

MINUTES OF BOARD OF ADJUSTMENT  
JULY 10, 2014  
BUFFALO COUNTY COURTHOUSE BOARD ROOM  
4:00 P.M.

Chairperson Fox opened the meeting at 4:00 P.M. at the Buffalo County Courthouse Board Room on July 10, 2014.

Agenda for such meeting was regularly posted as required by law. Present were: Larry Fox, Marlin Heiden, Sharon Martin and Lloyd Wilke. Absent: Richard Weiss and alternate Barb Pemberton Riege. Fox announced we do have a quorum. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Deputy County Attorney Kari Fisk, Zoning Administrator LeAnn Klein and two members of the public. Richard Weiss was recused from today's hearing since he is a supervisor to the applicant, Donald Schauer and a possible conflict with this hearing.

Chairperson Fox 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 4:00 P.M. No one was present. The public forum closed at 4:00 P.M.

Chairperson Fox opened the public hearing at 4:01 P.M. submitted by Donald and Debra Schauer for a tract of land being part of Lot 1, Homestead Acres an administrative subdivision being part of the East Half of the Northwest Quarter (E ½ NW ¼ ) of Section Twenty (20), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northeast corner of said Lot 1 and assuming the North line of said lot as bearing N 89° 58' 15" W and all bearings contained herein are relative thereto; thence N 89° 58' 15" W on the aforesaid North line a distance of 215.0 feet; thence S 00° 12' 21" E a distance of 197.22 feet; thence N 89° 58' 30" E a distance of 215.0 feet to a point on the East line of said Lot 1; thence N 00° 12' 22" W on the aforesaid East line a distance of 197.0 feet to the place of beginning. Containing 0.97 acres, more or less, hereinafter referred to as the subject property.

Donald and Debra Schauer were present and told the Board they had wanted to buy 2 ½ acres from their neighbor but because of judgments on the property, they weren't able to purchase the property. They had previously vacated their property that used to be listed as Lot 10, Block 4 of Homestead Acres Subdivision and filed a new administrative subdivision now shown as part of Lot 1, Homestead Acres. Schauer has gotten a new legal description from Trenton Snow that described the parcel where his home is situated. The reason they are before the Board of Adjustment is because the subject property is only 0.97 acres and they need approval for relaxation of the 3.0 minimum lot size required in the Agricultural Residential Zoning District.

Hoffmeister explained to the Board what had transpired with this property.

The question before this Board is will Donald Schauer be able to create a subdivision using this metes and bounds description of the subject property, which will require that, after relaxation of this minimum lot size requirement, that there first be a partial vacation of Lot 1, Homestead Acres comprised of the subject property, and then they will be allowed a creation of a new administrative subdivision comprised of the subject property. The end result would be to allow the creation of two non-conforming lots, as to size. One being the remnant of Lot 1, Homestead Acres after partial vacation of the subject property and the other being the lot created from the subject property as a new administrative subdivision.

Fox closed the public hearing at 4:15 P.M.

Hoffmeister explained to the Board and Mr. Schauer there is a sunset for taking action for these proceedings. Per zoning regulations, namely Section 9.33 the applicant has 120 days from the date of a favorable decision to commence activity on the matter to which the variance/relaxation is related and two years after the date of a favorable decision to substantially complete the matter, unless the Board allowed otherwise.

The Board reviewed areas surrounding the subject property. The subject property fits within what was once described as Lot 10, Homestead Subdivision. In its' original size, it roughly contained 1.0 acres. That was a typical size of the lots within Homestead Subdivision and other surrounding lots to the west and north of the subject property. The direction taken to create Lot 1, Homestead Acres Administrative Subdivision was to create a lot that was in conformity as to size. Due to legal complications necessary to convey merchantable title for the creation of a subdivision without liens attached to the real estate, which did not successfully occur, the situation before the Board has become an extraordinary hardship situation that it probably could legally be corrected, but at great expense.

Accordingly, the Board finds that:

- a. The strict application of the regulation would produce undue hardship;
- b. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- 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; 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.

Thereafter, Martin moved, and Heiden seconded, that the Board relax the required minimum lot size of 3.0 acres to the area described in the subject property should the Schauers need to create an administrative subdivision for the subject property. This in turn additionally authorizes a relation of minimum lot size for Lot 1, Homestead Acres Subdivision, excepting therefrom the subject property.

The effect of this relaxation shall mean, that should the applicants so chose, they shall be allowed to proceed with the creation of an Administrative Subdivision done by the vacation first of the

subject property as part of Lot 1, Homestead Acres Subdivision followed by or simultaneously with the creation of the new Administrative Subdivision comprised of the subject property.

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

Moved by Heiden, seconded by Martin to approve the minutes of the March 13, 2014 meeting of the Board of Adjustment as mailed. Voting yes were Heiden, Martin, Fox and Wilke. Voting no: none. Absent: Riege, Excused and recused: Wiese. The Chair declared that the Motion had carried.

Chairperson Fox adjourned the meeting at 4:30 P.M. until such time they will be called into session.