



Community Development Department

BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA

March 6, 2014

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

MINUTES

- 1. Consider the approval of the minutes of the January 2, 2014 meeting of the Board of Adjustment.

REQUEST

- 2. Variance from Section 14-03-09 of the City Code of Ordinances (Non-Conforming Uses) - 215 South 13th Street (Part of Lot 14 and Lots 15-16, Block 19, Sturgis Addition) Robert Fettig is requesting a variance to allow the construction of an accessory building on a non-conforming lot (less than 10,000 square feet) with an existing non-conforming use (single-family dwelling).

Board Action: []approve []continue []table []deny

OTHER BUSINESS

- 3. Other

ADJOURNMENT

- 4. Adjournment. The next regular meeting date is scheduled for April 3, 2014.



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: 215 South 13 th Street – Variance (Non-Conforming Use) (Part of Lot 14 and Lots 15-16, Block 19, Sturgis Addition)	
Status: Board of Adjustment	Date: March 6, 2014
Owner(s): Robert Fettig	Engineer: None
Reason for Request: Variance from Section 14-03-09 of the City Code of Ordinances (Non-Conforming Uses) to allow the construction of an accessory building on a non-conforming lot (less than 10,000 square feet) with an existing non-conforming use (single-family dwelling) in a MA – Industrial zoning district.	
Location: In central Bismarck, along the east side of South 13 th Street between East Front Avenue and East Sweet Avenue	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The proposed variance request is located within a subdivision (Sturgis Addition) that was recorded in 1912 and a single-family house was constructed on the property in 1940. According to City Assessing the lot size has been 8,400 since prior to constructing the house. The property was zoned MA – Industrial in 1959. 2. The applicant is proposing to remove the existing 240 square foot (12'x 20') accessory building in order to construct a 1,250 square foot (25'x 50") accessory building. The proposed accessory building will be accessed via the existing driveway for the property, located on South 13th Street. If the 240 square foot accessory building is not removed, the property will be over the allowed lot coverage. 	
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 14-02-03 of the City Code of Ordinances (Definitions) defines a nonconforming use as, "The use of a building or other structure or a tract of land which does not conform to the use or regulations of this title for the district in which it is located, either at the effective date of this title, or as a result of subsequent amendments which may be incorporated into this title." 3. Section 14-04-14(2) of the City Code of Ordinances (MA – Industrial District)(Uses Permitted) does not include a single-family dwelling; therefore, it is not a permitted use in the MA-Industrial zoning district. 4. Section 14-04-14(3) of the City Code of Ordinances (MA – Industrial District)(Lot Area) states, " Each principal building hereafter erected, together with its accessory buildings, shall be located on a lot having an area of not less than ten thousand (10,000) square feet." The lot area of the property is 8,400 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 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 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.

