

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
February 4, 2021**

The Bismarck Board of Adjustment met on February 4, 2021, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Due to ongoing public health concerns related to COVID-19, the meeting was held via Zoom. Chair Marback presided and was present in the Tom Baker Meeting Room.

Members present were Ken Hoff, Curtis Janssen, Michael Marback, Chris Seifert and Rick Wohl.

Member absent was Jennifer Clark.

Staff members present were Hilary Balzum – Community Development Administrative Assistant, Brady Blaskowski – Building Official/Floodplain Administrator, Jannelle Combs – City Attorney, Ben Ehreth – Community Development Director and Jenny Wollmuth – Planner.

MINUTES:

Chair Marback called for approval of the minutes of the December 3, 2020 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Janssen to approve the minutes of the December 3, 2020 meeting, as presented. With Board Members Janssen, Hoff, Marback and Seifert voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-01(5) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL / SIDE YARD) – LOT 2, BLOCK 1, HARVEST GROVE SECOND SUBDIVISION (8600 NORTHWOOD DRIVE)

Chair Marback stated the applicants, Dustin and LaDawn Schmitt, are requesting a variance to reduce the required side yard setback located along the south side of their property from 15 feet to 11.5 feet in order to construct a detached accessory building on an existing concrete slab located on Lot 2, Block 1, Harvest Grove Second Subdivision (8600 Northwood Drive). The property is located north of Bismarck, north of 84th Avenue NE between North Washington Street and US Highway 83, along with west side of Northwood Drive.

Ms. Wollmuth informed the Board that a building permit was issued in 2013 for an accessory building and according to the permit inspection notes, the first inspection, the inspection of the foundation and placement of the slab, was approved.

Ms. Wollmuth went on to say that the applicant did not construct the proposed accessory building in 2013 and that the permit was no longer valid due to lack of activity. A new permit was requested, and it was discovered that the existing slab was encroaching into the side yard setback.

Ms. Wollmuth then gave the following findings for all variances:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning district.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said staff recommends reviewing the findings contained in the staff report, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

Chair Marback asked what the dimensions of the building would have been when it was requested in 2013.

Ms. Wollmuth said it was not proposed to be as large as the concrete pad at that time but the size has now increased to the size of the concrete pad.

Chair Marback asked how it was missed that it would not meet the setback requirement.

Ms. Wollmuth said she does not have exact documentation but it is likely that it was done in error, that the setback could have been misread due to the existing a tree row being misinterpreted as the property line, or it was thought that the setback was accurate. She said the side yard has always been a fifteen-foot setback from the property line to the building wall.

Mr. Wohl asked, if when these items are permitted, could it be made a requirement of the homeowner to provide a survey showing the lot lines prior to any inspections being allowed.

Chair Marback opened the public hearing.

Ms. Schmitt said the neighboring owners have given their blessing to their request and when the rear property owner surveyed their property they could not locate one of the pins, so that pin has since been replaced. She said the concrete pad was poured in the wrong location in 2013 and it was their neighbor who noticed it was not far enough away from the side yard, but they have also given their written consent to this request.

There being no further comments, Chair Marback closed the public hearing.

Mr. Janssen said though the request was permitted in 2013, it is placed in the best location for this particular property and it would be difficult to go back that far now and say to move it.

MOTION: A motion was made by Mr. Janssen to approve the variance from Section 14-04-01(5) of the City Code of Ordinances (RR – Residential / Side Yard) to reduce the required side yard setback located along the south side of their property from 15 feet to 11.5 feet in order to construct a detached accessory building on an existing concrete slab located on Lot 2, Block 1, Harvest Grove Second Subdivision (8600 Northwood Drive), based on the topographic conditions of the lot and this being the only flat area on the property to place the building. The motion was seconded by Mr. Seifert and with Board Members Hoff, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved and the variance was approved by the Board of Adjustment.

VARIANCE FROM 14-04-19(6)(B)(5)(A) OF THE CITY CODE OF ORDINANCES (FP – FLOODPLAIN DISTRICT) – LOT 4, BLOCK 7, FOX ISLAND SUBDIVISION (3221 DEER LODGE DRIVE)

Chair Marback stated the applicants, Steve and Mary Selzler, are requesting a variance to allow the construction of an addition to an existing single-family dwelling at the same elevation of the home, but below the elevation requirement outlined in the City zoning ordinance located on Lot 4, Block 7, Fox Island Subdivision (3221 Deer Lodge Drive). The property is located south of Bismarck, west of south Washington street and south of Larson Road, along the north side of Deer Lodge Drive.

Ms. Wollmuth explained that if approved as proposed, the addition to the existing single-family dwelling would be constructed 1.8 feet below the elevation requirement. As the existing single-family dwelling is not located 1 foot above the BFE, the proposed addition must be constructed 2 feet above the BFE.

