

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
October 6, 2016**

The Bismarck Board of Adjustment met on October 6, 2016 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Vice Chairman Clark presided.

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

Member absent was Michael Marback.

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

MINUTES:

Vice Chairman Clark called for approval of the minutes of the September 1, 2016 meeting of the Board of Adjustment.

Mr. Heier pointed out a typo in the word ‘they’ on page 5. Ms. Balzum said the correction will be made prior to publishing the minutes.

MOTION: A motion was made by Mr. Seifert and seconded by Mr. Heier to approve the minutes of the September 1, 2016 meeting, with the suggested correction. With Board Members Clark, Hoff, Seifert, Wohl and Heier voting in favor, the minutes were approved.

VARIANCE FROM 14-04-01(3) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL)(LOT AREA) – LOT 7, BLOCK 4, PRAIRIE VIEW SUBDIVISION (5412 MEADOW LARK LANE)

Vice Chairman Clark stated the applicants, Mary Jo and Lino Ybarra, are requesting a variance to allow the construction of a 1,400 square foot accessory building on a lot, platted prior to 2003, that is less than 40,000 square feet.

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. Wollmuth said if it is the decision of the Board to approve the request, staff requests that a condition that the placement of the proposed accessory building not be located over an identified secondary drain field be included in the motion.

Ms. Ybarra said they have lived at on this property for 16 years and they would love to have an accessory building so they can stop having to pay for off-site storage. She said she is fine with the condition of having to avoid the drain field if the building is constructed.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

MOTION: A motion was made by Mr. Heier to approve the variance to allow the construction of a 1,400 square foot accessory building on a lot, platted prior to 2003, that is less than 40,000 square feet, with the condition that the placement of the proposed accessory building not be located over an identified secondary drain field location, on Lot 7, Block 4, Prairie View Subdivision (5412 Meadow Lark Lane), based on the size of the lot being previously platted at a substandard size. The motion was seconded by Mr. Hoff and with Board Members Clark, Heier, Hoff, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCE FROM Section 14-03-05(4)(b) OF THE CITY CODE OF ORDINANCES (SUPPLEMENTARY PROVISIONS)(LOCATION OF RESIDENTIAL ACCESSORY BUILDING) – LOT 18, BLOCK 8, PARK HILL 2ND ADDITION (1026 SUMMIT BOULEVARD)

Vice Chairman Clark stated the applicant, Walter Rehling, is requesting a variance to reduce the required rear yard setback for an accessory building approached from the alley from twenty (20) feet to (10) feet in order to construct an additional 384 square foot accessory building on the property.

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 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.

Vice Chairman Clark asked what the history is behind the existing setback from an alley requirement. Ms. Wollmuth said the requirement has been there since at least the early 1980's and was put in place to allow for better maneuvering and stacking of vehicles.

Mr. Hoff asked when this neighborhood was developed. Ms. Wollmuth said it was developed around the 1930's, when alleyways were more common.

Ray Morrell, Premier Homes, Inc., said the proposed construction design would keep the new and existing buildings in alignment with each other and most of the adjacent properties with accessory buildings are also set back ten feet. He said setting the building back would restrict further development of the property and it would not be any closer to the alley than the existing building. He then said the building footprint and roofline will also be the same as the one that is there now and a new concrete slab will be poured as well. He said the owner has a conversion van that is becoming damaged from sitting outside and he would like to be able to have it inside if possible.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

MOTION: A motion was made by Mr. Heier to approve the variance to reduce the required rear yard setback for an accessory building approached from the alley from twenty (20) feet to (10) feet in order to construct an additional 3,841 square foot accessory building on Lot 18, Block 8, Park Hill 2nd Addition (1026 Summit Boulevard), based on the new accessory building not being

closer to the alley than the existing one and the driveway being short enough to not allow for blockage of the alley. The motion was seconded by Mr. Hoff and with Board Members Clark, Heier, Hoff, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was granted.

**VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES
(OFF-STREET PARKING AND LOADING) – LOTS 1-3, BLOCK 33,
GOVERNOR PIERCE ADDITION (220 NORTH 23RD STREET)**

Vice Chairman Clark stated the applicant, Mark Meier, is requesting a variance to reduce the number of off-street parking spaces required for the operation of a soup kitchen.

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 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.

Vice Chairman Clark asked what type of use would be able to comply without a variance given the available amount of parking. Ms. Wollmuth said with there only being ten parking spots, very few uses would comply.

