



Request to the City Council M& C# \_\_\_\_\_  
ALCOHOL DISTANCE APPEAL APPLICATION  
(Please Print or Type)

Name of Establishment Funkytown Food Mart Location 4800 Wichita St, Fortworth

Legal Description Trueland Addition Block/Ab 12 Lot/Tr 7R

Owner of Establishment Funkytown Food Mart, Inc Owner Signature [Signature]

Owner Address 5212 S Bowen Rd City Arlington, TX Zip 76017

Owner Phone No (817) 336-2400 2<sup>nd</sup> Ph No \_\_\_\_\_ Email jramsey@deckerjones.com

Name of School or Church < 300 ft / 1000 ft from the establishment Metropolitan Church of Christ

Has the School, Church, etc. been contacted or do you know of any opposition to this request? Yes  No

Is Alcohol Consumption: ON PREMISE  or OFF PREMISE  Type of TABC License(s) BQ

Type of Business Convenience Store Setback Measurement / Distance Requested 228' Is building leased? Yes  No

Building Owner / Lessor name Carawan, LLC Lessor Signature [Signature]

Lessor Address 5212 S Bowen Road City Arlington, TX Zip 76017

Lessor's Phone No. (817) 336-2400 2<sup>nd</sup> Ph No \_\_\_\_\_ Email jramsey@deckerjones.com

Applicant Name (if other than Owner) Fahim Toma (all communications c/o Jake Ramsey, Esq.)

Applicant Address 801 Cherry Street, Unit #46 City Fort Worth Zip 76102

Applicant Phone No (817) 336-2400 2<sup>nd</sup> Ph No \_\_\_\_\_ Email jramsey@deckerjones.com

ALCOHOL DISTANCE APPEAL PROCESS & REQUIREMENTS:

- Building Inspector, Ken McGowen (817-392-7834), (Rejection Letter and Measurements required PRIOR TO SUBMITTING).
- Processing time is approximately 4 weeks and the request will be heard at the appropriate City Council Hearing. Hearings are held at City Hall on Tuesdays and the applicant is required to be present.
- Summary of hardship and/or reason for requesting a DISTANCE APPEAL is recommended.
- Staff to provide Early Notifications to surrounding HOA's, Schools, etc., within a 1/4 mile buffer of subject property.
- Staff will notify all property owners, neighbors, within a 300' buffer of subject property  
(You may contact Council Members prior to the hearing to see if they approve or have received opposition for your case at <http://fortworthtexas.gov>)

\*\* At the hearing, "Speaker Request forms" must be completed and turned in to the staff desk upon addressing the City Council. Beginning April 1, 2011, the speaker request form must be turned in fifteen (15) minutes prior to the start of the meeting, and to register to speak before the meeting you may call 817-392-6150, fax 817-392-6196 or <http://fortworthtexas.gov>\*\*

Application Fee	Received	Date	Hearing Date	Case #
Code 124 \$350.00	By: <u>BK</u>	<u>5-8-15</u>	<u>TBD</u>	<u>AA# 15-00002</u>

# DeckerJones

ATTORNEYS AND COUNSELORS

Decker Jones, PC  
801 Cherry Street, Unit #46  
Burnett Plaza, Suite 2000  
Fort Worth, Texas 76102  
817.336.2400 | 817.336.2181 (Fax)  
www.deckerjones.com

**Jake L. Ramsey**  
jramsey@deckerjones.com

May 6, 2015

**Via personal delivery**

The City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

**Re: Variance request for 4800 Wichita Street, Fort Worth, Texas.**

To the Honorable City Council of Fort Worth:

By way of introduction, this law firm represents Carawan, LLC and Funkytown Food Mart, Inc. ("Funkytown") regarding real property it acquired at 4800 Wichita Street, Fort Worth, Texas. Funkytown is seeking a variance from City Ordinance § 4-4(d) in order to obtain a beer and wine permit for the premises. This letter is intended to provide you with some factual and legal background on this matter prior to the scheduled variance hearing.

