

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
January 4, 2018**

The Bismarck Board of Adjustment met on January 4, 2018, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

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

Staff members present were Jenny Wollmuth – Planner, Brady Blaskowski – Building Official, Melanie LaCour – Assistant City Attorney and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chairman Marback called for approval of the minutes of the November 2, 2017 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Janssen to approve the minutes of the November 2, 2017 meeting, as presented. With Board Members Clark, Hoff, Janssen, Marback, Seifert and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL)(FRONT YARD) – LOT 18, BLOCK 11, WASHINGTON HEIGHTS FOURTH ADDITION (2611 STEVENS STREET)

Chairman Marback stated the applicants, Jacob and Barb Hipp, are requesting a variance to reduce the required front yard setback from 18 feet to 15 feet in order to construct a 42 square foot covered porch addition to the front of the existing single-family dwelling.

Ms. Wollmuth said a recent zoning ordinance text amendment was approved by the City Commission in October 2017 and this amendment allows for alternative means for measuring front yard setback requirements within residential zoning districts throughout the City that are located in subdivisions that were platted prior to 1979. She then explained that the measurement is based on six reference lots that are located adjacent to the building in question along the same side of the street, located within the same zoning district and are dwellings, adding that once the reference lots are determined, the front yard setback to the same street is measured for each one. Ms. Wollmuth then said the required setback for the subject property is the median (the middle of the series) of the reference lots, plus or minus three feet, however, the building may not be set back closer than the closest of the six or further than the furthest of the six. She said based on these requirements the required front yard setback for this property is 18 feet.

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. Seifert asked what determines the plus or minus three feet as it relates to the setback when speaking to the contextual setbacks and reference lots.

Ms. Wollmuth said whichever is more beneficial to the owner, be it plus three feet or minus three feet within the required setback, that is what is used per how the ordinance is written.

Rick Kramlich, Hopfauf Custom Builders, explained that the six-foot by four-foot porch with a two-foot overhang has been removed. He said the existing overhang is creating a hazard because water runs off right in front of the front door and freezes, creating an icy space. He said they want to safe guard the front door and cover the porch and the owners would also like to have a seven-foot by six-foot deck with 12 inches above grade and clad posts covered with stone to match the house. He said they were made aware of the setback issue when the requested an inspection and added that the porch would be covered, but not enclosed. He said the deck would be composite material and the cover would match the roof line of the house.

Ms. Clark asked if the two-foot overhang has been completely removed. Mr. Kramlich said it has been removed and that they have been making improvements as much as they can with the exception of those related to the variance request.

Ms. Clark asked if the setback measurement is being taken from the bump-out on the house or from the front door. Ms. Wollmuth said because the existing overhang was two-feet, the setback was likely measured from the foundation.

Mr. Kramlich said the total projection from the house would be seven feet with six feet being the deck and another one foot for the overhang.

Mr. Wohl asked if the measurements would depend on the additional overhang would be off of the existing roof or off of the edge of the new deck. Ms. Wollmuth said if an overhang is larger than the standard 18-24 inches it would be included in the setback measurement.

Chairman Marback said if the setback measurement is taken from the bumpout on the house then they should only need an 8-inch variance. Ms. Wollmuth said the survey provided with a layout of the house does not indicate a bumpout and if a variance of only eight inches were needed then the variance would likely have been granted administratively.

Mr. Kramlich said they would like to obtain a larger variance if possible, but could make the four-foot difference work if needed. He said they would prefer an extra six feet if possible but concrete has not been poured yet and the intent of the owner is to replace the porch and improve the property as much as possible.

Mr. Hoff said he likes the idea of replacing the porch as it would be an improvement to the property, but he is concerned that other owners will see this was done and want to obtain variances for the same thing.

Ms. Wollmuth said the new ordinance would not likely require a variance for many of the adjacent properties and this request is unique. She said if the deck is uncovered it can project up to 15 feet but because this particular deck would be covered the measurement needs to be taken from beginning point of coverage.

Chairman Marback opened the public hearing.

