



*Community Development Department*

**BISMARCK BOARD OF ADJUSTMENT  
MEETING AGENDA**

**December 4, 2014**

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**Tom Baker Meeting Room**

**4:00 p.m.**

**City-County Office Building**

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**MINUTES**

1. Consider the minutes of the November 6, 2014 meeting of the Board of Adjustment.

**REQUESTS**

2. **Variance from Section 14-04-01(4) of the City Code of Ordinances (RR – Rural Residential zoning district)(Front Yard) – Lot 5, Block 2, Brentwood Estates (9201 Baine Drive).**

*Dennis Torgerson is requesting a variance to reduce the required front yard setback located along the southwest side of the property from forty (40) feet to twenty-five (25) feet for the purpose of constructing a garage addition to the existing single-family dwelling.*

*Board Action:*    approve    continue    table    deny

**OTHER BUSINESS**

3. **Other**

**ADJOURNMENT**

4. **Adjournment.** The next regular meeting date is scheduled for January 8, 2015.



**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
November 6, 2014**

The Bismarck Board of Adjustment met on November 6, 2014 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Marback presided.

Members present were Ken Hoff, Chris Seifert, Ken Heier and Michael Marback.

Members absent were Jennifer Clark and Jeff Ubl.

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

**MINUTES:**

Chairman Marback asked for consideration of the minutes of the September 4, 2014 meeting of the Board of Adjustment.

**MOTION:** A motion was made by Mr. Seifert and seconded by Mr. Hoff to approve the minutes of the September 4, 2014 meetings with corrections. With Board Members Hoff, Seifert, Heier and Marback voting in favor, the minutes were approved.

**VARIANCE 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)**

Chairman Marback stated the applicant, 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 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.

Blake Preszler, Plain View Design, Co., said his focus is to infill undeveloped spaces in the downtown area with housing.

Mr. Hoff asked if this property will have an address on Avenue B. Mr. Preszler said it would be addressed on 12<sup>th</sup> Street as that is where the front door will face.

Mr. Hoff asked if the existing retaining wall will be removed. Mr. Preszler said yes it will as well as the garage and new walls and rock gardens will be constructed in their place with a large focus on landscaping as they want to take advantage of this being a corner lot.

Mr. Hoff asked if the driveway that is in place along the northern portion of the property adjacent to the neighbor to the west will be shared. Mr. Preszler said they are going to work on a design with the neighbor to make sure it is adequate for both properties.

Mr. Seifert asked if there is going to be an effect on the site line with it being a corner lot. Mr. Preszler said the property has large setback requirements as well as boulevards with a lot of green space so there should not be any impediment on the required site triangle.

Chairman Marback asked how long the property has been vacant. Ms. Wollmuth said a demolition permit was issued in 2004.

Mr. Hoff asked what the square feet of living space will be. Mr. Preszler said there will be two upper floors as well as a lower level and they will all be approximately 700 square feet each.

Mr. Hoff asked what there will be for parking space. Mr. Preszler said there is some space behind the property that could possibly be utilized as parking.

Mr. Hoff asked if any input has been given from any of the adjacent owners. Ms. Wollmuth said one response was received from the neighbor to the east asking if his property tax is going to go up but that was the only one.

Timothy Reed, 1114 East Avenue A, said he received an adjacent property owner notification and he is not opposed to this proposal but wanted to give more information on the history of the property. He said he moved to his home in 2002 and he and the neighborhood were informed of a similar attempt to this one in 2003. He said the owner began demolishing the property but then was told the lot was too small for a house. He said he does have concerns over the lot continuing to remain vacant. He said he works for the State Historical Society and he would like to see it responsibly utilized and his concern is of other nearby rentals not being maintained and he would like to see resources such as HUD grants being utilized if needed.

**MOTION:** A motion was made by Mr. Hoff to approve the 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 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. The motion was seconded by Mr. Heier and with Board Members Heier, Hoff, Marback and Seifert voting in favor of the motion, the motion was approved and the variance request was approved.

**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)**

Chairman Marback stated the applicant Art Goldammer, 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.

Mr. Goldammer said a building permit was issued for this property but that an inspection showed the house was too big for the lot. He said they were able to reduce the square footage to within 2.9% of what the ordinance requirement as interpreted by the building official.

