

**ECCO**  
**PLANNING COMMISSION MEETING**  
**October 16, 2014**

Marvin Kraut and Paul Barnes of the City Planning Department were in attendance, in addition to ECCO Board members and neighbors. Paul Barnes also attended the October 13 meeting with the FarmHouse fraternity representatives, architect, ECCO Board members, and neighbors.

Marvin Kraut opened the meeting by saying the neighborhood was right to take this issue seriously.

- He noted that it appeared that the relationship that was there historically, is no longer there, or at least not the same.
- This is a unique situation, because it would take R-6 zoning today, for a fraternity to be built.
- The current density (per the special permit allowing a maximum of 80 persons to live on the premises) of the FarmHouse fraternity is equivalent to 35 units per acre – very high/intense density
- Further, undergraduate college students as an occupancy are not like most households
- The fraternity is surrounded by much lower density – even the adjacent and nearby apartments are a much lower density
- This has been compatible to the neighborhood until now
- There is no obligation of the neighborhood to support an expansion of a use that would intensify the current density.
- The proposals the neighbors have made so far to the fraternity frankly seem reasonable to the Planning Commission.
  - ✓ The Special Permit changes throughout the years have been something the neighbors have “lived with”.
  - ✓ They are asking to build a much more commercial architectural style; moving the building to the east; taking down a residential property to accommodate the expansion; and reducing the front set-back
- Perhaps the neighbors should talk to the fraternity about looking at other sites that would be more compatible with their needs, where they would have the opportunity to build the type of building they want, without worrying about neighbors.

Responses from neighbors attending the meeting:

- Interesting that only 80 residents are currently allowed – currently, according to the fraternity representatives at the meeting Monday evening, there are 83 residents plus the House Mother living at FarmHouse. Also, they only have 55 parking spaces. Per the current ordinance of .75 parking spaces required per occupant, they would need to have 60 parking spaces; 83 members (if allowed, which per the Special Permit, is not) would mean they must provide 62 parking spaces (rounding down).
- One neighboring family has already sold their home out of fear of reduced property values, and not wanting to live next to the proposed expansion. The family in the house adjacent to the home purchased 1.5 years ago by FarmHouse, are selling their house as well. The concern is that this is creating an increased shift from owner-occupied family residences, to rentals. Our neighborhood is already near a “tipping point” in this regard. Expansion of the fraternity footprint will only make this worse.
- We do not necessarily want the fraternity to move; we want to understand the zoning itself, what our legal options are, and how the process will work.
- The apartments to the west of the fraternity may also be R-2 – it was difficult to tell from the City’s zoning map. We would like clarification there, as we may also have non-forming apartments, in addition to the fraternity’s non-conforming use of property. This is left over from an earlier time.....

Ann Bleed noted that after the meeting Monday night, she forwarded questions to Marvin and Paul that were raised regarding zoning. Paul provided handouts to those attending, including Ann’s questions, and the Planning Department’s written answers. That document served as the outline for this meeting – the information here includes discussion of those points.

Paul summarized the history of the Farmhouse Fraternity development over the years – this is detailed in the handout.

Questions/comments from the group:

- When did the fraternity purchase/take over the portion of Fontenelle Street that ran from X to Apple Street, in order to expand their parking lot? Paul said he would check to see when that occurred.
- Was the fraternity originally on the site before 1954, when the original FarmHouse structure was built? No one seemed to know what was there before – or whether the fraternity was there earlier in some other structure/home.
- The 1979 zoning update is probably when the fraternity use became “non-conforming”. There were fewer districts, and Special Permits were the way to deal with more intense uses than surrounding/existing zoning.
- Paul Johnson indicated that Ag Men and AGS fraternities used to be together – then split in the 1950’s. AGS updated their house in the 1970’s.

Marvin asked whether the fraternity members were actually ag-related today – perhaps that might be another reason they may want to re-locate?

