



Community Development Department  
**BISMARCK BOARD OF ADJUSTMENT**  
**MEETING AGENDA**

**September 1, 2016**

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**Tom Baker Meeting Room**

**5:00 p.m.**

**City-County Office Building**

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**MINUTES**

1. Consider the minutes of the August 4, 2016 meeting of the Board of Adjustment.

**REQUESTS**

2. **Variance from Section 14-04-06(4) of the City Code of Ordinances (R10 – Residential) (Lot Area).** – Lots 1-2, less the East 65 feet, Block 9, Flannery and Wetherby Addition (1215 East Avenue F) | VAR2016-016

*Owner / Applicant:* Amy Bleier

*Board Action:*      approve      continue      table      deny

3. **Variance from Section 14-04-01(10) of the City Code of Ordinances (RR – Residential)(Accessory Building).**– Lot 4, Block 3, High Top Acres Second Subdivision (7201 Moonstone Lane) | VAR2016-017

*Owner / Applicant:* Jeff Anderson

*Board Action:*      approve      continue      table      deny

4. **Variance to increase the total area of accessory buildings for 3336 Jericho Road.**– Part Lot 1, Block 1, Stonecrest 2<sup>nd</sup> Addition (3336 Jericho Road) | VAR2016-018

*Owner / Applicant:* Liechty Homes, Inc. / Chris Tietz

*Board Action:*      approve      continue      table      deny

**ADJOURNMENT**

5. **Adjournment.** The next regular meeting date is scheduled for October 6, 2016

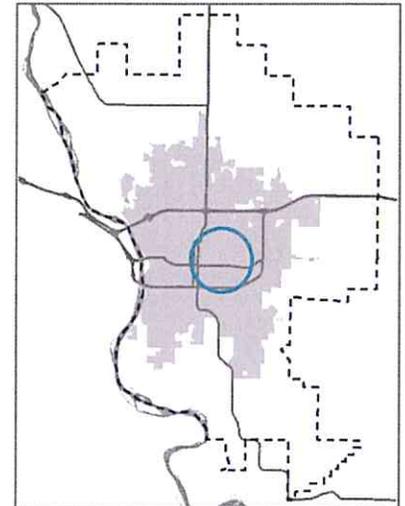


**Application for: Variance**

TRAKiT Project ID: VAR2016-016

**Project Summary**

<b>Title:</b>	Lots 1-2, less the East 65 feet, Block 9, Flannery and Wetherby Addition (1215 East Avenue F)
<b>Status:</b>	Board of Adjustment
<b>Owner(s):</b>	Amy Bleier
<b>Project Contact:</b>	Amy Bleier
<b>Location:</b>	Central Bismarck, south of Boulevard Avenue, between North 12 <sup>th</sup> Street and North 13 <sup>th</sup> Street, along the south side of East Avenue F.
<b>Request:</b>	Variance from Section 14-04-06(4) of the City Code of Ordinances (R10 – Residential)(Lot Area).



**Staff Analysis**

The applicant is requesting a variance to construct a detached 484 square foot accessory building, which would replace an existing attached garage that is proposed to be demolished, on a lot that is considered to be non-conforming due to its size.

The City Code of Ordinances requires properties located within the R10 – Residential zoning district platted prior to 1953 to be no less than 5,000 square feet. If approved as proposed, the accessory building would be constructed on a 4,600 square foot parcel.

It appears that the existing single-family dwelling was constructed prior to 1958; however, no information regarding the original construction date has been located. An addition was added to the existing single-family dwelling in 1958. The building permit for the addition references the existing legal description, and it appears that the size of the lot has not been altered. A copy of the building permit is attached.

The single-family dwelling and addition likely met zoning regulations at the times of construction.



**Applicable Provision(s) of Zoning Ordinance**

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance 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.”

Section 14-04-06(4) of the City Code of Ordinances (R10 – Residential)(Lot Area) states, “Each permitted structure hereafter erected, together with its accessory

(continued)

buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that on a record lot corresponding to a plat recorded prior to 1953, a single-family of two-family dwelling and accessory buildings may be erected, provided said lot contains not less than five thousand (5,000) square feet." The lot is located within a plat recorded prior to 1953. The plat titled Flannery and Wethery by Addition was recorded in 1882. However, the lot is less than 5,000 square feet.

**Required Findings of Fact**

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 R10 - 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.

