

BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
August 5, 2021

The Bismarck Board of Adjustment met on August 5, 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. Chairman 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 Rich Wohl.

Staff members present were Brady Blaskowski, Building Official/Floodplain Administrator, Jannelle Combs – City Attorney, Jenny Wollmuth – Senior Planner and Anton Sattler – Environmental Health Administrator.

MINUTES:

Chair Marback called for approval of the minutes of the July 1, 2021 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Seifert and seconded by Mr. Wohl to approve the minutes of the July 1, 2021 meeting, as presented. With Board Members Clark, Janssen, Marback, Seifert, and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-03(6) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL / LOT COVERAGE) – PART OF LOT 3, BLOCK 6, NORTHERN PACIFIC ADDITION (707 NORTH WASHINGTON STREET)

Ms. Wollmuth stated the applicant, Sherri Potter, is requesting a variance to increase the maximum lot coverage from 30% to 36% in order to demolish an existing 9'5"x17'3" attached garage and construct a 12'x24' addition with a garage to the existing single-family dwelling.

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 the applicant was present, along with her contractor and that 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 if the Board has allowed variances in the R5 – Residential zoning district due to unique situations such as this.

Ms. Wollmuth said that she does recall a few variances in the past years for additions that would encroach into side yard setbacks and or increase the lot coverage for properties. These variances were in older areas of town where the lots are smaller.

Chair Marback added that he recalls about four to five variances that have been approved in similar situations.

Chair Marback called the applicant and contractor forward and asked if there was anything they would like to add that was not in their packets.

Ms. Potter said the reason for the addition would be to have a laundry room on the main floor, making mobility easier for her due to ankle and knee surgeries.

Todd Freitag, the contractor said he would square things off, make the residence a rectangle shape, and feels the proposed addition would enhance the surrounding community. He also stated that due to the very steep steps within the existing house the proposed addition would make it possible for Ms. Potter to remain in her house longer and be safer.

Mr. Janssen asked if the addition includes the garage.

Mr. Freitag stated it is basically just room for more storage, as she does not have much of a garage right now, and although he would like to get her a garage there is just no space for it.

Chair Marback opened the public hearing.

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

MOTION: A motion was made by Mr. Seifert to approve the request for a 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 36% in order to demolish an existing 9'5"x17'3" attached garage and construct a 12'x24' addition with a garage to the existing single-family dwelling based on the fact that this is a very small lot and that is a hardship, and he thinks it is necessary for reasonable use of the land. The motion was seconded by Mr. Wohl and with Board Members Clark, Janssen, Seifert, Wohl and Marback voting in favor of the motion, the motion was unanimously approved and the variance request was approved.

VARIANCE FROM SECTION 14-04-19(6)(b)(5)(a) OF THE CITY CODE OF ORDINANCES (FP-FLOODPLAIN DISTRICT) – LOT 1 LESS THE EAST 40 FEET, BLOCK 7, FOX ISLAND SECOND SUBDIVISION (3005 DEER LODGE DRIVE)

Ms. Wollmuth stated the applicant, Don Roloff, is requesting a variance to allow the construction of an addition to an existing single-family structure, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, to be constructed below the elevation requirement outlined in the City zoning ordinance.

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

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 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 also included the following findings for a floodplain variance:

1. The proposed accessory building may increase flood levels during the base flood discharge.
1. The variance is not the minimum necessary, considering the flood hazard, to afford relief.
2. The applicant has not shown good and sufficient cause for granting the variance.
3. A failure to grant the variance would not result in exceptional hardship to the applicant.
4. 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 the applicant was present and available for any questions. She stated the staff recommends reviewing the findings contained in the staff report for both a standard variance as well as a floodplain variance, identifying any hardship and modifying the findings as necessary to support the decision of the Board.

Ms. Clark asked if there was any insight as to how this structure was built with the garage so low.

Ms. Wollmuth stated the Building Official is present and may be able to provide more history. She added that in 2007 our regulations were not as they are today.

Mr. Blaskowski stated that the elevation of the single-family dwelling is just under a foot below the base flood elevation, and the zoning ordinance does allow for an addition to be added unless it is at the same elevation as the home, and not a substantial improvement. Mr. Blaskowski added that the living portion of the attached garage meets the elevation requirements but as the attached garage is below the base flood elevation a variance for the proposed addition is required.

Mr. Roloff informed the board that the size of the addition would be 12x22, nothing substantial.

Mr. Wohl asked what was between the elevation change between home and garage, such as a step or ramp.

