

MINUTES  
OF  
DOUGLAS COUNTY BOARD OF ADJUSTMENT  
3015 MENKE CIRCLE  
OMAHA, NEBRASKA 68134  
February 15, 2006  
6:00 p.m.

The meeting was called to order by Chair Mayo with roll call.

Members Present: Scott Bruhn, Barbara Hayes, Colleen Mayo, Mark Roseland, and Steve Wright.

Other County officials, staff, and representatives present: Barb Frohlich (Environmental Services) and Bernie Monbouquette (Deputy County Attorney).

Motion by Mr. Wright, seconded by Ms. Hayes to approve minutes of September 21, 2005.

Voting Yes: Bruhn, Hayes, Mayo, Roseland, and Wright.  
Voting No: None.

1. Election of Officers

Motion by Ms. Hayes to elect Ms. Mayo as Chair and Ms. Trebbien as Vice-Chair, seconded by Mr. Roseland.

Voting Yes: Bruhn, Hayes, Mayo, Roseland, and Wright.  
Voting No: None.

2. **PUBLIC HEARINGS**

**APPLICATION**

**V-1-06**

**REQUEST:** Variance to allow placement of an accessory building on a lot less than 2 acres for other permitted uses in Agriculture Farming -1 and placement of an accessory on a lot without a residence.

**LEGAL:** Lot 1, Venice View Acres, 1.86 acres

**LOCATION:** 27120 West Center Road

**INTENDED USE:** Accessory Building

**APPLICANT:** Gary Backman, 27220 West Center Road, Waterloo, NE 68069

Jim Lang, 11718 Nicholas St, representative for the applicant made the following presentation:

1. The application is for two waivers, waiver to permit an accessory building on a lot less than two acres in agricultural farming -1 zoning district and waiver to allow an accessory building on a lot without a main structure.
2. The property is located at 27220 West Center Road on the north side. The property runs south from West Center Road to the north.
3. The property is odd shaped, two lots were platted, lot 1 is 1.86 acres and lot 2 is 4.48 acres.
4. The property is oblong shaped with a creek at the north end of the property making it unusable.
5. There is a residence located on lot 2 and a building permit was issued. The residence was moved to the site and is now being completed.
6. The applicant is requesting permission to locate an accessory building on lot 1 that works with the residence on lot 2 since both lots are owned by the applicant.
7. State statute provides that in a situation with an odd shaped lot that creates an undue burden on the property owner, the Board can grant a waiver.
8. Lot 1 is just slightly under the two acres required and granting the waiver would have no real adverse effect to any other property owner because it could be placed there if it were two acres.
9. He believes none of the adjoining property owners would be damaged by placing the accessory building on lot 1 because it could be placed there if the lot was two acres and the main structure was on lot 1.
10. Ms. Frohlich was to check with the State Department of Roads to determine if there were additional setback requirements along the highway.  
Ms. Frohlich stated she was unable to contact Mr. Blankenau with the State of Nebraska but believes the setback is 100 feet from the property line.
11. Mrs. Linda Backman and her son, Brent Backman, are here to answer questions.
12. We are requesting that the Board grant our request for two waivers.

Questions, Comments, and Discussion among Board members:

1. Mr. Monbouquette asked Mr. Lang if the hardship is due to the shape of the lot because of it's present shape or was the shape created when the lot was laid out. Mr. Lang responded that he believes it is a combination. Because of the shape of the land, this was the only way to plat two lots on the property.
2. Mr. Wright asked if the property had to be divided into two lots. Mr. Lang said he did not know the answer to that question.
3. Ms. Hayes asked if the applicant knew the reason it was divided into two lots. Mr. Backman (Brent) stated that originally the plan was for lot 1 to be zoned commercial. They have now decided that having two lots allows him the opportunity in the future to build a second home there or pursue different things down the road.
4. Mr. Roseland asked why lot 1 could not be increased in size to two acres. Mr. Backman (Brent) said he did not know how the decision was made on the lot size. Also stated his main concern at this point was to get the building placed on the property.

