

City Council Introduction: **Monday**, September 18, 2000
Public Hearing: **Monday**, September 25, 2000, at **5:30 p.m.**

Bill No. 00-167

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3276**, a text amendment to Chapter 27.33 of the Lincoln Municipal Code, requested by the Director of Planning on behalf of the Problem Resolution Team, to require fences to screen used car lots, service stations, heating & cooling and appliance sales and repair operations in the B-3 zoning district when located within 100' of any residential use or district, to make those uses conditional uses and to prohibit those as new uses within 100' of residential uses or districts.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 9/6/00
Administrative Action: 9/6/00

RECOMMENDATION: Approval, as revised by staff on 9/6/00 (8-0: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Steward absent).

STAFF RECOMMENDATION: Approval, as revised on 9/6/00.

FINDINGS OF FACT:

1. The Planning staff recommendation to approve this text amendment, as revised on September 6, 2000, is based upon the "Analysis" as set forth on p.2-3, concluding that the ability of zoning locational or screening requirements to solve problems of neighborhood stability and vitality are certainly very limited, but the PRT feels that each and every element is a causative factor and should be methodically addressed. This proposal attempts to contribute one piece of the much larger puzzle of how to keep fragile residential neighborhoods from sliding into a state of decay.
2. The presentation by the applicant is found on p.10.
3. Testimony in support is found on p.10-11, and the record consists of four letters in support (p.14-16).
4. There was no testimony in opposition.
5. On September 6, 2000, the Planning Commission voted 8-0 to agree with the staff recommendation, as revised by staff on 9/6/00 [See p. 6, (j)(4)].

FACTSHEET PREPARED BY: Jean L. Walker

DATE: September 11, 2000

REVIEWED BY: _____

DATE: September 11, 2000

REFERENCE NUMBER: FS\CC\FSCZ3276

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: CHANGE OF ZONE NO. 3276

DATE: August 24, 2000

****Revised on 9/06/00****

PROPOSAL: The Planning Director proposes to amend Chapter 27.33 of the Lincoln Municipal Code to require fences to screen used car lots, service stations, heating & cooling, and appliance sales and repair operations in the B-3 zoning district when located within 100 feet of any residential use or district, to make those uses conditional uses, and to prohibit those as new uses within 100 feet of residential uses or districts.

GENERAL INFORMATION:

APPLICANT: Kathleen A. Sellman, AICP, Director of Planning,
at the request of the Problem Resolution Team
Planning Director
Lincoln/Lancaster County Planning Department
555 South 10th Street
Lincoln, Nebraska 68508
402-441-7491

CONTACT: John L. Bradley, AICP
Assistant Planning Director, Land Use
Lincoln/Lancaster County Planning Department
555 South 10th Street
Lincoln, Nebraska 68508
402-441-6372

REQUESTED ACTION: Require fences to screen used car lots, service stations, heating & cooling, and appliance sales and repair operations in the B-3 zoning district when located within 100 feet of any residential use or district, to make those uses conditional uses, and to prohibit those as new uses within 100 feet of residential uses or districts.

LEGAL DESCRIPTION: Chapter 27.33 of the Lincoln Municipal Code

ANALYSIS:

1. The B-3 Commercial District is a special district that was applied to older, existing commercial areas in the 1979 zoning update. Uses found are primarily retail, but some heavier commercial and some industrial uses are there. Typical places it is found are Havelock, University Place, South Street from 17th to 9th, 27th and "O" Street, North 27th Street, and College View (see map for total distribution). None is found in suburban locations. B-3 districts typically, but not always, are one lot deep, along a major street, and seldom found internal to residential neighborhoods. There are currently 286.5 acres of B-3 in Lincoln.

