

ZONING BOARD OF APPEALS
PRE-MEETING - THURSDAY, APRIL 13, 2023 - 11:00 A.M.
11TH FLOOR – CENTRAL CONFERENCE ROOM
OMAHA/DOUGLAS CIVIC CENTER - 1819 FARNAM STREET - OMAHA, NEBRASKA

PRE-MEETING:

The board members in attendance were: Jeremy Aspen, Brian Mahlendorf, Joe Pogge, Kris Moore and Sean Kelley. Jake Placzek and Clinette Ingram from the Planning Department were also in attendance. The board reviewed the cases.

ZONING BOARD OF APPEALS
PUBLIC MEETING - THURSDAY, APRIL 13, 2023 – 1:00 P.M.
LEGISLATIVE CHAMBER (LC-LEVEL) - 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 3, 2023 (Use Waivers) and Thursday, April 6, 2023.

BOARD MEMBERS PRESENT: Sean Kelley, Chair
Kris Moore, Vice-Chair
Jeremy Aspen
Brian Mahlendorf
Joe Pogge

BOARD MEMBERS NOT PRESENT: Dusty Friedman
Matthew Kortright

STAFF PRESENT: Jake Placzek, ZBA Administrator
Jennifer Taylor, City Attorney
Rikki Flott, Planning Department
Clinette Ingram, Recording Secretary

The meeting was called to order at 1:00 p.m. Mr. Kelley introduced the board members and City staff. He mentioned that there was a potential conflict of interest for Case 23-038 and that there would be only 4 members hearing the case. The applicant would have the opportunity for a layover if it appeared that the case would be denied.

LAYOVER CASES:

1. Case No. 22-168 (from 11/11/22)
Platte River Concrete
9555 S. 147th St.
Omaha, NE 68138
- REQUEST: Waiver of Sections 55-503, 55-506, 55-715, 55-734, 55-718, and 55-740(f) – Variance to the front yard setback from 50' from the center line of the fronting street to 0'; to the maximum impervious coverage from 90% to 97%, to the minimum required street yard landscaping from 10% to 3%; to the minimum required street yard landscaping depth from 12.5' to 0'; to the minimum required perimeter parking lot landscaping depth from 10' to 5' and 0'; to the required number of standard parking stalls from 14 to 10; to the requirement of one tree planting for every 500 square feet of minimum street yard landscaping depth; and to the permitted use regulations of the GI District to allow for a Heavy Industry use (batch plant) not otherwise permitted to rearrange and upgrade its current operations on the site.
- LOCATION: 6155 M St. and 6160 & 6140 Holmes St.
ZONE: GI-FF

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Rick Hawks (Archi Etc.) and Aaron Luth (Platte River Concrete) appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, recalled that this request was laid over at the November 11, 2022 meeting to give the applicant the opportunity to provide a Stormwater Management plan and to ensure that the submitted site plan was acceptable to the Public Works Department. Since that time, the applicant had submitted a Stormwater Management plan and provided verification that the Public Works Department had approved the proposed site plan.

The applicant was proposing to expand the current batch plant operations at 6155 M Street onto the two recently acquired parcels to the adjacent south (6160 & 6140 Holmes Street) as well as implement equipment upgrades. The submitted site plan exceeded the maximum impervious coverage and did not provide the required front yard setback, street yard landscaping, street yard landscaping depth, perimeter parking lot landscaping depth, standard number of parking stalls, and tree plantings. Furthermore, the proposed *Heavy Industry* use to allow for the continued operation of a concrete batch plant was not permitted in the GI District. The Planning Department found no hardship or practical difficulty to support the redevelopment of the site with a *Heavy Industry* use, which included the enlargement of an existing concrete batch plant in this GI District. The Planning Department believed that any new redevelopment on the site should comply with the GI District regulations and recommended denial. It was noted that the existing use at 6155 M Street could continue to operate in accordance with the nonconforming use regulations of Chapter 55. It was also noted that if the waiver request was granted, the site would require the applicable flood plain permits for any new and/or rearranged improvements on the subject site since it was located within the FF-Flood Fringe Overlay District.

Mr. Hawks explained that the intent was relocate the existing concrete plant and enclose it so that it had the appearance of a structure. The move would create better circulation of the site and would remove cars and cement trucks off the street. There would also be room for trailer storage and ag piles between the buildings so that they would not be visible to neighbors. He mentioned that the City requested that landscaping be installed along 62nd Street, however, he believed that trucks would not be able to avoid destroying anything that was placed in that area. He proposed installing as much landscaping as possible on the east and south sides of the site, noting that it would not be the required 10%.

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Dan Hershiser (Owner - Fire Protection Services, 6123 Holmes St.) appeared in opposition to the request. Mr. Hershiser presented several photos showing traffic in the area. He was concerned about the high volume of trucks coming through the area. He stated that many of the truck drivers were not considerate and would regularly park their vehicles on private property. He was against the expansion of the site and the increase in traffic and noise that it would create.

Bob Diers (Owner, Classic Automobile Restoration – 4820 S. 61st St.) appeared in opposition to the request. Mr. Diers stated that the trucks that bring in the cement have issues making the turn on 61st Street so they use 60th Street which is a residential street with a weight limit. He was concerned about the increased amount of traffic and he did not support the rezoning to Heavy Industrial.

Tom Dyer (6049 Holmes St.) appeared in opposition to the request. He stated that traffic conditions were horrible and that the trucks constantly used Holmes Street since they could not make the corner turns. He added that the trucks were too heavy for the street.

