Bismarck

Community Development Department

BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA

APRIL 4, 2013

David J Blackstead Conference Room **4:00 p.m.** **2nd Floor / City-County Building**

MINUTES

1. Consider the approval of the minutes of the August 23, 2012 special meeting and the September 26, 2012 meeting of the Board of Adjustment.

REQUEST

2. **Front Yard Setback** - 924 North 11th Street (Lots 1-8, Block 73, Mckenzie & Coffins Addition) First United Methodist Church (owner) and Kenneth J. Klekamp, Inc (applicant) are requesting a variance to reduce the front yard setback along the north and east property lines from 25 feet to 15 feet for the purpose of constructing a fence to accommodate a playground.

OTHER BUSINESS

3. **Other.**

ADJOURNMENT

4. **Adjournment.** The next regular meeting date is scheduled for May 2, 2013.

Bismarck-Burleigh County Community Development Department
221 North 5th Street • PO Box 5503 • Bismarck, ND 58506-5503 • TDD: 711 • www.bismarck.org

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BISMARCK BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES
AUGUST 23, 2012

The Bismarck Board of Adjustment met on August 23, 2012 at 12:15 p.m. in the First Floor Conference Room in the City-County Office Building, 221 North 5th Street. All members were present with Michael Marback, Blair Ihmels, Dean Conrad, Jeff Ubl, Jennifer Clark, and Ken Heier in attendance.

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

Others present were David Mayer, Bismarck; and Jeff Welch, Bismarck.

MINUTES

Chair Marback asked for consideration of the August 2, 2012 minutes.

MOTION: A motion was made by Mr. Conrad and seconded by Mr. Ubl to approve the minutes of the August 2, 2012, meeting as presented. With Ms. Clark, Mr. Conrad, Mr. Ihmels, Mr. Heier, Mr. Ubl, and Chair Marback voting in favor, the minutes were approved.

VARIANCE – GRAND THEATRES – 1486 INTERSTATE LOOP, ETAL.

Chair Marback stated the applicant was requesting reconsideration of a 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 Second Addition). He added the reason for the consideration was prompted by conditions put on the approval of this variance (at the August 2, 2012 Board of Adjustment meeting) which included the installation of a pedestrian activated crossing signal at Interstate Avenue between the off-site parking on the north of Interstate Avenue and the theater facility on the south of Interstate Avenue, and also to provide specific signage directing patrons to overflow parking options. The applicant was denied the option of installing the pedestrian activated crossing signal and was therefore unable to meet the condition placed on the approval of the variance.

Chair Marback introduced Mark Berg, City of Bismarck Traffic Engineer, asking him to provide information as to why the crossing signal cannot be installed. Mr. Berg explained it was not that a crossing signal at that location could not be installed, but rather that it must be warranted before it can be installed. Mr. Berg then cited distances from specific off-site parking lots to the front door of the theater, and he questioned, given the range in distances, which lots were actually getting used and how much pedestrian crossing traffic was being generated by each. He summarized by saying his desire would be to have a study performed after the lots had been in place and people were accustomed to their availability and using them. The study would

examine which lots were being used, how much crossing traffic was generated from each, if a crossing signal would be warranted, and if so, where.

Chair Marback asked Dave Mayer, consultant with Kadrmas, Lee & Jackson, who was representing applicant Jerry Brekke, to provide information on usage of the lots. Mr. Mayer noted any information was only anecdotal, as he was unaware of any studies performed by the owner to determine utilization of lots.

Mr. Conrad expressed two concerns regarding pedestrian crossing signals, the first being the count of 40 pedestrians per hour to warrant a signal. He cited a crossing at Washington Street which he estimates does not come near that number. Mr. Berg stated the pedestrian crossing there is in addition to a traffic signal and, briefly explaining the timing of each device, said the priority is to optimize the vehicular traffic first, then the pedestrian traffic. Mr. Conrad then referenced the existing blinking crossing beacon located on Interstate Avenue east of the proposed off-site parking areas. He commented that due to vehicular speed and situations of distracted driving, he felt strongly about possibly installing another flashing beacon to alert motorists to the possibility of pedestrian traffic in the area.

Mr. Ubl asked Mr. Mayer if the 475 available parking stalls have been verified and Mr. Mayer responded that number to be correct. Mr. Ubl then referenced the minutes from past meetings and surmised that according to the last consideration in 2005, there should now be a 564 space commitment. Mr. Mayer replied the existing parking as submitted for this variance did not account for the recycled asphalt parking lot behind Mr. Lubester, which if included, does bring the count up to 564 spaces. The existing parking included for this application accounts only for the paved and striped stalls per the Ordinance.

Lengthy discussion ensued regarding issues of crosswalks; off-site parking lot utilization; traffic volumes relative to facility use including peak times and staggered show times; a possible drop-off/pick-up loop; and study elements and possible study options.

