

MINUTES OF BOARD OF ADJUSTMENT
JANUARY 2, 2014
BUFFALO COUNTY COURTHOUSE BOARD ROOM
4:05 P.M.

Chairperson Fox called the meeting to order at 4:05 P.M. in the Buffalo County Courthouse Board Room on January 2, 2014.

Agenda for such meeting was regularly posted as required by law. Present were: Larry Fox, Marlin Heiden, Sharon Martin, alternate Barb Pemberton Riege, Richard Weiss and Lloyd Wilke. Absent: none. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Deputy County Attorney Kari Fisk, Zoning Administrator LeAnn Klein and two members of the public.

Chairperson Fox announced we do abide by the open meeting act 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 4:05 P.M. No one was present. The public forum closed at 4:05 P.M.

Chairman Fox opened the public hearing at 4:06 P.M. Nathan Barry with Advantage Business Services, Inc. was present. The legal description is Lot 18, Block 3, Miracle Hills Estates, a subdivision being the Southwest quarter of Section 2, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska. Barry is asking for a variance for the portion of the home that encroaches on the 50' setback. Barry told the Commission Miller & Associates had done a survey on this property and one corner of the home was in the 50' setback. He said the County had approved the permit and the homeowners association had also approved the permit. He had done everything he was supposed to do.

Heiden stated the original zoning permit showed the setback was 200'. Barry said because of a natural swale that runs through the back of the lot, they had moved the location of the home. Heiden said the natural waterway could have been changed very easily since this is a large lot. Barry told him they wanted a walk out basement. Heiden also said not being able to get title insurance is not a hardship. Barry said he had gone through all the proper channels to get this permit and this permit had been approved by the County.

Hoffmeister asked if the stakes had been moved. Barry replied no they had not been moved. He said he would have moved the house back 7-8' if he had known the setbacks weren't okay.

Martin asked if it was possible to move the cul-de-sac.

Barry said he had checked twice with the County and also checked with the homeowners association and they both had said the setbacks were okay.

Wilke asked if he had submitted a new plan either to the County or homeowners association. Barry responded he had submitted a new plan to the homeowners association but not to the County. He asked the County if they needed a new plan but he was told no.

Hoffmeister told the Commission they would have to re-plat the three lots if that was done.

Rod Flanigan was present and he owns Lots 19 & 20 on the cul-de-sac. He is opposed to moving the cul-de-sac because of the costs involved with moving culverts and other costs involved. He was out at the site after the basement had been dug and he talked to Klein and she said the setbacks were okay.

Heiden said they would be setting a precedent if they were to approve this.

Hoffmeister referred to Section 9.31 of the zoning regulations. He also referred to Section 2.52 where if in the event any nonconforming structure is damaged or destroyed, by any means, to the extent of more than 60 percent of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located. If the structure is destroyed more than 60 percent, it would need to comply with the correct setbacks.

Barry said the majority of the costs would be in the foundation if the home would be destroyed.

Wilke said that would be a true statement with any house that was a nonconforming structure.

Fox asked what choices they had.

Hoffmeister said the permit has already been issued. You would have to amend this zoning permit.

Wilke asked if it was a true statement that LeAnn Klein looked at the property and approved the setbacks. That is a true statement.

Martin said that is why they are looking at changing the cul-de-sac. Heiden thought that would be the simplest solution to the problem.

Hoffmeister said a surveyor would need to determine how much the cul-de-sac would need to be moved.

Barry asked who pays for the movement of the cul-de-sac. There would be a lot of costs involved.

Hoffmeister said there are two alternatives, one is it takes a 4/5 vote, we've made an error and the home would need to be re-built in conformity if is destroyed more than 60 percent and the other alternative is to modify the cul-de-sac.

Wilke asked if they had the authority to move the cul-de-sac.

Hoffmeister responded no, the Commission has no power to move the cul-de-sac.

Weiss stated Mr. Barry did what he thought was correct. We either grant the variance or not grant the variance.

Martin asked how old this subdivision was. Hoffmeister responded it was developed before zoning.

Barry asked if they could just grant the variance on this one property.

Heiden said who would pay for the costs of moving the cul-de-sac. Barry said it would be a big expense to move the cul-de-sac with the utilities etc.

Fox closed the hearing at 5:15 P.M.

Motion was made by Heiden, seconded by Martin to relax the required minimum setback of 50 feet from the public street for the portion of the building lying within 50 feet of the public road as reflected on the survey that accompanied the variance application with the original zoning permit being modified to reflect the structure as it is now situated. In the event the property is destroyed more than 60 percent, the structure will need to be rebuilt in compliance with the correct setbacks. The legal description is Lot 18, Block 3, Miracle Hills Estates, a subdivision being the Southwest quarter of Section 2, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska.

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

A copy of these minutes will be filed with the Register of Deeds together with copy of survey that accompanied the variance application, and a copy will be sent to the applicants.

Moved by Wilke, seconded by Weiss to approve the minutes of the December 19, 2013 meeting of the Board of Adjustment as mailed. Voting yes were Wilke, Weiss, Fox, Heiden and Martin. Voting no: none. Absent: none. Motion carried.

Chairperson Fox adjourned the meeting at 5:20 P.M. until such time they will be called into session.