CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

September, 2010

SNH Entertainment, LLC
C/O Steve Holt
4311 W. Central
Wichita, KS 67212

Maisch Family L P
1940 S Oliver
Wichita, KS 67218

CORRECTED RESOLUTION

RE: **CON2010-00020** - City Conditional Use request to permit a nightclub in the city within 300 feet of residential zoning and outdoor service of food and drink within 200 feet of residential zoning, generally located on the southeast corner of West Central Avenue and Tracy Street (4301and 4311 West Central).

Dear Ladies and Gentlemen:

At its regular meeting on **June 17, 2010**, 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 stated in the enclosed resolution.

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

Sincerely,

Dale Miller
Current Plans Manager
Current Plans Division

DLM:mc
Enclosure

RE: CON2010-00020 - City Conditional Use request to permit a nightclub in the city within 300 feet of residential zoning and outdoor service of food and drink within 200 feet of residential zoning, generally located on the southeast corner of West Central Avenue and Tracy Street (4301and 4311 West Central).

Copies to: Robert Kaplan, 301 N. Main, Ste 1600, Wichita, KS 67202
La Placita Park, Greg Boyajian, 3325 W 9Th, Wichita, KS 67203
Orchard Breeze, Brad Hinkle, 5214 W. First, Wichita, KS 67212
Orchard Park, Donna Aldrich, 1013 N Compton, Wichita, KS 67212
Sunflower, Judy Morris, 526 Leonine, Wichita, KS 67213
WCC IV, Paul Gray, Mail Stop 1-13
N.A. IV, Kelli Glassman, Mail Stop 1-135
Julianne Kallman, Engineering, Mail Stop 1-71
Kurt Schroeder, Office of Central Inspection, Mail Stop 1-72
J. R. Cox, Office of Central Inspection, Mail Stop 1-72
Paul Hays, Office of Central Inspection, Mail Stop 1-72

CONDITIONAL USE RESOLUTION NO. CON2010-00020

WHEREAS, SNH Entertainment, LLC and Maisch Family L P, (Owner/Applicant); pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requests a Conditional Use to permit a nightclub in the city within 300 feet of residential zoning and outdoor service of food and drink within 200 feet of residential zoning on property zoned LC Limited Commercial ("LC") described as:

Lots 1, 2 and 3 Alton Powell's 1st Addition, Wichita, Sedgwick County, Kansas, generally located on the southeast corner of West Central Avenue and Tracy Street (4301and 4311 West Central).

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 June 17, 2010, 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 permit a nightclub in the city within 300 feet of residential zoning and outdoor service of food and drink within 200 feet of residential zoning on property zoned LC Limited Commercial ("LC") described as:

> Lots 2 and 3 Alton Powell's 1st Addition, Wichita, Sedgwick County, Kansas, generally located on the southeast corner of West Central Avenue and Tracy Street (4301and 4311 West Central).

Approved subject to the following conditions:

1. A "nightclub in the city" with outdoor service of food and drink is permitted on the subject site so long as the use is developed, operated and maintained in substantial compliance with the approved site plan, all applicable city ordinances, including: zoning, building, fire, health codes or licensing requirements.
2. Vegetation per the landscape ordinance shall be installed prior to beginning operations as a "nightclub in the city" with outdoor service of food or drink. Except for drive-way entrances and exits, the application area (including the area identified as un-used land on the site plan) located south of the existing building shall be screened from ground view by a six-foot fence, masonry wall, berm or a combination of the three. Shade trees, as defined by the landscape ordinance, with a minimum caliper of two-inches shall be planted at intervals of 20 feet along the south and eastern property line described in the previous sentence.
3. Parking shall be provided per code. Parking areas shall be paved and striped. Access drives to the property shall be modified only with the approval of the Traffic Engineer or action of the MAPC or City Council. Any parking lot lighting standards located south of the existing building shall not exceed 15 feet in height, including the base. Any exterior lighting affixed to the façade of the building shall be directed downward so that light does not spill over to any property residentially used and developed with a residence.
4. No outdoor speakers or outdoor sound amplification devices are permitted.

