

AGENDA ITEM 4A

Conditional Use Permit Amendment

12040 McDermott Plaza

Southport Center, LLC & Beyond Golf, LLC



**CITY OF LA VISTA
PLANNING DIVISION
RECOMMENDATION REPORT**

CASE NUMBERS: PCUP21-0003;

FOR HEARING OF: JULY 15, 2021
REPORT PREPARED ON: JULY 7, 2021

I. GENERAL INFORMATION

A. APPLICANT(S):

Beyond Golf, LLC
Josh Galvin
12040 McDermott Plaza, #330
La Vista, NE 68128

Southport Center, LLC
John L. Hoich
5410 N. 279th Street
Valley, NE 68064

B. PROPERTY OWNER:

Southport Center, LLC
John L. Hoich
13548 Discovery Drive, STE J
Omaha, NE 68137

C. LOCATION: 12040 McDermott Plaza, #330, La Vista, NE 68128.

D. LEGAL DESCRIPTION: Lot 4 Southport East Replat Six

E. REQUESTED ACTION(S): Approval of a Conditional Use Permit amendment to allow for an expansion of the Beyond Golf establishment, including expansion of both the interior and exterior spaces.

F. EXISTING ZONING AND LAND USE: C-3 Highway Commercial/Office Park District, PUD Planned Unit Development District (Overlay District), and Gateway Corridor District (Overlay District).

G. PURPOSE OF REQUEST: To allow for the expansion of Beyond Golf, considered a "tavern and cocktail lounge", to 5,100 square feet of interior space and 1,400 square feet of exterior patio space, from the previously permitted 3,693 square feet interior space and 375 square feet exterior space.

H. **SIZE OF SITE:** Approximately 2.84 acres.

II. BACKGROUND INFORMATION

A. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:

<u>Direction From Subject Property</u>	<u>Future Land Use Designation</u>	<u>Current Zoning Designation</u>	<u>Surrounding Development</u>
North	Commercial	C-3 Highway Commercial / Office Park District with a Planned Unit Development Overlay (Overlay District) and a Gateway Corridor Overlay (Overlay District)	Vacant Lots
East	Commercial; Parks & Recreation	C-3 Highway Commercial / Office Park District with a Planned Unit Development Overlay (Overlay District) and a Gateway Corridor Overlay (Overlay District) & TA Transitional Agriculture District and a Gateway Corridor Overlay (Overlay District)	Comfort Suites Hotel & proposed Multi-Sports Complex property
South	Commercial	C-3 Highway Commercial / Office Park District with a Planned Unit Development Overlay (Overlay District) and a Gateway Corridor Overlay (Overlay District)	Sonic Drive-In Restaurant
West	Commercial	C-3 Highway Commercial / Office Park District with a Planned Unit Development Overlay (Overlay District) and a Gateway Corridor Overlay (Overlay District)	Vacant Lot

B. **RELEVANT CASE HISTORY:** Beyond Golf was issued a Conditional Use Permit by the La Vista City Council on December 2, 2008 to construct and operate a "tavern and cocktail lounge" on Lot 4 Southport East Replat Six. The owner of Beyond Golf recently inquired about expanding their tenant bay (both indoor and outdoor spaces), which requires an amendment to this existing Conditional Use Permit.

C. APPLICABLE REGULATIONS:

1. Section 5.12 of the Zoning Regulations – C-3 Highway Commercial/Office Park District
2. Section 5.15 of the Zoning Regulations – PUD Planned Unit Development District (Overlay District)
3. Section 5.17 of the Zoning Regulations – Gateway Corridor District (Overlay District)
4. Article 6 of the Zoning Regulations – Conditional Use Permits

III. ANALYSIS

A. COMPREHENSIVE PLAN: Supporting the expansion of La Vista's local retail, restaurant, and entertainment establishments supports the La Vista Comprehensive Plan Goals Shop-1 and Shop-2, which read: "establish the city as a regional destination" and "establish the city as a place for local shopping and entertainment."

B. OTHER PLANS: N/A.

C. TRAFFIC AND ACCESS:

1. The multi-tenant building located at 12040 McDermott Plaza has driveway access onto Eastport Parkway, McDermott Plaza, and S 123rd Plaza.
2. The outdoor patio shall not impede pedestrian traffic.

D. UTILITIES: N/A

E. PARKING REQUIREMENTS:

1. There are currently 143 parking spaces servicing the multi-tenant commercial building located at 12040 McDermott Plaza, 17 of which are provided off-site, as allowed by the City through the PUD Site Plan approved for Lots 4 & 5 Southport East Replat 6. Per the PUD Ordinance for Southport East Replat 6 & 9 (Ordinance No. 1045), off-street parking shall be provided in the aggregate ratio of four and a half (4.5) off-street parking spaces per one thousand (1,000) square feet of gross leasable floor area. For 12040 McDermott Plaza, this requirement would equate to the provision of 99 off-street parking stalls.
2. Sufficient parking exists for the proposed use at this time, however, in the event that additional parking spaces are warranted by parking demand, the property owner will be required by the City to provide additional parking, per condition 2.f. of the draft Conditional Use Permit attached to this staff report as Exhibit "C".

