

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
September 5, 2013**

The Bismarck Board of Adjustment met on September 5, 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 and Jennifer Clark.

Staff members present were Kim Lee – Planning Manager, Jenny Wollmuth – Planner and Brady Blaskowski – Plans Examiner.

Others present were Mark Holzer, Kris Smotherman, Will Kincaid, Jeff Feist, Lonny Bosch, Randy Pergors, Teresa Bleich, Curt Binstock, Mark Harstad, and Devin Barnes.

MINUTES:

Chair Marback asked for consideration of the minutes of the August 1, 2013 meeting.

MOTION: A motion was made by Mr. Ihmels and seconded by Mr. Ubl to approve the minutes of the August 1, 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) – 2001 SHERMAN DRIVE

Chair Marback stated the applicant was requesting a variance to reduce the front yard setback requirement from 40 feet to 19 feet in order to construct a 896 square foot (30'x28') accessory building.

Mark Holzer approached the Board to further explain the variance. He also stated that many neighbors within his subdivisions had accessory buildings located within the front yard setback.

Mr. Ihmels asked Mr. Holzer to explain to the Board the location of the proposed accessory building. Mr. Holzer stated that he intends to place the building along the east side of his property approximately 19 feet from the property line.

MOTION: A motion was made by Mr. Ihmels to approve the variance to reduce the front yard setback from 40 feet to 19 feet in order to construct a 896 square foot (28'x32') accessory building. The motion was seconded by Mr. Ubl and was unanimously approved with Board Members Clark, Ihmels, Ubl, and Marback voting in favor.

**VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES
(R5-RESIDENTIAL)(FRONT YARD) – 523 NORTH 1ST STREET**

Chair Marback stated the applicant was requesting a variance from the front yard setback on the north side of his property from 25 feet to 15 feet in order to construct a 1,200 square foot (30'x40') accessory building.

Kris Smotherman approached the Board to further explain the variance request. He stated that although his lot is fairly large, it has been previously landscaped and he does not want to tear out the landscaping to place the accessory building further into his property.

Will Kincaid, an adjacent property owner, approached the Board to state that he had concerns with the size of the accessory building and its potential use.

Mr. Ubl asked if the proposed accessory building was set back 20 feet, would the applicant be able to park his vehicle in front of the accessory building without encroaching onto the sidewalk.

Mr. Ihmels asked the applicant if he could live with the accessory building being set back 20 feet rather than 15 feet. Mr. Smotherman responded yes, he could.

Ms. Clark stated that she struggles with downtown properties. She asked the applicant if he would consider reducing the proposed 3-stall accessory building to something smaller, since the adjacent property owner was upset with the size. Mr. Smotherman replied he would be willing to decrease the size of the accessory building a little, but further explained his desire to have a 3-stall accessory building. He added that the size of his lot would allow for a larger accessory building.

Chairman Marback asked if the variance request could be modified so that the applicant would only need a 1 foot variance, which would move the proposed accessory building further into his property while maintaining the size of the building.

Mr. Ihmels asked if there was a hardship in this variance, stating that the applicant's lot is large enough for the proposed accessory building.

MOTION: A motion was made by Ms. Clark to approve the modified variance request to reduce the front yard setback on the north side of the property from 25 feet to 24 feet in order to construct a 840 square foot (30'x28') accessory building. The motion was seconded by Mr. Ihmels. With Board Members Clark, Ihmels, and Marback voting in favor of the motion and Board Member Ubl voting to deny the motion, the motion was not approved. Since the motion was not approved, the variance request was denied. *(Secretary's Note: Per NDCC, four affirmative votes are needed to approve a variance.)*

VARIANCE FROM SECTION 14-04-01(6) OF THE CITY CODE OF ORDINANCES (RR-RESIDENTIAL)(REAR YARD) – 4560 HILLSBORO DRIVE

Chair Marback stated the applicant was requesting a variance to reduce the required rear yard setback along the west side of the property from 50 feet to 35 feet in order to construct a 1,200 square foot (30'x40') accessory building.

Lonny Bosh approached the Board to further explain the request.

No further comments were made.

MOTION: A motion was made by Mr. Ubl to approve the variance request to reduce the rear yard setback along the west side of the property from 50 feet to 35 feet in order to construct a 1,200 square foot (30'x40') accessory building. The motion was seconded by Mr. Ihmels, and unanimously approved with Board Members Clark, Ihmels, Ubl and Chairman Marback voting in favor of the motion.

