



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA
AUGUST 2, 2012**

Tom Baker Meeting Room 4:00 p.m. City-County Office Building

MINUTES

1. **Minutes.** Consider approval of the minutes of the July 5, 2012 meeting.

REQUESTS

2. **220 East Boulevard Avenue** (Arrowhead Tesoro). Request for a variance to reduce the front yard setback along East Boulevard Avenue from 15 feet to 5 feet and reduce the front yard setback along North 3rd Street from 15 feet to 0 feet for the purpose of constructing additions to the east side and the south side of the building (City Lands, part of Section 33, T139N-R80W) .
3. **1486 Interstate Loop** (Grand Theatres). Request for a variance to reduce the number of required off-street parking spaces from 1025 to 540 and to allow parking off-site in conjunction with the proposed theater expansion project (Lots 1-5 & Lot 8, Block 1, & Lot 5, Block 2, Lindquist-Miller Development & Lot 1, Block 1, Hamby Creek Addition; Lot 1, Block 1, Camrud-Foss Addition; Lot 2 Less the West 13' & Lots 3 and 4, Block 1, Green Thumb Addition; and Lot 4, Block 1, Boutrous Addition).

OTHER BUSINESS

4. **Other.**

ADJOURNMENT

5. **Adjourn.** The next regular meeting date is scheduled for September 6, 2012.



**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
July 5, 2012**

The Bismarck Board of Adjustment met on July 5, 2012 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Board members present were Michael Marback, Blair Ihmels, Dean Conrad, Jennifer Clark, and Ken Heier.

Staff members present were Brady Blaskowski (Building Plans Examiner), Kim Lee (Planning Manager), Jenny Wollmuth (Planner), and Kim Riepl (Office Assistant).

Others present were Ken Selzler, Bismarck; Dennis Fried, Bismarck; and Mike Seifert, Bismarck.

MINUTES

Chair Marback asked for consideration of the June 7, 2012 minutes.

MOTION: A motion was made by Mr. Conrad and seconded by Mr. Ihmels to approve the minutes of the June 7, 2012, meeting as presented. With Ms. Clark, Mr. Ihmels, Mr. Heier, Mr. Conrad, and Chair Marback voting in favor, the minutes were approved.

VARIANCE – CONLINS FURNITURE – 1708 EAST BROADWAY AVENUE

Chair Marback noted the applicant was not present to provide information and suggested the item be delayed until later in the meeting. The item was delayed with concurrence from the other members.

VARIANCE – AURORA BOREALIS DAKOTA LLC – 406 SOUTH 22ND STREET

Chair Marback stated the applicant was requesting a variance to reduce the lot area required for a parcel in the MA zoning district from 10,000 square feet to 9,976 square feet and 9,124 square feet for the purpose of splitting a 19,100 square foot parcel (19,545 square feet in City records) into two parcels.

Mike Seifert explained the unique situation created by the previous ownership of the lots, an easement on the north side of the parcel, and a City-owned water detention pond on the west side of the property, and an easement running from that which essentially splits the property in two.

Mr. Conrad questioned future consequences for surrounding property owners regarding water drainage and Mr. Seifert replied he'd had conversations with Keith Demke, Utilities Operations Director for the City of Bismarck, and Mr. Demke said there would be no problems.

Mr. Marback asked if there were any comments received and Ms. Lee replied there had only been one, and that individual had no opposition, but was simply curious as to the intent of the property owner and the need for the variance.

The following findings were provided:

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 MA zoning classification.
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 the minimum variance that will 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; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Ihmels to approve the request for the variance to reduce the lot area required for a parcel in the MA zoning district from 10,000 square feet to 9,976 square feet and 9,124 square feet for the purpose of splitting a 19,100 square foot parcel into two parcels. The motion was seconded by Ms. Clark, and with all members voting in favor, the motion was approved.

VARIANCE – CONLINS FURNITURE – 1708 EAST BROADWAY AVENUE

Chair Marback announced the applicant was requesting a variance to reduce the front yard setback along North 18th Street from 15 feet to 0 feet for the purpose of constructing an addition to the north side of the existing building, which will maintain the existing building wall line on the east property line. As there was no representative present to provide further information on behalf of the applicant, Chair Marback noted the property covers one square block and there is therefore considered to be a front yard on all four sides.

Mr. Conrad asked if the ordinance (Section 14-04-12(6) of the City Code of Ordinances) was new, relative to the requirement of a front yard setback of 15 feet. Ms. Lee explained it was not new, having been in effect since perhaps prior to the 1970s, however, the building had been constructed prior to that. Mr. Blaskowski added the building was constructed in 1965. Mr. Ihmels asked about the driveway on the east side of the property and Mr. Blaskowski explained it would be blocked and moved to the north as indicated on the plans provided. Mr. Marback asked if there were any comments received and Ms. Lee replied there had been none.

Chair Marback recognized Ken Selzler, an adjacent property owner, and Mr. Selzler approached the Board. He was concerned with how far north the proposed driveway would be. Ms. Lee provided him with a sketch of the proposed site plan showing him the proposed driveway. Mr. Selzler stated his question had been answered and that he was in favor of the variance.

The following findings were provided:

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 zoning classification.
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 the minimum variance that will 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; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Ihmels to approve the request for the variance to reduce the front yard setback along North 18th Street from 15 feet to 0 feet for the purpose of constructing an addition to the north side of the existing building, which will maintain the existing building wall line on the east property line. The motion was seconded by Mr. Heiers, and with all members voting in favor, the motion was approved.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on August 2, 2012.

Respectfully Submitted,

Kim Riepl
Recording Secretary

APPROVED:

Michael Marback, Chair

**BISMARCK-BURLEIGH COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: City Lands (part of Section 33, T139N-R80W) – Front yard setback (15 feet to 5 feet on south & 0 feet on east) (220 East Boulevard Avenue – Arrowhead Tesoro)	
Status: Board of Adjustment	Date: August 2, 2012
Owner(s): Randy Kopp – applicant Fleck Interstate Investments - owner	Engineer/Architect: Ubl Design Group
Reason for Request: Reduce the front yard setback along East Boulevard Avenue from 15 feet to 5 feet and reduce the front yard setback along North 3 rd Street from 15 feet to 0 feet for the purpose of constructing additions to the east side and the south side of the building. The property is on a corner lot with front yards on two sides.	
Location: Along the north side of East Boulevard Avenue at the intersection with North 3 rd Street (an unplatted tract in Section 33, T139N-R80W, described as , described as commencing at a point 66’ North of the Northeast corner of Block 88, McKenzie & Coffins Subdivision, thence North 70’, thence West 105’, thence South 70’, thence East 105’ to the point of beginning).	
Applicable Provision(s) of Zoning Ordinance: Section 14-03-08(6) of the City Code of Ordinances (CA – Commercial District) states, “each lot shall have a front yard not less than fifteen (15) feet in depth.” Front yard setbacks apply to any frontage along a public right-of-way. Section 14-01-10(1)(s) of the City Code of Ordinances (Off-street Parking and Loading – Filling Station) states, “adequate off street parking must be provided for all operator equipment and at least one space for each two employees and at least five spaces for each service stall or bay on the premises.” As proposed, this facility would require a minimum of 11 off-street parking spaces for two service bays and two employees. Section 14-03-10(8) of the City Code of Ordinances (Off-street Parking and Loading - Location of required parking and loading facilities), states, “the off-street parking facilities required by this section shall be on the same lot or parcel of land as the structure they are intended to serve; provided, however, when practical difficulties, as determined by the board of adjustment, prevent the establishment of such facilities upon the same lot or parcel, they shall be furnished within four hundred feet of the premises to which they are appurtenant. The off-street loading facilities required by this section shall in all cases be on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be part of the area used to satisfy the off-street parking requirements of this article. All required off-street parking and loading facilities along with all ingress and egress driveways thereto shall be zoned adequately for the principal use which they are intended to serve.”	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The existing building encroaches into the required front yard setback on both the south and east sides of the building. The south building line is set back approximately 5 feet from the property line; the east building line is set back approximately 8 feet from the property line. 2. The proposed addition to the building would comply with the required 25-foot sight triangle at the intersection of East Broadway Avenue and North 3rd Street and the required 15-foot sight triangle at the driveway along North 3rd Street. 	

