



Community Development Department

**BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA**

April 3, 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

3. **Variances from Section 14-02-03 (Definitions)(Sight-Triangle); Section 14-03-10(1)(a)(2) (Off-Street Parking and Loading)(Multi-family dwellings); Section 14-03-10(1)(i) (Off Street Parking and Loading)(Office Buildings); Section 14-03-11(10) (Buffer Yards); Section 14-04-08(8) (RT-Residential)(Side Yard); and Section 14-04-08(9) (RT-Residential)(Rear Yard) of the City Code of Ordinances** – 2039 North Kavaney Drive (Lots 22-23, Block 12, Homan Acres Replat)
KJ and Deborah Carpenter are requesting variances to allow the construction of a mixed use single and two-story addition (two dwelling units and additional office space) to an existing building.

Board Action: approve continue table deny



APPEAL OF STAFF INTERPRETATION

4. **Section 14-06-02(1) (Powers and Duties)(Interpretation) of the City Code of City Ordinances**

Ken Dykes, Bismarck Cancer Center, is appealing staff's interpretation of Section 14-03-04(1) (General Provisions)(Permitted Uses) regarding off-site parking lots in the RM-Residential and RT-Residential zoning districts.

Board Action: approve continue table deny

OTHER BUSINESS

5. **Other**

ADJOURNMENT

6. **Adjournment.** The next regular meeting date is scheduled for May 1, 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: April 3, 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 on a property with a single-family house constructed in 1940. According to City Assessing the lot size has been 8,400 since prior to construction of 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 as a permitted use; 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 suggests that if the Board acts to grant a variance that 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.

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.



Wikipedia:
Bismarck, North
Dakota

Map Help

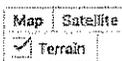


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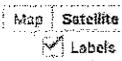


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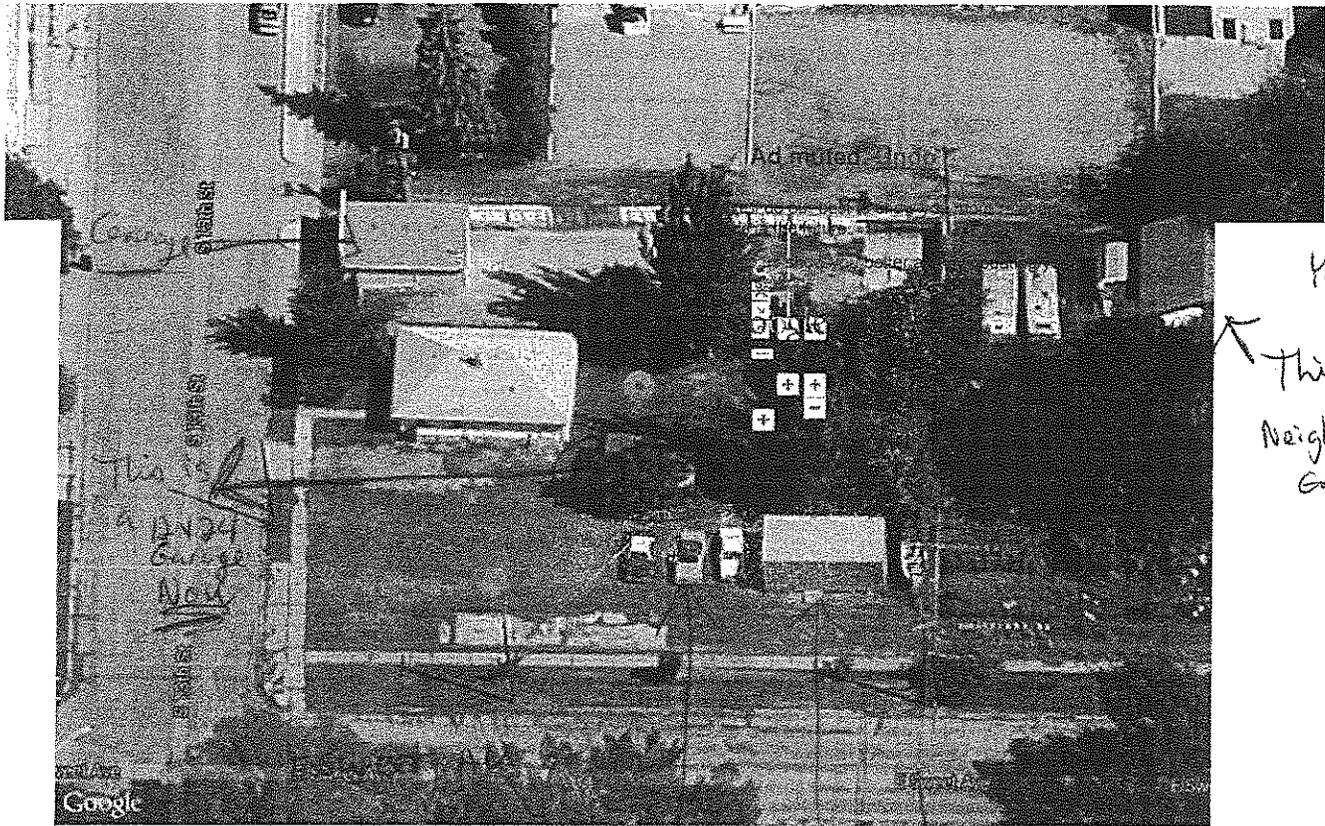
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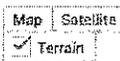


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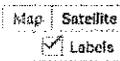


