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.
LAYOVER CASES:

1. Case No. 10-005  
(over from 1/21/10, 2/18/10, 3/18/10)  
The Architectural Offices  
5015 Underwood Avenue  68132  

REQUEST: Waiver of Section 55-734, 55-735 and 55-740(h) – Variance to the required off-street parking for a duplex and 3 unit apartment building from 9 stalls to 1 stall and allow parking in the front yard setback and allow cars to back into the adjacent street  

LOCATION: 1547 S 28 Street  
ZONE: R7  

STAFF RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, no one appeared.

Mr. Meyer moved to LAYOVER the request. Mr. Anzaldo seconded the motion.

AYES: Anzaldo, Teutsch, Mahlendorf, Meyer, Hancock

MOTION CARRIED: 5-0
NEW CASES:

2. Case No. 10-023
   John McFarlane
   1804 Ontario Street  68108

   REQUEST: Waiver of Section 55-186 – Variance to the rear yard setback from 25’ to 8’4” and to the maximum building coverage from 40% to 68% to allow 4’ x 12’ porch enclosure to remain

   LOCATION: 3702 S 18 Street
   ZONE: R4(35)

   STAFF RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Mr. John L. McFarland, 1804 Ontario Street, appeared before the board in support of the waiver.

Mr. Tom Blair, ZBA Administrator, stated that the property is a single family home at the corner of 18th & B Street. He stated that the addition on this 50’ X 50’ rear lot was started some time ago. The applicant proposes to complete it and requests a waiver of the rear yard setback.

Mr. Hancock stated that the site was inspected today and there was concern that the backyard has not been properly maintained. Mr. McFarland stated that he will apply for a permit and complete the construction within a month. He noted that construction of the addition began approximately six years ago. During construction, he received a notice from the City which led to this request. Mr. McFarland stated that the debris has been loaded onto trailers and will be disposed of as the construction goes up. He added that the yard will be cleaned during construction time as well.

Mr. Jorge Gutierrez, 5014 Sunset Drive, appeared in opposition. He stated that he was a neighbor at one time and recalled that the applicant’s dog had access to the public alleyway which was a concern when he walked with his children. He stated that he has no objection to the request for waiver. In response to Ms. Teutsch, Mr. McFarland stated that the house is vacant. McFarland’s intent is to complete the construction and sell the property.

Mr. Anzaldo suggested a show-cause hearing if the construction work and clean-up is not completed within 90 days. In response to Mr. Mahlendorf, McFarland stated that the building material of the addition will match the house.

Mr. Anzaldo moved to APPROVE the waiver, subject to completed construction and removing debris in the backyard of the home within 90 days. Mr. Mahlendorf seconded the motion.

AYES: Mahlendorf, Meyer, Anzaldo, Teutsch, Hancock

MOTION CARRIED: 5-0
3. Case No. 10-024  
Holy Name Housing  
3014 N 45 Street  68104  

REQUEST:  Waiver of Section 55-206 – Variance to the front yard setback from 35' to 25' to erect 3 single-family dwellings  
LOCATION:  3227, 3223 and 3219 Seward Street  
ZONE:  R5(35)  

STAFF RECOMMENDATION:  Approval as requested.  

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Tom Blair, ZBA Administrator, introduced the case.  

Mr. Blair stated that the Department received phone calls inquiring about the waiver.  He stated that the residents did not have a problem when they realized the request referenced the setbacks.  

Mr. Anzaldo moved to APPROVE the request for waiver.  Ms. Teutsch seconded the motion.  

AYES:  Meyer, Anzaldo, Teutsch, Mahlendorf, Hancock  

MOTION CARRIED:  5-0
4. Case No. 10-025  
Holy Name Housing  
3014 N 45 Street  68104  

REQUEST: Waiver of Section 55-206 – Variance to the front yard setback from 35' to 25' to erect 4 single-family dwellings  

LOCATION: 3005, 3009, 3013 and 3017 Franklin Street  

ZONE: R5(35)  

STAFF RECOMMENDATION: Approval as requested.  

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Tom Blair, ZBA Administrator, introduced the case.  

Mr. Anzaldo moved to APPROVE the request for waiver. Ms. Teutsch seconded the motion.  

AYES: Mahlendorf, Meyer, Anzaldo, Teutsch, Hancock  

MOTION CARRIED: 5-0
5. Case No. 10-026
Holy Name Housing
3014 N 45 Street  68104

REQUEST: Waiver of Section 55-246 - Variance to the
front yard setback from 35' to 25' to erect a
single-family residence

LOCATION: 1615 Pinkney Street
ZONE: R7

STAFF RECOMMENDATION: Approval as requested.

