

MINUTES
ZONING BOARD OF APPEALS
REGULAR MEETING - THURSDAY, JUNE 14, 2012
LEGISLATIVE CHAMBERS – LC LEVEL – 1:00 P.M.
OMAHA/DOUGLAS CIVIC CENTER
1819 FARNAM STREET
OMAHA, NEBRASKA

Certification of Publication: Zoning Board of Appeals Administrator certifies publication of this agenda in the Daily Record, the official newspaper of the City of Omaha on Monday, June 4, 2012 and Thursday, June 7, 2012.

MEMBERS PRESENT: Bert Hancock, Chair
Brian Mahlendorf, Vice Chair
Sebastian Anzaldo
Jacque Donovan
Teri Teutsch, Alternate
Sean Kelley, Alternate

MEMBERS NOT PRESENT: Jonathan Nash

STAFF PRESENT: Mike Carter, Zoning Board of Appeals Administrator
Rick E. Cunningham, Planning Director
Michelle Peters, City Attorney
RoseMarie Horvath, Assistant City Attorney
Dave Fanslau, Planning Manager
Debbie Hightower, Recording Secretary

Mr. Hancock called the meeting to order at 1:00 p.m., introduced the board members, as well as the staff, and explained the procedures for hearing the cases.

LAYOVERS

- | | |
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| 1. Case No. 12-043
<i>(over from 5/10/12)</i>
Buck's, Inc. - Layover
4973 Dodge Street
Omaha, NE 68132 | REQUEST: Waiver of Section 55-366 & 55-740(f) –
Variance to the maximum impervious
coverage on Lot 1 from 85% to 85.5%; to
the rear yard setback on Lots 1 & 2 from 15'
to 2' and 1.63'; to the minimum perimeter
landscaping on Lots 1 & 2 from 5' to 0'; and
to the minimum interior landscaping on Lot
1 from 5% to 0% to allow for the approval
of an administrative subdivision |
| | LOCATION: 8455 Frederick Street and
3052 South 84 th Street |
| | ZONE: CC & CC/FF |

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Larry Jobeun, 1140 West Center Road, appeared before the board on behalf of both the applicant and the prospective buyer of the strip center.

Mr. Jobeun stated that they were requesting a layover to allow them more time to come up with additional alternatives.

Mr. Anzaldo moved to LAYOVER to allow the applicant additional time to work through alternatives. Ms. Donovan seconded the motion.

AYES: Anzaldo, Donovan, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0

NEW CASES

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| 2. | Case No. 12-021
John J. Portera
U.S.S. Hazard Inc.
607 Dearborn Circle
Papillion, NE 68046 | REQUEST: | Waiver of Section 55-661(b); and appeal of the determination by the City of Omaha that the cost of restoration is more than 50% of the market value of the structure before the flooding occurred |
| | | LOCATION: | 2499 Freedom Park Road |
| | | ZONE: | HI-FW |

RECOMMENDATION: Denial of the waiver request. Denial of the applicant's appeal of the determination by the City of Omaha that the cost of restoration is more than 50% of the market value of the structure before the flooding occurred.

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Dave Domina, Attorney, appeared before the board on behalf of the applicant.

Mr. Domina stated that the applicant, John Portera, was not requesting a waiver of an ordinance. He explained that Mr. Portera was requesting that the Board deny what could be considered as an application for a building permit. Mr. Domina further explained that the City of Omaha has a Flood Overlay District ordinance that has been adopted pursuant to a Nebraska Statute. He noted that the Statute is encouraged, although not mandated, by regulations of the Federal Emergency Management Administration (FEMA).