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**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: 2039 North Kavaney Drive – Variances (Sight-Triangle; Off-Street Parking and Loading; Buffer Yards; Side Yard Setback; and Rear Yard Setback) (Lots 22-23, Block 12, Homan Acres Replat)	
Status: Board of Adjustment	Date: April 3, 2014
Owner(s): KJ and Deborah Carpenter	Architect: Dave Nelson, Leaf Design Studio
Reason for Request: Variances from Section 14-02-03 (Definitions)(Sight-Triangle); Section 14-03-10(1)(a)(2) (Off-Street Parking and Loading)(Multi-family dwellings); Section 14-03-10(1)(i) (Off Street Parking and Loading)(Office Buildings); Section 14-03-11(10) (Buffer Yards); Section 14-04-08(8) (RT-Residential)(Side Yard); and Section 14-04-08(9) (RT-Residential)(Rear Yard) of the City Code of Ordinances in order to construct a mixed use single and two-story addition to the existing building.	
Location: In central Bismarck, along the east side of North Kavaney Drive, between East Turnpike Avenue and East Divide Avenue.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> The applicant is proposing to construct a two-story addition along the south side of the existing building and a single-story addition along the west side of the existing building. Two two-bedroom dwelling units would be located on the first and second floors of the two-story addition and office space will be located in the single-story addition. A single-stall attached garage would be located at the southwest corner of the addition, a two-stall attached garage and single-stall attached garage would be located at the southeast corner of the proposed addition. The proposed addition would encroach four (4) feet into the required ten (10) foot side yard located along the northern property line and three (3) feet into the required ten (10) foot rear yard located along the eastern property line. As the proposed addition is located adjacent to a lower intensity R5-Residential zoning district with existing single-family homes, a ten (10) foot landscape buffer yard and a six (6) foot fence are required. The proposed addition would require a total of nineteen (19) off-street parking spaces; however, according to the site plan submitted with the application only eighteen (18) off-street parking spaces could be provided if variances were issued for the sight-triangle, side yard setback, rear yard setback, landscaping and buffering requirements and reducing the size of a standard off-street parking spaces for the proposed parking space along the northwest side of the property. If these variances are not approved only twelve (12) off street parking spaces could be provided. The existing building is located within the RT-Residential zoning district and was constructed in 1976 as a single-story daycare center. The existing building as an office use meets the applicable provisions of the zoning ordinance relating to the side yard setback requirements, rear yard setback requirements and the off-street parking requirements. The landscaping and screening ordinance (Section 14-03-11) was approved by the City Commission in June 2005, after the building was constructed. 	
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.” The property would be considered a regular shaped parcel (130’x 118’) and is relatively flat with minimal grade differential and no landscaping or mature vegetation that would pose challenges meeting requirements of the zoning ordinance. 	

(continued)

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." According to the site plan submitted with the application, the applicant is proposing to locate two (2) off-street parking spaces within the sight-triangles located within the property. Placing off-street parking spaces located within a sight-triangle is not permitted.
3. Section 14-03-10(1) (Off-street Parking and Loading) states, "Each required parking space shall be of an area of at least nine (9) feet wide and eighteen (18) feet in length." According to the site plan submitted with the application, the applicant is proposing to classify one of the required parking spaces located at the northwest corner of the property as a "compact" parking space being approximately nine (9) foot wide by thirteen (13) feet long. As the size of a required off-street parking space is defined as being 9'x18', a 9'x13' parking space would not be considered a legitimate off-street parking space; and cannot be counted towards required off-street parking.
4. Section 14-03-10(1)(a)(2) of the City Code of Ordinances (Off-street Parking and Loading)(Multi-Family Dwellings) states, "Multiple-family dwellings – One (1) space for each efficiency unit; two (2) spaces for each two-bedroom unit; two and one-half (2.5) spaces for each three-bedroom unit or larger." According to the parking calculations submitted with the application, the two dwelling units proposed will each have two (2) bedrooms which would require a total of four (4) parking spaces for the proposed multi-family addition to the building.
5. Section 14-03-10(1)(i) of the City Code of Ordinances (Off-street Parking and Loading)(Office Buildings) requires one (1) space for each two-hundred fifty (250) square feet of gross floor area. According to the parking calculations submitted with the application, a total gross floor area of 3,800 square feet (existing and proposed office space) will be located in the building, which would require a total of fifteen (15) off-street parking spaces for the existing and proposed office space portion of the building.
6. Section 14-04-08(8)(a) of the City Code of Ordinances (RT – Residential)(Side Yard) Residential use 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. In no case shall any side yard be less than (10) feet." Section 14-04-08(8)(b) of the City Code of Ordinances (RT – Residential)(Side Yard) Non-Residential use states, "On any lot on which the principal building is designed and used for non-residential use, no side yards shall be required except where such lot is located adjacent to a residential district, in which case that side adjoining such residential district shall comply with the side yard requirements of such residential district." The adjacent property to the north is a residential condominium building; therefore a ten (10) foot side yard along the northern edge of the property would be required regardless if this building would be considered a non-residential use or be considered a residential use. According to the site plan submitted with the application, the applicant is proposing to construct the addition four (4) feet into the required ten (10) foot side yard setback along the north side of the property.

(continued)

7. Section 14-04-08(9)(a) of the City Code of Ordinances (RT – Residential)(Rear Yard) Residential use states, “Each lot shall have a rear yard not less than ten (10) feet in depth. Section 14-04-08(9)(b) Non-Residential use states, “Each lot shall have a rear yard not less than ten (10) feet in depth.” Therefore, a ten (10) foot rear yard is required of both a non-residential use and a residential use. According to the site plan submitted with the application, the applicant is proposing to construct three (3) feet into the required ten (10) foot rear yard setback along the east side of the property.
8. Section 14-03-11(10)(e) of the Code of City Ordinances (Landscaping and Screening)(Buffer Yards) requires a ten (10) foot buffer yard with a six (6) foot screening fence be installed at a side or rear yard between any expanding higher intensity land use adjacent to a single and two-family residential use. This buffer would be required along the entire length of the east property line to separate the expanding higher intensity land use from the existing lower intensity single-family uses located to the east. According to the site plan submitted with the application, the applicant is proposing a seven (7) foot buffer yard between the addition and the existing single-family dwellings located to the east.

