

## **FACTSHEET**

**TITLE:** **CHANGE OF ZONE NO. 07027**, from R-4 Residential District to B-3 Commercial District, requested by RJJ&T, LLC, and Red Cloud Development, on .91 acre, more or less, generally located south of South Street between 9<sup>th</sup> and 10<sup>th</sup> Streets.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 05/23/07, 06/20/07 and 07/18/07  
Administrative Action: 07/18/07

**STAFF RECOMMENDATION:** Approval, subject to conditional zoning and development agreement.

**RECOMMENDATION:** Approval, subject to conditional zoning and development agreement, with amendments (5-3: Larson, Sunderman, Taylor, Strand and Carroll voting 'yes'; Cornelius, Krieser and Carlson voting 'no'; Esseks absent).

**ASSOCIATED REQUESTS:** Conditional Zoning and Development Agreement (07R-206) and Street & Alley Vacation No. 07003 (07-157).

### **FINDINGS OF FACT:**

1. This change of zone request and the associated Street & Alley Vacation No. 07003 were heard at the same time before the Planning Commission.
2. This proposed change of zone to B-3 would allow commercial development within 30 feet of the rear lot line abutting residential, and parking would be allowed in the required rear yard with a 6' wide landscape buffer from the residential district.
3. The staff recommendation of approval, subject to a conditional zoning and development agreement, is based upon the "Analysis" as set forth on p.4-5, concluding that the proposed change of zone is not in conformance with the Comprehensive Plan because it encroaches into an existing residential area and the character of the proposed development does not meet the guidelines for pedestrian orientation or buffering the adjacent area to the south. Staff supports the expansion of zoning only if the applicant agrees to a zoning agreement that includes a revised site plan or conditions that are more reflective of the South Street design principles as described in the South Street Redevelopment Plan. Staff also expressed concern about allowing access to South Street as well as 9<sup>th</sup> and 10<sup>th</sup> Streets, and Public Works suggested that a right turn lane be constructed along South Street if a driveway is permitted.
4. By the time of the Planning Commission hearing, Planning staff had determined that the most important goal in this proposed redevelopment would be to relocate the sidewalk along South Street from alongside the curb to the applicant's property, with a 9.5 foot planting strip to separate pedestrians from the traffic lanes. In return for that concession, staff would agree to the building layout in the site plan which placed some parking between the sidewalk and buildings, contrary to the South Street design principles.
5. The testimony on behalf of the applicants by Michael Rierden and John Layman is found on p.8-12. The applicant submitted proposed amendments to the Development and Conditional Zoning Agreement as set forth on p.20-25. The photographs and renderings submitted by the applicant are found on p.24-35.
6. There was no testimony in opposition; however, the record consists of one e-mail in opposition to the associated alley vacation.
7. On July 18, 2007, the majority of the Planning Commission agreed with the staff recommendation and voted 5-3 to recommend approval, subject to the conditional zoning and development agreement, with amendments (Cornelius, Krieser and Carlson dissenting). The Planning Commission had concerns about the appearance of the Advance Auto Parts building and the access to South Street. The Planning Commission action recommends one access to South Street. See Minutes, p.13-14.
8. On July 18, 2007, the Planning Commission also voted 5-3 to recommend approval of the associated Street & Alley Vacation No. 07003, also subject to the conditional zoning and development agreement, with amendments.
9. The revised site plan submitted by the applicant is found on p.19. Public Works has withdrawn the request for a right turn lane along South Street if a driveway is permitted on that block.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** October 1, 2007

**REVIEWED BY:** \_\_\_\_\_

**DATE:** October 1, 2007

**REFERENCE NUMBER:** FS\CC\2007\CZ.07027+

**LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**

**for June 20, 2007 PLANNING COMMISSION MEETING**

**\*\*As Revised and Recommended for Conditional Approval  
by Planning Commission: 07/18/07\*\***

**PROJECT #:** Change of Zone # 07027

**PROPOSAL:** Change the zone from R-4 Residential to B-3 Commercial District.

**LOCATION:** South of South Street between 9<sup>th</sup> and 10<sup>th</sup> Streets.

**LAND AREA:** .91 acres, more or less.

**EXISTING ZONING:** R-4 Residential

**WAIVER /MODIFICATION REQUEST:** None

**CONCLUSION:** This change of zone is not in conformance with the Comprehensive Plan for two primary reasons. One, it encroaches into an existing residential area. Two, the character of the development as proposed does not meet guidelines for pedestrian orientation or buffering the adjacent area to the south. Staff would support an expansion of zoning or a special permit for parking, but only if the applicant agrees to a zoning agreement that includes a revised site plan or conditions that are more reflective of the South Street Design Principals as described in the South Street Redevelopment Plan.

<b><u>RECOMMENDATION:</u></b>	<b>Conditional Approval</b>
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**GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** See attached.

**EXISTING LAND USE:** Parking lot and single family houses.

**SURROUNDING LAND USE AND ZONING:**

North:	B-3 Commercial	Area included in the redevelopment
South:	R-4 and R-6 Residential	Houses, Apartments
East:	P Public	Convalescent hospital
West:	R-2 Residential	Houses

**ASSOCIATED APPLICATIONS:** SAV# 07003

## **HISTORY:**

- June 6, 2007 Planning Commission recommended approval of the South Street Redevelopment Plan to City Council. The Plan is scheduled for public hearing at City Council on July 9, 2007.
- May 23, 2007 Planning Commission had a hearing on this Change of Zone #07027 and Street and Alley Vacation #07003. Both applications were deferred for 4 weeks to enable the applicant to consider staff recommendations and return with a revised site plan, or definitive set of conditions establishing the arrangement of buildings and parking circulation.
- July 7, 2006 The City Council determined that substandard and blighted conditions existed along South Street as found in the March 2006 Blight & Substandard Determination Study of the South Street Redevelopment Area.
- May 8, 1979 The area of application was zoned B, Two Family Residential and D, Multiple Dwelling District and changed to R-4 Residential and R-6 Residential.
- January 15, 1979 City Council Approved Change of Zone #1645 from A-2, Single Family and B, Two Family to D, Multi Family.
- March 4, 1974 Void Special Permit for additional parking due to a Change Of Zone # 1163. The Special Permit to allow for a parking lot was approved by City Council on October 24, 1966.
- December 13, 1971 City Council Approved Change of Zone #1163 from B, Two Family to D, Multi-Family.
- January 28, 1963 City Council approved Special Permit #247 for a parking lot associated with Jim Kings Drive in Restaurant at 923 South Street.

## **COMPREHENSIVE PLAN SPECIFICATIONS:**

This area is shown as commercial in the 2030 Comprehensive Plan.

