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, December 31, 2012 and Thursday, January 3, 2013.

MEMBERS PRESENT: Bert Hancock, Chair
Brian Mahlendorf, Vice Chair
Jacque Donovan
Sebastian Anzaldo
Teri Teutsch, Alternate

MEMBERS NOT PRESENT: Jonathan Nash, Jr.
Sean Kelley, Alternate

STAFF PRESENT: Rick Cunningham, Planning Director
Dave Fanslau, Current Planning Manager
Mike Carter, Zoning Board of Appeals Administrator
Rosemarie Lee Horvath, City Law
ClINETTE Warren, Recording Secretary

Mr. Hancock called the meeting to order at 1:03 p.m., introduced the board members, as well as the staff, and explained the procedures for hearing the cases.
LAYOVERS

1. Case No. 12-132 (from 12-13-12)  
   Tom Meister  
   Savoreux, Inc.  
   11422 Miracle Hills Drive #400  
   Omaha, NE  68144  
   REQUEST: Waiver of Section 55-716 & 55-366 - Variance to the required bufferyard between CC and DR from 30’ to 25’10” and to the street side yard setback from 15’ to 10’ for a new building, parking lot, and patio.  
   LOCATION: 14225 Pacific Street (14208 Pierce Plaza)  
   ZONE: CC

RECOMMENDATION: The Planning Department recommends approval of the request subject to:

1) Administrative Board of Appeals (ABA) approval of the reduced stacking requirement  
2) The new building materials and signage complying with the MCC-Major Commercial Corridor standards  
3) Submittal of an application to rezone the property to MCC-Major Commercial Corridor Overlay District.

At the Zoning Board of Appeals meeting held on Thursday, January 10, 2013, Jeff Lake - Olsson Associates, Kris Brown - Savoreux, Inc., and Jerry Huber - Investors Realty, appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the project as proposed encroaches into required bufferyard to the west. The Planning Department recommends approval of the waiver because of the existing encroachment. It is also recommended that the applicant receive approval to waive the required 275’ driveway stacking requirements from the Administrative Board of Appeals (ABA). In addition, the building and signage should comply with MCC standards, and an application to rezone the property to Major Commercial Corridor Overlay District should be submitted. Mr. Carter stated that the property owner has indicated that they intend to potentially lease parking stalls from the property to the east, since additional parking is needed. He explained that as part of the building permit process, the property owner will need to document the leased parking arrangement.

Mr. Lake stated that the owner has a verbal agreement with the property to the east for parking, and that an application had been submitted to the Administrative Board of Appeals for the waiver of the stacking requirements.

In response to Mr. Mahlendorf, Mr. Carter stated that the Zoning Ordinance includes a clause that addresses shared parking with an adjacent property. He explained that a parking plan would have to be created outlining the arrangement between the property owners.

In response to Mr. Mahlendorf, Mr. Lake stated that his client had issues with the 2nd and 3rd recommendations made by the Planning Department. He referred to a letter submitted by his client opposing the MCC Overlay. Mr. Lake questioned the City’s reason for requesting an MCC Overlay recommendation when the request is for a setback waiver only. He felt that the process of applying for the MCC Overlay would delay the issuance of the building permit. Mr. Carter responded that MCC standards would primarily affect the materials used for the exterior construction of the building and should not cause any delays in obtaining a permit. He added that rezoning is contingent upon submittal of the application as opposed to waiting for approval. Mr. Carter advised Mr. Lake to meet with the Urban Design staff to receive guidance on what is acceptable for MCC standards, before applying for the building permit and appearing before the Administrative Board of Appeals. In response to Mr. Mahlendorf, Mr. Carter confirmed that the MCC overlay would apply only to the building materials and signage.

Mr. Lake stated that his client was concerned that the MCC overlay would mean that other signage on the property would have to be removed. Mr. Carter explained that the existing signage on the property would be considered as non-conforming unless changes are made to them. Mr. Lake explained that the property
owner is allowing Dunkin Donuts to install their own monument sign specific to their store, in addition to the two already existing signs.

In response to Ms. Teutsch, Mr. Brown stated that Dunkin Donuts uses a prototype for their stores that can be adjusted according to specific regulations.

