



**BOARD OF ADJUSTMENT AGENDA  
REGULAR MEETING  
MONDAY, APRIL 23, 2012  
CITY COUNCIL CHAMBERS  
4:30 P.M.**

1. Meeting Called to Order.
2. Roll Call, Determination as to Legality, Notice of Meeting and Agenda.
3. Reading of the Minutes of the March 26, 2012 Regular Meeting.
4. Public comment period. The general public is invited to address the Board of Adjustment regarding any item on this agenda. The overall and individual speaking time allotments may be limited by the Chair.
5. Consider the variance request of Gary Pebley to build within the rear yard setback by 5 feet in order to build a bathroom addition to the existing structure at 581 West 20th. Article 4, Section 405. R1 – Single Family Residential District.
6. Consider the variance request of Cedarwood Development, Inc. to reconstruct parking lot at 1624 East 23<sup>rd</sup> Avenue North, with variance to required street yard landscaping requirements. Article 8, Table 8-1. GC – General Commercial District.
7. Consider variance request of Brian P. Doerr to construct a fence in the street side yard that is 6 feet in height and is more than 50% enclosed, and allow for construction of a hot tub in the street side yard setback at 1165 North Howard Street. Article 7, Section 707. R1 – Single Family Residential District.
8. Consider request of Fremont Rod & Gun Club to continue, reconstruct and enlarge the non-conforming use Cabin on Site #7 (867 County Road 19) with a variance to the 100<sup>1</sup> year flood elevation requirements for stairways on a part of the SW ¼ of Section 13, Township 17 North, Range 7 East of the 6<sup>th</sup> P.M., Dodge County, Nebraska. Section 557, 558, 1104 b. and Section 1105 c. RL – Lake and River Residential District.
9. Adoption of Board of Adjustment By-laws.

**AGENDA POSTED AND KEPT CONTINUALLY CURRENT AT THE MUNICIPAL BUILDING, POLICE STATION AND THE DODGE COUNTY COURTHOUSE AND DISTRIBUTED TO THE MAYOR, CITY COUNCIL AND THE BOARD OF ADJUSTMENT ON APRIL 18, 2012. COPIES AVAILABLE AT THE CITY MUNICIPAL BUILDING, 3<sup>RD</sup> FLOOR. A COPY OF THE OPEN MEETING LAW IS POSTED IN THE CITY COUNCIL CHAMBERS.**

## STAFF REPORT

**TO:** Board of Adjustment

**FROM:** Rian Harkins, AICP, Planning Director

**DATE:** 12 April 2012

**SUBJECT:** Variance to allow for the construction of a bathroom addition within 5 feet of the rear yard setback, 581 W 20<sup>th</sup> Street, Fremont, Nebraska (Pebley)

<p><b>Recommendation:</b> Staff recommends approval provided the proposed addition remains the size proposed by the applicant; and that no other setback variances be granted for the property.</p>
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**Request:**

The applicant requests a variance to allow for the construction of a bathroom addition that goes 5 feet into the rear yard setback.

**Background**

Located in the R-1 Single Family Residential Zoning District, this property is located on the intersection of West 20<sup>th</sup> Street and Colson Ave. The existing structure was built in 1922 (and thus before the current zoning ordinance was adopted), and is a single family residence that the owner/applicant has indicated he desires to sell at some point in the future. The house has a wing that already sits within the 20 foot rear yard setback, with said area measuring 6' x 10'. Said wing does allow a 14' rear yard setback. The property also has a detached garage that is located adjacent to the rear lot line.

The proposed addition is to be 5'x5' and situated to the rear of the house, if approved, the addition would be 15' from the rear property line. The addition would be obscured from any street views by the presence of the existing residence (including the wing that currently does not meet setback requirements).

Most of the lots in the surrounding neighborhood have a rear property line that is farther back in comparison to this property. Because of this, it is much more difficult to add square footage to the residence. With this in mind, staff is recommending approval based on the fact that the strict application of the zoning ordinance on this property would cause a hardship on the property owner, and the fact that the variance would not cause a detriment to the public good.

**Required findings:**

- (a) The strict application of the zoning regulations will produce undue hardship.
- (b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.

- (c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
- (d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.
- (e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these Zoning Regulations.
- (f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.





## STAFF REPORT

**TO:** Board of Adjustment

**FROM:** Rian Harkins, AICP, Planning Director

**DATE:** 12 April 2012

**SUBJECT:** Variance to allow for street yard landscaping requirements to be reduced to 8' and 4'-7" respectively, 1624 East 23rd, Fremont, Nebraska (Cedarwood)

<b>Recommendation:</b> Staff recommends approval.
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### **Request:**

The applicant requests a variance to allow for the re-construction of parking lot with landscaping buffer that are less than the required 10' landscaping buffer noted in the zoning ordinance.