(continued)

3. Sufficient parking is not provided on site for the existing or proposed uses; however, parking for this facility may be provided on the surrounding tract (Arrowhead Plaza) which is also owned by Fleck Interstate Investments. The site is adjacent to and within 400 feet of the filling station property.
4. If the variance is granted, the building addition project would be subject to the City's site plan review process prior to obtaining a building permit.

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 CA zoning classification.
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 will 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; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

RECOMMENDATION:

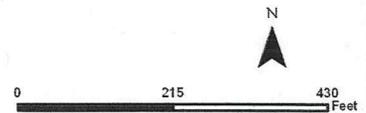
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board. If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

Proposed Variance Reduce Front Yard Setback 220 East Boulevard Avenue



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: July 25, 2012 (klr)

Source: City of Bismarck



Bismarck

COPY

CITY OF BISMARCK
BUILDING DIVISION
221 N 5TH ST
BISMARCK, ND 58506-5503
PH (701) 355-1465

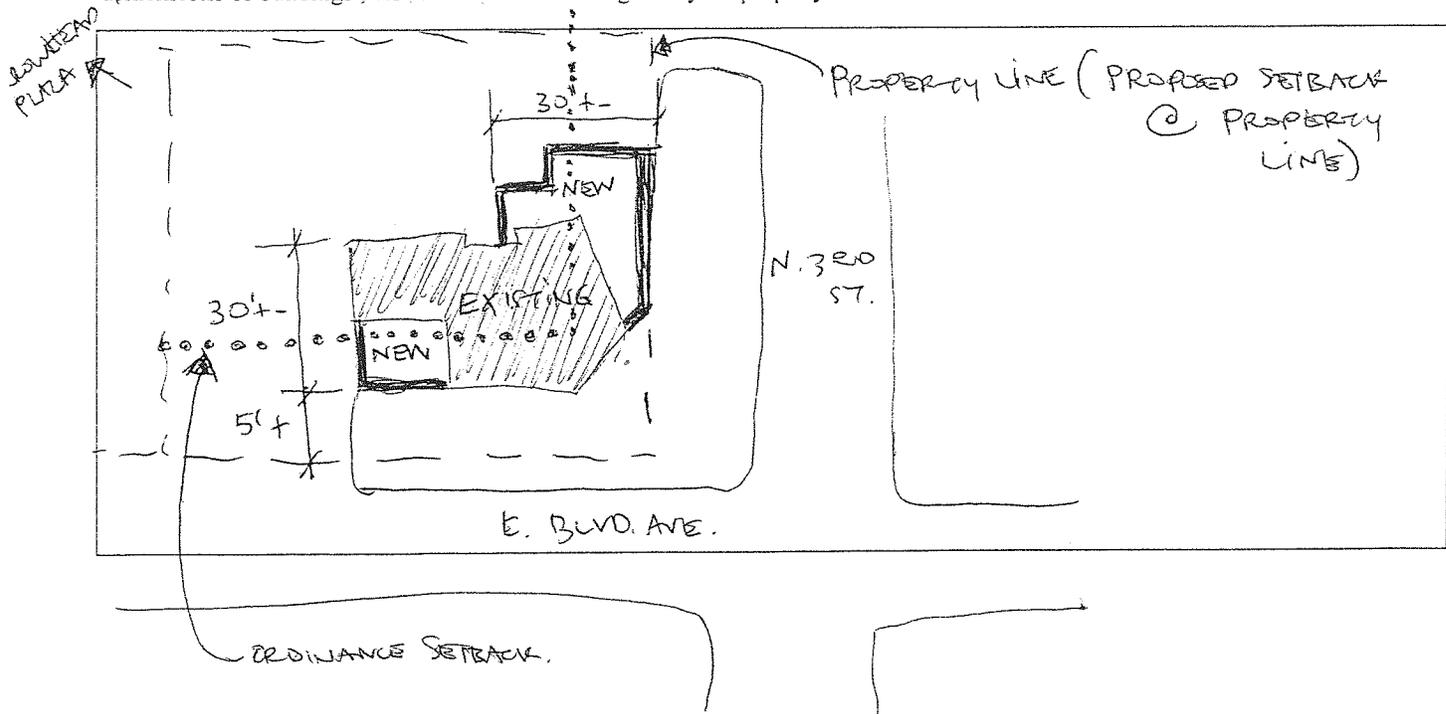
CITY OF BISMARCK / ETA & BURLEIGH COUNTY

RECEIVED DATE: 7-16-12

CONTACT INFORMATION:

- 1. Name: Randy Kopp / Katie Vasbinder (UBL DESIGN GROUP)
- 2. Phone Number: (UBL DESIGN GROUP)
- 3. Property Address: 220 EAST BOULEVARD AVENUE, BISMARCK, ND
- 4. Location of Property: City of Bismarck ETA Burleigh County
- 5 Reason for variance RENSE SETBACK REQUIREMENTS.

6. In the space below, please draw your lot, all existing buildings located on your lot and the proposed structure. Include dimensions of buildings, distance between buildings and your property lines.



7. Your application has been reviewed. It has been:

Approved

Denied

Reviewed By:

Ray Egan

Date:

7-16-12

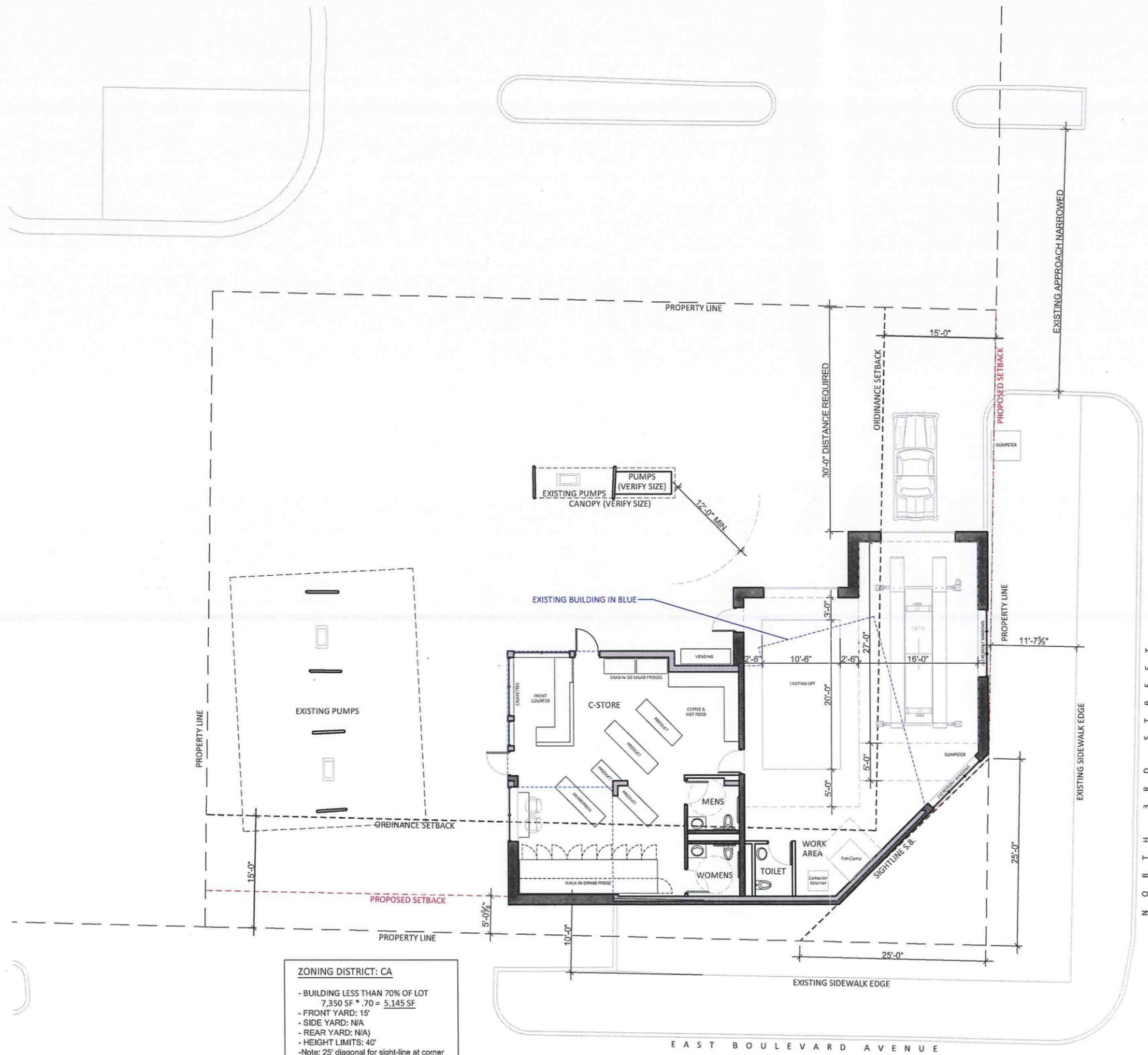
8. Reason for denial:

*Does not meet the required
get backs*

Please make the corrections and resubmit the application

Please note that an application for a permit is deemed to be abandoned 180 days after the date of filing, unless the application has been pursued in good faith or a permit has been issued. Therefore, supply us with the required plans at your earliest convenience.





ZONING DISTRICT: CA
 - BUILDING LESS THAN 70% OF LOT
 7,350 SF * .70 = 5,145 SF
 - FRONT YARD: 15'
 - SIDE YARD: N/A
 - REAR YARD: N/A
 - HEIGHT LIMITS: 40'
 - Note: 25' diagonal for sight-line at corner

1 main level floor plan
 scale: 1/8" = 1'-0"



Existing Northeast View



Existing Southeast View



① Northeast View
12" = 1'-0"



② Southeast View
12" = 1'-0"

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

1. Property Address or Legal Description: 220 East Boulevard Avenue, Bismarck, ND

2. Location of Property: City of Bismarck ETA Burleigh County

3. Type of Variance Requested: Revise setback requirements

4. Applicable Zoning Ordinance Chapter/Section: 14-04-10 CA Commercial District, 6. Front yard.

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.)

See attached.

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

See attached.

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

See attached.

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

5. Existing physical conditions of the site provides for a limit of use on the property. This physical condition (an existing building) does not currently fulfill the requirements of the Zoning Ordinance. The south end of this building sits approximately 10' within the current required setback, therefore, limiting new additions that fulfill the current requirements to not align with the existing building.

6. Reasonable use of the existing building and site would be to maintain existing exterior wall locations and any setbacks that are required for safety and welfare of the surrounding areas. The sightline setback, which the current building fulfills, would need to be maintained as one of these setbacks. Further limitations on the setbacks would deprive the site of reasonable future development and upgrades do to minimal available area. In turn, other upgrades that could follow would also be deprived, including the proposed narrowing of the approach off of N. 3rd Street (this would be a great safety improvement for the area/neighborhood). Other items include that there is no current landscaping around the building or the dumpster, repaired vehicles are often parked outfront (not in a garage), and there are drainage issues on the site; all of which will be remedied during the addition/renovation.

7. The request is to maintain the existing exterior wall location as a setback, maintain the sightline setback, and continue this setback to the east property line for a new addition. Given the property has not been platted by the city, the east property line is a presumed location based off of street right-of-ways; setbacks at this location are therefore also presumed. This request is minimum as it is based off of existing conditions and maintaining the necessary safety requirements of the area.

**BISMARCK-BURLEIGH COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: L1-5 & 8, B1 and L5, B2, Lindquist Miller Development, Etal. – Parking (1025 spaces to 540 spaces, portion of which are not on the same parcel as the principal use) (1486 Interstate Loop – Grand Theatres)	
Status: Board of Adjustment	Date: August 2, 2012
Owner(s): Jerry Brekke	Engineer/Architect: Kadrmass Lee & Jackson
Reason for Request: Reduce the number of required off-street parking spaces from 1025 to 540 and to allow parking off-site in conjunction with the proposed theater expansion project.	
Location: Along the south and north sides of East Interstate Avenue and along Interstate Loop (Lots 1-5 & Lot 8, Block 1, & Lot 5, Block 2, Lindquist-Miller Development & Lot 1, Block 1, Hamby Creek Addition; Lot 1, Block 1, Camrud-Foss Addition; Lot 2 Less the West 13' & Lots 3 and 4, Block 1, Green Thumb Addition; and Lot 4, Block 1, Boutrous Addition).	
Applicable Provision(s) of Zoning Ordinance: Section 14-03-10(1)(f) of the City Code of Ordinances (Off-street Parking and Loading – Theaters) requires, “one space for each sixty (60) square feet of gross floor area.” For a 61,500 square foot facility, a total of 1025 spaces would be required. Section 14-03-10(8) of the City Code of Ordinances (Off-street Parking and Loading - Location of required parking and loading facilities), states, “the off-street parking facilities required by this section shall be on the same lot or parcel of land as the structure they are intended to serve; provided, however, when practical difficulties, as determined by the board of adjustment, prevent the establishment of such facilities upon the same lot or parcel, they shall be furnished within four hundred feet of the premises to which they are appurtenant. The off-street loading facilities required by this section shall in all cases be on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be part of the area used to satisfy the off-street parking requirements of this article. All required off-street parking and loading facilities along with all ingress and egress driveways thereto shall be zoned adequately for the principal use which they are intended to serve.”	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The existing facility is 46,500 square feet with 2,084 seats. With the proposed 15,000 square foot addition, the size of the facility will increase to 61,500 square feet with 2,624 seats. 2. This is the sixth parking variance that has been requested for the Grand Theatre complex. Previous parking variances were requested on: 4/29/93 (approved), 3/10/00 (approved), 8/15/02 (denied), 9/19/02 (approved) and 3/17/05 (approved). Minutes of the meetings where those variances were considered are attached. 3. The variance granted in 2002 allowed the number of parking spaces to be reduced to 354, which would have been the amount required under the previous “1 space per 5 seats” requirement. The variance granted in 2005 allowed the number of parking spaces provided for just that addition to be reduced to 210, which brought the total number of spaces required for the entire facility to 564 spaces. 	
<i>(continued)</i>	

4. The information submitted with the application indicates that there are currently 475 parking spaces available for the use of Grand Theatres. If there are only 475 spaces as indicated in the materials submitted with the application, it would appear that some of the off-street parking committed to in 2002 and/or 2005 was never constructed.
5. If today's standard was applied to the existing structure, 775 spaces would be required for the existing facility, not including the proposed addition. If today's standards were only applied to the addition, an additional 250 spaces would be required in addition to the 564 required in 2005, which would bring the total to 814.
6. Based on the above calculations, the variance being requested at this time is to increase the size of the facility by 15,000 square feet, while reducing the amount of parking below what was required with the 2005 variance (564 spaces down to 542 spaces).
7. In addition to the parking being provided on the same parcel, 4 off-site parking areas are being proposed. There is an existing 67 space lot on the north side of Interstate Avenue, an existing 67 space lot on the west side of Interstate Loop west of the theater, an existing 67 space lot on the east side of Interstate Loop east of the theater, and a proposed 92 space lot north of Interstate Avenue and east of the existing lot.
8. As proposed, 252 spaces will be provided on the same parcel as the theater facility and 290 spaces will be provided in the four remote lots. The remote sites are within 400 feet of the theater property.
9. If the variance is granted the building addition project would be subject to the City's site plan review process prior to obtaining building permits.

