

MINUTES OF BOARD OF ADJUSTMENT
JUNE 15, 2023
BUFFALO COUNTY COURTHOUSE COMMISSIONER'S ROOM
4:00 P.M.

Interim Chairperson Barb Pemberton-Riege opened the meeting at 4:00 P.M. at the Buffalo County Courthouse on June 15, 2023.

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

After roll call, those present were: Barb Pemberton-Riege, Richard Pierce, Larry Hardesty, Randy Vest, and Rich White. Also present were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator Dennise Daniels and members of the public.

Rodney Gangwish was absent.

Quorum is met.

Interim Chairperson Pemberton-Riege turned the Re-Organizational Meeting of Officers over to Zoning Administrator Daniels. She called for nominations for a Chairperson. A nomination was made by Mr. Hardesty to appoint Barb Pemberton-Riege for Chairperson. Zoning Administrator Daniels called for nominations three times.

A Motion was made by Mr. Hardesty, seconded by Mr. White to cease nominations for the Chairperson.

Voting "Aye" were: Pierce, Hardesty, Vest, and White.

Abstain: Pemberton-Riege.

Voting "Nay": None.

Absent: Gangwish.

Motion passed.

Zoning Administrator Daniels declared a unanimous ballot. Motion was made by Mr. Vest, seconded by Mr. Pierce to cast a unanimous ballot for Barb Pemberton-Riege as Chairperson.

Voting "Aye" were: Pierce, Hardesty, Vest, and White.

Abstain: Pemberton-Riege.

Voting "Nay": None.

Absent: Gangwish.

Motion passed.

Zoning Administrator Daniels declared Barb Pemberton-Riege as Chairperson and turned the meeting over to Chairperson Pemberton-Riege.

Chairperson Pemberton-Riege called for nominations for Vice-Chairperson. Mr. Vest nominated Richard Pierce for Vice-Chairperson. Chairperson Pemberton-Riege called for additional nominations. A motion was made by Vest, seconded by White to cease nominations and cast a unanimous ballot for Richard Pierce for Vice-Chairperson.

Voting "Aye" were: Pemberton-Riege, Hardesty, Vest, and White.

Abstain: Pierce.

Voting “Nay”: None.
Absent: Gangwish.
Motion passed.

Chairperson Pemberton-Riege called for nominations for Second Vice-Chairperson. Vice-Chairperson Pierce nominated Mr. Vest for Second Vice-Chairperson. Chairperson Pemberton-Riege called for additional nominations. A motion was made by Pierce, seconded by Hardesty to cease nominations and cast a unanimous ballot for Randy Vest for Second Vice-Chairperson. Voting “Aye” were: Pemberton-Riege, Pierce, Hardesty, and White.
Abstain: Vest.
Voting “Nay”: None.
Absent: Gangwish.
Motion passed.

Chairperson Pemberton-Riege announced we do abide by the Open Meeting Act and are available for anyone wanting a copy.

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 4:06 P.M. No one provided any comment at this time. The public forum closed at 4:06 P.M.

Chairperson Pemberton-Riege opened the public hearing at 4:07 P.M. for a Zoning Variance, received from Todd Willers and Darcy Willers, under Buffalo County Zoning Regulations, Section 3.3100 and Section 5.33, requiring accessory structures as a subordinate use to a principal structure, located in D.J. Sleepy Hollow Subdivision, Lot 10, situated in in Section Ten (10), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Chairperson Pemberton-Riege requested any parties, presenting this application, step forward. Mr. Todd Willers, along with his attorney, Mr. Michael Carper, stepped forward to present the application. Mr. Carper explained, his clients, Todd Willers and Darcy Willers, intended to construct a 40-foot by 60-foot hoop storage building, with a 10-foot by 12-foot overhead door with a gravel/crushed concrete floor, on a lot that does not have a primary structure, such as a residence. He reviewed legal description of the tract and explained that the applicants have resided and offered contracting services in the Buffalo County area for many years. He explained the applicants have maintained the subject property for many years.

Further, Mr. Carper continued, the applicants have obtained signatures from the neighbors, stating they have no objections to the proposed construction of the shed, in the cul-de-sac, except one, who was on vacation. That document has been submitted to the record as Exhibit A. He described the location of the property as being north of Highway 40, on YDC Road, and about a quarter of a mile north. Mr. Willers added that this property is situated across the road from a substation.