**Staff Recommendation**

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

**Attachments**

1. Location Map
2. Site Plan
3. Written Statement of Hardship
4. Building permit (1958)

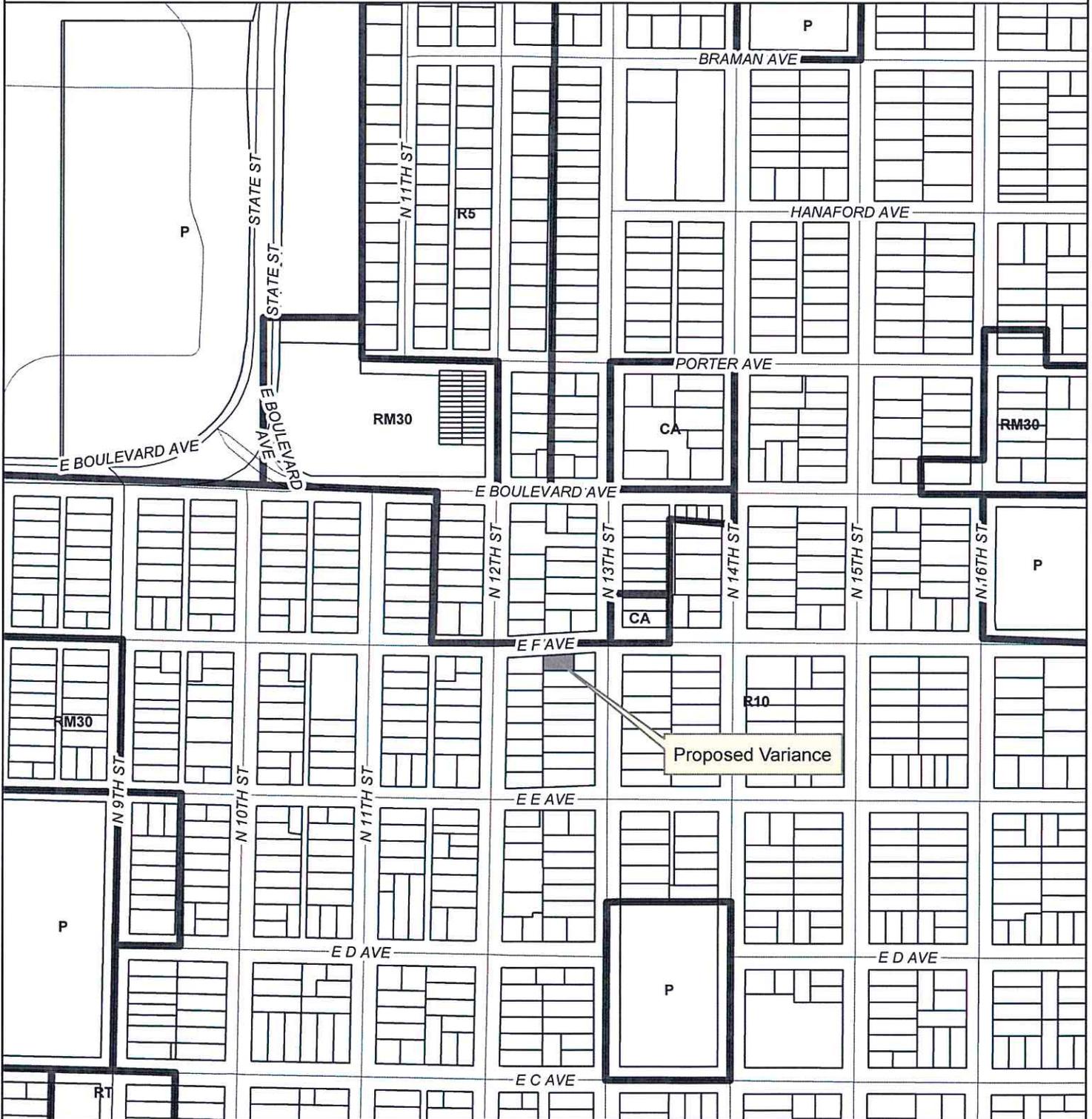
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Staff report prepared by: Jenny Wollmuth, Planner

