

MINUTES
Administrative Board of Appeals
August 26, 2013

MEMBERS PRESENT:

David Levy, Vice Chair
Jose Lopez-Nuno
Jim Weaver
Ann O'Connor, Chair

MEMBERS ABSENT:

Bode Labode

OTHERS PRESENT:

RoseMarie Horvath, Law Department
Scott Benson, Planning Department
Roger Carroll, Planning Department
Mike Gaughen, Public Works Department
Ryan Haas, Public Works Department
Andrea Wisniewski, Recording Secretary

ROLL CALL:

Ms. O'Connor called the meeting to order at 1:04 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:

13-7-52 *From 7/29/2013*

Dennis Kosmicki
8704 Boyd St
Omaha NE 68134

REQUEST: Appeal Omaha Police Department notice of
nuisance

7/29/2013:

Dennis Kosmicki appeared before the Board. Kevin Denker, City Planning Department, stated that this property is zoned DR, or development reserve. He discussed the various vehicles currently on site, and stated that it is possible that gravel parking surface on this property has grandfather rights. He asked the Board to lay this case over to their next meeting in order to allow him to research this matter further.

Motion to hold this case over to the August 26, 2013 meeting by Mr. Levy. Second by Mr. Labode.

AYES: Levy, Lopez, Labode, O'Connor

Motion carried 4-0. Case held over to August 26, 2013.

8/26/2013:

Mr. Kosmicki was not present. The Board Secretary stated that as of today's date, Mr. Kosmicki has not picked up his certified notice to appear from the post office. Scott Benson, City Planning Department explained grandfather rights to the Board in regards to parking areas. Mr. Benson stated that the applicant could keep his parking area if he can prove that this area had been in place, been maintained, and had not been expanded or enlarged since 1977. Mr. Benson concluded by stating that the tractors parked on this property would have to be moved onto a gravel surface, as they cannot remain parked on the grass.

After some discussion, the Board decided that more time was needed in order to allow Mr. Kosmicki a chance to appear before the Board and to get further information regarding how this property has changed since 1977 from Kevin Denker of the City Planning Department.

Motion to hold this case over to the September 30, 2013 meeting by Mr. Levy. Second by Mr. Weaver.

AYES: Levy, Weaver, Lopez, O'Connor

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

13-7-53 From 7/29/2013

Charlotte J Pascarella
8106 Castelar St
Omaha NE 68124

REQUEST: Appeal Omaha Police Department notice of
nuisance (re: The Happy Bar, 519 N 16th St)

7/29/2013:

Patrick Sodoro, attorney, appeared before the Board for Charlotte Pascarella, who goes by the name "Jean". Mr. Sodoro explained that The Happy Bar is a small, family owned business. There are four or five parking spaces in front of the bar; however, most customers park in a gravel lot across the street from the premises. Mr. Sodoro stated that his client is an elderly woman with health issues; she wants to work with the City in order to improve the gravel parking lot, but cannot afford to pave it. Mr. Sodoro stated that Ms. Pascarella is working with a contractor to explore having the parking lot re-graded and to have new gravel installed. Roger Carroll, City Planning Department, submitted photographs of the parking lot in question for the Board's review.

After some discussion, it was determined that additional time was needed in order for the applicant to work with the City and to research any possible grandfather rights that the property may have.

Motion to hold this case over to the August 26, 2013 meeting by Mr. Levy. Second by Mr. Labode.

AYES: Lopez, Labode, Levy, O'Connor

Motion carried 4-0. Case held over to August 26, 2013.

8/26/2013:

Patrick Sodoro, attorney, appeared before the Board for Charlotte Pascarella. Mr. Sodoro stated that since his last appearance before the Board, he has obtained an estimate from Water Solutions Inc., LLC to grade and re-gravel the parking lot located across the street from Ms. Pascarella's property. The improvements would allow for water to drain properly from the parking lot. Paving this lot would incur a cost of approximately \$60,000; Mr. Sodoro stated that his client cannot afford to pave the parking area, although she wants to make improvements to her property. He concluded by stating his hope that his client and the Board could come to a compromise which would not involve paving the parking lot.

Roger Carroll, City Planning Department, presented aerial photos of the lot in question, which proved that the parking lot has been in place prior to 1977. He also submitted photographs showing the current condition of the lot. He pointed out some plastic fencing on the site which would most likely need to be removed, as he didn't believe that it was allowable under City regulations. Mr. Sodoro stated that his client would be happy to remove the fencing as required.

