



Community Development Department
BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA

September 3, 2015

Tom Baker Meeting Room

5:00 p.m.

City-County Office Building

MINUTES

1. Consider the minutes of the July 2, 2015 meeting of the Board of Adjustment.

REQUESTS

2. **Variance from Section 14-04-01(4) of the City Code of Ordinances (RR – Residential)(Front Yard)** - Lot 2, Block 8, Northridge Estates Second Subdivision (8025 Ridgeland Drive)
Steven and Mary Kelsch are requesting a variance to reduce the front yard setback, located along the northwest side of the property, from forty (40) feet to twenty-eight (28) feet for the purpose of constructing an accessory building.

Board Action: approve continue table deny
3. **Variances from Section 14-04-06(2)(e)(2) of the City Code of Ordinances (R10 – Residential)(Row House)(Lot Width)** – The West 50 feet of Lots 4-6, Block 51, Northern Pacific 2nd Addition (1012 East C Avenue)
Shawn Damberger is requesting a variance to reduce the required lot width for a row house (twin home) from thirty (30) feet to twenty-five (25) feet, for the purpose of constructing a 2-unit row house (twin home).

Board Action: approve continue table deny
4. **Variance from Section 14-04-01(4) of the City Code of Ordinances (RR – Residential)(Front Yard)** – Lot 10, Block 7, Copper Ridge 3rd Subdivision (6800 Tiffany Drive)
Investcore, Inc. is requesting a variance to reduce the front yard setback, located along the east side of the property, from forty (40) feet to thirty-eight feet nine inches (38 feet 9 inches) for the purpose of constructing a single-family home.

Board Action: approve continue table deny



5. **Variance from Section 14-04-19(6)(b)(5) of the City Code of Ordinances (FP – Floodplain District)** – Lot 5, Block 3, Ridgeview Acres 2nd Subdivision (2200 Oahe Bend Drive)

Bismarck Public Schools is requesting a variance to allow the construction of a 1,653 square foot addition to Prairie Rose Elementary School, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, that will to be constructed below the required elevation of two (2) feet above the Base Flood Elevation (BFE).

Board Action: approve continue table deny

OTHER BUSINESS

6. **Bylaws of the Board of Adjustment**

Review the draft document of the Bylaws for the Board of Adjustment.

ADJOURNMENT

7. **Adjournment.** The next regular meeting date is scheduled for October 1, 2015.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: 8025 Ridgeland Drive – Variance (Front Yard Setback) (Lot 2, Block 8, Northridge Estates Second Subdivision)	
Status: Board of Adjustment	Date: September 3, 2015
Owner(s): Steven and Mary Kelsch	Engineer: None
Reason for Request: Variance from Section 14-04-01(4) of the City Code of Ordinances (RR-Residential)(Front Yard) to reduce the front yard setback located, along the northwest side of the property, from forty (40) feet to twenty-eight (28) feet for the purpose of constructing an accessory building.	
Location: North of Bismarck, east of North Washington Street and south of 84 th Avenue NE, along the east side of Ridgeland Drive.	
APPLICABLE PROVISION(S) OF ZONING ORDINANCE:	
<ol style="list-style-type: none"> 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.” Section 14-04-01(4) of the City Code of Ordinances (RR – Residential)(Front Yard) states, “Each platted lot shall have a front yard not less than forty (40) feet in depth as measured from the front property line.” According to the site plan submitted with the application the proposed accessory building is setback twenty-eight (28) feet from the front property line located along the northwest side of the property. 	
FINDINGS:	
<ol style="list-style-type: none"> The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning classification. The hardship is not caused by the provisions of the Zoning Ordinance. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant. 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.	
<i>/JW</i>	

Proposed Variance

Lot 2, Block 8, Northridge Estates Second Subdivision



June 15, 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 herein.



Legend

- 📍 8025 Ridgeland Dr
- 🔴 One

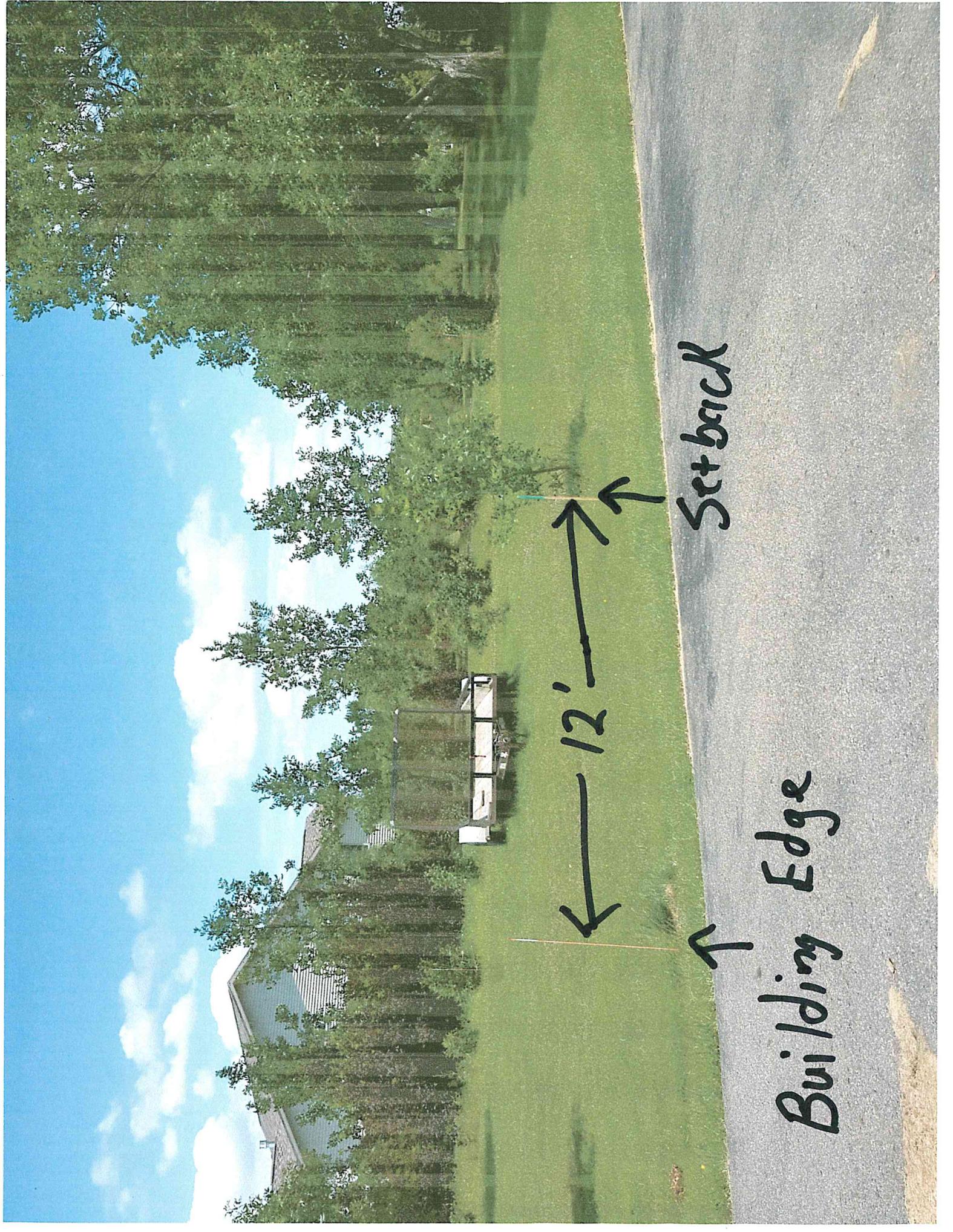
Untitled Map
Write a description for your map.



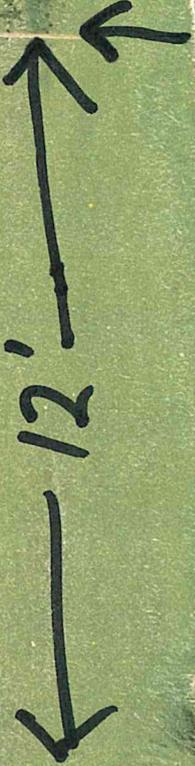
90 ft

Google earth

© SPOT IMAGE
© 2015 Europa Technologies
8025 Ridgeland Dr



Setback



Building Edge



12'

Building
Edge

setback

Bismarck

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

1. Property Address or Legal Description:
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 road curves at My lot making the setback farther than a normal setback. To build this garage would require going 12 feet into the setback. There are no utilities where we are building, and it would not affect or obstruct vision

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

It is one of the few places on the lot that is level. Also I would have to take out 2 large trees that were planted in the 30's. Other locations on the lot would be far away from the home making it impossible to get to in the winter

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

We are only requesting the ~~amount~~ amount of feet to allow for building - we are not asking for more than we need



Community Development Department

August 21, 2015

Dear Property Owner:

Please be advised that the Bismarck Board of Adjustment will be conducting a public hearing on a variance request on Thursday, September 3, 2015, at 5:00 p.m. in the Tom Baker Meeting Room, City-County Office Building, 221 North 5th Street, Bismarck, North Dakota, which may be of interest to you.

