Certification of Publication: Zoning Board of Appeals Administrator certifies publication of this agenda in the Daily Record, the official newspaper of the City of Omaha on Monday, April 30, 2012 and Thursday, May 3, 2012.

MEMBERS PRESENT: Bert Hancock, Chair  
Brian Mahlendorf, Vice Chair  
Sebastian Anzaldo  
Jacque Donovan  
Jonathan Nash

MEMBERS NOT PRESENT: Teri Teutsch, Alternate  
Sean Kelley, Alternate

STAFF PRESENT: Mike Carter, Zoning Board of Appeals Administrator  
Rick E. Cunningham, Planning Director  
Alan Thelen, City Attorney  
Debbie Hightower, Recording Secretary

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.
LAYOVERS

1. Case No. 12-034
   (Over from 4/12/12)
   Omaha Senior Partners, LLC
   15677 Spaulding Street
   Omaha, NE  68116
   LOCATION: 10909 M Street
   ZONE: GI

   REQUEST: Waiver of Section 55-503 – Variance to the permitted use regulations of the GI District to allow Assisted living use

At the Zoning Board of Appeals meeting held on Thursday, May 10, 2012, Jim Lang, 11718 Nicholas Street, appeared before the board with Randy Meyer, architect on behalf of the applicant. Mr. Lang indicated that his client is in agreement with the conditions of the recommendation report. He stated that the area is a transitional area and the project will be compatible with the existing uses. Mr. Lang offered to answer any questions.

Mr. Hancock stated that the department recommends approval in accordance with the plans submitted subject to installation of a sidewalk along “M” Street with connections to the building and a signage plan acceptable to the Planning Department.

In response to Mr. Anzaldo, Mr. Lang stated the pole signs will be moved and the signage will be upgraded. The facility will be upgraded and a complete renovation of the property will go from 137 to 87 units. Mr. Lang offered several letters of support from neighbors and adjacent property owners.

Mr. Anzaldo moved to APPROVE in accordance with the plans submitted subject to installation of a sidewalk along “M” Street with connections to the building and a signage plan acceptable to the Planning Department. Ms. Donovan seconded the motion.

AYES: Anzaldo, Donovan, Mahlendorf, Nash, Hancock

MOTION CARRIED: 5-0
NEW CASES

2. Case No. 12-037
   Patricia Quinlan
   3443 Augusta Avenue
   Omaha, NE  68144
   LOCATION: 3443 Augusta Avenue
   ZONE: R4(35) & R4(35)/FF
   REQUEST: Waiver of Section 55-187(e) – Variance to the front yard setback from 35’ to 28.32’ to allow a front stoop and stairs to remain

At the Zoning Board of Appeals meeting held on Thursday, May 10, 2012, Kathy Quinlan, appeared before the board on behalf of the applicant, which is her mother. Ms. Quinlan stated that her mother took out a reverse mortgage to replace the deck. She stated that the deck was built without a permit and the person who built the deck has health issues and is unavailable to modify the deck.

Mr. Anzaldo moved to APPROVE in accordance with the plan submitted. Mr. Nash seconded the motion.

AYES: Donovan, Mahlendorf, Nash, Anzaldo, Hancock

MOTION CARRIED: 5-0
3. Case No. 12-038  
Realty Asset Advisors  
20202 Nina Street  
Omaha, NE 68130  

REQUEST: Waiver of Section 55-246, 55-716, 55-734, 55-740(f)(4), 55-740(g), 55-740(b) – Variance to the site area/unit from 1,000 sq. ft. to 756 sq. ft.; to the required bufferyard between R7 and R3 from 30’ to 0’; to the required number off-street of parking stalls from 49 to 14; to the required drive aisle width from 24’ to 16’; to the parking perimeter landscaping from 10’ to 0’; and to the 4’ parking lot screening required adjacent to a residential district  

LOCATION: 3304 Burt Street  
ZONE: R7  

At the Zoning Board of Appeals meeting held on Thursday, May 10, 2012, Jason Thielen, E & A Consulting Group, appeared before the board on behalf of the applicant.

