

**Excerpt from the
CITY PLANNING COMMISSION MINUTES
Minneapolis Community Planning & Economic Development (CPED)
Planning Division**

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MEMORANDUM

DATE: January 24, 2011

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of January 10, 2011

The following actions were taken by the Planning Commission on January 10, 2011. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners present: President Motzenbecker, Bates, Carter, Cohen, Gorecki, Huynh, Luepke-Pier and Tucker – 8

Not present: Schiff (excused)

Committee Clerk: Lisa Baldwin (612) 673-3710

10. West Broadway and Washington Mixed-Use (BZZ-5040 and MS-209, Ward: 5), 201-229 West Broadway ([Kimberly Holien](#)).

A. Conditional Use Permit: Application by Scott Englad of DJR Architecture, on behalf of Land Ho, LLC, for a conditional use permit for an off-sale liquor store in the I1 District located at 201-229 West Broadway, in the I1 and PO Districts.

Action: The City Planning Commission adopted the findings and **approved** the conditional use permit to allow an off-sale liquor store in the I1 District for the property located at 201-229 West Broadway, subject to the following conditions.

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. The use shall comply with all requirements of Title 14, Liquor and Beer, of the Minneapolis Code of Ordinances and Chapter 4 of the Minneapolis City Charter.

B. Site Plan Review: Application by Scott Englad of DJR Architecture, on behalf of Land Ho, LLC, for a site plan review for property located at 201-229 West Broadway, in the I1 and PO Districts.

Action: The City Planning Commission adopted the findings and **approved** the site plan review for a building addition for a multi-tenant commercial building at the property of 201-229 West Broadway, subject to the following conditions:

1. CPED Planning staff review and approval of the final site, elevation, floor and landscaping plans.
2. All site improvements shall be completed by January 10, 2012, unless extended by the Zoning Administrator, or the approvals may be revoked for noncompliance.
3. A merchandising plan shall be submitted illustrating that first floor or ground floor windows will allow views into and out of the building at eye level. Shelving, mechanical equipment or other similar fixtures shall not block views into and out of the building in the area between four feet and seven feet above the adjacent grade, in compliance with Section 530.120 of the zoning code.
4. In addition to the required short-term bicycle parking spaces, a minimum of one long-term bicycle parking space shall be provided for the office use, in compliance with Section 541.180 of the zoning code.
5. The furnishings proposed on West Broadway and to the rear of the building shall be of the same quality and located in the spaces shown on the site plan, provided the necessary approvals are obtained by Public Works to allow furniture in the right-of-way.

C. Minor Subdivision: Application by Scott Englad of DJR Architecture, on behalf of Land Ho, LLC, for a minor subdivision to adjust the common lot line between the properties at 201 West Broadway and 217 West Broadway.

Action: The City Planning Commission adopted the findings and **approved** the minor subdivision to adjust the common lot line for properties at 201-229 West Broadway.

Staff Holien presented the staff report.

Commissioner Gorecki: Can you help explain what our role is under the conditional use permit, item two in the Title 14 Liquor and Beer. Are we here to approve or not approve the 2000 feet? Is that part of our discussion tonight? We've tended to go on and on about the 2000 foot requirement and I just want to be clear that if it is not in our purview that it is not something that we dwell on tonight.

Staff Holien: The 2000 foot spacing requirement is actually in Title 14 Liquor and Beer. While that is a specific development standard that's required to be met as part of this application, we are not charged with finding that the 2000 foot spacing is met as part of this application. That determination will be made by Licensing staff and that condition is in place here just so we can ensure that's so.

President Motzenbecker opened the public hearing:

Dean Dovolis (333 Washington Ave N) [not on sign-in sheet]: I'm with DJR Architecture. We made some changes in response to the Committee of the Whole discussion that we did incorporate some color change that you can see to give a little more variety and accent in terms of defining the individual storefront design within the building. I think we have a very attractive development which may be a very good first phase to what I'll call the West Broadway redevelopment and we hope to be a good example to which others will follow.

