MINUTES
ZONING BOARD OF APPEALS
REGULAR MEETING - THURSDAY, OCTOBER 20, 2011
CONFERENCE ROOM - 7th FLOOR, ROOM 702 – 1:00 P.M.
CIVIC CENTER - 1819 FARNAM STREET
OMAHA, NEBRASKA

MEMBERS PRESENT: Bert Hancock, Chair
Brian Mahlendorf, Vice Chair
Sebastian Anzaldo
Jacque Donovan
Sean Kelley, Alternate

MEMBERS NOT PRESENT: Jonathan Nash
Teri Teutsch, Alternate

STAFF PRESENT: Michael Carter, Zoning Board of Appeals Administrator
RoseMarie Horvath, Assistant City Attorney

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 announced that layovers were requested for Case No.’s 11-110 and 11-123.
This case was taken out of order because of a conflict with the Urban Design Review Board.

19. Case No. 11-126
Theresa L. Wyant
3219 South 220th Street
Omaha, NE 68022

REQUEST: Waiver of Section 55-108 - Variance to the minimum lot size from 1 acre to 39,314 square feet and to the minimum lot width from 100’ to 61.60’ to allow subdivision of the property (Lot 2, Trailridge Ranches, Replat 3)

LOCATION: 3305 South 220th Street
ZONE: DR

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Mr. Hancock stated that the applicant has requested that the case be laid over.

Ms. Donovan moved to LAYOVER the request until the November 17, 2011 meeting to allow the applicant time to review the survey. Mr. Anzaldo seconded the motion.

AYES: Kelley, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
LAYOVERS

1. Case No. 11-091
   (Over from 8/18/11 and 9/15/11)
   Kevin Walker
   9458 Maple Street
   Omaha, NE  68134
   REQUEST: Waiver of Section 55-166 – Variance to the
   front yard setback from 35’ to 15’ to
   construct an attached garage
   LOCATION: 9458 Maple Street
   ZONE: R3

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Paul Runyon, Tuff Shed, appeared before the board on behalf of the applicant.

Mr. Michael Carter, ZBA Administrator, stated that the applicant originally proposed a detached garage to the north of the existing garage. The board asked that he return with plans for an attached garage. The proposed garage will be a 20’ x 20’ attached garage on the east side of the existing garage and will encroach to within 15’ of the front property line. The department supports the request with the condition that it be built in conformance with the plans submitted and that no further construction to the south of the existing home and proposed garage be allowed.

Mr. Anzaldo moved to APPROVE subject to the garage being built in conformance with the plans submitted and no further construction to the south side of the home/garage. Ms. Donovan seconded the motion.

AYES: Donovan, Anzaldo, Kelley, Mahlendorf, Hancock

MOTION CARRIED: 5-0
2. Case No. 11-098
(Over from 8/18/11 and 9/15/11)
Jeff Patchin
12305 William Street
Omaha, NE 68144

REQUEST: Waiver of Section 55-146 – Variance to the interior side yard setback from 10’ to 2’6” to allow construction of a 22’ X 30’ 22’ garage addition

LOCATION: 12305 William Street
ZONE: R2

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Jeff Patchin appeared before the board in support of this request.

Mr. Michael Carter, ZBA Administrator, stated that the applicant originally requested a 32’ x 22’ addition to the rear of the existing garage. In the meantime, the applicant revised his request to a 22’ x 30’ addition. The property was surveyed and it was discovered that the side yard setback is not 3’6” but actually 2’6”. The department does not feel there is a hardship or practical difficulty and recommends denial of the request.

Mr. Hancock stated he is concerned with the depth of the garage and asked Mr. Patchin if he could consider reducing the depth of the garage to 22’. Mr. Patchin stated that he has a car that is 20’ long and would need to fit in the garage. He also indicated that OPPD has easement rights to a considerable amount of his property on the southeast side therefore he is unable to construct a garage in that location.

Ms. Donovan stated that a 30’ garage is too long coupled with the existing garage. Mr. Kelley asked Mr. Patchin if 22’ would be long enough. Mr. Patchin asked if 28’ would be negotiable.

Ms. Donovan moved to APPROVE subject to the size of the garage to be 22’ x 22’. Mr. Mahlendorf seconded the motion.

AYES: Anzaldo, Kelley, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
NEW CASES

3. Case No. 11-110 - Layover
   Mike Welniak
   15803 Pacific Street
   Omaha, NE  68118
   REQUEST: Waiver of Section 55-716 - Variance to the required bufferyard between GI and R6 from 50’ to 30’ and 25’ to allow expansion of convenience storage
   LOCATION: 15815 Pacific Street
   ZONE: GI

RECOMMENDATION: Denial.

No one appeared before the board. Mr. Hancock stated that the applicant requested that the case be laid over.

