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. He stated that ZBA Case 10-098 was withdrawn per the applicant’s request.
LAYOUTER CASE:

1. Case No. 10-043  
   (over from 5/20/10, 6/17/10)  
   TRP Properties, LLC  
   12910 F Plaza  68137  

REQUEST:  
Appeal of the determination by the City of Omaha that an existing use exceeds the maximum permitted sound levels of the General Industrial District as provided by Sections 55-803 & 55-804  

LOCATION:  
12910 F Plaza  

ZONE:  
GI  

RECOMMENDATION:

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Jerry Slusky, Attorney, 8712 W. Dodge Road, Mr. Terry Peterson, TRP Properties, 13010 F Plaza, Mr. Stuart McGregor, Engineering Dynamics, 3925 S. Kalamath Street, Englewood, CO 80110, Mr. Rick Russell, Millard Lumber, 6310 S. 118th Street, and Mr. Brent Reeder, Sigma Corp., appeared before the board in support of this request.

Mr. Tom Blair stated that this case was laid over for 60 days so that the Law Department could look into the issue of sound level readings more specifically; whether they were taken from the proper location, and whether the Planning Department interpreted the decibel rating to be applied at this location of 60 dBA. A written opinion from the Law Department was prepared and sent to the board members and applicants. During the 60-day period, the City staff took multiple readings from one of the residential properties approximately 300 feet to the north in which a number of those readings exceeded the 60 dba violating the sound restrictions found within Section 55-803, 55-804 of the zoning code. He stated that the City staff who took the readings are present today to answer any questions. Blair stated that aerial photos were also prepared showing the property in relationship to the Connectivity property to the north, the railroad right-of-way to the north, and the residential properties above and to the north. The board examined the site on various occasions and from different vantage points over the 60-day period.

Mr. Hancock asked if the requests that were made of the applicant in the June 17 meeting were met. He stated that at that meeting the applicant offered some solutions to mitigate the noise. Hancock inquired what steps were taken to do so. Mr. Peterson stated that they ceased the operation of the mechanical rail breaker, the hours were limited, new techniques were taught in handling material so as to produce less noise as far as drop heights and other things to correct the noise producing activity, they switched to handling rail by grapple rather than magnet; however, the magnet is still in use for smaller, loose material. He stated that the stringers were changed from steel to wood, a new back up alarm system was installed that produces a less piercing noise, and some of the methods for loading and unloading railcars were changed.

There was discussion concerning an independent test of the decibel ratings which was one of the requirements of the 60-day layover period. Mr. Blair stated that the testing spoken of earlier were the only readings taken by the City. Mr. Slusky introduced Mr. McGregor, a certified sound engineer, who reviewed some of the original testing and performed readings yesterday. He offered the report of those readings as an exhibit.

Mr. Hancock had concerns because it was not determined who would take responsibility for this test. Therefore, he felt that the board did not have the proper information to make a decision at this time. Hancock referred to Mr. McGregor’s report noting that the readings of 60-70 dBA showed some improvement. Discussion surrounded the objectivity of an extended, independent test in order to understand the sound levels along with the ambient sounds.
Mr. Hancock stated that the Law Department reported that the sound measurements taken at the R4 property line are valid. Mr. Slusky concurred. In response to Mr. Hancock, Mr. Slusky referred to Section 55-804 B2 which indicates an additional 10 dBA allowance, when it does not exceed 15 minutes in any given hour. Mr. Blair read the section of the code under “Adjustments” as it relates to maximum permitted sound levels of the zoning regulations: “The permitted sound level may be exceeded by 10 dBA for a cumulative period not to exceed 15 minutes of any given hour during daytime hours.”

Mr. Hancock made reference to a point made at the June 17 meeting and a letter submitted by the applicant relative to the City’s initial conversations about working at the site. Mr. Peterson stated that the level of sound issue was not addressed. He stated that they had asked for a ruling of whether the business was within the general industrial district and if a special use permit was needed. Peterson stated that they were told that a special use permit was not needed. He stated that several attorneys and judges interpreted the law and informed them that they were in a maximum 80 dBA general industrial area.

Mr. & Mrs. Todd and Kandis Koozer, 12729 C Street, and Mr. Franklin Thompson, Omaha City Councilmember, District 6, appeared in opposition to the request.

Mr. Koozer inquired about the applicant’s permit to work at the site. He stated that the company moved from a rail yard in Council Bluffs to Millard next to residential property. Koozer stated that the rail is scored and hammered with a sledge hammer. The readings reflect at 87 dBA. He qualified his results by stating that he is a sound engineer and has dealt with decibel levels for 17 years. Koozer stated that when rail is moved, it registers at 90-100 dBA on a daily basis. He stated that the crashing of plates could be heard ¼ of a mile away. Koozer felt that the noise from the applicant’s business ricochets off the Millard Lumber metal building. Therefore the readings taken below the level of the sound have less of an impact.

Mr. McGregor stated that yesterday and this morning he measured the ambience of the area from atop the hill. He noted that readings had not been taken on each operation. McGregor stated that the engine of a train is a different character of noise than clanging metal. He stated that the ambient sound was in the 50-55 dBA range. It varies when airplanes fly over and trains go by.

Mr. Hancock recognized Omaha City Councilmember, Franklin Thompson, District 6, who represented the residents from his district. He stated that he favors development but felt that the noise was excessive to the level where people would have to move in order to have a comfortable standard of living.

Mr. McGregor stated that measurements of 87 dBA are normal for this type of operation. He stated that according to the data from previous readings, the mitigating steps have decreased the noise levels. McGregor stated that once in awhile an avalanche occurs that creates noise that would be short in duration. McGregor stated that a 10 dBA increase on the sound level meter are activities that do not occur often. In response to Mr. Thompson, Mr. Hancock stated that the City’s measurements are consistent to what Mr. McGregor found which is 60-70 dBA, spiking to 75 dBA and an occasional 80+ dBA.

Mr. Slusky stated that steps were taken to decrease the sound levels which resulted in 75 dBA and 72 dBA readings in the three major operations. He stated that the applicant is therefore requesting a variance of 2-5 dBA to do business.

Mr. Anzaldo suggested rubber pads to catch the steel. He asked to hear from City employees regarding the results of the tests taken. Mr. Joe Adriano, Code Enforcement, stated that readings were taken three times per week on different days for 8 weeks. He stated that the work decreased greatly. Adriano stated that the median was 73-75 dBA regarding any activity. Mr. Scott Benson, Code Enforcement, added that the meter was handled by the same person each time readings were taken. He stated that he assisted Adriano on some of those days. Benson was distinctive in describing the spike in the sound level of noise made at the business.
In response to Ms. Donovan, Mr. Peterson explained their daily business process. He stated that the functions are controlled by what comes in delivery each day and how much work is involved. He stated that since the last meeting, they have diverted certain operations to their Chicago facility. Peterson stated that they would never get as low as 60 dBA unless the facility was completely enclosed.

In response to Mr. Hancock, Mr. Koozer stated that the loudest reading taken was at 90-98 dBA when rail is loaded and unloaded.

Mr. Anzaldo stated that a report needs to be generated by an impartial party so that a correct judgment can be passed. He suggested that the applicant and the City select someone based upon the levels that are to be brought to this board. Mr. Mahlendorf stated that the board should decide on who does the readings. He felt that more data rather than a day’s worth of reading would cover the gambit of time that they need to address. Mr. Thompson suggested that the residents need to have access to the third party as well. Thompson stated that the readings should be taken at the times when the noise is loudest and felt that Mr. Koozer could attest to that time. Mr. Koozer stated that there is no set time when the noise spikes. He has been able to catch the peak readings because he lives there and is subject to the noise on a consistent basis. Mr. Slusky suggested that the applicant, Mr. Koozer, the City, and a board member decide on a third party to measure the readings. Mr. Koozer was against using Terracon again.

Ms. RoseMarie Horvath, City Law Department, had concerns about the cost of the sound test. Mr. Anzaldo felt that the applicant should be responsible for the cost of a third party sound test. Mr. Slusky stated that Mr. McGregor is a sound engineer that has provided a report showing small increases of 2 and 5 decibels above the limit. Mr. Hancock reminded that Mr. McGregor had not observed the rail deliveries or the rail breaking process. Mr. McGregor stated that the measurements taken by the City should not be discounted. He stated that during a sound test each party should calibrate their meters together for accurate readings. McGregor added that each activity should be measured in order to determine the actual noise levels from the facility, the train, the lumber yard, etc. In response to Ms. Donovan, Mr. Roger Carroll, Code Enforcement, reiterated that the City took sound readings for 8 weeks. He stated that the sound level varied and spiked while they were below the bank at times and at other times on top of the bank. He detailed an instance when rail was being broken with hammers and measured above 80 dBA. Mr. Anzaldo felt that the applicant has not been successful in decreasing the noise level over the 60-day layover period. Mr. Hancock stated that based on the sound results of the City engineers, Mr. McGregor not observing all the activities at the site, and the applicant’s admission that getting below 60 decibels would never happen; he could not support the continued operation of the business. The cost for testing was discussed. Mr. Hancock felt that the City should pay for half of the cost of a sound test. In response to Mr. Koozer, Mr. Hancock stated that if the sound test had been within range during the 60-day layover, the applicant would have been required to return in a year to show proof that the sound level was being maintained within that range. Mr. Anzaldo stated that a continuation of the June 17 motion be considered in regards to the independent test.