Commerce Centers should develop as compact clusters or hubs with appropriate site design features to accommodate shared parking, ease of pedestrian movement, minimize impacts on adjacent areas, and possess a unique character. (35)

New or established commercial uses should not encroach upon, or expand into, existing neighborhoods. (36)

Encourage renovation and reuse of existing commercial centers. Infill commercial development should be compatible with the character of the area and pedestrian oriented. As additional centers are built, the City and developers should be proactive in redevelopment of existing centers to make sure that redevelopment is sensitive to the surrounding neighborhood and happens quickly to reduce vacancies. (36)

Maintain and encourage retail establishments and businesses that are convenient to, and serve, neighborhood residents, yet are compatible with, but not intrusive upon residential neighborhoods. (48)

Expansion of existing commercial and industrial uses should not encroach on existing neighborhoods and must be screened from residential areas.(48)

Many activities of daily living should occur within walking distance. Neighborhoods should include homes, stores, workplaces, schools and places to recreate. (66)

Preserve, protect, and promote city and county historic resources. Preserve, protect and promote the character and unique features of rural and urban neighborhoods, including their historical and architectural elements. (67)

Encourage a mix of compatible land uses in neighborhoods, but similar uses on the same block face. Similar housing types face each other: single family faces single family, change to different use at rear of lot. Commercial parking lots should not intrude into residential areas where residential uses predominate a block face. More intense commercial uses (gas stations, big box stores, car wash, fast food, etc.) may not be compatible due to impact on nearby housing. Expansion in existing centers should not encroach, or expand to encroach, on existing neighborhoods, and commercial areas must be screened from residential areas.(68)

Encourage pedestrian orientation with parking at rear of residential and neighborhood commercial uses.(68)

Require new development to be compatible with character of neighborhood and adjacent uses (i.e., parking at rear, similar setback, height and land use).(68)

## **UTILITIES:** Existing

**TRAFFIC ANALYSIS:** Both 9<sup>th</sup> and 10<sup>th</sup> Streets are designated as Urban Principal Arterials and South Street is designated as an Urban Minor Arterial in the 2030 Comprehensive Plan. South Street between 9<sup>th</sup> and 17<sup>th</sup> is currently undergoing construction for resurfacing, replacement of islands and medians, new traffic signing and marking, new traffic signals, new streetscape enhancements, ornamental pedestrian lighting, and replacement of storm sewers and water main.

**REGIONAL ISSUES:** Part of Urban Development's 5 year Strategic Plan is the design and construction of streetscape enhancements, benefitting the blighted commercial area and its surrounding residents.

## **AESTHETIC CONSIDERATIONS:**

A design committee that includes business owners, property owners, and City staff has discussed the challenge of making South Street a safe and successful corridor that promotes current business, maintains a unified theme, is inviting to pedestrians, and welcomes new business investment. See Attachment A for the DRAFT South Street Commercial Design Principles as presented to the Urban Design Committee on March 3, 2007.

**ALTERNATIVE USES:** The redevelopment could be done by positioning the new buildings along South Street with 0 set back from South Street. A change of zone would not be needed. (See Analysis)

## **ANALYSIS:**

1. South Street between 9<sup>th</sup> and 17<sup>th</sup> is currently undergoing construction for resurfacing, replacement of islands and medians, new traffic signing and marking, new traffic signals, new streetscape enhancements, ornamental pedestrian lighting, and replacement of storm sewers and water main. These improvements are part of a broader strategy which Urban Development has developed for the South Street commercial corridor. They will be presenting the South Street Redevelopment Plan including Design Principles to Planning Commission on May 23, 2007

2. The proposed change of zone would allow commercial development within 30 feet of the rear lot line abutting residential, and parking would be allowed in the required rear yard with a 6 foot wide landscape buffer from the residential district.
3. Staff suggested to the applicant that the site could be redeveloped without a change of zone, if the primary building was moved up to the lot line along South Street, as recommended in the proposed Design Principles. The smaller drive thru building also could be moved further away from the residences to the south. Parking could be provided south of the buildings with a Special Permit for a parking lot in a residential district. This parking lot would provide a buffer between the residential to the south and the commercial to the north.
4. Staff recommendations approval of the change of zone conditioned on a definitive site plan or a set of conditions establishing the arrangement of buildings, parking circulation and uses. These conditions would be contained in a separate agreement with the City Council. The re-zoning of the property at 9<sup>th</sup> and 10<sup>th</sup> Streets and Van Dorn represents a recent precedent for this type of agreement.

**CONDITIONS**

That the owner sign a Zoning Agreement with the City.

Prepared by:

Christy Eichorn  
Planner

**DATE:** May 10, 2007

**APPLICANT:** RJJ&T LLC and Red Cloud Development  
14 Hawthorne Road  
Bronxville, NY 10708

**OWNER:** Same as applicant

**CONTACT:** Michael J Rierden  
645 M Street, STE 200  
Lincoln, NE 68508

**CHANGE OF ZONE NO. 07027  
and  
STREET & ALLEY VACATION NO. 07003**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 23, 2007

Members present: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson; Larson absent.

The Clerk announced that the staff has recommended and the applicant has agreed to a four-week deferral.

Strand moved to defer, with continued public hearing and action scheduled for June 20, 2007, seconded by Taylor and carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting 'yes'; Larson absent.

There was no public testimony.

**REQUEST FOR DEFERRAL:**

June 20, 2007

Members present: Krieser, Carroll, Sunderman, Taylor, Cornelius, Esseks, Larson and Carlson; Strand absent.

The Clerk announced that the applicant has requested an additional four-week deferral.

Carroll moved to defer, with continued public hearing and action scheduled for July 18, 2007, seconded by Cornelius and carried 8-0: Krieser, Carroll, Sunderman, Taylor, Cornelius, Esseks, Larson and Carlson voting 'yes'; Strand absent.

There was no public testimony.

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 18, 2007

Members present: Cornelius, Larson, Sunderman, Taylor, Krieser, Strand, Carroll and Carlson; Esseks absent.

Staff recommendation: Approval, subject to a zoning agreement.

Ex Parte Communications: None.

Additional information for the record: Christy Eichorn of Planning staff submitted a letter in opposition to the alley vacation with concerns about buses that use the alley. She knows that the neighbors do use the alley so there would need to be an easement so that there could be access to the alley.

Staff presentation: **Christy Eichorn of Planning staff** provided background information and reviewed the site plan. This is a proposed street and alley vacation and change of zone to B-3. The

staff does not believe it is in conformance with the Comprehensive Plan because it encroaches into an existing residential area and the character of the development as proposed does not meet the guidelines for pedestrian orientation or buffering of adjacent residential areas to the south, which are both requirements of the Comprehensive Plan and the South Street Redevelopment Plan. However, the Comprehensive Plan also suggests that we should encourage renovation and reuse of existing commercial centers and that infill should be compatible with the character of the area and pedestrian-oriented. Eichorn further pointed out that the B-3 district provides for local commercial uses in a redeveloping neighborhood generally located in an established retail center of those neighborhoods.