- Lisa Warren indicated that there is a breakdown by major of all residents on the FarmHouse website.
- AGR indicated that that only half of their members still have ag-related majors – FarmHouse had told us that about 60% were ag-related. Clearly, unlike the past, the reasons for joining are no longer related to having an agriculture focus.
- A point was made that the “ambiance” some members are seeking – that of living in a neighborhood, rather than on the downtown City campus – is in danger of being ruined as well, if the surrounding area becomes primarily rental rather than owner-occupied homes. The example of Ag Men was given – only 6 members were living in that house, when AGR rented it for 15 months, while their house was being rebuilt. The surrounding area makes it difficult to attract members today.

Rich Sutton said that if they would move the building to the west side of the premises, then maybe the neighborhood would be willing to speak up, to support a reduction in the rear set-back. This might give them a few more square feet; it would just be backing up closer to the MoPac Trail, rather than encroaching on nearby homes.

- Marvin & Paul indicated that the Special Permit would allow that modification
- There is now an LES line that runs through that area, and either the line or the plan may have to be shifted. There may be a utility easement.
- The architect is showing something like 15-20 feet – hard to tell from the drawing – if this could be used for the building instead, may be easier to support. It is a matter of trying to make the plan more palatable.

There is a concern of what might go in, should they leave.

- It was mentioned – hypothetically – that what might go in could be less intense density, if it weren’t a fraternity, so would alleviate the parking issue. Might not be a bad thing. Again, no one necessarily wants the fraternity to leave. The point was made, we should not necessarily be afraid of their indicating they might leave.
- The Farmhouse likely has few options of building on City campus.
- Paul J. indicated that there are two separate situations:
  - ✓ Immediate = building project, and how it lays out, etc.
  - ✓ Long-term = the other issues that are of concern to the neighborhood, including party house, “dorm houses”, rentals, alcohol issues, etc. These issues are common throughout the City – not just in our neighborhood.

Ann Bleed indicated that we need to go back to the document – get through the answers to the previous questions – then expand the discussion – especially to make the best use of our time with Marvin and Paul.

#### **Premises definition & discussion:**

- Same ownership of different lots can comprise a premises – but the lots must be contiguous
- The lot FarmHouse currently sits on today, as well as the lot they have purchased with the house on it, is technically all one premises by definition
- Is there any limit to how much they can expand? How is that looked at by the City?
  - ✓ Technically, there is not a limit. With R-6 zoning, it would be harder to get adjacent lots re-zoned (for instance, as AGR had to do). It is technically easier to get a Special Permit amended/approved.
  - ✓ However, uses must be deemed compatible within the district – and the question becomes, “Can it be made compatible?”
  - ✓ There is no guarantee that the Special Permit change will be granted – that is precisely our issue, since we fall in the Special Permit situation, rather than a re-zoning situation.
- What is the process?
  - ✓ The Special Permit is a Planning Commission action – it does not have to go to the City Council, as a re-zoning hearing does.
  - ✓ If either party is unhappy – those living within 200 feet would receive the legal notice of the change, and would have the right to be appeal the decision, and could notify the Planning Commission. The neighborhood association in one case, was allowed to have this status to object; a City Council member or the Mayor can also appeal a decision by the Planning Commission as regards a Special Permit action.
- What if the property owners within 200 feet are all rentals – and don’t care, or would actually support such an action?
  - ✓ Again, an individual or a group can still make the case that they are not far away, and that they are adversely affected by the decision. The issue would be looked at from the standpoint of, are they close enough that the change would present a problem to that aggrieved party or group?
  - ✓ As indicated, the City Attorney has accepted a neighborhood association one time in Lincoln, as the “aggrieved party” – so may do so again.

Marvin indicated that they cannot tear down the house they currently own, without the special permit. They must show the “need” for this property use to be changed to the “non-conforming” use of their premises. What CAN they do without a special permit?

- They can have 80 members within their current square footage, per the existing Special Permit.
- The lot they own to the east may be large enough to accommodate a duplex (requirement is 10,000 square feet).
- They can only change the house lot to parking, with a Special Permit – they cannot do this, without it.

Since they are over 80 members currently, what do we do?

- They are already over 80 members, and not in compliance with the current Special Permit – there is also the issue of parking – they should have 60 parking spaces for the 80 member maximum limit. Technically, they only have enough parking now, to accommodate 73 total members.
- Currently, there is no parking for 28 members.
- We would need to report this non-compliance; it would be investigated. We all agree that the current FarmHouse representatives are unaware of the restriction.

