



Community Development Department

BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA

June 5, 2014

Table with 3 columns: Tom Baker Meeting Room, 4:00 p.m., City-County Office Building

MINUTES

- 1. Consider the minutes of the April 3, 2014 and the May 1, 2014 meeting of the Board of Adjustment.

APPOINTMENTS / ELECTION OF OFFICERS

- 2. Re-appointment of Ken Heier, and Michael Marback.
3. Appointment of Ken Hoff.
4. Election of Chair and appointment of Vice Chair

REQUESTS

- 5. Variance from Section 14-04-04(1) of the City Code of Ordinances (RR-Residential)(Front Yard) - 5538 Falconer Drive (Lot 5, Block 2, Falconer Estates)
Tate Neideffer is requesting a variance to reduce the required front yard setback along the east side of his property from forty (40) feet to ten (10) feet in order to construct an accessory building.

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

- 6. Variance from Section 14-03-05(4)(b) of the City Code of Ordinances (Supplementary Provisions) - 1303 North 3rd Street (Lot 14, Block 7, Casey's 2nd Addition)

Jared Marquardt is requesting a variance to reduce the required rear yard setback along the east side of his property from twenty (20) feet to six and-a-half (6 1/2) feet in order to construct an accessory building, with access perpendicular to the adjacent alley.

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



7. **Variations from Section 14-04-09(9) of the City Code of Ordinances (HM – Medical Facility District) to reduce the required rear yard setback along the west side of the property from ten (10) feet to one (1) foot and Section 14-03-10(1) of the City Code of Ordinances (Off-Street Parking and Loading) – 500 North 8<sup>th</sup> Street (Track 500 being a part of Blocks 27 and 38, Northern Pacific 2<sup>nd</sup> Addition).**

*The Bismarck Cancer Center is requesting a variance to reduce the rear yard setback along the west side of the property from ten (10) feet to one (1) foot in order to construct and addition to the Bismarck Cancer Center in line with the existing building and to reduce the number of required off-street parking spaces to thirty-two (32) spaces.*

Board Action:      approve      continue      table      deny

#### **OTHER BUSINESS**

8. **Other**

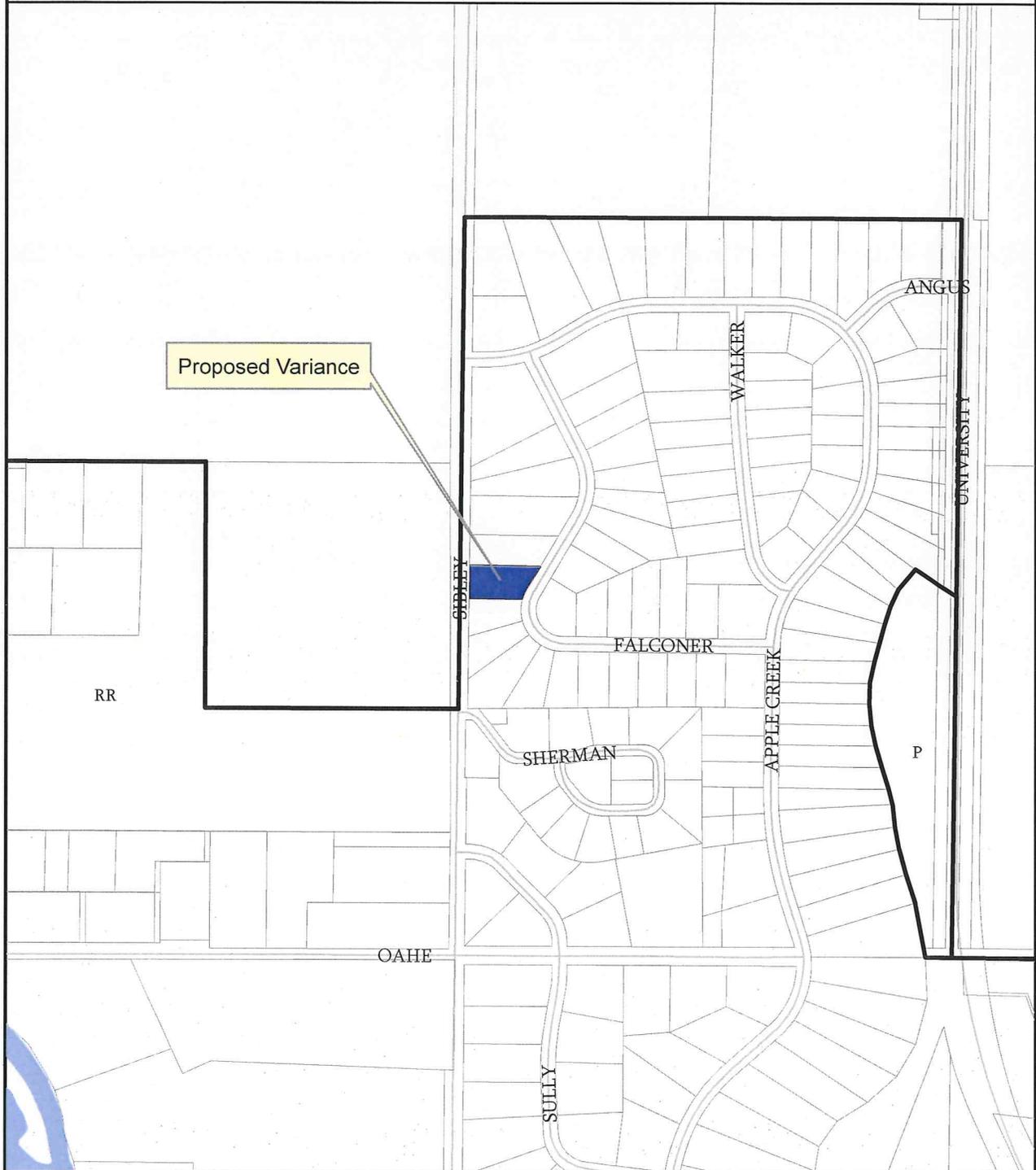
#### **ADJOURNMENT**

9. **Adjournment.** The next regular meeting date is scheduled for July 3, 2014.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

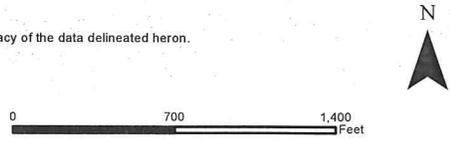
<b>BACKGROUND:</b>	
<b>Title:</b> 5538 Falconer Drive – Variance (Front Yard Setback) (Lot 5, Block 2, Falconer Estates)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> June 5, 2014
<b>Owner(s):</b> Tate Neideffer	<b>Engineer:</b> None
<b>Reason for Request:</b> Variance from Section 14-04-01(4) of the City Code of Ordinances (RR-Residential)(Front Yard) to reduce the required front yard setback for a lot located within a RR-Residential zoning district from forty (40) feet to ten (10) in order construct an accessory building.	
<b>Location:</b> In south Bismarck, along the west side of Falconer Drive east of Sibley Drive	
<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 14-04-01(4) of the City Code of Ordinance (RR-Residential)(Front Yard) states, “Each platted lot shall have a front yard not less than forty (40) feet in depth as measured from the front property line.” According to the site plan submitted with the application the proposed accessory building will be located ten (10) feet from the front property line.</li> </ol>	
<b>FINDINGS:</b>	
<ol style="list-style-type: none"> <li>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.</li> <li>2. The hardship is not caused by the provisions of the Zoning Ordinance.</li> <li>3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.</li> <li>4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.</li> <li>5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance</li> </ol>	
<b>RECOMMENDATION:</b>	
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.	

