WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

January 2, 2009

Cortez, Inc
c/o Mary or Enrique Cortez
344 W 29th St N
Wichita, KS 67204

RE: CON2008-00049 - City Conditional Use for a Tavern/drinking Establishment and Nightclub in GC General Commercial zoning within 200 feet of residential zoning, generally located north of 29th Street North and west of Broadway (344 W. 29th Street North).

Dear Ladies and Gentlemen:

At its regular meeting on November 20, 2008, the Wichita - Sedgwick County Metropolitan Area Planning Commission considered the above captioned request. The action of the MAPC was to APPROVE the request, subject to the conditions in the attached resolution.

If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,

Derrick K. Slocum
Associate Planner
Current Plans Division

DKS:mc
Attachment

Copies to: James Howell, 7701 E Kellogg Ste 415, Wichita, KS 67207
El Pueblo, Alejandro Calderon, 1623 S. Emporia, Wichita, KS 67211
Kechi Township, James W McKenney, 502 E 69th St North, Wichita, KS 67219
WCC VI, Sharon Fearey, Mail Stop 1-13
N.A. VI, Terri Dozal, Mail Stop 1-135
Julianne Kallman, Engineering, Mail Stop 1-71
Kurt Schroeder, Office of Central Inspection, Mail Stop #1-72

CONDITIONAL USE RESOLUTION NO. CON2008-00049

WHEREAS, Mary and Enrique Cortez (Applicant); pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), request a Conditional Use for a tavern/drinking establishment and nightclub within 200 feet of residential zoning on 2.0 acres zoned "GC" General Commercial described as:

> Lot 1, Nance Second Addition to Wichita, Sedgwick County, Kansas EXCEPT that part of Lot 1 described as commencing at the NW corner of Lot 1, Block A, Bud Palmer Second Addition; thence southwesterly along the east line of said Lot 1, Nance Second Addition, said east line being the west line of Lot 1, Block A, Bud Palmer Second Addition, 29.65 feet for a place of beginning; thence West, perpendicular to said east line, 1.70 feet; thence south 9.96 feet to a point of said east line, being 39.46 feet southwesterly of the NW corner of Lot I, Block A, Bud Palmer Second Addition; thence northeasterly along said east line, 9.81 feet to the place of beginning. Generally located north of 29th Street North and midway between Broadway and Arkansas Avenue

WHEREAS, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

WHEREAS, the MAPC did, at the meeting of November 20, 2008, consider said application; and

WHEREAS, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Area Planning Commission that this application be approved to allow a Conditional Use for a tavern/drinking establishment and nightclub within 200 feet of residential zoning on 2.0 acres zoned "GC" General Commercial described as:

> Lot 1, Nance Second Addition to Wichita, Sedgwick County, Kansas EXCEPT that part of Lot 1 described as commencing at the NW corner of Lot 1, Block A, Bud Palmer Second Addition; thence southwesterly along the east line of said Lot 1, Nance Second Addition, said east line being the west line of Lot 1, Block A, Bud Palmer Second Addition, 29.65 feet for a place of beginning; thence West, perpendicular to said east line, 1.70 feet; thence south 9.96 feet to a point of said east line, being 39.46 feet southwesterly of the NW corner of Lot I, Block A, Bud Palmer Second Addition; thence northeasterly along said east line, 9.81 feet to the place of beginning. Generally located north of 29th Street North and midway between Broadway and Arkansas Avenue

Approved subject to the following conditions:

1. Days of operation for the nightclub will be Friday and Saturday. Hours of operation will be between 10PM – 2AM.

2. The operation of the nightclub will only be allowed as long as there is a restaurant/DER as the primary use in the building.