He moved for to APPROVE a 30-day layover to allow: 1) the City and the applicant to select a professional to perform a sound test; 2) to be paid for by the applicant; 3) and the length of time and days of the week shall be selected by the City and the applicant. Mr. Hancock seconded the motion.

Mr. Hancock allowed for further discussion. Mr. Slusky stated the site was approved by the City and Omaha Works Industrial Park. He stated that a certificate of occupancy was not issued to the applicant. Slusky mentioned that the applicant has two building permits. He introduced Mr. Rick Russell, President of Millard Lumber, who gave some history on the sale of the northern portion of the site to Mr. Peterson. He stated that it was understood that the applicant make sure that his use was permitted in a GI district. Russell stated that the property owners association has certain covenants as to what types of activity occur on the property. He stated that they had met with TRP with regard to assurances made by the applicant to maintain the Omaha facility. Russell stated that they were made aware of the applicant’s use which would consist of the clutch, loading, unloading, sorting, bundling, fabricating, recycling and distribution of used cross ties, switch ties, railroad tracks, and other track material including steel and
wooden beams. He stated that the property owners association passed a resolution accepting the applicant’s use on the site prior to the sale of the property.

Mr. Brent Reeder, President of Sigma Construction, gave an overview of his involvement with the City prior to the construction of Omaha Track Equipment on Lot 19. He stated that in February 2009, he applied for a building permit. Reeder stated that in March 2009, the Permits & Inspection Division notified that the building was in the Millard Airport flight zone and needed FAA approval. He stated that Mr. Slusky, Mr. Peterson, and others petitioned the City for a conditional use permit in order to start up the business. Reeder stated that there was no permit issued. He stated that there were no inquiries with respect to the sound levels. Mr. Slusky recalled that uses were discussed with the Planning Department and Public Works. Mr. Anzaldo recalled that the use was under consideration at that time as well. Mr. Slusky stated that building permits were then issued.

Mr. Hancock inquired about a certificate of occupancy. Mr. Peterson stated that the certificate of occupancy was issued for Omaha Track Equipment on Lot 19. Hancock inquired if the certificate of occupancy was related to the current operation. Mr. Dave Fanslau, Manager of Current Planning for the City, stated that the only certificate of occupancy applied to Lot 19 for equipment repair services.

Roll call was taken:

NAY: Mahlendorf, Nash, Donovan, Anzaldo, Hancock

MOTION FAILED: 5-0

Mr. Anzaldo moved to DENY the application. Mr. Mahlendorf seconded the motion.

Mr. Hancock called for discussion. Mr. Mahlendorf commented that the sound level is technically twice the limit with indications that it could range up to 90 decibels. Ms. Donovan questioned if a sound test would be an appropriate decision. Mahlendorf cautioned against spending City money. Mr. Hancock stated that an independent test would be an investment to collect data should this case go further. He took into account the confirmed validity of the City’s data and the resident’s numerous readings at 90+ dBA.

Mr. Slusky reminded that the noise levels at the applicant’s site read at 72 to 75 dBA as compared to the trains that measured at 86 to 90 dBA.

Mr. Hancock called for the vote.

AYES: Anzaldo, Mahlendorf, Hancock

NAYS: Nash, Donovan

MOTION CARRIED: 3-2
NEW CASES:

2. Case No. 10-086
   City of Omaha
   Attn: Kevin Denker
   1819 Farnam Street  68183
   REQUEST: Waiver of Section 55-740(E)(1) - Variance to the hard surfacing requirement for a temporary parking lot (for one year)
   LOCATION: 1101 Abbott Drive
   ZONE: CBD

RECOMMENDATION: Approval for whatever period of time is necessary to complete the construction of the new TD AmeriTrade Stadium.

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Kevin Denker, Code Enforcement Division, appeared before the board on behalf of the City of Omaha.

Mr. Denker stated that this is a temporary lot being used by Kiewit Construction during the construction of the TD Ameritrade stadium. He stated that the anticipated completion date is July 18, 2010. Mr. Mahlendorf stated that after discussion, the consensus was to extend the time for hard surfacing.