IV. REVIEW COMMENTS:

- A. The proposed improvements to the outdoor seating area, including the pergola, fencing, and patio furniture, will need to be approved through the City's Design Review process and be in accordance with the Southport East Design Guidelines, the Gateway Corridor District Guidelines, and the PUD Ordinance for Southport East Replats 6 & 9.
- B. Additional information about the proposed use is included in the "Operating Statement" as an attachment to the Draft Conditional Use Permit attached to this staff report as Exhibit "C".

V. STAFF RECOMMENDATION – CONDITIONAL USE PERMIT:

Staff recommends approval of the Conditional Use Permit amendment for Beyond Golf for Lot 4 Southport East Replat Six, as the request is consistent with La Vista's Comprehensive Plan and Zoning Ordinance.

VI. ATTACHMENTS TO REPORT:

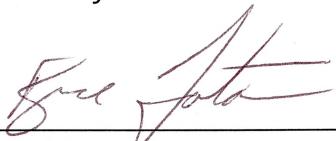
- A. Vicinity Map
- B. Review Letter
- C. Draft Conditional Use Permit

VII. COPIES OF REPORT SENT TO:

- A. Josh Galvin, Beyond Golf, LLC
- B. John Hoich, Southport Center, LLC
- C. Public Upon Request



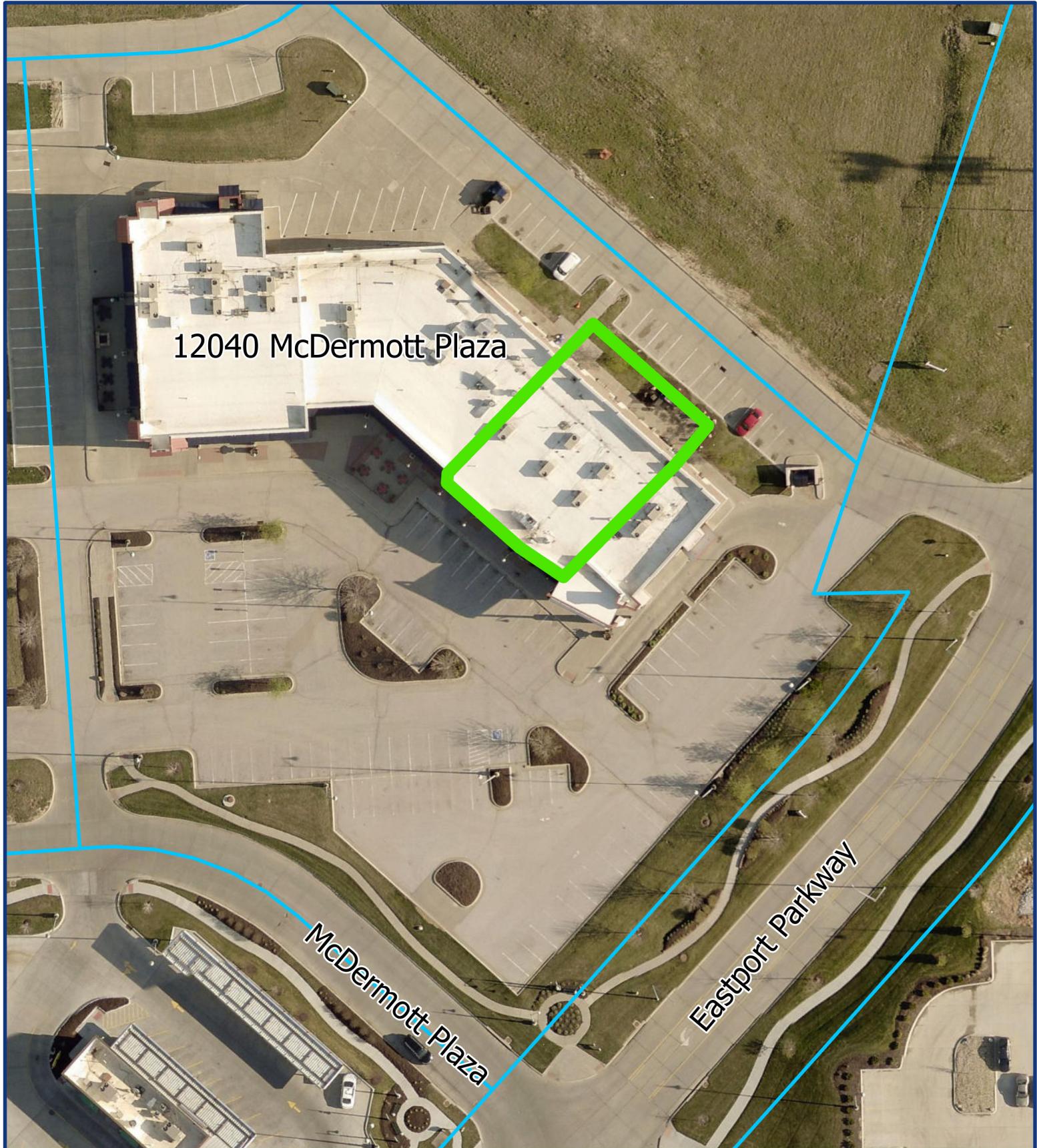
Prepared by: Assistant Planner



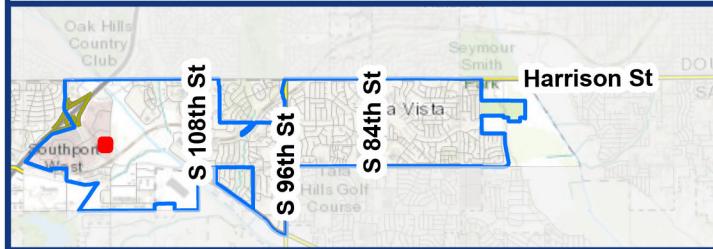
Community Development Director

7/8/21

Date



Conditional Use Permit Amendment Vicinity Map



Legend

- La Vista Parcels
- Beyond Golf with Expansion





June 24, 2021

Beyond Golf
Attn: Josh Galvin
12040 McDermott Plaza, #330
La Vista, NE 68128

RE: Conditional Use Permit Amendment – Initial Review
Lot 4 Southport East Replat Six

Dear Mr. Galvin,

Thank you for your submittal of the above referenced Conditional Use Permit (CUP) application. Staff has reviewed the initial submittal and has provided the following initial comments:

1. Please update the site plan that was submitted for the patio to include the location of the proposed fencing. Please also confirm that the fencing will not block off the sidewalk abutting the building. It will need to be left open for ease of egress along that side of the property.
2. Will the proposed pergola/canopy be attached to the building? If so, it will need to meet the required 10-foot setback per the PUD Ordinance for Southport East Replats 6 & 9. This distance, per the Ordinance, is measured from the back of the curb (please see Exhibit "A" attached to this letter for clarification on where the back of curb is). Please confirm what this distance will be with the proposed pergola.
