



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA**

October 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 September 5, 2013 meeting of the Board of Adjustment.

REQUESTS

2. **Variance from Section 14-04-06(7) of the City Code of Ordinances 14-04-01(4) of the City Code of Ordinances (R10-Residential District) (Front Yard)** – 914 South 17th Street (part of Block 20, Lincoln Addition).
Dan Szarkoswki is requesting a variance from the front yard setback requirement along the east side of his property from twenty-five (25) feet to twenty (20) feet in order to construct a 5'x8' uncovered deck on the second level of a proposed duplex.
3. **Variance from Section 14-04-03(8) of the City Code of Ordinances (R5-Residential District)(Side Yard)** – 3312 Devon Place (Lot 12, Block 1, Tatley Meadows VIII).
Ross Lang, R Lang Construction Inc., is requesting a variance from the side yard setback requirement along the west side of his property from ten (10) feet to six (6) feet in order to construct a single-family dwelling.
4. **Variance from Sections 14-03-10(h) of the City Code of Ordinances (Off-Street Parking)(Retail Establishments) and** – 411 Fraine Barracks Road (Part of Block 2, River Heights Addition).
Dennis Kemmesat, Single track, LLC, is requesting a variance from the off-street parking requirements for retail facilities to reduce the required off-street parking spaces on the existing site to allow for the re-adaptive use of the existing building (Hanson's Furniture)for Epic Sports.
5. **Variance from Section 14-03-10(g) of the City Code of Ordinances (Off-Street Parking and Loading)(Places of Public Assembly)** – 1603 East Main Avenue (Tract 1575 of the NW ¼ of Section 3, T138N-R80W; Tract 1605 of Block 1, Governor Pierce Addition; and Lots 1-5, less the west 5 feet of Lot 5, Block 1, Governor Pierce Addition and all vacated adjacent 17th Street less the east 33.2 feet of said vacated 17th Street).

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



Sixteen03 Main Events, LLC and Otter Holdings, LLP are requesting a variance from the off-street parking requirements for places of public assembly to reduce the required off-street parking spaces on the existing site to allow for the re-adaptive use of the existing building (Sweat Heart Bakery) for Sixteen03 Main Events Center.

OTHER BUSINESS

- 6. Other.**

ADJOURNMENT

- 7. Adjournment.** The next regular meeting date is scheduled for November 7, 2013.

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

BACKGROUND:	
Title: 914 South 17 th Street – Variance (Side Yard) (Part of Block 20, Lincoln Addition)	
Status: Board of Adjustment	Date: October 3, 2013
Owner(s): Dan Szarkowski.	Engineer: None
Reason for Request: Variance from Section 14-04-06(7) of the City Code of Ordinances (R10-Residential)(Front Yard) to reduce the required front yard setback along the east side of the property from twenty-five (25) feet to twenty (20) feet in order to construct a 5’x8’ uncovered deck on the second level of a proposed duplex.	
Location: The property is located between South 16 th Street and South 17 th Street, north of East Bismarck Expressway.	
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 14-02-03 of the City Code of Ordinances (Definitions) defines a front yard as, “ A yard extending across the full width of the lot lying between the front line of the lot and the nearest line of the principal building.” Section 14-04-06(4) of the City Code of Ordinances (R10-Residential District)(Lot Area) states, “Each permitted structure hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than seven thousand (7,000) square feet. Provided, however, that on a record lot corresponding to a plat recorded prior to 1953 a single-family or two-family dwelling and accessory buildings may be erected, provided said lot contains not less than five thousand (5,000) square feet.” The proposed variance is located in Lincoln Addition and was platted in 1917. Section 14-04-06(7) of the City Code of Ordinances (R10-Residential District)(Front Yard) states, “Each lot shall have a front yard of not less than twenty-five (25) feet in depth.” Section 14-04-06(8) of the City Code of Ordinances (R10-Residential District)(Side Yard) states, “No building on a corner lot shall have a side yard on the street less than twenty-five (25) feet in width .” The proposed variance is located on a parcel with three (3) front yards. 	
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 R10-Residential zoning classification. 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. 	

Continued

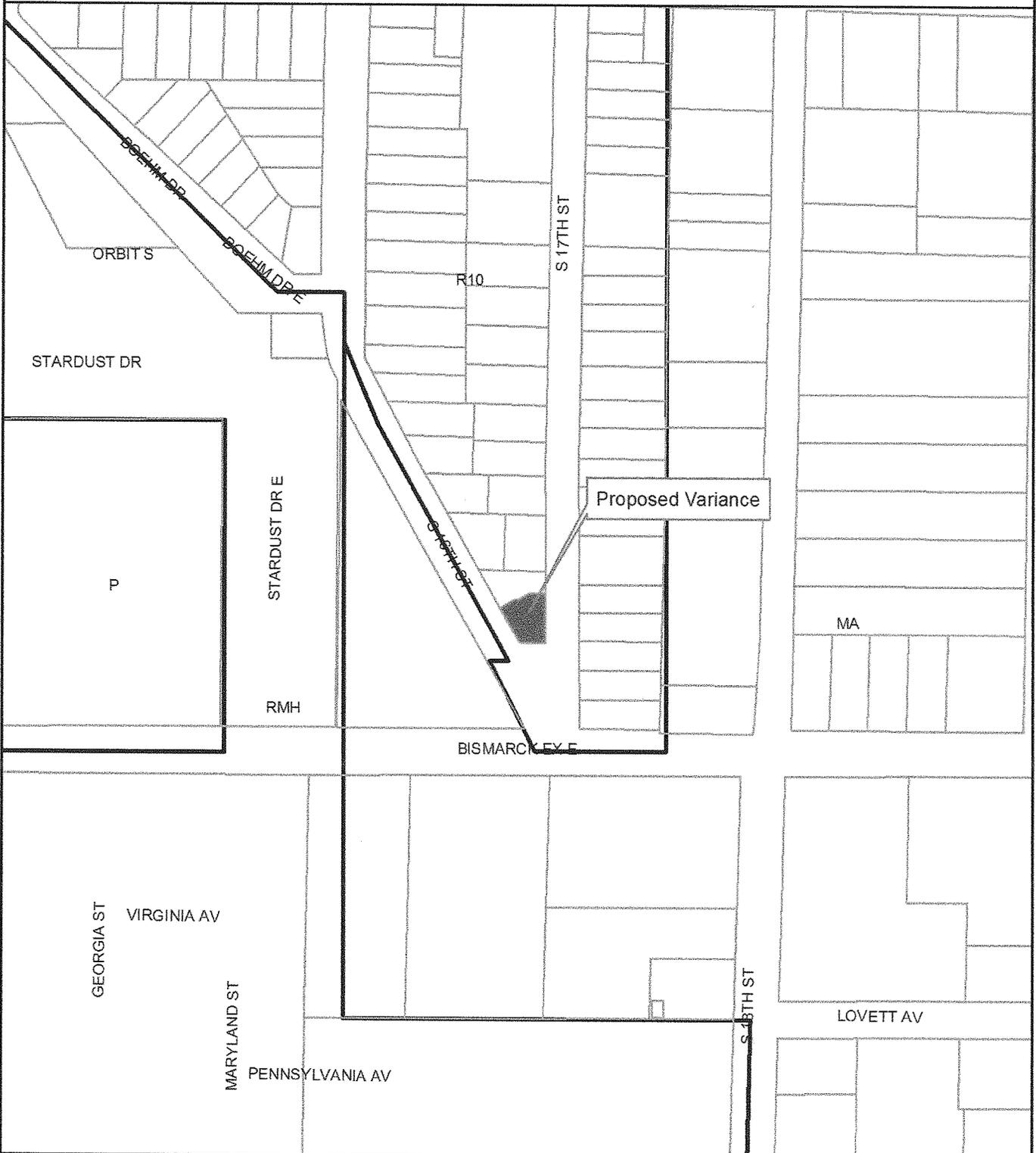
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

RECOMMENDATION:

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

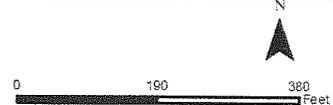
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

**Proposed Variance
914 South 17th Street
(Part of Block 20, Lincoln Addition)**



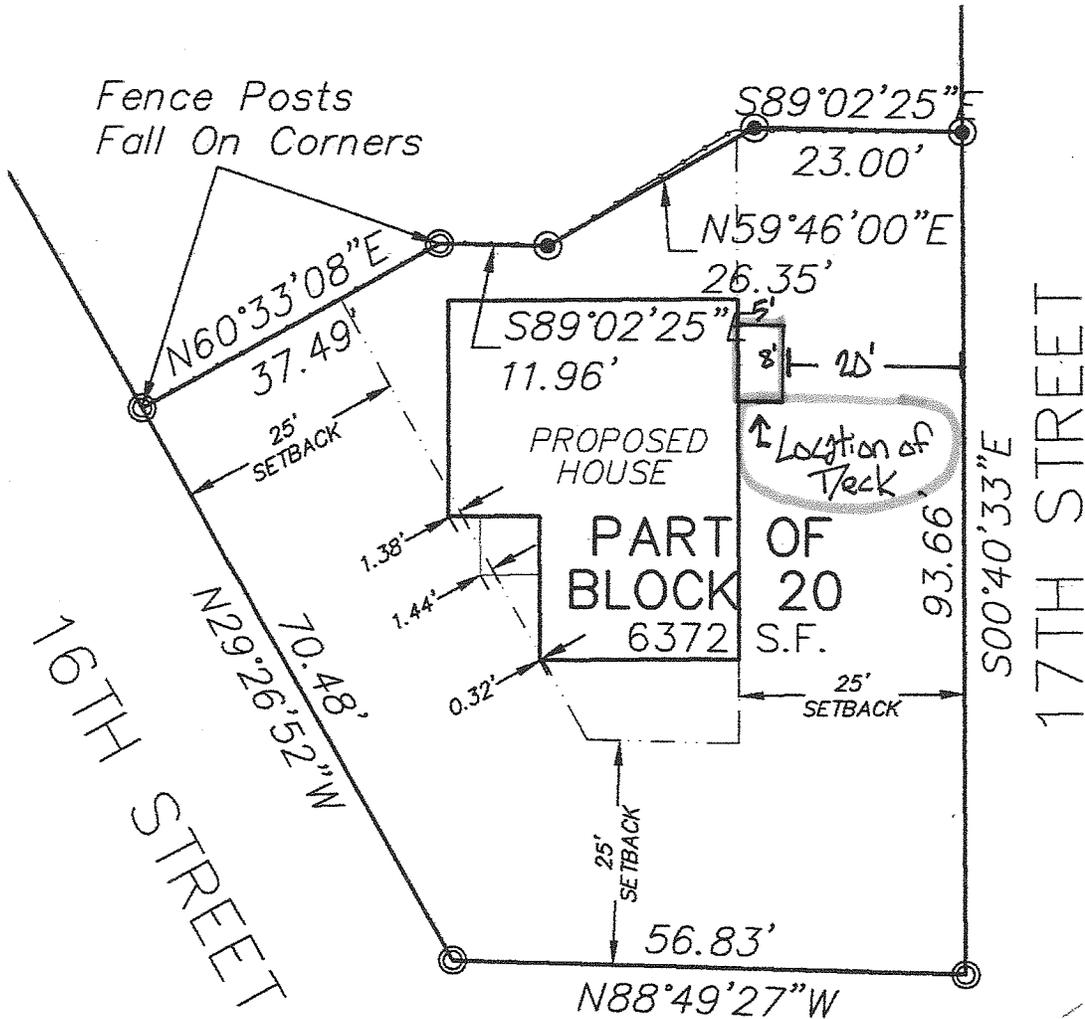
DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: 08/30/13 (jw)

Source: City of Bismarck



LOT SURVEY EXHIBIT

LOT Part of Block 20
 SUBDIVISION Lincoln Addition
 ADDRESS 914 South 17th Street
 OWNER Dan Szarkowski



SCALE: 1" = 20'
DATE: 8/15/13

**PRELIMINARY-NOT FOR CONSTRUCTION,
RECORDING PURPOSES OR IMPLEMENTATION**

- ⊙ FOUND MONUMENT
- ⊙ SET MONUMENT
- BUILDING SETBACK OR NON-ACCESS STAKE
- FENCELINE



SWENSON, HAGEN & COMPANY P.C.

909 Basin Avenue
 Bismarck, North Dakota 58504
 sheng@swensonhagen.com
 Phone (701) 223 - 2600
 Fax (701) 223 - 2606

NOTES

THE BUILDING SETBACK LINES SHOWN ARE TYPICAL. THERE MAY BE OTHER BUILDING RESTRICTIONS THAT AFFECT THIS PROPERTY. THE BUILDER IS RESPONSIBLE FOR VERIFYING THE BUILDING SETBACKS.

FAXED OR EMAILED TO:
BUILDER OR OWNER

DATED:

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

1. Property Address or Legal Description: 914 South 17th Street
2. Location of Property: City of Bismarck ETA Burleigh County
3. Type of Variance Requested: I would like to build a deck 5 feet into the front setback.
4. Applicable Zoning Ordinance Chapter/Section: 14-02-03
5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

The lot I am building on is an irregular shape and small. It has a street on 3 out of 4 sides. Because of this it is very difficult to meet all the setback requirements.

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

The building I am putting up is a small duplex. In order to give each unit a small 5'x8" deck I need to be able to build into the setback. (The other deck does not extend into the setback.) The deck will come off of the 2nd floor and will be cantilevered out so no deck posts will be required.

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

In order to make the deck a useable size I need at least 5' to be able to fit a small table and 2 chairs. Many other houses in this neighborhood have houses, garages and decks built well into the setbacks. We have included pictures of what the deck would look like and pictures of other houses near this lot that have decks or garages built well into the setback.

**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.

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

BACKGROUND:

Title:
3312 Devon Place – Variance (Side Yard)
(Lot 12, Block 1, Tatley Meadows VIII)

Status: Board of Adjustment	Date: October 3, 2013
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Owner(s): Ross Lang, R Lang Construction Inc.	Engineer: None
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Reason for Request:
Variance from Section 14-04-03(8) of the City Code of Ordinances (R5-Residential)(Side Yard) to reduce the required side yard setback along the west side of the property from ten (10) feet to six (6) feet in order to construct a single-family dwelling.

Location:
The property is located along the north side of Devon Place, west of Manchester Street

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 14-02-03 of the City Code of Ordinances (Definitions) defines a side yard as, “ A yard between the side line of the lot and the nearest line of the principal building and extending from the front yard to the rear yard.”
3. Section 14-04-03(8) of the City Code of Ordinances (R5-Residential District)(Side Yard) states, “Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) percent of the average width of the lot. On any lot having an average width greater than sixty (60) feet, neither side yard shall be less than six (6) feet in width.” The average width of the property is eighty-five (85) feet; twenty (20) percent of the average width (85 feet) is seventeen (17) feet. There is a seven (7) foot utility easement along the east property line; therefore, a ten (10) foot side yard setback along the west side of the property would be required.

FINDINGS:

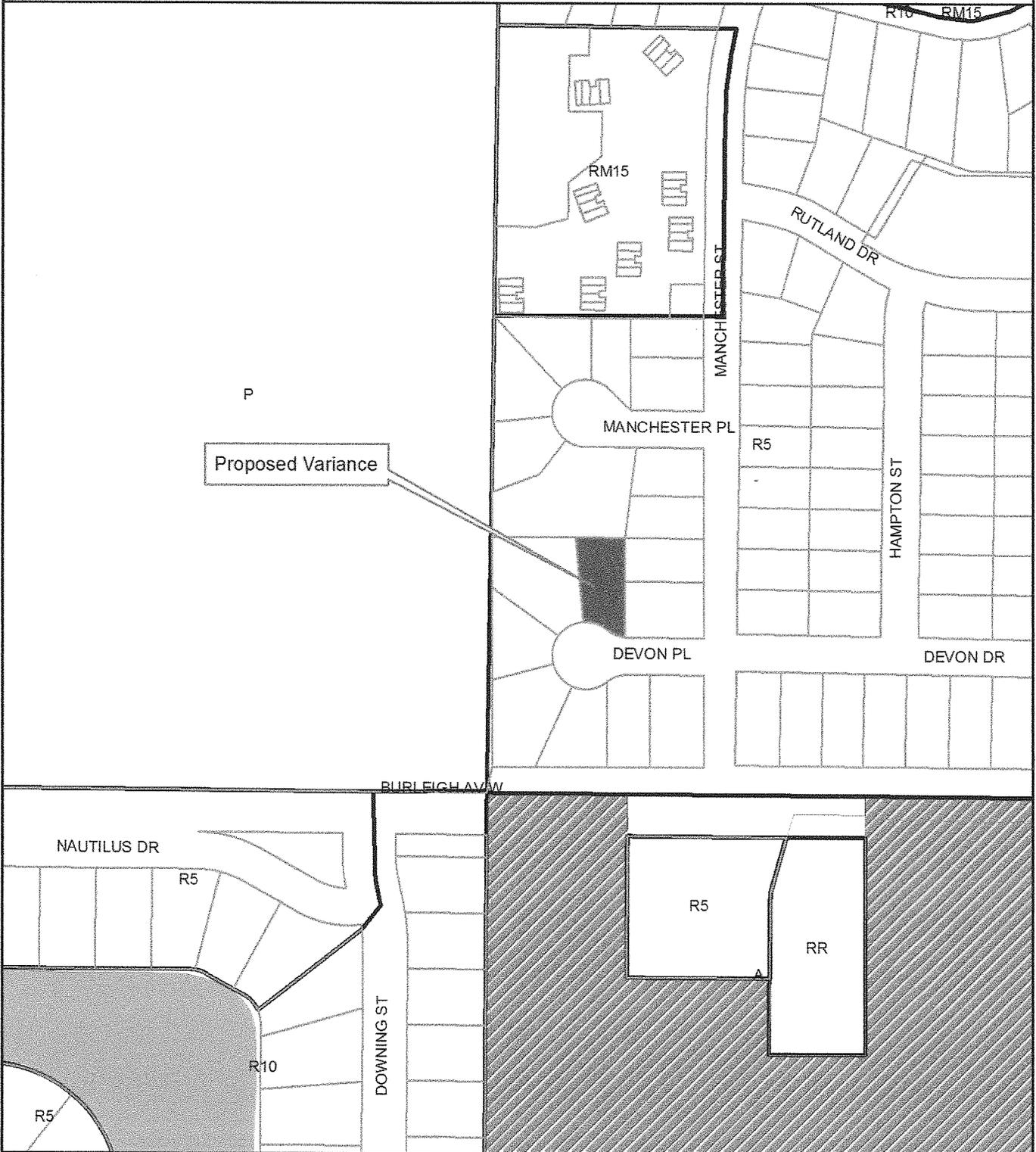
1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5-Residential zoning classification.
2. The hardship is not caused by the provisions of the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

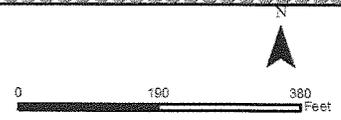
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

**Proposed Variance
3312 Devon Place
(Lot 12, Block 1, Tatley Meadows VIII)**



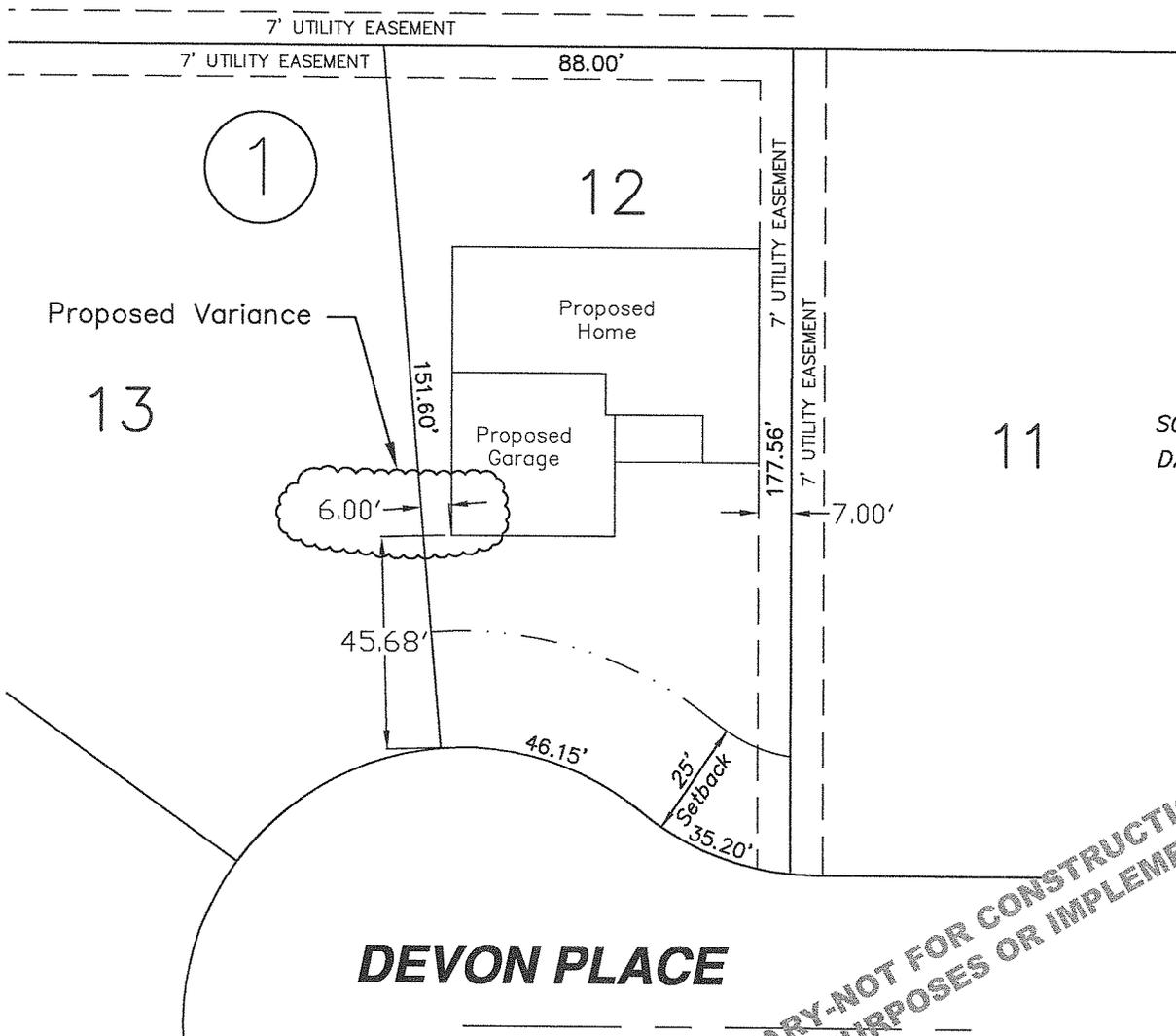
DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: 09/19/13 (jw)

