



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA**

July 3, 2013

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

1. Consider the approval of the minutes of the May 16, 2013 special meeting of the Board of Adjustment and the June 6, 2013 meeting of the Board of Adjustment.

REQUESTS

2. **Variance from Section 14-04-19(6)(b)(1) of the City Code of Ordinances (Floodplain District)(Flood Hazard Reduction/Accessory Buildings)** – 8900 12th Street Southeast (Lot B of the N $\frac{1}{2}$, Section 9, T137N-R80W/Fort Rice Township).
Thomas Brown is requesting a variance from the elevation requirement for an accessory building constructed in the Special Flood Hazard Area (SFHA), or 100-year Floodplain, from 2 feet above the Base Flood Elevation (BFE) to 1 foot above the Base Flood Elevation (BFE) for the purpose of constructing a 2,000 square foot (40'x50') accessory building.
3. **Variance from Section 14-04-07(7) of the City Code of Ordinances (RM-Residential)(Front Yard Setback)** – 3400 Nebraska Drive (Lot 1, Block 1, Edgewood Village 4th Addition).
Baptist Home Inc. is requesting a variance to reduce the front yard setback along the east side of the property (Nebraska Drive) from 25 feet to 11 feet for the purpose of constructing a monument sign (6'1" in height, 8'8" in width).
4. **Variance from Section 14-03-08(4)(q)(2) of the City Code of Ordinances (Special Uses)(Child Care Center/ Outdoor Recreation Area)** – 306 E Divide Avenue (City Lands, Part of the E $\frac{1}{2}$ of the E $\frac{1}{2}$ of the SW $\frac{1}{4}$, Section 28, T139N-R80W/Lincoln Township).
Missouri Valley Family YMCA and First Baptist Church are requesting a variance to allow the use of an off-site outdoor recreation area located on an adjacent property to the north (Northridge Elementary school) in place of providing an onsite outdoor recreation area on the existing property (First Baptist Church) in which an after school child care center is proposed to operate in the lower level of the facility.

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



5. **Variance from Section 14-03-10(1)(n) of the City Code of Ordinances (Off-Street Parking)** – 420 South 22nd Street (The North 121.67 feet of the East 75 feet of Lot 4, Block 1, Airport 2nd Addition) and 430 South 22nd Street (The East 75 feet of Lot 4 less the North 121.67 feet, Block 4, Airport Road Addition)

Aurora Borealis Dakota, LLC is requesting a variance to reduce the total number of required off street parking spaces for two warehouse facilities with individual units including office space and restrooms from 20 spaces to 0 spaces; therefore eliminating the required off-street parking for both parcels.

OTHER BUSINESS

6. **Other.**

ADJOURNMENT

7. **Adjournment.** The next regular meeting date is scheduled for August 1, 2013.

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

BACKGROUND:**Title:**

8900 12th Street SE – Variance (Floodplain / Accessory Building)
(Lot B of the N½ of Section 9, T137N-R80W/ Fort Rice Township)

Status:

Board of Adjustment

Date:

July 3, 2013

Owner(s):

Thomas Brown

Engineer / Architect:

None

Reason for Request:

Variance from Section 14-04-19(6)(b)(1) of the City Code of Ordinances (Flood Hazard Reduction/Accessory Buildings) to reduce the elevation requirement for an accessory building being constructed in the Special Flood Hazard Area (SFHA), or 100-year Floodplain, from 2 feet above the Base Flood Elevation (BFE) to 1 foot above the Base Flood Elevation (BFE).

Location:

Along the west side of 12th SE, approximately 600 feet south of 89th Avenue SE.

ADDITIONAL INFORMATION:

1. The property is an unplatted 3-acre tract located within the A – Agricultural zoning district that has been a separate tract since June 1974. Because it existed as a separate tract when this area came under the City's zoning jurisdiction in 2005, it is considered a parcel of record.
2. A building permit may be issued for a new accessory building on a parcel of record with an existing single-family principal building, provided: 1) the parcel of record meets the minimum lot area requirement for a zoning lot in the district in which the parcel is located; 2) the parcel of record has its principal frontage on a dedicated public right-of-way or on a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way not less than twenty feet wide; and 3) the parcel of record is an auditor's lot or aliquot description rather than a metes and bounds description (*Section 14-05-07 of the City Code of Ordinances/ Requirements for a Building Permit*).
3. In order to obtain a building permit for an accessory building on this tract, a plat of irregular description must be prepared and recorded and the property must be rezoned to RR – Residential.

APPLICABLE PROVISION(S) OF ZONING ORDINANCE:

1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, "A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return."
2. Section 14-04-19(6)(b)(1) (FP Floodplain District/Provisions for Flood Hazard Reduction/Accessory Buildings) states, "Accessory buildings over 120 square feet in area shall be subject to the same construction requirements as the residential structure to which it is accessory. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation.

ADDITIONAL INFORMATION – VARIANCES FROM FLOODPLAIN PROVISIONS:

In considering appeals and variance applications, and in addition to the requirements outlined in Section 14-06-02 of the City Code of Ordinances (Powers and Duties), the Board of Adjustment shall consider all technical evaluations, all relevant factors, and the standards specified in this section, including:

1. The danger to life and property due to flooding or erosion damage;
2. The danger that materials may be swept onto other lands to the injury of others;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion;
7. The compatibility of the proposed use with the existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

FINDINGS:Any Variance

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 A – Agricultural or RR-Residential zoning classifications.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that 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 40'x50' (2000 square feet) 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.

(continued)

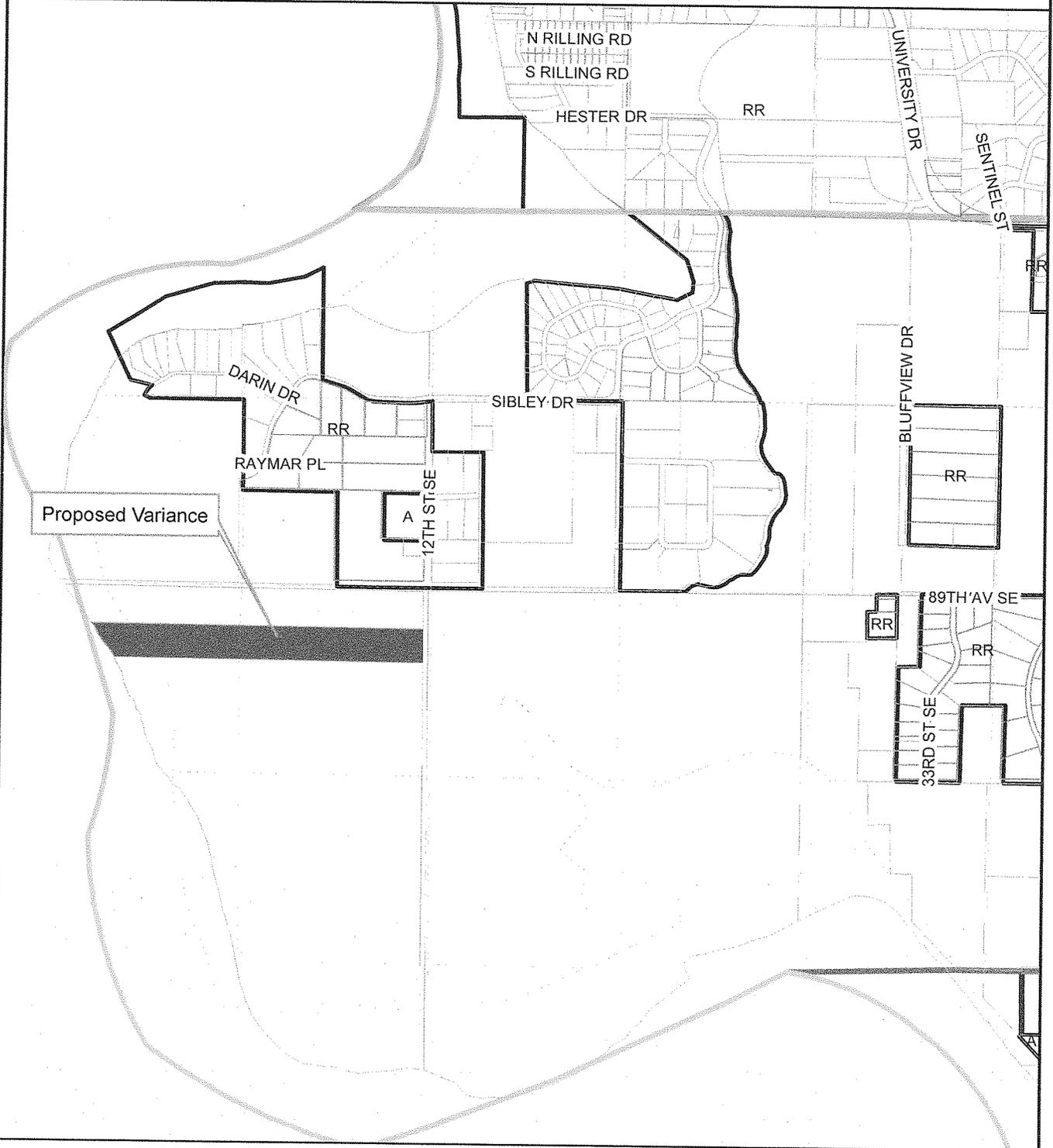
3. The applicant has not shown good and sufficient cause for granting the variance.
4. A failure to grant the variance would not result in exceptional hardship to the applicant.
5. The granting of the variance may result in increased flood heights, additional threats to public safety and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

RECOMMENDATION:

Staff recommends reviewing the findings above and modifying them as necessary to support the decision of the Board. Staff also recommends that if the variance is granted the following condition would apply:

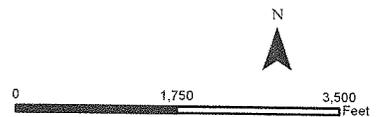
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

Proposed Variance
Lot B, Section 9, T137N-R80W/Ft Rice Township
8900 12th St SE



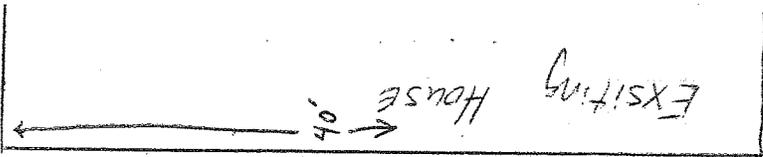
DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: June 5, 2013 (Klee)

Source: City of Bismarck

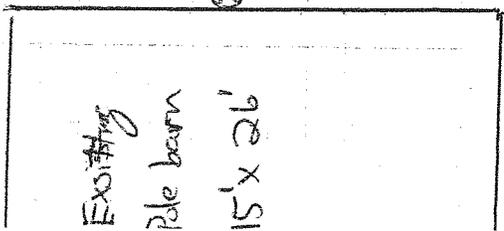
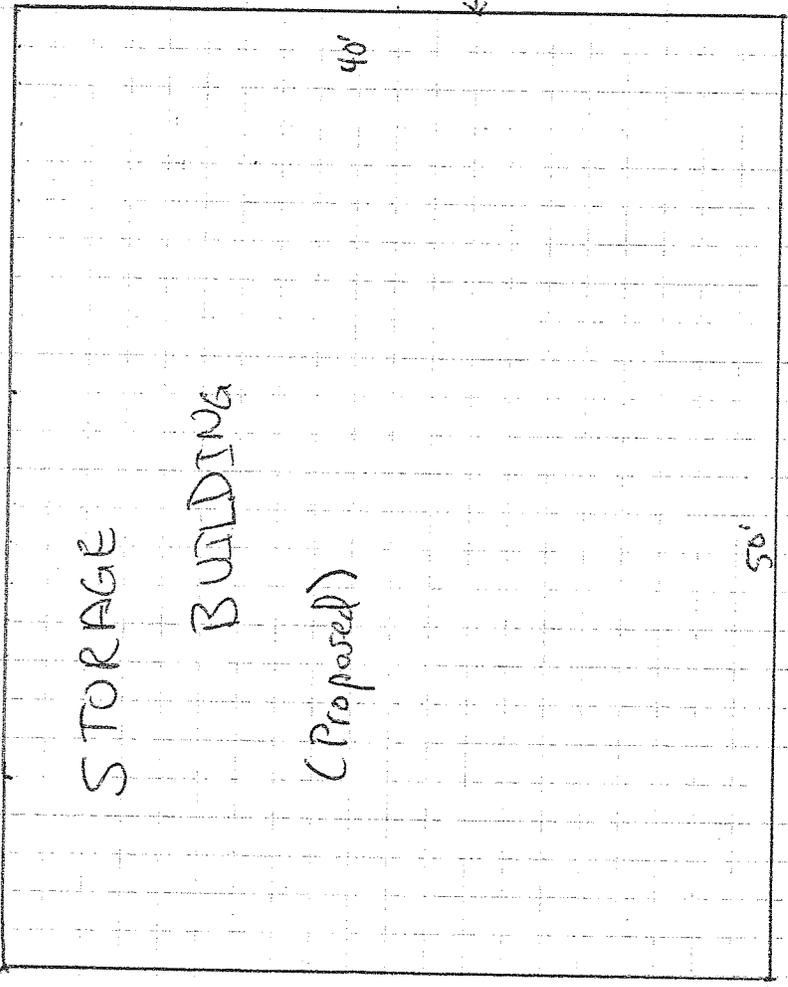


Site Plan

Thomas Brown
8900 12th St SE
Bismarck, ND 58504



This area for access
to rear of home and
to fill propane tank.



Drain Field

Written Statement of Hardship

Thomas Brown

8900 12th St. SE

Bismarck, ND 58504

6-3-13

To whom it may Concern,

I originally built my home in 1991-92. I built above the flood plain at the time (crawl spaces were allowed and grade was height of finished main floor). I added on to my home in '05. At this time no crawlspaces were allowed and you had to build 1 ft above the established flood plain elev. I built my addition slab on grade to match the finished floor on the original house; I was still above the min. elev.

I plan on building a storage building within 25 ft of existing home. If I build 2ft above (to current codes) the water runoff will move toward home and render the space between the structures to be unusable due to grade difference.

I would like to build at or up to 6 in below house elev.

I am also going to raise a section of my road (nearest to river) to stop water intrusion at or greater than the high water mark of "11 Flood. On the east side of house water (flood '11) came into yard at 2 low areas, these too will be raised. Water in area of proposed storage building was less than 4 in at height of flood. This area will be raised at least 1.5ft for proposed storage building.

