



Community Development Department

BISMARCK BOARD OF ADJUSTMENT MEETING AGENDA

April 13, 2015

1st Floor Conference Room

5:00 p.m.

City-County Office Building

MINUTES

- 1. Consider the minutes of the March 5, 2015 meeting of the Board of Adjustment.

REQUEST

- 2. Variances from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) and Section 14-03-05(3) of the City Code of Ordinances (Supplementary Provisions) – The East 130 feet of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue).

Jerry and Renae Doan and Bis-Man Community Food Cooperative are requesting a variance to reduce the required off-street parking spaces from 51 spaces to 32 spaces for a single-tenant retail building (Bis-Man Community Food Cooperative) and a variance to allow required off-street parking spaces to be placed within the required sight triangles located at the intersection of East Sweet Avenue and South 8th Street and at a proposed access point adjacent to South 8th Street.

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

OTHER BUSINESS

- 3. Consideration of a modification to the regularly scheduled meeting time of the Board of Adjustment.

ADJOURNMENT

- 4. Adjournment. The next regular meeting date is scheduled for May 7, 2015.



**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
March 5, 2015**

The Bismarck Board of Adjustment met on March 5, 2015 at 4:00 p.m. in the First Floor Conference Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

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

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

MINUTES:

Chairman Marback asked for consideration of the minutes of the December 4, 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 December 4, 2014 meeting as distributed. With Board Members Hoff, Seifert, Heier, Ubl and Marback voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-03-05(4)(b) OF THE CITY CODE OF ORDINANCES (SUPPLEMENTARY PROVISIONS) – THE NORTH 23 FEET OF LOT 27, ALL OF LOT 28 AND THE SOUTH 4 FEET OF LOT 29, BLOCK 39, FISHER ADDITION (1221 NORTH 13TH STREET)

Chairman Marback stated the applicant, Amy Frison, is requesting a variance to reduce the rear yard setback located along the east side of her property from twenty (20) feet to six (6) feet for the purpose of constructing an accessory building with direct access from the adjacent alley.

Chairman Marback asked if the existing building in the back yard will be staying. Ms. Frison said it will stay as it is a greenhouse constructed for her gardening and landscaping needs and the building she wants to build will strictly be a garage for parking.

Mr. Ubl asked if there is an ordinance requiring the garage to be properly configured closer to the alley. Ms. Wollmuth said the garage door will face the alley so a 20 foot setback from the rear property line is required as opposed to the door facing a different direction then as little as three feet could be required.

Ms. Frison said there are several other garages along the alley that are also as close as she wants to go.

Mr. Hoff said from the alley to the large tree in her backyard is approximately 63 feet. Ms. Frison said there is also brick landscaping around the base of the tree that she does

not want to disturb and would have to measure when the snow melts to get an exact measurement.

Mr. Hoff said other garages by the alley are closer to ten feet away. Mr. Heier said the main reason for the setback requirement is because of the driveway and he would rather see it set back only six feet to avoid people using it as a parking space and blocking the alley.

MOTION: A motion was made by Mr. Heier to approve the variance to reduce the rear yard setback located along the east side of her property from twenty (20) feet to six (6) feet for the purpose of constructing an accessory building with direct access from the adjacent alley. The motion was seconded by Mr. Heier and with Board Members Heier, Hoff, Marback, Ubl and Seifert voting in favor of the motion, the motion was approved and the variance request was approved.

VARIANCE FROM SECTION 14-03-08(q)(2) OF THE CITY CODE OF ORDINANCES (SPECIAL USES)(CHILD CARE CENTER) – LOTS 4-6, BLOCK 1, EDGEWOOD VILLAGE 7TH ADDITION (3800 NEBRASKA DRIVE)

Chairman Marback asked if anybody has an issue with him having a conflict of interest with this request as he is a vendor working on the construction project. The general consensus from the Board was there are no objections to him staying on as Chairman for this item.

Chairman Marback stated the applicant, Tess Imhoff, is requesting a variance to reduce the required front yard setback along the east side of the property, adjacent to Knudsen Loop, from twenty-five (25) feet to zero (0) feet for the purpose of expanding the outdoor recreation area for the child care center.

Ms. Imhoff explained that landscape requirements, a power line and the setback requirements are restricting the extra play area she would like to have available.

Chairman Marback asked if the amount of play yard requirement is being met without the variance. Ms. Imhoff said yes, she received the special use permit required to have a child care center at that location and the playground as of now does meet the requirement for a center.

Mr. Hoff asked how big of a space it is now. Ms. Imhoff said it is 2500 square feet with the potential to add another 1500 square feet and have a separate area for the infants and toddlers and will take any extra amount she can get.

Mr. Ubl asked if the fence would go right up to the sidewalk and what materials will be used. Ms. Imhoff said it will go all the way up to the sidewalk and the play area will be comprised of grass and woodchips with a white vinyl fence.

Mr. Seifert asked if this will contradict the approval of the special use permit previously granted by the Planning and Zoning Commission. Ms. Wollmuth said it will not.