FINDINGS:

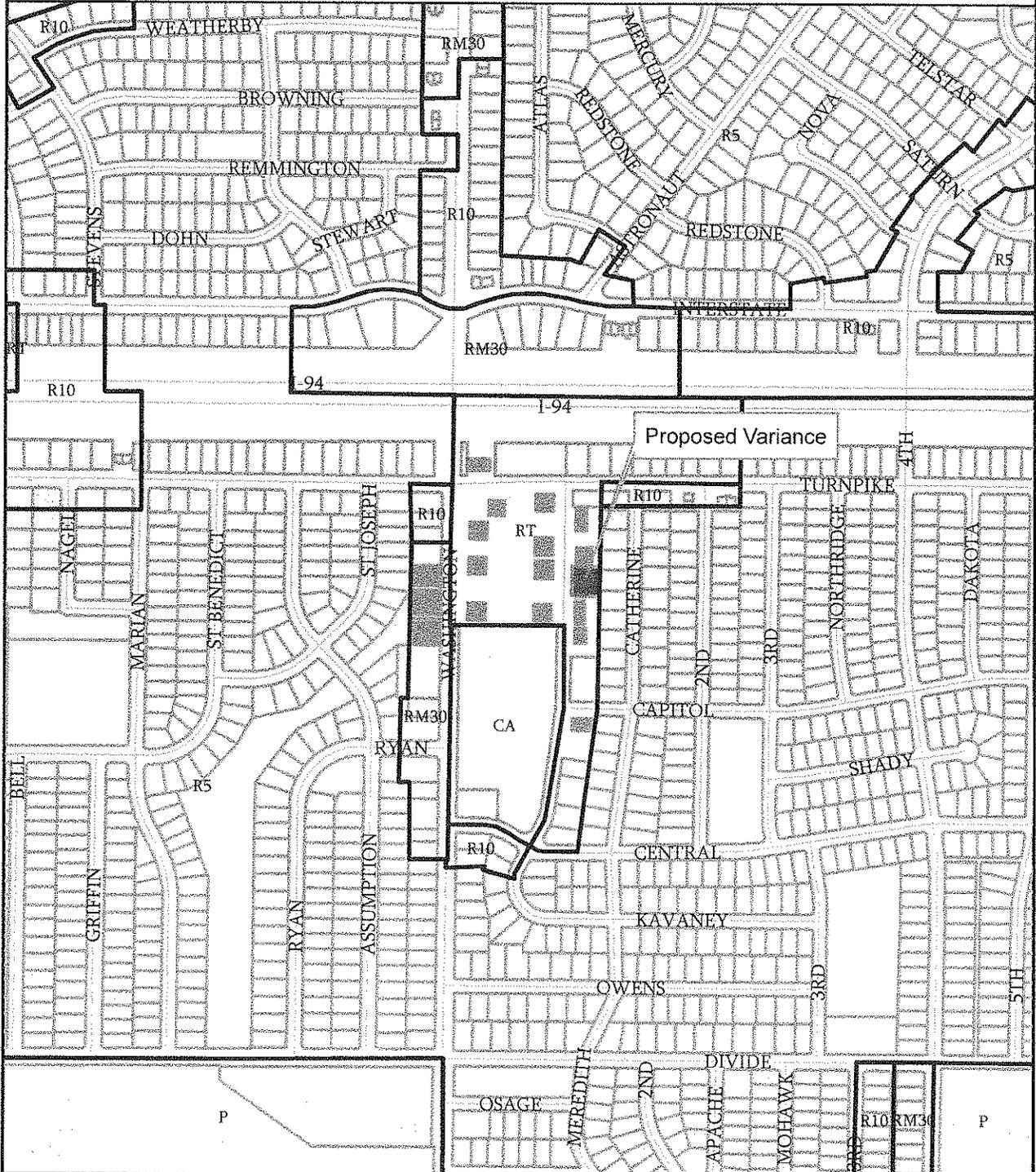
1. The need for a variances are not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RT - Residential zoning classification.
2. The hardship is not caused by the provisions of 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 variances are not the minimum variances that would accomplish the relief sought by the applicant.
5. The granting of the variances 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.

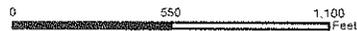
Proposed Variance

Lots 22-23, Block 12, Homan Acres Replat



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 herein.
 Date: 3/20/2014 (rb)