Relief on this issue is the only reasonable course to build this storage building next to my existing house. Thank you for your time and attention to this matter.

Yours Truly,



Thomas Brown

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

1. Property Address or Legal Description: 8900 12th St SE Lot B Sec 9 137N R80W

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

3. Type of Variance Requested: reduction in building (shop) elevation

4. Applicable Zoning Ordinance Chapter/Section:

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

The 2' above flood plain level would rise the storage building I plan to build above the grade of my house. Water would run from the shop toward my house.
I would like to build it at 1' above flood plain.
This would accommodate drainage away from both house & storage build.

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

I built my home in '91-'92. I built above the flood plain at the time by about 1.5'. If my planned storage building is constructed at 2' above flood plain the the water run-off will move toward my house. If I can build storage building 6" to 10" below the grade of house all the run-off can be made to move away from both home & storage building.

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

6" below my house grade will allow drainage away from house and planned storage building.

**EXCERPTS FROM BISMARCK ZONING ORDINANCE
RELATING TO VARIANCES
(City of Bismarck & ETA Requests)**

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.

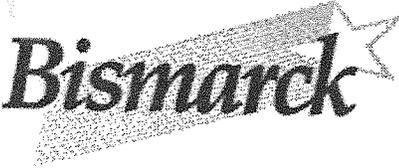
14-06-02. Powers and Duties.

* * * * *

2. Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this article in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the article would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

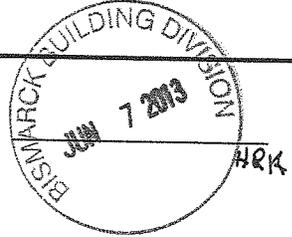
No adjustment in the strict application of any provisions of this article shall be granted by the board of adjustment unless it finds:

- a. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not.
- b. That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of said land or building, and the granting of the variances is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.
- c. That the grant of the variance will be in harmony with the general purposes and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- d. A variance granted under this chapter must be put into use within 24 months of the granting of the variance or it shall lapse and the landowner must reapply.



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: Thomas Brown

2. Phone Number: [REDACTED]

3. Property Address: 8900 12th St SE Sec 9 T137N R80W

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

5 Reason for variance I want to build a storage building approx. 26' from my house. If I build to 2' above flood plain all runoff will move toward house. Elevation @ 1632.3'

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.

Attached

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

Approved

Reviewed By:

[Signature]

Denied

Date:

6-11-13

8. Reason for denial:

Ordinance - 14-04-19, 4.6.1.5.4.1 -
it to be elevated 2' above B.F.E.

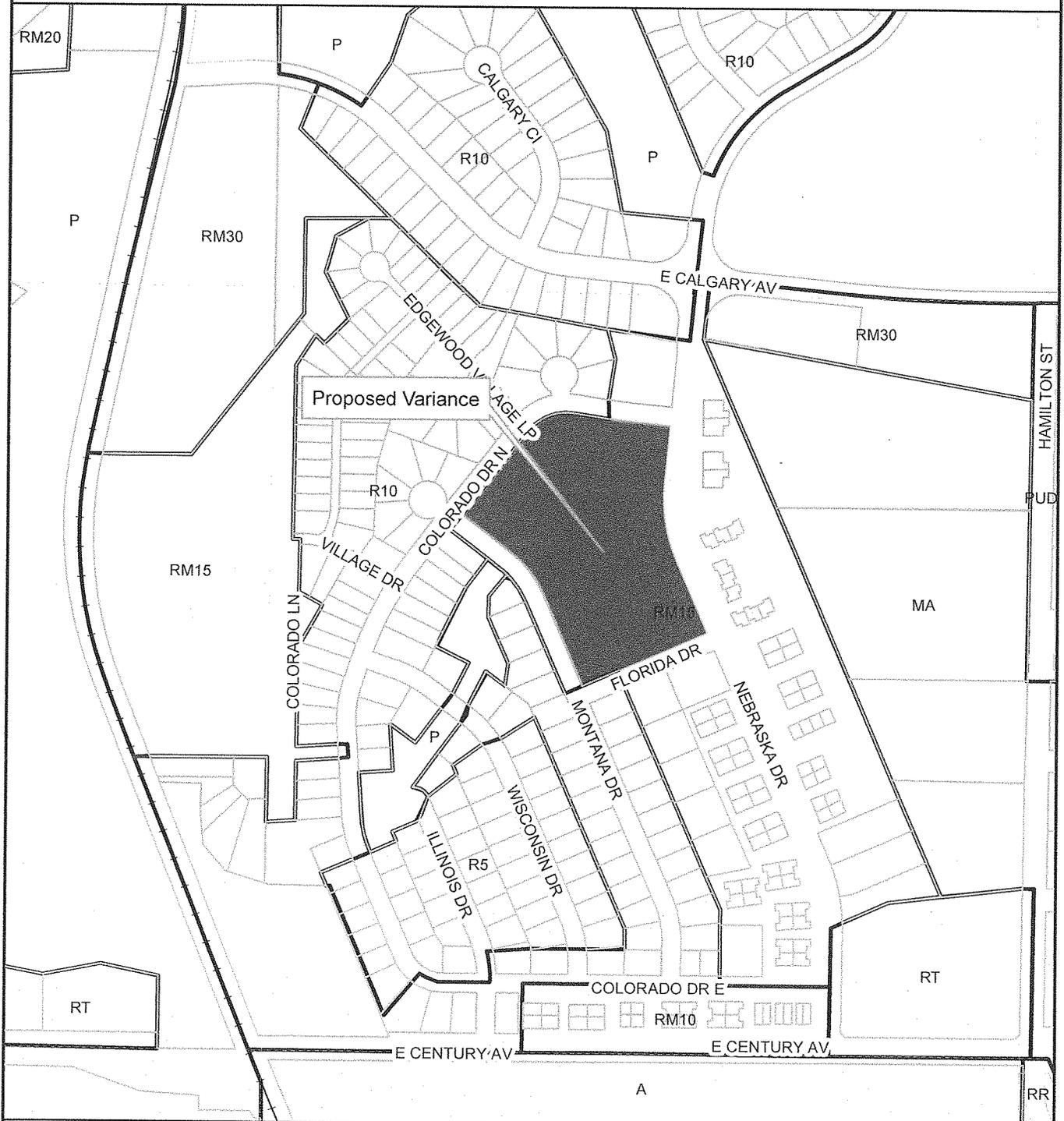
Please make the corrections and resubmit the application

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.

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

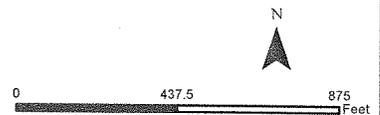
BACKGROUND:	
Title: 3400 Nebraska Drive – Variance (Front Yard Setback) (Lot 1, Block 1, Edgewood Village 4 th Addition)	
Status: Board of Adjustment	Date: July 3, 2013
Owner(s): Baptist Home Inc. (owner)	Engineer: None
Reason for Request: Variance from Section 14-04-07(7) of the City Code of Ordinances (RM-Residential / Front Yard Setback) to reduce the front yard setback along the east side of the property (Nebraska Drive) from 25 feet to 11 feet for the purpose of constructing a monument sign (6'1" in height, 8'8" in width).	
Location: The property is an entire block and is bounded by Colorado Drive to the north, Florida Drive to the south, Nebraska Drive to the east and Montana Drive to the west.	
APPLICABLE PROVISION(S) OF ZONING ORDINANCE:	
<ol style="list-style-type: none"> Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, "A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return." Section 14-04-07(7) of the City Code of Ordinances (RM-Residential Front Yards) states, "Each lot shall have a front yard not less than twenty-five (25) feet in depth. Such front yard setbacks shall apply to all structures permitted on or after August 12, 1997." 	
FINDINGS:	
<ol style="list-style-type: none"> 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-Residential zoning district. The hardship is not caused by the provisions of the Zoning Ordinance. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance. 	
RECOMMENDATION:	
<p>Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.</p> <p>If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.</p>	

Proposed Variance
Lot 1, Block 1, Edgewood Village 4th Addition
3400 Nebraska Drive



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: June 19, 2013 (hjb)

Source: City of Bismarck



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

RECEIVED
JUN 7 8 2013

1. Property Address or Legal Description: 3400 Nebraska Drive
2. Location of Property: City of Bismarck ETA Burleigh County
3. Type of Variance Requested: Set back
4. Applicable Zoning Ordinance Chapter/Section: 14-04-07

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

The 25' setback will not work for the east sign location because the parking lot is already in and there is a relatively steep grade at this location of the property. If the sign was to move 25' from property line it would be in the existing parking lot. We propose locating the sign 11' from the property line. We have attached drawings that show the sign drawn to scale with an 11' setback.

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

The proposed sign location does not allow enough room for the sign to be moved 25' from property line. The customer understands the ordinance and will move the sign on the west end of the property because there is room to do so. There simply is not enough room for the 25' setback to be used on the east sign location.

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

We are requesting that the monument sign on the east side of the property be setback 11' from the property line. Moving the sign further will cause problems with the curb and gutter that is already in. After surveying this sign location we feel this is a fair request and that the sign will not obstruct the view of entering/exiting vehicles.

**EXCERPTS FROM BISMARCK ZONING ORDINANCE
RELATING TO VARIANCES
(City of Bismarck & ETA Requests)**

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.

14-06-02. Powers and Duties.

* * * * *

2. Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this article in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the article would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

No adjustment in the strict application of any provisions of this article shall be granted by the board of adjustment unless it finds:

- a. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not.
- b. That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of said land or building, and the granting of the variances is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.
- c. That the grant of the variance will be in harmony with the general purposes and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- d. A variance granted under this chapter must be put into use within 24 months of the granting of the variance or it shall lapse and the landowner must reapply.



RECEIVED
JUN 18 2013

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

**CITY OF BISMARCK / ETA & BURLEIGH COUNTY
ADMINISTRATIVE VARIANCE APPLICATION**

RECEIVED DATE: _____

CONTACT INFORMATION:

1. Name: Mann Signs Inc. - Scott Bina

2. Phone Number: _____

3. Property Address: Baptist Home Elim Care, 3400 Nebraska Dr.

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

5 Reason for variance The 25' set back does not work on the east side of the property because the parking lot is already in. The signs need to be placed 10' back from property lines to avoid being in the parking lot. These signs placed 10' back from property lines should not impede the view of vehicles entering/exiting the property.

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.

Please see attachment for sign locations on east and west sides of property.

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

Approved

Denied

Reviewed By:

[Signature]

Date:

6-17-13

8. Reason for denial:

Monument signs are required
to be placed behind the building
setback line Ordinance 14-04-07 requires
a 25' setback

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.

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

BACKGROUND:	
Title: 306 E Divide Avenue – Variance (Location of Child Care Facility Outdoor Recreation Area) (City Lands, part of the E½ of the E½ of the SW¼ of Section 28, T139N-R80W/Lincoln Township)	
Status: Board of Adjustment	Date: July 3, 2013
Owner(s): Missouri Family YMCA (applicant) First Baptist Church (owner)	Engineer: None
Reason for Request: Variance from Section 14-03-08(4)(q)(2) of the City Code of Ordinances (Special Uses)(Child Care Center / Outdoor Recreation Area) to allow the use of an off-site outdoor recreation area located on an adjacent property to the north (Northridge Elementary School) in place of providing an outdoor recreation area on the existing property in which an after school child care center is proposed to operate in the lower level of the First Baptist Church.	
Location: At the intersection of North 3 rd Street and East Divide Avenue, south of Northridge Elementary School	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The City of Bismarck Planning & Zoning Commission conditionally approved a special use permit to operate an after school child care center in the lower level of the First Baptist Church at 306 East Divide Avenue, provided that the Board of Adjustment grant a variance from Section 14-03-08(4)(q)(2) of the City Code of Ordinance to allow the use the adjacent outdoor recreation area (playground) located at Northridge Elementary School in place of providing an outdoor play area on their property. 2. The First Baptist Church property does not have any space available on the site for an outdoor recreation area. 3. Bismarck Public Schools had agreed in writing to allow the use of the outdoor recreation area at Northridge Elementary School by the after school child care center. 4. The child care center will have limited hours of operation (3:00pm to 6:30pm) and will only be open the schools are in session. The facility will not operate on the weekends, during vacation breaks or during the summer. 	
APPLICABLE PROVISION(S) OF ZONING ORDINANCE:	
<ol style="list-style-type: none"> 1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.” 2. Section 14-03-08(4)(q)(2) of the City Code of Ordinances (Special Uses) (Child Care Center / Outdoor Recreation Area) states, “Each lot shall provide an outdoor recreation area of not less than seventy-five (75) square feet per child. The recreation area shall be fenced, have a minimum width of twenty (20) feet, a minimum depth of twenty (20) feet, be located on the same lot or parcel of land as the facility is intended to serve, and must be located behind the building setback lines.” 	

