

*Community Development Department*

**BISMARCK BOARD OF ADJUSTMENT  
MEETING AGENDA**

**December 12, 2013**

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**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 November 7, 2013 meeting of the Board of Adjustment.

**REQUESTS**

2. **Variance from Section 14-03-10(1)(e) of the City Code of Ordinances (Off-Street Parking and Loading) (Restaurants)** – 1515 Burnt Boat Drive (Auditor's Lot C2, Block 2, Tyler's First Subdivision)  
*Dale Gossett is requesting a variance to reduce the number of required off-street parking spaces from 33 spaces to 10 spaces for the operation of a self-serve yogurt establishment in a multi-tenant building.*
3. **Variance from Section 14-04-01(3) of the City Code of Ordinances (RR-Residential District)(Lot Area)** - (Part of Lot 3, Block 3, Grand Prairie Estates 4<sup>th</sup> Subdivision)  
*Glen Ternes is requesting a variance to allow development of a 36,285 square foot parcel located within the RR-Residential zoning district.*
4. **Variance from Section 14-04-06(8) of the City Code of Ordinances (R10-Residential District)(Side Yard)** – 3321 Thunderbird Lane (Lot 8, Block 1, K & L's 4<sup>th</sup> Addition)  
*Jan Carter is requesting a variance to reduce the side yard setback along the of the property from ten (10) feet eight (8) inches to five (5) feet four (4) inches in order to construct a second level addition and uncovered deck.*



## OTHER BUSINESS

5. **Parking Determination** – Hay Creek Shops (Lot 1, Block 2, Hay Creek Commercial Addition)

*Staff is requesting a parking determination be made by the Board in accordance with Section 14-03-10(4) of the City Code of City Ordinances (Off-Street Parking and Loading) to determine the acceptability of the joint use of parking for a proposed mixed use shopping center.*

6. **Parking Determination** – Times Square (Lots 1-3, Block 1, Lots 1-3, Block 2, and the vacated Mayfair Avenue adjacent, Mayfair Managers Addition, and Tract S of the SE1/4 of Section 4, T138N-R80W/ Lincoln Township)

*Staff is requesting a parking determination be made by the Board in accordance with Section 14-03-10(4) of the City Code of Ordinances (Off-Street Parking and Loading) to determine the acceptability of the joint use of parking for an existing mixed use shopping center.*

## ADJOURNMENT

7. **Adjournment.** The next regular meeting date is scheduled for January 2, 2013.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>	
<b>Title:</b> 1515 Burnt Boat Drive –Variance (Off-Street Parking and Loading) (Auditor’s Lot C2, Block 2, Tyler’s First Subdivision)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> December 12, 2013
<b>Owner(s):</b> Froelich Land Limited Partnership (owner) Dale Gossett (applicant)	<b>Engineer/Architect:</b> None
<b>Reason for Request:</b> Variance from Section 14-03-10(1)(e) of the City Code of Ordinances (Off-Street Parking and Loading)(Restaurants) to reduce the required number of off-street parking spaces from 33 spaces to 10 spaces for the operation of a self-serve yogurt establishment in a multi-tenant building.	
<b>Location:</b> The property is located in northwest Bismarck along the south side of Burnt Boat Drive, between Tyler Parkway and Clydesdale Drive	
<b>ADDITIONAL INFORMATION:</b>	
<ol style="list-style-type: none"> <li>1. According to the site plan submitted with the variance request, the maximum number of off-street parking spaces the existing site which has the potential for multiple tenants, can provide is thirty-eight (38) spaces. The number of required off-street parking for the proposed variance is thirty-three (33) spaces.</li> </ol>	
<b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>	
<ol style="list-style-type: none"> <li>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.”</li> <li>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.”</li> <li>3. Section 14-03-10(e) of the City Code of Ordinances (Restaurants) states, “Restaurants, including bars, taverns, nightclubs, lunch counters, diners, drive-ins and all other similar dining or drinking establishments: One space for each sixty (60) feet of gross floor area (1,984 square feet). Patio area shall be included when calculating gross floor area.” According to the building plan submitted for the proposed variance, thirty-three (33) off-street parking spaces would be required for the proposed use.</li> </ol>	

**FINDINGS:**

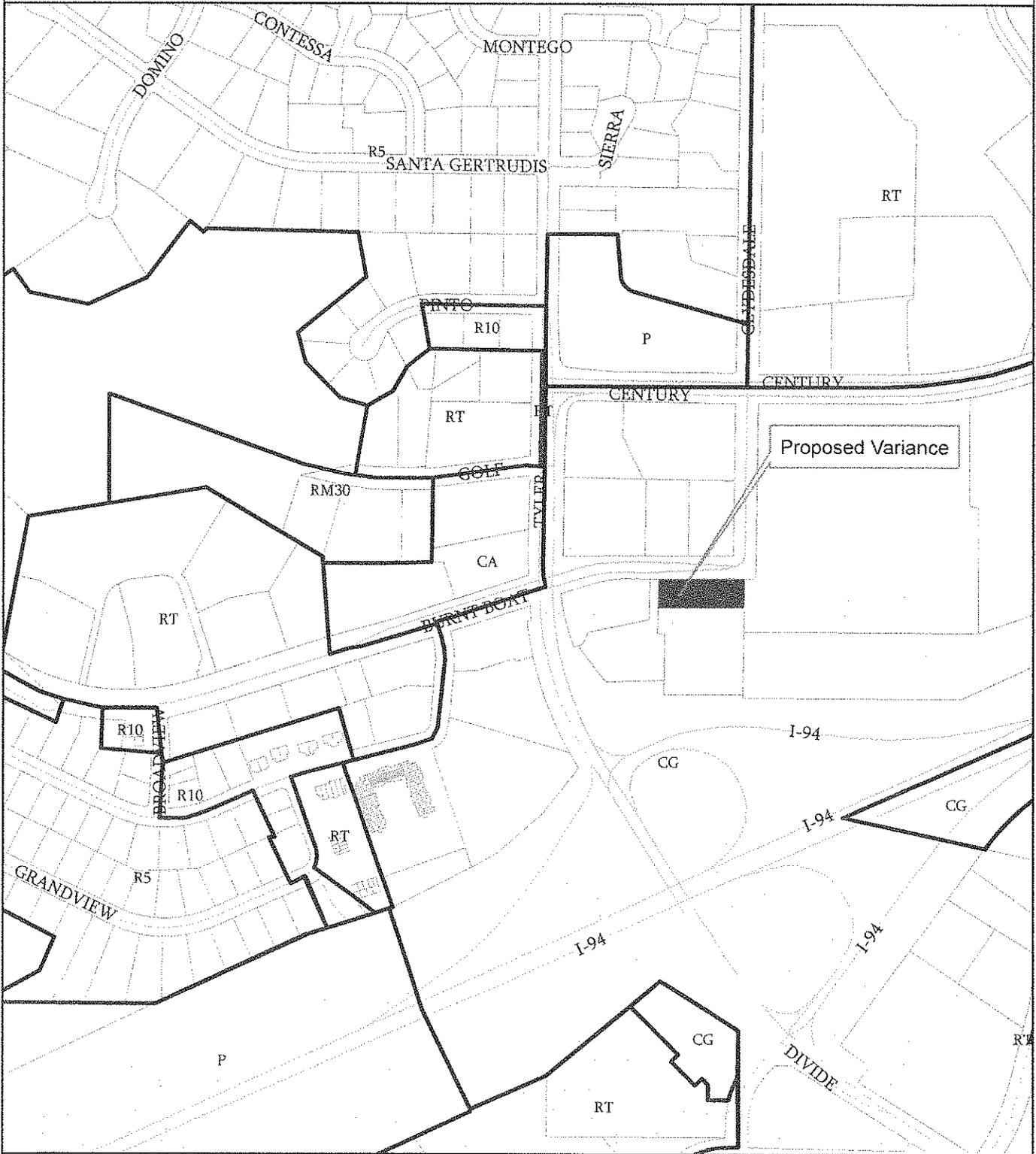
1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the CG-Commercial zoning classification.
2. The hardship is not caused by the provisions of the Zoning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

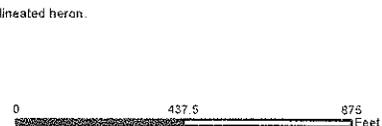
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

