

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
July 6, 2023**

The Bismarck Board of Adjustment met on July 6, 2023, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street.

Board members present were Curtis Janssen, Jennifer Clark, Chris Seifert, Michael Marback and alternate Ken Hoff.

Member absent was Rick Wohl.

Staff members present were, Jannelle Combs – City Attorney, Jenny Wollmuth – Senior Planner, Ben Ehreth – Community Development Director and Tracy Walters – Office Assistant II.

MINUTES:

Chair Marback called for approval of the minutes of the April 6, 2023 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the April 6, 2023 meeting. Board Members Clark, Janssen, Seifert, Hoff, and Chair Marback all voted in favor and the minutes were approved.

VARIANCE FROM SECTION 14-04-14(6) OF THE CITY CODE OF ORDINANCES (MA – INDUSTRIAL / FRONT YARD) LOT 3, BLOCK 1, JACKS FIRST ADDITION (1105 E BISMARCK EXPRESSWAY).

Ms. Wollmuth stated the applicant, Andrew Johnson, InSite Real Estate Investment Properties, LLC is requesting a variance from Section 14-04-14(6) of the City Code of Ordinances (MA - Industrial / Front Yard) to reduce the required front yard setback along the north side of the property, adjacent to East Bismarck Expressway, from fifty (50) feet to forty (40) feet to construct a fast-food restaurant. The proposed variance is in south Bismarck, in the southwest quadrant of the intersection of East Bismarck Expressway and South 11th Street.

Ms. Wollmuth also stated this property was recently replatted, is zoned MA - Industrial and is currently vacant. The property includes utility easements that have been in place since the 1960s and 70s and has newer easements for access, sanitary sewer, stormwater and drainage.

She went on to say this property is also along East Bismarck Expressway, which is classified as a principal arterial roadway and a fifty (50) feet front yard setback for buildings along this type of roadway is required. This requirement has been in place since the zoning ordinance was re-written in 1982 and it is likely that this requirement was added to preserve areas that may be needed for future roadway widening projects and to provide an increased clear area adjacent to roadways with higher speeds. A principal arterial roadway provides for rapid movements of large traffic volumes.

Ms. Wollmuth also noted that the Community Development Department recently initiated a zoning ordinance text amendment to eliminate the required fifty (50) foot front yard setback for properties adjacent to certain principal arterial roadways throughout the city. However, after much discussion with staff from the Engineering Department and the Metropolitan Planning

Organization, it was determined that the required fifty (50) feet front yard setback along East Bismarck Expressway should remain.

Ms. Wollmuth included the following review standards:

Pursuant to Section 14-06-02 of the City Code of Ordinances, the Board of Adjustment may vary or adjust the strict application of any of the requirements of the zoning ordinance in case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the zoning ordinance would result in an unnecessary hardship that would deprive the owner of a reasonable use of land or building involved, but in no other case.

Ms. Wollmuth went on to say no adjustment in the strict application of any provisions of the zoning ordinance shall be granted by the Board of Adjustment unless it finds the following:

- That there are special circumstances or conditions that do not apply generally to land or buildings within the neighborhood and have not resulted from any act of the applicant.
- That the strict application of the provisions of this article the zoning ordinance would deprive the applicant of the reasonable use of said land or building, the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.
- That the grant of the variance will be in harmony with the general purposes and intent of this article, the zoning ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- A variance granted under this chapter must be put into use within 24 months of the granting of the variance or it shall lapse and the landowner must re-apply.

Ms. Wollmuth also stated that the applicant has submitted a written statement that identifies their anticipated hardship and explains why they believe the variance should be granted. She also noted that the public has been notified of this request; eight letters were mailed to the owners of nearby properties on June 23, 2023. Ms. Wollmuth asked the Board to review the review standards, identify a hardship and modify the review standards or findings to support their decision.

Chair Marback asked if there were any questions of staff.

Mr. Janssen asked when they re-evaluated and they chose certain areas to adjust the setback, what is the main reason to have the setback at fifty (50) feet.

Ms. Wollmuth stated that staff from the Metropolitan Planning Organization, City Planning, and City Engineering opted to keep the fifty (50) foot set back is because it is part of the I-94 Business Loop.

Chair Marback asked if there were any more questions of staff, hearing none, he invited the applicant to come forward.

