

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 29, 2011, 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, Wendy Francis, Roger Larson, Jeanelle Lust, Jim Partington and Lynn Sunderman (Dick Esseks and Tommy Taylor absent); Marvin Krout, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, Christy Eichorn, Rashi Jain, Sara Hartzell, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

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

Sunderman then requested a motion approving the minutes for the regular meeting held June 15, 2011. Motion for approval made by Francis, seconded by Larson and carried 6-0: Cornelius, Francis, Larson, Lust, Partington and Sunderman voting 'yes'; Gaylor Baird absent at time of vote; Esseks and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

June 29, 2011

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 11006; COUNTY SPECIAL PERMIT NO. 196A and SPECIAL PERMIT NO. 1976A, View Pointe North Community Unit Plan; and STREET AND ALLEY VACATION NO. 11007.**

Ex Parte Communications: None

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

Note: This is final action on Comprehensive Plan Conformance No. 11006 and City Special Permit No. 1976A, 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.

Note: This is final action on County Special Permit No. 196A, unless appealed to the County Board by filing a letter of appeal with the County Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 11019
TEXT AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE TO DEFINE AND
ADD “ENTERTAINMENT RESTAURANT” IN THE
B-2, B-3 AND B-5 ZONING DISTRICTS.

REQUEST FOR DEFERRAL:

June 29, 2011

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

The clerk announced that the applicant has submitted a written request for an additional two-week deferral.

Larson moved to defer, with continued public hearing and action scheduled for Wednesday, July 13, 2011, seconded by Gaylor Baird and carried 7-0: Partington, Cornelius, Gaylor Baird, Larson, Francis, Lust and Sunderman voting yes; Esseks and Taylor absent.

There was no public testimony.

CHANGE OF ZONE NO. 11002,
TEXT AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING TO
EXPANSION OF NONSTANDARD SINGLE- AND
TWO-FAMILY DWELLINGS INTO REQUIRED YARDS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 29, 2011

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Christy Eichorn of Planning staff** gave a history of the expansion of nonstandard and nonconforming uses. Over two years ago, a text amendment was done to clarify some confusion with these special permits. At that time, there was a provision for

a special permit for expansion of a nonstandard single- or two-family dwelling. There was also provision for a special permit for expansion of nonstandard or nonconforming use – nonstandard means it does not meet setback requirements; nonconforming means the use is not allowed in the district. These special permits had been in existence since the 1979 update of the zoning ordinance.

In reviewing these regulations, staff found that it was getting confusing, both to staff and to the public, in trying to decide when and which special permit should be used because essentially they did the same thing. In 2008, the special permit for the expansion of nonstandard dwellings was eliminated and rolled into the regulations for the special permit for expansion of nonconforming use. Since that time, the staff has again taken a look at the regulations and has found that the special permits for expansion of nonstandard uses were almost always getting approved and almost always on the consent agenda. The public was having difficulty understanding why they had to go through this process just to improve their property on its existing site. So, in 2009, the special permit for nonstandard use was made a conditional use as opposed to a special permitted use. The staff thought that would encompass pretty much everything on a residential lot in terms of reconstruction of an existing house, enlarging or somehow improving the property within 3' from the side lot line and within 10 feet of the rear or front lot lines with no further encroachment into the yard than what already existed.

Eichorn then stated that after the text was amended in 2009, applications were still being submitted specifically for the expansion of single- and two-family dwellings – dwellings where the owners were tearing down all or a portion of their building and rebuilding in the same footprint. Eichorn explained that it was not the intent that the applicant would have to get a special permit to rebuild in the same footprint. As long as you are not making anything any worse, you should be able to rebuild and better your property.

Eichorn explained that this proposed amendment clarifies the language so that when someone wants to improve their property, they can use this provision to tear down an entire room and rebuild back into the same footprint, or at least along the same setbacks that are in place.

The second part of this proposed amendment has to do with garages. It was unclear in 2009 that a garage is actually considered an accessory structure to the main building. By definition, even if the garage is attached, it is still considered an accessory structure. The previous language talked about the main structure. We want to clarify that the expansion and reconstruction of the main structure does include an attached garage – either one physically attached or one 6' or closer to the house.