# Proposed Variance 1515 Burnt Boat 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: December 2, 2013 (hfb)

Source: City of Bismarck





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

<b>BACKGROUND:</b>	
<b>Title:</b> Parcel on Plainsman Drive (no address assigned) Variance (Rear Yard) (Tract E of Lot 3 and Auditor's Lot A of Lot 3, Block 3, Grand Prairie Estates 4 <sup>th</sup> Subdivision)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> December 12, 2013
<b>Owner(s):</b> Glen Ternes	<b>Engineer:</b> None
<b>Reason for Request:</b> Variance from Section 14-04-01(3) of the City Code of Ordinances (RR-Residential District) to allow the development of a 36,285 square foot parcel located within an RR-Residential zoning district.	
<b>Location:</b> The property is located northeast of Bismarck, north of 43 <sup>rd</sup> Avenue NE along the north side of Plainsman Drive.	
<b>ADDITIONAL INFORMATION:</b>	
<ol style="list-style-type: none"> <li>1. According to the Burleigh County Recorder's Office, Tract A(Auditor's Lot A) of Lot 3, Block 3, Grand Prairie Estates 4<sup>th</sup> Subdivision, (the northern portion of the parcel) containing 4,067 square feet was created in October 2000 via an Auditor's Plat (Document Number 547120). In June 2001, Tract A and Tract E of Lot 3 Block 3, Grand Prairie Estates, (the southern portion of the parcel) containing 38,986 square feet were combined via warranty deeds (Document Numbers 555283 and 555284). Copies are of the documents are attached.</li> <li>2. In October 2013, prior to applying for a building permit to construct a single-family dwelling, the applicant applied for a lot modification to adjust the existing lot lines for Tract A and Tract E of Lot 3, Block 3, Grand Prairie Estates 4<sup>th</sup> Subdivision, proposing to combine the larger portion of Tract A (3,460 square feet) with the adjacent lot to the east (Lots C and D, Block 4, Grand Prairie Estates 3<sup>rd</sup> Subdivision) and the smaller portion of Tract A (606 square feet) with Tract E of Lot 3, Block 3, Grand Prairie Estates 4<sup>th</sup> Subdivision resulting in a parcel size of 36,285 square feet. It was determined at that time that a variance would need to be approved as staff cannot administratively approve a lot modification that would create a parcel that does not meet the minimum lot size for the zoning district.</li> <li>3. On August 1, 2006, a Development of Substandard Sized Platted Lots policy was adopted by the Community Development Department to outline a process and establish standards for the development of substandard platted lots within the ETA. In particular, if the area of the substandard lot is less than 40,000 square feet, the lot will only be considered developable if the Building Inspections is provided with documentation that the soil conditions present through the lot are such that a second treatment area is able to be installed in the lot. The applicant has submitted a septic drainage field hydrologic evaluation for the proposed variance; however, additional information is required per policy in order for the Building Inspection Division to determine if the lot is developable. A copy of the Development of Substandard Sized Platted Lots is attached.</li> </ol>	
<b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>	
<ol style="list-style-type: none"> <li>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."</li> </ol>	
<i>(continued)</i>	

2. Section 14-04-01(3) of the City Code of Ordinances (RR-Residential District) states, "Each principal building erected together with its accessory building, shall not be located on a lot containing a minimum area of 65,000 square feet with a minimum lot width of 150 feet and a minimum lot depth of 200 feet. Provided, however, that on a record lot corresponding to a plat recorded prior to September 23, 2003, a single-family dwelling and accessory buildings may be erected, provided said lot contains no less than 40,000 square feet." In order for the current 38,986 square foot parcel to be considered conforming, the parcel size must be at least 40,000 square feet, as it was created prior to September 23, 2003. The request to create a parcel that is 36,285 square feet can only be approved if a variance was granted to allow the development of a lot smaller than the required 65,000 square feet.

**FINDINGS:**

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning 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:**

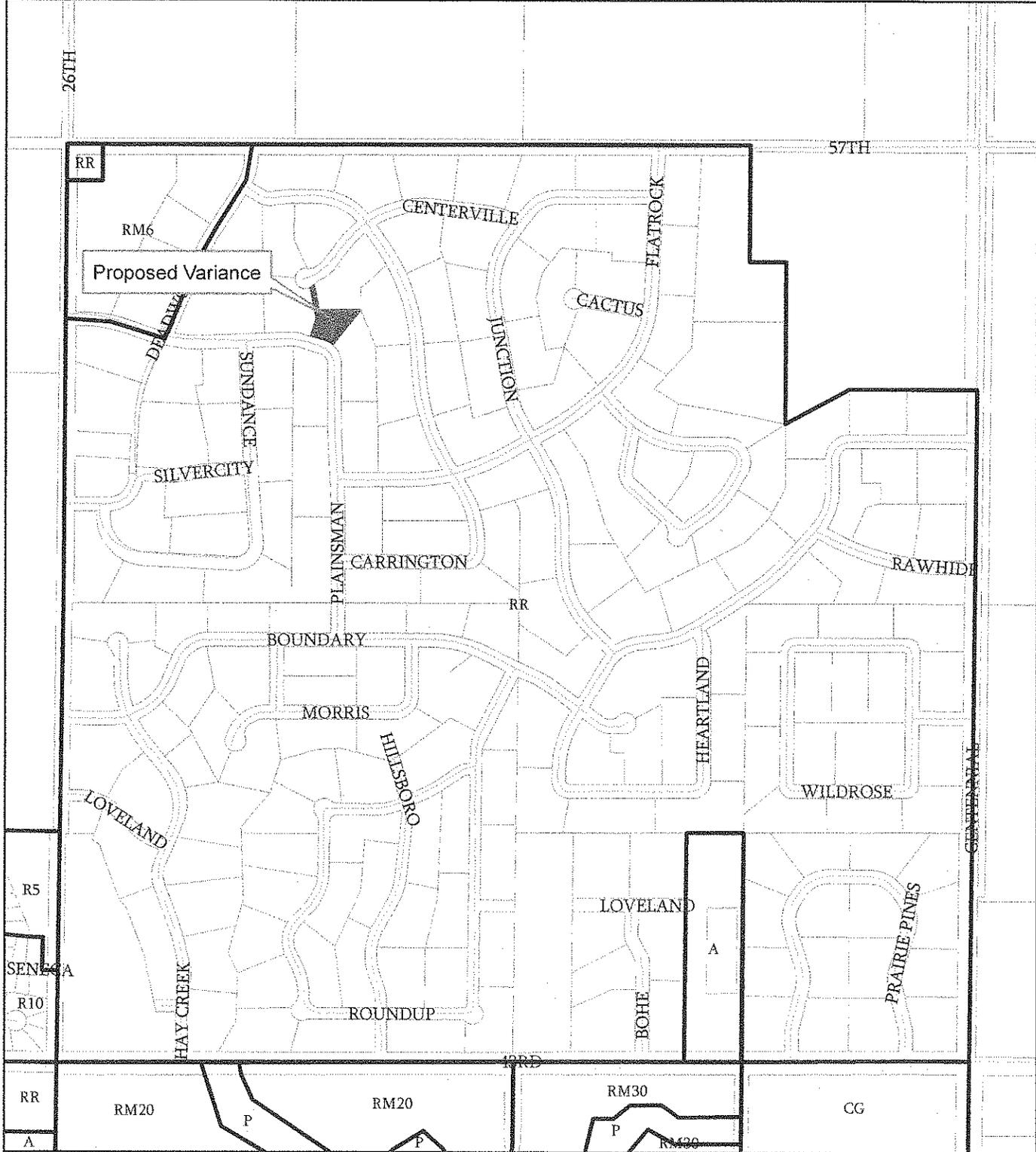
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

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

# Proposed Variance

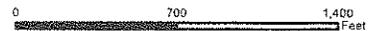
## Lot 2 of Tract A, Lot 3, Block 3

### Grande Prairie Estates 4th Subdivision



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: November 25, 2013 (hib)

Source: City of Bismarck



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

1. Property Address or Legal Description:

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

3. Type of Variance Requested:

4. Applicable Zoning Ordinance Chapter/Section:

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

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

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

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

Written Statement continued...

1. Property Address or Legal Description:

- Lot 2 of Tract A, Lot 3, Block 3, Grande Prairie Estates 4<sup>th</sup> Subdivision
- Tract E, Lot 3, Block 3, Grande Prairie Estates 4<sup>th</sup> Subdivision

5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property.

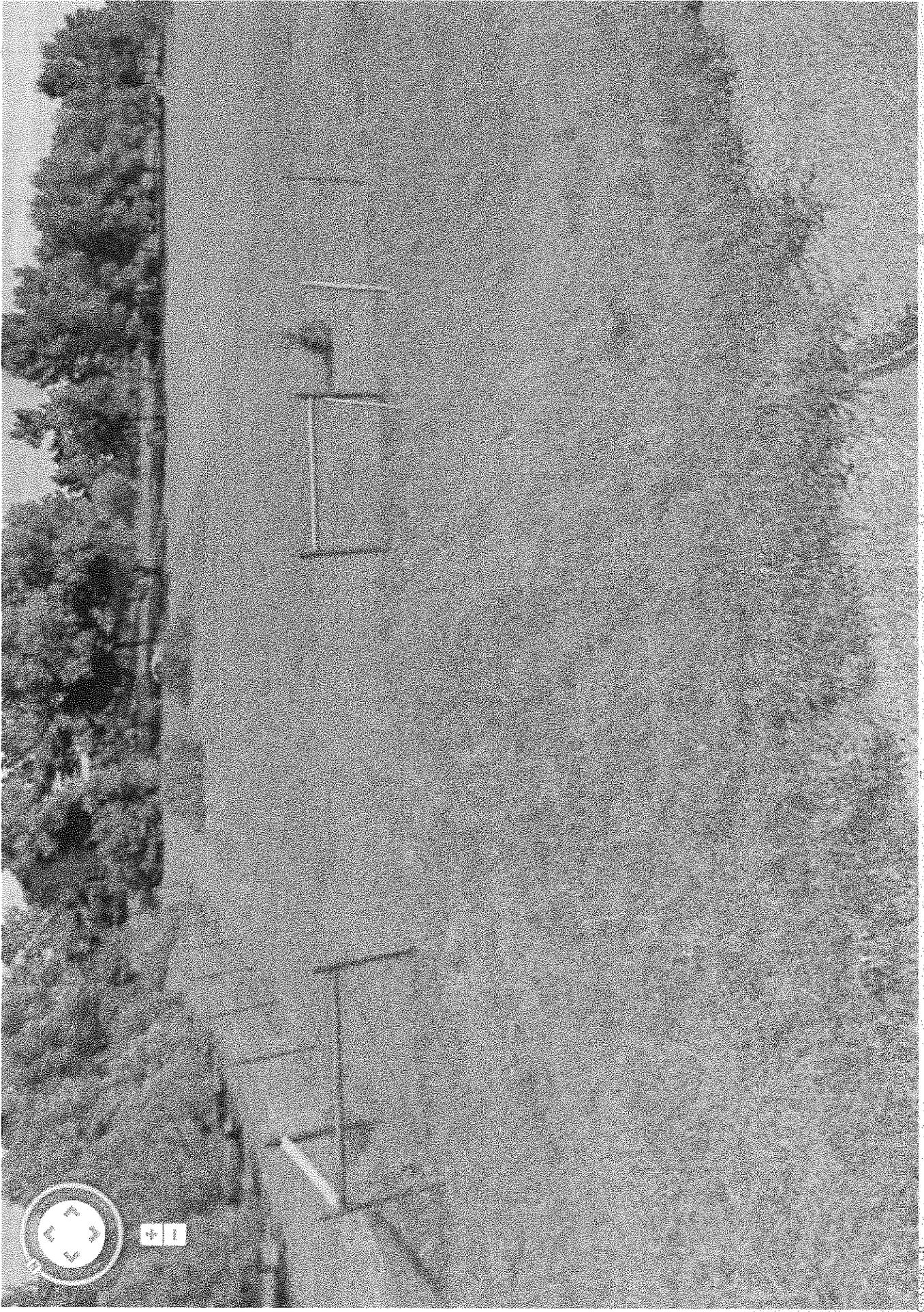
This request involves an irregular sized lot of .802 acres (35,545) square feet. The current ordinance restricts building on this parcel. Therefore, a variance to this restriction is necessary for reasonable use of the land.