701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

# Proposed Variance

## Lots 1-2, less the East 65 feet, Block 9 Flannery and Wetherby Addition

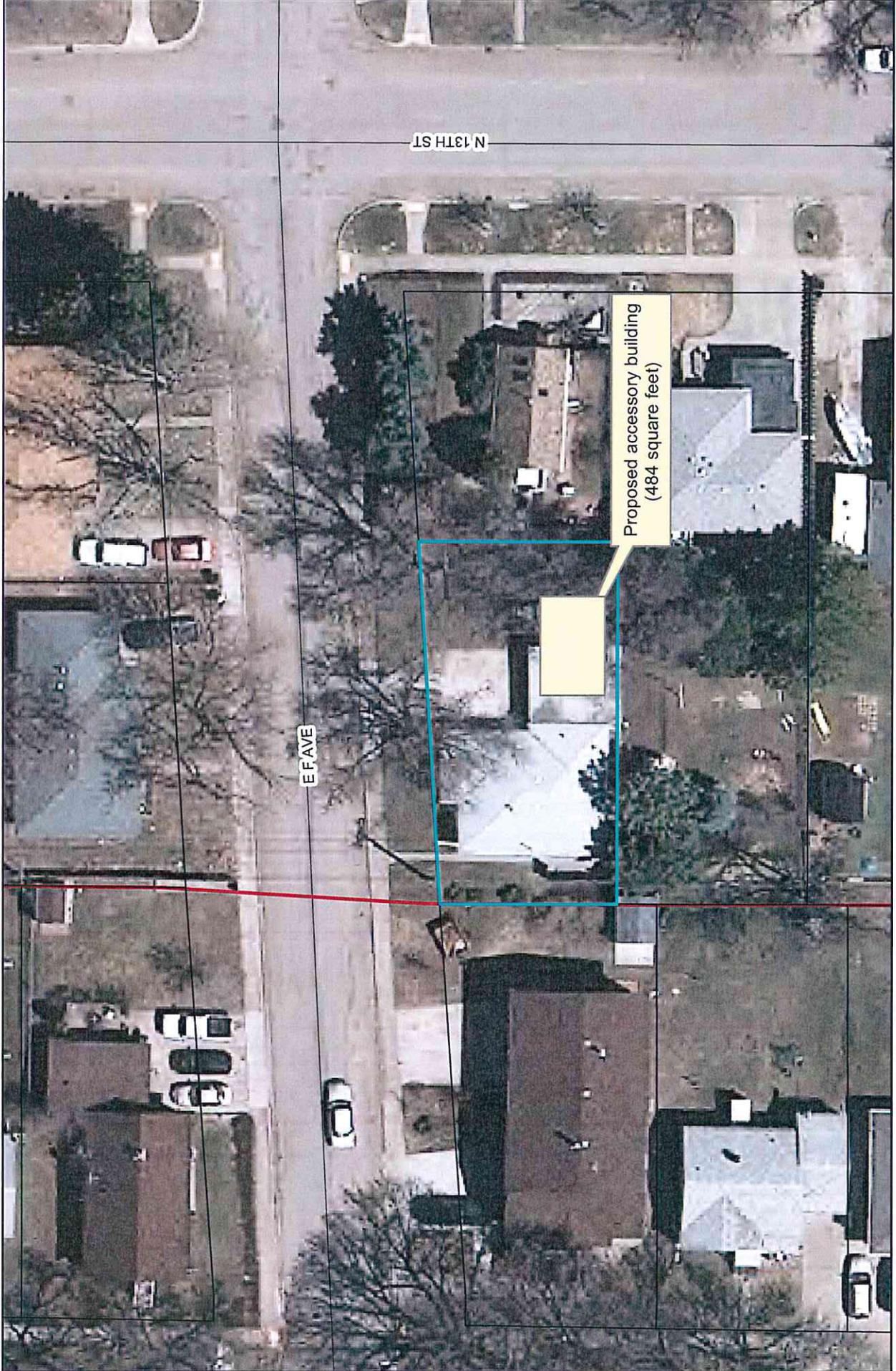


August 17, 2016 (h1b)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



**Lots 1-2, Less the East 65 feet, Block 9, Flannery and Wetheryby addition  
(1215 E F Avenue)**



Date: 8/26/2016

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Bismarck

**CITY OF BISMARCK/ETA  
APPLICATION FOR APPROVAL OF A VARIANCE  
WRITTEN STATEMENT**

1. Property Address or Legal Description: 1215 East Avenue F

2. Location of Property:  City of Bismarck  Extraterritorial Area (ETA)

3. Type of Variance Requested:

4. Applicable Zoning Ordinance Chapter/Section:

5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

The property is too small for construction of a second building. The house was built in 1959. The garage appears to be a lean-to with an unknown construction date.

6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

The second building, a detached garage, would alleviate the pressure on the house, thereby stabilizing the current physical integrity and saving on repairs to cracked walls, gutters, and the roof.

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.

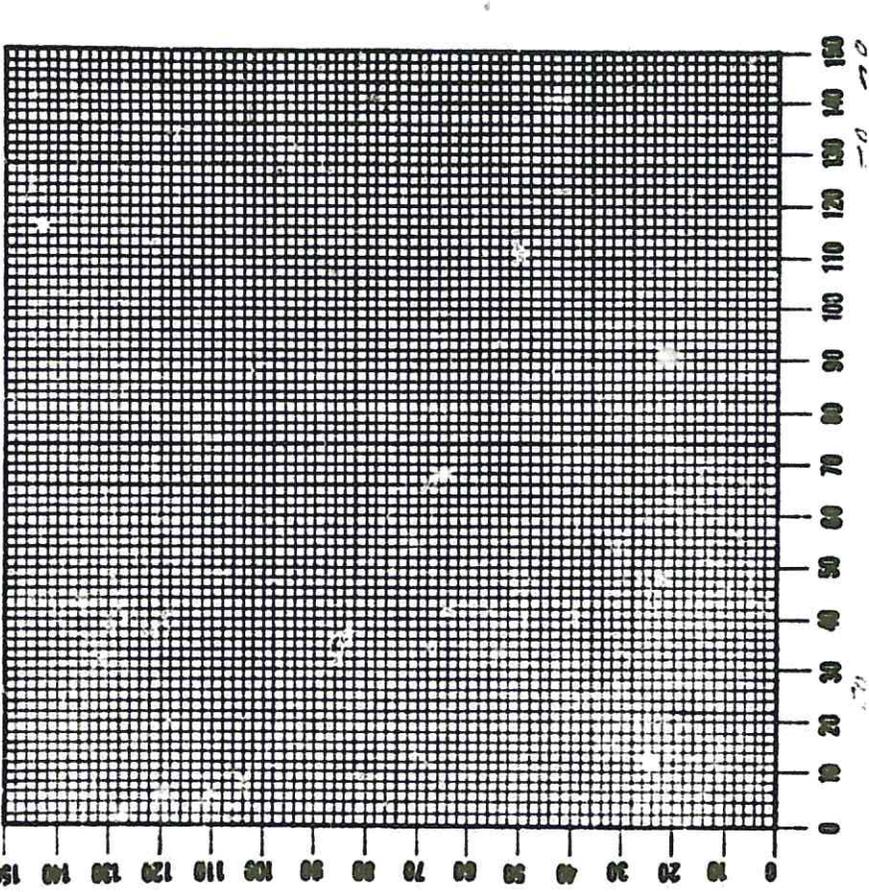
A single garage with some additional space for a snow-blower, lawn mower, yard tools, and a bicycle.

The existing siding will be salvaged and re-used on the new garage so it matches the house. The majority of the new garage overlaps with the existing footprint.

# APPLICATION FOR BUILDING PERMIT

Bismarck, North Dakota, Application No. 555-78  
4-22, 1958

The undersigned hereby makes application, for a permit to alter the following described building, and in consideration of the issue and delivery to me by the Building Inspector of the City of Bismarck of such permit, hereby agrees to do the proposed work in accordance with the provisions of the ordinances of the City of Bismarck, and hereby states that the work to be set forth by me are true and correct, and the undersigned further agrees, and understands that if the proposed work is not done in accordance with the description hereinafter set forth, this building permit shall immediately terminate and be void and of no effect and the undersigned shall be in the same position as respects all incidents of law, as though no permit had been issued and shall be subject to prosecution accordingly.