Mr. Roloff said in 2007 it was all on one level but the outside walls of the attached garage were constructed in such a way that he would have had to go to short radius rails for the garage doors which did not work well at that time. He came to the city to ask if he could drop the elevation so that he could use full radius rails for his garage doors, which he received approval for. *Secretary's note, a variance to drop the elevation of the attached garage was not requested of nor approved by the Board of Adjustment.*

Chair Marback opened the public hearing.

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

Ms. Clark asked for clarification on what granting this floodplain variance would do to our standing for flood status.

Mr. Blaskowski said that it is uncertain as to what would happen. All variances that are granted by the Board of Adjustments are submitted to FEMA for their review. He can say that this specific variance is in regards to the City of Bismarck's minimum standards, which is more restrictive than FEMA's regulations.

Mr. Janssen asked that if an addition was put on the existing home, which was built theoretically correct, if it would be less likely to be flagged by FEMA than if the addition were to be dropped lower.

Mr. Blaskowski said this is correct, that it would affect us in a different way.

MOTION: A motion was made by Mr. Janssen to approve the request for a variance from Section 14-04-19(6)(b)(5)(a) of the City Code of Ordinances (FP-Floodplain District) based on the exceptional topographical condition where there is an existing structure that met the requirements when it was built and the extension would meet all the other criteria for a variance. He added that

his hardship reasoning in modification includes all the floodplain findings. 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 was approved.

APPEAL OF NOTICE AND ORDER – THE SOUTH 9 FEET OF LOT 15 AND ALL OF LOT 16 AND THE NORTH 33 FEET OF THE VACATED PALMER AVENUE, BLOCK 6, HAIGHT AND LITTLE’S ADDITION (1800 NORTH 14TH STREET)

Ms. Wollmuth stated that Algie Mahto, Rosalind Walks and Leisha Aaseth are appealing a Notice and Order requiring the removal or storage in an enclosed building of tires, scrap lumber, surplus, scrap, salvage and similar items on their property as required in Section 14-05-05.1 of the City Code of Ordinances.

Ms. Wollmuth said that the City of Bismarck – Environmental Health Division received a complaint regarding this property on April 5, 2021. A code case was opened and inspections and correspondence with the property owners to ensure compliance began on April 6, 2021.

Ms. Wollmuth said a Notice and Order was sent to the property owners on May 17, 2021. She stated that a Notice and Order is a formal request by the City of Bismarck to comply with regulations outlined in the City Code of Ordinances; in this case specifically, Section 14-05-05.1 (Accumulation of Certain Items Prohibited).

Ms. Wollmuth stated that the property owner submitted an appeal of the Notice and Order to the Planning Division on June 17, 2021.

Ms. Wollmuth said that notifications were sent to approximately 42 property owners adjacent to this property and comments regarding the request were received.

Ms. Wollmuth said staff recommends reviewing the information included in the staff report and rendering a decision of the appeal of the Notice and Order. She also stated that the applicant and the Environmental Health Administrator, Anton Sattler are present for any questions.

Chairman Marback asked if there were any questions of the staff or the Environmental Health Administrator.

Mr. Seifert asked Mr. Sattler if he investigated the issue due to a complaint.

Mr. Sattler said yes. He stated there are times when they will do a spring survey where they will patrol portions of the city, but this particular case was complaint based.

Mr. Seifert asked how many of these complaints are received on average in a year.

Mr. Sattler said he was unsure, but many of the code cases they receive are complaint based.

Mr. Seifert asked that since most do not show up at a Board of Adjustment meeting, can he assume that these people solve the problem on their own.

Mr. Sattler explained their process, stating they first send a Notice of Violation with reasonable time to make their property compliant and that the Notice of Violation also states that if they need additional time, the Environmental Health Division willing to work with the property owner. He said it should be noted the property owner requested and was granted additional time to comply with the Notice of Violation. If a property owner does not comply, a Notice and Order is issued. Mr. Sattler went on to say that a property owner can appeal the Notice and Order to the Board of Adjustment, which they have done in this case. If they do not appeal the Notice and Order and they do not comply, it typically goes to Municipal Court.

Mr. Seifert asked if they do typically settle on their own.

Mr. Sattler confirmed that was correct.

Mr. Janssen asked if the Notice and Order clearly defines what needs to be corrected so the property owner knows to what extent they must clean for it to be considered acceptable.

Mr. Sattler stated the Notice of Violation includes the portion of the ordinance that specifies these things and the items are listed in the body of the letter along with pictures.

Ms. Clark asked when Mr. Sattler was last at this site.

Mr. Sattler stated he was there today.

Ms. Clark asked if there has been any change.

Mr. Sattler said no, the property is still non-compliant.

