

AGENDA ITEM 4 A

VARIANCE REQUEST TO REAR SETBACK

7008 HIGHLAND BLVD



CITY OF LA VISTA
BOARD OF ADJUSTMENT

STAFF REPORT

VARIANCE
MALIBU SUNROOMS

DATE OF BOA MEETING:
May 5, 2011

SUBJECT:

Variance to Section 5.06.05.01 of the City of La Vista Zoning Ordinance;
Request for a variance to a rear-yard setback.

PROPERTY INFORMATION

APPLICANT:

Malibu Sunrooms
Tom Patton
13633 S. 217th
Gretna, NE 68028

PROPERTY OWNER:

Todd and Christine Swogger
7008 Highland Blvd
Omaha, NE 68138

SUBJECT PROPERTIES:
Lot 474 Millard Highland South Replat

ZONING:

R-1, Single-Family Residential

DEFINITIONS

(from Section 2 of Zoning Ordinance)

SETBACK, REAR YARD OR SIDE YARD shall mean the line which defines the width or depth of the required rear or side yard. Said setback line shall be parallel with the property line, *offset* by the perpendicular distance prescribed for the yard in the district. (*Ordinance No. 1083, 2-17-09*)

BACKGROUND

Description of Development:

The Swogger house is a single-family residence located in the Millard Highland South subdivision, south of Harrison Street and west of Interstate 80. The split-entry 1124 square feet dwelling sits on an irregular lot facing a half-circle entrance, with a side-yard facing Highland Blvd.

See attached aerial image for more information.

Applicable Zoning Regulations:

Section 5.06 R-1 Single-Family Residential

5.06.01 Intent: The Single-Family Residential District is intended to permit low to medium-density residential developments to accommodate residential and compatible uses.

5.06.02 Permitted Uses:

- 5.06.02.01 Single family dwellings.
- 5.06.02.02 Public and private schools.
- 5.06.02.03 Public Services.
- 5.06.02.04 Publicly owned and operated facilities.
- 5.06.02.05 *Child Care Home, as per Section 7.10. (Ordinance No. 880, 11-19-02)*
- 5.06.02.06 *Group Care Home (Ordinance No. 1118, 4-6-10)*

5.06.03 Permitted Conditional Uses:

- 5.06.03.01 Public and private recreation areas as, country clubs, golf courses, lakes, common areas and swimming pools.
- 5.06.03.02 Churches, temples, seminaries, convents, including residences for teachers and pastors.
- 5.06.03.03 Public utility main transmission lines including substations, distribution centers, regulator stations, pumping stations, storage, equipment buildings, garages, towers, or similar public service uses.
- 5.06.03.04 Home Occupations, as per Section 7.10.
- 5.06.03.05 Child Care Center.

5.06.04 Permitted Accessory Uses:

- 5.06.04.01 Buildings and uses customarily incidental to the permitted uses.
- 5.06.04.02 Decks, elevated patios either attached or detached.
- 5.06.04.03 Private swimming pool, tennis court, and other recreational facilities in conjunction with a residence.
- 5.06.04.04 Parking for permitted uses as per Section 7.05 through 7.09.
- 5.06.04.05 Signs allowed in Section 7.01 through 7.04.
- 5.06.04.06 Temporary buildings incidental to construction work where such building or structures are removed upon completion of work.
- 5.06.04.07 Landscaping as required by Section 7.17.