### **Background**

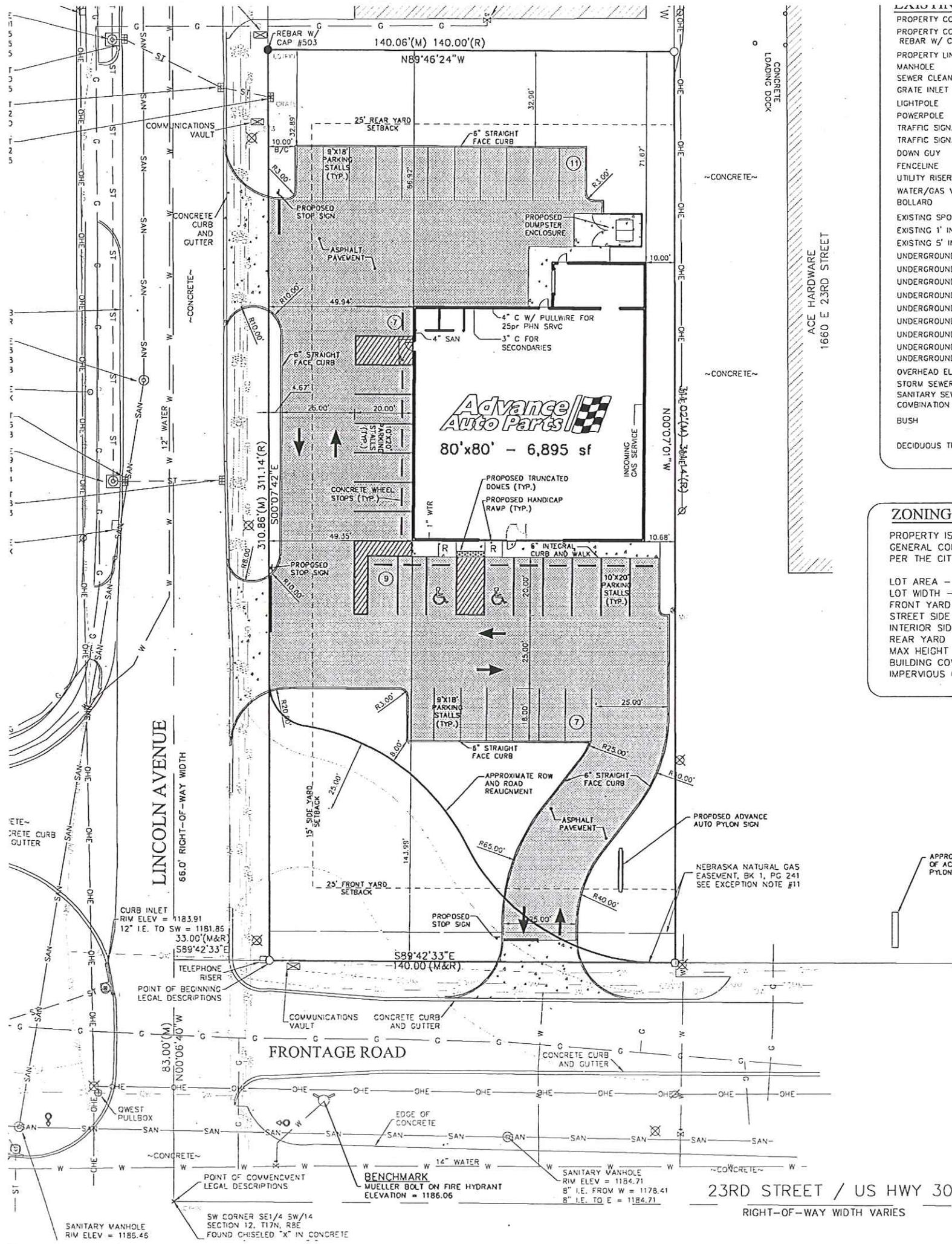
Located in a GC General Commercial zoning district, the property is situated at 1624 East 23<sup>rd</sup> Street. The property is the former Whiskey Creek restaurant. The applicant wishes to develop a new retail auto parts store on the property. The property is being reconfigured during the development due the City's desire to obtain additional right-of-way for the frontage road along 23<sup>rd</sup> Street. This need for additional right of way has caused the owner/applicant to have to configure the proposed development in a manner that causes the landscape buffer at the west corner of the south parking lot and the landscape buffer along the west side of the property.

These two locations are the only aspects of the development that do not meet the requirements of the zoning ordinance. However, the property would likely be developed in complete accordance with the zoning ordinance if not for the City's purchase of additional right-of-way. With this in mind, staff is recommending approval based on the fact that the strict application of the zoning ordinance on this property would cause a hardship on the property owner (due to the City's actions), the fact that the variance would not greatly alter the character of the area, and the fact that the variance would not cause a detriment to the public good.

### **Required findings:**

- (a) The strict application of the zoning regulations will produce undue hardship.
- (b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.
- (c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

- (d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.
- (e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these Zoning Regulations.
- (f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.



- EXISTING:**
- PROPERTY CC
  - PROPERTY CC
  - REBAR W/ C
  - PROPERTY LIN
  - SEWER CLEAN
  - GRATE INLET
  - LIGHTPOLE
  - POWERTPOLE
  - TRAFFIC SIGN
  - TRAFFIC SIGN
  - DOWN GUY
  - FENCELINE
  - UTILITY RISER
  - WATER/GAS
  - BOLLARD
  - EXISTING SPO
  - EXISTING 1' IN
  - EXISTING 5' IN
  - UNDERGROUND
  - OVERHEAD EL
  - STORM SEWER
  - SANITARY SEA
  - COMBINATION
  - BUSH
  - DECIDUOUS TI

**ZONING**

PROPERTY IS GENERAL COI PER THE CIT

LOT AREA -  
LOT WIDTH -  
FRONT YARD  
STREET SIDE  
INTERIOR SID  
REAR YARD  
MAX HEIGHT  
BUILDING CO'  
IMPERVIOUS I