Mike Carter, ZBA Administrator, stated that the applicant is in the process of rehabilitating an existing multi-family residential facility. Mr. Carter stated that as part of the proposal, many of the existing improvements on the property are not in compliance therefore the waivers are needed. The department believes there is a hardship and practical difficulty because, without the waivers, the property would not be usable in its current form. The department recommends approval in accordance with the plans submitted.

Mr. Thielen stated there are a first right of refusal agreements for the homes to the west and north that would be used to alleviate parking issues. He stated that the unit count will be reduced from 34 to 32 units and there is an agreement with an adjacent property owner to utilize 10 additional parking spaces therefore the parking and landscaping requirements will be met as well.

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

AYES: Mahlendorf, Nash, Anzaldo, Donovan, Hancock  

MOTION CARRIED: 5-0
4. Case No. 12-039
Shannon Roeder
707 South 36th Street
Omaha, NE 68105

REQUEST: Waiver of Section 55-246 – Variance to the interior side yard setback from 5’ to 0.5’ to allow existing carport to remain
LOCATION: 707 South 36th Street
ZONE: R7

At the Zoning Board of Appeals meeting held on Thursday, May 10, 2012, Rosaleen Roeder, 662 North 85th Street, appeared before the board on behalf of the applicant, which is her daughter.

Mike Carter, ZBA Administrator, stated that the waiver request is a result of an anonymous complaint for the carport that is approximately 12 years old. Mr. Carter stated that the code would not have permitted the carport to be constructed as close to the property line. He stated that there is no hardship or practical difficulty therefore the department recommends denial.

Ms. Roeder stated that her daughter purchased her home 11 years ago with the carport as described in the listing. She stated that, according to the Douglas County tax records, the taxes for the property were based on the home with the carport. Ms. Roeder submitted a copy of an affidavit from a land title company issued February 28, 2001 that verified that the structure includes the carport (Exhibit 2). She also submitted a letter from the adjacent property owner (711 South 36th Street) to the south stating that he sees no issue with the carport and has no problem with drainage (Exhibit 3). Ms. Roeder explained that her daughter and the adjacent property owner to the south are the only two individuals who own their own property on their block.

Mr. Mahlendorf pointed out that it is evident that the carport has been located on the property for some time and the adjacent property owner does not have concerns about the carport.

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

AYES: Nash, Anzaldo, Donovan, Mahlendorf, Hancock

MOTION CARRIED: 5-0
At the Zoning Board of Appeals meeting held on Thursday, May 10, 2012, Bruce Frasier, AIA, 1005 South 76th Street, appeared before the board on behalf of the homeowner, Wallace Weitz.

Mike Carter, ZBA Administrator, stated that the waiver request is to allow a 6’ high wrought iron fence that would surround both properties. Mr. Carter stated that the applicant states that they would like to secure both properties and match the proposed fence with the existing fence. He stated that there is no hardship or practical difficulty and the fence can be legally built on the property therefore the department recommends denial.

Mr. Frasier stated that his client purchased the additional adjacent property to expand. There are two swimming pools on the property that need to be secure and there is also concern about security because of personal threats. There is extensive landscaping on the property on the west and north perimeter and will stay in place therefore the fence should not be noticed by the neighbors. Mr. Frasier stated that his client has received emails of support from several nearby property owners.

Mr. Mahlendorf asked for an understanding and a general idea as to where the fence will be located in relation to the street and landscaping. Mr. Frasier explained that a previous variance was granted for a small portion of the fence on the north side but the proposed waiver would allow for a continuance of the same fence. He stated that the property line is 24’ from the curb on the west side and approximately 14’ feet from the curb on 93rd Street. In response to Ms. Donovan, Mr. Frasier verified that the proposed fence would be located on the exterior side of the existing landscaping and as the property continues to develop the landscaping will extend between the fence and the property line thus limiting visibility.

In response to Mr. Mahlendorf, Mr. Frasier stated that the distance of the fence to the road on the north side varies from 24’ to 33’.

Mr. Hancock stated that upon inspection there was no other properties in the neighborhood with a similar fence and he was concerned that the applicant is creating the hardship so therefore he does not support the request.

In response to Mr. Mahlendorf, Mr. Carter explained that the property is actually two separate corner lots and the required setbacks are 50’ from the front property line and 25’ from the side property line.

