MINUTES
Administrative Board of Appeals
October 23, 2017

MEMBERS PRESENT:
David C. Levy, Chairman
Ann O’Connor, Vice Chair
Brian W. Kruse
Mark Santo

MEMBERS NOT PRESENT:
Jeffrey Beals
Ryne Bessmer, Alternate

STAFF PRESENT:
Timothy Himes, Law Department
Jay Davis, 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:

1.
17-10-092
Caleb Beasley
E&A Consulting Group
10909 Mill Valley Road, Suite 100
Omaha NE 68154

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: 10043 Scott Circle)

Caleb Beasley and Chris Faulk, Public Works Department, appeared before the board. Mr. Faulk stated that the applicant submitted a site plan with a building permit that showed a driveway on Scott Circle. The proposed driveway does not meet the City’s driveway regulations since it is too close (closer than 40’) to an adjacent driveway. He added that since Scott Circle is a low-volume street, the City did not oppose a waiver in this instance.

Mr. Beasley explained that there would be no impact on traffic since Scott Circle is a dead-end street and there are no site distance issues. He added that if the driveway complied with driveway regulations, there would not be sufficient circulation in the parking lot.

Motion to APPROVE by Mr. Kruse. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0.
Luke Weatherly (Olsson Associates), Cary Thomsen (RDG) and Ryan Haas (Public Works Department) appeared before the board. Mr. Haas stated that the parking lot wrapped around the south and west sides of the site. There is an existing driveway on Bedford Avenue and a proposed driveway for 30th Street between Spencer and Wirt Streets. He explained that the offset between the proposed 30th Street access and the intersection of 30th and Spencer Street is less than the required intersection spacing; however, the situation is alleviated by the existing left turn lane. Public Works found no other deficiencies or Life Safety issues.

Mr. Weatherly explained that if the proposed driveway was lined up with Spencer Street it would result in development of the site being restricted. He added that the proposed driveway is offset in such a way that left-turn movement is not affected. He explained that 30th Street will also be reconfigured from a 5-lane street to a street with parking on both sides and one turn lane in the middle.

Mr. Thomsen stated that the first floor of the building would be used for the early childhood center and the second floor for office space.

Motion to APPROVE by Mr. Kruse. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0.

3. 17-10-094
Caleb VanWeelden REQUEST: Appeal Public Works Department denial of Lamp Rynearson & Associates driveway permit
14710 West Dodge Road (RE: 165th & West Maple Road, QuikTrip)
Omaha NE 68154

Joe Flaxbeard (Lamp Rynearson), Ryan Harding (QuikTrip Corporation) and Ryan Haas (Public Works Department) appeared before the board. Mr. Haas stated that the access plan proposed a full movement driveway on the south end of the site and a right-in/right-out, second access for the north end along 165th Street. The site plan showed a paved stub at the south property line with a cross access easement for the adjacent undeveloped property. The proposed shared driveway to the south would have a width of 35’, which is 5’ more than what is allowed. There were no other deficiencies with the site.

Mr. Flaxbeard explained that the 35’ wide driveway would allow fuel trucks to safely enter and exit the site. Mr. Harding added that the developer had determined that the larger width allowed fuel trucks to enter the site safely and efficiently. A document was submitted to support that claim (Exhibit B). In response to Mr. Levy, Mr. Flaxbeard stated that the 35’ driveway was for trucks turning left to enter the site.

Motion to APPROVE by Mr. Kruse. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0.
Nate Burnett (REGA) and Chris Faulk (Public Works Department) appeared before the board. Mr. Faulk stated that the applicant submitted a plan for redevelopment of the site, which shows three lots that would be combined into one (two lots on Farnam Street and one on Harney Street). The lot would only be allowed one driveway access. The site plan showed a proposed parking lot off of Harney Street that connects onto an existing driveway approach. There is also an existing driveway on Farnam Street. He added that there was no connection between the two lots on Farnam and the one on Harney.

In response to Mr. Levy, Mr. Fault explained that a waiver was needed for the two accesses and to allow the existing Farnam Street drive approach to remain without proper separation from the Harney Street lot.

Mr. Burnett stated that the building was being renovated with an office on the first floor and apartments on the second floor. The parking lot will have 13 parking stalls for the 8 apartments. He explained that there is approximately 8’ – 9’ of grade difference between the parking lots on Farnam and Harney. In addition, a retaining wall would be built that would make it impossible to navigate between the two lots. He indicated that the driveway access on Harney Street is on a lot that is only 45’ wide, which makes it impossible to have 15’ radiuses. He stated that there was some discussion with the property owner to the west who agreed to keep the existing pavement as is. The applicant was also requesting a waiver to the 40’ minimum requirement for separation between driveways for the Harney Street lot. He indicated that there was 23’ of distance to the east and 15’ to the west.

