



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

**November 3, 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 October 6, 2016 meeting of the Board of Adjustment.

**REQUESTS**

2. **Variance from Section 14-04-06(7) of the City Code of Ordinances (R10 – Residential)(Front Yard) – Lots 15-16, less the West 10 feet, Block 40, Fisher Addition (1214 Porter Avenue) | VAR2016-026**

*Owner / Applicant: Josh Churchill*

*Board Action:*      approve      continue      table      deny

3. **Variance from Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential)(Front Yard) – Lots 15-18, Block 3, McKenzie and Coffins Addition (707 North Anderson Street) | VAR2016-027**

*Owner / Applicant: Ken Keller*

*Board Action:*      approve      continue      table      deny

4. **Variances from Sections 14-04-03(4);14-04-03(7);and 14-04-03(9) of the City Code of Ordinances (R5 - Residential)(Lot Area / Front Yard/ Rear Yard) – The South 50 feet of the West 1/3 of Lot 4, block 5, Northern Pacific Addition (717 North Mandan Street) | VAR2016-023**

*Owner / Applicant: Anne Cleary*

*Board Action:*      approve      continue      table      deny



5. **Variance from Section 14-04-01(6) of the City Code of Ordinances (RR – Residential)(Rear Yard) – Lot 9, Bock 3, Pine Meadows Subdivision (8312 White Oak Loop) | VAR2016-024**

*Owner / Applicant: Jim Alber*

*Board Action:*      approve      continue      table      deny

6. **Variance from Section 14-04-01(6) of the City Code of Ordinances (R5 – Residential)(Rear Yard) – Lot 3, Block 1, Fox Haven Subdivision (7480 Red Fox Lane) | VAR2016-022**

*Owner / Applicant: Kim and Wyatt Gross*

*Board Action:*      approve      continue      table      deny

7. **Variance from Section 14-04-01(5) of the City Code of Ordinances (RR – Residential)(Side Yard) – The South ½ of Lot 1, Block 1, CW Acres (4905 52<sup>nd</sup> Street NE) | VAR2016-025**

*Owner / Applicant: Scott Samuelson*

*Board Action:*      approve      continue      table      deny

8. **Variance from Section 14-04-06(9) of the City Code of Ordinances (R10 – Residential)(Rear Yard) – The East 102 feet of the South 50 feet of Lot 5, Block 12, Riverview Addition (302 West Custer park Street) | VAR2016-028**

*Owner / Applicant: Darcy Bengston*

*Board Action:*      approve      continue      table      deny

## **ADJOURNMENT**

9. **Adjournment.** The next regular meeting date is scheduled for December 1, 2016



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

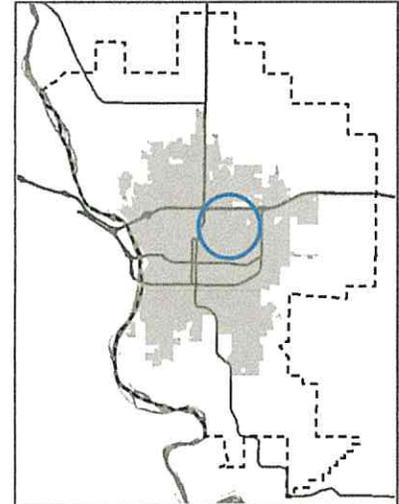
Agenda Item # 2  
November 3, 2016

## Application for: Variance

TRAKiT Project ID: VAR2016-026

### Project Summary

|                         |  |
|-------------------------|--|
| <b>Title:</b>           | Lots 15-16, less the West 10 feet, Block 40, Fisher Addition (1214 Porter Avenue)  |
| <b>Status:</b>          | Board of Adjustment  |
| <b>Owner(s):</b>        | Josh Churchill   |
| <b>Project Contact:</b> | Josh Churchill   |
| <b>Location:</b>        | In central Bismarck, between North 12 <sup>th</sup> Street and North 13 <sup>th</sup> Street, along the north side of Porter Avenue. |
| <b>Request:</b>         | Variance from Section 4-04-06(7) of the City Code of Ordinances (R10 – Residential)(Front Yard).                                     |



### Staff Analysis

The applicant is requesting a variance to reduce the required front yard setback along the south side of the property, adjacent to Porter Avenue, from twenty-five (25) feet to twenty-one (21) feet in order to construct a 960 square foot accessory building.

The applicant obtained a building permit (BRAC-0139) on August 25, 2016. According to the site plan submitted with the building application, the proposed accessory building was to be setback twenty-five (25) feet from the front property line as required by the ordinance. However, during the footing / foundation inspection on October 4, 2016 it was discovered that the proposed accessory building was located twenty-one (21) feet from the front property line. A copy of the Building Permit and inspection notes are attached.

The existing house located on the property was constructed in 1954 and set back approximately fourteen (14) feet from the front property line adjacent to Porter Avenue. Staff was unable to locate a building permit for the existing house; however, it appears that ordinance requirements were met at the time 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(7) of the City Code of Ordinances (R10 – Residential)(Front Yard) states, "Each lot shall have a front yard of not less than twenty-five (25) feet in depth." According to the applicant, the proposed accessory building would be located twenty-one (21) feet from the front yard property line located along the south side of the property adjacent to Porter Avenue.

### 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.

(continued)

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 (BRAC2016-0139)
5. Inspection Notes

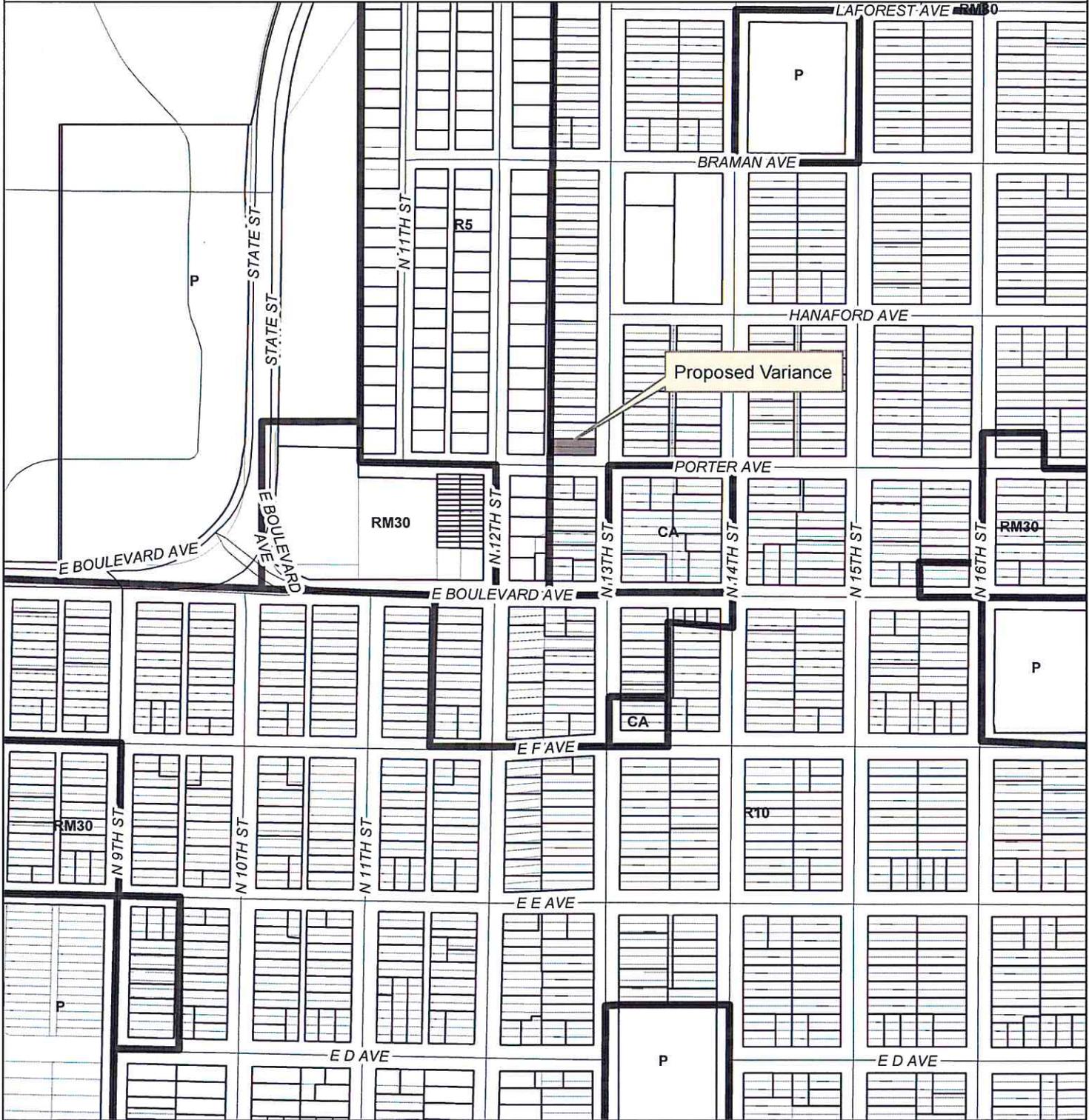
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Staff report prepared by: Jenny Wollmuth, CFM, Planner  
701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

# Proposed Variance

## Lots 15-16 less the West 10 feet, Block 40

### Fisher Addition

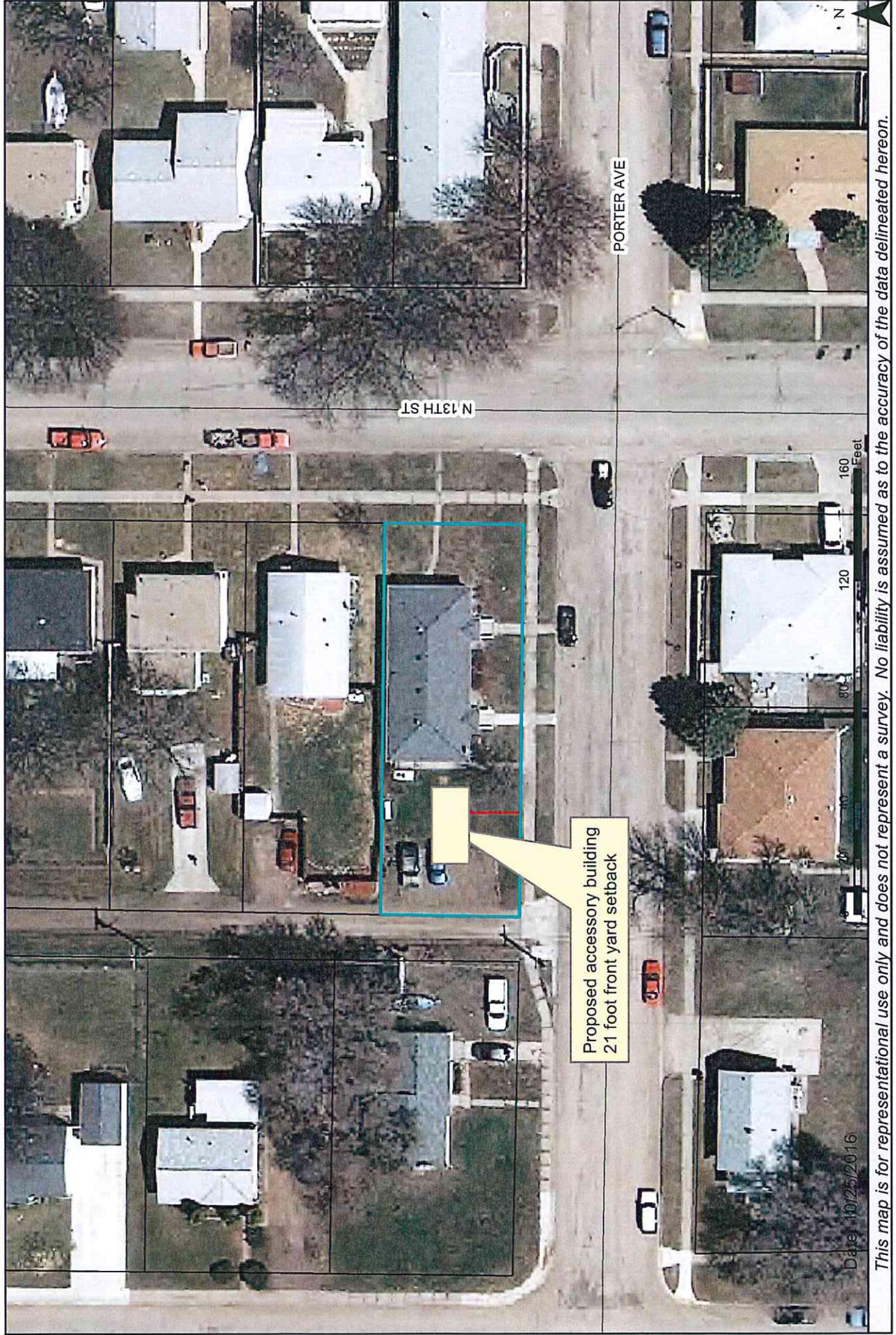


October 13, 2016 (hlb)

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.



**Lots 15-16 less the West 10 feet, Block 40, Fisher Addition  
(1214 Porter Avenue)**



Date: 10/25/2016

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.



