

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
August 4, 2016**

The Bismarck Board of Adjustment met on August 4, 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, Ken Heier and Michael Marback.

Member absent was Rick Wohl.

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

MINUTES:

Chairman Marback called for approval of the minutes of the July 14, 2016 meeting of the Board of Adjustment.

Mr. Seifert pointed out a correction to be made to the motion on agenda item #5; stating Mr. Wohl opposed the motion. Ms. Balzum said the correction will be made prior to publishing the minutes.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the July 14, 2016 meeting, with the suggested correction. With Board Members Clark, Hoff, Marback, Seifert and Heier voting in favor, the minutes were approved.

VARIANCES FROM SECTIONS 14-04-03(7) OF THE CITY CODE OF ORDINANCES (FRONT YARD), SECTION 14-04-03(8) OF THE CITY CODE OF ORDINANCES (SIDE YARD) AND SECTION 14-03-09(3) OF THE CITY CODE OF ORDINANCES (NONCONFORMING USES) – LOTS 3-5, BLOCK 87, MCKENZIE AND COFFINS ADDITION (1024 NORTH 2ND STREET)

Chairman Marback stated the applicant, James Papacek, is requesting variances to reduce the required front yard setback along the east side of his property from twenty-five (25) feet to fifteen (15) feet and to reduce the required width of the side yards from fifteen (15) feet to eleven (11) feet in order to construct a 23'x47' addition to the existing single-family dwelling along the south side of the property.

Mr. Blaskowski gave an overview of the requests, 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 R5-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.

Mr. Blaskowski 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 what the current setback requirements are. Mr. Blaskowski said they are fifteen feet and five feet.

Ms. Clark asked if the fifteen foot setback requirement would then be reduced to eleven feet. Mr. Blaskowski said that is correct, that because of the average width of the side yards it would be eleven feet.

Mr. Heier asked if they will be exceeding their maximum allowable lot coverage percentage with this addition. Mr. Blaskowski said they would not.

Ms. Clark asked if there is going to be any issues with a second driveway being added to the property. Mr. Blaskowski said for any new driveway, the City Engineering Department would have to approve a request for a second one.

Mr. Papacek said this property has been in his family for a long time and when it was originally purchased it was two 25-foot wide lots which is why there is only a four foot setback on the north side. He said their request to reduce the setback on the south side to 11 feet is due to health issues and wanting to make their home as comfortable as possible for them. He said this addition would take care of their needs and the easiest way to do that is by adding a double garage. He said the front yard setback would still be 16 feet and the rear yard would be 22 feet. He said the existing driveway will go away upon completion of a new one.

Mr. Hoff asked if the City Engineering Department has approved that request yet. Mr. Papacek said they have not because he wanted to make sure his variance request was

approved first. He said some prep work has been done for it and he will make sure the addition will be very aesthetically appropriate with the rest of the neighborhood. He said he hired Big River Builders to help with this project and has no doubts that it will be palatable compared to the neighboring properties and has been working on the plans for this since February.

Mr. Hoff said comments have been received from the neighbors to the south and asked if they will be the ones to occupy the property long term. Mr. Papacek said they will as they are moving here from Fargo because their home there was purchased to make room in the Red River floodplain. He said access cannot be from the back alley because the grade differential would make the steps very steep which would create safety issues due to his health concerns. He said steps are difficult for him and having to have more steps would exacerbate his hardship, especially in the winter time. He said he would like his wife to be able to go straight from the garage into the house when she works nights and after having explored many various options to try and make this work, the plan proposed is the most logical way to do it.

Mr. Hoff asked if the addition could be flipped around so that access is from the alley. Mr. Papacek said the access being how it is proposed would be much safer, in addition to snow removal being easier.

Chairman Marback said the neighbor to the south does take issue with this addition, having stated the view from their home will be compromised. Mr. Papacek said he made sure when developing the building plans that the addition will blend into the existing and surrounding homes and he would not exceed any major peaks or the height of the house.

Jordan Anderson, Big River Builders, said the elevation in the rear yard is quite steep and the driveway would have to be almost 70 feet long which is not an option.