Chairperson Pemberton-Riege declared she had conducted a drive-by inspection of the property and inquired if other members of the board had done the same. She explained to the applicants that it allowed The Board to make more sound decisions if an inspection can be performed, prior to the public hearing.

Mr. Willers articulated he has owned the property for 15 years and, after providing a brief ownership history, stated that he has spent the last several years cleaning up the property, including the demolition and/or removal of a grain bin, cattle pens, and a few loafing sheds.

His intent, Mr. Willers continued, was to have a structure at that site. He stated he would like to put up the new building, directly to the south of the existing structure, to house a 1979 Dodge pickup for his sons to restore. The building would house two antique tractors, as well, he added, one that has been restored, and one that hasn't, which belonged to his grandfather and father. Further, he explained, he has a camper, boat, and other exterior materials that would be housed within the structure to protect them from the elements, as well as being secure.

Mr. Willers stated that there is existing structure on the property, which needs to have a 16-foot-wide overhead door installed and portions of the steel roof needs replaced, due to high winds from several years ago, but he secured it on a permanent foundation.

The new structure, Mr. Willers described, would have a 20-foot-wide by a 14-foot-wide overhead door and provided photos of a similar structure to The Board. Those photos were added to the record as Exhibit B-1, Exhibit B-2, and Exhibit B-3.

Mr. Willers added that he does snow removal for the neighbors in the cul-de-sac, as well as their driveways. He explained he would like to have his snow-removal equipment, such as a skid loader, located on the subject property, for the convenience of access.

Mr. Hardesty inquired what the current zoning district was for this property and the purpose of the zoning regulation requiring a principal structure. Deputy County Attorney Hoffmeister responded, it is zoned Agricultural (AGR) District and it is intended to protect the purpose of the residential use. Mr. Hardesty clarified the subject property should be used for agricultural or residential purposes. Deputy County Attorney Hoffmeister confirmed and added that the current proposed use of the structure would be permissible as an accessory or a supplemental use to a principal use, which is for the purpose of agricultural or residential. However, he added, since the applicant does not have a principal structure and does not intend to construct one, then the primary use becomes storage, which is not permitted. Deputy County Attorney Hoffmeister added, he believed Mr. Willers resided in the neighboring cul-de-sac. If the applicant had his residence abutting the subject tract, he added, it would be contiguous and the accessory use would be permitted. Deputy County Attorney Hoffmeister advised, to curb the overuse of storage/accessory structures from overtaking residential-designated tracts, while protecting the permitted residential use, accessory structures are permitted only as an accessory use to a principal use.

Deputy County Attorney Hoffmeister asked Mr. Willers if he intended to put electricity in the structure; Mr. Willers confirmed and added there is an overhead door in the proposed building and electricity would be a requirement to have lights or service his equipment.

Deputy County Attorney Hoffmeister questioned Mr. Willers what material the structure would be made of and Mr. Willers responded that it would be fabric. Exhibit B-1, Exhibit B-2 and Exhibit B-3 were presented to Deputy County Attorney Hoffmeister.

Mr. Hardesty inquired if Mr. Willers was operating his commercial business from the subject property and Mr. Willers named several projects. He added, when his employees are between jobs, then his construction equipment and materials is stored at this location. In fact, he added, he has equipment, such as a telehandler, currently situated on the lot. He explained he has two locations in Nebraska, but on occasion, has materials, etc. delivered to this property.

Chairperson Pemberton-Riege asked for additional questions or comments.

Mr. Hardesty asked Mr. Willers he had obtained of all adjoining land owners' signatures and Mr. Willers responded he had received signatures from all residents, but one, from within the neighboring cul-de-sac. Mr. Hardesty, then, re-proposed the previous question if Mr. Willers had obtained all adjoining landowners' signatures and Mr. Willers confirmed. Deputy County Attorney Hoffmeister queried Mr. Willers if the signatures, acquired in Exhibit A, waived the right to protest the storage of equipment and materials in the future. Mr. Willers advised the landowners who signed the document indicated to him they would sign if the site would be cleaned up.