5. Mr. Wright asked how big of a building they could have in their front yard if the property was all one lot. Ms. Frohlich stated they would probably not need a variance for the size of the building but would need a variance to place it in the front yard.
6. Ms. Hayes asked what the accessory building was going to be used for. Mr. Backman (Brent) stated his father sells cars and needs a facility in order to have a license.
7. Ms. Mayo asked if this is a commercial operation. Mr. Backman (Brent) stated it is not going to be commercial property but his father will use the address to sell cars.
8. Ms. Hayes asked if a conditional use permit had been granted for him to do that. Ms. Frohlich stated the variance is being requested before he applies for the conditional use permit.
9. Ms. Hayes stated she was concerned that if a variance is granted then that fact will be used as a reason the Planning Commission should grant the conditional use permit.
10. Ms. Frohlich stated that the variance request to put an accessory building on a lot without a residence is being requested so the accessory building can be on lot 1 even if the conditional use permit is not granted.
11. Ms. Hayes asked Mr. Monbouquette if the granting of the variance wouldn't color the application for the conditional use permit. Mr. Monbouquette stated it is sort of creating your own reason to ask for approval of the conditional use permit.
12. Ms. Hayes stated the Planning Commission worked very hard last year to make this situation work and the applicant did not work with us.
13. Mr. Backman (Brent) stated that he hoped to move past that and be able to place the building on the property.
14. Ms. Mayo commented that from the material she read, she noted a public hearing was scheduled for March 9, 2005 that the applicant did not attend, and then on December 7, 2005 a ticket was issued because a building permit had been obtained and the approved subdivision had been filed. She also expressed concern that she could not be assured the proposed use of the accessory building would not be commercial because of her past experiences as a counselor where past behavior is predictive of future behavior. Mr. Backman (Brent) stated that he stepped forward in December to start the process to get the building placed on the property and could not speak to the past because he was not involved.
15. Ms. Mayo asked if there was a reason the March 9, 2005 meeting was missed. Mr. Backman (Brent) stated that his father did not miss the meeting on purpose.
16. Ms. Mayo expressed concern about a pattern of behavior on his father's part where the Planning Commission bent over backwards to make the situation work and then he didn't follow through.
17. Ms. Hayes stated she was concerned that approval of the variance would be used as a reason by the applicant that the conditional use permit should be approved by the Planning Commission. Mr. Monbouquette stated that one did not necessarily have to be done before the other but you don't want to have somebody create a circumstance they can point to and say it is now a hardship in that I have spent money on this.

18. Ms. Hayes asked Mr. Backman (Brent) if he understood that the conditional use permit had not been granted. Mr. Backman (Brent) responded that he understood that but his main concern now is to get the building placed on the property.
19. Ms. Hayes stated that the building needed to be placed on the property for the purpose of a business. Mr. Monbouquette added that selling cars is not a matter of right on that property.
20. Mr. Wright stated he didn't think the Board of Adjustment could conjecture about what the Planning Commission might decide and the application should be looked at from only what the Board of Adjustment can decide.
21. Ms. Mayo asked if conditions could be put on the variance. Mr. Monbouquette stated that only conditional use permits can have qualifications.
22. Mr. Roseland stated the Board of Adjustment would be allowing an accessory building but the building permit would not be issued until it is specified what the building will be used for. Ms. Frohlich responded that if the variance to place an accessory building on a lot without a residence is granted, a building permit could be issued but the building could not be used for Mr. Backman's business unless the conditional user permit is recommended for approval by the Planning Commission. She further explained that if the variance to allow a conditional use permit on less than two acres is granted, then the applicant can apply to the Planning Commission for that conditional use permit and the building permit would be issued after County Board approval of the conditional use permit. One, both, or neither variance can be granted.
23. Mr. Roseland stated that if this to be used for an auto dealership, it has to be a commercial building because you have to have a bathrooms, sales office, and a place to repair cars. He added that a 4'x4' sign is also required. Mr. Backman (Brent) agreed that a sign was required.
24. Mr. Monbouquette commented that he did not see how the sale of automobiles would every be an accessory to a residential use. Mr. Backman (Brent) responded that the area is not really residential because there business located up and down Highway 92.
25. Ms. Mayo pointed out that Venice Woods is immediately west of the property and the Board of Adjustment has to be attentive to the neighbors as well.
26. When the applicant applied for re-zoning, there wasn't a conditional use permit in agricultural farming – 1 zoning district that would allow this type of use. The Planning Commission created a conditional use permit rather than re-zone the property to commercial but the applicant never followed through
27. Mr. Roseland asked if that was before or after they created the two lots. Ms. Frohlich stated it was after the lots were created. Ms. Mayo commented that we wouldn't be here today if the applicant had followed through.
28. Mr. Roseland asked if conditional use permits stay with the owner or stay with the land. Mr. Monbouquette stated it could be tied specifically to the owner or to the land.
29. Ms. Hayes stated the conditions of the conditional use permit could address that issue.
30. Mr. Wright asked if a conditional use permit would override the lot size restriction and the location of the building. Ms. Frohlich stated a variance would still be needed in order to make it work.

