



**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](tel:1-312-626-6799)

**Meeting ID:** [827 6053 6209](tel:827-6053-6209)

**Passcode:** [564104](tel:564104)

*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 29<sup>th</sup>, 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

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

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## **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



## BOARD OF ADJUSTMENT STAFF REPORT

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



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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.*

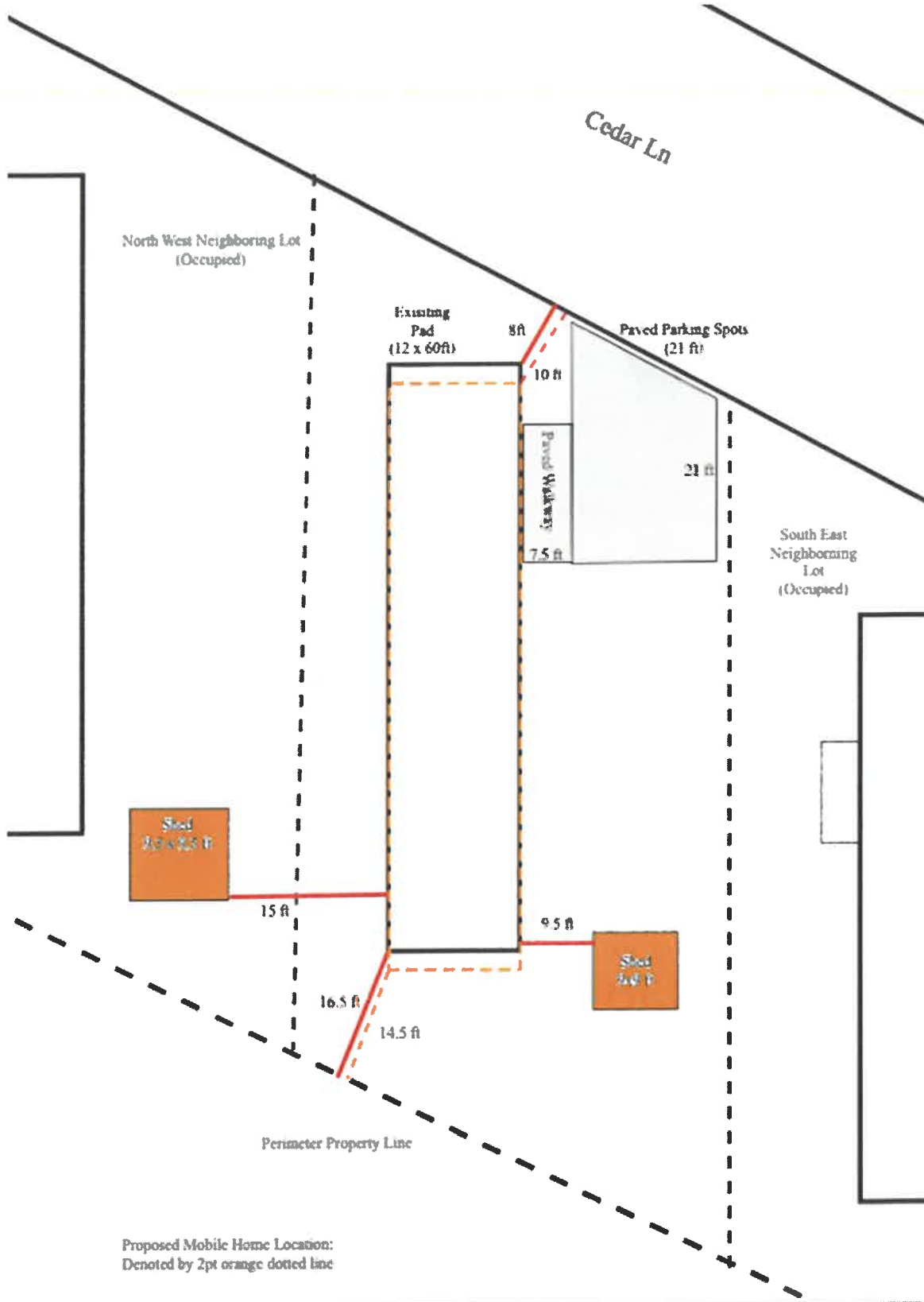
The Board has two options:

**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



X

Site Address - 911

2493 CEDAR LN 63010

Currents Of: 6/16/2023

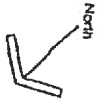
Zoom In

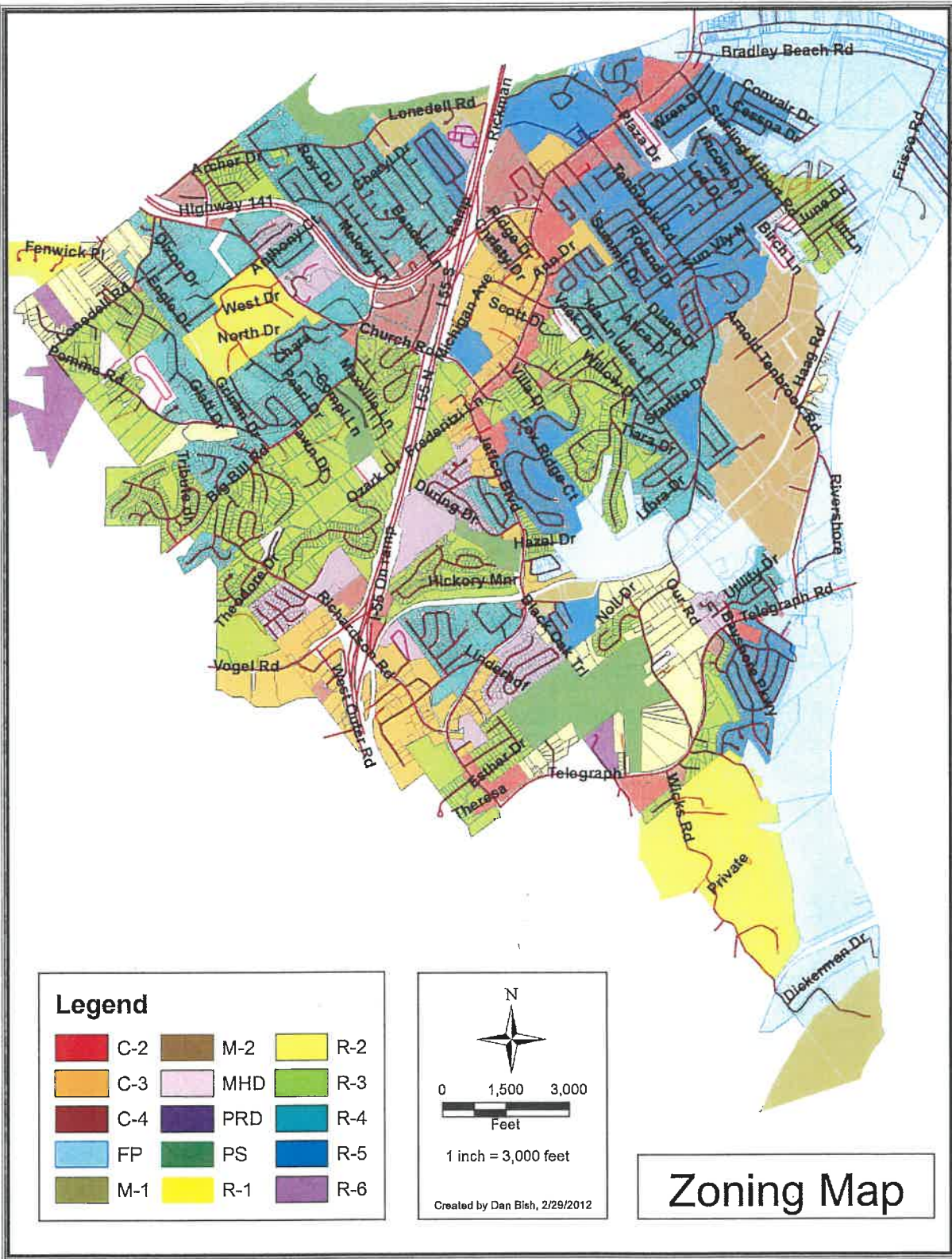
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**OZARK MOBILE HOME PARK**  
**Arnold, Missouri**  
 December 1994

David Dixon Associates / Architects  
 PO Box 8718 St. Louis, Missouri 63114-2718-842 Jan 16, 2003





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 Officer<sup>1</sup>  
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,

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<sup>1</sup> 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.

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.<sup>2</sup> “Appeals”: “Appeals to the Board may be taken by any person aggrieved...affected by any decision of the Zoning

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<sup>2</sup> 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.”

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-



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

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.”

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*

*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.

**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](mailto: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](mailto: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 Slate 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,

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  
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. }

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

{34359 / 72062; 998320.3 }



**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.

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{34359 / 72062; 997537. }

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.

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#### **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:

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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.

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

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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](mailto:bookkeepingmhp@gmail.com)

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{34359 / 72062; 997537. }

A-1

{34359 / 72062; 998320.3 }

B-3



# City of Arnold

Ron Counts, Mayor

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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,

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  
636/262-2380

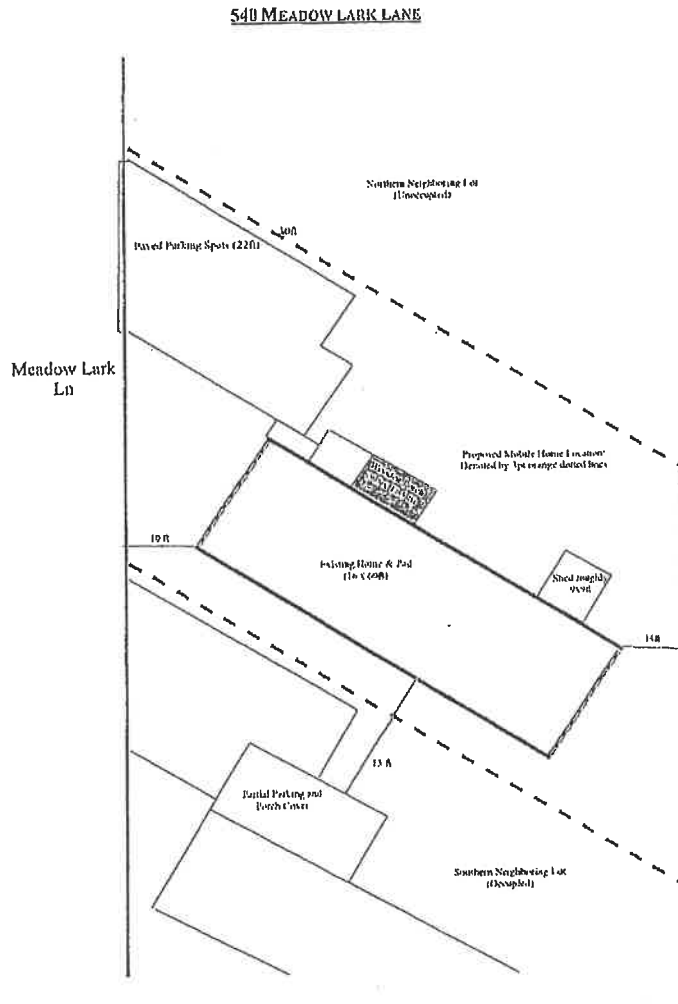
Public Works  
2900 Arnold Tenbrook Rd.  
Arnold, MO 63010  
636/262-2386



