

MINUTES OF BOARD OF ADJUSTMENT
AUGUST 13, 2020
BUFFALO COUNTY COURTHOUSE COMMISSIONERS' ROOM
4:00 p.m.

Chairperson Wilke opened the meeting at 4:01 p.m. at the Buffalo County Courthouse on August 13, 2020.

Agenda for such meeting was regularly posted as required by law.

Chairperson Wilke announced the roster changes, by appointment of The Buffalo County Board of Commissioners, for The Board of Adjustment. Larry Fox resigned on February 25, 2020 and was replaced with Rodney Gangwish, who was appointed on February 25, 2020. John Keeney resigned on July 9, 2020, and was replaced with Randy Vest, who was appointed on July 28, 2020.

The following Board members responded to roll call: Rodney Gangwish, Barb Pemberton Riege, Lloyd Wilke, J.C. Ourada, Randy Vest, and alternate Rich White. Quorum is met. Absent: None. Also present were Deputy County Attorney Kari Fisk, Zoning Administrator Dennise Daniels and two members of the public.

Chairperson Wilke began the Re-Organizational Meeting of Officers. Zoning Administrator Daniels called for nominations for Chairperson. A motion was made by Ourada, seconded by Riege to appoint Lloyd Wilke for Chairperson. Upon roll call vote, the following Board members voted "Aye": Gangwish, Riege, Wilke, Ourada, Vest, White. Voting "Nay": None. Abstain: None. Absent: None. Motion carried.

Chairperson Wilke called for nominations for Vice-Chairperson. A motion was made by Ourada, seconded by Vest to appoint Barb Pemberton Riege for Vice-Chairperson. Upon roll call vote, the following Board Members voted "Aye": Gangwish, Riege, Wilke, Ourada, Vest, White. Voting "Nay": None. Abstain: None. Absent: None. Motion carried.

Chairperson Wilke called for nominations for Second Vice-Chairperson. A motion was made by Vest, seconded by White to appoint J.C. Ourada for Second Vice-Chairperson. At this point, Mr. Ourada kindly declined the nomination and stated that he wishes to resign from his position on The Board of Adjustment, due to personal reasons.

Chairperson Wilke again called for nominations for Second Vice-Chairperson. A motion was made by Gangwish, seconded by Riege to appoint Randy Vest for Second Vice-Chairperson. Upon roll call vote, the following Board Members voted "Aye": Gangwish, Riege, Wilke, Ourada, Vest, White. Voting "Nay": None. Abstain: None. Absent: None. Motion carried.

Chairperson Wilke announced The Board of Adjustments abides by the Open Meeting Act and copies are available for anyone wanting to see it, in the rear of the room.

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. Discussion ensued to formally approve the amended agenda. After investigation, no variations were identified between mailed copies and meeting copies.

The public forum was opened at 4:07 p.m. Two citizens of the public were present, but no one provided any comment at that time. However, Deputy County Attorney Kari Fisk reminded The Board of their rights, responsibilities, powers and the duties, in their positions. She recapped the Quasi-Judicial powers, reviewed the statutes regarding their fact-finding missions, and provided real-world examples. The public forum closed at 4:20 p.m.

Chairperson Wilke opened the public hearing for a Variance of Section 8.1 at 4:20 p.m. Kevin Duncan, on behalf of Sharon Eckelberger, is requesting a variance, under Section 8.1, Accessory Buildings, that requires an accessory building or structure to be constructed in the rear yard, located on a tract in Government Lot 3, in Section 31, Township 9 North, Range 16 West of the 6th p.m., Buffalo County, Nebraska.

Chairperson Wilke asked a representative to step forward and to provide evidence to The Board, regarding this hearing. Kevin Duncan, of Duncan-Theis Construction, stepped forward to present the information to The Board. He reiterated that he was seeking a variance to construct a building in the side yard, instead of the required, rear yard. He stated that the topography has about 40 feet of fall, in less than 100 feet, and it would be difficult to move the building for the purposes of a motor vehicle. Mr. Duncan added that the owner was under the impression, upon the purchase the property that she could put up a building. He states that she would not have purchased the property if she had known that she could not put up the building. He reiterated that the topography of the land was creating a problem for moving the building. Mr. Duncan asked The Board for any questions.

