

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
JULY 7, 2011**

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

Members absent were Ken Heier and Jennifer Clark.

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

Others present were Hunt Boustead, Bismarck; Tom Bauer, Mandan; Greg Kosbab, Bismarck.

**MINUTES**

Chair Marback asked for consideration of the June 2, 2011 minutes.

**MOTION:** A motion was made by Mr. Conrad and seconded by Mr. Ihmels to approve the minutes of the June 2, 2011, meeting as presented. With all members voting in favor, the minutes were approved.

**VARIANCE – PAUL JUNDT – 7500 GRAY FOX LANE (RECONSIDERATION)**

Mr. Marback stated the applicant was requesting a variance to reduce the front yard setback from 40-feet to 30-feet for the purpose of constructing a detached garage. He further stated this request was denied at the June 2, 2011 meeting, but a reconsideration of the request had been granted at the applicant's request to provide additional information. He asked for additional comments from the applicant. The applicant was not present to provide additional information.

**MOTION:** A motion was made by Mr. Ihmels and seconded by Mr. Conrad to table the variance request for Gray Fox Lane to be the last item on the agenda to allow the applicant additional time to arrive at the meeting. With all members voting in favor, the motion to table the variance request was approved.

**VARIANCE – HUNT BOUSTEAD – 806 CANADA AVENUE**

Mr. Marback stated the applicant was requesting a variance to reduce the side yard setback from 6-feet to 4-feet for the purpose of bringing the newly-constructed house into compliance (with the City Code). Mr. Boustead stated that to be correct and explained the home was designed to fit on the lot, but at some time during the construction process the home ended up only 4-feet from the east property boundary. He said he found the setback issue 6 days prior to the buyer moving into the home. The buyer wanted to install a fence, and there was a

northeast property stake which appeared to be accurate at that time but the southeast stake could not be located. Mr. Boustead called Swenson, Hagen & Co. to re-survey the lot, and that is when the distance discrepancy was found.

Discussion took place regarding lot line modifications. It was noted that Mr. Boustead does not own the adjacent lot and did approach the landowner about purchasing an additional 2-feet of his lot, but the landowner was nervous and uncomfortable with that request. Also, because Mr. Boustead is also the listing agent for the newly constructed home, he is required by industry standards to purchase the entire lot, listed at \$5,000 over market value, making that option unfeasible for him.

Mr. Marback asked Mr. Ziegler if the footings had been inspected at the time of construction. Mr. Ziegler confirmed they had, however, he cited items concerning the property lines of this lot and the surrounding area which may have contributed to this situation. He referenced a fire hydrant and stated that for whatever reason, it is in the wrong location, indicating the alignment was off. He then noted a change in elevation to the north, which may have made it difficult to see the stake, as well as the possibility of snow on the ground at the time of inspection. Mr. Boustead confirmed there was snow on the ground at that time, and also that there is a drop in elevation of perhaps 50- or 60-inches. Mr. Ziegler went on to say that if a home were built on Lot 2, there would still be 10-feet between the homes, and that is his main concern at this time.

Mr. Greenquist asked if, when Swenson, Hagen & Co. re-surveyed, the southeast pin was found, to which Mr. Boustead replied it had been, although it was much deeper than the others.

Mr. Ubl indicated Mr. Ziegler's reference to the 10-foot distance between homes, and questioned whether it was for access or fire issues. Mr. Ziegler explained that older city lots were typically 50-feet wide and had side yards of 5-feet, allowing for 10-feet of access between them, per old fire codes.

Mr. Ihmels questioned how the position of the house could have gotten to be 2-feet off, and Mr. Boustead stated he is confused on that point as well, but that he must rely on the engineering company (surveyor), the contractor, and the City to verify those footings are (properly) in place. Mr. Ihmels asked Mr. Ziegler to affirm this process, and Mr. Ziegler stated that to be correct. He added that it is not unusual for pins to disappear, or stakes to get removed. Mr. Boustead said that a utility company had come through, early in the construction process, and trenched in that location last October.

Mr. Ubl asked if Swenson, Hagen & Co. had staked for the house and Mr. Boustead that he only paid them to do the lot exhibit and the staking was done by the company doing the foundation.

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 R10 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.

Discussion took place regarding the particular circumstances that may have led to the house being placed too near the east property line. It was the general consensus of the Board that the circumstances seem to be unusual and not an ordinary occurrence.

**MOTION:** A motion was made by Mr. Ihmels to approve the request for the variance to reduce the side yard setback from 6-feet to 4-feet. The motion was seconded by Mr. Ubl, and with all members voting in favor, the motion was passed.

**MOTION:** A motion was made by Mr. Ihmels to modify the language of the findings to reflect “the need for the variance is based on special circumstances or conditions”. The motion was seconded by Mr. Conrad, and with all members voting in favor, the motion was passed.

#### **VARIANCE – PAUL JUNDT – 7500 GRAY FOX LANE (TABLED RECONSIDERATION)**

Mr. Marback introduced the tabled request for a variance to reduce the front yard setback requirement from 40-feet to 30-feet for the purpose of constructing a detached garage. Mr. Marback called for additional information from the applicant, but the applicant was not present.

**MOTION:** A motion was made by Mr. Ihmels to take no action on the request for the variance to reduce the front yard setback from 40-feet to 30-feet. The motion was seconded by Mr. Conrad, and with all members voting in favor, the motion to take no action was passed.

#### **OTHER BUSINESS**

Mr. Conrad addressed the Board members on the subject of consistent appearance of non-residential areas. He cited a recent application brought before the Board in which the property developer had requested a variance which, in part, would allow better aesthetics and curb appeal for a building he was proposing to construct. Mr. Conrad offered the opinion that the City of Bismarck could improve its image if (design) standards were imposed on buildings within industrial-zoned areas.

Mr. Marback asked if that was already addressed in the plan review process and Mr. Ziegler explained the plans are reviewed for code and ordinance compliance, not cosmetics. Also, landscaping is not a requirement within industrial-zoned areas.

Mr. Greenquist commented that many communities do employ architectural standards, and he agreed with Mr. Conrad that this can result in a positive economic impact, and can be particularly important in gateway corridors.

Further discussion followed, and it was determined the Board of Adjustment can recommend ordinance amendments to address this issue.

Mr. Marback suggested Mr. Conrad meet with the staff and director of Community Development and bring further information back to the Board.

#### ADJOURNMENT

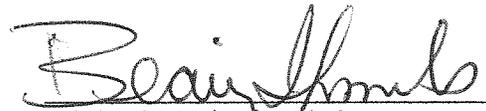
There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on August 4, 2011.

Respectfully Submitted,



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Kim Riepl  
Recording Secretary

APPROVED:



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Michael Marback, Chair