Eichorn indicated that staff would support an expansion of the B-3 zoning but only if the applicant agrees to a zoning agreement which prohibits certain of the permitted uses in the B-3 district and which includes some development restrictions as proposed in the staff report which are reflective of the South Street design principles, as follows:

1. In consideration for the City re-zoning the Property to B-3 Commercial District the Developer agrees that the development of the Property shall be subject to the following restrictions:
  - a. The property shall be developed in accordance with the South Street Redevelopment Plan Commercial Design Principles.
  - b. Access limited to one driveway to each abutting street.
  - c. Provide safe and attractive sidewalks, including clear, convenient connections to building entrances.
  - d. Buildings shall be located a maximum of 10 feet from the lot line along South Street with windows and entrances fronting on South Street.
  - e. Parking shall be located along the side or rear of buildings.
  - f. A 20 foot side yard set back shall be required between the Residential District to the south and the B-3 Property.
2. As further consideration for granting the B-3 zoning on the Property, Developer agrees that the following permitted uses in the B-3 commercial zoning district between 9<sup>th</sup> and 10<sup>th</sup> Street approximately 170 feet south of South Street are prohibited:
  - a. Service Stations and self-serve, coin-operated car washes
  - b. Automobile and vehicle repair, sales., dealerships or lots.
  - c. Drive thru service facilities.
  - d. Tire stores and tire sales including vulcanizing:
  - e. No sale of alcoholic beverages for consumption off the premises. Sale of alcoholic beverages for consumption on the premises shall be in

conjunction with the sale and service of food and gross receipts from the sale of alcoholic beverages shall be 50 percent or less of gross receipts from all business activity conducted on the premises.

- f. Sign Restrictions
  - 1. Changeable copy or message center type signs.
  - 2. Freestanding signs shall be limited to ground signs.
  
- g. Lighting Restriction
  - 1. All exterior lighting shall utilize full cutoff fixtures and be mounted level in the horizontal and vertical axis.

Eichorn noted that the applicant has today submitted a revised site plan. The staff report and her presentation today are based on the site plan submitted previously. Staff thought the development could be arranged better to make it more pedestrian friendly by moving the sidewalk back. The staff also recommended to the applicant to move the buildings closer to South Street and relocate the parking back toward the residential area to buffer the residential from the commercial.

Carroll inquired as to the difference between the original site plan and the one submitted today. Eichorn believes it is similar to the very first site plan submitted back in May.

Larson inquired whether the two buildings shown on the site plan are existing buildings. Eichorn explained that they are not existing buildings. Right now there is the old King's building and an old auto muffler shop. Both of those buildings would be demolished as well as the houses along 9<sup>th</sup> Street.

### Proponents

**1. Mike Rierden** appeared on behalf of the applicant and submitted proposed amendments to the terms of the recommended zoning agreement, as follows:

## **RECITALS**

### **I.**

Developer has petitioned the City for a change of zone (No.07027) from R-4 to B-3 upon the following described property generally located between 9<sup>th</sup> and 10<sup>th</sup> Street south of the east west alley, south of South Street . The property is legally described as:

Lot 7,8,9,33 and 34, Block 2, South Park Addition; North/South Alley adjacent to said lots 7,8,33 and 34; and the South Half of the East/West Alley adjacent to said Lots 7 and 34; all located in Section 25, Township 10 North, Range 6 East of the 6<sup>th</sup> P.M., Lancaster County, Nebraska.

**II.**

Developer has also petitioned the City for vacation of the East/West Alley and also petitioned the City for a partial vacation of the North/South Alley, both of which are located upon the Property.

**III.**

This change of zone from R-4 Residential to B-3 Commercial District and the aforementioned alley vacations will allow the Property to be used for a range of commercial and retail uses which would not be compatible with the adjacent residential properties.

**IV.**

The Developer has represented to the City that in consideration of the City re-zoning the Property to B-3 Commercial District and the vacation of the alleys, the Developer will enter into an agreement with the City subjecting the Property to restrictions on uses, lighting and conformance with the South Street Redevelopment Plan in order to provide a compatible development with the adjacent residential neighborhood.

**V.**

The City desires an Agreement, to be assured that the Developer will develop the Property in a manner compatible with the adjacent residential neighborhood should the Property be re-zoned to B-3 Commercial District and the alleys be partially/completely vacated.

**VI.**

If the developer enters into a redevelopment agreement with the City for the Property, the redevelopment agreement will void and supercede this zoning agreement.

NOW THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

1. The City hereby agrees to grant Developer's petition to change the zoning map from R-4 Residential to B-3 Commercial District on the Property and to vacate the East/West Alley and partially vacate the North/West Alley as set forth above.
2. In consideration for the City re-zoning the Property to B-3 Commercial District, the Developer agrees that the development of the Property shall be subject to the following restrictions:
  - a. The property shall be developed in accordance with the following South Street Redevelopment Plan Commercial design principles:
    - 1) Provide parking to serve the South Street business corridor.

- 2) Improve parking availability in conjunction with the redevelopment of the Property.
  - 3) Provide well landscaped parking lots along the sidewalk edge.
  - 4) Entrances shall be visible and convenient to the sidewalks.
- b. Access limited to one driveway to South Street ~~each abutting street.~~
  - c. Provide safe and attractive sidewalks, including clear, convenient connections to building entrances.
  - d. Buildings shall be located as shown on the attached plan identified as Exhibit "A" and incorporated herein. The parties agree that the sizes of parking stalls and minor changes to the layout may be made at the time building permits are applied for. ~~a maximum of 10 feet from the lot line along South Street with windows and entrances fronting on South Street.~~
  - e. Most parking shall be located along the side or rear of buildings.
  - f. A 20 foot side yard set back shall be required between the Residential District to the south and the B-3 Property.
3. As further consideration for granting the B-3 zoning on the Property, Developer agrees that the following permitted uses in the B-3 commercial zoning district between 9<sup>th</sup> and 10<sup>th</sup> Street approximately 170 feet south of South Street are prohibited:
    - a. Service Stations and self-serve, coin-operated car washes
    - b. Automobile and vehicle repair, sales, dealerships or lots but does not prohibit automobile parts stores such as Advanced Auto.
    - ~~c. Drive thru service facilities.~~
    - ~~d.~~ Tire stores and tire sales including vulcanizing.
    - ~~e.~~ No sale of alcoholic beverages for consumption off the premises. Sale of alcoholic beverages for consumption on the premises shall be in conjunction with the sale and service of food and gross receipts from the sale of alcoholic beverages shall be 50 percent or less of gross receipts from all business activity conducted on the premises.
    - ~~f.~~ Sign Restrictions:
      1. Changeable copy or message center type signs.
      2. Freestanding signs shall be limited to ground signs.
    - ~~g.~~ Lighting Restrictions:

1. All exterior lighting shall utilize full cutoff fixtures and be mounted level in the horizontal and vertical axis.

Rierden also submitted Exhibit "A", a revised site plan. The South Street design principles state:

Locating the buildings at or close to the front property line, with windows and entrances toward the sidewalk is desirable; when that cannot be achieved, parking lots should be well-landscaped along the sidewalk edge and entrances should be visible and convenient to the sidewalks.