FINDINGS:

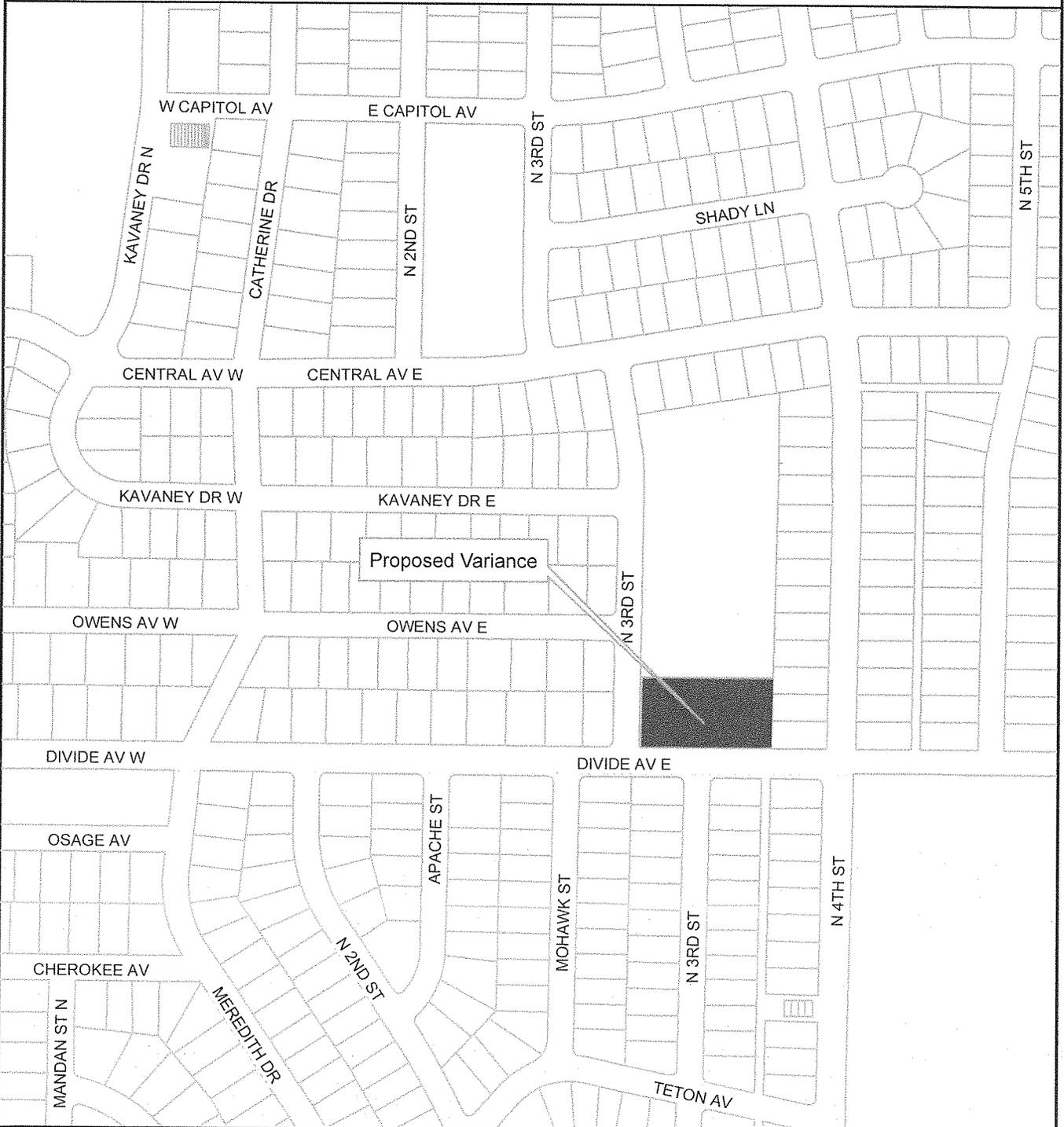
1. The need for a variance is based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5-Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning 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 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.

RECOMMENDATION:

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

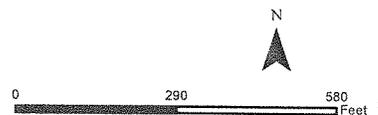
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

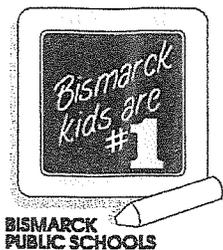
Proposed Variance First Baptist Church 306 East Divide Avenue



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: June 18, 2013 (hjb)

Source: City of Bismarck





Bismarck Public Schools

806 N Washington St.
Bismarck, North Dakota 58501
(701) 323-4000
Fax: (701) 323-4001
www.bismarckschools.org

TAMARA J. USELMAN
SUPERINTENDENT

MICHAEL J. HEILMAN
ASST. SUPERINTENDENT
SECONDARY SCHOOLS
CURRICULUM INSTRUCTION

FRAN A. RODENBURG
ASST. SUPERINTENDENT
ELEMENTARY SCHOOLS
STUDENT SERVICES

EDWIN J. GERHARDT
BUSINESS MANAGER

LISA J. KUDELKA
HUMAN RESOURCES MANAGER

June 18, 2013

Dear Bill Bauman and YMCA:

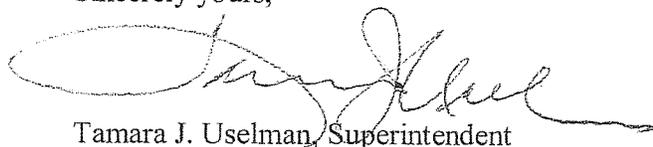
Thank you for contacting us requesting use of Northridge playground by an after school group who shall be located at the church on the property adjacent to Northridge Elementary.

Please know that the school shall allow this use of the Northridge Elementary playground provided the following conditions are met:

- 1) BPS reserves the right of first usage for any school programs that may need the playground for a purpose BPS deems necessary to ensure that there will not be an overcrowding issue. The YMCA shall give to the Northridge principal contact information for notification;
- 2) The YMCA shall coordinate with the Northridge principal so that the two entities are consistent in rules about playground safety for users; and
- 3) The YMCA shall at all times of use properly supervise the playground to ensure physical and emotional safety of the children using it

We look forward to partnering with the YMCA to better serve our students and families!

Sincerely yours,



Tamara J. Uselman, Superintendent

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

1. Property Address or Legal Description: First Baptist Church 300 E Divide Bism ND

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

58502

3. Type of Variance Requested: H-03-08(4)(9)(2)

4. Applicable Zoning Ordinance Chapter/Section: Section 28 T 139 N - R80 W

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.)

First Baptist Church property is not conducive to creating a playground or green space for an afterschool program.

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

First Baptist Church has a great indoor space for 40-60 after school youth and would provide the YMCA the opportunity to create quality afterschool programming for Northridge school. This property is not conducive for outdoor play.

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

This variance would give us the opportunity to have an after school program at First Baptist Church. We have made arrangements with BPS to use the Northridge School playground. This playground is next to the church.

**EXCERPTS FROM BISMARCK ZONING ORDINANCE
RELATING TO VARIANCES
(City of Bismarck & ETA Requests)**

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.

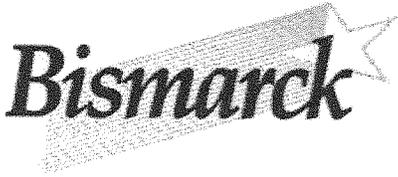
14-06-02. Powers and Duties.

* * * * *

2. Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this article in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the article would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

No adjustment in the strict application of any provisions of this article shall be granted by the board of adjustment unless it finds:

- a. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not.
- b. That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of said land or building, and the granting of the variances is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.
- c. That the grant of the variance will be in harmony with the general purposes and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- d. A variance granted under this chapter must be put into use within 24 months of the granting of the variance or it shall lapse and the landowner must reapply.



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

**CITY OF BISMARCK / ETA & BURLEIGH COUNTY
ADMINISTRATIVE VARIANCE APPLICATION**

RECEIVED DATE: 6.18.13 *ju*

CONTACT INFORMATION:

1. Name: Carmen Traeholt

2. Phone Number: _____

3. Property Address: 306 East Divide Avenue

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

5 Reason for variance We are requesting a variance because the church property is not conducive to creating a green space for a playground. Northridge School is right behind First Baptist and BPS has agreed to "share" the playground with YDC after school program participants.

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

Reviewed By:

Ray Jui

Denied

Date:

6-18-13

8. Reason for denial:

Ordinance 14-03-08 3. Q. (2) requires
an outdoor play area

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.

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

BACKGROUND:	
Title: 420 South 22 nd Street – Variance (Off-street Parking) (The North 121.67 feet of the East 75 feet of Lot 4, Block 1, Airport 2 nd Addition) 430 South 22 nd Street - Variance (Off-street Parking) (The East 75 feet of Lot 4 less the North 121.67 feet, Block 4, Airport Road Addition)	
Status: Board of Adjustment	Date: July 3, 2013
Owner(s): Aurora Borealis Dakota, LLC	Engineer: None
Reason for Request: Variance from Section 14-03-10(1) and Section 14-03-10(1) of the City Code of Ordinances (Off-Street Parking) to reduce the minimum number of required off-street parking spaces for two contractor storage and warehousing facilities, with individual units including office space and restrooms, from 20 spaces to 0 spaces, therefore eliminating the required off-street parking for both parcels.	
Location: The property is located on the west side of South 22 nd Street, between Sweet Avenue and Indiana Avenue.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. A variance was granted to reduce the lot area required for a parcel in the MA zoning district from 10,000 square feet to 9,124 square feet (420 S 22nd Street) and 9,976 square feet (430 S 22nd Street) at the July 5, 2012 meeting of the Board of Adjustment. 2. A lot modification to split the parcel into two parcels was subsequently approved by staff on July 24, 2012. 3. This variance request is in conjunction with a site plan to construct two single story contractor storage and warehousing facilities, located on two separate parcels adjoining one another. The proposed building located at 420 South 22nd Street will have a building footprint of 2,300 square feet and the proposed building located at 430 South 22nd Street will have a building footprint of 5,700 square feet. It is staff's understanding that the applicant has not leased any of the proposed units located in either of the buildings. Without knowing what will occupy the individual units, the amount of required off-street parking cannot be accurately calculated; however, a minimum of 20 spaces (8 spaces for 420 South 22nd Street and 12 spaces for 430 South 22nd Street) would be required for storage facilities as indicated on the proposed site plan. The required off-street parking would need to be increased if the actual use of the space is something other than storage ie, if there is more than one employee, if there are company owned or leased vehicles, or if the spaces are occupied by higher intensity uses, such as a retail use. 	
APPLICABLE PROVISION(S) OF ZONING ORDINANCE:	
<ol style="list-style-type: none"> 1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, "A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return." 	

(continued)

2. Section 14-03-10(1) of the City Code of Ordinances (Off-Street Parking and Loading) states “No application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street parking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. All off-street parking spaces required and all driveways on private property leading to such parking areas shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material.”
3. Section 14-03-10(8) of the City Code of Ordinances (Off-Street Parking and Loading), 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 service; 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.”
4. Section 14-03-10 (1)(i) of the City Code of Ordinances (Off-Street Parking and Loading) states “Office buildings, adult or vocational education facilities, engraving works, blueprinting, and small animal veterinary clinics, including commercial, government and professional buildings, except as otherwise provided for in this section: One space for each two hundred fifty (250) square feet of gross floor area.” According to the site plan submitted for this project two (2) spaces would be required for the proposed building located at 420 South 22nd Street and three (3) spaces would be required for the proposed building located at 430 South 22nd Street.
5. Section 14-03-10(1)(n) of the City Code of Ordinances (Off-Street Parking and Loading) states, “Wholesale, warehouses and storage buildings, lumberyards and all other similar facilities. One space for each six hundred (600) square feet of storage area.” According to the site plan submitted for this project six (6) spaces would be required for the proposed building located at 420 South 22nd Street and nine (9) spaces would be required for the proposed building located at 430 South 22nd Street.

FINDINGS:

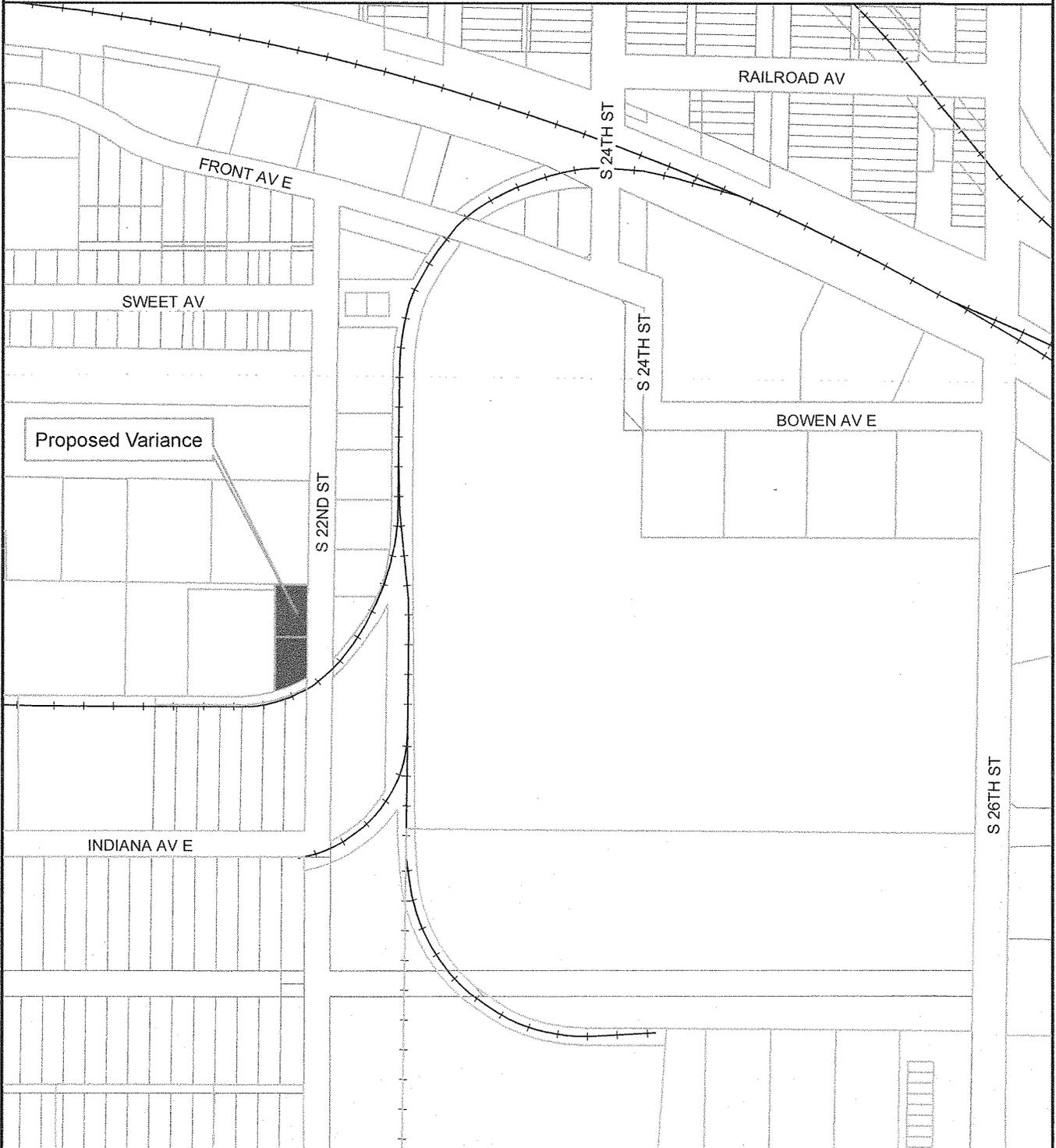
1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the MA –Industrial zoning classifications.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

RECOMMENDATION:

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

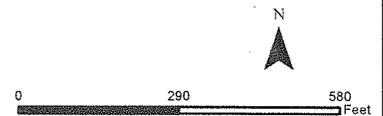
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

Proposed Variance
East 75' of Lot 4, Block 1, Airport 2nd Addition
420 & 430 South 22nd Street