WICHITA–SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM NO. 8

STAFF REPORT

MAPC November 20, 2008
DAB VI November 19, 2008

CASE NUMBER: CON2008-00049

APPLICANT/AGENT: Cortez Inc. c/o Mary or Enrique Cortez (Owner/Applicant)
James Howell (Agent)

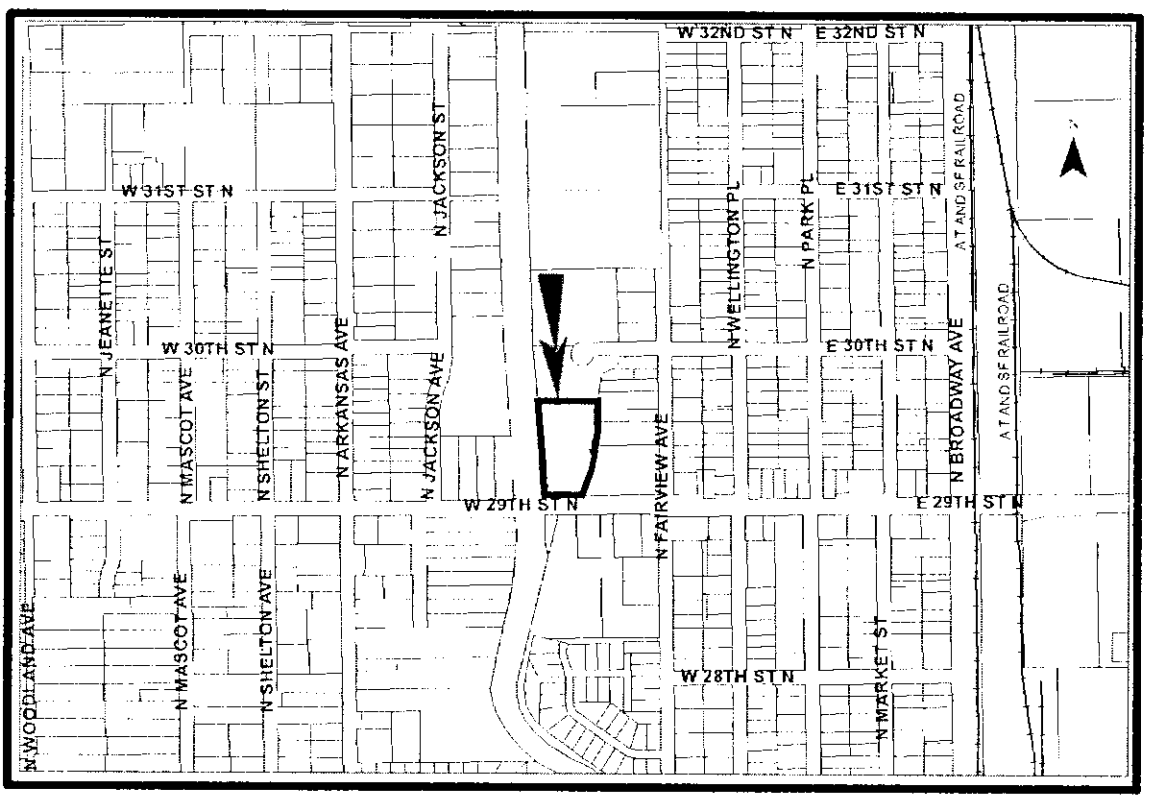
REQUEST: Conditional Use for a Tavern/Drinking Establishment and Nightclub within 200 feet of residential zoning

CURRENT ZONING: GC General Commercial ("GC")

SITE SIZE: 2.00 acres

LOCATION: North of 29th Street North and West of Broadway (344 W. 29th Street North)

PROPOSED USE: Nightclub



BACKGROUND: The applicant is requesting a Conditional Use for a nightclub, on a 2.0-acre part of the Nance 2nd Addition. All of the approximately 3.37-acre Nance 2nd Addition, including the subject site, is zoned GC General Commercial ("GC"). The building on the site proposed to house the nightclub currently operates as a restaurant/drinking establishment (DRE license) which limits its liquor sales to 50% of the total sales. A nightclub allows unlimited liquor sales, regardless of whether or not there are food sales. The applicant proposes to provide live music or a DJ and dancing for patrons, which is considered a "nightclub in the city" per Art.II, Sec.II-B, 9(b) of the Unified Zoning Code (UZC). Nightclubs are a permitted use in the GC zoning district, but require a Conditional Use when located within 200 feet of church or a place of worship, public park, school or residential zoning, per Art.III, Sec.III-D(w) of the UZC. The site abuts land zoned SF-5 Single-family Residential ("SF-5") and MF-29 Multi-family Residential ("MF-29"), thus triggering the Conditional Use requirement.

