

**SARPY COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
November 29, 2018**

I. CALL MEETING TO ORDER

A meeting of the Board of Adjustment of Sarpy County, Nebraska was convened in open and public session at the call of Chairperson Sharon Hansen at 7:00 P.M. at the Courthouse in Papillion, Nebraska. Chairperson Hansen stated that a copy of the "Nebraska Open Meetings Act" is posted on the north wall of the Sarpy County Boardroom. Roll call attendance was taken.

Present: Doug Kellner, Harlan Metschke, Sharon Hansen, Colm Breathnach and Deanna Korth

Notice of the public hearing was given in advance thereto by publication in the Omaha World Herald dba Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor. Proof of Publication is on file in the Planning Department. Notice of the meeting was simultaneously given to all members of the Board of Adjustment of Sarpy County, Nebraska. Availability of the agenda was communicated in the published notice and in the notice to members of the Board of Adjustment of this meeting.

Sarpy County Staff present: Bruce Fountain, Director of Planning & Building Department, Donna Lynam, Assistant Director of Planning & Building Department, and Kelly Jeck, Planning & Zoning Assistant, and Nicole Spitzenberger, Deputy County Attorney.

II. APPROVAL OF MINUTES

1. Approval of Minutes from the April 12, 2018 meeting.

MOTION: Korth moved, seconded by Kellner, to approve the Minutes of the April 12, 2018 meeting. **Ballot:** *Ayes –Breathnach, Kellner, Hansen, Metschke and Korth. Nays: None. Abstain: None. Absent: None. Motion carried.*

III. REGULAR AGENDA

1. **PUBLIC HEARING AND DECISION** – Jeffrey and Carri Siedlik have submitted an application for consideration of a Variance to the Sarpy County Zoning Regulations, Section 16 - RD-50 Two Family Residential District, 16.4 Height and Lot Requirements, front yard setback requirement for a single family dwelling on a parcel legally described as Lot 1, Hanson's Lake Replat 13, as surveyed, platted and recorded in Sarpy County, NE. Generally located south of La Platte Road and Bojanski Drive.

Donna Lynam, Assistant Director, gave the background information on this variance request as outlined in the Planning Department's Staff Report:

The Hanson's Lakes Subdivision, platted in 1975, was originally zoned Seasonal Recreational Housing (SRH). The lake front development was platted for construction of cabins to be used for intermittent occupancy on a seasonal basis, not year around living. The Sarpy County Subdivision Regulations in effect for the Seasonal Recreational Zoning District required a front yard setback of 25 feet.

The zoning designation changed from SRH to RD-50 for the lake front developments in the area sometime between 2006 and 2009.

The Hanson's Lakes, Chris Lake and Betty Lake Developments have numerous structures that do not comply with the past or current regulations. Current Planning Department staff has no explanation for this. Staff is working on a re-write of the Zoning Regulations, which will consider an overlay district for all lake front developments. The draft regulations are not far enough along to provide possible language for such an overlay district. Staff does recognize that lake front developments have different aspects that differ from urban residential developments.

The Hanson's Lakes area also lies within the designated Flood Plain for Sarpy County. With this, development occurring towards the higher elevation on the lot (opposite the lake), it would have fewer complications with the Flood Plain Regulations.

A 10-foot front yard variance was granted in 2011 on Lot 2, Hanson's Lake due to the property having peculiar and exceptional practical difficulties, and exceptional and undue hardship, because of the topographic conditions.

The applicant purchased this property, along with the adjacent lot to the west in June of 2018. They submitted for and received approval of an Administrative Replat in October of 2018. They are requesting a variance of the front yard setback to allow for the construction of a new home. The applicant approached the Lake Association about purchasing additional property along the rear lot line to provide additional depth to the lot. The Association's response was not favorable as they did not want to set a precedent for future requests.

