1. Non-Conforming Mobile Home Parks Within "MHD" Mobile Home Districts. Mobile home parks located in "MHD" Mobile Home Districts that are non-conforming due to lot size, setback, or other such characteristics shall be subject to the following special provisions:*
 - a. Shall not be expanded or modified except in conformance with the guidelines of the "MHD" Mobile Home District.*
 - b. Non-conforming mobile home parks or parts thereof that are made to conform with the regulations of the "MHD" Mobile Home District shall thereafter be required to conform and shall not be altered to create a non-conforming use.*
 - c. Any non-conforming mobile home park destroyed by any means to an extent of more than fifty percent (50%) of its reconstruction cost at the time of destruction, including streets, pads and utilities, shall not be reconstructed except in conformance with the provisions of the "MHD" Mobile Home District.*
 - d. Notwithstanding other provisions of the "MHD" Mobile Home District regulations to the contrary, mobile home parks that are located within "MHD" Mobile Home Districts that existed at the time of adoption of this Chapter shall meet the following minimum requirements:*
 - (1) Mobile homes shall not be located closer than ten (10) feet to any street right-of-way, road easement, or street that is located within the boundaries of the mobile home park. No mobile home shall be located closer than twenty (20) feet to any street right-of-way or road easement that is located outside the boundaries of the mobile home park.*
 - (2) Mobile home pads may not be expanded, and larger mobile homes may not be placed in the mobile home park.*
 - (3) Mobile homes shall be located so that there is a clear space of not less than fifteen (15) feet between it and any other mobile home, building, or structure of any kind, except storage sheds not exceeding ten (10) feet by ten (10) feet in dimension or any required fencing. Any deck, carport, patio cover, or other appurtenance that is constructed of combustible material shall be considered to be a part of the mobile home and shall not be located closer than fifteen (15) feet to any other mobile home, building, or structure of any kind.*
 - (4) For the purposes of this Chapter, the above setback provisions shall be applied without regard to any internal side or rear property lines for lots that are platted within the mobile home park.*

ANALYSIS – NON-CONFORMITY (PERMIT-SPECIFIC)

On July 26, 2023, Staff notified Ozark MHP LLC representative Justin Donald that the eight (8) requested MHU Placement permits were archived due to a lack of occupancy permit for the park. As a courtesy,



BOARD OF ADJUSTMENT STAFF REPORT

City Planning Staff conducted cursory reviews of the permits for compliance with the Zoning Ordinance. The following is a detailed explanation of Staff's interpretation process in the determinations made regarding the five applications:

Permit #23-001106 (2491 Cedar Ln.)

The original permit description states the proposed scope of work: "To install/replace a mobile home on a vacant plot/lot that previously contained a mobile home." The site plan shows an existing 14 ft. by 70 ft. pad. The applicant has stated the proposed home is 16 ft. by 60 ft. Plan documents show the pad would need to be expanded to accommodate the proposed placement. Per Section 405.070(G)(1)(d)(2) on the previous page of this report, "*Mobile home pads may not be expanded, and larger mobile homes may not be placed in the mobile home park.*" If Ozark had a valid occupancy permit, which as stated it does not, Staff would not be able to approve this permit on zoning grounds.

Permit #23-001107 (2491 Birch Ln.)

The original permit description states the proposed scope of work: "To install/replace a mobile home on a vacant plot/lot that previously contained a mobile home." The site plan shows one existing 12 ft by 58 ft. pad, with a proposed new 12 ft. by 58 ft. home. Plan documents show the pad would need to be expanded to accommodate the proposed placement. Per Section 405.070(G)(1)(d)(2) on the previous page of this report, "*Mobile home pads may not be expanded, and larger mobile homes may not be placed in the mobile home park.*" Additionally, the proposed home is shown on the site plan as being 1 foot from Birch Ln. Per Section 405.070(G)(1)(d)(1) on the previous page of this report, "*Mobile homes shall not be located closer than ten (10) feet to any street right-of-way, road easement, or street that is located within the boundaries of the mobile home park.*" If Ozark had a valid occupancy permit, which as stated it does not, Staff would not be able to approve this permit on zoning grounds.

Permit #23-001112 (509 C St.)

The original permit description states the proposed scope of work: "To install/replace a mobile home on a vacant plot/lot that previously contained a mobile home." There is one existing 12 ft. by 66 ft. pad, with a proposed new 12 ft. by 66 ft home. Staff did not find any deficiencies in the provided plan. If Ozark had a valid occupancy permit, which as stated it does not, Staff would be able to approve this permit on zoning grounds.

This section is intentionally blank.



BOARD OF ADJUSTMENT STAFF REPORT

FINDINGS:

The applicant's appeal packets contain their petitions, various claims, and relevant correspondence. Staff recommends the Board of Adjustment carefully read the applicant's submitted materials in conjunction with this report. The Board must keep the appeal provision in mind when coming to a determination of whether to approve or deny this request:

The Board of Adjustment shall have the following duties: [...] 1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Enforcement Officer in the enforcement of this Chapter.

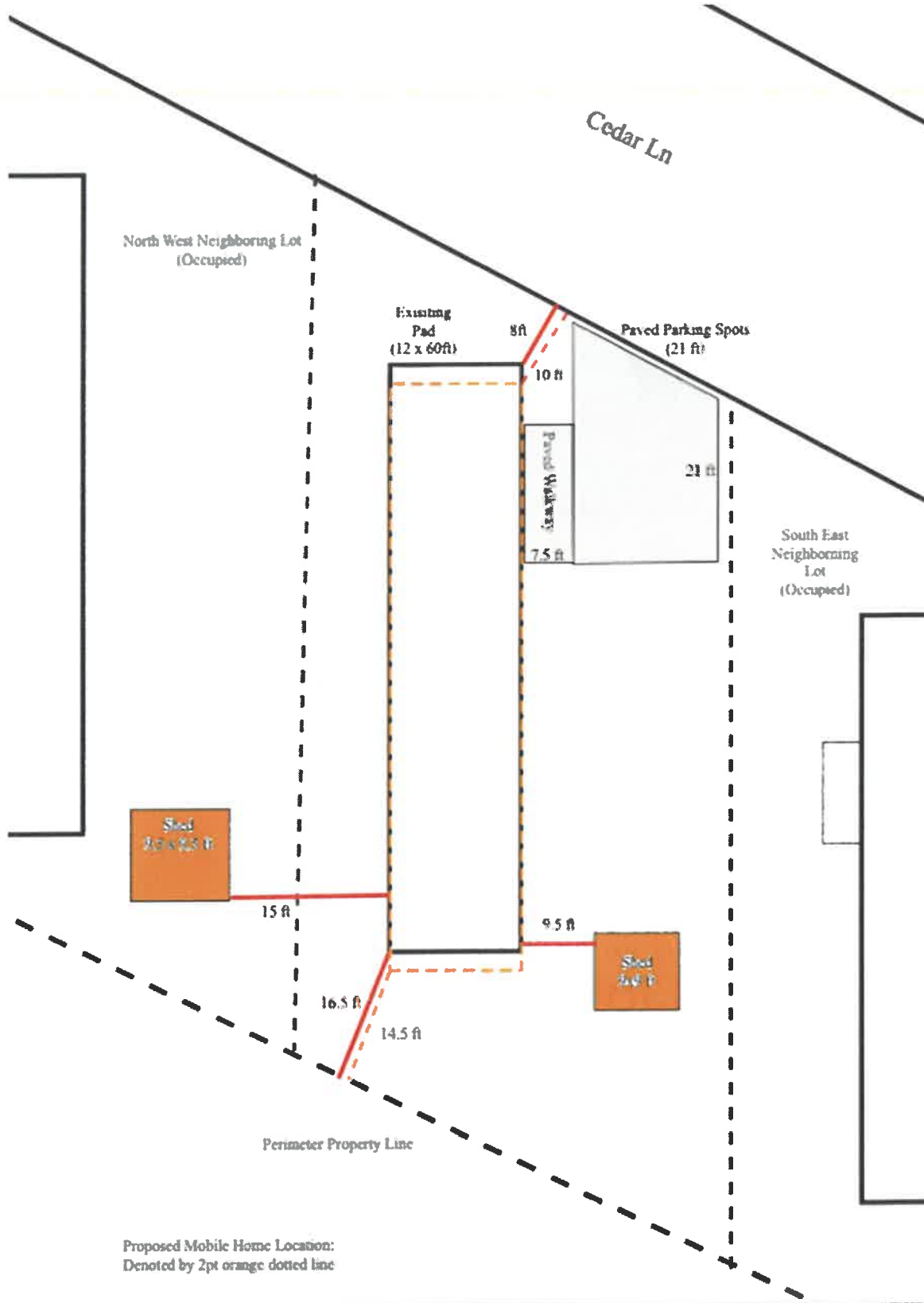
The Board has two options:

Option 1: Should the Board of Adjustment find that there is no error in any order, requirement, decision, or determination made by Staff, the Board may make a motion to uphold Staff's determinations on these three (3) applications, i.e. that the requested MHU Placement permits cannot be processed or formally reviewed due to a lack of valid occupancy permits for the Ozark Mobile Home Park, in addition to deficiencies found in zoning compliance of specific permits. Agreement on this finding would result in the denial of this appeal.

Option 2: Should the Board of Adjustment find that Staff has made an error in an order, requirement, decision, or determination, the Board may make a motion to overturn Staff's determinations on these three (3) applications. Should the Board make this finding, the applicant has requested the three (3) applications for "MHU Placement" permits be granted. Agreement on this finding would result in the approval of this appeal.

Please note: The Board of Adjustment does not have the jurisdiction or authority to determine issues of constitutionality and will not hear evidence on this matter.

2493 CEDAR LN



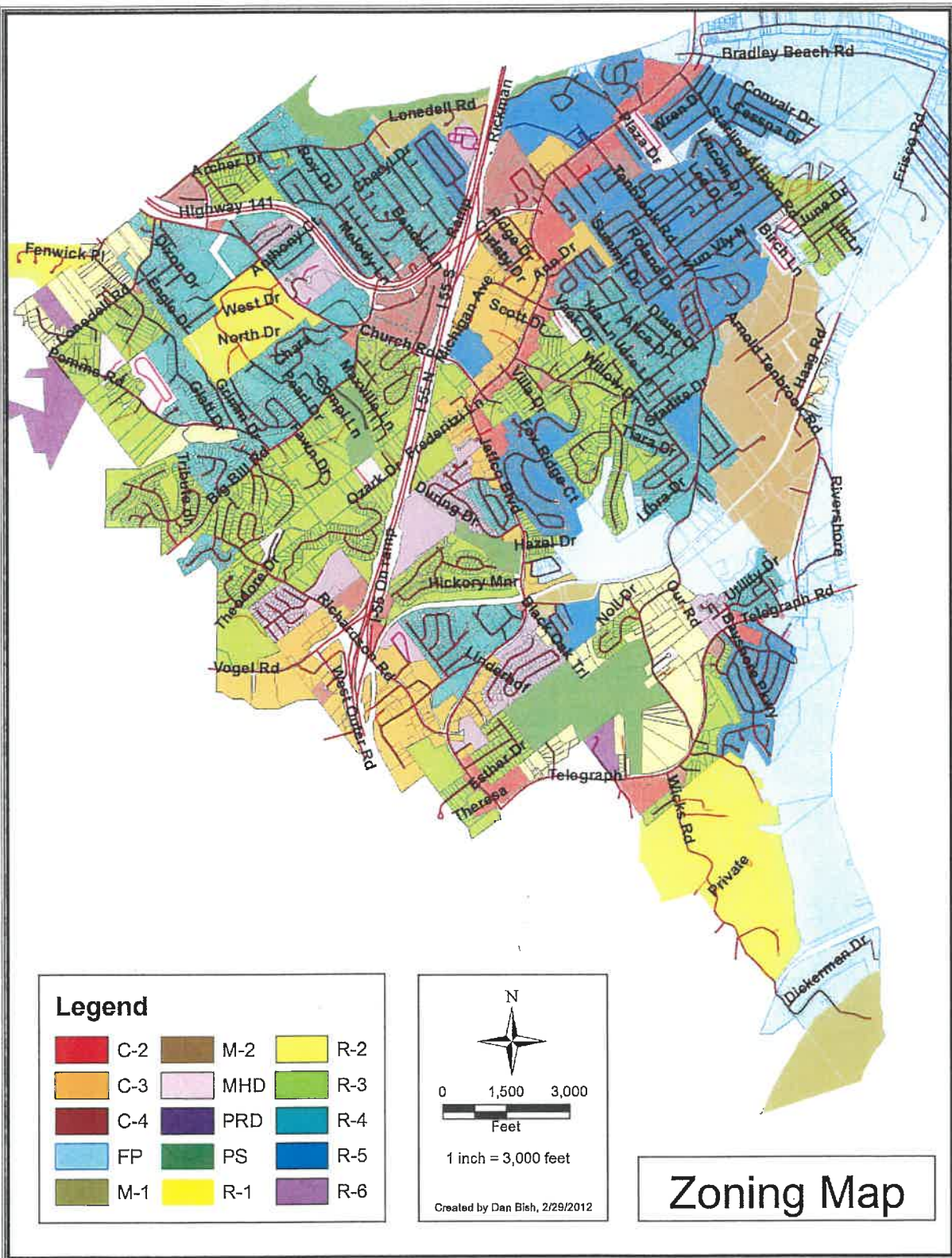
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County Viewer

Department of the County Assessor







**ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.**

Patricia R. Jensen
pjensen@rousepc.com
816.502.4723

August 24, 2023

VIA FEDERAL EXPRESS

City of Arnold, Missouri, Board of Adjustment
c/o Mr. Jonathan Giallanzo, Chairman
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

Mr. David B. Bookless, AICP, Community Development Director, Zoning Enforcement Officer¹
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

**Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 405.240.G**

Application No., Property ID, and Address:

#23-001112 - MHU (Trailer) Placement, 01502104001030, 509 C St
#23-001111 - MHU (Trailer) Placement, 01502104001030, 2495 Aspen Ln
#23-001110 - MHU (Trailer) Placement, 01502104001030, 544 Meadowlark Ln
#23-001109 - MHU (Trailer) Placement, 01502104001030, 2493 Cedar Ln
#23-001108 - MHU (Trailer) Placement, 01502104001030, 2482 Cedar Ln
#23-001107 - MHU (Trailer) Placement, 01502104001030, 2491 Birch Ln
#23-001106 - MHU (Trailer) Placement, 01502104001030, 2491 Cedar Ln
#23-001105 - MHU (Trailer) Placement, 01502104001030, 540 Meadowlark Ln

Messrs. Giallanzo and Bookless,

I. History and Appeal Process

On July 10, 2023, Ozark MHP, LLC (“Ozark”) submitted the above mobile home placement permit applications (“Applications”) to the City of Arnold regarding homes located within the Ozark Mobile Home Park (“Park”). In response, this firm received the City’s July 26,

¹ Pursuant to City Code § 405.230 the Community Development Director shall be the Zoning Enforcement Officer, and shall enforce the provisions of City Code Chapter 405, Zoning. Pursuant to City Code § 405.240.G, appeals to the Board of Adjustment shall be taken by filing with the Zoning Enforcement Officer and with the Board a notice of appeal.

{34359 / 72062; 998320.3 }

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2023, letter (“Notice”; attached hereto as Exhibit A) from the City’s Senior Planner, Sarah Turner, effectively denying the Applications by filing them as “archived” in the City’s permit portal.

The Applications remained “archived” in the portal, with no further action taken until approximately July 26, 2023, immediately following the date on which Ozark appealed the City’s decision to deny the above Applications. At this point the Applications’ statuses were changed to “In review,” but contained the City’s note that “This Project has been archived with the status “Other” on July 26, 2023....” Again, effectively denying the Applications’ requests.

Pursuant to City Code § 110.020.C, “Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services,” Ozark appealed Ms. Turner’s denials to the City Administrator, Bryan Richison. A copy of Ozark’s appeal letter is attached hereto as Exhibit B. In response, Mr. Richison, by letter dated August 10, 2023, attached hereto as Exhibit C, upheld Ms. Turner’s decisions (“Administrator Decision”).

This letter serves as an appeal to the City’s Board of Adjustment (“Board”) of (i) the Administrator Decision and (ii) Ms. Turner’s decision as documented in the Notice, for the purpose of investigating grievances, errors, and disputes, and for any other purpose(s) authorized under the City Code, Missouri law, and Federal law.

Firstly, the lack of Board appeal rules and regulations must be addressed. City Code § 405.240.C, “Board Shall Adopt Rules And Regulations,” states, “The Board shall adopt from time to time such rules and regulations as may be necessary to carry into effect the provisions of this Chapter.” However, no rules, regulations, or procedures (“Rules”) have been published. City Code § 405.240, “Board of Adjustment” includes no Board Rules. And while Mr. Giallanzo “read the Board of Adjustment procedures” at the Board’s January 11, 2023, meeting, there is no record of what procedures were read.

The lack of adopted Rules confuses the appeal process and rights. For example, the Code requires that an appellant must submit an appeal to the Board “upon forms provided for that purpose and shall show the minimum information as prescribed on the forms.” City Code § 405.240.H. However, compliance with this requirement is impossible given the lack of Rules or forms. Notwithstanding the above, Ozark’s appeal is submitted by this letter and all attached Exhibits.

This appeal is authorized under City Code § 405.240.G.² “Appeals”: “Appeals to the Board may be taken by any person aggrieved...affected by any decision of the Zoning

² Further authority for this appeal is set forth in City Code § 405.240.K.1: “The Board of Adjustment shall have the following duties... To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Enforcement Officer in the enforcement of this Chapter.”

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Enforcement Officer. Such appeal shall be taken within reasonable time as prescribed by the Board by general rule, by filing with the Zoning Enforcement Officer and with the Board a notice of appeal specifying the grounds thereof.” Note that although the term “reasonable time” has not been defined, the Board previously heard an appeal made 97 days after a Zoning Enforcement Officer’s decision. Accordingly, it has been established that only an appeal made later than 97 days from a City-decision can be considered outside a reasonable appeal time.

II. Basis for Appeal

In general, the City’s archiving of the Applications functions is an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City’s reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner’s constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section III below relates to Lot-specific responses. Section IV addresses constitutional violations. The Applications should be processed promptly and approved.

III. Lot-Specific Responses; Permit Application Drawings (Attached as Exhibit D)

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use (“LNCU”). As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-

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conforming use. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960's and has done so continuously to date. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as Exhibit E, and as included in the permit applications materials submitted to the City. The current home, based on aerial imagery, is approximately 14' x 70'. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12' x 58'. The current home, based on aerial imagery, is approximately 12' x 58'. Accordingly, this is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the “street right-of-way, road easement, or street setback.” Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot

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exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit E, the Table, the proposed home is 28' x 60'. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit E, the proposed home is 12' x 60'. The current pad, based on aerial imagery, is approximately 12' x 60'. Accordingly, this is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – "The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit E, the proposed home is 12' x 50'. The current home, based on aerial imagery, is approximately 15' x 64'. This is not an expansion violation.

See also response to #1.

7. Permit #23-001111 (2495 Aspen Lane – Ozark Park) - "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) – "The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit."

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 6

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

IV. Application-Wide Responses

a. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park's Mobile Home Use

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters–Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

As the Park's use predates the City and its Zoning Ordinance, the Park use is an LNCU, and not subject to use regulations and non-life/safety regulations enacted following its establishment.

The City's application of its Code provisions, including the claimed occupancy and inspection requirements, operates so that the Park and its lots are effectively being amortized out of existence. In Missouri, amortization of LNCUs is forbidden. *See Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. 1965) (holding unconstitutional a six-year amortization of LNCUs). This is so because amortization "would validate a taking presently unconstitutional by the simple expedient of postponing such taking for a 'reasonable' time." *Id.*

b. Regulatory Taking / Inverse Condemnation

The City attempts through regulations to disable and dismantle Ozark's Park operation. "Archiving" the Applications on the basis that Park-wide inspections are required in advance overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with manufactured homes (often referred to as mobile homes). This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a "Catch 22", preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

Manifestly, where a person is lawfully conducting a business in a certain area, he has a vested right to continue, even though such business use has become, by

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 7

reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring and then denying him a license, could destroy such vested right and put him out of business, would be absurd and unreasonable. Such is not the law.

State ex rel. Capps v. Bruns, 353 S.W.2d 829, 831 (Mo. App. 1962). The US Supreme Court comes to the same conclusion:

"The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go-and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle...."

[W]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

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c. Equal Protection; Disparate and Discriminatory Treatment – Undue Burden -- Targeted and Selective Code Application

Mobile home parks provide affordable housing. But the City has threatened to "bulldoze" the Park by communicating as much to certain residents. This type of conduct, along with the City's selective enforcement of its Code, violates Ozark's rights.

On information and belief, other similarly situated property owners in the City – single-family homes, multi-family homes, condominiums – have not been subject to the same regulatory treatment as Ozark. This violates the Equal Protection and Due Process clauses of the U.S. Constitution. It is also likely that the City's treatment of Ozark will unduly burden protected classes of citizens including seniors and non-white persons.

d. Occupancy Permit and Inspection Requirement Warrantless and Invalid Warrant Search in Violation of Fourth Amendment

The City's Occupancy Permit and inspection requirements under section 520.010 1) do not apply under City Code to Ozark, 2) even assuming applicability violate LNCU rights, 3) overreach by forcing Park wide inspections and forcing individual mobile home owners to give up privacy rights, 4) violate the Fourth Amendment prohibiting search and seizure, 5) are impermissibly vague and confusing regulations, 6) are unevenly applied.

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 8

e. Unconstitutional Conditions

The City's Code provisions as applied to the Park collectively infringe on and burden the basic rights of the Park's owner. The City "may not deny a benefit to a person on a basis that infringes a constitutionally protected right, even if the person has no entitlement to that benefit." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006). The Supreme Court has explained that the "unconstitutional conditions" doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up."

Thompson v. City of Oakwood, Ohio, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

For all of the reasons set forth here, Ozark urges the Board to approve the eight placement permit Applications and provide such other relief as it proper.

Based upon schedules, we request that the hearing related to this appeal be scheduled for the week of October 2, 2023.

Very truly yours,



Patricia R. Jensen

Enclosures

cc: Robert Sweeney, City Attorney (rks@robertsweeneylaw.com w/ encl.)

Exhibit A – City’s Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

The City is in receipt of the above-referenced applications. Let this letter serve as formal notice that the eight (8) Manufactured Home Unit (MHU) Placement Permit request applications will be archived due to the Ozark Manufactured Home Park (Ozark MHP) not holding a valid City Occupancy Permit.

For your convenience, we have completed cursory reviews of the plans for compliance with the City of Arnold's Zoning Ordinance. For comments on each individual permit, please refer to the following:

- Permit #23-001105 (540 Meadowlark Lane) – The provided site plan satisfies the provisions and Intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.
- Permit #23-001106 (2491 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001107 (2491 Birch Lane) – The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001108 (2482 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).

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2900 Arnold Tenbrook Rd.
Arnold, MO 63010
636/282-2386



City of Arnold

Ron Counts, Mayor

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The comments above pertain solely to Staff's preliminary compliance review with the Zoning Ordinance and relevant sections therein, including but not limited to §405.070(G)(1), *Non-Conforming Manufactured Home Parks Within "MHD" Manufactured Home Districts*. To bring the parks into conformance with the "MHD" Manufactured Home District, please refer to the options discussed during the April 6, 2023 meeting with your legal counsel and City Staff.

Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sarah", followed by a horizontal line.

Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

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Exhibit B – Ozark Appeal to City Administrator

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

PATRICIA R. JENSEN
pjensen@rousepc.com
816.502.4723

August 3, 2023

VIA FED EX & EMAIL (brichison@arnoldmo.org)

Bryan Richison, City Administrator
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 110.020.C

Dear Mr. Richison:

This firm received the City of Arnold's July 26, 2023, letter ("Notice") regarding the above mobile home placement permit applications submitted by Ozark MHP, LLC ("Ozark"). A copy of that Notice is attached here as Exhibit A. Please note, notwithstanding the parties to whom the City addressed the Notice, the Lots described in the eight applications are located within the Ozark Mobile Home Park (the "Park") and owned solely by Ozark.

Pursuant to City Code § 110.020.C, "Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services," this letter serves as an appeal of the archiving by Sarah Turner, Senior City Planner, of the eight permit applications ("Applications") for the purpose of investigating the Notice errors and disputes.

In general, the City's archiving of the Applications functions as an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City's reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner's constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section I below relates to Lot-specific responses. Section II addresses constitutional violations. The Applications should be processed promptly and approved.

{34359 / 72062; 997537. }

Attorneys at Law || 4510 Belloview Avenue, Suite 300 || Kansas City, MO 64111 || rousepc.com

{34359 / 72062; 998320.3 }

Bryan Richison
August 3, 2023
Page 2

I. Lot-Specific Responses; Permit Application Drawings Attached as Exhibit B

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use. As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-conforming use. The Park was established in the 1960's. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as **Exhibit C**, and as included in the permit applications materials submitted to the City. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size

{34359 / 72062; 997537. }

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Bryan Richison
August 3, 2023
Page 3

of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12' x 58'. This is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the "street right-of-way, road easement, or street setback." Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the Table, the proposed home is 28' x 60'. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the proposed home is 12' x 60'. This is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – "The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the proposed home is 12' x 50'. This is not an expansion violation.

See also response to #1.

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Bryan Richison
August 3, 2023
Page 4

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Pursuant to the submitted Table C, the proposed home is 12’ x 56’. This is not an expansion violation.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) - “The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

II. Application-Wide Responses

A. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park’s Mobile Home Use

The City was incorporated in 1972. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960’s and has done so continuously to date.

