

City Council Introduction: **Monday**, December 17, 2007
Public Hearing: **Monday**, January 7, 2008, at **1:30 p.m.**

Bill No. 07-186

FACTSHEET

TITLE: CHANGE OF ZONE NO. 07058, requested by Brett Richardson, amending Title 27 of the Lincoln Municipal Code relating to sale of alcoholic beverages for consumption on the premises by special permit to allow such sales 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 zoning districts.

STAFF RECOMMENDATION: Approval, as revised by staff.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 12/05/07
Administrative Action: 12/05/07

RECOMMENDATION: Approval, as revised by staff (6-2: Larson, Esseks, Gaylor-Baird, Francis, Carroll, and Sunderman voting 'yes'; Taylor and Moline voting 'no'; Cornelius absent).

FINDINGS OF FACT:

1. This is not the text amendment remanded back to the Planning Commission by the City Council in September, 2007 (Change of Zone No. 07046), which proposed to make the on-sale of alcohol in restaurants a conditional use. This amendment to Section 27.63.680 of the zoning ordinance is proposed by the owner and operator of 9 South Char-Grill located at 9th & South Streets. This text amendment, as proposed by the applicant, would allow restaurants in the B-1 and B-3 zoning districts to have on-sale alcohol under a unique set of conditions by special permit, including being no less than 25 feet from a residential zoning district. The conditions proposed by the applicant are found on p.13.
2. The staff recommendation of approval, with revisions, is based upon the "Analysis" as set forth on p.2-6, concluding that the amendment should be expanded to also include the H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zoning districts. The staff is also recommending the unique set of conditions proposed by the applicant, with the amendments set forth on p.6. These conditions address the definition of a restaurant in contrast to a bar, set allowable operating hours, and prohibit gaming devices, vending machines and drive-through windows. The staff presentation and discussion with the Planning Commission is found on p.8-11.
3. The applicant's testimony is found on p.11-12. The record also consists of a letter from the Everett Neighborhood Association in support relating to the 9 South Grill restaurant (p.19).
4. There was no testimony in opposition. The Planning Commission asked several questions of the Chief Assistant City Attorney about the degree of discretion they would have in considering these special permits (See Minutes, p.9-11).
5. On December 5, 2007, the majority of the Planning Commission agreed with the staff recommendation and voted 6-2 to recommend approval, as revised by staff. The Commission found that this proposal will encourage and allow the opportunity for the development of restaurants in older neighborhoods (Taylor and Moline dissenting, based on their discomfort with the minimum 25 ft. spacing requirement; Cornelius absent). See Minutes, p.12.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: December 10, 2007

REVIEWED BY: _____

DATE: **December 10, 2007**

REFERENCE NUMBER: FS\CC\2007\CZ.07058 text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT
for December 5, 2007 PLANNING COMMISSION MEETING

- PROJECT #:** Change of Zone No. 07058
- PROPOSAL:** A text amendment to Lincoln Municipal Code (LMC) Section 27.63.680 Permitted Special Use: Sale of Alcoholic Beverages for Consumption On the Premises.
- CONCLUSION:** A similar ordinance to allow the sale of alcohol in restaurants as a conditional use was recently considered. It was referred back to the Planning Department for revisions after the public hearing by the City Council. This amendment is based upon the same premise that among the uses selling alcohol, full-service restaurants have different operating characteristics and warrant different treatment, and suggests that under certain conditions restaurants should be allowed to sell alcohol on the premises closer to residential zoning districts.

RECOMMENDATION:	Conditional Approval
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RECENT ASSOCIATED HISTORY:

CZ#07046 - A proposed amendment to the Zoning Ordinance to allow on-sale alcohol in restaurants as a conditional use was considered and received a 7-2 vote by the Planning Commission to recommend approval. After holding a public hearing on the proposed amendment the City Council referred it back to the Planning Department for revisions. That applicant has not yet decided whether to attempt to revise the proposed ordinance or withdraw it.

