

ZONING BOARD OF APPEALS
REGULAR MEETING - THURSDAY, JANUARY 8, 2015
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, December 29, 2014 and Thursday, January 1, 2015.

MEMBERS PRESENT: Brian Mahlendorf, Chair
 Sebastian Anzaldo
 Jason Lanoha
 Sean Kelley, Alternate
 Teri Teutsch, Alternate

MEMBERS NOT PRESENT: Jacque Donovan, Vice-Chair
 Michael Aspen

STAFF PRESENT: Mike Carter, Zoning Board of Appeals Administrator
 Travis Gibbons, City Planner
 Jennifer Taylor, City Law
 Clinette Warren, Recording Secretary

Mr. Mahlendorf called the meeting to order at 1:00 p.m., introduced the Board members and staff, and explained the procedures for hearing the cases.

SHOW-CAUSE HEARING:

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| 1. | Case No. 14-013
Premier Bank
Chris Maher
16802 Burke Street
Omaha, NE 68118 | REQUEST: Waiver of Section 55-824(d) – Variance to allow a monument sign on a property with a building closer than 15' to the property line. |
| | | LOCATION: 4314 & 4318 Dodge Street, 109 North 43 rd Avenue |
| | | ZONE: GC-ACI-2(50) |

PLANNING DEPARTMENT RECOMMENDATION: The sign should be revised to comply with the plans as submitted to the Board at the January 2014 meeting.

At the Zoning Board of Appeals meeting held on January 8, 2015, Larry Jobeun (Fullenkamp, Doyle & Jobeun), Chris Maher (Premier Bank), and Pat Schuster (American Lift & Sign) appeared before the Board.

Mr. Jobeun stated that sign regulations for the district allow a 12' sign that has to be set back at least 15' from the property line. He explained that, because of the location of the Wendy's restaurant that sits to the east of the bank, the allowed sign would not have been visible. The original waiver from January 2014 allowed the sign to be placed 3' from the front property line and in accordance with the plans that had been submitted at that time. He explained that the original plans showed a conceptual sign that was approximately 7 ½' tall. He added the original waiver dealt with the setback only and not the sign. After discussion between the applicant and a representative from the sign company, a permit was issued for the sign that is currently in place. He stressed that, under the ACI guidelines, the existing sign was legal. Due to the significant cost of the sign, the applicant was open to any options that would allow the sign to remain in place. He mentioned making changes to the operating characteristics that would make the sign more acceptable.

Mike Carter, Zoning Board of Appeals Administrator, stated that that there was a discrepancy in Mr. Jobeun's statement about the actual waiver. He clarified that the section of the code referred to by Mr. Jobeun, states that if a building is within 15' of the street, a monument sign is not allowed. He stated that the plans that the Planning Department originally received for the sign show it with a 0' setback. That plan is what the Board reviewed and approved at the January 2014 meeting. He explained that a permit was applied for and issued in error for a much larger sign with a larger message board. The Planning Department decided to bring that case back before the Board for a show-cause hearing. Mr. Jobeun responded that there was a miscommunication, noting the fact that there was nothing in place to bring to the Planning Department's attention specific waivers that have been approved by the Board.

In response to Ms. Teutsch, Mr. Jobeun stated that the sign in the original plan was included as a conceptual design. There were no definite plans at that time about what type of sign would be constructed. Ms. Teutsch suggested that, if the case was laid over, the minutes from the January 2014 meeting be reviewed so that it could be determined whether there was any discussion about the design characteristics of the sign. Mr. Carter responded that there was minimal discussion about the sign details since the Planning Department had recommended approval in accordance with the plans that had been submitted and the applicant was in agreement.

Mr. Maher recalled that there were several meeting with the City during the process of obtaining the building permit. He stated that he was told to deal with the sign issue separately from any issues with the building. The Zoning Board of Appeals approved the waiver for the building in January 2014; approximately 6 months later, work began on the sign. At that time he approached the sign company and inquired into what type of sign he was allowed to build.

Ms. Teutsch stated that the Board witnessed 24 separate messages being displayed on the electronic portion of the sign. She felt that the sign was too big and too bright. In response, Mr. Jobeun suggested the case be laid over so that the applicant could have time to work with the Planning Department on issues relating to acceptable operating characteristics.

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In response to Ms. Teutsch, Mr. Schuster stated that the electronic messaging on the existing sign could not be diminished; a new sign would be required. He explained that dimming and message length could be regulated through the software. In response to Mr. Lanoha, Mr. Schuster stated that a portion or border of the screen could be darkened so that the sign could be reduced without it being physically removed. He further explained that his company believed that the applicant was allowed to place a monument sign in the current location. He added that, with his knowledge of the code and discussions with Mike Grothe (Sign Inspector – Permits & Inspections), he was certain that the sign complied with the regulations of the zoning district.

Mr. Maher stated that the intent of the sign is to make the public aware of the bank's location and to create awareness for its website.

In response to Mr. Anzaldo, Mr. Maher stated that he would be willing to review some of the changes that could possibly be made to make the sign more acceptable to the Board. Mr. Maher agreed to speak with his attorney about reasonable suggestions.

Dave Fanslau, Acting Assistant Director – Planning Department, inquired as to whether the applicant or the City should appear back before the Board. He stated that an agreement may not be reached among the City, the applicant, or the Board. Mr. Anzaldo suggested that the applicant discuss their ideas with the City so that the Board would be able to review them.

Mr. Lanoha stated that any compromises on the part of the applicant would need to be substantial considering the size of the sign that was presented in the original plan and the large size of the existing sign. Mr. Jobeun stressed that the sign was legal and that the only issue was that it was not the sign the Board thought they were approving.

Mr. Mahlendorf suggested that the Planning Department look into the regulations for off-premise and on-premise electronic messaging with regards to lighting, flashes, etc.

Mr. Anzaldo moved to LAYOVER for 30 days until the February 12, 2015 meeting. Ms. Teutsch seconded the motion.

AYES: Anzaldo, Teutsch, Lanoha, Kelley, Mahlendorf

MOTION CARRIED: 5-0

NEW CASES:

2.	Case No. 15-002 Oren Long 2506 North 176 th Street Omaha, NE 68116	REQUEST: LOCATION: ZONE:	Waiver of Section 55-186 – Variance to the rear yard setback from 25' to 22' to allow construction of a 12'x14'6" screened deck. 2506 North 176 th Street R4
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PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 8, 2015, Oren Long appeared before the Board.

Mike Carter, Zoning Board of Administrator, stated that the applicant was proposing to construct a covered screened-in deck on the back of the home that would extend into the required rear yard setback. The Planning Department found no hardship or practical difficulty and believed that any construction should comply with zoning regulations. He noted that no other waivers had been granted in the neighborhood. He mentioned that the applicant had provided letters of support from the property owner to the west and from the homeowner's association. The Planning Department recommended denial.

Mr. Long explained that he wanted to construct a deck that would match up with the existing roof line. The deck would provide protection from the sun and wind. Mr. Mahlendorf noted that one of the letters of support was from the neighbor directly behind the applicant, who would be mostly impacted by the deck. In response to Mr. Lanoha, Mr. Long stated that a smaller deck would not be usable.

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

AYES: Teutsch, Lanoha, Kelley, Anzaldo, Mahlendorf

MOTION CARRIED: 5-0

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| 3. | Case No. 15-005
Habitat for Humanity
1701 North 24 th Street
Omaha, NE 68110 | REQUEST: Waiver of Section 55-742(b) – Variance to allow required off-street parking for a single-family home within the front yard setback. |
| | | LOCATION: 2907 South 23 rd Street |
| | | ZONE: R4 |

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 8, 2015, Dan Brewer – Habitat for Humanity, appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was renovating the home and, as part of the process, the existing driveway would be replaced. The applicant had been granted permits for the renovation and driveway in compliance with the requirements of the code, which requires two parking stalls past the front yard setback. The applicant is proposing to remove some of the existing driveway as a result of a grade change on the site. The Planning Department did not believe that the grade change prevented access to the site and recommended denial.

