

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
October 6, 2022**

The Bismarck Board of Adjustment met on October 6, 2022, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chair Marback presided.

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

Staff members present were Jannelle Combs – City Attorney, Kim Lee – Planning Manager, Jenny Wollmuth – Senior Planner and Tracy Walters – Office Assistant II.

MINUTES:

Chair Marback called for approval of the minutes of the December 2, 2021 meeting of the Board of Adjustment.

MOTION: A motion was made by Ms. Clark and seconded by Mr. Janssen to approve the minutes of the December 2, 2021 meeting as distributed. With Board Members Seifert, Marback, Janssen, Clark and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-01 OF THE CITY CODE OF ORDINANCES (RR– RESIDENTIAL / SIDE YARD) – LOT 4, BLOCK 2, HARVEST GROVE FOURTH SUBDIVISION (407 90TH AVENUE NE)

Chair Marback called for the public hearing on the side yard setback variance request, for Lot 4, Block 2, Harvest Grove Fourth Addition.

Ms. Wollmuth stated the applicants, Tim and Jamie Michlitsch, are requesting a variance to reduce the required side yard setback along the eastern side of their property from fifteen (15) feet to twelve (12) feet in order to construct an 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 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, identifying a hardship, and modifying the findings as necessary to support the decision of the Board.

Chair Marback asked the owners to come forward; however, the homeowners were not present at the meeting.

Chair Marback opened the public hearing.

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

In order to facilitate discussion, Mr. Janssen made a motion to deny the request, with Mr. Seifert seconding the motion.

Chair Marback asked for any discussion.

Mr. Siefert said he would have had questions for the homeowners; however, as they were not present and he could not see the hardship, he would vote against it.

Ms. Clark also stated she would have questions for the homeowners and was at a loss to see what to do about that, so she would support a denial.

Chair Marback asked for any further discussion on the matter.

Ms. Wollmuth stated that the Board could continue the public hearing request to the next meeting, and they could ask any questions of the homeowners during that meeting.

Mr. Wohl stated that they could make the shop 32 feet wide instead of 36 feet wide and the problem would be solved.

Mr. Janssen stated this request does not meet the criteria for a hardship.

MOTION: Based on the findings included in the staff report, Mr. Janssen made a motion to deny the variance to reduce the required side yard setback along the eastern side of their property from fifteen (15) feet to twelve (12) feet in order to construct an accessory building. The motion was seconded by Mr. Seifert and with Board Members Clark, Wohl, Janssen, Seifert and Marback voting in favor of the motion, the variance was denied unanimously.

VARIANCE FROM SECTION 14-03.1-07(5)(d) OF THE CITY CODE OF ORDINANCES (SIGNS / RESIDENTIAL ZONING STANDARDS) – LOT 2, BLOCK 1 WASHINGTON SQUARE ADDITION (4100 NORTH WASHINGTON ST)

Ms. Wollmuth stated that Nate Wolf, Old 10 Bar & Grille, is requesting a variance to extend the frame hold time from 9pm to 11pm and to allow animations, background animations, frame entrances and exits, and other similar effects known as "live action video" for a proposed Electronic Message Center (EMC) sign.

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 CG – Commercial 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, identifying a hardship, and modifying the findings as necessary to support the decision of the Board.

Ms. Clark asked that if this were not in a residential area, would they be able to extend the frame hold time past 9:00 pm?

Ms. Wollmuth replied yes, that would be correct.

Ms. Clark asked if the residential zoning district requirements apply to this parcel even with churches surrounding it, does that have anything to do with the video or effects?

Ms. Wollmuth replied that live action videos are prohibited in the City of Bismarck regardless of the zoning district.

Chair Marback asked if the owner would like to come forward.

Nate Wolf stated that the neighboring residential zoned property is a church, and questioned if the neighbor was a church and not a residential property, that they were caught in the middle of unintended restrictions. He stated they do not plan to utilize strobe lights or ambient lights and they would not be streaming videos, instead including animations of fireworks during the 4th of July, or a turkey at Thanksgiving.

Chair Marback opened up discussion for public hearing.

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

Chair Marback asked what the definition of live action video was.