Staff has reviewed the site plan, and it has been determined that the parking requirement has been met. The parking requirement for a nightclub use is determined by occupancy (1 space per 2 occupants). The total occupancy for the building is 386 people (or 193 parking spaces), which includes the bar, the big and small party rooms and the main dining room. The applicant proposes to close off the big and small party rooms during the nightclub operation, which reduces the occupancy to 284 persons (or 142 parking spaces). The applicant currently has 112 off-street parking spaces available, which is less than the required spaces needed for the use. However, the applicant and the property owner adjacent to the east property line have a Covenant and Agreement Regarding Maintenance or Shared Parking Spaces document on file (recorded May 10th 2008) with the Office of Central Inspection that gives the applicant use of an additional 100 off-street/off-site parking spaces between the hours of 9:00 p.m. and 2:00 a.m. The 100 additional parking spaces allow the applicant access to 212 parking spaces, which exceeds the requirements for both the restaurant and nightclub. Landscaping, existing signage, screening and light pole locations are not shown on the site plans but will be requested by staff in the revised site plan which will be a condition of approval.

The south side of the site abuts 29th Street North, and directly across the road is property zoned B Multi-family Residential ("B") which is largely undeveloped but dose have with a few single-family residences located along the east and southeast part of the B zoned property, approximately 300 to 600 feet away from the subject site. Property located directly to the north is a part of the Nance 2nd Addition, zoned GC, but the property north of that is zoned SF-5 and consists of large lot single-family residences. Abutting the east property line of the subject site are three different zone districts. The property along the southern part of the east property line is zoned GC and is developed with a retail store, property along the central part of the east property line is zoned MF-29, and is developed with a four-plex; while the property abutting the northern part of the east property line is zoned SF-5 and is undeveloped. Along the west property line runs an 125-foot wide drainage canal, and the property abutting the west side of the drainage canal is zoned both SF-5 and MF-29, with the SF-5 zoned property developed with a single-family residence and the MF-29 zoned property developed with a church.

CASE HISTORY: The subject property is platted as part of the Nance Second Addition, which

was recorded June 27, 1979.

ADJACENT ZONING AND LAND USE:

NORTH:	GC	Storage
SOUTH:	B	Vacant
EAST:	MF-29 & GC	Retail and Four-plex
WEST:	SF-5 & MF-29	Drainage Canal and Residences

PUBLIC SERVICES: The subject property fronts West 29th Street North, which is a four-lane minor arterial street with an 80-foot right-of-way at this location. The current traffic volume on 29th Street North is approximately 14,000 vehicles per day. The 2030 Transportation Plan designates that 29th Street North remain a four-lane arterial. Traffic generated by a nightclub typically higher than a restaurant; however, the site already operates as a restaurant/drinking establishment so the overall increase would be minimal and occur at a different time than the restaurant. The increase in traffic and late hours of a nightclub could negatively affect the residences to the east and west of the site. The subject property has all other public utilities.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for "Urban Residential" development. This category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. However this site has been zoned GC since 1979, and the present restaurant/drinking establishment use has been operating for many years. This site seems more suitable for a "Local Commercial" classification due to the location on an arterial street and the use which has been occurring at this location since the early 1980's. Land classified as "local commercial" is also located to the west, across the canal, and to the southeast of the subject site.

RECOMMENDATION: The proposed nightclub site has in the past been a restaurant/drinking establishment (DER license), which limits its liquor sales to 50% of the total sales. The applicant is now requesting a Conditional Use for a nightclub, which allows unlimited liquor sales, regardless of wither or not there are food sales. The Conditional Use would also allow dancing, live music or music provided by a DJ. Because of the site's proximity to residential zoning and uses, a key consideration would be prohibiting outside loud speakers and outdoor entertainment, as well as providing solid screening. Therefore, based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, subject to the following conditions:

1. Days of operation for the nightclub will be Friday and Saturday. Hours of operation will be between 10PM – 2AM.

2. The operation of the nightclub will only be allowed as long as there is a restaurant/DER as the primary use in the building.