Ms. Donovan moved to LAYOVER the request until the November 17, 2011 meeting. Mr. Kelley seconded the motion.

AYES: Kelley, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
4. Case No. 11-111
   Cesar Fragoso
   4314 Center Street
   Omaha, NE 68105
   REQUEST: Waiver of Section 55-187 - Variance to the front yard setback from 35’ to 17’ to allow a covered front porch to remain
   LOCATION: 4314 Center Street
   ZONE: R4(35)

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Cesar and Deborah Fragoso appeared before the board in support of this request.

Mr. Michael Carter, ZBA Administrator, stated that in 2010 the applicant was before the board to request a waiver to enclose the covered front porch. At that time the waiver was approved for 27’ 5” but subsequently it was determined that the dimension is 17’ therefore the applicant was required to return to the board to correct the waiver. He stated that the department is consistent in recommending against the waiver request.

Mr. Fragoso stated he was not aware of where the property line was located. In response to Mr. Anzaldo, Mr. Fragoso answered that his neighbors do not have any objections.

Mr. Mahlendorf moved to APPROVE. Mr. Kelley seconded the motion.

AYES: Mahlendorf, Donovan, Anzaldo, Kelley, Hancock

MOTION CARRIED: 5-0
5. Case No. 11-112
The Garage Company
8301 Q Street
Omaha, NE 68127

REQUEST: Waiver of Section 55-740(e) - Variance to the paved, hard surfaced driveway requirement for a 20’ x 20’ shed

LOCATION: 14051 Patrick Avenue

ZONE: R3

RECOMMENDATION: Approval subject to the door opening being no larger than 6’.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Mark Taylor, The Garage Company and Mary Wilkins, property owner appeared before the board in support of this request.

Mr. Michael Carter, ZBA Administrator, stated that the applicant is proposing to construct a 20’ x 20’ detached shed/garage behind the house. There are numerous lots being combined to complete the proposed project. The code requires a hard surfaced driveway if a structure is capable of storing a vehicle. Mr. Carter stated that if the garage door is no larger than 6’ wide then the department would support the waiver request.

Mr. Taylor indicated that the garage would be used for a lawn mower and other yard equipment. He stated he would prefer a 9’ wide opening.

Ms. Wilkins stated that two existing sheds that have deteriorated would be removed. She stated she has a two-car garage for her vehicles.

Mr. Mahlendorf moved to APPROVE subject to the overhead door to be no larger than 9’ wide. Ms. Donovan seconded the motion.

AYES: Donovan, Anzaldo, Kelley, Mahlendorf, Hancock

MOTION CARRIED: 5-0
REQUEST: Waiver of Section 55-187 - Variance to the front yard setback from 35’ to 19’ to allow an existing covered front porch to be enclosed

LOCATION: 3818 U Street

ZONE: R4(35)

RECOMMENDATION: Approval subject to no further encroachment into the front yard setback.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Jose Castillo appeared before the board in support of this request.

Mr. Michael Carter, ZBA Administrator, stated that the applicant started enclosing the existing covered front porch and was stopped through an enforcement action because of the lack of a building permit. The front porch encroaches into the front yard setback up to 19’ but the porch fits into the neighborhood. The department supports the request as long as there is no further encroachment into the front yard setback.

Ms. Donovan moved to APPROVE subject to no further encroachment into the front yard setback. Mr. Kelley seconded the motion.

In response to Mr. Hancock, Mr. Castillo stated he could complete the project within two weeks.

AYES: Donovan, Anzaldo, Kelley, Mahlendorf, Hancock

MOTION CARRIED: 5-0
7. Case No. 11-114  
James Incontro  
2818 South 34th Street  
Omaha, NE  68105  

REQUEST: Waiver of Section 55-206 - Variance to the side yard setback from 5’ to 4’ for an existing home to allow the property to be subdivided (Lot 2, Incontro Village)  
LOCATION: 3117 South 60th Street  
ZONE: R5  

RECOMMENDATION: Approval in accordance with the plan submitted.  

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, James Incontro appeared before the board in support of this request.  

Mr. Michael Carter, ZBA Administrator, stated that the property is part of a redevelopment in a 9-lot subdivision. The existing home is only 4’ from the proposed lot line therefore the waiver request of 1’ to the side yard setback is needed to approve the subdivision. The department supports the waiver to provide for the redevelopment of the infill property and recommends approval.  

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

AYES: Kelley, Mahlendorf, Donovan, Hancock  

ABSTAIN: Anzaldo  

MOTION CARRIED: 4-0
8.    Case No. 11-115
      James Incontro
      2818 South 34th Street
      Omaha, NE 68105

REQUEST: Waiver of Section 55-206 - Variance to the minimum lot width from 50’ to 45.54’ for Lot 7, Incontro Village to allow the property to be subdivided

LOCATION: 3227 South 60th Street
ZONE: R5

RECOMMENDATION: Approval in accordance with the plan submitted.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, James Incontro appeared before the board in support of this request.

