CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

July 30, 2013

Gary L. and Debra S. Lofland
6645 Bedford Circle
Derby, KS, 67037

REFERENCE: CON2013-00015 – City Conditional Use for a Nightclub in the City on LC Limited Commercial ("LC") zoned property; generally located north of Pawnee Avenue on the southeast corner of Oliver Avenue and Blake Street; 2304 S. Oliver.

Dear Applicant:

At its regular meeting on **July 25, 2012**, the Wichita - Sedgwick County Metropolitan Area Planning Commission (MAPC) considered the above captioned request. The action of the MAPC was to **APPROVE** the request, subject to the following conditions:

(1) No outside loudspeakers or entertainment are permitted.
(2) Parking must be per code for a Night Club in the City. Relief can be sought through Administrative Adjustment. If a variance is required, approval of the Conditional Use is contingent on approval of the variance.
(3) Paving of the east portion of the site must be completed within one-year of approval of the Conditional Use by the appropriate governing body. All permits and inspections, including a drainage plan for the required paved parking, must be submitted and approved.
(4) No parking on the unimproved parking area located along the east side of the site. Prior to the paving of the parking area the applicant must provide an off-site parking agreement with an adjacent property owner.
(5) Landscaping and screening will be per the Unified Zoning Code and the Landscape Ordinance. The outdoor trash receptacle shall have solid screening (a minimum of a wooden fence) on three sides with a solid gate. When the required paving of the parking area is completed (see conditions #3) the trash receptacle will be placed on the paved surface with the just noted required screening.
(6) No pole lights taller than 14 feet, including the base. All outside lights will be designed to disperse light onto the subject site and away for residential development.

(7) The site will be developed with an approved revised site plan, showing, but not limited to, screening, landscaping and parking. The site plan must be submitted for review within 60-days of approval by the appropriate governing body.
(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 the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

NOTICE: The public hearing on planning items is conducted by the MAPC under provisions of State Law. Adopted policy is that the City Council will not take additional testimony on zoning related applications and other issues for which the MAPC has held a public hearing. However, interested parties may file a written statement with the City Clerk by 5:00 p.m. on the Wednesday preceding this meeting, providing new facts on the issue or alleging an unfair hearing. The Council will determine from such statements whether to return the issue to the MAPC for reconsideration or to reverse their recommendation.

Property owners may also file written protest petitions on zoning related items heard by the MAPC. In order to be considered a "valid" petition, the signatures must reflect the correct and entire ownership of the property, the property must be at least partially within 200 feet of the property for which the application was filed, and must be submitted to the City Clerk within 14 days of the conclusion of the MAPC hearing, by **August 8, 2013, at 5 PM.** Such petitions may cause the application to be disapproved, if the land area encompassed by the protesting owners exceeds 20% of the land area within 200 feet of the perimeter of the application area, unless the Council overrides such a protest and approves the application by a vote of six (6) of its members.

If there are no valid appeals or protest petitions filed opposing this action to the City Clerk by **August 8, 2013, at 5 PM** the action of the MAPC will be considered final. If appeals or protest petitions are filed, your application will be forwarded to the **September 10, 2013** City Council meeting for review and final action. That meeting will be at 9 AM, 1st Floor City Hall, 455 N Main Street.

NOTE: District Advisory Board III (DAB) will consider this case at their meeting to be held at **6:30 PM, Wednesday, August 7, 2013, at the Wichita Water Center, 101 E. Pawnee (Herman Hill Park)**, Wichita, KS. Additional information regarding the DAB meeting may be obtained by calling the Neighborhood Assistant, Janet Johnson at 303-8029, or jcjohnson@wichita.gov. **The applicant and anyone interested in this request needs to be present at this meeting.**

This is a reminder that the zoning notification signs should now be removed from the property. If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,

Bill Longnecker
Senior Planner

BL:mc

Copies to: Jolen Novascone, 8814 Churchill Circle, Wichita, KS, 67206
Vector Investments Group, c/o Mike J. Grbic, 1445 N Rock Road, #125, Wichita, KS, 67206
Meadowlark Association of Neighbors, c/o Karen Smith, 2240 S Crestway, Wichita, KS, 67218
James Clendenin, WCC III, Mail Stop 1-13
Janet Johnson, NA III, Mail Stop 1-135