Frederick Healy (6130 Holmes St.) appeared in opposition to the request. Mr. Healy stated that some of the drivers had parked their cement trucks on the sidewalk of his property. He believed that the change in zoning would negatively impact property values.

In response to the opposition, Mr. Luth clarified that this was not an expansion of the existing facility. The biggest change would be that the plant would be new and enclosed in an effort to reduce the amount of dust and to improve the appearance of the site. He added that he would address the concerns that had been mentioned by the neighbors, noting that this was the first time that he had been made aware of them. He explained that the intent was to move the facility further back from the street in an effort to create a better traffic flow.

Mr. Aspen noted that the dust generated from the site should not increase. Mr. Luth added that there should not be an increase in the number of vehicles to the site. In response to Mr. Aspen, Mr. Luth explained specifically how the traffic issues would be improved, stating that one of the major improvements would be that trucks would wait on their private property instead of on city streets. Currently, many of the trucks were waiting on M Street or Holmes Street. Mr. Aspen stressed the importance of considering the neighbors in this particular case. He suggested the possibility of the case being laid over to give the applicant the opportunity to speak with the neighbors.

In response to Mr. Aspen, Mr. Healy stated that the nuisance that had been created needed to be addressed along with the change in zoning from General Industrial to Heavy Industrial. Mr. Placzek advised that zoning of the property was not changing, adding that the waiver would allow this particular use on a the site. He mentioned that if the waiver request was approved, it could be stipulated that it would be for his applicant only.

Mr. Mahlendorf mentioned that modern-day batch plants were very different from those that were built 30 years ago from a noise, environmental and efficiency standpoint. He argued that modern batch plants were less Heavy Industrial than what the code identified currently. Mr. Luth mentioned that improvements that had been made to the site since 2016.

Although Mr. Aspen was convinced by the statement made by the applicants, he believed that a layover was needed so that the neighbors' concerns could be addressed.

Mr. Aspen moved to LAYOVER until the May 11, 2023 meeting. Ms. Moore seconded the motion.

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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2. Case No. 23-027 (from 2/9/23) REQUEST: Waiver of Section 55-108 & 55-782(b)(2) –
Thompson, Dreessen & Dorner Variance to the required interior side yard
10836 Old Mill Rd. setback from 25' to 15' and 16.7' to allow
Omaha, NE 68154 for a previously constructed single-family
home with back yard deck to remain and to
allow for construction of a new pool
equipment pad.
LOCATION: 23030 J Plaza Cir.
ZONE: DR

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Douglas Dreessen appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, recalled that this request was laid over at the February 9, 2023 meeting to allow for further discussion between the applicant and the property owner to the adjacent south. Since that time, the applicant had proposed to administratively subdivide both the subject site as well as the property to the adjacent south by relocating the shared property line between the two lots further south thereby creating a less intensive waiver request for the previously constructed deck. The proposed pool equipment pad would also be relocated further north from the adjusted property line. Upon approval of the administrative subdivision, the revised site plan indicated that that previously constructed back yard deck would be located 16.7' from the south property line, which did not meet the required 25' interior side yard setback of the DR District. Furthermore, the proposed pool equipment pad would be located approximately 15' from the south property line, not meeting the required 25' interior side yard setback. The Planning Department found no hardship or practical difficulty to support this request as this was a design preference and any new construction should meet the site development regulations of the DR district. The Planning Department recommended denial. It was noted that a building envelope existed on the lot, and that any approved waivers would require approval of the proposed administrative subdivision and the building envelope to be adjusted on the plat to match the exact outline of the improvements through the administrative subdivision process.

Mr. Dreessen stated that they had worked with the two neighbors to come up with a solution that both agreed on. The plan was to essentially relocate the property line in an effort to minimize the necessary waivers.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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3. Case No. 23-038 (from 3/9/23) REQUEST: Waiver of Section 55-246 & 55-716 –
McNeil Company Variance to the required front yard setback
4666 S. 132nd St. for a *Multifamily* use in the R7 District from
Omaha, NE 68137 35' to 15', to the rear yard setback from 25'
 to 10', and to the required bufferyard
 between R3 and R7 Districts from 30' to 10'
 to allow for the construction of a new
 apartment complex.
 LOCATION: Southwest of 168th and Shirley Streets
 ZONE: R7-MCC

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Ken Rasmussen (2723 S. 105th Ave.) appeared before the board on behalf of the applicant. Board member Joe Pogge was not present for this case.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a 201-unit apartment complex on the two vacant lots located on the northwest and southwest corners of the 168th and Shirley Streets intersection. The applicant had indicated that due to the irregular shape of the lot as a result of the sanitary easement and the intermittent waterway that bisected the property, the proposed construction on the vacant lot to the southwest (subject site) would only provide a front yard setback of 15' and a rear yard setback 10', which did not meet the required 35' front yard and 25' rear yard setbacks for a *Multifamily Residential* use in a R7 district. Furthermore, the proposed construction would only provide a 10' bufferyard on a portion of the east property line, which did not meet the required 30' bufferyard between R3 and R7 districts. With the proposed being new construction, the Planning Department found no hardship or practical difficulty to support this request as it was a design preference and the proposed apartment complex could be reconfigured and constructed in such a way as to comply with the zoning regulations of the R7 district. The Planning Department recommended denial.

