

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 04014**, a text amendment to Title 27 of the Lincoln Municipal Code, requested by Kent Seacrest on behalf of Ridge Development Company and Southview, Inc., regarding on-sale and off-sale alcohol as permitted conditional uses in the B-2 Planned Neighborhood Business District and the B-5 Planned Regional Business District.

STAFF RECOMMENDATION: Approval, with revision to references to park land.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 03/17/04 and 03/31/04
Administrative Action: 03/31/04

RECOMMENDATION: Approval of the staff recommendation (8-0: Carlson, Carroll, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Krieser absent).

FINDINGS OF FACT:

1. The applicant is requesting to change the sale of alcohol in the B-2 and B-5 zoning districts from a permitted use to a conditional use and to provide conditions under which alcohol is allowed to be sold in the B-2 and B-5 zoning districts as a conditional use, at set forth on p.2. The proposed text is found on p.16-21.
2. The staff recommendation of approval, with revision regarding the references to park land, is based upon the "Analysis" as set forth on p.3-6, concluding that the treatment of alcohol sales in the zoning code has been different in the B-2 and B-5 districts from the non-downtown, historically commercial districts in that alcohol sales is a permitted use outside of the required separation distance from residential zoning districts. Development in these two districts is also subject to stricter landscape/screening requirements, deeper building setbacks, and site plan approval, and the nature of development patterns in the newer areas where these two districts are located generally provides less opportunity for intrusion of commercial activity into residential areas. These differences justify different treatment of alcohol sales in these two districts from the new regulations adopted by the City Council. The applicant's proposed amendments trade off a reduction of the 100' separation requirement with the addition of parking areas as well as buildings that are subject to the proposed 50' separation, and adds conditions to alcohol sales uses that meet the separation requirement which are not applicable today. In addition, the amendments would delete current language in the zoning code that still allows the City Council to waive (by "mitigation") the separation requirements in the B-2/B-5 districts, which is consistent with the intent that led the City Council to remove a similar provision that applied to the other non-downtown commercial districts.
3. The applicant's testimony and testimony in support on behalf of the Nebraska Grocery Industry Association is found on p.7-9. The applicant agreed with the amended language proposed by staff regarding park land; however, he would prefer it be referred to as "dedicated" park land.
4. Testimony in opposition is found on p.9, and the record consists of two letters in opposition on behalf of the Vavrina Meadows Homeowners Association (p.27-29). The applicant stated that the developer will proceed with the mitigation plan for Use Permit No. 89A to which the letters in opposition refer.
5. After the applicant's testimony, the Planning staff requested a two-week deferral to come to an agreement with the applicant as to the interpretation of the proposed language regarding the parking requirements adjacent to the building. A motion to defer for two weeks failed 1-7 (See Minutes, p.11-12). The staff will attempt to resolve this issue with the applicant prior to the public hearing before the City Council.
6. On March 31, 2004, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval, with the amendment recommended by staff regarding references to park land, as set forth on p.6.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\2004\CZ.04014

DATE: April 5, 2004

DATE: April 5, 2004

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for March 31, 2004 PLANNING COMMISSION MEETING

P.A.S.: Change of Zone #04014

PROPOSAL: To amend the conditions under which alcohol is allowed to be sold in the B-2 and B-5 zoning districts to include the following:

1. Makes the sale of alcohol in the B-2 and B-5 districts a conditional use, and eliminates City Council authority to waive the yard, parking location, and door opening location requirements.
2. The B-2 side yard separation will be 50' where the building containing the licensed premises abuts a residential district.
3. Off-street parking will not be allowed within 50' of the side or rear property lines where the building containing the licensed premises abuts a residential district.
4. ~~The licensed premises will be at least 100' away from a day care facility, church, state mental health institution, park (not including trail) or residential district unless there is an intervening exterior wall, in which case it will be measured along the base of the building to the door.~~ The exterior door will be 100' away from a day care facility, church, state mental institution, park, or residential district as measured by the shortest, most direct distance unless there is an intervening exterior wall. In that case, the distance is measured from the exterior door opening along the exterior base of the building. (**As revised by staff on March 31, 2004**)
5. Any exterior door facing a residential district must be more than 150' away from the residential district as measured by the most direct, perpendicular distance.
6. Define the exterior door opening as any door used for public or membership access, but to not include emergency doors or loading doors that are not used for public access.
7. Vehicle stacking for a drive-thru window shall not be located in any required building setback from a residential district.
8. There shall be no amplified outside noise sound or noise source within 150' of a residential district.

CONCLUSION: The treatment of alcohol sales in the zoning code has been different in the B-2 and B-5 districts from the non-downtown, historically commercial districts in that alcohol sales is a permitted use outside of the required separation distance from residential zoning districts. Development in these two districts is also subject to stricter landscape/screening requirements, deeper building setbacks, and site plan approval, and the nature of development patterns in the newer areas where these two districts are located generally provides less opportunity for intrusion of commercial activity into residential areas. These differences justify different treatment of alcohol sales in these two districts from the new regulations adopted by the City Council. The applicant's proposed amendments trade off a reduction of the 100' separation requirement with the addition of parking areas as well as buildings that are subject to the proposed 50' separation, and adds conditions to alcohol sales uses that meet the separation requirement which are not applicable today. In addition, the amendments would delete current language in

the zoning code that still allows the City Council to waive (by “mitigation”) the separation requirements in the B-2/B-5 districts, which is consistent with the intent that led the City Council to remove a similar provision that applied to the other non-downtown commercial districts.

RECOMMENDATION:

Conditional Approval

GENERAL INFORMATION:

RELATED APPLICATIONS: CZ#04003 - A text amendment to Sections 27.63.680 and 27.63.685 of the Zoning Ordinance relating to the sale of alcoholic beverages for consumption on and off the premises. This application was approved by the City Council on March 15, 2004.

UP#89B - An amendment to Use Permit #89 - Pine Ridge, to allow the sale of alcoholic beverages for consumption on the premises less than 100' away from a residence and a residential district. Submitted by the same applicant as this text amendment, it was placed on pending by the Planning Commission at their 10/2/02 hearing.

ANALYSIS:

1. The Zoning Ordinance regulates the sale of alcohol depending upon the district as follows:
 1. On-sale is allowed by special permit in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 districts.
 2. Off-sale is allowed by special permit in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, and I-3 districts.
 3. On and off-sale are allowed as permitted uses in the B-4 district.
 4. On-sale is allowed in residential districts where such use is an accessory use to a golf course or country club.
 5. On-sale in a restaurant is allowed by special permit as part of a use permit in the O-3 district provided the locational requirements of 27.63.680 are met or waived by City Council.
 6. On and off-sale alcohol are allowed as permitted uses in the B-2 and B-5 districts provided the locational requirements of 27.63.680 are met or are waived by City Council.
2. During the February 18, 2004 Planning Commission public hearing, Kent Seacrest stated that he felt a distinction could be made between B-2/B-5 and the other districts that allowed the sale of alcohol. Because they are use permit districts, he felt that adequate mitigation was already built into the process by way of increased setbacks, landscaping, and area requirements. He went on to note however, that in spite of the heightened development standards, any request

in the B-2 or B-5 that did not provide the required 100' separation was still subject to Council approval. This request addresses concerns raised by Mr. Seacrest, and only modifies the conditions under which alcohol sales are allowed in the B-2 and B-5 districts.

3. A comparison between the current, applicable requirements from LMC for the B-2 and B-5 districts and the proposed amendments are as follows:

LMC Requirements:

A. Setbacks -

	Front	Side	Rear
B-2	50'	20' when abutting residential	50' when abutting residential
B-5	50'	100' when abutting residential	100' when abutting residential

B. Off-street parking is not allowed in the front or side yards of either district, but is permitted within the rear yards of both.

C. The 100' separation is measured from the nearest point of the licensed premises.

D. The definition of an access door which must be more than 150' away from a residential district also includes loading and unloading doors.

E. Required screening includes a 60% screen from 0' to 10' in height along the property line. Required landscaping includes four trees and 400 square feet of shrubs for every 10,000 square feet of floor area.

Proposed Amendment:

A. Setbacks from the premises where alcohol is sold -

	Front	Side	Rear
B-2	50'	50' when abutting residential	50' when abutting residential
B-5	50'	100' when abutting residential	100' when abutting residential

B. Off-street parking is not allowed in the front, side, or rear yards of either district.

C. The 100' separation is measured from the exterior door opening unless there is an intervening wall, in which case the distance is measured from the door along the base of the building (see attached Exhibits A-D).

D. The definition of an access door which must be more than 150' away from a residential district includes only those doors that provide public or membership access, and not loading and unloading doors (see attached Exhibit E)

E. No change to the screening or landscaping is proposed. However, the additional restriction on parking in the rear yard means this area will typically be left as green open space.

4. If approved, the following impacts would be considered more restrictive:

A. City Council's authority to waive conditions would be eliminated.

B. Parking would not be allowed within 50' of the rear property line in B-2.

C. The side yard separation in the B-2 would be increased from 20' to 50' when abutting a residential district, with no parking allowed within 50' of the side property line. Additionally, no parking would be allowed within the rear yard in the B-5.

The following would be considered less restrictive:

A. The 100' separation would be measured from the nearest point of the licensed premises unless there is an intervening wall, in which case the distance is measured from the door along the base of the building.

B. Loading and unloading doors will not be required to be at least 150' away from a residential district.

5. The applicable screening and landscaping standards were designed to promote compatibility with surrounding uses, and only apply to B-2 and B-5 when adjacent to a zoning district of substantially different character.

6. The minimum site area for B-2 is five acres, and thirty acres for B-5. The B-2 and B-5 commercial centers are generally found at major intersections, and the buildings are oriented towards major streets and away from surrounding residences. These factors prevent the situation often encountered in the older neighborhoods, where the commercial districts are small and lacking depth. It also ensures there is adequate area to maintain screening and landscaping, and that buildings and traffic are oriented towards major streets and away from residential uses.

7. As noted previously, CZ#04003 was approved by the City Council. It included a substitute ordinance that refined the definition of park to exclude golf courses and hiker/biker trails. This request should be amended to contain language consistent with that ordinance.

8. This request was presented to the Mayor's Neighborhood Roundtable at their March 11, 2004 meeting.

CONDITIONS:

1. Change “DEDICATED CITY OR COUNTY PARK LAND” to “PARK (EXCLUDING GOLF COURSES AND HIKER/BIKER TRAILS)” throughout the proposed ordinance.

Prepared by:

Brian Will
441-6362
bwill@ci.lincoln.ne.us
Planner

March 3, 2004

CONTACT: Kent Seacrest
1111 Lincoln Mall Suite 350
Lincoln, NE 68508 (402) 535-6000

APPLICANT: Ridge Development Company
PO Box 22296
Lincoln, NE 68542-2296 (402)421-1627

CHANGE OF ZONE NO. 04014

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 17, 2004

Members present: Larson, Carroll, Sunderman, Carlson, Taylor, Marvin, Pearson and Bills-Strand; Krieser absent.

Staff recommendation: Deferral until March 31, 2004, due to revised application.

Ex Parte Communications: None.

There was no testimony in support or in opposition.

Carlson moved to defer, with continued public hearing and administrative action scheduled for March 31, 2004, seconded by Taylor and carried 8-0: Larson, Carroll, Sunderman, Carlson, Taylor, Marvin, Pearson and Bills-Strand voting 'yes'; Krieser absent.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 31, 2004

Members present: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand; Krieser absent.

Staff recommendation: Approval, provided "Dedicated City or County Park Land" is changed to "Park (Excluding Golf Courses and Hiker/Biker Trails)" throughout the proposed ordinance.

Ex Parte Communications: Bills-Strand and Pearson indicated that they had discussions with Kent Seacrest regarding the exhibits. Carlson indicated that he attended the Neighborhood Roundtable meeting when this ordinance was discussed.

Brian Will of Planning staff submitted two letters in opposition from individuals with the Vavrina Meadows Homeowners Association.

Additionally, Will submitted written clarification of Item #4 on page 1 of the staff report which summarizes the proposal:

"4. The exterior door will be 100' away from a day care facility, church, state mental institution, park, or residential district as measured by the shortest, most direct distance unless there is an intervening exterior wall. In that case, the distance is measured from the exterior door opening along the exterior base of the building."

Proponents

1. Kent Seacrest appeared on behalf of **Ridge Development Company and Southview, Inc.** Seacrest stated that he appeared previously to discuss the administration's proposal to remove mitigation on liquor special permits. The City Council approved that legislation, which is basically

the “one size fits all” where we now have the 100’ rule from any point of the building measured back to the residential district line. That ordinance now applies uniformly, no matter what the zoning might be.

Seacrest proposed that certain zones have unique characteristics, such as B-2 and B-5, which are the subject of this text amendment. B-2 and B-5 have a use permit process, which is a distinction from special permits. “Special permit” assumes that it is not a good land use for that zoning. “Use permit” has the opposite assumption—these are uses that we do want in this zone, but the use permit provides site review. It is assumed that alcohol is an accepted use in the B-2 and B-5 district. The next distinction is the setbacks. B-2 and B-5 are the modern commercial zones which provide a lot more protection and buffering than the older B-1 and B-3 zones. To begin with, there are larger setbacks. Additionally, the B-2 and B-5 are in the newer areas and are bigger sites than those found in the B-1 and B-3. Seacrest believes it would seem more appropriate to go with a set of rules unique to these two use permits zones, B-2 and B-5.

Instead of measuring the distance requirement from the building, the proposal in B-2 and B-5 measures the distance requirement from the front door because that is where the activity to the neighborhood starts. The activity also ends up in the parking lot, so it’s not just the front door measurement but also the parking lots. The proposal suggests that the impact starts at the door and ends at the parking lot. This proposal measures from the front door and pushes the parking lots further away than they are today. The cars would be at least 50’ back and not right on the property line. Today the side yard setback is 20’ in the B-2. This proposal requires 50’ setback, making it tougher and a clearer standard.

Seacrest then explained the exhibits attached to the staff report. The measurement to the front door is measured around the base of the building as opposed to through the building. If there are two doors serving the business, both doors must meet the 100’ distance measurement.

Seacrest then referred to the letter of concern from the Vavrina Meadows neighbor. He was shocked to see this letter because he talked with the author of the letter before the Neighborhood Roundtable meeting, and he called her after the Neighborhood Roundtable meeting. At that time, she lead him to believe that she was in support. As recent as last Sunday, she said that she liked what was being done. Seacrest stated that the applicant is going forward with the mitigation plan to which the letter refers.

Carlson asked whether the applicant is acceptable to the amendment proposed by the staff regarding reference to park land. Seacrest indicated that he is comfortable, although he would be more comfortable including “dedicated” park land.

Carlson asked the applicant to explain the measurement of the door facing the residential district at 150’. Seacrest explained that the existing ordinance requires a door facing the neighborhood to be 150’ away. This amendment does not change that requirement. This amendment clarifies that the 150’ means when it is “facing” the neighborhood, and Seacrest considers “facing” to be a perpendicular line, and that is what is being proposed.

Carlson noted that the current ordinance provides that the 150’ includes the loading and unloading in the rear. Seacrest does not believe the loading door is the issue. The loading doors need to be

in the back. If you agree that it should be in the back, then you have to have a door back there. If you allow the public to go through the back door, then you have to meet the requirements. If the back door is not for public entry, but only deliveries, then you can have the back door and not meet the 100' test.

Carroll observed that if you have a big box store with the doors in the center, you could use up 100' almost across the face of the building, meaning that the setback in the rear would be 50' in the B-2 and 100' in the B-5. With a 30' depth store, the neighborhood would only be 80' from the front door. Seacrest agreed. His theory is that retailers do not want a lot of depth, so you do not want to force the building out front, creating dead space in the back (sprawl).

Carroll then referred to a strip mall in B-2 with 20' side yard that wants liquor sales, but the mall is in that side yard. How do you handle that? Seacrest stated, "you don't". Carroll then inquired about pre-existing solutions. Seacrest believes that if it is there today, they are fine, but in the future, they need to meet the 50' setback requirements. Similarly, if you have parking there today and you decide to put liquor in, you have to move those parking stalls out. This is an attempt to get the balance of having the neighbors protected and not create a lot of dead zone space in the back.

