

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
February 6, 2020**

The Bismarck Board of Adjustment met on February 6, 2020, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Vice Chair Clark presided.

Members present were Jennifer Clark, Ken Hoff, Curtis Janssen, Chris Seifert and Rick Wohl.

Member Michael Marback was absent.

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

MINUTES:

Vice Chair Clark called for approval of the minutes of the December 5, 2019 and January 2, 2020 meetings of the Board of Adjustment.

MOTION: A motion was made by Mr. Seifert and seconded by Mr. Hoff to approve the minutes of the December 5, 2019 and January 2, 2020 meetings, as presented. With Board Members Clark, Janssen, Hoff, Seifert and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-03(8) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL / SIDE YARD) – LOT 12, BLOCK 1, HIGHLAND ACRES (833 CRESCENT LANE)

Vice Chair Clark stated the applicants, Andrew and Sarah Rodenburg, are requesting a variance to reduce the required side yard setback from six feet to zero feet, located along the south side of Lot 12, Block 1, Highland Acres.

Ms. Wollmuth explained that the variance is being requested in order to dedicate a 20-foot access easement and construct a driveway along the southern portion of their property to provide access to Lots 1-4, Block 1, Torrance Hill Addition, which are east and adjacent to this property and are owned by the applicants. She said the applicants have indicated that they would build a single-family dwelling on these lots if the variance is approved as proposed. Ms. Wollmuth went on to say the zoning ordinance requires a side yard be measured from the interior edge of an access easement and if approved as proposed, the measurement from the interior edge of the access easement to the single-family dwelling would be zero feet. She added that the zoning ordinance also requires lots to have non-obstructed access to a public right-of-way and Lots 1-4, Block 1,

Torrance Hill Addition do not have a non-obstructed access to a public right-of-way. Ms. Wollmuth said it should be noted that when the lots to the east of this request were platted in Torrance Hill Addition in 1986, access to the lots was proposed to be from Crescent Lane. She further explained that the property developer at the time proposed the demolition of the single-family dwelling located at 825 Crescent Lane, which is located 2 lots to the south of the property with the proposed variance. City Staff during the review and ultimate approval of Torrance Hill Addition in 1986, also indicated that access could be provided from the south, through a 19.5-foot wide extension of Williams Street. She said the extension was platted as Lot 7, Block 1, Torrance Hill Addition and this extension was not favored by staff as additional right-of-way from adjoining properties would be needed to increase the width. This area was also obstructed by existing fencing, trees and an accessory building. She added that it appears that in 1982, prior to submittal of the plat, the property owners east of the proposed extension of Williams Street vacated the eastern half of the street right-of-way. Ms. Wollmuth closed by saying according to Planning Division documents, approval of Torrance Hill Addition was dependent on access to this area which was proposed to be provided from 825 Crescent Lane. Court documents from a 1987 South Central Judicial Court case, filed after approval of the plat, between adjacent property owners and the property developer, indicate that an access from 825 Crescent Lane violated the covenants for Highland Acres Addition as only single-family dwellings were permitted on residential lots. She said the summary opinion also states “The City may need to be convinced to extend Williams Street to the north or adjoining owners may need to assent to a private access road and finally it may be that an easement to the property may exist as an easement of necessity.” Ms. Wollmuth said a copy of the judgement summary is attached to the staff report. She noted to the Board that neighborhood covenants are an agreement between property owners in a subdivision, and the City of Bismarck is not to party to them nor does the City enforce them. Ms. Wollmuth stated that a variance is defined in the zoning ordinance as “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”

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 above findings, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

Mr. Hoff asked if any comments have been received from the property owner to the south. Ms. Wollmuth said they were notified but did not provide any comments. She added that it is likely that the APO had not reached them yet, as the mailing address is out of the country.

Mr. Wohl asked if the east half of Williams Street is vacated then what is left. Ms. Wollmuth replied the south 19.5 feet is left as indicated on the southern portion of Lot 7, Block 1, Torrance Hill Addition. She further stated that Lot 7 could have provided access, but because it was platted, it is not considered an access easement.

Vice Chair Clark opened the public hearing.

Brian Eiseman, Stoneshire Builders, said the owners bought the four vacant lots several years ago and have since been working on a way to access them in order to build a home. He said the proposal is essentially for a driveway, but the zoning ordinance does not have provisions for access through one property to another.