Mr. Michael Carter, ZBA Administrator, stated that the property is part of a redevelopment in a 9-lot subdivision. The department recommends approval.

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

AYES: Kelley, Mahlendorf, Donovan, Hancock

ABSTAIN: Anzaldo

MOTION CARRIED: 4-0
9. Case No. 11-116
Scott Paskewitz
18230 Tammy Trail
Omaha, NE  68135

REQUEST: Waiver of Section 55-740(e) - Variance to the hard surfaced driveway requirement for a detached garage

LOCATION: 18230 Tammy Trail
ZONE: DR

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Scott and Lisa Paskewitz appeared before the board in support of this request. Mr. Paskewitz stated that he planned on having a driveway to the detached garage but a driveway could not be installed because the septic and lateral fields are located in the front and side yard where a driveway would be located. Ms. Paskewitz confirmed that vehicles would not be stored in the detached garage.

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

AYES: Mahlendorf, Donovan, Anzaldo, Kelley, Hancock

MOTION CARRIED: 5-0
10. Case No. 11-117
   Thomas and Kathleen Williams
   1313 Turner Boulevard
   Omaha, NE  68105-1932

   REQUEST: Waiver of Section 55-166 - Variance to the maximum building coverage from 35% to 42%; to the maximum impervious coverage from 45% to 68%; and to the interior side yard from 7’ to 3’9” to allow construction of a house addition

   LOCATION: 1313 Turner Boulevard
   ZONE: R3

   RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Thomas Williams appeared before the board in support of this request. Mr. Williams stated that the existing deck would be removed and replaced with a covered porch and the addition of another entrance to the basement. He also stated that the kitchen would be expanded at the same time.

Mr. Michael Carter, ZBA Administrator, stated that the structure is large and exceeds the maximum building and impervious coverage. The department feels that the request is an overbuilding of the site with no hardship or practical difficulty. The department recommends denial.

Mr. Williams submitted a list taken from the Douglas County Assessors and Douglas-Omaha Geographic Information Systems websites of other homes in the Field Club area that have higher building coverage (Exhibit 2).

Mr. Hancock asked Mr. Williams what the size of the proposed footprint would be as compared to the existing footprint. Mr. Carter stated the existing building coverage is 37% and the proposed coverage would be 42%. The existing coverage already exceeds the maximum building coverage and the impervious coverage.

In response to Mr. Hancock, Mr. Williams stated he has talked to his neighbors and they have no problem with the proposed construction. Mr. Carter stated that an e-mail was received from a neighbor in support of the request.

Mr. Hancock indicated that he is not comfortable with the request but appreciated the evidence that was presented. He stated he is concerned that a boxed-in effect is being created with the neighbors.

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

Mr. Mahlendorf stated that the coverage in the whole neighborhood exceeds the maximum building coverage and the project should be done tastefully.

AYES: Donovan, Anzaldo, Kelley, Mahlendorf, Hancock

MOTION CARRIED: 5-0
11. Case No. 11-118  
Patricia Greives  
3037 South 35th Avenue  
Omaha, NE 68105  

REQUEST: Waiver of Section 55-206 - Variance to the rear yard setback from 25’ to 15’ to allow construction of a sunroom addition  
LOCATION: 3037 South 35th Avenue  
ZONE: R5  

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Patricia Grieves, owner; Russell Grieves, son of owner; Robert Laughlin, attorney; and Geoff (last name unknown), representative from Champion, appeared before the board in support of this request.

Jerry Taucreti, 3033 South 35th Avenue, appeared before the board in opposition. Mr. Taucreti stated that he is opposed to the sunroom addition because the homes in the area are very close to each other and the back yards are small.

Mr. Laughlin submitted a photo of the subject property (Exhibit 2). He stated that the sunroom would be the exact same size as the deck. He indicated that Ms. Grieves is 76 years old and handicapped. He stated she would like to use the deck year round. Mr. Laughlin stated that another property two doors down have a shed built up against the fence. The sunroom would be more private for the neighbors. The practical difficulty is that Ms. Grieves cannot use the deck most of the year.

Mr. Hancock indicated that there was not enough time to look at this case and he is not comfortable approving the request when there is opposition. He suggested that the board layover the case.

Mr. Anzaldo moved to LAYOVER until the November 17, 2011 meeting. Ms. Donovan seconded the motion.