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

Owner has no use for this parcel and is unable to sell it in its current state. Testing of soil quality and water tables substantiate parcel would sustain a standard septic system.

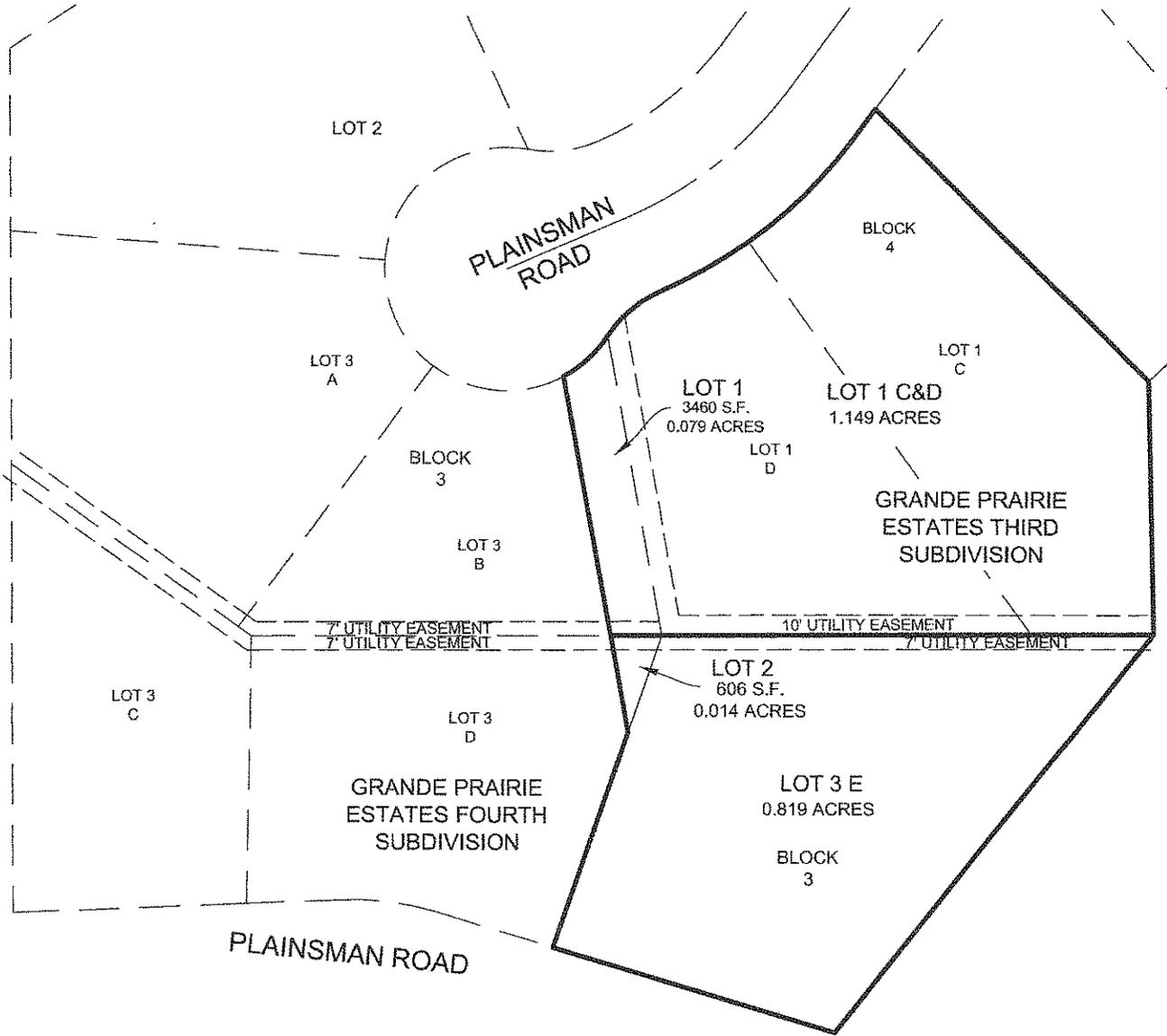
7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.

Parcel will sustain both a principal residence and a standard septic system. The square foot restriction is the only barrier to this parcel having a reasonable use in the neighborhood.



Map labels: Carrington, Bismarck, ND, and other geographical markers.

# LOT COMBINATION EXHIBIT



LOT 1 OF TRACT A OF LOT 3,  
BLOCK 3, GRANDE PRAIRIE  
ESTATES FOURTH ADDITION = 0.079 ACRES

LOT C & D OF LOT 1, BLOCK 4,  
GRANDE PRAIRIE ESTATES THIRD  
SUBDIVISION = 1.149 ACRES

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LOT 2 OF TRACT A OF LOT 3,  
BLOCK 3, GRANDE PRAIRIE  
ESTATES FOURTH ADDITION = 0.014 ACRES

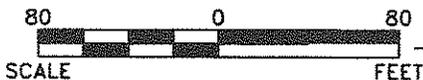
LOT E OF LOT 3, BLOCK 3, GRANDE  
PRAIRIE ESTATES FOURTH  
SUBDIVISION = 0.819 ACRES

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0.833 ACRES



OCTOBER 2013



OCT 28 2013

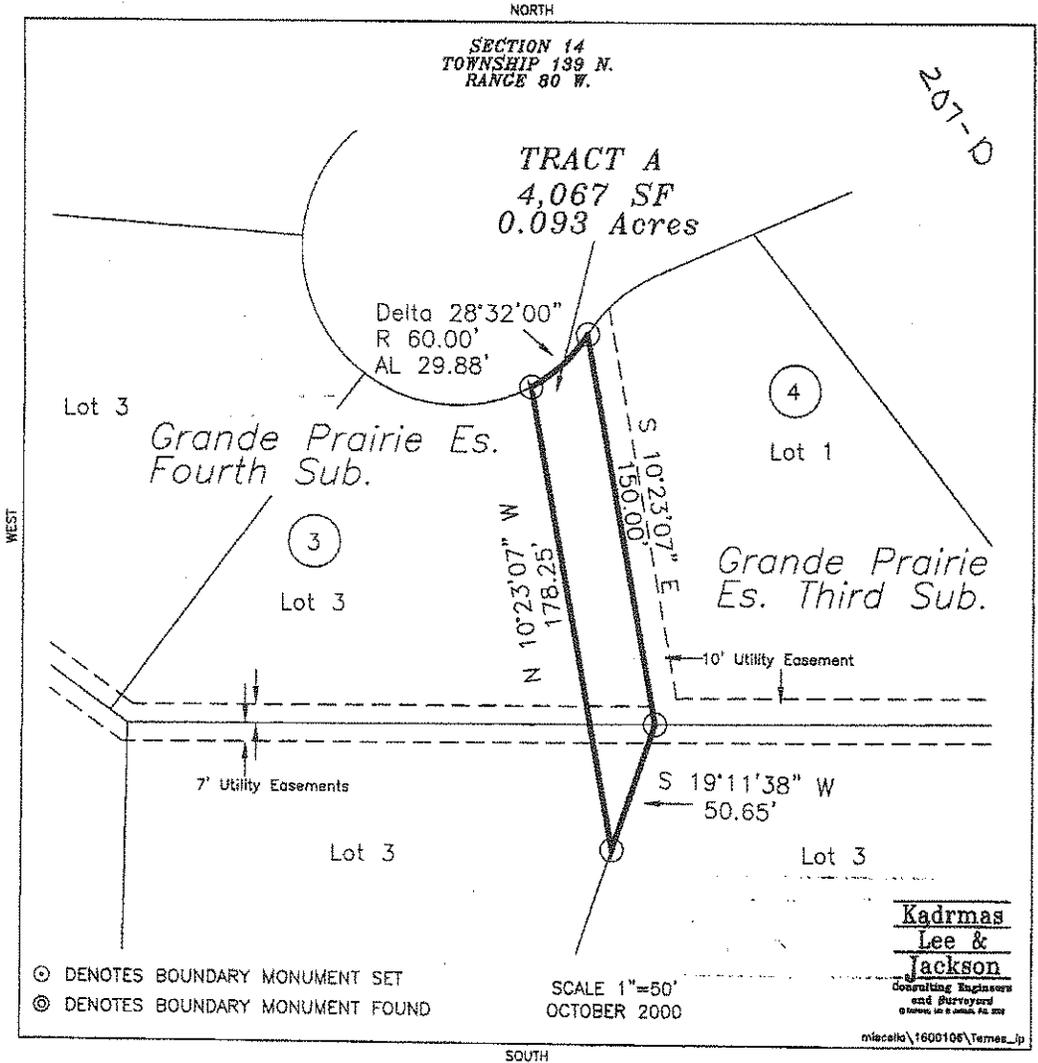


PLAT OF IRREGULAR DESCRIPTION (Sec. 57-02-39-N.D.C.C.)

