

Minutes
Administrative Board of Appeals
April 26, 2010

MEMBERS PRESENT: Ann O'Connor, Chair
David Levy, Vice Chair
Jim Weaver
Jose Lopez

MEMBERS ABSENT: None

OTHERS PRESENT: RoseMarie Horvath, Law Department
Kevin Denker, Planning Department
Debbie Hightower, Recording Secretary

I. Roll Call

Ms. O'Connor called the meeting to order at 1:35 pm.

Mr. Denker asked that the board receive as Exhibit 1 in each of this meeting's cases the contents of the City's file on each case.

Ms. O'Connor acknowledged the contents of the City's file as Exhibit 1 in each case.

II. Cases

Kevin Denker requested that the following case be heard first.

10-4-17

Appeal notice of nuisance issued by Omaha Police Department: Kathleen Feldman / Leonard P. Nunn, 5618 N 107 Street 68134

Leonard Nunn appeared before the Board. Mr. Nunn stated the reason for his appeal is that he would like his 30' camper to remain parked in his driveway.

Mr. Denker cited the Chapter 55 ordinance with regard to the length of a vehicle that is stored or parked in the front yard setback. Mr. Denker suggested installing a driveway on the side of the residence to park the recreational vehicle.

Motion to deny appeal by Mr. Weaver.

Mr. Levy suggested that Mr. Nunn determine the exact front yard setback for his residence. The front yard setback is the required distance between the property line and where the residence is built. The camper may not have to be parked all the way behind the front of his residence.

Mr. Denker stated the new driveway would need to be pavers, asphalt or concrete.

Mr. Weaver withdrew his motion.

Motion to deny appeal with 60 days to comply by Mr. Levy. Second by Mr. Weaver.

AYES: Weaver, Lopez, Levy, O'Connor

Motion carried 4-0. Appeal denied with 60 days to comply.

10-3-08 (over from 3/29/10)

Appeal Omaha Police Department denial of firearm registration: William A. Zimmerman, 16106 Robin Drive 68136

William A. Zimmerman appeared before the Board.

Mr. Levy suggested a lay over until next month when there is a possible full quorum.

Mr. Zimmerman agreed to a lay over.

Mr. Levy made a motion to hold this case over to the next meeting on May 24, 2010. Second by Mr. Lopez.

AYES: Levy, Weaver, Lopez, O'Connor

Motion carried 4-0.

10-4-15

Appeal Omaha Police Department denial of firearm registration: Brian D. Czyz, 3125 N 48 Street 68104

Brian Czyz appeared before the Board and stated the reason for his appeal is to get his gun back and register it.

Sgt. Mark Hanner, Omaha Police Department, stated that Mr. Czyz was denied a gun registration because he provided false information on the application by answering "no" to the question regarding being convicted of a misdemeanor or felony crime. On May 21, 2000, Mr. Czyz was convicted of weapon concealment and fined \$75.00.

Mr. Weaver asked Mr. Czyz to explain the circumstances in 2000. Mr. Czyz explained that brass knuckles, which were given to him by his grandfather, were found in his glovebox when he was stopped by the police.

Sgt. Hanner stated Mr. Czyz does not have any other criminal history.

Mr. Czyz stated his handgun was purchased from Cabelas and he has been issued a certificate to purchase by Douglas County.

Mr. Weaver made a motion to grant the appeal. Second by Ms. O'Connor.

AYES: Weaver, Lopez, O'Connor

NAYS: Levy

Motion carried 3-1. Appeal granted.

10-4-16

Appeal Omaha Police Department denial of firearm registration: Christopher S. Harris, 6209 N 102 Avenue 68134

Christopher Harris appeared before the Board. Mr. Harris stated he has a certificate to purchase a firearm.

Sgt. Mark Hanner, Omaha Police Department, stated that Mr. Harris was denied a gun registration because of a sickness report. Based on city code, a concealable firearm cannot be registered to any person who has a record of mental disorder which would show the applicant to be dangerous to self or others. On May 25, 2005, Mr. Harris was found to be out of control, irrational, making threats to his grandmother and punching walls and furniture. Mr. Harris was taken to Immanuel and subsequently held.