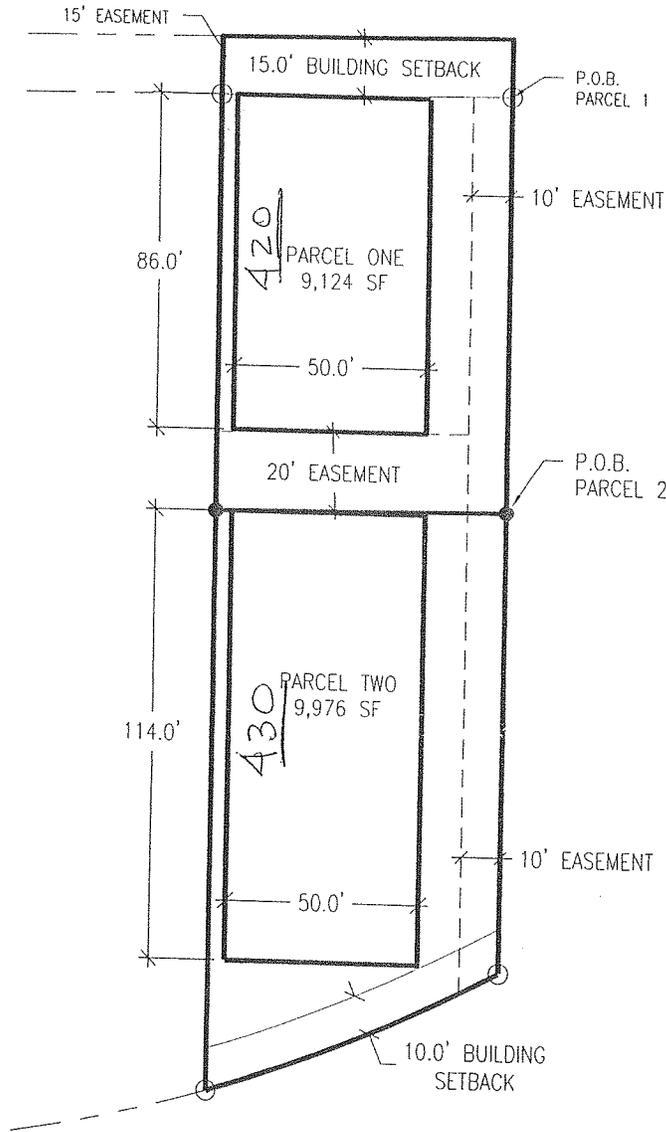
DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: June 14, 2013 (hib)

Source: City of Bismarck



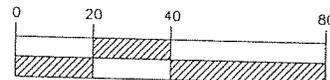
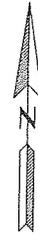


PRELIMINARY BUILDING LAYOUT



420 S. 22nd St
 BUILDING A
 50' BY 86' = 4,300sqft
 LOT SIZE = 7,625sqft

430 S. 22nd St.
 BUILDING B
 50' BY 114' = 5,700sqft
 LOT SIZE = 10,338sqft



Lightowler Johnson Associates
 ARCHITECTS
 PHONE 701.291.1350
 FAX 701.291.1353
 WEBSITE WWW.LJA.COM
 BISMARCK, ND

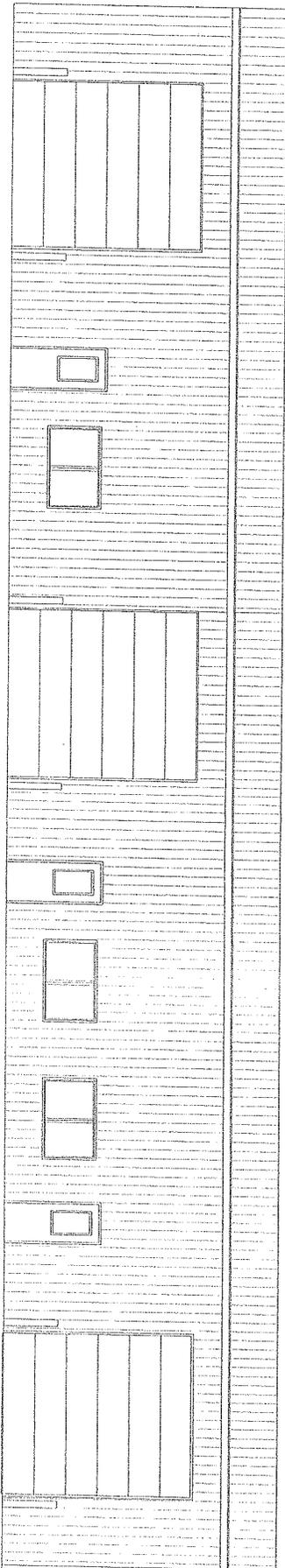
REVISIONS

AURORA BOREALIS
 BISMARCK, ND

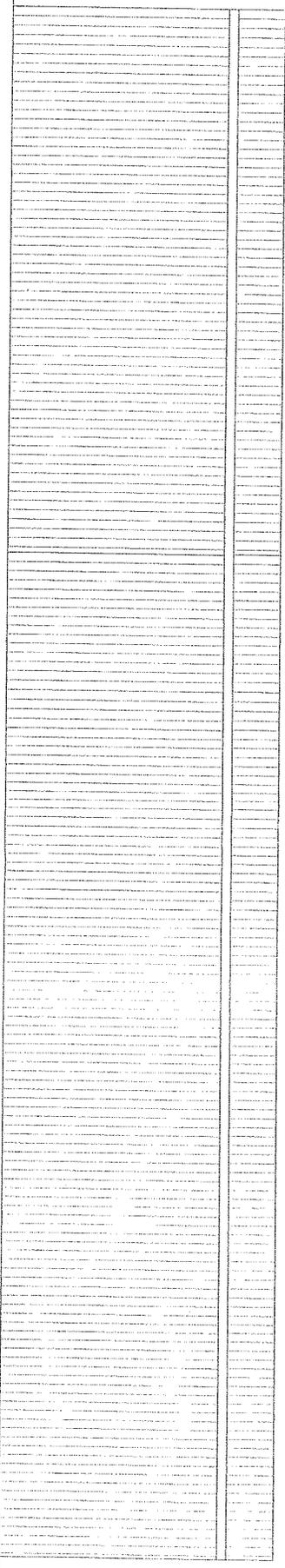
PLEASE BE ADVISED THAT THIS SET OF PLANS HAS BEEN PREPARED FOR BUILDING CODE AND PLAN REVIEW ONLY. THIS SET OF PLANS SHOULD BE CONSIDERED PRELIMINARY AND NOT FOR ANY BIDDING, FINAL ESTIMATE OR CONSTRUCTION. THIS SET OF PLANS SHALL NOT BE DEEMED FINAL UNTIL ALL APPROVALS HAVE BEEN OBTAINED FROM ALL CODE AUTHORITIES HAVING JURISDICTION. ANY BID SUBMITTED, BASED ON THIS SET OF PRELIMINARY PLANS, IS SUBJECT TO CHANGE AND IS INCOMPLETE.

LJA JOB #	1265
PROJ. DATE:	2-7-12
FILE NAME:	1265
DWG. SCALE:	
CHECKED BY:	
DRAWN BY:	

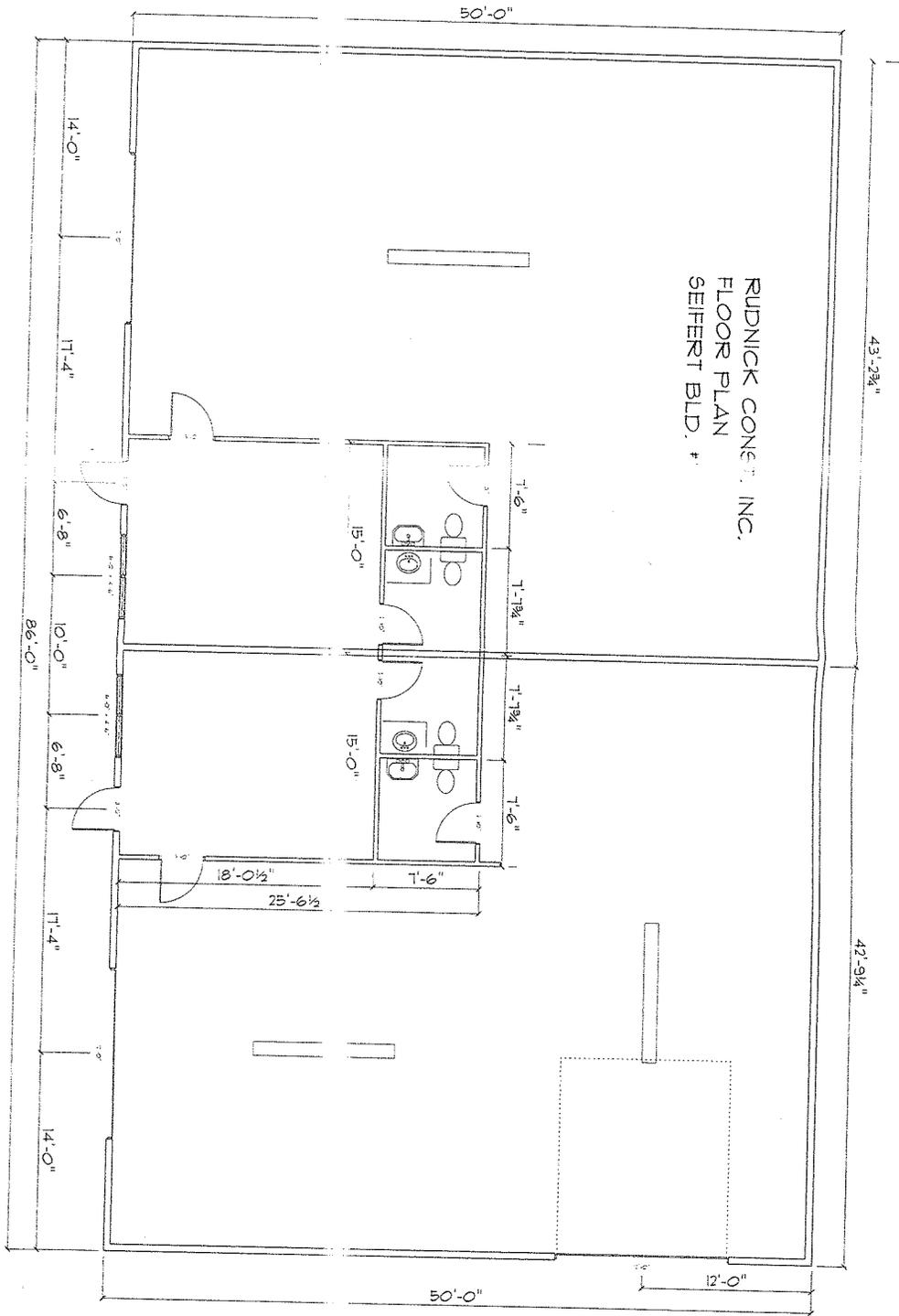
SHEET DESCRIPTION



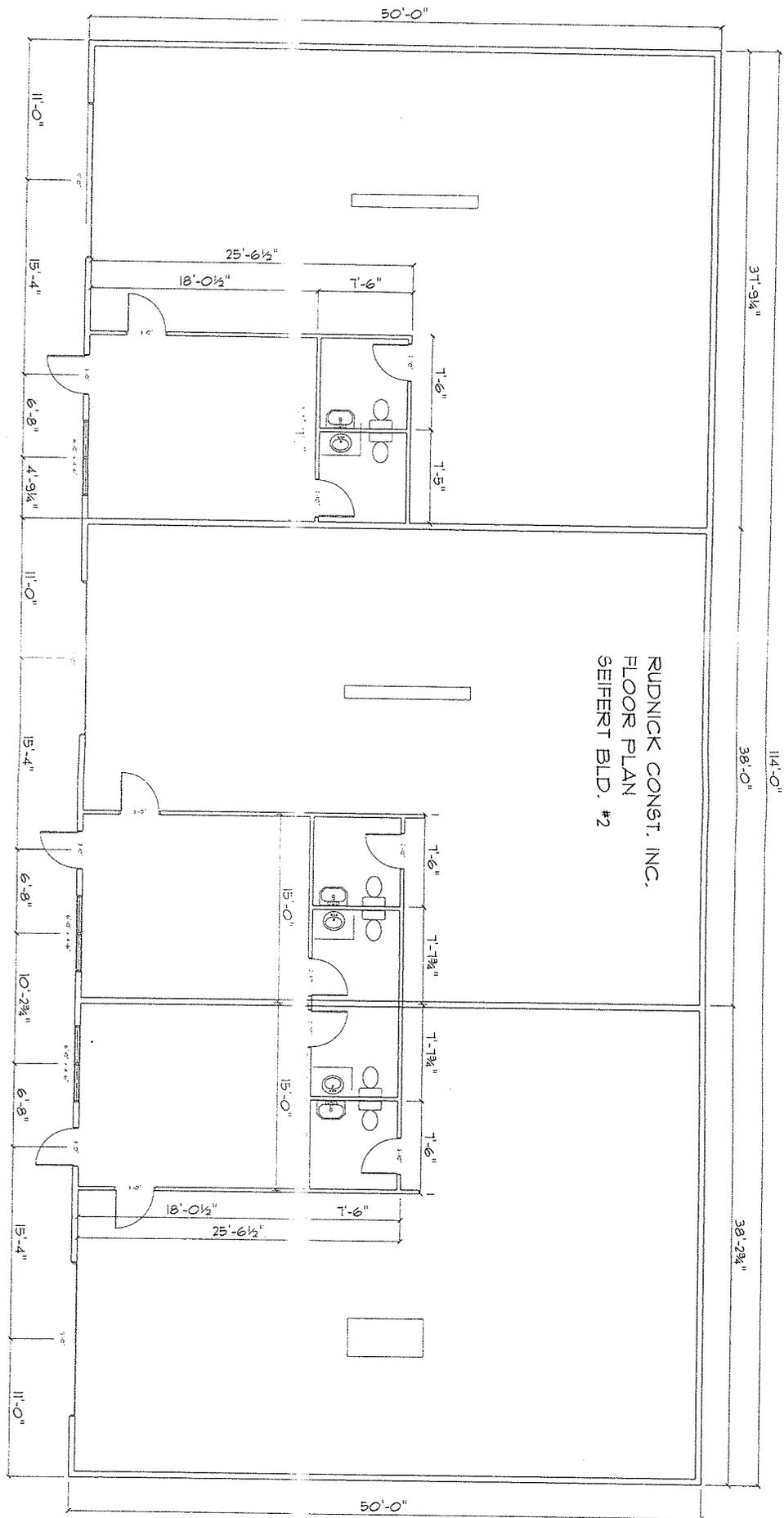
RUDNICK CONST. INC.
FRONT ELEVATION
SEIFERT BLD. #2



RUDNICK CONST. INC.
REAR ELEVATION
SEIFERT BLD. #2



474



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.)