Chairperson Wilke asked Mr. Duncan if he could provide more information on the proposed project. Mr. Duncan stated that it would be an accessory building to house the owner's RV. He indicated that the RV would need to be put into a shelter and that her physical abilities would not allow her to traverse from long distances. He added that she would have storage space for maintenance and upkeep such as mowers and there will be limited livestock, such as goats. He stated that there would not be a significant amount of livestock, as stated by code, from the conversation between Zoning Administrator Daniels and Mr. Duncan.

Mr. Ourada asked if the building would be 75 feet by 54 feet. Mr. Duncan confirmed. He stated that a 10-foot area would be a covered area, under an overhang. Mr. Ourada asked if the only overhang would be on the north side of the building. Mr. Duncan confirmed. Mr. Duncan asked if the plans were submitted with the packet. Zoning Administrator Daniels testified that they were not submitted with the original application, as they were not a requirement. Mr. Duncan agreed. He asked if he could offer the plans to The Board. Deputy County Attorney Fisk stated that he may provide the exhibits, as long as he would provide copies for the record. Deputy County Attorney Fisk provided advice to Zoning Administrator Daniels for the purpose of the minutes and for the labelling of exhibits.

Mr. Duncan provided Exhibit A, a copy of the plans, to The Board. Mr. Duncan highlighted the design of the facility. He stated that the design is to be aesthetic, and not similar to a pre-engineered design. There will be overhead doors to allow the owner to drive her RV directly into

the building. Mr. Duncan confirmed with Zoning Administrator Daniels, that the site plan was provided to The Board in their packets and Zoning Administrator Daniels confirmed. Mr. Duncan reviewed the site plan and the 50' radius turn area for the RV. He stated that Duncan-Theis "pushed the building as far as we [Duncan-Theis] could go the rear yard", before it became "unsafe". Mr. Duncan provided Exhibit B, the black and white site plan, which provided the contours of the land, then provided Exhibit C, the colored site plan.

Vice-Chairperson Riege asked if the owner did her own fill work. Mr. Duncan confirmed that it has been filled and stated that she did the work. Vice-Chairperson Riege asked if the work was done after the property was purchased. Mr. Duncan confirmed. Mr. White asked if the intent of the owner was to drive the RV in, from the road, and then out. Mr. Duncan confirmed. Mr. White asked why the building was placed so far from the house, if she did not have good physical ability. Mr. Duncan stated the size of the building played a part in that decision. He also stated that the idea was entertained to build onto the house; however, the edge of the house sits on the edge of the drop-off.

Vice-Chairperson Riege asked how the 50' radius was established. Mr. Duncan replied that was a typical dual-axle driving standard. Discussion occurred between truck and trailer radius and roundabout examples.

Mr. White asked what amount of fill would be required in the area to move the building to the back of the house. Mr. Duncan stated that 6-7 feet of fill has already been applied. He advised that, to move 20 feet back, on the western side, it would take another 20 feet of fill. He stated that it actually may need more, due to the required slope of the land to encourage the growth of prairie grass.

Mr. Ourada stated that, after a site visit, there is plenty of land to build a building, just not the way the owner wants it done. He asked if the owner could rotate the building. He asked Zoning Administrator Daniels to define the "front yard", with the house at an angle. He asked if it would be more angular with the house or parallel with the road. Mr. Duncan stated he believed the regulation read "a straight line on the back of the house". Mr. Ourada stated that it would not be feasible to place a building in the rear yard, due to a draw in that location. Zoning Administrator Daniels read the definition of the "front yard" per Buffalo County Zoning Regulations, Section 3.3181. Mr. Duncan, then, requested Zoning Administrator Daniels to read the definition of a rear yard, which she did, from Section 3.3182, Buffalo County Regulations Manual. Mr. Duncan asked if the rear yard would have a straight line, parallel to the rear lot line. Deputy County Attorney Fisk stated that she believed it would be a straight line, based on the definition, and the right angle reference. Mr. Ourada confirmed with Deputy County Attorney Fisk that it would be parallel to Dove Hill Road. Deputy County Attorney Fisk confirmed. Mr. Ourada referenced Exhibit C and stated that it would not be buildable. He stated that he believed that on the western edge of the property is approximately 50 to 80 foot deep. Mr. Duncan confirmed. He asked The Board if they considered that a hardship.

Chairman Wilke asked if the draw had an active flow of water during a storm. Mr. Duncan confirmed that he believed that it would, based on the depth and the narrowness of the basin. Mr. Ourada discussed the southern neighbor's much higher property and how the subject property sat downhill from that neighbor. Chairman Wilke stated that it looked like an active drainage. Mr. White asked if water would flow in or out, since he hadn't seen the full rear yard. Chairman

Wilke stated that you have to drive into the property to see the size of the draw. Mr. Ourada confirmed that is very steep on the backside.

Chairman Wilke asked if anyone had additional questions. Vice-Chairperson Riege asked where the goats would be enclosed on the building. Mr. Duncan stated that they would be on the western edge of the building in pens, south of the north overhang.

Deputy County Attorney Fisk asked if the second story portion of the building would be used for any kind of residential purpose. Mr. Duncan stated no, because it would be only five and a half feet tall. There will be a small area for “gaming”, but primarily for storage. Deputy County Attorney Fisk confirmed that no Mother-In-Law Suite would be constructed in that area. Mr. Duncan confirmed.

Mr. Duncan addressed The Board and noted that he was unsure of the precision of the contours, regarding elevations. He stated that he was unsure if the contours were updated since the house was built. He stated that when the house was built, dirt was shoved into the ravine, which made the embankment steeper, which could have altered the elevations.

Deputy County Attorney Fisk asked if other houses in this area shared the same type of ravines. Mr. Duncan stated that they may, however, he believed that the neighbors may have more room (roadside) to build. He stated that constructing this building in the front yard would make the neighborhood more consistent and would not decrease anyone’s home value.

Mr. White requested the size of the acreage and Mr. Duncan stated 14 acres. Mr. Ourada asked when the ordinance, requiring accessory buildings be constructed in the rear yard, was passed. Deputy County Attorney Fisk stated that it has been an ordinance during the entirety of zoning. She stated that some of the buildings that were constructed, in this area, in the front yard may pre-date zoning and some might have been non-permitted. Mr. Ourada asked why there were some that were approved recently. Zoning Administrator Daniels stated that some of the buildings indicated on the maps (Exhibits D, E, & F) are within the City of Kearney’s Extra-Territorial District. Mr. Ourada confirmed that Buffalo County would not necessarily have gotten those permits and Zoning Administrator Daniels confirmed. Mr. Duncan stated that it depended on where the ETJ line was at that time.

Two members of the public were asking questions of Mr. Duncan, in the background. Zoning Administrator Daniels asked the members to identify themselves for the record. The man was identified as Monte Hogg, the neighbor to the east. He stated that he wished to know the positioning of the building. After reviewing Exhibit A, the building plans, Chairman Wilke asked Mr. Hogg if he had any issues with the building. Mr. Hogg stated that he had no issues and he was curious to see what was occurring across the street. Monte Hogg’s wife, Nannette Hogg, then identified herself. She stated that she had no objections, if the proposed building would be more aesthetic than a steel building. Chairperson Wilke stated that he agreed and it was important to see something aesthetically pleasing, upon entrance of the property. Mr. Hogg requested confirmation of whether the building would face east and west. Exhibit B was shown to Mr. and Mrs. Hogg.

Mr. Wilke opened the floor to additional questions. Vice-Chairperson Riege asked if it was possible to have the owner back her RV out of the proposed building, instead of driving through.

Mr. Duncan replied it was possible, however, with the terrain, owner's skills, and weather, it would be more difficult. Vice-Chairperson Riege confirmed that the owner would have a trailer. Mr. Duncan stated that she does. Mr. White asked if it was a bumper hitch trailer. Mr. Duncan confirmed.

Vice-Chairperson Riege asked if the 50' radius would need more fill. Mr. Duncan stated that there would not. Mr. Wilke stated the he believed no additional dirt work would be needed to complete this project. Mr. Duncan confirmed. Zoning Administrator Daniels asked if the dirt work had been started before the permit was applied for. Mr. Duncan said he was unsure.

Vice-Chairperson Riege asked if the owner can use the area in the rear yard or access it. Mr. Duncan stated that it could be done, but it would be challenging. Mr. Ourada affirmed that the location that the building is proposed on, is the only area to put it. He stated that it could be repositioned, but the driving positioning would change. Vice-Chairperson Riege stated that she agreed, but wondered if it was possible to reposition the building and move it back towards the rear yard. Mr. Gangwish asked if it would be harder to make the turn-around if the building was repositioned. Mr. Duncan stated that he wasn't sure how that would work. Mr. Ourada asked if there was a ditch separating the subject property and the neighbor. Mr. Duncan confirmed. He went on to explain that he believed he went through all the options with the owner. He stated the ravine doesn't allow for a repositioning and that the work she has put into it has been extensive. He stated that it was difficult to get the site pad built, and predict the worst-case scenario.

