

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 12010**, requested by Mark Hunzeker, to amend Section 27.63.685 of the Lincoln Municipal Code, to waive the 100' separation requirement for sale of alcoholic beverages for consumption off the premises under specified conditions.

STAFF RECOMMENDATION: Denial.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/16/12
Administrative Action: 05/16/12

RECOMMENDATION: Denial (7-1: Weber, Esseks, Hove, Cornelius, Butcher, Gaylor Baird and Francis voting 'yes'; Sunderman voting 'no'; Lust absent).

FINDINGS OF FACT:

1. This is a request to amend the special permit provisions in the zoning code for the sale of alcoholic beverages for consumption off the premises, to provide a certain set of circumstances under which the City Council is allowed to waive the 100 foot separation requirement between the licensed premises and a day care facility, park, church, state mental health facility or residential zoning district.
2. The staff recommendation of denial is based upon the "Analysis" as set forth on p.3-6, concluding that the proposed conditions are so narrowly written that they would apply to a very small number of sites in Lincoln, perhaps only two. Amending the Zoning Ordinance in such a way to exempt specific sites raises a question of equity for those remaining sites which do not meet the requirements. Also, the language is vague by using the term "significant vertical grade difference", which is intended to serve in lieu of the required 100 foot horizontal separation. It is otherwise without definition, and therefore entirely subjective and will be difficult to administer fairly. Additionally, the provisions allowing a reduced separation between the licensed premises and a park or park area used as roadway, parking lot, or not an active play area separated by a six foot-tall privacy fence assumes that the people and activities typically found in a park would not be found in these selected areas. The list of exceptions does not address either a flaw in the ordinance, or some larger problem caused by the current text when applied to the city as whole. Staff is also concerned that this provision will encourage others to apply for other kinds of exceptions. With each amendment, the permits become more difficult to interpret and administer, and the opportunity for error is compounded. The provisions in place since 2004, which eliminated the previous case-by-case review of exceptions to the 100 foot separation standard, have worked well to provide an efficient, predictable system that protects residential neighborhoods. The staff presentation is found on p.7-8.
3. The applicant's testimony is found on p.8-9, suggesting that the subjective evaluation is no more than what is done now on a regular basis; that the Planning Commission is accustomed and sometimes required to deal with discretionary approvals using words that are less than precisely defined; and that this proposal will allow for the issuance of special permits in limited circumstances and in the sound discretion of the elected City Council, subject to approval by our elected Mayor. This is a mechanism by which certain circumstances can be recognized while meeting the general purpose of the ordinance.
4. There was no testimony in opposition; however, the record consists of two letters in opposition from the Everett Neighborhood Association and the Near South Neighborhood Association (p.18-19), plus a letter from the Director of Parks & Recreation in opposition to the proposed exception for sites close to city park land (p.17).
5. On May 16, 2012, the majority of the Planning Commission agreed with the staff recommendation and voted 7-1 to recommend denial (Sunderman dissenting; Lust absent). See Minutes, p.10-11.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: May 24, 2012

REVIEWED BY: _____

DATE: May 24, 2012

REFERENCE NUMBER: FS\CC\2012\CZ12010 Text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 16, 2012 PLANNING COMMISSION MEETING

- PROJECT #:** Change of Zone No. 12010
- PROPOSAL:** To amend the special permit for the sale of alcoholic beverages for consumption off the premises to provide a certain set of circumstances under which the City Council is allowed to waive the 100 foot separation requirement between the licensed premises and a day care facility, park, church, state mental health facility, or residential zoning district.
- TEXT AMENDED:** Section 27.63.685 - Sale of Alcoholic Beverages for Consumption Off the Premises
- CONCLUSION:** The proposed conditions are so narrowly written as to apply to very small number of sites in Lincoln, perhaps only two. Amending the Zoning Ordinance in such a way as to exempt specific sites raises a question of equity for those remaining sites which do not meet the requirements. Also, the language is vague by using the term “significant vertical grade difference”, which is intended to serve in lieu of the required 100 foot horizontal separation. It is otherwise without definition, and therefore entirely subjective and will be difficult to administer fairly. Additionally, the provisions allowing a reduced separation between the licensed premises and a park or park area used as roadway, parking lot, or not an active play area separated by a six foot-tall privacy fence assumes that the people and activities typically found in a park would not be found in these selected areas. The list of exceptions lack commonality with regard to proposing a set of conditions where the intent is to address either a flaw in the ordinance, or some larger problem caused by the current text when applied to the city as whole. Since the provisions regulating both on and off-sale alcohol were adopted in 1994, both special permits have been amended multiple times, probably more than any others in Lincoln Municipal Code. Some of the changes have served to relax the standards, others have served to make them more restrictive. One practical reality is that with each amendment, the permits become more difficult to interpret and administer, and the opportunity for error is compounded.

