MINUTES
ZONING BOARD OF APPEALS
REGULAR MEETING - THURSDAY, MARCH 17, 2011
CONFERENCE ROOM - 7th FLOOR, ROOM 702 – 1:00 P.M.
CIVIC CENTER - 1819 FARNAM STREET
OMAHA, NEBRASKA

MEMBERS PRESENT: Brian Mahlendorf, Vice Chair
Sebastian Anzaldo
Jacque Donovan
Lloyd Meyer
Teri Teutsch, Alternate

OTHERS PRESENT: Tom Blair, Zoning Board of Appeals Administrator
Michael Carter, City Planner
Rosemarie Horvath, Assistant City Attorney
Todd Pfister, Public Works
Joan Green, Public Works

Mr. Mahlendorf 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. 11-004
   Omaha Neon Sign Co.
   (Over from 1/20/11, 2/17/11)
   1120 N 18 Street
   Omaha, NE 68102

   REQUEST: Waiver of Section 55-843 – Variance to the allowed height of a pole sign from 35’ to 60’
   LOCATION: 14540 Grover Street
   ZONE: GI

RECOMMENDATION: The Planning Department remains opposed to this request.

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Bruce Hansen, 14540 Grover Street, Mr. Brent Kuhn, Harris Kuhn Law, 1005 S 107th Ave., and Mr. Troy Panagiotis, Omaha Neon Sign Company, appeared before the board in support of this appeal.

Mr. Tom Blair, ZBA Administrator, stated that this case was laid over to give the applicant an opportunity to look into other ways to improve the signage as it relates to finding this location. The applicant has indicated that they are willing to reduce the overall height from 60’ to 50’. The department also suggested that the Traffic Engineering division of Public Works be contacted for recommendations that can improve the signage in the area so that people can easily find 145th & Grover. It was also suggested to have signage placed on private property on the east end with approval.

Mr. Kuhn stated that the hardships of this case involves the circuitous nature that it takes to get to the property in light of the way the streets are laid out, and due to the typography of the ground (it sits approximately 40’ below L Street). He presented drawings showing the signage which does not provide the needed visibility at 35’. Kuhn stated that the applicant is willing to concede an additional 536’ allowed in the sign budget. The applicant felt that doing so helps prevent sign clutter in the area. Kuhn stated that the applicant’s business is categorized in an industrial business tract, but is actually more of a retail service business. Mr. Blair stated that the signage for commercially zoned properties is different than the type of signage for industrial property. Mr. Hansen stated that the neighboring businesses were approached but not interested in a multi-tenant, off-premise sign. Kuhn mentioned the company’s involvement in a community program and the difficulty that participants experience in locating the business. Mr. Meyer felt that, if granted, this would set a precedent among numerous businesses along the strip between 144th to 154th & Grover. He added that the applicant was aware of the topology at the time of purchasing the property.

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

AYES: Anzaldo

NAYES: Teutsch, Meyer, Donovan, Mahlendorf

MOTION FAILED: 1-4
2. Case No. 11-007
Sullivan Homes
(Over from 1/20/11, 2/17/11)
333 S 93 Street
Omaha, NE 68114

REQUEST: Waiver of Section 55-126 – Variance to the rear yard setback from 35' to 36' 16' to allow construction of an 18' X 10' addition with a covered deck

LOCATION: 610 Loveland Drive

ZONE: R1

RECOMMENDATION: Approval

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Charles Sullivan, Sullivan Homes, 333 S. 93rd Street, appeared before the board in support of this appeal.

Mr. Tom Blair, ZBA Administrator, stated that this case which was laid over involves an irregular lot. He stated that the existing home projects into the required rear yard setback. Blair stated that there is a provision in the code for averaging the rear yard, yet difficult to apply the standard due to the absence of a code to establish what constitutes an irregular lot. Blair felt that this case would qualify stating that the Planning Department is in support.

Mr. Meyer moved to APPROVE the request subject to the building materials matching the existing structure as recommended by the Planning Department. Ms. Donovan seconded the motion.

AYES: Teutsch, Meyer, Donovan, Anzaldo, Mahlendorf

MOTION CARRIED: 5-0
3. Case No. 11-011  
Douglas County School District  
(Over from 2/17/11)  
3215 Cuming Street  
Omaha, NE 68131  

REQUEST: Waiver of Section 55-715, 55-735 & 55-740  
- Variance to the minimum depth of street yard landscaping from 15’ to 0’, to the perimeter parking lot landscaping from 10’ to 0’ and to allow a parking lot without curbs, protective bumpers, wheel stops or other devices to protect landscaping and to allow parking for a non-residential use in a residential district in the required front or street side yard setback  

LOCATION: 5610 S 42 Street  
ZONE: HI (R4-Pending)

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Mark Warneke, Omaha Public Schools, 4041 N 72nd Street, Mr. Scott Dye, Baird Holm LLP, 1500 Woodmen Tower, Ms. Rebecca Harding and Ms. Dolores Silkworth, RDG Planning & Design, 900 Farnam Street, Suite 100, appeared before the board in support of this appeal.

Mr. Tom Blair, ZBA Administrator, stated that this case was laid over due to an additional request for advertisement. He noted that the three waivers refer to: 1) parking in the front yard setback, 2) protective bumpers and wheel stops, and 3) the landscaping adjacent to 42nd Street.

Ms. Silkworth discussed the logic behind the curbless parking only at the visual stop at the front of the parking stall. She pointed out the series of bioswales being used to take the stormwater from the parking lot which is a process called "sheeting" the water. Sheeting the water and not concentrating it reduces the erosiveness of the bioswales. She stated that curbs and islands will be placed into other portions of the parking lot. Silkworth added that the vegetation installed will be 18-24" tall for visibility from inside a vehicle when parking.

In response to Mr. Mahlendorf, Mr. Todd Pfitzer, Traffic Engineer, stated that Public Works remains neutral regarding the parking lot and curbs. He stated that potential is seen in the design, and chose not to limit the applicant's creativity in that area. Pfitzer had no issues with the front yard parking as well. Pfitzer had concerns regarding the front yard setback. He stated that if the setback is granted and later additional sidewalks are required along the curb line, the sidewalk would take up a majority of the minimized green space. Mr. Meyer clarified there is no ordinance that requires a sidewalk in the setback. He felt that due to the topography and the nature of this use, the sidewalk location is safer than along the curb. Pfitzer stated that Public Works had previously required that the applicant build the sidewalk around the driveway (as shown) in addition to building a sidewalk along the curb. Mr. Mahlendorf suggested that the sidewalk waiver(s) be discussed toward the end of the project in approximately 2013. Mr. Kuhn explained the bus drop-offs and other transport which will occur in the parking area of the school and the early childhood center.

Mr. Robert Secord, 4:47 U Street, inquired if the required setback applies to the east side of the street as well. He received notice requiring him to trim his trees on the east side directly across from the elementary school. Mr. Secord was informed that OPPD requested that of him in order to better position the power lines.

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

AYES: Meyer, Donovan, Anzaldo, Teutsch, Mahlendorf.

MOTION CARRIED: 5-0
NEW CASES:

4. Case No. 11-014
   Roncalli High School
   Attn: Jeff Dempsey
   6401 Sorensen Parkway
   Omaha, NE 68152

   REQUEST: Waiver of Section 55-830 – Variance to allow an electronic message sign not permitted in the R2 District and to the maximum area and height for a monument sign from 25 sq. ft. to 47 sq. ft., and from 5’ tall to 9’ tall, and to the maximum sign budget from 32 sq. ft. to 61 sq. ft.

   LOCATION: 6401 Sorensen Parkway
   ZONE: R2

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Jeff Dempsey, President of Roncalli Catholic, appeared before the board in support of this request.

Mr. Mahlendorf stated that the board generally supports this type of request with respect to schools and in keeping with the Department’s approval. Ms. Teutsch confirmed with the applicant that the messages would be school related and no pictures or outside advertising.

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

AYES: Donovan, Anzado, Teutsch, Meyer, Mahlendorf.

MOTION CARRIED: 5-0
5. Case No. 11-015
   Jay Slagle
   317 S 52 Street
   Omaha, NE 68132

   REQUEST: Waiver of Section 55-166 – Variance to the allowed impervious coverage from 45% to 50% to allow the construction of an 8 X 23 garage addition and 259 sq. ft. driveway expansion

   LOCATION: 317 S 52 Street
   ZONE: R3

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Jay Slagle appeared before the board in support of this request.

Mr. Slagle stated that he lives in an area where the lots are tight. He stated that he wants to enlarge the garage and driveway behind the house. Slagle stated that the garage barely fits items that are typical of a family of five. He discussed his ties to the neighborhood and the safety precautions he felt would be necessary in storing his property.

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

AYES: Anzaldo, Teutsch, Meyer, Donovan, Mahlendorf

MOTION CARRIED: 5-0
6. Case No. 11-015  
   REQUEST: Waiver of Section 55-326 – Variance to the maximum height in a GO District that is within 100’ of an R5(35) District from 45’ to 50’ for a free-standing lattice broadcast tower  
   LOCATION: 13326 A Street  
   ZONE: GO  

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Tom Blair, ZBA Administrator, stated that the applicant requested to withdraw this case.