Exhibit B - Permit Application Drawings

Completed by: A. Bhagat

10/21/2022

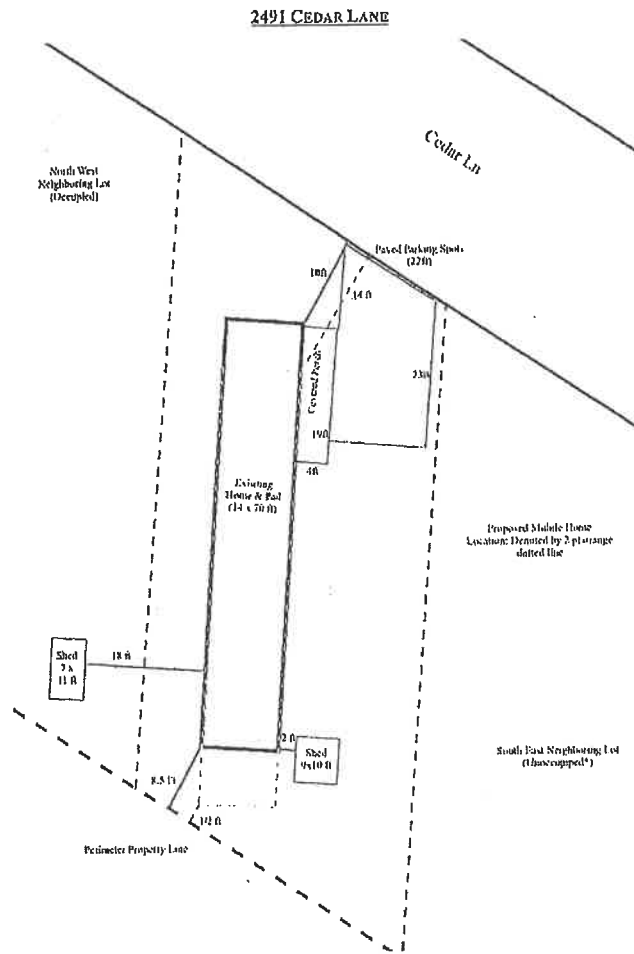


{34359 / 72062; 997537. }

B-1

{34359 / 72062; 998320.3 }

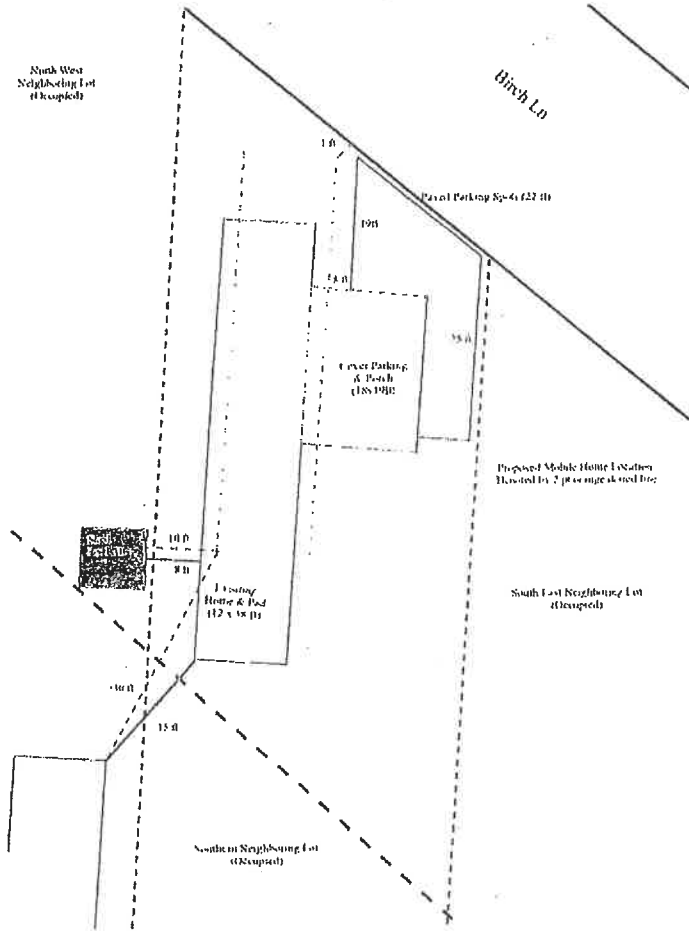
B-3



Completed by: A. Bhagat

10/21/2022

2491 BIRCH LANE



11

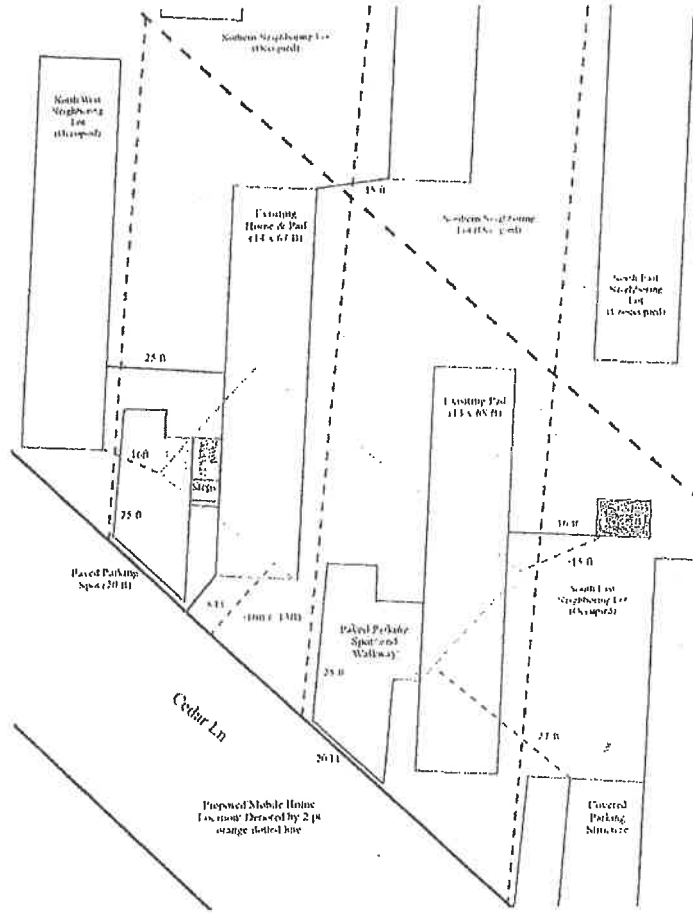
{34359 / 72062; 997537.}

B-3

{34359 / 72062; 998320.3}

B-3

2482 CEDAR LANE



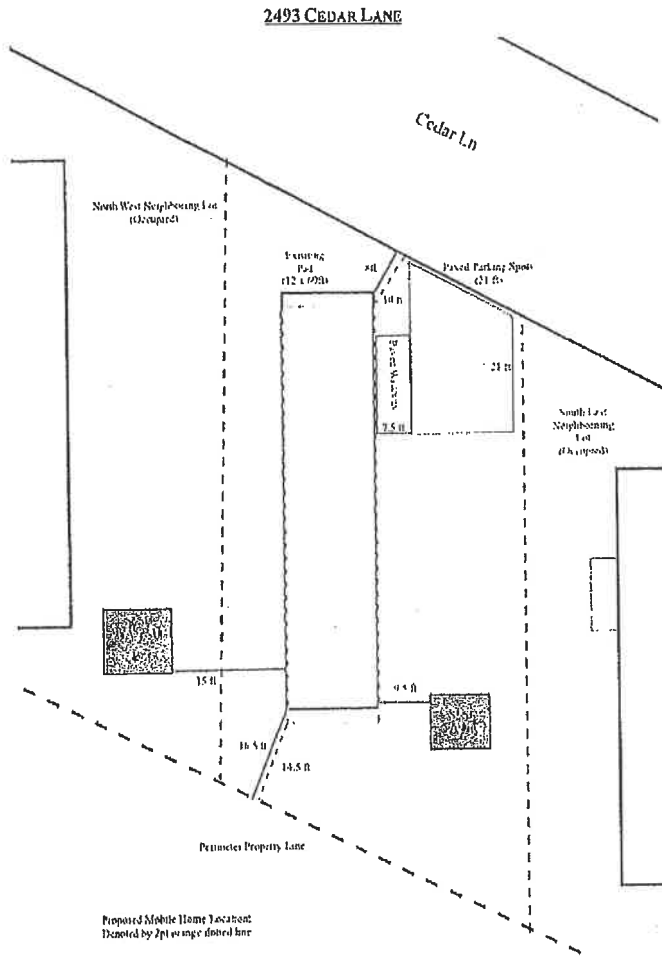
12

{34359 / 72062; 997537. }

B-4

{34359 / 72062; 998320.3 }

B-3

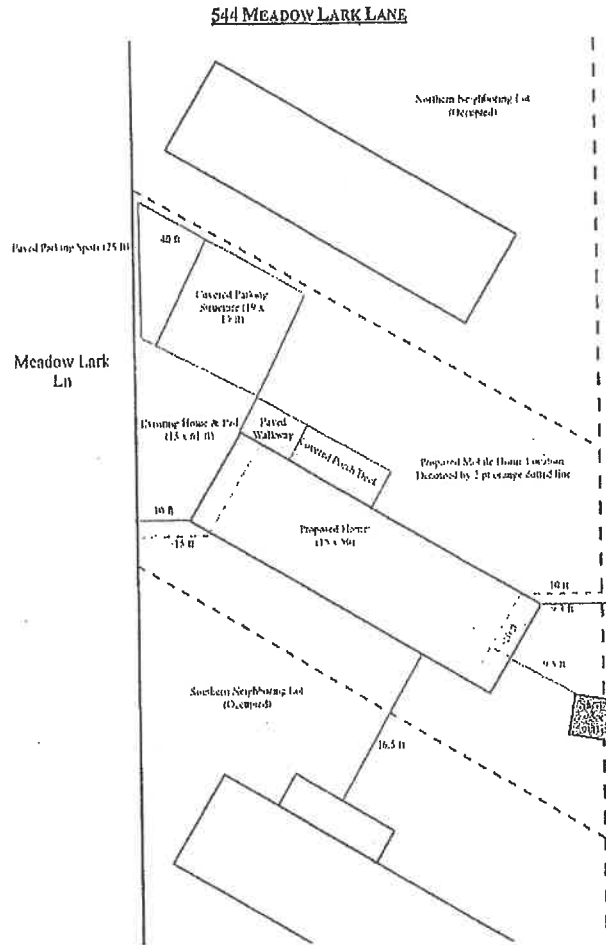


{34359 / 72062; 997537. }

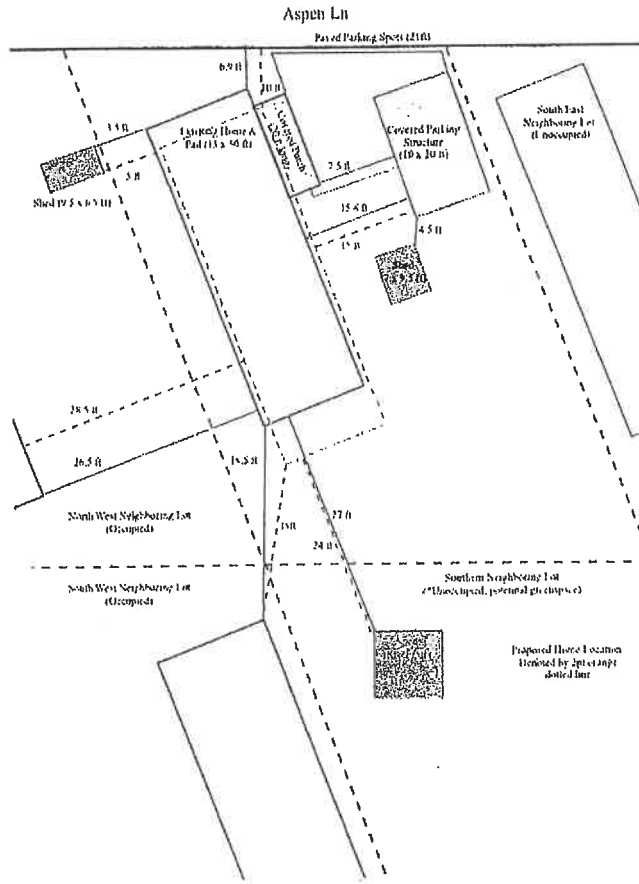
B-5

{34359 / 72062; 998320.3 }

B-3

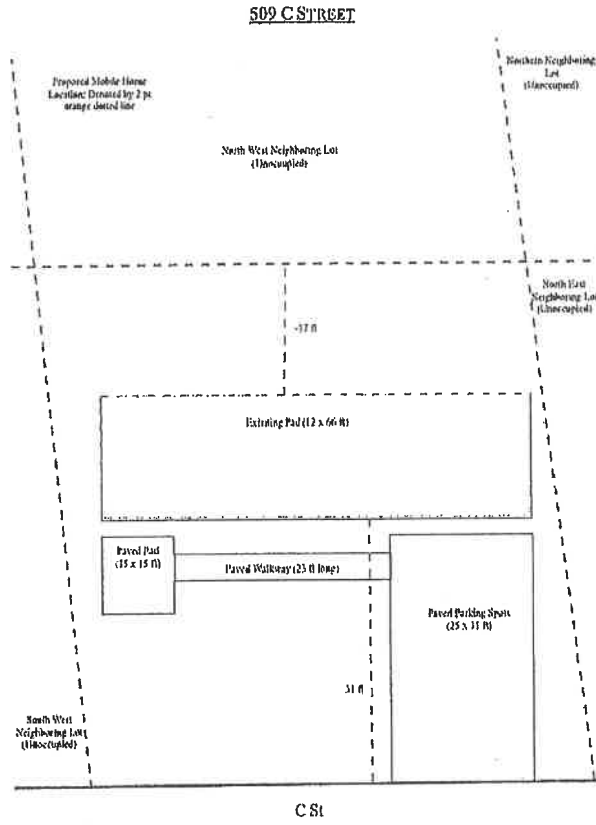


2495 ASPEN LANE



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. Jenson,

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

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

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

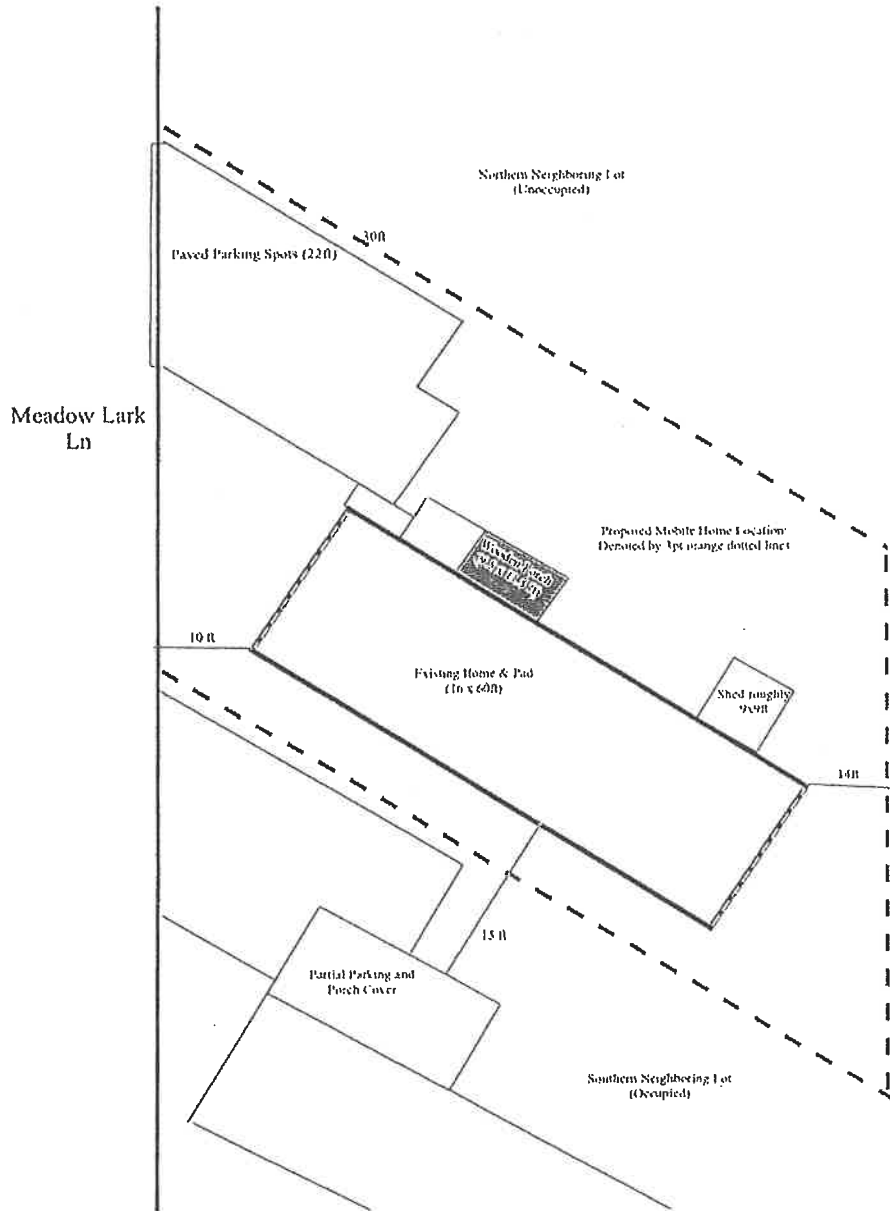
Public Works  
2900 Arnold Tenbrook Rd.  
Arnold, MO 63010  
636/282-2386