RECEIVED  
OCT 13 2016

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

1. Property Address or Legal Description: 1214/1218 Porter Ave.

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

3. Type of Variance Requested: Reduce set back requirement.

4. Applicable Zoning Ordinance Chapter/Section: 14-04-06(7)

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 25' setback requirement would prevent the construction of a detached garage.

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

The existing structure (side by side duplex) is only set back 17' back from the south property line. If granted a variance, the garage would be set back 22'.

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

To construct a garage of reasonable usefulness, the setback would have to be reduced to 21'.





**BUILDING RESIDENTIAL  
ACCESSORY  
GARAGE**

Permit: BRAC2016-0139  
Approved By: MBAS  
Issued Date: 8/26/2016  
Expiration Date: 2/22/2017  
Permit Fee: \$185.35

**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: CHURCHILL, JOSHUA R

Address: 1214 PORTER AVE

Location: CITY OF BISMARCK

Property Number: 0100-040-035

Legal Description: 15-16 LESS W10'15-16 LESS W10' 15-16 LESS W10'

Contractor: LIPPERT ENTERPRISES

Phone Number: (701) 391-2969

Front Yard Set Back: 25

Rear Yard Set Back: 3

Side Yard Set Back: 3W

Easements:

Description of Work: 24x40 DETACHED ACCESSORY BUILDING ON THICKENED EDGE SLAB

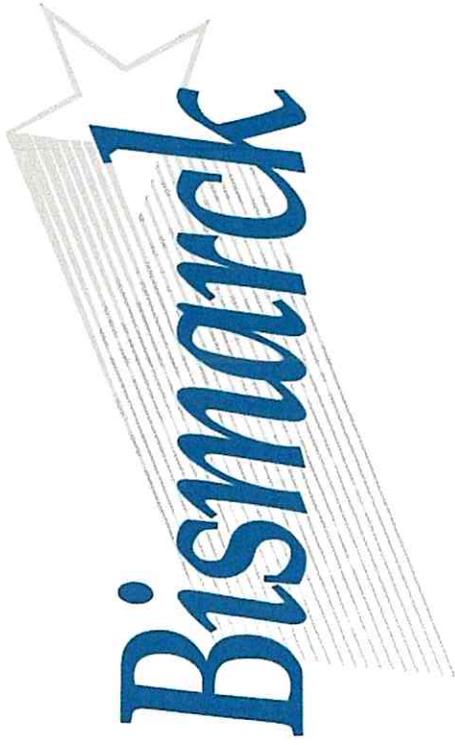
Additional Notes: DETACHED ACCESSORY BUILDING ON THICKENED EDGE SLAB.

CONVENTIONAL STICK BUILT WITH A MAXIMUM OF 12' SIDEWALLS AND MAXIMUM HEIGHT OF 25' AT THE PEAK. DISTANCE OF 10' FROM WALL OF PRINCIPLE BUILDING TO ACCESSORY BUILDING.

ALL PROPERTY LINES MUST BE CLEARLY MARKED.

IF PLUMBING IS TO BE INSTALLED, OTHER THAN A DRAIN, A 4' FOUNDATION IS REQUIRED AS FROST PROTECTION.

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.



BUILDING RESIDENTIAL  
ACCESSORY  
GARAGE

Permit: BRAC2016-0139  
Approved By: MBAS  
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IF ELECTRIC WILL BE INSTALLED AND WITHIN BISMARCK CITY LIMITS A SEPARATE PERMIT WILL BE REQUIRED; OUTSIDE CITY LIMITS WILL BE INSPECTED BY ND STATE ELECTRICAL BOARD.

(3) INSPECTIONS WILL BE REQUIRED:

1. FOUNDATION INSPECTION AFTER FORMS HAVE BEEN SET BUT BEFORE CONCRETE IS POURED. THIS INSPECTION CANNOT BE SCHEDULED ONLINE. PLEASE CALL OUR OFFICES AT 355-1465.
2. FRAMING INSPECTION AFTER STRUCTURE WALLS, FLOORS, WINDOWS, DOORS, AND OTHER FRAMING MEMBERS ARE IN PLACE AND AFTER EXTERIOR SHEATHING HAS BEEN INSTALLED. PRIOR TO INSULATION. ROOF MUST BE COMPLETED TO THE POINT THAT INTERIOR CAN BE CONSIDERED WEATHER PROTECTED.
3. FINAL UPON COMPLETION OF PROJECT.

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.



# Permit Inspections

## City of Bismarck

**Permit Number: BRAC2016-0139**

**Description: 24x36 DETACHED ACCESSORY BUILDING ON THICKENED EDGE SLAB**

Applied: **8/25/2016**

Approved: **8/25/2016**

Site Address: **1214 PORTER AVE**

Issued: **8/26/2016**

Finalized:

City, State Zip Code: **BISMARCK, ND 58501**

Status: **ISSUED**

Applicant: **LIPPERT ENTERPRISES**

Parent Permit:

Owner: **CHURCHILL, JOSHUA R**

Parent Project:

Contractor: **LIPPERT ENTERPRISES**

Details:

**DETACHED ACCESSORY BUILDING ON THICKENED EDGE SLAB.**

**CONVENTIONAL STICK BUILT WITH A MAXIMUM OF 12' SIDEWALLS AND MAXIMUM HEIGHT OF 25' AT THE PEAK. DISTANCE OF 10' FROM WALL OF PRINCIPLE BUILDING TO ACCESSORY BUILDING.**

**ALL PROPERTY LINES MUST BE CLEARLY MARKED.**

**IF PLUMBING IS TO BE INSTALLED, OTHER THAN A DRAIN, A 4' FOUNDATION IS REQUIRED AS FROST PROTECTION.**

**IF ELECTRIC WILL BE INSTALLED AND WITHIN BISMARCK CITY LIMITS A SEPARATE PERMIT WILL BE REQUIRED; OUTSIDE CITY LIMITS WILL BE INSPECTED BY ND STATE ELETRICAL BOARD.**

**(3) INSPECTIONS WILL BE REQUIRED:**

**1. FOUNDATION INSPECTION AFTER FORMS HAVE BEEN SET BUT BEFORE CONCRETE IS POURED. THIS INSPECTION CANNOT BE SCHEDULE ONLINE. PLEASE CALL OUR OFFICES AT 355-1465.**

**2. FRAMING INSPECTION AFTER STRUCTURE WALLS, FLOORS, WINDOWS, DOORS, AND OTHER FRAMING MEMBERS ARE IN PLACE AND AFTER EXTERIOR SHEATHING HAS BEEN INSTALLED. PRIOR TO INSULATION. ROOF MUST BE COMPLETED TO THE POINT THAT INTERIOR CAN BE CONSIDERED WEATHER PROTECTED.**

**3. FINAL UPON COMPLETION OF PROJECT.**

### LIST OF INSPECTIONS

| SEQ ID | SCHEDULED DATE | COMPLETED DATE | TYPE              | INSPECTOR | RESULT | REMARKS |
|--------|----------------|----------------|-------------------|-----------|--------|---------|
| 1      |                |                | ACCESSORY FOOTING | Mark Kern |        |         |
| Notes: |                |                |                   |           |        |         |
| 1      |                |                | ACCESSORY FOOTING | Mark Kern |        |         |
| Notes: |                |                |                   |           |        |         |



# Permit Inspections

## City of Bismarck

|  |           |    |           |                   |           |                      |                       |
|--|-----------|----|-----------|-------------------|-----------|----------------------|-----------------------|
| 1  | 10/4/2016 | PM | 10/4/2016 | ACCESSORY FOOTING | Mark Kern | REINSPECTION REQUIRE | RNOW PAM 608-212-4871 |
| <p>Notes:</p> <ul style="list-style-type: none"><li>- Slab has 2 #4 in thickened edge with #4 at 40" oc ew in slab</li><li>- The location is not OK. The building is setback approximately 22'-5" from the south property line and they need to be setback 25'. The rest of the setbacks are OK, 3' from the north and 10' from the principal and 2' minimum from the west (all measured from the wall of the accessory building)</li><li>- The contractor told me that he was going to apply for a variance.</li><li>- If the contractor decides to not apply for a variance then the building will have to be moved back to meet the 25' setback on the south side.</li><li>- A re-inspection is needed no matter what before they can pour to verify the location. At the time of the re-inspection, the property lines must be clearly marked so that there is no question as to where they are.</li></ul> |           |    |           |                   |           |                      |                       |
| 2  |           |    |           | ACCESSORY FRAMING | Mark Kern |                      |                       |
| <p>Notes:</p>  |           |    |           |                   |           |                      |                       |
| 3  |           |    |           | ACCESSORY FINAL** | Mark Kern |                      |                       |
| <p>Notes:</p>  |           |    |           |                   |           |                      |                       |



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

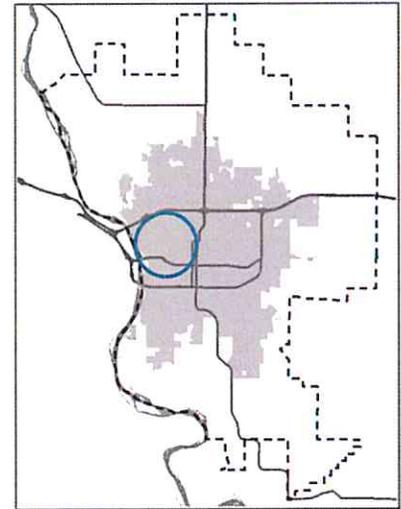
Agenda Item # 3  
November 3, 2016

## Application for: Variance

TRAKiT Project ID: VAR2016-027

### Project Summary

|                         |  |
|-------------------------|--|
| <b>Title:</b>           | Lots 15-18, Block 3, McKenzie and Coffins Addition<br>(707 North Anderson Street)                                |
| <b>Status:</b>          | Board of Adjustment  |
| <b>Owner(s):</b>        | Ken Keller   |
| <b>Project Contact:</b> | Scott Stoeckel, Paramount Builders, Inc  |
| <b>Location:</b>        | In Central Bismarck, in the northeast quadrant of the<br>Intersection of West Avenue C and North Anderson Street |
| <b>Request:</b>         | Variance from Section 14-04-03(7) of the City Code of<br>ordinances (R5 – Residential)(Front Yard)               |



### Staff Analysis

The applicant is requesting a variance to reduce the front yard setback located along the west side of the property adjacent to North Anderson Street from twenty-five (25) feet to twenty (20) feet in order to construct a 416 square foot addition to the existing attached garage.

The Board of Adjustment at their meeting of May 23, 1991 approved a variance to reduce the front yard setback along the west side of the property adjacent to North Anderson street from twenty-five (25) feet to sixteen (16) feet in order to construct the existing single-family dwelling on the property. The proposed addition to the existing attached garage is a separate action and a separate variance is required, as the City Code of Ordinances does not make provisions that would allow a variance to be used for subsequent buildings or additions.

### 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 14-04-03(7) of the City Code of Ordinances (R5 – Residential)(Front Yard) states, "Each lot shall have a front yard not less than twenty-five (25) feet." According to the site plan submitted with the application, the proposed addition to the existing garage would be setback twenty-one (21) feet from the front property line along the west side of the property, adjacent to North Anderson Street.

### 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 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.

(continued)

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.

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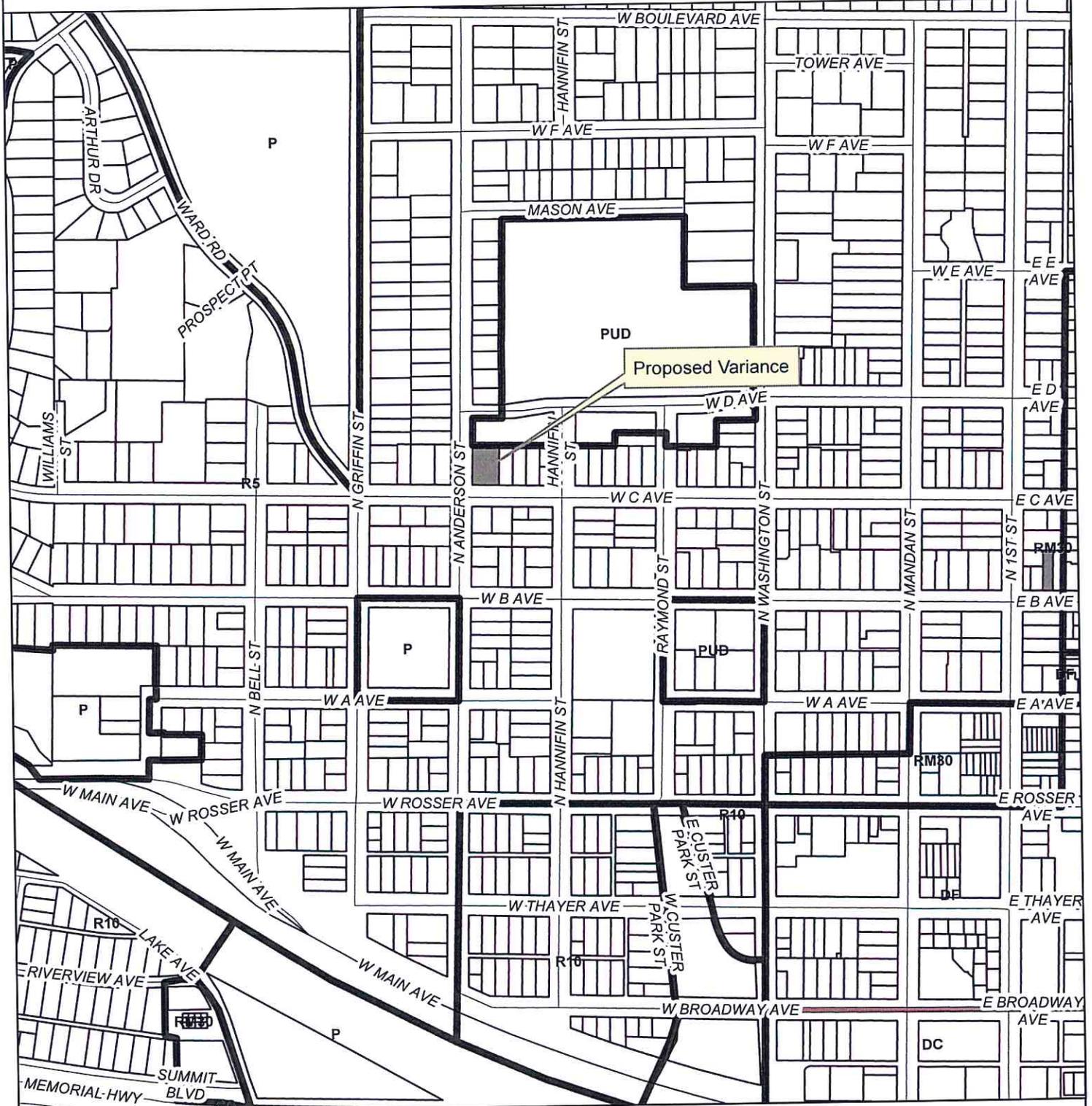
**Attachments**