Source: City of Bismarck



VARIANCE EXHIBIT

LOT 12 BLOCK 1
 SUBDIVISION Tatley Meadows 8th
 ADDRESS 3312 Devon Place
 BUILDER Ross Lang



SCALE: 1" = 40'
 DATE: 9/18/13

**PRELIMINARY-NOT FOR CONSTRUCTION,
RECORDING PURPOSES OR IMPLEMENTATION**

- ⊙ FOUND MONUMENT
- ⊙ SET MONUMENT
- ⊠ BUILDING SETBACK STAKE

NOTES PLS

THE BUILDING SETBACK LINES SHOWN ARE TYPICAL, THERE MAY BE OTHER BUILDING RESTRICTIONS THAT AFFECT THIS PROPERTY. THE BUILDER IS RESPONSIBLE FOR VERIFYING THE BUILDING SETBACKS. LOT DIMENSIONS ARE FROM PLAT. BUILDING AS SHOWN WAS NOT FIELD STAKED AND POSITION MAY CHANGE FROM THAT SHOWN.

FAXED OR EMAILED TO: _____ DATED: _____
 BUILDER OR OWNER



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Surveying
 Hydrology
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 Landscape & Site Design
 Construction Management

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

1. Property Address or Legal Description: 3312 Devon Place

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

3. Type of Variance Requested: Side Yard

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.)

Do to deminishing health of the perspective home buyers, They would like to live in a slab on grade home. In saying that we need to spread out the floor plan of the Home.

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

IF House was set on this lot at a standard sideyard setback it would have to be pushed to back portion on lot. leaving a vary small backyard and large front yard.

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

IF House is brought forward to ~~set out~~ ~~front~~ ~~and~~ ~~back~~ ~~yard~~ balance ~~set~~ out front & back yard.

Thank you

**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.

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

BACKGROUND:	
Title: 411 Fraine Barracks Road –Variance (Off-Street Parking and Loading) (Part of Block 2, River Heights Addition)	
Status: Board of Adjustment	Date: October 3, 2013
Owner(s): Dennis Kemmesat, Single Track, LLC	Engineer: Houston Engineering
Reason for Request: Variance from Section 14-03-10(1)(h) of the City Code of Ordinances (Off-Street Parking and Loading)(Retail Establishments) to reduce the required off-street parking spaces on the existing site to allow for the re-adaptive use of the existing building for a retail establishment. Upon review of the request, staff determined that a variance from Section 14-03-05(3) of the City Code of Ordinances (Supplementary Provisions)(Fences, Walls and Vegetation) was required to allow the placement of off-street parking spaces within a sight triangle and a variance from Section 14-03-11(8) of the City Code of Ordinances (Landscaping and Screening)(Perimeter Parking Lot Landscaping) was required because no perimeter landscaping could be provided on site with the layout of the parking lots.	
Location: The property is located along the west side of Shirley Street and east side of Fraine Barracks Road.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The variance request is for the re-adaptive use of an existing building that has been vacant for a number of years. According to the site plan submitted with the variance request, the maximum number of off-street parking spaces the existing site can provide without additional variances is twenty-seven (27) spaces. 2. Prior to purchasing the property, the applicant received a letter dated June 27, 2013 from former Building Official Ray Ziegler indicating that a total of thirty-two (32) off-street parking spaces would be needed if the applicant was to purchase the building and use it as a retail establishment. Unfortunately four parking spaces shown on the original parking plan submitted to Mr. Ziegler were located in the NDDOT right-of-way and off-street parking cannot be located within the right-of-way. The applicant then submitted a new site plan providing thirty-three (33) off-street parking spaces. Upon review of the re-submitted parking plan it was determined that six (6) of the off-street parking spaces were located within sight-triangles and could not be counted as off-street parking. The applicant was advised to apply for a variance to either reduce the total number of required off-street parking from thirty-two (32) spaces (originally required by Mr. Ziegler) to twenty-seven (27) spaces or apply for a variance to allow the placement of off-street parking within the sight-triangles created by the proposed drive way intersections on both parking lots located on the property. 	
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.” 	
<i>(continued)</i>	

2. Section 14-02-03 of the City Code of Ordinances (Definitions)(Sight Triangle) defines a sight triangle as, “An area of unobstructed vision at the intersections of streets, alleys and driveways. The purpose of the sight triangle is to ensure visibility for operators of motor vehicles, bicycles and pedestrians on intersections streets, driveways and alleys.” The definition further states that, “For a commercial, industrial, institutional or multi-family use with a driveway, the sight triangle is the triangle formed by measuring from the point of intersection of the property line adjacent to a street and the edge of the driveway a distance of fifteen (15) feet in along the street right-of-way line and a distance of fifteen (15) feet along the edge of the driveway and connecting the points to form a sight triangle on the area of the lot adjacent to the intersection of the street and driveway.”
3. Section 14-03-05(3) of the City Code of Ordinances (Supplementary Provisions)(Fences, Walls and Vegetation), states, “The building line and yard requirements of these regulations shall not apply to retaining walls or other walls or fences not over six feet in height; except that, on any lot in any district, no fence, wall, terrace, structure, shrubbery, planting, off-street parking spaces, or other obstruction to vision having a height greater than three feet above the curb level shall be located within the sight triangle, as defined in section 14-02-03. Deciduous trees may be planted within the sight triangle provided they are not an obstruction to vision between three feet and ten feet above the curb level. On a corner lot in a commercial or industrial district, no portion of a building or other obstruction to vision between two and ten feet above the curb level, except a post or column, shall be located within the sight triangle, except for buildings located in zoning districts with no minimum front yard setback.” A total of thirty-three (33) spaces are shown on the site plan submitted for the variance request, however six (6) parking spaces are located within sight-triangles.
4. 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.”
5. Section 14-03-10(1)(h) of the City Code of Ordinances (Off-Street Parking and Loading) states, “Retail establishments, including personal service shops, equipment or repair shops in a CA-Commercial zoning district – off-street parking shall be provided in an amount equivalent to one space for each two hundred (200) square feet of gross floor area on the ground floor, plus one space for each three hundred (300) square feet of gross floor area in a basement or any story above the ground floor; except that a furniture store shall have one space for each six hundred (600) square feet of gross floor area.” If this provision of the ordinance was strictly applied to the proposed use of the property, a total of thirty (30) spaces would be required for the main level. If the lower level was also used as retail space, a total of twenty (20) off-street spaces would be required for that area. Based on these numbers, the required off-street parking would increase from 32 spaces (required by Mr. Ziegler) to 50 spaces.
6. Section 14-03-11(8) of the City Code of Ordinances (Landscaping and Screening)(Perimeter Parking Lot Landscaping) requires perimeter parking lot landscaping with a width of 4 feet with a masonry wall, decorative fencing or continuous evergreen or deciduous hedge with a minimum height of 3 feet or a width of 6 feet with 1 shade or ornamental tree and 5 shrubs for every 25 linear feet of street frontage. In order to maximize the amount of parking on the site as proposed, it does not appear that perimeter parking lot landscaping can be provided as required.

FINDINGS:

