

## **Bellevue Board of Adjustment Meeting**

Wednesday, August 16, 2023 6:00 PM

Bellevue City Hall

1500 Wall Street

Bellevue, NE 68005

### **1. CALL TO ORDER:**

a. Roll Call

b. The Open Meetings Act location

c. Approve Minutes of April 19, 2023 Regular Meeting

d. Accept into the record all staff reports, attachments, memos, and handouts regarding each application.

### **2. PUBLIC HEARINGS:**

a. Request for a variance of Section 5.08.05, City of Bellevue Zoning Ordinance, regarding the minimum 35-foot rear yard setback in the RS-120 zoning district for Lot 2, Marchio's Subdivision Replat 1. The applicant is requesting the minimum 35-foot rear yard setback be reduced to 15 feet to facilitate the construction of a single family residence. Applicant: Sebastian Enzolera. General location: 417 Bellevue Blvd. N. Case #: BOA-2307-02

### **3. CURRENT BUSINESS**

### **4. ADJOURNMENT**

# MINUTE RECORD

Bellevue Board of Adjustment, April 19, 2023, Page 1

The Bellevue Board of Adjustment held a regular meeting on Wednesday, April 19, 2023, at 7:00 p.m. in the Bellevue City Council Chambers. Upon roll call, present were Board Members Anderson, Lasenburg, Crompton, Conte, and Hankins. Absent was Petersen. Also present were Tammi Palm, Planning Department Manager, and Angela Curry, Assistant Planning Manager.

Notice of this meeting was given in advance thereof by publication in the Gretna Guide and posting in two public places and was also given to the Chairperson and members prior to the meeting. These minutes were written and available for public inspection within ten days of the meeting.

Anderson announced a copy of the Open Meetings Act was posted in the entry to the City Council Chambers.

Motion was made by Hankins, seconded by Crompton, to approve the minutes of the September 23, 2020, regular meeting as presented. Upon roll call, Lasenburg, Crompton, Anderson, and Hankins, voted yes, Conte Abstained. Motion carried.

Anderson asked staff for updates. Palm stated there were no new updates.

Motion was made by Hankins, seconded by Conte, to accept into the record all staff reports, attachments, memos, and handouts regarding each application. Upon roll call, all present voted yes. Motion carried unanimously.

Anderson explained the public hearing procedures.

PUBLIC HEARING was held on an appeal of a decision or determination made by city staff on denial of a sign permit for a nonconforming pole sign 20 feet tall with a 10-foot setback from the property line, located in the Northeast ¼ of Section 35, T14N, R13E of the 6th P.M., Sarpy County, Nebraska. Applicant: Richard Corbin. Location: 1505 Galvin Road South. Case #: BOA-2303-01.

Richard Corbin 2308 Plymouth Rock Rd., Bellevue, NE, was present to speak. He stated he owns Jammers Club located at 1505 Galvin Rd. South. Corbin stated he is not the property owner but has leased four bays for approximately 15 years and the sign is part of his lease. He said this digital sign is a way of advertising events throughout the year and it would help in the growth of his business. Corbin stated the sign permit application was denied because it is a legal nonconforming sign and according to the Planning Department the requested changes would increase the nonconformity of the sign. Corbin stated the sign is 20 feet tall and will remain at that height so he does not believe the changes will increase the nonconformity. He said the portion of the sign he wants to change will be about a foot smaller than the original sign. Corbin stated he had contact with his council representative Rich Casey and after some research Casey agreed the ordinance was hard to understand. He said Section 7 (Sign Regulations) of the Zoning Ordinance says the sign can be changed with a permit. Corbin stated it makes no sense the proposed changes would increase the nonconformity.

There was no one else present to speak in favor of, or in opposition to this request. Subsequently, Anderson closed the public hearing.

Hankins asked staff if the applicant is able to place a marque sign at this location. Palm stated Section 4.16 (Non-Conforming, General Intent) states the intent of the Zoning Ordinance is to permit lawful nonconformities to continue until they are removed but not to encourage their survival. She said the Planning Department's interpretation is a face change on a nonconforming sign is allowed but any other changes would not be acceptable. Palm said Mr. Corbin was told he could install a face change but he could not change the type of sign that existed. She said most legal nonconforming signs are closer to the property line than allowed, larger in square footage, and taller than is allowed by the current regulations. Palm stated the sign ordinance was adopted in the mid 90's and at that time the original ordinance said it would grandfather any existing signs as long as the owner filed an application with the Planning Department. As a result there are a large number of legal nonconforming signs in the city.