Mr. Levy asked Mr. Sodoro how long it would take to have the grading and gravel work done at this site. Mr. Sodoro replied that he was confident that the work could be completed within six weeks. He stated that Ms. Pascarella understands that the gravel on the lot will need to be periodically replaced and the lot maintained in order to retain the grandfather rights on this property.

Motion to grant appeal with 60 days to comply with the City's requirements for grading and gravel by Mr. Weaver. Second by Mr. Lopez.

AYES: Weaver, Lopez, Levy, O'Connor

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

13-8-54

Corey Luetticke
1736 S 10th St
Omaha NE 68108

REQUEST: Appeal Omaha Police Department denial of
firearm registration.

Corey Luetticke appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Mr. Luetticke's application was denied due to a conviction for marijuana less than one ounce dating from September 26, 2007. Mr. Luetticke was fined \$100.00 for this offense.

Mr. Luetticke stated that he would like to have a firearm for hunting and for self-protection. He also stated concerns about crime in his area. In response to Mr. Levy'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. In response to Mr. Weaver's question, Mr. Luetticke stated that he no longer uses marijuana, adding that his job performs drug testing.

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

AYES: Levy, Weaver

NAYS: Lopez, O'Connor

Motion failed 2-2.

Motion to hold this case over to the September 30, 2013 meeting by Mr. Levy. Second by Mr. Weaver.

AYES: Levy, Weaver, Lopez

NAYS: O'Connor

Motion carried 3-1. Case held over to September 30, 2013.

13-8-55

Clifford E Jackman
11406 Spaulding St
Omaha NE 68164

REQUEST: Appeal Omaha Police Department denial of
taxicab driver permit

Clifford Jackman appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Mr. Jackman's application was denied due to three DUI convictions dating from September 26, 1985, May 19, 1992 and September 11, 2006. Lt. Sedlacek commented that the third conviction for DUI involved a hit-and-run/property damage accident.

Mr. Jackman stated that he has severe nerve damage in his feet and legs which prevents him from standing while working for long periods of time. He would like to work as a taxi cab driver as it is a job he could perform whilst sitting down. In response to Ms. O'Connor's question, Mr. Jackman stated that he no longer drinks. In response to Mr. Weaver's question, Mr. Jackman stated that he has been offered a job with a taxi company, provided that he can obtain his permit. Mr. Levy asked Lt. Sedlacek whether there was anything else of concern on the applicant's record after 2006. Lt. Sedlacek described some minor traffic concerns on Mr. Jackman's record, including some seatbelt violations.

Mr. Weaver commented that Mr. Jackman stated in his application that he has been attending regular meetings of Alcoholics Anonymous. He asked Mr. Jackman how often he attends meetings and where. Mr. Jackman replied that he attends meetings at least four to five days per week.

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

AYES: Weaver, Lopez, Levy

NAYS: O'Connor

Motion carried 3-1. Appeal granted.

13-8-56

Todd E Sundermeier
1502 S 90th St
Omaha NE 68124

REQUEST: Appeal Public Works Department denial of
driveway permit.

Todd Sundermeier and Danielle Sundermeier, property owners appeared before the Board with Donald Sundermeier and John Main. Mike Gaughen, Public Works Department, stated that he had denied the Sundermeier's request for a driveway curb cut permit due to the fact that the applicants wished to install a forty-five foot wide driveway on their property. City regulations limit driveway throat width to thirty feet. Mr. Gaughen stated that several factors, such as on-street parking and gutter line water displacement, could be affected if everyone were allowed to have such a large driveway. This accounts for the thirty foot width limit on driveways.

Mr. Sundermeier submitted additional photos of the property in question. He cited safety concerns as being his reason behind installing a wider driveway on his property. Mr. Sundermeier stated that there is no parking on his side of the street; parking is limited on the opposite side of the street. Street angles and conditions in the area make parking on the street dangerous for himself and his family members, several of whom have handicapped parking tags. Mr. Sundermeier stated that the width of his driveway was calculated by the total number of cars that would need to be parked at his home during family functions, and to provide handicapped-accessibility for his father, mother and grandfather. He added that the street is considered to be a Class B street; there are no sidewalks, curbs or sewers running beneath the ground in this area. Mr. Sundermeier stated that he had petitioned his neighbors to get their opinions on his driveway; he submitted a list of over 100 signatures from people living in his neighborhood who approve of his driveway and several letters from residents in the neighborhood who are pleased with the Sundermeier's new driveway (see file for list and letters). He again stressed that safety was the main factor behind the sizing of his driveway.