RECOMMENDATION:

Denial

HISTORY:

Apr 11, 1994 - CZ#2808 was approved creating Lincoln Municipal Code (LMC) Sections 27.63.680 (on-sale) and 27.63.685 (off-sale).

Jul 5, 1994 - CZ#2839 was passed amending Sections 27.63.680 (on-sale) and 27.63.685 (off-sale) adding "Vehicular ingress and egress to and from the property shall be designed to avoid disruption."

Feb 27, 1995 - CZ#2877 was passed amending Sections 27.63.680 (on-sale) and 27.63.685 (off-sale) adding "no special permit or amendment to be required for interior expansions of existing licensed liquor premises."

Nov 20, 1995 - CZ#2940 was passed amending Sections 27.63.680 (on-sale) and 27.63.685 (off-sale) by adding the language "unless waived by City Council."

Aug 15, 1997 - CZ#3064 was passed amending Sections 27.63.680 (on-sale) and 27.63.685 (off-sale) to include the I-3 district.

May 18, 2001 - The Nebraska Supreme Court affirms the City's authority to regulate the sale of alcohol by special permit.

Mar 15, 2004 - CZ#04003 was approved amending the requirements for special permits for on and off-sale alcohol by eliminating City Council's authority to reduce the required 100 foot separation where adequate mitigation was provided, and also made the permits final action at Planning Commission.

Apr 26, 2004 - Amended the requirements for on and off-sale alcohol making both conditional uses in the B-2 and B-5 zoning districts.

Jun 2010 - Amended the separation criteria to include a 100 foot separation from the licensed premises to the property line of the premises of a residential use located on the first floor in a nonresidential zoning district.

Sep 2011 - Amended the prohibition on parking in a required side or rear yard, instead allowing it provided the entrance door is located at least 100 from any parking spaces in a side or rear yard.

ANALYSIS:

1. This is a request to amend the Zoning Ordinance by modifying the conditions under which the sale of alcohol for consumption off the premises is allowed. It specifically creates a new section which grants the City Council the authority to waive the required 100 foot separation requirement provided a set of conditions are met.

2. Specifically, the proposed text to be added to LMC Section 27.63.685 is as follows:
 - (k) The City Council may waive the 100-foot separation requirement set forth in subsection ©) above if the Council finds that the following three conditions have been met:
 - (1) There is either:
 - (i) A significant vertical grade separation between the property upon which the licensed premises is located and the applicable day care facility, park, church, state mental health institution, or residential district which would effectively serve the same purpose of mitigating any adverse impact upon such use or district as the 100-foot horizontal separation requirement; or
 - (ii) The licensed premises is within 100 feet of a park and the portion of the park lying within 100 feet of the licensed premises is:
 - A. Used primarily as a roadway or parking lot; or
 - B. A landscaped area not intended for active play, does not include any playground equipment, and will be separated from the property upon which the licensed premises is located by a solid fence at least six feet in height which effectively serves the same purpose of mitigating any adverse impact within the park as the 100-foot horizontal separation requirement.
 - (2) The licensed premises is located on property which lies at the intersection of two major arterial streets, each of which have not less than two through lanes of traffic in each direction; and
 - (3) The applicable day care facility, park, church, state mental health institution, or residential district will not be adversely effected by the waiver under the specific and unique circumstances presented by the application.
3. As proposed, all three conditions must be satisfied in order to apply for a special under this amendment.
4. Staff understands this amendment is intended to make two specific Walgreens stores eligible for off-sale alcohol. One is located at South 48th & O Streets and does not meet the requirements for a special permit due to the proximity of R-2 Residential zoning to the south. A 100 foot separation from the licensed premises to a residential zoning district is required, and in this case staff estimates the store is approximately 65 feet away. There is grade separation between the store and the residential zoning district to the south, and Section 1(I) is designed to allow special consideration for this circumstance.

