BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
August 7, 2014

The Bismarck Board of Adjustment met on August 7, 2014 at 4:00 p.m. in the 1st Floor Conference Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

Members present were Jennifer Clark, Ken Hoff, Chris Seifert, Jeff Ubl and Michael Marback.

Member absent was Ken Heier.

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

MINUTES:

Chairman Marback asked for consideration of the minutes of the July 9, 2014 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Ubl to approve the minutes of the July 9, 2014 meetings as distributed. With Board Members Clark, Hoff, Seifert, Ubl and Marback voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-06(5) OF THE CITY CODE OF ORDINANCES (R10-RESIDENTIAL)(LOT WIDTH) – 414 NORTH 22ND STREET (LOT 5 AND THE NORTH 16TH FEET OF LOT 6, BLOCK 26, GOVERNOR PIERCE ADDITION)

Chairman Marback stated the applicant was requesting a variance to reduce the required lot width for a parcel platted prior to 1953 from fifty (50) feet to forty-one (41) feet in order to convert the existing single-family dwelling into a two-family dwelling (duplex).

Chairman Marback said he went to the property to look at the house and asked if the entrance on the south side is going to be converted to an up and down entrance.

Christopher Herrmann said there will be stairs from the entrance to the upper level and another set of steps leading to the lower level that is currently being renovated. He said there is not room on any side of the property where he could add area to the lot to make it 50 feet wide. He said there was permits issued for the garage and the shed that are behind the house and those were built without any issues and it was originally used as a duplex.

Ms. Wollmuth said that an electrical permit was issued recently for the conversion of the house to a duplex and a permit to construct an accessory building was issued in 2009 without a variance.

Mr. Hoff asked if there will be egress windows in the lower level. Mr. Herrmann said the previous owner of the property did dig out areas for egress windows and he will be cutting out the windows and placing the window wells. Ms. Wollmuth said per building codes, only the bedrooms need to have egress windows.

MOTION: A motion was made by Mr. Hoff to approve the variance to reduce the required lot width for a parcel platted prior to 1953 from fifty (50) feet to forty-one (41) feet in order to convert the existing single-family dwelling into a two-family dwelling (duplex). The motion was seconded by Mr. Ubl and with Board Members Clark, Hoff, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) – PART OF LOT 3 LESS LOT A, BLOCK 1, PRAIRIE HILLS 5TH ADDITION (BEING REPLATTED AS LOT 2, BLOCK 1, MUNICH ADDITION)

Chairman Marback stated the applicant was requesting a variance to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces in order to construct a multi-use building with assembly and business uses.

Chairman Marback said the differences between a gymnasium and a business need to be considered. Mr. Blaskowski said the proposed uses would classify this building under the health club definition in the 2012 International Building Code (IBC), which is an assembly use which would require one parking space per 60 square feet.

Jeff Welch, Jiran Architects, said both he and the applicant had considered the use a health based office with the focus being on fitness training. He said the assembly occupancy definition has doubled the parking requirement which will be almost impossible to meet. He said there will be physical therapy and a training clinic as well as a child care drop-off service and coffee shop. He said the main difference is going to be that there is not a general medical practice but rather scheduled sessions and a lower volume of people. He said the physical training center will have smaller equipment and be more member driven. He also said there is a 30 foot easement on the rear side of the property and that cannot be built on. In addition, with what is left for space, while still being able to circulate vehicles, they can only fit 108 off-street parking spaces.

Lon Romsaas, Swenson, Hagen & Co., provided the board with a large drawing of the proposed site plan to explain the ingress and egress of the proposed variance. He said traffic will be able to use two access points as both ingress and egress points. He then said 108 off-street parking spaces would be sufficient if the use would be defined as assembly and not business.

Mr. Hoff asked what the plan is for pushing and, if needed, removing snow from the parking lot. Mr. Romsaas said they have already worked out the option of having it hauled away right away.
Tana Trotter, Proximal 50 Life Center, is the potential property owner and she said she does not anticipate there being constant business at this location but rather rushes before and after typical working hours and steady in between. She said statistics on Burleigh and Morton Counties show a dire need for physical and cardiology therapy.

Mr. Ubl asked if it is known what the square footage of utilized area would be without the locker rooms. Mr. Welch said it is less than 900 square feet.

John Sagsveen said he owns the business at 1237 West Divide and he is already getting overflow parking in his lot from other businesses and he feels a reduction of 50% on the parking requirement is a lot and his customers and clients have already had to go without parking in the past.

Mr. Hoff asked how they anticipate traffic to flow out of the parking lot with the coffee shop drive-through being there and having people that want to turn left onto Divide Avenue where there is no traffic light.

Mr. Ubl said it can be argued that not all of the space in the building will be utilized but they would still need more parking to meet the requirement.

Mr. Hoff said the needs and uses of the business could change down the road and there would be an issue then.

