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, June 30, 2014 and Thursday, July 3, 2014.

MEMBERS PRESENT: Bert Hancock, Chair
                Sebastian Anzaldo
                Jacque Donovan
                Jason Lanoha
                Sean Kelley, Alternate

MEMBERS NOT PRESENT: Brian Mahlendorf, Vice Chair
                       Teri Teutsch, Alternate

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

Mr. Hancock called the meeting to order at 1:00 p.m., introduced the Board members and staff, and explained the procedures for hearing the cases.
LAYOVERS:

1. Case No. 14-061 - WITHDRAWN (from 6/12/14)
   Robert Quartoroli
   Dream Scape Homes
   P.O. Box 963
   Elkhorn, NE 68022
   REQUEST: Waiver of Section 55-715 – Variance to the
   minimum street yard landscaping percentage from 60% to 50% and to the
   minimum street yard landscaping depth from 15’ to 4’ to allow a circular driveway.
   LOCATION: 21015 “W” Circle
   ZONE: R4

This request was withdrawn at the request of the applicant.
2. Case No. 14-062  
(from 6/12/14)  
Rolando Armas  
5103 Center Street  
Omaha, NE 68106

REQUEST: Waiver of Section 55-406, 55-716 & 55-734  
- Variance to the street side yard setback requirement from 50’ from center line to 45.5’ from center line; to the rear yard setback from 15’ to 4’; to the required buffer yard between GC & R4 from 5’ to 0’ and 13’ to 3’; and to the required number of off-street parking stalls from 5 to 0 to construct a new building.

LOCATION: 5103 Center Street  
ZONE: GC

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on July 10, 2014, Rolando Armas and Brad Blakeman appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to replace an existing home with a new office building, which results in the need for waivers to the street side yard setback on the east side of the property. Additional waivers are also required for the south side of the property due to the existing residential garage and driveway that are part of the home. The Planning Department found no hardship or practical difficulty since the proposed building could be built in compliance with zoning regulations and recommended denial.

Mr. Armas explained that water is entering the basement of the home because of how the garage was built. The damage to the foundation has prompted the property owner to construct a new building on the property.

Mr. Hancock mentioned that the structure on the south side of the property does not have a Certificate of Occupancy. He added that if the waivers were granted both buildings would require a Certificate of Occupancy.

Mr. Blakeman explained that the proposed building will be very similar to the existing building but will be resituated for accessibility and drainage issues.

Mr. Carter clarified that, although parking stalls are shown on the plans, the area could technically not be used for parking.

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

AYES: Anzaldo, Donovan, Lanoha, Kelley, Hancock

MOTION CARRIED: 5-0
3. Case No. 14-066 (from 6/12/14)

Anna Johnson
3815 North 83rd Street
Omaha, NE 68134

REQUEST: Waiver of Section 55-715 – Variance to the minimum street yard landscaping percentage from 65% to 58% and to the minimum street yard landscaping depth from 20’ to 0’ to allow a circular driveway to remain.

LOCATION: 5419 Western Avenue
ZONE: R3

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on July 10, 2014, Anna Johnson appeared before the Board.

Ms. Johnson explained the changes to the original design, which included removal of concrete near the curb and, if necessary, 2’ from the portion of the driveway that is connected to the neighbors. The adjacent neighbor could not be contacted about a shared access easement agreement.

Ms. Donovan stated that the applicant had done what the Board requested. Mr. Hancock clarified that the driveway would be located 2’ from the neighboring property line and that the section of concrete adjacent to the street (between the curb and sidewalk) would be removed. Landscaping would replace the concrete that connected the two driveways.

Ms. Donovan moved to APPROVE in accordance with the revised plan submitted which includes the following: removal of the portion of concrete that currently meets the curb and removal of the 2’ of concrete that abuts the neighbor’s driveway. Mr. Kelley seconded the motion.

AYES: Donovan, Lanoha, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0
**NEW CASES:**

4. Case No. 14-076  
Douglas County School District  
3215 Cuming Street  
Omaha, NE 68131  

**REQUEST:** Waiver of Section 55-830 – Variance to the maximum total sign area from 32 sq. ft. to 143.5 sq. ft. and to the maximum height for a wall sign from 16’ to 30’ to allow for additional wall signs.