RESOLUTION No. 13-166

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO PERMIT A NIGHT CLUB ON APPROXIMATELY 0.42-ACRES ZONED LC LIMITED COMMERCIAL (LC), GENERALLY LOCATED NORTH OF PAWNEE AVENUE, ON THE SOUTHEAST CORNER OF OLIVER AVENUE AND BLAKE STREET, IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 44-975 AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS:

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, for a Conditional Use to allow a Night Club, on approximately 0.42-acres zoned LC Limited Commercial (LC) legally described below:

Case No. CON2013-00015

A Conditional Use to allow a Night Club, on approximately 0.42-acres zoned LC Limited Commercial (LC) described as:

The North 130.54 feet of the West 140 feet of Block H, McAdam Acres Addition to Wichita, AND Beginning 140 feet East of the Northwest corner of Block H; thence East 107.44 feet; thence South 95 feet; thence West 52.45 feet; thence South 35.49 feet; thence West 55 feet; thence North130.58 feet to the beginning, McAdam Acres Addition to Wichita, AND Beginning 105 feet West of the Northeast corner of Block H; thence West 15 feet; thence South 95 feet; thence East 15 feet; thence North 95 feet to the beginning, McAdam Acres Addition to Wichita, all in Wichita, Sedgwick County, Kansas; generally located north of Pawnee Avenue, on the southeast corner of Pawnee Avenue and Blake Street.

SUBJECT TO THE FOLLOWING CONDITIONS:

(1) No outside loudspeakers or entertainment are permitted.
(2) Parking must be per code for a Night Club in the City. Relief can be sought through Administrative Adjustment. If a variance is required, approval of the Conditional Use is contingent on approval of the variance.
(3) Paving of the east portion of the site must be completed within one-year of approval of the Conditional Use by the appropriate governing body. All permits and inspections, including a drainage plan for the required paved parking, must be submitted and approved.
(4) No parking on the unimproved parking area located along the east side of the site. Prior to the paving of the parking area the applicant must provide an off-site parking agreement with an adjacent property owner.
(5) Landscaping and screening will be per the Unified Zoning Code and the Landscape Ordinance. The outdoor trash receptacle shall have solid screening (a minimum of a wooden fence) on three sides with a solid gate. When the required paving of the parking area is completed (see conditions #3) the trash receptacle will be placed on the paved surface with the just noted required screening.
(6) No pole lights taller than 14 feet, including the base. All outside lights will be designed

to disperse light onto the subject site and away for residential development.

(7) The site will be developed with an approved revised site plan, showing, but not limited to, screening, landscaping and parking. The site plan must be submitted for review within 60-days of approval by the appropriate governing body.

(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 the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date

September 10th, 2013

Carl Brewer, Mayor

ATTEST:

Karen Sublett, MMC

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, City Attorney

AGENDA ITEM NO. 7

WICHITA—SEDGWICK COUNTY

STAFF REPORT

MAPC July 25, 2013
DAB III August 7, 2013

CASE NUMBER: CON2013-00015

APPLICANT/OWNER: Gary and Debra Lofland (applicants)