Mr. Anzaldo moved to APPROVE the withdrawal of this case. Ms. Teutsch seconded the motion.

AYES: Teutsch, Meyer, Donovan, Anzaldo, Mahlendorf

MOTION CARRIED: 5-0
7. Case No. 11-017
Westport Commercial LLP &
Brookestone Village, Inc.
10250 Regency Circle, #300
Omaha, NE 68114

REQUEST: Waiver of Section 55-716 & 55-740F –
Variance to the perimeter parking lot
landscape from 10’ to 0’ and to the
bufferyard between CC & R6 from 30’ to 0’

LOCATION: 4150 South 144 Street
ZONE: R6-FF (CC pending)

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Mark LaPuzza, Pansing Hogan Ernst & Bachman LLP, 10250 Regency Circle, appeared before the board on behalf of both applicants in support of this request.

Mr. Brian Mahlendorf recused himself from the vote due to his affiliation with the entity.

Mr. Tom Blair, ZBA Administrator, stated that the applicant proposes a realignment of the lot line between the two properties to the south as shown in the exhibits. He stated that both parties share the parking lot. Blair stated that the Planning Department is in support of the waiver based on the revised lot line location. He added that the rezoning and plat of the property are pending.

Ms. Donovan moved to APPROVE the waiver request. Ms. Teutsch seconded the motion.

AYES: Meyer, Donovan, Anzaldo, Teutsch

ABSTAIN: Mahlendorf

MOTION CARRIED: 4-0-1
8. Case No. 11-018
Urban Village
Attn: Jerry Reimer
4880 S 131 Street, #2
Omaha, NE 68137

REQUEST: Waiver of Section 55-740(f)(4) – Variance to the perimeter parking lot landscaping from 10’ to 0’ to allow construction of a 13-stall parking lot for a new apartment building

LOCATION: 518, 522 & 526 S 30 Street
ZONE: R8

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Gerald Reimer, appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated two ways to resolve this issue: 1) to remove the northern- and southern-most parking stall on the alley and request a waiver of the number of parking stalls required for an 18-unit apartment building, or 2) to provide the parking stalls and request a waiver of the landscaping along the south and north property line. Mr. Meyer referenced the precedent of the alleyway discussed during the inspection of his property.

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

AYES: Donovan, Anzaldo, Teutsch, Meyer, Mahlendorf

MOTION CARRIED: 5-0
9. Case No. 11-019
   Arena Sports Bar & Grill
   Attn: Brian Wragge
   3809 N 90 Street
   Omaha, NE 68134

   REQUEST: Waiver of Section 55-363 & 55-716 – Variance to the use regulations of the CC District to allow outdoor sports and recreation and to the required bufferyard between CC and DR from 30’ to 6’ 15’

   LOCATION: 3809 N 90 Street
   ZONE: CC

RECOMMENDATION: Denial of the request to waive the bufferyard, approval of the use waiver for two sand volleyball courts. The applicant will have to abide by all applicable noise regulations of the zoning ordinance.

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Jim Lang, Attorney, and Mr. Brian Wragge appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, mentioned additional letters from neighbors received today which were added to the case file and forwarded via email to Mr. Lang.

Mr. Lang stated that the applicant proposes to add volleyball courts and 10’ chain-link fence to the facility. Lighting will be placed on the east fence and pointing to the west. There was discussion explaining that the volleyball courts will limit the parking and the circular access that currently exists. The courts will only be open from April 30 to mid-October.

In response to Ms. Teutsch, Mr. Wragge stated that they plan to have speakers for recorded music outside until 10:30 pm. Wragge stated that a privacy fence rather than a chain link fence and berm are also being considered. Ms. Donovan recommended evergreen trees.

In response to Mr. Anzaldo, the applicant agreed to address potential complaints from neighbors regarding the speaker sounds. Wragge added that there would be no volleyball games after 10:30 pm as well.

Mr. Meyer moved to APPROVE waiver request for use and bufferyard setback in accordance with the plans submitted with the following conditions: 1) install an 8-foot high, C-shaped (all of the east side, half north and half south sides) solid fence; 2) light poles and speakers to be placed on the east side and facing toward the building; 3) the lighting on the building be designed so that there is no light spillage out to the adjacent property; 4) no live music outside; 5) no recorded music or speaker music after 10:30 pm outside; and 6) and volleyball dates to run from April 15 to October 15. Ms. Donovan seconded the motion.

