

MINUTES OF BOARD OF ADJUSTMENT
JANUARY 12, 2017
BUFFALO COUNTY COURTHOUSE COMMISSIONERS ROOM
4:00 P.M.

Zoning Administrator Klein opened the meeting at 4:00 P.M. at the Buffalo County Courthouse Commissioners Room on January 12, 2017.

Agenda for such meeting was regularly posted as required by law. Present were: Marlin Heiden, Sharon Martin, Barb Pemberton Riege, Lloyd Wilke and alternate J.C. Ourada. Absent: Larry Fox. Also present were Deputy County Attorney Kari Fisk, Zoning Administrator LeAnn Klein and three members of the public. We do have a quorum.

Klein asked for nominations for Chairperson. A motion was made by Wilke, seconded by Heiden to appoint Sharon Martin for Chairperson. Voting yes were Wilke, Heiden, Riege and Ourada. Voting no: none. Abstain: Martin. Absent: Fox. Motion passed.

Klein asked for nominations for Vice-Chairperson. A motion was made by Martin, seconded by Wilke to appoint Barb Pemberton Riege for Vice-Chairperson. Voting yes were Martin, Wilke, Heiden, Riege and Ourada. Voting no: none. Absent: Fox. Motion passed.

Klein asked for nominations for Second Vice-Chairperson. A motion was made by Riege, seconded by Ourada to appoint Lloyd Wilke for Second Vice-Chairperson. Voting yes were Riege, Ourada, Heiden, Martin and Wilke. Voting no: none. Absent: Fox. Motion passed.

Klein turned the meeting over to Chairperson Martin.

Chairperson Martin 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 4:03 P.M. Several persons were present, but no one provided any comment. The public forum closed at 4:03 P.M.

Chairperson Martin opened the public hearing at 4:04 P.M. submitted by Mitchell Humphrey on behalf of Anita Lorentzen for a tract of land being part of the Northwest Quarter of the Northeast Quarter of Section 30, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 30 and assuming the West line of said Northeast Quarter as bearing S 00° 20' 58" E and all bearings contained herein are relative thereto; thence S 00° 20' 58" E on the aforesaid West line a distance of 604.76 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S 00° 20' 58" E on the aforescribed course a distance of 537.53 feet to a point on the south line of the North 1142.29 feet of the North Half of the

Northeast Quarter of said Section 30; thence N 60° 51' 33" E a distance of 362.29 feet; thence N 00° 20' 58" W a distance of 298.7 feet; thence N 57° 28' 37" W a distance of 246.53 feet; thence S 57° 28' 57" W a distance of 130.47 feet to the place of beginning. Containing 3.38 acres, more or less. TOGETHER WITH rights of ingress and egress over and across the West 40.0 feet of the South 481.76 feet of the North 604.76 feet of the Northwest Quarter of the Northeast Quarter of said Section 30.

The oath was administered by Chairperson Martin to Mitch Humphrey.

Mitchell Humphrey was present and he is representing Anita Lorentzen and he told the Board Anita Lorentzen wants to split this parcel into two lots. She wants to build a home for her mother on one of these lots. He told the Board the drive-way leading into the property is only 40' wide so that is why she is asking for a variance. This property is located across from the landfill and is on 3.38 acres of land as shown on the GIS map on the wall. There is a long drive-way leading into this property. David Owen owns the property to the east, north and south. 56th Street is to the north. The County took additional right-of-way when 56th Street was built. This property is zoned Agricultural-Residential and the landfill is zoned Industrial. The pink line on the GIS map is the City of Kearney's two mile jurisdiction line. Lorentzen was at a meeting a couple of months ago asking to allow an additional home for her mother. Two residences are not allowed on one lot according to the zoning regulations. The City of Kearney has been talking about allowing additional homes for relatives. Once the family member is gone, it turns into an apartment and creates other problems. This is what the City of Kearney is looking at in their housing study.

Humphrey told the Board after meeting with the Planning & Zoning Commission, it was suggested to Anita to split her property into two lots to accommodate the extra home for her mother. She is able to split her property into two parcels, both being over the 70,000 square feet and she would be able to put an additional home on her property.

