BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
December 3, 2015

The Bismarck Board of Adjustment met on December 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 Hoff, Chris Seifert and Michael Marback.

Members absent were Ken Heier and Jeff Ubl.

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

MINUTES:

Chairman Marback called for approval of the minutes of the November 5, 2015 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Seifert and seconded by Ms. Clark to approve the minutes of the November 5, 2015, as presented. With Board Members Clark, Hoff, Marback and Seifert voting in favor, the minutes were approved.

Ms. Clark stated she has an indirect conflict with the following variance request as she is a member of the Bisman Community Food Cooperative and that she will act on the request upon approval of a motion from the Board.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to allow Ms. Clark to remain on the Board of Adjustment as an active member for the following variance request. With Board Members Hoff, Marback and Seifert voting in favor, the motion was approved.

VARIANCES FROM SECTION 14-04-12(8) OF THE CITY CODE OF ORDINANCES (CG – COMMERCIAL DISTRICT)(REAR YARD) AND SECTION 14-04-12(6) OF THE CITY CODE OF ORDINANCES (CG – COMMERCIAL)(FRONT YARD) - THE EAST 130 FEET OF LOTS 1-6, BLOCK 73, ORIGINAL PLAT (711 EAST SWEET AVENUE)

Chairman Marback stated the applicants, Jerry and Renae Doan and Bisman Community Food Cooperative, are requesting variances to reduce the required rear yard setback located on the west side of the property from ten (10) feet to zero (0) feet for the purpose of constructing a loading dock addition to the existing building and a variance to reduce the required front yard located along the east side of the property from fifteen (15) feet to

zero (0) feet in order to bring the existing building into conformance with the zoning ordinance.

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 CG-Commercial 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 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 purpose and intent of the Zoning Ordinance.

Ms. Wollmuth then gave the following additional information:

1. The Board of City Commissioners approved an appeal to the April 13, 2015 Board of Adjustment decision to deny variances from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required number of off-street parking spaces from fifty-one (51) spaces to thirty-two (32) spaces for a single-tenant retail building (Bisman Community Food Cooperative) and a variance from Section 14-03-05(3) of the City Code of Ordinances (Supplementary Provisions) to allow required off-street parking spaces to be placed within the required sight triangles located at the intersection of East Sweet Avenue and South 8th Street and at a proposed access point adjacent to South 8th Street.

2. A private agreement-easement for access and parking was established by the property owners of 311 South 7th Street and 711 East Sweet Avenue in July 1993. The agreement allows both properties to utilize parking spaces along the eastern portion of the property located at 311 South 7th Street (A & B Pizza) and allows an additional access to 711 East Sweet Avenue (Snoopers Tons of Fun / Bisman Community Food Cooperative). The proposed variance request is not intended to alter or terminate the private agreement-easement between the property owners.

3. A building permit was issued in July 1993 for a 100' x 80' single story building (Rasenbaum's Leasing) with mezzanine. Prior to obtaining the building permit a lot survey was completed by City Staff. Both the building permit and lot survey required a fifteen (15) foot front yard along the north and east sides of the property adjacent to East Sweet Avenue and South 8th Street. A fifteen (15) foot front yard was observed

along the north side of the property adjacent to East Sweet Avenue; however, a fifteen (15) foot front yard was not observed along the east side of the property adjacent to South 8th Street. The building was constructed with a zero (0) foot front yard setback along the east side of the property adjacent to South 8th Street. The certificate of occupancy was issued for the building in January 1994. A copy of the lot survey and building permit are attached.

4. A variance to reduce the required front yard setback adjacent to South 8th Street was not requested when the building was constructed; therefore, the existing building is considered non-conforming. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a nonconforming use as, "The use of a building or other structure or a tract of land which does not conform to the use or regulations of this title for the district in which it is located, either at the effective date of this title, or as a result of subsequent amendments which may be incorporated into this title."

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

Chairman Marback said he would like to address the request for the front yard variance first to bring the property into compliance with the zoning ordinance.

Chairman Marback opened the public hearing.

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 required front yard located along the east side of the property from fifteen (15) feet to zero (0) feet in order to bring the existing building into conformance with the zoning ordinance for the East 130 feet of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue), based on the need for the property to be brought into compliance as the building is already existing. The motion was seconded by Mr. Hoff and with Board Members Clark, Hoff, Seifert and Marback voting in favor of the motion, the motion was approved and the variance was granted.

Chairman Marback asked for comments on the request for a variance from the rear yard setback requirement.

Paul Breiner, Matrix Design, said the variance to eliminate the rear yard setback is needed in order to install a loading dock to accommodate the delivery needs of the facility. He said there is a transformer in place on the side of the building that they need to work around, so placing the loading dock addition where they have proposed would allow truck to maneuver up to the building. He said deliveries would be twice a day, each delivery taking approximately 20-30 minutes.

Mr. Hoff asked what the hardship is with this request.

Mr. Breiner explained that they are restricted to the proposed location because placing it anywhere else would force delivery trucks to cross the property line and there is also an overhang on the building to avoid. He said the existing dock is very small and not sufficient for the food cooperative.

Ms. Clark asked if the original plan shown when a parking variance was requested in April reflected a loading dock.

Mr. Breiner said those plans originally provided were conceptual and there would have been issues with keeping the existing loading dock due to the existing electrical transformer and difficult access to the delivery door.

Chairaman Marback opened the public hearing.

Tyler Demars, Bismarck Community Food Cooperative President, said the loading dock was discussed with staff in July and there seemed to be some confusion regarding the setback requirements. He said they are trying to open as soon as possible so approval of this variance would be very much appreciated.

Mr. Hoff asked if the loading dock will be at ground level or raised.

Mr. Breiner said delivery trucks would back in with the option to use a scissor lift and forklift and the dimensions of the loading dock would be six feet by eight feet.

Ms. Clark asked if the previous loading dock was also encroaching on the west side setback.

Mr. Breiner said it was just a small ramp to the door and the original ramp has already been removed, as well as some asphalt, in order to prepare for whatever it is they might need to do to accommodate delivery needs.

MOTION: A motion was made by Mr. Hoff to approve the variance to reduce the required rear yard setback located on the west side of the property from ten (10) feet to zero (0) feet for the purpose of constructing a loading dock addition to the existing building on the East 130 feet of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue), based on the unique characteristics of the parcel and the existing electrical transformer box. The motion was seconded by Mr. Seifert and with Board Members 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 said discussion of the bylaws of the Board of Adjustment will take place at the next meeting.

Ms. Clark said she did provide some suggestions to Planning staff if anybody would like to see them so they can be acted on at the next meeting.

Ms. Wollmuth said she will distribute Ms. Clark's suggestions prior to the next meeting of the Board of Adjustment.

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 January 7, 2016.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman