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.
HOLD OVER CASES:

1. Case No. 10-053
   (over from 5/20/10, 6/17/10)
   R & A Builders
   Box 540731  68154

   REQUEST: Waiver of Section 55-126 – Variance to the
   maximum impervious coverage from 30% to 42% and to the
   minimum street yard landscaping from 75% to 65% and to the
   maximum building coverage from 25% to 26%

   LOCATION: 1223 Ranch View Lane
   ZONE: R1

   RECOMMENDATION: Approval

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Chad Allington, R & A Builders, appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the case was laid over because the building coverage did not meet the standards of the ordinance by approximately 1 percent and needed to be advertised. He stated that the board previously granted waivers of setback on this lot due to the change in the zoning from Elkhorn to Omaha. Some provisions were not in Elkhorn’s ordinance. This waiver would allow a home to be constructed that is commensurate with the other homes in the subdivision. The Department recommended approval.

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

AYES: Anzaldo, Mahlendorf, Meyer, Donovan, Hancock

MOTION CARRIED: 5-0
2. Case No. 10-070  
(over from 6/17/10)  
Josh Lingenfelter  
1528 N 75 Avenue  68114  
REQUEST: Waiver of Section 55-786(E)(1) – Variance to the residential fence regulations to allow a 6’ high privacy fence in the street side yard  
LOCATION: 1528 N 75 Avenue  
ZONE: R3  
RECOMMENDATION: Denial – This request will set a precedent.

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Josh Lingenfelter and Mr. Dennis Hyde appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the property was inspected today. The hedge, discussed at the June meeting, was in the process of being removed. The applicant submitted revised drawings with more detail regarding placement of the fence in relationship to the sidewalk, property line, and a retaining wall adjacent to Seward Street. He stated that the required setback from Seward Street is 17.5 feet. A 4’ high, 50% open fence at the property line is allowed. The applicant is proposing to build a 6’ high solid fence near the property line.

Mr. Meyer felt that the proposed 6’ high privacy fence at the property line would cut off too much vision because of the lay of the land on that street. He recommended that the applicant build a fence that begins at the northwest corner of the garage and extend directly west to the northwest property line. Meyer clarified his suggestion by drawing it on the applicant's proposed plan.

Mr. Meyer moved to APPROVE a 6’ high solid fence, beginning at the northwest corner of the garage extending to the northwest corner of the lot, as shown by Exhibit 2. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Meyer, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
NEW CASES:

3. Case No. 10-074
   Patrick Wortmann
   5416 Leavenworth Street  68106
   REQUEST: Waiver of Section 55-206 – Variance to the side yard setback from 5’ to 4’ to erect a 16’ X 15’ 8” 2-story addition to existing residence
   LOCATION: 5416 Leavenworth Street
   ZONE: R5(35)

RECOMMENDATION:

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Patrick Wortmann appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated the current structure has a 4’ setback along the west property line. In order to retain that same building material and match that wall, a waiver from 5’ to 4’ is required for this addition.

Mr. Wortmann presented the plans and explained that the addition will be no wider than the existing house. He stated that the tenants and other neighbors do not have any objections.

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

AYES: Meyer, Donovan, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0.
4. Case No. 10-075  
Robert Oberhauser  
12657 Augusta Avenue  68144  
REQUEST: Waiver of Section 55-186 - Variance to the rear yard setback from 25’ to 14’ to replace a 16’ X 16’ deck  
LOCATION: 12657 Augusta Avenue  
ZONE: R4(35)  

RECOMMENDATION:

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Robert Oberhauser and Mr. Melvin Horton appeared before the board in support of this request.

The board reviewed the property and had concerns about the depth of the deck, north to south. The board suggested a 12’ X 16’ deck with the stairs on either side. Mr. Oberhauser then requested to extend the deck to 20 feet, with a 4 feet wide stair and landing.

Mr. Meyer moved to APPROVE a rear yard setback from 25’ to 14’ to erect a 12’ X 20’ deck. Mr. Mahlendorf seconded the motion.

AYES: Donovan, Anzaldo, Mahlendorf, Meyer, Hancock  

MOTION CARRIED: 5-0
5.  Case No. 10-076  
The Garage Company  
8301 Q Street  68127  

REQUEST: Waiver of Section 55-740(E)(3) – Variance to the requirement that a hard-surfaced driveway be provided for a structure capable of storing a personal vehicle  

LOCATION: 21408 Honeysuckle Drive  
ZONE: R2  

RECOMMENDATION:  

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Brian Timmer, The Garage Company and Mr. Jim Edmondson, property owner, appeared before the board in support of this request.  

Mr. Tom Blair, ZBA Administrator, stated that the proposed garage will be 16’ X 24’ to within 16’ of the rear property line on a very large lot. The building will be used for residential purposes and it will not be used for vehicle storage that would require a driveway. Blair stated that the property is large enough to support a building of this size for equipment to maintain the property.  

Ms. Donovan moved to APPROVE the waiver request, subject to the applicant not using the building for storage of any vehicles. Mr. Meyer seconded the motion.  

AYES: Anzaldo, Mahlendorf, Meyer, Donovan, Hancock  
MOTION CARRIED: 5-0
6. Case No. 10-077
   Jennifer Buescher & Mark Lane
   102 North 54 Street  68132

   REQUEST: Waiver of Section 55-786 - Variance to allow a 6’ high privacy fence in the street side yard setback in a residential district

   LOCATION: 102 N 54 Street
   ZONE: R3-ACI-2(50)

RECOMMENDATION:

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Ms. Jennifer Buescher and Mr. Mark Lane appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the waiver request only refers to the portion along Dodge Street from the front wall of the house extended to their most western property line. Blair stated that the Department received calls from neighboring property owners with concerns about safety. He explained that the proposed fence would be far enough from the curb line to see east and west on Dodge Street. Therefore, they had no objections. Also, the fence material would be in keeping with the other type of fence material found in the neighborhood.

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

AYES: Mahlendorf, Meyer, Donovan, Anzaldo, Hancock

MOTION CARRIED:  5-0
7. Case No. 10-078
   John J. Shrauger
   5106 North 93 Street  68134

   REQUEST: Waiver of Section 55-782(B)(6) – Variance to the maximum size for an accessory building from 750 sq. ft. to 846 sq. ft. by adding a 15’ X 18’ patio cover

   LOCATION: 5106 N 93 Street
   ZONE: R3

RECOMMENDATION:

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. John Shrauger and Mr. Ed Walenz appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the existing garage is 24’ X 24’ (576 sq. ft.). He stated that the applicant proposes to attach a patio cover to the garage which enlarges the size of the structure to 846 sq. ft. The patio cover would gain some of its support from the garage, and exceeds the 750 sq. ft. size limitation for accessory structures in a residential district. Mr. Shrauger explained that he would lose 2’ under the overhang of the garage if the patio cover were to be built separate from the garage, taking up a large amount of living space in that area. In response to Mr. Hancock, Mr. Shrauger stated that the material would match the roof along with using cedar posts and metal beams to construct the patio cover.

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

AYES: Meyer, Donovan, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0
8. Case No. 10-079  
E & A Consulting Group  
Attn: Jason Thiellen  
330 North 117 Street  68154  

REQUEST: Waiver of Section 55-105 – Variance to the use regulations of the Development Reserve District (DR) to permit building maintenance services (a landscaping and lawn care business) not otherwise allowed in DR  

LOCATION: 4730 State Circle  
ZONE: DR-ED  

RECOMMENDATION:

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Ryan Kieny and Ms. Jennifer Taylor appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that only a portion of this large tract of land is used for this business which has operated at this location in excess of two years. He stated that commercial activity is not permitted in this residential zoning. The applicant is requesting a period of time to identify and secure a more permanent location suitable for the commercial part of his business. The Planning Department is concerned about setting a precedent whereby large pieces of residential property would begin to be used for commercial purposes.

Ms. Taylor gave some history on the condemned property which the applicant purchased eight years ago and spent several years cleaning up. She commented on the time spent with the Planning Department in trying to find a good use for the property. Taylor stated that the applicant proposed to move a portion of the business, consisting of two trucks dedicated to the lawn care business and employees associated with that business. She stated that the applicant would like permanent use of the wholesale horticulture operation to remain, which is permitted in the Development Reserve district. Taylor stated that Mr. Keiny plans to expand the horticulture business and continue to operate there.

Mr. Hancock commented that the neighbors in the area commended the applicant for the notable work done to the property and felt no urgency in relocating.

In response to Mr. Anzaldo, Mr. Keiny proposed a rural setting for the landscape. Discussion surrounded an appropriate number of employees and vehicles.

Mr. Anzaldo moved to APPROVE a waiver of use to allow this landscaping business to continue from this location subject to: 1) limiting the number of non-conforming employees to 5 fulltime employees and 2 company vehicles; and 2) for this applicant only. Ms. Donovan seconded the motion.

AYES: Meyer, Donovan, Anzaldo, Mahlendorf, Hancock  
MOTION CARRIED: 5-0
9. Case No. 10-080
Metropolitan Comm. College
c/o Bernie Sedlacek
P.O. Box 3777 68103

REQUEST: Waiver of Section 55-865, 55-84, 55-87 - Variance to the maximum impervious coverage from 10% to 28% and to the use regulations of the AG District by expanding a non-conforming use with 85 additional parking stalls

LOCATION: NE of 204th & W Dodge Road
ZONE: AG

RECOMMENDATION: Approval, subject to the applicant making application to rezone the property to an appropriate residential classification with a conditional use permit and subdivision plat prior to the issuance of a parking lot permit by the City of Omaha.

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Bob Griffin, Ehrhardt & Griffin and Mr. Bernie Sedlacek, MCC, appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the proposed parking is a distance away from West Dodge Road and an even further distance away from 204th Street. He stated that in March 2007, the MCC became part of the City of Omaha as part of the annexation of the Elkhorn area. There was no land use study at the time. Agricultural zoning was placed on the property by Elkhorn and matched by the City of Omaha. Blair stated that the property needed to be rezoned preferably to a residential classification with a conditional use permit. He added that the property also needed to be subdivided. Blair stated that MCC cannot expand on this site with the zoning that is in place today. The City's concern is that the zoning be rectified.

In response to Mr. Hancock, Mr. Griffin stated that this project has gone out for bid in which there is a short window from August 16 until September 7 for construction to be underway due to the urgent need for parking. He stated that the college has commissioned them to initiate the zoning application as well.

Griffin mentioned that the college is going through a revised master plan process in which all other relative plans would follow in suit. Ms. Donovan stated that rezoning the property would be a necessary step regardless of a master plan.

Mr. Bernard in den Bosch, Assistant City Attorney, suggested that a specific time period be added to the conditions to rezone the property, applicant submit a conditional use permit, and provide a subdivision plat before approving this request.

Mr. Anzaldo felt that MCC needed to be more proactive in addressing the noted deficiencies.

Mr. Jim Lang, Attorney, representing Gottsch Land Company, owner of the adjoining property to the north and west. He stated that the company has an interest in the traffic and access to the area which is deficient at this time. Lang stated that the company's concern is that the area be developed in the proper manner. He agreed with Mr. in den Bosch's suggestion regarding the conditions for a waiver. Lang included an additional point that if the conditions are not met within the given timeframe, MCC should go before the board for a show cause hearing.

Mr. Meyer moved to APPROVE the waiver, subject to: 1) the applicant making application to rezone the property to an appropriate residential classification; 2) develop and submit a conditional use permit; 3) provide a subdivision plat; and 4) this board will not approve any additional waiver on this property until the prior three conditions are executed and approved. Mr. Hancock seconded the motion.

Mr. Anzaldo moved to AMEND and APPROVE the waiver, subject to: 1) the applicant making application to rezone the property to an appropriate residential classification; 2) develop and submit a conditional use permit; 3) provide a subdivision plat; and 4) this board will not approve any additional waiver on this
property until the prior three conditions are executed and approved within the next eighteen (18) months. Mr. Meyer accepted the amendment. Mr. Hancock seconded it.

AYES: Anzaldo, Mahlendorf, Meyer, Donovan, Hancock

MOTION CARRIED: 5-0
10. Case No. 10-081  
Silo Extreme Outdoor Adv. LLC  
308 S 51 Street  68123  

REQUEST: Waiver of Section 55-716 – Variance to the required bufferyard between GI and R5 from 50’ to 10’ and 30’ to allow outdoor/indoor recreation.  

LOCATION: 3417 Vinton Street  
ZONE: GI  

RECOMMENDATION: Approval in accordance with the plans submitted.  

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Rick Brock, property owner, 308 S. 51st Street, Mr. Chris Willet, Olsson Associates, 2111 S. 67th Street, Ste. 200, and Mr. Eddy Santamaria, Architect, Contrivium, 1301 Nicholas Street, appeared before the board in support of this request.  

Mr. Tom Blair, ZBA Administrator, stated that this case was before the board due to a change in the plans that had been previously approved by the Planning Board and City Council. The applicant plans on using only the paved portion of the site that is currently used for parking. The site plan has been modified to reflect the area that is currently hard-surfaced. The amount of landscaping adjacent for Vinton Street is 10 feet and the requirement is 50 feet. The amount of landscaping that would be required along the east side adjacent to that residential is 50’ and they would have 30 feet.  

