

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
SEPTEMBER 20, 2012**

The Bismarck Board of Adjustment met on September 20, 2012 at 4:00 p.m. in the 2nd Floor Conference Room in the City-County Office Building, 221 North 5<sup>th</sup> 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 Ray Ziegler (Building Official and Floodplain Administrator), Kim Lee (Planning Manager), Jenny Wollmuth (Planner), Brady Blaskowski (Plans Examiner) and Kim Riepl (Office Assistant).

Others present were Cameron McCullough, Bismarck; Matt Reichert, Bismarck; W. Sehreurs, Kitimat, British Columbia; Heather Jones, Bismarck; Jewel Lambrecht, Bismarck; Craig Lambrecht, Bismarck; Mark Dougherty, Bismarck; and Brad Krogstad, Bismarck.

**MINUTES**

Minutes of the August 23, 2012 Special Meeting were not available for consideration.

**FLOODPLAIN ORDINANCE INFORMATION**

Chair Marback introduced Ray Ziegler, Floodplain Administrator for the City of Bismarck, and asked him to provide general information on the Floodplain Ordinance. Mr. Ziegler stated the 2009 flooding event due to the ice jam triggered more restrictive regulations. There was much consideration given to the sediment issue at the time, with Oahe Dam backing up. If that were to happen, then our base flood elevations would also increase. That is when the "Two feet above BFE (base flood elevation)" requirement was implemented. He emphasized the BFE fluctuates from south to north (along the river); there is not just one BFE. Part of the intent of the requirement was also to give residents (in the Floodplain) a better insurance rate, as the higher above the BFE a building is constructed, the lower the insurance rate. FEMA looks at local ordinances and bases the rates on that as well. The BFE also has an effect on the community if disaster strikes relative to funding. If the ordinances are outdated, it's possible not all available funding assistance may be received.

Mr. Ziegler added the talk of the sediment building up has subsided, and there has been speculation that our BFE could even drop. He cautioned though, that there have been no studies done and this is only speculation at this point. He summarized that the existing ordinance provides a good measure of security for quite a long time.

Mr. Ziegler referenced the two variance requests before the Board involving the BFE. He stated the maps used to determine BFE are accurate to within about 6 inches. He stated the BFE for 1785 Far West Drive is 1636.1' and the BFE for 231 Sheehan Road is 1635'. He noted in order to get an exact determination of BFE, a registered land surveyor would have to perform that service.

## VARIANCE – CRAIG & JEWEL LAMBRECHT-1785 FAR WEST DRIVE

Chair Marback stated the applicants were requesting a variance to eliminate/reduce the required two feet above the Base Floodplain Elevation for the purpose of constructing a two story, 4,279 square feet, addition to the existing house (Lots 4 & 5, Block 1, Fox Island Subdivision).

Ms. Lambrecht stated the main floor of the addition to be all garage space, with living space above the garage. She said there is a 42" difference in garage floors, driveways, and rooflines if the addition were constructed two feet above BFE. She further stated that during the flooding event of 2011, the permanent dike constructed around their property held to 19½-20 feet, with no water in the garage, and only some in the crawl space which was manageable.

Chair Marback referenced the original construction of the home which was built at 1634' BFE and the two additions, one in 1998, built to 1634' BFE and one in 2005, built to 1636' BFE. He questioned at what elevation this new addition would be built and the Lambrechts replied they were unsure of the exact elevation but it would be between the 1634' and the 1636' BFE as the existing garage floor is higher than the original part of the house because there is a sunken living room on the original structure which is lower than the existing garage floor.

Mr. Heier asked Mr. Ziegler for clarification on measuring, whether it is to the top of the foundation or the top of the lowest floor. Mr. Ziegler replied the top of the foundation is often considered the elevation of the lowest floor however, it can be confusing when crawl spaces must be considered. Mr. Lambrecht stated both previous additions are both slab on grade, with no crawl space at all.

Mr. Ubl asked the difference in elevation between the garage and the finished floor adjacent to the garage and Mr. Lambrecht replied it to be a one foot difference.