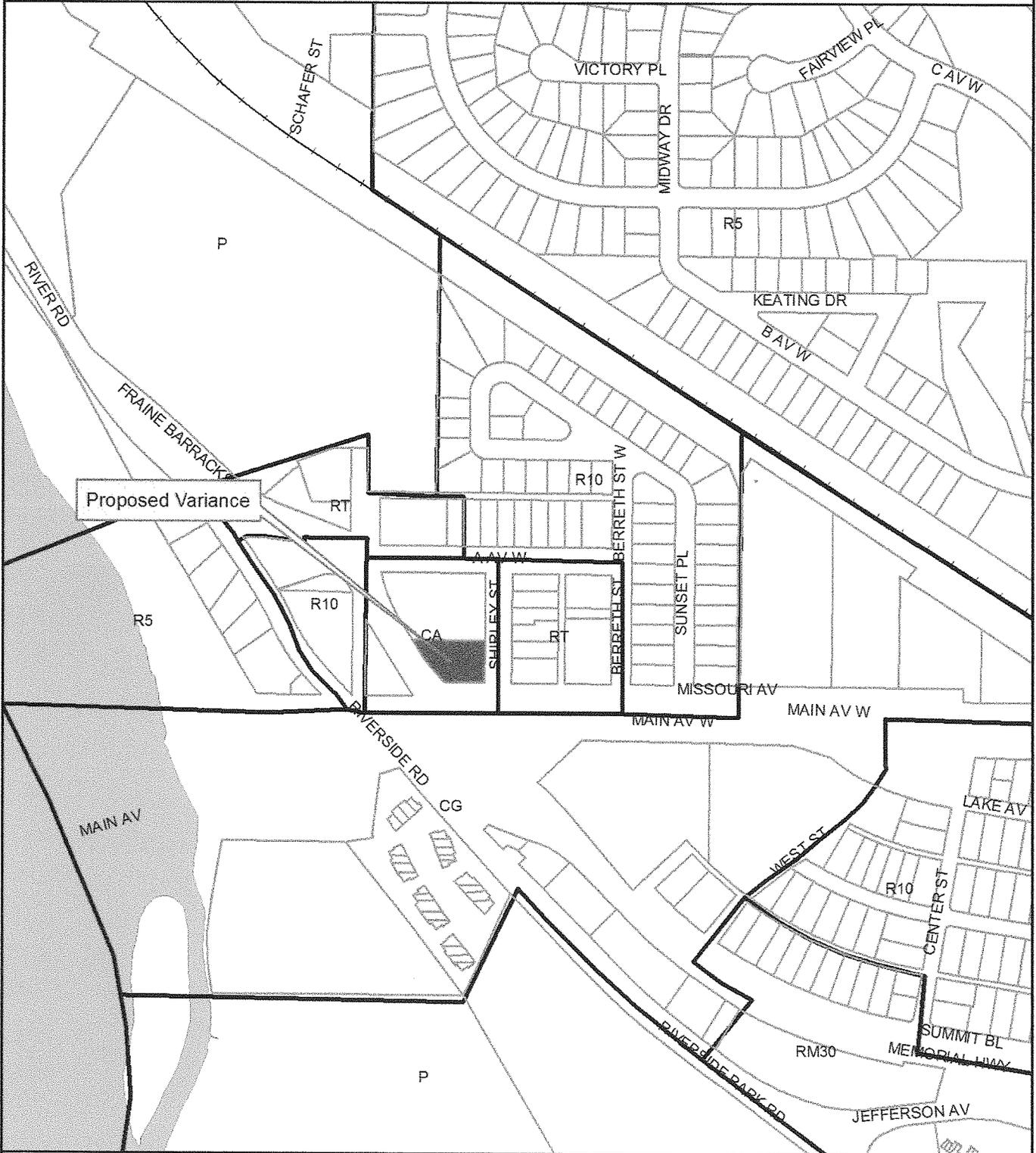
1. The need for a variance is based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the CA – Commercial zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that would accomplish the relief sought by the applicant, as there is no space on the site for additional off-street parking spaces.
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.

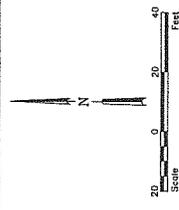
Proposed Variance
411 Fraine Barracks Road
(Part of Block 2, River Heights Addition)



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Map was Updated/Created: 08/30/13 (jw)

Source: City of Bismarck





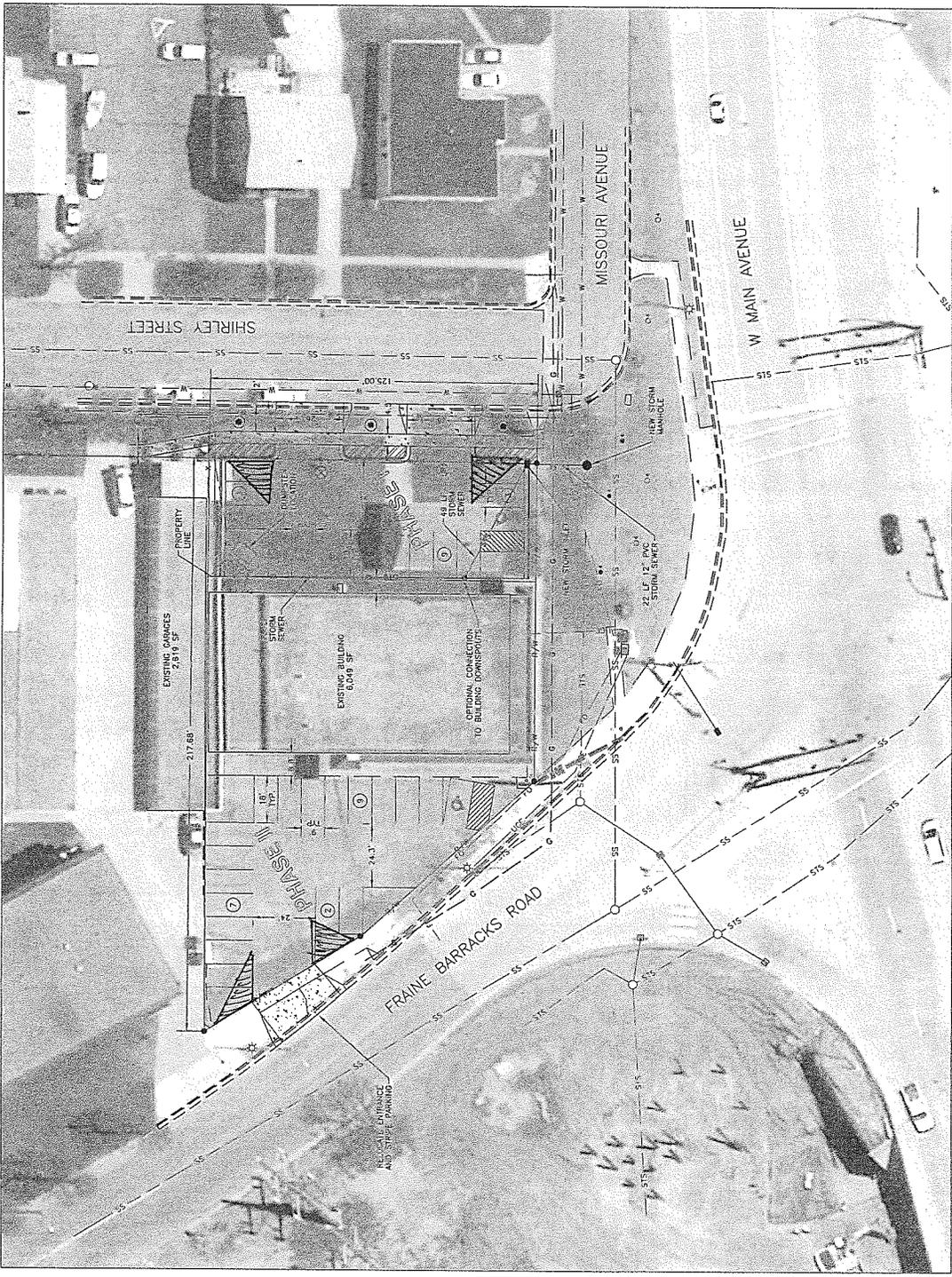
CA - NEIGHBORHOOD COMMERCIAL
 SIDE YARD: 10 FT
 REAR YARD: 10 FT

SPACES PROVIDED
 WEST: 19 PHASE II
 EAST: 15 PHASE I

- ⊗ TREE REMOVAL/RELOCATION = 2
- ⊙ NEW TREE = 3
- ▨ BUFFER YARD PLANTING

- LEGEND**
- EXISTING**
- STORM INLET
 - MANHOLE
 - FIRE HYDRANT
 - GATE VALVE
 - CURBSTOP
 - LIGHT POLE
 - SIGN
 - IRON MONUMENT FOUND
 - IRON MONUMENT SET
 - WATER MAIN
 - SANITARY SEWER MAIN
 - STORM SEWER MAIN
 - OVERHEAD ELECTRIC
 - UNDERGROUND ELECTRIC
 - UNDERGROUND TELEPHONE
 - UNDERGROUND FIBER OPTIC
 - CABLE TV
 - GAS MAIN
 - FENCE
 - STANDARD CURB & GUTTER
 - RIGHT OF WAY LINE
 - HEDGE
 - BUILDING

This document is preliminary and not for construction or implementation purposes.



CONCEPT 5		SHEET	
PROJECT NO. 7880-001		1 OF 3	
Drawn by	Date	Checked by	Scale
AAS	9-18-13	MHG	AS SHOWN
Bismarck	Houston Engineering Inc.		
P: 701.323.0200			
F: 701.323.0300			
No.	Revision	By	Date

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.)

See attached description:

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

See attached description:

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

See attached description:

**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.

Variance Request - Epic Sports
411 Fraine Barracks Road
September 20, 2013 Submittal Attachment

Application Responses:

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.)*

This project includes redevelopment or re-adaptive use of an existing building site and removal of an adjacent structure. These structures have been vacant for many years and the developer's intended use will result in significant site improvements – see attached photos and renderings. As an existing lot and building, the available space on site is inadequate to provide the necessary parking for the intended use or landscaping. As such discussions were held to determine a means to reasonably increase parking and accommodate landscaping requirements for the structure.

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

The existing paved parking on the west side of the building, under current ordinances, does not provide sufficient parking for even the main floor. Therefore, the developer has removed the smaller structure to the east and proposes to construct new parking in this area. However, the standard parking dimensions and required landscape buffer would not allow use of this area for any reasonable or functional parking. It is also the only available area on this site that can be used to expand parking. Therefore, the current site and ordinances significantly restrict building uses and results in the need for this variance.

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

This variance is necessary to provide for the reasonable creation of parking and installation of a landscape buffer adequate to accommodate proposed uses. The variance would optimize the use of the available space within the lot with limited encroachment from the new parking area and landscaping into existing ROW. The variance would provide for the use of a portion of the west side of the Shirley Street ROW for the newly constructed parking. This amounts to a narrow strip approximately 1.6 feet wide at the south and 0.8 feet on the north. In addition the variance would allow for the use of another 4 to 5 feet of ROW for landscaping, abutting a new 4.5 foot sidewalk along the east side of the site. Supporting this variance is the fact that the ROW in this area is currently 80 foot in width, while the adjoining zoning typically requires a 66 foot ROW. Therefore, the use of approximately six feet of this ROW for parking lot and the landscape buffer, where seven feet might be considered available ROW for the variance, is a reasonable accommodation to provide for the ability to use this building – see attached site plan. The projected parking requirements and uses are documented on the next sheet.

411 Fraine Barracks Road
Parking Requirements
Lower Floor areas and uses remain to be finalized

Main Floor Parking Required

Retail layout per City discussion	16 spaces
Repair Area	2 spaces (1,500 sq ft)
Coffee Shop seating (inside)	3 spaces (based on 12 people for coffee area seating)
	21 spaces

Lower Floor Parking Required - Estimated

Repair Area	1,200 sq ft	2 spaces
Retail (1/200)	700 sq ft	3.5 spaces
Garage	380 sq ft	0 spaces
New Stairwell	100 sq ft	0 spaces
Office (1/250)	400 sq ft	1.6 space
Storage (1/600)	2,270 sq ft	3.8 spaces (Unused in reality since no activity)
	Required	10.9 spaces

Combined Requirement **21+11 = 33** ***18 and 15 = 33 spaces Available***

Notes:

1. The entire building will be retained by the developer for the proposed use.
2. Phase I parking east of the building (15 spaces) will be completed this fall after the site plan is approved.
3. Phase II parking to the west (18 spaces) would require relocating the parking lot access and would occur once the lower floor is put to use, a timeline for which remains to be determined.
4. The developer has considered using the 700 square feet of retail space in the basement for a Class Room style use related to education, training or seminars on bicycling. These sessions would not occur during normal business hours so they would not impact the parking demands. The parking requirement for such use would be 12 spaces, which can be accommodated on this site with approval of the variance and timing for this use.
5. All lower floor uses are subject to compliance with building codes.



