

MINUTES OF BOARD OF ADJUSTMENT
DECEMBER 14, 2023
BUFFALO COUNTY COURTHOUSE COMMISSIONER'S ROOM
4:00 P.M.

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.

Agenda for such meeting was regularly posted as required by law.

Chairperson Barb Pemberton-Riege opened the meeting at 4:02 P.M. at the Buffalo County Courthouse on December 14, 2023.

After roll call, those present were: Barb Pemberton-Riege, Richard Pierce, Rodney Gangwish, and Randy Vest. Also present were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator Dennise Daniels and members of the public.

Larry Hardesty and Rich White were absent.

Quorum is met.

Chairperson Pemberton-Riege announced we do abide by the Open Meeting Act and are available for anyone wanting a copy.

Chairperson Pemberton-Riege reviewed the agenda and let the members of the public know that an agenda is available for anyone wanting a copy. Chairperson Pemberton-Riege asked if any changes needed to occur or if there were any questions. No one spoke.

Chairperson Pemberton-Riege opened the public hearing at 4:02 P.M. for a Variance of Buffalo County Zoning Regulations, Section 5.32 (2) and a Variance of Buffalo County Subdivision Regulations, Section 1.05, Section 2.35, and Section 4.02 (E).

Eric C. D. Roubicek and Heather Roubicek, are requesting a variances under Buffalo County Zoning Regulations, Section 5.32 (2), requiring residences abut an improved road, Buffalo County Subdivision Regulations, Section 1.05, requiring all subdivided lands abut a dedicated and maintained public street, public road, or private street, Section 2.35, defining a street, and Section 4.02 (E), requiring all lots have a minimum width of twenty-five feet along a street or road, situated in the North Half of the Southwest Quarter of Section One (1), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Mr. Mitch Humphrey, of 5308 Parklane Drive, Kearney, Nebraska, stepped forward to present the application, along with Eric C. D. Roubicek and Heather Roubicek, both of 10455 North 1st Avenue Place, Kearney, Nebraska. He stated that Mr. and Mrs. Roubicek are requesting a deviation from the regulations. He explained that Mr. Lyle Raasch owned a large tract of land, on and around Raasch's Subidivision and had subdivided several tracts throughout his period of

ownership. Further, Mr. Humphrey added, a large variety of these subdivided tracts occurred prior to the adoption of zoning and subdivision regulations.

Mr. Humphrey reviewed the tract of land that is being proposed for subdivision. He explained that Mr. Gary Roubicek constructed his residence to the far east of the subject parcel and Eric and Heather acquired the piece to the west of Gary Roubicek's property and have, since, constructed a residence of their own. These particular tracts, he added, are accessed by an sixty-foot-wide easement which was created around 1993.

Mr. Humphrey continued, explaining this particular tract had received additional deviations and variances, which were reviewed, from the Board of Adjustment in 2018. Subsequently, he added, the preliminary plat was, shortly thereafter, was approved by The Buffalo County Planning Commission and The Buffalo County Board of Commissioners.

For a myriad of reasons, he explained, the final subdivision was not submitted immediately. In 2023, however, he added, the final plat was rejected, as presented, because The Buffalo County Board of Commissioners passed several new zoning and subdivision regulations that directly affected the proposed subdivision. In 2021, he continued, The Buffalo County Board passed regulations that stated each lot had to have twenty-five feet of frontage on a public road. Mr. Humphrey explained this regulation caused issues for the subdivision because the two lots that were proposed for subdivision were just over three acres. If the twenty-five feet abutment were required, he added, then the southern lot would be substandard and under three acres.

Mr. Humphrey, then, reviewed the access requirements that were, also, listed as part of the rejected final plat. He explained the applicant wished to move forward with the subdivision that was presented in 2018 and to request additional deviations from the additional twenty-five foot road abutment to avoid a substandard lot of less than three acres. He stated he wished to keep the three-acre minimum lot size requirement and move forward with the subdivision that had already received approval of deviations from 2018; furthermore, it had received an approval of preliminary plat from The Planning Commission and The Board of Commissioners.

Mr. Humphrey added that this particular area was unusual and accessed by, primarily, easements. Further, he explained, there was, recently, a third amendment to the protective covenants indicating that the neighbors approved the proposed subdivision of land.

Deputy County Attorney Hoffmeister asked for clarification on the size of Lot 2. He asked if the acreage size of 3.24 acres included the access easement and Mr. Humphrey confirmed. Deputy County Attorney Hoffmeister asked if North First Avenue Place was a street and Mr. Humphrey stated it was not and added that North First Avenue north and south is a dedicated street, but North First Avenue Place is not.

