

MINUTES
Administrative Board of Appeals
January 27, 2014

MEMBERS PRESENT:

Ann M. O'Connor, Chair
David C. Levy, Vice Chair
Jim Weaver
Jose Lopez-Nuno
Bode M. A. Labode

MEMBERS ABSENT:

John R. Barrett, Alternate
Marty Conboy, Alternate

OTHERS PRESENT:

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

ROLL CALL:

Ms. O'Connor called the meeting to order at 1:03 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:

14-1-006

Gary Marshall
4232 Ellison Avenue
Omaha, NE 68111

REQUEST: Appeal Police Department denial of taxicab driver permit

Gary Marshall appeared before the Board. Lt. David Sedlacek, Omaha Police Department, stated that Mr. Marshall's application was denied due to past criminal history; sexual assault 1st degree conviction on May 3, 2004; for which he was sentenced for 5 years, registered sex offender with a sexual registration violation on April 17, 2008, when he failed to notify the Douglas County Sheriff of his new address.

Mr. Marshall stated that he and the victim were young at the time of the conviction and that the relationship was consensual. He then stated that he was at his previous job for 4 years when the company was sold, has been unemployed for a year and was seeking employment to provide for his family.

In response to Mr. Weaver Lt. Sedlacek confirmed that Mr. Marshall was obligated to register as a convicted sexual offender for life. He then confirmed to Mr. Levy that the ordinance for a taxicab permit

does not provide a time limit for the conviction and that Mr. Marshall had nothing on his record regarding driving or vehicles. Mr. Levy commented that the ordinance was specific and that Mr. Marshalls offense fell within the guidelines for denial.

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

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

Motion carried 5-0. Appeal denied.

13-12-89 *From 12/30/13*

Joshua Craig
5025 NW Radial Hwy
Omaha, NE 68104

REQUEST: Appeal Police Department denial of firearm registration

Mr. Craig was not present and also was not present at the December 30, 2013 meeting. The Board Secretary confirmed that she had received a return confirmation of the notice sent to Mr. Craig by certified mail.

Motion to Deny by Mr. Levy. Seconded by Mr. Lopez-Nuno.

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

Motion carried 5-0. Appeal denied.

13-12-92 *From 12/30/13*

Michael C. Smith
4716 N. 47 Street
Omaha, NE 68104

REQUEST: Appeal Police Department denial of firearm registration

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

Motion to Deny by Mr. Weaver. Seconded by Mr. Lopez-Nuno.

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

Motion carried 5-0. Appeal denied.

14-1-004

Ryan G. Pegel
13412 Shirley Street
Omaha, NE 68144

REQUEST: Appeal Police Department denial of firearm registration

Ryan G. Pegel appeared before the Board with attorney, Dan Pfeffer. Lt. David Sedlacek, Omaha Police Department, stated that Mr. Pegel's application was denied for marijuana less than an ounce charge and drug paraphernalia conviction on April 13, 2005. Lt. Sedlacek then mentioned that the conviction had been set aside by a judge earlier today and could not be used against him.

Mr. Pfeffer, 1823 Harney Street, Suite 202, appeared on behalf of Mr. Pegel and submitted a copy of the Order to Set Aside Conviction signed by the Judge (Exhibit 2).

Motion to approve by Mr. Weaver. Seconded by Mr. Lopez-Nuno.

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

Motion carried 5-0. Appeal granted.

13-11-83 *From 11/25/13 and 12/30/13*

Elton Foster
3959 N. 40 Avenue
Omaha, NE 68111

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

Scott Benson, City Inspector, Planning Department, submitted several photos (Exhibit 2) and stated that the nuisance still existed. He then mentioned that Mr. Foster had a meeting with the Planning Department last week to discuss zoning options.