**Note:** All inspection will be made at request of builder at completion of stages.  
 This permit expires in 3 years but must be renewed every 6 months.  
 Leonard Miller  
 1215 Ave. F  
 East 65 lots 17 except

Lot Size  
 Depth of Front Yard  
 Depth of Side Yard  
 Area of Main Building  
 Area of Accessory Building  
 Total Area  
 Lot Area  
 % of Lot Occupied  
 Type of Apartment

FEES	
Certificate of Occupancy	\$ 25.00
Permit	\$ 3.00
Survey	
Total	\$ 28.00

PERMIT TO BUILD

Estimated Cost  
 To Be Completed  
 To Be Used As  
 No. Rooms  
 Bath  
 Stories  
 No. Families  
 No. of Leaves  
 Nature of Construction: Wood Frame

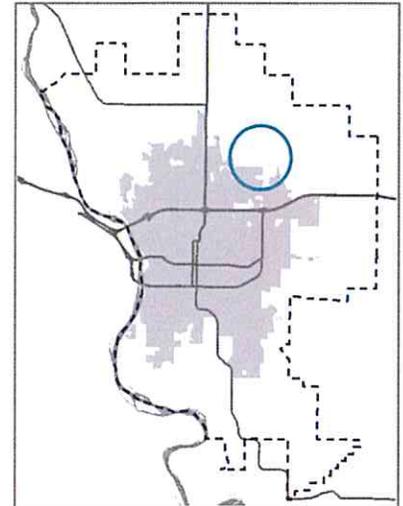
Builder  
 Street  
 City of Lot  
 Subd.  
 Estimated Cost  
 To Be Completed  
 To Be Used As  
 No. Rooms  
 Bath  
 Stories  
 No. Families  
 No. of Leaves  
 Nature of Construction

## Application for: Variance

TRAKiT Project ID: VAR2016-017

### Project Summary

Title:	Lot 4, Block 3, High Top Acres Second Subdivision (7201 Moonstone Lane)
Status:	Board of Adjustment
Owner(s):	Jeff Anderson
Project Contact:	Jeff Anderson
Location:	Northeast of Bismarck, east of US Highway 83 and north of 71 <sup>st</sup> Avenue NE, along the east side of Moonstone Lane.
Request:	Variance from Section 14-04-01(10) of the City Code of Ordinances (RR – Residential)(Accessory Building).



### Staff Analysis

The applicant is requesting a variance to increase the side wall height of an accessory building currently under construction from fourteen (14) feet to sixteen (16) feet.

A building permit was issued for a 2,368 square foot accessory building on October 15, 2015. Upon inspection it was discovered that the side walls were constructed at sixteen (16) feet. According to the applicant the proposed accessory building was to be constructed with sixteen (16) foot side walls. However, the building permit does not state the size of the side walls. A copy of the building permit is attached. The zoning ordinances limits the maximum height of side walls for accessory buildings located in the RR – Residential zoning district to fourteen (14) feet.

If approved as proposed the side wall height for the accessory building, currently under construction, would be increased to sixteen (16) feet.

### Applicable Provision(s) of Zoning Ordinance

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance 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."

Section 14-04-01(10) of the City Code of Ordinances (RR – Residential)(Accessory Buildings) states, "All allowable accessory buildings for a single-family residence shall be limited to a maximum of fourteen hundred (1,400) square feet for lots of 40,000 square feet or less; to a maximum of eighteen hundred (1,800) square feet for lots between 40,000 square feet and 64,999 square feet; and to a maximum of twenty-four hundred (2,400) square feet for lots over 65,000 square feet, except provided herein. The maximum wall height shall be limited to fourteen (14) feet and the maximum building height shall be limited to twenty-five (25) feet." According to the applicant the side wall height of the accessory building currently under construction is sixteen (16) feet.

(continued)

**Required Findings of Fact**

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 RR - 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.

**Staff Recommendation**

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

**Attachments**

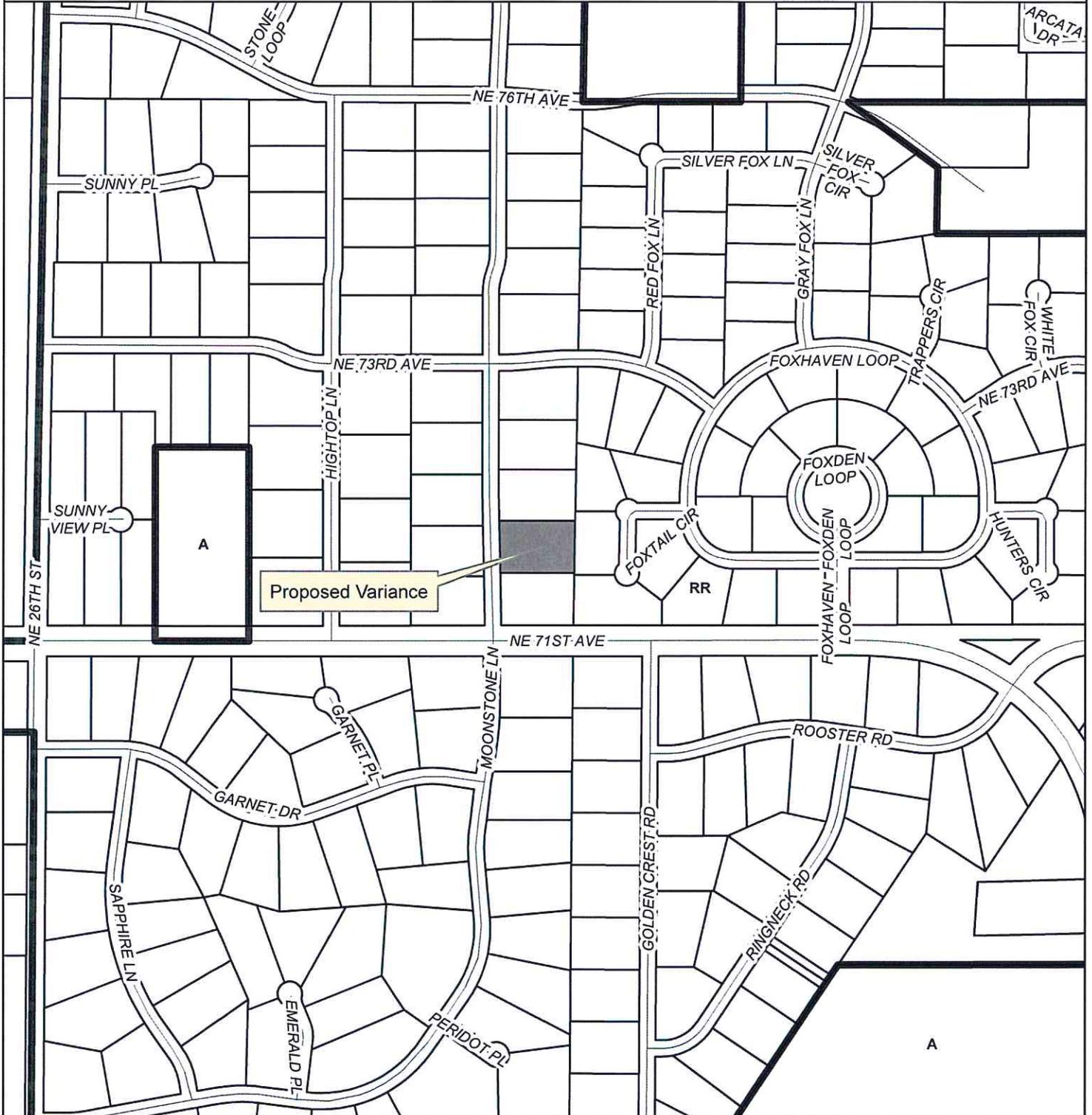
1. Location Map
2. Site plan
3. Written Statement of Hardship
4. Building permit (BRAC2015-0183)