Steve Kelsch is requesting a variance from Section 14-03-08(4) of the City Code of Ordinances (RR-Residential)(Front Yard) to reduce the front yard setback located along the northwest side of the property, from forty (40) feet to twenty-eight (28) feet for the purpose of constructing an accessory building to be located on Lot 2, Block 8, Northridge Estates (8025 Ridgeland Drive).

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

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



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: 1012 East C Avenue – Variance (Lot Width) (The West 50 feet of Lots 4-6, Block 51, Northern Pacific 2 nd Addition)	
Status: Board of Adjustment	Date: September 3, 2015
Owner(s): Shawn Damberger	Engineer: None
Reason for Request: Variance from Section 14-04-06(2)(e)(2) of the City Code of Ordinances (R10 – Residential)(Row House)(Lot Width) to reduce the required lot width for a row house (two-family dwelling) from thirty (30) feet to twenty-five (25) feet, for the purpose of constructing a 2-unit row house (two-family dwelling).	
Location: In central Bismarck, between North 10 th Street and North 11 th Street, along the north side of East C Avenue.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> The proposed variance is located in the R10 – Residential zoning district on a vacant parcel that is fifty (50) feet wide. A single-family dwelling was demolished in 2007. Row houses are permitted within the R10 – Residential zoning district. However, in order to construct a row house, which is a side-by-side two-family dwelling with a property line and firewall separating the two dwellings, the fifty (50) foot wide parcel would need to be split into two twenty-five (25) foot wide parcels. A side-by-side two-family dwelling that is not considered to be a row house or does not have a firewall or property line separating the two dwellings may be constructed on a lot no less than fifty (50) feet provided the lot was platted prior to 1953. The proposed variance is located within a subdivision (Northern Pacific 2nd Addition) that was platted in 1912. 	
APPLICABLE PROVISION(S) OF ZONING ORDINANCE:	
<ol style="list-style-type: none"> 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.” Section 14-04-06(2)(e)(2) of the City Code of Ordinances (R10 – Residential)(Row House)(Lot Width) requires the lot width for a row house measured along the front building line to be not less and thirty (30) feet. According to the site plan submitted with the application each half of the proposed row house would be located on a lot twenty-five (25) feet wide. 	
FINDINGS:	
<ol style="list-style-type: none"> 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 	
<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.

/JW

Proposed Variance

The West 50 feet of Lot 4-6, Block 51

Northern Pacific 2nd Addition

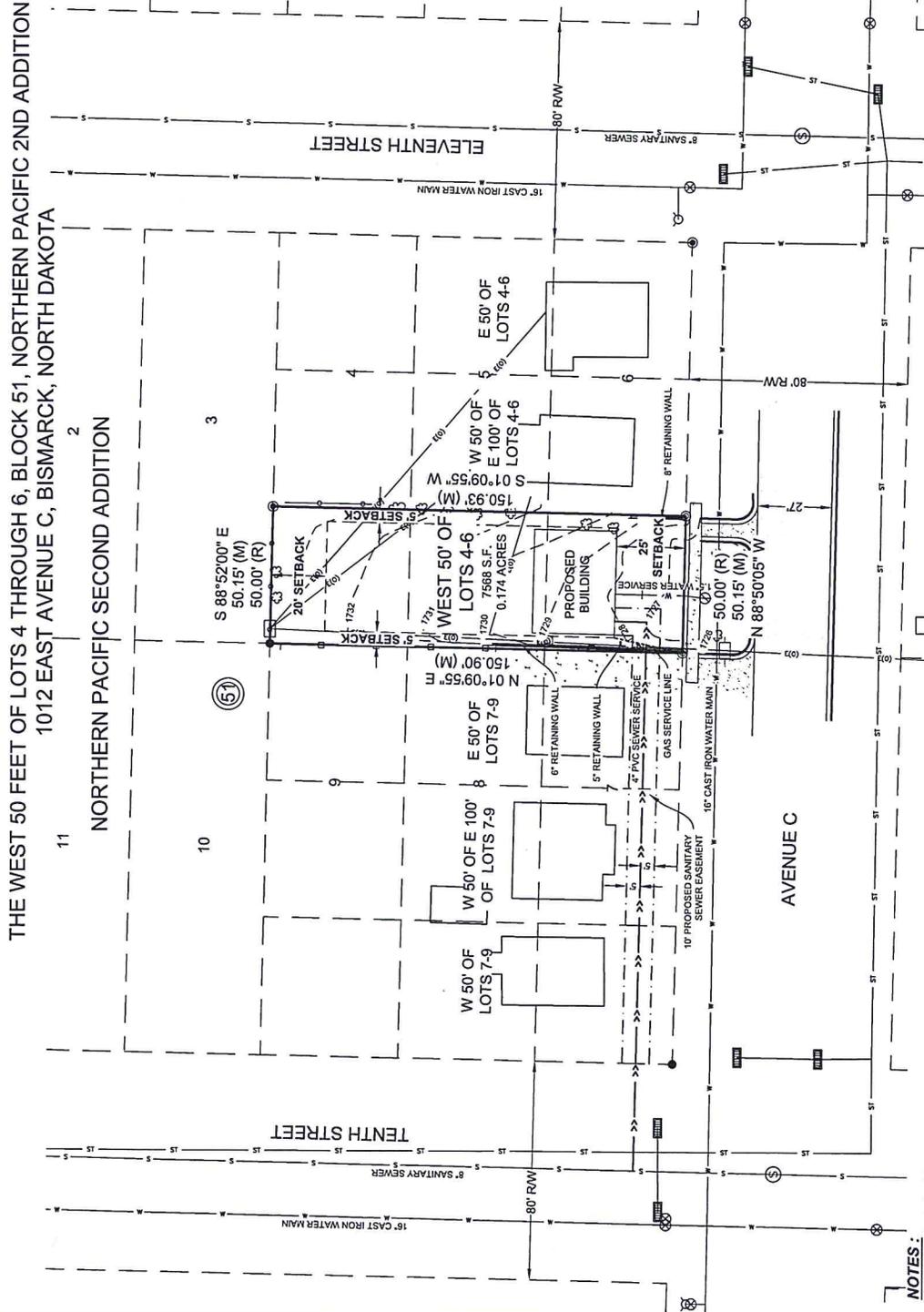


June 15, 2015 (hlb)

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SITE PLAN EXHIBIT



LEGEND

- Iron Pipe Found
- Iron Rebar and LS Cap Found
- Calculated Point
- Power Pole
- Water Gate Valve
- Water Service Valve
- Fire Hydrant
- Sanitary Sewer Manhole
- Storm Sewer Inlet
- Tree
- Measured
- Recorded
- Property Line
- Adjacent Property Line
- Overhead Electrical
- Existing Water Main
- Proposed Water Service
- Existing Sanitary Sewer Line
- Proposed Sanitary Sewer Line
- Existing Storm Sewer Line
- Chain Link Fence
- Wood Fence
- Concrete Curb and Gutter
- Concrete Surface
- Asphalt Surface

HORIZONTAL DATUM:
 U.S. State Plane
 NAD 1983
 International Feet

ZONING:
 R10

SETBACKS:
 Front: 25'
 Side: 6'
 Rear: 20'



SITE PLAN EXHIBIT
 SHAWN DAMBERGER
 BISMARCK, NORTH DAKOTA

KLJ

1012 EAST CAUVENUE
 WEST 50 FEET OF LOTS 4-6, BLOCK 51
 NORTHERN PACIFIC SECOND ADDITION
 BISMARCK, NORTH DAKOTA

REV. NO. DATE BY

1 10/14/14 JLD

© KLJ 2014

SUBMITTED BY:
 Shawn Damberger
 320 North Mandan St., #3
 Bismarck, N.D. 58501
 701-390-2845

ENGINEER:
 KLJ
 4585 Coleman Street
 Bismarck, N.D. 58503
 701-355-8400

- NOTES:**
- Maintain 10' of horizontal separation between water and sewer lines.
 - All utilities shall be constructed in accordance with the City of Bismarck Construction Specifications for Municipal Public Works Improvements.

Oct 03, 2014 - 5:30pm - P:\Projects\ND\Survey\Q\damberger\16145161 Damberger\16145161.dwg - Shawn Damberger



RECEIVED

JUL 24 2015

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

1. Property Address or Legal Description: 1012 East C Avenue, Bismarck 58501

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

3. Type of Variance Requested: Requirements of lot width for row house.

4. Applicable Zoning Ordinance Chapter/Section: 14-04-06 R10 Residential District "Row House" 2 (e) (2) width requirements

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.)