ANALYSIS:

1. This proposed amendment adds a section to LMC 27.63.680 (special permit for on-sale alcohol) that allows restaurants in the B-1 and B-3 zoning districts to have on-sale alcohol under a unique set of conditions.
2. LMC 27.63.680 now states: 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 and on the premises of a restaurant in the O-3 district upon the approval of a special permit. Alcoholic beverages also may 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 in conformance with Chapter 27.67 [see 27.67.040(y)].

(b) 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.

©) 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).

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

(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.

(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.

(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.

(h) 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.

(i) All other regulatory requirements for liquor sale 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;

(2) Repeated violations related to the operation of the permittee's business; or

(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.

Notwithstanding the above, no special permit or amendment thereto shall be required for interior expansions of existing licensed liquor premises.

3. The modifications as proposed by the applicant are listed below in bold type with staff comments (where applicable) following each condition:

1) The restaurant shall be located at least 25 feet away from a residential zoning district;

The intent is to reduce the required separation between the licensed premises and a residential zoning district from 100' to 25'. It is noted that this amendment references only the B-1 and B-3 zoning districts, the zoning found in most of the city's older commercial districts. However, the other zoning districts where on-sale is allowed by special permit, excluding the O-3 district, are generally more intensive zoning districts. If a reduced setback is appropriate for the B-1 and B-3 districts, this provision should be expanded to include the H-1, H-2, H-3, H-4, I-1, I-2, and I-3 zoning districts. The advertisement for this application includes these additional districts so that the Planning Commission could choose to include them as a part of this amendment.

2) Notice to owners of residential property within 100' by the applicant;

The Zoning Ordinance already requires the City to notify all surrounding property owners within 200' of the affected property on all special permits. As a result this condition is redundant and not required.

3) Gross sales from the sale of alcoholic beverages shall not exceed 40% of the gross sales of food and beverages;

During the 9/10/07 public hearing before the City Council on CZ#07046 to allow alcohol in restaurants as a conditional use, it was noted that regulating such a condition could be difficult and the City Attorney was asked how it would be enforced. His response is attached to this report.

In their review comments, Building and Safety noted that this provision would be difficult to enforce. Staff recommends an additional condition that gives the City the ability to review sales receipts to verify compliance with this condition as suggested by the City Attorney.

4) The restaurant must have a licensed kitchen and offer a full menu of full-course meals during the hours of operation. Full-course meal shall mean a diversified selection of food which is eaten with tableware and not eaten while standing or walking;

As part of CZ#07046, staff recommended adding the following definition of restaurant so the affected use was clearly defined: Restaurant shall mean any place (a) 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, (b) which has

no sleeping area, and c) 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.

Additionally, with CZ#07046 staff noted that a full-course meal was already defined in State law. For consistency and convenience, staff recommended that a full course meal be defined by referencing Neb. Rev. Stat. 53-123.04(3)©).

5) Hours of outdoor operation are from 11:00 a.m. to 11:00 p.m.;

An 11:00 p.m. closing time is appropriate and consistent with the midnight time proposed by CZ#07046. However, an earlier opening time consistent with normal business hours could be included without significant impact.

6) The restaurant shall not have any gaming devices or self-serve vending;

7) No drive through windows shall be allowed;

8) No off-sale liquor other than wine doggie bag.

State law allows restaurant patrons to leave a licensed premises with the unconsumed portion of an open bottle of wine. It is not considered off-sale, so this condition does not need to be included. It should be noted that if a “wine doggie bag” were considered off-sale, a separate special permit under LMC 27.63.685 would be required. That section of LMC is not being proposed to be amended, and includes the same 100' separation requirement that this amendment is seeking to revise.

4. CZ#07046 proposed to allow restaurants with on-sale alcohol as a conditional use in the O-3, B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2, and I-3 zoning districts. It would have modified the conditions to include the following separation requirement:

Be located at least 100 feet (as measured by the shortest, most direct distance) from a day care facility, church, state mental health institution, park (excluding golf courses and hiker/biker trails), or a residential district; provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such day care facility, church, state mental health institution, park (excluding golf courses and hiker/biker trails), or residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the day care facility, church, state mental health institution, park (excluding golf courses and hiker/biker trails), or residential district;

And, if the exterior door opening is less than 100 feet from a residential district, it must face the opposite direction from that district.