23RD STREET / US HWY 30  
RIGHT-OF-WAY WIDTH VARIES

SANITARY VANHOLE RIV ELEV = 1185.45

SW CORNER SE1/4 SW/14 SECTION 12, T17N, R8E FOUND CHISELED "X" IN CONCRETE

BENCHMARK MUELLER BOLT ON FIRE HYDRANT ELEVATION = 1186.06

SANITARY VANHOLE RIV ELEV = 1154.71  
8" I.E. FROM W = 1178.41  
8" I.E. TO E = 1184.71

## STAFF REPORT

**TO:** Board of Adjustment

**FROM:** Rian Harkins, AICP, Planning Director

**DATE:** 12 April 2012

**SUBJECT:** Variance to allow for construction of a fence in the street side yard setback that is 6 feet in height and is more than 50% enclosed, and allow for construction of a hot tub in the street side yard setback at 1165 North Howard Street, Fremont, Nebraska (Dunker/Doerr)

<b>Recommendation: Staff recommends denial based on lack of a hardship present.</b>
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### **Request:**

The applicant requests three separate variances to allow for the construction noted above.

### **Background**

Located in the R-1 Single Family Residential Zoning District, the property is located at the intersection of 12<sup>th</sup> and Howard Streets. The applicant desires to install privacy fence for the hot tub and pool they are planning to install, and feels the fence needs to be located within the street side yard setback and completely enclosed in order to maintain privacy.

Many of the lots in the surrounding neighborhood have at fencing similar to what the applicant is proposing to install if the variance is granted. However, these are generally older fences that were likely installed before the existing zoning ordinance was adopted.

While granting the variance would not cause a detriment to the public good, staff is recommending denial based on the lack of a hardship present, and the fact that other properties within the area are under the same fencing requirements.

### **Required findings:**

- (a) The strict application of the zoning regulations will produce undue hardship.
- (b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.
- (c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
- (d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.
- (e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these Zoning Regulations.
- (f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.

EAST

Doerr

1165 N. Howard Str.

1/4" = 5'  
1" = 20'

Street Vision Clear Zone

NORTH

12th Street

6' Fence for Pool

Power Lines

6' Fence (Pool)

Front Yard

Front Door

Garage

The only Back Door Existing

Patio Slides Back Doors

3rd Car Garage  
Sun room

Hot Tub

Deck

Master Addition

Super Deck

Back YARD

Existy Trees

Ornamental Garden

POOL  
.8E

10' 5"

25' to Prop. Line

40' to Lot Ln

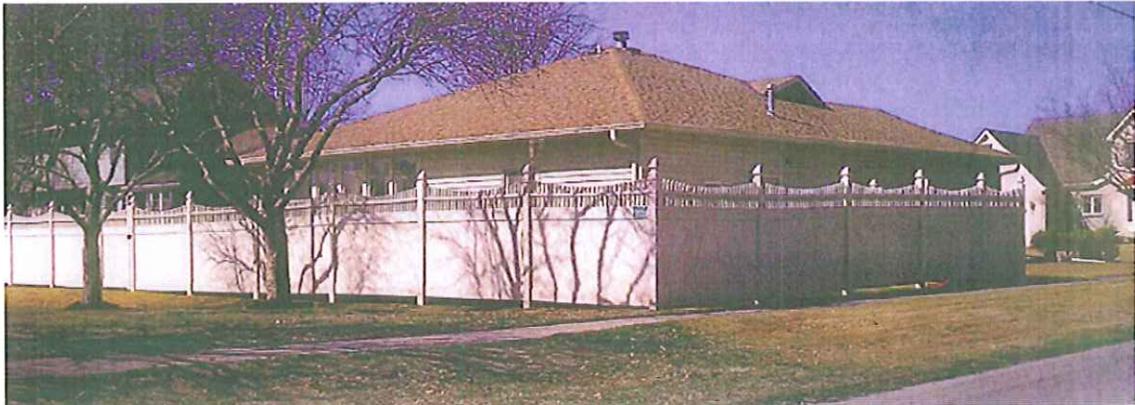
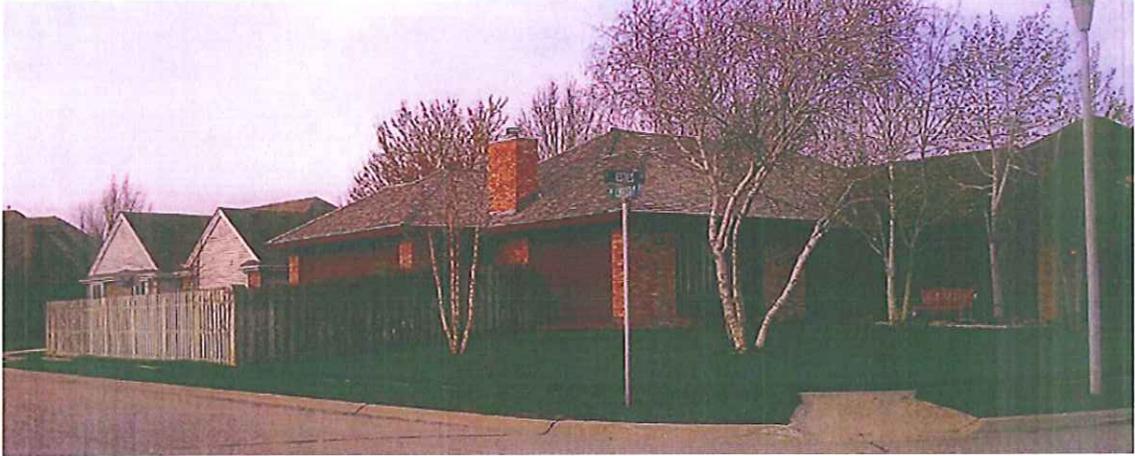
2.5' Concr.