# Proposed Variance Lot 5, Block 2, Falconer Estates

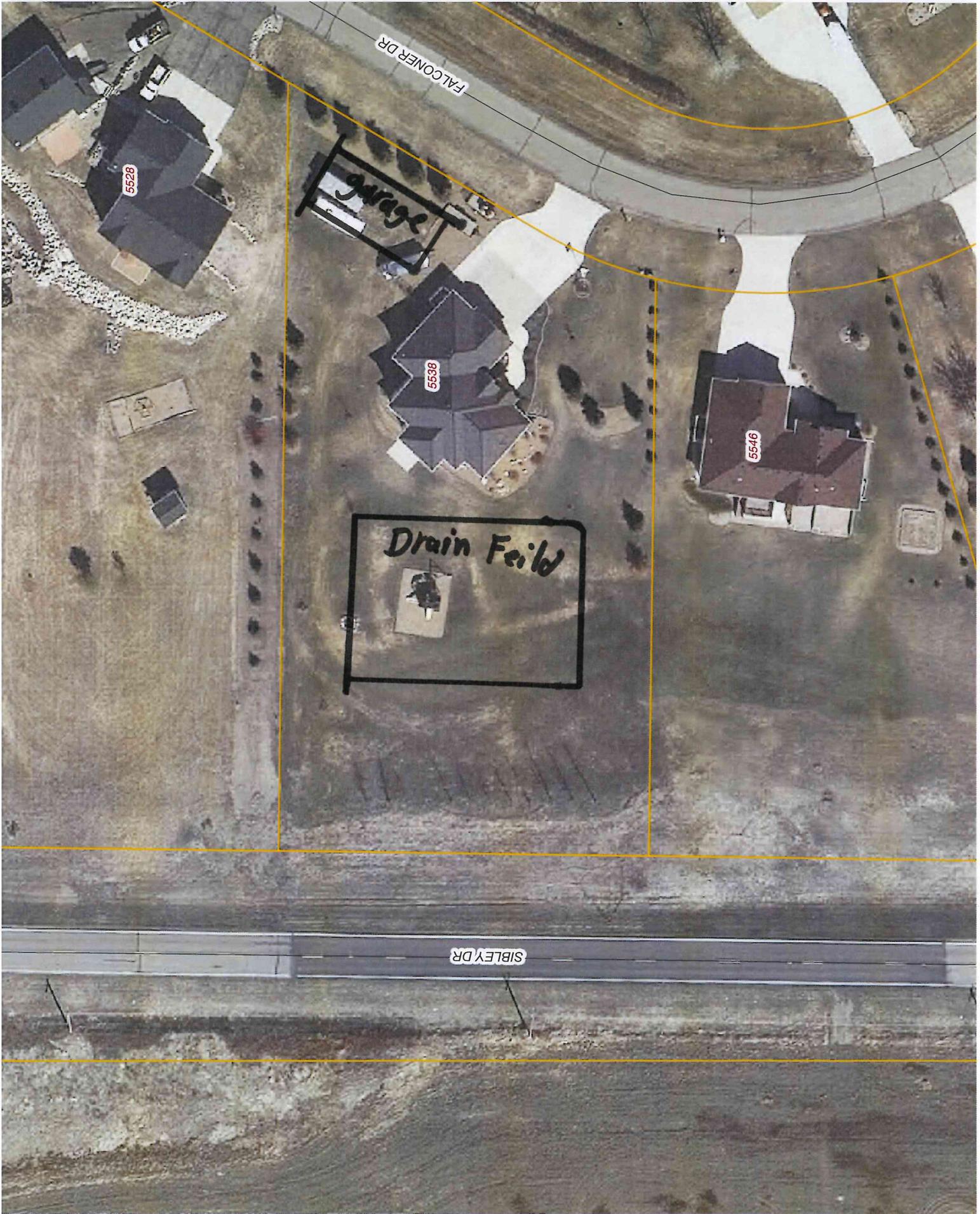


DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
Date: 5/9/2014 (hlb)

Source: City of Bismarck



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FALCONER DR

5528

5538

5546

Drain Field



SIBLEY DR

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

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

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

14-06-02. Powers and Duties.

\* \* \* \* \*

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

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

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



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

1. Property Address or Legal Description: 5538 Falconer Drive Bismarck N.D. 58504

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

3. Type of Variance Requested: Front yard Set back, reduce 40 feet to 10 feet

4. Applicable Zoning Ordinance Chapter/Section: 14-04-01(4)

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.

#5. The zoning ordinance would limit the use of this property due to some of the irregularities of the property. The steep side hills are the issue. The south side of my house has a very steep drop off. My house is built into a side hill that drops off substantially to a flatter area. Driving up and down this hill can be dangerous, especially when the weather conditions including snow and ice. I have established trees on the south side of my house that would not allow access to the back of my property. That side is equally as steep and unsafe. The majority of my backyard property is drain field for my house. The drain field along with the setbacks and the no access from Sibley Drive does not allow me ample space for a garage in the backyard of my property.

#6. The forty foot set back from the property pin closest to Falconer Drive is limiting the best space usage of my property. A beautiful garage that would have the same color steel siding and same color shingles as my house would enhance the aesthetics of this property and the neighborhood. By adding a garage in this spot on my property, I could keep my landscaping equipment in it and out of plain site.

The most important thing about this garage is keeping the children of the neighborhood safe. I have had countless times that I have informed the children of the neighborhood that it is not safe to climb on and play around my equipment.

I already have established 15 feet tall pine trees running parallel to Falconer Drive. Placing my garage just on the other side of those pine trees would allow me ample amount of space to place my garage in this area. I would of course leave enough room for the trees to grow.

I currently utilize this area of my property to park my equipment. By building a garage in this area, I would be able to protect my equipment and the children of the neighborhood.

#7. If granted this variance, it would allow me to put up the square foot allowable for this property. The allowable is 1800 square feet.



## Community Development Department

May 23, 2014

Dear Property Owner:

Please be advised that the Bismarck Board of Adjustment will be conducting a public hearing on a variance request on Thursday, June 5, 2014, at 4:00 p.m. in the Tom Baker Meeting Room, City-County Office Building, 221 North 5<sup>th</sup> Street, Bismarck, North Dakota, which may be of interest to you.

Tate Neideffer is requesting a variance Section 14-04-01(4) of the City Code of Ordinances (RR-Residential)(Front Yard) to reduce the required front yard setback along the east side of the property from forty (40) feet to ten (10) feet in order to construct an accessory building on Lot 5, Block 2, Falconer Estates (5538 Falconer Drive).

A map showing the location involved in the request and site plan are enclosed for your information.

At the hearing, the Board of Adjustment will provide an opportunity for all interested persons to be heard with respect to this item. Interested persons may also submit written comments regarding this request prior to the meeting to the Community Development Department ~ Planning Division, PO Box 5503, Bismarck, North Dakota 58506-5503, fax: 701- 222-6450, or e-mail - cobplan@nd.gov.

If you have any questions or need any additional information on this request, please contact Jenny Wollmuth, the planner in our office assigned to this request, at 355-1845.

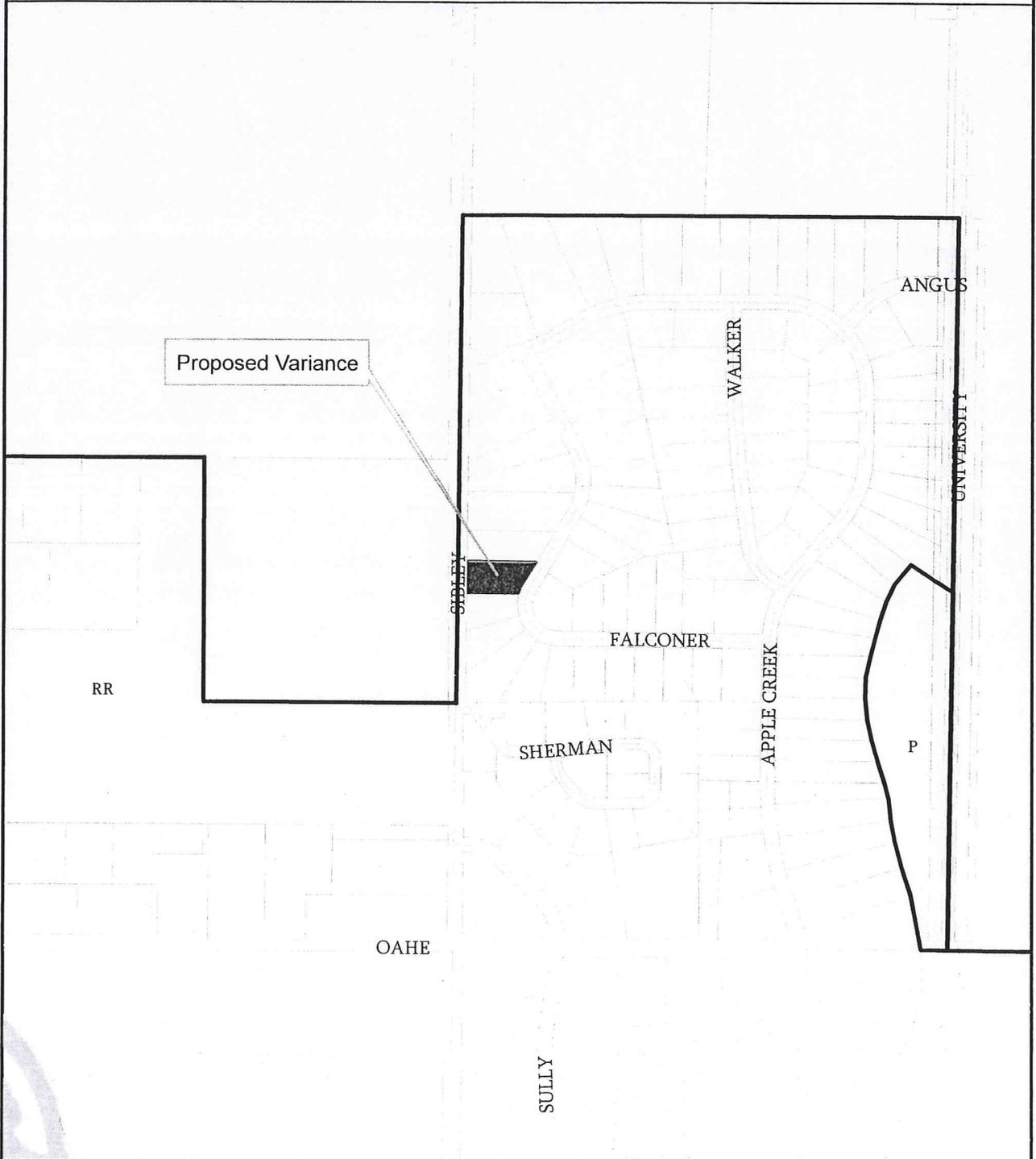
Bismarck Community Development Department - Planning Division

