MEETING RECORD

NAME OF GROUP:	CITY BOARD OF ZONING APPEALS
DATE, TIME AND PLACE OF MEETING:	Wednesday, January 6, 2012, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Andrew Budell, Tim Francis, George Hancock, Scott Sandquist and Lynn Sunderman. Tim Sieh of City Attorney; Todd Stutzman of Building and Safety; Steve Henrichsen, Brian Will and Teresa McKinstry of the Planning Department.
STATED PURPOSE OF MEETING:	Regular Board of Zoning Appeals meeting

Brian Will opened the meeting and acknowledged the posting of the Open Meetings Act in the room. Due to the fact that this group has not met since May of 2009 and the term of Chair and Vice-Chair only run for one year, Will called for nominations for Chair.

Sunderman nominated Hancock as Chair, seconded by Francis. There being no other nominations, George Hancock was elected as Chair by a vote of 4-0: Budell, Francis, Sandquist and Sunderman voting 'yes'; Hancock abstained.

Will then opened nominations for Vice Chair. Sunderman nominated Francis for Vice-Chair. Francis stated he appreciates the nomination, but declined.

Sunderman then nominated Sandquist for Vice-Chair, seconded by Budell. There being no other nominations, Scott Sandquist was elected as Vice-Chair on a vote of 4-0: Budell, Francis, Hancock and Sunderman voting 'yes'; Sandquist abstained.

Hancock then called for a motion approving the minutes of the regular meeting held May 29, 2009. Motion for approval made by Sandquist, seconded by Francis and carried 5-0; Budell, Francis, Hancock, Sandquist and Sunderman voting 'yes'.

Hancock then called for a motion approving the minutes of the special orientation meeting held October 12, 2011. Motion for approval made by Francis, seconded by Sandquist and carried 5-0: Budell, Francis, Hancock, Sandquist and Sunderman voting 'yes'.

APPEAL NO. 1102
FOR A VARIANCE TO ALLOW A DECK IN THE REAR YARD AND A VARIANCE TO THE REAR YARD SETBACK, ON PROPERTY GENERALLY LOCATED AT 1801 E. BERMUDA DRIVE
PUBLIC HEARING: **January 6, 2012**

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

Brad Carper appeared as applicant. The previous owner built the garage on his property. He received a building permit and exceeded how far he was supposed to build it by about six inches. He was not aware of it when he purchased the property. He is on a corner lot. He has two front yards. That makes his back yard have a certain percentage of square feet. The way it sits now, he can't build closer than 20 feet from the back lot line. He presented a map for viewing. He pointed out where the fence sits on his property. Behind the garage is a retaining wall. The deck would be seven feet off the ground. If it was only three feet off the ground, he wouldn't even need a permit. He had a sliding glass door installed which would be the entrance onto the deck. This started in October of 2010. He didn't realize you need a building permit just to replace the windows. He put in the sliding glass door. The window company didn't tell him you needed a permit. He went to get a permit when he found out and was denied. He had neighbors sign a letter stating they did not have a problem with him building a deck. He showed pictures of other decks in what he believes are similar situations. He wants to build twelve feet from the house. 2100 S. 57th St. has a deck that is six feet from the lot line. Another picture showed 6701 Everett St. shows a deck that is twelve feet by thirty-four feet and it is less than 10 feet from the back property line. Both of these properties are corner lots. He is not asking to build a deck the whole length of the house, just to the opening of the sliding glass doors. The window opening is thirteen feet. The deck would be twelve feet out. That would leave nine feet, six inches to the property line. The elevation shows the steps go down three feet to the lower level in back of the garage. He submitted a letter of eight signatures of property owners in support of his requested variance.

Hancock questioned if the main rooms, kitchen etc. are on the main level. Carper replied he was correct. He doesn't want a huge deck. It will not have a roof or be enclosed.

Carper was told that the City is concerned when construction eliminates green space. He doesn't believe this eliminates any green space.

Hancock questioned the non-conforming garage and wondered if there is any relationship to the two variances being requested.

Brian Will of Planning staff replied that the requested variances are two separate and distinct requests and can be separated. Will believes it is a practical matter. The second request doesn't make a lot of sense if the first one is not granted. If the first one is not granted, the applicant will have to remove a significant portion of the structure.

Sunderman wondered what happened in 1974 that the house was built 2.5 feet over farther than it should have been. Will replied that a corner lot has two front yards. You can pick either one as a front yard. The applicant at that time picked one and the front yard switched. The side yard conformed, the rear yard was inadequate.

Hancock wondered if that was changed since 1974. Will replied what changed was in 1981, relative to decks. Previously there was no prohibition in your rear yard three feet above or below the grade. The requirements for the garage were the same then that they are today.

Sunderman stated that all around town there are decks higher that three feet. Will noted that prior to 1981 you could build a deck projecting into the rear yard, that was more than three feet above the grade. Relative to the deck in the side yard, there never was a prohibition as long as you meet the setback. That hasn't changed. Some of the examples are properly reflective of the Ordinance at the time.

Hancock stated that what strikes him that part one of the request should be addressed first, the variance to the rear yard setback. The statute that creates the Board of Zoning Appeals is terribly clear. In regard to correction of errors, those are usually errors that come from having been turned down for something. He is talking about the garage now, not the deck. Someone is in the position now that if we enforce everything technically, he would have to tear down the garage. That would be a great hardship. He can't ask anyone to tear that down. Having said that, it leads to the second part regarding the deck.

ACTION:

Sandquist moved approval of the variance of the rear setback from 23.93 feet to 21.6 feet, seconded by Sunderman.

