MINUTES
Administrative Board of Appeals
July 25, 2016

MEMBERS PRESENT:
David C. Levy, Chairman
Ann O’Connor, Vice Chair
Jeffrey Beals
Brian W. Kruse
Marty Conboy, Alternate

MEMBERS NOT PRESENT:
Mark Santo
John R. Barrett, Alternate

STAFF PRESENT:
Timothy Himes, Law Department
Kevin Denker, Planning Department
Rikki Flott, 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:

1. 16-07-054
   Bryan Zimmer
   The Architectural Offices
   4610 Dodge Street
   Omaha NE 68132
   REQUEST: Appeal Public Works Department denial of driveway permit
   (RE: 2739 North 61st Street, Dundee Bank)

Jeff Royal (Dundee Bank), Adrian Hernandez and Bryan Zimmer (Architect) appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the proposed site plan was for a new bank facility. He explained that the driveway regulations could not be met for the site, specifically the drive-through stacking requirement. He stated that changes were underway to change the drive-through bank requirements from 200’ to 100’. He noted that stacking for the site was at 60’ which would result in some of the stacking to occur in the alley which is a public right-of-way. The Public Works Department recommended denial.

Mr. Royal commented on the hardship of building on an urban site. He stated that the tenant to the east believed that the bank’s use of the property would make the alley much safer, claiming that it was being used by transients. He also mentioned that no traffic study had been done that would prove that bank traffic would inhibit the flow of traffic in the alley.

Mr. Hernandez stated that he had contacted as many of the neighbors as he could and that they had all been supportive of the project and believed that a bank would add diversity to the Benson area.

Mr. Zimmer explained that the bank planned to use the existing credit union building and to grow to the east to get more stacking space. He added that drive-through lanes would tuck underneath the building. He further explained that the site was directly north of a large public parking lot that could be utilized if the alley was congested.
Mr. Levy stated that he had previously recused himself from a case involving Dundee Bank since the bank was a client of his firm and he was directly involved with the project. He indicated that that was no longer the case.

In response to Mr. Kruse, Mr. Zimmer stated that that, from what he witnessed, there is very little traffic in the adjacent alley. Mr. Royal also did not anticipate that there would be a large volume of traffic in the drive-through. The applicant indicated that at their location at 50th & Underwood, they could not recall a time when there were more than 3 cars stacked in the drive-through.

Mr. Haas stated that Public Works was concerned about gridlock situations that could possibly occur from traffic entering from the west. He noted that the alley was one-way going west with a one-way sign located on 60th Avenue. He stated that Public Works would also make the signage clearer on 61st Street if the waiver was granted.

Mr. Levy noted that the owner was reusing an infill site where there was less flexibility on the design of the site. He added that the owner had gone through the expense of acquiring more property to the east in an attempt to alleviate the issues with the site.

Motion to APPROVE by Mr. Kruse. Second by Mr. Beals.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal granted.

2.
16-07-055
REQUEST: Appeal Public Works Department denial of driveway permit
Ben Drews
Thompson Dreessen Dorner
10836 Old Mill Road
Omaha NE 68154

(RE: 210th Street & California Circle, Elkhorn Baseball Academy)

Doug Kellner appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the site plan spanned two lots. The plan showed a driveway on the north end of the site on 210th Street and a second on California Circle on the south side. With the exception of having more than one driveway for the site, it complied with all other regulations.

Mr. Kellner stated that one-way options were considered but that it took space away from parking and the academy. He mentioned that the site was on a cul-de-sac with very little traffic. In response to Mr. Conboy, Mr. Kellner stated that there was mostly commercial spaces nearby with minimal traffic.

Motion to APPROVE by Mr. Conboy. Second by Mr. Kruse.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal granted.
3.  
16-07-061
Doug Kellner
Thompson Dreessen Dorner
10836 Old Mill Road
Omaha NE 68154

REQUEST: Appeal Public Works Department denial of driveway permit
(RE: 7449 Farnam Street, Lorenz Transportation)

Doug Kellner and Robert Lorenz appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the proposed plan was for a tractor truck storage facility. The lot has a frontage road to Harney Street on the south side of the building. Two driveways were proposed for the site to facilitate movement and to eliminate backing from public streets into the building. He stated that the only non-compliance on the site would be the two driveways. He added that Harney and Farnam were lightly travelled streets in the area with lower speeds and volumes.

