PRE-MEETING:

The board members in attendance were: Jeremy Aspen, Dustin Friedman, Matthew Kortright, Kristine Moore, Sean Kelley, Brian Mahlendorf and Jason Lanoha. Planning Department staff in attendance were: Cliff Todd and Clinette Ingram.

Eric Englund appeared to advise the board that provisionally he was the Acting Assistant Director and that Mike Carter is the Acting Current Planning Manager. Mr. Englund stated that Mr. Carter would be attending future Zoning Board of Appeals meetings.

Mr. Englund discussed potential cases that may come to the board as a result of recent flooding in the area, specifically with homes that were built in the Flood Fringe and/or the Floodway.

Jennifer Taylor with the City Law Department appeared to advise the board on the procedures that should be followed when hearing cases. She explained that the Zoning Board of Appeals is a quasi-judicial board and that cases could be appealed to District Court. She encouraged “robust conversation” and valid reasons for “no” votes. She briefly discussed the Open Meetings Act and submitted to each member of the board “Comments on Case Law and Rules of Law for Boards of Appeals”.

The board reviewed the cases.

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, April 1, 2019 and Thursday, April 4, 2019.

MEMBERS PRESENT: Jason Lanoha, Chair
Jeremy Aspen, Vice-Chair
Sean Kelley
Brian Mahlendorf
Kristine Moore

MEMBERS NOT PRESENT: Dustin Friedman (Alternate)
Matthew Kortright (Alternate)

STAFF PRESENT: Cliff Todd, Zoning Board of Appeals Administrator
Jake Placzek, City Planner
Jennifer Taylor, City Attorney
Clinette Ingram, Recording Secretary

The meeting was called to order at 1:00 p.m. Mr. Lanoha introduced the board members, City staff and explained the procedures for hearing the cases.
LAYOVER CASES:

1. Case No. 19-019  (from 2/14/19)
   Isaac Nelson
   McDaniel Wallquist
   Construction
   2628 South 87th Street
   Omaha, NE 68124
   REQUEST: Waiver of Section 55-715 - Variance to the street yard landscaping percentage from 75% to 67% to allow for a circular driveway.
   LOCATION: 1724 South 105th Street
   ZONE: R1

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 11, 2019, Isaac Nelson and Tony Schrager (12815 Binney Street) appeared before the board on behalf of the homeowner.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant wanted to convert the existing driveway to a circular one. This would result in the property not meeting the required 75% street yard landscaping. The request was laid over at the February 14, 2019 meeting to allow the applicant time to discuss an alternate design plan with the homeowner. Since that time, no new information has been submitted and the applicant had indicated that the homeowner did not wish to deviate from the originally submitted plans. The Planning Department continued to recommend denial of the request.

Mr. Schrager explained that the driveway is only wide enough to fit one car which means that on some occasions cars have had to back out onto 105th Street. He mentioned that there is no off-street parking on 105th Street which requires that guests park in the driveway.

Mr. Kelley agreed that 105th Street caused a hardship since there was no parking; however, he believed that the applicant was requesting too much. Mr. Schrager responded that small portions of the driveway could be removed but he didn’t think it would be enough. Ms. Moore noted that there were a couple of areas on the driveway, including a hammerhead, which a car could use to maneuver to go out onto the street without backing out. Mr. Aspen believed that enough had been done on the site to accommodate cars that needed to turn around. He added that he would consider another access on 105th Street if some pavement was removed. Mr. Kelley agreed that he could support the waiver if some concrete was removed from the north side, the southwest corner and the hammerhead. Mr. Mahlendorf stated that he could not support a waiver when the property was already not in compliance.

In response to Mr. Kelley, Mr. Schrager stated that he could support eliminating some concrete so that he could have a circular drive. Mr. Lanoha stated that removal of the hammerhead could make backing out onto 105th Street worse.

Mr. Mahlendorf moved to APPROVE the variance to the street yard landscaping percentage from 75% to 71% to allow for a circular driveway. Mr. Kelley seconded the motion.

AYES: Aspen, Kelley, Mahlendorf, Moore, Lanoha

MOTION CARRIED: 5-0.