The other store is located at North 14th and Superior Streets, and the inability to get a special permit for off-sale alcohol is caused by the proximity of Keach Park which is adjacent to the north and east. Staff estimates the store is 65 feet away from the park to the north, and 97 feet away from the park to the east.

The proposed amendment appears to adequately address the condition on the north side of the building where the property line is adjacent to a driveway and parking spaces in the park. It is not clear the amendment fully addresses the condition on the east, however. Staff estimates the separation from the licensed premises to be 97' from an active play area, which would not comply with Section 1(ii)(B) as intended.

5. Section 1(I) of the proposal uses the term “significant vertical grade separation” which is vague and undefined. Such language is open to interpretation, and as a result would be very difficult to administer consistently. A better approach would be one that uses an objective provision, such as a mathematical formula which requires increased vertical separation in proportion to decreased horizontal separation. Staff is not proposing alternate language, rather pointing out an objective approach that avoids language which is so ambiguous that it will be virtually impossible to apply fairly and consistently.
6. It is not clear what distinction is being made in Sections 1(ii)(A) and (B) with regard to the required separation to parks. It is presumed the separation to parks exists at least in part to buffer the families and children that visit them, and so should be applied to parks in their entirety. However, the provisions assume people don't walk to and from their vehicles, or stray from “active” play areas, or are somehow otherwise confined to certain areas. The term “active” play area is undefined and gives no clear definition of what the term includes, such as playground, athletic field, soccer field, etc. Given the lack of definition this provision would be problematic to administer.
7. It is not apparent how the proposed condition of being located adjacent to two, four-lane arterial streets relates to mitigation of a reduced 100 foot separation. Whether it is a two-lane or four-lane street, the impact due to proximity to adjacent uses is unaffected by the type of street on the opposite side of the licensed premises, and it does not appear to relate to mitigation in any meaningful way.
8. Staff has supported other amendments to the alcohol special permits. However, in those cases there was either a flaw in the ordinance which was being addressed, or the amendment revised a provision which was no longer a concern or relevant. In this case, the specific nature of the text changes means they only apply to a very limited number of sites. Staff finds the two sites described to be unique only with regard to their inability to meet the requirements for a special permit. The proposed amendment is not addressing a flaw in the ordinance that just happens to occur at the two locations described, rather it creates exceptions to the requirements that are otherwise specifically intended to prohibit alcohol at these locations. Further, this selective ‘conditioning’ of the regulations creates an issue of equity for any remaining site in the city which doesn't conform to the regulations. Staff predicts that approval of this application will encourage further proposals for exceptions.
9. It should be noted that with the 2004 text amendment, the City Council delegated approval authority for alcohol special permits to the Planning Commission. That set of changes traded the adoption of clear separation standards for the elimination of City Council's authority to

reduce the required 100 foot separation in those cases where adequate mitigation was found. Prior to 2004, the findings of adequate mitigation varied, and the result was an inconsistent application of the rule and treatment of applicants. This request reverses many of the significant changes adopted in 2004 by the City Council.

The 2004 amendment was intended to make the process more fair, objective, and predictable for all involved including applicants, neighbors, and staff. This amendment is contrary to that purpose and instead will make the process more subjective and less predictable. As a result, this request is also contrary to the City's larger, ongoing effort to simplify and streamline the Zoning Ordinance.

Additionally, the special permits regulating alcohol sales serve to limit the density of alcohol sales establishments throughout the city. This has helped avoid concentrations of such uses which can have a negative effect on neighborhoods. The proposed changes would diminish the special permit's role in this regard.

The need for additional amendments is not apparent with this request, and is not demonstrated by the application.