Mr. Meier said his clientele is not the typical restaurant clientele and that most will come to the facility via transit, bike or on foot. He said they would also be within walking distance of the Ruth Meiers shelter which would be very convenient.

Vice Chairman Clark asked if there is anything similar to this use in town and what their parking arrangements are. Mr. Meier said there is not another year round location like this one anywhere in Bismarck so there is not anything to compare to. He said they had six spaces at their previous location and that was always adequate and this would be the same operation as at that location.

Mr. Hoff asked why they left their previous location. Mr. Meier said the owner wanted to try and sell the property and felt the tenant needed to change before he could do that. He said this proposed location is convenient and the square footage is adequate, as is the facility. He said their operation is purely donation based and receives no federal or state funds or grants and all of their services are free.

Mr. Hoff asked what the hours of operation would be. Mr. Meier said they will be open from 11-7 Monday through Saturday, so traffic will be more spread out, rather than just at concentrated lunch and dinner times. He said they would be closed on Thanksgiving but open on Christmas as they did at their previous location.

Mr. Hoff asked if he has had experiences with issues of people living on the property at the other location. Mr. Meier said the owner was not tolerant of that and there was not really any space or shelter for that to happen anyways.

Mr. Seifert asked if there is a plan in the near future for the open space in the building. Mr. Meier said they have plans in phases for potential shower and laundry spaces as well as things like a computer area to aid with job searching.

Vice Chairman Clark asked if another variance would be needed for those additional uses and if more parking would be needed. Mr. Blaskowski said they could add that to this request or wait since there is not a specified ordinance for this unique use, but it could classify as a homeless day center which are usually located downtown and have no parking requirements.

Mr. Hoff said the building to the south looks limited on parking as well. Mr. Wohl asked if the parking would be parallel or perpendicular to the property.

Mr. Meier said it would be perpendicular as there is a shared driveway.

Vice Chairman Clark asked if the loading dock is needed or if that could be removed to add more parking. Mr. Meier said they have already accounted for one space being added where that concrete is, but they do need the loading dock for deliveries.

Vice Chairman Clark opened the public hearing.

Jeff Neuberger, current owner of this building, said he averages 26 customers a day and has never had an issue and there is also plenty of street parking in this area. He said there is plenty of room for access, but they could probably do without the loading dock. He said he is only moving his business to another location because he needs more interior space and he already has storage space at his other property so he is moving his business there.

Jaci Hall, Executive Director – Ruth Meiers Hospitality House, said they neither oppose nor support this use in this location, but she wants Mr. Meier to be educated on the services and needs. Information provided by Ms. Hall is attached as Exhibit A.

Mr. Heier asked if Ms. Hall has had experiences with law enforcement having to remove people from the property for either sleeping on the property or in their vehicles nearby. Ms. Hall said those vehicles that are removed are usually abandoned or have been used for sleeping in.

Steven Schnibley, 216 North 23rd Street, said his building consists of offices, Rock 30 Games, an oil company and Bisman Online. He said they use the parking lot and park on the street if they need to and do use the same access to get to their spaces, so this occupant would do the same. He said removing the loading dock would not add enough spaces and he supports what Mr. Meier wants to do. He said it is a good cause and the issue needs to be the variance from the parking requirements, not what the use will be. He pointed out that the notice he received in the mail showed there being eight parking spaces, but now there seems to have been two added.

Ms. Wollmuth said the applicant was able to add two more parking spaces after those notices were sent out. She stated the parking configuration would be looked at with a site plan review when the change of occupancy is requested.

Matt Wetsch, Skeels Electric, said his business tried to get a variance and they were denied, so they have to park in the street or their fenced area or wherever else they can.

Ron Plante, 2222 East Thayer Avenue, said he owns the painting business at this location and he is more concerned about the proposed use of the building than anything. He said he does not want to see people living in their vehicles there or coming across other properties during business hours. He said other businesses nearby are already lacking in parking as it is.

Mike Walsh said he owns the nearby laundromat and car wash and he wants the focus here to be on the parking needs, but asked that the surrounding businesses and their hours be considered. He then asked if the new use would be closed on Sundays.

Mr. Meier said they would be open briefly on Sunday mornings for some church services. Mr. Walsh said people cannot be allowed to linger around during other businesses open hours.

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

Vice Chairman Clark said staff has asked to include a reference to the change in use and that the focus needs to be on the dynamics of the soup kitchen, not the potential future uses at this time.

Mr. Heier said he feels reducing the parking from the required 47 down to 10 is too great of a difference.