5.06.05 Height and Lot Requirements:

5.06.05.01 The height and minimum lot requirements shall be as follows:

Uses	Lot Area (SF)	Lot Width	Front Yard	Side Yard	Rear Yard	Max. Height	Max. Building Coverage
Single-family Dwelling (existing development ⁴) ²	5,000	60'	30'	5'	30'	35'	35%
Single-family Dwelling (future development ³) ²	7,000	70'	30'	10'	30'	35'	40%
<i>Other Permitted Uses</i>	8,000	75'	25'	25'	25'	35'	25%
Other Conditional Uses	8,000	75'	25'	25'	25'	45'	25%
Accessory Buildings	-	-	50'	5'	5'	17'	10% ¹

¹ Provided total area of accessory structures for single family does not exceed 700 sq. ft. and the total lot coverage of all buildings and accessory structure does not exceed 50%

² On Corner Lots the following criteria apply to setbacks. In existing developed areas, the Street Side Yard setback may conform to existing setbacks of existing structures along that street. In new developments, the Street Side Yard setback shall be equal to the Front Yard setback.

³ Future development shall be defined as all new subdivisions created after *the adoption of Ordinance No. 848 on November 20, 2001*.

⁴ Existing development shall be defined as existing prior to the adoption of this regulation and shall not include any replatting or lot splits done after the date of original adoption.

The applicant has applied to construct a sunroom addition to the rear of their single-family house. The 15-foot wide by 12-foot deep addition would encroach upon the existing rear yard setback of 30 feet. The applicant is requesting a 20' rear yard setback.

SPECIFIC REQUIREMENTS IN APPROVAL OF A VARIANCE

Section 8.03.03.01 and Nebraska Revised State Statutes Section 19-910:

The Board of Adjustment shall authorize no such variance, unless it finds that:

1. The strict application of the Ordinance would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

Bylaws and Rules of Procedure of the City Of La Vista Board of Adjustment – Section 7, Specific Requirements in Approval of a Variance:

In any action by the Board with regard to approval of a variance, such action shall be taken in accordance with the limitations of Nebraska law and the requirements and limitations of the applicable City Zoning Regulations and these Rules of Procedure. In any action to approve a variance, the Board shall make findings which shall be recorded in the minutes of the Board that:

A. The strict application of any applicable provision of the applicable City Zoning Regulation would, in each specific variance petition, result in at least one of the following:

1. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in question;

Staff Analysis: The lots in this area are irregularly shaped due to the original platting of the area. Eight lots along Highland Blvd consist of irregularly shaped lots due to their platting along two half-circles.

Resulting Hardship: Yes / No

2. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exception topographic conditions on the piece of property in question;

Staff Analysis: The lot slopes downward from west to east, dropping a total of approximately eight feet from the western edge to the eastern edge of the property. This is similar to the topography of other lots in this subdivision. The issue of this application is not related to topographical aspects.

Resulting Hardship: Yes / No

3. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.

Staff Analysis: Although the depth of the lot is shallower than the average lot in this subdivision, other lots within this subdivision have similar or smaller lot depths. This hardship was an unintended consequence of the subdivision.

Resulting Hardship: Yes / No

B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that EACH of the following requirements for authorizing a variance can be met:

1. Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable City Zoning Regulations;

Staff Analysis: The purpose and intent of the setbacks are one of the core reasons for the initial creation and use of zoning regulations in the United States. Specifically with this case, the reduction in the setback would hinder the access of firefighting apparatus to pass through the back yard.

Specific requirement: satisfied / not satisfied

2. The strict application of the applicable requirements of the applicable City Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition;

Staff Analysis: The strict application of the code would not allow for the construction of a sunroom off the back of the dwelling unit. This would not be considered an undue hardship as the house can be fully utilized without the construction of the sunroom.

Specific requirement: satisfied / not satisfied

3. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

Staff Analysis: Lots 218-221 and 475-477 of Millard Highland South Replat share this irregularity due to the half-circle access, although there are several other irregularly shaped lots within this subdivision, no other properties in Millard Highland South currently have this irregular shape due to the half-circle access.

Specific requirement: satisfied / not satisfied

4. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by such variance;

Staff Analysis: Staff does not believe substantial detriment would occur on adjacent properties or within the zoning district.

Specific requirement: satisfied / not satisfied

5. The authorization of a variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;

Staff Analysis: The variance request is a matter of convenience or desire of the property owner in staff's opinion.

