

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, March 10, 2010, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Jim Partington, Lynn Sunderman and Tommy Taylor (Roger Larson and Jeanelle Lust absent); Marvin Krout, Steve Henrichsen, Mike DeKalb, Brian Will, Christy Eichorn, Tom Cajka, 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 requested a motion approving the minutes for the regular meeting held February 24, 2010. Motion for approval made by Taylor, seconded by Francis and carried 7-0: Gaylor Baird, Cornelius, Esseks, Francis, Partington, Sunderman and Taylor voting 'yes'; Larson and Lust absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

March 10, 2010

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 10007, SPECIAL PERMIT NO. 10009, SPECIAL PERMIT NO. 10010 and SPECIAL PERMIT NO. 10011.**

Ex Parte Communications: None

Item No. 1.1, Special Permit No. 10007, was removed from the Consent Agenda and scheduled for separate public hearing.

Cornelius moved to approve the remaining Consent Agenda, seconded by Francis and carried 7-0: Gaylor Baird, Cornelius, Esseks, Francis, Partington, Sunderman and Taylor voting 'yes'; Larson and Lust absent.

Note: This is final action on Special Permit No. 10009, Special Permit No. 10010 and Special Permit No. 10011, 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.

SPECIAL PERMIT NO. 10007,
HAMANN MEADOWS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT PIONEERS BOULEVARD AND LUCILE DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 10, 2010

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval, as revised.

This application was removed from the Consent Agenda due to revised conditions of approval submitted by staff.

Staff presentation: **Brian Will of Planning staff** explained that this is a request for a special permit for a community unit plan for Hamann Meadows, located northwest of the intersection of Lucile Drive and Pioneers Blvd. The revised staff recommendation adds Condition #2.2:

Provide documentation that an easement granting use of and access to Outlot A, Hamann Meadows 1st Addition, from the owner(s) of Outlot A to the owners within this CUP has been recorded with the Register of Deeds.

This area was part of the Hamann Meadows preliminary plat approved back in 2005, and brings in these two outlots, adding 12 lots to both of the outlots for a total of 44 dwelling units. The reason for the community unit plan is to adjust the rear yard setback. The reason for the added condition of approval is to just make sure that the common outlot/common open space surrounding these two areas is to be shared. Condition #2.2 provides that a permanent access easement over that outlot shall be recorded.

Proponents

1. Mike Eckert of Civil Design Group, appeared on behalf of the developer, Cameron Homes, LLC. He believes this to be a pretty straight forward community unit plan, and because it is all surrounded by green space, staff willingly granted the applicant's request to reduce the rear yard setback. Eckert agreed with the revised conditions of approval.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

March 10, 2010

Taylor moved to approve the staff recommendation of conditional approval, as revised, seconded by Francis and carried 7-0: Francis, Esseks, Cornelius, Taylor, Gaylor Baird, Partington and Sunderman voting 'yes'; Larson and Lust absent. This is final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 10003,
FROM R-2 RESIDENTIAL AND R-5 RESIDENTIAL
TO B-3 COMMERCIAL AND O-2 SUBURBAN OFFICE;
and
SPECIAL PERMIT NO. 10008,
FOR OFF-PREMISE ALCOHOL SALES;
and
STREET & ALLEY VACATION NO. 10002
TO VACATE THE NORTH/SOUTH ALLEY,
ALL ON PROPERTY GENERALLY LOCATED
AT 16TH STREET AND SOUTH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 10, 2010

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

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone; conditional approval of the special permit; and a finding of conformance with the Comprehensive Plan on the alley vacation.

Staff presentation: **Christy Eichorn of Planning staff** began the presentation by requesting a four-week deferral of the public hearing because the staff and Planning Commission have been inundated with a lot of last minute information. In order to make a well-informed decision and recommendation it would be beneficial to have some additional time. She would like to have the opportunity to clarify some of the issues of the opposition and gather additional information.

The project is located between 15th and 16th Streets, north of South Street, for a CVS Pharmacy, located mostly on property currently zoned B-3. The proposed changes of zone are to change three properties from either R-5 or R-2 to O-2 and B-3. Taking a look at the overall application, there have been a lot of questions about the O-2 zoning. Some of the letters in opposition were that the O-2 was strictly for the alcohol sales for the CVS Pharmacy on the B-3 zoning and whether the applicant's intent is to develop the O-2 into an office district. The staff looked at the O-2 by itself to see if it was appropriate for this particular district.