3. A revised site plan will need to be provided to show the location of landscaping, existing signage, screening and light pole locations.

4. A minimum six-foot high screening fence constructed of wood, brick, stone, stucco, or

concrete shall be provided along the length of the east property line abutting residential zoning.

5. Signage shall be in conformance with the sign code.

6. No outside loudspeakers or outdoor entertainment, including dancing.

7. The applicant shall obtain, maintain, and comply with all applicable permits and licenses necessary for the operation of a tavern and drinking establishment.

8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood**: The south side of the site abuts 29th Street North. Directly across the road from the application area is property zoned B Multi-family Residential ("B") which is largely undeveloped, but there are a few single-family residences located along the east and southeast part of the B zoned property, approximately 300 to 600 feet away from the subject site. Property located directly to the north is a part of the Nance 2nd Addition, and is zoned GC. The property located north of that is zoned SF-5, and consists of large lot single-family residences. Abutting the east property line of the subject site are three different zone districts. The property along the southern part of the east property line is zoned GC, and is developed with a retail store. Property located along the central part of the east property line is zoned MF-29 and is developed with a four-plex. The property abutting the northern part of the east property line is zoned SF-5, and is undeveloped. Along the west property line runs an 125-foot wide drainage canal, and the property abutting the west side of the drainage canal is zoned both SF-5 and MF-29, with the SF-5 zoned property developed with a single-family residence and the MF-29 zoned property developed with a church.

2. **The suitability of the subject property for the uses to which it has been restricted**: The site is zoned "GC" General Commercial, which accommodates office and retail uses, including a DER, the site's current use.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property**: If poorly managed a night club could generate a variety of detrimental impacts on nearby residences. The conditions of the Conditional Use will help minimize the negative impact.

4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies**: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for "Urban Residential" development. This category encompasses areas that reflect the full diversity of residential

development densities and types typically found in a large urban municipality. However, this site has been zoned GC since 1979, and the present restaurant/drinking establishment use has been operating for many years. This site seems more suitable for a "Local Commercial" classification due to its location on an arterial street, and the use which has been occurring at this location since the early 1980's. Local commercial classified land is also located to the west, across the canal, and to the southeast of the subject site.

5. **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for police services.