Parking should not be required as the intended use of the building is storage.

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

Building size would have to be considerably smaller to accommodate parking.

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

Parking requirements would significantly reduce usable space for the intended storage building

**EXCERPTS FROM BISMARCK ZONING ORDINANCE
RELATING TO VARIANCES
(City of Bismarck & ETA Requests)**

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.

14-06-02. Powers and Duties.

* * * * *

2. Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this article in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the article would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case.

No adjustment in the strict application of any provisions of this article shall be granted by the board of adjustment unless it finds:

- a. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not.
- b. That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of said land or building, and the granting of the variances is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.
- c. That the grant of the variance will be in harmony with the general purposes and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- d. A variance granted under this chapter must be put into use within 24 months of the granting of the variance or it shall lapse and the landowner must reapply.

**EXCERPTS FROM BURLEIGH COUNTY ZONING ORDINANCE
RELATING TO VARIANCES
(Burleigh County Requests)**

Article 3. Definitions.

For the purposes of this ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural shall include the singular; the word "shall" is mandatory and not directory.

Variance: A grant of relief from the literal provisions of this ordinance in situations where strict adherence would cause practical difficulty or unnecessary hardship because of circumstances unique to the property.

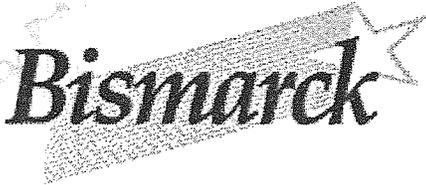
Article 28. Variances.

Section 3. Required Findings

The Board of County Commissioners may vary or adjust the strict application of any of the requirements of this article in the case of an exceptionally irregular, narrow, shallow, or steep lot, or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the article would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved. It is not the intent of this article to allow a variance for a land use that is not permitted within the particular zoning district.

No adjustment in the strict application of any provisions of this ordinance shall be granted by the Board of County Commissioners unless it finds:

- A) That there are special circumstances or conditions, fully described in the findings of the Board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this article, whether in violation of the provisions of the article, or not.
- B) That, for reasons fully set forth in the findings of the Board, the circumstances or conditions so found are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of said land or building, and the granting of the variances necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that would accomplish the relief sought by the applicant.
- C) That the grant of the variance will be in harmony with the general purposes and intent of this ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- D) In no case shall any variance be more than a minimum easing of the requirements; in no case shall it have the effect of reducing the traffic capacity of any major or secondary street; in no case shall it be in conflict with existing zoning regulations.
- E) In granting variances the Board of County Commissioners may require such conditions as will, in its judgment, secure substantially the objectives of the standards and regulations so affected.
- F) A variance granted under this article must be put into use within twenty-four (24) months of the granting of the variance or it shall lapse and the land owner must reapply.



CITY OF BISMARCK / ETA & BURLEIGH COUNTY



RECEIVED DATE: *WWW*

CONTACT INFORMATION:

1. Name: RUDNEK CONST. INC

2. Phone Number: [REDACTED]

3. Property Address: 420 & 430 SOUTH 22ND ST.

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

5 Reason for variance PARKING requirements would significantly reduce usable space for the intended storage buildings & usable use of the lots.

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.

SEE Preliminary Building Layout

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

Approved

Denied

Reviewed By:

[Signature]

Date:

6-11-13

8. Reason for denial:

Ordinance 14-03-10 require off-street parking

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.

BISMARCK BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES
MAY 16, 2013

The Bismarck Board of Adjustment met on May 16, 2013 at 4:00 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, Jeff Ubl, Jennifer Clark, and Ken Heier in attendance.

Staff members present were Kim Lee (Planning Manager), Jenny Wollmuth (Planner), Ray Ziegler (Building Official/Zoning Administrator) and Hilary Balzum (Office Assistant).

Others present were Blaine Nordwall, Mary Wendt, Bruce Wendt, Nina Graves, Angela Kiesz, Lugene Geuber, Michelle Stahl, Vince Bitz, Marjorie Bitz, Douglas Kitzen, Cynthia Graham, Mike Jangula, Dave Thompson, Skip Duemeland, Mike Muehler, Bill Rogers, Allen Roth, Al Nosbusch, Robert Graham, Peg Schwichtenberg, Richard Schlenker, Toni Ganje, Nadine Philp, Doug Philp, Dave Salter, Bea Webster, Mel Webster, T.J. Corcoran and Dave Patience (Swenson, Hagen & Co.).

MINUTES:

Chair Marback asked for consideration of the August 23, 2012 minutes.

MOTION: A motion was made by Mr. Ihmels and seconded by Mr. Ubl to approve the minutes of the August 23, 2012, meeting as presented. With Ms. Clark, Mr. Ihmels, Mr. Heier, Mr. Ubl, and Chair Marback voting in favor, the minutes were approved.

Chair Marback asked for consideration of the September 20, 2012 minutes.

MOTION: A motion was made by Mr. Ubl and seconded by Mr. Ihmels to approve the minutes of the September 20, 2012, meeting as presented. With Ms. Clark, Mr. Ihmels, Mr. Heier, Mr. Ubl, and Chair Marback voting in favor, the minutes were approved.

VARIANCE – FRONT YARD SETBACK – 924 NORTH 11TH STREET

Chair Marback stated the applicant was requesting a variance to reduce the front yard setback along the north (East Avenue F) and east (North 11th Street) property lines from 25 feet to 15 feet and to reduce the side yard setback located along the west property line (alley) from 6 feet to 0 feet for the purpose of constructing fenced areas to accommodate two separate playgrounds for a proposed day care center.

Dave Patience spoke to the Board and stated that a neighborhood meeting was held regarding this request and it was decided that the request to reduce the setback along the west property line from 6 feet to 0 feet has been withdrawn, but the applicant would still like to change the north and east setbacks from 25 feet to 15 feet.

Mr. Patience indicated that the 15 foot setback would be consistent with other structures in the neighborhood. Pictures taken by Mr. Patience and distributed to the Board of Adjustment are attached as Exhibit A.

T.J. Corcoran said that this variance request will allow the child care center to construct play structures with the appropriate fall zone clearance and will increase the usable space for a playground and equipment.

Mr. Ihmels noted that the proposed request would help put everything on the property in line with the rest of the neighborhood. Mr. Heier agreed, noting that most of the neighboring properties have structures that are within the 15 foot setback.

Chair Marback opened the public hearing at this time and reminded those in attendance that comments should only be made regarding the request of changing the setbacks.

Toni Ganje stated that she has 129 signatures from people that do not want this variance to be approved. Signatures of those opposed to the request are attached as Exhibit B.

Angie Keyes said that she had wanted to raise her garage in order to pour new concrete and their request was denied. She was told when she wanted to build a garage that she could not go through the Board of Adjustment. She also stated the alley space that was indicated as a potential through-way for the day care center is sometimes needed for neighborhood parking. Pictures taken by Ms. Keyes are attached as Exhibit C.

Blaine Nordwall of Nordwall Law Office spoke on behalf of Robert and Cynthia Graham and said that the center is supposed to accommodate 200 children with a play area but that Ordinance 5958 which requires 75 square feet of outdoor space per child is not being adhered to. He also stated the combined total square footage of the parking lot and the building are not to exceed 40 % of the lot and there is no way that all of the requirements can be met on that lot. He closed by saying the efforts for a variance are futile because the center could not operate even if the proposed variance request is approved.

Mr. Nordwall's comments are attached as Exhibit D.

Skip Duemeland said he took pictures of the adjacent properties to show that nearly all of the surrounding setbacks are 15 feet and some even look to be only seven or eight feet. He said this is a hardship for everybody involved, that childcare is not easy to find right now and that that's what variance requests are for.

Myrna Graves said she has a concern of the fence that would go around the play area obstructing views worse than they already are and that she worries about the safety of the high school children that drive in the area every day.

Mr. Patience returned to the Board to explain that they will make sure that any fences installed do not violate the sight triangle in order to help with issues of being able to see around them.

Nadine Philp said that her concerns are of not being able to pass each other in the alley. People will have to pull off to the sides even more than they already do to try and make room and having a fence right next to it will make this that much more difficult to pass oncoming vehicles.

Al Nosbusch stated that he lives across from the alley and that he always sees people trying to squeeze through the alley, adding that they drive over the existing flower beds as well as dangerously close to the garage that sits on the corner of the alley. He said garbage trucks take up almost the whole alley and asked if there would be the option to make the alley one-way traffic only. He ended with saying he's concerned about children playing right on the other side of a fence next to so much traffic.

Chair Marback asked Mr. Patience if he could elaborate on the drop-off area at the facility. Mr. Patience replied that 14 to 16 cars could drop off children at one time with the average drop-off time being about five minutes and these would be on both the east and south sides of the property.

Bill Rogers said that it will be very difficult for busses to access the property, adding that a staff member will need to come out to the bus to escort the children off and into the building. He said there are going to be several issues just with trying to get in and out of the parking lot and that the safety of the most important people involved in all of this needs to be their first priority.

Al Roll said he is worried that if this variance request is denied, that no daycare will ever be able to meet the requirements of occupying the existing building. He fears that it will end up sitting empty.

Mr. Duemeland returned to explain that is indeed very difficult to sell a church and that it will be a worse hardship on the community to have an empty church in the neighborhood, so a daycare may be the best solution.

Michelle Stahl stated that anything that blocks views is a safety concern for everybody around it. Mr. Corcoran explained that there would be a 20 foot buffer on the east side of the property so there will be no safety issue there. He went on to say that the request to reduce the six foot setback to zero feet has been withdrawn so he is unsure where the safety concerns are coming from.

MOTION: A motion was made by Mr. Ihmels to deny the request for a variance to reduce the front yard setback along the north (East Avenue F) and east (North 11th Street) property lines from 25 feet to 15 feet with the request of reducing the setback on the west property line from six feet to zero feet having already been withdrawn. The motion was seconded by Mr. Ubl and with Mr. Ubl voting in favor and Ms. Clark, Mr. Heier, Mr. Ihmels and Chair Marback voting opposed, the motion was denied.

MOTION: A motion was made by Ms. Clark to approve the request for a variance to reduce the setback to 20 feet instead of 15 feet on the north and east sides of the property. The motion was seconded by Mr. Ihmels and with Mr. Ihmels, Mr. Ubl and Chair

Marback voting opposed and Ms. Clark and Mr. Heier voting in favor, the motion failed to pass.

With there being no new motion in place, Chair Marback explained to the applicants' representative, Mr. Corcoran, that their request may now be appealed to the City Commission.

VARIANCE – REAR YARD SETBACK – 1331 SOUTH 7TH STREET

Chair Marback stated that the applicant is requesting a variance to reduce the rear yard setback along the east property line from 20 feet to 12 feet in order to convert the existing 624 square foot detached garage to a 1,152 square foot attached garage by constructing a 528 square foot addition the existing garage.

The applicant showed a layout of the request to the Board and said that the rearyard setback for a detached garage would have worked but with an attached garage the 20 foot requirement will not. He went on to say he has visited with his neighbors and that they have no concerns with his idea.

Mr. Ihmels asked Planner Jenny Wollmuth if once the addition is constructed would the property be in compliance with the allowed lot coverage requirement. She answered that yes, it would. She added that the property is in R5-Residential zoning district and 30% lot coverage is allowed. The owner would have 380 square feet of allowable space left once this project is complete.

MOTION: Mr. Heier made a motion to approve the request of to reduce the rear yard setback along the east property line from 20 feet to 12 feet in order to convert the existing 624 square foot detached garage to a 1,152 square foot attached garage by constructing a 528 square foot addition the existing garage and Mr. Ihmels seconded the motion. With Ms. Clark, Mr. Heier, Mr. Ihmels, Mr. Ubl and Chair Marback voting in favor, the motion was approved.

VARIANCE – ELEVATION REQUIREMENT – 4501 HUBER DRIVE

Chair Marback stated that the applicant is requesting a variance to eliminate the elevation requirement for an accessory building constructed within the Special Flood Hazard Area (SFHA)(100-year Floodplain) for the purpose of constructing a 30' x 40' (1200 square feet) accessory building.

The applicant explained to the Board that during the last flood, a temporary road was constructed on his property and that the existing road (Huber Drive) is not going to be raised. He added that his property will be protected by the permanent levee that is planned and that he will still carry flood insurance on his accessory buildings.

Ms. Clark asked the applicant if he would be willing to raise the building one or two feet, understanding that he would have to raise it five feet to be in compliance. Mr. Muehler said no.

Ms. Clark went on to say she is concerned about setting a precedent for Floodplain variances for accessory buildings to not be elevated as is the requirement.

Mr. Heier asked if making approvals of this nature could compromise the eligibility of the community for flood insurance by FEMA. Mr. Ziegler (Zoning Administrator and Floodplain

Administrator) explained that FEMA has more of a concern with the loss of insurable items, not necessarily structures like this.

MOTION: Mr. Ihmels made a motion to approve the request for a variance to eliminate the elevation requirement for an accessory building constructed within the Special Flood Hazard Area (SFHA)(100-year Floodplain) for the purpose of constructing a 30' x 40' (1200 square feet) accessory building and Mr. Heier seconded the motion. With Ms. Clark voting in opposition and Mr. Heier, Mr. Ihmels, Mr. Ubl and Chair Marback voting in favor, the motion was approved.

Mr. Ubl went on to ask if it was FEMA that urged the ordinance to be put in place. Mr. Ziegler replied yes they did and that it was agreed upon as a community based on discussions with FEMA that the elevation requirement for accessory buildings to be elevated to two feet above the Base Flood Elevation be added into the city's zoning ordinance.

Mr. Heier asked the applicant, Mr. Muehler, if it would be an option to pour a shallow foundation and use less fill dirt. Mr. Muehler said that most of the outbuildings on neighboring properties are at ground level and none of them took on water in any of the recent flooding. He closed by saying most of the new development around his property have outbuildings and the mounds they are required to be on would be unsightly and protected by the permanent protection that is coming anyway.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:39 p.m. to meet again on June 6, 2013.

