

MINUTES
Administrative Board of Appeals
August 25, 2014

MEMBERS PRESENT:

Ann M. O'Connor, Chair
David C. Levy, Vice Chair
Jim Weaver
Bode M. A. Labode
Jose Lopez-Nuno

MEMBERS NOT PRESENT:

Marty Conboy, Alternate
John R. Barrett, Alternate

STAFF PRESENT:

Tim Himes, Law Department
Kevin Denker, Planning Department
Yvonne Barna, Planning Department
Scott Benson, Planning Department
Steve Anderson, Planning Department
Chris Faulk, Public Works Department
Ryan Haas, Public Works Department
Rikki Flott, Recording Secretary

ROLL CALL:

Ms. O'Connor 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:

1.

14-6-046

James Bogensberger
2004 N. 50th St.
Omaha, NE 68104

REQUEST: Appeal Planning Department Notice of
Nuisance
(RE: 1810 Northwest Radial Highway)

Kevin Denker, Planning Department, stated that the City inspector was at the property today and submitted a photo of the property (Exhibit 2). He explained that the motor home was removed and the applicant was now in compliance.

Motion to deny by Mr. Levy. Seconded by Mr. Weaver.

AYES: Labode, Lopez-Nuno, Weaver, Levy, O'Connor

Motion carried 5-0. Appeal denied.

2.

14-6-047

Donald L. Reents
1205 S. 27th St.
Omaha, NE 68105

REQUEST: Appeal Planning Department Notice of
Nuisance
(RE: 1216 South 27th Street)

Donald Reents appeared before the Board. Yvonne Barna, City Inspector, Planning Department, visited the property today and submitted photos of the property (Exhibit 2). She stated that one vehicle and 2 sheds were on the property and that the truck was the subject of the Notice of Nuisance.

Mr. Reents discussed the sheds on his property, which were not items listed on the Notice of Nuisance, and submitted photos of his property (Exhibit 3). He stated that his truck was drivable that all other items listed on the nuisance were removed from the property. He also mentioned he kept one utility trailer in his possession and was currently storing the trailer at a neighbor's home. Ms. Barna confirmed that the truck remaining on the property was now in compliance and all other items listed were removed. In response to Mr. Weaver, Mr. Reents explained the photos he submitted were of his property and properties in the surrounding neighborhood. He then identified his property in the photos. Ms. Barna noted that the sheds were not part of today's case and that Mr. Reents' current violations for his sheds were appealable through the Zoning Board of Appeals.

Motion to deny by Mr. Weaver. Seconded by Mr. Levy.

In response to questions by Mr. Labode, the Board discussed that the denial of the appeal prevented the items of Nuisance from legally reappearing at the property.

AYES: Lopez-Nuno, Weaver, Levy, O'Connor

NAYS: Labode

Motion carried 4-1. Appeal denied.

3.

14-8-059

Ralph L. Smith
3805 N. 88th Ave
Omaha, NE 68134

REQUEST: Appeal Police Department Notice of
Nuisance
(RE: 3805 North 88th Avenue)

Carol Smith, Wife of Ralph Smith, appeared before the Board. Kevin Denker, Planning Department, stated that the Notice of Nuisance was issued by the Police Department for a boat parked in the front yard that was in excess of the 20 feet setback regulation.

Mrs. Smith stated that she was confused regarding the items cited on the Notice of Nuisance. Mr. Denker responded that the Chapter 55 zoning code referenced vehicles in excess of the front yard, or street side yard, setback regulations. In response to the Board, Mr. Denker stated that because the right-of-way on Mrs. Smith's street was 50 feet, the setback begins at the stoop of the house. Scott Benson, and Steve Anderson, City Inspectors, Planning Department, explained that the trailer with the boat parked on the pavement would still be in excess of setback regulations if items were removed to shorten the length. Mr. Benson explained to Mrs. Smith that the 35 feet setback regulation was approximately 5 feet from her garage door and Mr. Denker explained the process for measuring setbacks.

In response to Mr. Levy, Mrs. Smith stated that she would need to rent a location to store the boat.

Motion to deny by Mr. Levy, with 30 days to comply. Second by Mr. Lopez-Nuno.