In response to Ms. O'Connor, Elton Foster stated that the reason for his appeal was because his trucks were legal and he was in the process of obtaining a Special Use Permit approval from the Planning Board. Kevin Denker stated that it would take a minimum of 60 days to obtain the Special Use Permit but that an approval was not guaranteed. He then mentioned that if denied Mr. Foster would be allowed to keep only the legally licensed vehicles on his property while obtaining a Special Use Permit and that if the appeal was laid over Mr. Foster would have 30 days to comply until the next meeting. Mr. Benson mentioned that some of the vehicles still remained unregistered.

Mr. Foster stated that he had intentions to comply in a short period of time.

Motion to deny by Mr. Levy with requirement of compliance by February 15, 2014 by filing for a Special Use Permit and paying the fee, removing everything from the lot other than legally plated vehicles with current registration and 120 days to obtain an approved Special Use Permit, or if denied achieve compliance with the zoning. Seconded by Mr. Lopez-Nuno.

Mr. Labode questioned Mr. Foster regarding his meeting with the Planning Department. Mr. Denker explained that at the meeting Mr. Foster was informed he must comply with zoning by obtaining a Special Use Permit for automotive storage and that after the Planning Board hearing the request would be heard before the City Council at 3 separate readings.

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

Motion carried 5-0. Appeal denied with 30 days to comply.

13-12-95 *From 12/30/13*

Robert Moser
6725 Grant Street
Omaha, NE 68104

REQUEST: Appeal Police Department Notice of
Nuisance

Kevin Mulcahy, City Inspector, Planning Department, submitted several photos (Exhibit 2) and stated that 2 vehicles were moved off the drive way and 2 vehicles remained under the carport, the white Geo Metro had current plates.

Mr. Moser stated that the Geo Metro under the carport had current plates and that the Oldsmobile Cutlass needed a vehicle inspection before transferring registration to Nebraska. Lt. Sedlacek offered to assist with the inspection of the Oldsmobile. Mr. Mulcahy responded to Mr. Levy that all other reported vehicles were legally parked.

Motion to deny by Mr. Weaver with 30 days to comply. Seconded by Mr. Labode.

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

Motion carried 5-0. Appeal denied with 30 days to comply.

14-1-002

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.

Todd Shearer, City Inspector, Planning Department, submitted several photos (Exhibit 2) and stated that the vehicle and trailer in question were removed but other nuisance violations existed. Mr. Denker stated the complaint of vehicles parking on the grass was substantiated and that Mr. Valdes had a commercial sign at the residence advertising his business. Mr. Valdes recently requested approval to park his trucks in the yard until a concrete driveway could be poured, but Mr. Denker stated that he was unsure if Mr. Valdes understood that commercial vehicles were not allowed to be parked on a residential lot.

In response to Mr. Labode, Mr. Denker stated that the citation was for parking in the grass.

Mr. Weaver consulted Timothy Himes, City Attorney, regarding the definition of "tabling" the appeal if the Board chose not to take action either way. Mr. Himes was not aware of the definition in this case. Mr. Denker expressed that the case wasn't a candidate for "tabling".

Motion to hold this case over until the February 24, 2014 meeting by Mr. Levy. Seconded by Mr. Lopez-Nuno.

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

Motion carried 5-0. Case held over until the February 24, 2014 meeting.

14-1-007

Billy J. House
BH Tax Accounting & Consulting
6058 Ames Avenue Suite 3
Omaha, NE 68104

REQUEST: Appeal Police Department Notice of
Nuisance and Planning Department Notice
of Violation
(RE: 1821 N. 30 Street)

Kevin Mulcahy, City Inspector, submitted photos of the vacant lot in question at the southeast corner of 30th and Parker (Exhibit 2) and stated that the lot was covered with gravel and tractors and trailers were previously parked on the lot. He mentioned that the lot was zoned for commercial use but a Conditional Use Permit was required to park vehicles on the lot.

Billy J. House stated that he was the accountant for, MMN, Inc., a transportation company, and mentioned that this lot and the lot adjacent were both owned by the transportation company. He stated he planned to pave both lots in the spring and received permits to install a 2-3 stall garage on the southeast corner. Mr. House also met with the Planning Department and confirmed the business was zoned for a transportation company. Mr. House was informed by the Planning Department that 2 small plots of land adjacent to the south of the lot near the alley were owned by the City and he stated he wanted to acquire these from the City.