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Staff report prepared by: Jenny Wollmuth, Planner  
701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

# Proposed Variance

## Lot 4, Block 3, High Top Acres Second Subdivision



August 17, 2016 (h/b)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein.



MOONSTONE LANE

3

③

N 90°00'00" E  
372.83'

N 01°09'54" W  
257.05'

40' SETBACK

DRIVE

100.0'

42.0'

30.0'

25.7' SETBACK

63.0'

111.3'

PROPOSED BUILDING

53.5'

32.0'

74.0'

PROPOSED BUILDING

31.0'

25.7' SETBACK

363.33'  
N 90°00'00" W

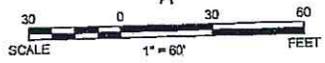
4  
94597 S.F.  
2.172 ACRES

73.6' SETBACK

10' UTILITY EASEMENT

257.04'  
S 00°57'10" W

5



LEGEND

- MONUMENT FOUND
- ⊙ MONUMENT SET
- BUILDING SETBACK

Rev'd.			
LOT SURVEY EXHIBIT JEFF ANDERSON BISMARCK, ND			
7201 MOONSTONE LANE LOT 4, BLOCK 3, HIGHTOP ACRES 2ND SUB. BURLEIGH COUNTY, ND			
DRAWN BY ZT	CHKD BY JRJ	PROJECT NO. 1615455	DATE 10/14/2015



Bismarck

**CITY OF BISMARCK/ETA  
APPLICATION FOR APPROVAL OF A VARIANCE  
WRITTEN STATEMENT**

1. Property Address or Legal Description: 7201 - Moonstone Lane
2. Location of Property:  City of Bismarck  Extraterritorial Area (ETA)
3. Type of Variance Requested: From 14' to 16' High
4. Applicable Zoning Ordinance Chapter/Section:
5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

I showed a picture of the building, & the sizes, that I needed a 14' opening to get my camper in, she said no problem, and gave me the permits

6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

I needed a 14' Door for a camper, so I needed 16' side walls, to get a 14' Door

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property

a 12' High Door is not High enough to use, if I could of only had a 12' Door, I would not have Built it



BUILDING RESIDENTIAL  
ACCESSORY  
GARAGE

Permit: BRAC2015-0183  
Approved By: CAND  
Issued Date: 10/15/2015  
Expiration Date: 4/12/2016  
Permit Fee: \$455.45

**Bismarck Community Development Department \*Building Inspections**  
221 North 5th Street \* PO Box 5503 \* Bismarck, ND 58506-5503 \* www.bismarcknd.gov

\* Phone: 701-355-1465 \* Fax: 701-258-2073

Owner: ANDERSON, JEFFREY B & LAURIE B

Contractor: OAK MASTER CABINETS AND CONSTRUCTION

Address: 7201 MOONSTONE LN

Contractor Address: 7309 MOONSTONE LA

Location: BISMARCK ETA

Phone Number: (701) 224-9379

Property Number: 31-139-80-01-03-040

Type Construction: VB

Legal Description:

Type of Work: NEW

Zoning: RR

Building Height: 1

Lot Size: 94597

Building Width: 74

Occupancy: R-3

Front Yard Set Back: 40

Number of Units: 0

Rear Yard Set Back: 50

Easements: 10' utility easement rear property line (E)

Side Yard Set Back: 15-36.41

Description of Work: CONSTRUCT A 32'X74' DETACHED ACCESSORY BUILDING

Additional Notes:

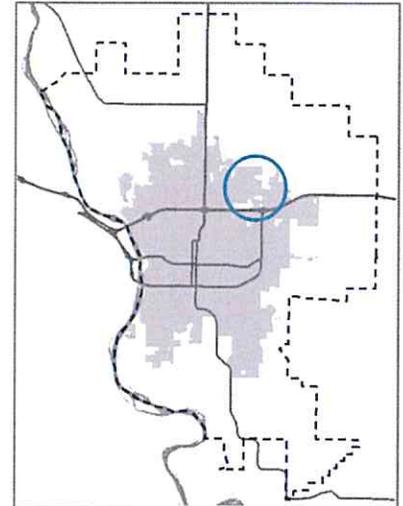
Work under this permit must commence within 180 days of permit issuance. Permittee must comply with all codes and ordinances applicable to work. Issuance of the permit does not grant any authorities to erect, modify, or use any structure in violation of any code or ordinance. All required inspections, including a final inspection, must be requested by the Permittee. In consideration for connection to City utilities, Permittee agrees to pay all applicable utility fees and charges pursuant to City Ordinance. This permit creates no warranties with regard to construction or code compliance. The inspections under this permit are for the benefit of the public and not the Permittee and the inspections do not create a duty to the Permittee, this owner, or to a subsequent purchaser with regard to quality of construction or code compliance. Federal law may require this construction project to conform to the Americans with Disabilities Act Accessibility Guidelines for Building and Facilities.