Respectfully Submitted,

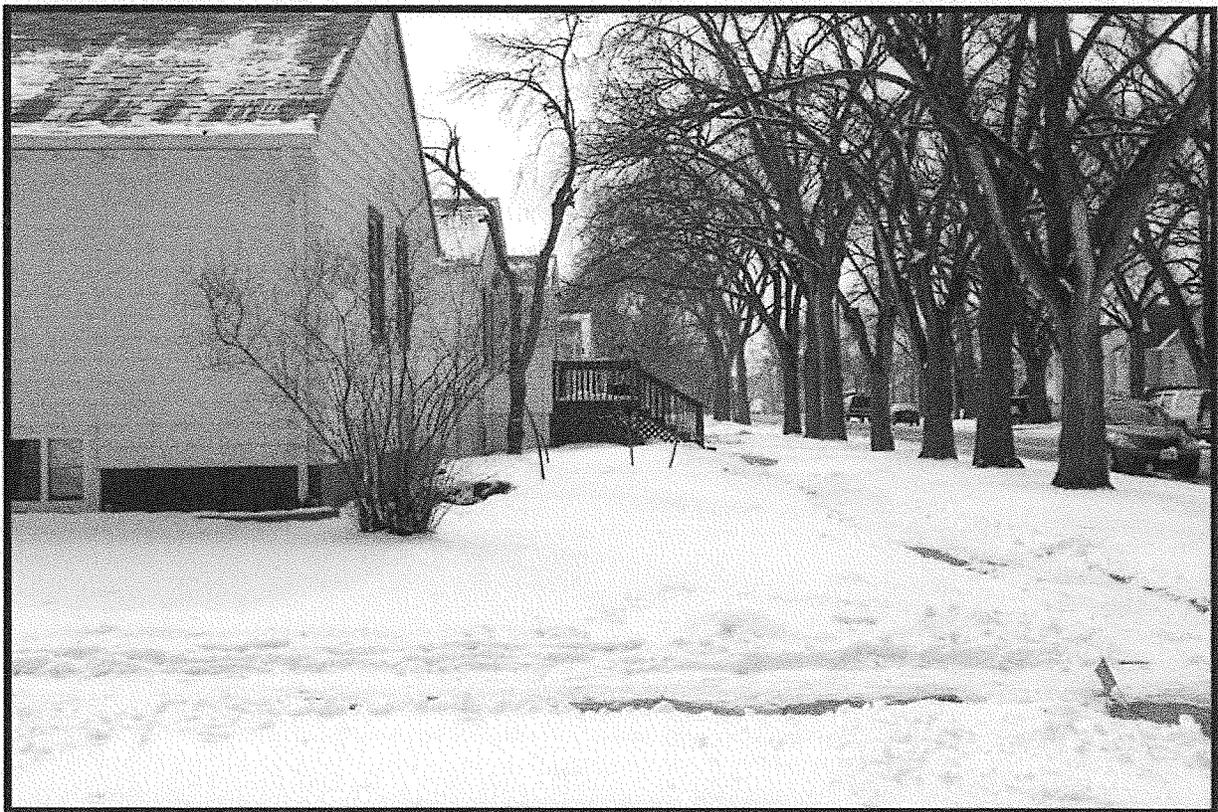
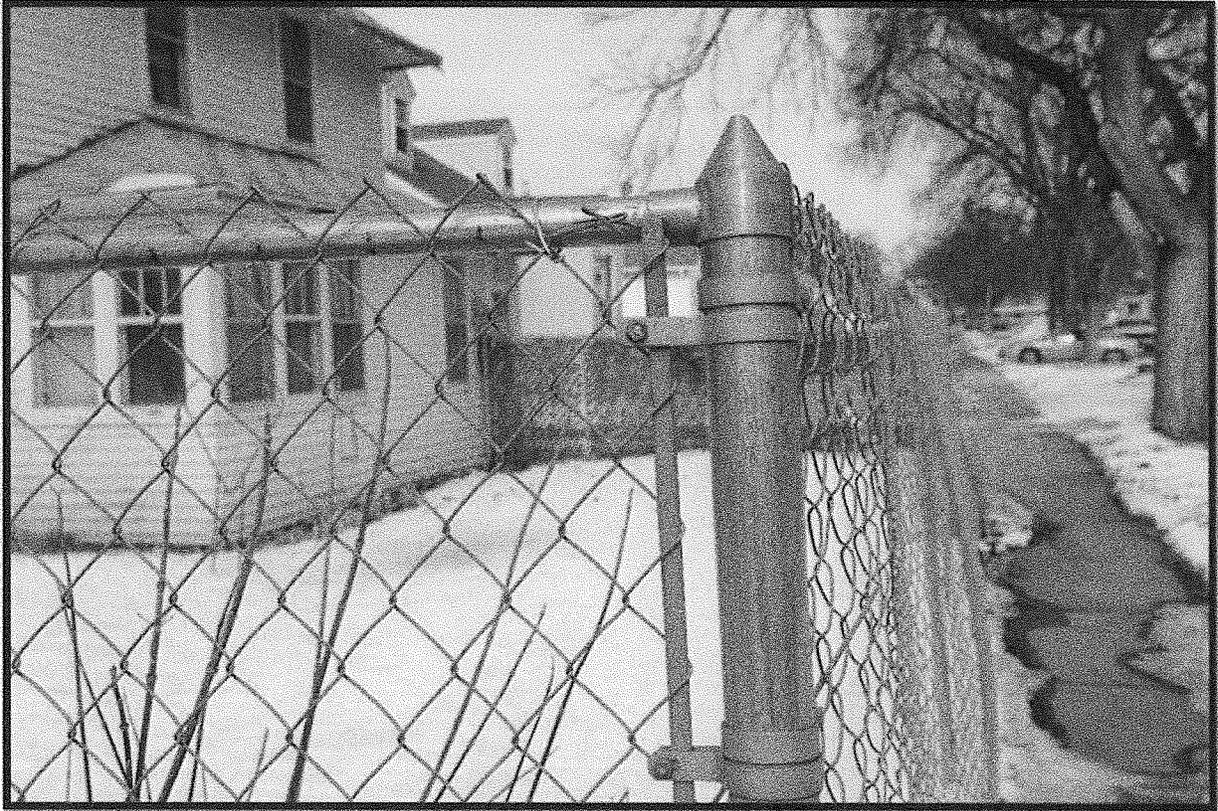
Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chair











TO: BISMARCK BOARD OF ADJUSTMENT

HAND DELIVERED

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NAME:	ADDRESS:	DATE:
<u>Joni Harji</u>	<u>929 N 11th St Bismarck</u>	<u>5/4/2013</u>
<u>Paul Schiller</u>	<u>1002 N 11th St Bismarck</u>	<u>5/4/2013</u>
<u>Brian Brown</u>	<u>1006 N 11th St. Bismarck</u>	<u>5/4/2013</u>
<u>Cheryl Gallagher</u>	<u>1010 N 11th St - Bis</u>	<u>5/4/2013</u>
<u>Jessica DeB...</u>	<u>1016 N 11th St Bis</u>	<u>5/4/2013</u>
<u>Ernestine Ziegler</u>	<u>1020 N 11th St Bis.</u>	<u>5/4/2013</u>
<u>Walter Schwick</u>	<u>1022 N 11th St Bis</u>	<u>5-4-2013</u>
<u>Scott Muggin</u>	<u>1026 N 11th St Bis</u>	<u>5-4-13</u>
<u>Sharon Paul</u>	<u>1021 N. 11th Bis</u>	<u>5-4-13</u>
<u>Mark Donner</u>	<u>925 N 11th St Bis</u>	<u>5/04/2013</u>
<u>Jain Vujan</u>	<u>917 N 11 St Bis</u>	<u>5/04/13</u>

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NAME:	ADDRESS:	DATE:
<u>Laura Johnson</u>	<u>915 N 11th St</u>	<u>5/4/2013</u>
<u>William Rogers</u>	<u>927 N 11th St</u>	<u>4 MAY 13</u>
<u>ANNE SCHROEDER</u>	<u>906 N 11th St.</u>	<u>4 MAY 13</u>
<u>D.G. McDonald</u>	<u>909 N. 11th St</u>	<u>5-4-13</u>
<u>Chad Tom</u>	<u>912 N 11th St</u>	<u>5-4-13</u>
<u>Barlene Haider</u>	<u>1027 N 11th St</u>	<u>5-4-13</u>
<u>Dennis Haider</u>	<u>1021 N 11th St</u>	<u>5-4-13</u>
<u>Bonnie K Schuch</u>	<u>1025 N 11th St</u>	<u>5-4-13</u>
<u>Brian Pederson</u>	<u>1028 N 11th St</u>	<u>5/4/13</u>
<u>Krista Davis</u>	<u>908 N 11th St</u>	<u>5-6-13</u>
<u>Kristi Millar</u>	<u>830 N 11th St</u>	<u>5-6-13</u>
<u>J.D.</u>	<u>820 N. 11th St</u>	<u>05-6-13</u>

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NAME:	ADDRESS:	DATE:
<u>Lynn Surette</u>	<u>931 N 12th St</u>	<u>5/7/13</u>
<u>Richard Gillespie</u>	<u>931 N 12th St.</u>	<u>5/7/13</u>
<u>Laylyn Gillespie</u>	<u>931 N 12th St</u>	<u>5/7/13</u>
<u>Sheila Nelson</u>	<u>927 N 12th</u>	<u>5-7-13</u>
<u>[Signature]</u>	<u>927 N 12th St</u>	<u>5/7/13</u>
<u>[Signature]</u>	<u>1001 12th St N</u>	<u>5/7/13</u>
<u>[Signature]</u>	<u>1300 E Ave F</u>	<u>5/7/13</u>
<u>Nichole Howe</u>	<u>1320 E Ave F</u>	<u>5/7/13</u>
<u>Michael CS</u>	<u>926 1/2 N 14th St</u>	<u>5/7/13</u>
<u>Aaron [Signature]</u>	<u>1413 E Ave F</u>	<u>5/7/13</u>
<u>George [Signature]</u>	<u>929 N. 11th St.</u>	<u>5-10-13</u>

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NAME:	ADDRESS:	DATE:
<u>Promise Jordan</u>	<u>1413 E. Avenue F</u>	<u>5/7/13</u>
<u>Linda Jordan</u>	<u>1413 E Ave F</u>	<u>5/7/13</u>
<u>Dean R Jordan</u>	<u>1413 E Ave F</u>	<u>5/7/13</u>
<u>Kai-ona Pew</u>	<u>932 16th St N</u>	<u>5/7/13</u>
<u>Devon Glass</u>	<u>1518 E Ave F</u>	<u>5/7/13</u>
<u>Stephanie Putz</u>	<u>1117 East Ave F</u>	<u>5/7/13</u>
<u>Leve Flohr</u>	<u>1114 E Ave F</u>	<u>5-7-12</u>
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TO: BISMARCK BOARD OF ADJUSTMENT

Meeting
May 16, 2013
4:00 PM

HAND DELIVERED

Tom Baller
Meeting Room
City/County Bldg.

we the undersigned are hereby indicating our opposition to the Bismarck Board of Adjustment granting any variances as requested for the property located at 924 N. 11th Street (lots 1-8, Block 73, McKenzie & Coffins Addition).

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NAME:	ADDRESS:	DATE:
<u>Eugene Gerber</u>	<u>931- N-13TH ST</u>	<u>5-7-13</u>
<u>Deserae B. Jensen</u>	<u>1008 N 13th ST</u>	<u>5-8-13</u>
<u>Annalynn</u>	<u>1024 N 13th ST</u>	<u>5-8-13</u>
<u>Mary Moorhouse</u>	<u>926 N. 13th St.</u>	<u>5-8-13</u>
<u>Jim Blunhagen</u>	<u>912 N 13th ST</u>	<u>5-8-13</u>
<u>Spin Ambros</u>	<u>912 N 13th ST</u>	<u>5-8-13</u>
<u>Josh BARR</u>	<u>830 N 13th ST</u>	<u>5-8-13</u>
<u>Brittany Harte</u>	<u>830 N 13th ST</u>	<u>5-8-13</u>
<u>Brent H</u>	<u>822 N 13th ST</u>	<u>5-8-13</u>
<u>Cassy Pace</u>	<u>1121 N. 12th ST</u>	<u>5/8/13</u>
<u>Chris Kraft</u>	<u>1121 N. 12th</u>	<u>5-8-13</u>

May 16TH
4:00 PM.

