

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
AUGUST 5, 2010**

The Bismarck Board of Adjustment met on August 5, 2010 at 4:00 p.m. in the Tom Baker Meeting 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, Dean Conrad, and Jeff Ubl.

Members absent were Ken Heier.

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

Others present were James Schmidt, 1620 Countryside Drive, Bismarck, ND, and Kim Lee, Planning Manager, City of Bismarck Community Development Department.

**MINUTES**

Chair Marback asked for consideration of the July 1, 2010 minutes.

**MOTION:** A motion was made by Mr. Conrad and seconded by Mr. Ubl to approve the minutes of the July 1, 2010 meeting as presented. With all members voting in favor, the minutes were approved.

**VARIANCE – JAMES SCHMIDT – 1620 COUNTRYSIDE DRIVE**

Chair Marback stated the applicant was requesting a variance to exceed the allowable accessory building area for the purpose of constructing a detached 30' x 40' storage building. He indicated that Mr. Schmidt's initial idea was to connect the existing garage with the proposed storage building by a set of underground footings without building the above-ground walkway on those footings, thus allowing continued access to the applicant's septic for pumping purposes. However, without an enclosed walkway between the two structures, the accessory building cannot be classified as part of the attached garage. The connection must be an enclosed, occupiable space.

Mr. Schmidt stated the positioning of the proposed storage building was tried both to the south and the west of the existing attached garage, but that the south extension distorted the house terribly and the extension to the west severed opportunity to access the septic tank. He referenced the engineer's drawing of the proposed underground footings included with the application, noting that through discussions with the engineer, they concluded that the underground footings were perhaps the best way of being able to build a 1200-square foot storage building. Mr. Marback reminded him that he would still be over the allowable square footage, to which Mr. Schmidt replied that he would be willing to adjust the square footage down. When asked if he had approached the (Burleigh) County in regards to gaining access to his septic tank from the north by

installing another approach, he indicated that he and his wife had decided against that as they felt it took away from the attractiveness of their house.

Further discussion took place regarding the location of the applicant's house and septic, current access to each, and other possible access options, given the fact that there are also easements on the property.

Mr. Ihmels cited the frequency of requests to exceed the allowable square footage (for accessory buildings) and wondered if there had been any directive to increase that allowable amount, to which Mr. Ziegler replied there are frequent inquiries directed to his office in this regards but that no formal recommendation had been made to increase the allowable amount. Mr. Greenquist did add that the allowable square footage for the accessory building itself has been increased in the last decade.

Mr. Marback asked if the proposed building would be the same height as the existing structure to which Mr. Schmidt replied no, it would only have 10-foot or 12-foot sidewalls.

Mr. Marback noted that according to the square footage computation sheet, that even if the proposed structure was attached (to the existing garage), he could only build a 1,070 square foot structure, as a 1,200 square foot structure still put him over his allowable square footage. Mr. Schmidt replied he would be very satisfied staying within the required square footage if he were allowed to use the footings to meet the requirement of an attached building.

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 match the allowable square footage of 1,070 square feet for an accessory building. The motion died for lack of a second.

Mr. Ihmels acknowledged that technically, the applicant can add on to his house, but agreed with the applicant that it would be unsightly. He noted that in the past, the collective thinking of the Board tended to be that if these types of variances were granted

that they (the Board of Adjustment) would be inundated with similar requests, but he stated he personally did not feel that would be the case. He added that it is the option of the Board to make those judgements. Mr. Ubl agreed this to be a power of the Board, but that such decisions must still be in compliance with the zoning ordinance, and if this type of request comes before the Board frequently, then it may be an issue of changing the ordinance rather than granting variances to it.

Ms. Clark stated she understands the applicant's reluctance to add on to the existing structure if it is not visually appealing; however, it can be done in such a way that the septic can still be accessed and doors can be used to prevent fumes from entering the house. She expressed the concern of this being a case where the desires and wishes of the applicant just do not comply with the ordinance.

Mr. Conrad questioned the response of neighbors, citing that when he inspected the property, he noted there were no other neighbors that had two or more stand alone structures other than lawn sheds. Mr. Conrad expressed a concern with setting precedence in allowing these stand alone structures on these lots, especially as there may come a day when these areas become a part of the City (corporate city limits).