Mr. Mahlendorf moved to APPROVE the waiver until June 18, 2011. Mr. Nash seconded the motion.

AYES: Nash, Donovan, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0
At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Larry Smith, Avant Architects appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that this case involves the required bufferyard between CC (Community Commercial) and DR (Development Reserve, which is residential). He stated that it is not appropriate to landscape adjacent to the water which would form a visual block for the development of this site as it relates to the side of the property adjacent to the marina and the lake. Blair stated that the applicant submitted a site plan. He pointed out the location of the neighboring residential property commenting that there is a 30’ landscape buffer as required between the commercial property and the residence.

Mr. Larry Smith stated the issue stems from when property was originally purchased. When the subdivision was created this commercial portion was in the Elkhorn jurisdiction with the balance of it in the county jurisdiction where the zoning was administered. He stated that these plans were in process when Omaha annexed Elkhorn. At that time the lot, including the body of water were commercial. He stated that through some transitioning an overlay was created and the area was rezoned to DR which requires a bufferyard. The applicant is requesting a waiver only for the area that relates to the water.

Mr. Blair stated that the adjacent property to the west which is a single family dwelling owned by Ms. Sandra Nielsen who the Department contacted with respect to this application.

Mr. Anthony Scioli, Attorney, Kutak Rock, 1650 Farnam Street, appeared before the board in opposition to the request on behalf of Mr. Doug Nielsen and family, 24421 Chicago Street.

Mr. Scioli stated that in viewing the tax assessor’s site, he noted a setback discrepancy. He felt that the applicant did not correctly identify where the buffer should begin. Scioli stated that construction of the marina (as advertised) was promised to the homeowners and they now feel it would be excluded according to this plan. He felt that a hardship or practical difficulty was not shown. Scioli felt that the buffer was created to separate two use types. He submitted a letter dated August 18, 2010 to the Planning Director from twelve residents who oppose this plan (Exhibit 2).

In response to Ms. Donovan, Mr. Blair referred to a drawing to explain that the 30’ bufferyard adjacent to Mr. Doug Nielsen is being provided. The requested waiver is for a 30’ bufferyard adjacent to the lake on the southwest side as well as a bufferyard that would be required adjacent to the marina, and a bufferyard adjacent on the east where the floating dock and fuel tank are located. Blair stated that there is a hardship created by the code in attempting to apply a bufferyard standard where the property is a lake and is not going to be developed residetially and therefore no residential property needs to be protected.

Mr. Blair stated that prior to the Elkhorn annexation, the area that is now water was commercially zoned. He stated that the area is DR under Omaha zoning. Blair stated that this applicant proposed to build two office buildings on an adjacent lot and Omaha’s code states that the shoreline of the lake should have a 30-foot bufferyard. He explained that this is a result of the conversion of the zoning that was done between the Elkhorn zoning and what is now Omaha zoning. Mr. Mahlendorf felt that a hardship is created. Mr. Hancock commented that there is a 30’ bufferyard between the properties of Mr. Scioli’s client, Mr. Doug Nielsen, and the applicant which meets the code in that respect.
Ms. Donovan moved to APPROVE the waiver request. Mr. Nash seconded the motion.

AYES: Donovan, Anzaldo, Mahlendorf, Nash, Hancock

MOTION CARRIED: 5-0
4. Case No. 10-088  
Eric Lakeman  
P. O. Box 82  
Bennington, NE  68007  

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’ and to the rear yard setback from 35’ to 25’

LOCATION:  21814 Daylily Circle  
ZONE:  R1  

RECOMMENDATION:  Approval.  A rezoning of this 9-lot subdivision should be initiated by the City Planning Board.

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Eric Lakeman, L & L Custom Builders Inc., 18520 Bennington Road, appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the former zoning of the property under Elkhorn was SF1. It was converted to R1 because the lot sizes are similar to R1 lots. Due to the grades on the property and the very heavily wooded nature of the property, the buildability of these lots is limited. R2 zoning would have been more appropriate.

Mr. Anzaldo moved to APPROVE the waiver request and to recommend to the Planning Board and City Council that other lots in Skyline Meadows be rezoned to R2 so that as the balance of the lots are developed, it would not be necessary to come before this board for setback waivers. Ms. Donovan seconded the motion.

AYES:  Anzaldo, Mahlendorf, Nash, Donovan, Hancock  
MOTION CARRIED:  5-0

Mr. Lakeman stated that the variance requested was a 25’ front yard setback, not 40’ as stated. He stated that the request is in regards to Lots 3 & 4 because of the severe drop-off and the nature of both lots.