Mr. Mahlendorf stated the same amount of concrete that is added to the driveway needs to be removed from another area of the driveway.
NEW CASES:

2. Case No. 19-035
   Belinda Maxwell
   962 Lilly Springs Road
   Glenville, PA 17329
   REQUEST: Waiver of Section 55-186 - Variance to the front yard setback from 35’ to 23.2’ to allow for the enclosure of an existing front porch.
   LOCATION: 6467 Pierce Street
   ZONE: R4(35)

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 11, 2019, Belinda Maxwell appeared before the board.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant wanted to construct a roof over the front porch of the home and is unable to meet the required 35’ front yard setback. Since the porch was already located within the front yard setback, any new construction would not be permitted. The Planning Department recommended denial of the waiver request. He noted that the applicant had applied for building permits.

Ms. Maxwell stated that all of the homes on the street were in the setback. She explained that there is a block foundation and a room under the porch. She presented pictures that showed a home on the block where the neighbors had enclosed the front entryway. She noted that there were 3 homes in the 6300 block of Pierce with covered or enclosed porches similar to what she was proposing.

Mr. Aspen moved to APPROVE in accordance with the plans submitted. Ms. Moore seconded the motion.

AYES: Kelley, Mahlendorf, Moore, Aspen

NAYES: Lanoha

MOTION CARRIED: 4-1.
3. Case No. 19-036  
Elkhorn Public Schools  
c/o Dawn Danley, DLR  
502 Glenn Street  
Omaha, NE 68022  

REQUEST: Waiver of Section 55-108 - Variance to the maximum impervious coverage from 25% to 32% to allow for new school parking and building improvements.  

LOCATION: 1401 Veterans Drive  
ZONE: DR  

PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on April 11, 2019, Dawn Danley appeared before the board.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant had proposed new school parking and building improvements that would exceed the maximum impervious coverage allowed in a DR District upon completion. He explained that a hardship existed since this property was constructed in 1980 using zoning regulations that were in use while under the jurisdiction of the City of Elkhorn. Based on the proposed/existing civic use of the site and underlying residential zoning regulations, exceptions to residential zoning requirements like impervious coverage are historically supported for civic uses such as schools and churches located in residential neighborhoods. The Planning Department supported the requested waiver and recommended approval in accordance with the plans submitted.

Ms. Danley noted that part of the impervious coverage on the site is the Common Ground facility that is owned by the City of Omaha.

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

AYES: Mahlendorf, Moore, Kelley, Lanoha  

NAYES: Aspen  

MOTION CARRIED: 4-1.
4. Case No. 19-037
Roger Olds
4306 Aurora Drive
Omaha, NE 68134

REQUEST: Waiver of Sections 55-146 & 55-740(e) - Variance to the rear yard setback from 25' to 5'6" and to the hard-surface driveway requirement to allow for construction of a new garage.

LOCATION: 4306 Aurora Drive
ZONE: R2

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 11, 2019, Roger Olds appeared before the board.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant wanted to construct a new garage in his backyard and due to its size and design, multiple waivers were needed. The Planning Department found no hardship or practical difficulty to support the request as this is a design preference. The garage could be constructed at a point in the rear yard where the required 25' setback could be met. In addition, it could be constructed with a door narrower than 6'. The Planning Department recommends denial. He noted that the Planning Department received numerous phone calls from neighbors that supported the request.

Mr. Olds stated that he wanted the garage to line up with an existing shed. He discussed the layout of the proposed garage. He stated that the proposed location of the garage would not block the view of his neighbors to the north and south. He added that he desperately needed the space for storage. He offered to reduce the size of the door to 6' if necessary.

Mr. Mahlendorf had an issue with the large size of the proposed shed, especially with it being so close to the property line. He stated that the applicant could have the garage in the spot that he wanted if the size was reduced to 750 square feet. Mr. Lanoha added that he could not support the project as proposed. The applicant decided to build the garage in accordance with the board’s recommendations.

Mr. Mahlendorf moved to APPROVE the variance to the hard-surface driveway requirement to allow for construction of a new garage subject to the garage being 750 sq. ft. or less. Ms. Moore seconded the motion.