# PLAT OF

TRACT A LYING IN PART OF LOT 3  
OF BLOCK 3, GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION  
TO THE CITY OF BISMARCK, LOCATED IN THE NW 1/4 OF Section 14, Township 139 N., Range 80 W.

Present Owner KEVIN SPLONSKOWSKI



## Description

TRACT A (of) LOT 3 OF BLOCK 3, GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION TO THE CITY OF BISMARCK, LOCATED IN THE NW 1/4 OF Section 14, Township 139 N. Range 80 W., described as follows:

A TRACT OF LAND LYING IN LOT 3 OF BLOCK 3 OF GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION TO THE CITY OF BISMARCK IN THE NW 1/4 OF SECTION 14, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 3, BLOCK 3 OF GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION WHICH IS THE POINT OF BEGINNING; THENCE FROM THE SAID POINT OF BEGINNING AND ALONG THE EAST LINE OF SAID LOT 3 S 10°23'07" E FOR 150.00 FEET; THENCE S 19°11'38" W FOR 50.65 FEET; THENCE N 10°23'07" W FOR 178.25 FEET; THENCE ALONG THE NORTH LINE OF SAID LOT 3 BLOCK 3 OF SAID SUBDIVISION ON A CURVE TO THE LEFT WHICH HAS A ARC LENGTH OF 29.88 FEET, A RADIUS OF 60.00 FEET AND A DELTA OF 28°32'00" TO THE SAID POINT OF BEGINNING.

TRACT A CONTAINS 0.093 ACRES (4,067 S.F.)

THE UNDERSIGNED, Owners of the within described property, in accordance with the provisions of Sec. 57-02-39, North Dakota Century Code, and upon demand of the County Auditor of Burleigh County, North Dakota, have caused to be made the within and foregoing plat of said land with the lots as herein described, and have caused the same to be placed on record, as provided by law.

Witness our hands and seal, this 30th day of October, 2000.

In presence of Barbara Neameyer } Kevin Splonskowski

Notary Public, State of North Dakota My Commission Expires Jan. 23, 2005

STATE OF NORTH DAKOTA, County of Burleigh ss

I, Barbara Neameyer, a Notary Public within and for said County, do hereby certify that on this 30th day of October A.D., 2000, personally appeared before me Kevin Splonskowski

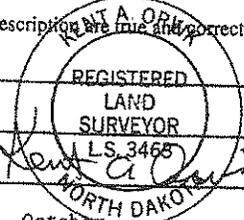
to me well known to be the same person described in and who executed the within and foregoing instrument and acknowledged that he executed the same free and voluntarily.

Notary Public, State of North Dakota My Commission Expires Jan. 23, 2005

My commission expires 1-23, 2005 Notary Public, Burleigh County, N.D.

I, Kent A. Orvik, Registered Land Surveyor, do hereby certify that, at the request of Kevin Splonskowski

I made the within and foregoing plat and description of the land as herein described and that the lots, distances, area and locations as indicated on said plat and contained in said description are true and correct to the best of my knowledge and belief.



Subscribed and sworn to before me this 23rd day of October A.D., 2000

Notary Public, State of North Dakota My Commission Expires Jan. 23, 2005, 2005 Notary Public, Burleigh County, N.D.

CERTIFICATE OF APPROVAL

The within and foregoing Plat is hereby approved.

Dated October 27, 2000



City Engineer of (or) County Surveyor Bismack of County, N.D.

Plat of Sec. Twp. R. OFFICE OF REGISTER OF DEEDS BURLEIGH COUNTY N.D.

547120 Page: 2 of 2 10/30/2000 02:13P Burleigh County



I hereby certify that this instrument was filed for record in this was duly recorded on page of of Book of Plat Register of Deeds. Deputy.

Taxes and special assessments paid and TRANSFER accepted this day of 2000

County Auditor Deputy, Burleigh County Auditor



WARRANTY DEED

THIS INDENTURE, made this 7 day of December, 2000, between Kevin J. Splonskowski, grantor, whether one or more, and Glen M. Ternes, grantee, whether one or more, whose post office address is 5413 Centerville Lane, Bismarck, North Dakota 58503-8953.

WITNESSETH, for and in consideration of the sum of one dollar and other good and valuable consideration, grantor does hereby GRANT to the grantee, all of the following real property lying and being in the County of Burleigh, State of North Dakota, and described as follows, to-wit:

TRACT A (OF) LOT 3 OF BLOCK 3, GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION TO THE CITY OF BISMARCK, LOCATED IN THE NW¼ OF SECTION 14, TOWNSHIP 139 N RANGE 80 W, DESCRIBED AS FOLLOWS:

A TRACT OF LAND LYING IN LOT 3 OF GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION TO THE CITY OF BISMARCK IN THE NW¼ OF SECTION 14, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 3, BLOCK 3 OF GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION WHICH IS THE POINT OF BEGINNING; THENCE FROM THE SAID POINT OF BEGINNING AND ALONG THE EAST LINE OF SAID LOT 3 S 10°23'07" E FOR 150.00 FEET; THENCE S 19°11'38" W FOR 50.65 FEET; THENCE N 10°23'07" W FOR 178.25 FEET; THENCE ALONG THE NORTH LINE OF SAID LOT 3 BLOCK 3 OF SAID SUBDIVISION ON A CURVE TO THE ~~LEFT~~ WHICH HAS A ARC LENGTH OF 29.88 FEET, A RADIUS OF 60.00 FEET AND A DELTA OF 28°32'00" TO THE SAID POINT OF BEGINNING.

Right  
5/24/01 KJS

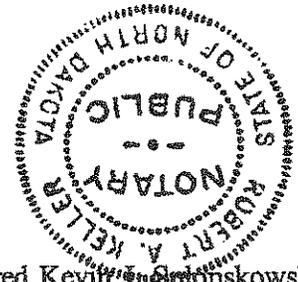
TRACT A CONTAINS 0.093 ACRES (4,067 S.F.)

And the said grantor for himself, his heirs, executors and administrators, does covenant with the grantee that he is well seized in fee of the land and premises aforesaid and has good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Auditor for collection, and the above granted lands and premises in the quiet and peaceable possession of said grantee, against all persons lawfully claiming or to claim the whole or any part thereof, the said grantor will warrant and defend.

WITNESS, the hand of the grantor:

Kevin J. Splonskowski  
Kevin J. Splonskowski

STATE OF NORTH DAKOTA )  
 )ss.  
COUNTY OF BURLEIGH )



On this 7<sup>th</sup> day of November, 2000, before me, personally appeared Kevin S. Spionkowski known to me to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged that he executed the same.

Robert Keller  
Notary Public  
Burleigh County, North Dakota  
My Commission Expires:

I certify that the full consideration paid for the property described in this deed is \$ 2750.00  
Signed: [Signature] Date: 6-8-01  
Grantee or Agent

Taxes and special assessments paid and TRANSFER accepted this 8 day of Aug, 2001  
[Signature]  
Burleigh County Auditor  
By [Signature]  
Deputy, Burleigh County Auditor



  
LUCAS TERNES      LD      10.00      555283  
Page: 2 of 2  
06/08/2001 03:39P  
Burleigh County

Marlys Landeris, Deputy



WARRANTY DEED

THIS INDENTURE, made this 7 day of December, 2000, between Kevin J. Splonskowski, grantor, whether one or more, and Glen Ternes, grantee, whether one or more, whose post office address is 5413 Centerville Lane, Bismarck, North Dakota 58503-8953.

WITNESSETH, for and in consideration of the sum of one dollar and other good and valuable consideration, grantor does hereby GRANT to the grantee, all of the following real property lying and being in the County of Burleigh, State of North Dakota, and described as follows, to-wit:

*E KJS 5/24/01*  
TRACT ~~3~~ (OF) LOT 3 OF BLOCK 3, GRANDE PRAIRIE ESTATES *4th Subdivision* *BNT*

A TRACT OF LAND LYING IN LOT 3 OF BLOCK 3 OF GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION TO THE CITY OF BISMARCK IN THE NW ¼ OF § 14, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 3, BLOCK 3 OF GRANDE PRAIRIE ESTATES FOURTH SUBDIVISION; THENCE ALONG THE EAST LINE OF SAID LOT 3 S 10°23'07" E FOR 150.00 FEET TO THE POINT OF BEGINNING; THENCE FROM THE SAID POINT OF BEGINNING N 89°36'53" E FOR 242.55 FEET; THENCE S 38°28'04" W FOR 260.41 FEET; THENCE ALONG A CURVE TO THE LEFT WITH A DELTA OF 21°51'15" A RADIUS OF 140.00 FEET A ARC LENGTH OF 53.40 FEET; THENCE N 73°23'07" W FOR 82.91 FEET; THENCE N 16°37'03" E FOR 160.72 FEET TO THE SAID POINT OF BEGINNING

*KJS 5/24/01*  
THE TRACT FOLLOWS THE ~~PROPOSED~~ BOUNDARY LINE FOR TRACT E LOT 3, BLOCK 3

*E KJS 5/24/01*  
TRACT ~~3~~ CONTAINS 0.802 ACRES (34,937 S.F.).

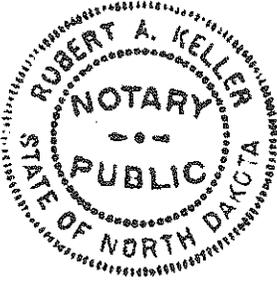
And the said grantor for himself, his heirs, executors and administrators, does covenant with the grantee that he is well seized in fee of the land and premises aforesaid and has good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Auditor for collection, and the above granted lands and premises in the quiet and peaceable possession of said grantee, against all persons lawfully claiming or to claim the whole or any part thereof, the said grantor will warrant and defend.