Ms. RoseMarie Horvath, Law Department, recommended that the request be re-advertised to give everyone public notice.

Mr. Anzaldo moved to RECONSIDER the previous APPROVAL and LAYOVER this case until the September 16, 2010 meeting to re-advertise the variance request of the front yard setback from 50 feet to 25 feet. Ms. Donovan seconded the motion.

AYES:  Mahlendorf, Nash, Donovan, Anzaldo, Hancock  
MOTION CARRIED:  5-0
5. Case No. 10-089  
John Mumma, Jr.  
10219 Gertrude Circle  
Omaha, NE 68128

REQUEST: Waiver of Section 55-166 – Variance to the rear yard setback from 25’ to 20’ to erect a 4’ X 10’ kitchen addition

LOCATION: 316 S 56 Street

ZONE: R3

RECOMMENDATION: Approval

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. John Mumma, Jr., J C Customs Builders, 10219 Gertrude Circle, appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated this property is the second lot from the corner of 56th & Harney. He stated that the rear of the property as constructed already has a setback of 20 feet. The applicant proposes an addition that would match up and maintain the same setback as the existing structure. Blair added that this lot was originally a north/south lot many years ago and was added to the adjacent lot to the north making it an L-shaped lot.

Mr. Mahlendorf moved to APPROVE the waiver request. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Nash, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
6.  Case No. 10-090  
James E. Mitchell  
5111 N 126 Street  68164  

REQUEST:  Waiver of Section 55-734 – Variance to the required off-street parking for a day care facility from 24 stalls to 18 stalls  

LOCATION:  4902 Hamilton Street  
ZONE:  GC  

RECOMMENDATION:  Denial – the day care facility can be reduced to 72 children and no waiver would be necessary.

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Bob Lanphier and Ms. Hanna Seitner, P. J. Morgan Real Estate, 7801 Wakeley Plaza; and Mr. James E. Mitchell and Ms. Veronica Lopez, O Little Angels Daycare Center, 3512 Leavenworth Street, appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the property could be licensed for up to 72 children legally. The applicant indicated in their application that some of the children would be picked up in a van and brought to this location which would reduce the need for parking. The applicant also indicated that they only have need for 8 parking stalls for employees and 4 front stalls for parents to pick up and drop off children. The applicant indicated that the neighboring property to the east has agreed to allow portions of their property to be used for overflow if necessary.

Mr. Mitchell stated that they have a daycare at another location with approximately 60 children and a waiting list with 20 children. He felt the daycare would reach a total of 98 children fairly quickly. Mitchell stated that arrangements were made so that there would be no parking problems during business and as the daycare grows. He stated that the daycare currently utilizes six stalls. In response to Ms. Donovan, Ms. Lopez stated that daycare transportation begins at 5:30 a.m. until 8 a.m. She stated that some of the employees walk and/or ride the bus to the daycare.

Mr. Anzaldo stated some concerns about the backyard. He inquired about the fencing and the area that would be used for the playground. Mr. Mitchell stated that the playground is not complete. He stated that the area will be developed further as they work with experts to determine the best way, educationally. Ms. Lopez stated that they are working with a developmental therapist from the Child Savings Institute who would provide recommendations to make the area a child-friendly environment. Ms. Donovan stated that given the size and capacity, these concerns should be addressed prior to licensing by the State.

Mr. Mahlendorf moved to APPROVE the waiver request for this applicant only. Ms. Donovan seconded the motion.

AYES:  Nash, Donovan, Anzaldo, Mahlendorf, Hancock  

MOTION CARRIED:  5-0
7. Case No. 10-091  
Karen M. Johnson  
2815 S 137 Street  68144

REQUEST: Waiver of Section 55-186 - Variance to the side and rear setback for a 14’ X 14’ 18-foot high storage shed from 5’ to 2.61’ and from 25’ to 2.32’

LOCATION: 2815 S 137 Street

ZONE: R4(35)

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mrs. Karen Johnson and Mr. Eric Johnson, appeared before the board in support of this request.

In response to Mr. Hancock, Mr. Johnson stated that the shed is actually 12’ X 14’ and the slab 14 feet X 14 feet. He stated that he applied for a permit. Mr. Hancock commented that the applicant will be assessed a quad-fee for constructing the shed prior to securing a permit. Mr. Johnson stated that the material and accents would match the house. Hancock suggested the applicant camouflage the height of the shed with tree/vines on the north side of it. Mr. Johnson stated that there are plans to plant vegetation and that the neighbors have no objections to the shed.

