

MINUTES OF BOARD OF ADJUSTMENT
JULY 14, 2011
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Chairperson Larry Fox called the meeting to order at 4:37 P.M. with a quorum present on July 14, 2011, 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: Larry Fox, Marlin Heiden, Sharon Martin, Barb Pemberton Reige, Richard Weiss and Lloyd Wilke. Absent: None. Also present were Mike Kelly, Attorney representing the Board of Adjustment, Buffalo County Deputy Attorney Andrew Hoffmeister, Roger Bissell, Jackie Bissell, Brent Schake, Vikki Stamm, Buffalo County Board Administrator Lynn Rauner, and 4 members of the public.

Hoffmeister announced that Kelly would be representing the Board of Adjustment, due to conflict. This hearing was held without a Zoning Administrator due to LeAnn Klein being on a leave of absence. Janice Taubenheim was acting as the interim Zoning Administrator up until July 5, 2011. Taubenheim has submitted an affidavit prepared when she was the acting Zoning Administrator when the initial zoning permit was filed and when the request for variance was filed.

Chairperson Fox announced we do abide by the open meeting act, 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 4:37 P.M. No one was present. The public forum closed at 4:37 P.M.

Appointment of the Chairperson was conducted at the October 25, 2010 meeting.

Chairperson Fox opened the public hearing at 4:47 P.M. for the request of variance for reduction of required 50 foot minimum front yard setback required by Sec. 5.36 the Buffalo County Zoning Regulations for Roger and Jackie Bissell for property in part of the East half of the Southwest Quarter (E ½ SW ¼) of Section Seventeen (17), Township Nine (9) North, Range Sixteen (16) West of the 6th p.m., Buffalo County, Nebraska. Thereafter, the Board heard testimony regarding application for a variance submitted by Roger and Jackie Bissell concerning property in Buffalo County, Nebraska.

Heiden announced to the board a potential conflict of interest because Brent Schake, the current contractor for Roger and Jackie Bissell, has worked for his construction company and he is a distant relative.

Vikki Stamm was present to represent Roger and Jackie Bissell. Roger Bissell told the board that he would like to apologize for not getting a permit. He stated that once he realized that he needed a permit, he read the Zoning Regulations and realized he was out of compliance. At that time, Roger Bissell came to the Buffalo County Zoning office to apply for a zoning permit.

Roger Bissell told the board that they took the existing house off of the foundation and were rebuilding on the existing foundation. The original building site was started in 1993 prior to zoning and prior to 56th Avenue. All of the current buildings on their property are out of compliance and have been grandfathered in. Trenton Snow, Buffalo County Surveyor, had prepared a survey showing the old garage and the new structure. Mr. Bissell also had Miller and Associates prepare a complete layout of the entire property. The survey prepared by Miller and Associates, and the survey prepared by Trenton Snow were presented to the Board of Adjustment.

The current septic system is on the east side of the house and there is a drop off which is why putting the structure anywhere other than where it is currently would cause undue hardship. If they had moved the structure into the pasture, which is the only other place it would fit, they would have had to install a new basement, new well and new septic system. Mr. Bissell stated that the new structure is not any more out of compliance than the new existing structure. The new structure is further away from the road than the old structure. Mr. Bissell stated that he wanted to address a concern about the Bissell's pulling out of the property onto 56th Avenue. Bissell noted that one of the complaints or issues the county had with the attached garage being too close to 56th Avenue was that his vehicles would back out from the garage on to 56th Avenue and cause traffic problems. That simply is not the case because he will continue to use a north to south driveway that runs for about 300' from the attached garage and then enters 56th Avenue. To evidence this driveway use, Mr. Bissell presented a picture showing a 300' driveway that is existing and is intended to stay after completion of construction.

Chairman Fox asked for questions. On the initial zoning permit, under Section A, the total footage from the road showed 100'. Marlin Heiden asked where the 100' came from. When Trenton Snow checked the setbacks he established the structure was only 22" from the road. Mr. Bissell stated it was a bad judge of distance, but he was giving his best estimation.

Hoffmeister asked if the attached garage is additional to what was there before. Mr. Bissell responded that it is, and the intention of them building was to have an attached garage and to move the laundry room from the basement.

Heiden asked Hoffmeister if Buffalo County had a provision for building or moving a structure to an area where a preexisting building was. Hoffmeister stated that we have a provision under Section 8.4 of our Zoning Regulations. Hoffmeister read the regulation:

8.41 FRONT YARDS: The front yards heretofore established shall be adjusted in the following cases: (Resolution 3-11-08)

Where forty percent (40%) or more of the frontage on one side of a street between two intersecting streets is developed and the buildings on this side of a block have observed a front yard greater in depth than herein required, new buildings shall not be erected closer to the street than the average front yard so established by the existing buildings provided that no building shall be required to have a front yard setback of more than fifty (50) feet.

Where forty percent (40%) or more of the frontage on one side of a street between two intersecting streets is developed with buildings that have a front yard less than the required, new buildings shall not be erected closer to the street than the nearest building on the block.

Kelley established that the issue before the Board is that the new structure is within 50' from the road. When zoning was established the original house was placed within 50' of the road together with a detached garage. The detached garage is entirely located within 50' feet of the road and part of the original structure is also located with 50' of the road. Under Section 2.5 the detached garage and part of the original house that encroached upon the street are non-conforming. Under Section 2.5 it states "any nonconforming structure may be enlarged, maintained, repaired, remodeled or rebuilt; provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or party of such structure. Kelley stated that the direction this regulation and state statute were headed were to discourage and prohibit structures that sat within the required minimum setback. According to Hoffmeister, this section states where the County stands on this issue, and it is the intention that when any nonconforming structure is replaced, and particularly when added to, that the structure comply with the 50' front yard setbacks.

Stamm stated that her clients were operating under Section 2.52. They are building a nonconforming structure where a current nonconforming was. They are not enlarging the nonconformities, so the structure should be able to be built. According to the survey submitted by Trenton Snow, the distance from the road is more than the original building and there is already a detached garage on the property that is closer than the newly built attached garage. Therefore the completed residence with the attached garage is less nonconforming than the existing structures on the property. Hoffmeister responded that if that were the case then for the entire eight acres along the road one could then build as close to the road as the existing attached garage which was approximately twenty and a half feet away from the east side of 56th Avenue. Stamm responded that Hoffmeister was overstating what was actually occurring on the property.

Chairperson Fox again asked for public comment. James Friesen with Town and Country Bank, neighbors LeRoy and Norman Lammers, and current contractor Brent Schake were all present in support of granting the variance. Mr. Lammers who lived next door noted that several times when dealing with the city, he had requested variances for relaxation of a few feet or even inches to help people complete or fit a house on their property, and typically variances were granted. He saw no problem in this instance.

Mr. Bissell told the board that the Bauer residence on the other side of the road closer to 85th Street has been grandfathered in but his place is close to the 56th Avenue also. Mr. Hoffmeister asked how far from the public road the Bauer structures were? Mr. Bissell responded that their driveway comes from 85th south and follows right along the fence line on the east side of 56th Avenue, with the house sitting on the east side of the driveway. Mr. Bissell stated that he knew their structure was not 50' back.

Martin asked if there were any options to move the garage in order to become in compliance with the regulations. Could the attached garage be moved? Mr. Bissell responded that with the way the ground lays, if we would move the structure it would be out of compliance probably and we would run over the septic system. He said he would have problems with the structure in any other area than its current position.

Heiden asked about the size of the garage? Mr. Bissell responded 26 x 30.

Hoffmeister asked what the undue hardship is for the applicants. Stamm responded that the county put in 56th Avenue in 2003 after the original Bissell residence was built, and the county created the undue hardship. Stamm asked why her clients should have to move their structure, when the residence was there before the road. Hoffmeister stated that his concern was the new construction of the attached garage to the house. A portion of the pre-existing residence was nonconforming and adding the attached garage increased the degree of nonconformity. Stamm responded that Snow's survey showed that the pre-zoning built detached garage is 20.55' from the road and the new attached garage is 22' from the road. That would mean that the degree or amount of nonconformity is not increasing due to placement of a new residence with the attached garage.

Kelley asked if the board had a copy of the variance application and a copy of the affidavit from Janice Taubenheim. Hoffmeister presented the affidavit of Taubenheim to the board and a copy was given to Vikki Stamm. Kelley noted that the affidavit appeared to be prepared for litigation and was probably one of the documents prepared for the injunction that Hoffmeister had prepared. That litigation was the basis of conflict for Mr. Hoffmeister.

Martin asked when the construction halted. Schake responded that he stopped working on June 24, 2011. He did put up the rest of the Tyvek and since the building was half shingled they asked permission from Buffalo County to finish the shingling in order to protect the structure. We did install some Tyvek that had been damaged during the recent storms, which permission from Hoffmeister.

Stamm pointed out the board that they have approved requests for variances in similar situations in the past. She discussed an application for Steven and Judy Martin that was approved on 03/23/06 for a 10' variance. She stated that there is precedence for approving setback variances.

Martin asked of Hoffmeister whether he was aware of a variance request for a garage or similar structure at 85th Street and 56th Avenue for the property located west of Bauer's house. Hoffmeister stated that he thought a request for setback relaxation for construction of a detached garage had been denied for that location. Martin and Heiden both thought that was the result of that particular request.

Riege left meeting at 5:16 p.m.

At 5:32 p.m. it was moved by Martin seconded by Heiden to enter into executive session to seek legal advice concerning what constituted the undue hardship in this variance request due to the expensive nature of the real estate improvements now on the property and the nature of the litigation.

Voting yes: Martin, Heiden, and Fox. Voting no: Weiss and Wilke, Absent: Riege. Motion carried.

The Board of Adjustment returned to regular session at 5:44 p.m. Chairperson Fox closed the public hearing at 5:45 p.m.

Moved by Martin, seconded by Wilke to deny the request for a variance on Section 8.41 of the Buffalo County Zoning Regulations for Roger and Jackie Bissell for property in part of the East half of the Southwest Quarter (E ½ SW ¼) of Section Seventeen (17), Township Nine (9) North, Range Sixteen (16) West of the 6th p.m., Buffalo County, Nebraska.

Voting yes: Martin, Wilke, and Fox. Voting no: Weiss. Abstain: Heiden. Absent: Reige. Motion carried.

A copy of these minutes will be filed with the Register of Deeds and a copy will be sent to the applicant.

Moved by Heiden, seconded by Wilke to approve the minutes of the October 25, 2010 meeting of the Board of Adjustment as mailed. Voting yes: Heiden, Martin, Weiss, Wilke, and Fox. Voting no: None. Absent: Riege. Motion carried.

Chairperson Fox adjourned the meeting at 5:54 P.M. until which time the Board of Adjustment is called into session again.