Prepared by:

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner
April 30, 2012

**APPLICANT/
CONTACT:**

Mark Hunzeker
1248 O Street
Lincoln, NE 69508
402-475-1075

CHANGE OF ZONE NO. 12010

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 16, 2012

Members present: Weber, Esseks, Hove, Cornelius, Sunderman, Butcher, Gaylor Baird and Francis; Lust absent.

Staff recommendation: Denial.

There were no ex parte communications disclosed.

The Clerk announced that there is one letter in opposition from the Near South Neighborhood Association.

Planning staff presentation: **Brian Will of Planning staff** explained that this text amendment relates to off-sale only. Staff is recommending denial because the proposed language is somewhat vague and would make it very difficult, if not impossible, to enforce. For example, paragraph (k)(1)(i) refers to “significant” vertical grade. During review of applications, terms such as “significant”, “adequate” or “approximate” raise red flags in the eyes of those regularly reviewing applications. Paragraph (k)(1)(ii) talks about relationship of the licensed premises to a park where the portion of the park lying within 100 feet of the licensed premises is “used primarily” as a roadway or parking lot. Also, “landscaped area not intended for active play” – these are difficult terms to evaluate and define.

Another issue is applicability. In terms of the Walgreens at 14th & Superior Streets, the proposed conditions provide that, “The licensed premises is located on property which lies at the intersection of two major arterial streets, each of which have not less than two through lanes of traffic in each direction.” The staff does not understand the relationship of the two major intersections to the areas to the north and east of the building at the 14th & Superior site.

Yet another objection is equity. As these rules are written, it would be clear that there is only a limited number of sites around the city where it could be applied. There are multiple other sites around the city that currently do not meet the regulations. Written this narrowly to define or allow a couple of specific sites would certainly open the door for other sites around the city to come in and attempt to develop specific provisions for their sites as well.

Will recalled that back in 2004, there was a provision in the special permit ordinance that allowed the City Council to adjust or to vary that required 100’ separation down to something less. The finding to allow that reduction depended upon a finding of “adequate mitigation”, and that terminology caused problems. Adequate mitigation has different meaning in different places to different people, and that provision resulted in an inconsistent application and less than fair treatment. The staff would suggest that those amendments in 2004 which deleted that ability of the City Council to adjust the 100’ separation established a firm 100’ separation, and granted approval authority to the Planning Commission. Therefore, this proposal is actually a step backwards – going back to previous provisions which lead to uncertainty and unequal treatment.

Butcher inquired whether the staff has any concerns about the proposed paragraph (3) in regard to no adverse effect on applicable day care facility, park, church, etc. That also seems like language that is up for interpretation. Will agreed. However, we do have some special permits such as nonconforming use where there is at least some area for some subjectivity to be entered into the equation. That proposed language is not completely dissimilar than some other provisions in the code, but standing alone, the staff would have that same concern.

Proponents

1. Mark Hunzeker appeared as the applicant, stating that the purpose of this application is to return a small part of the discretion to the City Council that it once had in the issuance of special permits for the sale of alcohol for consumption off premises. This amendment affects only off-sale. It allows for the reduction of the 100' separation requirement for uses such as residential or parks under very limited circumstances. For example, either there has to be a significant grade separation or, in the event adjacent to a park, the area within that 100' protection zone has to be used for a parking lot or roadway and not a playground.

Hunzeker acknowledged that this text amendment is narrowly drawn; that it applies to a limited number of sites that is purposeful. He understands the concern about too much discretion; however, he suggested that the staff criticism as being vague or lacking defined terms is misplaced. The very fact that the current ordinance language is so objective and so rigid creates inequities itself. The B-2 and the B-5 districts allow for liquor sales which violate the usual 100' separation from all the protected uses – not just residential and parks – with no mitigating circumstances required and no discretionary findings that abutting property won't be adversely affected, and it is not limited to specific unique circumstances. The permit is allowed in those districts if the front door is 100' from a protected use or 150' if the door faces a residential district. Both locations identified in the staff report meet the B-2 and B-5 requirements – they're just not zoned B-2 or B-5, but they would meet the additional criteria of this proposal.

