



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA**

May 5, 2016

Tom Baker Meeting Room

5:00 p.m.

City-County Office Building

MINUTES

1. Consider the minutes of the April 7, 2016 meeting of the Board of Adjustment.

REQUESTS

2. **Variations from Section 14-03-08(4)(q) of the City Code of Ordinances (Special Uses / Child Care Center) and Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) – Lots 1-8, Block 25, Casey's 4th Addition (106 Osage Avenue).**

Owner / Applicant: Good Shepherd Lutheran Church and Missouri Family YMCA

Board Action: approve continue table deny

ADJOURNMENT

3. **Adjournment.** The next regular meeting date is scheduled for June 2, 2016





STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

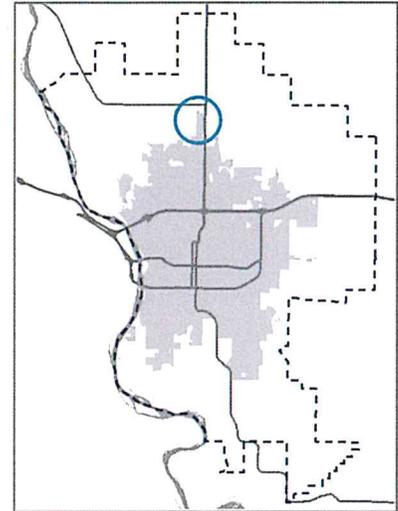
Agenda Item # 2
May 5, 2016

Application for: Variance

TRAKiT Project ID: VAR2016-004

Project Summary

Title:	Lots 1-8, Block 25, Casey's 4 th Addition (106 Osage Avenue)
Status:	Board of Adjustment
Owner(s):	Good Shepherd Lutheran Church
Project Contact:	Bill Bauman, Missouri Valley Family YMCA
Location:	In the southeast quadrant of the intersection of North Washington Street and East Divide Avenue.
Request:	Variations from Section 14-03-08(4)(q) of the City Code of Ordinances (Special Uses / Child Care Center) to reduce the required front yard setback for the proposed outdoor recreation area, located on the north side of the property adjacent to East Divide Avenue, from twenty-five (25) feet to twenty feet six inches (20'6") and from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to eliminate seventeen (17) off-street parking spaces required for the proposed child care center.



Staff Analysis

A special use permit was approved by the Bismarck Planning and Zoning Commission at their meeting of April 27, 2016, with the condition that the proposed variances must be approved by the Board of Adjustment.

A child care center is allowed as a special use in the R10 - Residential zoning district, provided certain conditions are met. The proposed child care center does not meet all five (5) provisions outlined in Section 14-03-08(4)(q) of the City Code of Ordinances (Special Uses / Child Care Center).

Prior to operating the proposed child care center, and as a condition of the approval of the special use permit by the Bismarck Planning and Zoning Commission, a variance to reduce the required front yard setback for the proposed outdoor recreation area, located on the north side of the property adjacent to East Divide

Avenue, from twenty-five (25) feet to twenty feet six inches (20'6") and a variance to eliminate seventeen (17) off-street parking spaces required for the proposed child care center would need to be approved.



The proposed child care center will operate as a summer program and an after school program and is intended to accommodate 90 children ages six (6) to twelve (12) years. The child care center will employ six

(continued)

(6) to eight (8) staff and the hours of operation will be Monday through Friday from June 4 to August 12 from 6:30am to 6:00pm and Monday through Friday from 3:00pm to 6:00pm during the school year.

Applicable Provision(s) of Zoning Ordinance

Section 14-03-08(4)(q) of the City Code of Ordinances (Special Uses / Child Care Center) states, "Child care centers may be permitted in all zoning district except RMH or MB districts, provided: 1) Each building shall provide not less than thirty-five (35) square feet of interior recreation area per child. Work areas, office areas, and other areas not designed for use of children may not be counted in the computation; 2) Each lot shall provide an outdoor recreation area of not less than seventy-five (75) square feet per child. The recreation area shall be fenced, have a minimum width of twenty (20) feet, a minimum depth of twenty (20) feet, be located on the same lot or parcel of land as the facility it is intended to serve, and must be located behind the building setback lines; 3) Adequate off-street parking shall be provided at the following ration: One space for each employee and one space for each ten (10) children; 4) Child care centers shall conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted by the City of Bismarck (Title 4 of the City Code of Ordinances – Building Regulations), and all requirements of the North Dakota Department of Human Services, and; 5) Child care centers shall comply with all applicable requirements relating to health and sanitation that have been adopted by the City of Bismarck (Title 8 of the City Code of Ordinances – Health and Sanitation), and all requirements of the North Dakota Department of Health."