Community Development Department

June 27, 2013

To whom it may concern.

The proposed parking calculations for the business titled Epic Bike/Bone Shaker Coffee has been approved by me, Building Official for the City. The location with an address of 411 Frane Barracks Road will consist of 32 parking spots and has met the requirements of Ordinance 14-03-10.

If you have any questions please feel free to contact me.

Sincerely

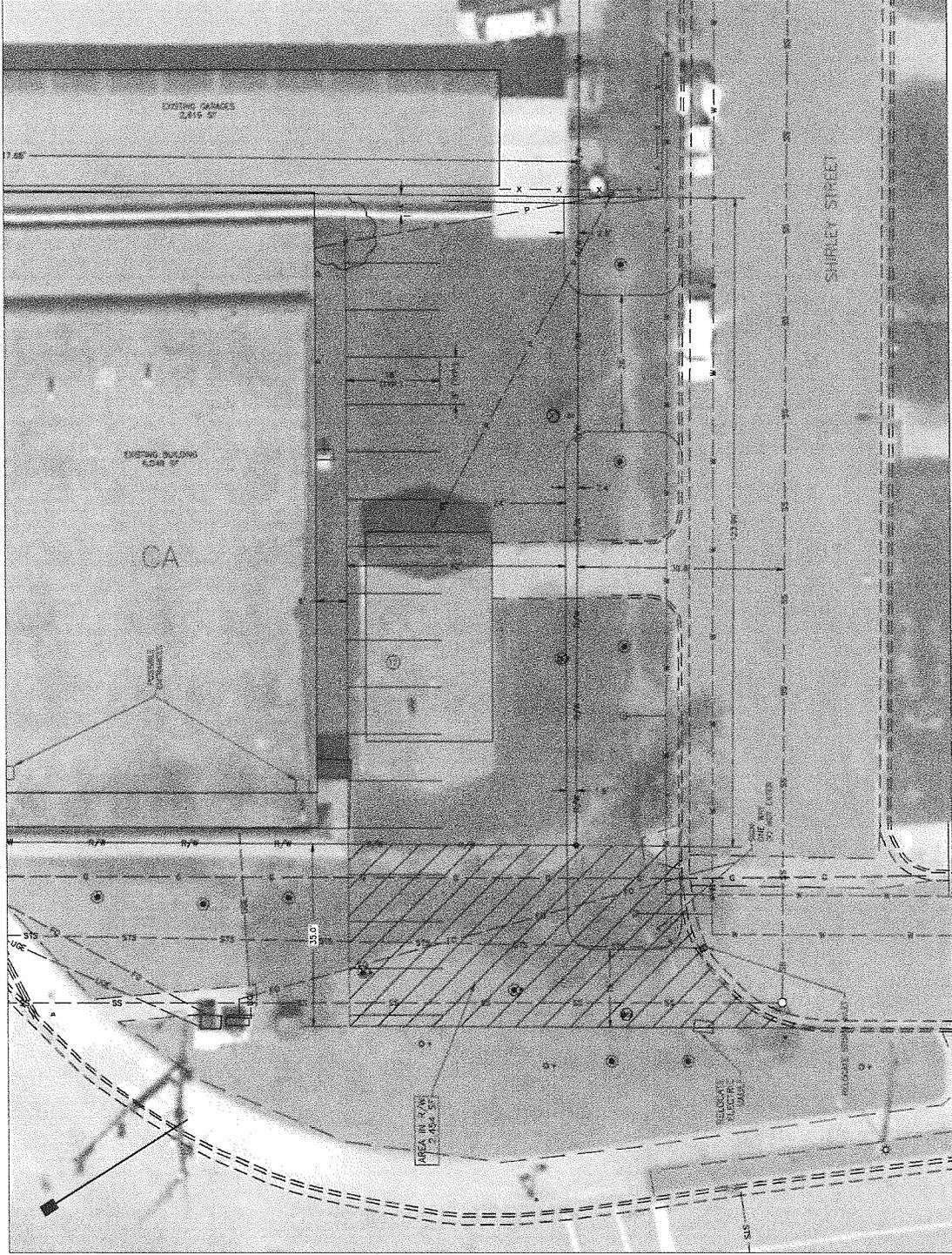
Ray Ziegler
Building Official
City of Bismarck

Bismarck-Burleigh County Community Development Department
221 North 5th Street • P.O. Box 5503 • Bismarck, ND 58506-5503 • (701): 711 • www.bismarck.org

**EPIC BIKE SHOP/BONE SHAKER COFFEE
411 FRANE BARRACKS ROAD
BISMARCK ND**

PARKING CALCULATIONS

Total Number of Parking Stalls Available: (See Attached Exhibit A Houston Engineering Plan)	32
Total Building Square Feet:	6,870
Less:	
Garage Area	(1,800)
Upper Stairwell	(66)
Lower Stairwell	(145)
Bike Repair Area (Requires 2 stalls)	(1,500)
Bathrooms	<u>(160)</u>
Total SF dedicated to Retail:	3,199/200 = (16 Stalls)
Bike Repair Area:	(2 stalls)
Parking Available for Coffee Shop Seating: (14 Stalls x 4 chairs per stall = 56 seats)	(14 stalls)



CA - NEIGHBORHOOD COMMERCIAL
 SIDE YARD: 10 FT
 REAR YARD: 10 FT

SPACES PROVIDED
 FRONT: 16
 REAR: 17

VACATED RIGHT OF WAY = 2,454 SF

- ⊗ TREE REMOVAL = 5
- ⊙ TREE REPLACEMENT = 8

LEGEND

- EXISTING**
- STORM INLET
 - MANHOLE
 - FIRE HYDRANT
 - GATE VALVE
 - COMBUST
 - LIGHT POLE
 - SIGN
 - IRON MONUMENT FOUND
 - IRON MONUMENT SET
 - WATER MAIN
 - SEWER MAIN
 - STORM SEWER MAIN
 - STORM SEWER MAN
 - OVERHEAD POWER
 - UNDERGROUND ELECTRIC
 - UNDERGROUND TELEPHONE
 - UNDERGROUND FIBER OPTIC
 - CABLE TV
 - GAS MAIN
 - FENCE
 - STANDARD CURB & GUTTER
 - RIGHT OF WAY LINE
 - HERE
 - BUILDING

This document is preliminary and not for construction or implementation purposes.

CONCEPT 3
 DETAIL VIEW
 PROJECT NO. 7880-001

SHEET
 2 OF 2

Drawn by
 AAS

Date
 9-4-13

Checked by
 MHG

Scale
 AS SHOWN

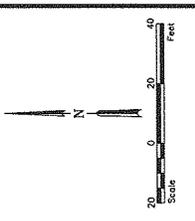
HOUSTON
 Engineering Inc.

Revision

No. _____

Date _____

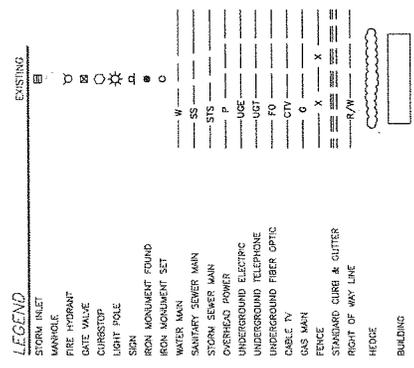
By _____



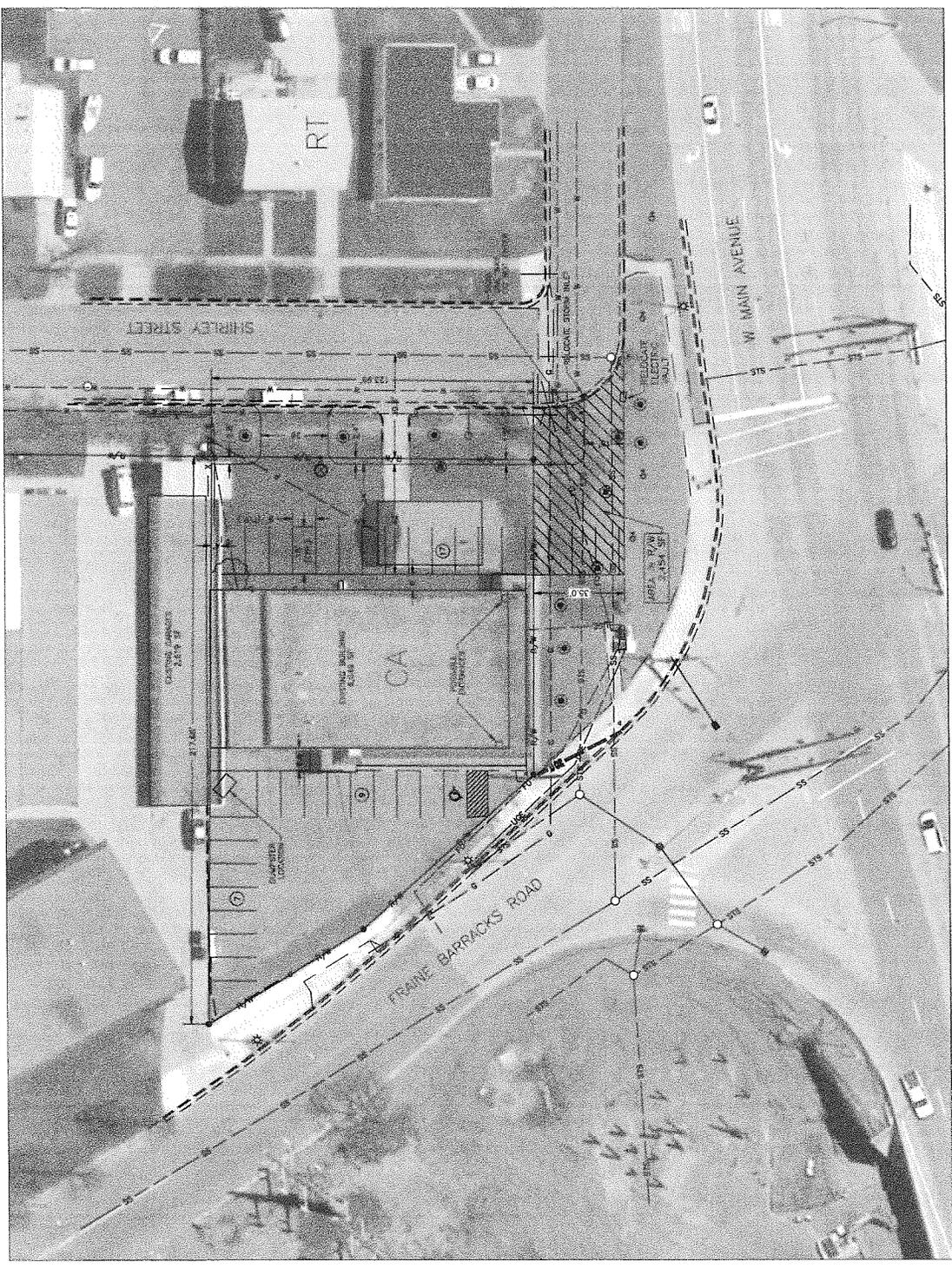
CA - NEIGHBORHOOD COMMERCIAL
 FRONT YARD: 0 FT
 SIDE YARD: 0 FT
 REAR YARD: 10 FT

SPACES PROVIDED
 FRONT: 16
 REAR: 17

VACATED RIGHT OF WAY = 2,454 SF
 TREE REMOVAL = 5
 TREE REPLACEMENT = 8



This document is preliminary and not for construction or implementation purposes.



