

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 2, 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, Roger Larson, Jeanelle Lust, Jim Partington, Lynn Sunderman and Tommy Taylor; Marvin Krout, Steve Henrichsen, Mike DeKalb, Brian Will, 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 Open Meetings Act.

Sunderman then requested a motion approving the minutes of the special public hearing on the Capital Improvements Program and Transportation Improvement Program held May 12, 2010. Motion for approval made by Cornelius, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Taylor and Sunderman voting 'yes'.

Sunderman then requested a motion approving the minutes for the regular public hearing held May 19, 2010. Motion for approval made by Francis, seconded by Cornelius and carried 8-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington and Taylor voting 'yes'; Sunderman abstained.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

June 2, 2010

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 10011, CHANGE OF ZONE NO. 10013 and COUNTY PRELIMINARY PLAT NO. 10002, FOX RUN.**

Ex Parte Communications: None

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

SPECIAL PERMIT NO. 07044A,
FOR ADDITIONAL PARKING,
WITH REQUEST TO ALLOW PARKING
IN THE FRONT YARD,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 18TH STREET AND F STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 2, 2010

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Christy Eichorn of Planning staff** explained that this is an application for a special permit for a parking lot in a residential zoning district for First Presbyterian Church located at 18th & F Street. This special permit was previously approved for a parking lot in 2007, but at that time there was not a provision to allow parking in the front or side yard setback for parking lots in residential zoning districts. When the use was approved, the applicant was required to meet all design standards and Title 27 requirements. In order to meet those provisions at that time, the church could not have parking along 18th Street, leaving approximately 10 stalls on the lot.

Eichorn went on to explain that in 2008, First Plymouth Church came forward with a text amendment to allow churches to have the ability to ask the City Council for an adjustment to allow parking in the side and front yards in a residential zoning district. In order to mitigate that parking in the front yard, the legislation provided that the city could ask for

additional landscaping, street trees, etc. In this case, the conditions of approval require the same landscaping as was required of First Plymouth Church.

Eichorn explained that in deciding whether parking in the front yard would be appropriate, the staff considers the distance that other structures are set back on that same block face. In this case, there are two other structures with less than 20' front yard setback, which is what would generally be required for any kind of structures in the R-6 zoning district.

Eichorn pointed out that the applicant has not asked to park in the front yard along F Street, where they are maintaining the 20' front yard setback in that area.

Larson inquired whether this action also requires a change of zone. Eichorn stated that it does not require a change of zone. In 2008, the ordinance was changed to allow commercial businesses or churches to ask for this accommodation without a change of zone.

Gaylor Baird believes that the landscaping and screening is key in this kind of equation and asked staff to speak to the conditions of approval. Eichorn stated that all parking lots, whether in a residential or commercial district, must meet landscape design standards. The staff may ask for additional landscape screening, but we also try not to totally block off the parking lot. In this case, the staff recommendation asks for some street trees in the public right-of-way to help soften the parking lot being up close.

Proponents

1. Terri Sherman, 5210 Deer Ridge Drive, Eagle, appeared on behalf of the applicant, **First Presbyterian Church** at 18th & F Streets. The church is requesting this special permit because the neighborhood is very congested with a lot of multi-family, large apartment buildings and duplexes, and the church members are finding it difficult to park. The church purchased and removed the two homes across the street. When the church realized the parking would only be 10 stalls, they put everything on hold. They are vacant lots at this time. The church is requesting to park in the front yard only on 18th Street. This will allow 20 additional parking stalls directly across the street from the other parking lot. The waiver is only to allow parking in the front yard on 18th Street to allow 20 stalls instead of 10.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 2, 2010

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

Francis believes this is excellent use of the space and that it is important to help retain churches in older neighborhoods.

Gaylor Baird expressed appreciation for the conditions requiring the additional landscaping.

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

SPECIAL PERMIT NO. 10023
FOR A PARKING LOT,
AND TO ALLOW PARKING IN THE FRONT YARD,
ON PROPERTY GENERALLY LOCATED
AT THE NORTHWEST CORNER OF
52ND STREET AND N STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 2, 2010

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Brian Will of Planning staff** provided background information on this application for a parking lot. The site is a little unusual with a zoning district boundary that doesn't quite cut the block in half, but rather 2/3rds, cutting off the rear of the lots along N Street. The applicant is requesting to be allowed to have parking in the front yard adjacent to 52nd Street and along N Street.