Mr. Levy asked Mr. Gaughen whether the applicant would have the same problem if his driveway was thirty feet wide at the area where it meets the street, but widened out into a larger parking area. Mr. Gaughen stated that if such were the case, he would most likely not have denied their curb cut permit, although impervious coverage requirements would still have to be met. Scott Benson, City Planning Department, stated that the Sundermeiers had made an application for a driveway permit; however, the width of the driveway, caught during plan review, prevented the issuance of the permit. Mr. Sundermeier stated that his house sits close to the street on the driveway side – there would not have been enough depth to install his new driveway in the way suggested by Mr. Levy. This lack of space contributed to the width of the finished driveway.

Donald Sundermeier, father of Todd Sundermeier, stated that the new driveway includes a new walkway from the driveway to the front door of the house. This new driveway makes it much easier for him, his wife, who will soon be using a walker, and his 89-year-old father, who uses a walker currently and will soon be transitioning to a wheelchair to get in and out of the house safely. He stated that there have been several accidents in the area of his son's house, citing it as sitting on a dangerous intersection.

Mr. Levy asked how this matter was first drawn to the attention of the City. Mr. Benson stated that the Codes and Violations Division received a complaint May 31, 2013. The complaint stated that a commercial lawn care business was being run at the address. The complaint also alleged that a new driveway had been poured at the site without a permit. Yvonne Barna of the Codes and Violations Division inspected the address. She found that the permit for the driveway was pending and observed a truck on site with a lawn care business logo on the side, which was determined to be a personal vehicle. No action was taken. Mr. Sundermeier stated that his truck is his personal vehicle and therefore comes home with him; however, his equipment is maintained off site.

The Board Secretary received a complaint from a neighbor who lives across the street from the Sundermeiers; this complaint was distributed to the Board and the applicant (see file for more information). In response to Mr. Levy's question, Mr. Sundermeier stated that he has plans to install further landscaping around the new driveway, including mulch, grass and bushes, pending the Board's decision today.

After some additional discussion, Mr. Levy made a motion to grant the appeal. Second by Mr. Lopez.

AYES: Levy, Lopez

NAYS: Weaver, O'Connor

Motion failed 2-2.

Motion to hold this case over to the September 30, 2013 meeting by Mr. Levy. Second by Mr. Lopez.

AYES: Levy, Lopez, O'Connor

NAYS: Weaver

Motion carried 3-1. Case held over to September 30, 2013.

13-8-57

Michael Novean
Burkhardt Engineering Company
195 Byers Rd Suite 202
Miamisburg OH 45342

REQUEST: Appeal Public Works Department denial of driveway permit (RE: Family Dollar, 9930 Maple St).

Jonathon Burkhardt of Burkhardt Engineering Company appeared before the Board. Ryan Haas, Public Works Department, stated that the proposed driveway at this site was determined to be less than the required minimum clearance of sixty feet from West Maple Road and was thus denied. In response to Mr. Levy's question, Mr. Haas stated that the proposed driveway has not yet been constructed.

Mr. Burkhardt stated that his company would like to appeal several items on the site plan rejection; however, as denial of the driveway permit was the only item applied for, the Board was unable to discuss Mr. Burkhardt's additional concerns. Mr. Burkhardt stated that they are proposing to reutilize an existing driveway on the property which was previously used by a gas station that used to occupy the space. He stated that they cannot relocate the driveway due to an existing access easement between the site and a daycare facility to the east of the property. Any shift of the driveway would leave them open to litigation due to violation of the access easement agreement.

In response to Mr. Burkhardt's comments, Mr. Haas stated that change of use triggers driveway regulations; thus, what was located on site prior to change of use is irrelevant. In regards to the matter of the easement agreement described by Mr. Burkhardt, Mr. Haas suggested that such an issue is a private civil matter, and is not grounds for a waiver of City requirements. Mr. Burkhardt replied that they have met with the owners to the east of their property; they are not willing to change the terms of the easement agreement. Mr. Burkhardt added that a failure to win today's appeal would result in the end of the project altogether, as Family Dollar's liability would be too great. In response to Mr. Levy's question, Mr. Burkhardt replied that there is no topographical reason why the driveway could not be moved eighteen feet to the north in order to make the driveway compliant with City regulation; the sole issue is the existing access easement on the property.

Motion to approve by Mr. Weaver. Motion died for lack of second.

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

AYES: Levy, Lopez, O'Connor

NAYS: Weaver

Motion carried 3-1. Appeal denied.

13-8-58

R. Jeffrey Lake
Olsson Associates
2111 S 67th St Ste 200
Omaha NE 68106

REQUEST: Appeal Public Works Department denial of driveway permit (RE: Crestline Storage Facility, 210th Street & Cumberland Drive).