On or about October 14, 2014, Funkytown purchased 4800 Wichita from its previous owner. At the closing of this sale, Funkytown paid off \$109,308.30 worth of tax and maintenance liens against the property which were held by the City and other local taxing authorities. These liens had accrued against the property due to the state of disrepair the prior owners(s) had permitted 4800 Wichita to fall under. As can be seen from the attached photographs, 4800 Wichita needs significant structural and cosmetic work in order to be restored to a state that the City and its neighbors can be proud of. See Enclosure "A", attached. Funkytown's intent is to restore 4800 Wichita to a code-compliant and aesthetically pleasing convenience store and gas station.

Funkytown's business model, which includes the costs of building out the premises, is dependent on revenue from the sale of packaged alcoholic beverage that will be consumed off-premises. Without such anticipated revenue, Funkytown will be unable to absorb the cost of construction to the premises while still being able to operate a profitable business.

Funkytown has retained this law firm to assist it in securing a BQ Wine and Beer Retailer's Off-Premise Permit from the Texas Alcoholic Beverage Commission ("TABC"). This process, however, has come to a stand-still as the City's Planning & Development Department ("P&D") has refused to sign-off on the requisite distance check. Specifically, P&D claims that 4800 Wichita is within 300 feet of the nearby Metropolitan Church of Christ ("Church"). This determination came as a shock to Funkytown.

Prior to purchasing 4800 Wichita, Funkytown studied the applicable ordinances and performed its own distance check as part of its due diligence efforts. Funkytown's measurements placed 4800 Wichita at 319 feet from the Church. A diagram of these

measurements is attached hereto as Enclosure "B". This diagram appears to conform to the measurement requirements described by the applicable ordinance. The ordinance states,

The measurement of the distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. Fort Worth, TX Code of Ordinances § 4-4(d). *See also*, Tex. Alcohol Beverage Code § 109.33(b) (identical language).

Unexpectedly, P&D and the City Attorney's office has interpreted the plain language of the ordinance differently. Effectively, they have disregarded the language "in direct line *across intersections*," and, instead, P&D has measured the distance in a straight line across the middle of the street. *See* Enclosure "C", attached. This has resulted in a distance measurement of 228 feet. For this reason, P&D has refused to approve Funkytown's distance check which effectively means that Funkytown will be unable to obtain a permit from the TABC.

In my personal conferences with the City Attorney's office, it has been made clear to me that the City will not consider re-evaluating the method in which they performed the distance check. While Funkytown disagrees with their interpretation of the ordinance, the cost of obtaining a declaration from a court of law is cost-prohibitive under Funkytown's business model. Therefore, the only recourse Funkytown has at this point is to request a variance from the City Council.

As an additional good-faith ground for believing 4800 Wichita would be in compliance with the City's alcohol ordinances, Funkytown was aware that a prior owner of a convenience store at the premises had been granted a TABC permit. My research into the matter does confirm that a TABC license was in fact granted for 4800 Wichita until it expired on October 10, 2001. Whether this license was granted per a variance from this Council or due to a different method of distance measurement by the City is unclear.

The City Council has authority to grant Funkytown the requested variance to the 300 feet distance requirement under Ordinance 4-4(f). This ordinance states,

The city council may allow a variance to this section [the 300 feet distance requirement] if it determines that the enforcement of the regulation in a particular instance is not in the best interests of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on the applicant for a license or permit, does not serve its intended purpose, or is not effective or necessary, or that a previous permit was issued for the premises in error and enforcement of the regulation would be inequitable, or for any other reason the city council determines, after consideration of the health, safety and welfare of the public and the equities of the situation, that the variance is in the best interest of the community ... Fort Worth, TX Code of Ordinances § 4-4(f).

Funkytown satisfies the requirements for a variance. Specifically, it would clearly create an undue hardship on Funkytown. Funkytown's purchase of the property, its pay-off of the debts owed to the City on the property, its planned restoration of the premises, and its use of the site as

a for-profit business were all dependent on Funkytown receiving revenue from alcohol sales. If Funkytown is not granted a variance, then these purchases and plans for 4800 Wichita will become untenable. This will likely result in 4800 Wichita remaining in its present deleterious state and continue to be an eye-sore and blight on the neighborhood. In contrast, granting the variance would allow Funkytown to continue with its plans to renovate the premises. This would result in a net benefit to the health, safety, and welfare of the community. It would turn 4800 Wichita into a respectable business that beautifies the property and brings jobs and economic activity to the area.