A dwelling with a footprint of 1,386 square feet or larger (two-story) could be designed for this property that would meet the setbacks of the RD-50 zoning district. While we understand that this is the home that the applicants desire, it does not meet the minimum requirement of a 25 foot front yard setback. Staff feels this variance is being requested due to the owner's desire to have a larger dwelling with a specific design rather than due to an actual hardship caused by the size of the property.

Ms. Lynam presented the plot plan submitted with the application showing a structure on the site with a 15-foot front yard setback from Bojanski Drive.

Jeff & Carri Siedlik, spoke in support of their variance request.

Mr. Siedlik said they do not have a specific design for the site yet, but have met with builders and designers who have told them this is not a buildable lot with the required front yard setback due to the unique topography on the lot. There is an 11-foot drop on the lot from the road to the beach area, so placing a house 25 feet back will result in a house that will look like it is sitting on an island. Mr. Siedlik said runoff is currently an issue as well because this area is at the lowest part of the road. Due to the drainage issue, the house on the property to the east is being undermined every time it rains. Mr. Siedlik said they intend to work with that property owner on a retaining wall to take care of the drainage issue. Mr. Siedlik said a 15-foot front yard setback would be more consistent with the setback of their cabin to the west that sits 11.5 feet from the road and would provide for a more manageable topography for grading and resolving drainage issues.

Mrs. Siedlik said when they bought this property it was a three for one deal that included the property to the east with a 780 sq. ft. cabin and an outlot on the north side of Bojanski Drive. They initially thought to add onto the existing cabin but because this area is in the floodplain, they were limited on how much more they could improve that structure. Mrs. Siedlik said they were hoping that the replat would give them more buildable area on this site, but it did not because of the narrow lot pin mark on the south. Mrs. Siedlik said an important part of their

process has been communicating with their neighbors to make sure that what they do on the lot makes sense for everybody and that includes helping with the drainage issue and not making it more of a problem.

Breathnach agreed that this is a tough site. He drove around Chris, Hanson and Betty Lakes and noticed that there are a lot of homes that appear to be built closer to the road.

Hansen said she does not understand the lake association's position on the applicant's request to purchase additional property to make this lot wider, saying that it would set a precedent, particularly since the lake is mostly built out.

Mr. Siedlik said the issue is that the lake association does not have a system in place that could accommodate the sale of a portion of the lake property. However, even if they could have moved the lot line, the topography issue and the runoff issue still exist.

Mrs. Siedlik added that purchasing additional property from the lake association would have moved the pin, but it would have resulted in the house looking like it was closer to the lake which is different from all of the other houses on the lake.

In response to a question from Kellner, Mrs. Siedlik said they intend to use their outlot across the street for parking, which is what most people in the area use. She pointed out that because Bojanski Road is not a main thoroughfare, they do not have issues with parking like some areas of the lake. Bojanski Road serves only the cabins around it and they are all located on one side of the road with the outlots located on the other side.

Mr. Siedlik added that they would at least like to have a one car garage on the proposed dwelling, but their intent is to have a garage for storage and a parking area on the outlot.

Ms. Lynam reported that current regulations allow the construction of an accessory building on an improved lot with a single-family dwelling. On outlots in this lake area, property owners can build a "principal structure" for storage such as a pole barn or garage up to a maximum of 1,200 SF so long as it meets the setbacks of the RD-50 zoning district (25-foot front; 25-foot rear; and 5 feet on each side).

Hansen said it appears from the Staff Report that a house just under 1,400 square feet could be built on this site. She is not sure that this lot is any different from any other lot in this area. Her concern is that by allowing this variance, the board is eroding the zoning laws. She noted that staff is working on an overlay district, which Hansen's Lakes has needed forever. Hansen said she does not want to grant a variance against the zoning law when a structure could be built on the site. The reason for the variance is not because of the lot; it is that they want a bigger structure.

Mr. Siedlik said that is not the case at all. He firmly believes a functional single-family house could not be built on this site without this variance. He stated that this is such a topography hardship that either they get the variance or they do not build.

Discussion continued about the status of an overlay district for this area.

