



Community Development Department

BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA

November 6, 2014

Tom Baker Meeting Room

4:00 p.m.

City-County Office Building

MINUTES

- 1. Consider the minutes of the September 4, 2014 meeting of the Board of Adjustment.

REQUESTS

- 2. Variances from Section 14-04-06(7) of the City Code of Ordinances (R10-Residential zoning district)(Front Yard) and Section 14-04-06(9) of the City Code of Ordinances (R10-Residential)(Rear Yard) – Lot 6 less the West 45 feet of the South 42 feet, Block 47, Northern Pacific 2bd Addition (602 North 12th Street).

Jesse Bradley is requesting a variance to reduce the required front yard setback located along the east side of the property from twenty-five (25) feet to fifteen (15) feet and to reduce the required front yard setback located along the south side of the property from twenty-five (25) feet to twelve feet eleven inches (12 feet 11 inches); and to reduce the required rear rad setback located along the north side of the property from twenty (20) feet to fifteen feet one inch (15 feet 1 inch) for the purpose of constructing a two-family dwelling

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

- 3. Variance from Section 14-04-03(6) of the City Code of Ordinances (R5-Residential zoning district)(Lot Coverage) – Lot 20, Block 3, Eagle Crest Addition (1320 Talon Road)

Art Goldammer, Red Door Homes of Bismarck, is requesting a variance to increase the maximum lot coverage of 30 % for a lot located in the R5-Residential zoning district to 32.9% for the purpose of constructing a single-family dwelling.

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



4. **Variance from Section 14-03-05(4)(a) of the City Code of Ordinances (Supplementary Provisions / Accessory Buildings)** – Lot 8, Block 3, Sattler’s Sunrise 8<sup>th</sup> Addition (3324 Frost Lane).

*Adam Tschosik is requesting a variance to reduce the required side yard setback located along the northeast side of the property from six (6) feet to three (3) feet for the purpose of constructing an accessory building.*

Board Action:      approve      continue      table      deny

#### **OTHER BUSINESS**

5. **Other**

#### **ADJOURNMENT**

6. **Adjournment.** The next regular meeting date is scheduled for December 4, 2014.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>	
<b>Title:</b> 602 North 12 <sup>th</sup> Street – Variance (Front Yard and Rear Yard Setbacks) (Lot 6 less the West 45 feet of the South 42 feet, Block 47, Northern Pacific 2 <sup>nd</sup> Addition)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> November 6, 2014
<b>Owner(s):</b> Jesse Bradley	<b>Architect:</b> Plain View Design Co.
<b>Reason for Request:</b> Variances from Section 14-04-06(7) of the City Code of Ordinances (R10-Residential zoning district)(Front Yard) to reduce the required front yard setback located along the east side of the property from twenty-five (25) feet to fifteen (15) feet and to reduce the required front yard setback located along the south side of the property from twenty-five (25) feet to twelve feet eleven inches (12 feet 11 inches); and from Section 14-04-06(9) of the City Code of Ordinances (R10-Residential zoning district)(Rear Yard) to reduce the required rear yard setback located along the north side of the property from twenty (20) feet to fifteen feet one inch (15 feet 1 inch) for the purpose of constructing a two-family dwelling.	
<b>Location:</b> In central Bismarck, along the north side of East Avenue B and west side of North 12 <sup>th</sup> Street.	
<b>ADDITIONAL INFORMATION:</b>	
<ol style="list-style-type: none"> <li>The proposed variance is located on a parcel that has been vacant since 2004 when a single-family dwelling was demolished. It appears that the original single-family dwelling was constructed in 1928, but setback requirements from property lines were not listed on the permit. Staff was unable to obtain an aerial photo taken in 1957. Based on the 1957 photo it appears that the single-family dwelling was constructed approximately fourteen (14) feet from the front yard property line located along the east side of the property; fifteen (15) feet from the front yard property line along the south side of the property; five (5) feet from the property line located along the north side of the property; and thirty-five (35) feet from the property line located along the west side of the property. A copy of the 1957 aerial photo is attached.</li> </ol>	
<b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>	
<ol style="list-style-type: none"> <li>Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”</li> <li>Section 14-04-06(7) of the City Code of Ordinances (R10-Residential zoning district)(Front Yard) states, “Each lot shall have a front yard of not less than twenty-five (25) feet in depth.” As the proposed variance is located on a corner lot at the intersection of two streets, the property is considered to have two front yards. According to the site plan submitted with the request, the applicant is proposing to reduce the required front yard setback along the east side of the property (North 12<sup>th</sup> Street) from twenty-five (25) feet to fifteen (15) feet and to reduce the required front yard setback along the south side of the property (East Avenue B) from the required twenty-five feet to twelve feet eleven inches (12’ 11”).</li> </ol>	
<i>(continued)</i>	

3. Section 14-04-06(9) of the City Code of Ordinances (R10-Residential zoning district)(Rear Yard) states, "Each lot shall have a rear yard not less than twenty (20) feet in depth." The established rear yard for this particular parcel is located on the north side of the property. According to the site plan submitted with the request, the applicant is proposing to reduce the required rear yard setback from twenty (20) feet to fifteen feet one inch (15' 1").

**FINDINGS:**

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R10-Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance

**RECOMMENDATION:**

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

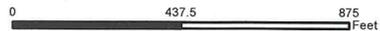
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

**Proposed Variance**  
**Lot 6 less the West 45 feet of the South 42 feet, Block 47**  
**Northern Pacific 2nd Addition**

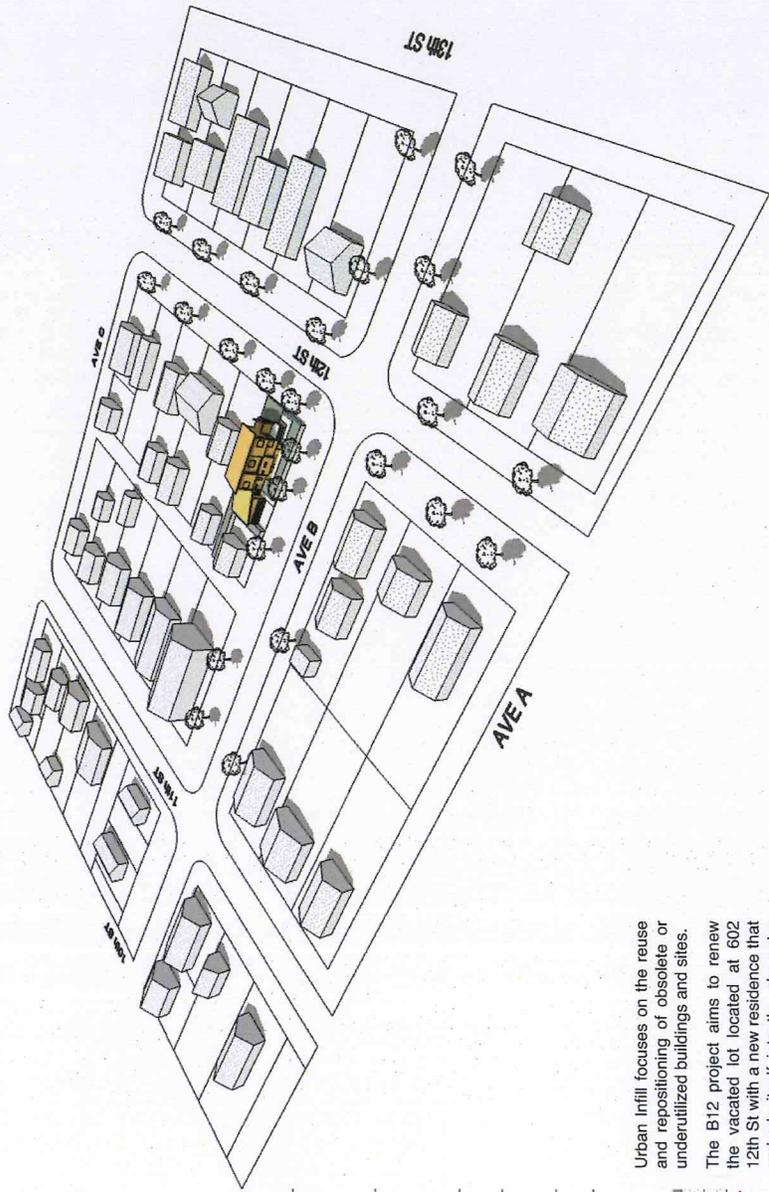


DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
Date: 10/15/20 (H/b)

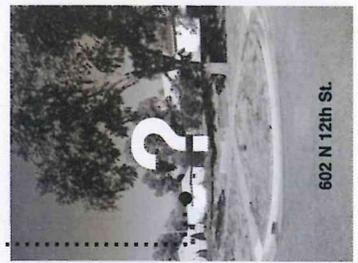
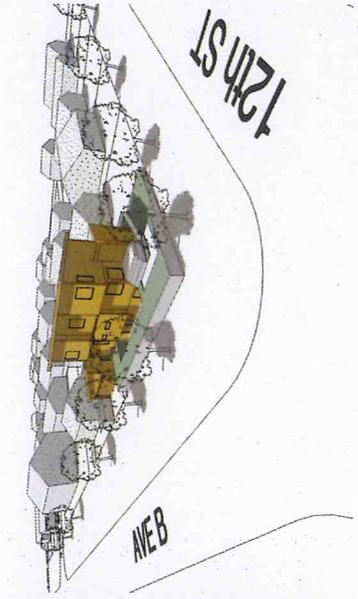
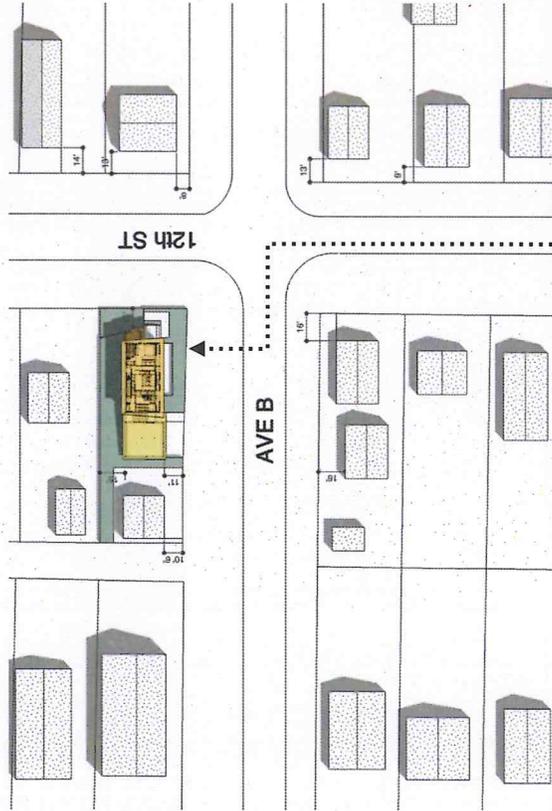
Source: City of Bismarck

