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 30, 2013 and Thursday, January 2, 2014.

MEMBERS PRESENT: Bert Hancock, Chair
Brian Mahlendorf, Vice Chair
Sebastian Anzaldo
Sean Kelley, Alternate
Teri Teutsch, Alternate

MEMBERS NOT PRESENT: Jacque Donovan

STAFF PRESENT: Mike Carter, Zoning Board of Appeals Administrator
Jay Davis, Assistant Director
RoseMarie Lee, City Law
Clinette Warren, Recording Secretary

Mr. Hancock called the meeting to order at 1:13 p.m., introduced the Board members and staff, and explained the procedures for hearing the cases.
ZONING BOARD OF APPEALS
Minutes – January 9, 2014
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LAYOVERS

1. Case No. 13-118
   (from 10-10-13 & 11-14-13)
   Mark Bulger
   Walter B. Roberts Corporation
   1024 South 32nd Street
   Omaha, NE 68105

   REQUEST: Waiver of Section 55-246, 55-716, 55-734 & 55-735 – Variance to the minimum site area per unit from 1,000 sq. ft. to 865 sq. ft; to the required buffer yard between R7 and R4 from 30' to 21' and 8'; to the required number of off-street parking stalls from 85 to 50; and to allow off-street parking for a multi-family residential use in the front yard setback with a Reasonable Accommodation request to allow construction of a new apartment building.

   LOCATION: 1024 South 32nd Street
   ZONE: R7

RECOMMENDATION: Approval in accordance with the plans submitted, including providing the access easement from 32nd Street to the alley on the west.

At the Zoning Board of Appeals meeting held on January 9, 2014, Mark Bulger, Glendora Weiland (Vice-President of Walter B. Roberts Corporation), Steve Eveans (Architect) and William B. Woodruff (Attorney) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant had submitted a revised site plan which includes the following proposed changes: Reduction to the number of units in the new building from 35 to 28, which was achieved by reducing the height of the building from 5 stories to 4; Reconfiguration of the parking lot to the west of the building; and, removal of the proposed “pocket park”. The proposed changes have reduced the need for one of the previously requested waivers and have caused an increase in the setback for landscaping purposes. The applicant has indicated that the facility is for blind and disabled persons and that the demand for this type of facility is high for this area. In addition, parking for these types of facilities is not as high as a typical multi-family facilities.

The Planning Department believes that there is a hardship with regards to providing living accommodations for persons who are blind and disabled. Also, the site as it exists limits the ability to provide those accommodations. The Department supports the waivers due to the need for this type of housing and, therefore, recommends approval in accordance with the plans submitted, including providing the access easement from 32nd Street to the alley on the west.

William B. Woodruff appeared on behalf of the Omaha Association for the Blind. He referred to the final drawing of the proposed property (Exhibit B). He felt that the applicant had addressed many of the issues that were raised by the Board at an earlier meeting. He added that the applicant had spoken with the neighbors who had previously expressed concerns about the project and his client had attempted to take those concerns into consideration. He requested that the waivers be approved in accordance with the Planning Department’s recommendation. He also mentioned that the project is supported by the Leavenworth Neighborhood Association.

Mr. Anzaldo noted the favorable response to the project from the Leavenworth Neighborhood Association.

Elaine Miller, 1025 South 32nd Street, appeared in opposition to the request. She stated that she was not in opposition to housing for the blind or disabled. However, she felt that the applicant was attempting to do too much with too little land.

Bill Dreiberbis appeared on behalf of his daughter who lives at 1030 South 32nd Street. He stated that negotiations with the applicant did not occur and that the land was not large enough for what the applicant was proposing.
Eduardo Zendejas, 1026 South 32nd Street, appeared in opposition to the request. He stated that he was not opposed to the type of housing being proposed. However, he felt that the applicant was attempting to do too much with too little land. He also felt that there was no compromise on the part of the applicant, since the neighbors’ recommendations were not taken into consideration. He questioned the validity of the Reasonable Accommodation Request being claimed by the applicant. In response to Mr. Mahlendorf, Mr. Zendejas stated that he did attend a private meeting with the applicant, but that was not allowed to have any input on the plans. Mr. Zendejas raised concerns with regards to parking and congestion along 32nd Street.