In reviewing this type of application, the staff takes the broader context of the area into consideration. The Planning Department supports the request to allow parking in the front yard along 52nd Street because as you look to the north, there will be parking potentially up

to within 6' of the lot line in the H-2 zoning. However, the staff is opposed to extending the line west along N Street because the existing development and homes are set back approximately 20' or more from the lot line. The existing parking lot on the west edge also has a 25' setback from N Street.

Will explained that this parking lot was approved by special permit back in the 1960's and used by an automobile dealership. In terms of compatibility, the staff is suggesting that allowing parking in the front yard along N Street does not make sense given the existing development. Everything north is H-2, everything south is R-2.

Larson wondered whether this would also require a change of zone. Will stated that it does not. A parking lot in a residential zoning district is allowed by special permit.

Francis inquired as to what has changed in this H-2 zoning area that requires the application to ask for more parking. Will believes the applicant will speak to that issue. He presumes that they have new or different tenants which has increased their parking demand.

Proponents

1. **Jerry Nelson**, 5617 Thompson Creek Blvd., the applicant, explained that the reason they are looking for increased parking is because there has always been a parking problem with this building, and the change in tenants has increased the parking problem. When Alltel became Verizon, their parking demand increased with the business change. There have been numerous complaints and numerous fender benders in that parking lot. It has been an ongoing issue.

Nelson explained that the reason they are asking for the adjustment to the setbacks is to allow 4-5 more stalls on each side. The adjustment on 52nd Street is essential in order to allow cars to turn around as opposed to a dead-end parking lot. Parking in the setback along N Street would allow another 4-5 parking stalls, which would also help the situation. There is some space in the building that is now vacant. Nelson assured that there is no desire to build any more square footage on the building, but they do want to keep the tenants happy and provide as much parking as possible.

Esseks pointed out that there is a large un-utilized parking lot at the west end of N Street near 50th Street, and the east boundary of that property line is just below this building. He wondered whether this applicant had considered leasing some of that space. Nelson

acknowledged that Kent Thompson does manage that property but it is under a total different ownership. They have discussed acquiring that property without success thus far. However, Nelson does not believe the parking benefit would be as high in that location. The largest parking stress is on the east side of the lot – that parking lot would be way to the west.

Larson inquired about access to the parking lot. Nelson stated that access would be from the existing drive on the back side of the building. The building which has some two-story apartments and small office use would be torn down, along with the house, to create this parking lot.

2. Richard Bagby, 389 S. 47th Street, appeared as President of the **Witherbee Neighborhood Association**, in support. Witherbee Neighborhood Association is interested in any development in the area and is generally opposed to knocking down any residential properties within the neighborhood, but with that said, the neighborhood association is supporting this proposal. Witherbee conducted a survey of neighbors immediately adjacent, and they are generally supportive of the project and looking forward to removal of the apartment/office building and the other residential property because of a long string of noisy tenants.

As to traffic and parking in the area, the nearby neighbors are looking forward to getting that commercial traffic off of the neighborhood streets. They see the removal of the higher density apartment building as a benefit to the neighborhood. The residential home on the corner is currently fenced off with a 6' privacy fence, so parking out to the boundaries of the property is not objectionable to the neighbors on the N Street side and the 52nd Street side. The removal of the fence with landscaping that screens the parking lot would be an improvement to the property.

The neighborhood association also favors the additional landscaping which is being recommended by the staff. The developer has made an effort to reach out to the neighbors and has shown an effort to listen to the neighbors and adapt to their concerns. The neighbors have expressed concern about the landscaping and potential lighting of the parking lot, and the developer has indicated that the lighting would be neighborhood friendly.

Bagby has heard no opposition from adjacent neighbors and the neighborhood association does not oppose the project. He acknowledged that there may have been some adjacent neighbors that they missed in doing their survey.

Esseks inquired whether the neighborhood association has taken a position on the 25' setback from N Street in order to be compatible with the properties just to the west. Bagby stated that the neighborhood association is not taking a position on that recommendation. The adjacent property owners to which they spoke are more interested in getting cars off the street than protecting that setback. Personally, Bagby would like to see the setback maintained.