5. A revised site plan depicting "as built" improvements on the site shall be submitted and be approved prior to the issuance of the resolution authorizing the nightclub in the city with outdoor service of food and drink.
6. 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 IV of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

Adopted this 17th Day of June 2010

METROPOLITAN AREA PLANNING COMMISSION

G. Nelson Van Fleet, Chair MAPC

ATTEST:

John L. Schlegel, Secretary

WICHITA–SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM NO. 8

STAFF REPORT

DAB IV 6-2-10
MAPC 6-17-10

CASE NUMBER: CON2010-00020

APPLICANT/AGENT: Maisch Family, LP (owner/applicant) / Robert Kaplan (agent)

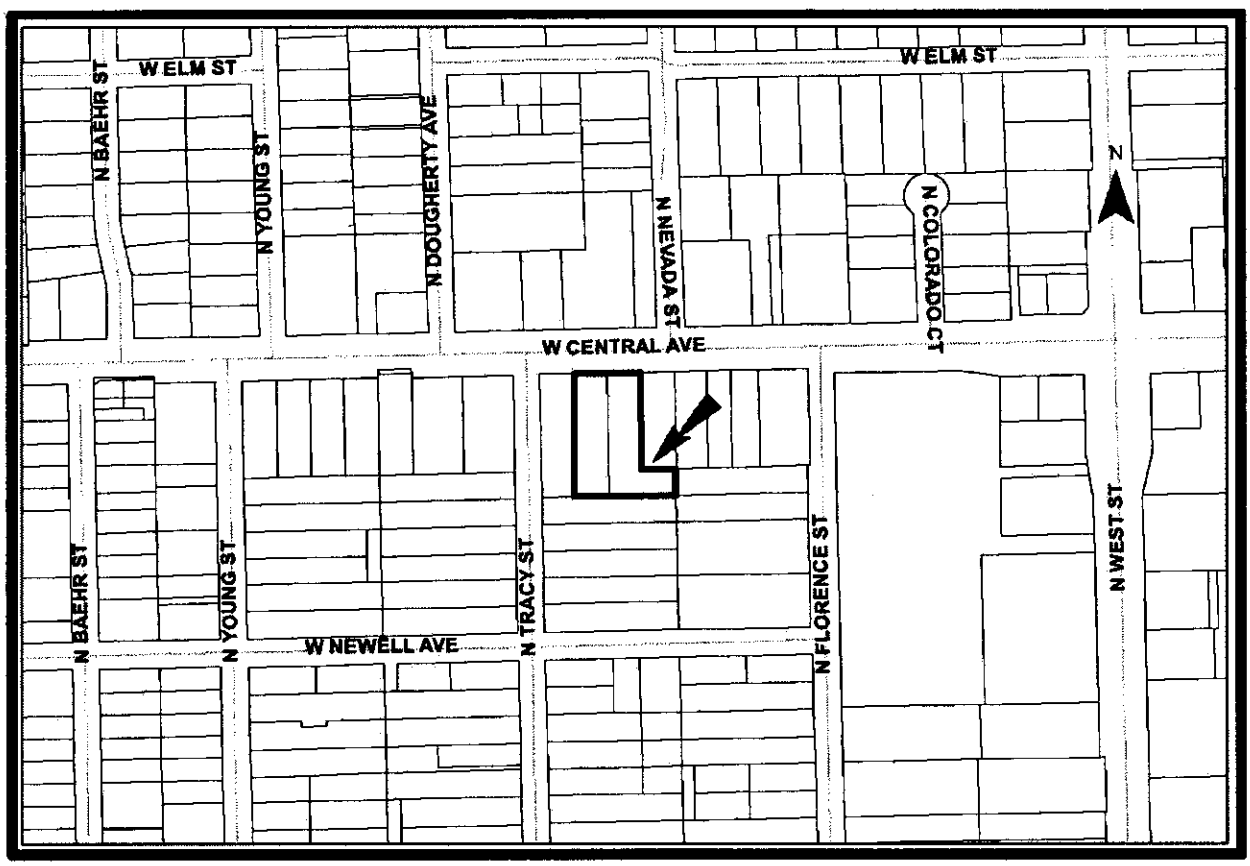
REQUEST: Nightclub in the City with outdoor service of food and drink

CURRENT ZONING: LC Limited Commercial ("LC")

SITE SIZE: .47 acre

LOCATION: Southeast of West Central Avenue and North Tracy Street

PROPOSED USE: Nightclub in the City with outdoor service of food and drink



BACKGROUND: The applicant owns approximately 1.45 acres platted as Lots 1, 2 and 3, Alton Powell's 1st Addition, located at the southeast corner of North Tracy Street and West Central Avenue. The three lots are zoned LC Limited Commercial ("LC"), and are developed with a strip retail center containing approximately 9,500 square feet that is developed as a "tavern and drinking establishment" and a restaurant. Lots 2 and 3, Alton Powell Addition are .99 acre in size, are addressed as 4301 and 4311 West Central Avenue and are the subject of this Conditional Use application - a request for a "nightclub in the city" with outdoor service of food and drink.

