

# **BUCHANAN COUNTY BOARD OF ADJUSTMENT**

**7:00 PM Monday, March 12, 2018**

**Buchanan County Public Health Meeting Room**

Chairperson Wulfekuhle called the meeting to order at 7:05 PM.

Wulfekuhle led the Pledge of Allegiance.

Deb Ehlers, Dan Sperflage, Karen Stephenson, Louis Wendling, and Al Wulfekuhle were in attendance along with Matthew Even, Environmental Health & Zoning Administrator.

Public guests (0) included:

## **The first item on the agenda was the election of officers.**

Wulfekuhle opened the floor for nominations of the positions of Chairperson and Vice Chairperson. Wendling nominated Ehlers for the position of Chairperson. Stephenson seconded the nomination. Wendling nominated Sperflage for the position of Vice Chairperson. Ehlers seconded the nomination. Ehlers motioned to appoint Even as Secretary. Sperflage seconded the motion. With a vote of 5-0, the motion passed.

## **The second item on the agenda was the approval of the March 13, 2017 minutes.**

Stephenson made a motion to accept the minutes of the last meeting. Sperflage seconded the motion. With a vote of 5-0, the motion carried.

## **The third item on the agenda was training on open meeting laws.**

Even reviewed the discussion at the last meeting on open meeting laws regarding site visits. Even provided copies of the email received from the County Attorney addressing the questions that were raised at the last meeting. It was determined that a majority could attend site visits as long as there is no deliberation, but it would be best to avoid going in groups larger than two to prevent any issues from arising with open meeting laws. It was also stated that members are not required to disclose the discussion they had with the requestors. Stephenson inquired how these rules apply to email conversations and Even reviewed applicability to email.

**The fourth item on the agenda was training on open meeting laws.**

Even then shared fact sheets regarding the Board of Adjustment and hardships. Even then walked through the fact sheet for hardships and how to determine if a variance requests meets the standards.

**The fifth item on the agenda was announcements.**

Even passed out information on the Iowa State University Extension's Introduction to Planning & Zoning Workshop. Interested participants should let Even know if they plan on attending.

Even also asked if there were any volunteers to serve on the Independence Airport Board of Adjustment. Sperfslage & Stephenson informed Even that they agreed to serve.

**The sixth item on the agenda was adjournment.**

Sperfslage made the motion to adjourn and Ehlers seconded the motion. With a vote of 5-0, the motion carried.

The meeting adjourned at 7:32 PM

*Submitted on April 5, 2018 by Matt Even*

# **BUCHANAN COUNTY BOARD OF ADJUSTMENT**

**7:00 PM Monday, April 16, 2018**

**Buchanan County Public Health Meeting Room**

Chairperson Ehlers called the meeting to order at 7:02 PM.

Ehlers led the Pledge of Allegiance.

Deb Ehlers, Dan Sperflage, Karen Stephenson, Louis Wendling, and Al Wulfekuhle were in attendance along with Matthew Even, Environmental Health & Zoning Administrator.

Public guests (0) included:

**The first item on the agenda was the approval of the March 12, 2018 minutes.**

Sperflage made a motion to accept the minutes of the last meeting. Wulfekuhle seconded the motion. With a vote of 5-0, the motion carried.

**The second item on the agenda was the approval of a variance request by Amanda Hendersen to Buchanan County Code of Ordinance 50.13(5) to allow a 20 feet rear yard for a future single-family dwelling instead of required 50 feet rear yard. This property is described as: Commencing at the west quarter corner of Sec 22, T88N, R8W of the 5th P.M., Buchanan County, Iowa, thence east 1.5 rods to the point of beginning, thence east 140.25 feet, north 621.18 feet, west 140.25 feet, south 621.18 feet to the point of beginning.**

Even reviewed the history of the creation of this parcel and its last rezoning in 1990 to "R-3" Residential. Even reported that there was previously a mobile home on the property that has since been removed. Even displayed an image depicting the areas located with the special flood hazard area on this property. Even then displayed aerial imagery of the property and reviewed the buildable area after setbacks and staying out of the floodplain. Even then reviewed the Board's authority under Iowa Administrative Code to grant variances and reviewed the qualities of demonstrating a hardship.

Wulfekuhle stated that he did not see how he could grant a variance when one of the qualifications for a hardship is that the unique circumstances must not be created by the landowner's own actions. Sperflage stated that he thought there was still ample space to build and that he did not see why a variance should be granted. Wulfekuhle stated that setbacks are created for a reason and that this would be creating a precedent to allow others to do the same. Even stated that the current owner is the same owner that requested to rezone this land previously and that the setbacks have not changed since that time.