Metshke said creating an overlay district on an existing development is complicated because you would not want to take every property out of compliance. In his opinion, granting the variance on the frontage road would make a house more in compliance with the other houses in the area.

Chairperson Hansen opened the public hearing on this request at 6:35 p.m.

Kevin Sopinski, property owner to the west, spoke in support of this variance request. He said the applicant is trying to build a modern, well-planned home on an odd shaped lot that has sat vacant forever, and he believes that a new home on this lot would be a great improvement for the area. He added that many of the homes on Bojanski Drive are located close to the road.

Mr. Sopinski said that while many parts of Chris, Hanson and Betty Lakes have parking issues, especially on the holidays, the properties on Bojanski Drive do not. Bojanski Drive is a very quiet, low traveled road with lots of green space and plenty of places to park.

Ken Weber, resident of the lake and owner of an outlot on Bojanski Drive, said he is a board member (although not here to speak as a board member), and clarified why the board did not vote on moving the lot pin into the lake. He said a decision on that would have to be made by all of the lot owners on the lake, because everyone owns the lake. Consequently, the board could not sell or move that lot pin and recommended that the Siedliks seek other options. The board was not against the Siedliks building a house on the site, they just could not help them with the lot. Mr. Weber said this is a tough lot, and he is in favor of the Siedliks building a house there because it would improve the lake.

With no one else coming forward to speak, Chairperson Hansen closed the Public Hearing at 6:43 p.m.

Breathnach said he does not believe the issue is that the applicant wants a bigger house. In his opinion, this lot is a topographical nightmare in the way that it drops from the road down into the beach area. He would rather give up space on the roadside of the lot rather than on the beach side, which is the value side of these properties. Mr. Breathnach said he is inclined to grant the variance because he would rather see the beach side of this property look consistent with other properties in the area.

Korth agreed. Because the property has sat vacant for so long, and with the applicant's intent to address the drainage problem, and because there are so many other houses that are nonconforming, she too is inclined to grant the variance.

Hansen said she is not certain this variance meets each of the requirements for granting a variance. She said there are other lots that share the same problems that this lot does. Further, this is a cabin lot, not a house lot, so the variance is a convenience or desire of the property owner.

Bruce Fountain, Planning Director said staff has been trying to research ways to address this area but it is difficult because you do not want regulations that put a property in a worse situation. Some of the structures in the area were built when there may not have been any regulations and other structures have been built there that have ignored the regulations.

Ms. Lynam reported that Hansen's Lakes was platted in 1977, so many of the houses existed before there was even a plat.

Kellner said he does not know why the County would create a zoning district to allow something like this lake area to ever happen again.

Breathnach asked how many empty lots are left on the lakeside.

Mr. Weber replied that only four lots (out of 104 lots) remain vacant, and a few of them are held by property owners who just want the extra space for privacy.

Kellner said he completely disagrees that there should be houses built in this area, however, the zoning was changed to allow the construction of houses, so he does not think a structure on this lot should have to remain a cabin, and the site should be able to accommodate a house customary of today's construction standards.

MOTION: Kellner said he finds that hardships exist and that this request meets the three items in Section A of the staff report required by state statutes, and satisfies the six conditions in Section B of the staff report required by state statutes. Kellner moved to APPROVE the 10-foot variance request to allow a 15-foot front yard setback for Lot 1 Hanson's Lake Replat 13, as proposed and presented to the Sarpy County Board of Adjustment by Jeffrey and Carri Siedlik. Motion was seconded by Metschke. **Ballot:** *Ayes – Breathnach, Kellner, Metschke, and Korth. Nays: Hansen. Abstain: None. Absent: None. Motion carried.*

IV. DISCUSSION

1. Set meeting date for approval of minutes.

The next meeting was scheduled for December 18, 2018 to take action on the minutes from this meeting.

V. ADJOURNMENT

There being no further discussion, Chairperson Hansen adjourned this meeting of the Sarpy County Board of Adjustment at 7:20 p.m.

Sharon Hansen, Chairperson

Kelly Jeck, Recording Secretary