Ms. Wollmuth stated streaming any kind of video and background animation, as described by the applicant, would be considered live action video.

Ms. Clark moved to grant the request to extend the hold time to 11:00 p.m. and deny the video effects request.

Ms. Clark stated this motion would be based on special circumstances, that this property is different from any other properties in the area, based on surrounding of churches, not residential units.

Mr. Janssen seconded the motion.

Mr. Janssen asked how much it is enhanced or achieved by going from 9:00 pm. to 11:00 pm.

Ms. Clark stated with serving food and drink, she thought it would enhance their business and pull people in.

Mr. Janssen stated that there were residences to the southeast that are impacted by this, and that these folks would be able to see the lights and he didn't want to overlook this.

MOTION: A motion was made by Ms. Clark to grant the request for a 9:00 pm to 11:00 pm. frame hold time and deny the effects of the live action video request. This motion would be based on special circumstances, that the property is different from any other property in the area, based on its surrounding of churches, which is less residential. Mr. Janssen seconded the motion. Board Members Seifert, Wohl, Janssen, Clark and Marback voting in favor of the motion and the variance to allow regular usage until 11:00 pm was approved by the Board, and the request to allow animations, background animations, frame entrances and exits, and other similar effects known as live action video was denied by the Board.

APPEAL OF ZONING DETERMINATION--ALLOWED USES IN CA -- COMMERCIAL ZONING DISTRICT – ARROWHEAD PLAZA (1122 NORTH 3RD STREET) APPL2022-001

Ms. Wollmuth stated the applicant, Justin Hoag, is appealing a zoning determination made in September 2022 by the Planning Manager / Zoning Administrator in accordance with Section 14-06-03 of the City Code of Ordinances (Board of Adjustment / Appeal Procedure) with regard to allowed uses in the CA – Commercial zoning district. Specifically, that a proposed archery use should not be classified as a use in the Commercial Recreation Group. Mr. Hoag is proposing to add an archery range (Burnt Creek Archery) with ancillary retail uses to sell and service archery equipment to a vacant unit in Arrowhead Plaza. Staff has reviewed the building plans and project narrative of the proposed archery range and have found that this use closely resembles several uses that are typical to the commercial recreation group, including a private club, bowling alley and billiard parlor. Therefore, the Planning Manager / Zoning Administrator has determined that the proposed archery range is a commercial recreation use. A commercial recreation use is not a permitted use in the CA – Commercial zoning district.

Ms. Wollmuth gave an overview of the request.

Chair Marback asked if the Board Members had any questions for staff.

Ms. Clark asked if there were any other variances granted that were at this location.

Ms. Wollmuth said she does not recall any within the last 10 years.

Chair Marback asked if the owner would like to come forward at this time.

Justin Hoag stated when he first got started with his archery business, he jumped in and got the ball rolling and he chose Arrowhead Plaza because the space was perfect for his needs. He has been involved in archery his whole life, it has done a lot for him, and he would like to

pass this onto the next generation. Burnt Creek Archery would be a pro shop where you could buy or rent archery supplies and they would also offer archery consulting and coaching. Having the archery range on site would help him serve the public better by providing a space to try out the product. With regards to the location, he has searched all over Bismarck, Arrowhead Plaza was the perfect spot where families would feel safe to drop off their children and women would feel safe going to. He also stated that the parking at this location was an asset. He went on to say that Scheels was once located in Arrowhead Plaza, and they had an archery range; however, it was smaller than Burnt Creek Archery's would be. He said that they have received a lot of community support. Burnt Creek archery will not just be for the archery community; he has reached out to several youth groups such as the 4H club for after school youth programs. Nishu Bowman is an archery range in town, they are in favor of this program because they are full and agree there is a need for an additional archery space. Burnt Creek Archery will be fully accessible with staff on hand should anyone need assistance. He would also offer programs for our Veterans as well as the Wounded Warrior program. Ultimately, he is looking to provide a safe environment for the community to take part in a great family sport.

Ms. Clark stated she wanted to make sure staff interpreted the ordinance correctly and asked what the principal activity would be.