3. The proposed improvements to the outdoor seating area will need to be approved through the City's Design Review process and be in accordance with the Southport East Design Guidelines, the Gateway Corridor District Guidelines, and the PUD Ordinance for Southport East Replats 6 & 9. The cut sheet for the approved fence type included in the PUD Ordinance for Southport East Replats 6 & 9 is attached to this letter as Exhibit "B" for your reference. Any proposed alternative fencing must be reviewed and approved by the City's Design Review Architect for conformance with the intent of the design guidelines.

City Hall
8116 Park View Blvd.
La Vista, NE 68128-2198
402.331.4343 **P**
402.331.4375 **F**

Community Development
8116 Park View Blvd.
402.593.6400 **P**
402.593.6445 **F**

Library
9110 Giles Rd.
402.537.3900 **P**
402.537.3902 **F**

Police
7701 S. 96th St.
402.331.1582 **P**
402.331.7210 **F**

Public Works
9900 Portal Rd.
402.331.8927 **P**
402.331.1051 **F**

Recreation
8116 Park View Blvd.
402.331.3455 **P**
402.331.0299 **F**

4. There are currently 143 parking spaces servicing the multi-tenant commercial building located at 12040 McDermott Plaza, 17 of which are provided off-site, as allowed by the City through the PUD Site Plan approved for Lots 4&5 Southport East Replat 6. The proposed expansion of Beyond Golf will increase the overall square footage of the use to 6,180, which would mean that 62 spaces are required for this use, in addition to one (1) space per employee on peak shift, per La Vista's Zoning Ordinance. Sufficient parking exists for the proposed use at this time, however, in the event that additional parking spaces are warranted by parking demand, the property owner will be required by the City to construct additional spaces.
5. Please review the site plan attached as Exhibit "C" and confirm that it accurately depicts the boundaries for Beyond Golf's interior and exterior after the proposed expansion.

Please submit a response to this letter and to any questions that are posed above. If you are able to address these questions by the end of the business day tomorrow, Friday, June 25th, this request can be placed on the agenda for the July 15th, 2021 Planning Commission Meeting. Please let me know if you have any questions.

