

MINUTES
Administrative Board of Appeals
November 25, 2013

MEMBERS PRESENT:

David C. Levy, Vice Chair
Jose Lopez-Nuno
Bode M. A. Labode
John R. Barrett, Alternate

MEMBERS ABSENT:

Ann M. O'Connor, Chair
Jim Weaver

OTHERS PRESENT:

Will Acosta-Trejo, Law Department
Kevin Denker, Planning Department
Todd Pfitzer, Public Works Department
Murthy Koti, Public Works Department
Ryan Haas, Public Works Department
Debbie Hightower, 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:

13-11-82

Adonus T. Marshall
3618 Hartman Avenue
Omaha, NE 68111

REQUEST: Appeal Police Department denial of taxicab driver permit

Adonus Marshall appeared before the Board. Lt. David Sedlacek, Omaha Police Department, reported that Mr. Marshall's application was denied for past criminal history; theft by deception-welfare fraud conviction on June 14, 2011. Mr. Marshall received 18 months in jail.

Mr. Marshall stated that he would like to provide a living for his family. He stated that he is currently doing odd jobs for the Command Center.

Lt. Sedlacek confirmed that there was nothing else of concern on the applicant's record which would prevent him from receiving a taxicab drivers permit.

Motion to approve by Mr. Labode. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Levy

Motion carried 4-0. Appeal granted.

13-10-75 *From 10/28/13*
Aaron and Na Mee Delacruz
4869 C Street
Omaha, NE 68106

REQUEST: Appeal Police Department Notice of
Nuisance
(RE: 4869 C Street)

10/28/13

Aaron and Na Mee Delacruz appeared before the Board. Mr. Delacruz explained that the Titon pickup is registered to his mother-in-law whom lives in Council Bluffs, Iowa and they are using it in the process of renovating the property. Mr. Delacruz further explained that the Scion was involved in an accident and he was told that the bumper would need to be repaired before it can be registered in Nebraska. In response to Mr. Weaver, Mr. Delacruz asked for additional time.

Motion to hold this case over to the November 25, 2013 meeting by Mr. Weaver. Second by Mr. Labode.

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

Motion carried 5-0. Case held over to November 25, 2013.

11/25/13

Aaron and Na Mee Delacruz were not present.

Mr. Denker stated that there were no vehicles in the driveway but the vehicle in need of repair could be inside the garage. There were no violations witnessed.

The board secretary verified that the applicant did receive a notice and Ms. Delacruz called previously to state that she was on her way to the DMV to get the needed license plates.

Motion to deny by Mr. Labode. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Levy

Motion carried 4-0. Appeal denied.

13-11-83
Elton Foster
3959 N. 40 Avenue
Omaha, NE 68111

REQUEST: Appeal Police Department Notice of
Nuisance
(RE: 3601 N. 24 Street)

Elton Foster was not present but previously asked that the case be laid over for 30 days because he would be out of town and unable to attend the hearing.

Motion to hold this case over to the December 30, 2013 meeting by Mr. Barrett. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Levy

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

13-11-81

Doug Kellner
Thompson, Dreessen & Dorner, Inc.
10836 Old Mill Road
Omaha, NE 68154

REQUEST: Appeal Public Works Department site plan denial of on-site drive-through stacking requirements
(RE: Proposed Huckleberry Coffee Shop at 8510 N. 30 Street)

Mr. Levy noted that a letter dated November 18, 2013 was submitted by Pete Festersen, President of the City Council in support of the proposal (Exhibit 2).

Doug Kellner, Thompson, Dreessen & Dorner, 10836 Old Mill Road, appeared before the Board with Alan and Bev Demory, owners.

Ryan Haas, Public Works Department, stated that the site plan, as submitted, is for a drive-thru coffee shop. The plan, as proposed, is short of the 200' stacking requirement. The site is not adjacent to an arterial or within 300' of an arterial that carries 20,000 vehicles per day therefore it was subject to a reduction per the requirements. The 170' proposed stacking does not meet the required minimum of 200'.

Mr. Kellner submitted an aerial photo (Exhibit 3). He stated that when the existing owners purchased the property there was a drive-thru but the 30th Street improvements came through and blocked off the driveway and left the owners with no drive-thru access. However, Planning and Public Works do not want an access to 30th Street which creates a hardship. An alternative is to loop around along the alley and put a secondary building for the coffee shop in the rear to create a drive-thru access for the coffee shop. Mr. Kellner requested that the stacking distance be reduced by 30'.