Joe Nolan, InSite Real Estate Investment Properties, LLC, came forward at this time and Andrew Johnson, InSite Real Estate Investment Properties, LLC, appeared remotely. Mr. Nolan stated the southern portion of the property is being served by two separate seventy-five (75) foot easements with the US Department of Energy, and Montana Dakota Utility Company (MDU). He stated within these two easements, no permanent structures can be permitted and they believe the only viable option would be to place the property in the front yard setback.

Andrew Johnson stated they have worked with City staff to review the site and they have made several adjustments. He understands there are some concerns with the request to encroach ten (10) feet into the required setback initially because of potential future improvements on Bismack Expressway. He has spoken with City Engineering, and they confirmed there are no plans to implement any improvements to Bismarck Expressway at this time. Mr. Johnson stated that he feels that the two transmission line seventy-five (75) foot easements are shrinking the property and this is their hardship.

Chair Marback asked if that is the smallest building that they could operate out of.

Mr. Nolan stated yes, this is the smallest building the owner has approved for this site.

Mr. Janssen asked if they could eliminate one of the two proposed drive-thru lanes.

Mr. Nolan stated he has done a single drive-thru in the past, but due to covid, their client is very particular about having two drive-thru lanes.

Mr. Janssen asked if they could eliminate a drive-thru and shift everything down. He suggested that they would not have to have a variance and it would be able to meet the fifty (50) foot setback.

Mr. Johnson stated the easements in southern portion of the map would affect the ordering board if they eliminated a drive-thru lane and shifted everything south.

Ms. Clark asked if there were other building options that their client would peruse that we have not discussed yet.

Mr. Nolan stated that their client is a national brand and they have not approved the smaller prototype for this particular site.

Chair Marback opened the public hearing, seeing no one, he closed the public hearing.

Mr. Seifert stated that there were a few buildings in the area that had setbacks closer than fifty (50) feet such as Cash Wise Foods and asked if there were similar situations from the past that had reduced setbacks approved.

Ms. Wollmuth stated that Cash Wise Foods was constructed in 1982 prior to when the ordinance was written. She went on to say that Tommy's Carwash is adjacent to the west of the property and was able to meet the fifty (50) foot setback, however, there are buildings along the corridor that are encroaching into that setback that may have been constructed prior to the setback requirements being added to the ordinance.

Mr. Hoff made a motion to deny the variance as he could not find a hardship.

Ms. Clark seconded the motion.

Chair Marback asked the Board for any discussion.

Mr. Seifert asked the Board if the property size, along with the easements that are set so far in are not a hardship.

Mr. Hoff replied no, because we've asked the question if they can use only one menu board and its not in their plans right now.

Mr. Janssen stated that they are working on a smaller prototype that they have not rolled out yet and it could properly fit on this site upon its approval.

Ms. Clark stated she thought this was the wrong project for this piece of land. She went on to say that the previous building that occupied this area encroached into the fifty (50) foot setback but it has since been demolished.

Chair Marback asked for any further discussion.

MOTION: A motion was made by Mr. Hoff to deny the variance as he could not find a hardship. Ms. Clark seconded the motion with Board members Hoff, Clark, Janssen, Seifert, and Marback voting in favor of the motion, the variance was denied.

STAKEHOLDER SELECTION: SELECTION OF BOARD OF ADJUSTMENT MEMBER TO STAKEHOLDER GROUP FOR REVISIONS TO CODE OF ORDINANCES.

Ms. Wollmuth stated they are working to create a stakeholder group to modify provisions in the zoning ordinances to allow some agritourism uses and to establish additional building sizes for riding stables. She stated since the members of the Board of Adjustment review the zoning code for variances that they will be an asset to the Stakeholder Group.

Chair Marback asked Mr. Janssen if he would consider the position.

Mr. Janssen accepted the position to serve on the stakeholder group.

ELECTION OF OFFICERS:

Chair Marback stated he would like to postpone the election of officers until all Board members were present.

ADJOURNMENT:

There being no further business, Chair Marback declared the meeting of the Board of Adjustment adjourned at 5:23 p.m. to meet again on August 03,2023.

Respectfully Submitted,



Tracy L. Walters
Recording Secretary

APPROVED:



Michael Marback, Chair