MEETING RECORD

NAME OF GROUP:	CITY BOARD OF ZONING APPEALS
DATE, TIME AND PLACE OF MEETING:	Friday, August 10, 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; Terry Kathe of Building and Safety; Marvin Krout, Brian Will and Teresa McKinstry of the Planning Department.
STATED PURPOSE OF MEETING:	Regular Board of Zoning Appeals meeting

Chair Hancock opened the meeting and acknowledged the posting of the open meetings act posted in the room. He then called for a motion approving the minutes of the regular meeting held February 24, 2012. Motion for approval made by Sunderman, seconded by Sandquist and carried 5-0: Budell, Francis, Hancock, Sandquist and Sunderman voting 'yes'.

APPEAL NO. 1203
REQUESTED BY ROD HORNBY, FOR A VARIANCE OF THE FRONT YARD SETBACK, ON PROPERTY GENERALLY LOCATED AT 3901 N. 63rd STREET
PUBLIC HEARING: August 10, 2012

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

Staff presentation

Brian Will of Planning staff appeared. He pointed out that paragraph 5 of his staff report stated "the variance could be revised to request a front setback of 14.36' (or reduction of 11.27')" should state 13.73' (or reduction of 11.27').

Proponents

Rod Hornby appeared as applicant. He acquired this property through foreclosure about a year ago. The property was about ten feet off the lot line. He talked to all the neighbors. They are all excited about the prospect of a new house being built on the lot. Without a variance, the unit would be about 17 foot wide. On the next lot over, there is a building within ten feet of the lot line.

Hancock questioned the timing of the demolition in relationship to acquiring the house.

Hornby replied that the demolition happened about 30-45 days before the Sheriff's sale. There was no house on the property when he took title. He was not aware of that fact. There is no requirement for the City to give the lender notice of demolition.

Sandquist wondered if the applicant made any assumptions in regard to the existing building. Hornby made the assumption that it could be rebuilt with the current setback. He went through the County and could not locate a survey.

Hancock inquired who did the demolition. Hornby replied that the City paid for the demolition through a private contractor.

Sunderman asked how the proposed building compares with the building that was torn down. Hornby replied they are about the same square footage. His proposed design might be a couple of feet further away from Seward Ave., but it is virtually the same as what was there before. Most of the houses in the neighborhood appear to be about 19 feet back, which is what this will be. Ed Zimmer has reviewed his design and said it would fit well into the neighborhood.

Sandquist questioned if the new setback will align with the adjacent property. Hornby replied yes.

No one appeared in opposition.

Sunderman wondered if the two year limitation is the question.

Terry Kathe of Building and Safety appeared. He stated it is difficult to prove whether the proposed setback matches what used to be there or not. There was no visible proof other than an aerial, which is not precise. A survey is different. It would have exact dimensions. If there was proof of the existing setbacks, a special permit for expansion of a non-conforming use could be done within two years. That allows the rebuilding of the house.

Sunderman questioned if the setback of the proposed house would match the houses around it. He wanted to know if this will still fit the character of the district. Kathe replied that the setback would be close to what is next door, but not the next one over. That is his personal opinion. He can't address character without a survey of what used to be there.

Hancock heard that the proposed house would sit almost exactly where the former house did. Kathe stated that the problem with aerials is that the property lines are superimposed and the points are stretched and maneuvered a little bit. It is not an exact guideline like a survey.

Francis believes it will be an improvement to the neighborhood. He noticed that the stuff around this property is industrial. It seems unlikely that this will be a high demand lot.

ACTION:

Francis moved approval, seconded by Sandquist.

Sunderman stated that it is nice to see the investment in the neighborhood,. This is next to industrial. It is unfortunate that we don't know exactly where the old house used to sit. He has the feeling that the new house will be in the approximate location of the old house. With the addition of Ed Zimmer looking at the house design and the investment of the money in the neighborhood, he thinks this is a good decision.

Tim Sieh of the City Attorney's office appeared. He advised that the Commissioners will want to make sure they state the factual basis for their decision.

Francis wonders what a 17 foot wide house looks like. It would not be possible to build a house on this lot with the current restrictions. This is such a long, narrow lot. He questioned what becomes of a vacant lot over time. It seems to him it would create more of an eyesore.

Hancock doesn't agree that the removal of a house creates a peculiar and unusual circumstance. But, the removal of the house is important because it changes everything. This comes down to two questions for him. He wondered which prevails; a precise technical interpretation of the code or another section of the code which says the Board can do what is proper. How much leeway do we have as a board? Are we permitted judgement based on common sense and what is best for the neighborhood? Neither of those questions have been identified that well. He takes the position that he has enough leeway to approve this as it will be a much greater benefit to the neighborhood.

Sandquist stated that in his opinion, a 17 foot wide structure would be truly unusual.

Sunderman added that when the applicant bought this property, there was the perception that he could rebuild what was previously on the property. In the absence of a survey, he believes it is appropriate to approve this.

Hancock questioned if there is a definition of when you stop remodeling and when it becomes replacement. Kathe replied that the non-conforming section talks about sixty percent and fair market value. If the whole structure is gone, it loses that status.

Motion for approval carried 5-0: Budell, Francis, Hancock, Sandquist and Sunderman voting 'yes'.

There being no further business, the meeting was adjourned at 1:50 p.m.