Chairman Marback said the majority of schools and child care centers around Bismarck have fences that go right up to the sidewalk so he does not see an issue with this request.

MOTION: A motion was made by Mr. Ubl to approve the variance to reduce the required front yard setback along the east side of the property, adjacent to Knudsen Loop, from twenty-five (25) feet to zero (0) feet for the purpose of expanding the outdoor recreation area for the child care center. The motion was seconded by Mr. Seifert and with Board Members Heier, Marback, Ubl and Seifert voting in favor of the motion, the motion was approved and the variance request was approved. Mr. Hoff opposed the motion.

VARIANCE FROM SECTION 14-03-10 OF THE CITY CODE OF ORDINANCES (OFF-STREET PARKING AND LOADING) – THE EAST 130 FEET OF LOTS 1-6, BLOCK 73. ORIGINAL PLAT (711 EAST SWEET AVENUE)

Chairman Marback stated the applicant, Jerry and Renae Doan and Bis-Man Community Food Cooperative are requesting a variance to reduce the required off-street parking spaces from 51 spaces to 21 spaces for a single-tenant retail building (Bis-Man Community Food Cooperative).

Ms. Doan explained that this will be the first food co-op of its kind in the area and the present use, Snoopers Tons of Fun, will be closing.

Chairman Marback asked how long the common use of parking agreement is in effect for. Ms. Doan said it was a 99 year agreement with the adjacent tenant.

Tyler Demars said there will be approximately 20-24 employees with around 8-12 on the property at any given time. He said most employees will park on the street and he has been visiting with other business in the area to see if they are willing to share some of their parking for the co-op employees.

Mr. Hoff asked what the operating hours will be. Mr. Demars said they will be standard day hours Monday through Friday, probably from 8 a.m. to 10 p.m. and less on the weekends. He said the plan is to have deliveries brought to the southwest part of the building and they are adding a scissor lift to the loading dock to accommodate the delivery trucks.

Mr. Ubl asked what the estimated delivery times are. Mr. Demars said early morning on Saturdays and between 8 a.m. and 6 p.m. on weekdays. He said he feels the parking is adequate and any good space is going to be hard to find with adequate parking for the use of a food co-op.

Ms. Doan said this property is located just outside of the downtown parking district that would allow them to have street parking.

Mr. Hoff asked if the potential traffic in this location is comparable to the other food co-ops. Mr. Demars said it is not really comparable but it has similar benchmarks and what is being proposed is adequate.

Clint Barth, 311 South 7th Street, said the joint use of parking agreement was only supposed to include parking for customers, not employees and that it was originally an agreement with a furniture store that was supposed to go into that space but it was not successful and then instead a competitor moved in. He said the agreement was for one row of parking and they are going to be parking on the piece of parking lot that he just paid to have replaced. He said he needs all the parking he can get and will not allow access for semis to go to the loading dock over his new concrete and he can put up a fence so that they do not have access.

Chairman Marback asked how many feet the building is from the property line. Ms. Wollmuth said it is approximately 20 feet.

Mr. Ubl asked if the A & B Pizza property would have enough parking if it were to be newly constructed. Ms. Wollmuth said it would need about 71 spaces if it were built new today and right now it has around 30.

Gabe Brown said he would like the Board to consider the values of the community and support this proposal. He said the co-op has been searching for an adequate property for approximately 18 months and he knows Bismarck prides itself on bringing in new businesses. He said there is over 100 people investing produce into the co-op and this would have a large economic impact on the city as a whole. He said most of the space will be needed for storage of produce and is not tied to the parking need.

Dawn Archer said many businesses are sharing parking spaces in town such as Qdoba and they have no issues with it. She said the food co-op would have more patrons biking and walking to the site and they would all be loyal and valued customers.

Kate Herzog, Downtowners Association, said she assisted in the search for a space for the co-op and in terms of future development in that area having a food co-op will help with residential in-fill projects and parking has also been added in the parking district which they are very close to. She said the area will be changing considerably in the next five years and will be becoming more multi-modal.

Marie Hauk said she has held residency in multiple communities that have had food co-ops and those areas were always the most vital and attractive. She said young people today want good food and nutrition readily available and she encourages efforts to come to an agreement with the neighbor so this can be a win-win outcome for everybody.

Mr. Ubl asked if the possibility of purchasing the adjacent property has been looked into. Mr. Barth said he has made multiple attempts but the owner is not interested in selling it at this time and it would only add minimal spaces compared to what is needed so the only good use for it is what it is now as a residence. He said he is not against the food co-op but he does not want his property affected by it.

Mr. Ubl asked if access to the food co-op could be moved to come off of South 8th Street. Mr. Barth said a few spaces would be lost and a few would be gained to it would not make much difference.

Paul Breiner, Matrix Design, said a new façade and signage is also going to make the property more aesthetically appealing.

Ms. Doan said when the property was operating as Snoopers Tons of Fun there was never an issue with inadequate parking and it is unlikely that patrons of the co-op would use parking on the A & B side either.

Mr. Demars said he understands the concerns and their intention is not to take over the adjacent property but he wants to maintain a good relationship with the neighbors and the option of exploring signage to differentiate the two businesses could also be looked into to.

Mr. Hoff asked how many parking spaces are on the west side of the property. Mr. Demars said there are four spaces on that side. Mr. Hoff said if a fence is put up by the other owner then those spaces would also be lost.

Mr. Demars said the joint use of parking agreement has another 80 years left and they do not want to be combative in their discussion but he would like to work out an agreement with Mr. Barth without being competitive.

Bill Daniel said he is the realtor working on the purchase and he feels this would be a very positive addition to Bismarck. He said there is 42 parking spaces within a block of the property of which hardly any were being used just this afternoon.

Mr. Ubl asked if any comments have been submitted by other adjacent owners. Ms. Wollmuth said none have been received.

Mr. Hoff asked if the property is not used as a food co-op then what could it be used for. Ms. Wollmuth said very few uses, if any, will ever meet the parking requirement.

Mr. Heier asked if this is considered a retail use now. Ms. Wollmuth said it is considered an assembly use so the requirement would be a ratio of 1 space per 60 square feet which means approximately 170 parking spaces would be needed.

Mr. Heier asked if since the new use requires fewer parking spaces than the previous use why it needs a variance now. Ms. Wollmuth said there was not a variance issued for the previous use so it is considered to be non-conforming.

Mr. Seifert said he is concerned about the amount of traffic this area sees as it is and feels it will likely become a very busy area which could be a problem.

Ms. Doan said she is trying to be a good neighbor and has allowed A & B customer overflow parking and employee on their side and vice versa.

Chairman Marback said either way a variance will be needed no matter which tenant goes into the property.

Mr. Demars said their peak times will mesh well with A & B peak times as opposed to them having high traffic at the same times with the previous use.

Mr. Ubl said this is a tough issue as neither of the businesses have adequate parking and the fact that they are similar uses should not be the decision. He said there is an issue with both tenants and a mutual agreement needs to be found to include shared parking with each other.

Mr. Hoff said peak time at both businesses would create a mess throughout the entire neighborhood.

Chairman Marback said he knows time is an issue with this project and he would like to see the agreement prior to making a decision and it is an option to hold a special meeting to discuss it.

Ms. Doan said they could sell the property altogether, keep the current use and the lack of space would continue to be worse than it would be if the food co-op went in as a tenant so nothing would change.

MOTION: A motion was made by Mr. Ubl to continue the variance request to reduce the required off-street parking spaces from 51 spaces to 21 spaces for a single-tenant retail building (Bis-Man Community Food Cooperative) to a special meeting to be held at 12:00 p.m. on Thursday, March 12. The motion was seconded by Mr. Hoff and with Board Members Heier, Marback, Ubl and Seifert voting in favor of the motion, the motion was approved.

OTHER BUSINESS

Chairman Marback reminded the Board that Ms. Clark and Mr. Hoff's terms will need to renew in April.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:10 p.m. to meet again for a special meeting on March 12, 2015.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman

Hilary Balzum

From: Planning - General Mailbox
Sent: Tuesday, March 10, 2015 10:50 AM
To: Hilary Balzum
Cc: Jenny Wollmuth
Subject: FW: Shared parking Co-op

From: Kelli Ellenbaum [REDACTED]
Sent: Tuesday, March 10, 2015 10:42 AM
To: Planning - General Mailbox
Subject: Shared parking Co-op

Hello! I am writing on behalf of the Bis-Man Coop regarding shared parking with A&B pizza. I would like to strongly encourage this shared parking concept. I think a shared parking lot very much serves as a benefit to both the Co-op and for A&B pizza. It certainly stands to increase patronage to the pizza place. Currently, I live on the north side of town. I know that I will visit the co-op weekly, and having a pizza place in the vicinity will greatly increase the likelihood of picking up pizza at A&B. We eat pizza on a weekly basis and happen to very much like their pizza. This is a win-win!

Kelli Ellenbaum

Kelli Ellenbaum, MS CCC-SLP/Owner
Red Door Pediatric Therapy
1303 East Central Avenue
Bismarck, ND 58501

Phone: (701) 222-3175
Website: www.reddoorpediatric.com

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, March 11, 2015 10:49 AM
To: Hilary Balzum; Jenny Wollmuth
Subject: FW: Comments for Board of Adjustment meeting 3-12-15

From: Heidi Demars [REDACTED]
Sent: Wednesday, March 11, 2015 10:44 AM
To: Planning - General Mailbox
Subject: Comments for Board of Adjustment meeting 3-12-15

Good morning,

I would like to submit the following information to the Board of Adjustment on behalf of the BisMan Community Food Co-op. This data is from other regional co-op's that are comparable in size and market. Board member Hoff asked about Amazing Grains in the last meeting so that data is included.