A "nightclub in the city" is defined as an "entertainment establishment" that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor are offered, consumed or served to the public or its members, and which may or may not serve food. (See Sec II-B.9.b) A "nightclub in the city" is first permitted in the LC zoning district subject to Supplementary Use Regulation Sec. III-D.6.w, which states that even though a "nightclub in the city" is permitted by-right in some districts, if the proposed "nightclub in the city" is located within 300 feet of a church, public park, school or residential zoning, then it requires Conditional Use approval. In this instance, the property located immediately south of the application area is zoned SF-5 Single-family Residential ("SF-5") as is the property located approximately 137 feet (measured lot line to lot line) to the west, across North Tracy Street.

The current tenant of the subject site occupies approximately 6,250 square feet of the strip center, and is classified as a "drinking establishment restaurant" ("DER"), which means that the establishment's percentage of food sales is larger than its percentage of alcohol sales. The applicant has submitted a site plan that depicts a floor area of 125 feet by 50 feet. The interior floor area appears to be situated predominantly with pool tables with lesser area devoted to seating, a dance floor served by a disc jockey, a kitchen, an office and dart boards. Located on the south side of the building is an outdoor patio area of 50 feet by 60 feet (3,000 square feet) enclosed by a three-foot tall iron fence. The proposed outdoor seating area would be approximately 100 feet away from the SF-5 zoned property located immediately to the south. A six-foot wooden fence exists along the southern property line. Thirty to thirty-one parking spaces are shown on the site plan, in front of and behind the existing building. The paved parking area located south of the building is approximately 105 feet from the applicant's southern property line.

The site currently has three points of ingress and egress – one from Central and two from Tracey. Although not listed as proposed on the site plan, a new drive-way is shown on the extreme eastern side of the site. The current access drive off of Central is located approximately 124 further east of the proposed drive, closer to Tracy. The site plan shows the eastern half of the current drive that is centered between Lots 1 and 2. The lot east of the application area, owned and developed by others, currently has a drive-way located within 60 feet of the applicant's proposed eastern drive. The access management policy contains a standard of 200 feet of separation between drive-ways and the drive is restricted to right-in, right-out only.

Outdoor service of food and drink is permitted by-right, subject to five development standards, as

an accessory use to a Nightclub in the City unless it is located within 200 feet of church, public park, school or residential zoning, then the outdoor service of food and drink also requires Conditional Use approval. The five development standards for the outdoor service of food and drink area are: 1) parking and restroom facilities are required if the outdoor area serves more than 16 occupants; 2) limited to a five-decibel increase in normal background off-site noise levels; 3) outdoor areas are to be screened with materials consistent with Sec. IV-B from ground level view from any residential-zoned property located within 150 feet of the outdoor area; 4) outdoor lighting shall comply with Sec. IV-B.4 and 5) outdoor uses shall be constructed and maintained in compliance with all other licenses, regulations and requirements of all other applicable codes. "Nightclubs in the city" may remain open until 2:00 A.M. whereas a "tavern and drinking establishment" must close at midnight. A DER does not have a mandatory closing time.

Parking for a Nightclub in the City is calculated at the rate of one space per two occupants. The proposed site plan depicts landscaping in the street right-of-way. Landscaping is not permitted in street right-of-way without the approval of the Traffic Engineer, and may require a minor street permit that carries an annual fee.

Properties fronting both sides of Central Avenue - north, east and immediately west of the application area – are zoned LC, and are primarily developed with retail commercial uses, such as: auto parts sales, nursing uniform sales, casket sales, fast food restaurant and car repair. The property immediately west of the application area is owned by the applicant, but is not part of this application and is developed with as a tavern and drinking establishment. The western 215 feet of the land located along Tracy, south of Central Avenue, are zoned GC General Commercial ("GC") and are developed with a body shop. South of the body shop, on the west side of Tracy, all of the properties are zoned SF-5. Those properties are developed with single-family homes. SF-5 zoning and single-family residences are also located on the east side of Tracy, south of the applicant's ownership.