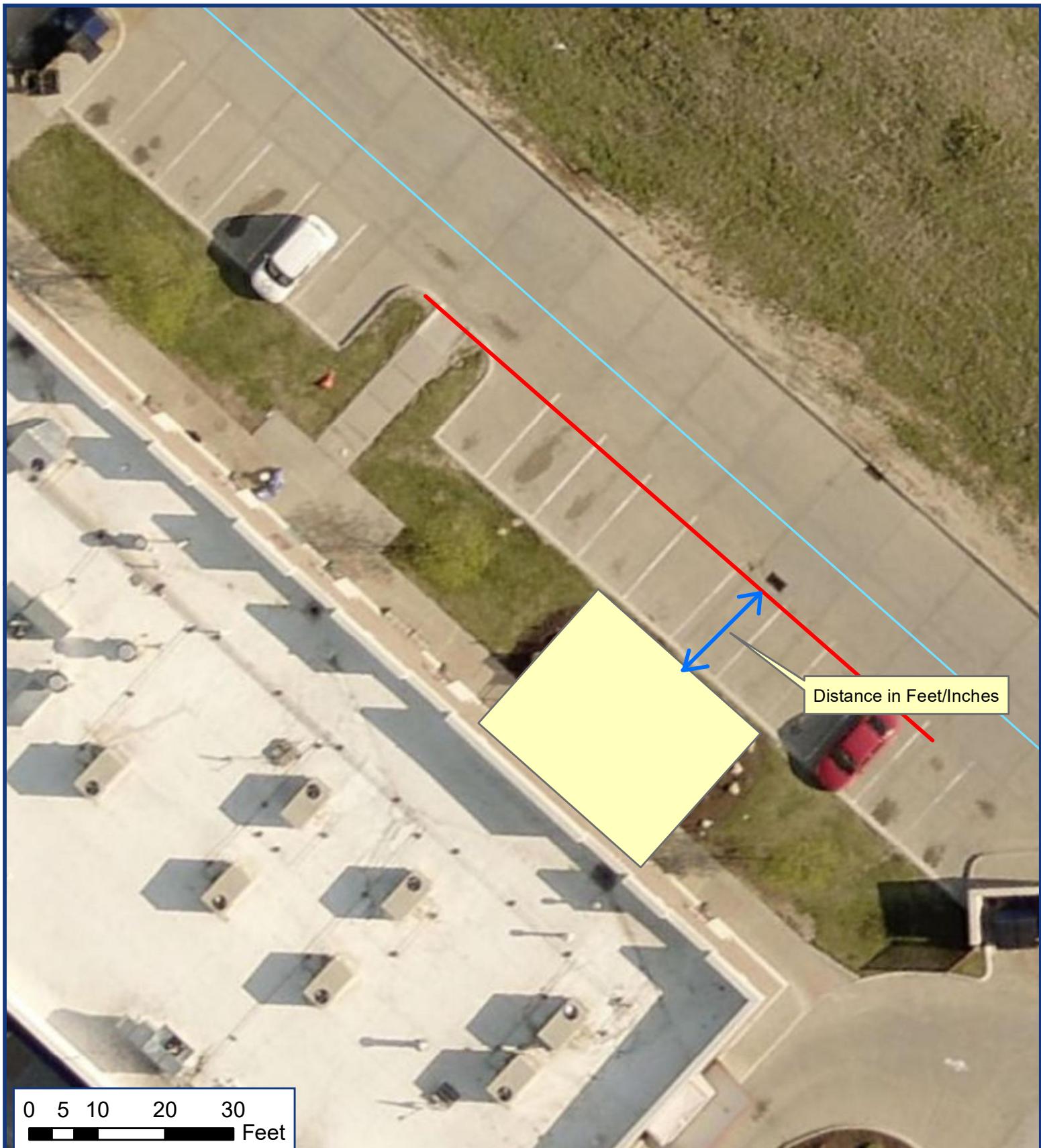
Sincerely,



Cale Brodersen
Assistant Planner
City of La Vista
(402) 593-6405
cbrodersen@cityoflavista.org

Cc: Bruce Fountain, Community Development Director
Chris Solberg, Deputy Community Development Director
John Hoich, Southport Center, LLC