Specific Variance request: Allow for the building of a side by side (zero lot line) row house on a 50 foot narrow lot. 14-04-06. R10 Residential District explains the permitted uses and requirements for row houses. A row house is defined as attached single-family dwelling in groups of (2). The current zoning requirement do not allow for a row type housing structure on this lot, but would allow for the exact same structure if it was built as a duplex. The current lot width requirements for row housing states that each unit must be at least 30 feet, meaning a lot width must be 60 feet wide in order to build a row house. The current lot width of this parcel is 50 feet wide and therefore limits the overall use of this parcel as two single family units as a row house. The current building plans developed as a side by side duplex have been approved by the city with a single address and legal description. This request is to allow a lot width of 25 feet for each front unit. Granting this request would create two separate units, each with a separate address, tax base and legal description. New development in this area of town will create enhanced curb appeal and inner city revitalization. The overall use of this lot is also impacted by the overhead powers lines that create a utility easement on the west side.

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

Reasonable use of inner-city land that provides for highest and best use to benefit the city, community and neighbors is a side by side row home. The changes proposed include the same building plans and setback requirements that have been approved by the city for a duplex. The only difference between what was approved as a duplex and the variance requested with the same plans is instead of having one address with a single legal description and tax identification there would be two separate legal descriptions. This property is zoned for two-family dwelling. Granting an exception for the minimum amount of width requirement for each building from 30 feet to 25 feet would allow for reasonable use of the property. This approval would allow for an additional above quality inner-city housing unit and add to the city's property tax revenue. The property setback requirements will be the same as to what the city has already approved.

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

Current market dynamics in the neighborhood limit the overall and realistic use of this parcel as a single family and duplex use due to no similar comparable properties for financing purposes. I would be willing and able to provide more concrete information upon request as to this unique situation. Simply expecting an owner-occupant to expose this property to non-traditional market exposure techniques is not realistic and reasonable. This request to grant a row house on this lot is reasonable, benefits the overall community and is the same property that would be built as a duplex but with two different addresses. There is a reason why this lot has not been developed since the previous property was demolished. Granting a variance that allows for a "row house" allows for the least reasonable use of this parcel when analyzing the market conditions of the downtown Bismarck housing market, more specifically east of Ninth Street.



Community Development Department

August 21, 2015

Dear Property Owner:

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Shawn Damberger is requesting a variance from Section 14-04-06(2)(e)(2) of the City Code of Ordinances (R10-Residential)(Row House)(Lot Area) to reduce the required lot width for a row house (twin home) from sixty (60) feet to fifty (50) feet, for the purpose of constructing a 2-unit row house (twin home) to be located on the West 50 feet of Lots 4-6, Block 51, Northern Pacific 2nd Addition (1012 East C Avenue).

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

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



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: 6800 Tiffany Drive – Variance (Front Yard Setback) (Lot 10, Block 7, Copper Ridge 3 rd Subdivision)	
Status: Board of Adjustment	Date: September 3, 2015
Owner(s): Investcore, Inc.	Engineer: SEH, Inc.
Reason for Request: Variance from Section 14-04-01(4) of the City Code of Ordinances (RR-Residential)(Front Yard) to reduce the front yard setback, located along the east side of the property, from forty (40) feet to thirty-eight feet nine inches (38 feet 9 inches) for the purpose of constructing a single-family home.	
Location: North of Bismarck, east of North Washington Street and south of 84 th Avenue NE, along the east side of Ridgeland Drive.	
ADDITIONAL INFORMATION:	
1. A building permit was issued on July 23, 2015 to construct a single-family dwelling. After the footings and foundation were poured, it was discovered that that single-family dwelling was not setback the required forty (40) feet. The requested variance would allow the foundation to remain in place and the construction of the remainder of the house.	
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 14-04-01(4) of the City Code of Ordinances (RR – Residential)(Front Yard) states, “Each platted lot shall have a front yard not less than forty (40) feet in depth as measured from the front property line.” 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 (Tiffany Drive) from forty (40) feet to thirty-eight feet nine inches (38 feet 9 inches).	
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 RR – Residential zoning classification.	
2. The hardship is not caused by the provisions of the Zoning Ordinance.	
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of reasonable use of the property.	
<i>(continued)</i>	

4. The granting of the variance is not in harmony with the general purpose and intent of the Zoning Ordinance.

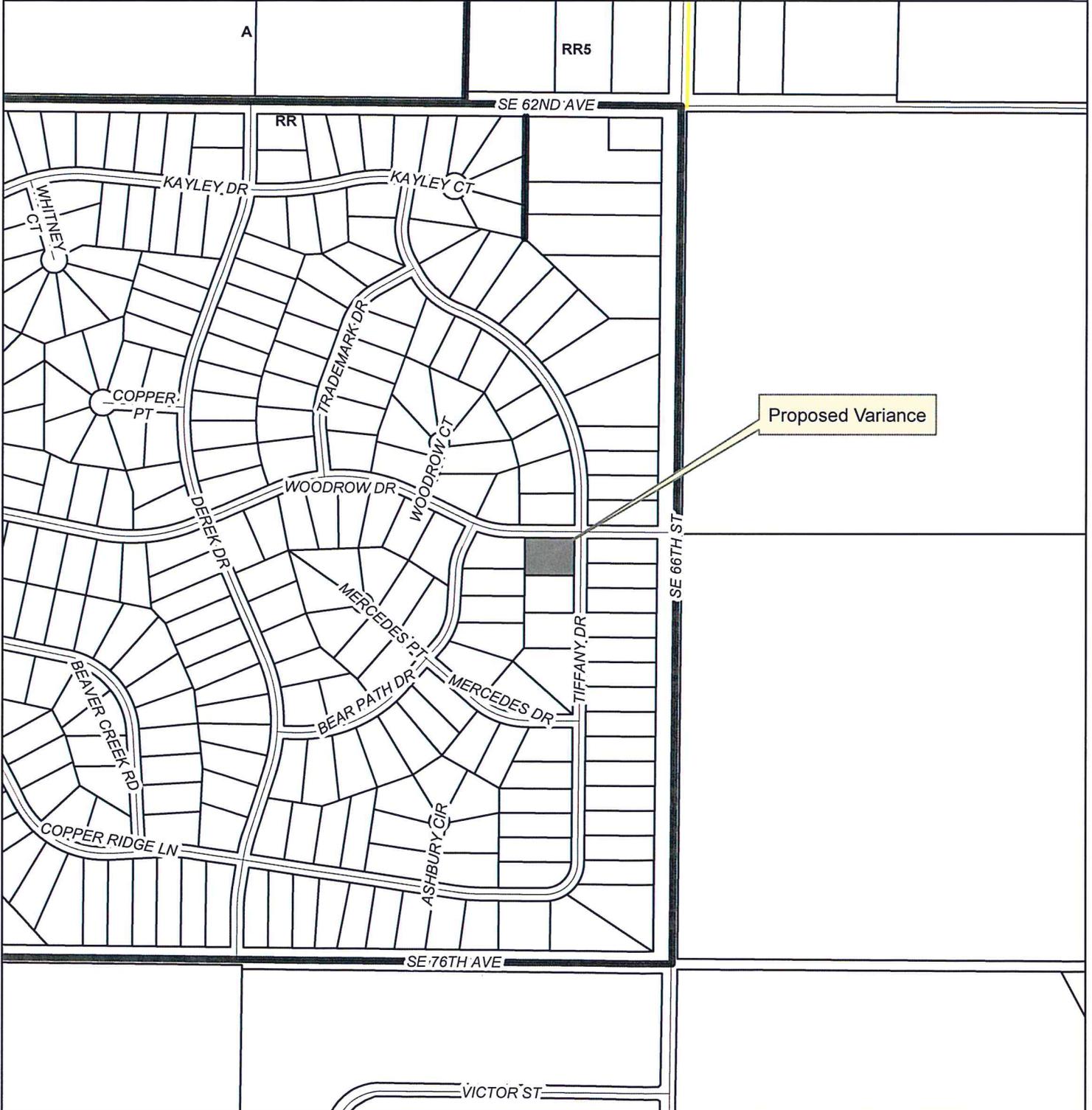
RECOMMENDATION:

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

/JW

Proposed Variance

Lot 10, Block 7, Copper Ridge 3rd Subdivision



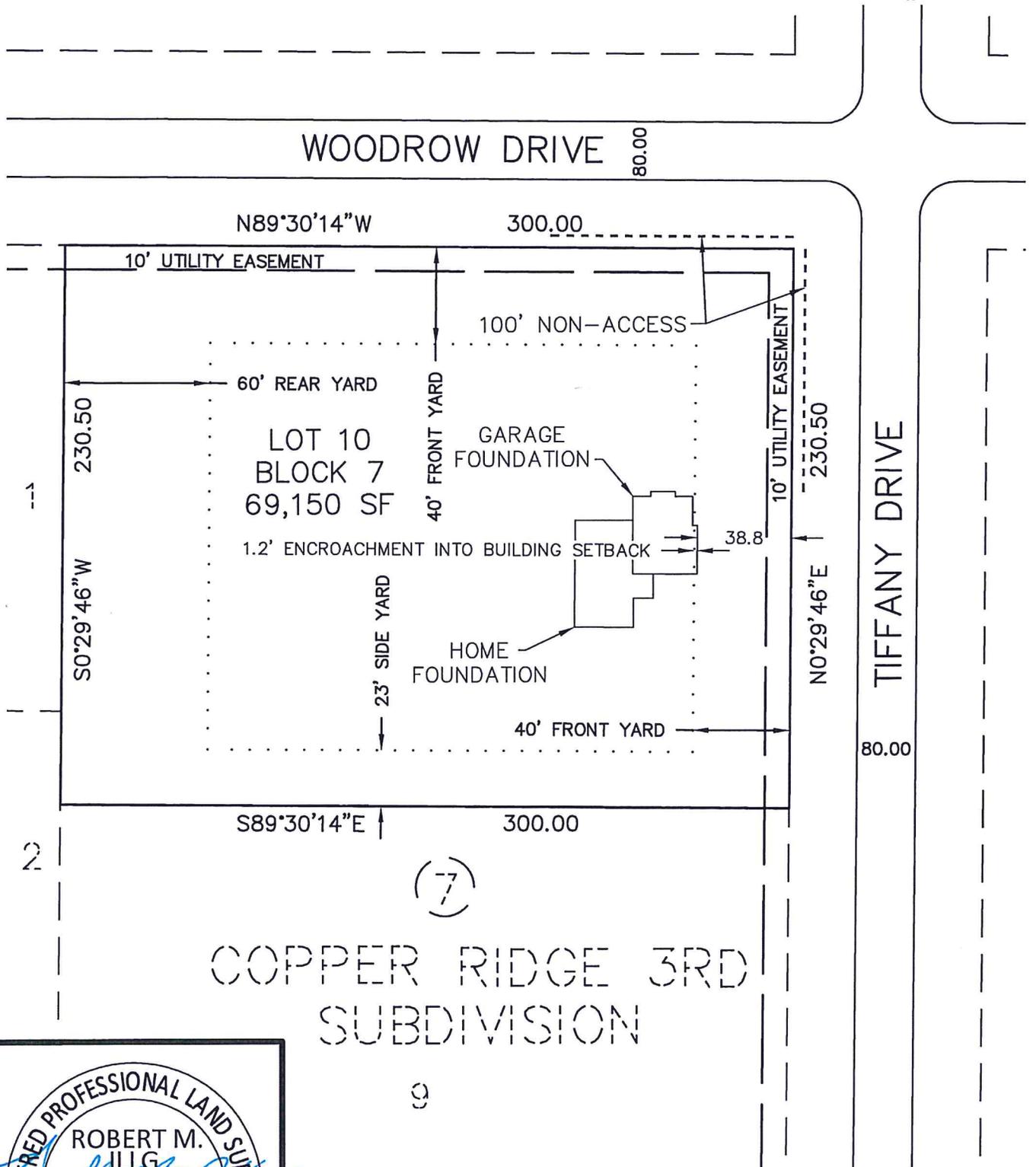
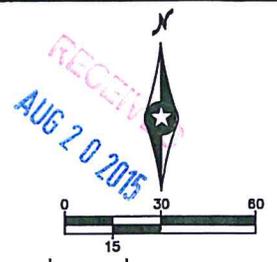
August 21, 2015 (hib)

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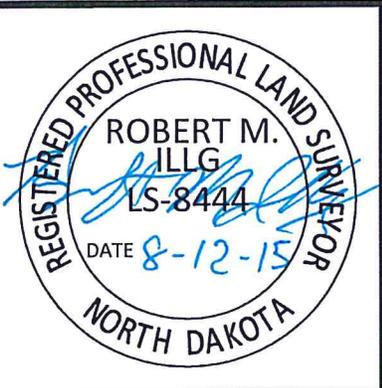


NOTES:

THE BUILDING SETBACK LINES SHOWN ARE TYPICAL, THERE MAY BE OTHER BUILDING RESTRICTIONS THAT AFFECT THIS PROPERTY. THE BUILDER IS RESPONSIBLE FOR VERIFYING THE BUILDING SETBACKS AND BUILDING DIMENSIONS. DIMENSIONS ARE FROM PLAT. BUILDING AS SHOWN WAS FIELD LOCATED.



P:\KOL\LANCD\133324\COPPER RIDGE\LOT 10 B7 3RDSUB.dwg 8/12/2015 10:42 AM rllg



SEH
 PHONE: 701.354.7121
 925 BASIN AVENUE, STE 101
 BISMARCK, ND 58504-6634
 www.sehinc.com

LOT SURVEY EXHIBIT

6800 TIFFANY DRIVE
 LOT 10, BLOCK 7,
 COPPER RIDGE 3RD
 SUBDIVISION
 BUILDER:
 TRITON HOMES

FILE NO. 133324
DATE 8/12/15
DRAWN BY: RMI CHECKED BY: MSG SURVEYED BY: DRL



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

RECEIVED
AUG 20 2015

1. Property Address or Legal Description: 6800 Tiffany Drive - L10 B7 Copper Ridge 3rd

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

3. Type of Variance Requested: Building Setback 1.25'

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

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 Rural residential zoning calls for a 40 foot setback from Tiffany Drive and also Woodrow Drive since this lot is on the corner. There was an honest misunderstanding between contractors and the footprint for the building was placed 1.2' east of the building setback line.

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

The construction on this home had already begun when the misunderstanding was found. A lot survey was done to verify that the home was indeed across the setback line. With the home being located in the building setback, it is not within the building limits shown on the submitted lot survey used to obtain the building permit for this lot. If the variance is not approved, the home would be considered uninhabitable.

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

The home was mistakenly place 1.2' to the east of the setback line and a setback of 38.5' from Tiffany Drive in lieu of the standard 40' setback is requested.



Community Development Department

August 24, 2015

Dear Property Owner:

Please be advised that the Bismarck Board of Adjustment will be conducting a public hearing on a variance request on Thursday, September 3, 2015, at 5:00 p.m. in the Tom Baker Meeting Room, City-County Office Building, 221 North 5th Street, Bismarck, North Dakota, which may be of interest to you.

Investcore, Inc. is requesting a variance from Section 14-04-01(4) of the City Code of Ordinances (RR-Residential)(Front Yard) to reduce the front yard setback located along the east side of the property, from forty (40) feet to thirty-eight feet nine inches (38 feet 9 inches) for the purpose of constructing a single-family home, to be located on Lot 10, Block 7, Copper Ridge 3rd Subdivision (6800 Tiffany Drive).

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

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



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

BACKGROUND:	
Title: 2200 Oahe Bend Drive – Variance (Flood Hazard Reduction / Additions to Existing Structures) (Lot 5, Block 3, Ridgeview Acres 2 nd Subdivision)	
Status: Board of Adjustment	Date: September 3, 2015
Owner(s): Bismarck Public Schools	Engineer: Swenson, Hagen & Company
Reason for Request: Variance from Section 14-04-19(6)(b)(5) of the City Code of Ordinances (FP – Floodplain District) to allow the construction of a 1,653 square foot addition to Prairie Rose Elementary School, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, that will be constructed below the required elevation of two (2) feet above Base Flood Elevation (BFE).	
Location: South of Bismarck, between Sibley Drive and University Drive, along the north side of Oahe Bend Drive.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. If approved, the proposed variance and the findings made by the Board of Adjustment will be subject to additional review by Hazard Program Specialists within FEMA’s National Flood Insurance Program (NFIP). By participating in the NFIP residents of the City of Bismarck and its jurisdictional area are eligible for flood insurance. 2. The applicant is proposing to construct an addition to the existing structure which was constructed in 1977 and is considered to be a Pre-FIRM structure. The City Code of Ordinances allows non-substantial improvements, (additions and or alteration to structures valued at 50 percent or less of the total value of the structure) to Pre-FIRM structures to be constructed at the elevation of the existing structure, provided that the existing structure is elevated to at least one foot above the Base Flood Elevation (BFE). The proposed 1,653 square foot addition is not considered to be a substantial improvement as the cost of the addition is less than 50 percent of the value of the structure. 3. A zoning text amendment relating to Pre-FIRM structures is being proposed by staff. The amendment would allow an addition to any existing structure that is considered to be a Pre-FIRM structure and is not deemed a substantial improvement to be constructed at the elevation of the existing structure, even if the existing structure is not constructed at or above the BFE. The North Dakota Century Code (NDCC) and the National Flood Insurance Program (NFIP) allow non-substantial improvements to Pre-FIRM structures to be constructed at the same elevation of the existing structure. The proposed amendment would match state and federal guidelines for additions to pre-FIRM structures not deemed a substantial improvement. 	
APPLICABLE PROVISION(S) OF ZONING ORDINANCE:	
<ol style="list-style-type: none"> 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.” 	
<i>(continued)</i>	

2. Section 14-04-19(6)(b)(5) of the City Code of Ordinances (FP – Floodplain District) states, “Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory building that is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure, provided the lowest floor of the existing structure is elevated on fill and / or a permanent foundation to at least one (1) foot above the base flood elevation.” According to the Elevation Certificate submitted with the application, the proposed 1,653 square foot addition would be constructed at an elevation of 1633.25 which is 3.85 feet below the BFE and 5.85 feet below the required construction elevation of two (2) feet above Base Flood Elevation (BFE) outlined in the ordinance.

