

MINUTES OF BOARD OF ADJUSTMENT
MAY 16, 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. 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.

Chairperson Barb Pemberton-Riege opened the meeting at 4:00 P.M. at the Buffalo County Courthouse on May 16, 2024.

After roll call, those present were: Barb Pemberton-Riege, Richard Pierce, Larry Hardesty, and Rich White. Also present were Deputy County Attorney Andrew Hoffmeister, Deputy County Attorney Josiah Davis, Zoning Administrator Dennise Daniels and no members of the public.

Randy Vest was in attendance at 4:03 P.M.

Rod Gangwish was absent.

Quorum is met.

The public forum was opened at 4:03 P.M. No one provided any comment at this time. The public forum closed at 4:03 P.M.

Chairperson Pemberton-Riege opened the public hearing at 4:03 P.M. for a Zoning Variance, received from Craig Bennett, of Miller and Associates Consulting Engineers, P.C., on behalf of Benjamin G. Hirschfeld and Christie Hirschfeld and Harry W. Whitley III and Correne E. Whitley, under Buffalo County Zoning Regulations, Section 5.32 (2), requiring residences abut an improved road, Buffalo County Subdivision Regulations, Section 1.05, requiring all subdivided lands abut a dedicated and maintained public street, public road, or private street, Section 2.35, defining a street, and Section 4.02 (E), requiring all lots have a minimum width of twenty-five feet along a street or road, Section 4.03, requiring all roads ending in a cul-de-sacs be less than 600 feet in length, Section 4.11, regarding minimum requirements for road design, Section 4.12 (A), requiring all subdivisions have access via dedicated public streets or roads, Section 4.12 (B), which require a minimum street width of sixty-six feet, and Section 5.01, which require all subdivisions be graded to the standards as set out in Chapter 4, for land situated in part of the Southwest Quarter of Section One (1), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Craig Bennett, of Miller and Associates Consulting Engineers, P.C. of 1111 Central Avenue, Kearney, Nebraska, stepped to the table, on behalf of Benjamin G. Hirschfeld and Christie Hirschfeld and Harry W. Whitley III and Correne E. Whitley. Mr. Bennett explained that the two subject tracts are accessed by two sixty-foot-wide easements. He stated that the Whitleys own a nine-acre parcel and Hirschfelds own two parcels that, collectively, are more than ten acres.

Mr. Bennett added that the Hirschfelds intend to purchase a small tract from the Whitleys and want to add that small tract to the already existing Hirschfeld tract. The Whitleys' land, he continued, will, then, reduce to seven acres. He added that state statute requires a minimum ten-acre tract, that does not require a subdivision. The Hirschfelds' land, he continued, which exceeds the ten-acre minimum will not be subdivided, as it will be compliant with state statute. He stated that the Whitley tract, at just over seven acres, will remain in compliance with the minimum lot size as required under Buffalo County Subdivision Regulations.

Mr. Bennett explained that the two subject tracts are accessed only by a sixty-foot easement. The issue, he continued, is that the roads do not meet the minimum criteria to subdivide a tract of land, which requires access to a sixty-six-foot road/street. He added that the applicants do not intend to add additional residences or lots. However, he added, in order to add the two-acre tract to the Hirschfelds, then Buffalo County Subdivision Regulations require the platting process take place.

Mr. Bennett stated this variance is similar to Board of Adjustment Variance for the tract to the north. He said that he has gone through the denial process with The Buffalo County Board of Commissioners and is, now, at the process of requesting a variance through the Board of Adjustment.

Mr. Bennett clarified that the applicants do not intend to increase density, but the platting process requires a lot creation in order to complete the lot line movement.

Mr. Bennett, using the projected Buffalo County GIS site of the subject area, explained the locations of the Hirschfeld and Whitley tracts. He referenced the information as contained in the Buffalo County Board of Adjustment packet, which was prepared by the Buffalo County Zoning Administrator, and added that the intent of the applicants is fully comprehensible.

Mr. Bennett, also, reviewed the easements, tracts and residences that are, currently, accessed via the sixty-foot easements. He explained that the two easements are private roads and do not meet the required (RL2) Buffalo County Minimum Road Standards.

Mr. Bennett explained the variance would be needed in order to split a tract of land.

Deputy County Attorney Hoffmeister counselled that there is a small notch on the southern border of the proposed lot. Mr. Bennett explained that the Hirschfeld wanted to ensure that the building, which is, currently, divided by the lot lines, would be included in one tract.

Deputy County Attorney Hoffmeister asked if the applicants intended to place a residence on proposed Lot 2. Mr. Bennett answered the applicants do not anticipate placing a residence on that tract. Mr. Bennett explained the Whitleys want to sell two acres to the Hirschfelds.

Deputy County Attorney Hoffmeister inquired the purpose of the structures and Mr. Bennett responded that he believed those structures were used for the storage of farm equipment.

Deputy County Attorney Hoffmeister addressed the board. He counselled that this particular process was the only way for the applicants to move a lot line for unplatted land. He added that there may be another tract, to the north, that may require another variance to avoid economic hardship.

The land, Deputy County Attorney Hoffmeister explained, has no other use other than residential. He added these lands are unique in that that they were created prior to zoning and they are accessed only by easements.

Vice-Chairperson Pierce asked if the two easements were maintained by the county and Deputy County Attorney Hoffmeister stated they are not.

Mr. Bennett asked if The Board had any questions.

Mr. Hardesty inquired if granting the variance could create issues for the surrounding properties and Deputy County Attorney Hoffmeister advised that the applicants intend to move a lot line and it could not be done without the relaxation. He added, that the relaxation would not create detriment to the surrounding properties because the applicants do not wish to increase density or road traffic.

Mr. Hardesty inquired if future owners could construct a residence on Lot 2, and Deputy County Attorney Hoffmeister responded that another variance would need be sought.

Mr. Vest asked what the process would be to add more than two houses in the subject area and Deputy County Attorney Hoffmeister answered the applicants would need to seek a new variance.

Deputy County Attorney Hoffmeister, referencing the projected image of the subject area, reviewed the history and the future economic planning, to avoid complete disarray of the neighborhood.

Some ownerships, along the easements, were reviewed by The Board.

Vice-Chairperson Pierce inquired if those easements could, potentially, become county-maintained roads and Deputy County Attorney Hoffmeister explained that it would be extremely cost-prohibitive and difficult because the lots, that abut that easement, are all nonconforming lots.

Chairperson Pemberton-Riege asked how the acreages were determined and Mr. Bennett answered that the proposed lots were surveyed. He explained where the proposed plats were located in the Buffalo County Board of Adjustment Packet.

Chairperson Pemberton-Riege inquired if setbacks were considered and Mr. Bennett explained that a ten-foot setback were added on to the plat.

Mr. Bennett, also, explained that, on behalf of the applicants, a 10-foot utility easement around Lot 1 for future use, has been added.

Chairperson Pemberton-Riege inquired if other board members had questions. No one spoke.

Chairperson Pemberton-Riege closed the public hearing at 4:33 P.M.

A motion was made by Mr. Hardesty, seconded by Mr. White, to approve the requests under Buffalo County Zoning Regulations, Section 5.32 (2), requiring residences abut an improved road, Buffalo County Subdivision Regulations, Section 1.05, requiring all subdivided lands abut a dedicated and maintained public street, public road, or private street, Section 2.35, defining a street, and Section 4.02 (E), requiring all lots have a minimum width of twenty-five feet along a street or road, Section 4.03, requiring all roads ending in a cul-de-sacs be less than 600 feet in length, Section 4.11, regarding minimum requirements for road design, Section 4.12 (A), requiring all subdivisions have access via dedicated public streets or roads, Section 4.12 (B), which require a minimum street width of sixty-six feet, and Section 5.01, which require all subdivisions be graded to the standards as set out in Chapter 4, for land situated in part of the Southwest Quarter of Section One (1), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

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.

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. Deputy County Attorney Hoffmeister explained the applicants have, in good spirit, made every attempt to correct any nonconformities to allow for the lot creation.

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

Absent: Gangwish.

Abstain: None.

Voting "Nay": None.

This Board, after recommendation by Deputy County Attorney Hoffmeister and further discussion, also, finds that the applicant shall complete the filing of the final plat within one year, in lieu of the 120-day commencement period completion, of the date of approval by The Buffalo County Board of Adjustment.

A separate motion was made by Hardesty and seconded by Vest to require the final plat be filed within one year of the variance approval.

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

Absent: Gangwish.

Abstain: None.

Voting "Nay": None.

Motion carried.

Moved by Vice-Chairperson Pierce, seconded by Mr. White, to approve the minutes of the April 11, 2024 meeting, of the Board of Adjustment, as mailed.

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

Absent: Gangwish.

Abstain: Vest.

Voting "Nay": None.

Motion carried.

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

Chairperson Pemberton-Riege adjourned the meeting at 4:43 P.M. until such time they will be called into session.

Vice-Chairperson Rodney Gangwish