5. This proposed amendment could result in approving a restaurant with an exterior door that is closer to a residential district than would be allowed under CZ#07046. However, this proposed amendment requires a special permit for a restaurant, which would allow a case-

by-case review of the door location and other aspects of the site plan. complied with the applicable conditions per this request.

6. The Police Department is opposed to this amendment, noting that the existing ordinance addresses the concerns of residents of residential areas in a fair and consistent manner.

CONDITIONS:

1. Revise the text of the proposed amendment as follows (additions in bold and underline, deletions in strikeout):

1.1 (d) Restaurants in the B-1, B-3, **H-1, H-2, H-3, H-4, I-1, I-2, and I-3** zoning districts where the licensed premises is no less than 25 feet away from a residential zoning district provided compliance with the following:

1.2 ~~(1) Notice to owner of residential property within 100 feet be made by the applicant by certified mail.~~

1.3 (2) Gross sales from the sale of alcoholic drinks cannot exceed 40% of the gross sales of food and drink. **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.**

1.4 (3) The ~~A~~ restaurant ~~must have a licensed kitchen and offer a full menu offering full course meals during hours of operation~~ **shall mean any place (a) 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, (b) which has no sleeping area, and c) 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. The restaurant shall serve full course meals as defined by Neb. Rev. Stat. 53-123.04(3)©.**

~~“Full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking.”~~

1.5 (5) Hours of outdoor operation ~~must end at 11:00 a.m.~~ **are from 8:00 a.m. to 11:00 p.m.**

1.6 ~~(8) No off-sale liquor other than wine doggie bag.~~

Prepared by:

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner
November 16, 2007

APPLICANT: Brett Richardson
1928 South 8th Street
Lincoln, NE 68506
402.474.9997

CHANGE OF ZONE NO. 07058

PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 5, 2007

Members present: Sunderman, Larson, Taylor, Francis, Moline, Gaylor-Baird, Esseks and Carroll; Cornelius absent.

Ex Parte Communications: None.

Staff recommendation: Approval, with revisions.

Staff presentation: **Brian Will of Planning staff** explained this to be a proposed text amendment to the zoning ordinance in the special permit section relating to on-sale alcohol, requested by Brett Richardson, the owner of 9 South Grill.

This proposed amendment proposes to amend the conditions under which a special permit can be granted, specifically, that restaurants would be allowed to apply for a special permit when they are located no less than 25' from a residential zoning district, as opposed to the current 100' restriction. Staff is recommending some modifications to the applicant's proposal for clarity and to eliminate some redundancy. Staff has been supportive of making a distinction between restaurants and the other uses where alcohol can be sold. As a result, staff is recommending approval, with revisions.

This is not the amendment that the City Council referred back to the Planning Commission. That amendment proposed making the sale of alcohol in a restaurant a conditional use (as opposed to requiring a special permit). This proposal is different in that a restaurant that does not meet the 100' separation would have to get a special permit and cannot apply without meeting the conditions set forth by this proposed amendment.

Again, the staff was not the applicant in the application referred by the City Council back to Planning. There have been discussions with that applicant as to their intent but there has been no response at this time.

Esseks inquired as to the Council's concerns in remanding that application back to the Planning Department. Will believes their primary concern was loosening the restrictions without the opportunity for a public hearing. This proposal, in part, addresses that issue but it reduces the standard for separation requirements.

Francis confirmed that approval of this amendment would require any restaurant wanting to sell liquor that is within 25' of a residential district to request a special permit. Will concurred. They would need a special permit for the alcohol. This amendment provides that if they are a restaurant and no less than 25' from a residential district and meet the criteria, they are eligible to apply for the special permit. As the ordinance exists today, they could not even apply. They must be over 100' away under the current ordinance. This is a proposal for no less than 25' if a restaurant. Will further explained that the 25' is measured from the "licensed premises", a term referring to the state liquor license. The measurement is from the licensed premises to the boundary of the residential zoning district.