JW/hlb

Enc: Location Map  
Site Plan

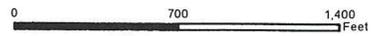


# Proposed Variance Lot 5, Block 2, Falconer Estates



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.  
Date: 5/9/2014 (hlb)

Source: City of Bismarck



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>	
<b>Title:</b> 1303 North 3 <sup>rd</sup> Street – Variance (Rear Yard Setback) (Lot 14, Block 7, Casey’s 2 <sup>nd</sup> Addition)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> June 5, 2014
<b>Owner(s):</b> Jared Marquardt	<b>Engineer:</b> None
<b>Reason for Request:</b> Variance from Section 14-03-05(4)(b) of the City Code of Ordinances (Supplemental Provisions) to reduce the required rear yard setback along the east side of the property from twenty (20) feet to six and-a-half (6 1/2) feet in order to construct and accessory building with access from the adjacent alley.	
<b>Location:</b> In central Bismarck, along the east side of North 3 <sup>rd</sup> Street between Teton Drive and East Divide Avenue.	
<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 14-03-05(4)(b) of the City Code of Ordinances (Supplementary Provisions) states, “A garage located in a rear yard and approached from an alley must be set back from the alley line at least twenty (20) feet.” According to the site plan submitted with the application the proposed accessory building would be located six and-a-half (6 ½) feet from the alley with access perpendicular to the adjacent alley.</li> </ol>	
<b>FINDINGS:</b>	
<ol style="list-style-type: none"> <li>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.</li> <li>2. The hardship is not caused by the provisions of the Zoning Ordinance.</li> <li>3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.</li> <li>4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.</li> <li>5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance</li> </ol>	
<b>RECOMMENDATION:</b>	
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.	



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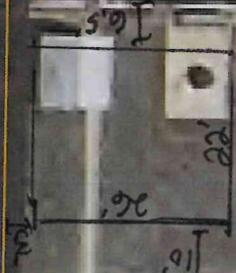
1306

1305

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304

N 3RD ST



**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:

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14-06-02. Powers and Duties.

\* \* \* \* \*

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

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

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



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

1. Property Address or Legal Description: 1303 N 3<sup>rd</sup> St Bismarck NO 58501

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

3. Type of Variance Requested: 2 Rearyard Set back; accessory building within Adjacent to alley

4. Applicable Zoning Ordinance Chapter/Section: MINUTE 14-03-05(4)(6)

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.)

*please see attached*

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.

Jared Marquardt  
1303 N 3<sup>rd</sup> St  
Bismarck ND 58501  
701-331-1678

City of Bismarck  
Application for Approval of a Variance  
Written Statement  
May 19, 2014

5. I wish to build a detached 22' by 26' garage with direct alley access in the NE corner of our backyard. I am requesting a variance be approved for the 20' alley set back code. My backyard is too shallow to build a 26' deep garage with the 20' set back from the alley. With a 20' set back, the garage would overlap our current covered porch and be very close to our house. I wish to have the garage door facing the alley due to the width constraints of our yard. Our backyard is quite narrow and I have selected this layout in an effort to conserve the most square footage of lawn plus our only mature tree. This layout would also preserve most of our existing privacy fence.

6. The limitations would deprive me of reasonable use of my lawn as well as restrict the size of garage that I could construct. The distance from my porch to the approximate property line (existing fence) is 43'. With a 20' set back, that would leave a total of 23'. Assuming a 3' gap between the porch and garage, that would only allow a 20' deep garage to be built, which would not be deep enough for my 19.3' long pickup.

7. I am requesting a variance from the 20' set back to approximately 6.5'. This would allow me to stay 10' from the edge of my porch. I would maintain a 3' set back on the north edge of my property. This requested variance and layout would allow the most reasonable use of my lawn space, save our tree, allow construction of a 22' by 26' garage, and allow continued use of our utility shed.



## Community Development Department

May 23, 2014

Dear Property Owner:

Please be advised that the Bismarck Board of Adjustment will be conducting a public hearing on a variance request on Thursday, June 5, 2014, at 4:00 p.m. in the Tom Baker Meeting Room, City-County Office Building, 221 North 5<sup>th</sup> Street, Bismarck, North Dakota, which may be of interest to you.

Jared Marquardt is requesting a variance from Section 14-03-05(4)(b) of the City Code of Ordinances (Supplemental Provision), to reduce the required rear yard setback along the east side of the property from twenty (20) feet to six and-a-half (6 ½) feet in order to construct an accessory building, with access from the adjacent alley on Lot 14, Block 7, Casey's 2<sup>nd</sup> Addition (1303 North 3<sup>rd</sup> Street).

A map and site plan showing the location involved in the request is enclosed for your information.

At the hearing, the Board of Adjustment will provide an opportunity for all interested persons to be heard with respect to this item. Interested persons may also submit written comments regarding this request prior to the meeting to the Community Development Department ~ Planning Division, PO Box 5503, Bismarck, North Dakota 58506-5503, fax: 701- 222-6450, or e-mail - [cobplan@nd.gov](mailto:cobplan@nd.gov).

If you have any questions or need any additional information on this request, please contact Jenny Wollmuth, the planner in our office assigned to this request, at 355-1845.