Dr. Owen reminded Humphrey of a 40' easement on the entire west side of Lorentzen's property for access to Dr. Owen's property which is not depicted on the map he gave the Board. Lorentzen only has rights to 40' to gain access to her property. Her house is only about 30' from the easement on the west side of her property. It is a tough situation with the terrain around her property. Humphrey told the Board we hope you can look at this and relax the 66' requirement. This is similar to the Rowe variance that was heard in February of 2015. Klein and Humphrey were reviewing the meeting minutes of the Rowe variance and noticed we should have relaxed the requirement of the cul-de-sac under Section 4.03 on this application.

Heiden asked why the easement is only shown on part of the map but the easement goes all the way on the west side of the property.

Humphrey was not aware of the 40' easement until Dr. Owen had mentioned it to him tonight. It is a separate document that is recorded. It is not shown on Lorentzen's deed.

Wilke said because of the 40' easement, the building site would need to be moved farther to the east.

Humphrey said that wouldn't be a problem because one of the lots is 74,440 square feet and the other lot is 72,840 square feet, both being over the required 70,000 square feet.

Brent Schake who is also in attendance tonight is the contractor who will handle the DEQ paperwork to get approval. Schake said it shouldn't be a problem with the location of the well and septic on both lots. Both the well and septic placement are shown on the attached plat.

Ourada said the south well is on the 40' easement.

Humphrey replied that would be moved to allow for the 40' easement.

Ourada asked if the leach field shouldn't be on the same lot as the dwelling.

Humphrey replied the leach field is on the same lot as the home is located.

Humphrey also stated they want to relax the cul-de-sac requirement.

Fisk stated this would have to be brought forward under another variance application since adjoining property owners weren't advised of this variance.

Humphrey stated the other application for Rowe was added the night of the hearing when it wasn't on the application.

Fisk stated it is too late to amend the application concerning the cul-de-sac. That will have to be brought up at a later meeting.

Martin asked exactly what are we looking at on this application.

Fisk reminded the Board we are here just to relax the width of the road from 66' to 40'.

Riege asked Humphrey the drawing he submitted shows the property line is different than what the GIS shows. Humphrey stated his map is correct. Dr. Owen owns some of the property south of what Lorentzen owns.

Dr. Owen stated someday he might want to build on his property and he would be using the 40' easement on the west side of Lorentzen's property. He just wants to make sure the building is not constructed on the 40' easement line.

Martin asked how difficult was it to change an easement from 40' to 66'?

Humphrey replied that is a good question. You would need the parties involved to agree to widen the easement from 40' to 66'. He stated the easement would be really close to the existing home and would require quite a bit of dirt work because of the terrain.

Martin than gave the oath to Dr. Owen and he identified himself for the record.

Wilke questioned if there ever would be a through street at this location.

Humphrey replied probably not because it is not financially feasible to put a street through this location.

Dr. Owen questioned if Lorentzen develops this property into two parcels, can one parcel be sold?

Humphrey replied yes, she could sell this parcel.

That concerns Dr. Owen. One property owner is fine.

Riege stated there are lots around Kearney that have well and septic that are located on a little more than ½ acre. That could cause a problem. The City allows this but the County does not.

Humphrey stated the County's regulations allow lots to go down to 70,000 square feet in AGR zoning.

Martin said shouldn't we force them to put a road in because of further developments down the line. This is prime land to build homes on speaking from an agricultural point of view.

Humphrey said these are private easements between two landowners and we really can't force them to put a street in at this time.

Dr. Owen questioned if a road had to be more than 66' road right-of-way.

Currently the zoning regulations require a 66' road right-of-way.

Ourada questioned why we couldn't make this a 66' road right-of-way. We could have the potential for three property owners to be off of this 40' road easement. Ourada is required to have a 66' road right-of-way so why shouldn't this property owner have to have a 66' right-of-way. How are emergency vehicles suppose to access these properties?