Mr. Ihmels asked Mr. Ziegler if the applicants would be able to build if the variance was granted. Mr. Ziegler replied that as Floodplain Administrator there are several factors to be considered in regards to this type of situation. He cautioned against jeopardizing the program as a community. He explained that FEMA comes in and performs audits requiring documentation on structures that may appear to be built low, and recently, there have arisen some different attitudes from FEMA regarding garages and accessory buildings as insurable structures.

Mr. Heier asked if there were going to be any utilities area or furnace room in the proposed garage and it was confirmed there would not. He then asked Mr. Ziegler, if, in his opinion, the construction of a garage used only for storage would jeopardize the program relative to FEMA and Mr. Ziegler responded FEMA would probably not be as concerned about it than if there were inhabitable space involved.

The following findings were provided:

### Any Variance

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 RR 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.

#### Floodplain Variance

1. The addition to the existing house may increase flood levels during the base flood discharge.
2. The variance is not the minimum necessary, considering the flood hazard, to afford relief.
3. The applicant has not shown good and sufficient cause for granting the variance.
4. A failure to grant the variance would not result in exceptional hardship to the applicant.
5. The granting of the variance may result in increased flood heights, additional threats to public safety, and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

**MOTION:** A motion was made by Mr. Ihmels to approve the request for a variance to eliminate/reduce the required two feet above the Base Floodplain Elevation for the purpose of constructing a two story, 4,279 square feet, addition to the existing house. The motion was seconded by Mr. Ubl and with all members voting in favor the motion was approved.

#### **VARIANCE – MATHEW REICHERT-231 SHEEHAN ROAD**

Chair Marback stated the applicant was requesting a variance to reduce/eliminate the elevation requirement for an accessory building constructed in the Special Flood Hazard Area (100 Year Floodplain), for the purpose of constructing a 22' x 50' (1,100 square feet) addition to an existing accessory building that was not constructed at the required two feet above the Base Flood Elevation (Lot 2 and the West 15 feet of Lot 1, Block 2, Three Bears Subdivision).

Mr. Reichert approached the Board explaining there was a change in his application relating to the size of the proposed structure. At the time of his application, he was under the impression the largest accessory building he could construct was of a maximum of 2,400 square feet, but has since learned he can build up to 3,200 square feet if a special use permit is approved due to changes in the accessory building ordinance. Therefore, he would request amending his application to include a proposed accessory building up to a maximum of 3,200 square feet. He noted another change, that of the configuration of the proposed building relative to the existing building. Rather than side by side, the proposed accessory building would be positioned

perpendicular to the existing building, which he presented on an aerial photo. He then stated the existing building had no water in it from either the 2009 or the 2011 flooding events due largely to the dike system that had been installed on 48<sup>th</sup> Avenue, and he added that Burleigh County did have plans to implement a permanent dike system on 48<sup>th</sup> Avenue in 2013 which would further protect his property. He explained in order to attain the two feet above BFE for the proposed building 4 to 5 feet of fill (possibly more) would be required over an area much larger than the footprint of the building. He stated in checking on insurance coverage, he was informed he could insure the building and the contents, but he could not purchase flood insurance on the building or contents. Mr. Reichert then explained the problem with bringing in the required fill to attain the two feet above BFE is the two buildings would have significantly different elevations and overall heights, causing drainage issues for the existing building (which was built by the previous owner). Because the sidewall heights and eave heights will be very different, it will be very difficult to tie them together.

Mr. Heier asked the total square footage of the existing buildings on the site and Mr. Reichert stated one is 20'x12' (240 square feet) and the other is 30'x38' (1,140 square feet), both built by the previous owner.

Chair Marback asked if the sidewall height of the proposed building was the same as that of the existing building and Mr. Reichert stated the sidewalls will be somewhat higher.

Mr. Ihmels questioned the dimensional accuracy of the drawing of the proposed building on the aerial photo as well as the elevation and construction of the proposed building. Mr. Reichert said the drawing is pretty close, with the proposed building being attached to the existing building at an elevation of approximately 1628' and the same construction of wood frame, steel exterior. Mr. Ihmels asked the elevation of the home on the property and Mr. Reichert guessed it to be about 1634'. He acknowledged there is a significant difference in elevation between the house and the proposed building, but added a major difference is there will be no water or sewer in the proposed building.

The following findings were provided:

Any Variance

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 RR 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.

