



# BOARD OF ADJUSTMENT MEETING MINUTES

Monday, September 11, 2023 at 7:30 AM  
City Hall – 38 1st Street West Dickinson, ND 58601

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## Commissioners:

**Chairman:** Larry Bares

**Vice Chairman:** Pat Bren

Trevor Ernst

Bruce Burke

Shawn Soehren

## CALL TO ORDER

## ROLL CALL

### 1. STANDARD MOTIONS

#### A. August 14, 2023 Final Meeting Minutes submitted for approval.

**Motion made by** Pat Bren, **Seconded by** Shawn Soehren.

**Voting Yea:** Larry Bares, Trevor Ernst, Bren, Bruce Burke, Shawn Soehren

### 2. REGULAR AGENDA:

#### A. 280 9th STREET WEST

Luke Simons is here to speak on the property of 280 9th Street West . Mr. Simons states that this property was a pretty run down rental property when he bought it. Right by the driveway was dirt, so he had someone from his church, fill it in concrete. He did not realize you had to have a permit. Mr. Simon explained when you park, you cannot get a pickup in the driveway because you will hit the garage when you try to pull it out. There is no other place to park during the winter because it is right on the turning lane. Mr. Simons states that public street parking is 250 feet away from the garage which makes it pretty rough, so he poured concrete to solve the issue. He wants to fix the curb so he can pull right into the parking spot without jumping the curb. Chairman Larry Bares is clarifying that the biggest problem here is pouring the pad without a permit and also tearing out the curb and gutter without a permit. He also hired a contractor that is not licensed. Building Official Leonard Schwindt states the main violation is pouring concrete without an off street parking pad, ripping up the sidewalk

without a permit, and tearing up the curb and gutter without a permit. The applicant is here for a variance to allow the concrete where the concrete is not allowed. Mr. Schwindt explains through the power point in a R-1 zone lot there is a 15 foot landscape buffer which allows the concrete in front of accessory structures. The code mandates you have two off street parking spots. Mr. Schwindt explains that the garage counts as one and the space outside of his garage is considered one. Mr. Schwindt shows with the PowerPoint where Mr. Simons poured concrete and where the permit would allow concrete to be poured. Mr. Bares asks if that area over the maximum square footage that is allowed to be poured. Mr. Schwindt explains that it does not meet the maximum, not even at half. Mr. Simons states that he is also asking for the curb to be part of the driveway, and states it is 289 feet less concrete than the maximum allowed if they leave the parking pad the way it is. Chairman Bares opens up the board for discussion. Board Member Pat Bren asked how many vehicles he plans to park there? Mr. Simons states approximately four vehicles; a side by side, right now there is a boat parked there but sometimes just a motorcycle. Community Development Director Josh Skluzacek states that these two intersections have setback requirements, and in our transportation master plan there are requirements, and changing the curb approach does not meet the new standards. Mr. Schwindt states the City has been monitoring this property for awhile and the off street parking, there was a pickup that was on jack stands on the driveway, so utilizing the space you have is what the code is there for. Mr. Schwindt asks for this application to be denied. Board Member Bruce Burk asks Mr. Skluzacek if this property meets the requirements for the curb and gutter as of today? Mr. Skluzacek responds, the setback would not meet the requirements and they would never let that pad be built with the turn lane right there. Mr. Burke clarifies it would make things worse if the curb and gutter were removed. Mr. Simons says that for 27 years people have been parking there in dirt and there have been no accidents, he is trying to make a solution. Mr. Simons was curious if the owner of the house normally gets code letters for the tenants. He states the pickup that was on blocks was his tenants. Mr. Schwindt clarifies that the letters do go out to the owners of the property. Mr. Schwindt refers to the photo in PowerPoint stating that there was a large tree, so he was not sure if the tenants parked under the tree or where they parked. Mr. Simons said the tenants parked on both sides of that tree. Board Member Shawn Soehren wants to know how