**LOCATION:** 3215 Cuming Street  
**ZONE:** R5

**RECOMMENDATION:** Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on July 10, 2014, Jeremy Madson (Douglas County School District) and Terry Rush (Omaha Neon Sign – 1120 North 18th Street) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to install four additional wall signs along Cuming Street, and have one existing wall sign near the Career Center to remain. As proposed, the signs would exceed the allowed maximum square footage for the site. He noted that the property received a waiver in 1989 to allow a sign budget of up to 60 square feet near the parking area. The proposed signs would help to identify various departments within the building that are used by the public. He mentioned that on June 4, 2014, the Planning Board approved a Major Amendment to a Conditional Use Permit to allow the signage to exceed the allowed amount in the district. One of the conditions of that approval was that the necessary signage waivers needed to be obtained from the Zoning Board of Appeals. The Planning Department recommended approval in accordance with the plans submitted.

Mr. Anzaldo stated that the Board had driven by the building and were in support of the request.

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

AYES: Lanoha, Kelley, Anzaldo, Donovan, Hancock

MOTION CARRIED: 5-0
5. Case No. 14-067
   Paul Jeffrey
   BVH Architects
   1425 Jones Street
   Omaha, NE 68102

   REQUEST: Waiver of Section 55-246 - Variance to the interior side yard setback from 10' to 5' to allow for installation of portable classrooms.

   LOCATION: 2215 Binney Street (Sacred Heart School)

   ZONE: R7

This request was withdrawn at the request of the applicant.
6. Case No. 14-068
   Habitat for Humanity
   1701 North 24th Street
   Omaha, NE 68110

   REQUEST: Waiver of Section 55-782(b)(6) – Variance to the interior side yard setback from 3’ to 1’6” and to the rear yard setback from 3’ to 2’8” to rebuild an existing garage.

   LOCATION: 2506 North 60th Street
   ZONE: R4(35)

RECOMMENDATION: Approval subject to the exterior materials of the garage matching that of the home.

At the Zoning Board of Appeals meeting held on July 10, 2014, Dan Brewer (Habitat for Humanity) appeared before the Board.

Mr. Brewer stated that the garage for the home had deteriorated and needed to be replaced. The proposed garage would be built in the same place as the previous garage; however, waivers are needed since the original garage did not meet the required setbacks.

Mike Carter, Zoning Board of Appeals Administrator, stated that Planning Department believes there is a practical difficulty resulting from the slope of the property and the orientation of the garage. There are several garages in the area that are similarly located, so the proposed garage would not be out of character with the neighborhood. The Department recommended approval, subject to the exterior materials of the garage matching that of the home.

Ms. Donovan moved to APPROVE in accordance with the plans submitted, subject to the exterior materials of the garage matching the home. Mr. Kelley seconded the motion.

AYES: Kelley, Anzaldo, Donovan, Lanoha, Hancock

MOTION CARRIED: 5-0
7. Case No. 14-069  
Brother Mike Wilmot SJ  
Gesu Housing, Inc.  
5008 ½ B Dodge Street  
Omaha, NE 68132
REQUEST: Waiver of Section 55-186 and 55-782(b)(2)  
- Variance to the rear yard setback from 25’ to 21.85’ and to allow a patio to project more than 10’ into a required yard for construction of a new home and patio.
LOCATION: 4303 Patrick Avenue
ZONE: R4

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on July 10, 2014, Mike Hall and Brother Mike Wilmot appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a new home on a vacant site with substandard depth. The depth of the lot is 82.55’ instead of the minimum 100’. This makes it difficult to comply with the standard setback requirements. The Planning Department supports the request; however, the applicant is encouraged to utilize an exception in the code which would allow the home to be moved closer to Patrick Avenue making it more consistent with other homes along the street. This would reduce or remove the need for any waivers. The Department recommended approval in accordance with the plans submitted.

Mr. Hall stated that the home would be moved closer to Patrick Avenue to match the adjoining properties.

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

AYES: Anzaldo, Donovan, Lanoha, Kelley, Hancock

MOTION CARRIED: 5-0
8. Case No. 14-070  REQUEST: Waiver of Section 55-206 – Variance to the
Brother Mike Wilmot SJ  street side yard setback from 15’ to 9’ to
Gesu Housing, Inc.  allow construction of a new home.
5008 ½ B Dodge Street  LOCATION: 4203 Burdette Street
Omaha, NE 68132  ZONE: R5(35)

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on July 10, 2014, Mike Hall and Brother Mike Wilmot appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant is proposing to build a new home on a vacant site. The 50’ width of the lot makes it difficult to meet the 15’ side yard setback for a corner lot. The Department had typically supported these types of variances for the area since many of the existing homes are within the 15’ setback. The Department suggested that the home be moved over 3’ closer to the interior side property line which would provide more space for the street side yard. The Planning Department recommended approval in accordance with the plans submitted, subject to a 5’ setback being provided on the west side to allow for a greater setback along 42nd Street.