WITNESS, the hand of the grantor:

*Kevin J. Splonskowski*  
Kevin J. Splonskowski

STATE OF NORTH DAKOTA            )  
  )ss.  
COUNTY OF BURLEIGH            )

On this 7<sup>th</sup> day of December, 2000, before me, personally appeared Kevin J. Splonskowski known to me to the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged that he executed the same.



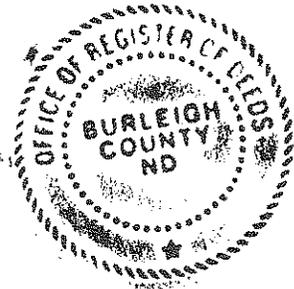
Robert Keller  
Notary Public  
Burleigh County, North Dakota  
My Commission Expires:

I certify that the full consideration paid for the property described in this deed is \$ 2750.00

Signed: Lucas Ternes Date: 12-8-01  
Grantor or Agent

Taxes and special assessments paid and TRANSFER accepted this 8 day of

July 2001  
Don Platt  
Burleigh County Auditor  
By Connie John  
Deputy, Burleigh County Auditor



  
LUCAS TERNES            ND            10.00    555284  
Page: 2 of 2  
06/02/2001 03:40P  
Burleigh County

Marly Landeis, Deputy

**CITY OF BISMARCK**  
**COMMUNITY DEVELOPMENT DEPARTMENT POLICY**  
**DEVELOPMENT OF SUBSTANDARD SIZED PLATTED LOTS**

**Effective Date:** August 1, 2006

**Purpose:** The purpose of this policy is to outline a process and standards for the development of substandard platted lots within the ETA.

**Policy:**

This policy applies to platted lots which meet the following criteria: 1) the lot is located within an approved subdivision; 2) the area of the lot is less than minimum lot area required for the zoning district in which the lot is located; and 3) the lot is not served by a central sewage treatment system.

If there are contiguous lots under common ownership which could be combined to meet the minimum lot area requirement for the underlying zoning district, said lots must be combined prior to development.

Section 62-03.1-03-04(1) of the North Dakota State Plumbing Code indicates that the minimum lot size in which a private on-site sewage treatment system may be installed is 40,000 square feet. If the area of the substandard lot is at least 40,000 square feet, the lot will be considered developable. If there are contiguous lots under common ownership which could be combined to meet the minimum lot size for a private treatment system, said lots must be combined prior to development. If the area of the substandard lot is less than 40,000 square feet, the lot will only be considered developable if the Building Inspections Division of the Community Development Department is provided with documentation that the soil conditions present throughout the lot are such that a second treatment area is able to be installed in the lot.

In order to document the soil conditions present, a soils test must be prepared by a Certified Soil Classifier or a Certified Soils Testing Agency and documentation on the site submitted to the Building Inspections Division of the Community Development Department. This documentation on soil conditions must include the following: 1) whether or not the lot will accommodate an on-site sewage treatment system as proposed; 2) whether or not the lot will accommodate a second treatment area if the first treatment area fails; 3) information on the specific design of the system needed based on soil conditions; and 4) the maximum number of bedrooms permitted on the lot based on the specifications in the plumbing code pertaining to individual septic systems. In addition to the documentation on soil conditions, a report from a registered engineer illustrating the design of the septic system and treatment area must also be submitted to the Building Inspections Division of the Community Development Department. If the required documentation cannot be provided, the lot is not developable.

If a determination is made that the lot is developable based on the information submitted, the site plan submitted to obtain a building permit must include the location of the treatment system as well as the location of the second treatment area needed if the first treatment area fails. Construction of buildings or other impervious surfaces over the identified second treatment area is not allowed.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>	
<b>Title:</b> 3321 Thunderbird Lane – Variance (Side Yard) (Lot 8, Block 1, K & L's 4 <sup>th</sup> Addition)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> December 12, 2013
<b>Owner(s):</b> Jan Carter	<b>Engineer:</b> None
<b>Reason for Request:</b> Variance from Section 14-04-06(8) of the City Code of Ordinances (R10-Residential)(Side Yard) to reduce the required side yard setback along the west side of the property from ten (10) feet eight (8) inches to five (5) feet four (4) inches in order to construct a second level addition and uncovered deck.	
<b>Location:</b> The property is located in northwest Bismarck along the south side of Thunderbird Lane, west of Daytona Drive.	
<b>ADDITIONAL INFORMATION:</b>	
<ol style="list-style-type: none"> <li>Prior to the applicant purchasing the property, a 10' 1" x 13' sunroom and 10' 1" x 7' 5" uncovered deck were constructed approximately four (4) feet nine (9) inches into the required ten (10) foot eight (8) inch side yard setback without obtaining a building permit. The current property owner would like to replace the existing sunroom and uncovered deck as both have begun to deteriorate.</li> </ol>	
<b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>	
<ol style="list-style-type: none"> <li>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."</li> <li>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."</li> <li>Section 14-04-06(2)(6) of the City Code of Ordinances (R10-Residential District)(Uses Permitted/ Regulations Imposed on Overall Structure) states, "The lot coverage requirements and the minimum front, side and rear yard setbacks shall be imposed on the overall structure rather than on each individual unit."</li> <li>Section 14-04-06(8) of the City Code of Ordinances (R10-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 for the overall structure is eighty (80) feet six (6) inches; twenty (20) percent of the average width of the property for the overall structure is twenty-one (21) feet six (6) inches. The existing side yard for the west side of the twinhome is approximately ten (10) feet six (6) inches; therefore the approximate required side yard setback along the east side of the twinhome would be 10 (10) feet eight (8) inches.</li> </ol>	

**FINDINGS:**

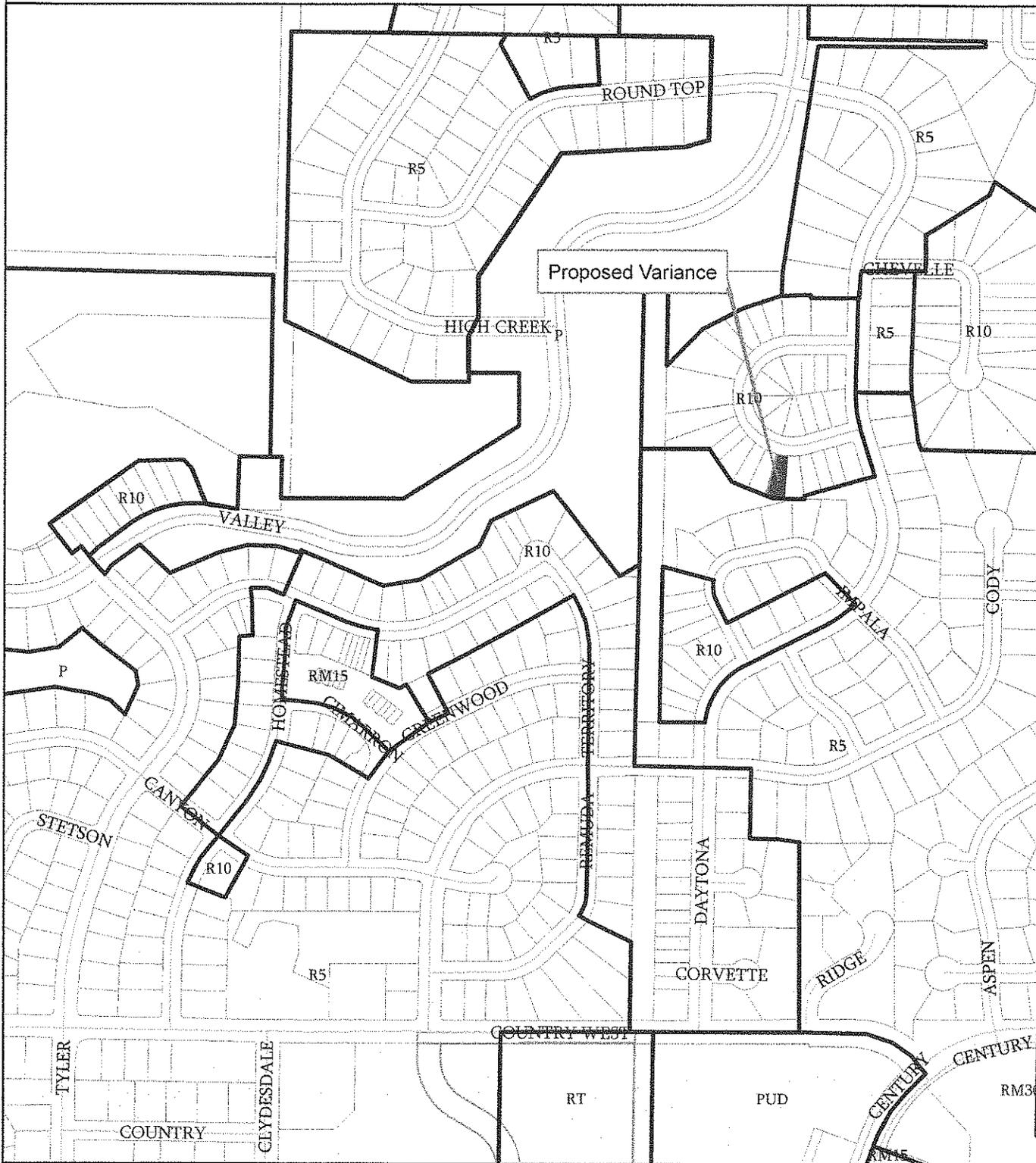
1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R10-Residential zoning classification.
2. The hardship is not caused by the provisions of the 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**  
**Lot 8, Block 1, K & L's 4th Addition**  
**3321 Thunderbird Lane**



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: November 22, 2013 (tlb)