Mr. Anzaldo expressed support for the changes made by the applicant and added that he would stipulate that if the applicant decided to sell the property in the future, the new owners must apply for any future use of the building and that the requested waivers are for this applicant only.

Mr. Woodruff explained that the Reasonable Accommodation Request is a result of there not being enough housing for individuals in the city who are blind.

In response to Mr. Hancock, Mr. Bulger stated that there are currently 41 rental units in the existing building with an additional unit for the apartment manager. He added that at last count, 17 of the 41 residents own vehicles. The 28 additional units being proposed would bring the total of units to 69. He believed that, due to the larger size of the units, the number of residents could increase to approximately 77 persons. After some discussion, it was determined that once the new apartment is built, the parking ratio would actually improve.

Mr. Zendejas pointed out that the applicant would not be able to discriminate against persons with any other disabilities due to HUD funding. For that reason, he stated that there could possibly be more residents with cars living in the new units. Mr. Bulger confirmed that apartments are for persons with any disability and those over age 62.

In response to Mr. Anzaldo, Mr. Bulger stated that the foundation is financially stable and does not need additional income to be profitable, that timely maintenance is provided, and that emergency vehicles have the necessary access to the site.

Mr. Anzaldo moved to APPROVE in accordance with the plans submitted, for this applicant only, which includes providing the access easement from 32nd Street to the alley on the west. If this applicant vacates the property the new owner must abide by all applicable zoning regulations. Ms. Teutsch seconded the motion.

AYES: Anzaldo, Mahlendorf, Teutsch, Kelley, Hancock

MOTION CARRIED: 5-0
2. Case No. 13-147  
Gary and Debbie Pink  
5615 South 118th Plaza  
Omaha, NE 68137  

REQUEST: Waiver of Section 55-126 & 55-715 - Variance to the front yard setback from 40’ to 30’; to the maximum impervious coverage from 30% to 42.38%; to the minimum street yard landscaping from 75% to 63.5%; and to the street yard landscaping minimum depth from 30’ to 0’ to allow construction of a new home and driveway.

LOCATION: 23464 “N” Street  
ZONE: R1

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 9, 2014, Mick McGuire (Straightline Design, Inc.) appeared before the Board on behalf of the applicants.

Mr. McGuire stated that there had been discussions with the neighbors to the west, to the east and across the street. At the request of the neighbors to the east, the applicants were proposing to situate the home closer to the property line than what was originally planned so as not to obstruct the view. He added that the new plan shows a 4-car garage instead of 6 as originally proposed. He mentioned other changes which included a reduction in the amount of the side yard setback being requested, the addition of a loop driveway and eliminating the use of impervious pavers due to soil conditions. He noted that there were letters from neighbors in support of the request.

Mr. Hancock stated that he found it difficult to support the request due to the fact that there were so many undeveloped lots in the area.

Larry Jobeun (11440 West Center Road) appeared on behalf of the Hamptons Land Development, LLC and the Boyer-Young Development Company. He submitted a letter (Exhibit B) signed by both parties expressing support for the waivers being requested in connection with the revised drawings.

Mr. Hancock was concerned that approval of this request would set a precedent for waiver requests from future property owners on that block. Mr. Jobeun explained that the developers support this project since it meets all the other design criteria with respects to the covenants of the development company. It is also consistent with the goals for development of the neighborhood.

Mr. Mahlendorf stated that one of the biggest issues was the circular drive. He suggested a revision to the drive that would make the plans more acceptable. Mr. Hancock stated that he did not have an issue with the request for a waiver for the street yard landscaping depth which is a result of the topography of the land. However, he did have an issue with the amount of impervious coverage being requested.

Dave Schmitt, 10306 Regency Parkway Drive, stated that he is the owner of a nearby lot. He requested that the waiver to the front yard setback from 40’ to 30’ be granted so that the property could be moved further to the south, which would improve his view.