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 zoning classification.
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 will 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; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

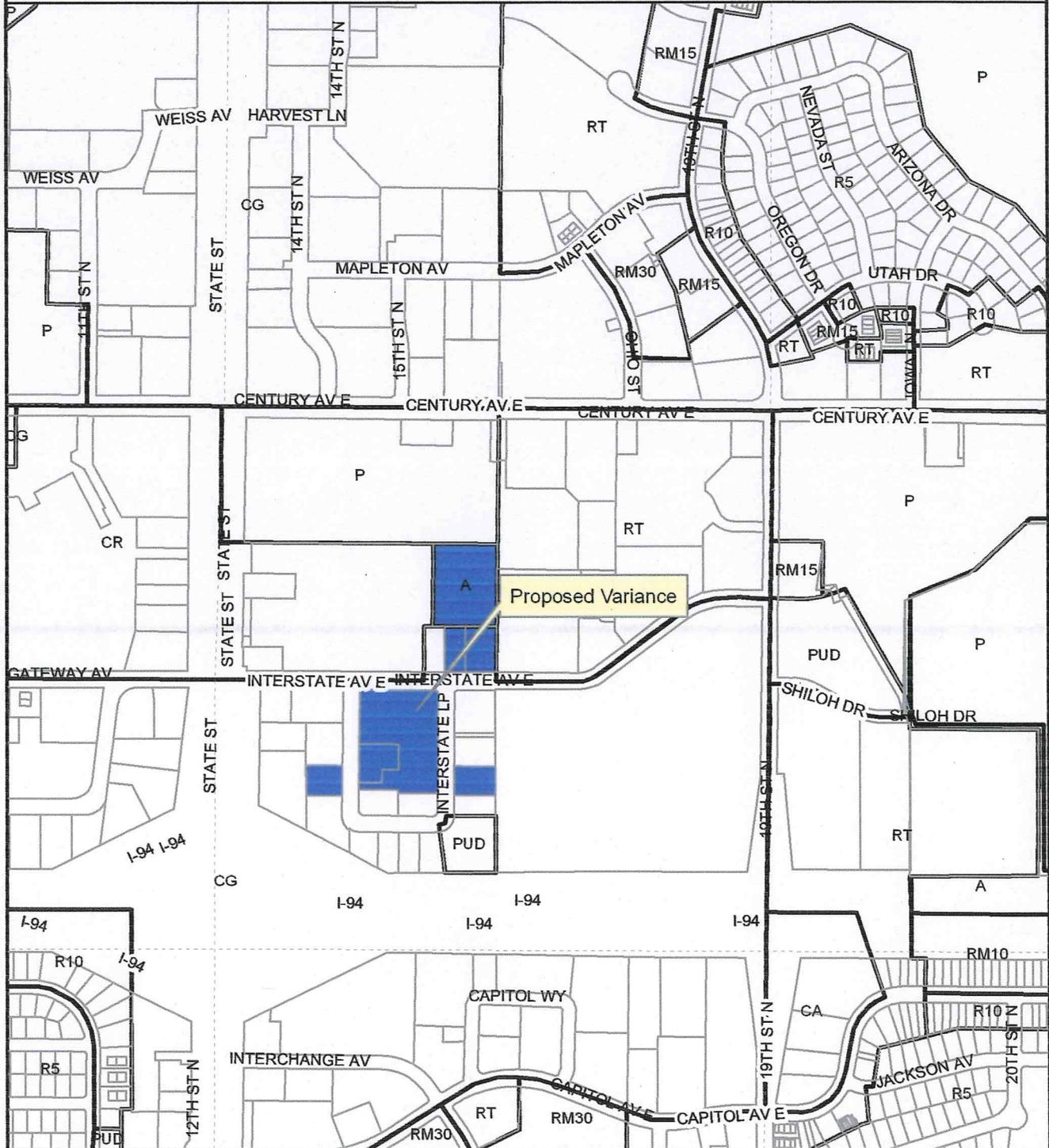
RECOMMENDATION:

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board. If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

Proposed Variance

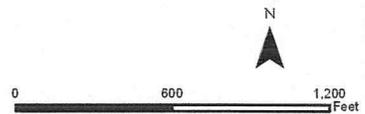
Reduce Parking Requirements and Allow for Off-Site Parking

1486 East Interstate Loop, etal.



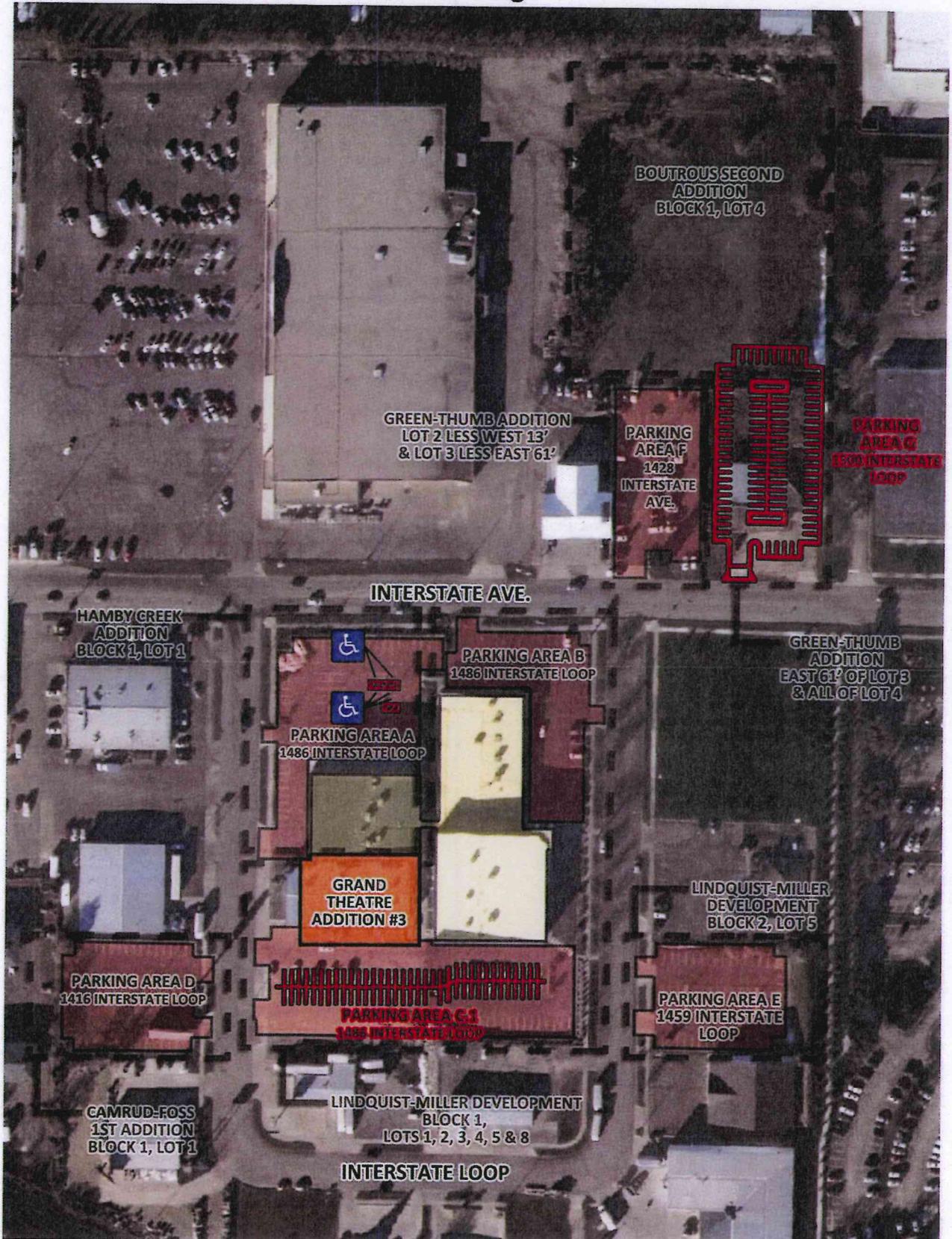
DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
 Map was Updated/Created: July 25, 2012 (kkr)