**Application for: Variance**

TRAKiT Project ID: VAR2016-018

**Project Summary**

<b>Title:</b>	Part of Lot 1, Block 1, Stonecrest 2 <sup>nd</sup> Addition (3336 Jericho Road)
<b>Status:</b>	Board of Adjustment
<b>Owner(s):</b>	Leichty Homes, Inc. / Chris Tietz
<b>Project Contact:</b>	Chris Tietz
<b>Location:</b>	In north Bismarck, between Hamilton Street and Centennial Road, south of East Calgary Avenue, along the northeast side of Jericho Road.
<b>Request:</b>	Increase the total area of accessory buildings at 3336 Jericho Road to 1,500 square feet.



**Staff Analysis**

The applicant is requesting a variance to increase the size of a proposed accessory building to 1,500 square feet.

Section 14-04-05(2) of the City Code of Ordinances (RMH Residential) outlines use development standards for single-family mobile and manufactured home dwellings located within manufactured home parks. The lot coverage standards indicate that each lot shall be limited to one attached utility structure of no more than 120 square feet. The height limits indicate that no accessory building shall exceed 15 feet in height.

Although detached accessory structures have historically been allowed in this district, the provisions of this section are silent on the size or placement of accessory buildings other than those that are attached to the principal structure. The practice has been to issue permits for accessory buildings in newer areas under the same provisions applied to single-family dwellings in the R5 and R10 zoning districts.

Staff has initiated a Zoning Text Amendment to allow accessory buildings located within the RMH –

Residential zoning district. The maximum size of accessory building(s) would be limited to twelve-hundred (1,200) square feet in this district, provided the lot coverage requirement of forty percent (40%) is not exceeded. The amendment also requires a maximum side wall height of twelve (12) feet and a maximum building height of twenty-five (25) feet.

The Planning and Zoning Commission, at their meeting of August 24, 2016, considered the proposed text amendment and scheduled a public hearing for the September 28, 2016 meeting of the Planning and Zoning Commission. If approved, the City Commission would consider and hold a public hearing on the proposed text amendment in October. However, the amendment as proposed would not allow for a fifteen hundred (1,500) square foot accessory buildings in the RMH – Residential zoning district.

**Applicable Provision(s) of Zoning Ordinance**

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance 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

(continued)

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.”

**Required Findings of Fact**

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 RMH – 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.

**Staff Recommendation**

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

**Attachments**

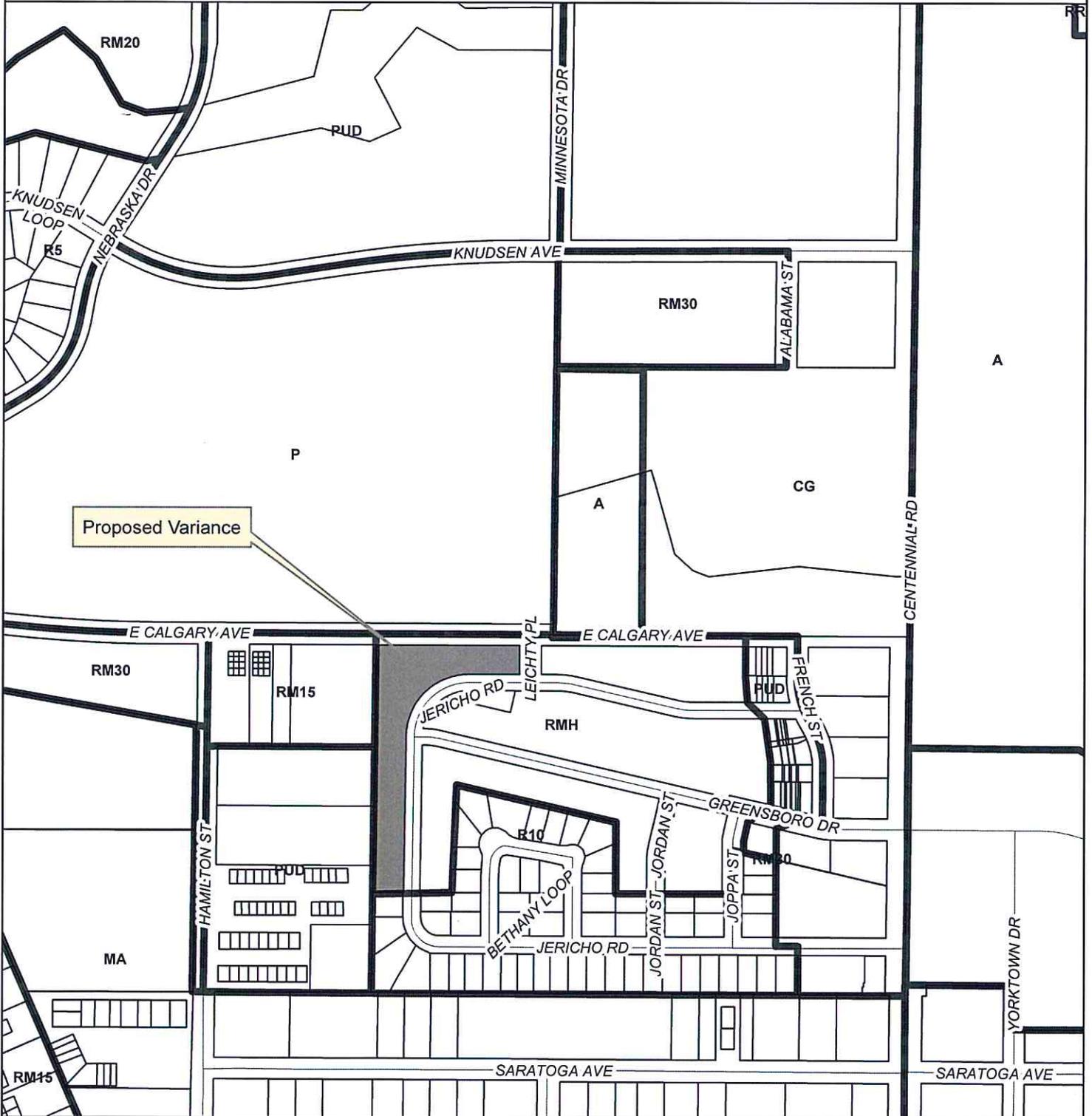
1. Location Map
2. Site plan
3. Written Statement of Hardship