Rierden stated that the developer is proposing a lot of landscaping along the property line as well as to the south to act as a buffer to the existing residential uses.

Rierden confirmed that the buildings would be demolished and that the site would be redeveloped in accordance with the rendering in the exhibit, providing some outside dining. The Advance Auto Parts building would be on the corner of South and 10<sup>th</sup> Street.

Rierden referred to the curbcuts that currently exist on South Street. Staff is recommending that the applicant give up vehicular access to South Street. Rierden agreed that the applicant will give up three of those accesses.

The property is now an eyesore and this developer is anxious to proceed. Rierden believes that the applicant and the staff will come to an agreement prior to the zoning agreement being scheduled on the City Council agenda.

**2. John Layman**, who was employed by the owner of the property on South Street between 9<sup>th</sup> and 10<sup>th</sup> to do a feasibility consultant study, testified on behalf of the applicant. He conducted a three-year study of the land parcel in question. The current owner began assembling this land 10 years ago. The blocks on the north side of South Street are only 200' deep and there is no way to adequately handle parking and pedestrian traffic with a 60' depth building and provide the number of adequate parking spaces, which is greater in the market than the city standards. When in an existing neighborhood, you are at a 100% density, so when you do the feasibility study you know the household numbers and the income levels and can generate the retail activity that can serve the neighborhood. This is a very viable area for a certain type of retail activity, and you won't find that activity in all areas because it is generated by the type of housing and the income levels.

When the study addressed the industrial area, the blighted study was referring to the area west of 8<sup>th</sup> Street. The blighted study and Redevelopment Plan suggest that most of this area become retail. There is sufficient B-2 zoning on the south side, which means the B-3 on the north side is only 100' deep and just would not work for retail in today's market. This block is down to one ownership. The current plan shows "fair" condition for this site.

Of the eight houses on 9<sup>th</sup> Street, three are not able to be occupied. There are also asbestos problems in the homes. For a party to come in to build buildings, the cost goes up dramatically in older areas.

It would not be acceptable to close all entries off South Street because the traffic would have to recirculate within the development. There are seven driveways plus two alleys, and the developer has agreed to reduce to three ingresses/egresses. According to today's retailing standards, the parking would be in front of the building. The staff is asking for the parking in the rear, but he has

not seen that in Lincoln in the last five years and as an appraiser he would not be following professional standards if he did not justify the economics of that type of proposal.

There was no testimony in opposition.

### Staff response

Eichorn suggested that “South Street Redevelopment Plan Commercial” be removed from paragraph VI.2.a. of the applicant’s proposed amendments. Otherwise, she believes the staff and applicant can reach agreement.

She also pointed out that the revised site plan provided by the applicant shows sidewalk on the applicant’s property and not in the right-of-way. She would want to confirm that the sidewalk is there. One of the most important things about this particular site is how to make it more pedestrian friendly. She believes that the sidewalk needs to be a minimum of 6' from the curb line. If the developer can give the city an easement to keep that 6' sidewalk, the proposed site plan could definitely work.

Carroll expressed concern about the “blank wall” of the Advance Auto Parts building facing South Street. He wondered whether the “design principles” would address this issue. Eichorn advised that the South Street design principles would not have to be followed if they do not request any TIF money. There would be no review by the Urban Design Committee. Any of those changes would have to be in an agreement or as a condition. Carroll would like to see a condition that the Advance Auto Parts building be acceptable by Planning staff as far as the design. Eichorn stated that the staff did encourage the developer to have windows and doors along South Street on any building, but the applicant did not believe that would work. Eichorn also advised that she has met once with the applicant since the last hearing and they did talk about a different site plan.

Eichorn agreed that she did not see the revised site plan prior to this meeting, but the staff is not interested in a delay. The only issues are how the developer feels about keeping the sidewalk on the private property and that the sidewalk would stay at least 6' from the curb line.

### Response by the Applicant

Rierden agreed with the changes requested by the staff. He advised that the sidewalks are right on the curb today. The proposed sidewalks would be approximately 9.5' from the curb line. Rierden also pointed out that the Advance Auto Parts store is on the east side of the property – the glass faces the corner so the glass and the entrance would basically be facing the intersection of South and 10<sup>th</sup> Street. The traffic on 10<sup>th</sup> is headed downtown anyway.

Rierden noted that there are four access points now on South Street. The applicant is willing to give up three of those. A retail establishment needs access off the arterial and proposes to locate it basically in the middle to serve both of the buildings. There has been discussion about a turn lane on South Street to access the property. The traffic on 10<sup>th</sup> Street and 9<sup>th</sup> Street is about 18,000 vehicular trips a day, and it goes down to 9,000 on South Street and diminishes as you go west. Therefore, he does not believe there is a need for a turn lane, but the applicant would agree to consider it.

Carroll again expressed his concern about the blank wall facing South Street. Since the building is oriented towards 10<sup>th</sup> Street, it will be a blank building with glass at one corner and he does not believe it looks like the rest of the businesses along South Street. It would look better with more windows or more design. Rierden agreed, but that would be a call of Advance Auto. He agreed that it would be nice to have a few more windows and he agreed to bring it up to Advance Auto to see if they could change their building design.

**CHANGE OF ZONE NO. 07027**

**ACTION BY PLANNING COMMISSION:**

July 18, 2007

Strand moved approval, subject to a zoning agreement, as amended by the applicant, with amendments to delete "South Street Redevelopment Plan" in paragraph VI.2.a., and making sure sidewalks are 6' back and allowing one access on South Street, seconded by Larson.

Carroll was interested in addressing the design of the Advance Auto Parts building, but he does not see any way to make it a condition of approval. He asked the applicant to make it as pleasing as possible for that site.

Cornelius commented, "we've got kind of a half-baked application and it sounds like a lot of chefs have been involved." This is in the South Street Redevelopment Area. We have heard retail consultants tell us what can be done and we have heard today how it can't possibly be done. He intends to vote no.

Carlson thinks there has been a lot of time and money invested to do the infrastructure improvements on South Street and we need to honor what those groups have come up with in terms of design principles. He thinks it needs to be a different layout.

Taylor is concerned. We need an attractive front on South Street.

Strand pointed out that the agreement does say the entrance shall be visible and convenient to the sidewalk and hopefully the developer would take the sidewalks on South Street into consideration. That section has been an eyesore for a long time and she thinks these are good improvements.

As far as the retail site, Carroll does not believe we will get the economic development there unless it is a site that is feasible to make a profit. People will not go there if they cannot access South Street. The minimum depth of the lots reduces the economic value of those businesses because they cannot do what this site can do. He understands the need to use South Street as an exit or entrance because of the economic ability of these businesses to do well. He understands the issue of not losing the entrance. He just has a problem with the looks of the building. It is difficult in an older area to redevelop unless you have a large land mass to do that, and he believes the development needs that South Street entrance to be successful.

