

FACTSHEET

TITLE: CHANGE OF ZONE NO. 06011, from R-1 Residential District to B-2 Planned Neighborhood Business District, requested by Michael Rierden on behalf of Elizabeth South Partners, on property generally located at South 70th Street and Pioneers Boulevard.

STAFF RECOMMENDATION: Approval

ASSOCIATED REQUESTS: Use Permit No. 84B (06R-67)

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 03/01/06 and 03/15/06
Administrative Action: 03/15/06

RECOMMENDATION: Approval (8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes').

FINDINGS OF FACT:

1. This proposed change of zone request is associated with the proposed Use Permit No. 84B and was heard at the same time before the Planning Commission.
2. This proposed change of zone will allow for expansion of the parking lot at Elizabeth Park South, resulting in a loss of 10 feet of buffer area between the existing commercial development and the residential development. To compensate for the reduced buffer width from 50 feet to 40 feet, the applicant proposes extensive landscaping and a six foot tall solid wood fence along the length of the buffer area.
3. The staff recommendation to approve this change of zone request is based upon the "*Analysis*" as set forth on p.3-4.
4. On March 1, 2006, the applicant requested a two-week deferral to work with the neighbors.
5. The testimony by Michael Rierden on behalf of the applicant on March 15, 2006, is found on p.5-6. Mr. Rierden also submitted the letter sent to the adjoining neighborhood, Pinehurst, Inc., setting forth the conditions which had been agreed upon between the applicant and the neighborhood, which also includes a "*Declaration of Covenant, Restriction and Condition*", which will be recorded with the Register of Deeds (See p.11-15). Mr. Rierden also submitted an additional letter from Warren K. Urbom, President of Pinehurst, Inc., in support (p.16).
6. Testimony in opposition by Marilyn Baker, who lives in Pinehurst, is found on p.6. She is opposed to any encroachment into the 50 foot buffer.
7. On March 15, 2006, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval.
8. On March 15, 2006, the Planning Commission also voted 8-0 to recommend approval of the associated Use Permit No. 84B, with conditions.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: March 28, 2006

REVIEWED BY: _____

DATE: March 28, 2006

REFERENCE NUMBER: FS\CC\2006\CZ.06011+

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for March 1, 2006 PLANNING COMMISSION MEETING

- PROJECT #:** Change of Zone No. 06011
- PROPOSAL:** From R-1 Residential to B-2 Planned Neighborhood Business District
- LOCATION:** South 70th & Pioneers Boulevard
- LAND AREA:** .0878 acres, more or less
- CONCLUSION:** This is a request for a change of zone on a narrow strip of land abutting, but outside of the boundaries of the approved use permit #84A. This land lies within a 50 foot-wide buffer area between the commercial development and a residential development to the west. Upon approval of the change of zone, this area would be added to the area of an approved use permit (see UP 84B) and would be used to create room for additional parking stalls.

<u>RECOMMENDATION:</u>	Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION:

A portion of Lot 2 Elizabeth Park South 1st Addition and a portion of Lot 9 Elizabeth Park South Addition, more particularly described in the attached legal description.

EXISTING ZONING:

R-2 Residential

EXISTING LAND USE:

Strip of undeveloped land(buffer) abutting a parking lot serving Elizabeth Park commercial development.

SURROUNDING LAND USE AND ZONING:

North:	R-1	Undeveloped/Landscaping/Buffer strip
South:	O-3	Office Building/Parking
East:	B-2	Retail/Office/Parking
West:	R-1	Townhomes/Buffer strip

ASSOCIATED APPLICATIONS:

This change of zone is associated with the request for Use Permit 84B to amend the use permit to add a small area to the approved use permit, reconfiguring parking areas, add parking spaces, and reduce the front yard setback along Pioneers Boulevard.

HISTORY:

The following is the history of the entire site known as Elizabeth Park commercial development.