Taking into consideration the testimony of the developer and neighbor, Mr. Hancock stated that he would support a waiver for the amount of impervious coverage if it was for no more than 35%. Mr. McGuire agreed to remove some of the concrete in the curved driveway in an attempt to reduce the amount of impervious coverage.
Mr. Mahlendorf moved to APPROVE in accordance with Exhibit “D”, the variance to the front yard setback from 40' to 30'; to the maximum impervious coverage from 30% to 38%; to the minimum street yard landscaping from 75% to 63.5%; and to the street yard landscaping minimum depth from 30' to 0'. The turnaround show on Exhibit D is not part of the approved plan. Mr. Kelley seconded the motion.

AYES: Mahlendorf, Teutsch, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0
NEW CASES

3. Case No. 14-001  
   Gary Trecek  
   624 South 150th Street  
   Omaha, NE 68154

REQUEST: Waiver of Section 55-166 & 55-715 - Variance to the front yard setback from 35’ to 17’ and to the minimum street yard landscaping depth from 20’ to 0’, to allow construction of a 25’x30’ detached garage.

LOCATION: 624 South 150th Street  
ZONE: R3

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 9, 2014, Gary Trecek and Shanin Marinnis appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a detached garage to the south of the existing home. The Planning Department found no hardship or practical difficulty since the property can be developed in compliance with the ordinance and, therefore, recommended denial.

Mr. Trecek explained that if he built any further back, he would not have a back yard. In response to Mr. Hancock, he stated that he would still not meet the setback if the garage was attached. Mr. Hancock explained how to eliminate the waiver for the minimum street yard landscaping depth with proper construction of the circular drive. He suggested a layover to give the Board the opportunity to visit the site and to allow the applicant time to create a revised plan.

In response to Ms. Teutsch, Mr. Trecek stated that some dirt work had been completed in an attempt to have it completed before frost set in. He explained that he would like to store his work truck and other items in the garage.

Mr. Hancock noted that there is a hardship due to the irregular shape of the lot. He suggested that the applicant attempt to construct the garage as legal as possible, which could possibly include a driveway from the curb to the garage or the garage being situated closer to the front of the home. He added that the garage could also be attached and offset from the home about 3’.

Ms. Teutsch moved to LAYOVER. Mr. Kelley seconded the motion.

AYES: Teutsch, Kelley, Anzado, Mahlendorf, Hancock

MOTION CARRIED: 5-0
4. Case No. 14-002
   Mike Moylan
   Capitol District, LLC
   1414 Harney Street
   Suite 400
   Omaha, NE 68102
   REQUEST: Waiver of Section 55-740 & 55-737(c) – Variance to the curb length of a 90° parking stall from 9’ to 8’6”; to the parking space depth from 18’ to 16’6”; and to the required grouping of compact stalls from 5 to 1.
   LOCATION: 1002, 1116 & 1120 Capitol Avenue & 215 North 12th Street
   ZONE: DS-ACI-1(PL)

RECOMMENDATION: Approval, in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on January 9, 2014, Larry Jobeun (11440 West Center Road) appeared before the Board.

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

AYES: Kelley, Anzaldo, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0
5. Case No. 14-003
   Mike Tackett
   4623 South 166th Circle
   Omaha, NE 68135

REQUEST: Waiver of Section 55-126 & 55-715 – Variance to the front yard setback from 40’ to 30’ and to the street yard landscaping depth from 30’ to 0’, to allow the construction of a detached garage and driveway.

LOCATION: 3414 & 3502 South 228th Street
ZONE: R1

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 9, 2014, Mike Tackett appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant is proposing to construct a 36’x70’ detached garage on a vacant lot adjacent to the existing home. The setback proposed for the garage is 30’ which encroaches into the 40’ setback that was granted via a waiver for the property in 2008. The waiver for the street yard landscaping depth is necessary to allow an angled driveway from the street. The Planning Department finds that there is no hardship or practical difficulty since the lot is vacant and can be developed in compliance with regulations and, therefore, recommended denial.

