

**DRAFT
PAPILLION BOARD OF ADJUSTMENT
FEBRUARY 10, 2015 – 7:00 PM**

The Papillion Board of Adjustment met in open and public session at the Papillion Council Chambers on Tuesday, February 10, 2015 at 7:00 PM. Chairman Michael Mallory called the meeting to order. Planning Assistant Kathy Schmidt called the roll. Members present were Jan Huff, Herb Thompson, and Robert Tribolet. Planning Director Mark Stursma, City Planner Michelle Wehenkel, and City Attorney Karla Rupiper were also present.

Notice of the meeting was given in advance by publication in the Papillion Times on January 28, 2015. Copies of publication are on file at the Office of the City Clerk.

Chairman Mallory led those present in the Pledge of Allegiance.

Chairman Mallory announced that a copy of the Open Meetings Act is posted in the City Council Chambers.

APPROVAL OF THE AGENDA

Motion by Mr. Tribolet, seconded by Mr. Huff, to approve the agenda. Roll call: Four yeas, no nays. Motion carried.

APPROVAL OF THE BOARD OF ADJUSTMENT MINUTES OF OCTOBER 9, 2012

Motion by Mr. Huff, seconded by Mr. Thompson, to approve the October 9, 2012 minutes. Roll call: Four yeas, no nays. Motion carried.

APPROVAL OF THE 2015 BOARD OF ADJUSTMENT SCHEDULE

Motion by Mr. Thompson, seconded by Mr. Tribolet, to approve the 2015 Board of Adjustment Schedule. Roll call: Four yeas, no nays. Motion carried.

PUBLIC HEARING

A request for a variance from §205-103 (Site Development Regulators for Limited Industrial District) and §205-202F(6) (Supplemental Use Regulations for Convenience Storage) for the property legally described as Part of Lot 2, Sarpy County Industrial Park Replat 1, generally located south of the Intersection of 126th Street and Giles Road. The applicant is SGTS LLC.
VAR-15-0001

Chairman Mallory opened the public hearing.

Matthew Hubel, 1044 North 115th Street, Suite 300, (Omaha) with Schemmer stepped forward to represent the applicant. Mr. Hubel provided a site layout plan to each of the board members. He stated the applicant's proposed project is a mini-storage facility located on two lots. The northern lot is in the City of La Vista's jurisdiction and the southern lot is in Papillion's jurisdiction. Mr. Hubel explained that the applicant is requesting variances to make the two lots more contiguous to allow for mini-storage as a single use. He continued that the applicant is requesting variances from: (1) §205-103 (Site Development Regulators for Limited Industrial District) which requires a minimum side yard requirement of ten feet because it would limit paving and (2) §205-202F(6) (Supplemental Use Regulations for Convenience Storage) which requires a landscape buffer yard of twenty feet adjacent to property lines because it would not allow paving. Mr. Hubel then demonstrated the hardship using on a site plan that identified the side yard setback and the buffer yard that would be required. Mr. Hubel explained that if the

buffer yard and side yard setback were required, then there would be no connection between the two lots and an additional drive would need to be added into the development, which would cause security issues as the applicant would like one controlled, secure access to the property.

Chairman Mallory asked Mr. Hubel to show the locations of W. Giles Road and 126th Street on the map. Mr. Hubel demonstrated the same.

Mr. Tribolet asked about an area on the north side of the plan. Mr. Hubel answered the building was an existing trucking company. Mr. Tribolet asked if the building was a developed industrial property. Mr. Hubel answered in the affirmative and that the building had been there a number of years. Mr. Huff asked about the setback at that business. Mr. Hubel answered he was not sure. Mr. Tribolet asked about the location of the Claas tractor and combine factory. Mr. Hubel showed the location of that factory near 126th Street.

Mr. Huff asked Mr. Hubel to show where the ten foot buffer would be on the site plan and Mr. Hubel highlighted that area. Mr. Tribolet asked about the location of power lines on the plan. Mr. Hubel pointed out the location of the poles as well as two OPPD easements in the area.

Chairman Mallory asked for any additional questions of the representative.

Mr. Tribolet asked Mr. Hubel about similar restrictions with La Vista. Mr. Hubel answered that the applicant is working with La Vista and is in the process of replatting. Mr. Hubel added that the applicant does not need a variance from the City of La Vista for a bufferyard or landscaping as their zoning code does not require them.

