MINUTES  
Administrative Board of Appeals  
September 24, 2018  

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

MEMBERS NOT PRESENT:
Jeffrey Beals
Ryne Bessmer, Alternate

STAFF PRESENT:
Mike Wilwerding, Planning Department
Tim Himes, Law Department
Clinette Ingram, Recording Secretary

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

Cases:

1.  
18-09-067
Eric Westman  
Alley Poyner Macchietto Architecture
1516 Cuming Street
Omaha NE 68102

REQUEST: Appeal Public Works Department denial of a driveway permit dated 9/6/18. (RE: Heart Ministry Center, 2221 Wirt Street)

At the Administrative Board of Appeals meeting held on September 24, 2018, Eric Westman appeared before the Board. Ryan Haas appeared on behalf of the Public Works Department. Mr. Levy stated that he would not be discussing or voting on the case since his firm represented Heart Ministry.

Mr. Haas stated that the proposed site would be an expansion of the existing operations that would include a new parking area on the north end of the site. There is a two-way access that would remain on Wirt Street, a narrow 16’ access onto 22nd Street (instead of the required 22’ minimum) and a narrow one-way out access onto Binney Street. Two waivers were needed for the site: one for the width of the 22nd Street access and another to allow the 2 ½ driveways instead of 1 as required by driveway regulations. All three streets are low-speed, low-volume streets with sufficient sight distance and corner clearance.

Mr. Westman explained that a number of community outreach operations occur on the site on a daily bases. There is also a food pantry that operates three times per week. The waiver would help to improve traffic circulation on the site.

In response to Ms. O’Connor, Mr. Westman stated that the narrow access on Binney Street was used as egress/ingress to access the small parking lot on the site. He added that the intentions were to change it to egress only. In response to Mr. Santo, Mr. Westman stated that there had been no opposition from the owners of the garage near the south access.
Mr. Kruse moved to GRANT the request. Ms. O’Connor seconded the motion.

AYES: Peterson, Santo, Kruse, O’Connor

ABSTAIN: Levy

MOTION CARRIED: 4-0-1. Appeal granted.

2. 18-07-058 (heldover from 8/27/18 meeting)

Dustin and Hollie Hopkins
18111 Howe Cir.
Omaha, NE 68130


Clinette Ingram, Board Secretary, stated that she received a phone call from the applicant’s attorney. The applicant wanted to withdraw the appeal. An email was to follow with the request to appeal.

Mark Langan, Nebraska Humane Society (NHS), stated that he received an email from Mike Bianchi, the attorney for the applicant, which stated that the Hopkins’ dogs would be turned over to NHS. The Hopkins had moved to Sarpy County; however, Mr. Langan wanted the Reckless Dog Owner Declaration to remain in effect in Omaha just in case they returned to Omaha. Mr. Langan read the email from Mr. Bianchi for the record.

Mr. Kruse moved to accept the applicant’s request to DISMISS the appeal. Mr. Peterson seconded the motion.

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

MOTION CARRIED: 5-0. Case dismissed.
At the Administrative Board of Appeals meeting held on September 24, 2018, Jose Sandoval appeared before the Board. Mark Langan appeared on behalf of the Nebraska Humane Society (NHS).

Mr. Langan stated that in September 2017, Anibus was declared a Potentially Dangerous Dog after he ran out of its house and attacked a dog that was being walked on a leash near 151st and Drexel. The dog sustained injuries that required several vet visits. A Potentially Dangerous Dog Declaration was subsequently issued, which included the requirement that the dog not be allowed off of the property without a harness or muzzle and a leash. The applicant satisfied all of the requirement with the exception of completing the dog behavior class. On August 11, 2018, NHS received a call to help the Omaha Police with an incident involving Anibus. A neighbor who was outside with her dog stated that Anibus came under his fence and began to attack her dog. She stated that she threw herself over her dog and that Anibus began to pull her by her ponytail. The applicant’s sister was able to remove the dog. The sister was issued a citation and a Reckless Owner Declaration was issued to Mr. Sandoval since his dog had violated the requirements of the Potentially Dangerous Dog Declaration. Mr. Sandoval appealed to the NHS appeals board on September 5, 2018. The appeal was denied because he had not taken the required dog behavior class and because the dog was shown to be a danger to the public after the Potentially Dangerous Dog declaration had been issued.

Mr. Sandoval stated that his dog did not attack the neighbor. He stated that Anibus ran around her 4 times but did not bite or scratch the woman or her dog. He indicated that the same neighbor had petted and played with Anibus on previous occasions. He also stated that he had repaired the privacy fence around his home so Anibus could not get out. He added that he had satisfied most of the requirements of the Potentially Dangerous Dog declaration.