Mr. Rasmussen noted the sanitary easement, the wetland channel, and the irregular shape of the northern lot which he believed created a hardship. He also noted the irregular shape of the lot that contained the proposed pool and the club house. Taking into consideration the irregular lots and neighbor feedback, the applicant proposed moving and rotating the building away from the residential housing along Shirley Street into the rear yard setback, which was the reason for the request of the variance to the rear yard setback from 25' to 10'. He stated that size of the pool had been reduced and it also had been pulled away from the residences along Shirley Street which created the need for the front yard and bufferyard waiver requests.

Nicholas Cass (1819 S. 169th Cir.) appeared in opposition to the request. He submitted a petition from neighbors who objected to the requested variances (Exhibit B). He believed that allowing the waivers would add visual blight to the neighborhood and that they did not accord with the spirit and intent of the zoning regulations, which would result in the reduction in values of the surrounding properties. He did not think the waivers were necessary to develop the site. He believed that with increased density should come increased setbacks and he cited the following four sites as comparable examples: 1) the Church of Jesus Christ and Latter Day Saints at 148th & West Dodge Rd; 2) Converge Church at 144th & Harvey Oaks; 3) Stony Brook Apartments at 144th & Stony Brook; and 4) West Hampton Park Apartment Homes at 192nd & Blondo. Mr. Cass stated that the design of the project was a preference of the developer, noting that at the September 2022 Planning Board and City Council meetings the applicant was proposing 128 units, 107 garages, 224 parking stalls, and a pool house that would not be a club house. The current plans showed 135 units, 108 garages, 228 parking stalls and a club house with parking lot. He believed there were a number of questions about the proposed plan that had not been discussed. He urged the board to deny the waiver requests.

Brian Nolan (1823 S. 169th Cir.) appeared in opposition to the request. The proposed club house and swimming pool to the south would be located across the street from his property. He stated that the proposed plan showed the pool and club house closer to his home. He added that more traffic would be added to Shirley Street which he believed was already overburdened with traffic. He stated that the applicant was proposing a larger and denser development. He believed that a club house right up to Shirley Street would result in a decrease in property values. He also believed that the pool that was shown on the renderings would be much larger than what was being presented. He urged the board to reject the waiver request.

David French (1717 S. 170th St.) appeared in opposition to the request. Mr. French was also speaking in behalf of Phyllis Norskov who lived at 17007 Shirley Street. He believed that the applicant was guilty of presenting different sets of plans, ideas, facts, etc., to each government body. In support of that claim, he repeated statements that he indicated had been made when the City Council approved the rezoning of the area in question at its November 15, 2022 meeting. He claimed that at that meeting, before the vote was made, Larry Jobeun had indicated to councilmember Brinker Harding that no waiver requests for this particular development were being sought and that it was being built in accordance with the Urban Design code with a 30' buffer being built all around it. Mr. Jobeun had added that it would meet the density requirements with 194 development being spread across the site. Mr. French added that Mr. Jobeun concluded his remarks by stating that as far as the zoning code, the applicant was not seeking any waivers.

Mr. French continued to reason that the proposed plan was not viable as drafted, noting the misalignment of the driveways and curb cuts which would more than likely be rejected by other government bodies. He added that there were no dumpster/garbage pickup/storage with the exception of one area on the most recent drawings. He also stated that there had been at least 2 dozen different site plans that had been presented to various entities at different times. He stated that the developer had intentionally decided to subdivide the land next to the proposed pool from the rest of the development and was now claiming that the size of the parcel was a hardship. Finally, Mr. French stated that the site plans as proposed showed a lack of forethought with regards to accessibility for fire trucks to navigate the site. He believed the site plans were premature since what had already been presented was flawed. For the reasons he mentioned, he and Ms. Norskov were opposed to the waiver requests.

Mr. Rasmussen presented renderings of the proposed apartments to show how the buildings would be pushed from the property line in an effort to reduce visual blight. He stated that the area near the club house would be heavily landscaped. With regards to fire safety, he stated that civil engineers were reviewing the plans, adding that the current plan met the requirements for fire truck turnarounds. He admitted that there was an opportunity to reduce the setbacks from what was being requested.

In response to Mr. Mahlendorf, Mr. Rasmussen stated that the request was for a 10' landscape buffer adjacent to 16925 Shirley Street. Mr. Mahlendorf noted that it appeared that it was actually closer to 30' in that location. After some discussion, Mr. Rasmussen stated that the bufferyard setback request could be increased from 10' to 25' (30' required). In addition, the front yard setback request could be increased from 15' to 30' (35' required). The rear yard setback request would remain at 10'. That would help to keep the structure moved away from the residential homes to the northwest and to create the necessary parking stalls. In response to Mr. Mahlendorf, Mr. Rasmussen stated that the property to the south was a commercial property that was separated by a large retaining wall and a pathway to a nearby park. He noted that there was an elevation change of approximately 20' between the properties.

Mr. Mahlendorf inquired as to the reason why the location of the club house and pool had been switched. Mr. Rasmussen explained that previous plan included a 1,800 sq. ft. pool, however, a change was made to perhaps include a sun deck, a 5' body of water and an exercise area in the club house with bathrooms. In addition, the change helped to direct the headlights from cars away from the adjacent home and towards the club house.

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Mr. Nolan (1823 S. 169th Cir.) continued to express concern about the applicant's original claims that no waivers would be sought. He also spoke about the increase of the requests and how the project would affect traffic in the area. He continued to express concern about the plans for a club house which he felt would bring even more traffic into the area in cases where a resident might use it for entertaining. He believed the waiver request to be unreasonable and he urged the board not to allow it.

