

MINUTES OF BOARD OF ADJUSTMENT  
SEPTEMBER 13, 2012  
BUFFALO COUNTY COURTHOUSE BOARDROOM  
4:00 P.M.

Chairperson Fox called the meeting to order at 4:06 P.M. in the Buffalo County Courthouse boardroom on September 13, 2012.

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

Chairperson Fox announced we do abide by the open meeting act, there is a copy posted in the County Board room and copies are available for anyone wanting to see it.

Notice of the meeting was given in advance thereof by publication in the legal newspaper. A copy of the proof of publication is on file in the Zoning Administrator's office. Advance notice of the meeting was also given to the Board of Adjustment and availability of the Agenda was communicated in the advance notice. The agenda is available for anyone wanting a copy of the agenda.

The public forum was opened at 4:06 P.M. No one was present. The public forum closed at 4:06 P.M.

Chairperson Fox opened the public hearing at 4:06 P.M. for the variance request of Douglas and Pamela Deterding for property located in the South Half of Lot 24 of Section Seven (7), Township Nine (9) North, Range Sixteen (16) West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska except part described as follows: Beginning at South quarter corner being also Southeast corner of said Lot 24, thence North  $0^{\circ} 42' 10''$  West (bearing assumed) a distance of 242.17 feet along East line of said Lot 24, thence North  $89^{\circ} 50' 20''$  West a distance of 202.96 feet, thence South a distance of 242.74 feet to the South section line of said Section 7 being also the South line of said Lot 24, thence East a distance of 200 feet along said section line to the South quarter corner and the true point of beginning. They are asking for a variance to relax the 50' required setback. Thereafter, the Board heard testimony regarding application of the variance submitted by Douglas and Pamela Deterding concerning property in Buffalo County, Nebraska.

Douglas and Pamela Deterding were present and told the Board they built the home in 1973. He had previously built a shop in his parent's house but eventually his parent's home will be sold so he wants to build a shop and breezeway to be attached to his home located at 7025 West 85<sup>th</sup> St. He also wants to add a small bathroom in the northwest corner of the shop and tie into the same septic system. He planted spruce trees in 1973 and he can't place the new addition any farther to the north or he would have to cut down the spruce trees and wouldn't be able to use the same septic system. The road has been widened already but he understands why there are setback requirements. He is not planning on placing the addition any closer to the road than what his house is already. It wouldn't obstruct any one's view. The addition is shown on the attached drawing. He doesn't recall any setbacks when his home was built back in 1973.

Hoffmeister questioned what the side setbacks would be. Deterding's parent's home is 10' from property line and Douglas's home with completion of the proposed construction would be approximately 25' from property line.

Hoffmeister also read Section 8.4 from the zoning regulations. He stated that the first subpart of that section doesn't apply to this application, but the second subpart might in that the structure immediately to the east of the proposed construction was 47' 1" from the street line. The problem with that Section is that the inclusion of the applicant's house for a calculation of the 40% of the structures on one side of a street encroached could allow a similar neighborhood type encroachment. However, the problem this application concerned and another previously ruled on about a year ago, was the concept of a rural type block in that Section 8.5 simply states between streets. In this instance, that could be almost a half mile to the west to a county section line road and to the east, past an easement road, to the next public road, making that calculation problematical in that the idea behind Section 8.4 was to make nonconforming structures look conforming if most of the neighborhood's setbacks were nonconforming.

Martin questioned where the water and sewer line is situated. The water line comes in from the north and the sewer comes in from the west.

Heiden asked if he had a layout of the sewer and one of his concerns is adding a bathroom. They also need space for additional leech fields. Deterding stated they would have plenty of room for additional leech fields. He has put in a concrete A frame sewer.

Riege asked where the west property line from his parent's home was. There is a power line easement between the two homes and his father's property line is 10' from property line and his structure would be 25' from property line.

Hoffmeister stated in the event the structure is destroyed more than 60%, the new home would have to be at least 50' from property line. If the Board were to consider allowing a variance, the relaxation would be from 50' to 37' from the road.

Martin asked how many cars go by their property each day. Deterding replied about 20-25 each way.

Heiden commented the addition could be used as a bedroom and future living space. Martin agreed it could easily become a bedroom.

Hoffmeister said this could easily become a residential use building.

Heiden stated removing the trees would not be considered a hardship.

