



Community Development Department
BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA

October 1, 2015

Tom Baker Meeting Room

5:00 p.m.

City-County Office Building

MINUTES

1. Consider the minutes of the September 3, 2015 meeting of the Board of Adjustment.

REQUESTS

2. **Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading)** - Lot 2, Block 1, Munich Addition (1151 West Divide Avenue)

Owner / Applicant: Tana Trotter

Board Action: approve continue table deny

3. **Variance from Section 14-04-01(10) of the City Code of Ordinances (RR – Residential)(Accessory Building)** – Lot 12, Block 2, Southridge Subdivision (3739 Southridge Lane)

Owner / Applicant: Damion Deibert

Board Action: approve continue table deny

4. **Variance from Section 14-04-19(6)(b)(1) of the City Code of Ordinances (FP – Floodplain District)** – Lot 5 of Government Lot 4, Section 28 T138N-R80W/Lincoln Township (5160 Willow Oaks Road)

Owner / Applicant: Leo Hoff

Board Action: approve continue table deny

5. **Variance from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading)** – Lot 1, Block 1, North Hills 16th Addition and Lot 4B of Lot 4, Block 3, North Hills 15th Addition (4202 Coleman Street)

Owner / Applicant: Dakota Carrier Network

Board Action: approve continue table deny



6. **Variance from Section 14-03-10(2) of the City Code of Ordinances (Off-Street Parking and Loading)** – Lot 8, Block 1, Miriam Industrial Park 2nd Addition (400 Channel Drive)

Owner / Applicant: Mitch Becker

Board Action: approve continue table deny

OTHER BUSINESS

7. **Bylaws of the Board of Adjustment**

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

ADJOURNMENT

8. **Adjournment.** The next regular meeting date is scheduled for November 5, 2015.

**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: 1151 West Divide Avenue -Variance (Off-Street Parking and Loading) (Lot 2, Block 1, Munich Addition)	
Status: Board of Adjustment	Date: October 1, 2015
Owner(s): Tana Trotter, Proximal50	Engineer/Architect: None
Reason for Request: Variance 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 to one hundred eight (108) off-street parking spaces in order to accommodate a multi-use building with assembly and business uses which is already under construction.	
Location: The property is located in west Bismarck along the south side of West Divide Avenue near the intersection with West Turnpike Avenue.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The proposed building is a multi-use building that will include a fitness area, a physical therapy clinic with associated support spaces, a fitness area, a child care center and a coffee shop. According to the site plan submitted with the variance request, the maximum number off off-street parking spaces the site can provide is one hundred eight (108). 2. The Board of Adjustment, at their meeting of August 7, 2014, held a public hearing on the request for a variance to reduce the required number of off-street parking spaces from two hundred fourteen (214) off-street parking spaces to one hundred eight (108) off-street parking spaces. During the public hearing, it was suggested by the Board that the applicant continue the variance request to the September 2014 meeting of the Board of Adjustment in order to allow staff the opportunity to work the architect, engineer and applicant to modify the size and uses of the building to comply with off-street parking requirements. The applicant stated that they were comfortable with the variance as requested to reduce the off-street parking requirement to one hundred eight (108) off-street parking spaces. The Board of Adjustment denied the proposed variance with a vote of four to one. After the vote took place and the variance was denied, a request was made by the applicant’s consulting engineer to continue the public hearing to the September 2014 meeting of the Board of Adjustment to allow the applicant time to work with their architect, engineer and City staff to modify the size and use of the building to comply with off-street parking requirements. A copy of the August 7, 2014 Board of Adjustment minutes are attached. 3. Prior to the September 2014 meeting of the Board of Adjustment, an email requesting the proposed variance be withdrawn was submitted by the applicant’s architect. The email indicated that the applicant had reevaluated the uses in the multi-use building, and in order to comply with off-street parking requirements, decided to eliminate the fitness center (assembly use) portions of the building. A copy of the email and staff memo dated August 28, 2014 notifying the Board of the request to withdraw the requested variance is attached. As the Board of Adjustment continued the variance request to the September 2014 meeting, a public hearing on the request was held. The letter notifying the applicant of the Board’s acknowledgement of the withdrawal request is attached. 4. According to the information submitted with the application, it appears that the applicant has modified the total area devoted to certain uses in the multi-use building. According to the applicant’s information regarding uses and total area of those uses, one hundred seventy six (176) off-street parking spaces are required. One hundred eight (108) off-street parking spaces have been provided on-site. 	

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 14-03-10(1) of the City Code of Ordinances (Off-Street Parking and Loading) states "No application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street parking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. All off-street parking spaces required and all driveways on private property leading to such parking areas shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material."
3. Section 14-03-10 (13) of the City Code of Ordinances (Off-Street Parking and Loading)(Mixed Uses) states, "In the case of mixed uses, the total requirements for off-street parking and off-street loading space shall be the sum of the requirements of the various uses computed separately as specified in subsections 1 and 2 of this section, and the off-street parking and off-street loading space for one use shall not be considered as providing the required off-street parking or off-street loading space for any other use.
4. Section 14-03-10(1)(g) of the City Code of Ordinances (Off-Street Parking and Loading)(Places of Public Assembly) states, "Places of public assembly, including private clubs, lodges and fraternal buildings not providing overnight accommodations, assembly halls, exhibition halls, convention halls, auditoriums, skating rinks dance halls, bowling alleys, sport arenas, stadiums, gymnasiums, amusement parks, zoos, racetracks, fairgrounds, circus grounds, community centers, libraries, museums, and all other similar places of public assembly: One space for each sixty (60) square feet of gross floor area." According to the information submitted with the application, the area identified as a fitness training center is 4,949 square feet, which would require eighty three (83) off-street parking spaces. The area identified as group classes is 825 square feet, which would require 14 off-street parking spaces. The area identified as coffee shop is 1,680 square feet, which would require twenty-eight (28) off-street parking spaces. A total of one hundred twenty five (125) off-street parking spaces would be required for the assembly uses outlined in the variance request.
5. Section 14-03-10(1)(i) of the City Code of Ordinances (Off-Street Parking and Loading)(Office Buildings) states, "Office buildings, adult or vocational education facilities, engraving works, blueprinting, and small animal veterinary clinics, including commercial, governmental and professional buildings, except as otherwise provided for in the section: One space for each two hundred fifty (250) square feet of gross floor area." According to the information submitted with the application, the area identified as physical therapy clinic and associated support/medical spaces is 5,512 square feet which would require twenty two (22) off-street parking spaces. The area identified as office leased space is 1,000 square feet, which would require four (4) off-street parking spaces would be required. The area identified as extra space, hallways, mechanical room and upstairs is 5,000 square feet and the applicant has indicated that twenty (20) off-street parking spaces will be required for this area. A total of forty six (46) off street parking spaces would be required for the office uses outlined in the variance request.