Mike Carter, ZBA Administrator, stated that the applicant is requesting a waiver and an appeal of the determination by the City that the structures, which include the former Anchor Inn and the former Sandpiper Cove Repair Center, were damaged at 100% of their market value and would require reconstruction. Both buildings are on the levy side, and are continually at risk for flooding. Mr. Carter explained that the floodway designation, FW (Floodway Overlay District), is defined in the code as the channel of a watercourse or drainway and the adjacent land areas that are necessary to be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. The Anchor Inn and the repair center were not allowed uses for that district. During the flood, the properties were inundated with water from 4' to 6'. He noted that the FEMA Substantial Damage Estimator report was prepared for both structures and it was determined that both structures were destroyed up to 100% of their value and that reconstruction would be required according to floodplain code regulations. Mr. Carter noted that the FEMA Substantial Damage Estimator was created with the intent to remove bias from either side of the issue. He added that granting any unwarranted variances could cause FEMA to place the City on probation or suspension, which could have a negative effect on more than just the property in question. Mr. Carter noted that there is a danger to life and property, due to the flooding, for any building that would be built in that area. For those reasons the Planning Department recommended denial of the request for the waiver and denial of the appeal.

In response to Mr. Hancock, Mr. Carter explained that buildings could not be rebuilt since they are in a floodway and were damaged beyond 50% of what was the market value prior to the 2011 flood. Mr. Carter added that anything that is done needs to conform to the Code.

Mr. Domina stated that they were not requesting a waiver of the ordinance, since they believe that they meet the requirements of the ordinance to reconstruct their buildings. He added that they do not need a variance to reconstruct the buildings since they meet the requirements which gives them the right to obtain a building permit. Mr. Domina stated that the issue is whether the two buildings could be reconstructed for less than 50% of their value. He noted that a general contractor and structural engineer claimed that one of the structures could be repaired for \$3,348. He added that it qualifies for the permit since the value of the structure exceeds more than twice that amount. Mr. Domina stated the repair shop could be repaired for \$6,631, and that the shop is worth several times that amount. He

added that since the buildings had not been damaged beyond 50% of their value, they were entitled to rebuild.

In response to Mr. Hancock, Mr. Domina stated that according to a 1999 appraisal report prepared by Thomas Stevens for the City of Omaha, the land with the buildings was valued at \$1,417,000. The land alone was valued at \$350,000. At the time there were four structures on the property: the Sandpiper Repair facility; the Anchor Inn pole building; and two tin/steel structures used for wintertime boat storage. Those structures were valued at \$12,000 - \$13,200 each. Mr. Domina claimed that there was a tenant interested in the pole building and ready to invest approximately \$70,000 in tenant improvements into the structure. In response to Mr. Hancock, Mr. Domina clarified that there was also a marina facility in operation at the time. Although it did not count as a structure, it did have income producing capacity as a marina.

In response to Ms. Teutsch, Mr. Domina stated that although there was no flood insurance on the buildings, there was other insurance on the building. John Portera stated that the Anchor Inn was insured for \$600,000. The two storage units were insured for \$200,000 each. He was not sure what the repair shop was insured for, although it was more than \$25,000.

In response to Mr. Hancock, Mr. Domina clarified that it would take \$20,000 to return both buildings to leasable condition.

Jay Davis, Superintendent - Planning Department, stated that he focused mostly on what was considered as substantial improvement. He stated that the information they used was given to them from FEMA. The program gives the value of the building before the 2011 flood, makes an allowance for the age of the building, the current value of the building, and the repair costs. Mr. Davis noted that part of the structures have been removed or taken down without permits. Since some of the buildings have been removed, the FEMA value is \$0. In response to Mr. Mahlendorf, Mr. Davis stated that the shell is the box on the outside that keeps the weather out.

Mr. Hancock mentioned that Ms. Donovan was recusing herself from this case and that Mr. Kelley would be the fifth voting member.

Kurt Holmstrom, City Inspector - Planning Department, stated that the City of Omaha is the flood administrator for FEMA. He explained that the FEMA assessments that he performed on the property were for the Anchor Inn and the marina. The FEMA assessments are based on the structure as it was on his inspection. When it was inspected there was only a shell. All the plumbing, electrical, heating and air had been removed. The kitchen facility had also been removed. The value of the building was based on data from Marshall and Swift, which is used in the FEMA program. He found similar buildings and based the price for square footage from that information. The base price for square footage was \$115, which would bring the cost of the structure to \$800,000. The depreciation value was based on the physical age of the building, which brought the market value of the building to \$481,000 prior to the 2011 flood.

