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, September 1, 2014 and Thursday, September 4, 2014.

MEMBERS PRESENT: Bert Hancock, Chair  
Brian Mahlendorf, Vice Chair  
Sebastian Anzaldo  
Jacque Donovan  
Jason Lanoha

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

STAFF PRESENT: Mike Carter, Zoning Board of Appeals Administrator  
Jennifer Taylor, 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. 14-042
   (From 4/10/14, 5/8/14, 6/12/14 & 8/14/14)
   Lamar Outdoor Advertising
   TLC Properties
   4849 “G” Street
   Omaha, NE 68117

REQUEST: Waiver of Section 55-853(a) – Variance to allow an electronic off-premise sign closer than 700’ to an existing standard off-premise sign.

LOCATION: 4409 Dodge Street
ZONE: CC-ACI-2(50)

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on September 11, 2014, Mike Degan appeared before the Board on behalf of the applicant.

Mr. Degan stated that an additional 30 days was needed. He stated that progress was being made and that attorneys for all parties were working out the details of an agreement.

Mr. Anzaldo moved to LAYOVER until the October 9, 2014 meeting of the Board. Ms. Donovan seconded the motion.

AYES: Anzaldo, Donovan, Lanoha, Mahlendorf, Hancock

MOTION CARRIED: 5-0
2. Case No. 14-080  
(from 8-14-14)  
Heather Kirk  
Santa Monica, Inc.  
130 North 39th Street  
Omaha, NE 68130  

REQUEST: Waiver of Section 55-764(c)(1) – Variance to allow a proposed Transitional Living use within ½ mile of an existing Transitional Living use with a Reasonable Accommodation request.  

LOCATION: 401 South 39th Street  
ZONE: GO-ACI-1(PL)

RECOMMENDATION: Approval, in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on September 11, 2014, Larry Roland appeared before the Board on behalf of the applicant.

Mr. Roland referred to a document that had been submitted to the case file. Included in Section 7 of the document was information regarding several other properties that had been considered; also included was information regarding other group homes in the area. In response to Ms. Donovan, Mr. Roland stated that of the 8 properties listed in his report, 7 are within the ½ mile radius.

At Mr. Hancock’s request, Mr. Roland explained why the applicant felt they qualified for consideration for Reasonable Accommodation. He stated that the goal was to assist individuals who are considered disabled who have dependency issues. Mr. Hancock stated that he was concerned with the portion of the Reasonable Accommodation Policy, Page 6, Step 2 – Item B which states, “The requested accommodation would constitute a Fundamental Alteration of the City’s Laws, Policies, or Processes”. He noted that the City has a law which states that there should be a ½ mile separation between transitional living homes. He felt that approval of the request would mean an alteration of that law. He added that the request makes it appear that there are no other residences outside of the ½ mile radius that are available to the applicant. Mr. Roland responded that while there would be a change, the request would be for one applicant and for one property. He also mentioned the limitations that are imposed on the clients who are served at Santa Monica, including the rule that they are not allowed to drive or own a vehicle. This creates the need to be close to public transportation for employment purposes. The applicant also wants to provide its clients a continuum of care; the proposed location would allow for this. Mr. Hancock felt that the “continuum of care” argument was created as a result of the applicant’s preference.

In response to Mr. Lanoha, Mr. Roland explained the efforts that were made to find an appropriate location for the new site.

Larry Sheehan - Attorney, 9290 West Dodge Road, appeared on behalf of the Montessori Education Center, owned by Dr. Lavonne Plambeck. The center is directly across from the proposed site for the Santa Monica House. Mr. Sheehan renewed his objection to the waiver that would allow the use. His client believed that it would negatively impact the operation of the Montessori center. He addressed three points: 1) The City’s Reasonable Accommodation policy requires that it be considered whether the accommodation would constitute a fundamental alteration of the City’s zoning regulations. He believed that there would be a fundamental alteration of the spacing requirement; 2) the potential impact of the project on the surrounding uses, including the Montessori Education Center. He stated that many parents of the children that attend the center are concerned about a halfway house being located directly across the street. He noted that most of the children are picked up between 4 p.m. and 6 p.m. which is when many of the women who would reside at the home will be arriving from work. He expressed concern about the safety of the children at the center; and 3) he believed that there are other sites that could be used for the proposed home. Based on those statements, he requested that the waiver be denied.

Dr. Lavonne Plambeck appeared in opposition to the request. She mentioned that there are two bars located between the existing Santa Monica location and the location being proposed. She felt that these might be a temptation to the women residing at the home.
Pamela Plambeck, Montessori Education Center, appeared in opposition to the request. She questioned the idea of having the group home in such close proximity to the children at the daycare and the bars in the neighborhood.

Rhonda Stuberg, President – Blackstone Neighborhood Association, appeared in opposition to the request. She stated that the neighborhood would like the homes in the area restored and preserved. She felt that there were enough group homes in the area. She spoke about the different activities that occur at an existing center that creates disturbances to the neighborhood like outside group meetings outside, the extra traffic associated with residents being dropped off and picked up, and the walks that occur.

Curt Snodgrass, 632 South 38th Street, appeared in opposition to the request. Mr. Snodgrass referred to a statement from the Department of Justice website, stating that if a neighborhood was composed largely of group homes, it would adversely affect the individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. He continued that it would be appropriate to be concerned about the setting of the home and overconcentration. He also questioned why Santa Monica was not required to obtain a Conditional Use Permit. He urged the Board to deny the permit and refer the matter back to the Planning Department.

Jim Farho, 3722 Dewey Avenue, appeared in opposition to the request. He submitted other locations that he felt would be more suitable for the applicant: 5209 Burt Street, 16206 Sedona Street, and 681 North 57th Street. He felt that the applicant should not be considered for Reasonable Accommodation and that the request should be denied.

Margie Magnuson, 4151 Davenport Street, President – Joslyn Castle Neighborhood Association, appeared in opposition to the request. She urged the Board to abide by the ½ mile separation law.

In response to Mr. Anzaldo, Mr. Carter stated that the Planning Board recommended approval of the Special Use Permit with the condition that the requested waiver be granted by the Zoning Board of Appeals. He added that if approved by the Zoning Board of Appeals, the Special Use Permit would go to City Council for final approval. Mr. Carter stated that the City had no issues with the other Santa Monica location at 130 South 39th Street. Mr. Anzaldo inquired as to whether the applicant was financially prepared to operate the property in a professional and legal manner. Mr. Roland stated that they were.

Mr. Hancock felt that the applicant had not fulfilled Step 2 of the Reasonable Accommodation policy. He stated that when multiple exceptions are made to a law, it becomes altered. He felt that the applicant could find another location to fit their needs.

Mr. Anzaldo moved to APPROVE in accordance with the plans submitted for this applicant only. Mr. Lanoha seconded the motion.

AYES: Donovan, Lanoha, Mahlendorf, Anzaldo,

NAYES: Hancock

MOTION CARRIED: 4-1
NEW CASES:

3. Case No. 14-093
   Tim & Mary Sheehan
   604 North 65th Street
   Omaha, NE 68132
   REQUEST: Waiver of Section 55-126 – Variance to the maximum impervious coverage from 30% to 44%; to the interior side yard setback from 25’ to 9’; and to the rear yard setback from 35’ to 7’6” to construct a detached shed and deck.
   LOCATION: 604 North 65th Street
   ZONE: R1

RECOMMENDATION: Denied.

At the Zoning Board of Appeals meeting held on September 11, 2014, Tim and Mary Sheehan appeared before the Board.

Mr. Sheehan stated this reasons for the request. Mr. Mahlendorf noted that the applicant had contacted his neighbors and received several letters of support from them. In response to Mr. Mahlendorf, Mr. Sheehan stated that the building would be used for personal storage.

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

AYES: Lanoha, Mahlendorf, Anzaldo, Donovan, Hancock

MOTION CARRIED: 5-0
4. Case No. 14-094
PDI Construction
P.O. Box 522
Gretna, NE 68028

REQUEST: Waiver of Section 55-734 – Variance to the required number of off-street parking stalls from 9 to 6 to allow expansion of the existing Cocktail Lounge use.

LOCATION: 5216 & 5218 North 24th Street

ZONE: GC

RECOMMENDATION: Denied.

At the Zoning Board of Appeals meeting held on September 11, 2014, Mike Kelley, 7134 Pacific Street, and Rod Kruse - Owner, 8129 Frances Street, appeared before the Board.

Mr. Kelley explained the reasons for the request. He stated that the applicant had recently received access to land directly to the west that would allow space for 6 parking stalls.

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

In response to Ms. Donovan, Mr. Kruse stated that there were plans to improve the exterior of the building.

Mike Carter, Zoning Board of Appeals Administrator, explained that there are several requirements for parking when it is added to a property. He stated that the Planning Department had not had the opportunity to review the parking plan.

Mr. Anzaldo felt that the applicant should be given the opportunity to make improvements to the property and that the Planning Department should make the necessary adjustments to allow them to do so.

AYES: Mahlendorf, Anzaldo, Donovan, Lanoha, Hancock

MOTION CARRIED: 5-0
5.  Case No. 14-095
    Dennis Kosmicki
    8704 Boyd Street
    Omaha, NE 68134

    REQUEST: Waiver of Section 55-108 – Variance to the
              front yard setback from 50’ to 40.1’ to
              enclose an existing porch.

    LOCATION: 8704 Boyd Street
    ZONE: DR

    RECOMMENDATION: Approval, in accordance with the plans submitted, subject to applying for rezoning to
    R2 – Single-Family Residential District (Low Density).

    The applicant did not appear before the Board.

    Mr. Mahlendorf moved to LAYOVER. Mr. Hancock seconded the motion.

    AYES: Anzaldo, Donovan, Lanoha, Mahlendorf, Hancock

    MOTION CARRIED: 5-0
6.   Case No. 14-096
      Mark Harral
      4802 South 90th Street
      Omaha, NE 68127

      REQUEST: Waiver of Section 55-782(b)(6) – Variance to the front yard setback from 60' to 35' to allow for construction of a 2-story garage addition.

      LOCATION: 8866 Holmes Street
      ZONE: R7

      RECOMMENDATION: Denied.

At the Zoning Board of Appeals meeting held on September 11, 2014, Mark Harral appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to remove the two western bays of an existing garage structure and rebuild a two-story garage in the same location. The new garage would be used to store equipment and materials for the existing apartment complex. He explained that a 60' front yard setback is required along 90th Street. The existing detached garage is at 35'. He stated that there was no hardship or practical difficulty to support the request; however, if the Board decided to grant the waiver, he suggested that the applicant be required to combine the apartment and garage lot into one lot. The Planning Department recommended denial.

Mr. Hancock stated that the Board had visited the site and noticed that the property across the street (4802 South 90th Street – Case 14-048), which is also owned by the applicant and was granted a waiver, had not been cleaned up. He further stated that he did not object to the request as long as the second floor of the structure was not used as a residence. He added that if the waiver was granted it would be with the condition that the steel shed on the southeast corner of the other lot be torn down. Other members of the Board agreed that the applicant’s other property should be cleaned up before another waiver was granted.

Ms. Donovan moved to LAYOVER to give the applicant time to make improvements to his other property (4802 South 90th Street). Mr. Mahlendorf seconded the motion.

AYES: Donovan, Mahlendorf, Anzaldo, Hancock

NAYES: Lanoha

MOTION CARRIED: 4-1
7. Case No. 14-097
Clarkson Memorial Hospital
988145 Nebraska Medical Center
Omaha, NE 68198

REQUEST: Waiver of Section 55-406 – Variance to the maximum building coverage from 70% to 79% to construct a parking garage.

LOCATION: 4111 Harney Street
ZONE: GC-ACI-1(PL)

RECOMMENDATION: Approval, in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on September 11, 2014, John Andrews (Leo A. Daly) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that applicant had appeared before the Planning Board and was approved for a Conditional Use Permit with the condition that a waiver is granted for building coverage. The proposed structure will replace the existing surface lot and will provide approximately 800 parking stalls. The Planning Department believes that there is a hardship that results from the high demand for parking in the area. The parking garage would consolidate various surface parking lots and off-street parking into one structure. The Planning Department recommended approval in accordance with the plans submitted.

In response to Mr. Mahlendorf, Mr. Andrews stated that the project with not impact the area.

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

AYES: Lanoha, Mahlendorf, Anzaldo, Donovan, Hancock

MOTION CARRIED: 5-0
8. Case No. 14-098
   Ryan Durant
   Omaha Housing Authority
   540 South 27th Street
   Omaha, NE 68105

   REQUEST: Waiver of Section 55-786 – Variance to the residential fence regulations to allow an ornamental fence with brick columns taller than 4’ in the front/street side yard setbacks of a residential district.

   LOCATION: 5900 Northwest Radial Highway (Benson Tower)

   ZONE: R8

   RECOMMENDATION: Denial.

   At the Zoning Board of Appeals meeting held on September 11, 2014, Ryan Durant appeared before the Board.

   Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a fence within the required setback, which limits the height and openness of fences, for security purposes. He stated that the request is similar to a waiver that was granted for the Jackson Tower, another Omaha Housing Authority property. The Planning Department found no hardship or practical difficulty since a fence can legally be constructed on the property and recommended denial.

   Mr. Durant explained that the fence is for security and aesthetic purposes. The Board expressed support for the project.

