

FACTSHEET

TITLE: TEXT AMENDMENT NO. 14002

BOARD/COMMITTEE: Planning Commission

APPLICANT: Tru-Built Investments
Great American Sports Park

RECOMMENDATION: Approval (9-0: Scheer, Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber voting 'yes').

STAFF RECOMMENDATION: Approval

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPONENTS: None.

REASON FOR LEGISLATION:

To amend Title 27 of the Lincoln Municipal Code by amending subsections (a) and (b) of Section 27.63.680, Sale of Alcoholic Beverages for Consumption On the Premises, to define restaurant under subsection (a), and to add the sale of alcoholic beverages for consumption on the premises of a restaurant as a special permitted use in the O-3 district under subsection (b); and repealing Section 27.63.680 of the Lincoln Municipal Code as hitherto existing.

DISCUSSION / FINDINGS OF FACT:

1. This text amendment and Use Permit No. 04006B were heard at the same time before the Planning Commission.
2. The change to Section 27.63.680 (a) is minor and adds the definition of a restaurant. It is purely for clarity and is intended to make subsection (a) consistent with subsection (b) of the special permit, given both sections use the term "restaurant".
3. The changes to subsection (b) include adding the O-3 zoning district to the list of those zoning districts eligible for a special permit for a restaurant, where the separation from the licensed premises can be reduced from 100 feet to 25 feet, provided a list of additional requirements contained in the permit are satisfied.
4. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-5, concluding that it is appropriate that on-sale alcohol be allowed by special permit in the O-3 district associated with a restaurant using the reduced 25' separation, given the existing setback and area requirements of the O-3 zoning district.
5. There was no testimony in opposition to the text amendment; however, there was one letter in support and three letters in opposition were specific to Use Permit No. 04006B and not the text amendment, and thus are not included with this Factsheet.
6. On April 30, 2014, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval of this text amendment.
7. On April 30, 2014, the Planning Commission also voted 9-0 to agree with the staff recommendation and adopted Resolution No. PC-01391, approving Use Permit No. 04006B, an amendment to allow "Restaurants" and "On-sale alcoholic beverages" as special permitted uses under the approved use permit, on property generally located at N.W. 1st Street and West Highlands Boulevard. As of the date of this Factsheet, Use Permit No. 04006B has not been appealed to the City Council.

POLICY OR PROGRAM CHANGE: ___ Yes ___ **X** ___ No

OPERATIONAL IMPACT ASSESSMENT: N/A

COST OF TOTAL PROJECT: N/A

RELATED ANNUAL OPERATING COSTS: N/A

SOURCE OF FUNDS: N/A

CITY: N/A

NON-CITY: N/A

FACTSHEET PREPARED BY: Jean Preister, Administrative Officer **DATE:** May 5, 2014

REVIEWED BY: Marvin Krout, Director of Planning **DATE:** May 5, 2014

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for April 30, 2014 PLANNING COMMISSION MEETING

PROJECT #: Text Amendment No. 14002 to Title 27 - Zoning Ordinance

PROPOSAL: Change Section 27.63.680(a) of the Zoning Ordinance to include the definition of a restaurant, and to change Section 27.63.680(b) allow the licensed premises of a restaurant with the sale of alcohol for consumption on the premises within 25' of a residential zoning district in the O-3 zoning district by special permit.

CONCLUSION: When the special permit for on-sale alcohol was amended to allow the required separation from a licensed premises to be reduced from 100' to 25' for a restaurant, it applied to all the zoning districts eligible for a special permit for on-sale alcohol except the O-3. Created as part of the 1979 Zoning Update, the O-3 zoning district was designed as the suburban office zoning district. It has increased setbacks and screening requirements when compared to several of the other zoning districts where the 25' restaurant separation is now allowed, such as the B-1 and B-3 districts. It is appropriate that on-sale alcohol be allowed by special permit in the O-3 district associated with a restaurant using the reduced 25' separation, given the existing setback and area requirements of the O-3 zoning district.

