

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
May 7, 2020**

The Bismarck Board of Adjustment met on May 7, 2020, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Due to ongoing public health concerns related to COVID-19, the meeting was held via Zoom. Chair Marback presided and was present in the Tom Baker Meeting Room.

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

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

MINUTES:

Chair Marback called for approval of the minutes of the March 5, 2020 meeting of the Board of Adjustment.

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

VARIANCE FROM SECTION 14-03-05(4)(A) OF THE CITY CODE OF ORDINANCES (SUPPLEMENTAL PROVISIONS/LOCATION OF ACCESSORY BUILDINGS) AND FROM SECTION 14-03-09(3) OF THE CITY CODE OF ORDINANCES (NON-CONFORMING USES) – THE EAST 39.5 FEET OF LOT 9, BLOCK 7, NORTHERN PACIFIC ADDITION (231 WEST AVENUE C)

Chair Marback stated the applicants, Stephen and Elizabeth Braus, are requesting variances to reduce the required side yard setback from three (3) feet to zero feet in order to construct an accessory building on an existing non-conforming lot with an existing non-conforming use to be located on the East 39.5 feet of Lot 9, Block 7, Northern Pacific Addition (231 West Avenue C).

Ms. Wollmuth explained that the zoning ordinance makes provisions for minimum lot size, minimum lot width, and allowed uses for each zoning district and the proposed variance is located within the R5 – Residential zoning district and within a subdivision that was platted prior to 1953. She said the allowed use within this zoning district is single-family dwellings, and the minimum lot area is 5,000 square feet and the minimum lot width is 50 feet.

Ms. Wollmuth went on to explain that the proposed variance is located within a lot that is 5,925 square feet which conforms to the zoning requirements for area, however, the property is being used as a two-family dwelling and the lot width is 39.5 feet. She said the lot width and existing use do not conform to the zoning ordinance and are considered to be pre-existing non-conformities. Ms. Wollmuth further explained that the zoning ordinance also makes provisions for the location of accessory buildings on a property within the R5 – Residential zoning district and allows an accessory building to be located three (3) feet from any side or rear yard setback, provided that the accessory building is placed in the rear yard at least ten (10) feet from the principal building or residence.

Ms. Wollmuth said the applicant is proposing to demolish the existing 400 square foot accessory building, constructed in 1944 and located zero feet from side yard setback along the east property line, and construct a new 840 square foot accessory building in the same location. She added that the proposed accessory building would be located in the rear yard at least ten (10) feet from the principal building and is proposed to be setback zero feet from the side yard setback located along the east side of the property. Ms. Wollmuth closed by saying as the existing accessory building is proposed to be demolished and a larger building would be constructed, the proposed accessory building must meet zoning requirements including the required building setback.

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 rebuilding a garage the same size as the one that is to be demolished would be grandfathered in.

Ms. Wollmuth said adding on to the existing garage would be permitted but the existing garage is to be demolished, so the owner would have to adhere to the requirements of the ordinance.

Mr. Janssen asked if a new building could be built on the same foundation as the existing garage, but at a taller height.

Ms. Wollmuth said the ordinance would not allow that, as the building is proposed to be demolished.

Mr. Wohl said the owner owns the adjacent property as well and asked what impact there could be on the adjacent property if the new garage on this property is built directly on the property line. He asked if a new accessory building on the adjacent property would have to be built further away from their property line.

Mr. Blaskowski said the normal setback requirements would apply still on the adjacent property. He said building the proposed accessory building to the property line would require it to be fire rated construction, but the adjacent property would not have any additional ratings or setback requirements.

Mr. Wohl said the burden of the additional construction requirements then would fall on this property, not the adjacent property. Mr. Blaskowski said that is correct.

Chair Marback said it would be built up to the east property line. Mr. Blaskowski said that is correct.

Mr. Braus said the observed hardship with their request is of the three-foot setback from the side yard. He said they do offer off-street parking for the tenant of the property and moving the new garage further west would make access to the current parking area very difficult. He said they would lose approximately four or five feet of vehicle maneuverability.

Mr. Janssen said if there is two rental units on the property, how many vehicles might that populate.

Mr. Braus said usually up to four vehicles. He said the garage can also be used when necessary, depending on the needs of the tenants.

Mr. Janssen asked why a parking slab could not just be added west of the existing garage. Mr. Braus said that would make the three perpendicular spaces harder to use so their off-street parking would be reduced.

Mr. Janssen said the four spaces there now seems to be adequate, a lot of the property is already being used for parking and now more is wanting to be added. He said he feels five or six vehicles parked on the property would be a lot.

Mr. Braus said they are the adjacent property owners to the east as well and they do use one of the spaces in the existing garage for personal use and adding on would open up more space for them to store lawn items and other storage needs. He said moving the

garage back two feet would open up more perpendicular parking as well for guests if needed.

Mr. Hoff said then that the garage would be more for storage rather than actual parking.

Mr. Braus said one space in the proposed garage would be kept for parking and the rest would likely be for storage which is the main reason for wanting the extra square footage.

Chair Marback said the tenants cannot park in front of the garage and allow others to still access the parking area.

Mr. Braus said that is correct. He said there is a shared driveway to the parking area and they need to be able to turn around in the parking area to drive straight out rather than back down the slanted driveway and onto a curved roadway.

Chair Marback said that is a safety issue. Mr. Braus said yes, it is.

Mr. Hoff asked when the house was built. Mr. Braus said it was built in 1936.

Chair Marback opened the public hearing.

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

Ms. Clark said for a building that is 70 years old she feels this would be an improvement to the property and is consistent with how the property is being used now and also how the neighboring properties are used.

Mr. Wohl said this is not the minimum variance in order to seek relief if they are going to have the proposed building be bigger than the existing building for storage purposes. He said they can add onto their own property for that need.

Mr. Janssen said he is trying to see the hardship and with two-unit building on a single property and two non-conforming issues he feels the need can be accomplished with more surface parking and a simple storage shed. He said he understands this would bring a convenience, but he is struggling to see the request meet the hardship requirement.

Mr. Hoff said he agrees and he was ok with the request until he learned it is a storage need of the property owner whose resident is not he adjacent lot to the east and would rather see the owner adding a parking slab instead.

Ms. Clark said she considers the improvement running to the benefit of the property.

Chair Marback said he saw the garage and feels it has functioned for as long as it could have and either way the owner would need a variance of some kind for this location.

Mr. Hoff said the properties would have to be sold together in the future because of the shared access point.

Chair Marback said that is not necessarily true, that Mr. Braus likely did not buy the two properties at the same time and that there would be a shared use agreement to be continued if needed in the future. He said by not allowing the owners to construct this building they are not allowing them full use of their property.

Mr. Janssen asked why the building could not be turned or moved and configured differently in order to fit. He said they would lose some garden space but feels they do have other options here. He asked if it is now a matter of convenience or a hardship.

Ms. Combs asked specifically what the hardship is with this request.

Ms. Clark said regular use of the property without the granting of a variance would not be maximized.

MOTION: A motion was made by Ms. Clark to approve the variances from Section 14-03-05(4)(a) of the City Code of Ordinances (Supplemental Provisions/Location of Accessory Buildings) and from Section 14-03-09(3) of the City Code of Ordinances (Non-Conforming Uses) to reduce the required side yard setback from three (3) feet to zero (0) feet in order to construct an accessory building on an existing non-conforming lot with an existing non-conforming use to be located on the East 39'5 feet of Lot 9, Block 7, Northern Pacific First Addition (231 W Avenue C) based on the request being consistent with adjacent neighborhood uses and the location of the existing garage. The motion was seconded by Mr. Seifert and with Board Members Clark, Seifert and Marback 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

UPDATE REGARDING ZONING ORDINANCE TEXT AMENDMENT TO SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING)

Ms. Wollmuth said the Bismarck Planning and Zoning Commission approved the proposed amendments to the off-street parking and loading requirements on April 22nd and the Bismarck Board of City Commissioners will consider the changes on May 12th with the assumption a public hearing will be called for at their May 26th meeting. She said it would become effective at that time if approved.

Chair Marback asked what the status is of the two recently denied variances from parking requirements that were appealed.

Ms. Wollmuth said those requests were delayed due to the ongoing public health concerns related to COVID-19 and in addition to the proposed changes the applicants have decided to wait and see if the amendments are approved before proceeding with their appeal requests.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:31 p.m. to meet again on June 4, 2020.

Respectfully Submitted,



Hilary Balzum
Recording Secretary

APPROVED:



Michael Marback, Chair