

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
January 2, 2020**

The Bismarck Board of Adjustment met on January 2, 2020, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chair Marback presided.

Members present were Jennifer Clark, Curtis Janssen, Michael Marback, Chris Seifert and Rick Wohl.

Member Ken Hoff was absent.

Staff members present were Ben Ehreth – Community Development Director, Kim Lee – Planning Manager, Janelle Combs – City Attorney, Jenny Wollmuth – Planner and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chair Marback stated the minutes of the December 5, 2019 meeting of the Board of Adjustment would be presented again at the next meeting.

VARIANCE FROM 14-04-03(8) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL/SIDE YARD) - LOT 4, BLOCK 11, SILVER RANCH ADDITION (3912 SILVER BOULEVARD)

Chair Marback stated the applicant, Premier Homes Inc., is requesting a variance to reduce the required side yard setback, located along the southern portion of the property, from six feet to four feet six inches for the construction of a proposed single-family dwelling.

Ms. Wollmuth said a building permit to construct a single-family dwelling was obtained October 30, 2019 and a lot survey indicating the placement of the proposed single-family dwelling conforming to required setbacks was submitted and reviewed prior to approval of the permit. She said a footing inspection occurred on November 21, 2019 and a foundation inspection occurred on December 3, 2019. Ms. Wollmuth said the building division passed both inspections; as the proposed single-family dwelling footings and foundation met the setback requirements according to the property pins set by the owners' surveyor. The owner's surveyor determined that the foundation of the proposed single-family dwelling was projecting approximately one foot six inches into the required side yard setback located along the southern portion of the property, as the property pins were set in the incorrect location.

Ms. Wollmuth gave an overview of the request, including the following findings:

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 R5-Residential zoning classifications.
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 not the minimum variance that would 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.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Mr. Wohl reiterated that no responses were received from adjacent owners and asked if the majority of the surrounding properties are still developer owned, or have been sold for development.

Ms. Wollmuth said it is some of both.

Mr. Janssen asked if there is a similar situation from the past that this could be compared to.

Ms. Wollmuth said not that she can recall from recently and indicated that possibly there may have been one like this a longer time ago.

Mr. Seifert said asked if it was platted and staked at that time then how was this caught or was it surveyed incorrectly.

Ms. Wollmuth said when the property was platted it was surveyed for building after which a building inspector measured and discovered the pins were incorrectly placed. She said those issues have all been corrected with the consulting engineer and the City Engineering Department.

Chair Marback asked if Mountain Plains was the surveyor that created the subdivision plat. Ms. Wollmuth said it was not Mountain Plains; the original plat of Silver Ranch First Addition was surveyed by another firm. She said Mountain Plains is now doing the individual lot surveys for some of the lots for construction and they discovered the issue.

Brian Zuroff, Mountain Plains, said both of the requests on the agenda today have the same issue. He said the coordinates were labeled and monumented and built in their system based off of what was on the plat, so what was on the plat is what was surveyed and staked by their surveyor. He said when inspecting the foundations, they found they did not line up and worked with City staff right away to correct it so that these would be the only ones with issues.

Mr. Seifert asked who originally engineered and surveyed the subdivision.

Mr. Zuroff said it was another local firm.

Mr. Janssen asked if all of the lots are wrong or just some. Mr. Zuroff said they are measured in relation to each other and in relation to the coordinates and measurements. He said the measurements for the two properties they surveyed are off by 4 feet in the east and west direction and 1.1 feet in the north and south direction.

Chair Marback opened the public hearing.

There being no comments, Chair Marback closed the public hearing.

Chair Marback said there have been situations in the past where a house was placed incorrectly, that it is rare, but never as a result of an incorrect survey.

Mr. Janssen said this is complicated being a new development, but there is a level of professionalism to do right and there are insurances to cover these types of mistakes. He said if the plat was wrong, other means and methods could have been taken preventively to correct it. He said this could have been discovered ahead of time and the responsible party is the one that can make it right again.

Ms. Clark said 18 inches is generally not alot, but this is only a 6-foot side yard to begin with, so it is a significant portion in this case.

Mr. Wohl said the final property owners being affected are not known at this time and so are not able to be here to say anything. He said he feels this would set a precedent.

MOTION: A motion was made by Mr. Seifert to approve the variance from Section 14-04-03(8) of the City Code of Ordinances (R5 – Residential/Side Yard) to reduce the required side yard setback, located along the southern portion of the property, from six feet to four feet six inches for the construction of a proposed single-family dwelling on Lot 4, Block 11, Silver Ranch First Addition, based on this being a mistake that has now created a hardship with the foundation and footings having already been poured. The motion was seconded by Ms. Clark and with Board Members Clark, Seifert and Marback voting in favor of the motion and Board Members Janssen and Wohl opposing the motion, the variance was not approved by the Board of Adjustment, as

four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07, therefore the variance is denied.

VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL/FRONT YARD) – LOT 26, BLOCK 10, SILVER RANCH ADDITION (4011 SILVER BOULEVARD)

Chair Marback stated the applicant, Premier Homes Inc., is requesting a variance to reduce the required front yard setback located along the western portion of the property, adjacent to Silver Boulevard, from 25 feet to 21 feet for the construction of a single-family dwelling.

Ms. Wollmuth said a building permit to construct a single-family dwelling was obtained October 30, 2019 and a lot survey indicating the placement of the proposed single-family dwelling conforming to required setbacks was submitted and reviewed prior to approval of the permit. She then said a footing inspection occurred on November 14, 2019 and a foundation inspection occurred on November 15, 2019. Ms. Wollmuth said both passed inspection; however, while performing an inspection on an adjacent property, the owner's surveyor determined that the foundation of the proposed single-family dwelling was projecting approximately 4 feet into the required front yard setback located along the western portion of the property, adjacent to Silver Boulevard, as the property pins were set incorrectly.

Ms. Wollmuth gave an overview of the request, including the following findings:

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 R5-Residential zoning classifications.
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 not the minimum variance that would 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.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Chair Marback opened the public hearing.

There being no comments, Chair Marback closed the public hearing.

MOTION: A motion was made by Mr. Wohl to deny the variance from Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential/Front Yard) to reduce the required front yard setback located along the western portion of the property, adjacent to Silver Boulevard, from 25 feet to 21 feet for the construction of a proposed single-family dwelling on Lot 26, Block 10, Silver Ranch Addition (4011 Silver Boulevard). The motion was seconded by Mr. Janssen and with Board Members Clark, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was denied.

OTHER BUSINESS

BYLAWS

The bylaws were presented included with the meeting packet for approval at this time.

MOTION: A motion was made by Ms. Clark to approve the bylaws as presented. The motion was seconded by Mr. Seifert and with Board Members Clark, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was unanimously approved.

CITY ATTORNEY COMBS

Ms. Combs said she is giving all of the City Boards and Commissions a refresher on some of the meeting rules and requirements. She said there was a memo shared that can be included with these meeting minutes. She said one of the main items is the need for there to be four votes in favor of a variance for it to be approved, but other items brought before this Board only need a majority, such as the bylaws. She said there is also information in the memo regarding amending motions and other procedural items, such as opening and closing public hearings. She said this Board always makes a motion for discussion, which is great, along with waiting until a public hearing is closed to hold discussion. She said any motion by this Board requires having a basis of a finding modified, which can never be a cost related finding. She reminded everyone that they are subject to open records requests and to be cautious of having serial conversations on agenda items so as to not violate any open meeting laws.

Chair Marback asked how to address the issue of applicants calling all of the Board members and if they are allowed to ask if they have already visited with other Board members. Ms. Combs said it is helpful to ask that question and indicated that the Attorney General would call that an open meeting. She said it needs to be made certain that the general public can see and hear any and all proceedings and to use caution with e-mails as well. She said those can be subject to open records requests and she, as well as Planning staff, is always available for consultation as needed.

Mr. Janssen asked if emails asking for general information should also be forwarded to Planning staff. Ms. Combs said that is the best and safest practice and those items can then be included in the meeting minutes as well.

Ms. Combs points are attached as Exhibit A.

Chair Marback informed those present that the November 2020 meeting of the Board of Adjustment will need to be held on a different date due to a conflict with the Burleigh County Commission meeting and election week.

Ms. Wollmuth said the day before and the day after the regular date, either November 4th or November 6th, are both available.

Chair Marback said a Wednesday is more preferable and to please put that meeting on the books for November 4th.

Ms. Wollmuth said the election of officers will be on the next meeting agenda.

There was no other business to discuss at this time.

ADJOURNMENT

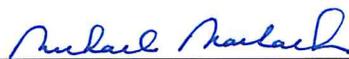
There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:27 p.m. to meet again on February 6, 2020.

Respectfully Submitted,



Hilary Balzum
Recording Secretary

APPROVED:



Michael Marback, Chair