Mr. Ubl questioned future expansion of the theater and if a master plan for the facility had ever been prepared. Jeff Welch, Jiran Architects, replied there was no master plan at this time.

Mr. Marback referenced previous conversations regarding a possible drop-off area and asked Mr. Mayer if there had been consideration given to the issue. Mr. Mayer responded there had been no conversations with the City to take any additional right-of-way for such a purpose. He further explained the initial scope of work for the project only included the off-site parking, it was not a drop-off issue.

Mr. Welch added he felt the drop-off issue to be a new issue, as in the previous projects the issue had always been the number of spaces, as far as he was aware. Mr. Ihmels responded that was incorrect, saying the minutes of all the previous meetings (relative to the applicant's parking) addressed the drop-off/pick-up issue. He referenced copies of the minutes in the packet and noted it had been a topic of concern every time, but it has not ever been acknowledged by the owner.

Mr. Heier agreed with Mr. Ihmels, adding he felt the Board should not be dealing with this as a variance issue continuously. He added his opinion that there should be a study done and the parking ordinance changed to accommodate the use (as a movie theater facility).

It was noted that staff indicated at the August 2nd meeting changes to the parking ordinance have been discussed. Further discussion ensued specifically regarding space requirements and options for a drop-off/pick-up area at the theater, returning again to the subject of a parking/pedestrian study or survey for the facility.

Mr. Mayer indicated the owner, in previous conversations, agreed with the idea of a study (to determine the need for a lighted traffic crossing); however, a sequence of events is necessary

to arrive at a point where a study can be conducted. Theater expansion, contingent on approval of the off-site lots, must occur to bring people in and create a need for additional parking off-site. The off-site parking must exist before patron's parking and crossing preferences can be studied. He further added the owner is respectfully requesting the elimination of the pedestrian actuated crossing as a requirement at this time, although he would agree to its installation in the future.

Discussion resumed, again focusing on different study options, how studies can be initiated and how they can be done by property owners. It was suggested the theater police their lots and conduct a survey to determine lot usage. Concern was expressed regarding commitment by the owner to do so, and if so, in what time frame.

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 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.

MOTION: A motion was made by Mr. Conrad to remove the requirement of a pedestrian activated crossing as a condition of approval of the 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. The motion was seconded by Mr. Ihmels and with Mr. Ubl voting in favor and Ms. Clark, Mr. Heier, Mr. Ihmels, Mr. Conrad, and Chair Marback voting opposed, the motion was denied.

MOTION: A motion was made by Mr. Conrad to abolish the approved action of the August 2, 2012 meeting of the Board of Adjustment to approve the request for the 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, with the condition there be installed a pedestrian activated signaled crossing at Interstate Avenue between the off-site parking on the north of Interstate Avenue and the theater facility on the south of Interstate Avenue and also to provide specific signage directing patrons to overflow parking options. The motion was seconded by Ms. Clark and with Mr. Heier voting opposed and Mr. Ihmels, Mr. Ubl, Ms. Clark, Mr. Conrad, and Chair Marback voting in favor, the motion was approved.

Staff suggested the applicant be allowed to make the off-site parking areas useable and install signage directing patrons to them, so that patrons' parking and crossing habits may be studied prior to the opening of the five new proposed theaters. This would provide information to aid in determining what crossing options may be necessary.

Mr. Mayer contacted Mr. Brekke by phone and Mr. Brekke participated by speaker phone.

Chair Marback addressed Mr. Brekke, providing him a brief summary of the discussion which had taken place at the meeting as well as referencing minutes of past meetings. He asked Mr. Brekke for his commitment to the following issues and suggestions by the Board:

- Seriously examine the drop-off/pick-up issues at the theater facility to see which options are feasible to alleviate the existing drop-off/pick-up problem and implement a strategy to that effect *(Mr. Brekke indicated agreement.)*
- Perform an in-house study to determine off-site lot usage, particularly those north of Interstate Avenue, so that the City can then pursue a traffic/pedestrian study if it is warranted *(Mr. Brekke indicated agreement.)*
- Begin the surveys of the lots prior to the theater expansion being completed so the information is available when the new theaters open *(Mr. Brekke indicated agreement)*

Mr. Brekke stated he was certainly willing to do all those things (carry out the suggestions of the Board as presented) and offered his commitment to carry them out.

Chair Marback thanked Mr. Brekke for his time, stating the Board would once again take the matter of the variance application under consideration.

The Board resumed its discussion of drop-off/pick-up options and required parking spaces if the parking lot configuration was altered. Mr. Blaskowski emphasized a new site plan would be necessary in the event any drop-off/pick-up area was added. He stated the current site plan had not been approved yet, pending the decision of the Board regarding the off-site parking. The suggestion was made that perhaps the CO (Certificate of Occupancy) be withheld until such time as certain conditions as discussed by the Board had been met.