Chairperson Wilke went through each member of The Board to ensure all questions were asked. All declined. Public hearing was closed 5:01 p.m. There was no one present in opposition.

Chairperson Wilke went through the requirements. He asked The Board if they believed this parcel was a regular parcel of property. Mr. Ourada stated that he believed it would be impossible to get to the rear yard, of the property. He indicated that it could be possible to reposition the building, but it will not get to the rear yard. Chairperson Wilke confirmed that this property would be an exception. Mr. Ourada asked The Board how far the depth of the draw would be allowable by this board.

Mr. Wilke asked if The Board agreed that, for a larger building to be constructed on this property, it would not be feasible. If it were a smaller building, perhaps. Mr. Ourada restated that, in order for the rear yard to be parallel with Dove Hills Road, to put a larger building on it, and to consider the topographic conditions, it is not possible. Discussion ensued regarding the depth of the draw.

Deputy County Attorney Fisk asked Mr. Ourada if his beliefs of the rear yard occurred in a "peculiar, or exceptional practical difficulty", based on the draw and the cost of fill. Mr. Ourada agreed. He stated that it would cost a lot of money to fill. Mr. Gangwish asked Deputy County Attorney Fisk to define hardship, and how the costs affected a hardship. Deputy County Attorney Fisk stated that it must be an undue hardship, which is undefined. She said that it has to be a demonstrable and exceptional hardship, as distinguished from profit, convenience or caprice. She further stated that it is the duty of The Board to establish the line between undue hardships with a rejection and the applicant not getting what they want. Mr. Wilke confirmed that the clause said "practical difficulties". Deputy County Attorney Fisk stated: "whether or not the strict application relates to the land, which would require the exceptional and practical difficulties..."

There are stacked decisions that have to be decided by The Board. “As far as the land goes, there needs to be finding that it’s an exceptional topographic condition or other extraordinary or exceptional situation or condition of the property that if you require a strict application of the zoning, would result in a peculiar and exceptional/practical difficulty to/or exceptional undue hardship upon the owner.” Once the land is cleared, then the next step criteria is visited. Deputy County Attorney Fisk advised The Board to consider the following questions: Does it produce an undue hardship if The Board does not grant the variance? Does this area share any of the same criteria as the neighbors? Is the request going to depreciate properties around them? Will you be granting the variance based on demonstrable hardship, and not profit, convenience or caprice? Does the land create a peculiar difficulty or hardship? If the answer is ‘no’ to any of these questions, then The Board denies the variance. If any of these questions answers ‘yes’, then the next step of criteria is visited.

Mr. Gangwish asked Deputy County Attorney Fisk how distances from lot lines affect the yard in which a building is constructed. Deputy County Attorney Fisk stated that it is based on the definition of front and rear yards, not distances. She, then, stated that the rear yard was established when the house was built. Mr. White asked if the current owner built the house. Mr. Duncan noted that the current owner did not build the house.

Vice-Chairperson Riege discussed the turn area and the 50’ radius. Deputy County Attorney Fisk reminded The Board that the district in question, is AGR – Agricultural Residential. Given the spirit of the district, Buffalo County does not want accessory building in the front yard, it needs to be in the rear yard. She reminded The Board that any decision today could set precedence for future construction in the AGR – Agricultural Residential district, and to prove undue hardship.

Mr. Gangwish referenced Exhibits D, E & F regarding accessory buildings that are currently constructed in the front yard. Deputy County Attorney Fisk advised The Board to ask the following questions: if this variance is considered, would it be substantial detriment to the neighboring properties in the district? Would the character of the neighborhood be changed?

Chairman Wilke reminded The Board that the first question must be answered first. He asked The Board if they agreed with Mr. Ourada regarding the practicality of the land.

Ourada made a motion and White seconded to define the hardship with 23-168.03-1(c) as the hardship. The narrowness, shallowness, or shape of the specific property creates a hardship to not exercise the use of the rear yard for a building permit [Zoning Permit].

Upon roll call vote, the following Board Members voted “Aye”: Vest, Riege, Gangwish, White, Ourada, Wilke. Voting “Nay”: None. Abstain: None. Absent: None. Motion carried.

Chairman Wilke announced next criteria: such hardship is not shared generally by other properties in the same zoning district and the same vicinity. Deputy County Attorney Fisk stated that although The Board has agreed on the land, “Section (a), regarding the strict application of the regulation would produce an undue hardship”, still needs a motion. That motion is regarding the applicant and to ask, would it provide an undue hardship if The Board votes no, to the variance.