Source: City of Bismarck



Grand Theatres - Building Addition #3 and Parking Lot Expansion

Exhibit 2 - Proposed Addition and Parking



- BUILDING ADDITION #3
- EXISTING PARKING LOTS
- EXISTING GRAND THEATRE BUILDINGS

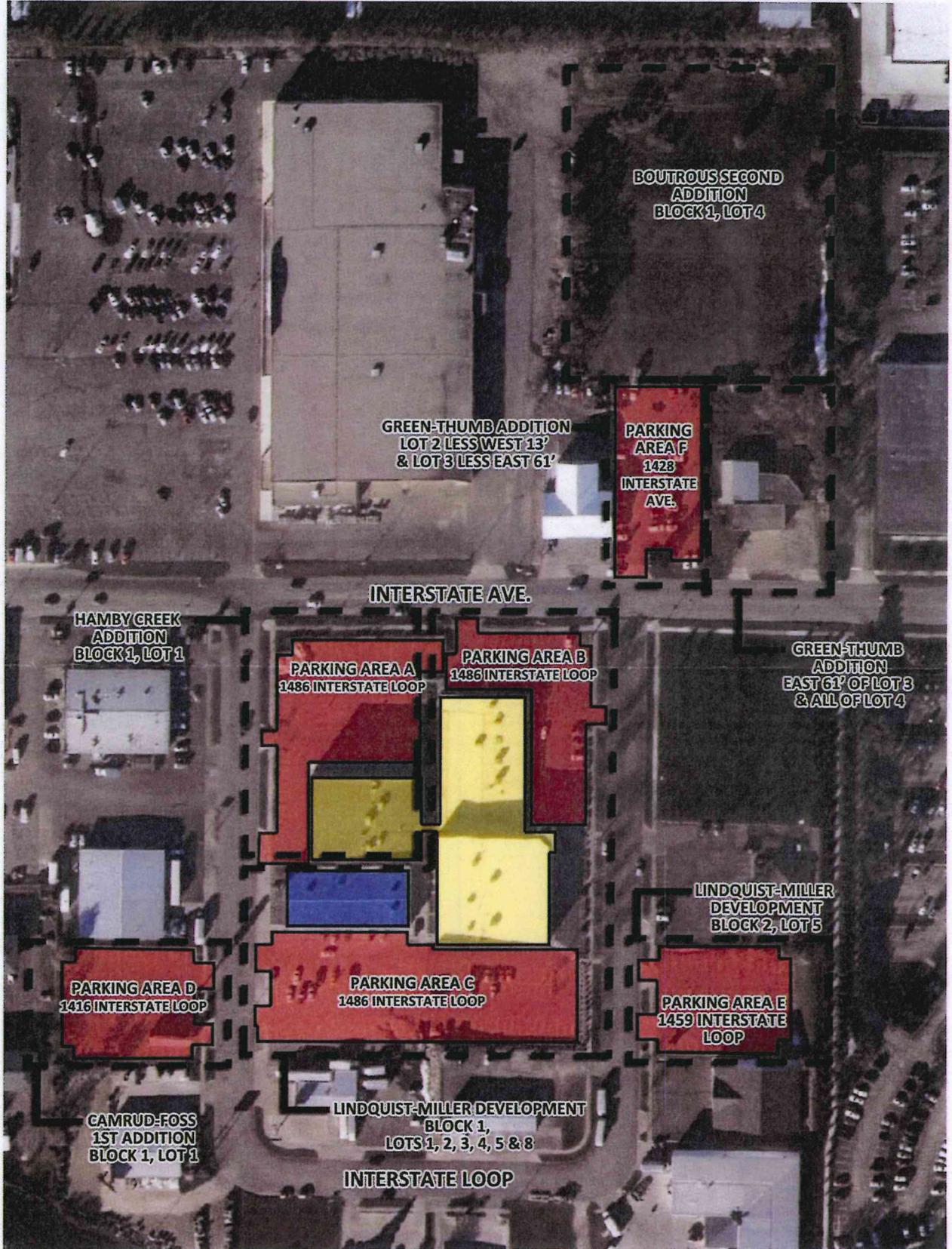
Kadmas
Lee &
Jackson
INCORPORATED
PLANNERS

07.16.2012
KL&J Project Number-1612219

- PARKING AREA A = 80 STALLS**
- PARKING AREA B = 62 STALLS**
- PARKING AREA C.1 = 110 STALLS**
- PARKING AREA D = 67 STALLS**
- PARKING AREA E = 67 STALLS**
- PARKING AREA F = 64 STALLS**
- PARKING AREA G = 92 STALLS**

PROPOSED WITH EXISTING AVAILABLE PARKING = 542 STALLS

Grand Theatres - Building Addition #3 and Parking Lot Expansion
Exhibit 1 - Existing Facility



- BUILDING SCHEDULED TO BE REMOVED
- EXISTING PARKING LOTS
- EXISTING GRAND THEATRE BUILDINGS

- PARKING AREA A = 83 STALLS
- PARKING AREA B = 62 STALLS
- PARKING AREA C = 129 STALLS
- PARKING AREA D = 67 STALLS
- PARKING AREA E = 67 STALLS
- PARKING AREA F = 67 STALLS

EXISTING AVAILABLE PARKING = 475 STALLS

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

1. Property Address or Legal Description:

2. Location of Property: City of Bismarck ETA Burleigh County

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.)

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

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

Property Information:

Lot 1,2,3,4,5 & 8 of the Lindquist-Miller Development and Lot 1,Block 1, Hamby Creek Addition - 1486 Interstate Loop

Lot 5, Block 2, Lindquist-Miller Development – 1459 Interstate Loop

Lot 1, Camrud-Foss 1st Addition – 1416 Interstate Loop

Lot 2 less West 13' & Lot 3 less East 61', Green Thumb Addition – 1428 East Interstate Avenue

East 61' of Lot 3 & all of Lot 4, Green Thumb Addition – 1500 East Interstate Avenue

Lot 4, Block 1, Bouttrous Addition

5.

The property has received numerous parking variances over the years to allow for building expansions. The current parking request is in conjunction with building expansion to add 7 theaters to the existing complex. Currently the facility has 475 parking stalls (See Exhibit 1) provided around the building as well as offsite parking lots. The current ordinance requires a movie theater to provide 1 parking stall per 60 SF of the gross floor area, if that ratio would have been required the current building (46,500 SF) would have needed 775 parking stalls. If the parking for the addition (15,000 SF) is required to meet the existing ordinance an additional 250 parking spaces would be required.

The proposed addition is planned to replace the old Hodge Podge building. The building footprints are very similar in size and maximize the property without eliminating a large amount of the existing parking. The request for the variance is due to the limitations of not only the current lot but the neighborhood. The area has been developed and no additional property is available for the construction of surface parking lots. The proposed additional parking for the building project is located at 1500 East Interstate Avenue (old Green Thumb Nursery).