Mr. Haas stated that there are a number of hurdles that would need to be met for access off 30th Street with regard to compliance; a driveway would be too close to Willit Street, 30th Street is a state highway, reduction of a large amount of on-street parking and there is a structure in the front which would be a significant amount of cost to the City to relocate. He stated that the alley access would be fine but the stacking is a little short the way the site lays out.

In response to Mr. Levy, Mr. Kellner stated that there would not be a conflict with off-street parking, the area in the rear would be devoted for the drive-thru.

Motion to approve by Mr. Barrett. Second by Mr. Lopez-Nuno.

AYES: Barrett, Lopez-Nuno, Levy

NAYS: Labode

Motion carried 3-1. Appeal granted.

13-11-84

Doug Kellner
Thompson, Dreessen & Dorner, Inc.
10836 Old Mill Road
Omaha, NE 68154

REQUEST: Appeal Public Works Department site plan
denial of driveway regulations
(RE: Proposed site plan at 1402 S. 50
Street)

Doug Kellner, Thompson, Dreessen & Dorner, 10836 Old Mill Road, and Matt Knutson, architect, 1301 Nicholas Street, appeared before the Board with Joseph McGill, owner.

Ryan Haas, Public Works Department, stated that the site plan, as proposed, contemplates two driveways along 50th Street. As indicated in the submitted diagram (Exhibit 2), the northernmost driveway meets the driveway regulations but the second driveway proposed does not meet the minimum spacing requirement from the intersection of 50th and Saddle Creek. According to the driveway regulations there are one of several conditions that have to be met for a second driveway to be granted. Mr. Haas stated that there is a provision that a second driveway can be granted if the driveway is shared with a neighboring adjoining property. Based on what is going on to the south, relative to the intersection, the City would not oppose if the Board chose to allow for a second driveway on the site subject to it being a shared common driveway with the neighboring property to the south.

Mr. Kellner stated that the property has a significant amount of concrete and driveway access. The building which ran parallel to 50th Street has been removed. Mr. Knutson indicated that there will be an addition to the existing metal building to create more warehouse space and to replace what was removed. Mr. Kellner stated that the north drive entrance has been narrowed to meet Public Works' requirements and more green space has been added. The south driveway is needed to allow access to the existing building for general operations on the site. Mr. Knutson stated that there are pickups with trailers that need room to maneuver for the business to function well therefore the south drive are needed. Mr. Kellner stated that the addition to the existing building will be raised over the flood plain which creates grade difficulties with the adjacent property to the south. Mr. Knutson pointed out that the curb cuts have been reduced from five to two curb cuts. There have been efforts to improve the entire property site with the removal of the old building and the addition of green space.

In response to Mr. Levy, Mr. Haas stated that based on the characteristics of 50th Street, the required distance is 230' from the intersection of 50th Street and Saddle Creek. Mr. Haas stated that the applicant was urged to contact the property owner to the south regarding the shared driveway. Mr. Knutson expressed concerns over a shared drive with regard to the difference in grade elevation between the two properties without significantly altering the neighboring property. In response to Mr. Labode, Mr. Knutson stated that the grade elevation is approximately 6-7%. Mr. Knutson confirmed that there has been no conversation with the adjacent property owner to the south.

Mr. McGill stated that he has owned the property since 1999 and has operated McGill Brothers, which does waterproofing and tuckpointing, for over 12 years. He also indicated that the site has been improved by creating green space, removing curb cuts and raising the existing building above the flood marks. Mr. McGill indicated that he would like to maintain a smaller drive off of 50th Street that is already there.

Mr. Haas stated that the public intersection of 50th and Saddle Creek is a mess because the intersection is not at a right angle which poses a number of challenges and concerns. He pointed out that the project is an infill project and there are constraints. It was felt that the shared driveway would meet the requirements while minimizing the amount of accesses.

Mr. Knutson stated that they have not approached the adjacent property owner to start the discussion regarding a shared driveway. Mr. McGill expressed that there are issues with drainage. Mr. Kellner further pointed out that it would be difficult to convince the neighbor to go from four driveway accesses to one and one-half.

Mr. Levy asked for an explanation for the need for the second driveway. Mr. Kellner stated that the importance of the second drive would be for vehicle access to the new warehouse by the employees.

In response to Mr. Labode, Mr. Knutson stated that they have exhausted all possibilities but they have not approached the neighbor because they do not think it will make a difference. Mr. McGill added that he would like to resolve the driveway issue but the current property owner to the south has no incentive to make the driveway work. Mr. Haas stated that a Board approved combined driveway on the property line guarantees access in the future.