- 1959** The northeast corner of the site was zoned G Local Business and the remainder zoned AA Rural and Public Use.
- March 1961** The AA zoned portion was changed to A-1 Single Family Dwelling.
- May 1972** Special Permit #600, Watergate Community Plan, was approved.
- January 1978** Portions of the G and A-1 zoned areas were changed to G-1 Planned Commercial District.
- 1979** During the 1979 Zoning Update, the areas zoned G were converted to B-1, G-1 to B-2, and A-1 to R-1.
- December 1981** The northern half of the western portion of the site (adjacent to Pinehurst Townhomes) was changed from B-2 to R-1, while alternately, the southern half of the western portion was changed from R-1 to B-2. This, in effect, formed a buffer area between the townhomes and the commercial development.
- March 1983** The B-2 zoning was expanded to the west and south to its current extent.
- January 1996** Use Permit #84 was approved for 108,200 square feet of commercial floor area.
- August 1996** Use Permit #84A was approved for an amendment to design standards for automobile stacking and a waiver to front yard setback.
- November 1997** Informational meeting held regarding proposal to add 18 parking stalls in a portion of the buffer area between the boundaries of Use Permit #84A and the residential neighborhood to the west. Residents objected and an application for such action was never received by the planning department.

COMPREHENSIVE PLAN SPECIFICATIONS:

The Lincoln/Lancaster County 2025 Comprehensive Plan designates this area as urban residential.

ANALYSIS:

1. The applicant requests a change of zone to allow for the expansion of a parking lot. This expansion would result in a loss of 10 feet of buffer area between the existing commercial development and the residential development. Currently this buffer strip is 50 feet wide, the expansion would reduce the width of the buffer strip to 40 feet.
2. To compensate for the reduced buffer width, the applicant proposes extensive landscaping and a six (6) foot tall solid wood fence along the length of the buffer area.

3. Concerns have been raised in the past at attempts to expand this parking lot into the buffer area toward the west. With this proposal, the property owners to the west, Pinehurst, Inc. support the approval of the proposed plan. (See attached letter)
4. If this change of zone is approved in conjunction with approval of Use Permit #84B, this area of land will be added to the area of the use permit and be used for additional parking.
5. The remainder of the buffer strip will remain undeveloped and zoned R-2.

Prepared by:

Joe Rexwinkle, Planner

DATE: February 15, 2006

APPLICANT: Michael Rierden
645 M Street
Suite 200
Lincoln, NE 68508

OWNER: Elizabeth South Partners
5101 Central Park Drive
Lincoln, NE 68504

CONTACT: Michael Rierden

**CHANGE OF ZONE NO. 06011
and
USE PERMIT NO. 84B**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 1, 2006

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

Staff recommendation: Approval of the change of zone and conditional approval of the amendment to the use permit.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda by the Clerk due to a request by the applicant for a two-week deferral.

Proponents

1. Mike Rierden appeared on behalf of the applicant. He is requesting a two-week delay for further discussion with the neighbors to the west.

Carroll moved to defer, with continued public hearing and action scheduled for March 15, 2006, seconded by Esseks and carried 6-0: Krieser, Carroll, Sunderman, Esseks, Taylor and Carlson voting 'yes'; Strand and Larson absent.

There was no other public testimony.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

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

Staff recommendation: Approval of the change of zone and conditional approval of the use permit amendment.

Ex Parte Communications: None.

Proponents

1. Mike Rierden appeared on behalf of the applicant. The purpose of this request for the change of zone from R-2 to B-2 is to provide for some additional parking on the west side of the development. On the other side of the development is the neighborhood known as Pinehurst and the applicant's retail and office complex is on the east side of 70th & Pioneers. Rierden submitted Exhibit A, showing the strip of ground along the west side of the applicant's property. Originally when this development came about, the strip was to be a 50' buffer between the commercial on the east and the residential on the west. This change of zone and amendment to the use permit would allow the applicant to encroach

approximately eight feet into that 50' buffer with concrete to allow a little more parking, bringing it down to 42' buffer. The applicant is willing to board both sides of the fence so that it will be 100% opaque and the applicant has hired Campbells Nursery to do a 100% landscape screen all along that buffer zone.

Rierden submitted a letter from Pinehurst, Inc., indicating approval and agreeing with this proposal. Rierden did receive some phone calls from property owners with concerns, so he requested the two week deferral in order to meet with the neighborhood, which they did last week. They heard many of the concerns of the property owners. One of them was security because there has been some speeding along 69th Street and some loitering. Rierden then submitted a letter dated March 10, 2006, which covers the matters which have been agreed upon with the neighborhood. The applicant has even agreed to do additional landscaping on the east side of the fence for any abutting property owners, should they request it. The applicant has also agreed to make every attempt possible to mitigate any light trespass. They have also agreed to file a declaration of covenant restriction that there will be no further encroachment into the 42' buffer zone either by his client or the successors in title.

Rierden also submitted another letter from Pinehurst, Inc., dated March 15, 2006, in agreement with the plans that have been presented and the agreements reached.

Opposition

1. Marilyn Baker, 4316 Waterbury Lane, testified in opposition. This would increase the traffic, noise and pollution. When the retail office complex was established, they were required to have the 50' buffer zone and she does not believe that should be changed. They have attempted to change it twice previously. She acknowledged that the Pinehurst Board did give their approval, however, none of the board members live along that fence line nor did they ask for her thoughts or inform her that this was happening. She acknowledged that she did meet with the Board and raised her concerns, and she continues to have concerns even though some of the issues are being addressed.

Staff questions

Esseks observed that it looks as though we are treating the loss of 10' for a denser vegetative buffer. Do we have any evidence that the increased vegetation and the fence will provide the necessary noise and odor buffer? Is this a fair exchange? Joe Rexwinkle of Planning staff agreed that the applicant is going to provide more vegetation – it is difficult to say what the tradeoff might be. This is the applicant's property and it is his opinion that up to a 10' reduction in that buffer zone is a reasonable trade-off as long as they are compensating with some extra vegetation. The 50' buffer was part of the previous approval of the use permit. It was not a condition of approval that required the buffer, but it was shown on the site plan.

Ray Hill of Planning staff pointed out that the reason for the change of zone is the fact that the zoning line was drawn 50' from the west line of this project to provide that 50' buffer, and that was somewhat of a compromise that was agreed upon when the change of zone was submitted. There was some concern originally and it was sort of a compromise to leave that 50' buffer between the two. The owner does have the right to request the change of zone.

Don Linscott testified that over time, the developer has tried to get additional parking on this property. In working with Olsson Associates, they have been able to figure out a way to only encroach on the 50'

setback by 8' and still come up with the parking that is necessary to provide for future parking of the current tenant in the building that is going to expand. As far as the 100% screening, the applicant has been working with Campbells Nursery. They even attended the neighborhood meeting and it was explained how the screening would be accomplished to cut down on the noise and improve the situation that currently exists. The applicant has also authorized Campbells to go from house to house and offer to plant a tree on the neighbors' property. They will do 100% screening on the fence and will provide screening on the west side of the fence as well. The tree line will also help to cut down the noise. Right now there is only 30% screening.

Carlson noted that the new parking will be on the east side of S. 69th Street, where they have previously been parking on the west side.

CHANGE OF ZONE NO. 06011

ACTION BY PLANNING COMMISSION:

March 15, 2006

Carroll moved approval, seconded by Strand and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the City Council.

USE PERMIT NO. 84B

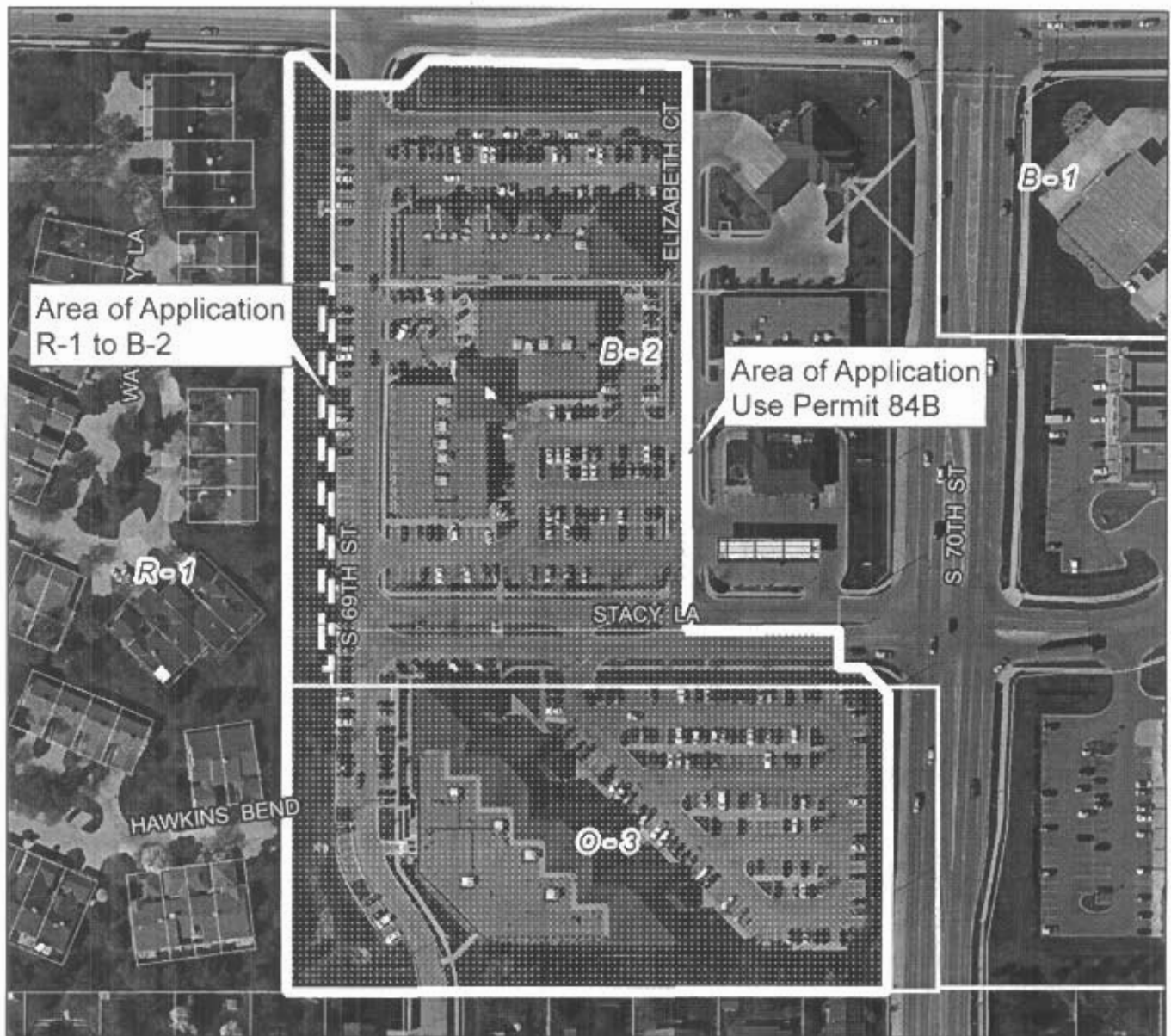
ACTION BY PLANNING COMMISSION:

March 15, 2006

Carroll moved to approve the staff recommendation of conditional approval, seconded by Strand.

Carlson appreciates the neighbor's concern, but he believes the applicant has taken quite a few steps and the private covenant goes above and beyond and creates a much higher standard for enforcement.

Motion for conditional approval carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the City Council.



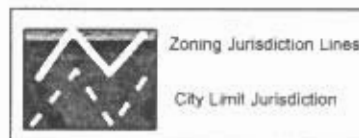
Change of Zone #06011 & Use Permit 84B S. 70th & Pioneers Blvd.

2005 aerial
Pioneers Blvd.

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-6	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. 9 T09N R7E



Old Cheney Rd.

PINEHURST, INC.

P. O. BOX 6185
LINCOLN, NE 68506
February 6, 2006

Lincoln City Council

Re: Elizabeth Park South

Dear City Council:

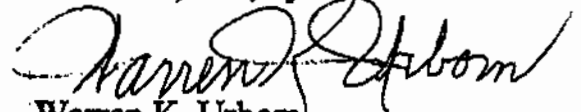
Pinehurst, Inc.'s board of directors approves the plan of Elizabeth Park South to create additional parking stalls, as represented by the enclosed drawing of Bahr Vermeer Haecker dated 4 January 2006. including 18 stalls along the east edge of South 69th Street adjacent to Pinehurst, Inc.'s land that abuts the west edge of South 69th Street.

Traffic flow will be somewhat increased by the addition, affecting the paths of entrance and exit from the commercial area of Elizabeth Park South. We urge that traffic signal lights be installed at the intersection of South 69th Street and Pioneers Boulevard, as well as at the intersection of 70th Street and Stacy Street to ease the entering and exiting from the area bounded by Pioneers, South 69th, Stacy, and 70th Streets.

Your consideration will be appreciated.

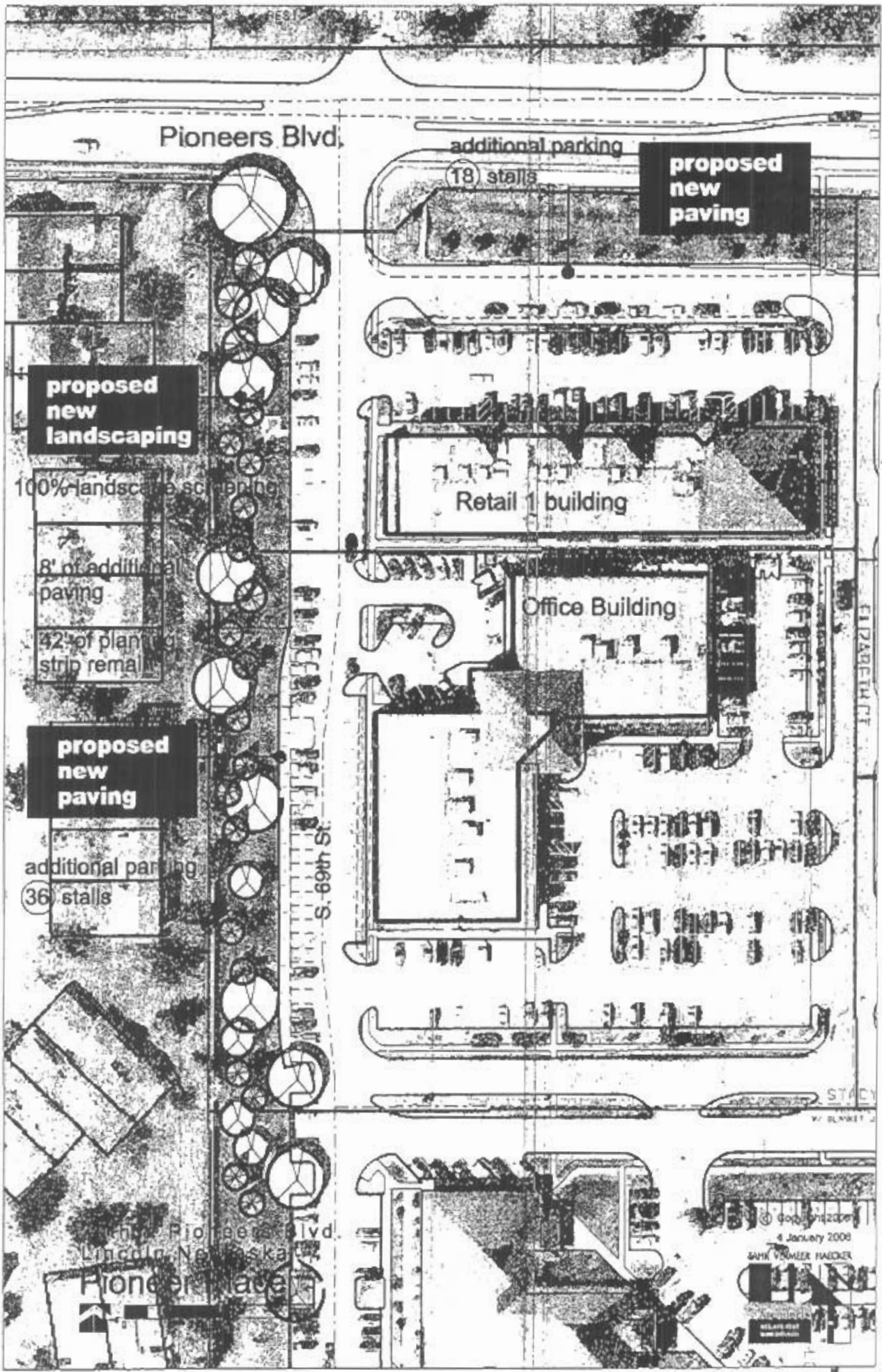
Very truly yours,

Pinehurst, Inc., by



Warren K. Urbom

President



J. Michael Rierden
ATTORNEY AT LAW

CHANGE OF ZONE NO. 06011
USE PERMIT 84B

THE COTSWOLD
845 "M" STREET
SUITE 200
LINCOLN, NE 68508

TELEPHONE (402) 476-2413
TELECOPIER (402) 476-2948

March 10, 2006

Pinehurst, Inc.
Att: Warren K. Urbom, President
P.O. Box 6185
Lincoln, Nebraska 68506

RE: Elizabeth Park South

Dear Judge Urbom:

As a follow-up to the March 8, 2006 meeting at your home with the Pinehurst homeowners, Don Linscott, on behalf of Elizabeth South Partners L.L.C. ("Developer"), agrees as follows:

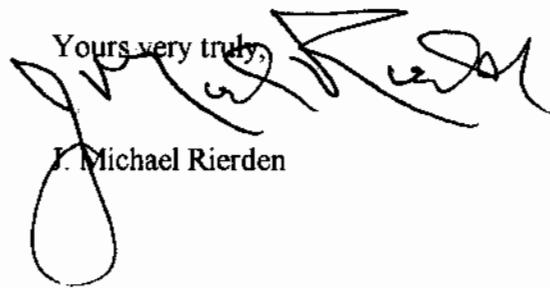
1. The six foot wooden fence along the west property line will be "boarded" on both sides so that it is 100% opaque (not letting light pass through).
2. Additional landscaping will be provided along the east side of the six-foot wooden fence to eventually achieve a 100% landscape screen as shown in Exhibit "A" which is attached hereto.
3. Additional landscaping will be provided, at the Developer's expense, along the west side of the six-foot wooden fence upon request of homeowners abutting the west side of the fence. This will require prior written approval of the Pinehurst Homeowners Association.
4. Developer will send a letter to the tenants of the buildings abutting the east side of 69th Street asking that lighting be reduced as much as possible. Developer will continue to monitor this situation.
5. Developer and any successors in title agree that there will be no further encroachment into the 42 foot buffer zone which is located along the entire west boundary of Developer's property. Developer agrees to file a written covenant/restriction on the chain of title to Developer's property prohibiting any encroachment into the buffer zone in a form similar to Exhibit "B" which is attached hereto

Judge Warren K. Urbom
March 10, 2006
Page 2

6. To address the reported problem of teenagers or young adults noisily congregating at night in the parking lot on the west side (near the fence) of the Elizabeth South Park development, Developer will (i) post signs to the effect of "No Loitering" or "Official Business Only", and (ii) hire a private Security Guard as needed to enforce the No Loitering policy during non-business hours.

I believe that this covers all of the matters that were agreed to at the March 8, 2006 meeting. I also plan on submitting a copy of this letter (with Exhibits) to both the Planning Commission and the City Council so that it is part of the public record. If you should have any questions or need any additional information please feel free to contact me.

Yours very truly,

A handwritten signature in black ink, appearing to read "J. Michael Rierden". The signature is stylized and somewhat cursive, with a large loop at the end.

J. Michael Rierden

JMR/jdr

Pioneers Blvd.

proposed new landscaping

100% landscape screening

8' of additional paving
42' of planting strip remain

proposed new paving

additional parking (36) stalls
net gain

S. 69th St.

Retail 1 building

Office Building

70th & Pioneers Blvd.
Lincoln Nebraska
Pioneer Place



BRIAN D. CARSTENS & ASSOCIATES
601 OLD CHENEY ROAD, SUITE C
LINCOLN, NE 68512
(402) 434-2424

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24-October 2005

WAIR VERMEER TRAECKER



DECLARATION OF COVENANT, RESTRICTION AND CONDITION

KNOW ALL MEN THESE PRESENTS:

WHEREAS Elizabeth South Partners L.L.C., a Nebraska limited liability company is the fee owner of Lots 4, 5, and 6, Elizabeth Park South, Lincoln, Lancaster County, Nebraska hereinafter ("Owner"); and

WHEREAS, Owner has developed it's property into a mixed retail/office complex and that as part of said development Owner agreed to provide a 50 foot buffer zone along the west boundary of Owner's property along with fencing and landscaping; and

WHEREAS, Owner is desirous of encroaching into said buffer zone an additional 8 feet to provide for additional parking to Owner's development; and

WHEREAS, Owner and Pinehurst, Inc. are desirous of preserving the 42 foot buffer zone and to prohibit any future encroachment into said buffer zone by either Owner or it's successors in title.

NOW THEREFORE, Owner does create, establish, adopt and impose the following covenant, restriction and condition on Owner's property described above.

1. As used herein the term "42 Foot Buffer Zone" shall be deemed to mean the west 42 feet of Lots 4, 5 and 6 in Elizabeth Park South, Lincoln, Lancaster County, Nebraska.
2. Owner agrees that it will not encroach or attempt to encroach in any manner, into the 42 foot buffer zone at any time in the future.

3. The aforementioned covenant, condition and restriction shall run with the land and shall be binding on the Owner and it's successors and assigns.
4. The enforcement of this covenant, condition and restriction shall be by proceedings at law or in equity and may instituted by any interested person or entity including, but not limited to, Pinehurst, Inc., a Nebraska non-profit corporation, against any person or persons violating or attempting to violate said covenant, condition and restriction. Such proceedings may be to restrict such violation or to recover damages.

DATED this _____ day of March, 2006.

ELIZABETH SOUTH PARTNERS
 L.L.C., a Nebraska
 limited liability
 company

BY: _____
 Managing Member

STATE OF NEBRASKA)
): ss.
 COUNTY OF LANCASTER)

Before me, the undersigned Notary Public, qualified and acting in and for said county and state, appeared _____, on behalf of said limited liability company and acknowledged the execution of the foregoing to be the voluntary act and deed of said limited liability company.

Witness my hand and notarial seal this _____ day of March, 2006.

 Notary Public

PINEHURST, INC.

P.O. BOX. 6185
Lincoln, NE 68506
March 15, 2006

Elizabeth Park South

Pinehurst, Inc. does not object to the proposal of Don Linscott on behalf of Elizabeth South Partners, L. L. C. ("Developer") as set out in J. Michael Rierden's letter of March 10, 2006, addressed to Pinehurst, Inc., accompanied by a document titled Exhibit "A" and a document titled "DECLARATION OF COVENANT, RESTRICTION AND CONDITION.

Very truly yours,

Pinehurst, Inc. by



Warren K. Urbom

President