This property is within the South Street Redevelopment Plan adopted in 2007. The area was declared blighted and became part of the Redevelopment Plan, although there was not a specific plan for this particular lot in that Redevelopment Plan.

Eichorn pointed out that there is a lot which was rezoned from Residential to B-3 in order to accommodate a potential drive-thru coffee shop. With that zoning, there was a zoning agreement which limited uses, had buffers and all kinds of mitigation techniques to mitigate the impacts on the residential to the north and west. This project expands that commercial area by two lots.

Eichorn advised that the staff is recommending that approval of the change of zone be subject to a zoning agreement, the purpose of which is to mitigate the impact of the commercial uses on the neighborhood. Currently, the B-3 abuts the R-2 and R-5 zoning. Whenever an area is redeveloped, there is an attempt to go from more intense commercial use to less intense commercial use to residential. If there is property that could potentially be rezoned between residential and commercial, especially like B-3, we try to mitigate that with R-T or O-2 zoning which are transition districts that generally allow office uses but not high intensity commercial uses.

In the zoning agreement, the staff is asking for specific points to help mitigate the impact, including no illuminated signs facing the west side of the property with more residential uses; retaining the mature trees that could be saved; and providing more street trees along South Street and 16th Street, which is in conformance with the South Street Redevelopment Plan.

The zoning agreement also requires the developer to rebuild the sidewalk on South Street. The developer has agreed to put the sidewalk 6 feet off the curb and make it 5 feet wide to meet all ADA standards, thus a portion needs to be located on private property.

The zoning agreement also requires a 6' opaque fence between O-2 and B-3, to remain as long as the uses are residential. When the O-2 zoning becomes an office use, then the fence would no longer be necessary.

As a carryover from the previous zoning agreement, some of the uses would also be limited, including the more intense uses such as tire stores, vehicle body repair, car wash, service stations, etc., which should be at least 100' from any residential district.

In terms of rezoning of the O-2 property, the staff is requesting the four-week deferral to get more clarification. It is not the intent to rezone someone's property if they don't want the property rezoned. Until early this morning, the Planning Department had no contact from the property owners proposed to be zoned O-2. They were notified; Eichorn attempted to visit and left her business card; and she posted a zoning action sign in their front yard. Unfortunately, she did not hear from the owners until receiving a letter this morning from Mr. Chapin, one of the property owners, who has concerns about the

pharmacy proposed with the noise that might be associated, potentially 24 hours a day. The author of this letter lives in the property just south of the alley. There is also a property just north of the CVS property from which the Planning Department has not heard anything. Chapin has concerns about the drive-thru but suggests that that could potentially be mitigated. Eichorn wants to discuss that more with Mr. Chapin. He is not against alcohol sales but he does not believe that it should be approved at the expense of the neighborhood. He also expressed concerns about future expansion of business districts where they do not belong. Eichorn wants to have some discussion with this property owner.

Esseks sought clarification of the uses north of this property – if we agree to O-2 along the bottom of the alley, there are properties immediately adjacent to the north. He would like the staff to make contact with these property owners as to their wishes and the current uses. Eichorn pointed to the historic landmark (the Dial House), which is currently in the process of potentially being moved to a location at 29th & Washington Streets. The owner of that property, B&J Partnership, applied for a demolition permit and was denied by the Historic Preservation Commission; however, the Historic Preservation Commission is in favor of moving the Dial House to another location. Those particular applications will be on the Planning Commission agenda on March 24th.

Esseks is also interested in the properties across the alley – in other words, he is interested in the uses of all adjacent properties. Eichorn noted that all of the property to the north is mostly single-family and two-family residential.

Francis inquired whether it is common to have a zoning request on property that is not owned by the applicant. Eichorn stated that it is not common, but it is not completely unheard of. The staff has submitted a list of properties that have been rezoned where the property has stayed in residential use. In most of those cases, it was the property owners who wanted to participate in the change of zone. She acknowledged that it is rare.

Francis referred to the site plan for the pharmacy layout. She inquired whether the parcel showing the parking lots and the turnaround is already owned by the applicant. Eichorn indicated that the property is owned by B&J Partnership, the applicant, and the Dial House. Francis wondered whether this project could move forward without the rezoning of those properties, and they would not be able to have alcohol sales at the pharmacy. Eichorn believes that might be possible.