Carroll confirmed that the non-parking provision for rear and side yards does not include loading trucks. Seacrest confirmed that driveways and loading areas do not apply. It is purely the patron parking. Employee parking would also not be allowed in the loading area.

2. Kathy Siefken, Executive Director of the **Nebraska Grocery Industry Association**, testified in support "because it is better than what we've got". The City Council passed the 100' rule, so in the B-2 and B-5 there is the extra dead space in the back of the stores where things happen that we don't want to have happen. We don't want employees parking in the back of the store. We need enough room to drive the truck behind to load and unload. We don't want people back there. Another concern is the pre-existing situation – what happens to a grocery store that has some catastrophic event – can you rebuild and still retain that liquor license? This ordinance won't take care of those stores in the older parts of town, but as far as future growth, they will be able to compensate and build according to these ordinances. This ordinance does fix about half of the grocery industry's problems.

Opposition

1. Mike Morosin, testified as past president of Malone Neighborhood, suggesting that in some ways this does clean up a little bit of the problems but in the older neighborhoods it spills away from the parking lot into the neighborhoods. When you have to pass these ordinances you have to look deep inside to what the ramifications are going to be. He suggested that surveillance cameras can take care of that extra 50' behind the store. The buffer zone would work well for the residential areas. We've worked hard to get the 100' that the City Council finally passed. We're getting too much alcohol availability. Once it gets away from the stores and the parking lots, it spills into the streets, residential areas, etc.

Marvin Krout, Director of Planning, does not believe the explanation of the ordinance amendment regarding the parking adjacent to the building matches the language that is proposed. The staff did not interpret it the way that Seacrest has explained it to the Commission. This may need to be deferred.

Staff questions

Marvin inquired as to how the 150' is measured now if it is not perpendicular, as proposed. Rick Peo of City Law Department believes the term used now is "facing" rather than "perpendicular", and "facing" is not defined. He believes that "facing" is generally and broadly construed to mean basically in the same direction, so you wouldn't necessarily have to be totally perpendicular. It's more like a block frontage type facing. Marvin wondered whether "perpendicular" might allow games to be played with the front door in terms of the architectural design. Peo agreed that if "perpendicular" is based from the door versus the building frontage, you could probably change the direction slightly.

Bills-Strand pointed out that when the Commission voted to recommend denial of the original ordinance that was passed by the City Council, the existing grocery stores were never addressed. Would it be appropriate to add some grandfathering language to this proposal to address the existing conditions? Peo suggested that if the Commission wishes to add any provisions other than what is proposed, it would require readvertising. Currently, under the ordinance, if a liquor store was pre-existing prior to 1979, it would be considered a pre-existing use and allowed to continue. If it were pre-existing between 1979 and this date, it would become nonconforming and allowed to continue as is, but would require a special permit to rebuild in event of change. A change in terminology would require some readvertising.

Brian Will of Planning staff approached the Commission to request a two week deferral. The applicant's presentation describing to which areas the prohibition of parking and increased setback would apply is a different interpretation than that of staff. Staff interpreted the language to mean that parking would not be allowed in the entire side and rear yard as shown on the exhibit. Will requested a two week deferral to meet with the applicant and address these interpretations.

Upon further discussion about attempts to address pre-existing conditions, staff suggested that it should be a separate application and reviewed on its own merits as it would most likely apply to more than the B-2 and B-5 districts. Carlson agreed. He believes it is a separate issue and he does not want to add that to this applicant's proposal.

Response by the Applicant

Seacrest attempted to explain the discrepancy between his interpretation and that of the staff. He drafted the language as pertaining to a building that contains a premise. When he answered the question indicating that certain parts would lose their parking and others would not, he was seeing it as two buildings. He interpreted that parking adjacent to the building with the liquor permit would have to be 50', but the other building that did not have liquor could be 20'. He believes that staff and the applicant have a contrary view. With one building there is usually one ownership. If it is two buildings and different ownership, it is not fair to have one business say they want liquor and force the parking measurements on the adjoining building. Seacrest indicated that he would agree to a delay, but he does not want to see it interpreted any other way. The parking adjacent to the licensed building would be 50'. If we had a pad site, the question then is, what is adjacent parking? He believes it would be a decision of the Building & Safety Department.

Carlson confirmed with Seacrest that his preference is the language as written in the proposal. Seacrest concurred.

Motion. Taylor moved to defer two weeks, seconded by Larson.

Pearson is not sure why we would want to wait for two weeks because she thought the applicant said that their proposal represents “perpendicular” and staff does not believe it should be “perpendicular”. The applicant is clear on what he is requesting. The applicant is saying “perpendicular” to the front door. He does not disagree with that interpretation. Seacrest stated that perpendicular would be at right angle to the opening of the building. If you don’t do perpendicular and if facing means something else, then it is the 180 degree rule. Remember, it is the impact of the noise coming out.

Carlson observed that the applicant’s proposed parking language is more stringent than is currently required. Seacrest concurred.

Marvin stated that he will vote against the deferral. Sunderman also indicated that he is ready to vote today.

Pearson asked for staff clarification as to the different interpretations. Hill stated that the proposal is not making the parking more restrictive except around the back of the building. The staff has interpreted that the side yard would apply to the entire property as well as the rear yard. If you take the applicant’s interpretation of “adjacent”, you could have parking right up to the property line in part of the rear yard, and that is not more restrictive than it is today. Staff is suggesting that if you are allowed to park in the rear yard outside of the perpendicular part of the building, you could have people parking right next to the residential area. The staff needs two weeks to get this worked out. But, Pearson observed that the B-2 currently has a 20' side yard. Hill agreed, and you cannot park in that side yard. What is being proposed is not the same. There is a misunderstanding between the applicant and the staff as to where you can park in the side and rear yards.

Carlson noted that the ordinance requires that parking shall be in conformance with the parking section of the ordinance. The only difference is that if it is adjacent, the parking standard becomes more restrictive. He does not believe they are asking the parking standard to change except where it abuts the licensed premises, and in which case it would be more restrictive. So how are we lowering the threshold? Hill believes the proposal increases the threshold in two areas. If you allow people to park next to the residential area, you are not giving them any more protection than they have now.

Seacrest entered the discussion, suggesting that there is a lot of case law on “adjacent”. Seacrest explained his interpretation at the map. The parking will probably be defined as “down the middle between the two buildings”. He believes he is increasing the setbacks for parking with this proposal.

Peo stated that we do not define “adjacent”, but we do define “abutting” as adjacent or contiguous. He believes the word “adjacent” means abutting and contiguous, so he would think that it has to run the length of the building itself and anything beyond the length of the building is no longer contiguous or abutting and therefore no longer adjacent. If you want to get the entire premises you are going to have to revise the language to change the word “adjacent” or else define it.

Motion to defer two weeks failed 1-7: Taylor voting ‘yes’; Pearson, Carlson, Sunderman, Larson, Carroll, Marvin and Bills-Strand voting ‘no’; Krieser absent.

Motion. Marvin moved approval, with the change regarding park land as recommended by staff, seconded by Larson.

Marvin believes the Commission is losing focus. This ordinance will apply to 5-acre to 30-acre tracts with really large buildings. Measuring from the front door on a 80,000 sq. ft. building and excluding the back loading dock as a point of entry makes sense. There is no comparison to a corner gas station selling alcohol. These distance setbacks need to be treated differently because these are giant properties. To make the same measurement distances for these large buildings that you do for an old converted gas station selling alcohol doesn't make sense. This treats the two properties differently and recognizes that the stores are different.

Motion for approval, with the change recommended by staff regarding park land, carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin, and Bills-Strand voting 'yes'; Krieser absent. This is a recommendation to the City Council.

SEACREST & KALKOWSKI, P.C.