Mr. Brock stated the original plan consisted of the construction of a new building on the south side of the property. Since then, he hired an architect and built a new structure on the north end of the property.  

Brock stated that they secured a special use permit. He stated that this waiver would allow them to utilize the existing paving along with some additional pavement. He stated that this project is centered on the reuse of this structure. In response to Mr. Blair, Mr. Brock stated that a small amount of concrete would be removed in order to create the 10’ of landscaping adjacent to the Vinton Street park property line but would not affect the number of stalls that would be put in. He stated that there would be 36 stalls with more added to make a full loop. Mr. Brock stated that 31 stalls are required.  

Mr. Meyer inquired about the applicant’s second appearance before the board which dealt with the graphics that were to be placed on the west side of the silos since it would affect the same parking. Mr. Blair stated that the projects involved with this site are not compromised. He explained that this plan matches the plan that went before the Planning Board for an amendment. In approving this plan, the Planning Board knew that the applicant would have to go before the Board of Appeals for the two waivers on both Vinton Street and the east property.  

Mr. Meyer moved to APPROVE the waiver in accordance with the plans submitted. Ms. Donovan seconded the motion.  

AYES: Mahlendorf, Meyer, Donovan, Anzaldo, Hancock  

MOTION CARRIED: 5-0
11. Case No. 10-082
Richard L. Williamson
315 S 68 Street  68132
REQUEST: Waiver of Section 55-186 - Variance to the rear yard setback from 25’ to 21’ to erect 16’ X 10’ elevated deck
LOCATION: 6702 Lake Street
ZONE: R4(35)

RECOMMENDATION: Approval

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Richard Williamson, property owner, and Ms. Christina Williamson appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that this corner property is a new single family dwelling under construction. A deck is proposed to gain access to the rear of the structure. The lot is less than 100’ in depth which creates a hardship. The deck is in keeping with the size and scale of the home that is being constructed. It is similar to a deck that was constructed on the neighboring property to the west.

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

AYES: Meyer, Donovan, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0
12. Case No. 10-083  
Dondi Stender  
20825 Timberlane Drive  68022  

REQUEST: Waiver of Section 55-126 - Variance to the side yard setback from 25’ to 10’ to erect to 30’ X 26’ detached garage  
LOCATION: 20825 Timberlane Drive  
ZONE: R1  

RECOMMENDATION: Approval in accordance with the plans submitted.  

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Dondi Stender appeared before the board in support of this request.  

Mr. Tom Blair, ZBA Administrator, stated that this case involves a site that came into the jurisdiction of Omaha with the Elkhorn annexation and the subsequent change in the zoning did not match. The structure does not meet the required setback of the zoning. The applicant is requesting a waiver to bring it into conformance with the same side yard found throughout the balance of the subdivision.  

Ms. Donovan moved to APPROVE the waiver request in accordance with the plans submitted. Mr. Meyer seconded the motion.  

AYES: Donovan, Anzaldo, Mahlendorf, Meyer, Hancock  

MOTION CARRIED: 5-0
13. Case No. 10-084
    Jeremy Carrell
    5020 S 110 Street  68137

REQUEST: Waiver of Section 55-206 - Variance to the
minimum lot width from 50' to 46.3' and
41.8 and to the minimum lot area from
5,000 sq. ft. to 4,279 sq. ft. and 3,891 sq.
ft.

LOCATION: 3108 & 3112 S 23 Street
ZONE: R5

RECOMMENDATION: Approval

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Mr. Jeremy Carrell appeared
before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the applicant is requesting an administrative subdivision so
that they could be sold separately and be owner occupied.

Ms. Donovan moved to APPROVE the waiver in accordance with the plans submitted. Mr. Mahlendorf
seconded the motion.