# Exhibit D - Permit Application Drawings

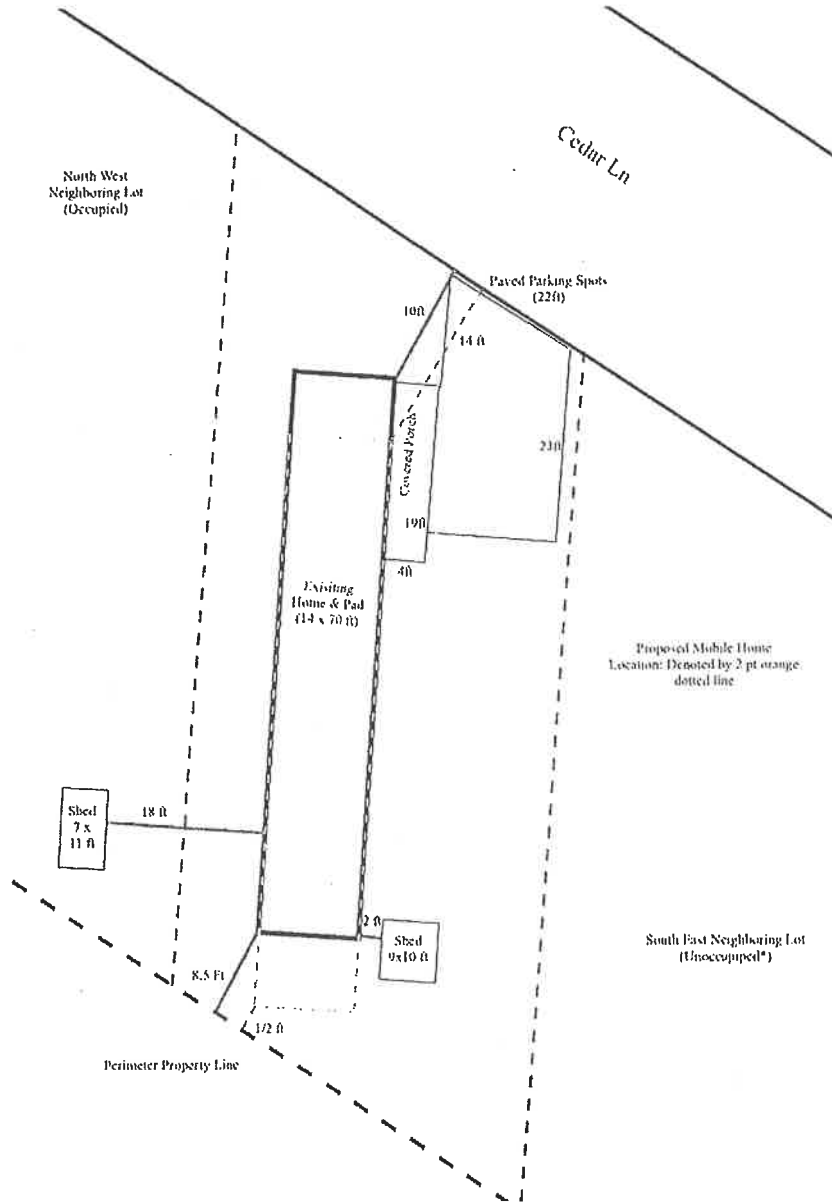
Completed by: A. Bhagat

10/21/2022

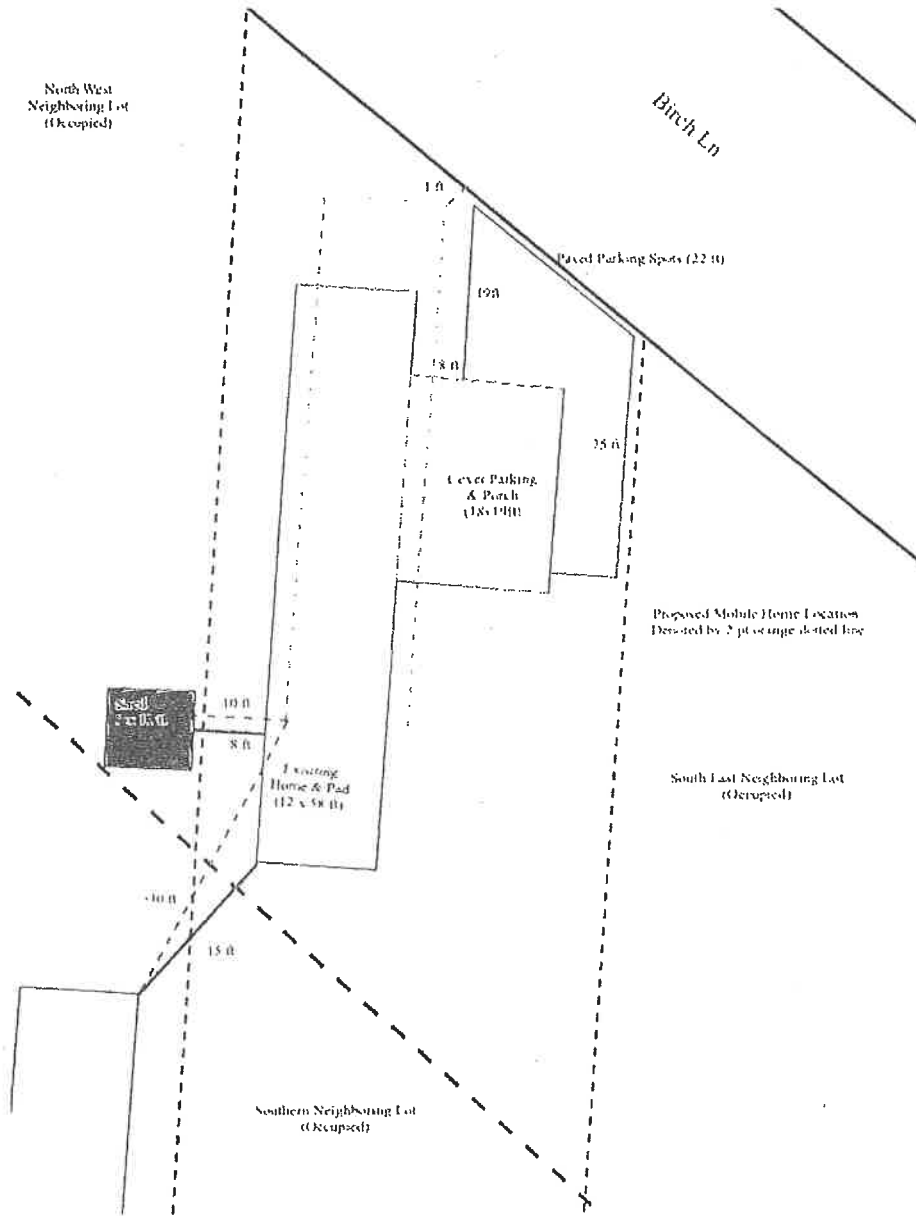
## 540 MEADOW LARK LANE



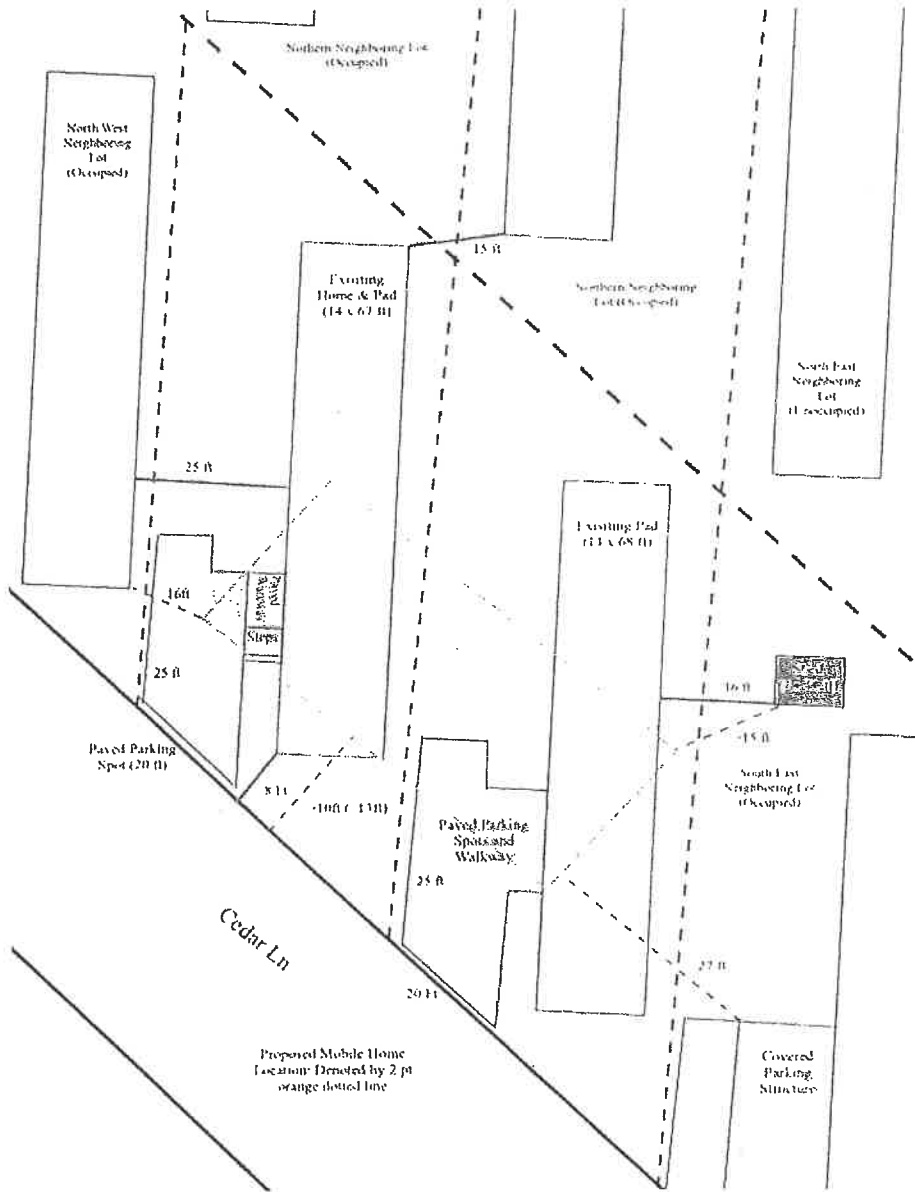
2491 CEDAR LANE



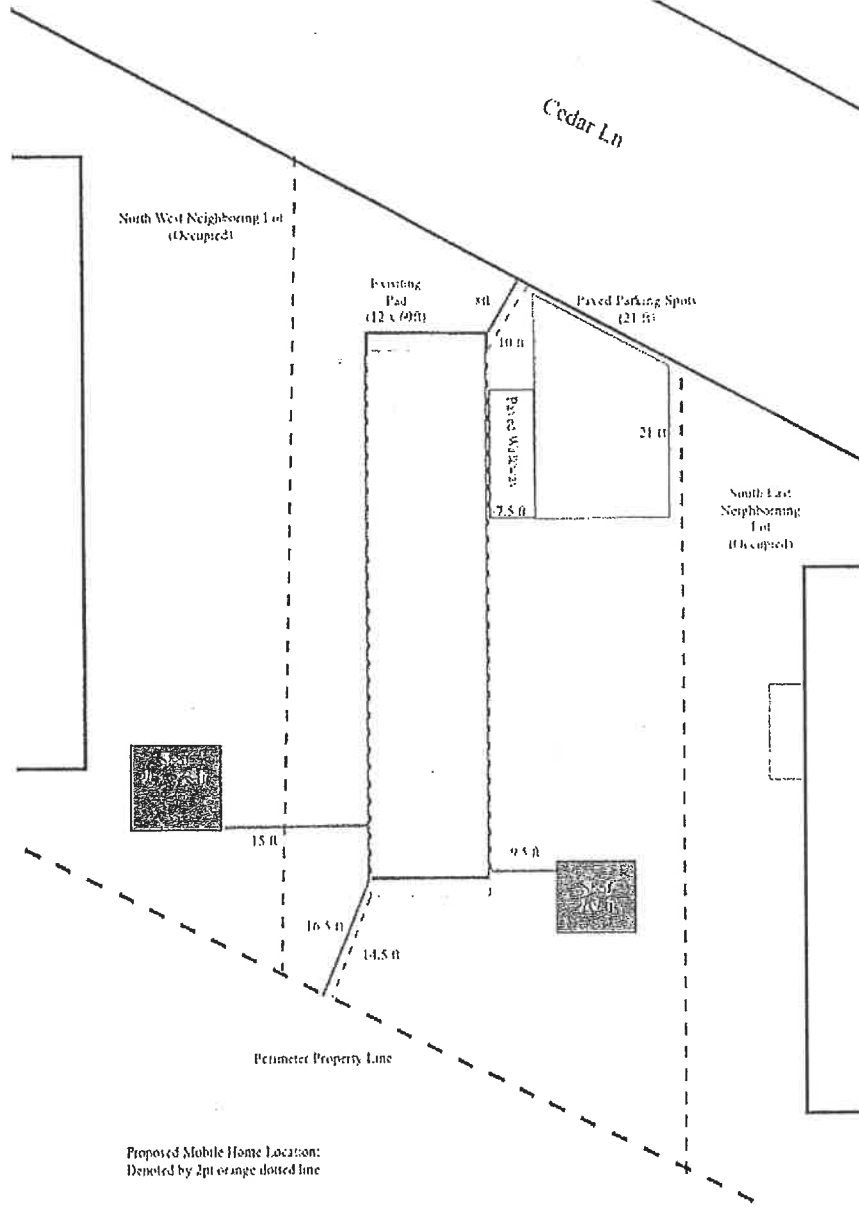
2491 BIRCH LANE



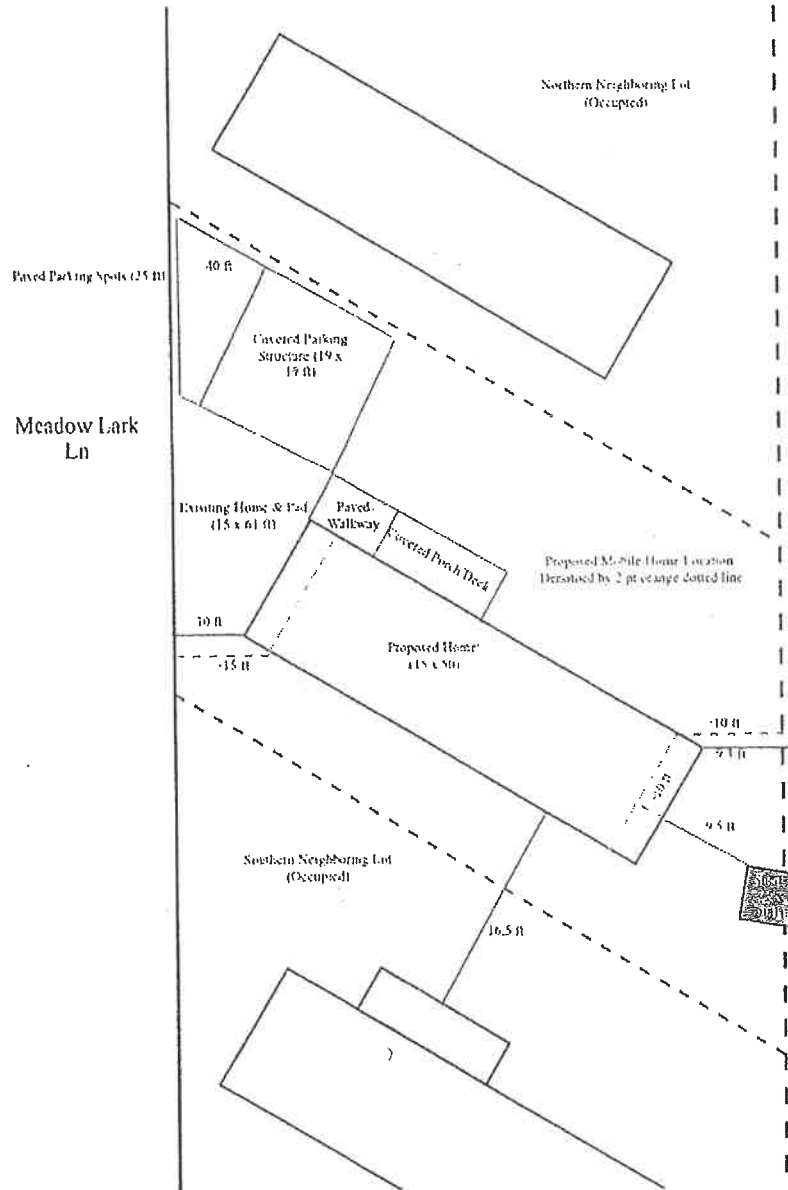
2482 CEDAR LANE



2493 CEDAR LANE

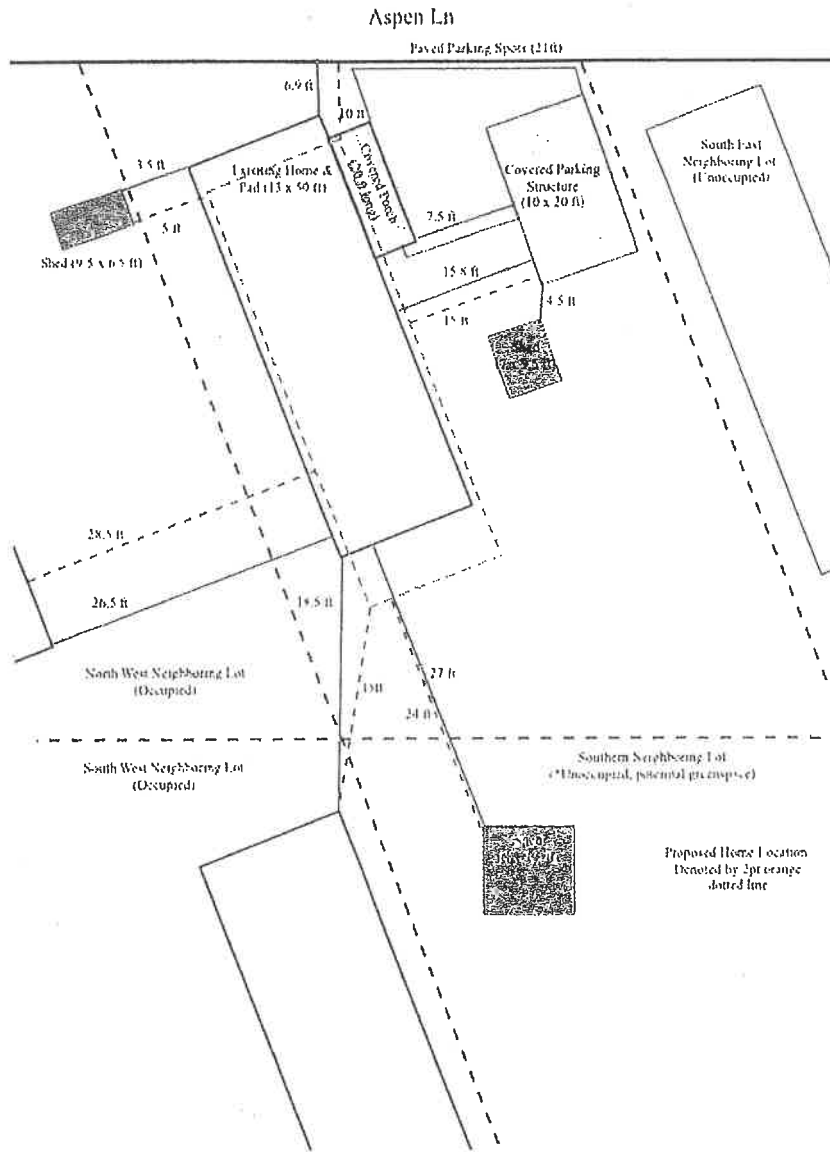


544 MEADOW LARK LANE

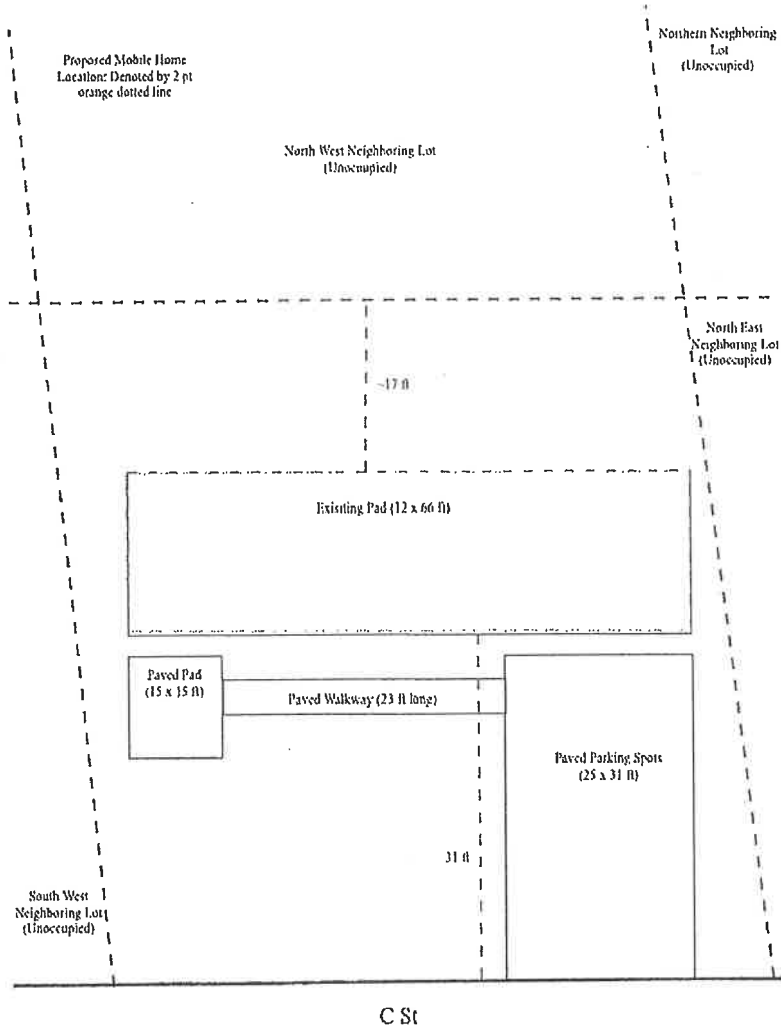




2495 ASPEN LANE



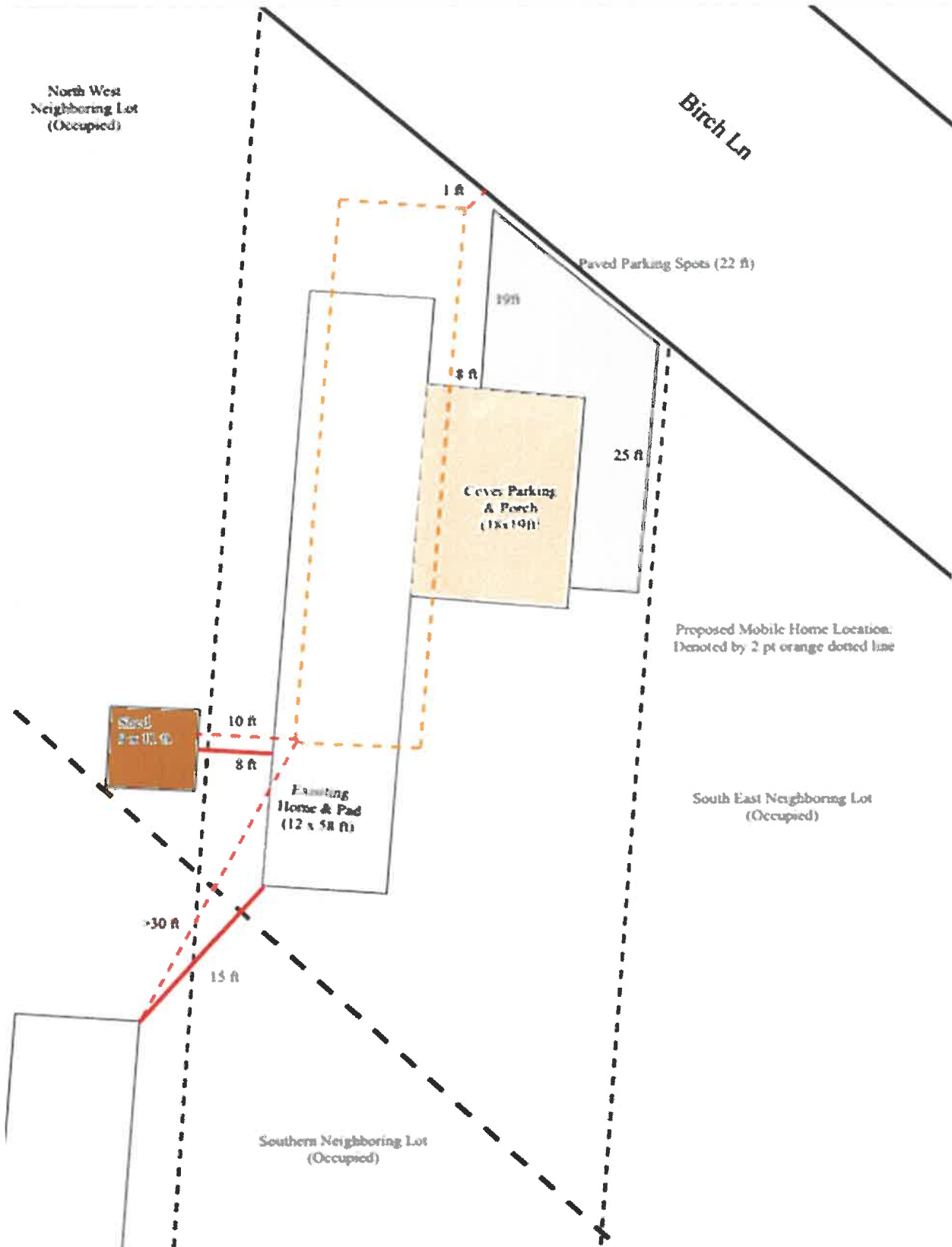
**509 C STREET**

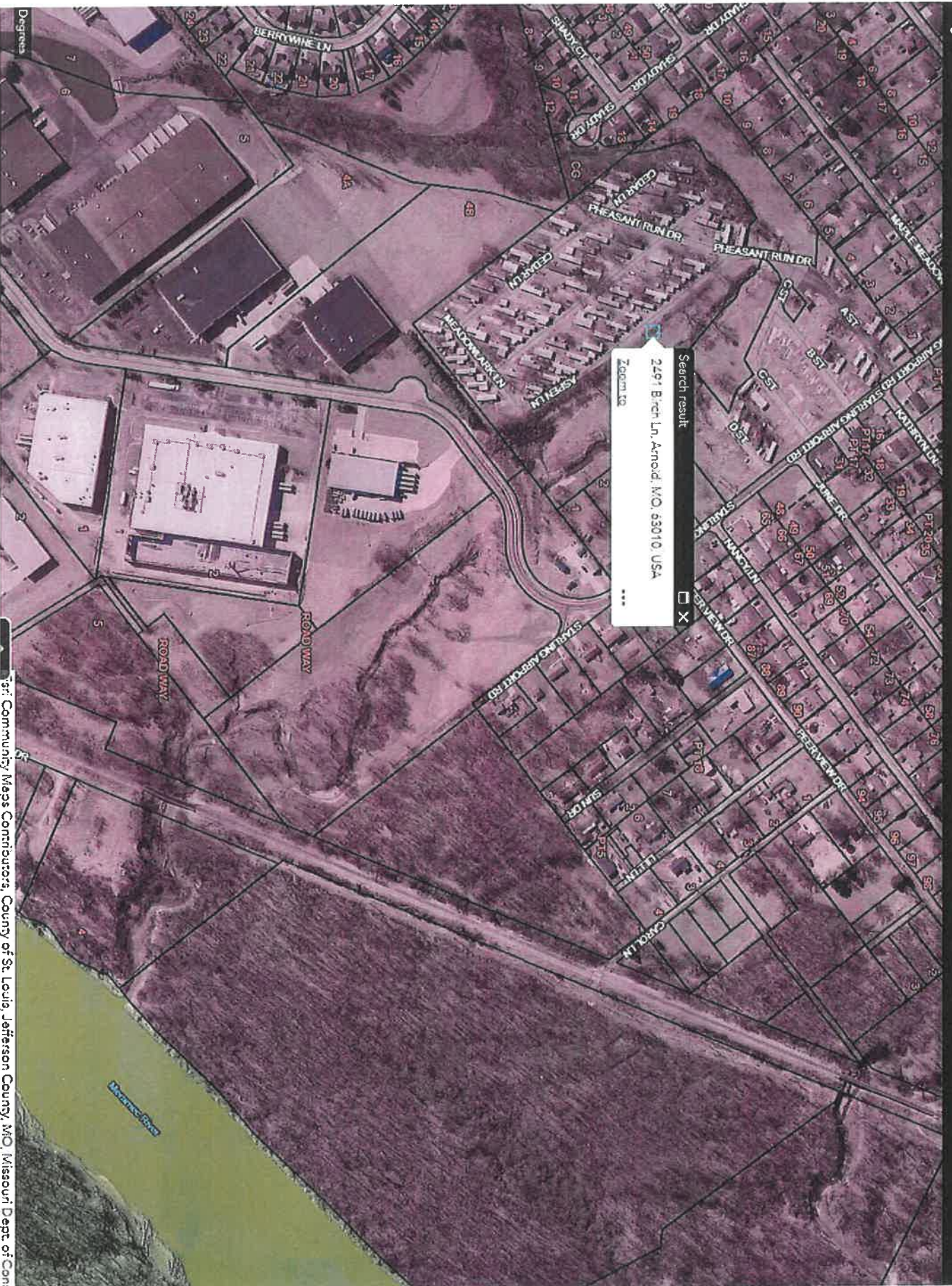


**Exhibit E – Home Dimensions Table**

<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

2491 BIRCH LN



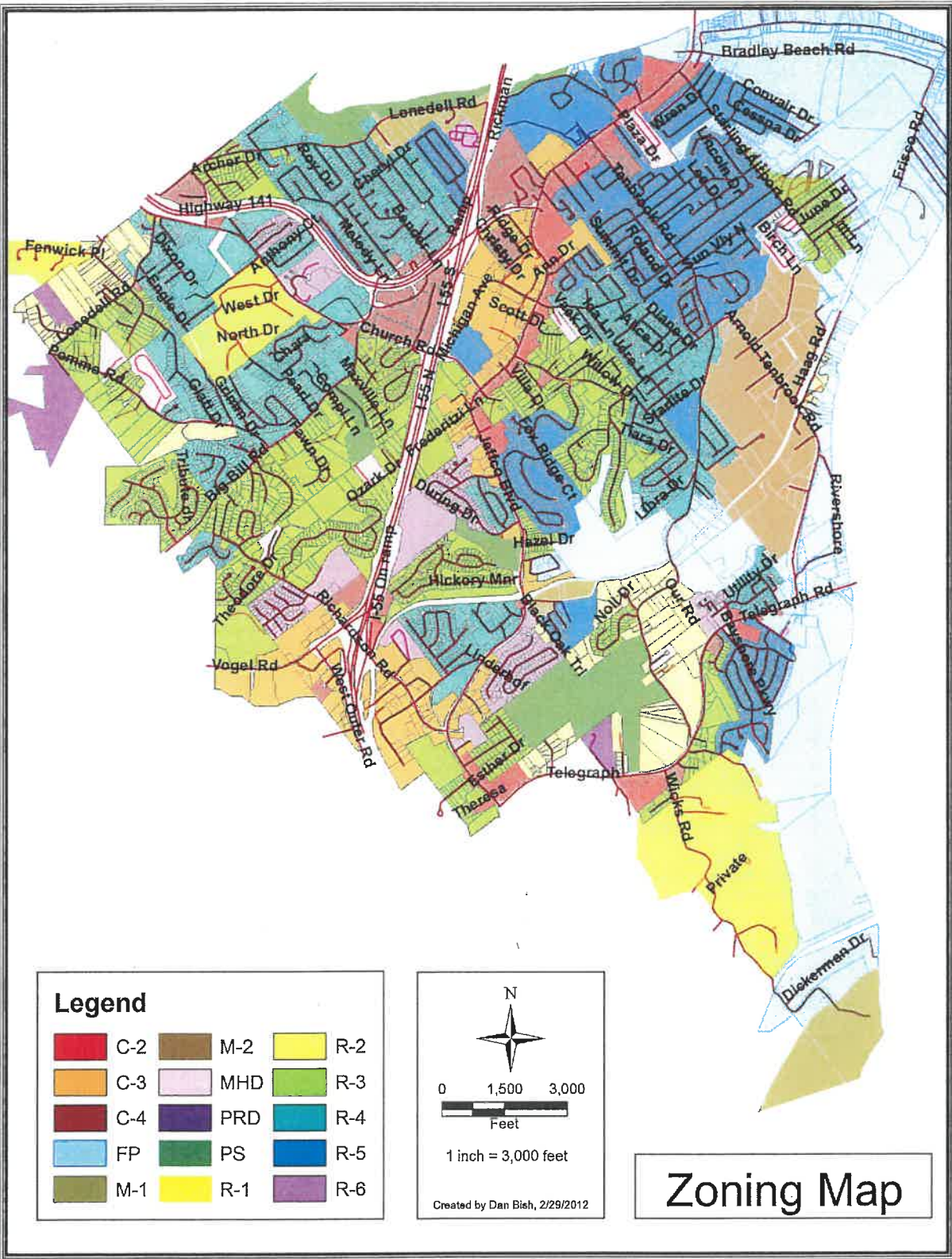


**OZARK MOBILE HOME PARK**  
 Arnold, Missouri  
 December 1994



David Davis Associates/Architects  
 P.O. Box 8218 St. Louis, Missouri 63114-8218 Jan 16 1995






**Legend**

<span style="color: red;">■</span> C-2	<span style="color: brown;">■</span> M-2	<span style="color: yellow;">■</span> R-2
<span style="color: orange;">■</span> C-3	<span style="color: pink;">■</span> MHD	<span style="color: lightgreen;">■</span> R-3
<span style="color: darkred;">■</span> C-4	<span style="color: purple;">■</span> PRD	<span style="color: teal;">■</span> R-4
<span style="color: lightblue;">■</span> FP	<span style="color: green;">■</span> PS	<span style="color: blue;">■</span> R-5
<span style="color: olive;">■</span> M-1	<span style="color: yellow;">■</span> R-1	<span style="color: purple;">■</span> R-6

N



0    1,500    3,000

Feet

1 inch = 3,000 feet

Created by Dan Bish, 2/29/2012

**Zoning Map**

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 Officer<sup>1</sup>  
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,

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<sup>1</sup> 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 }



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.<sup>2</sup> “Appeals”: “Appeals to the Board may be taken by any person aggrieved...affected by any decision of the Zoning

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<sup>2</sup> 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.”