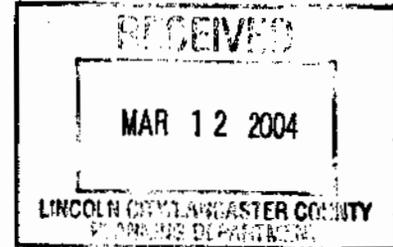
1111 LINCOLN MALL, SUITE 350
LINCOLN, NEBRASKA 68508-3905

TELEPHONE (402) 435-6000
FACSIMILE (402) 435-6100

KENT SEACREST
E-MAIL: kent@sk-law.com

DANAY KALKOWSKI
E-MAIL: danay@sk-law.com

March 12, 2004



Marvin Krout
Planning Department
County-City Building
555 South 10th Street
Lincoln, NE 68508

RE: Submittal of Revised Text Amendments to Section 27.31 (B-2 Zone) and Section 27.37 (B-5 Zone) of the Lincoln Municipal Code

Dear Marvin:

Our law firm represents Ridge Development Company and Southview, Inc. regarding proposed revisions to the B-2 and B-5 zoning text concerning on and off premises alcohol beverage sales. We want to acknowledge the City Administration's effort to process a Special Permit Ordinance Amendment which removes the possibility to mitigate and reduce the 100 foot spacing requirement for liquor establishments. We support the Administration's effort to eliminate this cumbersome mitigation provision.

Similarly, we have enclosed revised language to our proposed B-2/B-5 text amendments, clarifying that the proposed spacing and separation provisions are not waiveable by the City Council. We have obtained Rick Peo's advice on how to best incorporate the nonwaiveable provision in the proposed B-2/B-5 text amendments. We have also clarified that "park land" would not include trails. In addition, we have incorporated the drive-through window and outside amplified sound prohibitions found under subparagraph (e) and (f) in Section 27.63.680 and Section 27.63.685. The other provisions of Section 27.63.680 and Section 27.63.685 are already covered by the use permit provisions. Furthermore, the other provision are not presently required since the present B-2 and B-5 ordinance only incorporates Section 27.63.680 and Section 27.63.685. "locational" requirements.

The enclosed B-2/B-5 text amendments complement the City Administration's efforts to protect residential areas. The following are additional justifications for our proposed B-2/B-5 text amendments in light of the City Administration's proposed Special Permit Ordinance Amendment:

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1. While the City Administration's Special Permit Ordinance Amendment removes the mitigation/waiveable provision from the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zones, the City Administration's Amendment fails to remove the waiveable provision from the B-2 and B-5 zones. Adoption of our enclosed revised language would similarly prevent the B-2/B-5 zones separation standards from being mitigated or waived by the City Council.

2. The commercial special permit zones are generally found next to the older residential areas, while the B-2 and B-5 zones are generally located next to the newer residential areas. The older residential areas generally have smaller block lengths, less residential spacing separation and more street connectivity between the residential and commercial areas. A one size fits all spacing separation standard fails to acknowledge the unique differences in urban form. The City Administration's effort to process a Special Permit Ordinance Amendment addresses the older neighborhood urban form, while our proposed B-2/B-5 text amendments properly address the newer neighborhood urban form pattern.

3. B-2 and B-5 zones have much larger front, side and rear yard setbacks than the special permit zones (B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3). For example the B-2 and B-5 rear yard setbacks next to a residential area are 50 feet and 100 feet respectively, while the B-1 and B-3 zones are generally 30 feet.

4. Many of the negative impacts on neighborhoods result from the liquor establishment's patrons parking next to the residential areas. Intoxicated patrons tend to make louder noises or do unsightly activities near the residential areas while getting into their cars to leave. The B-1 and B-3 side yard separation for residential areas is only ten feet and five feet respectively. Consequently, parking (and the possible parking issues related to intoxicated patrons) is permitted only ten feet and five feet from residential areas in the B-1 and B-3 zones respectively. Our proposed B-2 ordinance amendment increases the side yard setbacks for liquor establishments from 20 feet to 50 feet. This change not only creates a larger liquor establishment separation from residential areas, it also would increase the parking stall separation from 20 feet to 50 feet, thus increasing neighborhood protections.

5. All the current commercial zone ordinances allow parking stalls in the required rear yard. Our text amendment would prohibit parking stalls in the rear yard behind liquor establishments. Therefore, the larger B-2 and B-5 rear yard setbacks will now apply to both buildings and parking stalls. Our proposed B-2 and B-5 ordinance amendments will extend the liquor building separation to also apply to patron parking, leading to greater neighborhood protections.

6. B-2 and B-5 zones are the only zones that permit alcoholic beverage sales for consumption on and off the premises "by right" assuming there is an approved use permit. The other zones require special permit approval which means the City Council

must find that alcoholic beverage sales with conditions adequately (i) protect the neighborhood and (ii) the surrounding area is not detrimentally harmed. The City Council has made a prior public policy decision to acknowledge the two types of urban form and require B-2 and B-5 to have larger yard setback requirements. The B-2/B-5 zones are the only non-downtown zones where alcoholic beverage sales are permitted without a special legislative finding that the surrounding neighborhood is protected or the surrounding area is not detrimentally harmed.

Based upon this rationale, we believe the enclosed B-2/B-5 text amendments complement the City Administration's efforts to protect residential areas. Please call if you have questions or need additional information. We appreciate your consideration of our proposed zoning text amendments.

Very truly yours,



Kent Seacrest
For the Firm

Enclosure (Revised B-2 and B-5 Text Amendments)

cc: Mayor Seng
City Council Members
Mark Bowen
Ann Harrell
Rick Peo
Brian Will, Planning Department (hand deliver)
Carol Brown, Chair of the Mayor's Neighborhood Round Table
Nebraska Restaurant Association
Nebraska Grocery Store Association
Ridge Development Company
Southview, Inc.

PROPOSED REVISIONS TO B-2 ZONING TEXT

L.M.C. Section 27.31.030 Permitted Uses

~~(z) Sale of alcoholic beverages for consumption on the premises, provided the locational requirements of Section 27.63.680 have been met or waived by the City Council;~~

~~(aa) Sale of alcoholic beverages for consumption off the premises, provided the locational requirements of Section 27.63.685 have been met or waived by the City Council;~~

L.M.C. Section 27.31.040 Permitted Conditional Uses

(f) Sale of alcoholic beverages for consumption on the premises:

(1) When the building containing the licensed premises abuts a residential district, the required yards shall be met; provided that the side yard adjacent to such building shall be 50 feet.

(2) Parking shall be in conformance with the provisions of Chapter 27.67; provided that no parking spaces shall be located in that portion of any required side yard or rear yard adjacent to the building containing the licensed premises that abuts a residential district.

(3) Any exterior door opening must meet the following conditions:

(a) Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, dedicated city or county park land, or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, dedicated city or county park land, or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care facility, church, state mental health institution, dedicated city or county park land, or residential district.

(b) If the exterior door opening faces a residential district, then such opening shall be at least 150 feet from a residential district as measured by the shortest, most direct perpendicular distance. The exterior door shall not be kept or propped open during the hours of operation.

For purposes of this section, "exterior door opening" shall mean (i) that portion of the exterior wall face of the building containing the licensed premises that contains a break to accommodate the exterior building door, door frame, door vestibule or door entryway area and (ii) provides public or membership access to the licensed premises. "Exterior door opening" shall not apply to openings for emergency exit doors required by building or safety codes, loading doors or unloading doors that are not available for public or membership access in the ordinary course of business.

(4) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

(5) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

(6) Notwithstanding any contrary provision contained in 27.31.100(h), the yard requirements, parking location requirements and the exterior door opening location requirements in this section shall not be adjusted by the City Council.

(g) Sale of alcoholic beverages for consumption off the premises

(1) When the building containing the licensed premises abuts a residential district, the required yards shall be met; provided that the side yard adjacent to such building shall be 50 feet.

(2) Parking shall be in conformance with the provisions of Chapter 27.67; provided that no parking spaces shall be located in that portion of any required side yard or rear yard adjacent to the building containing the licensed premises that abuts a residential district.

(3) Any exterior door opening must meet the following conditions:

(a) Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, dedicated city or county park land, or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, dedicated city or county park land, or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care

facility, church, state mental health institution, dedicated city or county park land, or residential district.

(b) If the exterior door opening faces a residential district, then such opening shall be at least 150 feet from a residential district as measured by the shortest, most direct perpendicular distance. The exterior door shall not be kept or propped open during the hours of operation.

