

MINUTES
Administrative Board of Appeals
February 24, 2014

MEMBERS PRESENT:

David C. Levy, Vice Chair
Jim Weaver
Jose Lopez-Nuno
John R. Barrett, Alternate

MEMBERS ABSENT:

Ann M. O'Connor, Chair
Marty Conboy, Alternate
Bode M. A. Labode

OTHERS PRESENT:

Timothy Himes, Jr., Law Department
Kevin Denker, Planning Department
Todd Shearer, Planning Department
Todd Pfitzer, Public Works Department
Murthy Koti, Public Works Department
Ryan Haas, Public Works Department
Rikki Flott, Recording Secretary

ROLL CALL:

Mr. Levy 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:

1.

14-2-008

Michael Sheridan
5119 Decatur Street
Omaha NE 68104

REQUEST: Appeal Police Department denial of taxicab driver permit

Michael Sheridan appeared before the Board. Lt. Sedlacek, Omaha Police Department, stated that Mr. Sheridan's application was denied due to past criminal history; three driving under the influence convictions dated May 1, 1983, February 21, 1997 and October 21, 1999. He then stated that since 1999 Mr. Sheridan had a good driving record.

Mr. Sheridan stated that after serving in the military and the Vietnam War he suffered PTSD symptoms but that support programs for military veterans did not exist at that time. He then stated that he was a former Council Bluffs police officer and worked for the City of Omaha Public Works Department for 19 years. He also mentioned that he previously had problems with alcoholism but found help by attending AA meetings and also through the Veterans Outreach programs. Mr. Sheridan stated that he was sober again in 1999 and that after 15 years of contract security work he now had medical issues that prevented him from standing. He then stated that he volunteers at the VA and that he was actively pursuing employment.

In response to Mr. Weaver, Mr. Sedlacek confirmed that after the third DUI, Mr. Sheridan's license was not suspended and that he has had a good driving record since that time.

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

AYES: Barrett, Lopez-Nuno, Weaver, Levy

Motion carried 4-0. Appeal granted.

2.

14-2-009

Eric Mease
4815 N. 148th Circle
Omaha NE 68116

REQUEST: Appeal Police Department denial of taxicab driver permit

Eric Mease appeared before the Board. Lt. Sedlacek, Omaha Police Department, stated that Mr. Mease's application was denied due to past criminal history; sexual assault two attempts conviction dated March 6, 1999, which was a class IV felony, and requirement to register as a sex offender.

Mr. Mease stated that his mother, brother-in-law and wife were also present. He then stated that the conviction was 16 years ago that he was now an independent contractor with a CDL license and supported his wife and three children.

In response to questioning by the Board, Mr. Sedlacek stated that Mr. Mease had no other items on his record that would prevent him obtaining a taxi permit and Mr. Mease responded that he does have a current job offer. He also responded that the former girlfriend he had issues with was no longer in his life and that he has been married for three years.

Tameka Mease, wife of Eric Mease, appeared before the Board. Mrs. Mease stated that she was a friend of Mr. Mease most of her life and that he had challenges after losing his mother when he was age 19. She mentioned that he was now living a positive life as her husband and a father, and that the flexibility of a taxi job would assist them in caring for her mother.

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

AYES: Barrett, Lopez-Nuno, Weaver, Levy

Motion carried 4-0. Appeal granted.

3.

14-2-010

Ryan L. Andrews
3027 Titus Avenue
Omaha NE 68112

REQUEST: Appeal Police Department denial of firearm registration

Ryan Andrews appeared before the Board. Lt. Sedlacek, Omaha Police Department, stated that Mr. Andrew's application was denied due to past criminal history; carrying concealed weapon conviction dated February 15, 2007.

Mr. Andrews stated that he completed a two year probationary period but did not serve jail time for his conviction (Exhibit 4). He then submitted a copy of his purchase permit received from the Sheriff's office on August 19, 2013 (Exhibit 2). He also submitted a copy of his sentencing order (Exhibit 3). Lt.

Sedlacek mentioned that the carrying concealed weapon conviction was the reason for denial, not the sentencing.

