MINUTES
Administrative Board of Appeals
June 27, 2016

MEMBERS PRESENT:
David C. Levy, Chairman
Brian W. Kruse
Mark Santo
Marty Conboy, Alternate

MEMBERS NOT PRESENT:
Ann O’Connor, Vice Chair
Jeffrey Beals
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. 16-06-044
Dan Dolezal
Ehrhart Griffin & Associates
3552 Farnam Street
Omaha NE 68102
REQUEST: Appeal Public Works Department denial of driveway permit (RE: 3325 South 67th Street)

Dan Dolezal appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the proposed project would add more parking on the west side of the existing building along 67th Street. The existing driveway to the east side of the property on the 67th Avenue frontage road is non-conforming and the City attempted to bring that driveway as much into compliance as possible. He explained that the driveway on 67th Street has a return that extends beyond the property line. Both streets are low-speed local streets with low volumes.

Mr. Dolezal added that there was a practical difficulty that resulted from the 32’ differential between 67th Street and 67th Avenue.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal granted.
2.

16-06-045
Dan Dolezal
Ehrhart Griffin & Associates
3552 Farnam Street
Omaha NE 68102

REQUEST: Appeal Public Works Department denial of driveway permit (RE: Alvarez Insurance, 3906 L Street)

Dan Dolezal appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the request was to move the driveway 43’ from L Street, closer than the 60’ minimum requirement. He noted that the site was in compliance with all other driveway regulations.

Mr. Dolezal explained that if the driveway was built in compliance he would lose about 1 ½ stalls of parking on the site which would reduce the number of stalls from 9 to 7. Since there is no parking along L Street, customers would possibly have to park in a residential area. He stated that, due of the nature of the business, there would not be a high volume of traffic on the site.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal granted.

3.

16-06-046
Matthew Walsh
GreenbergFarrow
21 South Evergreen Avenue, Suite 200
Arlington Heights IL 60005

REQUEST: Appeal Public Works Department denial of driveway permit (RE: South 132nd & Westwood Lane)

Margaret Blum, GreenbergFarrow, appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas explained that site is an assisted living facility located southwest of 132nd & Westwood Lane. The applicant worked with the City on their access plan and was in compliance with all other driveway regulations with the exception of having one driveway per site. He stated that Westwood Lane and Grover Street were both low speed/low volume streets that were primarily intended for access.

Ms. Blum stated that the proposed second driveway would improve safety and circulation of the site for fire and emergency vehicles. She stated that the applicant worked with the Public Works and Planning Departments on the driveway locations.

In response to Mr. Levy, Ms. Blum stated that originally the site consisted of more than one parcel before it was merged. She stated that most of the parking would be used by employees and visitors.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal granted.
4.  
16-06-047  
Joe Zadina  
Lamp Rynearson & Associates  
14710 West Dodge Road  
Omaha NE 68154  
REQUEST:  Appeal Public Works Department denial of driveway permit  
(RE: OPS JP Lord School, 4444 Marinda Street)  

Joe Flaxbeard appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that the request was for a waiver to allow a second access on 45th Street. The site is in compliance with all other design requirements and regulations. He noted that both 44th and 45th Streets are low speed/low volume streets.

Mr. Flaxbeard explained that the school serves students with disabilities and that there is a lot of drop-off traffic. The two driveways would allow the bus traffic to be routed from the 44th Street entrance and out of the 45th Street entrance. Access off the north would be fully curbed and gated to deter regular vehicle traffic.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal granted.

5.  
16-06-048  
Joe Zadina  
Lamp Rynearson & Associates  
14710 West Dodge Road  
Omaha NE 68154  
REQUEST:  Appeal Public Works Department denial of driveway permit  
(RE: Miller Electric, 2501 St. Mary’s Avenue)  

Joe Flaxbeard appeared before the Board. Ryan Haas, Public Works Department, appeared before the Board. Mr. Haas stated that proposed project included a building addition and parking lot improvements for the existing building. The plan showed a driveway for 25th Street, one for Jones Street and a one-way pair driveway leading from 25th Street to 25th Avenue. Mr. Haas stated that the building was existing with existing parking in the front. The applicant was also requesting a waiver to the 60’ offset from St. Mary’s Avenue to the two one-way accesses on the north side. He explained that if the driveway regulations were enforced then all parking in front of the building would be lost. He acknowledged the challenge for industrial sites and especially for those in the downtown area. Public Works was mainly concerned with access on St. Mary’s Avenue which is a busy street with more volume and higher speeds.