According to the site plan and information submitted with the application, the proposed variance meets three of the provisions for approval for a child care center; it has adequate interior recreation areas, it conforms to the applicable requirements of the IBC and IFC, and it

complies with applicable requirements relating to health and sanitation requirements of the City of Bismarck and the North Dakota Department of Health. However, the site cannot accommodate the required seventeen (17) off-street parking spaces needed for the proposed child care center and the proposed outdoor recreation area is not setback the required twenty five (25) feet.

Required Findings of Fact

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 R10 – Residential zoning classifications.
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.

Staff Recommendation

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Attachments

1. Location Map
2. Site plan
3. Written Statement of Hardship



**CITY OF BISMARCK/ETA
APPLICATION FOR APPROVAL OF A VARIANCE
WRITTEN STATEMENT**

1. Property Address or Legal Description: 106 Osage Ave, Lots 1-8, Block 25, Cassey's 4th Addition, Bismarck

2. Location of Property: City of Bismarck Extraterritorial Area (ETA)

3. Type of Variance Requested: Set back distance 20' 6" versus 25' & parking variance - 6 employees and 1 space for each 10 children

4. Applicable Zoning Ordinance Chapter/Section: Section 14-03-03(q) of the City Code of Ordinances

5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

We are requesting a variance on the property line set back distance for a playground and also a variance for parking for the Y to secure a Special Use Permit to operate a grade school age school care program and summer care program for 90 grade school age children. The days and hours of operation at the Church will be Monday-Friday, 3:00 pm - 6:00 pm during the school year and Monday - Friday, 6:30 am - 6:00 pm in the summer. With the days and times of the planned school age care program, we will have little conflict with scheduled Sunday morning or Wednesday evening church activities.

We have the minimum length, width, and square footage available for the fenced play area on the north side grassy area of Good Shepherd Church. Available space is 20' x 91' for a total of 1820 sq ft (only 1075 sq ft is required for the play area with a minimum width of 20, so this proposed fenced area will meet the requirement). The on site fenced play area is required to be set back 25 feet from the property line. We have 40' 6" available from the property line to the building with an additional 5' of sidewalk to the street.

6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

If we are required to meet the full set back distance to the required on site fenced play area we would be unable to meet the requirements and unable to operate child care in the Good Shepherd Lutheran Church building and site.

In addition to the set back distance variance request, we will have 6-8 employees. We will have the employees park across the street in the south Osage parking area to reduce any impact to the on site parking requirements at Good Shepherd.

If a strict adherence to the variance is required, the YMCA will be unable to operate the grade school program that will provide much needed after school and summer care for 90 children resulting in hardship to their families.

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.

The variance of 4' 6" on the 25' set back is the minimum distance needed for the fenced area to meet its minimum width requirement.

The parking variance will cover the required 1 to 10 ratio of children and 6-8 employees. We will instruct the employees to park in the south lot across Osage Ave.

The granting of the variance will be in harmony with the general purpose and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
April 7, 2016**

The Bismarck Board of Adjustment met on April 7, 2016 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, Chris Seifert, Ken Hoff and Michael Marback.

Members absent were Jeff Ubl and Ken Heier.

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 January 7, 2016 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 January 7, 2016, as presented. With Board Members Clark, 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 4, BLOCK 2, PINE MEADOWS SUBDIVISION (8201 WHITE OAK LOOP)

Chairman Marback stated the applicants, Jason and Chris Dirk, are requesting a variance to reduce the front yard setback located along the north side of the property, from forty (40) feet to thirty-five (35) feet in order to construct a 1,350 square foot 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 classifications.
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.

Chairman Marback asked how close the trees would be to the accessory building if it were to be moved back another 5 feet as the ordinance requires. Mr. Dirk said they would not be able to get in and that the ditch would create too steep of a driveway.

Mr. Seifert asked if they would enter the building from the east side. Mr. Dirk said that is correct and that it would be similar construction to that of a property nearby.

Mr. Hoff asked if they knew they were going to need accessory buildings when they bought the property and built the house. Mr. Dirk said they did not think they would need one when the plans for the house were done but as their family has grown, so has their need for more space.

