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 11-070, 11-126, 11-131 and 11-144.
LAYOVERS

1. Case No. 11-070- Layover
   (Over from 7/21/11, 8/18/11, and
   9/15/11)
   Slosburg Company
   10040 Regency Circle #200
   Omaha, NE 68114

REQUEST: Waiver of Section 55-716, 55-740(f)(4) & 55-935 – Variance to the bufferyard requirements between CC and R2 from 30’ with screening to 0’ without screening; to the perimeter parking lot landscaping from 5’ to 0’; and to the minimum sidewalk width from 10’ to no less than 7’ for a large retail building

LOCATION: 2501 S 90 Street and 8998 West Center Road

ZONE: CC & CC/FF

RECOMMENDATION: Approval of the request in accordance with the plans submitted, subject to: 1) The applicant applying to rezone the property to MCC-Major Commercial Corridor Overlay District; 2) The site meeting all other MCC regulations, including signage; and 3) The applicant returning to the ZBA once the design/placement for the corner building has been finalized.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Mike Carter, ZBA Administrator, presented this case and recommended a layover.

Mr. Anzaldo moved to LAYOVER the request until the December 15, 2011 meeting. Ms. Teutsch seconded the motion.

AYES: Anzaldo, Teutsch, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
2. Case No. 11-104  
(Over from 9/15/11)  
Nebraska Methodist Hospital  
8303 Dodge Street  
Omaha, NE  68114  

REQUEST:  Waiver of Section 55-123 & 55-740 – Variance to allow a temporary gravel parking lot for construction personnel not permitted in the R1 district  

LOCATION:  8135 & 8151 Farnam Drive and 8220 & 8224 Harney Street  

ZONE:  R1  

RECOMMENDATION:  Approved in accordance with the information/site plan submitted, subject to:  1) replacing curb and properly landscape the former drive access from Harney Street; 2) variance expiring on March 31, 2015 or upon the issuance of a certificate of occupancy for the parking garage, whichever comes first; and 3) work with the Planning Department to prepare an acceptable landscape plan.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Tom Eiserman, Vice President, Methodist Health System, 8511 West Dodge Road; Jackie Pueppke, 1500 Woodmen Tower; and Jered Morris, 2111 South 67th Street, appeared before the board in support of this request.

Mike Carter, ZBA Administrator, stated that a revised plan was submitted and many of the issues were addressed but the department continues to be concerned about the landscaping and compliance with screening requirements. The department recommends approval in accordance with the information/site plan submitted, subject to:  1) replace the curb and properly landscape the former drive access from Harney Street; 2) variance expiring on March 31, 2015 or upon the issuance of a certificate of occupancy for the parking garage, whichever comes first; and 3) work with the Planning Department to prepare an acceptable landscape plan.

Mr. Eiserman stated that landscaping would be added to the closed drive access on Harney Street. Mr. Carter explained that there is a significant amount of area to be screened and the landscaping would need to be acceptable or in compliance based on a typical screened parking lot. The department is in agreement to the hours of operation.

Mr. Eiserman stated the parking garage will be built first but the temporary parking would be needed until the end of the surgery project or approximately March 2015.

Mr. Mahlendorf moved to approve in accordance with the information/site plan submitted, subject to:  1) replace the curb and properly landscape the former drive access from Harney Street; 2) variance expiring on March 31, 2015; and 3) work with the Planning Department to prepare an acceptable landscape plan. Ms. Donovan seconded the motion.

AYES:  Teutsch, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED:  5-0
3. Case No. 11-110  
(Over from 10/20/11)  
Mike Welniak  
15803 Pacific Street  
Omaha, NE  68118  
REQUEST: Waiver of Section 55-716 - Variance to the required buffer yard between GI and R6 from 50’ to 30’ and 25’ to allow expansion of convenience storage  
LOCATION: 15815 Pacific Street  
ZONE: GI  
RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Mike Welniak and Larry Jobeun, 11440 West Center Road, appeared before the board in support of the request.

Mike Carter, ZBA Administrator, stated that the applicant is proposing to construct a convenience and storage facility on a portion of the property. The facility will encroach into the required 50’ buffer yard that is adjacent to an apartment complex to the east. The department is in opposition to the request. There is no hardship or practical difficulty. The project can comply with the code and brought into compliance legally without access on the east side of the proposed buildings.

Mr. Jobeun presented a site plan of the proposed indoor storage and distributed photos of the existing conditions of the site. He pointed out that the site is zoned GI (General Industrial) and was in effect long before the residential zoning. Outdoor storage is permitted in the GI zoning but the existing outdoor storage is not aesthetically pleasing. As an improvement to the area, the expansion of the convenience storage will move the outdoor storage to inside storage. Mr. Jobeun indicated that the nearest apartment building is 75’ away from the property line. The buildings are all outside the 50’ buffer and the only portion inside the 50’ buffer is the paved area. Mr. Jobeun stated the intent of the code will be meet by installing “green paving” which is a graded system/hard paving that will support the weight of a vehicle.

Bob Dailey, 1601 Dodge Street, appeared before the board in opposition and on behalf of Rick Vosik who owns a home nearest to the property. Mr. Dailey indicated that the standard is not met and the buffer is not an unnecessary hardship. He indicated that this is the first opportunity to see any plans therefore he is not in a position to respond.

Brenda Vosik, 1422 South 158th Circle, appeared before the board in opposition. Ms. Vosik indicated that she is skeptical that the indoor storage will ever be built.