Marvin Krout, Director of Planning, discussed the previous application, wherein there was an attempt to mirror the conditional use standards in B-2 and B-5, which have a different measurement other than the licensed premises, and which would have allowed less than 100'. This proposal accomplishes something similar, but in a different way of measurement.

Krout believes that the Council's main concern was approval without some prior notice to and opportunity for public comment by the neighbors. There were general concerns about enforcement of the distinction between a restaurant and a bar based on, for example, a 60/40 split. There is a provision in the special permit section today for revoking a special permit if there is disorderly conduct or problems that are occurring. There was some discussion and maybe an amendment drafted that reduced the closing time (now it is proposed 11:00 p.m. instead of midnight). There was another amendment suggesting that you can only serve a drink in conjunction with serving a meal, and that led to another discussion about enforcement as well. He believes this proposal addresses the main issue of the Council.

Gaylor-Baird inquired about the Police Department's objection. Krout believes that Chief Casady would like to ban alcohol from Lincoln and we would have a lot fewer enforcement problems. If they see a rule that is more likely to reduce the number of calls and enforcement problems, they would be in favor. Building & Safety also indicated that they were concerned that this would add to their administrative load in distinguishing a restaurant from a bar.

Moline understands that the distance requirement under the current ordinance is 100' measured from the front door. Moline is concerned that the proposed 25' puts the alcohol closer to residential neighborhoods. Krout suggested that such consideration will have to be made on a case-by-case basis. Typically, you will have a strip center with the rear of building being more than 25' from the property line; and typically, the side of that building will be 60' or more; then, if you measure to the front entrance of some building in that strip center, it is typically going to be more than 100 feet.

Esseks confirmed that under this proposal, the main door to the restaurant could be as few as 25' from the nearest residential zoning. Krout agreed, but he believes there would be some discretion through the special permit process in determining whether or not it is appropriate or whether there is an opportunity to move the door.

Practically speaking, Esseks suggested that this proposal attempts to accommodate a restaurant which would not represent a nuisance. He asked Krout whether he could think of some practical circumstance where the 25' rule would be sustainable. Krout stated that the reason staff was recommending a conditional use instead of special permit is because there is a grey area, e.g., when dealing with the special permit, if you meet the minimum standard in the language, there is a sort of presumption that you have met your requirements and you should not have too many other hurdles to accomplish. The degree of discretion is always kind of a grey area in special permits and that is why the staff tried to avoid it in the previous application.

Rick Peo of City Law Department explained the special permit is for a use that can be compatible in a particular district but might not normally fit in based on other uses. So under the special permit, the Planning Commission does have the authority to impose reasonable conditions to ensure compatibility to the other permitted uses. When you establish the criteria for the special permit, you basically have made a finding that the criteria makes the special permit compatible in relation to the

health and safety of the general public and that will be the general playing field. In order to impose something more strenuous, it should be found that a particular application is more unique than other restaurant applications and so the criteria might not fully satisfy the needs. This amendment establishes a certain criteria and if the applicant can meet the conditions, it is probably almost mandated that it be approved, but there may be minor exceptions. If you say 25' is good, and approve 25', it is going to be hard to require someone else to be 50' away.

Esseks quoted from the Police Department commentary: The proposal "would cause issues not only with previous court tested cases, but would cause confusion and create an unfair set of rules". Are we concerned about equal application of the law? Peo suggested that there needs to be a rational basis for the difference between a restaurant and a bar, and most people believe a restaurant is a different situation than a bar. He does not see a problem treating restaurants differently, but it is an area of concern that needs to be considered.

Taylor expressed concern about the 25'. In what circumstance would it be an appropriate use for a restaurant that provides alcohol to be within 25' of a residence? He can't think of an example. Peo suggested that it would most likely be the back yard type situations. If you have a street between them, you will have ample separation from side yards. Front yard would be across the street.

Moline inquired whether the 60/40 rule gives Peo any concern as an attorney. It seems arbitrary to him. Peo's response was, "you have to draw the line somewhere sometime". If we are trying to define restaurant, it would seem that your other criteria for a restaurant would require those conditions anyway. But there are some bars that can meet the 60/40 criteria.