Good Earth Market: Billings, MT

10,000 sq. ft. store with 6,200 of retail

29 spaces in parking lot

4,700 member-owners

Open since 1993

Hours are 8am-8pm

Harmony Food Co-op: Bemidji, MN

10,000 sq. ft store with 4,300 of retail (4,000 is used for a commercial kitchen that is rented out to producers to process value-added foods)

25 spaces in parking lot

2,259 member-owners

Open since 1990

Hours are 8am-8pm

Amazing Grains: Grand Forks, ND

2800 sq. ft with 1600 retail

5 spaces in parking lot

1,200 member-owners

Open since late 80's

Open 8am-8pm

Thank you,
Heidi Demars
Outreach Coordinator

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, March 11, 2015 3:23 PM
To: Jenny Wollmuth; Hilary Balzum
Subject: FW: Bisman Food Co-op and parking

From: Beth Schatz [REDACTED]
Sent: Wednesday, March 11, 2015 3:19 PM
To: Planning - General Mailbox
Subject: Bisman Food Co-op and parking

Good afternoon,

I send this email as an expression of support for the community's new food co-op and its effort to open in its ideally situated location near central Bismarck. As a co-op member and Bismarck native, I'm thrilled to see our community get more options such as this co-op, things that are more commonly found in urban locations such as Minneapolis.

Bismarck is truly up and coming, with progressive urban planning as reflected in the recent Bismarck Downtown Study and Envision 2040 Study. Groups like 1 Million Cups pack the house with energetic entrepreneurs. Sidewalk dining has revitalized the energy of downtown Bismarck. With spring arriving, we shall soon see more and more people utilizing the new Bismarck bike lanes. New businesses are opening consistently. It's a great time to live here.

However, it would be very unfortunate to prevent the co-op from opening in our community due to antiquated parking regulations. I do not grocery shop during the dinner hour, so personally do not see a conflict in parking accessibility between the proposed co-op location and the neighboring business. Certainly a parking agreement must have been in place previously; I'm unclear on why suddenly there is an issue. I'm happy to bike to the coop from my central Bismarck home, or ask my husband to meander up from his workplace at the Bismarck Police Department to pick up items. And hey, maybe we'll pick up a pizza since it's just next door - win win.

Best regards,

Beth Schatz Kaylor
1032 W. Highland Acres Rd.
Bismarck

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, March 11, 2015 3:59 PM
To: Hilary Balzum; Jenny Wollmuth
Subject: FW: Bisman Food Co-op parking variance app. BOA

From: Angela Oberg [REDACTED]
Sent: Wednesday, March 11, 2015 3:54 PM
To: Planning - General Mailbox
Subject: Bisman Food Co-op parking variance app. BOA

Dear Board of Adjustment,

As a cooperator, I am grateful that the Bismarck Board of Adjustment requested that the Bisman Food Co-op find common ground with A & B Pizza owner, neighbor of Snoopers Building. However, I hope that the BOA takes a few points into consideration:

- 1) Grocery use will require less parking than its current use (public gathering)
- 2) Regional food co-ops of similar size have less than 30 parking places
- 3) A downtown location is ideal for the City of Bismarck and the Bisman Food Co-op (Market study)
- 4) There is a good business synergy in favor of A & B (Market study)
- 5) Most types of businesses attempting to use this location will most likely require a parking variance.
- 6) Part of the co-op's vision is to provide stress free shopping experience. If problems do arise during peak business times, the co-op will find creative ways to improve the situation. For example- offer delivery, offer discounts for car pool, bike riders, or pedestrians, offer specials for plan ahead.

I have been involved with the Bisman Food Co-op since 2001. At the core of this project is *cooperation*. It would not be in its final stage of start up if the entire community did not support this project. We have over 700 invested member owners and have received outstanding support from businesses, both big and small, and community organizations. This store is literally owned and supported by the community and will be managed by an experienced General Manager who we are looking forward to bringing back to their home town state for this position.

It would be unfortunate for one or two individuals to stand in the way of such a community embraced project. The Bisman Food Co-op's proven dedication to working together and our mission demonstrates a business's ability to improve the quality of life in Bismarck, ND.

Thank you for considering a parking variance for the Bisman Food Co-op!

Sincerely,
Angela Oberg, Board Chair Bisman Community Food Co-op

Angela Oberg

B.S. Alternative Medicine

Licensed Massage Therapist ~ Certified Shiatsu Therapist

Certified Yoga Teacher

<http://www.facebook.com/pages/Angela-Oberg-LMT/169514639788300>

<http://bismarck.sanfordhealth.org/whc/therapy/index.asp#therapists>

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, March 11, 2015 4:02 PM
To: Jenny Wollmuth; Hilary Balzum
Subject: FW: comments for Board of Adjustment from co-op member-owner

From: Heidi Demars [REDACTED]
Sent: Wednesday, March 11, 2015 3:54 PM
To: Planning - General Mailbox
Subject: comments for Board of Adjustment from co-op member-owner

Good afternoon,

I send this email as an expression of support for the community's new food co-op and its effort to open in its ideally situated location near central Bismarck. As a co-op member and Bismarck native, I'm thrilled to see our community get more options such as this co-op, things that are more commonly found in urban locations such as Minneapolis.

