

MINUTES
Administrative Board of Appeals
December 30, 2013

MEMBERS PRESENT:

David C. Levy, Vice Chair
Jim Weaver
Jose Lopez-Nuno
Bode M. A. Labode
John R. Barrett, Alternate

MEMBERS ABSENT:

Ann M. O'Connor, Chair
Marty Conboy, Alternate

OTHERS PRESENT:

Timothy Himes, Jr., Law Department
Kevin Denker, Planning Department
Rikki Flott, Recording Secretary

ROLL CALL:

Mr. Levy called the meeting to order at 1:00 pm. The Board received as Exhibit 1 in each of this meeting's cases the contents of the City's file on each case.

CASES:

13-12-88
Roger Bentley
6824 N. 65 Avenue
Omaha, NE 68152

REQUEST: Appeal Police Department denial of firearm registration

Roger Bentley appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Mr. Bentley's application was denied due to a conviction of marijuana less than an ounce on February 9, 2010. Mr. Bentley was fined \$300.00 for his offense.

Mr. Bentley stated that he is appealing the denial of his handgun registration because he is not a felon. In response to Mr. Labode, Mr. Bentley answered that his conviction was only a misdemeanor.

Mr. Weaver confirmed that the registration of a firearm with the City of Omaha Police Department is confusing but there are certain requirements that do not fall under other jurisdictions. He further explained that approximately two years ago the City Council passed an ordinance that a conviction of less than an ounce of marijuana would prevent a citizen from registering a handgun.

Motion to deny by Mr. Weaver. Second by Mr. Labode.

AYES: Barrett, Labode, Lopez-Nuno, Weaver, Levy

Motion carried 5-0. Appeal denied.

13-12-89

Joshua Craig
5025 NW Radial Hwy
Omaha, NE 68104

REQUEST: Appeal Police Department denial of firearm
registration

Mr. Craig was not present. The Board Secretary stated that she had not received return confirmation of the notice sent out to Mr. Craig by certified mail.

Motion to hold this case over to the January 27, 2014 meeting by Mr. Weaver. Second by Mr. Labode.

AYES: Barrett, Labode, Lopez-Nuno, Weaver, Levy

Motion carried 5-0. Case held over to the January 27, 2014 meeting.

13-12-90

Kevin Hawthorne
3717 Summit Street
Omaha, NE 68112

REQUEST: Appeal Police Department denial of firearm
registration

Kevin Hawthorne appeared before the Board with attorney, Bernard McNary. Lt. David Sedlacek, Omaha Police Department, reported that Mr. Hawthorne's application was denied due to a CCW (380 handgun) conviction on October 3, 1989. Mr. Hawthorne was fined \$200.00 for his offense.

Mr. McNary submitted a copy of the handgun registration application that was denied (Exhibit 2) and a Douglas County Sheriff's report from 2005 (Exhibit 3). Mr. McNary explained the situation involving the CCW conviction for Mr. Hawthorne. He further explained that Mr. Hawthorne does not have any other significant items on his record, is a disabled veteran, had a heart attack in 2000 and is presently on kidney dialysis. He has custody of an 11 year-old daughter and lives in an area where there are issues with violence and would like the opportunity to defend his family.

In response to Mr. Weaver, Mr. Hawthorne showed a valid copy of a gun purchase permit.

Motion to approve by Mr. Weaver. Second by Mr. Labode.

AYES: Labode, Lopez-Nuno, Weaver, Levy

NAYS: Barrett

Motion carried 4-1. Appeal granted.

13-12-91

Joshua I. Powell, Sr.
2205 E. Locust Street #319
Omaha, NE 68110

REQUEST: Appeal Police Department denial of firearm
registration

Joshua Powell appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Mr. Powell's application was denied due to a conviction of marijuana less than an ounce on November 17, 2006. Mr. Powell was fined \$100.00 for his offense.

Mr. Powell stated that he has not had any other drug use since July 2011 and would be willing to submit to a drug test. Mr. Powell further stated that his conviction was a misdemeanor and that he would like a firearm for family protection.

In response to Mr. Labode's question, Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record which would prevent him from registering a firearm in the City of Omaha.

Motion to approve by Mr. Labode. Second by Mr. Weaver.

AYES: Labode, Lopez-Nuno, Weaver, Levy

NAYS: Barrett

Motion carried 4-1. Appeal granted.

