

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
April 3, 2014**

The Bismarck Board of Adjustment met on April 3, 2014 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Marback presided.

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

Staff members present were Jason Hammes – Assistant City Attorney, Kim Lee – Planning Manager, Jason Tomanek – Planner, Jenny Wollmuth – Planner, Brady Blaskowski – Building Official and Hilary Balzum – Community Development Office Assistant.

**MINUTES:**

Chair Marback asked for consideration of the minutes of the January 2, 2014 meeting.

**MOTION:** A motion was made by Mr. Ubl and seconded by Mr. Seifert to approve the minutes of the January 2, 2014 meeting as distributed. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting in favor, the minutes were approved.

**VARIANCE FROM SECTION 14-03-09 OF THE CITY CODE OF ORDINANCES (NON-CONFORMING USES) – 215 SOUTH 13<sup>TH</sup> STREET (PART OF LOT 14 AND LOTS 15-, BLOCK 19, STURGIS ADDITION)**

Chairman Marback stated the applicant was requesting a variance to allow the construction of an accessory building on a non-conforming lot (less than 10,000 square feet) with an existing non-conforming use (single-family dwelling).

Mr. Fettig said the property is currently being used as a rental property and that there is an existing single stall accessory building on the property which will be demolished. He said the house had a fire and when he made repairs afterwards he made sure not to exceed half of the value of the house.

Chairman Marback asked if the garage will be used for storage or if it will be used by the renting tenant. Mr. Fettig said it will be used by the renting tenant.

Mr. Ihmels asked why he wants the new garage to be 25 feet by 50 feet. Mr. Fettig said because of the way the lot is laid out and because of the sizes of the homes in the area.

Ms. Clark asked if there is an issue with the proposed size of the new garage and the resulting lot coverage or if the problem is only because of the existing zoning. Ms. Wollmuth said the required setbacks will still be met and the proposed size is fine, as long as the existing accessory building is removed.

Joe Eckert said he owns property to the north and wanted to make these same changes at his home and was told he could not do it. Ms. Wollmuth said up until 2011 there was an ordinance regarding non-conformities that did not allow some of the requested changes; however, that has changed for non-conforming residential uses.

**MOTION:** A motion was made by Ms. Clark to approve the variance to allow the construction of an accessory building on a non-conforming lot (less than 10,000 square feet) with an existing non-conforming use (single-family dwelling), with the condition that the existing accessory building is demolished prior to construction of the new one. The motion was seconded by Mr. Ubl. With Board Members Clark, Ihmels, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the variance request was approved. Mr. Heier opposed the motion.

**VARIANCES FROM SECTION 14-02-03 (DEFINITIONS)(SIGHT-TRIANGLE); SECTION 14-03-10(1)(A)(2) (OFF-STREET PARKING AND LOADING)(MULTI-FAMILY DWELLINGS); SECTION 14-03-10(1)(I) (OFF STREET PARKING AND LOADING)(OFFICE BUILDINGS); SECTION 14-03-11(10) (BUFFER YARDS); SECTION 14-04-08(8) (RT-RESIDENTIAL)(SIDE YARD); AND SECTION 14-04-08(9) (RT-RESIDENTIAL)(REAR YARD) OF THE CITY CODE OF ORDINANCES – 2039 NORTH KAVANEY DRIVE (LOTS 22-23, BLOCK 12, HOMAN ACRES REPLAT)**

Chairman Marback stated the applicant was requesting variances to allow the construction of a mixed use single and two-story addition (two dwelling units and additional office space) to an existing building.

Mr. Carpenter said he is the one who made the requests and that he brought his architect, Dave Nelson, to explain the concept further.

Mr. Nelson said the site has an existing office building which was formerly a daycare. He said the landscaping requirements are an issue because of the size of the proposed building and because the proposed building would be both apartment and office uses there is a requirement of 19 parking spaces as well as one handicapped van accessible space.

He went on to say they are proposing spaces adjacent to the sidewalk in the required sight triangle. He also stated that parking spaces along the west side of the building will be marked as handicapped; however, there is a required four foot landscape buffer between the building and the sidewalk which they would like reduce as that area is rarely used. He said having the required 15 foot sight triangle is difficult and parking spaces would be lost and the rentable space inside the building would have to be reduced. He then said they would like to reduce the parking requirement by one space and that there is also a seven foot utility easement on the property that would not allow any room for the required 10 foot landscape buffer. He closed by saying this is the third time they have attempted to develop this property and that the new plan would also allow for a garage to be built up to the seven foot utility easement instead of the 10 foot landscape buffer.

Mr. Carpenter said the neighboring properties are also built up to their seven foot easement and that a landscape variance is needed, but all of the other landscape requirements will be met.

Martha Downs said she lives behind the property and her main concern is of drainage issues around the condos to the south of Mr. Carpenter's property. She said there is nothing showing how that issue will be addressed if the existing drainage is being eliminated.

Shawn Werle said he shares a backyard property line with Mr. Carpenter and he urges the Board to deny all of the requests because the definition of a variance includes proof of a hardship and none of the reasons Mr. Carpenter gave for needing the variances are hardships. Mr. Werle then said he researched the possibility of putting a shed on his property and found out he could not and he dealt with it. He then said notification of only 10 days prior to the meeting to the adjacent property owners is not enough time to address all of the issues involved with these requests. Mr. Werle also submitted comments which are attached as Exhibit A.