Hunzeker submitted that every special permit that the Planning Commission issues involves some subjective evaluation being required, and it is actually required by the special permit chapter of the ordinance. Section 27.63.010 requires that, "The planning commission shall impose such conditions as are appropriate and necessary to ensure compliance with the comprehensive plan and protect the health, safety and general welfare in the issuance of any such special permits." Hunzeker stated that if one can define half the words in that sentence, in 25 words or less, he'll give in.

Section 27.63.020 provides that, "Before the issuance of any special permit for any of the buildings or uses enumerated in this chapter, the Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the Comprehensive Plan of the City of Lincoln, the community as a whole, and other matters relating to the public health, safety and general welfare."

Hunzeker went on to state that even the planning director gets involved because he has authority to make administrative changes to permits which have been issued. He is authorized to approve amendments under certain circumstances, one being a minor increase in total floor area. "Minor increase in total floor area" is certainly no more precise than "significant grade separation". In addition, the provision states that no amendment shall be contrary to the general purposes of this chapter.

Therefore, Hunzeker observed that the Planning Commission is accustomed and sometimes required to deal with discretionary approvals using words that are less than precisely defined. This proposed language does not preclude other sites from meeting the criteria; the subjective evaluation is no more than what is done already on a regular basis. It will allow for issuance of special permits in limited circumstances and in the sound discretion of the elected City Council subject to the approval by our elected Mayor. This is not throwing things open to arbitrary decision making. It is a mechanism by which certain circumstances can be recognized of having met the general purpose.

There was no testimony in opposition.

Francis inquired how a business might proceed if they cannot meet the 100' separation. Will explained that as part of the liquor license review, they need to insure compliance with local zoning regulations. The Liquor Commission will tell them to go to the city and see if they meet the requirements. It starts with a pre-application meeting and the staff will evaluate their site relative to the criteria described in the ordinance. There is no provision to adjust that 100' horizontal separation. If they do not meet the criteria, including the 100' separation, they cannot apply for the permit. He believes the current regulations were designed to prevent locations that are not desirable for liquor sales.

Francis recalled an exception being made for the 9th Street Grill. Will explained that was for on-sale (not off-sale). He added that multiple changes have been made to these permits over time where we have noticed a flaw or something inappropriate or not intended. That applicant made the case that a restaurant is not a bar – it is a different entity – and alcohol associated with that use is less intensive. That separation was reduced down to 25'. That was only for on-sale and only for a restaurant.

Sunderman asked whether the City Council currently has discretion on the 100' separation. Will reiterated that that provision was taken out in 2004 when final approval of liquor special permits was granted to the Planning Commission.

Sunderman inquired about how the B-2 and B-5 are treated differently for off-sale. Will also referred to B-4, where alcohol sales is a permitted use in the downtown that is not regulated by special permit. The B-2 and B-5 are two use permit districts for planned commercial districts -- by use permit, the city has review authority in those developments. Those sites are typically large and integrated. There is not as much conflict. They still have criteria and separation requirements.

Sunderman suspects that the reason this ordinance, unlike other ordinances for special permits, really gives the Planning Commission no discretion as far as adjustment to the separation is because of the emotionally charged aspect of it. Will explained that it goes back to 2004. There were applications which did not meet the required separation, but proposed what they felt was mitigation. That mitigation was debated and subject to dispute. Sometimes they were approved based upon that mitigation and sometimes not. That was the basic rationale for eliminating that subjectivity, i.e. what is adequate mitigation – is it a 6' fence, a 10' fence, vertical separation, etc. – sites were not being treated fairly. It was difficult to be equitable every time. So the trade-off was to make it straight forward and objective and require the 100' separation with Planning Commission having the approval authority.