Mr. Tackett stated that the developer is attempting to preserve a large oak tree that is located about 90’ from the property line.

Mr. Hancock noted that there was a letter of support from Jason Lanoha in the case file. However, he stated that he could not support the waiver as requested since there is sufficient space to build the garage legally.

In response to Mr. Mahlendorf, Mr. Tackett stated that he would be agree to look into a different design.

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

AYES: Anzaldo, Mahlendorf, Teutsch, Kelley, Hancock

MOTION CARRIED: 5-0
6. Case No. 14-004
   David and LaVonne Weston
   625 South 51st Street
   Omaha, NE 68106

   REQUEST: Waiver of Section 55-782(b)(6) – Variance to the interior side yard from 3' to 21” to erect a 14'x20' detached garage.

   LOCATION: 625 South 51st Street
   ZONE: R3

   RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 9, 2014, LaVonne Weston appeared before the Board.

Ms. Weston proposed to replace an existing garage with a new one of the same size in the same location. She explained that if the garage was moved 3’ from the property line as required, it would be difficult to get a car inside the structure.

Mr. Mahlendorf stated that the Board has supported these types of requests in the past as long as the proposed garage is in the same location and the same size as the garage being replaced.

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

In response to Mr. Hancock, Ms. Weston stated that the design of the garage will match the existing home with regards to roof style, color and siding.

AYES: Mahlendorf, Teutsch, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0
<table>
<thead>
<tr>
<th>Case No.</th>
<th>REQUEST:</th>
<th>LOCATION:</th>
<th>ZONE:</th>
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<tr>
<td>14-005</td>
<td>Waiver of Section 55-716 &amp; 55-766(b)(3) - Variance to the required buffer yard between GI &amp; R2 from 60’ with screening to 0’ with screening and to allow a Scrap and Salvage use within 300’ of a residential zoning district.</td>
<td>2728 North 85th Street</td>
<td>GI</td>
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**RECOMMENDATION:** Approval, in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on January 9, 2014, Joe Foley and Jennifer Jones appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant is planning to move their scrap and salvage business to a new location. A Special Use Permit was approved by the Planning Board with one of the conditions being that the necessary waivers must be obtained from the Zoning Board of Appeals. He explained that the residential zoning of the property on the west side of Keystone Drive and the residential property on the west side of the creek make the requested variances necessary. He added that the property on the west side of Keystone Drive is designated for industrial use and could be rezoned to industrial making the requested buffer yard waiver unnecessary. The Planning Department believes that the 300’ separation is a hardship, since it extends into the back yard of residential homes but not the homes themselves. The Planning Department recommends approval in accordance with the plans submitted.

In response to Ms. Teutsch, Ms. Jones stated that there is a logger baler on site. She explained that business hours are Monday through Friday, 9:00 a.m. to 4:45 p.m., and Saturday 9:00 a.m. to 2:45 p.m., which should prevent any noise after-hours. She added that the Blondo property will be cleaned.

Mr. Carter stated that the applicant would be required to comply with any sound regulations.

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

**AYES:** Teutsch, Kelley, Anzaldo, Mahlendorf, Hancock

**MOTION CARRIED:** 5-0
8. Case No. 14-006
Mark J. Hemmer
Maxim Enterprises, LLC
16559 Dora Hamann Parkway
Omaha, NE 68116

REQUEST: Waiver of Section 55-715 – Variance to the minimum street yard landscaping percentage from 65% to 54% and to the minimum street yard landscaping depth from 20’ to 5’ to allow construction of a circular driveway.

LOCATION: 18817 Nicholas Street
ZONE: R3

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 9, 2014, Mark Hemmer, Steve Michaud and Stacey Michaud appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the home is currently under construction and that the applicant has applied for a variance to allow construction of a circle drive in the front of the home. The Planning Department believes that there is no hardship or practical difficulty since the home is currently under construction and the driveway can be constructed in compliance with city codes. The Department recommended denial.

Mr. Hemmer stated that there are approximately 51 houses within a 3 block radius of the proposed home with similar driveways. He added that the Five Fountains committee supports the plan.

Mr. Hancock suggested making the left side of the driveway straighter or making the right side more circular in order to bring the property more in compliance. The applicant agreed to round out the right side of the driveway. Modifications were made to the original plan and submitted as Exhibit B.

Mr. Mahlendorf moved to APPROVE in accordance with Exhibit B. Mr. Hancock seconded the motion.

AYES: Kelley, Anzaldo, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0
9. **Case No. 14-008**

**REQUEST:** Waiver of Section 55-734 – Variance to the required number of off-street parking stalls from 244 to 169 to allow a *Religious Assembly* use.

**LOCATION:** 1313 North 48th Ave & 4859 Hamilton Ave

**ZONE:** GC

- Kevin Strehle
- BCDM
- 1015 North 98th Street Suite 300
- Omaha, NE 68114

**RECOMMENDATION:** Approval in accordance with the plans submitted, subject to: 1) Meeting with Planning Department staff to develop an acceptable landscape plan, and 2) Approval of a right-of-way lease for the parking stalls along the west side of the building.

At the Zoning Board of Appeals meeting held on January 9, 2014, Kevin Strehle and Silas West appeared before the Board in behalf of Waypoint Church.

Mr. Strehle stated that his client had accepted the terms of the City’s recommendation. In response to Mr. Mahlendorf, Mr. Strehle stated that his client would be willing to reduce the east and west 90° parking stalls in order to add more landscaping, along with removing some existing concrete.

Mr. Mahlendorf moved to APPROVE in accordance with the plans submitted, subject to: 1) Meeting with Planning Department staff to develop an acceptable landscape plan and 2) Approval of a right-of-way lease for the parking stalls along the west side of the building. Ms. Teutsch seconded the motion.

**AYES:** Anzaldo, Mahlendorf, Teutsch, Kelley, Hancock

**MOTION CARRIED:** 5-0
10. Case No. 14-009
    Omaha Neon
    Dennis Plachy
    1120 North 18th Street
    Omaha, NE 68102
    REQUEST: Waiver of Section 55-836 – Variance to the
    maximum height of wall signs (2) from 35’
    to 53’.
    LOCATION: 11201 Davenport Street
    ZONE: CC-FF/FW

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on January 9, 2014, Dennis Plachy appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the site is being redeveloped with a new hotel. The district regulations for the CC (Community Commercial) District allow the height of a building to be taller than what the sign regulations allow. The Planning Department supports the request due to the conflict and, therefore, recommends approval in accordance with the plans submitted.

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

AYES: Mahlendorf, Teutsch, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0
11. Case No. 14-010  
John and Michelle Cannella  
526 South 96th Street  
Omaha, NE 68114  
REQUEST: Waiver of Section 55-126 – Variance to the maximum impervious coverage from 30% to 40% to allow for a home addition.  
LOCATION: 526 South 96th Street  
ZONE: R1  
RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 9, 2014, Charles Gifford, Dr. John Cannella and Craig Tuttle (General Contractor) appeared before the Board.

Mr. Gifford explained that the applicants are proposing to add 54 square feet to the back of the home to provide support for an existing cantilever, including building a new footing. A raised patio is also being proposed. In response to Mr. Hancock, Mr. Gifford stated that the proposed patio would be 300’ larger than what currently exists.

Mr. Tuttle explained how the patio would be created. He stated that poured concrete walls of varying heights would be constructed around the perimeter of the new patio. A structural concrete slab would be poured on top of the walls and a stone mortar set in place on top of the concrete. The proposed deck will not be higher than the existing deck.

Dr. Cannella stated that he had met with his neighbors to the north and south and that both are in support of the project. He also mentioned that there are other homes in the neighborhood that exceed the maximum amount of impervious coverage. There was discussion regarding drainage of the property and the use of another material in lieu of the concrete deck.

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

AYES: Teutsch, Kelley, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0
(A slight adjustment to the agenda was made, this case was heard after 14-003.)