(continued)

6. Section 14-03-10(1)(p) of the City Code of Ordinances (Off-street Parking and Loading)(Child Care Center) states, "Child care center: One space for each employee and one space for each ten (10) children." According to the building plans submitted with the application, the area identified as the child care center is 1,197 square feet. The applicant has indicated that a total of twenty (20) children will attend the child care center and three (3) staff will be employed. Based on those numbers, a total of five (5) off-street parking spaces would be required.

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 CG-Commercial 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 the minimum variance that would accomplish the relief sought by the applicant, as there is no space on the site for additional parking spaces.
- 5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

RECOMMENDATION:

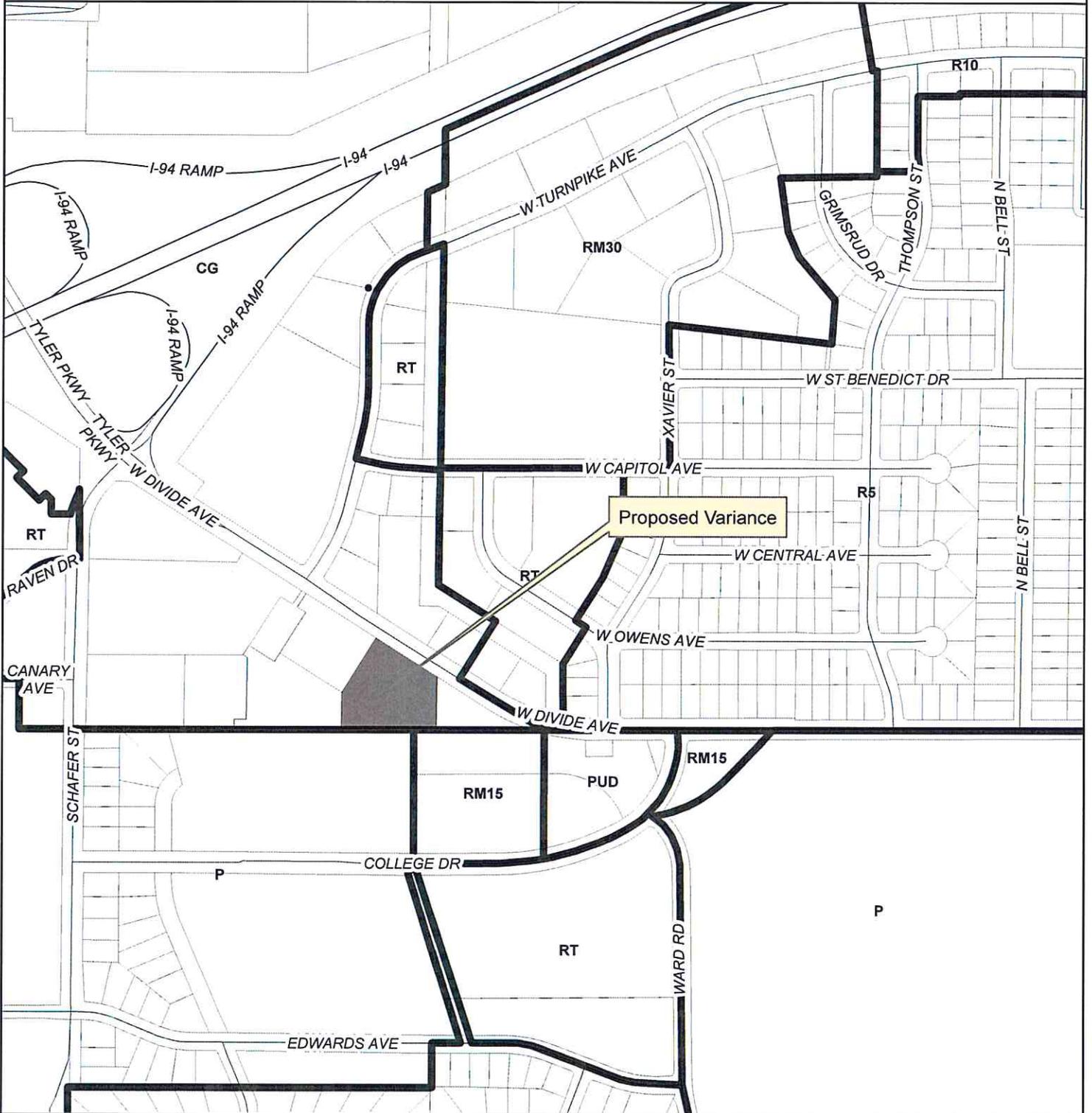
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

If the Board approves the variance as proposed, staff further recommends the following.

- 1. Approval of a special use permit by the Bismarck Planning and Zoning Commission is required prior to the operation of the proposed child care facility.

Proposed Variance

Lot 2, Block 1, Munich Addition



September 14, 2015 (h1b)

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.



- Proximal50 Community: We plan to team up with many groups in the community to help special populations get medical needs met as well as form support groups for parents to join together.

Breakdown of the Facility

Area Designated for fitness programs = 4,949 s.f. /60 = **82.5 Parking Spots**

- Large majority of the people using this will be appointment based while the others have requested a time to use the facility for the ability to monitor traffic flow.
- Currently have 60 pieces of equipment that are able to be used by clients limiting the capacity below what the required Assembly parking ratio.
- In comparison to other facilities that do **not** have individualized programming or clinical basis behind their product yet have received variances in the past include.
 - Anytime Fitness(South)- 7,225 s.f. with 48 parking spots = **1 space per 150 s.f.**
 - Gold's Gym – 15,000 s.f. with 115 parking spots = **1 space per 130 s.f.**
 - YMCA – Should have nearly 1400 parking spots

Area Designated for Group Classes (both physical and educational) 825 s.f./60= **14 Parking spots**

- Client limit will be 12-14 people depending on activity. People will have to reserve their spot for any class given on any day through website, app or calling in.