Bismarck Community Development Department - Planning Division

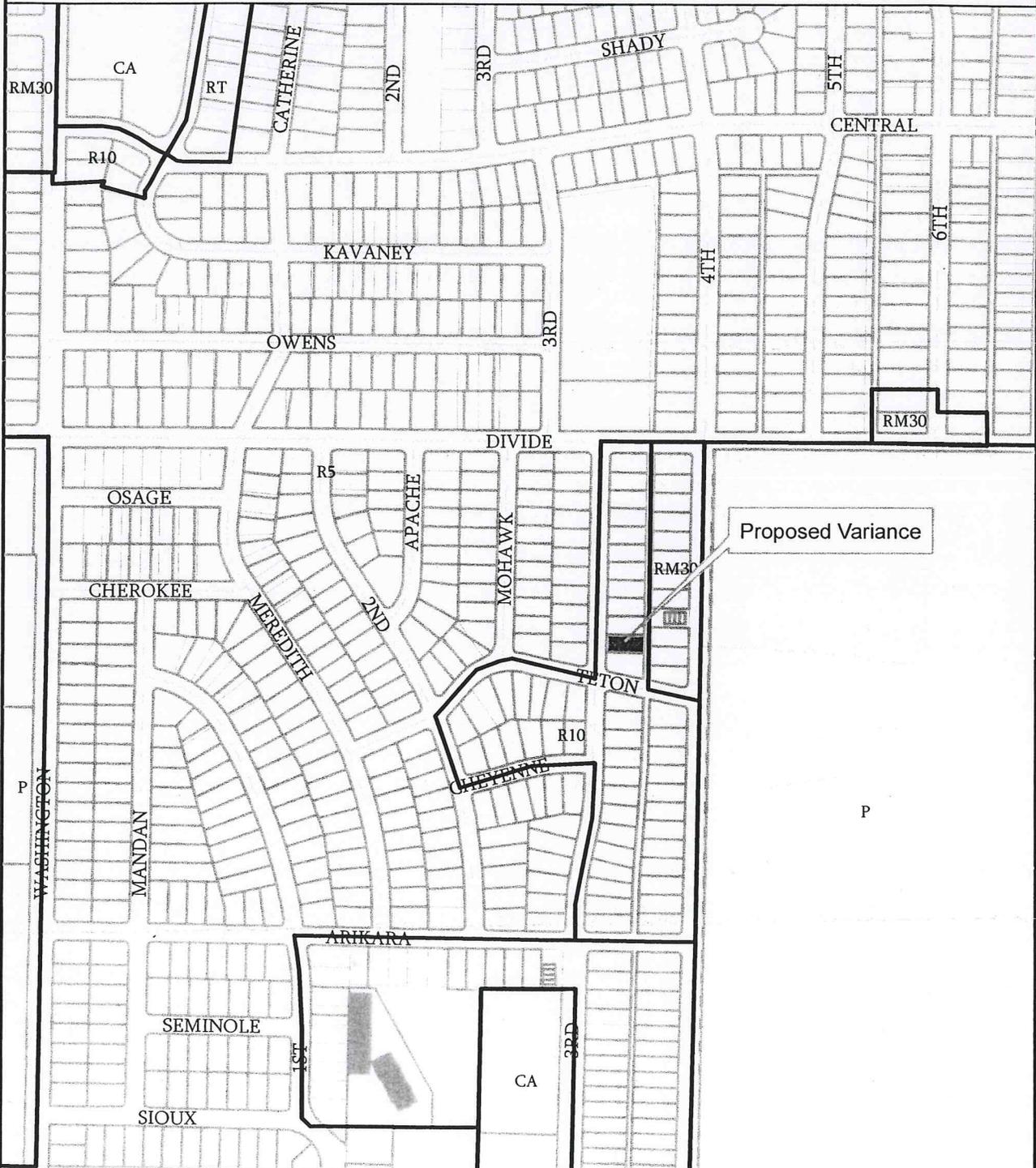
JW/hlb

Enc: Location Map  
Site Plan



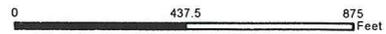
# Proposed Variance

## Lot 14, Block 7, Casey's 2nd 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.  
 Date: 5/19/2014 (hfb)

Source: City of Bismarck



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>	
<b>Title:</b> 500 North 8 <sup>th</sup> Street –Variance (Off-Street Parking and Loading) and (Rear Yard Setback) (Tract 500 being a part of Blocks 27 and 38, Northern Pacific 2 <sup>nd</sup> Addition.)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> June 5, 2014
<b>Owner(s):</b> Bismarck Cancer Center	<b>Engineer/Architect:</b> Swenson, Hagen & Company
<b>Reason for Request:</b> Variances from Section 14-04-09(9) of the City Code of Ordinances (HM – Medical Facility District) to reduce the required rear yard setback along the west side of the property from ten (10) feet to one (1) foot and from Section 14-03-10(1) of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required off-street parking to thirty-two (32) spaces in order to construct an addition to the existing facility.	
<b>Location:</b> The property is located in central Bismarck along the west side of North 8 <sup>th</sup> Street, between East Rosser Avenue and East Avenue B.	
<b>ADDITIONAL INFORMATION:</b>	
<ol style="list-style-type: none"> <li>1. The Bismarck Cancer Center is in the initial stages of constructing a 6,920 square foot addition to the south side of their existing facility. This addition will add 5,600 square feet of office space and 1,320 square feet of garage and storage space to the existing 13,760 square foot building. The existing facility was constructed in 1998-1999. It appears that if the building may have been constructed ten (10) feet from the rear property line; however, since the initial building permit was issued the alley adjacent to the property to the west was vacated and property was transferred between the two adjacent property owners on either side of the alley, both of which may have resulted in the existing building being located approximately one (1) foot from the rear property line.</li> <li>2. The existing site provides fifty-one (51) off-street parking spaces, nineteen (19) of those spaces would be eliminated for the proposed addition to the building. In order to provide off-street parking for staff, the Bismarck Cancer Center requested approval of special use permits to construct four off-site parking lots at 811 East B Avenue, 813 East B Avenue, 515 North 7<sup>th</sup> Street, and 611 North 5<sup>th</sup> Street. The Bismarck Planning and Zoning Commission met and denied this request on May 28, 2014, as all four sites did not meet the provisions outlined in Section 14-03-08 of the City Code of Ordinances (Special Uses). If approved, these four off-site parking lots would have created a total of thirty-seven (37) parking spaces.</li> <li>3. Once construction begins on the proposed addition, a maximum of thirty-two (32) off-street parking spaces can be provided on the site. The applicant is confident that thirty-two (32) off-street parking spaces are sufficient for the patients receiving treatment at the Bismarck Cancer Center. The applicant is also committed to replacing the nineteen (19) staff parking spaces eliminated by the proposed addition, at appropriate locations off-site.</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 14-03-10(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.”
4. Section 14-04-09(9) of the City Code of Ordinances (HM – Medical Facility District) states, “Each lot shall have a rear yard not less than ten (10) feet in depth, except as may be allowed under provisions of subsection 6(b) of this district regulation. Provided, however, that where the rear of a lot adjoins an alley, no rear yard shall be required for a principal non-residential building.” According to the site plan submitted for the proposed variance, the proposed addition would be located one (1) foot from the rear property line along the west side of the property. Subsection 6(b) of this section allows for the Board of Adjustment to adjust lot coverage up to one-hundred (100) percent, thus eliminating any setback requirements.
5. Section 14-03-10(1)(i) of the City Code of Ordinances (Offices) states, “Office buildings, adult or vocational education facilities, engraving works, blueprinting, commercial, governmental and professional buildings, except as otherwise provided for in this section: One space for each two hundred fifty (250) square feet of gross floor area.” The total gross floor area for the existing facility and the proposed addition is 20,680 square feet, therefore, a total of eighty-three (83) off-street parking spaces would be required. If the Board wishes to remove square footage not accessible to patients or staff in the parking calculations, a total of seventy-one (71) off-street parking spaces would be required if the square footage for the linear accelerators (2,980 square feet) was removed and a total of sixty-two (62) off-street parking spaces would be required if the garage and storage area in addition to the linear accelerators were removed (5,350 square feet). According to the site plan submitted for the proposed variance, a maximum of thirty-two (32) off-street parking spaces can be provided on the site.