Mr. Hall was in agreement with providing a 5’ setback being provided on the west side of the home for this particular project.

Mr. Anzaldo moved to APPROVE in accordance with the plans submitted subject to the home providing a 5’ setback on the west side to allow for a greater setback along 42nd Street. Mr. Kelley seconded the motion.

AYES: Donovan, Lanoha, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0
9. Case No. 14-071
   Tom Reeker
   1409 Cascio Drive
   Bellevue, NE 68005
   REQUEST: Waiver of Section 55-186 – Variance to the rear yard setback from 25’ to 20’ to allow replacement of existing deck.
   LOCATION: 13516 Hascall Street
   ZONE: R4(35)

RECOMMENDATION: Approval, subject to the new deck not extending further into the rear yard setback than the existing deck.

At the Zoning Board of Appeals meeting held on July 10, 2014, Tom Reeker appeared before the Board.

Mr. Reeker explained that the existing deck had deteriorated and needed to be replaced. He confirmed that the new deck would encroach nor farther into the rear yard setback than the existing deck.

Ms. Donovan moved to APPROVE subject to the new deck not extending further into the rear yard setback than the existing deck. Mr. Kelley seconded the motion.

AYES: Lanoha, Kelley, Anzaldo, Donovan, Hancock

MOTION CARRIED: 5-0
10. Case No. 14-072
   Justin Rossitto
   3567 Howard Street
   Omaha, NE 68105

   REQUEST: Waiver of Section 55-786 – Variance to the residential fence regulations to allow a 6’ tall, wrought-iron fence in the front and street side yard setbacks.

   LOCATION: 3567 Howard Street
   ZONE: R7-AC1-1(PL)

   RECOMMENDATION: Denial.

   At the Zoning Board of Appeals meeting held on July 10, 2014, Justin Rossitto appeared before the Board.

   Mike Carter, Zoning Board of Appeals Administrator, stated that applicant was proposing to install a 6’ tall, wrought-iron style fence around the perimeter of the property. As proposed, the fence would encroach into the front and street side yard setbacks. In addition, zoning regulations require that the fence be no taller than 4’. The Planning Department found no hardship or practical difficulty to support the installation of a 6’ tall fence and, therefore, recommended denial. He noted that there is a fence nearby where portions of the fence appear to exceed 4’; however, no waivers for a 6’ tall fence have been granted in that neighborhood.

   Mr. Rossitto stated that a 6’ tall fence would provide more security for when his children are outside playing. He explained that 36th Street is a busy street and a large multi-unit property will be built in the near future which would add even more traffic to the area. He stated that he could possibly agree to a compromise of 5’ for the some of the front portions of the fence. He also added that the fence as proposed will not obstruct the view of traffic.

   Ms. Donovan stressed that the fence should be properly maintained with no obstructions from landscaping, etc. In response to Mr. Hancock, Mr. Rossitto agreed to move the fence 2’ closer to the home on the Howard Street side.

   Mr. Carter advised that the applicant to meet with Public Works with regards to the locations of the gate.

   Ms. Donovan moved to APPROVE in accordance with the plans submitted subject to the fence to be moved 2’ closer to the home on the Howard Street (north) side. Mr. Kelley seconded the motion.

   AYES: Kelley, Anzaldo, Donovan, Hancock

   NAYES: Lanoha

   MOTION CARRIED: 4-1
11. Case No. 14-073
David Kain
P.O. Box 4066
Omaha, NE 68104

REQUEST: Waiver of Section 55-266, 55-734, 55-740(f)(4), 55-928(c) & 55-934 - Variance to the street side yard setback from 25' to 5'; to the rear yard setback from 25' to 22'; to the interior side yard setback from 10' to 0.78'; to the maximum impervious coverage from 80% to 84%; to the minimum number of off-street parking stalls from 58 to 36; to the perimeter parking lot landscaping from 10' to 3.57'; to the minimum interior parking lot landscaping from 7% to 1.3%; and to allow a retaining wall (Category 3) height greater than 10' for the construction of a new apartment building.