Mr. Thompson asked Mr. Hubel to explain the hardships that the applicant may incur in addition to the security issue previously discussed. Mr. Hubel explained that if the variance would not be approved, the project may need to be developed as two separate facilities with two driveways which may or may not require two separate offices and additional fencing. Mr. Hubel continued that due to the lack of utilities extending south along 126th Street, there would need to be additional easements. He added that they will have a blanket easement over both lots, ensuring utility service, storm water maintenance, and access in the instance of two separate owners. Mr. Hubel re-emphasized that having two separate accesses with possibly two offices without the ability to connect the two on a contiguous property would be the hardship.

Mr. Huff asked Mr. Hubel to point out the location of the office or offices. Mr. Hubel answered if the applicant is able to build one office, they are proposing the office to be located near 126th Street on the Papillion side.

Chairman Mallory called for proponents and opponents. Seeing and hearing no input from the public, Chairman Mallory closed the public hearing.

Mr. Huff asked Mr. Stursma to clarify if there were one or two variances. Mr. Stursma answered it is a single variance request with two components: 1) a ten foot side yard setback and 2) a twenty foot landscape buffer. Mr. Stursma added that the request can be treated as one variance but both components need to be addressed.

Mr. Thompson asked for clarification regarding the Change of Zone language in the staff report. Mr. Stursma confirmed that approval of the variance should be conditioned based upon the

approval of the Change of Zone. Chairman Mallory added that the applicant had appeared before the Planning Commission on 1/28/15, and the Planning Commission recommended approval of the Change of Zone.

Mr. Huff questioned if it was a conflict for a Board of Adjustment member to also be a member of the Planning Commission. Chairman Mallory responded that City ordinances require one member to be on both boards. Ms. Rupiper clarified that §205-283 of the City Code states that one member of the Board of Adjustment shall be appointed from the Planning Commission. Ms. Rupiper added that this provides continuity and understanding. Mr. Huff thanked Ms. Rupiper for the clarification.

Mr. Thompson asked about any concerns related to the Tri-City Interlocal Agreement listed in the staff report. Chairman Mallory answered that he believed the analysis concluded that if the variance was not granted, then the agreement may need to be amended between the cities of Papillion, La Vista, and Bellevue. Mr. Stursma stated that this information was included in the staff report because one option for the applicant was for one city to cede jurisdiction. He continued that the boundary agreement between Papillion, La Vista, and Bellevue is a long-standing agreement. Mr. Stursma continued that the applicant concluded it was a better to pursue the variance. He concluded that if this property was located in one jurisdiction instead of two, a variance would not be needed.

Chairman Mallory asked if this was the only undeveloped property that spans both the Papillion and La Vista jurisdiction. Mr. Stursma answered that staff reviewed other properties and did not find any others that intersect both Papillion and La Vista.

Mr. Huff asked if the variance would stand if the property was divided in the future. Mr. Stursma answered that one lot could be sold and be under separate ownership. He continued that the applicant has agreed to adopt cross-access easements across the entire property. Mr. Stursma added that, though there may be a single point of access on the La Vista side, there will be permanent easements that allow for right of access on the Papillion side and allow the lots to function as one development.

Chairman Mallory pointed out the section of the staff report that states per Nebraska State Law, the Board of Adjustment must make the following findings in order to grant a variance:

- a. Strict application of this chapter (the zoning ordinance) will produce undue hardship.
- b. Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.
- c. The authorization of such variance will not be of substantial detriment to adjacent property, and the character of the district will not be changed by the granting of the variance.
- d. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

- e. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonable practicable a general regulation to be adopted as an amendment to this chapter.
- f. The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any ordinance or resolution.

Chairman Mallory commended the applicant for their patience. He stated if there was a project that met the conditions and findings for a variance it was this project. He added that granting a variance required four votes of support and four members were present.

Mr. Tribolet asked Mr. Stursma to clarify his comment regarding this property being the only one that was bisected by both Papillion and La Vista boundaries. Mr. Stursma reiterated that this was the only undeveloped property that staff found that was bisected by multiple cities, but there are properties that are in the extra-territorial jurisdiction that are bisected by both Papillion and Sarpy County. He continued that there are processes to amend boundaries with the County, but altering boundaries between cities is difficult due to the agreement between the three cities.