In response to the board, Mr. Burnett explained that the north lot would be for office staff with the south lot for apartment tenants.

Motion to APPROVE by Mr. Kruse. Second by Mr. Santo.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0.

Jamie Winterstein, Ryan Haas (Public Works Department) appeared before the board. Mr. Haas stated that the request was for a proposed new structure on a previously undeveloped site. He explained that the developer intended to use the structure for two separate entities that would share the site. Three driveways were being proposed for the site. Since there were several accesses on Cumberland Drive, Public Works encouraged the applicant to move access onto 210th Street where there was low/volume - low/speed traffic. There were no other deficiencies with the site.

Mr. Winterstein stated that two distinct entities would be using the facility. He explained that there was some concern about traffic flow on the site with the number of drop-offs/pick-ups that would occur with just 2 access points. He indicated that a 3rd access point was proposed for 210th Street instead of Cumberland Drive where there was less traffic. This would enable vehicles to enter to site, drop-off and circle back out.
Motion to APPROVE the request to allow 3 driveways by Mr. Kruse. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0.

6.

17-10-097
Kyle Haase
E&A Consulting Group, Inc.
10909 Mill Valley Road, Suite 100
Omaha NE 68154

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: 21220 Elkhorn Drive, Relevant Community Church)

Kyle Haase (E & A Consulting Group) and Ryan Haas (Public Works Department) appeared before the board. Mr. Haas stated that the access plan for the site showed 2 driveways, one on the north end of the site and the other on the southwest end of the site. He noted that there was a driveway stub on the south end of the site which leads to a single-family dwelling behind the site. The applicant indicated that approval could have been granted administratively to allow shared access between the single-family dwelling and the commercial site. Mr. Haas explained that the shared driveway provision was to allow internal trips between commercial or similar uses. Public Works had no other issues with the site.

Mr. Haase stated that a second access would help traffic flow out of the site. He indicated that the neighbor to the east was in agreement with the proposed plan.

Motion to APPROVE by Mr. Kruse. Second by Mr. Santo.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0.

7.

17-10-098
Kevin J. Hill
3713 Saratoga Street
Omaha NE 68111

REQUEST: Appeal Police Department denial/revocation of firearm registration

Kevin Hill and Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that on September 19, 2017, the applicant applied to register a firearm but was denied for a marijuana less than one ounce convictions dated June 9, 2016 for which he was fined $300. He explained that the conviction resulted from a traffic stop violation where the applicant was seen throwing a marijuana cigarette out of the window. He received 3 other marijuana less than one ounce convictions in 1989, 2001 and 2003.

Mr. Hill stated that he had not smoked marijuana for a while. He explained that the marijuana cigarette from the 2016 incident belonged to a friend. In response to Mr. Kruse, Mr. Hill stated that he did not have a job that required him to be regularly tested for drugs.

Mr. Santo noted that waivers were usually granted in exceptional cases and enough time had lapsed since the last conviction.

Motion to DENY by Mr. Santo. Motion died for lack of a second.
Mr. Kruse stated that he believed the applicant’s claim that the marijuana was not his. Mr. Levy noted that the applicant plead guilty to the charges and was convicted of the offense.

Motion to APPROVE by Mr. Kruse. Second by Ms. O’Connor.

NAYES: Santo, O’Connor, Levy
AYES: Kruse

Motion failed 3-1.

Motion to DENY by Mr. Santo. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0. Appeal denied.

8.
17-10-099
Doris Fletcher
125 Castle Pine
Papillion NE 68046

REQUEST: Appeal Police Department Notice of Nuisance (RE: 8001 North 34th Street)

Doris Fletcher appeared before the Board. Kurt Holmstrom, Planning Department – Housing Code Enforcement, appeared before the Board on behalf of the City.

Mr. Holmstrom stated that a complaint was received on September 15, 2017 about a person living in a camper on a vacant lot. He submitted pictures of the site. He indicated that, after speaking with the applicant, she felt that it was acceptable to live in a camper on the site since she owned the lot. He added that she planned to build a home on the lot in the future. Mr. Holmstrom stated that he visited the site on October 23, 2017 and saw a power pole, a tent and a deer stand but no camper. He explained that the City allowed the power pole; however, he witnessed an exposed wire running into an outlet on a tree. He stated that it appeared as if someone was living in the tent.