Conte asked staff what size digital sign Mr. Corbin could install. Palm stated the height and size of the sign determines the set back from the property line. She said the farther you are from the property line the taller and larger the sign can be. Palm stated at 20 feet in height this sign would need to be 18 feet from the property line and the sign could only be 90 square feet in area. Conte inquired at its current setback what is allowed. Palm stated at the current 10-foot set back he is allowed to have a sign 12 foot in height and 50 feet of square footage.

# MINUTE RECORD

Board of Adjustment Meeting, April 19, 2023 Page 2

Anderson stated Section 7.04.03 (11) D says any nonconforming sign which has been registered in accordance with 7.04.03 (8) may be repaired or modified provided such repair does not involve structural alteration or result in the sign becoming more nonconforming. Discussion ensued regarding the language in those sections. Palm stated there are institutional uses such as churches and schools in residential zoning that are allowed signage and in those areas you could have nonconforming signs that are larger and taller than the ordinance allows. She said although the applicant is in a commercial zone the same interpretation applies to all nonconforming signs. Palm stated tonight's vote will set precedence and the Planning staff would then use that interpretation for all legal nonconforming sign permits in the future.

Anderson stated Section 4.16 is a statement of the city's goals they do not want these nonconforming signs to continue. He questioned the applicant if the pole had two signs and was he only replacing the lower sign. Mr. Corbin stated that was correct. Anderson said his concern is that if the Board allows the sign to be changed there would be nothing stopping the applicant from coming back in six months to apply for a digital sign on the upper sign creating a completely new nonconforming sign. Palm stated the goal of Section 4.16 is not to encourage nonconforming uses to remain. She said these old signs should either be removed or brought into conformance. Corbin stated the language in Section 4.16 about nonconforming structures makes perfect sense but not for signage. Anderson stated neighboring properties who make application for signage are required to conform to the current Zoning Ordinance regulations. Corbin stated there are neighboring properties that have digital messaging signs. Anderson stated those signs were installed in conformance with the current Zoning Ordinance. Discussion ensued regarding setbacks, height, and cost of new signs in conformance with the current Zoning Ordinance at the applicant's location.

Anderson stated if the Board allows this change to a nonconforming sign, then others would also be allowed to make these changes to their nonconforming signs. He stated that is not the goal of Section 4.16. Mr. Corbin stated that Section 4.16 does not say the sign cannot be changed and Section 7 clarifies that the sign can be structurally altered if a permit is issued. He said he believes Section 7 made specifically for signs is the ordinance that should be followed. Palm stated in the staff report page 3 lists the definition of a sign as a structure.

Conte asked staff what changes could be made to a nonconforming sign. Palm said if they are decreasing the size of the same type of sign or keeping the same size sign, a face change is allowed. Discussion ensued regarding examples of changes to nonconforming signs that would not be allowed.

Lasenburg asked staff what specifically makes this sign more nonconforming. Palm stated the sign is going from internally illuminated to a digital message board. She stated in her opinion it's the type of sign requested.

Anderson stated when the city adopted the sign ordinance it allowed this nonconforming sign to remain as is, but it is time to update the sign and bring it into conformance with the zoning ordinance.

Conte asked staff if a marquee sign would be allowed. Palm stated that would be acceptable if it was not digital copy.

Lasenburg stated this would set a precedence for future nonconforming signs and in this case or per ordinance there is an option to move the sign. He said the language might need to be clarified. Palm stated that is why there is a Planning Commissioner on the Board, so if we need to clarify language that recommendation can be made and is done by text amendment to the Zoning Ordinance. Conte said to allow these nonconforming signs to be changed to digital would be a mistake. Discussion ensued regarding the options of moving or lowering the existing sign.

Palm said if the Board decides in favor of the applicant, then moving forward all applicants would be allowed to make these changes on all nonconforming signs, but if the board decides in favor of the Planning Department, then perhaps a text amendment is needed to clarify language in the Zoning Ordinance.

MOTION was made by Anderson, seconded by Conte, to agree with staff's decision to deny a sign permit for a nonconforming pole sign 20 feet tall with a 10-foot setback from the property line for a digital sign, located in the Northeast ¼ of Section 35, T14N, R13E of the 6th P.M., Sarpy County, Nebraska. Applicant: Richard Corbin. Location: 1505 Galvin Road South. Case #: BOA-2303-01. Upon roll call, Crompton, Anderson, and Hankins voted yes. Conte and Lasenburg voted no. MOTION failed.