Motion to approve subject to applicant granting an access easement to adjacent neighbor to the south to allow a shared driveway in the future by Mr. Barrett. Second by Mr. Lopez-Nuno.

AYES: Barrett, Lopez-Nuno

NAYS: Labode, Levy

Motion failed 2-2.

Mr. Labode stated that he would like the applicant to have a conversation with the neighbor.

Motion to hold this case over to the December 30, 2013 meeting by Mr. Labode. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Levy

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

13-11-85

David Fjare
Olsson Associates
2111 S. 67 Street Suite 200
Omaha, NE 68106

REQUEST: Appeal Public Works Department site plan
denial of driveway regulations
(RE: Proposed Bucky's at 40th & Dodge
Streets)

Ryan Haas, Murthy Koti, and Todd Pfitzer, Public Works Department, appeared before the Board with Doug Halvorson, Olsson Associates, and John Perlebach, Buchanan Energy.

Mr. Haas stated that the application is for a proposed expansion on the southeast corner of 40th and Dodge. The site plan, as proposed, anticipated a driveway onto 40th Street and a second driveway onto Dodge Street. The Dodge Street driveway is of significant concern; too close to the signalized intersection of 40th and Dodge Street as per regulations of 230' and safety concerns which would be the main objection. He stated that the regulations state that, "No driveway approach shall be constructed or reconstructed in such manner and in such location as in the opinion of the city traffic engineer the use thereof would constitute a hazardous condition" as indicated (Exhibit 2). Mr. Haas stated that the

driveway at 40th and Dodge is so bad and in advance of a hazard and because of the hill, causes crashes with the existing site and causes significant safety issues. Mr. Koti indicated that Dodge Street is a state highway and carries a high volume of traffic. Mr. Pfitzer pointed out that vehicles cannot turn left from the center lane of Dodge Street onto 40th Street but a left turn is permitted from the center lane of Dodge Street into the existing driveway. There are significant concerns about the driveway, whether or not the site develops, because of the accident history. Mr. Koti stated that there was a recent pedestrian fatality at the crest of the hill and was related directly to the Dodge Street driveway. Mr. Haas submitted the Guidelines and Regulations for Driveway Location, Design and Construction (Exhibit 3).

Mr. Halvorson stated that Bucky's has been located at the existing site for 25 years and over time, the owners have closed two entrances and in the past there were no curb cuts. Dodge Street is under transition, there is no way to know what the transportation will be like in the future. He stated that the fuel tanks need to be replaced; they could be replaced as they are today but Bucky's wants to go to the next level because of all the development in the area. There is an option to purchase the adjacent Katie's site. The hardship or reason to not close the driveway on Dodge Street is because there would be no way to allow the fuel trucks on the property for better circulation. Mr. Halvorson stated that they have worked very hard with Omaha by Design for the project to be an improvement to the area: buffering, improved sidewalk layout, green space, trees and signage. The project cannot move further east because of the access of the hill and the grade elevations. Mr. Halvorson offered to answer any questions.

In response to Mr. Pfitzer, Mr. Halvorson answered that he would like to access the alley but it is inaccessible. Mr. Haas stated that the existing driveway location has a significant crash pattern; seven that were directly attributable to the Dodge Street driveway. The concern of Public Works is to address the significant safety concern caused by the driveway onto Dodge Street. Mr. Pfitzer stated that the City traffic engineer can close a driveway that is a nuisance driveway. That nuisance could be addressed based on the seven accidents within the last three years. In response to Mr. Levy, Mr. Haas stated that the seven accidents are based on the information created in the accident reports.

Mr. Pfitzer stated that some sites are not big enough and are not built for semi access. Mr. Halvorson responded stated that it will be hard to develop much of the corridor with the issue of the hill. He asked if it would be possible to discuss a right-in, right-out but a right-in might be possible. Mr. Koti stated that any design approved would need to be consistent with the public safety aspect. A right-in, right-out at 40th and Dodge would not be conducive. The spacing distance does not allow for a safe maneuver, or enough distance to slow down. Mr. Haas stated that a right-in, right-out is hard to get into place and without the benefit of a median will introduce more conflicts.

Mr. Levy asked if it would be possible to have two driveways on 40th Street which would allow trucks to enter from the south and exit at the north on 40th Street. Mr. Haas stated that, in this case, there is nothing on Dodge Street that complies because of the spacing and safety issues.