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters–Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

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Bryan Richison
August 3, 2023
Page 5

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The City attempts through regulations to disable and dismantle Ozark’s Park operation. “Archiving” the Applications on the basis that inspections Park wide are first required overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with mobile homes. This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a “Catch 22”, preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

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Bryan Richison
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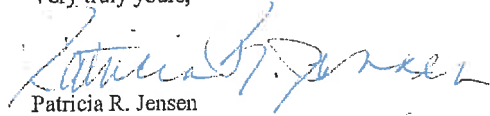
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Bryan Richison
August 3, 2023
Page 7

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Very truly yours,



Patricia R. Jensen

PRJ:nrh
enclosures

cc: Sarah Turner, Senior Planner (sturner@arnoldmo.org)
David Bookless, Community Development Director (dbookless@arnoldmo.org)
Robert Sweeney, City Attorney (rks@robertsweeneylaw.com)

{34359 / 72062; 997537. }

Exhibit A – City's Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
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Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

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636/282-2386

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{34359 / 72062; 998320.3 }

B-3



City of Arnold

Ron Counts, Mayor

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Respectfully,

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Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

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A-2

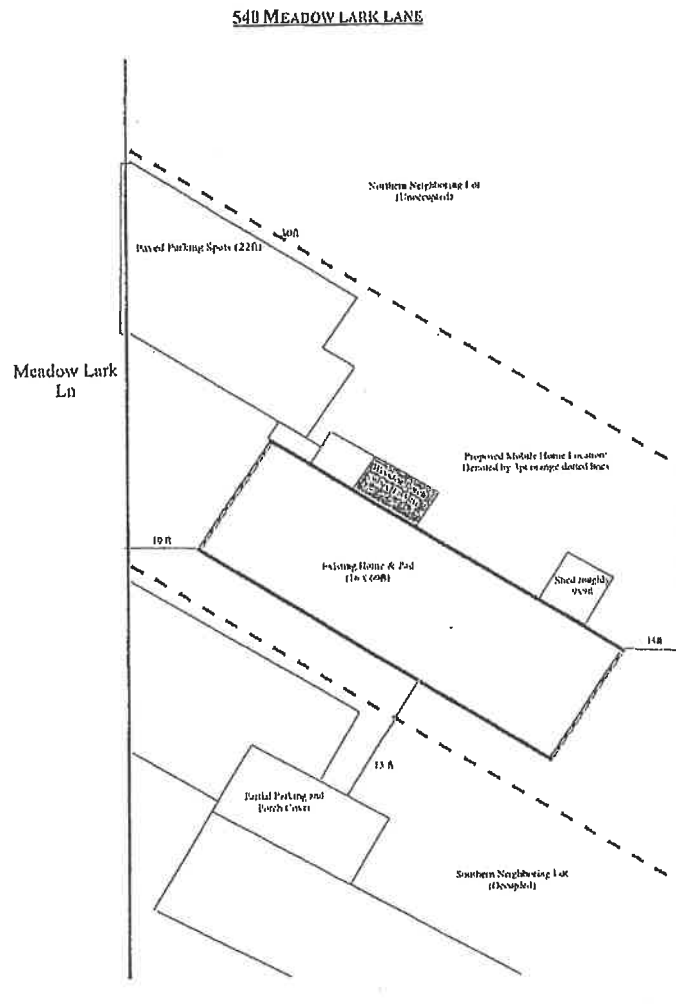
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B-3

Exhibit B - Permit Application Drawings

Completed by: A. Bhagat

10/21/2022



{34359 / 72062; 997537. }

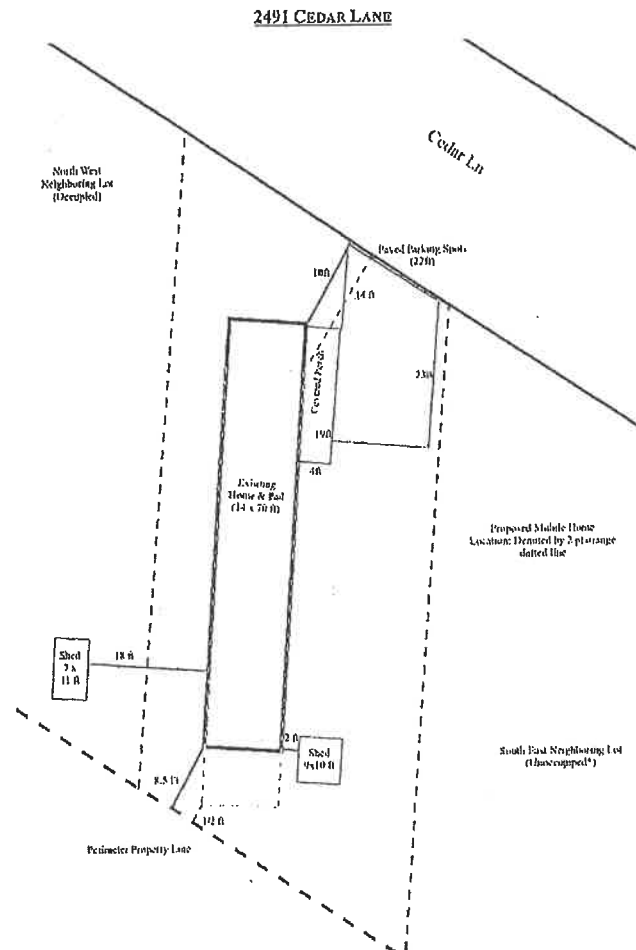
B-1

{34359 / 72062; 998320.3 }

B-3

Completed by: A. Bhagat

10/21/2022



10

{34359 / 72062; 997537. }

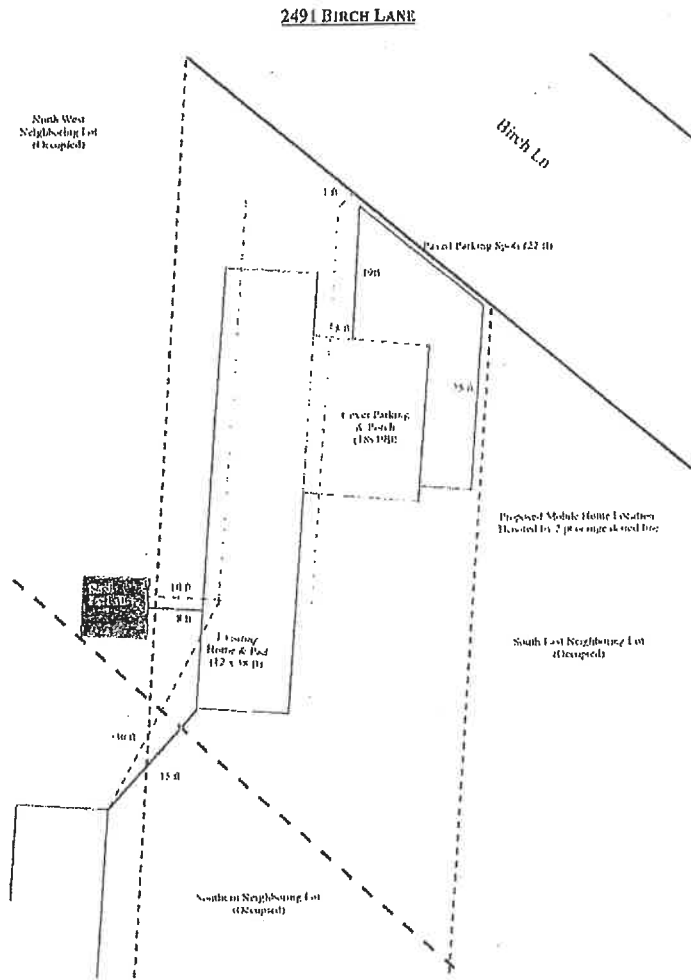
B-2

{34359 / 72062; 998320.3 }

B-3

Completed by: A. Bhagat

10/21/2022



11

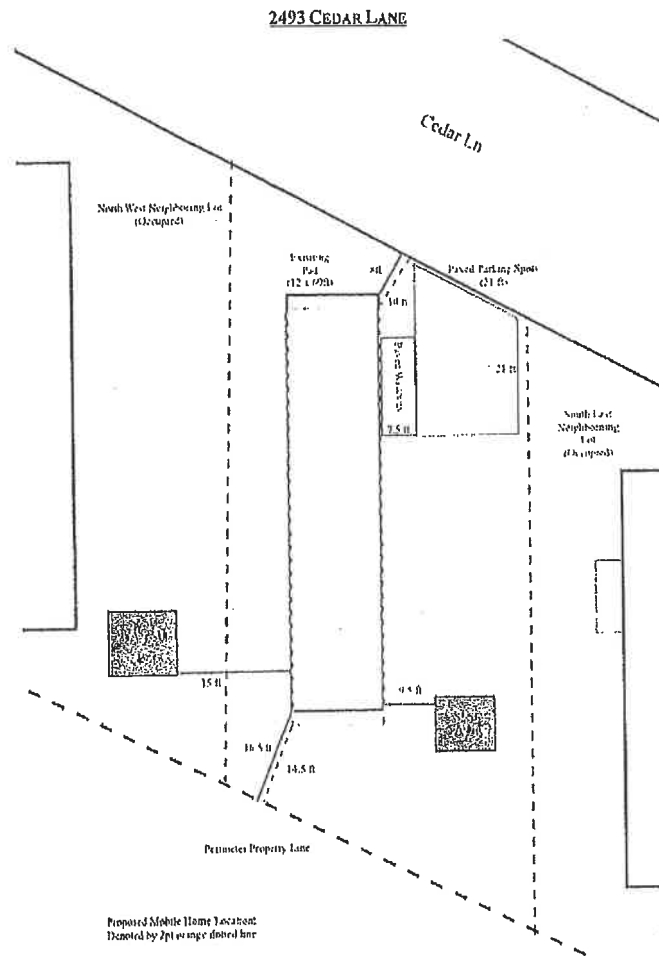
{34359 / 72062; 997537. }

B-3

{34359 / 72062; 998320.3 }

B-3

10/21/2022



13

{34359 / 72062; 997537. }

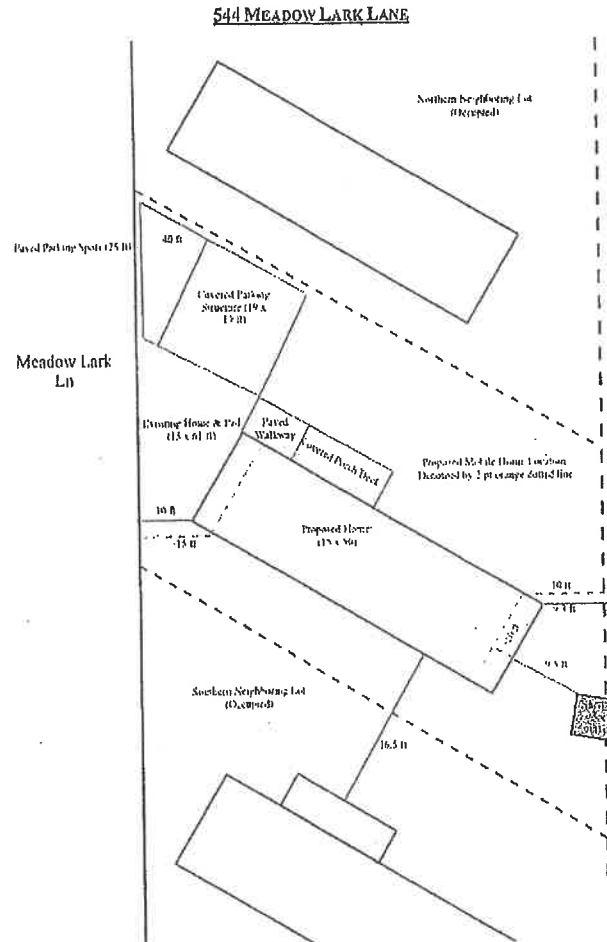
B-5

{34359 / 72062; 998320.3 }

B-3

Completed by: A. Bhagat

10/21/2022



14

{34359 / 72062; 997537. }

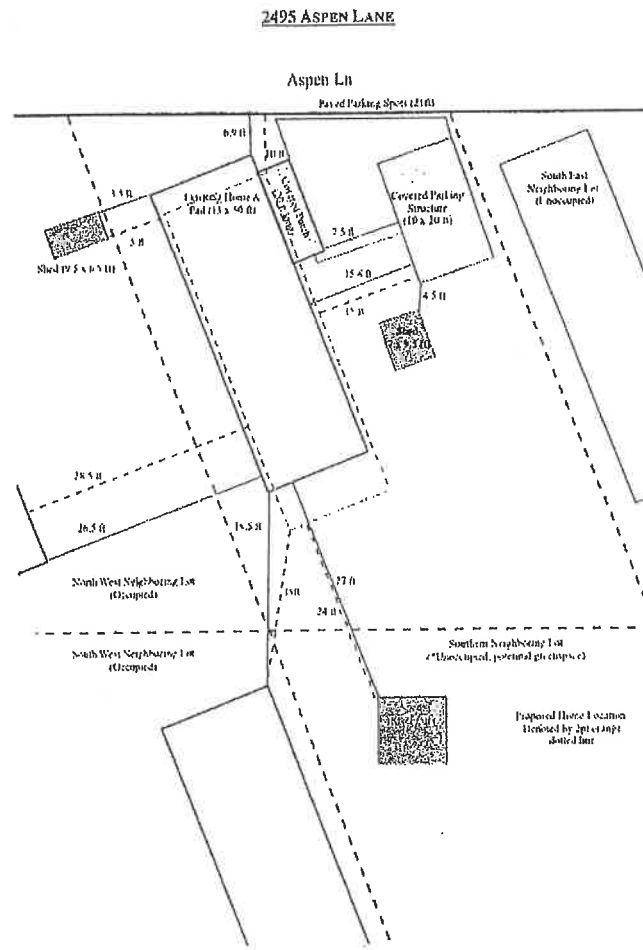
B-6

{34359 / 72062; 998320.3 }

B-3

Completed by: A. Bhagat

10/21/2022



15

{34359 / 72062; 997537. }

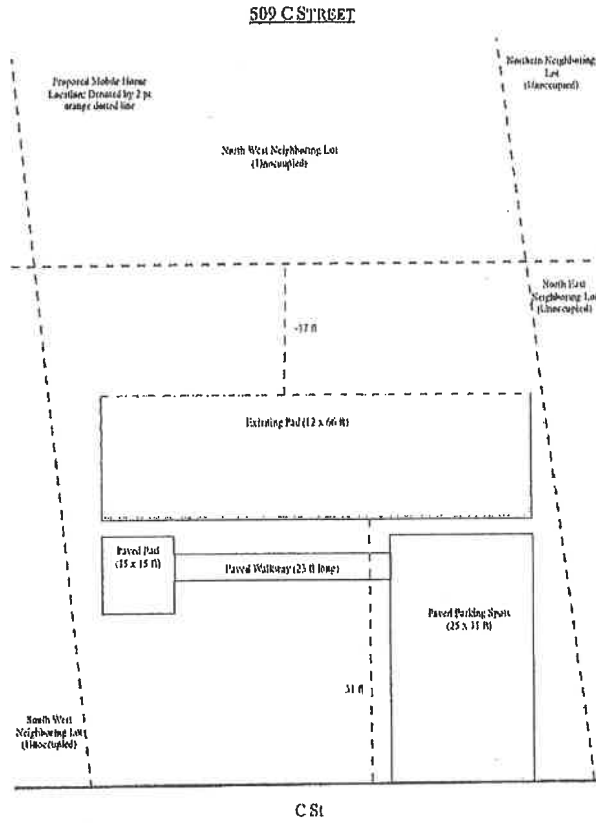
B-7

{34359 / 72062; 998320.3 }

B-3

Completed by: A. Bhagat

10/21/2022



16

{34359 / 72062; 997537. }

B-8

{34359 / 72062; 998320.3 }

B-3

Exhibit C – Home Dimensions

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
1	540 Meadowlark Lane	16X60
2	2491 Cedar Lane	14X60
3	2491 Birch Lane	12X58
4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56

{34359 / 72062; 997537. }

C-1

{34359 / 72062; 998320.3 }

B-3

Exhibit C – Administrator Decision



City of Arnold

Ron Counts, Mayor

Re: Ozark MHP, LLC Permit Applications/Appeal

Dear Ms. Jensen,

As I previously indicated, I received your appeal. While my response should not be taken as an acceptance of your interpretation that the archiving of the applications at issue is commensurate with a denial, in an effort to move this matter forward, please accept this as my response.

When an applicant believes it has been wrongly denied certain services, processes or permits, Section 10.020 (c) of the Code of Ordinances of the City of Arnold grants me the authority to review the denial and take certain actions. Those actions include ordering the service, process, or permit or conditionally ordering the service, process, or permit. Under the current circumstances, I am disinclined to grant any relief. It is the position of the City of Arnold ("City") that the compliance obligations referenced in City's July 26, 2023 letter do not infringe on your client's right to operate a legal non-conforming use, that the status as a legal non-conforming use does not excuse or shield the use from any and all regulations, and that the regulations with which you take issue are life/safety regulations.

As previously mentioned, the City desires to ensure the continued availability of a variety of housing stock within the corporate limits of the City, including your client's mobile home park. That desire, however, is not unconditional. Housing, including your client's park, must be safe and meet modern health and safety regulations. City staff remains available and willing to work with your client to ensure its continued operation.

Sincerely,

Bryan Richison
City Administrator - Arnold

Cc: Robert Sweeney, City Attorney
David Bookless, Community Development Director
Sarah Turner, Senior Planner

City Hall
2101 Jeffco Blvd.
Arnold, MO 63010
636/296-2100

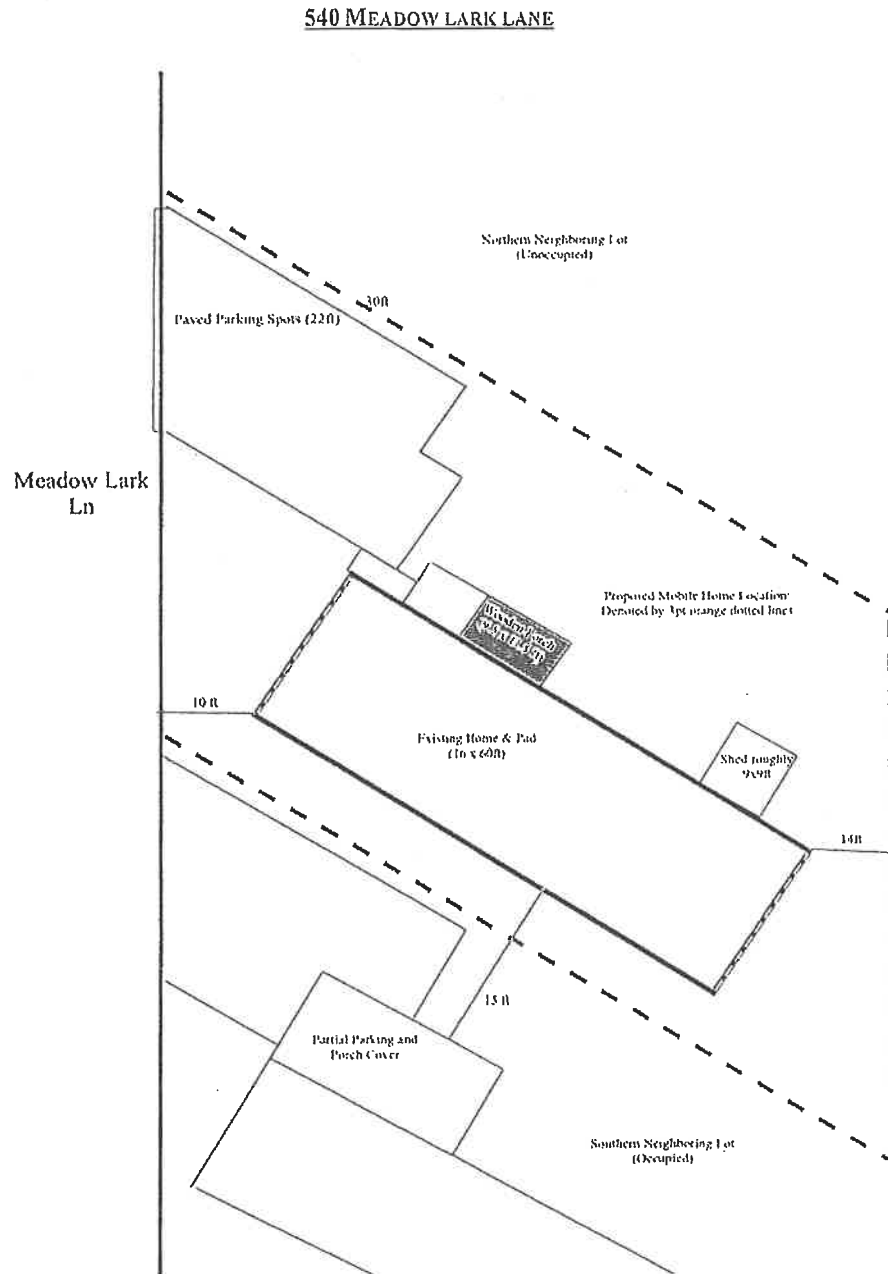
Parks and Recreation
1685 Missouri State Rd.
Arnold, MO 63010
636/282-2380