AYES: Moore, Aspen, Kelley, Mahlendorf, Lanoha

MOTION CARRIED: 5-0.
5. Case No. 19-038
   David Sorys
   16704 V Street
   Omaha, NE 68135

   REQUEST: Waiver of Section 55-186 - Variance to the side yard setback from 5’ to 2’ to allow for the addition of a 3rd car garage.
   LOCATION: 16704 V Street
   ZONE: R4

   PLANNING DEPARTMENT RECOMMENDATION: Denial.

   At the Zoning Board of Appeals meeting held on April 11, 2019, David Sorys appeared before the board.

   Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant wanted to add a third car garage to his home and was unable to meet the required 5’ side yard setback. The Planning Department found no hardship or practical difficulty to support the request since it is the result of a design preference. The Planning Department recommended denial of the waiver request.

   Mr. Sorys stated that he wanted the addition to match his existing home. He also wanted a 10’ door instead of 9’ to fit his truck. He explained that the lot adjacent to his home was bought by the church behind him to create an entrance. He indicated that he continues to maintain property that is owned by the church.

   Mr. Todd mentioned that Mr. Sorys might need a waiver for the proposed driveway because of its vicinity to the church driveway that is more like a street in this case.

   Mr. Mahlendorf stated that he had an issue with the width of the proposed addition. He believed that it could be reduced by a couple of feet. He added that the length of the garage would also exceed the length of the home. In response to Mr. Mahlendorf, Mr. Sorys stated that he could agree to an addition that would be 12’4” wide and no further back than the existing corner of the home.

   Mr. Mahlendorf moved to APPROVE the variance to the side yard setback from 5’ to 4’ subject to the third-car garage not exceeding past the back corner of the existing home to allow for the addition of a third-car garage. Mr. Kelley seconded the motion.

   AYES: Aspen, Kelley, Mahlendorf, Moore, Lanoha

   MOTION CARRIED: 5-0.
6.   Case No. 19-039
     Robert Zagozda
     Omaha School District 66
     909 South 76th Street
     Omaha, NE 68114

     REQUEST: Waiver of Sections 55-715 & 55-735(b) -
               Variance to the street yard landscaping
               depth from 20' to 10' and to allow
               parking in the side yard setback to allow
               for construction of a new elementary
               school pickup and drop off lane.

     LOCATION: 11402 Hascall Street
     ZONE: R2

     PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans
                                          submitted.

     At the Zoning Board of Appeals meeting held on April 11, 2019, Caleb Snyder (Lamp Rynearson
                                          & Associates – 14710 West Dodge Road) appeared before the board on behalf of the applicant.

     Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant wanted to construct
     a new pick-up/drop-off parking lane and was unable to meet the minimum landscaping and
     parking requirements of the R2 District. A hardship existed due to the residential zoning district,
     which does not take into consideration large civic uses such as schools and churches. Historically,
     the Planning Department is supportive of these types of waivers due to the need for
     these types of uses in residential zoning districts. He noted that, if the waiver was granted, the
     design of the new drive will be subject to the conditions of Sec. 55-740(g), Screening
     Requirements of the City of Omaha Municipal Code. The Planning Department supported the
     request and recommended approval in accordance with the plans submitted.

     Mr. Snyder explained that the existing pick-up/drop-off is not long enough for the size of the
     school. The improvement would take the pick-up/drop-off off of Hascall Street and bring it onto
     the school property.

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

     AYES: Kelley, Mahlendorf, Moore, Aspen, Lanoha

     MOTION CARRIED: 5-0.
7. Case No. 19-040
Robert Zagozda
Omaha School District 66
909 South 76th Street
Omaha, NE 68114

REQUEST: Waiver of Section 55-830(1),(2) - Variance to the maximum signage budget for a civic use in a residential district from 32 sq. ft. to 202.75 sq. ft. including an above peak roof sign, not otherwise permitted and to allow a monument sign with electronic messaging not otherwise permitted in an R4 District.

LOCATION: 1312 Robertson Drive
ZONE: R4(35)

PLANNING DEPARTMENT RECOMMENDATION: APPROVAL of a sign budget not to exceed 138.25 square feet subject to the plans submitted and DENIAL of the electronic messaging center.