Hoffmeister referred to Section 9.3 of the zoning regulations. He noted that he believed that this variance hearing not only concerned the typical variance issues, but also pertained to a good part of his concern for the need of interpretation of whether Section 8.4 and 8.1 pertaining to accessory use apply or rather how they should apply in this situation. He particularly noted Section 9.3 2 which states this Board has the power and is authorized:

“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.”

He noted that Section 8.4’s required relaxation, if it applied, might also affect the concept of accessory use. By that he stated that this proposed structure could possibly be considered an “accessory use”, because if the Section 8.4 required front yard relaxation did apply, then the proposed use of the structure as a shop could cause this proposed structure to be considered “accessory because it was not in the front yard. He noted the following provision in Section 8.1 pertaining to accessory uses, a use by right:

## **8.1 ACCESSORY BUILDING**

“Buildings and structures may be erected and land may be used for purposes, which are clearly incidental to, and customarily and commonly associated with the main permitted use of the premises. Such accessory buildings and uses shall be so constructed, maintained and conducted as to not produce noise, vibration, concussion, dust, dirt, fly ash, odor, noxious gases, heat or glare which is injurious, damaging, unhealthful or disturbing to adjacent property, or the users thereof, and shall be on the premises of the main use.

Accessory buildings shall not occupy more than thirty percent of the required area for the rear yard. Any accessory building shall have a minimum setback of 3 feet and all garage entrances must have ten (10) feet from the access street or alley. Attached garages are considered part of principal building”.

Hoffmeister, noted that this structure as proposed is probably accessory if 8.4 applied, but it has the potential of becoming something more than a shed/shop type accessory use. It would be wise for the Board to consider its’ potential as being eventually considered an attached garage or living space, but in no event should the structure as a whole be considered for more use than that of a single family dwelling.

Heiden agreed by having a bathroom, it could be used for residential use in the future.

Riege asked if it would be a full bathroom. Deterding replied just a sink and a stool, nothing more.

Hoffmeister stated this is a single family dwelling and the addition would be more than an accessory use.

The Commission discussed what would be concrete in the front of the structure. It would just be an open slab. The breezeway would be enclosed.

The Commission didn’t want another access in this area. It is unsafe to back onto the County road. The concrete pad could be used to turn around so one wouldn’t have to back out onto the road.

Chairperson Fox closed the public hearing at 4:52 P.M.

Motion was made by Riege, seconded by Martin to grant the variance request submitted by Douglas and Pamela Deterding with the following conditions:

1. This is a single family dwelling; with the fact the structure already does not meet the required setback.
2. In the event of destruction of more than 60% of this dwelling, re-building would need to be at the 50' setback as now required.
3. Additional construction as submitted by the plans and drawing submitted by the applicant, incorporated herein by this reference, would be permitted with a setback of no greater than 37' from road right-of-way, not to exceed the existing setback.

This will be on the following legal description:

A tract of land being the South Half (S ½) of Lot Twenty-four (24) of Section Seven (7), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska except part described as follows: Beginning at South quarter corner being also Southeast corner of said Lot 24, thence North 0° 42' 10" West (bearing assumed) a distance of 242.17 feet along East line of said Lot 24, thence North 89° 50' 20" West a distance of 202.96 feet, thence South a distance of 242.74 feet to the South section line of said Section 7 being also the South line of said Lot 24, thence East a distance of 200 feet along said section line to the South quarter corner and the true point of beginning.

1. Strict application of the regulations would produce undue hardship on the applicant.
2. The character of the district will not be changed by granting the variance.
3. The granting of this variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

Voting yes were Riege, Martin, Fox, Heiden and Weiss. Voting no: None. Absent: Wilke. Motion carried.

Hoffmeister told Deterding that as provided by Buffalo County's Zoning Regulation, construction must commence within 120 days and construction must be completed within two years.

A copy of these minutes will be filed with the Register of Deeds and a copy will be sent to the applicant.

Moved by Heiden, seconded by Weiss to approve the minutes of the July 12, 2012 meeting of the Board of Adjustment as mailed. Voting yes were Heiden, Weiss, Fox, Martin and Riege. Voting no: none. Absent: Wilke. Motion carried.

Chairperson Fox adjourned the meeting at 5:06 P.M. until which time the Board of Adjustment is called into session again.