Vice Chair Clark asked if the Rodenburgs possess a small sliver of Lot 7 as well. Mr. Eiseman said they originally owned that piece and sold it to the neighbor to the south to accommodate his properties and the existing landscaping to include a fence. He said Mr. Rodenburg bought the four lots from adjacent property owner Mr. Reichert and then the home they occupy now happened to come for sale, so at the suggestion of Mr. Reichert they bought it with the understanding of there not being any current access to the four lots behind. He went on to say that the original developer abandoned Lot 7 as an access easement and turned it into a lot. He said he was unaware of any lawsuit and their intent was never to develop the property as four separate lots without demolishing the existing house. He said several meetings have been held with City staff as well as the utility companies and it seems that a new access easement would be the most reasonable option. He added that the Fire Department is willing to allow a less than 20-foot wide access with six-inch reinforced concrete and the existing fire hydrant, located along Crescent Lane where the proposed driveway would be located, can be moved to accommodate the property as well. He said there are some drainage issues at this location and he believes the construction of a driveway with curb and gutter could help collect more stormwater and lessen that impact on the adjacent owners, as well as making other utilities more accessible.

Mr. Hoff asked if the Rodenburgs own the home now. Mr. Eiseman said they do and they would continue to own it.

Mr. Hoff asked if demolishing the house has been considered. Mr. Eiseman replied it has not because they want to be good neighbors and maintain the character of the neighborhood.

Mr. Hoff said if it was demolished it could be used as an access point.

Mr. Rodenburg said that crossed their minds but after living there for 3½ years they are attached to the house and have made it aesthetically appealing. He said losing it completely would create an eye sore.

Mr. Hoff asked why it has taken six years of owning the current property to decide to do this now.

Mr. Rodenburg said time and money were an issue and they lived in Oklahoma City at the time. He said they moved into it after owning it for two years and have made improvements to it over the years but are ready to build something new now.

Mr. Wohl said the 1987 court case would indicate that the property to be demolished and turned into an access lot would not be allowed because of the restrictive covenants.

Mr. Eiseman said the covenants state there must be a certain amount of square footage of a house on the lot, so demolishing it would be against the spirit of the covenants. He said multiple provisions of the covenants no longer apply but the lawsuit was over the roadway being proposed to multiple lots versus to just one home.

Mr. Wohl said this is not much different from what was originally not allowed and he wonders if the owners have retained legal counsel to determine if that would happen again.

Mr. Rodenburg said they have not spoken with an attorney and the neighboring owner, Dr. Volk, explained the situation to them a bit differently.

Vice Chair Clark said it is up to the owner to work out the requirements of the restrictive covenants as the Board of Adjustment does not enforce those.

Mr. Eiseman said the lawsuit referenced was not originally brought to the attention of the Rodenburgs.

Kyle Engelhart, 925 Crescent Lane, said he fully supports this proposal and feels it would add value to the area. He said this is a great piece of property and he appreciates the Board's consideration and approval.

Phil McMahon, 903 Crescent Lane, said he has lived at his property since October 2014 and he fully supports this request. He said he is the Rodenburgs' direct neighbor to the north and he believes this project would be done courteously and compassionately.

Clark Preszler, 910 Ward Road, said he is also an adjacent property owner and he also fully supports the request.

There being no further comments, Vice Chair Clark closed the public hearing.

Mr. Hoff asked if a private drive could be created if the existing house is demolished. Ms. Wollmuth replied the zoning ordinance would allow the existing house to be demolished and a private drive to serve the lots to the east. A lot combination to combine all of the properties owned by the Rodenburgs would also be permitted.

Mr. Wohl asked if it would be allowed if the properties are in different subdivisions. Ms. Wollmuth said that is still allowed as long as the zoning districts are the same, which they would be.

Mr. Wohl said he expected to hear more opposition to this request, especially from the neighbor to the south. He said he did consider the demolition option as well as he feels it would be cleaner and would move the access easement and further from the adjacent owner, but that is not the question right now.

Mr. Seifert said a home south of this property was what the owner wanted to demolish in 1987, but that was for the construction of multiple units at the time.

Mr. Wohl said once the properties are combined the covenants might not apply because it would be described in two different subdivisions.

Ms. Clark said the covenants would still apply because a portion of it would still be in Highland Acres, so only one residence would be allowed. He said the most restrictive of the covenants and the ordinance applies, but again, the City does not govern restrictive covenants.

Mr. Janssen said that why the four lots were purchased knowing there was not any access to them is puzzling. He said there is the issue of what could result further down the road, such as if their access were to become blocked and making sure a new owner of the existing house knows about the access point. He said he feels this will create other issues than what has been discussed so far.

Vice Chair Clark said she is torn between the hardship of a landlocked area and it being a nice green area, or a hardship of allowing a larger square footage home and trying to decide where the hardship lies.

Mr. Hoff said it would be easier and cleaner to demolish the house and have a nice big driveway to the new home, so he cannot favor this request at this time.

Mr. Janssen said it becomes a hardship as soon as construction is desired and there is not an access point to be had. He said this is a challenge. He said if there is not construction then there is no hardship.