Public Works
2900 Arnold Tenbrook Rd.
Arnold, MO 63010
636/282-2388

Exhibit D - Permit Application Drawings

Completed by: A. Bhagat

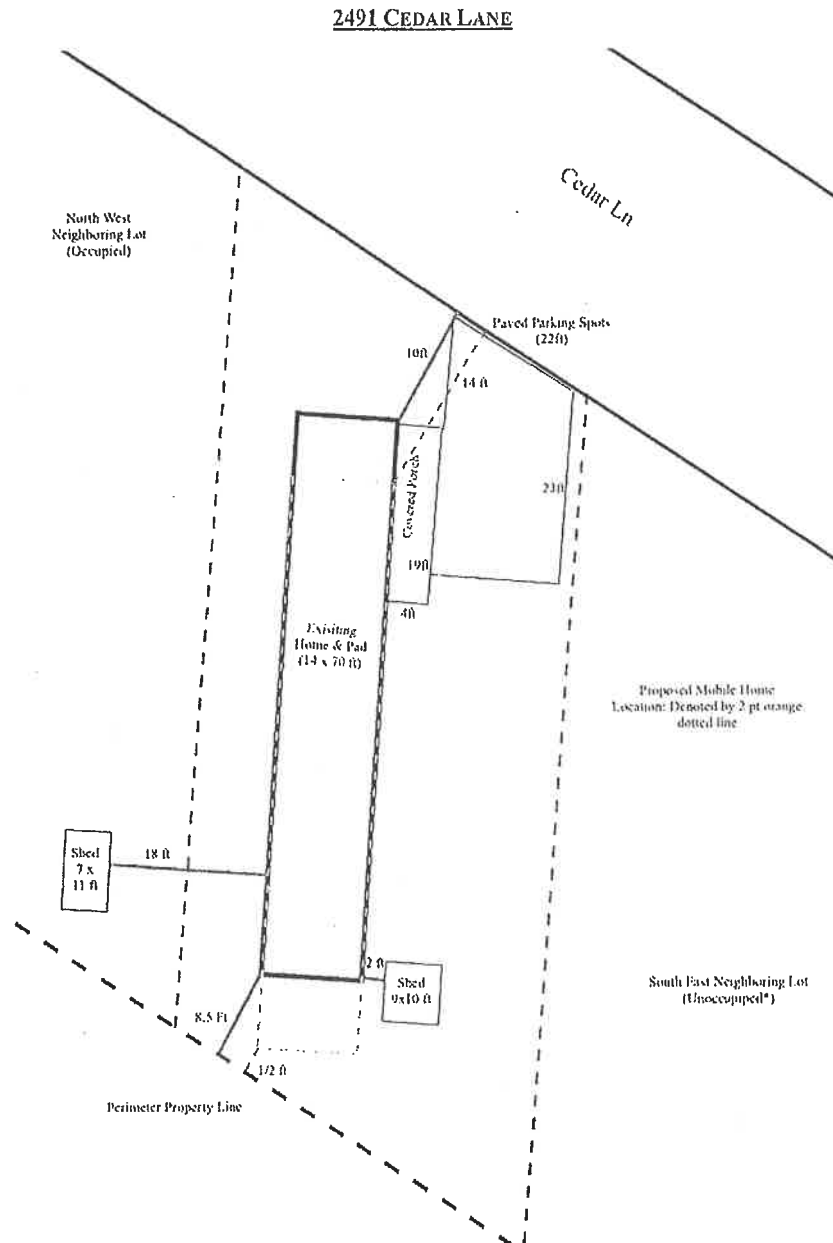
10/21/2022



9

Completed by: A. Bhagat

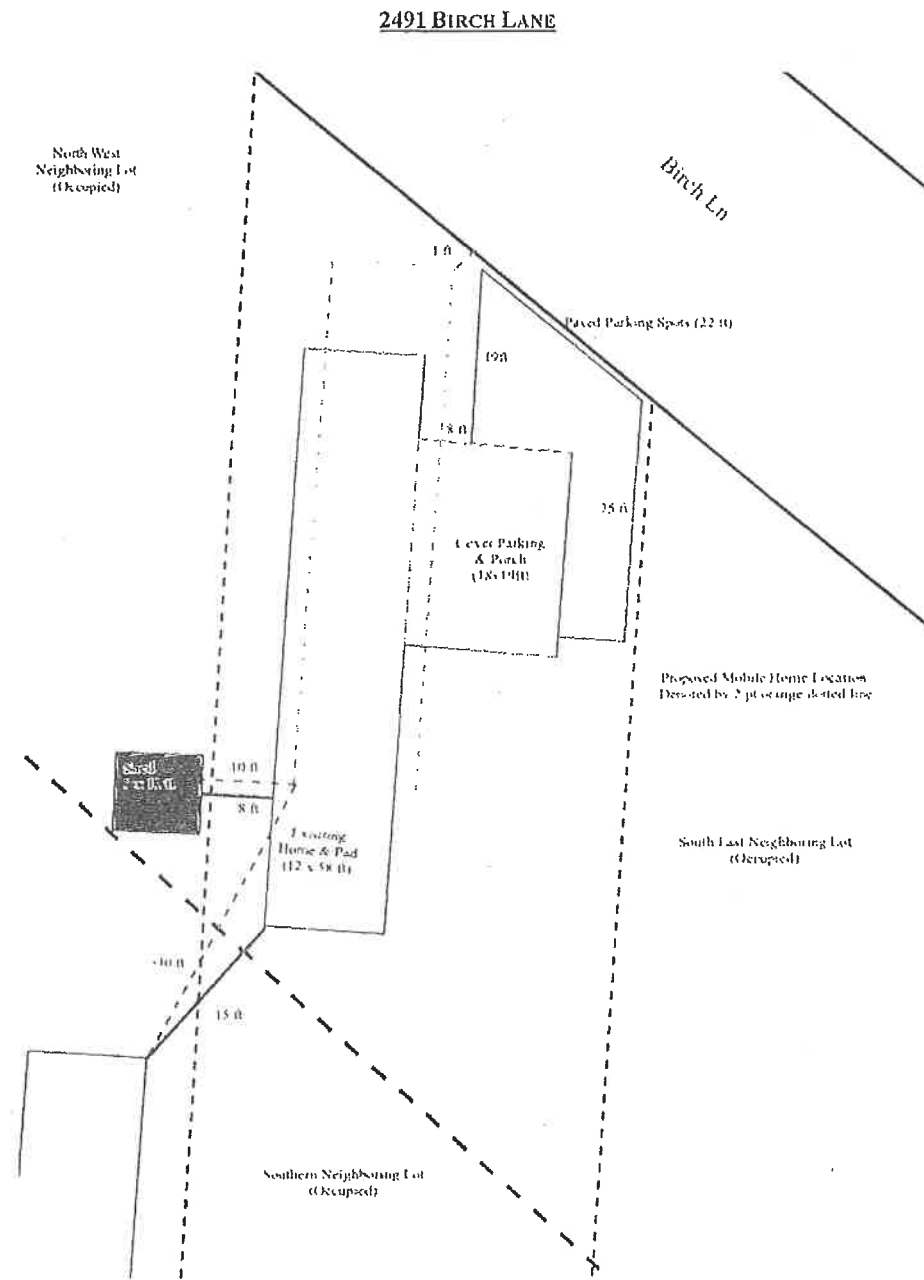
10/21/2022



10

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10/21/2022

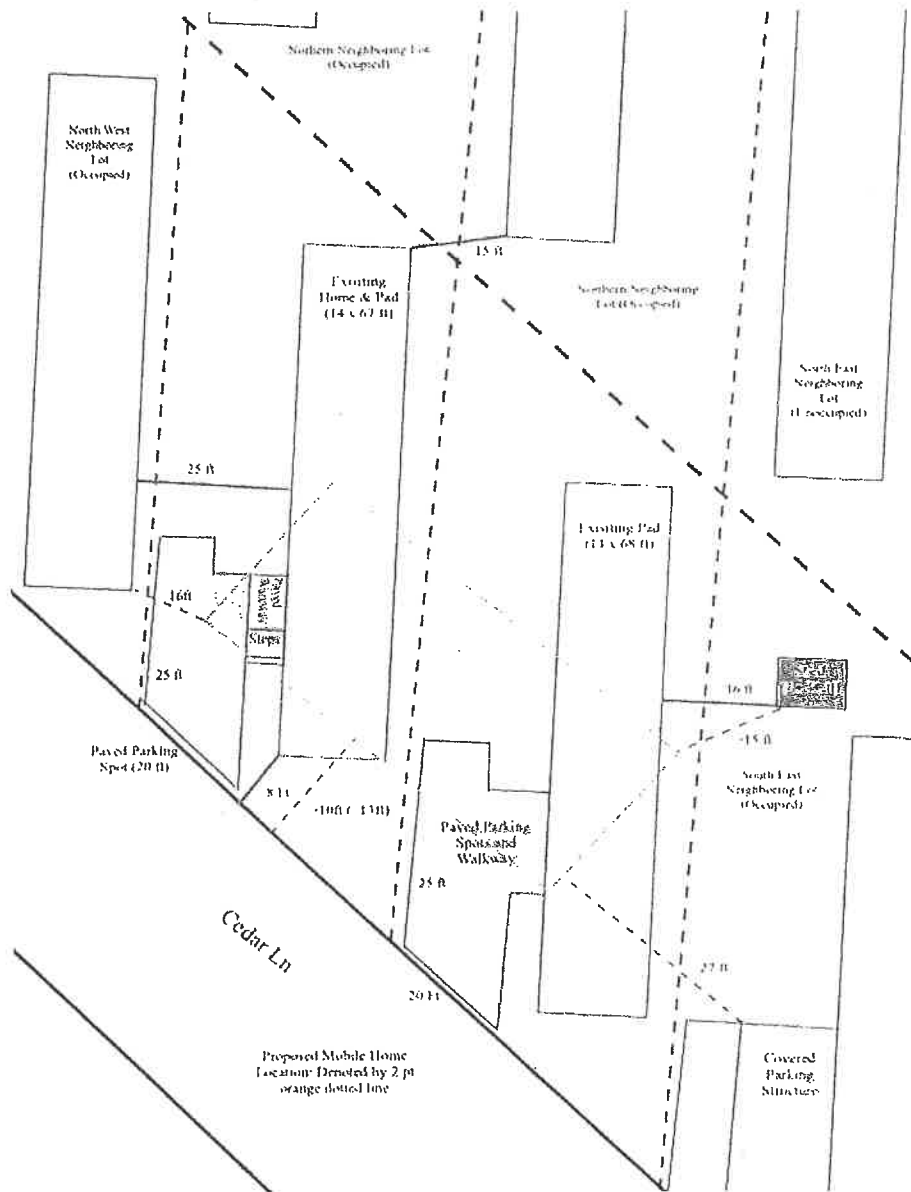


11

Completed by: A. Bhagat

10/21/2022

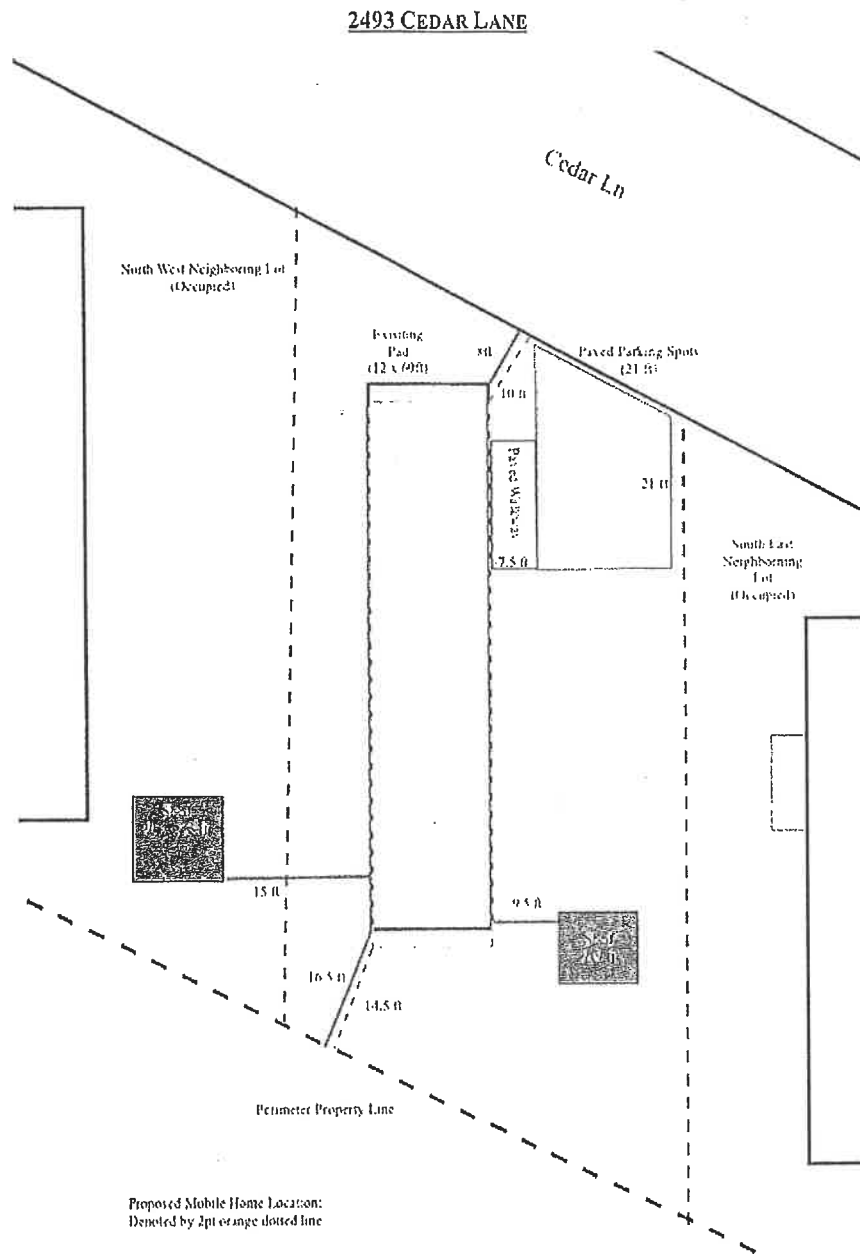
2482 CEDAR LANE



12

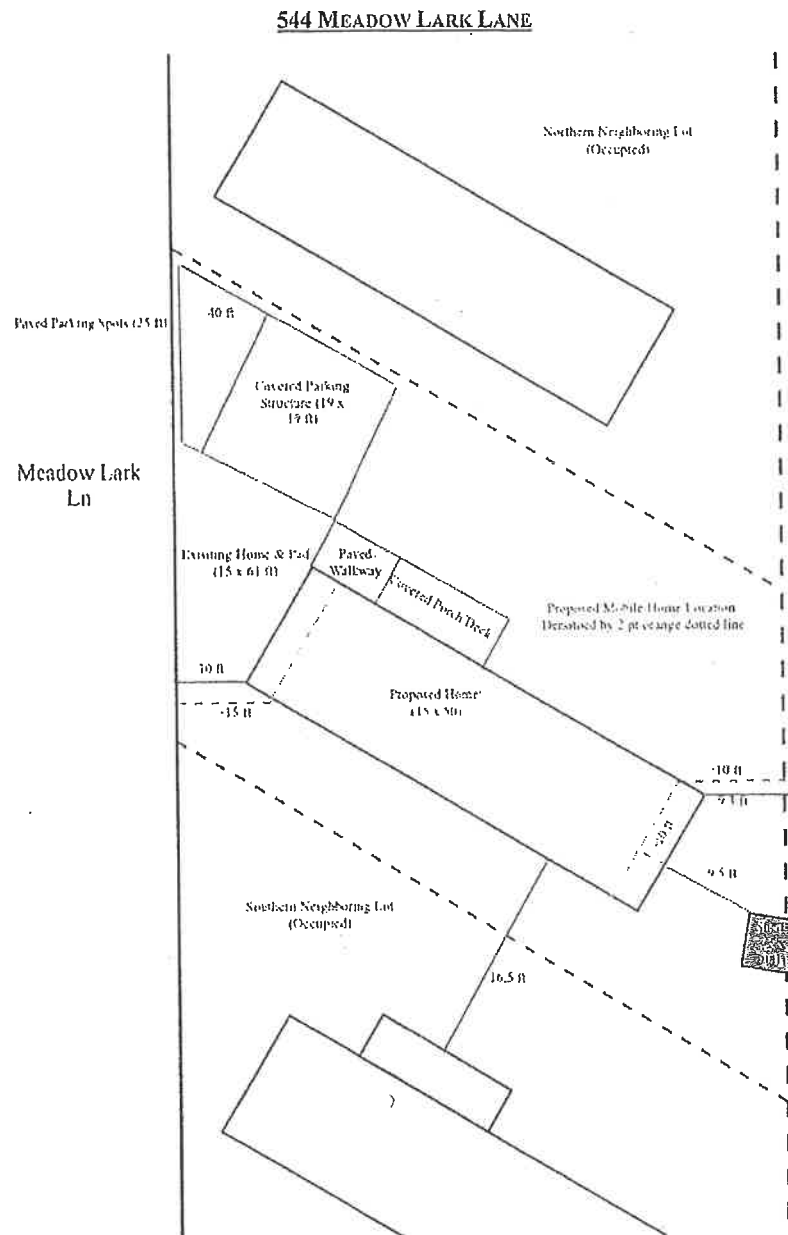
Completed by: A. Bhagat

10/21/2022



Completed by: A. Bhagat

10/21/2022

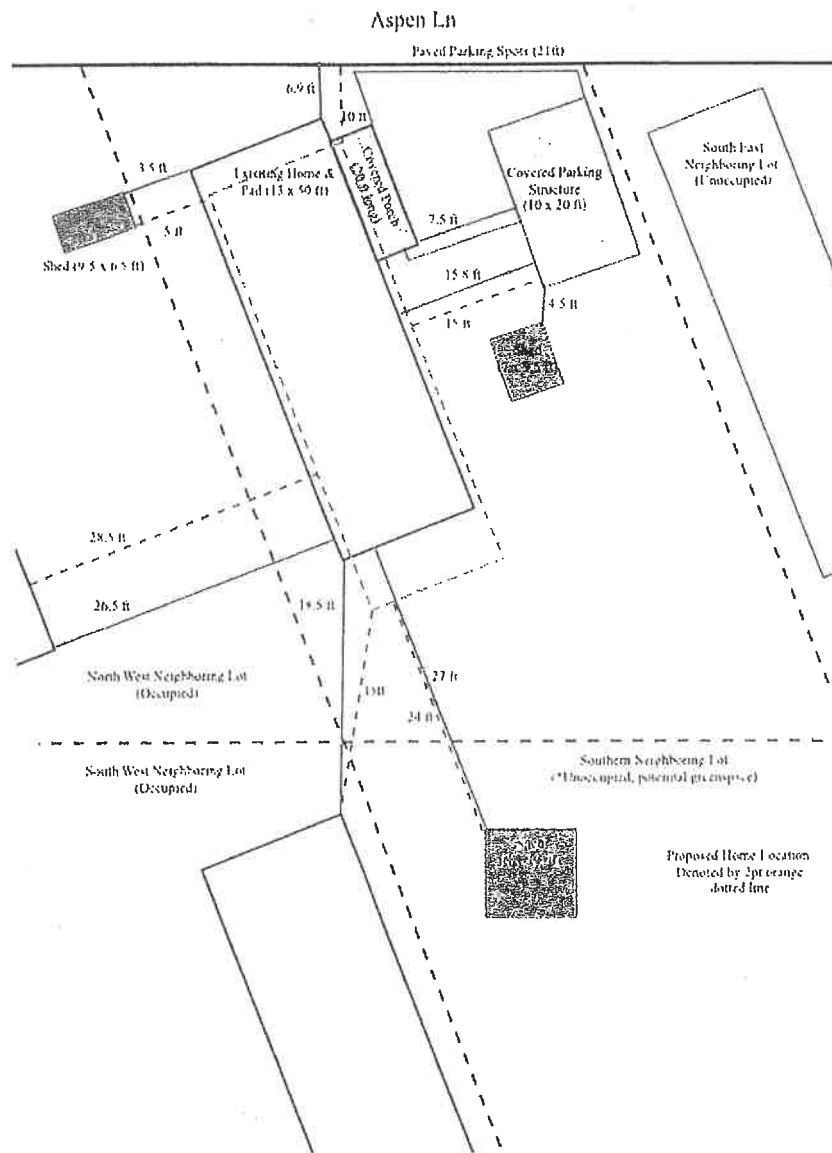


14

Completed by: A. Bhagat

10/21/2022

2495 ASPEN LANE



Completed by: A. Bhagat

10/21/2022

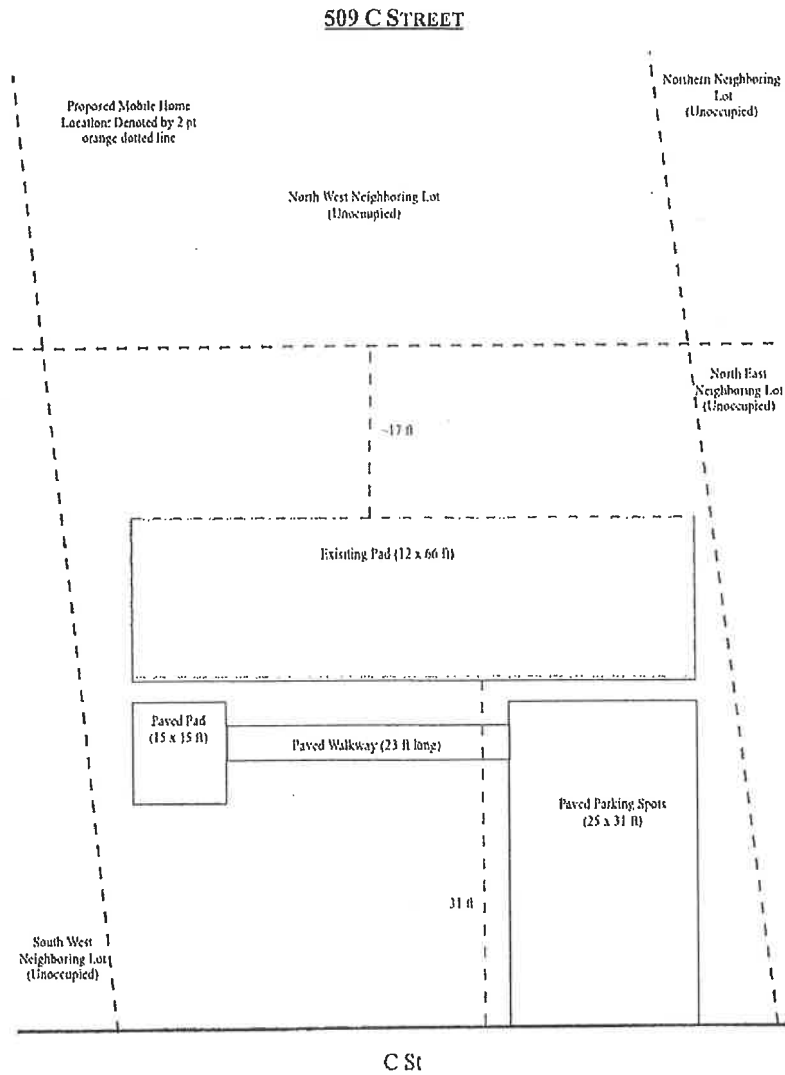
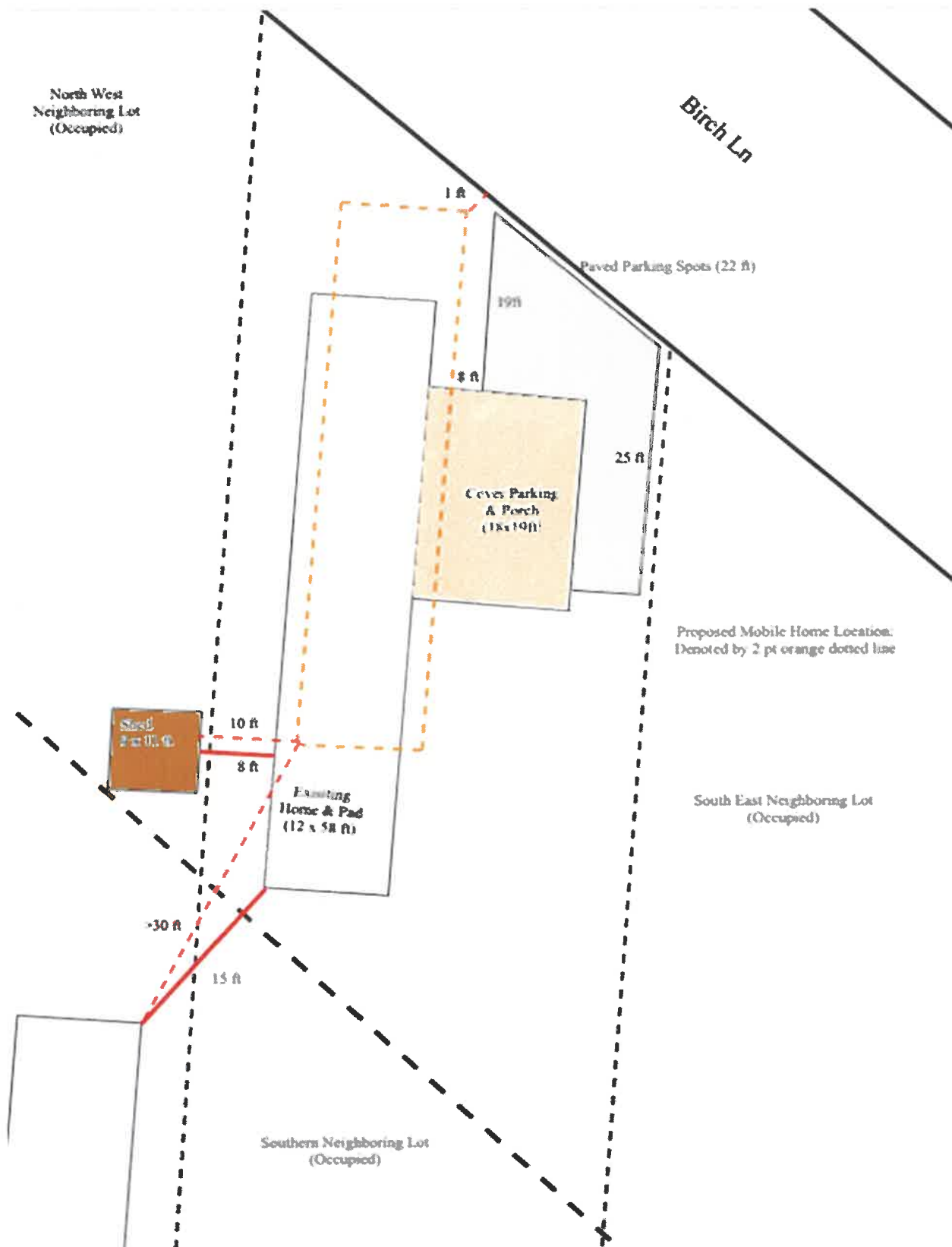


Exhibit E – Home Dimensions Table

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
1	540 Meadowlark Lane	16X60
2	2491 Cedar Lane	14X60
3	2491 Birch Lane	12X58
4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56

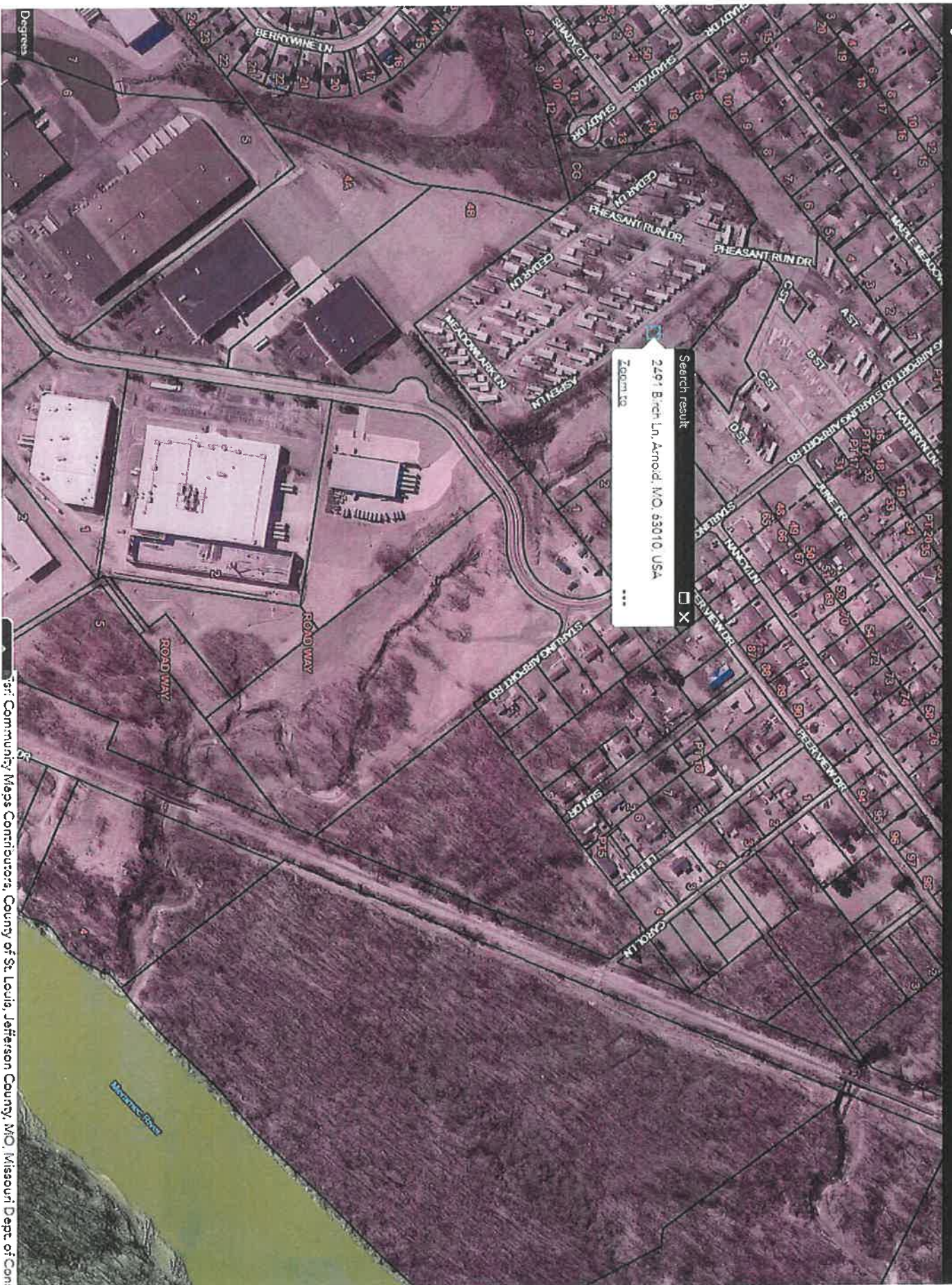
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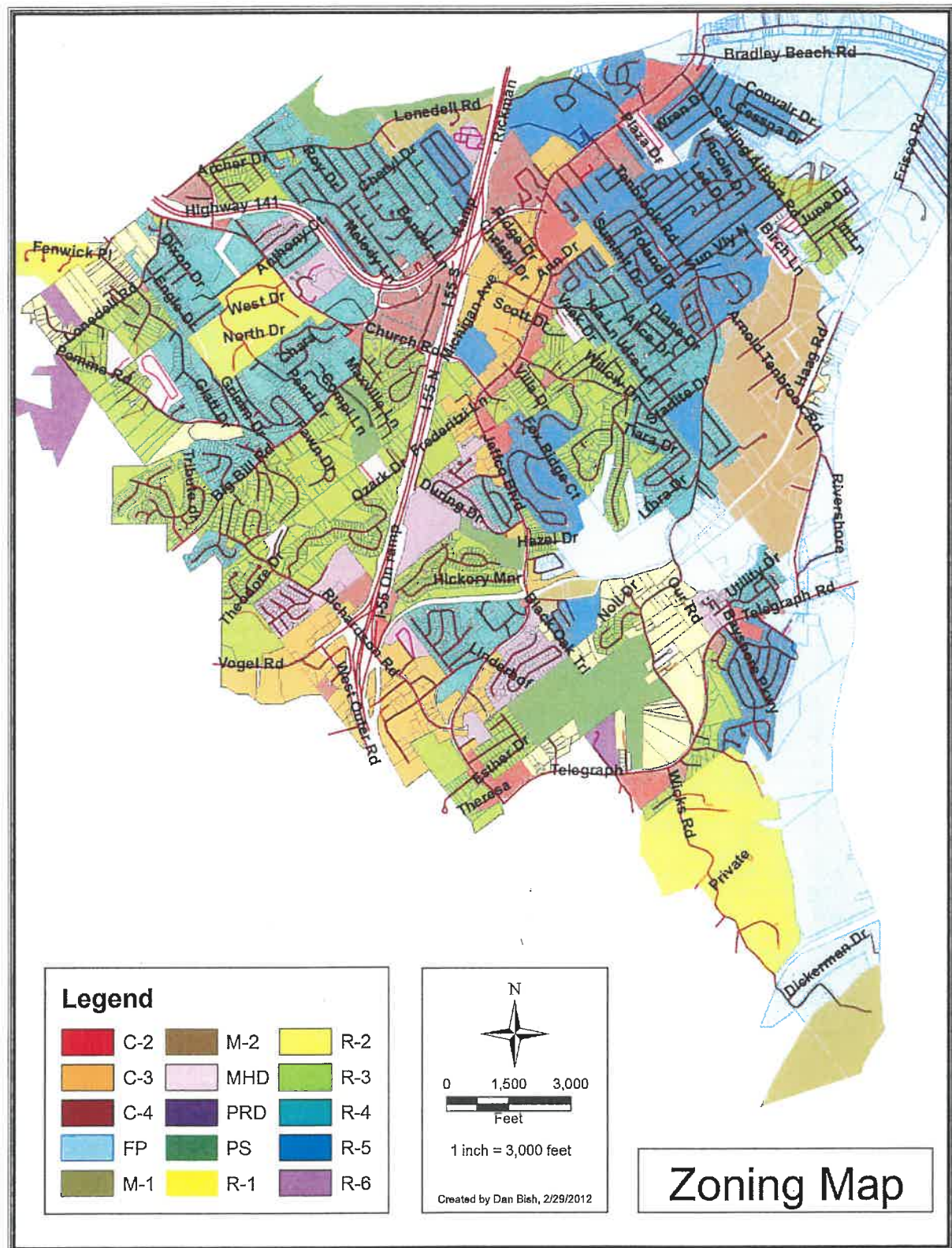
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erty Viewer

Department of the County Assessor







**ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.**

Patricia R. Jensen
pjensen@rousepc.com
816.502.4723

August 24, 2023

VIA FEDERAL EXPRESS

City of Arnold, Missouri, Board of Adjustment
c/o Mr. Jonathan Giallanzo, Chairman
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

Mr. David B. Bookless, AICP, Community Development Director, Zoning Enforcement Officer¹
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

**Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 405.240.G**

Application No., Property ID, and Address:

#23-001112 - MHU (Trailer) Placement, 01502104001030, 509 C St
#23-001111 - MHU (Trailer) Placement, 01502104001030, 2495 Aspen Ln
#23-001110 - MHU (Trailer) Placement, 01502104001030, 544 Meadowlark Ln
#23-001109 - MHU (Trailer) Placement, 01502104001030, 2493 Cedar Ln
#23-001108 - MHU (Trailer) Placement, 01502104001030, 2482 Cedar Ln
#23-001107 - MHU (Trailer) Placement, 01502104001030, 2491 Birch Ln
#23-001106 - MHU (Trailer) Placement, 01502104001030, 2491 Cedar Ln
#23-001105 - MHU (Trailer) Placement, 01502104001030, 540 Meadowlark Ln

Messrs. Giallanzo and Bookless,

I. History and Appeal Process

On July 10, 2023, Ozark MHP, LLC (“Ozark”) submitted the above mobile home placement permit applications (“Applications”) to the City of Arnold regarding homes located within the Ozark Mobile Home Park (“Park”). In response, this firm received the City’s July 26,

¹ Pursuant to City Code § 405.230 the Community Development Director shall be the Zoning Enforcement Officer, and shall enforce the provisions of City Code Chapter 405, Zoning. Pursuant to City Code § 405.240.G, appeals to the Board of Adjustment shall be taken by filing with the Zoning Enforcement Officer and with the Board a notice of appeal.