13-12-92

Michael C. Smith
4716 N. 47 Street
Omaha, NE 68104

REQUEST: Appeal Police Department denial of firearm
registration

Mr. Smith was not present. The Board Secretary stated that she had not received return confirmation of the notice sent out to Mr. Craig by certified mail.

Motion to hold this case over to the January 27, 2014 meeting by Mr. Weaver. Second by Mr. Labode.

AYES: Barrett, Labode, Lopez-Nuno, Weaver, Levy

Motion carried 5-0. Case held over to the January 27, 2014 meeting.

13-12-93

Shantae Dennard
7309 Corby Street #22
Omaha, NE 68134

REQUEST: Appeal Police Department denial of firearm
registration

Shantae Dennard appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Ms. Dennard's application was denied due to a conviction of marijuana less than an ounce on May 31, 2006. Ms. Dennard was fined \$100.00 for her offense.

Ms. Dennard stated that she would like to possess a firearm because she is a single woman who lives alone and would like it for protection.

In response to Mr. Weaver's question, Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record which would prevent her from registering a firearm in the City of Omaha.

Motion to approve by Mr. Weaver. Second by Mr. Lopez-Nuno.

AYES: Labode, Lopez-Nuno, Weaver, Levy

NAYS: Barrett

Motion carried 4-1. Appeal granted.

13-12-94

Tristan Harper
4812 Maple Street
Omaha, NE 68104

REQUEST: Appeal Police Department denial of firearm registration

Mr. Harper was not present because he was killed recently.

Based on the marijuana convictions, a motion to deny was made by Mr. Weaver. Second by Mr. Labode.

AYES: Barrett, Lopez-Nuno, Weaver, Levy

NAYS: Labode

Motion carried 4-1. Appeal denied.

At the end of the agenda, a motion was made by Mr. Labode to reopen case #13-12-94. Second by Mr. Levy.

AYES: Barrett, Labode, Lopez-Nuno, Levy

NAYS: Weaver

Motion carried 4-1. Case reopened.

Mr. Levy suggested that the case be denied but the filing fee returned to the applicant. Mr. Weaver stated that he voted to deny the appeal due to the number of violations in less than a five year time frame with regard to less than an ounce of marijuana.

Motion to deny but appeal fee to be returned to applicant by Mr. Weaver. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Weaver, Levy

Motion carried 5-0. Appeal denied but appeal fee to be returned.

13-11-83 *From 11/25/13*

Elton Foster
3959 N. 40 Avenue
Omaha, NE 68111

REQUEST: Appeal Police Department Notice of
Nuisance
(RE: 3601 N. 24 Street)

11/25/13

Elton Foster was not present but previously requested that the case be laid over for 30 days because he would be out of town and unable to attend the hearing.

Motion to hold this case over to the December 30, 2013 meeting by Mr. Barrett. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Levy

Motion carried 4-0. Case held over to December 30, 2013.

12/30/13

Elton Foster appeared before the Board.

Scott Benson, City Inspector, Planning Department, submitted several photos (Exhibit 2). Kevin Denker stated that the notice was an informal tow notice issued by the Omaha Police Department for vehicles that are marked as "dead storage". In response to Mr. Weaver, Mr. Denker explained that "dead storage" vehicles are inoperable, or may not have a valid license plate or may have flat tires.

Mr. Foster stated that the property in question is at 3601 North 24 Street. He questioned what the violations were. Mr. Denker offered to meet with Mr. Foster before the next meeting to verify that all vehicles can start and are operable. Mr. Denker also explained that the car parts stored outside need to go inside a building or be disposed of.

In response to Mr. Weaver, Mr. Foster answered that he has been before the Board in the past.

Motion to hold this case over to the January 27, 2014 meeting by Mr. Labode. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Levy

NAYS: Weaver

Motion carried 4-1. Case held over to the January 27, 2014 meeting.

13-12-95

Robert Moser
6725 Grant Street
Omaha, NE 68104

REQUEST: Appeal Police Department Notice of
Nuisance

Robert Moser appeared before the Board.

Kevin Denker reported that there are still vehicles on the property that are not licensed.

Mr. Moser stated that he is retired and has a couple of older “project” cars and would like for them to remain on his property. He stated that one vehicle has been licensed but asked if he could put a cover on the cars. Mr. Denker answered that if a vehicle is stored outside, it has to be operable, tires inflated and properly licensed. Mr. Denker suggested that another alternative would be to rent storage at another location.