Gaylor Baird asked Eichorn to clarify Analysis #2, in terms of the zoning agreement, where it suggests that the B-3 zoning would allow a range of commercial and retail uses in the future that would not be compatible with residential zoning. Eichorn explained that the zoning agreement limits where those uses might be located. There are a variety of uses allowed in the B-3 district. The zoning agreement prohibits those more intense uses to within 100' of a residential district, which is more buffer than what would normally be required. The zoning agreement stays with the land. If a subsequent owner would want

to do a service station on this property in the future, they would be required to be at least 100' away from any residential districts, they could not have any illuminated signs on the western side of their building and they would be required to meet all restrictions put in the zoning agreement. The zoning agreement mitigates those concerns in Analysis #2. The purpose of the O-2 is to mitigate more of the residential area to the north and buffer what would already be allowed in the B-3 district so that we don't have B-3 adjacent to R-2.

Proponents

1. Mark Hunzeker appeared on behalf of **B&J Partnership**, the applicant and owner of most of this property. They have been working with staff on this for six months and would agree to a four-week delay.

Francis moved to defer, with continued public hearing and action on April 7, 2010, seconded by Esseks and carried 7-0: Francis, Esseks, Cornelius, Taylor, Gaylor Baird, Partington and Sunderman voting 'yes'; Larson and Lust absent.

There was no other public testimony.

SPECIAL PERMIT NO. 10005,
FOR A RECREATIONAL FACILITY,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 25TH STREET AND BENNET ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 10, 2010

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval.

Staff presentation: **Mike DeKalb of Planning staff** presented the proposal for a recreational facility on a 20-acre portion of four parcels consisting of about 120 acres and two existing farm houses. The boundaries of the special permit were shown on the site plan. The proposal is for 80 children, six staff and a time period of about seven weeks during the summer months.

The roads leading to the site are gravel. Saltillo Road is about 1.25 miles to the north and is paved. South 25th is a gravel county road – at the low end of the maintenance level -- and West Bennet Road from South 25th Street west to Homestead Expressway is partially dirt and was closed by a snowdrift when he posted the sign.

Proponents

1. **Jeff Keiser**, 13440 S. 25th Street, presented the proposal as the applicant. Camp Sonshine is a summer day camp program of 8 weeks for children from grades kindergarten to six. It is south of town in the country. They are excited about giving kids from Lincoln an opportunity to get out of the city and be on an old farm to spend some of their summer time in a safe environment. The supervisors are very active with the kids. Their purpose is to help raise these kids with good character, qualities and traits.

The access to the camp is a gravel road from the north. Those attending from the Hickman area approach from Roca Road, which is blacktopped. Out of the 80 children, there are a lot of siblings and a lot of families that car pool so the actual number of vehicles traveling to and from the camp would be in the range of 40, with there being about a 50/50 split of the traffic approaching from two directions. There are 8 weeks of camp; however, during the last week there is not a lot of traffic because the children are brought in by vans. The camp directors desire to create a memory for these kids so that when they are back in school they know what it is to be a leader and how to interact with peers.

2. **Ken Schroeder**, appeared on behalf of the **County Engineer** to address their previous comments about the impact on the roads using the worst case scenario of 80 cars from the north twice a day, which would require the road to be regraded and redesigned for 50 mph. However, with the new information submitted by the applicant as to how the traffic is split up, the County Engineer is now comfortable with the plan and does not believe the traffic will increase enough to require the regrading. He suggested that the permit could be approved on a trial basis to see how it works out and take a look at the traffic impact again next year.

Esseks wondered how things would be changed if it was found that the traffic impact required regrading of the road. Schroeder stated that the road would have to be regraded due to the traffic count. If the traffic count kicks up to 200-250 cars a day, it will need to be addressed. County Engineer no longer objects based upon the applicant's detail of how the traffic flow will occur, plus it is only 7 weeks out of the year.

Francis inquired as to the typical schedule for regrading. Schroeder explained that when the traffic count hits 200-250 vehicles per day, the County Engineer will study it and put it in the one and six year plan. The existing wash-board condition of the road should improve with the thawing and the work they are doing on the roads now. This has been a bad year for the roads.

There was no testimony in opposition.

Response by the Applicant

Keiser submitted a list of parent evaluation comments about the camp reflecting the positive impact on the community and the development of the children.

ACTION BY PLANNING COMMISSION:

March 10, 2010

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

Francis believes this to be a great opportunity for kids to be out on the farm.

Sunderman agreed. It's handy and easy to get to. So many of the summer camp units are so far away and hard to get to.

