

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
January 4, 2024**

The Bismarck Board of Adjustment met on January 4, 2024, at 5:30 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, Al Wangler, Rick Wohl, and alternate Ken Hoff.

Staff members present were, Jannelle Combs – City Attorney, Jenny Wollmuth – Senior Planner, Daniel Nairn – Planning Manager, Brady Blaskowski – Building Official, and Tracy Walters – Office Assistant II.

TERMS AND OATHS OF OFFICE:

Vice Chair Clark stated that Curt Janssen has been re-appointed to the Board of Adjustment and she also welcomed new Board member, Al Wangler. She stated that Mr. Janssen and Mr. Wangler have both signed the Oath of Office prior to the start of the meeting of the Board of Adjustment.

ELECTION OF OFFICERS:

Vice Chair Clark asked for nominations for Chairman of the Board of Adjustment Committee.

NOMINATION: Mr. Seifert nominated Jennifer Clark for Chairman of the Board of Adjustment. Mr. Wohl seconded the nomination with Board members Janssen, Seifert, Wangler Wohl, and Clark all in favor. Jennifer Clark is unanimously voted as Chairman of the Board of Adjustment.

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

NOMINATION: Mr. Wohl nominated Chirs Seifert for Vice Chairman of the Board of Adjustment. Mr. Wangler seconded the nomination with Board members Janssen, Wangler, Wohl, Seifert and Clark all in favor. Chris Seifert is unanimously voted as Vice Chairman of the Board of Adjustment.

MINUTES:

Chair Clark called for approval of the minutes of the October 5, 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 October 5, 2023 meeting. Board members Janssen, Seifert, Wangler, Wohl and Chair Clark all voted in favor and the minutes were approved.

APPEAL OF ZONING DETERMINATION | OFF-PREMISE ADVERTISING SIGN – LOT 1, BLOCK 1, BASIN ELECTRIC FOURTH ADDITION (2830 NORTH 19th STREET).

Ms. Wollmuth stated Joe Gusaas, with Gusaas Signs is appealing a zoning determination made on December 12, 2023, by the Planning Manager / Zoning Administrator with regard to a

proposed off-premise advertising sign to be located on Lot 1, Block 1, Basin Electric Fourth Addition (2830 North 19th Street).

Ms. Wollmuth stated the property is located in northeast Bismarck, in the southwest quadrant of the intersection of East Century Avenue and North 19th Street and was recently rezoned from the RT – Residential zoning district to the conditional CG – Commercial zoning district. Planning staff did communicate with the property owner prior to the rezoning of the property and during the rezoning process that an off-premise advertising sign could not be placed on the property as it would not meet the required spacing distance from the intersection of East Century Avenue and North 19th Street.

Ms. Wollmuth also stated the zoning ordinance requires an off-premise sign to be placed at least two hundred (200) feet from the center point of an intersection of an arterial roadway (East Century Avenue) and collector roadway (North 19th Street). She also noted that all spacing distances are measured as linear distance along the centerline of the roadway. The western boundary of the property is exactly two hundred (200) feet from the center point of the intersection, therefore is no location within the property that would meet this requirement. This requirement was added to the zoning ordinance in 2016.

Ms. Wollmuth added that a building permit was submitted for the proposed sign and it has been denied. After the permit was denied, Planning staff offered to discuss a possible amendment to the ordinance with other City staff, including those from the Bismarck Police Department and City Engineering Department, who helped create the ordinance requirements in 2016. City staff stated they would not be supportive of any changes to the ordinance that would allow the proposed sign to be placed on this property.

Ms. Wollmuth also stated the Planning Manager / Zoning Administrator, Daniel Nairn has reviewed the zoning ordinance and the proposed request. Mr. Nairn has determined that the dimensional requirements outlined in the zoning ordinance would prohibit the installation of an off-premise advertising sign located at 2830 North 19th Street (Lot 1, Block 1, Basin Electric Fourth Addition). She also stated that both the Planning Manager and Building Official are here to answer questions, and asked if the Board had any questions for her at this time.

Chair Clark asked Ms. Wollmuth for clarification on whether the Board was to find that there is a hardship in the case or if their job was only to determine whether the ordinance was applied correctly.

Ms. Wollmuth replied that this is not a variance request and finding a hardship was not required. The Board must determine whether the ordinance was applied correctly.

Chair Clark invited the applicant to come forward at this time.

Joe Gusaas, with Gusaas Signs came forward and provided an example of a sign that was permitted at Calgary Avenue and State Street between 2020 and 2021. The exhibit that he displayed is closer to approximately thirty-five (35) feet from the roadway to the south (East Calgary Avenue) and roughly two hundred fifty (250) feet from the intersection. Mr. Gusaas also displayed Section 14-03.1-05 (i) of the ordinance. He discussed the different ways that the ordinance could be interpreted, and he believes that different interpretations lead up to the denial of the building permit. He then displayed an exhibit of the property located at 2830 North 19th Street that he presented to City Staff and asked if the area in orange on the exhibit was permissible. Mr. Gusaas stated he received a yes answer with the condition it would also have

to be approved by the Chief of Police, and the Traffic Engineer. He went on to say that upon turning in the building permit, staff once again questioned the ordinance interpretation and asked him to not apply any more resources to the project until the ordinance could be interpreted correctly. Mr. Gusaas asked the Board if they had any questions for him.

Chair Clark asked if anyone had questions for Mr. Gusaas.