CASE HISTORY: In 2003, the Maisch Family, LP, filed a similar request, Conditional Use 2003-00022 for a "tavern and drinking establishment" on Lots 1, 2 and 3, Alton Powell Addition. Planning staff originally recommended denial of the application; however, CON2003-00022 was modified and staff recommended approval. CON 2003-00022 was subsequently withdrawn by the applicant after receiving a recommendation of approval (7-0) from District Advisory Board IV but prior to the hearing by the Metropolitan Area Planning Commission (MAPC).

The subject property was originally platted as part of the Parkwilde Addition, which was recorded in 1887 as a residential subdivision. In 1971, the property was replatted to the Alton Powell Addition. In 1973, the property was once again replatted as the Alton Powell 1st Addition and rezoned to LC.

ADJACENT ZONING AND LAND USE:

NORTH: LC Limited Commercial; auto parts sales, casket sales, fast food
SOUTH: SF-5 Single-family Residential; single-family residential

EAST: LC Limited Commercial and GO General Office; music store
WEST: LC Limited Commercial, GC General Commercial and SF-5 Single-family Residential; tavern and drinking establishment, auto body shop, single-family residences

PUBLIC SERVICES: Central Avenue as this location is a paved five-lane arterial with 50 feet of half-street right-of-way and center turn lanes. The application area shares a driveway onto Central with the lot contiguous to the west. Tracy is a paved local street with 30 feet of half-street right-of-way. Two drive-ways are located on Tracy that provide direct access to the lot located west of the application area and indirect access to the application area since they appear to share parking and internal circulation.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" map depicts this site as appropriate for "local commercial" uses. Property so designated is appropriate for commercial, office and personal service uses that do not have a significant regional market draw, such as: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. A "nightclub in the city" with outdoor service of food and drink is permitted on the subject site so long as the use is developed, operated and maintained in substantial compliance with the approved site plan, all applicable city ordinances, including: zoning, building, fire, health codes or licensing requirements.
2. Vegetation per the landscape ordinance shall be installed prior to beginning operations as a "nightclub in the city" with outdoor service of food or drink. Except for drive-way entrances and exits, the application area (including the area identified as un-used land on the site plan) located south of the existing building shall be screened from ground view by a six-foot fence, masonry wall, berm or a combination of the three. Shade trees, as defined by the landscape ordinance, with a minimum caliper of two-inches shall be planted at intervals of 20 feet along the south and eastern property line described in the previous sentence.
3. Parking shall be provided per code, and prior to beginning operation as a night club in the city with outdoor service of food and drink, parking areas shall be paved and striped. Access drives to the property shall be modified only with the approval of the Traffic Engineer or action of the MAPC or City Council. Any parking lot lighting standards located south of the existing building shall not exceed 15 feet in height, including the base. Any exterior lighting affixed to the façade of the building shall be directed downward so that light does not spill over to any property residentially used and developed with a residence.
4. No outdoor speakers or outdoor sound amplification devices are permitted.
4. A revised site plan depicting "as built" improvements on the site shall be submitted and be approved prior to the issuance of the resolution authorizing the nightclub in the city with outdoor service of food and drink.
5. 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 IV 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 properties fronting Central Avenue are overwhelmingly zoning LC, are used for primarily for retail or personal service uses, such as auto parts, fast food or casket sales. There is an existing tavern and drinking establishment located immediately next door to the application area. Land to the south and southwest, along Tracy, is zoned SF-5 and developed with single-family residences. Land to the southeast is developed with an office.