AYES: Anzaldo, Mahlendorf, Meyer, Donovan, Hancock

MOTION CARRIED: 5-0
14. Case No. 10-085
GESU Housing Inc.
c/o Brother Mike Wilmot, S.J.
5008 ½ Dodge Street, Unit B  68132

REQUEST: Waiver of Section 55-206 - Variance to the street side yard from 15' to 9' and to the front yard from 35' to 25' to erect single-family residence

LOCATION: 4304 Burdette Street
ZONE: R5(35)

RECOMMENDATION: Approval

At the Zoning Board of Appeals meeting held on Thursday, July 15, 2010, Brother Mike Wilmot, S.J., appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that this is a platted lot at the corner of 43rd & Burdette Street. It is 50’ wide by 120’ in depth. Many of the homes in this neighborhood were constructed at a time where on the side street a side yard setback was permitted where there were no houses fronting on the side street. Since that time, corner lots are typically made larger than the interior lots to accommodate a street side yard setback. So the setback requested by the applicant of 9’ is similar to other street side yard setbacks throughout the neighborhood. The 25’ front yard setback is also common throughout the neighborhood and matches up with other houses on this block face.

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

AYES: Meyer, Donovan, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0
DISCUSSION

Mr. Anzaldo moved to APPROVE an addition to the agenda re: discussion relating to TRP Properties, LLC. Mr. Hancock seconded the motion.

AYES: Meyer, Donovan, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED:  5-0

Mr. Rick Cunningham, Planning Director, was present for the discussion.

Mr. Tom Blair, ZBA Administrator, stated that the City has quite a bit of research, done by the Law Department, on the issues of adjacency and whether the Planning Department was correctly interpreting those sections of the code related to sound. He stated that the board went to the site today and found that the magnet was in use and that the trucks still had the reverse beeping noises.

Mr. Anzaldo stated that they went into the residential area also and were able to hear the train going by. The members of the board agreed that the train was louder than first thought. Mr. Meyer stated that they were not breaking rail. He stated that the magnet was being used to move side plates. Mr. Meyer stated that they did have the wood sleepers under the rails. Mr. Hancock stated that it looked like they were moving their product from the steel sleepers to the wood sleepers.

Mr. Hancock questioned why adjacency defaults to the less intensive zoning use. Ms. Horvath stated that the railroad is the adjacent property. She stated that next to the railroad is the Connectivity Inc. property which is in general industrial. Next to Connectivity is railroad right-of-way which is zoned RR. Horvath stated that according to the code, the right-of-way should be split down the middle and half of it goes to residential which is the one connected to the railway on one side; and the right-of-way to the south would go to general industrial. She stated that standing at the middle of the railroad tracks, where the two places meet, or going to the R4 to take the measurement of sound is the same.

Mr. Hancock inquired why the measurement was being split down the middle. Mr. Blair stated according to the code when railroad right-of-way becomes abandoned and is no longer used for railroad purposes, it takes on the use of the adjacent property on either side. Mr. Hancock pointed out that the railroad is not abandoned. Ms. Horvath stated that this railroad right-of-way does not fall under the noise ordinance because the noise generated by the railroad right-of-way is exempt. It has no criteria for measurements. Measurements are taken from the less intensive zoning that is adjacent to it.

Mr. Hancock commented that TRP wants to call the railroad the adjacent property and take the reading from there. Mr. Cunningham stated that there are no criteria for reading at the railroad property line, and not the table for identifying a decibel. He stated that TRP's interpretation is that they are abutting heavy industrial and that's where they're getting the 80 or 90 db criteria that they want to use. But immediately on the other side of that property is an R4 and TRP's noise is going all the way over to R4.

Mr. Cunningham stated that the Department received an email from TRP indicating that they were splitting rails but not using the same piece of equipment. Mr. Anzaldo stated that they were torching, sawing, and hammering. Mr. Blair mentioned the email that Mr. Jerry Slusky prepared and sent to the board. Mr. Mahlendorf felt that the conditions were being adhered to. Mr. Cunningham stated that TRP has done what the letter stated with exception to the back-up beepers. He stated that based on legal advice, TRP is still violating the noise ordinance as it relates to the decibel level at the property line of R4. Mr. Blair felt that TRP thinks the City interpreted the code incorrectly and gave them a citation in error. Ms. Donovan stated that the code specifically states “nothing over 60 decibels.”
APPROVAL OF MINUTES

Mr. Meyer moved to APPROVE the meeting minutes of June 17, 2010 as written. Mr. Hancock seconded the motion.

AYES: Anzaldo, Mahlendorf, Meyer, Hancock

ABSTAINED: Donovan

MOTION CARRIED: 4-0-1

ADJOURNMENT

Mr. Anzaldo moved to ADJOURN the meeting at 2:30 p.m. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Meyer, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0

-- --------------------------------------------------

Approved (date)

-- --------------------------------------------------

Bert Hancock, Chairman

-- --------------------------------------------------

Claudia Moore, Secretary