

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for December 8, 2004 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #04065

PROPOSAL: To allow the sale of alcoholic beverages for consumption on the premises for a beer garden at Risky's Sports Bar and Grill.

CONCLUSION: Light and noise associated with both the beer garden and from inside the bar when the access door is open is a concern. The expansion of the area where alcohol is consumed to include a beer garden has the potential to create a nuisance for the residences to the west of the shopping center.

RECOMMENDATION:

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1, UPC First Addition, Lancaster County, Nebraska.

LOCATION: 4680 Leighton Avenue.

EXISTING ZONING: B-3 Commercial

EXISTING LAND USE: Commercial

SURROUNDING LAND USE AND ZONING:

North:	Parking Lot/Multiple-family Residential	R-6
South:	UN-L East Campus	P
East:	Commercial	B-3
West:	Multiple-family Residential	R-6

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land uses in this area.

BACKGROUND: The owner of Risky's is proposing to construct a beer garden at the west edge of the building. The bar has been in existence prior to the requirement for special permits for on and off sale alcohol. It does not comply with the current requirements for a special permit to sell alcohol, and is considered a nonconforming use.

This request covers only the proposed 20' x 19' expansion of the bar to allow for an outdoor beer garden. The beer garden is accessed by what appears to be an emergency access door to the bar. The expansion will extend into the existing parking lot and eliminates approximately three parking spaces.

ANALYSIS:

1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC)

27.63.680: Alcoholic beverages may be sold for consumption on the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zoning districts upon the approval of a special permit. Alcoholic beverages may also be sold for consumption on the premises as an accessory use to a golf course or country club as part of a separate special permit under Section 27.63.130 approving the golf course or country club in any district where recreational facilities are allowed as a permitted use, permitted conditional use, or permitted special use. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:

(a) Parking shall be provided on-site at the ratio of one space per 100 square feet of gross floor area.

Based upon a 1999 parking count for the shopping center, 200 parking stalls are required, and 537 parking stalls were available. With a cross-parking agreement covering the center, the number of parking spaces provided on the site is well in excess of what is required by Lincoln Municipal Code (LMC) Chapter 27.67 (Parking).

(b) The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a permit under LMC Section 27.63.685 of this code.

This application is for a special permit to allow the sale of alcohol for consumption on the premises. The sale of alcoholic beverages off the premises is not a part of this proposal and is not being requested.

(c) The designated area specified in a license issued under the Nebraska Liquor Control Act of any building approved for such activity must be located no closer than 100 feet from a day care facility, park, church, state mental health institution, or a residential district (except where such use is accessory to a golf course or country club).

The shopping center is surrounded by R-6 zoning to the north and west. The dimensions on the site plan (verified by the Police Department) show the beer garden

located 101' from the R-6 to the north, and 110' from the R-6 to the west. There is no known day care facility, park, church, or state mental health institution in the vicinity.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

No additional lighting is shown as part of this request. Any lighting must comply with the Parking Lot Lighting Standards of the City of Lincoln Design Standards and will be reviewed at the time of building permits.

(e) 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.

A drive-through window is not shown as part of this application.

(f) 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.

No such devices are shown as part of this application. However, the impact of noise from the bar when the door opened to access the beer garden is a concern. The Police Department notes their concern over the impact of noise upon the neighbors and is recommending denial as a result.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

Both access doors for the bar are located on the west side of the building, and are within 150' of R-6 zoning to the west. As noted previously, the existing bar is considered nonconforming and this is one of the reasons why. It is also nonconforming because the licensed premises is within 100' of R-6 to the north. LMC allows nonconforming uses to continue to operate, but does not allow them to expand or be rebuilt if destroyed except by special permit.

While the proposed beer garden meets all applicable location requirements, it will utilize an existing door which is 130' from a residential district and does not meet the

required separation. It is the intent of the separation provision to protect surrounding residences from light and noise emanating from inside the premises when the door is open. Even if the door is treated as existing and not reviewed as a component of this permit, the impact of the potential noise and light escaping due to the increased use of the door because of the beer garden must be considered. A beer garden is viewed as a general extension of the premises, and it must be assumed that the neighbors would be exposed to the range of activities previously confined inside.

