

BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
August 1, 2013

The Bismarck Board of Adjustment met on August 1, 2013 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

Members present were with Michael Marback, Blair Ihmels, Jeff Ubl, Jennifer Clark, and Ken Heier.

Staff members present were Jenny Wollmuth – Planner and Brady Blaskowski – Plans Examiner.

Others present were Glenn Maier, Cody Strothman, Richard Goodwin, Doug Unruh, CJ Heidt, Carol Heidt, Michael Jassek, and Laura Jassek.

MINUTES:

Chair Marback asked for consideration of the minutes of the July 3, 2013 meeting.

MOTION: A motion was made by Mr. Ihmels and seconded by Mr. Heier to approve the minutes of the July 3, 2013 meeting as presented. With Board Members Clark, Ihmels, Ubl, and Marback voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-01(4) OF THE CITY CODE OF ORDINANCES (RR-RESIDENTIAL DISTRICT) (FRONT YARD) – 4525 HILLSBORO DIVE

Chair Marback stated the applicant was requesting a variance to reduce the front yard setback requirement from 40 feet to 25 feet in order to construct a 768 square foot (24'x34') accessory building.

CJ Heidt approached the Board to further explain the variance. He stated that he may need to expand his existing 19 year old drainfield and that the only practical place to construct the proposed accessory building is within the front yard setback. He added that the accessory building would be screened by existing 10 to 15 foot trees.

Chair Marback noted to staff that after a visit to the site, he noticed that there were some accessory buildings constructed within the front yard setback. Jenny Wollmuth stated that there was a concern from an adjacent property owner regarding other accessory buildings constructed within the front yard setback. She added that after checking permitting information it appeared that the buildings in question were constructed without obtaining the proper permits.

Ken Heier stated that because the right-of-way was 80 feet, he felt comfortable with a 25 foot setback. A 25 foot setback would be required if the property was urbanized.

Blair Ihmels asked the applicant if he would use the existing driveway. Mr. Heidt replied that he would.

MOTION: A motion was made by Mr. Ihmels to approve the variance request to reduce the front yard setback from the required 40 feet to 25 feet in order to construct a 768 square foot (24'x32') accessory building. The motion was seconded by Mr. Heier and was unanimously approved with Board Members Clark, Ihmels, Ubl, and Chair Marback voting in favor of the motion.

VARIANCE FROM SECTION 14-03-10(1) OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) – 2300 SKYLARK AVENUE

Chair Marback stated the applicant was requesting a variance to allow the use of crushed rock in place of the required hard-surface material for the required off-street parking area in order to construct two storage and warehousing facilities.

Cody Strothman approached to Board to further explain the variance request. She stated that she plans on using crushed concrete rather than crushed asphalt or rock as crushed concrete is stronger.

Chair Marback asked the applicant if the proposed buildings would be used as cold storage buildings and if water and sewer would be ran to the proposed buildings. Ms. Strothman indicated that the buildings would be used as cold storage.

Blair Ihmels asked staff when the requirement to pave off-street parking areas was added to the zoning ordinance. Staff replied that the exact date is not known, but the ordinance was updated in 2011 and previous to that update in 2009. *(Secretary's Note: This provision has been in place since April 2006 with the adoption of Ordinance 5501)*

Ms. Strothman stated to the Board that the proposed buildings would be used for seasonal storage and that she expects minimal traffic.

Jennifer Clark asked staff how this variance is different from a variance granted for storage buildings at 311 Enterprise Street. Brady Blaskowski explained that the proposed building in that particular request was smaller, that there were some topographical constraints as well as part of the property being located within a Special Flood Hazard Area (SFHA) or 100-year floodplain. Mr. Blaskowski further explained to the Board that the Zoning Ordinance not only requires that required off-street parking be paved but also requires that drive lanes be paved and accessible parking stalls and isles also are required to be paved with a hard surface material.

Mike Jasek with 1804 Storage approached the Board to state that he has just recently completed a site plan review for proposed storage buildings located within the same subdivision as the requested variance, adding that he is required to pave his off-street parking area. He then stated to the Board that if this variance was approved he would ask for one for his property, too.

Ms. Strothman stated to the Board that she would pave the apron from the street.

Mr. Ihmels asked the Board if Ms. Strothman had a hardship.

Jeff Ubl stated to the Board that the accessibility requirements should not be ignored and cannot be waived, adding that it is the intent of the Ordinance to maintain accessibility.