The neighbors present agreed that they would want the 80 member maximum to remain unchanged.

- It was pointed out that at the current member number (83), they are one of the largest, if not the largest fraternities at UNL (by numbers). And.....they are in a residential area, not designed for this intense density.
- It was suggested that the neighbors may be able then, to support several hypothetical options:
  - ✓ If the house were built where it currently sits on the premises, to the maximum allowable set-back toward the south (MoPac Trail), to house a maximum of 80 members. A total of 60 parking spaces

would be required. If all of this could be built on the current site, without taking down the first house which they own, that would be optimum.

- ✓ Same scenario – but allowing the first house to be taken down to accommodate 60-80 spaces, to alleviate neighborhood parking issues due to FarmHouse fraternity members’ parking throughout the neighborhood. Appropriate landscaping, wall, and buffers would be required, as well as a similar required resolution not to build on the area used for parking, or extend it in any way – similar to the AGR situation.

Special Permit components were discussed:

- The AGR zone change application was again discussed, as we went through the document. As indicated there, the AGR had to make an application for an actual zoning change of the lot to the east they had purchased, from R-2 to R-6, in order to build part of their building on a small part of that lot. There is a 20-year conditional zoning agreement with landscaping buffers, etc. This was negotiated between the neighbors and Kappa Foundation, owners of AGR property; it was drawn up by their attorney, Kent Seacrest, with input from the Planning Commission.
- We do not want R-6 zoning in the middle of the neighborhood
- We do not want to support a change in the Special Permit to allow more than 80 members (current level); and the house must alter its membership to 80 ASAP.
- We do want to work with FarmHouse ultimately, once we see the revised site plan. Note: Once the site plan is approved, the FarmHouse must conform when they build their structure, etc. Building & Safety Department makes certain they comply with the approved plan.
  - ✓ For instance, they could ask then for a reduction in the rear set-back, as suggested by Richard Sutton
- Richard Sutton asked about excessive run-off that would be created, with the increase in parking surface area. New requirements recently adopted in Lincoln will be going into effect, as regards permeable surfaces. Again, the reconfiguration without taking down the house to the east would be better from a run-off standpoint.
  - ✓ This should be included in the site plan – and again, they need to comply with the approved plan. It will be important to research and be certain this is built in the best way possible.
- The primary reason given by FarmHouse representatives regarding wanting to building on the east side of the site, was to keep the members housed in the current house until the new house was built – in order to avoid “lost income”.
  - ✓ We discussed the “lost income” issue with AGR representative Keith Carlson. The FarmHouse representatives told us at the Monday meeting that FarmHouse has a current debt load – part of the fees charged to current members goes not only to cover their expenses – but toward retiring that old debt. They stated they would lose this needed income, if the members were not longer paying it.
  - ✓ The neighbors feel that the short-term debt problem should not become a very long-term problem for the neighborhood. Keith said that it was critical that their fund-raising include paying their old debt, as well as paying for the new structure. They should structure their fund-raising, to include this issue – they could also charge the members a fee for membership + whatever rent they need to pay for dorms, or wherever they end up living during construction.
  - ✓ There is a sense that FarmHouse is doing things a bit cheaply, especially in comparison to AGR – not as much consideration architecturally, and to the impact of the neighborhood – more about their financial issues.
- Again, the current Special Permit allows a fraternity at the site. Could we include some additional restrictions? The short answer from Marvin is yes.....
  - ✓ The question is, are the restrictions reasonably related to the use? And, how enforceable are those restrictions?
    - For instance, no basketball games after 10PM on weeknights – midnight on weekends, etc.
    - For instance, restaurants are allowed to be nearer to residential areas than taverns/bars. Restaurants may serve liquor – but must close at 11:00 PM, if near residences.
    - Limiting hours and/or activities can be done – but must be enforceable to be effective
    - Even if they are not completely or easily enforceable, they can still serve as a deterrent to unwanted activities – this provides a record of response to several complaints, etc