Mr. Heier stated he disagreed with the discussion taking place, as it is his opinion this belongs in front of the (Bismarck) City Commission. He further stated he has never seen the Board of Adjustment do anything like this (setting conditions on approval of a variance request), and that the Board is amending a parking ordinance for which there is no special circumstance, and therefore, he cannot support it. He explained he has no problem with the concept, but feels it is not the place of the Board of Adjustment; rather, the (Bismarck) City Commission should be making the changes. He further expressed concern that there are no provisions for approving a variance with conditions.

Discussion followed regarding required steps and time necessary to amend the parking ordinance to reflect the 1:5 ratio and the possibility of incorporating language allowing off-site parking without it having to be brought before the Board of Adjustment. Staff proposed amending the Ordinance in this respect for introduction to the Bismarck Planning & Zoning Commission and Board of City Commissioners.

After additional comments, the following points were generally agreed upon by members of the Board:

- Only two issues to be considered were before the Board, that of the required off-street parking spaces being reduced from 1025 to 540 and the allowance of off-site parking

- It is not the Board's responsibility to police safety issues beyond what is stated in the City Ordinance
- The owner/applicant has made assurances and is on record as stating the Board's concerns will be addressed relative to drop-off/pick-up issues and crossing issues
- If the parking ordinance is amended it will address much of what is before the Board today in terms of required parking spaces and off-site parking

MOTION: A motion was made by Mr. Ubl to approve the request for the 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. The motion was seconded by Mr. Ihmels, and with Ms. Clark and Mr. Heier voting in opposition and Mr. Conrad, Mr. Ihmels, Mr. Ubl, and Chair Marback 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 September 6, 2012.

Respectfully Submitted,

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Kim Riepl
Recording Secretary

APPROVED:

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Michael Marback, Chair

BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
SEPTEMBER 20, 2012

The Bismarck Board of Adjustment met on September 20, 2012 at 4:00 p.m. in the 2nd Floor Conference Room in the City-County Office Building, 221 North 5th Street. All members were present with Michael Marback, Blair Ihmels, Dean Conrad, Jeff Ubl, Jennifer Clark, and Ken Heier in attendance.

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

Others present were Cameron McCullough, Bismarck; Matt Reichert, Bismarck; W. Sehreurs, Kitimat, British Columbia; Heather Jones, Bismarck; Jewel Lambrecht, Bismarck; Craig Lambrecht, Bismarck; Mark Dougherty, Bismarck; and Brad Krogstad, Bismarck.

MINUTES

Minutes of the August 23, 2012 Special Meeting were not available for consideration.

FLOODPLAIN ORDINANCE INFORMATION

Chair Marback introduced Ray Ziegler, Floodplain Administrator for the City of Bismarck, and asked him to provide general information on the Floodplain Ordinance. Mr. Ziegler stated the 2009 flooding event due to the ice jam triggered more restrictive regulations. There was much consideration given to the sediment issue at the time, with Oahe Dam backing up. If that were to happen, then our base flood elevations would also increase. That is when the "Two feet above BFE (base flood elevation)" requirement was implemented. He emphasized the BFE fluctuates from south to north (along the river); there is not just one BFE. Part of the intent of the requirement was also to give residents (in the Floodplain) a better insurance rate, as the higher above the BFE a building is constructed, the lower the insurance rate. FEMA looks at local ordinances and bases the rates on that as well. The BFE also has an effect on the community if disaster strikes relative to funding. If the ordinances are outdated, it's possible not all available funding assistance may be received.

Mr. Ziegler added the talk of the sediment building up has subsided, and there has been speculation that our BFE could even drop. He cautioned though, that there have been no studies done and this is only speculation at this point. He summarized that the existing ordinance provides a good measure of security for quite a long time.

Mr. Ziegler referenced the two variance requests before the Board involving the BFE. He stated the maps used to determine BFE are accurate to within about 6 inches. He stated the BFE for 1785 Far West Drive is 1636.1' and the BFE for 231 Sheehan Road is 1635'. He noted in order to get an exact determination of BFE, a registered land surveyor would have to perform that service.

VARIANCE – CRAIG & JEWEL LAMBRECHT-1785 FAR WEST DRIVE

Chair Marback stated the applicants were requesting a variance to eliminate/reduce the required two feet above the Base Floodplain Elevation for the purpose of constructing a two story, 4,279 square feet, addition to the existing house (Lots 4 & 5, Block 1, Fox Island Subdivision).

Ms. Lambrecht stated the main floor of the addition to be all garage space, with living space above the garage. She said there is a 42" difference in garage floors, driveways, and rooflines if the addition were constructed two feet above BFE. She further stated that during the flooding event of 2011, the permanent dike constructed around their property held to 19½-20 feet, with no water in the garage, and only some in the crawl space which was manageable.

Chair Marback referenced the original construction of the home which was built at 1634' BFE and the two additions, one in 1998, built to 1634' BFE and one in 2005, built to 1636' BFE. He questioned at what elevation this new addition would be built and the Lambrechts replied they were unsure of the exact elevation but it would be between the 1634' and the 1636' BFE as the existing garage floor is higher than the original part of the house because there is a sunken living room on the original structure which is lower than the existing garage floor.

Mr. Heier asked Mr. Ziegler for clarification on measuring, whether it is to the top of the foundation or the top of the lowest floor. Mr. Ziegler replied the top of the foundation is often considered the elevation of the lowest floor however, it can be confusing when crawl spaces must be considered. Mr. Lambrecht stated both previous additions are both slab on grade, with no crawl space at all.

Mr. Ubl asked the difference in elevation between the garage and the finished floor adjacent to the garage and Mr. Lambrecht replied it to be a one foot difference.

Mr. Ihmels asked Mr. Ziegler if the applicants would be able to build if the variance was granted. Mr. Ziegler replied that as Floodplain Administrator there are several factors to be considered in regards to this type of situation. He cautioned against jeopardizing the program as a community. He explained that FEMA comes in and performs audits requiring documentation on structures that may appear to be built low, and recently, there have arisen some different attitudes from FEMA regarding garages and accessory buildings as insurable structures.

Mr. Heier asked if there were going to be any utilities area or furnace room in the proposed garage and it was confirmed there would not. He then asked Mr. Ziegler, if, in his opinion, the construction of a garage used only for storage would jeopardize the program relative to FEMA and Mr. Ziegler responded FEMA would probably not be as concerned about it than if there were inhabitable space involved.

The following findings were provided:

<u>Any Variance</u>

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 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.

Floodplain Variance

1. The addition to the existing house may increase flood levels during the base flood discharge.

2. The variance is not the minimum necessary, considering the flood hazard, to afford relief.

3. The applicant has not shown good and sufficient cause for granting the variance.

4. A failure to grant the variance would not result in exceptional hardship to the applicant.

5. The granting of the variance may result in increased flood heights, additional threats to public safety, and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

MOTION: A motion was made by Mr. Ihmels to approve the request for a variance to eliminate/reduce the required two feet above the Base Floodplain Elevation for the purpose of constructing a two story, 4,279 square feet, addition to the existing house. The motion was seconded by Mr. Ubl and with all members voting in favor the motion was approved.

VARIANCE – MATHEW REICHERT-231 SHEEHAN ROAD

Chair Marback stated the applicant was requesting a variance to reduce/eliminate the elevation requirement for an accessory building constructed in the Special Flood Hazard Area (100 Year Floodplain), for the purpose of constructing a 22' x 50' (1,100 square feet) addition to an existing accessory building that was not constructed at the required two feet above the Base Flood Elevation (Lot 2 and the West 15 feet of Lot 1, Block 2, Three Bears Subdivision).

Mr. Reichert approached the Board explaining there was a change in his application relating to the size of the proposed structure. At the time of his application, he was under the impression the largest accessory building he could construct was of a maximum of 2,400 square feet, but has since learned he can build up to 3,200 square feet if a special use permit is approved due to changes in the accessory building ordinance. Therefore, he would request amending his application to include a proposed accessory building up to a maximum of 3,200 square feet. He noted another change, that of the configuration of the proposed building relative to the existing building. Rather than side by side, the proposed accessory building would be positioned

perpendicular to the existing building, which he presented on an aerial photo. He then stated the existing building had no water in it from either the 2009 or the 2011 flooding events due largely to the dike system that had been installed on 48th Avenue, and he added that Burleigh County did have plans to implement a permanent dike system on 48th Avenue in 2013 which would further protect his property. He explained in order to attain the two feet above BFE for the proposed building 4 to 5 feet of fill (possibly more) would be required over an area much larger than the footprint of the building. He stated in checking on insurance coverage, he was informed he could insure the building and the contents, but he could not purchase flood insurance on the building or contents. Mr. Reichert then explained the problem with bringing in the required fill to attain the two feet above BFE is the two buildings would have significantly different elevations and overall heights, causing drainage issues for the existing building (which was built by the previous owner). Because the sidewall heights and eave heights will be very different, it will be very difficult to tie them together.

Mr. Heier asked the total square footage of the existing buildings on the site and Mr. Reichert stated one is 20'x12' (240 square feet) and the other is 30'x38' (1,140 square feet), both built by the previous owner.

Chair Marback asked if the sidewall height of the proposed building was the same as that of the existing building and Mr. Reichert stated the sidewalls will be somewhat higher.