12. Case No. 14-011

City of Omaha

Bridget Hadley

1819 Farnam Street

Omaha, NE 68183

REQUEST: Waiver of Section 55-840(d) - Variance to the maximum height of an off-premise advertising sign from 55' to 65'.

LOCATION: 1102 Davenport Street

ZONE: DS-ACI-1(PL)

RECOMMENDATION: Approval in accordance with the plans submitted, subject to: 1) The bottom of the sign face can be no higher than the top of the concrete retaining wall of I-480, with the overall height of the sign being no taller than 65', 2) Approval of the vacation of the 11th Street right-of-way and 3) no electronic signage allowed.

At the Zoning Board of Appeals meeting held on January 9, 2014, Bridget Hadley appeared before the Board.

In response to Ms. Teutsch, Ms. Hadley stated that there would be no change in the size of the sign, only its location.

Mr. Anzaldo moved to APPROVE in accordance with the plans submitted, subject to: 1) The bottom of the sign face can be no higher than the top of the concrete retaining wall of I-480, with the overall height of the sign being no taller than 65', 2) Approval of the vacation of the 11th Street right-of-way and 3) no electronic signage allowed. Mr. Kelley seconded the motion.

AYES: Kelley, Anzaldo, Malendorf, Teutsch, Hancock

MOTION CARRIED: 5-0
13. Case No. 14-012
Ariel Roblin
2665 Douglas Street
Omaha, NE 68131

REQUEST: Waiver of Section 55-839, 55-933(b) & 55-928(e) – Variance to the maximum height for a monument sign from 12’ to 17’ and to perimeter parking lot landscaping from 15’ to 0’.

LOCATION: 1001 South 10th Street
ZONE: CBD-ACI-1(PL)

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on January 9, 2014, Dawn Danley (Leo A. Daly) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant is seeking waivers for the Burlington Railroad Depot site that is currently undergoing renovation. A waiver is being requested for a sign along the 10th Street Bridge. He explained that, due to the elevation of the property and location of the bridge, a 12’ sign would not be visible. Because the building has historical status, the proposed sign cannot be attached to the building. In addition, if the required landscaping along Pacific Street was installed, it would likely not survive due to the area being hidden by a retaining wall. The area also drops below Pacific Street, causing the landscaped area to not be visible from the street. The Planning Department does believe that there are hardships, and recommended approval in accordance with the plans submitted.

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

AYES: Anzaldo, Mahlendorf, Teutsch, Kelley, Hancock

MOTION CARRIED: 5-0
14. Case No. 14-013
Premier Bank
Chris Maher
16802 Burke Street
Omaha, NE 68118

REQUEST: Waiver of Section 55-824(d) – Variance to allow a monument sign on a property with a building closer than 15’ to the property line.

LOCATION: 4314 & 4318 Dodge Street, 109 North 43rd Avenue
ZONE: GC-ACI-2(50)

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on January 9, 2014, Larry Jobeun appeared before the Board on behalf of the applicant.

Mr. Jobeun explained that the waiver request is a result of the required dedication of the 13’ right-of-way. In addition, because the property is located in an ACI district, the building must be built closer than 15’ from Dodge Street. The existing retaining wall to the east of the property reduces the visibility of the proposed monument sign.

Mr. Anzaldo moved to APPROVE in accordance with the plans submitted, subject to compliance with the ACI regulations. Mr. Kelley seconded the motion.

AYES: Mahlendorf, Teutsch, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0
15. Case No. 14-014

David Ksiazek 14535 Fir Circle
Plattsmouth, NE 68048 &
John and Laura Sherman
10126 Edna Circle
Omaha, NE

REQUEST: Waiver of Section 55-186 – Variance to the interior side yard setback from 5’ to 1.8’ and 4.2’ to allow for approval of an administrative subdivision.