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-

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

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.”

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*

*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.

**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](mailto: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](mailto: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,

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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2900 Arnold Tenbrook Rd.  
Arnold, MO 63010  
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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 Avonue, Suite 300 || Kansas City, MO 64111 || rousepc.com

{34359 / 72062; 998320.3 }

**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. }

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. }

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.

{34359 / 72062; 997537. }

**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 “vindicating 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).

{34359 / 72062; 997537. }

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

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c/o Justin Donald  
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Arnold, MO 63010  
636/282-2385

{34359 / 72062; 997537. }

A-1

{34359 / 72062; 998320.3 }

B-3



# City of Arnold

Ron Counts, Mayor

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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,

Sarah Turner  
Senior Planner

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

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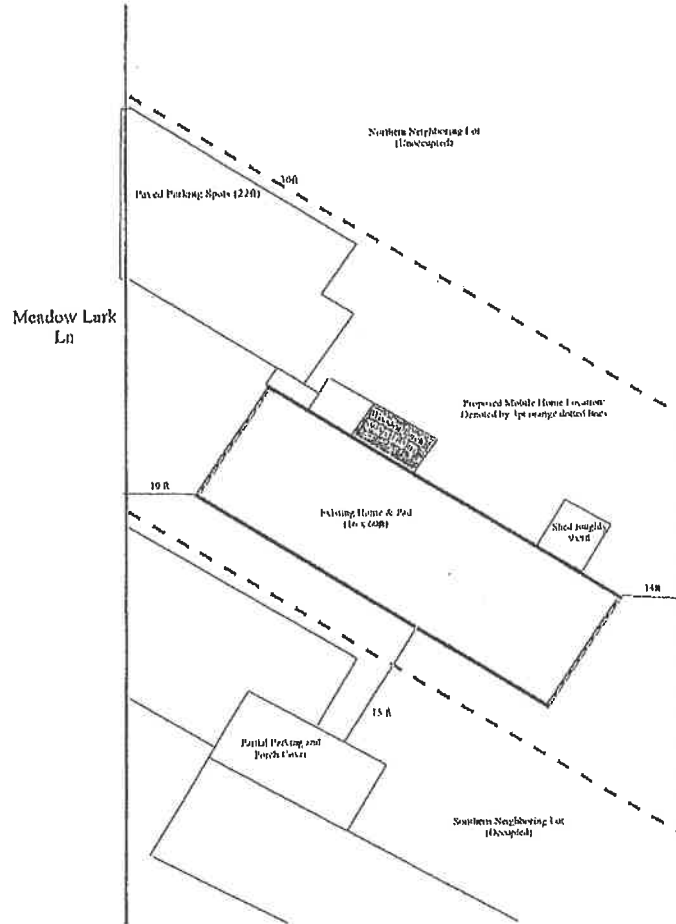
Public Works  
2800 Arnold Tenbrook Rd.  
Arnold, MO 63010  
636/282-2386

Exhibit B - Permit Application Drawings

Completed by: A. Blinget

10/21/2022

540 MEADOW LARK LANE



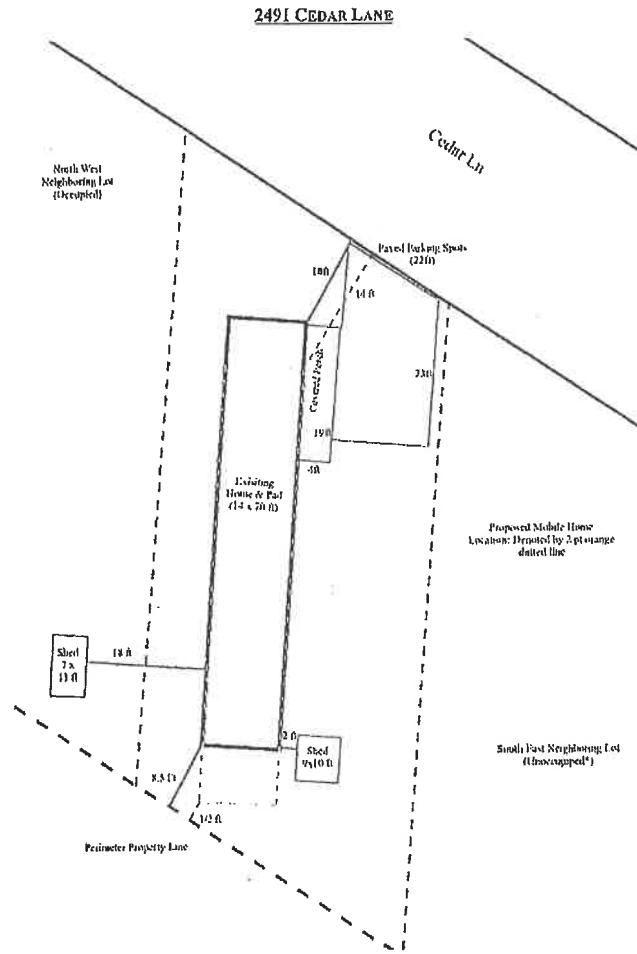
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{34359 / 72062; 997537. }

B-1

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B-3



{34359 / 72062; 997537. }

B-2

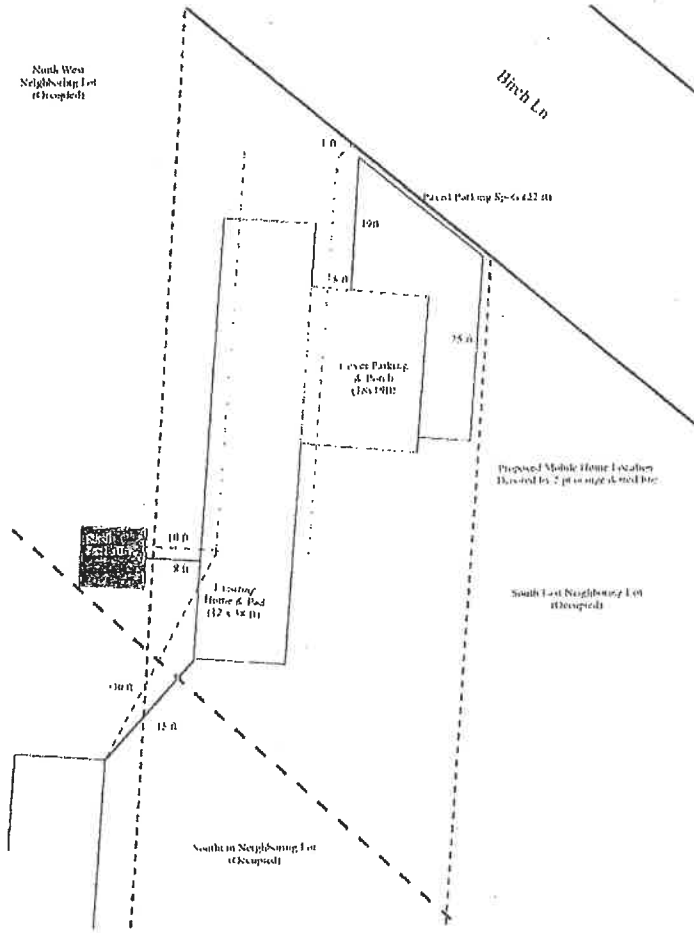
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B-3

Completed by: A. Bhagat

10/21/2022

2491 BIRCH LANE



11

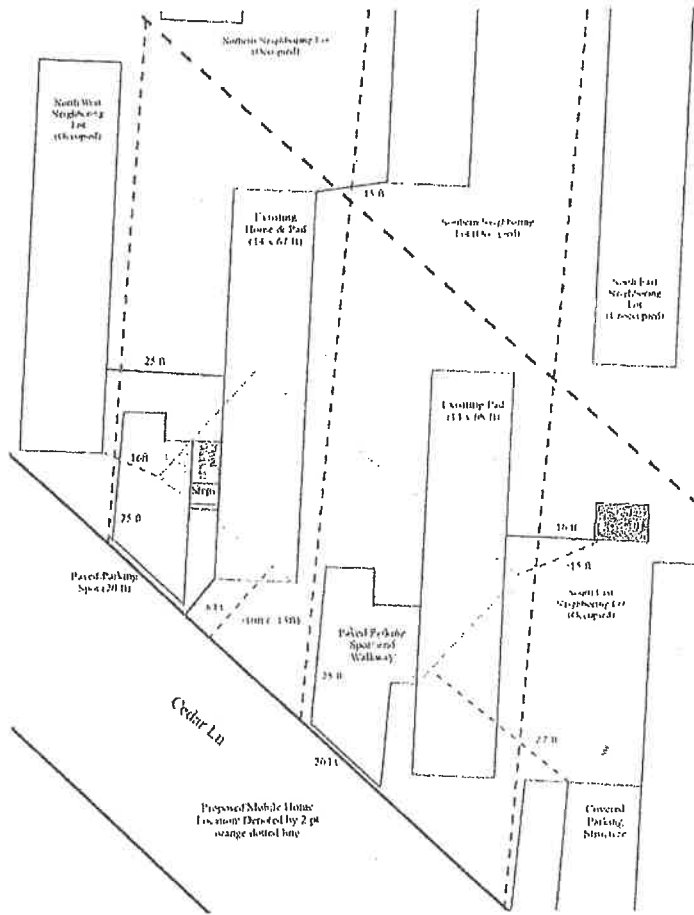
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{34359 / 72062; 998320.3 }

B-3

2482 CEDAR LANE



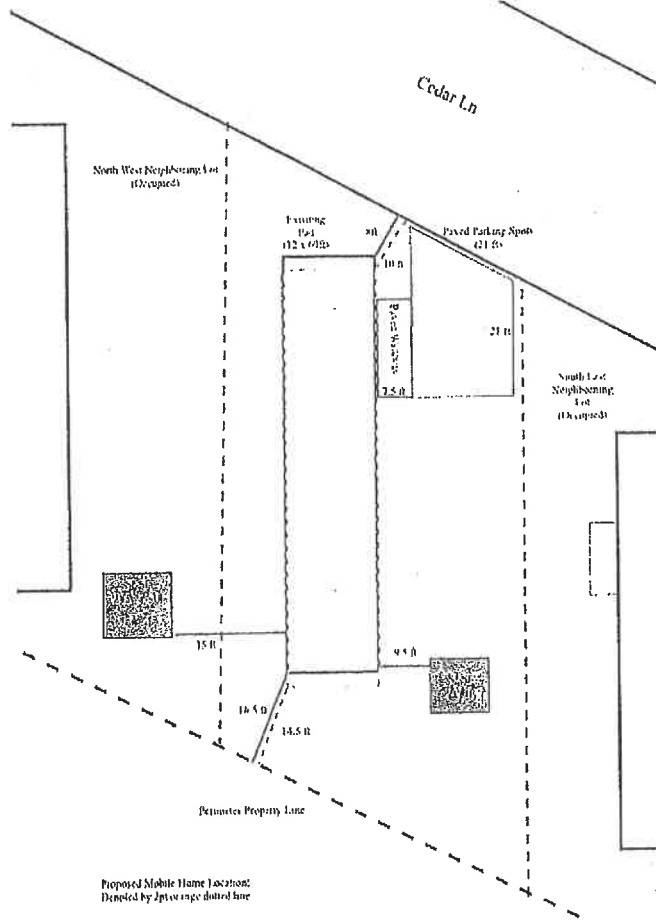
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B-4

{34359 / 72062; 998320.3}

B-3

2493 CEDAR LANE

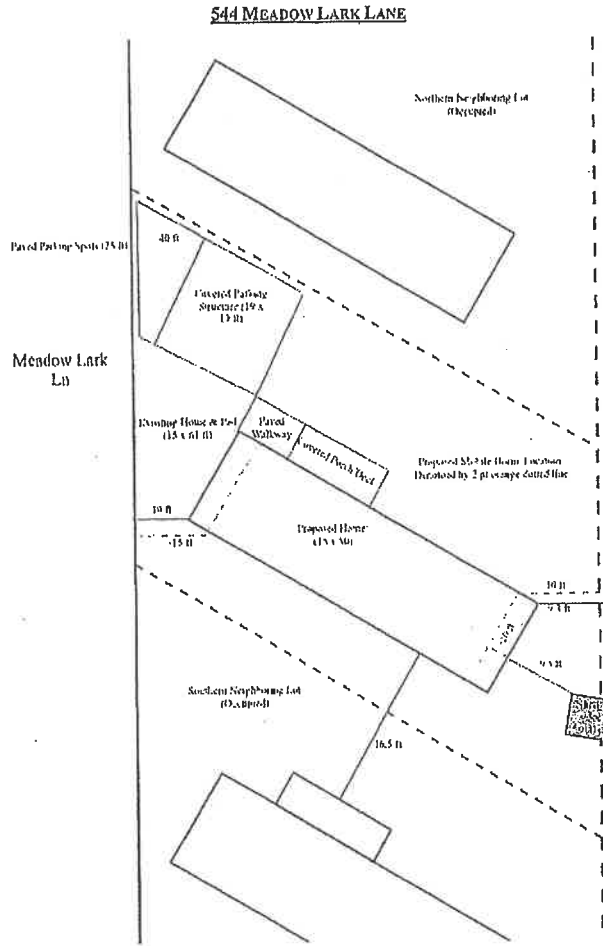


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B-5

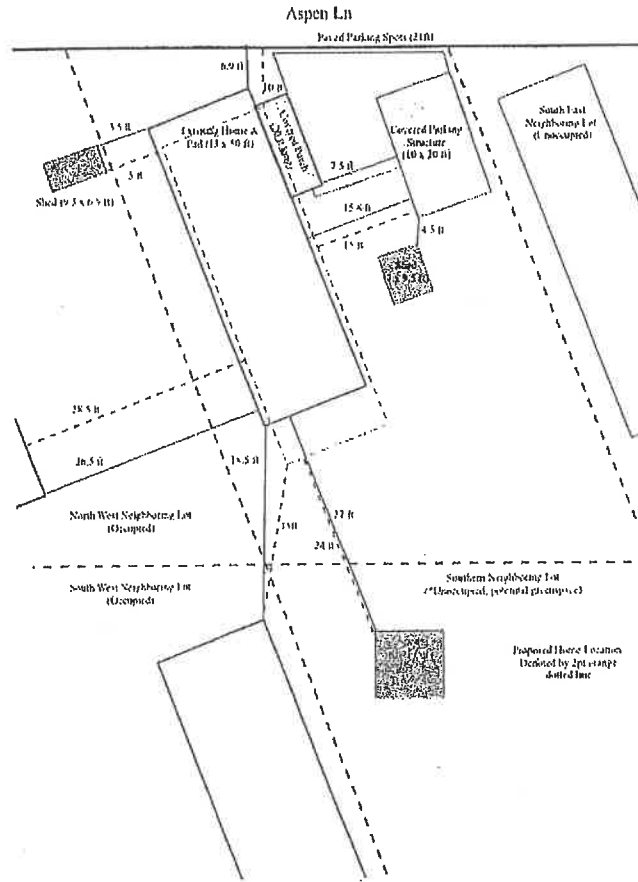
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B-3



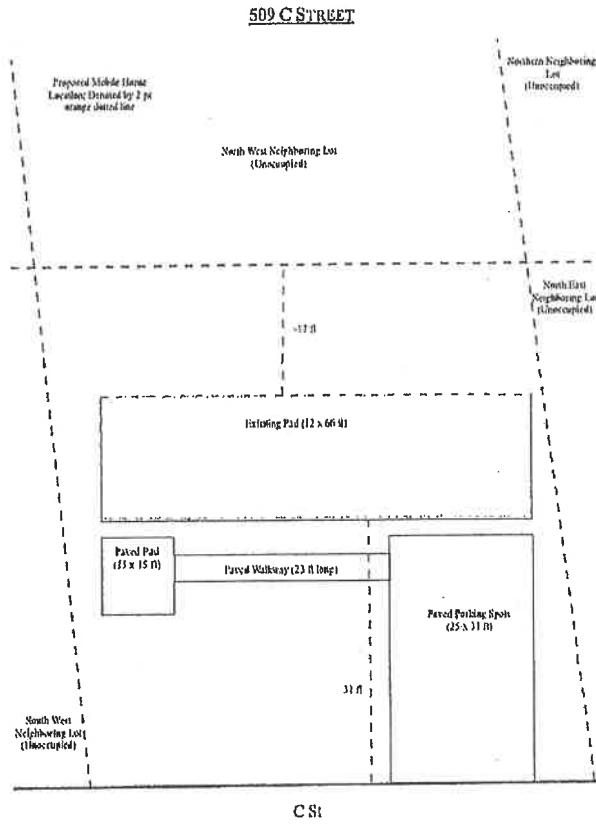


2495 ASPEN LANE



Completed by: A. Bhagat

10/21/2022



16

{34359 / 72062; 997537. }

B-8

{34359 / 72062; 998320.3 }

B-3

**Exhibit C – Home Dimensions**

<b><u>LOT</u></b>	<b><u>ADDRESS</u></b>	<b><u>DIMENSIONS</u></b>
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,

