

MINUTES OF BOARD OF ADJUSTMENT
DECEMBER 12, 2024
BUFFALO COUNTY COURTHOUSE COMMISSIONER'S ROOM
4:00 P.M.

Notice of the meeting was given in advance, thereof, by publication in the legal newspaper on November 30, 2024. 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.

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

Vice-Chairperson Rodney Gangwish, after introduction, opened the meeting at 4:00 P.M. at the Buffalo County Courthouse on December 12, 2024. He announced that Randy Vest has resigned from his position on The Board of Adjustment and at the December 10, 2024 Board of Commissioners' Meeting, Tammy Jeffs was appointed in his place.

After roll call, those present were: Larry Hardesty, Rich White, Tammy Jeffs, and Rod Gangwish. Also present were Deputy County Attorney Andrew Hoffmeister, Deputy County Attorney Josiah Davis, Zoning Administrator Dennise Daniels and several members of the public.

Barb Pemberton-Riege and Richard Pierce were absent.

Quorum is met.

Vice-Chairperson Gangwish announced the Open Meetings Act and reviewed the amended agenda.

The public forum was opened at 4:02 P.M. No one provided any comment at this time. The public forum closed at 4:02 P.M.

Vice-Chairperson Rodney Gangwish opened the public hearing at 4:03 P.M. for an Application for Zoning Variance, received from Mitch Humphrey, licensed land surveyor, on behalf of Tyler R. Wilterding and Karmen M. Wilterding and Ryan S. Rodehorst and Rutheah A. Rodehorst, under Buffalo County Subdivision Regulations: Section 1.05 which requires all subdivided land abut a dedicated and maintained street/road; Section 2.35 which defines a street; Section 4.02 (E) which requires that all lots have a minimum 25 feet abutment along a street/road; Section 4.03 which requires streets/roads ending in a cul-de-sac be shorter than 600 feet; Section 4.03 which requires the minimum right-of-way widths to be 66 feet; Section 4.03 which requires cul-de-sacs have a 66-foot radius; Section 4.11 which require all streets/roads in a subdivision conform minimum standards; Section 4.12 (A) which requires access within a subdivision be accomplished by dedicated public streets/roads with minimum design standards; Section 4.12 (B) which requires all private streets to have a minimum width of 66 feet; Section 5.01 which sets out requirements for the grading of roads/streets; AND Buffalo County Zoning Regulations, Section 5.32 (2) which requires all dwellings to abut an improved road for a tract of land located in the North Half of the Southwest Quarter of Section One (1), Township Nine (9) North, Range Sixteen (16) West of the 6th P.M., Buffalo County, Nebraska.

Mitch Humphrey, licensed land surveyor, with Buffalo Surveying Corporation, of 5308 Parklane Drive, Kearney, Nebraska, stepped to the table, on behalf of Tyler R. Wilterding and Karmen M. Wilterding and Ryan S. Rodehorst and Rutheah A. Rodehorst. Mr. Humphrey provided a brief history on the proposed subdivided lands, adding that easements were a common means of access when this particular tract of land was originally subdivided. Further, he added, the access easement is not built to conformity with current regulations and will never be maintained by Buffalo County.

Mr. Humphrey explained that after the tract was originally subdivided by Mr. Lyle Raasch, Faith Christian Homes, a tax-exempt organization, took possession of the property, constructing two residences to house and rehabilitate troubled youth. Recently, he continued, the organization has sold the property to Tyler R. Wilterding and Karmen M. Wilterding and Ryan S. Rodehorst and Rutheah A. Rodehorst. The applicants, he advised, wish to subdivide the tract into four smaller lots and avoid sharing one tract of land between the two families. In order to advance the application and ensure economic stability for this tract of land, he stated, the applicants have requested several variances to bring the subdivision into conformity. He reviewed the variances set forth as: Buffalo County Subdivision Regulations: Section 1.05 which requires all subdivided land about a dedicated and maintained street/road; Section 2.35 which defines a street; Section 4.02 (E) which requires that all lots have a minimum 25 feet abutment along a street/road; Section 4.03 which requires streets/roads ending in a cul-de-sac be shorter than 600 feet; Section 4.03 which requires the minimum right-of-way widths to be 66 feet; Section 4.03 which requires cul-de-sacs have a 66-foot radius; Section 4.11 which require all streets/roads in a subdivision conform minimum standards; Section 4.12 (A) which requires access within a subdivision be accomplished by dedicated public streets/roads with minimum design standards; Section 4.12 (B) which requires all private streets to have a minimum width of 66 feet; Section 5.01 which sets out requirements for the grading of roads/streets; AND Buffalo County Zoning Regulations, Section 5.32 (2).