Jerry Slusky, 8712 West Dodge Road, appeared before the board in opposition and on behalf of Broadmoor Development, the apartment complex located near the project. He stated that there is no hardship and the project can be modified and brought into compliance without a waiver. Bob Stratton, Broadmoor Development, stated he does not understand the need for a 50’ setback change that will set precedence in the area.

Mr. Jobeun indicated that the waiver is realistically a 25’ waiver for the “green paving” and again will be a substantial improvement and much more aesthetically pleasing than outdoor storage. He offered to lay over the request to allow time to meet with the neighbors.

Gary Petersen appeared before the board in opposition and on behalf of John Peterson of American Development, which is an adjoining landowner. Mr. Petersen stated that all adjoining areas meet the buffer requirements and it is important for the area to maintain the buffer requirements.

Mr. Hancock concluded that there is no hardship and the proposal seems to be a design preference. He stated that it is important to meet with the neighbors. The proposal is better than outdoor storage but if the buildings were not built legally, there would be no ability to limit outdoor storage. Sometimes the solution is better than the alternative.
Mr. Mahlendorf moved to LAYOVER the request until the December 15, 2011 meeting. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Donovan, Anzaldo, Teutsch, Hancock

MOTION CARRIED: 5-0
4. Case No. 11-118  
(Over from 10/20/11)  
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, November 17, 2011, Patricia Grieves, owner; Russell Grieves, son of owner; Robert Laughlin, 11606 Arbor Street, attorney; and Geoff Shinn, representative from Champion, appeared before the board in support of this request.

Mike Carter, ZBA Administrator, stated that the applicant is requesting to construct a sunroom addition on the existing deck that encroaches into the rear yard setback. The department recommends denial.

Mr. Hancock indicated that the request was laid over to give the board an opportunity to visit the property. He stated the homes are new and the board feels the sunroom would be too close.

Mr. Laughlin submitted photos of other non-conforming structures in the neighborhood including the neighbor to the north who extended a deck closer to the lot line for the storage of a grill. He stated that Ms. Grieves is 78 years old and would like a roof over the deck to be used more during the year.

Kevin O’Connell, 3544 ½ Center Street, appeared before the board in opposition. Mr. O’Connell stated the zoning was in effect at the time of the purchase. He indicated that there is no undue hardship and the proposed deck would block wind circulation.

Jerry Taucreti, 3033 South 35th Avenue, appeared before the board in opposition. Mr. Taucreti stated that he expanded his deck for a grill because of the damage to the support beams caused by the squirrels. He concluded that he would not have purchased his home if the sunroom had existed.

Ms. Donovan moved to DENY. Ms. Teutsch seconded the motion.

AYES: Donovan, Anzaldo, Teutsch, Mahlendorf, Hancock  

MOTION CARRIED: 5-0
Case No. 11-119
(Over from 10/20/11)
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 36’ and 50’
to allow subdivision of the property

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

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Gary Petersen and Mickey Sadoro, NP Dodge Real Estate, appeared before the board on behalf of the applicant and in support of the request. Mr. Petersen stated that Mr. Brenneman, consulting engineer, was unable to appear before the board due to health issues.

Mr. Hancock indicated that the case was previously laid over to allow the applicant time to rezone and replat the four lots but the waiver request has changed.

Mike Carter, ZBA Administrator, stated that the location of the circle and lot width was adjusted slightly to create two of the lots. The department believes that there is no hardship or practical difficulty and recommends denial.

Mr. Petersen indicated that he visited with many neighbors and submitted an adjoining property owner list (Exhibit 2). He stated that many of the rumors and misunderstandings were cleared up and the majority of the neighbors that were contacted were in support of the request. He indicated that the two existing homes would not change. Mr. Berkshire is not building homes on the vacant lots but the lots will be sold to prospective homeowners.

Mr. Hancock asked the opposition if they are comfortable with the lot widths and a four home subdivision.

Susan and Thomas Cheslak, 620 South 76th Street, appeared before the board in opposition. Ms. Cheslak submitted a 2009 Nebraska Court of Appeals case, Rousseau v. Zoning Board of Appeals of Omaha (Exhibit 3) to set precedence in this request. She also submitted the Nebraska Law Review (Exhibit 4) dated August 1, 2011 stating the new proposed standards for not only what a hardship is, but also what a hardship is not and when to grant a variance. She stated that Mr. Berkshire purchased the property, which was zoned R1 since 1947 when it was developed. On June 2, 2009, there was a hearing before the moving of the house from 1301 South 75th Street to 600 South 76th Street and that was approved. On July 22, 2009, the eighty year old home was moved to said property and situated on the southwest corner of the lot, as far back of the property line at a northeast angle, which is inconsistent with the other homes in the area. Ms. Cheslak submitted a recent aerial view (Exhibit 5) of the house on the lot and the surrounding homes indicating the 70’ setback of the homes on the block that are zoned R1. The house has been sitting on the lot since construction began in 2009, following the moving of the house. The house remains uncompleted and the property is a blight to the neighborhood. She stated that Mr. Berkshire had trees and shrubs cleared from the property and contractors destroyed the fence on the south property line as indicated by submitted photos (Exhibit 6). After acquisition of the second property, Mr. Berkshire submitted a petition for rezoning of both properties to R2 seeking variances in order to subdivide the property into multiple lots, which is inconsistent with the homes, and property in the area. Before seeking zoning or variances, Mr. Berkshire had two drain sewer clean out pipes placed on the property. She stated that the Planning and Permits Department confirmed that this action was done proactively for future development of the property. On November 2, 2011, following a meeting of the City of Omaha officials, Mr. Berkshire was threatening and intimidating by provoking actions outside the Legislative Chambers. She stated a fact in Rousseau v. Zoning Board of Appeals of Omaha, states, “A rule has been adopted by a Nebraska Supreme Court, wanting to increase profits does not constitute sufficient hardship and an individual cannot create their own hardship.” In Peterson vs. Vasek, the court
states that, “A hardship occurs when there is convincing proof that it is impossible to use a property for conforming purpose.” The property located at 600 and 610 South 76th Street can be utilized for a conforming purpose as it is zoned R1. Mr. Berkshire’s actions and outward aggression clearly indicate that he does not want to be a good neighbor and he has not demonstrated good faith to property owners in the area. In conclusion, based upon the evidence and submitted photos, why would Mr. Berkshire develop the property for nonconforming zoning without receiving prior approval from the City of Omaha Planning Board and the Zoning Board of Appeals.