Source: City of Bismarck



**PRELIMINARY
 NOT FOR
 CONSTRUCTION**

**CARPENTER
 OFFICE
 ADDITION &
 REMODEL**

**2039 KAVANEY
 DRIVE
 BISMARCK ND 58501**

PROJECT NUMBER
2013-09

PHASE
**CONSTRUCTION
 DOCUMENTS**

DATE
03-17-2014

DRAWING NAME
**SITE PLAN &
 PLANTING
 SCHEDULE**

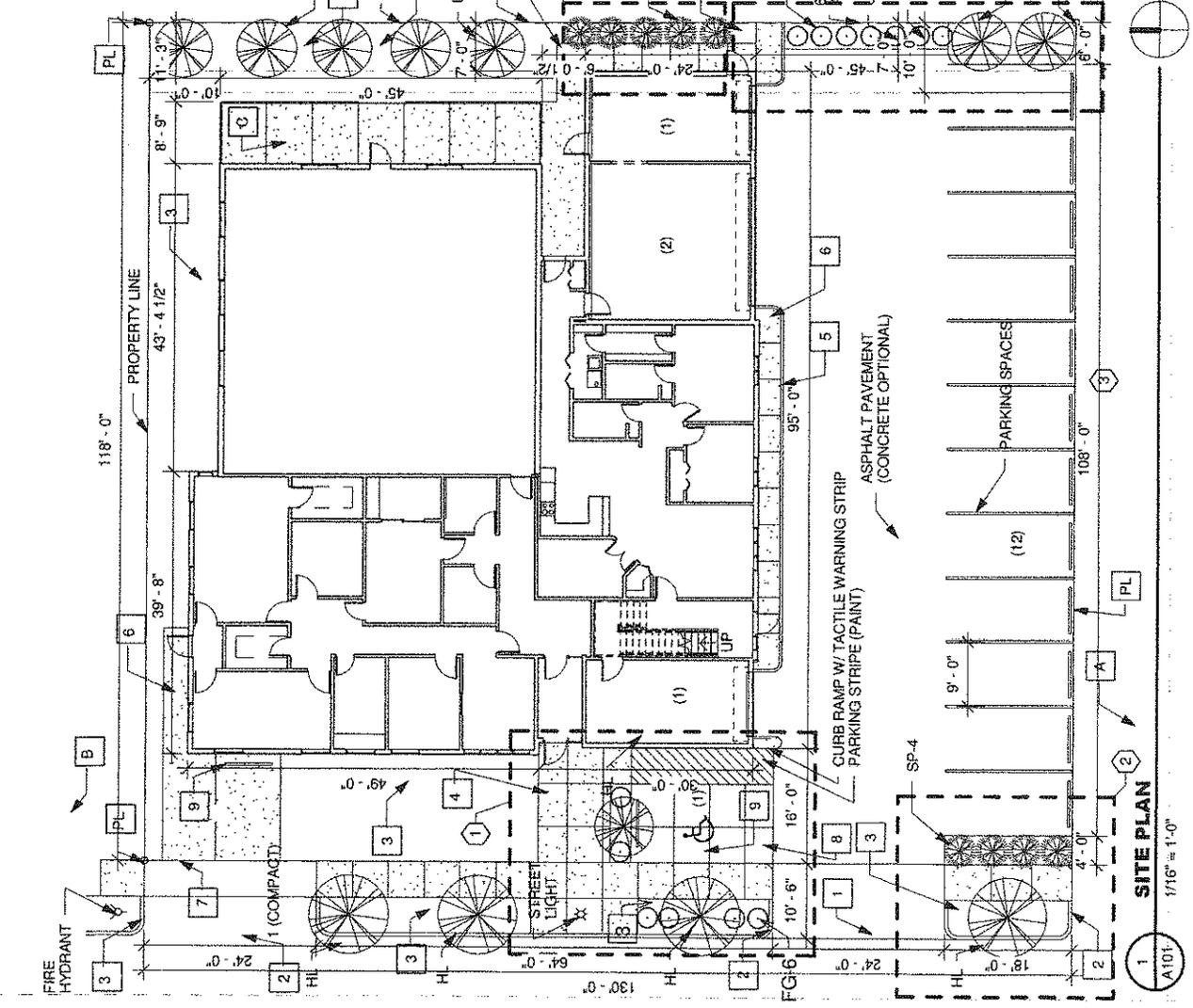
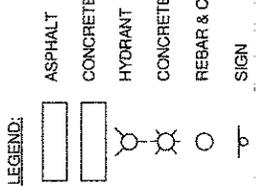
DRAWN BY: **Author**

SHEET NUMBER
A101

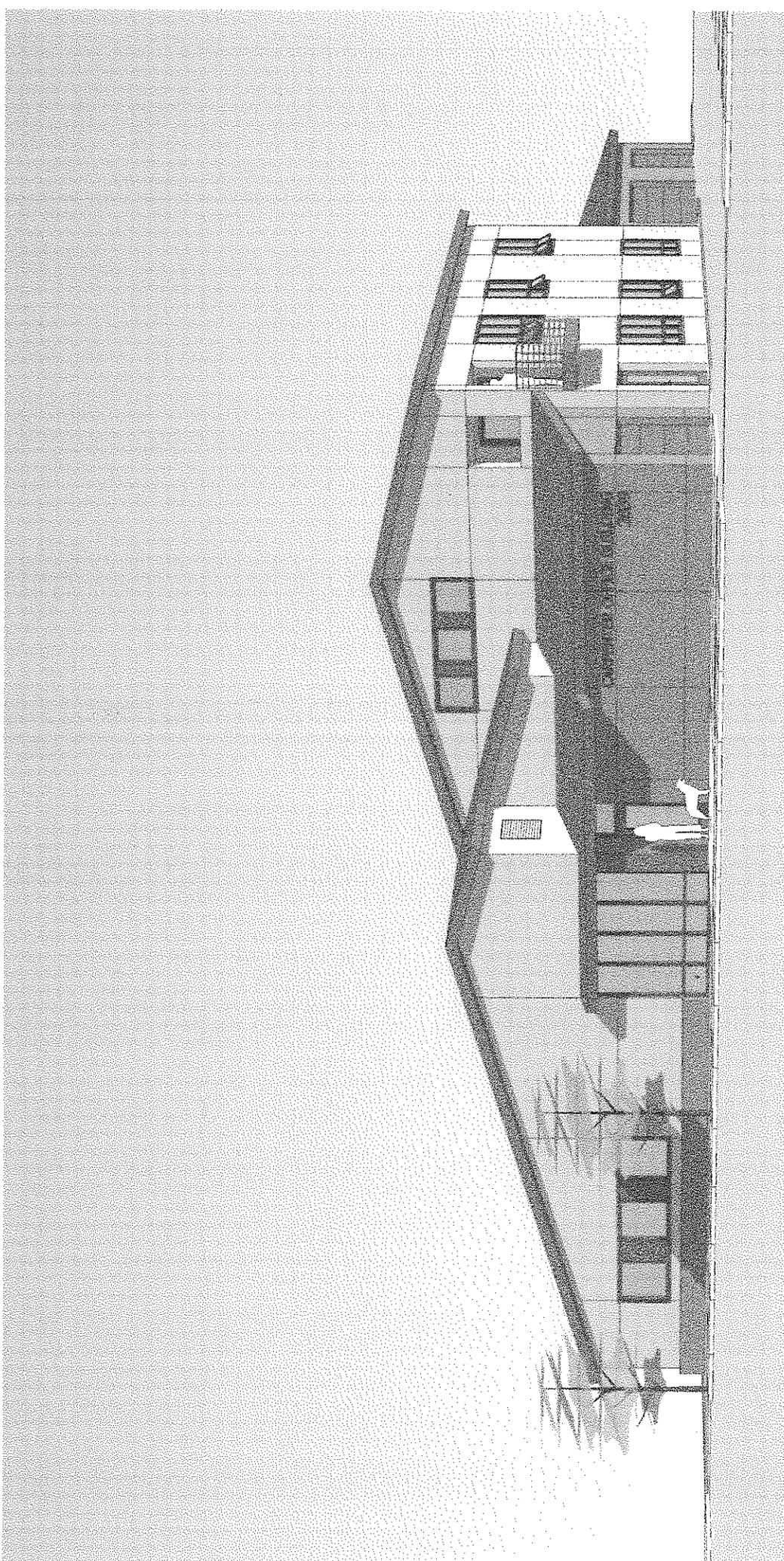
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PLANTING SCHEDULE			REMARKS
KEY	COMMON NAME	SCIENTIFIC NAME	
JL 5	JAPANESE TREE LILAC	SYRINGA RETICULATA	2" CALIPER
HL 4	HONEYLOCUST	THORNLESS GLEDITSIA TRIACANTHOS VAR INERMIS	2" CALIPER
FG 13	FEATHER REED GRASS	GALAMAGROTIS "KARL FOERSTER"	
SP 9	ANTHONY WATEROR SPIREA	SPIREA JAPONICA	

