

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
JULY 1, 2010**

The Bismarck Board of Adjustment met on July 1, 2010 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Board members present were Chair Michael Marback, Blair Ihmels, Jennifer Clark, Dean Conrad, and Jeff Ubl.

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

Others present were Kinsey Piatz, 10410 Lilly Drive, Bismarck, ND; and John Schultz, 5350 38th Avenue, Flasher, ND.

MINUTES

Chair Marback asked for consideration of the June 3, 2010 minutes.

MOTION: A motion was made by Mr. Conrad and seconded by Mr. Ihmels to approve the minutes of the June 3, 2010 meeting as presented. With all members voting in favor, the minutes were approved.

VARIANCE – WENDLIN PIATZ – 10410 LILLY DRIVE

Chair Marback stated the applicant was requesting a variance to reduce the side yard setback from 15-feet to 9-feet for the purpose of constructing a detached garage on the property at 10410 Lilly Drive due to the location of the septic system and a steeply sloped lot. He asked Ms. Kinsey Piatz, who was representing the applicant, if there was anything to add. Ms. Piatz declined, saying everything should be in the application.

Mr. Ihmels asked Mr. Ziegler if the only issue was the setback and if the property was otherwise compliant in square footage. Mr. Ziegler confirmed that the setback was the only issue and the minimum required setback was 15-feet.

Mr. Ihmels expressed the opinion that this situation seemed to present a textbook example of a variance needed due to topographical features.

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 side yard setback from 15-feet to 9-feet. Mr. Conrad seconded the motion and with all members voting in favor, the motion to approve the variance was passed.

Upon passage of the motion, Mr. Greenquist did recommend to the applicant that subdivision covenants should be checked prior to obtaining a building permit.

OTHER BUSINESS

Discussion took place regarding the usage of lot percentages to determine setback requirements. Informational packets were provided to the members of the Board of Adjustment which outlined references in the City Ordinance to the proportional percentage calculation of setbacks. Mr. Conrad asked if the packets were for informational purposes only or if the intent was to standardize the text language within the Ordinance. Mr. Greenquist noted that the practical application of using the proportional percentage to calculate setback requirements in the RR zoned districts has not been exercised for quite some time, several decades perhaps. He stated an Ordinance re-write had been ongoing for approximately the last three years and that perhaps changes recommended by the Board of Adjustment could be incorporated into that process.

Mr. Ubl commented that any changes made to the text would have far-reaching effects as the proportional percentage calculation was relevant to many of the zoning districts, and that the members of the Board should take some time to review the material provided. Ms. Clark did agree that any recommendations coming from that review should become part of the re-write process so that practices follow the Ordinance.

Ms. Clark asked Mr. Ziegler if, with new construction, variances were necessary if the lot size did not comply with the 20% (calculation for setbacks) or if that was being disregarded and the straight 15-foot was being used in all cases. Mr. Ziegler replied that in rural settings such as the ETA, the 15-foot minimum is observed as the lots are larger and it is not difficult to attain that 20% calculation for setback requirements. However, in the city limits, the 20% calculation is always used as the lots are smaller.

Mr. Ihmels agreed that the Ordinance should reflect the reality (of what is being practiced) and asked for clarification of the re-write process should the Board make recommendations. Mr. Greenquist explained that to initiate an ordinance text amendment, the Board of Adjustment would submit their recommendations to planning staff who would then draft the language to the Board's satisfaction. The draft would then be taken to the Bismarck Planning & Zoning Commission which meets once per month. The first month, the recommendations are put on their agenda as a consideration item,

with a public hearing scheduled at their following months' meeting. He said the Planning Commission has the power to change the draft, deny the draft, or recommend that it go forward to the City Commission. He emphasized that once the recommendations initially reach the planning department for development of the draft, there are still about three to four months of process that must take place.

Discussion took place regarding the different zoning districts, and Mr. Greenquist provided definitions for each as follows:

- RR-Rural Residential, with a minimum lot size requirement of 65,000 square feet or 1.94 acres.
- RR5-Rural Residential zoning district created to satisfy Apple Creek Township's desire to have lots of 5 acres or larger.
- R10-Residential, for twin homes and duplexes, allowing up to 10 units per acre.
- RM-Residential Multi-Family, which may have density designations of either RM-15, allowing up to 15 units per acre, or RM-30, allowing up to 30 units per acre.
- RT-Residential, which is kind of a hybrid between residential and light commercial as it does allow for the inclusion of offices and residential.
- HM-Medical Facility District that was created for the hospitals.
- CA-Commercial district that is considered "light" or "neighborhood" commercial, with the trigger being that nothing can be retailed that requires a truck to haul it away.
- CG-Commercial district of a more inclusive nature and has no percentage setbacks.
- MA & MB-Industrial districts.
- PUD-Planned Unit Development which is a customized mixed-use zoning district that would allow for a combination of the uses.

Chair Marback recommended that the issue of addressing setback requirements be kept as a continuing item on the Board of Adjustment's agenda. It was the consensus of the rest of the members to do so.

Chair Marback announced there had been a request by Dean Conrad, a newly appointed Board member, was interested in the other members' backgrounds. Each member, in turn, shared information on their background.

Chair Marback introduced the idea of a voting roll call. It was discussed, and conflict of interest situations were addressed, with the decision being to utilize a roll call for voting items and any member with a conflict of interest that may affect the vote shall excuse himself/herself from that vote.

Mr. Ubl questioned the effect the Burleigh County Commission's proposal (to create a planning staff within the County rather than continue to utilize City planning staff) would have on the Board of Adjustment. Mr. Greenquist explained that legislation enacted in May, 2009, created an area of joint jurisdiction which exists in the area between the 2- and 4-mile ETA. This joint jurisdiction will exist either between the City

(of Bismarck) and the County (of Burleigh) or the City and a township. One of these jurisdictions will take lead. In any square mile in which there is already a subdivision, or that is developed, the City assumes lead jurisdiction. In any square mile that has no subdivision in it, either Burleigh County or the township assumes lead.

He continued by saying that if the Board of Adjustment approves a variance where the City is lead jurisdiction, upon approval, the secondary jurisdiction is notified of the action and then has a 30-day period to agree or object to the action. If they voice an objection, it goes to arbitration to be decided.

Ms. Clark asked if failure of the secondary jurisdiction to respond is assumed to be acceptance of the action, and Mr. Greenquist confirmed that to be correct.

ADJOURNMENT

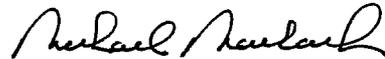
There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on August 5, 2010.

Respectfully Submitted,



Kim Riepl
Recording Secretary

APPROVED:



Michael Marback, Chair