Mr. Hoag stated the principal activity would be the sales and pro shop where he would be fixing equipment, and this would fit well within the existing CA – Commercial zoning district. It is the archery range itself that is not within the zoning ordinance limits. His shop, without the archery range, would be just like Scheels. He is looking to offer more to the community than just selling equipment; he would like to better the community by offering the archery range on site.

Mr. Janssen asked when he purchased the property, if it was correct that he didn't look into what it was permitted for the use of the property.

Mr. Hoag stated that he was brand new to business and leaned hard on people whom he thought would have passed that information on to him in the process.

Mr. Janssen stated that you cannot just buy bowling balls without having a place to throw them, so the sales part of the project goes hand in hand with having the archery range on site.

Chair Marback asked if there were any further questions for Mr. Hoag, and then he opened up discussion for public hearing.

George Yineman, a broker for Rise Property Brokers, stated he conducted an extensive search to find a location for Burnt Creek Archery. Upon their search for a property, the strip mall in Arrowhead Plaza seemed perfect. They signed a lease with Arrowhead Plaza and the project was underway. It was not until they requested a building permit from the City of Bismarck, that they were informed that it was not an allowed use in the CA – Commercial zoning district. He stated that if we do not address this, we will see centers like this die. He went on to say this is a missed opportunity to save strip malls like Arrowhead Plaza and see our community grow. Ms. Wollmuth and Ms. Lee asked them for other examples pertaining to this. He gave eight other examples of strip malls located across the United States with archery ranges located within them; however, none of these were located in North Dakota. He went on to say that it is a great use for this space, to have activities and services for the local neighborhoods. He also stated that the CG – Commercial zoning locations within the community are more expensive, and the MA – Industrial zoning was more affordable; however, these locations are not on the bus route or scooter route to have kids dropped off at, and the property at Arrowhead Plaza is on these

routes. This is the perfect fit for the Board of Adjustment to grant this request and allow Mr. Hoag to open his business.

Chair Marback asked if anyone else would like to come forward at this time.

Cary Schilling stated that he owns the property next to Arrowhead Plaza and will soon live there. He believes that Arrowhead Plaza could use an establishment such as Burnt Creek Archery. Mr. Schilling went on to say that he is grateful that there is a concrete wall in the back of the building, or the arrows may have flown into his back yard. Burnt Creek Archery will be a great asset to the community and that he hopes the Board of Adjustment approves this request.

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

Mr. Seifert asked Ms. Lee to elaborate on the staffs' zoning determination.

Ms. Lee stated the whole city is divided into zoning districts. The CA – Commercial zoning district is a neighborhood commercial district, serving the residents of the surrounding neighborhood. The CG – Commercial district is community wide serving the entire community. The way the zoning ordinance is set up, use groups are either allowed or not allowed in certain zoning districts. The commercial recreation group, in staffs' opinion, would include this facility, and because the CA – Commercial zoning district does not allow the commercial recreation group; however, it is allowed in the CG — Commercial and the MA — Industrial districts.

Mr. Janssen asked if in the future if the CA – Commercial zoning district could be modified.

Ms. Lee said staff have talked about it internally, because we also classify Anytime Fitness in the Commercial Recreation category as well. Staff is currently finishing up the Together 2045 comprehensive plan and it made more sense to finish that first, and then look at updating the zoning ordinance.

Ms. Clark asked if staff found the ordinance was read correctly, and if staff puts a halt to the building process, what kind of appeal process was available.

Ms. Lee stated the applicant could appeal this case to the City Commission. They could also apply for a zoning change as well, but that the owner of the property would have to come in and ask for the zoning to be changed.

Chair Marback asked if there were any other questions for the staff.

Ms. Clark made a motion to uphold the determination made by the staff.

Chair Marback asked for a second motion. There was not one, so he asked the Board members for a second motion or for further discussion.

Ms. Combs asked the Board if this type of entity is not a commercial group use, which use group does it belong in.

Chair Marback stated it could be both public recreation and education use group.

Ms. Lee stated she looked at different use groups within the zoning ordinance and thought the proposed archery range could be classified as the retail group A because they are selling items.