Motion for conditional approval carried 7-0: Francis, Esseks, Cornelius, Taylor, Gaylor Baird, Partington and Sunderman voting 'yes'; Larson and Lust absent. This is final action, unless appealed to the City Council within 14 days.

**SPECIAL PERMIT NO. 10006,
FOR EXPANSION OF A NONCONFORMING USE,
ON PROPERTY LOCATED AT
322 NORTH 9TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 10, 2010

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

Ex Parte Communications: None.

Staff recommendation: Denial.

Staff presentation: **Tom Cajka of Planning staff** submitted a letter from Curt Donaldson, a neighbor in the area (2860 R Street), in support of the staff recommendation to deny this special permit, stating that it is important to keep the historic look of porches for the integrity of the neighborhood and that the applicant should have to follow the zoning requirements.

Cajka presented the proposal for a special permit to expand a nonstandard dwelling to enclose a porch at 322 N. 29th Street. Staff is recommending denial because this porch is only set back 5.4 feet from the property line. A porch can encroach the front yard if it is not enclosed. By totally enclosing this porch, it almost becomes more part of the house than a porch, such that it would no longer be called a porch. So now, the house is 5.4' from the property line.

Building & Safety inspected the porch and left a door hanger on the property due to a complaint. Cajka showed pictures taken by Building & Safety. The porch now has siding on it that matches the rest of the house, so the work continued after Building & Safety left the door hanger.

The zoning ordinance does allow enclosed porches under certain criteria, one being no closer than 10 feet to the right-of-way line. This is only 5.4 feet. Also 50% of the walls have to be transparent – this is more like 75% non-transparent. In addition, as staff observed the neighborhood, there are other porches but predominantly, the houses in this area have unenclosed porches. Those that are enclosed were done many years ago and are more like a screened-in porch. Staff does not believe the proposed enclosed porch is in character with the neighborhood.

With regard to neighborhood design standards, Cajka pointed out that this proposal does not have to meet the neighborhood design standards because it is a non-standard property. If it was going to be a new house, it would have to meet the neighborhood design standards and they would be required to have an open porch, not enclosed.

Cajka noted that the applicant stated that the purpose was to make it more aesthetically pleasing and safer. Cajka believes that both of those purposes could have been met without enclosing the porch.

Cajka confirmed that this is not located in a historic district.

The house is located on a half-lot, a little under 3000 sq. ft., 48' wide and 62' north/south. It was probably deeded off before the city had subdivision requirements.

Francis inquired whether there are properties that sit on this same street with porches that are set back further than this property. Cajka stated that there is one directly across the street that has an enclosed porch that is probably not set back any further. He did not know how long that porch had been enclosed.

Francis wondered whether the staff recommendation would be different if this structure had more windows. Cajka does not believe that would change the staff recommendation because we do not want to encourage or set a precedent of granting special permits on non-standard properties that are located this close to the property line. In the past, whenever we have made a recommendation for approval on expanding a non-standard property, it was usually when the expansion is in line with the existing building or house. He acknowledged that there was an existing porch, but there is a difference between having an open area that is predominantly unlivable and then converting it to something that looks like an extension to the house.

Esseks confirmed with Cajka that this is a violation of the zoning code. Esseks wanted to know the implications of the violation if this special permit is not approved. Cajka indicated

that the applicant can appeal to the City Council. If the City Council denies the request, the city has authority to make the owner remove it and rebuild it as an unenclosed porch. Steve Henrichsen of Planning staff advised that the City does proceed on violations. Building & Safety will inspect and request that the work be stopped. The individual is then given the opportunity to stop the work and go through the correct process. In this case, the applicant chose to go forward with the work rather than going through the correct process. If this special permit is not approved by the Planning Commission and City Council, the applicant would be required to reverse the work.

Esseks confirmed that the city acted based on a complaint by a neighbor. Cajka agreed. Building & Safety received a complaint, but it is not public record who makes the complaint.

Gaylor Baird assumes there was contact made with the homeowner at the time of the photo in January. Was the homeowner aware of the violation before completing the project? Cajka answered, "yes". The picture shown is the first time Building & Safety inspected, but the work did continue after that.

Gaylor Baird suggested that it would be fair to say that if we were to make some sort of exception today, that in the future other people might come forth with a request for special permit after work is done. What is the risk of making an exception for this house today? Henrichsen responded, stating that in this neighborhood and lots of neighborhoods you will find enclosed porches that perhaps were done decades ago, but by and large the character of this area is mostly for unenclosed porches. This addition was done in the front yard contrary to inspection and posting by Building & Safety. It would definitely be a precedent.