Enclosures



0 5 10 20 30
Feet

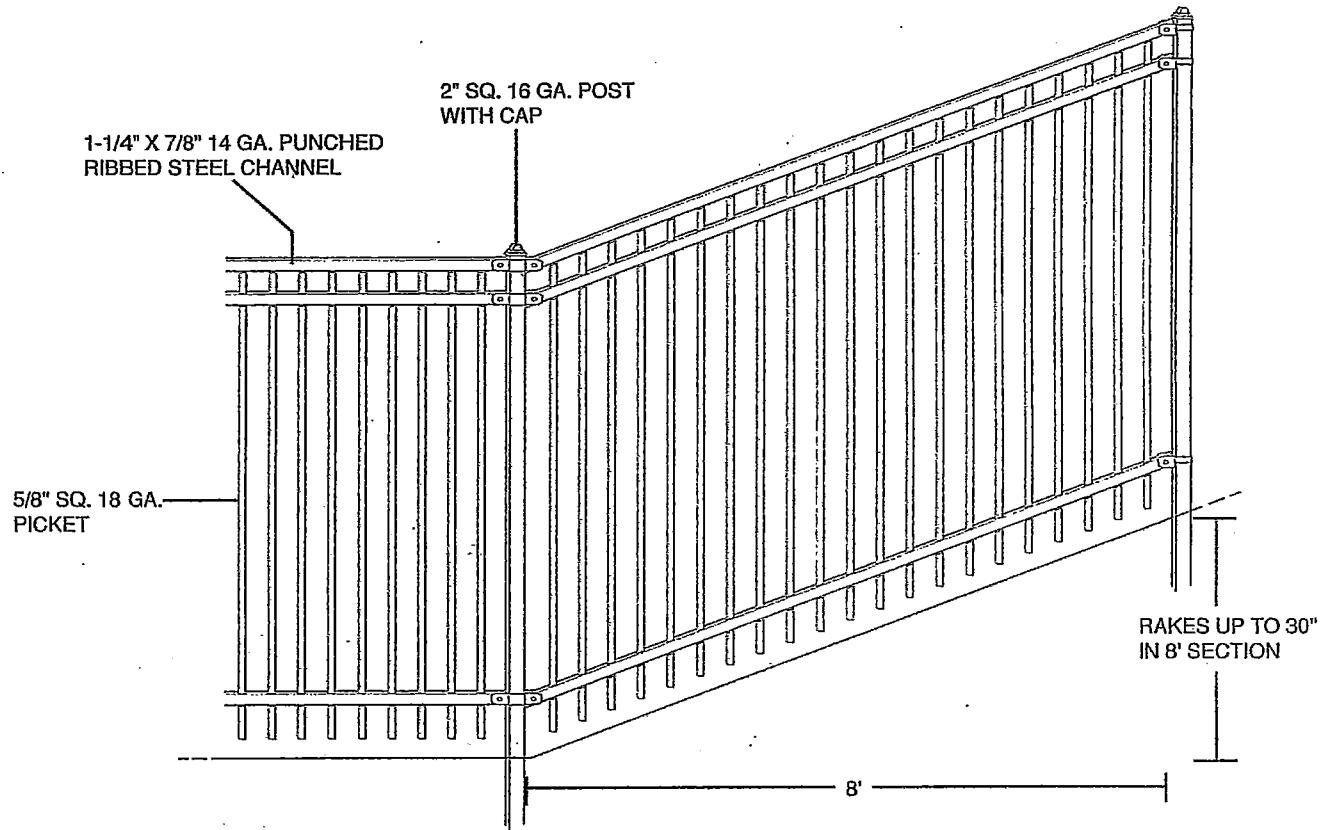
Measurement from Pergola to Back of Curb