Response by the Applicant

Hunzeker suggested that the main thing to remember is that the Planning Commission does have this kind of discretion in virtually every other permit. This provides that the application will go on to the City Council for their determination and their approval or disapproval. There is no appeal. Special Permits have been issued where you have not only replaced but literally torn down and expanded nonconforming uses where there were previous liquor licenses in place, and ended up with much smaller setbacks and less mitigation than this will require. The lack of any discretion does impose some hardships and creates inequities. There are circumstances in B-2 and B-5 where liquor licensed establishments are closer to churches than this proposed amendment would permit to residential districts or parks. He gave Clocktower Shopping Center as an example – there is a church immediately next door. Hunzeker suggested that this is just a matter of returning a little bit of discretion to the City Council.

Gaylor Baird clarified that this is an amendment to the zoning ordinance but it really only affects a few limited sites. If this does not pass, what is the process for these specific sites that meet the proposed criteria for seeking approval for changes to the special permit? Will stated that if these locations do not meet the requirements under the provisions today, there is no remedy. That is what the provisions were intended to do – to prevent alcohol at those locations. The only other possibility would be some other significant action such as rezoning to B-2 or something like that. But with no other significant changes, they cannot apply for the special permit.

Hunzeker agreed that there is no other alternative, particularly in cases where you are surrounded on two sides by a park. The option of rezoning enough land to come under B-2 or B-5 does not exist, and if you think about the area in the vicinity of 48th & O, there isn't enough room there either. There is no more commercialized area in the city.

ACTION BY PLANNING COMMISSION:

May 16, 2012

Francis moved to deny, seconded by Esseks.

Francis believes there are other avenues for this, e.g. the CVS at 17th & South.

Esseks observed that it was the City Council's judgment and action in 2004 that there should be one clear criterion, and that is the distance from the applying property to the surrounding uses that the City Council wants to be protected. It seems that the City Council needs to make the change back if it wants other criteria. The applicant has offered us three specific criteria – significant vertical grade; within 100' of a park when used primarily as a roadway or parking lot; and landscaped area not intended for active play. Esseks does not believe these are convincing mitigating circumstances.

Cornelius agreed that this is an emotionally charged issue. That is one of the reasons that these sorts of applications are difficult and also why the existing ordinance is drawn as narrowly as it is. Because of that, the conclusion has been reached that this 100' separation requirement is something that we find useful. It is a tool that allows us to create a transition on the boundaries of residential districts that are bordered by commercial-- districts where we know that off-sale won't be sold. In general, we have found that the current wording works. Sometimes people can't get the permit that they want, but in general, it is not difficult to find a place to buy off-sale liquor. Because this is an emotionally charged issue, Cornelius finds himself sympathetic to the argument

that perhaps a degree of discretion might be useful in these cases, but he would rather see that pursued through a broader public process with generalized review and input from various stakeholders.

Motion to deny carried 7-1: Weber, Esseks, Hove, Cornelius, Butcher, Gaylor Baird and Francis voting 'yes'; Sunderman voting 'no'; Lust absent. This is a recommendation to the City Council.



RANDALL L. GOYETTE*
STEPHEN S. GEALY
GAIL S. PERRY
DALLAS D. JONES
JILL GRADWOHL SCHROEDER
DAVID A. DUDLEY
BRENDA S. SPILKER
W. SCOTT DAVIS
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WILLIAM G. BLAKE
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WALTER E. ZINK II
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ALSO ADMITTED IN:
*IOWA
**KANSAS

April 18, 2012

Mr. Marvin Krout
City of Lincoln – Planning Department
555 S. 10th Street, Suite 213
Lincoln, NE 68508

RE: Text Amendment to the Lincoln Municipal Code

Dear Mr. Krout:

Attached with this correspondence is an Application to Text Amendment to amend Section 27.63.685 of the Lincoln Municipal Code to add a new section as shown on Exhibit "A" attached to the Application. The purpose of the Text Amendment is to provide the City Council with flexibility on special permit application for the sale of alcoholic beverages for consumption off the premises as it relates to the 100 ft. restriction contained in Section 27.63.685(c).

If you have any questions or need additional information please feel free to call.