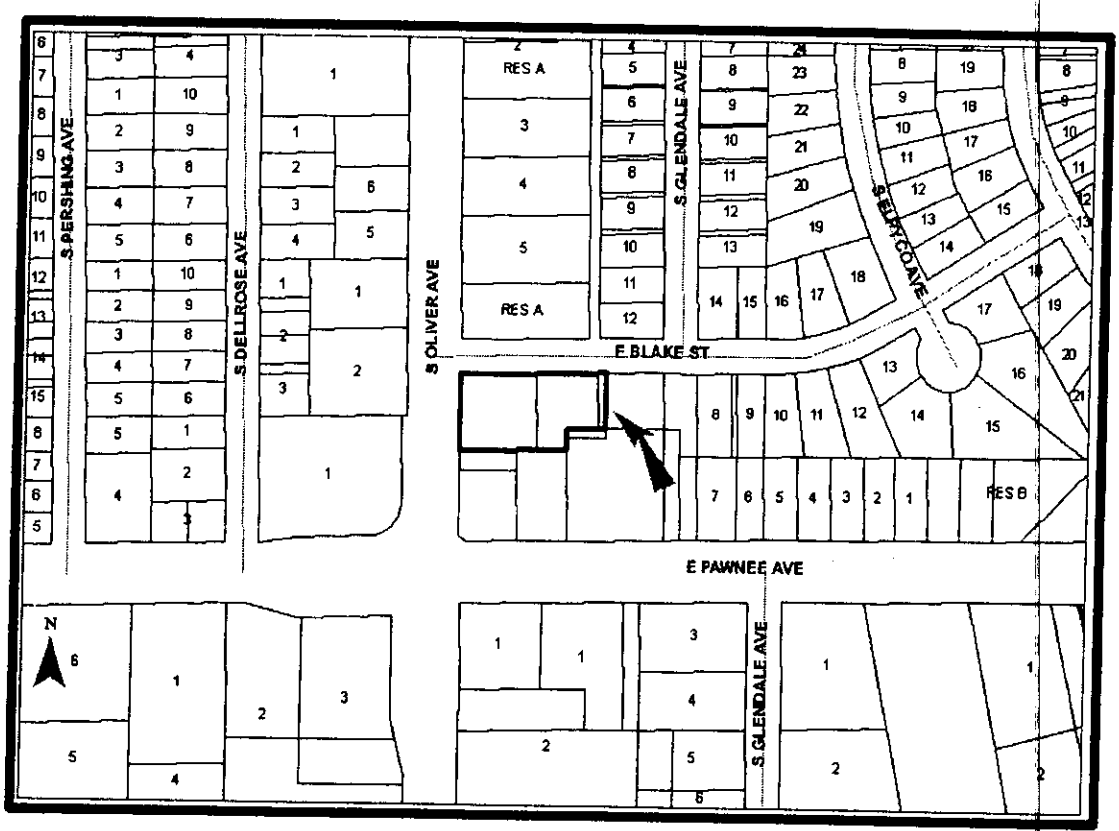
REQUEST: Conditional Use to allow a Nightclub in the City

CURRENT ZONING: LC Limited Commercial (LC)

SITE SIZE: Approximately 0.42-acres

LOCATION: Generally located north of Pawnee Avenue, on the southeast corner of Oliver Avenue and Blake Street (2304 S Oliver)

PROPOSED USE: Live music, entertainment, drinks and food



BACKGROUND: The LC limited Commercial (LC) zoned site is one of four small LC zoned site/businesses located on the northeast corner of Oliver and Pawnee Avenues. Recent license records track the site's stand alone building operating as a full service restaurant (DER) from 2005 to the present. Per the Unified Zoning Code (UZC), Sec.II-B.13.b.; a DER, is a restaurant that derives in a six-month period less than fifty percent (50%) of its gross revenues from the preparation and retail sale of alcoholic liquor or cereal malt beverage for consumption on the premises.

The applicants' propose to continue to serve food, but with no limit to the sale of alcoholic liquor or cereal malt beverage for consumption on the premises. They also propose to provide live entertainment, including karaoke, live bands, fund raisers, etc. The UZC defines all of the above combined activities as a Nightclub in the City; Sec.II-B.9.b.; "...an establishment located in the City that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor (drinks) are offered, consumed or served to the public or its members, and which may or may not serve food." When a nightclub is located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District, approval of a Conditional Use is required; UZC, Sec.III-D6.w. The nearest residential zoning district to the site is a TF-3 zoned duplex, located approximately 60 feet north of the site, across Blake. The nearest single-family residences are located approximately 170 feet east (zoned TF-3) of the site and approximately 180 feet northeast (zoned SF-5 Single-Family Residential {SF-5}) of the site, across Blake Street. A church is located approximately 100 feet west of the site across Oliver Avenue.

