BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
September 3, 2015

The Bismarck Board of Adjustment met on September 3, 2015 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

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

Member Jeff Ubl was absent.

Staff members present were Brady Blaskowski – Building Official, Jenny Wollmuth – Planner, Daniel Nairn – Planner and Hilary Balzum – Community Development Adminstrative Assistant.

MINUTES:

Chairman Marback called for approval of the minutes of the July 2, 2015 meeting of the Board of Adjustment.

Mr. Heier said the motion for the request at 1623 East Avenue B was to reduce the setback to 18 feet, not 16 feet. Mr. Hoff said that motion was also seconded by him, not Mr. Heier.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Heier to approve the minutes of the July 2, 2015, meeting with corrections. With Board Members Clark, Heier, Hoff, Marback and Seifert voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-01(4) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL)(FRONT YARD) - LOT 2, BLOCK 8, NORTHRIDGE ESTATES SECOND SUBDIVISION (8025 RIDGELAND DRIVE)

Chairman Marback stated the applicants, Steven and Mary Kelsch, are requesting a variance to reduce the front yard setback, located along the northwest side of the property, from forty (40) feet to twenty-eight (28) feet for the purpose of constructing an accessory building.

Ms. Wollmuth gave an overview of the request including the following findings:

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 RR-Residential 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 not the minimum variance that would 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.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Mr. Kelsch explained that the spot where they would like to place the structure is completely flat, otherwise it would have to be all the way in the back of the property and would be very difficult to access in the winter time. He said putting it anywhere else would require a lot of fill dirt to be brought in and he would also have to remove some trees in doing so.

Mr. Hoff asked how large the building would be. Mr. Kelsch said it would be 24 feet by 32 feet and would act as storage as well as additional parking room as their children are now grown and will need vehicles of their own. He said they have been there since it was built in 2007 and preferred the lot because it is almost three acres total.

Ms. Clark asked if the garage door would face south towards the existing driveway. Mr. Kelsch said it would and that they can then avoid having to remove mature shade trees.

Ms. Clark asked whose idea it was to place the house where it is. Mr. Kelsch said the developer wanted it on top of the hill for drainage purposes otherwise the neighboring lots would flood and other problems would occur elsewhere as well if his lot did not drain properly.

Mr. Hoff said he has an issue with the lack of planning that was done when the house was originally built.

Mr. Kelsch said there would not be any utility lines or anything else in the way of where he wants to put the building and he also would not impede any views by placing it where he has requested.

Mr. Hoff asked if it could be reduced to 24 feet by 24 feet in order to fit better on the lot and it would then also be a little bit further away from his neighbor's property.

Ms. Wollmuth said the side yard requirement in this zoning district is 15 feet.

Ms. Clark suggested the size of the building could be decreased and it could then be placed at the end of the parking slab where only a slight amount of fill dirt would have to be brought in.

Mr. Kelsch said he would have to bring in more fill dirt and if he cannot do the desired size as proposed then he will probably just add onto the existing garage. He said that would require him to have footings poured which would be more expensive compared to a slab on grade structure.

Ms. Clark said a smaller dimension might be more easily supported by the Board.

Mr. Seifert said either the size should be reduced or it should be moved to the back of the property.

Mr. Kelsch said it would be difficult to build this structure anywhere else as the lot is very oddly shaped.

Chairman Marback opened the public hearing.

There being no comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Mr. Hoff to deny the variance to reduce the front yard setback, located along the northwest side of the property, from forty (40) feet to twenty-eight (28) feet for the purpose of constructing an accessory building for Lot 2, Block 8, Northridge Estates Second Subdivision (8025 Ridgeland Drive). The motion was seconded by Mr. Heier and with Board Members Clark, Heier, Hoff, Marback and Seifert, the motion was approved and the variance was denied.

VARIANCES FROM SECTION 14-04-06(2)(E)(2) OF THE CITY CODE OF ORDINANCES (R10 – RESIDENTIAL)(ROW HOUSE)(LOT WIDTH) – THE WEST 50 FEET OF LOTS 4-6, BLOCK 51, NORTHERN PACIFIC 2ND ADDITION (1012 EAST C AVENUE)

Chairman Marback stated the applicant, Shawn Damberger, is requesting a variance to reduce the required lot width for a row house (twin home) from thirty (30) feet to twenty-five (25) feet, for the purpose of constructing a 2-unit row house (twin home).