Mr. Lake agreed to accept the waiver with the recommendations from the Planning Department.

Mr. Mahlendorft moved to APPROVE subject to: 1) Administrative Board of Appeals approval of the reduced stacking requirement; 2) the new building and new signage complying with the MCC (Major Commercial Corridor) standards; 3) submittal of an application to rezone the property to MCC Overlay District. Ms. Donovan seconded the motion.

AYES: Anzaldo, Donovan, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0
NEW CASES

2. Case No. 13-001
   Jose Tenorio
   14908 Echo Hills Drive
   Omaha, NE  68138
   REQUEST: Waiver of Section 55-246 - Variance to the front yard setback from 35’ to 5’ to allow new stairs and landing to remain.
   LOCATION: 2717 Poppleton Avenue
   ZONE: R7

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, January 10, 2013, Jose Miranda - Property Owner, appeared before the Board. Steve Solorio from the Mayor’s Office provided assistance to Mr. Miranda with interpreting when needed.

Mike Carter, Zoning Board of Appeals Administrator, stated that the property has an existing front porch that is covered by a second-floor deck. He explained that new stairs and a landing were added to the existing deck to allow access to the 2nd floor, without the benefit of a building permit. The applicant requested a waiver to allow the stairs and landing to remain in the front yard setback. Mr. Carter stated that construction should have met the setback requirements of the code. He added that access could also have been constructed to the rear of the home. He also stated that if the applicant was attempting to create access to allow for a separate dwelling on the 2nd floor, then the proper permits should be obtained which would allow the home to be converted to a duplex. The Planning Department found that there was no hardship or practical difficulty and recommended denial.

Mr. Mahlendorf stated that the home matches other homes in the neighborhood that sit on the property line. He added that the homeowner would need to obtain a building permit. Mr. Miranda responded that the original builder claimed to have obtained the permit. He further stated that Mr. Tenorio, the applicant, had since obtained a permit.

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

Mr. Anzaldo stressed to Mr. Miranda that, although he had filled out an application, he needed to obtain a permit. He also suggested that the applicant clean up the property.

AYES: Donovan, Mahlendorf, Teutsch, Anzaldo, Hancock

MOTION CARRIED: 5-0

Mr. Anzaldo stated that the City should attempt to educate the Latino community about the proper procedures to construct and remodel their homes. He mentioned several groups that would welcome a speaker or informative materials that would provide direction in this area. Rick Cunningham, Planning Director, agreed with Mr. Anzaldo, and stated that the Mayor’s Office has an advocate for South Omaha that could be used as a resource for that purpose. He added that he would contact the Mayor’s Office, Jay Davis (Building Superintendent), and seek direction from Mr. Anzaldo regarding the matter.
3. Case No. 13-002
American Fence
15225 Industrial Road
Omaha, NE  68144

REQUEST: Waiver of Section 55-246 - Variance to the
front yard setback from 35’ to 5’ and to the
interior side yard setback from 10’ to 1’ for
a trash enclosure.

LOCATION: 137 North 33rd Street
ZONE: R7

RECOMMENDATION: Approval, subject to the enclosure being constructed of a masonry material to
match the main building.

At the Zoning Board of Appeals meeting held on Thursday, January 10, 2013, Rod Kimmell appeared
before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct
a 6’ tall, wooden enclosure to screen dumpsters at the property. He explained that the hardship is that
there is no other area on the property where the dumpster can be placed. The Planning Department
recommended approval, subject to the enclosure being constructed of a masonry material that matches
the main building. Mr. Carter noted that the 5’ and 1’ setbacks mentioned in the request are based on the
plans that were submitted with the building permit. After a visit to the property, he was not sure whether
the plans match what was being done on the actual site. He explained that if the enclosure was closer
than the 5’ setback being requested, the applicant would need to make a request for the actual location
of the setback.

In response to Mr. Hancock, Mr. Kimmel stated that he did not
want to construct the enclosure of the
same masonry material as the building, since similar properties in the City have used privacy fence. He
added that he is proposing to build a cedar enclosure with a double-gate in front.