Bismarck is truly up and coming, with progressive urban planning as reflected in the recent Bismarck Downtown Study and Envision 2040 Study. Groups like 1 Million Cups pack the house with energetic entrepreneurs. Sidewalk dining has revitalized the energy of downtown Bismarck. With spring arriving, we shall soon see more and more people utilizing the new Bismarck bike lanes. New businesses are opening consistently. It's a great time to live here.

However, it would be very unfortunate to prevent the co-op from opening in our community due to antiquated parking regulations. I do not grocery shop during the dinner hour, so personally do not see a conflict in parking accessibility between the proposed co-op location and the neighboring business. Certainly a parking agreement must have been in place previously; I'm unclear on why suddenly there is an issue. I'm happy to bike to the coop from my central Bismarck home, or ask my husband to meander up from his workplace at the Bismarck Police Department to pick up items. And hey, maybe we'll pick up a pizza since it's just next door - win win.

Best regards,
Beth Schatz Kaylor
1032 W. Highland Acres Rd.
Bismarck

Hilary Balzum

From: Planning - General Mailbox
Sent: Thursday, March 12, 2015 8:20 AM
To: Hilary Balzum; Jenny Wollmuth
Subject: FW: Parking variance

From: Janis Cheney [mailto:jcheney@bis.midco.net]
Sent: Wednesday, March 11, 2015 5:56 PM
To: Planning - General Mailbox
Subject: Parking variance

TO: Bismarck Board of Adjustment
RE: Parking Variance for BisMan Food Cooperative
DA: March 11, 2015

Greetings:

As members of the BisMan Food Cooperative, we are excited to have this wonderful asset to our community opening soon. We are committed to their mission and fully supportive of their efforts to become established here. The location under consideration is perfect – close to downtown and to the mall and will certainly help make this important community resource a successful venture.

Based on our experience and observation in Bismarck – we have lived here for 35 years – it seems unlikely that the parking in this location should present a significant issue. We shop at various times of the day and on various days, and rarely over noon hour or evening when the nearby business might have more clientele. Even so, we have no objection to street parking which seems fairly readily available in that area. I am certain that many of those who are members of the food co-op will be willing and eager to make accommodations to ensure that this location can work for our community.

We encourage your favorable consideration of this variance.

Sincerely,

Janis Cheney and Stephen Crane
[1004 W Highland Acres Rd](#)
[Bismarck, ND 58501](#)

jc
Janis Cheney
Sent from my iPad

Hilary Balzum

From: Heidi Demars <[REDACTED]>
Sent: Thursday, March 12, 2015 9:06 AM
To: Planning - General Mailbox
Subject: Fwd: Bis-Man Co-op/A&B Pizza
Attachments: MEMORANDUM OF MEDIATION.pdf

Hello,
Attached is a memorandum of mediation from attorney LaRoy Baird in regards to a meeting held between The BisMan Community Food Co-op and A&B Pizza. There was an attempt to come to an agreement as recommended by member Ubl of the Board of Adjustment.

Thank you,
Heidi Demars

----- Forwarded message -----

From: Dina Baird <[REDACTED]>
Date: Tue, Mar 10, 2015 at 2:29 PM
Subject: Bis-Man Co-op/A&B Pizza
To: Heidi Demars <[REDACTED]> <[REDACTED]>
Cc: LaRoy Baird <[REDACTED]>

Heidi and Tyler –

Attached please find a memorandum regarding yesterday's mediation. I've not been able to reach Mr. Barth – if you have an email address, I'd ask for your help in forwarding this to him. I'll send it to his store via US Mail today as well.

Thank you,

Dina Baird

Paralegal

Office Manager

LaRoy Baird, P.C.

Logan Building

120 North 3rd Street Suite 210

PO Box 913

Bismarck, ND 58501

MEMORANDUM OF MEDIATION

At the request of the Parties, LaRoy Baird agreed to be the mediator concerning parking lot usage by adjoining land owners. The issue is available parking for the proposed cooperative grocery store (Co-Op) occupying the building at the corner of East Sweet Ave and South 8th Street, formerly Snoopers. The Co-Op is in need of approximately 20 additional parking spots in addition to the parking spots on the land where the Co-Op would be located. A request has been made to the Board of Adjustment for a variance of the spots required for the proposed project. The variance is resisted by Clinton Barth, owner of the adjoining business property, A&B Pizza (A&B). A mediation was held with the parties on March 9, 2015.

A&B takes the position that the Easement Agreement it entered with the original owner of the Co-Ops building in July, 1993, has cost him significant loss of business because of lack of parking available on his own property. A lack to the extent he is unwilling to allow any additional parking use for the Co-Op. He did make a financial proposal to off-set his loss of business, but it was beyond what the Co-Op was willing to pay.