LOCATION: 3419 & 3421 Madison Street
ZONE: R4(35)

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on January 9, 2014, David Ksiazek appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the waiver request is the result of the applicant and an adjacent property owner attempting to complete an administrative subdivision. The new subdivision reflects that there is a property line down the middle of the two homes, which does not comply with the 5’ side yard setback. The Planning Department supports the request since the homes are existing, and the request would help to clearly define the property lines for both properties. The Planning Department recommends approval in accordance with the plans submitted.

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

AYES: Teutsch, Kelley, Anzaldo, Mahlendorf, Hancock

MOTION CARRIED: 5-0
16. Case No. 14-015

John Shavlik
5843 Grover Street
Omaha, NE 68106

REQUEST: Waiver of Section 55-206 & 55-207(d)(3) – Variance to the interior side yard setback from 10’ to 6’ and to the minimum separation between dwelling units from 25’ to 10.7’ to allow for use of the site for two-family residential.

LOCATION: 5843 Grover Street
ZONE: R5

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on January 9, 2014, Larry Jobeun, John Shavlik and Debra Ciullo appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant is proposing to convert an existing duplex into a single-family home by removing the dwelling unit in the basement. In addition, he is proposing to add a unit above the existing detached garage to the south. This would change the use of the property to Two-Family Residential and creates a need for the waivers being requested. The Planning Department finds that there is no hardship or practical difficulty since the need for the waivers was created by the applicant and, therefore, recommended denial. He suggested that if the Board decides to grant the waivers, conditions should be added to ensure that the property is changed as proposed.

Mr. Jobeun explained that the house was converted into two separate units. The tenant who occupied the basement unit has moved out and the applicant would again like to make the home a single-family dwelling, which would include removing any additional utility connections. He added that there is a living space above the garage that is adjacent to the home. The applicant is requesting a waiver to the minimum separation between the home and the garage. In an attempt to improve the situation, he spoke with Jay Davis, Assistant Director – Permits and Inspections, who advised him that the living quarters in the basement would need to be removed from the home. This would bring the property into compliance with the R5 zoning requirements of no more than two single-family dwellings on one lot. He further stated that the applicant had no objections to the recommendation of the Planning Department, should the Board decide to grant the waivers.

In response to Mr. Anzaldo, Mr. Shavlik stated that, if the request was approved, the garage with the three large doors would remain. Mr. Shavlik explained that he would use the garage to store a motor home, car and other items. He stated that he would not be operating a business from the garage. He plans to live above the garage while his wife will live in the home. Also in response to Mr. Anzaldo, Mr. Shavlik admitted that some hard feelings had been created with various members of the neighborhood as a result of the garage and the space that had been built above it. Mr. Shavlik stated that he would abide by any requirements recommended by the Planning Department and set by the Board.

Terry Ficenec, 5610 “A” Street, appeared in opposition to the request. Mr. Ficenec felt that the removal of meters and appliance would not be enough to ensure that the basement would not be used again as an apartment. He also felt that, although Mr. Shavlik has stated that he has gone out of business, he could decide to resume it at a later time. He also stated that the two buildings were too close to consider a waiver of the separation requirements. He added that the garage has a meter with three connections, which could prove that there was more than one residence planned for the space above the existing garage. He was also concerned about the effect it would have on parking. In response to Mr. Anzaldo, Mr. Ficenec stated that he feels that many of the applicant’s problems were self-inflicted and that the Board should deny the request.

Rich Fornacka, 3624 South 55th Street, appeared in opposition to the request. He stated that Mr. Shavlik built the garage for the sole purpose of parking his work trucks and that the issue has been going on for 10 years. He felt that if the applicant’s request was approved, it would set a precedent for the
neighborhood. He has observed that there has been a parking problem at the home ever since the garage was built. He objected to having two residences on one lot in his neighborhood.

Virginia Fomacka, 3624 South 55th Street, appeared in opposition to the request. Ms. Fomacka stated that she has spoken with Jay Davis several times through the years regarding Mr. Shavlik’s property. She also felt that the applicant has created his own problems and that he has overbuilt the lot. She showed some pictures that she had taken of the property in 2007. She testified that the garage has been used in the past to store work trucks. She stated that Mr. Shavlik’s actions in the past have made it difficult for the neighbors to take him at his word. She has witnessed electrical meters and plumbing being installed which could be interpreted to mean that residential units are planned for the space above the garage. She recommended that the garage should be torn down.

