ZONING BOARD OF APPEALS
REGULAR MEETING - THURSDAY, APRIL 14, 2016
LEGISLATIVE CHAMBERS - LC LEVEL – 1:00 P.M.
OMAHA/DOUGLAS CIVIC CENTER
1819 FARNAM STREET
OMAHA, NEBRASKA

Certification of Publication:  Zoning Board of Appeals Administrator certifies publication of this agenda in the Daily Record, the official newspaper of the City of Omaha on Monday, April 4, 2016 and Thursday, April 7, 2016.

MEMBERS PRESENT:    Jacque Donovan, Vice-Chair
                      Sebastian Anzaldo
                      Jeremy Aspen
                      Sean Kelley, Alternate
                      Jason Lanoha

MEMBERS NOT PRESENT:  Brian Mahlendorf, Chair

STAFF PRESENT:       Mike Carter, Zoning Board of Appeals Administrator
                      Jennifer Taylor, Assistant City Attorney
                      Michelle Alfaro, City Planner
                      Clinette Ingram, Recording Secretary

Ms. Donovan called the meeting to order at 1:00 p.m., introduced the Board members and staff, and explained the procedures for hearing the cases.
LAYOVER CASE:

1. Case No. 16-021 (from 3/10/16)
   Clif Poling
   Best Lawns, Inc.
   2205 North 88th Street
   Omaha, NE 68134
   REQUEST: Waiver of Section 55-186 – Variance to the rear yard setback from 25’ to 5’ to construct a 15’ x 20’ gazebo.
   LOCATION: 21031 X Street
   ZONE: R4

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 14, 2016, Clif Poling appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, recalled that the case had been laid over to give the applicant time to submit additional information about impervious coverage. As proposed, the property would remain under the maximum amount of impervious coverage allowed. It was also determined that the property owners would not be acquiring the property to the rear as mentioned at the March meeting.

Mr. Poling mentioned the letters of support for the project from the surrounding neighbors.

In response to Mr. Lanoha, Mr. Poling confirmed that he had fulfilled the conditions as agreed upon from a previous project.

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

AYES: Anzaldo, Aspen, Kelley, Lanoha, Donovan

MOTION CARRIED: 5-0
NEW CASES:

2. Case No. 16-024
   Perri Gardner
   Professional Resource Development
   1200 Network Center Drive
   Effingham, IL 62401
   REQUEST: Waiver of Section 55-716 – Variance to the required bufferyard between CC and R4 from 30’ to 19’ to allow for construction of a commercial building and parking lot.
   LOCATION: 17810 Pierce Plaza
   ZONE: CC

PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on April 14, 2016, Paul Gonzalez (E & A Consulting Group) appeared before the Board on behalf of the applicant.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a new building on a vacant piece of land. The waiver would allow for a reduction to the bufferyard on the east side of the property. The width of the adjacent right-of-way to the east is 100’ wide, similar to the width of a collector or arterial street. If it were a collector or arterial street, the code would allow the bufferyard to be reduced by half. The Planning Department recommended approval of the request as submitted.

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

AYES: Aspen, Kelley, Lanoha, Anzaldo, Donovan

MOTION CARRIED: 5-0
3. Case No. 16-025
   Joe Kreski
   9300 Underwood Avenue
   Suite 200
   Omaha, NE 68114

   REQUEST: Waiver of Section 55-786 – Variance to the residential fence regulations to allow a 6’ tall, wrought iron fence with 6’11” pillars, 8’9” gate and a 15’ tall decorative arch in the front yard setback of a residential zoning district.

   LOCATION: 407 North Elmwood Road
   ZONE: R1

   PLANNING DEPARTMENT RECOMMENDATION: Denial.

   At the Zoning Board of Appeals meeting held on April 14, 2016, Joe Kreski (Kreski Designs), Rich Swanson and Katie Swanson (Homeowners) appeared before the Board on behalf of the applicant.

   Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to install a type of fencing that was taller than what the code allows in the front yard setback of a residential property. The Planning Department found no hardship or practical difficulty and recommended denial.

