

BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
APRIL 7, 2011

The Bismarck Board of Adjustment met on April 7, 2011 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 Michael Marback, Blair Ihmels, Dean Conrad, Ken Heier, and Jeff Ubl.

Members absent were Jennifer Clark.

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

Others present were Tony Wilson, Bismarck.

**MINUTES**

Chair Marback asked for consideration of the March 3, 2011 minutes.

**MOTION:** A motion was made by Mr. Conrad and seconded by Mr. Ubl to approve the minutes of the March 3, 2011, meeting as presented. With all members voting in favor, the minutes were approved.

**VARIANCE – TONY WILSON-3851 PRAIRIE PINES LOOP**

Mr. Marback stated the applicant was requesting a variance to exceed the maximum allowable area for an accessory building for the purpose of constructing a detached 24-foot by 40-foot building at the above mentioned property. He further stated the request to be for 96 square feet over the maximum area allowed.

Mr. Wilson used an aerial view of his property to provide answers to questions of the Board, saying that access to the proposed accessory building would be gained via an extension of the driveway to the northwest, which would be for his camper only. He also pointed out a rock garden and the location of the septic system drain field.

Mr. Conrad stated he did inspect the area for the proposed accessory building, as did the other Board members, as well as the surrounding neighborhood. He made the comment that the lots are nice, with few stand-alone garages, and a number of RVs parked outside. He reported speaking with one of the neighbors who stated he was in favor of the variance request as he hoped to put a similar building on his property.

Mr. Ubl asked if the design of the accessory building was consistent with the existing buildings and Mr. Wilson replied it would be and further stated there are strict standards in place that require all accessory buildings to be of the same material as the primary structures to maintain the good looks of the area.

Mr. Ihmels questioned whether there was any intent for use of the accessory building other than storage, such as a business use, and Mr. Wilson replied it was strictly for his camper to improve the appearance of the property by not having it sitting out and to protect his

investment from weather-related damage and deterioration. Mr. Wilson added that a shorter building length was not an option due to the length of the camper, and narrowing the width from the 24-foot trusses he ordered would greatly harm the aesthetics, and that is the reason for his variance request.

Mr. Ubl asked how it came to be that Mr. Wilson ordered trusses in that size and then found them to be too wide. Mr. Wilson explained the situation resulting in his request for an additional 96 square feet of allowable area. He stated that upon first calling the Building Inspections Department, measurements of the attached garage rather than the detached garage were used to calculate the remaining allowable square footage available for an accessory building. The size he wished to construct exceeded that amount by 24 square feet, and he was informed that it shouldn't be a problem. He proceeded to order trusses that were 24-foot wide which were discounted at that time. He was subsequently hospitalized, preventing him from going in for his building permit right away. When he went into the Building Inspections Department for his permit, the allowable lot area was again calculated, but this time using the correct measurements for the detached garage which resulted in being 96 square feet over the allowable limit. In the meantime, he now has trusses that are 24-foot wide. Mr. Ziegler confirmed this explanation was correct according to his understanding.

There was one letter received from an adjacent property owner in opposition of the variance request and three letters received stating no objection to the request. It was noted the concerns expressed in the letter of opposition were that of a possible business being run from the property and that the building conform to the standards of the covenants, and that both these issues had been addressed.

Mr. Heier stated this appears to be a minor variance, but in view of the interpretation of the ordinance previously given by the City Attorney, he questioned the existence of a hardship other than the order of materials. Mr. Marback concurred with that thought, but introduced the idea that, although it is hearsay, the applicant was supplied misinformation that led to this (circumstance). He added that reducing the building size to 20'x40' would make it compliant, at which point Mr. Wilson stated his concern over the appearance of such a long, narrow building, which was echoed by Board members. Mr. Marback then suggested the materials could possibly be returned to the supplier.

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 allow the applicant to exceed the maximum allowable area for an accessory building with discussion to follow to allow for clarification of the motion. The motion was seconded by Mr. Heier, and discussion followed.

*Discussion: Mr. Ihmels stated he based his motion on a circumstantial hardship resulting from staff making a mistake and the applicant now having material on the ground which he ordered based on information provided to him by staff. He added that he does have reservations due to not wanting to set a precedence, however, it may be time to re-examine the ordinance relating to accessory buildings as things seem to be trending towards this circumstance.*

*Mr. Heier agreed with the statements made by Mr. Ihmels. Mr. Ubl inquired as to how the (allowable) size for an accessory building was originally set up, and was it arbitrary? Mr. Ziegler responded he supposed perhaps in the beginning, with the intent being to avoid commercialized-looking facilities, but he acknowledged that to be the trend with people purchasing larger lots to accommodate their boats, RVs, etc. Mr. Marback added that the RVs continue to increase in size, with upwards of 40-feet in length not being unusual. Mr. Ziegler continued by saying the original intent (of the language of the ordinance) to eliminate the running of a business is often referred to, but he emphasized that factor is uncontrollable (by limiting building size), as you could run a business from inside of a doghouse. Mr. Heier stated this was really a separate issue, to which Mr. Ziegler agreed.*

**CALL FOR VOTE:** Chair Marback called for a vote on the motion made by Mr. Ihmels and seconded by Mr. Heier. With Mr. Conrad voting opposed and Mr. Ubl, Mr. Heier, Mr. Ihmels and Mr. Marback voting in favor, the motion to approve the request for the variance to allow the applicant to exceed the maximum allowable area for an accessory building was passed.

#### **OTHER BUSINESS**

Mr. Ziegler, in response to a question posed by Mr. Conrad, provided an update on the general compliance relating to the City's request for removal of portable storage containers, noting the trailers at the Ramkota Hotel are still there and seem to be the source of most calls. He indicated the hotel is remodeling, with completion to be somewhere around the end of April, at which time the containers will be removed.

Mr. Conrad then asked what role the Board of Adjustment has in the enforcement of the storage container ordinance. Mr. Marback stated he felt it to be the Board's responsibility to enforce the ordinance the City has in place. For instance, if someone were to file a complaint, and the complaint was appealed, it would then come before the Board of Adjustment. Mr. Ziegler added the complaint could originate administratively through his office as well, although he said zoning ordinance violations most often originate from a complaint that has been filed as the Building Inspections Department consists of a co-mingled group and simply doesn't have the staff necessary to hunt for violations, rather, a complaint comes in and is then acted on.

Mr. Ziegler then turned attention to a question that again came up at this meeting regarding the 1,800 (maximum) square footage allowed for accessory buildings. He announced he had visited with Planning staff requesting they consider a straight 10% lot coverage (formula) just as it is done for lots within city limits. He added that city lots are granted 30% lot coverage. He stated they are questioned all the time as to why only 1,800 square feet is allowed as people complain they buy the bigger lot because they want to build bigger and they have bigger stuff. Another complaint is that they don't want one big building, they want several smaller buildings and they don't want to add it on to their house. Mr. Ziegler indicated if a property owner had enough money and was willing to attach it on to their house, they could have a 15,000 square foot garage; *if* they had the money. He stated it isn't really fair to cater to the rich. He said Planning staff will take up future discussions on this item and he alerted the Board that they would likely be brought in to the discussions for their feedback. Board members stated these requests have become more frequent and they struggle with each one, whereupon they began citing specific recent examples.

Mr. Ubl remarked that many of these buildings purchased from building supply centers are a standard size and any variations from that size become expensive, and this makes the flexibility with the percentage (of lot coverage) easier and more appealing. Mr. Ziegler agreed, and added it also puts much less burden on the staff.

Mr. Heier used the application for this meeting as an example to see what the allowable square feet for the building would have been using a 10% lot coverage formula. The lot was 85,000 square feet, resulting in 8,500 square feet available, and Mr. Ziegler reminded the Board that was for everything, the house, the garage, and accessory buildings. He also added the 10% was just a figure to start with; it could be 8% or whatever, but it's got to start somewhere.

Mr. Ubl asked Mr. Ziegler if he's gotten any information as to what other communities are using for their calculations. He replied that he really hasn't, but has talked with Carl (Hokenstad) and Kim Lee. He further stated Gregg (Greenquist) will be meeting with them as well as Laura (Stroh), as she has a lot of background with what people are requesting at the counter. He thought he recalled seeing 10% in other places, but he added that as we (the City) expand out and bring these areas into our jurisdiction, then do we go 30%? He stated it just doesn't seem right the way it is now. Mr. Ubl agreed that a straight percentage seemed better, with a definite limit, rather than always increasing the square footage.

Blair Ihmels departed.

Mr. Marback said it would be nice to know what other communities such as Fargo and Grand Forks are doing in this area. He assumed Fargo has an ordinance enforcement officer, and Mr. Ziegler explained Fargo has property maintenance inspectors, but it got into rental units and other issues dealing with zoning, eventually charging fees for licensing and annual inspections, issuing fines, etc., and they found out quickly that it was a self-supportive program. He indicated he has advocated for years that we (City of Bismarck) need to get to that point with all the growth, further stating there will be a price to pay for not keeping up with it. A great looking city is no accident, it takes rules and it takes enforcement, because not everybody wants to have a good looking building.

Mr. Ubl referred to an "administrative" variance if an applicant is slightly over and asked Mr. Ziegler what the comfort zone is for that. Mr. Ziegler replied there really was no comfort zone, it's more of a realistic zone. He explained that if it is 5 or 10 square feet over, is that really

worth taking to the Board (of Adjustment), holding projects up for a month? Not in his opinion, although it is a gray area. Mr. Heier agreed that there are gray areas, for instance with side yards (setbacks), and are you going to make someone move a basement because they are over by an inch?

Mr. Ziegler concluded by saying he could come before the Board and ask for some tolerance of a 5% or 10% overage, but that is a tough one, too.

#### ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on May 5, 2011.

Respectfully Submitted,



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Kim Riepl  
Recording Secretary

APPROVED:



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Michael Marback, Chair