{34359 / 72062; 998320.3 }

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 2

2023, letter (“Notice”; attached hereto as Exhibit A) from the City’s Senior Planner, Sarah Turner, effectively denying the Applications by filing them as “archived” in the City’s permit portal.

The Applications remained “archived” in the portal, with no further action taken until approximately July 26, 2023, immediately following the date on which Ozark appealed the City’s decision to deny the above Applications. At this point the Applications’ statuses were changed to “In review,” but contained the City’s note that “This Project has been archived with the status “Other” on July 26, 2023....” Again, effectively denying the Applications’ requests.

Pursuant to City Code § 110.020.C, “Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services,” Ozark appealed Ms. Turner’s denials to the City Administrator, Bryan Richison. A copy of Ozark’s appeal letter is attached hereto as Exhibit B. In response, Mr. Richison, by letter dated August 10, 2023, attached hereto as Exhibit C, upheld Ms. Turner’s decisions (“Administrator Decision”).

This letter serves as an appeal to the City’s Board of Adjustment (“Board”) of (i) the Administrator Decision and (ii) Ms. Turner’s decision as documented in the Notice, for the purpose of investigating grievances, errors, and disputes, and for any other purpose(s) authorized under the City Code, Missouri law, and Federal law.

Firstly, the lack of Board appeal rules and regulations must be addressed. City Code § 405.240.C, “Board Shall Adopt Rules And Regulations,” states, “The Board shall adopt from time to time such rules and regulations as may be necessary to carry into effect the provisions of this Chapter.” However, no rules, regulations, or procedures (“Rules”) have been published. City Code § 405.240, “Board of Adjustment” includes no Board Rules. And while Mr. Giallanzo “read the Board of Adjustment procedures” at the Board’s January 11, 2023, meeting, there is no record of what procedures were read.

The lack of adopted Rules confuses the appeal process and rights. For example, the Code requires that an appellant must submit an appeal to the Board “upon forms provided for that purpose and shall show the minimum information as prescribed on the forms.” City Code § 405.240.H. However, compliance with this requirement is impossible given the lack of Rules or forms. Notwithstanding the above, Ozark’s appeal is submitted by this letter and all attached Exhibits.

This appeal is authorized under City Code § 405.240.G.² “Appeals”: “Appeals to the Board may be taken by any person aggrieved...affected by any decision of the Zoning

² Further authority for this appeal is set forth in City Code § 405.240.K.1: “The Board of Adjustment shall have the following duties... To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Enforcement Officer in the enforcement of this Chapter.”

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 3

Enforcement Officer. Such appeal shall be taken within reasonable time as prescribed by the Board by general rule, by filing with the Zoning Enforcement Officer and with the Board a notice of appeal specifying the grounds thereof.” Note that although the term “reasonable time” has not been defined, the Board previously heard an appeal made 97 days after a Zoning Enforcement Officer’s decision. Accordingly, it has been established that only an appeal made later than 97 days from a City-decision can be considered outside a reasonable appeal time.

II. Basis for Appeal

In general, the City’s archiving of the Applications functions is an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City’s reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner’s constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section III below relates to Lot-specific responses. Section IV addresses constitutional violations. The Applications should be processed promptly and approved.

III. Lot-Specific Responses; Permit Application Drawings (Attached as Exhibit D)

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use (“LNCU”). As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-

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conforming use. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960's and has done so continuously to date. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as Exhibit E, and as included in the permit applications materials submitted to the City. The current home, based on aerial imagery, is approximately 14' x 70'. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12' x 58'. The current home, based on aerial imagery, is approximately 12' x 58'. Accordingly, this is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the “street right-of-way, road easement, or street setback.” Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot

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Page 5

exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit E, the Table, the proposed home is 28' x 60'. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit E, the proposed home is 12' x 60'. The current pad, based on aerial imagery, is approximately 12' x 60'. Accordingly, this is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – "The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit E, the proposed home is 12' x 50'. The current home, based on aerial imagery, is approximately 15' x 64'. This is not an expansion violation.

See also response to #1.

7. Permit #23-001111 (2495 Aspen Lane – Ozark Park) - "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) – "The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit."

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 6

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

IV. Application-Wide Responses

a. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park's Mobile Home Use

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters—Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

As the Park's use predates the City and its Zoning Ordinance, the Park use is an LNCU, and not subject to use regulations and non-life/safety regulations enacted following its establishment.

The City's application of its Code provisions, including the claimed occupancy and inspection requirements, operates so that the Park and its lots are effectively being amortized out of existence. In Missouri, amortization of LNCUs is forbidden. *See Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. 1965) (holding unconstitutional a six-year amortization of LNCUs). This is so because amortization "would validate a taking presently unconstitutional by the simple expedient of postponing such taking for a 'reasonable' time." *Id.*

b. Regulatory Taking / Inverse Condemnation

The City attempts through regulations to disable and dismantle Ozark's Park operation. "Archiving" the Applications on the basis that Park-wide inspections are required in advance overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with manufactured homes (often referred to as mobile homes). This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a "Catch 22", preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

Manifestly, where a person is lawfully conducting a business in a certain area, he has a vested right to continue, even though such business use has become, by

Jonathan Giallanzo, David Bookless
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Page 7

reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring and then denying him a license, could destroy such vested right and put him out of business, would be absurd and unreasonable. Such is not the law.

State ex rel. Capps v. Bruns, 353 S.W.2d 829, 831 (Mo. App. 1962). The US Supreme Court comes to the same conclusion:

"The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go-and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle...."

[W]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1965). The City's regulations go too far.

c. Equal Protection; Disparate and Discriminatory Treatment – Undue Burden -- Targeted and Selective Code Application

Mobile home parks provide affordable housing. But the City has threatened to "bulldoze" the Park by communicating as much to certain residents. This type of conduct, along with the City's selective enforcement of its Code, violates Ozark's rights.

On information and belief, other similarly situated property owners in the City – single-family homes, multi-family homes, condominiums – have not been subject to the same regulatory treatment as Ozark. This violates the Equal Protection and Due Process clauses of the U.S. Constitution. It is also likely that the City's treatment of Ozark will unduly burden protected classes of citizens including seniors and non-white persons.

d. Occupancy Permit and Inspection Requirement Warrantless and Invalid Warrant Search in Violation of Fourth Amendment

The City's Occupancy Permit and inspection requirements under section 520.010 1) do not apply under City Code to Ozark, 2) even assuming applicability violate LNCU rights, 3) overreach by forcing Park wide inspections and forcing individual mobile home owners to give up privacy rights, 4) violate the Fourth Amendment prohibiting search and seizure, 5) are impermissibly vague and confusing regulations, 6) are unevenly applied.

Jonathan Giallanzo, David Bookless
August 24, 2023
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e. Unconstitutional Conditions

The City's Code provisions as applied to the Park collectively infringe on and burden the basic rights of the Park's owner. The City "may not deny a benefit to a person on a basis that infringes a constitutionally protected right, even if the person has no entitlement to that benefit." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006). The Supreme Court has explained that the "unconstitutional conditions" doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up."

Thompson v. City of Oakwood, Ohio, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

For all of the reasons set forth here, Ozark urges the Board to approve the eight placement permit Applications and provide such other relief as it proper.

Based upon schedules, we request that the hearing related to this appeal be scheduled for the week of October 2, 2023.

Very truly yours,



Patricia R. Jensen

Enclosures

cc: Robert Sweeney, City Attorney (rks@robertsweeneylaw.com w/ encl.)

Exhibit A – City's Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

The City is in receipt of the above-referenced applications. Let this letter serve as formal notice that the eight (8) Manufactured Home Unit (MHU) Placement Permit request applications will be archived due to the Ozark Manufactured Home Park (Ozark MHP) not holding a valid City Occupancy Permit.

For your convenience, we have completed cursory reviews of the plans for compliance with the City of Arnold's Zoning Ordinance. For comments on each individual permit, please refer to the following:

- Permit #23-001105 (540 Meadowlark Lane) – The provided site plan satisfies the provisions and Intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.
- Permit #23-001106 (2491 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001107 (2491 Birch Lane) – The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001108 (2482 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).

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2101 Jeffco Blvd.
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2900 Arnold Tenbrook Rd.
Arnold, MO 63010
636/282-2386



City of Arnold

Ron Counts, Mayor

- Permit #23-001109 (2493 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001110 (544 Meadowlark Lane) – The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001111 (2495 Aspen Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001112 (509 C Street) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.

The comments above pertain solely to Staff's preliminary compliance review with the Zoning Ordinance and relevant sections therein, including but not limited to §405.070(G)(1), *Non-Conforming Manufactured Home Parks Within "MHD" Manufactured Home Districts*. To bring the parks into conformance with the "MHD" Manufactured Home District, please refer to the options discussed during the April 6, 2023 meeting with your legal counsel and City Staff.

Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sarah Turner", is written over a horizontal line.

Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

City Hall
2101 Jeffco Blvd.
Arnold, MO 63010
636/296-2100

Parks and Recreation
1695 Missouri State Rd.
Arnold, MO 63010
636/282-2380

Public Works
2900 Arnold Tenbrook Rd.
Arnold, MO 63010
636/282-2386

Exhibit B – Ozark Appeal to City Administrator

ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.

PATRICIA R. JENSEN
pjensen@rousepc.com
816.502.4723

August 3, 2023

VIA FED EX & EMAIL (brichison@arnoldmo.org)

Bryan Richison, City Administrator
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 110.020.C

Dear Mr. Richison:

This firm received the City of Arnold's July 26, 2023, letter ("Notice") regarding the above mobile home placement permit applications submitted by Ozark MHP, LLC ("Ozark"). A copy of that Notice is attached here as Exhibit A. Please note, notwithstanding the parties to whom the City addressed the Notice, the Lots described in the eight applications are located within the Ozark Mobile Home Park (the "Park") and owned solely by Ozark.

Pursuant to City Code § 110.020.C, "Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services," this letter serves as an appeal of the archiving by Sarah Turner, Senior City Planner, of the eight permit applications ("Applications") for the purpose of investigating the Notice errors and disputes.

In general, the City's archiving of the Applications functions as an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City's reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner's constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section I below relates to Lot-specific responses. Section II addresses constitutional violations. The Applications should be processed promptly and approved.

{34359 / 72062; 997537.1 }

Attorneys at Law || 4510 Belleview Avenue, Suite 300 || Kansas City, MO 64111 || rousepc.com

{34359 / 72062; 998320.3 }

Bryan Richison
August 3, 2023
Page 2

I. Lot-Specific Responses; Permit Application Drawings Attached as Exhibit B

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use. As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-conforming use. The Park was established in the 1960's. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as **Exhibit C**, and as included in the permit applications materials submitted to the City. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size

{34359 / 72062; 997537. }

{34359 / 72062; 998320.3 }

Bryan Richison
August 3, 2023
Page 3

of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12' x 58'. This is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the "street right-of-way, road easement, or street setback." Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit C, the Table, the proposed home is 28' x 60'. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit C, the proposed home is 12' x 60'. This is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – "The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted Exhibit C, the proposed home is 12' x 50'. This is not an expansion violation.

See also response to #1.

{34359 / 72062; 997537. }

Bryan Richison
August 3, 2023
Page 4

7. Permit #23-001111 (2495 Aspen Lane – Ozark Park) - “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Table C, the proposed home is 12’ x 56’. This is not an expansion violation.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) - “The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

II. Application-Wide Responses

A. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park’s Mobile Home Use

The City was incorporated in 1972. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960’s and has done so continuously to date.

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters–Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

As the Park’s use predates the City and its Zoning Ordinance, the Park use is an LNCU, and not subject to use regulations and non-life/safety regulations enacted following its establishment.

The City’s application of its Code provisions, including the claimed occupancy and inspection requirements, operates so that the Park and its lots are effectively being amortized out

{34359 / 72062; 997537. }

Bryan Richison
August 3, 2023
Page 5

of existence. In Missouri, amortization of LNCUs is forbidden. *See Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. 1965) (holding unconstitutional a six-year amortization of LNCUs). This is so because amortization “would validate a taking presently unconstitutional by the simple expedient of postponing such taking for a ‘reasonable’ time.” *Id.*

B. Regulatory Taking / Inverse Condemnation

The City attempts through regulations to disable and dismantle Ozark’s Park operation. “Archiving” the Applications on the basis that inspections Park wide are first required overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with mobile homes. This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a “Catch 22”, preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

Manifestly, where a person is lawfully conducting a business in a certain area, he has a vested right to continue, even though such business use has become, by reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring and then denying him a license, could destroy such vested right and put him out of business, would be absurd and unreasonable. Such is not the law.

State ex rel. Capps v. Bruns, 353 S.W.2d 829, 831 (Mo. App. 1962). The US Supreme Court comes to the same conclusion:

“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go-and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle....

[W]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1965). The City’s regulations go too far.

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Bryan Richison
August 3, 2023
Page 6

C. Equal Protection; Disparate and Discriminatory Treatment – Undue Burden -- Targeted and Selective Code Application

Mobile home parks provide affordable housing. But the City has threatened to “bulldoze” the Park by communicating as much to certain residents. This type of conduct, along with the City’s selective enforcement of its Code, violates Ozark’s rights.

On information and belief, other similarly situated property owners in the City – single-family homes, multi-family homes, condominiums – have not been subject to the same regulatory treatment as Ozark. This violates the Equal Protection and Due Process clauses of the U.S. Constitution. It is also likely that the City’s treatment of Ozark will unduly burden protected classes of citizens including seniors and non-white persons.

D. Occupancy Permit and Inspection Requirement Warrantless and Invalid Warrant Search in Violation of Fourth Amendment

The City’s Occupancy Permit and inspection requirements under section 520.010 1) do not apply under City Code to Ozark, 2) even assuming applicability violate LNCU rights, 3) overreach by forcing Park wide inspections and forcing individual mobile homeowners to give up privacy rights, 4) violate the Fourth Amendment prohibiting search and seizure, 5) are impermissibly vague and confusing regulations, 6) are unevenly applied.

E. Unconstitutional Conditions

The City’s Code provisions as applied to the Park collectively infringe on and burden the basic rights of the Park’s owner. The City “may not deny a benefit to a person on a basis that **infringes a constitutionally protected right**, even if the person has no entitlement to that benefit.” *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006). The Supreme Court has explained that the “unconstitutional conditions” doctrine “vindicates the Constitution’s enumerated rights by **preventing the government from coercing people into giving them up.**”

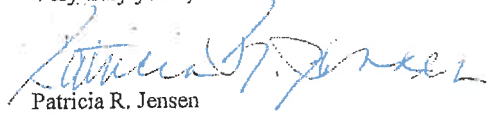
Thompson v. City of Oakwood, Ohio, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

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Bryan Richison
August 3, 2023
Page 7

For all of the reasons set forth here, Ozark urges the City to process and approve the eight placement permit Applications.

Very truly yours,



Patricia R. Jensen

PRJ:nrh
enclosures

cc: Sarah Turner, Senior Planner (sturner@arnoldmo.org)
David Bookless, Community Development Director (dbookless@arnoldmo.org)
Robert Sweeney, City Attorney (rks@robertsweeneylaw.com)

{34359 / 72062; 997537. }

Exhibit A – City's Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

The City is in receipt of the above-referenced applications. Let this letter serve as formal notice that the eight (8) Manufactured Home Unit (MHU) Placement Permit request applications will be archived due to the Ozark Manufactured Home Park (Ozark MHP) not holding a valid City Occupancy Permit.

For your convenience, we have completed cursory reviews of the plans for compliance with the City of Arnold's Zoning Ordinance. For comments on each individual permit, please refer to the following:

- Permit #23-001105 (540 Meadowlark Lane) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.
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{34359 / 72062; 997537. }

A-1

{34359 / 72062; 998320.3 }

B-3



City of Arnold

Ron Counts, Mayor

- Permit #23-001109 (2493 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
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Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Sarah Turner".

Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

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Arnold, MO 63010
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A-2

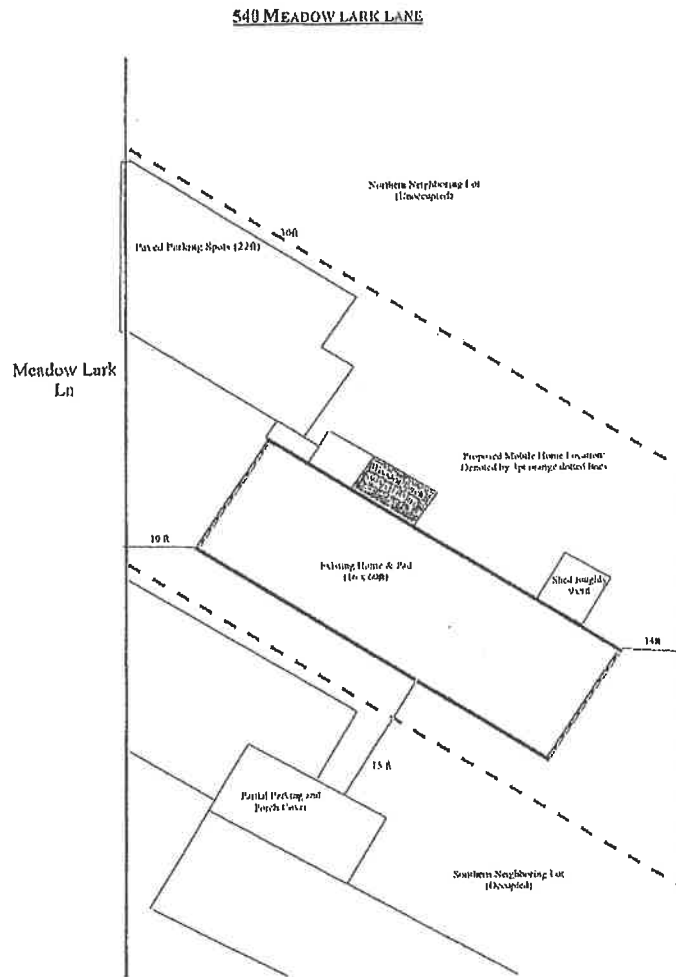
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B-3

Exhibit B - Permit Application Drawings

Completed by: A. Bhagat

10/21/2022



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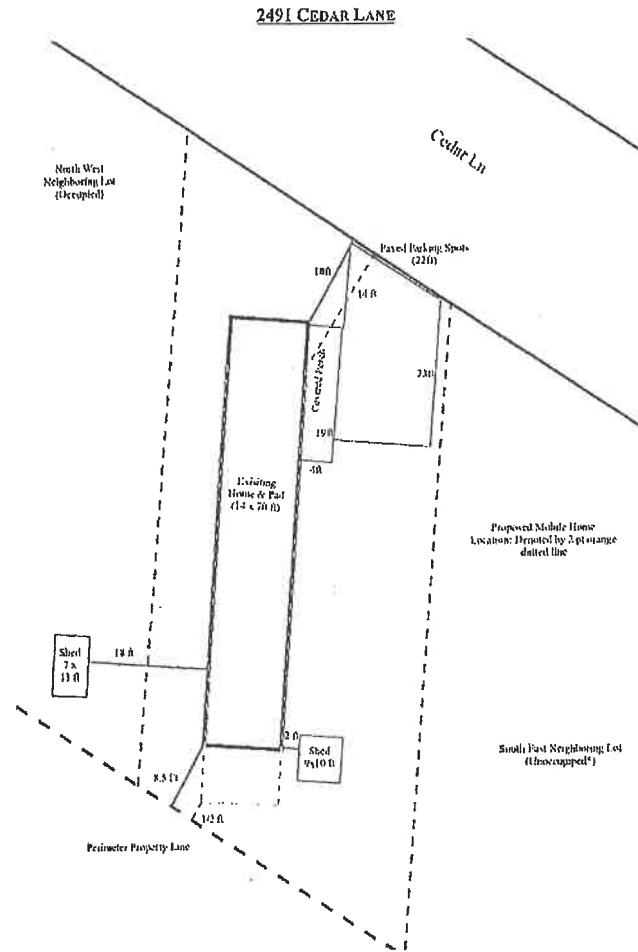
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Completed by: A. Bhagat

10/21/2022



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B-2

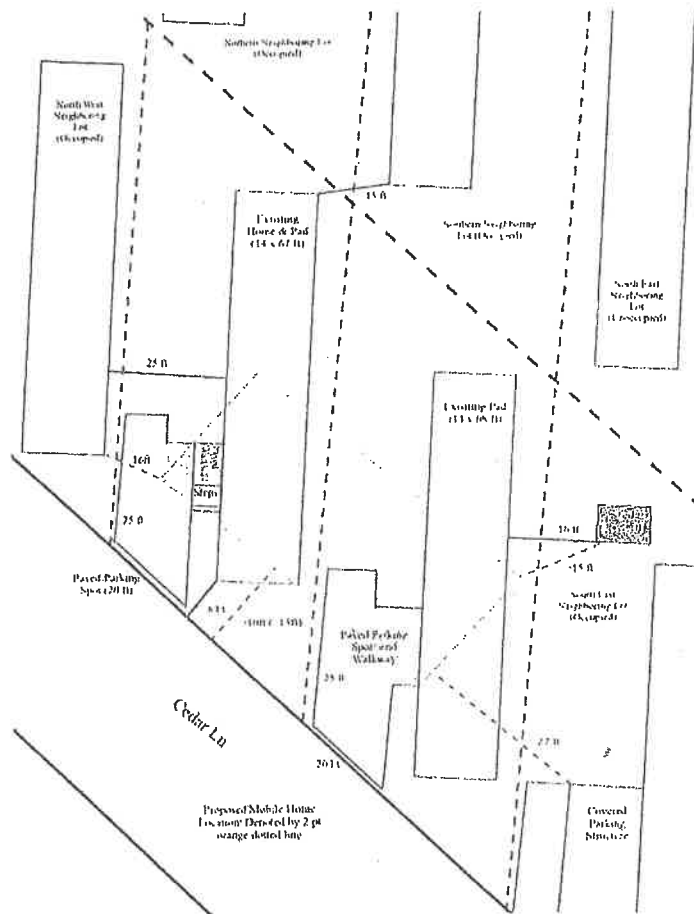
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Completed by: A. Bhagat

10/21/2022

2482 CEDAR LANE



12

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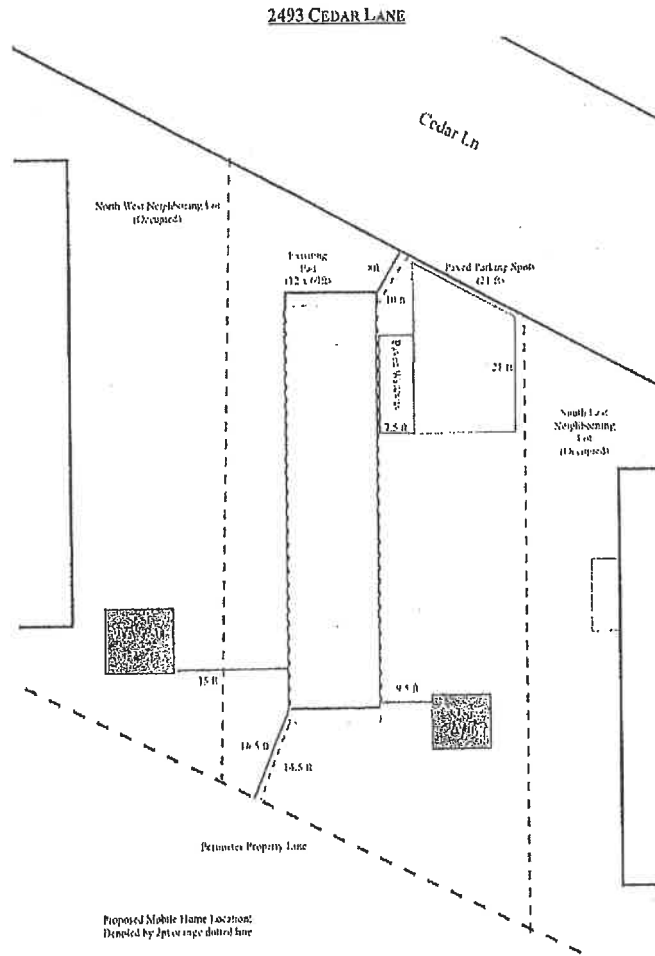
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Completed by: A. Bhagat