CONCEPT 3		SHEET	
PROJECT NO. 7880-001		1 OF 2	
Drawn by	Date	Checked by	Scale
AAS	9-4-13	MHG	AS SHOWN
Reviewed by	Checked by	Scale	AS SHOWN
HOUSTON ENGINEERING INC.	HOUSTON ENGINEERING INC.	HOUSTON ENGINEERING INC.	HOUSTON ENGINEERING INC.
No.	Revision	Date	By

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

BACKGROUND:	
Title: 1603 East Main Avenue –Variance (Off-Street Parking and Loading) (Tract 1575 of the NW ¼ of Section 3, T138N-R80W; Tract 1605 of Block 1, Governor Pierce Addition; and Lots 1-5, less the west 5 feet of Lot 5, Block 1, Governor Pierce Addition and all vacated adjacent 17 th Street less the east 33.2 feet of said vacated 17th Street).	
Status: Board of Adjustment	Date: October 3, 2013
Owner(s): Otter Holdings, LLP (owner) Sixteen03 Main Events, LLC (applicant)	Engineer/Architect: Ubl Design Group
Reason for Request: Variance from Section 14-03-10(1)(g) of the City Code of Ordinances (Off-Street Parking and Loading)(Places of Public Assembly) to reduce the required off-street parking spaces on the existing site to allow for the re-adaptive use of the existing building for an events center.	
Location: The property is located along the south side of East Main Avenue between South 16 th Street and Airport Road.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The variance request is for the re-adaptive use of an existing building that has been vacant for a number of years. The applicant intends to demolish the two existing buildings located to the east and west sides of the larger building to create a larger parking area. According to the site plan submitted with the variance request, the maximum number of parking spaces the existing site can provide is 182. 2. City staff met with the applicant and the architect for the proposed project to discuss alternative options for calculating the required parking for this project. In particular, calculating the required parking based on the largest assembly area in the building was discussed as an alternative calculation, as it is unlikely that all spaces would be utilized concurrently. However, it was determined that the total number of off-street parking required based on this calculation was 206 spaces, which is twenty-four (24) spaces more than the site can provide. 	
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 14-03-10(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.” 	

(continued)

3. Section 14-03-10(1)(g) of the City Code of Ordinances (Off-Street Parking and Loading)(Public Places of Assembly) states, "Places of public assembly, including private clubs, lodges and fraternal buildings not providing overnight accommodations, assembly halls, exhibition halls, convention halls, auditoriums, skating rinks, dance halls, bowling alleys, sport arenas, stadiums, gymnasiums, amusement parks, zoos, race tracts, fair grounds, circus grounds, community centers, libraries, museums, and all other similar places of public assembly: One space for each sixty (60) square feet of gross floor area." According to the building plans submitted for the proposed variance, approximately 471 off-street parking spaces would be required for the events center uses on the main and second level of the building.
4. Section 14-03-10(1)(n) of the City Code of Ordinances (Off-Street Parking and Loading)(wholesale, warehouses and storage buildings) states, "One space for each six hundred (600) square feet of storage area." According to the building plans submitted for the proposed variance approximately twenty-nine (29) off-street parking spaces would be required for the storage uses in the basement of the building.

FINDINGS:

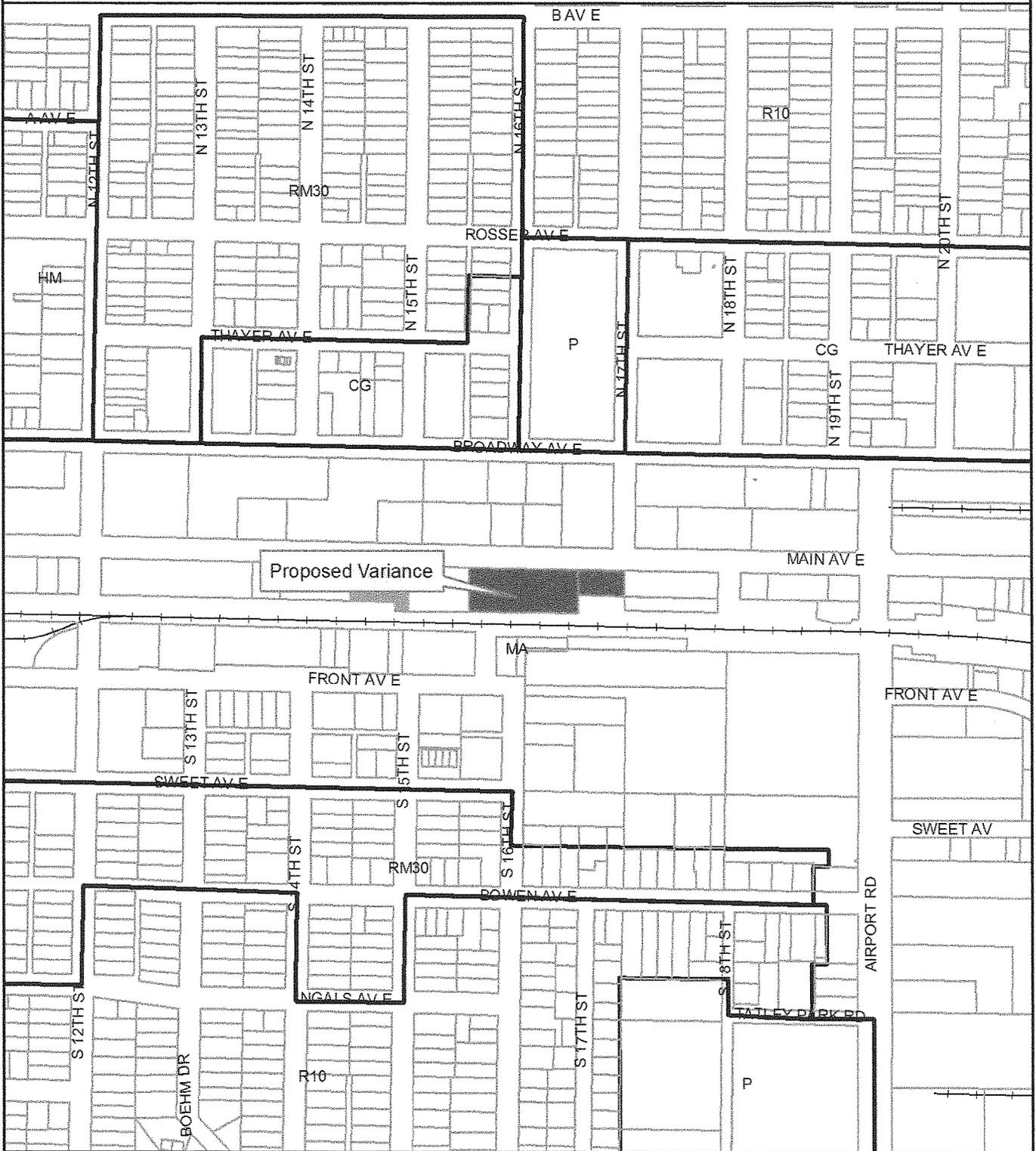
1. The need for a variance is based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the MA-Industrial zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that would accomplish the relief sought by the applicant, as there is no space on the site for additional parking spaces.
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
1603 East Main Avenue
(Tract 1575 of the NW ¼ of Section 3, T138N-R80W and Part of Governor Pierce Addition).



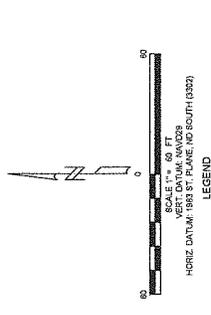
DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: 09/24/13 (jw)

Source: City of Bismarck



PROPOSED CONDITIONS

BUILDING CONSTRUCTION TYPE: STEEL FRAME
 NUMBER OF STORIES: 2
 FIRE SUPPRESSION SYSTEM: YES
 TOTAL BUILDING AREA: 28,284 SF
 TOTAL REQUIRED PARKING: SEE NOTE BELOW
 TOTAL REQUIRED PARKING: 162 SPACES
 TOTAL SPACES PROVIDED: 162 (IS ADA + 177 REGULAR)



- LEGEND**
- ⊛ EXISTING STREET LIGHT
 - EXISTING SANITARY SEWER MANHOLE
 - ⊗ EXISTING POWER POLE
 - ⊕ EXISTING FIRE HYDRANT
 - ⊠ EXISTING SIGN
 - EXISTING OVERHEAD POWERLINE
 - EXISTING FENCE LINE
 - EXISTING UNDERGROUND ELECTRIC
 - EXISTING CONTOUR
 - PROPOSED WATER SERVICE
 - PROPOSED SEWER SERVICE
 - PROPOSED CHAINLINK FENCE (6' TALL)
 - ▨ EXISTING CONCRETE
 - ▨ EXISTING ASPHALT
 - ▨ PROPOSED ASPHALT

PROPOSED PARKING STALL COUNT
 LOT NUMBER
 BLOCK NUMBER

LEGAL DESCRIPTION:
 PART OF A CERTAIN TRACT OF LOT 3 &
 ALL VACATED 17TH STREET, ADJ.
 LESS EAST 33.2' OF SAID VACATED
 17TH STREET AND TRACTS 1575 &
 1576, BISMARCK, ND, COUNTY OF BISMARCK,
 LOT AREA: 84,428 SF

OWNER:
 TESSER MANUELS, L.L.C.
 903 MAIN AVENUE
 BISMARCK, ND 58501

CONTRACTOR:
 ACE MANAGEMENT, L.L.C.
 ZONING: MA

ENGINEER:
 TOMAN ENGINEERING CO.
 801 1st Street NW, Mandan, ND 58544
 Phone: 701-465-9483