Mr. Ihmels questioned the dimensional accuracy of the drawing of the proposed building on the aerial photo as well as the elevation and construction of the proposed building. Mr. Reichert said the drawing is pretty close, with the proposed building being attached to the existing building at an elevation of approximately 1628' and the same construction of wood frame, steel exterior. Mr. Ihmels asked the elevation of the home on the property and Mr. Reichert guessed it to be about 1634'. He acknowledged there is a significant difference in elevation between the house and the proposed building, but added a major difference is there will be no water or sewer in the proposed building.

The following findings were provided:

<u>Any Variance</u>

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 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.

Floodplain Variance

1. The 1,100 square foot addition to the existing accessory building may increase flood levels during the base flood discharge.

2. The variance is not the minimum necessary, considering the flood hazard, to afford relief.

3. The applicant has not shown good and sufficient cause for granting the variance.

4. A failure to grant the variance would not result in exceptional hardship to the applicant.

5. The granting of the variance may result in increased flood heights, additional threats to public safety and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

MOTION: A motion was made by Mr. Ihmels to approve the request for the variance to eliminate the elevation requirement for an accessory building constructed in the Special Flood Hazard Area, for the purpose of constructing and addition (which requires a Special Use Permit) to an existing accessory building that would bring the total area of accessory building up to 3,200 square feet that was not constructed at the required two feet above the Base Floodplain Elevation. The motion was seconded by Mr. Heier and with all members voting in favor the motion was approved.

VARIANCE – HHM PROPERTIES, LLP-311 ENTERPRISE ROAD

Chair Marback stated the applicant was requesting a variance to eliminate or reduce the number of required parking stalls from 14 stalls with one stall being accessible, provided with an accessible aisle, to zero stalls, in conjunction with the proposed construction of a building for cold storage units (Lot G1 of Lot G and the South 24 feet of Lot H1 of Lot H, Block 11, Eastdale Addition).

Brad Krogstad of Kadrmas, Lee & Jackson, spoke on behalf of Heather Jones and HHM Properties, LLP. He explained the proposed construction was for two cold storage buildings, with no water or sewer provided to them, and neither of them having any office space or occupancy. He disclosed the site was designed with no parking to prevent long term parking of vehicles or trailers and keep the appearance of the property neat and clean.

Mr. Krogstad indicated this is being built in the floodplain and the floodway does cut through the south side of the property. Because of this, there is a substantial portion of the property that is used up by the floodway and the City of Bismarck for a storm water easement, making it unusable by the applicant. He noted on the west side of the property, the City recently (about three years ago) constructed Enterprise Street about four feet below the Floodplain elevation and because the building site and parking lot had to be constructed two feet above (the BFE), there is about a 6 feet differential between the street and the storage buildings, making access to the site and parking difficult.

Ms. Clark asked if there was space on the north side of the lot to bring in additional fill and provide the (parking) spaces there and Mr. Krogstad replied no, the whole lot is being entirely filled and the fill extends well beyond the lot to the north.

He then expressed concern there is obscurity within the parking requirements in the Ordinance in regards to shop condos and warehouses versus strictly cold storage units. While

understanding the need for parking at shop condos and warehouses, it is Mr. Krogstad's opinion there shouldn't be any need for parking (for storage facilities) as a cold storage building doesn't warrant parking stalls.

Ms. Clark asked if there could be a decrease in the size of the building to add a stall and Mr. Krogstad replied if one of the units was eliminated but it (eliminating units) makes the project infeasible. Ms. Clark commented it is hard to justify a reduction in parking from 14 stalls to zero, especially when everyone else is complying with the ordinance. Mr. Krogstad responded in his observation, the cold storage facilities in Bismarck for the most part, are not complying with the parking ordinance, although some may have begun to comply recently. He suggested perhaps staff could provide further comment on that aspect. Ms. Clark asked if there had been a recent change in the ordinance and Mr. Blaskowski replied there had not been a change in the ordinance, but that recently non-structural permitting had begun to be required. This means it falls on Inspections to ensure the parking gets installed, and he acknowledged there are probably examples within the city where the parking requirements were not met as they were not previously enforced.

Mr. Heier stated he was sympathetic to the applicant's desire to abstain from providing parking, further adding he has observed several instances where parking spaces in cold storage facilities end up being rented for secured storage, which is not the intent. He is of the opinion there may need to be a change to the ordinance for parking requirements for cold storage facilities.

Mr. Ubl asked if there was absolutely no room for parking stalls on the property and Mr. Krogstad explained there may be room on the back and the sides, but due to the differential of six feet between the site and the street, the site is already struggling with grades. There is an 8% slope coming into the units, which necessitated setting the units back further than the required setbacks just to make it possible to access the units when coming up from the street. This in turn makes it nearly impossible to provide useable parking spaces, especially accessible spaces.