- GENERAL NOTES:**
- A ASPHALT DRIVE AT ADJACENT PROPERTY TO REMAIN G.C. TO PROTECT & REPAIR ANY DAMAGED AREAS
 - B CONCRETE SIDEWALK AT ADJACENT PROPERTY TO REMAIN G.C. TO PROTECT & REPAIR FULL DAMAGED PANELS
 - C CONCRETE PATIO TO REMAIN
 - D WOOD FENCE TO REMAIN
- CONSTRUCTION NOTES:**
- 1 NEW CURB CUT
 - 2 MODIFY CURB CUT AT ADJACENT PROPERTY
 - 3 NEW 4" TOP SOIL + SOD + IRRIGATION SYSTEM
 - 3A CONTOUR LANDSCAPE THE AREA TO PROVIDE DRAINAGE TO SOUTH
 - 4 LANDSCAPE ROCK W/ GEO-FABRIC
 - 5 CONCRETE CURB
 - 6 CONCRETE SIDEWALK (4" THICK)
 - 7 NEW 6" THICK REINFORCED CUT SIDEWALK + SLAB THIS AREA
 - 8 ACCESSIBLE VAN PARKING W/ STRIPPING + SIGNAGE
 - 9 CONCRETE PARKING BLOCK



1 SITE PLAN
 1/16" = 1'-0"



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

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

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

14-06-02. Powers and Duties.

* * * * *

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

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

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

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

Article 3. Definitions.

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

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

Article 28. Variances.

Section 3. Required Findings

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

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

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



CITY OF BISMARCK/ETA APPLICATION FOR APPROVAL OF A VARIANCE WRITTEN STATEMENT

RECEIVED
MAR 1 2014

1. Property Address or Legal Description: 2039 North Kavaney Drive

2. Location of Property: City of Bismarck Extraterritorial Area (ETA)

3. Type of Variance Requested: Parking and setbacks

4. Applicable Zoning Ordinance Chapter/Section: See attached document

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

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

See attached

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

See attached



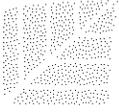
Project: **Carpenter Office Addition and Remodel**
2039 North Kavaney Drive
Bismarck, North Dakota

Item 1 – Accessible Van Parking at Main Entrance:

5. It has been determined, based on the area of the building, that nineteen (19) off-street parking spaces will be required for this project. One (1) of the required spaces is an accessible van parking space near the primary entrance. Our site plan (see attached Sheet A101) provides this space near the front adjacent to the public sidewalk.

Section 14-03-11. Landscaping and Screening requires a 4' landscape buffer from the property line to the beginning of the parking surface to provide vegetation. By requiring the 4' landscape buffer, in addition to the 16' for the accessible parking, reduces the size of our building by 4' making the adjoining garage too small thus reducing our required parking by one (1) parking space.

6. The plan shows a marked accessible parking space adjacent to the public sidewalk providing what we would call a public open space. The Owner has indicated they rarely have clients utilizing the accessible parking therefore the space would become an inviting open space, and positive design element, to the street elevation of the building. We also propose to install the buffering bushes at the boulevard side of the sidewalk and the installation of bushes at the front of the vehicle parking area as a buffer to the main entry.
7. This variance would allow adequate space on the site for this parking function to exist without taking two (2) parking spaces in the main parking area and also brings the space closer to the public entrance.
5. Section 14-02-03. Definitions – Site Triangle: Within the definitions section of the City Ordinance is a very obscure regulation pertaining to site triangles for projects at mid-block that has long been neglected during our design process. Our accessible van parking location is directly inside the property line and would be in conflict with this ordinance.
6. Our plan shows this space to serve as the van accessible location for our building. Adhering to the ordinance would require the accessible parking to be relocated south of the driving lane consuming an additional parking space required for the loading zone and also eliminate one (1) of our required parking spaces on the site. This would be a net loss of two (2) parking spaces on the site.
7. As stated before, the space is seldom used and should not interfere with public safety of the general public with the vehicular traffic moving from the parking lot to the street.