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Tom Blair, ZBA Administrator,
introduced the case.

Mr. Meyer moved to APPROVE the request for waiver. Mr. Hancock seconded the motion.

AYES: Meyer, Anzaldo, Teutsch, Mahlendorf, Hancock

MOTION CARRIED: 5-0
6. Case No. 10-027  
   Jordan Michael Homes  
   1710 N 203 Street  68022  

   REQUEST: Waiver of Section 55-126 - Variance to the 
              front yard setback from 50' to 40' and to the 
              side yard setback from 25’ to 10’ to erect a 
              single-family dwelling  

   LOCATION: 1205 Ranch View Lane  
   ZONE: R1  

   STAFF RECOMMENDATION: Approval.

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Mr. Steve Headley, 15149 Edna Street, and Mr. Jon Ish, Jordan Michael Homes, 1710 N. 203rd Street, appeared before the board in support of the waiver.

Mr. Tom Blair, ZBA Administrator, stated that the property was originally subdivided under Elkhorn’s jurisdiction. He stated that upon annexation in March 2007, the zoning was changed from county zoning SF1 to Omaha zoning R1 and in the process the setbacks were dramatically increased. Blair stated that a waiver of those setbacks would conform to the other homes in the neighborhood. He stated that the applicant submitted a site plan to show how the home would be constructed on the lot. The Planning Department supports the request due to the change in zoning at the time of annexation which creates a hardship.

Mr. Hancock added that the City of Omaha discovered that the paving for Ranch View Lane was not installed in the right-of-way as platted. Mr. Blair explained that a review of this case revealed that Ranch View Lane improvements were not in the correct location. The street is platted further to the north and the pavement is further to the south. He stated that the surveyor is aware of this and is taking steps to modify the subdivision plat. In response to Mr. Ish, Mr. Blair recommended to contact Louis Surveying regarding the proposed property in relation to the street.

Mr. Meyer moved to APPROVE the request for waiver. Ms. Teutsch seconded the motion.

AYES: Mahlendorf, Meyer, Anzaldo, Teutsch, Hancock

MOTION CARRIED: 5-0
7. Case No. 10-028  
Thrasher Basement Systems  
12330 Cary Circle  68128

REQUEST: Waiver of Section 55-768 - Variance to allow a temporary commercial use not permitted in the R4(35) District for the 2010 College World Series

LOCATION: 3484 S 13 Street
ZONE: R4(35)

STAFF RECOMMENDATION: Approval with the same restrictions applied to this applicant as in 2009.

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Mr. Bill Kirby, Thrasher Basement Systems, 12330 Cary Circle, appeared before the board in support of the waiver.

In response to Mr. Anzaldo, Mr. Kirby stated that alcoholic beverages will be served, not sold. Kirby stated that this location request is the same as in years past.

Mr. Anzaldo moved to APPROVE the request subject to: 1) for this applicant only, 2) for the 2010 College World Series only, 3) no bands, 4) no sale of food or alcohol, 5) the applicant must provide a detailed site plan showing tents, vendor tables, temporary fencing, signage and pedestrian access, 6) the hours of operation will be between 8:00 a.m. and midnight, 7) no use of golf carts or other motorized vehicles, 8) the applicant must provide trash pick-up daily, security and portable toilets, 9) product delivery between 6:00 a.m. and 10:00 a.m. only and 10) a required setback of 2' from the property line including stakes, tie downs, overhangs and signage. Ms. Teutsch seconded the motion.

AYES: Meyer, Anzaldo, Teutsch, Mahlendorf, Hancock

MOTION CARRIED: 5-0
8. Case No. 10-029
Planit Omaha
10832 Old Mill Road, Ste 8  68154

REQUEST: Waiver of Section 55-166 – Variance to allow the rear yard setback from 25’ to 23’ to erect a 10’ X 16’ partially covered deck

LOCATION: 3118 N 193 Street
ZONE: R3

STAFF RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Mr. Tom Blair, ZBA Administrator introduced the case. The applicant was not present.

Mr. Mahlendorf moved to LAYOVER the request. Mr. Meyer seconded the motion.