Mr. Ubl inquired as to a possible change in use of the building and what that would mean for the required parking. Mr. Blaskowski conceded that in situations of just plain storage, 14 stalls seems excessive, but if the use changes or turns into shop condos, then the 1 per 600 is not nearly enough. He said the ordinance, as it is currently, does not fit every type of occupancy. Mr. Krogstad emphasized the building construction does not warrant office or shop condo use and new permits would have to be obtained in addition to water and sewer being supplied. Changing use would also require a new CO (Certificate of Occupancy) to be issued.

Mr. Ihmels asked how many units were in each of the proposed buildings and Mr. Krogstad stated there will be 24 units in the north building, and 10 large units and 5 small units in the south building and the buildings will be of steel construction.

Ms. Jones added there are provisions in the lease agreements for the units prohibiting any business from being run within any of the units, as well as prohibition of occupancy.

There was general agreement expressed by some members of the Board that an amendment to the parking requirement in the ordinance may be in order. Mr. Heier asked Ms. Lee how difficult a change to the ordinance would be and she replied discussions have already taken place due to the increase in construction of shop condos and the parking issues involved with them. She said it would not be difficult to look at other occupancy uses at the same time.

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 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, and may be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Ubl to approve the request for a variance to eliminate or reduce the number of required parking stalls from 14 stalls with one stall being accessible, provided with an accessible aisle, to zero stalls, in conjunction with the proposed construction of a building for cold storage units. The motion was seconded by Mr. Conrad and with all members voting in favor the motion was approved.

VARIANCE – CAMERON & MARY MCCULLOUGH-116 EAST AVENUE B

Chair Marback stated the applicants were requesting a variance to reduce the rear yard setback from 20 feet to 0 feet and reduce the side yard setback from 10 feet to 0 feet for the purpose of constructing a 24' x 24' (576 square feet) accessory building in the same location as the existing accessory building in the rear yard (the South 25 feet of the West 70.63 feet of the East 142.76 feet of Lot 3 and the South 7 feet of the West 24 feet of the East 142.76 feet of the North 50 feet of Lot 3 and the West 70.63 feet of the East 142.76 feet of Lot 4, Block 9, Northern Pacific Addition).

Chair Marback asked the applicant if the existing garage was ready to be demolished and Mr. McCullough confirmed that yes, he had received comments from his neighbor about the poor condition of the garage; the concrete is starting to rot, it has a flat roof, and the garage is only 20 feet deep while his pickup is 19 feet 10 inches long.

Chair Marback then asked if the applicant had a common use agreement (with the neighbor for the shared driveway) and Mr. McCullough replied it was a verbal agreement. Mr. Heier asked how long the McCulloughs had owned the house, and Mr. McCullough replied 10 or 11 years. Mr. Heier commented there appears to be enough room for the proposed 24'x24' garage and still have enough room for the required 10 feet eave-to-eave distance (between the eaves of the garage and the eaves of the house). Mr. McCullough said there would be between 10 and 11 feet from eave-to-eave, adding the new garage will have a peaked roof.

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 RM 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 may 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. Heier to approve the request for a variance to reduce the rear yard setback from 20 feet to 0 feet and reduce the side yard setback from 10 feet to 0 feet for the purpose of constructing a 24' x 24' (576 square feet) accessory building in the same location as the existing accessory building in the rear yard. The motion was seconded by Mr. Conrad and with all members voting in favor the motion was approved.

OTHER BUSINESS

Chair Marback announced Mr. Conrad, citing concerns over inability to attend future meetings, had expressed a need to resign his position as a member of the Board of Adjustment. Discussion took place regarding the number of Board members and the need to have a voting quorum at each meeting. Meeting times were also discussed. It was agreed staff will advertise for applicants to fill Mr. Conrad's position as it will be vital to have someone in place in time for the January, 2013 meeting as Ms. Clark is unable to attend the months of January, February, and March.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on October 4, 2012.

Respectfully Submitted,

_____

Kim Riepl
Recording Secretary

APPROVED:

_____

Michael Marback, Chair

BISMARCK-BURLEIGH COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

BACKGROUND:

Title:
Front yard setback – (25 feet to 15 feet)
924 North 11th Street (Lots 1-8, Block 73 Mckenzie & Coffins Addition)

Status:	**Date:**
Board of Adjustment	April 4, 2013
Owner(s): First United Methodist Church (owner) Kenneth J. Klekamp Inc(applicant)	**Engineer:** Swenson, Hagen & Company

Reason for Request:
Reduce the front yard setback along the north and east property lines from 25 feet to 15 feet for the purpose of constructing a fence to accommodate a playground.

Location:
The property is located at the southwest corner of North 11th Street and East F Avenue (Legacy United Methodist Church).