LOCATION: 617 South 31st Street
ZONE: R8-ACI-1(PL)

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on July 10, 2014, Dan Dolezal (Ehrhart Griffin & Associates) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that applicant is proposing to demolish two existing structures on the site and build a 36-unit, multi-family, residential building. As proposed, waivers are needed for the placement of the trash enclosures, interior and perimeter parking lot landscaping, the number of off-street parking stalls, the retaining wall on the east side of the property which exceeds the maximum 10' height, and the amount of impervious coverage. He explained that the Planning Department has been supportive of these types of projects in the urban areas of the City. The Department believes there is a hardship resulting from the amount of impervious coverage and recommended approval in accordance with the plans submitted. In response to Mr. Hancock, Mr. Carter stated that the City supports the waiver for off-street parking stalls since more on-street parking is being provided and because public transportation would be readily available to residents and visitors.

In response to Mr. Hancock, Mr. Dolezal stated that 10 off-street parking stalls are being provided. He explained that some of the impervious coverage is caused by the trash enclosure on the site. He further explained the need for the retaining wall waiver. Mr. Carter noted that the applicant has worked with the City on the design of the project and that the wall complies with ACI regulations in all other respects.

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

AYES: Anzaldo, Donovan, Lanoha, Kelley, Hancock

MOTION CARRIED: 5-0
12. Case No. 14-074
Eloy Flores
2829 Monroe Street
Omaha, NE 68104

REQUEST: Waiver of Section 55-207(g) – Variance to
the front yard setback from 35’ to 20.78’ to
construct a garage addition.

LOCATION: 3007 V Street
ZONE: R5(35)

RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on July 10, 2014, Dan Dolezal (Ehrhart Griffin & Associates) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, noted that the applicant had previously appeared before the Board in August 2014 with the belief that the front of the home was 29’ from the property line along V Street. The applicant received a survey after that meeting and realized that the property line is closer than what was originally thought creating the need for an additional waiver. The Planning Department supports the request since the proposed addition would match up with the existing home and would not encroach any farther into the front yard setback. Also, other homes in the area are similarly situated in the setback. The Department recommended approval in accordance with the plans submitted.

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

AYES: Donovan, Lanoha, Kelley, Anzaldo, Hancock

MOTION CARRIED: 5-0
13. Case No. 14-075  
Laura Bostwick  
8416 North 44th Street  
Omaha, NE 68112  

REQUEST: Waiver of Section 55-126 & 55-740(e) - Variance to the interior side yard setback from 25’ to 3’ and to the hard-surface driveway requirement to allow a 40’ x 24’, 2-story detached garage with attached deck and gravel driveway to remain.

LOCATION: 8416 North 44th Street  
ZONE: R1-ED

RECOMMENDATION: Denial of the waiver request to the interior side yard setback. Approval of the waiver to the hard-surfaced driveway requirement, subject to paving the driveway at such time that 44th Street adjacent to the property is paved.

At the Zoning Board of Appeals meeting held on July 10, 2014, Laura and Brent Bostwick appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that applicant had substantially completed construction of a 40’x24’, 2-story detached garage with an attached deck without the benefit of a building permit. The applicant indicated that the new garage replaced the former and was situated in the same general location. The new garage encroaches approximately 3’ into the side property line and uses an existing gravel driveway. It is also much larger than the previous 400 sq. ft. garage which results in the need for waivers. The Planning Department found no hardship or practical difficulty that justifies the need for the waiver of the side yard setback and recommended denial; however, the Department has been supportive of waivers to the hard-surfacing requirement in situations where the street that the driveway connects to is also gravel. There are other gravel driveways in the neighborhood. Approval of that waiver is subject to the driveway being paved at such time that the adjacent street is improved.

In response to Mr. Hancock, Ms. Bostwick explained that her husband had been improperly advised that he did not need a permit if he was replacing one garage with another. She submitted a picture of the original garage (Exhibit B) which showed it in a state of disrepair. She explained that her husband will use the second floor of the new garage for storage and as an office.

Mr. Hancock commented that the remote location of the garage lessens its impact on the neighbors. He expressed support for the project but made sure the applicant was aware of the consequences of the garage being built without a permit. Mr. Bostwick stated that the neighbors were in support of the project.

Michael Borsh, 8414 North 44th Street, appeared in support of the project. He had no objections to the new garage.

Gary and June Blair, 8408 North 44th Street, appeared in support of the project. He felt that the garage would have very little impact to the area.

Mr. Carter cautioned the property owners about using the detached garage for business purposes, since it would be a violation of the code.