For purposes of this section, "exterior door opening" shall mean (i) that portion of the exterior wall face of the building containing the licensed premises that contains a break to accommodate the exterior building door, door frame, door vestibule or door entryway area and (ii) provides public or membership access to the licensed premises. "Exterior door opening" shall not apply to openings for emergency exit doors required by building or safety codes, loading doors or unloading doors that are not available for public or membership access in the ordinary course of business.

(4) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

(5) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

(6) Notwithstanding any contrary provision contained in 27.31.100(h), the yard requirements, parking location requirements and the exterior door opening location requirements in this section shall not be adjusted by the City Council.

PROPOSED REVISIONS TO B-5 ZONING TEXT

L.M.C. Section 27.37.020 Permitted Uses

~~(16) Sale of alcoholic beverages for consumption on the premises, provided the locational requirements of Section 27.63.680 have been met or waived by the City Council;~~

~~(17) Sale of alcoholic beverages for consumption off the premises, provided the locational requirements of Section 27.63.685 have been met or waived by the City Council;~~

L.M.C. Section 27.37.025 Permitted Conditional Uses

(c) Sale of alcoholic beverages for consumption on the premises:

(1) When the building containing the licensed premises abuts a residential district, the required yards shall be met.

(2) Parking shall be in conformance with the provisions of Chapter 27.67; provided that no parking spaces shall be located in that portion of any required side yard or rear yard of the building containing the licensed premises that abuts a residential district.

(3) Any exterior door opening must meet the following conditions:

(a) Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, dedicated city or county park land, or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, dedicated city or county park land, or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care facility, church, state mental health institution, dedicated city or county park land, or residential district. For purposes of this section, "park land" shall not include trails.

(b) If the exterior door opening faces a residential district, then such opening shall be at least 150 feet from a residential district as measured by the shortest, most direct perpendicular distance. The exterior door shall not be kept or propped open during the hours of operation.

For purposes of this section, "exterior door opening" shall mean (i) that portion of the exterior wall face of the building containing the licensed premises that contains a break to accommodate the exterior building door, door frame, door vestibule or door entryway area and (ii) provides public or membership access to the licensed premises. "Exterior door opening" shall not apply to openings for emergency exit doors required by building or safety codes, loading doors or unloading doors that are not available for public or membership access in the ordinary course of business.

(4) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

(5) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

(6) Notwithstanding any contrary provision contained in 27.37.070(i), the yard requirements, the parking location requirements and the exterior door opening location requirements in this section shall not be adjusted by the City Council.

(d) Sale of alcoholic beverages for consumption off the premises

(1) When the building containing the licensed premises abuts a residential district, the required yards shall be met.

(2) Parking shall be in conformance with the provisions of Chapter 27.67; provided that no parking spaces shall be located in that portion of any required side yard or rear yard of the building containing the licensed premises that abuts a residential district.

(3) Any exterior door opening must meet the following conditions:

(a) Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, dedicated city or county park land, or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, dedicated city or county park land, or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care

facility, church, state mental health institution, dedicated city or county park land, or residential district. For purposes of this section, "park land" shall not include trails.

(b) If the exterior door opening faces a residential district, then such opening shall be at least 150 feet from a residential district as measured by the shortest, most direct perpendicular distance. The exterior door shall not be kept or propped open during the hours of operation.

For purposes of this section, "exterior door opening" shall mean (i) that portion of the exterior wall face of the building containing the licensed premises that contains a break to accommodate the exterior building door, door frame, door vestibule or door entryway area and (ii) provides public or membership access to the licensed premises. "Exterior door opening" shall not apply to openings for emergency exit doors required by building or safety codes, loading doors or unloading doors that are not available for public or membership access in the ordinary course of business.

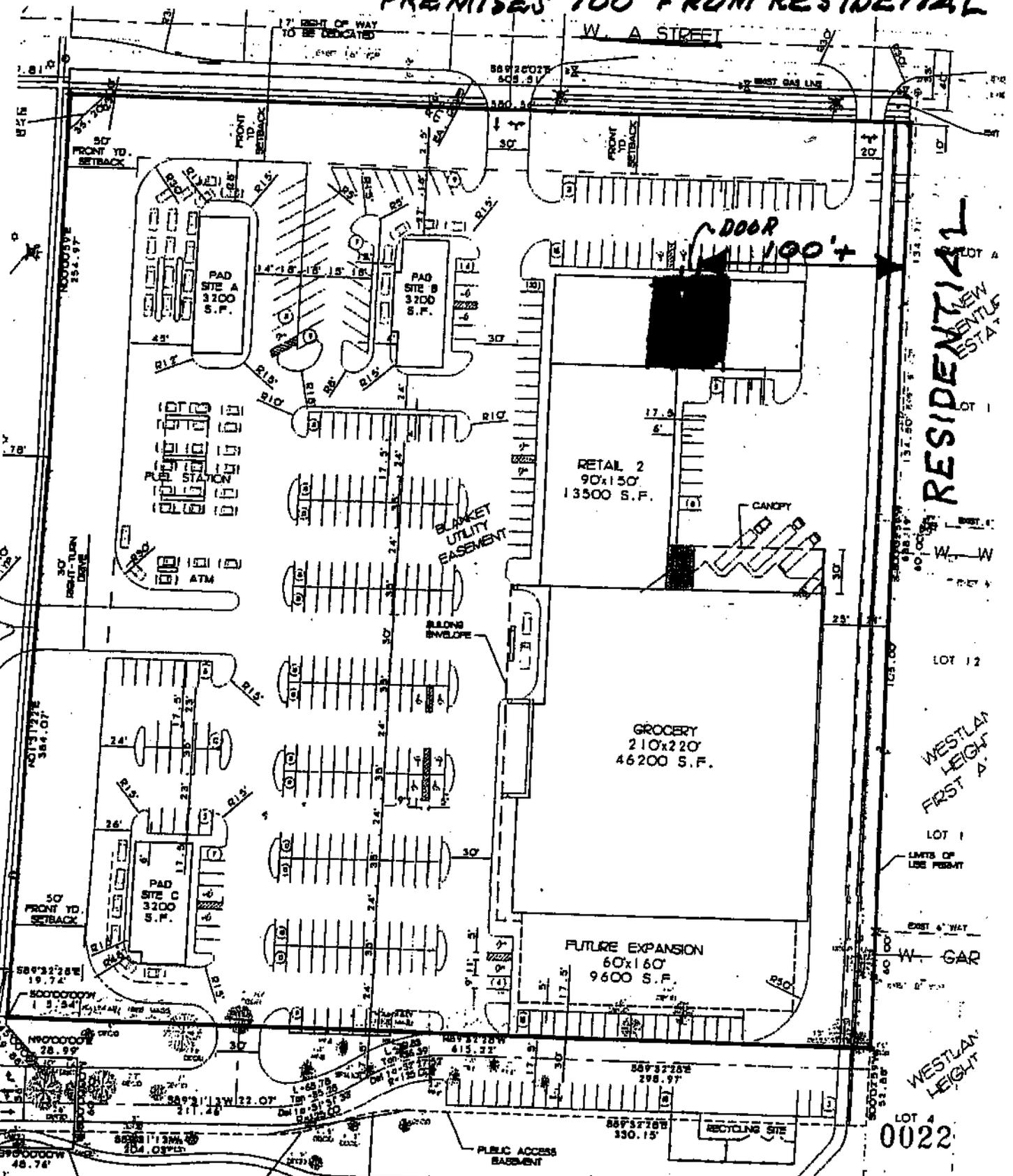
(4) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

(5) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

(6) Notwithstanding any contrary provision contained in 27.37.070(i), the yard requirements, the parking location requirements and the exterior door opening location requirements in this section shall not be adjusted by the City Council.