In response to Mr. Weaver, Mr. Andrews explained events that led to his arrest and conviction; the firearm found in his vehicle was not his and that the rightful owner did not claim the firearm, subsequently he had the option of going to court or accepting a plea deal of the carrying concealed weapon conviction. Lt. Sedlacek explained that on August 12, 2006, Mr. Andrews and his three passengers were arrested for MIP and that four firearms were found in vehicle; one unregistered, one had a defaced serial number and one was a loaded shotgun. He then explained that all four occupants of vehicle were arrested and charged. In response to Mr. Levy, Mr. Andrews stated he was the owner of the vehicle. Lt. Sedlacek then responded to the Board that Mr. Andrews had nothing on his record since that conviction.

In response to Mr. Levy, Mr. Andrews stated that he wanted to register and own a gun to protect himself and his family. He then discussed the aspects of the hunter safety course he recently completed. He also mentioned his charge was eight years ago when he was age 19 and that he had been with his current employer for three years.

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

AYES: Barrett, Lopez-Nuno, Weaver, Levy

Motion carried 4-0. Appeal denied.

4.

14-2-011

Theodore C. Carter
2617 Blondo Street
Omaha NE 68111

REQUEST: Appeal Police Department denial of firearm registration

Theodore Carter was not present. The Board Secretary confirmed that a certified notice was sent to the applicant by mail, but a return confirmation was not received.

Lt. Sedlacek, Omaha Police Department, stated that Mr. Carter's application was denied due to past criminal history; carrying concealed weapon conviction dated October 6, 1992.

Motion by Mr. Weaver to hold this case over until the March 31, 2014 meeting. Seconded by Mr. Lopez-Nuno.

AYES: Barrett, Lopez-Nuno, Weaver, Levy

Motion carried 4-0. Case held over until the March 31, 2014 meeting.

5.

14-1-002 from 1/27/14

Juan Valdes
4955 Oaks Lane
Omaha, NE 68137

REQUEST: Appeal Police Department Notice of Nuisance

Juan Valdes was not present. The Board Secretary confirmed that she had received a return confirmation of the notice sent to Mr. Valdes by certified mail.

Kevin Denker, Planning Department, explained that an inspection of the property was completed earlier today.

Todd Shearer, City Inspector, Planning Department, submitted photos (Exhibit 2 and Exhibit 3) and stated that Mr. Valdes continued to use a grassy area of his yard to park vehicles and trailers.

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

AYES: Barrett, Lopez-Nuno, Weaver, Levy

Motion carried 4-0. Appeal denied.

6.

14-2-012

Barbara Brunton
10914 Hascall Street
Omaha NE 68144

REQUEST: Appeal Police Department Notice of
Nuisance

Barbara Brunton was not present. Kevin Denker, Planning Department, explained that an inspection of the property was completed earlier today with no evidence of a vehicle currently parking on the grass (Exhibit 2). He then mentioned that the tenant occupying the home spoke with the Inspector and informed him they were no longer parking in the yard.

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

AYES: Barrett, Lopez-Nuno, Weaver, Levy

Motion carried 4-0. Appeal denied.

7.

14-1-003 from 1/27/14

Brinker Harding
Colliers International
6464 Center Street Suite 200
Omaha, NE 68106

REQUEST: Appeal Public Works Department denial of
driveway permit
(RE: Proposed King Kong at 4409 Dodge
Street)

Ryan Haas, Murthy Koti and Todd Pfitzer, Public Works Department, appeared before the Board with Brinker Harding, Colliers International, and Nick Triantafillou, owner of King Kong.

Mr. Haas recapped the discussion of the proposed site plan from the January 27, 2014 meeting. He then stated that potential solutions for the east driveway issues were presented and that a compromise was offered with two conditions; Board approval and installation of removable bollards. Mr. Pfitzer mentioned that since the January 27, 2014 meeting, the developer had not discussed options with the Public Works Department regarding revisions to the driveways and site plan. Mr. Koti explained that he obtained statistics for the intersection at 44th and Dodge Streets; during peak hours the queues stack up and block the proposed access at the east driveway creating safety issues.