AYES: Anzaldo, Teutsch, Meyer, Donovan, Mahlendorf

MOTION CARRIED: 5-0
10. Case No. 11-020
   Concordia Academy School
   Attn: Andy Groothuis
   3504 S 108 Street
   Omaha, NE  68144

   REQUEST: Waiver of Section 55-786 – Variance to the
            residential fence regulations to allow an 8’
            chain link fence surrounding a playground
            area
   LOCATION: 1821 N 90 Street & 8714 Decatur Street
   ZONE: R2

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Andy Groothuis and Mr. Steve Freese appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the church and school are expanding to the east. He stated that the applicant proposes to remove the western-most home (8714 Decatur Street) and replace it with a playground to be surrounded by a fence. Blair stated that a 10’-high fence makes the property look less residential. Ms. Donovan stated that she felt there is no hardship shown by this request.

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

AYES: Meyer, Anzaldo

NAYES: Teutsch, Donovan, Mahlendorf

MOTION FAILED: 2-3
Case No. 11-021
Creighton University
Attn: Lennis D. Pederson
2500 California Plaza
Omaha, NE 68178

REQUEST: Waiver of Section 55-740 - Variance to the hard surfacing requirements and perimeter landscaping for a temporary gravel parking lot

LOCATION: 613 N 17 Street
ZONE: DS ACI-1(PL)

RECOMMENDATION: Approval, provided the parking lot is not used during the 2011 College World Series and the new parking lot is completed by the fall of 2011.

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Lennis Pederson appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the applicant is requesting additional time in order to build a permanent parking lot on this site. Blair stated that the College World Series is approaching and others have been told that a gravel parking lot cannot be used around the TD AmeriTrade stadium. Ms. Donovan had concern about the delay in hard-surfacing the lot prior to the year 2012, according to the applicant’s plan to pave it.

Ms. Donovan moved to APPROVE the gravel parking lot until October 1, 2011. Ms. Teutsch seconded the motion.

AYES: Meyer, Donovan, Anzaldo, Teutsch, Mahlendorf

MOTION CARRIED: 5-0
12. Case No. 11-022
Shawn Spencer
10224 V Street
Omaha, NE 68127

REQUEST: Waiver of Section 55-782(b)(6) – Variance to maximum size for an accessory building in a residential district from 750 sq. ft. to 1,464 sq. ft. by adding a 35' X 24' addition to an existing detached garage

LOCATION: 10224 V Street
ZONE: R3

RECOMMENDATION: Denial

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Shawn Spencer appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that according to the code, detached accessory buildings that are greater in size than 750 sq. ft. must be in the build-able area of the lot. He stated that this building is not in the build-able area due to the triangular shape.

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

AYES: Donovan, Anzaldo, Teutsch, Meyer, Mahlendorf

MOTION CARRIED: 5-0
Case No. 11-023
Neil Willer
10035 N 29 Avenue
Omaha, NE 68112

REQUEST: Waiver of Section 55-126 & 55-715 – Variance to the minimum street yard depth from 30’ to 12.6’ and to the front yard setback from 50’ to 37’ to erect a 30’ X 60’ detached garage

LOCATION: 10035 N 29 Avenue
ZONE: R1-ED

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, March 17, 2011, Mr. Neil Willer and Mr. Robert Torczon, Architect, appeared before the board in support of this request.

Mr. Tom Blair, ZBA Administrator, stated that the waiver is necessary due to the severe grade change to the rear of the property. He stated that the existing residence is located within 37’ of the front property line. Blair stated that in order to keep one access point, the design is such that the drive runs parallel to 29th Avenue and increases the amount of concrete which is in the street yard. Mr. Mahlendorf confirmed a hardship relative to the grade which drops drastically. In response to Ms. Teutsch, Mr. Willer stated that the garage would not be used for business purposes.

Ms. Donovan moved to APPROVE the waiver request in accordance with the plans submitted subject to using similar materials to match the existing structure. Ms. Teutsch seconded the motion.

AYES: Anzaldo, Teutsch, Meyer, Donovan, Mahlendorf

MOTION CARRIED: 5-0
APPROVAL OF MINUTES:

Ms. Donovan moved to APPROVE the February 17, 2011 meeting minutes as amended. Mr. Meyer seconded the motion.

AYES: Teutsch, Meyer, Donovan, Anzaldo, Mahlendorf

MOTION CARRIED: 5-0.

ADJOURNMENT:

Ms. Donovan moved to ADJOURN the meeting at 2:42 p.m. Mr. Mahlendorf seconded the motion.

AYES: Meyer, Donovan, Anzaldo, Teutsch, Mahlendorf

MOTION CARRIED: 5-0

Approved (date)

Brian Mahlendorf, Vice Chair

Claudia Moore, Secretary