For these reasons and any additional grounds advanced by Funkytown at the hearing on this matter, Funkytown requests that the City Council grant it a variance to Ordinance 4-4(d) and instruct the Department to sign off on its TABC application. If you should have any concerns or questions regarding this matter, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'JLR', with a long horizontal flourish extending to the right.

Jake L. Ramsey

**ATTORNEY FOR  
FUNKYTOWN FOOD MART, INC.**

JLR/gg

Enclosures.

10881.66001/401693

**ENCLOSURES**

- Enclosure "A"      Photographs of current state of 4800 Wichita**
- Enclosure "B"      Funkytown's Measurements**
- Enclosure "C"      P&D's Rejection Letter and Measurements**

INNER  
RGER  
INNER  
817-534-32

24HR  
FOODSTORE

MEOW FOOD MART 1

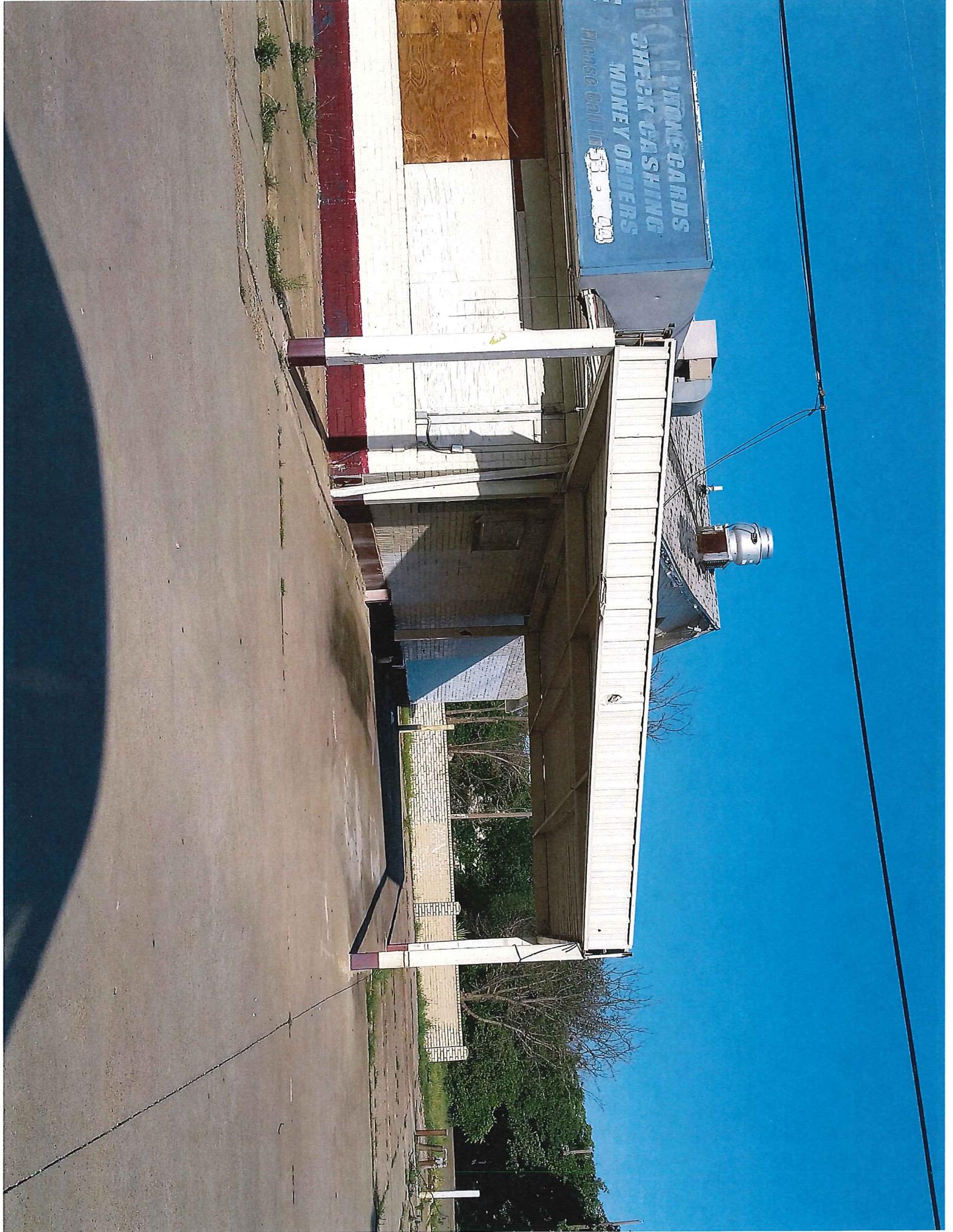
24HR  
FOODSTORE

PLEASE CHECK CASH MONEY OUT  
Please call in 5

4800



"A"



PHONE CARDS  
CHECK CASHING  
MONEY ORDERS  
Please Call In 532-2200



N

GARDENIA

CONV. STORE  
4800  
WICHITA

WICHITA

WICHITA

3201  
MARTIN ST  
Metropolitan  
Church of  
Christ  
Established 1928

319

319

MARTIN ST

#1

" B "



CITY OF FORT WORTH, TEXAS
ALCOHOL PERMIT LOCATION VERIFICATION

INSTRUCTIONS: Applicant is to complete all requested information down to the double line and also attach a copy of the completed T.A.B.C. application form.

Name of Applicant: Funky Town Feed Mart Phone: 817-240-2791

Name of Business: Funky Town Feed Mart Phone:

Application Address: 4800 Wichita St. Ft. Worth Tx Zip: 76119

Legal Description of Property: Lot: 4R Block: 12 Addition: Trueland Add

Is there or has been a T.A.B.C. license on the property before? Yes X No
If Yes, when does it or did it expire? Oct 10th, 2011