Mr. Hoff asked what the hardship is with this request. Mr. Dirk said the established tree row and the steep grade in the location of the proposed driveway would impede them from putting it the required 40 feet from the front property line. He said he would also like to make it look attractive with landscape around the sides and mowing around it would be difficult if it were back any further.

Mr. Seifert said it is ultimately the trees that are hindering the placement of the building. Mr. Dirk said that is correct and that the trees were originally put in to act as a privacy screen between his property and his neighbors.

Chairman Marback opened the public hearing.

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

Ms. Clark said she feels this is a fairly minimal request and she can appreciate the need for the property to grow as the family grows. She said she likes that there will be a side approach to the building therefore you will not see the garage doors from the front of the property.

Mr. Hoff said he does not see a hardship and granting this variance will result in more of this type of request. He said he feels there needs to be more planning in the beginning stages when building a new home.

MOTION: A motion was made by Ms. Clark to approve the variance to reduce the front yard setback located along the north side of the property, from forty (40) feet to thirty-five (35) feet in order to construct a 1,350 square foot accessory building on Lot 4, Block 2, Pine Meadows Subdivision (8201 White Oak Loop), based on the unique grade and characteristics of the property. The motion was seconded by Mr. Seifert and with Board Members Clark, Hoff, Seifert and Marback.

VARIANCES FROM SECTION 14-04-06(7) OF THE CITY CODE OF ORDINANCES (R10 – RESIDENTIAL/FRONT YARD) AND SECTION 14-04-06(9) OF THE CITY CODE OF ORDINANCES (R10-RESIDENTIAL/REAR YARD) – THE WEST 100 FEET OF LOTS 31-32, BLOCK 20, FLANNERY & WETHERBY ADDITION (831 NORTH 16TH STREET)

Chairman Marback stated the applicants, Morris and Jacqueline Conklin, are requesting variances to reduce the required front yard setback located along the north side of the property from twenty-five (25) feet to nineteen feet six inches (19' 6") and to reduce the required rear yard setback along the south side of the house from twenty (20) feet to seven feet, four inches (7' 4") for the purpose of constructing a detached 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 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 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 said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Ms. Clark asked if the footprint would be the same as the existing structure but with the addition of an overhang. Ms. Wollmuth said that is correct, that the overhang is what would extend the building into the setback.

Mr. Conklin said this property was constructed in 1948 and there have been issues with the building settling and he has concerns about the stability of the structure. He said rather than lift it up off the foundation he would like to tear it down and rebuild it with an overhang. He said the overhang will help prevent water issues and they will also be widening the driveway in order to add parking for the basement rental unit. He said they will do the slab for the garage now and the driveway expansion later and the siding will match the house. He said it will be only slightly higher than the old building because they will have a thickened slab to help avoid water problems as well.

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 approve the variance reduce the required front yard setback located along the north side of the property from twenty-five (25) feet to nineteen feet six inches (19' 6") and to reduce the required rear yard setback along the south side of the house from twenty (20) feet to seven feet, four inches (7' 4") for the purpose of constructing a detached accessory building on The West 100 feet of Lots 31-32, Block 20, Flannery & Wetherby Addition (831 North 16th Street), based on the size of the lot and the fact that it was platted in 1948. The motion was seconded by Ms. Clark and with Board Members Clark, Hoff, Seifert and Marback voting in favor of the motion, the motion was approved and the variance was granted.

**VARIANCE FROM SECTION 14-05-07 OF THE CITY CODE OF ORDINANCES
(REQUIREMENTS FOR A BUILDING PERMIT) – PART OF THE
SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION
2/HAY CREEK TOWNSHIP (7201 BURNT CREEK LOOP)**

Chairman Marback stated that the applicants, Bill and Marcia Patrie, are requesting a variance in order to construct a 1,280 square foot accessory building on a parcel of record, also known as an Auditor's lot.

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 A-Agricultural 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 said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Mr. Hoff asked what the land to the south of this property is zoned. Ms. Wollmuth said it is zoned RR-Residential.

Mr. Hoff asked why this property has not yet been platted and zoned RR-Residential. Ms. Wollmuth said the owners have not brought a request forward to have it platted and when the Extra-Territorial Area (ETA) was negotiated a mass rezoning was completing to change properties from the R1-Residential zoning district to the RR-Residential zoning district. This property was not included in those changes as it was zoned A-Agricultural, not R1-Residential.