Sandquist stated that this is the result of an error that occurred nearly 40 years ago. It went undetected which in itself suggests it is of no effect. The neighborhood didn't detect anything was wrong. He thinks suggesting that 28 inches be cut off the entire length of the garage would be a hardship. He sees no benefit to the City or anyone else in making such a requirement.

Sunderman noted this has gone through several owners since this addition was put on, as well.

Carper pointed out that when the property is sold, he would hope that be part of the title search to make sure that everything you are buying is legal. It was undetected all this time. Maybe something is lacking in the process. He would have hoped to know this when he purchased the property.

Motion to approve the variance from 23.93 feet to 21.6 feet carried 5-0: Budell, Francis, Hancock, Sandquist and Sunderman voting 'yes'.

Carper stated that the garage being 28 inches out had little or no effect on the neighborhood. He believes the effect is negligible and doesn't believe the request is unreasonable. All the affected neighbors are in support of the application.

Hancock stated that the next item to consider is the variance to allow a twelve foot by thirteen foot deck at seven foot, ten inches above the ground level.

Hancock explained that technically, the Board of Zoning Appeals is not permitted to grant a variance if something is not unusual. He is not sure if a setback would qualify for this. A lot of problems come before this board that are created by triangular lots. He is not sure that applying the statute, unless there is an unusual condition, the board is not empowered to act.

Tim Sieh of City Attorney agrees that the Board of Zoning Appeals has some discretion, but the variances are not necessarily looked upon favorably by the appellate courts.

Sandquist countered that he believes the topography is unusual. As a builder, a significant grade change is quite common. He believes the severe grade change of this lot is uncommon.

Carper stated that the topography from side to side being so drastic was quoted by the building inspector also.

Sandquist believes the changing grade is the entire issue.

Francis is inclined to accommodate the applicant.

Francis moved approval of the variance to allow the deck at seven feet, ten inches above the adjacent ground level for a twelve foot by thirteen foot uncovered deck, seconded by Budell.

Sunderman will not support the motion. He does not believe it is justified. Building and Safety missed the two feet on the garage. If proper procedure was followed, the whole problem would have been figured out at the time. The topography is unusual, but this allows the applicant to have a walk out basement. It can't be used as a benefit and detriment at the same time.

Sandquist inquired why three feet is the maximum deck height. It is not obvious to him.

Will stated that in a residential zoning district, maintaining adequate separation is important. The rear yard is the majority of your open space. You can suppose that there were several decks and it became an issue at some point. If you exceed a deck height of three feet, you need to meet the setback. You can go to within two feet of the lot line.
Hancock stated that this board has the right to say that in a particular situation, with a particular problem, a particular rule need not be enforced. We do not set precedent. We listen to each application on it's own merits. This is not an easy question. He questioned if the applicant couldn't build the deck, what would he do.

Carper is not sure what he would do.

Francis believes it would be an unsafe door and a code violation. He does not believe that approval of this would create a precedent.

Sandquist commented that in developments over the last decade or so, corner lots are considerably larger than other lots because of the dual front yard mandate. If this lot was built during a time when that mentality was used by builders, this wouldn't be an issue. This lot is a victim of it's age. It isn't quite large enough. It's the same size as the neighbors and a corner lot works differently. In his opinion, it is a factor that contributes to this not being a common lot.

Sunderman disagrees with that thinking. A smaller corner lot represents a significant portion of the built city. He doesn't think you want to go down the path of saying that corner lots are all different. As far as it being a smaller lot, it has been sold at least once and he would assume the price and the lot were reflective of that.

Francis believes we expose ourselves to owners wanting to squeeze contemporary uses onto an older lot.

Sunderman is personally inclined to vote for approval, but believes that his role on this board doesn't allow him to approve it.

Hancock stated there has been a lot of disagreement if lot size is a permissible condition of peculiar and unusual circumstance. Topography and shape can be considered. If size is a consideration, can it be stretched to refer to the size of the buildable area? He is not sure there is an answer to that problem. The problem probably wouldn't arise if this were a larger lot. Most corner lots are larger.

Francis doesn't believe if this condition arose, a permit would have never been allowed.

Sandquist believes the benefits of allowing the deck, is an aesthetic improvement and he believes the benefits outweigh the negatives. The only negative is that this seems to be against the rules, but it is not clear to him why three feet is mandated as the height limit. In this case, the bottom line is the obvious benefits to the city and the neighborhood.

Budell stated that in reading through the materials, it appears to him there are a series of unusual circumstances that lead to this specific parcel. He does not have any difficulty approving this variance, because the circumstances that are unusual to this parcel are specific. He agrees that the side yard setback and the rear yard setback changed with the garage addition, but the orientation of the house didn't. He doubts the events that led to this are in many other corner lots.

Motion for approval of a 12 foot by 13 foot deck at 7 feet 10 inches above ground level carried 3-2: Budell, Francis and Sandquist voting 'yes'; Hancock and Sunderman voting 'no'.

APPEAL NO. 1103
REQUESTED BY MELANI SAMOA FOR CASEY'S RETAIL CO. FOR A VARIANCE OF THE REAR YARD SETBACK, ON PROPERTY LOCATED AT 1445 S. 17TH STREET
PUBLIC HEARING: **January 6, 2012**

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

Sunderman moved approval of the applicant's request to continue public hearing until March 30, 2012, seconded by Francis and carried 5-0: Budell, Francis, Hancock, Sandquist and Sunderman voting 'yes'.

There being no further business, the meeting was adjourned at 2:20.

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