VARIANCES FROM FLOODPLAIN PROVISIONS:

In considering appeals and variance applications, and in addition to the requirements outlined in Section 14-06-02 of the City Code of Ordinances (Powers and Duties), the Board of Adjustment shall consider all technical evaluations, all relevant factors, and the standards specified in this section, including:

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

FINDINGS:

Any Variance

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.

(continued)

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

Floodplain Variance

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

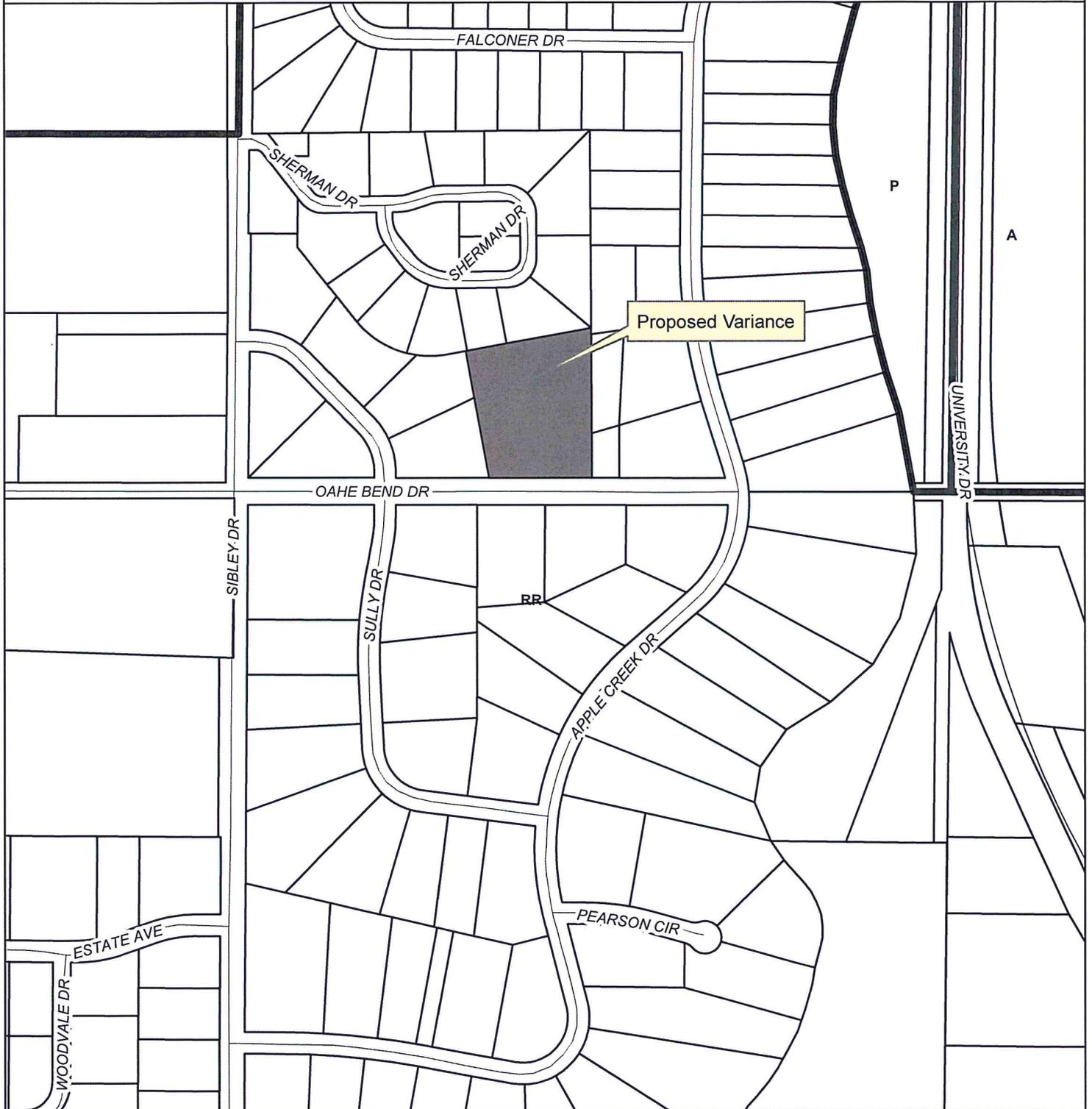
RECOMMENDATION:

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

/JW

Proposed Variance

Lot 5, Block 3, Ridgeview Acres 2nd Addition

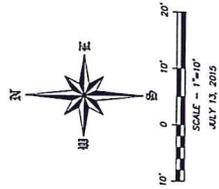
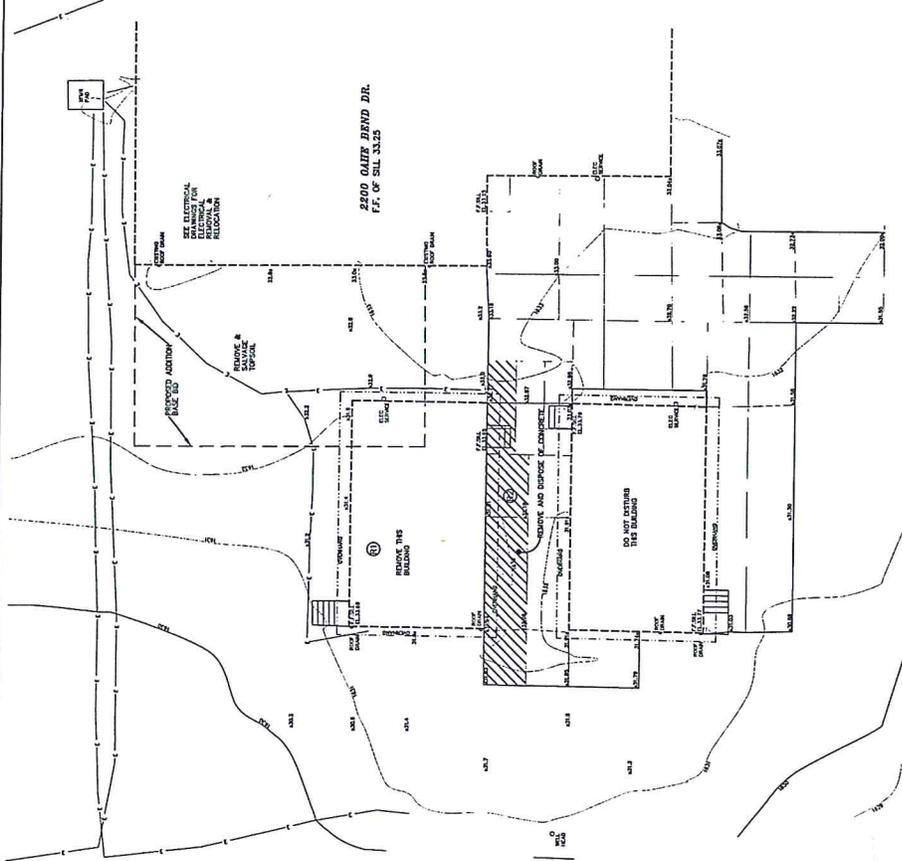


June 15, 2015 (hlb)

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.



- REMOVALS**
- ⑩ CONTRACTOR SHALL REMOVE AND DISPOSE OF BUILDING TO A DISPOSAL SITE APPROVED FOR SUCH MATERIAL.
 - ⑪ CONTRACTOR SHALL REMOVE AND DISPOSE OF PORTABLE BUILDING FOOTINGS.
 - ⑫ REMOVE AND DISPOSE OF CONCRETE PAVEMENT.