President Motzenbecker: Thank you for making those changes for us, we appreciate it.

Scott Harris (150 S 5th St): I'm with Leonard, Street and Deinard. I'm here on behalf of UB Liquors, LLC which I will refer to as Merwin Liquors, the nearby liquor store at 700 West Broadway. I did want to note that in the report to you, I believe one of the required neighborhood groups for notification and comment was always the Hawthorne Area Council. Ms. Holien failed to mention that that neighborhood group submitted a comment adverse to this proposal that I trust is in the record. I submitted to you extended written comments. I appreciate your reference to the question of the 2000 foot setting. We have previously asserted, and I just want to note that, ironically, this particular applicant Land Ho came before the city in 2009 on another project, I believe referred to as La Parisienne over on Lyndale and that instance where the spacing issue was not even as close as it is in this case and we acknowledge that it is close, they didn't seek a CUP from the Planning Commission, but rather sought special legislation from the state legislature to try to get an exception because, I presume, that they know this committee would not have approved a CUP or a site plan where this 2000 foot plan is obvious. I simply wish to point out, I know you're well aware of your responsibilities to make six factual findings in advance, that is before establishing the appropriateness of the CUP and three of those are implicated by this issue and the reason that we raised this issue to your committee, and I understand staff says this committee isn't going to involve itself, rather, this committee should approve a conditional use permit with a condition on it that the 2000 foot standard be met. Our position on that is that this is an obvious ascertainable factual issue rather than other issues that come before liquor licensing regarding the qualifications of an applicant for a liquor license. If this issue, if it's not 2000 feet...and attachment A to our written submission is our measurement and it shows it's not 2000 feet and I suggest this committee could ask for some specifics from this applicant before issuing approval of a conditional use permit. I would note that this applicant has sued the City of Minneapolis and my client claiming that your May 24 approval of a conditional use permit gave rise to what this applicant called "vested zoning rights" which gave rise to a claim against the City of Minneapolis when it was not allowed to proceed on its prior applicant to develop the project. Under these circumstances, we simply don't understand why this commission would not ask for some specifics rather than a vague site plan with a dotted line on it that says 2000 feet. References by the staff in its report in two places saying they moved their door and they want a subdivision in an attempt to reach the 2000 foot mark, I just suggest that it's premature of this commission to issue an approval of a CUP and then subject both the city and presumably my client to yet more claims and litigation over an objective ascertainable fact, is it or isn't it?

You're well aware that previously when this matter came in front of you, the applicant had suggested to the Planning Commission that a mezzanine was a second floor and we took issue with that and ultimately the City Council decided that it was not appropriate to deem that particular proposal a two floor proposal. Now we have a proposal with all the new construction having two floors to it so that the new construction to this project does not add nonconformity to this project with regard to the issue of two floors. The applicant faces a fatal problem with the other West Broadway pedestrian overlay district zoning requirement, that is that this project have a floor area ratio of 1.0. The staff has apparently accepted the contention by this applicant that this project need not comply with the FAR requirement of the zoning law because this project is allegedly an expansion of BJs. We suggest to you that there is no way anyone can look at this project and say that this is an expansion of BJs strip joint. We have set out an elaborate measure in our written submissions, the basic tenets that the state of Minnesota and the City follows in terms of allowing an expansion of a nonconforming use and for that matter a nonconforming structure. Those requirements in the city's ordinances for expansion of a nonconforming structure should be strictly construed because the basic policy of the state and this city is to eliminate nonconformities through obsolescence exhaustion of the existing buildings. The applicant is proposing now to actually reduce the size of the BJs building by some 800 feet, but then add a new structure of over 14,000 feet in size. The applicant has called it an expansion of BJs, however, we note that the use in the 14,000 foot structure will be unrelated to the use of BJs. Not only unrelated to the current use as a strip joint, but unrelated to the proposed new use as a restaurant. There's going to be a liquor store, there's going to be offices. The uses in the new structure will be entirely different than those in the existing structure. The occupants in the new structure will be unrelated to occupants in the existing structure. The tenants of the new structure will be unrelated to the occupants of BJs. The management in the new structure...