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

MOTION: A motion was made by Ms. Clark to approve the variance to reduce the required front yard setback from 18 feet to 15 feet in order to construct a 42 square foot covered porch addition to the front of the existing single-family dwelling on Lot 18, Block 11, Washington Heights Fourth Addition (2611 Stevens Street), based on coverage on that part of the house being needed for safety reasons and a six-foot deck being appropriate. The motion was seconded by Mr. Janssen and with Board Members Clark, Hoff, Janssen, Marback, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCE FROM SECTION 14-04-03(8) AND SECTION 14-04-03(9) – LOT 20 AND 21B, BLOCK 1, KILBER 2ND ADDITION (2724 PACIFIC AVENUE)

Chairman Marback stated the applicant, Jonathan Huagen, is requesting a variance to eliminate the required side and rear yard setback for the purpose of constructing a privacy fence, which will be over six (6) feet in height along the rear and side property lines.

Ms. Wollmuth said the City Code of Ordinances requires that any fence over six (6) feet in height meet the principal building setback requirements outlined in the zoning district the building is located.

Ms. Wollmuth then said if approved as proposed, the fence would be ten (10) and eight (8) feet in height along the west and northwest sides of the property adjacent to the Bismarck Parks and Recreation District multi-use trail.

Ms. Wollmuth then gave an overview of the request and included 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.

Ms. Clark asked for clarification of the picture showing the proposed layout of the desired privacy fence and where the fence would have to be, by ordinance requirements, if it were 10 feet high in order to be in compliance.

Mr. Haugen explained that because of the slope in their back yard and the other improvements they have made on their property, placing the fence at the required 20-foot setback would put it past the retaining wall they have already constructed. He said they originally wanted the fence for privacy purposes but they have also had issues of safety twice now with rocks being thrown from the walking trail at the top of the slope in their

back yard. He said one rock hit the house and if one were to penetrate their pool cover that would pose a serious safety hazard as well.

Mr. Hoff asked how far it would be from the fence to the walking path. Mr. Haugen said he estimates they would be about 20 feet apart.

Chairman Marback asked what the setback for a fence this height would be in a zoning district other than the R5. Ms. Wollmuth said any residential zoning district will have a 20-foot rear yard setback and the rear yard setback requirement for commercial zoning districts typically have a 10-foot setback.

Mr. Haugen said he does not feel a fence that is 8 feet or even 10 feet high would be noticed compared to the height of the walking trail at the top of the slope.

Ms. Clark said some very nice improvements have been made to this property but she feels a fence that size could make it start to look like a fortress, especially since none of the other nearby properties have fences of that size. She asked if they have considered installing more landscaping or another retaining wall to help buffer from the walking path.

Mr. Haugen said they did originally consider more landscaping but having rocks thrown from the walking path and the severity of the slope changed their minds. He said it would be very difficult to get anything to grow on that steep of a slope and retaining walls are not cheap. He said they did approach the Bismarck Park Board to ask for an easement to be allowed to build closer to the walking path, but they were turned down. He said the bottom line is that a 6-foot fence would hardly cover their property enough to be protective.

Ms. Clark said it is hard to support this request and thinks there are other ways for the owners to go about getting the privacy they want.

Mr. Haugen said either a retaining wall or the desired fence would have partial landscaping coverage to conceal it some and they have already planted some trees and other things at the bottom of the slope.

Mr. Hoff asked how long they have owned the property. Mr. Haugen said they have lived there since 2010 and are not the original owners.

Chairman Marback opened the public hearing.

Written comments in opposition to this request are attached as Exhibits A-C.

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

Ms. Wollmuth said when speaking of the fence, the same requirements are in the zoning ordinance as it relates to retaining walls.

Ms. Clark asked if a 6-foot fence could potentially be built off of the retaining wall. Ms. Wollmuth said the measurement would typically be taken from grade level, but that could be a possibility depending on the grade of the property.

Mr. Seifert asked if there is a fencing requirement because of the pool on the property and if the ordinance requires a protective fence.

Ms. Wollmuth said Title 4 of the City Code of Ordinances has various requirements for pools, not necessarily just for fences, and that some changes were made to the ordinance recently.

MOTION: A motion was made by Mr. Seifert to deny the variance to eliminate the required side and rear yard setback for the purpose of constructing a privacy fence, which will be over six (6) feet in height along the rear property line on Lot 20 and 21B, Block 1, Kilber 2nd Addition (2724 Pacific Avenue). The motion was seconded by Mr. Hoff and with Board Members Clark, Janssen, Hoff, Marback, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was denied.

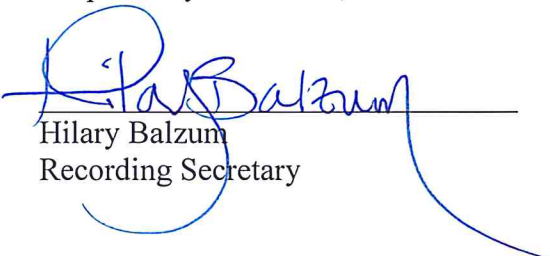
OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:48 p.m. to meet again on February 1, 2018.

