

MINUTES OF BOARD OF ADJUSTMENT
AUGUST 13, 2009
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Chairperson Ann Bosshamer called the meeting to order at 4:05 o'clock P.M. with a quorum present on August 13, 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, Sharon Martin and Lloyd Wilke. Absent: Larry Fox and alternate Barb Pemberton Riege. 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 4:05 P.M. No one was present. The public forum closed at 4:05 P.M.

Chairperson Bosshamer opened the hearing at 4:06 P.M. for the zoning variance filed by Mitch Humphrey on behalf of RAJB Patel Co. for a tract of land being part of the Southeast Quarter of the Northeast Quarter located in Section 5, Township 8 North, Range 18 West of the 6th p.m., Buffalo County, Nebraska. Thereafter, Board heard testimony regarding application of the variance submitted by RAJB Patel Co. concerning property in Buffalo County, Nebraska.

Mitch Humphrey was present to speak on behalf of Jack Patel who owns the property. Humphrey told the Board his client owns the tire shop and motel site. The motel site is accessed off Buffalo Creek Road and the tire shop is accessed off Highway #183. The owner wants to divide the property into two parcels to sell off the one commercial property (formerly the tire shop). According to the present Buffalo County Zoning Regulations, the commercial site must be at least 40,000 square feet and the tire shop is only approximately 35,000 square feet. They can't make the site any larger because of the location of the waste water treatment lagoon.

Humphrey showed the Board a drawing of the site and the location of lagoon. This lagoon is licensed through the State of Nebraska. The area in back of the motel also has waste water treatment lines which should stay with the motel site. They would have to come up with an additional 5,000 square feet or 45' which would cut into the motel site. There is also a drive-way on the west side of the building site to allow access to the building along with the electric and gas meters and also a telephone pedestal. They are asking for a variance to be able to do an Administrative Subdivision.

Hoffmeister asked if the side and rear setbacks also need to be relaxed. Humphrey said they would need to relax the side (south) from 15' to 14' and the rear (west) from 20' to 10'. Humphrey told the Board the tire shop is also served by the lagoon and they will have an agreement with the owner to use the same lagoon for both businesses.

Heiden asked why they couldn't use that property (lagoon) as part of property they are splitting. Humphrey said they couldn't use that because they have a state approved lagoon and they can't take any property away from that.

Martin asked Humphrey to show her the exact location of the south lot line of the tire shop. Humphrey said the boundary of the tire shop has always followed where the fence is located. Humphrey told the Board the property in front of the motel is owned by someone else.

Heiden asked if someone else could use the lagoon. Humphrey thought that is a possibility but they would have to check with the owner.

Martin said there is some concern about the condition of the lagoon. She noticed there is a lot of garbage in the lagoon.

Heiden replied that is ruled by the Nebraska Department of Environmental Quality and the County does not oversee that.

Martin also wanted to know the distance from the motel to the tire shop and also the distance from the motel to the west property line.

Humphrey asked what happens if the variance is granted and the building is destroyed.

Hoffmeister replied the variance allows the building but in the event the building is destroyed more than 60%, the new building must meet the required setbacks.

Chairperson Bosshamer closed the public hearing at 4:30 P.M.

Motion was made by Heiden, seconded by Wilke to approve the variance received from RAJB Patel Co. to allow relaxation of the 40,000 square feet to 35,000 square feet for the Commercial site which was formerly the tire shop and to allow the relaxation for the side (south) from 15' to 14' and to allow relaxation of the rear (west) from 20' to 10' and the building on site is deemed to be allowed to exist but subject to building requirements as a nonconforming structure and is subject to Section 2.53 of the Buffalo County Zoning Regulations as it relates to the structure. The drive-way to the west of the tire shop is not considered a public street or alley but only an access to the building. Both lots utilize a common lagoon. The legal description on the east tract is a tract of land being part of the Southeast Quarter of the Northeast Quarter (SE ¼ NE 1/4) of Section Five (5), Township Eight (8) North, Range Eighteen (18) West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Beginning at a point on the South line of said Northeast Quarter that is 530.7 feet West of the East One-Quarter Corner of said Section 5; thence continuing West along said South line a distance of 209.4 feet, running thence North and parallel to the East line of said Quarter Section a distance of 660.0 feet, thence East and parallel to the South line of said Quarter Section a distance of 200.5 feet; thence South parallel to the East line of said Quarter Section a distance of 181.0 feet; thence Easterly with a deflection angle to the left of 89° 50' 54" to a point on the West line of a tract of land deeded to the State of Nebraska, Department of Roads described on Microfilm Roll 93, Page 12804 thru 12805 and recorded on July 28, 1993, in the Buffalo County Register of Deeds

office; thence Southerly on the West line of said tract of land deeded to the State of Nebraska, Department of Roads a distance of 176.47 feet to the Southwest Corner of said tract of land deeded to the State of Nebraska, Department of Roads; thence in a Westerly direction and leaving the West line of said tract of land and parallel to the South line of said Quarter Section a distance of 180.01 feet and running thence South and parallel to the East line of said Quarter Section a distance of 300.0 feet to the place of beginning, EXCEPT THEREFROM the following described tract of land being part of the Southeast Quarter of the Northeast Quarter (SE ¼ NE ¼) of Section Five (5), Township Eight (8) North, Range Eighteen (18) West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Beginning at a point on the South line of said Northeast Quarter that is 530.7 feet West of the East One Quarter Corner of said Section 5; thence continuing West along said South line a distance of 209.4 feet running thence NORTH and parallel with the East line of said Quarter Section a distance of 660.0 feet; thence EAST and parallel with the South line of said Quarter Section a distance of 200.5 feet; thence SOUTH parallel with the East line of said Quarter Section a distance of 243.0 feet; thence Westerly with a deflection angle to the right of 90° 08' 37" a distance of 12.69 feet; thence southerly with a deflection angle to the left of 90° 01' 05" a distance of 116.89 feet; thence easterly with a deflection angle to the left of 90° 41' 04" a distance of 21.89 feet and running thence SOUTH and parallel to the East line of said Quarter Section a distance of 300.0 feet to the place of beginning.

- 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.

This would allow the applicant to sell the existing tire shop to another owner as a separate parcel of land.

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

The Administrative Subdivision will need to be filed to complete this process. This resolution will be filed in the Register of Deed's office against the property and a copy will be sent to the applicant.

Moved by Wilke, seconded by Heiden to approve the minutes of June 11, 2009 meeting of the Board of Adjustment as mailed. Voting yes were Wilke, Heiden, Bosshamer and Martin. Voting no: none. Absent: Fox and Riege. Motion carried.

Chairperson Bosshamer adjourned the meeting at 4:50 P.M. until which time the Board of Adjustment is called into session again.