Mr. Humphrey stated that there is a hardship involved with widening the road because the applicants would need to acquire additional lands to bring the easement/access road into conformity. Furthermore, he continued, the access road, ending in a cul-de-sac is too long, under Buffalo County Subdivision Regulations.

Mr. Humphrey continued further; he stated that all the proposed lots do not have frontage along a dedicated road. He stated that two lots will have frontage, but the other two will not.

Mr. Humphrey added that the proposed subdivision has a 55-foot radius cul-de-sac, but Buffalo County Subdivision Regulations, Section 4.03 requires cul-de-sacs have a 66-foot radius. He added that the situation of requiring a 66-foot radius cul-de-sac would create an additional hardship and an additional nonconformity for the 50-foot setback requirement under Buffalo County Zoning Regulations.

My. Humphrey explained the preliminary plat is in conformance in its entirety, with the exception of the inventoried list of variances.

Mr. Humphrey reviewed two other nonconforming subdivisions in this geographic region that had, recently, been reviewed and approved.

Deputy County Attorney Hoffmeister advised that a hardship will be impending for the applicants for financing, as well as disrepair on the existing structures, if the variances are not approved.

Deputy County Attorney Hoffmeister counselled the intent of the Agricultural – Residential (AGR) District, Buffalo County Zoning Regulations, Section 5.31, “INTENT: This district is intended to provide for low-density, acreage residential development in selected areas in close proximity to the communities of Buffalo County, or in rural areas with reasonable access to major rural roads. Generally, these districts are located near urban and built-up areas within reasonable reach of fire protection and hard surfaced roads.”

Ms. Jeffs inquired about the discrepancy regarding the address. Zoning Administrator Daniels explained that upon review of the proposed plat, “Heritage Hills Subdivision”, the ingress/egress easement, which provides access to the proposed lots, is named 1st Avenue Place North and the post office addresses for the existing structures are, also, listed as such. However, she continued, upon discussion and review with the Buffalo County Sheriff’s Department, that particular access is shown in the 911 software as East 106th Road. She added, to further complicate the situation, there is a subdivision directly to the south of the proposed subdivision, which has an entirely different access, also known as North 1st Avenue Place. Buffalo County Subdivision Regulations, Section 4.08 (B) states, “Duplication or similar naming discouraged Proposed Street names shall not duplicate or approximate phonetically the name of any existing street in Buffalo County and the City of Kearney.” Ms. Jeffs stated that she would like to have the address issue resolved to ensure timely emergency responses. Zoning Administrator Daniels explained there were emails from The Buffalo County Highway Department and the Buffalo County Sheriff’s Office, regarding how the address situation should be resolved.

Mr. Hardesty asked if the applicants were present. Mr. Humphrey answered, yes. Mr. Hardesty asked one, or both, of the applicants to step to the table. Mr. Tyler Wilterding, of 10665 1st Avenue Place, Kearney, Nebraska, stepped forward. He stated that he currently resides in the northernmost residence and added that, as things are, the applicants are having a difficult time getting homeowners insurance with multiple structures/residences on the same parcel. Mr. Humphrey added, due to the uniqueness of the property, the property sat unsold and vacant for a long period of time.

Deputy County Attorney Hoffmeister advised that, if either of the residences burn down, then a residence cannot be reconstructed with its existing nonconformities, due to our current regulations.

Mr. Hardesty inquired when the proposed tract of land was originally subdivided. Mr. Humphrey testified, he wasn’t sure, but thought it was around 1990.

Vice-Chairperson Gangwish requested confirmation of the entirety of the variances. Mr. Humphrey reviewed the variances.

Mr. Humphrey added that the plat, as presented, should not significantly increase traffic counts on a regular basis.

Vice-Chairperson Gangwish asked if anyone from the public wished to speak.

Mr. Sawyer Scherr, of 10475 North 1st Avenue Place, Kearney, Nebraska, who is later identified, inquired how many more hearings, regarding the proposed subdivision there were and Deputy County Attorney Hoffmeister explained there would be two, assuming The Board of Adjustment approved the variances.

Deputy County Attorney Hoffmeister counselled The Board on what interpretations and requirements they are charged with.

Mr. Humphrey reviewed the floodplain area, as well as the existing structures, in the proposed subdivision.