Beyond Golf
CUP App Review
6/24/2021 cb

Exhibit A

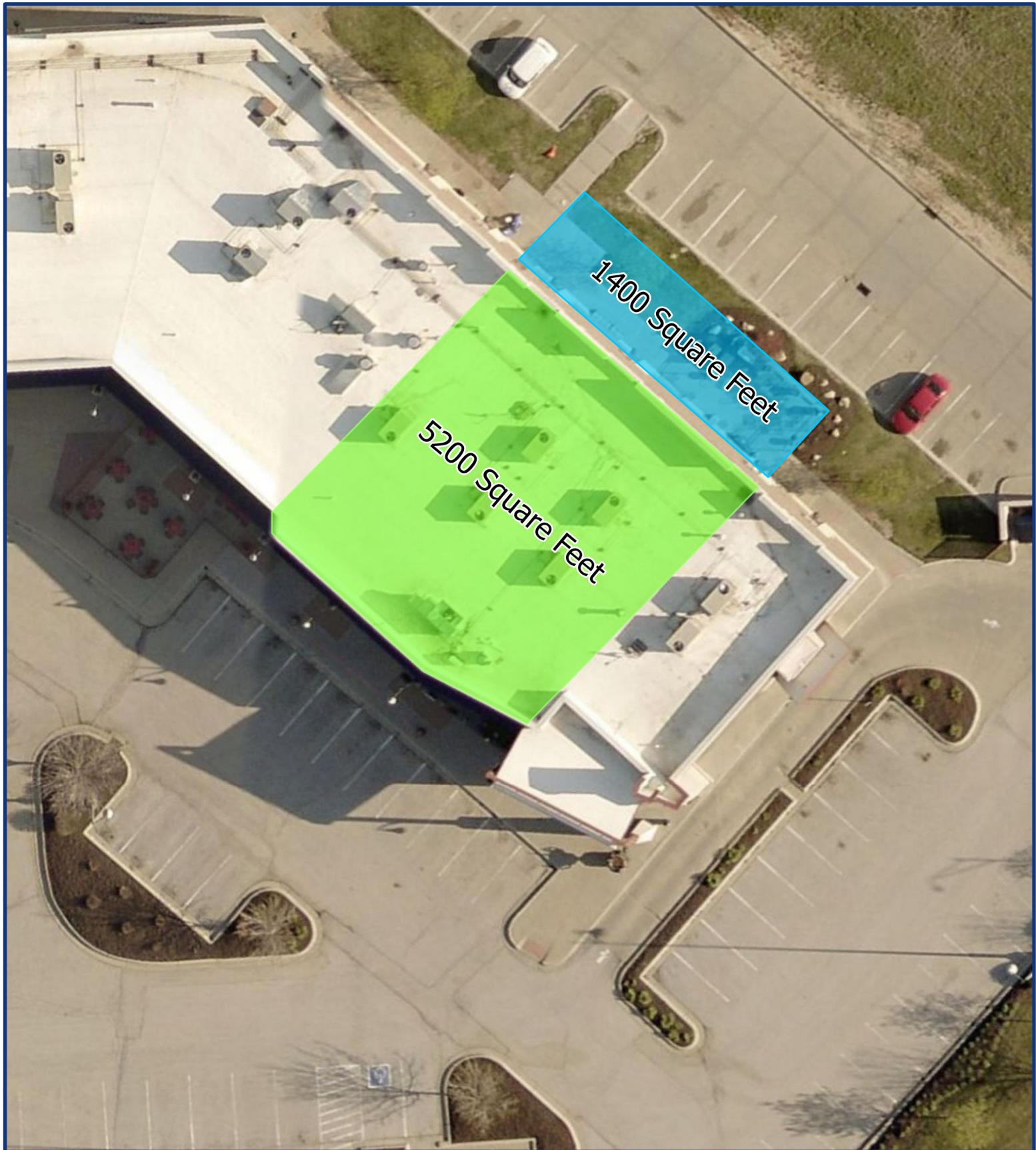




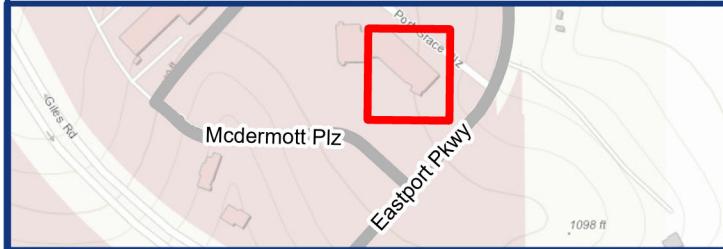
- Made from Galvanized Steel and Welded for Extra Strength
- All Terrain Fence (ATF) - Sections are Biasable to 30" in 8'
- Available in 3" Picket Air Space for Increased Protection and Security
- Maintenance-Free, E-Coated Product
- Welded Gates to Match Each Style
- Manufactured in USA

★ 20-Year Limited Warranty* ★

Exhibit B



Conditional Use Permit Site Plan



Legend

Exhibit C

 Beyond Golf Interior
 Beyond Golf Patio


LA VISTA

From: [Josh Galvin](#)
To: [Cale Brodersen](#)
Cc: ["John Hoich"](#); [Christopher Solberg](#); [Bruce Fountain](#)
Subject: [EXT]RE: Beyond Golf CUP Amendment - Initial Review Letter
Date: Thursday, June 24, 2021 1:52:08 PM

Cale,

Thanks for the call and going over this with me. Here are the answers to the questions we discussed:

1. See attached file showing the fencing locations. There will be two gates that are 6' wide allowing for pass through of the common areas against the building. Due to liquor commission regulations the patio must be fully enclosed.
2. The proposed canopy will be attached to the building, but sits roughly 2.5' from the parking lot curb so our clearance of 10' setback should be plenty.
3. Noted and will provide spec sheets prior to building.
4. Noted
5. Correctly depicted.

Josh Galvin

Beyond Golf Bar + Kitchen

402.916.4727

josh@beyondgolf.com

www.beyondgolf.com

“Perfect Golf Weather Now!”



City of La Vista Conditional Use Permit

Conditional Use Permit for a Tavern / Bar for Beyond Golf, LLC

This Conditional Use Permit issued this ____ day of _____, 2021, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Southport Center, LLC ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner was granted a Conditional Use Permit on December 2, 2008 to construct and operate a tavern and cocktail lounge to be known as Beyond Golf upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 4 of Southport East Replat 6; located in the SE ¼ of Section 18, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska.

WHEREAS, Owner has applied for an amended conditional use permit for the purpose of increasing the size (square footage) of the indoor and outdoor spaces of the tavern and cocktail lounge; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a revised conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the premises designated on Exhibit "A" hereto for a tavern and cocktail lounge, said use hereinafter being referred to as "Permitted Use or Use".

Conditions of Permit

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
 - a. A site plan showing the boundaries and extent of the Permitted Use is attached as Exhibit "A".
 - b. Hours of operation for the use will be from 10:30 a.m. – 10:00 p.m. on weekdays and 10:30 a.m. – 11:00 p.m. on Fridays and Saturdays. Hours of operation may be modified upon request to the Community Development Department with approval by the City Administrator.
 - c. The use will be comprised of 5,200 sq. feet of building space and 1400 sq. feet of outdoor patio space, of which 420 square feet will be dedicated to the communal walkway of the patio space.
 - d. Off-street parking shall be provided for the Permitted Use and the number of parking spaces shall be adequate, as determined by the City, to accommodate the patrons and guests of the Permitted Use without negatively impacting or limiting the number of parking spaces for other existing or future tenants.
 - e. Ease of ingress and egress utilizing the sidewalk abutting the building on the northeast corner of the building (adjacent to the patio) must be maintained. Any gates that bisect the walkway must remain unlocked. The layout of the proposed patio expansion, including the location of fences and gates is represented in Exhibit "B", attached to this permit.

