

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
October 5, 2023**

The Bismarck Board of Adjustment met on October 5, 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, Rick Wohl, Michael Marback and alternate Ken Hoff.

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

MINUTES:

Chair Marback called for approval of the minutes of the July 6, 2023 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 July 6, 2023 meeting. Board Members Janssen, Seifert, Clark, Wohl and Chair Marback all voted in favor and the minutes were approved.

VARIANCE FROM SECTION 14-04-01(4) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL / FRONT YARD) LOT 7, BLOCK 5, NORTHRIDGE ESTATES SECOND SUBDIVISION (8010 NORTHWOOD DRIVE)

Ms. Wollmuth stated the applicants, Cody and Jessica Clark are requesting a variance from Section 14-04-01(4) of the City Code of Ordinances (RR– Residential / Front Yard) to reduce the required front yard setback, along the east side of their property adjacent to Northwood Drive from forty (40) feet to approximately twenty-three (23) feet for the purpose of constructing an accessory building.

Ms. Wollmuth also stated the accessory building is currently under construction and that a building permit indicating the required 40-foot front yard setback was issued on June 1, 2023. She went on to say a member of the Building Inspection Division passed an inspection for the siting of the building and to pour the concrete floor on June 30, 2023. It was discovered in August that the building did not meet the required setback and that the setback measurement was taken in error from the road, not the property boundary. The City's zoning ordinance states that setbacks are measured at the closest point between a building or structure and the property boundary.

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. The Hay Creek Township and the public were notified of this request and we have received one written comment. 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. Wohl asked how the issue was discovered in August.

Ms. Wollmuth stated she believed staff has received a call from an adjacent property owner, however, Mr. Blaskowski may have additional information to offer.

Mr. Blaskowski stated he had received a phone call from a neighbor inquiring if a permit has been issued, and stated he sent an inspector to investigate the location of the building.

Mr. Janssen stated on the permit, it states property lines must be clearly marked for all new construction, additions, accessory buildings and decks. He asked Mr. Blaskowski if the property lines were properly identified and located.

Mr. Blaskowski stated he checked with our inspector and the property lines were not located. The City inspector had a conversation on August 16, 2023, with the builder and had discovered an error was made.

Mr. Marback asked if there were any other questions of staff, hearing none, he invited the property owners to come forward.

Mr. Clark stated the property lines have stakes around them and were located four (4) years ago when he purchased the property. He went on to say he believed the property lines started 40 (forty) feet off the roadway.

Chair Marback asked if there were any questions from the board.

Mr. Janssen asked if the property pins were located or if he assumed that the property pins were forty (40) feet off the roadway.

Mr. Clark stated yes, his assumption was the property lines were forty (40) feet off the roadway, but the accessory building is currently located forty-seven (47) feet off the roadway.

Mr. Janssen asked if the builder verified where the property pins were or if a land survey was conducted to confirm where they were located.

Mr. Clark stated no, however, there are stakes that are on the property that go down the south side of the property.

Mr. Janssen stated the property pins are a piece of rebar with a cap on it and that it is an industry standard. He has personally had to locate the property pins twice on his construction jobs as it was a requirement for the permit to make sure there were not any setback issues.

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

Ms. Clark stated she had photos of their property available and she shared them with the Board. She also went on to say that their front yard has a slope on it and stated their property has topographical and storm water issues. Ms. Clark stated that because of the topographical issues, it makes sense to place the accessory building where it is currently located.

Mr. Seifert asked if the builder was present at the meeting, and why the builder did not catch that the property setbacks were not correct.

Mr. Clark stated the builder was not present at the meeting.

Mr. Seifert asked Mr. Blaskowski when the inspector first went out to the property, were there any forms up for the pavement.

Mr. Blaskowski stated he believed the forms were up for the pavement at the time of the inspection and that the inspector used a copy of a lot survey with the location of the accessory building and setbacks placed on it.

Chair Marback stated that the public hearing is now closed and asked for a motion for discussion from the board.

Mr. Seifert stated that he saw two mistakes made, the City and the builder have both had made mistakes and he hated to see the homeowner have to tear down the building.

Ms. Clark stated had the mistake not been made, there would have been other options for the location of the accessory building. The Board of Adjustment is limited in their decision making by not taking financial hardship into account for a project that has already been started.

Mr. Janssen stated that there is a process to follow for safety reasons and after being in construction for 37 years, he has always had to correctly locate the property pins before starting

on a project. He went on to say that the Board of Adjustment cannot use financial hardship as part of the criteria to determine a variance.

Chair Marback asked for any other discussion, seeing none, he closed the public hearing.

MOTION: A motion was made by Mr. Janssen to deny the variance. Ms. Clark seconded the motion with Board members, Janssen, Clark, Wohl and Marback in favor of the motion. Board member Seifert opposed the motion. The motion to deny the variance has been approved.

ELECTION OF OFFICERS:

Chair Marback asked for nominations for Chairman of the Board of Adjustment Committee.

NOMINATION: Ms. Clark nominated Michael Marback for Chairman of the Board of Adjustment. Mr. Wohl seconded the nomination with Board members Janssen, Seifert, Clark and Wohl in favor. Chair Marback abstained the nomination and he was voted as Chairman of the Board of Adjustment.

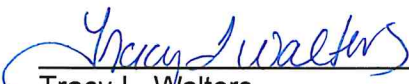
Chair Marback asked for nominations for Vice Chairman of the Board of Adjustment.

NOMINATION: Mr. Janssen nominated Jennifer Clark for Vice Chairman of the Board of Adjustment. Mr. Seifert seconded the nomination with Board members Janssen, Seifert, Wohl, and Marback in favor. Jennifer Clark abstained the nomination and she was voted as Vice Chairman of the Board of Adjustment.

ADJOURNMENT:

There being no further business, Chair Marback declared the meeting of the Board of Adjustment adjourned at 5:20 p.m. to meet again on November 2, 2023.

Respectfully Submitted,



Tracy L. Walters
Recording Secretary

APPROVED:



Chair