10'

10' Util Esng.

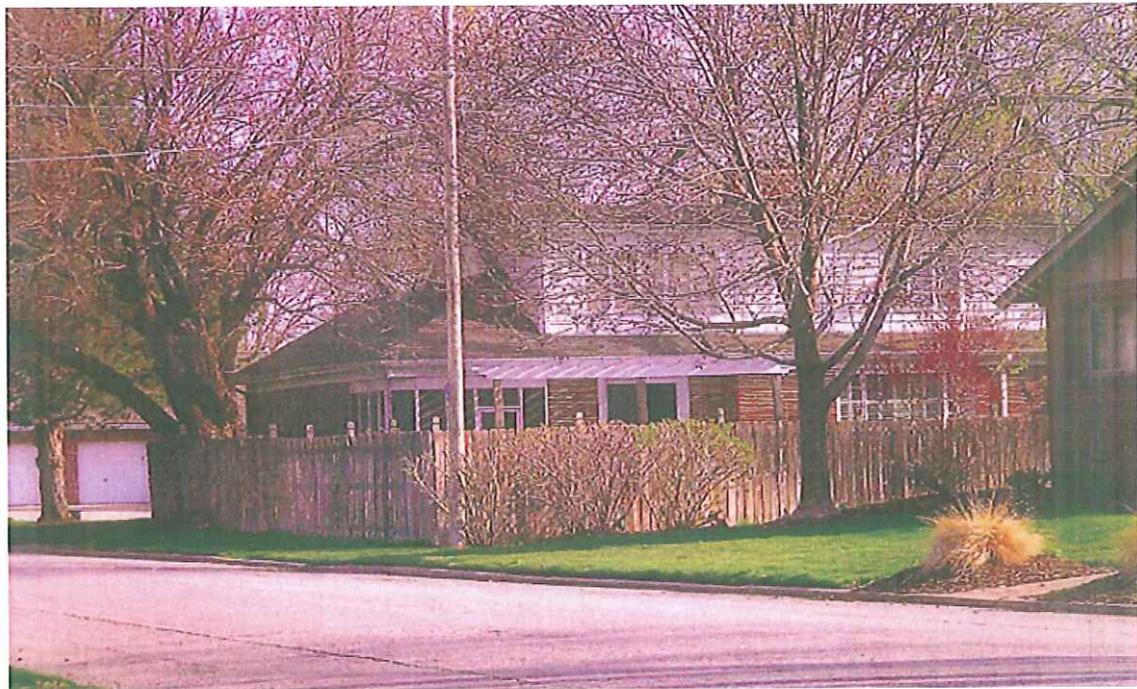
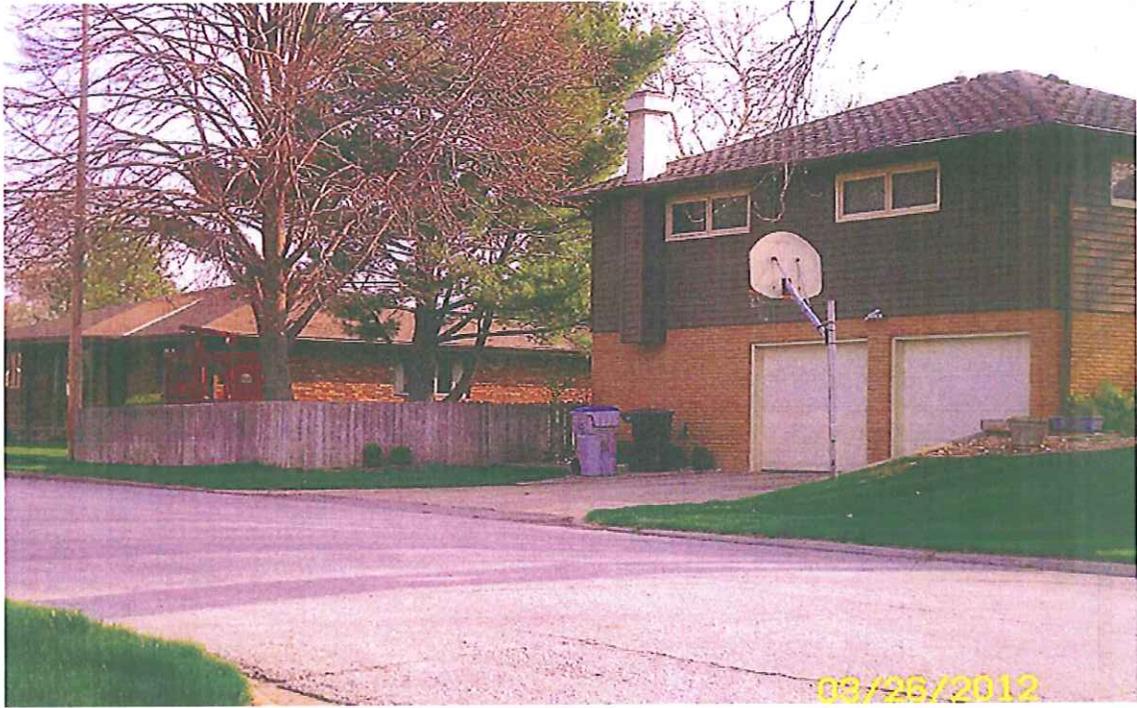
Adjacent

