

BUCHANAN COUNTY BOARD OF ADJUSTMENT

7:00 PM Monday, May 13, 2013

Assembly Room, Buchanan County Courthouse

Chairman Price called the meeting to order at approximately 7:00 PM.

Jim Price, Alan Wulfekuhle, Deb Ehlers, Louis Wendling, and Karen Stephenson were in attendance along with Chad Beatty, Environmental Health & Zoning Administrator, and Michael Hudson, Assistant County Attorney.

Public guests (5) included: Kenny Schares, Gary Schares, Martin Schares, Annette Schares, Jennifer Hawley

The first item on the agenda was the approval of the minutes from the previous meeting.

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

The second item on the agenda was Gary Schares of rural Jesup is seeking a variance to the Zoning Ordinance 50.07 General Provisions, paragraph number nine to allow an accessory structure to be constructed closer to the lot line than the required side yard setback with the “Sunset Acres at Shady Grove” final plat which was recorded in January 2011. The “Sunset Acres at Shady Grove” building side yard setback requirement is 25 feet for structures and the applicant is requesting a 10 foot side yard setback in the “R-3” subdivision.

Beatty read the request by Gary Schares and described the additional handouts that were included in the packets. Beatty showed a video of the property that he took and described the existing and proposed structures on the property. Beatty explained the recorded setbacks for this subdivision, typical setbacks within the Zoning Ordinance, and the process through which the County goes to answer setback questions for subdivisions.

Price asked for clarification on the 25 feet setback listed in the variance request and Beatty confirmed that was recorded with the subdivision plat. Wulfekuhle asked for clarification that the County Zoning Ordinance requirement is 10 feet. Beatty responded that 10 feet is the county ordinance and described that Schares is seeking a variance from 50.07.09 which states that the recorded plat setback must be used since it is more restrictive.

Price stated that the big question of this meeting was if we allow the applicants to do this, how many other people would want to do this. Discussion followed on how this could open a can of

worms and how do you tell someone else they can't do it if we let the applicants do it. Gary Schares stated that he doubted that this would be a problem as he went around and talked to every neighbor and got their signature. He also mentioned that he is the only one with a drainage ditch on his property and that he has geothermal loops so he is practically trapped. He could go back by the trees, but he wouldn't have access to it. He reaffirmed that all of the neighbors were good with it and that it does not make sense to have it somewhere by the trees and block the view of them.

Somebody questioned if Schares could locate the structure half way back and stay away from the geothermal loops and Schares replied that he could not because the geothermal loops are one hundred feet wide. Beatty also pointed out on the map where the septic system was and some of the setback requirements for that system.

Schares also described some background on the design and building of the houses in the subdivision. Someone questioned if the subdivision had an association that could decide on this and Schares described that they have restrictive covenants that they agreed to. Beatty included that the county cannot enforce restrictive covenants, they can only enforce recorded subdivision plats and the Zoning Ordinance.

Someone asked if his son could deed over fifteen feet and leave the Board out of this. Schares replied that he doesn't know if that makes sense since it would go in the same spot. Schares added that they have to have a minimum of two acres and they could not add fifteen feet along the entire property line so it would be a jagged property line. Beatty added that Kurtis Marks had suggested in his letter that he would be okay with Schares obtaining more land.

Beatty explained that they could work with the surveyor to take a strip from Martin Schares and add that separate parcel under Gary Schares' name and record that with the plot. Someone asked why they would go through all of this to build the structure as desired when they could issue a variance to do the same thing? Beatty stated that if the Board granted this variance, it would allow for everyone in the subdivision to apply for that same variance and at that point it really becomes rezoning to change the entire plat. Beatty recommended that if they grant this variance, that it should go back to rezoning to change all of the subdivision to the county setback of 10 feet. Schares asked if they could re-record the entire plat. Beatty stated that they could, but there would be a cost with that and the subdivision would have to decide who should pay for that. Schares stated that everyone's buildings should be setup to build additional structures, except his since he has a drainage ditch.

Beatty asked if there were any other comments from the crowd. Someone in the crowd stated that Gary was cheated and that he didn't think it was a problem with the 10 feet since it met county setbacks. All of the neighbors talked about it and agreed to sign the request. Gary is

really the only one affected in the subdivision and that he doesn't have a problem with it. Someone stated that they also do not have a problem with it.

Someone asked who owns the drainage ditch and Schares stated that he does and he continued to point it out on the map. Schares stated he knew about the ditch when he bought it, but he didn't know about the twenty-five feet setback and he thought it was 10 feet. Schares then continued to describe how he came about knowing about the twenty-five feet setback. The location of the owners' houses that were present was pointed out on the map.

Wulfekuhle stated that their biggest concern is the precedent it sets when this problem could be easily worked out by Schares and his son who owns the neighboring lot to the south.

Schares asked what the opposition is. Chad read the letter from Curtis and Sonya Marks that opposed the request by Schares. Someone stated that they think this should be resolved between the father and son. Schares said that what Curtis wrote was pretty close to what happened. He said he asked Marks what the big deal was and Marks replied that he had a big fight on his hands with the local farmers who opposed the subdivision and now the farmers who opposed it had him on his their hit list. He said those farmers would never sign to allow the structure and he told him that if he got their signatures, he would back off. Schares had received signatures from all three farmers (Greg Corkery, John Schares, Joe Youngblut) declaring their support for the construction of the structure.

Schares asked the Board to ignore everything else going on and just focus on the issue at hand, the request for a 10 feet setback. Someone stated that they personally do not have a problem with him building his shed there, but rules and regulations are rules and regulations. Someone else expressed their concerns over how to deny other requests after they allow this one.

Schares stated that Curtis Marks and his builder were the ones that staked his house and that he isn't a builder, he followed their advice. Schares then asked how much it would cost to re-survey to cut out the 15 feet. Beatty then stated that he could work with Schares tomorrow to get the original surveyor to come out and survey since they have the most knowledge of the site and would therefore be cheaper. Schares continued to describe the reasons why he bought the lot despite the fact it had the drainage ditch and how much he wanted to retire here and 15 feet is going to stop him, that it is crazy, and makes no sense.

Wulfekuhle began to read some of the required questions. He answered that the applicant can achieve a reasonable use of the property without the variance. He also answered that the variance cannot be granted without changing the intent of the zoning ordinance and that the variance would give Schares an unfair advantage to the applicant over others in the same type of district.

Since this issue could be worked out between the applicant and his son, Wulfekuhle made a motion to deny the variance. Wendling seconded the motion. With a vote of 5-0, the motion carried.

The third item on the agenda was adjournment.

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

The meeting adjourned at approximately 7:46 PM

Submitted on 2/3/2016 by Matthew Even

***** NOTICE *****

These minutes were compiled by Matthew Even on February 3, 2016 using brief notes taken by Chad Beatty and a recording of the meeting from May 13, 2013. Therefore, it was difficult to determine who stated what and people were identified if their voices were easily discernable.