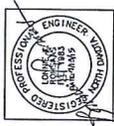


CALL BEFORE YOU DIG
 NORTH DAKOTA
 UTILITIES LOCATION SERVICE
 1-800-735-0555

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UTILITY NOTE
 THE UTILITIES SHOWN ON THIS DRAWING ARE BASED ON THE RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL VERIFY THE EXISTENCE OF ALL UTILITIES PRIOR TO ANY EXCAVATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY BE OCCURRED BY THE CONTRACTOR'S FAILURE TO EXCAVATE AND PREPARE ANY AND ALL UNDERGROUND UTILITIES.

BENCH MARKS DATUM MANORS
 1000 FEET WEST OF SITE
 1000 FEET NORTH



SWENSON, HAGEN & CO
 THIS DOCUMENT WAS PREPARED BY SWENSON, HAGEN & CO. IN BISMARCK, NORTH DAKOTA. THE PROJECT WAS COMPLETED BY SWENSON, HAGEN & CO. IN BISMARCK, NORTH DAKOTA.



SWENSON, HAGEN & COMPANY P.C.
 800 Union Avenue
 Bismarck, North Dakota 58504
 Phone (701) 231-3000
 Fax (701) 231-3000
 Email: info@shengr.com

ELEVATION CERTIFICATE

Important: Read the instructions on pages 1-9.

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

SECTION A - PROPERTY INFORMATION

FOR INSURANCE COMPANY USE

A1. Building Owner's Name Bismarck Public Schools

Policy Number:

A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.
 2200 Oahe Bend Dr

Company NAIC Number:

City Bismarck

State ND

ZIP Code 58504

A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)
 Lot 5 Block 3, Ridgeview Acres Second

A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) Non-Residential

A5. Latitude/Longitude: Lat. N46.7373 Long. W100.7590 Horizontal Datum: NAD 1927 NAD 1983

A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.

A7. Building Diagram Number 1B

A8. For a building with a crawlspace or enclosure(s):

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

A9. For a building with an attached garage:

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

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number
 City of Bismarck 380149

B2. County Name
 Burleigh

B3. State
 ND

B4. Map/Panel Number
 38015C0960D

B5. Suffix
 D

B6. FIRM Index Date
 8/4/2014

B7. FIRM Panel Effective/Revised Date
 8/4/2014

B8. Flood Zone(s)
 AE

B9. Base Flood Elevation(s) (Zone AO, use base flood depth)
 1637.1

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9.

- FIS Profile FIRM Community Determined Other/Source: _____

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

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

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: Construction Drawings* Building Under Construction* Finished Construction

*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.

Benchmark Utilized: BSC CORS

Vertical Datum: NAVD 1988

Indicate elevation datum used for the elevations in items a) through h) below. NGVD 1929 NAVD 1988 Other/Source: _____

Datum used for building elevations must be the same as that used for the BFE.

Check the measurement used.

- a) Top of bottom floor (including basement, crawlspace, or enclosure floor) 1633.25 feet meters
- b) Top of the next higher floor N/A feet meters
- c) Bottom of the lowest horizontal structural member (V Zones only) N/A feet meters
- d) Attached garage (top of slab) N/A feet meters
- e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments) 1633.25 feet meters
- f) Lowest adjacent (finished) grade next to building (LAG) N/A feet meters
- g) Highest adjacent (finished) grade next to building (HAG) N/A feet meters
- h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support N/A feet meters

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available.

I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

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

Certifier's Name Tim Langerud

License Number 5770

Title PLS

Company Name Swenson, Hagen & Co.

Address 909 Basin Ave

City Bismarck

State ND ZIP Code 58504

Signature Tim Langerud

Date 8-20-15

Telephone 701-223-2600



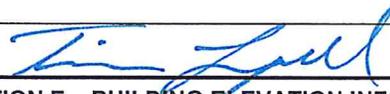
ELEVATION CERTIFICATE, page 2

IMPORTANT: In these spaces, copy the corresponding information from Section A.	FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 2200 Oahe Bend Dr	Policy Number:
City Bismarck State ND ZIP Code 58504	Company NAIC Number:

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

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

Comments This certificate is valid only for the information in A1 through A3 and Section B and not intended for insurance purposes. Information in C2 a-h was provided from plans.

Signature  Date 8-20-15

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

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

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

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

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

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

Address _____ City _____ State _____ ZIP Code _____

Signature _____ Date _____ Telephone _____

Comments _____

Check here if attachments.

SECTION G – COMMUNITY INFORMATION (OPTIONAL)

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

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

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

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

Local Official's Name _____ Title _____

Community Name _____ Telephone _____

Signature _____ Date _____

Comments _____

Check here if attachments.



SUBSTANTIAL IMPROVEMENT / SUBSTANTIAL DAMAGE APPLICATION

PROPERTY INFORMATION:

Legal Description (lot, block, subdivision): Lot 5 Block 3 Ridgeview Acres Second Addition

Street address of property: 2200 Oahe Bend

Type of structure:

Residential (house, accessory building) Non-residential

2014 FIRM Panel Number: 0960D

Base Flood Evaluation(BFE): 1637.08

Elevation of Existing Structure: 1633.25

Year Built: 1977

Market Value (structure only): \$ 2,867,848

Construction Value: \$ 300,000 est

PROPERTY OWNER:

Name: Bismarck Public Schools

Phone number: 323-4000

Mailing address: 806 North Washington Street

CONTRACTOR (if different than owner):

Name: N/A

Phone number:

Mailing address:

CONTACT PERSON:

Name: Richard Bohrer

Name of Firm (if applicable): Architectural Concepts Inc.

Mailing address: 122 East Main Avenue, Suite 202, Bismarck, ND 58501

Phone number: 255-3057

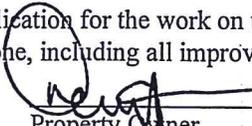
Email Address: rbohrer@acind.net

Fax number: 255-3062

I hereby attest that I have discussed the nature and extent of the work requested by the homeowner including all improvements, rehabilitation, remodeling, repairs, additions, and other forms of improvement. I further attest that the cost estimate provided on this application includes all cost elements identified by the City of Bismarck including labor, overhead, materials, profit, and all other miscellaneous costs.

Contractor

I hereby attest that the description included in the permit application for the work on the existing building that is located at the property identified above is all of the work that will be done, including all improvements, rehabilitation, remodeling, repairs, additions, and any other form of improvement.



Property Owner



FLOODPLAIN DEVELOPMENT APPLICATION

PROPERTY INFORMATION:

Address of Property: 2200 Oahe Bend

Legal Description: Lot 5 Block 3 Ridgeview Acres Second Addition
 (lot, block, subdivision)

APPLICANT (Contractor/Engineer/Contractor):

Name: Architectural Concepts Inc.	Phone number: 255-3057
-----------------------------------	------------------------

Mailing address: 122 E Main Ave, Suite 202

PROPERTY OWNER:

Name: Bismarck Public Schools	Phone number: 323-4000
-------------------------------	------------------------

Mailing address: 806 North Washington Street

TYPE OF DEVELOPMENT (check all that apply):

<p>Activity:</p> <input type="checkbox"/> New structure <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Alteration <input type="checkbox"/> Replacement <input type="checkbox"/> Removal / Demolition <input type="checkbox"/> Remodel / Renovation <input type="checkbox"/> Other (please specify): _____	<p>Activity:</p> <input type="checkbox"/> Single-family residential <input type="checkbox"/> Two-family residential <input type="checkbox"/> Multi-family residential <input type="checkbox"/> Manufactured home <input type="checkbox"/> Combined use <input checked="" type="checkbox"/> Non-residential <input type="checkbox"/> Other (please specify): _____	<p>Activity:</p> <input type="checkbox"/> Placement of fill <input type="checkbox"/> Grading <input type="checkbox"/> Excavation <input type="checkbox"/> Installation of utilities <input type="checkbox"/> Subdivision (new or expansion) <input type="checkbox"/> Stormwater/drainage improvement <input checked="" type="checkbox"/> Other (please specify): non-substantial addition _____
--	---	--

PROJECT DISCRPTION:

Describe in detail work being done:

1,653 sf CMU & brick storage room addition.