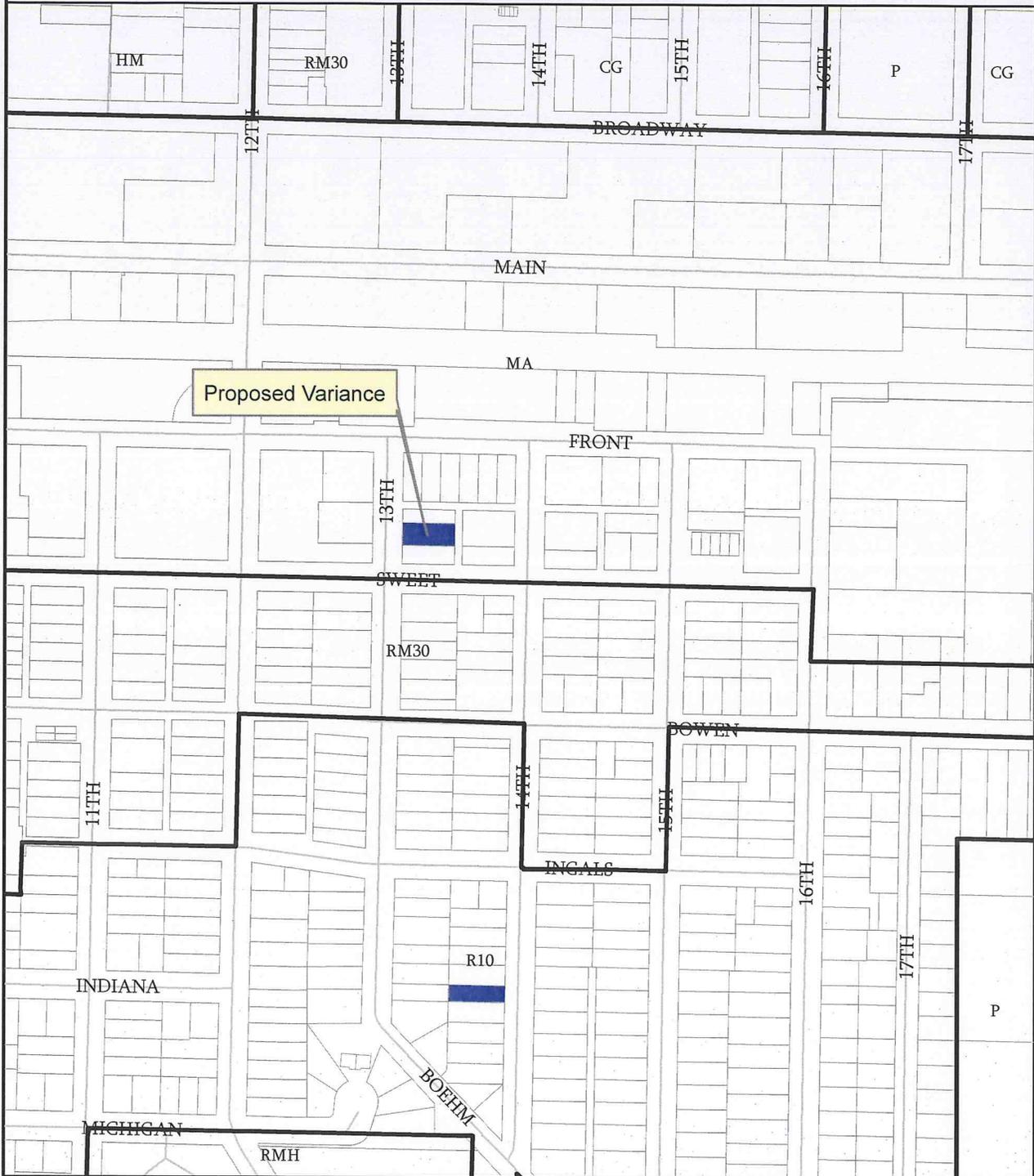
RECOMMENDATION:

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

1. The existing 240 square foot (12'x20') accessory building must be removed prior to the construction of the proposed 1,250 square foot (25'x50') accessory building.

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

Proposed Variance (Non-conforming Use) Part of Lot 14 and Lots 15-16, Block 19, Sturgis 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 5, 2013 (hlb)

Source: City of Bismarck



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

FEB 07 2014

1. Property Address or Legal Description: 215 South 13th St. / Sturgis / Block 019

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

3. Type of Variance Requested: Non-Conforming Use + Lot Area

4. Applicable Zoning Ordinance Chapter/Section: 14-03-14(2) AND ~~14-03-14(5)~~

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.)

By Building a 25x50 Detached Garage you would have options with the land. So if you did Build an apartment or shop you would still use this structure.

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

By Not Building a garage ~~It~~ would make you want to park on the street instead of your own property.

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

By Building a garage you would keep vehicles off of the streets making it better for the city so they would not have to sweep + blade around vehicles.

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

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

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

14-06-02. Powers and Duties.

* * * * *

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

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

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

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

Article 3. Definitions.

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

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

Article 28. Variances.