Source: City of Bismarck

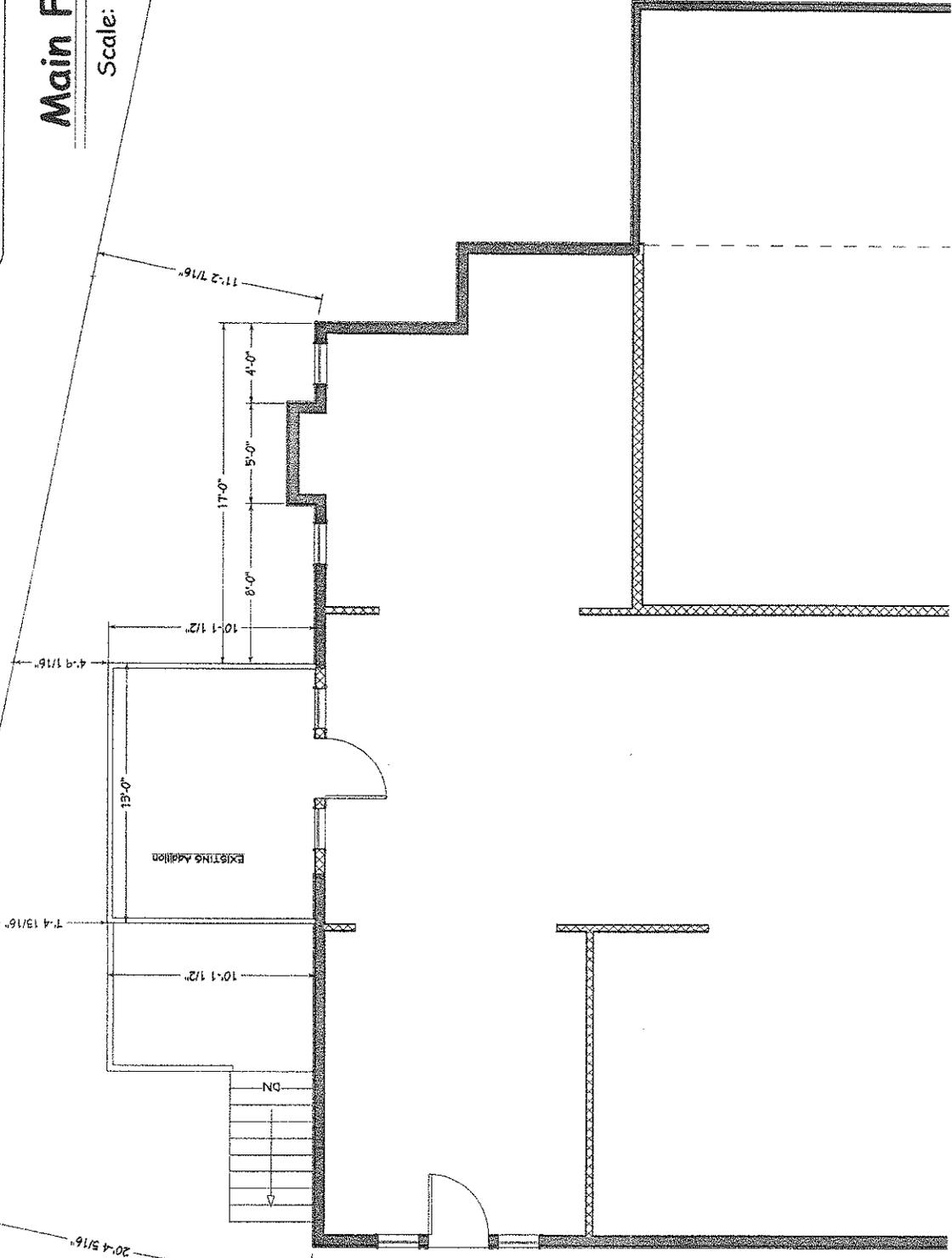




# Existing House

## Main Floor Plan

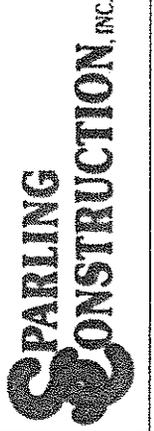
Scale: 1/8"=1'-0"



Sparring Construction located (year) SW property pin.  
 Sparring Construction went off Barrett & Vest engineers front property measurement of 11.2'.  
 The front property pin could not be located due to large landscaping rocks in the way or the pin  
 was removed.

*This plan was designed & drawn by Sparring Construction Inc. for their use only. Use of this drawing, without specific permission, for any other purpose or entity is in violation of the agreement of receiving this drawing. These conceptual drawings may not reflect actual layout design.*

Drawn By: JK  
 Date: 11/19/2013



Client & Address:  
 Jan Carter  
 3321 Thunderbird Ln  
 Bismarck, ND 58503

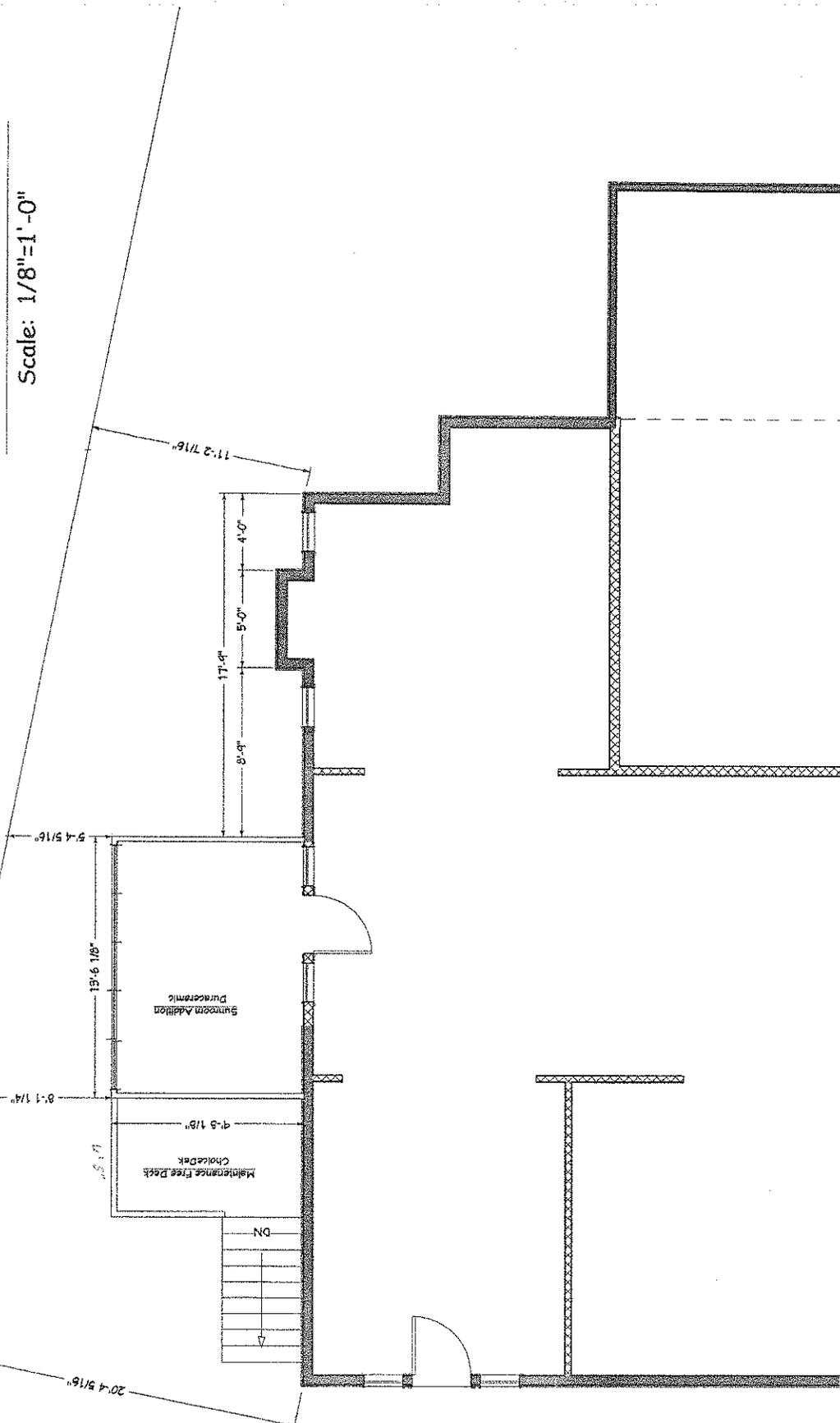
Sparring Construction Inc  
 2011 Lovell Ave.  
 Bismarck, ND 58504  
 info@sparringconstruction.com  
 (p) 701-222-0783  
 (t) 701-222-3911

# New Addition

## Main Floor Plan

Scale: 1/8"=1'-0"

Sparling Construction located (near) SW property pin.  
 Sparling Construction went off Bartlett & Vreel engineers front property measurement of 11.2'.  
 The front property pin could not be located due to large landscaping rocks in the way of the pin  
 was removed.



NOV 19 2013

This plan was designed & drawn by Sparling Construction Inc. for their use only. Use of this drawing, without specific permission, for any other purpose or entity is in violation of the agreement of receiving this drawing. These conceptual drawings may not reflect actual layout design.