2. The B-3 permits institutions, retail, and some community support services, such as ambulance service, food storage lockers, and undertakers. Dwellings are permitted above the first floor, and more intensive uses are permitted with conditions, or as special permitted uses.
3. The Problem Resolution Team (PRT), was established by Mayor Johanns in 1996. It is comprised of representatives from 9 city departments and other agencies. The purpose of the PRT is to address long term problem properties that need a multi-jurisdictional approach. The PRT has encountered some problems that may have, as part of their origin, land use or structural elements. One problem observed was the interface between used car lots and dwellings. The Planning Department was asked to find solutions to this problematic situation. The staff explored buffer yards, landscaping, fencing, and even eliminating the car lots as a permitted use in the B-3.
4. In the end, solid fencing was determined to be the most effective visual screen between residences and outdoor sales, display, and storage.
5. The Urban Development Department identified certain additional problem operations: service stations, appliance, and heating and cooling sales and repair businesses as well that were located within 100 feet of any residential district or use.
6. A three year period for existing facilities to erect the fence is proposed.
7. No more of these uses would be permitted to locate within the 100 foot "buffer distance" as new land uses.
8. The City adopted Parking Lot Landscape Design Standards in **April, 1985** (Res. A-70059).
9. In **July, 1985**, the City also adopted landscape and screening standards for adjacent land uses of substantially different character in the B-1, B-2, B-3, B-5, H-2, H-3, H-4, O-2, I-1, and I-2 (Res. A-70168), but these did not apply to existing uses, or place a distance restriction on those uses.
10. The three year- to-comply is not a new approach for Lincoln. In **September, 1985** the City adopted new landscape and screening standards for Vehicle Auto Body Repair shops and Salvage Yards in the I-1, I-2, H-4, H-3, H-2, B4, and B-3 districts, and gave existing uses until **January 1, 1987** to comply (Ord. 14185). The City Attorney's Office thinks there may have been a similar deadline imposed on parking lots that did not meet surfacing requirements.
11. This proposal affects only outdoor storage and display. There is a discernable difference between the listed uses and the static interface represented by a use solely within a building.

CONCLUSION:

The ability of zoning locational or screening requirements to solve problems of neighborhood stability and vitality are certainly very limited, but the PRT feels that each and every element is a causative factor and should be methodically addressed. This proposal attempts to contribute one piece of the much larger puzzle of how to keep fragile residential neighborhoods from sliding into a state of decay.

STAFF RECOMMENDATION: Approval. This approval amends the following section to Chapter 27 of the Lincoln Municipal Code:

Chapter 27.33

B-3 COMMERCIAL DISTRICT

Sections:

- 27.33.010** **Scope of Regulations.**
- 27.33.020** **Permitted Uses.**
- 27.33.030** **Permitted Conditional Uses.**
- 27.33.040** **Permitted Special Uses.**
- 27.33.050** **Accessory Uses.**
- 27.33.060** **Parking Regulations.**
- 27.33.070** **Sign Regulations.**
- 27.33.080** **Height and Area Regulations.**

This is a district providing for local commercial uses in a redeveloping neighborhood generally located in established retail centers of those neighborhoods. The uses permitted generally are those for neighborhood uses, plus additional limited manufacturing uses that reflect the character of that commercial area.

27.33.010 **Scope of Regulations**

The regulations set forth in this chapter, or set forth elsewhere in this title when referred to in this chapter, are the regulations in the B-3 Commercial District. (Ord. 12571 §205; May 8, 1979).

27.33.020 **Permitted Uses.**

A building or premises shall be permitted to be used for the following purposes in the B-3 Commercial District:

- (a) Parks, playgrounds, and community buildings, owned or operated by a public agency;
- (b) Public libraries;
- (c) Public elementary and high schools, or private schools having a curriculum equivalent to a public elementary or public high school, and having no rooms regularly used for housing or sleeping purposes;
- (d) Churches;
- (e) Nonprofit religious, educational, and philanthropic institutions;
- (f) Banks, savings and loan associations, credit unions, and finance companies;
- (g) Barber shops, beauty parlors, and shoeshine shops;
- (h) Private schools, including but not limited to, business or commercial schools, dance or music academies, and nursery schools;
- (i) Adult care centers;
- (j) Hospitals and clinics for animals, but not open kennels;
- (k) Self-service laundromats, and laundrettes;
- (l) Receiving stores for dry cleaning or laundry;
- (m) Messenger and telegraph stations;
- (n) Office buildings;
- (o) Restaurants;
- (p) Stores or shops for the sale of goods at retail;
- (q) Undertaking establishments;
- (r) Photography studios;
- (s) Key shops;
- (t) Ambulance services;