# MINUTE RECORD

Bellevue Board of Adjustment, April 19, 2023, Page 3

Meeting adjourned at 8:07 p.m.

*Dianna Van Horn*

Dianna Van Horn  
Planning Secretary

**CITY OF BELLEVUE  
BOARD OF ADJUSTMENT REPORT**

**CASE NUMBER:** BOA-2307-02

**FOR HEARING OF:**  
**REPORT #1:** August 16, 2023

**I. GENERAL INFORMATION**

**A. APPLICANT:**

Sebastian Enzolera  
1609 Grove Road  
Bellevue, NE 68005

**B. PROPERTY OWNER:**

Sebastian Enzolera  
1609 Grove Road  
Bellevue, NE 68005

**C. GENERAL LOCATION:**

417 Bellevue Blvd North

**D. LEGAL DESCRIPTION:**

Lot 2, Marchio's Subdivision Replat 1, located in the Southeast ¼ of Section 23,  
T14N, R13E of the 6<sup>th</sup> P.M., Nebraska.

**E. REQUESTED ACTIONS:**

Variance of Section 5.08.05, regarding height and lot requirements for Lot 2,  
Marchio's Subdivision Replat 1.

**F. EXISTING ZONING AND LAND USE:**

RS-120, vacant

**G. PURPOSE OF REQUEST:**

The applicant is requesting a variance to allow for a 15-foot rear yard setback in the RS-120 zoning district to facilitate the construction of a single family residence, which requires a minimum 35 foot rear yard setback.

**H. SIZE OF SITE:**

The site is approximately .30 acres.

**II. BACKGROUND INFORMATION**

**A. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

- 1. **North:** Single Family Residential, RS-120
- 2. **East:** Single Family Residential, RE
- 3. **South:** Single Family Residential, RE
- 4. **West:** Single Family Residential, RS-120

**B. GENERAL COMMENTS:**

1. Section 19-910 of the Nebraska State Statutes requires the Board of Adjustment to make four (4) findings prior to granting a variance. If the Board finds the following present, the applicant is entitled to a variance. If the Board finds the following not present, it is suggested the variance be denied.

- i. Does the strict application of the zoning regulation produce undue hardship? Section 19-910 (a) Yes or No?
- ii. The hardship created is not shared by other properties in the same zoning district or vicinity. Section 19-910 (b) Yes or No?
- iii. Granting of this variance will not be of substantial detriment to adjacent property or the character of the zoning district. Section 19-910 (c) Yes or No?
- iv. Is this a demonstrable and exceptional hardship as distinguished from a variance for convenience, profit or caprice? Section 19-910 (d) Yes or No?

The applicant should be prepared to address these statements.

2. The applicant desires to construct a single-family residential dwelling with an attached garage on Lot 2, Marchio's Subdivision Replat 1. With the applicant's proposed layout, the garage would be 15 feet from the rear property line. To be in

conformance with the zoning ordinance, the residence must be setback 35 feet from the rear (east) property line.

3. The applicant facilitated the replatting of Lot 2, Marchio's Subdivision Replat 1.

In September 2021, the applicant requested to rezone and small subdivision plat Lots 1 and 2, Marchio's Subdivision. The lot was rezoned from RE (Residential Estates) to RS-120 (Single-Family Residential, 12,000 Square Foot Zone) with a small subdivision plat to create Lot 2, Marchio's Subdivision Replat 1. This request was approved by City Council on December 21, 2021.

4. With the RS-120 zoning, Section 5.08.05 requires a minimum 35-foot rear yard setback.

The applicant is requesting a waiver of this 35-foot rear yard setback requirement along the eastern property line to allow for a 15-foot rear yard setback.

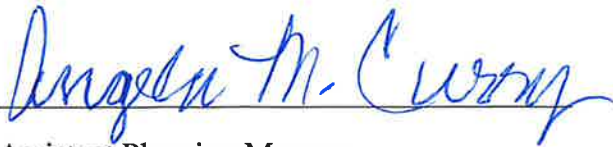
5. The applicant has provided two plot plans, which are attached. Exhibit A shows the requested variance with a 15-foot rear yard setback. Exhibit B shows the house moved to the north with a smaller garage footprint to accommodate the required rear yard setback. The applicant states this option "would create an unbalanced esthetic view of the house on the lot," and would also "create an additional issue with ground slope on the north side."

