

## **Sarpy County Board of Adjustment**

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### **MINUTES OF MEETING SARPY COUNTY BOARD OF ADJUSTMENT**

Monday, August 20, 2012  
Sarpy County Administration Building  
Board Room

The location of the posted Nebraska Open Meetings Act was given and the meeting of the Board of Adjustment was convened in open and public session by Sarpy County Board of Adjustment Chairman Sharon Hansen at 7:00 P.M. in the County Board Room in the Administrative Office Building in Papillion, Nebraska.

Notice of the meeting was given in advance thereto by publication in the Midlands Newspapers, Inc. dba Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor on August 1, 2012. A copy of the Proof of Publication is on file in the Department of Planning office. Notice of the meeting was simultaneously given to all members of the Sarpy County Board of Adjustment. Availability of the agenda was communicated in the published notice and in the notice to members of the Board of Adjustment of this meeting.

#### **Roll Call**

Present: Sharon Hansen, Donna Dostal, Gene Mackey, Del Reibold, Susie Bliss (Alternate Member)  
Absent: Doug Hill  
Others Present: Bruce Fountain, Director – Sarpy County Planning and Building Department  
Donna Lynam, Zoning Administrator - Sarpy County Planning and Building Department  
Cindy Gilbert, Administrative Assistant - Sarpy County Planning and Building Department  
Nicole O'Keefe, Deputy County Attorney – Sarpy County

#### **Motion to Approve or Correct minutes from 12-19-2011.**

**MOTION:** Dostal moved, seconded by Reibold, to approve the minutes of December 19, 2011 as presented. Ayes: Dostal, Hansen, Mackey and Reibold. Nays: None. Abstain: Bliss  
None. Absent: Hill. Motion carried.

#### **A. Public Hearing and vote on application of:**

- 1) Labeledz Haven, L.L.C. requests approval of a variance to Section 35.10- Fences to allow for the construction of a six foot (6') high solid fence in the front yard on the following described property, to wit: Tax Lots D1 and D2 of both Sections 27, Township 13 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska AND Section 34, Township 13 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska **(2113 and 2127 Platte River Drive)**

Pat Sullivan, Attorney representing the Frank Labeledz, noted that various members of the family had lived here over the years. Mr. Sullivan said that Mr. Labeledz purchased the property next to them and cleared out a lot of underbrush and trees, removed some old cabins, and constructed a pond. Mr. Sullivan said that since that time, trespassing has become an issue especially with people riding four-wheelers through the property. He stated that a fence was needed to help keep the trespassers out as they believe it is a safety and liability issue. Other points brought up by Mr. Sullivan included:

- They believe that the lot functions as a back yard for the Labeledz residence which faces the river
- They believe that the proposed fence does not create a substantial detriment to the community

- They do not believe that a precedent is being set by allowing the proposed fence
- No one lives on the property full time which inhibits their ability to keep people out when they are not there.

*Public Hearing Opened at 7:17 pm*

Frank Labeledz said he his family have owned property in the area since 1954. He said he had recently acquired the property next door, cleaned it up, and put in a pond. He said they are having a difficult time keeping 4-wheelers and golf carts out as well as pedestrians. He stated that it is hard to enjoy the property while they are constantly trying to keep trespassers out.

Mary Pat Sacco stated she has lived in her house across the street from this site for 30 years. She said that for 28 years of that time, she had to look at a mess across the street. She said she appreciated the cleanup work that Mr. Labeledz had done and now enjoys the view of the river. She said she would prefer that they not put up a 6' fence that would block her view. She said she does understand the necessity to secure the property, but doesn't think they need to put a solid 6' fence there.

Pat Sullivan reiterated the need to keep others out by erecting a fence. He said that this is a unique property in its size and topography.

*Public Hearing Closed at 7:30 pm*

Discussion by the Board of Adjustment included:

- Everyone in the area has the same issues with people cutting through properties and trespassing to get to the river or the lakes.
- There is no need for 6' solid fence when a shorter fence which met the zoning regulations would have the same effect.
- If the owner wants to keep people out, shouldn't they fence the rest of the property as well to keep trespassers out.
- Natural landscaping is another alternative that could be utilized that would meet the zoning regulations.
- The property can be kept secure with fence that meets the zoning regulations.

**MOTION:** Dostal moved, seconded by Bliss to **deny** the request for a variance as presented based on the following findings:

1. The requirement that peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property in the petition due to exceptional narrowness, shallowness or shape of the piece of property in question is not met because there is no peculiar shape of the land and there is no hardship due to exceptional narrowness or shallowness of the property.
2. The requirement that peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional topographic conditions on the piece of property in question is not met because the information given by the applicant and within the planning department report shows the land is not exceptionally different than properties in the same area.
3. The requirement that peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question is not met because the information given by the applicant and within the planning department report shows the land is not exceptionally different than properties in the same area and because there are other opportunities to wall off the area which will comply with the zoning regulations.
4. The requirement that such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable County Zoning

Regulations is not met because granting the variance would set a dangerous precedent to others in the area and I agree with the staff analysis on page 5, section B.1. within the planning staff report.

5. The requirement that the strict application of the requirements of the applicable County Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition is not met because there is no undue hardship on the owner of the property because there are other opportunities to wall off the area and make the area more secure, which will meet the zoning regulations.
6. The requirement that such hardship is not shared generally by other properties in the same zoning district and the same vicinity is not met because the property is not unusual for the area and the hardship is not different than any other property within the area, as all other owners face people walking across their properties.
7. The requirement that the authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the variance is not met because a six-foot fence will deter from the aesthetic value of the area and thus would change the character of the area.
8. The requirement that the granting of such variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner is not met because the characteristics of the property were created by the owner and are in keeping with the characteristics of the other properties in the area and thus there is no exceptional hardship. In addition, there are other ways to keep the property safe within the regulations.
9. The requirement that the condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable County zoning regulations is satisfied because this situation is not a recurring problem and is not something that warrants the county changing the regulations because this situation is already addressed by the zoning regulations.

**Ballot: Ayes – Dostal, Bliss, and Hansen. Nays - Mackey and Reibold. Abstain - none. Absent - Hill. Motion carried. (3-2)**

**Adjournment:**

By a unanimous oral vote, Chairman Hansen declared the meeting adjourned at 8:30 p.m.

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Sharon Hansen, Chairman  
Sarpy County Board of Adjustment

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Cindy Gilbert, Recording Secretary  
Sarpy County Planning Department