- 1 (u) Retail bakery;
- 2 (v) Sales and showrooms, including service facilities and rental of equipment, provided all displays and
3 merchandise are within the enclosure walls of the buildings;
- 4 (w) Milk distribution stations, but not involving any bottling on the premises;
- 5 (x) Food storage lockers;
- 6 (y) Optical lens grinding and finishing;
- 7 (z) Clubs;
- 8 (aa) Parking lots and storage garages;
- 9 (bb) Enclosed commercial recreational facilities;
- 10 (cc) ~~Service stations and automobile~~ Motorcycle, bicycle, and home and office equipment, ~~and appliance~~
11 ~~sales and repair facilities~~, but not including vehicle body repair shops.
- 12 (dd) Mail order catalog sales;
- 13 (ee) Tailor shops, shoe repair shops, upholstery shops, printing and photocopying shops, or other, similar
14 business establishments. (Ord. 16962 §3; March 25, 1996: prior Ord. 16767 §6; April 10, 1995: Ord. 16253 §2;
15 October 26, 1992: Ord. 16144 §6; July 6, 1992: Ord. 14185 §5; September 3, 1985: Ord. 13736 as amended by Ord.
16 13745 §3; January 3, 1984: Ord. 12571 §206; May 8, 1979).

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18 **27.33.030 Permitted Conditional Uses**

19 A building or premises may be used for the following purposes in the B-3 Commercial District in conformance
20 with the conditions prescribed herein:

- 21 (a) Automobile wash facility:
 - 22 (1) Automatic, conveyor-operated: The length and location of vehicle stacking lane or lanes for the
23 approach side or sides and the exit side or sides of the wash operation shall be in conformance with the "guidelines
24 and regulations for driveway design and location" as adopted by the City of Lincoln. The stacking space shall not be
25 located within the required front yard.
 - 26 (2) Self-service, coin-operated car wash: The car wash facility shall not exceed four wash bays. The
27 length and location of vehicle stacking lane or lanes for the approach side or sides and the exit side or sides of the
28 wash operation shall be in conformance with the "guidelines and regulations for driveway design and location" as
29 adopted by the City of Lincoln. The stacking space shall not be located within the required front yard.
- 30 (b) Motels and hotels: A distance of at least twenty feet shall be maintained between buildings on the lot,
31 and each hotel or motel unit shall have a minimum enclosed floor area of 200 square feet.
- 32 (c) Furnace, heating, sheet metal, electrical shops or electrical contractors, heating and air conditioning
33 contractors, and cabinet shops or stores:
 - 34 (1) The floor area of said premises not devoted to sales or office space shall not exceed 8,000
35 square feet;
 - 36 (2) Not more than ten percent of the lot or tract occupied by the establishment shall be used for
37 open and unenclosed storage of material and equipment.
 - 38 (3) All outside storage of material and equipment shall be screened by an opaque, 6 foot tall fence
39 constructed of wood, or a substitute material found acceptable by the Director of Building and Safety.
- 40 (d) Tire stores and sales, including vulcanizing:
 - 41 (1) The floor area of said premises not devoted to sales or office space shall not exceed 4,000
42 square feet;
 - 43 (2) There shall be no manufacturing on the premises.
- 44 (e) Tailor shops, shoe repairing, upholstery shops, printing, photocopying, household appliances repairs, or
45 similar business establishments; dyeing and drycleaning works; laundry; plumbing and water softener service shops.
46 The floor area of said premises not devoted to sales or office space shall not exceed 4,000 square
47 feet.
- 48 (f) Dwellings, provided that:
 - 49 (1) Except as provided subparagraph 2 below, dwellings shall only be permitted above the first story
50 of a building, with the first story used for a non-dwelling use as permitted in the district. Such non-dwelling use shall
51 not be accessory to the residential use or be a parking lot or garage.
 - 52 (2) Dwellings shall be permitted in buildings that were originally constructed for a residential use
53 prior to November 1, 1997.