AYES: Anzaldo, Kelley, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
12. Case No. 11-119
Richard Berkshire
Berkshire Family Building, LLC
600-610 South 76th Street
Omaha, NE  68114

REQUEST: Waiver of Section 55-146 - Variance to the minimum lot width from 80’ to 39’ and 52’ and the interior side yard setback from 10’ to 5’ to allow subdivision of the property

LOCATION: 600-610 South 76th Street
ZONE: R1 (R2-Pending)

RECOMMENDATION: Layover for the applicant to provide a site plan with dimensions for the existing improvements.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Michael Brenneman, consulting engineer and Gary Petersen, NP Dodge, 13321 California Street, appeared before the board on behalf of the applicant and in support of this request.

Mr. Michael Carter, ZBA Administrator, stated there is an existing plat and rezoning request scheduled to go before the Planning Board on November 2, 2011 to subdivide two existing lots, with two homes, into a four-lot subdivision. Two of the lots that are being created do not meet the minimum lot width and appear to not meet setbacks at one point. Because the scale of the plan appears to be in error and the site plan may need additional waivers, the department recommends a layover of the request to allow time for the applicant to pursue the subdivision and the creation of new lots and zoning with the Planning Board. Mr. Carter stated that the department received numerous e-mails in opposition.

Mr. Brenneman stated there are two existing lots with an existing house on the north side and another home that was recently moved onto the property. The two existing homes will stay as they are. In response to Mr. Hancock, Mr. Brenneman stated it has been slow in getting things done but he anticipates completion by the end of the year.

Mr. Hancock indicated that the case will most likely be laid over but requested to hear from the opposition. He reminded the opposition that the Board is only concerned with the waivers requested.

Susan Cheslak, 620 South 76th Street, appeared before the board in opposition. Ms. Cheslak stated the property is part of the Old Loveland Homeowners Association and the lots in the subdivision were built as acre lots and was established to be an estate-like setting and the value of the property is in the land itself. She stated that there are personal issues with the builder. In the beginning, the 2½-story house should have never been put into the neighborhood. The home is not functional and all the homes in the area are ranches or raised ranches. At the Planning Board on June 6, 2011, the neighborhood was told that the home was to be moved from 1301 South 75th Street, which was originally a clubhouse for women. She stated that Mr. Berkshire assured the neighbors that he would abide with the code. He then moved the house to the back of the lot therefore creating the zoning variances himself.

Mr. Hancock addressed the dimensions of the setbacks shown on the drawing. Mr. Brenneman confirmed that the home, as situated, conforms to the R1 zoning.

Mark Evans, Old Loveland Homeowners Association, questioned if the homeowners were invited to a hearing where they could view the subdivision of the lots.

Mr. Petersen stated that approximately a week ago a letter was sent out to all neighbors within 300’ of the existing house at 610 South 76th Street. The letter updated the progress of the renovation of the existing house and also indicated that the neighbors would be called and met with individually. He stated that addresses and phone numbers were also submitted to the neighbors. As of today, he indicated that they have not heard from any of the neighbors.
Mr. Hancock suggested that the case be laid over and encouraged a meeting be held with the neighbors. He also indicated that there is a lot of frustration, the house has sat for a long time and there is a trust issue.

Mr. Mahlendorf moved to LAYOVER until the November 17, 2011 meeting to allow applicant time to pursue the subdivision and the creation of new lots and zoning with the Planning Board. Ms. Donovan seconded the motion.

AYES: Kelley, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
13. Case No. 11-120
Larry and Lori Wee
12232 Farnam Street
Omaha, NE  68154

REQUEST: Waiver of Section 55-146 - Variance to the street side yard setback from 20’ to 11.2’ to allow 14’ x 24’ garage to remain

LOCATION: 12232 Farnam Street
ZONE: R2

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Larry Wee appeared before the board in support of this request.

Mr. Michael Carter, ZBA Administrator, stated the waiver request is caused by a need to comply with the ordinance for the street side yard setback. Apparently, the building permit was issued for the building but the plans showed a required 20’ side yard setback but during the construction process it was determined that the setback was measured from the wrong spot. The department believes there is no hardship or practical difficulty and the property can be developed in compliance. The department recommends denial.

Mr. Wee stated the permit was issued before the contractor put in the concrete. The permit was given to the contractor, Mike Zorinsky with 3M Construction. Mr. Wee stated he received the permit back from Mr. Zorinsky with two stamps therefore he thought the driveway was in compliance with the zoning requisites. Mr. Hancock questioned how the footings were poured before they were inspected. Mr. Wee stated the footings were poured by 3M Construction. Mr. Hancock questioned why the contractor of 3M Construction was not present.

Mr. Hancock stated this is the only garage that sticks out in the entire neighborhood. Mr. Wee stated the garage is on a side street with four taller bushes on the west side of the garage. He stated there is support from the neighbors on the corners and an architect that lives in the area commented on how nice the garage looks sitting there. Mr. Wee stated he would not have invested $16-17,000 in the garage if he thought it could be bulldozed. He stated the structure of the garage is consistent with the structure of the house, which is well maintained.