Typically, the facility will see maximum of 2,521 people on a given Saturday, spread out over 15 theaters and 5 showings per theater. That's an average of 504 people attending the theater per showing. If you consider that most people drive together to a movie and account for 1 vehicle per five people that would mean that at one showing time, only 101 parking stalls are necessary. Even at a ratio of 1 vehicle per 2 people, only 252 parking stalls are needed per showing. We are proposing a parking ration change for the entire complex of 1 parking stall per five seats. The current facility has 2,084 seats, the proposed addition will have 618 seats for a total of 2,702 seats. By using the ratio of one (1) parking stall per five(5) seats, 540 total stalls would be necessary for the property. This total count will account for five times the typical maximum present day attendance.

With the addition of the building, 19 existing parking stalls would be eliminated. We propose the construction of an additional parking lot to account for 92 stalls.

540 total stalls required
-475 existing stalls
65 new stalls
+ 25 new stalls to replace existing stalls lost
90 Total New Parking Stalls required
92 Parking Stalls Proposed in new parking lot for a total of 542 parking stalls for the entire facility.

BISMARCK BOARD OF ADJUSTMENT

MEETING MINUTES

MARCH 16, 2000

The Bismarck Board of Adjustment met on March 16, 2000 at 5:00 p.m. in the Tom Baker Meeting Room in the City County Building, 221 North 5th Street. Board members present were Gilbert Ellwein, Blair Ihmels, Al Kosir, Mike Marback, and Larry Thompson. Duane Berger was absent. Staff members present were Bill Augustadt and Mark Richardson. Clark Bormann, Gerridee Wheeler, Bruce Britton, Ron Haugom, LaRoy Baird, John Miller, and Tom Miller were also present. Chairman Kosir presided.

MINUTES

MOTION. Mr. Ellwein made a motion to approve the minutes of the February 17, 2000 meeting as submitted. Mr. Ihmels seconded the motion and the Board unanimously approved it with all members present voting aye.

VARIANCE - MR. BRUCE BRITTON - 602 WEST THAYER AVENUE

Mr. Britton said he planned to replace his existing garage with another larger garage using the existing foundation. The garage is built on the alley right-of-way line and 20.8 feet from Anderson Street. The zoning ordinance requires garages to be three feet from the alley and 25 feet from the street. Mr. Britton wanted to maintain the existing setbacks. The extra building area would extend into his yard.

MOTION. Mr. Ellwein made a motion to approve the variances from minimum setback requirements for Mr. Bruce Britton for property he owns at the east 25 feet of Lot 11 and Lot 12, Block 10, Riverview Addition with a street address of 602 West Thayer Avenue. The variances allow Mr. Britton to construct a garage using the existing setbacks from the alley and Anderson Street. Mr. Thompson seconded the motion and the Board unanimously approved it with all members present voting aye.

VARIANCE - MR. JERRY BREKKE - 1486 INTERSTATE LOOP

Mr. Clark Bormann, representing Mr. Brekke, said that Mr. Brekke planned to expand the Grand Theatres. This expansion will require additional off-street parking that is not available on the site of the theatres. To meet the parking needs of the City, Mr. Brekke is working with the Dakota Foundation to remove the existing Hodge-Podge building south of the theatre and move its operation to the vacant UBC building to the west. The theatres and foundation will benefit from improved properties and shared parking. In addition, Mr. Brekke has acquired additional parking space north of an existing lot north of Interstate Avenue. He cannot proceed with his plans unless the Board authorizes these off-site parking arrangements. Mr. Brekke was confident these arrangements would meet the needs of his customers.

In response to questions from the Board, Mr. Augustadt said the ordinance requires off premises parking to be within 400 feet of the use. It was determined that the far north lot was within 400 feet of the theatres.

MOTION. Mr. Marback made a motion to authorize the off-premises parking arrangements for the Grand Theatres located at Lot 1, Block 1, Lindquist-Miller Development with a street address of 1486 Interstate Loop as shown on the proposed improvement program attached to the minutes as Exhibit A. Mr. Thompson seconded the motion and the Board unanimously approved it with all members present voting aye.

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
MARCH 17, 2005**

The Bismarck Board of Adjustment met on March 17, 2005 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building at 221 North 5th Street. Board members present were Chair Al Kosir, Doug Loos, Blair Ihmels and Larry Thompson. Staff members present were Lisa Garcia (Office Assistant), and Bill Augustadt (Building Dept). Others present were Craig Ruhland, Brett Gurholt, and Jeff Welch.

MINUTES

MOTION: A motion was made by Mr. Thompson and seconded by Mr. Ihmels to approve the minutes of the December 6, 2004 special meeting. With all members present voting in favor of the motion, the minutes were approved.

VARIANCE – JERRY BREKKE – 1486 INTERSTATE LOOP (GRAND THEATER)

Jerry Brekke requested a variance to reduce the number of required off-street parking spaces from 220 spaces to 210 spaces for the purpose of meeting the parking needs for a proposed addition to the existing theater. Mr. Ruhland, a representative, reviewed the site plans. He stated Mr. Brekke would like to add an addition onto the existing theater, which will include four more theaters. After setbacks and landscaping are adhered to, there will be 210 parking spaces available – ten short of the city's requirements. This will create a 63:1 ratio, verses the required 60:1. Mr. Ruhland stated additional land could be developed north of Interstate Avenue, but would not be pedestrian safe. The landscaping improvements will screen the parking lots.

Mr. Welch, a representative, stated Mr. Brekke did not know the theater was going to be so successful. He has made an attempt to buy surrounding property to meet the city's parking requirements. Currently people park where they are not supposed to. Mr. Welch stated if Mr. Brekke did not have to follow the city's landscaping requirements, he would be able to provide enough parking spaces.

Mr. Ruhland stated the city's Forestry Department has reviewed the proposed landscaping plan and found it acceptable.

Mr. Thompson stated the theater is 200 parking spaces short of the requirement; however, four variances have been granted and thus, Mr. Brekke is in compliance.

Mr. Loos asked if any adjacent property owners have responded to the property owner notification that was mailed? Staff stated no.

Mr. Ihmels asked if this variance is approved or denied, what happens to the other variances that have been granted? Mr. Augustadt stated they remain in effect.

Mr. Kosir stated the parking area north of Interstate Avenue is not striped. It consists of weeds and dirt and cannot be used for parking and should not be included in the number of available parking spaces.

Mr. Thompson stated the last time the Board approved Mr. Brekke's parking variance, the north parking space was supposed to get paved and made available for parking.

Mr. Ruhland asked if people will use the area north of Interstate Avenue even if it is paved? They know they can park in K-mart's parking lot and it is closer to the theater's entrance.

Mr. Loos stated if K-mart does not care if theater patrons park in their lot, why should the Board?

Mr. Kosir asked why the applicant wants to build an addition onto the existing theater instead of finding another space? Mr. Welch stated Mr. Brekke has invested a lot of money into the theater already.

Mr. Ihmels asked how the proposed addition is going to connect to the existing theater if there is an easement that lies between the two of them? Mr. Welch stated a bridge will have to be constructed.

Mr. Kosir stated many of the theater's parking lots force customers to walk a long way to get to the theater's entrance.

Mr. Augustadt noted that the minutes of the September 19, 2002 meeting, where Mr. Brekke requested a variance to reduce the required number of off-street parking spaces to 354 for the purpose of converting existing space into an 80-seat theater, stated the variance was approved "*with the provision that the north parking lot be paved to bring the parking lot into compliance with the previous variance.*" Those improvements were to be done with the conversion of the lobby area into a theater and be in place by the time the conversion project was completed. Immediate compliance is requested.

MOTION: A motion was made by Mr. Loos and seconded by Mr. Ihmels to approve the variance to reduce the number of required off-street parking spaces from 220 spaces to 210 spaces for the purpose of meeting the parking needs for a proposed addition to the existing theater at 1486 Interstate Loop. With all members present voting in favor of the motion, the variance was approved.