much he wants to add to the driveway? Mr. Simons says that one inspector spray painted a dot, about 8 feet and that is where is he asking for the curb to be. Mr. Soehren asked Mr. Schwindt if they would allow the driveway pad to be the full distance or access it through the original driveway. Mr. Schwindt states that the code states the driveway has to be the same width as the detached structure. Mr. Schwindt states that this property is at the max already for the width of the driveway per code. Chairman Bares asked if he poured concrete on the side of the garage, would he have room for two vehicles, one parked right behind the other. Mr. Schwindt says yes and states we have issued many permits for people that have followed the code. We are here for a hardship that the code puts on the applicant, not that the applicant puts on themselves. Mr. Schwindt says there was no permit but Chairman Bares is correct you could get two or three vehicles next to your garage. Board Member Trevor Ernst states if you pour concrete by the garage, but a little wider, you could have a pad next to your existing driveway and you wouldn't be in the landscaping area. Mr. Ernst states if you go wider than 8 feet you could pour a pad and you could have the off street parking and you would not have to mess with the curb and gutter. Mr. Simons states that the problem is pulling out of the driveway. If you have two vehicles you have to pull one out to get to the second vehicle but the way it is set up right now, you do not need to do that. Mr. Simons feels like the way the land is landscaped, the dirt is higher than the garage so the water would just sit there so he does not want to put that pad next to his garage. He is just asking for the curb to be changed. If he parks any vehicles there they will make him tear out the concrete. Mr. Simons states he just wants to make it so it is easier for him to pull in. Mr. Ernst states that if he pours concrete on the side of his driveway, he should be able to park the vehicles and back out the vehicles without going against the cities codes and guidelines. There is away to alleviate the hardship even though concrete is already poured. Mr. Simons states he needs permission to park on the side of the driveway. He states he has had two different inspectors saying two different things to him so it is unclear of what he can and cannot do. Chairman Bares wants to know if this variance is denied, how much of this concrete can be cut and removed. Mr. Schwindt states the intent of the parking pad permit is to make more parking outside of the accessory structure. He could use the current concrete as the patio. Mr. Schwindt is asking for what has been poured to be removed and leave what can used as a parking pad. Mr. Simons states that when Mr. Schwindt stopped by his

property he just asked him not to park there but now he is asking for the concrete to be removed. He spent over \$7,000 dollars and fully intends to park on it. He understands what they are asking but he did not know he needed a permit. Mr. Schwindt states he did hire an unlicensed contractor and the hardship was created by the applicant. It is a learning experience and he does not recommend this for approval. Mr. Simons states he did not realize the contractor was unlicensed but he is licensed now. Mr. Schwindt received one phone call message, regarding this property, saying that everyone needs to follow codes and regulations. Mr. Simons states that is why he is here today is to follow code. Chairman Bares asks if there is a penalty? Mr. Schwindt states at any time the city can send out fees, but usually they try to work it out with the individual. Mr. Soehren wants to know if they normally hop the curb or go around. Mr. Simons states they normally hop the curb which has been happening for years. Mr. Bren motioned to deny the variance request with the applicant to be able to work something out with City Engineer. Mr. Ernst wants to know if there is a time frame on this request. Mr. Bren wants it done immediately to get this project completed. Mr. Schwindt states twenty days from today would be the deadline. City Attorney Christina Wenko wants to clarify the motion. Ms. Wenko states that Mr. Bren is denying the request and than the applicant has twenty days to resubmit a proposed plan for a variance that would allow the ability to use what is currently being used. Mr. Bren says that is correct and states that as a city he wants to make sure they work with Mr. Simons. Ms. Wenko states her only concern is that if it is not agreeable this variance will end up in front of the Board of Adjustments again so she wants to make sure everyone is clear that the motion should state that if this application is not submitted within 20 days, what will happen next. Board Member Bruce Burke wants to know if the applicant decides that this is all to much hassle, can he rip out the concrete and do some form of what the PowerPoint shows? Mr. Skluzacek states that Mr. Schwindt and himself are in full agreement with what is highlighted red in the PowerPoint. The turn lane being at a major intersection is what he is concerned about. Ms. Wenko clarifies, the red highlighted area on the Power Point is at the maximum for width. Mr. Schwindt states no it is not, but they cannot extend it further past the driveway. Ms. Wenko wants to know if the applicant needs to fill out a new application for a parking pad permit and Mr. Schwindt states he does. Mr. Simons asks for clarity regarding if he can or cannot park on it or if he has to remove it. Mr. Schwindt states if he receives a parking pad

permit, the city would would work with him on being able to keep some of the cement, but any off street parking cement would have to be removed.

Motion made by Pat Bren, Seconded by Trevor Ernst.