1. Location Map
2. Site plan
3. Written Statement of Hardship
4. Certificate of Occupancy
5. Excerpt of Board of Adjustment minutes (May 23, 1991)

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

# Proposed Variance

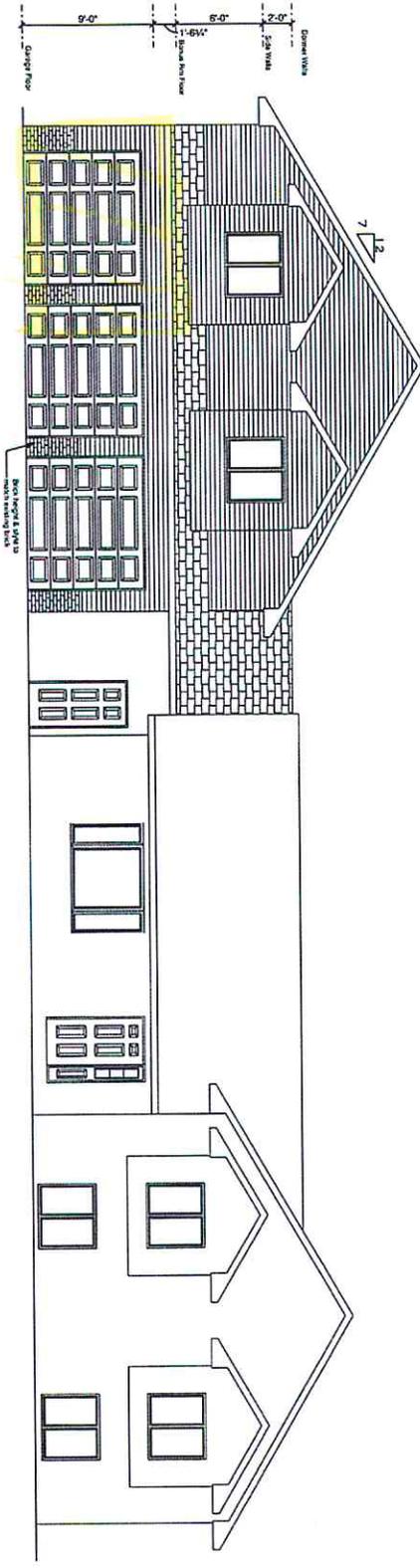
## Lots 15-18, Block 3, McKenzie and Coffins Addition



October 17, 2016 (hlb)

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.





**DRAWN BY:**  
REGGI GLOECKERT

**DATE:**  
9/26/2016

**PROJECT NAME:**  
KEN KELLER

**FRONT**



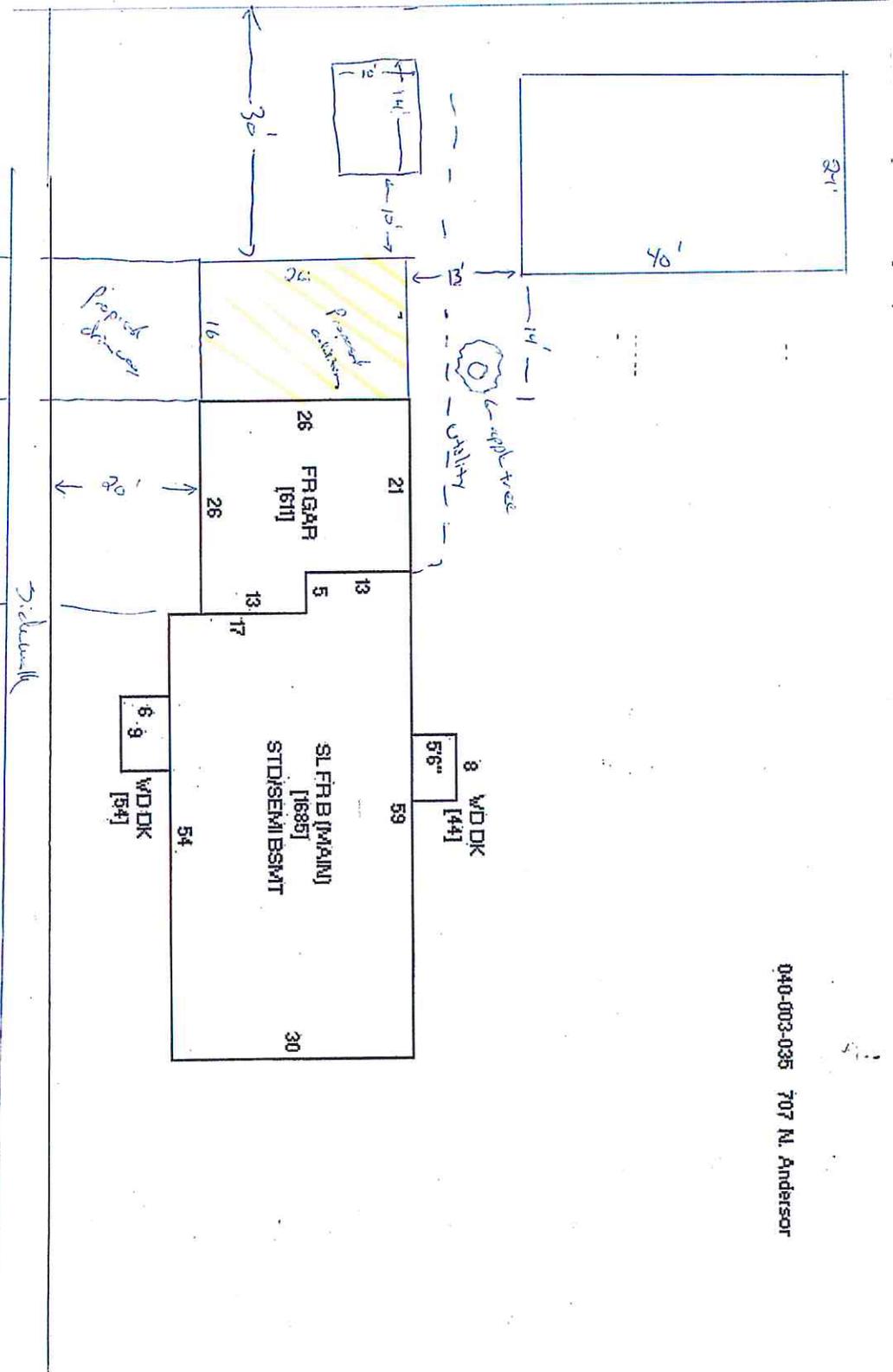
PROPERTY OF PARAMOUNT BUILDERS, INC.  
ANY FORM OF DUPLICATION IS PROHIBITED

**APPROVAL SIGNATURE**  
\_\_\_\_\_  
**DATE**  
\_\_\_\_\_

600 SOUTH 2ND ST. SUITE 239 - BISMARCK, ND 58504  
PHONE: (701) 258-0088 FAX: (701) 258-4553  
E-MAIL: JRGLOFF@PARAMOUNTBUILDERSINC.NET  
WEBSITE: WWW.PARAMOUNTBUILDERSINC.NET

**SCALE:**  
1/8" = 1'-0"

CONTRACTOR SHALL VERIFY, AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB WRITTEN DIMENSIONS ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALED DIMENSIONS. THESE DRAWINGS CONFORM TO GENERAL BUILDING PRACTICES, STATE AND LOCAL CODES ARE TO BE FOLLOWED.



I CERTIFY THAT THIS IS A MICROFILM COPY OF THE RECORDS OF THE CITY  
BUILDING INSPECTION DEPARTMENT, BISMARCK, NORTH DAKOTA.

DATE

1/13/92

SIGNATURE

DeAnn Schimmochar

## Certificate Of Occupancy City Of Bismarck

Department Of Building Inspection

This Certificate issued pursuant to the requirements of Section 307 of the Uniform Building Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the City regulating building construction or use. For the following:

Desc of Work: 1. 1 UNIT HOUSE/A.G. 26' X 26' 8' X 5' PATIO  
2. DECK - 1425 S.F. BASEMENT FINISH-APPROVED  
3. BD. ADJUSTMENT - W. SETBACK 16' FROM SIDEWALK

Bldg. Permit No. 92-00126

Type Construction: VN

Group: RESIDENTIAL

Zoning District: RESIDENTIAL SINGLE FAMILY

Owner Of Building: KELLER, KENNETH L.

Building Address: 707 N ANDERSON ST

Locality: CITY OF BISMARCK

By: John Weber

Date: 06/29/92

[Signature]  
BUILDING OFFICIAL

POST IN A CONSPICUOUS PLACE

I CERTIFY THAT THIS IS A MICROFILM COPY OF THE RECORDS OF THE CITY BUILDING INSPECTION DEPARTMENT, BISMARCK, NORTH DAKOTA.

DATE

1/13/92

SIGNATURE:

DeAnn Schumacher

### BOARD OF ADJUSTMENT

May 23, 1991

The Board of Adjustment met on Thursday, May 23, 1991, at the hour of 5:00 p.m. in the Tom Baker Meeting Room at the City/County Office Building, located at 221 North Fifth Street. There were present Messrs: Gilbert Ellwein, Al Kosir, Larry Thompson and Chairman Archie Seebart.

Mr. Gilbert Ellwein moved approval of the minutes of the Board of Adjustment meeting of March 21, 1991. Seconded by Mr. Al Kosir. All members present voting "Aye".

Chairman Archie Seebart then announced the time had arrived for a public hearing on a request for a special use permit to allow a day care center to be located at 1824 North 11th Street. Pat and Dan Hahn appeared before the Board of Adjustment and stated they would comply with all regulations. Mr. Al Kosir then moved approval of said request, subject to compliance with all regulations, including the building code. Seconded by Mr. Gilbert Ellwein. Upon roll call all members voted as follows: "Ayes" Gilbert Ellwein, Larry Thompson, Al Kosir and Chairman Archie Seebart. "Nayes" None, the motion carried.

Chairman Archie Seebart then announced the time had arrived for a public hearing on a request for a special use permit to allow a day care center to be located at 227 East Denver Avenue. Patty Wangler appeared before the Board of Adjustment and stated that the day care center would be limited to the main floor only. Mr. Gilbert Ellwein moved approval of said request, subject to meeting all regulations and the building code. Seconded by Mr. Al Kosir. Upon roll call all members voted as follows: "Ayes" Gilbert Ellwein, Larry Thompson, Al Kosir and Chairman Archie Seebart. "Nayes" None, the motion carried.

Chairman Archie Seebart then announced the time had arrived for a public hearing on a request for a special use for a church to be located at 2510 East Divide Avenue. Representative of the St. Paul's Evangelical Church appeared before the Board of Adjustment and presented a site plan indicating ingress and egress to said facility. Mr. Larry Thompson moved approval of said request. Seconded by Mr. Gilbert Ellwein. Upon roll call all members voted as follows: "Ayes" Gilbert Ellwein, Larry Thompson, Al Kosir and Chairman Archie Seebart. "Nayes" None, the motion carried.

The Board of Adjustment then considered a request from Mr. Dick Grenz to construct an addition to accommodate a physical therapy equipment area at property located at 422 Brandon Avenue. Mr. David Patience and Dick Grenz appeared before the Board of Adjustment and presented a site plan for the proposed addition. Mr. Grenz informed the Board of Adjustment that the condominium

I CERTIFY THAT THIS IS A MICROFILM COPY OF THE RECORDS OF THE CITY  
BUILDING INSPECTION DEPARTMENT, BISMARCK, NORTH DAKOTA.

DATE

1/13/92

SIGNATURE

DeAnn Schumacher

association has approved his proposed addition. Mr. Al Kosir moved that a variance be granted of 4 feet, 3 inches setback from the property line. Seconded by Mr. Gilbert Ellwein. Upon roll call all members voted as follows: "Ayes" Gilbert Ellwein, Larry Thompson, Al Kosir and Chairman Archie Seebart. "Nayes" None, the motion carried.

The Board of Adjustment then considered a request of Mr. Ken Keller at 520 Avenue C. West for a variance on a required setback: Mr. Bill Keller appeared before the Board of Adjustment with a proposed layout that would included demolition of an existing house, and would be replaced by a new home with the same setback from the public sidewalk. Mr. Al Kosir moved that said request be approved with a minimum setback from the sidewalk of 15 feet, 10 inches. Seconded by Mr. Gilbert Ellwein. Upon roll call all members voted as follows: "Ayes" Gilbert Ellwein, Larry Thompson, Al Kosir and Chairman Seebart. "Nayes" None, the motion carried.

The Board of Adjustment then considered a request of Mr. Mark Gietzen for a variance on lot coverage and setbacks for a proposed garage to be located at 1118 Michigan Avenue. After a review by the Board of Adjustment, Mr. Al Kosir moved that a variance be granted on lot coverage and also a one (1) foot variance on the rear lot line only. Seconded by Mr. Gilbert Ellwein. Upon roll call all members voted as follows: "Ayes" Al Kosir, Gilbert Ellwein and Chairman Archie Seebart. "Nayes" Larry Thompson. The motion failed.

Mr. Gietzen then stated that he could reduce the size of the proposed garage and meet all building codes.

The Board of Adjustment then considered a request from Blue Star Construction for an addition to a building located at "1414" Interstate Loop. Mr. Jack Hegedus, Building Inspector advised the Board of Adjustment that said addition would violate the off street parking requirements by 26 spaces. After a review by the Board of Adjustment, and information presented by Blue Star Construction, Mr. Al Kosir moved that said request be denied. Seconded by Mr. Larry Thompson. Upon roll call all members voted as follows: "Ayes" Al Kosir, Gilbert Ellwein, Larry Thompson, and Chairman Archie Seebart. "Nayes" None, the motion failed.

The Board of Adjustment adjourned to meet again at the call of the Secretary.

  
Grant L. Bergquist, Secretary



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

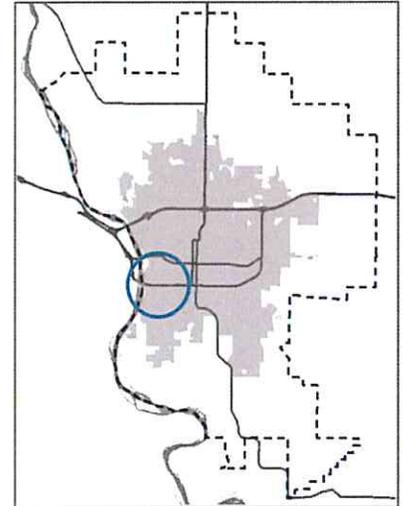
Agenda Item # 4  
November 3, 2016

## Application for: Variance

TRAKiT Project ID: VAR2016-023

### Project Summary

|                         |   |
|-------------------------|---|
| <b>Title:</b>           | The South 50 feet of the West 1/3 of Lot 4, Block 5, Northern Pacific Addition<br>(717 North Mandan Street)   |
| <b>Status:</b>          | Board of Adjustment   |
| <b>Owner(s):</b>        | Anne Cleary   |
| <b>Project Contact:</b> | Blake Preszler, Plain View LLC  |
| <b>Location:</b>        | In central Bismarck, between West Avenue C and West Avenue D, along the east side of North Mandan Street  |
| <b>Request:</b>         | Variance from Sections 14-04-03(4); 14-04-03(7); and 14-04-03(9) of the City Code of Ordinances (R5 – Residential)(Lot Area / Front Yard / Rear Yard) |



### Staff Analysis

The applicant is requesting variances to allow the construction of a single-family dwelling on a lot platted prior to 1953, that is less than 5,000 square feet; to reduce the front yard setback along the west side of the property adjacent to North Mandan Street from twenty-five (25) feet to ten (10) feet; and to reduce the required rear yard setback located along the east side of the property from twenty (20) feet to five (5) feet.

The lot is located within a subdivision (Northern Pacific Addition) that was platted in 1879 and certified and recorded in 1912. The lot was created for the construction of a water pump house owned and operated by the City of Bismarck. The City of Bismarck sold the property in July 2015 and the pump house was demolished in November 2015.



717 North Mandan Street

### 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."

(continued)

Section 14-04-03(4) of the City Code of Ordinances states, "Each permitted structure hereafter erected, together with its accessory 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 dwelling and accessory buildings may be erected, provided said lot contains no less than five thousand (5,000) square feet." The lot is located within a plat recorded prior to 1953. The plat titled Northern Pacific Addition was recorded in 1912. However, the lot is less than 5,000 square feet. According to property information the lot is 2,500 square feet in area.

Section 14-04-03(7) of the City Code of Ordinances (R5 – Residential)(Front Yard) states, "Each lot shall have a front yard not less than twenty-five (25) feet in depth." According to the site plan submitted with the application the proposed single-family dwelling would be setback ten (10) feet from the front property line located along the west side of the property adjacent to North Mandan Street.

Section 14-04-03(9) of the City Code of Ordinances (R5 – Residential)(Rear Yard) states, "Each lot shall have a rear yard not less than twenty (20) feet in depth." According to the site plan submitted with the application the proposed single-family dwelling would be located five (5) feet from the rear property line along the east side of the property.

#### **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 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.

#### **Staff Recommendation**

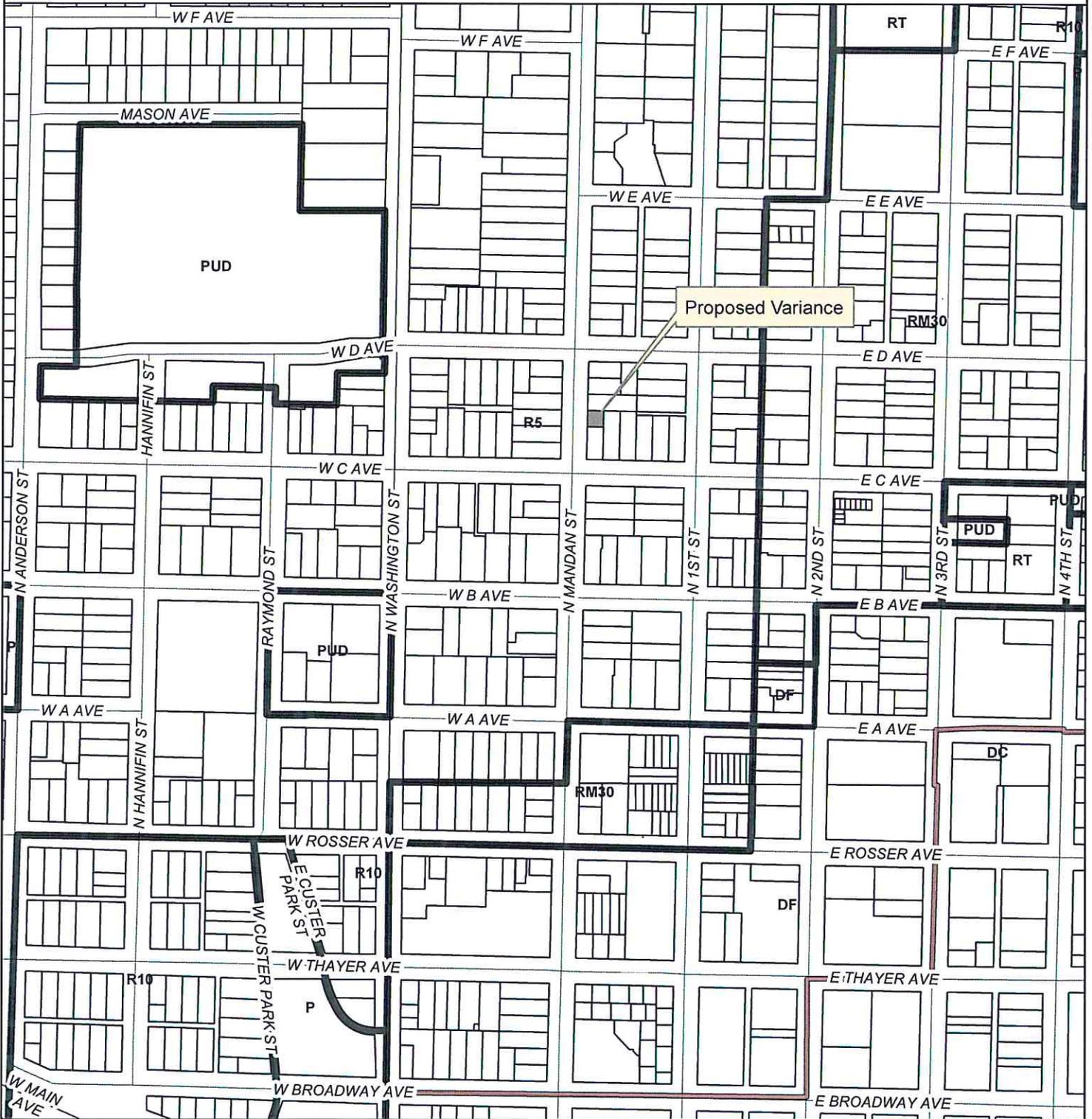
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

#### **Attachments**

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

# Proposed Variance

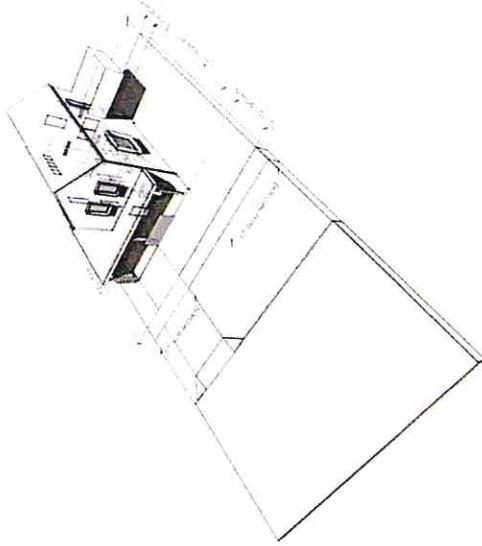
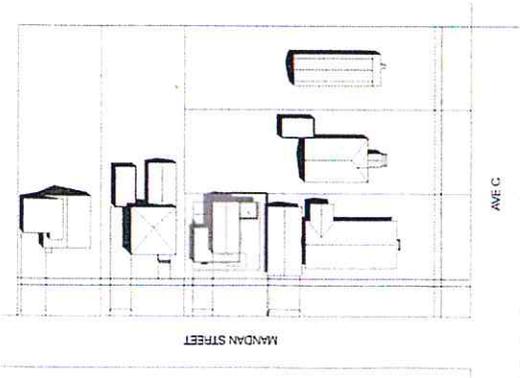
## The South 50' of Lot 4, Block 5, Northern Pacific Addition



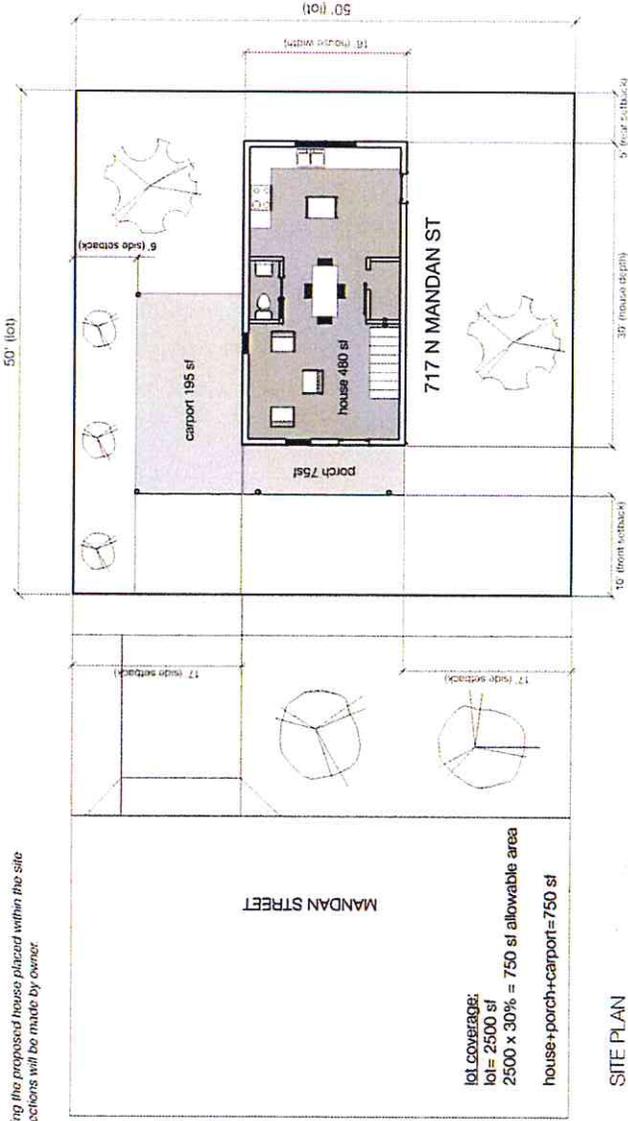
October 3, 2016 (h1b)

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.

