

BISMARCK BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES
AUGUST 23, 2012

The Bismarck Board of Adjustment met on August 23, 2012 at 12:15 p.m. in the First Floor Conference Room in the City-County Office Building, 221 North 5th Street. All members were present with Michael Marback, Blair Ihmels, Dean Conrad, Jeff Ubl, Jennifer Clark, and Ken Heier in attendance.

Staff members present were Kim Lee (Planning Manager), Jenny Wollmuth (Planner), Brady Blaskowski (Plans Examiner), Mark Berg (Traffic Engineer), and Kim Riepl (Office Assistant).

Others present were David Mayer, Bismarck; and Jeff Welch, Bismarck.

MINUTES

Chair Marback asked for consideration of the August 2, 2012 minutes.

MOTION: A motion was made by Mr. Conrad and seconded by Mr. Ubl to approve the minutes of the August 2, 2012, meeting as presented. With Ms. Clark, Mr. Conrad, Mr. Ihmels, Mr. Heier, Mr. Ubl, and Chair Marback voting in favor, the minutes were approved.

VARIANCE – GRAND THEATRES – 1486 INTERSTATE LOOP, ETAL.

Chair Marback stated the applicant was requesting reconsideration of a request for 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 (Lots 1-5 & Lot 8, Block 1, & Lot 5, Block 2, Lindquist-Miller Development & Lot 1, Block 1, Hamby Creek Addition; Lot 1, Block 1, Camrud-Foss Addition; Lot 2 Less the West 13' & Lots 3 and 4, Block 1, Green Thumb Addition; and Lot 4, Block 1, Boutrous Second Addition). He added the reason for the consideration was prompted by conditions put on the approval of this variance (at the August 2, 2012 Board of Adjustment meeting) which included the installation of a pedestrian activated crossing signal 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 applicant was denied the option of installing the pedestrian activated crossing signal and was therefore unable to meet the condition placed on the approval of the variance.

Chair Marback introduced Mark Berg, City of Bismarck Traffic Engineer, asking him to provide information as to why the crossing signal cannot be installed. Mr. Berg explained it was not that a crossing signal at that location could not be installed, but rather that it must be warranted before it can be installed. Mr. Berg then cited distances from specific off-site parking lots to the front door of the theater, and he questioned, given the range in distances, which lots were actually getting used and how much pedestrian crossing traffic was being generated by each. He summarized by saying his desire would be to have a study performed after the lots had been in place and people were accustomed to their availability and using them. The study would

examine which lots were being used, how much crossing traffic was generated from each, if a crossing signal would be warranted, and if so, where.

Chair Marback asked Dave Mayer, consultant with Kadrmas, Lee & Jackson, who was representing applicant Jerry Brekke, to provide information on usage of the lots. Mr. Mayer noted any information was only anecdotal, as he was unaware of any studies performed by the owner to determine utilization of lots.

Mr. Conrad expressed two concerns regarding pedestrian crossing signals, the first being the count of 40 pedestrians per hour to warrant a signal. He cited a crossing at Washington Street which he estimates does not come near that number. Mr. Berg stated the pedestrian crossing there is in addition to a traffic signal and, briefly explaining the timing of each device, said the priority is to optimize the vehicular traffic first, then the pedestrian traffic. Mr. Conrad then referenced the existing blinking crossing beacon located on Interstate Avenue east of the proposed off-site parking areas. He commented that due to vehicular speed and situations of distracted driving, he felt strongly about possibly installing another flashing beacon to alert motorists to the possibility of pedestrian traffic in the area.

Mr. Ubl asked Mr. Mayer if the 475 available parking stalls have been verified and Mr. Mayer responded that number to be correct. Mr. Ubl then referenced the minutes from past meetings and surmised that according to the last consideration in 2005, there should now be a 564 space commitment. Mr. Mayer replied the existing parking as submitted for this variance did not account for the recycled asphalt parking lot behind Mr. Lubester, which if included, does bring the count up to 564 spaces. The existing parking included for this application accounts only for the paved and striped stalls per the Ordinance.

Lengthy discussion ensued regarding issues of crosswalks; off-site parking lot utilization; traffic volumes relative to facility use including peak times and staggered show times; a possible drop-off/pick-up loop; and study elements and possible study options.

Mr. Ubl questioned future expansion of the theater and if a master plan for the facility had ever been prepared. Jeff Welch, Jiran Architects, replied there was no master plan at this time.

Mr. Marback referenced previous conversations regarding a possible drop-off area and asked Mr. Mayer if there had been consideration given to the issue. Mr. Mayer responded there had been no conversations with the City to take any additional right-of-way for such a purpose. He further explained the initial scope of work for the project only included the off-site parking, it was not a drop-off issue.

Mr. Welch added he felt the drop-off issue to be a new issue, as in the previous projects the issue had always been the number of spaces, as far as he was aware. Mr. Ihmels responded that was incorrect, saying the minutes of all the previous meetings (relative to the applicant's parking) addressed the drop-off/pick-up issue. He referenced copies of the minutes in the packet and noted it had been a topic of concern every time, but it has not ever been acknowledged by the owner.

