

MINUTES OF BOARD OF ADJUSTMENT
JUNE 10, 2004
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Zoning Administrator LeAnn Klein called the meeting to order at 4:04 o'clock P.M. with a quorum present on June 10, 2004 at the Buffalo County Board of Supervisors room in the Buffalo County Courthouse, Kearney, Nebraska.

Agenda for such meeting was regularly posted as required by law. Present were: Dennis Farrell, Marlin Heiden, Sharon Martin, Lloyd Wilke and alternate Carol Porter. Absent: Chairperson Ann Bosshamer. Also present were Deputy County Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein, Tobian Tool and his attorney Dan Lindstrom.

Klein asked for nominations for a Vice-Chairperson protem. Moved by Martin, seconded by Wilke to appoint Dennis Farrell Vice-Chairperson protem. Voting yes were Martin, Wilke, Heiden and Porter.

Zoning Administrator Klein turned the meeting over to Vice-Chairperson Farrell.

The public forum was opened at 4:09 P.M. No one spoke.

Vice Chairperson Farrell opened the hearing at 4:10 P.M. Thereafter, Board heard testimony regarding application for zoning variance submitted by Tobian Tool. Attorney Lindstrom addressed the Board on the behalf of Tobian Tool who wishes to build a single family home on the south part of this property. Because of the 1000' requirement between homes in Agricultural zoning district in the same quarter, this home would not be allowed.

No one spoke in opposition.

Board member Martin questioned if there would be a new septic and new well. Tool stated there would be a new septic and well.

The hearing closed at 4:35 P.M.

Following public hearing regarding application for zoning adjustment the following facts were determined:

1. This is an application for a variance to zoning regulations, specifically Sec. 5.16 relating to minimum lot size and minimum distance between residences in an AG District. The application seeks permission to build an additional single family residence on the subject property.
2. That on the subject property there is one single-family residence occupied by Jerry Lee Tool, an uncle of the applicant. That Jerry Lee Tool owns an interest in the subject property. That Ethel Ruse Tool, mother of Jerry Lee Tool, owns an interest in the subject property. Both Jerry Lee Tool and Ethel Ruse Tool have, by letter submitted to this Board, dated May 24,

2004, authorized the application for Zoning Variance by Tobian Tool (“Applicant”), who has caused initial surveys of proposed parcels to have been done and submitted to this Board.

3. Such May 24, 2004 letter from Jerry Lee Tool and Ethel Ruse Tool states that it is Jerry Lee Tool and Ethel Ruse Tool’s intent that, should variance be granted, that of the subject property, Jerry Lee Tool will retain the northern 1.15 acres for his existing residence with such 1.15 acres to be merged with the southern parcel upon death of Jerry Lee Tool or at such time as Jerry Lee Tool no longer wishes to occupy the existing mobile home located on the north 1.15 acres.
4. That it is the applicants’ intent that although two residences will be built upon the subject property should this variance be granted, that eventually, and particularly after death of Jerry Lee Tool, there will be on the subject property solely one residence.
5. That the “newer” residence sought to be built on the subject property is to be built on southern portion of the subject property south of the existing residence of Jerry Lee Tool.
6. That the subject property is adjacent to U.S. Highway #30 on the south side and Cessna Road on the east side and is approximately 3.768 acres in size of which 0.654 acres more or less are used for road purposes.
7. That under existing AG zoning regulations, a relative is allowed to build a residence within 1000’ of another relative’s residence and such relative’s residence could be upon a lot of 3-acres or more in size as a matter of right. However, should either residence on such tract cease to contain relatives to the other residence one or the other residences would be non-conforming use to the other residence.
8. That the subject property is described as:
“A tract of land being located in the Northeast Quarter of the Northeast Quarter of Section thirty-five (35), Township Nine (9), North, Range Eighteen (18), West of the 6th Principal Meridian, Buffalo County, Nebraska more particularly described as being the East 193.0 feet of the Northeast Quarter of the Northeast Quarter of said Section 35 lying North of U.S. Highway No. 30. Containing 3.768 Acres, more of less, of which 0.654 Acres, more or less are presently being used for road purposes.

Moved by Porter, seconded by Heiden that variance to strict application of zoning regulations concerning application of Ethel Ruse Tool and Jerry Lee Tool concerning subject property described as a tract of land being located in the Northeast Quarter of the Northeast Quarter of Section thirty-five (35), Township Nine (9), North, Range Eighteen (18), West of the 6th Principal Meridian, Buffalo County, Nebraska more particularly described as being the East 193.0 feet of the Northeast Quarter of the Northeast Quarter of said Section 35 lying North of U.S. Highway No. 30. Containing 3.768 Acres, more of less, of which 0.654 Acres, more or less are presently being used for road purposes should be allowed because:

- 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.

The decision of Zoning Administrator to not allow zoning permit is reversed and zoning permit is allowed with the following conditions that will run with the land until fulfilled or extinguished:

1. That this granting of variance of terms of zoning regulations shall apply to the entire subject property and that a summary the contents of this decision shall be filed against the subject property.
2. That on the subject property there shall be allowed one additional residence.
3. That on the subject property after the addition of one additional residence particularly sought by this variance there shall be allowed no additional residences.
4. That two residences, one built by this permission of this variance and the other now existing, shall be allowed on the subject property until such time as Jerry Lee Tool dies or in writing, delivered to the Buffalo County Zoning Administrator's Office or successor thereto, expresses an intent to no longer occupy the presently existing residence located upon the subject property. Thereafter, there shall be allowed solely one residence on the subject property.
5. That this granting of variance upon the subject property shall apply so long as the subject property is zoned AG District or similar classification. Should the subject parcel be re-zoned to a zoning district that allows for smaller minimum lot size such that no variance would be required to allow additional residences and/or occupancies upon the subject property, this variance and its conditions shall no longer apply.

Voting yes were Porter, Heiden, Farrell, Martin and Wilke. Absent: Bosshamer. Voting no: none. Motion carried.

Moved by Porter, seconded by Wilke to approve the minutes of May 13, 2003 meeting of the Board of Adjustment. Voting yes were Porter, Wilke, Farrell, Heiden, Martin. Absent: Bosshamer. Voting no: none: Motion carried.

Moved to adjourn at 4:40 P.M. until time that Board of Adjustment is called into session again.