

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
September 5, 2024**

The Bismarck Board of Adjustment met on September 5, 2024, 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, 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.

MINUTES:

Chair Clark called for approval of the minutes of the January 4, 2024, meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Wangler to approve the minutes with a spelling correction on page four (4). The motion was seconded by Mr. Seifert to approve the minutes with the spelling correction of the January 4, 2024, meeting. Board members Janssen, Seifert, Wangler, Wohl and Chair Clark all voted in favor and the minutes were approved.

**VARIANCE FROM SECTION 14-05-07 OF THE CITY CODE OF ORDINANCES
(REQUIREMENT FOR A BUILDING PERMIT) PART OF SECTION 3, HAY CREEK
TOWNSHIP (FORMERLY LOT 25, BLOCK 1, PONDEROSA RIVERSIDE VILLAGE) (5815
MAGNOLIA DR)**

Ms. Wollmuth stated the applicant, Daniel Olson, is requesting a variance from Section 14-05-07 of the City Code of Ordinances (RR– Requirement for a Building Permit) on Part of Section 3, Hay Creek Township (formerly platted as Lot 25, Block 1, Ponderosa Riverside Village) to allow the construction of a 1,400 square foot accessory building on his property.

Ms. Wollmuth stated the property is located northwest of Bismarck, north of Olive Tree Drive and west of River Road, along the south side of Magnolia Drive. She went on to say this property has a unique history, it was zoned residential and platted as Lot 25, Block 1, Ponderosa Riverside Village in 1963. City/County records indicate this lot was vacated from the plat in 1968. At the time of platting, the lot was 25,726 square feet and according to records, the lot size was increased to 32,234 square feet when Sunshine Drive, along the west side of the property, was also vacated in 1968. She also stated that the City considers this property a parcel of record because it existed prior to the City obtaining zoning jurisdiction of this area in 1983. This property does not currently meet the requirements for issuing a building permit.

Ms. Wollmuth stated there are other properties that do not meet requirements for building permits throughout the City's zoning jurisdiction and the zoning ordinance includes criteria for issuing building permits for parcels of record. The following criteria will apply:

- The parcel of record meets the minimum lot area requirement for a zoning lot in the district in which the parcel is located.

Ms. Wollmuth stated that this property does not meet this requirement. The minimum lot size for a lot located in the RR – Residential zoning district that was platted prior to 2003 is 40,000 square feet. This parcel is 32,234 square feet. She went on to say that properties smaller than 40,000 square feet may not meet the minimum parcel size requirement for a septic system according to the ND State Plumbing Code. However, the applicant has submitted information from Bowers Excavating indicating that if the existing septic system fails, the existing system would be removed, and a new system be installed in the existing location.

- The parcel of record has its principal frontage on a dedicated public right-of-way or on a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way not less than twenty feet wide.

Ms. Wollmuth confirmed that this property meets this requirement. The principal frontage for this property is Magnolia Drive which is a dedicated public right-of-way.

- The parcel of record is an auditor's lot or aliquot description rather than a metes and bounds description.

Ms. Wollmuth stated that this property does not meet this requirement. This property is described as a metes and bounds description as it is vacated and no longer located within a platted subdivision.

Ms. Wollmuth noted that because this property did not meet all of the criteria staff was unable to issue a building permit for the proposed accessory building.

Ms. Wollmuth also reiterated the following review standards for variances:

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 also stated 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 apply to the land or buildings 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 the zoning ordinance would deprive the applicant of the reasonable use of said land or building, and 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 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 stated Hay Creek Township was notified of this request on August 23, 2024. The township has not yet made a recommendation regarding this request. She also stated eighty-seven (87) letters were mailed to the owners of nearby properties on August 23, 2024. Ms. Wollmuth informed the Board if they chose to approve the variance as proposed, Staff asks that you identify a hardship and modify the review standards or findings outlined in their staff report to support their decision. She stated the applicant and their consultant are here to answer any questions, but before they approach the board, she asked if the Board had any questions for her.

Chair Clark asked Ms. Wollmuth if the property owner could do anything about the property being described as meets and bounds.

Ms. Wollmuth replied that the property owner could file an auditor's plat or go thru the formal subdivision process if they wish.