AYES: Labode, Lopez-Nuno, Weaver, Levy, O'Connor

Motion carried 5-0. Appeal denied, with 30 days to comply.

4.

14-8-060

Louise M. Liekhus
8002 Blondo St. #4
Omaha, NE 68134

REQUEST: Appeal Police Department Notice of
Nuisance
(RE: 8002 Blondo Street)

Louise Liekhus appeared before the Board. She submitted a copy of an Iowa title for a 2001 Chrysler PT Cruiser and current Nebraska registration information for a 1991 Lincoln Town Car belonging to her son (Exhibit 2). She explained that because she is in the process of dissolution of her marriage, the Chrysler was currently registered in Iowa in her husband's name.

Officer J.V. Stokes noted that code 60-362 Registration requirements stated that a vehicle needed to be registered in the state of Nebraska if continuously in the state for over 30 days. Ms. Liekhus explained to the Board that this vehicle was in her husband's name and that he resided in Council Bluffs. She further explained that she lived in Omaha and was currently in possession of the vehicle until a decision was made regarding their marriage.

Kevin Denker, City Planning, stated that he explained the registration requirements, as stated by Officer Stokes, to Bob Belgrade, the owner of Ms. Liekhus' residential complex. In response to Mr. Weaver, Officer Stokes stated that Nebraska does not offer programs allowing out-of-state plates for temporary residence in Nebraska; with the exception of temporary full-time out-of-state college students, or military personnel.

In response to Mr. Weaver, Ms. Liekhus stated that cooperation with her estranged husband was not likely because they are not on speaking terms and that she planned to move back to Iowa next year.

Motion to deny by Mr. Weaver, with 60 days to comply. Second by Mr. Labode.

AYES: Labode, Lopez-Nuno, Weaver, Levy, O'Connor

Motion carried 5-0. Appeal denied, with 60 days to comply.

5.

14-8-062

Steven Ginn
Steven Ginn Architects
2516 Garden Road
Omaha, NE 68124

REQUEST: Appeal Public Works Department denial of
driveway permit
(RE: 812 North 66th Street)

Steven Ginn and Greg Gettman with Steven Ginn Architects, appeared before the Board. Chris Faulk, Public Works, stated that the driveway permit denial was for an additional driveway next to the existing driveway. He explained that City guidelines did not permit a second driveway serving a single parcel to be separated by less than 40 feet full height curb between the driveways.

Mr. Ginn stated that he represented the owner of the property, Richard Jacobson, and that Mr. Jacobson was adding two additional stalls to the west of his existing garage and driveway along Cuming Street. Mr. Ginn explained that the property was approximately 1.5 acres and that because of a tight turning radius from the existing driveway, the additional driveway along Cuming Street allowed easier access to

the new garage addition. He added that neighbors were not objected to the construction of a garage addition, nor the additional driveway.

Mr. Levy stated that he was aware Cuming Street was a through-street, but had minimal traffic. In response to Mr. Weaver, Mr. Faulk stated that the driveway separation requirements prevented obstructed views of oncoming traffic and that only 2 licensed drivers resided at this residence. Mr. Levy commented that because this was a single-family residence, the concern that 2 vehicles would exit the driveway at the same time should not be an issue.

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

AYES: Labode, Lopez-Nuno, Weaver, Levy

NAYS: O'Connor

Motion carried 4-1. Appeal granted.

6.

14-8-063

Arthur O. Smith, III
Leo A. Daly Company
8600 Indian Hills Dr.
Omaha, NE 68114

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: Alegent Creighton Health, 42nd & L Streets)

Arthur O. Smith, III and John Andrews with Leo A. Daly Company, and Donald Mandel with CHI Health appeared before the Board. Ryan Haas, Public Works, stated that the request was for a proposed medical office facility that originally had many driveway deficiencies. He added that the applicant submitted a traffic study and results were a second access was not needed. He then stated that the issue was two access points on the site, but that the applicant worked with Public Works to find an acceptable plan.