Mr. Aspen expressed some concern about the claim that different information was presented to different government entities. Mr. Mahlendorf reasoned that changes in plans frequently happened during the development process, explaining that a project was not fully designed until it was rezoned which could trigger the need for waivers before the permitting process began.

Mr. Kelley stated that he was mostly concerned about the parking lot in the club house area, however, since the bufferyard waiver in that area would not be reduced to 10', he was more supportive of the request.

Mr. Rasmussen explained that the trash storage issues were still being determined. He stated that they were leaning towards a central compactor instead of having several dumpsters placed throughout the complex.

Mr. Mahlendorf believed that a hardship was created as a result of the lot shapes, the wetlands and the sewer easement. He added that the waiver request that was created by pushing Building A6 (rear yard setback from 25' to 10') was beneficial for the neighborhood. He highlighted the progress that had been made noting that the request had been reduced from 35' to 30' for the front yard setback and 30' to 25' for the bufferyard.

Mr. Mahlendorf moved to APPROVE the variances to the required front yard setback for a Multifamily use in the R7 District from 35' to 30', to the rear yard setback from 25' to 10'; and to the required bufferyard between R3 and R7 Districts from 30' to 25' to allow for the construction of a new apartment complex subject to doubling of the landscaping requirements along the parking outside of the clubhouse and along Shirley Street. Ms. Moore seconded the motion.

AYES: Aspen, Mahlendorf, Moore, Kelley

MOTION CARRIED: 4-0.

NEW CASES:

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| 4. | Case No. 23-040
Gloria Pavalos
4102 S. 13 th St.
Omaha, NE 68107 | REQUEST: Waiver of Section 55-764(d)(2) – Variance to the capacity limitations for a Daycare Services (General) use in a R5(35) district from 24 to 280 individuals. |
| | | LOCATION: 4110 & 4102 S. 13 th St. |
| | | ZONE: R5(35) |

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

At the Zoning Board of Appeals meeting held on April 13, 2023, Ralph Gladbach (Architect, 1708 Childs Road East, Bellevue, NE) appeared before the board on behalf of the applicant.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was requesting a waiver to the number of individuals allowed for a daycare in the R5(35) zoning district. The ordinance limited the capacity for a daycare to no more than 12. The applicant currently operated a daycare at 4102 South 13th Street for up to 100 individuals and was proposing another daycare at 4110 South 13th Street, the former St. Rose Church building. Both daycares would share off-street parking and would be licensed for up to a total of 280 individuals which resulted in the need for the waiver request. The Planning Department believed this to be an acceptable use of the facility noting that the zoning ordinance did not consider a situation where the location of the daycare would be a former school or church. The site complies with all other applicable regulations. The Planning Department recommended approval in accordance with the plans submitted.

Mr. Pavalos stated that the daycare located at 4102 South 10th Street was granted a waiver in 2011 to exceed the capacity. The applicant wanted to expand the waiver into the new building.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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| 5. | Case No. 23-041
Bret Linden
1227 S. 109 th St.
Omaha, NE 68144 | REQUEST: Waiver of Section 55-126 – Variance to the required street side yard setback from 25' to 12.5' to allow for the construction of a garage addition. |
| | | LOCATION: 10822 Poppleton Ave. |
| | | ZONE: R1 |

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Bret Linden appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a garage addition on the south side of the existing, attached garage that would be located 12.5' from the west property line, not meeting the required 25' street side yard setback in the R1 District. The Planning Department found no hardship or practical difficulty to support this request as this was a design preference and any new construction should meet the site development regulations of the R1 district. The Planning Department recommended denial.

Mr. Linden stated that the addition would be used for a third car. In response to Mr. Kelley, Mr. Linden stated that the waiver would be for a portion of the garage. It was determined that a hardship existed as a result of the shape of the lot.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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6.	Case No. 23-042 Penny Johnson 8005 N. 172 nd St. Omaha, NE 68007	REQUEST: Waiver of Section 55-186 – Variance to the required rear yard setback from 25' to 19' to allow for the extension of an existing deck.
		LOCATION: 8005 N. 172 nd St.
		ZONE: R4

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Alen Johnson appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct an extension to the existing deck that would be located 19' from the east property line, not meeting the required 25' rear yard setback. The Planning Department found no hardship or practical difficulty to support this request as it was a design preference and any new construction should meet the site development regulations of the R4 district. The Planning Department recommended denial.

Mr. Johnson stated that he wanted to extend the deck another 10' to the east. He explained that there were no neighbors that would be impacted, noting that there was a creek behind the home.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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| 7. | Case No. 23-043
Greg Ederer
5704 S. 53 rd St.
Omaha, NE 68117 | REQUEST: Waiver of Section 55-108 – Variance to the required interior side yard setback from 25' to 5' to allow for the construction of a detached garage. |
| | | LOCATION: 5704 S. 53 rd St.
ZONE: DR |

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Greg Ederer appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a 30' x 40' detached garage and had indicated that elevation differences on the property as well as accessibility to the rear of the lot necessitated that the garage be constructed 5' from the south property line, not meeting the required 25' interior side yard setback. The Planning Department found no hardship or practical difficulty to support this request as this was a design preference and any new construction needed to comply with the site development regulations of the DR district. The Planning Department recommended denial. He noted that the property was residential in use and zoning, and that no commercial use was permitted on the site.

