

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
May 1, 2014**

The Bismarck Board of Adjustment met on May 1, 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 Jennifer Clark, Ken Heier, Chris Seifert and Michael Marback.

Board member Jeff Ubl was absent.

Staff members present were Jason Hammes – Assistant City Attorney, Jenny Wollmuth – Planner, Brady Blaskowski – Building Official, Keith Demke – Director of Utility Operations and Hilary Balzum – Community Development Office Assistant.

**MINUTES:**

The minutes of the April 3, 2014 meeting of the Board of Adjustment will be forwarded for considered for consideration at the June 5, 2014 meeting.

**VARIANCE FROM SECTION 14-04-14(8) OF THE CITY CODE OF ORDINANCES (MA-INDUSTRIAL)(REAR YARD) – 2407 RAILROAD AVENUE (WEST 31.78 FEET OF LOTS 1-4 AND ALL OF LOT 6, AND AUDITOR’S LOT 2407 OF BLOCK 41, GOVERNOR PIERCE ADDITION)**

Chairman Marback stated the applicant was requesting a variance to reduce the required rear yard setback along the south side of the property from ten (10) feet to zero (0) feet in order to construct a 6,000 square foot warehouse building.

Chairman Marback asked if the frozen food lockers that exist on this property are going to be demolished.

Dave Lutzky, Ulteig Engineering, said the lockers will be torn down, which will allow the sight line on the property to be the same as the adjacent properties. This will also give more room for a turning radius for large trucks as well as more green space.

Mr. Seifert said it will add to the appearance of Railroad Avenue to have all of the properties lined up consistently.

Ms. Clark asked if the building can be turned on the lot in any way to make it fit and comply with the setback requirements. Mr. Lutzky said it would not fit and also would not be in compliance with the side yard setback requirement.

**MOTION:** A motion was made by Mr. Seifert to approve the variance to reduce the required rear yard setback along the south side of the property from ten (10) feet to zero (0) feet in order to construct a 6,000 square foot warehouse building the motion was seconded by Mr. Heier. With Board Members

Clark, Heier, Seifert and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

**VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL)(FRONT YARD) – 202 W AVENUE F (LOTS 13-16 AND THE EAST 10 FEET OF THE VACATED ALLEY, BLOCK 85, MCKENZIE AND COFFINS ADDITION)**

Chairman Marback stated the applicant was requesting a variance to reduce the required front yard setback along the south side of the property from twenty-five (25) feet to eight (8) feet in order to construct a 648 square foot equipment building for a Verizon cell phone tower.

Keith Demke, Director of Public Works - Utility Operations, said the site plan shows two existing buildings on the property, one near the cell phone tower which will be demolished and done in the southwest corner of the lot which will not be demolished.

Chairman Marback asked if the grade of the property is too steep for this type of construction.

Mr. Demke said there is a retaining wall that separates the property and the sidewalk, which is going to be replaced with steps to allow easier access to the tower and buildings. He added that the shelter needs to be located near the base of the tower instead of running anchors and cables throughout the property.

Chairman Marback asked who will be responsible for maintaining the site. Mr. Demke said the City contracts out for maintenance, grounds keeping and repairs and that there is going to be a fence around the property, as well as around the equipment and the building in addition to a gate adjacent to the new shelter.

Ms. Clark asked if there is any way the building can be placed anywhere else on the lot. Mr. Demke said it needs to be near the tower and that there is no room on the west side because of the towers legs and the north side would not allow adequate access for Verizon Wireless employees or neighboring property owners. He said there is also underground utilities which would have to be moved if the building was placed anywhere else on the property.

Clare Hochhalter said he lives west of the property and he feels approving this request would increase the commercialization of the neighborhood and that the lot needs to be cleaned up before any more work is done, including removing the concrete slab from the previous building and the building that is there that is not being used. He said adding another building will not add to the appearance of the neighborhood.

Scott Markovic said he lives north of the property and he agrees with the comments made by Mr. Hochhalter. He said he knows that the previous owner of the lot deeded the property to the City with the agreement that the property had to remain park-like.

Ms. Clark asked if staff is aware of the conditions of the deed referenced by Mr. Markovic. Ms. Wollmuth said it is possible, but that this is the first she has heard of the requirement.