AYES: Meyer, Anzaldo, Teutsch, Mahlendorf, Hancock

MOTION CARRIED: 5-0
9. Case No. 10-030
Marque Custom Builders LLC
19322 Spencer Street 68022

REQUEST:
Waiver of Section 55-166 - Variance to allow the rear yard setback from 25’ to 23’ to erect a 10’ X 16’ partially covered deck

LOCATION: 3118 N 193 Street
ZONE: R3

STAFF RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Mr. Mark Hopkins, Marque Custom Builders, LLC, 19322 Spencer Street, appeared before the board in support of this waiver.

Mr. Tom Blair, ZBA Administrator, stated that the plans that were submitted for permit showed the covered deck to be at the 25’ setback line. The applicant is requesting that the deck portion be enlarged by 2 feet and cantilevered into the rear yard setback so that it would have a 23’ setback. There was some concern that this new subdivision has vacant lots on three sides and other homes in various stages of construction on the fourth side. In light of that fact, the Department felt that the applicant should adhere to the setbacks.

Mr. Hopkins stated that the reason for the request is due to a change in the original plan which was drawn up. He stated that the 2’ will consist of only the overhang. The roof will cover 8’ of the deck and the 2’ cantilevered portion will not be covered. Mr. Hopkins was concerned that 8’ of deck surface would not allow much use. In response to Ms. Teutsch, Mr. Hopkins stated that the homeowners specifically wanted a covering due to the deck facing the west side. The waiver is in regards to the cantilever only so that the homeowners can have more use of the deck. Mr. Meyer noted that based on the lay of the land, the lots that are adjacent to the rear and face the backyard are significantly lower. Hopkins had confirmed earlier that the back of the property slopes off.

Mr. Anzaldo moved to APPROVE the request for waiver. Mr. Hancock seconded the motion.

AYES: Anzaldo, Mahlendorf, Teutsch, Meyer, Hancock

MOTION CARRIED: 5-0
10. Case No. 10-031
    Kenneth Long
    16103 Manderson Street  68116

    REQUEST:     Waiver of Section 55-126 & 55-715 -
                  Variance to the front yard setback from 50’
                  to 40’ and to the side yard setback from 25’
                  to 10’ and to the minimum street yard
                  landscaping from 75% to 65% to erect
                  single-family residence

    LOCATION:    1201 Ranch View Lane
    ZONE:        R1

STAFF RECOMMENDATION: Approval

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Mr. Tom Blair, ZBA
Administrator, introduced the case. He noted that a letter will be sent to the applicant regarding the
zoning issue that occurred during the annexation of Elkhorn which creates a hardship.

Mr. Meyer moved to APPROVE the request for waiver. Ms. Teutsch seconded the motion.

AYES: Mahlendorf, Teutsch, Meyer, Anzaldo, Hancock

MOTION CARRIED:  5-0
11. Case No. 10-032
John Smith
924 N 3 Street
Jacksonville, FL  32250
Cathy Harrington
2609 Woodsdale Blvd.
Lincoln, NE  68502

REQUEST: Waiver of Section 55-768 – Variance to allow a temporary commercial use not permitted in the R4(35) district during the 2010 College World Series
LOCATION: 3464 & 3458 S 13 Street
ZONE: R4(35)

STAFF RECOMMENDATION: Approval subject to the same conditions that were applied in 2009 for these properties.

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Mr. Keith Cyr, 821 N. Happy Hollow, and Cathy Harrington, 2609 Woodsdale, Lincoln, Nebraska, appeared before the board in support of the waiver.

Mr. Tom Blair, ZBA Administrator, stated that both properties were before the board in past years. He stated that the request was modified as to the size of the tent at 3458 S. 13th Street based on an onsite inspection by the person sub-leasing the property. Mr. Cyr, owner of 3464 S. 13th Street, requested to change the tent size to 20’ X 40’ at 3458 S. 13th Street for the sale of CWS products and memorabilia. Blair stated that the same size tent was requested next door (3464 S. 13th Street) to the south for the same purpose. He stated that the third property referred to the porch of 3464 S. 13th Street which is for an 8’ X 28’ space to be utilized by Cathy Harrington for the sale of photography. Blair stated that all properties meet the 2’ setback and the applicants are aware of the conditions which have been applied from last year.

In response to Mr. Anzaldo, Mr. Cyr stated that alcoholic beverages will not be sold from either location requested.

Mr. Mahlendorf moved to APPROVE subject to: 1) for this applicant only, 2) for the 2010 College World Series only, 3) no bands, 4) no sale of food or alcohol, 5) the applicant must provide a detailed site plan showing tents, vendor tables, temporary fencing, signage and pedestrian access, 6) the hours of operation will be between 8:00 a.m. and midnight, 7) no use of golf carts or other motorized vehicles, 8) the applicant must provide trash pick-up daily, security and portable toilets, 9) product delivery between 6:00 a.m. and 10:00 a.m. only and 10) a required setback of 2’ from the property line including stakes, tie downs, overhangs and signage. Mr. Meyer seconded the motion.