Discussions were had on approaching the City to set aside the parking easement of 1993. The Co-Op recognized it would have to find other parking to make that feasible. It did offer to give a restrictive covenant on its property to prevent the sale of products competitive to those sold by A&B. Perhaps with the restriction and definitely if the 1993 agreement were set aside, A&B would be willing to work out an agreement allowing delivery trucks of the Co-Op to travel over his lot for purposes of parking at the unloading dock which is anticipated to be on the SW corner of the Co-Op building.

No definitive agreement was reached in mediation.

Hilary Balzum

From: Karen K. Ehrens <[REDACTED]>
Sent: Thursday, March 12, 2015 11:32 AM
To: Planning - General Mailbox
Subject: comments re. Board of Adjustments meeting Thursday, March 12

Dear Jenny,

I would like to state my support for approving locating the BisMan Community Food Co-op in the location now housing Snoopers Tons of Fun, and the continuation of working toward the finding of an agreement for parking space.

I would hope that the other business owner can grow to see the mutual benefits of these businesses sharing parking spots in addition to street parking and potential other parking at the Bismarck Tribune lot.

I believe strongly in the benefits to the overall community, the business community, employment, and the economy in addition to the benefits to the health and welfare of all the residents of Bismarck, any of whom will be able to shop at the food co-op.

Thank you for the consideration of these comments,
Karen

Karen Ehrens
233 W Ave C
Bismarck, ND 58501
phone: 701-258-4596

Hilary Balzum

From: Planning - General Mailbox
Sent: Thursday, March 12, 2015 11:41 AM
To: Hilary Balzum; Jenny Wollmuth
Subject: FW: Comments for Board of Adjustment Re: Co-op Site

From: Wendy Anderson-Berg [mailto:[\[REDACTED\]](#)]
Sent: Thursday, March 12, 2015 11:38 AM
To: Planning - General Mailbox
Subject: Comments for Board of Adjustment Re: Co-op Site

Hello Board members: I am unable to attend the special meeting today regarding the proposed food co-op site. I would like to lend my support to the project. I am a local planner in town and have been involved with the downtown plans for a time as well. I believe that the focus of this process should be on the project at hand and the number of parking spaces available. I believe the focus at the previous meeting strayed to an agreement that has already been approved and will be in existence regardless of any decision here. From what I understood at the meeting, the new proposed site would have around 35 spots off street and around 42 spots on street. Seems like this might bring us to the number of spots needed. I have no doubt that patrons of this type of business will not complain about on-street parking or walking a block to the business.

Although I can understand some concern about people parking where they are not supposed to park, we cannot guide our decisions based on the worst case scenario, on people's sometimes poor behavior, or on the opinions of one person. This business will be a wonderful addition to the community of Bismarck and future downtown plans and I hope you will grant the variance for parking requirements.

Thanks for your time,
Wendy Berg
3700 Daytona Drive
Bismarck

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: 711 East Sweet Avenue – Variance (Off-Street Parking and Loading) (The East 130 feet of Lots 1-6, Block 73, Original Plat)	
Status: Board of Adjustment – Special Meeting	Date: April 13, 2015
Owner(s): Jerry and Renae Doan (owner) Bis-Man Community Food Cooperative (applicant)	Engineer: None
Reason for Request: Variances from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required number of off-street parking spaces from fifty-one (51) spaces to twenty-one (32) spaces for a single-tenant retail building (Bis-Man Community Food Cooperative) and a variance from Section 14-03-05(3) of the City Code of Ordinances (Supplementary Provisions) to allow required off-street parking spaces to be placed within the required sight triangles located at the intersection of East Sweet Avenue and South 8 th Street and at a proposed access point adjacent to South 8 th Street.	
Location: In central Bismarck, between South 7 th Street and South 8 th Street, along the south side of East Sweet Avenue.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The Board of Adjustment at their meeting of March 5, 2015 continued the public hearing on the proposed variance to March 12, 2015 at 12:00pm in order for the applicant and the adjacent property owner to discuss an existing parking agreement-easement in further detail. The Board of Adjustment did not have a quorum of members for the March 12, 2015 special meeting and the April 2, 2015 regular meeting and as a quorum is required to conduct business, those meetings were not held. 2. The applicants have modified the original variance request and site plan to include a request to allow required off-street parking spaces to be placed within the required sight triangles located at the intersection of East Sweet Avenue and at a proposed access point adjacent to South 8th Street. In order to provide 32 off-street parking spaces, an access point adjacent to South 8th Street must be installed and the access point adjacent to East Sweet Avenue removed. The applicants have agreed to this requirement. 3. A private agreement – easement for access and parking was established by the property owners of 311 South 7th Street and 711 East Sweet Avenue in July 1993. The agreement allows both properties to utilize parking spaces along the eastern portion of the property located at 311 South 7th Street (A & B Pizza) and allows an additional the access to 711 East Sweet Avenue (Snoopers Tons of Fun / Bis-Man Community Food Cooperative). The proposed variance request is not intended to alter or terminate the private agreement-easement between the property owners. 4. A building permit was issued in July 1993 for a 100' x 80' single story retail sales building (Rasenbaum's Leasing) with mezzanine. The number of off-street parking listed on the permit was 53 spaces. A joint use of parking agreement for the west 20 feet of the adjacent property (311 South 7th Street) was recorded with the Burleigh County Recorder's Office in July 1993. It is unclear if the parking obtained by the joint use of parking agreement in addition to the parking provided on site totaled 53 spaces. A variance to reduce the number of required off-street parking was not requested. A certificate of occupancy was issued for the building in January 1994. A building permit was then issued in September 1994 for an interior alteration of the building to be used as an assembly use for Snoopers Tons of Fun with no additional parking required. 	
<i>(continued)</i>	