Ms. Fletcher stated that she intended to build a home on the lot. The tent allowed her to watch over any materials that were left on the lot. She explained that she is still trying to determine what could be built and that she was researching what should be done with regards to water and sewer. She intended to live in the trailer temporarily until the plans for her home were completed. She acknowledged that her current situation could possibly cause the value of the property to depreciate; however, she reasoned that it was already a depressed area. She believed that a permit for a temporary structure should be granted to her. She added that her grandson was granted a permit to hunt deer on the property with a bow and arrow.

In response to Mr. Levy, Mr. Davis stated that trailers were prohibited from being put on vacant land for use as residences. Mr. Levy advised that applicant that the board did not have the authority to grant permits for temporary structures. In response to Mr. Kruse, Ms. Fletcher stated that she would need about a week to remove all her belongings from the lot.

Motion to DENY with seven days to comply by Mr. Kruse.

Mr. Kruse withdrew his motion to allow for further conversation. Mr. Levy stated that he was concerned about giving the applicant seven days to comply. He did not want to condone an individual living in a tent on a vacant lot for any length of time.
Motion to DENY by Mr. Kruse. Second by Mr. Levy.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0. Appeal denied.

9.
17-10-100
George W. Huffaker
5026 South 23rd Street
Omaha NE 68107-2824

REQUEST: Appeal Parks Department Notice of Nuisance (RE: 5016 South 23rd Street)

George Huffaker appeared before the Board. Dave Austin, Chief Building Inspector - Parks and Recreation Department, appeared before the Board on behalf of the City of Omaha.

Mr. Parks stated that on September 13, 2017 Inspector Brian Houser visited the property in response to a complaint about a couch and other items in the alleyway. A notice was sent to the applicant. It was explained to Mr. Huffaker that it was the responsibility of the abutting property owner to remove items left in the alley per Omaha Municipal Code 18-28. The situation had since been remedied.

Mr. Huffaker stated that his appeal was based on his belief that the issue was not under his control and did not result from his failure to maintain the property. He spoke about all of the problems that he had dealt with in the area. He was ultimately grateful for the Park’s Department assistance in conveying to the other property owners what their responsibilities were so that he did not have to carry the burden for upkeep in that area.

Motion to DENY by Mr. Kruse. Second by Mr. Santo.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0.

10.
17-10-101
Shawn Maloy
4303 North 142nd Street
Omaha NE 68164

REQUEST: Appeal Parks Department Notice of Nuisance (RE: 1119 South 51st Street)

Shawn Maloy (Property Manager) appeared before the Board. Dave Austin, Chief Building Inspector - Parks and Recreation Department, appeared before the Board on behalf of the City of Omaha.

Mr. Austin stated that on September 4, 2017 the owner of record, Jonathan Perkins of Colorado, was issued a tree violation for the property. He explained that a cottonwood tree in the backyard was a menace and in danger of falling. The inspector, who is also a licensed arborist in the State of Nebraska, noted that there was a cavity forming at the base of the tree and root flare damage. On September 19, 2017, Inspector Brian Houser reported that he returned a call to the applicant and informed him that the tree had been condemned and was a hazard. He submitted photos of the tree (Exhibit 2) that showed that there were issues with the tree at the base.

Mr. Maloy stated that he has received numerous calls from a neighbor about the property. He stated that the owner believed that the tree was fine and did not want to spend any money to remove it. He indicated that in the past he had arborists look at the tree and the determined that it was fine.

Mr. Kruse believed that the City provided enough evidence to prove that the tree should be cut down.
Motion to DENY by Mr. Kruse. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0.

11.
17-10-102
Mario Degante-Reyna
3122 South 44th Avenue
Omaha NE 68105

REQUEST: Appeal Nebraska Humane Society
Potentially Dangerous Dog Declaration

Mario Degante-Reyna, Pablo Degante-Ortega, Minerva Ortega-Degante, Victor Lapuma, Attorney, and Maricela Robles, Interpreter, appeared before the Board. Mark Langan, Nebraska Humane Society (NHS), appeared before the Board. Mr. Langan stated that on August 23, 2017, Animal Control Officers contacted a 12-year old female who indicated that on August 21, 2017 she walking by the applicant’s address when a dog jumped the front fence and began biting her on the buttocks area. Mr. Degante-Reyna was contacted by NHS. He denied that his dog was involved in the incident. A citation was issued for improper restraint and the dog was set up on a 10-day rabies home quarantine period. A Potentially Dangerous Dog Declaration was also issued. He noted that the officer observed a small laceration and some scrapes in the area of the dog bite, but did not take pictures because of the location of the wounds. He added that on August 21, 2017, NHS received an anonymous call around 4:20 p.m. regarding the Doberman from that address running loose and attempting to bite people. The incident with the girl happened at approximately 4:30 p.m. Mr. Degante-Reyna appealed to the Humane Society on September 6, 2017. An officer from NHS conducted another interview with the girl on September 6, 2017 who restated the same facts from the original interview. The applicant’s appeal was subsequently denied by NHS based on the testimony of the girl.