Mr. Patrie said they purchased the property in 1992 because it was zoned A-Agricultural and they want to stay in that zoning district because they have chickens. He said there is a nearby pasture and the entire section is agricultural which makes it nice for wildlife. He said his neighbors want to stay zoned agricultural as well.

Mr. Hoff asked if there is any benefit or not to staying in the A-Agricultural zoning district. Mr. Patrie said he can continue to maintain his chickens without limitations.

Mr. Hoff asked if the neighbors to the north have been asked about selling or keeping the agricultural uses. Mr. Patrie said he does not know but it is currently all farm land.

Chairman Marback opened the public hearing.

Written comments in support of this request are attached as Exhibits A-E.

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

Mr. Hoff asked if the size of the property would be in compliance with a zoning change to the RR-Residential zoning district. Mr. Blaskowski said if zoned RR-Residential, the lot would meet the required minimum lot size.

Ms. Clark said she expects they will see more needs like this in unique developments and she can appreciate wanting to keep the agricultural areas in order to maintain the fit of the area.

MOTION: A motion was made by Mr. Seifert to approve the variance in order to construct a 1,280 square foot accessory building on a parcel of record, also known as an Auditor's lot, for Part of the southwest quarter of the southwest quarter of Section 2/Hay Creek Township (7201 Burnt Creek Loop), based on the size of the lot and the adjacent layouts and uses. The motion was seconded by Ms. Clark and with Board Members Clark, Hoff, Seifert and Marback voting in favor of the motion, the motion was approved and the variance was granted.

OTHER BUSINESS

Chairman Marback asked for an update on the proposed zoning ordinance text amendment relating to off-street parking. Ms. Wollmuth said the amendment was adopted on March 22nd so they should hopefully not see as many requests for parking variances as they have in the past.

Chairman Marback complimented staff on how nice the new staff reports and packets look.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:33 p.m. to meet again on May 5, 2016.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman

To: Board of Adjustment

From: Shawn Newsma

Address: 7000 Horseshoe Bend Bismarck, ND 58503

RE: Variance Request by William and Marcia Patrie

It is our understanding that our neighbors, Bill and Marcia Patrie, are requesting a variance to build a 32' x 40' pole building on land adjacent to ours. We support the variance request and do not feel the proposed structure will conflict with the existing land use of the neighborhood.

Signed 

Date 3-12-16

To: Board of Adjustment

From: DAVID RENWICH

Address: 7060 HORSESHOE BEND

RE: Variance Request by William and Marcia Patrie

It is our understanding that our neighbors, Bill and Marcia Patrie, are requesting a variance to build a 32' x 40' pole building on land adjacent to ours. We support the variance request and do not feel the proposed structure will conflict with the existing land use of the neighborhood.

Signed David C Renwich

Date 3-12-2016

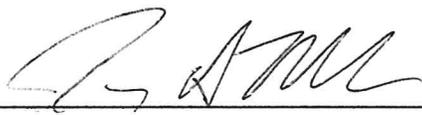
To: Board of Adjustment

From: Jay Wheeler

Address: 7030 Horseshoe Bend

RE: Variance Request by William and Marcia Patrie

It is our understanding that our neighbors, Bill and Marcia Patrie, are requesting a variance to build a 32' x 40' pole building on land adjacent to ours. We support the variance request and do not feel the proposed structure will conflict with the existing land use of the neighborhood.

Signed 

Date 3/10/16

To: Board of Adjustment

From: Janet Muhlbradt

Address: 4351 Burnt Creek

RE: Variance Request by William and Marcia Patrie

It is our understanding that our neighbors, Bill and Marcia Patrie, are requesting a variance to build a 32' x 40' pole building on land adjacent to ours. We support the variance request and do not feel the proposed structure will conflict with the existing land use of the neighborhood.

Signed Janet Muhlbradt

Date March 12

To: Board of Adjustment

From: Brandon Spil

Address: 7050 Burnt Creek LP

RE: Variance Request by William and Marcia Patrie

It is our understanding that our neighbors, Bill and Marcia Patrie, are requesting a variance to build a 32' x 40' pole building on land adjacent to ours. We support the variance request and do not feel the proposed structure will conflict with the existing land use of the neighborhood.

Signed B Spil

Date 3-12-16