Mr. Harris stated he was released from the hospital after an overnight stay to detox. He admitted to smoking marijuana but he believes there were other intoxicants in the marijuana. He stated that was his first and last time smoking marijuana. He stated he has graduated from college and is pursuing his master's degree.

Sgt. Hanner stated Mr. Harris does not have any other criminal history. Since 2005, Mr. Harris has only had one speeding ticket.

Mr. Levy made a motion to grant the appeal. Second by Mr. Weaver.

AYES: Lopez, Levy, Weaver, O'Connor

Motion carried 4-0. Appeal granted.

10-4-18

Appeal Omaha Police Department denial of firearm registration: Clyde Nance, 2443 S 14 Street 68108

Clyde Nance appeared before the Board. Mr. Nance stated he is a responsible gun owner and gun collector. He received a notice of revocation for his gun registration because of a protection order that was filed against him. The protection order has since been dismissed.

Sgt. Mark Hanner, Omaha Police Department, stated the revocation letter was issued on March 22, 2010 based on a protection order that was issued on October 23, 2009. On November 19, 2009 the protection order was dismissed and is no longer valid. There is no other basis to deny a gun registration to Mr. Nance.

Mr. Weaver made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Levy, Levy, Lopez, O'Connor

Motion carried 4-0. Appeal granted.

10-4-19

Appeal Omaha Police Department denial of firearm registration: Christopher Allen, 5919 N 36 Street 68112

Christopher Allen appeared before the Board. Mr. Allen stated he lives in a rough neighborhood and would like a gun for protection.

Sgt. Mark Hanner, Omaha Police Department, stated the gun registration revocation letter was issued on March 22, 2010 based on a protection order that was issued on November 17, 2009. On March 30, 2010 the protection order was dismissed. There is no other basis to deny a gun registration to Mr. Allen.

Mr. Levy made a motion to grant the appeal. Second by Mr. Weaver.

AYES: Weaver, Lopez, Levy, O'Connor

Motion carried 4-0. Appeal granted.

10-4-20

Appeal Omaha Police Department denial of firearm registration: Abdirahman Ahmed, 2841 T Avenue 68107

Abdirahman Ahmed appeared before the Board. Mr. Ahmed stated the reason for his appeal is that he needs protection because he lives in a bad neighborhood and works overnight.

Sgt. Mark Hanner, Omaha Police Department, stated the gun registration for Mr. Ahmed was denied based on his citizenship status because he marked that he is not a U.S. citizen. There is no other basis to deny a gun registration to Mr. Ahmed.

Mr. Levy asked Mr. Ahmed for his citizenship status. Mr. Ahmed answered that he is a permanent resident and showed proof (Exhibit 2). Mr. Ahmed stated he is presently taking a class to test to become a US citizen.

Mr. Weaver indicated that Mr. Ahmed purchased the handgun legally and resides in this country legally.

Mr. Weaver made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Lopez, Levy, Weaver, O'Connor

Motion carried 4-0. Appeal granted.

10-4-21

Appeal Omaha Police Department denial of firearm registration: Robert Harless, 4721 S 51 Street 68117

Robert Harless did not appear before the board.

Mr. Weaver made a motion to deny the appeal. Second by Mr. Levy.

AYES: Levy, Weaver, Lopez, O'Connor

Motion carried 4-0. Appeal denied.

10-4-23

Appeal notice of nuisance issued by Parks Maintenance Department: John Gebuhr, 2340 N 64 Street 68104

John Gebuhr appeared before the Board. Mr. Gebuhr stated the reason for his appeal is that he would like the guide wires to remain on the city owned tree. The guide wires support a tower that has been granted a variance.