Motion to hold this case over to the January 27, 2014 meeting by Mr. Weaver. Second by Mr. Labode.

AYES: Barrett, Labode, Lopez-Nuno, Weaver, Levy

Motion carried 5-0. Case held over to the January 27, 2014 meeting.

13-12-96

Shawna Harvat
3927 “U” Street
Omaha, NE 68107

REQUEST: Appeal Police Department Notice of
Nuisance

Ms. Harvat was not present. Mr. Denker stated that the camper in question has been plated and is in compliance.

Motion to approve by Mr. Weaver. Second by Mr. Labode.

AYES: Barrett, Labode, Lopez-Nuno, Weaver

NAYS: Levy

Motion carried 4-1. Appeal granted.

13-11-84 *From 11/25/13*

Doug Kellner
Thompson, Dreessen & Dorner, Inc.
10836 Old Mill Road
Omaha, NE 68154

REQUEST: Appeal Public Works Department site plan
denial of driveway regulations
(RE: Proposed site plan at 1402 S. 50
Street)

11/25/13

Doug Kellner, Thompson, Dreessen & Dorner, 10836 Old Mill Road, and Matt Knutson, architect, 1301 Nicholas Street, appeared before the Board with Joseph McGill, owner.

Ryan Haas, Public Works Department, stated that the site plan, as proposed, contemplates two driveways along 50th Street. As indicated in the submitted diagram (Exhibit 2), the northernmost driveway meets the driveway regulations but the second driveway proposed does not meet the minimum spacing requirement from the intersection of 50th and Saddle Creek. According to the driveway regulations there are one of several conditions that have to be met for a second driveway to be granted. Mr. Haas stated that there is a provision that a second driveway can be granted if the driveway is shared with a neighboring adjoining property. Based on what is going on to the south, relative to the intersection, the City would not oppose if the Board chose to allow for a second driveway on the site subject to it being a shared common driveway with the neighboring property to the south.

Mr. Kellner stated that the property has a significant amount of concrete and driveway access. The building which ran parallel to 50th Street has been removed. Mr. Knutson indicated that there will be an addition to the existing metal building to create more warehouse space and to replace what was removed. Mr. Kellner stated that the north drive entrance has been narrowed to meet Public Works' requirements and more green space has been added. The south driveway is needed to allow access to the existing building for general operations on the site. Mr. Knutson stated that there are pickups with trailers that need room to maneuver for the business to function well therefore the south drive are needed. Mr. Kellner stated that the addition to the existing building will be raised over the flood plain which creates grade difficulties with the adjacent property to the south. Mr. Knutson pointed out that the curb cuts have been reduced from five to two curb cuts. There have been efforts to improve the entire property site with the removal of the old building and the addition of green space.

In response to Mr. Levy, Mr. Haas stated that based on the characteristics of 50th Street, the required distance is 230' from the intersection of 50th Street and Saddle Creek. Mr. Haas stated that the applicant was urged to contact the property owner to the south regarding the shared driveway. Mr. Knutson expressed concerns over a shared drive with regard to the difference in grade elevation between the two properties without significantly altering the neighboring property. In response to Mr. Labode, Mr. Knutson stated that the grade elevation is approximately 6-7%. Mr. Knutson confirmed that there has been no conversation with the adjacent property owner to the south.

Mr. McGill stated that he has owned the property since 1999 and has operated McGill Brothers, which does waterproofing and tuckpointing, for over 12 years. He also indicated that the site has been improved by creating green space, removing curb cuts and raising the existing building above the flood marks. Mr. McGill indicated that he would like to maintain a smaller drive off of 50th Street that is already there.

Mr. Haas stated that the public intersection of 50th and Saddle Creek is a mess because the intersection is not at a right angle which poses a number of challenges and concerns. He pointed out that the project is an infill project and there are constraints. It was felt that the shared driveway would meet the requirements while minimizing the amount of accesses.

Mr. Knutson stated that they have not approached the adjacent property owner to start the discussion regarding a shared driveway. Mr. McGill expressed that there are issues with drainage. Mr. Kellner further pointed out that it would be difficult to convince the neighbor to go from four driveway accesses to one and one-half.

Mr. Levy asked for an explanation for the need for the second driveway. Mr. Kellner stated that the importance of the second drive would be for vehicle access to the new warehouse by the employees.