<u>RECOMMENDATION:</u>	Approval of the attached text
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ANALYSIS:

1. This is a text amendment to amend both subsections A and B of Section 27.63.680 of the Lincoln Zoning Ordinance. The change to Section 27.63.680(a) is minor and adds the definition of a restaurant to Section A of the special permit. The changes to Section 27.63.680(b) include adding the O-3 zoning district to the list of those zoning districts eligible for a special permit for a restaurant, where the separation from the licensed premises can be reduced from 100' to 25' provided a list of additional requirements contained in the permit are satisfied.
2. The change to Section 27.63.680(a) is minor, and intends to simply include the definition of a restaurant in Section A, the same as it exists in Section B. This change is purely for clarity, and is intended to make Section A consistent with Section B of the special permit which already contains the definition, given both sections use the term 'restaurant'.
3. Allowed by right in the B-4 and as a conditional use in the B-2 and B-5, the sale of alcohol for consumption on the premises is also allowed in 10 office and commercial zoning districts by special permit. Section A(3) of the permit is the provision which requires a 100' separation from the licensed premises. Section A currently reads as follows:

(a) The sale of alcoholic beverages for consumption on the premises may be allowed in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2, and I-3 zoning districts and on the premises of a restaurant in the O-3 district upon the approval of a special permit subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:

(1) Parking shall be in conformance with Chapter 27.67.

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

(3) 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 (i) 100 feet from the property line of a premises used in whole or in part for a first-floor residential use, day care facility, park, church, or state mental health institution, or (ii) 100 feet from a residential district (except where such use is accessory to a golf course, country club, farm winery, or market garden).

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

(5) 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.

(6) 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.

(7) 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.

(8) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible, 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.

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

4. Section B of the special permit reduces the required separation for the licensed premises from 100' to 25' provided several provisions are satisfied. Section B currently reads as follows:

(b) In addition, a special permit may be granted to allow alcoholic beverages to be sold for consumption on the premises of a restaurant in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2, and I-3 districts subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:

(1) The Permittee as the holder of any liquor license issued on the premises pursuant to a special permit for the sale of alcoholic beverages for consumption on the premises of a restaurant shall agree in writing to voluntarily surrender and consent to the cancelling of the liquor license in the event the special permit is revoked by the City. If the Permittee is not the holder of the liquor license, the Permittee shall require such holder to agree in writing to

voluntarily surrender and consent to the cancelling of the liquor license in the event the special permit is revoked by the City. In addition, the City shall request that the Nebraska Liquor Control Commission issue the liquor license contingent upon the premises having such special permit.

(2) The restaurant shall be located at least 25 feet away from a residential zoning district.

(3) Gross sales from the sale of alcoholic beverages shall not exceed forty percent (40%) of the gross sales of food and beverages. Upon request of the City, the license holder/operator shall provide sales receipts for the past six (6) months for the purpose of demonstrating that no more than 40% of the restaurant's gross sales are derived from the sale of alcohol

(4) The restaurant shall serve full-course meals as defined by *Neb. Rev. Stat. § 53-123.04(c)(3)* during the hours of operation.

(5) Hours of operation must not commence prior to 8:00 a.m. and shall end no later than 11:00 p.m.

(6) Hours of outdoor operation must not commence prior to 8:00 a.m. and shall end no later than 10:00 p.m.

(7) The restaurant shall not have any gaming devices or self-serve vending. Gaming devices include pool tables, dart boards, keno. Self-serve vending includes candy machines and drink machines that use electricity.

(8) No drive-through windows shall be allowed.

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

For the purposes of this subsection (b), restaurant shall mean any place (i) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served; (ii) which has no sleeping area; and (iii) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests.