Deputy County Attorney Hoffmeister asked if it was the intent for the owners of Lot 1 and the eastern-most lot to allow access over Lot 2 and Mr. Humphrey confirmed and explained that the access predates zoning. Discussion occurred regarding the ownerships of land abutting the easement access.

Mr. Humphrey described Mr. and Mrs. Roubicek's intent to subdivide Lot 1 and Lot 2 and build a new house on Lot 1. Discussion occurred regarding the other subdivision inquiries and projects

in this area. Deputy County Attorney advised that since this area was subdivided prior to zoning regulations and The Buffalo County Board of Adjustment needed to consider the allowance of some relaxation to ensure denser housing and avoid a hardship of making the lot entirely unusable. He counselled that if the adjoining property owners had issues with the proposal, then they would be present to object. Since no one was present, he added, it can be considered the neighbors do not object to the proposed project.

Mr. Eric Roubicek spoke and explained that he maintains the north-south road and the access. He said that he never asks for repayment of the maintenance.

Deputy County Attorney Hoffmeister inquired when Mr. and Mrs. Roubicek's house was constructed and Mrs. Roubicek answered, it was constructed in 2003.

Mr. Gangwish asked if the easement were to become a public road, would it be required to be sixty-six feet wide and Deputy County Attorney Hoffmeister confirmed.

Discussion occurred regarding easement laws in different jurisdictions and the reasons Buffalo County does not allow easement accesses.

Deputy County Attorney Hoffmeister reviewed the proposed deviations and how they are not impactful for the other lots in this area. Easement concerns were discussed, further.

To move forward, Deputy County Attorney Hoffmeister counselled that the applicant will need to resubmit the preliminary plat, assuming the deviations are approved and set forth by The Board of Adjustment, to The Planning Commission and The Board of Commissioners and, then, file a final plat to The Board of Commissioners.

Chairperson Pemberton-Riege asked if anyone wished to speak. Mr. Gangwish requested clarification of all the variations of the proposed project and Mr. Humphrey explained that, in order to have two conforming lots, they would need some deviations from road abutment requirements and access regulations.

Chairperson Pemberton-Riege commented that at the 2018 meeting, the future development of this area was discussed, but not at length.

Zoning Administrator Daniels requested confirmation on the approved deviation from the setback requirements and Mr. Humphrey explained that it was referenced on Resolution 2018-38. Zoning Administrator Daniels thanked Mr. Humphrey for the confirmation.

Chairperson Pemberton-Riege asked if anyone wished to speak. No one spoke.

Chairperson Pemberton-Riege closed the public hearing at 4:51 P.M.

1. This board found that the strict application would cause undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. The authorization of such variance will not be of substantial detriment to the adjacent property and the character of the district will not be changed by the granting of the variance;

4. The granting of the variance is not based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

A motion was made by Vice-Chairperson Pierce, seconded by Mr. Gangwish, to approve the request for the variance under Buffalo County Zoning Regulations, Section 5.32 (2), requiring residences abut an improved road, Buffalo County Subdivision Regulations, Section 1.05, requiring all subdivided lands abut a dedicated and maintained public street, public road, or private street, Section 2.35, defining a street, and Section 4.02 (E), requiring all lots have a minimum width of twenty-five feet along a street or road, situated in the North Half of the Southwest Quarter of Section One (1), Township Nine (9) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Voting “Aye”: Gangwish, Vest, Pierce, and Pemberton-Riege.

Absent: Hardesty and White.

Abstain: None.

Voting “Nay”: None.

Motion carried.

Old Business

A motion was made by Vice-Chairperson Pierce, seconded by Second Vice-Chairperson Vest to approve the minutes of the June 15, 2023 meeting, of the Board of Adjustment, as mailed.

Voting “Aye”: Gangwish, Vest, Pierce, and Pemberton-Riege.

Absent: Hardesty and White.

Abstain: None.

Voting “Nay”: None.

Motion carried.

New Business

Chairperson Pemberton-Riege asked Zoning Administrator Daniels if there was other business. Zoning Administrator Daniels reviewed The Comprehensive Plan and the revision of the Buffalo County Zoning and Subdivision Regulations. She stated that she would like to do a workshop with The Board and review the changes that will occur. She, also, notified The Board of the Nebraska Planning Workshop to be held March 6 – March 8, 2024 and more information would be provided as it became available.

The public forum was opened at 5:00 P.M. No one provided any comment at that time. The public forum closed at 5:00 P.M.

Chairperson Pemberton-Riege adjourned the meeting at 5:01 P.M. until such time they will be called into session.

Chairperson Barb Pemberton-Riege