Lust inquired about the limit of the garage having to be within 6' of the main building. Eichorn explained that the 6' comes from the fact that there is already a provision in the zoning ordinance that any structure located 6' or less from the house is considered part of the main structure. A structure that is more than 6' from the main house is required to meet

different setbacks. If you have a garage, it can sit 2' from your lot line, which is actually closer than it could be under the provisions of the nonstandard and nonconforming use section.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 29, 2011

Larson moved approval, seconded by Partington.

Lust commented that being one of the newest members on the Planning Commission, she is continually impressed by how often staff brings these issues forward and continues to try to improve the process for everyone. She appreciates the effort to streamline and this is a great step toward that.

Larson appreciated the excellent job Eichorn did in presenting this amendment in an understandable fashion.

Motion for approval carried 7-0: Partington, Cornelius, Gaylor Baird, Larson, Francis, Lust and Sunderman voting 'yes'; Esseks and Taylor absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 11021
FOR DESIGNATION OF A HISTORIC LANDMARK
and
SPECIAL PERMIT NO. 11015
FOR HISTORIC PRESERVATION,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 40TH STREET AND RANDOLPH STREET
(3935 RANDOLPH STREET).**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 29, 2011

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

Ex Parte Communications: None.

Staff recommendation: Approval of the landmark designation and conditional approval of the special permit.

Staff presentation: **Ed Zimmer of the Planning staff** advised that the structure was built in 1925 on a lot of under 6,000 sq. ft. and was used by Lutheran congregations in the first couple of decades, and then by Presbyterian congregations into the 1960's and 1970's. And for much of the early period the pastor lived directly in the church.

This proposal has been reviewed by the Historic Preservation Commission and they unanimously support the landmark designation and the request for special permit to put the building back in use.

Zimmer pointed out that because it has always been in church use, the structure still retains the sanctuary and essential characteristics on the main floor of the small church. In the special permit, the applicant's proposal does not change that portion of the building, but merely addresses primarily the basement area where there are no historic characteristics to retain. While no longer in church use, the structure will still maintain its characteristics of a church.

The applicant for the special permit is requesting to use the building for a commercial kitchen in the basement for a catering business to prepare food for catering off-site. In the conditions of approval, the staff attempts to make it slightly more generic to not simply say "catering kitchen", but rather limited commercial use for not more than three employees, not directly serving customers on-site. This allows some flexibility in this use for the future.

Proponents

1. Jennifer Beebe, the applicant for the special permit, stated that she is interested in and currently negotiating the purchase of the property.

Sunderman inquired whether the main floor with the pews will be used at all. Zimmer pointed out that the conditions of approval specify that the applicant can use the main floor for storage and it needs to be stated as such. Any alteration to the pews, etc., would have to come back to the Historic Preservation Commission for review. The main floor can be used for storage as being supportive to the use in the basement.

Support

1. Jack Mills, 1918 Yorkshire Court, trustee of the property adjacent to the site for the special permit, stated that he is appearing in a neutral position. He did not have opportunity to attend the neighborhood discussion albeit he tries to be active in the community and to be a good neighbor. The trust has owned the property since 1978 as a brick duplex with professional upkeep. He is interested in seeing the subject property maintained better than it has been. But he does have a concern about the meaning of the "catering service" or "kitchen service". Mills is also concerned about future use of the property if this applicant moves on. Who will be the next persons or corporations to use this kitchen for commercial use for three employees? His main concern is upkeep of the neighborhood.

He is hopeful this will be a positive direction for the area and that the building will be kept up. He would have bought the property if he could have done anything with it. The parking is terrible.

There was no testimony in opposition.

Sunderman asked Zimmer to address Mr. Mills' question about future use. Zimmer acknowledged that the special permit is attached to the land, not to the specific permittee. That is one reason staff worked on conditions that would fit this application but somewhat more generic. The focus really has to be on the conditions and whether they seem to fit the use. No one knows who might use it next. The issue is whether these conditions make sense for this property and protect the surrounding property. Any other use would have to come back either to the Planning Commission for public hearing or the Director of Planning for an administrative amendment if a minor change.

CHANGE OF ZONE NO. 11021

ACTION BY PLANNING COMMISSION:

June 29, 2011

Lust moved approval, seconded by Francis.

Sunderman thinks this is a great way to preserve a historic building and a great way to offer some opportunities for small business to expand and grow. He believes that the property will be maintained better being occupied as opposed to vacant.

