



Community Development Department

BISMARCK BOARD OF ADJUSTMENT MEETING AGENDA

September 4, 2014

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

MINUTES

- 1. Consider the minutes of the August 7, 2014 meeting of the Board of Adjustment.

REQUESTS

- 2. Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) – Part of Lot 3 less Lot A, Block 1, Prairie Hills 5th Addition (being replatted as Lot 2, Block 1, Munich Addition)

Continuation of the variance request of the First State Bank of Munich and Tana Trotter, Proximal 50 Life Center. (see attached memo)

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

- 3. Variance from Section 14-04-07(8) of the City Code of Ordinances (RM15 – Residential District)(Side Yard) – Lots 4, 6, 8, 10, Block 1 Pebble Creek 8th Addition Replat & Lot 15 less the westerly 148 feet of the southerly 180 feet, Block 2, Pebble Creek 8th Addition (3118 Nebraska Drive)

Arrowhead Ranch Condominium Association, Annette Sauer, and LaVerne Sauer are requesting a variance to reduce the required side yard setback located along the north side of the property in order to bring the existing building into compliance.

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

- 4. Variance from Section 14-04-19(6)(4)(c) of the City Code of Ordinances (Floodplain District)(Flood Hazard Reduction / Accessory Buildings) – Lot 8 less the south 50 feet, Block 2, Glenwood Estates (475 Forestlawn Drive)

Dennis Torgeson is requesting a variance to allow an accessory building, located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, to be constructed at an elevation of 1632.2, two (2) feet below the Base Flood Elevation (BFE), and four (4) feet below the ordinance requirement of constructing buildings two (2) feet above the Base Flood Elevation (BFE).

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



## **OTHER BUSINESS**

5. **Other**

## **ADJOURNMENT**

6. **Adjournment.** The next regular meeting date is scheduled for October 2, 2014.



## Community Development Department

### MEMORANDUM

**TO:** Michael Marback  
Chairman, Board of Adjustment

**FROM:** Jenny Wollmuth, Planner  
Community Development Department – Planning Division

**DATE:** August 28, 2014

**SUBJECT:** Continuation of variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) – Part of Lot 3 less Lot A, Block 1, Prairie Hills 5th Addition (being replatted as Lot 2, Block 1, Munich Addition)

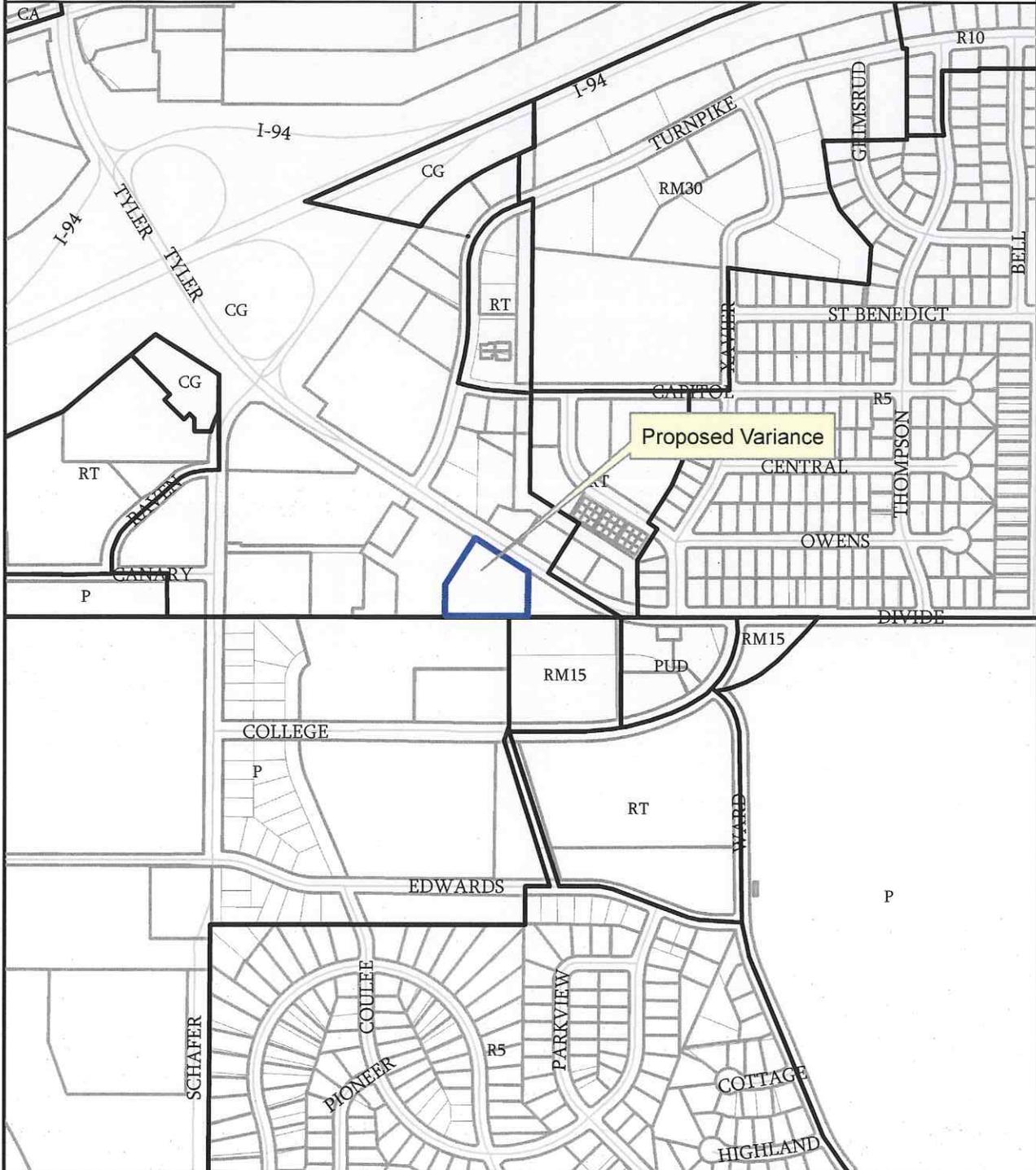
The proposed variance request from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) has been withdrawn.

Tana Trotter, Proximal 50 Life Center, has reevaluated the uses in the proposed multi-use building located at 1151 West Divide Avenue (Lot 2, Block 1, Munich Addition) and, in order to comply with the Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading), has decided to eliminate the fitness center (assembly use) portions of the proposed building.

An email outlining the intended uses of the proposed building and parking calculations are attached. The proposed site plan and revised building plans and a special use permit for the operation of a drive-through must be approved prior to construction of the proposed building.



**Proposed Variance**  
**Lot 3, Block 1, Prairie Hills 5th Addition**  
**(being replatted as Lot 2, Block 1, Munich First 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: 7/21/2014(hib)

Source: City of Bismarck



## Brady Blaskowski

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**From:** Jeff Welch <[REDACTED]>  
**Sent:** Friday, August 15, 2014 9:15 AM  
**To:** Blaskowski, Brady V.  
**Subject:** PROXIMAL 50 LIFE CENTER

Brady,

After a great deal of discussion about options on how to proceed on the Life Center project, the owner has decided to give up the idea of having any sort of fitness center in the building. She really wants to keep the coffee shop and the only way to do that is to eliminate any other assembly area. This is what we are prepared to do in modifying the plan:

- The entire second floor of the building will become unfinished lease space (except for the child watch area as previously shown). All the fitness areas and exercise studios will be removed and replaced as rentable lease space.
- The area on first floor that was previously called fitness will now become physical therapy space and become part of the physical therapy clinic. There will be no fitness club memberships, all occupants will be patients of the clinic only that will come to the building by appointment only. This area will be closed off from the public lobby and north stairway to allow exiting from the second floor to not pass through the physical therapy clinic.
- Under this plan, the entire main part of the building will be either medical clinic or unfinished lease space and as such, parking ratio would be 1 to 250. The coffee shop will be separated from the main part of the building with a 1 hour barrier and the site plan will remain as previously presented with parking at 1 to 60, no exterior patio, and drive through stacking for 10 cars.

The owner has consulted with her future business partners and decided to give up the idea of a fitness center to focus her business on physical therapy. Their thinking is that they will make more money by leasing the second floor to a business like a small medical clinic, chiropractor, or some other medical type office space than they would by trying to run a fitness center. By increasing the therapy space in the clinic on first floor, they open the opportunity to hire more therapists and will require more area for therapy. They also feel that having the Caribou Coffee as part of the project will be of more benefit to their overall business plan than a fitness center would being that the fitness market is becoming saturated. The announcement of the YMCA project in Mandan sort of sealed their decision on this.

Please confirm with me that this course of action will be acceptable to Building Inspection and allow us to proceed with the project without further involvement of the Board of Adjustment.