Mr. Hancock answered that the board can only speculate and the responsibility of the board is to decide on the width of the lots. He stated that he could have envisioned a small cluster subdivision of four small cottages on the side of the hill with great views but Mr. Berkshire has gone about the process in a backwards way and has shown no good faith in completing the house that was moved to the property. Without a comprehensive plan to begin with, Mr. Berkshire has put himself in a box. The opposition has a valid point, the trust has been violated and there is an eyesore in the neighborhood. Mr. Hancock stated that it is hard to believe that the property will be developed properly in the future. He concluded that he would not support the plan and the minimum lot widths.

Mr. Anzaldo moved to DENY. Ms. Teutsch seconded the motion.

AYES: Anzaldo, Teutsch, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
6. Case No. 11-120
(Over from 10/20/11)
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 a 14’ x 24’ garage to remain

LOCATION: 12232 Farnam Street
ZONE: R2

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Larry Wee, owner; Chad Cullinane, Cullinane Construction; and Larry Jobeun, 11440 West Center Road, attorney, appeared before the board in support of this request.

Mike Carter, ZBA Administrator, stated the waiver was laid over last month to determine what the permits were issued for and when the permits were issued. There has been no new information submitted. The department continues to recommend denial based on no hardship or practical difficulty.

Mr. Jobeun submitted a current survey (Exhibit 2) that was prepared on September 27, 2011 showing the actual location of the garage in relation to the property line. The current survey shows that the street yard setback waiver is actually 20’ to 17.2’ at one point and 20’ to 11.2’ at another point. The applicant acted in good faith but the point of measurement was done in error. Mr. Jobeun submitted a copy of the driveway paving permit #BLD-10-02740 (Exhibit 3) that was issued on June 2, 2010 and the actual construction permit (#07876) for the garage (Exhibit 4) that was issued on October 27, 2010. He stated the point of measurement was in error and was measured from the right-of-way line or back of the curb. The practical difficulty or hardship in this case is evident by the photographs (Exhibit 5) and the location of the garage is the only feasible location given the configuration of the lot and the existing house. There is no impact on adjacent properties or issues regarding visibility or safety because of the curvature of 123rd Street. There was no opposition for the construction of the garage from all adjacent residential neighbors (Exhibit 6).

In response to Mr. Mahlendorf, Mr. Wee admitted that he drew the garage on the surveyors certificate and he was the one who came up with the measurements. Mr. Jobeun explained that it was an honest mistake and Mr. Wee thought he was doing all the right things by applying for a permit and getting contractors involved to comply with the code.

Mr. Hancock indicated that the board has had a struggle with the case because the garage is not overwhelmingly large, appears to be in taste with the home and the neighborhood but it is an unusual precedent for the neighborhood. There has not been anything else built in the neighborhood that intrudes that far into the setback.

Mr. Hancock questioned how the building was built without a footing inspection. Mr. Cullinane stated he performed the framing and construction of the garage but the concrete work that was performed by another contractor was inspected and signed off according to the permit (Exhibit 4). Jay Davis, Chief Building Inspector, verified that the signature on the concrete work permit was not that of any city inspector. Mr. Davis stated that he is not that concerned whether the footing is good or not good but the location of the garage would have been in question if the footing was inspected. There is no record of any footing inspection.

In conclusion, Mr. Jobeun indicated that the request is actually a waiver for just under 10’ at one location and less than 2’ on the other side of the garage. The practical difficulty or hardship has been shown.

Mr. Mahlendorf indicated that it would have been difficult to obtain a waiver if the waiver would have been requested before the garage was built.
Mr. Cullinane stated that he believes a concrete contractor scammed Mr. Wee. In response to Mr. Hancock, Mr. Cullinane stated he could have pulled the measurements but he built the garage because he was shown a permit that had a signature for footing inspections.

Mr. Hancock suggested removing the fence along the side of the garage, build a new fence that abuts the corner of the garage and tie into the back fence, remove the basketball hoop and screen the garage with landscaping.

Ms. Donovan stated she is concerned that a huge precedent would be set for the entire neighborhood.

Mr. Carter indicated that a fence would need to be in compliance for a street sideyard setback or a waiver would be required.