#### **FINDINGS:**

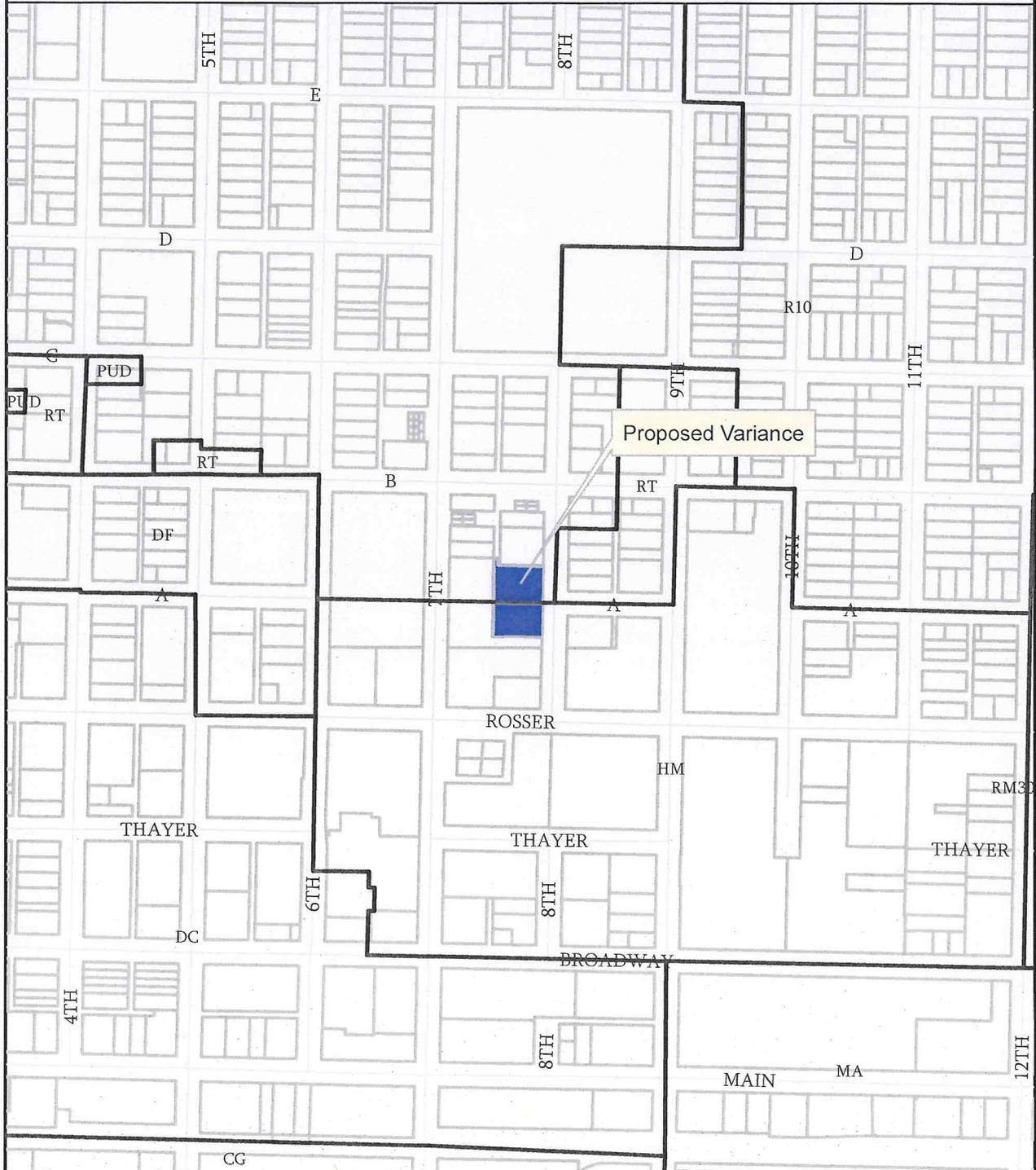
1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the HM – Medical Facility district.
2. The hardship is not caused by the provisions of the Zoning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

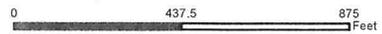
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

# Proposed Variance Bismarck Cancer Center 500 North 8th Street



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
Date: 5/30/2014(hib)

Source: City of Bismarck



DATE:	REVISION:

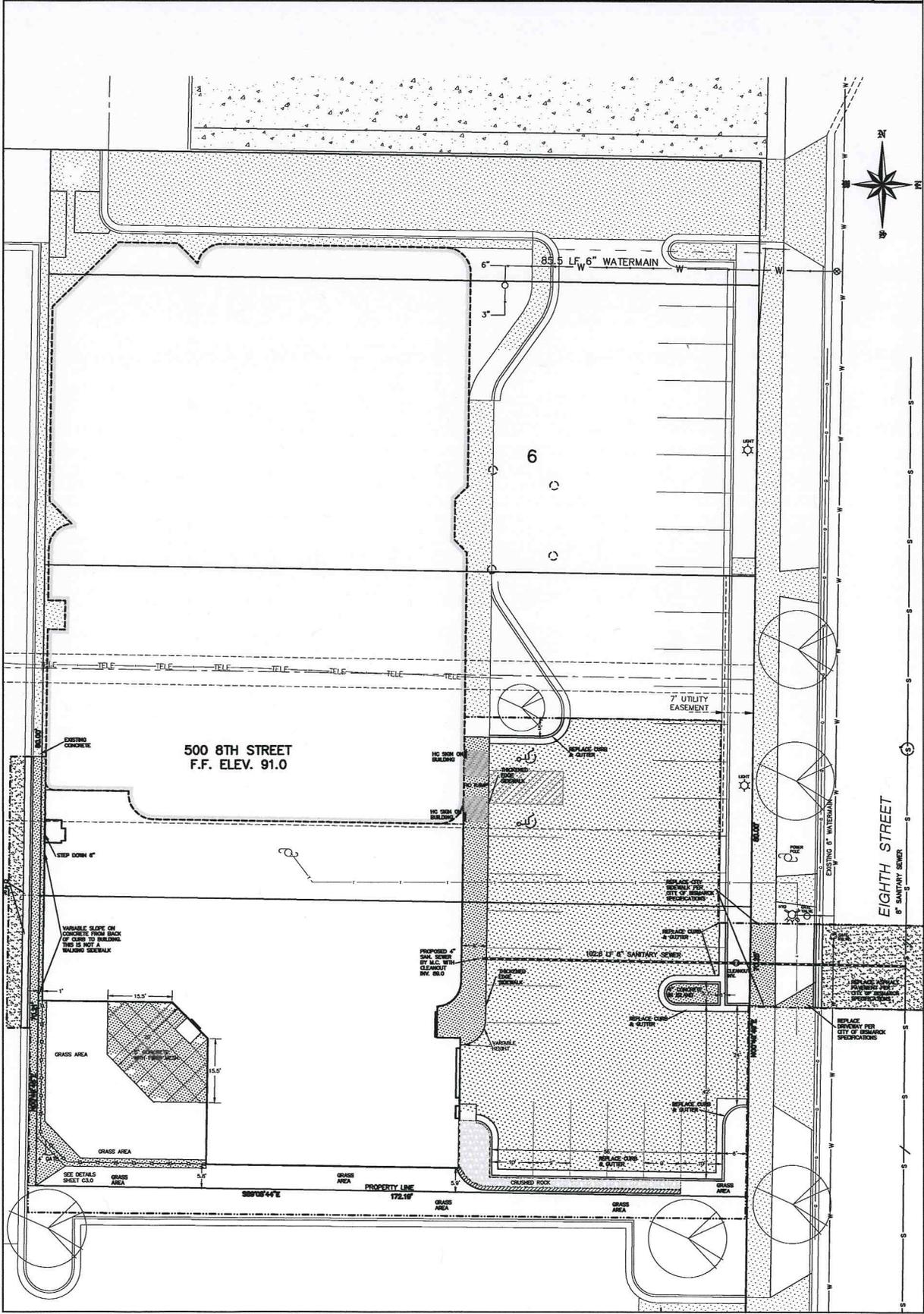
**BISMARCK CANCER CENTER  
NORTHERN PACIFIC 2ND ADDITION  
BISMARCK, NORTH DAKOTA**

**PROJECT**  
SWENSON, HAGEN & COMPANY P.C.



Drawn by: JF  
Checked by: JAR  
Date: 1/27/2014  
File Name: BISMARCK  
Computer File:  
Survey File:

**SHEET  
C2.0**



**EIGHTH STREET  
& SANITARY SEWER**



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

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

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

14-06-02. Powers and Duties.

\* \* \* \* \*

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

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

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

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

1. Property Address or Legal Description: **BIS. CANCER CENTER 500 N 8<sup>TH</sup> ST. BIS. N.D**

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

3. Type of Variance Requested: **1. setback 2. required parking 3. buffer LANDSCAPE**

4. Applicable Zoning Ordinance Chapter/Section:

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

**SEE ATTACHMENT**

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

**SEE ATTACHMENT**

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

**SEE ATTACHMENT**

Bismarck Cancer Center

Variance Request No. 1 – Rear Yard Setback

The rear yard setback requirement for HM zoning is 10 feet. The existing building was constructed to within 1 foot of the back lot line. Sanford Health owns the property adjacent to the back lot line and does not object to the variance.

If the rear yard setback variance is not approved, there is no other direction to go with the building addition, except to the east which eliminates additional parking opportunities.

Variance Request No. 2 – Off Street Parking Variance

Section 14-03-10-3 of the ordinance references uses not specifically mentioned. This building does not fall into an office complex or into a hospital use where parking is defined by hospital beds. The existing building contains the following:

9730 sf	Clinic/office
2980 sf	Linear accelerators
<u>1050 sf</u>	Garage and storage
13,760 sf	Total

The proposed expansion will be:

5600 sf	Office space
<u>1320 sf</u>	Garage and storage
6920 sf	Total

The garage is used for transporting patients.

A strict interpretation of 1 parking space for each 250 square feet of building would require 83 parking spaces. If only the office space is counted, the required parking spaces per the requirement of 1 space per 250 square feet would be 62 spaces.

This is a unique building with a single use due to the linear accelerators and the concrete construction. They have been in business for many years and know the staffing requirements and the client traffic. The proposed expansion is not adding additional staff. The staff parking is the current lot to the south of the existing building. The proposed expansion would eliminate approximately 22 parking spaces. The parking to the east of the building which is client parking plus some staff parking on the south end, would be able to be maintained.