Mr. Mulcahy stated that a transportation company was an allowed use and that a Special Use Permit was not needed. In response to Mr. Levy, Mr. House stated trucks were occasionally parked at the lot. Mr. House stated that concrete installation could be planned for approximately May or June.

Motion to deny by Mr. Weaver, with 120 days to comply. Seconded by Mr. Levy.

Mr. Labode questioned the time allowance to comply.

Mr. Weaver amended his motion to deny with 150 days to comply. Seconded by Mr. Lopez-Nuno

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

Motion carried 5-0. Appeal denied with 150 days to comply.

13-12-97 *From 12/30/13*

Donald Thompson
D. Thompson Realty & Property
Management
3802 Leavenworth Street Suite 200
Omaha, NE 68105

REQUEST: Appeal Planning Department Notice of
Violation for trash container

(RE: 3833 Cuming Street)

Roger Carroll, City Inspector, submitted photos (Exhibit 2). He explained that the applicant moved the trash container to the location the Board previously indicated and was now in compliance.

Motion to deny by Mr. Levy. Seconded by Mr. Weaver.

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

Motion carried 5-0. Appeal denied.

14-1-001
Kevin Kropf
8211 S. 105 Street
LaVista, NE 68128

REQUEST: Appeal denial of reinstatement of First
Grade Stationary Engineer's Certificate

Kevin Kropf was not present. Mr. Phipps stated Mr. Kropf's license was not renewed last year and that the Permits and Inspections Department had not received complaints against his license by employers or the general public.

Motion to approve by Mr. Levy, subject to Mr. Kropf paying 2013 and 2014 fees. Seconded by Mr. Labode.

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

Motion carried 5-0. Appeal granted.

14-1-005
Max Sharp
16214 River Road
Plattsmouth, NE 68048

REQUEST: Appeal denial of reinstatement of Third
Grade Stationary Engineer's License

Max Sharp was not present. Mr. Phipps stated Mr. Sharp's license was not renewed last year and that the Permits and Inspections Department had not received complaints against his license by employers or the general public. In response to Mr. Levy, Mr. Phipps stated the check submitted by Mr. Sharp dated December 31, 2013 for licensing fees was returned because he did not have a license to renew.

Motion to approve by Mr. Levy, subject to Mr. Sharp paying 2013 and 2014 fees. Seconded by Mr. Weaver.

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

Motion carried 5-0. Appeal granted.

14-1-003
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 submitted an updated site plan (Exhibit 2) for the King Kong restaurant at 4409 Dodge Street. He explained that 2 proposed access points to Dodge Street were shown on the site plan; the western access point conformed to driveway regulations and the denial was for the secondary east access point that was within the required 230 foot buffer from the signalized intersection at 44th and Dodge Street. He explained that the south side of the site had a significant drop to the alley below that made it difficult for trucks to maneuver through the lot. He further explained that Public Works was not opposed to

accommodating a waiver with the condition that removable bollards be placed along the east driveway to prevent vehicles from entering and exiting the site but allowed access for trucks. Mr. Haas mentioned that Dodge Street was a state highway and that the NDOR superseded City approval.

Mr. Harding submitted a site plan and aerial of the site (Exhibit 3). He stated he had met with the Planning Department and Public Works regarding issues concerning this location and mentioned that the waiver was requested due to hardship and unique physical conditions of the property. He explained that the owner would construct a new building and one of the issues was that the new building would sit on an east west access to accommodate stacking. He further explained that because of setbacks and structural concerns this was the only orientation for the new building. Mr. Harding described that the drive-through lane wrapped around from the east to the north side of the building and exited onto Dodge Street using the west driveway, but that customers parked along the east side would have to get in line with drive-through customers to exit the site at the west driveway. He mentioned that this site was land-locked because of the significant grade change on the south side and did not have access to a secondary side street similar to the surrounding properties. In response to Mr. Levy, Mr. Harding stated that his client was opposed to the use of the bollards but was not opposed to the east driveway regulated to right-out only with signage in place.

Mr. Haas suggested that if the billboard at the east driveway was moved or relocated the lot could be reconfigured to accommodate the drive-through issue. He then explained that the use of the bollards would accommodate the issue with trucks moving the site and that in the absence of a median the right-out only exits were ineffective and not universally acknowledged or followed. Mr. Koti stated that operational solutions could be pursued; having deliveries during non-peak hours and removing then replacing the bollards. Mr. Pfitzer stated that history has proven with similar scenarios that without bollards the east driveway would be used to exit left onto Dodge Street and potentially as an entrance to the site.

In response to Mr. Weaver, Mr. Haas stated that he did not have accident statistics on hand but noted that there were approximately 3 accidents within a 5-year period related to the driveways on the site. He added that consolidating accesses reduced the number of conflict points and reducing 2 driveways to 1 was a safety improvement. Mr. Koti stated that the number of access points existing along Dodge Street between 40th Street and Saddle Creek Road already created side street friction and opportunities to improve the traffic conditions along Dodge Street increased safety.

Mr. Harding again stated that this site was land-locked with grading issues creating hardships that were unique to this parcel and warranted a waiver. He added that the billboard was leased but not owned by Mr. Triantafillou. He explained that if the existing building was not removed the use of the 2 existing driveways would be allowed but the owner was constructing a new site to ACI standards to the best of his ability considering the hardships on the site.

Mr. Haas stated that driveway regulations were triggered by specific activities such as this case and that existing businesses were not required to meet the new regulations.

Mr. Triantafillou stated that customers exiting east onto Dodge Street would benefit from an east exit-only driveway but only 1 driveway would complicate egress. Mr. Haas responded that a commercial driveway had a maximum width of 35 feet to support left turning and right turning traffic and that widening the east drive by 12 feet would make it compliant with regulations. Mr. Koti again mentioned that the goal was to minimize the number of conflict points. In response to Mr. Levy, Mr. Haas explained that code prohibited the 2nd driveway being too close to the intersection and that a 2nd driveway could be granted if shared with an adjoining property or an engineering study proved there was a need. Mr.

Brinker responded that if the adjacent property to the west was developed the 2nd access point would be shared.

In response to Mr. Weaver, Mr. Haas stated that left turns east and west bound on Dodge Street were prohibited at intersection with public streets. In response to Mr. Levy, Mr. Pfitzer stated that left turns from Dodge Street into a private driveway was legal.

In response to Mr. Weaver, Mr. Haas stated that Public Works would not oppose a waiver request with the condition that removable bollards be placed across the east driveway. In response to Mr. Labode, Mr. Haas explained that the bollards would be removed upon the trucks entering or exiting the site. Mr. Levy questioned if the width of the east drive could be narrowed and accommodate trucks exiting east. Mr. Pfitzer explained that narrowing the driveway would require the trucks to intrude further into the eastbound lanes. Mr. Harding responded to Mr. Weaver's questions explaining that because of regulations along the north side and the grading of the south side of the lot, the drive-through could not be widened to accommodate another lane for exiting traffic.

Motion to deny by Mr. Weaver. Mr. Harding requested the case be held over to allow further discussions with the Public Works Department.

Mr. Weaver amended his motion and motioned to hold this case over to the February 24, 2014 meeting. Seconded by Mr. Labode.

AYES: Labode, Weaver, Levy,

NAYS: Lopez-Nuno, O'Connor

Motion carried 3-2. Case held over to the February 24, 2014 meeting.

APPROVAL OF MINUTES:

Motion by Mr. Weaver to approve the minutes from December 30, 2013. Second by Mr. Lopez-Nuno.

AYES: Laobde, Lopez-Nuno, Weaver, Levy

ABSTAIN: O'Connor

Motion carried 4-0-1.

ADJOURN:

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

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

Motion carried 5-0. Meeting adjourned at 2:49 pm.