Mr. Ederer wanted to replace a garage that had been damaged in a storm. He recalled that in 2018, he was granted a waiver that allowed a building to be built behind the garage in question. He explained that if the garage was built in compliance with zoning regulations, it would cut off access to the rear building. He also noted the elevation changes from the front of the property to the rear and also from the north to the south.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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8. Case No. 23-044
Michael Ambrose
1704 S. 85th Ave.
Omaha, NE 68124
- REQUEST: Waiver of Section 55-146, 55-715, & 55-742(b)(2) – Variance to the required rear yard setback from 25' to 10'; to the minimum depth from 25' to 0'; and to the parking regulations to allow parking in the front yard setback to allow for the construction of a garage addition and circle driveway.
- LOCATION: 1704 S. 85th Ave.
ZONE: R2

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Michael Ambrose and John Ambrose appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a garage addition on the west side of the existing, attached garage that would be located 10' from the west property line, not meeting the required 25' rear yard setback in the R2 District. The applicant was also proposing to construct a circle driveway on the east side of the home that would be located within the required 40' front yard setback where the parking of personal vehicles on a residential lot was not permitted by City Code. Furthermore, the proposed circle driveway would provide a depth of 0', which did not meet the minimum depth requirement of 25' in the R2 District. The Planning Department found no hardship or practical difficulty to support this request as this was a design preference and any new construction and off-street parking design should meet the site development regulations of the R2 district. The Planning Department recommended denial.

Michael Ambrose explained that the three existing garages were older and could not accommodate modern vehicles. The fourth stall would allow the ceilings to be raised. He mentioned that he had received support from his neighbor. He noted that he had hired an architect to ensure that the proposed addition would fit the context of the neighborhood. Regarding the circle driveway, he wanted to add a driveway off of 85th Avenue to get parking off the street to alleviate any safety concerns. He noted that there was restricted parking on Hickory Street during school hours which pushed parking onto 85th Avenue.

Mr. Pogge believed that the addition fit well with the neighborhood and that the setbacks were reasonable. Mr. Kelley also noted the orientation of the house on the lot.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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9. Case No. 23-045
Kristina Spangenberg
2204 N. 188th Ave.
Omaha, NE 68022
- REQUEST: Waiver of Section 55-186 & 55-715 –
Variance to the required front yard setback
from 35' to 25' and to the minimum depth
from 15' to 5' to allow for the construction
of a single-family home.
- LOCATION: 1718 N. 56th St.
ZONE: R4(35)

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Kristina Spangenberg appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a single-family home on the site that would be located 25' from the east property line, not meeting the required 35' front yard setback in the R4(35) District. In an effort to utilize the existing driveway that led to a detached garage on the southwest corner of the site, the applicant was proposing to construct an extension of the driveway to provide access to the attached garage. The driveway extension would flare out approximately 5' from the east property line, not meeting the minimum depth requirement of 15' in the R4(35) District. The Planning Department found no hardship or practical difficulty to support this request as this was a design preference and any new construction and driveway design should meet the site development regulations of the R4(35) district. The Planning Department recommended denial.

Ms. Spangenberg noted that the lot in question was not very deep. She stated that most of the homes in the area did not meet the 35' setback. She added that the 5' flare of the driveway would allow for access to the proposed attached garage.

Noting the amount of green space to the rear, Mr. Pogge suggested that the property be moved back, creating a shorter rear yard. Mr. Spangenberg responded that if the home were pushed back on the site, it would create an encroachment in the side yard setbacks. He stated that perhaps the applicant should apply for a waiver to the rear yard setback instead since it would make for a better fit for the neighborhood. The board decided to lay the case over so that the request could be amended.

Mr. Aspen moved to LAYOVER until the May 11, 2023 meeting. Ms. Moore seconded the motion.

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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| 10. | Case No. 23-046
Alan Sadofsky
6605 S. 154 th St.
Omaha, NE 68137 | REQUEST: Waiver of Section 55-186 – Variance to the required street side yard setback from 15' to 7' and to the rear yard setback from 25' to 17.5' to allow for the construction of a carport. |
| | | LOCATION: 6605 S. 154 th St.
ZONE: R4(35) |

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Alan Sadofsky appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a carport to the south of the existing, single-family home. Upon construction, the carport would be located 7' from the west property line and 17.5' from the south property line, not meeting the required 15' street side yard and 25' rear yard setbacks in the R4(35) District. The Planning Department found no hardship or practical difficulty to support this request as this was a design preference and any new construction should meet the site development regulations of the R4(35) district. The Planning Department recommended denial.

Mr. Sadofsky explained that his house sat on a small lot. He stated that that the carport would provide protection from the elements.

Mr. Pogge supported the request since it would help to conceal the applicant's boat. Mr. Aspen also noted the small size of the lot. In response to Mr. Mahlendorf, Mr. Sadofsky stated that the carport would be open and would be 12' wide and 20' deep.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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| 11. | Case No. 23-047
Cory Morris
11136 N. 126 th St.
Omaha, NE 68142 | REQUEST: Waiver of Section 55-87 – Variance to the maximum impervious coverage from 10% to 14% and to the maximum building coverage from 5% to 7% to allow for the construction of a home addition. |
| | | LOCATION: 11136 N. 126 th St.
ZONE: AG |

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Cory Morris appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct an addition on the west side of the existing single-family home. Upon construction, the site would consist of a building coverage of 7% and an impervious coverage of 14%, which exceeded the maximum building coverage of 5% and the maximum impervious coverage of 10% allowed in the AG District. The applicant had noted that the property currently had a building coverage of 5% and an impervious coverage of 12%, and that the proposed addition would increase both coverage amounts by 2%. The Planning Department found no hardship or practical difficulty to support this request as this was a design preference and any new construction should meet the site development regulations of the AG district. The Planning Department recommended denial.