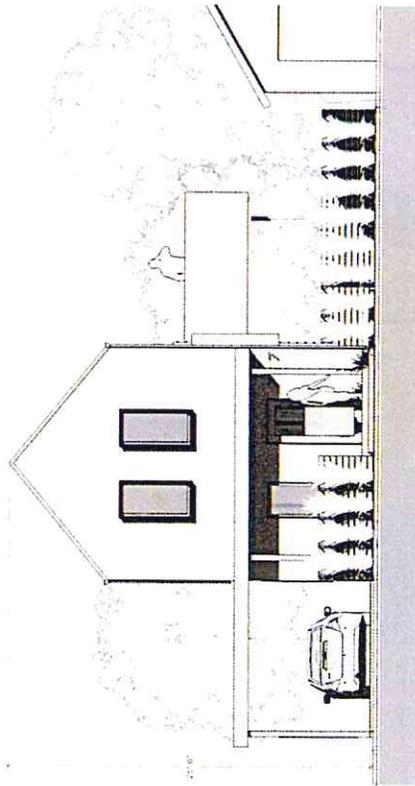


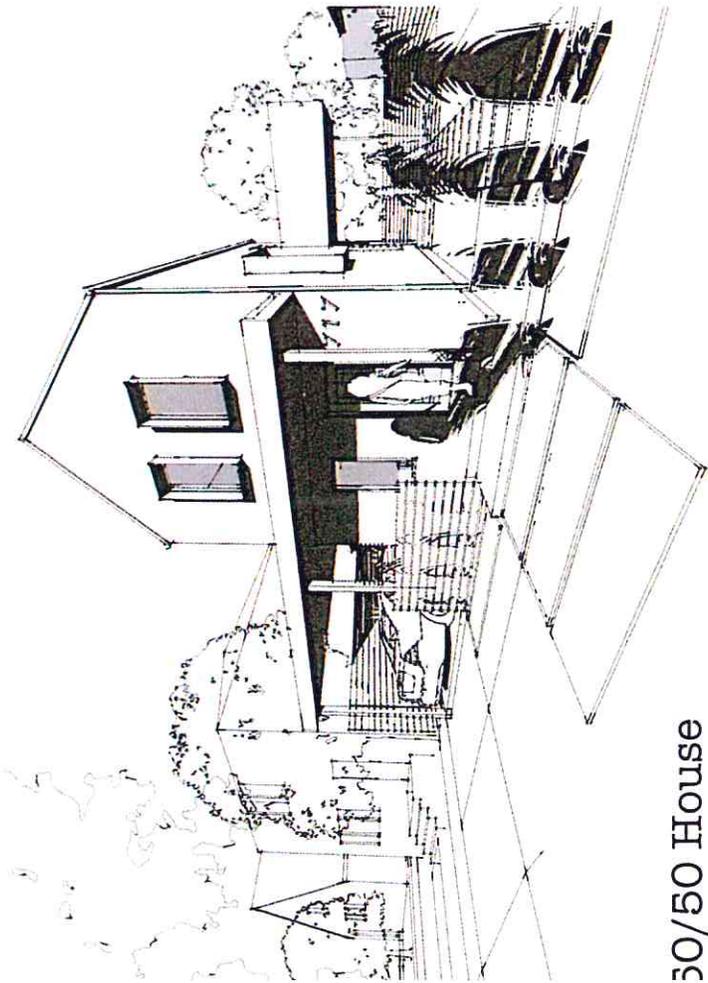


*\*\*conceptual rendering strictly for the intention of showing the proposed house placed within the site  
- siding and colors are purely representational. final selections will be made by owner.*



SITE PLAN





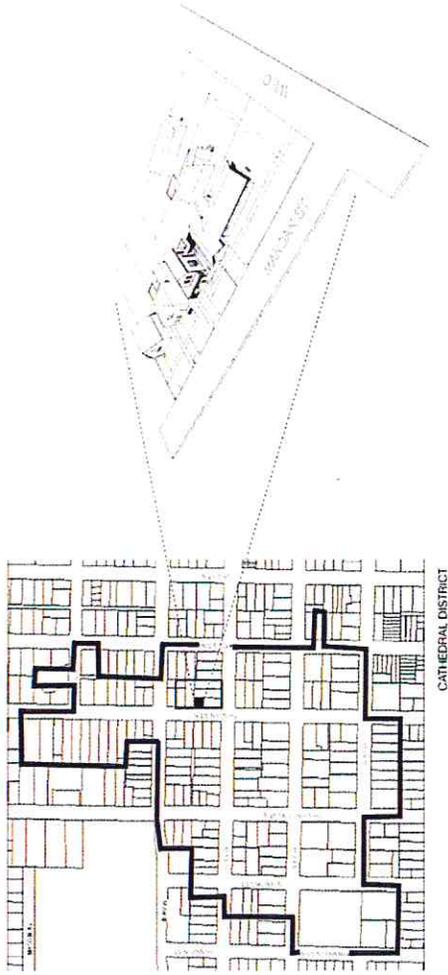
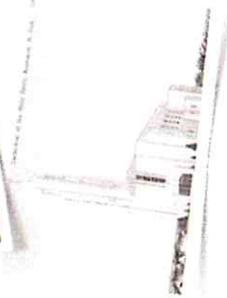
# 30/50 House

THE RESIDENCE OF ANNE CLEARY 717 NORTH MANDAN ST

The Cathedral District is one of Bismarck's most cherished and historically significant neighborhoods. Located on portions of two early Bismarck subdivisions—the Northern Pacific Addition, platted in 1879, and McKenzie's Addition of 1862, it was not until the early 1900s when the first homes were constructed.

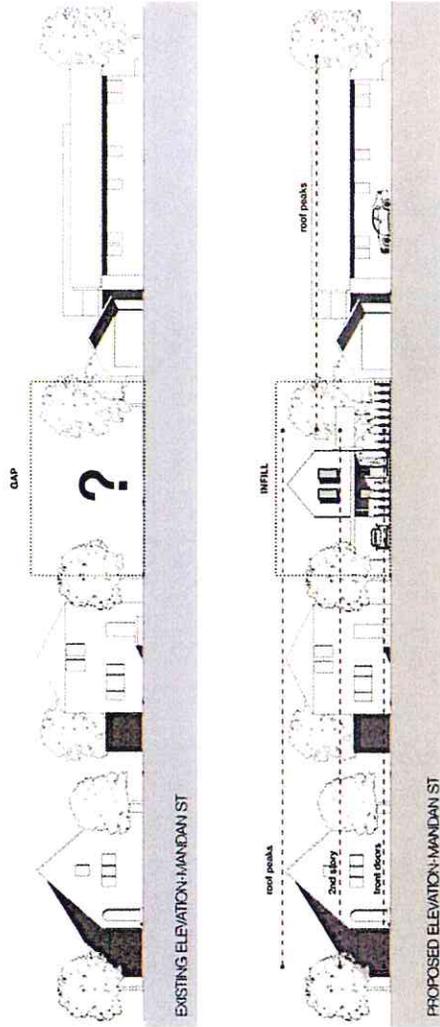
Mostly developed from 1900-1945 the Cathedral District consists of homes of Shingle, Prairie, Tudor Revival, Craftsman, Cape Cod, and American Four-square architectural styles. Today, this variety of style stands as Bismarck's most architecturally diverse and beloved neighborhoods.

The proposed 50/50 House on the vacant lot of 717 North Mandan Street seeks to continue the diverse legacy of the district, through the design and construction of a modern home that honors the history of the district as a continuation of the Cathedral District's story. Not unlike the homes in the district, the house is to be designed and built of its time and place.



Urban Infill is defined as new development that is sited on vacant or undeveloped land within an existing community, and that is enclosed by other types of development. The term "urban Infill" implies that existing land is mostly built-out and what is being built is in effect "filling in" the gaps.

\*urbaninfill.com



PLAIN VIEW  
DESIGN CO.

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

1. Property Address or Legal Description: 717 N. MANDAN ST.

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

3. Type of Variance Requested: SETBACKS: FRONT; REAR

4. Applicable Zoning Ordinance Chapter/Section: 14-04-03

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 CITY ORDINANCE STATES A 25' FRONT YARD SET BACK. THE AVERAGE FRONT YARD SETBACK IN THE NEIGHBORHOOD IS (10'-12'). WE ARE PROPOSING A (10') SETBACK TO ACHIEVE CONTINUITY.

- ORDINANCE STATES 20' REAR YARD, WE ARE PROPOSING A 5' SETBACK. 20' IS TOO RESTRICTIVE SINCE LOT IS (50') DEEP.

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

THE LIMITATIONS OF THE CITY ORD. DEPRIVES US OF REASONABLE USE OF THIS LOT BASED ON IT'S IRREGULAR SIZE (50'x50'). WITHOUT THE REQUESTED VARIANCES, THERE IS NO WAY TO BUILD AN APPROPRIATE DWELLING. RESULTING IN ANOTHER VACANT LOT VOID OF A DWELLING.

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

THE VARIANCES WOULD ALLOW US TO BUILD AN APPROPRIATE STRUCTURE THAT WOULD ADD VALUE TO THE NEIGHBORHOOD AS WELL AS <sup>^</sup>TAXABLE CONTINUE THE DIVERSE ARCHITECTURAL LEGACY OF THE CATHEDRAL DISTRICT.



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

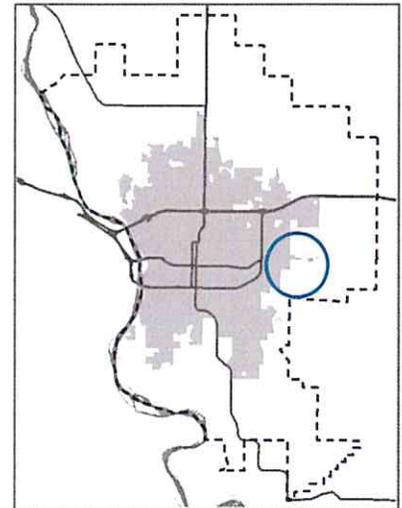
Agenda Item # 5  
November 3, 2016

## Application for: Variance

TRAKIT Project ID: VAR2016-024

### Project Summary

|                  |  |
|------------------|--|
| Title:           | Lot 9, Block 3, Pine Meadows Subdivision<br>(8312 White Oak Loop)  |
| Status:          | Board of Adjustment  |
| Owner(s):        | Jim Alber  |
| Project Contact: | Jim Alber  |
| Location:        | East of Bismarck, between County Highway 10 and Burr Oak Loop, east of 80 <sup>th</sup> Street SE, along the north side of White Oak Loop. |
| Request:         | Variance from Section 14-04-01(6) of the City Code of Ordinances (RR – Residential)(Rear Yard).  |



### Staff Analysis

The applicant is requesting a variance to reduce the required rear yard setback located along the east side of the property from seventy-five (75) feet to fifty-three (53) feet in order to construct a 1,800 square foot accessory building.

### 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(6) of the City Code of Ordinances states, "Each lot or premises shall have a rear yard depth of not less than fifty (50) feet or twenty (20) percent of the depth of the lot or premises whichever is larger, but need not exceed seventy-five (75) feet." According to the site plan submitted with the application the proposed accessory building would be

set back fifty-three (53) feet from the rear property line located along the east side of the property.