VARIANCE FROM SECTION 14-03-10(h) OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING)(RETAIL ESTABLISHMENTS) AND SECTION 14-04-10(N) OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) (WAREHOUSE/STORAGE FACILITIES) – 2228 EAST FRONT AVENUE

Chair Marback stated the applicant was requesting a variance from the required off-street parking requirements for retail facilities and warehouse/storage facilities from 32 spaces to 24 spaces in order to construct a 9,216 square foot addition to the existing building.

Mark Harstad, Ross and Associates, approached the Board on behalf of the applicant to explain the request. Mr. Harstad stated that the applicant wishes to vacate the building they currently renting for warehouse space across the street from the proposed variance citing safety concerns of the cross traffic. He added that the majority of the proposed addition is warehousing. He further stated that a small portion of the proposed addition would be used as retail space culminating in 10% of sales; the other 90% of sales is done through the warehouse with no walk-in or retail traffic.

Ms. Clark stated she is struggling with this request because it is creating a nuisance. It is limited space because the applicant wishes to max out his building area. She asked the applicant if the size of the proposed addition is the smallest size needed to operate the business. Curt Binstock, the owner of the property, approached to Board to state that the size of the proposed addition was the smallest size needed to operate the business

Mr. Ihmels asked if there was parking for employees. Mr. Binstock responded that there were, adding that he is still providing more off-street parking than adjacent properties in the vicinity.

Ms. Clark asked how long the business has been in its current location. Mr. Binstock replied since 1985.

MOTION: A motion was made by Mr. Ihmels to approve the variance request from the required off-street parking requirements for retail facilities and warehouse/storage facilities from 32 spaces to 24 spaces in order to construct a 9,216 square foot addition to the existing building. The motion was seconded by Mr. Ubl, and unanimously approved with Board Members Clark, Ihmels, Ubl and Chairman Marback voting in favor of the motion.

VARIANCE FROM SECTION 14-04-19(6)(b)(1) OF THE CITY CODE OF ORDINANCES (FLOODPLAIN DISTRICT)(FLOOD HAZARD REDUCTION / ACCESSORY BUILDINGS) – 2812 WOODLAND DRIVE

Chair Marback stated the applicant was requesting a variance from the elevation requirement for an accessory building constructed in the Special Flood Hazard Area (SFHA), or 100-year Floodplain, from 2 feet above the Base Flood elevation (BFE) to 0 feet above the Base Flood Elevation (BFE), in order to construct a 1,260 square foot (36'x35') accessory building.

Randy Pergors approached the Board to further explain the request.

Chairman Marback asked the applicant if the proposed accessory building will be occupied. Mr. Pergors stated it would not.

MOTION: A motion was made by Mr. Ubl to approve the variance request from the elevation requirement for an accessory building constructed in the Special Flood Hazard Area (SFHA), or 100-year Floodplain, from 2 feet above the Base Flood elevation (BFE) to 0 feet above the Base Flood Elevation (BFE), in order to construct a 1,260 square foot (36'x35') accessory building. The motion was seconded by Mr. Ihmels, and unanimously approved with Board Members Clark, Ihmels, Ubl and Chairman Marback voting in favor of the motion

VARIANCE FROM SECTION 14-04-16(4) OF THE CITY CODE OF ORDINANCES (P-PUBLIC USE DISTRICT)(FRONT YARD) – 408 WEST SWEET AVENUE

Chair Marback stated the applicant was requesting a variance from the required front yard setback from 25 feet to 16 feet along the south side of the property in order to construct a grandstand behind home plate at the Bismarck Municipal Ball Park.

Jeff Feist, REH Architects, approached the Board to further explain the request.

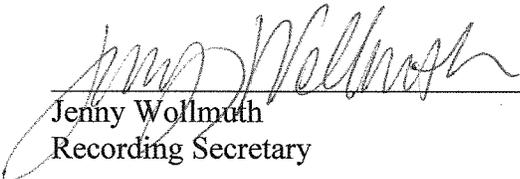
Mr. Ubl asked if the original grandstand encroached into the setback. Mr. Feist replied they did not; however, they are unable to adhere to the setback with the new grandstand because they cannot get any closer to home plate.

MOTION: A motion was made by Mr. Ubl to approve the variance request to reduce the required front yard setback from 25 feet to 16 feet along the south side of the property in order to construct a grandstand behind home plate at the Bismarck Municipal Ball Park. The motion was seconded by Mr. Ihmels, and unanimously approved with Board Members Clark, Ihmels, Ubl and Chairman 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 5:25 p.m. to meet again on Thursday, October 3, 2013.

Respectfully Submitted,



Jenny Wollmuth
Recording Secretary

APPROVED:



Michael Marback, Chairman