In response to Mr. Kelley, Mr. Wee stated he was the one who applied for the building permit and the permit has a stamp with an inspector’s initials.

In response to Ms. Donovan, Mr. Wee answered that he does not have the stamped permit with him. He stated that Boundary Line Survey did the survey after the garage was built and spent approximately four hours finding the corners of the property. Mr. Wee admitted that he did not have a survey before the garage was built. He stated he would not have started building on the slab if he had known it was in conflict. The garage is built to comply with the neighborhood and the garage does not obstruct any vision.

Mr. Mahlendorf stated he is confused on how it got to this point. Mr. Hancock answered that the permit was issued based on what the applicant provided. Mr. Wee admitted that he was in error and stated he measured from the back corner, which is 7.2’. He stated he thought he was 20’ from the back and did not pay attention to the slab.

Mr. Anzaldo questioned if the garage could have been built properly with the correct setbacks. Mr. Wee answered that it would have been difficult because the roof of the garage would have been too close to the house. In response to Mr. Anzaldo, Mr. Carter stated the permit was issued showing a 20’ setback and it was built with an 11’ setback.

Mr. Hancock stated he does not support the request. The only reason he would support the request is for financial hardship, which is not a consideration by the board. Mr. Hancock stated he does not
disagree that the garage is tastefully done and looks nice. He stated he does not understand how a footing got poured without an inspection.

Ms. Donovan questioned if the contractor takes any responsibility. Mr. Anzaldo stated this is a huge mistake and 3M Construction has some obligation.

Mr. Hancock stated this is one of the most egregious cases that the board has seen. He stated he would like to see the original permit and who signed off on it. Ms. Donovan suggested that the builder and the party from 3M Construction appear before the board.

Mr. Mahlendorf moved to LAYOVER until the November 17, 2011 meeting to allow the builder to appear before the board and to allow the applicant time to submit additional information including a set of drawings and the original building permit. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Donovan, Anzaldo, Kelley, Hancock

MOTION CARRIED: 5-0
14. Case No. 11-121  
Andrew Rikli  
Westside Community Schools  
909 South 76th Street  
Omaha, NE 68114  
REQUEST: Waiver of Section 55-764(d) - Variance to the capacity limitations for a Daycare services (general) use in a R2 district from 12 to 45 individuals  
LOCATION: 9030 Western Avenue  
ZONE: R2  

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Michael Coyle, 500 Energy Plaza appeared before the board on behalf of the applicant.

Mr. Michael Carter, ZBA Administrator, stated that this case has been before the Planning Board and is pending before the City Council for a Special Use Permit for the daycare. As part of the process, the regulations limit the capacity to 12 children in a residential district. The department recognizes a practical difficulty and recommends approval of the request.

Mr. Mahlendorf moved to APPROVE. Mr. Kelley seconded the motion.

AYES: Donovan, Anzaldo, Kelley, Mahlendorf, Hancock

MOTION CARRIED: 5-0
15. Case No. 11-122
Urban Village
Park Avenue Redevelopment, LLC
4880 South 131st Street Suite 2
Omaha, NE  68137

REQUEST: Waiver of Section 55-735 - Variance to allow off-street parking in the front yard setback
LOCATION: 806 Park Avenue; 709 and 713 South 30th Street; and 710 and 712 Park Avenue
ZONE: R7

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Jerry Reimer, Urban Village, 4880 South 131st Street, appeared before the board in support of the request.

Mr. Michael Carter, ZBA Administrator, stated there are two locations involved with a total of three proposed parking lots to include approximately 70 plus parking stalls. The code limits the parking encroachment in the front yard setback per zoning regulations. He stated that the way the parking lots are lined up fits in with the neighborhood and the existing historical buildings on the property. The department recommends approval as submitted.

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

Mr. Kelley questioned lighting and illumination plans for the project. Mr. Reimer stated there will be lighting on the buildings and additional lighting in the parking lots.

AYES: Anzaldo, Kelley, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
16. Case No. 11-123 - Layover
Jim and Shirley Huerter
9230 Capitol Avenue
Omaha, NE 68114

REQUEST: Waiver of Section 55-126 & 55-786 - Variance to the street side yard setback from 25’ to 14’ for a 9’ x 12’ shed; to the rear yard setback from 35’ to 2’ and the street side yard setback from 25’ to 14’ for pool equipment; to the maximum impervious coverage from 30% to 46%; and to allow a 6’ high privacy fence in the street side yard setback

LOCATION: 9230 Capitol Avenue
ZONE: R1

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Michael Carter, ZBA Administrator stated that the applicant has requested that the case be laid over.

Ms. Donovan moved to LAYOVER until the November 17, 2011 meeting. Mr. Kelley seconded the motion.

AYES: Kelley, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
17.  Case No. 11-124  
Andrew Gustafson  
3126 Chicago Street  
Omaha, NE  68131  

REQUEST:  Waiver of Section 55-246 - Variance to the front yard setback from 35’ to 22’ to rebuild existing covered front porch  

LOCATION:  140 North 33rd Street  

ZONE:  R7  

RECOMMENDATION:  Approval in accordance with the plans submitted.  

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Andrew Gustafson, 3126 Chicago, appeared before the board in support of the request.  

Mr. Michael Carter, ZBA Administrator, stated the request is to rebuild the bottom portion of an existing covered front porch.  The roof will remain as it is but the porch encroaches into the front yard setback.  The porch fits into the neighborhood therefore the department recommends approval.  

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

AYES:  Mahlendorf, Donovan, Anzaldo, Kelley, Hancock  

MOTION CARRIED:  5-0
18. Case No. 11-125
Tim Lang
9710 Parker Street
Omaha, NE 68114-1248
REQUEST: Waiver of Section 55-146 - Variance to the interior side yard setback from 10’ to 3’ to construct a garage/house addition
LOCATION: 9710 Parker Street
ZONE: R2

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Tim Lang and Mary Reilly, 9710 Parker Street, appeared before the board in support of the request.

Mr. Michael Carter, ZBA Administrator, stated the applicant is requesting to build an addition on the west side of the house that will encroach up to 3’ from the side property line. The lot widens as it goes toward the back and there is ample space to build in compliance with the code. The department does not believe there is a hardship or practical difficulty in complying with the code therefore the department recommends denial.

Mr. Lang stated he is proposing to build a garage on the side of the house with a shop area toward the rear of the house.

Paul Kenny, 9716 Parker Street, appeared before the board in opposition to the request. Mr. Kenny stated he recently purchased the adjacent home to the west. He stated he does not have a front or back yard and the side yard is his front yard. He would like to build on the side yard in the future.

Mr. Hancock confirmed that the irregular shaped lot is taken into consideration. He stated he would not support the project because the addition is not behind the pinch point of 3’ where there is a large amount of structure located in the setback.

Mr. Lang stated he chose the location for the garage because it lines up with the main body of the house.

Mr. Carter stated another option is to build a detached structure as close as 3’ on the side yard setback but the lot is a double fronted lot because it backs up to a street. The structure would have to be 60’ from both street property lines if the side yard setback is 3’. The project could be built closer than 60’, but the side yard setback is then 10’.

Ms. Donovan suggested talking to the neighbors. Mr. Hancock suggested a layover to redesign the addition.

Mr. Anzaldo moved to LAYOVER until the November 17, 2011 meeting to allow applicant time to redesign and submit a new proposal. Ms. Donovan seconded the motion.

AYES: Anzaldo, Kelley, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
20. Case No. 11-127  
Jeremy Carrell  
5020 South 110th Street  
Omaha, NE 68137  
REQUEST: Waiver of Section 55-108 - Variance to the interior side yard setback from 25’ to 10’ to allow an existing garage to remain  
LOCATION: 18008 Sunset Lane  
ZONE: DR  
RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Jeremy Carrell, 5020 South 110th Street, appeared before the board on behalf of the owner.

Mr. Michael Carter, ZBA Administrator, stated the request is to allow an existing detached garage to remain in the back yard. The garage was built over the property line when constructed and the owner now wants to move the property line to bring into compliance. The department recommends approval as submitted.

Mr. Carrell stated that the two properties involved are owned by brothers. He stated that one brother is moving and the other brother is willing to give up a portion of his yard so that the property can be sold.

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

AYES: Mahlendorf, Donovan, Anzaldo, Kelley, Hancock  
MOTION CARRIED: 5-0
21. Case No. 11-128  
Edward Okosi  
12311 Parker Circle  
Omaha, NE 68154  

REQUEST: Waiver of Section 55-764(d) - Variance to the capacity limitation for a Daycare services (general) use in a R3 district from 12 to 40 individuals  
LOCATION: 5622 North 69th Street  
ZONE: R3  

RECOMMENDATION: Approval in accordance with the plans submitted.  

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Edward Okosi, 12311 Parker Circle, appeared before the board in support of the request.  

Mr. Michael Carter, ZBA Administrator, stated that this case has been before the Planning Board and is pending before the City Council for a Special Use Permit for the daycare. As part of the process, the regulations limit the capacity to 12 children in a residential district. The property is located on a collector street and is a good use of the property. The department recommends approval of the request.  