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

AYES: Lanoha, Kelley, Anzaldo, Donovan, Hancock

MOTION CARRIED: 5-0
14. Case No. 14-077
   Brian Timmons
   The Garage Company
   8301 Q Street
   Omaha, NE 68127

   REQUEST: Waiver of Section 55-782(b)(6)(a) -
   Variance to the front yard setback from 60'
   to 56.5' to construct a detached garage.

   LOCATION: 3302 Madison Street
   ZONE: R4(35)

   RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on July 10, 2014, Brian Timmons and Jeff Thompson appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the property owner was proposing to construct a 14’ x 22’ detached garage which would utilize the existing driveway. The shallow depth of the lot makes it difficult to comply with the required 60’ setback to the front property line. The Planning Department found no hardship or practical difficulty and believed that any new construction should be in compliance with zoning regulations and, therefore, recommended denial.

The applicant was in agreement with Ms. Donovan’s suggestion that the garage be situated 3’ from the rear property line in order to get more space in the front.

Ms. Donovan moved to APPROVE in accordance with the plans submitted subject to: 1) The rear and side yard setback be at the 3’ minimum, and 2) Materials to be similar to the existing home. Mr. Hancock seconded the motion.

AYES: Kelley, Anzaldo, Donovan, Lanoha, Hancock

MOTION CARRIED: 5-0
15. Case No. 14-078
   David Updike
   1404 North 60th Street
   Omaha, NE 68132

REQUEST: Waiver of Section 55-187(e) – Variance to the front yard setback from 35’ to 20’ 9 ½” to construct a new deck and stairs.

LOCATION: 1404 North 60th Street

ZONE: R4(35)

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on July 10, 2014, David Updike appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct an 8’ x 16’ deck with landing and stairs at the front of the home, which would replace an existing deck and stoop. The proposed deck would encroach 20’ 9 ½” from the property line. The Planning Department found no hardship or practical difficulty and believes that any deck/stair should comply with zoning regulations and, therefore, recommended denial.

Mr. Updike stated that the existing steps, stoop, etc. all need to be repaired or replaced. There was some discussion as to the exact location of the proposed deck, what type of materials would be used, and how much of the existing brickwork would remain. It was determined that, as proposed, the deck would extend 15’ from the front door. The applicant stated that he had future plans to construct a deck with similar materials on the north end of the home.

Ms. Donovan felt that the proposed deck was not characteristic of the neighborhood. She suggested that the applicant attempt to get support from his neighbors for the project. She further suggested that the case be laid over which would also give the Board the opportunity to look at the home. Mr. Hancock also requested that the applicant submit plans that show the proposed layout for the front of the home and the front elevation of the deck. There was some discussion about the materials that will be used for the deck.

Mr. Anzaldo moved to LAYOVER. Mr. Kelley seconded the motion.

AYES: Anzaldo, Donovan, Lanoha, Kelley, Hancock

MOTION CARRIED: 5-0
DISCUSSION

Alan Thelen, City Law, updated the Board on the case U.S.S. Hazard v. Zoning Board of Appeals (Case 12-021). Mr. Thelen recalled that the Zoning Board of Appeals denied the request of the U.S.S. Hazard to be able to obtain permits to rebuild after the 2011 floods. The applicant appealed to the District Court, which overruled the decision of the Zoning Board of Appeals. The City of Omaha appealed to the Nebraska Court of Appeals, whose opinion it was that the City should issue the permits to U.S.S. Hazard. Mr. Thelen stated that the final step for the City would be to submit a Petition for Further Review to the Nebraska Supreme Court. He requested some confirmation from the Board that it was in favor of the City taking the case to the Nebraska Supreme Court. There was some discussion about some of the details of the case.

Mr. Anzaldo moved to APPROVE the decision by the City of Omaha to appeal to the Nebraska Supreme Court on behalf of the Zoning Board of Appeals. Mr. Hancock seconded the motion.

AYES: Anzaldo, Donovan, Lanoha, Kelley, Hancock

MOTION CARRIED: 5-0

APPROVAL OF MINUTES

Mr. Anzaldo moved to APPROVE the minutes for the June 12, 2014 meeting. Ms. Donovan seconded the motion.

AYES: Donovan, Lanoha, Anzaldo, Hancock

ABSTAIN: Kelley

MOTION CARRIED: 4-0-1

ADJOURNMENT

It was the consensus of the Board to ADJOURN the meeting at 2:36 p.m.