Mr. Mahlendorf moved to APPROVE the variance of the street side yard setback from 20’ to 11.2’ and 17.2’ to allow a 14’ x 24’ garage to remain subject to removing the fence along the west side of the garage, no outside storage of trash cans, and removal of the basketball hoop. Ms. Teutsch seconded the motion.

AYES: Teutsch, Mahlendorf, Hancock

NAYES: Donovan, Anzaldo

MOTION NOT CARRIED: 3-2 (4 affirmative votes are required for approval)

Mr. Anzaldo moved to LAYOVER until the next meeting on December 15, 2011 to allow the applicant time to submit a landscape drawing. Ms. Donovan seconded the motion.

AYES: Teutsch, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
7. Case No. 11-123  
(Over from 10/20/11)  
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 1’  
and the street side yard setback from 25’  
to 13’ 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, November 17, 2011, John Fullenkamp, 11440 West Center Road, attorney; Shirley Huerter, owner; and Bob Torson, architect, appeared before the board in support of this request.

Mr. Hancock stated that the board reviewed the case extensively but does not understand how the shed was built in a place that did not meet the required setbacks. Mr. Fullenkamp answered that there were permits for the pool improvement and the yard but there was a requirement to have an onsite detention reservoir for storm water from the gutters on the house. The reservoir was added at a cost of approximately $5,000.00. He submitted photos (Exhibit 2) showing a large tree and the best place for the shed/accessory building, which stores the mechanical equipment and other items for the pool. The building was built where the reservoir was located to save the 75-year old tree and to fit in with the existing landscaping. The building is intended to be finished to match the existing house. There have been many waivers in the neighborhood regarding impervious coverage/landscaping and the neighborhood is in support of the waiver requests.

Mr. Anzaldo moved to APPROVE. Ms. Teutsch seconded the motion.

In response to Mr. Hancock, Mr. Torson stated that the building was built based on visual clues regarding the fence that lined up with the side of the house. Mr. Fullenkamp added that there is no better excuse and some mistakes were made regarding the placement of the accessory building. It just made sense to leave the 75-year old tree.

AYES:  Mahlendorf, Donovan, Anzaldo, Teutsch, Hancock  

MOTION CARRIED:  5-0
8. Case No. 11-125
(Over from 10/20/11)
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 8’ to construct a garage/house addition
LOCATION: 9710 Parker Street
ZONE: R2

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Tim Lang and Mary Reilly, 9710 Parker Street, appeared before the board in support of the request.

Mike Carter, ZBA Administrator, stated the applicant has submitted a revised plan proposing to enlarge the existing garage wall to approximately 8’ from the property line and then extend to create a tandem garage situation on the property. The department remains against the waiver as requested.

Mr. Lang stated that a survey was completed and the property line is actually 1’ inside the power poles. He stated that he would like to request a waiver to 7’ 8” as indicated on the submitted plan but he could live with an 8’ side yard setback as requested. Mr. Lang stated that he was in contact with several neighbors that are in support of the request.

Mr. Hancock commended Mr. Lang for the revised plan and the elimination of a potential garage door and extensive paving. Mr. Anzaldo was concerned that the view of the neighbor to the west could possibly be blocked by the garage extension.

Mr. Mahlendorf moved to APPROVE as modified (see Exhibit 2). Ms. Donovan seconded the motion.

AYES: Donovan, Anzaldo, Teutsch, Mahlendorf, Hancock

MOTION CARRIED: 5-0
9. Case No. 11-126 - **Layover**  
(Over from 10/20/11)  
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 and 3219 South 220th Street  

ZONE: DR  

RECOMMENDATION: The Planning Department supports the request by the applicant for a layover.  

Mike Carter, ZBA Administrator, indicated that the applicant has requested a layover.  

Mr. Mahlendorf moved to LAYOVER until the next meeting on December 15, 2011 meeting. Ms. Teutsch seconded the motion.  

AYES: Anzaldo, Teutsch, Mahlendorf, Donovan, Hancock  

MOTION CARRIED: 5-0
10. Case No. 11-131- Layover
(Over from 10/20/11)
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: The Planning Department supports the applicant’s request for a layover, but suggests a shorter time frame.

Mike Carter, ZBA Administrator, indicated that the applicant has requested a layover until March 2012.

Mr. Mahlendorf moved to LAYOVER until the March 8, 2012 meeting. Ms. Donovan seconded the motion.

AYES: Teutsch, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
NEW CASES

11. Case No. 11-130
James Holt
JDH Properties LLC
563 South 175th Circle
Omaha, NE 68118

REQUEST: Waiver of Section 55-523 & 55-734 - Variance to the permitted use regulations of the HI district to allow a kennel use and to the minimum number of off-street parking stalls from 9 to 0 for the kennel use

LOCATION: 819 South 7th Street
ZONE: HI-ACI-1(PL)

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, James Holt, 563 South 175th Circle and Thomas Westman, 208 Heavenly Drive, appeared before the board in support of the request.

Mike Carter, ZBA Administrator, stated the applicant is proposing to open a kennel business with a privacy fence in the rear to allow the dogs to be outside. He stated that kennels are very restrictive and there are issues with compatibility with surrounding properties. The department does not support the waiver of the use or the parking request because there is no hardship or practical difficulty. There are also concerns with the kennel being compatible with the horses at the adjacent horse barn.

In response to Mr. Hancock, Mr. Westman answered that the operation would include some interior housing of dogs but primarily the dogs would be allowed to run freely outside.

Mr. Carter verified that if there are any external effects of the boarding of the dogs, the operation would be classified as a kennel as opposed to pet services.

