

MINUTES OF BOARD OF ADJUSTMENT
JULY 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 July 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 Andrew Hoffmeister, Zoning Administrator LeAnn Klein and eleven 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. Several persons were present, but no one provided any comment. The public forum closed at 4:00 P.M.

Chairperson Fox opened the public hearing at 4:01 P.M. submitted by William Bashore on behalf of Golden Eye Properties, L.L.C. for property described as a tract of land being part of Government Lot 1 and part of Government Lot 12 located in Section 7, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska more particularly described as follows: Referring to the Southeast corner of Government Lot 12 in Section 7 and assuming the South line of said Government Lot as bearing North 89° 54' 08" West and on the South line of said Government Lot 12 a distance of 594.75 feet, thence North 00° 37' 20" West a distance of 1006.4 feet to the ACTUAL PLACE OF BEGINNING; thence continuing North 00° 37' 20" West a distance of 435.6 feet; thence North 89° 45' 03" West a distance of 200.0 feet; thence South 00° 37' 20" east a distance of 435.6 feet; thence South 89° 45' 03" East a distance of 200.0 feet to the place of beginning. TOGETHER WITH right of ingress-egress over and across a 60.0 foot strip of land which is located in Government Lot 1 and Government Lot 12 of said Section 7, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, with said 60.0 foot strip of land being more particularly described as follows: Referring to the Northeast Corner of Government Lot 1 in said Section and assuming the North line of said Government Lot as bearing South 89° 45' 03" West and all bearings contained herein are relative thereto; thence South 89° 45' 03" West and on the aforesaid North line a distance of 575.87 feet to the ACTUAL PLACE OF BEGINNING; thence continuing South 89° 45' 03" West and on the aforesaid North line a distance of 60.0 feet, thence South 00° 37' 20" East a distance of 2639.91 feet to a point on the South line of Government Lot 12 in said Section; thence South 89° 54' 08" East and on the aforesaid South line a distance of 60 feet; thence North 00° 37' 20" West and parallel to the West line of said 60 foot strip of land a distance of 2640.27 feet to the PLACE

OF BEGINNING. They are asking for a variance of Section 5.36 of the Buffalo County Zoning Regulations for relaxation of the three acre requirement.

Bashore told the Board he wants to divide a two acre parcel into 2 one acre lots. The adjoining lots are residential lots. When he purchased this property he was told by the County Surveyor he wouldn't have a problem building on both of these lots. The survey was done on November 25, 1998 and was filed with the State on February 3, 1999 but was never filed with the County. Kearney has a need for additional housing and he intends to put nice homes at this location. He has submitted a drawing which shows the placement of the septic systems and the well in addition to the placement of the homes. Zack Stegeman with Stegeman Solutions, LLC drew out the location of the septic systems and the two wells. He also showed where the primary and secondary leach fields would be located.

Hoffmeister told him that percolation tests would be required even if this Board granted the requested variance. He also noted that the streets of the Vista Del Valle subdivision, which would serve the subject property, are 60' wide. The streets are of a nonconforming width in that Buffalo County requires a minimum public street width in subdivisions of 66' pursuant to Buffalo County's Subdivision Regulations Section 4.03. He questioned if the houses could be moved back an additional three feet to allow for the expansion of the road to 66' if needed. Bashore said there would be no problem with that.

Hoffmeister noted that pursuant to Buffalo County's Zoning Regulations, the issue with the request was the following zoning regulation:

“2.51 NONCONFORMING LOTS OF RECORD: The Zoning Administrator may issue a Zoning Permit for any nonconforming lot of record provided that:

Said lot is shown by a recorded plat or deed recorded with the Buffalo County Register of Deeds to have been owned separately and individually from adjoining tracts of land, at a time when the creation of a lot of such size and width at such location would not have been prohibited, and

Said lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the zoning regulation, and

Said lot can meet all yard regulations for the district in which it is located.”

In the situation before this Board, a survey of the land in question was completed November 25, 1998. This survey was filed with the State Surveyor's Repository on February 3, 1999. This survey has not filed with the Buffalo County Register of Deeds. Even if this survey were properly filed with the Buffalo County Register of Deeds, there would still be an issue concerning nonconformity. This would be because the parcel or two parcels in question would be considered one lot for purposes of zoning due to nonconformity rules in that the subject property was considered to be two lots, the two lots were never owned in separate and distinct ownership. As such, for zoning purposes, the subject property whether described as one lot or two lots, is considered to be “one” lot, upon which only one residence is allowed, absent a variance being granted.