The applicants have provided an aerial of the 18,276-square foot platted site. The aerial shows paved parking on the Oliver Avenue/west side of the site. It also shows unpaved parking on the east side of the site. Per the UZC, Sec.IV.A2.b; non-residential parking lots in the City are required to be paved with asphalt, concrete or similar materials, not including gravel or rock. Access to the site includes one drive onto Oliver, an arterial street, and two drives onto Blake Street, a local two-lane residential street. The Appraiser's link has the building listed as 2,400-square feet. A nightclub requires more parking than a restaurant; one space per two occupants, as opposed to one space per three occupants. Applying 15-square feet of space needed per occupant, or 30-square feet per two occupants for one parking space, the site would need to provide 80 parking spaces; this total could vary more or less depending on the Fire Marshall's approved occupancy. The applicant needs to provide the seating capacity of the building to address the new parking standards if the Conditional Use is approved.

As noted the site is one of four small LC zoned site/businesses located on the northeast corner of Oliver and Pawnee Avenues. The other businesses are a south abutting liquor store, an east abutting auto repair garage and a southeast abutting small retail strip, that has (but not limited to) a Subway fast food restaurant and a Cowley County Junior College extension office. MF-29 Multi-family Residential (MF-29) zoned vacant land is also located southeast of the site, along the north side of Pawnee. A mostly SF-

5 Single-Family Residential (SF-5) zoned single-family residential neighborhood is located east of the auto repair garage; there is also some TF-3 Two-Family Residential zoning mixed into the area. North of the site, across Blake Street, is a LC zoned furniture store, TF-3 zoned duplexes, and the just noted SF-5 zoned single-family residential neighborhood. A LC zoned apartment complex is located north of the furniture store. West of the site across Oliver is a LC zoned pawn shop and church and SF-5 zoned single-family residences.

There is more LC and GC General Commercial (GC) zoned nonresidential development located south of Pawnee than in the area located north of Pawnee, where the subject site is located. The area south of Pawnee is dominated by the LI Limited Industrial (LI) zoned aircraft plants and the AFB Air Force Base (AFB) zoned McConnell Air Force base. The closest of these aircraft supporting properties to the site (Spirit being the largest) is the LI zoned Cessna facilities located approximately ½-mile southeast of the site, across Pawnee Avenue. The north-south running Oliver Avenue bisects this aircraft complex land into east and west halves. The LC and GC zoned development located south of Pawnee includes (but is not limited to): car lots; vacant land; pawn shops; retail; small office warehouses; a bowling alley; a DER; a restaurant; an electric substation; a US Post Office sorting facility; some apartments, and; maybe two bars located approximately 900-1,800 feet south of the site. Unlike the immediate neighborhood around the site, there is no single-family residential development located around these bars.

CASE HISTORY: The site is located on a portion of Reserve H, McAdam Acres Addition, which was recorded with the Register of Deeds July 5, 1951. The applicants were advised to apply for a Conditional Use, when they were denied their Entertainment Establishment license by the City. Staff has received a letter protesting the request.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, TF-3, SF-5	Furniture store, apartments, duplexes, single-family residences
SOUTH:	LC, MF-29, GC bars, fast	Liquor store, retail strips, vacant lands, DER, car lot, pawn shops, electric substation, bowling alley, food, self storage,
EAST:	LC, TF-3, SF-5	Auto repair, single-family residences
WEST:	LC, SF-5	Pawn shop, churches, single-family residences

PUBLIC SERVICES: The site has a drive onto Oliver Avenue. Oliver is a major arterial street at this location, with four lanes and turn lanes. The site also has two drives onto Blake Street, a paved two lane residential street. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "*2030 Wichita Functional Land Use Guide*" depicts this location as being appropriate for "local commercial," which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or

insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

The UZC requires a Conditional Use for a nightclub or a drinking establishment/tavern when they are located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District. The nearest residential zoning district to the site is a TF-3 zoned duplex, located approximately 60 feet north of the site, across Blake. The nearest single-family residences are located approximately 170 feet east (zoned TF-3) of the site and approximately 180 feet northeast (zoned SF-5 Single-Family Residential {SF-5}) of the site, across Blake Street. A church is located approximately 100 feet west of the site across Oliver Avenue.