- f. Additional off-street parking spaces may be required by the City if warranted by the parking demand, in which case, the owner shall be responsible for constructing additional parking spaces in a manner consistent with a plan approved by the City.
- g. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles per Appendix P: Site Furnishings in the Southport East Design Guidelines and those approved in writing by the City.
- h. There shall not be any outside storage of materials. All trash receptacles, benches and planters, as permitted by the Southport East Design Guidelines, shall be placed on property and securely fastened to building or concrete.
- i. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, ADA and FAA.
- j. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
- k. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
- l. Any changes to the operation of the Permitted Use outlined in the Operating Statement, attached as Exhibit "C" that are considered minor must be submitted and approved by the City Administrator prior to implementation. Significant changes to the conditions in this permit or the characteristics outlined in the Operating Statement will require an amendment to this Conditional Use Permit.

3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:

- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval, if the violation continues after written notice from the City to Owner and a reasonable time was given for Owner to cure such violation.

4. In respect to the Gateway Corridor Overlay District, Southport East Design Guidelines, and PUD Ordinance for Southport East Replat 6 & 9, the design for all exterior building improvements, including the proposed patio pergola, firepits, fencing, and site furniture, will need to be approved through the City's Design Review process.

5. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:

- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
- b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
- c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.

6. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
 - a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
 - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
 - c. Owner's construction or placement of a storage tank, structure or other improvement on the premises not specified in this permit.
 - d. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
7. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
8. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Miscellaneous

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

Contact Name and Address: John L. Hoich
Southport Center, LLC.
5410 N 279th Street
Valley, NE 68064
(402) 677-4848

Effective Date:

This permit shall amend, supersede and replace the Original Conditional Use Permit in its entirety and take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By _____
Douglas Kindig, Mayor

Attest:

Pam Buethe
City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner: _____
By: _____
Title: _____
Date: _____

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF _____) ss.
)

On this _____ day of _____, 2021, before me, a Notary Public duly commissioned and qualified in and for said County and State, appeared Douglas Kindig and Pamela A. Buethe, personally known by me to be the Mayor and City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Agreement, and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said City.