Jeff Welch, AIA  
Principal Architect  
**JIRAN ARCHITECTS & PLANNERS, P.C.**

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

|   |  |
|---|--|
| <b>BACKGROUND:</b>  |  |
| <b>Title:</b><br>3118 Nebraska Drive – Variance (Side Yard Setback)<br>(Lots 4, 6, 8, 10, Block 1, Pebble Creek 8 <sup>th</sup> Addition Replat & :Lot 15 less the westerly 148 feet of the southerly 180 feet, Block 2, Pebble Creek 8 <sup>th</sup> Addition)   |  |
| <b>Status:</b><br>Board of Adjustment   | <b>Date:</b><br>September 4, 2014                                    |
| <b>Owner(s):</b><br>Arrowhead Ranch Condominium Association<br>Annette Sauer and LaVerne Sauer  | <b>Consultant :</b><br>Bormann, Myerchin, Monasky, and Espeseth, LLP |
| <b>Reason for Request:</b><br>Variance from Section 14-04-07(8) of the City Code of Ordinances (RM15 – Residential District)(Side Yard) to reduce the required side yard setback located along the northeast side of the existing building from 10 feet to 5.74 feet and to reduce the required side yard setback located along the northwest side of the existing building from 10 feet to 8.84 feet in order to bring the existing building into compliance.  |  |
| <b>Location:</b><br>In northeast Bismarck, along the west side of Nebraska Drive, north of East Century Avenue.   |  |
| <b>ADDITIONAL INFORMATION:</b>  |  |
| <ol style="list-style-type: none"> <li>1. The proposed variance is for a four (4) unit condominium building that was constructed in 2009-2010 within the required side yard setback. At that time, all lots were under common ownership and it was anticipated that the development would continue north on Lots 1, 3, 5, 7, and 9, Block 1, Pebble Creek Eighth Addition Replat and be part of the existing association located on Lots 2, 4, 6, 8, and 10, Block 1, Pebble Creek Eighth Addition Replat and in Pebble Creek Eighth Addition; therefore, the building setback from the side yard along the north property line was not taken under consideration when the existing building was constructed.</li> <li>2. The existing building is set back 5.74 feet measuring from the northeast corner of the existing building to the north property line (side yard) and 8.84 feet from the north property line (side yard) at the northwest corner of the building. As this property is located on a parcel that does not meet the minimum setback requirement for a side yard it is considered a nonconforming use.</li> </ol> |  |
| <b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>   |  |
| <ol style="list-style-type: none"> <li>1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”</li> <li>2. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a nonconforming use as, “The use of a building or other structure or of 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.”</li> </ol>  |  |
| <i>(continued)</i>  |  |

3. Section 14-04-07 of the City Code of Ordinances (RM-Residential District)(Side Yards) 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) per cent of the average width of the lot and in no case shall a side yard be less than ten (10) feet in width. On any lot having an average width of fifty (50) feet or less, each side yard shall not be less than ten (10) per cent of the width of the lot and in no case less than five (5) feet in width. For lots where the average lot width exceeds two hundred (200) feet, the sum of the two (2) side yards shall be no less than forty (40) feet, but in no case shall a side yard in excess of twenty (20) feet be required except as required herein for increased building height. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width. Such side yard setbacks on corner lots shall apply to all structures permitted on or after August 12, 1997. Any structure originally permitted prior to August 12, 1997 that is damaged to the extent that the foundation is no longer usable must comply with this section if it is rebuilt. For buildings in excess of two stories in height permitted on or after October 1, 2007, the required side yard setback shall be increased by 10 feet for each additional story in height over two." The required side yard setback located along the north property line is ten (10) feet. According to the lot survey submitted with the application, the northeastern portion of the existing building is setback 5.74 feet from the required side yard setback along the north property line and the northwestern portion of the existing building is setback 8.84 feet from the required side yard setback along the north property line.

#### **FINDINGS:**

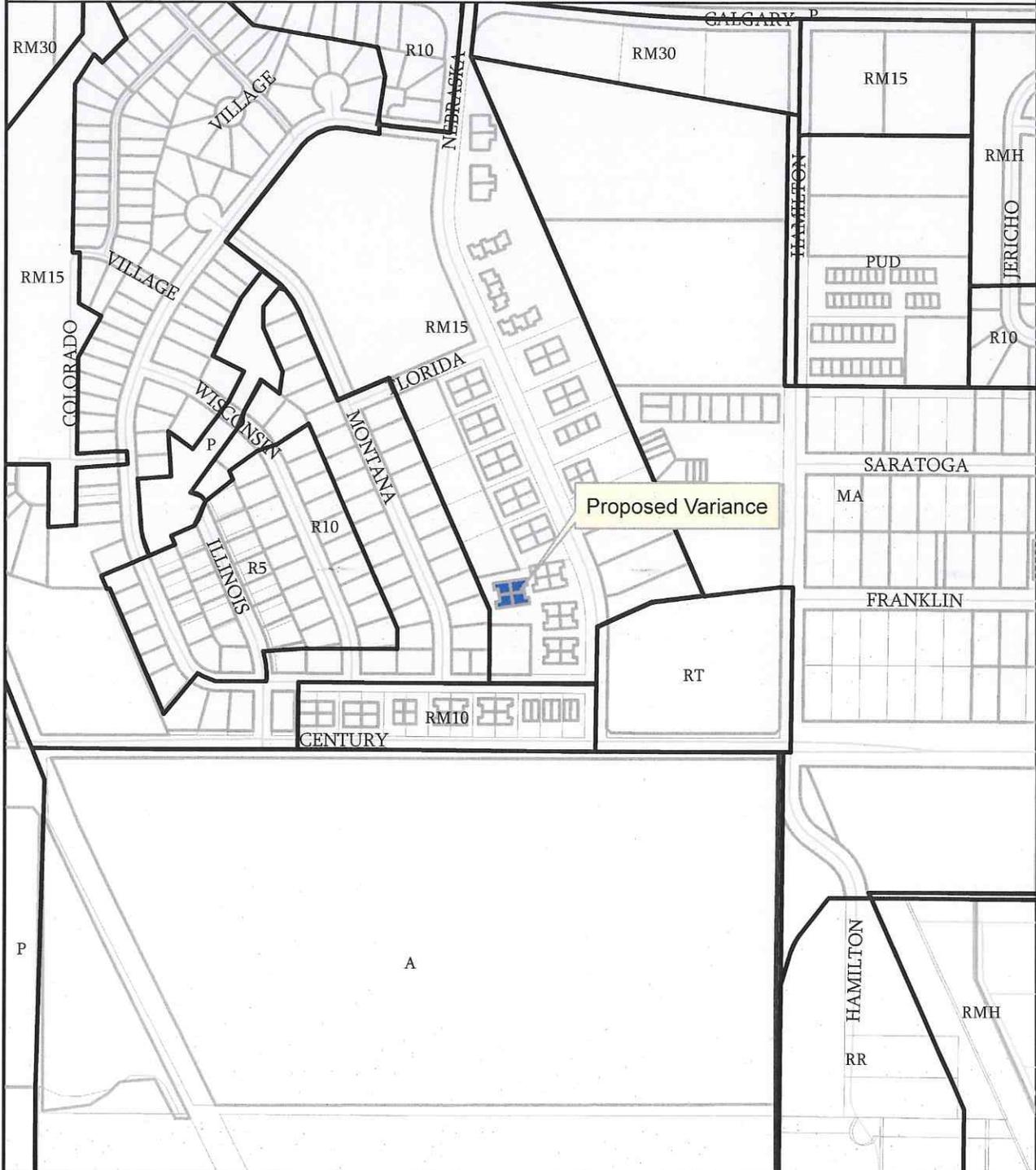
1. The need for a variance is based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RM15-Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance

#### **RECOMMENDATION:**

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

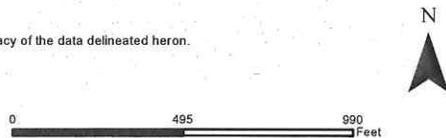
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

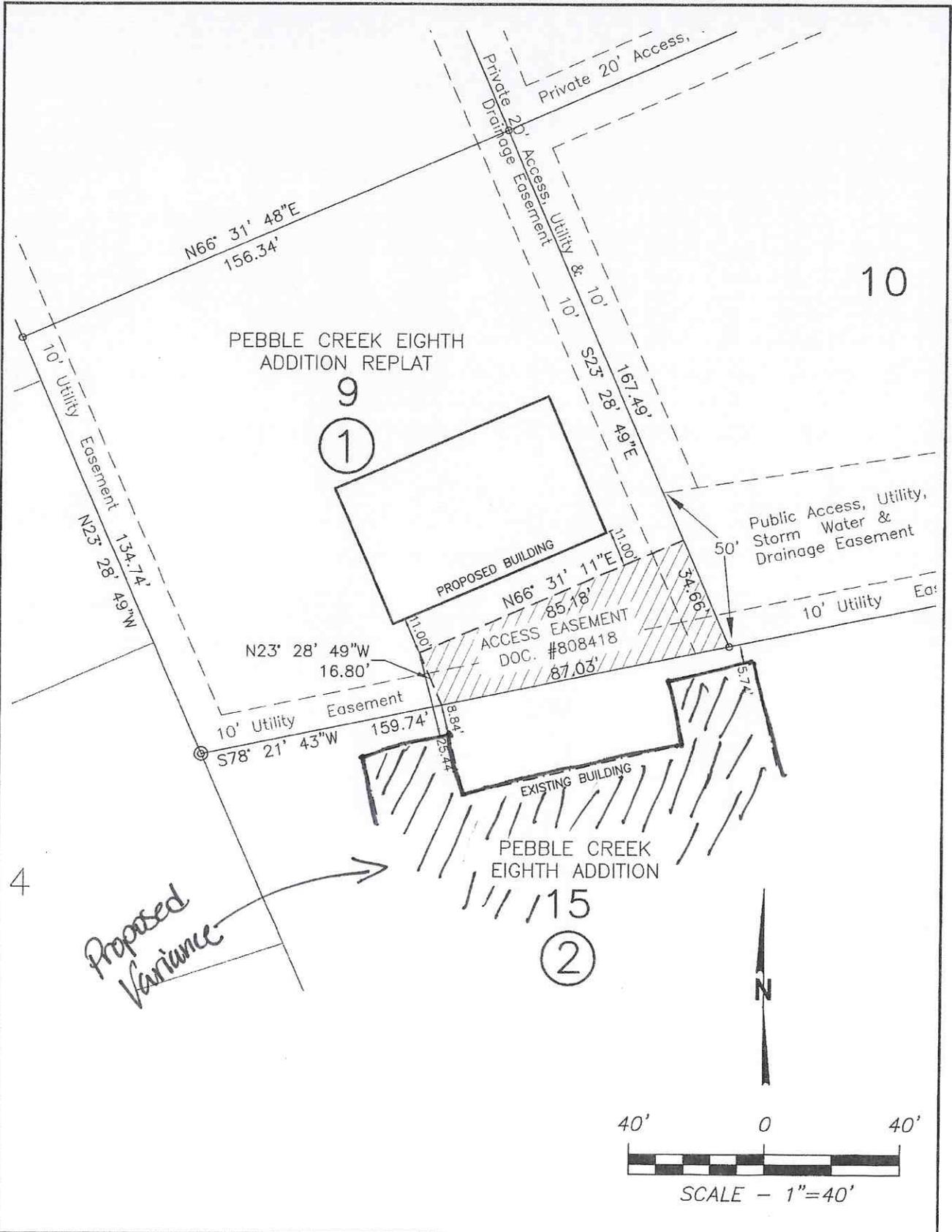
**Proposed Variance**  
**Lots 4, 6, 8, 10, Block 1, Pebble Creek 8th Addition Replat &**  
**Lot 15 less the westerly 148 feet of the southerly 180 feet, Block 2,**  
**Pebble Creek 8th Addition**



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: 8/27/2014(hb)

Source: City of Bismarck





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

Surveying  
Hydrology  
Land Planning  
Civil Engineering  
Landscape & Site Design  
Construction Management

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

**EXHIBIT ONE**  
VARIANCE

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

1. Property Address or Legal Description:

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

3. Type of Variance Requested:

4. Applicable Zoning Ordinance Chapter/Section:

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

See attached memo.