Area Designated for Physical therapy, Private Medical Services and Employee Office Space – 5,512 /250= **22 parking spots**

Empty Leasable – 1000 /250= **4 parking spots**

Extra space like Hallways, Lobby, mechanical room -5,000 SqFt + upstairs. /250=**20 parking spots**

Drop In Child Watch – 1,197 s.f. -- 20 children capacity with 3 staff at a time = **5**

Parking Spots

Coffee Shop – 1680s.f. /60= **28 Parking Spots**

175.5 parking spots total according to city code.

Have also received permission from neighboring Horizon Bank and Mr. John Vollmer to allow for overflow parking into their lot. This will be used for all employee parking to prevent any congestion in the facility's parking space.

In Closing:

Having a 1 to 60 ratio for areas of fitness makes it very difficult for future entrepreneurs to come into the city with a building large enough to be functional as a wellness facility. Proximal50 Life Center is a new concept completely unrelated to other facilities in the Bismarck area. It is geared towards saving health care costs as well as helping people live healthier lives. This facility will be a long-term sponsor and help to many organizations in the Bismarck community as well as a large supporter of fellow local businesses to help boost the local economy. There has already been great support and desire from the

Sept 2015

community for a help like this, which only continues to grow the passion I have for this project. I appreciate you taking the time to read this and consider this new concept of health care.

Tana Trotter, PT, DPT

Explanation of Parking for Proximal50 Life Center

The entire premise behind Proximal50 Life Center is PREVENTION, which will be implemented through fitness, diet and physical therapy. Examples of the clients we would like to help include:

- A person with back, knee, hip or other pain that has been thinking about joint replacement, injections or other surgeries. Expensive procedures like these can often be prevented with weight loss and a strengthening/flexibility program that we would provide.
- An obese individual that is very unhealthy and at risk for stroke or heart attack. We would analyze the risks they have then give an appropriate program to decrease risks in an appropriate way without drugs and surgery.
- A cardiac patient who has finished their rehabilitation program through the hospital but needs help with long term maintenance and education that insurance does not cover.
- Athletes who are either injured or want to avoid injury through a movement evaluation/screen and will follow a program to properly rehabilitate or prevent injury.
- An elderly client who is at risk for falling or losing their independence due to weakness or other healthy concerns.
- The average person who wants to get healthier but doesn't know how.

How Proximal50 Works:

- People will sign up and automatically be scheduled for an initial consult with a health care professional that will assess their level of risk and identify areas of concern.
 - Clients will be given guidance on an individual program and be checked in on each quarter.
 - They will schedule a time period of the day that they will be using the facility but we want to encourage independence so they will not be working with a professional each session.
 - Clients that are paying the monthly Proximal50 payment will have discounts on side programs that are offered in the building.
 - Examples of classes given at proximal50: Pregnancy classes, cooking classes, diabetes classes, nutrition classes, support groups etc.

The Main programs that will be at Proximal50 Life Center:

- Proximal Priority: For the obese individuals at high risk for medical emergencies.
 - Will have 5 participants for a 6-month period.
 - Will get individual and group attention from all professionals.
 - Will begin with higher frequency while decreasing throughout program to encourage independence and maintenance.
- Going Above the Knife: For individuals who want to avoid surgical intervention through physical therapy and exercise.

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

1. Property Address or Legal Description:

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

3. Type of Variance Requested:

4. Applicable Zoning Ordinance Chapter/Section:

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

Due there being a 30' easement along the south property line and a steep grade to design around, there were challenges in developing adequate parking to accommodate the space classified as Assembly by city staff. See attachment for further explanation.

Text Field

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

The use of this building will be more medical based while incorporating fitness which will decrease the number of people using it at one time. To make changes to the building plan to accommodate 1 to 60 parking would greatly decrease the value of both the real estate as well as the business that has been developed and invested into thus far. See attached letter for further explanation.

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

By seeing this building as more of a medical and clinical building with less traffic flow than a usual gym franchise, 108 parking spots would be what is necessary for the business plan already constructed for the facility on this site. See attached letter for further explanation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER BUSINESS

Chairman Marback and Mr. Hoff said they have concerns about numerous unmoved vehicles at two different auto shops on Main Avenue. Chairman Marback said CK Auto was required to put a fence around the vehicles at their business and he wonders if this business can have

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

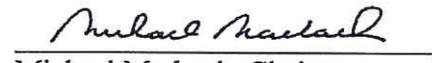
ADJOURNMENT

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

Respectfully Submitted,


Hilary Balzum
Recording Secretary

APPROVED:


Michael Marback, Chairman

Bismarck

Community Development Department

MEMORANDUM

TO: Michael Marback
Chairman, Board of Adjustment

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

DATE: August 28, 2014

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

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

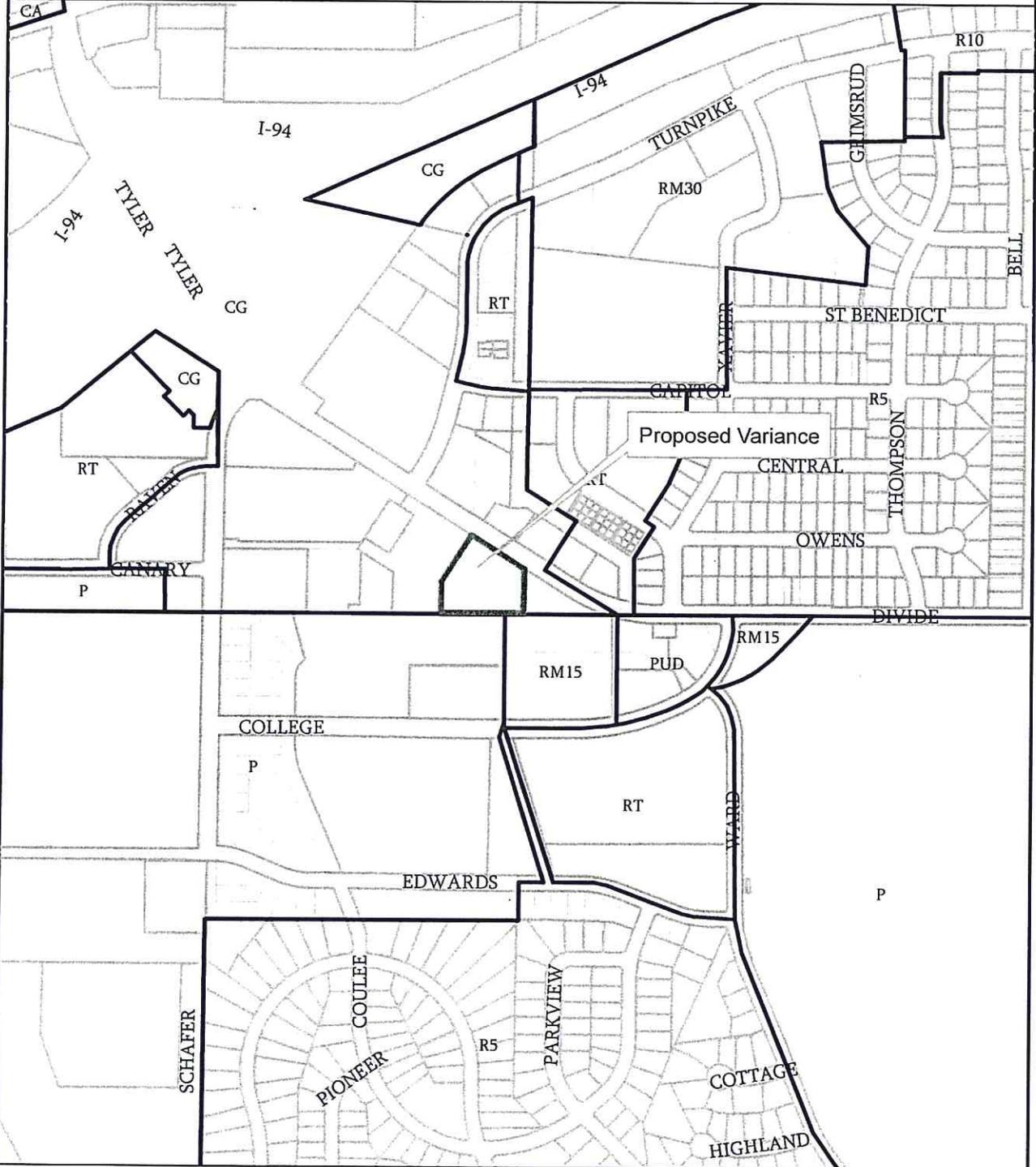
Tana Trotter, Proximal 50 Life Center, has reevaluated the uses in the proposed multi-use building located at 1151 West Divide Avenue (Lot 2, Block 1, Munich Addition) and, in order to comply with the Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading), has decided to eliminate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

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



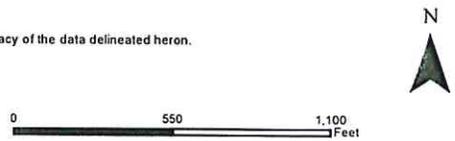
Proposed Variance

Lot 3, Block 1, Prairie Hills 5th Addition (being replatted as Lot 2, Block 1, Munich First Addition)



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Date: 7/21/2014(hlb)

Source: City of Bismarck



Brady Blaskowski

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

Brady,

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

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

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

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

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

Bismarck

Community Development Department

September 5, 2014

Tana Trotter
40 McGinnis Way
Lincoln ND 58504-9303

RE: Variance Request – 1151 West Divide Avenue (Lot 2, Block 1, Munich Addition)

Dear Ms. Trotter:

The purpose of this letter is to inform you that the Board of Adjustment held a public hearing on September 4, 2014 to reconsider your request for a variance from Section 14-03-10(10) of the City Code of Ordinances (Off-street Parking and Loading) to reduce the required amount of off-street parking spaces from two hundred fourteen (214) off street parking spaces to one hundred eight (108) off-street parking spaces on the above mentioned property. As the request was withdrawn, no formal action was taken by the Board.

Please be advised that a site plan and building plan for the proposed building must be approved prior to construction.

If you have any questions, please feel free to contact me at 355-1845.

Sincerely,



Jenny Wollmuth
Planner

JW/hlb

cc: Brady Blaskowski, Building Inspections
Jason Hammes, City Attorney's Office
Lon Romsaas – Swenson, Hagen & Co.
Jeff Welch – Jiran Architects



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

BACKGROUND:	
Title: 3739 Southridge Lane – Variance (Side Wall Height – Accessory Building) (Lot 12, Block 2, Southridge Subdivision)	
Status: Board of Adjustment	Date: October 1, 2015
Owner(s): Damion Deibert	Engineer: None
Reason for Request: Variance from Section 14-04-01(10) of the City Code of Ordinances (RR-Residential)(Accessory Buildings) to increase the maximum sidewall height of an accessory building from fourteen (14) feet to 16 (sixteen) feet for an existing accessory building.	
Location: South of Bismarck, west and north of university Drive / ND Highway 1804 along the south side of Southridge Lane.	
ADDITIONAL INFORMATION:	
1. A building permit was issued on October 10, 2014 to construct an accessory building. The provisions outlined in the zoning ordinance for accessory buildings located within the RR – Residential zoning district limit the side wall height to fourteen (14) feet. After the accessory building was constructed it was discovered that the side wall height of the accessory building is sixteen (16) feet. The requested variance would allow the accessory building to remain in place and be compliant with the zoning ordinance.	
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(10) of the City Code of Ordinances (RR – Residential)(Accessory Building) states, “The maximum side wall height shall be limited to fourteen (14) feet and the maximum building height shall be limited to twenty-five (25) feet.” According to the information submitted with the request, the side wall height of the accessory building is sixteen (16) feet.	
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 12, Block 2, Southridge Subdivision

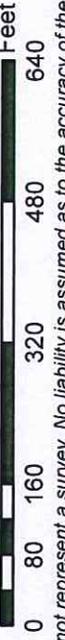


June 15, 2015 (hlb)

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 hereon.



3739 Southridge Lane (Accessory Building)



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.

3739 Southridge Lane
(accessory building)





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

1. Property Address or Legal Description: 3739 Southridge Lan (Lot 12, Block 2, Southridge Subdivision)

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

3. Type of Variance Requested: Sidewall height for accessory building

4. Applicable Zoning Ordinance Chapter/Section: 14-04-01(10)

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 building was built with 16ft sidewalks in Nov 2014 City Ordinance doesn't allow 16ft sidewalks in the RR zoning district 16ft allow my 5th wheel camper to be put inside for storage

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

16 ft sidewalks would allow me to store my 5th wheel camper inside.

