

MINUTES OF BOARD OF ADJUSTMENT
APRIL 9, 2009
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Chairperson Ann Bosshamer called the meeting to order at 4:00 o'clock P.M. with a quorum present on April 9, 2009 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: Ann Bosshamer, Marlin Heiden, Larry Fox, alternate Barb Pemberton Riege and Lloyd Wilke. Absent: Sharon Martin. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and one member of the public.

Chairperson Bosshamer announced we do abide by the open meeting act and there is a copy posted in the County Board room and copies are available for anyone wanting to see it.

The public forum was opened at 4:00 P.M. No one was present. The public forum closed at 4:00 P.M.

The Bylaws of the Buffalo County Board of Adjustment were discussed. Deputy County Attorney Hoffmeister handed out an updated copy of the Bylaws. Discussion followed with proposed changes.

Motion was made by Wilke, seconded by Heiden to approve the Bylaws of the Buffalo County Board of Adjustment with the noted changes. Riege added a friendly amendment to make the changes and review the Bylaws and place on the agenda at the next meeting of the Board of Adjustment. Voting yes were Wilke, Heiden, Bosshamer, Fox, and Riege. Voting no: none. Absent: Martin. Motion carried.

Chairperson Bosshamer opened the hearing at 4:30 P.M. for the zoning variance filed by Robert Behrendt for property located in the NE ¼ in Section 34, Township 11 North, Range 15 West of the 6th p.m., Buffalo County, Nebraska. Thereafter, Board heard testimony regarding application of the variance submitted by Robert Behrendt, concerning property in Buffalo County, Nebraska.

Marjorie Behrendt, representing her husband Robert Behrendt, was present and told the Board they would like to add an additional mobile home for their daughter and husband. The layout is as shown on the drawing submitted to the Board of Adjustment. They had applied for a zoning permit for a mobile home for their son and been granted this on the relative exemption on October 19, 2007. They had set up a container to store property and they can't place the other mobile home until this container is moved. Their daughter and her husband had a fire at their residence and they are now living in the basement of Robert and Marjorie's home. Mrs. Behrendt said her daughter had located another mobile home but there are some problems with Greentree Financial not releasing this mobile home so they don't know if they can still purchase this trailer. They have the septic in place for the northern trailer and there is a well at this site

which they hope to use for both mobile homes. They will have separate electrical hook ups for each mobile home. No land will be subdivided but will remain as the entire Northeast Quarter.

Heiden questioned how many acres there are. Klein told the Board they have applied for this variance on the entire quarter which is approximately 160 acres. Each mobile home will also have separate septic systems. He also asked how far apart the mobile homes were. He asked if the septic systems are at least 100' from the well. Mrs. Behrendt said they would be at least 100' from the well.

Mrs. Behrendt said there are two mobile homes temporarily on this site but the one mobile home is junk and the other mobile home would be placed under a pole shed type building approximately 60' x 80' in size for their son. The pole shed building has not been built yet. In the event the son leaves, they would use the pole shed for storage for their farm machinery.

The daughter's mobile home would be placed on the north edge of the property south of the existing trees.

Bosshamer asked the location of the well. Mrs. Behrendt showed the Board the location of the existing well and also told the Board they have their own separate well for their home.

Mrs. Behrendt also said they would like to move a garage close to the pole shed and use this for washing of trucks.

Heiden asked about washing trucks and Mrs. Behrendt replied it would be used for just their own stock trailers.

Bosshamer asked where this other mobile home is located. Mrs. Behrendt replied it is in a mobile home park in Kearney.

Wilke asked if this was just a temporary request and Mrs. Behrendt replied this is permanent.

Heiden questioned if it was a problem placing a mobile home in a pole shed.

Riege asked about the trailer home financing and questioned if there was a problem in getting financing for a mobile home through banks.

Bosshamer asked Deputy County Attorney Hoffmeister to explain Section 9.3 of the Buffalo County Zoning Regulations.

Hoffmeister asked if the mobile homes would ever be replaced by a stick-built home. Mrs. Behrendt replied the daughter might replace the mobile home with a stick-built home. Hoffmeister commented one stipulation might be added that occupants should be related by the first degree. They are asking to have the 1000' requirement be relaxed.

Fox asked if we needed a distance from the well to the septic and mobile homes.

Heiden questioned who had put in the septic system and drain fields. Mrs. Behrendt replied it had been Forward Well Service.

Deputy County Attorney Hoffmeister read and reviewed Section 9.3 of the Buffalo County Zoning Regulations stating the rules allowing interpretations and variances for the Board of Adjustment.

The Board discussed conditions that could be placed on this variance in the event they do approve this.

Hoffmeister questioned if their son and daughter held outside jobs. Mrs. Behrendt told the Board they both have cattle and are involved in the farming operation. Neither the son nor daughter has outside jobs.

Chairperson Bosshamer closed the public hearing at 5:15 P.M.

Thereafter Heiden moved, and Fox seconded that the following motion with findings, authorizations, and conditions be approved to grant the variance received from Robert Behrendt.