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

See attached memo.

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

See attached memo.

AUG 18 2014

MEMORANDUM

TO: Board of Adjustments 

FROM: Attorney Paul H. Myerchin, Representing Arrowhead Ranch Condo Association  
& Annette Sauer and LaVerne Sauer

DATE: Thursday, August 14, 2014

RE: ***Responses to Variance Application Questions 5, 6, & 7***

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This submission is intended to respond to questions 5, 6, and 7 of the Variance Application.

This Application is sought by the property owners, Annette & LaVerne Sauer (Sauers) and Arrowhead Ranch Condo Association (the Association), to correct a problem which should have been addressed and corrected by the original owner/developer, Mark & Albina Krebsbach (Krebsbachs), some time ago.

As way of background relating to the reasons for this request, Krebsbachs were the prior owners of Lot 15, Block 2, Pebble Creek 8<sup>th</sup> Addition & Lots 1 – 10, Pebble Creek 8<sup>th</sup> Addition Replat. In 2005, Krebsbachs submitted plans to the City of Bismarck that Lots 1 – 10 were all going to be developed as 4-plex condominiums. This development was consistent with the 4-plex condominiums already built on Lot 15, Block 2, Pebble Creek 8<sup>th</sup> Addition. However, in approximately 2009 or 2010, Krebsbachs constructed the final 4-plex condominiums on Lot 15, Block 2 in the northwest corner of Lot 15. The address of this condominium is 3318 Nebraska Drive. Units 3 and 4 of 3318 Nebraska Drive were purchased by Annette Sauer (Unit 3) and LaVerne Sauer (Unit 4). When the Sauers purchased their condominiums from the Krebsbachs no 4-plex condominiums were built on the odd number Lots 1, 3, 5, 7, or 9 of Block 1, Pebble Creek 8<sup>th</sup> Addition Replat.

The unique feature of the Sauers condominium and the property in the northwest corner of Lot 15 is the retention pond which the City required be built by Krebsbachs to address drainage concerns. This retention pond required the 4-plex condominium to be moved north closer to the lot line of Lot 15 and Lot 9.

This adjustment, at the time of construction, was of little concern because it was anticipated that 4-plex condominiums would continue to be built on the odd number lots in the Pebble Creek 8<sup>th</sup> Addition Replat. As is common in condominium developments, an adjustment of lot lines would have occurred prior to the construction of a 4-plex condominium in Lot 9. This never occurred.

Rather, the Krebsbachs (after the Sauers had purchased their units at 3318 Nebraska Drive), sold Lots 1, 3, 5, 8, 7, and 9, Block 1, Pebble Creek 8<sup>th</sup> Addition Replat to LB Family Properties LLC in May 2013. However, prior to the sale to LB Family Properties LLC, Krebsbachs failed to seek an adjustment of the lot lines between Lots 9 and 15 to make the Sauers' property conforming.

This failure by the Krebsbachs has created a hardship on the Sauers. The Sauers and the Association are left with a non-conforming property that does not meet the 25 foot setback requirements.

Regarding the issues raised by question 5, importantly, the Sauers home was built in compliance with the applicable ordinances but the non-conforming issues now arise solely by virtue of a transaction between third parties entirely outside the control of the Sauers, this is coupled with the unique physical characteristics on Lot 15, Block 2 that are a result of a series of unusual, unrelated, and unlikely events that were not created by the Sauers and are inapplicable to the other properties in the neighborhood. Of concern to the Sauers is the inability to make improvements to the outside of the property.

Regarding the issues raised by question 6, while the Sauers are concerned about the marketability of their home as a result of non-conformance, there are other consequences for non-conforming use, including a finding of a public nuisance, fines and prosecution. This is a particularly unfair result where (1) the Sauers have never themselves taken any action that is contrary to the County's zoning ordinances but rather relied on the representation of others that the property was conforming; (2) Sauers believed based on those representations that their homes conformed to all applicable ordinances at the time of construction and sale to the Sauers; (3) the non-conforming use arose after the Sauers' purchased their units due solely to a series of unrelated and unlikely, albeit lawful, events; and (4) the Sauers have no economically feasible alternatives that would allow them to conform to the ordinances. This threat of persecution is a substantial interference with the normal and ordinary enjoyment of their home, and is an unreasonable limitation on the use of this property.

This is not a case where a developer seeks a variance to maximize the profitability of a proposed condominium project – this is a case where the Sauers want to enjoy their homes free from worry, especially since this issue should have been taken care of long ago. If not now, then when?

Regarding the issues raised by question 7, granting a variance would allow the property to conform to the setback requirements, and would mitigate the unfair hardship to the Sauers. Additionally, the owner of the adjacent property that is most directly affected by the variance, L.B. Family Properties, LLC, has already granted and recorded the attached access easement which addresses the access issue. L.B. Family Properties, LLC consents to this variance. The Association is also supportive of this variance both for the benefit of the Sauers and all the members of the Association.

PHM/lr

# Bismarck

## Community Development Department

August 25, 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, September 4, 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.

Arrowhead Ranch Condominium Association, Annette Sauer, and LaVerne Sauer are requesting a variance from Section 14-04-07(8) of the City Code of Ordinances (RM15-Residential District)(Side Yard) to reduce the required side yard setback located along the north side of the property in order to bring the existing building located at 3118 Nebraska Drive into compliance.

A map and site plan showing the location involved in the request 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@bismarcknd.gov](mailto:cobplan@bismarcknd.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



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

|  |                                   |
|--|-----------------------------------|
| <b>BACKGROUND:</b>   |                                   |
| <b>Title:</b><br>475 Forestlawn Drive – Variance (Flood Hazard Reduction / Accessory Building)<br>(Lot 8 less the south 50 feet, Block 2, Glenwood Estates)  |                                   |
| <b>Status:</b><br>Board of Adjustment  | <b>Date:</b><br>September 4, 2014 |
| <b>Owner(s):</b><br>Dennis Torgeson  | <b>Engineer:</b><br>KLJ           |
| <b>Reason for Request:</b><br>Variance from Section 14-04-19(6)(4)(c) of the City Code of Ordinances (Floodplain District)(Flood Hazard Reduction / Accessory Building) in order to allow an accessory building, located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, to be constructed at an elevation of 1632.2, two (2) feet below the Base Flood Elevation (BFE), and four (4) feet below the ordinance requirement of constructing buildings two (2) feet above the BFE.   |                                   |
| <b>Location:</b><br>South of Bismarck, along the eastside of Forestlawn Drive, south of 48 <sup>th</sup> Avenue SW.  |                                   |
| <b>ADDITIONAL INFORMATION:</b>   |                                   |
| <ol style="list-style-type: none"> <li>1. If approved, the proposed variance and the findings made by the Board of Adjustment will be subject to additional review by Hazard Program Specialists within FEMA’s National Flood Insurance Program (NFIP). It should be noted that approval of a variance in violation of the requirements set forth in the NFIP, could impact the City of Bismarck and its jurisdictional area’s community status and eligibility for participation in the NFIP. By participating in the NFIP, the residents of the City of Bismarck and its jurisdictional area are eligible for flood insurance.</li> </ol>  |                                   |
| <b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>  |                                   |
| <ol style="list-style-type: none"> <li>1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”</li> <li>2. Section 14-04-19(6)(4)(c) of the City Code of Ordinances (FP Floodplain District)(Provisions for Flood Hazard Reduction/Accessory Buildings) states, “Accessory buildings over 120 square feet in area for residential structures, non-residential structure and manufactured homes shall be subject to the same construction requirements as the residential structure, nonresidential structure or manufactured home to which it is accessory.”</li> </ol> |                                   |
| <b>VARIANCES FROM FLOODPLAIN PROVISIONS:</b>   |                                   |
| <p>In considering appeals and variance applications, and in addition to the requirements outlined in Section 14-06-02 of the City Code of Ordinances (Powers and Duties), the Board of Adjustment shall consider all technical evaluations, all relevant factors, and the standards specified in this section, including:</p> <ol style="list-style-type: none"> <li>1. The danger to life and property due to flooding or erosion damage;</li> <li>2. The danger that materials may be swept onto other lands to the injury of others;</li> </ol>   |                                   |
| <i>(continued)</i>   |                                   |

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion;
7. The compatibility of the proposed use with the existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

#### **FINDINGS:**

##### Any Variance

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that will 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; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