**SEACREST PROPOSAL
SITUATION A
EXTERIOR DOOR TO
PREMISES 100' FROM RESIDENTIAL**

EXHIBIT A



RESIDENTIAL
NEW
MULTI-
ESTATE

WESTLAN
HEIGHT
FIRST A

WESTLAN
HEIGHT

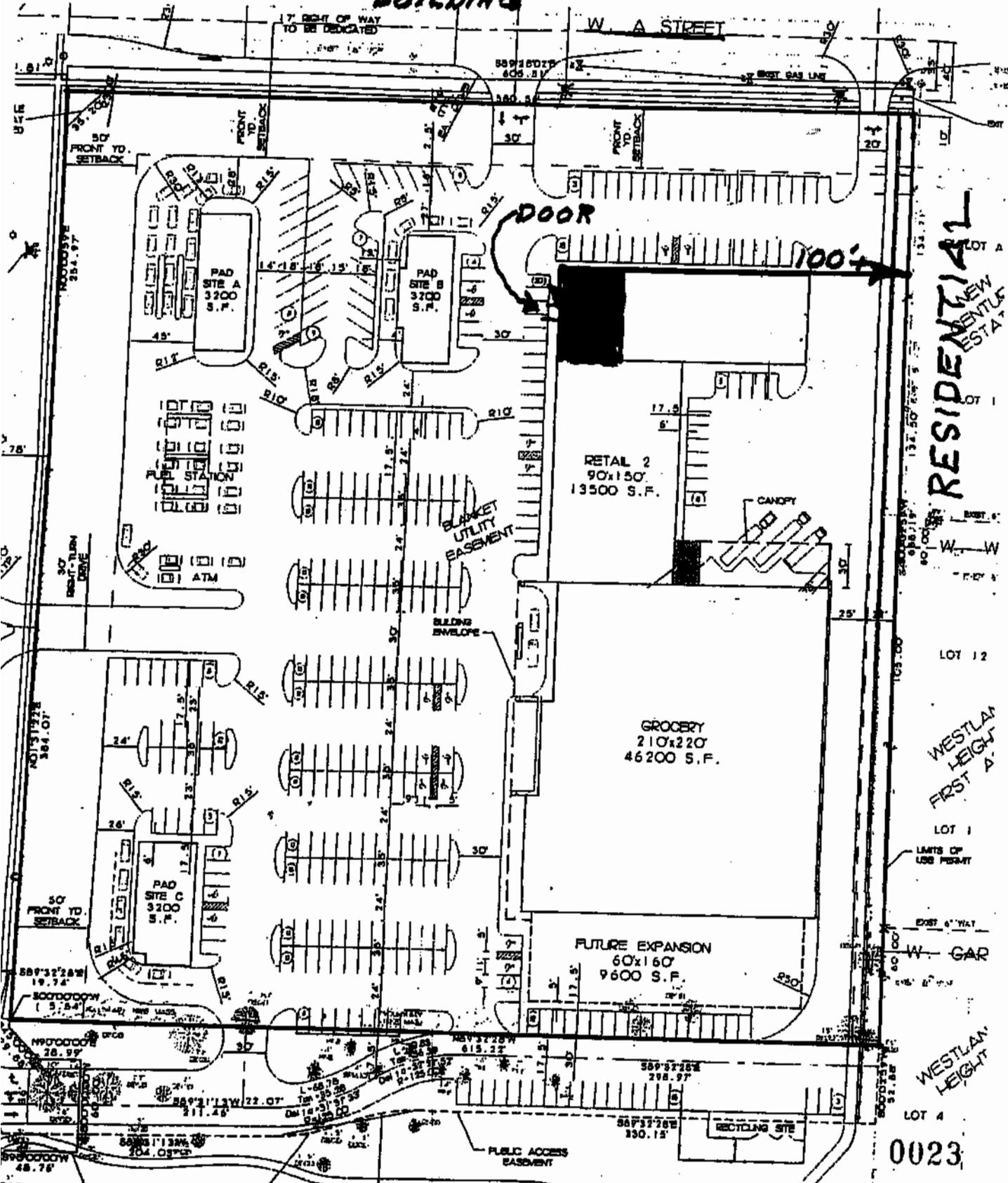
LOT 4
0022

SEACREST PROPOSAL

EXHIBIT B

SITUATION B

EXTERIOR DOOR TO PREMISES
100' MEASURED ALONG BASE OF
BUILDING



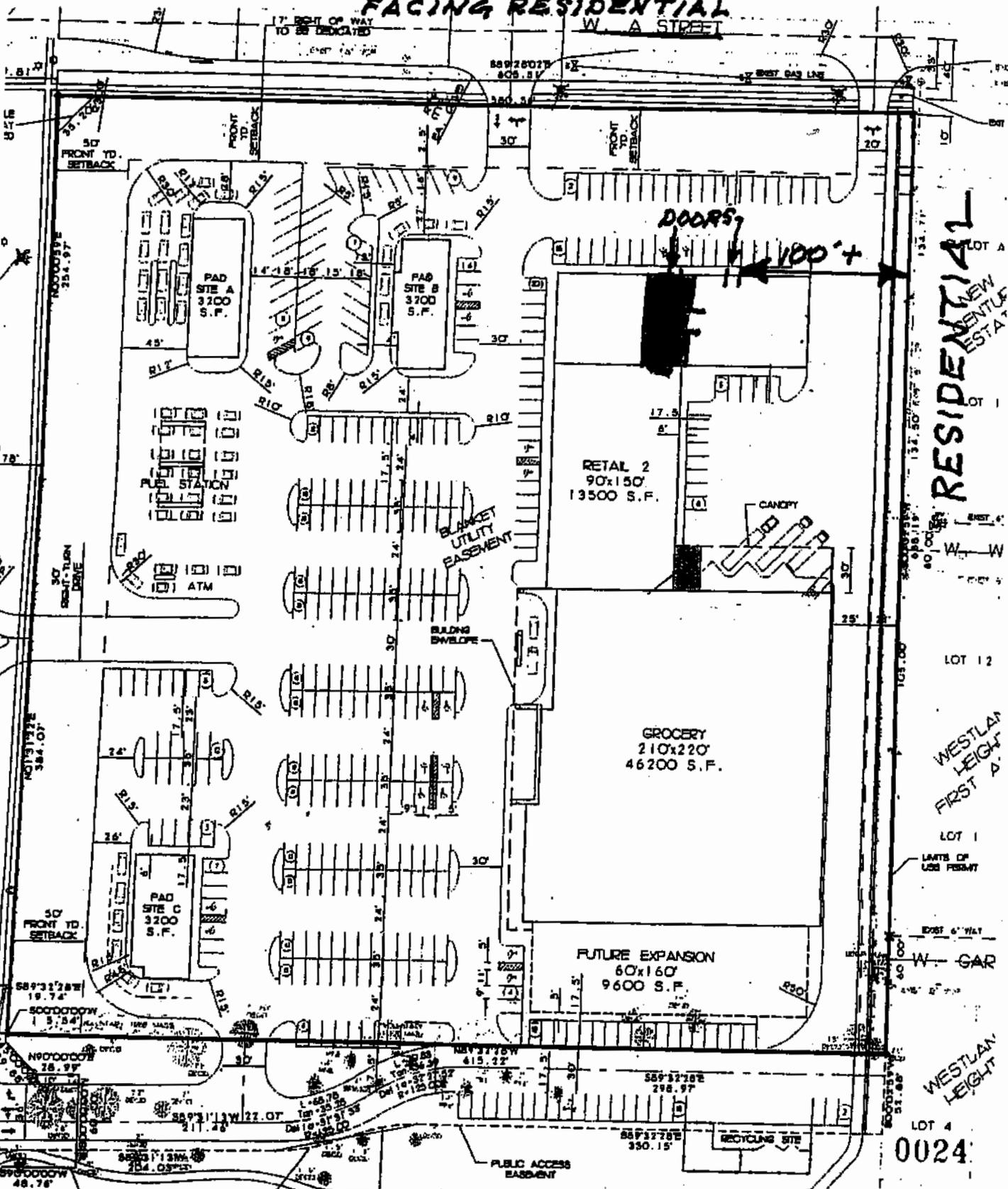
RESIDENTIAL
NEW
RENTAL
ESTATE

WESTLAN
HEIGHT
FIRST A

0023

**SEACREST PROPOSAL
SITUATION C
OPENING BETWEEN PREMISES