- Unfortunately, currently, not a lot of zoning people out and about at the times parties, etc., occur, in order to investigate immediately – perhaps there need to be some☺?
- ✓ Could another fraternity come in?
  - Yes, if they conform to the existing Special Permit use.
- ✓ Could there be another iteration or type of “fraternity”?
  - Interesting – there may be some sort of test to be met – but could get creative. The original intent is UNL students – but some interesting ideas were put forth:
    - Graduate students (historically, not party-givers – much quieter – more mature)
    - Older individuals who have lived in the neighborhood – would like to stay in the neighborhood – could create a “fraternity” or an specific type of assisted living arrangement
- ✓ Lisa W. asked if the property owner were not a fraternity, would the new owner have to obtain alternative zoning to do something different?
  - Marvin indicated that yes, if there were a different use, for instance an apartment, the owner would have to go through the process to get the property rezoned for that purpose.
  - Paul said they could ask for a CUP (Community Unit Plan). If they did, under the R-2 CUP, given the current density requirements, they could have an apartment with only 6 units on the current property.
- ✓ What about the property next door (to the east)?
  - It would need more analysis.
  - Need a minimum of 1 acre for a CUP – there is more than that now on the FarmHouse site, without the lot with the house still on it.
  - They would have to comply with what is there today.
- ✓ Marvin indicated that we would need to talk more about what different uses might be approved, at a later time.

The question on the handout was discussed, as regards the wording as to impact(s) on adjacent properties. Is property value considered? Is that an adverse impact?

- This is a big component of the intent of zoning. The impact is certainly considered when looking at cases like this – but can difficult to substantiate, as there is no tool that exists to measure it. However, part of the intent of zoning is to protect property values.
- Adjacent, site-specific properties would have the most voice as regards impact, for instance high buildings next to smaller ones, especially when the proposed change is up on a hill, etc.

Is there the consideration of the cumulative effect of yet another expansion in quick succession, in a fragile neighborhood (our characterization, as well as Marvin’s characterization of ECCO). For instance, there are 3 fraternities in our neighborhood, which is unprecedented, except in the Wesleyan area – and there are many more rentals in that area than in ECCO, currently – many have already been converted away from single-family home ownership – though there are certainly still some in that area.

- The characterization of ours as headed down the path of Malone, Hartley, and Clinton neighborhoods, if changes are allowed that further discourage families from living here. Again, already proven, with the recent sale, pending for sale sign going up, and the Donsigs having left the area – all due to pressure due to FarmHouse.
  - ✓ Marvin indicated that the farther you get away from the non-conforming use, the less argument there is for impact, for instance from the parking and noise – not a strong argument, as you move away from adjacent properties.
  - ✓ However, the increase in rentals does create a sort of domino effect, as we have pointed out – which has a longer reach. The overall neighborhood character could be considered to be impacted adversely by the proximity of the house, and parking, etc.
  - ✓ Trying to keep the neighborhood desirable and marketable, so people would want to live here in owner-occupied homes, is a valid concern.

- Another point is that the house on the lot now owned by the FarmHouse is in the historic district – though the fraternity itself is not.
  - ✓ Does this have any bearing on the architecture of the building?
    - Yes, character, height, set-back, etc.
    - There were several comments about the conceptual drawings – a very commercial look to the design – very close to the street, rather than properly set back, more in character with the neighborhood. The boulevard view that many would pay a great deal for – being proposed as the parking lot instead. The safety issue of the proximity of the park being closer to the parking lot – creating a problem for those using the park.
    - If they ask for an amendment to the current Special Permit, these components would certainly be considered – and the neighborhood would want to address these issues as far as the design that would be more palatable to ECCO residents. The environs of a historic district are important.
    - However, the only real “barrier” as regards the HPC (Historic Planning Committee), is a 6-month “cooling off” period, if some aspect of the design is not acceptable to the HPC. Any recommendation from HPC is only advisory to the Planning Commission – not binding.

How does the hardship of the applicant compare to the hardship on the surrounding properties?