From a legal standpoint, Moline believes that this creates havoc for the city in enforcement. Is the standard for "full service kitchen" defined somewhere? Peo stated that the staff is trying to pull some of the definitions from the state liquor commission. The city does have licensing requirements for food establishments. He believes that the full service kitchen is defined by those two entities - the Liquor Control Commission and the City/County Health Department. The more terminology you put in, the more issues you have to sort out and enforce. This is an attempt to allow more flexibility.

Gaylor-Baird wondered whether there are some establishments that would be grandfathered in. Aren't there some already less than 100'? Peo agreed that if the use was established prior to the adoption of the zoning ordinance for liquor special permits, then yes, there would be some that would be grandfathered.

Esseks posted the hypothetical: We have a restaurant with the main door being on the side, with the front open for seating so people can look out onto a busy street. 25' is the beginning of a residential district - it is a really small side yard setback so that those folks would be within 30' of the main door. Could we say no? Peo suggested that the Planning Commission might be able to deny such a request because you have an existing building that is that close. There is still some discretion in making a finding that it is a unique situation, but it should not be every time.

Francis clarified that this is an attempt to change the law to allow someone to apply if within 25'. This would allow opportunity for business owners to start a business if they are in a unique situation

where their property happens to abut a residential area. She doesn't have a problem looking at each application on its own merit. In this case, we have a letter from the neighborhood association in support, with no concerns about this business having a liquor license.

Moline's concern is setting up the criteria, and then if an application meets the criteria, it becomes very difficult to turn someone down. Peo agreed. This is doing more than establishing the right to apply. This is setting minimum standards that should be the basis for deciding that it is acceptable, except for a unique situation. There might be other problems such as traffic. The Planning Commission will have discretion to impose additional requirements. This is designed to set out criteria that we believe to be satisfactory. We are trying to vision and establish a minimum standard that is adequate. If the proposed criteria here does not make it compatible, then there should be something different or some different conditions in the ordinance.

If the Planning Commission does not approve this text amendment, Gaylor-Baird inquired whether a restaurant within 100' of a residential area would have any way to seek an exception. Peo stated that the existing ordinance for sale of alcohol on the premises is a 100' separation – no exceptions. This proposed amendment reduces that requirement, but only for restaurants.

Proponent

1. Brett Richardson, 844 South Street, the applicant, stated that the reason he is requesting this amendment is to allow on-sale alcohol in the 9 South Grill restaurant at 9th & South Streets. He is on the South Street Business & Civic Association and the owner of 9 South Grill. On average, the restaurant will have 15 to 20 people come in at night (Chief Casady included), wanting a glass of wine with their steak dinner. When they find out they cannot have the wine, they end up going somewhere else. He considered the old K's Restaurant location, but they cannot reapply for a liquor license because of the setback from the residential area. The current requirements eliminate the older neighborhoods in B-1 and B-3 from bringing in a restaurant business with on-sale alcohol. There will be no vending machines, pool tables, keno, etc., allowed so that it is truly just a restaurant. By taking out the gaming devices, you eliminate the bar aspect of the restaurant.

Taylor inquired about the separation distance of the K's site from the residential area. Richardson believes it is 62'. At the 9th & South location, the license premises would be 47' to the residential district on the back side and 80' on the side.

Gaylor-Baird asked whether the applicant had worked with the neighbors on this proposal. Richardson stated that he has worked with the neighborhoods and the Business & Civic Association, and everyone has been positive.

Moline asked how Richardson came up with the 25' versus 50' or some other number. Richardson stated that with the setbacks along the B-3 district, there needs to be that option to go within 25' when building a new building. The front door will face South Street and the parking will be in the rear.

Francis inquired whether Richardson attended the Everett Neighborhood Association meeting. Richardson indicated that he sent a letter out to the neighborhood associations, and those

neighborhood associations also have members on the Board of the South Street Business & Civic Association. He received no objections from any of the other neighborhood associations.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

December 5, 2007

Esseks moved approval, with conditions as recommended by staff, seconded by Sunderman.

Francis stated that she is in support because it allows the Commission to deal with each applicant individually. This allows opportunity for some small businesses to be successful and to locate in the smaller neighborhoods.