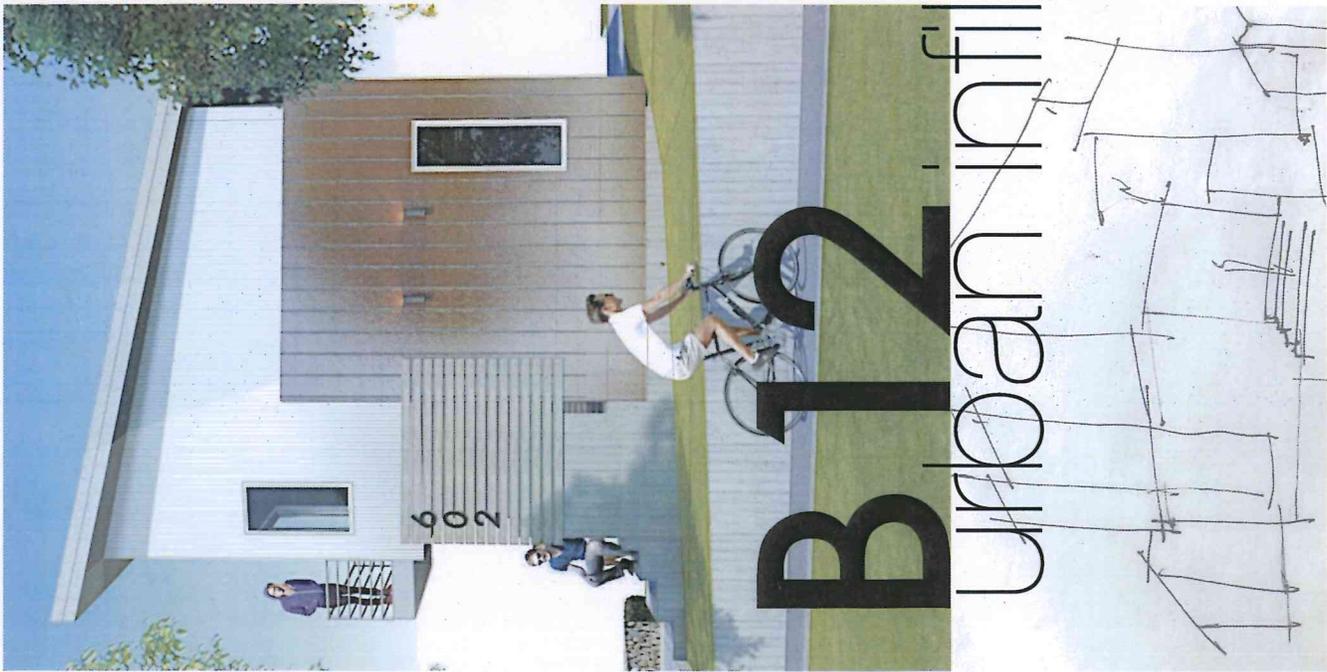


# B12 Urban infill



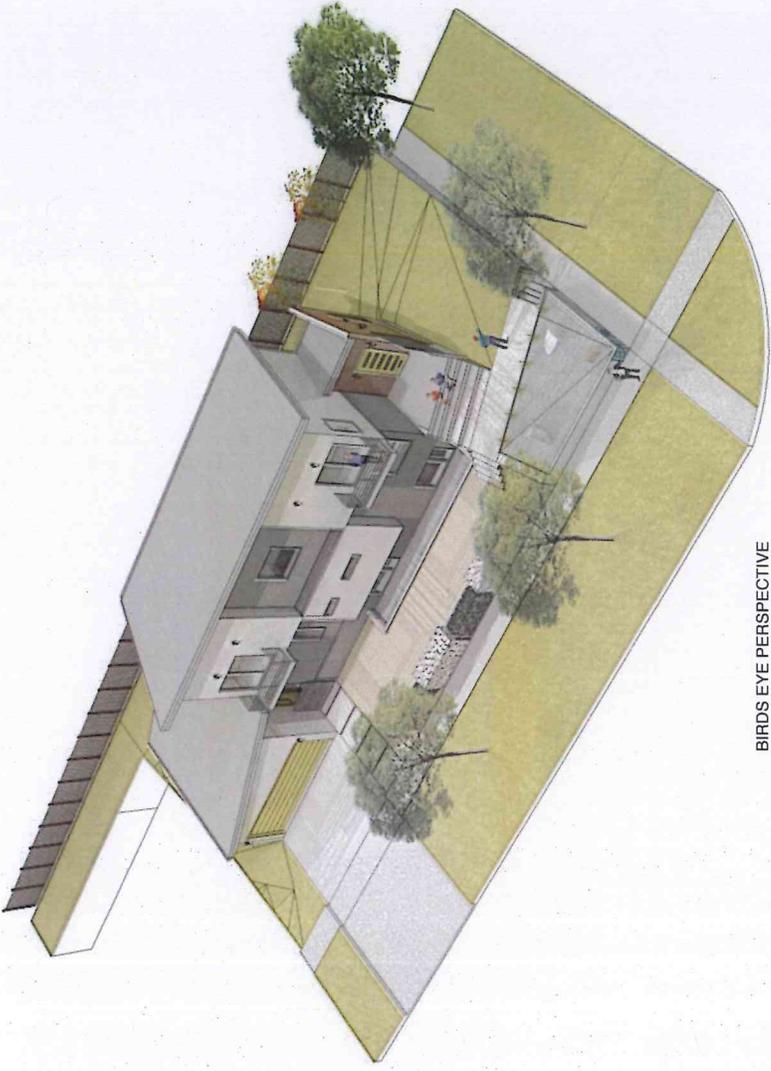
Urban Infill focuses on the reuse and repositioning of obsolete or underutilized buildings and sites. The B12 project aims to renew the vacated lot located at 602 12th St with a new residence that embeds itself into the character of the neighborhood and erases blight by creating value.