Sincerely,

Mark A. Hunzeker
For the Firm
mhunzeker@baylorevnen.com

MAH/sjones

616488

EXHIBIT A

Add a new Section 27.63.685(k) as follows:

- (k) The City Council may waive the requirement of subsection (c) above, if the Council finds:
1. Either (i) there is a significant vertical grade separation between the property upon which the licenses premises is located and the abutting property, which would effectively serve the same purpose of mitigating any adverse impact upon the abutting property as the 100 ft. horizontal separation requirement; or (ii) the licensed premises is within 100 ft. of a park and the portion of the park lying within 100 ft. of the licensed premises is:
 - (A) used primarily as a roadway or parking lot; or
 - (B) is a landscaped area not intended for active play, does not include any playground equipment, and will be separated from the property upon which the licensed premises is located by a solid fence at least 6 ft. in height which effectively serves the same purpose of mitigating any adverse impact within the park as the 100 ft. horizontal separation requirement; and
 2. The licensed premises is located on property which lies at the intersection of two major arterial streets, each of which have not less than two thru-lanes of traffic in each direction; and
 3. The abutting property will not be adversely effected by the waiver under the specific and unique circumstances presented by the application.



Application Information			
Application #	CZ12010	Title	OFF-SALE TEXT AMENDMENT
Associated Requests			

Planning Department Use Only			
Submission Date	4/23/2012	Review Due	5/3/2012
Project Planner	Brian Will		

Review Agencies (Planning Department Use Only)

Review Agencies	<Choose Entry>	<Choose Entry>	
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County Health: Chris Schroeder (cschroeder@lincoln.ne.gov) Remove Agency Reviewer

Development Review Manager: Steve Henrichsen (shenrichsen@lincoln.ne.gov) Remove Agency Reviewer

Law Department: Rick Peo (rpeo@lincoln.ne.gov) Remove Agency Reviewer

Lincoln Police Department: Sgt Jeri Roeder (lpd667@cjis.lincoln.ne.gov) Remove Agency Reviewer

Stronger Safer Neighborhoods: Jon Carlson (jcarlson@lincoln.ne.gov) Remove Agency Reviewer

Urban Development: Wynn Hjernstad (whjernstad@lincoln.ne.gov) Remove Agency Reviewer

Parks & Recreation: Mark Canney
(mcanney@lincoln.ne.gov)

Remove Agency Reviewer

Review Comments		
Planning	<input checked="" type="radio"/> Corrections Needed for Review <input type="radio"/> Insufficient Information for Review <input type="radio"/> Recommend Denial <input type="radio"/> Recommend Approval with Conditions <input type="radio"/> Recommend Approval <input type="radio"/> No Review Required Review 1:	
County Health (Chris Schroeder)	<input type="radio"/> Corrections Needed for Review <input type="radio"/> Insufficient Information for Review <input type="radio"/> Recommend Denial <input type="radio"/> Recommend Approval with Conditions <input checked="" type="radio"/> Recommend Approval <input type="radio"/> No Review Required Review 1: The Lincoln-Lancaster County Health Department does not object to the approval of this application.	
Development Review Manager (Steve Henrichsen)	<input type="radio"/> Corrections Needed for Review <input type="radio"/> Insufficient Information for Review <input type="radio"/> Recommend Denial <input type="radio"/> Recommend Approval with Conditions <input type="radio"/> Recommend Approval <input type="radio"/> No Review Required Review 1:	
Law Department (Rick Peo)	<input type="radio"/> Corrections Needed for Review <input type="radio"/> Insufficient Information for Review <input type="radio"/> Recommend Denial <input type="radio"/> Recommend Approval with Conditions <input checked="" type="radio"/> Recommend Approval <input type="radio"/> No Review Required Review 1: Two draft ordinances have been provided to Planning for review -- one per applicant's request and one revised for clarification recommended by the Law Department.	
Lincoln Police Department (Sgt Jeri Roeder)	<input type="radio"/> Corrections Needed for Review <input type="radio"/> Insufficient Information for Review <input type="radio"/> Recommend Denial <input type="radio"/> Recommend Approval with Conditions <input type="radio"/> Recommend Approval <input type="radio"/> No Review Required Review 1:	
Stronger Safer Neighborhoods (Jon Carlson)	<input type="radio"/> Corrections Needed for Review <input type="radio"/> Insufficient Information for Review <input checked="" type="radio"/> Recommend Denial <input type="radio"/> Recommend Approval with Conditions <input type="radio"/> Recommend Approval <input type="radio"/> No Review Required Review 1: Recommend denial. The 100 foot spacing for alcohol sales continues to be an important protection for neighborhoods and neighborhood revitalization work.	