Mr. Romsaas said the area is being replatted to include one access point off of Divide Avenue and turning lanes to prevent traffic congestion. He said there are different interpretations of public space and some ordinance clarification is needed. He said people will not come to your business if parking is lacking and he understands that.

Ms. Trotter said she has the option to cap memberships if she is getting too busy and that she cannot force workout times on people but she could monitor daily activity to see what is working.

Mr. Welch said there will be a finite low amount of equipment to allow space for access for clients as it is going to be more for clinical health than everyday fitness.

Mr. Ubl said this is not the same as every day office space and that there are issues with a 1:60 ratio and there is no happy medium.

Ms. Trotter said there is no pool, running track or basketball courts so it does not really qualify as a health club or community center such as the YMCA.

Ms. Clark said there is a very broad option of things to consider with this request and she thinks they should be supportive of the staff's findings. Mr. Blaskowski said they can

track ordinance issues and amend them as needed but there is no in between classification for retail and assembly uses.

Mr. Ubl said the definition of hardship is limited and he is trying to understand a way to make the building fit the property. He said he would like to continue the request to the September meeting of the Board of Adjustment in order to allow staff to work with the architect, engineer and applicant to resolve the issue of the size of the building.

Mr. Romsaas said by ordinance, the board can clarify the interpretation of the ordinance in addition to the variance request.

Chairman Marback said even if the use was solely for fitness, they would still be 32 spaces short. He said he is open to continuing the request and asked if a number of 108 spaces is fixed.

Ms. Trotter said it is pretty fixed and that the breakdown of people using the facility at one time for how much equipment and space there is it might only be 54 people at once.

Ms. Clark said she is supportive of new businesses but she is hesitant when its new construction already having to borrow space from the neighbors.

Mr. Blaskowski said staff does not have the ability to find an in between number of required off-street parking for assembly spaces.

Ms. Trotter said she is completely comfortable with 108 spaces and she has thought about and planned and worked out the issues. She said she will be open 14-16 hours per day and all of the spaces will never be full every hour. She said she would never put her business at risk in the off chance it would not work out.

Mr. Hoff asked what the applicants options are if they deny the request. Ms. Wollmuth said they would have fifteen days from the receipt of the letter of denial to appeal the decision to the City Commission. She said it would be in their best interest to have the request submitted by August 18th in order to be on the agenda for the August 26th City Commission meeting.

Mr. Hoff then asked if would be an option to eliminate the second floor of the building as that would remove approximately 3000 square feet. Ms. Trotter said if that was done the whole point of the services offered would be lost.

Comments received on this request are attached as Exhibits A and B.

MOTION: A motion was made by Mr. Ubl to deny the variance to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces in order to construct a multi-use building with assembly and business uses. The motion was seconded by Mr. Hoff. With Board Members Clark, Hoff and Seifert voting in favor of the motion, the motion was approved and the variance request was denied. Chairman Marback opposed the motion.

VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) – LOTS 3-4, BLOCK 19, STURGIS ADDITION (1317 EAST FRONT AVENUE)

Chairman Marback stated the applicant is requesting a variance to reduce the required amount of off-street parking spaces from fifty-three (53) off-street parking spaces to four (4) off-street parking spaces in order to convert an existing building into a multi-use building with assembly and business uses.

Gina Padilla, Big Muddy Cross-Fit, said the growth in Bismarck has resulted in an influx of people and an interest in maintaining a healthy lifestyle which is not always easy. She said an ideal property has been found to be purchased and it will only be a fitness facility and some storage space for their large equipment. She said it is basically a warehouse for workouts but floor space use is limited to the area around the pull-up rig that will only allow ten people utilizing the space at a time. She said the workouts are fast and intense and not more than 30 minutes long and sometimes only 15 minutes and depending on the type of class, five people can be in each session as there will be one employee staffed at a time to conduct the class.

Ms. Wollmuth said any required parking would have to be paved and the other part of the request is that the off-street parking stay a gravel lot. She said if it were paved then eight parking spots could fit.

Joe Eckert said he owns two houses near the property as well as the Our Place Tavern and he asked what the plans are for snow removal at this location. He said the prior owner dumped their snow on his property and any water run-off drained to his property as well. He said there needs to be a channel across the sidewalk to the curb to allow for proper drainage because the building sits too low for water to drain away from it.

Ms. Padilla said they do not have any snow removal plans yet but they are aware of the drainage issue and are working with an engineer on different ways to fix the problems.

Bob Henschel, 222 South 14th Street, asked if since there will be only four spaces then would they make it into eight if it is paved. He said other business in the area fill their parking lots and any overflow has to park in the street.

MOTION: A motion was made by Mr. Hoff to approve the variance to reduce the required amount of off-street parking spaces from fifty-three (53) off-street parking spaces to four (4) off-street parking spaces in order to convert an existing building into a multi-use building with assembly and business uses, with the condition that 1250 square feet of concrete be poured within 12 months to allow for eight off-street parking spaces.
The motion was seconded by Ms. Clark. With Board Members Hoff, Seifert and Marback voting in favor of the motion and Board Members Clark and Ubl opposing the motion, the motion died.