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

   AYES: Mahlendorf, Anzaldo, Donovan, Lanoha, Hancock

   MOTION CARRIED: 5-0
9. Case No. 14-099
   Joseph Finelli
   11933 Hickory Road
   Omaha, NE 68144

   REQUEST: Waiver of Section 55-786 – Variance to the
   residential fence regulations to allow a 6’ tall, privacy fence in the street side yard
   setback of a residential district.

   LOCATION: 11933 Hickory Road
   ZONE: R2

   RECOMMENDATION: Denial.

   At the Zoning Board of Appeals meeting held on September 11, 2014, Joseph Finelli appeared before the Board.

   Mr. Finelli explained that the fence would enclose part of the side and back yards. The purpose of the fence would be to provide privacy and to alleviate some of the noise from the traffic along 120th Street. It would also provide a place for their pet to run free. He explained that if the fence was placed 20’ from the property line, it would provide little protection due to the elevation of the lot.

   Mike Carter, Zoning Board of Appeals Administrator, stated that the Planning Department recommended denial since there is no hardship or practical difficulty. He added that, if a waiver was granted, it should be with the condition that the applicant work with Public Works to ensure that there is adequate sight distance along 120th Street.

   Ms. Donovan stated that the Board had visited the property and noticed the traffic along the street and the landscaping that obstructs the view of traffic. There was some discussion about the proposed location of the fence and the materials to be used. In response to Mr. Hancock, Mr. Carter stated that there were other waivers granted for fences along 120th Street. Mr. Carter suggested that the fence be pulled back from the property line to make space for landscaping so that it is not in the City’s right-of-way.

   Mr. Mahlendor suggested that the side fence be moved 5’ from the property line instead of 3’. He reflected the changes to the plan on Exhibit B. The existing bushes along the property line would be removed.

   Mr. Mahlendor moved to APPROVE in accordance with exhibit B which shows the fence 5’ from the side property line and 12’ from the front property line; subject to the removal of the existing bushes along the property line. Ms. Donovan seconded the motion.

   AYES: Anzaldo, Donovan, Lanoha, Mahlendorf, Hancock

   MOTION CARRIED: 5-0
10. Case No. 14-100

Clif Poling
Best Lawns, Inc.
2205 North 88th Street
Omaha, NE 68134

REQUEST: Waiver of Section 55-126 & 55-782(b)(2) - Variance to the rear yard setback from 35’ to 4’, to the interior side yard setback from 25’ to 4.5’, and to allow a patio as close as 4’ from the rear property line for the construction of a new pool house structure and patio.

LOCATION: 1314 North 141st Avenue
ZONE: R1

RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on September 11, 2014, Clif appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that as proposed the structure should comply with the setback. The Planning Department found no hardship or practical difficulty and recommended denial. He mentioned that no information was provided with regards to impervious coverage so he was not sure whether the applicant was in compliance with those regulations.

In response to Mr. Mahlendorf, Mr. Poling stated that the plan is to keep some of the existing trees along the fence line in back. Some evergreen bushes are also being proposed for privacy. He added that three trees would need to be removed to install the fence.

Ms. Donovan stated that she would be recusing herself from the case since her property abuts the applicant’s. However, she objected to any of the trees along the rear property line being removed. Mr. Hancock stated that the applicant should submit a landscaping plan. Mr. Lanoha stated that he did not have enough information to vote on the case. The applicant was encouraged to speak with his adjacent neighbor about the plans.

Mr. Lanoha moved to LAYOVER. Mr. Mahlendorf seconded the motion.

AYES: Lanoha, Mahlendorf, Anzaldo, Hancock

ABSTAIN: Donovan

MOTION CARRIED: 4-0-1
APPROVAL OF MINUTES

Mr. Anzaldo moved to APPROVE the minutes for the August 14, 2014 meeting. Ms. Donovan seconded the motion.

AYES: Lanoha, Mahlendorf, Anzaldo, Donovan

ABSTAIN: Hancock

MOTION CARRIED: 4-0-1

ELECTION OF OFFICERS:

Mr. Anzaldo moved to appoint Mr. Mahlendorf as Chair of the Board. Ms. Donovan seconded the motion.

AYES: Anzaldo, Donovan, Lanoha, Mahlendorf, Hancock

MOTION CARRIED: 5-0

Mr. Anzaldo moved to appoint Ms. Donovan as Vice-Chair of the Board. Mr. Mahlendorf seconded the motion.

AYES: Anzaldo, Donovan, Lanoha, Mahlendorf, Hancock

MOTION CARRIED: 5-0

ADJOURNMENT

It was the consensus of the Board to ADJOURN the meeting at 2:50 p.m.