Item 2 – Site Triangle at Southwest Corner of Parking Lot:

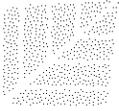
5. Section 14-02-03. Definitions – Site Triangle: The site triangle again comes into play on this request for variance. Continuing the line 15' into the parking lot from the property line will require the elimination of two (2) parking spaces on our site. The building plan has been coordinated very closely to maximize the site and provide the required number of parking spaces.
6. Each time a parking space is lost the project scope needs to be reduced by 250 square feet. The loss of these two (2) spaces would require the reduction of 500 square feet within our proposed addition.
7. To maintain the viability of the space planned for the office addition we need to maximize the number of parking spaces at the south lot.

Item 3 – Request for Reduction in Required Parking Spaces:

5. Section 14-03-10. Off-Street Parking and Loading: Off-street parking, based on our proposed plans, requires nineteen (19) spaces. Along the south parking area we originally calculated thirteen (13) spaces to meet the requirements but with the 4' buffering at the west property line and 10' buffer at the east property line for landscaping the total available space will only allow twelve (12) spaces. This would reduce our parking to eighteen (18) spaces.
6. The space requirements for the landscaping have reduced the property significantly. The Owner is requesting a reduction of off-street parking from nineteen (19) to eighteen (18) cars for this project. There is currently ample street parking at the west property line that could potentially make up for the loss of one (1) space.
7. Approval of this variance would allow the square footage of the proposed office space to remain.

Item 4 – Partial Parking Space in Rear Buffer Zone:

5. Section 14-03-11. Landscaping and Screening: This ordinance requires a 10' buffer at the rear yard separating the RT Zoning from the adjacent R – Residential.
6. The requirement for this landscape area leaves the current design 3' short of providing a full parking space. We are requesting the ability to pave the required amount of space and provide landscaping on the remaining 7' of the buffer zone. The 7' is also the utility easement designated for the site. The Owner will also be constructing a new 6' to 8' solid fence between the RT and R Zone.
7. Approval of this variance would allow the square footage of the proposed office space to remain.



Item 5 – Construction of Garage into Rear Buffer Zone:

5. Section 14-03-11. Landscaping and Screening: This ordinance requires a 10' buffer at the rear yard separating the RT Zoning from the adjacent R – Residential. At the rear yard there is also a 7' utility easement along the east property line. Along the 130' rear yard is a 24' section of garage that extends 3' into the buffer zone and up to the 7' utility easement.
6. Our dimension string, for the residential portion of the building, requires the additional 3' to provide typical garages for the tenants. We are requesting the approval to build within the buffer zone for this building element only. The garage is a one story structure with pitch roof and should not be objectionably visible from the R-Residential zone.
7. The solid fence at the property line and landscaping should provide an adequate buffer / transition to the adjacent residential area.

Respectfully,

David L. Nelson, AIA, LEED AP
Principal Architect



RECEIVED
MAY 19 2014

Project: Carpenter Office Addition & Remodel
Project No.: 2013.09
Date: March 17, 2014

Owner: K.J. & Deborah J. Carpenter
Property Address: 2039 North Kavaney Drive, Bismarck, North Dakota
Legal Description: Lot 22 & 23, Block 12, Hamon Acres Addition
Year Constructed: 1976
Flood Plain - 100 Year: No
Zoning District: RT - Residential District (Office - Multifamily)
Property Use: Office
Lot Area (s.f.): 15,340 (0.35 acres)
Lot Width (60'-0" min.): 130'-0" (combined)
Lot Depth: 118'-0"
Easement: 7' Utility easement at rear yard (east)

Setbacks:	Front (15' min.)	Side (6' min. North) (0' min. South) (Note 2)	Rear (10' min.) (Notes 1)
Current	42'-0"	North - 10'-0" South - 75'-0"	20'-0"
Construction Type:	New Construction	Alteration	Addition
	n/a	Yes	Yes
Foundation Type:	Slab-on-Grade	Crawl Space	Basement
	Yes	n/a	No

Bldg. Height (40' max.): 25'-0"
Stories: 2 Story

Building Area (s.f.):	Existing	New	
1st Floor	1,895	4,520	
2nd Floor	0	1,975	
Garage (Note 3)	0		Total (s.f.)
Sub-total	1,895	6,495	8,390
Accessory Ground Coverage:	Existing	New	
Offstreet Parking (Parking only)	0	5,049	
Deck	0	n/a	
Patio	0	0	Total (s.f.)
* Total (s.f.):	0	5,049	5,049

	Existing	New	Total
Building Footprint:	1,895	4,520	
Accessory Ground Coverage:		5,049	
Lot Coverage (75% max.)	12.35%	62.38%	74.73%

	Existing	New	Total
Parking Requirements:			
Gross Area (s.f.) (Business)	1,895	1,905	
Spaces / s.f.	250	250	
Total Spaces:	7.6	7.6	15.2
2 Bedroom Residential (2 Units)		4.0	4.0
		Spaced Required	19.2
H/C Parking Spaces (ADAAG .1.2)			1

Toilet Requirements:	3,907		39.07
Occupant Load Factor	100		1 Men / 1 Women

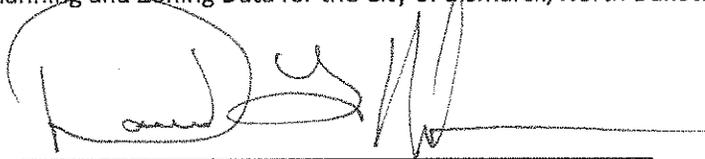
	Existing	New	Total
Opinion of Probable Cost:			
	n/a	n/a	\$0.00

Note 1. There is currently a 7'-0" utility easement at the rear yard (east boundary).