Specific requirement: satisfied / not satisfied

6. The condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable City Zoning Regulations.

Staff Analysis: This development was unique in that the half-circle accesses off of Highland Blvd would not be allowed in future development. No changes to the City's Zoning Regulations would be needed, as this will not be a recurring situation.

Specific requirement: satisfied / not satisfied

DECISION AND ORDER

Move to approve the variance request, as proposed and presented to the City of La Vista Board of Adjustment, finding that at least one hardship has been created by the strict application of the Zoning Ordinance and finding that each specific requirement has been satisfied.

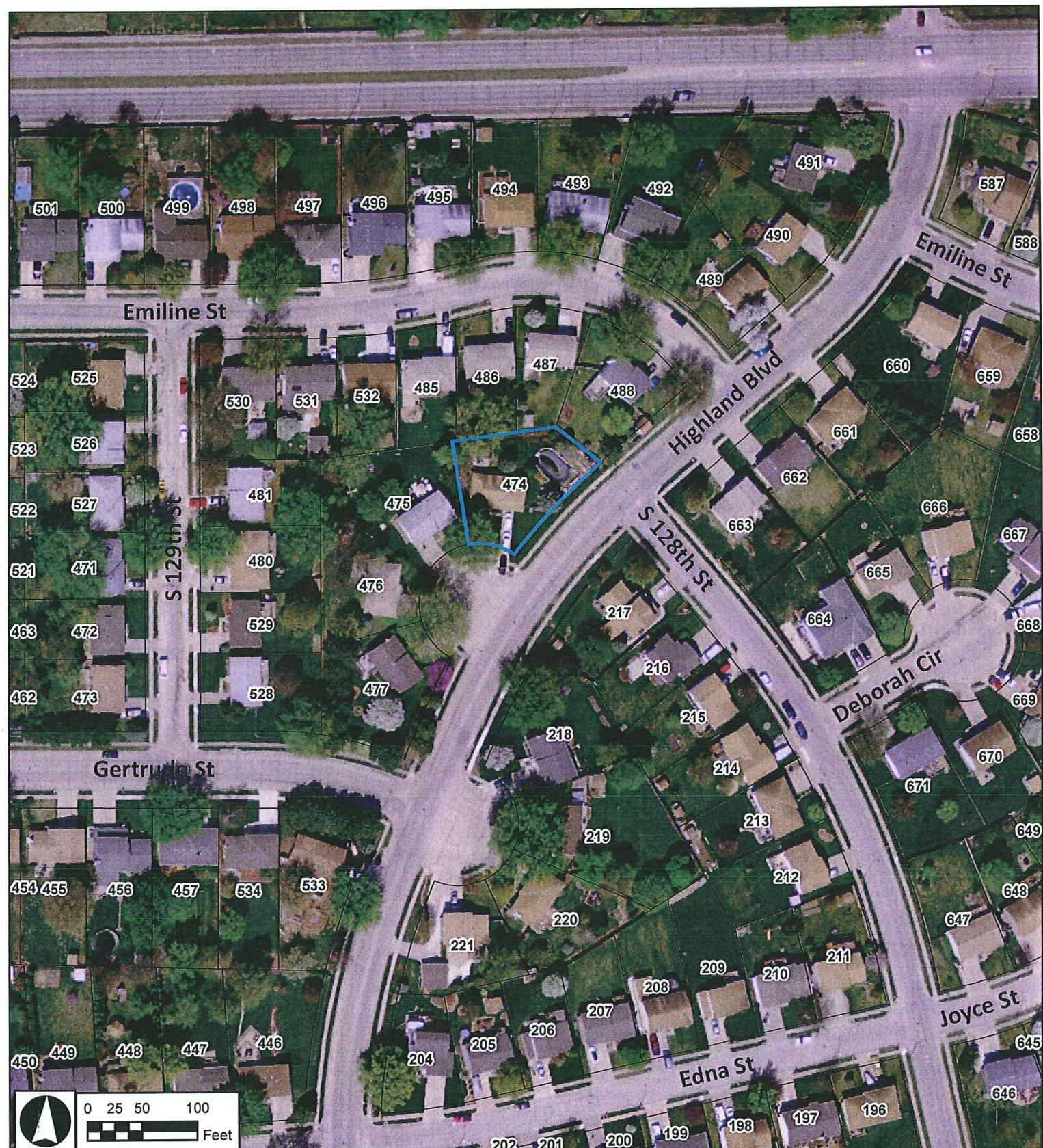
Seconded: _____

Vote: Ayes _____ Nays _____

If motion to approve fails:

Move to deny the variance request, as proposed and presented to the City of La Vista Board of Adjustment based on the following reasons for denial:

Vote: Ayes _____ Nays _____



Swogger Property

Board of Adjustment Variance Request

April 28, 2011
CAS





BOARD OF ADJUSTMENT AND
BOARD OF APPEALS APPLICATION

CITY OF LA VISTA

8116 PARK VIEW BLVD., LA VISTA, NE 68128

402-331-4343

A. General Information

1. **APPLICANT**

Name: Malibu Sunrooms Contact: Tom Patton
Address: 13633 So. 217th
City/State/Zip: Gretna NE 68028
Phone/Fax: 402-715-5300 402-332-3788
Email address: _____

2. **PROPERTY OWNER (If not the same as applicant above):**

Name: Todd & Christine Swogger Contact: _____
Address: 7008 Highland Blvd
City/State/Zip: Omaha NE 68138
Phone/Fax: 402-896-0948
Email address: christine.swogger@yahoo.com

3. **PRIMARY PROJECT CONTACT (applicant, representative, or other):**

Name: Malibu Sunrooms Contact: Tom Patton
Address: 13633 So. 217th
City/State/Zip: Gretna NE 68028
Phone/Fax: 402-715-5300 402-430-1293 cell
Email address: _____

4. **CERTIFICATION:**

An application may be filed only by the owner(s) of the property or by a person with the written permission of the owner authorizing the application, or by an attorney representing the owner.