Point No. 1 – The existing 51 spaces has adequately served both staff and clients. History would indicate that 51 spaces would also serve the existing building and the proposed addition since no additional staff is proposed and the addition is to provide private space for existing services provided by the Cancer Center.

The first request for a variance is to determine the required parking spaces since this is a unique use as noted in the ordinance. Owner requests a variance to require only 51 spaces.



March 17, 2014

Michael Marback  
Board of Adjustments  
City County Office Building  
221 North 5<sup>th</sup> Street  
Bismarck ND 58501

Dear Mr. Marback,

Attached is a Variance Request from Bismarck Cancer Center for your consideration.

The Bismarck Cancer Center is a not-for-profit 501(c)3 organization which was formed as a joint venture between St. Alexius Medical Center and Medcenter One (now Sanford Health). Since its founding in 1999, the Bismarck Cancer Center has become an acknowledged leader in delivering high technology radiation therapy services. Over the past 14 years, the Bismarck Cancer Center has never turned a patient away due to lack of ability to pay. Our mission is to make available world-class cancer care to people of Bismarck-Mandan and western North Dakota. The quality of our medical professionals and services rival that of major medical facilities across the country. Since the Bismarck Cancer Center's founding, national accrediting bodies and standards of care have advanced considerably and Bismarck Cancer Center continues to meet those additional requirements.

While the original building was adequate for patient care for many years, the addition of these support services and the advent of new technology has made the current space less efficient, resulting in patient delay and inconvenience. This has created a hardship for patients to move efficiently and quickly through the building while receiving multiple support services and treatment modalities. Outside consultants have strongly recommended that Bismarck Cancer Center reorganize and expand its physical space to meet the efficient treatment needs of its patients.

In considering the Bismarck Cancer Center's request for this variance, please keep in mind that the physical expansion which we are proposing will be staffed by the exact number of staff as at present. The only planned addition is to add a third physician, if needed, within three to five years. Because the Bismarck Cancer Center is a highly specialized radiation treatment center, it would be very difficult for the building to be used for any other purpose. As an example, the vaults housing the two linear accelerators are constructed of reinforced concrete which is over six feet thick. It is, of course, Bismarck Cancer Center's intention to continue to operate radiation therapy services at the existing site for many, many years to come.

Because the Bismarck Cancer Center is land-locked, the only expansion options available to us are to do either a vertical or horizontal expansion. We have determined, with our consultants, the vertical option will not produce desired efficient patient flow and have therefore decided upon a horizontal expansion to be built on the existing employee parking lot. By our count, we will lose 22 employee parking spaces but retain all existing patient parking spaces. We believe that no additional patient parking spaces will be needed and that it will only be necessary to replace the 22 employee parking spaces which will be lost because of the expansion.

We respectfully request that you approve our hardship exemption to replace only the 22 employee parking spaces that will be lost as a result of the expansion. Furthermore, we would request your approval to utilize two properties owned by St. Alexius Medical Center on Avenue B and two properties owned by Bismarck Cancer Center, one on 7<sup>th</sup> Street and one on 5<sup>th</sup> Street, to replace lost employee parking. The employees of Bismarck Cancer Center support this plan as an effort to provide an enhanced patient experience.

Respectfully yours,

A handwritten signature in black ink that reads "Ken Dykes". The signature is written in a cursive, slightly slanted style.

Ken Dykes  
Executive Director  
Bismarck Cancer Center



## Community Development Department

May 30, 2014

Dear Property Owner:

Please be advised that the Bismarck Board of Adjustment will be conducting a public hearing on a variance request on Thursday, June 5, 2014, at 4:00 p.m. in the Tom Baker Meeting Room, City-County Office Building, 221 North 5<sup>th</sup> Street, Bismarck, North Dakota, which may be of interest to you; however, the variances have been modified by the applicant.

The request of the Bismarck Cancer Center for special use permits to create four off-site parking lots at 811 East B Avenue, 813 East B Avenue, 515 North 7<sup>th</sup> Street and 611 North 5<sup>th</sup> Street was denied by the Bismarck Planning and Zoning Commission on May 28, 2014. As a result of this denial, the Bismarck Cancer Center has modified the variance requests originally specified in the letter dated May 23, 2014 to the following in order to construct and addition to the Bismarck Cancer Center:

- A variance from Section 14-04-09(9) of the City Code of Ordinances (HM-Medical Facility District) for 500 North 8<sup>th</sup> Street to reduce the required rear yard setback along the west side of the property from ten (10) feet to one (1) foot in order to construct the addition in line with the existing buildings.
- A variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required off-street parking spaces from the current fifty-one (51) spaces to thirty-two (32) spaces.

A map showing the location involved in the modified request and a proposed site plan are enclosed for your information.

At the hearing, the Board of Adjustment will provide an opportunity for all interested persons to be heard with respect to this item. Interested persons may also submit written comments regarding this request prior to the meeting to the Community Development Department ~ Planning Division, PO Box 5503, Bismarck, North Dakota 58506-5503, fax: 701- 222-6450, or e-mail - [cobplan@nd.gov](mailto:cobplan@nd.gov).

If you have any questions or need any additional information, please contact Jenny Wollmuth, the planner in our office assigned to this request, at 355-1845.

Bismarck Community Development Department - Planning Division

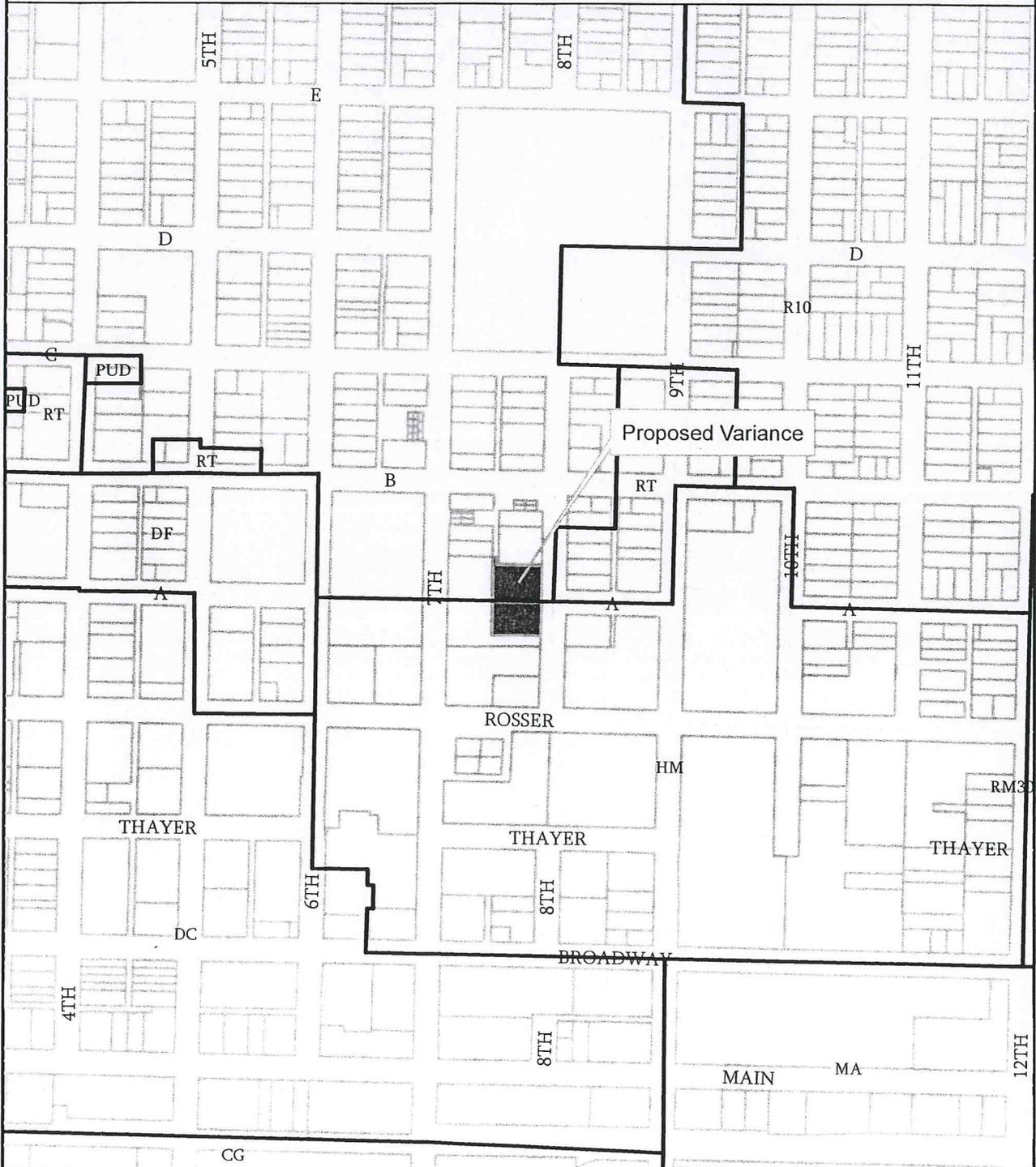
JW/hlb

Enc: Location Map  
Site Plan

221 North 5th Street • PO Box 5503 • Bismarck, ND 58506-5503 • TDD: 711 • [www.bismarck.org](http://www.bismarck.org)

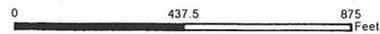


# Proposed Variance Bismarck Cancer Center 500 North 8th Street



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
Date: 5/30/2014(hlb)