FLOODPLAIN DETERMINATION:

Development will occur in the following:

- SFHA (100-year floodplain)
- Regulatory Floodway

Flood map information:

FIRM Date and Panel Number August 4, 2014 Panel 0960D

FIRM Zone: AE

Base Flood Elevation (BFE) at development site (1988 DATUM): 1637.08

Development will be elevated to (1988 DATUM): **NA 1633.25**

ADDITIONAL INFORMATION REQUIRED:

Submitted	N/A
-----------	-----

1. A site plan drawn to scale showing the nature, location, dimensions, and elevations of the area in question including 1-foot contour lines; existing or proposed structures, fill storage materials, drainage facilities and the delineation of SFHA, including floodway boundaries, flood zones and BFE's (required with all applications).	X	
2. Certification by a registered professional engineer that the floodproofing methods for any non-residential structure meet the floodproofing criteria in section 14-04-19 of the City Code of Ordinances (required with all applications involving floodproofing of non-residential buildings).		X
3. Certification by a registered professional engineer demonstrating that encroachments; including; fill, new construction, substantial improvements, and other development shall not result in any increase in flood levels during the occurrence of a base flood discharge or 100-year flood as required in Section 14-04-19 of the City Code of Ordinances (required with all applications in the floodway).		X
4. Substantial Improvement Determination Form (required for an addition or alteration to an existing structure located within the SFHA)	X	
5. Elevation Certificate (required for all development including a structure).		
6. Certification of fill form completed by a registered professional engineer (required for any fill placed within an identified SFHA or floodway).		X



Signature

8-18-15

Date:

NOTE: Approval of this Floodplain Development Permit Application by the City of Bismarck does not eliminate your need to comply with other State and Federal guidelines and requirements.



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

1. Property Address or Legal Description:

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.)

As I read the ordinance, it doesn't address non-substantial additions or modifications to pre-firm buildings, so I looked to the IBC (Ch 34, Section 3403.2) and FEMA they both allow non-substantial improvements without any raising of elevation or flood proofing. The City of Bismarck is interpreting that since the ordinance doesn't address the situation, then it isn't allowed. This interpretation means no work can be done on a pre-firm building unless it is for health, sanitary, or safety code or the building is on the Register of Historic Places. Worn out carpets can't be replaced, walls can't be painted, ADA modifications can't be made. Strict application of this ordinance in the way the City of Bismarck is interpreting it would mean this school should fall into disrepair, be abandoned, and the school district would have to build it at some other location at a great expense at a time when schools are overcrowded and budgets are strained to keep up with the demand.

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

By not allowing the storage addition, cafeteria tables are being stored in the gymnasium, creating a hazard to the students when the gymnasium is used for physical education. By requiring the addition to be at an elevation of 3.75 feet higher than the gymnasium floor, means tables would have to be moved 4 times a day up and down for the two meals served. This would take more time out of the day that the gymnasium couldn't be used and possibly create a hazard to the employees that have to move the tables.

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

This addition (either 1,653 sf or 827 sf) would replace an existing 920 sf wood structure that is currently on the property. The addition will be a concrete floor with CMU and brick walls, which is less susceptible to flood damage than the wood structure it replaces or other areas of the school that have finishes that could be damaged.



Community Development Department

August 24, 2015

Dear Property Owner:

Please be advised that the Bismarck Board of Adjustment will be conducting a public hearing on a variance request on Thursday, September 3, 2015, at 5:00 p.m. in the Tom Baker Meeting Room, City-County Office Building, 221 North 5th Street, Bismarck, North Dakota, which may be of interest to you.

Bismarck Public Schools is requesting a variance from Section 14-04-19(6)(b)(5) of the City Code of Ordinances (FP-Floodplain District) to allow the construction of a 1,500 square foot addition to Prairie Rose Elementary School, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, that will to be constructed below the required elevation of two (2) feet above the Base Flood Elevation (BFE), to be located on Lot 5, Block 3, Ridgeview Acres 2nd Addition (2200 Oahe Bend).

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

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



Bylaws of the City of Bismarck Board of Adjustment

Article I. Authorization

A. Authority. The Board of Adjustment is established pursuant to Chapter 14-06 of the City of Bismarck Code of Ordinances (Title 14) and pursuant to provisions in the North Dakota Century Code (NDCC) Chapter 40-47.

Article II. Purpose

A. Purpose. The purpose of the Board of Adjustment is to promote the health, safety and general welfare of the citizens of the City of Bismarck and its extraterritorial jurisdictional boundary by hearing and deciding appeals of orders, requirements, and decisions or determinations of an administrative official when appropriate to Title 14.

Article III. Membership, Organization and Compensation

A. Membership. The Board of Adjustment shall consist of six (6) members, each to be appointed by the Board of City Commissioners for a term of three (3) years. *(Title 14)*

B. Organization. The organization of the Board of Adjustment will consist of a chairperson and vice chairperson who shall be selected by the membership and who shall serve at the pleasure of the membership for one year. Nominations and election of officers shall be taken from the floor at the Board of Adjustment's first meeting of the year. In the event that an officer is unable to complete the specified term, a special election shall be held for the completion of the term. *(Title 14)*

The chairperson shall preside at all Board of Adjustment meetings and review agendas with staff. *(Title 14)*

The vice-chairperson shall conduct all business delegated by the chairperson, in his or her absence. *(Title 14)*

C. Compensation. The Board of Adjustment members shall be compensated for their service to the board at a rate established annually by the Board of City Commissioners. *(Title 14)*

Article IV. Conduct of Members and Ethics

A. General Conduct. Members of the Board of Adjustment shall make every effort to attend all meetings and shall make every effort to represent the interests of all of the citizens of the City of Bismarck and its extraterritorial jurisdictional boundary in a fair and impartial manner.

B. Conflict of Interest. Any member of the Board of Adjustment who has a direct and substantial personal or pecuniary (financial) interest in a matter before the Board must disclose the fact to the body and may not participate or vote on that particular matter without the consent of a majority of the rest of the Board. Such personal interest includes any actual or potential benefit or advantage that a Board of Adjustment member, a spouse, or family member might directly or indirectly obtain from a Board of Adjustment decision.

C. Removal of Members. The Board of Adjustment may recommend that the Board of City Commissioners remove any member if that member has failed to attend three (3) consecutive regular meetings of the Board of Adjustment or has failed to attend seven (7) regular meetings within one calendar year. The Board of City Commissioners shall make judgment on such matters after receiving a report from the chairperson of the Board of Adjustment.

D. Ex-parte Communication. Ex-parte communication includes any oral or written communication between the commissioner and other persons interested in an item such as the applicant, another commissioner, or staff. Such practices are expected and are a reasonable form of communication. Communications on a particular item sent to the Board of Adjustment after the agenda packet has been sent via email or mail may be distributed and announced at the Board of Adjustment meeting.

Article V. Powers and Duties of the Board

A. Powers and Duties of the Board. The Board of Adjustment shall have all of the powers and duties confirmed by Chapter 14-06 of Title 14 and Chapter 40-47 of the NDCC. These powers and duties include, but are not limited to:

1. Interpretation. The Board of Adjustment shall decide any question involving the interpretation of any provision of Title 14. *(Title 14)*
2. Variations. The Board of Adjustment may vary or adjust the strict application of any of the requirements of Title 14. The Board of Adjustment shall prescribe any conditions to the approval of a variance necessary or desirable to carry out the general purposes of the article or preserve the neighborhood or general welfare from injury. *(Title 14)*
3. Parking Determination. The Board of Adjustment shall determine off-street parking and off-street loading in unique situations for any use not specifically mentioned in Title 14, Section 14-03-10(4). *(Title 14)*

Article VI. Appeals to the Board

A. Appeal – How Taken. An appeal to the Board of Adjustment may be taken by any aggrieved applicant, including any person, firm, or corporation aggrieved, or by any governmental officer, department, board, or bureau affected by any decision of the Zoning Administrator based in whole or in part upon the provisions of Title 14. Any party may appear at the hearing in person or by agent or by attorney. *(Title 14)*

An appeal to the Board of Adjustment stays all proceedings in the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment that, based on facts stated in the certificate, a stay would in his or her opinion cause imminent peril to life or property. In such case proceedings shall not be stayed except by a restraining order granted either by the Board of Adjustment or by a court of record, on application, upon notice to the office from whom the appeal is taken and on due cause shown. *(Title 14)*.

B. Appeal – Procedure. The Board of Adjustment shall fix a reasonable time for the hearing of an appeal or for action on any matter upon which it is required to pass under Title 14 of the City

Code of Ordinances and give due notice thereof to interested parties, and make all decisions within a reasonable time. *(Title 14)*

The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or other official, or to decide in favor of the applicant any matter or to effect any variation from Title 14. *(Title 14)*

Article VII. Findings of Fact

A. Findings of Fact. In accordance with Chapter 14-06 of Title 14, no adjustment or variance in the strict application of any provisions of Title 14 shall be granted by the Board of Adjustment unless it finds the following:

1. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act the applicant has taken.
2. That, for reasons fully set forth in the findings of the Board of Adjustment, the circumstances or conditions so found are such that the strict application of the provisions of Title 14 would deprive the applicant of the reasonable use of said land or building, and the granting of the variances is necessary for the reasonable use of the land or building, and that the variance as granted by the Board of Adjustment is the minimum variance that will accomplish the relief sought by the applicant.
3. That the granting of the variance will be in harmony with the general purposes and intent of Title 14, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
4. A variance granted must be put into use within twenty-four (24) months of the granting of the variance or it shall lapse and the landowner or their agent must re-apply.