This Board finds that:

1. Applicant seeks to relax Buffalo County Zoning Regulation 5.12(5) to add one additional single family farmhand/relative residence in addition to the one additional single/two family dwelling allowed for purpose of housing relatives or permanent agriculture workers allowed as use by right in the Agricultural (AG) District.
2. Applicant owns 160 acres described on his application. This land is identified as the "subject property" for purposes of discussion as to whether the requested variance should be granted or denied.
3. Applicant now occupies a single family residence on the subject property. This structure is referred to as the "primary residence".
4. The subject property in addition to the primary house also has an open zoning permit, as a use by right, allowing Applicant to build a single family dwelling to be occupied by Applicant's son. Hereafter this is simply referred to as the "son's residence". There are no other residences on the subject property other than applicant and son's residences.
5. Applicant wants permission to place on the subject property an additional single family dwelling to be occupied by his daughter. Hereafter this proposed dwelling shall be referred to as "daughter's residence".
6. Daughter's dwelling will be built in the same vicinity as the primary residence and the son's residences.
7. As proposed all three residences are within a 1000 foot radius of each other.
8. Daughter's dwelling is in contravention of Regulations 5.12(5) and 5.16(2) (A) because it is a separate dwelling unit and not 1000 feet from the son's and/or applicant's residence.
9. Applicant's daughter and son both have commercial livestock on the subject property and surrounding property owned by the Applicant. Both son and daughter care for their individually owned livestock and Applicant's livestock on the subject property. Applicant, his son, and daughter compose a single family farm economic unit in that they

- share equipment, manpower, and facilities in a farming operation. This farming operation is the sole source of income for the applicant, his son, and his daughter.
10. Son's residence uses water well separate and apart from the water well used by the primary residence. Son's residential water well is to be shared with daughter's residence. Son and daughter's residences will have separate sanitary sewers installed or to be installed by professional, licensed plumbers.
 11. The subject property is situated in the Agricultural (AG) District. In the AG District the subject property could have as a use by right four individually situated residences, similar to the primary residence, situated 1000 feet distant from each other. Additionally as a use by right, each of these four individual residences could by Section 5.12(5) of Buffalo County's Zoning Regulations have "one additional farm/ranch single/two family dwellings for the purpose of housing relatives or permanent agriculture workers". Therefore by right on one 160-acre tract, four primary single family residences could exist together with four additional relative/farmhand single/two family dwelling units. That type of density is not a desirable density in the AG District because such uses intensify dispersed usage of land that is better situated for agricultural and not residential uses.
 12. As a use by right, Applicant could have placed his son and daughter in a structure housing two families.
 13. In the situation before the Board, it would seem more prudent to limit the overall number of residences and family units on the subject property, but allow an increase of density on a part of the subject property. This would maintain an overall neighborhood that would appear consistent with a farming environment. That would also allow a more intense occupancy in one location on the subject property, but limit overall rural residential increases on the subject property.
 14. It would be proper in the circumstances before the Board to relax the limit of rural housing on the subject property to allow on the subject property one additional farmhand/relative single family residence as proposed in the application.
 15. It would also be proper to limit other independently situated rural housing on the subject property.
 16. With some degree of certainty it is foreseeable that the applicant's now occupied residence, the son's residence, and/or the daughter's requested additional residence will cease to be occupied continually by persons that are related to each other and/or are permanent agricultural workers. Therefore the underlying need for this relation that justifies and allows this relaxation of zoning regulations will at some point in the future, no longer exist. As such the Board believes that some degree of mobility should be required for the son's or daughter's residences.
 17. From a regulatory standpoint, the some limitation should be placed upon the degree of kinship housed in the several residences on the subject property.
 18. To not allow this variance would cause applicant a need to disperse his relatives, who are also permanent agricultural workers, at locations that are more distant from existing farming operations with such residences being no less than 1000 feet distant from each other. Also such spacing would result in higher building costs per site and perhaps add to overall density on the subject property and neighborhood. The relief that applicant has sought can be allowed in the circumstances that exist on the subject property without

substantial detriment to the public good and without substantially impairing the intent and purpose of Buffalo County's zoning regulations.

19. The strict application of the regulation in question produces an undue hardship on the subject property and its owner.
20. The hardship is not shared generally by other properties in the same zoning district and in the same vicinity.
21. Authorization of Applicant's 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 with the conditions that this Board places upon the subject property as a condition of allowing this variance.
22. This variance is being granted based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

Therefore, The Buffalo County Board of Adjustment approves Applicant's request to relax Buffalo County Zoning Regulation 5.12(5) so that in addition to the one additional farm/ranch single/two family dwelling for purpose of housing relatives or permanent agricultural worker, he can place one additional single family relative or farmhand residence on the subject property with the following conditions that will apply to the entirety of the subject property:

1. The primary residence shall remain as a use by right.
2. Son's single family dwelling unit is allowed to continue as a single family residence, but the conditions has to how that residence will be allowed is changed with the granting of this variance.
3. Daughter's residence is allowed by variance to Buffalo County's Zoning Regulations to exist as a single family dwelling unit with conditions stated in this motion.
4. As applied for on Son and Daughter's residences, both are allowed to exist as mobile or trailer homes all as requested in the two applications submitted. However, between these two uses only one of the two, should either mobile or trailer house be replaced, is allowed to have a basement or be replaced by a permanent built on site type residence.
5. The granting of this variance upon the subject property constitutes usage of three of four single family dwellings allowed under Buffalo County Zoning Regulation 5.16(2) (A).
6. A copy of this motion shall be filed against the subject property.
7. The subject property is legally described as:

The Northeast Quarter of Section Thirty-Four (34), Township Eleven (11) North, Range Fifteen (15) West of the 6th p.m., Buffalo County, Nebraska.

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

Moved by Heiden, seconded by Fox to approve the minutes of March 12, 2009 meeting of the Board of Adjustment as mailed. Voting yes were Heiden, Fox, Bosshamer, Riege and Wilke. Voting no: none. Absent: Martin. Motion carried.

The Board of Adjustment adjourned at 5:30 P.M. until which time the Board of Adjustment is called into session again.