

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
AUGUST 2, 2012**

The Bismarck Board of Adjustment met on August 2, 2012 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Board members present were Michael Marback, Blair Ihmels, Dean Conrad, and Jennifer Clark.

Members absent were Jeff Ubl and Ken Heier.

Staff members present were Ray Ziegler (Building Official), Kim Lee (Planning Manager), Jenny Wollmuth (Planner), and Kim Riepl (Office Assistant).

Others present were Bob Berg, Bismarck; Randal M. Kopp, Bismarck; and Cheryl Hansen, Bismarck; David Mayer, Bismarck; Jeff Welch, Bismarck; Katie Vasbinder, Bismarck.

MINUTES

Chair Marback asked for consideration of the July 5, 2012 minutes.

MOTION: A motion was made by Mr. Conrad and seconded by Mr. Ihmels to approve the minutes of the July 5, 2012, meeting as presented. With Ms. Clark, Mr. Conrad, Mr. Ihmels, and Chair Marback voting in favor, the minutes were approved.

VARIANCE – ARROWHEAD TESORO – 220 EAST BOULEVARD AVENUE

Chair Marback stated the applicant was requesting a variance to reduce the front yard setback along East Boulevard Avenue from 15 feet to 5 feet and reduce the front yard setback along North 3rd Street from 15 feet to 0 feet for the purpose of constructing additions to the east side and the south side of the building.

Katie Vasbinder of Ubl Design Group provided a brief background of Arrowhead Tesoro and Arrowhead Plaza. She said Arrowhead Plaza was one of the first strip malls in the region, with Arrowhead Tesoro being a full service station in a neighborhood that has a high percentage of older residents. She explained it is the owner's intent to maintain the historical aspects of the structure in the proposed renovation and remodel. She further explained there currently exists drainage issues on the south portion of the property and traffic movement issues throughout, which is made worse by the large approach on North 3rd Street. The desire is to narrow the approach to slow traffic in that area, while maintaining the sight line setback along the east property line. In addition, concrete and landscaping will be installed to further define the approach and direct traffic movement through that area. The approach is about 50 feet wide now, but will be reduced to approximately 32 feet.

Ms. Clark asked if the northeast corner of the proposed addition goes beyond the current footprint and Ms. Vasbinder replied it did, and in fact, reaches to the property line on the east side. She further added that since the property is not platted, the boundaries are assumed.

The following findings were provided:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the CA zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Conrad to approve the request for the variance to reduce the front yard setback along East Boulevard Avenue from 15 feet to 5 feet and reduce the front yard setback along North 3rd Street from 15 feet to 0 feet for the purpose of constructing additions to the east side and the south side of the building. The motion was seconded by Mr. Ihmels, and discussion followed.

Discussion: Mr. Conrad stated he'd spoken with Bill Fleck, managing partner of Fleck Interstate Investments, the registered owner of the Arrowhead property. Parking became the topic of discussion and Mr. Fleck ultimately stated he saw no concern regarding parking relative to the proposed expansion. Mr. Kopp also noted the additional bays proposed would help alleviate some of the parking and traffic issues immediately around the building. He stated he has a lease agreement with Mr. Fleck for the property the Tesoro building is on, with Mr. Kopp bearing the responsibility for the building and Mr. Fleck bearing responsibility for land it is on. Further, the lease includes reference to vehicles, what is prohibited, etc., however, the parking agreement is mostly verbal.

CALL FOR VOTE: Chair Marback called for a vote on the motion made by Mr. Conrad to approve the request for the variance to reduce the front yard setback along East Boulevard Avenue from 15 feet to 5 feet and reduce the front yard setback along North 3rd Street from 15 feet to 0 feet for the purpose of constructing additions to the east side and the south side of the building and seconded by Mr. Ihmels. With all members present voting in favor, the motion was approved.

VARIANCE – GRAND THEATRES – 1486 INTERSTATE LOOP

Chair Marback stated the applicant was requesting a variance to reduce the number of required off-street parking spaces from 1025 to 540 and to allow parking off-site in conjunction with the proposed theater expansion project.

David Mayer of Kadrmas, Lee & Jackson, the representative for Grand Theatres, described the proposed theater expansion as the addition of seven theaters with a total combined seating capacity of 618 seats. This will bring the total theater seating capacity up to 2,702 seats. Using a parking ratio of 1:5, that number of seats would require 540 parking stalls. However, more realistically, using ticket sales which produce an average of 500 seats per showing, and assuming patrons per car average 2, only 250 available parking stalls would be required per showing. He stated in the worse case scenario, allowing for overlap of showings that would require 500 parking stalls, validating their ratio of 1:5.

Mr. Marback asked if that ratio was derived by polling other cities' ratios and Mr. Mayer replied he believed Fargo's to be 1:4 and although unsure of others; Jiran Architects had looked into those numbers.

Mr. Marback asked Mr. Ziegler if the 1:5 or 1:6 ratio seemed typical of other cities and Mr. Ziegler stated it sounded somewhat accurate, but the real question is what is acceptable and appropriate for Bismarck's theater parking needs.

Discussion and explanation of available parking spaces in each off-site lot took place. Ms. Clark noted the signage for the off-site lots was not specific enough to direct people to park there if they didn't already know it could be used for theater parking. Concerns were expressed as to whether there was evidence the existing off-site lots were even being used. Mr. Conrad also brought up concerns of pedestrians crossing Interstate Avenue from north to south without a proper crossing. Several options were discussed including signage and a crossing, although Mr. Mayer stated that during the site plan review process, the idea of a flashing crossing at Interstate Avenue was denied by Mark Berg as Basin Electric has one located a short distance away.

Cheryl Hansen, Gateway Fashion Mall, spoke against the proposed variance, and a letter of opposition from the Dakota Boys and Girls Ranch Thrift Store was also read. The Dakota Boys and Girls Ranch Thrift Store cited numerous instances of theater patrons using the Store's parking lot, even during business hours.

Bob Berg, owner of Capital Heights Auto Clinic, located on the north side of Interstate Avenue next to the Green Thumb Nursery, where there is off-site parking, spoke in favor of it. He said in 24 years of business there he has never experienced a problem with the parking and finds it hard to believe they need more parking. He feels Jerry Brekke is doing a good job.

Further discussion took place regarding parking challenges faced by the theater and it was generally agreed that no matter how the spaces were marked or striped, how the lots were lit, etc., the theater patrons will find the closest places to park.

Jeff Welsch, Jiran Architects, spoke regarding the fact that the current parking ordinance is based on square footage of the building while theaters have fixed seating. This comment sparked further discussion on parking ordinances in other cities that have separate requirements for movie theaters, and even more discussion took place regarding the possibility of changing Bismarck's ordinance to reflect the same.

The following findings were provided:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the CA zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Ihmels to approve the request for the variance to reduce the number of required off-street parking spaces from 1025 to 540 and to allow parking off-site in conjunction with the proposed theater expansion project. There was a lack of a second to the motion and the motion was denied.

MOTION: A motion was made by Mr. Conrad to approve the request for the variance to reduce the number of required off-street parking spaces from 1025 to 540 and to allow parking off-site in conjunction with the proposed theater expansion project, with the condition there be installed a pedestrian activated signaled crossing at Interstate Avenue between the off-site parking on the north of Interstate Avenue and the theater facility on the south of Interstate Avenue and also to provide specific signage directing patrons to overflow parking options. The motion was seconded by Mr. Ihmels, and with all members voting in favor, the motion was approved.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on September 6, 2012.

Respectfully Submitted,



Kim Riepl
Recording Secretary

APPROVED:



Michael Marback, Chair