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

The Building is already constructed



Community Development Department

September 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, October 1, 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.

Damion Deibert is requesting a variance from Section 14-04-01(10) of the City Code of Ordinances (RR-Residential)(Accessory Buildings) to increase the maximum sidewall height of an accessory building to 16 (sixteen) feet on Lot 12, Block 2, Southridge Subdivision (3739 Southridge Lane).

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: 5160 Willow Oaks Road – Variance (Flood Hazard Reduction / New Construction) (Lot 5 of Government Lot 4, Section 28)	
Status: Board of Adjustment	Date: October 1, 2015
Owner(s): Leo Hoff	Engineer: None
Reason for Request: Variance from Section 14-04-19(6)(b)(1) of the City Code of Ordinances (FP-Floodplain District) to allow the construction of an accessory building, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, that is proposed to be constructed below the required elevation of two (2) feet above the Base Flood Elevation (BFE).	
Location: South of Bismarck, south of 48 th Avenue SE and West of South 12 th Street, along the southwest side of Willow Oaks Road.	
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. According to the Elevation Certificate submitted with the request, the Base Flood Elevation (BFE) for the property is 1634.0. The applicant is proposing to construct an accessory building with the lowest floor elevation at 1635.0 which is one foot above BFE. The City Code of Ordinances requires all new construction to be elevated to at least two (2) feet above BFE. The North Dakota Century Code (NDCC) requires new construction to be elevated one (1) foot above BFE and the National Flood Insurance Program (NFIP) allows new construction to be constructed at BFE. If approved as proposed, the variance would not violate the requirements for new construction outlined in the NDCC or NFIP. 	
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.” 2. Section 14-04-19(6)(b)(1) of the City Code of Ordinances (FP – Floodplain District) states, “New construction and substantial improvement of any residential structure shall have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above Base Flood Elevation (BFE)” According to the Elevation Certificate submitted with the application, the proposed accessory building, which is considered to be new construction, would be constructed at 1635.0, one foot above BFE. 	

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.
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.

(continued)

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 of Government Lot 4, Section 28

T138N-R80W/Lincoln Township

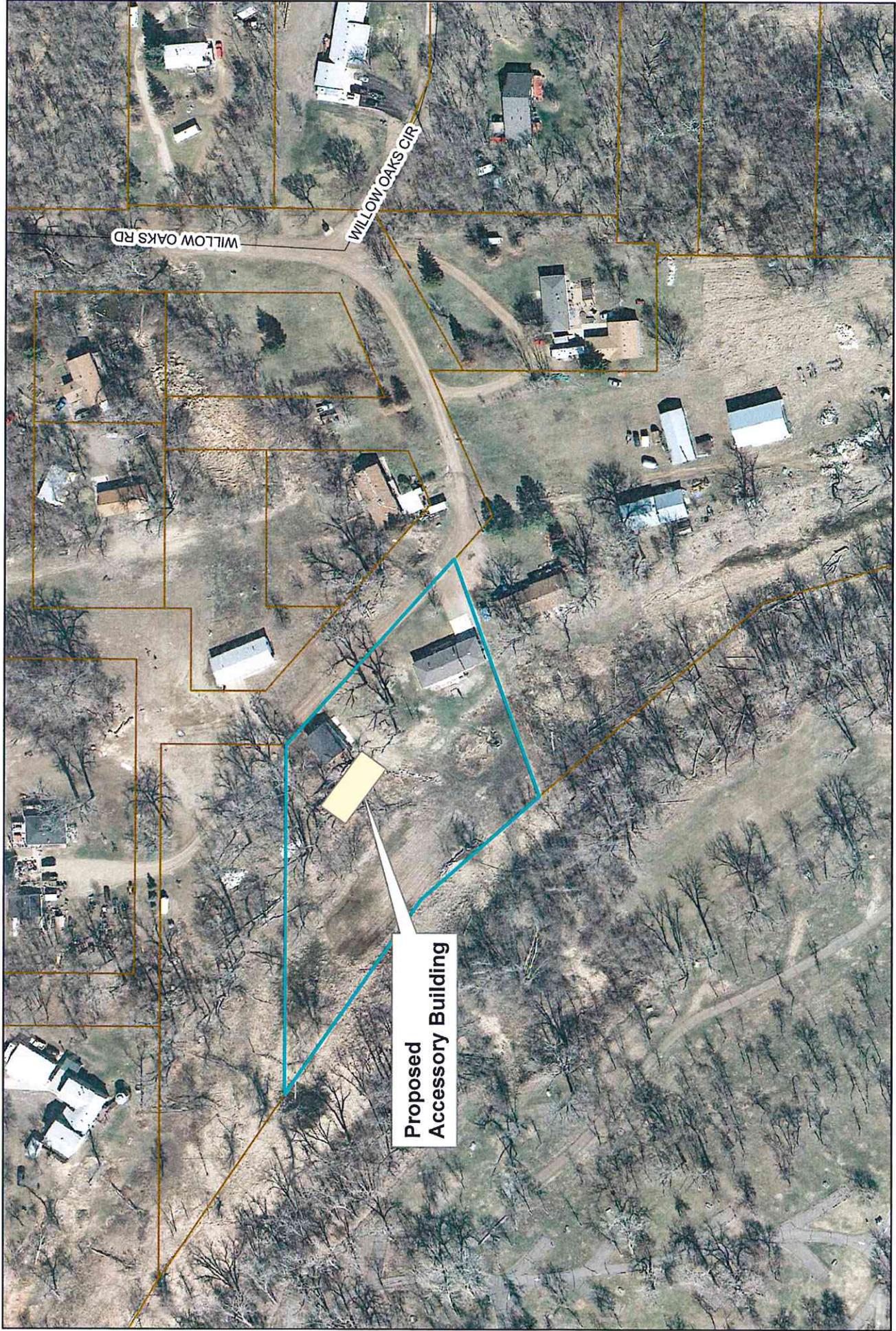


September 14, 2015 (h/b)

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5160 Willow Oaks Road (Accessory Building)



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.

ELEVATION CERTIFICATE

Important: Read the instructions on pages 1-9.