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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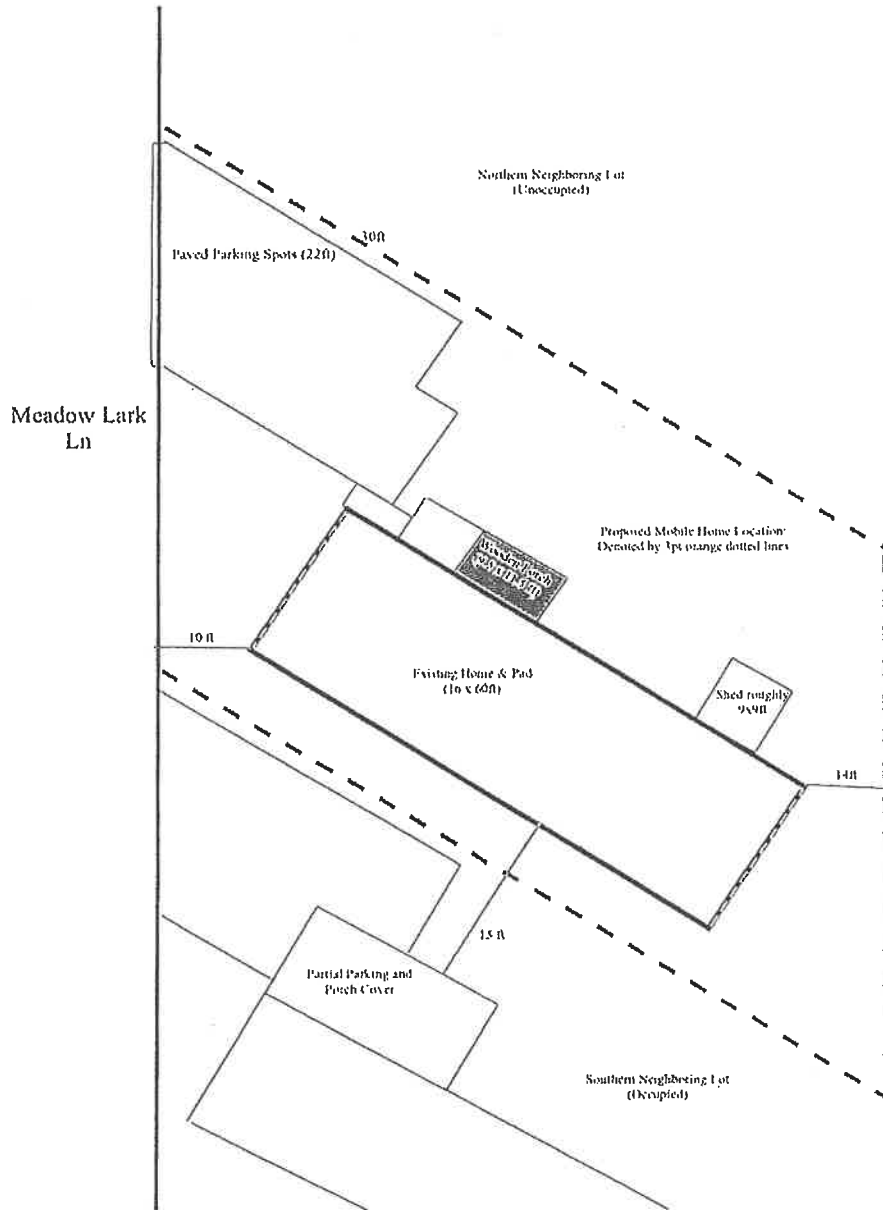
Public Works  
2900 Arnold Tenbrook Rd.  
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# Exhibit D - Permit Application Drawings