5. If permitted today, a total of 170 off-street parking spaces would be required for the assembly use. A certificate of occupancy was issued for the interior alteration and change of use from a retail use to an assembly use as Snoopers Tons of Fun in November 1994. As no variance was issued to reduce the required off-street parking for the retail service use (Rasenbaum's Leasing) or the assembly use (Snoopers Tons of Fun), the use of the existing building is considered a non-conforming use. Based on the size of the building and the size of the lot, very few uses would be considered conforming as there is limited space available on site for off-street parking.

APPLICABLE PROVISION(S) OF ZONING ORDINANCE:

1. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, "A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return."
2. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a nonconforming use as, "The use of a building or other structure or a tract of land which does not conform to the use or regulations of this title for the district in which it is located, either at the effective date of this title, or as a result of subsequent amendments which may be incorporated into this title." As a variance to reduce the required off-street parking for the retail service use (Rasenbaum's Leasing) or the assembly use (Snoopers Tons of Fun) was not issued, the use of the existing building is considered a non-conforming use because adequate parking is not available on site.
3. Section 14-03-10(h)(1) of the City Code of Ordinances (Off-Street Parking and Loading)(Retail Establishments) states, "In a RT, CA, CG, CR commercial and MA industrial district – off-street parking shall be provided in an amount equivalent to one space for each two hundred (200) square feet of gross floor space area on the ground floor, plus one space for each three hundred (300) square feet of gross floor area in a basement or any story above the ground floor; except that a furniture store shall have one space for each six hundred (600) square feet of gross floor area." According the site plan submitted with the application, 32 spaces will be provided on-site if the sight triangle variances are granted.
4. Section 14-02-03 of the City Code of Ordinances (Definitions)(Sight Triangle) defines a sight triangle as, "An area of unobstructed vision at the intersections of streets, alleys and driveways. The purpose of the sight triangle is to ensure visibility for operators of motor vehicles, bicycles and pedestrians on intersections streets, driveways and alleys." The definition further states that, For any use on a corner lot, the sight triangle is the triangle formed by measuring from the point of the intersection of the two (2) property lines a distance of twenty-five (25) feet in both directions along the street right-of-way lines and connection the points to form a triangle on the area of the lot adjacent to the street intersection. For a commercial, industrial, institutional or multi-family use with a driveway, the sight triangle is the triangle formed by measuring from the point of intersection of the property line adjacent to a street and the edge of the driveway a distance of fifteen (15) feet in along the street right-of-way line and a distance of fifteen (15) feet along the edge of the driveway and connecting the points to form a sight triangle on the area of the lot adjacent to the intersection of the street and driveway." Section 14-03-05 of the City Code of Ordinances prohibits off-street parking within the sight triangle as defined in section 14-02-03 of the City Code of Ordinances. According to the site plan submitted with the application, the applicant is proposing to locate five (5) off-street parking spaces within the sight-triangles located within the property. Placing off-street parking spaces located within a sight-triangle is not permitted.

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 CA - Commercial zoning classification.

(continued)

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 standard findings and modifying them as necessary to support the decision of the Board.



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

1. Property Address or Legal Description: Lot 1-6 Block 73

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

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.)

The strict application of the ordinance requirement for parking would require 55-60 stalls available for the proposed use of a retail grocery store. The lot has space for 21 parking stalls, in addition to the 12 stalls available through a shared use agreement with Arb Pizza. The steep decline on the south side of the building forces the location of the building 25-30 feet North of where it could otherwise be located. This location decreases the parking available by 25 stalls.