Source: City of Bismarck



**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
April 3, 2014**

The Bismarck Board of Adjustment met on April 3, 2014 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 Blair Ihmels, Jennifer Clark, Ken Heier, Chris Seifert, Jeff Ubl and Michael Marback.

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

**MINUTES:**

Chair Marback asked for consideration of the minutes of the January 2, 2014 meeting.

**MOTION:** A motion was made by Mr. Ubl and seconded by Mr. Seifert to approve the minutes of the January 2, 2014 meeting as distributed. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting in favor, the minutes were approved.

**VARIANCE FROM SECTION 14-03-09 OF THE CITY CODE OF ORDINANCES (NON-CONFORMING USES) – 215 SOUTH 13<sup>TH</sup> STREET (PART OF LOT 14 AND LOTS 15-, BLOCK 19, STURGIS ADDITION)**

Chairman Marback stated the applicant was 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).

Mr. Fettig said the property is currently being used as a rental property and that there is an existing single stall accessory building on the property which will be demolished. He said the house had a fire and when he made repairs afterwards he made sure not to exceed half of the value of the house.

Chairman Marback asked if the garage will be used for storage or if it will be used by the renting tenant. Mr. Fettig said it will be used by the renting tenant.

Mr. Ihmels asked why he wants the new garage to be 25 feet by 50 feet. Mr. Fettig said because of the way the lot is laid out and because of the sizes of the homes in the area.

Ms. Clark asked if there is an issue with the proposed size of the new garage and the resulting lot coverage or if the problem is only because of the existing zoning. Ms. Wollmuth said the required setbacks will still be met and the proposed size is fine, as long as the existing accessory building is removed.

Joe Eckert said he owns property to the north and wanted to make these same changes at his home and was told he could not do it. Ms. Wollmuth said up until 2011 there was an ordinance regarding non-conformities that did not allow some of the requested changes; however, that has changed for non-conforming residential uses.

**MOTION:** A motion was made by Ms. Clark to approve the 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), with the condition that the existing accessory building is demolished prior to construction of the new one. The motion was seconded by Mr. Ubl. With Board Members Clark, Ihmels, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the variance request was approved. Mr. Heier opposed the motion.

**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)**

Chairman Marback stated the applicant was 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.

Mr. Carpenter said he is the one who made the requests and that he brought his architect, Dave Nelson, to explain the concept further.

Mr. Nelson said the site has an existing office building which was formerly a daycare. He said the landscaping requirements are an issue because of the size of the proposed building and because the proposed building would be both apartment and office uses there is a requirement of 19 parking spaces as well as one handicapped van accessible space.

He went on to say they are proposing spaces adjacent to the sidewalk in the required sight triangle. He also stated that parking spaces along the west side of the building will be marked as handicapped; however, there is a required four foot landscape buffer between the building and the sidewalk which they would like reduce as that area is rarely used. He said having the required 15 foot sight triangle is difficult and parking spaces would be lost and the rentable space inside the building would have to be reduced. He then said they would like to reduce the parking requirement by one space and that there is also a seven foot utility easement on the property that would not allow any room for the required 10 foot landscape buffer. He closed by saying this is the third time they have attempted to develop this property and that the new plan would also allow for a garage to be built up to the seven foot utility easement instead of the 10 foot landscape buffer.

Mr. Carpenter said the neighboring properties are also built up to their seven foot easement and that a landscape variance is needed, but all of the other landscape requirements will be met.

Martha Downs said she lives behind the property and her main concern is of drainage issues around the condos to the south of Mr. Carpenter's property. She said there is nothing showing how that issue will be addressed if the existing drainage is being eliminated.

Shawn Werle said he shares a backyard property line with Mr. Carpenter and he urges the Board to deny all of the requests because the definition of a variance includes proof of a hardship and none of the reasons Mr. Carpenter gave for needing the variances are hardships. Mr. Werle then said he researched the possibility of putting a shed on his property and found out he could not and he dealt with it. He then said notification of only 10 days prior to the meeting to the adjacent property owners is not enough time to address all of the issues involved with these requests. Mr. Werle also submitted comments which are attached as Exhibit A.

Linda Enyart said she lives next to this property and she is concerned about the variance requested on the north side yard as it will cause issues with safety, clearing snow, maintenance and emergency service access if there is only a seven foot buffer.

Comments received from Julie Reimann and signatures in support of the variances are attached as Exhibit B.

Mr. Carpenter said the engineering company he has hired, KLJ, is waiting on approval of the variances to start working on the proposed site plan. He said his property sits a lot lower than those around him so any storm water runoff would run into his property, which he does not want for himself or his neighbors and he has instructed KLJ that drainage needs to be directed to the street.

Mr. Heier asked why the required landscape buffer is 10 feet. Mr. Blaskowski said an office and multi-family use requires a 10 foot buffer yard adjacent to Residential uses.

Ms. Clark asked if the sight triangle requirement is regularly enforced. Mr. Blaskowski said yes and that it is usually either 15 or 25 feet, depending on the location. Ms. Clark then said all options should be explored to make the building fit on the property before having a variance granted, even if it means reducing the interior space and making it smaller and building small but usable garages for the rental units.

Mr. Carpenter said that as a realtor he can assure the Board that a space with small garages will not rent, that this building has been sitting since 1976 and that they have been working since 2007 to make a plan that will work.

**MOTION:** A motion was made by Mr. Ubl to deny the 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. The motion was

seconded by Mr. Ihmels. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the variance requests were denied.

### **APPEAL OF STAFF INTERPRETATION - SECTION 14-06-02(1) (POWERS AND DUTIES)(INTERPRETATION) OF THE CITY CODE OF CITY ORDINANCES**

Chairman Marback stated that 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.

Lon Romsaas, Swenson, Hagen & Co., said the hardship involved with the proposed request for a variance is that the facility cannot increase their offered programs or staff numbers if the patients utilizing the services cannot move through the facility efficiently.

Mr. Dykes explained that the changes at their facility need to be radical and that at the time it was built in 1999, it was current on all of its needs. He said many new services have been added to make the most of the facility they cannot build upwards because of the technological requirements associated with the type of care they offer. He added that they are not hiring more staff, but they will need more parking as it is a required with the plan they will submit for the building expansion.

Mr. Romsaas said that the request would be for employee parking to be displaced in various locations, only to be used by employees of the Center, but that Planning staff has indicated parking lots are not an allowable use in the proposed locations. He then said there is also a hardship associated with the construction timeline if work cannot be started soon. He added that the Center needs to be operable within a year and that the adjacent property owners have already been spoken to.

Amy Gross said the adjacent property owners understand the concept of the plan and they are accepting of it because they want the Center to be the best it can be. She said she visited with 12 people in the area total.

Ms. Lee explained that staff is adding off-street parking lots as a special use in residential zoning districts and it is anticipated that this amendment will be approved by the City Commission by the end of May. She added that Mr. Dykes could apply for a special use permit and go through that process with the Planning and Zoning Commission.

Mr. Romsaas said he is trying to expedite the process and cannot wait another 30 days. He said he needs answer so he knows this is going in the right direction.

Chairman Marback said it is probably best to wait out the process with the zoning ordinance text amendment, as right now the only people that will be impacted by this change are the employees of the Center, not the patients.

**MOTION:** A motion was made by Ms. Clark to deny the appeal of staff's interpretation of Section 14-06-02(1) (Powers and Duties(Interpretation) of the City Code

of Ordinances). The motion was seconded by Mr. Ubl. With Board Members Clark, Heier, Ihmels, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved, the appeal was denied and the staff's interpretation was upheld.