President Motzenbecker: Mr. Harris, I think we understand. I don't need to hear a litany of lists please. We understand you have an issue with the FAR requirement. You've explained it quite good detail. If you have other issues, I suggest you move on to those.

Scott Harris: There is also no entrance from one building to the other. It can't be legal to enter the liquor store from BJs because it would violate your ordinances on entries to liquor stores. We have cited to you, and this is by the way a matter of law, the question of interpretation of zoning ordinances, it's a question of law as is stated by the cases in Minnesota that I've quoted to you in our papers and I cited to you and explained the High case from the State of Michigan - High v. Cascade Hills Country Club and they are a country club that was nonconforming and sought to build a maintenance building on the land contiguous with the country club right next door to it and said that the new building should be deemed an extension of the country club and should be acceptable. The Court of Appeals of Michigan rejected the zoning board's determination that it was an acceptable expansion and determined that it could not be because it is impossible to enlarge or extend that in which does not exist. Since the use was going to be a completely different use, it could not be deemed an extension of the building. Faced with those facts here, if you find that this is not an extension, and I suggest that under no reasonable understand of what is an extension of BJs is this such a thing, then there is a requirement of a variance application in order for you to approve this because the new building, which is not an extension, will not meet the FAR.

President Motzenbecker: Duly noted, we've asked you to move on to your next point.

Scott Harris: My next point is that if you somehow determine that it is an extension of BJ's, we suggest that's impossible, but if you find that it was then it is an impermissible extension because the staff has determined because of the ratio and the FAR that is going to improve that therefore there is no increase in nonconformity. I suggest again as a matter of law, that is a flat out incorrect interpretation of the law. In order for this not to be an increase in nonconformity, you would have to find that everything being added to this building does not have a violation of your FAR requirement. That is, it's not enough for you to find that the ratio at the end of the day is going to be better. Every square foot, and the staff I believe will not dispute this, every square foot of the new building is nonconforming in regard to the FAR requirement of 1.0. It doesn't matter that it's less nonconforming, that would suggest that, for instance, if your floor requirement on West Broadway was a three floor requirement rather than two and the Land Ho project suggested that they were going to add a two floor addition to the nonconforming but permitted one floor BJ's, that that would not be an increase in nonconformity, of course it would be. It would just be a less egregious increase in nonconformity and what you have here is the entire building that's being added to BJ's is a less egregious nonconforming building than is BJ's but it is nonconforming in every square foot. The staff is telling you we are not having an increase in nonconformity when you... [tape ended] ...classic case of an increase in nonconformity, we cited the case from Lewis where the zoning board adhered to the same methodology that the staff has here and said that the new addition is not as severe an increase in nonconformity, not as severe as the existing nonconformity so we will approve it. The court in Maine and courts throughout our country have rejected that notion and said no, that's an expansion of nonconformity, that's an increase. Anything you add to a building in order to comply with the requirements of your ordinance cannot increase the nonconformity. This building is going to be six times as large a nonconforming with brand new structure and that means, of course, that it's not going to become obsolete, you're just having expansion of FAR violation right down Broadway and that's a violation. Under 531.80, when there is a change in use from a nonconforming use, that's code of ordinances 531.80, there have to be factual showings that the new use will be less intense. BJ's is right now a nonconforming use, it's not just a nonconforming structure. The strip joint is a nonconforming use that is without dispute intended to be changed. When you're going to change a nonconforming use under your ordinance, there has to be a showing of less intensity in the subsequent use. That can't be done here. It hasn't been done. There's been no submission to the staff and there's been no findings or suggestions by the staff that there has been, but it can't be done because this structure stretching down West Broadway from the 2800 foot BJ's is clearly going to be a more intense use than is BJ's and if it is then you can't approve an application. We also cited to the fact that where there is change in tenants or management in a building, that's under your ordinance 531.20 (d) that any such change can only occur provided there is no change in the nature or character of such nonconforming use or structure. As I pointed out in my earlier comments, there will be dramatic change in the character or nature of the use that's going to go in there that would require specific exception and it can't be done. Frankly, you have a proposal, and I recognize that the city would like to see development there, but the development there has to comply with your ordinances and this doesn't. Thank you.