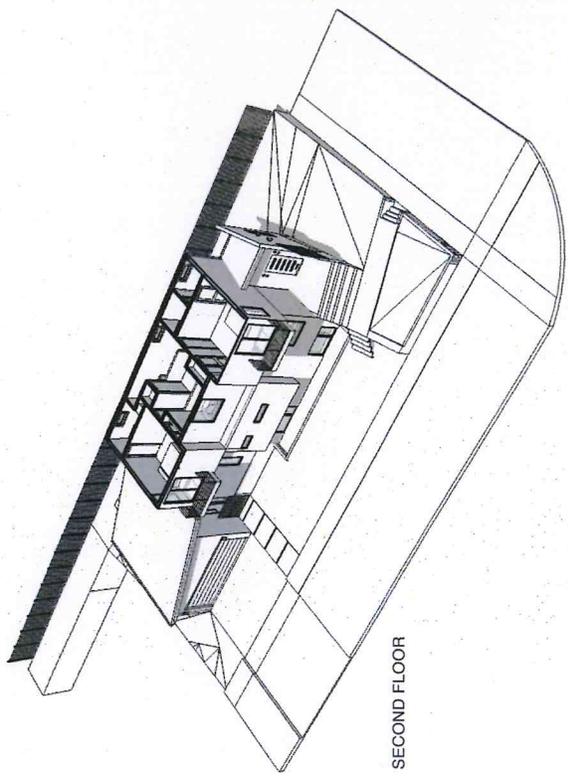


**PLAIN VIEW**  
DESIGN Co

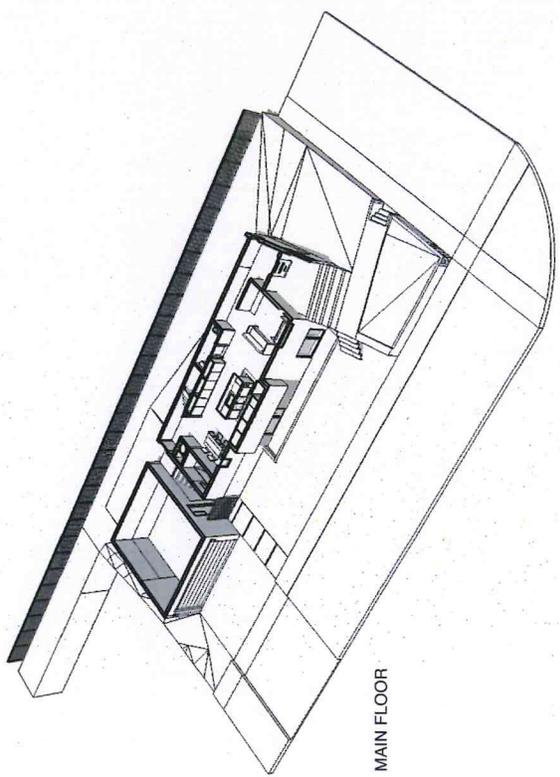
COPYRIGHT © PLAIN VIEW LLC 2014



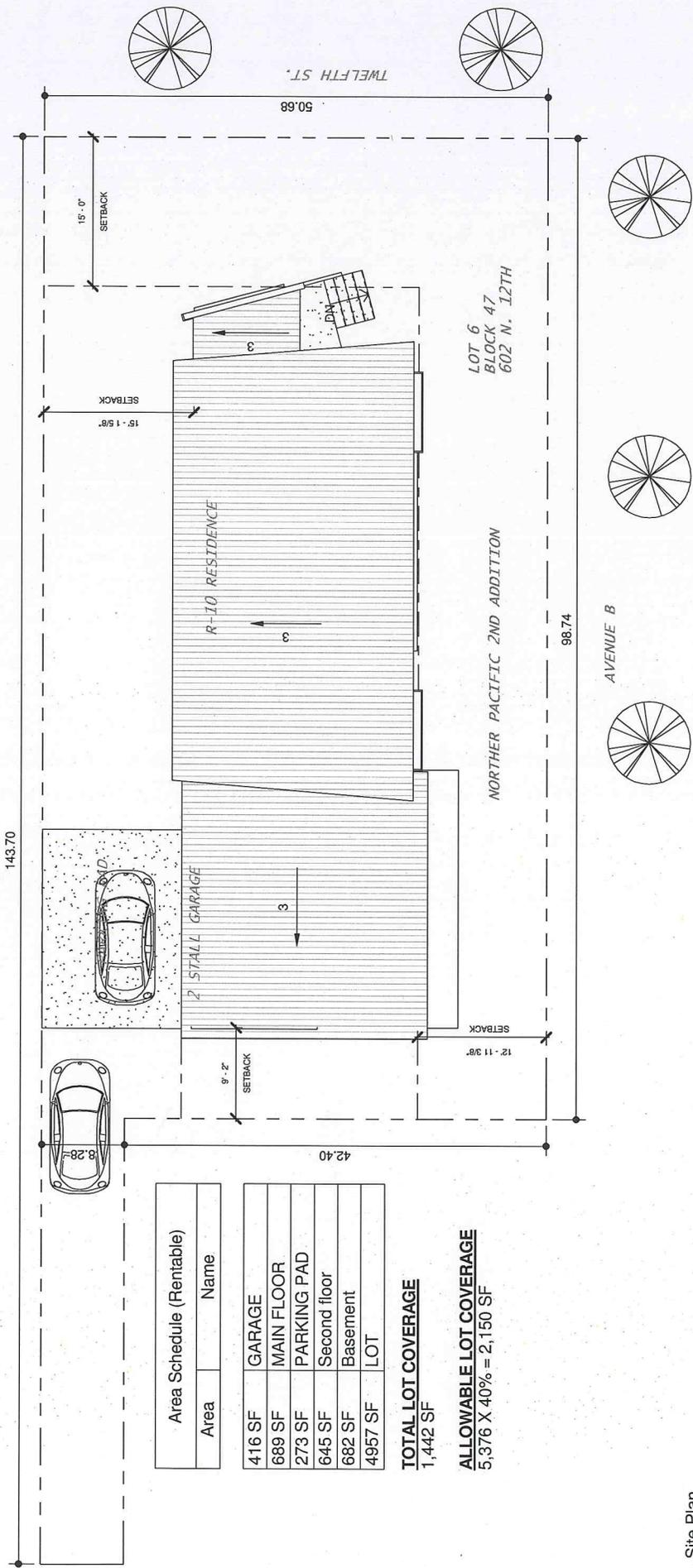
BIRDS EYE PERSPECTIVE



SECOND FLOOR



MAIN FLOOR



Area Schedule (Rentable)	
Area	Name

416 SF	GARAGE
689 SF	MAIN FLOOR
273 SF	PARKING PAD
645 SF	Second floor
682 SF	Basement
4957 SF	LOT

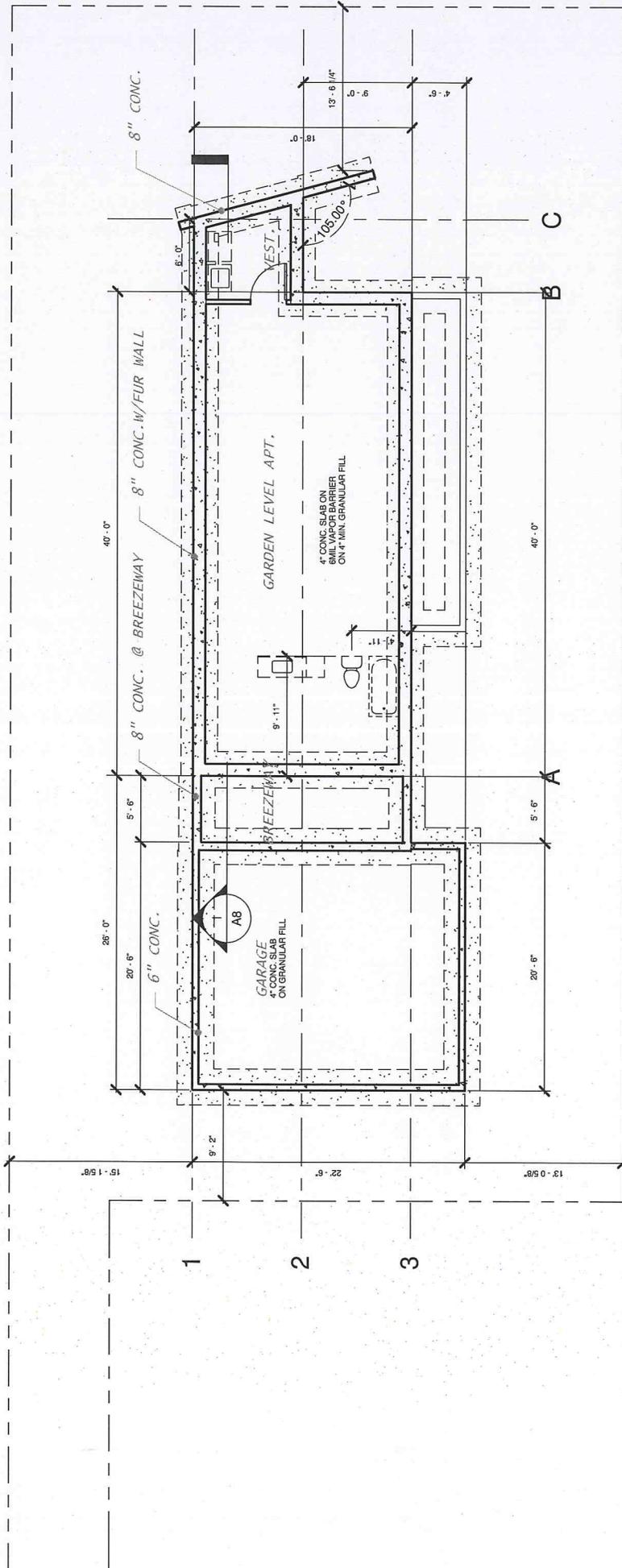
**TOTAL LOT COVERAGE**  
1,442 SF

**ALLOWABLE LOT COVERAGE**  
5,376 X 40% = 2,150 SF

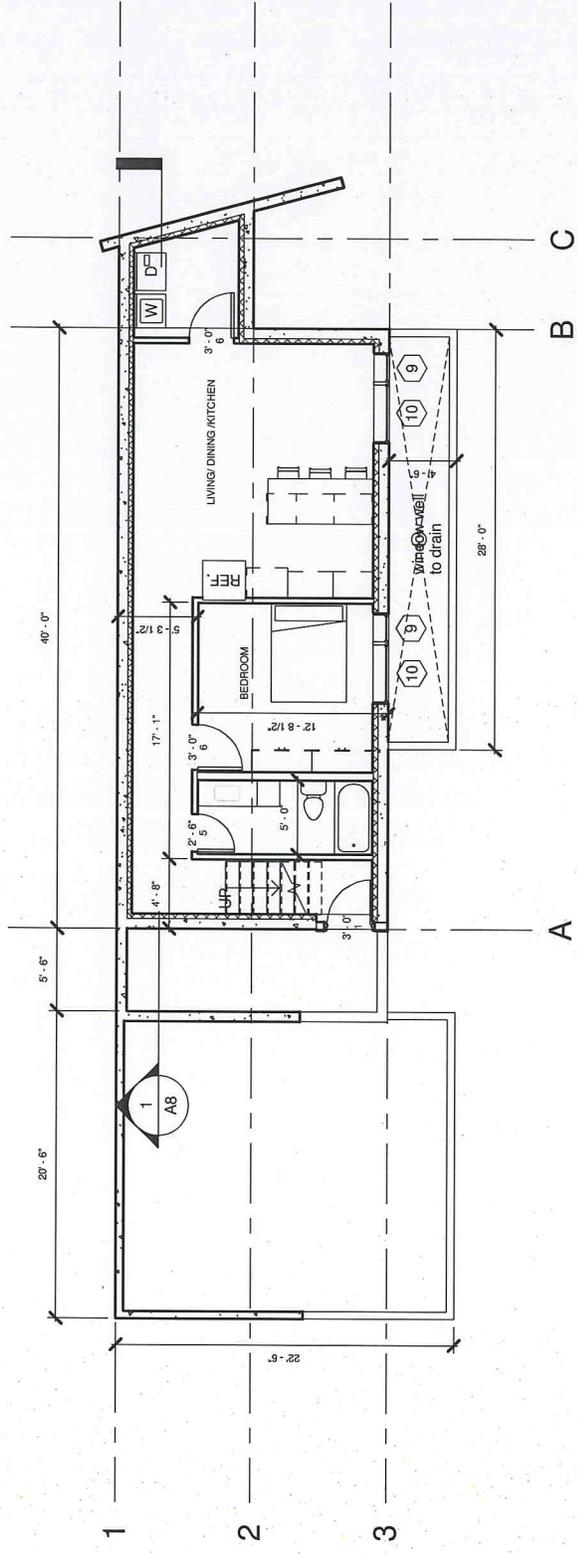
1 Site Plan  
1" = 10'-0"