In response to Ms. Teutsch, Mr. Kimmel stated that the enclosure would be 9’ wide instead of 8’ to
accommodate the dumpsters. Also, the parking space adjacent to the enclosure would be reduced from
11’ to 9’.

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

In response to Mr. Hancock, Mr. Carter stated that the existing posts on the property might be closer
than the 5’ being requested. He explained that if that is the case, the posts would need to be moved back
to the 5’ or the applicant would need to apply for a waiver for the actual location of the posts. Mr.
Hancock made certain that Mr. Kimmel was aware that he could be cited by the City if it was found that
the posts are too close to the property line.

AYES: Mahlendorf, Teutsch, Anzaldo, Donovan, Hancock

MOTION CARRIED: 5-0
At the Zoning Board of Appeals meeting held on Thursday, January 10, 2013, Dale Luebbert appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, noted that this property had been before the Board at the September 13, 2012 meeting (Case No. 12-087) for a waiver of the setback for a 22’x24’ garage. That request was granted. He stated that the applicant has since decided that a 22’x30’ garage is needed at the 1’ setback. He recalled that the previous structure had been hit by a vehicle in the alley and knocked over. The Planning Department found that there was no hardship or practical difficulty since a garage in compliance with the ordinance can be constructed on the site, and therefore recommended denial.

Mr. Luebbert stated that there would not be enough space for the family’s two vehicles. He explained that previously he anticipated parking one car in the garage and the other outside; however, since both vehicles have been broken into and he would like to park both vehicles in the garage. He would also like the use the bigger space to store his trash can and other supplies.

In response to Mr. Hancock, Mr. Luebbert stated the reasons why he could not legally build a garage on his property, which included difficulty with entering and exiting the garage.

Mr. Anzaldo clarified that Mr. Luebbert was requesting an addition 6’ of space to build a larger garage.

Mr. Anzaldo moved to APPROVE. Mr. Hancock seconded the motion.

In response to Ms. Teutsch, Mr. Luebbert stated that he did not wish to switch the orientation of the garage because a driveway already exits. Also it would interfere with the drip line of an oak tree that sits on the property line. In response to Ms. Teutsch’s suggestion to move the garage back 1’6”, Mr. Luebbert stated that the garage would be more difficult to enter. Ms. Teutsch stated that the Board could deny the request, allowing the waiver granted at the September 13, 2012 meeting to stand.

Mr. Hancock stated that the Board felt that most of the compromise was on their part, and none from the applicant.

Mr. Anzaldo withdrew his motion to approve. Mr. Hancock withdrew his second.

Mr. Hancock suggested that Ms. Teutsch make a motion for what she would like to see happen, giving the applicant the option of building according to what is stated in her motion, building according to code, or building according to the waiver that was granted at the September 13, 2012 meeting.

Ms. Teutsch moved to have the variance remain at 3’ to 1’ to erect a 22’x30’ detached garage. The garage must remain legal on the rear. Mr. Hancock seconded the motion.

AYES: Teutsch, Anzaldo, Donovan, Hancock

NAYES: Mahlendorf

MOTION CARRIED: 4-1
5. Case No. 13-004
Kevin Strehle
BCDM
1015 North 98th Street
Suite 300
Omaha, NE 68114

REQUEST: Waiver of Section 55-166, 55-715, 55-740(f), & 55-735 - Variance to the impervious coverage from 45% to 69%; to the minimum street yard landscaping depth from 20’ to 18.5’ and 3’; to the minimum street yard landscaping from 65% to 40%; to the minimum interior parking lot landscaping from 5% to 1.7%; and to allow parking for a nonresidential use in the front yard setback of a residential district.

LOCATION: 2617 South 114th Street
ZONE: R3(MCC Pending)

RECOMMENDATION: Approval, in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on Thursday, January 10, 2013, Kevin Strehle appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that this case had been before the Planning Board at its December 5, 2012 meeting. At that time a Major Amendment for a Conditional Use Permit was approved. One of the conditions for approval was that waivers for the project be obtained from the Zoning Board of Appeals. The Planning Board recommended approval in accordance with the plans submitted. Mr. Carter advised Mr. Strehle that based on the new submittal, a Minor Amendment would need to be obtained that reflected changes to the parking. Mr. Strehle responded that Public Works requested that some parking be removed to mitigate the amount of impervious coverage and storm water impact.