##### Floodplain Variance

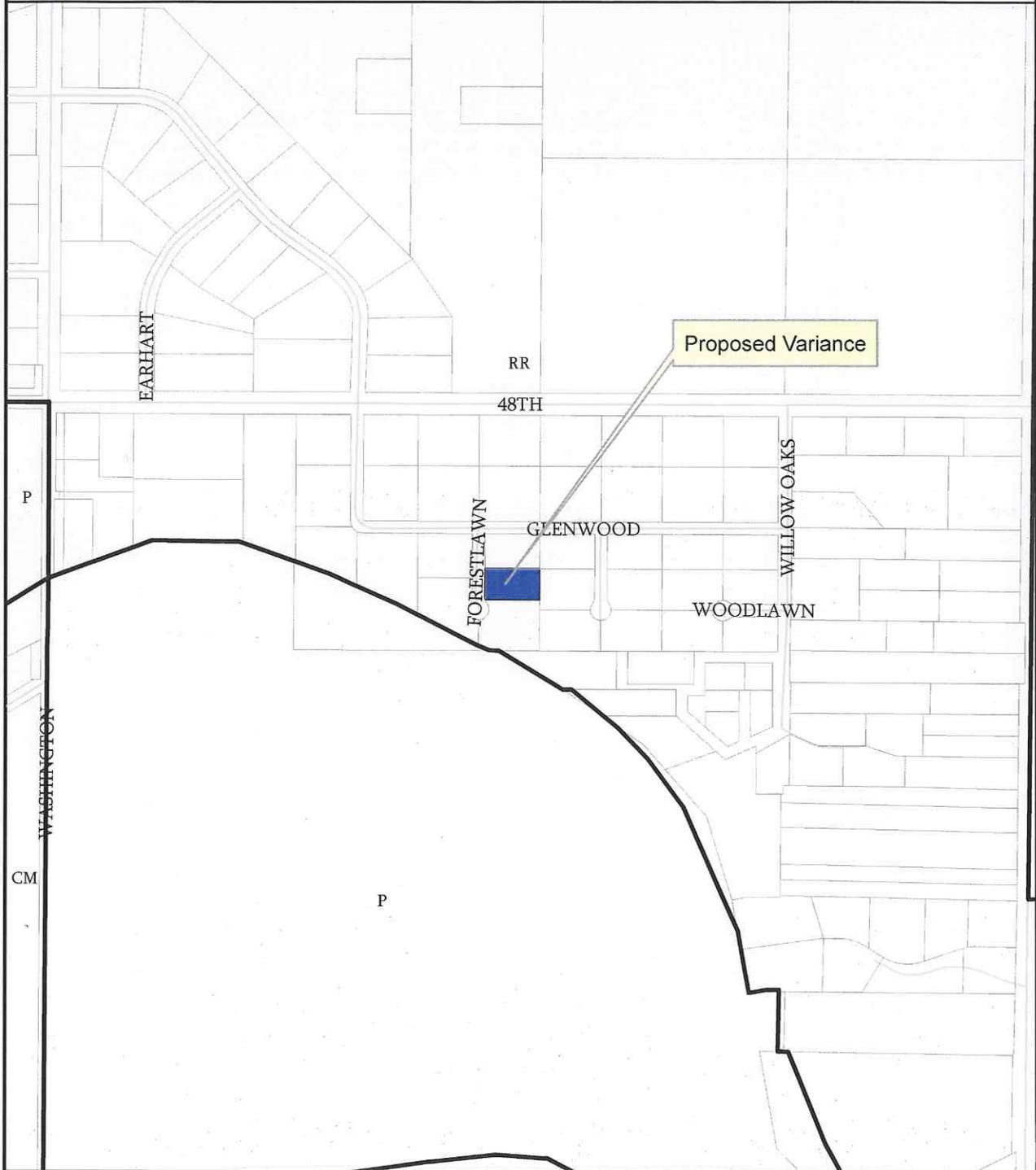
1. The proposed variance may increase flood levels during the base flood discharge.
2. The variance is not the minimum necessary, considering the flood hazard, to afford relief.
3. The applicant has not shown good and sufficient cause for granting the variance.
4. A failure to grant the variance would not result in exceptional hardship to the applicant.
5. The granting of the variance may result in increased flood heights, additional threats to public safety and conflict with existing local laws or ordinances. However, it is doubtful the granting of the variance would cause fraud or victimization of the public.

**RECOMMENDATION:**

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

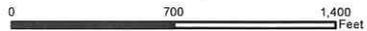
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

# Proposed Variance Lot 8, Block 2, Glenwood 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: 8/6/2014 (hlb)

Source: City of Bismarck



AUG 06 2014

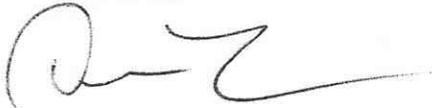
Dennis Torgerson  
475 Forestlawn Dr  
Bismarck, ND 58504

August 6, 2014

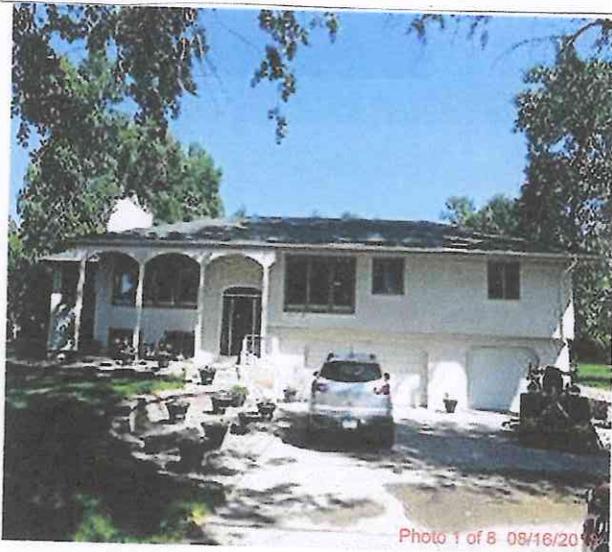
To Whom It May Concern,

I am requesting this variance for 475 Forestlawn Dr, Bismarck, ND 58504, I need this variance due to the fact that my existing garage floor and lowest level of my house is already 1 foot 8½ inches below flood level which is 1634. Therefore, if I have to raise my new garage 2 feet over flood, my driveway will be too steep. I have consulted with our concrete contractor and he says that we will bottom out our vehicles entering the garage space and that it will be dangerously steep and slippery in the winter time. We are getting close to retirement age and would prefer not to have to deal with falling.

