

MINUTES OF BOARD OF ADJUSTMENT  
NOVEMBER 12, 2004  
BUFFALO COUNTY COURTHOUSE BOARDROOM  
4:00 P.M.

Chairperson Bosshamer called the meeting to order at 4:00 o'clock P.M. with a quorum present on November 12, 2004 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 Barb Pemberton Riege. Absent: none. Also present were Deputy Buffalo County Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and Siegfried Brauer.

The public forum was opened at 4:02 P.M. No one spoke.

Chairperson Bosshamer asked for clarification from Hoffmeister on the zoning regulations regarding the variance request. Hoffmeister explained Section 9.3 a, b, c & d of the Buffalo County zoning regulations.

Chairperson Bosshamer opened the hearing at 4:05 P.M. for the variance filed by J. H. Schroeder, Trustee for the Loyal W. Sheen Family Trust. Thereafter, Board heard testimony regarding application for variance submitted by Siegfried Brauer, representing the Trustees for the Loyal W. Sheen Family Trust concerning property described as part of Government Lot 18 & part of Government Lot 19 in Section 31, Township 9 North, Range 16 West of the 6<sup>th</sup> P.M., Buffalo County Nebraska also known as 2715 Evergreen Road. Mr. Brauer addressed the Board and said he had been out to the site and measured the area. He said there are two houses on the property, one north of the canal and the other house about 350-400 feet north, both owned by the Trust. He took some measurements that would work with the lay of the land. There are two access roads between the trees that sit between the two houses and it appears that both roads have been used to access the alfalfa field. The Trust wanted one of the access roads to be included with the property with the south house. Brauer thought it would be about 33,500 square feet, which would be less than 1 acre. Another issue brought up last week was the septic system and where additional leech fields would be placed for future use. One option would be to extend the leech field into the alfalfa field. He looked at the issue as it affects the canal and the irrigation source. It appears that the canal is owned by Central Power Co dba as Kearney Water & Electric. Brauer stated the canal is owned by the Power Co from bank to bank or about 16'. It is unclear exactly how much property they do own since the bank is wider than 16'.

Heiden questioned how much property was needed. Hoffmeister clarified that according to the Buffalo County Zoning Code, it needed to be at least 3 acres or 70,000 square subject to review and compliance by Nebraska Department of Health and approval of County Board.

Brauer asked that this particular parcel be allowed to exist in the form that it has for decades in actual practical terms, a separate residential property on the edge of farm ground.

Hoffmeister stated even though this dwelling was rented out, it was included with the remainder of the property in this quarter and has never been split off and filed as a separate parcel prior to the implementation of zoning.

Brauer questioned having to spend money for a survey and where the boundaries could be located in a practical sense without having to do up to five surveys.

Klein referenced the motion from the last meeting "Motion was made by Farrell, seconded by Martin to continue this hearing until November 12, 2004 and request that a survey be completed and more information obtained such as location of property lines, acres at this location, ownership and property line of Kearney Canal and what type of easement the Trust has been granted by Nebraska Public Power District.

Bosshamer stated that she didn't think he had presented anything definitive. She said they really don't have a plan. Without a survey the Board prefers not to accept any information.

Heiden also questioned the perimeter of the lot, location of well, septic tanks and location of lateral leech field. He stated they need exact measurements to present to the Board of Adjustment.

Brauer seemed to think it would be foolish to spend the money on a survey not knowing if the Board would accept this.

Hoffmeister also suggested submitting a subdivision to the County Board for their approval. He said it would have to be surveyed at some point because even if the Board would approve this variance, it would have to be filed against a specific piece of property. It also is not fair to future owners not to comply with Department of Environmental Quality.

Brauer could give measurements for the well but he was unsure where the septic is located.

Heiden also questioned when this property is sold; there will need to be an actual legal description. By hiring a surveyor, he can guide you in the right direction and give the needed information to the Board of Adjustment.

Farrell also questioned the exact location of the ownership of the Canal. He also said no hardship was proven, but it was more for convenience or profit.

Brauer stated they were not coming under the hardship but were coming under the other clause "does not change the character of the neighborhood, is not a detriment to adjacent properties." He questioned if they had to show a hardship also.

Farrell also questioned is this could be a subdivision. Hoffmeister stated they could go before the County Board and have this accepted as a subdivision. Farrell asked if having this approved as a subdivision wouldn't be the easiest way to go.

Hoffmeister referred to 9.31

- a. The strict application of the regulation would produce undue hardship;

- b. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- c. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
- d. 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 and,

9.32 No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Brauer seemed to think the end result would be no different if there was a variance a 70,000 square foot lot as opposed as going to the subdivision approval process you end up with same thing If you don't want to deal with it, I guess we will go somewhere else.

Hoffmeister reiterated again that the Board needs a survey, and surrounding areas will be noted on the survey. The Board also needs to know placement of well, septic and leech field as well as outbuildings.

The hearing closed at 4:45 P.M.

The Board questioned the intent of the variance request. They also questioned if the variance request was for approximately one acre or one acre plus.

Klein stated the Trust wanted to sell the rental house and only wanted to sell less than one acre. Under the current Buffalo County Zoning Regulations, this is not allowed.

Farrell commented the Trust wants the Board to make an amendment to zoning regulations to approve the sale of land with less than one acre and we would set precedence. Many farmsteads in the County are less than one acre.

Bosshamer referred to the motion made at the October 14, 2004 Board of Adjustment meeting at which time they had asked that a survey be completed and more information obtained such as location of property lines, acres at this location, ownership and property line of Kearney Canal of which none had been answered.

Moved by Wilke, seconded by Martin to deny the request for the variance filed by J. H. Schroeder, Trustee for the Loyal W. Sheen Family Trust concerning property described as part of Government Lot 18 & part of Government Lot 19 in Section 31, Township 9 North, Range 16 West of the 6<sup>th</sup> P.M., Buffalo County Nebraska also known as 2715 Evergreen Road because no survey had been submitted, other information had not been received and the following reasons were not addressed:

- a. The strict application of the regulation would produce undue hardship;

- b. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- c. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
- d. 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 and

9.32 No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Voting yes were Wilke, Martin, Bosshamer, Farrell and Heiden. Voting no: none. Absent: none. Motion carried.

Moved by Martin, seconded by Farrell to approve the minutes of October 14, 2004 meeting of the Board of Adjustment as mailed. Voting yes were Martin, Farrell, Bosshamer, Heiden and Wilke. Absent: none. Voting no: none: Motion carried.

Moved by Wilke, seconded by Heiden to adjourn at 4:55 P.M.