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

AYES: Anzaldo, Donovan, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0
6. Case No. 13-005
Olsson Associates
Jeff Lake
2111 South 67th Street
Suite 200
Omaha, NE 68106
REQUEST: Waiver of Section 55-836 - Variance to the
front yard setback from 12’ to 3’ for a
monument sign.
LOCATION: 7060 Dodge Street
ZONE: CC-ACI-2(65)

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, January 10, 2013, Jeff Lake appeared before
the Board.

Mr. Lake stated that the Raising Cane’s restaurant at this location is scheduled to open January 31, 2013.
He explained that the owners of the restaurant have a permit for the sign; however, the sign is in
violation of the current setbacks. Mr. Lake referred to the letter submitted with the application for the
Zoning Board of Appeals, which detailed the hardships and difficulties for the property owner. One
hardship, relating to the Urban Design Code, is the requirement that an additional foot of right-of-way be
dedicated. The Urban Design Code requires 8’ of green space behind the curb, 7’ of sidewalk, and
another 15’ of green space. In addition there was the issue of build-to/setback lines. Finally, cross access
easements were required with the properties to the east and west. As a result of these conditions, the
sign would be 60’ – 70’ off of Dodge Street.

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

Mr. Hancock stated that he would support the request if the sign did not include LED signage. In
response to Ms. Teutsch, Mr. Lake stated that if approval of the request was based on removal of the
LED lighting, he would accept the conditions. He added that Raising Cane’s has versions of the sign that
does not include LED.

Ms. Donovan withdrew her second to the motion.

Mr. Mahlendorf’s amended motion was to APPROVE the variance to the front yard setback from 12’ to 3’
for a monument sign subject to the removal of the LED portion of the sign. Ms. Donovan seconded the
motion.

AYES: Donovan, Mahlendorf, Teutsch, Anzaldo, Hancock

MOTION CARRIED: 5-0
7. Case No. 13-006
    William Novak
    2606 North 154th Avenue
    Omaha, NE  68116

REQUEST: Waiver of Section 55-740(e) - Variance to the hard-surfacing requirement for a temporary parking lot from 5/24/13 to 9/2/13.

LOCATION: Generally south of West Maple Road between 230th Street and 233rd Street

ZONE: AG-FW

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, January 10, 2013, William Novak appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, recalled that a similar request for this property was before the Zoning Board in September 2012. The current request would allow for a variety of music oriented events, a soccer tournament, tubing and tanking operations, and other events. Mr. Carter stated that the Planning Department recommended denial since the applicant had the option of providing shuttle service for the various events planned. He added that the Planning Department does not support waivers to the hard-surfacing requirement for Temporary Use Permits. He also noted that there were petitions submitted to the Planning Department in opposition to the applicant's request from the residents of Waterloo, Nebraska. The petitioners cited noise from previous events as an issue.

In response to Mr. Hancock, Mr. Novak detailed the circumstances surrounding his September 2012 waiver request. He stated that he had met with Mary Ann Borgeson, Douglas County Commissioner, regarding his proposed plans.

In response to Mr. Hancock, Mr. Novak stated that, if necessary, he would seek a waiver from the Zoning Board of Appeals annually to facilitate the events planned for the area. He further stated that there have been events at his location for the past three years. He added that if the waiver were not granted, the only option for parking would be on the grass shoulders of the road.

Mr. Mahlendorf stated that the Board was mostly concerned with the noise from music festivals. In response to Mr. Anzaldo, Mr. Novak stated that he fully complies with the State statute on noise. In compliance with that statute, he noted that music levels are reduced at 10 p.m. In addition, the speakers are directed away from Waterloo and a monitor is placed in the area to ensure that the music is inaudible. Mr. Novak listed other changes in policy that he discussed with Ms. Borgeson. These changes include the elimination of the stage at the beach area and the shutdown of all stages at 12:30 a.m.

Mr. Anzaldo advised Mr. Novak that the Board discussed limiting the noise from the area from 10 a.m. to 10 p.m.