Mr. Westman explained that he would like to provide a boarding and dog day care service to the downtown area and allow the dogs to exercise outside. He stated that he has operated Tully's Kennels for over 35 years. Mr. Westman indicated that the proposed location is near the railroad tracks, OPPD substation and the agricultural setting with the horses. He stated that the horses should not be afraid of the dogs because they are used to being out on the streets.

Mr. Holt stated that a rezoning request from HI to CBD is scheduled to go before the Planning Board on December 7, 2011. He stated that there would be no off-street parking issue if the CBD zoning request were granted.

In response to Ms. Teutsch, Mr. Westman stated that the kennel can facilitate 20-60 dogs and most of the dogs will be indoors at any one time. There will be 48 kennels with an open area for indoor play.

Sgt. Tammy Mitchell, Omaha Police Department, 615 Leavenworth Street, appeared before the board in opposition. Sgt. Mitchell explained that the horse barn is located directly north of the proposed project. She stated that ConAgra built the horse barn in 2005 for use by the Police Department. She stated that the great part about the location is that it is out of the way, is quiet and most importantly, it gives the horses a place to relax. The horses are allowed to relax in the barn and run and relax in the abutting arena. There is no option to relocate the seven horses and the 12 stalls elsewhere.

In response to Ms. Donovan, Mr. Westman answered that the distance between the dog kennel and the outdoor arena would be approximately 40 feet. Mr. Westman offered to work on any type of accommodation because there is a true need for a kennel in the downtown area. Ms. Teutsch stated that her son manages a dog day care center in downtown Cincinnati with all interior runs.

In response to Ms. Donovan, Sgt. Mitchell stated that it would not make a difference if the outside kennel area were moved to the opposite end of the building. She stated that there is also a concern that a hardship could be created if one of the dogs were to get loose.
Mr. Anzaldo indicated that he would have to abstain from voting or vote “no”. He stated that he purchased the first four-horse wagon for the Police Department and the horse patrol is a big tool for the Omaha Police Department. He stated he is not willing to personally jeopardize the horse patrol with the thought that the dogs would upset the horses.

In response to Ms. Teutsch, Mr. Westman answered that he would like to accommodate but is not willing to move the operation indoors. The dogs will bark more when they are confined inside. Mr. Holt indicated that he believes the proposed location is the most logical downtown location.

Ms. Donovan added that she likes the location but suggested that the applicant and the Police Department meet to discuss other alternatives. Mr. Hancock agreed that there is a need for a dog day care in downtown Omaha but he does not feel comfortable with a vote and would like to visit the site.

Mr. Mahlendorf moved to LAYOVER over until the next meeting on December 15, 2011 to allow time for the applicant to meet with the opposition and the board to visit the site. Ms. Teutsch seconded the motion.

AYES: Mahlendorf, Donovan, Anzaldo, Teutsch, Hancock

MOTION CARRIED: 5-0
12. Case No. 11-133
City of Omaha
1819 Farnam Street #1111
Omaha, NE 68183

REQUEST: Waiver of Section 55-207(g) - Variance to the front yard setback from 35’ to 26.1’ to replace existing covered front stoop

LOCATION: 2213 North 37th Street

ZONE: R5(35)

RECOMMENDATION: Approval in accordance with the plan submitted.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Don Seten, Planning Department, Housing Division-Community Development, appeared before the board in support of the request.

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

AYES: Donovan, Anzaldo, Teutsch, Mahlendorf, Hancock

MOTION CARRIED: 5-0
13. Case No. 11-134
Omaha Neon Sign Co.
1120 North 18th Street
Omaha, NE 68102

REQUEST: Waiver of Section 55-836 – Variance to the front yard setback from 12’ to 0’ for a monument sign

LOCATION: 3223 North 108th Street

ZONE: CC

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Dennis Plachy, Omaha Neon Sign Company, 1120 North 18th Street and Jama Samiev, TFL Inc., appeared before the board in support of the request.

Mr. Hancock asked if the existing pole sign would remain. Mr. Plachy answered that the pole sign would remain and the proposed monument sign would be 18’.

Mr. Hancock stated that the general consensus of the board is to remove the pole sign and install a 12’ monument sign with a masonry base. Mr. Samiev indicated that he is not willing to remove the pole sign. Mr. Plachy explained that the gas tanks are located to the north and requested that the pole sign be moved to the middle portion of the property to identify the entrance area.

Ms. Donovan stated that the board would not approve both signs. She suggested removing the pole sign and installing a 12’ monument sign with a 0’ setback.

Ms. Teutsch indicated that there will be a lot of redevelopment in the area and the board is trying to assure that the area is pleasant looking. Mr. Plachy answered that there has been extensive landscaping and the property is an improvement from the previous Kentucky Fried Chicken restaurant. Ms. Teutsch stated that she considers pole signs “visual pollution”.

Mr. Mahlendorf moved to LAYOVER until the next meeting on December 15, 2011 to allow the applicant time to redesign. Ms. Donovan seconded the motion.

AYES: Anzalado, Teutsch, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
14. Case No. 11-135
J P Carpentry
8610 South 21st Street
Omaha, NE 68147

REQUEST: Waiver of Section 55-126 – Variance to the front yard setback from 50’ to 25.9’ to construct a 20’ x 20’ detached garage
LOCATION: 185 South 216th Circle
ZONE: R1

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Jeff Pavel, 8610 South 21st Street, appeared before the board in support of the request. Mr. Pavel admitted that his measurement was not originally correct and has recently had the property surveyed.