### **III. ATTACHMENTS TO REPORT**

1. Zoning Map/Vicinity Map
2. 2022 GIS aerial photo of the property
3. Site Plan Exhibit "A" received July 28, 2023
4. Site Plan Exhibit "B" received July 28, 2023

**IV. COPIES OF REPORT TO:**

1. Sebastian Enzolera
2. Public Upon Request

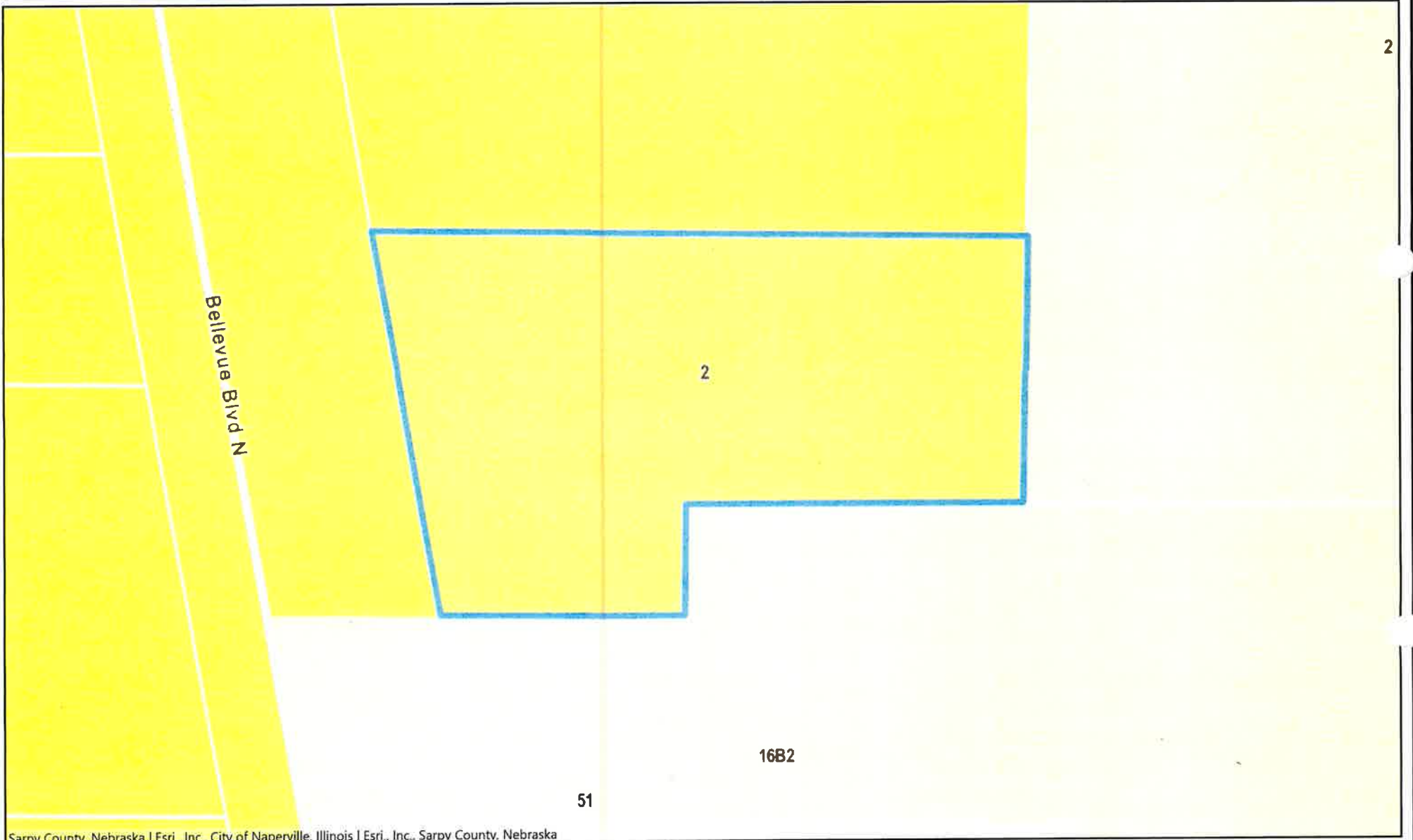


Assistant Planning Manager



Planning Director

Date of Report



Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska

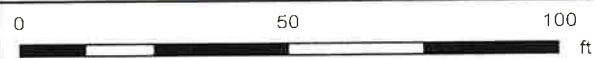
0 50 100 ft

Map Scale 1: 564