Mr. Kellner stated that the design would allow trucks to drive through without needing to back into it. The site would be used mainly during the winter months to work on vehicles.

Mr. Lorenz stated that Nebraska Furniture Mart has a driveway across the street on Harney. He stated that the facility was used to keep the trucks warm during the winter months. He stated that the company was small and the only persons on the site would be the drivers.

Motion to APPROVE by Mr. Kruse. Second by Mr. Conboy.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal granted.

4.  
16-07-056
Sydney Goodman
14068 Pine Street
Omaha NE 68144

REQUEST: Appeal Police Department denial of firearm registration

Sydney Goodman appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that the applicant applied to register a firearm on June 20, 2016 and was denied because of two marijuana less than one ounce convictions from October 26, 2007 and February 13, 2009. She received a fine for both convictions. There was a MIP in 2007 and other traffic related offenses on the applicant’s record.

Ms. Goodman explained that she received the convictions when she was a teenager and after she had made some unwise decisions. She planned to take a Concealed Carry class and to become a responsible gun owner. She stated that she was currently a loan officer. In response to Mr. Levy, she stated that she and her boyfriend like to go shoot recreationally.

Motion to APPROVE by Mr. Kruse. Second by Mr. Beals.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal granted.
Mary Flowers appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that on May 27, 2016 a letter was sent to the applicant which stated that her firearm registration had been revoked due to an explosive device conviction from May 11, 2016 for which she received probation. He explained that the applicant went to a residence to collect a debt from someone who owed her money. At some point she pulled out her gun and fired off a round. She was subsequently arrested and charged with discharging a firearm within the city limits.

Ms. Flowers explained that she did not lend any money but that it was stolen from her by her caretaker. She stated that she kept the gun for protection. She admitted that her actions were wrong. She admitted that when she was 18 she stole from a store but that she had not done anything illegal since that time. In response to Mr. Levy, the applicant stated that she purchased the gun sometime last summer after her residence was robbed. Ms. Flowers indicated that she received a permit to carry the gun and that she also attended classes.

Lt. Sedlacek stated that the gun was in the police property room. Ms. Flowers stated that a judge advised that she would need to appeal to the board to get her gun back. The applicant had been on probation since May 2016. She explained that she shot the gun off because she was angry but that she did not normally resort to that type of violence. She also regretted how her actions affected her children.

Mr. Conboy was concerned with the fact that the applicant was still on probation. Ms. Flowers asked if the gun could be held until she finished her probation. In response to Mr. Levy, Lt. Sedlacek stated that the gun could be held until Ms. Flowers’ probation was over.

Motion by Mr. Conboy to GRANT the appeal subject to the applicant completing and satisfying her current probation. Second by Ms. O’Connor.

AYES: Conboy, Beals, O’Connor, Levy

NAYES: Kruse

Motion carried 4-1. Appeal granted, subject to the applicant completing and satisfying her current probation.

Thomas Smith appeared before the Board. Scott Benson, Planning Department, and Officer James Stokes, Omaha Police Department appeared before the Board. Mr. Benson stated that he had visited the property that morning and he submitted pictures to the board which showed an unlicensed vehicle still in the driveway. There were tires on the car instead of on jack stands as previously reported. The plates on the car were from 2013. Officer Stokes confirmed Mr. Benson’s statements.

Mr. Smith explained that the truck was originally in a friend’s garage until he moved. He stated that repairs were completed on the vehicle but he would need more time to get it registered. The applicant
indicated that he was on a fixed income and was attending school. He also needs to get a locksmith because he has no keys to the vehicle. The applicant requested 30 days.

Motion to DENY the appeals with 45 days to comply by Mr. Kruse. Second by Mr. Beals.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal denied with 45 days to comply.

7.
16-07-058
N’ava Reynel REQUEST: Appeal Police Department Notice of Nuisance
3911 South 33rd Street (RE: 3911 South 33rd Street)
Omaha NE 68107

N’ava Reynel and Rene Garrido, his interpreter, appeared before the Board. Scott Benson, Planning Department, and Officer James Stokes, Omaha Police Department appeared before the Board. Mr. Benson stated that he had visited the property that morning and that the vehicle in question had not been moved. He presented pictures to show to the board. The plates on the vehicle are current but it sits in the front yard setback. Officer Stokes presented copies of the original complaint, the ordinance and proof of registration. He explained that because of the way the layout of the property, the applicant would run into the same setback issue if he parked the vehicle behind the home.