Mr. Janssen asked Mr. Gussas why he included a radius in his third exhibit that he showed the Board.

Mr. Gusaas stated he added the radius as a crow flies measurement to illustrate that it was two hundred (200) feet.

Mr. Janssen asked for clarification that the ordinance reads measurements by linear distance, and not by radius.

Mr. Gusaas answered that the second sentence in the paragraph of the ordinance measures between structures, and then by linear distance. He went on to say that interpreting the ordinance may be slightly different for every individual. He believes that he is not the only one who interpreted the ordinance in a way that makes the sign permissible.

Mr. Janssen asked if everyone involved in the request was clearly informed of the sign requirements and ordinance interpretation when the property was rezoned.

Mr. Gusaas stated that the landowners had been properly informed, but he is not the landowner. He went on to say that if the City computers had been updated and showed that the property was re-zoned on the day that he applied for the permit, the Building Official, Brady Blaskowski, would not have contacted the Planning Manager, Daniel Nairn regarding this matter, and that the permit would have been issued.

Mr. Janssen asked if it would have been issued because the ordinance was interpreted differently.

Mr. Gussas stated that the Building Official had initially interpreted the ordinance in a way that the permit could have been issued.

Jed Fluhrer, one of the property owners, came forward and confirmed that it was communicated to the landowners that they could not have the off-premise sign at this location. He stated that he could not disagree with the interpretation of the ordinance until the property was re-zoned. Once the property was re-zoned, the process of having an interpretation of the ordinance was conducted by City staff. He stated the landowners disagreed with the City staff's decision and this is the reason they are here today.

Mr. Janssen asked Mr. Fluhrer if he was aware when he bought the property that there might be a possibility they could not have the sign on the premises.

Mr. Fluhrer stated they had compared similar signs that were approved in the past and believed that they would be able to have the sign.

Mr. Janssen asked that if they were unable to put up the proposed off-premise sign, would they still have the ability to put a sign on the building.

Mr. Fluhrer stated that he would like to add an off-premise sign and had not discussed putting a sign on the building at this time.

Chair Clark asked if Board members had any additional questions.

Mr. Janssen asked City staff to address the fact that if the computer system had been updated at the time Mr. Gusaas had spoken with the Building Official, Brady Blaskowski, that we would not be having this discussion today.

Mr. Blaskowski stated that if the zoning had been changed in the GIS software, he believes it is possible we would have issued the permit as he was interpreting the ordinance differently in the past. After having a conversation with the Planning Manager / Zoning Administrator, Daniel Nairn, he stated he was applying the zoning ordinance incorrectly.

Chair Clark asked if there were any additional questions or discussion from the Board.

Mr. Wohl stated that he feels for the applicant, however, the appeal is not based on the examples provided by the applicant. He went on to say that if the ordinance was interpreted differently in the past, we can't bring that into the present situation.

Chair Clark stated she agreed with Mr. Wohl's statement. She went on to say that the entity that is responsible for enforcing the ordinance is also responsible for interpreting the ordinance.

MOTION: Mr. Wohl made a motion to affirm the decision made by the Planning Manager / Zoning Administrator. Mr. Wangler seconded the motion with Board members Janssen, Seifert, Wohl, Wangler and Chair Clark all in favor, the motion was approved.

OTHER BUSINESS:

RESOLUTION OF APPRECIATION FOR MICHAEL MARBACK.

Chair Clark read the Resolution of Appreciation for Michael Marback. See the Resolution of Appreciation in the attachments of the minutes.

BYLAWS:

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

MOTION: Mr. Seifert made a motion to approve the bylaws. Mr. Janssen seconded the motion with Board Members, Janssen, Seifert, Wangler, Wohl and Chair Clark in favor, the motion was unanimously approved.

CITY ATTORNEY JANNELE COMBS, BOARD OF ADJUSTMENT | PROCEDURE AND PROTOCOL.

City Attorney Jannelle Combs presented an overview of variance law, procedures and protocol to the Board of Adjustment.

ADJOURNMENT:

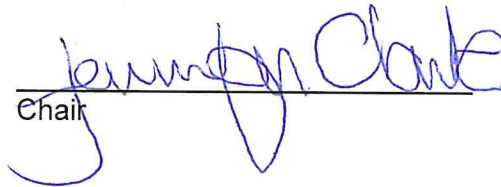
There being no other business, Chair Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 6:24 p.m. to meet again on February 1, 2024.

Respectfully Submitted,



Tracy L. Walters
Recording Secretary

APPROVED:



Chair



Resolution of Appreciation

Whereas, Michael Marback has served as a member of the Bismarck Board of Adjustment for the past twenty-four years; and

Whereas, during this time he has represented the interests of both urban and rural residents of the City of Bismarck and Burleigh County; and

Whereas, Mr. Marback has given freely of his time and expertise in the many matters considered by the Commission; and

Whereas, during his term of office on the Board of Adjustment, Mr. Marback has distinguished himself for fair deliberation and common-sense decision making; and

Whereas, Mr. Marback will now leave the Board of Adjustment for a well-deserved rest;

Now, therefore be it resolved by the Bismarck Board of Adjustment that Michael Marback be commended for his dedication and his support for the zoning ordinances that govern the City Bismarck and the Extra Territorial Area and that the appreciation of the Board of Adjustment be extended to him.

1/4/2024

Date

Jennifer Clank
Chairman

Bismarck Board of Adjustment