Josh Frey, Omaha Code Enforcement with the Parks and Maintenance Department, stated that the maple tree located on the city right of way at 2340 N 64 Street was inspected in an annual tree survey on March 6, 2010. A certified notice to trim the tree and remove the cable was sent out on March 8, 2010 with a signature received on March 11, 2010. After speaking with Mr. Gebuhr approximately the first week of April, an extension was issued until April 15, 2010 because Mr. Gebuhr was going to be out of town. After further examination it was determined by City Forester John Wynn that the cable was damaging the tree. The cable must be removed from the tree and the

tree is in need of maintenance. On April 9, 2010 an appeal was filed by Mr. Gebuhr. The cable is in violation of Municipal Code 37-5 of the Omaha Municipal Code which states, "Unless specifically authorized by the city Forester, no person shall intentionally damage, cut, carve, transplant, or remove any tree belonging to the city; attach any rope, wire, nails, advertising posters or other contrabands to any such tree; allow any gaseous liquids or solid substance which is harmful to such tree, to come in contact with them or set fire or permit any such fire to burn when such fire or heat will injure any such portion of the tree." A letter from City Forester John Wynn recommending the immediate removal of the cables from the maple tree was submitted along with photos (Exhibit 2).

Ms. O'Connor questioned the need for the cables. Mr. Gebuhr stated the cables are guide cables for his tower which is a large antenna located in the back yard. Photos and a second opinion were submitted from two foresters from the University of Nebraska Extension stating that there is minimal damage to the tree (Exhibit 3).

Mr. Levy verified with Mr. Frey that the maple tree in question is located within the city right-of-way. Mr. Frey stated there is damage to other trees located in the back yard from the cables that are also attached. Mr. Gebuhr stated the guide wires have been on the maple tree for approximately 35 years. The radio system is part of the emergency communications in the metropolitan region and currently provides communication for emergency management, homeland security, Red Cross and other agencies.

Mr. Levy questioned Mr. Denker on the specifics of the variance. Mr. Gebuhr submitted a copy of the 1975 variance for Mr. Levy to review.

In response to Mr. Weaver regarding damage to the tree, Mr. Frey stated the cable restricts the nutrients from flowing to the cambium layer of the tree.

Mr. Levy stated that the damage to the tree is not an issue but there should not be a precedent set to allow anything to be attached to a tree or any other structure in a right-of-way.

Motion to deny by Mr. Levy. Second by Ms. O'Connor.

Mr. Gebuhr asked for additional time.

Mr. Levy amended the motion to deny appeal with 60 days to comply. Second by Ms. O'Connor.

AYES: Lopez, Levy, Weaver, O'Connor

Motion carried 4-0. Appeal denied with 60 days to comply.

10-4-22

Appeal denial of engineering license; Mark Thomas, 1115 S 51 Street 68106

Mark Thomas appeared before the Board. Mr. Thomas stated the reason for his appeal is that he forgot to pay the fee on time for his engineering license.

Tom Phipps, Chief Mechanical Inspector for the City of Omaha, stated that Mr. Thomas appeared on March 29, 2010 to pay for his license. The annual renewal period is January 1 through March 1st. A license becomes void when it is not renewed on time. The only other options are to retest or be reinstated by this board. Mr. Phipps confirmed that there have not been any complaints against Mr. Thomas.

Mr. Weaver made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Levy, Weaver, Lopez, O'Connor

Motion carried 4-0. Appeal granted.

III. Approval of Minutes from March 29, 2010

Motion to approve minutes from the March 29, 2010 meeting by Mr. Levy. Second by Mr. Weaver.

AYES: Weaver, Lopez, Levy, O'Connor

Motion carried 4-0.

IV. Adjournment

Motion to adjourn meeting by Mr. Levy. Second by Mr. Weaver.

AYES: Lopez, Levy, Weaver, O'Connor.

Motion carried 4-0. Meeting adjourned at 2:30 PM.

Debbie Hightower, Planning Department
Recording Secretary

Visit the Planning Department's Site on the Internet at
<http://co.douglas.ne.us/omaha/planning/boards/administrative-board-of-appeals>