Mr. Reynel explained that he wanted to park the motor home behind his property but when he wanted to build a garage he was told by the City that he needed a permit because the space behind the home was a street and not an alley. He felt that he should be able to park the motor home where it was because there was no sidewalk and it did not block the street. He stated that he had spoken with his neighbors and none had any problems with the motor home being parked where it was.

Mr. Benson explained that the ordinance states that no vehicle longer than 20’ can sit in the front of a home but has to be behind the front yard setback. The applicant’s vehicles sit 3’ in the setback. The side yard is also too narrow since there is 7’ from the home to the fence. There was some discussion about whether the motor home could legally be parked in the back of the home.

Motion to APPROVE by Ms. O’Connor. Second by Mr. Kruse.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal granted.

8.
16-07-059
Debra S. Robinson REQUEST: Appeal Police Department Notice of Nuisance
5937 South 136th Circle (RE: 5937 South 136th Circle)
Omaha NE 68137

Debra and Mark Robinson appeared before the Board. Scott Benson, Planning Department, and Officer James Stokes, Omaha Police Department appeared before the Board. Mr. Benson stated that he met with Mr. Robinson at the property that morning. The vehicle in question, which is over 20’ in length, was still in front of the home. He submitted pictures to the board and stated that he and the owner discussed a way that the vehicle can sit on the property and be in compliance with the ordinance.
Officer Stokes submitted more pictures, the vehicle registration and a copy of the ordinance. He stated that the vehicle was 25’ in length.

Ms. Robinson stated that a driveway was poured on the north side of the home so that the vehicle could not obstruct traffic. She submitted pictures of several other residences that were in violation of the ordinance. She indicated that the camper was 21’ from the sidewalk and 31’ from the street. Mr. Robinson stated that the camper does not block traffic.

Mr. Benson explained that the applicant could possibly pour another 6’ – 8’ of concrete on the north, the camper could be backed up to where the cab lines up with the front of the home. Currently, the cab was the only part of the camper in front of the home. Although Mr. Levy did not have an issue with where the camper was located, he felt that the applicant should add more driveway since there was room enough on the property. He did not feel that an exception to the ordinance should be made in this case when there was another option. He suggested that the applicant should be given enough time to comply. Ms. Robinson stated that 60 days would be enough time to complete the driveway.

Motion to DENY with 60 days to comply by Mr. Kruse. Second by Mr. Conboy.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal denied with 60 days to comply.

9.

REQUEST: Appeal Nebraska Humane Society Reckless Dog Owner Designation

Terence Bryant and his representative Christopher Odigbo appeared before the Board. Mark Langan, Nebraska Human Society appeared before the Board.