10/21/2022



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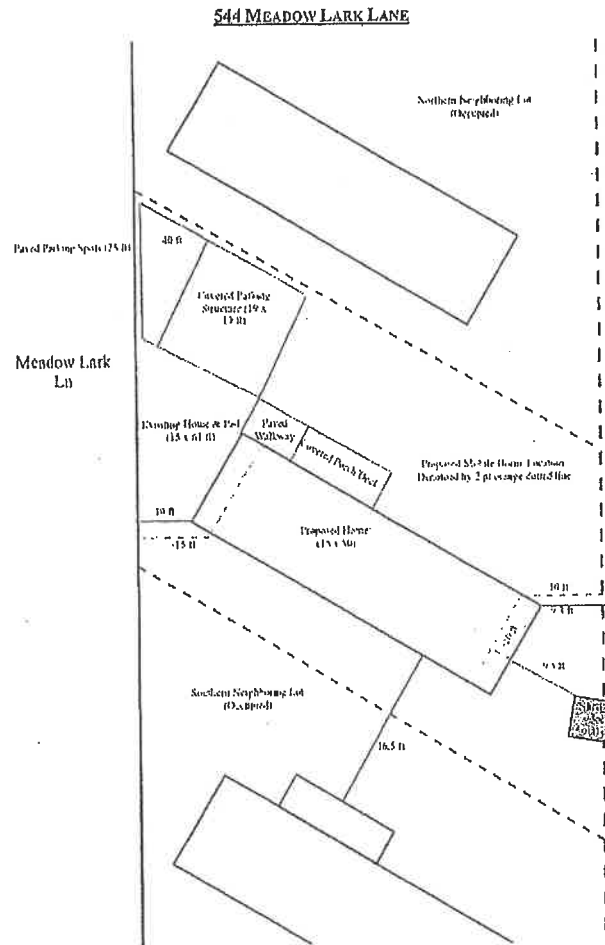
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Completed by: A. Bhagat

10/21/2022



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B-6

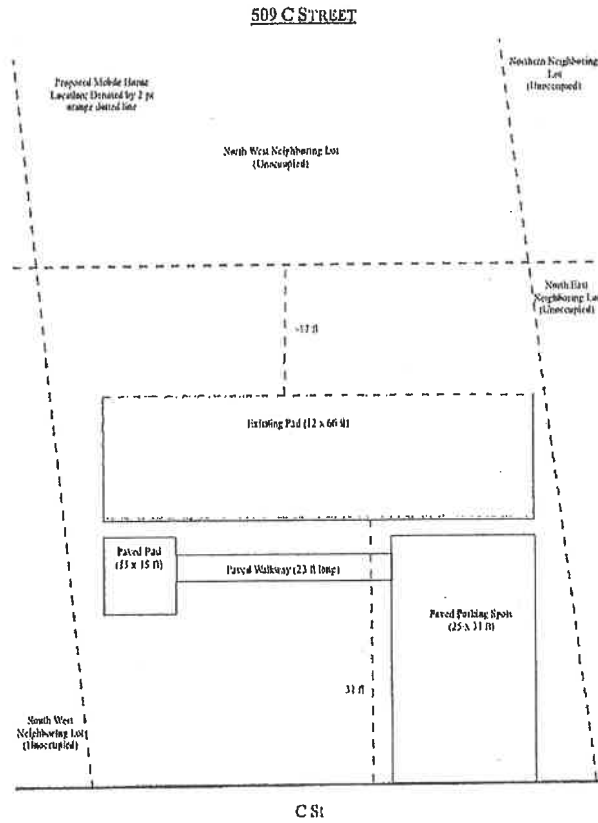
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B-3

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Completed by: A. Bhagat

10/21/2022



16

{34359 / 72062; 997537. }

B-8

{34359 / 72062; 998320.3 }

B-3

Exhibit C – Home Dimensions

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
1	540 Meadowlark Lane	16X60
2	2491 Cedar Lane	14X60
3	2491 Birch Lane	12X58
4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56

{34359 / 72062; 997537. }

C-1

{34359 / 72062; 998320.3 }

B-3

Exhibit C – Administrator Decision



City of Arnold

Ron Counts, Mayor

Re: Ozark MHP, LLC Permit Applications/Appeal

Dear Ms. Jensen,

As I previously indicated, I received your appeal. While my response should not be taken as an acceptance of your interpretation that the archiving of the applications at issue is commensurate with a denial, in an effort to move this matter forward, please accept this as my response.

When an applicant believes it has been wrongly denied certain services, processes or permits, Section 110.020 (c) of the Code of Ordinances of the City of Arnold grants me the authority to review the denial and take certain actions. Those actions include ordering the service, process, or permit or conditionally ordering the service, process, or permit. Under the current circumstances, I am disinclined to grant any relief. It is the position of the City of Arnold ("City") that the compliance obligations referenced in City's July 26, 2023 letter do not infringe on your client's right to operate a legal non-conforming use, that the status as a legal non-conforming use does not excuse or shield the use from any and all regulations, and that the regulations with which you take issue are life/safety regulations.

As previously mentioned, the City desires to ensure the continued availability of a variety of housing stock within the corporate limits of the City, including your client's mobile home park. That desire, however, is not unconditional. Housing, including your client's park, must be safe and meet modern health and safety regulations. City staff remains available and willing to work with your client to ensure its continued operation.

Sincerely,

Bryan Richison
City Administrator - Arnold

Cc: Robert Sweeney, City Attorney
David Bookless, Community Development Director
Sarah Turner, Senior Planner

City Hall
2101 Jellico Blvd.
Arnold, MO 63010
636/296-2100

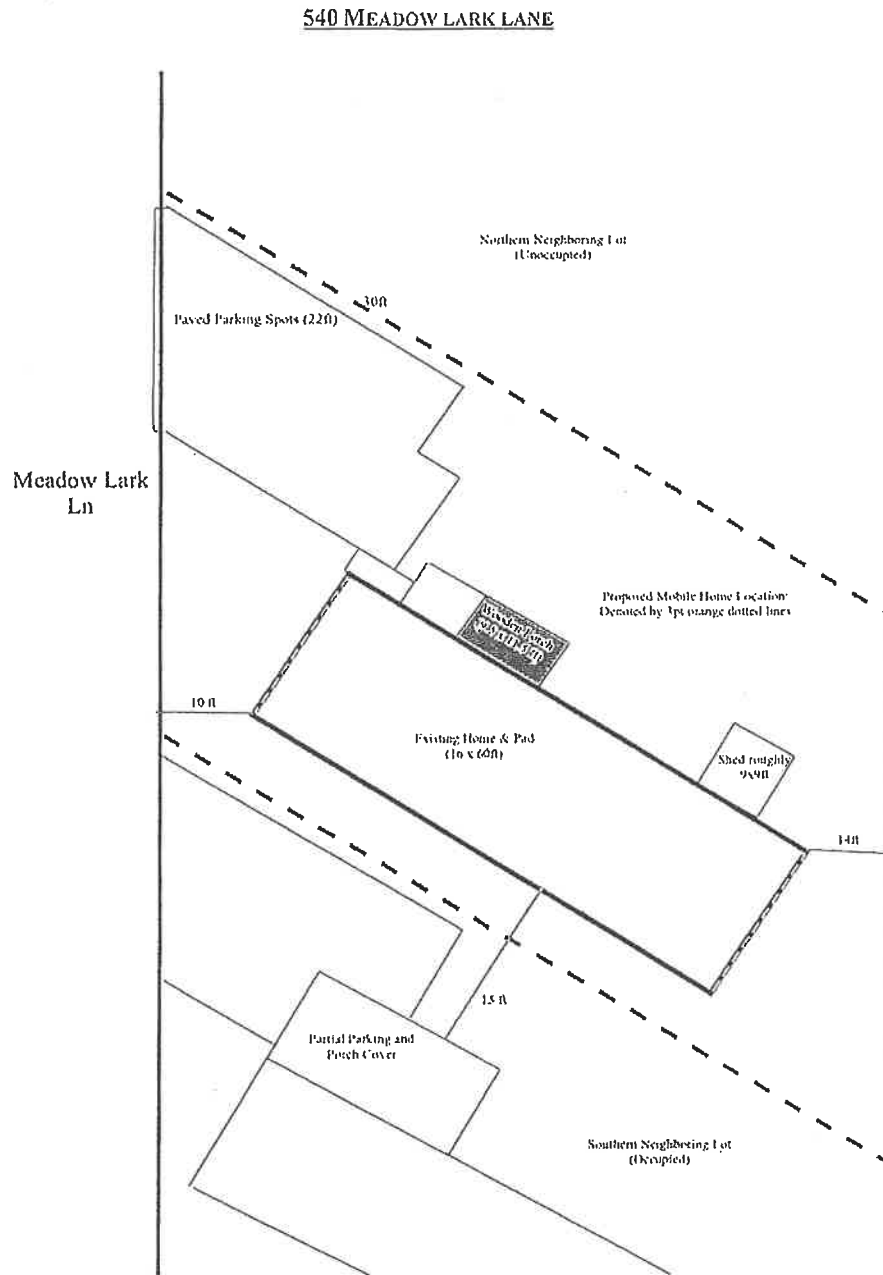
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Exhibit D - Permit Application Drawings

Completed by: A. Bhagat

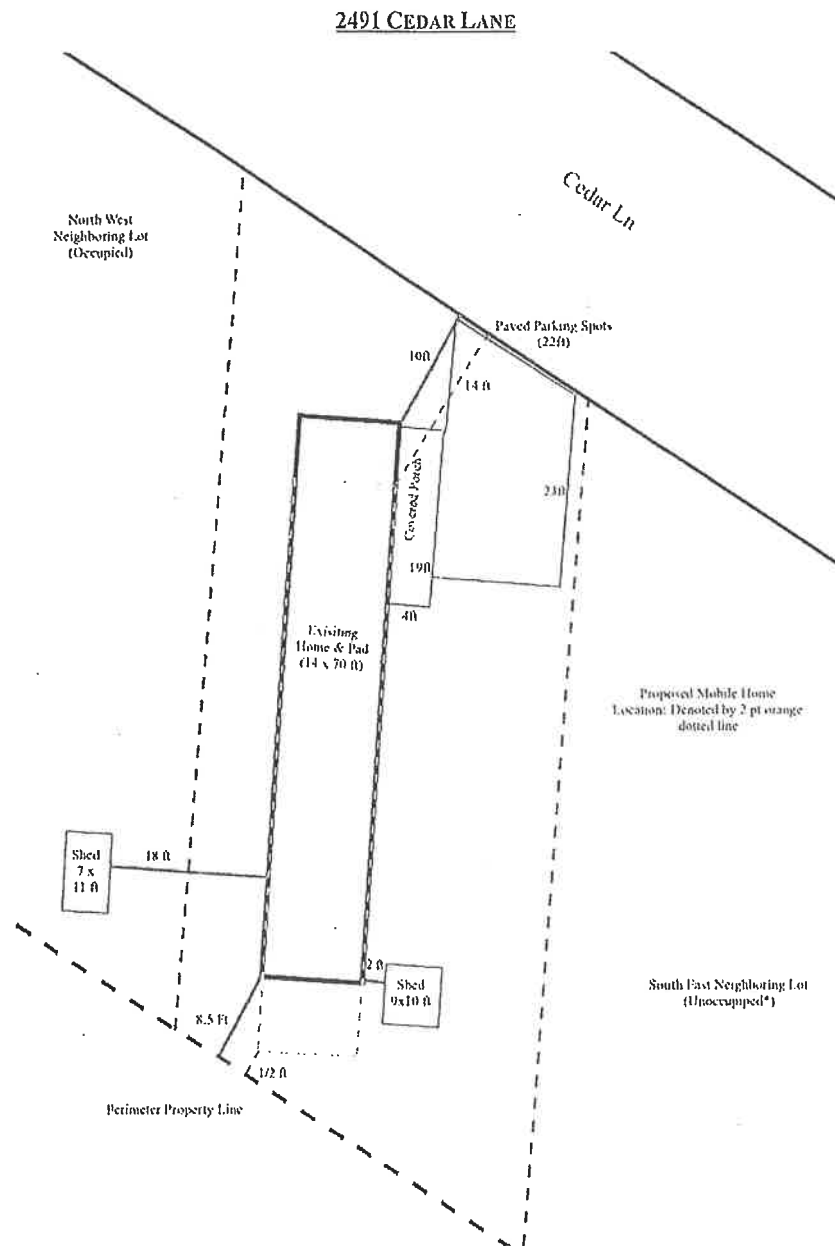
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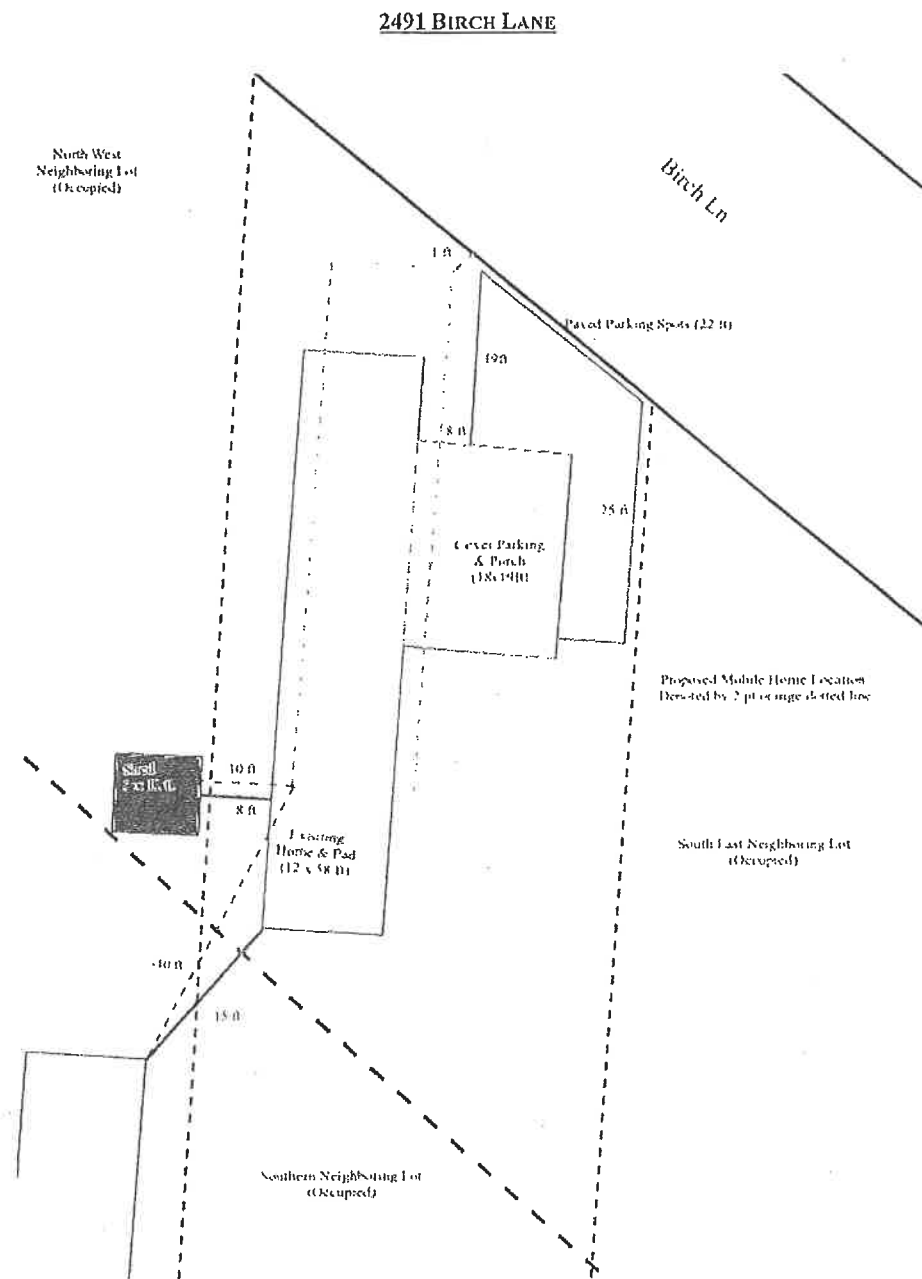
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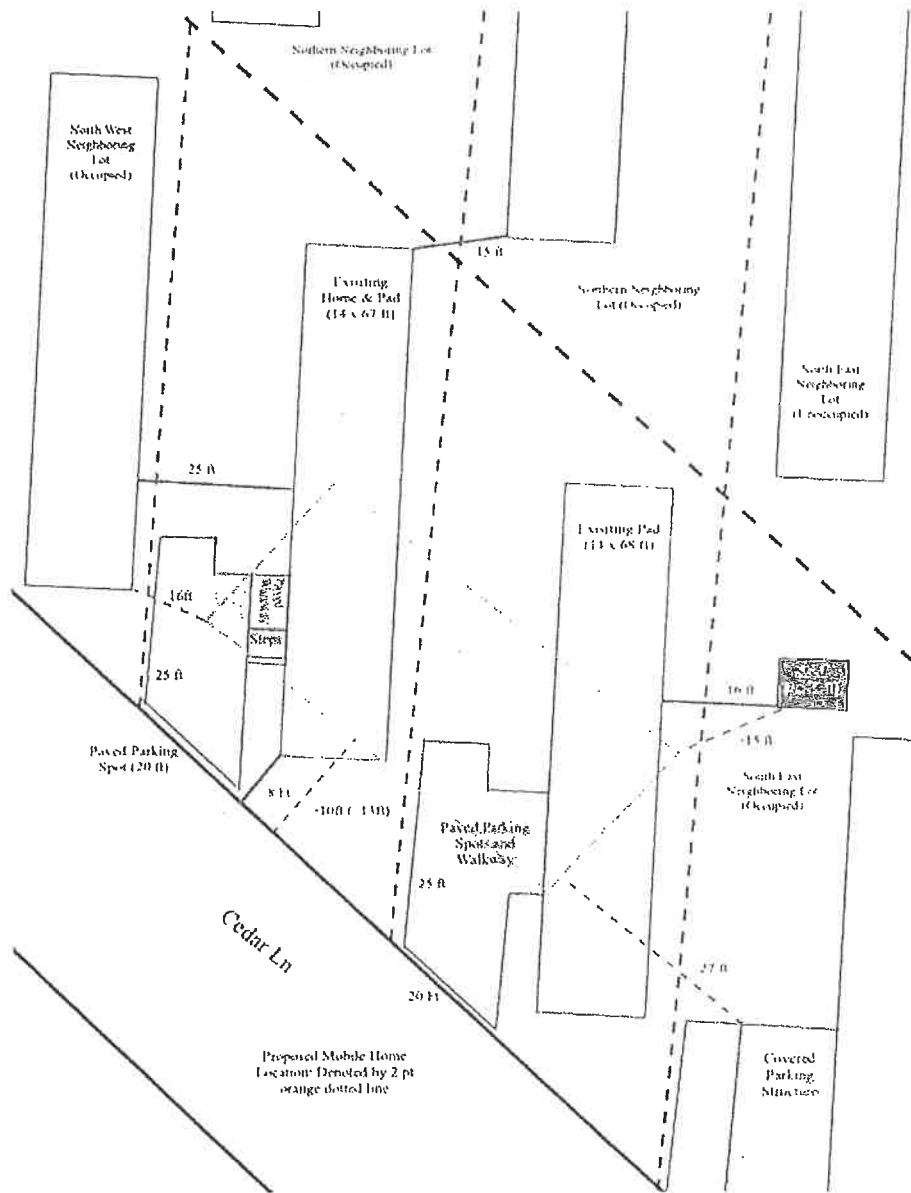
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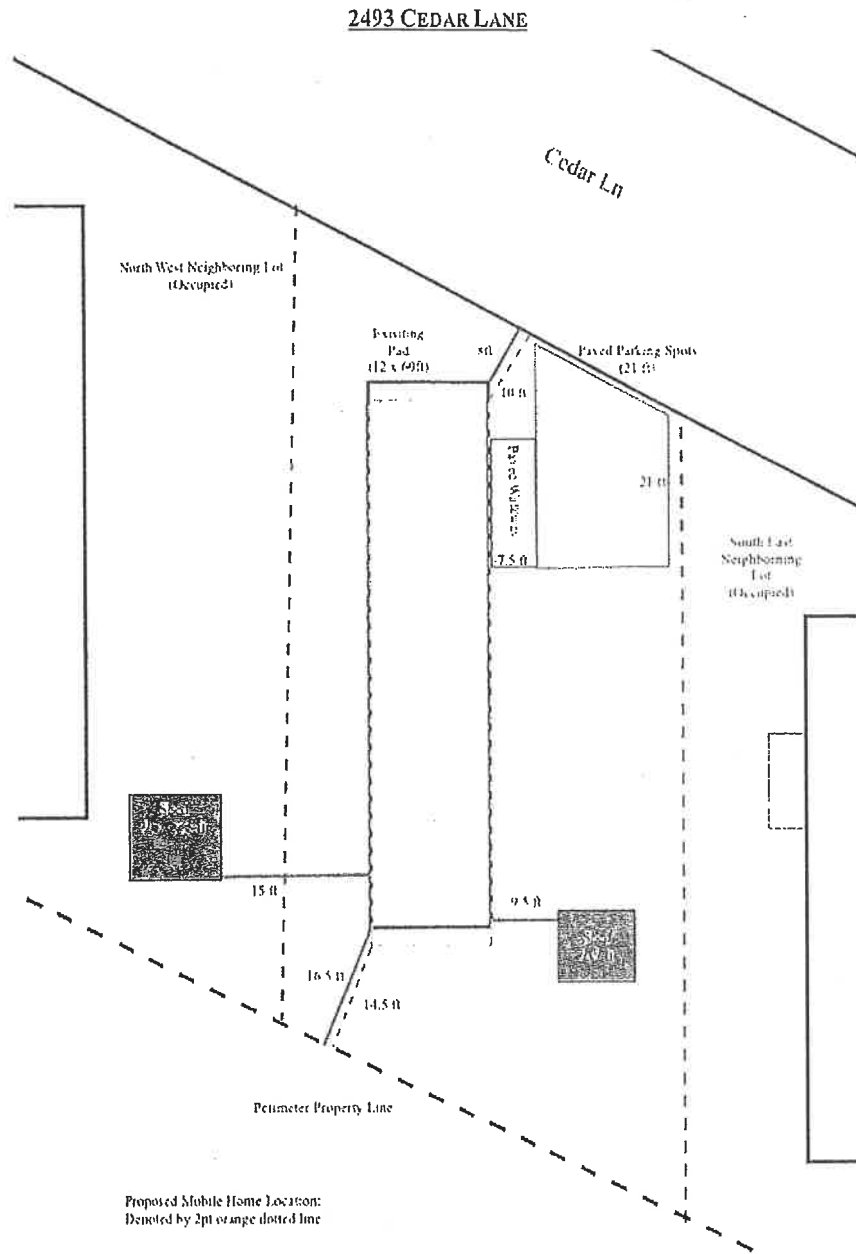
2482 CEDAR LANE



12

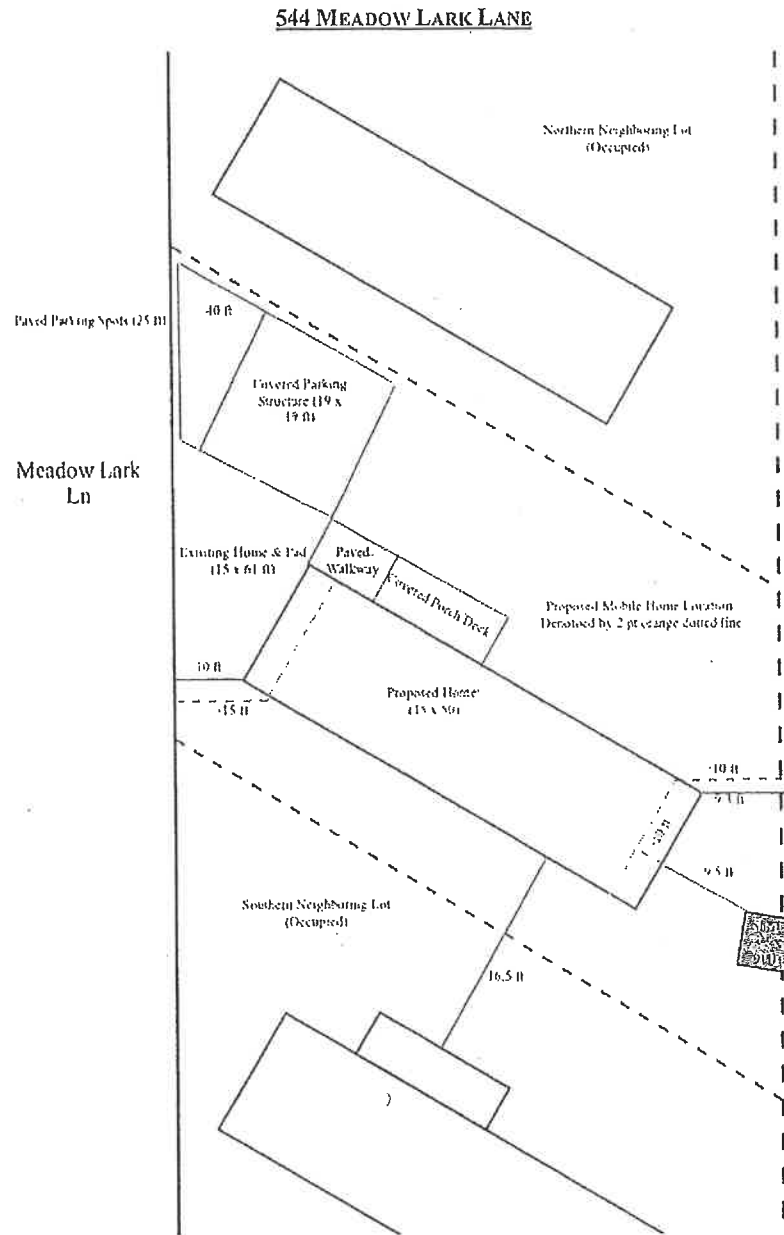
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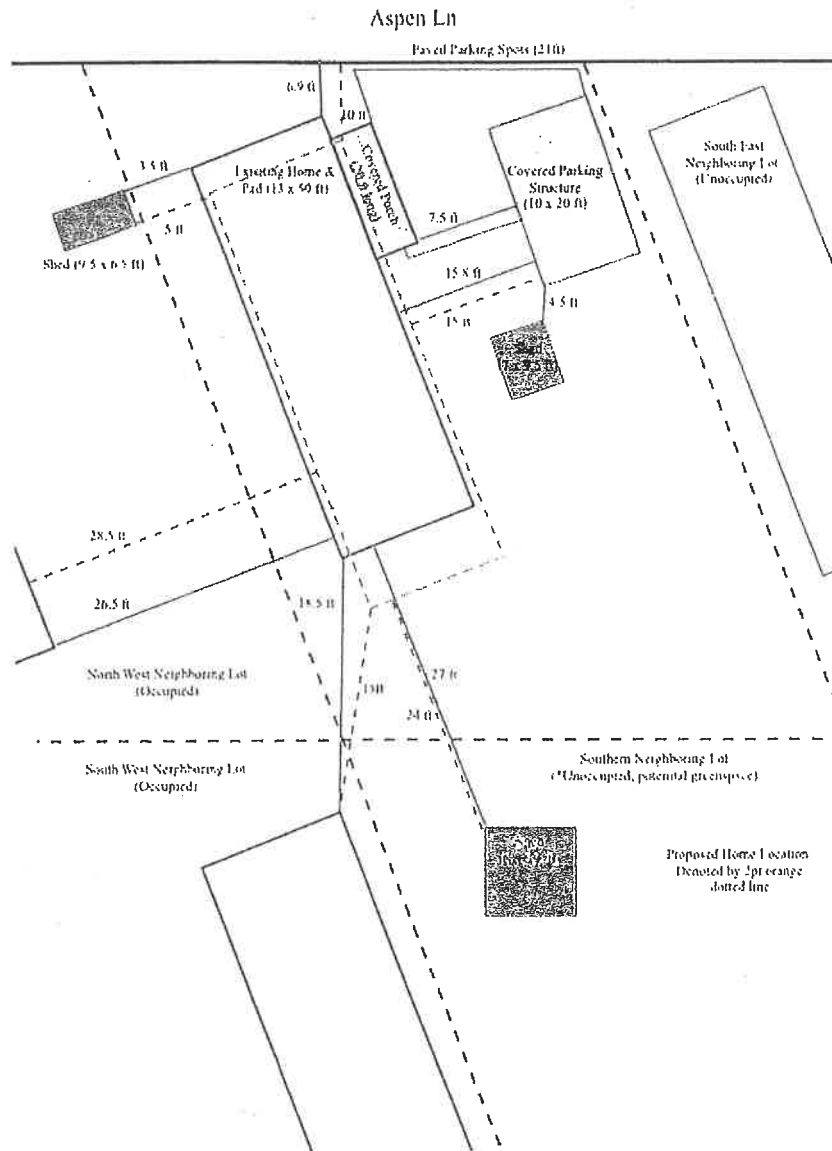
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2495 ASPEN LANE