### 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.

(continued)

**Staff Recommendation**

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

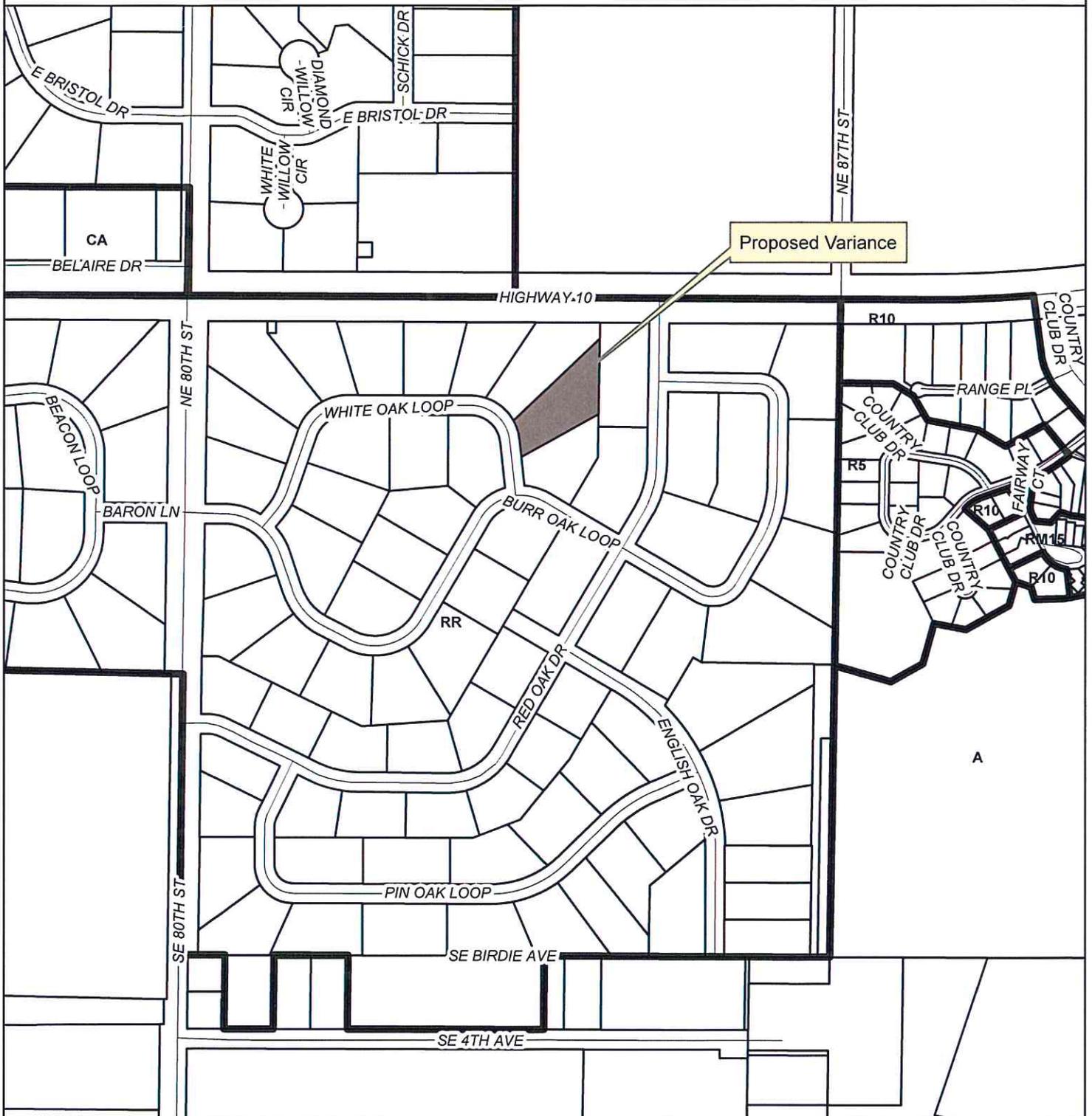
**Attachments**

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

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

# Proposed Variance

## Lot 9, Block 3, Pine Meadows Subdivision



October 11, 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.



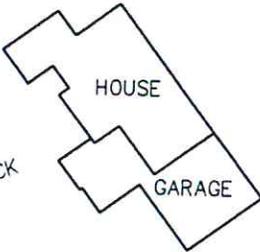
Oct 11, 2016 - 2:21pm - User: J61 C:\projects\SHOP S\RF ACE.dwg

# PINE MEADOWS SUBDIVISION

LOT 8

N45°32'19"E  
482.52'

BLOCK 3  
LOT 9



N59°52'14"E  
357.86'

LOT 10

306.11'  
S00°00'19"E

75' SETBACK

68.4'

53.3'

15'

15' SETBACK

10' UTILITY EASEMENT

R=200.00'  
Δ=23°18'45"  
L=81.38'

WHITE OAK LOOP

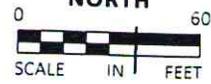
S07°07'01"E  
71.80'

## LEGEND

- FOUND MONUMENT
- SET MONUMENT

## DESCRIPTION

LOT 9, BLOCK 3, PINE MEADOWS SUBDIVISION, BURLEIGH COUNTY, NORTH DAKOTA.




**Sambatek**  
www.sambatek.com  
Engineering | Surveying | Planning | Environmental

**ALBER SHOP**  
8312 WHITE OAK LOOP  
BISMARCK, ND  
LOT SURVEY EXHIBIT

Designed: JA  
Drawn: JA  
Approved: JA  
Issued: 10/11/2016  
Rev.: A-Comment  
Date: MM/DD/YYYY

Exhibit Number  
  
Project No. ALB00000

Bismarck

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

1. Property Address or Legal Description:
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.)

A drainage swale ~~exists~~ presently exists on the lot. ~~The~~ From the back side of the ~~house~~ house ground slopes to the east to the drainage swale, and from the East property line ground slopes to the west toward the swale. This swale ~~carries~~ carries storm water from adjoining Lot 8, across my Lot (Lot 9) to the property line common to Lots 9 & 10. If rear yard setback requirement is followed, the ~~proposed~~ proposed outbuilding will prevent storm water from exiting Lots 8 and 9.

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

If rear yard setback requirement is followed, ~~the~~ the proposed outbuilding will prevent storm water from exiting Lots 8 and 9.

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

Reducing Rear yard setback from 75' to 53' will allow an outbuilding to be constructed while not disrupting storm water drainage.



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

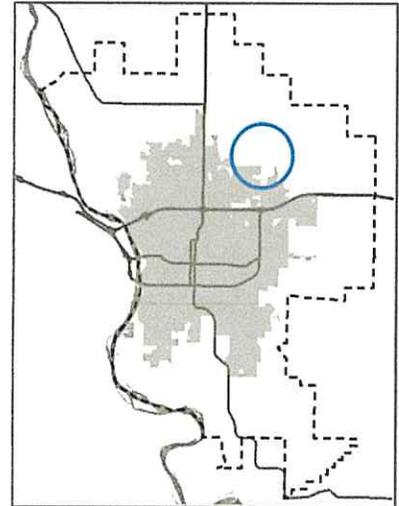
Agenda Item # 6  
November 3, 2016

## Application for: Variance

TRAKit Project ID: VAR2016-024

### Project Summary

|                         |  |
|-------------------------|--|
| <b>Title:</b>           | Lot 3, Block 1, Fox Haven Subdivision<br>(7480 Red Fox Lane)   |
| <b>Status:</b>          | Board of Adjustment  |
| <b>Owner(s):</b>        | Kim and Wyatt Gross  |
| <b>Project Contact:</b> | Wyatt Gross  |
| <b>Location:</b>        | North of Bismarck, east of US Highway 83 between 73 <sup>rd</sup> Avenue NE and 76 <sup>th</sup> Avenue NE, along the west side of Red Fox Lane. |
| <b>Request:</b>         | Variance from Section 14-04-01(6) of the City Code of Ordinances (RR – Residential)(Rear Yard).  |



### Staff Analysis

The applicant is requesting a variance to reduce the required rear yard setback located along the east side of the property from sixty-five (65) feet to forty (40) feet in order to construct a 2,400 square foot accessory building.

### 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(6) of the City Code of Ordinances states, "Each lot or premises shall have a rear yard depth of not less than fifty (50) feet or twenty (20) percent of the depth of the lot or premises whichever is larger, but need not exceed seventy-five (75) feet."

According to the site plan submitted with the application the proposed accessory building would be set back forty (40) feet from the rear property line located along the east side of the property.

### 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.

(continued)

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**

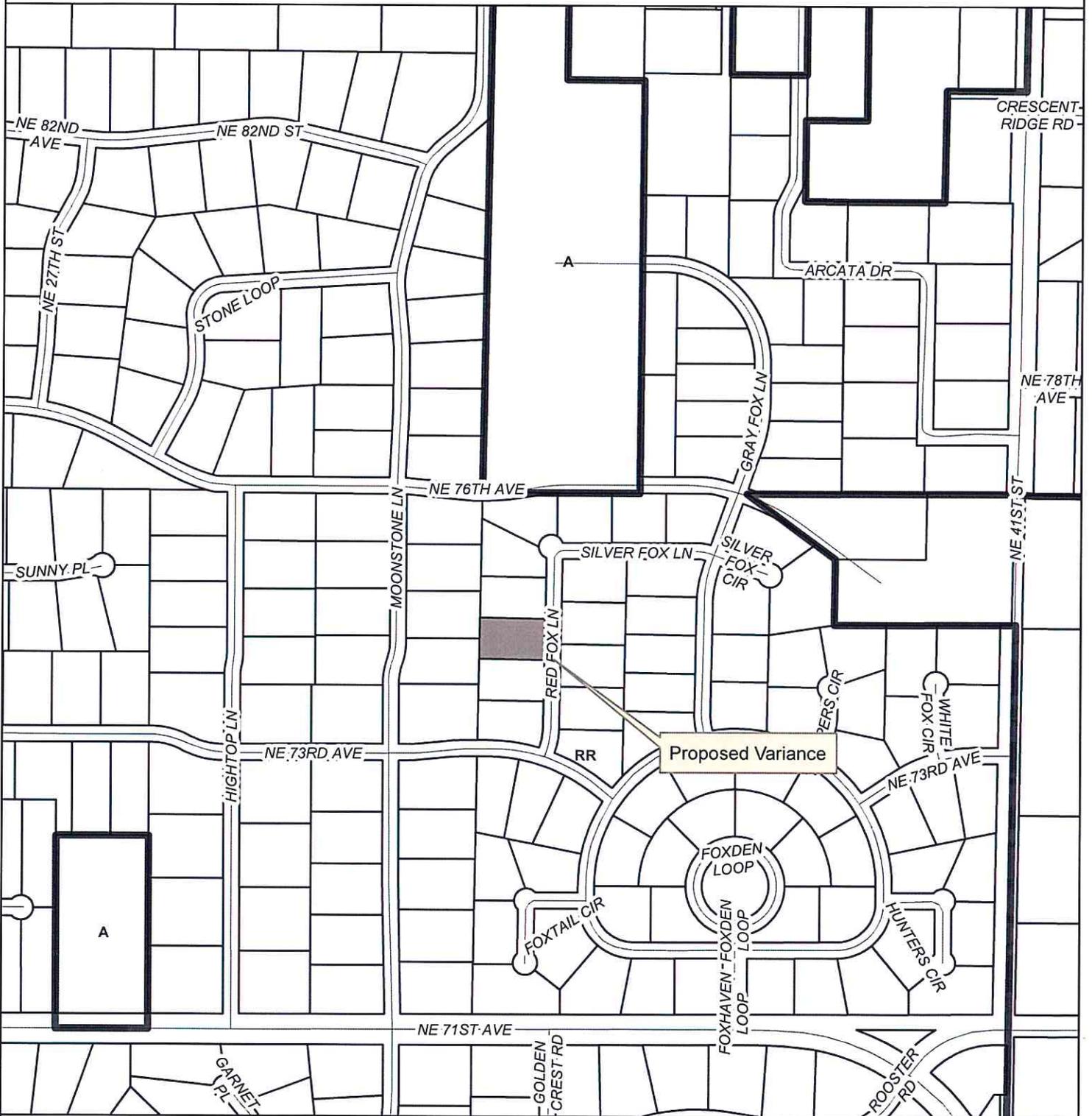
1. Location Map
2. Site plan
3. Written Statement of Hardship

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

# Proposed Variance

## Lot 3, Block 1, Fox Haven 1st Subdivision



August 17, 2016 (hib)

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.



**Lot 3, Block 1, Fox Haven 1st Subdivision  
(7480 Red Fox lane)**



Date: 9/29/2016

*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.*

Bismarck

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

1. Property Address or Legal Description:

7480 Red Fox Lane

2. Location of Property:

 City of Bismarck Extraterritorial Area (ETA)

3. Type of Variance Requested:

Rear Yard

4. Applicable Zoning Ordinance Chapter/Section:

14-04-01(6)

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.)

Natural drainage from house to N.W Corner of Lot. If building is 65ft from W property line it would be on top of septic system drainfield.

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

If built in NW corner, natural drainage could not be maintained nor could building foundation. If built on top of septic system drainfield it could not function properly, could not be maintained and not accessible for repair if it fails.

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

Building 40ft from west property line would allow the minimum safe distance for septic system drainage and natural topographical drainage.



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

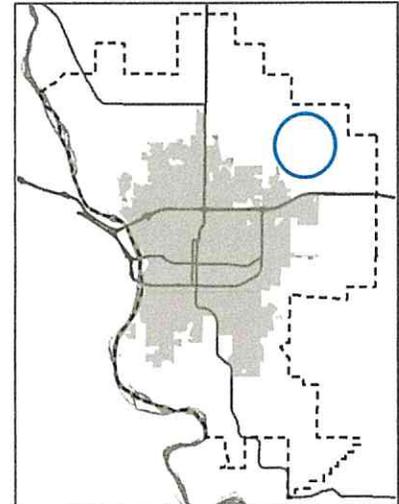
Agenda Item # 7  
November 3, 2016

## Application for: Variance

TRAKit Project ID: VAR2016-025

### Project Summary

|                         |  |
|-------------------------|--|
| <b>Title:</b>           | The South 1/2 of Lot 1, Block 1, CW Acres (4905 52 <sup>nd</sup> Street NE)                                    |
| <b>Status:</b>          | Board of Adjustment  |
| <b>Owner(s):</b>        | Scott Samuelson  |
| <b>Project Contact:</b> | Scott Samuelson  |
| <b>Location:</b>        | Northeast of Bismarck, north of 43 <sup>rd</sup> Avenue NE, along the east side of 52 <sup>nd</sup> Street NE. |
| <b>Request:</b>         | Variance from Section 14-04-01(5) of the city Code of Ordinances 9RR – Residential)(Side Yard)                 |



### Staff Analysis

The applicant is requesting a variance to reduce the required side yard setback located along the south side of the property from fifteen (15) feet to five (5) feet in order to construct a 1,680 square foot accessory building.

