

MINUTES OF BOARD OF ADJUSTMENT
JUNE 12, 2003
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Chairperson Bosshamer called the meeting to order at 4:15 o'clock P.M. with a quorum present on June 12, 2003 at the Buffalo County Board of Supervisors room in the Buffalo County Courthouse, Kearney, Nebraska.

Agenda for such meeting was regularly posted as required by law. Present were: Chairperson Ann Bosshamer, Dennis Farrell, Marlin Heiden, Sharon Martin, Lloyd Wilke and alternate Carol Porter. Also present were Deputy County Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein, Steven L. Nelson, Sharon Nelson and Charles Nelson.

The public forum was opened at 4:16 P.M. No one spoke.

Chairperson Bosshamer opened the hearing for the variance for Steve & Sharon Nelson. Thereafter, Board heard testimony regarding application for zoning variance submitted by Steven and Sharon Nelson, concerning property located by street address at 9015 17th Avenue, Kearney, Nebraska with complete legal description as follows: A tract of land located in the Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4) of Section 11, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Southwest Quarter of Section 11 and assuming the West line of the Southwest Quarter as bearing South and all bearings contained herein are relative thereto; thence South on the West line of the Southwest Quarter of said Section 11 a distance of 861.1 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on the centerline of Wood River; thence continuing South on the West line of the Southwest Quarter of said Section 11 a distance of 237.4 feet; thence N 89°58'45" E a distance of 181.0 feet; thence N 02° 00"W a distance of 190.46 feet to a point on the centerline of Wood River; thence N 74°55'W on and along the centerline of Wood River a distance of 180.57 feet to the place of beginning. Containing 0.87 acres, more or less, of which 0.18 acres, more or less, are presently being used for road purposes on the West side.

Board member Heiden questioned whether the plans as submitted included alternate or reserved leach field area as required by Nebraska Department of Environmental Control.

Testimony was given from Steven L. Nelson, Sharon Nelson and Charles Nelson, brother and neighbor of applicants. It was disclosed that applicants:

- 1) in September, 2002 had water well in operation on the subject property,
- 2) that in August, 2002 Dawson Public Power District was provided rural electrical services,
- 3) that construction on garage with small apartment for human occupation was completed in Fall, 2002 prior to January 1, 2003, and
- 4) that prior to January 1, 2003 applicant had placed batter boards for continuation of construction commenced in late summer, 2002 for residence to be attached to garage and small apartment which had been closed up for winter.

- 5) That such garage and small apartment as it exists today is wired for 200-amp service, which would by customary knowledge be approximately double any service for the structure in its present state of construction.

The hearing closed at 5:14 P.M.

That based upon such undisputed facts, Deputy County Attorney Hoffmeister advised the Board that based upon these facts, he would consider that applicant's improvements should be considered to have been under construction although such construction once completed would be considered to be nonconforming in its use because as batter boards are set up, the structure would be seventeen and one foot over that zoning regulations required set back of fifty feet from boundary of the county road situated on the west side of the subject property. As such, because the work was in progress January 1, 2003, no zoning application would be required. Mr. Hoffmeister did advise applicants that in his opinion the Board could not rule on the variance, that such structure as nonconforming once completed may not, in the future, be able to be rebuilt in event partial and/or full destruction or damage to the structure. Further as concerns compliance with Department of Environmental Control regarding the reserved area for an alternate leach-field that that issue would or could be enforced by the State of Nebraska's Department of Environmental Control, not the County Attorney's Office, unless specifically assigned to the local office. As such he wanted the applicants to know about the potential problem(s) regarding nonconformance of the improvements under construction prior to January 1, 2003 and possible review problems regarding septic tanks and drain fields.

Thereafter, it was moved by Heiden, seconded by Wilke, after advice of legal counsel that this Board takes no action regarding the variance application filed by Steven L. and Sharon Nelson concerning property located at 9015 17th Avenue, Kearney, Nebraska. Reason for such advice was that the plans for residence as submitted by Nelsons were under construction prior to January 1, 2003. In support of this reasoning this Board was informed that structure under construction on January 1, 2003 identified in their application as of January 1, 2003: already had plumbing stubbed to it for sanitary and water purposes to residential portion of structure; had septic tanks and leach fields in place to handle more than one bedroom capacity; had electrical panel for residential structure already in place situated in garage which was completed by January 1, 2003; and had batter boards up and in place for dirt excavation for residence under construction some time prior to January 1, 2003. As such, the proposed improvement which was under construction by objective facts on January 1, 2003 is deemed to be grandfathered as to residential portion of improvement although such improvements on the subject property may well be non-conforming in nature as to the existing zoning regulations now in effect in Buffalo County. Voting yes were Heiden, Wilke, Bosshamer, Farrell and Martin. No - none. Motion carried.

Moved by Bosshamer, seconded by Martin to adjourn at 5:35 P.M. until time that Board of Adjustment is called into session again. Voting yes were Bosshamer, Martin, Farrell, Heiden and Wilke. Motion carried.