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 decrease the required side yard setback from six (6) feet to zero (0) feet for the purpose of creating an access easement to provide access to the property east of Lot 12, Block 1, Highland Acres (Lots 1-2, Lot 3 less the North 16 feet and Lot 4 less the East 29 feet, Block 1, Torrance Hill Addition)(811, 815, 819 and 823 Torrance Place) in order to construct a single-family dwelling, based on the property being landlocked and that the requested variance is the minimum variance that would accomplish the relief sought by the applicant because access cannot be provided to the property from the south through Williams Street, as this would also need to be approved by variance as existing structures would not comply with the required setbacks either. The motion was seconded by Mr. Wohl and with Board Members Clark and Seifert voting in favor of the motion and Board Members Hoff, 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.

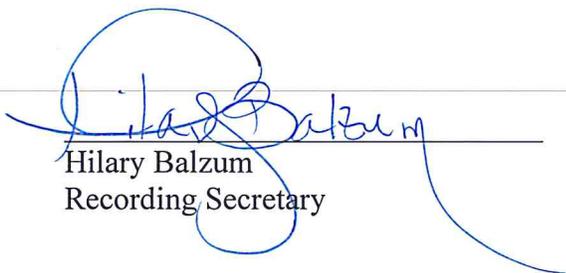
OTHER BUSINESS

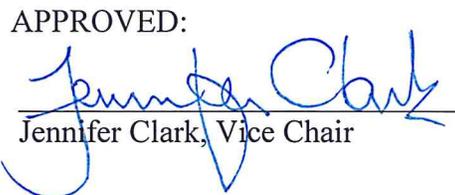
There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Vice Chair Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 5:40 p.m. to meet again on March 5, 2020.

Respectfully Submitted,


Hilary Balzum
Recording Secretary

APPROVED:

Jennifer Clark, Vice Chair

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Andrew Rodenburg/Stoneshire Builders
Date: Tuesday, February 4, 2020 2:06:34 PM

From: hank reichert [mailto:]
Sent: Tuesday, February 4, 2020 11:56 AM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Andrew Rodenburg/Stoneshire Builders

Bismarck Board of Adjustment Members; Since I am not able to physically be present for the meeting considering the variance application of Andrew Rodenburg, I respectfully request consideration of my written support of the variance before this board. I have a history with this land having owned it before it was platted in the early 1980's and again beginning in year 2000. Andrew Rodenburg's planed use of this property is ideal as it allows increase in tax revenue to the city with the single family house, minimal impact on surrounding neighbors and, with your granting of the variance, simple and safe access. Development facilitated by the requested variance also meets Bismarck's desire to promote development of unused property within the city rather than all at the city periphery. I appreciate having the opportunity to speak to you via email in support of Andrew Rodenburg's request, thank you. Henry Reichert

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Sarah and Andrew Rodenburg variance request
Date: Wednesday, February 5, 2020 11:09:35 AM

From: Phil McMahon [mailto: [REDACTED]]
Sent: Wednesday, February 5, 2020 10:46 AM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Sarah and Andrew Rodenburg variance request

Hello, my name is Phil McMahon and I live at 903 Crescent Lane which is directly next door to the north of the Rodenburg's. I am planning on attending the meeting on February 6th, but wanted to send a quick email to attest to my neighbor's character. I have lived at 903 Crescent Lane since October of 2014 and have known Andrew and Sarah in the capacity of neighbors and friends since 2016. They are kind, family-oriented and caring people that are always willing to lend a helping hand. The property they own that they are wishing to access by road with this variance is directly behind my house to the East. Being in this close proximity to the request I feel I have knowledgeable perspective on the case. Knowing both of them I see absolutely nothing wrong with building a road on property, which they own, to more easily access property, which they also own. I believe they will act courteously and compassionately in respect to their neighbors and the existing landscape to complete this and future projects. Thank you for your time and consideration.

Sincerely,
Philip McMahon
[REDACTED]

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Rodenburg property
Date: Thursday, February 6, 2020 4:11:02 PM

-----Original Message-----

From: Bridget Hineman [<mailto:>]
Sent: Thursday, February 6, 2020 3:20 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Rodenburg property

Hello,

This is Bridget Coleman I am contacting you to write a written comment about Sarah and Andrew Rodenburg. Our residence is 832 crescent lane right across from the rodenburgs. We are in agreement to allow the rodenburgs to add the easement and construct a single family dwelling. If you have any other questions or need anything else please let me know.

Thanks,

Judah and Bridget Coleman

Bismarck Fire Department

To: Jenny Wollmuth, Planner
From: Brooks Martin, Battalion Chief of Support Services *BM*
RE: Rodenburg Easement/ Access
Date: 2/6/2020
Cc: Brian Eiseman

Recently the Bismarck Fire Department was contacted in reference to a possible access easement at 833 Crescent Lane. The Bismarck Fire Department recognizes this unique situation. The following items have been discussed and shall be in place:

1. Access road must be for only one home
2. Road will be designed within specifications to support the weight of a fire truck.
3. Road will have an approved turn around for fire apparatus (IFC Appendix D D103.4)
4. Access road must be as wide as possible with 20' being optimum, narrowing to 15 ft. will be considered along the current residence. Using the existing driveway would not be optimal and could cause issues as an access point.
5. Access road should be as perpendicular to Crescent Lane as possible.
6. A private hydrant will be required in close proximity of the new residence; final location shall be approved by the Fire Department.
7. At no point will the access road have a grade greater than 10% grade.
8. The current hydrant location will have to be moved, final location will need to be approved by Bismarck Public Works.



City Attorney

DATE: May 14, 2019
FROM: Janelle Combs, City Attorney
ITEM: Discussion on Board Conduct and Governance

I was requested to provide a basic overview on common Robert's Rules of Order governance as well as North Dakota laws that often are impacted by work such as with the Board of Adjustment.

The by-laws provide that a concurring vote of at least four members is needed to reverse any decision of an officials or for a variance. Procedural motions can be had with a simple majority. As such, four is the quorum for any Board of Adjustment meeting.

1. To amend a motion on the table: Need motion and second, and then a simple majority vote to amend the motion; then you need to vote on the actual motion. Or the movant can ask to withdraw the motion. The chair can ask if there is any objection; if none, it is withdrawn. If there is objection, the withdrawal will be put to a vote.
2. Do not need majority if someone rises to a question of privilege (i.e. to complain about noise or heat) or rise to a point of order (i.e. protest breach of rules).
3. If you believe something is out of order without enough discussion or no actual second or a miscalculation of the votes, you can "rise to a point of order" which is one area where you do not need to be recognized by the chair before you speak.

Chair controls the meeting and controls who speaks by "recognizing" members. Discussion is not a conversation. No one should speak a second time until all who wish have spoken. Typically, once the topic is presented by staff, spoke about by the affected parties and all questions of those individuals are done, then a motion is needed before you can further discussion. Also the discussion should only occur after any public hearing is closed.

Findings for variances must include hardship finding that must be in the motion if you are to approve the variance (and it cannot be based on cost):

1. Where it can be shown in the case of a particular proposed subdivision, that strict compliance with the requirements of these regulations would result in extraordinary hardship to the subdivider because of unusual topography, soils, or

other such conditions which would result in retarding the achievement of the objective of these regulations, then the board of adjustment may vary, modify or waive requirements so Title 14 & 14.1 325

substantial justice may be done and the public interest secured; provided that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of these regulations, or of the master plan.

2. In no case shall any variance, modification or waiver be more than a minimum easing of the requirements; in no case shall it have the effect of reducing the traffic capacity of any arterial or collector street; in no case shall it be in conflict with the existing zoning regulations.

3. In granting variances, modifications or waivers, the board of adjustment may require such conditions as will, in its judgment secure substantially the objectives of the standards and regulations so affected.

4. Easiest method is to amend one, or more, of the findings of fact listed in the staff report list at the end of their memo.

Open records/meetings:

1. If you meet with more three other commissioners on a particular topic, it is a meeting that we need to disclose. Social or accidental meetings are exempt but be aware to not let the appearance of communication occur.
2. If you email or teleconference with more than 3 commissioners on Board of Adjustment business, it is a meeting requiring disclosure.
3. Emails, voicemails, letters, texts, notes, etc. documenting anything relating to Board of Adjustment business is discoverable by the public. We must turn those over, even from your personal or business email address or phones. And deletion rarely ever occurs without an electronic bread crumb trail. Several AG opinions specifically call out that if substantive issues are mentioned, even if attending another committee or meeting, and any Commissioner provides an opinion regarding public business, builds support or consensus, then open meetings law are triggered.
4. If there is suspicion that you are not handing over all information, you may have to hand over electronic access to your email or phone to review in camera for anything not disclosed. If you miss something and did not disclose it, that will be an open records or meeting violation.
5. Penalties for compliance can require corrective action to announce the prior meetings and provide all of the information discussed to the public. Additionally, there can be civil and criminal penalties, including if the AG's office feels the Board member should have known of the rules and will require that individual to be personally liable for noncompliance and those fees, without reimbursement from the City or insurance. Our errors and omissions insurance will not likely cover conduct that would rise to that level.
6. If it is kept, it is discoverable. The City will maintain the minutes and memos required under state law to remain, which is 3 years or longer if it involves certain projects. But you may have requests for any documents, especially emails or texts, if we believe you may be impacted.

If you have questions, please let Community Development or City Attorney Departments know. Jannelle is available anytime if you have a legal question on whether an issue is in compliance with her contact information below.

STAFF CONTACT INFORMATION

Janelle Combs | City Attorney, 355-1340 or jcombs@bismarcknd.gov