Carlson thinks there is opportunity to change the layout and design and still have some access. We need to remember the millions of dollars that have been invested by Urban Development to create that catalyst.

Larson stated that he will vote in favor because this area has been an eyesore for a long time. This looks like a pretty good plan. The only disagreement is the north wall of the Advance Auto Parts building and if we could get some sort of stronger commitment from the applicant about what he would ask the owner to do, we would have a better agreement.

Sunderman believes this is a unique section of the South Street Redevelopment Plan with it being on 9<sup>th</sup> and 10<sup>th</sup> with a good deal of traffic.

Motion for approval, subject to the zoning agreement, with amendments, carried 5-3: Larson, Sunderman, Taylor, Strand and Carroll voting 'yes'; Cornelius, Krieser and Carlson voting 'no'; Esseks absent. This is a recommendation to the City Council.

**STREET & ALLEY VACATION NO. 07003**  
**ACTION BY PLANNING COMMISSION:**

July 18, 2007

Strand moved approval, subject to the same zoning agreement, with amendments, as approved with Change of Zone No. 07027 above, seconded by Larson and carried 5-3: Larson, Sunderman, Taylor, Strand and Carroll voting 'yes'; Cornelius, Krieser and Carlson voting 'no'; Esseks absent. This is a recommendation to the City Council.



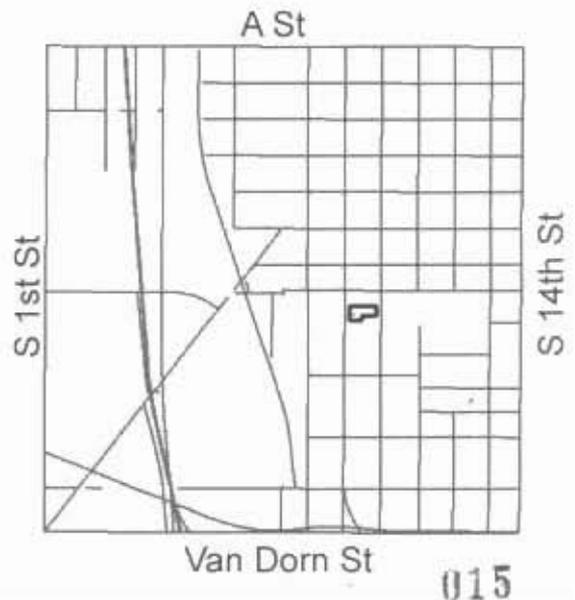
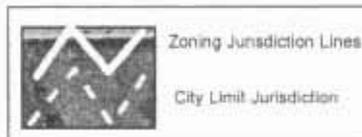
**Change of Zone #07027  
S 9th & South St**

2005 aerial

**Zoning:**

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile  
Sec. 35 T10N R06E



**CHANGE OF ZONE  
'R-4' TO 'B-3'  
LEGAL DESCRIPTION**

A legal description of Lot 7, 8, 9, 33 and 34, Block 2, South Park Addition; North/South Alley adjacent to said Lots 7, 8, 33 and 34; and the South Half of the East/West Alley adjacent to said Lots 7 and 34; all located in Section 35, Township 10 North, Range 6 East of the 6<sup>th</sup> P.M., Lancaster County, Nebraska and more particularly described as follows:

Beginning at the Northeast Corner of Lot 1, Block 2 of Southpark Addition; thence South 00°00'00" East, a distance of 144.56 feet to the **POINT OF BEGINNING**.

THENCE South 00°00'00" East, for a distance of 108.00 feet;

THENCE South 89°54'45" West, for a distance of 158.09 feet;

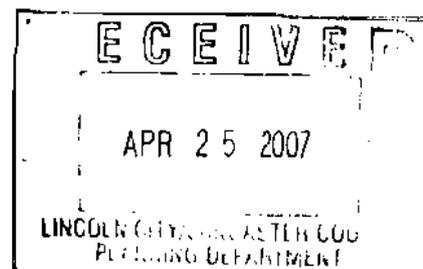
THENCE South 00°02'26" East, for a distance of 50.16 feet;

THENCE North 89°47'49" West, for a distance of 142.12 feet;

THENCE North 00°01'29" East, for a distance of 158.16 feet;

THENCE South 89°56'58" East, for a distance of 300.10 feet, to the **POINT OF BEGINNING**, containing a calculated area of 39,598.35 square feet or 0.91 acres more or less.

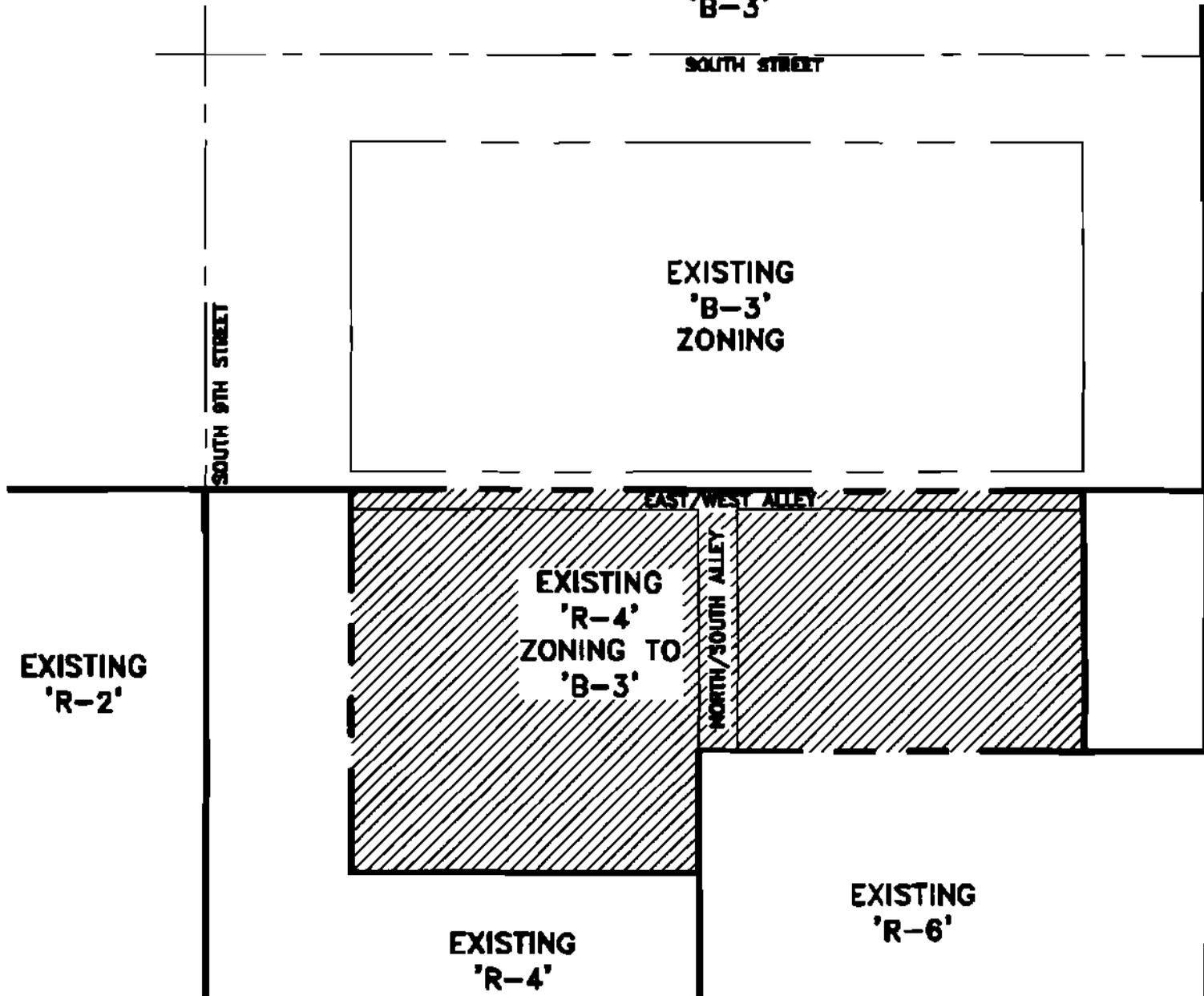
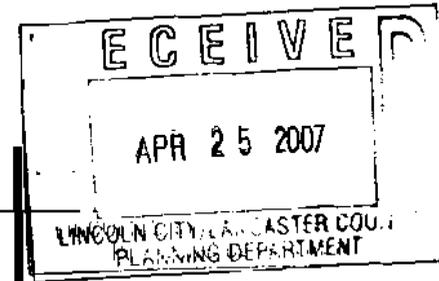
Including the adjacent right-of-way of South 9<sup>th</sup> and South 10<sup>th</sup> Streets.