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Staff report prepared by: Jenny Wollmuth, Planner  
701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

# Proposed Variance

## Lot 1, Block 1, Stonecrest 2nd Addition



August 17, 2016 (h1b)

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## CITY OF BISMARCK/ETA APPLICATION FOR APPROVAL OF A VARIANCE WRITTEN STATEMENT

1. Property Address or Legal Description: 3336 Jericho Rd

2. Location of Property:  City of Bismarck  Extraterritorial Area (ETA)

3. Type of Variance Requested: garage size variance

4. Applicable Zoning Ordinance Chapter/Section:

5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

current zoning for a garage in the city of Bismarck is 1200 sq ft. I am requesting a garage that will be 1500 sq ft, it will be 30ft across the front and 50 ft deep. The proposed lot is very deep and can allow for a deeper garage. This will also allow the tenant on the lot to have a close access to their detached garage with the home being back a long distance from the street. Liechty Homes currently owns the 80 lots in this development and the tenants rent the land from Liechty Homes. the view of this garage from the front will look no larger than the current garages and will actually be less wide than several. The roof pitch will still be lower than house and the same pitch as all other structures in the development.

6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

The lot is very large and the home will be 2280 sq ft and the garage 1500 sq ft, this will only use up about 17% of the total lot. This leaves a very large lot with an extremely large amount of lawn space to have to maintain. The garage will allow the homeowner to have more usable space the will not need constant lawn maintenance.

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.

The extra 300 sq ft on the garage will still be well under 40% of the total lot size and will look congruent with the current homes and garages in the neighborhood. Liechty Homes has a great reputation of making their parks look and stay looking nice, and feel this will not impede on the reputation.

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
August 4, 2016**

The Bismarck Board of Adjustment met on August 4, 2016 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Marback presided.

Members present were Jennifer Clark, Chris Seifert, Ken Hoff, Ken Heier and Michael Marback.

Member absent was Rick Wohl.

Staff members present were Brady Blaskowski – Building Official, Jason Hammes – Assistant City Attorney, Will Hutchings - Planner and Hilary Balzum – Community Development Administrative Assistant.

**MINUTES:**

Chairman Marback called for approval of the minutes of the July 14, 2016 meeting of the Board of Adjustment.

Mr. Seifert pointed out a correction to be made to the motion on agenda item #5; stating Mr. Wohl opposed the motion. Ms. Balzum said the correction will be made prior to publishing the minutes.

**MOTION:** A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the July 14, 2016 meeting, with the suggested correction. With Board Members Clark, Hoff, Marback, Seifert and Heier voting in favor, the minutes were approved.

**VARIANCES FROM SECTIONS 14-04-03(7) OF THE CITY CODE OF ORDINANCES (FRONT YARD), SECTION 14-04-03(8) OF THE CITY CODE OF ORDINANCES (SIDE YARD) AND SECTION 14-03-09(3) OF THE CITY CODE OF ORDINANCES (NONCONFORMING USES) – LOTS 3-5, BLOCK 87, MCKENZIE AND COFFINS ADDITION (1024 NORTH 2<sup>ND</sup> STREET)**

Chairman Marback stated the applicant, James Papacek, is requesting variances to reduce the required front yard setback along the east side of his property from twenty-five (25) feet to fifteen (15) feet and to reduce the required width of the side yards from fifteen (15) feet to eleven (11) feet in order to construct a 23'x47' addition to the existing single-family dwelling along the south side of the property.

Mr. Blaskowski gave an overview of the requests, 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.

Mr. Blaskowski said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Chairman Marback asked what the current setback requirements are. Mr. Blaskowski said they are fifteen feet and five feet.

Ms. Clark asked if the fifteen foot setback requirement would then be reduced to eleven feet. Mr. Blaskowski said that is correct, that because of the average width of the side yards it would be eleven feet.

Mr. Heier asked if they will be exceeding their maximum allowable lot coverage percentage with this addition. Mr. Blaskowski said they would not.

Ms. Clark asked if there is going to be any issues with a second driveway being added to the property. Mr. Blaskowski said for any new driveway, the City Engineering Department would have to approve a request for a second one.

Mr. Papacek said this property has been in his family for a long time and when it was originally purchased it was two 25-foot wide lots which is why there is only a four foot setback on the north side. He said their request to reduce the setback on the south side to 11 feet is due to health issues and wanting to make their home as comfortable as possible for them. He said this addition would take care of their needs and the easiest way to do that is by adding a double garage. He said the front yard setback would still be 16 feet and the rear yard would be 22 feet. He said the existing driveway will go away upon completion of a new one.