Mr. Marback noted that notices are sent out to the adjacent property owners. Mr. Greenquist confirmed this and added that they are given the opportunity to provide a response or even attend the meeting to respond. When questioned if any responses had been received, Mr. Greenquist reported receiving three phone calls in opposition, two of which had requested anonymity. The responses were phoned-in and not in writing. Discussion took place regarding the wording of the adjacent property owner notices and it was recommended the notices should be changed to request written responses.

Mr. Marback asked Mr. Schmidt if the last time his request was denied, he appealed the decision to the (Bismarck) City Commission and Mr. Schmidt replied he had not appealed.

**MOTION:** Mr. Ihmels reinstated his previous motion to approve the request for the variance to match the allowable square footage of 1,070 square feet for an accessory building. The motion was seconded by Ms. Clark, and with Blair Ihmels voting in favor and Dean Conrad, Jennifer Clark, and Jeff Ubl voting in opposition, the motion was denied.

## **OTHER BUSINESS**

Ms. Kim Lee addressed the Board of Adjustment in regards to the RR District. She explained that the City's (City of Bismarck) building size regulations are the same as the County's (Burleigh County). These were amended in 2003 when the ETA was extended.

She announced that a Zoning Ordinance re-write process was begun in 2007 but the committee has not met since March, 2008 as it got put on the back burner due to other priorities. She stated the review committee has examined setbacks and has made some recommendations. At this point, if the Board of Adjustment has specific concerns, it would be a good idea to submit those to the review committee in an effort to avoid a duplication of effort. All comments received will be reviewed and considered. It is the hope of the committee to reconvene in perhaps September or October.

Mr. Marback asked Ms. Lee if there would be something that the Board of Adjustment could review prior to a public meeting being called on the revised ordinance. She stated that at this time there is no revised schedule, however, the district regulations could be submitted for the Board's review when they are completed.

Ms. Lee explained that there have been increases in setback requirements to the RM district, the RT district, the CA district and the CG district if the property is adjacent to residential and the proposed building exceeds two stories in height. There has also been a change to the front yard setback in the HM district. The committee is trying to group all the individual districts, for instance, all the residential districts, together, with the information (such as lot coverage and setbacks) and uses for each of those districts clearly outlined to make it easier to reference.

Ms. Lee disclosed there had been no discussion yet regarding accessory buildings, so comments from the Board of Adjustment would be timely at this point in the process. Size options for accessory buildings were discussed with several specific cases that had come before the Board being cited. Size increases that have been requested for accessory buildings range all the way up to 2,400 square feet, with increasing requests for horse arenas. With regards to attached garages, one individual has a garage that is 1½ times the size of his house. Ms. Lee indicated there is a special use provision in the ordinance for larger buildings but it must be located beyond the 2-mile ET zone.

Mr. Ihmels asked what happens in the instance of the 2- to 4-mile ETA becoming part of the City, for instance, what happens to a 2.5 acre lot when it becomes a city lot? Mr. Greenquist replied that approximately two years ago there was an ordinance amendment that required any new subdivision within the USAB (Urban Service Area Boundary), which roughly approximates the 2-mile line, must show ghost lines, or ghost lots for future development, as well as city water and city sewer rather than rural water and sewer. He referenced an older plat, Grand Prairie Estates, where the subdivision was platted with ghost lines to show the future breakdown of the existing lots (sublots). In that case, residents did not recognize the ghost lines and some built their homes on the lines. In those cases, the two (or more) lots will ultimately be combined as one parcel. He emphasized that the new ordinance states those ghost lines must be recognized and respected, with buildings placed on the property accordingly. Ms. Lee added that although the zoning may be Rural Residential, R5 standards for setbacks were applied. Further discussion ensued, leading to the question of annexation. It was explained that the City of Bismarck does not generally initiate annexation and it is up to the property owner. Ghost platting allows for annexation of one parcel (one, two, or maybe three lots) at a time. It also offers a shared utilities cost for the property owners as the area is developed.

Ms. Lee offered to come back to the Board of Adjustment in the future at their request to answer any further questions they may have.

**ADJOURNMENT**

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on September 2, 2010.

Respectfully Submitted,



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Kim Riepl  
Recording Secretary

APPROVED:



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Michael Marback, Chair