Mr. Wohl asked if there has been any improvement in the situation since the very first time.

Mr. Sattler said there has been improvement in the front of the yard, some items have been removed and that a fence has been constructed along the side of the property that seems to be concealing some of the items, but according to ordinance these items need to be stored in an enclosed building. The vast majority of the items are now in the backyard which is surrounded by a fence.

Chairman Marback asked if there were further questions and there were none. He then asked the property owners to come forward if they had anything to add.

Ms. Aaseth stated that she spoke with Mr. Sattler and explained that she was preparing for a yard sale and will donate anything that does not sell.

Chairman Marback asked when she plans to have the yard sale and if she could give an approximate date.

Ms. Aaseth stated she is waiting for the weather to improve and is hoping for this weekend or next weekend.

Ms. Aaseth also voiced her concerns regarding how she felt the City employees were trespassing and invading her privacy. She questioned why Mr. Sattler was wearing street clothing and explained she did not know who he was and felt threatened. She stated that she had a privacy fence for the purpose of having privacy.

Chairman Marback asked Ms. Combs for clarification on a privacy fence.

Ms. Combs stated that a fence does not guarantee that anything you put there is private, especially when you live in a city with zoning regulations. Ms. Combs stated that when she spoke with Mr. Sattler, he indicated that his inspection of the property was done from a property that had consented to his presence or from public property. Ms. Combs also stated that the property owner could file a civil suit if she felt her privacy was invaded. However, in reference to the Notice and Order the property is in violation of the ordinance.

Chairman Marback asked Ms. Combs to confirm that Ms. Aaseth does have the ability to file a civil suit if she would like.

Ms. Combs said yes.

Ms. Wollmuth informed the Board that according to the zoning ordinance, a rummage sale could not be held more than twice in one year at the same location, and that a sale could only go four consecutive days, but the total for the two sales could not exceed six days. The ordinance does not allow a perpetual rummage sale on a property.

Chairman Marback opened the public hearing.

Jerry Auck addressed the board, stating he has lived at 1829 North 14th Street for fifty years. He stated this issue did not happen overnight, it is a constant problem, and he strongly encouraged the Board to decide tonight.

Chairman Marback closed the public hearing.

MOTION: A motion was made by Mr. Seifert to affirm the Notice and Order. Mr. Janssen seconded the motion commenting that after looking through the pictures he felt it was important that the City maintain their ordinances to help control issues such as this. Mr. Wohl added that he viewed the property before the meeting and although most of the items were in the backyard, it was creeping into the front. He did not feel this issue was going away even with a yard sale. Ms. Clark expressed her concern that this could be a reoccurring issue every year when the property owner wanted to hold a rummage sale. A call for votes was unanimous by all Board members in favor of affirming the Notice and Order. Chairman Marback informed Ms. Aaseth that she has the right to appeal the decision to the Board of City Commissioners.

OTHER BUSINESS

UPDATE ON ZONING ORDINANCE TEXT AMENDMENT RELATING TO ACCESSORY STRUCTURES LOCATED WITHIN THE SPECIAL FLOOD HAZARD AREA (SFHA)

Ms. Wollmuth said the City Commission at their meeting of July 27th approved the proposed ordinance which allows accessory structures 600 square feet or less to be constructed below the base flood elevation utilizing floodproofing techniques outlined by FEMA.

UPDATE ON APPEAL OF THE NOVEMBER 4, 2020 DECISION TO DENY A VARIANCE TO BRYAN SKAGER

Ms. Wollmuth said that at the City Commission at their meeting of July 27th the appeal of Mr. Skager's denial of a variance was upheld. The Building Inspection Division and Floodplain Administrator will work with the applicant to obtain compliance.

Ms. Wollmuth did make an additional request that when quorum calls are made that a response be returned no later than Tuesday at noon so we can prepare the alternate Board member if necessary.

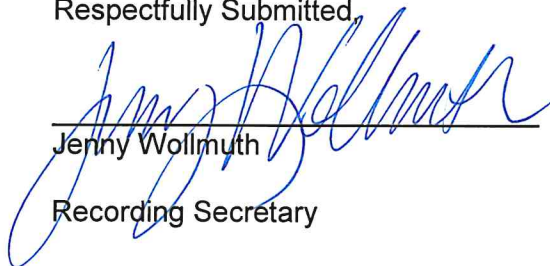
Chair Marback asked if there are any other questions for staff.

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 5:48 p.m. to meet again on September 2, 2021.

Respectfully Submitted



Jenny Wollmuth
Recording Secretary

APPROVED:



Michael Marback, Chair