Mr. Hancock questioned whether it would be possible for the structures to be rebuilt for \$200,000. Mr. Holmstrom explained that, according to the FEMA model, because the building components had been removed, the structure was considered 100% loss, because there was nothing left to value. In response to Ms. Teutsch, Mr. Holmstrom stated that if the components would not have been removed from the building, the estimate would have been based on what was left of the structure.

Mr. Hancock requested that Mr. Domina address FEMA's rule that once a structure has had its component removed, the value of the structure is then reduced to \$0. Mr. Domina's response was that: 1) there was no evidence that the owner removed any of the components; 2) there is nothing in the City Ordinance that supports FEMA's regulations; therefore, they are not mandatory since they have not been adopted by the City Council; and 3) USS Hazard, Inc. had been the landlord, not an operator, who had always leased a shell and not a finished structure. He added that what was looked at after the flood was a tenant improved post-flood structure.

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In response to Mr. Hancock, Mr. Domina stated that owner would like to restore the buildings for under \$240,000 to structures that can be occupied.

In response to Mr. Anzaldo, Mr. Carter clarified that the Code (Section 661) specifically states that, "If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of this ordinance."

Mr. Anzaldo moved to DENY. Ms. Teutsch seconded the motion.

AYES: Mahlendorf, Teutsch, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0

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3. Case No. 12-044 - **Layover** REQUEST: Waiver of Section 55-803 & 55-804; and
TRP Properties, LLC appeal of the determination by the City of
12910 F Plaza Omaha that an existing use exceeds the
Omaha, NE 68137 maximum permitted sound levels of the GI
district
- LOCATION: 12910 F Plaza
ZONE: GI

RECOMMENDATION: Denial of the waiver request. Denial of the applicant's appeal of the determination by the City of Omaha that an existing use exceeds the maximum permitted sound levels of the GI district.

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Mr. Hancock stated that the applicant has requested that the case be laid over.

Mr. Mahlendorf moved to LAYOVER. Ms. Donovan seconded the motion.

AYES: Teutsch, Anzaldo, Donovan, Mahlendorf, Hancock

MOTION CARRIED: 5-0

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| 4. | Case No. 12-045
Joe Glaser
7907 Molokai Drive
Papillion, NE 68046 | REQUEST: Waiver of Section 55-832 – Variance to the sign regulations to allow a 32 sq. ft. wall sign for a commercial use |
| | | LOCATION: 3637 South 24 th Street |
| | | ZONE: R7 |

RECOMMENDATION: Approval, subject to the wall sign being no larger than 18 square feet.

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Rich Nelson, 3637 South 24th Street, and Joe Glaser, Glaser Sign Group, appeared before the Board.

Mike Carter, ZBA Administrator, stated that the applicant was requests the waiver because R7 zoning restricts commercial signage. The practical difficulty is that the existing building has a Certificate of Occupancy for a showroom. He further stated that the department recommended approval in this case with the stipulation that the sign be no more than 18 square feet (3' x 6').

In response to Mr. Hancock, Mr. Nelson stated that they were obtaining the sign at no cost and that it would cost them to have the size of the sign reduced. Mr. Glaser added that the current sign is 4' x 8', and suggested that they could have the top and bottom of the sign blackened out at night.

In response to Mr. Anzaldo, Mr. Nelson stated that the only other sign on the building is a wooden sign with the company name. Mr. Anzaldo suggested removing the wooden sign on the building and the sign in the window.

Mr. Anzaldo moved to APPROVE subject to the removal of the existing signage. Ms. Donovan seconded the motion.

AYES: Anzaldo, Donovan, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0

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| 5. | Case No. 12-046
Jon Petersen
5710 "F" Street
Omaha, NE 68117 | REQUEST: | Waiver of Section 55-735(b) – Variance to allow off-street parking for a non-residential use in the front yard setback of a residential district |
| | | LOCATION: | 2909 South 80 th Avenue |
| | | ZONE: | R8 |

RECOMMENDATION: Denial as requested.

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Doug Kellner, 10836 Old Mill Road, and Jon Petersen, 5710 "F" Street, appeared before the Board.

Mike Carter, ZBA Administrator, stated that the applicant proposes to construct a church on the subject site. He added that because of the grade of the property, a retaining wall is being required along the east property line; therefore, pushing the parking area towards the street. Mr. Carter stated that due to the practical difficulty of the residential district, especially in regards to churches and schools, the Planning Department recommended approval.