Completed by: A. Bhagat

10/21/2022

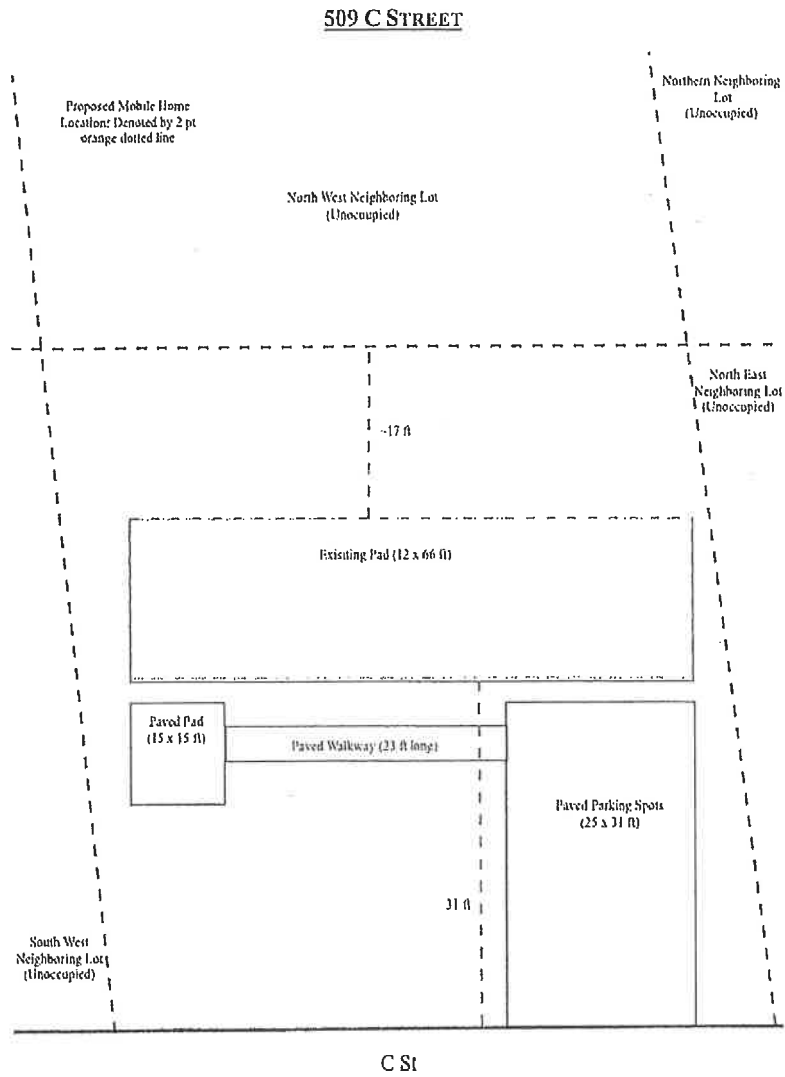
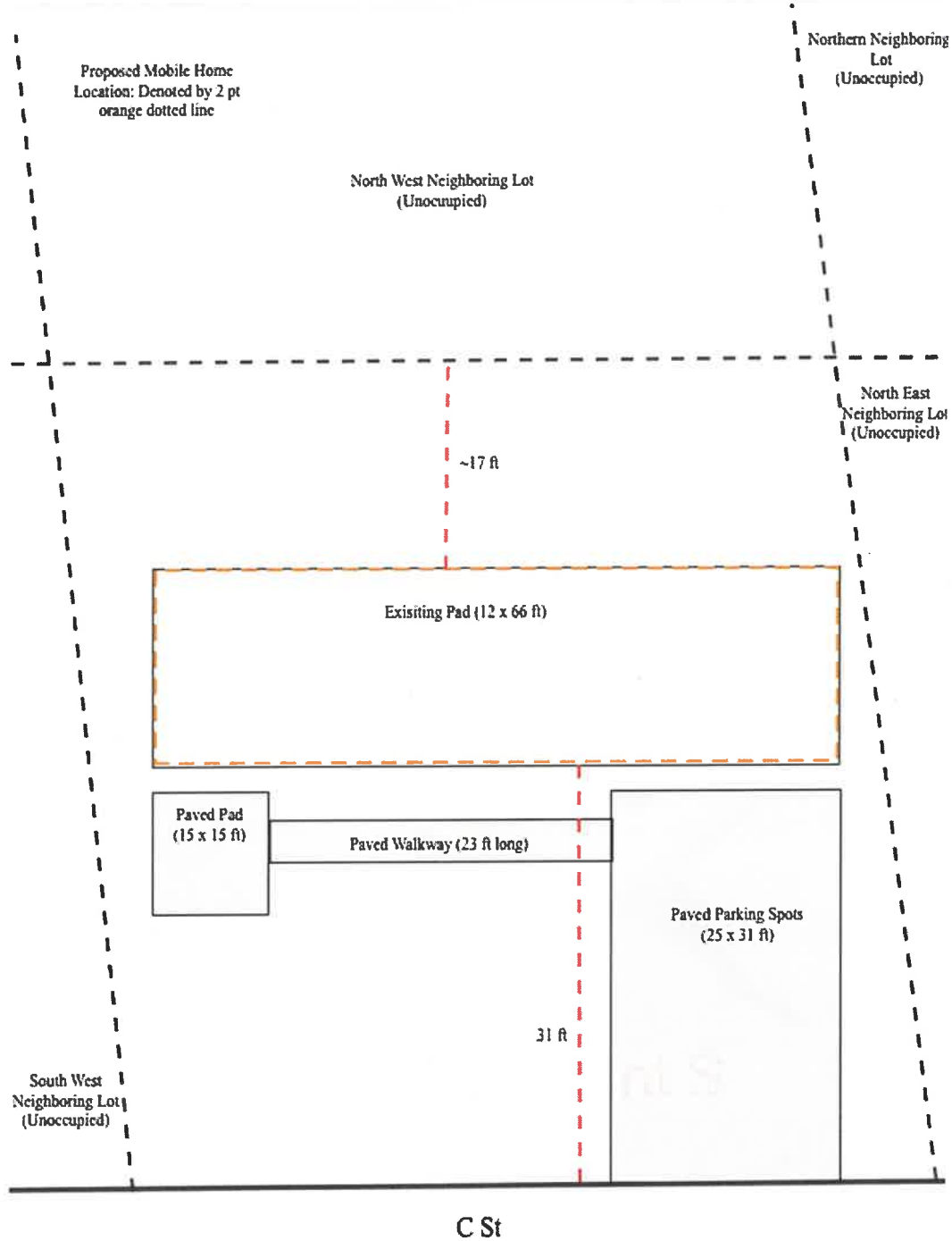


Exhibit E – Home Dimensions Table

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
1	540 Meadowlark Lane	16X60
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4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56

509 C St

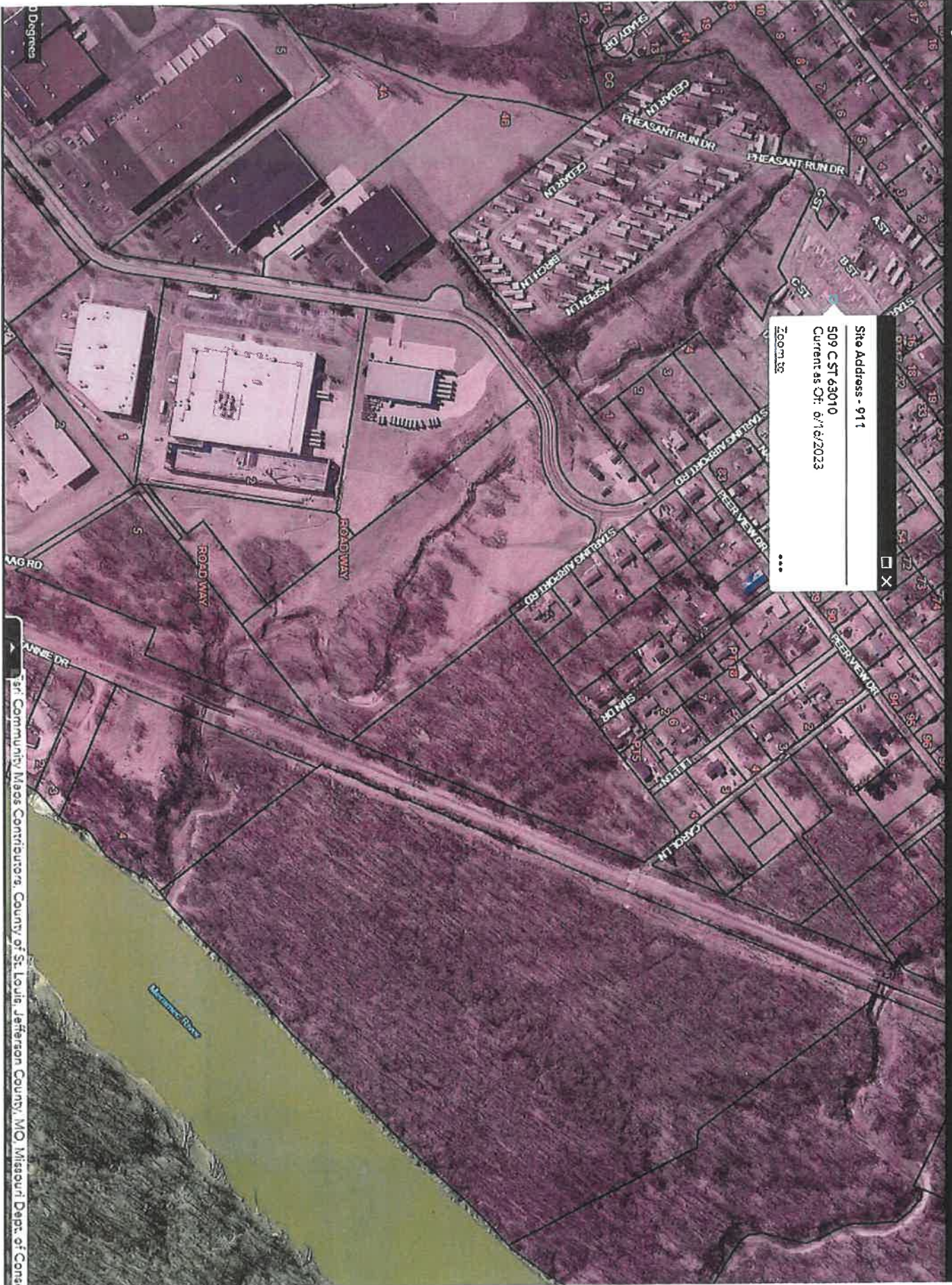


3m/apps/webappviewer/index.html?id=e1af62634c3c494ab61f03bbcd759ec7

Property Viewer

Department of the County Assessor

Site Address - 911
509 C ST 63010
Current as of: 6/16/2023
Zoom In
Zoom Out
...

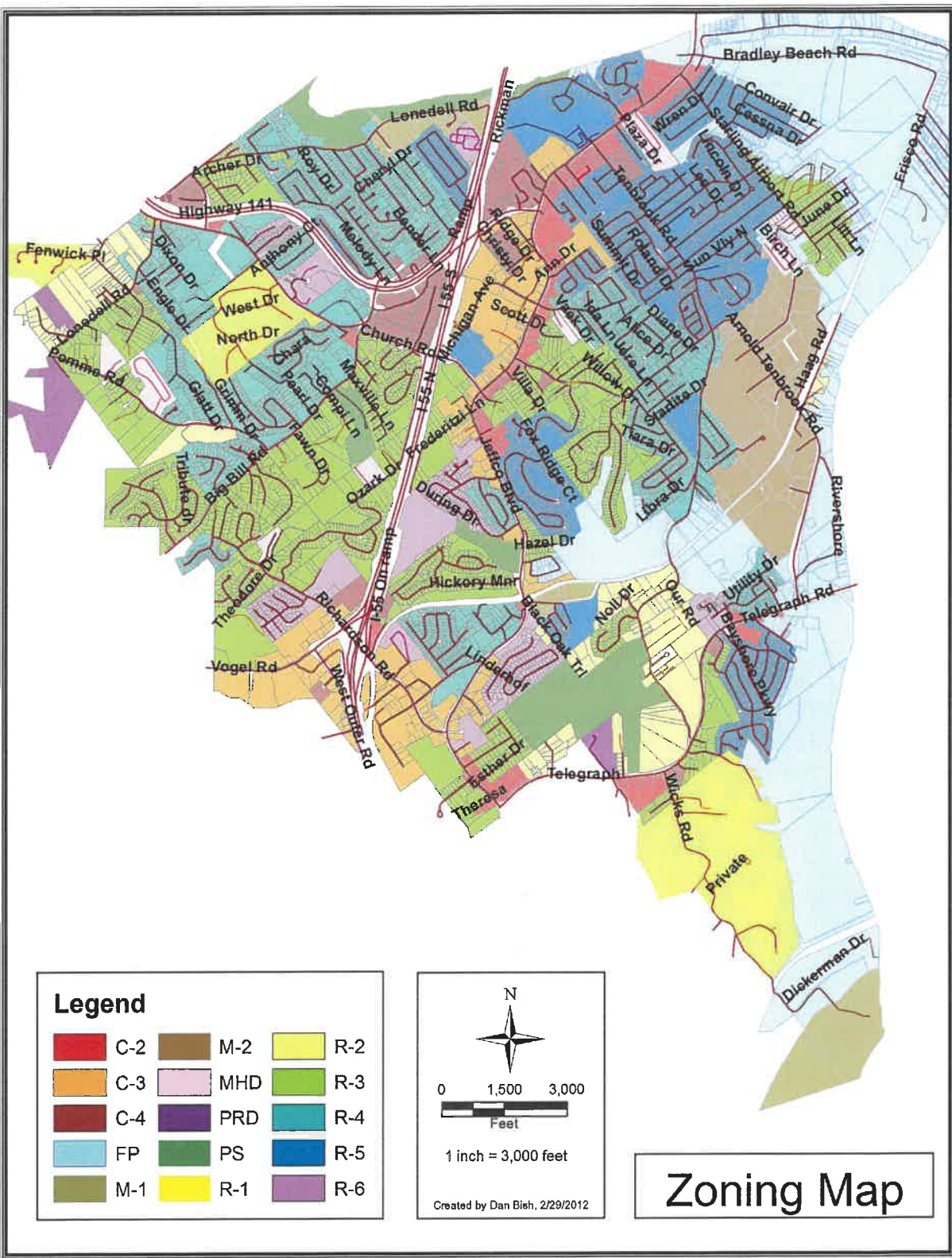


OZARK MOBILE HOME PARK
Arnold, Missouri
December 1994

David David Associates / Architects
PO Box 6219 St. Louis, Missouri 314-731-9492

North





**ROUSE FRETS WHITE GOSS
GENTILE RHODES, P.C.**

Patricia R. Jensen
pjensen@rousepc.com
816.502.4723

August 24, 2023

VIA FEDERAL EXPRESS

City of Arnold, Missouri, Board of Adjustment
c/o Mr. Jonathan Giallanzo, Chairman
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

Mr. David B. Bookless, AICP, Community Development Director, Zoning Enforcement Officer¹
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

**Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 405.240.G**

Application No., Property ID, and Address:

#23-001112 - MHU (Trailer) Placement, 01502104001030, 509 C St
#23-001111 - MHU (Trailer) Placement, 01502104001030, 2495 Aspen Ln
#23-001110 - MHU (Trailer) Placement, 01502104001030, 544 Meadowlark Ln
#23-001109 - MHU (Trailer) Placement, 01502104001030, 2493 Cedar Ln
#23-001108 - MHU (Trailer) Placement, 01502104001030, 2482 Cedar Ln
#23-001107 - MHU (Trailer) Placement, 01502104001030, 2491 Birch Ln
#23-001106 - MHU (Trailer) Placement, 01502104001030, 2491 Cedar Ln
#23-001105 - MHU (Trailer) Placement, 01502104001030, 540 Meadowlark Ln

Messrs. Giallanzo and Bookless,

I. History and Appeal Process

On July 10, 2023, Ozark MHP, LLC (“Ozark”) submitted the above mobile home placement permit applications (“Applications”) to the City of Arnold regarding homes located within the Ozark Mobile Home Park (“Park”). In response, this firm received the City’s July 26,

¹ Pursuant to City Code § 405.230 the Community Development Director shall be the Zoning Enforcement Officer, and shall enforce the provisions of City Code Chapter 405, Zoning. Pursuant to City Code § 405.240.G, appeals to the Board of Adjustment shall be taken by filing with the Zoning Enforcement Officer and with the Board a notice of appeal.

{34359 / 72062; 998320.3 }

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 2

2023, letter (“Notice”; attached hereto as Exhibit A) from the City’s Senior Planner, Sarah Turner, effectively denying the Applications by filing them as “archived” in the City’s permit portal.

The Applications remained “archived” in the portal, with no further action taken until approximately July 26, 2023, immediately following the date on which Ozark appealed the City’s decision to deny the above Applications. At this point the Applications’ statuses were changed to “In review,” but contained the City’s note that “This Project has been archived with the status “Other” on July 26, 2023....” Again, effectively denying the Applications’ requests.

Pursuant to City Code § 110.020.C, “Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services,” Ozark appealed Ms. Turner’s denials to the City Administrator, Bryan Richison. A copy of Ozark’s appeal letter is attached hereto as Exhibit B. In response, Mr. Richison, by letter dated August 10, 2023, attached hereto as Exhibit C, upheld Ms. Turner’s decisions (“Administrator Decision”).

This letter serves as an appeal to the City’s Board of Adjustment (“Board”) of (i) the Administrator Decision and (ii) Ms. Turner’s decision as documented in the Notice, for the purpose of investigating grievances, errors, and disputes, and for any other purpose(s) authorized under the City Code, Missouri law, and Federal law.

Firstly, the lack of Board appeal rules and regulations must be addressed. City Code § 405.240.C, “Board Shall Adopt Rules And Regulations,” states, “The Board shall adopt from time to time such rules and regulations as may be necessary to carry into effect the provisions of this Chapter.” However, no rules, regulations, or procedures (“Rules”) have been published. City Code § 405.240, “Board of Adjustment” includes no Board Rules. And while Mr. Giallanzo “read the Board of Adjustment procedures” at the Board’s January 11, 2023, meeting, there is no record of what procedures were read.

The lack of adopted Rules confuses the appeal process and rights. For example, the Code requires that an appellant must submit an appeal to the Board “upon forms provided for that purpose and shall show the minimum information as prescribed on the forms.” City Code § 405.240.H. However, compliance with this requirement is impossible given the lack of Rules or forms. Notwithstanding the above, Ozark’s appeal is submitted by this letter and all attached Exhibits.

This appeal is authorized under City Code § 405.240.G.² “Appeals”: “Appeals to the Board may be taken by any person aggrieved...affected by any decision of the Zoning

² Further authority for this appeal is set forth in City Code § 405.240.K.1: “The Board of Adjustment shall have the following duties... To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Enforcement Officer in the enforcement of this Chapter.”

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 3

Enforcement Officer. Such appeal shall be taken within reasonable time as prescribed by the Board by general rule, by filing with the Zoning Enforcement Officer and with the Board a notice of appeal specifying the grounds thereof.” Note that although the term “reasonable time” has not been defined, the Board previously heard an appeal made 97 days after a Zoning Enforcement Officer’s decision. Accordingly, it has been established that only an appeal made later than 97 days from a City-decision can be considered outside a reasonable appeal time.

II. Basis for Appeal

In general, the City’s archiving of the Applications functions is an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City’s reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner’s constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section III below relates to Lot-specific responses. Section IV addresses constitutional violations. The Applications should be processed promptly and approved.

III. Lot-Specific Responses; Permit Application Drawings (Attached as Exhibit D)

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use (“LNCU”). As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 4

conforming use. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960's and has done so continuously to date. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as Exhibit E, and as included in the permit applications materials submitted to the City. The current home, based on aerial imagery, is approximately 14' x 70'. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12' x 58'. The current home, based on aerial imagery, is approximately 12' x 58'. Accordingly, this is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the “street right-of-way, road easement, or street setback.” Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 5

exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Exhibit E, the Table, the proposed home is 28’ x 60’. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Exhibit E, the proposed home is 12’ x 60’. The current pad, based on aerial imagery, is approximately 12’ x 60’. Accordingly, this is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – “The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Exhibit E, the proposed home is 12’ x 50’. The current home, based on aerial imagery, is approximately 15’ x 64’. This is not an expansion violation.

See also response to #1.

7. Permit #23-001111 (2495 Aspen Lane – Ozark Park) - “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

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There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

IV. Application-Wide Responses

a. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park's Mobile Home Use

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters—Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

As the Park's use predates the City and its Zoning Ordinance, the Park use is an LNCU, and not subject to use regulations and non-life/safety regulations enacted following its establishment.

The City's application of its Code provisions, including the claimed occupancy and inspection requirements, operates so that the Park and its lots are effectively being amortized out of existence. In Missouri, amortization of LNCUs is forbidden. *See Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. 1965) (holding unconstitutional a six-year amortization of LNCUs). This is so because amortization "would validate a taking presently unconstitutional by the simple expedient of postponing such taking for a 'reasonable' time." *Id.*

b. Regulatory Taking / Inverse Condemnation

The City attempts through regulations to disable and dismantle Ozark's Park operation. "Archiving" the Applications on the basis that Park-wide inspections are required in advance overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with manufactured homes (often referred to as mobile homes). This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a "Catch 22", preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

Manifestly, where a person is lawfully conducting a business in a certain area, he has a vested right to continue, even though such business use has become, by

Jonathan Giallanzo, David Bookless
August 24, 2023
Page 7

reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring and then denying him a license, could destroy such vested right and put him out of business, would be absurd and unreasonable. Such is not the law.

State ex rel. Capps v. Bruns, 353 S.W.2d 829, 831 (Mo. App. 1962). The US Supreme Court comes to the same conclusion:

“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go-and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle....

[W]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1965). The City’s regulations go too far.

c. Equal Protection; Disparate and Discriminatory Treatment – Undue Burden -- Targeted and Selective Code Application

Mobile home parks provide affordable housing. But the City has threatened to “bulldoze” the Park by communicating as much to certain residents. This type of conduct, along with the City’s selective enforcement of its Code, violates Ozark’s rights.

On information and belief, other similarly situated property owners in the City – single-family homes, multi-family homes, condominiums – have not been subject to the same regulatory treatment as Ozark. This violates the Equal Protection and Due Process clauses of the U.S. Constitution. It is also likely that the City’s treatment of Ozark will unduly burden protected classes of citizens including seniors and non-white persons.

d. Occupancy Permit and Inspection Requirement Warrantless and Invalid Warrant Search in Violation of Fourth Amendment

The City’s Occupancy Permit and inspection requirements under section 520.010 1) do not apply under City Code to Ozark, 2) even assuming applicability violate LNCU rights, 3) overreach by forcing Park wide inspections and forcing individual mobile home owners to give up privacy rights, 4) violate the Fourth Amendment prohibiting search and seizure, 5) are impermissibly vague and confusing regulations, 6) are unevenly applied.

Jonathan Giallanzo, David Bookless
August 24, 2023
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e. Unconstitutional Conditions

The City's Code provisions as applied to the Park collectively infringe on and burden the basic rights of the Park's owner. The City "may not deny a benefit to a person on a basis that infringes a constitutionally protected right, even if the person has no entitlement to that benefit." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006). The Supreme Court has explained that the "unconstitutional conditions" doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up."

Thompson v. City of Oakwood, Ohio, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

For all of the reasons set forth here, Ozark urges the Board to approve the eight placement permit Applications and provide such other relief as it proper.

Based upon schedules, we request that the hearing related to this appeal be scheduled for the week of October 2, 2023.

Very truly yours,



Patricia R. Jensen

Enclosures

cc: Robert Sweeney, City Attorney (rks@robertsweeneylaw.com w/ encl.)

Exhibit A – City’s Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

The City is in receipt of the above-referenced applications. Let this letter serve as formal notice that the eight (8) Manufactured Home Unit (MHU) Placement Permit request applications will be archived due to the Ozark Manufactured Home Park (Ozark MHP) not holding a valid City Occupancy Permit.

For your convenience, we have completed cursory reviews of the plans for compliance with the City of Arnold's Zoning Ordinance. For comments on each individual permit, please refer to the following:

- **Permit #23-001105 (540 Meadowlark Lane)** – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.
- **Permit #23-001106 (2491 Cedar Lane)** – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- **Permit #23-001107 (2491 Birch Lane)** – The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- **Permit #23-001108 (2482 Cedar Lane)** – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).

City Hall
2101 Jeffco Blvd.
Arnold, MO 63010
636/296-2100

Parks and Recreation
1695 Missouri State Rd.
Arnold, MO 63010
636/282-2380

Public Works
2900 Arnold Tenbrook Rd.
Arnold, MO 63010
636/282-2386



City of Arnold

Ron Counts, Mayor

- Permit #23-001109 (2493 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001110 (544 Meadowlark Lane) – The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001111 (2495 Aspen Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001112 (509 C Street) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.

The comments above pertain solely to Staff's preliminary compliance review with the Zoning Ordinance and relevant sections therein, including but not limited to §405.070(G)(1), *Non-Conforming Manufactured Home Parks Within "MHD" Manufactured Home Districts*. To bring the parks into conformance with the "MHD" Manufactured Home District, please refer to the options discussed during the April 6, 2023 meeting with your legal counsel and City Staff.

Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sarah Turner".

Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

City Hall
2101 Jeffco Blvd.
Arnold, MO 63010
636/296-2100

Parks and Recreation
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Public Works
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Exhibit B – Ozark Appeal to City Administrator

|| ROUSE FRETS WHITE GOSS
|| GENTILE RHODES, P.C.

PATRICIA R. JENSEN
pjensen@rousepc.com
816.502.4723

August 3, 2023

VIA FED EX & EMAIL (brichison@arnoldmo.org)

Bryan Richison, City Administrator
City of Arnold, Missouri
City Hall
2101 Jeffco Blvd
Arnold, MO 63010

**Re: Ozark MHP, LLC – MHU Placement Permit Applications
Appeal under City Code § 110.020.C**

Dear Mr. Richison:

This firm received the City of Arnold's July 26, 2023, letter ("Notice") regarding the above mobile home placement permit applications submitted by Ozark MHP, LLC ("Ozark"). A copy of that Notice is attached here as Exhibit A. Please note, notwithstanding the parties to whom the City addressed the Notice, the Lots described in the eight applications are located within the Ozark Mobile Home Park (the "Park") and owned solely by Ozark.

Pursuant to City Code § 110.020.C, "Compliance with City Regulations a Prerequisite to the Issuance of Permits and Provision of Certain Services," this letter serves as an appeal of the archiving by Sarah Turner, Senior City Planner, of the eight permit applications ("Applications") for the purpose of investigating the Notice errors and disputes.

In general, the City's archiving of the Applications functions as an unlawful denial of them. The City is without authority to condition the processing and approval of the Applications on obtaining certificates of occupancy and inspections Park wide. Such a condition is constitutionally impermissible, among other reasons set forth below. Further, the City's reliance on or efforts to enforce its Code provisions relating to non-conforming use provisions in Chapter 405 violate the Park owner's constitutional rights to continue to operate the Park as a legal non-conforming use.

The City through regulations is attempting illegally to force Ozark out of its mobile home park business and out of existence. The City has expressed an intent to get rid of the Park and has appeared hostile to Ozark and its owner.

Section I below relates to Lot-specific responses. Section II addresses constitutional violations. The Applications should be processed promptly and approved.

{34359 / 72062; 997537. }

Attorneys at Law || 4510 Belleview Avenue, Suite 300 || Kansas City, MO 64111 || rousepc.com

{34359 / 72062; 998320.3 }

Bryan Richison
August 3, 2023
Page 2

I. Lot-Specific Responses; Permit Application Drawings Attached as Exhibit B

Sections in quotation marks below are excerpted from the Notice.

1. Permit #23-001105 (540 Meadowlark Lane – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

The City Code Occupancy Permit regulations in place when Ozark purchased the Park, section 520.010, are inapplicable to Ozark as the Buyer, even assuming the section had applicability. The Code provisions requiring inspection before sale applied to the Seller of property. The City failed to enforce the provisions and cannot legally force the requirement onto Ozark. Furthermore, the homes previously had obtained occupancy permits or were not required to have such permits. In any case, this regulation is overbroad, confusing, and vague on its face and has now and on belief historically targeted mobile home parks and their residents.

The entire Park, inclusive of its lots, is a legal non-conforming use. As an LNCU, the Park is not subject to use ordinances enacted following the establishment of the non-conforming use. The Park was established in the 1960's. The City was incorporated in 1972. Its zoning and other Code provisions came later.

This location is compliant with all zoning and subdivision ordinance terms. There is no basis under the Code for refusing to process and approve a placement permit where the location is in full compliance.

The permit should be processed and issued.

2. Permit #23-001106 (2491 Cedar Lane – Ozark Park) – “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

The proposed mobile home for 2491 Cedar Lane is 16' x 60' as shown on the Table attached as **Exhibit C**, and as included in the permit applications materials submitted to the City. Accordingly, this is not an expansion violation.

See also response to #1, incorporated here.

3. Permit #23-001107 (2491 Birch Lane – Ozark Park) – “The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size

{34359 / 72062; 997537. }

{34359 / 72062; 998320.3 }

Bryan Richison
August 3, 2023
Page 3

of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

As noted above, the Applications included the proposed home sizes, including that of 2491 Birch Lane: 12' x 58'. This is not an expansion violation.

Further, this denial is defective because it fails to describe the specific alleged violation, instead stating that a violation may have occurred as to the "street right-of-way, road easement, or street setback." Failure to identify which alleged violation occurred makes it impossible to respond.

See also response to #1.

4. Permit #23-001108 (2482 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the Table, the proposed home is 28' x 60'. Ozark requests that the City issue the permit. This is not an expansion violation.

See also response to #1.

5. Permit #23-001109 (2493 Cedar Lane – Ozark Park) – "In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the proposed home is 12' x 60'. This is not an expansion violation.

See also response to #1.

6. Permit #23-001110 (544 Meadowlark Lane – Ozark Park) – "The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2)."

Pursuant to the submitted **Exhibit C**, the proposed home is 12' x 50'. This is not an expansion violation.

See also response to #1.

{34359 / 72062; 997537. }

Bryan Richison
August 3, 2023
Page 4

7. Permit #23-001111 (2495 Aspen Lane – Ozark Park) - “In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).”

Pursuant to the submitted Table C, the proposed home is 12’ x 56’. This is not an expansion violation.

See also response to #1.

8. Permit #23-001112 (509 C Street – Ozark Park) – “The provided site plan satisfies the provisions and intent of the Zoning Code. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.”

There is no legal basis for conditioning the placement of a home that is in conformance with the Zoning Code on occupancy and inspection requirements.

See also response to #1.

II. Application-Wide Responses

A. Legal Non-Conforming Use Prohibits Application of Use Ordinances Enacted Following Establishment of Park’s Mobile Home Use

The City was incorporated in 1972. Based on due diligence documents and GIS photos from Jefferson County, the Park existed and operated starting in the 1960’s and has done so continuously to date.

A legal non-conforming use (LNCU) in Missouri means a use of land that lawfully existed before enactment of a zoning ordinance and which is maintained after enactment of the ordinance even though not in compliance with use restrictions. *Storage Masters–Chesterfield, LLC v. City of Chesterfield*, 27 S.W.3d 862, 865 (Mo. App. E.D. 2000). A LNCU is a vested property right that may not be foreclosed by a zoning ordinance. *City of Sugar Creek v. Reese*, 969 S.W.2d 888, 891 (Mo. App. W.D. 1998). Zoning ordinances must permit continuation of LNCUs to avoid taking private property without just compensation.

As the Park’s use predates the City and its Zoning Ordinance, the Park use is an LNCU, and not subject to use regulations and non-life/safety regulations enacted following its establishment.

The City’s application of its Code provisions, including the claimed occupancy and inspection requirements, operates so that the Park and its lots are effectively being amortized out

{34359 / 72062; 997537. }

Bryan Richison
August 3, 2023
Page 5

of existence. In Missouri, amortization of LNCUs is forbidden. *See Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. 1965) (holding unconstitutional a six-year amortization of LNCUs). This is so because amortization “would validate a taking presently unconstitutional by the simple expedient of postponing such taking for a ‘reasonable’ time.” *Id.*

B. Regulatory Taking / Inverse Condemnation

The City attempts through regulations to disable and dismantle Ozark’s Park operation. “Archiving” the Applications on the basis that inspections Park wide are first required overreaches and denies Ozark the right to bring in or replace existing homes. In other words, the City denies Ozark the right to continue to operate the Park as it has always operated – with mobile homes. This also has the effect of preventing Ozark from improving or updating the Park. The set of regulations operates as a “Catch 22”, preventing replacement and repair while reserving the right to penalize for not repairing or replacing. The regulatory impact amounts to a taking and inverse condemnation of the Park. Missouri courts prohibit such action as unlawful:

Manifestly, where a person is lawfully conducting a business in a certain area, he has a vested right to continue, even though such business use has become, by reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring and then denying him a license, could destroy such vested right and put him out of business, would be absurd and unreasonable. Such is not the law.

State ex rel. Capps v. Bruns, 353 S.W.2d 829, 831 (Mo. App. 1962). The US Supreme Court comes to the same conclusion:

“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go-and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle....

[W]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1965). The City’s regulations go too far.

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Bryan Richison
August 3, 2023
Page 6

C. Equal Protection; Disparate and Discriminatory Treatment – Undue Burden – Targeted and Selective Code Application

Mobile home parks provide affordable housing. But the City has threatened to “bulldoze” the Park by communicating as much to certain residents. This type of conduct, along with the City’s selective enforcement of its Code, violates Ozark’s rights.

On information and belief, other similarly situated property owners in the City – single-family homes, multi-family homes, condominiums – have not been subject to the same regulatory treatment as Ozark. This violates the Equal Protection and Due Process clauses of the U.S. Constitution. It is also likely that the City’s treatment of Ozark will unduly burden protected classes of citizens including seniors and non-white persons.

D. Occupancy Permit and Inspection Requirement Warrantless and Invalid Warrant Search in Violation of Fourth Amendment

The City’s Occupancy Permit and inspection requirements under section 520.010 1) do not apply under City Code to Ozark, 2) even assuming applicability violate LNCU rights, 3) overreach by forcing Park wide inspections and forcing individual mobile homeowners to give up privacy rights, 4) violate the Fourth Amendment prohibiting search and seizure, 5) are impermissibly vague and confusing regulations, 6) are unevenly applied.

E. Unconstitutional Conditions

The City’s Code provisions as applied to the Park collectively infringe on and burden the basic rights of the Park’s owner. The City “may not deny a benefit to a person on a basis that **infringes a constitutionally protected right**, even if the person has no entitlement to that benefit.” *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006). The Supreme Court has explained that the “unconstitutional conditions” doctrine “vindicates the Constitution’s enumerated rights by **preventing the government from coercing people into giving them up.**”

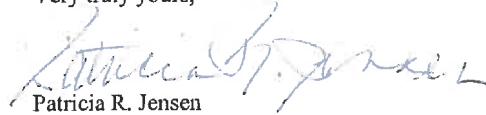
Thompson v. City of Oakwood, Ohio, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

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Bryan Richison
August 3, 2023
Page 7

For all of the reasons set forth here, Ozark urges the City to process and approve the eight placement permit Applications.

Very truly yours,



Patricia R. Jensen

PRJ:nrh
enclosures

cc: Sarah Turner, Senior Planner (sturner@arnoldmo.org)
David Bookless, Community Development Director (dbookless@arnoldmo.org)
Robert Sweeney, City Attorney (rks@robertsweeneylaw.com)

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Exhibit A – City’s Denial Letter



City of Arnold

Ron Counts, Mayor

July 26, 2023

Ozark MHP, LL & Starling MHP, LLC
c/o Justin Donald
bookkeepingmhp@gmail.com

Re: Ozark MHP, LL & Starling MHP, LLC – MHU Placement Permit Applications

Mr. Donald:

The City is in receipt of the above-referenced applications. Let this letter serve as formal notice that the eight (8) Manufactured Home Unit (MHU) Placement Permit request applications will be archived due to the Ozark Manufactured Home Park (Ozark MHP) not holding a valid City Occupancy Permit.

For your convenience, we have completed cursory reviews of the plans for compliance with the City of Arnold's Zoning Ordinance. For comments on each individual permit, please refer to the following:

- Permit #23-001105 (540 Meadowlark Lane) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.
- Permit #23-001106 (2491 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001107 (2491 Birch Lane) – The provided site plan shows the proposed manufactured home would violate the required street right-of-way, road easement, or street setback as found in §405.070(G)(1)(d)(1). In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001108 (2482 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding existing pads per §405.070(G)(1)(d)(2).

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Public Works
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Arnold, MO 63010
636/282-2386

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A-1

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B-3



City of Arnold

Ron Counts, Mayor

- Permit #23-001109 (2493 Cedar Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001110 (544 Meadowlark Lane) – The proposed manufactured home would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001111 (2495 Aspen Lane) – In addition to the fact that the provided site plan does not indicate the size of the proposed manufactured home, which cannot exceed the size of the home it is replacing, the proposed replacement would violate the restriction on expanding the existing pad per §405.070(G)(1)(d)(2).
- Permit #23-001112 (509 C Street) – The provided site plan satisfies the provisions and intent of the Zoning Ordinance. However, the proposed placement permit cannot be accepted or formally reviewed due to the manufactured home park within which this site is located, Ozark MHP, not having a City Occupancy Permit.

The comments above pertain solely to Staff's preliminary compliance review with the Zoning Ordinance and relevant sections therein, including but not limited to §405.070(G)(1), *Non-Conforming Manufactured Home Parks Within "MHD" Manufactured Home Districts*. To bring the parks into conformance with the "MHD" Manufactured Home District, please refer to the options discussed during the April 6, 2023 meeting with your legal counsel and City Staff.

Please note that building code compliance has not yet been assessed. To assess both Ozark MHP and Starling MHP for building code compliance and obtain occupancy permits, please coordinate with the Building Commissioner to schedule park-wide inspections.

Should you have any questions on this letter, please contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Sarah Turner", is written over a horizontal line.

Sarah Turner
Senior Planner

Cc: David B Bookless, Community Development Director
Robert Sweeney, City Attorney

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2800 Arnold Tenbrook Rd.
Arnold, MO 63010
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A-2

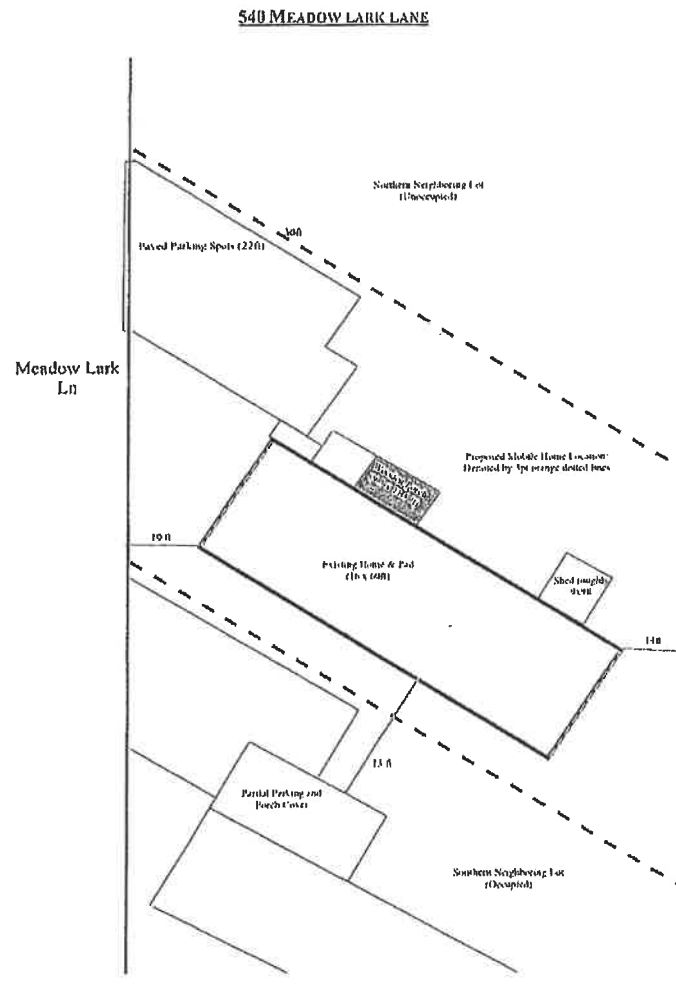
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B-3

Exhibit B - Permit Application Drawings

Completed by: A. Bhagat

10/21/2022



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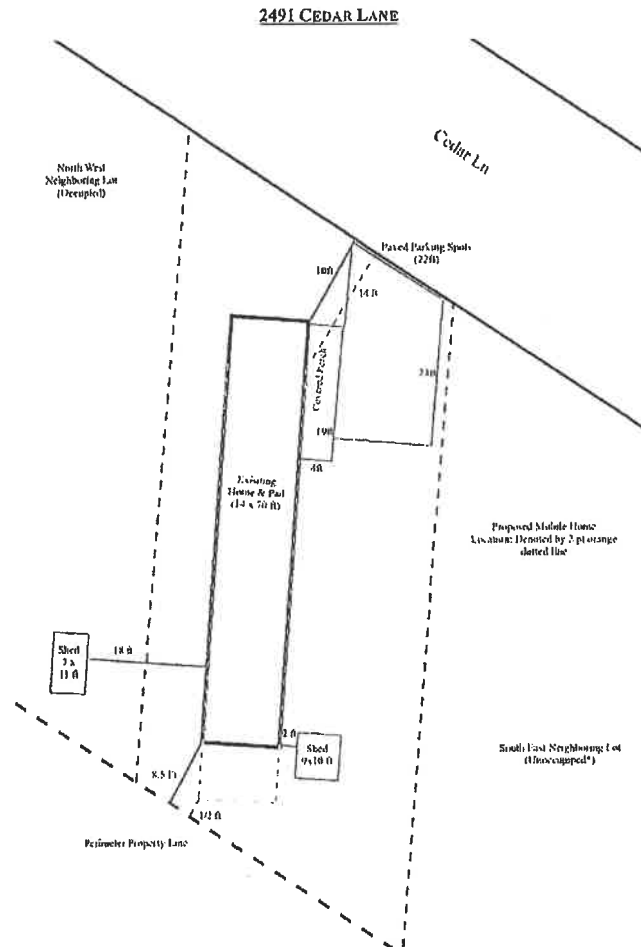
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Completed by: A. Bhagat

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B-3



B-3

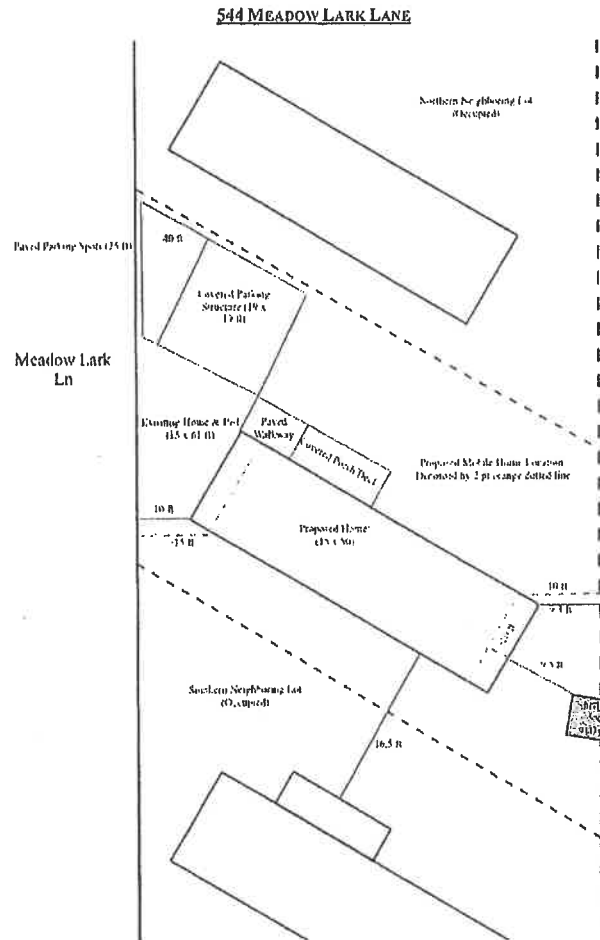
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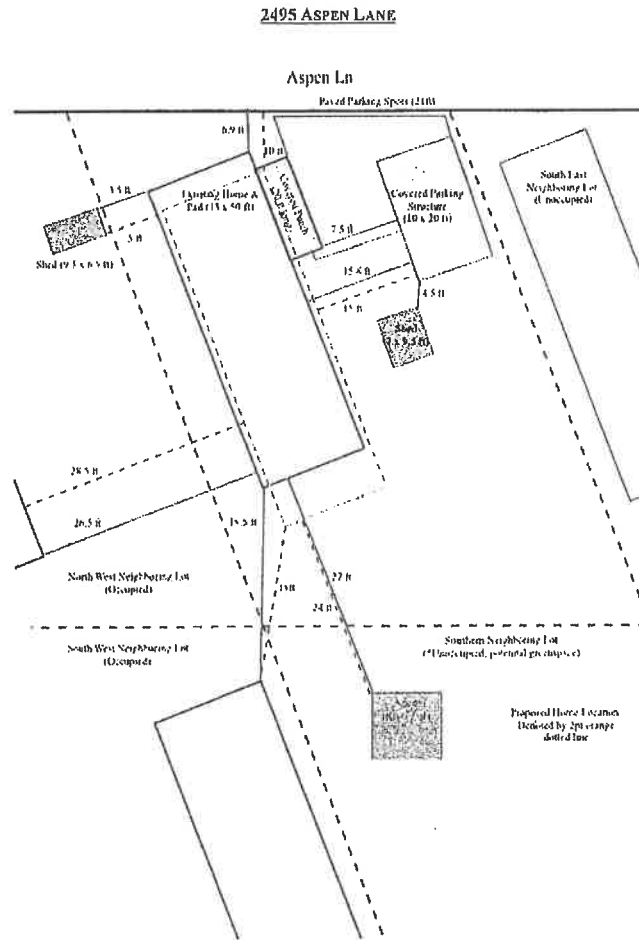
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Completed by: A. Bhagat

10/21/2022



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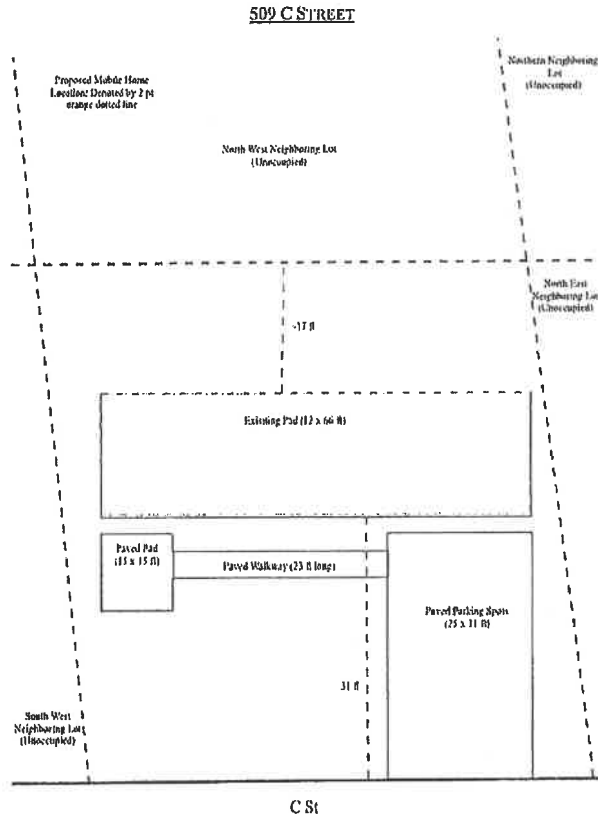
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B-3

Completed by: A. Bhagat

10/21/2022



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{34359 / 72062; 997537. }

B-8

{34359 / 72062; 998320.3 }

B-3

Exhibit C – Home Dimensions

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
1	540 Meadowlark Lane	16X60
2	2491 Cedar Lane	14X60
3	2491 Birch Lane	12X58
4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56

{34359 / 72062; 997537. }

C-1

{34359 / 72062; 998320.3 }

B-3

Exhibit C – Administrator Decision



City of Arnold

Ron Counts, Mayor

Re: Ozark MHP, LLC Permit Applications/Appeal

Dear Ms. Jensen,

As I previously indicated, I received your appeal. While my response should not be taken as an acceptance of your interpretation that the archiving of the applications at issue is commensurate with a denial, in an effort to move this matter forward, please accept this as my response.

When an applicant believes it has been wrongly denied certain services, processes or permits, Section 110.020 (c) of the Code of Ordinances of the City of Arnold grants me the authority to review the denial and take certain actions. Those actions include ordering the service, process, or permit or conditionally ordering the service, process, or permit. Under the current circumstances, I am disinclined to grant any relief. It is the position of the City of Arnold ("City") that the compliance obligations referenced in City's July 26, 2023 letter do not infringe on your client's right to operate a legal non-conforming use, that the status as a legal non-conforming use does not excuse or shield the use from any and all regulations, and that the regulations with which you take issue are life/safety regulations.

As previously mentioned, the City desires to ensure the continued availability of a variety of housing stock within the corporate limits of the City, including your client's mobile home park. That desire, however, is not unconditional. Housing, including your client's park, must be safe and meet modern health and safety regulations. City staff remains available and willing to work with your client to ensure its continued operation.