Mr. Flaxbeard stated that the driveways on the north would be for customer and the one to the south would be for employees and loading/unloading. The additional driveway on the south would prevent large trucks from backing up into public right-of-way.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal granted.
6.  
16-05-038 (held over from 05/23/2016)  
Kenneth Johnson  
10540 V Street  
Omaha NE 68127  
REQUEST: Appeal Police Department denial of firearm registration  

Kenneth Johnson did not appear before the Board. The secretary of the board had been in contact with the applicant who felt that it would not be worth his time to appear. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. He stated that the applicant was denied a firearm registration due to possession of marijuana less than an ounce conviction from November 25, 2013. The applicant was fined $300. The only other violation of his record were traffic-related.

Mr. Levy stated that he would not have supported the request due to the recent marijuana conviction.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal denied.

7.  
16-05-041 (held over from 05/23/2016)  
Carl Hendrix  
12602 Ames Plaza, Apt 306  
Omaha NE 68164  
REQUEST: Appeal Police Department denial of Taxicab Driver’s Permit  

Carl Hendrix and Pastor Ron Smith (3841 Decatur Street) appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that the applicant applied for a Taxicab Driver’s Permit on April 16, 2016 and was denied for his past criminal history which included a robbery conviction on May 23, 1991 for which he was sentenced to 3 years in jail. There was also an operating under suspension conviction on August 16, 2012. Lt. Sedlacek stated that the main concern was with the 8 assault and battery convictions dating back to 1987, the last of which was March 2016.

Pastor Ron Smith stated that he had known Mr. Hendrix for about 4 months. He has a prison and street ministry and seeks to assist youths with employment and spirituality. He wanted to help the applicant to get employment with Happy Cab so that he could provide for himself and his family. He expressed support for Mr. Hendrix.

In response to Mr. Levy’s inquiries about the March 2016 incident, Mr. Hendrix explained that he was trying to assist a friend of his and ended up in a fight with a young woman which led to his arrest. He stated that he had been trying to help the woman with various issues for the past year. He felt that employment with Happy Cab would give him the opportunity to make an honest living. He stated that he would be working approximately 10 – 12 hours per day. He stated that he had no contact with the woman since the incident. Lt. Sedlacek stated that the applicant’s last assault conviction was in 2003. Mr. Hendrix explained that because of drug and alcohol use he made some bad decisions which he regretted.

In response to Mr. Conboy, Pastor Smith stated that he believed in the applicant and that he also felt that he deserved a second chance. He stated that the cab company test for drugs and alcohol on a yearly basis along with quarterly safety screenings and fingerprinting. Mr. Hendrix added that he is on probation and that he has to make daily calls to see if he needs to take a drug test.

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

AYES: Conboy, Kruse, Santo, Levy
Motion carried 4-0. Appeal granted.

8.
16-06-049
Shane M. O’Connell
11706 Burt Street, Apt. W9
Omaha NE 68154
REQUEST: Appeal Police Department denial of firearm registration

Shane O’Connell appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that on May 28, 2016 the applicant applied to register a firearm and was denied because of a carrying a concealed weapon conviction on February 8, 2010 for which he received 12 months of probation. There were other arrests and convictions for traffic-related offenses, shoplifting and a MIP.

Mr. O’Connell explained that the charges were from a long time ago and were the result of irresponsibility on his part. He brought the incident report for the shoplifting arrest that indicated that a 3 ¼” knife was found on him. He explained that he had found the knife and was not carrying it for protection. The applicant stated that he currently held 2 jobs.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal granted.