### Floodplain Variance

1. The 1,100 square foot addition to the existing accessory building may increase flood levels during the base flood discharge.
2. The variance is not the minimum necessary, considering the flood hazard, to afford relief.
3. The applicant has not shown good and sufficient cause for granting the variance.
4. A failure to grant the variance would not result in exceptional hardship to the applicant.
5. The granting of the variance may result in increased flood heights, additional threats to public safety and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

**MOTION:** A motion was made by Mr. Ihmels to approve the request for the variance to eliminate the elevation requirement for an accessory building constructed in the Special Flood Hazard Area, for the purpose of constructing and addition (which requires a Special Use Permit) to an existing accessory building that would bring the total area of accessory building up to 3,200 square feet that was not constructed at the required two feet above the Base Floodplain Elevation. The motion was seconded by Mr. Heier and with all members voting in favor the motion was approved.

### **VARIANCE – HHM PROPERTIES, LLP-311 ENTERPRISE ROAD**

Chair Marback stated the applicant was requesting a variance to eliminate or reduce the number of required parking stalls from 14 stalls with one stall being accessible, provided with an accessible aisle, to zero stalls, in conjunction with the proposed construction of a building for cold storage units (Lot G1 of Lot G and the South 24 feet of Lot H1 of Lot H, Block 11, Eastdale Addition).

Brad Krogstad of Kadrmas, Lee & Jackson, spoke on behalf of Heather Jones and HHM Properties, LLP. He explained the proposed construction was for two cold storage buildings, with no water or sewer provided to them, and neither of them having any office space or occupancy. He disclosed the site was designed with no parking to prevent long term parking of vehicles or trailers and keep the appearance of the property neat and clean.

Mr. Krogstad indicated this is being built in the floodplain and the floodway does cut through the south side of the property. Because of this, there is a substantial portion of the property that is used up by the floodway and the City of Bismarck for a storm water easement, making it unusable by the applicant. He noted on the west side of the property, the City recently (about three years ago) constructed Enterprise Street about four feet below the Floodplain elevation and because the building site and parking lot had to be constructed two feet above (the BFE), there is about a 6 feet differential between the street and the storage buildings, making access to the site and parking difficult.

Ms. Clark asked if there was space on the north side of the lot to bring in additional fill and provide the (parking) spaces there and Mr. Krogstad replied no, the whole lot is being entirely filled and the fill extends well beyond the lot to the north.

He then expressed concern there is obscurity within the parking requirements in the Ordinance in regards to shop condos and warehouses versus strictly cold storage units. While

understanding the need for parking at shop condos and warehouses, it is Mr. Krogstad's opinion there shouldn't be any need for parking (for storage facilities) as a cold storage building doesn't warrant parking stalls.

Ms. Clark asked if there could be a decrease in the size of the building to add a stall and Mr. Krogstad replied if one of the units was eliminated but it (eliminating units) makes the project infeasible. Ms. Clark commented it is hard to justify a reduction in parking from 14 stalls to zero, especially when everyone else is complying with the ordinance. Mr. Krogstad responded in his observation, the cold storage facilities in Bismarck for the most part, are not complying with the parking ordinance, although some may have begun to comply recently. He suggested perhaps staff could provide further comment on that aspect. Ms. Clark asked if there had been a recent change in the ordinance and Mr. Blaskowski replied there had not been a change in the ordinance, but that recently non-structural permitting had begun to be required. This means it falls on Inspections to ensure the parking gets installed, and he acknowledged there are probably examples within the city where the parking requirements were not met as they were not previously enforced.

Mr. Heier stated he was sympathetic to the applicant's desire to abstain from providing parking, further adding he has observed several instances where parking spaces in cold storage facilities end up being rented for secured storage, which is not the intent. He is of the opinion there may need to be a change to the ordinance for parking requirements for cold storage facilities.

Mr. Ubl asked if there was absolutely no room for parking stalls on the property and Mr. Krogstad explained there may be room on the back and the sides, but due to the differential of six feet between the site and the street, the site is already struggling with grades. There is an 8% slope coming into the units, which necessitated setting the units back further than the required setbacks just to make it possible to access the units when coming up from the street. This in turn makes it nearly impossible to provide useable parking spaces, especially accessible spaces.

