

MINUTES OF BOARD OF ADJUSTMENT
MAY 14, 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 May 14, 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, Larry Fox, Sharon Martin, Lloyd Wilke and alternate Barb Pemberton Riege. Absent: None. Also present were Buffalo County Deputy Attorney Melodie Bellamy, Buffalo County Zoning Administrator LeAnn Klein and one member 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 to address the Board. The public forum closed at 4:00 P.M.

The Bylaws of the Buffalo County Board of Adjustment were discussed. Riege questioned the definition of rebuttal in Section 7 in Article III. She also noted a correction in Article IV that Supervisors should replace Commissioners. Discussion followed with the proposed change.

Motion was made by Heiden, seconded by Fox to approve the Bylaws of the Buffalo County Board of Adjustment with the noted change. Voting yes were Heiden, Fox, Bosshamer, Martin and Wilke. Voting no: none. Absent: none. Motion carried.

Chairperson Bosshamer opened the hearing at 4:10 P.M. for the zoning variance filed by Trenton Snow for Linda Bailey and Judy West for Lot 1, Block 3, Homestead Subdivision located in the NE ¼ of the NW ¼ in Section 20, Township 9 North, Range 16 West of the 6th p.m., Buffalo County, Nebraska. Thereafter, Board heard testimony regarding application of the variance submitted by Linda Bailey and Judy West, concerning property in Buffalo County, Nebraska.

Surveyor Trenton Snow represented the owners and told the Board they would like to sell off the West 37' from Lot 1 and sell this to the neighbor to the west which is Lot 8, Block 3, Homestead Subdivision. They would extend the lot line from the south directly to the north. The neighbor to the west can mow this easier than the applicants can. Snow told the Board they will have to comply with the State's requirements as far as well and septic requirements. There are no neighbors that oppose this split. The utility easements do not need to be vacated at this time.

Fox asked if there were any utilities in this area currently. Snow responded there are no utilities that occupy this area at this time.

Heiden questioned where the well and septic are located. Snow responded he thought the well was on the east side of Lot 1. Heiden stated if this is changed, it throws out the grandfather clause.

Klein stated she had mailed a copy of the platting for Homestead Subdivision to each of the Board members so they might see the line that divides these lots.

Snow said even with this change, Lot 1 is larger than Lots 2, 3 or 4.

Martin questioned if Heiden was concerned about the size of Lot 1 for future septic and well requirements.

Heiden questioned if this is a hardship, but thinks this is monetary only. This is not a unique lot. He would like to see the notation of well and septic locations on future applications.

Snow responded this requirement should be listed on the application. He said anything under three acres need DEQ approval.

Heiden asked if DEQ approval should be approved first.

Bellamy responded we can't really hinge a decision on DEQ approval. These are two separate entities that need to give approval. If the County approves something it would be contingent on also getting approval from DEQ.

Heiden also asked if the utility easements should also be moved.

Snow thought the Board of Adjustment could not change utility easements. This could be done with a Minor Subdivision and they would have a separate instrument to address the easement change. He said the utility companies are using the easements on the front of each lot.

Bellamy noted a utility easement could not be moved until the utility companies had been properly notified.

Martin questioned if we approve this, DEQ could still stop it.

Wilke noted if the easement was moved, that would make Lot 1 smaller yet.

Bosshamer noted the Board of Adjustment would base their decision on the 4 items listed in Section 9.31 #3.

Martin questioned if the owners would have additional problems with this lot in the event this Lot 1 is sold.

Heiden questioned how many acres are in Lot 2 and Lot 3. Snow responded Lot 2 and Lot 3 each have 1.02 acres.

Snow noted the footage of 254.28 as shown on Lot 2 is incorrect and a correction would be made to show 243'.

Bosshamer asked if this Lot 1 is steeper.

Trenton stated this Lot 1 has a slight rise.

Martin questioned why not change these lot lines. The other lots are also not in compliance and are smaller than Lot 1.

Heiden questioned what the hardship is.

Zoning Administrator Klein read Section 9.31 #3, a, b, c & d of the Buffalo County Zoning Regulations stating the rules allowing interpretations and variances for the Board of Adjustment.

Bosshamer questioned how far the shed was from the proposed lot line. Snow said the shed is approximately 17' from the proposed lot line. Snow said if the well or septic goes bad, they will need approval from DEQ.

Martin asked if we are creating a hardship for these two lots by not approving this variance.

Snow told the Board that if this is approved, they will still need DEQ approval in the event the septic needs to be replaced.

Bellamy told the Board they can't require showing the placement of the septic and well now, when it never has been required on previous applications.

Martin believes in the rights of land owners in being able to do what they want with their land. We are not DEQ and cannot determine what they need.

Wilke asked why they couldn't split this piece off and sell to their neighbor.

Klein told the Board that under Section 2.3 of our zoning regulations, a split cannot be done if it is smaller than three acres unless they have approval from the Board of Adjustment.

Martin stated the Board of Adjustment is not DEQ and these decisions need to be approved by DEQ.

Riege questioned the prior variance request also received in Homestead Subdivision the Board of Adjustment recently approved.

Chairperson Bosshamer closed the public hearing at 5:00 P.M.

Motion was made by Martin, seconded by Fox to approve the variance received from Linda Bailey and Judy West to allow to split off the West 37' of Lot 1 and add the 37' to Lot 8, Block 3, Homestead Subdivision located in the NE ¼ of the NW ¼ in Section Twenty (20), Township

Nine (9) North, Range Sixteen (16) West of the 6th p.m., Buffalo County, Nebraska, because it does 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.

The Board finds the degree of nonconformity is shared by the entire neighborhood. A minor subdivision change will need to be filed to complete this process. This variance allowing transfer of land between two nonconforming lots of record shall commence, by survey or staking, within 120 days after authorization and shall be completed, i.e. filed of record, two years after commencement.

Voting yes were Martin, Fox and Bosshamer. Voting no: Heiden and Wilke. Absent: none. Motion failed to pass. The Board of Adjustment Bylaws requires a motion to be approved by at least four members present.

Moved by Heiden, seconded by Fox to approve the minutes of April 9, 2009 meeting of the Board of Adjustment as mailed. Voting yes were Heiden, Fox, Bosshamer, Martin and Wilke. Voting no: none. Absent: none. Motion carried.

Motion by Fox to adjourn at 5:10 P.M. until which time the Board of Adjustment is called into session again.