5. Under Section B, a restaurant that complies with provisions 1-9 can apply for a special permit in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2, and I-3 districts to be located as close as 25' to a residential zoning district. Added in 2008, Section B made a distinction between restaurants and all other businesses which also have on-sale alcohol as part of the use. Provisions 1-8 were included to reinforce and refine the distinction between what was envisioned to be covered by the reduced 25' separation exception, and all other uses.
6. So while 9 of the 10 zoning districts were carried forward from Section A with the 2008 text amendment and made eligible for a special permit using the reduced 25' separation, the O-3 district was not. Staff has gone back through the record and cannot find this was a deliberate deletion. Rather, it appears to be an unintentional omission, likely owing to the fact the O-3 district was separated from the other zoning districts in the text of Section A, and was simply not brought forward with the others when the 2008 text amendment was created.

7. The O-3 zoning district was created with the 1979 Zoning Update, and was intended for suburban office park developments. The O-3 district often serves as a transitional zoning district, located between more intensive commercial land uses and residential areas. To that end, the district includes setback and screening requirements to help ensure compatibility. It also has a limited range of allowed uses, including that restaurants are only allowed by special permit.
8. When compared the other nine zoning districts eligible for a special permit under Section B, the O-3 has at least comparable, if not superior, setback and screening protections for adjacent residential areas.
9. It is appropriate to include the O-3 zoning district in Section of 27.63.280, as adequate protection exists given the combined provisions of the special permit and the zoning district regulations which help ensure compatibly among land uses. Additionally, restaurants with alcohol could serve as a good complement in an office park setting. Such a mix of uses would also be consistent with the goals of the Comprehensive Plan.

Prepared by:
Brian Will
441-6362, bwill@lincoln.ne.gov
April 16, 2014

APPLICANT: Shad Sanford
148 West Lombard Drive
Lincoln, NE 68522
(402)440-1157

CONTACT: Megan Buettenbach
5533 NW 1st Street
Lincoln, NE 68521
402-202-0676

OWNER: Tru-Built Investments
2640 W M Court
Lijncoln, NE 68522

**TEXT AMENDMENT NO. 14002
and
USE PERMIT NO. 04006B**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 30, 2014

Members present: Scheer, Beecham, Sunderman, Corr, Hove, Cornelius, Weber, Harris and Lust.

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

Ex parte communications: Beecham disclosed that she received a phone call from Lois Poppe on Pemberly Lane to talk about screening and buffering, and she advised her to email or contact the Planning Department.

Staff presentation: **Brian Will of Planning staff** explained that this text amendment is associated with an amendment to the Baron's Ridge Use Permit. It is the result of what the owner is attempting to do; however, it is a text amendment to the zoning ordinance so it would be applicable city-wide.

Will noted that both on-sale and off-sale alcohol is regulated by the City by special permit in those districts where allowed. It is a conditional use in the B-2 and B-5 districts and is a permitted use in the B-4 district. As we look at the special permit for on-sale consumption, it is currently allowed by special permit in the B-2, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zoning districts, and on the premises of a restaurant in the O-3 district. A text amendment was done a few years back with a unique exception for restaurants which reduced the required separation which normally applies, i.e. 100' separation from day care, church, park, residential zoning district, etc. That special exception was made for restaurants because restaurants were deemed as unique with less impact. Section (b) says that the special permit may be granted for alcoholic beverages to be sold for consumption on the premises in all of those same districts, except the O-3 associated with a restaurant. That provision was not carried forward. This amendment brings the O-3 district forward, reducing the separation to 25' when alcohol is associated with a restaurant.

When that amendment was made for the restaurant exception, Will found no discussion and no issue that prohibited the O-3 from being brought forward, so he concludes that it was just by omission that O-3 was not included. He believes it was an error. The O-3 is as compatible or more compatible than a lot of the commercial districts with respect to required setbacks, screening, etc.

Corr asked for a comparison between the setbacks and screening from O-3 to B-3. Will stated that he believes the O-3 has a 40' rear yard setback, and 10' or 15' when adjacent to residential. The B-3 setbacks are less, i.e. 30' or 20% of lot depth.

The O-3 zoning district would have increased landscaping and screening requirements.