9.
16-06-050
Kashif Jones
2555 Pinkney Street
Omaha NE 68111
REQUEST: Appeal Police Department denial of firearm registration

Kashif Jones 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 May 26, 2016 and was denied because of 3 marijuana less than 1 ounce convictions from August 2012, May 2014 and May 2015. In all 3 incidents the applicant was fined $300. Other convictions on his record were for traffic offenses and drug paraphernalia.

Mr. Jones explained that his offenses were non-violent and were done when he was underage. He indicated that he had been working at Baxter Ford for a year and another company before that for 2 years. In response to Mr. Levy, Mr. Jones stated that he wanted the firearm for safety. The Board noted the recent date of the convictions. The applicant questioned why he was able to register for a firearm outside of Douglas County but not inside of county limits.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal denied.
10.

16-06-053
Brandon L. Klein
6761 Maple Street
Omaha NE 68104

REQUEST: Appeal Police Department denial of firearm registration

Brandon Klein appeared before the Board. Lt. David Sedlacek, Omaha Police Department, appeared before the Board. Lt. Sedlacek stated that on June 4, 2016 the applicant had applied to register a firearm and was denied for a marijuana conviction from November 18, 2011 in Arizona for which he received 10 days in jail. The only other offenses on his record were traffic-related.

Mr. Klein stated that he was a pizza delivery driver and that he wanted the gun for protection. He explained that the marijuana was medicinal and that he did not have the paperwork to prove it at the time. He was not sure of how much he had on him because he was growing his own marijuana for which he stated that he had a license to do. He stated that he looked into other treatment options and no longer used marijuana for medical or recreational purposes. Mr. Kruse noted the recent date of the conviction.

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

AYES: Conboy, Kruse, Santo

NAYES: Levy

Motion carried 3-1. Appeal denied.

11.

16-06-051
Robert F. Egan
2727 North 63rd Street
Omaha NE 68104

REQUEST: Appeal Planning Department Notice of Nuisance (RE: 2727 North 63rd Street)

Robert Egan appeared before the Board. Scott Benson, Planning Department, appeared before the Board. Mr. Benson stated that he had met with the applicant that morning at the property. He presented photos of the property as it appeared in May. There were unlicensed vehicles on the property along with non-working vehicles, trash and debris, and some campers. Mr. Benson went by the property the week before the meeting to take pictures of what was in the driveway and there was a Ford van that was one of the violations and a convertible that was added. He stated that some vehicles had been removed. This included an unlicensed camper, a Ford Contour with expired plates and a pop-up camper that was on dirt. There were 3 vehicles that were still on the property: a Ford Blazer, one box truck parked in the alley and another in the driveway. The applicant indicated that he wanted all of those vehicles removed.

Mr. Egan explained what his plans were for the items on his property. He wanted to keep the cube truck that was in his driveway that he had recently purchased that would need work to get running along with the convertible that also needed work. The applicant requested an additional 30 days to complete the work on both vehicles. He added that the backyard would be cleaned within 24 hours.

Mr. Benson explained that part of the problem with the vehicles was that they were parked in an alleyway which could block emergency vehicles if they needed access.

Mr. Denker stated that in the past the Board had denied these types of appeals but given the applicant time to comply.

Motion to DENY with 30 days to comply by Mr. Kruse. Second by Mr. Conboy.
AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal denied.

12.