- This is mitigated through the site plan review – for instance, walls around the parking lot, increased buffers, etc.
- This is not specifically part of the code – but it is part of the review.
- Ann Bleed indicated that part of the situation is that the impact on neighboring houses in comparison, will last for years – while any “hardship” for the fraternity would be temporary – during construction. Or, they may need to be sure to raise adequate funds to complete the project properly, and per the greater hardship on, and additional (yet reasonable) requirements of the neighborhood.
  - ✓ Weighing the different goals and objectives from different parties’ perspectives is the essence of the Planning Commission’s work.
  - ✓ Some felt that “any reasonable planning commissioner” would be able to make these types of decisions.
  - ✓ One precedent, is that AGR did not have to operate in this way – and they have offered to testify to that effect – that they were not financially damaged by having to house their members in a different manner away from the premises for 15 months total.
  - ✓ FarmHouse would have to prove the hardship – and it would be weighed against that of the neighborhood.
  - ✓ An issue can be that the “use” of houses may (unfortunately) increase or keep the value high – for awhile – because of the “value” of the use of a house as a rental. However, as can be proven from looking at the history of Malone, Hartley, and Clinton neighborhoods – once that tipping point is reached, where rentals begin to outnumber owner-occupied homes, there is a “downhill slide” that results in the overall reduction of the value of homes – and certainly reduces to zero, the likelihood that families will purchase these homes to live in the neighborhood.
    - Note: ECCO is working hard in other areas, as well as with this project, to work to keep this from occurring where we are. It will take the combined efforts of many parties – but we are actively working on this issue. For now, we must focus on the immediate issue of the Farmhouse fraternity expansion – and how this is already affecting our neighborhood, with the families literally fleeing as a result of the announcement that the project will take place.
- Paul J. indicated that is the plans went through as they are now – what about the parking? Construction workers would need to park – and (presumably) 80 members would need to park throughout the neighborhood. The reality is that they would find ways to park nearby if they could – even if they find another means to park during that time, for instance, on East Campus.
  - ✓ Keith Carlson of AGR also spoke to this issue – the members parked at Ag Men parking lot (35 spaces) and on the street (10-15 additional cars); others parked at the apartments/houses where they were housed, during this period.

Additional questions:

Steve Schock: We would all feel better if they flip-flopped the plan – what can we do to compel them to leave it where it is?

- They are probably already aware that if they move further to the east, there will be a fight/opposition from the neighborhood.
- Some people are more savvy about the process and what can be done
- Staff recommendation is to suggest that Farmhouse continue to work with the neighborhood – our requests are reasonable.

Marvin indicated that Doug has been copied in to our correspondence/progress. He is very interested, and wants to be kept informed. Mary E. has been copying him – and will continue to do so.

Lisa Sutton emphasized that the project is being paid for by the Farmhouse Alumni. Many of the older members really valued living in this neighborhood. It would be a very good idea for those of us in the neighborhood, who personally know FH Alumni, to contact them about the neighborhood residents' concerns.

- We need to use all leverage
- Who is on the Visioning Committee? If anyone knows members of the committee to contact, this could be a help as well.
- The plan must ultimately go to the Planning Commission – it is in their best interest to go to this meeting with our support of plan we feel we can move forward with – rather than with opposition.

Marvin also indicated that there are real champions of neighborhoods on the Planning Commission. It would be good to reach out to these folks as appropriate.

- It will be important to see what the Farmhouse Vision Committee comes back with vis-à-vis a plan, incorporating the suggestions already recommended by the neighborhood, based on our concerns.
- Paul J. indicated that when AGS was putting plans together, they waited and came to the neighborhood after designs were already completed. AGR did pretty much the same thing. It is a much easier process to work with the neighbors more toward the beginning. Thanks to the advice given to them by the Planning Department, the Farmhouse has approached us earlier in the process; even though there is great opposition to the current plan, at least it is more the starting phase vis-à-vis the City.

Steve S. asked what can we do – if they keep buying properties adjacent to the current property, which would be contiguous and therefore part of their premises?