Mr. Hoff asked if the City Engineering Department has approved that request yet. Mr. Papacek said they have not because he wanted to make sure his variance request was

approved first. He said some prep work has been done for it and he will make sure the addition will be very aesthetically appropriate with the rest of the neighborhood. He said he hired Big River Builders to help with this project and has no doubts that it will be palatable compared to the neighboring properties and has been working on the plans for this since February.

Mr. Hoff said comments have been received from the neighbors to the south and asked if they will be the ones to occupy the property long term. Mr. Papacek said they will as they are moving here from Fargo because their home there was purchased to make room in the Red River floodplain. He said access cannot be from the back alley because the grade differential would make the steps very steep which would create safety issues due to his health concerns. He said steps are difficult for him and having to have more steps would exacerbate his hardship, especially in the winter time. He said he would like his wife to be able to go straight from the garage into the house when she works nights and after having explored many various options to try and make this work, the plan proposed is the most logical way to do it.

Mr. Hoff asked if the addition could be flipped around so that access is from the alley. Mr. Papacek said the access being how it is proposed would be much safer, in addition to snow removal being easier.

Chairman Marback said the neighbor to the south does take issue with this addition, having stated the view from their home will be compromised. Mr. Papacek said he made sure when developing the building plans that the addition will blend into the existing and surrounding homes and he would not exceed any major peaks or the height of the house.

Jordan Anderson, Big River Builders, said the elevation in the rear yard is quite steep and the driveway would have to be almost 70 feet long which is not an option.

Chairman Marback said either way he would still need the setback to be reduced. Mr. Papacek said as he designed this addition he took into consideration the window pattern on the home because it creates a unique air flow effect and to modify them would have an adverse effect on that. He said he wanted to retire in the home he helped build in Fargo but that is no longer an option and he just wants to be able to live comfortably in his home as he ages.

Mr. Anderson said the existing garage is not large enough for most modern vehicles and these requests are the minimum needed to make this work. He said the proposed location of the addition is ideal with the grade of the property and being able to avoid having to constructing stairs and retaining walls.

Mr. Hoff pointed out that are not any other front facing garages in this part of town. Mr. Papacek said his neighbors garages face the street as well as the house next to that. He said many do have their garages in the back of the home but with the addition and still maintaining a 25 foot setback he feels this plan would work well.

Ms. Clark said some of the neighboring homes do have access off of North 2<sup>nd</sup> Street and drive to the back of the home to a single or double garage.

Mr. Heier asked if a variance is needed for the driveway. Mr. Blaskowski said the driveway does not need a variance and the request is only for the front and side yard setbacks.

Ms. Clark said if the addition is moved further back, the roof lines would not line up and it appears a front yard setback is not needed because the addition will be back 16 feet further. Mr. Anderson said that is correct.

Mr. Blaskowski said not needing a front yard setback can be clarified with the motion and prior to a building permit being issued a lot survey can be requested.

Mr. Heier asked if it is 35% maximum allowed lot coverage in this zoning district. Mr. Blaskowski said it is 30% and they will be under that percentage with the addition.

Chairman Marback opened the public hearing.

Written comments in opposition to this request are attached as Exhibit A.

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

**MOTION:** A motion was made by Ms. Clark to approve the variance to reduce the required width of the side yards from fifteen (15) feet to eleven (11) feet in order to construct a 23'x47' addition to the existing single-family dwelling along the south side of the property on Lots 3-5, Block 87, McKenzie and Coffins Addition (1024 North 2<sup>nd</sup> Street), based on the grade of the property and not needing a front yard setback reduction. The motion was seconded by Mr. Seifert and with Board Members Clark, Seifert and Marback voting in favor of the motion and Board Members Heier and Hoff opposing the motion, the motion failed as four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07.

Mr. Papacek asked if he can ask questions of the two Board Members who opposed the motion. Mr. Hammes explained the decision cannot be questioned once it has been made and discussions and the public hearing have been closed.

Chairman Marback explained that this decision can be appealed to the Board of City Commissioners if the owner wishes to do so.

## **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 5:28 p.m. to meet again on August 4, 2016.

Respectfully Submitted,

\_\_\_\_\_  
Hilary Balzum  
Recording Secretary

APPROVED:

\_\_\_\_\_  
Michael Marback, Chairman

To the members of the board of adjustments. We are the neighbors at 1018 N. 2<sup>nd</sup> st. and we respectfully ask that the setback request for the property to the north of us, be changed from 11' to 7' be denied.

My wife, Mary and I have lived here since 1988 and have had the same view all this time. When my wife sits on the deck, it's a peaceful view. That would change with the house to the north of us being that much closer. My wife is disabled, hit by a drunk driver in 1984. Change is not easy for her. I have been in Real Estate since 1988 and when we bought our house, a large part of that decision was because the houses were so far from each other. There is a reason the city has had this setback in place for all these years and we would like it to stay that way.

Jim stated in a text, "I needed a heated garage at a reasonable cost." My question is, why not put it in the back off the alley like everyone on this street that have built more garage space? It certainly would be cheaper, if "reasonable cost" is the goal. When we built our garage, off the alley, all those years ago, we asked the city if we could put it in our side yard, up front. The response was they didn't want another driveway onto 2<sup>nd</sup> st.

Jim has lived in Fargo all these years and has used the home as a rental. He currently does not reside at the residence.

We respectfully ask the members of the board of adjustments not to grant this request and leave the setback at 11 feet.

Thanks you for your time and consideration.

Sincerely,

Nick and Mary Choukalos

1018 N. 2<sup>nd</sup> st. Bismarck, ND