Ms. Wollmuth gave an overview of the request including the followings findings:

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 R10-Residential 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 not the minimum variance that would 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.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Mr. Damberger said the dimensions of the duplex would be 50 feet by 150 feet and it would be easier for taxation purposes to have two separate twinhome tax parcels instead of one duplex tax parcel. He said there are not any comparables available for financing purposes, as there are not any twin homes recently sold in that area.

Mr. Heier said the firewall rating changes from a twinhome to a duplex and an adequate firewall could not be done here between the garages with the way it is proposed to be built.

Mr. Damberger said he has a reputable architect working on this project and he is confident that the building would be constructed appropriately.

Mr. Blaskowski explained that a row house does require one two-hour fire wall separation, not two one-hour walls, but the fire partition is specific to the row house designation and the plans will need to show that.

Ms. Clark said the main reason the request is here is because the lot is very small.

Ms. Wollmuth said the request to construct a two-unit row house would require the lot to be split into two 25 foot wide parcels and that the minimum lot width requirement in this zoning district is 30 feet. She said if the applicant chose to construct a side by side duplex a lot split to create two 25 foot wide parcels would not be required.

Mr. Blaskowski said the proposed building would not look any different as a duplex versus a twin home, but the row house provisions are there to avoid very narrow lots being created.

Ms. Clark said she understands if there are concerns from the neighbors, but the truth is that the lot will be tight no matter what is built on it.

Mr. Damberger said the lot has been empty for several years and it will stay that way without some hardship relief. He said he purchased it with the intent of building two units with a vision of possibly occupying one and renting out or selling the other. He said

there is also an overhead power line that has a setback requirement but he will still meeting the parking requirement as well as install a privacy fence and grass and trees.

Chairman Marback opened the public hearing.

Written comments submitted in opposition to this request are attached as Exhibit A.

There being no further comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Mr. Seifert to approve the variance to reduce the required lot width for a row house (twin home) from thirty (30) feet to twenty-five (25) feet, for the purpose of constructing a two-unit row house (twin home) for the West 50 feet of Lots 4-6, Block 51, Northern Pacific 2nd Addition (1012 East C Avenue), as based on the characteristics and special circumstances of substandard lot dimensions. The motion was seconded by Ms. Clark and with Board Members Seifert, Marback and Clark voting in favor of the motion and Board Members Heier and Hoff opposing the motion, the variance not approved by the Board of Adjustment, as four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07.

VARIANCE FROM SECTION 14-04-01(4) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL)(FRONT YARD) – LOT 10, BLOCK 7, COPPER RIDGE 3RD SUBDIVISION (6800 TIFFANY DRIVE)

Chairman Marback stated the applicant, Investcore, Inc., is requesting a variance to reduce the front yard setback, located along the east side of the property, from forty (40) feet to thirty-eight feet nine inches (38 feet 9 inches) for the purpose of constructing a single-family home.

Ms. Wollmuth gave an overview of the request, including the following findings:

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 RR – Residential 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 reasonable use of the property.

4. The granting of the variance is not in harmony with the general purpose and intent of the Zoning Ordinance.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Mr. Seifert asked if the comment received regarding footings and foundation being poured yesterday at this location has been looked into.

Ms. Wollmuth said footings were poured and inspected at the end of July; however, it is possible that garage floor has been poured in the last couple of days. She said the error was discovered when the lot surveyed which was after the footings were inspected.

Mr. Heier said these things happen and they need to be considered inconsequential.

Kim Borke, Invescore, Inc., said she is unsure of when the floor was poured and then said she has nothing more to add except that this was a simple mistake and completely unintentional.

Mr. Blaskowski said the lot survey originally provided did not have a house footprint on it, as that is not a current requirement of a lot survey done beyond the City limits. He said a setback of 40 feet was denoted and the error came when the foundation was poured and it encroached into that setback.

Mr. Hoff asked why the garage floor has been poured if the variance has not been granted yet.

Ms. Borke said she is unsure of that schedule, but they are still working to correct the problem by being here now.

Mr. Seifert said the garage floor should not have been poured without the variance being granted, but that this was probably an honest mistake.

Chairman Marback opened the public hearing.

Written comments received in opposition to this request are attached as Exhibit B.