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Notes



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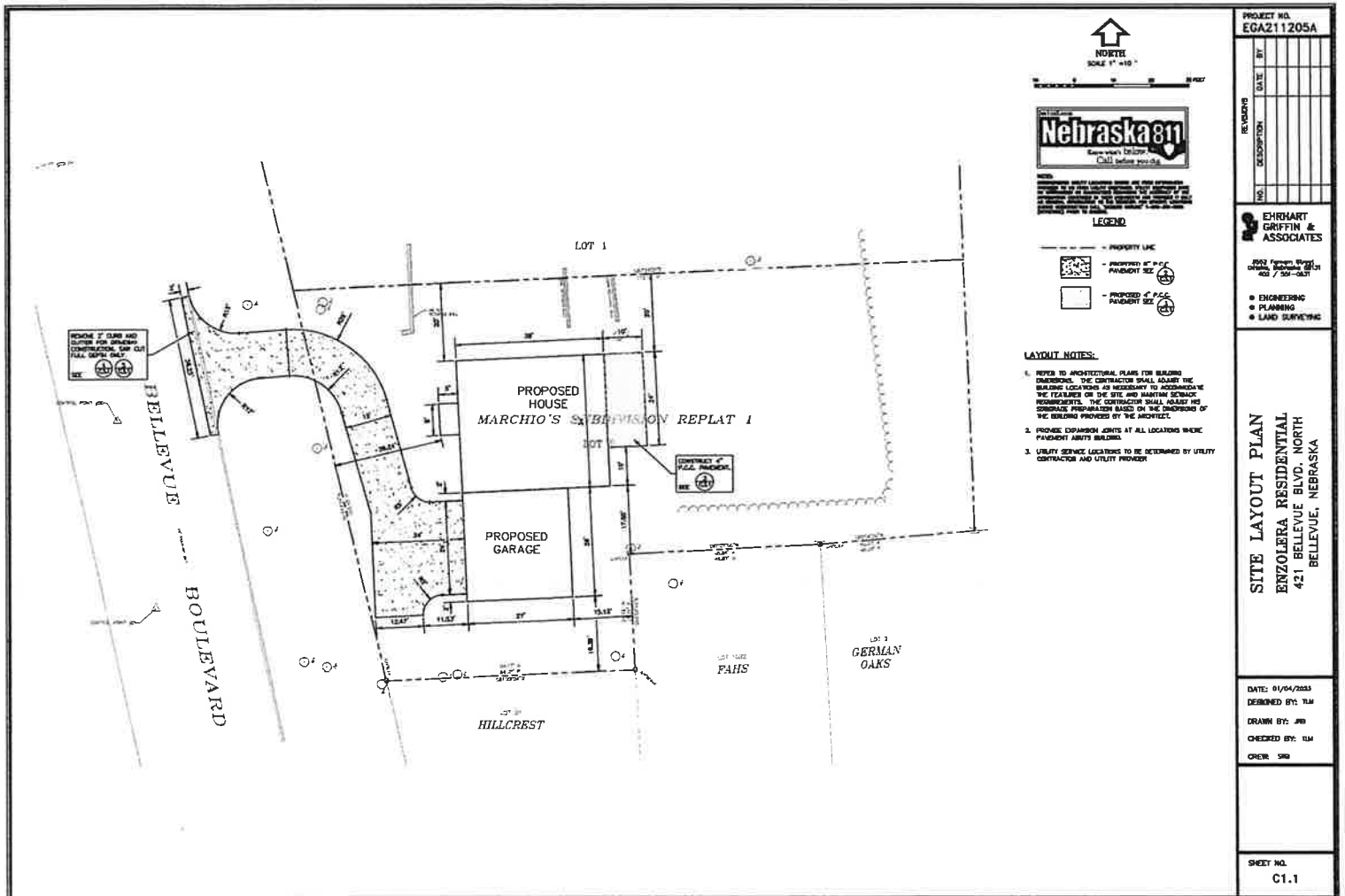
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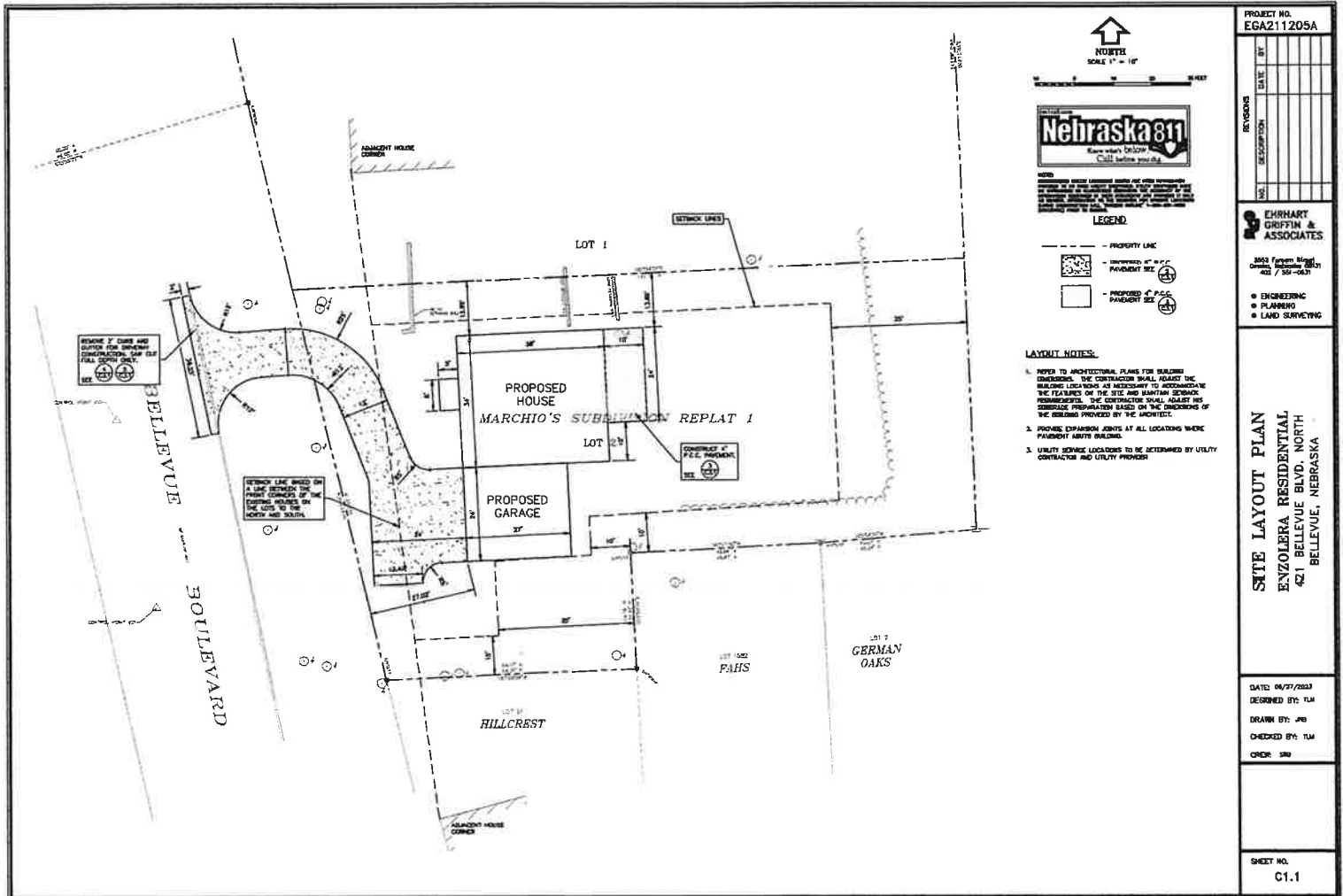
RECEIVED

JUL 28 2023

PLANNING DEPT.



Showing house/garage with requested variance



PROJECT NO. EGA211205A	
REVISIONS	DATE BY
EHRHART GRIFFIN & ASSOCIATES 3803 Federal Blvd. Omaha, NE 68131 402 / 551-0431 • ENGINEERING • PLANNING • LAND SURVEYING	
SITE LAYOUT PLAN ENZOLESERA RESIDENTIAL 421 BELLEVUE BLVD, NORTH BELLEVUE, NEBRASKA	
DATE: 06/27/2023	DESIGNED BY: TLM
DRAWN BY: JFB	CHECKED BY: TLM
OTHER: SMO	
SHEET NO. C1.1	

showing house/garage moved to north by 6'  
 and garage reduced from 28' wide to 24' wide  
 The 6' move and 4' reduction in garage width  
 would get the structure with code, but  
 would create an unbalanced esthetic view of  
 the house on the lot, create an additional  
 issue with ground slope on the north side and  
 move footings into root area of 100+ year oak tree.