Mr. Harding mentioned that Mr. Barrett was not at the January 27, 2014 meeting and restated details discussed at the meeting regarding their reasons for the appeal. He added that the unique hardships of this particular site warrant the need for a waiver of the driveway regulations. He explained that the design of the site plan and placement of the building accommodated the steep grade south of the lot, setback regulations, the parking and stacking requirements and access for delivery trucks. He admitted he did not discuss further options with the City, but discussed the matters internally. Mr. Harding stated he was still

requesting two access points and mentioned that the property owner to the west recently met with the City to discuss development; with the future configuration of Saddle Creek Road unknown, they would also request access to Dodge Street. He added that the east driveway was not a point of access but a form of egress.

In response to Mr. Barrett, Mr. Harding stated that the new building design was larger than the existing building and was orientated to meet setback regulations and still allow for delivery truck to enter and exit the property. Mr. Weaver noted that left turns were not allowed at intersections along Dodge Street, but were allowed at entrances of businesses. Mr. Haas responded that right-out only exits were ineffective for ingress traffic without the installation of a median, which cannot be done along Dodge Street. Mr. Harding agreed that control of the right-out only driveway was difficult and mentioned that a right-out only driveway exists at the south east corner of 72nd & Dodge Streets. He also explained that he did not want a precedence set for every driveway appeal case and that each parcel should be treated on a case by case basis. Mr. Harding then reminded the Board of the hardships with this particular parcel of land. Mr. Pfitzer mentioned that regulations were in place for public safety reasons and that the 72nd & Dodge Streets example used by Mr. Harding actually had a median at the intersection so it was not similar.

Mr. Weaver asked the Public Works Department to explain why the property currently had two driveways but the proposed redevelopment of the site did not allow the second east driveway. Mr. Haas explained that City regulations have existed for many years and were updated periodically. He further explained that the only opportunity to apply new regulations was with new requests or new construction and this was done to keep the roadways as safe as possible. Mr. Haas explained the three options for driveway permit denials: renovate the building with existing framework and new driveway regulation do not apply; comply with regulations; or ask for a waiver. He then gave examples of businesses along Dodge Street that were denied driveway permits and chose to either renovate, comply or appealed and were denied. In response to Mr. Barrett, Mr. Pfitzer explained that the trigger for the driveway regulations for this site was the reconfiguration of the building and that regulations were not imposed on existing sites but regulated during new construction. Mr. Koti stated that the Public Works Department worked to improve public traffic safety and noted that Dodge Street was the busiest arterial street in the City. He mentioned he understood the needs of businesses but Public Works strived to balance traffic safety with the needs of the businesses; the removable bollards at the east driveway were a balance of needs and safety for this particular site.

Mr. Levy discussed the benefits and difficulties of the Urban Design regulations. He then discussed the problem with one driveway at this site; traffic parked on the east would need to wait in line with the drive-through traffic to exit at the west driveway. Mr. Haas mentioned that this situation could be resolved with relocation of the existing billboard.

Mr. Levy agreed that every case before the Board had unique scenarios and should be handled case by case. He then discussed different options were available to accommodate this site and that further solutions should have been explored. In response to Mr. Barrett, Mr. Triantafillou responded that his business existed for 20 years and that if business increased a second driveway would alleviate traffic issues. He also mentioned he had invested \$50,000 with the design of the new building. Mr. Pfitzer explained that Public Works offered a compromise with the removable bollards and wanted the business to succeed, but was concerned with safety at the east driveway. In response to Mr. Weaver, Mr. Pfitzer discussed the future changes UNMC planned for the Saddle Creek Road interchange and how it would affect the access off Saddle Creek Road onto 44th Street; as an entrance to UNMC, traffic along 44th Street would increase significantly. The Public Works Department representatives again discussed how the traffic queues at 44th and Dodge Street would negatively affect the east driveway at the site.

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

Mr. Levy mentioned that further compromise was obtainable and asked that the appellant continue to work with the Public Works Department to ensure safety at the east driveway.

AYES: Barrett, Weaver, Levy

NAYS: Lopez-Nuno

Motion carried 3-1. Appeal granted.

APPROVAL OF MINUTES:

Motion by Mr. Weaver to layover the minutes from January 27, 2014. Second by Mr. Lopez-Nuno.

AYES: Barrett, Lopez-Nuno, Weaver, Levy

Motion carried 4-0.

ADJOURN:

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

AYES: Barrett, Lopez-Nuno, Weaver, Levy

Motion carried 4-0. Meeting adjourned at 2:25 pm.