Mr. Ubl inquired as to a possible change in use of the building and what that would mean for the required parking. Mr. Blaskowski conceded that in situations of just plain storage, 14 stalls seems excessive, but if the use changes or turns into shop condos, then the 1 per 600 is not nearly enough. He said the ordinance, as it is currently, does not fit every type of occupancy. Mr. Krogstad emphasized the building construction does not warrant office or shop condo use and new permits would have to be obtained in addition to water and sewer being supplied. Changing use would also require a new CO (Certificate of Occupancy) to be issued.

Mr. Ihmels asked how many units were in each of the proposed buildings and Mr. Krogstad stated there will be 24 units in the north building, and 10 large units and 5 small units in the south building and the buildings will be of steel construction.

Ms. Jones added there are provisions in the lease agreements for the units prohibiting any business from being run within any of the units, as well as prohibition of occupancy.

There was general agreement expressed by some members of the Board that an amendment to the parking requirement in the ordinance may be in order. Mr. Heier asked Ms. Lee how difficult a change to the ordinance would be and she replied discussions have already taken place due to the increase in construction of shop condos and the parking issues involved with them. She said it would not be difficult to look at other occupancy uses at the same time.

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 MA 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, and may be injurious to the neighborhood or otherwise detrimental to the public welfare.

**MOTION:** A motion was made by Mr. Ubl to approve the request for a variance to eliminate or reduce the number of required parking stalls from 14 stalls with one stall being accessible, provided with an accessible aisle, to zero stalls, in conjunction with the proposed construction of a building for cold storage units. The motion was seconded by Mr. Conrad and with all members voting in favor the motion was approved.

#### **VARIANCE – CAMERON & MARY MCCULLOUGH-116 EAST AVENUE B**

Chair Marback stated the applicants were requesting a variance to reduce the rear yard setback from 20 feet to 0 feet and reduce the side yard setback from 10 feet to 0 feet for the purpose of constructing a 24' x 24' (576 square feet) accessory building in the same location as the existing accessory building in the rear yard (the South 25 feet of the West 70.63 feet of the East 142.76 feet of Lot 3 and the South 7 feet of the West 24 feet of the East 142.76 feet of the North 50 feet of Lot 3 and the West 70.63 feet of the East 142.76 feet of Lot 4, Block 9, Northern Pacific Addition).

Chair Marback asked the applicant if the existing garage was ready to be demolished and Mr. McCullough confirmed that yes, he had received comments from his neighbor about the poor condition of the garage; the concrete is starting to rot, it has a flat roof, and the garage is only 20 feet deep while his pickup is 19 feet 10 inches long.

Chair Marback then asked if the applicant had a common use agreement (with the neighbor for the shared driveway) and Mr. McCullough replied it was a verbal agreement. Mr. Heier asked how long the McCulloughs had owned the house, and Mr. McCullough replied 10 or 11 years. Mr. Heier commented there appears to be enough room for the proposed 24'x24' garage and still have enough room for the required 10 feet eave-to-eave distance (between the eaves of the garage and the eaves of the house). Mr. McCullough said there would be between 10 and 11 feet from eave-to-eave, adding the new garage will have a peaked roof.

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 RM 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 may deprive the property owner of the reasonable use of the property.
4. The requested variance is 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. Heier to approve the request for a variance to reduce the rear yard setback from 20 feet to 0 feet and reduce the side yard setback from 10 feet to 0 feet for the purpose of constructing a 24' x 24' (576 square feet) accessory building in the same location as the existing accessory building in the rear yard. The motion was seconded by Mr. Conrad and with all members voting in favor the motion was approved.

#### **OTHER BUSINESS**

Chair Marback announced Mr. Conrad, citing concerns over inability to attend future meetings, had expressed a need to resign his position as a member of the Board of Adjustment. Discussion took place regarding the number of Board members and the need to have a voting quorum at each meeting. Meeting times were also discussed. It was agreed staff will advertise for applicants to fill Mr. Conrad's position as it will be vital to have someone in place in time for the January, 2013 meeting as Ms. Clark is unable to attend the months of January, February, and March.

#### **ADJOURNMENT**

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on October 4, 2012.

Respectfully Submitted,



Kim Riepl  
Recording Secretary

APPROVED:



Michael Marback, Chair