Chairman Marback said the new plan is approximately 200 square feet smaller than the original. Mr. Goldammer said that is correct and that the total includes the house, garage, covered deck and covered porch. He said the covered deck and porch make the home more visually appealing for the rear neighbors.

Mr. Hoff asked if this home has been sold or if it is a spec home. Mr. Goldammer said it will be a spring Parade of Homes house and that they had a buyer but the purchase fell through.

Mr. Hoff asked how big the porch is. Mr. Goldammer said it is 16 feet by 22 feet.

Mr. Hoff asked if the deck and porch could be reduced. Mr. Goldammer said they can uncover them or remove the rear porch if the variance is not granted.

Mr. Seifert asked if the permit was issued prior to this issue being noticed. Ms. Wollmuth said the permit was issued in error and they were able to reduce the square footage once already but not enough to meet the 30% of lot coverage requirement.

Rick Wohl, 1455 Eagle Crest Loop, said he has a concern of somebody trying to put the biggest house on the smallest lot in the neighborhood and that this will create a privacy issue. He said their house will now only be about 60 feet from the back deck of this new home and there are no unique characteristics of the lot hindering the builder from making it fit. He said it will look obnoxious on too small of a lot.

Mr. Hoff asked if the definition of a building in the ordinance explains what parts of the building are included when calculating lot coverage.

Ms. Wollmuth said the zoning ordinance does not specify but that the International Building Code might.

**MOTION:** A motion was made by Mr. Hoff to approve the variance to decrease the allowable lot coverage request from 32.9% to 30.6% by removing the covered deck on the rear of the proposed single family dwelling. The motion was seconded by Mr. Heier and with Board Members Hoff, Marback, Seifert

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

**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 8TH ADDITION (3324 FROST LANE)**

Chairman Marback stated the applicant, 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.

Mr. Tschosik said he stopped the building process when the footing inspection was done and it was found that the building would not be located in the rear yard. He said it is apparent that there are procedural problems within the Department of Community Development. He explained that he has done all of the construction himself and that there has been multiple mistakes throughout the permitting and variance process. He said his lot has severe watershed issues and that problems are of the developer’s making. He said the water problems are tremendous and that the placement of the building where he wants it is absolutely necessary.

Mr. Heier said the ordinance states that an accessory building needs to be three feet from the property line if it is ten feet behind the house with no overhang for the purpose of keeping it away from whatever it is next door to. He said if the property to the north does not object with his proposal then he is ok with where it is placed at now.

Mr. Hoff asked how far this will be from his house. Mr. Tschosik said it is 10 feet 2 inches away from his house.

Mr. Hoff asked how the permit for this happened to be issued. Mr. Blaskowski explained that it was an oversight on the part of staff and a general error. He said different people may also have different interpretations of the ordinances and building requirements.

**MOTION:** A motion was made by Mr. Heier to approve the 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. The motion was seconded by Mr. Seifert and with Board Members Hoff, Marback, Seifert and Heier voting in favor of the motion, the motion was approved and the variance request was approved.

**OTHER BUSINESS**

There was no other business to discuss at this time.

**ADJOURNMENT**

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 4:40 p.m. to meet again on December 4, 2014.

Respectfully Submitted,

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Hilary Balzum  
Recording Secretary

APPROVED:

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Michael Marback, Chairman

DRAFT

Special Flood Hazard NO  
Deeded Owner RED DOOR HOMES OF BISMARCK LLC  
Elevation  
Contractor Num 34164  
Phone Num 202-2809

Contractor VERITY HOMES INC  
Nondeeded Owner VERITY HOMES INC  
Contact Person ADAM MOON  
Desc Of Work SINGLE FAMILY HOUSE WITH 1001SF GARAGE,  
2392SF UNFINISHED BASEMENT, 252SF CVD  
DECK, 96SF CVD ENTRY

Property Number 1440-003-095  
Addition Name EAGLE CREST  
Legal Desc 1. LOT 20  
3.