Deputy County Attorney Hoffmeister asked Zoning Administrator Daniels how far the subject property was from the applicants' residence and Zoning Administrator Daniels provided the answer on the GIS aerial on the projector.

Deputy County Attorney Hoffmeister inquired about the access to the subject property and Mr. Willers stated, he normally accesses that property using the county road. However, he added, there is another access on the southeast part of the property.

The easement on the north side of the property was discussed.

Mr. Hardesty asked Mr. Willers why didn't construct his structure next to his residence, which would have been permitted, and Mr. Willers responded that he and his family enjoy his yard.

Second Vice-Chairperson Vest asked if the entire tract was three acres and Mr. Willers confirmed.

Deputy County Attorney Hoffmeister asked Mr. Willers if he intended to use the property as a personal use storage building or a commercial-use storage building. Mr. Carper responded, he believed it was primarily personal use. Deputy County Attorney Hoffmeister asked if Mr. Willers was currently using his residence to run his construction business and Mr. Willers stated that he normally runs it from his other two locations.

Mr. Hardesty commented that he had conducted a drive by of the subject property and declared that there was a significant amount of material located on the lot. He asked if Mr. Willers could provide an inventory. Mr. Willers responded, he has materials for the building, an old pickup, johnboat, etc. that need to go to the salvage yard. Furthermore, he added, he has seven bundles of lumber for customers. Mr. Hardesty asked how long the lumber had been stored on the property

and Mr. Willers responded, since this winter. Mr. Willers reviewed other materials stored on the subject property for other customers and friends, as well. Mr. Hardesty asked how long some of the other materials have been stored on this property and Mr. Willers responded, some had been there for around ten years.

Mr. Carper asked Mr. Willers where he intended to construct the building and Mr. Willers explained he intended to place it three feet south of the existing structure.

Mr. Hardesty declared that when he conducted a drive-by of the property, it appeared the foundation had already been constructed for the proposed structure and Mr. Willers said it had, due to a miscommunication between him and his business partner. Mr. Willers explained, he stopped his business partner from constructing the entire structure.

Chairperson Pemberton-Riege asked Zoning Administrator Daniels if setbacks were acceptable and Zoning Administrator Daniels confirmed.

Chairperson Pemberton-Riege asked if anyone from the public wished to comment. Mr. Steve McNitt, an adjoining property owner to the north, stepped forward to comment. He stated that he is in opposition of the variance and he was never asked to sign a waiver for the applicants' proposed structure. He explained he has a private drive, north of the subject property and Mr. Willers uses the private road to access the subject property, while operating a construction business, including loading and unloading construction equipment.

Deputy County Attorney Hoffmeister requested clarification from Mr. McNitt about his stance of allowing an accessory structure without a residence and Mr. McNitt explained he was against running a commercial business out of a residential lot. He said he's concerned about the amount of material that is stockpiling on this property and if a structure is permitted, the material will not be removed, but will continue to increase, based on the applicants' history.

Mr. McNitt stated Mr. Willers had blocked his private driveway, unloading construction equipment. Deputy County Attorney Hoffmeister asked Mr. McNitt where he resides and Mr. McNitt explained that his house is directly north of the subject lot. Deputy County Attorney Hoffmeister asked Mr. McNitt who resides further down the private drive and Mr. McNitt said it is his son.

Deputy County Attorney Hoffmeister disclosed that the lead secretary of The Buffalo County Attorney's Office resides in this subdivision and signed the document on Exhibit A and, also, disclosed his mother-in-law lives closely to the subject property.

Mr. Hardesty asked Mr. McNitt asked if the site has looked cleaner than in the past and Mr. McNitt responded that it looks worse now with the trailers, construction equipment, lumber, etc.

Discussion occurred regarding Mr. McNitt's easement/private drive.

Chairperson Pemberton-Riege commented that Mr. McNitt did not sign the waiver, but everyone in the cul-de-sac signed.

Discussion occurred regarding the power lines located around this property.

Mr. Willers re-approached The Board. History of property lines and the private drive/easement were discussed.

Mr. Willers added, he prefers a neat property and would like the ability to maintain the property better than it has been in the past by mowing and putting down crushed rock.

Deputy County Attorney Hoffmeister asked if Mr. Willers' if the subject property would be useless if the variance is not granted and Mr. Willers stated it would not be useless. Deputy County Attorney clarified, this property is still useable if the variance is not granted and Mr. Willers confirmed.