Article VIII. Meetings

A. Meetings. The Board of Adjustment's regular meeting time shall be 5:00pm on the first Thursday of each month in the Tom Baker Meeting Room in the City-County Building and open to the general public. Special meetings can be held at any time and may be called by the chairperson.

B. Meeting Notice. Notice of the time and place of a hearing shall be sent to the applicant or their agent after a complete application is submitted to staff for action by the Board of Adjustment. Notice of the time, place and request of the Board of Adjustment shall be sent to all known adjacent property owners no later than five (5) business days prior to the Board of Adjustment meeting unless specifically approved by the chairperson of the Board.

C. Participation. A Board member may join the meeting by telephone and be included in the determination of a quorum, and discussion and voting on all agenda items.

D. Meeting Rules. Unless otherwise specified, Robert's Rules of Order shall govern the proceedings of the Board of Adjustment.

E. Meeting Documents. All notices, agendas, requests, letters, reports, maps, photographs, staff reports, minutes and other related items shall constitute the documents of the Board of Adjustment and shall be maintained in the Community Development Department.

Article VI. Staff Responsibilities.

A. Staff Responsibilities. The Bismarck Community Development Department will provide administrative and technical support to the Board of Adjustment.

Support will include preparation of meeting documents, presentation of requests and recommendations to the Board of Adjustment, and technical advice prior to and during meetings of the Board.

Article X. Amendment of Bylaws

A. Amendments. These Bylaws may be amended at any regular meeting of the Board of Adjustment, provided that the proposed amendment has been introduced in writing at least seventeen (17) days prior to a regular meeting of the Board. Amendment of the Bylaws shall require the affirmative vote of at least four (4) members of the Board.

Adopted this ____ day of _____, 2015

Board of Adjustment

Chairman

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
July 2, 2015**

The Bismarck Board of Adjustment met on July 2, 2015 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Vice Chairman Clark presided.

Members present were Jennifer Clark, Ken Heier, Ken Hoff and Chris Seifert.

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

MINUTES:

Vice Chairman Clark called for approval of the minutes of the June 4, 2015 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the June 4, 2015, meeting. With Board Members Clark, Heier, Hoff and Seifert voting in favor, the minutes were approved.

VARIANCES FROM SECTION 14-04-07(7) OF THE CITY CODE OF ORDINANCES (R10 – RESIDENTIAL)(FRONT YARD) AND SECTION 14-04-06(9) OF THE CITY CODE OF ORDINANCES (R10 – RESIDENTIAL)(REAR YARD) – THE EAST 102 FEET OF LOTS 1 & 2, BLOCK 45, FLANNERY AND WETHERBY ADDITION (1623 EAST AVENUE B)

Vice Chairman Clark stated the applicants, Kenneth and Susan Wangler, are requesting variances to reduce the required front yard setback located along the north side of the property from twenty-five (25) feet to sixteen (16) feet, and to reduce the required rear yard setback located along the west side of the property from twenty (20) feet to ten (10) feet in order to construct an addition to the exiting attached garage.

Ms. Wollmuth gave an overview of the request including the following 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 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.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Mr. Wangler said after finding out that a one foot foundation cannot be rebuilt on, he will manage with the original 18 foot setback and will have more electrical work to do but he will make the original proposal of 18 feet on the north, 10 feet on the west and six feet on the sides work.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

MOTION: A motion was made by Mr. Heier to approve the variance to reduce the front yard setback to 18 feet for the East 102 feet of Lots 1 & 2, Block 45, Flannery and Wetherby Addition (1623 East Avenue B), with the findings amended to be based on special circumstances and it being appropriate to build with a front yard setback of 18 feet. The motion was seconded by Mr. Heier and with Board Members Clark, Heier, Hoff and Seifert, the motion was approved and the variance was granted.

VARIANCES FROM SECTION 14-04-07(9) OF THE CITY CODE OF ORDINANCES (RM30 – RESIDENTIAL)(REAR YARD) AND SECTION 14-03-09 OF THE CITY CODE OF ORDINANCES (NONCONFORMING USES) AND SECTION 14-03-05(4) OF THE CITY CODE OF ORDINANCES (SUPPLEMENTARY PROVISIONS) – THE WEST 50 FEET OF THE NORTH 50 FEET OF THE NORTH 100 FEET OF LOT 1, BLOCK 2, NORTHERN PACIFIC ADDITION (317 EAST AVENUE D)

Vice Chairman Clark stated the applicants, Jeff and Diane Kapple, are requesting variances to reduce the required rear yard setback located along the south side of their property from twenty (20) feet to three feet 6 inches (3 feet 6 inches) to allow the construction of a 9 square foot addition to their existing single-family dwelling on a nonconforming lot (less than 7,000 square feet) and to allow the construction of an accessory building with a zero (0) side and rear yard setback located along the west and south sides of their house.

Ms. Wollmuth gave an overview of the request including the followings 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 for a single-family dwelling within the RM-Residential zoning classification.

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

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Corey Mowder, Apple Creek Builders, said the existing bathroom in the home is small and the owners would like to remodel it to include a shower and full vanity that is 18 inches long. He said this will add an excessive amount of functionality to the bathroom and because the home is a tuck-under design, an L-shaped accessory building is needed in order to fit and hold the homes maintenance items.

Mr. Heier said he feels there is not any other option that would be safer than to have the accessory building on the property line in this case.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

MOTION: A motion was made by Mr. Heier to approve the variances to reduce the required rear yard setback located along the south side of their property from twenty (20) feet to three feet 6 inches (3 feet 6 inches) to allow the construction of a 9 square foot addition to their existing single-family dwelling on a nonconforming lot (less than 7,000 square feet) and to allow the construction of an accessory building with a zero (0) side and rear yard setback located along the west and south sides of their house, as based on special circumstances and the characteristics of the neighborhood. The motion was seconded by Mr. Seifert and with Board Members Heier, Hoff, Seifert and Clark voting in favor of the motion, the motion was approved and the variance request was granted.

VARIANCE FROM SECTION 14-04-03(9) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL)(REAR YARD) – LOT 14, BLOCK 5, HIGH MEADOWS (3425 OVERLOOK DRIVE)

Vice Chairman Clark stated the applicants, Tom and Dianna Turck, are requesting a variance to reduce the required rear yard setback located along the east side of their property from twenty (20) feet to sixteen (16) feet two (2) inches in order to construct a sunroom addition.

Ms. Wollmuth gave an overview of the request, including the following 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 R5-Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Nate Halvorson, Regal Homes, explained that the new sunroom addition to the home will be smaller than the existing deck and it would be placed in alignment with the widest portion of the lot so as to need the most minimal variance necessary. He said it will be built as small as they are able to do so while still having it be functional and usable and added that it will be shingled and sided to match the house. He said it will be mostly glass with a heating and cooling system and an entrance and exit on the north side.

Vice Chairman Clark asked when the home was built.

Mr. Turck said it was built in 1992 and they have lived there since 2000.

Mr. Seifert asked if the deck was bigger than the sunroom will be. Mr. Halvorson said that is correct.

Vice Chairman Clark asked if the third stall of the garage is in compliance with the setback requirements or if that was granted a variance as well.

Mr. Blaskowski explained that the lot survey shows it at 9.9 feet or 20% of the width of the lot which appears deceiving but is correct and it is in compliance with the setback requirements for that location.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

MOTION: A motion was made by Mr. Hoff to approve the variance to reduce the required rear yard setback located along the east side of their property from twenty (20) feet to sixteen (16) feet two (2) inches in order to construct a

sunroom addition, based on special circumstances due to the angle of the lot. The motion was seconded by Mr. Seifert and with Board Members Heier, Hoff, Seifert and Clark voting in favor of the motion, the motion was approved and the variance was granted.

OTHER BUSINESS

BYLAWS OF THE BOARD OF ADJUSTMENT

Vice Chairman Clark said she would like to move discussion of the bylaws of the Board of Adjustment to the August meeting so Chairman Marback can be present to give input.

Ms. Wollmuth said in the future it can be discussed to move the July meeting of the Board of Adjustment to the second Thursday so as to avoid conflicts with people having time off for the holiday weekend. She also reminded the Board that it is critical for the staff findings to be modified to support the motion when granting a variance in the event a denial decision is appealed to the City Commission.

Ms. Clark said she will be unable to attend the August meeting of the Board of Adjustment.

ADJOURNMENT

There being no further business, Vice Chairman Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 5:23 p.m. to meet again on August 6, 2015.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Jennifer Clark, Vice Chairman