Opposition

1. Judith Wolfe and Ted Naylor, 200 52nd Street, testified in opposition. Currently, there is a beautiful 50-year old tree on the lot. This is a residential area with children. Currently, there are no parking areas. They have not noticed any traffic from the Verizon Store parking in any of the neighborhood. What they do have are neighbors parking in the neighborhood. She is concerned about the lighting and increased traffic, which has already increased because of HyVee. A parking lot will only increase the number of cars coming up and down 52nd Street to get to O Street or Randolph Street. N Street will become another main thoroughfare. She will have problems backing out of her driveway.

Wolfe also pointed out that the Witherbee survey was not an overall survey. She does not think that they represent everyone within the area.

Naylor suggested that there is plenty of other opportunities for parking in the area. Traffic will increase on 52nd Street due to destruction of the hotel, and traffic has increased on N Street to avoid the 48th Street and O Street traffic light.

Staff questions

Sunderman clarified that the entrance and exit will be the existing drive north of the premises. The plan does not show a driveway onto N Street or 52nd Street.

Larson noted that there is a traffic light at 52nd and O Streets.

Gaylor Baird asked staff to address the concerns about the additional traffic. Will could not say the traffic would increase nor decrease. He would anticipate that most of the traffic will be coming down O Street and exiting off 52nd Street, and perhaps some northbound traffic on 52nd Street. Some may find N Street a shortcut over to the Walgreens site. There is also a median cut in O Street at 50th Street. The staff does not anticipate that there would be a significant increase in traffic. N Street ends at 52nd Street.

Response by the applicant

Nelson stated that the intention of this parking lot is not to bring more business to the area, but to allow people that are coming there to be able to park as opposed to sitting in line in the parking lot waiting for the next person to back out. It is to relieve the pressure on parking. The access is only from the north. The applicant does not anticipate any increased pressure on the streets. If anything, this will relieve traffic on N Street and not increase it.

Esseks inquired as to how many parking stalls are at the north edge of the existing building. Nelson did not know the number for sure. Esseks then suggested that the real issue is whether you have 22 or 27 parking stalls because of the importance of sustaining the 25' setback on N Street. Nelson pointed out that they do have more parking than is required from a zoning standpoint. With regard to the setback on N Street, Nelson pointed out that the special permit on file allows that to be 2' from the property line which does not allow screening.

As far as screening for this parking lot, Campbell's Nursery has provided a landscape plan that screens the parking well and, in addition, Planning is asking for 100% screening, to which the applicant does not object.

ACTION BY PLANNING COMMISSION:

June 2, 2010

Lust moved to approve the staff recommendation of conditional approval, which allows parking in the front yard to within 6' of the lot line along South 52nd Street, but not along N Street, seconded by Esseks.

Esseks believes the issue is whether to maintain the 25' setback, and the underlying principle is to keep the setback compatible with setbacks of the adjoining homes, and we would do that by accepting the Planning staff recommendation. It would be a mistake to deviate from keeping setbacks compatible with the area.

Cornelius acknowledged the concerns of the neighbors to the southeast about traffic. In looking at the configuration of the parking lots and streets, he tends to come to the conclusion that if there is increased traffic along N street as a result of the existing businesses, it is likely the result of the inability of the existing parking lot to manage the traffic and parking that is required. And expanding that lot as proposed is likely to actually contain some of those trips, so he believes this is a benefit to the neighborhood. It is

valuable that the neighborhood association gave us some further input from the neighbors and information.

Taylor appreciates the neighbors coming forward; however, in this case, he believes that the traffic flow will not be as great as it has been. He likes the way the property is configured. It would be more problematic if that parking was shifted. Overall he believes it will be a better situation for the whole neighborhood.

Sunderman commented that as O Street continues to develop, it is going to be a strong commercial area. This application and the 25' setback gives credence to supporting commercial businesses that come into a redeveloping area but still puts a line between the neighborhood and the development.

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

CHANGE OF ZONE NO. 10012,
TEXT AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING TO
SPECIAL PERMITS FOR THE SALE OF
ALCOHOLIC BEVERAGES FOR
CONSUMPTION ON AND OFF THE PREMISES.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 2, 2010

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

Ex Parte Communications: Gaylor Baird disclosed that she made a phone call to Council Member Cook to see if he would be present at this hearing.

Staff recommendation: Approval.

Staff presentation: **Brian Will of Planning staff** submitted eight additional letters in support.