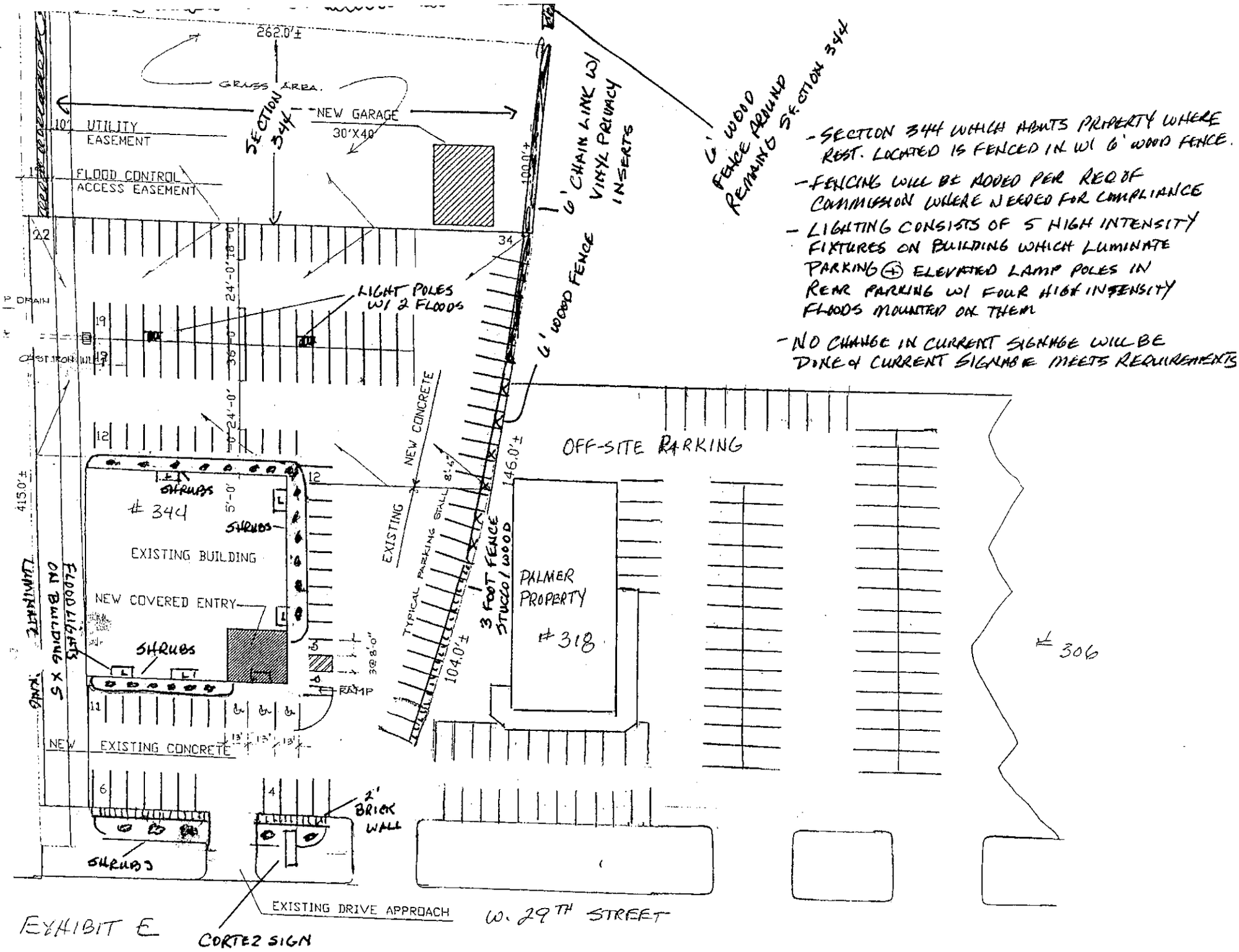

262.0'±
GRASS AREA
NEW GARAGE
30'X40'
10' UTILITY EASEMENT
FLOOD CONTROL ACCESS EASEMENT
SECTION 344
100.0'±
6' CHAIN LINK W/ VINYL PRIVACY INSERTS
6' WOOD FENCE AROUND REMAINS OF SECTION 344
- SECTION 344 WHICH ABUTS PROPERTY WHERE REST. LOCATED IS FENCED IN W/ 6' WOOD FENCE.
- FENCING WILL BE ADDED PER REQ OF COMMISSION WHERE NEEDED FOR COMPLIANCE
- LIGHTING CONSISTS OF 5 HIGH INTENSITY FIXTURES ON BUILDING WHICH LUMINATE PARKING ⊕ ELEVATED LAMP POLES IN REAR PARKING W/ FOUR HIGH INTENSITY FLOODS MOUNTED ON THEM
- NO CHANGE IN CURRENT SIGNAGE WILL BE DONE & CURRENT SIGNAGE MEETS REQUIREMENTS
LIGHT POLES W/ 2 FLOODS
6' WOOD FENCE
24'-0" TB
36'-0"
24'-0"
NEW CONCRETE
EXISTING
OFF-SITE PARKING
146.0'±
415.0'±
#344
EXISTING BUILDING
NEW COVERED ENTRY
SHRUBS
5'-0"
8'-4"
TYPICAL PARKING STALL
3 FOOT FENCE STUCCO/WOOD
PALMER PROPERTY
#318
104.0'±
#306
3@8'-0"
RAMP
NEW EXISTING CONCRETE
13' 13' 13'
2' BRICK WALL
EXISTING DRIVE APPROACH
W. 29TH STREET
CORTEZ SIGN

EXHIBIT E