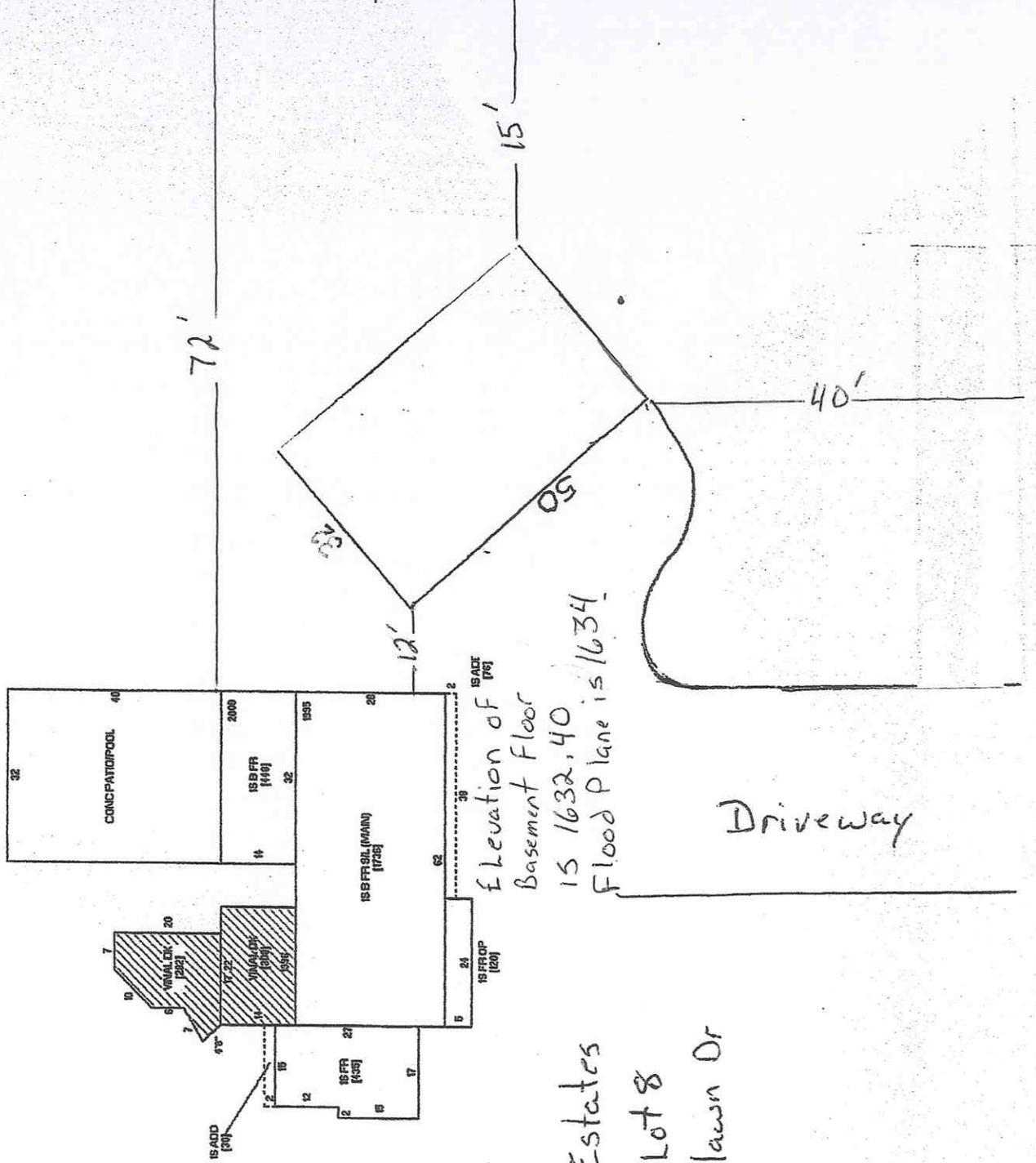
Sincerely,



Dennis Torgerson



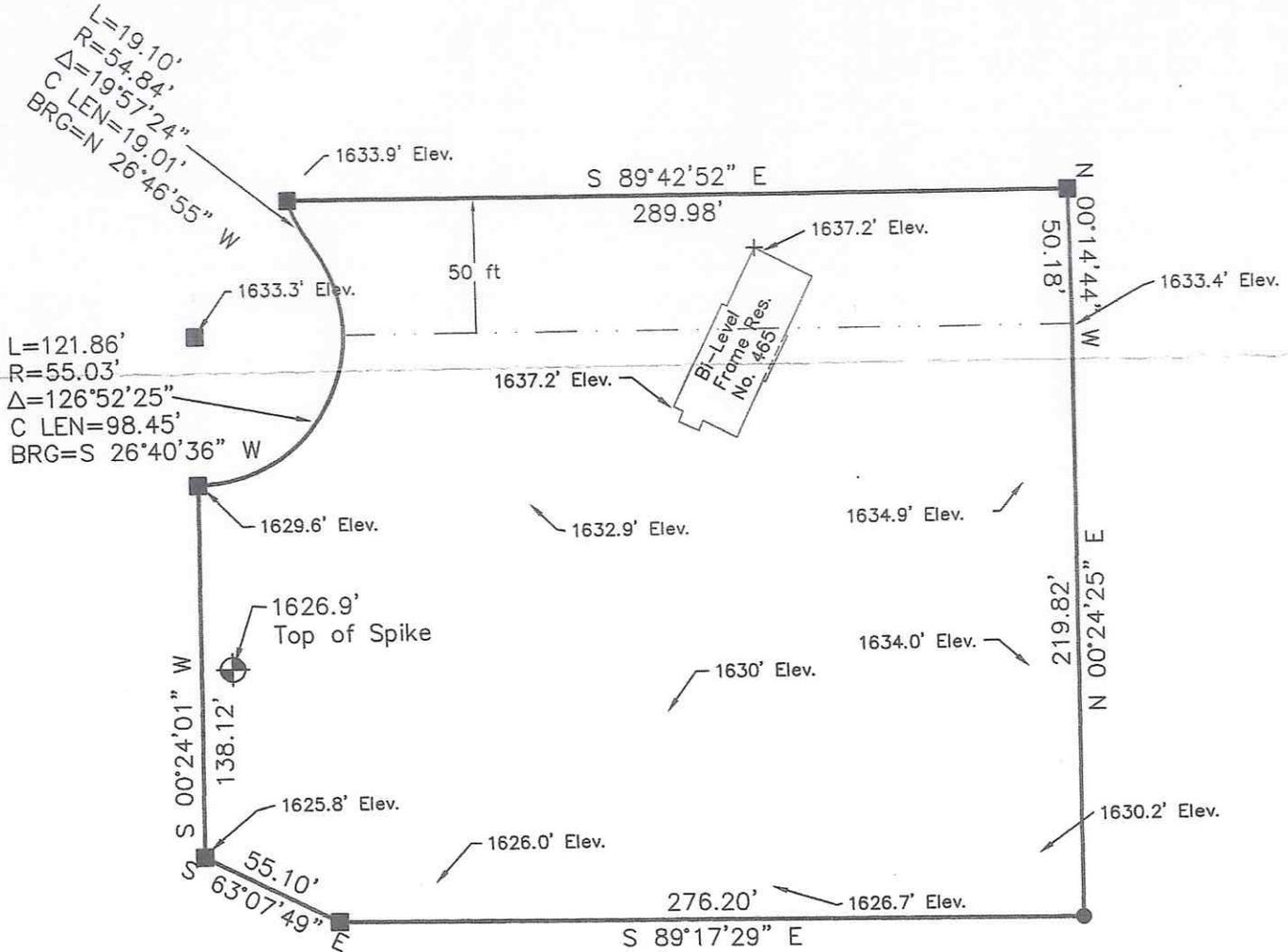
Property line



Plat Glenwood Estates  
 Legal Block 2 Lot 8  
 Address 475 Forestlawn Dr  
 Zoning RR  
 Acreage 1.140  
 No. Lots 1

Forestlawn Dr

FOREST LAWN



**SURVEYOR'S NOTES**

1. Survey performed for Floyd Robb who wanted a boundary survey and an elevation certificate for a building permit. He appears on Warranty Deed, Doc. No. 343683.
2. Basis of Bearing - Used record bearing from found iron's at intersection of Center-line Glenwood Drive & Forestlawn Drive & Meadowview Drive. All measurements shown are more or less.
3. Elevations based on City of Bismarck Benchmark No.2681. Firm Panel 38015C0960C shows the flood elevation of 1634', NAVD 1988.
4. Survey field work completed in October/November 2013.

- = Found iron monument
- = Set 2-12" spikes w/plastic cap at corner

**SURVEYOR'S CERTIFICATE**

I, MICHAEL ZIMNY, HEREBY CERTIFY THAT THIS PLAT IS A REPRESENTATION OF A SURVEY MADE BY ME OR UNDER MY DIRECTION AND THAT SAID SURVEY HAS BEEN MADE IN CONFORMITY WITH THE MANUAL OF INSTRUCTIONS FOR THE SURVEY OF PUBLIC LANDS OF THE UNITED STATES.

DATE: 11/8/13  
 SIGNED BY: *[Signature]*  
 NDPLS NO: \_\_\_\_\_



60' 120' 180'



# Burleigh County

## Photo Review

Tue, August 5, 2014 2:11 PM

Page 1

PDF+Parcel Number  
39+38-138-80-42-02-081  
Deedholder  
TORGERSON, DENNIS & ROBERTA  
Contract

Street Address  
475 FORESTLAWN DR  
Comments:

ComputerID  
Location - Class  
Rural-Residential  
Route Map  
000-000-000  
Map Area  
LINCORN TWP RES  
Photo 1 of 8

Image Type: Picture  
Date Taken: 8/16/2013  
Photo Last Edit: 8/16/2013

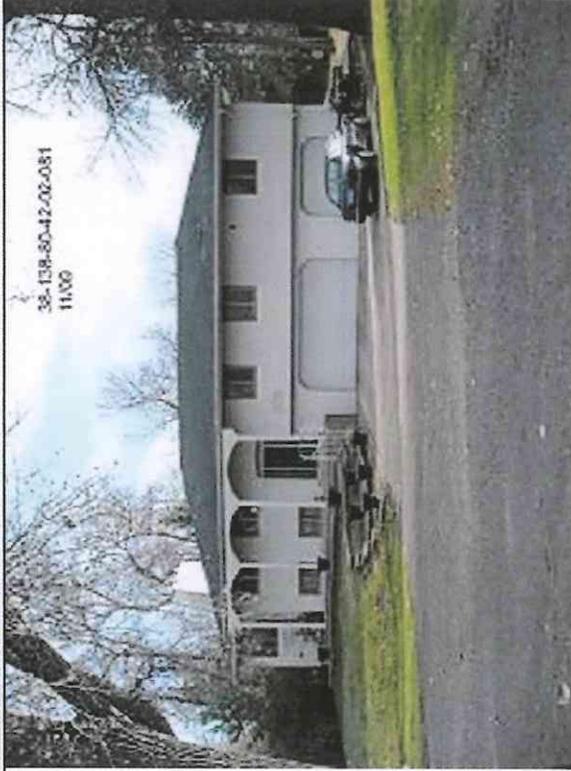


PDF+Parcel Number  
39+38-138-80-42-02-081  
Deedholder  
TORGERSON, DENNIS & ROBERTA  
Contract

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Route Map  
000-000-000  
Map Area  
LINCORN TWP RES  
Photo 2 of 8

Image Type: Picture  
Date Taken: 11/5/2009  
Photo Last Edit: 11/6/2009



72  
32

Deed: **TORGERSON, DENNIS & ROBERTA**

Map Area: **LINCOLN TWP RES**

Checks/Tags:

Contract: **475 FORESTLAWN DR,**

Route: **000-000-000**

Lister/Date:

CID#: **49,658.40**

Tax Dist: **01-BI**

Review/Date:

DBA: **49,658.40**

Plat Page: **381388042 GLENWOOD ESTATES**

Entry Status:

MLS: **Not Applicable**

Subdiv: **381388042 GLENWOOD ESTATES**

Pr Yr: 2014

Net Assmt

Land Total (Rnd nearest \$100)

\$250,000

\$28,500

\$28,500

\$250,000

\$28,500

\$28,500

\$250,000

\$28,500

\$28,500

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**Land**

**Utilities**

**Zoning**

**Building Permits**

**Sales**

**Values**

**Res. Structure**

**Plumbing**

**Finish**

**Non-base Heating**

**Fireplace**

**Appliances**

**Obsolescence**

**Garage**

**Basement**

**No Bsmt Fir.**

**Heat**

**AC**

**Attic**

**Condition**

**Phy-Depr. %**

**Basement**

**No Bsmt Fir.**

**Heat**

**AC**

**Attic**

Depth Factor

Acres

SF

R. Lot

Side 1

Side 2

Rear

Front

Land Basis

Acres

EFF

Qual./Land

Unit Price

Total

Topo

Econ

Other

\$Adj

Land Total (Rnd nearest \$100)