Ms. Donovan indicated that there is a hardship due to the fact that there is a drop off in the yard.

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

AYES: Teutsch, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
15. Case No. 11-136

Paula J. Philippi
1411 South 16th Street
Omaha, NE  68108

REQUEST: Waiver of Section 55-206 – Variance to the
minimum lot area from 5,000 sq. ft. to
2,653.4 sq. ft. and 3,050 sq. ft. to allow for
approval of an administrative subdivision

LOCATION: 1411 South 16th Street and
1515-1517 William Street

ZONE: R5

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Paula J. Philippi
appeared before the board in support of the request.

Mike Carter, ZBA Administrator, stated the applicant is requesting to change an existing situation. The
two properties that front off of William Street received a waiver for lot width and size. The proposed
request will change the property along the alley to connect with the property on 16th Street.

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

AYES: Mahlendorf, Donovan, Anzaldo, Teutsch, Hancock

MOTION CARRIED: 5-0
16. Case No. 11-137
Jason and Denise Bash
315 North 36th Avenue
Omaha, NE 68131

REQUEST: Waiver of Section 55-166 – Variance to the
front yard setback from 35’ to 9’ 4” and to
the interior side yard setback from 7’ to 3’
3’ to construct a two-story detached
garage

LOCATION: 315 North 36th Avenue
ZONE: R3

RECOMMENDATION: Approval of the waiver for the front yard setback to 9’4” and to the interior side
yard from 7’ to 3’, subject to the removal of the second story of the proposed garage.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Jason Bash appeared
before the board in support of the request.

Mike Carter, ZBA Administrator, stated that the property is double fronted with an existing detached
garage in poor condition that is located to the rear of the property. The applicant is proposing to remove
the garage and build a two-story garage. The department supports the waiver for the front yard setback
but suggests moving the interior side yard setback to 3’ and materials should match the existing home.

Mr. Bash explained that the second story on the garage is needed due to a safety issue and the nature of
the slope of the back yard. He stated that the vehicles would enter on 36th Street and park in the lower
portion of the garage with inside stairs to the second story. There would be two off street parking spots
in the driveway of the front yard. The garage will be used for storage and a possible play area for the
children.

Ms. Donovan moved to APPROVE subject to: 1) The materials to match the existing home, 2) the front
yard setback to be 9’4” and the interior side yard setback to be 3’; and 3) the second story to be used as
storage only and not to be used as a residence. Mr. Anzaldo seconded the motion.

AYES: Donovan, Anzaldo, Teutsch, Mahlendorf, Hancock

MOTION CARRIED: 5-0
17. Case No. 11-138  
Thomas McLeay  
America First Real Estate Group LLC  
1004 Farnam Street Suite 400  
Omaha, NE  68102  
REQUEST: Waiver of Section 55-326 – Variance to the rear yard setback from 15’ to 0’ and to the interior side yard setback from 7’ to 0’ for the existing building to allow for approval of an administrative subdivision  
LOCATION: 819 Dorcas Street  
ZONE: GO  

RECOMMENDATION: Approval in accordance with the plans submitted, subject to: 1) Including a reciprocal/shared access and parking easement for both lots on the subdivision plat; 2) Amending the Conditional Use Permit (C7-11-135); and 3) Consulting with Permits and Inspections staff to ensure that splitting of the buildings as proposed meets all applicable building code requirements.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Tom McLeay, 1004 Farnam Street, appeared before the board in support of the request. He stated that he is in the process of working with the Veteran’s Administration to do a project for leasing space to the Veteran’s Administration for an Outreach Clinical Office for veterans and affordable housing for at-risk veterans. Mr. McLeay confirmed that he is in acceptance of the Planning Department’s recommendations and requirements.

Mr. Mahlendorf moved to APPROVE in accordance with the plans submitted subject to: 1) including a reciprocal/shared access and parking easement for both lots on the subdivision plat; 2) amending the Conditional Use Permit (C7-11-135); and 3) consulting with Permits and Inspections staff to ensure that splitting of the buildings as proposed meets all applicable building code requirements. Ms. Donovan seconded the motion.

AYES: Anzaldo, Teutsch, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
18.  Case No. 11-139  
Ron Zych  
6712 South 91st Avenue  
Omaha, NE  68127  
REQUEST:  Waiver of Section 55-782(b)(6) – Variance to the rear yard setback from 3’ to 0’ for a 10’ x 14’ shed  
LOCATION:  6712 South 91st Avenue  
ZONE:  R4  
RECOMMENDATION:  Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Jason Thiellen, E & A Consulting Group, 330 North 117th Street and Ron Zych, 6712 South 91st Avenue, appeared before the board in support of the request.

Mike Carter, ZBA Administrator, stated that the existing building was built without a permit and is proposed to be moved to a 0’ setback off the rear property line. He stated that information was recently submitted indicating that the building would be used for the raising of pigeons. The building is currently a shed and can be built legally on the property therefore the department recommends denial.

In response to Mr. Mahlendorf, Mr. Zych confirmed that the shed would be used for the storage of pigeons, all enclosed and non-flying. Mr. Thiellen stated that the building originally started out to be a playhouse for a granddaughter. Mr. Zych believed that his property line was deeper than it actually is but a 15-year-old tree would need to be removed to satisfy the required setback.