Mr. Hardesty inquired the purpose of subdividing. Mr. Wilterding explained that it was the applicants' intent to secure lending, as well as seek insurance.

Mr. Rich asked how long the applicants have owned the tract of land. Mr. Wilterding responded they have owned it for approximately two years.

Vice-Chairperson Gangwish asked if anyone from the public wished to speak.

Mr. Sawyer Scherr stepped forward to provide testimony. He stated that he owns property to the south of the proposed subdivision. He testified that he has no issue with the subdivision of the lands, but he's concerned about road maintenance. He explained that he lives along an access easement that is currently being maintained by a property owner that will be moving. He stated he believed Buffalo County should provide maintenance and he should not be burdened with the cost of road maintenance. Deputy County Attorney Hoffmeister explained Buffalo County will not accept responsibility and reviewed the requirements of Buffalo County accepting the maintenance. Mr. Scherr thanked The Board for their time.

The road maintenance responsibility was discussed.

Vice-Chairperson Gangwish asked Zoning Administrator Daniels if she had anything to add. She declined. He, then, asked Deputy County Attorney Hoffmeister if he wished to add anything and Deputy County Attorney Hoffmeister reiterated that The Board is charged with making a nonconforming area, conforming to ensure no economic disrepair and to remain in conformance with the spirit of the Agricultural – Residential (AGR) District.

The address concern was discussed. Zoning Administrator Daniels stated that The Buffalo County Sheriff's Office and The Buffalo County Highway Department recommended renaming the street East 106th Street Place. Mr. Hardesty and Vice-Chairperson Gangwish agreed.

Vice-Chairperson Gangwish inquired if anyone wished to speak. No one spoke.

Vice-Chairperson Gangwish closed the public hearing at 4:51 P.M.

Vice-Chairperson Gangwish if there was further discussion. Ms. Jeffs stated that she appreciated the road name change. Mr. Rich advised that the project should be approved, due to the named hardships. Mr. Hardesty agreed.

A motion was made by Ms. Jeffs, seconded by Mr. Hardesty to approve the Application for Variance, under Buffalo County Subdivision Regulations: Section 1.05 which requires all subdivided land abut a dedicated and maintained street/road; Section 2.35 which defines a street; Section 4.02 (E) which requires that all lots have a minimum 25 feet abutment along a street/road; Section 4.03 which requires streets/roads ending in a cul-de-sac be shorter than 600 feet; Section 4.03 which requires the minimum right-of-way widths to be 66 feet; Section 4.03 which requires cul-de-sacs have a 66-foot radius; Section 4.11 which require all streets/roads in a subdivision conform minimum standards; Section 4.12 (A) which requires access within a subdivision be accomplished by dedicated public streets/roads with minimum design standards; Section 4.12 (B) which requires all private streets to have a minimum width of 66 feet in width; Section 5.01 which sets out requirements for the grading of roads/streets; AND Buffalo County Zoning Regulations, Section 5.32 (2) which requires all dwellings to abut an improved road for a tract of land located in the North Half of the Southwest Quarter of Section One (1), Township Nine (9) North, Range Sixteen (16) West of the 6th p.m., Buffalo County, Nebraska, along with the suggested address change to 'East 106th Street Place'.

This Board finds that there was an undue hardship for land that may be devalued due to a nonconforming lot, which is accessed by nonconforming accesses based on the inability for the use of economic development potential, paired with the inability to secure lending and have access to affordable insurance.

This Board finds that this particular issue is not generally shared by the other properties in the same zoning district and the same vicinity.

This Board finds that the authorization of the variance will not be of substantial detriment to the adjacent properties and character of the district will not be changed by the granting of the variance.

This Board finds that 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 "Aye": Hardesty, Jeffs, White and Gangwish.

Absent: Pierce and Pemberton-Riege.

Abstain: None.

Voting "Nay": None.

Motion carried.

Moved by Mr. White, and seconded by Mr. Hardesty, to approve the minutes of the May 16, 2024 meeting, of the Board of Adjustment, as mailed.

Voting "Aye": Hardesty, White and Gangwish.

Absent: Pierce and Pemberton-Riege.

Abstain: Jeffs.

Voting "Nay": None.

Motion carried.

Vice-Chairperson Gangwish asked if any new business needed to be discussed and Zoning Administrator Daniels answered there was none.

Vice-Chairperson Gangwish adjourned the meeting at 4:56 P.M. until such time they will be called into session.

Vice-Chairperson Rodney Gangwish

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