Mr. Langan submitted a copy of the ordinances. He stated that on March 22, 2016 NHS received a report from a citizen near 95th & Ames that their yellow lab had been attacked in their backyard by multiple Cane Corso dogs belonging to the applicant. The owner of the lab grabbed a shotgun and intended to shoot the dogs until Sandra Bryant ran into the backyard and retrieved her dogs. One of the dogs had previously ran into the neighbor’s house and forced the wife and her child to secure themselves in a bedroom. Numerous citations were issued to the applicant and Potentially Dangerous Dog declarations were issued to all 4 dogs. Less than 2 weeks later the same neighbor reported that one of the applicant’s dogs, Lexus, again entered his back yard and chased his wife and child into the home. The wife recorded video of the dog barking aggressively at the back door. This video was shown to the animal control officer. At that time, numerous citations were issued to Sandra Bryant for numerous animal control violations. Another complaint was received on April 5th from another neighbor about the applicant having too many dogs. A citation was issued to Ms. Bryant for having too many dogs. The Bryant’s appealed the Dangerous Dog Declaration on April 15th for the dogs to NHS. Ms. Bryant indicated that only 2 of the 4 dogs, Dolce and Lexus, were involved in the attack on the neighbor’s dog. A decision was delayed until witnesses were interviewed further. The witnesses stated that 3 dogs were involved in the attack. The board reconvened on April 19th and denied the Bryant’s appeal on Dolce and Lexus. They could not determine the 3rd dog that was involved in the attack. The effective date for the declaration was May 2, 2016 and the owners were required to have the dogs spay/neutered, microchipped, insurance coverage and purchase of a Potentially Dangerous Dog license. Eight days after the appeal hearing, Lexus bit a child at another location. Another adult stated that Mr. Bryant had given her Lexus to watch but by the time NHS arrived the dog was gone. A search warrant was issued on the applicant to try to locate Lexus and impound her as a dangerous dog, but the dog was not found. Mr. Bryant stated that the dog was given
away to a truck driver on Facebook and no other information was provided. On May 23rd NHS received a call about too many dogs at the applicant’s current address. NHS saw 4 dogs at the address but no one was home. The 30-day requirements were due on the dogs on June 2nd but nothing had been satisfied. A Reckless Owner Declaration was served on Ms. Bryant on June 6th as per city ordinance. On June 24th another complaint was received by NHS about 4 dogs at the applicant’s address and another citation was issued to Ms. Bryant. Mr. and Ms. Bryant both attended a Reckless Owner appeal hearing that was held at NHS on July 7, 2016. They provided proof of a microchip and spay on Dolce, but indicated that they did not know of the whereabouts of Lexus. Mr. Bryant stated that he did not plan to comply with the requirements for Lexus. The appeal was denied and Mr. and Mrs. Bryant were declared Reckless Owners due to nothing being satisfied on Lexus. On the same day, another Reckless Owner declaration was served on Ms. Bryant due to her accruing 3 animal control convictions in a 24-month period. NHS received a call to the Bryant home on July 14. The applicant had been evicted from their home and left behind 3 dead snakes and other reptiles living in filthy conditions and in poor health. NHS planned to issue additional citations because of those conditions. Mr. Langan stated that there were numerous calls between November 2014 and August 2015 regarding the Cane Corso dogs. As of the meeting, nothing had been satisfied for Lexus and a Potentially Dangerous Dog license had not been purchased for Dolce. NHS records indicated that the applicant possibly had up to 5 dogs at that time.

Mr. Odigbo stated the he was representing Terence Bryant only. He indicated that there were discrepancies in many of the statements given by Mr. Langan. He stated that his friends and clients never owned Lexus and that they had provided information of her location to NHS. He stated that there were no pictures that showed the conditions that the snakes were living in. He explained that the applicant was seeking to get into the breeding business to supplement his income. He stated that the dogs were taken care of and that his client was scheduled to take the required class on August 2nd. He felt his client should not have to meet any of the requirements for Lexus since she had been given to another owner.

Mr. Bryant stated that he currently had 3 dogs along with the 2 snakes that NHS had taken possession of. He indicated that the 3 dogs were being taken care of by a friend of his in another state. He explained that Lexus was never supposed to be in the home. He added that she had a couple of owners who did not take her and that he ultimately wanted to ship her to Florida to be a part of an organization where she could be put to good use. He wanted to get all of her immunizations so that she could be shipped to Florida but those plans fell through. He eventually gave her to someone who was supposed to deliver the dog to an organization in Florida but he could not locate his contact person. He indicated that if he had Lexus, he would be more than willing to hand her over to the Humane Society.

There was some discussion about Mr. Bryant’s wife being declared a Reckless Owner and how it would affect the couple as a whole with regards to owning any pets. Mr. Langan stated that he held Mr. Bryant responsible for Lexus and that he doubted Mr. Bryant’s story as to her whereabouts.

Mr. Conboy stated that, by his actions, the applicant treated Lexus as if she was his dog.

In response to Mr. Levy, Mr. Langan stated that even if Lexus were taken out of the picture, the applicant would still not comply with the Potentially Dangerous Dog declaration for Dolce and that would be enough under the ordinance to have Mr. Bryant declared a Reckless Owner. Mr. Langan added that the applicant was denied a permit that would allow him to have 5 dogs based on the number of violations he had. The applicant also did not apply for a breeder’s permit which is required if he wanted to breed dogs.

Motion to DENY by Mr. Beals. Second by Mr. Kruse.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Appeal denied.
APPROVAL OF MINUTES:

Motion by Mr. Kruse to approve the minutes from June 27, 2016. Second by Mr. Beals.

AYES: Conboy, Beals, Kruse, Levy

ABSTAIN: O’Connor

Motion carried 4-0-1.

ADJOURN:

Motion to adjourn by Mr. Kruse. Second by Conboy.

AYES: Conboy, Beals, Kruse, O’Connor, Levy

Motion carried 5-0. Meeting adjourned at 3:15 pm.