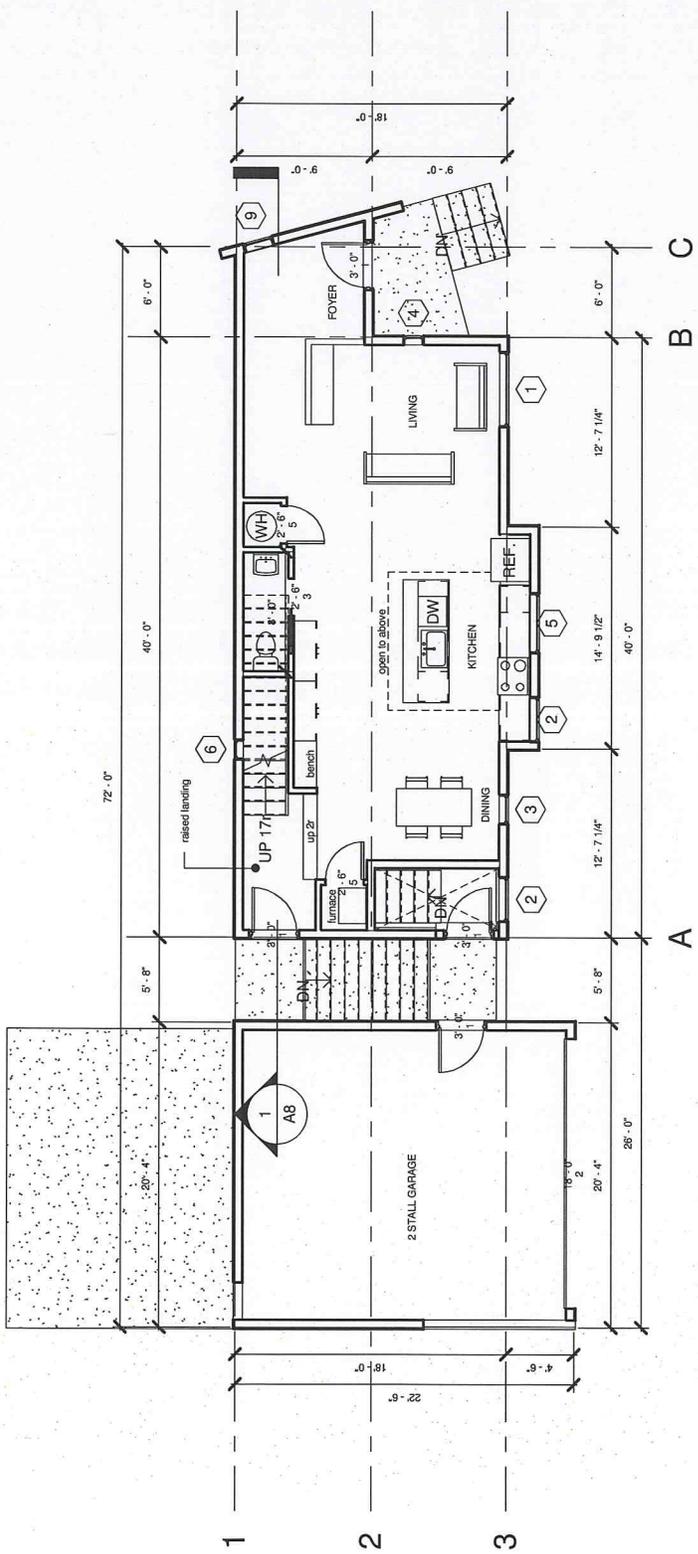
COPYRIGHT © PLAIN VIEW LLC 2014



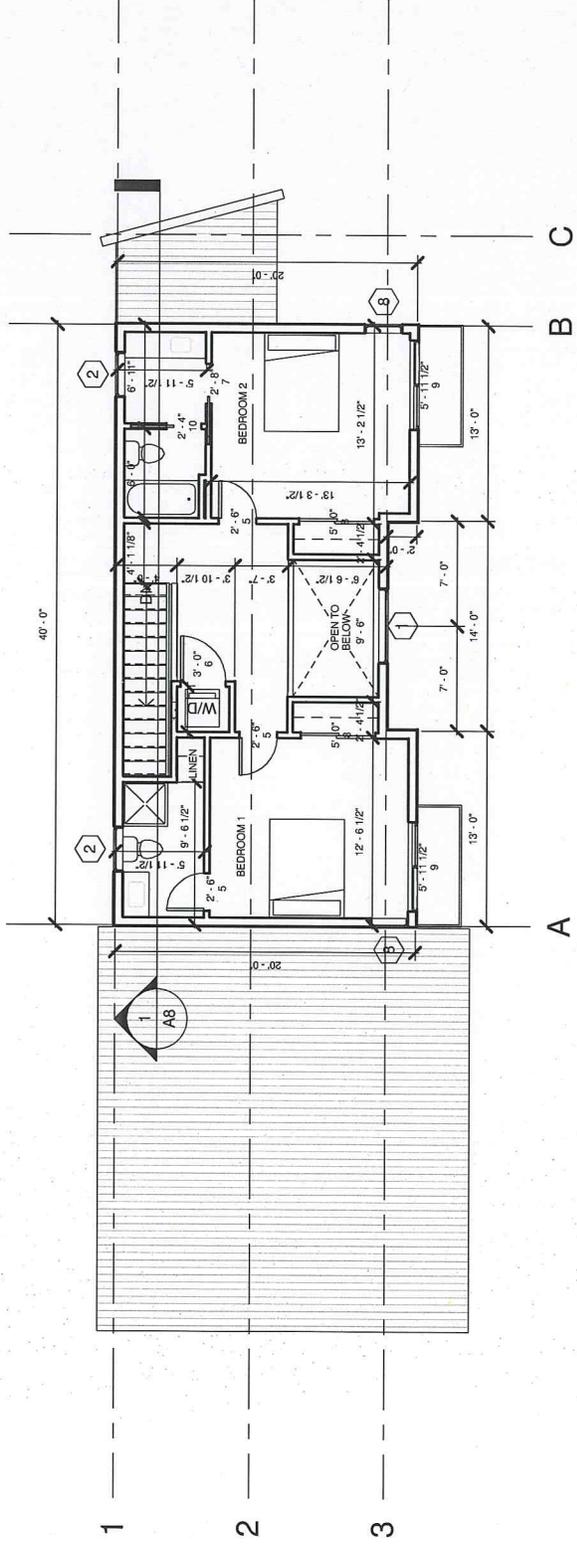
① FOUNDATION  
 1/8" = 1'-0"



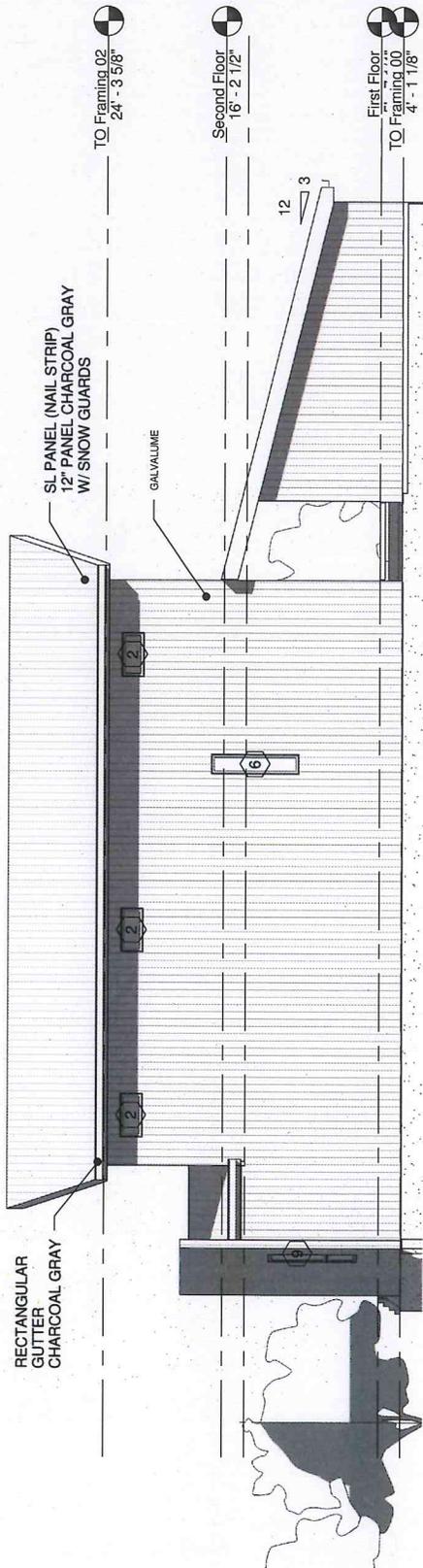
1 Basement  
1/8" = 1'-0"



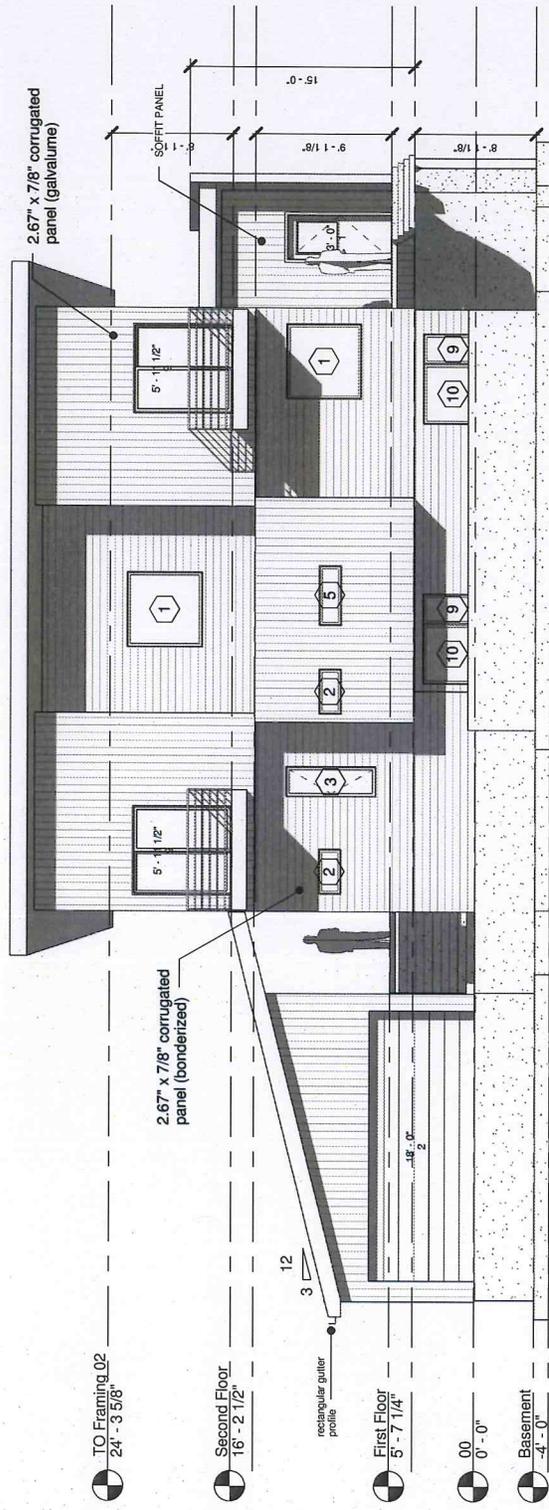
① First Floor  
1/8" = 1'-0"



