

MINUTES OF BOARD OF ADJUSTMENT
OCTOBER 9, 2025
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 September 25, 2025. 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.

Interim Vice-Chairperson Richard Pierce opened the meeting at 4:00 P.M. at the Buffalo County Courthouse on October 9, 2025.

After roll call, those present were: Tammy Jeffs, Richard Pierce, Larry Hardesty, and Rich White. Also present were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator Dennise Daniels and a few members of the public.

Rodney Gangwish and Barb Pemberton-Riege were absent.

Quorum was met.

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

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

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

Abstain: None.

Voting "Nay": None.

Absent: Gangwish and Pemberton-Riege.

Motion passed.

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

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

Abstain: None.

Voting "Nay": None.

Absent: Gangwish and Pemberton-Riege.

Motion passed.

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

Interim Vice-Chairperson Pierce called for nominations for Vice-Chairperson. Ms. Jeffs nominated Mr. Pierce for Vice-Chairperson. Interim Vice-Chairperson Pierce called for additional nominations three times. A motion was made by Mr. Hardesty, seconded by Mr. White to cease nominations and cast a unanimous ballot for Richard Pierce for Vice-Chairperson.

Voting "Aye" were: Jeffs, Hardesty, and White.

Abstain: Pierce.

Voting "Nay": None.

Absent: Gangwish and Pemberton-Riege.

Motion passed.

Vice-Chairperson Pierce called for nominations for Second Vice-Chairperson. Mr. Hardesty nominated Rodney Gangwish for Second Vice-Chairperson. Vice-Chairperson Pierce called for additional nominations three times. A motion was made by Ms. Jeffs, seconded by Mr. White to cease nominations for a unanimous ballot for Second Vice-Chairperson.

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

Abstain: None.

Voting "Nay": None.

Absent: Gangwish and Pemberton-Riege.

Motion passed.

Vice-Chairperson Pierce declared a unanimous ballot. Motion was made by Mr. Hardesty, seconded by Ms. Jeffs to cast a unanimous ballot for Rodney Gangwish as Second Vice-Chairperson.

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

Abstain: None.

Voting "Nay": None.

Absent: Gangwish and Pemberton-Riege.

Motion passed.

Vice-Chairperson Pierce announced we do abide by the Open Meeting Act and a copy is available for anyone wanting a copy.

Vice-Chairperson Pierce announced that there were no amendments to the agenda, but that agenda is available for anyone wanting a copy.

The public forum was opened at 4:07 P.M. No one provided any comment at this time. The public forum closed at 4:07 P.M.

Vice-Chairperson Pierce opened the public hearing at 4:07 P.M. for a Zoning Variance, filed by Bryan Brown, licensed land surveyor, on behalf of Johnny Lee Halkyard and Karen Marie Halkyard, Dee A. Krowlikowski and Duane Krolikowski, David K. Halkyard and Mary Halkyard, and Debbie A. Chaney and Scott Chaney, who are requesting a variance under Buffalo County Zoning Regulations: Section 5.16 (2A) regarding minimum lot sizes in the Agriculture (AG) District; Section 2.52, regarding nonconforming structures; Section 3.3149, defining a nonconforming structure; AND Buffalo County Subdivision Regulations Section 4.06 (B), regarding compliance with minimum lot sizes; Section 2.23 (a) which defines a lot; Section 3.02 (B) regarding minimum remnancy on a tract of land being part of the Southeast Quarter of the Northeast Quarter of Section Two (2), Township Nine (9) North, Range Fourteen (14) West of the 6th P.M., Buffalo County, Nebraska.

Bryan Brown, licensed land surveyor, of 419 4th Street, Shelton, Nebraska, stepped forward to present the application. He stated that he is speaking on behalf of Johnny Lee Halkyard and Karen Marie Halkyard, who reside at 10940 Gibbon Road, Gibbon, Nebraska. Mr. Bryan testified that the applicants, the Halkyards, have a pre-zoned tract. He stated that the applicants found that their garage encroaches over the property line by more than one foot. He stated that the applicant intends to keep a one-acre tract, but move the property lines to meet the setbacks, as required under Buffalo County Zoning Regulations. Deputy County Attorney Hoffmeister clarified that the applicants intend to make the lot less narrow and wider. Mr. Brown confirmed and stated that the proposed one-acre tract does not meet the minimum three-acre requirement under Buffalo County Subdivision Regulations. He testified that the proposed subdivision does meet the minimum well and septic setbacks, as required under Department of Environment and Energy (NDEE), with room for expansion in the future.

Deputy County Attorney Hoffmeister asked if the applicants intended to increase the density of the housing. Mr. Brown stated the applicants do not intend to increase the density.