Type Of Work 1 - NEW  
Occupancy Group R - RESIDENTIAL  
Num Living Units 1  
Ownership Code 1 - PRIVATE  
Census Code 0101  
Division 3  
Stories 1  
Type Const VB  
Zoning Dist R5 - RESIDENTIAL SINGLE FAM  
Easement 7' S  
Required Front Yard 25  
Required Side Yard 6.0  
Required Rear Yard 20

Area Main Bldg	Previous Permit (s)	Current Permit	Total	Lot Front Width
Garage Size	0	3,594	3,594	87.00
Total Finished	0	1,001	1,001	72.05
Total Basement Finished	0	2,497	2,497	79.53
Area Acc Bldgs	0	0	0	63.62
Num Off Street Parking	0	0	0	61.50
Area Off Street Parking	0	0	0	10,848.00
Total	0	0	0	.00

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 \*\*\*

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 Issued By  
Permit Applicant

10/29/2014

Dear Jenny Wollmuth and the Bismarck Board of Adjustment

I am writing in reference to Art Goldammer requesting a variance of the City Code of Ordinances at 1329 Talon Road.

As an Eagle Crest Loop residence I oppose his request. He has owned this lot for a great length of time as well as has built numerous homes to know that a different plan could have been chosen to alleviate this problem long ago.

I feel we have the City Code of Ordinances in place for a reason and to go outside that scope to squeeze a large home on a small lot doesn't seem like the best interest of the surround neighbors.

Thanks for your time and consideration on this matter!

Sincerely

Concern Eagle Crest Resident.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

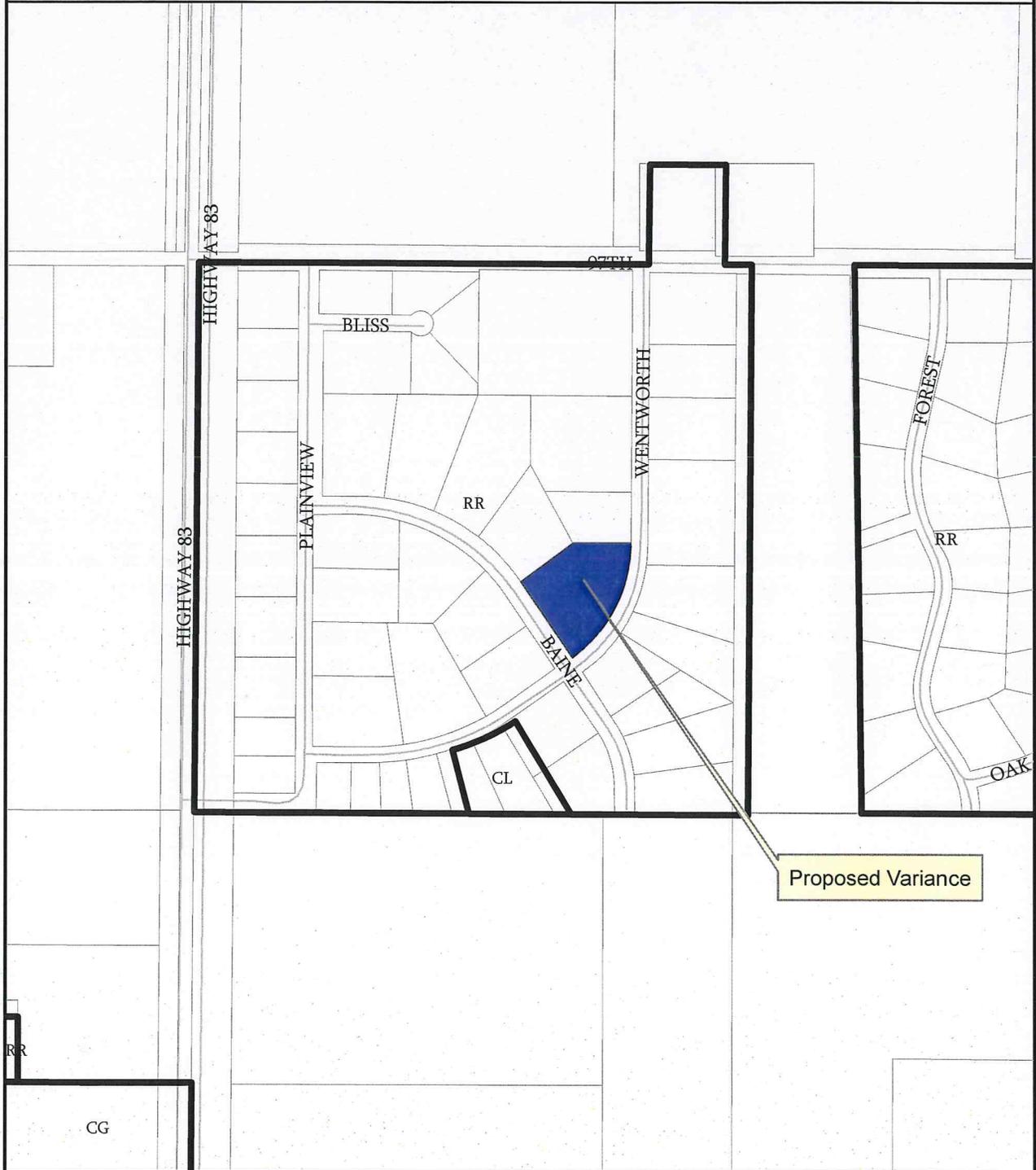
<b>BACKGROUND:</b>	
<b>Title:</b> 9201 Baine Drive – Variance (Front Yard Setback) (Lot 5, Block 2, Brentwood Estates)	
<b>Status:</b> Board of Adjustment	<b>Date:</b> December 4, 2014
<b>Owner(s):</b> Dennis Torgerson	<b>Architect / Engineer:</b> None