Mr. Mahlendorf noted that it would be difficult to install a hard surface in the area because it is in a flood plain. He added that most of the opposition for the waiver was from citizens outside of the City's jurisdiction and that the motion would address those concerns.

Mr. Mahlendorf moved to APPROVE the variance to the hard-surfacing requirement for a temporary parking lot from 5/24/13 to 9/2/13 subject to a noise limitation on music being only from 10 a.m. to 10 p.m. Ms. Donovan seconded the motion.

AYES: Mahlendorf, Teutsch, Anzaldo, Donovan, Hancock

MOTION CARRIED: 5-0
8. Case No. 13-007  
Conceptual Ventures, Inc.  
Bryan Rubek  
18716 Mayberry Street  
Omaha, NE 68022

REQUEST: Waiver of Section 55-146 - Variance to the side yard setback from 10’ to 6’ for a home/garage addition.

LOCATION: 558 South 87th Circle

ZONE: R2

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on Thursday, January 10, 2013, Bryan Rubek appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was seeking a waiver to construct a garage and second-floor master bedroom addition on the south side of the existing home. The driveway on the north side for the existing garage will be removed and converted into living space. Since an addition in compliance with the Code could be constructed, the Planning Department recommended denial.

Mr. Rubek explained that the 10’ setback requirement leaves only 16’ of building space and is not enough to construct a 20’x21’, two-car garage on the south side of the property; therefore, a waiver of an additional 4’ is needed.

Mr. Carter noted that the Planning Department received a letter of support from the church to the south of the property.

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

AYES: Teutsch, Anzaldo, Donovan, Mahlendorf, Hancock
9. Case No. 13-008
Garrison Hassenflu
2020 Broadway
Kansas City, MO 64108

REQUEST: Waiver of Section 55-734 - Variance to the required number of off-street parking stalls from 48 to 12 to allow for redevelopment of the building.

LOCATION: 701 South 24th Street
ZONE: DS-ACI-1(PL)

This request was withdrawn at the request of the applicant.
APPROVAL OF MINUTES

Ms. Teutsch moved to APPROVE the December 13, 2012 meeting minutes as amended. Mr. Hancock seconded the motion.

AYES: Anzaldo, Mahlendorf, Teutsch, Hancock

ABSTAIN: Donovan

MOTION CARRIED: 4-0-1

DISCUSSION

Rick Cunningham, Planning Director, stated that OTM waiver requests were being scheduled (re: Case Number 12-044), and that the case would possibly be back before the Board at the February 14, 2013 meeting. He further stated that TPR Properties, LLC had hired an acoustical consultant whose recommendations had been forwarded to the Planning Department. The City of Omaha has also hired an acoustical consultant who has taken readings and reviewed the applicant’s proposals. The attorneys for the applicant would like to brief the members of the Zoning Board of Appeals on their findings and proposals. Mr. Cunningham stated that the City has also planned a public meeting to inform citizens on the matter. Mr. Hancock wanted to be assured that the applicant would not be receiving an advantage that is not given to other applicants appearing before the Board. He noted that the subject of those meetings should be limited to technical knowledge of the case. Mr. Cunningham responded that the purpose of the meeting would be to educate the Board on certain technical aspects of the case that would enable them to make a more informed decision on the matter. The meetings would also be held with no more than two Board members at a time.

ELECTION OF OFFICERS

Mr. Mahlendorf moved to nominate Bert Hancock as Chairman of the Zoning Board of Appeals. Ms. Teutsch seconded the motion.

AYES: Donovan, Mahlendorf, Teutsch, Anzaldo, Hancock

MOTION CARRIED: 5-0

Mr. Anzaldo moved to nominate Brian Mahlendorf as Vice-Chair of the Zoning Board of Appeals. Mr. Hancock seconded the motion.

AYES: Donovan, Mahlendorf, Teutsch, Anzaldo, Hancock

MOTION CARRIED: 5-0


ADJOURNMENT

It was the consensus of the Board to ADJOURN the meeting at 2:51 p.m.

____________________________________________
Approved (date)

____________________________________________
Bert Hancock, Chair

____________________________________________
Clinette Warren, Secretary