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

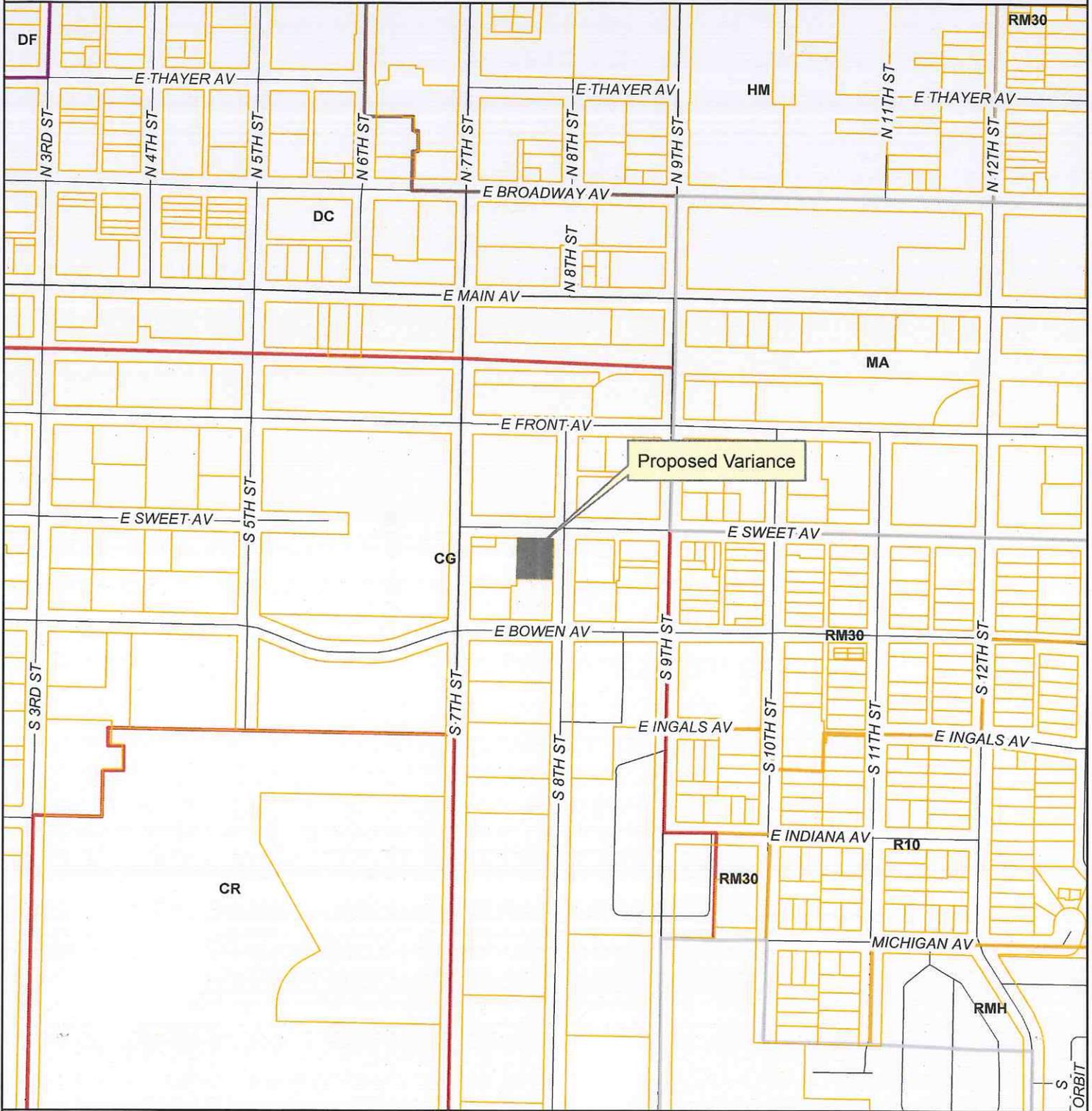
The Bismarck Community Food Co-op or any other retail food service or public establishment could not locate in the building without a variance permitted for parking. Current use is a public gathering space and restaurant, which has a significantly higher requirement for parking than a retail grocery store.

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

The variance requested is allowing a retail grocery cooperative to locate on a property with 21 off street parking stalls available, that would require stalls by city ordinance. Twenty one stalls parking stalls is the most parking that could fit in the existing lot, taking into consideration required sight triangles and handicap parking.

Proposed Variance

East 130' of Lots 1-6, Block 73, Original Plat



January 21, 2015 (hlb)

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.





Google earth

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Google earth

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Bismarck

April 6, 2015

Community Development Department

Dear Property Owner:

Please be advised that the Bismarck Board of Adjustment will be conducting a continued public hearing on a variance request on Monday, April 13, 2015 at 5:00 p.m. in the 1st Floor Conference Room, City-County Office Building, 221 North 5th Street, Bismarck, North Dakota, which may be of interest to you. The Board of Adjustment meeting previously scheduled for Thursday, April 2, 2015 at 4:00 pm was cancelled because the quorum of members required to conduct business was not available.

Jerry and Renae Doan and Bis-Man Community Food Cooperative are requesting a variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required off-street parking spaces from 51 spaces to 32 spaces on the East 130 feet of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue).

Jerry and Renae Doan and Bis-Man Community Food Cooperative are also requesting a variance from Section 14-03-05(3) of the City Code of Ordinances (Supplementary Provisions) to allow required off-street parking spaces to be placed within required sight triangles located at the intersection of East Sweet Avenue and South 8th Street and at a proposed access point adjacent to South 8th Street for the operation of a food co-op to be located on the East 130 feet of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue).

A map showing the location involved in the requests and site plan showing the parking layout 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 these items. Interested persons may also submit written comments regarding these requests 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.

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

Bismarck Community Development Department - Planning Division

JW/hlb

Enc: Location Map
Site Plan

