

MINUTES OF BOARD OF ADJUSTMENT  
APRIL 9, 2015  
BUFFALO COUNTY COURTHOUSE COMMISSIONERS ROOM  
4:00 P.M.

Chairperson Fox opened the meeting at 4:00 P.M. at the Buffalo County Courthouse Commissioners Room on April 9, 2015.

Agenda for such meeting was regularly posted as required by law. Present were: Larry Fox, Marlin Heiden, Sharon Martin, Richard Weiss and Lloyd Wilke. Absent: None. Also present were alternate Barb Pemberton Riege, Buffalo County Deputy 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 4:00 P.M. No one was present. The public forum closed at 4:00 P.M.

Chairperson Fox opened the public hearing at 4:01 P.M. submitted by Scott and Karri Damratowski for property described as Lot 1, Block 3, Madison Way Estates, a subdivision being part of the Southwest Quarter of the Northeast Quarter and part of the North Half of the Southeast Quarter of Section 6, Township 9 North, Range 15 West of the Sixth Principal Meridian, Buffalo County, Nebraska. They are asking for a variance of Section 5.28 of the Buffalo County Zoning Regulations for relaxation of a 50' setback.

Scott Damratowski was present and told the Board he is asking for a 15' relaxation on the northeast edge of his property and to put up a 60' x 40' building on the northeast edge of their property. The road to the east is the issue. He also wants to go as far north as possible to get away from the slough from their pond. He also wants to have an access area between the building and pond to be able to pump out their septic system.

Riege told the Board she would be listening and not voting today.

Wilke asked Damratowski if he had contacted the utility companies. He told the Board he had not contacted them. There is a meter at the northeast edge of his property and where the building would be located would be approximately 25' from the meter.

Damratowski also questioned when the structure would need to be finished because his funding had changed and he was unsure what size the building would be. Fisk told him he would have to commence within 120 days and the structure would need to be completed within 2 years.

Martin questioned where the door would be located. Damratowski told the Board the door would be to the east and there would be a driveway from the east side of the road to the building.

Fisk asked Klein if she had checked on the location of the driveway and Klein told her she had not checked on the driveway location. Klein asked Damratowski if there was anything in the restrictive covenants which would restrict this driveway. He was unsure what the restrictive covenants allowed. They don't have a housing association but do have restrictive covenants.

Fisk told the Board 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.

Martin told Damratowski that she had noticed the house had lots of fill brought in to be able to build the house at that location. She questioned how much would be in the road right-of-way to the east. Damratowski said that it would be about 15' in the right-of-way. Approximately half of the building would be in the right-of-way.

Fisk asked if the building could be moved farther to the south. Damratowski said he possibly could move it a little bit but he would need to keep the access to the pond open to clean out the septic. Fisk also asked if the building couldn't be moved to the southeast corner of the lot or the northwest corner of the lot. Damratowski said the southeast corner wouldn't be an option because of the steep bank and the northwest corner has his leach fields.

Fox asked him what size the building would be. Damratowski said he is unsure what size building it will be at this point.

Martin again asked if he could move his building farther to the west.

Fisk said convenience is not a factor in allowing a variance. It has to be a hardship or by reason of exceptional topographic conditions.

Heiden also asked if he could move the building back to the west. Damratowski said his electrical service is trenched in at about 4' and he is unsure if he wants to put his footings over his electrical service. Heiden asked what type of building he is going to put up. Damratowski said he hasn't really decided what type of structure it would be. He wanted to see what his options were before he would decide on what type of structure it would be. The building would be parallel with the tree row.

Fox questioned Fisk what the hardship would be on this. Fisk told the Board they would have to prove exceptional topographic conditions would be a hardship for the owner in order to grant the variance.

Martin said his option would be to move the building or to have a smaller building.

Heiden asked if moving his building farther to the west would interfere with the drainage to the west end of that lot. Damratowski didn't think that would be a problem.

Scott Javins handed out a sheet of paper which showed two locations of the building and the stopping distance at 35 MPH and a 2 second and 3 second reaction time. He has concerns with the safety issues on the road to the east side of this property and the stopping distances. He lives directly to the north of this property. Item #1 shows a setback of 25 feet from each corner of the road which would reduce the vision from each direction to pedestrians, children and vehicles creating a hazard. Item #2 shows a setback of 50 feet from each corner of the road, which produces less of a blind corner. This setback allows for more reaction time and braking distance.

Martin said this throws a challenge into building on this lot.

Fox said it creates more of a hardship on the neighbors if they allow this variance.

Chairperson Fox closed the public hearing at 4:35 P.M.

Motion was made by Martin, seconded by Heiden to deny the variance for Scott and Karri Damratowski for property described as Lot 1, Block 3, Madison Way Estates, a subdivision being part of the Southwest Quarter of the Northeast Quarter and part of the North Half of the Southeast Quarter of Section 6, Township 9 North, Range 15 West of the Sixth Principal Meridian, Buffalo County, Nebraska because the factors were not 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 Martin, Heiden, Fox, Weiss and Wilke. Voting no: none. Absent: none.  
Motion carried.

Moved by Heiden, seconded by Martin to approve the minutes of the February 12, 2015 meeting of the Board of Adjustment as mailed. Voting yes were Heiden, Martin, Fox, Weiss and Wilke. Voting no: none. Absent: none. Motion carried.

Chairperson Fox adjourned the meeting at 4:35 P.M. until such time they will be called into session.