Note 2. No side yard shall be required on any lot on which the principal building is for nonresidential use.

Note 3. Coverage calculated with accessory ground coverage for parking.

Data presented based on City Planning and Zoning Data for the City of Bismarck, North Dakota.



Prepared by:

David L. Nelson, AIA
 Leaf Design Studio, Inc.
 Bismarck, North Dakota



Community Development Department

MEMORANDUM

TO: Michael Marback
Chairman, Board of Adjustment

FROM: Jenny Wollmuth, Planner
Community Development – Planning Division

DATE: March 28, 2014

SUBJECT: Board of Adjustment Item – Appeal of Staff Interpretation

Swenson Hagen & Company, on behalf of Ken Dykes, Bismarck Cancer Center is appealing staff's interpretation of Section 14-03-04(1) of the City Code of Ordinances (General Provision) (Permitted Uses) relating to the establishment of off-site parking lots in the RM – Residential and RT – Residential zoning districts.





**BISMARCK
CANCER CENTER**
701-222-6100
500 N 8th Street, Bismarck, ND 58501 • Fax: 701-222-6150
bismarckcancercenter.com

March 26, 2014

Mr. Carl Hokenstad
Director of Community Development
PO Box 5503
Bismarck, ND 58502-5503

Re: Variance Requests/Off-Site Parking Lots

Mr. Hokenstad,

We are in receipt of your letter dated March 25, 2014 regarding our request for variances related to off-site parking lots for Bismarck Cancer Center.

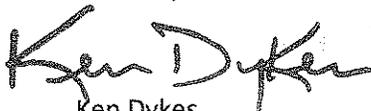
Attached is the projected construction schedule and goal.

The timeline goal to take bids on this project is June 5, 2014. Architectural plans are being completed. Commitment of cost to MDU to raise overhead MDU lines has been completed.

We will incur significant costs by the end of May when this ordinance could be approved by the City Commission, in addition to losing valuable summer time construction.

Please consider this letter as an appeal to your department's opinion on off-site parking lots and submit this appeal to the Board of Adjustment for their meeting on April 3, 2014.

Sincerely,



Ken Dykes
Executive Director



BISMARCK CANCER CENTER

Construction Schedule

A/E Contract Signed		2/14/2014	Complete
	Construction Documents		
	MDU to move lines		Notified
Submit for Bid		5/5/2014	Pending
Submit for Permit		5/5/2014	Pending
Receive City Comments		5/23/2014	Pending
Pick up and re-submit		5/28/2014	Pending
Sending out Addendum to Bidders		5/28/2014	Pending
City Approval		5/30/2014	Pending
Receive Bids		6/5/2014	Pending
Award Contract		6/6/2014	Pending
	MDU completes move	6/6/2014	Pending
Contractor Pulls Permit		6/9/2014	Pending
	New Construction		
COO of New Prior to Remodel		12/19/2014	Pending
Occupy New Expansion		12/22/2014	Pending
	Remodel Phase 1		
Occupy Remodel Phase 1		3/16/2015	Pending
	Remodel Phase 2		
Occupy Remodel Phase 2		6/29/2015	Pending



Community Development Department

March 25, 2014

Ken Dykes
Executive Director
Bismarck Cancer Center
500 North 8th Street
Bismarck ND 58504-5598

RE: Variance Requests/Off-site Parking Lots

Dear Mr. Dykes:

The purpose of this letter is to inform you that your request for variances related to off-site parking lots for Bismarck Cancer Center cannot be processed, as they would constitute use variances and use variances are not allowed. Section 14-03-04(1) (General Provisions/ Permitted Uses) states, "No building or structure shall be erected, and no existing building or structure shall be moved, altered, added to or enlarged; nor shall any land, building or structure be used, designed or arranged for use for any purpose or in any manner not included among the uses hereinafter listed as permitted in the district in which such building, structure or land be located." Since off-site parking lots are not specifically listed as a permitted use in either the RM-Residential or the RT – Residential zoning districts, they are considered to be prohibited.

The Community Development Department has initiated a zoning ordinance text amendment to allow off-site parking lots in these zoning districts as a special use; however, it will be late May before the ordinance could be approved by the City Commission.

If you do not wish to wait for the zoning ordinance text amendment to take effect, you have the right to appeal staff's interpretation that off-site parking lots are not allowed to the Board of Adjustment. In order to place such an appeal on the next regularly scheduled meeting of the Board of Adjustment on April 3, 2014, the appeal must be received by our office no later than 12:00noon on Thursday, March 27, 2014.