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

SECTION A - PROPERTY INFORMATION

A1. Building Owner's Name Leo Hoff		FOR INSURANCE COMPANY USE	
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 5160 Willow Oaks Road		Policy Number:	
City Bismarck	State ND	Company NAIC Number:	
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) Lot 5 W 1/2 of NE 1/4 Section 28 T138 N R80 W			
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) <u>Accessory</u>			
A5. Latitude/Longitude: Lat. <u>N46.7464</u> Long. <u>W100.7815</u> Horizontal Datum: <input type="checkbox"/> NAD 1927 <input checked="" type="checkbox"/> 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 <u>1A</u>			
A8. For a building with a crawlspace or enclosure(s):		A9. For a building with an attached garage:	
a) Square footage of crawlspace or enclosure(s) _____ sq ft		a) Square footage of attached garage _____ sq ft	
b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade _____		b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade _____	
c) Total net area of flood openings in A8.b _____ sq in		c) Total net area of flood openings in A9.b _____ sq in	
d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number Burleigh 380017		B2. County Name Burleigh		B3. State ND	
B4. Map/Panel Number 38015C 0960D	B5. Suffix D	B6. FIRM Index Date 08-04-14	B7. FIRM Panel Effective/Revised Date 08-04-14	B8. Flood Zone(s) AE	B9. Base Flood Elevation(s) (Zone AO, use base flood depth) 1634.0
B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9. <input type="checkbox"/> FIS Profile <input checked="" type="checkbox"/> FIRM <input type="checkbox"/> Community Determined <input type="checkbox"/> Other/Source: _____					
B11. Indicate elevation datum used for BFE in Item B9: <input type="checkbox"/> NGVD 1929 <input checked="" type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source: _____					
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Designation Date: _____ <input type="checkbox"/> CBRS <input type="checkbox"/> 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, ARA1-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: Bsmk 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.

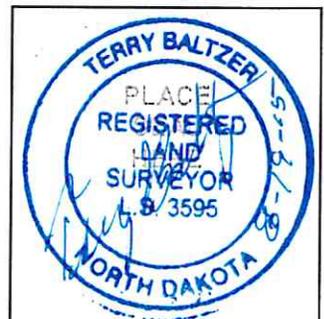
a) Top of bottom floor (including basement, crawlspace, or enclosure floor)	<u>1635.0</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters
b) Top of the next higher floor	<u>NA</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
c) Bottom of the lowest horizontal structural member (V Zones only)	<u>NA</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
d) Attached garage (top of slab)	<u>NA</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments)	<u>NA</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
f) Lowest adjacent (finished) grade next to building (LAG)	<u>NA</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
g) Highest adjacent (finished) grade next to building (HAG)	<u>NA</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters
h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support	<u>NA</u>	<input type="checkbox"/> feet	<input type="checkbox"/> meters

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

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

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

Certifier's Name Terry Baltzer	License Number 3595
Title PLS	Company Name Swenson, Hagen & Co.
Address 909 Basin Ave	City Bismarck State ND ZIP Code 58504
Signature 	Date 8-19-15 Telephone 701-223-2600





**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.)

See Attachment

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

See Attachment

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

See Attachment

Attachment

5. Due to the irregularly shape of the property, and its elevation, there is less than half of it that is useable for any practical purposes. The other half is an old river channel with an elevation ranging from 1624 ft. to 1628 ft. Can not be used to construct a storage building on.

6. The only other space available with a higher elevation is beside the existing shop. The shop has a cement floor that is at 1633.1 ft. that was measured by Swenson + Hagen Engineers 8-19-15.
During the flood of 2011 there was 10 1/2 inches of water in the shop. The old 100-year flood plain for this zone was at 1631.8 ft. It has now been raised to 1634.0 ft. Fema requires new structures to be at Base Flood Elevations 1634.0 ft. N.D. State requires 1 ft above BFE 1635.0 ft. City is requiring 2 Ft. above BFE 1636.0 ft.

7. My point being, I would have to elevate the building so high that the driveway to get in and out of it, would have to have a 4 ft. incline. That would make it very difficult to get equipment in and out, especially in the winter with snow and ice. That steep ~~of~~ ~~and~~ incline would also be very hazardous just to walk on in the snow and ice.



Community Development Department

September 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, October 1, 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.

Leo Hoff is requesting a variance from Section 14-04-19(6)(b)(1) of the City Code of Ordinances (FP-Floodplain District) to allow the construction of an accessory building, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, that is proposed to be constructed below the required elevation of two (2) feet above the Base Flood Elevation (BFE) on Lot 5 of Government Lot 4, Section 28, T138N-R80W/Lincoln Township (5160 Willow Oaks Road).

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: 4202 Coleman Street – Variance (Off-Street Parking) (Lot 1, Block 1, North Hills 16 th Addition and Lot 4B of Lot 4, Block 3, Northern Hills 15 th Addition)	
Status: Board of Adjustment	Date: October 1, 2015
Owner(s): Dakota Carrier Network	Engineer: None
Reason for Request: Variance from Section 14-03-10(2)(i) of the City Code of Ordinances (Off-street Parking and Loading) to reduce the required amount of off-street parking at the above mentioned property to one hundred thirty five (135) off-street parking spaces, for the purpose of constructing a 30,000 square foot addition to the existing building.	
Location: North Bismarck, along the south side of 43 rd Avenue NE and west side of Coleman Street.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The applicant has indicated that an error was made calculating the existing parking on the application for a variance. The two existing parking lots on site currently contain one hundred thirty five (135) off-street parking spaces not one hundred nineteen (119) off street parking spaces as indicated in the application. The proposed variance request has been modified to reflect the change. 2. The existing 42,000 square foot building was constructed in 2012. The building is classified as an office use, which requires one off-street parking space per two hundred and fifty (250) square feet, and a total of one hundred sixty eight (168) off-street parking spaces should have been required. However, according to the building permit a total of ninety seven (97) off-street parking spaces were required and according to the site plan, one hundred thirty five (135) off-street parking spaces were provided. A variance request to reduce the number of off-street parking was not submitted prior to the building permit being issued. 	
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.” 2. Section 14-03-10 (1)(i) of the City Code of Ordinances (Off-Street Parking and Loading) states “Office buildings, adult or vocational education facilities, engraving works, blueprinting, and small animal veterinary clinics, including commercial, government and professional buildings, except as otherwise provided for in this section: One space for each two hundred fifty (250) square feet of gross floor area.” The applicant is proposing to construct a 30,000 square foot addition to the existing building; one hundred twenty (120) additional parking spaces are required for the addition. According to the site plan submitted with the request, one hundred thirty five (135) off-street parking spaces are currently provided on site and no additional off-street parking spaces would be provided. 	

