

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

The Bismarck Board of Adjustment met on December 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, and Rick Wohl.

Staff members present were, Jenny Wollmuth – Senior Planner, Brady Blaskowski – Building Official, and Annie Hojian – Office Assistant II.

MINUTES:

Chair Clark called for approval of the minutes of the September 5, 2024, 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 September 5, 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 THE NORTH ½ OF SECTION 28,
T138N-R80W/LINCOLN TOWNSHIP (575 MEADOWVIEW DRIVE).**

Ms. Wollmuth stated the applicants Todd and Lois Ihle are requesting a variance from section 14-05-07 of the City Code of Ordinances (Requirement for a Building Permit) on their property for the reconstruction of two (2) existing decks, one partially covered, to a single-family dwelling. She added that the construction of the proposed decks would be considered a building addition.

Ms. Wollmuth stated the property is located south of Bismarck, south of 48th Avenue SE between South Washington Street and 12th Street SE, along the south side of Meadowview Drive. She went on to say that the property is not platted and is a metes and bounds description. According to records, the existing single-family dwelling was constructed in 1974. The property is considered a parcel of record as it existed as a separate parcel prior to the City obtaining jurisdiction of this area. The City of Bismarck obtained extraterritorial jurisdiction and rezoned the property, along with adjacent properties within Section 28, to RR – Residential in December 1976. She also stated that permits have been issued for various improvement projects for this property since it was constructed, including building additions to enclose a pool, construct an attached garage, and construct an accessory building. The last permit of record was issued in 2004.

Ms. Wollmuth also stated according to records, the zoning ordinance was modified between 2004-2008 to add additional criteria for approval of a building permit for a property that is not platted. In this situation, the following criteria apply:

1. The value of said addition does not exceed twenty-five (25) percent of the assessed value of the building to which it is being added.

Ms. Wollmuth indicated that the value of the proposed decks does not exceed twenty-five (25) percent of the assessed value of single-family dwelling.

2. 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 indicated that the property is 2.19 acres. She also stated that the minimum lot area requirement is 1.5 acres.

3. 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 (20) feet wide.

Ms. Wollmuth stated that the property has access via Meadowview Drive, although not through a typical platted right-of-way or easement. She stated that the Burleigh County Commission at their meeting on June 5, 1973, took action to extend Meadowview Drive between Lots 12 and 13, Block 2 to the southern edge of the plat, essentially providing access to this property. She also stated the County Engineer has confirmed that this extension is being maintained by the Burleigh County Highway Department. A copy of the minutes from the June 5, 1973, Burleigh County Commission are attached.

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

Ms. Wollmuth indicated that this condition would not be met. She noted the property is not an auditor's lot or an aliquot description. It is described as a metes and bounds description.

Ms. Wollmuth stated that because not all of the criteria for a building permit would be met, a permit for the reconstruction of the proposed decks could not be issued as proposed. The variance would allow the construction of two (2) existing decks on a parcel that is legally described as a metes and bounds description.

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.

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 the 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 the applicant has submitted a written statement that identifies their anticipated hardship and explains why they believe the variance should be granted. She also stated sixty-three (63) letters were mailed to the owners of nearby properties on November 22, 2024. Ms. Wollmuth stated that if the Board choose to approve the variance as proposed, Staff asks that you identify a hardship and modify the review standards or findings outlined in your staff report to support your decision. She also stated the applicant is here to answer any questions, but before they approach the Board, she asked if the Board had any questions for her.

Mr. Seifert asked if the existing decks that they tore down could be rebuilt with the same footprint.

Ms. Wollmuth replied that the ordinance provides that if the house would incur a natural disaster such as a fire or tornado, the homeowners would be allowed to rebuild the same footprint on the property. She also stated that the proposed decks are larger than the existing decks and will have an overhang on them.

Chair Clark asked if the homeowners were requesting the decks to be the same footprint, would a variance still be necessary.

Ms. Wollmuth replied yes, that in this case a variance would be necessary as the criteria for issuing a building permit could not be met.

Mr. Wohl asked if the property would be eligible to be platted by the City of Bismarck.