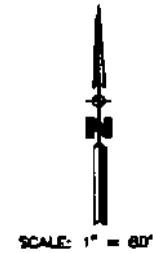
# CHANGE OF ZONE EXHIBIT

'R-4' TO 'B-3'

EXISTING  
'B-3'



EXISTING  
'P'





JJrierden@aol.com  
04/25/2007 02:56 PM

To CEichom@ci.lincoln.ne.us  
cc JMESTL@MSN.COM  
bcc

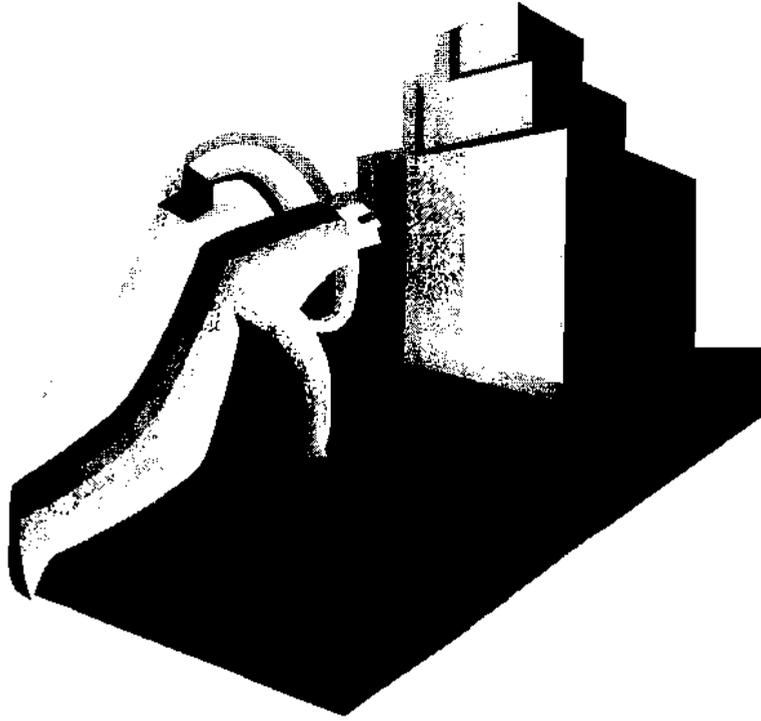
Subject change of zone at 9th and South Street

Christy, please consider this my submittal letter for the aforementioned. First of all, I would request that the Change of Zone and the Application for the Alley vacations be placed on the Planning Commission agenda for May 23, 2007. As you know this property is within the South Street Redevelopment project. It is my clients intention to demolish all of the existing commercial structures and old houses on the property and to redevelop the property with new commercial buildings. The alley vacation is being requested so that the points of ingress can be relocated to allow for a better development plan. We have committed to Dennis Bartels at Public Works that we will grant public access easements through the development. We are cognisent of the fact that one of the conditions of approval may be to agree to a Conditional Zoning Agreement. Since no one knows what those conditions may be at this point in time all I can say is my client is certainly willing to sit down and negotiate on a good faith basis with the City. If you should have any questions please feek free to contact me.

Mike Rierden

See what's free at [AOL.com](http://AOL.com).





NINTH AND SOUTH STREET  
REDEVELOPMENT PROPOSAL

**DEVELOPMENT AND CONDITIONAL ZONING AGREEMENT  
(9<sup>th</sup> to 10<sup>th</sup> Streets South of South Street)**

This Development and Conditional Zoning Agreement is hereby made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_, by and between \_\_\_\_\_, herein referred to as "Developer", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City".

**RECITALS**

I.

Developer has petitioned the City for a change of zone (No. 07027) from R-4 to B-3 upon the following described Property generally located between 9<sup>th</sup> and 10<sup>th</sup> Street south of the East/West Alley, south of South Street. The Property is legally described as: Lot 7, 8, 9, 33 and 34, Block 2, South Park Addition; North/South Alley adjacent to said Lots 7, 8, 33 and 34; and the South Half of the East/West Alley adjacent to said Lots 7 and 34; all located in Section 25, Township 10 North, Range 6 East of the 6<sup>th</sup> P.M., Lancaster County, Nebraska.

II.

Developer has also petitioned the City for vacation of the East/West Alley and also petition the City for a partial vacation of the North/South Alley both of which are located upon the Property.

III.

This change of zone from R-4 Residential to B-3 Commercial District and the aforementioned alley vacations will allow the Property to be used for a range of commercial and retail uses which would not be compatible with the adjacent residential properties.

IV.

The Developer has represented to the City that in consideration of the City rezoning the Property to B-3 Commercial District and the vacation of the alleys, the Developer will enter into an agreement with the City subjecting the Property to restrictions on uses, lighting and conformance with the South Street Redevelopment Plan in order to provide a compatible development with the adjacent residential neighborhood.

V.