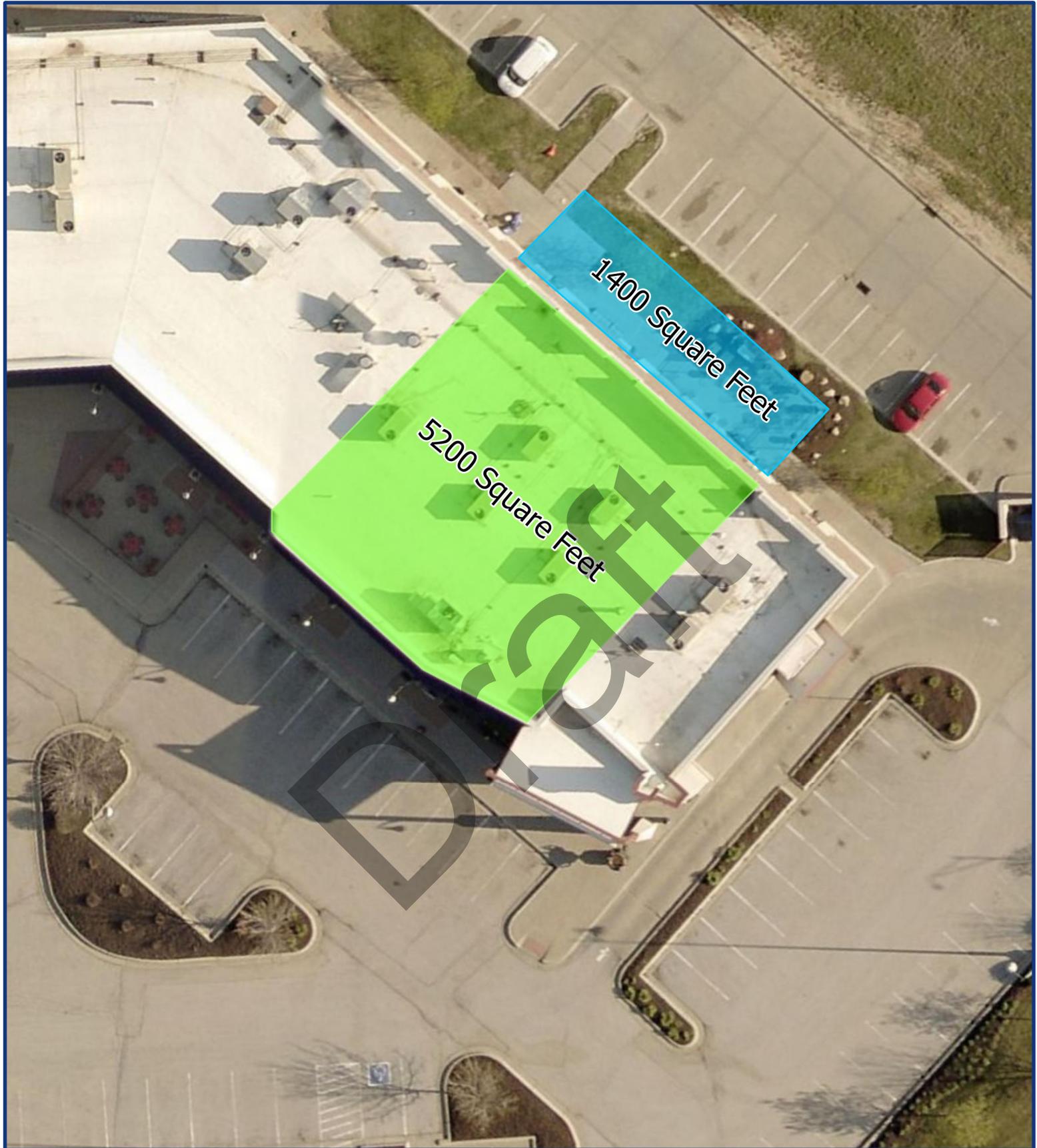
Notary Public

ACKNOWLEDGMENT OF NOTARY

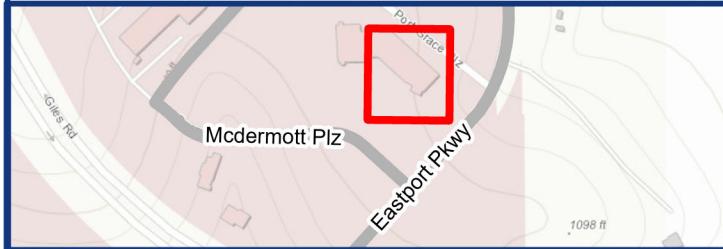
STATE OF NEBRASKA)
COUNTY OF _____) ss.
)

On this _____ day of _____, 2021, before me, a Notary Public duly commissioned and qualified in and for said County and State, appeared John L. Hoich personally known by me to be the Owner of Southport Center, LLC, and the identical person whose name is affixed to the foregoing Agreement, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said company.

Notary Public



Conditional Use Permit Site Plan



Legend

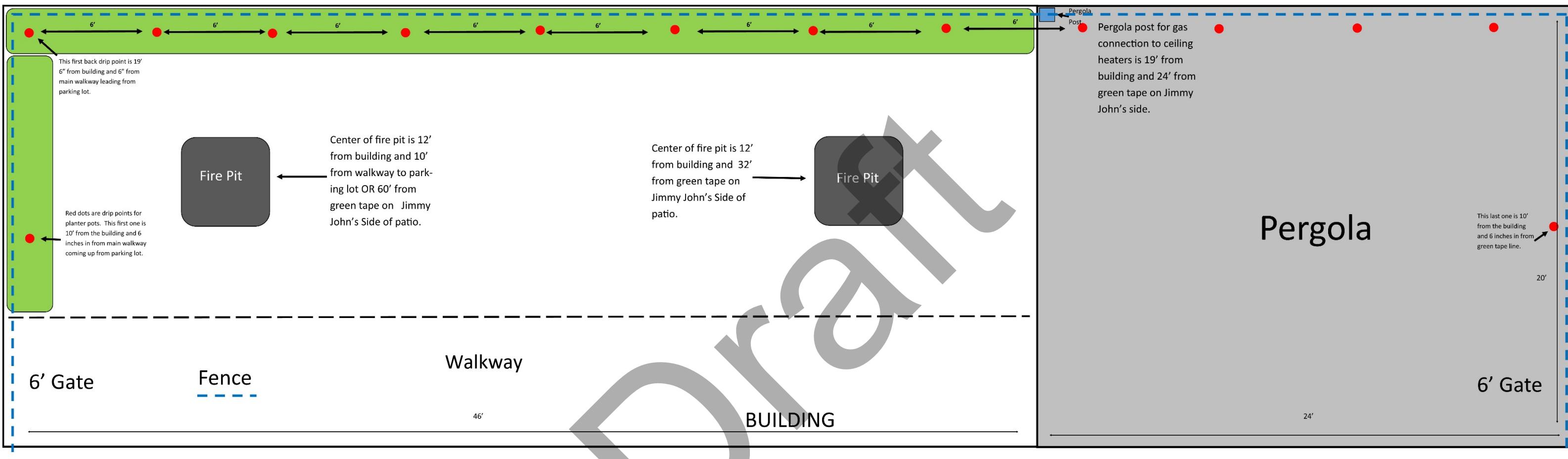
- Beyond Golf Interior
- Beyond Golf Patio

Exhibit A



LA VISTA

Beyond Golf Patio Layout



Operating Statement

Exhibit C

Beyond Golf is an indoor golf facility featuring five state of the art golf simulators along with a full kitchen and bar. Beyond Golf has been operating in the City of La Vista since January of 2009. We have 5,200 square feet of indoor space and are now hoping to add on to our current patio space that is 500 square feet. We would like to increase that to 1400 square feet of which 420 square feet of that space is communal walk way.

Business at Beyond Golf is somewhat seasonal with winter being our busy season when people can't golf outside. We have always been trying to build our summer business and believe that a bigger and better patio space will help us with that.

Beyond Golf is open seven days a week from 10:30am to 10pm during the week and 11pm on Friday and Saturday. We employ roughly 10-15 employees depending on seasonality.

Draft