Existing Fences













## STAFF REPORT

**TO:** Board of Adjustment

**FROM:** Rian Harkins, AICP, Planning Director

**DATE:** 12 April 2012

**SUBJECT:** Variance for the 100 year flood elevation requirements in order to construct two stairways in conjunction with the re-construction and enlargement of a non-conforming use, on Site #7 of the Fremont Rod & Gun Club at 867 CR 19 (Fremont Rod & Gun Club)

<b>Recommendation: Staff recommends approval.</b>
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### **Request:**

The applicant requests a variance of the 100 year flood elevation requirements for the stairways associated with the non-conforming use at the property located above so it may be continued with a new, larger cabin that would replace the existing cabin located in the RL Lake and River Residential Zoning District.

### **Background**

The property is located within the Fremont Rod and Gun Club, and contains an existing cabin that is approaching the end of its useful life according to the applicant. The variance request is to allow the stairway landings to be placed within the 100 year floodplain. This is similar to a request made in November 2000 regarding Cabin #3 on the same property.

Because the denial of the variance would cause an undue hardship upon the property due to a lack of stairs after construction of the new cabin, and the lack of detriment to the overall public good, staff is recommending approval.

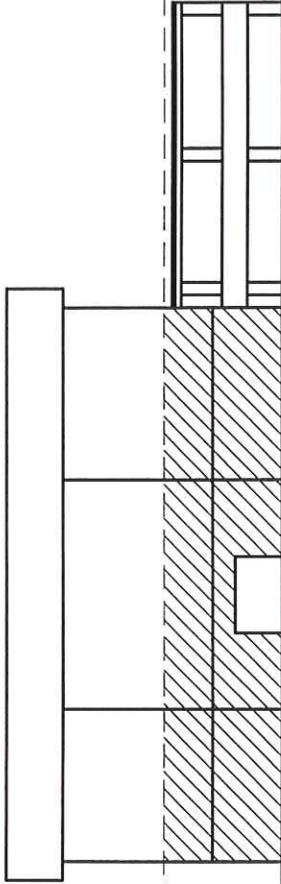
### **Required findings:**

- (a) The strict application of the zoning regulations will produce undue hardship.
- (b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.
- (c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
- (d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.
- (e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these Zoning Regulations.
- (f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.

SITE PLAN AND NO RISE CERTIFICATE  
 CABIN #7, FREMONT ROD & GUN CLUB  
 SECTION 13-17-7  
 KEITH LALLMAN  
 SCALE: 1" = 10'

BASE FLOOD  
 ELEV. = 1216.9

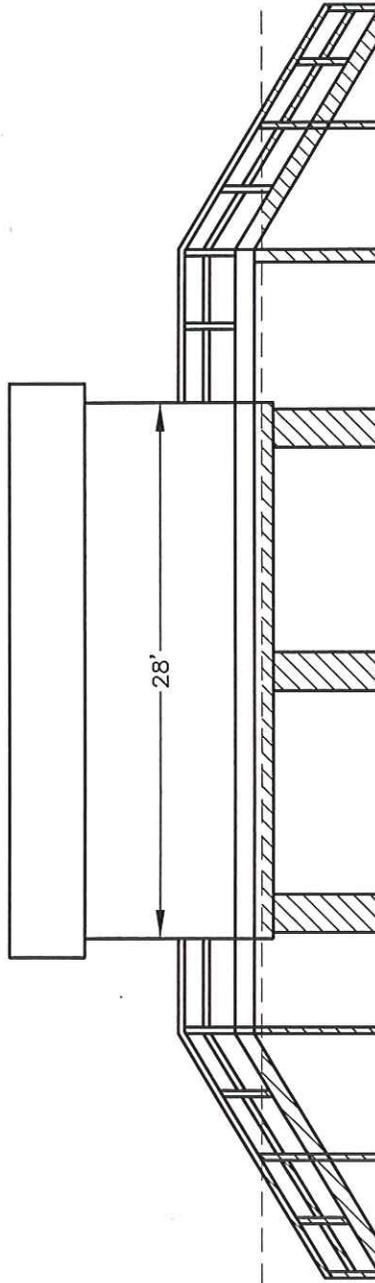
AVE. GROUND  
 ELEV. = 1210.6



EXISTING CABIN TO BE REMOVED.  
 LOOKING EAST. EXISTING CABIN ON CONCRETE  
 BLOCK FOUNDATION WITH OPENINGS.  
 OBSTRUCTED AREA BELOW B.F.E. = 172.7 S.F.  
 DECK TO REMAIN.

BASE FLOOD  
 ELEV. = 1216.9

AVE. GROUND  
 ELEV. = 1210.6



PROPOSED CABIN.  
 LOOKING EAST. PROPOSED 28' X 26' CABIN  
 ON 24" REINFORCED CONCRETE PIERS.  
 FIRST FLOOR ELEV = 1218.3 OR HIGHER.  
 OBSTRUCTED AREA BELOW B.F.E. = 95.7 S.F.  
 (STAIRS SHOWN FOR CONCEPTUAL PURPOSES  
 ONLY. LOCATIONS MAY CHANGE.)



I HEREBY CERTIFY, TO THE BEST OF MY  
 KNOWLEDGE AND BELIEF, THAT BASED UPON THE  
 CURRENT FIRM MAP AND FIELD SURVEY DATA,  
 PROPOSED CONSTRUCTION SHOWN HEREON WILL  
 NOT CAUSE AN INCREASE IN THE BASE FLOOD  
 ELEVATION.

*Stephen W. Dodd*  
 STEPHEN W. DODD

Dodd Engineering & Surveying

Stephen W. Dodd  
 P.E. & L.S.

Ph. 402-727-9067, FAX 721-0509  
 402 North D Street, P.O. Box 1855  
 Fremont, NE 68026-1855

KEY MAP FOR ADJOINING PROPERTY OWNERS WITH 100' OF FREMONT ROD AND GUN PROPERTY

SCALE: 1" = 1000'

PREPARED 3-24-2012 BY STEPHEN W. DODD, PE & LS



## STAFF REPORT

**TO:** Board of Adjustment

**FROM:** Rian Harkins, AICP, Planning Director

**DATE:** 12 April 2012

**SUBJECT:** Adoption of By-laws/Rules of Procedure for the Board of Adjustment

<b>Recommendation:</b> Staff recommends approval.
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### **Background**

Over the last three weeks, staff has researched and discovered that either there are no by-laws for the Planning Commission, or that they are so old that there is no record of them. Adoption of the attached by-laws will help clarify procedures for handling matters before the Planning Commission, and help keep the Planning Commission in line with state statutes.

City of Fremont, Nebraska  
Board of Adjustment  
By-laws/Rules of Procedure  
Adopted April 2012

The intent and purpose of these Rules of Procedure is to provide procedures for the Board of Adjustment to follow in the consideration of applications for appeals by those persons who do not agree with the interpretation of the Zoning Ordinance as made by the Planning Director; and to provide relief for those persons, in the form of variances to the strict interpretation of the Zoning Ordinance, who would suffer a hardship if the ordinance was strictly enforced.

**Article I - Organization and Officers**

1. The Board shall organize annually at its first meeting after January 1, and elect from among its members a Chair and a Vice-Chair to serve for a term of one year. The chair and vice-chair shall be elected by a majority vote of the Board members present. The chair shall not serve for more than two consecutive terms. The Board shall appoint a Secretary who may be an officer or employee of the City.
2. The Chair shall preside at all meetings of the Board. In the absence of the Chair, the Vice-Chair shall preside. In the absence of both the Chair and the Vice-Chair, the Planning Director or their designee shall preside to select a temporary Chair, and the Planning Director shall forthwith relinquish the Chair after selection of a temporary Chair.
3. The presiding officer shall direct the conduct of and shall preserve strict order and decorum in all meetings of the Board. Subject to these rules, the presiding officer shall, on the recommendation and advice of the duly appointed legal counsel, decide all points of order and procedure, unless overruled by a majority of the members present.
4. The Chair or other presiding officer shall have the right to make motions and to second motions without vacating the Chair; provided, however, that when the Planning Director is serving as presiding officer, under the provisions of Article I, paragraph B above, he or she shall not have the right to make or second motions, nor shall he or she have a vote.
5. The officer presiding at the meeting and the Secretary shall sign any Resolutions and other official documents adopted or approved by the Board.
6. Subject to these Rules and the direction of the Board, the Secretary shall submit reports on all official matters occurring between meetings; conduct all official correspondence; send all notices required by these Rules and orders of the Board; prepare meeting agendas; make the necessary inspections of premises; attend all meetings and hearing; keep the Minutes of the Board's proceedings; prepare the necessary resolutions; compile the required records; maintain the necessary files and generally supervise all the clerical and technical work of the Board.
7. The Board shall be composed of six members appointed by the City Council per Chapter 2.203 of the Fremont Municipal Code.
- 8.

## Article II - Meetings, Attendance, and Voting

1. The Board of Zoning Appeals shall meet on the fourth Monday of each calendar month, unless otherwise scheduled on an adopted meeting date schedule approved by a majority of the Board. Meetings are to be held at 4:30 p.m. in the City Council Chambers, Second Floor, City Hall, 400 East Military Avenue, Fremont, Nebraska.
2. All hearing sessions shall be open to the public.
3. Four members of the Board shall constitute a quorum. Any member who abstains from voting, as allowed by Subsection E. below, shall be counted as a member for determining if a quorum exists.
4. All members shall attend all meetings of the Board, excepting only when they are unable to do so because of illness, absence from the City or unavoidable press of other business. Members shall advise the Secretary or Planning Director at least four hours in advance of a scheduled meeting, except in the most unusual cases, of their intention to be absent or late.
5. The presiding officer may grant permission to abstain from voting when a board member has a conflict of interest or has not been present during or reviewed the official record of proceedings regarding a matter before the Board and such member requests permission to abstain. If a member is granted permission to abstain from voting, such member shall not participate in the discussions or proceedings regarding the application or appeal and shall disassociate themselves from the Board. Unless such permission shall have been granted, or unless there shall have been a negative vote cast by such member, that member's silence in voting shall be recorded as an abstention.
6. If a member is deemed to have a conflict of interest on a matter before the Board, that member shall leave the room during all matters pertaining to that agenda item.
7. A majority vote of the members present shall be required for the Board to pass a motion regarding Rules of Procedure, administrative or election matters.
8. Special meetings may be called by any four members of the Board, or by the Planning Director, with the consent of any four members of the Board, for whatever time and purpose they deem necessary; provided, however, that no case or proceedings shall be considered unless legal notice by publication and mail shall have been given as by law provided, unless the proceedings involve only the review of a site or landscape plan or restrictive covenant or other document previously required by the Board as a condition of approval of an application.
9. Members of the Board shall refrain from any form of ex parte communication. Any member who receives written documents from any source shall forward a copy of any written ex parte communication to the Secretary. Such materials will be distributed to all members of the Board. The Secretary will enter the material into the official record regarding the matter. The Secretary shall inform applicants through written application instructions that they should refrain from ex parte communication with members of the Board. Prior to the hearing on an application, members of the Board shall disclose the nature of any ex parte communication, written or verbal, and any information obtained through the ex parte communication that may have a bearing on their decisions. Members who feel they have been influenced by ex parte communication shall abstain from voting on that particular agenda item.