Will also explained that defining restaurant is also for clarification. The ordinance does define a restaurant and we are suggesting that the same definition be brought up into paragraph (a).

Corr noted under the definition that the restaurant shall serve full-course meals. She wondered whether pizza is considered a full-course meal. Will believes that it does meet the definition of restaurant by state statute.

Tom Cajka of Planning staff presented the proposed amendment to the use permit in the O-3 district (Use Permit No. 04006B) for 18 dwelling units which have all been built; 10,450 square feet of office and 3,000 square feet of restaurant. The restaurant is the amendment to the existing approved use permit. Restaurants are allowed in O-3 by special permit. Once again, we are in a use permit district so we can have the special permitted uses included in the use permit. In this case, there are two special permitted uses -- the restaurant and the sale of alcohol for consumption on the premises. This amendment allows 3,000 square feet of the building to be used as a restaurant.

Cajka pointed out that the on-sale alcohol is allowed today. The text amendment changes the distance factor to 25 feet. Any on-sale would have to meet all the conditions that are imposed for serving in a restaurant. There will be no drive-through facility at this restaurant and a condition has been added so that there will be no outdoor dining between the building and the residential to the west. There will also be screening between the building and the back yards of the residential areas, including ash trees and Colorado Blue Spruce. The staff is not requiring a fence.

Weber inquired whether the area in the back of the building is grass. Cajka stated that it is currently unpaved and is a grass area, and he assumes it would continue to be a grass area.

The site plan also shows four additional parking stalls with this amendment

Corr noted that there will be no outside dining in the rear. What about the front? Cajka advised that the staff recommendation does not prohibit that.

Corr inquired as to the distance to the day care center to the north. Cajka pointed to the map showing the location of the day care. The application would meet the 100' requirement easily.

Corr stated that she knows one rule measures the distance from the property line to the property line and another rule measures from the door. She assumes that this text amendment relates to the door issue. Will stated that the separation is measured from the door in the B-2 and B-5 districts. When the on-sale is allowed by special permit in commercial districts, the separation is measured from the licensed premises. In this case, we are not measuring from the front door, but measuring from the footprint of the building. Will pointed out that the dwellings are also located in the O-3 district. This text amendment allows the separation to be 25' to a residence and the applicant is aware.

Corr noticed that one of the letters in opposition talked about being denied the ability to build a deck in their rear yard. Cajka was not sure what that letter referred to. In general, at that time, if a deck was more than 3' off the ground, it could not encroach into a rear yard setback. That has been amended from time to time.

Rick Peo of City Law Department approached and advised the Commission that staff is going through a process of changing procedures on how to address use permit applications that also involve a special permitted use. In the past, two applications have been required – a use permit and a request for special permit. For tracking purposes and keeping better records, we thought about combining it all into one use permit application. Use permits are unique in that they basically say no use is permitted on the property without a use permit -- permitted conditional use or special permitted use. You are in a sense amending the use permit to approve special permitted uses. Staff will attempt to be more clear in the future when it is a multiple application. The Planning Commission still has the ability to impose conditions on the special permit separate and distinct from the use permit. As we do our staff reports, we need to make this more clear as being a combined use permit with a special permit.

Proponents

1. Steve Powell of TruBuilt Investments appeared as the applicant to answer any questions.

Lust inquired as to the location of the dumpsters for the restaurant. Powell stated that they would be in the rear and accessible by the access road but the location it has not been specifically identified at this time. It will be an enclosed dumpster.

There is not a driveway behind the back of the building.

2. Shad Sanford, 148 West Lombard Drive, appeared as the potential owner of the pizza restaurant. As far as location of the dumpster, they have not yet discussed it. He understands the concerns as far as potential smells, odor, etc. With just proper care by his staff, they can certainly minimize those issues. He has been in the industry for 21 years so he has good knowledge of how to control those types of things. He wants to be a great neighbor.

Powell added that this is an owner-occupied building so they will maintain and keep it nice. Thirty-six residences were notified and they had good response from all of them for both the restaurant and the liquor.