In addition to the sale of alcoholic beverages, please provide an accurate statement of all other business or entertainment activities to be conducted at the application address: C-STORE

NOTICE: Approval of the processing form does not imply that the location/building is in compliance with all applicable ordinances. This form is only for distance check and zoning use. Consult with the Department of Development, lower level of City Hall, regarding all other requirements before investing any time or money.

FOR CITY USE ONLY

Date Received: 3/11/15 Mapso No.: 921F Council District: B Zoning on the property: 'E'

Is the location within 300' of a Church? Yes X No
Public school? Yes No X
Public hospital? Yes No X
Private school? Yes No X
If Yes, give address and date the use was established: C-STORE at 4800 Wichita St. is within 300ft of Church located at 3201 Martin St.

Is the location within 1000' feet of a private school protected by resolution? Yes No X
Comments:

BUILDING INSPECTORS CERTIFICATION

I hereby certify that I have personally inspected the property described above and my comments are:

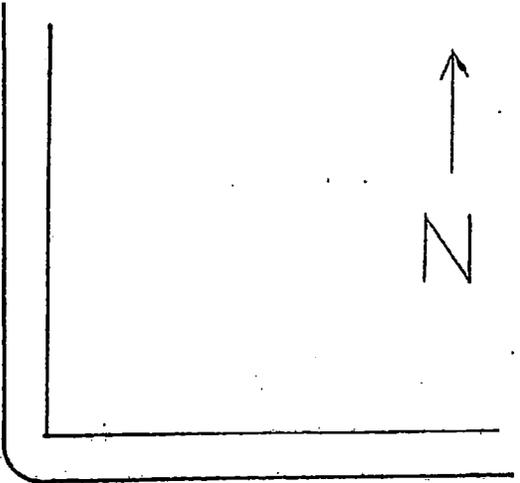
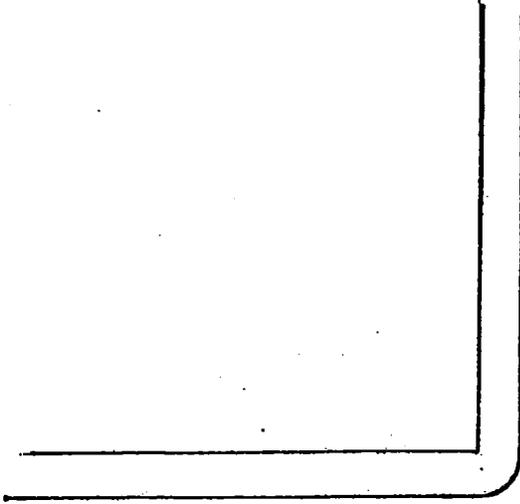
- 1. The use as described by the applicant is allowed in this zoning? Yes X (by right, by legal nonconforming) No
2. The locatio is within 300' of a church, public school or public hospital? Yes X No
3. This locatlon is within 1,000' of a private school protected by resolution? Yes No X
4a. If the zoning allows this use and the distance check complies, check the Yes box to the right and continue processing.
b. If zoning does not allow this use, check the No box, clear the paperwork and stop he processing.
c. If the zoning allows this use but the distance does not comply, check the No box, clear the paperwork, and forward to the Director for review. OK to issue Yes No X