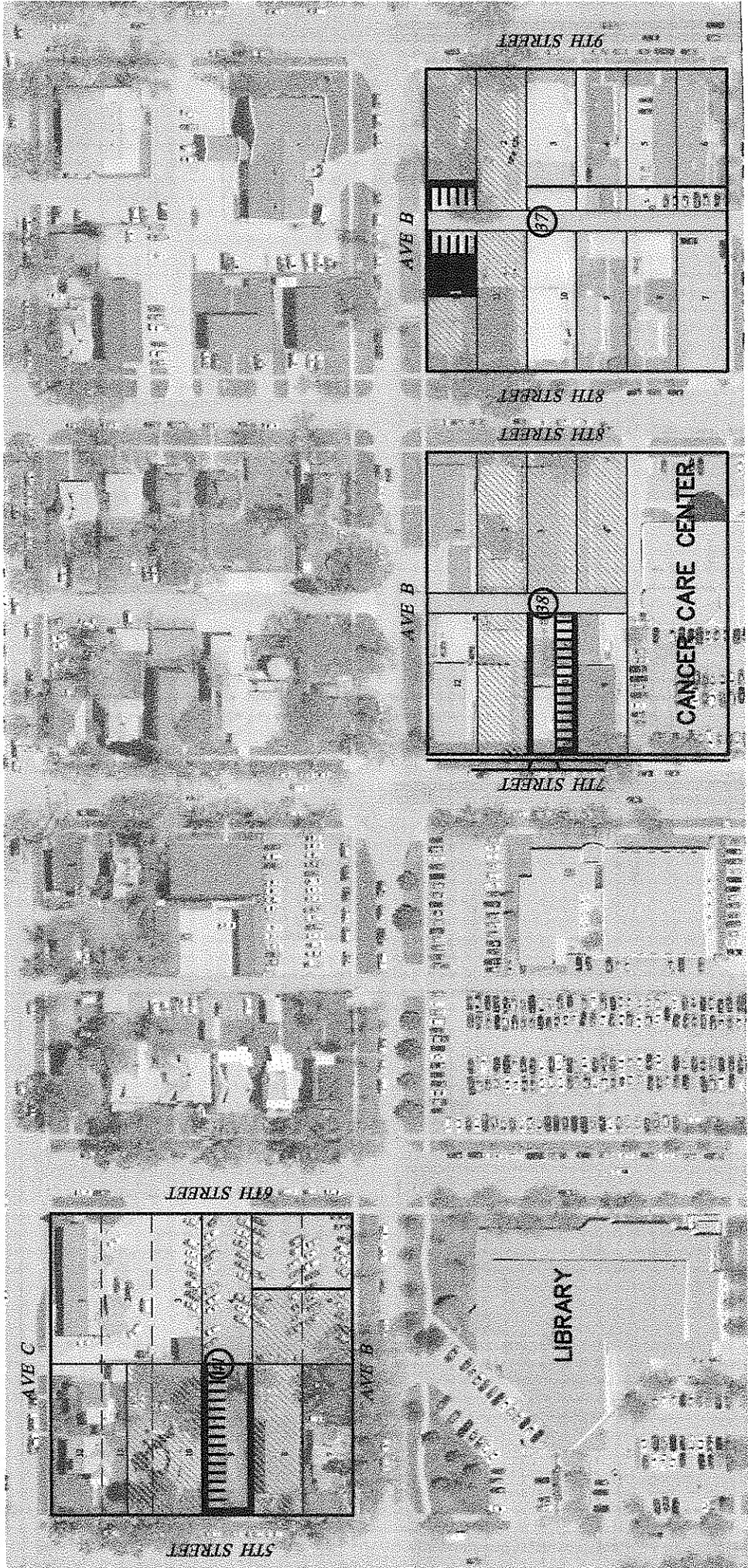
If you have any questions, please feel free to call me at 701.355.1840.

Sincerely,

Carl D. Hokenstad, AICP
Director of Community Development

cc: Lon Romsaas, Swenson Hagen & Company





CITY OF BISMARCK Ordinance No. XXXX

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 14-02-03, 14-03-08 AND 14-03-10 OF THE BISMARCK CODE OF ORDINANCES (REV.) RELATING TO DEFINITIONS, SPECIAL USES AND OFF-STREET PARKING AND LOADING/OFF-SITE PARKING LOTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-02-03 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Definitions is hereby amended and re-enacted to read as follows:

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

* * * * *

Parking lot, on-site: An on-site parking lot shall mean any land legally used for the parking of motor vehicles that is located on the same lot or parcel as the use it is intended to serve.

Parking lot, off-site: An off-site parking lot shall mean any land legally used for the parking of motor vehicles that is located on a different lot or parcel as the use it is intended to serve.

* * * * *

Section 2. Amendment. Section 14-03-08 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Definitions is hereby amended and re-enacted to read as follows:

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and Building Official (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and Building Official (where allowed) are hereby given limited discretionary powers relating to the granting of such permit or certificate.

* * * * *

4. Permanent uses (planning commission approval). The city planning and zoning commission is authorized to grant special use permits for the following uses:

* * * * *

x. Off-site Parking Lots. Off-site parking lots for any use may be permitted in any R5 - Residential, R10-Residential, RM-Residential and RT-Residential district as a special use provided:

1. The lot or parcel meets the dimensional requirements for the underlying zoning district.

2. The lot or parcel is located along a public roadway and obtains access from a roadway classified as either a local roadway or a collector.

3. The lot or parcel is located no further than four hundred (400) feet from the use it is intended to serve.

4. A twenty (20) foot landscaped buffer yard is provided along any common lot line with an existing residential use and the buffer yard is installed in accordance with the provisions of Section 14-03-11(10) of the City Code of Ordinances (Landscaping and Screening/Buffer Yards).

7. A site plan is submitted showing the overall dimensions of the site, the location and

dimensions of parking spaces and access aisles, perimeter landscaping, landscaped buffer yards, adjacent roadways and proposed access (ingress/egress).

* * * * *

Section 3. Amendment. Section 14-03-10 of the City of Bismarck Code of Ordinances (1986 Rev.) relating to Off-street Parking and Loading is hereby amended and re-enacted to read as follows:

* * * * *

8. Location of required parking and loading facilities. The off-street parking facilities required by this section shall be on the same lot or parcel of land as the structure they are intended to serve; provided, however, when practical difficulties, ~~as determined by the board of adjustment,~~ prevent the establishment of such facilities upon the same lot or parcel, they shall be furnished within four hundred (400) feet of the premises to which they are appurtenant. Off-site parking lots within residential areas are subject to the requirements of Section 14-03-08(4)(x). The off-street loading facilities required by this section shall in all cases be on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be part of the area used to satisfy the off-street parking requirements of this article. All required off-street parking and loading facilities along with all ingress and egress driveways thereto shall be zoned adequately appropriately for the principal use which they are intended to serve.

* * * * *

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance shall take effect following final passage and adoption.

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