ADDITIONAL INFORMATION:

1. The proposed variance is in conjunction with a request for a special use permit to operate a child care center in an existing church facility in the R10-Residential zoning district. The child care center request is tentatively scheduled for a public hearing before the Bismarck Planning & Zoning Commission on Wednesday, April 24, 2013.

APPLICABLE PROVISION(s) OF ZONING ORDINANCE:

1. Section 14-04-06(7) of the Code of City Ordinances (R10 Residential District/ Front Yard) states, "Each lot shall have a front yard of not less than twenty-five (25) feet in depth."
2. Section 14-04-06(8) of the Code of City Ordinances (R10 Residential District/Side Yard) states, "No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width."

FINDINGS:

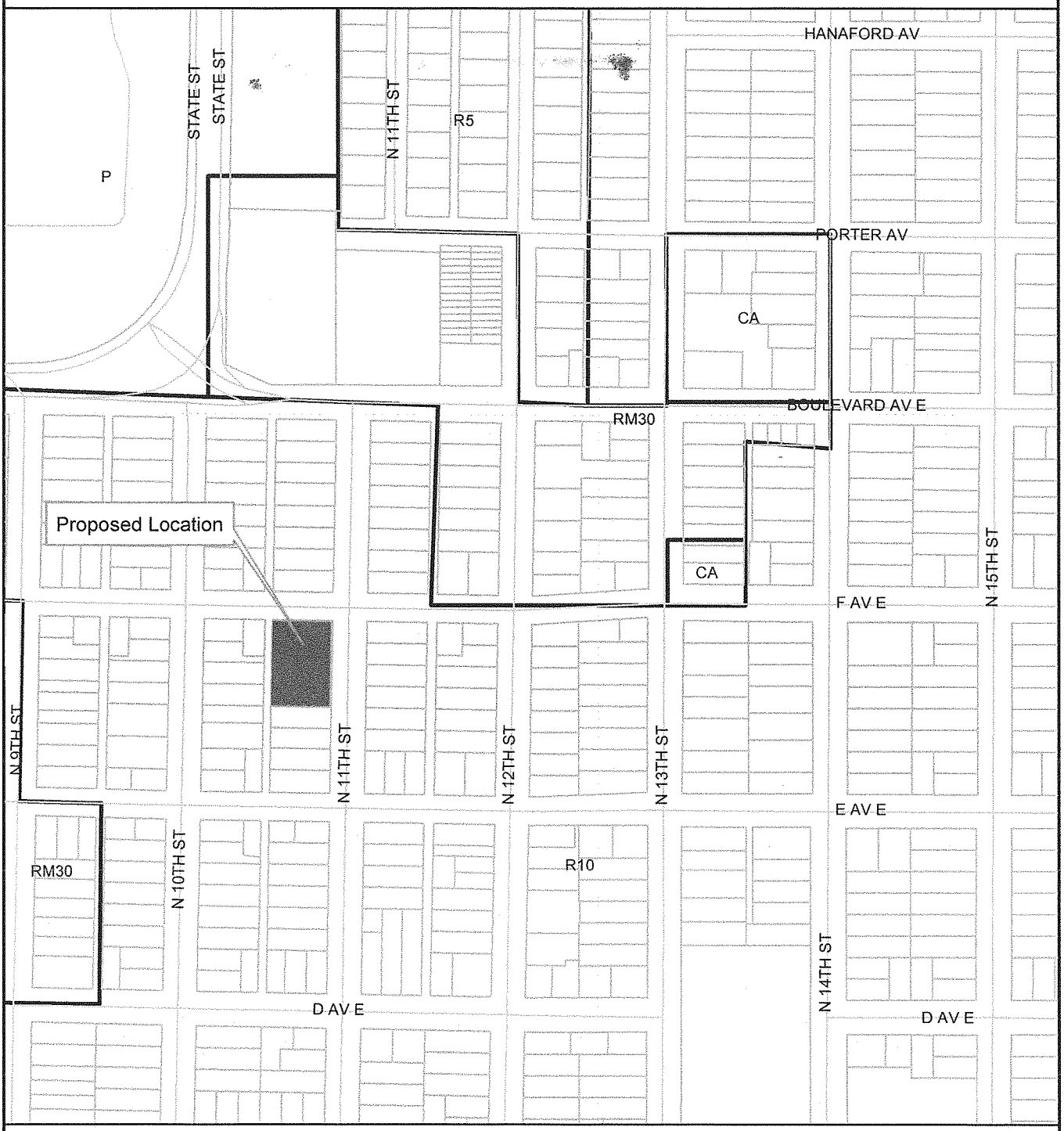
1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R10 zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
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 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; 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
Lots 1-8, Block 73, McKenzie & Coffins Addition
924 N 11th St