Deputy County Attorney Hoffmeister stated that the applicants were not increasing the degree of nonconformity because the applicant would retain one acre and Mr. Brown confirmed.

Deputy County Attorney Hoffmeister stated that the applicants and the surrounding land owners are not the same, as far as common ownership. He stated that the applicant owns the surrounding property with relatives. He explained that the pre-zoned lot was created by the applicant's parents in early 1980, prior the enactment of zoning.

Mr. Brown explained that the reason the applicants were unable to make the minimum three-acre requirement was because Mr. Halkyard, along with his siblings, were unable to come to an agreement to acquire more land to make the tract conforming.

Deputy County Attorney Hoffmeister stated there weren't many one-acre tracts around the area with a building encroachment.

Deputy County Attorney Hoffmeister stated there would not be a detriment to the neighboring tracts because Mr. Halkyard, along with his siblings, owned the surrounding tract. He added that if the variance is approved, The Board would need to require a transfer of title for the remaining tract to the west.

Deputy County Attorney Hoffmeister referenced a map, which is enclosed within the Board's packet, for the setbacks of the well and septic to show the compliance with Nebraska Department of Environment and Energy NDEE). Mr. Brown explained that the setbacks were more compliant with the proposed property boundaries than the existing one.

Mr. Hardesty inquired the reason for a three-acre minimum. Deputy County Attorney Hoffmeister stated that three-acres or greater in area is the state-wide exemption for NDEE. He added that Agricultural – Residential 1 (AGR 1) District and the Agricultural – Residential 2 (AGR 2) District both allow for a relaxation of the three-acre minimum, providing NDEE provides approval. Mr. Hardesty asked Deputy County Attorney Hoffmeister if NDEE has reviewed the proposed subdivision and Deputy County Attorney Hoffmeister stated it is subject to review. Vice-Chairperson Pierce stated that the tract is grandfathered.

Deputy County Attorney Hoffmeister reiterated that the one-acre tract was created prior to zoning and the proposed boundary changes are not causing the subdivision to become more nonconforming. He stated that it was more conforming based on NDEE.

Mr. Hardesty asked when the encroachment of the garage was constructed, and Mr. Brown stated it was done prior to the enactment of zoning and testified that the property lines were not verified upon construction. Mr. Hardesty stated that every property owner should be aware of the property lines before construction.

Ms. Jeffs asked if the relaxation is approved. Deputy County Attorney Hoffmeister explained that the owners will have a more compliant lot. Mr. Brown added that the surrounding land is up for sale and Mr. and Mrs. Halkyard intend to continue living in the existing house, but don't want to cause any issues with a buyer.

Mr. Hardesty reaffirmed that the owner built over the property line by one foot and is currently not in compliance with the required 15-foot setback and Mr. Brown confirmed. Deputy County Attorney advised that the encroachment was done prior to the enactment of zoning and was not required to have those setbacks at that time. If, however, the structure was destroyed, the new structure would need to be constructed in compliance with the regulations at that time. He advised that the current setbacks are 10 feet.

Discussion was had regarding the existing well and septic and the proposed changes.

Vice-Chairperson Pierce asked if the proposed tract is one acre and Mr. Brown confirmed. Deputy County Attorney Hoffmeister asked if the one-acre tract was net of roads and Mr. Brown stated that it was not. He testified that after the dedication of road, required under an administrative subdivision, the lot size would be 0.86 acres.

Vice-Chairperson Pierce inquired if the variance is approved, then the proposed subdivision would be more compliant and Deputy County Attorney Hoffmeister stated that it would.

Mr. Hardesty inquired why the abutting area, which was unfarmed, wooded land, could not be included in the three-acre tract to make a compliant subdivision and Mr. Brown stated that the owners were unable to agree on terms.

Mr. Halkyard testified. He explained that his mother recently passed. He stated that his mother's residence was directly south of his residence. He added that his sister found that the garage was built over the property line and let him know. He testified that he could not sell the farmland with part of his house on that tract.

Vice-Chairperson Pierce asked if anyone wished to provide comment. No one else spoke.

Vice-Chairperson Pierce closed the public hearing at 4:34 P.M.

Mr. Hardesty asked Deputy County Attorney Hoffmeister how many nonconforming tracts of land there are and he responded that there were hundreds, created pre-zoning. Vice-Chairperson Pierce agreed.

Ms. Jeffs asked if The Board approves the request for variance, which appears to be moving from nonconforming to nonconforming, if the grandfathered clause stays intact. Deputy County Attorney Hoffmeister stated that, from a NDEE standpoint, the tract is more compliant. Mr. Hardesty stated that he does not agree with near compliance, versus complete compliance.