### 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(5) of the City Code of Ordinances (RR – Residential)(Side Yard) states, "Each lot shall have two (2) side yards, one on each side of the principal and accessory buildings. The sum of the width of the two (2) side yards shall not be less than twenty (20) percent of the average width of the lot, and in no case less than fifteen (15) feet per yard." According to the site plan submitted with the application the proposed

accessory building would be located five (5) feet from the side property line located along the south side of the property.

### 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.

(continued)

**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
- 

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

# Proposed Variance

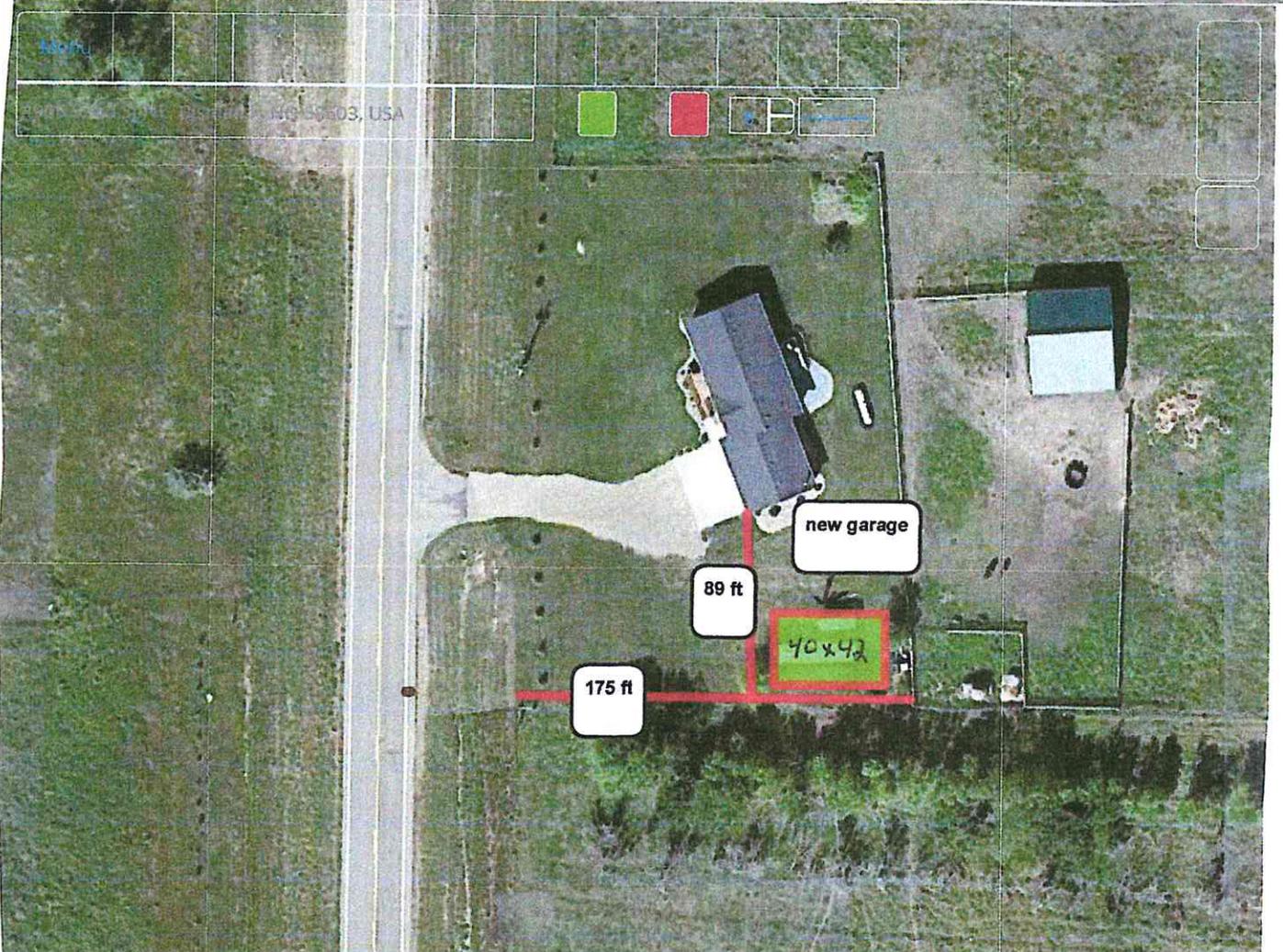
## The South 1/2 of Lot 1, Block 1, CW Acres



October 11, 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 herein.







# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

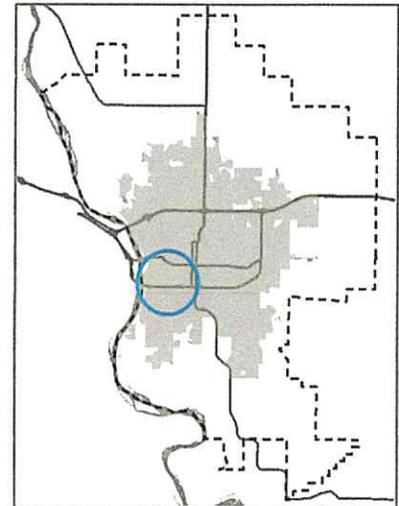
Agenda Item #8  
November 3, 2016

## Application for: Variance

TRAKit Project ID: VAR2016-028

### Project Summary

|                         |   |
|-------------------------|---|
| <b>Title:</b>           | The East 102 Feet of the South 50 feet of Lot 5, Block 112, River View Addition (302 West Custer Park Street)           |
| <b>Status:</b>          | Board of Adjustment   |
| <b>Owner(s):</b>        | Darcy Bengston  |
| <b>Project Contact:</b> | Darcy Bengston  |
| <b>Location:</b>        | In central Bismarck, between West Rosser Avenue and West Thayer Avenue, along the west side of West Custer Park Street. |
| <b>Request:</b>         | Variance from Section 14-04-06(9) of the City Code of Ordinances (R10 – Residential)(Rear Yard)                         |



### Staff Analysis

The applicant is requesting a variance to reduce the required rear yard setback along the west side of the property from twenty (20) feet to six (6) feet, in order to construct a second floor entrance / exit.

The applicant is proposing to convert 2<sup>nd</sup> floor space above the existing attached garage into a second dwelling unit. The property is located within the R10 – Residential zoning district and two-family dwellings are a permitted use within the zoning district. However, the proposed second dwelling unit must meet all applicable zoning and building code requirements.

If approved as proposed, staff suggests that a condition be placed on the approval that requires the applicant to obtain a change of occupancy permit indicating that the use of the building has changed from a single-family dwelling to a two-family dwelling and that all applicable zoning and building code requirements are met.



### 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(9) of the City Code of Ordinances (R10 – Residential)(Rear Yard) states, "Each lot shall have a rear yard not less than twenty (20) feet in depth." According to the drawing submitted with the

(continued)

application, the rear yard setback would be six (6) 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.

If approved as proposed, staff requests that the following condition be added to the approval. The applicant must obtain approval of a change of occupancy permit from a single-family dwelling to a two-family dwelling and that all applicable zoning and building code requirements are met.

**Attachments**

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

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

# Proposed Variance

## East 102' of the South 50' of Lot5, Block 12

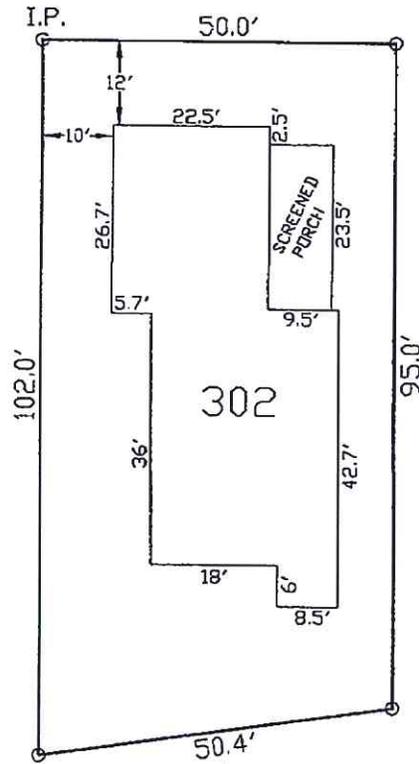
### Riverview Addition



October 24, 2016 (hlb)

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.





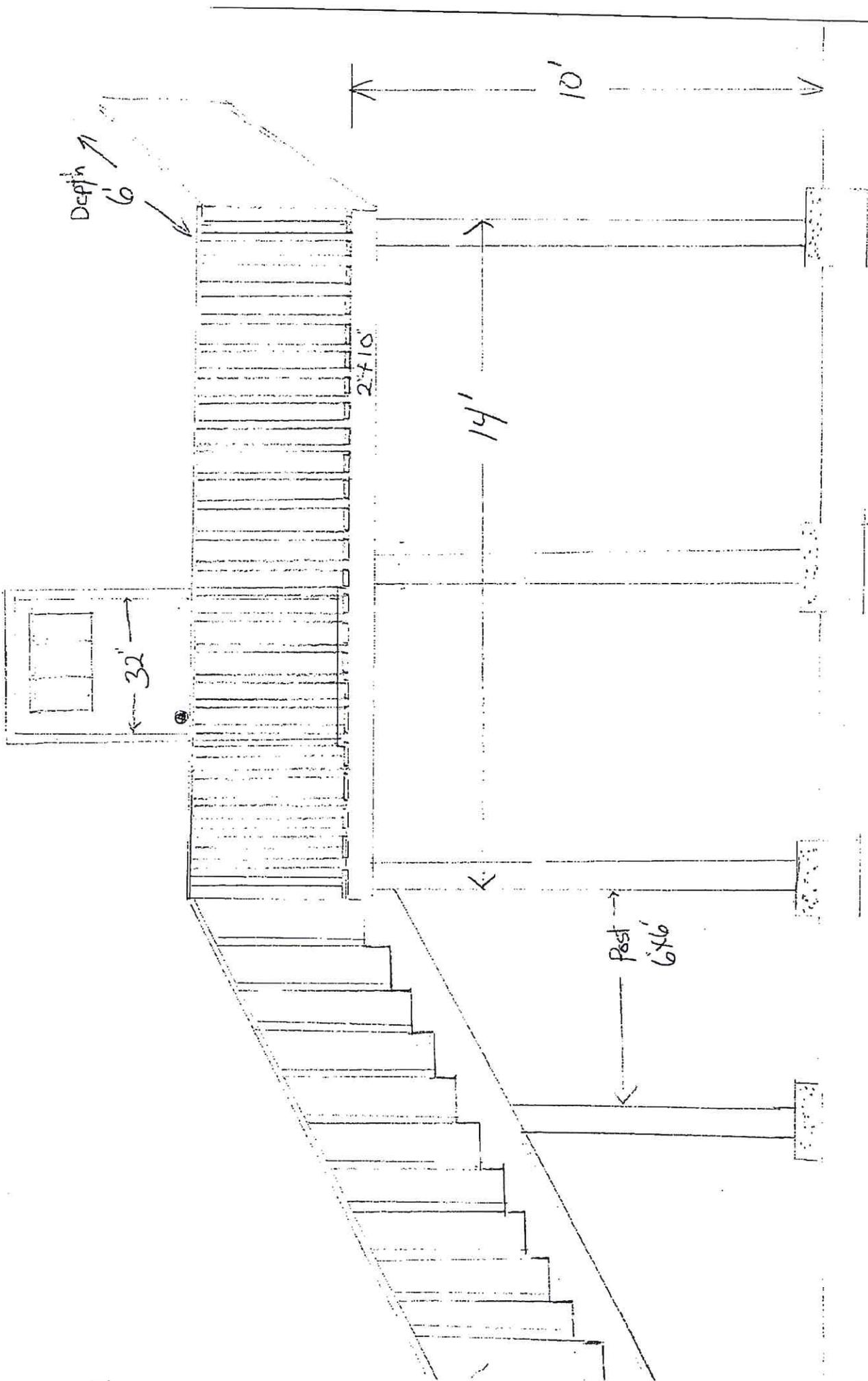
W. CUSTER PARK ST.

THIS IS NOT A SURVEY  
FILE # 52857 / BENGSTON

INSPECTION DATE: NOVEMBER 21, 2014  
 PROPERTY ADDRESS: 302 W. CUSTER PARK ST.  
 LEGAL DESCRIPTION: EAST 102' OF SOUTH 50' OF LOT 5, BLOCK 12, RIVERVIEW  
 SCALE: 1" = 20' ADDITION TO THE CITY OF BISMARCK, ND

I, Connie M. Kasslan, hereby certify that the dimensions shown on the above sketch are based upon the recorded plat in the county records as verified by on-sight inspection and that the boundary lines are as shown. All other distances are based upon measurements taken at the inspection and may be approximations based upon conditions at the site. I also certify that there are no encroachments on the property unless indicated and that the utility easements shown are based on the recorded plat. This plat is provided for information purposes only, and should NOT be used or relied upon by any party for any other purpose, including but not limited to the construction of fences or additional improvements.

Connie M. Kasslan 



Print Form

Bismarck

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

1. Property Address or Legal Description: 302 West ~~West~~ Custer Park St.

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

3. Type of Variance Requested: Fire escape/balcony Setback variance

4. Applicable Zoning Ordinance Chapter/Section: 14-04-06

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.)