The zoning ordinance does not indicate percentage of space determining a specific use group. For example, with Scheels the majority of what they are doing is sales, but because Burnt Creek Archery's sales square footage is smaller, the closest thing to compare it to is a bowling alley with ball and shoe sales and repair. The Commercial Recreation Group was the closest use group we could find to associate the proposed archery range with.

Chair Marback has asked if we made any variances in the past referring to the CA — Commercial zoning.

Ms. Lee said not that she could recall.

Ms. Clark stated that she wanted to see this be built, but she believes the staff has read the ordinance correctly.

Chair Marback agreed with Ms. Clark stating that the staff had a tough job and that they went above and beyond for Burnt Creek Archery. He believes the staff has determined the zoning ordinance correctly also.

MOTION: Mr. Seifert made a motion to overturn the zoning determination for the reason that the proposed archery range is more a Retail Group A than a Commercial Recreation Group. Mr. Janssen seconded the motion. Board Members Clark, Marback and Wohl voted to oppose the motion with Janssen and Seifert voting to approve the motion. The motion to overturn the zoning determination was not approved.

MOTION: Mr. Wohl made a motion to uphold the zoning determination. Ms. Clark seconded the motion. Board Member Clark, Marback and Wohl voted to approve the motion, with Board Members Janssen and Seifert opposing the motion. The motion to uphold the zoning determination was approved.

APPEAL OF ZONING DETERMINATION – ALLOWED USES IN CG – COMMERCIAL ZONING DISTRICT – Track 712 part of Block 12, Original Plat (712 East Front Avenue)

Ms. Wollmuth stated Wayne Munson, with Bismarck Sign Company, is appealing a zoning determination made in September 2022 by the Planning Manager / Zoning Administrator in accordance with Section 14-06-03 of the City Code of Ordinances (Board of Adjustment / Appeal Procedure) with regard to allowed uses in the CG – Commercial zoning district. Specifically, that Bismarck Sign Company should not be classified as an industrial use. Mr. Munson is proposing to relocate Bismarck Sign Company to the exiting Lafarge property located at 712 East Front Avenue. Staff have reviewed the proposed request and, although a sign company is not specifically identified as a use in any particular zoning district, the zoning ordinance does include typical uses within the various use groups. Uses within the Industrial Group A are businesses involving the manufacturing or the storage and sale of heavy building materials or equipment. This use group also references the manufacture, compounding, processing, packaging, treatment or assembly of various materials and products, including electric and neon signs, outdoor advertising signs, and commercial advertising structures. The use group also includes references to contractors' equipment storage yards. Bismarck Sign Company would be appropriately classified as being within the Industrial Group A. This

determination is based on the assembly and storage of signs for Bismarck Sign Company. The industrial group A is not a permitted use group in the CG – Commercial zoning district.

Chair Marback asked the owner of the property to come forward at this time.

Wayne Munson stated he was one of the owners of Bismarck Sign Company, and that the building on this property was built in 1979. He stated Bismarck Sign Company is not your traditional sign company, they do not manufacture lighted or neon signs at their facility. They do not weld, grind or paint onsite to give off any emissions. They purchase and bring in product that they take and install for other commercial buildings. He believes the interpretation is wrong as they do not manufacture. However, they do print at the facility, and Mr. Munson stated United Printing, for example, is located in the CG – Commercial zone. He believes the majority of their business and the quantity of the work they do would be categorized in the CG – Commercial zone. This property fits very well within their needs, and the first plan is to get rid of the silos and clean up the property. They believe because they do not manufacture signs and therefore should be allowed to be in the CG – Commercial zone.

Mr. Seifert asked Ms. Lee knowing that they are not going to manufacture, would that change the zoning.

Ms. Lee stated there is language about assembly and storage, that is why Bismarck Sign Company would be in the Industrial Group A category. Even though they are not manufacturing, they are assembling parts of a sign on site.

Mr. Munson stated they bring in product from a manufacturing facility; they do have storage and store product on site, but the majority of assembly is done at the job site, and not at their facility.

Ms. Clark asked what they are storing at the facility.

Mr. Munson stated at their current facility, you can see a chain link fence, trailers, equipment, and in the background, you can see a wood crate with materials that they take to the jobsite and install.