In response to Mr. Hancock, Mr. Zych stated that his property backs up to the Burlington Railroad. Mr. Thiellen verified that the building is a shed and will not be a playhouse.

Mr. Carter indicated that the department would require more information to find out what is exactly going on. The storage of pigeons could be considered a home occupation and it would need to be determined if they are being sold or bred.

Mr. Zych stated that the pigeons are show pigeons. He stated that the pigeons have been a hobby for over 30 years and there is no money to be made.

Mr. Mahlendorf indicated that the only property owner affected would be the railroad but the city raises some good points about how the shed will be used regarding the pigeons and whether it is legal or not.

Mr. Carter stated that a property owner has to declare what a structure will be used for. The code states that a shed structure is the only time a 3’ setback exception can be used but for a playhouse, the normal setbacks would need to be meet. The city would need more information before making any further recommendations.

In response to Mr. Hancock, Mr. Zych answered that his pigeons are presently located at a facility in Mead, Nebraska.

Mr. Zych stated he would like to save the tree. Mr. Thiellen requested a layover for a new request for a playhouse, no other structures and no birds.

Ms. Donovan moved to LAYOVER until the next meeting on December 15, 2011. Ms. Teutsch seconded the motion.

AYES:  Teutsch, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED:  5-0
19. Case No. 11-140
   Steve Turner
   6315 Hamilton Street
   Omaha, NE  68132

REQUEST: Waiver of Section 55-187(e) - Variance to the front yard setback from 35’ to 9’ 2” to allow a covered front stoop to remain

LOCATION: 6315 Hamilton Street
ZONE: R4(35)

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Steve Turner appeared before the board in support of the request.

Mr. Turner confirmed that the decaying front stoop was on the home when it was purchased. He stated that he hired a contractor to replace the stoop and add a roof but it was never finished. Mr. Turner stated that he is presently in the process of finishing the project.

Mr. Hancock added that the variance seems excessive but the house is non-conforming as are other homes in the neighborhood. He stated the request is reasonable and is no closer than the existing stoop.

Mr. Mahlendorf moved to APPROVE subject to the materials to match the existing home. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Donovan, Anzaldo, Teutsch, Hancock

MOTION CARRIED: 5-0
20. Case No. 11-141
James Warner
Thompson, Dreessen & Dorner, Inc.
10836 Old Mill Road
Omaha, NE 68154

REQUEST: Waiver of Section 55-166 & 55-163 - Variance to the use regulations of the R3 District to allow single-family residential (attached); to the lot area from 7,500 sq. ft. to 6,603 sq. ft. and 5,158 sq. ft.; to the lot width from 60' to 50' and 38'; to the maximum impervious coverage from 45% to 55%; and to the interior side yard setback from 7' to 0'

LOCATION: 5203 and 5205 Chicago Street
ZONE: R3

RECOMMENDATION: Approval, in accordance with the plans submitted, subject to no future driveway or garage to be constructed on the 5203 Chicago Street property.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, James Warner, Thompson, Dreessen & Dorner, 10836 Old Mill Road, appeared before the board in support of the request on behalf of the owner. Mr. Warner stated that the property is an existing duplex.

Mr. Hancock stated that the request is a basic lot split that is typically granted but with the stipulation that no future driveway or garage be constructed on the property.

Ms. Donovan moved to APPROVE in accordance with the plans submitted subject to no future driveway or garage to be constructed on the 5203 Chicago Street property. Ms. Teutsch seconded the motion.

AYES: Donovan, Anzaldo, Teutsch, Mahlendorf, Hancock

MOTION CARRIED: 5-0
21. Case No. 11-143
Kum & Go
6400 Westown Parkway
West Des Moines, IA 50266

REQUEST: Waiver of Section 55-925 - Variance to the build-to/setback requirement from 95’ to approximately 170’ for a new convenience store

LOCATION: 1819 North 72nd Street
(Northeast corner of 72nd & Decatur Streets)

ZONE: GC (ACI-2 (50)-Pending)

RECOMMENDATION: Approval in accordance with the plans submitted with the design enhancements, subject to: 1) The support structure of the canopies shall be constructed of (or veneered with) masonry material matching the convenience store to no less than 30 inches square and no less than 8’ high; 2) All other sidewalk, landscape and building design provisions are met; 3) No subsequent waiver requests of the ACI-2 standards; and 4) Recording the approved subdivision plat.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Jeff Keating, PDM, 1111 North 102nd Court; John Bachman, Pansing, Hogan, Ernst & Bachman, 10050 Regency Circle; Joshua House, Kum & Go LLC, 6400 Westown Parkway, West Des Moines, Iowa; and Doug Halvorson, Olsson Associates, 2111 South 67th Street, appeared before the board in support of the request.

Mike Carter, ZBA Administrator, stated that the project has been through the Urban Design Review Board and the proposed design has been approved with the listed conditions therefore the department recommends approval of the request based on the design.

In response to Mr. Hancock, Mr. Keating answered that he agrees with the conditions of the planning department.

In response to Mr. Anzaldo, Mr. House answered that there are a series of five additional Kum & Go sites under contract in the Omaha area.

Ms. Donovan moved to APPROVE in accordance with the plans submitted with the design enhancements subject to: 1) the structure of the canopies shall be constructed of (or veneered with) masonry material matching the convenience store to no less than 30 inches square and no less than 8’ high; 2) all other sidewalk, landscape and building design provisions are met; 3) no subsequent waiver requests of the ACI-2 standards; and 4) recording the approved subdivision plat. Mr. Anzaldo seconded the motion.