ADJOURNMENT

There being no further business, the meeting was adjourned at 5:35 p.m. to meet again on April 21, 2005.

BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
September 19, 2002

The Bismarck Board of Adjustment met on September 19, 2002 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Board members present were Chair Al Kosir, Duane Berger, Doug Loos, Mike Marback and Larry Thompson. Staff members present were Bill Augustadt (Building Official) and Kim Lee (Planner). Others present were Walter Schnellbach, Kenneth Welch, Terry Curl and Clark Borman.

MINUTES

MOTION: A motion was made by Mr. Loos and seconded by Mr. Marback to approve the minutes of the August 15, 2002 meeting as presented. With all members voting in favor, the minutes were approved as presented.

VARIANCE – WALTER AND DARLENE SCHNELLBACH – 520 SOUTH 10TH STREET

Walter and Darlene Schnellbach requested variances to allow the expansion of a structure on a nonconforming lot and increase the projection into the required front yard setback from 6 feet to 10 feet (9.5 feet from front property line) along South 10th Street for the purpose of constructing an 10' x 11' 7" patio deck on the front of an existing residence. The property is located at 520 South 10th Street and is legally described as the South 15' of the East 50' of Lot 9 and the East 50' of Lots 10-12, Block 11, Coffin Addition.

Mr. Schnellbach stated that they would like a place on the front of their home to sit that is accessible with a wheelchair. The deck will be even with the front entrance, which is 23 inches above grade.

Mr. Thompson asked if they would be willing to go down to a 9.5 feet deep deck versus 10 feet and lower the deck to 18 inches above grade, which would be in line with the ordinance amendment being proposed. Mr. Schnellbach replied that six inches is a lot of space when you are trying to maneuver in a wheelchair. In addition, the 23 inches above grade is in line with the front entrance, and lowering it would make accessibility problematic.

MOTION: A motion was made by Mr. Loos and seconded by Mr. Marback to approve the request for variances to allow the expansion of a structure on a nonconforming lot and increase the projection into the required front yard setback from 6 feet to 10 feet (9.5 feet from front property line) along South 10th Street for the purpose of constructing an 10' x 11' 7" patio deck on the front of an existing residence at 520 South 10th Street. With members Kosir, Berger, Loos and Marback voting in favor and member Thompson voting against, the motion to approve the request carried.

VARIANCE – GRAND THEATRES – 1486 INTERSTATE LOOP

Grand Theatres (Jerry Brekke) requested a variance to reduce the required number of off-street parking spaces to 354 (the number in place with improvements to the northern end of the off-site parking area north of Interstate Avenue) for the purpose of converting existing space (old lobby) into an 80-seat theatre. The property is located at 1486 Interstate Loop and is described as Lots 1-4, the North 25 feet of Lot 7, and Lot 8 less Tract A, Block 1, Linquist & Miller Addition.

Clark Bormann appeared on behalf of the applicant. He indicated that Grand Theatres had Kadrmas Lee and Jackson prepare a parking study, which was submitted with this request. The plan includes the creation of an additional 83 parking spaces at the north end of the off-site parking area north of Interstate Avenue. The plan also includes improvement to the southern portion of this parking area. With the addition of this area, enough parking would be provided to allow the conversion of the old lobby area into an 80-seat theatre.

Chair Kosir asked why the parking study did not address the congestion issue on the north end of the theater. Mr. Bormann replied that the owner did not think this was a major issue, as no one has gotten hurt because of the traffic congestion in this area. Also, the owner did not want to eliminate parking spaces in this area, as there are so few parking spaces adjacent to the building. Mr. Bormann then pointed out that there are conflicts between pedestrians and vehicles at the civic center, and the City allowed the expansion of the civic center. Mr. Augustadt stated that the civic center is part of the downtown parking district and is exempt from the off-street parking requirements.

Mr. Berger stated that the remote lots at the theater are not well-signed.

Mr. Thompson stated that the theater is asking for something additional and still not addressing the congestion issue.

Chair Kosir asked if lighting would be added to the north parking lot, and whether the lighting would have an adequate foot-candle level from a safety perspective. Also, this parking lot only has one way in and out, and he is concerned with traffic flow.

Mr. Thompson asked if traffic engineering has looked at this parking lot. Mr. Augustadt indicated that he is not aware of any review, adding that the City's engineering department may not have even been requested to look at it by the owner.

Mr. Augustadt stated that the previous requests before this board were to allow off-site parking for the north and east lots, rather than requests to reduce the number of off-street parking to the number allowed under the previous ordinance. The number of spaces required for the theater addition meets the current requirement (one space per 60 square feet) and the number of spaces for the older portion of the theater meets the previous requirement (one space per five seats). The conversion of the old lobby into theater space would need to meet the one per 60 square feet requirement.

Mr. Berger asked about the width of the access to the north parking. Mr. Bormann replied that it appears to be about 20 feet in width.

Mr. Augustadt pointed out that patrons of the theater regularly park in the parking lots for the office buildings to the east of the theater. If these businesses were to ever block off their parking lots at night, parking in the area would be another issue. Mr. Bormann stated that the theater only has a written agreement for parking with Hodge Podge.

Mr. Thompson stated that he still had concerns with the congestion issue at the north side of theater. Mr. Bormann replied that he spoke with his client regarding this issue and he does not want to lose the parking spaces in this area at this time.

Mr. Bormann and Mr. Augustadt then reviewed the original parking plan for the theater. For the conversion of the old lobby, 20 additional parking spaces would be needed based on the square footage. With the addition of the 83 spaces on the north end of the northern lot, this requirement would be met.

MOTION: A motion was made by Mr. Loos and seconded by Mr. Marback to approve a variance to reduce the required number of off-street parking spaces to 354 (the number in place with improvements to the northern end of the off-site parking area north of Interstate Avenue) for the purpose of converting existing space (old lobby) into an 80-seat theatre at 1486 Interstate Loop, with the provision that the north parking lot be paved to bring the parking lot into compliance with the previous variance. With all members voting in favor, the motion to approve the request carried.

The timing of improvements to the north parking lot was then discussed, with it being clarified that the improvements should be done in conjunction with the conversion of the lobby area into a theater and be in place by the time the conversion project is completed.

APPEAL – KENNETH AND GAIL WELCH – 2481 TIMBERLANE PLACE

Kenneth and Gail Welch appealed a Notice and Order regarding the accumulation of items on their property. The property is located at 2481 Timberlane Place and is legally described as Lot 9 and 1/9 of Lot 12, Timberlane Place.

Mr. Welch indicated that he was in the process of constructing a new driveway with brick pavers. He has completed the excavation work and expects to have the crushed rock in place next week. The area then needs to be compacted prior to placement of the pavers.

Mr. Thompson asked if the project would be completed by November 1st. Mr. Welch replied that he hoped to have the project completed by then.

Mr. Berger asked when the project would be started. Mr. Welch replied that he would be starting on the placement of pavers next week.

MOTION: A motion was made by Mr. Thompson and seconded by Mr. Loos to give the Welch's until November 1, 2002 to complete the project, with the understanding that if the project is not completed by that date, the bricks would be moved to a suitable location and stored in an orderly fashion. With all members voting in favor, the motion to approve the request carried.

VARIANCE – DARL FARLEY – 524 NORTH 19TH STREET

Darl Farley requested a variance to increase the projection into the required front yard setback from 6 feet to 7 feet (16.5 feet from front property line) for the purpose of constructing an accessibility ramp on the front of an existing house. The property is located at 524 North 19th Street and is legally described as Lots 5 and 6, Block 47, Flannery and Wetherby Addition.

Mr. Curl indicated that this project was being done by the Golden Age Project through the Tesoro Refinery. They did not know until earlier today that a variance was needed.