In response to several board members, Mr. Frasier stated that a garden structure would be built on the new lot with an arbor, picnic tables, bathroom, catering kitchen and a dining room. He stated that the structure would be an accessory building for the main house and no one would live in the proposed structure. In response to Ms. Donovan, Mr. Carter stated that the separate lot is zoned as residential and a separate structure can be built on the new lot provided that it has a bathroom and a kitchen.

Mr. Mahlendorf suggested that the fence match the distance of 24’ from the property line on the west side. Mr. Frasier was in agreement.

Mr. Mahlendorf moved to APPROVE subject to the fence setback to be 24’ from the property line on the west side of Lot 2. Ms. Donovan seconded the motion.

AYES: Anzaldo, Donovan, Mahlendorf, Nash, Hancock
MOTION CARRIED:  5-0
6. Request: Waiver of Section 55-187(e) – Variance to the front yard setback from 35’ to 15’ to allow construction of a 7’ x 30’ front porch addition with stairs

Location: 5243 South 49th Avenue

Zone: R4(35)

At the Zoning Board of Appeals meeting held on Thursday, May 10, 2012, Bruce Karlquist and Cheryl Johnson, 5243 South 49th Avenue, appeared before the board.

Mike Carter, ZBA Administrator, stated that the applicant is proposing to construct a covered front porch with stairs that would encroach into the required front yard setback. Mr. Carter stated that there is no hardship or practical difficulty and is a design preference therefore the department recommends denial.

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

AYES: Donovan, Mahlendorf, Nash, Anzaldo, Hancock

MOTION CARRIED: 5-0
7. Case No. 12-042  
Gateway Mortgage  
12020 Shamrock Plaza  
Omaha, NE 68154

REQUEST: Waiver of Section 55-833 – Variance to the maximum height for a wall sign in a LO district from 20’ to 34’

LOCATION: 12020 Shamrock Plaza  
(12002 Pacific Street)

ZONE: LO

At the Zoning Board of Appeals meeting held on Thursday, May 10, 2012, Gaby Ryan, Signworks, 4713 T Street and Suzanne Claussen, Property Manager, Iret Properties, 11422 Miracle Hills Drive, appeared before the board on behalf of the applicant.

Mike Carter, ZBA Administrator, stated that a tenant applied for a sign permit but the proposed sign exceeds the height allowance for the zoning classification. Mr. Carter stated that the department recommends a layover to allow the property owner time to submit an overall sign plan.

Mr. Hancock stated that there are other signs at the site at the same height as the proposed sign. He stated that the board would like the signs to be right.

Ms. Ryan questioned the specific criteria for the sign plan and asked that the 20’ height be waived for this specific sign because the tenant is anxious to have a sign installed. The proposed sign will be smaller than the former MetLife sign and will have a white face on a raceway with channel lettering.

Mr. Carter stated that the department would like to have the property owners get a handle on what signage is actually located on the property, the height of each sign and the impact on the properties to the west.

In response to Ms. Donovan, Ms. Claussen confirmed that Iret Properties owns and manages all buildings. Ms. Donovan stated that she is concerned that as the buildings are broken up that there will be a need for more and more signage. She stated that she would prefer a layover so that a plan can be submitted that can be used and followed in the future. In response to Ms. Donovan, Ms. Claussen stated that there is a monument sign located off of Pacific Street.

In response to Mr. Hancock, Mr. Carter stated that a sign budget is based on street frontage and secondary frontage and would be fairly high for the subject property. Ms. Ryan stated that the sign budget for the subject property, which is located in a limited office district, would be 490 square feet and the proposed Gateway sign would calculate at 15 square feet. She explained that typically signs located on a building are for larger tenants who have signed a long-term lease.

Mr. Mahlendorf stated that he agrees with the height of the proposed sign but he is concerned about granting the proposed waiver when there is another sign on the building that is illegal. Ms. Ryan pointed out that Signworks did not install the illegal sign but that there was a permit for the sign.

Mr. Carter stated that the department would like to see a plan to clean up the signage budget and make everything legal. There would need to be a plan and to verify that there are no other violations.

Ms. Ryan asked if it would be necessary for a new tenant to come before the board when a sign is needed. Mr. Carter answered that each side of the building could possibly have an exact amount of signage. Ms. Claussen explained that signage would not be allowed all over the side of the building.