FINDINGS:

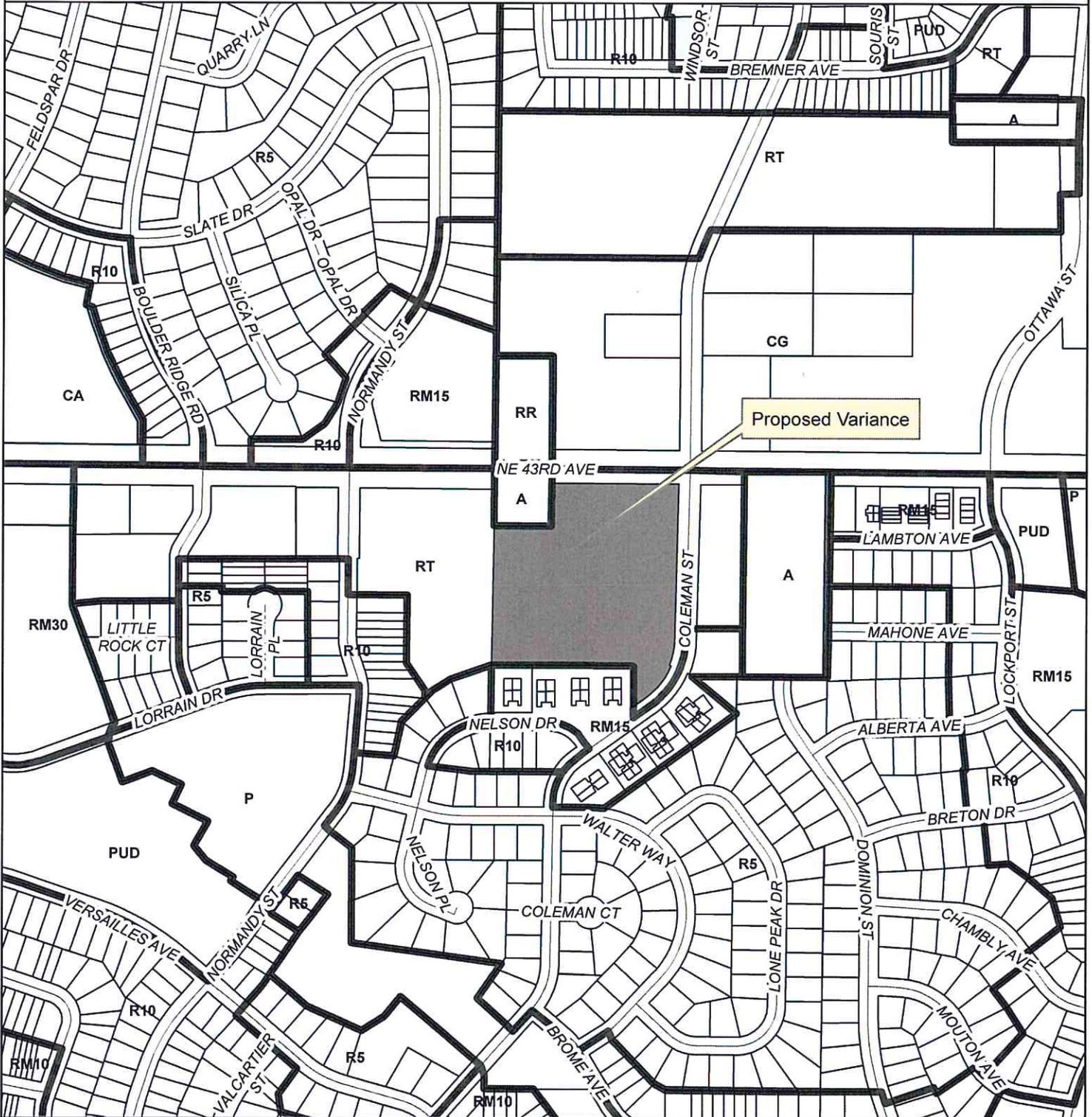
- 1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RT - Residential zoning classification.
- 2. The hardship is not caused by the provisions of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

RECOMMENDATION:

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

Proposed Variance

Lot 1, Block 1, North Hills 16th Addition and Lot 4B of Lot 4, Block 3, North Hills 15th Addition