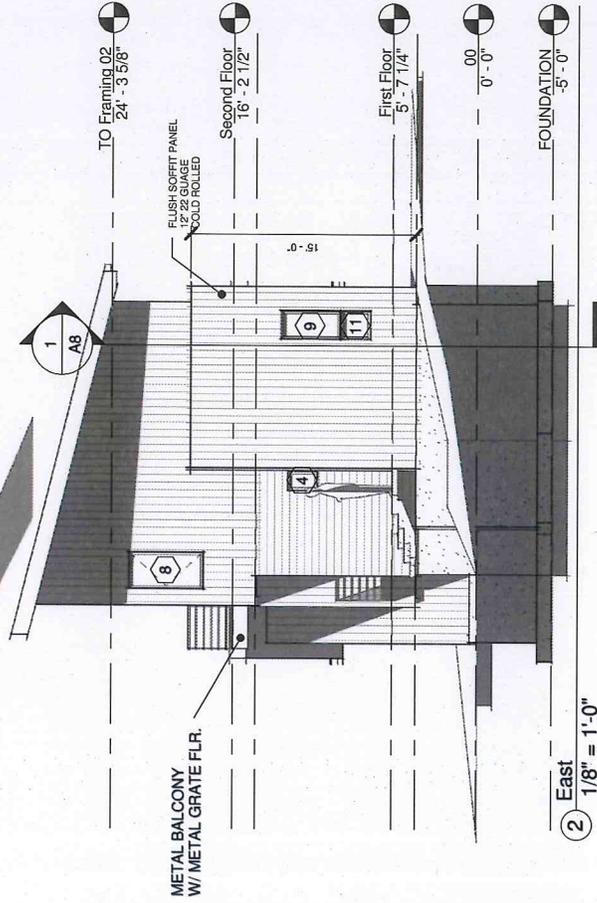
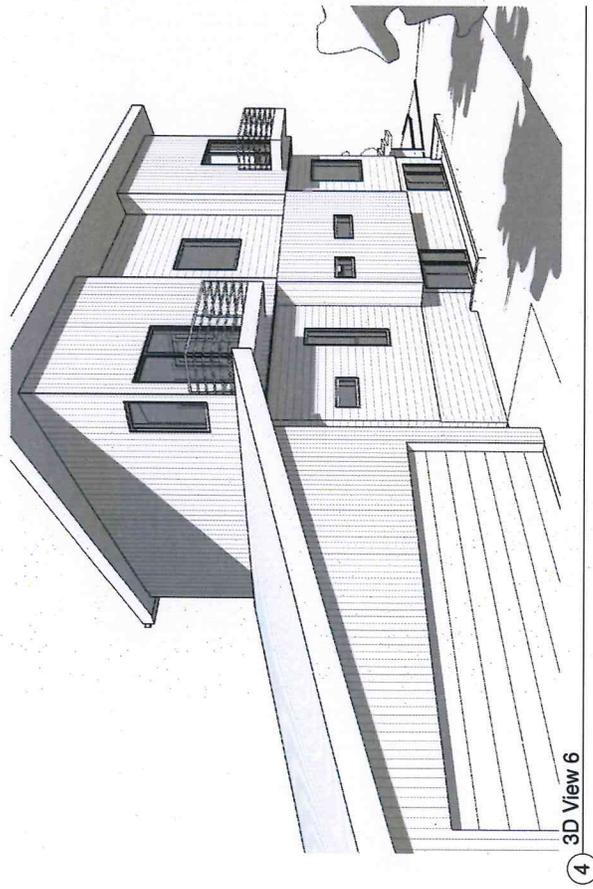
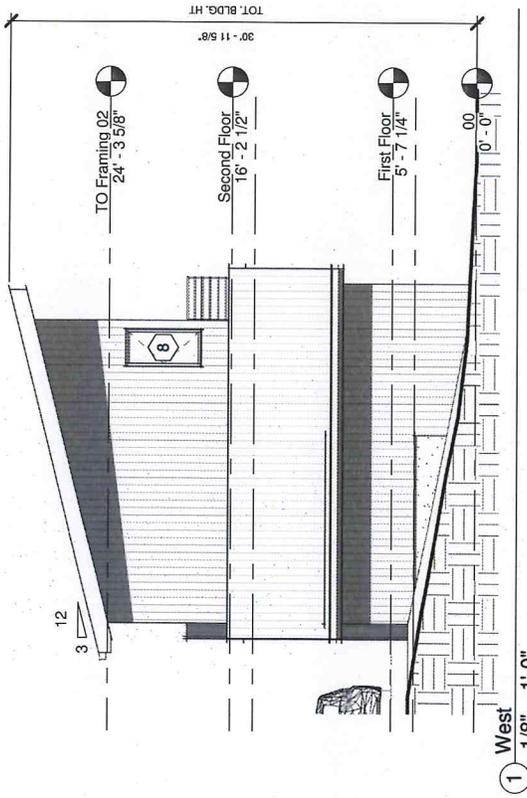
1 Second Floor  
1/8" = 1'-0"



① North  
1/8" = 1'-0"



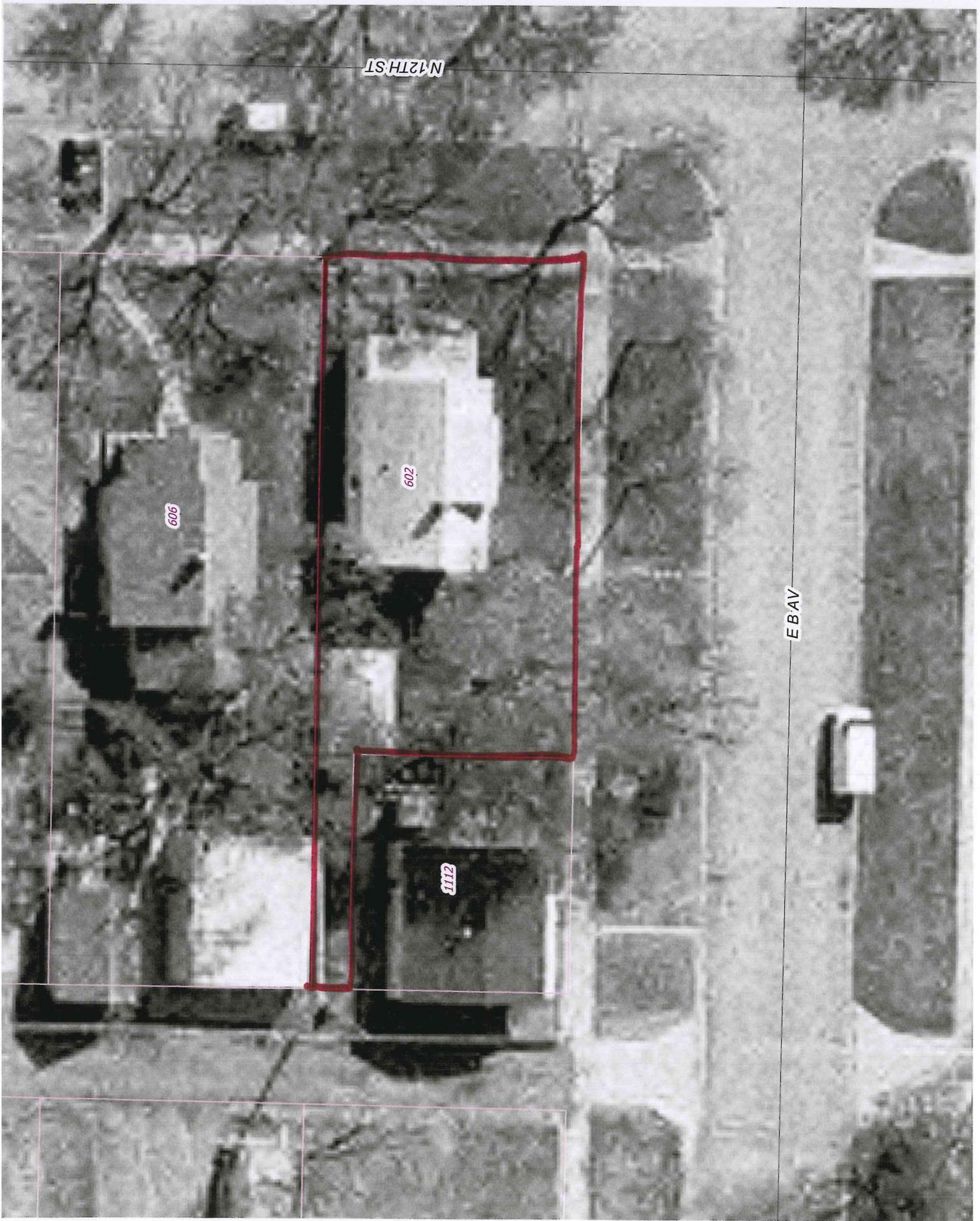
② South  
1/8" = 1'-0"



**PLAIN VIEW**  
DESIGN Co

N ↑

Aerial Photo 1957



N 12TH ST

606

602

1112

E BAV

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

1. Property Address or Legal Description: 662 N. 12<sup>TH</sup> ST

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

3. Type of Variance Requested: SETBACKS FRONT, REAR, SIDE

4. Applicable Zoning Ordinance Chapter/Section: 4-04-06

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.)

• SINCE THIS IS A CORNER LOT, THE (25') FRONT YARD SETBACK LIMITS THE POSSIBILITY OF PLACING A STRUCTURE.  
 • THE LOT IS 50' WIDE & IRREGULARLY SHAPED  
 • REAR YARD SETBACK (20') LIMITS PLACING STRUCTURE.  
 \* VARIANCES REQUESTED:  
 (15') FRONT YARD, (12'-11") FRONT YARD, (15'-1") REAR YARD

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

THE LIMITATIONS OF THE CITY ORDINANCE DEPRIVES US OF REASONABLE USE THIS LOT BASED ON ITS IRREGULAR SHAPE, NARROWNESS, & CORNER LOT DESIGN. WITHOUT THE REQUESTED SETBACKS, THERE IS NO WAY TO BUILD AN APPROPRIATE STRUCTURE.

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

THE REQUESTED VARIANCES WOULD ALLOW US TO ~~BRING~~ BRING VALUE TO THE BLIGHTED LOT, BOTH FROM TAXABLE & NEIGHBORHOOD PERSPECTIVE. THE VARIANCES WOULD ALLOW US TO BUILD A RESIDENCE THAT EMBEDS ITSELF INTO THE NEIGHBORHOOD, ADDS CHARACTER, & RESTORES VALUE TO THE SURROUNDING COMMUNITY.

# Bismarck

## Community Development Department

October 27, 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, November 6, 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.