Mr. Morris explained that a bedroom, bathroom and storm shelter were being added to the home.

Mr. Kelley noted the minimal impact of the addition to any of the neighbors. Mr. Mahlendorf added that the lot was smaller than others in the neighborhood.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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| 12. | Case No. 23-048
Gaby Ryan
Signworks, Inc.
4713 F St.
Omaha, NE 68117 | REQUEST: Waiver of Section 55-829(2) – Variance to the maximum height of a monument sign from 6' to 6' 9" and to the required front setback from 12' to 0' to allow for the installation of a new monument sign. |
| | | LOCATION: Southwest of Glen Cunningham Lake Park & Bennington Roads |
| | | ZONE: AG-ED-FF |

PLANNING DEPARTMENT RECOMMENDATION: Approval, in accordance with the plans submitted, subject to obtaining an encroachment permit from the Nebraska Department of Transportation.

At the Zoning Board of Appeals meeting held on April 13, 2023, Gaby Ryan and Brook Bench (Lake Cunningham Development Trust) appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a 6' 9" monument sign for a Glenn Cunningham Lake Park entrance. The proposed sign would not meet the maximum height of 6'. Furthermore, because the monument sign was proposed to be located outside of the property lines and within state right-of-way along Highway 36/Bennington Road, a waiver to the front setback for a monument sign in the AG District from 12' to 0' was also being requested. Due to the large size of the civic recreational site, there was a need to identify the park and its access location. Considering that the signage was not out of context for the site or area, the Planning Department supported the request and recommended approval, in accordance with the plans submitted, subject to obtaining an encroachment permit from the Nebraska Department of Transportation.

Ms. Ryan stated that the applicant would be seeking to obtain the permit from the Nebraska Department of Transportation.

Mr. Aspen moved to APPROVE in accordance with the plans submitted subject to obtaining an encroachment permit from the Nebraska Department of Transportation. Ms. Moore seconded the motion.

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

13. Case No. 23-049
Kayla Beller
12149 W. Center Rd.
Omaha, NE 68144
- REQUEST: Waiver of Section 55-740(f)(4) & 55-934(b)(3) – Variance to the perimeter parking lot landscaping depth from 10' to 7.5' and to the maximum height for a Category 3 retaining wall in an Urban Design Overlay District from 10' to 13' to allow for the construction of an apartment complex.
- LOCATION: 3001, 3021, 3023 & 3029 Leavenworth St.
ZONE: NBD-ACI-1 (pending)

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

At the Zoning Board of Appeals meeting held on April 13, 2023, Barb Terry (Lamp Rynearson – 14710 W. Dodge Rd. #100) appeared before the board on behalf of the applicant.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct an apartment complex on the site that would not provide the minimum perimeter parking lot landscaping depth and would consist of a retaining wall with a portion that exceeded the maximum height for retaining walls constructed in an Urban Design Overlay District. Due to the limited space available on the site to meet the requirements without compromising additional Urban Design standards including the aesthetics and usability of the street frontage and interior landscaping, the Planning Department found the waiver request to be acceptable and recommended approval, in accordance with the plans submitted.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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| 14. Case No. 23-050
Torrey Walker
7927 Brentwood Dr.
La Vista, NE 68128 | REQUEST: | Waiver of Section 55-186, 55-782(b)(2) & 55-734 – Variance to the required front yard setback from 35’ to 25’; to the interior side yard setback for a patio with no structural elements above two feet from ground level from 3’ to 0’; and to the required number of off-street parking stalls from 2 to 0 to allow for the construction of a single-family home. |
| | LOCATION: | 3735 N. 44 th Ave. |
| | ZONE: | R4(35) |

PLANNING DEPARTMENT RECOMMENDATION: Approval of the waiver to the front yard setback from 35’ to 25’; Denial of the waiver to the side yard setback for a patio from 3’ to 0’; Denial of the waiver to the off-street parking requirement for a single-family residential use from 2 stalls to 0 stalls.

At the Zoning Board of Appeals meeting held on April 13, 2023, Torrey Walker appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a single-family home on the site that would be located 25’ from the west property line, not meeting the required 35’ front yard setback. The applicant also intended to construct a concrete patio area on the north end of the home 0’ from the north lot line, where a 3’ setback is required. Finally, the home would not provide any off-street parking, when two off-street parking stalls were required for a single-family residential use in the R4(35) District.

Section 55-782(c) allowed for a front yard setback adjustment for single-family homes constructed on developed residential blocks if 75% or more of the lots on the residentially zoned blockface were developed and if 50% or more of the buildings on that blockface had front yard setbacks less than those required for the specific district. The Planning Department was of the opinion that the proposed single-family home could meet the requirements for the adjustment, as the proposed 25’ front yard setback for the new home was similar and in-line with the existing single-family homes along the 44th Avenue blockface. Therefore, the Planning Department supported the requested 25’ front yard setback. However, it did not find any hardship or practical difficulty to support the requested patio waiver and parking waiver, as these were design preferences that should comply with the zoning regulations of the R4(35) District. The Planning department recommended approval of the waiver to the front yard setback from 35’ to 25’; denial of the waiver to the side yard setback for a patio from 3’ to 0’; and denial of the waiver to the off-street parking requirement for a single-family residential use from 2 stalls to 0 stalls.