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

AYES: Donovan, Anzaldo, Kelley, Mahlendorf, Hancock  

MOTION CARRIED: 5-0
22. Case No. 11-129
Grace Lutheran Church
1326 South 26th Street
Omaha, NE  68105

REQUEST: Waiver of Section 55-246, 55-735(b) & 55-740(f) - Variance to the maximum impervious coverage from 70% to 86%, to allow off-street parking for a non-residential use within the required front yard setback and to the perimeter parking lot landscaping from 10’ to 5.2’ and 5’ to allow expansion of an existing parking lot

LOCATION: 1326 South 26th Street
ZONE: R7

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Dan Dolezal, Ehrhart Griffin & Associates, 3552 Farnam Street, appeared before the board on behalf of the applicant.

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

AYES: Anzaldo, Kelley, Mahlundorf, Donovan, Hancock

MOTION CARRIED: 5-0
23.  Case No. 11-131
    Jodi Peckham
    5409 North 9th Street
    Omaha, NE  68110

REQUEST:  Waiver of Section 55-187 - Variance to the
front yard setback from 35’ to 10’ to allow a
25’ x 27’ house addition

LOCATION:  5409 North 9th Street

ZONE:  R4(35)

RECOMMENDATION:  Denial.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Jodi Peckham, 5409 North 9th Street, appeared before the board in support of the request.

Mr. Michael Carter, ZBA Administrator, stated the applicant is requesting a waiver to allow a 25’ x 27’ house addition on the front of the house. The department recommends denial.

Mr. Hancock stated he is not opposed to the waiver because there are no nearby neighbors but there is concern that the adjacent property could be developed into a commercial use in the future.

Ms. Peckham submitted a personal drawing indicating the layout. She stated her father and brother would be doing the construction.

In response to Mr. Anzaldo, Mr. Carter stated the department recommends denial because the proposed addition would take up the entire front yard.

In response to Mr. Carter, Ms. Peckham stated she does not have a survey.

Ms. Donovan moved to LAYOVER until the November 17, 2011 meeting to allow applicant time to obtain a survey. Mr. Kelley seconded the motion.

AYES:  Kelley, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED:  5-0
24. Case No. 11-132
G. Thomas Simmons
667 North 66th Street
Omaha, NE 68132

REQUEST: Waiver of Section 55-734 - Variance to the required number of off-street parking stalls from 38 to 14

LOCATION: 5203 Leavenworth Street
ZONE: GC

RECOMMENDATION: Layover for the applicant to submit documentation for additional shared parking from adjacent property owners.

At the Zoning Board of Appeals meeting held on Thursday, October 20, 2011, Tom Simmons, 667 North 66th Street and Joe Saniuk, The Architectural Offices, 4610 Dodge Street, appeared before the board in support of the request.

Mr. Michael Carter, ZBA Administrator, stated that the property is the former Wohler’s Grocery Store and is being remodeled into a bookstore and a restaurant with outside dining. The code requires 38 parking stalls on site but as part of the redevelopment of the property there will be 14 stalls on the property that can be included and 11 stalls on the street which cannot be included. The department recommends a layover to allow the applicant time to submit additional information for the review.

Paul Halbur, 500 Energy Plaza, appeared before the board. He stated he is in support of the project but he owns the adjacent property to the south and is concerned with a potential parking issue. He stated that the proposed project is severely under parked and he is concerned that if there is not an understanding, there will be overflow parking in his parking lot.

Mr. Simmons stated he had a conversation with Mr. Halbur to try to work out problematic parking problems. He stated that Mr. Halbur submitted a parking lease but the original price was increased and secondly, the parking was very intermittent. Mr. Simmons stated he negotiated a signed parking lease with Elmwood Tower to lease 10 stalls for employees and 14 stalls for overflow of customers (Exhibit 2).

Mr. Saniuk stated the capacity of the restaurant would be 100 with an outdoor dining area. Mr. Simmons added that the property would include a bookstore with a coffee shop with a drive-thru to the west.

Mr. Carter encouraged the board members to layover the request to give the department an opportunity to review the proposed parking stalls. The property is zoned residential (multi-family) and there are restrictions to commercial parking in a residential district.

Mr. Simmons stated he has $1.7 million in the project and has enhanced the building. He stated he does not think it is fair that Mr. Halbur hold him ransom and not validate the waiver because other parking arrangements were made.

Ms. Donovan stated she has concerns about parking in the leased parking stalls especially during inclement weather.

Mr. Halbur stated he still has concerns that the restaurant customers will naturally park in his parking lot and he has to be the “bad guy” and the “parking lot police”. Mr. Halbur stated that by allowing the severely under parked use, even with a lease, will impact his property.

Ms. Donovan stated the property was bought with limitations. She stated she is sensitive to Mr. Halbur’s position and there will be parking problems forever. The proposed leased parking stalls are a long ways away.

In response to Mr. Kelley, Mr. Saniuk stated that Mr. Simmons owns the lot where the dry cleaning building is located. There are 14 on-site parking stalls, 4 off-street parking stalls on Leavenworth and 7
off-street parking stalls on 52nd Street for a total of 25 parking stalls. Mr. Carter stated that restaurants are historically higher in parking demand.

