

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
APRIL 1, 2010**

The Bismarck Board of Adjustment met on April 1, 2010 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Board members present were Blair Ihmels, Acting Chair; Warren Tvenge; Jennifer Clark; and Ken Heier;

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

Others present were Gary Marchus, 9321 Plainview, Bismarck; Jerry Doan, 711 E. Sweet Avenue, Bismarck; Dave Barth, 311 S. 7th Street, Bismarck; and Dave Tschider, 418 E. Rosser Avenue, Bismarck.

MINUTES

Acting Chair Ihmels asked for consideration of the October 29, 2009 minutes. Ms. Clark asked for an explanation of the secretary's note on the October 29, 2009 minutes. It was explained a quorum (four of six members) is required to assemble. In order to approve a variance, four concurring votes for approval must be cast. A variance may be denied by majority vote.

MOTION: A motion was made by Ms. Clark and seconded by Mr. Tvenge to approve the minutes of the October 29, 2009 meeting as presented. With all members voting in favor, the minutes were approved.

VARIANCE – GARY MARCHUS – 701 E. SWEET AVENUE

Mr. Marchus requested a variance to obtain a building permit for a nonconforming, undersized lot. Acting Chair Ihmels read the applicant's reason for request which stated: "Applicant wishes to install a billboard on a nonconforming, undersized lot. In the CG Zoning District, the minimum required lot area is 5,000 square feet. The subject lot is 3,330 square feet. The minimum width for lots in the CG District is 50-feet. The subject lot is 37-feet. Because this is an undersized lot, a building permit cannot be issued without approval of a variance. A billboard is a permitted use in the CG Zoning District and would be in compliance with the zoning of this property". Mr. Ihmels asked if there was anything to be added.

Mr. Marchus stated that the question before the Board was not one of whether a billboard was a permitted use for the lot, as it is zoned CG and billboards are permitted in CG zoning, but rather, if consent would be given to issuing a building permit for an undersized lot, as the size of the lot is what makes it nonconforming.

Mr. Heier inquired as to the specific location of the proposed billboard and Mr. Marchus replied directly west of the building currently there; also that it would be 6-feet by 8-feet in size.

Ms. Clark asked if the current building on the property was a rental and if the billboard would advertise for a business on the premises or otherwise. Mr. Marchus affirmed it was a rental, and that advertising would be for other businesses or perhaps his own needs.

Dave Tschider, representing Dave Barth who owns the business directly to the south of the applicant's property, encouraged the Board to deny the request, citing the following:

- 1.) According to City Ordinance, a 50-foot lot is required to build on that lot, but this lot is 37-feet, approximately 26% below the required width, not only a foot or two.
- 2.) The property is currently being used as a residence. The sign is not related to the residence or a residential purpose; that the sign would be a commercial purpose and this request essentially changes the use of the property from a residential use to a commercial use.
- 3.) Concern that on the application there are no size restrictions for the size of the proposed billboard and there may be a precedent set for commercial billboard companies to request variances to build large signs in areas zoned, but not suitable for them.
- 4.) Safety issues exist on this hillside and motorists do not need additional distractions here.
- 5.) Concern that approval of this request would provide an open variance to do anything the applicant wishes on the property.
- 6.) Zoning laws and variance guidelines are in place to provide community benefit, but the purpose of this application is self-serving.

Mr. Tvenge noted the Board of Adjustment was allowed to grant approval of a variance based on hardship.

Jerry Doan, owner of Snooper's Tons of Fun, Giovanni's Pizza, and the strip mall south of the applicant's property, stated he was in concurrence with many of the issues raised by Mr. Tschider. Mr. Doan is concerned with the fact that the property has a residence on it that probably shouldn't be a residence, but now Mr. Marchus wants to put the property to commercial use as well. He also agreed there is a safety factor involved because of the traffic speeds and the hill, coupled with a lot of pedestrian traffic crossing 7th Street.

Dave Barth, who owns the tire store at the bottom of the hill (south of the applicant's property), agreed to the safety issues previously cited.

Mr. Marchus reiterated that because the zoning allows billboards, the fact that the lot is nonconforming becomes the focus of the variance request. In response to the safety issues, Mr. Marchus noted that one of the busiest intersections in town is located one block to the north of his property and that there are signs in that area. As far as traffic accidents, these are accidents that have already happened and the causes have not been made known, but are probably not due to signs. Regarding the statement made that he is just trying to make more money, he responded by saying he is no different from Mr. Barth who also has a sign. Mr. Marchus added he is just trying to utilize the property that he has.

Ms. Clark asked how long Mr. Marchus has owned the property and he replied since 1986.

Mr. Heier asked what the specific hardship was in this application, noting there are setback requirements for a residential use already not being met with the existing building on the property. For instance, if the variance was to add a deck onto the house, setbacks would not be adequate and would not meet the requirements. Mr. Marchus replied that the sign, 6-foot x 8-foot in size, will be on a six-inch pole, ten-feet off the ground and there will be little interference.

Ms. Clark asked if zoning ordinance requirements have changed, becoming more stringent, since 1986? Mr. Ziegler stated he would have to check on that. Mr. Greenquist added that zoning ordinances are always being updated, but changes occur to properties as well. The property in question appears to be a combination of lots, as in the early days, lots tended to be much smaller.

Mr. Ihmels asked for a definition of the CG-Commercial District. Mr. Greenquist read from the ordinance: "...The CG commercial district is a heavy commercial area located outside the central business district to provide commerce and service to the City of Bismarck and surrounding regional market. The CG commercial district is established to promote the general purpose of this article, the specific intent of this section is:

To encourage the continued expansion of the commercial facilities within the city without creating increased vehicular congestion in the existing central business district;

To provide an orderly and comprehensive expansion of commercial services within the city;

To prevent commercial encroachment on existing residential districts;

To encourage the development of a conveniently arranged district offering a broad range of commercial and professional services in a relaxed atmosphere and in an area where adequate off-street parking will be provided." Mr. Greenquist then stated that item #7 in Service Group B, an outdoor advertising sign, billboard, is a permitted use in this district.

Mr. Heier asked Mr. Ziegler what the classification of this sign would be to which Mr. Ziegler replied it would likely be classed as a billboard sign, for which there are maximum size limitations but no minimum size requirements. He added that under the Uniform Sign Code, the sign would have to meet all legal setbacks, in this case, 15-feet.

Mr. Ihmels commented that if the variance were approved, there would still be other requirements Mr. Marchus would have to meet in order to obtain a building permit for the sign. Mr. Ziegler said that was correct.

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 CG 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 deny the request for a variance to obtain a building permit for a nonconforming, undersized lot based on a lack of hardship. Mr. Heier seconded the motion and with all members voting to deny, the motion to deny the request was approved.

OTHER BUSINESS

Mr. Greenquist announced that the three-year terms of service for both Warren Tvenge and Larry Thompson expire with this meeting, and it is the wishes of both to retire their positions. New applicants will be sought.

ADJOURNMENT

There being no further business, the meeting of the Bismarck Board of Adjustment was adjourned to meet again on May 6, 2010.

Respectfully Submitted,



Kim Riepl
Recording Secretary

APPROVED:



Michael Marback, Chair