Completed by: A. Bhagat

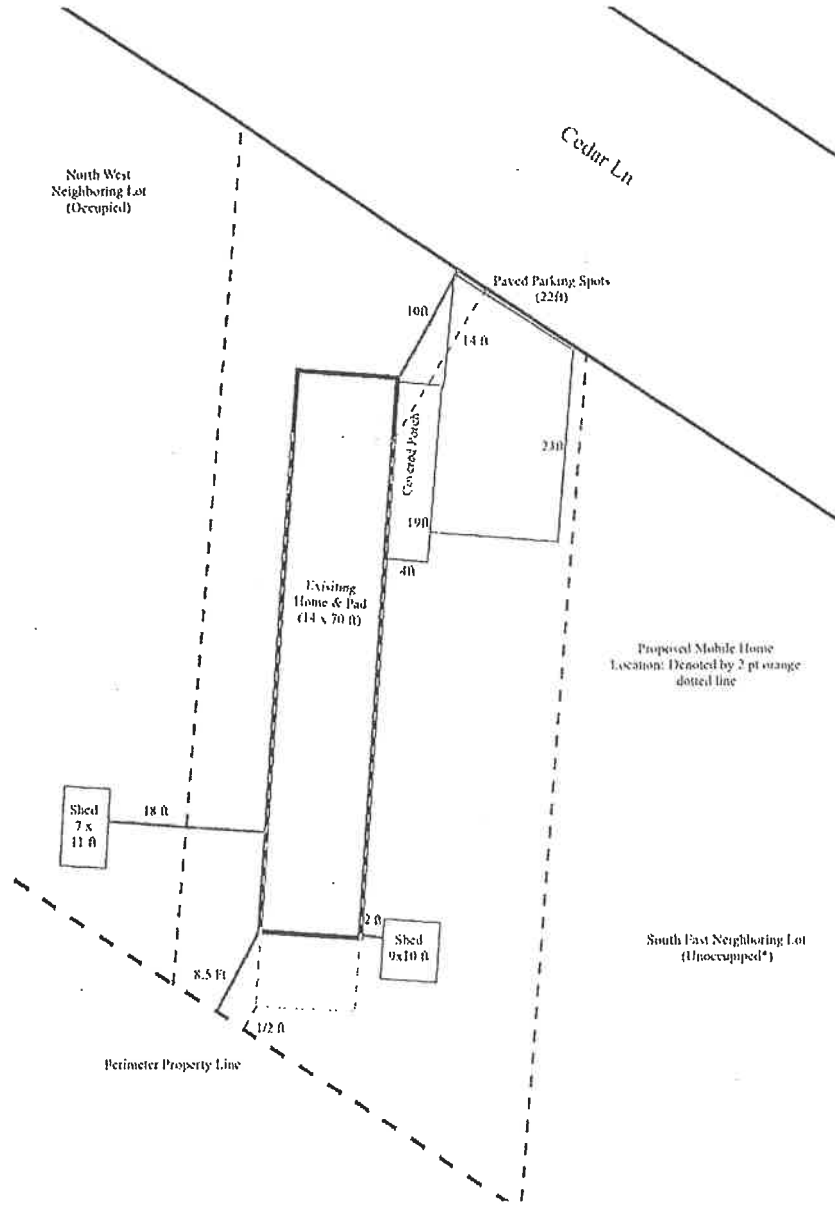
10/21/2022

540 MEADOW LARK LANE

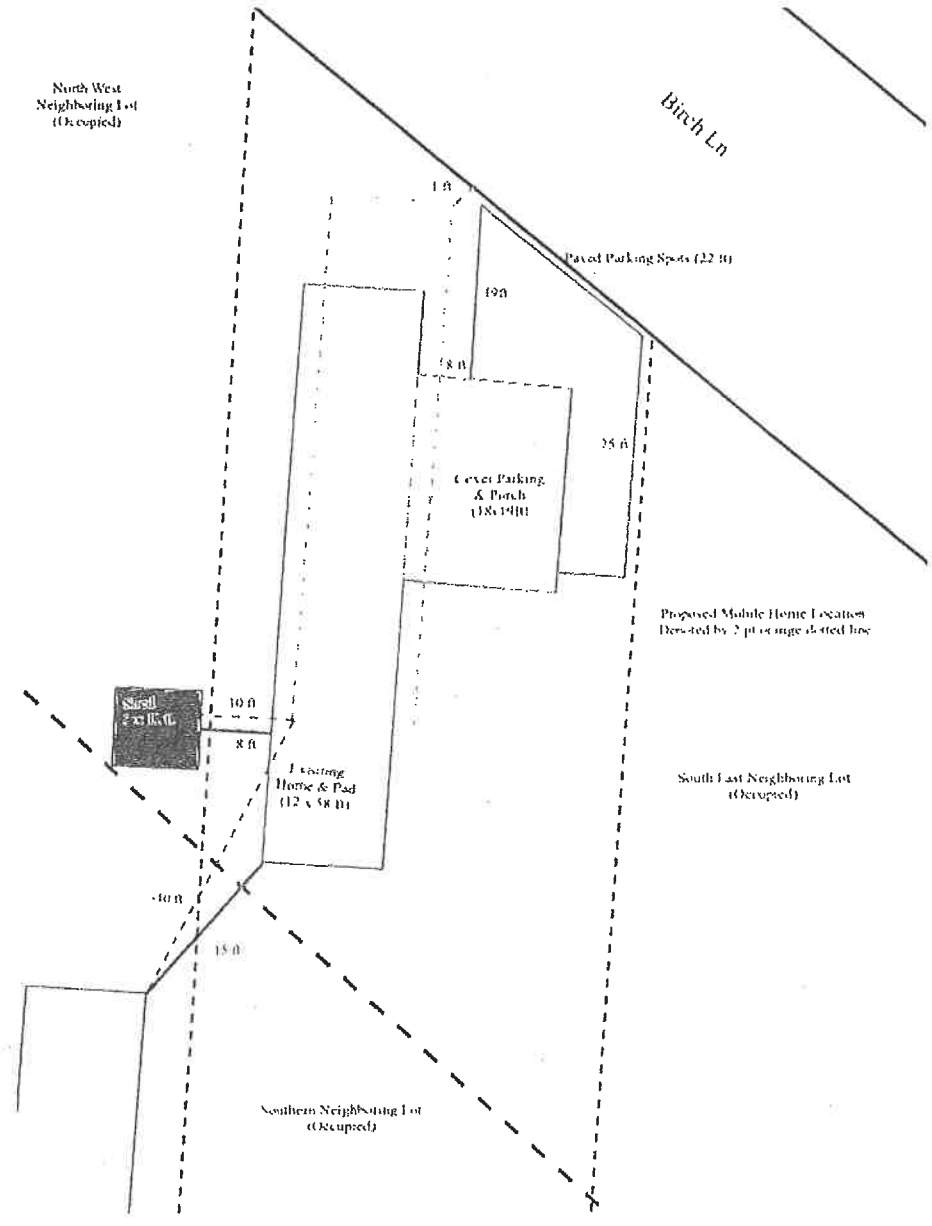


9

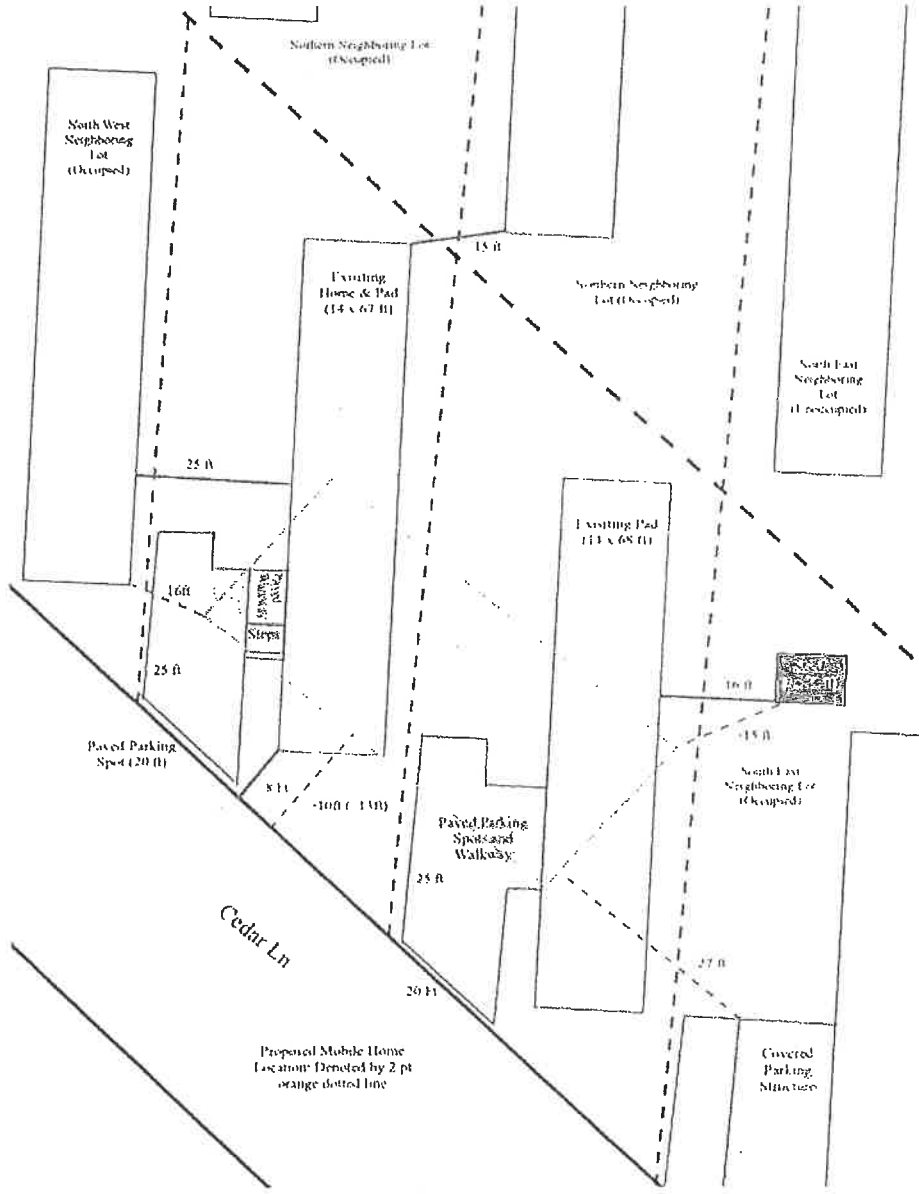
2491 CEDAR LANE



2491 BIRCH LANE

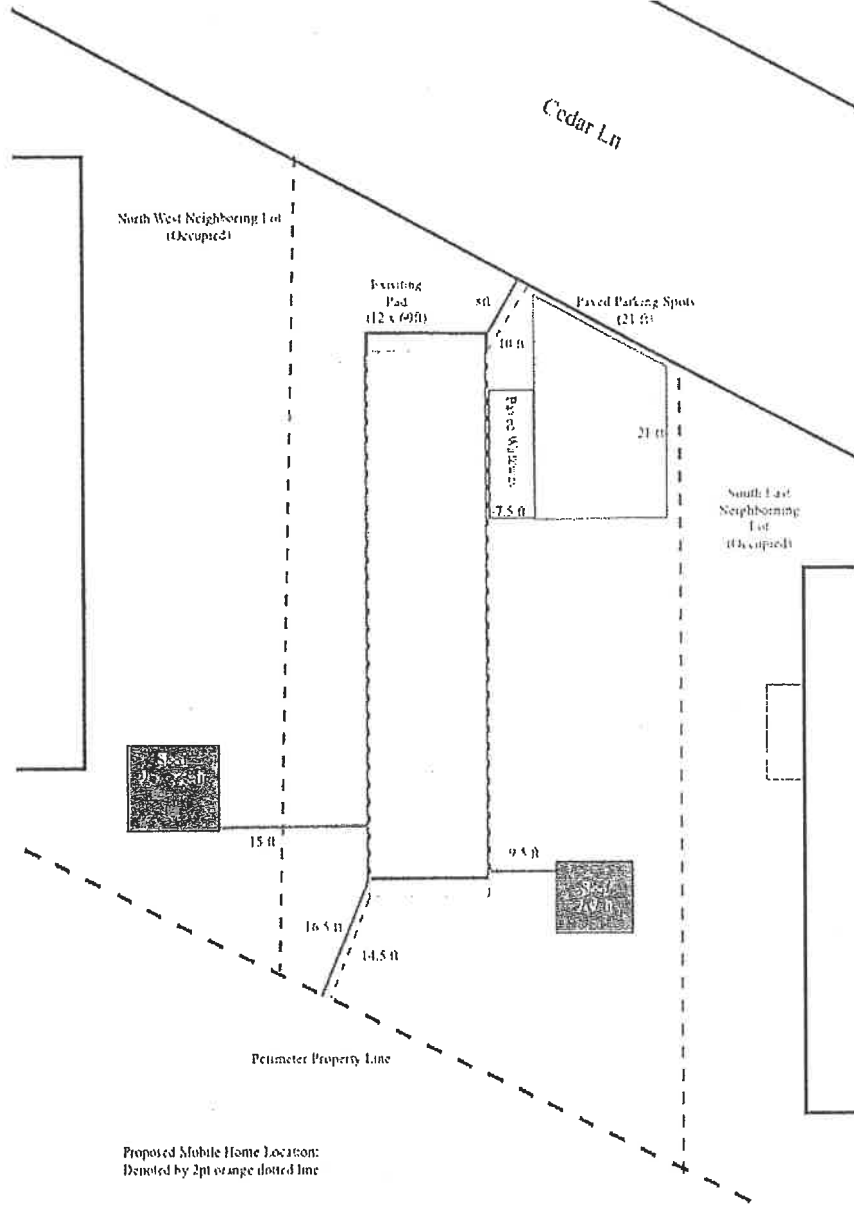


2482 CEDAR LANE

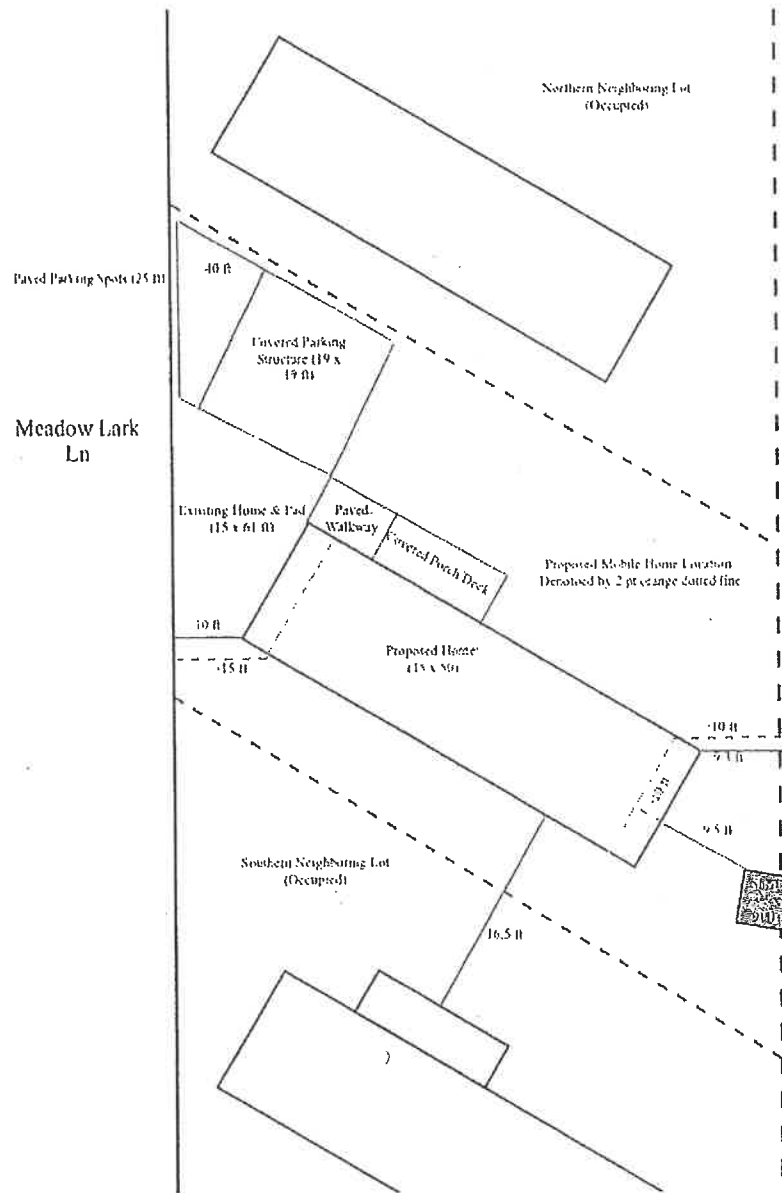




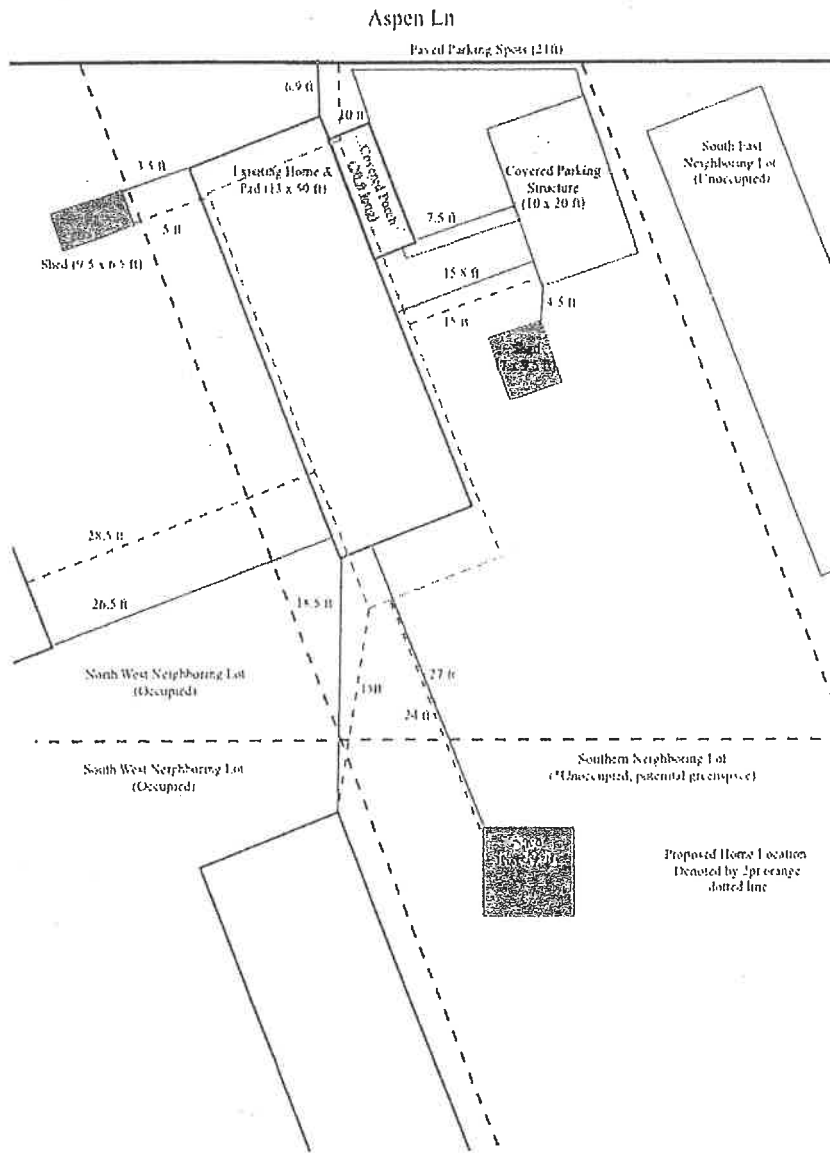
2493 CEDAR LANE



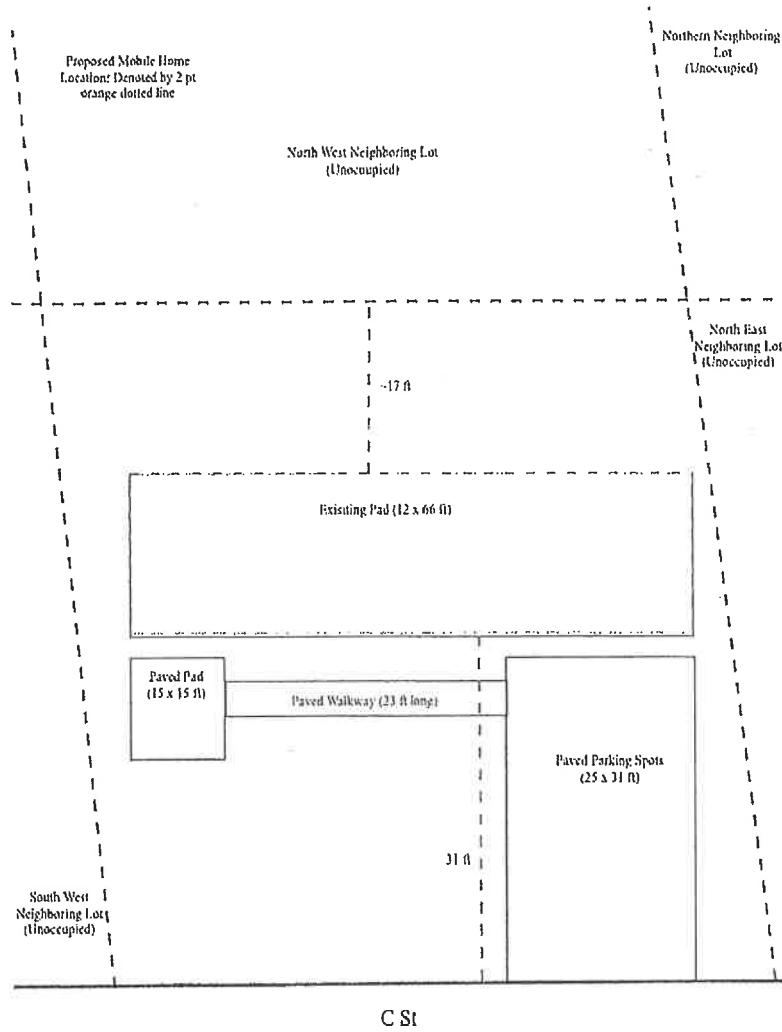
544 MEADOW LARK LANE



2495 ASPEN LANE



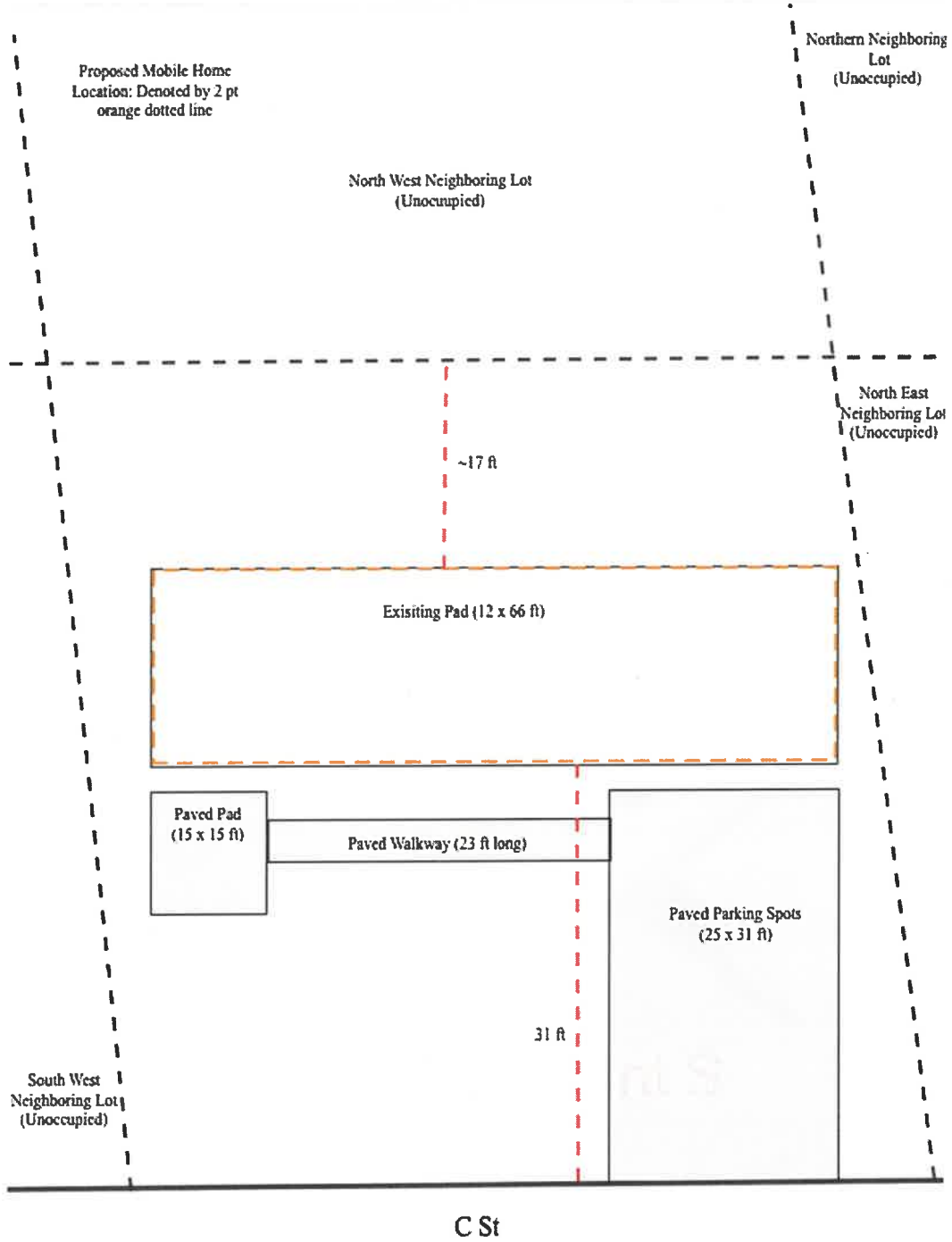
509 C STREET



**Exhibit E -- Home Dimensions Table**

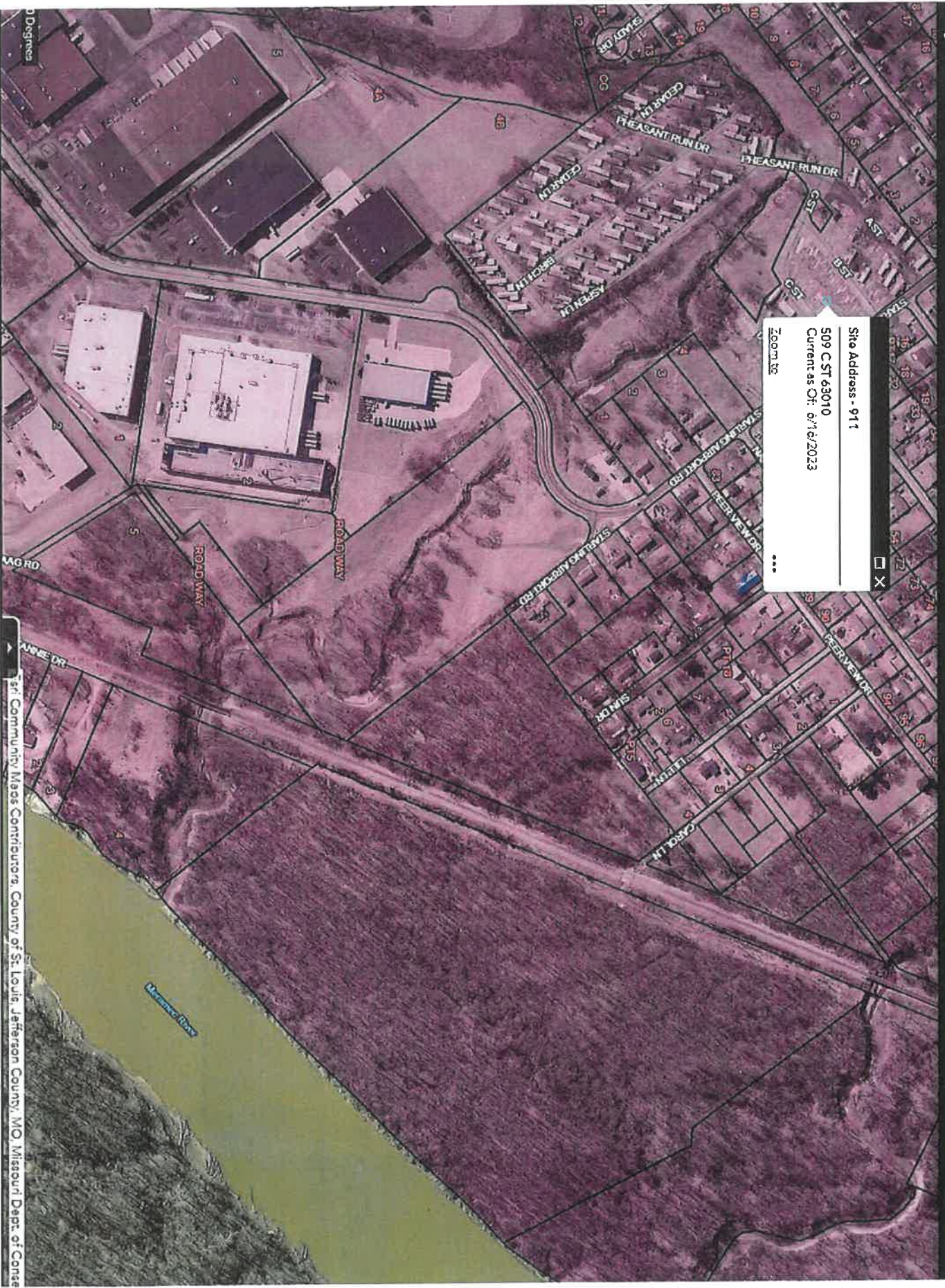
<b><u>LOT</u></b>	<b><u>ADDRESS</u></b>	<b><u>DIMENSIONS</u></b>
1	540 Meadowlark Lane	16X60
2	2491 Cedar Lane	14X60
3	2491 Birch Lane	12X58
4	2482 Cedar Lane	28X60
5	2493 Cedar Lane	12X60
6	544 Meadowlark Lane	12X50
7	2495 Aspen Lane	12X56
8	509 C Street	12X56

509 C ST



Site Address - 911  
509 CST 63010  
Current as of: 6/16/2023

Zoom In

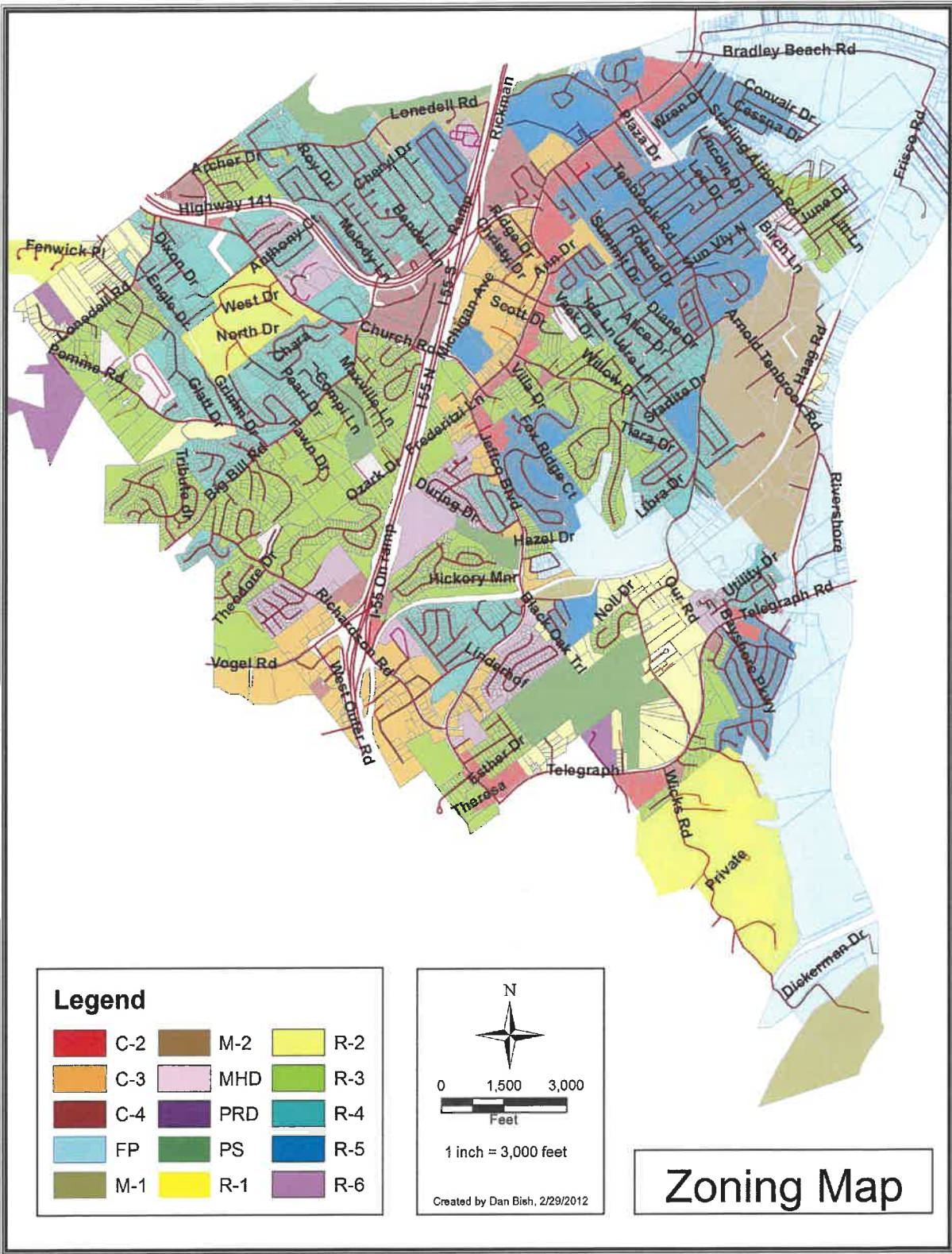


**OZARK MOBILE HOME PARK**  
 Arnold, Missouri  
 December 1994

David Dewey Associates / Architects  
 PO Box 8218 St. Louis, Missouri 63111-8218 Jan 16, 1995








**Legend**

C-2	M-2	R-2
C-3	MHD	R-3
C-4	PRD	R-4
FP	PS	R-5
M-1	R-1	R-6

N



0 1,500 3,000  
Feet

1 inch = 3,000 feet

Created by Dan Bish, 2/29/2012

**Zoning Map**

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 Officer<sup>1</sup>  
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,

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<sup>1</sup> 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 }

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.<sup>2</sup> “Appeals”: “Appeals to the Board may be taken by any person aggrieved...affected by any decision of the Zoning

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<sup>2</sup> 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.”

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-

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

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.”

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*

*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.



**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](mailto: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](mailto: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 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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**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. }

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

{34359 / 72062; 998320.3 }

**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. }

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. }

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.