MOTION: A motion was made by Mr. Loos and seconded by Mr. Thompson to approve a variance to increase the projection into the required front yard setback from six feet to seven feet for the purpose of constructing an accessibility ramp at 524 North 19th Street. With all members voting in favor, the motion to approve the request carried.

MOTION: A motion was made by Mr. Thompson and seconded by Mr. Loos to deny the request for variances to allow the expansion of a structure on a nonconforming lot and reduce the front yard setback along East Avenue A from 25 feet to 16 feet for the purpose of constructing an 8' x 10.5' screened porch at 500 North 5th Street, with the provision that the applicant work with his builder on a design for a detached screened porch and come back for the appropriate variances. With members Kosir, Ihmels, Loos and Thompson voting in favor and member Marback voting against, the motion to deny the request carried.

Constructing a detached screened porch versus an attached screened porch was then discussed briefly, with it being mentioned that either could be allowed with the requested variances provided code requirements were met.

MOTION: A motion was then made by Mr. Marback and seconded by Mr. Loos to approve the request for variances to allow the expansion of a structure on a nonconforming lot and reduce the front yard setback along East Avenue A from 25 feet to 16 feet for the purpose of constructing either a detached or attached porch, provided the applicable provisions of the building code are met. With all members voting in favor, the motion to approve the request carried.

VARIANCE – CHARLES EDER – 802 NORTH 2ND STREET

Charles Eder requested a variance to reduce the side street yard setback from 25 feet to 22 feet along East Avenue D to allow the construction of a detached garage. The property is located at 802 North 2nd Street and is legally described as Lots 15-16, Block 59, McKenzie & Coffin's Addition.

Mr. Eder indicated that he is requesting the variance in order to save two mature trees on his lot.

Mr. Marback asked if any comments had been received from adjacent property owners. Ms. Lee indicated that she had received one comment in favor of the request.

MOTION: A motion was made by Mr. Loos and seconded by Mr. Marback to approve the request for a variance to reduce the side street yard setback from 25 feet to 22 feet along East Avenue D to allow the construction of a detached garage at 802 North 2nd Street. With all members voting in favor, the motion to approve the request carried.

VARIANCE – GRAND THEATRES – 1486 INTERSTATE LOOP

Grand Theatres (Jerry Brekke) requested a variance to reduce the required number of off-street parking spaces from 354 to 284 (existing number) for the purpose of converting existing space (old lobby) into an 80-seat theatre without providing additional off-street parking. The property is located at 1486 Interstate Loop and is described as Lots 1-4, the North 25 feet of Lot 7, and Lot 8 less Tract A, Block 1, Linquist & Miller Addition.

Clark Bormann appeared on behalf of the applicant. He indicated that the permit issued in March 2000 for the theatre expansion showed 264 spaces, although there are currently 285 spaces. He added that the letter included in the packet provided a rationale for the reduced number of spaces based on ticket sales and previous actions of the Board of Adjustment. Under the old parking requirements of one space per four seats, a total of 354 would be allowed. Signatures in support of the request were obtained from all property owners other than the owner of Tour Ice, who refused to sign the petition.

Mr. Thompson asked where people park. Mr. Bormann stated that people use the parking lots adjacent to the theatre, as well as the two remote lots (one across Interstate Avenue to the north and one across Interstate Loop to the east). Mr. Thompson then asked if people also parked on the street. Mr. Bormann replied that he did not know for sure, although it is possible. He added that the owner had not received any complaints regarding where people park.

Mr. Kosir indicated that he had counted the spaces himself and only came up with 268. Mr. Bormann apologized for the error and said that Mr. Kosir could be right, as he relied on information provided by the owner.

Mr. Ihmels stated that access to the theatre was problematic, especially picking up and dropping off kids. He then asked if the north exit would still be available with the proposed remodeling. Mr. Bormann replied that he was unsure whether or not the north exit would still be available. Mr. Ihmels added that the owner may not be getting complaints, but there are issues with parking and access and that a kid is going to get hit by a car with the current situation.

Mr. Thompson stated that the Board bent over backwards to accommodate the theatre with previous variances, while denying them to other businesses in the area when there was a lack of parking.

Mr. Bormann stated that the number of spaces are more than adequate based on actual usage, rather than going with the maximum required by the off-street parking regulations.

Mr. Ihmels indicated that there is a problem already, which will be worse with additional theatre space.

Mr. Thompson added there was a problem in 2000 as well, and that granting this variance would just be making it worse.

Mr. Kosir stated that the remote lots are too far away and people will park closer, either in the street or at other businesses, rather than use the remote lots.

MOTION: A motion was made by Mr. Thompson and seconded by Mr. Loos to deny the request for a variance to reduce the required number of off-street parking spaces from 354 to 284 (existing number) for the purpose of converting existing space (old lobby) into an 80-seat theatre without providing additional off-street parking at 1486 Interstate Loop. With all members voting in favor, the motion to deny the request carried.

Mr. Augustadt suggested that the theatre come up with a plan to alleviate congestion and address the dropping off and picking up kids situation as well as the conflicts between the drop off area and parking. Mr. Ihmels suggested that the plan also address the interior layout in regard to the north exit.

VARIANCE – SHEILA AND GORDY HERMAN – 601 LANSING LANE

Sheila and Gordy Herman requested variances to reduce the side yard setback from 6 feet to 4 feet and to reduce the sum of the widths of the two side yards from 14.6 feet to 11.2 feet to allow the construction of a 12' wide addition on the west side of an existing attached garage. The property is located at 601 Lansing Lane and is legally described as Lot 3, Block 4, Meadow Valley Addition.

Mr. Herman indicated that he had nothing to add regarding his request.

BOARD OF ADJUSTMENT

minutes
April 29, 1993

The Board of Adjustment met on Thursday, April 29, 1993, 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. The following board members were present: Duane Berger, Gilbert Ellwein, Blair Ihmels, Archie Seebart and Larry Thompson.

Mr. Larry Thompson moved that Al Kosir be nominated as Chairman of the Board of Adjustment. Mr. Duane Berger seconded that motion. All members present voted "AYE".

Mr. Gilbert Ellwein then moved that the minutes from the March 18, 1993, Board of Adjustment meeting be approved. Seconded by Mr. Larry Thompson. All members present voting "Aye".



Mr. Clark Bormann appeared before the Board of Adjustment and requested that the Board of Adjustment allow the use of the land north of Grand Theatres for off street parking. Mr. Bormann indicated that the Grand Theatres is planning an addition to their theatre and additional off street parking will be required. Mr. Gilbert Ellwein moved that this request be approved and notification be given to the City Traffic Engineer, so that a crosswalk could be considered for this area. Mr. Larry Thompson seconded the motion. All members present voted "AYE".

Mr. Jerry Roper and Mr. Mort Bank representing the McDonald's Drive-in Restaurant located at 2631 State Street appeared before the Board of Adjustment and requested that the Board grant a variance from the required setback of 50' from State Street. Mr. Ted Boutrous also appeared before the Board of Adjustment and explained that he was in the process of considering the purchase of a parcel of property adjacent to this McDonald's restaurant. The Board discussed with Mr. Roper, how much of a hardship McDonald's currently has, when McDonald's would not need a variance if Mr. Boutrous purchased this property and leased it to McDonald's. Mr. Larry Thompson moved that the Board of Adjustment deny this request. Mr. Gilbert Ellwein seconded the motion. All members voted "AYE".

Mr. Maynard Lantz of 621 North Anderson Street then appeared before the Board of Adjustment and requested that the Board of Adjustment grant him a variance to construct a detached garage on the north side of his residence. The Board Chairman Archie Seebart explained to Mr. Lantz that it was the responsibility of the Board of Adjustment to approve the smallest variance necessary when a variance is needed. The Board discussed some alternative options that Mr. Lantz could consider instead of the detached garage that he was planning to built. Mr. Larry Thompson moved to approve a three foot variance that would allow