Indicate your authority.

I (We) (am) (are) the sole owner(s) of the property.

I have the written permission of the property owner(s) authorizing the application and a copy of the authorization is attached.

I am an attorney representing the owner(s).

Tom Patton

Signature

Tom Patton

Print Name

13633 So. 217th Gretna

Address

The applicant or representative must be present at the scheduled hearing to answer any questions or present required information to the Board. It is the Board's policy to postpone the case when the applicant or representative fails to appear at the scheduled hearing; however, the Board is not required to postpone the application and may postpone, approve or disapprove the application with or without the applicant or representative's presence. If the applicant or representative is unable to attend the hearing, they may request a postponement of the application prior to the meeting.

B. Project Information:

1. Project Location: 1/4 1/4 Section _____, T _____, R _____, Sarpy County, Nebraska
General Location: Lot 474 Millard Highland South Replat
2. Project/Property Address (if known): 7008 Highland Blvd.
3. Area: _____ (acres)
4. Existing Use of the Property: SFR
5. Variance Request: Reduce rear yard setback to allow construction of a 12' projection x 15' wide sunroom. Setback is currently 30'; it have to be approx. 20' instead.

Note: The Board of Adjustment does not have unlimited discretion in deciding whether or not to grant a variance. The Board must follow Section 8 of the La Vista Zoning Ordinance in their deliberations (see attachment).

C. Additional Submittal Requirements:

Submit one original and ten copies of the following:

1. Board of Adjustment/Board of Appeals Application Form.
2. Legal Description of Property and Surveyor's Certificate.
3. Site Plan and/or other documents that illustrate this request.
4. For Public Hearing Presentation, overhead transparencies or other approved form of projected illustrations identical to any display boards being used are required to be provided at time of submittal.

The application fee will also be required at the time of submission.

For Office Use Only

Project Case Number _____

Planning Commission _____

Published _____

Action: _____

Date Complete Application Received _____

City Council _____

Published: _____

Action: _____

Check Number/Amount _____

Posted on Property: _____

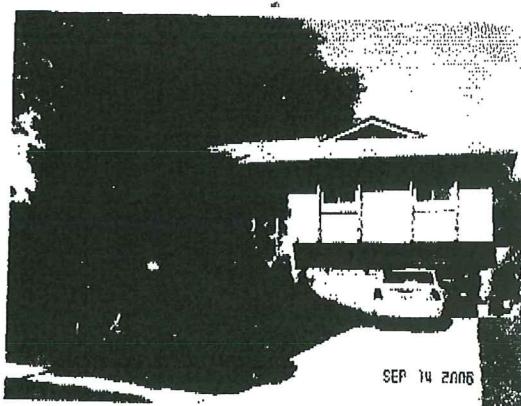
Notice to School District: _____

Other Comment(s): _____

Sarpy Property

Page 1 of 4

Active
Parcel Number: 010913122
Location: 07008 \HIGHLAND BLVD
Owner: SWOGGER/TODD R
C/O
Mail Address: 7008 HIGHLAND BLVD
OMAHA NE 68138-0000
Legal: LOT 474 MILLARD HIGHLANDS SOUTH
REPLAT
Tax District: 17014
Map #: 2959-18-0-61320-000-0474

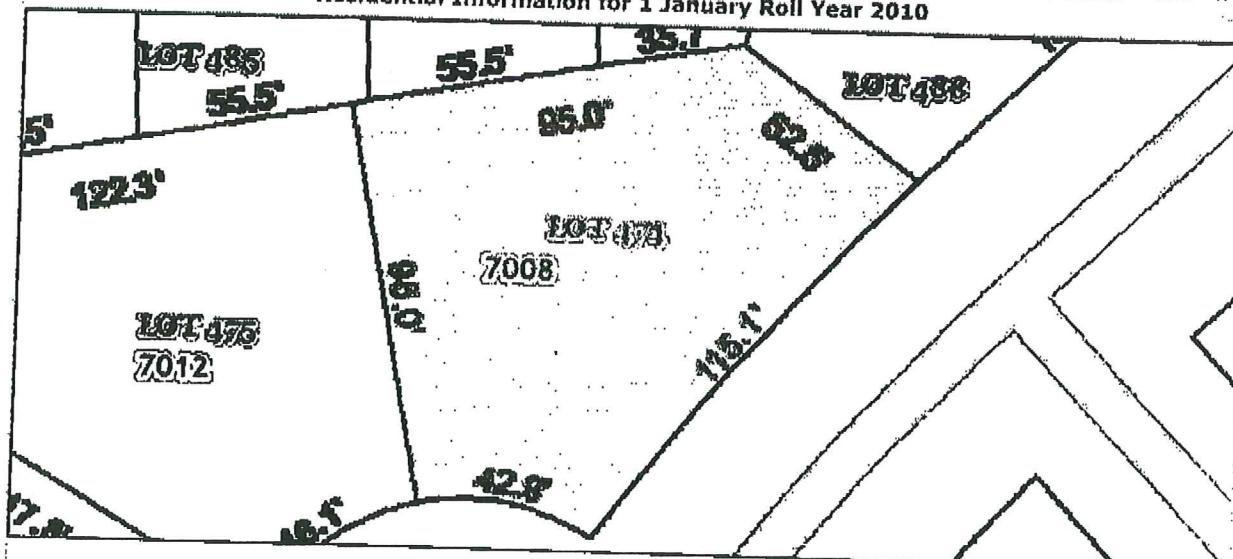


Click Picture/Sketch for Larger View

Use arrows to view Picture/Sketch.

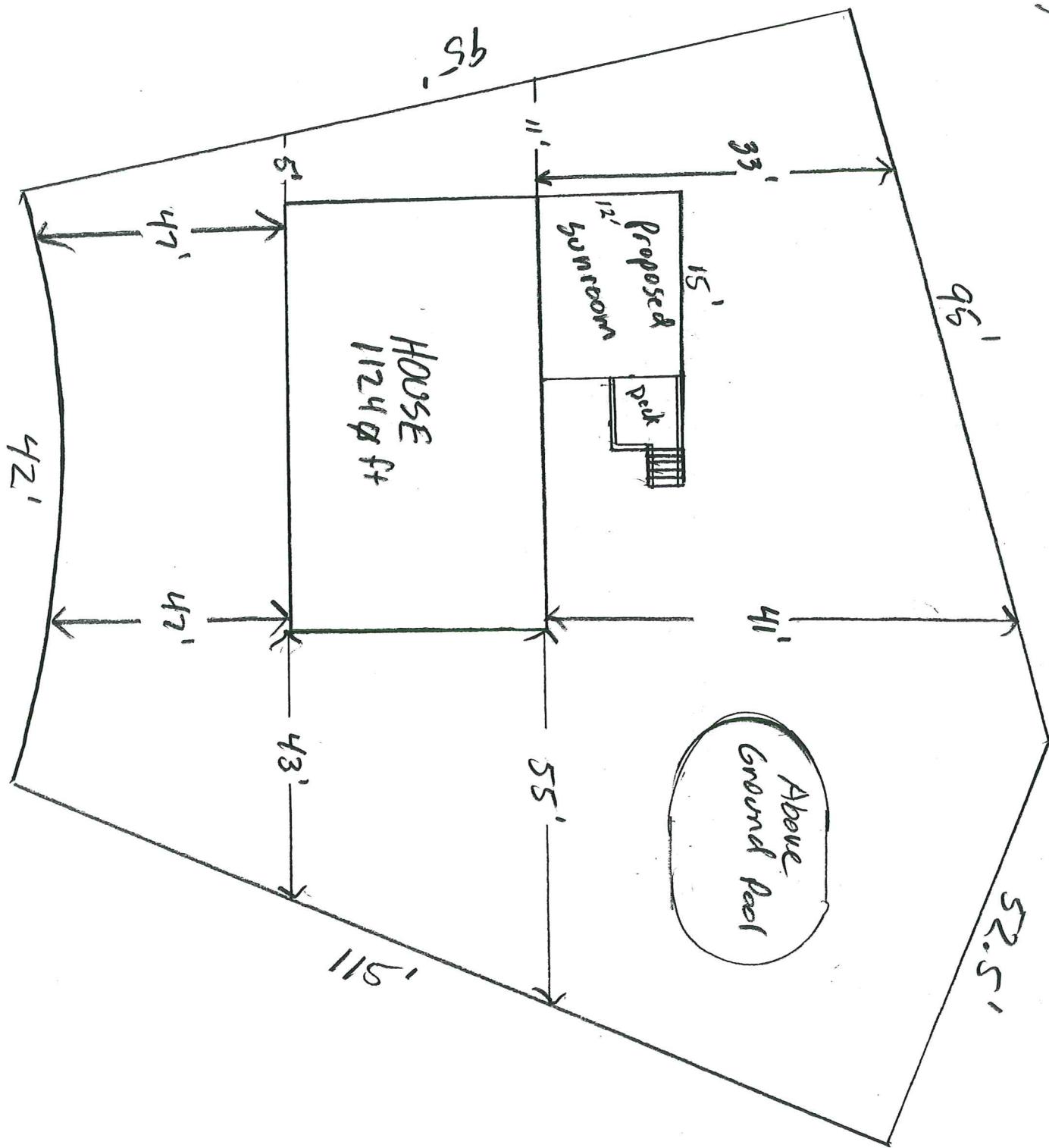
THIS IS NOT A PROPERTY RECORD FILE

Residential Information for 1 January Bell Year 2010



Style:	Split Entry	
Year Built:	1979	#Bedrooms above Grade 3
#Bathrooms Above Grade 1		
Total Bsmt Finish Sqft	576	Total Sqft 1124
		Bsmt Total Sqft 1056