Ms. Donovan moved to APPROVE the waiver request. Mr. Nash seconded the motion.

AYES: Mahlendorf, Nash, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
8. Case No. 10-092
Oakhaven Homes Inc.
Attn: Dave McVicker
501 E Gold Coast Road  68133

REQUEST: Waiver of Section 55-146 – Variance to the front yard setback from 40’ to 36’ by adding an archway with decorative columns and to retain the existing covered front porch

LOCATION: 1723 S 87 Street
ZONE: R2

RECOMMENDATION: Denial of the proposed archway and approval for the existing covered porch.

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Dave McVicker appeared before the board in support of the request.

Mr. Tom Blair, ZBA Administrator, stated that the existing covered porch was in violation of the setback when the house was originally built.

Mr. McVicker explained that initially he was told that the setback for this address was 35 feet. McVicker explained that the permit stated R3 use for the property. He later found out during the inspection that the required setback was 40 feet.

Mr. Mahlendorf moved to APPROVE the waiver request. Ms. Donovan seconded the motion.

AYES: Anzaldo, Mahlendorf, Nash, Donovan, Hancock

MOTION CARRIED: 5-0
9. Case No. 10-093  
Kelly Wirges  
19136 Harrison Street  68136

REQUEST: Waiver of Section 55-166, 55-767C - Variance to the front yard setback for a multiple frontage lot from 35’ to 7’ and allow a home occupation to be located outside the dwelling unit

LOCATION: 19136 Harrison Street  
ZONE: R3

RECOMMEDATION: Approval in accordance with the plans submitted, for this applicant only and subject to there being no employees associated with the home occupation.

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Mick McGuire, Straightline Design, 3925 S. 147th Street, and Mr. Randy Shoults, 19136 Harrison Street, appeared before the board in support of the request.

Mr. Tom Blair, ZBA Administrator, referred to the exhibit showing that the property is on the corner of 192nd and Harrison and also abuts Polk Street to the east, which is technically considered a multi-frontage lot. He stated that this exhibit shows where the buildable area of that lot would be. Blair stated that there is a small structure located on the north end of the property. He stated that there would be a connection via an archway that creates a courtyard in the northeast corner of the site. Blair stated that the applicant proposes to build a new single family residence at this location with a 7’ setback adjacent to Polk Street rather than what would technically be required to be 35 feet. He stated that the developer of the adjacent property to the east has no objection.

Mr. Mahlendorf moved to APPROVE the waiver of front yard setback from 35 feet to 7 feet. Mr. Anzaldo seconded the motion.

AYES: Mahlendorf, Nash, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0

Mr. Mahlendorf moved to APPROVE the waiver allowing a home occupation to be located outside the dwelling unit for this applicant only and subject to there being no additional employees associated with the home occupation. Mr. Anzaldo seconded the motion.

AYES: Nash, Donovan, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0
10. Case No. 10-094
   Capitol Rows, LLC
   Attn: Don Mohlman
   11422 Miracle Hills Drive, Ste. 400
   Omaha, NE  68154

   REQUEST:  Waiver of Section 55-740F - Variance to the required perimeter landscaping from 10' to 0' and 6.6' to construct parking lots for adjacent townhomes
   LOCATION:  323 N 24 Street
   ZONE:  CBD-ACI-2(PL)

RECOMMENDATION:  Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. John Coolidge, Lamp, Rynearson & Associates, 14710 West Dodge Road, and Mr. Don Mohlman, Tetrad Development Corp., 11422 Miracle Hills Drive, appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that there is a parking stall that is at the entrance to Chicago Street. There is a required 10' setback adjacent to Chicago Street and 6.6' is proposed. The second waiver refers to the interior portion of the north and east side of the site. Those parking lots go over the lot line to the extent of approximately 2.6 feet and 7.6 feet. There is an easement that allows for that improvement. The easement is with Joslyn Properties and was recorded on the plat.

Ms. Donovan moved to APPROVE the request based on the plans submitted. Mr. Nash seconded the motion.

AYES: Donovan, Anzaldo, Mahlendorf, Nash, Hancock

MOTION CARRIED:  5-0
11. Case No. 10-095  
Scott Lohmann  
4905 Washington Street  68117  

REQUEST: Waiver of Section 55-108 - Variance to the side yard setback from 25’ to 22’ to erect a 30’ X 40’ addition to existing shed  

LOCATION: 4905 Washington Street  
ZONE: DR  

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Scott Lohmann appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the existing building at this location is a 30’ X 40’ metal shed that will bring the total size to 80 feet X 30 feet. The lot is 150’ across Washington Street and 250’ at its deepest point.