Section 3. Required Findings

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

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

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



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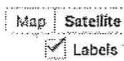
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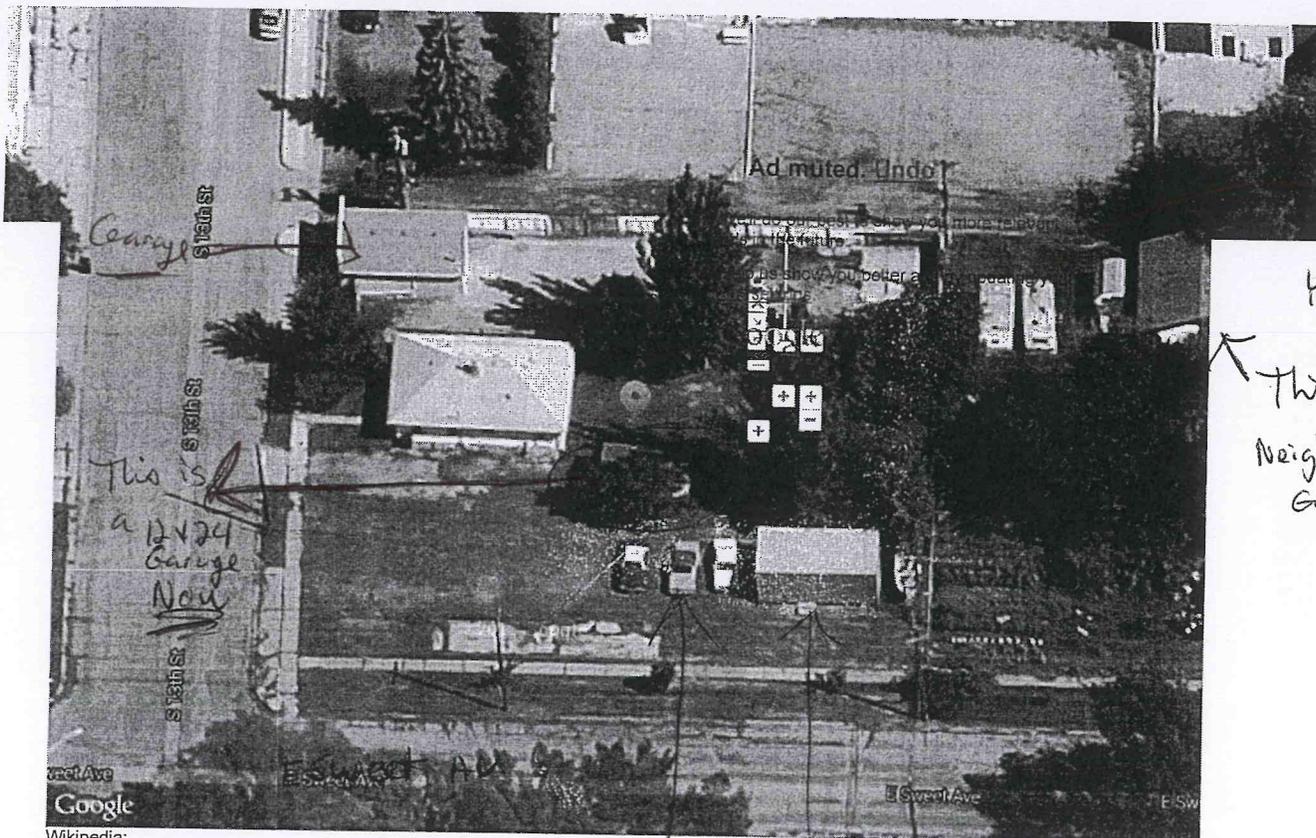
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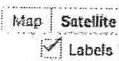


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Atlanta, Atlantic City, Austin, Baltimore, Boston, Charlotte, Chicago, Cincinnati, Cleveland, Columbus, Dallas, Denver, Detroit, El Paso, Fort Worth, Honolulu, Houston, Indianapolis, Jacksonville, Kansas City, Las Vegas, Long Beach, Los Angeles, Memphis, Miami, Milwaukee, Minneapolis, Nashville, New Orleans, New York City, Norfolk, Oklahoma City, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, Sacramento, St. Louis, San Antonio, San Diego, San Francisco, San Jose, Santa Fe, Seattle, Tampa, Tucson, Washington

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BISMARCK BOARD OF ADJUSTMENT

MEETING MINUTES

January 2, 2014

The Bismarck Board of Adjustment met on January 2, 2014 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 Blair Ihmels, Jennifer Clark, Ken Heier, Chris Seifert, Jeff Ubl and Michael Marback.

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

MINUTES:

Chair Marback asked for consideration of the minutes of the December 12, 2013 meeting.

MOTION: A motion was made by Mr. Ihmels and seconded by Mr. Heier to approve the minutes of the December 12, 2013 meeting as distributed. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-06(5) OF THE CITY CODE OF ORDINANCES (R10-RESIDENTIAL)(LOT WIDTH) – 604 SOUTH 14TH STREET (LOT 2, BLOCK 10, RICHTER'S SUBDIVISION)

Chairman Marback stated the applicant was requesting a variance to allow the construction of an accessory building on a lot considered a nonconforming use (lot width of less than 50 feet).

Chairman Marback asked the applicant if the driveway will be directly adjacent to the house. Mr. Richter said it will be and that he also has plans to remove the step on the south side of the house to allow for more drive space.

Mr. Heier asked how the garage will be accessed on the property. Mr. Richter said access will be from the front of the house and he also noted that one of the adjacent properties has a lot width of 37 feet.

Mr. Ihmels asked if the only issue at hand is that of the lot size, but not of the lot coverage percentage. Chairman Marback said yes, they need to decide on the lot width variance.

MOTION: A motion was made by Mr. Ihmels to approve the variance to allow the construction of an accessory building on a lot considered a nonconforming use (lot width of less than 50 feet). The motion was seconded by Mr. Heier. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting

in favor of the motion, the motion was approved and the variance request was approved.

OTHER BUSINESS

Mr. Seifert let it be known that he will be absent at the February 6, 2014 meeting of the Board of Adjustment.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 4:06 p.m. to meet again on Thursday, February 6, 2014.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman