

FACTSHEET

TITLE: USE PERMIT NO. 84B, requested by Michael Rierden on behalf of Elizabeth South Partners, to reconfigure parking areas, add parking spaces and reduce the front yard setback along Pioneers Boulevard, on property generally located at South 70th Street and Pioneers Boulevard.

STAFF RECOMMENDATION: Conditional Approval

ASSOCIATED REQUESTS: Change of Zone No. 06011 (06-56)

SPONSOR: Planning Department

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

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

FINDINGS OF FACT:

1. This proposed amendment to Use Permit No. 84A is associated with Change of Zone No. 06011 and was heard at the same time before the Planning Commission.
2. This proposal would add 54 parking stalls throughout the Elizabeth Park South development, resulting in a reduction of the front yard setback along Pioneers Boulevard and the addition of a small area to the use permit. The area proposed to be added is approximately 10 feet wide and is currently a part of a 50 foot wide buffer strip next to the Pinehurst neighborhood. 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 use permit amendment is based upon the "Analysis" as set forth on p.3-4, concluding that the combined change of zone and amendment to the use permit will result in a net increase of 54 parking stalls and a small expansion of the area of the use permit.
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.7-8. 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.13-16). Mr. Rierden also submitted an additional letter from Warren K. Urbom, President of Pinehurst, Inc., in support (p.17).
6. Testimony in opposition by Marilyn Baker, who lives in Pinehurst, is found on p.8. 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 conditional approval, as set forth in the staff report dated February 15, 2006.
8. On March 15, 2006, the Planning Commission also voted 8-0 to recommend approval of the associated Change of Zone No. 06011.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: March 28, 2006

REVIEWED BY: _____

DATE: March 28, 2006

REFERENCE NUMBER: FS\CC\2006\UP.84B+

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for March 1, 2006 PLANNING COMMISSION MEETING

PROJECT #: Use Permit No. 84B

PROPOSAL: To amend Use Permit 84A to reconfigure parking areas, add parking spaces, and reduce the front yard setback along Pioneers Boulevard.

LOCATION: South 70th & Pioneers Boulevard

LAND AREA: 12.6 acres, more or less

CONCLUSION:

This use permit proposes to add 18 stalls to the parking area serving the retail building facing Pioneers Boulevard which will require a reduction in front yard setback from 50 to 44 feet. In addition 14 parking stalls along the western side of South 69th Street (private) and 22 stalls on the east side would be added. This would result in a slight realignment of South 69th Street to the west onto R-1 zoned property which will require a change of zone and expansion of the boundary of the use permit to include this area. The applicant has requested a change of zone (see Change of Zone #06011). Combined, the various requests will result in a net increase of 54 parking stalls and a small expansion of the area of the use permit.

RECOMMENDATION:

Conditional Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: A portion of Lots 1 and 2, Elizabeth Park South 1st Addition and a portion of Lot 9, Elizabeth Park South Addition, all located in the Northeast 1/4 of Section 9-9-7, Lancaster County, Nebraska, generally located at S. 70th and Pioneers Boulevard.

EXISTING ZONING: B-2 Planned Neighborhood Business District and O-3 Office

EXISTING LAND USE: A mixture of medical and general offices, retail, and parking.

SURROUNDING LAND USE AND ZONING:

North:	R-1/B-1	Cemetery
South:	R-3	Residential
East:	B-1/B-2	Shopping Center
West:	R-1	Residential

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 #60o, 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 commercial.

ANALYSIS:

1. This use permit proposes the addition of 54 parking stalls throughout the development resulting in a reduction in front yard setback along Pioneers Boulevard and the addition of a small area to the use permit (see CZ 06011).
2. The reduction in setback along Pioneers will be required to accommodate 18 new parking stalls in that area, reducing the setback from 50 to 44 feet. Approval of this request is recommended so long as any landscaping that is removed as a result is replaced. Planning staff finds this request reasonable because the reduction creates usable space for needed parking, the adjustment is only 6 feet, and the remaining 44 feet of setback is sufficient if additional landscape screening is provided.

3. The applicant intends to add 14 parking stalls on the west side of South 69th Street and 22 stalls on the east side. The boundary of the use permit must be expanded in this area in order to add these additional stalls. The area proposed to be added is approximately 10 feet wide and is currently a part of a 50 foot wide buffer strip.
4. Additional parking spaces have previously been built without approval along the west side of South 69th Street south of Stacy Lane. However a request for approval of these spaces is not a part of this request. Resubmitted plans should note that these spaces will be approved with this request and proper building permits should be obtained.
5. To mitigate the reduction in width of the buffer strip, the applicant proposes extensive landscaping and an addition to the existing six foot tall solid wood fence along the length of the buffer strip.
6. Pinehurst, Inc. owner of the residential property to the west of the buffer area agrees to support to proposed plan in regards to the reduction in the width of the buffer area. (See attached letter)

CONDITIONS OF APPROVAL:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the site plan to show:
 - A. The correct location of the sidewalk along the west side of South 69th Street.
 - B. The buffer area between South 69th Street and the residential property to the west.
 - C. Remove notes and data from site plan that no longer apply or were voided in previous amendments or contain a strike-out line across them.
 - D. Curve data for the proposed horizontal curves in South 69th Street in accordance with design standards.
 - E. Site distances of all parking lot connections to South 69th Street and at the intersection of Stacy Lane and 69th Street.
 - F. Additional parking shown on the west side of South 69th Street, south of Stacy Lane added without prior approval is a part of this request and that proper building permits shall be obtained.
2. This approval permits an additional parking, adjustment to the yard requirements to reduce the front yard setback along Pioneers from 50 to 44 feet and a small expansion in the area

of the use permit to include the proposed additional parking stalls along the west side of South 69th Street.

General:

3. Before receiving building permits:

3.1 The permittee shall have submitted a revised and reproducible final plan including 8 copies and the plans are acceptable:

3.2 The construction plans shall comply with the approved plans.

STANDARD CONDITIONS:

4. The following conditions are applicable to all requests:

4.1 Before occupying the parking areas all development and construction shall have been completed in compliance with the approved plans.

4.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.

4.3 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.

4.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

4.5 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.

5. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

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

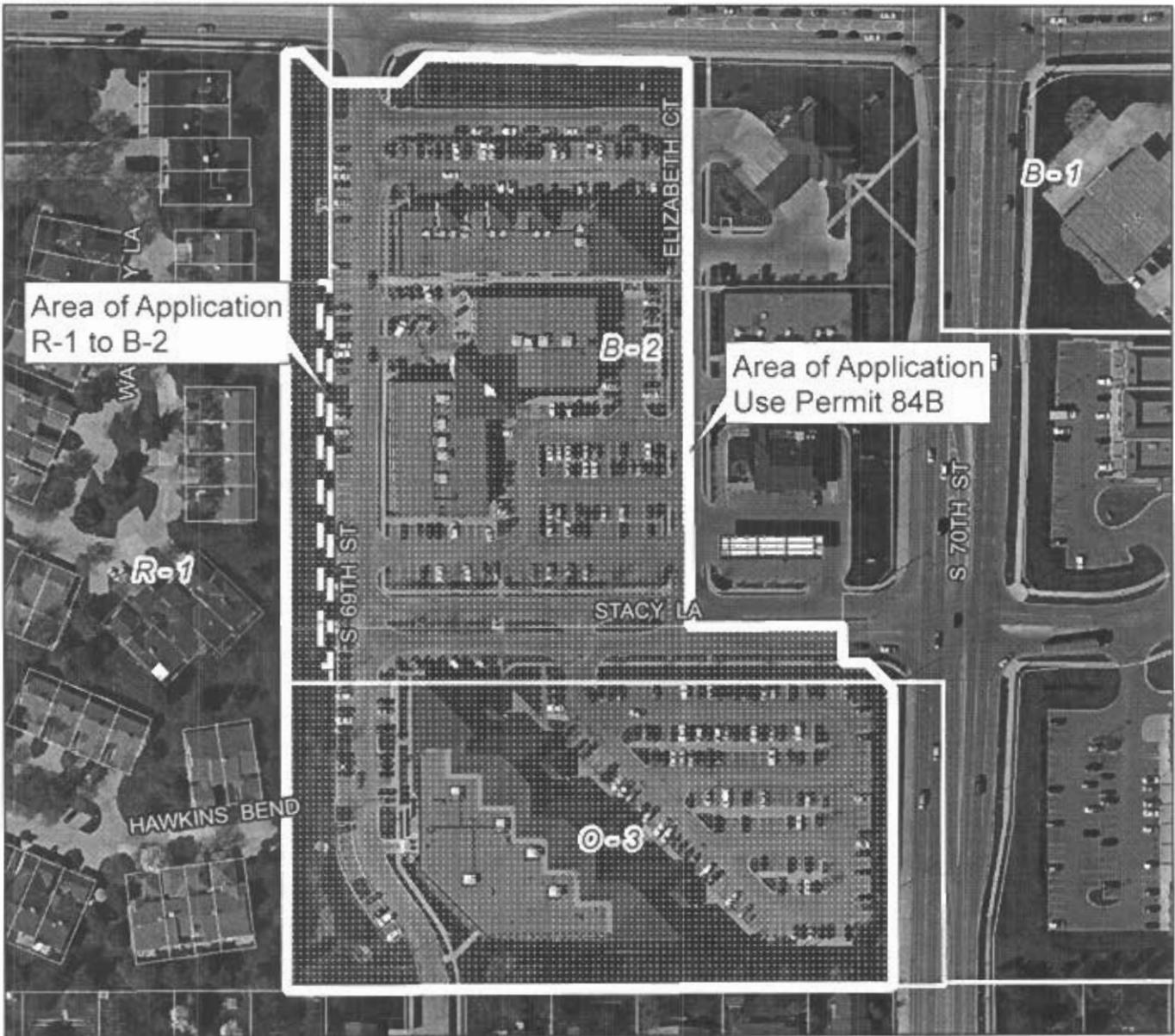
ACTION BY PLANNING COMMISSION:

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.



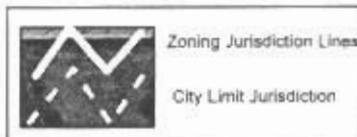
**Change of Zone #06011 & Use Permit 84B
S. 70th & Pioneers Blvd.**

2005 aerial
Pioneers Blvd.

Zoning:

- R-1 to R-5 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. 9 T09N R7E



PINEHURST, INC.

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

Lincoln City Council

Re: Elizabeth Park South

Dear City Council:

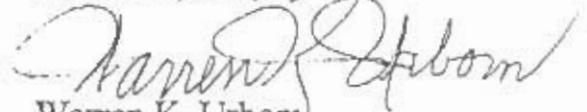
Pinehurst, Inc.'s board of directors approves the plan of Elizabeth Park South to create additional parking stalls, as represented by the enclosed drawing of Bahr Vermeer Haecker dated 4 January 2006. including 18 stalls along the east edge of South 69th Street adjacent to Pinehurst, Inc.'s land that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

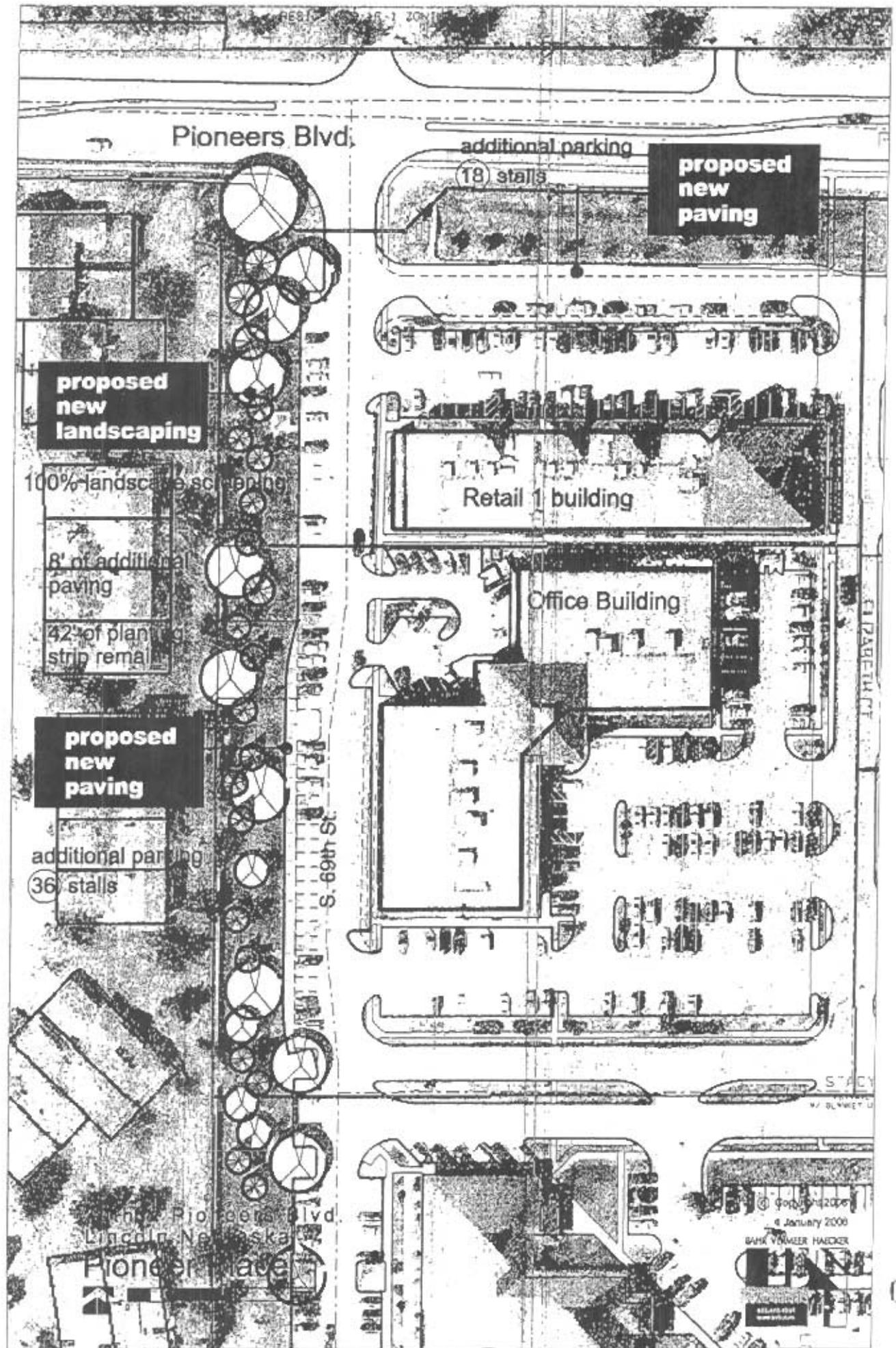
Your consideration will be appreciated.

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
645 "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

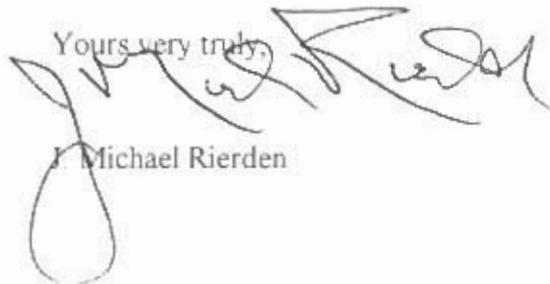
March 10, 2006

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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