   Mr. Kreski explained that the homeowners wanted the fence for security purposes. He indicated that there have been numerous individuals walking around on their property. He stated that there were approximately 15 properties in the surrounding area where the fence either exceeded the legal height for fence and/or gate. He added that there was another property in the area with a fence similar to what was being proposed. In response to Ms. Donovan, the applicant stated that the fence would be situated behind 7’ – 8’ shrubbery. The gate and piers would be set back over 40’ 5” from the property line; the fence is approximately 50’ 5” from the property line. He added that the fence and gate were architecturally designed to relate to the home and neighborhood.

   Mr. Lanoha felt that the proposed fence was appropriate for this particular neighborhood. He added that, because of the existing shrubbery, there would be little to no visual impact from the street.

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

   AYES: Kelley, Lanoha, Anzaldo, Aspen, Donovan

   MOTION CARRIED: 5-0
4.  

Case No. 16-026

REQUEST: Waiver of Section 55-186 – Variance to the
rear yard setback from 25’ to 15’ to
construct a 16’ x 33’ deck.

Jeff Winkler
Home Improvement USA
18063 Jones Street
Elkhorn, NE 68022

LOCATION: 13431 Marinda Street

ZONE: R4(35)

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 14, 2016, Jeff Winkler and Cathi Melcher (Property Owner) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a 16’ x 33’ deck to the rear of the property that would encroach as close as 15’ from the rear property line. The Planning Department found no hardship or practical difficulty since the deck could be reduced to comply with zoning regulations and, therefore, recommended denial.

Mr. Winkler explained that one of the reasons for the larger width of the deck was so that the retaining walls underneath would not need to be altered. Ms. Melcher submitted additional photos of the site (Exhibit B). She stated that deck would provide an additional exit for family members who need extra medical assistance. She explained that her home is set back farther than the others on the block which makes the back yard smaller; sections of the back yard are situated on a hill. She stated that she had spoken with all of her adjacent neighbors and that they provided letters of support for the project.

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

AYES: Lanoha, Anzaldo, Aspen, Kelley, Donovan

MOTION CARRIED: 5-0
5. Case No. 16-027  
Matt Kohles  
1617 South 63rd Street  
Omaha, NE 68106  
REQUEST: Waiver of Section 55-186 & 55-186(e) -  
Variance to the front yard setback from 35’ to 18’ and to the rear yard setback from 25’ to 15.5’ to allow for construction of additions to the existing home.  
LOCATION: 1617 South 63rd Street  
ZONE: R4(35)  

PLANNING DEPARTMENT RECOMMENDATION: Denial.  

At the Zoning Board of Appeals meeting held on April 14, 2016, Matt Kohles, Katherine Kohles and Chris Jerram (City Councilmember – 1819 Farnam Street) appeared before the Board.  

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a number of additions to the existing home. Waivers would be necessary for the front porch and the rear addition. The Planning Department found no hardship or practical difficulty and believed that any new construction on the site should comply with zoning regulations. He noted that the front yard setback waiver may not be necessary depending upon information regarding other homes on the block. Also, the addition to the east of the home would replace an existing addition for the attached garage. The new addition would be very similar in location; however, a bump out for a fireplace will cause a further encroachment. The Planning Department recommended denial.  

Ms. Kohles stated that a 2-car garage would better meet the needs of her family. The garage would be constructed in such a way that it would match the home.  

Councilman Jerram stated that he was in support of the Kohles family reinvestment in the neighborhood.  

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

AYES: Anzaldo, Aspen, Kelley, Lanoha, Donovan  

MOTION CARRIED: 5-0
6. Case No. 16-029  
John & Holly Cimino  
330 South 93rd Street  
Omaha, NE 68114  

REQUEST: Waiver of Section 55-126 - Variance to the rear yard setback from 35' to 0.8' to allow a new storage cabinet and replacement/enlargement of a deck.  
LOCATION: 330 South 93rd Street  
ZONE: R1  

PLANNING DEPARTMENT RECOMMENDATION: Denial.  

At the Zoning Board of Appeals meeting held on April 14, 2016, Eddy Santamaria (1301 Nicholas Street) appeared before the Board on behalf of the property owners.  

Mike Carter, Zoning Board of Appeals Administrator, stated that there was no record of waivers being granted for the existing, deteriorated deck on the back of the home. The structure sits very close to the rear property line. The applicants were proposing to repair and replace the structure as needed. Some areas of the deck would be enlarged and the storage cabinet would be rebuilt. The Planning Department found no hardship or practical difficulty and believed that any new construction should comply with the setback requirements and, therefore, recommended denial.  