	<p>Creating exemptions weakens those buffers and protections and will certainly lead to more requests for exemptions and exceptions. The 100 foot spacing requirement has been in place for many years and the development community is well aware of the requirement. Infill projects have been and should continue to be designed to accommodate this requirement.</p>	
<p>Urban Development (Wynn Hjermstad)</p>	<p> <input type="radio"/> Corrections Needed for Review <input type="radio"/> Insufficient Information for Review <input type="radio"/> Recommend Denial <input type="radio"/> Recommend Approval with Conditions <input type="radio"/> Recommend Approval <input type="radio"/> No Review Required </p> <p>Review 1:</p>	
<p>Parks & Recreation (Mark Canney)</p>	<p> <input type="radio"/> Corrections Needed for Review <input type="radio"/> Insufficient Information for Review <input type="radio"/> Recommend Denial <input type="radio"/> Recommend Approval with Conditions <input type="radio"/> Recommend Approval <input type="radio"/> No Review Required </p> <p>Review 1:</p>	

Brian Will

From: Lynn Johnson
Sent: Friday, May 04, 2012 6:10 PM
To: Brian Will
Cc: Marvin S. Krout; Mark E. Canney
Subject: CZ#12010

Memorandum

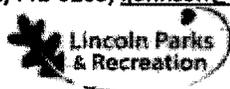
May 4, 2012

TO: Brian Will, Planning
FR: Lynn Johnson, Parks and Recreation Director
RE: CZ#12010
Cc: Marvin Krout, Planning Director

The purpose of this memo is to respond to the proposal to amend the conditions associated with sale of alcoholic beverages for consumption off the premises as they relate to park areas. The current requirement of at least 100 feet separation between a park and a business selling alcoholic beverages is a reasonable standard to provide physical separation between people involved in recreation activities and those selling or purchasing alcoholic beverages. Often park users are children, youth and families.

The specific instance of the current Walgreen's site on the northeast corner of No. 14th and Superior is a location where a commercial business directly adjoins a neighborhood park co-located with a branch public library. The public and private properties were developed in tandem, and there was an understanding at the time of development of what the intended uses of the properties would be. A children's playground is located immediately east of the Walgreen's site, and a multi-purpose playfield is located to the north. Current community standards have established that this is not an area that is suited for off-sale of alcoholic beverages. It is my recommendation that the zoning code not be amended to allow off-sale of alcohol to become one of the approved commercial activities on this site.

Lynn Johnson, Parks and Recreation Director
Lincoln Parks and Recreation
2740 A Street
Lincoln, NE 68502
(402)441-8265, ljohnson@lincoln.ne.gov



Jean Preister

From: panderson@neb.rr.com
Sent: Wednesday, May 16, 2012 1:15 PM
To: Jean Preister
Subject: 100' rule alcohol sales

Dear Planning Commissioners,

I am writing on behalf of the Everett Neighborhood Assoc. Board. Please leave the 100' rule for alcohol sales in tact. It is logical and serves a good purpose. Our older neighborhoods are especially at risk if this ordinance changes. We don't have covenants protecting land use.

Society survived just fine when liquor was only available in liquor stores. Now it's available in every gas station, grocery store and pharmacy. There is no need to expand sales.

Pat Anderson Sifuentez

President, Everett NA

Sent on the Sprint® Now Network from my BlackBerry®

Jean Preister

From: William Carver [williamc@neb.rr.com]
Sent: Wednesday, May 16, 2012 8:13 AM
To: Jean Preister
Subject: Vote No on Change of Zone No. 12010

Dear Planning Commissioners,

After discussion at our May 14th board meeting, the NSNA Board of Directors voted unanimously to oppose Change of Zone Number 12010. The current ordinance is fair to everyone. Please do not undue what we have fought so hard to preserve.

Thank You,

William Carver
President NSNA