**Voting Nay:** Larry Bares, Trevor Ernst, Pat Bren, Bruce Burke, Shawn Soehren

## **B. 1575 37TH STREET EAST**

Alfredo Herman wants permission to build a shop on the back of his house that goes over the square footage by 1800 square feet. Chairman Larry Bares is wondering how big his lot is right now. Mr. Herreman says it is 90 feet long. Mr. Herreman states they have a boat they they purchased and his daughter is going to start driving so he want to park her car in there. The shop will be for personal use. Board Member Trevor Ernst asks if he plans to have the garage match the house. Mr. Herreman states he plans to build it exactly like the house, the color, the stucco, the only thing that might be different is the roof. Mr. Ernst states that if this is approved, they ask for there to be no more permitted or unpermitted buildings on the lot. Chairman Larry Bares asks how tall will the sidewalls will be? Mr. Herreman states about 14 feet tall. Board Member Bruce Burke asks Building Official Leonard Schwindt if they have received any comments from the public. Mr. Schwindt states they have not had any phone calls for or against this variance. Mr. Schwindt states that any detached structure that is over 250 square feet has to be built with similar materials as the primary structure and it cannot exceed the height of the main building. For every two feet you get a foot for height. Mr. Lynn Cherney, from the audience, is concerned about the easements and if it is that big it is gonna be really close to the neighbors lots. Mr. Cherney states that Mr. Herreman needs to stick to some codes. The lot is so small that he has already encroached on the neighbors. Mr. Herreman states that when he bought the lot, it was originally supposed to be 120 feet but the neighbor next door ended up taking about 30-35 feet away from the lot. The lot is now 95 feet instead of what everyone else's is. He was allowed to have a setback of 15 feet instead of 25 feet. He plans to build the shop the same setback as the house at 15 feet. From the Audience, Jared Robinson, states he lives west of Mr. Herreman. He spent money on this lot to not be

claustrophobic with buildings around. Mr. Robinson states that in his opinion, put up a structure but don't have it be too much. He wants to point out that no one wants to just look at a structure blocking a really nice view. A gentleman from the audience states that he doesn't think he should have to look at a giant wall on the property. He states that he should be able to build what he wants as long as it is per code. Mr. Herreman states that he understands the complaints but he wants to make it look residential and make his property look good. Mr. Schwindt states that if the board approves the variance today, the applicant will have to follow city code. The applicant is in front of the board to exceed the maximum square footage of the building. Board Member Shawn Soehren clarifies that he would be accessing this property through 40th Street, Mr. Herreman states he would. Mr. Soehren wanted to know if this house was permitted through the city or the county. Mr. Herreman said it was permitted through the county. Mr. Ernst states that if the side yards are 15, even if the covenants are 25 feet, the side yards would go down to 15 feet once the house is built. Mr. Schwindt states that we only go by the city ordinances, we do not go by what the land covenants are. City Attorney Christina Wenko states that we do not get in the middle of land covenants, that needs to be enforced by the land owner or an association. It is not the city's prerogative to get involved in personal private property rights. Mr. Cherney states that he checked into it and there is no covenants on his land so they have to follow city guidelines. Board Member Bruce Burke states that there are enough neighbors that are concerned about the size of the building, he is wondering if there could be a compromise made to possibly move the garage farther back. Mr. Herreman states that he is going as far back as he can, the building will be 60x50. Mr. Burke motioned to deny this variance request. Mr. Bren seconded motion to deny this variance request. Mr. Schwindt asked Ms. Wenko if they will have to go in front of the board again if he changes the size of the building. Ms. Wenko states that it is up to the applicant but it would make sense to see what an appropriate size is. The surrounding neighbors, including the ones present, would get notice of this variance.

Motion made by Bruce Burke, Seconded by Pat Bren.

**Voting Yea:** Larry Bares, Pat Bren, Bruce Burke

**Voting Nay:** Trevor Ernst, Shawn Soehren

**3. OTHER BUSINESS**  
**A. Positions on the Board**

Building Official Leonard Schwindt stated that there is interest in someone taking Chairman Larry Bares position but no one has submitted any paperwork. Mr. Schwindt asks Attorney Christina Wenko if the Board Members can elect new Vice President and President or does it need to be advertised. Ms. Wenko states the Board members could vote on this and it does not need to be advertised. Ms. Wenko states that it should be put on the agenda for the new Board of Adjustments meeting as an agenda item.

**4. ADJOURNMENT**

**Link for viewing Board of Adjustment Meeting:**

**This link will not be live until approximately 7:20 on September 11, 2023**

**Meeting Packet:** <https://tinyurl.com/BOA-09-11-2023-Packet>

**Stream Link:** <https://tinyurl.com/BOA-09-11-2023-Stream>

**Teams Meeting:** <https://tinyurl.com/BOA-09-11-2023-Teams>

**Meeting ID:** 248 513 653 827

**Meeting Passcode:** sF4RoS

**Teams Phone #:** +1 701-506-0320

**Phone Conference ID:** 271 166 413#

**Local Phone #:** 701-456-7006

***Persons desiring to attend the meeting who require special accommodations are asked to contact the City Administrator by the Friday preceding the meeting.***