Esseks stated that he is in favor because if there is special circumstance where it will jeopardize the health, welfare and lifestyles of adjoining residential land uses, the Planning Commission and the City Council could set conditions to prevent those risks.

Taylor wishes he could make an amendment that would make him feel comfortable, but he is concerned about the 25'. He does not believe it is adequate. He empathizes with the applicant and he definitely understands their reasons, but he is not to the point where he feels comfortable. He will not support the motion.

Moline stated that he will also vote no. When you set up a set of rules that are somewhat arbitrary and require definitions, that becomes a standard and he is concerned that we may start having to approve things that meet the standard that we ordinarily might have concerns with. Alcohol is regulated for a reason. He does not believe 25' is far enough from a residential neighborhood. He does not believe old or new neighborhoods should have alcohol that close to residential uses.

Carroll stated that he will support the proposal. 25' will usually be the rear yard in the older neighborhoods so the entrance to the restaurant would be around the building in the front. We should encourage the development of restaurants in older neighborhoods.

Motion for approval, with the revisions recommended by staff, carried 6-2: Sunderman, Larson, Francis, Gaylor-Baird, Esseks and Carroll voting 'yes'; Taylor and Moline voting 'no'; Cornelius absent. This is a recommendation to the City Council.

Changes to 27.63.680
ADD

(as proposed by applicant)

(d) Restaurants in the B-1 and B-3 districts where the licensed premises is no less than 25 feet away from a residential zoning district provided compliance with the following:

(1) Notice to owner of residential property within 100 feet; be made by applicant by certified mail.

(2) Gross sales from the sale of alcoholic drinks cannot exceed forty percent (40%) of the gross sales of food and drink.

(3) The restaurant must have a licensed kitchen and offer a full menu offering full course meals during hours of operation.

"full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking."

(4) Hours of outdoor operation must end at 11:00pm till 11:00am.

(5) The restaurant must not have gaming devices or self serve vending and no drive thru.

"gaming devices include pool tables, dart boards, keno" " self serve vending include candy machines and drink machines that use electricity"

(6) No off sale liquor sales other than the wine doggie bag.

INTER-DEPARTMENT COMMUNICATION

TO City Council DEPARTMENT ATTENTION COPIES TO	DATE September 17, 2007 FROM Dana W. Roper DEPARTMENT City Law SUBJECT J Cook RFI 132 COZ 7046 – Bill No. 07-142
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1. Enforcement of the 60/40. This will be enforced, at least initially, on a complaint basis. If necessary, the City would attempt to subpoena the books of the business. It is not entirely clear how a court would rule on this matter and it may be prudent to include a provision requiring an applicant to cooperate and comply with the City's request to inspect books. Once the City has such information, if a public records request were made, we would deny it because it was an investigatory record and/or contained commercial information which would serve no public purpose to disseminate.

2. Determination of 60/40 split. Given the lack of guidance in the ordinance we would expect to calculate this requirement on an annual basis. Consequently, the time of the sales would be irrelevant.

3. New applications. Determining compliance with initial applications will be based on the word of the applicant absent some obvious and glaring defect, i.e. no kitchen, etc.

4. Non-compliance with the 60/40 split. It is questionable whether failure to comply with the 60/40 split would allow the City to revoke the liquor license. Normally the Liquor Commission has been reluctant to revoke licenses absent a showing of State law violations. The City should be able to revoke the conditional permit.

5. Appeal process. The appeal process would likely go to District Court in cases where the City has attempted to enforce its zoning ordinance. If the City attempted to enforce under the State Liquor laws, it would go to the Nebraska Liquor Control Commission and then to the District Court. The other possible forum would be the BZA.

6. Law Department comfort. You have asked whether the Law Department “. . . is comfortable with the legality and mechanism of enforcement of the 60/40 split.” We are still uncomfortable, as we were with the smoking ordinance of the 60/40 split, because of the difficulty in enforcement. This criteria currently exists for sidewalk cafes but only 23 of them exist in the City whereas this rule would apply to all zoning districts that allow the sale of alcohol.