TO: BISMARCK BOARD OF ADJUSTMENT

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NAME:	ADDRESS:	DATE:
<u>Douglas Kitson</u>	<u>931 N 13ST Bismarck</u>	<u>5-8-2013</u>
<u>Jeff Boots</u>	<u>1019 N 13th St BIS</u>	<u>5-8-13</u>
<u>Debbie Will</u>	<u>829 N 13th St Bismarck</u>	<u>5-8-13</u>
<u>Gene Lord</u>	<u>428 Hay Creek Ct</u>	<u>5-9-13</u>
<u>Mrs. Ann Conrad</u>	<u>930 N 13th St</u>	<u>5-13-13</u>
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NAME:	ADDRESS:	DATE:
<u>Emma Robideau</u>	<u>428 Haycreek Court</u>	<u>5-9-13</u>
<u>Ryan Holmer</u>	<u>2501 Hillview Ave</u>	<u>5-9-13</u>
<u>Anna Marie Blier</u>	<u>2945 ^{Bismarck, ND 58503} Manitoba Ave</u>	<u>5-16-13</u>
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TO: BISMARCK BOARD OF ADJUSTMENT in Meeting May 16, 2013

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NAME:	ADDRESS:	DATE:
<u>Shirley Lemmons</u>	<u>1012 N. Anderson St. Bism.</u>	<u>5-13-13</u>
<u>Naty Plum</u>	<u>1314 N 18th St Bismarck</u>	<u>5-13-13</u>
<u>Barb Plum</u>	<u>1314 N 18th St Bismarck</u>	<u>5/13/13</u>
<u>Sandy Thiel</u>	<u>4728 British Dr Bismarck</u>	<u>5-13-13</u>
<u>David Plum</u>	<u>1314 N 18th St Bismarck</u>	<u>5-13-13</u>
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TO: BISMARCK BOARD OF ADJUSTMENT in Meeting May 16, 2013

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NAME:	ADDRESS:	DATE:
<u>Karen Miller</u>	<u>828 N 10th St</u>	<u>05-11-13</u>
<u>Ricky King</u>	<u>921 N 9th St</u>	<u>05-11-13</u>
<u>Layla Kuehball</u>	<u>911 E Ave F</u>	<u>5-11-13</u>
<u>Deane Womer</u>	<u>927 9 St</u>	<u>5-11-13</u>
<u>Kris Thomas</u>	<u>909 N. 9th St</u>	<u>5-11-13</u>
<u>Susan Quinell</u>	<u>905 N 9th St</u>	<u>5/11/13</u>
<u>Tammy Hox</u>	<u>905 E Ave E</u>	<u>5/11/13</u>
<u>LoAnn Fetting</u>	<u>901 E. Ave. E</u>	<u>5-11-13</u>
<u>SHAPENE Houx</u>	<u>912 E. AVE D</u>	<u>5-11-13</u>
<u>Thomas H. Kuehbach</u>	<u>911 - E. Ave F</u>	<u>5-11-13</u>
<u>Adam Miller</u>	<u>902 E Ave F</u>	<u>5-12-13</u>
<u>Kevin Shelley</u>	<u>1030 N. 9th St.</u>	<u>5-12-13</u>

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NAME:	ADDRESS:	DATE:
<u>Natalie Thiel</u>	<u>924 N. 11th St Bldg ND SE301</u>	<u>5-12</u>
<u>Joel WENTZ</u>	<u>919 N 8TH ST Bldg ND 58501</u>	<u>5-12</u>
<u>Joe Miller</u>	<u>818 E. 4th E SE501</u>	<u>5-12</u>
<u>Deve Gern</u>	<u>722 E AVE E Bldg ND</u>	<u>5-12</u>
<u>Green Schenck</u>	<u>931 N 7th St</u>	<u>5-12</u>
<u>Deane Schaeffer</u>	<u>713 East Av. ^F East</u>	<u>5-12-13</u>
<u>Allen P. Schaffer</u>	<u>713 EAST AV F</u>	<u>5-12-13</u>
<u>Paige Anderson</u>	<u>922 North 8th St</u>	<u>5-12-13</u>
<u>Judith Hummer</u>	<u>1021 N 6th St #3</u>	<u>5/12/13</u>
<u>Ray M</u>	<u>901 N 8th St</u>	<u>5/12/13</u>
<u>BETH BELVIN</u>	<u>1012 N. 10th St.</u>	<u>5-13-13</u>
<u>Julie Tello</u>	<u>905 N 10th St</u>	<u>5-14-13</u>

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NAME: ADDRESS: DATE:

<u>James J. Jahn</u>	<u>908 S. 10th St. Apt #1</u>	<u>05-15-13</u>
<u>Cynthia Cochran</u>	<u>915 N 10th</u>	<u>5/15/13</u>
<u>Robert J. Jahn</u>	<u>908 N. 10th St. Apt #1</u>	<u>5-15-13</u>
XXXXXXXXXX		
<u>Dorene Heur</u>	<u>919 N. 10th</u>	<u>05/15/13</u>
<u>Robert Cochran</u>	<u>915 - N - 10th St</u>	<u>5/15/2013</u>
<u>Ryell Bohner</u>	<u>805 N - 10 ST</u>	<u>5/15/13</u>
<u>Mary Ann Bohner</u>	<u>811 N 10th</u>	<u>5/15/13</u>

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NAME:	ADDRESS:	DATE:
<u>Day Philip</u>	<u>928 N 10th St Bis, ND</u>	<u>5/5/13</u>
<u>Opaline Phelps</u>	<u>928 N 10th St. Bismk</u>	<u>5/6/13</u>
<u>Ben Schuchtmeyer</u>	<u>927 N 10th St Bismark</u>	<u>5/6/13</u>
<u>Jack A. Schmitz</u>	<u>927 N 10th St Bismark ND</u>	<u>5-6-13</u>
<u>Rosalee Clark</u>	<u>1011 N 10th St Bismarck ND</u>	<u>5-6-13</u>
<u>Mercedes Clark</u>	<u>1011 N 10th St Bismarck</u>	<u>5-6-13</u>
<u>Jacq. M...</u>	<u>1030 N. 10th St BIS</u>	<u>5-6-13</u>
<u>KA L...</u>	<u>1030 N 10th St Bis</u>	<u>5-6-13</u>
<u>John W. Atwood</u>	<u>1026 N. 10th St. Bis.</u>	<u>5/6/13</u>
<u>Virginia M...</u>	<u>1022 W 10th St BIS</u>	<u>5-6-13</u>
<u>Frank Paul</u>	<u>1014 N 10th St Bismarck</u>	<u>5-6-13</u>

TO: BISMARCK BOARD OF ADJUSTMENT

HAND DELIVERED

we the undersigned are hereby indicating our opposition to the Bismarck Board of Adjustment granting any variances as requested for the property located at 924 N. 11th Street (lots 1-8, Block 73, McKenzie & Coffins Addition).

The setback variances requested would be to change the setback along the north and east property lines from 25 feet to 15 feet and reduce the side yard setback located along the west property line from 6 feet to zero feet for the purpose of constructing fences to accommodate two separate playgrounds.

NAME:	ADDRESS:	DATE:
<u>Jane A Paul</u>	<u>1014 N 10th St</u>	<u>5-6-13</u>
<u>Michelle Stahl</u>	<u>915 East Ave F</u>	<u>5-6-13</u>
<u>Thomas G. Fuhrman</u>	<u>1008 N. 10th</u>	<u>5-7-13</u>
<u>Elizabeth Fuhrman</u>	<u>1008 - 10 St. St.</u>	<u>5-7-13</u>
<u>Camille Grothier</u>	<u>1004 N 10th St</u>	<u>5-7-13</u>
<u>Maria Grothier</u>	<u>1004 N 10th St</u>	<u>5-7-13</u>
<u>[Signature]</u>	<u>920 N. 10th St.</u>	<u>5-7-13</u>
<u>[Signature]</u>	<u>902 N 10th St</u>	<u>5-7-13</u>
<u>Aimee Danner</u>	<u>902 N. 10th st</u>	<u>5-7-13</u>
<u>Dennis Bobrecht</u>	<u>831 N 10th St</u>	<u>5-8-13</u>
<u>Mary Adams</u>	<u>821 N 10th St</u>	<u>5-8-13</u>