The Nebraska Human Society believed that the 2-year probationary period was necessary for the dog and its owner to ensure public safety. Mr. Langan noted that there was a school located nearby. He mentioned that the applicant had already signed up for the Owner Responsibility Class that is required with the Dangerous Dog Declaration.

Mr. Lapuma stated that the girl had not originally identified Mr. Degante-Reyna’s dog but later changed her mind and decided that his dog had bitten her. The family stated that the dog was either in the house or in the yard during the incident. They also stated that there were other large dogs in the neighborhood. He indicated that his client planned to put a chip in the dog and have it spayed/neutered. The family did not want the dog declared as a Potentially Dangerous Dog because of the possibility of it being destroyed.

Mr. Degante-Reyna indicated that he was at home with his dog Max at the time of the incident. He stated that there are similar dogs in the neighborhood and that the officer who spoke to the family stated that the incident occurred 3 blocks away from the home. He further indicated that the girl texted his son and asked if he had a Doberman. When his son responded that he did, she accused the dog of biting her. He contended that if she knew the dog well, she would not have asked. Ms. Ortega-Degante and her son Pablo Degante-Ortega, the applicant’s son, both stated that the dog was inside the home at the time of the incident. Pablo Degante-Ortega explained that he and his brother brought the dog outside for a little while to play with him and then brought him back inside. Mr. Langan stated that NHS officers were told that no one saw the incident because the dog was outside and the family was inside the home.

In response to Mr. Levy, Mr. LaPuma stated that the insurance requirement of the declaration would be an economic burden to the family. He also stated that it was difficult to determine the motives of the anonymous caller who reported the dog.
Motion to DENY by Mr. Kruse. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor

NAYES: Levy

Motion carried 3-1. Appeal denied.

12.
17-10-103
Doug Werth
4164 North 146th Plaza, #207
Omaha NE 68116

REQUEST: Appeal Nebraska Humane Society

Potentially Dangerous Dog Declaration

Doug Werth and Tammy Ferris appeared before the Board. Mark Langan, Nebraska Humane Society (NHS), appeared before the Board. Mr. Langan stated that on August 12, 2017 a woman was riding her bike near 8100 Manderson Street when a big, brown dog came out of 8105 Manderson Street and bit her on the leg leaving a puncture and some bruising to her left thigh. NHS contacted Tammy Ferris a few days later and issued her a citation for improper restraint for which she was fined $50. The dog was transferred to another address near 146th and Boyd Street on the same day as that incident. That night, a teenaged boy was walking the same dog on a leash around 10:30 pm that night when it bit a man and left 3 puncture wounds on his left arm. No citations were issued for that incident. The dog was set up on a 10-day rabies home quarantine period and a Potentially Dangerous Dog Declaration was issued. An appeal filed by the applicant was denied at a hearing that was held on September 5, 2017 at NHS. On September 12, 2017, the same dog bit a 22-year old woman on the face while it was being walked by Mr. Werth. The Human Society issued him a citation for harboring a dangerous dog. The case had not yet been heard at Douglas County Court.

Mr. Werth stated that his dog is always leashed and inside of a fence. He indicated that when the dog bit the woman on the bike, it had escaped from a screen door that had been left unsecure. He further indicated that he did not see the incident that happened that same night when his teenaged son took the dog out. He added that the dog is now muzzled and harnessed whenever he is away from home. The dog had been neutered, chipped and had his rabies shots before any of the bite incidents. He believed that the dog usually bit people when it was being restrained. Mr. Werth submitted a statement from an individual that had been bitten by his dog, but who stated that the bite was not Mr. Werth’s fault (Exhibit 2).

Ms. Ferris (8105 Manderson Street) stated that during the incident that occurred on August 12th, the dog did not bite the woman on the bike but lunged at her. She stated that she looked at the woman’s leg and saw a puncture but not a hole. She stated that a trainer had been hired for the dog and that she and Mr. Werth planned to enroll the dog in programs provided by NHS.

Mr. Levy stated that he found no exceptional circumstances in this case that would justify the board granting the appeal.

Motion to DENY by Mr. Kruse. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0. Appeal Denied.
ADJOURN:

Motion to adjourn by Mr. Kruse. Second by Ms. O’Connor.

AYES: Santo, Kruse, O’Connor, Levy

Motion carried 4-0. Meeting adjourned at 3:28 p.m.