

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
May 6, 2021**

The Bismarck Board of Adjustment met on May 6, 2021, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. The meeting was held in person and via Zoom. Chair Marback presided and was present in the Tom Baker Meeting Room.

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

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

MINUTES:

Chair Marback called for approval of the minutes of the April 1, 2021 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 April 1, 2021 meeting, as presented. With Board Members Clark, Marback, Janssen, Hoff, Wohl 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 23, BLOCK 2, COPPER RIDGE SUBDIVISION (5627 KAYLEY DRIVE)

Chair Marback stated the applicants, Aaron Joramo and Jerri Buchmiller, are requesting a variance to reduce the required side yard setback, located along the west side of their property, from 15 feet to 11.5 feet in order to construct a 2,304 square foot accessory building on Lot 23, Block 2, Copper Ridge Subdivision (5627 Kayley Drive). The property is located south of Bismarck, south of 62nd Avenue SE and west of 52nd Street SE, along the south side of Kayley Drive.

Ms. Wollmuth said at the request of staff, the Board of Adjustment, during their April 1, 2021 meeting, continued the public hearing for the proposed variance. Staff indicated to the Board that an error was made and the applicant was notified of the wrong meeting date for the public hearing.

Ms. Wollmuth gave an overview of the request, including the following findings:

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 any hardship and modifying the findings as necessary to support the decision of the Board.

Chair Marback opened the public hearing.

Chair Marback asked if the building has been proposed where it is because of the drain field for the septic system.

Mr. Joramo said that is correct and that the septic system runs southwest. and then provided pictures of the proposed location. These are attached as Exhibit A.

Mr. Janssen asked why the drain field was placed where it is. Mr. Joramo said he is unsure as they are the second owners of the property and were not able to locate any as-built drawings or other specifications for the drain field from when it was originally permitted and installed. He said the hill or his lot contours to the south so likely the lowest area was chosen for the drain field location.

Mr. Janssen asked if the proposed accessory building could be placed behind the drain field. Mr. Joramo said they do not want to have to drive over the drain field to get to the accessory building or place it any closer to their house.

Mr. Seifert said the variance is supposed to be the minimum variance needed and asked why the proposed accessory building could not be built one foot narrower or smaller so that it would fit on the property according to the zoning requirements.

Mr. Joramo said the building was pre-built and has already been delivered. He said it would be a pole style building and also placed in line with existing utility lines.

Mr. Hoff asked how long a drain field typically is. Mr. Janssen said it depends on the size of the house as well as the design of the property.

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

Mr. Janssen said they must identify a hardship. As the proposed building could be moved or reduced in size, he has not seen anything that dictates the need for this variance.

Mr. Wohl said he feels there are other options and a variance is not supposed to be granted based on economic inconveniences.

MOTION: A motion was made by Mr. Seifert to deny the request for variance to reduce the required side yard setback, located along the west side of their property, from 15 feet to 11.5 feet in order to construct a 2,304 square foot accessory building on Lot 23, Block 2, Copper Ridge Subdivision (5627 Kayley Drive). The motion was seconded by Mr. Wohl and with Board Members Clark, Hoff, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved and the variance request was denied.

OTHER BUSINESS

MEMBER TERMS AND APPLICATION PROCESS

Chair Marback said in 2008 the Board of Adjustment added a sixth member because of difficulties they were having consistently obtaining a quorum at that time. He said North Dakota Century Code states that the Board of Adjustment consist of 5 members, and that if a city chooses a 6th member could be added to the Board of Adjustment as an alternate to serve on an as-needed basis. Chair Marback said those members whose terms are expiring at the end of May should re-apply and the City Commission should be the entity to determine who the alternate member is. Chair Marback said he does not feel it is fair to limit the alternate position to those two members whose terms are expiring in May.

Mr. Hoff asked if the alternate would still receive the meeting information and attend the meetings.

Ms. Wollmuth said she would expect that staff would share the meeting information with all members and would make quorum calls the day prior to the meeting to ensure the alternate is aware well in advance if their presence is needed.