Mr. Walker clarified that the driveway on the left side of the site plan belonged to the neighbor. He stated that all of the homes on the block had a 25’ setback with no driveways or garages. He wanted the proposed home to fit the context of the neighborhood.

Mr. Kelley agreed that the 25’ setback fit the context of the neighborhood and that there was very little parking. With regards to the patio, Mr. Walker stated that it would not be included as part of the plans.

Ms. Moore moved to APPROVE the request for waivers to the front yard setback and the required number of parking stalls only. Mr. Kelley seconded the motion.

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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| 15. | Case No. 23-051
Ron Stukenholtz
15203 Ontario St.
Omaha, NE 68144 | REQUEST: Waiver of Section 55-786(e)(3) – Variance to the residential fence regulations to allow a 6’ tall, privacy fence within the street side yard setback. |
| | | LOCATION: 15203 Ontario St.
ZONE: R4-FF |

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Ron Stukenholtz appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to replace an existing 3’ tall, picket fence with a 6’ tall, privacy fence. The fence would be located along the south property line and would not meet the required street side yard setback of 15’ in the R4 District. The Planning Department found no hardship or practical difficulty to support this request as this was a design preference and recommended denial.

Mr. Stukenholtz stated that there was very little traffic near his home and that the fence would not cause any traffic or safety concerns. He indicated that the fence would be located approximately 68’ from the street. He indicated that there was a home 3 blocks away with a situation similar to what he was proposing. He explained that there was a lot of foot traffic by his home and he preferred not to have people watch his family while they attempted to enjoy their backyard space. He also wanted the fence for safety, noting that his neighbor had a dog that was not friendly. He wanted to fence put in the same location as his existing fence. Mr. Stukenholtz stated that he had spoken with his neighbors about the fence and they agreed with him that he needed a privacy fence.

Mr. Aspen was hesitant to approve a 6’ fence so close to the setback. He noted a couple of similar requests in that area had been denied in the past. He added that the fence would come out further than other fences in the area, adding that there were no other 6’ tall, privacy fences in the area. Ms. Moore responded that there were no traffic or line-of-sight issues. She added that there was also support from the neighbors, noting that the denials were from 20 years ago.

Mr. Pogge believed that the code regulations needed to be upheld in this case, noting that there had been two previous denials. He supported the height of the fence being increased to 4’ with the use of landscaping to create privacy. Mr. Mahlendorf stated that he could not support the fence being located on the property line, however, he suggested that the fence be located 5’ from the south property line inside of the existing landscaping which would help to hide the fence. Mr. Stukenholtz stated that he would accept that suggestion as a compromise.

Mr. Mahlendorf moved to APPROVE in accordance with the plans submitted subject to the fence being located 5’ from the south property line and inside of the existing landscaping. Mr. Kelley seconded the motion.

AYES: Aspen, Mahlendorf, Moore, Kelley

NAYES: Pogge

MOTION CARRIED: 4-1.

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| 16. | Case No. 23-052
Dave Lanoha
c/o Lanoha Nurseries
19111 W. Center Rd.
Omaha, NE 68130 | REQUEST: Waiver of Section 55-740(e) – Variance to the hard-surface driveway requirement to allow a graveled driveway and site circulation for a new agricultural sales and service facility. |
| | | LOCATION: Northeast of 258 th Plaza & West Center Rd. |
| | | ZONE: AG-FF (DR-FF pending) |

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

At the Zoning Board of Appeals meeting held on April 13, 2023, Larry Jobeun (11440 W. Center Rd.) and Caleb Snyder (Lamp Rynearson) appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to operate Lanoha Nurseries' Wood Waste Recycling as well as their Soil Improvement/Soil Quality Restoration production, storage, and transportation operations on the site. Graveled access and circulation was being proposed for a portion of the site, where hard-surface pavement was required throughout the entire site in the DR District. The Planning Department found the requested waiver to be acceptable, based on the remote location of the site, the existing floodplain on the property, and the unique operation characteristics of this use. Paving the entire length of the driveway was determined to be unnecessary and would result in excessive increases in impervious surfaces on the property. The Planning Department recommended approval, in accordance with the plans submitted.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

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17. Case No. 23-053
Larry and Theresa Baggett
4448 S. 63rd St.
Omaha, NE 68144
- REQUEST: Waiver of Section 55-186 – Variance to the required front yard setback from 35' to 25' and to the rear yard setback from 25' to 7.6' to allow for the construction of a covered front yard deck and stoop, covered backyard patio, home addition and garage addition.
- LOCATION: 6110 Hillside Ave.
ZONE: R4(35)

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Mick McGuire (3925 S. 147th St.) and Caleb Snyder (Lamp Rynearson) appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct the following: a covered front yard deck and stoop on the south side of the existing single-family home that would be located 25' from the south property line, which would not meet the required 35' front yard setback; a garage addition on the east side of the home that would be located 26' from the south property line and 12.4' from the north property line, which would not meet the required 35' front yard and 25' rear yard setbacks; a covered patio that would be located 7.6' from the north property line, which would not meet the required 25' rear yard setback; and finally, a home addition on the west side of the home that would be located 24.4' from the north property line, which did not meet the required 25' rear yard setback. The Planning Department believed that all of the proposals were design preferences and that there was no hardship or practical difficulty to support them. The department believed that any new construction should comply with the zoning regulations of the R4(35) District and, therefore, recommended denial.