While the review standards are applied to this request independent of the existing bar, approval of this permit will have the effect of expanding a nonconforming use while simultaneously creating a potential nuisance for adjacent residences.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

Primary access to the subject premises is from Leighton Avenue, a minor arterial street.

(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

- (1) Revocation or cancellation of the liquor license for the specially permitted premises; or**
- (2) Repeated violations related to the operation of the permittee's business.**
- (3) Repeated or continuing failure to take reasonable steps to prevent unreasonable disturbances and anti-social behavior on the premises related to the operation of the permittee's business including, but not limited to, violence on site, drunkenness, vandalism, solicitation, or litter.**

Planning Commission approval is required for this use.

2. DEPARTMENT RESPONSES:

POLICE: The Police Department recommends denial of this request.

PUBLIC WORKS: Public Works and Utilities has requested a detailed site plan showing the location of the beer garden and parking.

Staff does not support this request and is recommending denial. However, if the Planning Commission votes to approve it, staff recommends that the Commission's approval be subject to the following conditions:

CONDITIONS:

Site Specific:

1. This approval permits the sale of alcohol for consumption on the premises at Lot 1, UPC First Addition, consistent with the revised site plan.

General:

2. Before receiving building permits:
 - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.
 - 2.1.1 Submit six copies of a revised site plan approved by the Public Works and Utilities Department.
 - 2.1.2 The following notes added to the site plan:
 - 2.1.2.1 There shall be no amplified noise source associated with the beer garden.
 - 2.1.2.2 The access door shall remain closed at all times except when used to enter and exit the outdoor premises.
 - 2.1.2.3 Any lighting must be shielded so it does not shine directly on adjacent properties and must comply with the Design Standards for Parking Lot Lighting.
 - 2.2 Submit a revised and completed ownership certificate prepared and signed by an attorney, title company, or abstractor. It must include the legal description of the subject property.

Standard:

3. The following conditions are applicable to all requests:
 - 3.1 Before the sale of alcohol for consumption on the premises, all development and construction is to comply with the approved plans.
 - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP, 441-6362, bwill@lincoln.ne.gov
Planner
November 23, 2004

OWNER: University Place, LLC
c/o Kessinger/Hunter and Company
2600 Grand Blvd Suite 700
Kansas City, MO 64108
(816) 843-2690

**APPLICANT
CONTACT:** Roger Patton
4680 Leighton Avenue
Lincoln, NE
(402) 466-6966



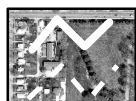
2002 aerial

Special Permit #04065 4680 Leighton Ave.

Zoning:

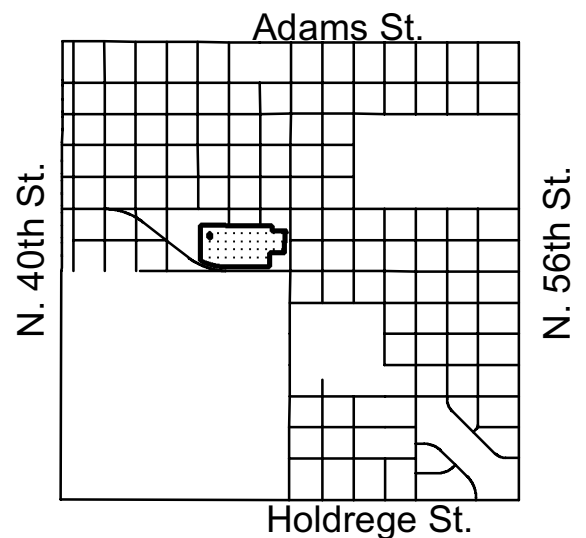
- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned 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. 17 T10N R7E



Zoning Jurisdiction Lines

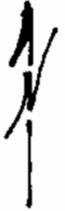
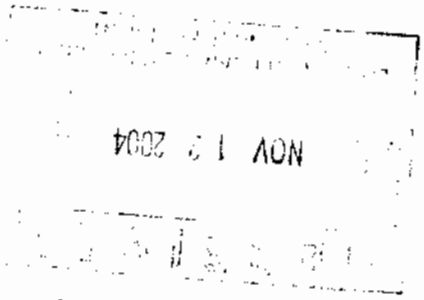
City Limit Jurisdiction



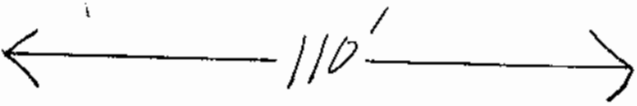
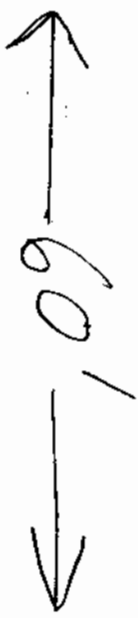
PARKING

LOT LINE

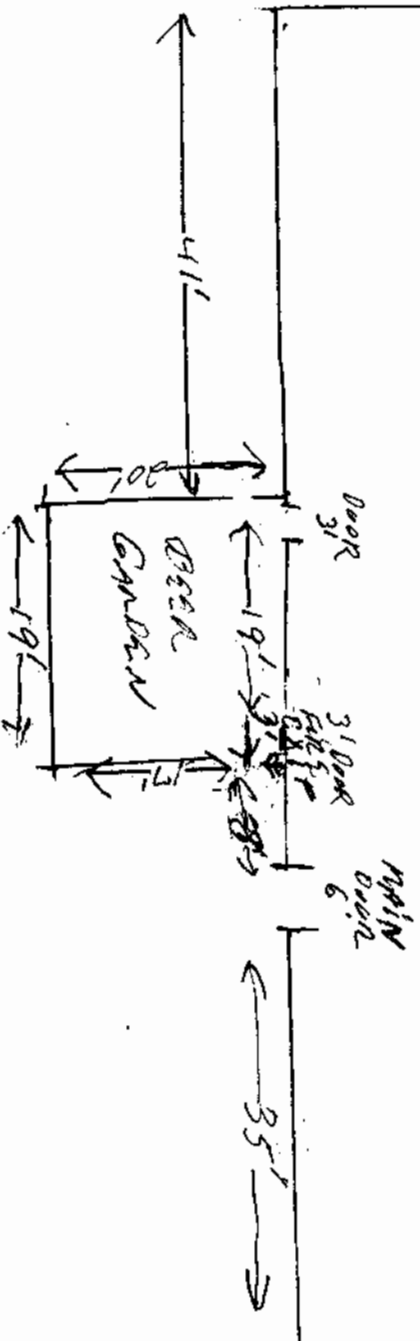
PARKING



PARKING



PARKING



RISKY'S
SPORTS
DRINK BAZILL

M e m o r a n d u m

To: Brian Will, Planning Department
From: Charles W. Baker, Public Works and Utilities
Subject: Alcohol Sales Special Permit #04065
Date: November 18, 2004
cc: Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the request for the proposed Beer Garden at Risky's Sports Bar & Grill located at 4680 Leighton Avenue. Public Works has the following comments:

- A detailed site plan of the location of the beer garden and parking must be provided for review.



MICHAEL WOOLMAN
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11/23/2004 09:03 AM

To: Brian Will <BWill@ci.lincoln.ne.us>
cc:
Subject: Risky's Alcohol Sales Special Permit

Mr. Will,

The Lincoln Police Department is recommending denial of the Risky's Alcohol Sales Special Permit.

The proposed location of the "Beer Garden" is on west side of the Risky's building. The west side of Risky's faces the apartment complex located at 2360 North 44th Street. 2360 North 44th Street is multilevel apartment complex that has apartments that face east towards Risky's. The Lincoln Police Department feels that the proposed "Beer Garden" will cause unnecessary noise disturbances for the residences at 2360 North 44th.

Sergeant Michael Woolman
Lincoln Police Department