The site is not currently permitted for a nightclub. Planning could find no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub or a drinking establishment/tavern on the site. Approval of a Conditional Use for a nightclub at this site would introduce a new use to the area north of Pawnee Avenue along Oliver Avenue. Recent license records track the site's stand alone building operating as a full service restaurant (DER) from 2005 to the present.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site does have one drive onto Oliver Avenue, an arterial street. It also has two drives onto Blake Street, a local residential street. Access onto Blake allows opportunities for nightclub traffic to spill over into the adjacent single-family residential neighborhood. The east abutting LC auto repair garage provides approximately 170 feet of buffer space between the site and a single-family residential neighborhood. The 60 feet of Blake Street right-of-way offers no buffer for the TF-3 zoned duplex(s) and the SF-5 zoned single-family residential neighborhood, as the site has two drives onto Blake and the east most portion of its parking is facing the TF-3 zoned duplex(s).

The site is located within western edge of the McConnell AFB Joint Land Use Study Area Boundary; JLUS. The JLUS is intended to promote and protect the future operational mission capacity of McConnell AFB, including evaluation of the compatibility of existing and future land use within the JLUS Area Boundary. The current request will not compromise the mission of McConnell AFB. The site is located within Airport Hazard Zone Area C, which establishes height restrictions. The current request will not be impacted by the Airport Hazard Zone Area C.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **DENIED.**

This recommendation is based on the following findings:

(1) **The zoning, uses and character of the neighborhood:** The site is one of four small LC zoned site/businesses located on the northeast corner of Oliver and Pawnee Avenues. The other businesses are a south abutting liquor store, an east abutting auto repair garage and a southeast abutting small retail strip, that has (but not limited to) a Subway fast food restaurant and a Cowley County Junior College extension office. MF-29 Multi-family Residential (MF-29) zoned vacant land is also located southeast of the site, along the north side of Pawnee. A mostly SF-5 Single-Family Residential (SF-5) zoned single-family residential neighborhood is located east of the auto repair garage; there is also some TF-3 Two-Family Residential zoning mixed in the area. North of the site, across Blake Street, is a LC zoned furniture store, TF-3 zoned duplexes, and the just noted SF-5 zoned single-family residential neighborhood. A LC zoned apartment complex is located north of the furniture store. West of the site across Oliver is a LC zoned pawn shop and church and SF-5 zoned single-family residences.

There is more LC and GC General Commercial (GC) zoned nonresidential development located south of Pawnee than in the area located north of Pawnee, where the subject site is located. The area south of Pawnee is dominated by the LI Limited Industrial (LI) zoned aircraft plants and the AFB Air Force Base (AFB) zoned McConnell Air Force base. The closest of these aircraft supporting properties to the site (Spirit being the largest) is the LI zoned Cessna facilities located approximately ½-mile southeast of the site, across Pawnee Avenue. The north-south running Oliver Avenue bisects this aircraft complex land into east and west halves. The LC and GC zoned development located south of Pawnee includes (but is not limited to): car lots; vacant land; pawn shops; retail; small office warehouses; a bowling alley; a DER; a restaurant; an electric substation; a US Post Office sorting facility; some apartments, and; maybe two bars located approximately 900-1,800 feet south of the site. Unlike the immediate neighborhood around the site, there is no single-family residential development located around these bars.

(2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC, which accommodates office and retail uses, including its current use as a DER. Approval of a Conditional Use would permit the site to become a nightclub, which would introduce a new use into the neighborhood. The site could continue to be used as permitted by right in the LC zoning district.

(3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Typical concerns about nightclubs include bad behavior resulting from unlimited liquor sales, the noise from music and dancing, and the hours of the nightclub having a detrimental impact on the adjacent SF-5 and TF-3 zoned single-family residential neighborhood. These are new negative considerations for the single-family residential neighborhood and the neighborhood as a whole. Denial of the request could have a negative financial impact on the applicants.