7008 Highland Blvd.





Office: 402-715-5300 • Outside Omaha: 1-800-809-8674
13633 S. 217th Street • Gretna, Nebraska 68028
www.MalibuSunrooms.com

I, we hereby accept your proposal to furnish all labor and material necessary to perform the following work on the premises of the:

Owner: Swogger, Todd + Chris
Address: 7008 Highland Blvd.
City: Omaha State: NE Zip: 68138 (402) 896-0948
Todd @ work 341-8028 (402) 320-2364
Approximate Size: 10 x 15 x 12 Approximate Height: 7' Color: white

3 Season: Single Pane: AllView Original or Elite Glass: (Clear / Bronze / Azurlite / Sungate 500 / Screens)
4 Season: Insulated Glass: AllView Original or Elite Glass: (Clear / VT70/Solarban/Azurlite)
Yr. Round: Thermally Broken Frame: ComfortView Alum or Vinyl Glass: (Clear / VT70/Solarban/Azurlite)

4-Season Studio Style Sunroom - 1 step down

A-Wall to be: door + screen
B-Wall to be: door + screen
C-Wall to be: 1-door + 1-side + screen on 18" solid brewall.
Other:
Trapezoid/Wings: solid wings

Roof Color: white Thickness 6" (R-30) Glass Roof Panels #: 0
Shingle Roof: no Gutters: yes Downspouts: yes, to grade

How will room be mounted to house: Fascia mount
Heating/Cooling Unit: Amana PTAC unit (14,000 BTUs) w/digital controls
Electric Work: 5-110v + 1-220v wiring
Any Tear-out and Haul away: steps

Foundation Work: Build 12x15 deck foundation w/footings, vapor barrier + OSB sub-floor insulation w/full thick fiberglass insulation + cover.

Additional Work: Build 7 1/2 x 6 open deck w/steps + railing

* contract subject to city approval

Malibu Sunrooms to obtain all necessary permits.

Estimated time from date of down payment to begin construction, weather permitting July, 2011

Total Investment: \$ 500.00 earnest deposit due April 1, 2011 Payable in the following installments: subject to city approval
30% down payment
30% upon delivery to warehouse
30% down upon beginning of construction
10% upon job completion

Owner Signature Terri Heiger Date 3-24-11
Malibu Sunrooms, LLC Date

Owner Signature Chris Swogger Date 3/10/11

Subject to the terms and conditions which appear on the face and on the reverse side of this agreement.

[Print](#) | [Close](#)

Subject: Malibu Sunrooms Website Contact Form
From: chris
To: info@malibusunrooms.com

Date: Mon, 28 Mar 2011 11:13:27 -0400

Name- chris

Address- swogger

Phone- 402-815/1774

Email- christine.swogger@yahoo.com

Comments- Tom or Terri.,, We were wondering if you were taking our measurements to Lavista today?? We sent the deposit check on Saturday..you should get it today...Thanks for your consideration, Chris

La Vista Board of Adjustment

Section 8.03 Powers and Jurisdiction on Appeal

The Board of Adjustment shall have the following powers:

- 8.03.01 To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;
- 8.03.02 to hear and decide, in accordance with the provisions of this Ordinance, requests for interpretation of any map, or for decisions upon other special questions upon which the Board is authorized by this Ordinance to pass; and
- 8.03.03 To grant variances, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance.
 - 8.03.03.01 The Board of Adjustment shall authorize no such variance, unless it finds that:
 1. The strict application of the Ordinance would produce undue hardship;
 2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
 4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

In exercising the above mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.