

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

The Bismarck Board of Adjustment met on July 2, 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 also 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, Janelle Combs – City Attorney, Bruce Govig – Assistant City Attorney, Jenny Wollmuth – Planner and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chair Marback called for approval of the minutes of the May 7, 2020 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the May 7, 2020 meeting, as presented. With Board Members Clark, Janssen, Marback, Hoff, Seifert and Wohl voting in favor, the minutes were approved.

APPEAL OF ZONING DETERMINATION – LOTS 14 AND 15, BLOCK 4, SOUTHBAY FIFTH ADDITION (4408 AND 4412 DOWNING STREET)

Ms. Wollmuth said Dennis Wetzel is appealing a zoning determination made in April 2020 by the Planning Manager/Zoning Administrator in accordance with Section 14-06-03 of the City Code of Ordinances (Board of Adjustment/Appeal Procedure) for properties located in the R10 – Residential zoning district legally described as Lots 14 and 15, Block 4, Southbay Fifth Addition.

Ms. Wollmuth reviewed the proposed building plans for the structure as well as the applicable sections in the zoning ordinance, referring to dwelling units and permitted uses within the R10 – Residential zoning district, and have found that all of the features that indicate a separate dwelling unit, including independent access, separate sanitation facilities, and separate eating/or cooking facilities are present in each of the units within the proposed structure. Therefore, the Planning Manager / Zoning Administrator has determined that the proposed structure is a three-unit building.

Ms. Wollmuth also stated that as three-unit building is not permitted within the R10 – Residential zoning district, which allows single and two-family dwellings, it cannot be constructed as proposed by the applicant.

Dennis Wetzel, 6111 Apple Creek Drive, said he wants to build this twinhome and when looking for a lot to purchase for that purpose this was the biggest one he could find. He said he wants to move into town and the structure would not have a door leading to the left side unit. He said he would live in one side and sell the other half. He added that Planning staff is calling it a three-unit structure and the R10-Residential zoning district only allows one and two-unit rowhouses or townhouses, which require private entrances. He said this building would only have two private entrances.

Ms. Lee said the interpretation does identify access as being allowed through a garage, which the additional unit is proposed to have.

Mr. Wetzel said if he were to build a twinhome elsewhere in Bismarck everything would be required to be kept separate, including the permits. He said Ms. Lee referenced the utilities and he has always been required to have all utilities separate as well as the addresses. He then said there would not be a firewall on that side because one is only required between the two units.

Mr. Wohl asked why there is a goal of having an extra kitchen.

Mr. Wetzel said the stove can be removed and he had wanted a bar area there but he can eliminate it if he needs to. He said he would live in 4412, the southernmost unit, and it is designed and separated in a way that would require a major remodel in order to separate out the westernmost part of the building as a third unit.

Mr. Wohl said he makes some good points, but it does look like an additional unit; however, in some ways it would not be a far stretch to separate another unit if he decided to.

Mr. Wetzel said that would require a building permit review and he can take out the kitchen. He said the lot is large and he can modify the structure as needed.

Mr. Wohl asked if there is the intention of having it as a living area for other family members.

Mr. Wetzel said that could be a possibility as they get older and have caretaking needs.

Mr. Hoff asked if one unit could be made bigger and still have the same amount of garage space.

Mr. Wetzel said it would be a gabled roof and he would also like to have a kitchen behind the foyer with a gazebo while keeping the middle area private and protected.

Chair Marback asked if that would be the area labeled court in the back.

Mr. Wetzel said that is correct and added that he cannot detach any of the garages because of the restrictive covenants of the subdivision.

Mr. Janssen said his perspective is that this is a three-unit. He said there is not a twinhome with six garages and said all it would take is a partition to be built and a separate unit could be created. He said the lot is not zoned to handle this type of a use and he sees a three-unit dwelling with this proposal. He said if it was zoned correctly it could work, but the zoning is in place to help avoid anomalies such as this. He said this does not fit the area and there is just too much separation for it to be considered a twinhome.

Mr. Wohl said he sees the potential for this to cause problems; however, he is not sure the interpretation is correct either. He said there is not a private entrance on the one side with the exception of that in the garage. He said this could have some features of a single-family home and nobody would call it a two-unit dwelling. He said it does not meet the definition of a three-unit building, but it does look like one.

Mr. Wetzel provided building specifications from his title insurance company at this time and explained that the garage and the connecting point would have one fire wall and one roof each.

Mr. Wohl said a dwelling unit is defined is that for eating, sleeping, living and sanitation, but it is not defined anywhere that there is a maximum number of how many of each of those needs is allowed. He said they are getting hung up on the entrance points and the semantics of an entrance versus an exit are not one in the same.

Mr. Janssen said with the two layouts it is critical to realize it could be changed to a different dwelling size, which is not within the allowances of the R10-Residential zoning district. He said he is concerned this could be a trend tough to handle and, since staff made the determination, he would like to know if there is a similar situation anywhere else like this one.

Ms. Lee said there are some properties that are questionable and suspected by staff that they are aware of, but she does not want to point them out publicly. She said a staff discussion was had as to what to put in the written opinion to the owner that they could all agree on.

Mr. Wohl asked if there is a different opinion of if there could be a door or not to the supposed third unit or kitchen area.

Ms. Lee said based on it being three very similar floor plans and the impact of the units on each other it was felt that if the owner wanted to change that part into a third unit they could easily do so.

MOTION: A motion was made by Mr. Seifert to uphold the zoning determination made by staff and found that the proposed structure, located in the R10 – Residential zoning district, is a three-unit and is not permitted to be constructed in the R10 – Residential zoning district which allows for the construction of one and two-family dwelling units. The motion was seconded by Mr. Hoff and with Board Members Clark, Hoff, Janssen, and Seifert voting in favor of the motion and Board Members Wohl and Marback opposing the motion, the motion was approved and the appeal of the administrative determination was denied.

Chair Marback informed Mr. Wetzel that he could appeal the decision of the Board of Adjustment to the City Commission, and that staff would help him with that process.

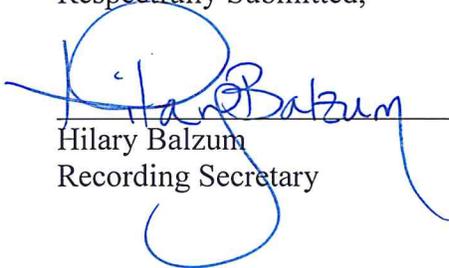
OTHER BUSINESS

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 5:30 p.m. to meet again on August 6, 2020.

Respectfully Submitted,



Hilary Balzum
Recording Secretary

APPROVED:



Michael Marback, Chair