Not Applicable

Utilities

Septic / Well

Not Applicable

Utilities

Septic / Well

Not Applicable

Utilities

Septic / Well

Not Applicable

| Bldg/<br>Adtn<br>1 of 1 | Description (RCN \$351,377)<br>101 - Single-Family / Owner Occupied | Units   | Price      | Base Value | Grade<br>Mult | Year | Phys% | Fobs% | Eobs% | Other% | Depreciated Total<br>(Rnd nearest dollar) | Map   | Appraised Value<br>(Rnd nearest \$100) |
|-------------------------|---|---------|------------|------------|---------------|------|-------|-------|-------|--------|---|-------|--|
|                         | Split Level Frame   | 1,736   |            | \$130,380  |               |      |       |       |       |        |   |       |  |
| #1                      | Bsmt Fin - Living Qtrs. (Multi) (Avg)                               | 650 Tbl | \$21.50    | \$13,975   |               |      |       |       |       |        |   |       |  |
|                         | Base Heat: FHA - Gas  |         |            |            |               |      |       |       |       |        |   |       |  |
|                         | Add Central Air   | 1,736   | \$2,930.00 | \$2,930    |               |      |       |       |       |        |   |       |  |
| #1                      | Porch: 1S Frame Open  | 120 SF  | \$3,670.00 | \$3,670    |               |      |       |       |       |        |   |       |  |
|                         | Deck #1: Vinyl/CompoDeck-Med  | 308 SF  | \$20.00    | \$6,160    |               |      |       |       |       |        |   |       |  |
|                         | Deck #2: Vinyl/CompoDeck-Med  | 282 SF  | \$20.00    | \$5,640    |               |      |       |       |       |        |   |       |  |
|                         | Plumbing  | 6       | N/A        | \$11,500   |               |      |       |       |       |        |   |       |  |
| #1                      | Fireplace: Masonry, 1 Story   | 1       | \$4,400.00 | \$4,400    |               | 1995 | 7.00  |       |       |        |   |       |  |
|                         | Garage: Att Frame   | 448 SF  |            | \$29,230   |               |      |       |       |       |        |   |       |  |
|                         | Qtrs Over: Frame  | 480 SF  |            | \$3,000    |               |      |       |       |       |        |   |       |  |
|                         | Basement Stall  | 1       | \$3,000.00 | \$1,300    |               |      |       |       |       |        |   |       |  |
|                         | Basement Stall (others)   | 1       | \$1,300.00 | \$212,185  |               |      |       |       |       |        | \$233,317                                 |       |  |
|                         | <b>Building Sub Total</b>   |         |            | \$25,890   |               |      |       |       |       |        | \$31,060                                  |       |  |
| 1 of 5                  | Adtn 1 Story Frame  | 435 SF  |            | \$27,280   |               |      |       |       |       |        |   |       |  |
|                         | Basement area   | 435 SF  |            |            |               |      |       |       |       |        |   |       |  |
| 2 of 5                  | Adtn 1 Story Frame  | 448 SF  |            |            |               |      |       |       |       |        |   |       |  |
|                         | Basement area   | 448 SF  |            |            |               |      |       |       |       |        |   |       |  |
| 3 of 5                  | Adtn 1 Story Frame  | 76 SF   |            | \$4,560    |               |      |       |       |       |        |   |       |  |
| 4 of 5                  | Adtn 1 Story Frame  | 0 SF    |            | \$0        |               |      |       |       |       |        |   |       |  |
| 5 of 5                  | Adtn 1 Story Frame  | 30 SF   |            | \$2,470    |               |      |       |       |       |        |   |       |  |
|                         | <b>Building TOTAL Value</b>   |         |            |            |               |      |       |       |       |        | \$305,361                                 | 1.000 | \$305,400                              |



25.36'

325.36'

# GLENWOOD

650.72'

2.36'

292.36'

BUILDING

SETBACK

5

DRIVE

9

40'

297.00'

FORESTLAWN

187.00'

40'

292.36'

187.00'

7'

7'

2.36'

6

8

R=55'

35.39' arc

R=55'

35.39' arc

R=55'

35.40' arc

121.79' arc

86.39' arc

270.36'

Utility Easement



364.59'

557.16'

140.14'

7

3/4" IP

55.10'

276.20'

10'

# ELEVATION CERTIFICATE

**Important: Read the instructions on pages 1-9.**

OMB No. 1660-0008  
 Expiration Date: July 31, 2015

## SECTION A - PROPERTY INFORMATION

A1. Building Owner's Name DENNIS & ROBERTA TORGERSON  
 A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.  
 475 FOREST LAWN DRIVE  
 City BISMARCK State ND ZIP Code 58504

## FOR INSURANCE COMPANY USE

Policy Number:  
 Company NAIC Number:

A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)  
 LOT 8, LESS THE SOUTH 50 FEET, BLOCK 2, GLENWOOD ESTATES

A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) ACCESSORY  
 A5. Latitude/Longitude: Lat. \_\_\_\_\_ Long. \_\_\_\_\_ Horizontal Datum:  NAD 1927  NAD 1983  
 A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.

A7. Building Diagram Number 1A

A8. For a building with a crawlspace or enclosure(s):  
 a) Square footage of crawlspace or enclosure(s) N/A sq ft  
 b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade 0  
 c) Total net area of flood openings in A8.b 0 sq in  
 d) Engineered flood openings?  Yes  No

A9. For a building with an attached garage:  
 a) Square footage of attached garage N/A sq ft  
 b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade 0  
 c) Total net area of flood openings in A9.b 0 sq in  
 d) Engineered flood openings?  Yes  No

## SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

|   |                 |                                      |   |                           |   |
|---|-----------------|--------------------------------------|---|---------------------------|---|
| B1. NFIP Community Name & Community Number<br>CITY OF BISMARCK 380149 |                 | B2. County Name<br>BURLEIGH          |   | B3. State<br>NORTH DAKOTA |   |
| B4. Map/Panel Number<br>38015C0960                                    | B5. Suffix<br>D | B6. FIRM Index Date<br>JULY 19, 2005 | B7. FIRM Panel Effective/Revised Date<br>AUGUST 4, 2014 | B8. Flood Zone(s)<br>AE   | B9. Base Flood Elevation(s) (Zone AO, use base flood depth)<br>1634.2 |

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9.  
 FIS Profile  FIRM  Community Determined  Other/Source: \_\_\_\_\_

B11. Indicate elevation datum used for BFE in Item B9:  NGVD 1929  NAVD 1988  Other/Source: \_\_\_\_\_

B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)?  Yes  No  
 Designation Date: \_\_\_\_\_  CBRS  OPA

## SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on:  Construction Drawings\*  Building Under Construction\*  Finished Construction  
 \*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.  
 Benchmark Utilized: 1633.1 Vertical Datum: NAVD 1988  
 Indicate elevation datum used for the elevations in items a) through h) below.  NGVD 1929  NAVD 1988  Other/Source: \_\_\_\_\_  
 Datum used for building elevations must be the same as that used for the BFE.

Check the measurement used.

|  |               |  |
|--|---------------|--|
| a) Top of bottom floor (including basement, crawlspace, or enclosure floor)  | <u>1632.2</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| b) Top of the next higher floor  | <u>N/A</u>    | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| c) Bottom of the lowest horizontal structural member (V Zones only)  | <u>N/A</u>    | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| d) Attached garage (top of slab)   | <u>N/A</u>    | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments) | <u>1632.2</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| f) Lowest adjacent (finished) grade next to building (LAG)   | <u>1632.0</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| g) Highest adjacent (finished) grade next to building (HAG)  | <u>1632.2</u> | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support                               | <u>N/A</u>    | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |

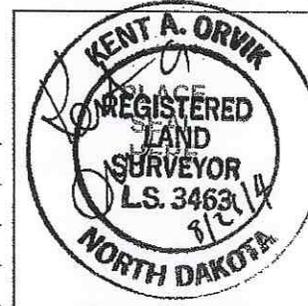
## SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

Check here if comments are provided on back of form. Were latitude and longitude in Section A provided by a licensed land surveyor?  Yes  No

Check here if attachments.

Certifier's Name KENT A. ORVIK License Number 3463  
 Title REG. LAND SURVEYOR Company Name KADRMAS, LEE & JACKSON  
 Address 1025 AIRPORT ROAD City BISMARCK State ND ZIP Code 58504  
 Signature Kent A. Orvik Date 8/26/14 Telephone 701-355-8400



**ELEVATION CERTIFICATE, page 2**

|  |                                  |
|--|----------------------------------|
| <b>IMPORTANT: In these spaces, copy the corresponding information from Section A.</b>                                      | <b>FOR INSURANCE COMPANY USE</b> |
| Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.<br>475 FOREST LAWN DRIVE | Policy Number:                   |
| City BISMARCK State ND ZIP Code 58504  | Company NAIC Number:             |

**SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)**

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments THE HOME OWNER WOULD LIKE TO BUILD THE ACCESSORY BUILDING AT ELEVATION 1632.2 TO MATCH THE EXISTING HOME AND GARAGE. THE EXISITING GARAGE IS AT ELEVATION 1631.6.

Signature *KA 90* Date 8/26/14

**SECTION E – BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)**

For Zones AO and A (without BFE), complete Items E1–E5. If the Certificate is intended to support a LOMA or LOMR-F request, complete Sections A, B, and C. For Items E1–E4, use natural grade, if available. Check the measurement used. In Puerto Rico only, enter meters.

- E1. Provide elevation information for the following and check the appropriate boxes to show whether the elevation is above or below the highest adjacent grade (HAG) and the lowest adjacent grade (LAG).
  - a) Top of bottom floor (including basement, crawlspace, or enclosure) is \_\_\_\_\_  feet  meters  above or  below the HAG.
  - b) Top of bottom floor (including basement, crawlspace, or enclosure) is \_\_\_\_\_  feet  meters  above or  below the LAG.
- E2. For Building Diagrams 6–9 with permanent flood openings provided in Section A Items 8 and/or 9 (see pages 8–9 of Instructions), the next higher floor (elevation C2.b in the diagrams) of the building is \_\_\_\_\_  feet  meters  above or  below the HAG.
- E3. Attached garage (top of slab) is \_\_\_\_\_  feet  meters  above or  below the HAG.
- E4. Top of platform of machinery and/or equipment servicing the building is \_\_\_\_\_  feet  meters  above or  below the HAG.
- E5. Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance?  Yes  No  Unknown. The local official must certify this information in Section G.

**SECTION F – PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION**

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here. The statements in Sections A, B, and E are correct to the best of my knowledge.

Property Owner's or Owner's Authorized Representative's Name

Address City State ZIP Code

Signature Date Telephone

Comments

Check here if attachments.

**SECTION G – COMMUNITY INFORMATION (OPTIONAL)**

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below. Check the measurement used in Items G8–G10. In Puerto Rico only, enter meters.

- G1.  The information in Section C was taken from other documentation that has been signed and sealed by a licensed surveyor, engineer, or architect who is authorized by law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)
- G2.  A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.
- G3.  The following information (Items G4–G10) is provided for community floodplain management purposes.

|                   |                        |   |
|-------------------|------------------------|---|
| G4. Permit Number | G5. Date Permit Issued | G6. Date Certificate Of Compliance/Occupancy Issued |
|-------------------|------------------------|---|

- G7. This permit has been issued for:  New Construction  Substantial Improvement
- G8. Elevation of as-built lowest floor (including basement) of the building: \_\_\_\_\_  feet  meters Datum \_\_\_\_\_
- G9. BFE or (in Zone AO) depth of flooding at the building site: \_\_\_\_\_  feet  meters Datum \_\_\_\_\_
- G10. Community's design flood elevation: \_\_\_\_\_  feet  meters Datum \_\_\_\_\_

Local Official's Name Title

Community Name Telephone

Signature Date

Comments

Check here if attachments.

# Building Photographs

See Instructions for Item A6.