Commissioner Cohen: My question is to our attorney. Assuming, Jason, for the moment that this 2000 foot issue is off the board and...my question is, where do these people that are objecting here acquire their standing? Do they have a standing to sue regardless of the merits of their argument having to do with proper or improper zoning? On what basis would they have the right to raise the issue?

Staff Wittenberg: Certainly in terms of our ordinance, we have a very generous appeals process whereby anybody for any reason can file an appeal. So in terms of standing, we're very generous in terms of filing an appeal. Ultimately, it would be up to a court to decide if a lawsuit comes forward whether...

Commissioner Cohen: How does one acquire standing? I mean, I can't go out and if I discern that somebody has constructed an illegal apartment or something of that respect and I don't live in that neighborhood and I have no connect with them other than my opinion that this is an illegal action, do I have some civil rights to bring a suit?

Staff Wittenberg: I would really rather just stick to what our ordinance requires in terms of appeal and deciding whether someone has a standing, I can't really speak to what a court would say in terms of somebody having standing in terms of a lawsuit.

Commissioner Cohen: But generally, private citizens do have a standing to get involved in these matters.

Staff Wittenberg: Sure.

Becky Boland (1723 Bryant Ave N): I represent something called the East Gateway Partnership which is a coalition of public and private sectors in north Minneapolis that have come together around the idea of achieving the reality of safety in north Minneapolis. We don't really focus on economic development, we partner with Catalyst and others on that. We don't necessarily focus on zoning code or those sorts of things, we really focus on achieving the reality of safety. We do this in partnership with law enforcement and the business sector, the faith based community and the nonprofit sector. One of the things we're working on right now is the move of the Minneapolis Public Schools on to West Broadway. We're thrilled that they're coming. We're excited that this is the biggest group of employees in north Minneapolis and we can't wait to have them there. I heard your request that we stick specifically to what was in the staff report so I will do that in an effort to make this really quick. Under the conditional use permit in number one that states if it will not be detrimental to or endanger the public healthy, safety, comfort or general welfare. My board of directors voted against this proposal for the primary reason that there will be a liquor store there. Members of my board include the fourth precinct, members of the business community, the nonprofit and the faith based community. We would love to see development there. It would be fantastic to have development at that location, we just really don't think it should be a liquor store. We've made great strides in north Minneapolis when it comes to safety and crime stats and actually we're ecstatic that right now we're neck and neck with southwest Minneapolis in terms of part one crimes in the end of 2010. Our part one crimes in north Minneapolis in 2010 went down 9.8% which is great and we really feel like we're at time when we've come together, we're making some strides in public safety, economic development and now is not the time to have a liquor store in that location. It speaks specifically to life safety, ordinance and public safety ordinances and we really do feel that those standards have not been met. The second thing is, the security plan submitted by the Gopher Wine and Spirits mentions that they've been working with the fourth precinct and Inspector Mike Martin who runs the fourth precinct couldn't be here tonight and he asked me to just briefly read a three statement email on his behalf. It says, "Please mention, Lieutenant Arradando did meet with Land Ho regarding their initial proposal. That proposal has changed and the fourth precinct is not supporting the project. Our primary concerns are traffic problems, site security and adequate parking." I just want to make that reference because point number one in the staff report mentions the approval of the

fourth precinct and the approval of the public safety partners in the neighborhood and they don't have that. We're here to achieve the reality of safety in the fourth precinct. We'd be thrilled to have this development if it didn't have a liquor store in it. Thank you.

