

MINUTES OF BOARD OF ADJUSTMENT
JULY 12, 2018
BUFFALO COUNTY JUSTICE CENTER HEARING ROOM B
4:00 P.M.

Zoning Administrator Klein opened the meeting at 4:00 P.M. at the Buffalo County Justice Center Hearing Room B on July 12, 2018.

Agenda for such meeting was regularly posted as required by law. Present were: Larry Fox, Marlin Heiden, Barb Pemberton Riege, Lloyd Wilke and alternate Rich White. Absent: J.C. Ourada. Also present were Deputy County Attorney Kari Fisk, Zoning Administrator LeAnn Klein and four members of the public. We do have a quorum.

Klein asked for nominations for Chairperson. A motion was made by Riege, seconded by White to appoint Lloyd Wilke for Chairperson. Voting yes were Riege, White, Fox, Heiden, and Wilke. Voting no: none. Absent: Ourada. Motion passed.

Klein asked for nominations for Vice-Chairperson. A motion was made by Wilke, seconded by Heiden to appoint Barb Pemberton Riege for Vice-Chairperson. Voting yes were Wilke, Heiden, Fox, and White. Voting no: none. Abstain: Riege. Absent: Ourada. Motion passed.

Klein asked for nominations for Second Vice-Chairperson. A motion was made by Riege, seconded by Wilke to appoint Larry Fox for Second Vice-Chairperson. Voting yes were Riege, Wilke, Fox, Heiden, and White. Voting no: none. Absent: Ourada. Motion passed.

Klein turned the meeting over to Chairperson Wilke.

Chairperson Wilke announced we do abide by the open meeting act and copies are available for anyone wanting to see it.

Notice of the meeting was given in advance thereof by publication in the legal newspaper. A copy of the proof of publication is on file in the Zoning Administrator's office. Advance notice of the meeting was also given to the Board of Adjustment and availability of the Agenda was communicated in the advance notice. The agenda is available for anyone wanting a copy of the agenda.

The public forum was opened at 4:03 P.M. Several persons were present, but no one provided any comment. The public forum closed at 4:03 P.M.

The Bylaws of the Buffalo County Board of Adjustment were discussed. Chairperson Wilke noted a correction in Article IV that Board of County Supervisors should now read Buffalo County Commissioners due to change in County government.

Motion was made by Heiden, seconded by Fox to approve the Bylaws of the Buffalo County Board of Adjustment with the noted changes. Voting yes were Heiden, Fox, White, Riege, and Wilke. Voting no: none. Absent: Ourada. Motion carried.

Chairperson Wilke opened the public hearing at 4:05 P.M. submitted by Mitchell Humphrey on behalf of Eric C.D. and Heather Roubicek for a tract of land being part of the North Half of the Southwest Quarter of Section One, Township Nine North, Range Sixteen West of the Sixth Principal Meridian, Buffalo County, Nebraska more particularly described as follows: Referring to the Northeast Corner of the Southwest Quarter of said Section 1 and assuming the East line of said Southwest Quarter as bearing SOUTH and all bearings contained herein are relative thereto; thence SOUTH on the East line of said Southwest Quarter a distance of 962.92 feet; thence N 89° 42' W and parallel with the North line of said Southwest Quarter a distance of 550.00 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N 89° 42' W and parallel with the North line of said Southwest Quarter a distance of 1529.66 feet to a point that intersects on the East right-of-way line of a public road in Raasch Subdivision, a subdivision being part of the West ½ of the Southwest ¼ of Section 1, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska; thence N 02° 47' 49" E on the aforesaid East right-of-way line a distance of 60.0 feet; thence S 89° 42' E and parallel with the North line of said Southwest Quarter a distance of 953.28 feet; thence N 00° 18' 40" E a distance of 400.3 feet; thence S 89° 42' E and parallel with the North line of said Southwest Quarter a distance of 435.27 feet; thence SOUTH a distance of 173.84 feet; thence S 25° 40' 57" E a distance of 318.42 feet to the place of beginning. Containing 6.37 acres, more or less. SUBJECT TO HOWEVER, rights of ingress and egress over and across a 60.0 foot strip of land which is more particularly described as follows: Referring to the Northeast Corner of the Southwest Quarter of said Section 1; thence South on the East line of said Southwest Quarter a distance of 962.92 feet; thence N 89° 42' W a distance of 944.68 feet to the actual place of beginning; thence continuing N 89° 42' W and parallel with the North line of said Southwest Quarter a distance of 1134.98 feet to a point that intersects on the East right-of-way line of a public road and Raasch Subdivision, a subdivision being part of the West ½ of the Southwest ¼ of Section 1, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska; thence N 02° 47' 49" E and on the aforesaid East right-of-way line a distance of 60.0 feet; thence S 89° 42' E and parallel with the North line of said Southwest Quarter a distance of 1106.93 feet; thence N 42° 40' 36" E a distance of 225.54 feet; thence N 65° 22' 41" E a distance of 142.93 feet to a point on the East line of the aforescribed tract of land; thence S 25° 40' 57" E and on the Easterly line of the aforescribed tract of land a distance of 60.0 feet; thence leaving the Easterly line of the aforescribed tract of land, S 65° 22' 41" W a distance of 132.00 feet; thence S 42° 40' 36" W a distance of 240.00 feet to the place of beginning.

Mitchell Humphrey was present and he is representing the Roubiceks and he told the Board they want to take a chunk of land east of Raasch Subdivision and get approval for the road as shown on the overhead projector. Currently this road is an easement of 60' and is narrower than the 66' that is now required by the current zoning regulations. Most of the house sites are less than three acres and it would not be possible to purchase additional right-of-way. Humphrey told the Board they want to divide Roubicek's parcel into two parcels, both being over three acres. The north parcel would be 3.13 acres and the south parcel would be 3.24 acres. They won't be asking for road top maintenance. The length of the road is rather long. This road has been there since 1992.

Fisk asked if the 3.24 acres includes the road easement. Humphrey replied it does.

Heiden asked if the other road that ties into 1st Avenue was 60' wide. Humphrey thought it was.

Humphrey said these seven driveways leading off of 1st Avenue has been in existence quite some time. There is also an easement leading to Gary and Fiona Roubicek's property to the east of Eric and Heather Roubicek's property. They are asking to grant a variance for 60' in width and are asking for a variance for the extended length of the road.

Fisk asked if a topographical map had been furnished if the road rises more than six feet. Humphrey replied he didn't have a topographical map.

Heiden asked if the County would put road in, how wide would it be? Humphrey replied the County would not put a road in at this location.

Fisk said they would also need a third variance to require a road access to Lot 1 and the applicant could amend this application to request a third variance for road access to Lot 1.

Humphrey said their intention is to keep this road as an easement.

Heiden said they can go down to 70,000 square feet but it would require another variance.

Fisk asked if there was a reason they couldn't go to 66' where they already have 60' on Lot 1. Humphrey said it would be really close to Eric and Heather's house and if you look at the site, the land drops off. They already have a recorded easement for this.

Fox asked if there is enough room for the well and septic. Humphrey said yes there was.

Riege asked what size the lot would be not including the easement. Humphrey said it would be under three acres.

Fisk questioned if they would be able to get Nebraska Department of Environmental Quality approval. Humphrey replied they would be able to get approval.

Humphrey said this is an undue hardship because they can't get any more land to get the additional six feet.

Fisk went over the points needed to grant this variance as far as undue hardship and the other findings they need to make.

Fisk also asked what the Roubicek's intention was. Humphrey said they want to subdivide their property into two parcels. They have land across the road to the north that is not being used currently.

Riege said Gary Roubicek could also subdivide his property.

Gary Roubicek said they don't intend to subdivide their property.

Humphrey said the intention is not to make the road public. It should be an easement maintained by the owners. The roads in the Raasch Subdivision are also private roads and are not maintained by the County.

Fisk reminded the Board three variances would be needed, one for the road width, one for the road length and the variance for Lot 1 having access to a road.

Gary Roubicek was present and told the Board he had purchased all of this property in 1980. The road was used by tractors and had been there a long time. People had bought this property in pieces and he had given them an easement to use the road.

Heiden asked if Gary Roubicek owns the road and he has given the other people permission to use this easement. Roubicek said that is correct.

Fisk said now with subdivision regulations, private easements are no longer an option.

Wilke asked what the Roubiceks want to do with the land. Eric Roubicek said they want to get rid of the north part and they don't want to maintain this property anymore because they don't use it. They use to have 4-H animals at this location but they don't anymore.

Humphrey stated when this road was put in, the County didn't have set standards but the City did have standards and it was 60' for the width of a road.

Heiden questioned what the hardship would be.

Humphrey thought this would be similar to the Kennedy hearing and the Rowe hearing previously approved by the Board of Adjustment. It would be the same hardship.

Heiden said if they couldn't put that road in because the land was too steep, that would be a hardship.

Fisk went over the explanation of hardships again.

Humphrey said one has to use common sense to make it happen. The Roubiceks can't maintain this land any more.

Fisk said Humphrey would need to go in front of the Planning & Zoning Commission and then to the County Commissioners to finish the process to review the subdivision process. If it is not in perfect compliance as far as Chapters 4, 5 & 6, then it would need to go in front of the Planning & Zoning Commission first before it goes to the County Commissioners.

Humphrey replied we didn't have to do this on the Kennedy project.

Chairperson Wilke closed the public hearing at 5:12 P.M.

The Board discussed the criteria for the hardship. Riege said our hands are tied.

Fox questioned if the hardship had been met.

Wilke said the width and length of the road and the access to Lot 1 is why they are asking for a variance.

Riege asked for clarification on the easement. Fisk replied the Roubiceks own the private easement and they do pay taxes on this easement.

It was moved by Riege seconded by Fox to reopen the hearing for more discussion from the applicants and Humphrey.

Heather Roubicek said there is a drainage area that goes through the land to the west of their property. The floodplain is shown on the overhead projector.

Gary Roubicek stated the road in the floodplain had been built to standards and there is a large culvert under the road to handle the water.

Fisk said that would require an engineer's certification to make sure this road is built in compliance with floodplain regulations.

Heather Roubicek said the road has been built up to requirements.

Fisk said they could continue this hearing if they need additional information to make their decision.

There was no one present in opposition.

Chairperson Wilke closed the public hearing at 5:35 P.M.

A motion was made by Riege, seconded by Heiden to grant the variance for road length, road width, and road access to Lot 1 on the following legal description for a tract of land being part of the North Half of the Southwest Quarter of Section One, Township Nine North, Range Sixteen West of the Sixth Principal Meridian, Buffalo County, Nebraska more particularly described as follows: Referring to the Northeast Corner of the Southwest Quarter of said Section 1 and assuming the East line of said Southwest Quarter as bearing SOUTH and all bearings contained herein are relative thereto; thence SOUTH on the East line of said Southwest Quarter a distance of 962.92 feet; thence N 89° 42' W and parallel with the North line of said Southwest Quarter a distance of 550.00 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N 89° 42' W and parallel with the North line of said Southwest Quarter a distance of 1529.66 feet to a point that intersects on the East right-of-way line of a public road in Raasch Subdivision, a subdivision being part of the West ½ of the Southwest ¼ of Section 1, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska; thence N 02° 47' 49" E on the aforesaid East right-of-way line a distance of 60.0 feet; thence S 89° 42' E and parallel with the North line of said Southwest Quarter a distance of 953.28 feet; thence N 00° 18' 40" E a distance of 400.3 feet; thence S 89° 42' E and parallel with the North line of said Southwest Quarter a distance of 435.27 feet; thence SOUTH a distance of 173.84 feet; thence S 25° 40' 57" E a distance of 318.42 feet to the place of beginning. Containing 6.37 acres, more or less. SUBJECT TO HOWEVER, rights of ingress and egress over and across a 60.0 foot strip of land which is more particularly described as follows: Referring to the Northeast Corner of the Southwest Quarter of said Section 1; thence South on the East line of said Southwest Quarter a distance of 962.92 feet; thence N 89° 42' W a distance of 944.68 feet to the actual place of beginning; thence continuing N 89° 42' W and parallel with the North line of said Southwest Quarter a distance of 1134.98 feet to a point that intersects on the East right-of-way line of a public road and Raasch

Subdivision, a subdivision being part of the West ½ of the Southwest ¼ of Section 1, Township 9 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska; thence N 02° 47' 49" E and on the aforesaid East right-of-way line a distance of 60.0 feet; thence S 89° 42' E and parallel with the North line of said Southwest Quarter a distance of 1106.93 feet; thence N 42° 40' 36" E a distance of 225.54 feet; thence N 65° 22'41" E a distance of 142.93 feet to a point on the East line of the aforescribed tract of land; thence S 25° 40' 57" E and on the Easterly line of the aforescribed tract of land a distance of 60.0 feet; thence leaving the Easterly line of the aforescribed tract of land, S 65° 22' 41" W a distance of 132.00 feet; thence S 42° 40' 36" W a distance of 240.00 feet to the place of beginning. This Board finds that an undue hardship has been demonstrated because the following conditions exists: exceptional narrowness of lot, unusual shape of lot and exceptional topographic conditions of lot. Furthermore, we find the following:

1. That the applicant has demonstrated that a strict application of the regulations would produce an undue hardship in the form of width and length of the road, access to Lot 1, that the requirement does not serve the need of the people, unduly limit of development and because of the floodplain.
2. That this hardship is not shared by other properties in the Agricultural-Residential zoning district and/or in the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent properties.
4. The character of the Agricultural-Residential district will not be changed by the granting of the variance.
5. We find that the granting of such variance is based upon reasons of demonstrable and exceptional hardship. Specifically, that the hardship has been demonstrated as inability to develop and that it is exceptional because of the road design and difficulty caused by the topographical conditions and the floodplain.
6. We find that this undue hardship is not merely a matter of convenience to the applicant.
7. We find that this undue hardship is not merely a matter of rendering the land or desired plans more economical, profitable, or valuable than it is or would be without the variance.
8. We find that the undue hardship is not for the purposes of caprice (whim, notion, impulse or fad).

Voting yes were Riege, Heiden, Fox, White and Wilke. Voting no: none. Absent: Ourada. 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 Fox to approve the minutes of the January 12, 2017 meeting of the Board of Adjustment as mailed. Voting yes were Heiden, Fox, Riege, and Wilke. Voting no: none. Abstain: White. Absent: Ourada. Motion carried.

Chairperson Wilke adjourned the meeting at 6:00 P.M. until such time they will be called into session.