Ms. Wollmuth replied that the property could be platted and she added that platting a property is a lengthy process. She also noted that previous auditors were comfortable creating an Auditor's Plat and that is likely why that criteria was added to the ordinance, however, the current Burleigh County Auditor has determined that this application is no longer permitted.

Mr. Janssen noted that we are asking the applicant to abide by the criteria today, when in the past we would have allowed them to have a permit. He also stated that the implementation of the ordinance in the past would affect the applicants today because the criteria for the ordinance has changed.

Ms. Wollmuth replied yes, that Mr. Janssen's statement was correct.

Mr. Wangler asked if the applicants would be required to obtain a variance if they were building on the exact same footprint.

Ms. Wollmuth replied that the applicants are requesting to reconstruct two (2) decks that are larger than the existing decks and that a portion of the new deck will now be a covered deck. She explained why the applicants would need to obtain a variance for this request.

Chair Clark invited the property owners to come forward at this time.

Todd and Lois Ihle stated they had done a few projects on their property, including new shingles, new siding, and the demolition of the existing decks. They had made the decision to tear down and rebuild the deck with maintenance free materials and bring the two (2) decks up to code. They also decided to make the two (2) decks larger and to cover a portion of one of the new decks. During the permitting process, they learned that their residence was an unplatted property. Ms. Ihle stated she contacted the Burleigh County Auditor's office inquiring about obtaining an Auditor's Plat. She stated she was informed that they were not able to be granted an Auditor's Plat for building permit purposes. Ms. Ihle went on to say that the hardship would be that they have already torn off the back decks and they need to be able to replace them. She also stated that there would be a five (5) foot distance to the ground from the patio door and she felt this could be a safety concern if a house guest were to open the patio door and step out at night.

Chair Clark asked how much additional square footage the applicants were asking the Board to approve.

Mr. Ihle stated it was under one hundred (100) square feet.

Mr. Seifert asked if the existing deck was covered and how much of the new deck was to be covered.

Mr. Ihle replied that the existing deck had a gazebo, which has been torn down. He also stated that the new deck would have a four (4) foot overhang to cover their barbeque.

Mr. Janssen asked if the Ihle's would have the option to plat their lot and be able to build the decks.

Ms. Ihle stated that the time it would take to go thru the platting process was a concern and that they had anticipated their decks would be built by now. She also added that the existing decks were not built to code and that the decks needed to be removed for safety reasons.

Chair Clark stated that seeing no one in attendance for public comments, the public hearing will now be closed.

Mr. Blaskowski came forward to clarify that even if the house would burn down, the criteria to rebuild under the same footprint could not be met as the property is described as a meets and bounds description and not an aliquot description and that is why we are here today.

Chair Clark asked the Board for a motion to facilitate a group discussion.

Chair Clark stated that the project that is being proposed is an improvement to the property and not constructing the deck would pose safety concerns.

Mr. Wohl stated that the proposed project was not encroaching on property lines or setbacks and that he felt it would not be injurious to the neighborhood. He also stated that not allowing

the applicants to construct the decks would not allow them normal use of the property and that he felt the hardship met the criteria to grant the variance.

MOTION: Mr. Wohl made a motion to approve the variance, as the lot has special circumstances which that the strict application of the provisions of zoning ordinance would deprive the property owners of 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.

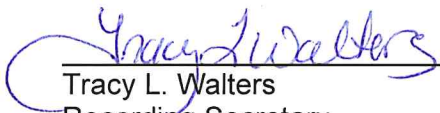
OTHER BUSINESS:

No other business was presented at this time.

ADJOURNMENT:

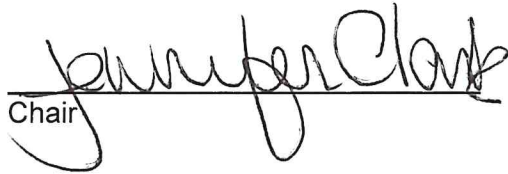
There being no other business, Chair Clark declared the meeting of the Board Adjustment adjourned at 5:31 p.m. to meet again on January 2, 2025.

Respectfully Submitted,



Tracy L. Walters
Recording Secretary

APPROVED: -



Chair