

MINUTES OF BOARD OF ADJUSTMENT
SEPTEMBER 11, 2008
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Chairperson Bosshamer called the meeting to order at 4:00 o'clock P.M. with a quorum present on September 11, 2008 at the Buffalo County Board of Supervisors room in the Buffalo County Courthouse, Kearney, Nebraska.

Agenda for such meeting was regularly posted as required by law. Present were: Chairperson Ann Bosshamer, Larry Fox, Marlin Heiden, Sharon Martin, Lloyd Wilke and alternate Barb Pemberton Riege. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and three members of the public.

Chairperson Bosshamer announced we do abide by the open meeting act and there is a copy posted in the County Board room and copies are available for anyone wanting to see it. The public forum was opened at 4:00 P.M. No one was present. The public forum closed at 4:00 P.M.

Chairperson Bosshamer opened the hearing at 4:01 P.M. for the amendment of the variance originally filed by Gary W. Day for Lot 86, Village of Odessa, Buffalo County, Nebraska. The original variance was heard by this Board on March 8, 2007. Thereafter, Board heard testimony regarding application for the amendment of the original variance submitted by Mr. Day, concerning property described as Lot 86, Village of Odessa, Buffalo County, Nebraska.

Deputy County Attorney Hoffmeister explained the process of a variance versus a special use permit to the Board of Adjustment.

Deputy County Attorney Hoffmeister asked the following questions:

1. If Day had applied for the original variance?
2. If he had recently rezoned this property?
3. If Day had demolished this building?
4. If it was feasible to demolish this building?
5. If the building was weather tight?
6. Are the pillars to the east still present?
7. Where are the openings of the building located?
8. Do you think the brick building is more valuable than mini storage facilities?

Day responded as follows:

1. He had applied for the original variance.
2. He had asked that his entire property that he owns is rezoned but everything but this Lot 86 had been rezoned to Commercial by the County Board of Supervisors.
3. Day had not demolished this building upon advice of his attorney because of the property dispute with the neighbor to the north.
4. It is not feasible to demolish this building.

5. He has reinforced the trusses. He has also insulated the walls and put two radiant heaters in this building.
6. He removed the two pillars that originally were on the east side of this building. He also removed a 20' addition on the west side of the building. The original building was built in 1926.
7. There is now one overhead door on the west, one regular door on the west and one regular door on the east side of the building for entry/exit.
8. Day thinks the brick structure is more valuable than removable storage units. This is now a solid structure.

Hoffmeister advised the Board of Adjustment the changes that had been added to the zoning regulations as of March 11, 2008 on Section 8.4 as follows:

8.4 YARD REGULATIONS: (Resolution 3-11-08)

8.41 FRONT YARDS: The front yards heretofore established shall be adjusted in the following cases: (Resolution 3-11-08)

Where forty percent (40%) or more of the frontage on one side of a street between two intersecting streets is developed and the buildings on this side of a block have observed a front yard greater in depth than herein required, new buildings shall not be erected closer to the street than the average front yard so established by the existing buildings provided that no building shall be required to have a front yard setback of more than fifty (50) feet.

Where forty percent (40%) or more of the frontage on one side of a street between two intersecting streets is developed with buildings that have a front yard less than the required, new buildings shall not be erected closer to the street than the nearest building on the block.

Hoffmeister said since this resolution was passed, Day would not have had to ask for the relaxation of setbacks on the east side. This building is actually farther from the road to the east than the two other homes on this block.

Day said there use to be an entrance on the south but he has since closed up the entrances on the south.

Heiden asked if Day planned any more doors on the north. Day replied no, not at this time. Day thought the doors on the west and east sides were sufficient.

Day said he does not have all of the storage units rented out. He currently does not have any rented out. He needs space to store cabinets since his business has recently gotten a big contract. The cabinets for the current job that he is working on needs to be in a climate controlled area. He has let the brick building sit idle until this matter is resolved. He hopes to be able to use this brick building for storage of his cabinets.

Martin said the purpose of the building has changed and he now needs storage for himself.

Marcia Gugelman owns two properties in Odessa and has questions on the upcoming Planning & Zoning meeting which Hoffmeister said he would talk to her later. Gugelman said Day has made this building look better.

Wilke stated Day has put the cart before the horse since all the work has been done on the building already.

Day said he now knows he should have come before the Board before he updated the building.

Wilke agreed the building does look much better.

Heiden said this all came to a head when he found out the neighbor to the north had encroached on his property.

Day thinks this all started when he trimmed bushes that were encroaching on the north side of his property. He told the Board the events that had occurred with the property dispute. That was when he contacted his attorney and his attorney advised him not to tear down the building.

Martin asked Day what he wanted to do next. He is asking to amend the original variance to be able to use the building. He will not be doing any additional work on this property.

Heiden asked if he is putting up a fence. Day replied he had put up a fence on his property line where he was able. The neighbor's fence is on his property but he will not be removing that fence. She has abandoned the property where the bushes were and Day has now put up a fence at that location. There is a question on the vacation of the alley and he won't put up a fence over the alley until that issue is resolved.

Hoffmeister told the Board we need to have three items amended from the original variance.

No one spoke in opposition. Chairperson Bosshamer closed the public hearing at 4:35 P.M.

Motion was made by Heiden, seconded by Wilke to amend the original variance of March 8, 2007 on the following three items:

1. To allow the brick building to remain on the property.
2. The storage building may have an entry/exit on the south, west and east side of the brick building and there may be an overhead door on the west side of the building.
3. The east setbacks are now in compliance since Section 8.41 has been added to the Buffalo County Zoning Regulations so there is no need to relax the setbacks on the east side of this property.

This has been requested by Gary W. Day for property described as: Lot 86, Village of Odessa, Buffalo County, Nebraska because the factors were met as per the Buffalo County Zoning Regulations 9.3, subsection #3:

3. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of adoption of the Zoning Resolution, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardships, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of these zoning regulations, but no such variance shall be authorized unless the Board finds that:
 - a. The strict application of the regulation would produce undue hardship;
 - b. Such hardship is not shared generally by other properties in the same zoning district and 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; and
 - d. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

Voting yes were Heiden, Wilke, Bosshamer, Fox and Martin. Voting no: none. Absent: none. Motion carried.

Klein stated this resolution would be filed in the Register of Deed's office against the property and a copy would be sent to Day.

Moved by Fox, seconded by Martin to approve the minutes of June 14, 2007 meeting of the Board of Adjustment as mailed. Voting yes were Fox, Martin, Bosshamer, Heiden and Wilke. Absent: none. Voting no: none: Motion carried.

Moved to adjourn at 4:42 P.M. until which time the Board of Adjustment is called into session again.