

MINUTES OF BOARD OF ADJUSTMENT
DECEMBER 3, 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 December 3, 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, Larry Fox, Sharon Martin, alternate Barb Pemberton Riege and Lloyd Wilke. Absent: Marlin Heiden. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and two members 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.

Chairperson Bosshamer opened the hearing at 4:01 P.M. for the zoning variance filed by Gilbert Antillon for a tract of land being part of the Northwest Quarter of the Northwest Quarter located in Section 10, Township 9 North, Range 17 West of the 6th p.m., Buffalo County, Nebraska. Thereafter, the Board heard testimony regarding application of the variance submitted by Gilbert Antillon concerning property in Buffalo County, Nebraska.

Antillon told the Board that it would require 42,000 cubic yards of fill dirt to place the building farther from the road. He owns about 5.8 acres but a lot of the land is not usable because of the hills. He doesn't think anyone could hit the building because of the hill and existing trees.

Hoffmeister asked how cars would access this building. Antillon said there is an existing drive already there. He said the entrance to the garage would be from the north.

Wilke asked how much closer this building is to the road than his house. Antillon was unsure but he thought it was probably the same distance. Wilke thought the placement of the proposed garage and existing house looked like it was the same distance as shown on Antillon's drawing.

Hoffmeister wanted to remind the Board sometimes these roads could be widened but Odessa Road is already an 80' road and won't be widened in the future. 100th Road is a 66' road.

Wilke asked what the measurements were from the road. Klein said the measurement would be 29' from the road so the variance would have to be relaxed 21'.

Klein thought this building was closer to the road than the house.

The Board questioned the exact size of the lot.

Klein read the legal description from the latest deed which states this property is 5.8 acres, more or less, of which 0.19 acres, more or less, are presently being used for road purposes on the north side. The deed reflects the 80' right-of-way of Odessa Road.

Martin asked what is in compliance with the existing buildings. The house is an existing home and is a nonconforming structure and is closer than the setbacks now required.

Hoffmeister stated some of this lot is only 166' wide.

Fox asked how close this structure is.

Hoffmeister replied the variance would need to be relaxed 21'.

Martin asked if it would be challenging to move additional dirt to move the building farther east.

Antillon told the Board it would take 48,000 cubic feet of fill to move the building to the east and it would take 88,000 cubic feet to move it to the south and east because of the lay of the land.

Hoffmeister asked about the privacy fence on the west side of the house. Antillon told him the fence was actually on road right-of-way.

Antillon stated he usually uses the access from 100th Road to his home.

Martin told him there are reasons for the required setbacks. We have setbacks for the safety of the public. She asked if Antillon saw any danger from putting his building that close to the road.

Antillon told the Board there are trees to the west side of the proposed garage and the trees would prevent any vehicle from hitting it.

Riege said there is a lot of traffic on this road. She asked if visibility would be a problem.

Klein said visibility from the drive would not be a problem if the setbacks are relaxed. The visibility to the north is a problem because of the hill on Odessa Road.

Antillon stated again because of the lay of the land, he is not able to put the garage any farther to the east.

Hoffmeister read Section 8.1 which states accessory buildings shall not occupy more than thirty percent of the required area for the rear yard. Any accessory building shall have a minimum setback of 3 feet and all garage entrances must have ten feet from the access street or alley.

Bosshamer said the Board has to look at the four conditions as stated in Section 9.3 #3.

Wilke asked if all the four conditions had to be met.

Hoffmeister stated that it does.

Martin asked Antillon how close the nearest neighbor was. Antillon replied ¼ of a mile.

Bosshamer reiterated Odessa Road is a well traveled road.

Wilke asked how tall the side walls would be. Antillon told him the side walls would be about 10' high.

Martin asked if he had already poured the footings. Antillon said he had not researched it and had already poured the footings.

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

Motion was made by Wilke, seconded by Martin to approve the variance requested from Gilbert Antillon who owns a two sized front yard lot that abuts Odessa Road and 100th Road to allow relaxation of front yard setback from 50' to 21' on the west side of property line adjacent to Odessa Road with the conditions that the garage will not be used for human habitation and will need to face north because of the unique topographical shape of the property. Odessa Road is already an 80' road and will not require additional right-of-way in the future. The building is considered an accessory use building and will never be a residence. The legal description for the property is a tract of land being part of the Northwest Quarter of Section Ten (10), Township Nine (9) North, Range Seventeen (17) West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest corner of said Section 10, and assuming the North line of said Northwest Quarter as bearing EAST, and all bearings contained herein are relative thereto; thence EAST on the North line of said Northwest Quarter a distance of 40.0 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on the East property line of a county highway; thence continuing EAST on the North line of said Northwest Quarter a distance of 255.6 feet; thence S 00° 18' 58" E a distance of 295.6 feet; thence WEST parallel with the North line of said Northwest Quarter a distance of 82.1 feet; thence S 00° 18' 58" E a distance of 1020.5 feet to a point on the South line of the Northwest Quarter of the Northwest Quarter of said Section 10, thence N 89° 40' 09" W and on the aforesaid South line a distance of 173.51 feet to a point on the East property line of the county highway; thence N 00° 18' 58" W and on the aforesaid East property line a distance of 1315.1 feet to the place of beginning. Containing 5.8 acres, more or less, of which 0.19 acres, more or less, are presently being used for road purposes on the north side. This is based on the following:

- a. The strict application of the regulation would produce undue hardship because the applicant cannot place an accessory use, a garage that typically is part of a residential occupation. Furthermore a strict interpretation of "accessory" use as a garage as defined in Article 8 would indicate that the garage should be placed in the rear yard. In the situation presented to the Board, it would be cost prohibitive to require placement of the garage in the rear yard;

- b. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity because of geographical constraints of the subject property would cause the applicant to incur significant costs to move the proposed garage further to the east;
- 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 because it does not increase rural residential housing of the area and after the improvement is completed it will not cause an appearance of a higher density of usage. Additionally, the proposed placement with the entry limitation, will not hinder visibility for the 100th and Odessa Roads intersection. The Board notes that Odessa Road already has an 80' right of way. Typical unsubdivided rural lots have a 66' right of way for the road. Therefore the proposed improvement is not believed to be detrimental to immediate future expansion of Odessa Road that would exceed the now in place 80' right of way, particularly with the entrance limitation, 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, because of the unique geographical constraints of the subject property, this property faces two public streets causing this property to have two front yards.

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

Antillon asked Hoffmeister about replacing the existing fence running north and south on the east side of Odessa Road. Hoffmeister told him to check where the property lines are and to place the new fence on the property lines.

Klein told Antillon he has two years to complete the structure and she will mail a copy of this resolution to him after it is filed in the Register of Deed's office with the property.

Moved by Wilke, seconded by Martin to approve the minutes of August 13, 2009 meeting of the Board of Adjustment as mailed. Voting yes were Wilke, Martin, Bosshamer, Fox and Riege. Voting no: none. Absent: Heiden. Motion carried.

Chairperson Bosshamer adjourned the meeting at 4:30 P.M. until which time the Board of Adjustment is called into session again.