Hoffmeister also questioned what we want to encourage in this neighborhood. These are nonconforming lots of record. It was noted that in the adjoining Vista Del Valle Subdivision, a subdivision which predated Buffalo County's enactment of zoning several one-acre lots were created. However, several of the originally created one-acre lots had become larger than one-acre lots due to mutual ownership. Due to Zoning Section 2.51, two or more nonconforming lots, when owned by the same owner continue to be nonconforming until total size of all commonly owned nonconforming lots equals the minimum lot size required by the code. In other words, several nonconforming lots are considered one lot for purposes of land use planning. The tract in question was located in the Agricultural Residential District (AGR). In the AGR zoning District pursuant to Sec. 5.36(1) there are three minimum lot sizes, depending upon the situation. There is the 3-acre minimum lot size, which is practically a use by right lot size. The 3-acre lot size is state wide exempt from DEQ minimum lot size regulations pertaining to sanitary water and sewer purposes. Next there is the 70,000 sq. ft. minimum lot size in approved subdivisions. This size would require DEQ approval usually relating to percolation testing prior to the subdivision being accepted by the County Board. Lastly, there is the 1-acre minimum size lot that can be allowed in the AGR Zoning District. The one-acre size can only exist where the lot(s) are serviced by a community water supply and community sewer system. He also told the public that the concept of nonconformity was to cause over time, nonconforming lots, uses, and structures to become conforming. He asked for public comment as to how the plans of Bashore will this impact the adjoining neighbors? He also asked about what sized lots existed that abutted the subject property. As to size of the lots, several lots in the Vista Del Valle were one-acres, but some were 1.5 to 2.0 acres. However several properties that were not in the Vista Del Valle that contained rural residential type housing were comprised of 3 to 5 acre parcels. The Board of Adjustment's packet contained this information in an aerial GIS photograph map together with an overhead projection that was presented to the public at the public hearing.

Wilke questioned what would the hardship be. Bashore purchased these lots with the understanding he could place two homes at this location. He would much rather build two \$200,000 houses and be able to sell them.

Hoffmeister said right now he can build one home at this location. Bashore said he would improve these lots by building nice homes at this site.

Scott Frauen has concerns of mobile homes going in at this location. He owns property to the west of this property. He doesn't want any more homes than what was planned originally. Increased density of the area and use of a privately maintained road was an issue to him. If this parcel were allowed to develop two one-acre residential lots, there would be more of the same. That to him was not a good plan for the area.

Ethan Vasko owns property to the east and his concern is what type of homes is going to be built.

Cheryl Hjort doesn't like to see a lot of rentals.

Hoffmeister told her zoning does not control rentals.

Martin asked Bashore how many years has he owned this lot. Bashore responded two years.

Krista Gutchewsky would prefer one home rather than two homes at this location. She was concerned by an increase in density, an increase in use of a privately maintained road, and the encouragement of smaller nonconforming lots. She did not believe that the increased use would benefit the neighborhood.

Tony Miller has two rentals across from his property. The owner had brought in two flooded manufactured homes and they didn't abide by the covenants.

Vasko has a two acre lot and he has only one home. He couldn't split it off to put another home on his property.

Gutchewsky also asked what's to prevent someone else from splitting off their property to add additional homes.

Martin stated it is easier to maintain one acre lots.

Hoffmeister questioned how many of these lots in this area are left to build on. Would there be room for nine additional homes?

Sara Nachtigal said their home is under covenants in their subdivision but this lot is not under any covenants.

Bashore said his lot is under the covenants.

Scott Frauen also has concerns of water runoff to the west.

Tony Miller said the association pays for gravel for Lindsay Road.

Heiden told Bashore he likes how he drew out the wells and septic systems. He also said they would need to do percolation tests at this site.

Vasko asked if there would be basements under these homes. Bashore replied there would be finished basements.

Chairperson Fox closed the public hearing at 4:45 P.M.

Motion was made by Wilke, seconded by Heiden to deny the variance for William Bashore for Golden Eye Properties for property described as a tract of land being part of Government Lot 1 and part of Government Lot 12 located in Section 7, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska more particularly described as follows: Referring to the Southeast corner of Government Lot 12 in Section 7 and assuming the South line of said Government Lot as bearing North 89° 54' 08" West and on the South line of said Government Lot 12 a distance of 594.75 feet, thence North 00° 37' 20" West a distance of 1006.4 feet to the ACTUAL PLACE OF BEGINNING; thence continuing North 00° 37' 20" West a distance of 435.6 feet; thence North 89° 45' 03" West a distance of 200.0 feet; thence South 00° 37' 20" east a distance of 435.6 feet; thence South 89° 45' 03" East a distance of 200.0 feet to the place of beginning. TOGETHER WITH right of ingress-egress over and across

a 60.0 foot strip of land which is located in Government Lot 1 and Government Lot 12 of said Section 7, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, with said 60.0 foot strip of land being more particularly described as follows: Referring to the Northeast Corner of Government Lot 1 in said Section and assuming the North line of said Government Lot as bearing South 89° 45' 03" West and all bearings contained herein are relative thereto; thence South 89° 45' 03" West and on the aforesaid North line a distance of 575.87 feet to the ACTUAL PLACE OF BEGINNING; thence continuing South 89° 45' 03" West and on the aforesaid North line a distance of 60.0 feet, thence South 00° 37' 20" East a distance of 2639.91 feet to a point on the South line of Government Lot 12 in said Section; thence South 89° 54' 08" East and on the aforesaid South line a distance of 60 feet; thence North 00° 37' 20" West and parallel to the West line of said 60 foot strip of land a distance of 2640.27 feet to the PLACE OF BEGINNING 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 Wilke, Heiden, Fox, Martin and Weiss. Voting no: none. Absent: none.
Motion carried.

Moved by Weiss, seconded by Heiden to approve the minutes of the April 9, 2015 meeting of the Board of Adjustment as mailed. Voting yes were Weiss, Heiden, Fox, Martin and Wilke.
Voting no: none. Absent: none. Motion carried.

Chairperson Fox adjourned the meeting at 4:50 P.M. until such time they will be called into session.