MEETING RECORD

NAME OF GROUP:	CITY BOARD OF ZONING APPEALS
DATE, TIME AND PLACE OF MEETING:	Friday, August 29, 2014, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN	Andrew Budell, Tim Francis, Annette McRoy, Scott Sandquist and Lynn Sunderman;Tim Sieh of City Attorney; Tim Stutzman of Building and Safety; Steve Henrichsen, Brian Will and Amy Hana Huffman of the Planning Department.
STATED PURPOSE OF MEETING:	Regular Board of Zoning Appeals meeting

Scott Sandquist opened the meeting and acknowledged the posting of the open meetings act posted at the back of the room. He called for a motion approving the minutes of the regular meeting held July 25, 2014. Motion for approval made by Sunderman, seconded by McRoy and carried 5-0: Budell, Francis, McRoy, Sandquist and Sunderman voting 'yes'.

APPEAL NO. 14002
FOR A VARIANCE TO ADJUST THE REAR YARD SETBACK TO 10 FEET FOR A SECOND STORY BALCONY, ON PROPERTY GENERALLY LOCATED AT 527 PIER 2, CAPITOL BEACH
PUBLIC HEARING: **August 29, 2014**

Members present: Budell, Francis, McRoy, Sandquist and Sunderman.

Perry Pirsch, 527 Pier 2, Capitol Beach, came forward as applicant to state that his neighborhood is a mix of zoning districts and homes of different ages. Many homes have second story balconies adjacent to the water. Due to the angle to the lake, and because many owners have boats, lifts, and canopies, it is difficult to enjoy the view. He stated his house was built to have a second story balcony. The request for the 3 foot height variance would allow for a structure that would be approximately 9 feet. The impression he got was that the height limit was to protect the privacy of neighbors. There is no property behind this house. It is over 100 feet to the next residence to the back. The balcony would not go across the entire house, only a portion, and it would be well over twenty feet from the neighbor's house. Additionally, the dock at the neighbor's house extends out much farther, so it is unlikely to obstruct his view. There are numerous other existing balconies. When the lots were subdivided, they were not divided evenly. Homes along Pier 1 allow for decks because those property lines extend out to the water, but the ability to improve our own property is limited. This project fits with the character of the neighborhood.

There was no testimony in support.

Opposition:

Stephen Bartunek, 523 Pier 2, came forward in opposition. He stated that the owner previous to Mr. Pirsch built a fence to full height that goes all the way back to the water. You could see the view from his single story home before that fence, but now it is much less visible. Any addition to Mr. Pirsch's house will further limit the ability to see the lake. If Mr. Pirsch removed that fence, his view would be the same as all of the other neighbors.

Lorenz J. Hamm, 547 Pier 2, came forward in opposition to state that he resides five houses to the west of the applicant. In his opinion, there are discrepancies in the testimony of Mr. Pirsch. There are homes with upper decks, but they are built into the house, within the footprint of the structure, and within the setback limit. None of the decks across the water extend off the water.

Pirsch stated there is a house across from his that has an extending deck.

Hamm went on to say that those homeowners are still within the 20 foot guideline. The porch does not fit the character of the neighborhood since it will be the only one that makes an exception to the existing guidelines. Even though he says he will not build a roof, there is no guarantee he will not get a canopy or umbrella, which would further obstruct views.

Sandquist asked if the deck would obstruct his view?

Hamm replied that the Pier is narrow. What would happen if everyone started to build out? That would ruin the view, so there should not be an exception made for one at the cost of everyone else who is there. On Mr. Pirsch's property, there is a sitting porch on the first floor. A balcony could be built straight up from that, within the footprint of the house, and it would not extend over the setback. Neighbors would be happier that way because it would fit in.

Brian Will, Planning Department, came forward to answer questions.

Sunderman asked if the applicant's lot lines were different from those on the other side of the lake? Will replied that if one looks at the properties from the website, it is easy to get the wrong impression. From the way the lots are laid out, the lots on the south look larger and like the property line extends beyond the seawall and into the lake. The rear lot line is ten feet and essentially the same on both sides.

Pirsch returned for rebuttal. If Will is correct, then my property extends into the lake and if that is the case, I am not building out. I am building nine feet over my deck. Mr. Bartunek does not have a second story; he is not able to see over the existing structures and my adding a deck will not impede his view or the view of others. It would improve the property value and would be good for everyone along the pier to be able to build to their property line.

Francis noted that this does not meet the Board's standards for granting a variance. If approved, the Board would have to go back ten years to question other denials.

Budell agreed.

Sunderman also agreed and added that there is nothing exceptional about the lot that allows this Board to grant the variance. If it were allowed, it would need to be allowed for everyone. If that is something the neighborhood desires as a whole, they would need to come forward and express that. He stated his vote will be to deny the variance.

McRoy said that a new code was passed to cut down on the number of requests and asked Will to discuss that point.

Will said the way the code was written before, it did not allow these types of variances. Planning noticed that over the years, more and more requests were happening. In response, a text amendment with new criteria was developed and states that under some conditions, it makes sense to grant a variance. Even with these looser regulations, this application still does not pass the test.

McRoy asked if the applicant would be allowed to build the deck over the existing patio?

Will stated that if he understands correctly, it would be only the 10 x 10 area within the footprint of the existing structure, so yes.

ACTION:

Francis moved denial.

Tim Sieh, Law Department, came forward to add that there needs to be some fact finding and standard for the denial.

Francis amended his motion to include that the appeal be denied based on its inability to meet the requirements to grant a variance. Seconded by Sunderman.

Motion for denial carried 3-2: Francis, Sandquist, and Sunderman voting ‘yes’; Budell and McRoy voning ‘no’.

Sunderman moved to adjourn, seconded by McRoy.

The meeting was adjourned at 2:01 p.m.