Don Gerberding (201 W Broadway) [not on sign-in sheet]: I'm here to talk more as a neighbor. I'd like to remind the commission that in the report the proposed use in the building additions comply with the plan and all other regulations of the I1 in the PO district. That really is the finding. It meets the zoning, the design elements consistent with the West Broadway Alive plan and it also meets all of the Chapter 530 site plan review requirements. As a property owner and one who has been in that part of the neighborhood for six or seven years now, I'd like to do two things, to speak to Mr. Harris' point, you bet. Changing the nonconforming use will certainly be less intense than the strip club that's there now. We don't need that strip club and we have an opportunity for some great development on this corner and a dramatic change to the character and use. For the items I think he tried to use to obfuscate the real issue is this is a mixed use development. This is not separate businesses locating along a boulevard. To speak to his position about the need for variances and the need for entrances in and out and to try to tie it all back to it doesn't meet the language of the ordinance, I think is pretty well put to bed when one understands what a mixed use development is and the advantages that brings in and the fact that the city encourages mixed use development. To speak to Ms. Boland, great strides to improve the public safety, I really believe my company and I have made significant influence to improve the public safety at West Broadway and Washington as well as Second Street. This is a good development. This is going to be a very high end development and I will repeat once more like I've said at the neighborhood meetings, if this project were proposed in other sections of our city, there would not be the objection. The objection is based on a fear of what was in the past, too many liquor stores, bad influence. This isn't a liquor, this isn't a bad influence. This is a high end wine and spirits store put together with a good sit down restaurant. This is something which the north side does not have. The residents are telling us they must leave the neighborhood to seek this type of place. We're talking about neighborhood development there. Here's my question, I'm invested heavily in that neighborhood, how come I don't deserve something nice, something that's permanent? How come the north side doesn't deserve to have this when other parts of our city do? That, to me, is really the lingering question. This is good business, good design. Thank you.

Mark Dziuk (2309 Lyndale Ave S): I am the applicant. Mr. Harris represents our competition. I brought myself up here to answer any questions that you might have about the integrity of the wine and spirits shop, the building, our intentions, where we're going.

Commissioner Luepke-Pier: One of the speakers brought up the involvement of the fourth precinct, can you speak to that because I found that interesting.

Mark Dziuk: Yeah, I did too. It's the first time I heard it. We met with them this summer. We co-created with Lieutenant Arradondo and we co-created our security plan in detail. They helped us lay out the windows and the landscaping in our prior plan. All we've done now is increase the top floor and the length of the building. This is the first I've heard of anything else. We've contacted Lieutenant Arradondo a few weeks ago and haven't heard back yet.

Commissioner Luepke-Pier: I remember at the CoW meeting that you had recently shown him the plans.

Mark Dziuk: Nope, not at all. We've not sat down with him since this summer when we had brought this idea forward and we engaged him intimately. There's an email back and forth saying that they support this. We co-created this security plan and he said it's a good one for what we're going to use it for.

President Motzenbecker closed the public hearing.

Staff Holien: I have not heard anything from the fourth precinct over the correspondence that has been included in your packet so I did not receive any correspondence from Inspector Martin from the fourth precinct objecting to the plan. I'm not aware of anything along those lines.

Commissioner Huynh: Can you explain a little bit about Mr. Harris' discussion on the nonconforming use and how that may impact a development where you're adding a significant amount of square footage on to an existing building?