Mr. Gangwish asked for clarification of the hardship: would it be to have no housing for the RV and to subject the RV to the elements or would it be to find another location to house the RV off-site. Deputy County Attorney advised that The Board has to make the determination.

Mr. Duncan asked if he could address The Board and Deputy County Attorney Fisk stated that he could not, as the public hearing was closed. She stated that he could speak to The Board, if they inquire.

Mr. Ourada stated that the undue hardship would be: that there is no building for the RV, and she would have to have a storage unit. He stated that there are storage units available everywhere, which is an inconvenience, but not a hardship. He addressed The Board: he asked if his cohorts believed that was a hardship and reiterated that this is just an inconvenience. Vice-Chairperson Riege agreed that there is no hardship and it is an inconvenience.

Mr. Gangwish cited Section 9.31 (3) (d) and requested the definition of caprice, which would be desire. He requested an example of hardship. Mr. White asked if the applicant was handicapped, to which Mr. Duncan stated that she was elderly.

Mr. Ourada posed the question to The Board: are all storage units are full and there is nowhere to store the owner's RV?

A motion was made by Riege, seconded by Ourada to deny the request for the variance for the construction of an accessory building in the front yard, located on a tract in Government Lot 3, in Section 31, Township 9 North, Range 16 West of the 6th p.m., Buffalo County, Nebraska.

This Board finds that an undue hardship has not been demonstrated, because the following conditions exists: based on Section 4, "the granting of such variance is based on upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice." This is a matter of convenience.

Upon roll call vote, the following Board Members voted "Aye": Ourada, Vest, Gangwish, White. Voting "Nay": None. Abstain: Wilke. Absent: None. Motion carried.

Chairperson Wilke opened the public hearing at 5:31 p.m. for an Amendment of The Board of Adjustment By-Laws. The Board of Adjustment will hear public comments on an amendment to The Board of Adjustment By-Laws, Article II, Section 1, to amend appeal deadline to ten days, after the date of decision of the Zoning Official.

Deputy County Attorney Andrew Hoffmeister joined the meeting. He stated that the Buffalo County Zoning Regulations and The Board of Adjustment timelines need to be consistent, and are not. The by-laws state 120 days and Buffalo County Zoning Regulations state 10 days. He recommended 30 days, but 10 business days could be considered. Mr. Vest stated that he believes an applicant should know immediately if they are going to appeal the Zoning Administrator's decision. He clarified that the purpose of this amendment is to adjust the time that a person has to appeal the Zoning Administrator's decision. Deputy County Hoffmeister confirmed.

Mr. Gangwish asked if you could resubmit a Zoning Permit. Deputy County Attorneys confirmed and added that they would just need to reapply for a new permit. Mr. Gangwish added that he believed 10 business days would be appropriate.

Deputy County Attorney Fisk asked Zoning Administrator Daniels how long it was taking people to file their appeals; Zoning Administrator Daniels stated that the appeals were being filed immediately. She stated that appeals are being filed before her disapproval letters were being mailed. She notified The Board that they would also be meeting in September for the same appeal.

A motion was made by Gangwish, seconded by Vest, to amend The Board of Adjustment By-Laws, Article II, Section 1, appeal deadline to ten days, after the date of decision of the Zoning Official.

Upon roll call vote, the following Board Members voted "Aye": Ourada, Vest, Gangwish, White, Riege, & Wilke. Voting "Nay": None. Abstain: None. Absent: None. Motion carried.

Moved by Ourada, seconded by White to approve the minutes of the October 10, 2019 meeting of The Board of Adjustment as mailed. Upon roll call vote, the following Board Members voted "Aye": Ourada, Gangwish, White, Wilke, Riege. Voting "Nay": None. Abstain: Vest. Absent: None. Motion carried.

Zoning Administrator Daniels notified The Board that she received another Variance Application about a week ago, and The Board will need to meet on September 10, 2020.

Mr. White inquired about renewal of membership on Board of Adjustment. Deputy County Attorney Hoffmeister stated that The Board of Commissioners would need to approve the reappointment. At that time, Mr. Ourada officially resigned his position no later than September 12, 2020. He stated that if a replacement could be found before then, he would prefer to resign sooner.

Chairperson Wilke adjourned the meeting at 5:40 P.M. until such time they will be called into session.