There was discussion regarding how long to wait for the applicant to plead their case. Even stated that letters were sent to the property owner and all neighbors and that he did not hear anything from the applicant. Ehlers inquired if there were any complaints and Even stated that he had not received any.

Stephenson made a motion to deny the request. Wulfekuhle seconded the motion. The reasoning for this denial is that the land in question can yield reasonable return while still conforming to the Zoning Ordinance. Furthermore, the plight of the landowner is not due to unique circumstances and was self-created. With a vote of 5-0, the motion carried.

**The third item on the agenda was announcements.**

There were no announcements.

**The fourth item on the agenda was adjournment.**

Wendling made the motion to adjourn and Sperflage seconded the motion. With a vote of 5-0, the motion carried.

The meeting adjourned at 7:16 PM

*Submitted on November 7, 2018 by Matt Even*

# **BUCHANAN COUNTY BOARD OF ADJUSTMENT**

**7:00 PM Thursday, November 15, 2018**

**Buchanan County Public Health Meeting Room**

Chairperson Ehlers called the meeting to order at 7:00 PM.

Ehlers led the Pledge of Allegiance.

Deb Ehlers, Dan Sperfslage, Karen Stephenson, Louis Wendling, and Al Wulfekuhle were in attendance along with Kris Holle, Zoning Administrative Assistant, and Matthew Even, Environmental Health & Zoning Administrator, via telephone.

Public guests (1) included: Jon King

**The first item on the agenda was the approval of the April 16, 2018 minutes.**

Stephenson made a motion to accept the minutes of the last meeting. Wulfekuhle seconded the motion. With a vote of 5-0, the motion carried.

**The second item on the agenda was the approval of a variance request by Jon & Candace King to Buchanan County Code of Ordinance 50.11(4) to allow a 10 feet front yard for an accessory structure instead of required 30 feet front yard. This property is described as: Parcel B in the NW ¼, SW ¼, Sec 15, T90N, R9W of the 5th P.M., in Buchanan County, Iowa as described in Survey and Plat in File No 1994R04032 in the office of the Buchanan County, Iowa Recorder.**

Even informed the Board that a garage was constructed on this parcel while the land was zoned "A-1" Agricultural and that was in compliance with setbacks. Prior to the transfer of the property to the current owners, the garage was removed leaving the existing concrete slab. This parcel was rezoned to "R-1" Residential on August 27, 2018 as part of the subdivision process for establishing four lots which requires a 30 feet setback for accessory structures. The future owners would like to construct a garage on this existing slab. Ehlers reviewed the Board's authority to grant variances under Iowa Administrative Code and the requirements for granting a variance.

The Board reviewed the first hardship test: the land in question cannot yield reasonable return if used only for the purposes allowed in that zone. Wulfekuhle asked when Mr. & Mrs. King purchased the property. Mr. King replied that they purchased the property two years ago and that the garage had already been removed. Sperfslage asked why King couldn't place the garage on the other side of the house and Mr. King replied that the slab is existing and that the door

from the house would connect to the new garage. Mr. King continued that they could not move it to the east because that is where the septic tank and seepage field is located. Wendling inquired if it would be the same size as the existing poured concrete slab and Mr. King replied that it would be the same size. The Board reviewed the second hardship test: the plight of the landowner is due to unique circumstances and not to general conditions in neighborhood. Mr. King stated that his circumstance is unique because the pad is already there. Ehlers stated that this circumstance was created by the owners own actions when they rezoned. The Board reviewed the third hardship test: the use to be authorized by variance will not alter essential character of locality.

Wulfekuhle stated that the land in question would be more profitable for the applicant, but the land can still yield reasonable return without a variance and therefore fails the first test. Sperflage stated that the garage could be built on the property in a different location without a variance. Mr. King replied that the pad is already there and that he cannot build to the east. Sperflage stated that it could be built to the south. Wulfekuhle stated that the proposed unique circumstances were created by the landowners' own actions and therefore it fails the second test.

Sperflage made a motion to approve the request. Wendling seconded the motion. With a vote of 0-5, the motion failed. Stephenson made a motion to deny the request. Ehlers seconded the motion. The reasoning for this denial is that the land in question can yield reasonable return while still conforming to the Zoning Ordinance and that the "unique circumstances" were created by the land owners' own actions when rezoning the land. With a vote of 5-0, the motion carried.

Mr. King inquired as to why the variance was denied and Wulfekuhle repeated the reasons that the Board already discussed. Mr. King stated that this is frustrating as he has a good concrete slab that cannot be used. Ehlers responded that the Board has to follow the requirements as set by state code and case law when granting variances.