In response to Mr. Labode, Mr. Haas stated that 40th Street and Dodge Street are arterials therefore both driveways are required to be 230' from the signalized intersection. Mr. Haas stated that Dodge Street is a challenge but the regulations have to be applied for safety reasons. Mr. Koti confirmed that safety concerns have to be considered during designs. Mr. Pfitzer pointed out that none of the driveways and lots were built and designed when Dodge Street was carrying the traffic that it does today.

Motion to deny by Mr. Labode. Second by Mr. Lopez-Nuno.

AYES: Barrett, Labode, Lopez-Nuno, Levy

Motion carried 4-0. Appeal denied.

13-11-86

David Fjare

Olsson Associates

2111 S. 67 Street Suite 200

Omaha, NE 68106

REQUEST: Appeal Public Works Department site plan
denial of driveway regulations

(RE: Proposed Bucky's at 72nd & Dodge
Streets)

Ryan Haas, Murthy Koti, and Todd Pfitzer, Public Works Department, appeared before the Board with Doug Halvorson, Olsson Associates, and John Perlebach, Buchanan Energy.

Mr. Haas stated the proposed site is for a convenient store located on the southwest corner of 72nd and Dodge. The site has three proposed driveways; one on 72nd Street, another on Douglas Street and one on Dodge Street. After review of the site characteristics and traffic patterns and crash history, it was determined that a compliant driveway could be provided on 72nd Street on the east side of the site and the Douglas Street access is acceptable however, the Dodge Street driveway has significant concerns. There is a downhill grade that contributes to the safety aspect and there are a lot of rear end accidents caused by queuing and a combination of characteristics working together to cause problems. The recent crash history shows that many accidents are directly attributable to the driveway. The trip generation of a former book store is significantly less than a large convenient store as proposed. Public Works stated that the trips and conflicts will pose a significant safety risk both to vehicles moving in and out of the site and vehicles passing on Dodge Street.

Mr. Koti pointed out that the intersection of 72nd and Dodge is the top two busiest intersections in the City. There is a struggle with signal timing because there is so much demand from all directions; it is difficult to make the intersection operate properly. Pedestrians at the intersections take time away from the signaling which adds to the queuing to cars and starts blocking driveways. The eastbound lanes of Dodge Street does not have an exclusive right turn lane; vehicles heading east share the curb lane with right turn vehicles which leads to a stacking problem.

Mr. Pfitzer noted that Crossroads has been purchased for redevelopment and the City is working with Metro Transit to develop the turning lane and have the first on-street transfer center to enhance bus service therefore a driveway on Dodge Street would eliminate the possibility of an on-street transfer.

Mr. Halvorson stated that the project has been through the site plan review process and has met all of the requirements by Omaha by Design. He further stated that any land needed would be dedicated for a right turn lane in the future.

Mr. Haas pointed out that there was some initial indication that the driveway was too close and did not meet the driveway corner clearance; the minimum required distance is only 115' on the upstream side of a right-in, right-out control. The driveway, as proposed, was denied on the basis of Section 5, Paragraph C, "No driveway approach shall be constructed or reconstructed in such manner and in such location as in the opinion of the city traffic engineer the use thereof would constitute a hazardous condition." Mr. Haas concluded that the driveway on Dodge Street should not be approved because of safety reasons.

Mr. Halvorson responded that the driveway would completely function as a right-in, right-out.

In response to Mr. Barrett, Mr. Haas confirmed that a right-in, right-out driveway is a perfect storm of factors that contribute to a large amount of crashes: queuing, volumes, number of accesses along the stretch and grade. Mr. Koti showed the amount of crashes for the intersection with the former Borders (Exhibit 2). Mr. Pfitzer confirmed that the recommendation for denial of the Dodge Street driveway is for

safety reasons and not the proximity of the driveway which is compliant. In response to Mr. Levy, Mr. Haas stated that the number of contributable accidents within the last three years were 2-3 based on the crash reports.

Motion to deny by Mr. Barrett. Second by Mr. Labode.

AYES: Barrett, Labode, Lopez-Nuno, Levy

Motion carried 4-0. Appeal denied.

APPROVAL OF MINUTES:

Motion by Mr. Labode to approve the minutes from October 28, 2013. Second by Mr. Lopez-Nuno.

AYES: Labode, Lopez-Nuno, Levy

ABSTAIN: Barrett

Motion carried 3-0-1.

ADJOURN:

Motion to adjourn by Mr. Barrett. Second by Mr. Labode.

AYES: Barrett, Labode, Lopez-Nuno, Levy

Motion carried 4-0. Meeting adjourned at 2:55 pm.