Verified by: Ken M. Hawen (Ken M. Hawen) Date: 3/11/15

(Inspector Signature and Printed Name) Proposed location within 300 feet of church
Date: 5/4/2015 (This approval not needed if the above box is marked YES)
ed by: Date:

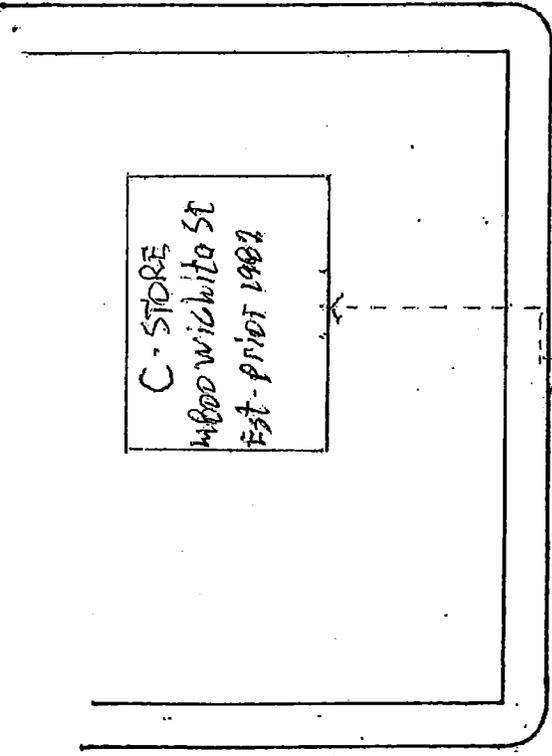
Clerk, City Secretary

AD15-00033



N ↑

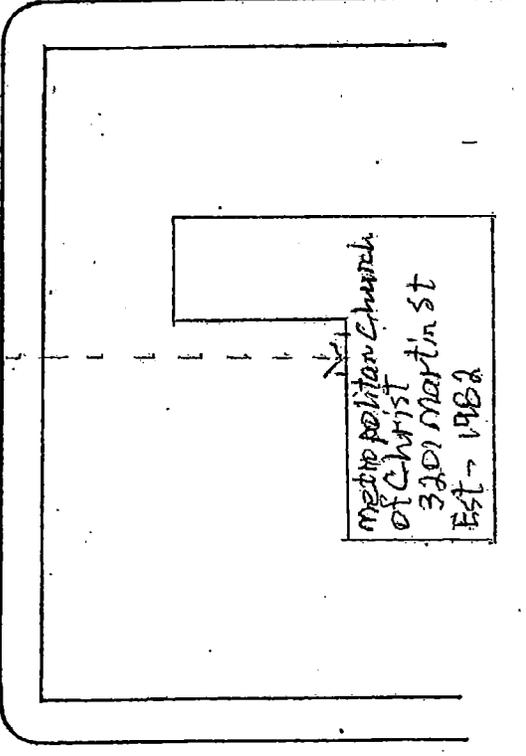
Gardenia St



C-STORE  
1400 WICHITA ST  
EST. PRIOR 1982

228'

Wichita St.



METHUEN POINT CHURCH  
OF CHRIST  
3201 MARTIN ST  
EST. 1982

Martin St.