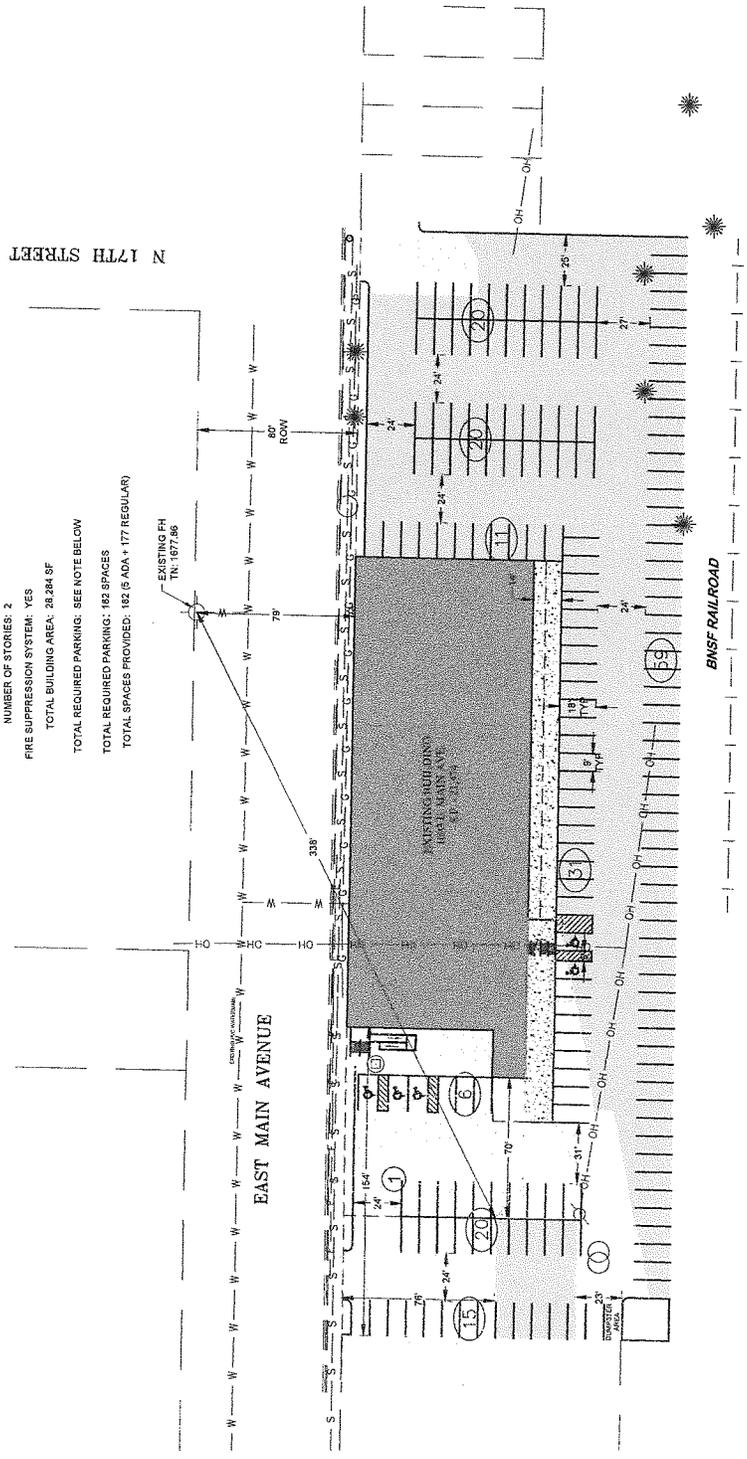
CAUTION
 VERIFY LOCATION PRIOR TO
 ANY EXCAVATION



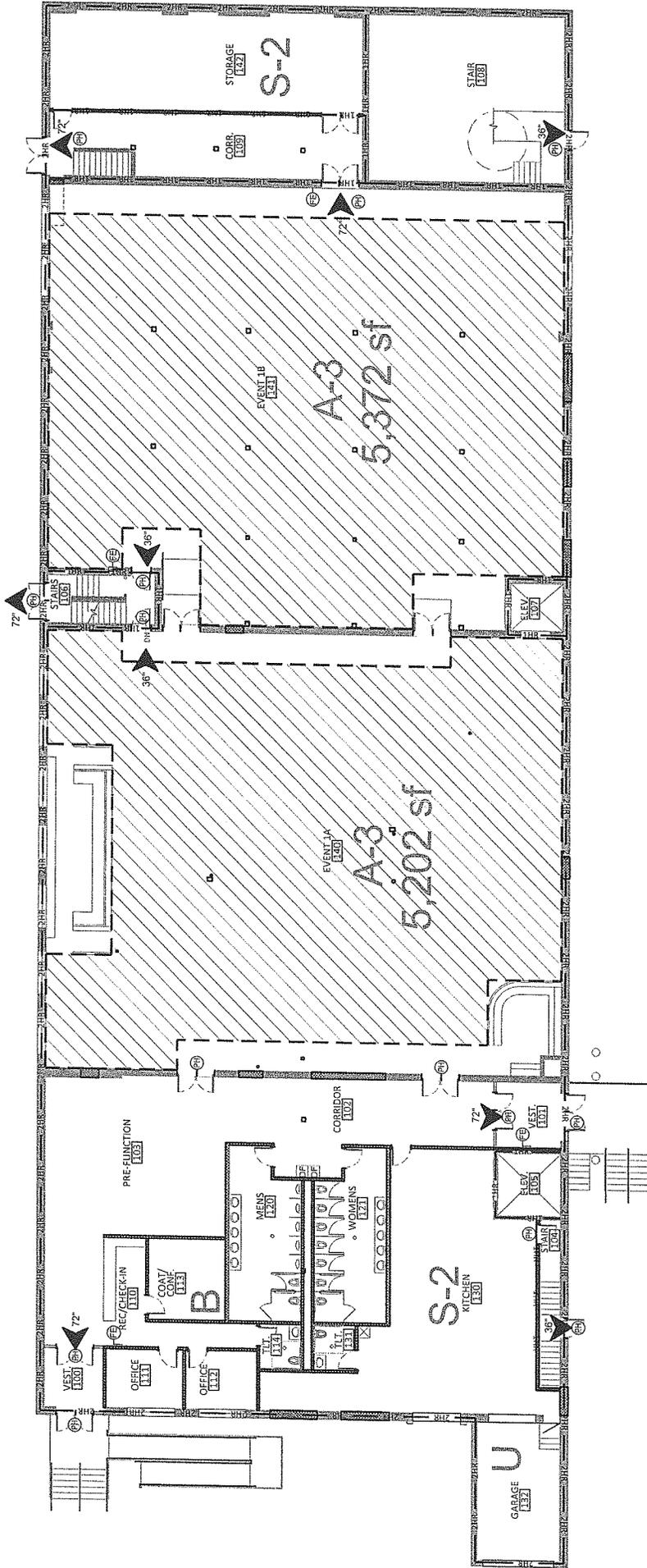
PROPOSED CONDITIONS
 SIXTEEN(3) MAIN EVENTS, LLC
 1603 E MAIN AVENUE
 BISMARCK, ND 58501

SITE IMPROVEMENTS
 PROJECT NO. 7854
 SHEET 3 OF 4
 BISMARCK, ND

JULY, 2013



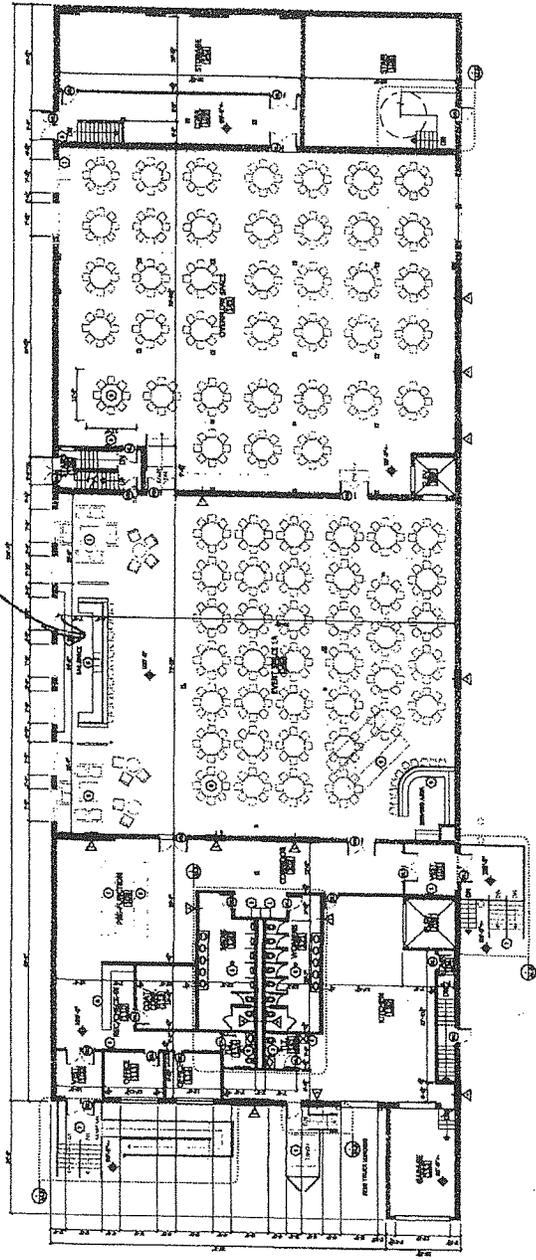
NOTES:
 DUMPSTER AREA SHALL BE SCREENED VIA FENCE



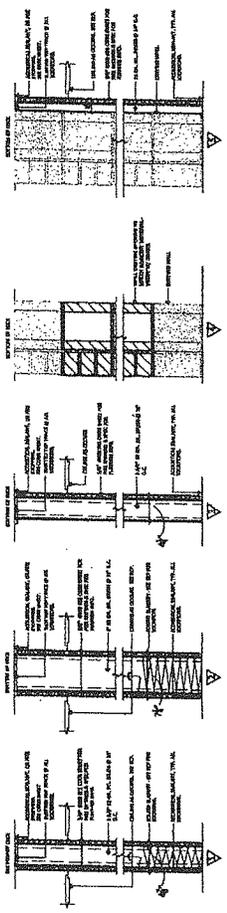
2 main level CODE PLAN
 scale 1/16" = 1'-0"

Portable & Static Brss
generally in This Location

- general notes**
1. THE GENERAL CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL EXISTING CONDITIONS PRIOR TO ANY CONSTRUCTION OF ANY TYPE. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED. VERIFY ALL DIMENSIONS AND LOCATIONS PRIOR TO ANY CONSTRUCTION OF ANY TYPE.
 2. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED. VERIFY ALL DIMENSIONS AND LOCATIONS PRIOR TO ANY CONSTRUCTION OF ANY TYPE.
 3. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED. VERIFY ALL DIMENSIONS AND LOCATIONS PRIOR TO ANY CONSTRUCTION OF ANY TYPE.
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 5. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED. VERIFY ALL DIMENSIONS AND LOCATIONS PRIOR TO ANY CONSTRUCTION OF ANY TYPE.
- general plan notes**
1. WALL TYPES AS SHOWN ON THIS PLAN.
 2. WALL TYPES AS SHOWN ON THIS PLAN.
 3. WALL TYPES AS SHOWN ON THIS PLAN.
 4. WALL TYPES AS SHOWN ON THIS PLAN.
 5. WALL TYPES AS SHOWN ON THIS PLAN.
 6. WALL TYPES AS SHOWN ON THIS PLAN.
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 8. WALL TYPES AS SHOWN ON THIS PLAN.
 9. WALL TYPES AS SHOWN ON THIS PLAN.
 10. WALL TYPES AS SHOWN ON THIS PLAN.