(4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2030 Wichita Functional Land Use Guide" depicts this location as being appropriate for "local commercial," which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

The UZC requires a Conditional Use for a nightclub or a drinking establishment/tavern when they are located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District. The nearest residential zoning district to the site is a TF-3 zoned duplex, located approximately 60 feet north of the site, across Blake. The nearest single-family residences are located approximately 170 feet east (zoned TF-3) of the site and approximately 180 feet northeast (zoned SF-5 Single-Family Residential {SF-5}) of the site, across Blake Street. A church is located approximately 100 feet west of the site across Oliver Avenue.

The site is not currently permitted for a nightclub. There is no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub or a drinking establishment/tavern on the site. Approval of a Conditional Use for a nightclub at this site would introduce a new use to the area north of Pawnee Avenue along Oliver Avenue. Recent license records track the site's stand alone building operating as a full service restaurant (DER) from 2005 to the present.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site does have one drive onto Oliver Avenue, an arterial street. It also has two drives onto Blake Street, a local residential street. Access onto Blake allows opportunities for nightclub traffic to spill over into the adjacent single-family residential neighborhood. The east abutting LC auto repair garage provides approximately 170 feet of buffer space between the site and a single-family residential neighborhood. The 60 feet of Blake Street right-of-way offers no buffer for the TF-3 zoned duplex(s) and the SF-5 zoned single-family residential neighborhood, as the site has two drives onto Blake and the east most portion of its parking is facing the TF-3 zoned duplex(s).

The site is located within western edge of the McConnell AFB Joint Land Use Study Area Boundary; JLUS. The JLUS is intended to promote and protect the future operational mission capacity of McConnell AFB, including evaluation of the compatibility of existing and future land use within the JLUS Area Boundary. The current request will not compromise the mission of McConnell AFB. The site is also located within Airport Hazard Zone Area C, which establishes height

restrictions. The current request will not be impacted by the Airport Hazard Zone Area C.

(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.

However, if the MAPC considers the request for a nightclub appropriate, Planning recommends the following conditions:

(1) No outside loudspeakers or entertainment are permitted.

(2) The applicant needs to provide the seating capacity of the building to address the parking standards for a nightclub if the Conditional Use is approved. Parking must be per code. Relief can be sought through Administrative Adjustment. If a variance is required, approval of the Conditional Use is contingent on approval of the variance.

(3) Paving of the east portion of the site must be completed within 6 months of approval of the Conditional Use by the appropriate governing body. All permits and inspections, including a drainage plan for the required paved parking, must be submitted and approved.

(4) Landscaping and screening will be per the Unified Zoning Code and the Landscape Ordinance.

(5) No pole lights taller than 14 feet, including the base. All outside lights will be designed to disperse light onto the subject site and away for residential development.

(6) The site will be developed with an approved revised site plan, showing, but not limited to, screening, landscaping and parking. The site plan must be submitted for review within 60-days of approval by the appropriate governing body.

(7) 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 the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