The City desires an Agreement, to be assured that the Developer will develop the Property in a manner compatible with the adjacent residential neighborhood should the Property be zoned to B-3 Commercial District and the alleys be partially/completely vacated.

VI.

If the Developer enters into a redevelopment agreement with the City for the Property, the redevelopment agreement will void and supercede this zoning agreement.

NOW THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

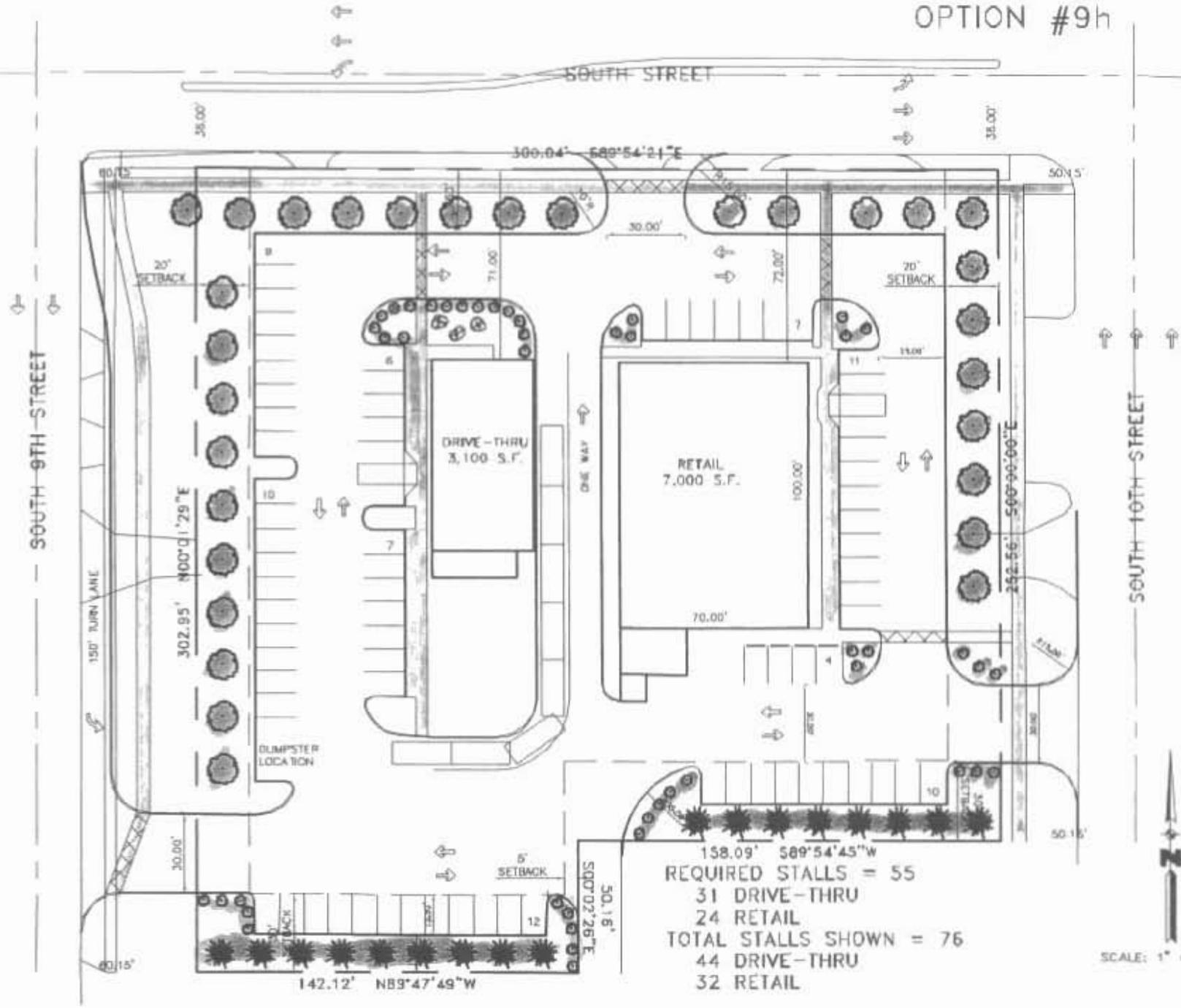
1. The City hereby agrees to grant Developer's petition to change the zoning map from R-4 Residential to B-3 Commercial District on the Property and to vacate the East/West Alley and partially vacate the North/West Alley as set forth above.
2. In consideration for the City re-zoning the Property to B-3 Commercial District the Developer agrees that the development of the Property shall be subject to the following restrictions.
  - a. The Property shall be developed in accordance with the following South Street Redevelopment Plan Commercial Design Principles:
    1. Provide parking to serve the South Street business corridor
    2. Improve parking availability in conjunction with the redevelopment of the Property
    3. Provide well landscaped parking lots along the sidewalk edge
    4. Entrances shall be visible and convenient to the sidewalks
  - b. Access limited to one driveway to each abutting street.
  - c. Provide safe and attractive sidewalks, including clear, convenient connections to building entrances.
  - d. Buildings shall be located as shown on the attached plan identified as Exhibit "A" and incorporated herein. The parties agree that the sizes of parking stalls and minor changes to the layout may be made at the time building permits are applied for.
  - e. Most parking shall be located along the side or rear of buildings.

- f. A 20 foot side yard set back shall be required between the Residential District to the south and the B-3 Property.
3. As further consideration for granting the B-3 zoning on the Property, Developer agrees that the following permitted uses in the B-3 Commercial Zoning District between 9<sup>th</sup> and 10<sup>th</sup> Street approximately 170 feet south of South Street are prohibited:
- a. Service Stations and self-serve, coin-operated car washes
  - b. Automobile and vehicle repair, sales, dealerships or lots but does not prohibit automobile parts stores such as Advanced Auto.
  - c. Tire stores and tire sales including vulcanizing:
  - d. No sale of alcoholic beverages for consumption off the premises. Sale of alcoholic beverages for consumption on the premises shall be in conjunction with the sale and service of food and gross receipts from the sale of alcoholic beverages shall be 50 percent or less of gross receipts from all business activity conducted on the premises.
  - e. Sign Restrictions:
    - 1. Changeable copy or message center type signs.
    - 2. Freestanding signs shall be limited to ground signs.
  - f. Lighting Restrictions:
    - 1. All exterior lighting shall utilize full cutoff fixtures and be mounted level in the horizontal and vertical axis.
4. This Agreement shall run with the land and shall be binding upon the parties hereto and their respective successors and assigns.
5. This Agreement, when executed by the parties hereto, shall be recorded by the City in the office of the Register of Deeds of Lancaster County, Nebraska, filing fees to be paid by Developer.

IN WITNESS WHEREOF, the parties herein have executed this Agreement on the day and year set forth above.