Doug Unruh approached the Board to state that his property which is located in the same subdivision as the requested variance, is paved. He added that there are problems with other buildings that were constructed without being required to pave their parking lots dragging mud into the public right of way. He further added that the lots that are existing and not paved are a muddy mess.

Ms. Clark asked if there was a compromise.

Ms. Strothman stated she understood that there could be problems if the public right of way was paved. Chair Marback stated that if the public roadway was paved staff would have no "teeth" to enforce paving the existing off-street parking area.

Glenn Maier, Creative Construction, approached the Board stating that his company has been hired to be the general contractor for the proposed storage buildings. Mr. Maier further stated that there are existing buildings located within the subdivision that do not have paved off-street parking areas and that the cost of paving is too great.

MOTION: A motion was made by Mr. Ubl to deny the variance request to allow the use of crushed rock in place of the required hard-surface material for the required off-street parking area in order to construct two storage and warehousing facilities. The motion was seconded by Ms. Clark and was approved with Board Members Clark, Ihmels, and Ubl voting in favor of the motion. Chair Marback voted to deny the motion.

VARIANCE FROM SECTION 14-04-14(8) OF THE CITY CODE OF ORDINANCES (MA – INDUSTRIAL DISTRICT)(REAR YARD) – 420 & 430 SOUTH 22ND STREET

Chair Marback stated the applicant was requesting a variance to reduce the required rear yard setback along the west side of the property from 10 feet to 0 feet in order to construct two contractor storage and warehouse facilities with individual units including office space, restrooms and required parking.

Gerry Rudnick, Rudnick Construction, approached the Board on behalf of the applicant.

Chairman Marback asked Mr. Rudnick if the proposed buildings would have offices in them or if they would be used only as cold storage buildings. He added that he is concerned that if they buildings were not used as cold storage, but rather office buildings they would take on a different role because the required parking could change.

Mr. Blaskowski stated that parking could not be calculated, as revised buildings plans have not been submitted since the last request for a variance in July 2013. Mr. Blaskowski added

that there was overhead door located on the building plans, and that there would be an option for some of the required parking to be located within the building.

Chair Marback asked staff if there was a possibility that if the side yard variance was granted, the applicant would still not be able to meet the required parking. Mr. Blaskowski stated that yes, there was a possibility of that occurring, depending on the use of the proposed buildings.

Mr. Ubl asked staff if the stormwater pond to the west of the proposed variance was part of a stormwater master plan or that it was located within a Special Flood Hazard Area (SFHA), or 100- year floodplain. Mr. Blaskowski replied that he was unaware of a master plan but in all likelihood the pond is a permanent fixture.

Mr. Ihmels asked staff if there was a potential for the stormwater detention pond to flood. Mr. Blaskowski replied that the property is not located in a floodway or floodplain, and that there would need to be a significant event to create flooding of this particular pond.

Chair Marback read the testimony submitted by Wright Warehouse LLC requesting denial of the proposed variance. The testimony is attached as Exhibit A.

Mr. Ihmels asked what the hardship was. Mr. Rudnick replied that sizes of the buildings, in order to comply with required parking, have been reduced. He added that the tax revenue generated from the smaller buildings would also be diminished.

Mr. Ihmels asked Mr. Rudnick if, with the current setbacks requirements, would the proposed buildings would fit on the property. Mr. Rudnick replied that they would not.

Mr. Ubl asked Mr. Rudnick if the detention pond was causing a problem or if the lot is too narrow. Mr. Rudnick replied that if they comply with the current setback requirements, they would need to further decrease the sizes of the proposed buildings.

Ms. Clark stated that she appreciated the fact that the owner has gone back to the drawing board and revised the proposed buildings.

Mr. Ihmels stated that he recognizes the challenges of the required setbacks, but that lots of other properties also need to comply. He added that it is convenient that the detention pond is located adjacent to the property, but there is not hardship with this request.

Chair Marback stated that the applicant knew what he had to work with at the time the initial variance was granted in 2012 to reduce the size of the proposed lots.

MOTION: A motion was made by Mr. Ubl to deny the variance to reduce the required rear yard setback along the west side of the property from 10 feet to 0 feet in order to construct two contractor storage and warehouse facilities with individual units including office space, restrooms and required parking. The motion was seconded by Mr. Heier and was unanimously approved with Board Members Clark, Ihmels, Ubl, and Marback voting in favor of the motion.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 4:55 p.m. to meet again on Thursday, September 5, 2013.

Respectfully Submitted,



Jenny Wollmuth
Recording Secretary

APPROVED:



Michael Marback, Chairman