There being no comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Mr. Seifert to approve the variance to reduce the front yard setback, located along the east side of the property, from forty (40) feet to thirty-eight feet nine inches (38 feet 9 inches) for the purpose of constructing a single-family home on Lot 10, Block 7, Copper Ridge 3rd Subdivision (6800 Tiffany Drive), based on special circumstances that the work has already been done and a mistake was made. The motion was seconded by Mr. Heier and with Board Members Heier, Hoff, Marback, Seifert and Clark voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCE FROM SECTION 14-04-19(6)(B)(5) OF THE CITY CODE OF ORDINANCES (FP – FLOODPLAIN DISTRICT) – LOT 5, BLOCK 3, RIDGEVIEW ACRES 2ND SUBDIVISION (2200 OAHE BEND DRIVE)

Chairman Marback stated the applicant, Bismarck Public Schools, is requesting a variance to allow the construction of a 1,653 square foot addition to Prairie Rose Elementary School, which is located within the Special Flood Hazard Area (SFHA) or 100-year Floodplain, that will to be constructed below the required elevation of two (2) feet above the Base Flood Elevation (BFE).

Ms. Wollmuth gave an overview of the request, including the following floodplain provisions:

1. The danger to life and property due to flooding or erosion damage;

2. The danger that materials may be swept onto other lands to the injury of others;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location, where applicable;

6. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion;

7. The compatibility of the proposed use with the existing and anticipated development;

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Ms. Wollmuth then gave the following findings:

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 RR-Residential 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 not 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.

Floodplain Variance

1. The proposed variance may increase flood levels during the base flood discharge.

2. The variance is not the minimum necessary, considering the flood hazard, to afford relief.

3. The applicant has not shown good and sufficient cause for granting the variance.

4. A failure to grant the variance would not result in exceptional hardship to the applicant.

5. The granting of the variance may result in increased flood heights, additional threats to public safety and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Chairman Marback asked if they would still be within the requirements if Federal Emergency Management Agency (FEMA) were to perform an audit.

Mr. Blaskowski said he has spoken with the State Water Commission as well as FEMA and he was advised that if approved, the variance would not put the City at risk of being removed from the National Flood Insurance Program (NFIP).

Lon Romsaas, Swenson, Hagen & Co., said a difference of 5.75 feet would be required to bring the floor of the addition to where it needs to be. He said they would like to stay at the same elevation if at all possible. He said the school has two portables that will be moved and the gym is currently dual purpose so there is not any room to store lunch tables when the gym is in use.

Richard Bohrer, Architectural Concepts, Inc., explained that the addition is needed to store the lunchroom tables and gym equipment and the slope that would be currently required by the zoning ordinance would make moving tables around dangerous as well.

Darin Scherr, Bismarck Public Schools, said an equity project was approved in 2012 to make Prairie Rose Elementary School more equitable. He said additions are also coming to Lincoln Elementary School as well as Dorothy Moses Elementary School and those improvements are strictly for equity and safety.

Chairman Marback opened the public hearing.

Jo Anne Blaser, 6430 Sully Drive, said she had an extra garage built on her property and she was required to bring it up six feet because of the zoning requirements. She said she does not think it is fair not to require the school to build their addition up two feet above the BFE when FEMA and the City made her comply to their requirements.

Ms. Wollmuth said the accessory building constructed by Ms. Blaser was new construction not an addition or alteration to an existing, pre-FIRM structure.

Kevin Nagel, 6324 Apple Creek Drive, said he wanted to a slab on grade building and he was informed that it would have to be elevated to two feet above the BFE. He asked if the new requirement will be only two feet above BFE.

Chairman Marback said there are differences with the requirements for new construction compared to a building addition.
Mr. Blaskowski said the requirements are based on whether the property is pre-FIRM or post-FIRM and if it is considered a substantial improvement or not.

Ms. Clark asked what the time frame is for the text amendment being proposed for this zoning ordinance. Ms. Wollmuth said it has to go through two Planning Commission meetings, and two City Commission meetings so the projected completion date would be near the end of October.

Ms. Clark asked what the hardship is with this request. Mr. Scherr said the approved equity projects need to be completed for the sake of the needs of Bismarck Public Schools.