Mr. Hochhalter said he is not opposed to the City making use of the property and he understands they will gain income from this, but this is the third building to go on this location and his concerns are of what the appearance will be and that maintenance will be lacking.

Chairman Marback said a variance was requested at this location in 2001 to have a building for AT&T constructed and it passed, which is how building permits were obtained.

Thomas Rausch asked if it is possible for the City to require that Verizon Wireless be the ones to maintain the park features instead of the City. Chairman Marback said that since the City is the lessor, they would be responsible for the maintenance or for subcontracting the necessary vendors to do what is needed. Comments submitted by Mr. Rausch are attached as Exhibit A.

Mr. Seifert said he would like to approve the request with the agreement that it will be appropriately maintained.

**MOTION:** A motion was made by Mr. Seifert to approve the variance to reduce the required front yard setback along the south side of the property from twenty-five (25) feet to eight (8) feet in order to construct a 648 square foot equipment building for a Verizon cell phone tower. The motion was seconded by Ms. Clark. With Board Members Clark, Heier, Seifert and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

**VARIANCE FROM SECTION 14-04-16(4) OF THE CITY CODE OF ORDINANCES (P-PUBLIC)(FRONT YARD) – 440 ASH COULEE DRIVE (LOT 3, BLOCK 1, REPLAT OF MILLENNIUM ADDITION)**

Chairman Marback stated that the applicant is requesting a variance to reduce the required front yard setback along the south side of the property from twenty-five (25) feet to six (6) feet in order to construct a 648 square foot equipment building for a Verizon cell phone tower.

Mr. Demke said the lot is quite large but there is going to be an underground reservoir under much of the property which will serve north Bismarck in the future. He said construction access for the water reservoir would be along the east side of the tower so that they do not interfere with each other and that the tower will be at least twenty-five feet away from the walking path and the roadway.

**MOTION:** A motion was made by Mr. Heier to approve the variance to reduce the required front yard setback along the south side of the property from twenty-five (25) feet to six (6) feet in order to construct a 648 square foot equipment

building for a Verizon cell phone tower. The motion was seconded by Mr. Seifert. With Board Members Clark, Heier, Seifert and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

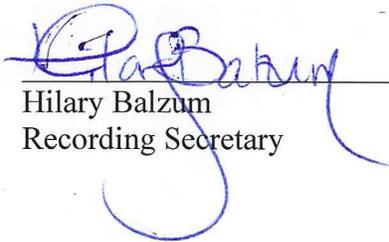
#### **OTHER BUSINESS**

There was no other business at this time.

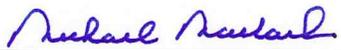
#### **ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 4:50 p.m. to meet again on Thursday, June 5, 2014.

Respectfully Submitted,

  
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Hilary Balzum  
Recording Secretary

APPROVED:

  
\_\_\_\_\_  
Michael Marback, Chairman

APR 30 2014

Thomas C Rausch  
215 Tower Avenue  
Bismarck, ND 58501

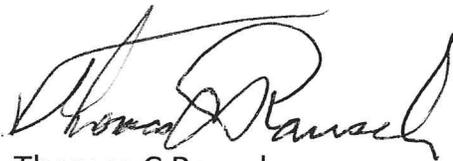
April 29, 2014

Jenny Wollmuth, Planner  
Bismarck Community Development Department – Planning Division

RE: Verizon Cell Phone Tower at 202 West Avenue F

Regarding the variance for Verizon to build a cell phone tower and the reference to take the East 10 feet of the vacated alley is a major concern. Presently Scott Markovic at 1014 N Mandan Street, our next door neighbor, and myself have our two homes connected to one sewer line. The sewer line travels from the middle of the my back yard at 215 Tower Avenue south into the middle of Avenue F. The sewer line runs north and south along the middle of the vacated alley into the middle of Avenue F street.

What will happen to the sewer line if the building is placed over the sewer line? Who's responsibility will it be for maintenance and repairs or replacement of the sewer line? For obvious reasons we therefore object to the variance until clarification and satisfactory resolution can be determined.



Thomas C Rausch

215 Tower Avenue



Scott Markovic

1014 Mandan Street