CON2013-15

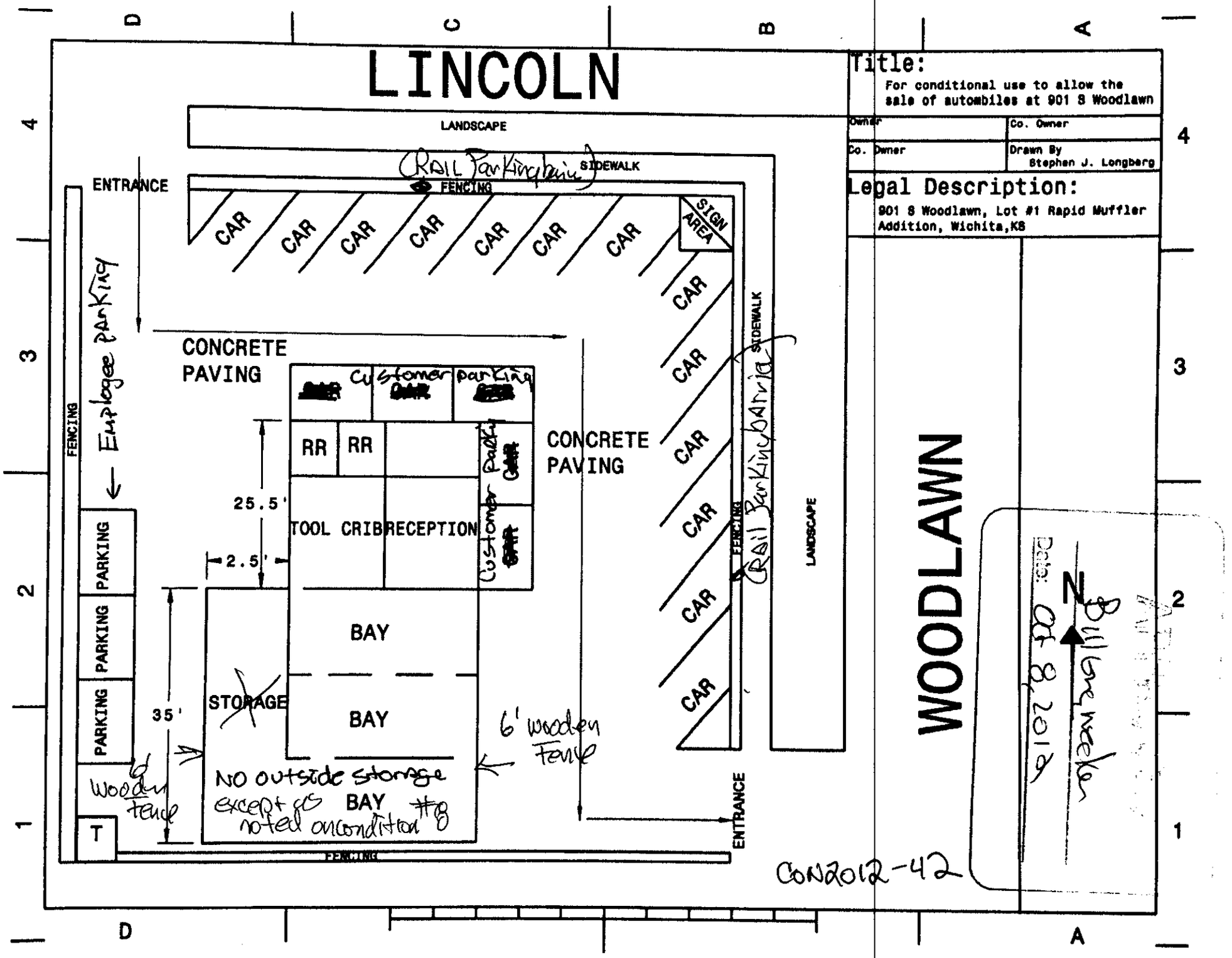
Magoo's Bar & Grill 2304 S Oliver Wichita KS 67218 Application For Conditional Use: Entertainment License

N 130.54 FT W 140 FT BLOCK H MC ADAM ACRES ADDITION and 35.49 FT W 55 FT N 130.58 FT TO BEG MC ADAM ACRES ADDITION 95 FT TO BEG MC ADAM ACRES ADDITION

BEG 140FT E NW COR BLOCK H E 107.44FT S 95 FT W 52.45 FT S and BEG 105 FT W NE COR BLOCK H W 15 FTS 95 FT E 15 FT N



20 marked parking spaces


LINCOLN
WOODLAWN
LANDSCAPE
SIDEWALK
FENCING
ENTRANCE
CAR
SIGN AREA
CONCRETE PAVING
Customer parking
RR
TOOL CRIB
RECEPTION
BAY
STORAGE
PARKING
25.5'
2.5'
35'
6' wooden fence
NO outside storage except as noted on condition #8
ENTRANCE
Title:
For conditional use to allow the sale of autombiles at 901 S Woodlawn
Owner
Co. Owner
Co. Owner
Drawn By
Stephen J. Longberg
Legal Description:
901 S Woodlawn, Lot #1 Rapid Muffler Addition, Wichita, KS
N
Date: 8/8/2012
CON2012-42