Jesse Bradley is requesting a variance from Section 14-04-06(7) of the City Code of Ordinances (R10-Residential zoning district)(Front Yard) to reduce the required front yard setback located along the east side of the property from twenty-five (25) feet to fifteen (15) feet and to reduce the required front yard setback located along the south side of the property from twenty-five (25) feet to twelve feet eleven inches (12 feet 11 inches); and from Section 14-04-06(9) of the City Code of Ordinances (R10-Residential zoning district)(Rear Yard) to reduce the required rear yard setback located along the north side of the property from twenty (20) feet to fifteen feet one inch (15 feet 1 inch) for the purpose of constructing a two-family dwelling on Lot 6 less the West 45 feet of the South 42 feet, Block 47, Northern Pacific 2<sup>nd</sup> Addition (602 North 12<sup>th</sup> Street).

A site plan and 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 - [planning@nd.gov](mailto:planning@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



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>	
<b>Title:</b> 1329 Talon Road – Variance (Lot Coverage) (Lot 20, Block 3, Eagle Crest Addition)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> November 6, 2014
<b>Owner(s):</b> Red Door Homes of Bismarck	<b>Architect / Engineer:</b> None
<b>Reason for Request:</b> Variance from Section 14-04-03(6) of the City Code of Ordinances (R5-Residential zoning district)(Lot Coverage) to increase the maximum lot coverage for a lot located in the R5-Residential zoning district from 30% to 32.9% of 319.1 square feet for the purpose of constructing a single-family dwelling.	
<b>Location:</b> In northwest Bismarck, along the south side of Talon Road, east of Ash Coulee Drive.	
<b>ADDITIONAL INFORMATION:</b>	
1. A building permit was issued on August 27, 2014 for a single-family dwelling, however after the permit was issued it was discovered that the single-family dwelling was permitted in error for 2.9 percent or 319.1 square feet over the allowed lot coverage of 30% or 3,254.4 square feet. The Building Inspection Division has put a hold on the permit and will not allow construction until a variance is granted or revised building plans reducing the lot coverage are submitted and approved.	
<b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>	
1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”	
2. Section 14-04-03(6) of the City Code of Ordinances (R5-Residential zoning district)(Lot Coverage) states, “The ground area occupied by the principal and accessory buildings shall not exceed thirty (30) percent of the total area of the lot. In computing lot coverage, off-street parking areas complying with Section 14-03-10 hereof shall be added to the actual area of buildings, if such space is not furnished within a buildings.” The lot area is 10,848 square feet; thirty (30) percent of the lot area is 3,254.4 square feet. When calculating lot coverage, the ground coverage or footprint of the principal building and accessory buildings are included. According to the site plan submitted with the request, the total ground coverage or footprint of the single-family dwelling, which includes the attached garage covered front porch and covered rear deck, is 3,573.5 square feet which is 319.1 square feet over the allowable lot coverage. If approved as proposed, the lot coverage would be increased to 32.9 percent.	
<b>FINDINGS:</b>	
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 R5-Residential zoning classification.	
2. The hardship is not caused by the provisions of the Zoning Ordinance.	
<i>(continued)</i>	

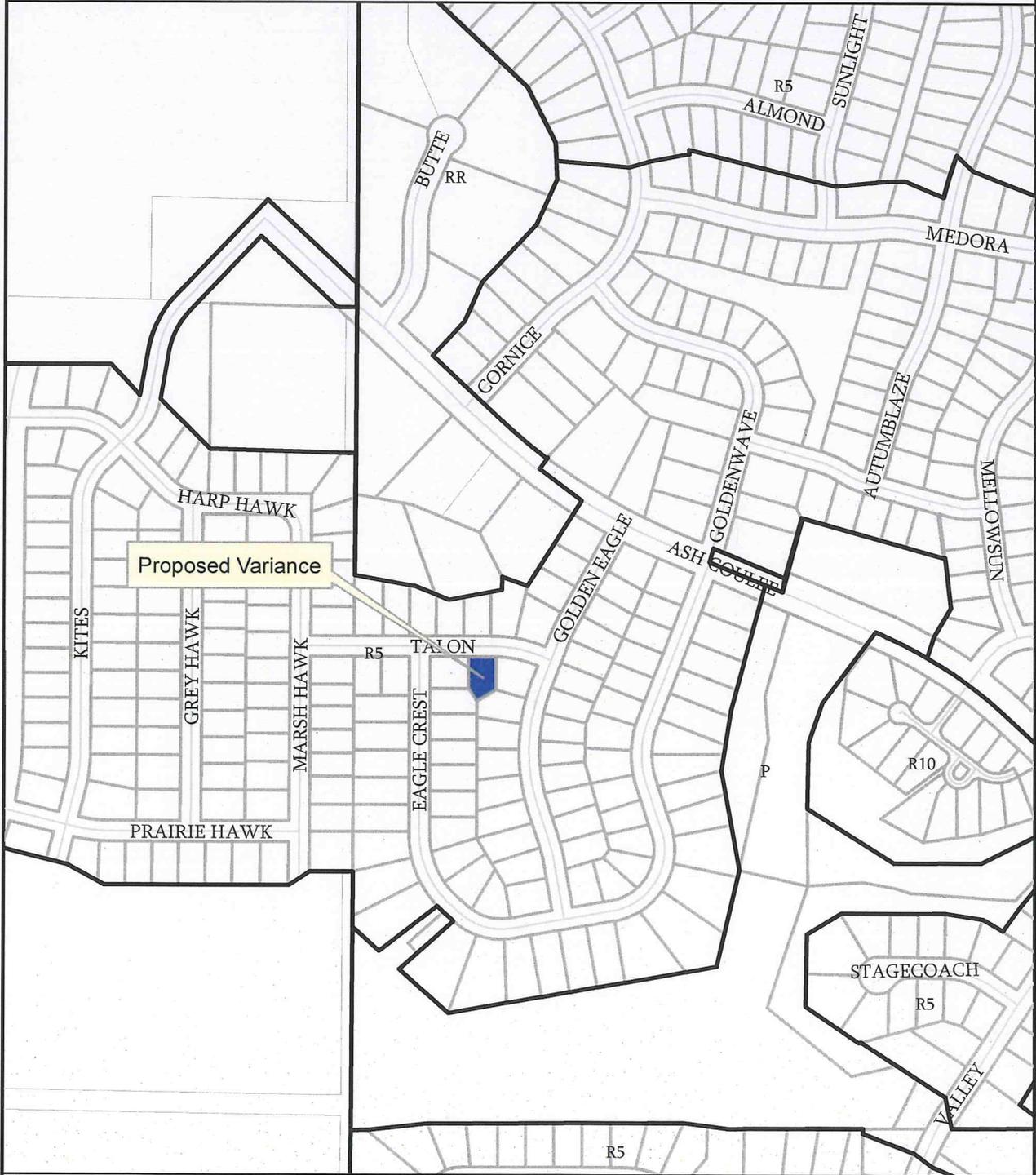
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance

**RECOMMENDATION:**

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

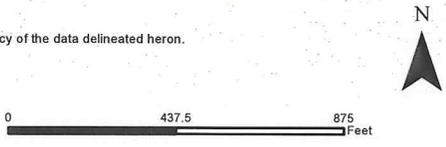
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

# Proposed Variance Lot 20, Block 3, Eagle Crest 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: 10/20/20 (Mlb)

Source: City of Bismarck



RECEIVED  
OCT 20 2012

*Newplan*

BUILDER/CONTRACTOR:

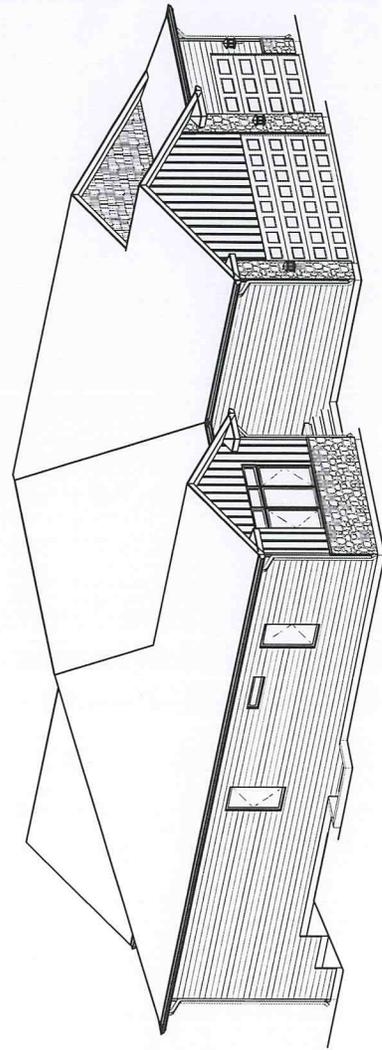


**PROJECT INFORMATION**

1st. FLOOR (ABOVE GRADE)	2314	SQ.FT.
2nd. FLOOR (ABOVE GRADE)	0	SQ.FT.
FINISHED BASEMENT	0	SQ.FT.
Total Heated:	2314	SQ.FT.
<hr/>		
GARAGE	931	SQ.FT.
FRONT PORCH	81	SQ.FT.
UNFINISHED BASEMENT	2223	SQ.FT.

FINISHED SQUARE FOOTAGE CALCULATIONS FOR THIS HOUSE ARE BASED ON THE FINISHED SQUARE FOOTAGE OF THE HOUSE AS BUILT.

It is the Subcontractor's responsibility to verify all details and dimensions. All work shall be performed in accordance with all applicable national, state, and local codes and regulations. All dimensions are to rough frame of studs or to the outside of concrete. Verify cabinet dimensions/layout shown w/ final layout from supplier. All footings to be below frost line and must rest on undisturbed soil capable of handling the building. All penetrations are to be sealed in accordance with state and local codes.