Staff Holien: Sure. In terms of nonconformities, first there is the issue of a nonconforming use and the issue of a nonconforming structure. In this case, currently the BJs use is nonconforming. That use is going to be going away and the restaurant use that's going to be placed in that portion of the building is a conforming use so that's something that is permitted in the I1 and the PO. It meets all the development standards and all the requirements for that use in this location so that doesn't require an additional land use application. In terms of the expansion of the existing structure, these parcels have functioned as one zoning lot for quite some time and especially prior to the adoption of the West Broadway PO. With that said, the nonconformity in terms of the FAR as it was at that time is now being reduced. There's a specific clause in the West Broadway Pedestrian Oriented Overlay District language that allows an exception for the 1.0 FAR in cases where you're expanding an existing building. The determination has been here that this is an expansion of the existing building. These sites have functioned as one zoning lot historically at the time of the adoption of the West Broadway PO. Construction code services staff or our commercial plan review staff doesn't require a wrecking permit for the amount of demolition that's being done at this building. They are retaining approximately 76% of it and construction code services staff typically says that anything where you're demolishing more than 50% of the building requires a wrecking permit. In this case, there wouldn't be any wrecking permit for that portion of the building so it is considered an expansion.

Commissioner Luepke-Pier: So it's an expansion of an existing building, but we're only saying that the use that's in the existing footprint of the building has to be conforming? Is that what I'm hearing?

Staff Holien: No.

Commissioner Luepke-Pier: When you were talking to Commissioner Huynh, it sounded like you were saying that the restaurant is nonconforming, therefore...

Staff Holien: No. The existing BJs use is nonconforming but that's going away. The restaurant use that's proposed is a conforming use.

Commissioner Luepke-Pier: But then the rest of the mixed use building, is that conforming as well?

Staff Holien: Yes.

Commissioner Luepke-Pier: Ok, so there's no issue that any of the things going in there are nonconforming in terms of their use?

Staff Holien: No, not in terms of their use.

Commissioner Luepke-Pier: That Hawthorne letter, we didn't have one in our packet. Was there one received?

Staff Holien: I didn't receive one. I haven't seen one.

President Motzenbecker: No, we just had it in Mr. Harris' submittal.

Staff Holien: I will get a copy of that from the Clerk's office.

Commissioner Bates: I'm sorry to bring up this 2000 foot issue again, but I just want to understand what it means to say that we have a development standard around this 2000 feet but that it is going to be a Licensing decision. Why would we have a standard then?

Staff Holien: That standard is in place so we can ensure that liquor stores don't go in in locations where the 2000 foot spacing requirement can't be met. In this specific case, Licensing staff has been involved and have reviewed the revised site plan, but until the site plan is approved, they haven't made a determination on the liquor license because they don't know if changes are going to be made to the building design, the building layout or the door location. Licensing staff has taken the position that they would make a determination on whether or not the 2000 foot spacing requirement is compliant once the building is approved. We can coordinate with them. We just included that condition that if for some reason Licensing staff does their investigation as part of the liquor license and finds that the door location doesn't meet it or that a small adjustment is required to be made, that will need to be made before the liquor store can operate in that location.

Commissioner Bates: So essentially it's possible to meet the development standard and that's why it's then moved off on to the Licensing decision.

Staff Holien: Correct.

Commissioner Bates: The second piece is, how did we determine that this was...when we were talking about this expansion of the building, how do you determine that it's one project for the expansion of the building? You said in your presentation that you have determined that this is one project, on what basis is that determined?

Staff Holien: That's its one zoning lot? That determination is made based on the fact that the sites have been under common ownership and functioning as one site for quite some time. Right now, the off street parking for the BJs use occurs on the property at 217 West Broadway. That's been the case since before the West Broadway Overlay District was adopted.

Commissioner Bates: Thank you.

Commissioner Luepke-Pier: There were a lot of letters on our packet from individuals concerned about another liquor store going in and we've heard ample testimony to that as well. If the 2000 square feet weren't an issue, would the fact that it's a liquor store be an issue that we'd even be ruling on at all?

Staff Holien: The liquor store requires a conditional use permit in either case.

Commissioner Luepke-Pier: So it's up to our discretion as to whether we would even allow a liquor store here or not just on that basis alone?

Staff Holien: Based on the conditional use permit findings.