Ms. Donovan moved to APPROVE in accordance with the plans submitted. Ms. Teutsch seconded the motion.

AYES: Donovan, Mahlendorf, Teutsch, Anzaldo, Hancock

MOTION CARRIED: 5-0

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6. Case No. 12-048
Staci Witkowski
St. Patrick's Church
20500 West Maple Road
Omaha, NE 68022
- REQUEST: Waiver of Section 55-830 – Variance to the maximum overall sign budget from 32 sq. ft. to 70 sq. ft.; to the maximum area for a monument sign from 25 sq. ft. to 48 sq. ft.; ~~and to allow an electronic information sign not otherwise permitted~~
- LOCATION: 20500 West Maple Road
- ZONE: R5

RECOMMENDATION: Denial as requested.

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Staci Witkowski, St. Patrick's Church, and Andye Nelson, Omaha Neon Sign Company, appeared before the Board.

Mike Carter, ZBA Administrator, stated that there is an existing monument sign along West Maple Road that appears to be in the right-of-way and will be removed. He added that if the proposed sign was approved, the applicant would need a waiver for the sign budget, the sign area, and for the electronic information sign. The signage that is already there, minus what they plan to remove totals approximately 22 square feet. The proposed sign is approximately 48 square feet. He stated that the Planning Department does not feel that there is a hardship or practical difficulty and recommended denial. He added that the department does support the waiver of the overall sign budget because of the limited amount of signage allowed in a residential district, but feels that the request for an electronic sign should be denied.

Ms. Witkowski stated that their church has grown over the last several years, with more activities being conducted there. She explained that the church sits on two major highways. One of those highways was widened from two lanes to four lanes with a turning lane in between, which has encroached on the church property and caused their current sign to be in violation of the code. Ms. Witkowski stated that they would like to replace the larger sign with a simpler one, and to also add the electronic sign.

In response to Ms. Donovan, Ms. Witkowski stated that there are various signs on site. There is a sign for the church and one on top of the school. She added that there is a sign with a flagpole directly in front of the church and a large brick sign off of Maple Street. Ms. Witkowski explained that the sign with the flagpole and the school sign are not visible from the intersection.

Ms. Nelson explained that some of the signs are in place to identify the entrances into the building.

Mr. Mahlendorf stated that the Board has attempted to restrict the use of electronic signs. He added that they could support the sign without the electronic signage and agreed that the sign along West Maple Road needed to be removed since it sits in the right-of-way.

Mr. Mahlendorf moved to APPROVE the maximum overall sign budget from 32 sq. feet to 70 sq. feet; to APPROVE the maximum area for a monument sign from 25 sq. feet to 48 sq. feet; and to DENY the electronic information sign not otherwise permitted. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Teutsch, Anzaldo, Donovan, Hancock

Motion approved 5-0.

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7.	Case No. 12-049 Pedodontics, P.C. 2521 South 119 th Street Omaha, NE 68144	REQUEST: Waiver of Section 55-834 – Variance to the front yard setback for a monument sign from 12' to 2'
		LOCATION: 2521 South 119 th Street
		ZONE: GO

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Bob True, Vital Signs, appeared before the Board.

Mike Carter, ZBA Administrator, stated that the proposed sign requires a 12' setback. He added that the building was recently constructed and that a monument sign in compliance with zoning regulations could be legally built if two parking stalls were removed. The Planning Department recommended denial of the request.

Mr. Anzaldo recommended that the owner obtain a Letter of Exemption from Public Works stating that they are not required to install sidewalks until others in the neighborhood are required to do so.

In response to Ms. Teutsch, Mr. True stated that there would be some landscaping put in around the base of the sign.

Mr. Anzaldo moved to APPROVE. Ms. Teutsch seconded the motion.