REV. NO.	DATE	REMARKS
1	08/29/2014	Permanent Plan Set
2	09/04/2014	Builder Approval Plan Set
3	09/08/2014	Construction Set (As Built)
4	10/01/2014	Fixed Member Data
5	10/10/2014	MB tub deck & layout adj. House adj to lot
6	10/14/2014	CO. Updated per redlines



PRINT DATE:	10/14/2014
LOT #:	L20 B3 Eagle Crest Addition
LOCATION:	1329 Talon Rd, Bismarck
SPEC:	
FOR:	
SHEET NUMBER:	0.00

CG Wiscors 2012 PLAN CREATION DATE 10/29/2012

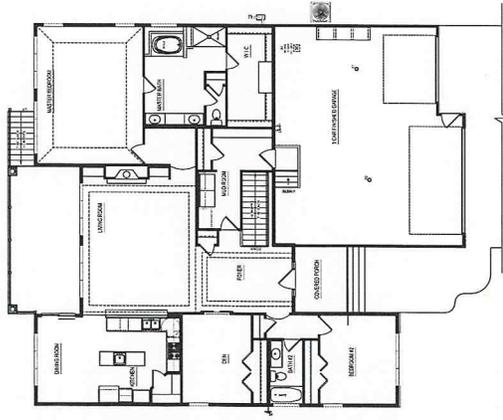
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**3SS12129 / 1012**

**SECOND FLOOR PLAN LAYOUT**

**FIRST FLOOR PLAN LAYOUT**



Property Address 1329 TALON RD Location CITY OF BISMARCK Phone 355-1465  
 Special Flood Hazard NO Elevation  
 Deeded Owner RED DOOR HOMES OF BISMARCK LLC

Contractor VERITY HOMES INC Contractor Num 34164  
 Nondeeded Owner VERITY HOMES INC  
 Contact Person ADAM MOON Phone Num

Desc Of Work SINGLE FAMILY HOUSE WITH 1001SF GARAGE, 2392SF UNFINISHED BASEMENT, 252SF CVD DECK, 96SF CVD ENTRY  
 Property Number 1440-003-095 Block 3  
 Addition Name EAGLE CREST  
 Legal Desc 1. LOT 20  
 3.

Type Of Work 1 - NEW Zoning Dist R5 - RESIDENTIAL SINGLE FAM  
 Occupancy Group R - RESIDENTIAL Easement 7' S  
 Num Living Units 1 Stories 3  
 Ownership Code 1 - PRIVATE Type Const VB

Area Main Bldg	3,594	Total	3,594	Lot Front Width	87.00
Garage Size	0	Current Permit	1,001	Lot Rear Width	72.05
Total Finished	0		2,497	Avg Lot Width	79.53
Total Basement	0		0	Max Bldg Width	63.62
Area Acc Bldgs	0		0	Bldg Width	61.50
Num Off Street Parking	0		0	Lot Square Ft	10,848.00
Area Off Street Parking	0		0	Percent Occupied	.00
Total	0		0		

Cost Less Land 261,230.50  
 Service Line Size 1 Water Mtr .75= 0 1=1 1.5=0 2=0 3=0 Water Agreement: YES Concrete Work: ASSESSABLE

Charges:  
 Permit Fee 1,174.25 Water Meter 602.37  
 Road Approach .00 Mobile Home .00  
 STPW W665  
 Payment Method Billed Num 14004604 ALL CHARGES ARE DUE AND PAYABLE WITHIN 30 DAYS TOTAL 1,776.62 \*\*\*

\*\*\*\*\*NOTICE\*\*\*\*\*  
 Separate permits are required for electrical, plumbing and mechanical (HVAC). Work under this permit must commence within 180 days of permit issuance and once commenced, work may not be suspended for more than 60 days. Permittee must comply with all codes and ordinances applicable to work. Issuance of this permit does not grant any authority to erect, modify or use any structure in violation of any code or ordinance. All required inspections, including a final inspection, must be requested by the permittee. In consideration for connection to City utilities, Permittee agrees to pay all applicable utility fees and charges pursuant to City Ordinance. This Permit creates no warranties with regard to construction or code compliance. The inspections under this permit are for the benefit of the public and not the permittee and the inspections do not create a duty to the Permittee, the owner or, to a subsequent purchaser with regard to quality of construction or code compliance. Federal law may require this construction project to conform with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.

I hereby certify that I have read and examined this application and know the same to be true and correct.  
 \_\_\_\_\_  
 BRADY BLASKOWSKI Building Official  
 \_\_\_\_\_  
 CASSANDRA ANDERSON Permit Applicant  
 \_\_\_\_\_  
 Issued By

OCT 23 2014

Print Form



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

1. Property Address or Legal Description: 1329 Talon Road, Bismarck, ND 58503

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

3. Type of Variance Requested: Overage in maximum square footage allowed

4. Applicable Zoning Ordinance Chapter/Section: 140-04-03 subsection 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. )

The permit for 1329 Talon Road had been issued on 8/17/14 (#2014-01441). The square footage submitted and approved on the Building Permit was 1001sf garage, 2392sf unf base, 252sf covered rear deck and 96 sf covered entry. At that time I believe we were over coverage by approx 4-5%. We were notified at that time that the building should be shrunk. We have shrunk the building the best we could based on the fact that we have a prospective buyer on the home. It is now approaching the third month after the permit was issued. We would request a variance be issued as we have shrunk the plan to reflect a covered area of 32.9% (3573.5 sq feet).

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

The limitations deprive the builder the use of the land as it was originally granted and issued on 8/17/14 by the Bismarck Inspections. Work on this property began shortly thereafter. As a builder we have done our best to remedy this oversight and coverage has been shrunk to 32.9%.  
(please see attached the lot survey exhibit, original permit, and new building plan.)

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

The variance request is the minimum needed to conform tot he matter at hand. The ordinance as written states that the ground area occupied by the principal structure needs to be computed. There is no clarification leading to whether or not a covered deck or porch are include as actual occupied area of the principal structure.

# Bismarck

## Community Development Department

October 27, 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, November 6, 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.

Art Goldammer is requesting a variance from Section 14-04-03(6) of the City Code of Ordinances (R5-Residential zoning district)(Lot Coverage) to exceed the allowable maximum lot coverage of 30% by 2.9% or 319.1 square feet, in order to construct a single family dwelling on Lot 20, Block 3, Eagle Crest Addition (1329 Talon Road).

A site plan and 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 - [planning@nd.gov](mailto:planning@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



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

<b>BACKGROUND:</b>	
<b>Title:</b> 3324 Frost Lane – Variance (Accessory Building – Side Yard Setback) (Lot 8, Block 3, Sattler’s Sunrise 8 <sup>th</sup> Addition)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> November 6, 2014
<b>Owner(s):</b> Adam Tschosik	<b>Architect / Engineer:</b> None
<b>Reason for Request:</b> Variance from Section 14-03-05(4)(a) of the City Code of Ordinances (Supplementary Provisions / Accessory Building) to reduce the required side yard setback located along the northeast property line from six (6) feet to three (3) feet for the purpose of constructing an accessory building.	
<b>Location:</b> In northeast Bismarck, along the west side of Frost Lane, between East Calgary Avenue and Hitchcock Drive.	
<b>ADDITIONAL INFORMATION:</b>	
1. A building permit was issued on July 24, 2014 for a 12’x 20’ accessory building, however after the first inspection it was discovered that the accessory building was not setback the required six (6) feet from the property line located on the northeast side of the property and that the building permit was issued in error. The Building Inspection Division has put a hold on the permit and will not allow construction until a variance is granted as proposed or revised building plans showing the required six (6) foot setback are submitted and approved.	
<b>APPLICABLE PROVISION(S) OF ZONING ORDINANCE:</b>	
1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, “A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return.”	
2. Section 14-03-05(4)(a) of the City Code of Ordinances (Supplementary Provisions / Accessory Buildings) states, “In any residential district except RR and RR5, all accessory buildings except garages shall be located in the rear yard and shall not be less than three (3) feet from the rear or side lot line when located at least ten (10) behind the principal building. Any uncovered deck, patio or porch shall not be considered as part of the principal building for purposes of this subsection. If the ten (10) foot distance cannot be maintained the same side yard must be maintained as is required for the principal building.” According to the site plan submitted with the request, the proposed accessory building is not located ten (10) feet behind the principal building and subject to the same setback requirements of the principal building. For this particular property the side yard requirement along the northeast side of the property is six (6) feet. The submitted site plan shows the proposed accessory building setback three (3) feet from the side yard property line located at the northeast side of the property.	
<b>FINDINGS:</b>	
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 R5-Residential zoning classification.	
<i>(continued)</i>	

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.



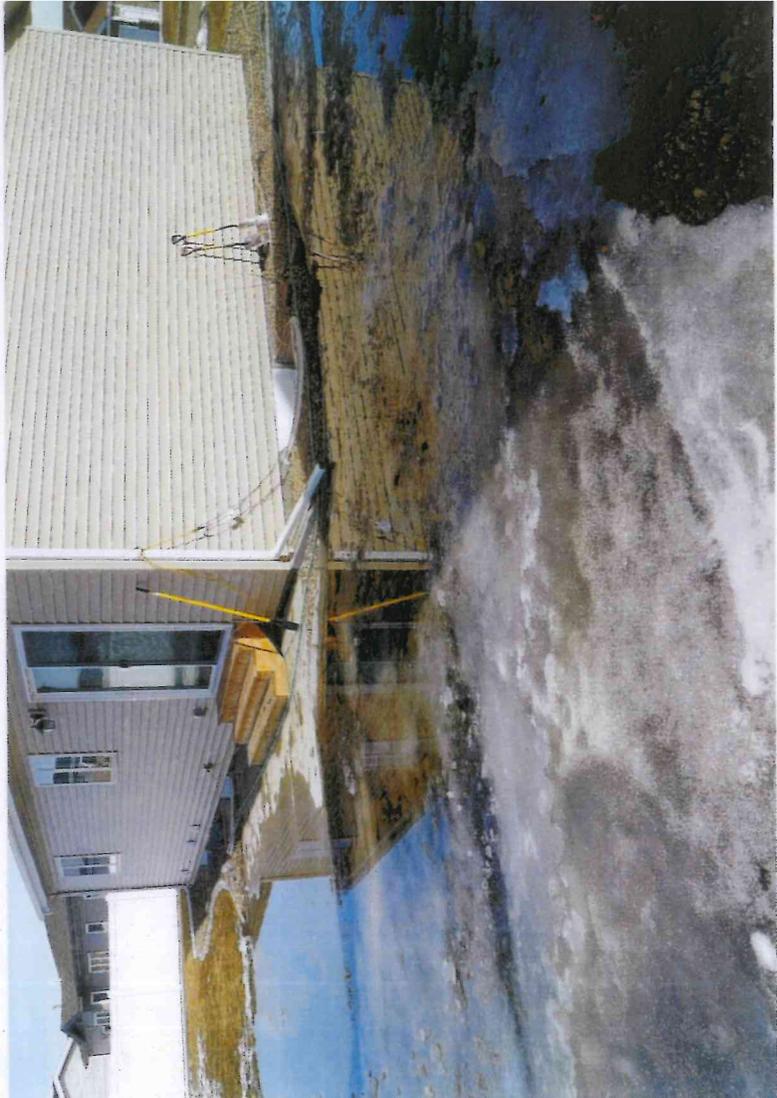
**Variance Request - 3324 Frost Lane  
(Lot 8, Block 3, Sattler's Sunrise 8th Addition)**

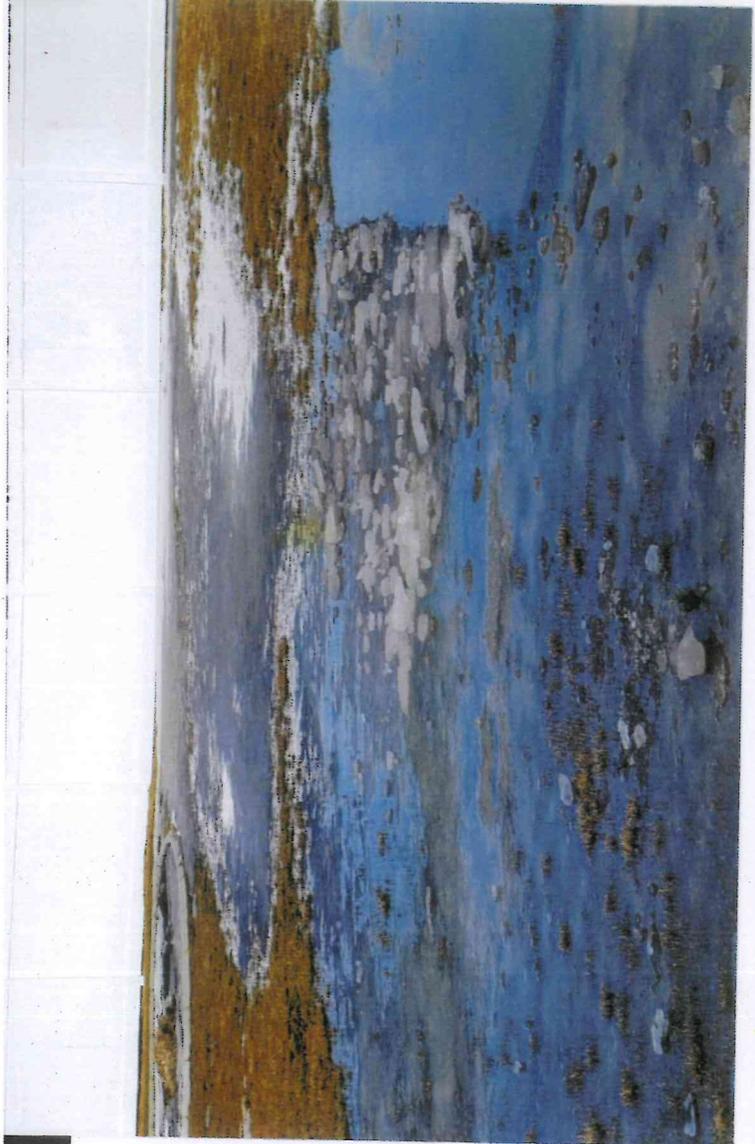


This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.











Bismarck

RECEIVED  
OCT 14 2014

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

1. Property Address or Legal Description: 3324 Frost Lane
2. Location of Property:  City of Bismarck  Extraterritorial Area (ETA)
3. Type of Variance Requested: 14-03-05(4)(d) Side yard
4. Applicable Zoning Ordinance Chapter/Section: 14-03-05(4)(a)
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.)

It would restrict me from placing the shed in an area free and clear of water flow due to a steep rear yard and re-shaping to achieve correct drainage from my yard.

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

The location for the shed was chosen in cooperation with the permit department. They have fully admitted wrong-doing in approval of the placement for the shed. Therefore, it would deprive me of using the remaining small, functional, level area for shed placements.

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

North side of shed from property line is placed 3ft from property line where the adjacent neighbor and I have created drainage from rear of home out to front. East side of shed is placed adjacent to camper pad. South side of shed is placed ten feet from eave of the house, also allowing space between shed and home for underground utilities that run through the area. West side of shed is placed 3ft from the beginning of drainage slope for water flow that runs east to west across entire rear yard. Pictures (enclosed) will show what water issues were present prior to re-shaping and are completely rendered. If shed was to be placed back further it would be directly in the middle of the corrected area. The shed will be flush mounted so no eaves will extend over required area.

# Bismarck

## Community Development Department

October 27, 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, November 6, 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.

Adam Tschosik is requesting a variance from Section 14-03-05(4)(d) of the City Code of Ordinances (Supplementary Provisions / Accessory Buildings) to reduce the required side yard setback located along the northeast property line from six (6) feet to three (3) feet for the purpose of constructing an accessory building on Lot 8, Block 3, Sattler's Sunrise 8<sup>th</sup> Addition (3324 Frost Lane).

A site plan and 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 - [planning@nd.gov](mailto:planning@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



**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
September 4, 2014**

The Bismarck Board of Adjustment met on September 4, 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, Jenny Wollmuth – Planner and Hilary Balzum – Community Development Office Assistant.

**MINUTES:**

Chairman Marback asked for consideration of the minutes of the August 7, 2014 meeting of the Board of Adjustment.

Mr. Seifert said the motion on page 5 should reflect that Chairman Marback opposed the motion.

Ms. Balzum said she would make the correction prior to publication of the minutes.

**MOTION:** A motion was made by Mr. Ubl and seconded by Mr. Seifert to approve the minutes of the August 7, 2014 meetings with corrections. With Board Members Clark, Hoff, Seifert, Ubl and Marback voting in favor, the minutes were 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 this request is a continuation of the original request from the August meeting. He said the applicant is 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.

Ms. Wollmuth explained that since asking that this variance request be continued from the last meeting, the applicant has found a solution to the parking issue and the project will now be in compliance so there is no action to take at this time.

**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 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 (NEBRASKA DRIVE)**

Chairman Marback stated the applicant was 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.

Paul Myerchin, Myerchin, Bormann, Monasky and Espeseth, said he is representing Arrowhead Ranch Condo Association and that he attempted to describe the request as best as possible when it was submitted. He said a mistake was made on the application and that the request is actually for 3118 Nebraska Drive, not 3112 Nebraska Drive. He then said a map that was produced by Jason Petryszyn at Swenson, Hagen & Co. gives a picture of the issue and that Mr. Petryszyn will answer any technical questions that might come up. He said this is a basic housekeeping issue to bring the property into compliance and that the use is not changing, only the setback. He said an existing retention pond forced the condo to be built further north and the owners of it now cannot fully enjoy their property.

Mr. Hoff asked if it is known when it was purchased. Mr. Myerchin said it was purchased in 2010, having been constructed in 2009.

Mr. Hoff asked how the issue arose of the property not being in compliance. Mr. Myerchin said the adjacent undeveloped property was recently surveyed and the property stakes and pins were placed extremely close to the existing condo building.

Chairman Marback asked if there are other units in the area that have had to have their lot lines adjusted because of this issue. Ms. Wollmuth said lot lines across the street from this location were adjusted after a survey the buildings were completed by filing for a condo association which adjusted the lot lines.

Wade Wilson, President of the Arrowhead Ranch Condo Association, said he was under the impression that the condos would extend all the way to Florida Drive and parallel to Nebraska Drive and the he had no idea until the sale and the developer had the property surveyed that the property lines are too close to the condos.

Ms. Clark asked if there is any liability on the initial landowner because of this issue.

Ms. Wollmuth said the intention was to extend to Colorado Drive but that did not occur and the property became non-conforming.

**MOTION:** A motion was made by Mr. Seifert to approve the 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.

The motion was seconded by Mr. Ubl and with Board Members Clark, Hoff, Marback, Seifert and Ubl voting in favor of the motion, the motion was approved and the variance request was approved.

**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)**

Chairman Marback stated the applicant 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).

Chairman Marback said he looked at the property and can see where the driveway drops down. He asked if it would be an option to move the driveway and the accessory building can be elevated without such a steep grade.

Mr. Torgerson said he would like to attach the building to the house but that he would be willing to do it unattached. Ms. Wollmuth said the last conversation she had with Mr. Torgerson was about the building being unattached.

Mr. Torgerson said if he moved the driveway there would be a four foot different from the existing garage to the new accessory building and it would not look right.

Ms. Wollmuth said the existing BFE is 1634.2 and the detached building would be at an elevation of 1632.2.

Mr. Ubl asked if any of the FEMA and the National Floodplain Insurance Program (NFIP) regulations have changed recently. Mr. Blaskowski said FEMA has ensured that the staff interpretations of the requirements are correct and that any new structures need to be elevated.

Mr. Ubl asked if FEMA is auditing these types of requests. Ms. Wollmuth said as a member of the NFIP, the request would be subject to review just like any others.

Mr. Seifert said if the building is detached and the driveway is raised up then this could be done without a variance.

Mr. Ubl said the applicant needs to understand that the City of Bismarck is a member of the NFIP, and as a result, FEMA is involved with granting variances in the floodplain. Variances can have an adverse effect on the City's Flood Insurance Program which could be detrimental to the community including the applicant and their neighbors, and their ability to obtain flood insurance.

Chairman Marback asked if attaching the building to the house would put it in compliance. Mr. Blaskowski said he would not be able to grant a variance for an addition

to the house because the house itself is one foot below BFE. He then said the interpretation used to be that it could be floodproofed but since it is not a residential structure, it is an accessory to a residence, the floodproofing provisions do not apply. He said a bi-annual report is to be submitted to FEMA informing them of any variances granted in the floodplain.

Mr. Hoff asked if water was in this residence during the flood in 2011. Mr. Torgerson said yes, that they were not protected by the dike and indicated that the water was approximately four feet deep in the lower level of the house.

Ms. Clark said she has concerns of jeopardizing Bismarck's participation in the NFIP when there are other ways of completing the project without granting a variance even though that might not be the applicant's first preference.

Mr. Torgerson asked if the request is denied if it can be appealed to the City Commission. Chairman Marback said it can be within fifteen days of board's decision today.

**MOTION:** A motion was made by Mr. Ubl to deny the 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). 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 and the variance request was denied.

## **OTHER BUSINESS**

Mr. Hoff said he also had a concern last month about unmoved vehicles at auto body repair shops on Main Avenue and that he would like that reflected in the minutes. Mr. Blaskowski said he checked on both of the concerns that were brought to his attention and that the business on Main Avenue was constructed prior to the Downtown Fringe zoning district being created and that the other business has an additional restoration shop. He said he visited with the owners and he was assured that the facility removes any vehicles from the property if they are abandoned.

## **ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 4:37 p.m. to meet again on October 2, 2014.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Michael Marback, Chairman

DRAFT