Mr. Brewer believed that the future homeowners would not want to use the driveway with the 17% grade change, especially during winter months. This could result in parking in the front yard or on the street. The applicant proposed having one of the two proposed stalls in the front yard setback. He mentioned that the home was acquired as a renovation and that the front yard was originally paved with concrete for parking purposes.

In response to Mr. Anzaldo, Mr. Brewer stated that the grade of the property had not been changed. He explained that a second stall could be constructed if it went into the back yard at the bottom of the grade.

Referring to the aerial photos of the area, Mr. Mahlendorf noted that there were several homes in the neighborhood with vehicles parked in the front yard setback.

Mr. Anzaldo moved to APPROVE in accordance with the plans submitted. Mr. Kelley seconded the motion.

AYES: Lanoha, Kelley, Anzaldo, Teutsch, Mahlendorf

MOTION CARRIED: 5-0

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| 4. | Case No. 15-006
Music School Development
Corporation, LLC
3504 South 108 th Street
Omaha, NE 68144 | REQUEST:

LOCATION:
ZONE: | Waiver of Section 55-143 – Variance to the permitted use regulations of the R2 District to allow a <i>Personal Improvement Services</i> use type.

7023 Cass Street
R2 |
|----|---|------------------------------------|---|

PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans submitted, subject to submittal of all the following prior to or concurrent with submittal of a Building Permit for the planned renovations: a) Application for a subdivision plat for the property; b) application to rezone from R2 to LC; and c) application for a Conditional Use Permit to allow *Personal Improvement Services* in the LC District.

At the Zoning Board of Appeals meeting held on January 8, 2015, Larry Jobeun – 11440 West Center Road and Paul Smith (Co-Founder of the Omaha Conservatory of Music), appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the Omaha Conservatory of Music was proposing to operate an instructional music school at the site, which was formerly the Temple Israel synagogue. This particular use is classified as a *Personal Improvement Services* use and is not allowed in the R2 District. The applicant has occupied a space at 108th & Grover Streets for several years and is proposing to expand to the Cass Street site. The Planning Department supports the proposed use of the property; however, it feels that the proper processes should be taken which would include rezoning, re-platting, and obtaining a Conditional Use Permit. The Planning Department supports the use waiver and recommended approval with the following conditions: a) the applicant apply for a subdivision re-plat of the property; b) the property be rezoned to LC (*Limited Commercial*); and c) a Conditional Use Permit to allow *Personal Improvement Services* in that zoning district be applied for. The Planning Department believed that the process for Use Waivers was applicable to the situation due to time limitations and the need to have to project move forward.

Mr. Jobeun stated that the hardship was that there was no adequate definition in the code that applied to the proposed use of the property. He noted that secondary and primary schools are allowed in a R2 District. He stated that his client was in agreement with the recommendation of the Planning Department; however, if the application to rezone the property or the Conditional Use Permit was not approved by the Planning Board or City Council, the Use Waiver would become permanent.

Mr. Smith provided some history about the Omaha Conservatory of Music. He stated that the program met a previously unfulfilled need in the community. The program has seen consistent and significant growth which has resulted in the need for the additional facility. He explained that the former Temple Israel location is a good fit for the school and is centrally located. He mentioned that a several commitments had been received from various members of the community and that the goal is to have children attending the facility by the fall of 2015.

Richard Anderson, Attorney - Fairacres Homeowners Association, stated that his client was in full support of the Use Waiver which would allow the Omaha Conservatory of Music to own and operate the building. He requested that the waiver be requested as applied for by the applicant without conditions, with the exception of the applicant applying for a subdivision plat for the property. In response to Ms. Teutsch, Mr. Anderson stated that an LC zoning designation would change the character of the property for future uses.

In response to Mr. Lanoha, Mr. Carter stated that the property would be within the mixed-use boundary of the 72nd and Dodge Mixed-Use Center. Mr. Lanoha stated that allowing the property to be rezoned to LC would be consistent with the future land use element. He stated that, in his opinion, the Board should not circumvent the process that would require the applicant obtain Planning Board and City Council approval.