### Article III - Cases Before the Board

1. The jurisdiction of the Board of Adjustment shall be limited to the following:
  - a. Appeals - See Section 12 of the Fremont Municipal Code.
  - b. Variances - See Section 12 of the Fremont Municipal Code.
2. The procedure for requesting a hearing before the Board of Adjustment shall be as follows:
  - a. An application (appeal, or variance) shall be filed with the Secretary of the Board on forms furnished by the Secretary (Planning Department, Third Floor, City Hall, Fremont, Nebraska).
  - b. An application shall be accompanied by the filing fee as set forth by ordinance. A separate filing fee shall be charged for each appeal, or variance request.
3. In addition to the above requirements, certain applications require additional information as follows:
  - A) Appeals
    - i. The appeal shall be filed within 30 days after a ruling has been made by the Planning Director.
    - ii. The order, requirement, decision or determination by the Planning Director which the appellant believes to be in error and the principal points supporting the appellant's allegation of errors, including reference to that section of the Zoning Ordinance under which it is claimed the permit should be issued.
    - iii. A clear and accurate description of the proposed work, use or action in which the appeal is involved and a statement as to why or in what manner an error has been made.
    - iv. The Planning Director or his authorized representative shall be represented at all hearings before the Board and shall then make available to the Board all records regarding the matter.
    - v. A plot plan drawn to scale showing the proposed plan of improvements, when deemed necessary by the Planning Director.
  - B) Variances
    - i. A statement from the applicant justifying the variance requested, indicating specifically the provisions of the Zoning Ordinance from which the variance is requested and to what degree such a variance is requested, including the hardship imposed by the strict application of the Zoning Ordinance.
    - ii. A specific statement outlining in detail the manner in which it is believed that this application will meet the requirements of the Zoning Ordinance.
    - iii. A sketch, drawn to scale, showing the lot or lots included in the application; the structures existing thereon; and the structure or use contemplated necessitating the variance requested.
    - iv. No application shall be accepted by the Secretary unless and until such time as the requirements set forth above have been met with by the applicant.
4. No application shall be considered wherein an application has been previously decided, involving the same premises and/or Zoning Ordinance requirements; except in cases where new plans or new facts pertaining to said requirements or

- regulations are presented, showing changed conditions or circumstances which, in the opinion of the Board, materially alter the aspects of the case. Each new reconsideration shall be considered a new case, requiring a filing fee.
5. Each specific variance request shall be reconsidered twice during the tenure of each owner of the property.
  6. No application shall be advertised for a public hearing for property wherein a change of zoning or other development application is first necessary until the zone change amendment or other development application is approved by the City Council.

#### **Article IV - Calendar**

1. The Secretary shall maintain a docket for all applications, numbering said applications consecutively.
2. The Secretary shall prepare and submit to the Board for its consideration and adoption a list of closing and hearing dates for the following year. The list shall be submitted to the Board no later than its last scheduled meeting in each calendar year.
3. Applications shall be placed on the calendar of the Board for hearing in accordance with a closing and hearing date schedule duly adopted by the Board.

#### **Article V - Article of Hearing**

1. Notice to the applicant shall be given not less than 10 days prior to the date of hearing and shall be by mail to his or her last known address or the address shown on the application.
2. The Secretary shall cause to be published in the official City paper a notice of public hearing of said meeting at least 10 days prior to the date of hearing, as provided by law.

#### **Article VI - Hearing of Cases**

1. All hearings of the Board and all official actions taken by the Board shall be public unless the Board has recessed to a closed session as allowed by the Nebraska Open Meetings Act and amendments thereto.
2. The applicant should be represented at the public hearing, either in person or by counsel or agent. In the event of the absence of the applicant, either in person or by his counsel or agent, the Board shall determine that said applicant was duly notified and the Board may proceed to decide the application on basis of the facts then available for consideration.
3. The Board may summon witnesses.
4. The Board may require persons testifying before it to be sworn in, in a manner and by an official as provided by law; provided, however, this provision shall not be applicable to members of the Board or administrative employees of the City of Fremont serving in an official or advisory capacity to the Board; or to legal counsel representing applicants in an application before the Board.
5. The Planning Director or his or her designee shall present to the Board a verbal report (which may include visuals) of the Planning Director 's findings of fact and recommendations regarding the application under consideration. The presiding officer shall then recognize any Board members who wish to ask specific questions of the Planning Director. A Board member may request recognition by

raising his or hand. Members shall be recognized as nearly as possible in the order in which requests for recognition are made to the presiding officer. Members shall refrain from expressing personal opinion until the close of the public hearing.

6. After presentation by the Planning Director, with follow-up questioning by the Board, the applicant and/or his or her agent will be allowed to address the Board. Presentation shall be limited to ten minutes unless extended by majority vote of the Board members present. In the case of an appeal, the applicant shall be allowed fifteen minutes to present his or her case to the board. The Planning Director or his or her attorney shall be allowed fifteen minutes to respond to the issues raised in the applicant's appeal. Such time periods may be extended by a majority of the Board members present. Specific follow-up questioning shall be permitted.
7. After presentation by the applicant and/or his or her agent, with follow-up questioning by the Board, the presiding officer shall recognize audience members desiring to speak in favor of the application and then shall recognize audience members desiring to speak in opposition to the application. Each speaker in turn shall approach the podium microphone and state his or her name and address before commenting on the application request. Each speaker will be limited to five minutes unless extended or lessened by majority vote of the Board members present. No speaker may address the Board more than once unless approved by majority vote of the Board members present. At the end of each speaker's presentation, the presiding officer shall recognize any Board members who wish to ask specific questions of that speaker. The speaker questioned shall answer from the podium microphone. The presiding officer shall have the discretion to reasonably limit public comment where such presentation is exercised in a dilatory manner, is unduly repetitious or is not pertinent to the agenda item. When the Board has heard all speakers and the Board members have completed their questioning of the speakers, the presiding officer shall declare the public hearing closed.
8. The presiding officer shall ask if any Board member has any additional questions of the applicant, agent, Planning Director, legal counsel or any City staff member represented at the meeting. If so, these questions may be asked at this time and the person being questioned shall answer from the podium microphone or a microphone at the staff table. The presiding officer shall next ask if any staff member has comments or clarification of previous statements to make. When no additional questions or comments are forthcoming, the presiding officer shall declare that all further discussion shall be confined to the Board.
9. Each Board member in turn shall be given the opportunity to express and is encouraged to express his or her reasons for supporting or opposing the application and what conditions should be required, if approved. Board members may question and have dialogue with each other, but shall refrain from arguing.
10. When the Board members have completed their review of the application, a motion shall be made to grant, deny or defer, with or without conditions. The motion shall be in the format as previously established by legal counsel and as provided to the Board members in writing.
11. The Board's legal counsel may at any time during the proceedings advise the board members of their legal rights and obligations.

## **Article VII - Final Disposition of Application**

1. The final disposition of every variance application shall be in the form of a voice vote resolution signed by the Chair and Secretary. Every variance granted or denied by the Board shall be accompanied by findings of fact and reasons for granting or denying the variance and various conditions may be stipulated by the Board to be fulfilled as a condition of granting of the variance.
2. In exercising its powers to hear an appeal, the Board by a voice vote or resolution may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, and on all appeals may attach appropriate conditions, and may issue or direct the issuance of a permit.
3. An affirmative vote of at least a majority of the Board members appointed and qualified, shall be necessary to grant an appeal or variance. In case of failure to reach an affirmative vote of a majority of the Board members, the appeal or variance shall be denied.
4. An applicant may withdraw the application at any time prior to the final action of the Board on the appeal or variance. Such a withdrawal would cancel and close the case, but the filing fee shall not be refunded.
5. The Secretary shall notify the applicant in writing of the final action of the Board if the applicant is not present at the meeting.
6. The Board may delegate to the Planning Director such duties as review and approval of a landscape plan, site plan, restrictive covenant, or other such documents or information required as a condition of approval of an application. The Board shall give specific direction to the Planning Director as to what it expects the plan or document to include. If, after reviewing the plan or document and discussing the same with the applicant, the Planning Director does not believe that the intent of the Board has been carried out, the Planning Director shall schedule the plan or document for review by the Board at its next meeting. The Board shall then determine whether such plan or document satisfies its previous requirement for approval of the application.
7. The Board may delegate to the Planning Director such duties as to review and monitor compliance of any condition to which a variance is granted. The representative from the Planning Director shall report to the Board the status of all variances granted and ensure compliance with all such conditions. If the Board, based on the information provided by the Planning Director determines that such conditions have not been met, the Board may request that the matter be placed on the agenda of its next meeting for review. The Secretary shall notify the applicant that the matter is to be reviewed by the Board.

## **Article VIII - Rehearings**

1. Requests for rehearing shall be in writing and duly verified and shall be submitted to the Secretary of the Board within 60 days of the date of the original hearing. The request shall recite the reasons for the request. No requests for rehearing shall be entertained unless new evidence is submitted which could not reasonably have been presented at the previous hearing. If the request is granted by the Board, the same procedure will be followed as was followed in consideration of the original application. A specific variance request shall not be heard by the Board more than three times during the tenure of a property owner.
2. The Board of Adjustment shall determine if a rehearing will be allowed in a manner consistent with these rules

## **Article IX - Amendments**

1. Amendment to these rules may be introduced at any meeting of the Board and voted on at the same or any subsequent meeting, provided that notice of the consideration of any such amendment or passage, either in the form of a letter or official Agenda of the board, is mailed to each member prior to its first introduction at a regular meeting.

## **Article X - Records**

1. The records of all Board cases and hearings shall be kept on file in the office of the Secretary of the Board in such manner as to be available for public inspection during the regular hours of the Secretary.