Mr. Lohmann stated that he plans to hard surface the driveway. He stated that the additional vehicles on the property will be moved into the shed when more space is available to store them. Lohmann added that the neighbor who would be directly affected has no objection.

Mr. Anzaldo moved to APPROVE the request. Ms. Donovan seconded the motion.

AYES: Anzaldo, Mahlendorf, Nash, Donovan, Hancock

MOTION CARRIED: 5-0
12. Case No. 10-096
Shanna Whitsitt
5013 Burt Street  68132

REQUEST: Waiver of Section 55-782 B6 - Variance to
the side yard setback for a residential
accessory building from 3’ to 1.5’ to erect a
22’ X 24’ detached garage

LOCATION: 5013 Burt Street
ZONE: R4(35)

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Ms. Shanna Whitsitt
appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the 12’ X 18’ garage currently located within 1.5’ from
the side lot line and 3’ from the rear is being removed. The proposed garage will be placed utilizing the same
setbacks going more toward the interior of the lot.

In response to Mr. Hancock, Ms. Whitsitt stated that the material would be consistent with the house.

Mr. Donovan moved to APPROVE the request. Mr. Nash seconded the motion.

AYES: Mahlendorf, Nash, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
13. Case No. 10-097
Stuart Wheat
5823 Briggs Street 68106

REQUEST: Waiver of Section 55-782 B6 - Variance to the side yard setback for a residential accessory building from 3' to 1.5' to erect a 20' X 22' detached garage

LOCATION: 5823 Briggs Street
ZONE: R4(35)

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Stuart Wheat appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that an existing garage is to be removed. He stated that a larger garage will be put in its place and pushed back further toward the corner. The applicant requests that the new garage be placed at the same setback as the garage that is being removed.

In response to Mr. Mahlendorf, Mr. Wheat stated that building materials will be siding similar to the house.

Mr. Mahlendorf moved to APPROVE the request. Mr. Anzaldo seconded the motion.

AYES: Nash, Donovan, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0
14. Case No. 10-098 WITHDRAWN
   Don Eckles
   8705 S 9 Street
   Bellevue, NE  68147

   REQUEST: Waiver of Section 55-686 - Variance to the major commercial corridor landscaping standards from 15’ to 10’ to construct a drive thru restaurant
   LOCATION: 4102 S 84 Street
   ZONE: GI-MCC (proposed)

This case was withdrawn at the applicant’s request.
15. Case No. 10-099
   Julie Beck  3311 Pine Street
   John Billings  3313 Pine Street
   William Latka  3316 Hickory
   Omaha, NE  68105

   REQUEST: Waiver of Section 55-166 - Variance to the
   minimum lot width from 60’ to 42.5 & 50’
   and to the minimum lot area from 7,500 sq.
   ft. to 5,610 sq. ft. and 7,435 sq. ft. in order
   to subdivide the subject properties

   LOCATION: 3316 Hickory/3311 Pine/3313 Pine
   ZONE: R3

   RECOMMENDATION: Approval

   At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. James Warner,
   Thompson, Dreessen & Dorner, 10836 Old Mill Road, appeared before the board in support of this
   request.

   Mr. Tom Blair, ZBA Administrator, stated that the lot line is being moved to the north which will allow the
   garage to be enlarged. He stated that the garage is currently 20’ deep and the variance would allow this
   new lot line to line up with other homes on Pine Street.

   Ms. Donovan moved to APPROVE the request. Mr. Nash seconded the motion.

   AYES: Anzaldo, Mahlendorf, Nash, Donovan, Hancock

   MOTION CARRIED: 5-0
16. Case No. 10-100  
Norton Custom Homes Inc.  
Attn: Scott Norton  
3307 Chandler Road 68147

REQUEST: Waiver of Section 55-782 B6 - Variance to the required side yard setback for a residential accessory building from 3’ to 1’ to replace a 24’ X 20’ detached garage

LOCATION: 5026 Burt Street  
ZONE: R4(35)

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Scott Norton, and Mr. George Matthews, property owner, appeared before the board in support of this request.

In response to Mr. Hancock, Mr. Matthews stated that the material will match the house. He added that he received a letter from the neighbor on the east who had no objections.

Ms. Donovan moved to APPROVE the request. Mr. Nash seconded the motion.