- 1 (g) Recycling center:
2 (1) The building area of such center shall not exceed 4,000 square feet;
3 (2) Adequate traffic stacking shall be provided on site as determined by the city;
4 (3) All required parking shall be provided on site;
5 (4) The facility shall not be designed to receive nor shall it accept shipments by semi-trailer trucks;
6 (5) The construction and operation of such center shall comply with all applicable health and fire
7 codes;
8 (h) Vehicle body repair shop:
9 (1) All salvage material including vehicles being salvaged shall be kept inside a building;
10 (2) All vehicles stored outside a building shall be repaired to an operating state within thirty days;
11 (3) All vehicles stored outside a building waiting repair shall be screened in accordance with the
12 screening requirements for salvage and scrap processing operations;
13 (4) The construction and operation of such shop shall comply with all applicable health and fire
14 codes;
15 (5) Vehicle body repair shops lawfully existing on the effective date of this ordinance shall have until
16 January 1, 1987 to be brought into compliance with conditions (1), (2), (3), and (4) above.
17 (i) Early childhood care facilities:
18 (1) Such facilities shall comply with all applicable state and local early childhood care requirements;
19 (2) Such facilities shall comply with all building and life safety code requirements;
20 (3) Such facilities shall be fenced and have play areas that comply with the design standards for
21 early childhood care facilities;
22 (4) Such facilities must receive a conditional use permit from the Department of Building and Safety.
23 (J)Service stations, automobile, and appliance sales and repair facilities, but not including vehicle body repair
24 shops:
25 (1) No service station, automobile, or appliance sales and repair facilities shall be permitted to locate
26 within 100 feet of any residential use or district;
27 (2) Any service station, automobile, or appliance sales and repair facilities located within 100 feet of
28 any residential use or district, by merit of having been legally located there on the effective date of this ordinance,
29 shall screen the operation from those residential uses or districts by the use of an opaque fence six feet in height,
30 constructed of wood, or of a substitute material found acceptable to the director of Building and Safety subject to the
31 provision of condition(3), below;
32 (3) Any service station, automobile, or appliance sales and repair facilities located within 100 feet of
33 any residential use or district that legally existed on the effective date of this ordinance shall have until October 1,
34 2003 to be brought into compliance with condition (2), above.
35 (4) The locational or screening requirements of (1), (2) and (3), above, shall not apply when said
36 residential use or district is across a public street, but shall apply if said residential use or district is across an alley
37 or private drive. (**Added by staff on 9/06/00**)
38
39 (Ord. 17262 §1; October 20, 1997: prior Ord. 16926 §3; February 5, 1996: Ord. 16854 §31; August 14, 1995: Ord.
40 14185 §6; September 3, 1985: Ord. 13344 §3; March 29, 1982: Ord. 12571 §207; May 8, 1979).

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42 **27.33.040 Permitted Special Uses.**

- 43 A building or premises may be used for the following purposes in the B-3 Commercial District if a special per-
44 mit for such use has been obtained in conformance with the requirements of Chapter 27.63:
45 (a) Health care facilities;
46 (b) Recreational facilities;
47 (c) Church steeples, towers, and ornamental spires which exceed the maximum district height;
48 (d) Broadcast towers;
49 (e) Expansion of nonconforming use;
50 (f) Historic preservation;
51 (g) Public utility purposes;
52 (h) Wind energy conversion systems;
53 (i) Cemeteries;

- 1 (j) Dwellings above the first story of a building which cannot meet the yard requirements of Section
- 2 27.33.080(g);
- 3 (k) Sale of alcoholic beverages for consumption on the premises;
- 4 (l) Sale of alcoholic beverages for consumption off the premises;
- 5 (m) Storage of vehicles for sale and resale on any portion of the lot where parking is permitted. (Ord. 17265
- 6 §2; October 20, 1997: prior Ord. 16593 §3; April 11, 1994: Ord. 15782 §3; November 26, 1990: 14780 §12; November
- 7 2, 1987: Ord. 14378 §11; May 5, 1986: Ord. 13588 §12; May 9, 1983: Ord. 12978 §16; August 25, 1980: Ord. 12894
- 8 §17; April 7, 1980: Ord. 12571 §208; May 8, 1979).

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10 **27.33.050 Accessory Uses.**

11 Accessory uses permitted in the B-3 Commercial District are accessory buildings and uses customarily

12 incident to the permitted uses. (Ord. 12571 §209; May 8, 1979).

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15 **27.33.060 Parking Regulations.**

16 All parking within the B-3 Commercial District shall be regulated in conformance with the provisions of

17 Chapter 27.67. (Ord. 12571 §210; May 8, 1979).

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19 **27.33.070 Sign Regulations.**

20 Signs within the B-3 Commercial District shall be regulated in conformance with the provisions of Chapter

21 27.69. (Ord. 12571 §211; May 8, 1979).

22

23 **27.33.080 Height and Area Regulations.**

24 The maximum height and minimum lot requirements within the B-3 Commercial District shall be as follows:

- 25 (a) General requirements:
- 26

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Table 27.33.080(a)

	Lot Area (Sq. ft.)	Frontage	Req'd Front Yard	Req'd Side Yard	Req'd Rear Yard	Height
29 Dwelling, 30 Above First 31 Story	1,000 per unit	0'	0'; if block face partially in residential district,	0',5'*	0',30'*	45'; 35' if abutting R-1, R-2 or R-3 zoning district
32 Other 33 Permitted 34 Uses	0	0'	same as abutting residential district	0', 5'* if abutting residential district	0', 30'* if abutting residential district	
35 *	When a side or rear yard abuts a residential district, it shall be screened in conformance with the landscape design standards adopted by the City of Lincoln.					

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- 38 (b) There shall be a required front yard on each street side of a double frontage lot.

- 39 (c) There shall be a required front yard on each street side of a corner lot; provided, however, that the
- 40 buildable width of a lot of record on November 2, 1953, need not be reduced to less than twenty-eight feet except
- 41 where necessary to provide a required side yard of not less than five feet in place of one of the required front yards.

- 42 (d) Open space requirements for residential use: A minimum amount of usable and accessible open
- 43 space must be provided for each residential use. This requirement shall be as follows:

- 44 125 square feet for the first dwelling unit;
- 45 80 square feet per unit for the next four dwelling units;

