

# HITCHCOCK COUNTY BOARD OF ADJUSTMENT

Trenton, Nebraska

October 4, 2021

The Hitchcock County Board of Adjustment met on Monday, October 4, 2021 at 3:00 p.m. in the Community Room, Hitchcock County Courthouse, 229 East D Street, Trenton, Nebraska.

Chair Miller called the meeting to order and read the open meetings statement as follows: *It is the policy of this board that the formation of public policy is public business and may not be conducted in secret. This board conducts its' business in accordance with the open meetings act.*

Chair publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy in the room where the meeting was being held.

Notice of the meeting was given in advance thereof by publication in the Hitchcock County News, the designated method for giving notice. Notice of this meeting was given to the Chair and all members of the Board. The agenda was also posted on the County's website <http://www.hitchcockcounty.ne.gov>. Availability of the agenda was communicated in the advance notice and in the notice to the Chair and the Board. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

The roll was called and the following members were present: Jacob Miller, Alex Pollmann, Paul Dwyer, Chris Williamson and Robert Brown. Chair declared a quorum. Also present were County Attorney D. Eugene Garner, recording secretary Margaret Pollmann. Chair Miller declared a quorum was present.

Member Pollmann moved to dispense with the reading of the January 21, 2021 meeting minutes as they had been previously reviewed and to approve and accept said minutes. The motion was seconded by Dwyer. The following members voted in favor of the motion: Pollmann, Miller, Dwyer, Williamson, and Brown. Motion carried.

Chair Miller recessed the meeting at 3:10 p.m. in order to enter into a public hearing to hear the applicant and all comments thereon from the public in attendance and to receive evidence regarding the Application for a Variance to the requirement of zoning regulations filed by Chris Ott for a variance to minimum lot area for single family residence in a Rural Commercial/Industrial (RCI) District on land located in Part of the W<sup>1</sup>/<sub>2</sub> of the SW<sup>1</sup>/<sub>4</sub> of Section 32, Township 3 North, Range 33 West of the 6<sup>th</sup> P.M., Hitchcock County, Nebraska (100' x 100') and referred to in said application as *36104 Bass Blvd.*

Chair Miller called for roll of those present for public hearing: Brown, Dwyer, Williamson, Pollmann, and Miller were present. Chair Miller advised that the hearing was being conducted under the open meetings act.

Applicant Chris Ott presented his application for variance on the above-described property and addressed questions posed by the Board. Attorney Garner advised applicant as to the Board of Adjustment's duties under Section 907, specifically this Board's duty to make certain findings on the variance request. The Board inquired as to possible future construction on this property i.e. garage, out buildings and applicant indicated he had no plans at this time. Extensive discussion held on the history of the Laker's North Shore Subdivision.

Chair Miller asked for comments from the public supporting the variance request. Terry and Mary Ginn offered supporting comments.

Chair Miller asked for comments from the public opposing the variance request. There were none.

Chair Miller asked for comments from the public representing a neutral position to the variance request. Member Dwyer inquired as to assessed value. County Assessor Terra Riggs was present and advised that the lot was taxed on a square footage rate, the same as the platted lots located in the Laker's North Shore Subdivision.

The following exhibits were received by Chair Miller for consideration by the board:

- Exhibit #1 - Meeting Notice & Notice of Public Hearing
- Exhibit #2 – Certificate of Mailing on Notice of Hearing
- Exhibit #3 – Zoning Administrator's Memorandum dated September 13<sup>th</sup>, 2021

Chair Miller asked for any further documents to be offered for consideration. There were none.

Chair Miller declared the public hearing concluded at 3:59 p.m. this date and re-entered board of adjustment meeting proceedings.

Chair Miller reconvened the public meeting at 4:00 p.m. this date.

Chair Miller inquired as to whether any of the board members had a conflict of interest regarding the application being considered. There were none.

Attorney Garner advised as to Article 9, Section 907 of the Zoning Regulations relating to the Board of Adjustment powers and duties specifically, finding requirements.

Motion by Pollmann to find that the application for variance submitted by Chris Ott is complete and in compliance with the requirements of this Hitchcock County Zoning Regulations. Motion was seconded by Brown and after consideration the following members voted in favor for the motion: Brown, Williamson, Pollmann, Miller, and Dwyer. Motion carried.

