

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
March 2, 2023**

The Bismarck Board of Adjustment met on March 2, 2023, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chair Marback presided via Zoom.

Board members present were Curtis Janssen and Rick Wohl. Board members Jennifer Clark and Michael Marback appeared remotely.

Members absent were Chris Seifert 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 October 6, 2022 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 October 6, 2022 meeting. Board Members Clark, Janssen, Marback, and Wohl all voted in favor and the minutes were approved.

VARIANCE FROM SECTION 14-04-16(5) OF THE CITY CODE OF ORDINANCES (P – PUBLIC / SIDE YARD) TRACT 3 OF PART OF SECTION 31 (1005 RIVER ROAD), TO BE PLATTED AS LOT 1, BLOCK 1, TECHNOLOGY HILL ADDITION, PART OF THE E ½ OF THE NE ¼ OF SECTION 31 (1200 SCHAFFER STREET)

Ms. Wollmuth stated the applicants, Bismarck State College (BSC) and BSC Foundation, are requesting a variance from Section 14-04-16(5) of the City Code of Ordinances, (P – Public / Side Yards) to reduce the required side yard setback along the east side of the property, legally described as Tract 3 of Part of Section 31 (1005 River Road), to be platted as Lot 1, Block 1, Technology Hill Addition, and to reduce the required side yard setback along the west side of the property, legally described as part of the E½ of the NE¼ of Section 31 (1200 Schaffer Street), from 6 feet to 0 feet to allow the construction of a skywalk between the National Energy Center of Excellence Building and the Polytechnic 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 P - Public 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 recommends reviewing the findings, identifying a hardship, and modifying the findings as necessary to support the decision of the Board.

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

Mr. Janssen asked if there were similar situations like this in Bismarck.

Ms. Wollmuth replied that there are many skywalks in Bismarck, mainly in the downtown or medical districts. They are constructed over public right-of-ways and the building front yard setbacks are 0 feet. She did mention that in 2017, the Board of Adjustment approved a variance for a connection between two buildings for an assisted care facility. The Board of Adjustment deemed the variance was necessary to transport patients and equipment between the buildings and that the buildings were also under separate ownership.

Hearing no other questions from staff, Chair Marback invited a representative of Bismarck State College to come forward.

Lon Romsaas, with Swensen, Hagen and Company, stated he is representing Bismarck State College, and is asking the for the Board of Adjustment to approve this variance. Mr. Romsaas stated the connection located at the Baptist Home is between two buildings under different ownership, but it was deemed necessary to transport patients and equipment between the two buildings. The Bismarck State College variance is a similar situation in which it is necessary for staff and students to transfer equipment safely between the two buildings. The National Energy Center of Excellence is owned by the BSC Foundation, but it is for the use of Bismarck State College. In the year 2032, the BSC Foundation will be able to transfer the National Energy Center of Excellence Building to Bismarck State College, adding that in the future, the two buildings will be under the same ownership. He stated that we cannot change the property's ownership right now, and that is the reason they are asking for a variance.

Chair Marback asked if anyone had any questions for Mr. Romsaas.

Mr. Janssen asked if there was a topographical issue between the existing building and the Polytechnic Building.

Mr. Romsaas stated the National Energy Center of Excellence has four floors, and there are only three floors in the Polytechnic Building; however, they are close to being the same elevation. Where the skywalk is to be located, there is a slope that does not allow for the direct connection from the Polytechnic Building to the National Energy Center of Excellence Building.

Chair Marback opened the public hearing.

Jim Christianson stated he serves on the BSC Foundation Board of Trustees, and he is also the Chair for the Bismarck Parking Authority. There is a skyway from the Radisson Hotel to the Parkade parking ramp on 6th Street and Broadway Avenue that is under separate ownership and has a similar situation as the one we are proposing today. He states he would strongly encourage the Board of Adjustment to approve this variance as it is very important to the project at Bismarck State College with the addition of the new Polytechnic Building. It is not feasible to

have a sidewalk between the two buildings because of the existing topography and the skywalk will assist with transferring students and equipment safely.

Chair Marback asked if anyone else would like to speak on this item. Hearing none, he closed the public hearing and asked for the Board's wishes.

Mr. Janssen added that his company that he works for was hired to build the Polytechnic Building. He is not involved in the project and does not have financial interest in it, and the decision one way or the other does not affect what would take place. He wants to make everyone aware of the situation for transparency and make sure no one has any issues with this.

Chair Marback called for Board recommendations.

Ms. Clark moved to grant the variance based on the unique topographical elements of the property and unique ownership between the BSC Foundation and Bismarck State College.

Chair Marback stated there was a motion to approve the variance and asked for a second motion.

Mr. Wohl seconded the motion.

Chair Marback asked for any further discussion.

Mr. Wohl asked if the Board could add a condition that the properties be the same ownership after 2032.

Ms. Clark asked if the Board would have to make BSC take it down if the properties were not under common ownership.

Ms. Combs added the Board can approve or deny the variance but cannot make a condition to the transfer of ownership. State lands can be very difficult to transfer ownership.

Mr. Wohl thought it would be a guarantee that what were discussing happens in the future but stated its not a deal breaker for him.

Chair Marback asked for any other discussion.

MOTION: Ms. Clark made a motion to approve the variance based on the unique topographical elements of the property and unique ownership between the BSC Foundation and Bismarck State College. Mr. Wohl seconded the motion. Board Members Clark, Janssen, Wohl and Marback voted in favor of the motion and the variance was approved.

OTHER BUSINESS:

The bylaws were presented for approval at this time.

MOTION: Mr. Wohl moved to approve the bylaws. Mr. Janssen seconded the motion. Board members Clark, Janssen, Wohl, and Marback all voted in favor of the motion, the bylaws were unanimously approved.

OATH OF OFFICE:

Chair Marback asked if this had taken place before the meeting.

Ms. Wollmuth stated that Mr. Wohl had signed the Oath of Office before the meeting.

ADJOURNMENT:

There being no other business, Chair Marback declared the meeting of the Board of Adjustment adjourned at 5:18 p.m. to meet again on April 6, 2023.

Respectfully Submitted,



Tracy L. Walters
Recording Secretary

APPROVED:



Michael Marback, Chair