Ms. Clark asked how many spaces could fit if paved. Mr. Blaskowski said a site plan could include eight 9x18 foot spaces but one and a half of them need to be handicapped accessible.

MOTION: A motion was made by Ms. Clark to approve the variance to reduce the required amount of off-street parking spaces from fifty-three (53) off-street parking spaces to four (4) off-street parking spaces in order to convert an existing building into a multi-use building with assembly and business uses, with the condition that the staff findings but amended to allow for special circumstances and the requirement of concrete being poured within 12 months to allow for eight off-street parking spaces.
The motion was seconded by Mr. Hoff. With Board Members Clark, Hoff, Seifert and Marback voting in favor of the motion and Mr. Ubl opposing the motion, the motion was approved and the variance request was approved.

Mr. Romsaas, on behalf of Proximal 50 Life Center, returned to the Board and said their only options are to give up on their project, appeal their request to the City Commission or look at what else they can do by illuminating uses. He said they have a strict timeline on this project and per parliamentary rules, he requests that the member who made the motion amend it be a motion to continue the request to the next meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Ubl to allow an amendment to the motion made by Mr. Hoff to deny the variance request to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces in order to construct a multi-use building with assembly and business uses.
The motion was seconded by Mr. Hoff. With Board Members Clark, Hoff, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved.

Mr. Hoff amended his motion from denying the request to continuing the request to the next meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Ubl to approve the amendment to the motion made by Mr. Hoff to instead continue the variance request to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces in order to construct a multi-use building with assembly and business uses to the next meeting of the Board of Adjustment.
The motion was seconded by Mr. Hoff. With Board Members Clark, Hoff, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved.

OTHER BUSINESS

Chairman Marback and Mr. Hoff said they have concerns about numerous unmoved vehicles at two different auto shops on Main Avenue. Chairman Marback said CK Auto was required to put a fence around the vehicles at their business and he wonders if this business can have

to do the same. Mr. Blaskowski said he will look into it and that it is easier to enforce those requirements if the vehicles are unlicensed.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 6:06 p.m. to meet again on September 4, 2014.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman

Exhibit E.

Hilary Balzum

From: cobplan
Sent: Wednesday, July 30, 2014 4:27 PM
To: Jenny Wollmuth
Cc: Hilary Balzum
Subject: FW: Variance for off-street parking

From: Laura Kourajian [mailto:[redacted]
Sent: Wednesday, July 30, 2014 3:54 PM
To: cobplan@nd.gov
Cc: Chad Kourajian
Subject: Variance for off-street parking

To whom it may concern:

My husband and I received a notice of a request for a variance for property that is near a condo we own on West Owens Ave. The variance is being requested by the First State Bank of Munich and is seeking a reduction in the number of required off-street parking spaces from 214 to 108.

I am pretty sure overflow parking -- and there will be a need for overflow parking -- won't likely affect our property, but granting the variance just doesn't seem like a good idea. It's been my experience that often even the minimally required number of off-street parking spaces are enough to accommodate parking needs for businesses.

My understanding from Jenny Wollmuth in the Planning Division is this building is zoned multi-use and is being used for a gym/rehab facility, a Caribou coffee shop and possibly a bank or other businesses. The gym/rehab facility alone will require short-term parking beyond in-and-out, so the likelihood is very strong there will be a need for overflow parking. I don't believe Divide Avenue accommodates parking, so where will those customers park?

Asking for the variance doesn't seem to be the best business practice. Granting the variance doesn't seem like the best civic practice.

Regards,

Laura Kourajian

Exhibit B.

HORIZON
FINANCIAL BANK

Munich Bancshares, Inc.

Munich
416 Main Street
PO Box 9
Munich, ND 58352
Phone: 701-682-5331
Fax: 701-682-5334

Osnabrock
329 Broadway
PO Box 67
Osnabrock, ND 58269
Phone: 701-496-3482
Fax: 701-496-3582

Devils Lake
204 Highway 2 West
PO Box 880
Devils Lake, ND 58301
Phone: 701-665-2020
Fax: 701-665-2021

Bismarck
1207 West Divide Ave.
Bismarck, ND 58501
Location opening in fall 2014

Online
HorizonFinancialBank.com

August 8, 2014

Jiran Architects
Attn: Jeff Welch

Per our conversation of August 5, 2014 with regard to Tana Trottier's project. Upon review of her plan, it appears that she will have more than sufficient parking for her building needs. If she needs additional parking before and after business hours that will not pose a problem for Horizon Financial Bank.

We look forward to seeing her building progress as planned. It will be a great addition to the city. If you should have any further questions, please feel free to contact me.

Respectfully,

John Vollmer
CEO

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