- The surest way to have control, is for the neighborhood or individuals in the neighborhood to buy the property.
- Marvin indicated that the neighborhood could also enter into an agreement (not enforceable by the City, but an agreement between parties) with a developer or property owner, to use the property as the neighbors see fit. If a disagreement were to arise, it could be expensive – also expensive to put into place – because it would definitely require the services of a qualified attorney. Again, this agreement would not be enforceable by the City. For instance, the agreement in place w/AGR is actually a decision by the City Council, which would require a decision by the Council to change. This is related to the zoning – a different situation. Marvin indicated you would not be fighting just the next Special Permit request – there would be a private restriction that would run with the land, if drawn up – and enforceability could still become an issue, which would have to be dealt with legally.
  - ✓ Note: There was a Pine Lake controversy some time ago, and it resulted in a private agreement with a developer that runs w/the land
  - ✓ Association Board is in charge of enforcing the agreement – so you want to think twice before allowing a developer to “blight” the land, or to make changes, etc.
- Theoretically, as indicated earlier, the fraternity would have to apply to amend the Special Permit, to change the use of the property from its current use, to the non-conforming use under the 1979 Special Permit in place.

Marvin further commented on the current deep front yard set-back for the fraternity building. The building itself is in sort of an International style from the 30's – and while it is not a residential style found in the neighborhood, it is interesting, fits in fairly well, and is “aggressive”, with its floating walls coming out.

- He asked whether they had considered keeping and renovating the current building. They have – but have rejected this option, due to the “suite style” on the inside, and the cost of retrofitting.
- Also, their current plan is to increase members to 92 (again, the neighborhood plans to ask that the current maximum restriction per the Special Permit, remain in place).
- He felt that the design would be best, to align their entrance with the “end” of Idylwild Drive boulevards, leading to their building.
- Again, the parking lot entrance across from the park with the current “flip-flopped” plan was discussed as a potential safety issue, in addition to being less attractive from a line of sight standpoint for Idylwild.

Additional thoughts from participants:

- The potential positive trade-off for the fraternity – the money they would “lose” by having to relocate the members during construction, could be off-set over time, if it were a better plan, and a more attractive plan to start with.
- It's all about economics – perhaps we can help them see the economic value in creating a plan that would not harm the neighborhood – which over time, would harm them as well. The very thing attracting members to the neighborhood, would be destroyed due to their plan – it would create more of an in-road for rentals – and has already chased off two homeowners in about a month!!
- A fear was expressed that “UNL will just fill up that space” right in our neighborhood, if FH abandons it.
  - ✓ Other, positive potential uses were suggested, partly in fun, partly seriously!

Anne Armstrong mentioned that City Council member Jon Camp is a Farmhouse Alum – he may be able to help – or at least it could be helpful to keep him informed of our progress and concerns. He has a lot of experience in watching zoning cases.

- Marvin indicated that some requests are easier to get approved than others.....
  - ✓ Apartment – can only put 6 units on current premises space (about 1.4 acres)
  - ✓ Group home of some sort
  - ✓ Assisted living – ECCO neighbors looking to stay in the neighborhood?
    - 1 resident per 2000 square feet of lot area – this would currently support 30 residents
  - ✓ Would be difficult to support a change to R-5 or R-6 in the middle of an historic district neighborhood
  - ✓ Occasionally a domestic shelter – they try to avoid a public process, due to extreme privacy needs – so would have to do something not requiring a Special Permit
  - ✓ The “fraternity” idea was suggested – neighbors looking to stay in the area – can no longer maintain their homes, or want to downsize or have no stairs, etc.

Summary:

It is clear that the Planning Department considers our requests to the fraternity for the changes in the plan as reasonable – and will be suggesting to the fraternity that they work with ECCO and toward developing a plan that can be supported by the neighborhood.

The FarmHouse committee has obviously never dealt with this type of situation before – so are perhaps not understanding how it would be in their best interest especially, to change from their current view of building on the east end of the lot. As indicated, it will be important to see what the FH Vision Committee presents, once they've had a chance to meet.

The ECCO Board will be putting together a meeting of the Board prior to the next scheduled Board meeting; as well as a public meeting, once the FH Vision Committee has come back with a plan. We hope it is something we can begin to support – we know from experience, which it will take several meetings to get to the final draft for the Planning Commission. The Planning Department will direct them to do their best to work with the neighborhood.