AYES: Meyer, Anzaldo, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0
12. Case No. 10-033
ConAgra Foods
ATTN: Dean Hoerning MS 11-300
11 ConAgra Drive 68102
REQUEST: Waiver of Section 55-786 F - Variance to the allowed height for a fence in the front yard of an industrial district from 6’ to 8’
LOCATION: 1512 N 16 Street
ZONE: HI

STAFF RECOMMENDATION: Approval in accordance with the plan submitted.

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Mr. Chris Aupperle, ConAgra Foods, 1 ConAgra Drive, and Mr. Matt Benoit, 1521 N. 16th Street, appeared before the board in support of the waiver.

Mr. Tom Blair, ZBA Administrator stated that the proposed fence will run along the property line of North 16th Street to provide security for the property and create some uniformity as to where the property begins and ends. The applicant submitted a detail of a wrought-iron type design with gates installed at the entrance points. He stated that the setback line is approximately 17’ behind the property line which is in the middle of the parking lot. Blair discussed the practicality of the fence being close to the property line. The Planning Department is in support of this request.

Mr. Aupperle added that a portion of the fence would be adjacent to the building. He stated that the building is within the 50’ setback making it impossible to put the fence back that far. Aupperle stated that the purpose of the fence would be to secure the property, provide better safety for the employees, and better safety for the equipment due to previous theft and vandalism. They elected to install an upgraded fence due to visibility and its nearness to the street.

Mr. Mahlendorf moved to approve in accordance with the plans submitted. Mr. Anzaldo seconded the motion.

AYES: Meyer, Anzaldo, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0
13. Case No. 10-034
Mariela Calderon
12171 Pacific Street 68104

REQUEST: Waiver of Section 55-734 – Variance to the required off-street parking for a daycare facility of 225 from 56 stalls to 26 30 stalls

LOCATION: 616 S 75 Street
ZONE: GC

STAFF RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, April 15, 2010, Ms. Carmen Batiz, 616 S. 75th Street, and Mr. Paul Kimmons, Architects, 8031 W. Center Street, appeared before the board in support of the waiver.

Mr. Tom Blair, ZBA Administrator, stated the existing property is currently being renovated for a 98-child day care facility which requires the number of parking stalls that are shown on-site. The proposal is to ultimately increase to 225 clients wherein they would need 56 parking stalls off-street. He stated there is not enough room to do that physically. Blair felt that reducing parking to less than half the requirement would potentially cause serious parking problems. He added that the property is on a curve with no other place to park. Blair stated that there is no way to create off-street parking as shown. The Planning Department is opposed to this request.

Mr. Kimmons stated that re-striping the parking lot would provide up to 33 stalls. He pointed out the inconsistency in the requirements for parking stalls at a daycare center and at elementary schools in which there are none. He stated that their business plan consists of picking up students from home and bus them into the facility. Forty percent of the clients would be bussed to and from the center. In response to Mr. Hancock, Ms. Batiz stated that full capacity would require having 12 employees. She discussed her experience in current operations of two other daycare centers that provide transportation.

Mr. Kimmons talked briefly about the storm shelter issue which was solved and that the building is sprinklered.

Mr. Kimmons stated that there was no option to lease more space for parking. He stated that the code allowed 225 children according to the size of the building. Kimmons added that full capacity is not anticipated. Ms. Batiz stated that the most children at one time at the other daycares she operates reached ninety-nine. She stated that the hours for this location are from 5 am to midnight. The facility is licensed for 24-hours. However, there are no clients who stay overnight. Mr. Anzaldo inquired about the fence being installed in the rear of the building. Ms. Batiz stated that they are proposing a playground area. In response, Ms. Batiz stated that the concrete will be removed and mulch added. She stated that only a certain number of children (25 at a time) are allowed on the playground. Batiz discussed the size requirement of the playground in relation to the daycare size.

Mr. Hancock stated his concerns about the plans for the playground area and the number of parking stalls requested. The facility should not violate the 1 to 4 ratio because the site is on a curb and having nowhere else to park which would create a parking problem at this location.

