

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
OCTOBER 29, 2009**

The Bismarck Board of Adjustment met on October 29, 2009 at 4:10 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Board members present were Chair Michael Marback, Warren Tvenge, Jennifer Clark, and Larry Thompson.

Staff members present were Ray Ziegler (Building Official), and Kim Riepl (Office Assistant).

Others present were Jerry Jangula, 700 N. 29th Street; Jim Kemp, 416 N. Anderson Street; Ardella Stein, 1029 W. Avenue B; Amber Hunze, 6155 12th Street SE; and Al Kraft, 6155 12th Street SE.

MINUTES

Chair Marback asked for consideration of the October 1, 2009 minutes.

MOTION: A motion was made by Mr. Tvenge and seconded by Mr. Thompson to approve the minutes of the October 1, 2009 meeting as presented. With all members voting in favor, the minutes were approved.

VARIANCE – ARDELLA STEIN - 1029 W. AVENUE B

Ms. Stein requested a variance to reduce the side yard setback distance from 6-feet to 4-feet for a proposed covered walkway on the east side of the house. The property is located at 1029 W. Avenue B and is legally described as Lot 3, Block 8, Keating Addition. Chair Marback read the applicant's reason for request and asked if there was anything to be added. Ms. Stein stated the proposed covered walkway would be of great benefit to her daycare parents as they use that area to bring their children into her house.

Mr. Thompson asked if the enclosed deck below would be removed to which Ms. Stein replied that the deck would stay. He then questioned the placement of the roof. Ms. Stein directed the question to Jerry Jangula, the contractor in charge of the construction project. He stated that the proposed covered area was on the east side of the house, but would wrap around the south side and continue on the west side of the deck. Ms. Stein stated she currently has the underside of the deck tinned so there is no seepage of rain or snow in that area. Mr. Marback asked if she intended to enclose the deck at any time to which she replied she did not intend to enclose the deck at any time.

Mr. Thompson addressed the safety factor involved and asked if a handrail would be provided for the children to which Mr. Jangula agreed it should. Jim Kemp, one of Ms. Stein's daycare parents, added that the covered walkway would increase the safety factor of the walkway for the parents and children.

Mr. Ziegler was asked if there were any fire code issues involved, to which he replied there were no issues as long as the deck was not enclosed. He also affirmed the 7-foot height of the roof was sufficient.

Ms. Clark asked Ms. Stein if her neighbors to the east were familiar with what she proposed to construct. Ms. Stein replied they were, and that they were comfortable with it as they were on very friendly terms.

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 R5 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 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. Tvenge to approve the variance to reduce the side yard (east side) setback distance from 6-feet to 4-feet. Mr. Thompson seconded the motion and with all members voting in favor, the motion was approved.

VARIANCE – AMBER HUNZE & ALLEN KRAFT – 6155 12TH STREET SE

Chair Marback read the reason for the variance being requested by Amber Hunze as being a request to increase the maximum accessory building area from 1,800 square feet to 4,000 square feet for the purpose of constructing a storage building to store custom combine equipment. He summarized the request by stating it was a request to allow the total square footage maximum be increased by 2,264 square feet. He stated the additional 64 square feet was due to the 8' x 8' accessory building already on the property.

Mr. Tvenge questioned the zoning and was told it was RR (Rural Residential) that allowed a maximum of 1,800 square feet for accessory buildings on that size lot.

Mr. Kraft stated that he would construct an 1,800 square foot building, if that was all that was allowed, as he needed a facility for the storage and maintenance of their equipment; however, he added that 1,800 square feet was a little too small for their needs. He noted that although it (the requested variance) sounds like an awfully large request, if the building allowed by the zoning is 30-feet by 60-feet, he's actually only asking for 20-feet wider and 20-feet longer (on the proposed building).

Mr. Thompson emphasized that as a Board, this must be looked at, as originally 1,200 square feet was the allowable maximum for an accessory building, and then it was increased to 1,600 square feet and then to 1,800 feet. He stated he felt that if the Board allowed this variance to increase the maximum square footage, they may as well leave

the whole thing open because it will open a can of worms. He stated that for this reason, he would vote to oppose it and would make a motion for that.

Mr. Kraft noted there were several neighbors in the area that had larger structures than what he was proposing, and that although it was zoned RR, it seemed to be more of an agricultural area as there were horses and wheat fields surrounding his property. Mr. Thompson noted, with Mr. Ziegler concurring, that it was likely those buildings were constructed prior to the rules and regulations being put in place.

MOTION: A motion was made by Mr. Thompson to deny the request for a variance to increase the maximum square footage of an accessory building from 1,800 square feet to 4,000 square feet. Mr. Tvenge seconded the motion.

Ms. Clark questioned the placement of the proposed accessory building, if it would be in the clearing behind the house. It was confirmed that would be the location, which is where equipment is currently being stored. She inquired as to what the large building to the north was and Mr. Kraft replied it was a horse arena.

Mr. Tvenge asked what type of maintenance would be performed in the proposed structure and Mr. Kraft replied it would be service work on the combines and over-the-road trucks when they bring them back. Mr. Tvenge asked him what his plans were in the event the variance was not granted. Mr. Kraft said he would get a permit for a building of allowable size and would then take it to the next level, whatever that would be to get another building put up.

Mr. Marback questioned the sidewall height of the structure, to which Mr. Kraft responded it was fourteen-feet.

Mr. Marback directed a question to Mr. Ziegler regarding Mr. Kraft's income being derived from agricultural activities. Mr. Ziegler explained that if he were a farmer and claiming farm status, making over 50% of his income off that land, then it wouldn't be a problem. However, because he is an ag-related service, he doesn't meet that qualification.

Ms. Clark requested the history of the maximum allowable amount of square footage for accessory buildings. Mr. Marback stated that the ordinance originally allowed 1,200 square feet, but after getting numerous requests for variances to increase that, it was raised to 1,600 square feet. It has since been increased to 1,800 square feet. Ms. Clark asked if the size of the lot determines the size of accessory building allowed, wondering if a larger accessory building would be allowed on a 4-acre lot than on a 3.7-acre lot. Mr. Ziegler stated it would still be the maximum 1,800 square feet, and that it was determined by a formula. He added that the next lot size realizing an increase in the allowable square footage would be 40-acres. The maximum allowable square footage is then determined by a percentage or about 5,000 square feet.

MOTION: Chair Marback reminded the Board that a motion was made by Mr. Thompson to deny the request of a variance to increase the maximum square footage of an accessory building from 1,800 square feet to 4,000 square feet and that Mr. Tvenge seconded the motion. Chair Marback then called for a vote on the motion. The motion to deny the requested variance was passed 3 to 1, with the only dissenting vote being Jennifer

Clark.

Ms. Clark cited the need for more research before she could support a denial of the variance as requested. Chair Marback stated that the applicants could obtain a permit for the 1,800 square foot building, which comment Mr. Ziegler supported, and that it (the request to increase the maximum square footage allowed for an accessory building) could be brought back to the December 3rd Board of Adjustment meeting.

(Secretary's Note: After the vote, Chair Marback indicated that a reconsideration of the variance request would be needed (thinking that a unanimous vote was needed to deny the variance). However, upon staff review of the voting requirements specified in North Dakota Century Code Chapter 40-47-07, it was determined that the action of the Board to deny the request was valid, and therefore, a reconsideration of the item was not required.)

ADJOURNMENT

There being no further business, the meeting of the Bismarck Board of Adjustment was adjourned to meet again on December 3, 2009.

Respectfully Submitted,

Kim Riepl
Recording Secretary

APPROVED:

Michael Marback, Chair