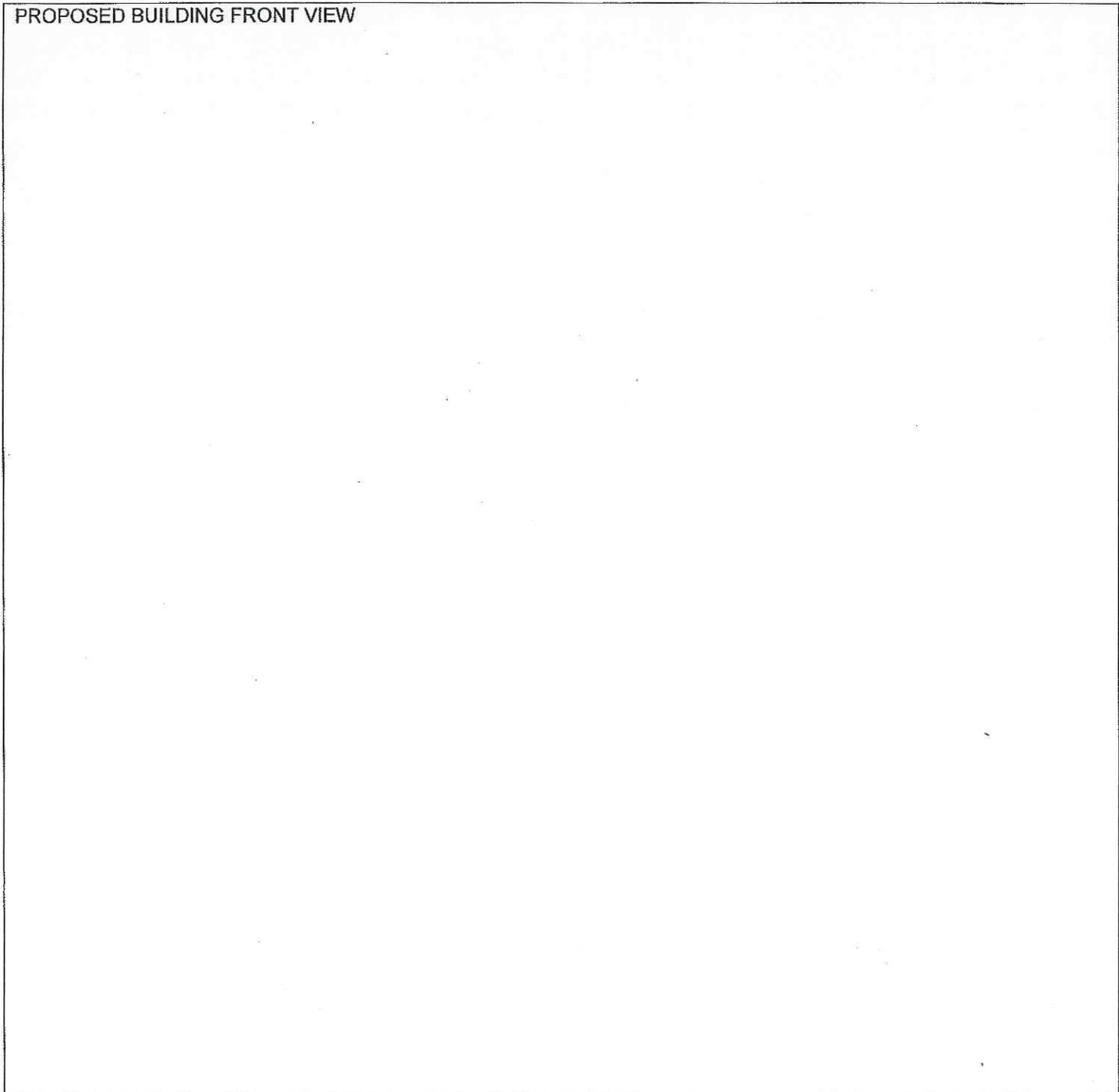
**IMPORTANT: In these spaces, copy the corresponding information from Section A.**

|  |          |                |
|--|----------|----------------|
| Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.<br>475 FOREST LAWN DRIVE |          |                |
| City BISMARCK  | State ND | ZIP Code 58504 |

|                           |
|---------------------------|
| FOR INSURANCE COMPANY USE |
| Policy Number:            |
| Company NAIC Number:      |

If using the Elevation Certificate to obtain NFIP flood insurance, affix at least 2 building photographs below according to the instructions for Item A6. Identify all photographs with date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8. If submitting more photographs than will fit on this page, use the Continuation Page.

PROPOSED BUILDING FRONT VIEW



**Building Photographs**

Continuation Page

**IMPORTANT: In these spaces, copy the corresponding information from Section A.**

|  |                                  |
|--|----------------------------------|
| Building Street Address (Including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.<br>475 FOREST LAWN DRIVE | <b>FOR INSURANCE COMPANY USE</b> |
| City BISMARCK    State ND                          ZIP Code 58504                    | Policy Number:                   |
|  | Company NAIC Number:             |

If submitting more photographs than will fit on the preceding page, affix the additional photographs below. Identify all photographs with: date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8.

**PROPOSED BUILDING REAR VIEW**

# Bismarck

## Community Development Department

August 25, 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, September 4, 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.

Dennis Torgeson is requesting a variance from Section 14-04-19 of the City Code of Ordinances (FP-Floodplain District) to allow an accessory building located within the Special Flood Hazard Area (SFHA), or 100-year floodplain, to be constructed at an elevation below the required elevation of two (2) feet above the Base Flood Elevation (BFE) on Lot 8 less the south 50 feet, Block 2, Glenwood Estates (475 Forestlawn Drive).

A map showing the location involved in the request 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@bismarcknd.gov](mailto:cobplan@bismarcknd.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



**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
August 7, 2014**

The Bismarck Board of Adjustment met on August 7, 2014 at 4:00 p.m. in the 1<sup>st</sup> Floor Conference Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Marback presided.

Members present were Jennifer Clark, Ken Hoff, Chris Seifert, Jeff Ubl and Michael Marback.

Member absent was Ken Heier.

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

**MINUTES:**

Chairman Marback asked for consideration of the minutes of the July 9, 2014 meeting of the Board of Adjustment.

**MOTION:** A motion was made by Mr. Hoff and seconded by Mr. Ubl to approve the minutes of the July 9, 2014 meetings as distributed. With Board Members Clark, Hoff, 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) – 414 NORTH 22ND STREET (LOT 5 AND THE NORTH 16TH FEET OF LOT 6, BLOCK 26, GOVERNOR PIERCE ADDITION)**

Chairman Marback stated the applicant was requesting a variance to reduce the required lot width for a parcel platted prior to 1953 from fifty (50) feet to forty-one (41) feet in order to convert the existing single-family dwelling into a two-family dwelling (duplex).

Chairman Marback said he went to the property to look at the house and asked if the entrance on the south side is going to be converted to an up and down entrance.

Christopher Herrmann said there will be stairs from the entrance to the upper level and another set of steps leading to the lower level that is currently being renovated. He said there is not room on any side of the property where he could add area to the lot to make it 50 feet wide. He said there was permits issued for the garage and the shed that are behind the house and those were built without any issues and it was originally used as a duplex.

Ms. Wollmuth said that an electrical permit was issued recently for the conversion of the house to a duplex and a permit to construct an accessory building was issued in 2009 without a variance.

Mr. Hoff asked if there will be egress windows in the lower level. Mr. Herrmann said the previous owner of the property did dig out areas for egress windows and he will be cutting out the windows and placing the window wells. Ms. Wollmuth said per building codes, only the bedrooms need to have egress windows.

**MOTION:** A motion was made by Mr. Hoff to approve the variance to reduce the required lot width for a parcel platted prior to 1953 from fifty (50) feet to forty-one (41) feet in order to convert the existing single-family dwelling into a two-family dwelling (duplex). The motion was seconded by Mr. Ubl and with Board Members Clark, Hoff, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the variance request was approved.

**VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) – PART OF LOT 3 LESS LOT A, BLOCK 1, PRAIRIE HILLS 5TH ADDITION (BEING REPLATTED AS LOT 2, BLOCK 1, MUNICH ADDITION)**

Chairman Marback stated the applicant was requesting a variance to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces in order to construct a multi-use building with assembly and business uses.

Chairman Marback said the differences between a gymnasium and a business need to be considered. Mr. Blaskowski said the proposed uses would classify this building under the health club definition in the 2012 International Building Code (IBC), which is an assembly use which would require one parking space per 60 square feet.

Jeff Welch, Jiran Architects, said both he and the applicant had considered the use a health based office with the focus being on fitness training. He said the assembly occupancy definition has doubled the parking requirement which will be almost impossible to meet. He said there will be physical therapy and a training clinic as well as a child care drop-off service and coffee shop. He said the main difference is going to be that there is not a general medical practice but rather scheduled sessions and a lower volume of people. He said the physical training center will have smaller equipment and be more member driven. He also said there is a 30 foot easement on the rear side of the property and that cannot be built on. In addition, with what is left for space, while still being able to circulate vehicles, they can only fit 108 off-street parking spaces.

Lon Romsaas, Swenson, Hagen & Co., provided the board with a large drawing of the proposed site plan to explain the ingress and egress of the proposed variance. He said traffic will be able to use two access points as both ingress and egress points. He then said 108 off-street parking spaces would be sufficient if the use would be defined as assembly and not business.

Mr. Hoff asked what the plan is for pushing and, if needed, removing snow from the parking lot. Mr. Romsaas said they have already worked out the option of having it hauled away right away.

Tana Trotter, Proximal 50 Life Center, is the potential property owner and she said she does not anticipate there being constant business at this location but rather rushes before and after typical working hours and steady in between. She said statistics on Burleigh and Morton Counties show a dire need for physical and cardiology therapy.

Mr. Ubl asked if it is known what the square footage of utilized area would be without the locker rooms. Mr. Welch said it is less than 900 square feet.

John Sagsveen said he owns the business at 1237 West Divide and he is already getting overflow parking in his lot from other businesses and he feels a reduction of 50% on the parking requirement is a lot and his customers and clients have already had to go without parking in the past.

Mr. Hoff asked how they anticipate traffic to flow out of the parking lot with the coffee shop drive-through being there and having people that want to turn left onto Divide Avenue where there is no traffic light.

