

MINUTES OF BOARD OF ADJUSTMENT
JANUARY 8, 2009
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Chairperson Ann Bosshamer called the meeting to order at 4:00 o'clock P.M. with a quorum present on January 8, 2009 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: Ann Bosshamer, Marlin Heiden, Sharon Martin, Lloyd Wilke and alternate Barb Pemberton Riege. Absent: Larry Fox. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Janice Taubenheim in the absence of Buffalo County Zoning Administrator LeAnn Klein and two 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.

Larry Fox arrived at 4:01 P.M.

Chairperson Bosshamer opened the hearing at 4:01 P.M. for the zoning variance filed by Lana Sullwold for the West 288.0 feet of the North 216.0 feet of Government Lot 1 in Section 31, Township 9 North, Range 17 West of the 6th p.m., Buffalo County, Nebraska, containing 1.428 acres, more or less, of which 0.218 acres, more or less, are presently being used for road purposes. This has been continued from the December 4, 2008 meeting. Thereafter, Board heard testimony regarding application of the variance submitted by Lana Sullwold, concerning property in Buffalo County, Nebraska.

Lana Sullwold has nothing new to present. Ag land should remain AG land and she didn't know DEQ and zoning were the same. She wants to maintain the value of the property. The well was just put in a year ago and she was told the well will last 100 years and the water shouldn't be a problem. This home was built in 1963 and other people have been grandfathered in. She feels she is being discriminated against since she inherited the home from her father. She said there are 108 total acres.

Deputy County Attorney Hoffmeister told the Board of Adjustment that as allowed in Buffalo County's Zoning Regulations, three acres are required in AG zoning district as minimum number of acres and 3 acres may be reduced to 70,000 square feet in a County Board approved subdivision in AGR zoning district with the subdivision also subject to review and compliance by Nebraska Department of Health.

Heiden asked what the distance of the well from the septic is and also if there had been a percolation test done. Heiden said the Department of Environmental Quality has strict rules that

require a certain distance between well and septic tanks. The Sullwolds were unsure of the exact distances.

Deputy County Attorney Hoffmeister read the following to the Board of Adjustment:

9.3 INTERPRETATIONS AND VARIANCES

9.31 The Board of Adjustment shall, subject to appropriate conditions and safeguards as specified in these regulations, have the following powers (Ref. 23-168.03 R.S. Neb.):

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or Planning Commission based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;
2. To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any maps, or for decisions upon other special questions upon which the Board is authorized by any such regulation to pass; and
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.

9.32 No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general

or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

9.33 In exercising the above-mentioned powers such Board may, in conformity with the provisions of said sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such orders, determine time limitations for commencement and substantial completion of work, unless otherwise specifically stated, construction requested on such variance shall commence within 120 days after authorization and shall be substantially completed two years after commencement, requirements, decisions or determinations as shall be proper, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation. (Resolution 10-10-03)

Hoffmeister handed out State Statute 23-168.03 to the Board members.

Sullwold told the Board she had just inherited this property a couple of years ago. The Sullwolds did not know about zoning.

Bosshamer questioned how many buildable acres there was. The survey said there were 1.2 buildable acres.

Heiden said the grandfathering would not apply to them since they were now trying to split off the home from the remainder of the property.

Chairperson Bosshamer closed the public hearing at 4:30 P.M.

Motion was made by Wilke, seconded by Heiden to deny the variance received from Lana Sullwold for the West 288.0 feet of the North 216.0 feet of Government Lot 1 in Section 31, Township 9 North, Range 17 West of the 6th p.m., Buffalo County, Nebraska, containing 1.428 acres, more or less, of which 0.218 acres, more or less, are presently being used for road purposes because it did not meet the following based on Section 9.3 of the Buffalo County zoning regulations:

- 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.

It does not meet the requirements of a 3 acre requirement or meet the requirements as set forth by the Nebraska Department of Environmental Quality. Additionally, the lot size of applicant's property at time of adoption of zoning was 108 acres. The application seeks permission to break off a farmstead from the 108 acres. At time of adoption of zoning the applicant's property comprised of 108 acres did not have exceptional narrowness, shallowness, or shape or exceptional topographic conditions or other extraordinary and exception situation or conditions that strict application of the zoning regulations causes exceptional and undue hardships upon the owner of the property. The planned break off lot is roughly little more than one acre, taken from the 108 acre tract, sought to be created after adoption of countywide zoning, this break off lot will create an unacceptable, nonconforming lot.

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

Moved by Martin, seconded by Fox to approve the minutes of December 4, 2008 meeting of the Board of Adjustment as mailed. Voting yes were Martin, Fox, Bosshamer, Heiden and Wilke. Voting no: none. Absent: none. Motion carried.

Moved to adjourn at 4:39 P.M. until which time the Board of Adjustment is called into session again.