

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
JUNE 3, 2010**

The Bismarck Board of Adjustment met on June 3, 2010 at 4:00 p.m. in the First Floor Conference Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Board members present were Chair Michael Marback, Blair Ihmels, Jennifer Clark, Ken Heier, Dean Conrad, and Jeff Ubl.

Staff members present were Ray Ziegler (Building Official), Mel Fischer (Environmental Health Administrator), Gregg Greenquist (Planner), and Kim Riepl (Office Assistant).

Others present were Donald Rohrich, 4013 Heartland Drive, Bismarck; Kenneth Connell, 1414 S. 3<sup>rd</sup> Street, Bismarck; and Cindy Connell, 1414 S. 3<sup>rd</sup> Street, Bismarck.

**CALL TO ORDER**

Chair Marback called the meeting to order and announced the introduction of new members to the Board of Adjustment as the first order of business. He introduced Dean Conrad and Jeff Ubl and welcomed them both to the Board of Adjustment.

**MINUTES**

Chair Marback asked for consideration of the May 6, 2010 minutes.

**MOTION:** A motion was made by Ms. Clark and seconded by Mr. Ihmels to approve the minutes of the May 6, 2010 meeting as presented. With all members voting in favor, the minutes were approved.

Ken Heier entered the meeting.

**APPEAL OF NOTICE & ORDER – KENNETH CONNELL – 1414 S. 3<sup>RD</sup> STREET**

Chair Marback noted the request was an appeal for the Notice & Order issued on May 5, 2010, by Mel Fischer, Environmental Health Administrator for the City of Bismarck. He called on Mr. Fischer to provide further details.

Mr. Fischer stated that the Notice & Order was issued May 5<sup>th</sup> to Mr. and Mrs. Connell as a result of a May 4th complaint received regarding vehicle parts, tires, a trailer that was filled with garbage and rubbish, as well as debris on the property. The complainant also indicated there were five dogs on the premises. Upon investigation, a camper was parked in the backyard at the time which appeared may be occupied. The trailer with rubbish and debris was verified. A Notice & Order was issued at that time citing the conditions with instructions to clean the area within fifteen days of the Connell's receipt of the Order, and if, in fact, the camper was being lived in, this was not appropriate in a residentially zoned area and would have to be moved to an RV camping facility. The number of dogs being kept on the premises could not be ascertained, but information was provided (to the Connell's) for a special pet permit for which there are

provisions, if indeed there were more than three dogs being kept. Mr. Fischer indicated that photos of the condition of the premises were included in the packet along with the complaint history for review.

Mr. Marback asked if Mr. Fischer had conducted a follow-up visit to the premises, and Mr. Fischer replied he had, on June 3<sup>rd</sup>, and that the property had been cleaned up considerably, at which time he supplied photos for the Board members' inspection. Mr. Fischer cited specific areas that still needed to be addressed, saying a complaint had just been received regarding the long grass in the easement area at the rear of the yard as well as a vehicle remaining in the back yard and some material alongside the house and some tree branches and other material in the back. Mr. Fischer referenced Section 14-05-5.1 of the City Ordinance which addresses inappropriate storage in yards, copies of which he distributed for review.

Chair Marback asked Mr. Connell if he had anything to add. Mr. Connell explained that the camper was not occupied, that the roof had leaked and the windows were open to dry it out. He addressed the number of dogs by saying they only have three dogs, one of which they are keeping temporarily as it belongs to their daughter. He stated the trailer contains rubbish and debris from a bathroom remodeling project in process and materials from cleaning up the back deck which the dogs had trashed over the winter. He further stated that the chairs from the deck are along the side of the gazebo now while he continues to refinish the deck and the jeep is a project they bought for their seventeen year old son, which they need to work on to get running.

Mrs. Connell supplied additional comment regarding the complaints she felt were unreasonable and harassing that had been made by the neighbors.

Mr. Connell then addressed the long grass in the easement saying with the frequent rainfall lately he had been unable to mow, but had mown it the week prior, before going camping.

Ms. Clark inquired of the Board members and staff what the standard for review in an appeal case was to be, and if the information provided was to be evaluated as a whole or otherwise. Mr. Fischer stated the reason for this type of appeal to come before the Board of Adjustment is that it is a violation of an existing zoning ordinance. The Board's task is to then determine if a hardship exists in order to honor the appeal, and if there is no hardship, then the applicable section of the ordinance would be followed and the Notice & Order upheld. The facts represented in the reports resulting from investigated complaints would be assumed to be correct.

Mr. Greenquist supplied the reading of the section of the City Ordinance pertaining to appeals, Section 14-06-03, which is as follows:

#### 14-06-03. Appeal Procedure.

1. Appeal - How taken: An appeal to the board of adjustment may be taken by any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Building Official based in whole or in part upon the provisions of this article. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the Building Official and with the board of adjustment a notice of appeal and specifying the grounds thereof. The Building Official shall forthwith transmit to the board all the papers

constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Building Official certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, and notice to the Building Official and on due cause shown.

2. Appeal - Procedure. The board of adjustment shall fix a reasonable time for the hearing of an appeal or for action on any matter upon which it is required to pass under this article and give due notice thereof to interested parties, and make all decisions within a reasonable time. Upon any hearing, any party may appear in person or by agent or attorney. The concurring vote of four members of the board shall be necessary to reverse an order, requirement, decision or determination of the Building Official or other official, or to decide in favor of the applicant any matter upon which it is required to pass under this article. The board shall adopt rules of procedure and shall keep records of applications and action thereon, which shall be a public record.

