

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
July 14, 2016**

The Bismarck Board of Adjustment met on July 14, 2016 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Marback presided.

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

Member absent was 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.

Chairman Marback introduced Rick Wohl as the new member of the Board of Adjustment.

**MINUTES:**

Chairman Marback called for approval of the minutes of the June 2, 2016 meeting of the Board of Adjustment.

**MOTION:** A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the June 2, 2016 meeting as presented. With Board Members Clark, Hoff, Marback, Seifert and Wohl voting in favor, the minutes were approved.

**VARIANCES FROM SECTION 14-04-01(6) OF THE CITY CODE OF ORDINANCES (RR-RESIDENTIAL)(REAR YARD) – LOT 4, BLOCK 1, PRAIRIE VIEW SUBDIVISION (5313 SOUTHVIEW LANE)**

Chairman Marback stated the applicant, Greg Hartze, is requesting a variance to reduce the required rear yard setback for a property located within the RR – Residential zoning district from fifty (50) feet to thirty (30) feet in order to construct 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 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.

Ms. Clark asked if there are issues with flooding on this property. Ms. Wollmuth said it is in the 500-year floodplain so elevation requirements do not apply.

Mr. Hoff asked how long the owner has lived there. Mr. Hartze said they have lived there since September 2003 and want to build a 28 foot by 32 foot accessory building. He said the lot is sloped so he would prefer to do one-foot footings with approximately four to six inches of fill dirt so that water draining from the north goes around the outside of the building. He said the driveway would be 10 feet long across the entire front of the accessory building and he would have to remove some established trees if the variance is not granted.

Mr. Hoff asked what the maximum square footage allowed on the lot could be. Ms. Wollmuth said per the zoning ordinance, they could go up to 2,400 square feet in accessory buildings on this lot.

Mr. Hoff said he would like to remind the owner that the accessory building cannot be used for commercial purposes, such as storage for a landscaping company.

Chairman Marback opened the public hearing.

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

**MOTION:** A motion was made by Ms. Clark to approve the variance to reduce the required rear yard setback for a property located within the RR – Residential zoning district from fifty (50) feet to thirty (30) feet in order to construct an accessory building on Lot 4, Block 1, Prairie View Subdivision (5313 Southview Lane), based on the slope of the property and the need for access to the accessory building. The motion was seconded by Mr. Seifert and with Board Members Clark, Hoff, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

**VARIANCE FROM SECTION 14-04-07(7) OF THE CITY CODE OF ORDINANCES (RM-RESIDENTIAL)(FRONT YARD) – LOT 12, LESS THE EAST 9 FEET FOR ALLEY, BLOCK 42, NORTHERN PACIFIC 2<sup>ND</sup> ADDITION (623 NORTH 6<sup>TH</sup> STREET)**

Chairman Marback stated the applicant, James Bohe, is requesting a variance to reduce the front yard setback for a property located in the RM – Residential zoning district from twenty-five (25) feet to twenty (20) feet in order to construct an attached garage along the east side of the existing 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 RM-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 large the attached garage is going to be. Ms. Wollmuth said they cannot exceed their maximum lot coverage and the plan is for it to be three stalls. She said the rear yard setback requirement can also be added to the variance request at this time if that is desired. Secretary's Note: A variance from Section 14-04-07(9) of the City Code of Ordinances (RM-Residential)(Rear Yard) to reduce the required rear yard setback from twenty (20) feet to four (4) feet will also be included in this request.

Mr. Hoff asked how this will work with the garage then being so close to the alley. Ms. Wollmuth said access would be off of East Avenue C and the City Engineering Department would be the ones to approve the appropriate curb cuts and skirting along the alley.

Chairman Marback opened the public hearing.

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

**MOTION:** A motion was made by Ms. Clark to approve the variance to reduce the front yard setback for a property located in the RM – Residential zoning district from twenty-five (25) feet to twenty (20) feet and to reduce the rear yard setback for a property located in the RM-Residential zoning district from twenty (20) feet to four (4) feet in order to construct an attached garage along the east side of the existing home on the Lot 12, less the East 9 feet for alley, Block 42, Northern Pacific 2<sup>nd</sup> Addition (623 North 6<sup>th</sup> Street), based on the age of the property and the addition of an attached garage improving the appearance of the property. The motion was seconded by Mr. Hoff and with Board Members Clark, Hoff, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

**VARIANCE FROM SECTION 14-04-03(8) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL)(SIDE YARD) – LOT 5, BLOCK 2, GRANDVIEW HEIGHTS (1929 NORTH GRANDVIEW LANE)**

Ms. Wollmuth explained that she received a request from the applicant today for this variance application to be withdrawn. She said because adjacent property owners were notified of the public hearing, the public hearing does still need to be opened.

Chairman Marback opened the public hearing.

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

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

**VARIANCE FROM A PLATTED FRONT YARD SETBACK LINE – LOT 13, BLOCK 4, HIGHLAND ACRES 2<sup>ND</sup> ADDITION (1136 NORTH PARKVIEW DRIVE)**

Chairman Marback stated the applicant, Troy Olson, is requesting a variance to reduce the front yard setback from a platted setback line as indicated on the subdivision plat of Highland Acres 2<sup>nd</sup> Addition from thirty (30) feet to twenty-six (26) feet in order to construct a single-family dwelling.

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 neighborhood.
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 or the platted set back line.

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 it is only the covered porch that would encroach into the setback. Ms. Wollmuth said that is correct, that it would encroach by four feet and that the foundation of the proposed single family dwelling will be set back the required 30 feet, as indicated on the plat of Highland Acres 2<sup>nd</sup> Addition.

Mr. Olson said the variance is only needed because it is a covered rather than uncovered porch.

Ms. Clark asked if the porch or house can be moved back on the property at all. Mr. Olson said the back portion of the lot drops off considerably so he is trying to avoid moving the house back any further.

Chairman Marback opened the public hearing.

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

Additional comments on this request are attached as Exhibits B and C.

Ms. Clark said the request does not seem to have changed much from the first time Mr. Olson asked for a variance on this property. She said there is a comment from a neighbor regarding the Highland Acres covenants but it is not the authority of this board to control those. Ms. Clark then asked if a future owner could be allowed to enclose the porch completely for addition living space.

Ms. Wollmuth said a condition or restriction can be placed on the motion that future owners not be allowed to do that, but it would be very difficult to completely enclose it as the proposed porch will be built on footings, not a perimeter foundation.

Mr. Blaskowski said a request or permit to enclose the porch would not necessarily be denied, but if the deck were uncovered then a variance would not be needed at all right now. He said an owner could screen it in and it would not be considered living space.

Mr. Wohl said it appears the rest of the neighborhood has been held to the 30-foot setback requirement and asked if there are any that are setback closer. Mr. Blaskowski said he has not seen any on file but some do appear to be built closer than 30 feet, specifically on corner lots.

**MOTION:** A motion was made by Mr. Seifert to reduce the front yard setback from a platted setback line as indicated on the subdivision plat of Highland Acres 2<sup>nd</sup> Addition from thirty (30) feet to twenty-six (26) feet in order to construct a single-family dwelling on Lot 13, Block 4, Highland Acres 2<sup>nd</sup> Addition (1136 North Parkview Drive), with the following condition: 1. The proposed covered front porch may not be enclosed to create additional living space. based on the unique topography of the property and all other efforts having been made to reduce the variance as much as possible. The motion was seconded by Mr. Hoff and with Board Members Clark, Hoff, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

### **OTHER BUSINESS**

There was no other business to discuss at this time.

### **ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:28 p.m. to meet again on August 4, 2016.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Michael Marback, Chairman