Respectfully Submitted,


Hilary Balzum
Recording Secretary

APPROVED:


Michael Marback, Chairman

From: Planning - General Mailbox
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee; William Hutchings
Subject: FW: Jan. 4 hearing on variance request
Date: Thursday, December 28, 2017 11:56:34 AM

From: Renae Walker [mailto: [REDACTED]]
Sent: Thursday, December 28, 2017 11:13 AM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Cc: Bruce & Kim Walth < [REDACTED] >; Dennis & Bonnie Senger < [REDACTED] >; Duane & Sharon Reitmeier < [REDACTED] >; Jayme & Michelle Carson < [REDACTED] >; Jon & Norine Haugen < [REDACTED] >; Kay & Greg Power < [REDACTED] >; Mary Bandle ([REDACTED]) < [REDACTED] >; Pat Martin < [REDACTED] >; Renae Walker < [REDACTED] >; Rueben Weigelt ([REDACTED]) < [REDACTED] >; Wayne Hopfauf ([REDACTED]) < [REDACTED] >
Subject: Jan. 4 hearing on variance request

I received a letter that Jonathan Haugen is requesting a variance to eliminate the required rear yard setback for the purpose of constructing a privacy fence that would be 6-to-10 feet tall in places. My husband and I are not in favor of this variance but cannot attend the Jan. 4 hearing as we have an important prior commitment.

We purchased our home on Harding Place nearly 20 years ago because of the view and the natural grasslands and paved trail owned by the Park District. We feel the fence will not only be an eyesore but it may become a safety hazard as youth and adult runners, walkers, bikers etc. currently have a clear view of the entire path and who is on it—people or wildlife. Thank you for considering our request not to grant the variance.

Renae Hoffmann Walker
Director of Community Relations
Bismarck Public Schools
806 N. Washington Street
Bismarck, ND 58501

[REDACTED]
(w) [REDACTED]
(c) [REDACTED]
(h) [REDACTED]

www.bismarckschools.org

Exhibit B.

From: [Planning - General Mailbox](#)
To: [Carl Hokenstad](#); [Daniel Nairn](#); [Hilary Balzum](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: VAR2017-025
Date: Wednesday, January 03, 2018 10:15:53 AM

From: Walter Baumgartner [mailto:[\[REDACTED\]](#)]
Sent: Tuesday, January 02, 2018 12:16 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: planning@bismarcknd.gov

Regarding project # VAR2017-025, we have no objections to the fence but prefer that be maintenance free on the east side.

Walter Baumgartner
[\[REDACTED\]](#)

From: [Jenny Wollmuth](#)
To: [Hilary Balzum](#)
Subject: FW: attn: Jenny Wollmuth
Date: Thursday, January 04, 2018 4:51:27 PM

Jenny Wollmuth, AICP, CFM
Planner | Planning Division
Community Development Department
701.355.1840-Department
701.355.1845- Direct
www.bismarcknd.gov

From: Planning - General Mailbox
Sent: Thursday, January 04, 2018 4:47 PM
To: Jenny Wollmuth <jwollmuth@bismarcknd.gov>
Subject: FW: attn: Jenny Wollmuth

From: Power, Greg J. [<mailto:>]
Sent: Thursday, January 04, 2018 12:20 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: attn: Jenny Wollmuth

Dear Jenny,

Thank you for taking the time to answer a few questions earlier this morning regarding VAR2017-025. I'm sympathetic to the homeowner if materials are being thrown toward his newly built pool presumably from the walking path immediately above his property. Adding a few feet above the allowed 6 foot fences may be helpful to address his problem. My bigger concern and one that has absolute zero legal standing is the fence itself. The entire neighborhood lacks any fences and, without a doubt, this proposed project will be an eye-sore for many/most. However, again I understand the homeowner has the legal right to fence his/her property within certain restrictions. Perhaps as an alternative, the homeowner would consider an even higher fence but much closer to the pool and one that parallels only the backside of his property (instead of surrounding his entire yard). Maybe this would give him the needed security while minimizing the visual footprint. The steep topography may prevent this from being feasible but I would like your office ask the homeowner to consider. Thank you.

Greg and Kay Power
1855 Harding Place
Bismarck, ND 58501