Drawn By: JK  
 Date: 11/19/2013



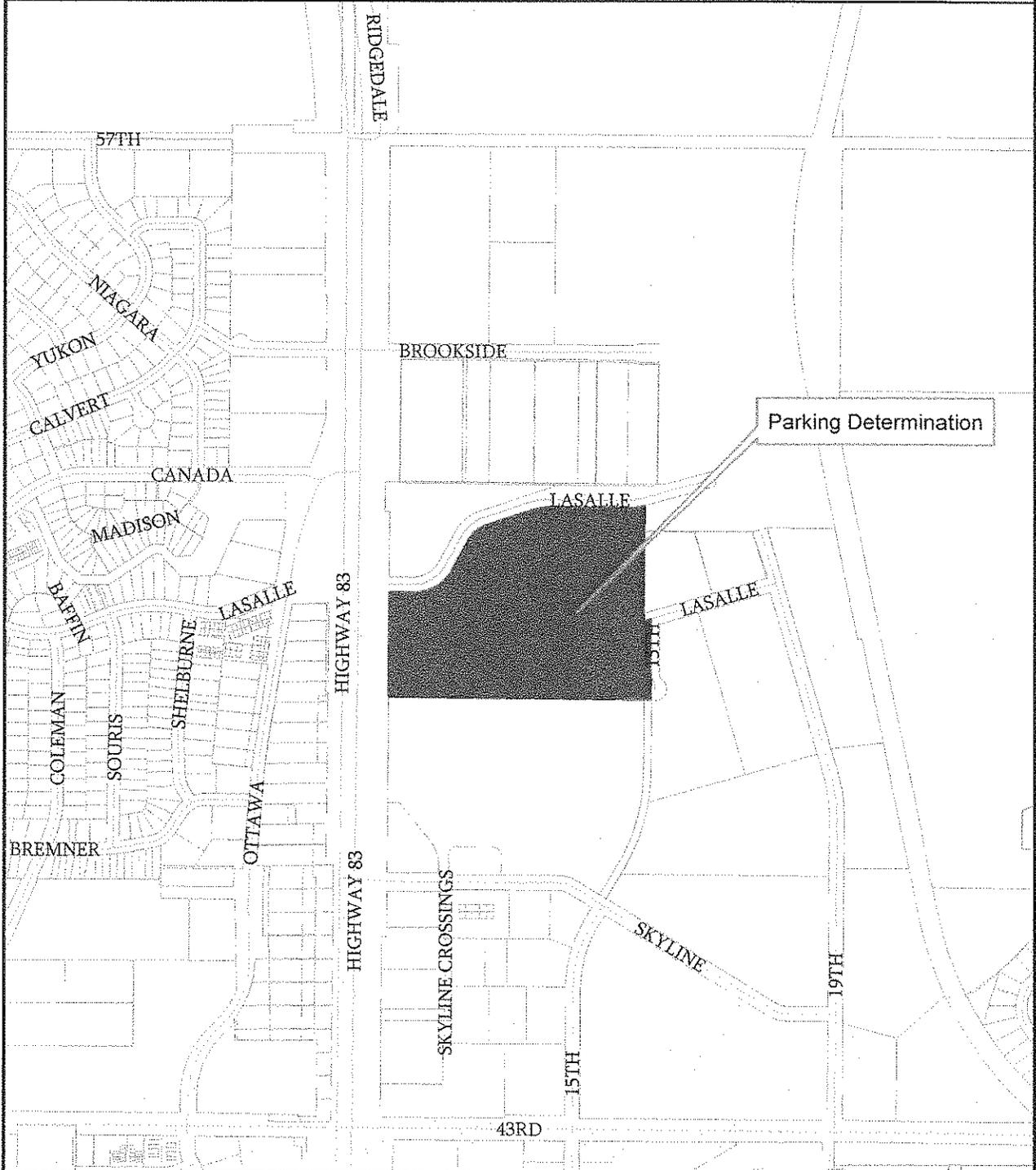
Client & Address:  
 Jan Carter  
 3321 Thunderbird Ln  
 Bismarck, ND 58503

Sparling Construction Inc  
 2011 Lovett Ave.  
 Bismarck, ND 58504  
 (e-mail) info@sparlingconstruction.com  
 (p) 701-222-0783  
 (f) 701-222-5911

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

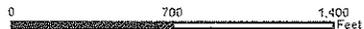
<b>BACKGROUND:</b>	
<b>Title:</b> Hay Creek Shops – Off-street Parking Determination (Lot 1, Block 2, Hay Creek Commercial Addition)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> December 12, 2013
<b>Location:</b> The property is located in north Bismarck, along the east side of US Highway 83 approximately ½ mile north of 43 <sup>rd</sup> Avenue NE.	
<b>ADDITIONAL INFORMATION:</b>	
<ol style="list-style-type: none"> <li>Staff is in the process of revising portions of Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading). It is expected that provisions for the joint use of parking and the establishment of minimum criteria for the joint use of parking in multi-tenant shopping centers will be included. In the interim, staff will be requesting the Board of Adjustment to make off-street parking determinations as provided for in Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading) for all multi-tenant shopping centers that meet the following criteria: 1) the project has a minimum of 30,000 square feet of leasable area; 2) a minimum of 120 off-street parking are provided on site; 3) the shopping center has a minimum of five (5) tenants; 4) all assembly uses within the shopping center do not exceed twenty-five (25) percent of the total leasable area; and 5) the parking ration is no less than one space per 250 square feet of leasable area.</li> <li>Based on the site plan and supplemental information submitted for the proposed parking determination, the existing multi-use shopping center (Hay Creek Shops) would meet the proposed criteria for the revisions of Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading).</li> </ol>	
<b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>	
<ol style="list-style-type: none"> <li>Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), Subsection 10 (Use of required off-street parking by another building), states, “No part of an off-street parking area required for any building or use for the purpose of complying with the provisions of this section shall be included as a part of an off-street parking area similarly required for another building or use unless the type of structure indicates that the periods of usage for such structures will not be simultaneous with each other, as determined by the Board of Adjustment.”</li> <li>Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), Subsection 12 (Collective action relative to off-street parking and loading), states, “Nothing in this title shall be construed to prevent the joint use of off-street parking or off-street loading space for two or more buildings or uses, if the total of such spaces when used together shall not be less than the sum of the requirements for the various individual uses computed separately in accordance with this section.”</li> <li>Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), Subsection 10 (Mixed Uses), states “ In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified in subsections 1 and 2 of this section, and the off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use.”</li> </ol>	
<b>RECOMMENDATION:</b>	
Staff recommends reviewing the attached information and making a determination if the off-street parking provided for this multi-tenant shopping center (Hay Creek Shops) is acceptable.	

# Proposed Parking Determination Lot 1, Block 2, Hay Creek Commercial 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: December 6, 2013 (hfb)

Source: City of Bismarck



128 Soo Line Drive  
PO Box 1157  
Bismarck, ND 58502-1157  
701 355 8400  
kljeng.com



November 18, 2013

Board Members  
Board of Adjustment  
City of Bismarck  
221 North 5th Street  
Bismarck, ND, 58501

Re: Hay Creek Shops - Parking Determination

Dear Board Members:

I am writing on behalf of my client to request your assistance in the matter of a parking determination for a shopping center they are planning in north Bismarck. We have submitted the site plans to the City for review and have been working with City staff to complete the site plan review process.

The proposed project is to develop 302,414 square feet of retail space, the various buildings will house a variety of businesses from larger (50,000 SF) stores to smaller (1,500 SF) shops. The intent of this development is to provide patrons with an opportunity to travel to one location, park and patronize multiple businesses at one time. Through this development model we are anticipating the parking required to be less than is typically needed if the businesses were located on individual sites.

The current City ordinance (14-03-10 h.1) requires 1 parking space per 200 square of gross retail square feet. Per the proposed development of 302,414 SF we would be required to provide 1,512 parking stalls. Due to steep grades on the site a large portion of the property is being used to grade down within the site and is not able to be used for parking. The site plan (see c3.1) has been designed to achieve as much parking as possible and does include some retaining walls to attain 1,364 proposed stalls. We are asking the board to consider all of the above circumstances and allow a parking ratio of 1 parking space per 225 square feet for the proposed shopping center.

Please feel free to contact me at 355-8714 with any questions.

Sincerely,

KLJ

A handwritten signature in black ink, appearing to read 'David M. Mayer', written over a horizontal line.