Ms. Wollmuth then said the existing single-family dwelling was constructed in 1997 – 1998 and is considered a post-FIRM building as it was constructed after the initial Flood Insurance Rate Map (FIRM) was created for the City and its ETA in 1985. She said the Base Flood Elevation indicated on the 1998 elevation certification indicated a BFE of 1634.2 and a finished floor elevation of 1635.3, these elevations were based off NAVD 29 datum and the dwelling was constructed in compliance with the zoning ordinance 1.1

feet above the BFE. Ms. Wollmuth said a copy of the building permit and elevation certificate are attached to the staff report. Ms. Wollmuth further explained that this area of the community was studied and remapped by FEMA in 2005; the 2005 FIRM established a BFE of 1636.2 for this property, and these elevations were based off NAVD 88 datum. She said according to the elevation certificate the finished floor elevation of the home is 1636.4, which is .2 feet above BFE and a copy of the elevation certificate using the 2005 FIRM date is attached to the staff report.

Ms. Wollmuth added that it should be noted that the most recent FIRM for the City of Bismarck and its ETA was revised and adopted in 2014, adding that an updated elevation certificate from the 2014 FIRM was not submitted with the application. Ms. Wollmuth said the zoning ordinance outlines elevation requirements for additions to existing buildings located within the SFHA and specifies that additions that are not a substantial improvement to a post-FIRM building can be constructed at the same elevation as the existing building, as long as the existing building is at least one foot above the current BFE. Ms. Wollmuth explained that a substantial improvement means any repair, reconstruction or improvement of a structure that is valued at 50% or more of the market value of the structure.

Ms. Wollmuth reminded the Board that The City of Bismarck and its ETA are a participating community in the National Floodplain Insurance Program (NFIP) Community Rating System (CRS). The CRS is a program that recognizes and encourages floodplain management activities that exceed the minimum NFIP requirements. As a result, flood insurance premium rates may be discounted for policy holders to reflect the reduced flood risk resulting from meeting the goals of the CRS program.

Variances from the provisions outlined in the FP – Floodplain zoning district and subsequent findings to support a variance may be subject to additional review by Hazard Program Specialists with the NFIP. Variances may impact the community's eligibility for participation in the NFIP. By participating in the NFIP, residents of the City of Bismarck and its ETA are eligible for flood insurance.

The CRS designation is awarded to communities that go above and beyond FEMA and State of North Dakota floodplain management practices. Approval of a variance from the provisions in the FP – Floodplain District in the Zoning Ordinance may result in removal of the City of Bismarck and its ETA from the program, which may cause discounted insurance premiums to rise.

Ms. Wollmuth detailed the following considerations for variances from floodplain provisions outlined in the City's Zoning Ordinance:

1. In considering appeals and variance applications, and in addition to the requirements outlined in Section 14-06-02 of the City Code of Ordinances (Powers and Duties), the Board of Adjustment shall consider all technical

evaluations, all relevant factors, and the standards specified in this section, including:

2. The danger to life and property due to flooding or erosion damage.
3. The danger that materials may be swept onto other lands to the injury of others.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
5. The importance of the services provided by the proposed facility to the community.
6. The necessity to the facility of a waterfront location, where applicable.
7. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion.
8. The compatibility of the proposed use with the existing and anticipated development.
9. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
10. The safety of access to the property in times of flood for ordinary and emergency vehicles.
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
12. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Ms. Wollmuth then gave the following findings for all variances:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning district.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the

relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth then gave the following findings for floodplain variances:

1. The proposed accessory building may increase flood levels during the base flood discharge.
2. The variance is not the minimum necessary, considering the flood hazard, to afford relief.
3. The applicant has not shown good and sufficient cause for granting the variance.
4. A failure to grant the variance would not result in exceptional hardship to the applicant.
5. The granting of the variance may result in increased flood heights, additional threats to public safety and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

Ms. Wollmuth said staff recommends reviewing the findings contained in the staff report, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

Mr. Janssen asked what was used to determine the 2014 changes to the FIRM. Ms. Wollmuth said it is her understanding that the 2014 FIRM did not re-study the Missouri River, which is the flooding source for this property. The 2014 reflects the study of existing tributaries such as Apple Creek and Hay Creek.

Mr. Hoff asked if this is similar at all to a previous request where building materials were questioned also.

Ms. Wollmuth said that particular request was for a detached accessory building, and a potential ordinance change related to allowable and required building materials in the floodplain for detached accessory buildings is under review at this time.

Mr. Selzler said they brought written comments in support of their request as well as written approval from the Homeowners Association. He said the elevation certificate from 2009 had the house at 1636.7 feet, which is contrary to what is listed in the staff report. *(Secretary's note, the elevation referenced in the staff report is from the elevation certificate and is the elevation of the attached garage floor, which is part of the existing home.)* He said the ordinance is written for additions not deemed substantial to be at one foot above BFE, which would put their addition at six inches below the BFE. He said this would not affect any of the staff findings as listed in the staff report and they intend to

say in this home as long as possible. He said the new addition is needed and they are having to work around an existing stairway. He said they have hired a reputable contractor and are trying to do right by the requirements.