Linda Enyart said she lives next to this property and she is concerned about the variance requested on the north side yard as it will cause issues with safety, clearing snow, maintenance and emergency service access if there is only a seven foot buffer.

Comments received from Julie Reimann and signatures in support of the variances are attached as Exhibit B.

Mr. Carpenter said the engineering company he has hired, KLJ, is waiting on approval of the variances to start working on the proposed site plan. He said his property sits a lot lower than those around him so any storm water runoff would run into his property, which he does not want for himself or his neighbors and he has instructed KLJ that drainage needs to be directed to the street.

Mr. Heier asked why the required landscape buffer is 10 feet. Mr. Blaskowski said an office and multi-family use requires a 10 foot buffer yard adjacent to Residential uses.

Ms. Clark asked if the sight triangle requirement is regularly enforced. Mr. Blaskowski said yes and that it is usually either 15 or 25 feet, depending on the location. Ms. Clark then said all options should be explored to make the building fit on the property before having a variance granted, even if it means reducing the interior space and making it smaller and building small but usable garages for the rental units.

Mr. Carpenter said that as a realtor he can assure the Board that a space with small garages will not rent, that this building has been sitting since 1976 and that they have been working since 2007 to make a plan that will work.

**MOTION:** A motion was made by Mr. Ubl to deny the variances to allow the construction of a mixed use single and two-story addition (two dwelling units and additional office space) to an existing building. The motion was

seconded by Mr. Ihmels. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the variance requests were denied.

**APPEAL OF STAFF INTERPRETATION - SECTION 14-06-02(1) (POWERS AND DUTIES)(INTERPRETATION) OF THE CITY CODE OF CITY ORDINANCES**

Chairman Marback stated that Ken Dykes, Bismarck Cancer Center, is appealing staff's interpretation of Section 14-03-04(1) (General Provisions)(Permitted Uses) regarding off-site parking lots in the RM-Residential and RT-Residential zoning districts.

Lon Romsaas, Swenson, Hagen & Co., said the hardship involved with the proposed request for a variance is that the facility cannot increase their offered programs or staff numbers if the patients utilizing the services cannot move through the facility efficiently.

Mr. Dykes explained that the changes at their facility need to be radical and that at the time it was built in 1999, it was current on all of its needs. He said many new services have been added to make the most of the facility they cannot build upwards because of the technological requirements associated with the type of care they offer. He added that they are not hiring more staff, but they will need more parking as it is a required with the plan they will submit for the building expansion.

Mr. Romsaas said that the request would be for employee parking to be displaced in various locations, only to be used by employees of the Center, but that Planning staff has indicated parking lots are not an allowable use in the proposed locations. He then said there is also a hardship associated with the construction timeline if work cannot be started soon. He added that the Center needs to be operable within a year and that the adjacent property owners have already been spoken to.

Amy Gross said the adjacent property owners understand the concept of the plan and they are accepting of it because they want the Center to be the best it can be. She said she visited with 12 people in the area total.

Ms. Lee explained that staff is adding off-street parking lots as a special use in residential zoning districts and it is anticipated that this amendment will be approved by the City Commission by the end of May. She added that Mr. Dykes could apply for a special use permit and go through that process with the Planning and Zoning Commission.

Mr. Romsaas said he is trying to expedite the process and cannot wait another 30 days. He said he needs answer so he knows this is going in the right direction.

Chairman Marback said it is probably best to wait out the process with the zoning ordinance text amendment, as right now the only people that will be impacted by this change are the employees of the Center, not the patients.

**MOTION:** A motion was made by Ms. Clark to deny the appeal of staff's interpretation of Section 14-06-02(1) (Powers and Duties(Interpretation) of the City Code

of Ordinances). The motion was seconded by Mr. Ubl. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved, the appeal was denied and the staff's interpretation was upheld.

### **OTHER BUSINESS**

Chairman Marback explained that Board Member Ihmels has moved out of the jurisdiction of the City of Bismarck Board of Adjustment so he is resigning from the Board at this time. He read a Resolution of Appreciation for Mr. Ihmels 26 years of service on the Board and asked for a motion for the adoption of it.

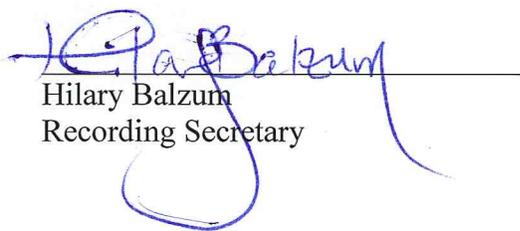
**MOTION:** A motion was made by Ms. Clark to adopt the Resolution of Appreciation for time served on the Board of Adjustment by Mr. Ihmels. The motion was seconded by Mr. Heier. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the Resolution of Appreciate was adopted.

Mr. Ihmels said he has thoroughly enjoyed all 26 years he has served and that he joined the Board after requesting, and receiving, a variance himself.

### **ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:25 p.m. to meet again on Thursday, May 1, 2014.

Respectfully Submitted,

  
Hilary Balzum  
Recording Secretary

APPROVED:

  
Michael Marback, Chairman