Mr. Hancock suggested that a motion for approval could be made for this applicant only and another option could be approval subject to working with the planning department to come up with a sign plan.

In response to Mr. Anzaldo, Ms. Ryan explained that they would like an approval for the sign for Gateway Mortgage.
Mr. Carter pointed out that there would be nothing to layover if the sign were approved.

Mr. Mahlendorf moved to LAYOVER subject to establishing a sign plan and identifying any waivers or variances that are needed for the entire parcel.

In response to Mr. Hancock, Alan Thelen, City Attorney, answered that you can take the question of the sign before you right now, yes or no, approve or disapprove and the second question is if you are inviting the applicant to amend their application and if so, you can move to layover the rest of the case and invite them to amend their application to identify what other waivers are needed. Mr. Thelen suggested that it might be more clear to take care of the issue that is on the application and then follow up with a motion to layover for the purpose of amending of the application.

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

AYES: Mahlendorf, Nash, Anzaldo, Donovan, Hancock

MOTION CARRIED: 5-0
8. Case No. 12-043
Buck’s, Inc.
4973 Dodge Street
Omaha, NE 68132

REQUEST: Waiver of Section 55-366 & 55-740(f) – Variance to the maximum impervious coverage on Lot 1 from 85% to 85.5%; to the rear yard setback on Lots 1 & 2 from 15’ to 2’ and 1.63’; to the minimum perimeter landscaping on Lots 1 & 2 from 5’ to 0’; and to the minimum interior landscaping on Lot 1 from 5% to 0% to allow for the approval of an administrative subdivision

LOCATION: 8455 Frederick Street and 3052 South 84th Street

ZONE: CC & CC/FF

At the Zoning Board of Appeals meeting held on Thursday, May 10, 2012, Matt Manning, general counsel, 4973 Dodge Street, appeared before the board on behalf of the applicant.

Mike Carter, ZBA Administrator, stated that the applicant is proposing to subdivide the existing property into two lots and, as part of the process, it is necessary to apply for several waivers because the existing improvements do not comply with the zoning ordinance regulations. Mr. Carter stated that there is no hardship or practical difficulty because if the property were subdivided prior to construction, the department would not have supported the waivers therefore the department recommends denial.

Mr. Manning stated that his client desires to split the property because there is a prospective buyer for the strip mall property. Mr. Manning stated that his client is evaluating all properties and striving to maintain a portfolio of only C-stores.

Mr. Hancock stated that the board is frustrated because several waivers were granted when it was before the board a few years ago. The site was cleaned up and landscape was added but it now appears to be a “bait and switch” and the two lots were combined to gain the benefits. Mr. Hancock stated that the hardship seems to be created by the applicant because of the waiver that was approved in 2009. Mr. Manning stated that it was not the intent to take advantage of the city or the board. He stated that the tattoo shop occupies the eastern portion of the retail property but the owner refuses to move to another location.

Ms. Donovan stated that she is not willing to support the request because the lots were previously combined so that a large facility could be built thus creating the problem.

Mr. Manning explained that there was a discussion of possibly moving the lot line and then granting an easement back to the prospective buyer of Lot 1. Mr. Hancock pointed out that there would need to be access easements but the tattoo parlor is too close to the C-store building, which was a choice that was made when waivers were granted in 2009. Mr. Hancock suggested that the case be laid over to explore other opportunities.

Mr. Mahlendorf moved to LAYOVER to allow the applicant an opportunity to submit other options. Ms. Donovan seconded the motion.

AYES: Nash, Anzaldo, Donovan, Mahlendorf, Hancock

MOTION CARRIED: 5-0
APPROVAL OF MINUTES

Ms. Donovan moved to APPROVE the April 12, 2012 meeting minutes. Mr. Nash seconded the motion.

AYES: Anzaldo, Donovan, Nash, Hancock
ABSTAIN: Mahlendorf
MOTION CARRIED: 4-0-1

ADJOURNMENT

Mr. Anzaldo moved to ADJOURN the meeting at 2:15 pm. Mr. Mahlendorf seconded the motion.

AYES: Donovan, Mahlendorf, Nash, Anzaldo, 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