REQUEST: Appeal Nebraska Humane Potentially Dangerous Dog Designation

Kayla Behrendsen and Terrell Howard appeared before the Board. Mark Langan, Nebraska Humane Society appeared before the Board. Mr. Langan submitted a copy of the ordinances. He stated that on May 12, 2016 animal control officers responded to a dog bite/attack call in the area of 43rd and Wirt Street. A resident stated that she had been walking past 4203 Wirt Street with her 14-week old terrier pup when two large dogs approached her but did not make contact. The resident picked up her dog but put him down when she determined that the dogs did not pose a threat. At that time a third dog named Buzzerlee rushed out and made contact with the resident’s dog, Lola, biting her rear legs. The resident used her hands to pry Buzzerlee off her dog and was herself bitten on the pinky finger. The animal control officers took pictures of the bites to Lola and her owner. The resident made contact with the applicant and Terrell Howard, the owners of Buzzerlee. Ms. Behrendsen and Mr. Howard were cited for improper restraint and no dog license for all three dogs. In addition, there was a citation for the pit bull, Buzzerlee, for not having a harness and muzzle. A Potentially Dangerous Dog designation was issued and a home rabies observation was set up for the pit bull. Since Buzzerlee was vaccinated at the time he was allowed to stay at the home; however, the dog owners did not follow up with the post-rabies examinations so the dog was confiscated. An appeal hearing was held at the Nebraska Humane Society on May 31. Mr. Langan indicated that during the hearing, Ms. Behrendsen and Mr. Howard did not take responsibility for the incident and felt that it was the fault of Lola’s owner for putting her dog back on the ground. The appeal was denied and it was determined that the actions of the dog met the definition of a Potentially Dangerous Dog. Ms. Behrendsen and Mr. Howard indicated during that hearing that they would license their other two dogs on June 1, but as of the day of the meeting those dogs had not been licensed and the rabies vaccinations had lapsed for all three dogs as of June 8, 2016.

Ms. Behrendsen stated that she was waiting on her next paycheck to get the other two dogs licensed. She submitted proof that shots for all three dogs were up to date as of June 13 (Exhibit 3). She also submitted a letter from her psychiatrist which explained that the dogs were emotional support animals (Exhibit 4).

In response to Mr. Kruse, Ms. Behrendsen explained that her back door does not shut properly so the dog got out. She stated that the door had been fixed and the dog was leashed and muzzled. The other two dogs are also leashed every time they go out. Mr. Kruse clarified that the appeal was for the two-year probationary period with the requirements that are set forth by city ordinance which include the following: spay/neuter, microchip, special licensing, proof-of-insurance, muzzle and leash, responsible pet ownership class and the dog being under the control of a person 19 years of age or older.

Mr. Howard stated that the incident occurred as a result of a “freak accident” and that he instructed Lola’s owner to pick up her dog, who was in their yard. Mr. Howard indicated that he had groceries in his hand and could not grab his dog. He added that there are “Beware of Dogs” signs posted in his yard. In response to the board, the applicant stated that they do not have a fence but that they are speaking with their landlord about installing one.

Mr. Levy expressed concern about Mr. Howard’s statement that he told the other dog owner to pick up her dog because he knew that his dog had the potential to attack the dog. He claimed that the dog loved children and would not harm them. Ms. Behrendsen stated that she wanted all three dogs microchipped; however, Mr. Howard stated that he did not want to spay the dog. At the time they also did not have
insurance for the dogs. They did not object to taking the Responsible Pet Ownership and Dog Behavior class.

Mr. Kruse concluded that Buzzerlee did indeed bite another dog and that the board did not want to remove the dog from the applicants, but wanted them to become responsible pet owners. Mr. Conboy added that the applicant’s home was unsecure and adjacent to the public right-of-way. He also noted Mr. Howard’s comment to the other dog owner to pick up the dog since Buzzerlee didn’t like other dogs. He stated that the ordinance was in place to ensure that a similar incident would not happen again.

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Appeal denied.

**APPROVAL OF MINUTES:**

Motion by Mr. Kruse to approve the minutes from April 25, 2016. Second by Mr. Conboy.

AYES: Conboy, Kruse, Santo

ABSTAIN: Levy

Motion carried 3-0-1.

Motion by Mr. Kruse to approve the minutes from May 23, 2016. Second by Mr. Conboy.

AYES: Conboy, Kruse, Santo

ABSTAIN: Levy

Motion carried 3-0-1.

**ADJOURN:**

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

AYES: Conboy, Kruse, Santo, Levy

Motion carried 4-0. Meeting adjourned at 2:43 pm.