Chair Marback opened the public hearing.

There being no comments, Chair Marback closed the public hearing.

Mr. Wohl said he struggles with the information provided being used to base their decision on and to justify a hardship. He said the house was built in compliance and a small addition would not be a large gain in value, but he cannot find a finding to modify to justify the need for a variance.

Chair Marback said he will not support denying this request because the owner would not have full use of their property with the addition being built to ADA compliance regulations.

Mr. Janssen said they could end up making themselves subject to a FEMA review by allowing additions below the BFE requirement. He said the want for ADA compliance does have challenges, but they need to look at the elevation guidelines.

Mr. Seifert asked if FEMA review could take place if a very minimal variance is granted or if that does not matter.

Chair Marback asked if the specific hardship is considered as well.

Ms. Wollmuth said the potential hardships listed in the staff report and in the City's zoning ordinance are from model ordinances provided by FEMA specifically for communities to adopt for the granting of variances. She said FEMA would review the determination made and what modifications were made to the findings of facts.

Mr. Hoff asked when FEMA would review the variance.

Mr. Blaskowski said they can ask to have it reviewed sooner than later or it would be reviewed during a regularly scheduled review visit.

Mr. Janssen said there is a finding of 'will not increase flood levels' and asked how to prove or not prove that would or would not happen if this addition were to be constructed.

Mr. Wohl said it is common sense that a 50 square foot addition over thousands of acres would likely not impact flood levels and a general discussion regarding the need for elevation requirements and the CRS program was held.

MOTION: A motion was made by Mr. Hoff to deny the variance from Section 14-04-19(6)(b)(5)(a) of the City Code of Ordinances (FP – Floodplain District) to

allow the construction of an addition to an existing family home, to be constructed below the Base Flood Elevation (BFE) located on Lot 4, Block 7, Fox Island Subdivision (3221 Deer Lodge Drive). The motion was seconded by Mr. Janssen and with Board Members Hoff and Janssen voting in favor of the motion and Marback, Seifert and Wohl opposing the motion, the motion failed.

MOTION: A motion was made by Mr. Wohl to approve the variance from Section 14-04-19(6)(b)(5)(a) of the City Code of Ordinances (FP – Floodplain District) to allow the construction of an addition to an existing family home, to be constructed below the Base Flood Elevation (BFE) located on Lot 4, Block 7, Fox Island Subdivision (3221 Deer Lodge Drive), based on the exceptional physical conditions of the property, the change to the elevation calculations, the addition not increasing flood levels and it being the minimum variance needed for the owner to receive relief. The motion was seconded by Mr. Seifert and with Board Members Marback, Seifert and Wohl voting in favor of the motion and Hoff and Janssen opposing the motion, the variance was not approved by the Board of Adjustment, as four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07, therefore the variance is denied.

OTHER BUSINESS

PLANNING UPDATE

Ms. Wollmuth said the Planning Division is working on various ordinance updates including a comprehensive plan, requirements for accessory buildings in the floodplain which a stakeholder group has been created for to assist, as well as changes to allowances related to microbreweries and the keeping of chickens in the City.

Chair Marback asked who is in the stakeholder's group for the floodplain requirements. Ms. Wollmuth said Board of Adjustment member Curt Janssen, Mayor Steve Bakken, County Commissioner Brian Bitner, City Building Official and Floodplain Administrator Brady Blaskowski, County Building Official and Floodplain Administrator Mitch Flanagan, Bismarck Planning and Zoning Commission Chair Michael Schwartz along with staff members including herself, Planning Manager Kim Lee, Community Development Director Ben Ehreth and a member of the Home Builders Association are all in the group.

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:40 p.m. to meet again on March 4, 2021.

Respectfully Submitted,



Hilary Balzum
Recording Secretary

APPROVED:



Michael Marback, Chair

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Steve and Mary Selzler's Variance Request 2/4/2021
Date: Wednesday, February 3, 2021 1:13:27 PM

From: >
Sent: Wednesday, February 3, 2021 10:04 AM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Cc: >
Subject: Re: Steve and Mary Selzler's Variance Request 2/4/2021

External Email - Use caution clicking links or opening attachments

We believe the Selzler's request for a variance to add a 4 x 18 foot addition to their home at 3221 Deer Lodge Dr. should be granted for any or all of the reasons cited below:

- This home, when initially constructed, complied with all existing building codes in place at that time.
- The proposed addition is but a small fraction increase to the existing main floor footprint.
- The proposed addition will not be visually unappealing to the area.
- The majority of the homeowners in the Fox Island neighborhood were recently assessed over \$20000 each for a recently completed flood control project by the Burleigh County Water Resource District designed to protect against another flood occurrence similar to that of 2011.
- Any future flooding while unpredictable is highly unlikely.
- There would be no cost or loss to the general public in the unlikely event a flood would cause damage to the proposed addition would be constructed.

Robert and Rebecca Reis
1707 Larson Rd
Bismarck, ND 58504

Sent from [Mail](#) for Windows 10