There being no further comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Ms. Clark to approve the variance to allow the construction of a 1,653 square foot addition to Prairie Rose Elementary School, which is located within the Special Flood Hazard Area (SFHA) or 100-year Floodplain, that will to be constructed below the required elevation of two (2) feet above the Base Flood Elevation (BFE) on Lot 5, Block 3, Ridgeview Acres 2nd Subdivision (2200 Oahe Bend Drive), based on special circumstances unique to the parcel and the importance of the services provided by the school to the community and there are no alternative locations for the proposed addition on site as the entire property is located within the Special Flood Hazard Area. The motion was seconded by Mr. Seifert and with Board Members Heier, Hoff, Marback, Seifert and Clark voting in favor of the motion, the motion was approved and the variance was granted.

OTHER BUSINESS

BYLAWS OF THE BOARD OF ADJUSTMENT

Chairman Marback asked if anybody has anything to add or change in the proposed by-laws or if it would be preferred to continue discussion to the next meeting.

Ms. Clark said she would like to review them over the next month so they are fresh in her mind for the next meeting.

Mr. Hoff asked if the by-laws address regular meeting attendance requirements by the members. Ms. Wollmuth said it is addressed in item 4C of the by-laws and specifies that a member may be removed because of poor attendance.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 6:30 p.m. to meet again on October 1, 2015.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman

Exhibit H.

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, September 02, 2015 2:33 PM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jason Tomanek; Jenny Wollmuth; Kim Lee
Subject: FW: Variance comment for proposed variance at 1012 East C Avenue

-----Original Message-----
From: Thomas Fitzsimmons [mailto[redacted]
Sent: Wednesday, September 02, 2015 1:50 PM
To: Planning - General Mailbox
Subject: Variance comment for proposed variance at 1012 East C Avenue

Hello:

We were sad to see that mature, healthy trees were cut down at 1012 East Avenue C. The new owner of the lot told us it was necessary so that driveways could be laid across the boulevard to serve the two unit row house he would like to build there.

Two units may mean two families, and we know that families often have two cars, or more. Where will the cars be parked? If there is room at the development for only one car per unit, that could mean any other cars will be parked on streets like 10th or 11th. As the City fathers know, the streets around Bismarck High School are already choked with parked cars during school hours.

Cars parked on boulevard driveways, or on the street, make for an unattractive neighborhood, and can signal the neighborhood's decline. Many Bismarck residential streets and avenues, especially those between Boulevard and Rosser, are simply littered with parked cars.

At the least, we think that a one-car garage with garage door be provided for each unit. The garages could be built at ground level in front of or beneath each unit.

Tom and Catherine Fitzsimmons,
614 North 11th Street.

Exhibit D.

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, September 02, 2015 10:17 AM
To: dfrank@bismarcknd.gov
Cc: petenbarb79@gmail.com; Jenny Wollmuth; Brady Blaskowski; Carl Hokenstad; Daniel Nairn; Kim Lee; Jason Tomanek; Hilary Balzum
Subject: FW: variance from set back Tiffany Drive

From: Barbara Finley [mailto:[redacted]
Sent: Wednesday, September 02, 2015 8:38 AM
To: Planning - General Mailbox
Subject: variance from set back Tiffany Drive

I am not going to attend the 5 P.M. meeting on 9/3/2015 because I am working and I suspect many other people will be doing the same. Is the City Code of Ordinances just a recommendation or is it law? If it is law and a variance is expected by the builder for poor planning or shoddy work, it isn't much of a law. I mention shoddy work because the builder is responsible for verifying the building setbacks and building dimensions. I do not believe that the giving of a variance sends much of a message to the builders that if you do shoddy work, no problem you can a variance. This is proven by the continuing of construction (pouring of concrete), at this site this morning, Sept. 2, 2015, when the request for a variance isn't scheduled until Sept. 3, 2015. I find this the height of indifference to the City Code that they don't even wait to the variance bring rubber stamped to continue building!

Pete Finley

FROM DOT FRANK:

BMHBA Building Officials Roundtable

Good morning,

We're excited to host the Fall Building Officials Roundtable on Thursday, Oct. 22 from 11:30 to 1 p.m. at the Bismarck Public Works Building. Please plan to attend. Our members genuinely appreciate your participation and look forward to this event to learn about anticipated changes for the 2016 construction season and a review of 2015. Lunch will be provided.

Dot Frank, Executive Officer
Bismarck-Mandan Home Builders Association
701-222-2400 (o) 701-527-5767 (c)
www.bmhba.com