1 25 square feet per unit for the next four dwelling units;
2 20 square feet per unit for each additional dwelling unit beyond nine.
3 This open space requirement may be met in the following manner:
4 (1) The required rear yard may be counted; however, the required front and side yards may not
5 be counted toward fulfillment of said open space requirement, except for porches, terraces and balconies as permitted
6 in Sections 27.71.100 and 27.71.110.
7 (2) Parking spaces, and land occupied by any building or structure may not be counted toward
8 fulfillment of this open space requirement.
9 (3) Required open space may be provided either on a balcony four or more feet in depth or on a
10 rooftop, provided that the roof is designed and surfaced in such a manner that it may be developed with areas of
11 planting, open space, recreation and other uses that are consistent with similar uses in ground-level side and rear
12 yards for dwellings. Such rooftop areas may not be occupied by structures such as vents, exhaust intakes, or other
13 mechanical devices, except where they do not interfere with the usable nature of the open space.
14 (4) The depth-to-width ratio of any area used to fulfill the open space requirement may not
15 exceed three to one if the smallest dimension of the open space is twelve feet or less.
16 (e) Accessory buildings shall not extend into any required yard except accessory buildings to
17 nonstandard residential uses may be allowed in the required rear yard when no more than thirty percent of such yard
18 is occupied and such building is not nearer than two feet to any side or rear lot line.
19 (f) Dwellings existing in this district on the effective date of this title which do not meet the requirements
20 of this chapter shall be considered nonstandard uses in conformance with the provisions of Chapter 27.61.
21 Accessory buildings for such non-standard dwellings shall not extend into any required yard except
22 as follows:
23 Accessory buildings which are attached to or not located more than six feet from the main structure
24 shall be considered a part of the main structure and shall comply with the height, front, side and rear yard
25 requirements of the main building. Accessory buildings not a part of the main structure may be located in the
26 required rear yard but such accessory buildings may not occupy more than forty percent of the required rear yard and
27 shall not be nearer than two feet to any side or rear lot line, nor more than fifteen feet in height. Accessory buildings
28 not a part of the main structure, if located not less than sixty feet from the front lot line, may extend into the required
29 side yard though not nearer than two feet to the side lot line. A garage which is entered from an alley shall not be
30 located closer than ten feet to the alley line.
31 (g) Where a yard is not otherwise required, a five foot yard shall be required adjacent to the wall of a
32 building which contains windows for dwelling units. The yard shall be on the premises on which the building is
33 situated. (Ord. 15782 §4; November 26, 1990: prior Ord. 15724 §3; September 17, 1990: Ord. 14696 §1; July 6, 1987:
34 Ord. 14137 §1; July 1, 1985: Ord. 13134 §2; May 4, 1981: Ord. 12638 §1; July 16, 1979: Ord. 12571 §212; May 8,
35 1979).

Prepared by:

John L. Bradley, AICP
Assistant Planning Director

CHANGE OF ZONE NO. 3276

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 6, 2000

Members present: Krieser, Newman, Hunter, Duvall, Taylor, Schwinn, Carlson and Bayer; Steward absent.

Planning staff recommendation: Approval.

Proponents

1. John Bradley, Assistant Director of Planning, submitted an amendment to section 27.33.030 adding language such that the locational or screening requirements shall not apply when said residential use or district is across a public street, but shall apply if said residential use or district is across an alley or private drive.

Bradley explained that the Problem Resolution Team (PRT) has requested this amendment. The PRT was established under Mayor Johanns and it is staffed by representatives of 9 city departments. It is a team working closely with the Police Department and the Urban Development Department to attempt to address particular problems within neighborhoods. Some of these problems might be addressed partially by changes to design standards, locational requirements or permitted uses, etc. The staff has been meeting with the team since early this year, presented different proposals and at this time proposes this minor amendment to require the buffering of certain uses in the B-3 district, which is a district that legitimized existing old neighborhood shopping districts, such as Uni Place, Havelock, South Street, areas which were already in place when we started putting zoning in place. They typically have no building setbacks, etc. As a result of the age of these districts, some of the buildings have been removed. Used car lots, appliance, and heating and air conditioning repair shops have now moved in so they are no longer strictly neighborhood oriented businesses. These were beginning to cause problems in some particular instances in the community.

The specific proposal is to remove, as outright permitted uses, service stations, auto repair shops, and appliance sales and repair facilities, and moving them to conditional uses, and requiring them to be separated by a certain distance if locating new in an area (100' in this case); require them to fence the uses from abutting residential uses; and give three years to existing service stations, automobile sales, and repair facilities that are located within 100' of residential use or districts to bring those into compliance. In the future you would not be able to locate any of these new uses again within 100'.

Carlson noted that if the setbacks are minimal or nonexistent in B-3, then some of the fencing would go straight to the sidewalk.

2. Wynn Hjernstad of Urban Development testified on behalf of the PRT to answer any questions.

3. Mike Morosin, past president of Malone Neighborhood Association, testified in support. This may bring a lot of the car lots and businesses into conformance. This is one step forward to help the older neighborhoods in controlling some of the things that go on.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 6, 2000

Taylor moved approval with the proposed revisions submitted by Bradley today, seconded by Hunter and carried 8-0: Krieser, Newman, Hunter, Duvall, Taylor, Schwinn, Carlson and Bayer voting 'yes'; Steward absent.