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Ms. Teutsch moved to APPROVE in accordance with the plans submitted, subject to submittal of all the following prior to or concurrent with submittal of a Building Permit for the planned renovations: a) Application for a subdivision plat for the property; b) application to rezone from R2 to LC; and c) application for a Conditional Use Permit to allow Personal Improvement Services in the LC District. Mr. Lanoha seconded the motion.

AYES: Kelley, Anzaldo, Teutsch, Lanoha

NAYES: Mahlendorf

MOTION CARRIED: 4-1

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| 5. | Case No. 15-007
Darrin and Kristin Schmidt
20605 Roundup Circle
Elkhorn, NE 68022 | REQUEST: | Waiver of Section 55-126 and 55-715 –
Variance to the front yard setback from 50’
to 42’; to the interior side yard setback from
25’ to 15’ and to the required street yard
landscaping percentage from 75% to 70%,
to construct a 12’x24’ garage and driveway
addition. |
| | | LOCATION: | 20605 Roundup Circle |
| | | ZONE: | R1 |

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 8, 2015, Darrin and Kristin Schmidt appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that applicants were proposing to construct an addition for a garage on the west side of the home. Additional pavement would be required for the driveway which would result in a reduction in the amount of landscaping. The existing home currently sits within the required front yard setback; the proposed addition would also sit in the required front yard and side yard setbacks. The Planning Department found no hardship or practical difficulty and believed that any construction should comply with the zoning regulations and recommended denial.

Mr. Schmidt explained that a garage could not be built on the other side of the home because of an existing septic tank and leach field. There is also an easement for horse trails that are located throughout the neighborhood. He mentioned that several waivers had been granted in the neighborhood.

Mr. Carter stated that, in the past, the Planning Department has supported waivers for the front yard setback for this type of situation, but not for the side yard or landscaping. In response to Mr. Lanoha, Mr. Schmidt stated that the neighbor to the south expressed verbal supported for the request.

There was some discussion about ways to limit the amount of concrete that would be needed on the driveway into the garage addition. An adjustment was made to the plans (Exhibit B) which reflected changes to the driveway resulting in less concrete and more landscaping.

Mr. Kelley moved to APPROVE in accordance with the plans submitted and Exhibit “B”. Mr. Mahlendorf seconded the motion.

AYES: Anzaldo, Teutsch, Lanoha, Kelley, Mahlendorf

MOTION CARRIED: 5-0

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| 6. | Case No. 15-009
Christina M. Blumkin Trust
9405 Davenport Street
Omaha, NE 68114 | REQUEST: | Waiver of Section 55-126 – Variance to the front yard setback from 50' to 45'; to the rear yard setback from 35' to 25'; and to the maximum height from 35' to 46', to construct a new single-family home. |
| | | LOCATION: | 9405 Davenport Street |
| | | ZONE: | R1 |

PLANNING DEPARTMENT RECOMMENDATION: Denial.

The applicant requested a layover of this case.

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

AYES: Teutsch, Lanoha, Kelley, Anzaldo, Mahlendorf

MOTION CARRIED: 5-0

APPROVAL OF MINUTES

Mr. Anzaldo moved to APPROVE the minutes for the November 13, 2014 meeting. Mr. Mahlendorf seconded the motion.

AYES: Anzaldo, Lanoha, Mahlendorf

ABSTAIN: Teutsch, Kelley

MOTION CARRIED: 3-0-2

Mr. Anzaldo moved to APPROVE the minutes for the December 11, 2014 meeting. Mr. Mahlendorf seconded the motion.

AYES: Anzaldo, Lanoha, Mahlendorf

ABSTAIN: Teutsch, Kelley

MOTION CARRIED: 3-0-2

ADJOURNMENT

It was the consensus of the Board to ADJOURN the meeting at 2:14 p.m.

Approved (date)

Brian Mahlendorf, Chair

Clinette Warren, Secretary