

MINUTES OF BOARD OF ADJUSTMENT  
SEPTEMBER 10, 2020  
BUFFALO COUNTY COURTHOUSE COMMISSIONERS' ROOM  
4:00 p.m.

Chairperson Wilke opened the meeting at 4:00 p.m. at the Buffalo County Courthouse on September 10, 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. J.C. Ourada announced his resignation upon term expiration on August 13, 2020, and was replaced with Larry Hardesty, who was appointed on September 8, 2020.

The following Board members responded to roll call: Barb Pemberton Vice Chairperson Riege , Lloyd Wilke, Larry Hardesty, Randy Vest, and alternate Rich White. Absent: Rodney Gangwish. Quorum is met. Also present were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator Dennise Daniels and two citizens for the hearing.

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.

The public forum was opened at 4:01 p.m. Two citizens of the public were present, but no one provided any comment at that time. The public forum closed at 4:01 p.m.

Chairperson Wilke opened the public hearing for a Variance of Section 8.1 at 4:02 p.m. Joyce Kinkade-Abell & Patrick Abell are requesting to construct an Accessory Building in the front yard, for property on Lot 4, Dry Creek Subdivision, situated in the Northwest Quarter of Section 17, Township 9 North, Range 16 West of the 6<sup>th</sup> Principal Meridian, Buffalo County, Nebraska.

Chairperson Wilke asked any representatives to step forward and to provide evidence to The Board, regarding this hearing. The two members of the public identified themselves as Joyce Kinkade-Abell and her husband, Patrick Abell, residing at 5980 W 85<sup>th</sup> Street, Kearney, NE 68845.

Mrs. Kinkade-Abell stated that her house is at an angle and there isn't a large enough side yard to get around to the rear yard. The applicants wish to have the building near the driveway to allow for Mr. Abell to access lawn care equipment, such as a snow blower and lawn mower. She stated that the house sits at a 45-degree angle and that they wished to put the structure in the "front yard". She declared that the structure would be hidden by trees and would not obstruct traffic. She further explained that that the neighbors appeared to support her endeavors. Discussion ensued regarding GIS imaging and the definition of the front yard. Deputy Attorney

Hoffmeister defined and showed the closest edge of the house, the northwest corner, from that point to the street as the front yard. Chairperson Wilke specified that the front yard would be parallel with the road. 90-degrees from the edge to the front of the house, is the front yard. Mr. Abell stated that the proposed shed/building is portable. Mrs. Kinkade-Abell confirmed Mr. Abell's testimony and added that the structure will have no electrical or plumbing, and furthermore, will not have a foundation.

Mr. Hardesty addressed Deputy County Attorney Hoffmeister asking why the location of this structure was an issue. Using Buffalo County Zoning Regulations, via projector, Deputy County Hoffmeister recapped the variance request regarding Section 8.1, Accessory Buildings. He discussed the February 2020 amendment. That amendment's passage was in effect a re-direction to not allow structures like garages in the front yard. Before this amendment, garages were allowed to exist in the front yard, as long as they were 10 feet back from a street. He stated that these uses were not allowed in the front yard, anymore. He advised that the County wishes to have no obstructions in the front yard.

Deputy County Attorney Hoffmeister reviewed Section 3.3181, the definition of front yard. Mrs. Kinkade-Abell agreed with the definition and stated that she doesn't believe that the structure will cause any issues, in that location.

Deputy Attorney Hoffmeister requested the size of the proposed building. Mrs. Kinkade-Abell stated that it was 12 x 20.

Deputy County Attorney Hoffmeister asked the applicants if the structure could be placed elsewhere on their lot. Mrs. Kinkade-Abell replied that, with the house being situated at an angle, it would not allow for a truck to unload the structure in the rear yard. She stated that the truck would need to drive over the septic system and underground sprinklers, and the backyard sloped. Additionally, she stated that it when it snows, the snow piles in the front of the garage. They can't get their vehicles or the snow blower out of the garage. Mr. Abell went on to say that the location is proposed strategically to move snow.

Mr. Hardesty stated that he drove by the area and he doesn't believe that the structure would be seen from the road, due to the tree belt. He stated that he didn't believe that it would become a road hazard. Mrs. Kinkade-Abell stated that she confirmed with her neighbors their intent, and no one objected to the location of the proposed structure.

Vice Chairperson Riege described her thoughts: in an effort to rectify the situation for the Abells, she asked if they could request an exit to the backyard through their neighbor's yard to the south. Mrs. Kinkade-Abell declared that the primary purpose of the structure is to situate the snow blower, as well as the lawn mower, in an easily accessed site. She indicated that Vice Chairperson Riege's suggestion would not be an option because the truck would need drive through a steep gully, and could be potentially hazardous. Vice Chairperson Riege empathized with the applicants' concern with putting the snow blower in the rear yard.

Deputy County Attorney Hoffmeister cited Section 8.41, in regards to front yard exemptions. He asked if there are other structures in that area. Discussion ensued of all the structures in that area. He stated that this subdivision predated zoning.

Zoning Administrator Daniels advised The Board that there were photos of the area, if anyone wished to view the site.

Second Vice Chairperson Vest asked if the applicants were willing to move their chain-link fence, to accommodate for a move to the rear yard. He stated that he agreed with Vice Chairperson Riege, that it would be difficult to put a snow blower in the rear yard.

Mrs. Kinkade-Abell sought clarification on the “front yard”. Deputy County Attorney Hoffmeister explained the front yard concept, with 50-foot setback. He went on to explain that the reason we use 90-degree angle is that would be measured from the street to closest edge of the structure with a 90-degree angle from the street. The reason for this is that a “front” of a building based upon the structure would be subjective as to the door or doors of a residence. A structure’s front defined from the structure to the street using such things as entrance doors would not result in a universal definition, or measurement, of a front yard of a lot. However, a measurement of 90-degrees from the street to the closest edge of a structure would be a universal definition of “front” however the structure was situated.

Mr. Hardesty pointed to one of the photos in the packet. He asked if it was the applicants’ intent to put the building in that location. The applicants confirmed. Discussion ensued regarding the neighbor’s garage to the east.

Mr. Hardesty asked what the intent of the regulations were. Deputy County Attorney Hoffmeister stated that the regulations are intended to have an open front yard. Mr. Hardesty noted that there wasn’t much of an open front yard now, due to the tree line. Deputy County Attorney stated that Buffalo County’s zoning resolution regarding accessory uses does not allow accessory uses in the front yard for such things as solar arrays, garages, and structures and/or uses that would be accessory to a main use of a lot. Discussion ensued city versus county zoning and front yard construction.

Mrs. Kinkade-Abell explained that they are requesting a variance because the structure would not be visible and “it’s not in front of the house”. She posed the question to Second Vice-Chairperson Vest if he believed that this was in the front yard. Second Vice-Chairperson Vest knows it is, because being on the Planning and Zoning Commission, he is knowledgeable of the defined area. Deputy County Attorney Hoffmeister added that the County wishes to keep the front yard free of obstruction.

Deputy County Hoffmeister identified that the Assessor taxes buildings, but not always solar arrays. Mrs. Kinkade-Abell said she believed that those structures are on a foundation. She stated that this structure will not be on a foundation or affixed to the ground. She stated that by definitions in Sections 3.311, Building, and Section 3.3172, both are defined as permanent structures, on a permanent foundation.

Vice-Chairperson Riege questioned if the applicants wished to put the structure on a foundation. Mrs. Kinkade-Abell stated that they did not wish to affix it to the real estate. Deputy County Attorney Hoffmeister referenced Section 3.3172, definition of structure. Chairperson Wilke stated that he doesn’t believe that this particular structure is defined as a building or structure, because, by definition, it’s not permanently attached to a masonry or concrete foundation.