Ms. Clark asked Mr. Fischer if all the complaint elements had been rectified and Mr. Fischer replied that with the exception of the remaining jeep, furniture and tree limbs, the property was much improved. Mr. Heier added that he had been to see the property and that he saw the chairs in the yard and could smell the old gas, noting it was obvious the Connell's had been working on complying with the Notice & Order. He then asked the Connell's if the trailer and the camper would be returned to the property for parking. The Connell's replied that yes, the camper and trailer would be brought back for parking and to be used as their remodel projects progress. Mr. Connell noted the trailer is emptied of its contents on a regular basis. Mr. Heier reiterated that the camper cannot be occupied at any time once it is returned to the property and that rubbish cannot be allowed to remain in the trailer.

**MOTION:** A motion was made by Mr. Heier to uphold the Notice & Order. Mr. Ihmels seconded the motion and with all members voting in favor, the motion to uphold the Notice & Order was passed, thus denying the requested appeal.

Chair Marback declared the letter of appeal denied based on lack of hardship. He informed Mr. and Mrs. Connell that they must maintain compliance with the order issued by Environmental Health within a fifteen-day period, the start date of which would be supplied to the Connell's in a letter, based on the opinion of the City Attorney.

#### **VARIANCE – DONALD ROHRICH – 4013 HEARTLAND DRIVE**

Chair Marback stated the applicant was requesting a variance to reduce the rear yard setback from 50-feet to 20-feet for the purpose of constructing an accessory building on the property at 4013 Heartland Drive. He asked Mr. Rohrich if there was anything he cared to add. Mr. Rohrich declined, saying everything should be in the application.

It was discussed and agreed that geographical features of the property do present a hardship, specifically citing the water drainage and the trees.

Mr. Greenquist noted a discrepancy in the packet concerning the size of the accessory building and emphasized that the correct size was 30-feet by 40-feet. Mr. Rohrich confirmed that, adding that he originally had wanted to build a structure that was 40-feet by 45-feet, but decreased the overall size to enable him to access the trees and perform snow removal more easily.

Ms. Clark asked if Mr. Rohrich had spoken with any of his neighbors (specifically on Rawhide Drive) regarding the accessory building and Mr. Rohrich replied that he had. He stated his neighbor to the east understood exactly why he was applying for the variance as they have the same water problems and the neighbor behind him was just curious as to why he had applied but had no problem with it. Mr. Marback asked if any comments had been received either in opposition to the variance request or in support of it, and it was noted that no comments had been received.

Mr. Conrad questioned ownership of the trees to the south and Mr. Rohrich replied those do belong to his neighbor on the south, who he'd just spoken with the previous weekend and all the other trees lie on Mr. Rohrich's property.

Mr. Greenquist referenced the aerial photo of Mr. Rohrich's property which had been included in the packet. He noted the approximate property lines are indicated in white and the 30x40 shop was drawn to scale so that the Board could ascertain the location of the accessory building.

Mr. Ihmels asked then what the absolute need for the variance was and if it was to obtain a twenty-foot rear yard setback. Mr. Ziegler replied that to be correct, that according to the zoning in that rural setting, a fifty-foot minimum rear yard is required to maintain that rural look. Mr. Ihmels questioned the reference in the ordinance to 20% of the depth of the lot, which, in this case, would be more than fifty-feet. Mr. Heier questioned the 20% as well, to which Mr. Ziegler replied that calculation really hasn't been used in quite some time, and the standard used is the fifty-foot minimum.

Mr. Rohrich informed the Board that due to the height of the surrounding trees, the proposed building wouldn't even be visible except from the front of his house.

Mr. Ubl asked if the ditch was natural and Mr. Rohrich acknowledged that it was, but had been somewhat enhanced to contain the water.

The following findings were provided:

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 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 the reasonable use of the property.
4. The requested variance is the minimum variance that will 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; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

**MOTION:** A motion was made by Mr. Ihmels to approve the request for the variance to reduce the rear yard setback from 50-feet to 20-feet. Mr. Conrad seconded the motion and with all members voting in favor, the motion to approve the variance was passed.

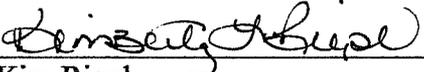
### **OTHER BUSINESS**

General discussion took place regarding the usage of lot percentages to determine setback requirements. It was determined when both options exist there is a natural tendency to use the straight footage minimums rather than the percentage calculations. It was also noted that when the percentage calculation was used, it was confusing and resulted in inaccuracies involving the field inspections. The idea of amending the ordinance to remove the percentage calculations was discussed and Mr. Greenquist offered to provide excerpts from the ordinance for further review and discussion at the next Board of Adjustment meeting.

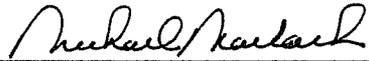
### **ADJOURNMENT**

There being no further business, the meeting of the Bismarck Board of Adjustment was adjourned to meet again on July 1, 2010.

Respectfully Submitted,

  
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Kim Riepl  
Recording Secretary

APPROVED:

  
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Michael Marback, Chair