Mr. Ubl said it can be argued that not all of the space in the building will be utilized but they would still need more parking to meet the requirement.

Mr. Hoff said the needs and uses of the business could change down the road and there would be an issue then.

Mr. Romsaas said the area is being replatted to include one access point off of Divide Avenue and turning lanes to prevent traffic congestion. He said there are different interpretations of public space and some ordinance clarification is needed. He said people will not come to your business if parking is lacking and he understands that.

Ms. Trotter said she has the option to cap memberships if she is getting too busy and that she cannot force workout times on people but she could monitor daily activity to see what is working.

Mr. Welch said there will be a finite low amount of equipment to allow space for access for clients as it is going to be more for clinical health than everyday fitness.

Mr. Ubl said this is not the same as every day office space and that there are issues with a 1:60 ratio and there is no happy medium.

Ms. Trotter said there is no pool, running track or basketball courts so it does not really qualify as a health club or community center such as the YMCA.

Ms. Clark said there is a very broad option of things to consider with this request and she thinks they should be supportive of the staff's findings. Mr. Blaskowski said they can

track ordinance issues and amend them as needed but there is no in between classification for retail and assembly uses.

Mr. Ubl said the definition of hardship is limited and he is trying to understand a way to make the building fit the property. He said he would like to continue the request to the September meeting of the Board of Adjustment in order to allow staff to work with the architect, engineer and applicant to resolve the issue of the size of the building.

Mr. Romsaas said by ordinance, the board can clarify the interpretation of the ordinance in addition to the variance request.

Chairman Marback said even if the use was solely for fitness, they would still be 32 spaces short. He said he is open to continuing the request and asked if a number of 108 spaces is fixed.

Ms. Trotter said it is pretty fixed and that the breakdown of people using the facility at one time for how much equipment and space there is it might only be 54 people at once.

Ms. Clark said she is supportive of new businesses but she is hesitant when its new construction already having to borrow space from the neighbors.

Mr. Blaskowski said staff does not have the ability to find an in between number of required off-street parking for assembly spaces.

Ms. Trotter said she is completely comfortable with 108 spaces and she has thought about and planned and worked out the issues. She said she will be open 14-16 hours per day and all of the spaces will never be full every hour. She said she would never put her business at risk in the off chance it would not work out.

Mr. Hoff asked what the applicants options are if they deny the request. Ms. Wollmuth said they would have fifteen days from the receipt of the letter of denial to appeal the decision to the City Commission. She said it would be in their best interest to have the request submitted by August 18<sup>th</sup> in order to be on the agenda for the August 26<sup>th</sup> City Commission meeting.

Mr. Hoff then asked if would be an option to eliminate the second floor of the building as that would remove approximately 3000 square feet. Ms. Trotter said if that was done the whole point of the services offered would be lost.

Comments received on this request are attached as Exhibits A and B.

**MOTION:** A motion was made by Mr. Ubl to deny the variance to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces in order to construct a multi-use building with assembly and business uses. The motion was seconded by Mr. Hoff. With Board Members Clark, Hoff, Seifert and Marback voting in favor of the motion, the motion was approved and the variance request was denied.

**VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES  
(OFF-STREET PARKING AND LOADING) – LOTS 3-4, BLOCK 19, STURGIS  
ADDITION (1317 EAST FRONT AVENUE)**

Chairman Marback stated the applicant is requesting a variance to reduce the required amount of off-street parking spaces from fifty-three (53) off-street parking spaces to four (4) off-street parking spaces in order to convert an existing building into a multi-use building with assembly and business uses.

Gina Padilla, Big Muddy Cross-Fit, said the growth in Bismarck has resulted in an influx of people and an interest in maintaining a healthy lifestyle which is not always easy. She said an ideal property has been found to be purchased and it will only be a fitness facility and some storage space for their large equipment. She said it is basically a warehouse for workouts but floor space use is limited to the area around the pull-up rig that will only allow ten people utilizing the space at a time. She said the workouts are fast and intense and not more than 30 minutes long and sometimes only 15 minutes and depending on the type of class, five people can be in each session as there will be one employee staffed at a time to conduct the class.

Ms. Wollmuth said any required parking would have to be paved and the other part of the request is that the off-street parking stay a gravel lot. She said if it were paved then eight parking spots could fit.

Joe Eckert said he owns two houses near the property as well as the Our Place Tavern and he asked what the plans are for snow removal at this location. He said the prior owner dumped their snow on his property and any water run-off drained to his property as well. He said there needs to be a channel across the sidewalk to the curb to allow for proper drainage because the building sits too low for water to drain away from it.

Ms. Padilla said they do not have any snow removal plans yet but they are aware of the drainage issue and are working with an engineer on different ways to fix the problems.

Bob Henschel, 222 South 14<sup>th</sup> Street, asked if since there will be only four spaces then would they make it into eight if it is paved. He said other business in the area fill their parking lots and any overflow has to park in the street.

**MOTION:** A motion was made by Mr. Hoff to approve the variance to reduce the required amount of off-street parking spaces from fifty-three (53) off-street parking spaces to four (4) off-street parking spaces in order to convert an existing building into a multi-use building with assembly and business uses, with the condition that 1250 square feet of concrete be poured within 12 months to allow for eight off-street parking spaces. The motion was seconded by Ms. Clark. With Board Members Hoff, Seifert and Marback voting in favor of the motion and Board Members Clark and Ubl opposing the motion, the motion died.

Ms. Clark asked how many spaces could fit if paved. Mr. Blaskowski said a site plan could include eight 9x18 foot spaces but one and a half of them need to be handicapped accessible.

**MOTION:** A motion was made by Ms. Clark to approve the variance to reduce the required amount of off-street parking spaces from fifty-three (53) off-street parking spaces to four (4) off-street parking spaces in order to convert an existing building into a multi-use building with assembly and business uses, with the condition that the staff findings but amended to allow for special circumstances and the requirement of concrete being poured within 12 months to allow for eight off-street parking spaces.  
The motion was seconded by Mr. Hoff. With Board Members Clark, Hoff, Seifert and Marback voting in favor of the motion and Mr. Ubl opposing the motion, the motion was approved and the variance request was approved.

Mr. Romsaas, on behalf of Proximal 50 Life Center, returned to the Board and said their only options are to give up on their project, appeal their request to the City Commission or look at what else they can do by illuminating uses. He said they have a strict timeline on this project and per parliamentary rules, he requests that the member who made the motion amend it be a motion to continue the request to the next meeting of the Board of Adjustment.

**MOTION:** A motion was made by Mr. Ubl to allow an amendment to the motion made by Mr. Hoff to deny the variance request to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces in order to construct a multi-use building with assembly and business uses.  
The motion was seconded by Mr. Hoff. With Board Members Clark, Hoff, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved.

Mr. Hoff amended his motion from denying the request to continuing the request to the next meeting of the Board of Adjustment.

**MOTION:** A motion was made by Mr. Ubl to approve the amendment to the motion made by Mr. Hoff to instead continue the variance request to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces in order to construct a multi-use building with assembly and business uses to the next meeting of the Board of Adjustment.  
The motion was seconded by Mr. Hoff. With Board Members Clark, Hoff, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved.

## **OTHER BUSINESS**

Chairman Marback said he has a concern about numerous unmoved vehicles at an auto shop on Main Avenue in the lot to the south of their building. He said CK Auto was required to put a fence around the vehicles at their business and is wondering if this business should have

to do the same. Mr. Blaskowski said he will look into it and that it is easier to enforce those requirements if the vehicles are unlicensed.

## **ADJOURNMENT**

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

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Michael Marback, Chairman

DRAFT

Exhibit A.

**Hilary Balzum**

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**From:** cobplan  
**Sent:** Wednesday, July 30, 2014 4:27 PM  
**To:** Jenny Wollmuth  
**Cc:** Hilary Balzum  
**Subject:** FW: Variance for off-street parking

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**From:** Laura Kourajian [mailto:kourajian@yahoo.com]  
**Sent:** Wednesday, July 30, 2014 3:54 PM  
**To:** [cobplan@nd.gov](mailto:cobplan@nd.gov)  
**Cc:** Chad Kourajian  
**Subject:** Variance for off-street parking

To whom it may concern:

My husband and I received a notice of a request for a variance for property that is near a condo we own on West Owens Ave. The variance is being requested by the First State Bank of Munich and is seeking a reduction in the number of required off-street parking spaces from 214 to 108.

I am pretty sure overflow parking -- and there will be a need for overflow parking -- won't likely affect our property, but granting the variance just doesn't seem like a good idea. It's been my experience that often even the minimally required number of off-street parking spaces are enough to accommodate parking needs for businesses.

My understanding from Jenny Wollmuth in the Planning Division is this building is zoned multi-use and is being used for a gym/rehab facility, a Caribou coffee shop and possibly a bank or other businesses. The gym/rehab facility alone will require short-term parking beyond in-and-out, so the likelihood is very strong there will be a need for overflow parking. I don't believe Divide Avenue accommodates parking, so where will those customers park?

Asking for the variance doesn't seem to be the best business practice. Granting the variance doesn't seem like the best civic practice.

Regards,

Laura Kourajian

# HORIZON

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## FINANCIAL BANK

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Munich, ND 58352  
Phone: 701-682-5331  
Fax: 701-682-5334

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**Devils Lake**

204 Highway 2 West  
PO Box 880  
Devils Lake, ND 58301  
Phone: 701-665-2020  
Fax: 701-665-2021

**Bismarck**

1207 West Divide Ave.  
Bismarck, ND 58501  
*Location opening in  
fall 2014*

**Online**

[HorizonFinancialBank.com](http://HorizonFinancialBank.com)

August 8, 2014

Jiran Architects  
Attn: Jeff Welch

Per our conversation of August 5, 2014 with regard to Tana Trottier's project. Upon review of her plan, it appears that she will have more than sufficient parking for her building needs. If she needs additional parking before and after business hours that will not pose a problem for Horizon Financial Bank.

We look forward to seeing her building progress as planned. It will be a great addition to the city. If you should have any further questions, please feel free to contact me.

Respectfully,



John Vollmer  
CEO

