

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, May 18, 2011, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jeanelle Lust, Jim Partington, Lynn Sunderman and Tommy Taylor; Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Lynn Sunderman called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Sunderman then requested a motion approving the minutes for the regular meeting held May 4, 2011. Motion for approval made by Francis, seconded by Cornelius and carried 8-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:**

**May 18, 2011**

Members present: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 11008, SPECIAL PERMIT NO. 11009 and MISCELLANEOUS NO. 11002.**

Ex Parte Communications: None

Francis moved approval of the Consent Agenda, seconded by Taylor and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 11008 and Special Permit No. 11009, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

There were no requests for deferral.

**CHANGE OF ZONE NO. 08057A,  
AN AMENDMENT TO THE  
UNIVERSITY PLACE PLANNED UNIT DEVELOPMENT,  
ON PROPERTY GENERALLY LOCATED  
AT NORTH 48<sup>TH</sup> STREET AND ST. PAUL AVENUE.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 18, 2011

Members present: Partington, Esseks, Francis, Cornelius, Gaylor Baird, Taylor, Larson, Lust and Sunderman.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Brian Will of Planning Department** explained that this proposal is an amendment to the University Place Planned Unit Development (PUD), which was approved back in 2008. The boundary of the PUD incorporates most all of the commercial properties within the University Place Business Center.

The applicant is the owner of the MoJava coffee shop at the corner of N. 48<sup>th</sup> Street and St. Paul Avenue. The request is to add the sale of alcohol for consumption on the premises as a conditional use, with a request to modify the parking requirement so that no additional parking is required. The staff finding is that the inclusion of the sale of alcohol for consumption on the premises of an existing use shall not be considered a change in use, thus no additional parking is required.

Will explained that the sale of alcohol for consumption on the premises is normally regulated by special permit. For this particular premises to be able to come forward and apply for a special permit, it is required that all criteria for the special permit must be met, including the 100' separation from residential use or residential district, location of outside speaker, drive-thru facilities, etc., including off-street parking. In order to apply for that special permit you have meet all those requirements.

The applicant, MoJava, meets all of those requirements and criteria, with one exception, that being off-street parking. The special permit requires that any premises applying for on-sale alcohol must provide one space per 100 sq. ft. of floor area. The PUD is a mechanism whereby certain signs and parking can be adjusted. In this situation, the special permit for on-sale alcohol is not feasible by virtue of the fact that there is a PUD overlay. Therefore,

this application is being brought forward as an amendment to the existing PUD. The staff is recommending that the development plan be modified to allow on-sale alcohol as a conditional use, provided the premises meets all of the requirements of the special permit for on-sale, with the exception of parking. In other words, by amending the entire PUD overlay, any existing use would be able to add on-sale if it meet all the conditions, with the exception of parking. No additional parking is required. Any new uses coming in would need to meet all of the other applicable standards including the parking requirements of the PUD.

In summary, Will stated that the staff is recommending approval, finding that all of the criteria and conditions of a special permit still apply, but it takes into account the unique character of the PUD in granting parking adjustments.

Gaylor Baird sought clarification of the parking requirements that would be required of any new business that would be located within this unique geographic area. Will explained that any new business would be required to meet the parking requirements of the PUD. We assume that those uses that exist today are there legally and meet all of the requirements, thus adding alcohol should not increase the parking requirements. Any new use coming in would need to meet the parking requirements of the PUD. We are suggesting that it does not make sense to have a higher parking standard just by adding on-sale alcohol to an existing use like MoJava.

Esseks asked staff to review the rationale for this PUD. This PUD covers an area where most of the ground is already built upon, so there must have been some type of rationale for a PUD when dealing with existing buildings. Will explained that University Place was developed prior to our fascination with the automobile and a fair number of businesses do not have the off-street parking required by the ordinance today. He believes that was the rationale and logic of the original PUD, coupled with there being several public parking facilities throughout University Place. There is parking throughout the area but it is not designated to a single user. Also, the PUD acknowledges the historic development pattern.

Esseks expressed concern because he believes that alcohol is an important change in use. Will stated that he does not consider the sale of alcohol a use, but rather an activity. A restaurant or a bar is a use, but the sale of alcohol is more of an activity. On-sale alcohol has one of the highest parking requirements (one space per 100 sq. ft.) because its operating character is considered like a restaurant or bar. In the case of this proposal, Will suggested that the fact that you are adding additional items to the menu doesn't really change the nature or operating characteristic of that use. The applicant is suggesting that it does not change the nature of the use.

Will pointed out that the staff has recommended a limitation on the hours of operation relative to the sale of alcohol, i.e. 8:00 a.m. to 11:00 p.m. The outdoor beer garden must cease operation at 10:00 p.m. This helps further define and refine the intent of this application.

Proponents

1. **Paul Marshall**, 2284 Sheldon Street, 68503, testified as the applicant. He has owned and operated MoJava Café in University Place for the last 17 years and feels the time has arrived to take his business to another level by offering the sale of alcoholic beverages. Business tends to suffer in the summer due to college letting out and schedules changing. He is hoping that adding alcohol to his menu helps create more business during these months. He will obtain a liquor license. He believes this will create more jobs and tax dollars. His intent is not to transform the business into a bar but just to fill in some of the slower times during the day and evening. He has live music Friday and Saturday evenings that ends at 10:00 p.m. He believes that being able to offer customers a glass of wine or beer will be acceptable. The limited hours of operation will define that the business is not a bar – no bar could survive these hours. His food menu consists of a limited sandwich menu. He has built the business around coffee and lunch clientele, which also has extended into smaller dinner options – hot and cold sandwiches, soups, salads, pizzas and coffee drinks.

There was no testimony in opposition.

Esseks referred to the issues the Planning Commission dealt with on the CVS Pharmacy at 16<sup>th</sup> & South Streets. Is this really any different? Staff purports that this does not change the use. **Rick Peo of the City Law Department** explained that this is a PUD which is an overlay zoning district, and, in a sense, the properties within that overlay can establish their own zoning district regulations. The PUD ordinance allows the City Council to modify the district regulations. By changing the development plan to accommodate this reduced parking requirement, it is a district wide change.

Peo also pointed out that there is another provision in the zoning code that currently allows properties in B-3 that have a change of use which cannot meet the parking requirements, to go to the City Council for a reduction in that parking. By amending this PUD ordinance, you make that decision only one time so that you don't have to make the decision on each individual property. He believes the PUD accommodates and recognizes those parking concerns.

**ACTION BY PLANNING COMMISSION:**

May 18, 2011

Francis moved to approve the staff recommendation of conditional approval, seconded by Gaylor Baird.

Francis thinks this is a great opportunity for the business to expand and grow. It is an appropriate use.

Cornelius noted that the Commission has received letters of support from the local business association and the local neighborhood association. Further, the Commission has

heard that the parking is not really a problem for the reasons of the historic character of the existing PUD and also the existence of a variety of parking opportunities. There is a limitation on the hours during which alcohol can be served, which should serve to reinforce the owner's assertion that this is not going to be a bar but rather support for ongoing activities occurring today.

Taylor commented that the proposal is consistent with what is going on in the neighborhood. It is something that is established – almost like it is grandfathered – and the community has not changed to a point where the usage is inconvenient or causes problems to the rest of that community.

Sunderman also believes this fits nicely. It may help increase the business in that area.

Motion for approval, with conditions, carried 9-0: Partington, Esseks, Francis, Cornelius, Gaylor Baird, Taylor, Larson, Lust and Sunderman voting 'yes'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 1:28 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 1, 2011.