Deputy County Attorney Hoffmeister asked if Mr. Willers' intended to place the exterior materials inside the structure and he confirmed.

Further discussion occurred regarding property lines and the private drive were discussed.

Mr. Hardesty asked Mr. Willers if, during his ownership in the last 15 years, the property looked the same and Mr. Willers affirmed it had been worse and he has cleaned it up by removing unwanted materials and structures. Mr. Willers discussed the existing well structure, its inferior design, and his intent to provide a neater layout including laying a concrete slab.

Chairperson Pemberton-Riege asked if anyone else wished to comment. No comments were made.

Chairperson Pemberton-Riege closed the public hearing at 4:51 P.M.

Chairperson Pemberton-Riege asked if a member of The Board wished to make a motion for discussion. Mr. Hardesty made a motion to disapprove the request for the variance under Buffalo County Zoning Regulations, Section 3.3100 and Section 5.33, requiring accessory structures as a subordinate use to a principal structure, located in D.J. Sleepy Hollow Subdivision, Lot 10, situated in in Section Ten (10), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska due no undue hardship and character of the district would be changed by the granting of the variance Second Vice-Chairperson Vest seconded the motion for the purposes of discussion.

Deputy County Attorney Hoffmeister advised The Commission that they would need four affirmative votes to overturn the decision of The Zoning Administrator.

Mr. White agreed with the motion.

Mr. Hardesty commented that some unwanted material is acceptable, but not to the degree that it emulates a commercial use. He said, Mr. Willers has, using past practices, not shown that he will clean up the property, even if the structure has been permitted.

Second Vice-Chairperson Vest stated that had concerns about the length of time the material is being stored.

Mr. Pierce appreciated Mr. Willers' intent to erect a structure to house some of the materials on the property. However, he agreed, he wasn't sure it was viable hardship to house antique items, either. He added, it is difficult to make a sound decision on intent.

Second Vice-Chairperson Vest stated, he believes if the variance is approved, the property will be used for a commercial purpose and not that of a residential purpose.

Possible solutions were discussed including enforcement of commercial use. Deputy County Attorney Hoffmeister, also, advised on nonconforming lots and interpretation regulations for The Board.

Zoning Administrator Daniels stated the subject property is not located in the floodplain.

A motion was made by Mr. Hardesty, seconded by Second Vice-Chairperson Vest, to disapprove the request for the variance under Buffalo County Zoning Regulations, Section 3.3100 and Section 5.33, requiring accessory structures as a subordinate use to a principal structure, located in D.J. Sleepy Hollow Subdivision, Lot 10, situated in in Section Ten (10), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

This Board finds that there was insufficient evidence to overturn the decision made by The Zoning Administrator; no undue hardship was found and the character of the district would be changed by the granting of the variance.

Voting "Aye": Hardesty, Vest, White and Pemberton-Riege.

Absent: Gangwish.

Abstain: None.

Voting "Nay": Pierce.

Motion carried.

Chairperson Pemberton-Riege reviewed the Nebraska Planning and Zoning Association classes and how beneficial they are to The Board. Chairperson Pemberton-Riege thanked Zoning Administrator Daniels for keeping them informed of trainings and requested she continued to do so.

Moved by Mr. Hardesty, seconded by Mr. White to approve the minutes of the September 8, 2022 meeting, of the Board of Adjustment, as mailed.

Voting "Aye": Pierce, Hardesty, Vest, White, and Pemberton-Riege.

Absent: Gangwish.

Abstain: None.

Voting "Nay": None.

Motion carried.

Chairperson Pemberton-Riege asked Zoning Administrator Daniels if there was other business. Zoning Administrator Daniels reviewed The Comprehensive Plan and the revision of the Buffalo

County Zoning and Subdivision Regulations. She stated that she would like to do a workshop with The Board and review the changes that will occur. Chairperson Pemberton-Riege agreed and suggested a floodplain workshop, in conjunction. Zoning Administrator Daniels agreed and said she would prepare a presentation.

Chairperson Pemberton-Riege adjourned the meeting at 5:15 P.M. until such time they will be called into session.

Chairperson Barb Pemberton-Riege

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