<b>Reason for Request:</b> Variance from Section 14-04-01(4) of the City Code of Ordinances (RR – Rural Residential zoning district)(Front Yard) to reduce the required front yard setback located along the southwest side of the property from forty (40) feet to twenty-five (25) feet for the purpose of constructing a garage addition to the existing single-family dwelling.	
<b>Location:</b> In northeast Bismarck, at the northeast intersection of Baine Drive and Wentworth Drive south of 97 <sup>th</sup> Avenue NE and east of US Highway 83.	
<b>ADDITIONAL INFORMATION:</b>	
<ol style="list-style-type: none"> <li>1. A building permit was issued on October 14, 2014 to construct a 30'x 36' garage addition to the existing single-family dwelling. During the required footing and foundation inspection to approve the pouring of concrete it was discovered that the proposed garage addition was not setback the required forty (40) feet from the front property line as stated on the building permit. The building permit was issued correctly noting the required setbacks. A copy of the building permit is attached.</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 14-04-01(4) of the City Code of Ordinances (RR-Rural Residential zoning district)(Front Yard) states, "Each platted lot shall have a front yard not less than forty (40) feet in depth as measured from the front property line." According to the site plan submitted with the application, the applicant is proposing to construct the garage addition twenty-five (25) feet from the front property line.</li> </ol>	
<b>FINDINGS:</b>	
<ol style="list-style-type: none"> <li>1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5-Residential zoning classification.</li> <li>2. The hardship is not caused by the provisions of the Zoning Ordinance.</li> <li>3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.</li> <li>4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.</li> <li>5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance</li> </ol>	