{34359 / 72062; 997537. }



**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.**”

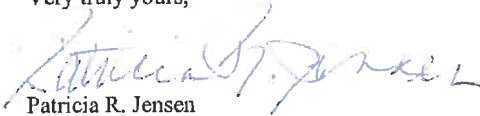
*Thompson v. City of Oakwood, Ohio*, 307 F. Supp. 3d 761, 778 (S.D. Ohio 2018), modified, No. 3:16-CV-169, 2018 WL 9944970 (S.D. Ohio Apr. 4, 2018) citing to *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

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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](mailto: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  
636/298-2100

Parks and Recreation  
1695 Missouri State Rd.  
Arnold, MO 63010  
636/282-2390

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

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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,

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

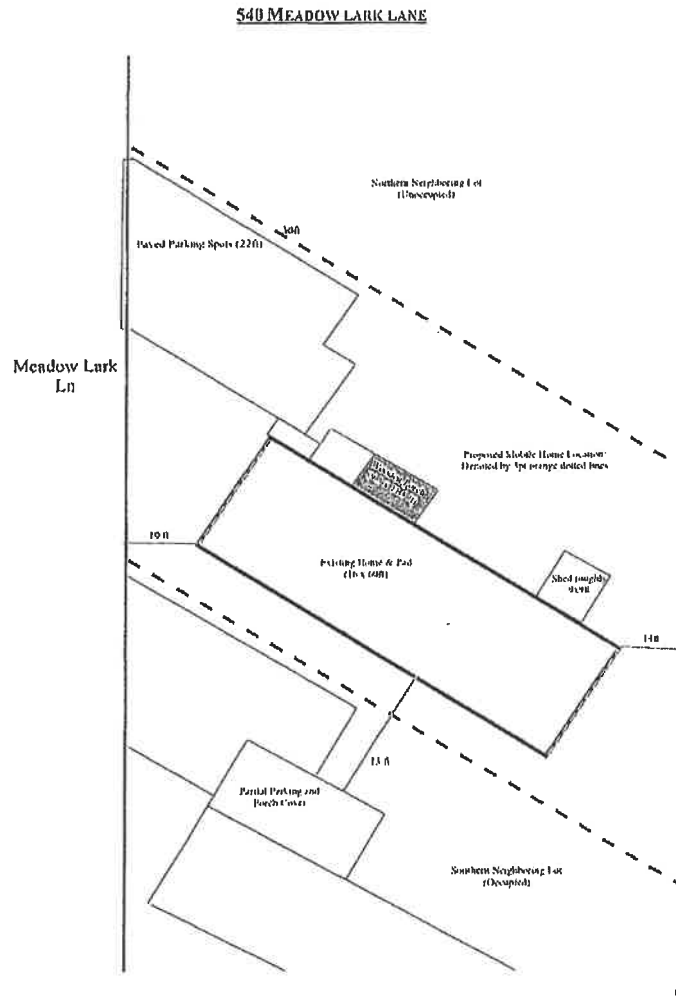
Parks and Recreation  
1695 Missouri Slate Rd.  
Arnold, MO 63010  
636/282-2380

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

# Exhibit B - Permit Application Drawings

Completed by: A. Bhagat

10/21/2022

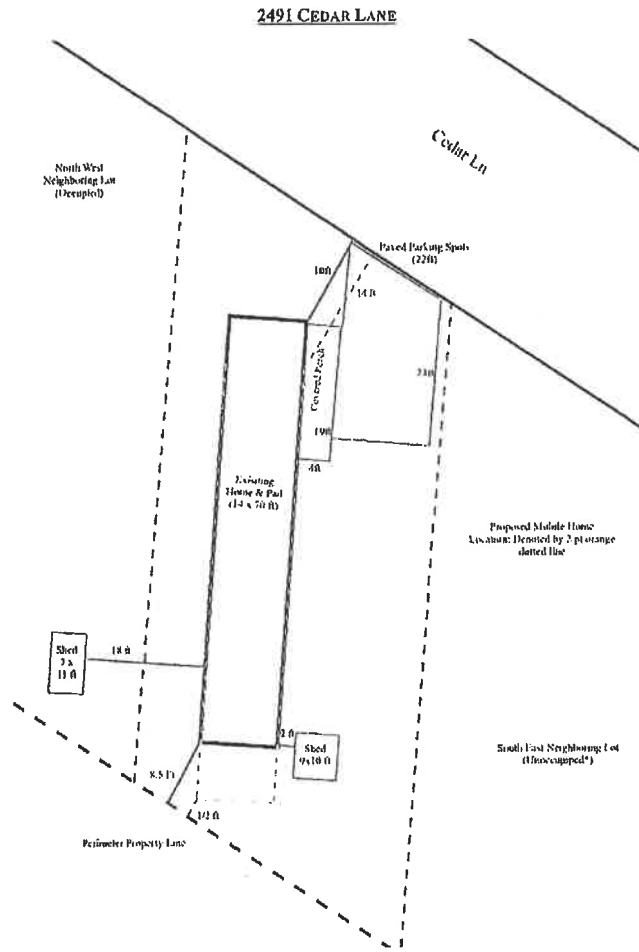


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B-3



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B-2

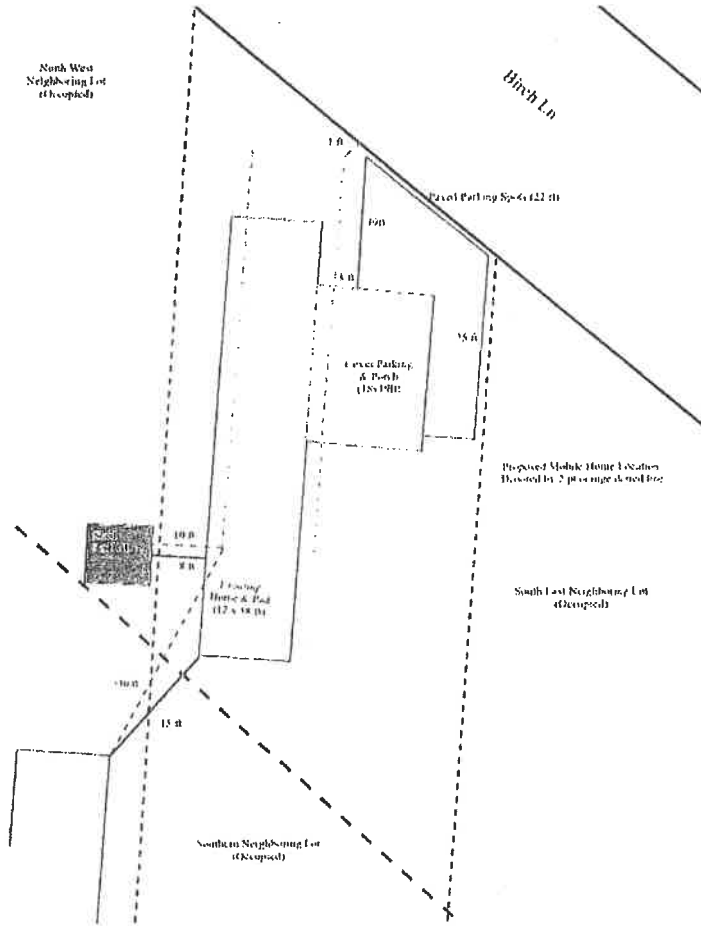
{34359 / 72062; 998320.3 }

B-3

Completed by: A. Bhagat

10/21/2022

2491 BIRCH LANE



11

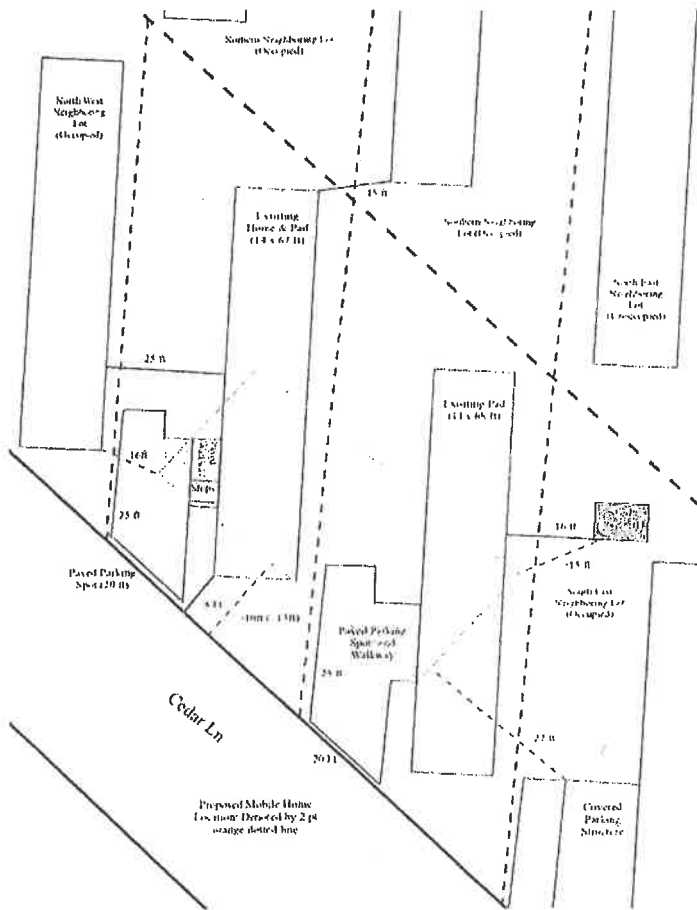
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B-3

{34359 / 72062; 998320.3 }

B-3

2482 CEDAR LANE



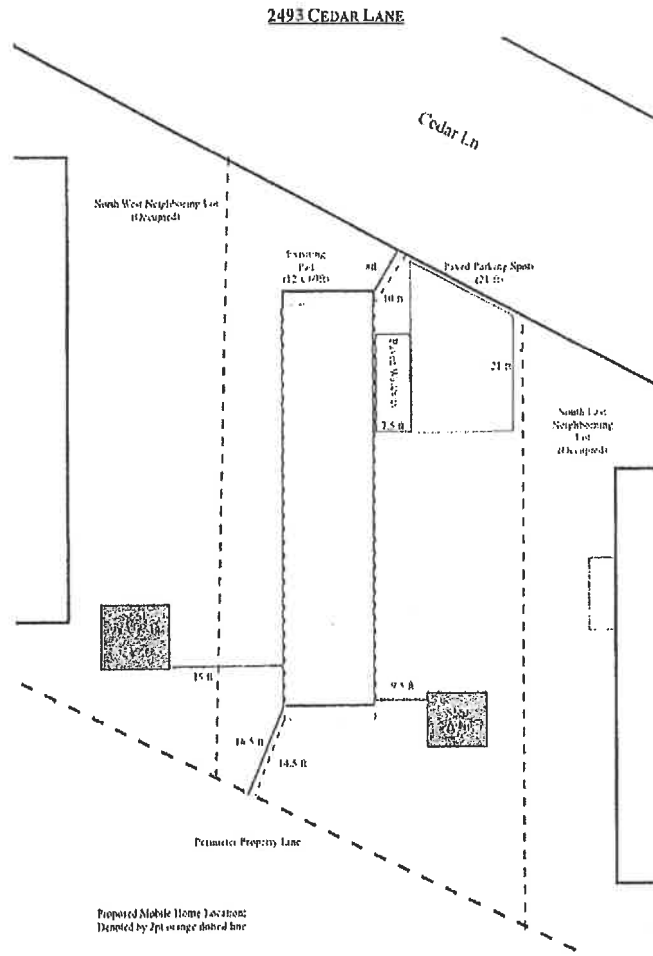
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B-4

{34359 / 72062; 998320.3 }

B-3



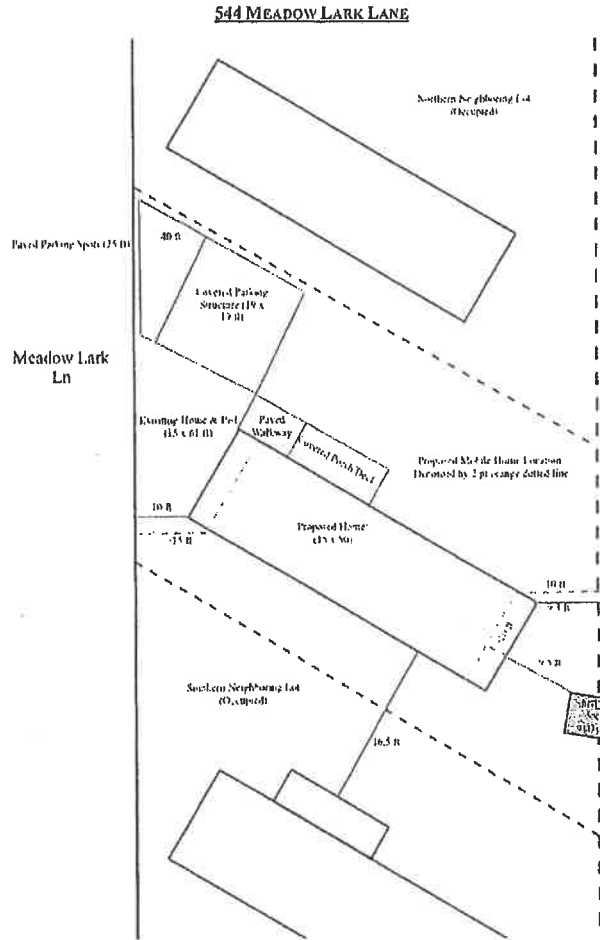


{34359 / 72062; 997537. }

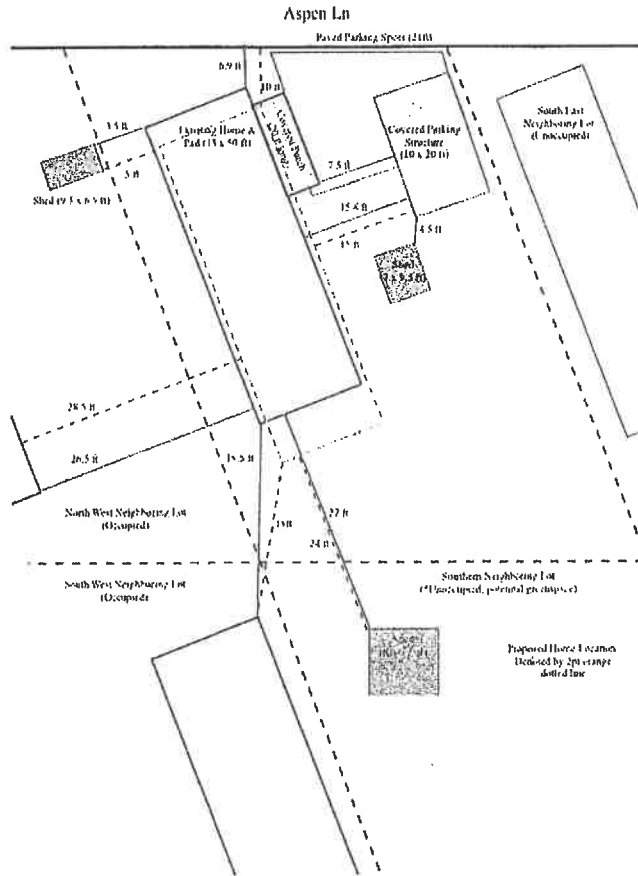
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{34359 / 72062; 998320.3 }

B-3

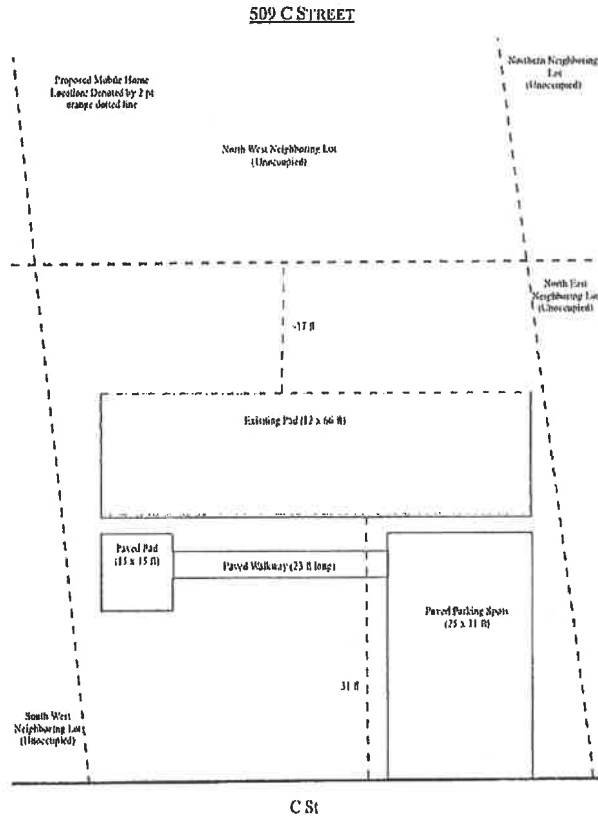


2495 ASPEN LANE



Completed by: A. Bhagat

10/21/2022



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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. Jenson,

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

---

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

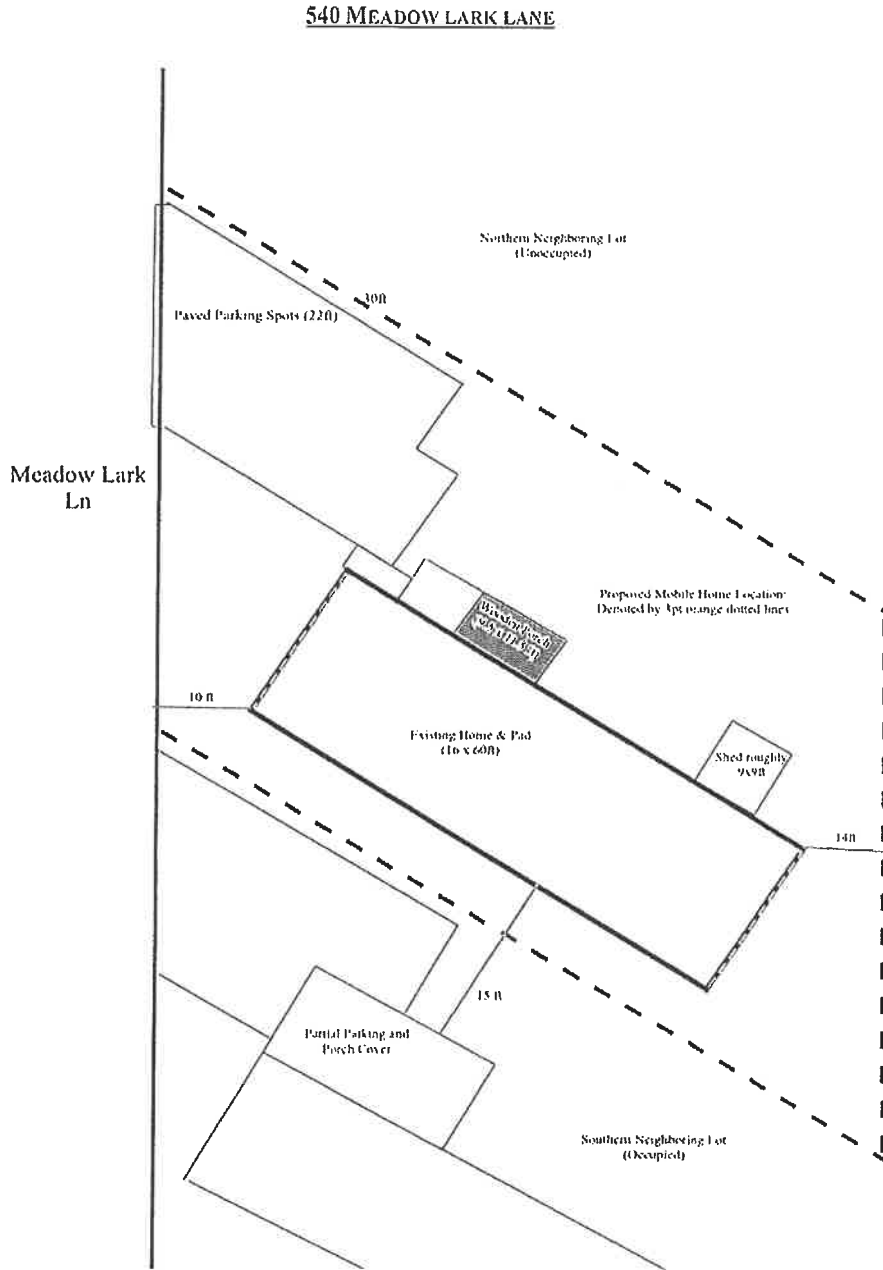
**Parks and Recreation**  
1695 Missouri State Rd.  
Arnold, MO 63010  
636/282-2380

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636/282-2386

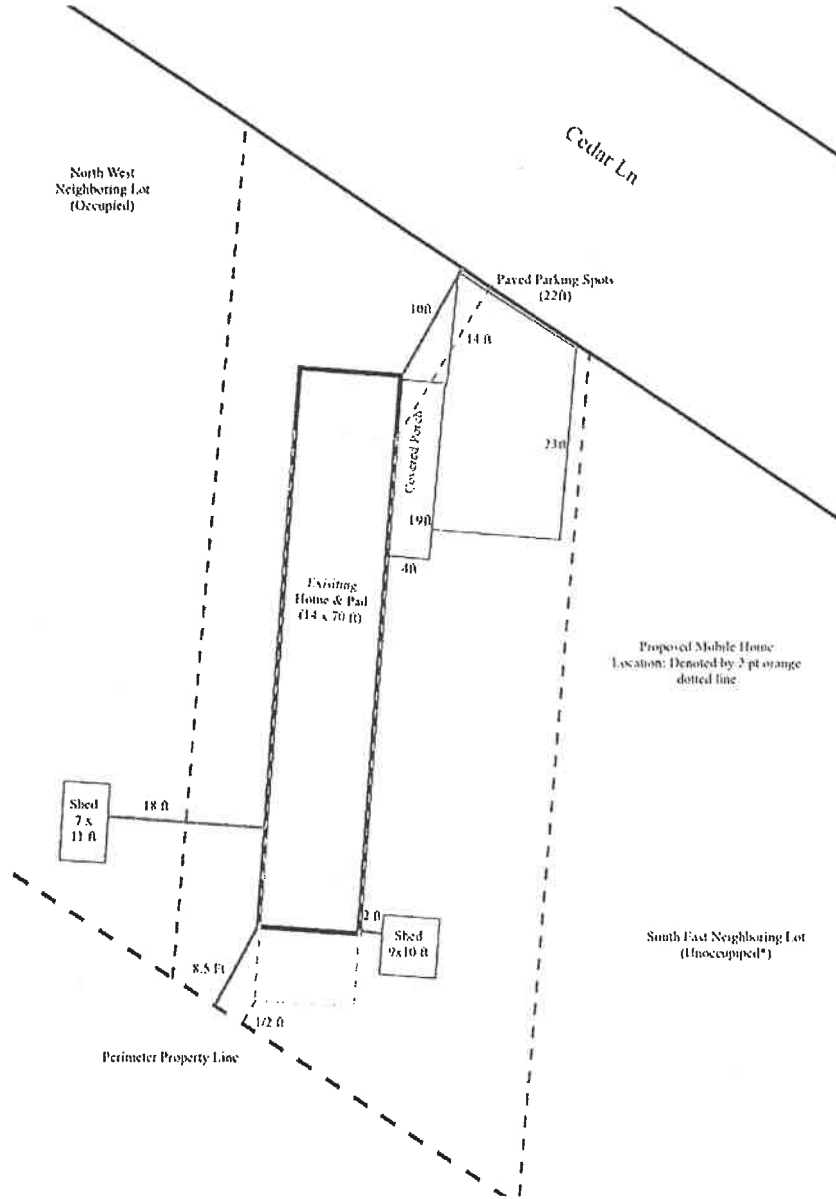
# Exhibit D - Permit Application Drawings