AND NON PREMISES DOOR NOT
FACING RESIDENTIAL**

EXHIBIT C



RESIDENTIAL
NEW
ESTATE

LOT 12
WESTLAW
HEIGHT
FIRST A

LOT 1
LANDS OF
USE PERMIT

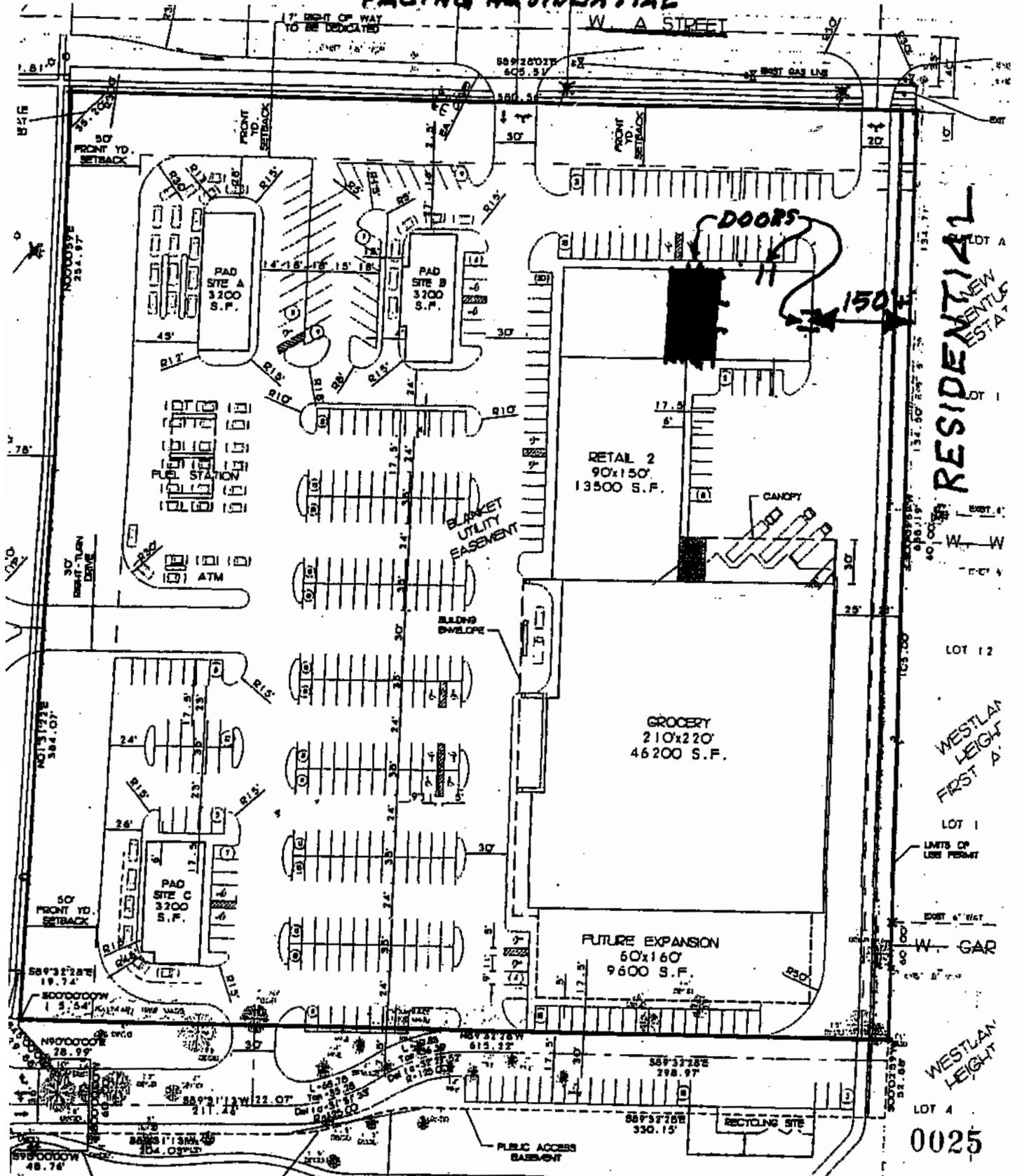
LOT 4
W GAR

WESTLAW
HEIGHT

0024

**SEACREST PROPOSAL
SITUATION D
OPENING BETWEEN PREMISES
AND NON PREMISES DOOR
FACING RESIDENTIAL**

EXHIBIT D



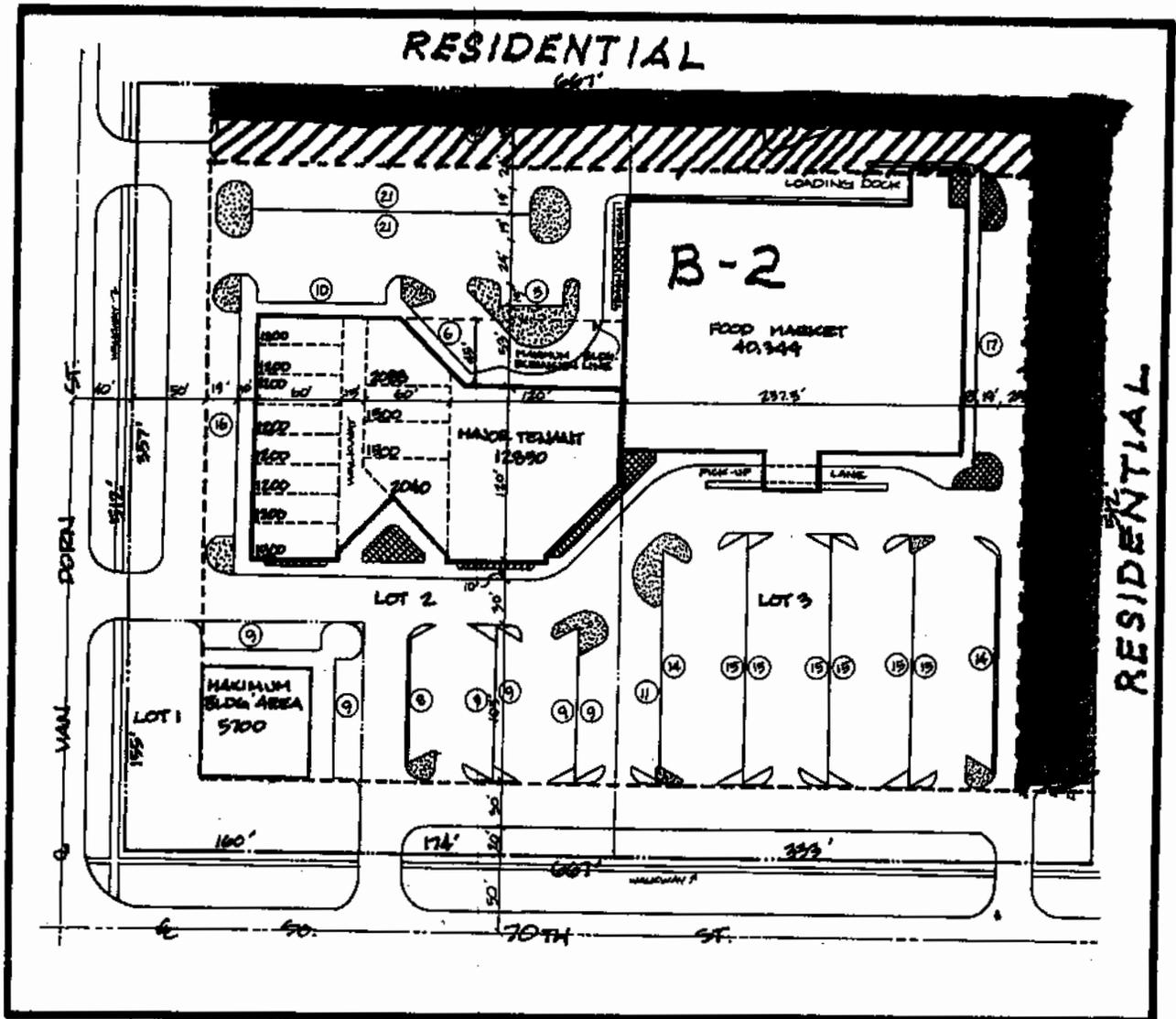
0025

USE PERMIT

TO DEVELOP A 'B-2' ZONED PROPERTY AS DESCRIBED ON THE ATTACHED LEGAL DESCRIPTION, IN LINCOLN LANCASTER COUNTY, NEBRASKA.