Powell also offered that there is and will be a tremendous amount of screening required. Four parking stalls were added for the restaurant. Those four stalls will provide a little flexibility in providing parking.

Corr asked about the neighbors they visited. Sanford stated that they hit the entire neighborhood behind the building. Of the three letters received by the Commission, one is a duplex and the residents were not home but they did leave the letter. He believes they were able to speak with 80% of the homes.

Corr inquired whether the entire 3,000 square feet designated for the restaurant will be used for the alcohol. Powell responded, "yes", and stated that they do not intend to have any more restaurants in this building. He clarified that this will not be a bar, but a small restaurant for people to sit down and have a beer with their meal. It is not intended to be a bar where people sit and drink for three or four hours. Sanford also indicated that he has no interest in the restaurant becoming a bar. 10:00 p.m. is the latest they will be open any day of the week.

Steve Henrichsen of Planning staff responded to the email in opposition from Rod Hornby. Henrichsen pointed out that in October 2009, staff approved an administrative amendment application by Mr. Hornby to allow 8 lots to encroach 10' into the rear yard setback for open, unenclosed decks. Henrichsen also stated that the four-story building went through the Planning Commission process; they met with the neighbors; and they added additional screening on the building to the north.

There was no testimony in opposition.

Beecham asked whether anyone has talked to the day care center. Sanford acknowledged that he dropped off a letter and spoke with the assistant manager (the manager was not available). The assistant manager believed that the manager would be fine with it.

TEXT AMENDMENT NO. 14002
ACTION BY PLANNING COMMISSION

April 30, 2014

Scheer moved approval, seconded by Weber.

Lust believes the text amendment is appropriate. It seems like a cleanup item.

Motion for approval carried 9-0: Scheer, Beecham, Sunderman, Corr, Hove, Cornelius, Weber, Harris and Lust voting 'yes'. This is a recommendation to the City Council.

USE PERMIT NO. 04006B
ACTION BY PLANNING COMMISSION:

April 30, 2014

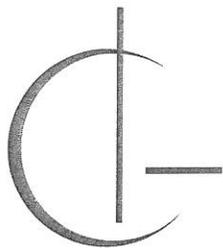
Hove moved to approve the staff recommendation of conditional approval, seconded by Scheer.

Weber indicated that he was originally concerned about the screening, but looking at the schematic there would appear to be adequate screening and if they take care to locate the dumpster appropriately.

Beecham stated that she is concerned about the parking spaces being so close but the screening will help.

Lust appreciates that the applicants reached out to the neighbors, knocking on doors and being very respectful with the screening and operation of the restaurant.

Motion for conditional approval carried 9-0: Scheer, Beecham, Sunderman, Corr, Hove, Cornelius, Weber, Harris and Lust voting 'yes'. This is final action, unless appealed to the City Council within 14 days.



Civil Design Group, Inc.

Consulting Engineers & Land Use Planners
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April 2, 2014

Mr. Marvin Krout
Director of Planning
City of Lincoln /Lancaster County
555 South 10th Street, Room 213
Lincoln, NE 68508

Re: Proposed Text Amendment to 27.63.680 (b) Sale of Alcoholic Beverages for Consumption on Premises.

Dear Mr. Krout:

On behalf of Tru-Built Investments we submit the following request for a text amendment to LMC 27.63.680(b) to include O-3 in the allowable zoning districts that should be subject the extra conditions presented in section B. The proposed change is as follows:

27.63.680: Sale of Alcoholic Beverages for Consumption on the Premises

(b) In addition, a special permit may be granted to allow alcoholic beverages to be sold for consumption on the premises of a restaurant in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2, and I-3 and O-3 districts subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:

In conjunction with this application we submit:

Application for Text Amendment
Filing Fee \$330.00

I hope that this letter and the plans provide you with enough information to review this application. In an effort to facilitate the review process, please call me at (402) 434-8494 if you questions.

Sincerely,

Mike Eckert, AICP

Encl

cc: Tru-built Investments

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