Mr. Heier agreed with Mr. Ihmels, adding he felt the Board should not be dealing with this as a variance issue continuously. He added his opinion that there should be a study done and the parking ordinance changed to accommodate the use (as a movie theater facility).

It was noted that staff indicated at the August 2nd meeting changes to the parking ordinance have been discussed. Further discussion ensued specifically regarding space requirements and options for a drop-off/pick-up area at the theater, returning again to the subject of a parking/pedestrian study or survey for the facility.

Mr. Mayer indicated the owner, in previous conversations, agreed with the idea of a study (to determine the need for a lighted traffic crossing); however, a sequence of events is necessary

to arrive at a point where a study can be conducted. Theater expansion, contingent on approval of the off-site lots, must occur to bring people in and create a need for additional parking off-site. The off-site parking must exist before patron's parking and crossing preferences can be studied. He further added the owner is respectfully requesting the elimination of the pedestrian actuated crossing as a requirement at this time, although he would agree to its installation in the future.

Discussion resumed, again focusing on different study options, how studies can be initiated and how they can be done by property owners. It was suggested the theater police their lots and conduct a survey to determine lot usage. Concern was expressed regarding commitment by the owner to do so, and if so, in what time frame.

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 remove the requirement of a pedestrian activated crossing as a condition of approval of the request for 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. The motion was seconded by Mr. Ihmels and with Mr. Ubl voting in favor and Ms. Clark, Mr. Heier, Mr. Ihmels, Mr. Conrad, and Chair Marback voting opposed, the motion was denied.

MOTION: A motion was made by Mr. Conrad to abolish the approved action of the August 2, 2012 meeting of the Board of Adjustment 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 Ms. Clark and with Mr. Heier voting opposed and Mr. Ihmels, Mr. Ubl, Ms. Clark, Mr. Conrad, and Chair Marback voting in favor, the motion was approved.

Staff suggested the applicant be allowed to make the off-site parking areas useable and install signage directing patrons to them, so that patrons' parking and crossing habits may be studied prior to the opening of the five new proposed theaters. This would provide information to aid in determining what crossing options may be necessary.

Mr. Mayer contacted Mr. Brekke by phone and Mr. Brekke participated by speaker phone.

Chair Marback addressed Mr. Brekke, providing him a brief summary of the discussion which had taken place at the meeting as well as referencing minutes of past meetings. He asked Mr. Brekke for his commitment to the following issues and suggestions by the Board:

- Seriously examine the drop-off/pick-up issues at the theater facility to see which options are feasible to alleviate the existing drop-off/pick-up problem and implement a strategy to that effect (*Mr. Brekke indicated agreement.*)
- Perform an in-house study to determine off-site lot usage, particularly those north of Interstate Avenue, so that the City can then pursue a traffic/pedestrian study if it is warranted (*Mr. Brekke indicated agreement.*)
- Begin the surveys of the lots prior to the theater expansion being completed so the information is available when the new theaters open (*Mr. Brekke indicated agreement*)

Mr. Brekke stated he was certainly willing to do all those things (carry out the suggestions of the Board as presented) and offered his commitment to carry them out.

Chair Marback thanked Mr. Brekke for his time, stating the Board would once again take the matter of the variance application under consideration.

The Board resumed its discussion of drop-off/pick-up options and required parking spaces if the parking lot configuration was altered. Mr. Blaskowski emphasized a new site plan would be necessary in the event any drop-off/pick-up area was added. He stated the current site plan had not been approved yet, pending the decision of the Board regarding the off-site parking. The suggestion was made that perhaps the CO (Certificate of Occupancy) be withheld until such time as certain conditions as discussed by the Board had been met.

Mr. Heier stated he disagreed with the discussion taking place, as it is his opinion this belongs in front of the (Bismarck) City Commission. He further stated he has never seen the Board of Adjustment do anything like this (setting conditions on approval of a variance request), and that the Board is amending a parking ordinance for which there is no special circumstance, and therefore, he cannot support it. He explained he has no problem with the concept, but feels it is not the place of the Board of Adjustment; rather, the (Bismarck) City Commission should be making the changes. He further expressed concern that there are no provisions for approving a variance with conditions.

Discussion followed regarding required steps and time necessary to amend the parking ordinance to reflect the 1:5 ratio and the possibility of incorporating language allowing off-site parking without it having to be brought before the Board of Adjustment. Staff proposed amending the Ordinance in this respect for introduction to the Bismarck Planning & Zoning Commission and Board of City Commissioners.

After additional comments, the following points were generally agreed upon by members of the Board:

- Only two issues to be considered were before the Board, that of the required off-street parking spaces being reduced from 1025 to 540 and the allowance of off-site parking

- It is not the Board's responsibility to police safety issues beyond what is stated in the City Ordinance
- The owner/applicant has made assurances and is on record as stating the Board's concerns will be addressed relative to drop-off/pick-up issues and crossing issues
- If the parking ordinance is amended it will address much of what is before the Board today in terms of required parking spaces and off-site parking

MOTION: A motion was made by Mr. Ubl 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. The motion was seconded by Mr. Ihmels, and with Ms. Clark and Mr. Heier voting in opposition and Mr. Conrad, Mr. Ihmels, Mr. Ubl, and Chair Marback 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