Commissioner Gorecki: I find these to be very interesting discussion in the sense that we have a business that wants to...we have a particular development that wants to open a mixed use development, have met the West Broadway Alive guidelines, but yet it's in conflict with another existing business and that's really what we're looking at here. The whole disagreement is not about whether or not this is a good development, it's whether or not it's going to step on somebody else's business and take away business. I think we've seen that in the additional arguments that have been made of why this isn't a good development. I think staff has done an excellent job of really laying out this development and why it does meet all of our guidelines and I think we'd be remiss not to approve this so I'm going to move the conditional use permit per staff recommendation (Tucker seconded).

Commissioner Bates: Commissioner Gorecki, I disagree with you a little bit. I don't think the only issue is about business competition. I think it also matters that two liquor stores are going to be within a hair's breath of each other in terms of what our standards are. I would certainly like to put a condition on your amendment and that would be the developers would need to...the fourth precinct issue needs to get cleared up. I think that it indicates a little bit of a concern there that a significant player in the neighborhood is having concerns about the health and safety issue which is our first finding and the major piece of evidence provided is under question. I would like that addressed in some way.

Commissioner Gorecki: I don't believe the requirement of the fourth precinct approval is necessary to meet any of the findings so I don't think that that's something that's germane to our discussion or approval tonight.

Commissioner Bates: I don't think it's an approval issue really, I think what it is is an assurance that we have crossed all our T's and dotted all of our I's in looking at the health and safety issues to the extent that we can and also supporting what I also see as a good development, but I also want to really address the concerns of the neighborhood on that.

Commissioner Luepke-Pier: I agree with Commissioner Bates in that I think that the weighing in of the fourth precinct from what we heard on both sides is very germane to the health, safety and welfare of the public because they would have an idea of what would be detrimental to the public's health, safety and welfare so I think it's something that should be taken into consideration with this, although I will agree that this proposal is vastly improved over the ones we've seen on this site leading up to this state. I think I will be voting against the motion.

President Motzenbecker: Would there be any opposition to something that we've done in the past where we've asked staff to work with the fourth precinct to get a verification of...because we've had both sides of the coin. Fourth precinct says yes, we've had another submission that says the fourth precinct said no but it was a different person who stated that. Would it be acceptable to have staff verify the opinion?

Commissioner Luepke-Pier: I would love to have it contingent upon their approval or something to that effect.

Staff Holien: I just want to clarify that the fourth precinct would also be involved as part of the liquor licensing process for any off sale liquor store that goes into this location.

President Motzenbecker: So maybe something where the applicant will work with the fourth precinct, and staff, to ensure that the compliance is met - just as a recommendation, not a condition.

Commissioner Luepke-Pier: I guess I'd rather see it as a condition of some sort just because I don't know what liquor license requirements are and what kind of authority the fourth precinct, if they had concerns, would be able to raise at Licensing. I don't know their process for approval so whether they just say "oh, 2000 feet away, here's your license" or what. I'd be happier with something more.

President Motzenbecker: We will vote on the condition. If it is a condition that the applicant work with the fourth precinct to ensure that clarification is reached for approval or disapproval of this use going in - we can add that as a third condition and we can vote to see if commissioners are open to that.

Commissioner Tucker: Do you consider that condition to be passing our approval authority along to the fourth precinct? I don't want that to be understood that way.

President Motzenbecker: I may ask Jason for clarification.

Staff Wittenberg: I would be very cautious about the wording of that condition because the language that you just stated would potentially give the impression that you delegate an authority to the fourth precinct so perhaps something that requires that the applicant consult with the fourth precinct on their security plan, would that be sufficient language for the proposer of the motion?

Commissioner Bates: I guess I'm going a little bit more with Commissioner Luepke-Pier and thinking about voting against the motion because I don't feel that the 2000 feet issue as a development standard indicates that at some point we don't want an intense number of liquor stores in one particular neighborhood. On the other hand, is it better to have the development vacant? That's not necessarily better for the community. The strip club is definitely not better for the community. I'm just trying to find some way that's tolerable to deal with what I think is a reasonable development standard that says we don't want an intense number of liquor stores no matter how competitive they may be. We all know what the person from the neighborhood was talking about in terms of her excitement around changing crime statistics. I'm just a little torn by that in terms of what the development means. I understand that this is definitely an anchor part of that development but it does call in to question the standards that we're thinking about. To fight

over it being one foot or ten feet, I think it's kind of really going a little against the spirit behind the standard itself.