Mr. Santamaria stated that owners purchased the home in 2013. He explained that the hardship was that owners were not aware when they bought the home that the deck would need to be replaced. He stated that the neighbors were in support of the project. The applicant planned to plant trees to provide screening for the neighbors.  

Mr. Anzaldo noted that the applicant's inherited the issues when they purchased the property and were attempting to correct the situation. In addition, Mr. Lanoha noted that the adjacent property to the rear that would be most impacted sits a significant distance below where the new deck would sit.  

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

AYES: Aspen, Kelley, Lanoha, Anzaldo, Donovan  

MOTION CARRIED: 5-0
7. Case No. 03-280 WITHDRAWN
TKG - Storage Mart Partners, LP
 c/o Weyen Burnham
215 North Stadium Boulevard
Columbia, MO 65203

REQUEST:  Waiver of Section 55-843 – To amend a previously approved variance to the allowed sign budget from 81.56 sq. ft. to 1,000 sq. ft.

LOCATION:  10010 Scott Circle
ZONE:  GI

This case was withdrawn at the applicant’s request.
8. Case No. 16-031  
Esteban Benitez  
6041 South 49th Street  
Omaha, NE 68117  

REQUEST: Waiver of Section 55-108–Variance to the interior side yard setback from 25' to 20' to allow construction of a 40' x 60' detached garage.  

LOCATION: 6041 South 49th Street  
ZONE: DR  

PLANNING DEPARTMENT RECOMMENDATION: Denial.  

At the Zoning Board of Appeals meeting held on April 14, 2016, Esteban Benitez and George Shrum appeared before the Board.  

Mike Carter, Zoning Board of Appeals Administrator, stated that the Planning Department believed that any improvements to the site should comply with zoning regulations and that there was no hardship or practical difficulty to allow the encroachment. However, if the board was inclined to grant the request, the applicant must understand that the proposed garage could not be used for commercial or business purposes. He noted that when the board visited the property, there was construction equipment on the site. The Planning Department recommended denial of the request.  

Mr. Benitez stated that he wanted the garage for his cars. He explained that sometime he parks his work vehicle at his home. In response to Ms. Donovan, Mr. Shrum stated that the garage would be built of the same brick material as his home.  

Mr. Lanoha asked the applicant what would happen with the existing wood fence and storage area if the garage was allowed. Mr. Benitez stated that he would remove the fence. The applicant indicated that he owned an adjacent lot. In response to Ms. Donovan, Mr. Carter explained that if the garage was situated on both lots that he owned, the proposed garage would be legal. The applicant intended to build a home on the adjacent lot.  

Mr. Carter mentioned that he received a call from a nearby neighbor who was concerned about equipment that had been stored at the home in the past and wanted to know what the plan were for the proposed garage. Ms. Donovan suggested a 30' x 60' garage with a 20' setback. The applicant agreed.  

Mr. Aspen moved to APPROVE subject to the interior side yard of at least 20'. Mr. Anzaldo seconded the motion.  

AYES: Kelley, Anzaldo, Aspen, Donovan  

NAYES: Lanoha  

MOTION CARRIED: 4-1
9. Case No. 16-032 WITHDRAWN
   Tom Egan, Jr.
   10220 F Street
   Omaha, NE 68127

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

   LOCATION: 956 South 95th Street
   ZONE: R2

   This case was withdrawn at the request of the applicant.
10. Case No. 16-033
Imelda Onate
5008 Glasgow Avenue
Omaha, NE 68157
REQUEST: Waiver of Section 55-246 – Variance to the minimum lot width from 40' to 27.03' and 28.9', to the minimum lot size from 4,000 sq. ft. to 1,324 sq. ft. and 1,360 sq. ft. and to the interior side yard setback from 5' to 3.5' to allow for the approval of an administrative subdivision.
LOCATION: 1263 & 1265 South 15th Street
ZONE: GI (R7 pending)

PLANNING DEPARTMENT RECOMMENDATION: Approval, in accordance with the plans submitted, subject to submittal of a Right-of-Way lease for the porch encroachments on each home.