SEACREST PROPOSAL

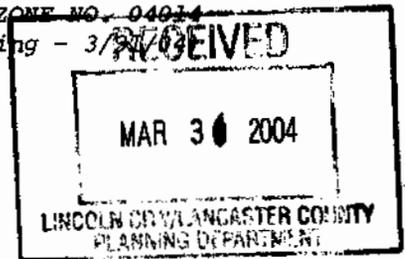
- ////// SIDE YARD 50' (NO PARKING)
- ////// REAR YARD 50' (NO PARKING)



REQUIRED YARD WHEN
ABUTTING RESIDENTIAL

- █ SIDE YARD 20' (NO PARKING)
- █ REAR YARD 50' (PARKING ALLOWED)





March 30, 2004

City Planning Department
555 South 10th Street, Suite 213
Lincoln, NE 68508

RE: Proposed Amendment to USE PERMIT NO. 89A

I am writing on behalf of the proposed amendment change that would allow the sale of alcoholic beverages for consumption on the premises within 100 feet of a residential district and the proposed legislation that has been drafted to change the boundary restrictions outlined in the current zoning ordinance.

The current zoning ordinances were developed upon careful consideration to maintain balance between commercial property and residential properties. A compromise to the current ordinance of a reduced distance for the sale and consumption of alcoholic beverages has no benefit to the homeowners what so ever and could potentially cause reduced property values and hinder the sale of homes in the affected areas. One of the areas, which would be affected by this change, is located between 16th to 20th & Pine Lake Road currently owned by Ridge Development LLC and Northern Lights LLC. It is bordering a middle class neighborhood (Vavrina Meadows) with hundreds of children. It is also located by a high school to the west; a middle school to the northeast and a proposed elementary school to the southeast all with in a two to three block radius.

After visiting with several families that currently live in the Vavrina Meadows Neighborhood, I do not feel that this change would be beneficial to our neighborhood. The families of the neighborhood do not have a problem with a shopping mall located on this area but feel no need for any zoning ordinance changes.

Therefore, I am asking the Planning Commission to reject any proposed legislation changes to amend current zoning ordinances drafted by Kent Seacrest and Danay Kalkowski, Attorneys representing Northern Lights LLC and The Ridge LLC, not just to maintain balance in my neighborhood but city wide.

Thank You,

A handwritten signature in black ink that reads "Amy J. Thompson".

Amy J. Thompson, Vice-President
Vavrina Meadows Homeowners Assn.
7301 S. 18th Street
Lincoln, NE 68512
402-328-9249

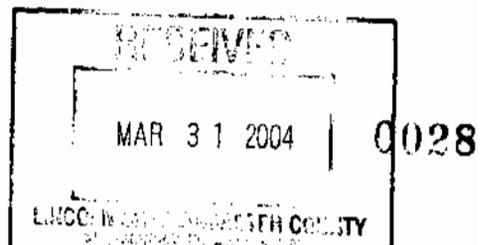
March 23, 2004

My name is JoAnn Brethouwer, and I live at 7441 S. 19th St. in the Vavrina Meadows neighborhood. I currently sit on the Board of Directors for the Vavrina Meadows Homeowners Association. I want to add that I am not writing on behalf of the Board of Directors but as a property owner that resides in Vavrina Meadows.

I am writing to you about the proposed legislation that is a follow up to the application to amend the USE PERMIT NO. 89A, in 2002. This amendment that would have allowed the sale of alcoholic beverages for consumption on the premises within 100 feet of a residential district. And this proposed legislation that has been drafted will change the boundary restrictions outlined in the current zoning ordinance. The springboard for this legislation is primarily focused on the property that is located on S. 14th and Pine Lake Road. The persons who have drafted this proposed legislation are Kent Seacrest and Danay Kalkowski, both attorneys representing Northern Lights LLC and The Ridge LLC. I am asking this Commission to decline this or any newly submitted amendment for the USE PERMIT NO. 89A, to be declined, as well as requesting that you not endorse the proposed legislation instigated by these people.

I am questioning the concerns expressed for the homeowners in Vavrina Meadows by the representing agents for these corporations. I do not want to see the people in my neighborhood treated with indifference. Vavrina Meadows is not a "high end" neighborhood. It is a neighborhood of hard working middle class families that currently cater to the existing businesses that are located in this mall. I want you to know that the people in my neighborhood are not against commerce, nor are we against responsible legal drinking. We are concerned about the commotion and crime that can accompany this sort of establishment and it filtering into our neighborhood. This sort of destructive conduct would devalue the properties bordering on the area that is owned by The Ridge LLC and Northern Lights LLC, and make it extremely difficult to resell the homes that currently exist on this boundary. And furthermore, I believe that this proposed change could hinder the peaceful existence of the current property owners who abut the land next to the shopping mall on 14th and Pine Lake Road.

I suspect that there are other reasons for a proposed change in the boundary codes in this legislation, and my suspicions tell me that the corporations that own the vacant land from 16th through 20th Streets and Pine Lake Road which happen to be The Ridge LLC; will eventually seek a change in the approved construction of apartment complexes on this land, to a continuance of the shopping mall on 14th and Pine Lake Road. By amending the boundary codes, The Ridge LLC will be allowed to place an alcohol serving establishment right behind the properties that currently exist on the north end of our outer most street, Marlene Drive. This would specifically effect blocks 1 and 2 in Vavrina Meadows. These property owners do not want to see another apartment complex erected on that site, we currently have apartment complexes to the east and west of us. As the former President of our Association, I have been told by several homeowners on Marlene Dr. that they do not have a problem with a commercial or retail establishments being built in the place of apartments. But they don't want an alcohol serving establishment allowed so close to their homes. A restaurant like a Valentinos, or an Applebees would be acceptable, but not a Brewski's, or Heidleburgs. There is a world of difference between these establishments.



Most of the people that own land on Marlene Dr. have sacrificed a great deal to purchase or build their first homes. A lot of sweat, time and money has gone into maintaining their properties, and they don't want to bear the grief that is often associated with the individuals who abuse their privilege to drink alcohol. This abuse can be manifested in vagrancy, vandalism, and drunk and disorderly conduct as well as destruction of property and trespassing! One solution to prevent a problem of unwelcome visitors and litter in the backyards of these property owners would be to have each person build a fence. That's not fair to them. They should be afforded the right to build a fence to enhance their properties because they desire to, not because they have to in order to protect their best interests. Each person that lives in Vavrina Meadows, as well as the other newly developed areas of Lincoln, have complied with each one of the zoning ordinances imposed on them during the construction of their homes. These ordinances were imposed for safety reasons and in compliance with the mandates established for our new neighborhood. If they didn't like something, they didn't hire an attorney to approach you to change a code simply to benefit their own personal interests. And if they had, would you have given them the deliberation that is given to the corporation that is currently approaching your commission? I doubt it. Yet, one corporation is approaching you to do just that. To place their personal interests ahead of the interests of the majority of the property owners in my neighborhood, for reasons that will benefit themselves.

Ideally, I would like to see this legislation and any boundary change amendment concerning the sale of alcohol so close in proximity to a residential area turned down, but I am a realist. I know that one person speaking does not carry the weight of a corporation. But as one person, I am concerned that the powers that be in my city are not concerned with the best interests of the middle class working people. I would ask you to carefully consider this proposed legislation and any future amendments to the zoning codes, and evaluate whether or not this is something that you'd like to see happen to your personal properties or your neighborhood that you've worked so hard to establish and maintain. This legislation will affect the entire city of Lincoln, not just my neighborhood. If you approve or endorse this proposed legislation or boundary changing amendments then you will be sending a message to my neighbors telling them that their properties do not matter and only the interests of these developing corporations The Ridge LLC and or Northern Lights LLC, should be considered and regarded.

However, if it is the Planning Commission's decision to approve any boundary changes in the form of an amendment or endorse any legislation that would affect a boundary change to the zoning codes; then on behalf of the property owners I would ask you to please include in your variance, waiver or endorsement, a specific plan for landscape screening that would be effective in it's purpose to prevent the patrons of this sort of establishment from filtering into our neighborhood as well as enhance the neighboring properties and the area as a whole.

Thank you for taking the time to read my letter and listening to what I have to say.

Sincerely



JoAnn Brethouwer
Director, Vavrina Meadows Homeowners Association Inc.