R. Jeffrey Lake and Brian Schuele of Olsson Associates appeared before the Board. Ryan Haas, Public Works Department, stated that the project in question is a new storage facility. The site plan as proposed has three driveways, one of which is a shared driveway on the common property line. City regulations limit this business to one driveway, with a second driveway allowable only if it falls on the common property line. The site plan was rejected due to the third proposed driveway for this business.

Mr. Lake stated that there is a space of approximately one thousand feet from one driveway to another; he cited public safety concerns about eliminating the third proposed driveway on this site. Concerns raised included issues with traffic flow within the storage facility site, especially in cases of larger vehicles which may need room to turn around and the possible of allowing quick exit in case of fire or emergency. The proposed site plan allows for access to both the front and back ends of this property. Mr. Schuele commented that many of the vehicles that will be utilizing this new storage facility are not personal vehicles; rather, there will be a good number of U-Hauls, trucks with trailers attached, semi-trucks and other large vehicles. He added that having the secondary point of access at the back of the property will also provide access for fire engines and other emergency vehicles if needed.

Mr. Levy asked whether vehicles exiting the rear of the site would be pulling out into traffic. Mr. Schuele stated that the back access point exits onto a circle/cul-de-sac. Mr. Haas stated that his department had no argument against providing a secondary egress point in case of fire; however, he pointed out that this area is estimated to have significant development which may result in an increase in traffic in the future. He pointed out that in regards to issues with turning vehicles around on this site; deviation from driveway regulations is allowable only in cases where to do otherwise would create unusual and extreme hardship. The proposed six-acre site has not yet been built and is still in the platting process; this allows the applicant ample space to design their site in such a way as to adhere to driveway regulations while still providing space for large vehicles to turn around on their lot. Mr. Lake pointed out that the owners of this site are contributing towards the widening and improvement of 210th Street and street improvements to the 204th and Cumberland area.

Mr. Levy stated that it seemed sensible in his opinion to offer multiple access points, as there may be cases where Cumberland Drive could become blocked. He stated that as the back access point terminates in a cul-de-sac and not into the flow of traffic, he could see no detriment in allowing this third driveway.

Motion to approve by Mr. Levy. Motion died for lack of second.

Mr. Weaver expressed concern that not knowing what additional businesses may be built along the cul-de-sac gives him pause. Mr. Lake stated that future construction includes an indoor sports facility which will primarily operate in the evenings and weekends. There is ample parking on site, and arrangements with a nearby bowling alley are being made in order to provide additional parking if needed. In response to Mr. Levy's question, Mr. Lake the owners are paying to have 210th Street widened and resurfaced in order to help alleviate any potential for increased traffic in the area. Additional improvements yet to be determined will also be made to 204th and Dodge Streets as a result of this project.

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

AYES: Weaver, Lopez, Levy, O'Connor

Motion carried 4-0. Appeal granted.

APPROVAL OF MINUTES:

Not enough members were present who could vote to approve the minutes from May 20th, 2013. These minutes will be approved at the September 30th, 2013 meeting.

Motion by Mr. Levy to lay over approval of the May 20, 2013 minutes to September 30, 2013 and to approve the minutes from July 29th, 2013. Second by Mr. Lopez.

AYES: Lopez, Levy, O'Connor

ABSTAIN: Weaver

Motion carried 3-0-1.

ADJOURN:

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

AYES: Levy, Weaver, Lopez, O'Connor

Motion carried 4-0. Meeting adjourned at 2:46 pm.

The Administrative Board of Appeals agenda and other information regarding the Administrative Board of Appeals and the Planning Department are available on the Internet at <http://www.ci.omaha.ne.us/planning>. The agendas available on the Internet are subject to change and are for convenience purposes only. The agenda may be altered no later than 24 hours before the scheduled commencement of the meeting. A copy of the official agenda, kept continually current, shall be available for public inspection at the City of Omaha Planning Department, 1819 Farnam Street, Suite 1100, Omaha, Nebraska, during normal business hours.

Prior to the hearing, the applicant may schedule a time to review the City's case file during normal business hours by contacting the Board Secretary at (402) 444-5203. If an alternative (audio version) to this agenda is necessary, please notify the Board Secretary at (402) 444-5203, 72 hours in advance.

CERTIFICATION OF PUBLICATION

The Secretary to the Administrative Board of Appeals certifies publication in The Daily Record, the official newspaper of the City of Omaha, on August 19, 2013.