Mr. Thompson asked if the contingencies for the approval of the variance would be 1) contingent on the Change of Zone from AG (Agricultural) to LI (Limited Industrial), 2) subsequent meetings and approval of the City Council and 3) ceding jurisdiction would be approved or amended by the three cities. Mr. Stursma answered that the only contingency is the approval of the Change of Zone. He clarified that the ceding of jurisdiction was an alternative solution for the applicant instead of seeking the variance, but the applicant decided to seek the variance instead of requesting that the cities change their boundaries. Mr. Thompson asked if City Council Meetings are part of the Change of Zone process. Mr. Stursma answered in the affirmative and explained the City Council Change of Zone process involves three meetings (introduction, public hearing, and vote) following the recommendation at Planning Commission.

Chairman Mallory stated that this piece of property meets the required conditions more than any other property he has seen.

Mr. Huff asked about any input from the City of La Vista regarding the property. Mr. Stursma answered that Papillion City Staff met with La Vista City Staff and the applicant. Mr. Stursma continued that the burden has been put on the applicant to go through a permit approval process with both cities, with a Change of Zone in Papillion and a platting process with La Vista. Mr. Stursma added that the work has been doubled for the property owner as building permits are needed from both jurisdictions, but La Vista has also agreed to one storm water management permit through the City of Papillion. He continued that both cities are communicating and La Vista is aware of the variance application.

With no further discussion, a **motion** was made by Mr. Huff, seconded by Mr. Tribolet, to approve the variance from 1) §205-103 (Site Development Regulators for Limited Industrial District) to reduce the interior side yard for the northern lot line from 10' to zero feet and 2) §205-202F(6) (Supplemental Use Regulations for Convenience Storage) to reduce the required landscape bufferyard for the northern lot line from 20' to zero feet contingent on the approval of the Change of Zone. Roll call: Four yeas, no nays. Variance granted.

Chairman Mallory advised Mr. Hubel that he would receive official notice in approximately two weeks.

ELECTIONS

Ms. Wehenkel provided an overview of the election procedure.

Chairperson – **Motion** by Mr. Tribolet, seconded by Mr. Thompson, to open nominations for Chairperson. Roll Call: Four yeas, no nays. Motion carried.

Nominations: Michael Mallory and Jan Huff

Motion by Mr. Thompson, seconded by Mr. Tribolet, to close nominations for Chairperson. Roll Call: Four yeas, no nays. Motion carried.

Mr. Huff asked for clarification regarding Planning Commission and Board of Adjustment Chairperson offices. Mr. Stursma answered that the Chairperson does not need to be on the Planning Commission, but Papillion's City Ordinance does require that one member of the Planning Commission also be a member of the Board of Adjustment. Discussion continued to clarify the roles and eligibility.

Ms. Schmidt announced that Michael Mallory received the majority vote.

Motion by Mr. Tribolet, seconded by Mr. Huff, to approve election of Mr. Mallory as Chairman. Roll call: Four yeas, no nays. Motion carried.

ELECTION- VICE CHAIRPERSON

Motion to open nominations for Vice Chairperson was made by Mr. Thompson, seconded by Mr. Tribolet. Roll Call: Four yeas, no nays. Motion carried.

Nominations: Jan Huff

Motion by Mr. Thompson, seconded by Mr. Tribolet, to close nominations for Vice Chairperson. Roll Call: Four yeas, no nays. Motion carried.

Ms. Schmidt announced that Jan Huff received the majority vote.

Motion by Mr. Tribolet, seconded by Mr. Thompson, to approve election of Mr. Huff as Vice Chairman. Roll call: Four yeas, no nays. Motion carried.

Chairman Mallory expressed appreciation for his election as Chairperson.

OTHER BUSINESS

Chairman Mallory acknowledged the passing of Buzz Snodgrass and his contributions to the Board of Adjustment.

Mr. Thompson asked if the Mayor is accepting names for the vacancy on the Board of Adjustment. Mr. Stursma answered that, for the regular member position, the person would

need to reside in the extra-territorial jurisdiction. Mr. Stursma added that the Mayor is always looking for people who are interested in serving on a City board.

Mr. Huff thanked staff for their work.

Mr. Stursma advised the Board of Adjustment members of the upcoming NPZA conference in Kearney on March 11-13, 2015 and that there were funds and applications available if Board of Adjustment members would like to attend.

Mr. Tribolet made a **motion**, seconded by Mr. Thompson to adjourn the meeting. Roll Call: Four yeas, no nays. The meeting adjourned at 7:52 PM.

Chairman Michael Mallory