Mr. McGuire explained that the home sat on a corner lot and was somewhat restrictive. He presented pictures that showed other homes in the neighborhood on corner lots that also encroached in the rear yard setback (Exhibit B - 4178 S. 60th Ave., 6208 H St., 4306 S. 62nd St., 6146 Hillside Ave. & 6092 H St.). He also submitted signatures from neighbors who supported the requested waiver (Exhibit C). He noted that there was a neighbor across the street who was concerned what the elevations would look like from the garages. He continued to discuss the details of the proposed plan.

Scott Donbeck (4309 S. 61st St.) appeared before the board. He supported the redevelopment of the home but he was concerned about the elevation and façade of the garage. He noted that the garage would be large and close to the street. He believed there should be landscaping installed along with other details that he believed would help to minimize the impact of the garage.

In response to Mr. Donbeck's concerns, Mr. McGuire stated that the visual from that home would already be impeded by pine trees. He explained that the garage would provide storage that was not provided elsewhere on the property.

Mr. Mahlendorf was concerned about the canopy portion of the patio that extended 16' from the home. He suggested that it be reduced to 12'. Mr. Aspen and Mr. Pogge supported the plan as presented.

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

AYES: Aspen, Moore, Pogge, Kelley

NAYES: Mahlendorf

MOTION CARRIED: 4-1.

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18.	Case No. 23-054 Jared Gerber 5037 Parker St. Omaha, NE 68104	REQUEST:	Waiver of Section 55-126 – Variance to the required interior side yard setback from 25' to 18' to allow for the construction of a garage addition.
		LOCATION:	813 S. 80 th St.
		ZONE:	R1

PLANNING DEPARTMENT RECOMMENDATION: Denial.

At the Zoning Board of Appeals meeting held on April 13, 2023, Jared Gerber appeared before the board.

Jake Placzek, Zoning Board of Appeals Administrator, stated that the applicant was proposing to construct a garage addition on the west side of the existing single-family home that would be located 18' from the north property line, not meeting the required 25' interior side yard setback in the R1 District. The applicant had noted that the home was located approximately 23' from the north property line, and that the proposed addition would encroach an additional 5' into the required interior side yard setback. The Planning Department found no hardship or practical difficulty to support this request as it was a design preference, and believed that any new construction should meet the site development regulations of the R1 District. The Planning Department recommended denial.

Mr. Gerber stated that the existing garage was only 18', making it difficult to utilize it as a two-car garage. The owners planned to use that space as a mudroom and for outdoor storage. The new garage addition would be 24' x 24'. He explained that the garage needed to be shifted to the north to accommodate water drainage.

Carol Legge (807 S. 80th St.) expressed support for the request.

In response to Ms. Moore, Mr. Gerber stated that the addition would match the rest of the home.

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

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

SHOW CAUSE:

19.	Case No. 20-041 Steve Walker 13612 Miami St. Omaha, NE 68164	REQUEST:	Waiver of Section 55-163 & 55-166 – Variance to allow a Warehousing and Distribution (limited) use not otherwise permitted in the R3 district and to the rear yard setback from 25’ to 15’ to allow for an existing storage building.
		LOCATION:	13612 Miami St. & 13611 Corby St.
		ZONE:	R3

PLANNING DEPARTMENT RECOMMENDATION: That the Zoning Board of Appeals move to schedule a “show cause” hearing on May 11, 2023, at the regular Zoning Board of Appeals meeting.

At the Zoning Board of Appeals meeting held on April 13, 2023, Jake Placzek, Zoning Board of Appeals Administrator, stated that in March 2020, the Zoning Board of Appeals granted a waiver to the applicant to allow a *Warehousing and Distribution (limited)* use, not otherwise permitted in the R3 District, and to the rear yard setback from 25’ to 15’ to allow for the existing storage building. This would allow the applicant to subdivide the site and construct a single-family home on the lot that included a storage building, bringing the site back into zoning conformance. At that meeting, the board moved to approve the applicant’s waiver request, in accordance with the plans submitted, subject to the recommendations of the Planning Department which included that “the new home must be complete and occupied (final inspection approval) within 12 months of this waiver being approved otherwise the waiver is void, appropriate enforcement action will be initiated, and the detached garage may only be used for personal use by the owner of 13612 Miami Street”. The Planning Department recommended that the Zoning Board of Appeals move to schedule a “show cause” hearing on May 11, 2023, at the regular Zoning Board of Appeals meeting to give the applicant the opportunity to explain why that condition had not been met and to provide a solution.

Mr. Aspen moved to hear the case at a “Show Cause” hearing at the May 11, 2023 meeting. Mr. Kelley seconded the motion.

AYES: Aspen, Mahlendorf, Moore, Pogge, Kelley

MOTION CARRIED: 5-0.

MINUTES:

Mr. Aspen moved to APPROVE the February 9, 2023 minutes. Mr. Kelley seconded the motion.

AYES: Aspen, Mahlendorf, Kelley

ABSTAIN: Moore, Pogge

MOTION CARRIED: 3-0-2.

Mr. Aspen moved to APPROVE the March 9, 2023 minutes. Ms. Moore seconded the motion.

AYES: Aspen, Mahlendorf, Moore, Pogge

ABSTAIN: Kelley

MOTION CARRIED: 4-0-1.

ADJOURNMENT

It was the consensus of the Board to ADJOURN the meeting at 3:32 p.m.

Approved (date)

Sean Kelley, Chair

Clinette Ingram, Secretary