Jane Renshaw, 6524 South 149th Avenue, appeared in support of the applicant. She indicated that she has lived next door to the applicant’s for several years and that her family pets and plays with the Anibus. She recalled an incident that occurred when her young grandson got out of the house and entered the applicant’s home. She testified that her son later came out of the home with the dog with no harm done to him. Ms. Renshaw stated that when she spoke with the neighbor about the incident with Anibus, the neighbor made racially insensitive comments about the applicant. She also mentioned that at times, the neighbor’s dog has gone under the fence and played with Anibus. The neighbor has also gone into the applicant’s yards to retrieve toys. Ms. Renshaw believed that the dog was being mislabeled. She stated that she was not afraid of Anibus and would let him into her home.

In response to Mr. Levy, Mr. Sandoval stated that he did not appeal the Potentially Dangerous Dog Declaration because he was not aware that he could. He also stated that he inadvertently attended the wrong dog behavior class and he never got the date for the second one. He stated that he was willing to take the required class. Mr. Sandoval explained that he understood that the dog needed to muzzled and on a leash when off of his property; however, he indicated that at the time of the incident, the dog was being taken care of by his sister.

Mr. Levy noted that Mr. Langan submitted a statement from NHS dated September 21, 2018 (Exhibit 2) which showed that Anibus passed an evaluation at the facility. He also noted that there were several letters of support for Anibus. In response to Mr. Levy, Mr. Langan stated that the existing Potentially Dangerous Dog Declaration was in effect until October 8, 2019. The board discussed the possibility of extending the effective date of the declaration as a condition of granting the appeal.
Ms. O’Connor was concerned that Mr. Sandoval had not finished his requirements of the Potentially Dangerous Dog declaration. She also mentioned that his neighbors had put up fences out of concern about his dog while it appeared that he had not taken any proactive measures. Mr. Sandoval responded that he planned to put up a 6’ tall fence that would be behind the front of the home. He added that his dog had never attacked a person and that he would attend the necessary dog classes.

There was some discussion about the conditions that would be included if the appeal was granted.

Mr. Kruse moved to GRANT the appeal with the following conditions: 1) THE POTENTIALLY DANGEROUS DOG DESIGNATION BE EXTENDED UNTIL OCTOBER 8, 2021; 2) THE APPLICANT MUST COMPLETE AND MAINTAIN ALL OF THE REQUIREMENTS OF THE POTENTIALLY DANGEROUS DOG DESIGNATION BEFORE THE DOG IS RETURNED TO THE OWNER; 3) ANY FEES OR COSTS INCURRED BY THE NEBRASKA HUMANE SOCIETY WHILE BOARDING THE DOG MUST BE PAID BEFORE THE DOG IS RETURNED TO ITS OWNER; 4) THE APPLICANT MUST COMPLETE CONSTRUCTION OF THE 6’ TALL, PRIVACY FENCE THAT ENCOMPASSES THE ENTIRE BACK YARD OF THE HOME; 5) ALL CONDITIONS MUST BE COMPLETED WITHIN 45 DAYS OF THE AUGUST 27, 2018 MEETING. IF THE APPLICANT FAILED TO COMPLY WITH ALL CONDITIONS, HE WILL BE DETERMINED TO BE A WRECKLESS DOG OWNER. Mr. Peterson seconded the motion.

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

MOTION CARRIED: 5-0.
At the Administrative Board of Appeals meeting held on September 24, 2018, Cassandra Nelson appeared before the Board. Lieutenant Sedlacek appeared on behalf of the Omaha Police Department.

Lt. Sedlacek stated that on August 29, 2018, the applicant was denied a Taxicab Driver’s Permit for two reasons: 1) a driving during a suspension conviction from July 20, 2018 for which she was fined $75; and 2) the applicant has had 3 Board of Mental Health orders during the last 4 years. There was also a misdemeanor assault on her mother from 2015 for which she received 90 days in jail.

Ms. Nelson explained that she has had some mental health issues for the past few years; however, she had complied with professionals over the years and had finally found a medication that allowed her to be stable and think clearly. She stated that before those issues occurred, she was productive and worked hard to take care of her family. She mentioned that her mother had written a letter of support for her. She explained that she continued to see mental health professionals and had been on her current medications for at least a year. She indicated that the medication was an injection that she took every 3 months.

In response to Mr. Levy, Ms. Nelson stated that she did have a job offer from a taxicab company which she showed to the board. In response to Mr. Kruse, Ms. Nelson explained that her license was suspended due to speeding ticket in Iowa.

In response to Mr. Peterson, Ms. Nelson explained that because of her criminal background, she could no longer do customer service jobs. She believed that driving a taxi could help her make a living.

Mr. Kruse moved to DENY the appeal.

Motion failed for lack of a second.

Mr. Santo stated that he believed that if the applicant was allowed the opportunity to work, it would help to continue her progress in the direction she wanted her life to go.

Mr. Santo moved to GRANT the appeal. Mr. Peterson seconded the motion.

AYES: Peterson, Santo, Levy

NAYES: Kruse, O’Connor

MOTION CARRIED: 3-2. Appeal granted.
At the Administrative Board of Appeals meeting held on September 24, 2018, Susan Mixan and Kevin Wilson appeared before the Board. Officer Stokes appeared on behalf of the Omaha Police Department.

Officer Stokes stated that a complaint was received from the Mayor’s Office about an oversized travel trailer that was parked in the front yard setback of the home in question. When he visited the address, he issued a Notice of Nuisance to Ms. Loder. She informed him that she had family staying in the trailer to assist her since her husband was ill. Officer Stokes advised that the applicant that the trailer would need to be removed in 10 days or she would need to file an appeal to see if it could remain on the property longer. He mentioned that the ordinance states that a person can stay in a trailer that is legally stored at their residence for no longer than 3 consecutive days and no more than 14 days in a year.

Ms. Mixan stated that she was in the process of moving to Florida in the RV when her father became ill. She postponed her trip to help both her parents with their numerous medical issues and doctor’s appointments. She requested an extension so that she could help her father through upcoming surgeries and possibly take both parents with her to Florida when she moved. She stated that she was not aware that she could not be parked in the setback until Officer Stokes spoke with her mother. She believed that she might be able to leave around the beginning of November. She stated that she does not have another place to live since there are other family members living in the home with her parents.

In response to Mr. Peterson, Ms. Mixan stated that if she determined that she would not be able to move, she would attempt to get a residence close to her parent’s home so that she could help take care of them.

Officer Stokes stated that one of the main issues is that a car parks in front of the trailer and blocks the sidewalk.

Mr. Santo inquired as to whether Ms. Mixan had looked into nearby campsites that could be used to park the trailer. Mr. Wilson responded that the closest site was approximately 3 – 4 miles away which made it difficult to help the dad who was a fall risk.

Mr. Peterson moved to DENY with 60 days to comply. Effective immediately – there must be no parking across the sidewalk. Mr. Santo seconded the motion.

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

MOTION CARRIED: 5-0. Appeal denied.
REQUEST: Appeal Police Department’s Notice of Nuisance dated 8/22/18. (RE: 5051 South 40th Street)

At the Administrative Board of Appeals meeting held on September 24, 2018, Matthew Parrot appeared before the Board. Officer Stokes appeared on behalf of the Omaha Police Department.

Officer Stokes stated that a complaint was received from the Mayor’s Office about vehicles on jack stands, vehicles being stored off of a hard surface and a possible mechanic’s shop being run from the residence. A Notice of Nuisance was issued to the applicant. Officer Stokes submitted current pictures of the site (Exhibit 2) and noted that the property had been almost completely cleared. He mentioned that there were still 2 vehicles that were not parked on a paved surface and a vehicle with no plates in the driveway.

Mr. Parrott stated that he helps out people with automotive repair issues. He explained that he had not found the time to work on the unregistered vehicle that belonged to a friend. He stated that if his appeal was not granted, he would move the vehicles into his garage.

In response to Mr. Santo, Mr. Parrott stated that 60 days should be enough time for him to bring his property into full compliance.

Mr. Santo moved to DENY with 60 days to comply. Ms. O’Connor seconded the motion.

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

MOTION CARRIED: 5-0. Appeal denied.
MINUTES:

Mr. Santo moved to APPROVE the minutes for the June 25, 2018 meeting. Mr. Kruse seconded the motion.

AYES: Santo, Kruse

ABSTAIN: Peterson, O’Connor, Levy

MOTION CARRIED: 2-0-3

Mr. Santo moved to APPROVE the minutes for the July 23, 2018 meeting. Ms. O’Connor seconded the motion.

AYES: Kruse, O’Connor, Levy

ABSTAIN: Peterson, Santo

MOTION CARRIED: 3-0-2

Mr. Kruse moved to APPROVE the minutes for the August 27, 2018 meeting. Ms. O’Connor seconded the motion.

AYES: Santo, Kruse, O’connor, Levy

ABSTAIN: Peterson

MOTION CARRIED: 4-0-1

ADJOURN:

It was the consensus of the board the ADJOURN the meeting at 2:34 p.m.