Mahlendorf inquired if the lot is re-striped to get 33 spaces (140 maximum occupancy) and the board allowed the waiver limited to 140 occupancy whether that would happen in the next 12 to 18 months. If not, the board can limit it at this time to 140 clients and when the applicant reached the point of exceeding 140 occupants they could provide some proof to the board if there would not be a need for more parking. The board could address it again in one, two, or four years from now.

Ms. Batiz stated that the daycare cannot operate with less than 150 occupants. She stated that up to ten children can be picked up at once, 40 children bussed, and 30 children picked up in shifts.
Mr. Anzaldo recommended an amended figure of 150 occupants which will provide 33 stalls. Blair had concerns whether the property could support 33 legal parking stalls relative to the size of the stalls, drive aisles, etc. Mr. Hancock stated that a site plan showing the parking stalls would need to be analyzed prior to a vote.

Mr. Hancock questioned if the board could limit occupancy. Blair stated that the board could limit the parking stalls to a particular number and in turn the occupancy. Anzaldo stated that the board could waive the amount of parking stalls based upon what it takes for 150 to what they have. They would need to have 38 stalls for 150 clients and the board could waive five parking stalls. Blair suggested the board address a waiver of off-street parking for a daycare facility not to exceed 150 children with no less than 33 parking stalls. Blair stated that the board can attach whatever reasonable condition to an approval assuming no other aspect of the code is being violated.

Ms. Teutsch took issue with the bike rack serving as two parking stalls. Mr. Kimmons stated that a bike rack can be put up in a certain percentage of the parking and count for cars according to the zoning code. Zimmons added that some of the helpers could ride a bike to work. Blair pointed out on the drawing that there are no dimensions on the parking stalls. Kimmons stated that the stalls are 19’ X 9’ for normal size vehicles and 18’ X 8’ for smaller cars. Ms. Batiz stated that the employees could park at one of the other daycare locations and be transported to work here.

Blair stated that once an applicant spends monies in reliance on a recommendation by the ZBA for a waiver of a given amount and we discover later that it does not work very well for some reason it becomes much more difficult to take the waiver away by virtue of the fact that they have relied on the approval by the board with those particular stipulations. He stated that the function of a daycare facility probably changes depending upon the mix of the ages that happen to be in the daycare at any given time, one particular time of the year they may not need that number of parking stalls and at another time of the year they might need more, one time they may need two vans and the next time they may need 3 or 4. He felt that daycare facilities must make arrangements for all of the clients to conveniently drop children off and pick them up.

Mr. Meyer reiterated the inconsistency in parking requirements for elementary schools and daycare centers. He stated that State licensing has no parking requirement for daycare facilities. He talked about the requirements of the State for outside play areas at daycare facilities. Mr. Blair explained that the ordinance passed in March 1987 stated that general daycare facilities would need a certain mix of parking stalls.

Mr. Hancock questioned whether the board has the ability to create a capacity limit on a daycare facility. Mr. Kimmons stated that by limiting the number of children, each child has to have more area inside the building. Hancock stated that capacity is limited by the parking area. The board was willing to support the parking plan subject to a maximum of 150 children. Meyer stated that based upon the plan submitted (Exhibit B) the board could grant a waiver of eight stalls (38 stalls to 30 stalls.)

Ms. Horvath, Law Dept., had concern that the board was considering a more restrictive maximum capacity per the parking equation. She stated that she could check with HHS regarding their decision. Mr. Mahlendorf felt that the board has the authority to reduce the maximum when balancing things out and granting more than what is allowed. Mr. Blair felt it important to note the number of parking stalls that are being suggested as well as the maximum licensed capacity.
Mr. Mahlendorf moved to APPROVE the request in accordance with the parking plans submitted subject to: 1) the maximum licensed capacity for this facility to be 150 persons; 2) provide no less than the number of stalls shown on Exhibit B.

AYES: Anzaldo, Mahlendorf, Meyer, Hancock

NAY: Teutsch

MOTION CARRIED: 4-1
APPROVAL OF MINUTES

Mr. Meyer moved to APPROVE the meeting minutes of March 18, 2010 as written. Mr. Mahlendorf seconded the motion.

AYES: Mahlendorf, Meyer, Anzaldo, Hancock

ABSTAIN: Teutsch

MOTION CARRIED: 4-0-1

ADJOURNMENT

Mr. Anzaldo moved to ADJOURN the Zoning Board of Appeals meeting at 2:17 pm. Mr. Mahlendorf seconded the motion.

AYES: Meyer, Anzaldo, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0

Approved (date)

Bert Hancock, Chairman

Claudia Moore, Secretary