At the Zoning Board of Appeals meeting held on April 11, 2019, Tom Kunkel (Boys & Girls Club of the Midlands – 2610 Hamilton Street) and Joah Bussert (Holland Basham Architects – 119 South 49th Avenue) appeared before the board on behalf of the applicant.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant wanted an increase in the allowed signage budget to accommodate the new Boys & Girls Club that is being incorporated into the existing school. A practical difficulty existed due to the multiple uses on the site, the large civic use and the restrictive nature for signage for civic uses in a residential district. Although the Planning Department does not usually support waivers for signage, it has supported waivers for large civic uses in residentially zoned districts. He explained that although the majority of the supported requests were for less than 100 square feet, the Planning Department supported a sign budget of 138.25 square feet for this location. Regarding the proposed electronic messaging center, Mr. Todd explained that the code does not allow them in an R4 District and the Planning Department does not support these types of requests for elementary schools. The Planning Department recommended approval of a sign budget not to exceed 138.25 square feet subject to the plans submitted and denial of the electronic messaging center.

Mr. Kunkel stated that the applicant was willing to follow the suggestions of the Planning Department in order to move forward with the signage.

Mr. Bussert stated that the school district agreed to remove the electronic portion of the sign. Instead a bulletin board with changeable copy would be used.

Ms. Moore moved to APPROVE the variance to the maximum signage budget for a civic use in a residential district from 32 square feet to 138.25 square feet with no electronic messaging. Mr. Aspen seconded the motion.

AYES: Mahlendorf, Moore, Aspen, Kelley, Lanoha

MOTION CARRIED: 5-0.
8. Case No. 19-041
Randy Schomers
P.O. Box 307
Waterloo, NE 68069

REQUEST: Waiver of Section 55-526 - Variance to the front yard setback from 50' from the center line of the fronting street to 35' from the center line of the fronting street to allow for a building addition.

LOCATION: 4111 Gibson Road
ZONE: HI

PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on April 11, 2019, Jason Heinze (Schemmer Associates – 1044 North 115th Street) appeared before the board on behalf of the applicant.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant was requesting a setback variance in order to construct an addition to the west side of their building. A practical difficulty existed since the expansion of industrial site is limited due to its proximity to the Missouri River levee system. The Planning Department did not believe that the request was unreasonable and it has been supportive of similar requests in this area in the past, including three requests on this site. The Planning Department recommended approval in accordance with the plans submitted.

Mr. Aspen moved to APPROVE in accordance with the plans submitted. Mr. Mahlendorf seconded the motion.

AYES: Moore, Aspen, Kelley, Mahlendorf, Lanoha

MOTION CARRIED: 5-0.
9. Case No. 19-042
   Scott Yusem
   2402 Crystal Drive
   Papillion, NE 68046
   REQUEST: Waiver of Section 55-166 - Variance to the street side yard setback from 17.5' to 12.7' to allow for the construction of a new single-family home.
   LOCATION: 8727 Pratt Street
   ZONE: R3

PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on April 11, 2019, Scott Yusem appeared before the board.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant wanted to construct a new single-family home on the site but would be unable to meet the required street yard setback due to a permanent sanitary and storm sewer easement. A hardship existed due to the location of a 22.5' wide, permanent sanitary and storm sewer easement which is located in the south corner of the property. The Planning Department did not find the request to be unreasonable and recommended approval of the waiver. He noted, however, that the Planning Department had received a number of calls from neighbors who were opposed to the waiver request.

Mr. Yusem stated that he did his due diligence when purchasing the property. He indicated that the property was so old that when the plats were pulled the sewer easements were not found. He stated that the sewer easements were found during the grading process. He stated that his project would match what's in the area, noting that many properties sit on the lot line. He added that the home would improve the site and provide housing in an area where it's needed.

Andrew Collins (Erickson Sederstrom Law Firm – 10330 Regency Parkway Drive, #100) appeared on behalf of Patricia Morrow (8724 Pratt Street). Ms. Morrow's, whose property is across the street from the proposed home, was opposed to the waiver request. Mr. Collins requested that the case be laid over since his client was out of town and could not make the meeting. He did not believe that there was a hardship because the applicant did not do his due diligence. His client was concerned about visibility and traffic issues.