Mr. Smith stated that he represented CHI Health. Mr. Mandel submitted a large exhibit of the site (Exhibit 2) and stated that the site included 6 parcels with multiple existing access points. He explained that they planned to construct a 28,000 square foot medical office clinic with a variety of health care services and then discussed that because of the many parcels acquired to build the facility, many access points existed. Mr. Mandel explained that only two access points would remain and that both were right-in/right-out only, with medians restricting traffic. He added that the two requested driveways allowed easier access for patients visiting the facility, and emergency vehicles needing to enter/exit the facility.

In response to Mr. Levy, Mr. Haas stated that both driveways met distance requirements and that changes were made along the 42nd Street driveway to avoid traffic entering the existing right turn lane along 42nd Street. In response to Mr. Labode, Mr. Smith stated that a median prevented left turns into the facility from L Street. Mr. Haas stated that although some conflicts existed, larger issues were mitigated and full movement access did not exist at the two requested driveways.

Motion to approve by Mr. Waver. Second by Mr. Levy.

AYES: Labode, Lopez-Nuno, Weaver, Levy, O'Connor

Motion carried 5-0. Appeal granted.

7.

14-8-061

Caryl Dumaine
5615 Florence Blvd.
Omaha, NE 68110

REQUEST: Appeal Nebraska Humane Society
Potentially Dangerous Dog Designation

Carol Dumaine appeared before the Board. Mark Langan, Nebraska Humane Society, appeared before the Board and submitted a Nebraska Humane Society Investigative Report, Dangerous Dog Ordinance, Potentially Dangerous Animal Declaration, and photos (Exhibit 2). Mr. Langan stated that on July 29, 2014 the Humane Society received a call of a severely injured dog in the area of 5647 Florence Boulevard. He continued on that an Italian Greyhound, owned by Christine Botel escaped from the yard and was found attacked by two Borzoi dogs owned by Ms. Dumaine. He further explained that the witness, Ms. Botel's son, stated that both of the Borzoi dogs participated in two separate attacks of the Italian Greyhound resulting in severe injuries to the Italian Greyhound, as shown in the submitted photos. Mr. Langan stated that Ms. Dumaine was issued citations and chose to euthanize her Borzoi dog named Pia. He then stated that the Potentially Dangerous Dog designation for Ms. Dumaine's Borzoi dog named Lyle was appealed at a Nebraska Humane Society hearing on August 6, 2014, but that the appeal was denied. He explained that several incidents from 2005 to present involving several of Ms. Dumaine's dogs were recorded with the Nebraska Humane Society. He then stated that Ms. Dumaine's dog Lyle was determined to be a potentially dangerous dog and was placed on a two year probationary period; if all requirements were met, the designation would be removed after the two year term.

Ms. Dumaine briefly discussed the history of her dogs escaping from the yard and stated that the reason for her appeal was that she did not view her dog Lyle as a danger to the public. She mentioned that the problem Borzoi dog Pia was euthanized and that it was not the intent of her dogs to hunt and kill the Italian Greyhound. She added that her yard was now more secure and that within a 20 year span of owning the Borzoi breed, an incident similar to the attack on the Italian Greyhound had never occurred. Ms. Dumaine mentioned that her dogs were a huge part of her life and feared the possibility of losing all her pets if a minor incident happened during the probationary period.

In response to Mr. Levy, Mr. Langan explained that a dog owner was deemed reckless if their dog was deemed potentially dangerous and violated requirements of the designation, or three animal control convictions were issued within the 24-month probationary period. He also explained that each incident was evaluated and that an appeal was available.

In response to Mr. Labode, Ms. Dumaine stated that prior to this incident; her dogs had not attacked another animal, but they occasionally chased or hunted in open land. She briefly discussed situations with her Borzoi dog Pia escaping and why she decided to euthanize this pet. She responded to further questioning that both dogs participated in the attack and that she did not see the report, or photos, from the Humane Society. Mr. Weaver stated that he concluded from Ms. Dumaine's testimony that the designation by the Humane Society was justified.

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

AYES: Labode, Lopez-Nuno, Weaver, Levy, O'Connor

Motion carried 5-0. Appeal denied.

ADJOURN:

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

AYES: O'Connor, Levy, Weaver, Lopez-Nuno, Labode,

Motion carried 5-0. Meeting adjourned at 2:07 pm.