

BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
July 1, 2021

The Bismarck Board of Adjustment met on July 1, 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, Curtis Janssen, Michael Marback, Chris Seifert and Rick Wohl. Alternate member Ken Hoff was also present, but did not vote on any agenda items.

Staff members present were Brady Blaskowski – Building Official/Floodplain Administrator, Jannelle Combs – City Attorney, Ben Ehreth – Community Development Director, Kim Lee – Planning Manager and Jenny Wollmuth – Senior Planner.

MINUTES:

Chair Marback called for approval of the minutes of the May 6, 2021 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Seifert and seconded by Mr. Janssen to approve the minutes of the May 6, 2021 meeting, as presented. With Board Members Clark, Janssen, Marback, Seifert, and Wohl voting in favor, the minutes were approved.

(Secretary's Note: To accommodate the arrival of an applicant, the order of agenda items was switched.)

VARIANCE FROM SECTION 14-04-03(6) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL / LOT COVERAGE) – LOT 23, BLOCK 5, COTTONWOOD PARKVIEW ADDITION (406 LENNOX DRIVE)

Chair Marback stated the applicant, Al Wangler, is requesting a variance to increase the maximum lot coverage for a lot located within the R5 – Residential zoning district from 30% to 31.2% in order to construct a covered patio (approximately 180 square feet) onto the single-family dwelling currently under construction.

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 R5 - 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.

Al Wangler presented a copy of an email from Chris Wachter stating he is ok with the additional lot coverage being requested. Mr. Wangler stated he was not aware of the issue of the 35% lot coverage and going over the allowed size, as he had assumed it was 40%. Mr. Wangler also stated that a 12x15 area for a covered porch will also be used for storage because he cannot have an accessory building. He then stated it also will not be visible from the street.

Mr. Janssen asked if a permit would be granted if the covered porch was removed.

Mr. Wangler said yes and added that a permit could not be issued until a contract was in place for ~~utilities~~ municipal improvements. He said it was during this process that further review found his lot coverage was over the allowed amount and added that while the basement was already being dug, the footprint would not change. Mr. Wangler stated he had worked with Brady Blaskowski and a covered porch did not change anything.

Mr. Janssen asked if the developer was aware of the lot coverage.

Mr. Wangler said to his knowledge the developer was aware of the lot coverage allowed in the R5-Residential and R10-Residential zoning districts. He said some lots are zoned R5-Residential around the southwest retention pond and other lots are zoned R10-Residential. He closed with saying further to the west properties are zoned RM30-Residential, but he believes the developer was aware of the allowed lot coverage.

Chair Marback opened the public hearing.

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

MOTION: A motion was made by Mr. Janssen to deny the request for variance from Section 14-04-03(6) of the City Code of Ordinances (R5-Residential)(Lot Coverage) to increase the maximum lot coverage from 30% to 31.2% for the purpose of constructing a covered patio on the residence being constructed on

Lot 23, Block 5, Cottonwood Parkview Addition (406 Lennox Drive) due to there being no hardship identified. The motion was seconded by Ms. Clark and with Board Members Clark, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved and the variance request was denied.

Ms. Clark said she would like to have approved this request; however, overbuilding the lot left her with no ability to approve it. Mr. Seifert agreed that there is not a hardship and Mr. Wohl agreed that the motion is correct, as there is no basis for a hardship.

Chair Marback stated the motion to deny is upheld and told Mr. Wangler that he can appeal the decision to the Board of City Commissioners, if he wishes to do so.

VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL / FRONT YARD) – LOT 12, BLOCK 3, REPLAT OF LOT 10, BLOCK 1, NORTH HILLS 1ST ADDITION (2981 VANCOUVER LANE)

Chair Marback stated the applicants, Jeramie and Janelle Middlestead, are requesting a variance to reduce the required front yard setback located along the north side of their property, adjacent to Ontario Lane, from 25 feet to 4 feet in order to construct a 192 square foot accessory building.

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 R5 – 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.

Ms. Wollmuth stated that the former Building Official administratively approved the location of the existing accessory building within this required setback.

Mr. Seifert asked if the permit was issued in 2007.

Ms. Wollmuth said yes, but it may have been subsequently removed.

Mr. Wohl asked if the building was outside the required setback for Winnipeg Drive and outside of the site triangle.

Ms. Wollmuth replied yes to both.

Mr. Janssen asked why it could not be attached.

Ms. Wollmuth stated it would still need to meet the 25-foot front yard setback requirement.

Chair Marback asked Mr. Middlestead if he was the owner in 2007.

Mr. Middlestead replied he was not.

Mr. Marback asked Mr. Middlestead if the building was there when they moved in.

Mr. Middlestead said yes, but they removed it a few weeks ago. He added that the garage is not big enough to hold all that they have and he has not parked in his garage since they have lived there.

Ms. Clark asked about the location and purpose of the three existing concrete slabs.

Mr. Middlestead stated in the back corner, where the shed was, is a pad they plan to use for a pool or patio. He added that the slab where the camper is parked is where the original shed was previously located, from what he understood, and the new slab was poured with the intention of a shed if approved, otherwise they will use for a patio.