Due to building code requirements, I must have fire escape or balcony to make a 2 unit. There are no other means for putting a fire escape/balcony other than side yard. I also own property to the property line that adjoins this request.

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

I would not be able to put in a 2nd unit to this property. In which would be a loss of income on this property.

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

It is the only way and means of having a 2nd unit in this property due to building and fire codes. It is the only place I can put it due to the structure of the house.

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
October 6, 2016**

The Bismarck Board of Adjustment met on October 6, 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. Vice Chairman Clark presided.

Members present were Jennifer Clark, Chris Seifert, Ken Heier, Ken Hoff and Rick Wohl.

Member absent was Michael Marback.

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

**MINUTES:**

Vice Chairman Clark called for approval of the minutes of the September 1, 2016 meeting of the Board of Adjustment.

Mr. Heier pointed out a typo in the word ‘they’ on page 5. Ms. Balzum said the correction will be made prior to publishing the minutes.

**MOTION:** A motion was made by Mr. Seifert and seconded by Mr. Heier to approve the minutes of the September 1, 2016 meeting, with the suggested correction. With Board Members Clark, Hoff, Seifert, Wohl and Heier voting in favor, the minutes were approved.

**VARIANCE FROM 14-04-01(3) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL)(LOT AREA) – LOT 7, BLOCK 4, PRAIRIE VIEW SUBDIVISION (5412 MEADOW LARK LANE)**

Vice Chairman Clark stated the applicants, Mary Jo and Lino Ybarra, are requesting a variance to allow the construction of a 1,400 square foot accessory building on a lot, platted prior to 2003, that is less than 40,000 square 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 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.

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. Wollmuth said if it is the decision of the Board to approve the request, staff requests that a condition that the placement of the proposed accessory building not be located over an identified secondary drain field be included in the motion.

Ms. Ybarra said they have lived at on this property for 16 years and they would love to have an accessory building so they can stop having to pay for off-site storage. She said she is fine with the condition of having to avoid the drain field if the building is constructed.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

**MOTION:** A motion was made by Mr. Heier to approve the variance to allow the construction of a 1,400 square foot accessory building on a lot, platted prior to 2003, that is less than 40,000 square feet, with the condition that the placement of the proposed accessory building not be located over an identified secondary drain field location, on Lot 7, Block 4, Prairie View Subdivision (5412 Meadow Lark Lane), based on the size of the lot being previously platted at a substandard size. The motion was seconded by Mr. Heier and with Board Members Clark, Heier, Hoff, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was granted.

**VARIANCE FROM Section 14-03-05(4)(b) OF THE CITY CODE OF ORDINANCES (SUPPLEMENTARY PROVISIONS)(LOCATION OF RESIDENTIAL ACCESSORY BUILDING) – LOT 18, BLOCK 8, PARK HILL 2ND ADDITION (1026 SUMMIT BOULEVARD)**

Vice Chairman Clark stated the applicant, Walter Rehling, is requesting a variance to reduce the required rear yard setback for an accessory building approached from the alley from twenty (20) feet to (10) feet in order to construct an additional 384 square foot accessory building on the property.

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 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.

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

Vice Chairman Clark asked what the history is behind the existing setback from an alley requirement. Ms. Wollmuth said the requirement has been there since at least the early 1980's and was put in place to allow for better maneuvering and stacking of vehicles.

Mr. Hoff asked when this neighborhood was developed. Ms. Wollmuth said it was developed around the 1930's, when alleyways were more common.

Ray Morrell, Premier Homes, Inc., said the proposed construction design would keep the new and existing buildings in alignment with each other and most of the adjacent properties with accessory buildings are also set back ten feet. He said setting the building back would restrict further development of the property and it would not be any closer to the alley than the existing building. He then said the building footprint and roofline will also be the same as the one that is there now and a new concrete slab will be poured as well. He said the owner has a conversion van that is becoming damaged from sitting outside and he would like to be able to have it inside if possible.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

**MOTION:** A motion was made by Mr. Heier to approve the variance to reduce the required rear yard setback for an accessory building approached from the alley from twenty (20) feet to (10) feet in order to construct an additional 3,841 square foot accessory building on Lot 18, Block 8, Park Hill 2<sup>nd</sup> Addition (1026 Summit Boulevard), based on the new accessory building not being

closer to the alley than the existing one and the driveway being short enough to not allow for blockage of the alley. The motion was seconded by Mr. Hoff and with Board Members Clark, Heier, Hoff, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was granted.

**VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES  
(OFF-STREET PARKING AND LOADING) – LOTS 1-3, BLOCK 33,  
GOVERNOR PIERCE ADDITION (220 NORTH 23RD STREET)**

Vice Chairman Clark stated the applicant, Mark Meier, is requesting a variance to reduce the number of off-street parking spaces required for the operation of a soup kitchen.

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 CG-Commercial 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.

Vice Chairman Clark asked what type of use would be able to comply without a variance given the available amount of parking. Ms. Wollmuth said with there only being ten parking spots, very few uses would comply.

Mr. Meier said his clientele is not the typical restaurant clientele and that most will come to the facility via transit, bike or on foot. He said they would also be within walking distance of the Ruth Meiers shelter which would be very convenient.

Vice Chairman Clark asked if there is anything similar to this use in town and what their parking arrangements are. Mr. Meier said there is not another year round location like this one anywhere in Bismarck so there is not anything to compare to. He said they had six spaces at their previous location and that was always adequate and this would be the same operation as at that location.

Mr. Hoff asked why they left their previous location. Mr. Meier said the owner wanted to try and sell the property and felt the tenant needed to change before he could do that. He said this proposed location is convenient and the square footage is adequate, as is the facility. He said their operation is purely donation based and receives no federal or state funds or grants and all of their services are free.

Mr. Hoff asked what the hours of operation would be. Mr. Meier said they will be open from 11-7 Monday through Saturday, so traffic will be more spread out, rather than just at concentrated lunch and dinner times. He said they would be closed on Thanksgiving but open on Christmas as they did at their previous location.

Mr. Hoff asked if he has had experiences with issues of people living on the property at the other location. Mr. Meier said the owner was not tolerant of that and there was not really any space or shelter for that to happen anyways.

Mr. Seifert asked if there is a plan in the near future for the open space in the building. Mr. Meier said they have plans in phases for potential shower and laundry spaces as well as things like a computer area to aid with job searching.

Vice Chairman Clark asked if another variance would be needed for those additional uses and if more parking would be needed. Mr. Blaskowski said they could add that to this request or wait since there is not a specified ordinance for this unique use, but it could classify as a homeless day center which are usually located downtown and have no parking requirements.

Mr. Hoff said the building to the south looks limited on parking as well. Mr. Wohl asked if the parking would be parallel or perpendicular to the property.

Mr. Meier said it would be perpendicular as there is a shared driveway.

Vice Chairman Clark asked if the loading dock is needed or if that could be removed to add more parking. Mr. Meier said they have already accounted for one space being added where that concrete is, but they do need the loading dock for deliveries.

Vice Chairman Clark opened the public hearing.

Jeff Neuberger, current owner of this building, said he averages 26 customers a day and has never had an issue and there is also plenty of street parking in this area. He said there is plenty of room for access, but they could probably do without the loading dock. He said he is only moving his business to another location because he needs more interior space and he already has storage space at his other property so he is moving his business there.

Jaci Hall, Executive Director – Ruth Meiers Hospitality House, said they neither oppose nor support this use in this location, but she wants Mr. Meier to be educated on the services and needs. Information provided by Ms. Hall is attached as Exhibit A.

Mr. Heier asked if Ms. Hall has had experiences with law enforcement having to remove people from the property for either sleeping on the property or in their vehicles nearby. Ms. Hall said those vehicles that are removed are usually abandoned or have been used for sleeping in.

Steven Schnibley, 216 North 23<sup>rd</sup> Street, said his building consists of offices, Rock 30 Games, an oil company and Bismar Online. He said they use the parking lot and park on the street if they need to and do use the same access to get to their spaces, so this occupant would do the same. He said removing the loading dock would not add enough spaces and he supports what Mr. Meier wants to do. He said it is a good cause and the issue needs to be the variance from the parking requirements, not what the use will be. He pointed out that the notice he received in the mail showed there being eight parking spaces, but now there seems to have been two added.

Ms. Wollmuth said the applicant was able to add two more parking spaces after those notices were sent out. She stated the parking configuration would be looked at with a site plan review when the change of occupancy is requested.

Matt Wetsch, Skeels Electric, said his business tried to get a variance and they were denied, so they have to park in the street or their fenced area or wherever else they can.

Ron Plante, 2222 East Thayer Avenue, said he owns the painting business at this location and he is more concerned about the proposed use of the building than anything. He said he does not want to see people living in their vehicles there or coming across other properties during business hours. He said other businesses nearby are already lacking in parking as it is.

Mike Walsh said he owns the nearby laundromat and car wash and he wants the focus here to be on the parking needs, but asked that the surrounding businesses and their hours be considered. He then asked if the new use would be closed on Sundays.

Mr. Meier said they would be open briefly on Sunday mornings for some church services. Mr. Walsh said people cannot be allowed to linger around during other businesses open hours.

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

Vice Chairman Clark said staff has asked to include a reference to the change in use and that the focus needs to be on the dynamics of the soup kitchen, not the potential future uses at this time.

Mr. Heier said he feels reducing the parking from the required 47 down to 10 is too great of a difference.

**MOTION:** A motion was made by Mr. Heier to deny the variance to reduce the number of off-street parking spaces required for the operation of a soup kitchen on Lots 1-3, Block 33, Governor Pierce Addition (220 North 23<sup>rd</sup> Street). Due to a lack of a second to the motion, the motion failed.

Mr. Seifert said he has concerns of too many vehicles being towed and having more traffic than the originally expected.

Mr. Hoff made a motion to call the question and those present were advised by Mr. Hammes that a roll all must be taken on the request to call the question.

**MOTION:** A motion was made by Mr. Hoff to call the question with Board Members Hoff and Seifert voting in favor of the motion and Board Members Clark, Heier and Wohl opposing the motion, the motion failed due to a lack of a majority vote.

Mr. Wohl asked if the required number of parking spaces granted by this variance would stay the same if the use changes in the future.

Ms. Wollmuth said a condition can be put on the motion requesting that a change of use other than a soup kitchen or new occupant would need to request a new variance from the parking requirements.

Mr. Heier said he has feelings of this being controversial and it might not be the responsibility of this board to regulate soup kitchens.

**MOTION:** A motion was made by Mr. Seifert to approve the variance to reduce the number of off-street parking spaces required for the operation of a soup kitchen on Lots 1-3, Block 33, Governor Pierce Addition (220 North 23<sup>rd</sup> Street), based on the lot being too small for other allowable uses, that a change of occupancy and use approval is required, with the condition that any other future use would have to meet the existing parking requirements outlined in the City Code of Ordinances. The motion was seconded by Mr. Hoff and with Board Members Clark, Heier, Hoff, Seifert and Wohl voting in favor of the motion, the motion was approved and the variance was granted.

## **OTHER BUSINESS**

There was no other business to discuss at this time.

## ADJOURNMENT

There being no further business, Vice Chairman Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 6:25 p.m. to meet again on November 3, 2016.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Jennifer Clark, Vice Chairman

DRAFT

Chairman Marback and the City of Bismarck Board of Adjustment Committee, my name is Jaclyn Hall and I am the Executive Director of Ruth Meiers. I am here today to neither support or oppose the request of Mark Meier, but to provide background and education on the current programs provided by Ruth Meiers and the future of our facility located at 305 N 23<sup>rd</sup> St.

Ruth Meiers acquired this facility in 1996 to provide 25 low income housing units. In 2013, Ruth Meiers expanded its services to provide:

- A 120 bed (capacity) men's overnight emergency shelter (9:00pm – 8:00am)
- Single Point of Contact (9:00am – 1:00pm)
  - Emergency Food Baskets
  - Basic Needs
    - Identifications
    - Medication Assistance
    - Laundry Vouchers
    - Clothing Vouchers
    - Transportation Assistance
    - Birth Certificates
    - Reemployment services
  - Hygiene Packs
  - Noon Meal

In 2015, Ruth Meiers provided 17,415 nights of shelter and over 20,000 pounds of food to the community. Our apartments run at 95% occupancy.

In December, Ruth Meiers will open its facilities from 8:00am to 8:00pm as well as overnight to expand its community based services. These services include:

- Luke's Kitchen – a community open table to provide nutrition and essential services to the homeless and those in need
- Expanded access to laundry facilities and showers
- Community collaborations to increase educational outreach

Working the homeless and those at risk is not an easy task. We find many face addiction, mental illness and physical disabilities. As a neighbor, we work with the surrounding residents and businesses to support their concern for their safety and the safety of their patrons. On average, we contact law

enforcement 3 times per week to remove vehicles that have been abandoned, investigate vehicles where clients are staying inside and assist with clients who cannot stay at Ruth Meiers.

We are working internally to determine whether or not Ruth Meiers needs to adjust our off street parking to include loading and unloading only areas and areas that restrict overnight parking. Ruth Meiers owns an additional adjacent lot located to the north of our current facility to add additional off street parking to assist with future growth.

Ruth Meiers has collaborated with Heaven's Helpers in the past and believe in their mission, the challenges we face are ones he may continue to face if he relocates to this facility.

I thank you for your time and will stand for any questions.