31. Ms. Hayes stated that it might have made more sense for the Planning Commission to consider the conditional use permit before the Board of Adjustment considered the variance request.
32. Ms. Hayes asked why the property could not be re-platted and lot 1 made two acres. Ms. Frohlich stated that could be done. Mr. Lang stated there would still be the issue of the accessory building. Ms. Frohlich stated that only application for the conditional use permit would be necessary.
33. Mr. Roseland asked if a variance wouldn't still be requested to put an accessory building on a lot without a house. Ms. Frohlich stated that approval of the conditional use permit would make the building no longer an accessory building to a residence.
34. Mrs. Linda Backman made the following comments:
  - a. I realize the Planning Commission bent over backwards but Gary did not intentionally miss those meetings.
  - b. He was very upset that he missed those meetings.
  - c. Brent and I are here tonight to try and start clean and fresh.
  - d. Our house and business used to overlook the Platte River, a beautiful area with million dollar homes.
  - e. A typical car lot type business would never have been allowed there.
  - f. The building was used to clean cars that were then taken to a car dealership and sold.
  - g. We have never had cars sitting in our yard and we never will.
  - h. The building would strictly be so Gary can obtain his dealer's permit so he can start wholesaling cars to dealerships.
  - i. The building needs to be placed down on the ground so he can obtain a dealer's license.
35. Mr. Roseland stated he would feel more comfortable with the residence and building on one lot because it wouldn't look like you want to put this building on its own lot so you could sell it off later as a commercial building. Also stated that to him it looked the applicant was trying to pull a fast one, you put the metal building on lot 1 for the future to be able to sell it because development is coming out there, you won't be made to take the building down so you can sell the building as a complete entity. He doesn't have a problem with the residence and the building on one lot and using the building as an accessory to the residence.
36. Ms. Hayes stated that she agreed with Mr. Roseland.
37. Mrs. Backman and Mr. Backman (Brent) stated they did not know why it was platted that way and believed Mr. Backman was told to do it that way. Ms. Frohlich responded that she expected the subdivision application to be for one lot but when it was submitted, it was for two lots.
38. Ms. Hayes asked why lot 1 and lot 2 could not be combined into one lot. Mr. Backman (Brent) stated he did not know the procedure for doing that and was concerned that it might take six or eight months.
39. Mr. Wright commented that granting a variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variances for the purposes of profit or caprice. I don't think we can grant a variance based on profit and convenience.

40. Mr. Lang asked if the one lot was created, would a variance be needed to place the accessory building in the front yard. Ms. Frohlich stated a variance would be needed and a conditional use permit to operate the business.
41. Mrs. Backman stated they would be willing to follow through with whatever they are asked to do but asked if they could be given special permission to locate the building in order to operate their business.
42. Mr. Wright, Ms. Hayes, and Ms. Mayo explained that the Board of Adjustment cannot do that.
43. Ms. Hayes stated she would have no problem granting a variance for the accessory building to be located in the front yard if the residence and accessory building were located on the same lot.
44. Ms. Frohlich asked if there was room to put the accessory building on lot 2. Ms. Hayes stated she believed that could be done.
45. Ms. Hayes asked Mr. Monbouquette what would need to be done to vacate lot 1. Mr. Monbouquette responded that a replat would have to be done.
46. Mr. Roseland asked if a variance could be granted pending a replat. Mr. Monbouquette stated he didn't believe you could make a variance conditional.
47. Mr. Roseland then stated that the only variance the Board of Adjustment could grant was to place the accessory building in the front on lot 2. Mr. Wright pointed out that the request was not for that situation.

Jeff Sharpe, 27110 West Center Road, made the following comments for the public hearing:

1. His property is located to the east of the Backman property and noted that the property lines are odd shaped.
2. When he purchased his property, the Backman property was cornfields and he never dreamed these issues would come up.
3. Mr. Backman told him the house would be located in the back but it is right next door to him.
4. The accessory building has set in front of his house since last April.
5. From all my windows and front door, I see a big red and white building.
6. Believes the accessory building could be located behind the house.
7. If the building is located on lot 1, it will block me from seeing the highway.
8. When placing his building, he consulted his neighbor to make sure the placement of the building was not a problem for him.
9. Doesn't want this building sitting in front of his house.

#### Discussion

1. Ms. Hayes stated that she believed some valid ideas have been suggested to solve the problem and asked by the applicant wanted the building placed immediately.
2. Mr. Backman ( Brent) stated it was not their intent to put the building in front of Mr. Sharpe's house.
3. Expressed concern that it has been 12 months since the building was moved to the property and concerned that it is going to take another 12 months to get the situation settled.
4. Ms. Hayes explained that the Board of Adjustment is trying to help them but that it takes time and has no control over the fact that you moved the building before

- you had a place to put it legally. She also pointed out that the applicant has had since last March to work this out.
5. Ms. Mayo also pointed out that the recommendations made by the Board of Adjustment need to be followed through so this situation does not happen again.
  6. Ms. Hayes pointed out that it will probably be less of an issue with the Planning Commission is one lot is created.
  7. Ms. Frohlich asked if there was any way the building can be put behind the house? Mr. Backman (Brent) said they tried to locate the house in the very back but were not allowed to put it there. Ms. Frohlich stated the applicant made the decision on the location of the house not Douglas County Permits. Mr. Backman (Brent) then admitted that the house movers couldn't move to the location where they wanted it.
  8. Mr. Wright asked why they wouldn't place such a large building behind the house. Mr. Backman (Brent) stated that it was suggestion that the back of the house with the deck and walk out basement look out to the area of trees.
  9. Mr. Wright stated that another hardship has been created if the Board of Adjustment looks at putting this big building in the front yard. Mr. Backman (Brent) stated he did not want to place the building in front of Mr. Sharpe's house; he would locate it as far west as allowable so it is not in front of his house.
  10. Mr. Lang suggested working out at a plan since everyone was present. Ms. Frohlich suggested that the Board of Adjustment conclude the meeting and that Mr. Lang, Mrs. Backman, Mr. Backman (Brent) and she schedule a meeting to discuss further action. Mr. Lang agreed with the suggestion.

The Board of Adjustment adjourned at 7:30 p.m. without a motion on the application.

Minutes approved at the March 15, 2006 meeting.