TO: BISMARCK BOARD OF ADJUSTMENT

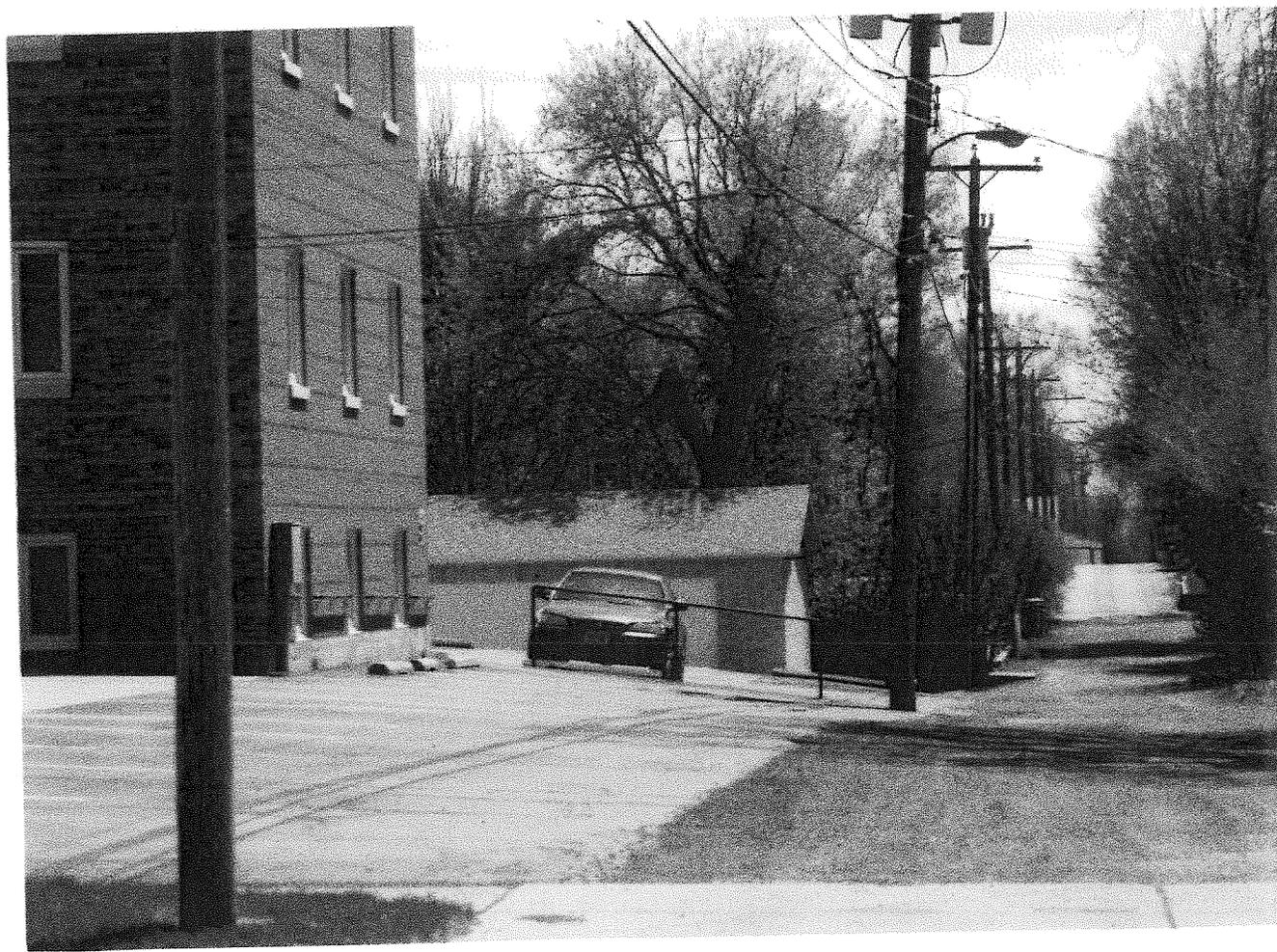
HAND DELIVERED

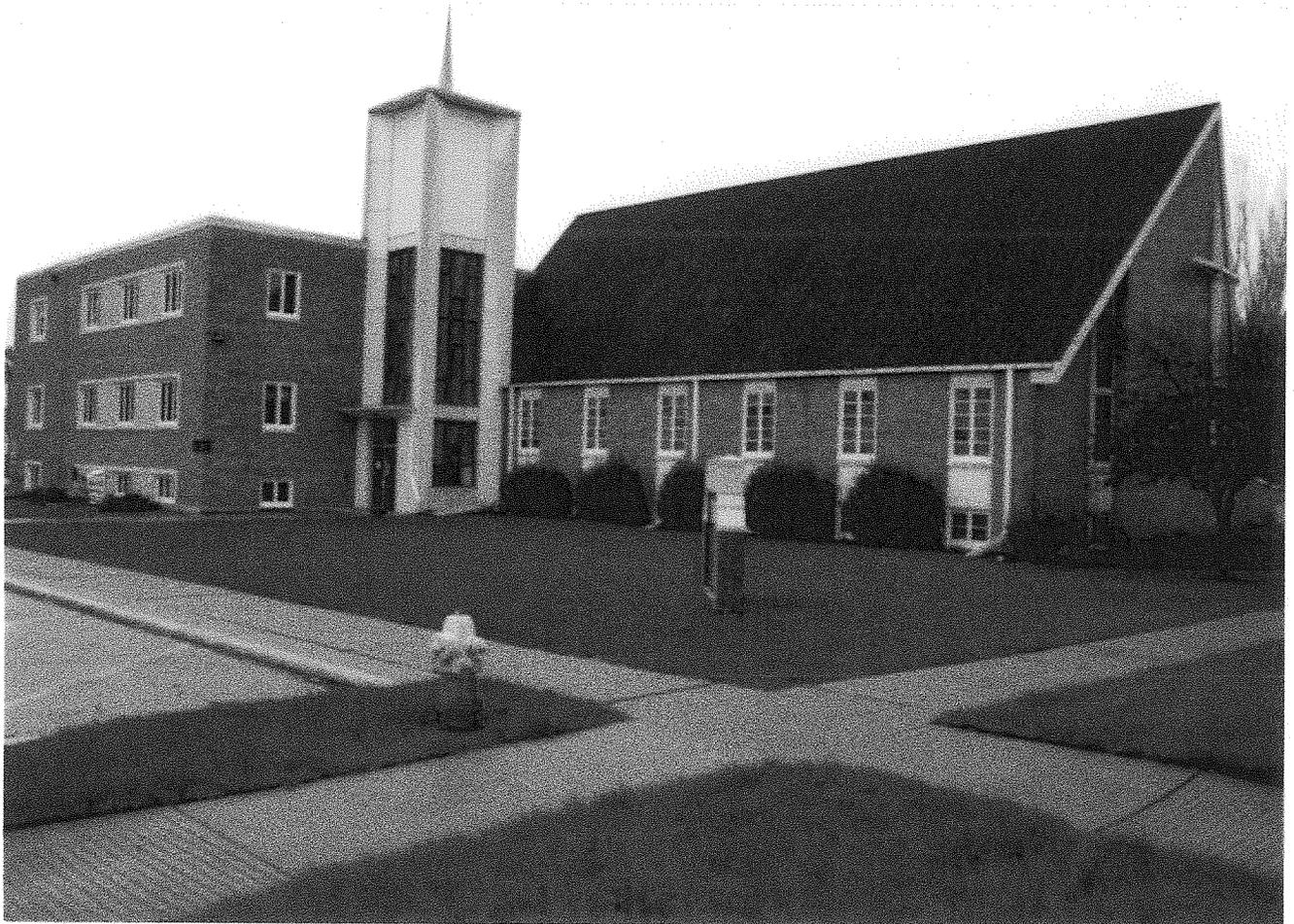
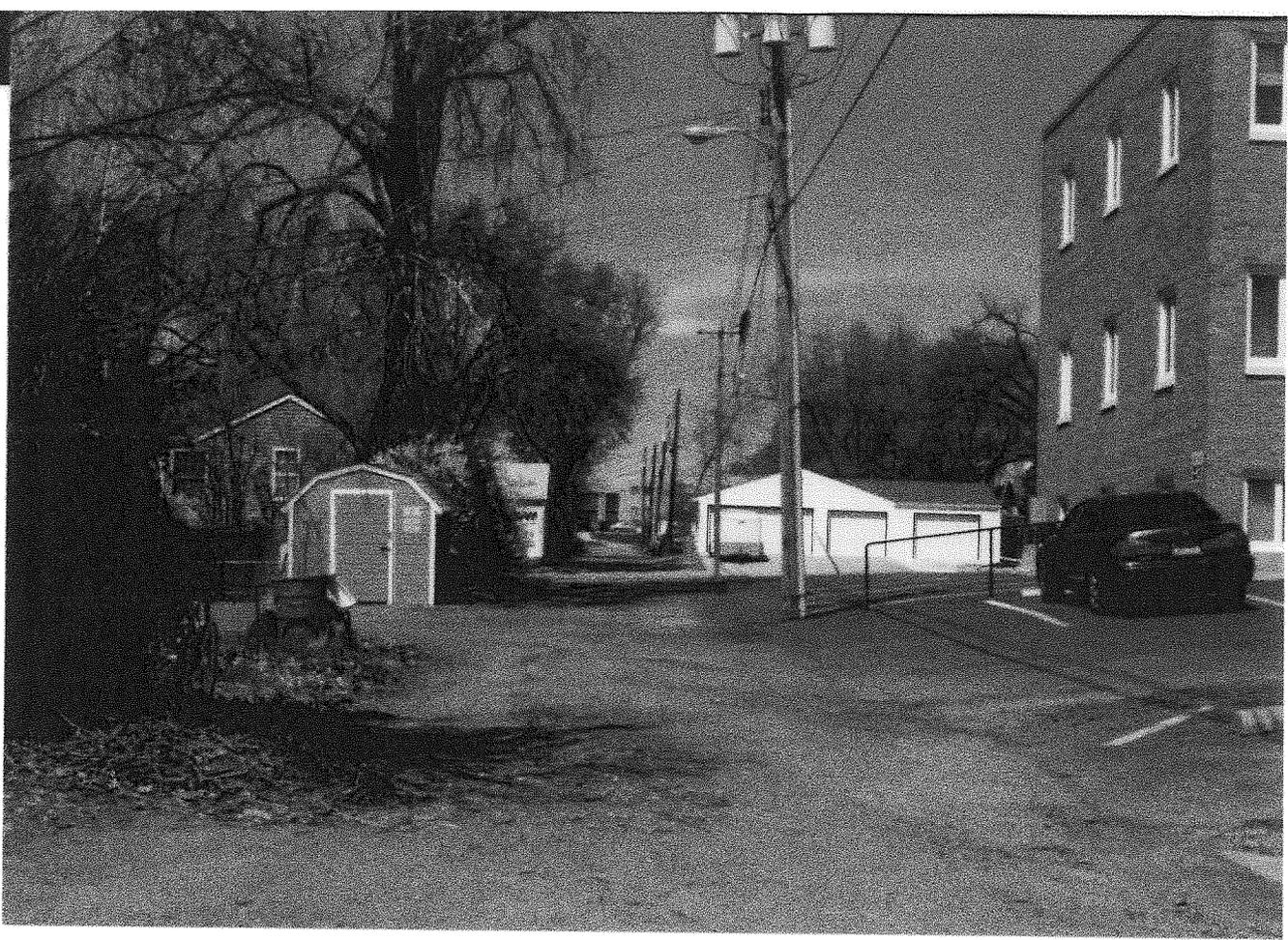
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NAME:	ADDRESS:	DATE:
<u>Cheryl Beattie</u>	<u>815 N 10th St.</u>	<u>4-8-13</u>
<u>D.R. L.</u>	<u>801 N. 10th St.</u>	<u>5-8-13</u>
<u>Jan Swenson</u>	<u>801 N 10 St</u>	<u>5-8-13</u>
<u>Kessa Hoskins</u>	<u>804 N 10th St</u>	<u>5-8-13</u>
<u>Joshua M. Conyer</u>	<u>820 N 10th St</u>	<u>5-8-13</u>
<u>Dave Salter</u>	<u>901 N 10th St</u>	<u>5-9-13</u>
<u>Ben Salter</u>	<u>901 N. 10 St</u>	<u>5-9-13</u>
<u>Wendy M. Webber</u>	<u>1015 East Ave E.</u>	<u>5-9-13</u>
<u>Jeanette L. Rehberg</u>	<u>1011 East Ave E</u>	<u>5/9/13</u>
<u>Brianne Fuzesy</u>	<u>1011 East Ave E</u>	<u>5/9/13</u>
<u>Eliza Kirby</u>	<u>918 N 10th St</u>	<u>5-9-13</u>

Exhibit C.





NORDWALL LAW OFFICE

723 North 2nd. Street
Bismarck,
North Dakota 58501

701-258-0930 (Land/Fax)
701-425-8609 (Cell)
bpnordwall@bis.midco.net

May 16, 2013

HAND DELIVERED

Bismarck Board of Adjustment
PO Box 5503
Bismarck, ND 58506-5503

RE: Proposed Variances (3) for 924 N 11th Street (Lots 1-8, Block 73, McKenzie & Coffins Addition)

Dear Members of the Board:

This letter is prepared on behalf of Robert and Cynthia Graham. The Grahams live at 915 N 10th Street, an address on Block 73, McKenzie & Coffins Addition. Two of the requested variances were denied on March 15, 2013, and those variances, with a third, are before this Board. The Grahams respectfully request that the Board adopt the findings included in the Bismarck-Burleigh Community Development Department Staff Report, for the reasons given in that report, and for three additional reasons.

The proponent of these variances, Kenneth J. Klekamp Inc., ("Klekamp") has also sought a special use permit for establishment of a child care center using the specified property, and also Lots 27-28, Block 73, McKenzie & Coffins Addition. The Bismarck-Burleigh County Planning & Development Department Staff Report concerning that Special Use Permit ("Special Use Staff Report") includes this as part of its "additional information":

1. The proposed daycare center is intended to accommodate 200 children, the total number of children under the age of 2½ years will be under 50.

Klekamp seeks variances to reduce the front yard setback along the north and east property lines from 25 feet to 15 feet and reduce the side yard setback located along the

west property line (which abuts a north-south alley) from six feet to zero feet, all for the purpose of constructing “opaque” fences (said by the proponent to be to accommodate two separate play areas on the east and west sides of the property).

The Grahams object to the grant of each and all of the requested variances to this property located in this R10 residential district, for the following reasons:

1. Bismarck City Ordinance sec. 14-04-06, R10 Residential District, provides, in relevant part:

In any R10 residential district, the following regulations shall apply:

1. * * *

6. Lot coverage. The ground area occupied by the principal and accessory buildings shall not exceed forty (40) per cent of the total area of the lot. In computing lot coverage, off-street parking areas complying with Section 14-03-10 hereof shall be added to the actual area of the buildings, if such parking space is not furnished within a building.

Emphasis added. The building, per a site description in the Special Use Staff Report, occupies 18,000 square feet. However, the footprint of the building totals about 9,500 square feet. Lots 1-8 are each (approximately) 25x140 ft, or 3,500 sf per lot, and a total of 28,000 sf. Lots 27-28 (each also (approximately) 25x140 ft, or 3,500 sf per lot), the total site is no greater than 35,000 sf. The site plan includes approximately 16,500 sf devoted to parking. The (approximately) 9,500 sf occupied by the building, when added to total parking, is equal to approximately 77.1 per cent of the total size of all ten lots ($9,500 \text{ sf} + 16,500 \text{ sf} = 27,000 \text{ sf}$; $27,000 \div 35,000 = .771429$), or, when added to the approximately 9,600 sf of parking on the eight lots for which variances are sought, is equal to approximately 68.2 per cent of the total size of the eight lots ($9,500 \text{ sf} + 9,600 \text{ sf} = 19,100 \text{ sf}$; $19,100 \div 28,000 = .682143$).

Whatever the exact size of the building, it is beyond question that the building, plus the “off-street parking areas complying with Section 14-03-10” cover far in excess of the 40 per cent limit. The building was originally erected as a church, and the parking areas were originally used a church parking. These are nonconforming uses that may not be subject to this lot coverage limit, per Bismarck City Ordinances sec.14-03-09. But sec.14-03-09 (6) provides:

6. Nonconforming Use-Change. A nonconforming use may be continued in accordance with the provisions of this section, but it shall not be changed to any other use except the one which would be permitted as a new use in the district in which the building is located.

Klekamp proposes to abandon the existing use, and secure a permit for an entirely different and new use of the property. To do so, Klekamp must conform to the current requirements applicable to new uses in an R-10 Zone. To do so, Klekamp must limit the parking on Lots 1-8 to approximately 1600 square feet, and the parking on Lots 27-28 to approximately 2,800 square feet, or secure a variance from those requirements.

No variance to the lot coverage limitation has been sought. Absent a grant of such a variance, any grant of the variances actually requested would be a futile act.

2. Bismarck City Ordinance No. 5958, adopted effective May 8, 2013, amends sec. 14-03-08 (4)(q)(2), concerning "special uses" by child care centers, to provide:

2) Each lot shall provide an outdoor recreation area of not less than seventy-five (75) square feet per child. The recreation area shall be fenced, and have a minimum depth of twenty (20) feet, be located on the same lot or parcel of land as the facility is intended to serve, and must be located behind the building setback lines..

Notably, and unlike a similar outdoor recreation area requirement in North Dakota Child Care center licensing rules at N.D Admin. Code 75-03-10-19 (2) this ordinance does not include a provision permitting a child care center with insufficient outdoor recreational area for its licensed capacity to schedule use by smaller groups or classes.

Klekamp has proposed a facility with a capacity of 200 children. Such a facility requires an outdoor recreation area of 15,000 square feet. On a lot comprising 28,000 square feet, with a building and parking area occupying approximately 19,100 square feet, the remaining area is insufficient to establish any compliant outdoor recreation space, let alone to erect the required fence within either the existing building setback lines, or those sought by the requested variance.

No variance to the outdoor recreation area requirement has been sought. Absent a grant of such a variance, any grant of the variances actually requested would be a futile act.

3. Bismarck City Ordinances, includes this, at sec. 14-02-03. Definitions:

Variance: A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.

Klekamp has not identified any particular physical surroundings, shape, or topographical condition of the property such as to cause a particular hardship. Rather, the variances Klekamp has requested are specifically intended to facilitate the establishment of a day

care business intended to be occupied by far more children than could be accommodated absent the variances.

Klekamp's variance requests claim only that "observing a 25 foot setback would eliminate 1200 square feet from the recreation area and 16 children from the capacity of the school. While Klekamp's math is woefully in error, its purpose arises out of Klekamp's desire to increase the financial return of that proposed child care center. Granting variances to satisfy a desire for increased financial return is specifically forbidden.

Please understand that the Grahams are not opposed to the establishment of a child care center at the proposed site. Working families need child care, and this neighborhood has many such families. Rather, the Grahams are concerned that such an immense child care facility as Klekamp has proposed is wholly inappropriate for the site it has selected, which has space available for a facility only a quarter of the size proposed.

Respectfully submitted, by



Blaine L. Nordwall
Bar ID no. 03424

c. R. and C. Graham

**BISMARCK BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES
June 6, 2013**

The Bismarck Board of Adjustment met on June 6, 2013 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street.

All members present were with Michael Marback, Blair Ihmels, Jeff Ubl, Jennifer Clark, and Ken Heier.

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

Others present were Aaron Stenberg (Duemeland Properties LLLP).

MINUTES:

Chair Marback stated that consideration of the minutes for the special meeting of the Board of Adjustment on May 16, 2013 will be considered at the July 3, 2013 meeting.

VARIANCE – OFF-STREET PARKING AND ACCESS LANE PAVING REQUIREMENT – 3960 CARTRIDGE LOOP (THE WEST 200 FEET OF LOT 1, AND LOTS 2-3, BLOCK 1, DUEMELAND’S 3RD SUBDIVISION).

Chair Marback stated the applicant was requesting a variance from Section 14-03-10(1) and Section 14-03-10(1)(k) of the code of City Ordinance to eliminate the paving requirement for required off-street parking and access lanes for a truck terminal facility.

Aaron Stenberg, the applicant’s representative, approached the Board to provide an overview of the variance request. Mr. Stenberg stated that the off-street parking and access lane paving requirement is the result of the applicant submitting a site plan and building permit application for an addition to an existing building. Mr. Stenberg further explained that the request for a variance should be granted because the addition is not a change in use, and the existing parking lot and access lane is currently not paved. He added that the roadway providing access to the property (Cartridge Loop) is a gravel roadway with only one means of ingress and egress. If the variance is not granted and the access lane and required off-street parking is required to be paved the single point of access to the property would be need to be shut down for a time and the property would not be able to function as a truck terminal facility.

Board Member Ihmels asked staff and the Board members why the paving requirement for off-street parking and access lanes is in the ordinance. Planning Manager Kim Lee stated that the paving requirement has been in the ordinance for at least 13 years, maybe longer.

Board Member Ken Heier stated to his fellow Board members that historically the paving requirement of the City Code Ordinances has been overlooked for properties located within the ETA. Brady Blaksowski, Building Division Plans Examiner, explained that the paving for required off-street parking was also an Americans with Disabilities Act (ADA) requirement.

Mr. Ihmels asked Mr. Stenberg if customers would frequent this facility. Mr. Stenberg said there would not, adding that there would be approximately 12 employees.

Mr. Blaskowski stated that ADA requires that parking spaces be a hard surface material, adding that parking requirements apply not only to customers of a business but also apply to employees of a business.

Board Member Jennifer Clark asked the Board what would happen if Cartridge Loop is paved.

Mr. Heier stated that requiring the off-street parking and access lanes to be paved would be a heavy burden on businesses, and it would keep this business from expanding.

MOTION: A motion was made by Mr. Heier to grant the variance from Section 14-03-10(1) and Section 14-03-10(1)(k) of the code of City Ordinance to eliminate the paving requirement for required off-street parking and access lanes for a truck terminal facility at 3960 Cartridge Loop (the West 200 feet of Lot 1 and Lots 2-3, Block 1, Duemeland's 3rd Subdivision). The motion was seconded by Mr. Ihmels, and was unanimously approved with Board members Clark, Heier, Ihmels, Marback and Ubl voting in favor of the motion.

OTHER BUSINESS

Chairman Marback has staff if any applications have come in for the vacancy on the Board. Staff indicated that no applications have been received.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:13 p.m. to meet again on Wednesday, July 3, 2013.

Respectfully Submitted,

Jenny Wollmuth
Recording Secretary

APPROVED:

Michael Marback, Chair