Mr. Wohl asked if he was a licensed contractor.

Mr. Munson stated yes, he was a licensed contractor.

MOTION: Mr. Wohl made to make a motion to uphold the zoning determination made by the zoning administrator. Mr. Janssen seconded the motion. Board Member Clark, Janssen, Marback, and Wohl voted in favor of the motion, with Board Member Seifert opposing the motion. Motion to uphold the zoning determination has been granted.

**APPEAL OF ZONING DETERMINATION– ELECTRONIC MESSAGE CENTER (EMC) –
OPERATIONAL STANDARDS– Lot 39, Block 1, Bismarck Airport Addition (2301
University Drive, Building 48)**

Ms. Wollmuth stated Executive Air Taxi is appealing a zoning determination made by Planning staff in application of Special Use Permit and supported by the Planning Manager / Zoning Administrator in accordance with Section 14-06-03 of the City Code of Ordinances (Board of Adjustment / Appeal Procedure) with regard to size requirements for Electronic Message Center (EMC) signs adjacent to the A – Agriculture zoning district. Ms. Wollmuth explained that

planning staff updated the sign code for the City of Bismarck in July 2020 to balance business interested and public safety. She went on to say requirements outlined in the sign code protect the health and safety of the community, create a content natural sign code consistent with supreme court ruling, and enhance a positive community image for businesses, residents, and visitors. The Planning and Zoning Commission at their meeting of July 27, 2022, approved a special use permit to allow an EMC sign for this property, with the conditions that the size of the EMC sign is no greater than 32 square feet, the maximum size allowed by ordinance, and that all operational requirements of the ordinance be met. Ms. Wollmuth noted that a copy of the meeting minutes are attached in the packet. She stated staff reviewed the proposed request and determined that as the property is adjacent to the A – Agriculture zoning district to the west, across University Drive, the residential zoning district standards outlined in the City's sign code limiting the size of the proposed EMC sign to 32 square feet apply. She noted that agricultural districts may become a variety of different uses that are presently unknown, and that the sign ordinance conservatively applies the more stringent residential standards.

Chair Marback asked if there were any questions of staff, and then invited Mr. Vetter to come forward.

Paul Vetter, the Chief Operating Officer of Executive Air Taxi stated they have been a commercial business at the Bismack Airport for 49 years. They are located on a highly trafficked University Drive and there is not a residential home in sight. They are surrounded by agricultural areas that he does not see ever becoming residential properties due to the proximity of the airport. Their current sign is off set pretty far from the main road and located lower than the road making it very hard to see. His request is to have a sign larger than their current 32 foot sign. He also stated they are remodeling and updating their entire facility and would like to request an Electronic Message Center (EMC) sign as part of the remodel they are doing. This would be the beautification part of their remodel.

Chair Marback asked how large of a sign would they be looking to get?

Mr. Vetter stated he would like to double the sign to 64 feet.

Mr. Janssen asked where the new sign would be located.

Mr. Vetter stated they would just replace the existing sign.

MOTION: Mr. Seifert made a motion to overturn the zoning determination because the property adjacent to the airport is agricultural, and not likely to be developed as residential. Mr. Wohl seconded the motion with Board Members Clark, Janssen, Wohl, Marback and Seifert all voting in favor of the motion, the motion was unanimously approved.

OTHER BUSINESS

The bylaws were presented with the meeting packet for approval at this time.

MOTION: Ms. Clark made a motion to approve the bylaws. Mr. Janssen seconded the motion with Board Members Clark, Janssen, Wohl, Marback and Seifert all voting in favor of the motion, the motion was unanimously approved.

OATH OF OFFICE

Chair Marback stated they had completed this prior to the meeting.

Ms. Wollmuth stated that was correct and we have moved item 8 to the beginning of the meeting to accommodate our notary public, who was unable to stay to attend the meeting. The Oath's of Office were notarized and would be put in the record.

Chair Marback stated our next meeting would be November 3, 2022.

ADJOURNMENT:

There being other business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 6:48 p.m. to meet again on November 3, 2022.

Respectfully Submitted,



Tracy L. Walters
Recording Secretary

APPROVED:



Michael Marback, Chair