Mr. Middlestead stated he looked into other options; however, it is not really an option with the roof line. He said he would have to redo rafters and have it engineered, but he felt it would be better and more cost effective to do the shed.

Mr. Janssen asked what will go in the building.

Mr. Middlestead said it would house items such as bikes and a snow blower, etc. and would be 28 feet around and have a fence installed around the perimeter, with 3 to 4 feet of the shed showing above fence.

Mr. Janssen stated he was concerned with the appearance and where it would line up with the egress window.

Mr. Middlestead stated the egress window was to the office in the basement and the depth of the garage was done in 1984-1985 from what he understands. He added that it is too shallow to get a pick-up inside and he wants to stay 10 feet away to avoid completely sheetrocking the shed, but he will do that if necessary.

Mr. Janssen stated he was wondering if there were other options that would make more sense.

Chair Marback opened the public hearing.

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

Mr. Janssen asked staff if the property is zoned R5-Residential.

Ms. Wollmuth stated it is and that 30% lot coverage is allowed. She further explained with the current structures on the lot, there is still 872 square feet of buildable space on the property.

Chair Marback stated the proposed building would be 192 square feet.

Mr. Janssen asked if the shed was put on the Winnipeg side if it would still be out of compliance.

Ms. Wollmuth said that this is correct.

Ms. Clark stated she felt this was a continuation of previous action.

MOTION: A motion was made by Mr. Wohl to approve the request for a variance from Section 14-04-03(7) of the City Code of Ordinances (R5-Residential)(Front Yard) to reduce the required front yard setback located along the north side of your property, adjacent to Ontario Lane, from twenty-five (25) feet to four (4) feet for the purpose of constructing a detached accessory building on Lot 12, Block 3, Replat of Lot 10, Block 1, North Hills 1st Addition (2981 Vancouver Lane), due to the hardship being a unique circumstance of having front yard setbacks on three sides and rights-of-way on three sides. The motion was seconded by Mr. Seifert and with Board Members Clark, Janssen, Marback Seifert and Wohl voting in favor of the motion, the motion was unanimously approved and the variance was approved.

OTHER BUSINESS

MEMBER AND ALTERNATE MEMBER APPOINTMENT

Ms. Wollmuth stated that after the unanimous vote during the May 6, 2021 Board of Adjustment meeting, an alternate member selection tool was used and Ken Hoff was selected as the alternate member of the Board of Adjustment. She further shared that the Bismarck

City Commission, at their meeting of June 22, 2021, reappointed Jennifer Clark and Ken Hoff to serve on the Board of Adjustment and that Ken Hoff serve as the alternate member. Their terms will expire in June 2024.

Ms. Wollmuth addressed that Planning staff will initiate a zoning ordinance text amendment to change the number of Board members, as it is currently not in compliance. She said this is typically a four-month process and the bylaws will also need to be updated. She also informed the Board that quorum calls will be moved up to Monday afternoons or Tuesday mornings the week of the meeting, as to better accommodate the needs of the alternate if necessary.

ZONING ORDINANCE TEXT AMENDMENTS

Ms. Wollmuth informed the Board that the City Commission, at their meeting of June 8, 2021, voted to deny the request for a public hearing related to keeping chickens within rural residential lots outside of City limits and regulations to allow chickens within the City.

Ms. Wollmuth informed the Board that the Planning and Zoning Commission, at their meeting of June 23, 2021, approved the zoning ordinance text amendment that would revise the construction and elevation requirements for accessory structures located within the Special Flood Hazard Area. She explained that the proposed changes would allow for accessory structures less than 600 square feet in area to be constructed below the Base Flood Elevation (BFE), according to floodproofing techniques approved by FEMA. She then explained that accessory structures greater than 600 square feet in area would be allowed to be constructed one foot above the BFE.

Ms. Wollmuth stated that the City Commission upheld the May 6th denial of a variance to reduce the required side yard setback on Lot 23, Block 2, Copper Ridge Subdivision. She added that the applicant came in the next day and to obtain a permit and will be building within the zoning requirements.

Chair Marback asked if the Floodplain ordinance passes through the City Commission, would it then need to be approved by FEMA.

Ms. Wollmuth replied that what was proposed has already been discussed and approved by FEMA prior to being presented to the Planning and Zoning Commission.

Chair Marback asked how many times we have used an alternate board member in the last calendar year.

Ms. Wollmuth stated the last time four members were used versus 5 members was in March 2019.

Chair Marback asked if there are any other questions for staff.

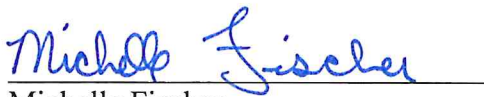
Chair Marback welcomed reappointed members Jennifer Clark and alternate member Ken Hoff.

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 5:44 p.m. to meet again on August 5, 2021.

Respectfully Submitted,



Michelle Fischer
Recording Secretary

APPROVED:



Michael Marback, Chair