AYES: Anzaldo, Teutsch, Mahlendorf, Donovan, Hancock

MOTION CARRIED: 5-0
22. Case No. 11-144- Layover

Dave Paladino
Paris Investments LLC
2702 Douglas Street
Omaha, NE  68131

REQUEST: Waiver of Section 55-734 - Variance to the required number of off-street parking stalls from 10 to 0 for a Daycare (General) use

LOCATION: 3828 Dodge Street and 101 North 38th Avenue

ZONE: GO-ACI-2(50)

RECOMMENDATION: Layover to allow the applicant time to provide additional information.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Mike Carter, ZBA Administrator, stated that the applicant has requested a layover.

Mr. Anzaldo moved to LAYOVER until the December 15, 2011 meeting. Mr. Mahlendorf seconded the motion.

AYES: Teutsch, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0
23. Case No. 11-145
Peter Fink
Certified Transmission
1801 South 54th Street
Omaha, NE 68106

REQUEST: Waiver of Section 55-183, 55-186, 55-715, 55-735 & 55-740 - Variance to the permitted use regulations of the R4 District to allow a surface parking use; to the maximum impervious coverage from 50% to 100%; to the 4’ screening requirement; to the perimeter parking lot landscaping from 10’ and 5’ to 0’; to the minimum depth of street yard landscaping from 15’ to 0’; to allow off-street parking for a non-residential use in the required front yard setback; and to the drive aisle width from 24’ to 9’

LOCATION: 1919 South 55th Street
ZONE: R4(35)

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Peter Fink, 1801 South 54th Street, appeared before the board in support of the request. Mr. Fink stated that there is a severe parking problem in the area for businesses therefore he acquires properties as they become available to help alleviate the parking problem. This request would complete the parking lot to the west and north along 55th Street.

Mr. Anzaldo questioned if more landscaping could be added along 55th Street. Mr. Fink answered that he would add landscaping once he has acquired the property.

Ms. Donovan stated that she does not see a hardship and would like to see the property go legal. Mr. Fink answered that the whole lot is 6,000 square feet and he is not willing to spend $60,000 to purchase the existing house and an additional $20,000 to demolish the house in order to get three or four parking stalls. He stated the existing house is rented and in disrepair. Mr. Fink pointed out that he has been a good neighbor and has allowed tenants in the apartment building across the street to park in the former Nebraska Unemployment Building parking lot. He indicated that he has meet with the neighbors and has improved each piece of property that he has acquired.

Mike Carter, ZBA Administrator, stated that the department is opposed to the request because of the encroachment slowly into that side of the block with a potential for further encroachment into the residential neighborhood.

Mr. Anzaldo pointed out that the existing house would always be a rental house. He stated that an improvement would be to tear down the existing house to square up the parking and the addition of more landscaping.

Mr. Mahlendorf moved to APPROVE subject to the installation of a 4’ tall screen fence when parking lot goes in and applying for any required fence waivers at that time. Mr. Anzaldo seconded the motion.

AYES: Mahlendorf, Anzaldo, Teutsch, Donovan, Hancock

MOTION CARRIED: 5-0
24. Case No. 11-146
William Matzek
Kimley-Horn and Associates, Inc.
2550 University Ave West 238 N
St. Paul, MN 55114

REQUEST: Waiver of Section 55-934 - Variance to the maximum height of a Category 3 retaining wall to allow a wall height up to 15.5’

LOCATION: 2451 North 90th Street
ZONE: CC(MCC Pending)

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, November 17, 2011, Larry Jobeun, 11440 West Center Road; Will Matzek and Trish Rothe, Kimley-Horn and Associates, 2550 University Avenue, St. Paul, Minnesota, appeared before the board in support of the request.

Mike Carter, ZBA Administrator, stated that the request is for the redevelopment of the property for a Walmart Market that will be replacing the existing Hobby Lobby. The retaining wall will be built between the Walmart property and the connection to the former Hobby Lobby to the south. The proposed retaining wall will exceed the 10’ minimum and will be as high as 15’. The Urban Design Review Board has recommended approval in accordance with the plans submitted based on the fact that it is an improvement to the overall site and the retaining wall has little to no exposure to the public right-of-way. The department recommends approval in accordance with the plans submitted.

Mohammed Nassez, appeared before the board. Mr. Nassez stated that he operates the adjacent gas station business and wants to understand where the property line is located. Mr. Jobeun indicated that he had previously met with Mr. Nassez but offered to meet again with him to confirm that there is no encroachment onto his property.

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

AYES: Donovan, Anzaldo, Teutsch, Mahlendorf, Hancock

MOTION CARRIED: 5-0
APPROVAL OF MINUTES

Mr. Mahlendorf moved to APPROVE the October 20, 2011 meeting minutes. Ms. Donovan seconded the motion.

AYES: Anzaldo, Mahlendorf, Donovan, Hancock

ABSTAIN: Teutsch

MOTION CARRIED: 4-0-1

ADJOURNMENT

Ms. Donovan moved to ADJOURN the meeting at 4:05 pm. Mr. Mahlendorf seconded the motion.

AYES: Teutsch, Mahlendorf, Donovan, Anzaldo, Hancock

MOTION CARRIED: 5-0

Approved (date)

Bert Hancock, Chair

Debbie Hightower, Secretary