**RECOMMENDATION:**

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

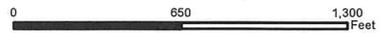
If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

# Proposed Variance Lot 5, Block 2, Brentwood Estates

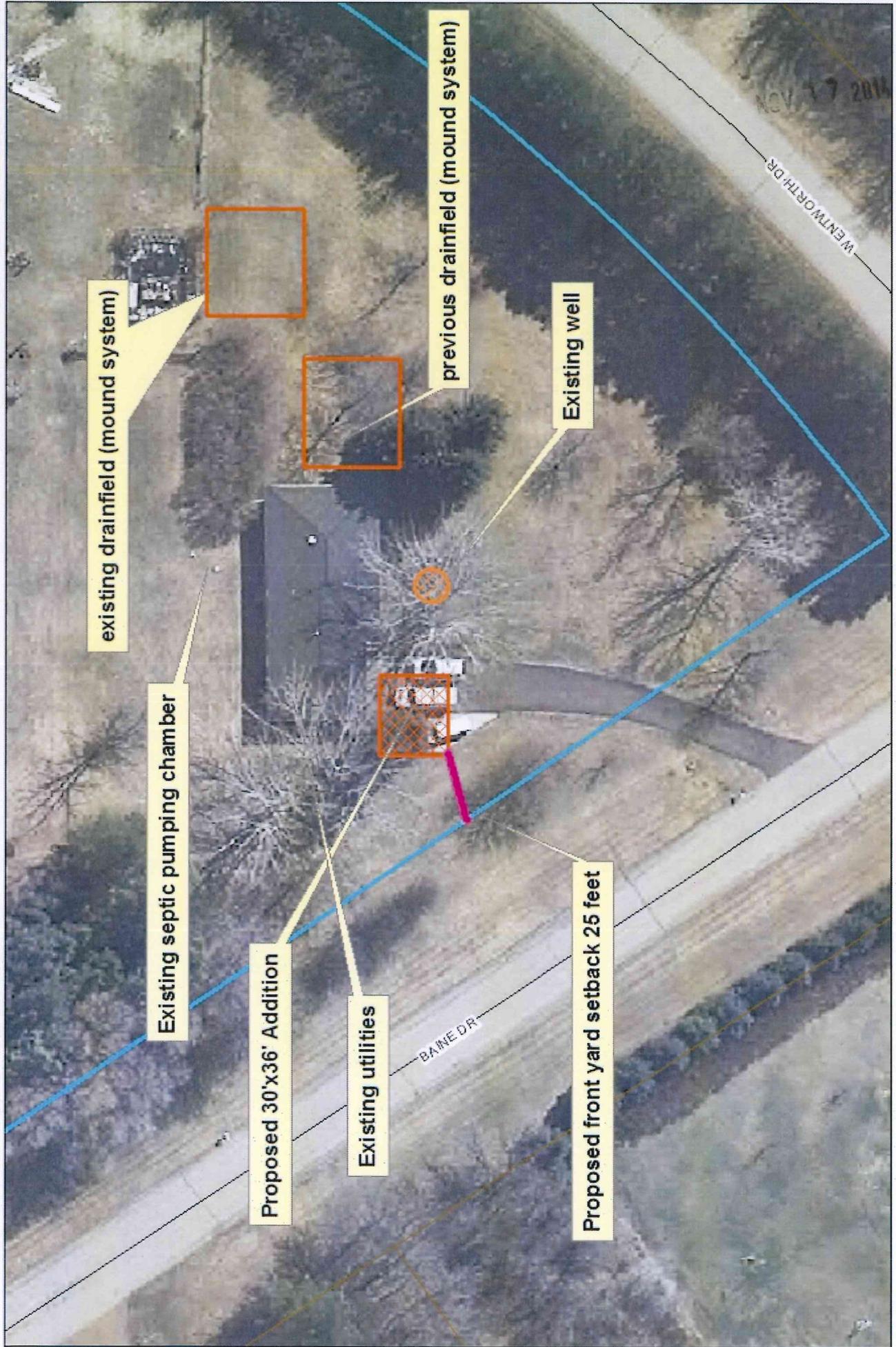


DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.  
Date: 11/18/2014

Source: City of Bismarck



# Lot 5, Block 2, Brentwood Estates (9201 Baine Drive) Variance Request



existing drainfield (mound system)

Existing septic pumping chamber

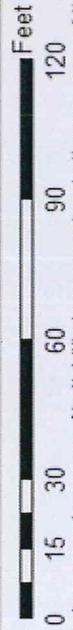
Proposed 30'x36' Addition

Existing utilities

previous drainfield (mound system)

Existing well

Proposed front yard setback 25 feet



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

NOV 17 2014

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

1. Property Address or Legal Description: Lot 5, Block 2, Brentwood Estates (9201 Baine Drive)

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

3. Type of Variance Requested: RR-Residential | Front Yard

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

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

We desire an attached garage - Currently the house sits on a pic shaped lot to the back of the house all of the electrical, gas, cable and other lines run into the basement/house. Also to the back is our septic tank which then runs and drains to the east. On the south east side of our ~~house~~ house this our well. Just out the front door to the east we have a ~~septic~~ sump pump chamber which drains into the 3 large pine trees.

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

Due to the fact that the house was built on the front corner of the pic and as years went by the ~~existing~~ previous owner had added the drain field to the east and due to the well being placed on south east side of house only the west side is accessible to the driveway/road.

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

Due to existing location of well, drain fields, utilities this is the best location for our garage. We are in the process of converting our two garage in a master bed/bath to make extra room for our foster child.



## Community Development Department

November 24, 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, December 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 Torgerson is requesting a variance from Section 14-04-01(4) of the City Code of Ordinances (RR-Residential zoning district)(Front Yard) to reduce the required front yard setback located along the southwest side of the property from forty (40) feet to twenty-five (25) feet for the purpose of constructing a garage addition to the existing single-family dwelling on Lot 5, Block 2, Brentwood Estates (9201 Baine Drive).

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@bismarcknd.gov](mailto:planning@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