David M. Mayer  
Project Manager

Enclosure(s): c3.1  
Project #: 1612537  
cc: Rick Machak, Woodmont Company

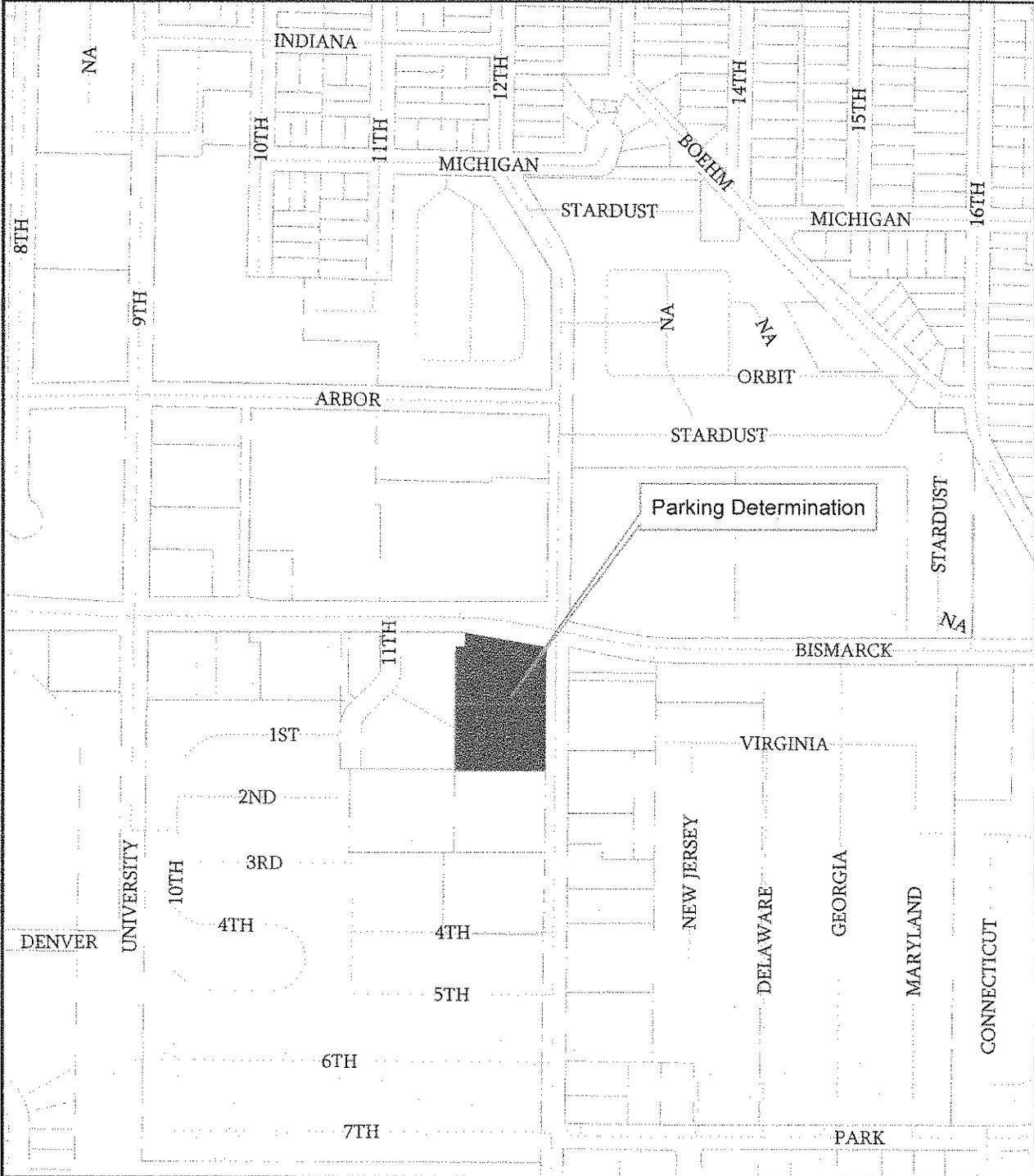
NATIONAL PERSPECTIVE  
REGIONAL EXPERTISE  
TRUSTED ADVISOR



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

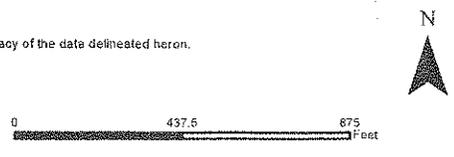
<b>BACKGROUND:</b>	
<b>Title:</b> Time Square – Off-street Parking Determination (Lots 1-3, Block 1, Lots 1-3, Block 2, and the vacated Mayfair Avenue adjacent, Mayfair Managers Addition, and Tract S of the SE¼ of Section 4, T138N-R80W)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> December 12, 2013
<b>Location:</b> The property is located in south Bismarck, along the west side of South 12 <sup>th</sup> Street and the south side of Bismarck Expressway	
<b>ADDITIONAL INFORMATION:</b>	
<ol style="list-style-type: none"> <li>Staff is in the process of revising portions of Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading). It is expected that provisions for the joint use of parking and the establishment of minimum criteria for the joint use of parking in multi-tenant shopping centers will be included. In the interim, staff will be requesting the Board of Adjustment to make off-street parking determinations as provided for in Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading) for all multi-tenant shopping centers that meet the following criteria: 1) the project has a minimum of 30,000 square feet of leasable area; 2) a minimum of 120 off-street parking are provided on site; 3) the shopping center has a minimum of five (5) tenants; 4) all assembly uses within the shopping center do not exceed twenty-five (25) percent of the total leasable area; and 5) the parking ration is no less than one space per 250 square feet of leasable area.</li> <li>Based on the site plan and supplemental information submitted for the proposed parking determination, the existing multi-use shopping center (Time Square) would meet the proposed criteria for the revisions of Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading).</li> </ol>	
<b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>	
<ol style="list-style-type: none"> <li>Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), Subsection 10 (Use of required off-street parking by another building), states, "No part of an off-street parking area required for any building or use for the purpose of complying with the provisions of this section shall be included as a part of an off-street parking area similarly required for another building or use unless the type of structure indicates that the periods of usage for such structures will not be simultaneous with each other, as determined by the Board of Adjustment."</li> <li>Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), Subsection 12 (Collective action relative to off-street parking and loading), states, "Nothing in this title shall be construed to prevent the joint use of off-street parking or off-street loading space for two or more buildings or uses, if the total of such spaces when used together shall not be less than the sum of the requirements for the various individual uses computed separately in accordance with this section."</li> <li>Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), Subsection 10 (Mixed Uses), states " In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified in subsections 1 and 2 of this section, and the off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use."</li> </ol>	
<b>RECOMMENDATION:</b>	
Staff recommends reviewing the attached information and making a determination if the off-street parking provided for this multi-tenant shopping center (Time Square) is acceptable.	

**Proposed Parking Determination**  
**Lots 1-3, Block 1, Lots 1-3, Block 2, and the vacated Mayfair Avenue**  
**adjacent, Mayfair Managers Addition, and Tract S**  
**of the SE¼ of Section 4, T138N-R80W**

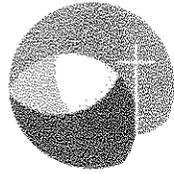


DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
 Map was Updated/Created: December 6, 2013 (hlb)

Source: City of Bismarck







**TruthFellowship** **LIVE**

A Church of The Living Word

July 11, 2013

Subject: Use of property at 1020 12 St. S. Bismarck, ND

To Whom It May Concern:

TFL has entered into a lease arrangement with Mr. Jerry Harmon for the above identified property in Time Square Plaza. The proposed use of the property is for the general activities involved in operating a church. The following table shows the average usage of the space.

<b>Day of Week</b>	<b>Regularity of Use</b>	<b>Time of Use</b>	<b>Type of Meeting</b>	<b>Number of People</b>	<b>Number of Parking Spaces</b>
Sunday	Weekly	8-12 a.m.	Worship Service	25	7-10 Cars
Monday	Regular	12-4:30 p.m.	Office	1	1
Tuesday	Weekly	6:30-7:15 p.m.	Prayer	5-6	3
Tuesday	Twice/Month	7:30-9:00 p.m.	Board Meeting	7	5-7
Wednesday	Regular	12-4:30 p.m.	Office	1	1
Thursday	Regular	12-4:30 p.m.	Office	1	1
Friday	Regular	12-4:30 p.m.	Office	1	1

As can be seen by the table above, the only large meeting we currently have is on Sunday mornings. There is a possibility that we will add one or two week-night study groups that would have 5-10 participants and using 5-10 parking spaces. The bulk of the usage of the building will be for small meetings in an office or small classroom setting.

Dr. Jon Hanson

Associate Pastor  
Truth Fellowship Live

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES**

**November 7, 2013**

The Bismarck Board of Adjustment met on November 7, 2013 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Marback presided.

Members present were Jennifer Clark, Ken Heier, Jeff Ubl and Michael Marback.

Member absent was Blair Ihmels.

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

Others present were Londell Nissen, Dick Goetz and Gayle Goetz.

**MINUTES:**

Chair Marback asked for consideration of the minutes of the October 3, 2013 meeting.

**MOTION:** A motion was made by Mr. Ubl and seconded by Mr. Heier to approve the minutes of the October 3, 2013 meeting as distributed. With Board Members Clark, Heier, Ubl and Marback voting in favor, the minutes were approved.

**VARIANCE FROM SECTION 14-04-03(a) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL DISTRICT)(REAR YARD) – 102 EAST CAPITOL AVENUE**

Chairman Marback stated the applicant was requesting a variance to reduce the required rear yard setback from twenty (20) feet to thirteen (13) feet along the north side of the property in order to construct a 700 square foot (20' x 35') accessory building.

Mr. Nissen stated he did not have anything to add to his request at this time. Mr. Heier asked him if a variance had been issued on the property prior to them moving in and why the rear yard setback is only 15 feet 8 inches. Mr. Nissen said he did not know why, that it is just the way the house was built.

Mr. Heier asked what the size of the overhang on the top of the house is. Mr. Nissen said it is between 18 and 24 inches.

Mr. Ubl asked what the front yard setback requirement is. Mr. Blaskowski answered it is 25 feet. Mr. Ubl then asked if the issue of being over the allowable percent of lot coverage has been resolved. Mr. Blaskowski said it was addressed by the former Building Official with an administrative variance.

**MOTION:** A motion was made by Mr. Heier to approve the variance to reduce the side yard setback requirement along the north side of his property from twenty (20) feet to thirteen (13) feet in order to construct a 700 square foot (20' x 35') accessory building, with the condition that that side wall height be consistent with that of the existing house. The motion was seconded by Ms. Clark. With Board Members Clark, Heier, Ubl and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

### **OTHER BUSINESS**

Mr. Blaskowski said he would like to inform the Board of the multiple parking variances that could potentially be brought forward in the near future. He explained that many multi-tenant retail facilities are struggling to maintain the required parking spaces and that many administrative variances that were granted in the past. However, per the ordinance, staff would like the Board to make determinations regarding required parking for the facilities. He asked that over the next few weeks they each take a look around as they are going through town and bring ideas for solutions to this issue, as far as accommodating multi-tenant buildings and their outlots, as well as the potential for some zoning ordinance text amendments.

Ms. Clark asked if in the event a strip mall is developed, is the ratio of how many restaurants versus retail establishments ever limited. Mr. Blaskowski said it has never been tried before but it is something to think about.

Ms. Clark also made the request that the December meeting of the Board of Adjustment be moved to December 12<sup>th</sup>.

### **ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 4:53 p.m. to meet again on Thursday, December 12, 2013.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Michael Marback, Chairman