1 Main level plan



2 wall types

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.)

The existing physical boundary of the site limits the use of the property. Currently the building is used for storage and fulfills the parking requirements for an industrial zone. The proposed use of the renovated building is mainly for an assembly space, administration area, storage, and a kitchen. The city ordinance requires a general calculation of parking based on the main use of the building; this required additional parking will not fit within the site boundaries. Further, the current building layout does not allow for all assembly areas to be used simultaneously. The city ordinance does not address this unique situation in the off street parking requirements.

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

Reasonable use of the existing building and site would be to calculate parking based on the actual use of each of the spaces. Further parking requirements as defined by the city ordinance would deprive the building of reasonable uses outside of a storage/industrial use. Also as a part of this project various upgrades will be made to the building, including general safety improvements, fire suppression system upgrades, egress improvements, the addition of landscaping, and improved vehicular way finding.

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

The request is to calculate parking based on the actual use of each of the spaces within the building. The request is the minimum variance necessary as it is based off of existing physical conditions while addressing reasonable use of the 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.

BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
September 5, 2013

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

Members present were with Michael Marback, Blair Ihmels, Jeff Ubl and Jennifer Clark.

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

Others present were Mark Holzer, Kris Smotherman, Will Kincaid, Jeff Feist, Lonny Bosch, Randy Pergors, Teresa Bleich, Curt Binstock, Mark Harstad, and Devin Barnes.

MINUTES:

Chair Marback asked for consideration of the minutes of the August 1, 2013 meeting.

MOTION: A motion was made by Mr. Ihmels and seconded by Mr. Ubl to approve the minutes of the August 1, 2013 meeting as presented. With Board Members Clark, Ihmels, Ubl, and Marback voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-01(4) OF THE CITY CODE OF ORDINANCES (RR-RESIDENTIAL DISTRICT)(FRONT YARD) – 2001 SHERMAN DRIVE

Chair Marback stated the applicant was requesting a variance to reduce the front yard setback requirement from 40 feet to 19 feet in order to construct a 896 square foot (30'x28') accessory building.

Mark Holzer approached the Board to further explain the variance. He also stated that many neighbors within his subdivisions had accessory buildings located within the front yard setback.

Mr. Ihmels asked Mr. Holzer to explain to the Board the location of the proposed accessory building. Mr. Holzer stated that he intends to place the building along the east side of his property approximately 19 feet from the property line.

MOTION: A motion was made by Mr. Ihmels to approve the variance to reduce the front yard setback from 40 feet to 19 feet in order to construct a 896 square foot (28'x32') accessory building. The motion was seconded by Mr. Ubl and was unanimously approved with Board Members Clark, Ihmels, Ubl, and Marback voting in favor.

VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL)(FRONT YARD) – 523 NORTH 1ST STREET

Chair Marback stated the applicant was requesting a variance from the front yard setback on the north side of his property from 25 feet to 15 feet in order to construct a 1,200 square foot (30'x40') accessory building.

Kris Smotherman approached the Board to further explain the variance request. He stated that although his lot is fairly large, it has been previously landscaped and he does not want to tear out the landscaping to place the accessory building further into his property.

Will Kincaid, an adjacent property owner, approached the Board to state that he had concerns with the size of the accessory building and its potential use.

Mr. Ubl asked if the proposed accessory building was set back 20 feet, would the applicant be able to park his vehicle in front of the accessory building without encroaching onto the sidewalk.

Mr. Ihmels asked the applicant if he could live with the accessory building being set back 20 feet rather than 15 feet. Mr. Smotherman responded yes, he could.

Ms. Clark stated that she struggles with downtown properties. She asked the applicant if he would consider reducing the proposed 3-stall accessory building to something smaller, since the adjacent property owner was upset with the size. Mr. Smotherman replied he would be willing to decrease the size of the accessory building a little, but further explained his desire to have a 3-stall accessory building. He added that the size of his lot would allow for a larger accessory building.

Chairman Marback asked if the variance request could be modified so that the applicant would only need a 1 foot variance, which would move the proposed accessory building further into his property while maintaining the size of the building.

Mr. Ihmels asked if there was a hardship in this variance, stating that the applicant's lot is large enough for the proposed accessory building.

MOTION: A motion was made by Ms. Clark to approve the modified variance request to reduce the front yard setback on the north side of the property from 25 feet to 24 feet in order to construct a 840 square foot (30'x28') accessory building. The motion was seconded by Mr. Ihmels. With Board Members Clark, Ihmels, and Marback voting in favor of the motion and Board Member Ubl voting to deny the motion, the motion was not approved. Since the motion was not approved, the variance request was denied. *(Secretary's Note: Per NDCC, four affirmative votes are needed to approve a variance.)*

VARIANCE FROM SECTION 14-04-01(6) OF THE CITY CODE OF ORDINANCES (RR-RESIDENTIAL)(REAR YARD) – 4560 HILLSBORO DRIVE

Chair Marback stated the applicant was requesting a variance to reduce the required rear yard setback along the west side of the property from 50 feet to 35 feet in order to construct a 1,200 square foot (30'x40') accessory building.

Lonny Bosh approached the Board to further explain the request.

No further comments were made.

MOTION: A motion was made by Mr. Ubl to approve the variance request to reduce the rear yard setback along the west side of the property from 50 feet to 35 feet in order to construct a 1,200 square foot (30'x40') accessory building. The motion was seconded by Mr. Ihmels, and unanimously approved with Board Members Clark, Ihmels, Ubl and Chairman Marback voting in favor of the motion.

VARIANCE FROM SECTION 14-03-10(h) OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING)(RETAIL ESTABLISHMENTS) AND SECTION 14-04-10(N) OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) (WAREHOUSE/STORAGE FACILITIES) – 2228 EAST FRONT AVENUE

Chair Marback stated the applicant was requesting a variance from the required off-street parking requirements for retail facilities and warehouse/storage facilities from 32 spaces to 24 spaces in order to construct a 9,216 square foot addition to the existing building.

Mark Harstad, Ross and Associates, approached the Board on behalf of the applicant to explain the request. Mr. Harstad stated that the applicant wishes to vacate the building they currently renting for warehouse space across the street from the proposed variance citing safety concerns of the cross traffic. He added that the majority of the proposed addition is warehousing. He further stated that a small portion of the proposed addition would be used as retail space culminating in 10% of sales; the other 90% of sales is done through the warehouse with no walk-in or retail traffic.

Ms. Clark stated she is struggling with this request because it is creating a nuisance. It is limited space because the applicant wishes to max out his building area. She asked the applicant if the size of the proposed addition is the smallest size needed to operate the business. Curt Binstock, the owner of the property, approached to Board to state that the size of the proposed addition was the smallest size needed to operate the business

Mr. Ihmels asked if there was parking for employees. Mr. Binstock responded that there were, adding that he is still providing more off-street parking than adjacent properties in the vicinity.

Ms. Clark asked how long the business has been in its current location. Mr. Binstock replied since 1985.

MOTION: A motion was made by Mr. Ihmels to approve the variance request from the required off-street parking requirements for retail facilities and warehouse/storage facilities from 32 spaces to 24 spaces in order to construct a 9,216 square foot addition to the existing building. The motion was seconded by Mr. Ubl, and unanimously approved with Board Members Clark, Ihmels, Ubl and Chairman Marback voting in favor of the motion.

VARIANCE FROM SECTION 14-04-19(6)(b)(1) OF THE CITY CODE OF ORDINANCES (FLOODPLAIN DISTRICT)(FLOOD HAZARD REDUCTION / ACCESSORY BUILDINGS) – 2812 WOODLAND DRIVE

Chair Marback stated the applicant was 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 0 feet above the Base Flood Elevation (BFE), in order to construct a 1,260 square foot (36'x35') accessory building.

Randy Pergors approached the Board to further explain the request.

Chairman Marback asked the applicant if the proposed accessory building will be occupied. Mr. Pergors stated it would not.

MOTION: A motion was made by Mr. Ubl to approve the variance request 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 0 feet above the Base Flood Elevation (BFE), in order to construct a 1,260 square foot (36'x35') accessory building. The motion was seconded by Mr. Ihmels, and unanimously approved with Board Members Clark, Ihmels, Ubl and Chairman Marback voting in favor of the motion

VARIANCE FROM SECTION 14-04-16(4) OF THE CITY CODE OF ORDINANCES (P-PUBLIC USE DISTRICT)(FRONT YARD) – 408 WEST SWEET AVENUE

Chair Marback stated the applicant was requesting a variance from the required front yard setback from 25 feet to 16 feet along the south side of the property in order to construct a grandstand behind home plate at the Bismarck Municipal Ball Park.

Jeff Feist, REH Architects, approached the Board to further explain the request.

Mr. Ubl asked if the original grandstand encroached into the setback. Mr. Feist replied they did not; however, they are unable to adhere to the setback with the new grandstand because they cannot get any closer to home plate.

MOTION: A motion was made by Mr. Ubl to approve the variance request to reduce the required front yard setback from 25 feet to 16 feet along the south side of the property in order to construct a grandstand behind home plate at the Bismarck Municipal Ball Park. The motion was seconded by Mr. Ihmels, and unanimously approved with Board Members Clark, Ihmels, Ubl and Chairman Marback voting in favor of the motion.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:25 p.m. to meet again on Thursday, October 3, 2013.

Respectfully Submitted,

Jenny Wollmuth
Recording Secretary

APPROVED:

Michael Marback, Chairman