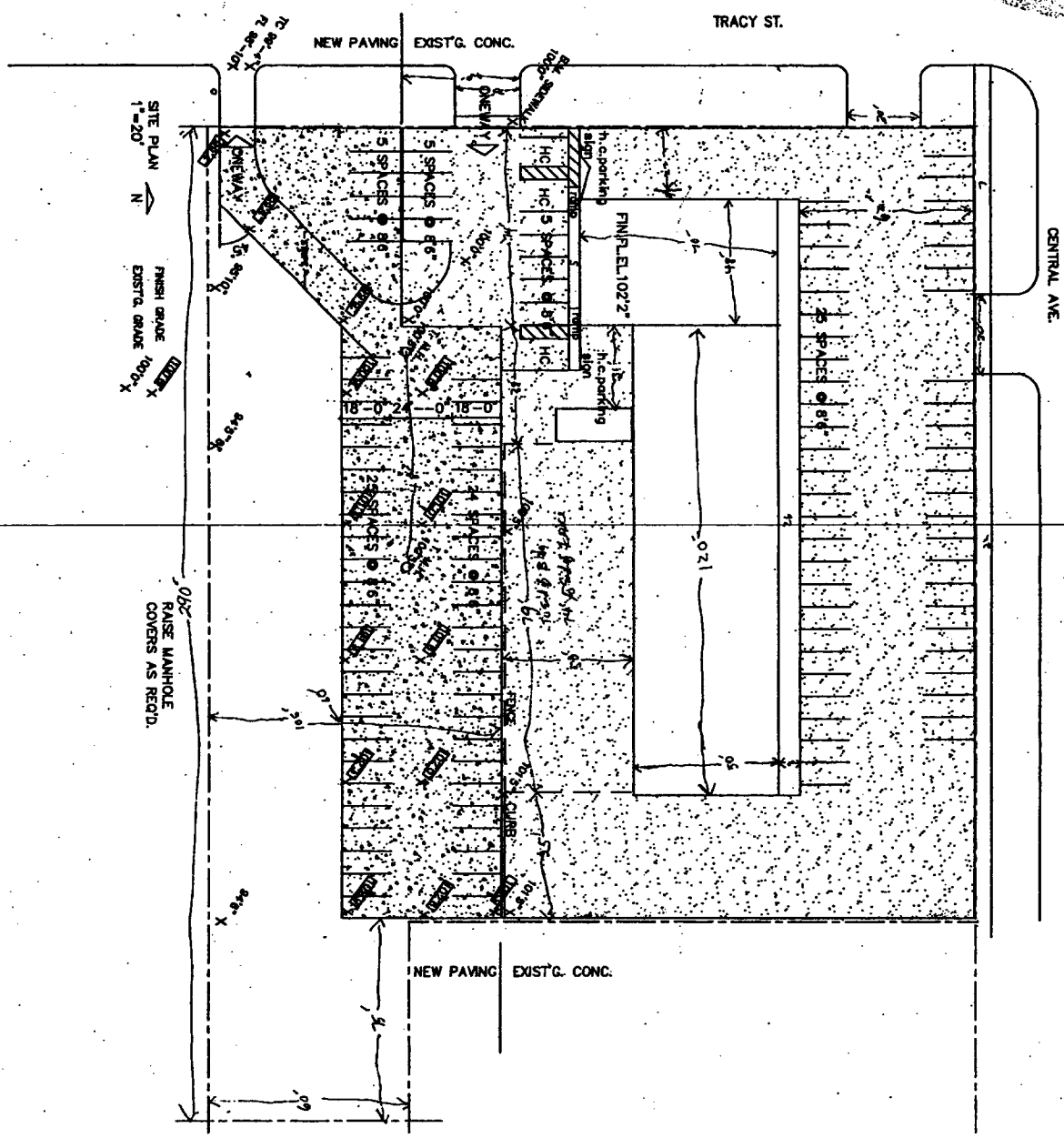
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC which permits a wide range of retail sales, office or residential uses. The wide range of uses allowed by the site's existing zoning provides the potential for the site to be put to economically viable uses as currently zoned.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: In other locations within the city some nightclubs have become problems for adjacent neighbors as well as for law enforcement due to the increased potential for: increased noise and car lights after midnight, litter, parking spilling over into a neighborhood and less than optimal public behavior. However, the recommended conditions of approval should minimize those detrimental impacts that can be addressed by design considerations, such as lighting and sound amplification.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Presumably the applicant is seeking the nightclub in the city with outdoor food and beverage service in order to increase his potential for economic return. Some portion of the public may appreciate an additional choice for after midnight entertainment and alcohol consumption; others may see the change in closing time from midnight to 2:00 A.M. allowed for a nightclub in the city as the potential for two more hours of noise, lights and car traffic.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide" map depicts this site as appropriate for "local commercial" uses. Property so designated is appropriate for commercial, office and personal service uses that do not have a significant regional market draw, such as: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

6. Impact of the proposed development on community facilities: None identified.



SITE PLAN

APPROVED 4-23-15 BY DM

PARKING LOT for CABOOSE CLUB
4311 W. CENTRAL, WICHITA, KS.