OPTION #9h

024



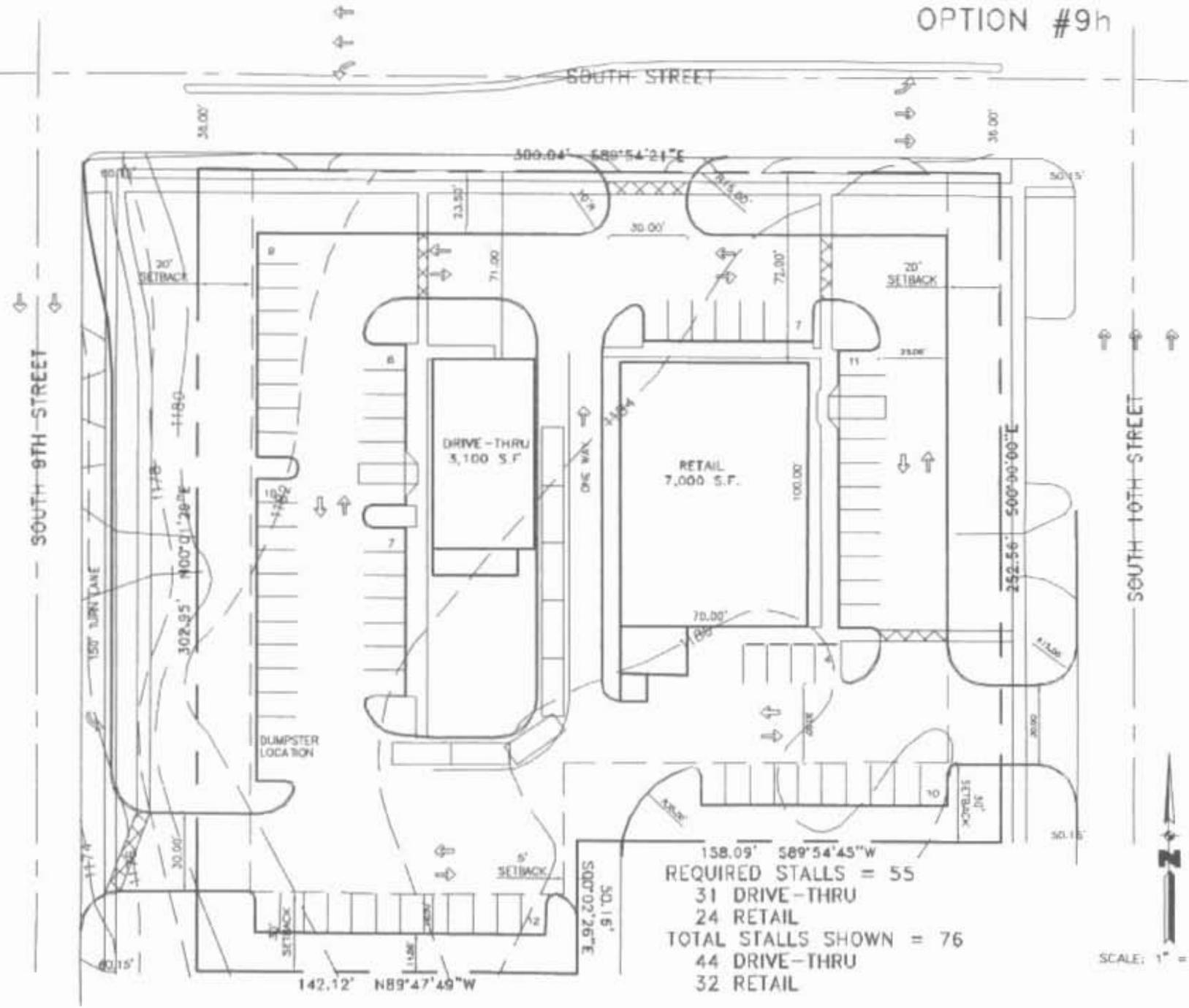
158.09' 589°54'45"W  
 REQUIRED STALLS = 55  
 31 DRIVE-THRU  
 24 RETAIL  
 TOTAL STALLS SHOWN = 76  
 44 DRIVE-THRU  
 32 RETAIL



EXHIBIT " A "

OPTION #9h

025



158.09' 589°54'45"W  
 REQUIRED STALLS = 55  
 31 DRIVE-THRU  
 24 RETAIL  
 TOTAL STALLS SHOWN = 76  
 44 DRIVE-THRU  
 32 RETAIL





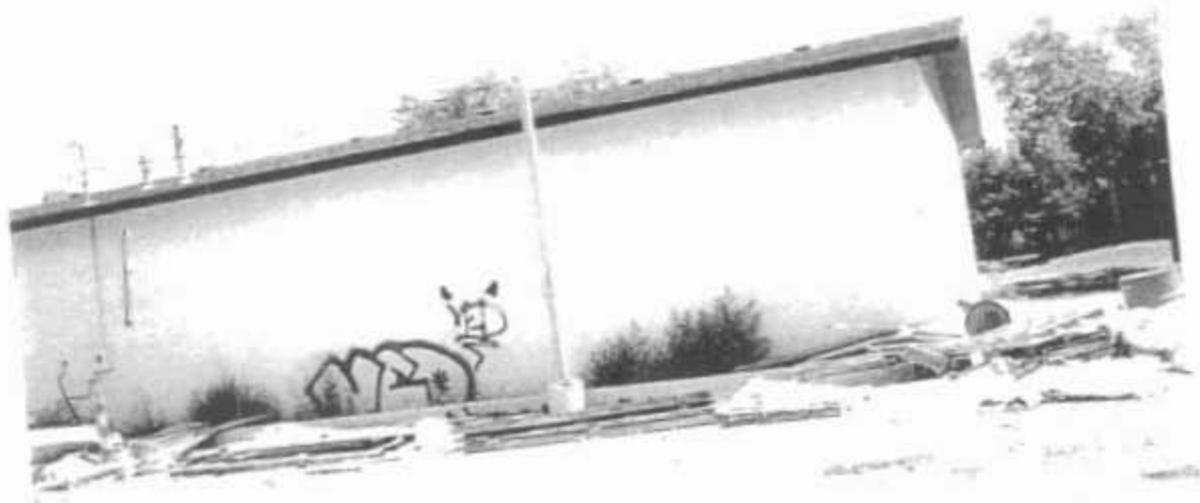
FORMER RESTAURANT BUILDING



EAST WEST ALLEY LOOKING WEST



FORMER MUFFLER BUILDING



FORMER MUFFLER BUILDING



FORMER MUFFLER BUILDING AND EAST WEST ALLEY



PARKING LOT LOOKING SOUTH



EAST WEST ALLEY LOOKING EAST



NORTH SOUTH ALLEY LOOKING SOUTH



VACANT HOUSE ON NINTH STREET



HOUSE ON NINTH STREET



LOOKING NORTH ACROSS SOUTH STREET



VACANT HOUSE ON NINTH STREET



GARAGES ON NORTH SOUTH ALLEY





**Advance Auto Parts** 