Motion for approval carried 7-0: Partington, Cornelius, Gaylor Baird, Larson, Francis, Lust and Sunderman voting 'yes'; Esseks and Taylor absent. This a recommendation to the City Council.

SPECIAL PERMIT NO. 11015

ACTION BY PLANNING COMMISSION:

June 29, 2011

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

Gaylor Baird believes it is fortunate for the city that the applicant wants to find this creative use for this piece of property which is not easy to reuse and inhabit. It will offer such a nice buffer and transition between the restaurant to the right and residences to the left.

Cornelius stated that he appreciates the concerns of the neighbors and the neighborhood, but the Commission has heard that there are sufficient limitations placed on the conditions of the special permit such that any future business is likely to be low impact and not have a negative impact on the surrounding area.

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

SPECIAL PERMIT NO. 11014
FOR HISTORIC PRESERVATION,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 16TH STREET AND G STREET
(720 SOUTH 16TH STREET).

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 29, 2011

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval

Staff presentation: **Ed Zimmer of Planning staff** clarified that a waiver of the parking requirements is no longer required. It appears that the site plan will meet the parking requirement. Thus, only the side yard reduction needs to be addressed in the conditions of approval.

Zimmer went on to state that the subject property is an existing landmark in the Capitol Environs. The Yates house has been a landmark for two decades and a number of uses have been considered. The use this applicant is seeking to put the property to is the same as it was in 1925-1930, which is a sorority, having previously been a sorority and a fraternity, both in the late 1920's. Since that time, the use has been mostly apartments but also a place for events.

Zimmer explained that the key of conversion of the property to the proposed use is getting it to life safety standards. The exiting of the property is particularly challenging from the top floor and the best solution appeared to be an exterior staircase exiting out the east side, within about 4' of the side property line. A structure would not be located in that space.

This application would exercise the Planning Commission's authority to make a recommendation and the City Council's authority to make an adjustment to the yards among the characteristics of a landmark property so that they could bring the stairway down within that space. The stairway will all be contained within the applicant's property. The neighboring property adjacent to the east is in support.

The Historic Preservation Commission has reviewed this proposal and recommends approval.

Zimmer acknowledged a letter in opposition from a nearby property owner with concerns about parking in the neighborhood.

Proponents

1. **William J . Wood**, Attorney, 808 D Street, the applicant, acknowledged that the property is on the National Register of Historic Places and is a significant landmark in Lincoln. It has been vacant for approximately three years and is deteriorating. It is important to get it back into some type of use to reverse the deterioration and improve it. He has spent a lot of time and money with architects and engineers to find this alternative that does not alter the view of the historic structure except from a side that is pretty much hidden with a house next door. He does not want to change the historic characteristics, but from an internal structural standpoint, a hallway can be extended to that side of the building fairly easily. Constructing an interior stairway would require removal of at least two rooms, making it not very advantageous from an economic point of view and would take a lot of internal reconstruction. Wood acknowledged that he did visit with the neighbors to the east, who are supportive. The Preservation Association of Lincoln has also submitted a letter in support.

Gaylor Baird noted that one of the concerns expressed in the letter of opposition is the appearance of the exterior stairway. Wood believes that in general it will be metal, so it will not be a bulky wood stairway, and they have tried to locate it where it will be pretty much hidden. You would not see it without walking in the alley.

Francis noted that the letter of opposition also mentions concern with parking. Are there parking issues? Zimmer stated that the proposed site plan meets the parking requirement of the zoning code for this district and sorority use. We cannot require more parking than what is required by the ordinance. This site plan meets what is called for in the code.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 29, 2011

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

Francis commented that it will be nice to see this property brought back to its historical splendor with what's old is new again - it is nice to see it as a sorority.

Cornelius believes that this appears to be a benefit for the surrounding area – protection and improvement of a historic structure. That alone is of value and probably outweighs any impact that the additional stairway might have. In terms of parking, in looking at the site plan and the aerials, it appears that as many cars park there now as will park there in the future, and, in fact, access will be better and parking will be more orderly.

Sunderman likes taking a piece of the history of Lincoln and coming up with solutions to keep these buildings around.

Motion for conditional approval carried 7-0: Partington, Cornelius, Gaylor Baird, Larson, Francis, Lust and Sunderman voting 'yes'; Esseks and Taylor absent. This a recommendation to the City Council.

There being no further business, the meeting was adjourned at 1:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 13, 2011.

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