Mr. Hoff asked if this is fair to those members who are up for reappointment and asked what the suggestions of the City Attorney might be.

Ms. Combs said it would be suggested to the City Commission what the request of this Board is as a whole. She said the Board is to consist of five members and have one alternate, but only five members can vote and a majority of four votes needed to approve any variance. She said if a consensus can be found here that would be best and the City Commission would decide based on the recommendation of this Board.

Mr. Janssen asked if at some point an alternate could move into a permanent member position. Ms. Wollmuth said that could be a possibility the next time a position were to come open.

Mr. Wohl asked what would happen if the City Commission appointed a member to the alternate position that wants to be a permanent member.

Ms. Combs said she is assuming the City Commission would value the recommendation this Board and how this Board would like to proceed with the selection of the alternate. She also stated that because the appointment is not of a property right, there is no due process to appeal that decision.

Mr. Hoff asked if they could move to having only five members on the Board again and not have an alternate

Ms. Wollmuth said it is in their best interest to keep six members in order to avoid the issue of not being able to obtain a quorum.

Chair Marback said they can explore the possibility of a bill to change the member number requirement outlined in the North Dakota Century Code.

Ms. Combs said it was also suggested by staff that the members could take turns utilizing the alternate in order to balance the members amongst the meetings throughout the year.

Mr. Wohl said it is not likely the alternate would be needed for every meeting.

Chair Marback gave a history of the attendance issues of the Board of Adjustment and what prompted the change to be made in the first place.

Ms. Clark stated that legislation in 2023 could be considered to increase the number of Board of Adjustment members as well as the approval and quorum requirement of four members reduced to three.

MOTION: A motion was then made by Mr. Seifert for the City Commission to choose the members to fill the open terms and then choose the alternate member. The motion was seconded by Ms. Clark and with Board Members Clark, Hoff, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved.

Mr. Hoff asked if the Chair would also have to be determined at that time. Ms. Clark said the Chair and Vice Chair are determined by the Board of Adjustment.

Mr. Wohl asked if all of the current members should share their board applications to be forwarded for consideration. Ms. Wollmuth said those applications can be revised and resubmitted to her and she will share them for consideration by the City Commission.

MOTION: A motion was made by Mr. Hoff that a determination be made from the applicants that apply who the two members are and then which of the six members would be the alternate member. The motion was seconded by Ms. Clark and with Board Members Clark, Hoff, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved.

BISMARCK COMMUNITY DEVELOPMENT MAP

Ms. Wollmuth said a new interactive map is being made available which shows Community Development projects within the last two years. She said this is going to be a great way to share information, and while staff will continue to notify adjacent property owners, this makes information available to those who might not be in the notification boundary but who are still interested in a project. She said Daniel Nairn and Ben Ehreth have worked closely with the City GIS Department to make this map available.

Chair Marback asked where the zoning ordinance text amendment related to the floodplain requirements is at in the process. Ms. Wollmuth said it has been drafted based on the accessory building construction needs in the Special Flood Hazard Area by creating a tiered system of requirements. She said it is being reviewed by FEMA and said it is expected that the Bismarck Planning and Zoning Commission will consider the draft ordinance at their May 26th meeting.

Mr. Janssen said he feels a good balance has been found in the stakeholder's group to help a lot of people. He said this will be a good thing.

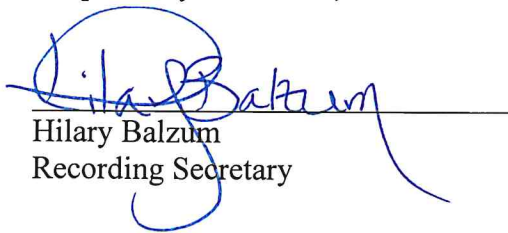
Chair Marback thanked Mr. Janssen for his involvement in that group and said he knew he would do well in it.

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 5:50 p.m. to meet again on June 3, 2021.

Respectfully Submitted,


Hilary Balzum
Recording Secretary

APPROVED:


Michael Marback, Chair