Rick Peo of City Law Department suggested that this application is really kind of an abuse of the special permit process for nonstandard and nonconforming properties to be enlarged. That special permit legislation was intended to allow a reasonable reuse of property that has predated our code. But this specific special permit is allowing this particular property to have an advantage over what legitimately built properties would not be allowed to have. If it were a permitted use instead of nonstandard, the applicant would not be able to enclose the front porch without going to the City Board of Zoning Appeals and showing a very unique and unusual hardship. Under this factual situation, it appears to be an inappropriate use of the special permit to approve it. If the Planning Commission votes to approve, there needs to be some findings of fact to justify contradiction of the findings by the Planning staff. It is Peo's opinion that this special permit request does not fit what was intended in the ordinance.

Cornelius inquired whether a building permit was pulled for this project. Cajka stated, "no".

Proponents

1. Chris Thompson, the applicant and property owner, stated that he purchased the house 2.5 years ago. The seller bought it for \$39,000 about 7 years ago. It was in shambles. The previous owner lifted the house and put in a new foundation. When Thompson purchased the house, the porch was more like a deck. It was what it was. This is a small piece of property with an awkward angle, so the house sits rectangular east to west on a property that is rectangular north to south. There is a setback of 4' behind the house; 10' in front of the house; 12' on one side toward the alley; and about 30' off to the other side. He is stuck with a porch that is about 4' higher than the sidewalk, so you are looking at a very rapid steep incline, which is relatively skinny. Thompson submitted that every porch in this neighborhood is 8-10 feet wide. Thompson has a high plank off the ground that he needs to somehow protect. His insurance required a railing, so he put up some boards as a temporary measure.

In November, the concrete steps caved in. He is trying to improve this house and acknowledged that he enclosed the porch. However, he stated that he had no intention of violating any regulations. He suggested that a first time home buyer does not necessarily understand when a permit is required. He understands that now, but he did not do this to divert the system or be deceptive.

His construction help left 2-3 days after the notice was left on the door so he completed the project himself. He stated that he did look on-line but did not find anything more than a general description of some stuff for which a permit was needed. It would be a very helpful resource to have a detailed walk-through of what you can and cannot do.

Thompson enclosed the porch for safety and aesthetics. He attempted to fix an atrocity and make it look like part of the house. There is theft in this neighborhood. He has seven bikes and wanted to keep them in the enclosed porch where they would not be visible.

It is Thompson's opinion that not enclosing the porch is going to look terrible. That does not fit this neighborhood any more than anything else.

Thompson also pointed out that he does not have a lot of other options for expanding. He cannot expand to the back or on either side of the house. Denying this special permit denies him the ability to develop and build his own property as he sees fit. He has no other options because of the way the property was built and designed.

Thompson suggested that this neighborhood is inconsistent. There are some enclosed porches. There are a lot of houses that abut the property line. There is a house six houses away that has spray-painted poetry across the house. Thompson is trying to have a house that looks relatively uniform and consistent. He plans to landscape and put up some fencing. If he can't do that, he sees no reason to invest time and money in this neighborhood. This neighborhood needs people putting money into it. Denial of this special permit tells him to sell his house and just leave it.

Thompson stated that he did not go to the Board of Zoning Appeals because he was told that it would be a losing battle. He was told that he could get a special permit for this nonconforming use. He assumed he could just file the paperwork and get a permit. Each step got more complicated.

Francis confirmed that the applicant has owned the property for 2.5 years. She asked whether any of the land has been taken away since he purchased the property. Thompson stated that it has remained the same size and he does not know of any zoning changes on his property.

There was no testimony in opposition.

Staff questions

Esseks asked about the Board of Zoning Appeals avenue. Cajka advised that the applicant must exhaust all other avenues before applying to the Board of Zoning Appeals. This special permit process would be his first step. If denied by Planning Commission and then City Council on appeal, he can make an application to the Board of Zoning Appeals. However, Cajka does not believe the applicant has any merit to go to the Board of Zoning Appeals because you cannot create your own hardship. We are not saying he cannot have a porch. He can make the porch meet all safety requirements and fix it up to be aesthetically pleasing and safe.