In response to Mr. Labode, Mr. Knutson stated that they have exhausted all possibilities but they have not approached the neighbor because they do not think it will make a difference. Mr. McGill added that he would like to resolve the driveway issue but the current property owner to the south has no incentive to make the driveway work. Mr. Haas stated that a Board approved combined driveway on the property line guarantees access in the future.

Motion to approve subject to applicant granting an access easement to adjacent neighbor to the south to allow a shared driveway in the future by Mr. Barrett. Second by Mr. Lopez-Nuno.

AYES: Barrett, Lopez-Nuno

NAYS: Labode, Levy

Motion failed 2-2.

Mr. Labode stated that he would like the applicant to have a conversation with the neighbor.

Motion to hold this case over to the December 30, 2013 meeting by Mr. Labode. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Levy

Motion carried 4-0. Case held over to December 30, 2013.

12/30/13

Mr. Denker stated that this case was withdrawn at the request of the applicant.

13-12-97

Donald Thompson
D. Thompson Realty & Property
Management
3802 Leavenworth Street Suite 200
Omaha, NE 68105

REQUEST: Appeal Planning Department Notice of
Violation for trash container

(RE: 3833 Cuming Street)

Donald Thompson, 3802 Leavenworth Street, appeared before the Board.

Roger Carroll, Housing Inspector, Planning Department, stated that a complaint was received regarding a five yard dumpster that was sitting on a public sidewalk near 3837 and 3833 Cuming Street. He stated that after notifying Mr. Thompson, the dumpster company moved the dumpster. Mr. Carroll stated a notice was sent after he returned a week later to notice that the dumpster was placed as non-compliant. The notice was erroneously sent to 3837 Cuming Street. The dumpster was sitting on the side lot of 3833 Cuming Street. Mr. Carroll referred to a site plan that was submitted showing the property in question and the dumpster. He explained that dumpsters are to be placed behind the front face of the building or the side yard face of the building.

Mr. Thompson explained that his company is the management company for both addresses and the owner, who lives in Colorado, owns both 3837 and 3833 Cuming Street. In response to Mr. Levy, Mr. Thompson agreed to proceed with the hearing regardless of the address confusion.

Mr. Carroll stated that because the apartment building is addressed on Cuming Street, Cuming Street then becomes the street front yard and the side of the building becomes the yard. In order to meet the ordinance, the dumpster would need to be behind the street side yard face of the building which is approximately 100 feet. He explained that the alternate would be to build a dumpster enclosure.

Mr. Levy read section 18-103 of the ordinance that says, "Other than during the collection period, containers shall be placed behind any street adjacent façade of the primary building or buildings on the lot or if they are in other areas of the lot, not in violation of the code, they have to be screened." In response to Mr. Levy, Mr. Thompson answered that the dumpster serves both buildings.

Mr. Thompson stated that the dumpster was moved to the side of the 3833 building therefore the dumpster truck has to drive across the parking lot with their heavy trucks. This is not practical. He submitted five photos (Exhibits 2-6) showing the parking lot and dumpster in relation to the two buildings. He requested that the dumpster be placed behind the 3837 address.

Mr. Denker suggested that Mr. Thompson paint a line on the ground where the dumpster needs to be placed. He explained that a gentleman rides his bike all over the City and has been overwhelming the department with complaints.

Mr. Levy suggested that a screen be considered on the north side so that the dumpster cannot be seen from 39th Street. Mr. Thompson pointed out that a screen would complicate the angle that the dumpster truck would need to pull in to empty the dumpster.

Mr. Denker suggested that the case be laid over so the department can assess the issue and work with the applicant.

Motion to hold this case over to the January 27, 2014 meeting by Mr. Labode. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Weaver

NAY: Levy

Motion carried 4-1. Case held over to January 27, 2014.

APPROVAL OF MINUTES:

Motion by Mr. Labode to approve the minutes from November 25, 2013. Second by Mr. Barrett.

AYES: Barrett, Labode, Lopez-Nuno, Levy

ABSTAIN: Weaver

Motion carried 4-0-1.

ADJOURN:

Motion to adjourn by Mr. Weaver. Second by Mr. Barrett.

AYES: Barrett, Labode, Lopez-Nuno, Weaver, Levy

Motion carried 5-0. Meeting adjourned at 2:10 pm.