**The third item on the agenda was announcements.**

There were no announcements.

**The fourth item on the agenda was adjournment.**

Wulfekuhle made the motion to adjourn and Stephenson seconded the motion. With a vote of 5-0, the motion carried.

The meeting adjourned at 7:23 PM

*Submitted on November 26, 2018 by Kris Holle*

# **BUCHANAN COUNTY BOARD OF ADJUSTMENT**

**7:00 PM Monday, December 10, 2018**

**Buchanan County Public Health Meeting Room**

Chairperson Ehlers called the meeting to order at 7:00 PM.

Ehlers led the Pledge of Allegiance.

Deb Ehlers, Dan Sperflage, Karen Stephenson, Louis Wendling, and Al Wulfekuhle were in attendance along with Matthew Even, Environmental Health & Zoning Administrator.

Public guests (2) included: Ronald Michael, David Tracy (via telephone)

**The first item on the agenda was the approval of the November 15, 2018 minutes.**

Sperflage made a motion to accept the minutes of the last meeting. Wulfekuhle seconded the motion. With a vote of 5-0, the motion carried.

**The second item on the agenda was the approval of a variance request by American Tower Asset Sub, LLC to Buchanan County Code of Ordinance 50.09(4) to allow a variance to the yard setbacks for a transmitting tower. This property is located at 1352 230th St, Independence, Iowa and is located in the NE ¼, NE ¼, Sec 9, T88N, R10W.**

Even reviewed the site history for the property. A 350 foot guy tower for wireless cellular communication was constructed in 1999 by SpectraSite. Transmitting towers are an allowable use within the "A-1" Agricultural District and have a required setback of half the tower height from all property boundaries. American Tower purchased this tower in 2005. AT&T leases space on the tower and checked on permits for equipment upgrades. During review for the tall structure ordinance, it was discovered that the tower was only approximately 150 feet from the western parcel boundary instead of the required 175 feet. The County then requested that AT&T notify the tower owner and ask them to seek a variance to bring the tower into compliance. David Tracy with American Tower then followed up with the County to seek the variance. Even added that there are no current plans to increase the tower height, they are just swapping out equipment. Even also stated that there are no dwellings within 350 feet of the tower.

David Tracy with American Tower introduced himself and stated that he is here seeking to keep this tower operating as it has for the last twenty years. Tracy added that there is only the one slight setback shortage on the west side. Tracy also reviewed the engineer's report stating that this tower is designed to collapse within 150 feet which is the primary reason setbacks are required. This tower is essential to the public as it provides cellular service from many different

providers for rural residents of Buchanan County. Tracy stated that there are not any other towers in the immediate vicinity so by allowing this tower to continue to operate, it will be in the public's best interest.

Wulfekuhle inquired if there were any concerns from neighbors. Ronald Michael replied that he did not have any concerns and Even added that he did not receive any concerns prior to the meeting. Sperflage inquired if Donald Boldt's land to the west is agricultural row crops or if there is any structures on it. Even replied that there are no structures on this neighboring parcel. Tracy stated that the closest structure to the tower was 850 feet to the northwest across 230<sup>th</sup> Street. Wulfekuhle inquired if the variance would be specific to the structure or if they could replace the tower in the same location. Even stated that the variance would be limited to the existing structure and if a new tower was to be installed, it would have to be in compliance with all setbacks. Sperflage inquired if the tower was in compliance with other provisions. Even stated that the County has not had any complaints or discovered any other violations with the tower. Ehlers inquired if this was not an ordinance in 1999 and Even replied that it was, but the County does not utilize any building or zoning permits so there are not any compliance checks. Sperflage inquired if American Tower could purchase more land from Donald Boldt and buy additional land if they wanted to increase the tower height and Even replied that they could. Wendling inquired if they own the ground or if they lease it and Even replied that they lease a 100 feet by 100 feet area. Tracy added that this is a perpetual easement for the tower site.

Sperflage made a motion to approve the variance request for the west setback for the existing structure so long as the total tower height is not increased or the west setback is not decreased. Wendling seconded the motion. With a vote of 5-0, the motion passed.

**The third item on the agenda was announcements.**

Even announced that the Board of Adjustment would hold their annual meeting on Monday, January 14 at 7:00 PM. Wulfekuhle indicated that he would be out of town for that meeting.

**The fourth item on the agenda was adjournment.**

Stephenson made the motion to adjourn and Sperflage seconded the motion. With a vote of 5-0, the motion carried.

The meeting adjourned at 7:13 PM

*Submitted on December 11, 2018 by Matt Even*