Completed by: A. Bhagat

10/21/2022

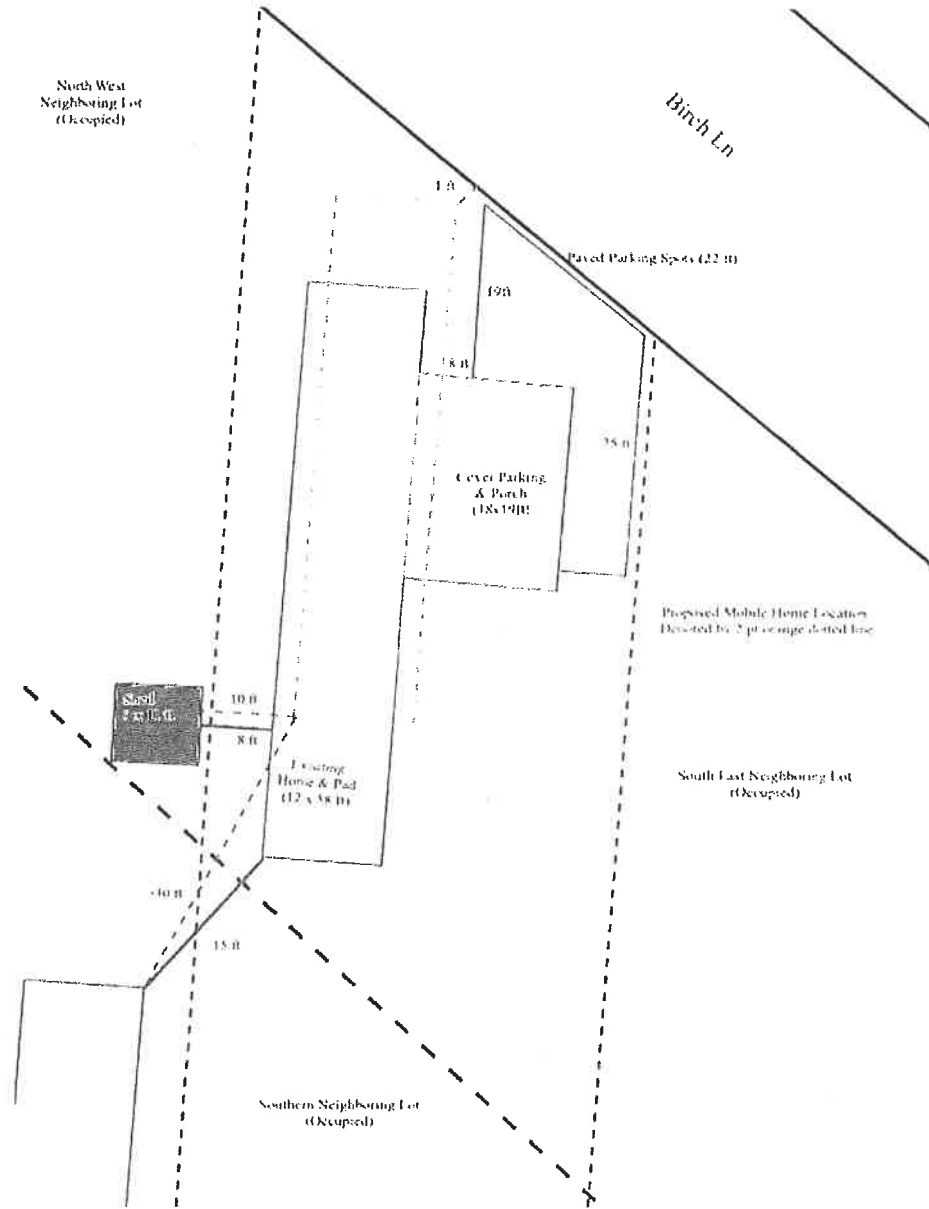


2491 CEDAR LANE

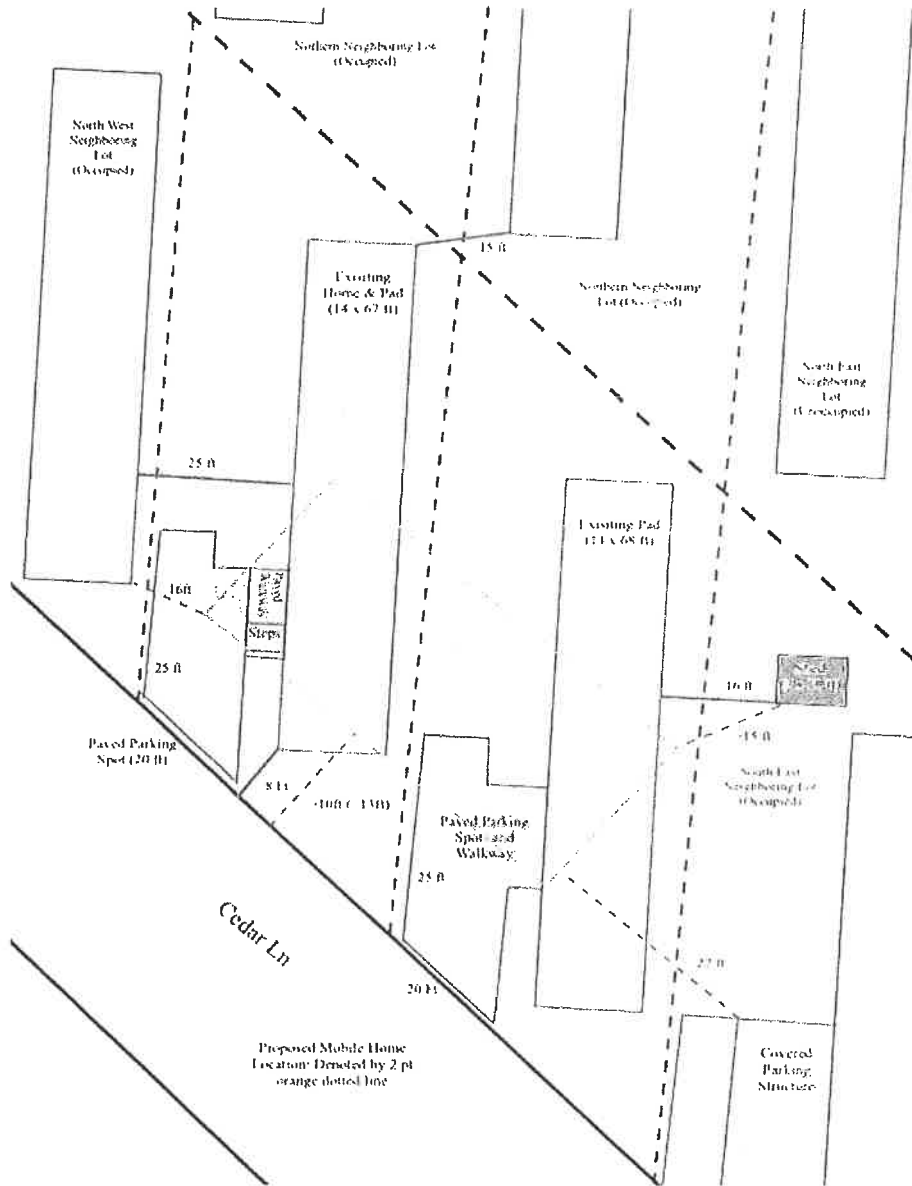




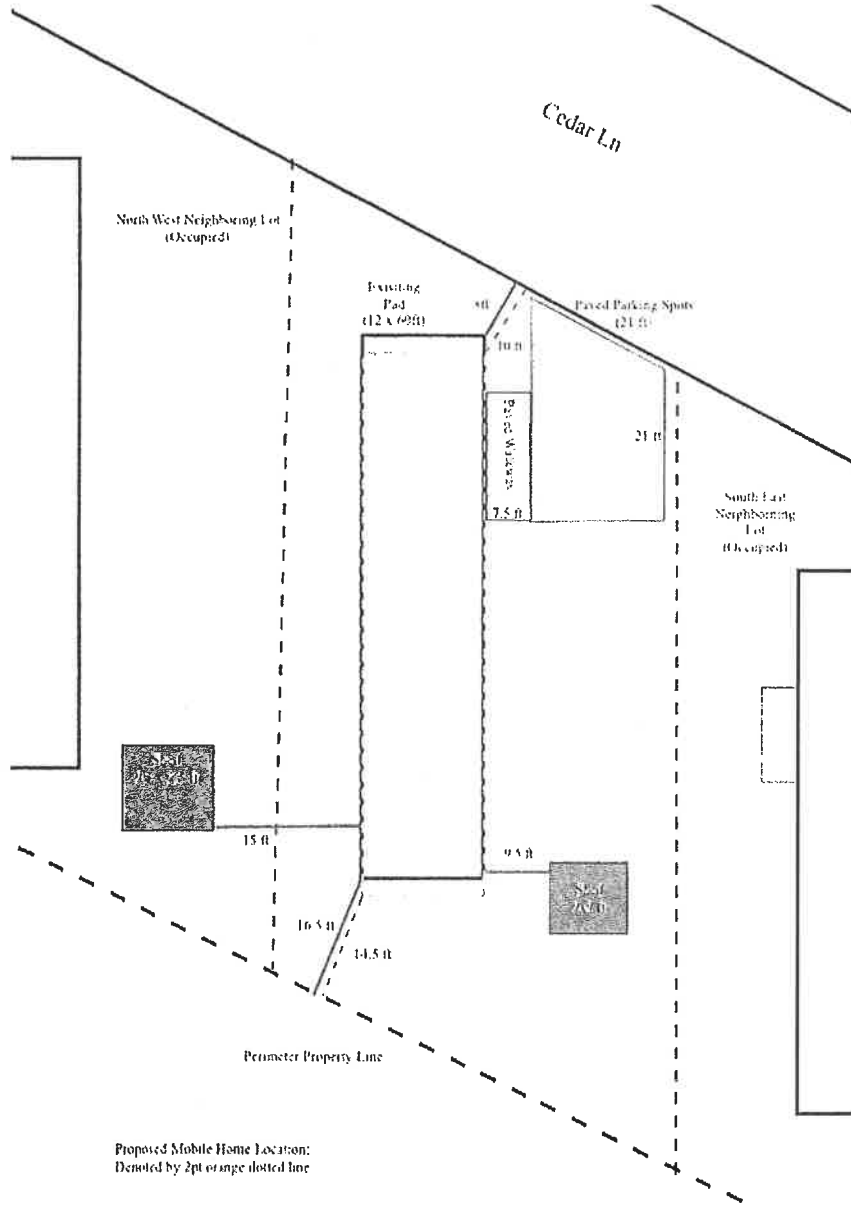
**2491 BIRCH LANE**



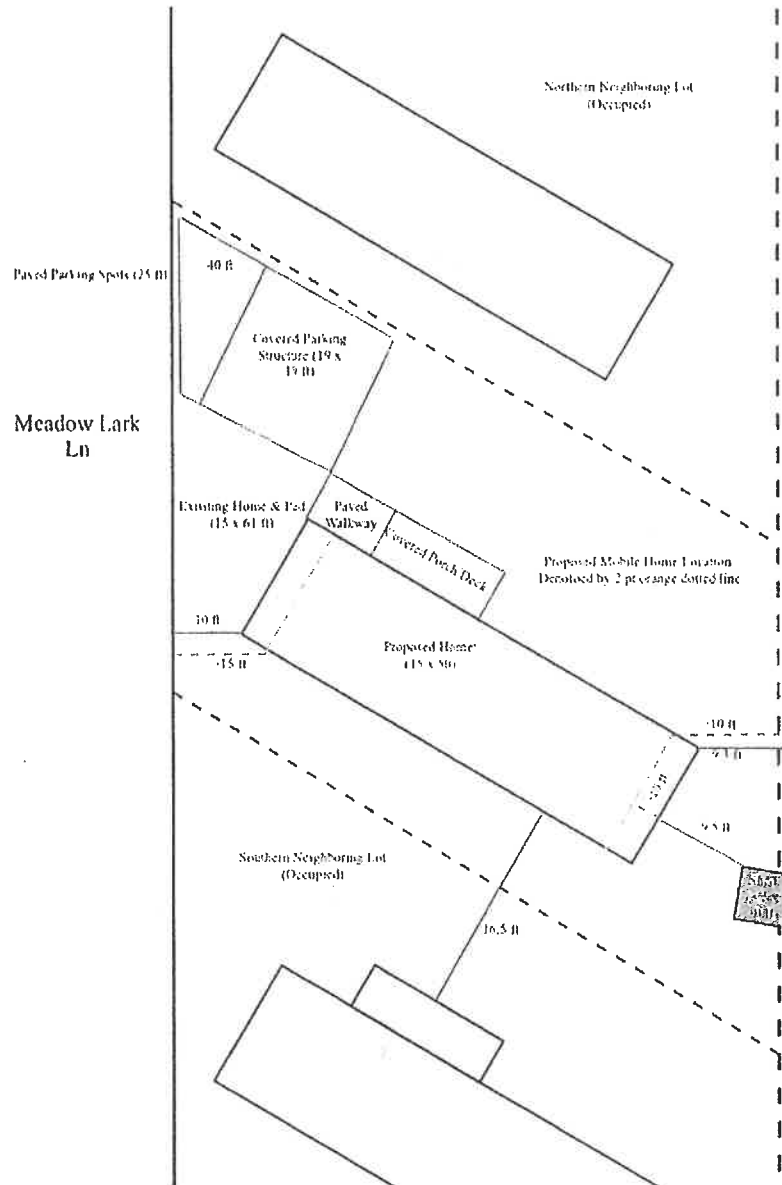
**2482 CEDAR LANE**



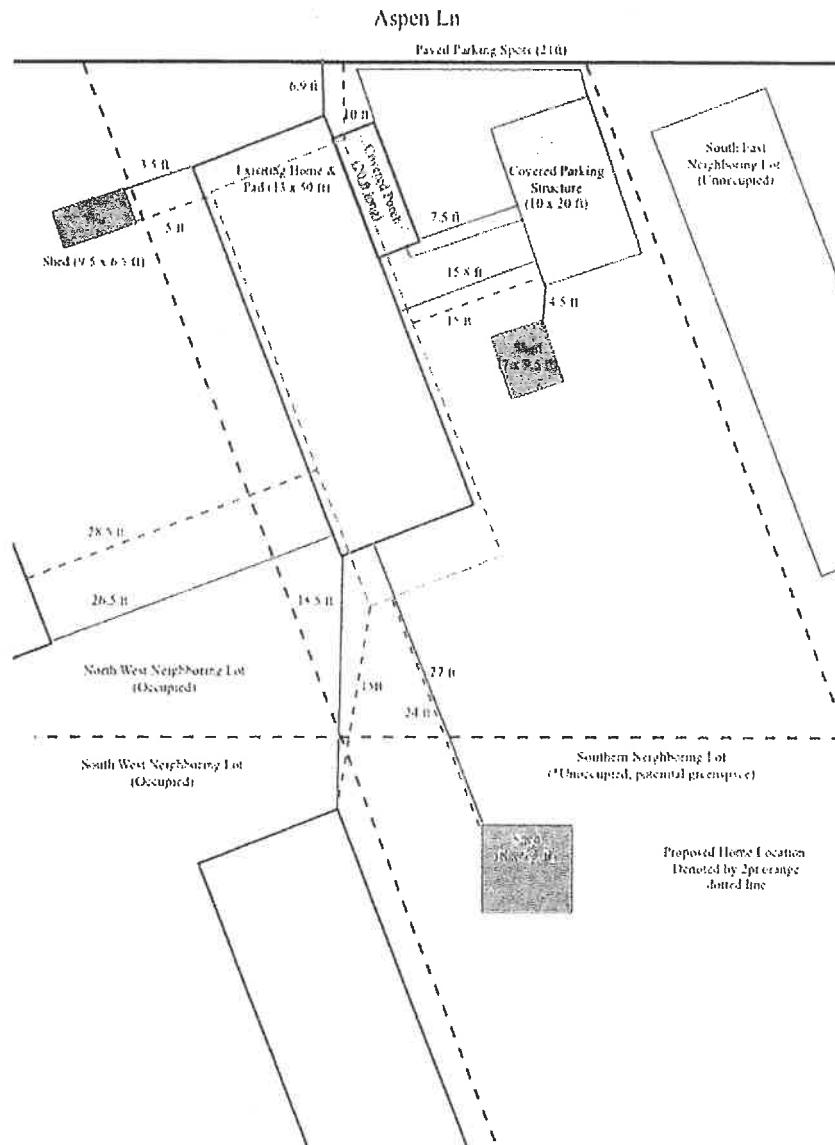
2493 CEDAR LANE



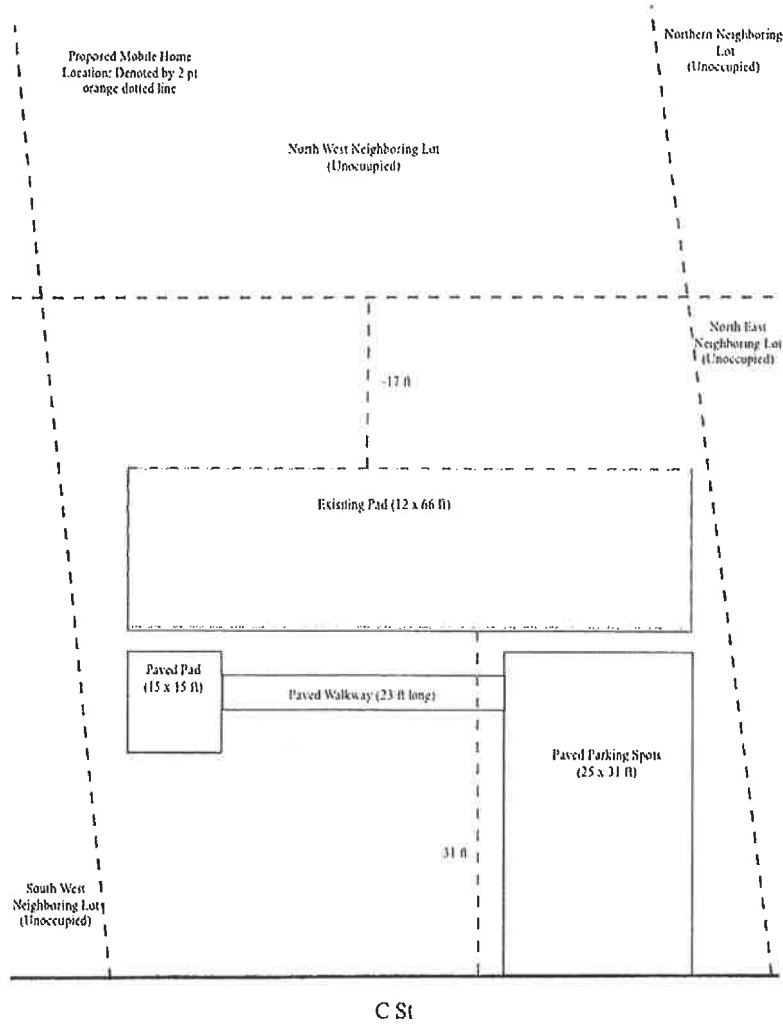
**544 MEADOW LARK LANE**



**2495 ASPEN LANE**



509 C STREET



**Exhibit E – Home Dimensions Table**

<b><u>LOT</u></b>	<b><u>ADDRESS</u></b>	<b><u>DIMENSIONS</u></b>
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