Judy Paskewitz, 3615 South 55th Street, appeared in opposition to the request. She felt that the request should be denied. She also presented a picture that showed three meters being attached to the garage and stated that the applicant had obtained a permit for six plumbing fixtures.

Several members of the Board recalled that they had visited the property when the applicant came before the Board in 2009 (Case 09-027). At that time they saw the two doors in back and the utility connections. Mr. Hancock stated this particular case was regarding the distance between the two dwellings. Ms. Paskewitz responded that, based on Mr. Shavlik’s history and the issue with parking at the property, the request should be denied.

Jay Davis stated that he had been asked by Mr. Carter what would be required to convert the lot to a Two-Family Residential use. Mr. Davis stated that if the request was granted, Mr. Shavlik may be required to install a fire-sprinkler system according to the Building Code. He also stated that as an official of the City of Omaha, he has the right, with probable cause and a search warrant, to enter a property. He explained that if a legitimate complaint was made on the property, the City could choose to enter the property. He stated that the structure was originally permitted as a garage with no second story, but evolved into a garage with a second-story duplex. In response to Mr. Anzaldo, Mr. Davis stated that a final inspection has not been performed on the property, with one of the issues being that the Department is unsure of what the property should be classified as. He added that if the request was denied the structure would be used “as necessary”. Mr. Anzaldo felt that the applicant was attempting to clear up all the issues with the property, and that possibly a legal agreement could be created with the help of Mr. Shavlik’s attorney, which would state what actions would be taken resolve all of those issues. He suggested a layover to allow time for this to occur. Mr. Davis responded that a plan would also need to be submitted.

In response to Mr. Mahlendorf, Mr. Davis stated that he began receiving complaints about construction activity occurring on the garage around 2011. City Inspectors observed the property, but did not witness any work being done. When an interior inspection was later performed, no evidence was found that work had been done.

Mr. Ficenec agreed with Mr. Anzaldo that all of the issues with the property needed to be settled and that the solution would be to remove the space above the garage, since it was created without permission.

Mr. Jobeun stated that he and his client would work with the City on an acceptable resolution; he felt that 30 days would be enough time to do so.

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

Irene Whiting, 5910 Grover Street, appeared in opposition to the request. Based on the applicant’s history, she felt that there should be a way to hold the applicant to his word.

Mr. Hancock stated that he was in support of a layover since it would allow more time for clarification of the Two-Family Residential and Duplex use.
Deb Ciullo, the applicant’s wife, spoke on his behalf. She stated that the home was condemned when Mr. Shavlik first purchased it, adding that great care was taken to ensure that the garage matched the home. She also questioned how near to the property the neighbors who appeared in opposition actually were.

Mr. Hancock acknowledged that this case was an emotional one for the neighbors; however, he stated that the Board’s main concern is the structure and how it relates to zoning laws, and not necessarily the applicant’s character.

AYES: Kelley, Anzaldo, Mahlendorf, Teutsch, Hancock

MOTION CARRIED: 5-0
ELECTION OF OFFICERS

The Election of Officers will be held at the February 13, 2014 meeting of the Board.

APPROVAL OF MINUTES

Mr. Mahlendorf moved to APPROVE the minutes of the November 14, 2013 meeting. Mr. Hancock seconded the motion.

AYES: Mahlendorf, Teutsch, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0

Mr. Anzaldo moved to APPROVE the minutes of the December 12, 2013 meeting. Mr. Hancock seconded the motion.

AYES: Anzaldo, Mahlendorf, Kelley, Hancock

ABSTAIN: Teutsch

MOTION CARRIED: 4-0-1

ADJOURNMENT

It was the consensus of the Board to ADJOURN the meeting at 4:38 p.m.

______________________________________________
Approved (date)

______________________________________________
Bert Hancock, Chair

______________________________________________
Clinette Warren, Secretary