AYES: Teutsch, Anzaldo, Donovan, Mahlendorf, Hancock

Motion approved: 5-0

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| 8. | Case No. 12-050
ADC Homes
15002 A Circle
Omaha, NE 68144 | REQUEST: | Waiver of Section 55-166 & 55-782(b) –
Variance to the rear yard setback from 25’
to 24.8’ for a deck addition; to the
maximum impervious coverage from 45% to
52%; and to allow a concrete patio with fire
pit 3’ from rear property line |
| | | LOCATION: | 7916 North 124 th Street |
| | | ZONE: | R3 |

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Casey Illian, ADC Homes, appeared before the Board.

Mike Carter, ZBA Administrator, stated that the applicant was proposing to open the view from under their existing deck to the golf course by relocating the deck pillars, which would require a small deck addition. They would also like to construct a concrete patio with a fire pit that would be as close as 3’ to the property line, exceeding the maximum impervious coverage. Because these proposed improvements would be a design preference, the Planning Department does not support the waiver for the impervious coverage or the patio. The Department does recommend approval for the deck addition since the existing deck is already at 24.8’.

Mr. Illian stated that the previous fire pit area was in the grass. His client was proposing to place it on concrete for safety reasons and to make it easier to move around it. He noted that he had obtained signatures from the golf course and the neighbors on either side of the home (Exhibit 2).

Ms. Donovan stated that she did not see any hardship and agreed with the City that a waiver should be allowed for the deck but not for the fire pit.

Ms. Donovan moved to APPROVE the waiver for the deck addition but not the waiver for the fire pit. Mr. Anzaldo seconded the motion.

In response to Ms. Teutsch, Mr. Illian stated that the fire pit had been removed. He also stated that the house had been built by the current owners. Mr. Illian clarified that the concrete, not the fire pit, would be 3’ from the property line.

Mr. Illian inquired as to what could be done to have the requests granted. Mr. Hancock suggested a layover.

Ms. Donovan retracted her motion.

Mr. Mahlendorf moved to LAYOVER to allow the applicant additional time to work with the City Planning Department regarding impervious coverage. Ms. Teutsch seconded the motion.

AYES: Mahlendorf, Teutsch, Anzaldo, Donovan, Hancock

Motion approved: 5-0

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| 9. | Case No. 12-051
Joe Belcher
3500 Parkway Lane, Suite 200
Norcross, GA 30092 | REQUEST: Waiver of Section 55-825(c) – Variance to the maximum area for a temporary sign from 32 sq. ft. to 828 sq. ft. for a banner during the Olympic Swimming Trials |
| | | LOCATION: 101 South 10 th Street |
| | | ZONE: CBD-ACI-1(PL) |

RECOMMENDATION: Approval of the temporary sign, subject to no company names, logos or brand emblems on the sign and no lighting of the sign.

At the Zoning Board of Appeals meeting held on Thursday, June 14, 2012, Joe Belcher and Tom Helm, Marriott Downtown Omaha, appeared before the Board.

Mr. Hancock stated that the Board supports the use of banners during special events, such as the College World Series and the Olympic Swimming Trials. He explained, however, that commercial advertising on those banners is forbidden. He added that the request for the banner would be granted if the logo was removed.

Mr. Helm explained that the hotel wanted to advertise their partnership with the Olympic organization. In response to Mr. Helm, Mr. Hancock noted that logos from non-profit organizations have been approved in the past.

Mr. Mahlendorf moved to APPROVE the maximum area for a temporary sign from 32 sq. ft. to 828 sq. ft. for a banner to be used during the Olympic Swim Trials through July 16, 2012, subject to no corporate advertising. Ms. Donovan seconded the motion.

AYES: Donovan, Mahlendorf, Teutsch, Anzaldo, Hancock

Motion approved: 5-0

APPROVAL OF MINUTES

Mr. Anzaldo moved to APPROVE the May 10, 2012 meeting minutes with one minor correction. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Anzaldo, Donovan, Hancock

ABSTAIN: Teutsch

MOTION CARRIED: 4-0-1

ADJOURNMENT

Mr. Mahlendorf moved to ADJOURN the meeting at 2:30 pm. Ms. Donovan seconded the motion.

AYES: Teutsch, Anzaldo, Donovan, Mahlendorf, Hancock

MOTION CARRIED: 5-0

Approved (date)

Bert Hancock, Chair

Debbie Hightower, Secretary