Ms. Jeffs stated that she, as part of the Planning Commission, has seen several instances where uses have been required to be torn down when noncompliance occurred. Deputy Attorney Hoffmeister explained that the use is compliant, but the subdivision is not compliant.

Ms. Jeffs stated that she does not believe that The Board should approve a variance when there is a sibling dispute and it should be solved between themselves. Vice-Chairperson Pierce disagreed.

Deputy County Attorney Hoffmeister asked if the residence to the south was using the applicant's well and Mr. Halkyard said he believed there was a separate well.

Vice-Chairperson Pierce stated that if this isn't approved, then it would affect the upcoming sale.

Mr. Hardesty asked if the garage was built at the same time as the residence and Mr. Halkyard said the house was constructed first and the garage and breezeway were added later. Mr. Hardesty asked Mr. Halkyard if he knew where the property lines were prior to construction. Mr. Halkyard said he did not because his land abutted his parents' land. Mr. Hardesty stated that he has dealt with a situation personally where an individual built over his property line pre-zoning and it has created issues for him and the new property owner. He stated that the owner should have asked the right questions when he constructed the garage and it is not an excuse for requesting a variance. He stated that this situation could have been avoided. Vice-Chairperson Pierce disagreed.

Mr. White asked if the variance is approved, would the sale of the surrounding property will be clear for sale and Deputy County Attorney Hoffmeister confirmed. He reiterated that the remnant tract should have a transfer of title to the surrounding land owner(s).

Mr. Hardesty stated that another remedy should be sought for the dispute between the family members, other than through The Board of Adjustment. Deputy County Attorney Hoffmeister explained that the approval would not create another one-acre tract.

Vice-Chairperson Pierce stated that he believed it should be approved.

A motion was made by Mr. White to approve the requests for variance, with the condition that a transfer of title to the surrounding land owner occurs, under Buffalo County Zoning Regulations: Section 5.16 (2A) regarding minimum lot sizes in the Agriculture (AG) District; Section 2.52, regarding nonconforming structures; Section 3.3149, defining a nonconforming structure; AND Buffalo County Subdivision Regulations Section 4.06 (B), regarding compliance with minimum lot sizes; Section 2.23 (a) which defines a lot; Section 3.02 (B) regarding minimum remnancy on a tract of land being part of the Southeast Quarter of the Northeast Quarter of Section Two (2), Township Nine (9) North, Range Fourteen (14) West of the 6th P.M., Buffalo County, Nebraska. Vice-Chairperson Pierce gave reasonable time for a second. None of the board members provided a second, the motion died.

A motion was made by Ms. Jeffs and seconded by Mr. Hardesty to disapprove the requests for variance under Buffalo County Zoning Regulations: Section 5.16 (2A) regarding minimum lot sizes in the Agriculture (AG) District; Section 2.52, regarding nonconforming structures; Section 3.3149, defining a nonconforming structure; AND Buffalo County Subdivision Regulations Section 4.06 (B), regarding compliance with minimum lot sizes; Section 2.23 (a) which defines a lot; Section 3.02 (B) regarding minimum remnancy on a tract of land being part of the Southeast Quarter of the Northeast Quarter of Section Two (2), Township Nine (9) North, Range Fourteen (14) West of the 6th PM., Buffalo County, Nebraska based on the following reasons:

The strict application of the regulation would not produce undue hardship. This Board finds that the family dispute affects the applicants' ability to conform to the existing subdivision regulations and the applicant failed to research property lines, prior to the construction of a structure. This is a matter of convenience. Furthermore, such hardship is not shared generally by other properties in the same zoning district and the same vicinity. This Board finds that there are several other one-acre tracts across the county and is reoccurring in nature.

Voting "Aye": Hardesty and Jeffs.

Abstain: None.

Voting "Nay": White and Pierce.

Absent: Gangwish and Pemberton-Reige.

Buffalo County Zoning Regulations, Section 9.33 requires, "The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to affect any variation in such regulation. (Resolution 10-10-03). Since there were not four affirmative votes, the decision to reverse the decision by the zoning administrator was denied.

Moved by Ms. Jeffs, seconded by Mr. Hardesty to approve the minutes of the December 12, 2024 meeting, of the Board of Adjustment, as mailed.

Voting "Aye" were: Hardesty, Jeffs, and White.

Abstain: Pierce.

Voting "Nay": None.

Absent: Gangwish and Pemberton-Riege.

Motion carried.

Vice-Chairperson Pierce announced there was no new business.

Vice-Chairperson Pierce adjourned the meeting at 4:51 P.M. until such time they will be called into session.

Vice-Chairperson Richard Pierce