Mr. Wangler asked Ms. Wollmuth if the status would change if the building was attached to the house.

Ms. Wollmuth stated the same criteria for issuing a building permit would apply if it was an addition to the house and that the addition could not be more than twenty-five (25) percent of the assessed value.

Chair Clark asked the applicants to come forward at this time.

Daniel and Samantha Olson came forward. Ms. Olson stated they understand their property has been vacated and it is not currently platted into Ponderosa Subdivision. She went on to say when you drive into the Ponderosa Subdivision, you would not be able to tell their property was not a part of the subdivision and they feel they are treated by their neighbors as if they belong within the community. She also stated if they were to be platted into Ponderosa Subdivision, they would be able to meet the 1400 square foot minimum and this issue would not be a concern.

Chair Clark asked if the homeowners were involved when the property was vacated from the Ponderosa Subdivision.

Ms. Olson stated they did not own the property at the time it was vacated from Ponderosa Subdivision. She also stated while they were going thru the buying process, they were not informed that their lot had been vacated from the plat and they proceeded to buy the lot. During the review process of their garage permit, they were informed by City staff that their lot had been vacated from the Ponderosa Subdivision and this is the reason they are asking the Board for a variance.

Chair Clark opened the public hearing and asked if anyone would like to address the Board.

Travis Johnson came forward and stated he owns the property adjacent to Daniel and Samantha Olson. He also stated the lot sizes were created very small in 1963. When Sunshine Lane was vacated, a replat had been done of neighboring properties. He believes it is no fault of the current homeowners that their lot was vacated from the Ponderosa Subdivision plat. He went on to say that several neighbors in the area have garages like the one the Olson's are seeking to construct. As a neighbor, he is here today in support of the Olson's request to construct their garage.

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

Alan Aarhus came forward and stated he and his wife own the lot directly south of the Olson's residence. Mr. Aarhus would like to voice their support for the Olson's to construct their garage and they do not foresee any issues.

Chair Clark closed the public hearing.

Chair Clark stated that there are two issues that are not satisfied under the Ordinance. The first is that the lot is too small and the second is that the lot is not platted.

Ms. Wollmuth stated the property could be re-platted, however, it would not fix the small lot size.

Mr. Seifert asked if there are other existing lots within the Ponderosa Subdivision that are not in compliance with today's standards for septic systems and correct lot size for accessory buildings.

Ms. Wollmuth stated there are other lots in the Ponderosa Subdivision that do not meet today's requirements. There are several lots with building permits in the area that have been issued several years ago under different criteria.

Mr. Wangler asked in the rural residential areas, if there is a maximum roof coverage for the lot size. He also asked if the existing house burned down, would they be able to rebuild on the property.

Ms. Wollmuth stated yes, the maximum roof coverage for an accessory building for this property would be 1400 square feet. She also stated the ordinance would require the homeowner to rebuild with the exact same footprint of the existing house if it were to burn down.

Chair Clark asked the Board to review the Procedure and Protocol document that they were provided at the January 4, 2024, meeting by the City Attorney, Jannelle Combs, that lays out the requirements for granting a variance.

MOTION: Mr. Wangler made a motion to grant the variance, as the lot has special circumstances which include the strict application of the provisions of the zoning ordinance that would deprive the property owners normal use of the property and that the variance would be in harmony of general purposes of the zoning ordinance and would not be injurious to the neighborhood or otherwise detrimental to public welfare. Mr. Seifert seconded the motion with Board members Wangler, Janssen, Seifert, Wohl, and Chair Clark in favor, the variance was unanimously approved.

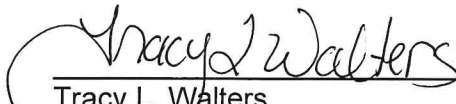
OTHER BUSINESS:

No other business was presented at this time.

ADJOURNMENT:

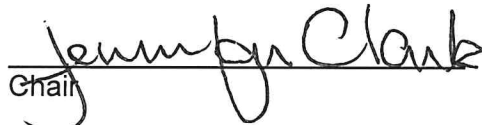
There being no other business, Chair Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 5:30 p.m. to meet again on October 3, 2024.

Respectfully Submitted,



Tracy L. Walters
Recording Secretary

APPROVED:



Chair