Sincerely,

Bryan Richison
City Administrator - Arnold

Cc: Robert Sweeney, City Attorney
David Bookless, Community Development Director
Sarah Turner, Senior Planner

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2101 Jaffco Blvd.
Arnold, MO 63010
636/296-2100

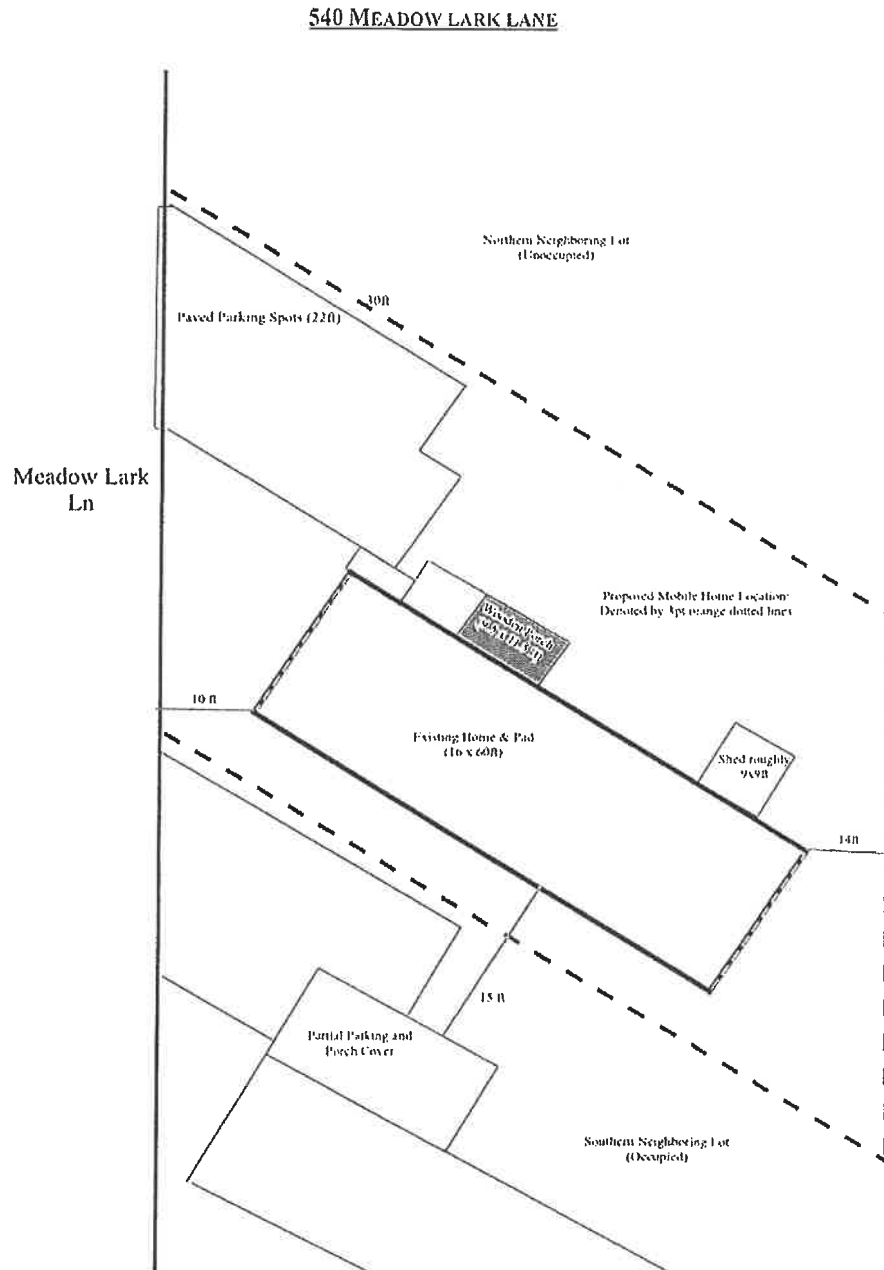
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1695 Missouri State Rd.
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Public Works
2900 Arnold Tenbrook Rd.
Arnold, MO 63010
636/282-2386

Exhibit D - Permit Application Drawings

Completed by: A. Bhagat

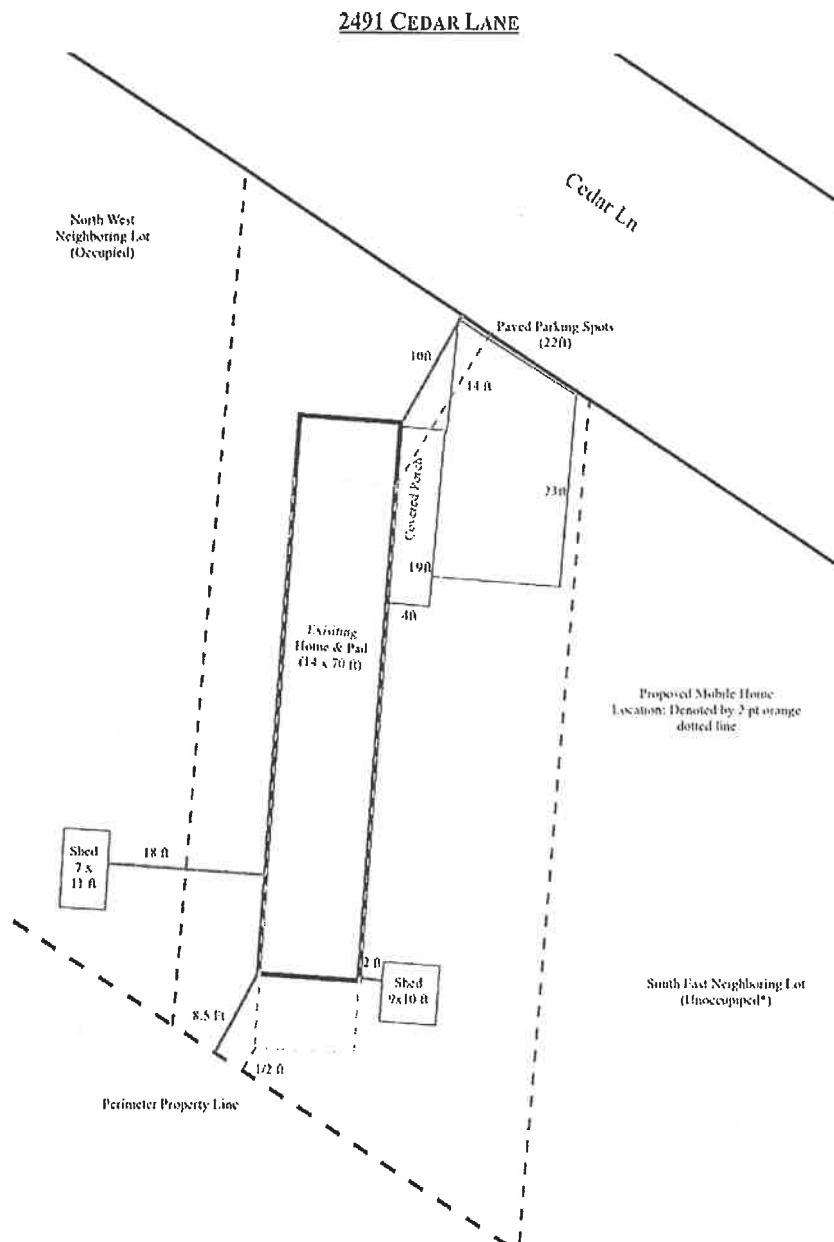
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Completed by: A. Bhagat

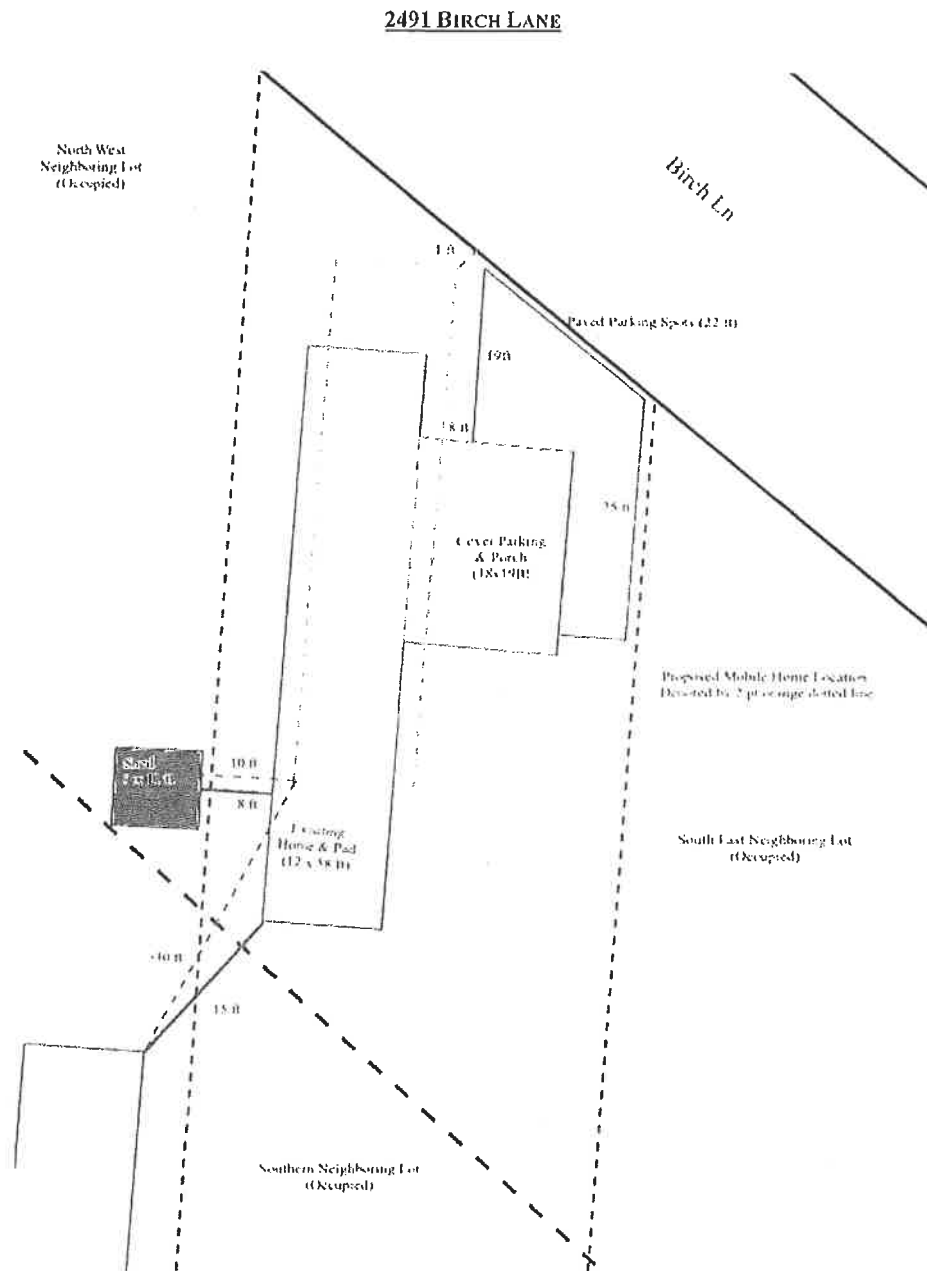
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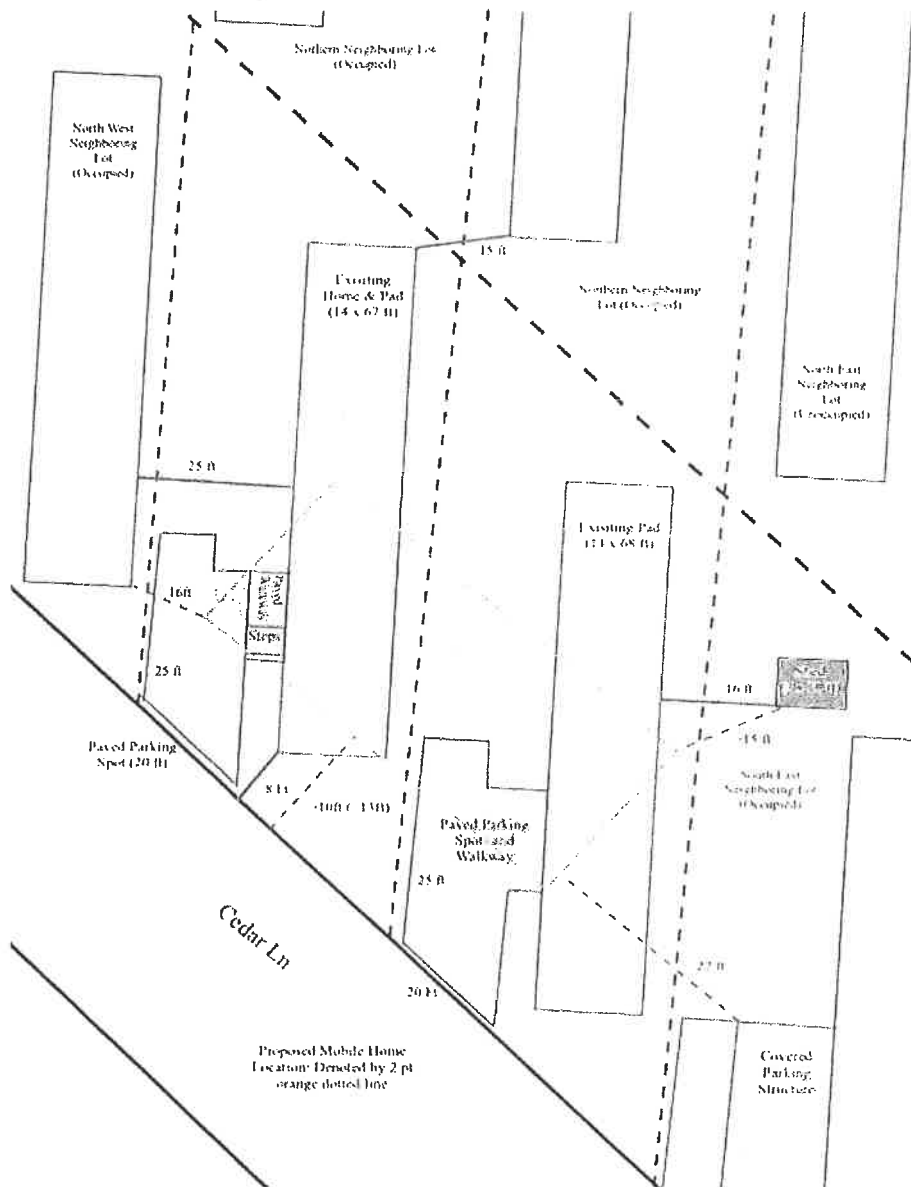


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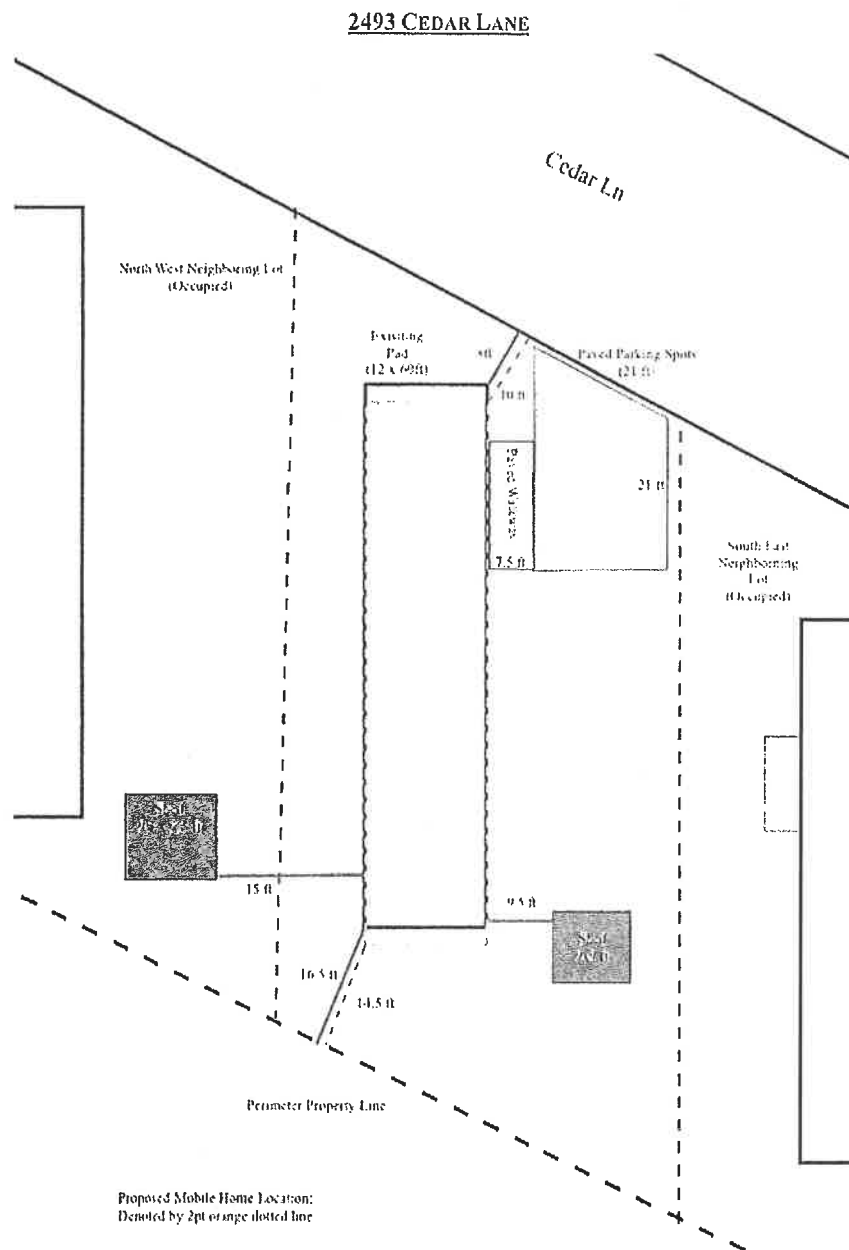
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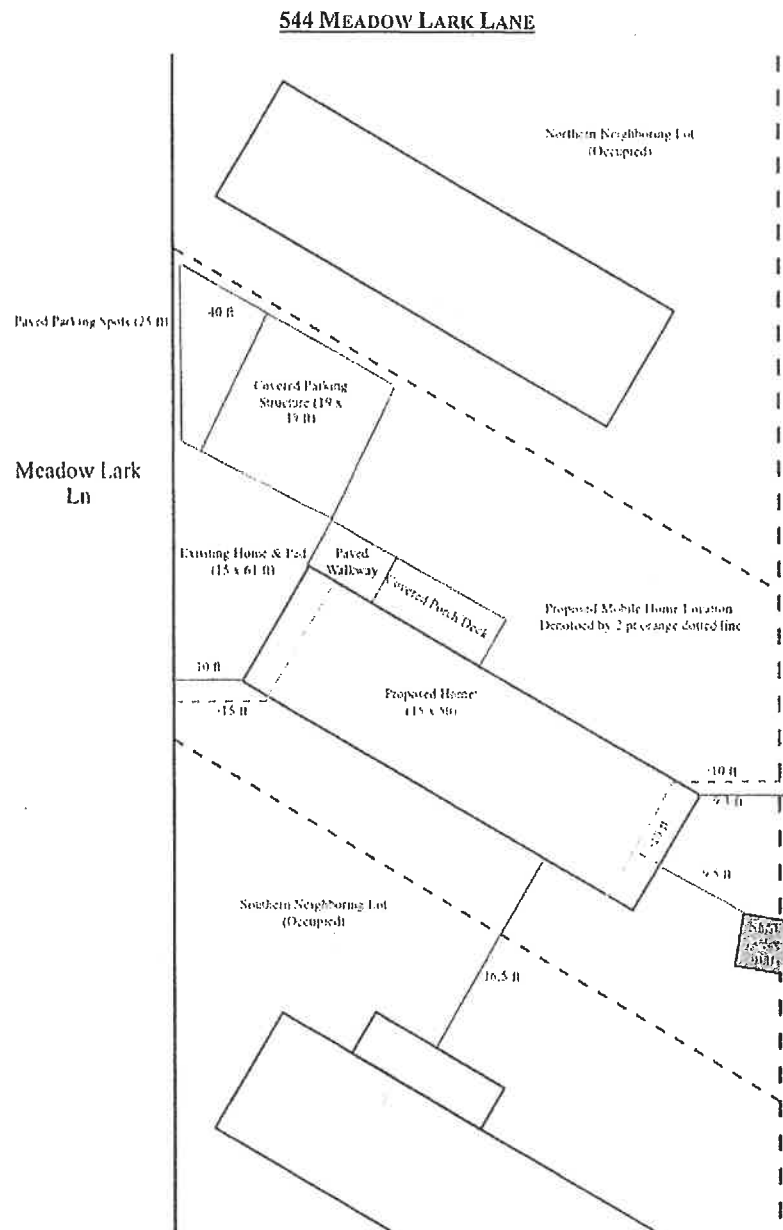
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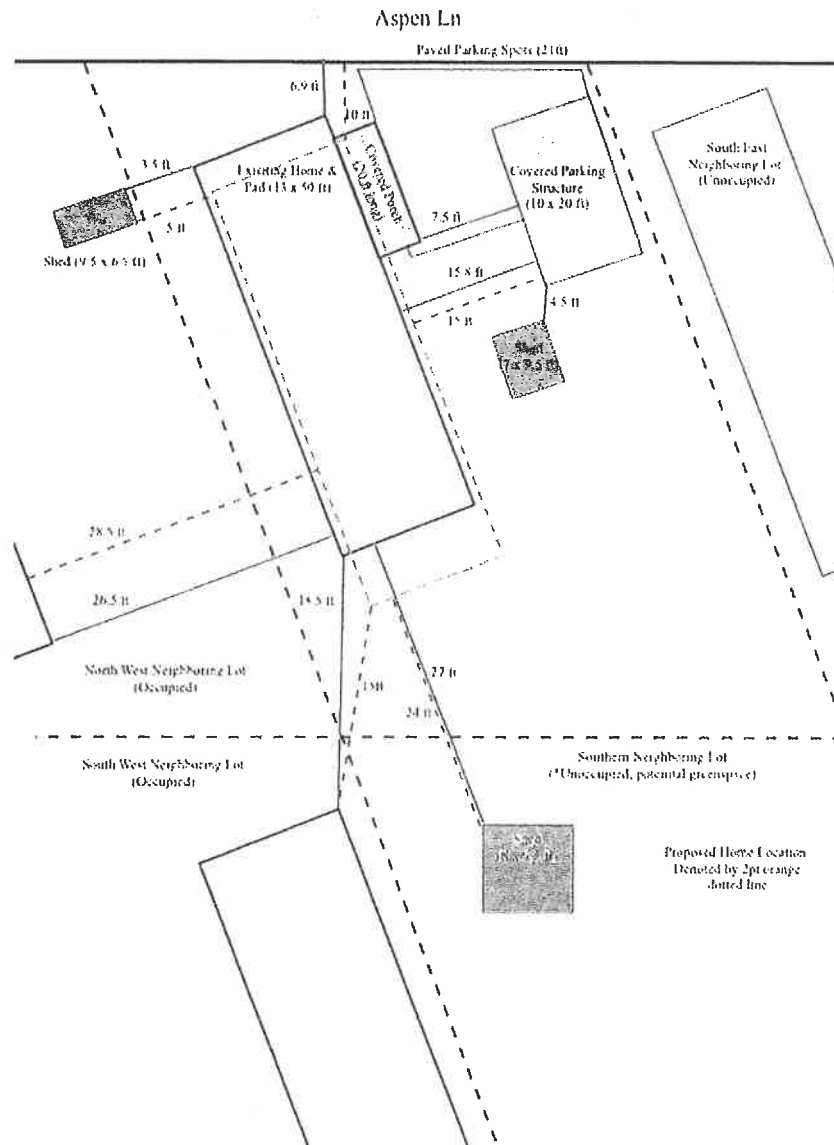
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10/21/2022

2495 ASPEN LANE



Completed by: A. Bhagat

10/21/2022

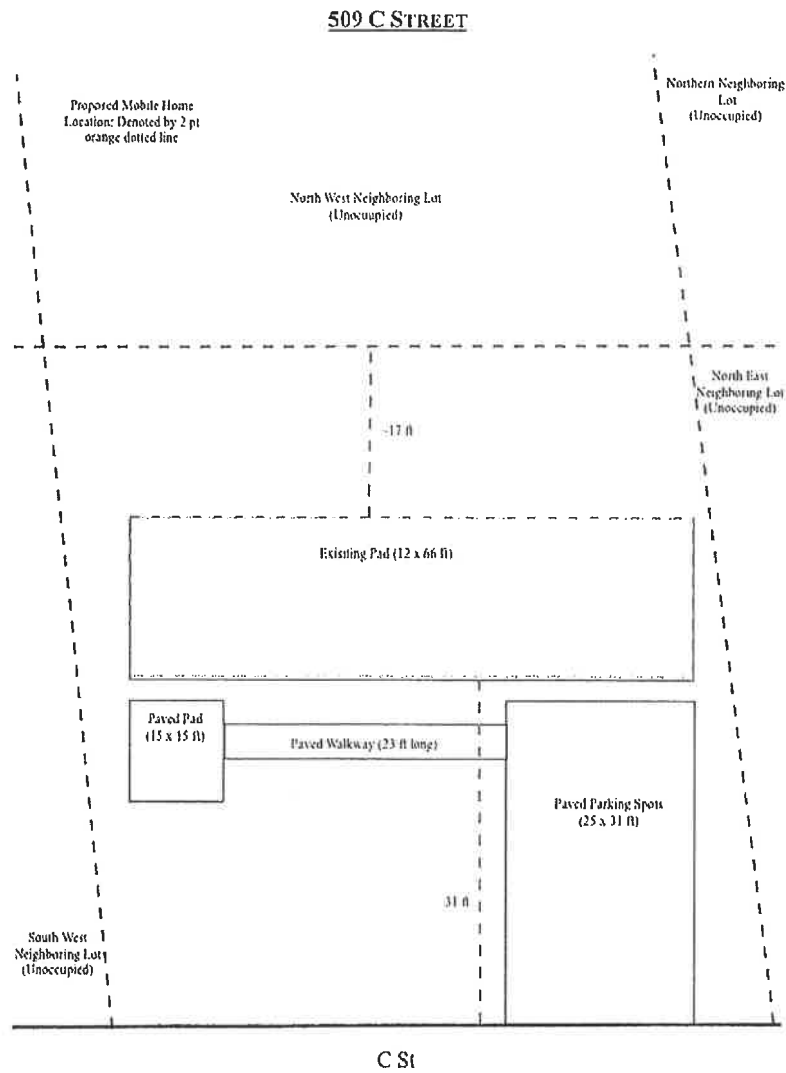


Exhibit E – Home Dimensions Table

<u>LOT</u>	<u>ADDRESS</u>	<u>DIMENSIONS</u>
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4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56



City of Arnold

Ron Counts, Mayor

November 30, 2023

Ozark MHP, LLC
c/o Patricia Jensen (pjensen@rousepc.com)
13421 Manchester Rd., Suite 103
Saint Louis MO 63131

Re: BA-2023-03 Ozark MHP (Appeal) at 501 A St. (Jefferson County Parcel No. 01-5.0-21.0-4-001-030)

Dear Ms. Jensen:

The purpose of this letter is to officially inform you that on November 29, 2023, the Board of Adjustment **denied** your request pertaining to BA-2023-03, to appeal decisions made by the Zoning Enforcement Officer for the purpose of seeking zoning approval of three Manufactured Home (MHU) Placement permit applications (2493 Cedar Ln, 2491 Birch Ln, and 509 C St) within the Ozark Mobile Home Park at the subject parcel. The Board of Adjustment voted 4 to 1 to uphold Staff's determination to archive the three permits due to a lack of a valid City Occupancy Permit for the Ozark Mobile Home Park

This concludes the City's appeal process. The decision of the Board of Adjustment may be appealed to the Circuit Court of Jefferson County by any persons of the municipality that may be aggrieved by the decision of the Board within 30 days after filing of this decision by the Board as set forth in Section 405.250.

Please contact this office should you have any questions regarding this letter.

Respectfully,

A handwritten signature in blue ink, appearing to be "ST", with a long horizontal flourish extending to the right.

Sarah Turner
Senior Planner

cc: Allison Sweeney, City Attorney

Cert. Mail: 7009 2820 0004 3485 1674

EXHIBIT

F

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