DWR/tb



Status of Review: FYI

11/08/2007 2:38:54 PM

Reviewed By Building & Safety

Terry Kathe

Comments: the 40 % is unenforceable.

We believe this is a repeat of a previous denied amendment that actually is less restrictive than its predecessor.

Status of Review: Approved

11/16/2007 10:58:31 AM

Reviewed By Health Department

ANY

Comments: LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION

TO: Brian Will DATE: November 16, 2007

DEPARTMENT: Planning FROM: Chris Schroeder

ATTENTION: DEPARTMENT: Health

CARBONS TO: EH File SUBJECT: Sale of Alcohol
EH Administration Beverages for
Consumption on the
Premises CZ #07058

The Lincoln-Lancaster County Health Department (LLCHD) has reviewed the change of zone application with the following noted:

The LLCHD advises that language be added to this proposed change of zone indicating business owners/operators of such licenses premises must comply with Lincoln Municipal Code 8.24 Noise Control Ordinance.

Status of Review: Active

Reviewed By Law Department

ANY

Comments

Status of Review: **Complete**

11/16/2007 12:52:07 PM

Reviewed By **Lincoln Police Department**

NCSBJW

Comments: **Mr. Will,**

The Lincoln Police Department does not support this change to Municipal Ordinance. The Lincoln Police Department feels that the current LMC is extremely adequate. Modification to 27.63.680 would cause issues not only with previous court tested cases, but would cause confusion and create an unfair set of rules. The Lincoln Police Department feels that the current ordinance addresses the concerns of neighbors and residential issues in a fair and standard manner.

The Lincoln Police Department does not support the suggested additions to 27.63.680.

Status of Review: **Complete**

Reviewed By **Planning Department**

RAY HILL

Comments:

Status of Review: **Active**

Reviewed By **Planning Department**

BRIAN WILL

Comments:

Status of Review: **Routed**

Reviewed By **Planning Department**

COUNTER

Comments:

Status of Review: **Complete**

11/15/2007 3:30:38 PM

Reviewed By **Public Works - Development Services**

SIETDQ

Comments: **Memorandum |**

To: | Brian Will, Planning Department
From: | Charles W. Baker, Public Works and Utilities
Subject: | Sale of Alcoholic Beverages for Consumption on the Premises
Change of Zone #07058
Date: | November 15, 2007
cc: | Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the Change of Zone #07058 and has no objections.

Status of Review: **Active**

Reviewed By **Urban Development**

ANY

Comments

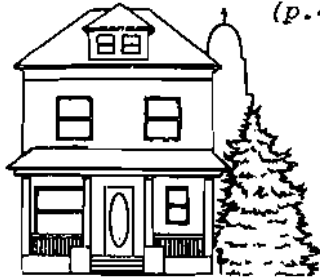
017

Status of Review: Active

Reviewed By Urban Development

ANY

Comments:



EVERETT
NEIGHBORHOOD
ASSOCIATION

P.O. Box 81044, Lincoln, NE 68501

DEC 3 - 2007

To: Planning Commission, City Council
From: Pat Anderson-Sifuentez
Everett Neighborhood Assoc., Secr.
Date: November 30, 2007
Re: 9 South Grill application for change to ordinance

Dear Members:

I am writing on behalf of the Everett Neighborhood Association (ENA) Board in support of Brett Richardson's application for a change to ordinance 27.63.680 in regards to liquor sales at 9 South Grill. The ENA board discussed and voted on November 17, 2007 to support the application for 9 South Grill.

The ENA board is confident 9 South Grill will operate within the ordinance guidelines and that there will be no problems. The original intent of this ordinance was to halt 'bar' type operations and potentially related problems within close proximity to residential areas. 9 South Grill is clearly operated as a restaurant and if people want to enjoy a glass of wine with a fine dinner, they should be able to do so. The ENA board anticipates no problems related to the change in ordinance and operations of 9 South Grill. .

Handwritten signature of Pat Anderson-Sifuentez.

Pat Anderson-Sifuentez
ENA, Secretary

Handwritten signature of Jeff Tangeman.

Jeff Tangeman
ENA, President