Deputy County Attorney Hoffmeister inquired of the applicants that that there would be no poured foundation or utilities. Mrs. Kinkade-Abell confirmed to these items would not be present.

Chairperson Wilke requested the location of the shed based on the applicant's drawing. Mr. White, then, asked which way the house actually faced. Mrs. Kinkade-Abell said that the house faces northeasterly. He stated it appeared that that the shed was proposed to put directly "behind the garage doors". Mrs. Kinkade-Abell verified that the structure would be 25-30 feet north of the garage, situated between the residence and the abutting street.

Deputy County Attorney Hoffmeister read Section 3.3180, the definition of "Yard". He stated that the front yard is the closest point from the house to the road. Mr. Abell stated that the actual front door is on the south side of the house.

Chairperson Wilke asked Deputy County Attorney Hoffmeister if the structure is considered one of permanency or portability. Deputy County Attorney Hoffmeister reiterated the definition of building: having a permanent foundation. Deputy County Attorney Hoffmeister counselled the Board on their options.

Mr. White asked if the structure met the current setback requirements. Second Vice-Chairperson Vest asked if a portable building is taxed. Deputy County Attorney Hoffmeister stated that it is and further explained the assessment process to the applicants.

Mr. Hardesty asked the applicants to confirm that they that do not wish to anchor the structure. The applicants confirmed that the structure or building would not be attached to concrete or similar foundation. It was their intent to level the ground for a place to put the shed.

Chairperson Wilke questioned the location of the building, in regards to the proximity to the house, and their use for it. The applicants stated that the building will not be far from the house, and will be directly on their gravel drive. It would be situated at least 50 feet from the public street lot line.

Vice Chairperson Riege stated she had concerns regarding permanency and the current compliance with setbacks. Deputy County Attorney stated that Section 10.21 General: states that no zoning or other structure shall be erected, moved, or added to or structurally altered without a zoning permit. Since the permanency of the building is in question, and the structure is defined as being portable, then a zoning permit should not be required.

Chairperson Wilke asked if there was anything to add. No one made comment. The public hearing was closed at 4:49 p.m.

A motion was made by White, seconded by Vest, that the proposed improvement consisting of a 12 foot by 20 foot shed, does not comprise a building and/or structure as defined by Buffalo County's Zoning Resolution, primarily because the proposed improvement is not anchored to a permanent foundation such as a concrete pad or a masonry foundation . The improvement appears to be movable as it is situated on skids and not anchored. From the plans submitted the improvement is more than 50 feet south from the north property lot line, which is considered by this Board to be the "front" of the lot. The proposed improvement accordingly meets minimum

setbacks from a street. Therefore, a zoning permit is not required in the situation of the proposed improvement before the Board of Adjustment all of which is located on land located in Government Lot 3, in Section 31, Township 9 North, Range 16 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska, described in more detail in the application before this Board. Chairperson Wilke stated that the plans must be completed, as submitted to this Board, and no attachment shall be added after the decision of The Board. This is effect reverses the decision of the Zoning Administrator to not issue a permit for the improvement.

Upon roll call vote, the following Board Members voted “Aye”: Reige, Wilke, Hardesty, Vest, and White. Voting “Nay”: None. Abstain: None. Absent: Gangwish. Motion carried and applicant is allowed to proceed with improvement as described in zoning application because in the facts before the Board, no zoning permit would be required and the improvement is not within the minimum required front yard setback from a street.

To approve the minutes of the August 13, 2020 meeting of The Board of Adjustment as mailed, the motion was moved by Vest, seconded by White.

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

Zoning Administrator Daniels notified The Board she has given each member a new folder with updated Zoning Regulations, Subdivision Regulations, Contact Sheet, and By-Laws.

Deputy County Attorney Hoffmeister stated that he appreciated that members of this Board visiting the sites. He stated that it shows the Board’s commitment to the cause.

Chairperson Wilke adjourned the meeting at 4:59 P.M. until such time they will be called into session.