Will explained that one part of this text amendment has been requested by Jonathan Cook and pertains to the commercial, H and I districts, where alcohol sales are allowed by

special permit for on- or off-sale. There are several criteria which must be met. This amendment affects the provision which talks about separation from adjacent land uses, currently providing that the “licensed premises” (the area licensed for liquor by the State of Nebraska) must be at least 100’ away from any day care facility, park, church, state mental health institution or residential district. Two weeks ago, there was a change of zone with a special permit for the purpose of meeting the 100 separation from the licensed premises to a residential zoning district. This text amendment adds language back into the ordinance, “....no closer than 100 feet from the property line of a premises used in whole or in part for a first-floor residential use”.

There are two other changes in this text amendment suggested by staff. One is to add clarity regarding how measurements are conducted, and the second relates to the provision regarding the timing of applicability such that, “...the provisions of this ordinance (CZ#10012) shall not apply to any special permit approved prior to the effective date hereof.”, in order to protect those special permits previously approved.

The change regarding measurement adds back language that existed prior to 2004, when the provision was that the separation had to be measured to a residential use. When those special permits became final action by Planning Commission, the term “residential use” was eliminated. At that time, it was believed that the highest and best use should prevail. The circumstance such as with the recent CVS application was perhaps an unintended consequence. Adding this language back in would prevent that circumstance from occurring in the future.

Lust wanted to know why the situation with the CVS pharmacy change of zone is being viewed as problematic or something that needs to be changed. Will agreed that there is clearly some subjectivity to it. As staff reviewed this, the attention focused on those older commercial districts around the city that are different than the newer districts being approved these days with the small lots that abut immediately to residential lots. There is not adequate depth to provide for separation. We find pressure for the commercial district to expand and the adjacent neighborhoods currently experience this pressure. The Comprehensive Plan talks about those commercial districts, except in limited circumstances, pretty much confining themselves to the boundaries they have today. Adding this language back in guarantees that it will remain a residential use.

But, Lust pointed out that the decision as to whether to change the zoning district from residential to office was examined by staff, the Planning Commission and the City Council, and in that situation it was decided that it was appropriate. Why is it that this body can no longer make those decisions and that we need this hard and fast rule?

Jonathan Cook, Lincoln City Council, responded, observing that many Council members felt that there had been a long process leading up to the CVS vote, and that included a recommendation from staff that this zoning change was okay, that there was a zoning agreement and that it was a larger investment in an older area. However, it became apparent later in the process, after the developer had gone through considerable time and expense, that the effect of the change of zone to O-2 solely for alcohol sales would set a precedent that would perhaps be harmful elsewhere in town. It would be difficult in the future to say why it was okay here or not there. Essentially it would undermine the clear rule about the spacing to residential uses. When the Council did vote on the CVS case, most of the Council members indicated that while they were voting in favor, they were interested in seeing the loophole closed. They felt that maybe there was a larger issue that needed to be addressed and perhaps had been overlooked, and that is why Cook has proposed this text change to put protections back in place for elsewhere in town.

Cook further suggested that when we start making exceptions here, there and elsewhere, then there is no longer a clear rule – no one knows what to expect. That is something we would like to avoid.

Partington referred to legislation in 2008, where there was an exception made for restaurants to be within 25' of residential zoning districts. He recalls that that exception was designed for some of the neighborhood shopping centers adjacent to residential areas. The additional criteria was 100' from the public entrance in that situation. Will clarified that that change applied to the B-2 and B-5 zoning where the sale of alcohol was conditioned on the 100' being measured from the door around the building. It was amended for the restaurants specifically. The rationale for that was that a restaurant is a separate and distinct use from the other uses that sell alcohol. This text amendment does not change that regulation.

Esseks inquired how the zoning ordinance defines "premises". Will stated that the "licensed premises" is that area approved for the state liquor license. Esseks is in favor but wants to make sure that it is clearly stated. He assumes the premises could include more than one lot. Will confirmed that if a building covers more than one lot, then the multiple lots would constitute the premises.

Esseks then confirmed that one could have a building used mostly for commercial or recreational purposes, but if one part is used for residential, the whole premises would have to be 100' from the proposed alcohol use premises.

Rick Peo, City Law Department, suggested that the ordinance provides that the "premises may be used for....". It is typically maybe a single lot. In some old areas of town there are a lot of little tiny lots, so to get a building permit, the permittee has to define which lots constitute his premises. Instead of requiring a replatting, we allow the permittee to designate the "premises". Those lots all have to be contiguous, so it is the owners decision to come forward and define how many lots he might have. They must meet minimum lot requirements. If you defined your premises with a perimeter boundary, the alcohol sales must be 100 feet from that outer boundary of the premises used for the residential use. We are measuring from the premise line occupied by a residential use. Instead of measuring to the building, you measure to the property line.