In response to Mr. Lanoha, Mr. Todd stated that the neighbor to the southeast was opposed to the request. Mr. Aspen did not believe that Mr. Yusem's prior knowledge about the easement was relevant to the discussion. He felt that the facts of the case presented a good example of a hardship. Mr. Lanoha added that no neighbors would be affected by the waiver. He also felt that a layover was not appropriate in this case since it has been property advertised. Mr. Mahlendorf added that the amount of right-of-way on Keystone Drive added to the hardship.

Mr. Aspen moved to APPROVE in accordance with the plans submitted. Ms. Moore seconded the motion.

AYES: Aspen, Kelley, Mahlendorf, Moore, Lanoha

MOTION CARRIED: 5-0.
10. Case No. 19-043
Kinghorn Gardens
C/o Jenika Florence
6464 Center St, Suite 120
Omaha, NE 68106

REQUEST: Waiver of Section 55-786(e)(1) - Variance to the residential fence regulations to allow a 6’5” privacy fence and a 9’4” arbor within the street side yard setback.

LOCATION: 5703 Leavenworth Street
ZONE: R4(35)

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 11, 2019, Jenika Florence appeared before the board.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant wanted to construct a new privacy fence taller than 6’ in the street side yard setback. The Planning Department found no hardship or practical difficulty to support the request since it was a design preference. The Planning Department recommended denial of the waiver request.

Ms. Florence stated that her client wanted to renovate an existing garden and add a backyard patio space. She indicated that there is an existing fence on the property that is not code-compliant that goes to the back of the sidewalk along 57th Street. She noted that the corner of 57th and Leavenworth is very busy. She submitted a letters of support from the couple across the street (Exhibit B).

Ms. Moore stated that the Zoning Board of Appeals does not typically support a 6’ tall, privacy fence on the street side yard. Ms. Florence responded that the fence is solid up to 4’ with 50% transparency at the top. In response to Ms. Moore, Mr. Todd stated that a 4’ tall, 50% open fence could be built on the property line.

Mr. Aspen believed that there was a hardship because of the shape of the lot and added that the fence would be less obtrusive than the existing fence. Mr. Mahlendorf noted that there was a large right-of-way that added to the uniqueness of this site. Mr. Todd also noted that the new fence would be more compliant than the existing structure.

Mr. Aspen moved to APPROVE in accordance with the plans submitted. Mr. Mahlendorf seconded the motion.

AYES: Kelley, Mahlendorf, Moore, Aspen, Lanoha

MOTION CARRIED: 5-0.
11.  Case No. 19-044  
Westroads Investors LLC  
c/o Jeff Elliott  
17007 Marcy Street, Suite 2  
Omaha, NE 68118  
REQUEST: Waiver of Section 55-925(c) - Variance to allow the rear of a building to face the street in an ACI-3(PL) district.  
LOCATION: 908 North 102nd Street  
ZONE: CC-ACI-3(PL)  

PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on April 11, 2019, Larry Jobeun (11440 West Center Road) appeared before the board on behalf of the applicant.

Cliff Todd, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a new Chipotle restaurant on this site as a complimentary use to the new Top Golf development. Since there would be restricted traffic access to the east side of the property, the applicant wanted to face the front of the building to the west. Because this property is located in an ACI-3(PL) district, the Urban Design code requires that new commercial development face the fronting street, which in this case is 102nd Street. The Planning Department did not believe the request to be unreasonable due to the unique nature of the traffic flow onto the site, which is the result of a traffic median that restricts access to the site from 102nd Street. The Planning Department recommended approval in accordance with the plans submitted.

Mr. Jobeun added that the applicant had gone before the Urban Design Review Board to obtain approval for the orientation of the building.

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

AYES: Mahlendorf, Moore, Aspen, Kelley, Lanoha  
MOTION CARRIED: 5-0.
APPROVAL OF MINUTES:

Mr. Mahlendorf moved to APPROVE the minutes for the March 14, 2019 meeting. Mr. Lanoha seconded the motion.

AYES: Moore, Aspen, Mahlendorf, Lanoha

ABSTAIN: Kelley

MOTION CARRIED: 4-0-1.

ADJOURNMENT

It was the consensus of the Board to ADJOURN the meeting at 2:24 p.m.

____________________________________________
Approved (date)

____________________________________________
Jason Lanoha, Chair

____________________________________________
Clinette Ingram, Secretary