Chairman Marback said either way he would still need the setback to be reduced. Mr. Papacek said as he designed this addition he took into consideration the window pattern on the home because it creates a unique air flow effect and to modify them would have an adverse effect on that. He said he wanted to retire in the home he helped build in Fargo but that is no longer an option and he just wants to be able to live comfortably in his home as he ages.

Mr. Anderson said the existing garage is not large enough for most modern vehicles and these requests are the minimum needed to make this work. He said the proposed location of the addition is ideal with the grade of the property and being able to avoid having to constructing stairs and retaining walls.

Mr. Hoff pointed out that are not any other front facing garages in this part of town. Mr. Papacek said his neighbors garages face the street as well as the house next to that. He said many do have their garages in the back of the home but with the addition and still maintaining a 25 foot setback he feels this plan would work well.

Ms. Clark said some of the neighboring homes do have access off of North 2nd Street and drive to the back of the home to a single or double garage.

Mr. Heier asked if a variance is needed for the driveway. Mr. Blaskowski said the driveway does not need a variance and the request is only for the front and side yard setbacks.

Ms. Clark said if the addition is moved further back, the roof lines would not line up and it appears a front yard setback is not needed because the addition will be back 16 feet further. Mr. Anderson said that is correct.

Mr. Blaskowski said not needing a front yard setback can be clarified with the motion and prior to a building permit being issued a lot survey can be requested.

Mr. Heier asked if it is 35% maximum allowed lot coverage in this zoning district. Mr. Blaskowski said it is 30% and they will be under that percentage with the addition.

Chairman Marback opened the public hearing.

Written comments 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 Ms. Clark to approve the variance to reduce the required width of the side yards from fifteen (15) feet to eleven (11) feet in order to construct a 23'x47' addition to the existing single-family dwelling along the south side of the property on Lots 3-5, Block 87, McKenzie and Coffins Addition (1024 North 2nd Street), based on the grade of the property and not needing a front yard setback reduction. The motion was seconded by Mr. Seifert and with Board Members Clark, Seifert and Marback voting in favor of the motion and Board Members Heier and Hoff opposing the motion, the motion failed as four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07.

Mr. Papacek asked if he can ask questions of the two Board Members who opposed the motion. Mr. Hammes explained the decision cannot be questioned once it has been made and discussions and the public hearing have been closed.

Chairman Marback explained that this decision can be appealed to the Board of City Commissioners if the owner wishes to do so.

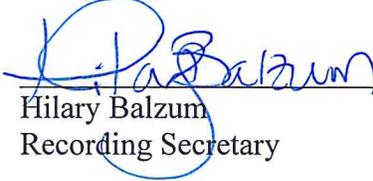
OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

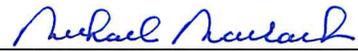
There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:28 p.m. to meet again on September 1, 2016.

Respectfully Submitted,



Hilary Balzum
Recording Secretary

APPROVED:



Michael Marback, Chairman

To the members of the board of adjustments. We are the neighbors at 1018 N. 2nd st. and we respectfully ask that the setback request for the property to the north of us, be changed from 11' to 7' be denied.

My wife, Mary and I have lived here since 1988 and have had the same view all this time. When my wife sits on the deck, it's a peaceful view. That would change with the house to the north of us being that much closer. My wife is disabled, hit by a drunk driver in 1984. Change is not easy for her. I have been in Real Estate since 1988 and when we bought our house, a large part of that decision was because the houses were so far from each other. There is a reason the city has had this setback in place for all these years and we would like it to stay that way.

Jim stated in a text, "I needed a heated garage at a reasonable cost." My question is, why not put it in the back off the alley like everyone on this street that have built more garage space? It certainly would be cheaper, if "reasonable cost" is the goal. When we built our garage, off the alley, all those years ago, we asked the city if we could put it in our side yard, up front. The response was they didn't want another driveway onto 2nd st.

Jim has lived in Fargo all these years and has used the home as a rental. He currently does not reside at the residence.

We respectfully ask the members of the board of adjustments not to grant this request and leave the setback at 11 feet.

Thanks you for your time and consideration.

Sincerely,

Nick and Mary Choukalos

1018 N. 2nd st. Bismarck, ND