Cornelius then confirmed that in the case where you have a premises which encompasses three lots, it is up to the owner of that premises to determine the boundary of the premises. Peo suggested that the boundary was probably pre-established when he got the building permit to build the building. Then you have a perimeter boundary which constitutes the single premises. We are measuring to the premises, not the actual use. For example, if the premises is Lots 1, 2 and 3, the whole thing is subject to this rule.

Lust inquired whether "residential use" is defined in the Lincoln Municipal Code. Peo stated that it is not. It is more of a common knowledge and understanding rather than adding definitions to the zoning code. Residence refers to a place where you reside or a dwelling where you live. It has to be a dwelling capacity. Lust wondered about a business owner who lives on the first floor with a business upstairs. Peo suggested that would be considered a live/work relationship building.

Gaylor Baird noted that the staff report mentions that the circumstance created by the CVS project was not anticipated and that is part of the justification for this text amendment. The staff report also suggested that the Planning Department regularly gets inquiries from businesses about how to get around the 100' requirement. Why is this important? What protections are we offering by reinserting this language? Will stated that the legislation goes back to 1994, and it was several years in the making. Going back through the record, he found that the distance varied throughout the process, e.g. there was talk of 300'; there was a draft that talked about 50'. He believes the 100' rule was adopted with the common thread of protecting the adjacent neighborhoods. It was agreed that 100' seemed to be a

reasonable separation. It is not unprecedented in the ordinance to have a separation like this for a special permit. Special permits can be conditioned on a case-by-case basis because it is a use that may not be appropriate in every circumstance. In 2004, when residential use was dropped out, he does not believe it was fully thought out.

Cook observed that one of the issues even back in 1994, was the issue of local control and a lot of frustration that the local governing body had little control over where alcohol was sold. There was a lot of concern amongst neighborhood groups that so many of these establishments could be right next to homes and that some kind of buffer was appropriate. What was not known at that time was whether this was an enforceable provision in the zoning code. In 2001, there was a Nebraska Supreme Court ruling which upheld the legality of this mechanism for controlling alcohol sales, saying the Liquor Commission could not override the local zoning code, but it also put a new burden upon us because now instead of our special permit being somewhat advisory, it had the force of law and we then need to apply the law without appearing arbitrary. There were continuous conflicts. Some of us felt that it was important to put in place a single simple rule to protect the closest properties. It makes it a clear rule and we can apply it consistently. We have had six years that have worked very well. There is predictability. But this residential use issue came up in 2004 because of mixed uses. The residential district probably protects most cases. And it did work for six years. Then someone thought about rezoning a couple houses that they didn't own. No one had tried this before. So then we talked about how to fix this loophole and that is how we came up with first-floor residential use to accommodate the mixed uses with second floor residential. This residential use requirement will prevent another example of rezoning solely for the purpose of getting around the spacing.

From a predictability standpoint, Lust referred to the O-2 zoning district and asked Cook whether he agrees that O-2 allows office and it allows residential. Cook stated that O-2 only allows residential on the second floor. Lust asked Cook whether he would agree that there are mixed use zonings. Cook responded, stating that there are a number of zones where you can have second floor residential. For predictability, Lust suggested that it is easier for someone planning to see what an adjacent district is zoned rather than trying to determine whether there is actual residential use in that area. Cook believes that normally they coincide pretty well. He does not believe it is difficult to determine if there is a first floor residential use, i.e., it's a house, it's a duplex, it's an apartment building, it's something no one would mistake. He does not believe it is complicated.

Cornelius observed that had the CVS package shown the two houses rezoned to O-2 and conversioning to O-2 appropriate uses in its assembly, we wouldn't be having this

discussion today. Cook agreed that it is possible that that would have made a difference. But that's a very different level of investment than coming in to rezone properties that the applicant does not even own just to meet some buffer.

Esseks pointed out that the Planning Commission received the approval of the rezoning from the two property owners just prior to the Planning Commission hearing and it was indicated to the Planning Commission that they had their own plans with the applicant. Cook agreed that it was a last minute thing and there would have been resistance to the rezoning if the owners were against it. But, he is not sure it is always appropriate to rezone property even if the owners are in favor of it, based on larger planning principles. In changing those lots to O-2, we have put some more people next to a commercial zone. When it comes to whether or not to protect owners, it doesn't mean the next owner will feel the same way. We want to avoid conflicts as much as possible. We want to make sure the uses are compatible.