At the Zoning Board of Appeals meeting held on April 14, 2016, Imelda Onate appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that there were two homes on the property and that the applicant had been able to get the property rezoned from Industrial to Residential. The applicant planned to renovate the homes and have them sit on their own individual lot, which requires an administrative subdivision for a 2-lot plat. The Planning Department believed that there was a practical difficulty because of the existing nature of the homes and the desire of the applicant to sell the homes separately. The Planning Department recommended approval in accordance with the plans submitted, subject to submittal of a Right-of-Way lease for the porch encroachments on each home.

Ms. Onate explained that she planned to renovate the homes so that they could be sold at a later date.

Mr. Kelley moved to APPROVE in accordance with the plans submitted, subject to submittal of a Right-of-Way lease for the porch encroachments on each home. Mr. Aspen seconded the motion.

AYES: Lanoha, Anzaldo, Aspen, Kelley, Donovan

MOTION CARRIED: 5-0
11. Case No. 16-034
   Election Systems & Software
   11128 John Galt Boulevard
   Omaha, NE 68137
   REQUEST: Waiver of Section 55-783 – Variance to the maximum height of a flagpole in the GI district from 150’ to 184’.
   LOCATION: 11128 John Galt Boulevard
   ZONE: GI

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 14, 2016, Larry Jobeun (11440 West Center Road) appeared before the Board on behalf of the applicant. Dick Joblonski (11128 John Galt Boulevard) were also in attendance.

Mike Carter, Zoning Board of Appeals Administrator, stated that the applicant was proposing to install a 184’ tall flag pole with an American flag on the property. It exceeds the maximum height of 150’ which is allowed in the GI District. The Planning Department found no hardship or practical difficulty to allow the waiver. He noted that the applicant submitted documentation from the Federal Aviation Administration which stated that the flag pole would not be a hazard to air navigation. The Planning Department recommended denial.

Mr. Jobeun showed that distance from the flag pole from several nearby locations. He noted that for the flag to be visible in its proposed location it would need to be raised. This would also prevent the flag from draping against the building. He stated that the pole would be for the American flag only and would be installed purely as a patriotic gesture.

Mr. Anzaldo moved to APPROVE in accordance with the plans submitted subject to only the American Flag being on the flagpole. Mr. Kelley seconded the motion.

AYES: Anzaldo, Aspen, Kelley, Lanoha, Donovan

MOTION CARRIED: 5-0
12. Case No. 16-035

Jeff Elliott
13131 West Dodge Road
Suite 200
Omaha, NE 68154

REQUEST: Waiver of Section 55-734 – Variance to the minimum number of parking stalls from 32 to 17 to allow construction of a Restaurant (Drive in).

LOCATION: 787 North 204th Avenue
ZONE: CC

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 14, 2016, Larry Jobeun (11440 West Center Road) appeared before the Board along with the applicant.

Mike Carter, Zoning Board of Appeals Administrator, explained that a drive-in restaurant was being proposed for the existing vacant site. The Planning Department found no hardship or practical difficulty to allow for the reduction of parking stalls and believed that the project should comply with zoning regulations. The Planning Department recommended denial of the request.

Mr. Jobeun explained the location of the proposed restaurant and indicated that, due to the width of Cumberland Avenue which is 36’, there could be parking on both side of the street with enough space for 2-way traffic. He further explained that 60% of the traffic for Starbucks is from the drive-through. The remaining customers could utilize the 17 parking stalls and on-street parking. He stated that the hardship was the irregular shape of the lot, noting that if the property was square there would be more space for parking on-site.

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

AYES: Aspen, Kelley, Lanoha, Anzaldo, Donovan

MOTION CARRIED: 5-0
13. Case No. 16-036
Eric Westman
Alley Poyner Macchietto
Architecture
1516 Cuming Street
Omaha, NE 68106

REQUEST: Waiver of Section 55-108 – Variance to the maximum impervious coverage from 25% to 41.2% to allow for a building expansion to the existing school.

LOCATION: 10828 Old Maple Road – Sunny Slope Elementary

ZONE: DR

PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on April 14, 2016, Eric Westman and Carl Bloomer (Omaha Public Schools) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, stated that an addition was proposed for the northwest side of the school. In addition, portables were proposed for the west side of the building that would be used during the various phases of construction, which should be completed in June of 2017. The Planning Department has historically supported similar waivers for schools in residential areas. The Department feels that there is a hardship because of the school’s residential location and recommended approval in accordance with the plans submitted.