## **OTHER BUSINESS**

Chairman Marback explained that Board Member Ihmels has moved out of the jurisdiction of the City of Bismarck Board of Adjustment so he is resigning from the Board at this time. He read a Resolution of Appreciation for Mr. Ihmels 26 years of service on the Board and asked for a motion for the adoption of it.

**MOTION:** A motion was made by Ms. Clark to adopt the Resolution of Appreciation for time served on the Board of Adjustment by Mr. Ihmels. 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 Resolution of Appreciate was adopted.

Mr. Ihmels said he has thoroughly enjoyed all 26 years he has served and that he joined the Board after requesting, and receiving, a variance himself.

## **ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:25 p.m. to meet again on Thursday, May 1, 2014.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Michael Marback, Chairman

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
May 1, 2014**

The Bismarck Board of Adjustment met on May 1, 2014 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, Chris Seifert and Michael Marback.

Board member Jeff Ubl was absent.

Staff members present were Jason Hammes – Assistant City Attorney, Jenny Wollmuth – Planner, Brady Blaskowski – Building Official, Keith Demke – Director of Utility Operations and Hilary Balzum – Community Development Office Assistant.

**MINUTES:**

The minutes of the April 3, 2014 meeting of the Board of Adjustment will be forwarded for considered for consideration at the June 5, 2014 meeting.

**VARIANCE FROM SECTION 14-04-14(8) OF THE CITY CODE OF ORDINANCES (MA-INDUSTRIAL)(REAR YARD) – 2407 RAILROAD AVENUE (WEST 31.78 FEET OF LOTS 1-4 AND ALL OF LOT 6, AND AUDITOR’S LOT 2407 OF BLOCK 41, GOVERNOR PIERCE ADDITION)**

Chairman Marback stated the applicant was requesting a variance to reduce the required rear yard setback along the south side of the property from ten (10) feet to zero (0) feet in order to construct a 6,000 square foot warehouse building.

Chairman Marback asked if the frozen food lockers that exist on this property are going to be demolished.

Dave Lutzky, Ulteig Engineering, said the lockers will be torn down, which will allow the sight line on the property to be the same as the adjacent properties. This will also give more room for a turning radius for large trucks as well as more green space.

Mr. Seifert said it will add to the appearance of Railroad Avenue to have all of the properties lined up consistently.

Ms. Clark asked if the building can be turned on the lot in any way to make it fit and comply with the setback requirements. Mr. Lutzky said it would not fit and also would not be in compliance with the side yard setback requirement.

**MOTION:** A motion was made by Mr. Seifert to approve the variance to reduce the required rear yard setback along the south side of the property from ten (10) feet to zero (0) feet in order to construct a 6,000 square foot warehouse building the motion was seconded by Mr. Heier. With Board Members

Clark, Heier, Seifert and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

**VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL)(FRONT YARD) – 202 W AVENUE F (LOTS 13-16 AND THE EAST 10 FEET OF THE VACATED ALLEY, BLOCK 85, MCKENZIE AND COFFINS ADDITION)**

Chairman Marback stated the applicant was requesting a variance to reduce the required front yard setback along the south side of the property from twenty-five (25) feet to eight (8) feet in order to construct a 648 square foot equipment building for a Verizon cell phone tower.

Keith Demke, Director of Public Works - Utility Operations, said the site plan shows two existing buildings on the property, one near the cell phone tower which will be demolished and done in the southwest corner of the lot which will not be demolished.

Chairman Marback asked if the grade of the property is too steep for this type of construction.

Mr. Demke said there is a retaining wall that separates the property and the sidewalk, which is going to be replaced with steps to allow easier access to the tower and buildings. He added that the shelter needs to be located near the base of the tower instead of running anchors and cables throughout the property.

Chairman Marback asked who will be responsible for maintaining the site. Mr. Demke said the City contracts out for maintenance, grounds keeping and repairs and that there is going to be a fence around the property, as well as around the equipment and the building in addition to a gate adjacent to the new shelter.

Ms. Clark asked if there is any way the building can be placed anywhere else on the lot. Mr. Demke said it needs to be near the tower and that there is no room on the west side because of the towers legs and the north side would not allow adequate access for Verizon Wireless employees or neighboring property owners. He said there is also underground utilities which would have to be moved if the building was placed anywhere else on the property.

Clare Hochhalter said he lives west of the property and he feels approving this request would increase the commercialization of the neighborhood and that the lot needs to be cleaned up before any more work is done, including removing the concrete slab from the previous building and the building that is there that is not being used. He said adding another building will not add to the appearance of the neighborhood.

Scott Markovic said he lives north of the property and he agrees with the comments made by Mr. Hochhalter. He said he knows that the previous owner of the lot deeded the property to the City with the agreement that the property had to remain park-like.

Ms. Clark asked if staff is aware of the conditions of the deed referenced by Mr. Markovic. Ms. Wollmuth said it is possible, but that this is the first she has heard of the requirement.

Mr. Hochhalter said he is not opposed to the City making use of the property and he understands they will gain income from this, but this is the third building to go on this location and his concerns are of what the appearance will be and that maintenance will be lacking.

Chairman Marback said a variance was requested at this location in 2001 to have a building for AT&T constructed and it passed, which is how building permits were obtained.

Thomas Rausch asked if it is possible for the City to require that Verizon Wireless be the ones to maintain the park features instead of the City. Chairman Marback said that since the City is the lessor, they would be responsible for the maintenance or for subcontracting the necessary vendors to do what is needed. Comments submitted by Mr. Rausch are attached as Exhibit A.

Mr. Seifert said he would like to approve the request with the agreement that it will be appropriately maintained.

**MOTION:** A motion was made by Mr. Seifert to approve the variance to reduce the required front yard setback along the south side of the property from twenty-five (25) feet to eight (8) feet in order to construct a 648 square foot equipment building for a Verizon cell phone tower. The motion was seconded by Ms. Clark. With Board Members Clark, Heier, Seifert and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

**VARIANCE FROM SECTION 14-04-16(4) OF THE CITY CODE OF ORDINANCES (P-PUBLIC)(FRONT YARD) – 440 ASH COULEE DRIVE (LOT 3, BLOCK 1, REPLAT OF MILLENNIUM ADDITION)**

Chairman Marback stated that the applicant is requesting a variance to reduce the required front yard setback along the south side of the property from twenty-five (25) feet to six (6) feet in order to construct a 648 square foot equipment building for a Verizon cell phone tower.

Mr. Demke said the lot is quite large but there is going to be an underground reservoir under much of the property which will serve north Bismarck in the future. He said construction access for the water reservoir would be along the east side of the tower so that they do not interfere with each other and that the tower will be at least twenty-five feet away from the walking path and the roadway.

**MOTION:** A motion was made by Mr. Heier to approve the variance to reduce the required front yard setback along the south side of the property from twenty-five (25) feet to six (6) feet in order to construct a 648 square foot equipment

building for a Verizon cell phone tower. The motion was seconded by Mr. Seifert. With Board Members Clark, Heier, Seifert and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

**OTHER BUSINESS**

There was no other business at this time.

**ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 4:50 p.m. to meet again on Thursday, June 5, 2014.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Michael Marback, Chairman

Thomas C Rausch  
215 Tower Avenue  
Bismarck, ND 58501

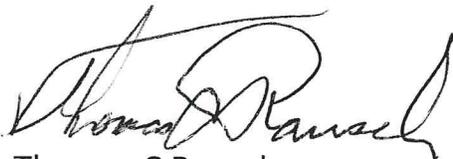
April 29, 2014

Jenny Wollmuth, Planner  
Bismarck Community Development Department – Planning Division

RE: Verizon Cell Phone Tower at 202 West Avenue F

Regarding the variance for Verizon to build a cell phone tower and the reference to take the East 10 feet of the vacated alley is a major concern. Presently Scott Markovic at 1014 N Mandan Street, our next door neighbor, and myself have our two homes connected to one sewer line. The sewer line travels from the middle of the my back yard at 215 Tower Avenue south into the middle of Avenue F. The sewer line runs north and south along the middle of the vacated alley into the middle of Avenue F street.

What will happen to the sewer line if the building is placed over the sewer line? Who's responsibility will it be for maintenance and repairs or replacement of the sewer line? For obvious reasons we therefore object to the variance until clarification and satisfactory resolution can be determined.



Thomas C Rausch

215 Tower Avenue



Scott Markovic

1014 Mandan Street