Mr. Simmons indicated that the parking on the east side was modified in accordance with Omaha by Design guidelines. In response to Ms. Donovan, Mr. Simmons stated that 8 or 9 stalls were lost because of the Omaha by Design.

Mr. Simmons stated that he is not interested in conflict but there were too many limitations so there was never going to be an opportunity to park in Mr. Halbur’s parking lot. Mr. Simmons stated he did whatever he had to do to form another relationship. He confirmed that the employees would park across the street at the Elmwood Tower and there would be extra security in that parking lot.

Mr. Hancock asked Mr. Carter for his opinion. Mr. Carter stated the department has not had the opportunity to look at the location for the proposed parking stalls. The property is zoned residential and at a minimum the department would like to review and insure that the parking complies and does not cause further problems. The department would want an acceptable plan.

Mr. Simmons stated he appreciates the city’s position but he is concerned that he would need to pull the waiver application and reapply because he cannot get the permits for the tenant finish on the restaurant when the waiver is pending. He stated he has three signed leases and was unaware that a waiver request could hold up a finish building permit.

Mr. Anzaldo asked the Chairman if the waiver could be approved and then allow the applicant to return to the board with a new waiver to add additional legal parking stalls at a new location.

Mr. Halbur suggested granting the waiver with the stipulation that Mr. Simmons maintain a sufficient parking lease elsewhere. Mr. Hancock responded to Mr. Halbur and stated the board will not negotiate a parking lease and unfortunately, the trade off is that by not working out a lease, Mr. Halbur would now have to be a “bad cop”.

Mr. Mahlendorf stated that, in his mind, Mr. Simmons was 13 stalls short and has now leased 24 stalls.

Mr. Hancock stated that any motion approved today would need to be subject to the applicant having 24 off-street parking stalls at Elmwood Tower. Ms. Horvath stated the parking stalls need to conform. Mr. Carter stated that if the parking stalls are not legal then the waiver would be done.

Ms. Donovan asked Mr. Simmons if he would be willing to put up “No Parking” signs in Mr. Halbur’s parking lot. Mr. Halbur stated he intends to put up additional signs. Mr. Halbur stated the additional 11 off-street parking stalls are also for the neighborhood. Mr. Simmons stated that if the waiver is not granted then Dundee Bank gets to foreclose on the building, his leases will go away and he goes broke.

Mr. Mahlendorf moved to APPROVE subject to 13 additional stalls being leased legally.

Mr. Simmons was concerned that the city may determine that the stalls are not legal. Mr. Mahlendorf answered that he would have time to figure out where an additional 13 cars will park. Mr. Carter stated that the condition must be satisfied before the building permit can be issued.

Mr. Kelley questioned if the board could approve and come back to revisit. Ms. Horvath stated the board could do a “Show Cause”. He stated that the last thing we would want to do is to say Mr. Simmons could get the waiver but then it could not be satisfied. Mr. Simmons stated he would not like to have the provision added to the motion.

Mr. Anzaldo stated that it bothers him that Mr. Simmons has spent $1.7 million and the board is holding him hostage.
Mr. Hancock stated that in his opinion the applicant has shown that he has secured 24 off-street parking stalls.

Motion died for lack of a second.

Mr. Kelley moved to APPROVE the waiver request to the required number of off-street parking stalls from 38 to 14. Mr. Hancock seconded the motion.

AYES: Mahlendorf, Donovan, Anzaldo, Kelley, Hancock

MOTION CARRIED: 5-0
APPROVAL OF MINUTES

Ms. Donovan moved to APPROVE the August 18, 2011 meeting minutes. Mr. Hancock seconded the motion.

AYES: Donovan, Anzaldo, Hancock

MOTION CARRIED: 3-0

Mr. Mahlendorf moved to APPROVE the September 15, 2011 meeting minutes. Mr. Anzaldo seconded the motion.

AYES: Donovan, Anzaldo, Mahlendorf

MOTION CARRIED: 3-0

DISCUSSION:

Ms. Horvath, Assistant City Attorney, Law Department stated that the VOA (Veterans of America) case is going before the appellant court.

Ms. Horvath suggested that there be a requirement that an applicant obtain a survey before coming to the board. Mr. Hancock suggested adding it to the next agenda.

Mr. Carter stated the election of officers would be in December. Mr. Carter suggested moving the meeting place of the ZBA meeting to the Legislative Chambers beginning next year.

ADJOURNMENT

Ms. Donovan moved to ADJOURN the meeting at 3:38 pm. Mr. Mahlendorf seconded the motion.

AYES: Anzaldo, Kelley, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0

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Approved (date)

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Bert Hancock, Chair

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Debbie Hightower, Secretary