Greg Schuett appeared on behalf of Gethsemane Lutheran Church and School (4040 North 108th Street). He felt that the proposed project did not take into account the changes that would need to occur with the traffic situation. He stated that there are traffic issues due to the two schools location adjacent to each other. He added that there were safety concerns for the students and families for both schools. He explained that the school day has already been staggered and other events have been coordinated with Sunny Slope to ease the traffic congestion. He asked that the parking situation be addressed along with the project.

Mr. Bloomer responded that eventually the 6th grade classes would be moved to other middle schools and Pre-K classes would move in. He indicated that the number of students should not increase above the 466 that were currently enrolled.

Mr. Schuett suggested that Old Maple Road could be widened and a turn lane added or other measures could be taken to adjust the flow of traffic.

Mr. Carter responded that the traffic issues would need to be addressed by Public Works. Mr. Lanoha stated that he preferred to see the project progress; however, he advised the applicant to speak with Public Works about parking options and with Gethsemane School about their concerns. Mr. Westman agreed to do so.

Mr. Lanoha moved to APPROVE in accordance with the plans submitted. Mr. Aspen seconded the motion.

AYES: Kelley, Lanoha, Anzaldo, Aspen, Donovan

MOTION CARRIED: 5-0
Case No. 16-037
Ryan Turek
1120 North 18\textsuperscript{th} Street
Omaha, NE 68102

REQUEST: Waiver of Section 55-830 – Variance to the maximum overall sign budget from 32 sq. ft. to 159.5 sq. ft., to the maximum area for wall signs from 32 sq. ft. to 36, 44 and 44 sq. ft., to the maximum height for wall signs from 16' to 21' and 45', to allow for an overall sign plan for the school.

LOCATION: 8050 North 129\textsuperscript{th} Avenue – Davis Middle School

ZONE: R3

PLANNING DEPARTMENT RECOMMENDATION: Approval in accordance with the plans submitted.

At the Zoning Board of Appeals meeting held on April 14, 2016, Ryan Turek and Dan Bartels (Principal – Davis Middle School) appeared before the Board.

Mike Carter, Zoning Board of Appeals Administrator, explained that there were 3 existing wall signs on the building that had not been properly permitted. The applicant proposed making the existing signs legal and constructing 2 additional monument signs, one near the intersection of 129\textsuperscript{th} & State and the other near the entrance to the school visitor parking area. The Planning Department has typically supported these types of requests for schools in residential areas. The Department found that there was a hardship or practical difficulty that resulted from the size of the site and the need for signage. The additional signage would ensure that visitors could identify the facility and would minimize future traffic into the future residential areas. He noted that the Planning Board approved a Conditional Use Permit for the school to allow the proposed signage at its April 6, 2016 meeting. The Planning Department recommended approval in accordance with the plans submitted.

Michelle Kerr (Parent Teacher Organization - 6616 North 110\textsuperscript{th} Avenue) appeared in support of the request. She stated that the goal of some of the parents was to build a monument sign and marquee for the school.

Lisa Carlson (Parent Teacher Organization - 6010 North 166\textsuperscript{th} Street) appeared in support of the request. She explained that the monument sign at the intersection was necessary because it was hard to identify the building as a school from State Street. This has caused some problems for visitors. She further explained that the State Street entrance to the school is poorly lit and at night it is a challenge to find the school. A sign with a message board was being requested for the entrance of the school for information purposes.

Mr. Bartels explained that the signage would also help parents who get confused with the location of the entrance and end up in the bus lane.

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

AYES: Lanoha, Anzaldo, Aspen, Kelley, Donovan

MOTION CARRIED: 5-0
APPROVAL OF MINUTES:

Mr. Aspen moved to APPROVE the minutes for the March 10, 2016 meeting. Mr. Anzaldo seconded the motion.

AYES: Anzaldo, Aspen, Lanoha, Donovan

ABSTAIN: Kelley

MOTION CARRIED: 4-0-1

DISCUSSION ITEMS:

Jennifer Taylor, Assistant City Attorney, updated the Board on some legal matters. She also discussed a Motion to Reconsider. She explained that a Motion to Reconsider would have to be made within 30 days if new evidence or additional information would come to light that would change the Board’s decision.

ADJOURNMENT

It was the consensus of the Board to ADJOURN the meeting at 3:05 p.m.

Approved (date)

____________________________________________
Brian Mahlendorf, Chair

____________________________________________
Clinette Ingram, Secretary