Lust asked whether Cook agrees that the CVS pharmacy project conforms with the Comprehensive Plan. Cook agreed that the investment was a valuable thing, but he would not necessarily agree that the rezoning was in conformance with the Comprehensive Plan because he believes it is a commercial intrusion into a residential area. By having these rules in place, sometimes it also allows for a project to come about in a little different way that is more acceptable. He believes that the project conforms in some ways, but the project as a whole does not conform.

Esseks believes that the Planning Commission did apply the appropriate criteria in approving the change of zone. Cook understands it was a difficult situation.

Support

1. Darrell Fisher, Executive Director of Lincoln Council on Alcoholism and Drugs (LCAD), located at 1914 L Street, testified in support and commended the Planning staff. The spacing requirement was intended to protect residential uses. The subsequent request to rezone residential properties as commercial when no plan to use those properties for anything other than residential created a loophole and a perfect storm. This proposal will require that 100' spacing apply to a residential use – not just a residential zone. LCAD is requesting favorable consideration of this proposal. LCAD supports economic development and stable neighborhoods, and stands ready to assist the Planning Commission, City Council and County Board by working to examine outlet density and prevent economic and social disintegration in Lincoln.

2. **Jon Carlson** appeared on behalf of the **Stronger Safer Neighborhoods Program** for the City of Lincoln, in support. Within the context of the Stronger Safer Neighborhoods Program, it is often said that good fences make good neighbors. In this case, good zoning and good buffers make good neighbors. These buffers have been important as we try to create safety and stability in the neighborhoods; we should never forget that while we desire new commercial investment in older neighborhoods, a vast majority of the existing investment is in the residential homes. We want the commercial uses to integrate and support the surrounding residential. The 100' spacing has served us very well.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 2, 2010

Taylor moved approval, seconded by Gaylor Baird.

Lust stated that she will vote against the proposed amendment. It is not that she does not support having buffers between commercial and residential districts; however, she believes the existing ordinance allows for that, as well as allowing for flexibility when there is a project like the CVS Pharmacy that did fit within the terms of our Comprehensive Plan and was a good development for that neighborhood. She is more than a little chagrined by the perception that this was somehow a "loophole" or not something that was well thought through when that change of zone came before this body. She believes that when it was initially brought up, the Commissioners asked very appropriate questions about the change of zone; we requested more research; we got more information; and then afterwards the applicant did get approval of the two property owners in the change of zone. That was the final straw in the approval of that project. She is voting against this amendment because she appreciates the flexibility that is within the existing ordinance. She thinks it led to a lot of thoughtful discussion about that particular project and it was a great discussion and a great thoughtful process. She still believes that the CVS Pharmacy is a good project for the city and she would hate to lose that opportunity of flexibility in the future by adopting standards that are more restrictive.

Taylor was on the Planning Commission in 2004 when the text was adopted. We saw that alcohol at a gas station would be a detriment to the neighborhood. He voted against the CVS project. Perhaps it is a good commercial investment, but the principal reason for the separation is for protection of the neighborhood. We should not cast aside principles because of a specific exception. He is disappointed that this text amendment was not taken care of before the CVS project came forward. He will vote in favor.

Gaylor Baird stated that she will support the text amendment. It is important to remember that staff asserted that this was something that was originally intended. We have spoken on a number of occasions about the Comprehensive Plan being a flexible guiding document. Without this text amendment, we call into question the meaningfulness of the buffer between alcohol sales and residential uses. This amendment puts some meaning back into those buffers.

Francis expressed appreciation for Lust's comments, but she will support the amendment. Just because we put these rules and guidelines back in does not mean that we cannot be flexible. The Planning Commission reviews things that don't conform – things that are different.

Sunderman believes this provides a strict definition of where alcohol sales can go and does away with the mitigating circumstances. He has gone back and forth on this decision. He thinks CVS is a good project and appropriate for the neighborhood. But he does know that alcohol sales is a very emotional issue, so it is almost better to have identified rules in those situations.

Motion for approval carried 8-1: Cornelius, Partington, Larson, Taylor, Esseks, Francis, Gaylor Baird and Sunderman voting 'yes'; Lust voting 'no'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 16, 2010.