Humphrey replied all the parties involved have to agree to a private road.

Heiden said this will only be a private road.

Humphrey replied all the parties involved would have to agree with making this private road into a public road.

Fisk told the Board we probably need to review the standards for allowing a variance. The following must be addressed: 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.

9.32 No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Riege asked if we could continue this until the next meeting. Fisk said that could be done or they could vote on this request to either approve this or deny this application.

Heiden said we can't ask for 66' road when the landowners are happy with a 40' easement.

Fisk told the Board they shouldn't continue until the next meeting unless they think more information will be brought up at the next meeting to help them decide if this meets the criteria of approving or denying this variance.

Riege just thought it might be easier if the property owners had a chance to talk before they made any type of a decision.

Fisk also told the Board that before the applicant can apply for an administrative subdivision in front of the County Commissioners, Lorentzen needs to obtain a variance to allow a 40' easement rather than a 66' right-of-way as what is required in our zoning regulations. Fisk reminded the Board of the standards for allowing a variance as previously stated in these minutes.

Brent Schake was administered the oath by Chairperson Martin. He told the Board what the applicant was intending to do. He has applied and received a permit for a garage/office for this property. If this variance is approved, a second floor would be built above the garage. Schake wasn't aware of the private easement so the building will need to be moved farther to the east.

Dr. Owen's concern is Lorentzen selling off the second lot eventually once her mother no longer lives there.

Fisk went over the points again what the Board needs to base their decision on.

Chairperson Martin closed the public hearing at 5:30 P.M.

Motion was made by Heiden to grant the variance from 66' to 40' because landowners want a 40' easement. Heiden did not find factual findings so motion was withdrawn.

Motion was made by Riege to table this until the next meeting. Motion failed for a lack of a second.

Moved by Ourada, seconded by Riege to deny the variance request because there was no undue hardship. Voting yes were Riege and Ourada. Voting no were Heiden, Martin and Wilke. Motion failed to pass.

The Board of Adjustment then looked at the minutes of the Donald Rowe property. Fisk reminded the Board that the conditions were different from the Rowe property.

Ourada reminded the Board we had to base the decision on the four conditions as stated under Section 9.31 of our zoning regulations.

Heiden said the only question before this Board is if we can grant a variance from 66' to 40'.

Fisk went over the four points again to articulate what the Board needs to find in order to approve this variance.

Motion was made by Riege, seconded by Wilke to grant the variance to allow the 40' based on the fact the easement to the south is also 40' in width. Discussion followed. Fisk said a "little hardship" wouldn't meet the criteria for undue hardship. Riege and Wilke both withdrew their motion.

Riege then made a motion to continue this application to the next meeting. Motion failed for a lack of a second.

Motion was made by Ourada, seconded by Riege to deny this variance submitted by Mitchell Humphrey on behalf of Anita Lorentzen for a tract of land being part of the Northwest Quarter of the Northeast Quarter of Section 30, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 30 and assuming the West line of said Northeast Quarter as bearing S 00° 20' 58" E and all bearings contained herein are relative thereto; thence S 00° 20' 58" E on the aforesaid West line a distance of 604.76 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S 00° 20' 58" E on the aforescribed course a distance of 537.53 feet to a point on the south line of the North 1142.29 feet of the North Half of the Northeast Quarter of said Section 30; thence N 60° 51' 33" E a distance of 362.29 feet; thence N 00° 20' 58" W a distance of 298.7 feet; thence N 57° 28' 37" W a distance of 246.53 feet; thence S 57° 28' 57" W a distance of 130.47 feet to the place of beginning. Containing 3.38 acres, more or less. TOGETHER WITH rights of ingress and egress over and across the West 40.0 feet of the South 481.76 feet of the North 604.76 feet of the Northwest Quarter of the Northeast Quarter of said Section 30 based on the fact that a hardship was not found. Voting yes were Ourada, Riege, Heiden, Martin and Wilke. Voting no: none. Absent: Fox. Motion passed.

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

Chairperson Martin adjourned the meeting at 6:08 P.M. until such time they will be called into session.