AYES: Anzaldo, Mahlendorf, Nash, Donovan, Hancock

MOTION CARRIED: 5-0
17. Case No. 10-101
Omaha International Food
Attn: Abdi Mohamed
219 S 25 Street  68131

REQUEST: Waiver of Section 55-734, 55-735B, 55-740F-
Variance to the required perimeter landscaping from 10’ to 0’ and allow parking
in the required front yard setback and to the required off-street parking from 25 stalls to
19 stalls

LOCATION: 2902 S 20 Street
ZONE: R6

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. James Warner,
Thompson, Dreessen & Dorner, 10836 Old Mill Road, appeared on behalf of the applicant in support of
this request.

Mr. Hancock stated that the applicant has many corrections to make at this property. They discussed the
fencing and landscaping. Mr. Warner stated that the fence on 20th Street will be eliminated. He stated
that the building to the west will be remodeled as a daycare center. Warner stated that the main
building will be an after-school tutoring center.

Mr. Mahlendorf moved to APPROVE the waiver in accordance with the plans submitted subject to the
paving work, weed removal, and landscaping being completed within 60 days. Ms. Donovan seconded
the motion.

AYES: Mahlendorf, Nash, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
18. Case No. 10-102
   NeighborWorks Omaha
   Attn: Ken Lyons
   1704 N 24 Street, Ste. 102  68110

   REQUEST: Waiver of Section 55-246 – Variance to the street side yard setback from 15’ to 8’ for HVAC units adjacent to 36th Street between Ohio Street & Lake Street
   LOCATION: 3520 Lake Street
   ZONE: R7

   RECOMMENDATION: Approval in accordance with the plans submitted.

   At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Curt Witzenburg, Holland Basham Architects, 119 S 49th Avenue, and Ms. Nancy Pridal, Lamp, Rynearson & Associates, Inc., 14710 W. Dodge Road, appeared before the board on behalf of the applicant in support of this request. Mr. Witzenburg stated that this property is a senior housing facility for individuals 55 and older. He stated that it is a non-supervised facility set up in an apartment style. Witzenburg stated that HVAC cooling units are located within the building setback adjacent to 36th Street to provide the units close proximity to the rooms being served on a relatively flat slope. He stated that the property has three street frontage sides and the fourth side includes the main entrance with extreme slope concerns out side of the parking area. In response to Mr. Hancock, Mr. Witzenburg stated that the units are placed 8’ from the property line.

   Mr. Nash moved to APPROVE the request. Ms. Donovan seconded the motion.

   AYES: Nash, Donovan, Anzalo, Mahlendorf, Hancock.

   MOTION CARRIED: 5-0
19.  Case No. 10-103  
Open Door Mission  
2201 E Locust Street East  68110

REQUEST:  
Waiver of Section 55-505, 55-734 - 
Variance to the use regulations of the GI District to allow multi-family and large group living for 270 men not permitted by right in GI District and to the off-street parking requirements from 172 stalls to 20 stalls

LOCATION:  2705 N 20 Street, East  
ZONE:  GI

RECOMMENDATION:  Approval in accordance with the plans submitted subject to the applicant making application for a special use permit for large group living on this portion of the site.

At the Zoning Board of Appeals meeting held on Thursday, August 19, 2010, Mr. Perry Poyner, Alley Poyner Macchietto Architecture, PC, 1516 Cuming Street, Ms. Candace Gregory and Mr. Richard DenHerder, Open Door Mission, 2828 N. 23rd Street, East, and Mr. Jim Royer, J Development Co., 142 W. Broadway #140, Council Bluffs, IA appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that in working with this applicant the uses of the campus had not matched up well with use types of the zoning ordinance. However, the Department identified a use type that is most fitting. The applicant would also need to apply for a Special Use Permit.

Mr. Anzaldo motioned to APPROVE the request in accordance with the plans submitted subject to the applicant making application for a special use permit for a large group living on this portion of the site. Ms. Donovan seconded the motion.

AYES:  Donovan, Anzaldo, Mahlendorf, Nash, Hancock  
MOTION CARRIED:  5-0
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APPROVAL OF MINUTES:

Ms. Donovan motioned to APPROVE the minutes of the July 15, 2010 meeting as written. Mr. Hancock seconded the motion.

AYES: Anzaldo, Mahlendorf, Nash, Donovan, Hancock

MOTION CARRIED: 5-0

ADJOURNMENT:

It was the consensus of the board to ADJOURN the meeting at 4:00 p.m.

____________________________________________
Approved (date)

____________________________________________
Brian Mahlendorf, Vice Chair

____________________________________________
Claudia Moore, Secretary