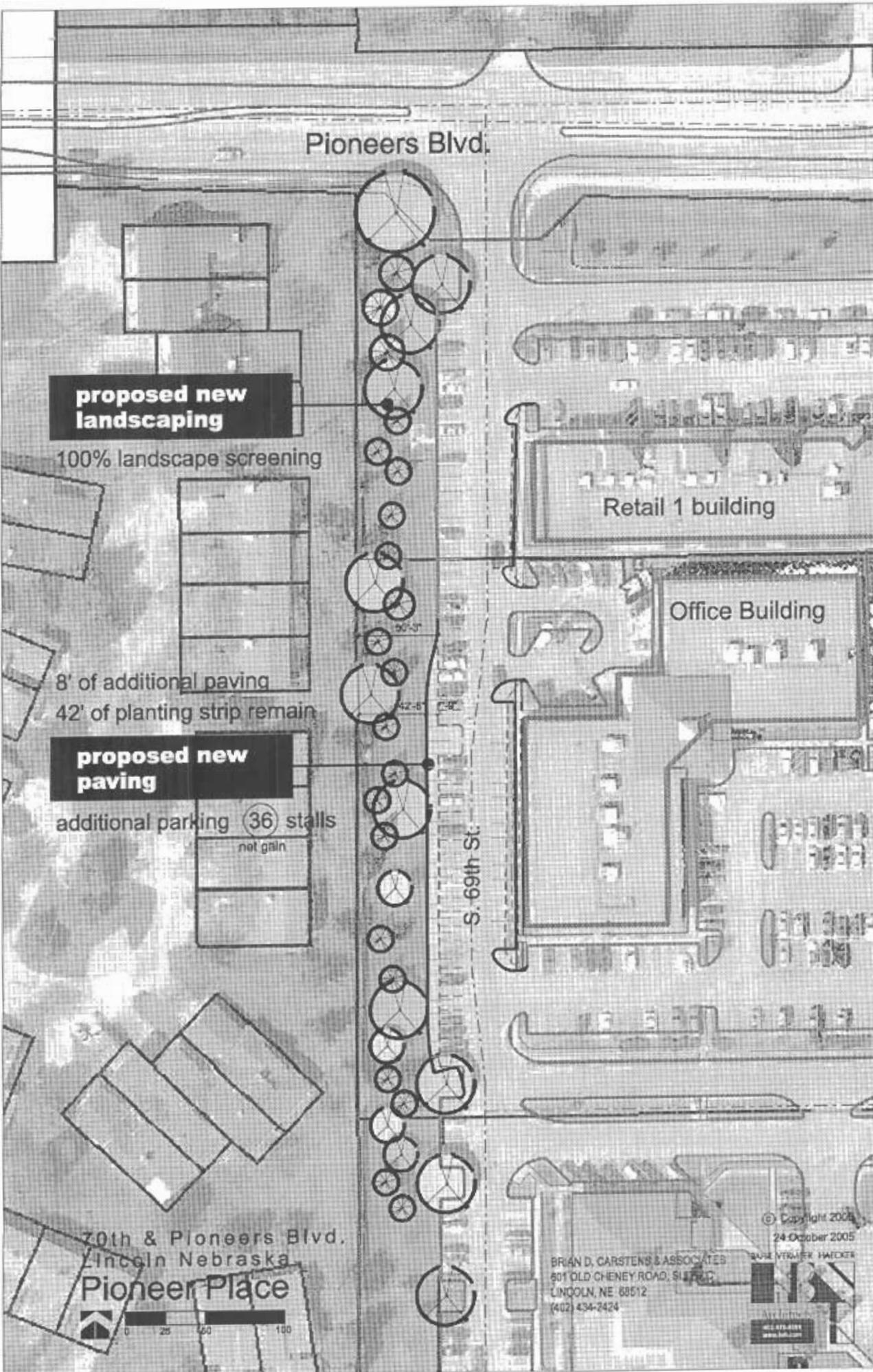
I believe that this covers all of the matters that were agreed to at the March 8, 2006 meeting. I also plan on submitting a copy of this letter (with Exhibits) to both the Planning Commission and the City Council so that it is part of the public record. If you should have any questions or need any additional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

J. Michael Rierden

JMR/jdr



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.

EXHIBIT " B "

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

SUBMITTED AT CONT'D PUBLIC HEARING
BEFORE PLANNING COMMISSION: 3/15/06
BY MICHAEL RIERDEN

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

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