Commissioner Cohen: The body that reviews these liquor licenses will do a very thorough job of vetting the safety, crime, manifestations of this approval and that we should not start festooning this approval with a lot of conditions since this thing is going to court anyway or there's a very good chance that it's going to court anyway. I would like to make as clean a motion as we can possibly make on this and I suggest that you trust the City Council on this to do a good job on the liquor license question.

Commissioner Carter: I agree with Commissioner Cohen and Gorecki's points and I think there is a fair distinction to be made between the type of wine and spirits with an adjacent restaurant as opposed to a general liquor store in terms of penetration.

Commissioner Luepke-Pier: I think consulting with the fourth precinct on a security plan could be the developer saying "we talked to them about having off duty police officers work there" which is not the same as saying "this development is safe and beneficial to the health, safety and welfare of the neighborhood." Those are two separate things and I think working it too loosely, we might as well not even put it in there because it has no effect. In regard to everything else in general that was spoken by Commissioner Gorecki, Carter and Cohen, I guess I just feel as though this is a contentious issue in the fact that we're hearing two different things about the fourth precinct. We're hearing about the group that we charge with maintaining the health, safety and welfare of this neighborhood and if one group is saying they are all for it and the other group is saying they are all against it, I think we need to get to the bottom of it before we rule on it. Merwins had a restaurant attached to it a while and if we are saying that just attaching a restaurant to a liquor store makes it ok and upscale, then I guess we already have one of those. There's nothing to say that this won't be everyone's worst nightmare or everyone's best dream just based on what we're seeing before us. I just think that logic is a little bit flawed.

President Motzenbecker: Commissioner Bates, are you still of the mind to add this as a condition? If so, we have to vote on it.

Commissioner Bates: At this point, I understand about wanting to make it a recommendation instead of a condition so I withdraw any inference that I wanted it to be a condition and I'm fine with it just being a recommendation.

President Motzenbecker: Then the motion before us on the floor is staff recommendation of the conditional use permit for a liquor store for 2001 229 West Broadway. All those in favor? Opposed?

The motion carried 5-2.

Commissioner Gorecki: I will move staff approval of the site plan review (Tucker seconded).

Commissioner Luepke-Pier: I support this motion and I'd like to add a condition that the condition we had of a prior approval regarding the quality of the exterior furnishings on West Broadway be included as a requirement provided that Public Works approves it as being acceptable in the public right-of-way. Prior to this, we had a motion and a condition on an approval for a site plan that said that the tables and chairs shown on West Broadway had to be of

the same quality as the tables and chairs on the back of the building as well as the lighting and pedestrian level amenities and I think that that's an important condition to still have because I'd hate to have this thing get approved, get built and then have none of the seating that we've seen on the site plan just because they don't have seating on West Broadway. It's very important to the pedestrian element and environment we're trying to create along the avenue. If Public Works approves of having furnishings on the right-of-way, I'd like make sure that they are of quality in nature and not just either not existent or plastic things from a thrift store. (Gorecki seconded).

President Motzenbecker: Let me make sure I got this. Add a condition five that the furnishings proposed, tables and chairs, that are shown both on West Broadway and to the rear of the building both be of the same quality and located in the proposed spaces if approved by Public Works. All those in favor of adding that condition? Opposed?

The motion to add the condition passed 7-0.

President Motzenbecker: All those in favor of the site plan review? Opposed?

The motion carried 7-0.

Commissioner Gorecki: I will move the minor subdivision, staff approval (Luepke-Pier seconded).

President Motzenbecker: All those in favor? Opposed?

The motion carried 7-0.