Member Dwyer moved to make the following findings pursuant to Hitchcock County Zoning Regulations Section 907.03:

1. The strict application of the regulations would produce undue hardship as the subject property is a 100' x 100' lot in the RCI District having been previously taxed as a residential lot and although purchased after the RCI District was enacted, the applicant has expended substantial financial resources towards the development of the subject property as a single-family residential property;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity as the adjoining property are all larger than 2 acre tracts or were previously platted in the Laker's North Shore Subdivision filed April 1, 1997 and recorded in Book 79 of Miscellaneous on Page 248, as 100' x 100' or smaller lots;
3. The authorization of such variance shall not be of substantial detriment to adjacent properties and the character of the district will not be changed by the granting of the requested variance:
  - a. as neighboring properties are already zoned and this property will be residential as are adjacent properties;
  - b. the owners of immediately adjacent properties have stated to this Board that they are not opposed to granting of this variance as it will not be detrimental to their property; and
  - c. other properties in the Laker's North Shore Subdivision are of residential use and the Castaway Parkway Subdivision which is partially in the RCI District also has similar residential uses;

4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of the owner's convenience, profit or caprice in that the applicant unsuccessfully attempted to obtain additional acres and the subject property is and has been assessed by the County as residential and taxed as such for the last several years; and
5. The condition and situation of the property concerned and the intended use of the property is not of so general or recurring nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to Hitchcock County Zoning Regulations in that there are no other properties located in the RCI zoning district which are 100' x 100' or smaller lots.

Member Pollmann seconded the motion, whereupon the motion came on for discussion.

Upon conclusion of discussion on the motion, Chair called for a roll call vote and the following members voted in favor of the motion: Pollmann, Dwyer, Williamson, Brown, and Miller. Motion carried.

Motion by Brown to find that the particular reasons set forth in the application for the variance justify the granting of the variance in accordance with the limitations for granting such variance as described in Section 907, Subsection 3, Paragraph A of the Hitchcock County Zoning Regulations and that the variance is the minimum variance that will make possible the reasonable use of the land involved. The motion was seconded by Miller and after consideration, the following members voted in favor of the motion: Dwyer, Brown, Williamson, Pollmann, and Miller. Motion carried.

Motion by Dwyer to find that the granting of the variance will be in harmony with the purpose and intent of the Hitchcock County Zoning Regulations and will not be injurious to adjacent lands or otherwise detrimental to the public welfare. The motion was seconded by Williamson and after consideration, the following members voted in favor of the motion: Williamson, Dwyer, Brown, Pollmann, and Miller. Motion carried.

Member Dwyer moved to grant and authorize the variance requested by Chris Ott for a variance to the minimum 2 acre lot area for a single family residence in the Rural Commercial/Industrial (RCI) District on that 100' x 100' parcel of real estate located in Part of the W<sup>1</sup>/<sub>2</sub> of the SW<sup>1</sup>/<sub>4</sub> of Section 32, Township 3 North, Range 33 West of the 6<sup>th</sup> P.M., Hitchcock County, Nebraska (Parcel #440000291 as identified by the Hitchcock County Assessor) based on the above listed findings and conditioned upon the applicant acting upon said authorization within one (1) year from the date of authorization of such variance and that if such authorized variance has not been acted upon by the applicant within said time limitation such authorization shall automatically be revoked. Member Williamson seconded the motion whereupon the motion came on for discussion.

Attorney Garner advised that at least three affirmative votes were necessary to grant and authorize the variance request before the Board.

Chair Miller read Darin Morgan, Zoning Administrator's, Recommendation from "Memorandum" dated September 13, 2021 as follows: *"It is the recommendation of the Zoning Administrator, based on dates noted in Section 6 above, this parcel cannot be considered as a non-conforming lot of record and pursuant to Article 7 Non-Conforming Uses, section 701 Intent, it is the intent of the resolution that, with the exception of residential structures, non-conformities shall not be enlarged, expanded or extended nor be used as grounds for adding other buildings, structures or uses prohibited in the zoning district in which such non-conformities are located."*

Chair Miller advised that the variance before the board was for a residential home only and does not include any future additional structures including garages or any other type of out buildings.

Upon conclusion of discussion, Chair Miller asked for a roll call vote on the motion and the following members voted in favor of the motion: Brown, Pollmann, Miller, Williamson and Dwyer. Motion carried.

Chair Miller inquired as to Agenda Item #9 “New Business”. There was none.  
Chair Miller inquired as to Item #10 “Old Business”. There was none.

With no further business before the Board, member Miller moved to adjourn at 4:56 p.m. Member Williamson seconded the motion and the following members voted in favor of the motion: Brown, Williamson, Miller, Pollmann, and Dwyer. Motion carried.

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Alex Pollmann, Secretary

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Margaret Pollmann, Recording Secretary