SHEET A1

DATE:

REVISED:

SANDY ROBERTS ARCHITECT
667 OAK FOREST LN. DERBY, KS. 67037 -
316-788-8699-M 2040482
FAX 316-788-3605



#2 Six ft fence along South end of property

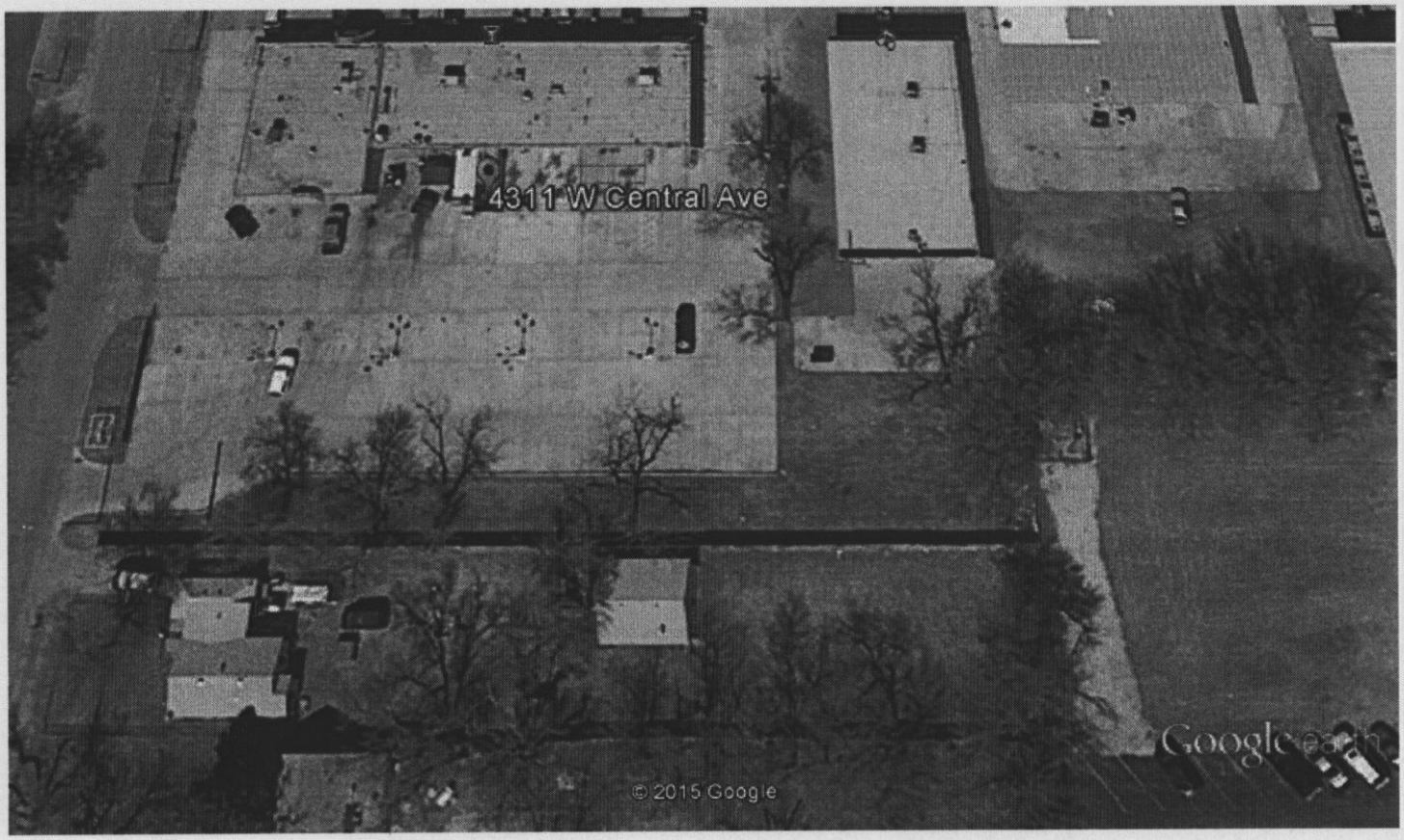
Shade trees also along South end of property

lighting in parking lot doesn't exceed 15'.

SITE PLAN

APPROVED 4-23-15 BY DM

CON 2010-00020



Google earth

feet 200
meters 60

SITE PLAN

APPROVED 4-23-15 BY