Cornelius observed that the process would involve submittal of drawings of the proposed expansion, and those would be compared with the codes and the homeowner would be informed whether or not it conformed before construction ever began. Cajka agreed. If the applicant would have gone to Building & Safety and had a plan showing it as it is today, Building & Safety would probably have not approved it and would have advised of this special permit process.

Esseks asked staff to explain why the 10' setback is so important to the public. Cajka stated that it is in the zoning code, but the issue is not only the 10'. There are other issues that you have to meet to enclose the porch – it cannot be served by heating, cooling or plumbing; 40% of the other residences on the block must have a porch that is encroaching into the front yard the same distance or greater than this house. The 10' keeps some distance between the sidewalk and the structure.

Henrichsen clarified that the setback is 15' in the R-4 zoning district. The existing house is 10.6'. If the owners of other houses that are set back 25' came in to change it from a porch to an addition to their house, they couldn't do it and they would not have this avenue to apply for it. With this house 10' closer already, the ability of this expansion of a nonconforming use gives the opportunity to make the setback even closer to the street, something that no one else meeting the provision of the ordinance has the ability to use.

Esseks believes that setbacks are useful for the community. They give people the ability to see what's going on in the world.

Cornelius asked staff to talk about the planning and zoning principles behind the idea of setbacks, beyond the visual aspect. Henrichsen stated that the setbacks vary by certain districts to provide uniformity between the various houses. Early on, a lot of setbacks were more related to fire code issues. With the construction standards today, having a 5' setback perhaps is not quite as much of an issue in terms of the fire code, but to get around the house and maintain the house, there needs to be a certain amount of uniformity, a certain amount of green space, overall aesthetics and value. It is a generally held principle that you have front, side and rear yard setbacks relating to aesthetics, safety and a certain amount of uniformity in the neighborhood.

Response by the Applicant

Thompson advised that he did speak with the individual who sent the letter in opposition. He appears to be a porch enthusiast, but the reality is that Thompson doesn't really have a porch. "It is no deeper than this podium." He is not proposing to change the footprint of anything; he is not changing a view; there are only have one or two driveways on this entire block; and there is no real uniformity in the neighborhood. There is not a straight line. He assured that he is not trying to work the system. He is not trying to strong arm anyone. He would just like to be able to use his property for something that he finds reasonable. Not granting this special permit is an indication that it is time to move on and stop throwing money and time into making this neighborhood nicer.

ACTION BY PLANNING COMMISSION:

March 10, 2010

Cornelius moved to deny, seconded by Francis.

Francis commented that she has sold hundreds of houses in this neighborhood in the real estate industry. It is an older neighborhood. The city has targeted this neighborhood for improvements and there is plenty of CDBG money available in that area. All of the homeowners that she works with know that if they are going to buy a small house, their storage space and their options for expansion are quite limited with a small lot and a small footprint. Any homeowner needs to take it upon themselves to find out the rules and regulations before they start changing things. Ignorance of the law is no excuse.

Esseks suggested that the owner can work with the city and make the necessary adjustments without losing all the value of his investment so far. He does not see how the Planning Commission can ignore the ordinance. He believes the staff is flexible enough to work with the owner to salvage the investment he has made so far as much as possible.

Taylor expressed empathy for the owner. These are learning points. He believes something can be worked out. He appreciates the applicant's determination to do a good thing. It looks as if it might have been and still may be an opportunity in terms of taking a dilapidated piece of property to make something of it. The applicant should not be discouraged. When the Planning Commission makes a decision, they must take into consideration the community as a whole and the regulations are really designed for the protection of the community and to make it a viable place to live. There is always a starting point to make things better and he thinks the applicant has the opportunity to do that.

Cornelius pointed out that the city legal department has indicated that this is not a particularly natural or appropriate use of the special permit process. We need to take that into account as well as being asked to find a relatively unique circumstance that contravenes the existing ordinance.

Gaylor Baird acknowledged that it is never fun to reverse something. She does not believe it is necessarily obvious to a young person and first time home buyer that certain rules exist and it can be complex. Perhaps the Building & Safety Department could make some adjustments on the Web site that can raise some red flags for people to avoid something like this in the future. She is hopeful that steps can be taken to make a situation like this easier.

Partington agreed. He does not believe any of the Commissioners are happy about denying this special permit. He is hopeful that the applicant will pursue every avenue he can to salvage what he can from the construction that has already been done.

Motion to deny carried 7-0: Francis, Esseks, Cornelius, Taylor, Gaylor Baird, Partington and Sunderman voting 'yes'; Larson and Lust absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 2:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 24, 2010.