MOTION: A motion was made by Mr. Heier to deny the variance to reduce the number of off-street parking spaces required for the operation of a soup kitchen on Lots 1-3, Block 33, Governor Pierce Addition (220 North 23rd Street). Due to a lack of a second to the motion, the motion failed.

Mr. Seifert said he has concerns of too many vehicles being towed and having more traffic than the originally expected.

Mr. Hoff made a motion to call the question and those present were advised by Mr. Hammes that a roll all must be taken on the request to call the question.

MOTION: A motion was made by Mr. Hoff to call the question with Board Members Hoff and Seifert voting in favor of the motion and Board Members Clark, Heier and Wohl opposing the motion, the motion failed due to a lack of a majority vote.

Mr. Wohl asked if the required number of parking spaces granted by this variance would stay the same if the use changes in the future.

Ms. Wollmuth said a condition can be put on the motion requesting that a change of use other than a soup kitchen or new occupant would need to request a new variance from the parking requirements.

Mr. Heier said he has feelings of this being controversial and it might not be the responsibility of this board to regulate soup kitchens.

MOTION: A motion was made by Mr. Seifert to approve the variance to reduce the number of off-street parking spaces required for the operation of a soup kitchen on Lots 1-3, Block 33, Governor Pierce Addition (220 North 23rd Street), based on the lot being too small for other allowable uses, that a change of occupancy and use approval is required, with the condition that any other future use would have to meet the existing parking requirements outlined in the City Code of Ordinances. The motion was seconded by Mr. Hoff and with Board Members Clark, Heier, Hoff, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was granted.

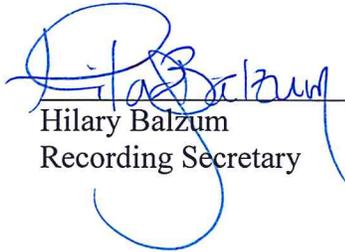
OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

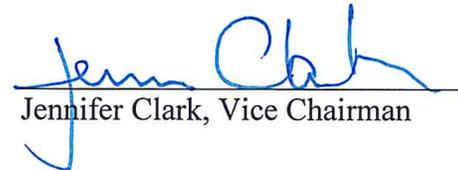
There being no further business, Vice Chairman Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 6:25 p.m. to meet again on November 3, 2016.

Respectfully Submitted,



Hilary Balzum
Recording Secretary

APPROVED:



Jennifer Clark, Vice Chairman

Chairman Marback and the City of Bismarck Board of Adjustment Committee, my name is Jaclyn Hall and I am the Executive Director of Ruth Meiers. I am here today to neither support or oppose the request of Mark Meier, but to provide background and education on the current programs provided by Ruth Meiers and the future of our facility located at 305 N 23rd St.

Ruth Meiers acquired this facility in 1996 to provide 25 low income housing units. In 2013, Ruth Meiers expanded its services to provide:

- A 120 bed (capacity) men's overnight emergency shelter (9:00pm – 8:00am)
- Single Point of Contact (9:00am – 1:00pm)
 - Emergency Food Baskets
 - Basic Needs
 - Identifications
 - Medication Assistance
 - Laundry Vouchers
 - Clothing Vouchers
 - Transportation Assistance
 - Birth Certificates
 - Reemployment services
 - Hygiene Packs
 - Noon Meal

In 2015, Ruth Meiers provided 17,415 nights of shelter and over 20,000 pounds of food to the community. Our apartments run at 95% occupancy.

In December, Ruth Meiers will open its facilities from 8:00am to 8:00pm as well as overnight to expand its community based services. These services include:

- Luke's Kitchen – a community open table to provide nutrition and essential services to the homeless and those in need
- Expanded access to laundry facilities and showers
- Community collaborations to increase educational outreach

Working the homeless and those at risk is not an easy task. We find many face addiction, mental illness and physical disabilities. As a neighbor, we work with the surrounding residents and businesses to support their concern for their safety and the safety of their patrons. On average, we contact law

enforcement 3 times per week to remove vehicles that have been abandoned, investigate vehicles where clients are staying inside and assist with clients who cannot stay at Ruth Meiers.

We are working internally to determine whether or not Ruth Meiers needs to adjust our off street parking to include loading and unloading only areas and areas that restrict overnight parking. Ruth Meiers owns an additional adjacent lot located to the north of our current facility to add additional off street parking to assist with future growth.

Ruth Meiers has collaborated with Heaven's Helpers in the past and believe in their mission, the challenges we face are ones he may continue to face if he relocates to this facility.

I thank you for your time and will stand for any questions.