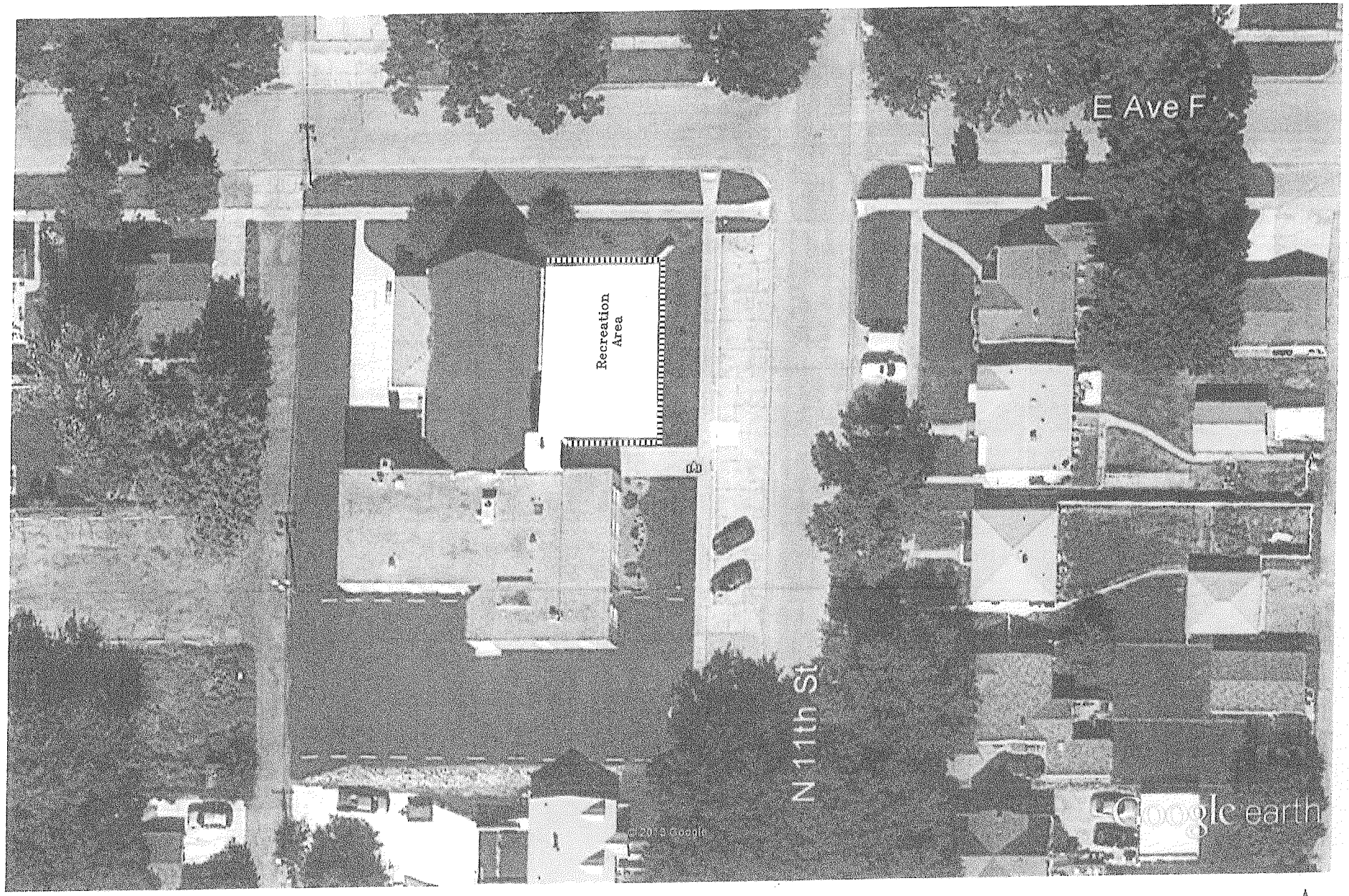


DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated heron.
Map was Updated/Created: March 18, 2013 (hlb)

Source: City of Bismarck

N

0 290 580 Feet



Google earth

feet 200

meters 90

RECD 3/18/13

BIF010

Bismarck

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: _____

CONTACT INFORMATION:

1. Name: Kenneth J. Kleckamp

2. Phone Number: [redacted]

3. Property Address: 924 N. 11th Street, Bismarck, ND 58501

4. Location of Property: ☑ City of Bismarck ☐ ETA ☐ Burleigh Country

5 Reason for variance: NEED 15' setback VARIANCE ALONG North & ~~West~~ EAST property BOUNDARIES TO ACCOMMODATE A PLAYGROUND for A proposed Child CARE FACILITY. THIS SETBACK is CONSISTENT WITH SURROUNDING Property setbacks

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: [illegible]

Date: 3-15-2013

8. Reason for denial: The required fence for a day care play area must be behind the building set back line.

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.