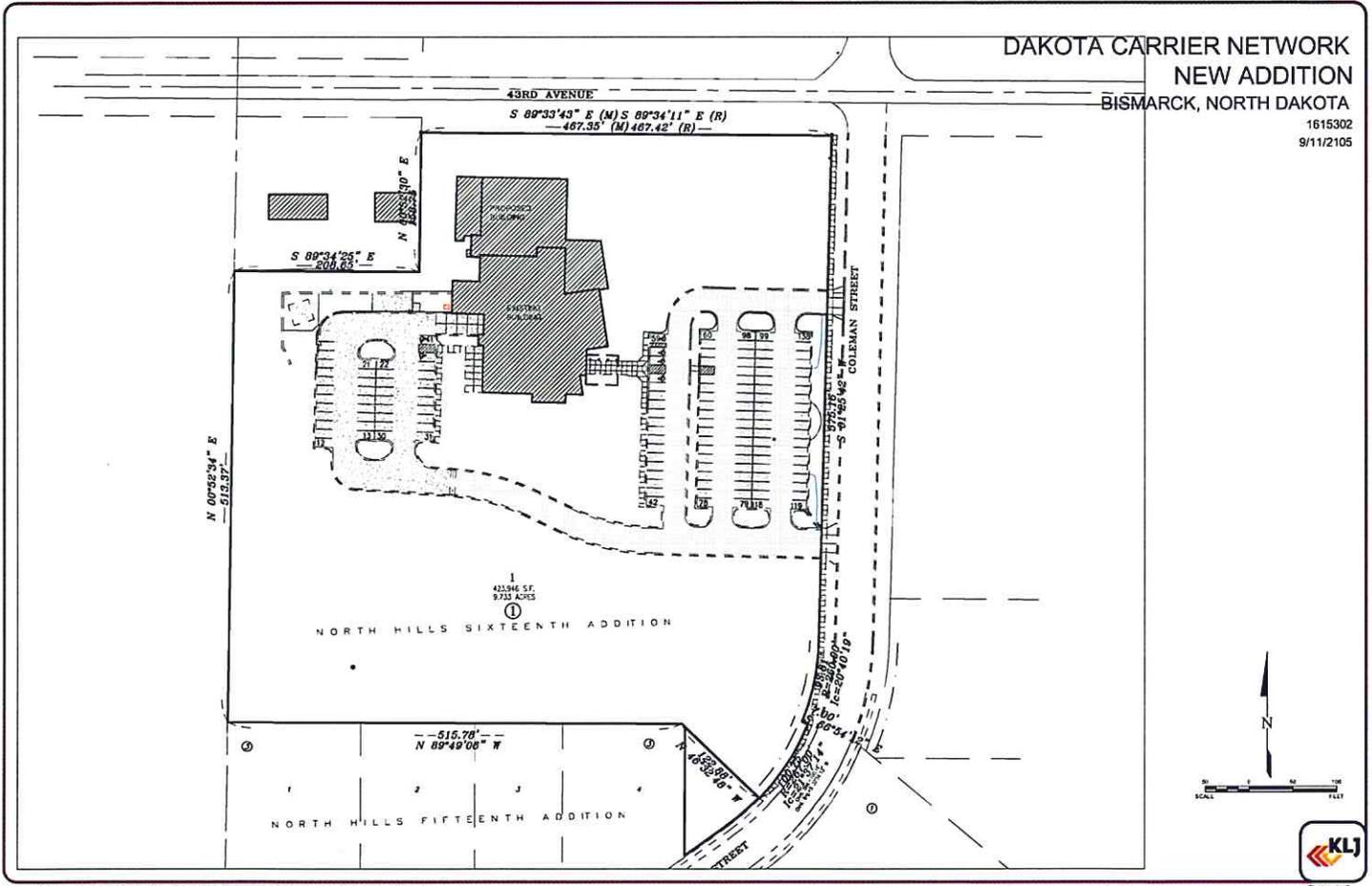
June 15, 2015 (hlb)

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DAKOTA CARRIER NETWORK
NEW ADDITION
BISMARCK, NORTH DAKOTA

1615302
9/11/2105





Community Development Department

September 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, October 1, 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.

Dakota Carrier Network is requesting a variance from Section 14-03-10(2)(i) of the City Code of Ordinances (Off-street Parking and Loading) to reduce the required amount of off-street parking at the above mentioned property to one hundred nineteen (119) off-street parking spaces, for the purpose of constructing a 30,000 square foot addition on Lot 1, Block 1, North Hills 16th Addition and Lot 4B of Lot 4, Block 3, North Hills 15th Addition (4202 Coleman Street).

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: 400 Channel Drive –Variance (Off-Street Parking and Loading) (Lot 8, Block 1, Miriam Industrial Park 2 nd Addition)	
Status: Board of Adjustment	Date: October 1, 2015
Owner(s): Mitch Becker	Engineer: None
Reason for Request: Variance from Section 14-03-10(2) of the City Code of Ordinances (Off-Street Parking and Loading) to eliminate the requirement to pave the driveway providing access to the seven (7) building cold storage facility already under construction.	
Location: In east Bismarck, adjacent to Hay Creek, west of Channel Drive along the north side of East Rosser Avenue.	
ADDITIONAL INFORMATION:	
<ol style="list-style-type: none"> 1. The City of Bismarck requires approval of a site plan for all new commercial projects prior to issuing a building permit for the development of the site. The site plan review process also includes plans for storm water management for the site. The review process involves reviews from multiple City Departments and Divisions including the Planning Division, Building Inspections Division, Engineering Department and Fire Department. A site plan was submitted for review for a seven (7) building cold storage facility in April 2015. The original site plan indicated that the driveway providing access to the cold storage facility would not be paved or surfaced with a dustless all-weather hard surface material as required in Section 14-03-10(2) of the City Code of Ordinances (Off-Street Parking and Loading). During the review of the cold storage facility, it was determined by the Building Inspections Division and Fire Department that the driveway must be paved prior to approval of the site plan. According to correspondence with the applicant's consulting engineer (Houston Engineering) it was agreed that the driveway would be paved. See attached review comments. The storm water management plan was also modified to reflect the paving of the driveway. After the site plan and storm water management plan were approved, a building permit for the seven (7) building cold storage facility was issued. The facility is currently under construction and foundations for five (5) of the seven (7) buildings have been poured. The applicant is now requesting a variance to not pave the driveway providing access the cold storage facility. 2. The City Engineer Department is concerned with the proposed variance. In particular, if approved as proposed, the approved Storm Water Management Plan must be revised to address the change and to insure sufficient erosion control methods are in place to limit the amount of sediment eroded into Hay Creek, and the revised plan must be approved by the City Engineering Department. Due to the ongoing mitigation efforts of the City and private agencies, Hay Creek was recently delisted from the Environmental Protection Agency (EPA) Impaired Waterway Listing. The EPA has determined that the water quality of Hay Creek is no longer threatened for certain fish and other aquatic animals to live or propagate in the Hay Creek channel or within the vicinity of Hay Creek. Any additional discharge into Hay Creek that may threaten the recent delisting may not be approved by the City Engineering Department. 3. Certification by a registered Professional Engineer verifying that the type of gravel surfacing can support the heaviest fire apparatus currently used by the Fire Department would be required if the variance is approved as proposed. 4. The proposed variance is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain and a portion of the Floodway. All applicable requirements for developing in the SFHA and Floodway will be met. 	

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 14-03-10(1) of the City Code of Ordinances (Off-Street Parking and Loading) states "No application for a building permit or certificate of occupancy in any zone shall be approved unless there is included with the plan for such building improvement or use, a site plan showing the required space designated as being reserved for off-street parking purposes to be provided in connection with such building improvements or use in accordance with this section; and no certificate of occupancy shall be issued unless the required facilities have been provided. All off-street parking spaces required and all driveways on private property leading to such parking areas shall be surfaced with a dustless all-weather hard surface material. Acceptable surfacing materials include asphalt, concrete, brick, cement pavers or similar materials installed and maintained according to industry standards. Crushed rock or gravel shall not be considered an acceptable surfacing material." According to the site plan submitted with the application, the driveway providing access to the storage facility will not be paved or surfaced with an acceptable surfacing material.

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

RECOMMENDATION:

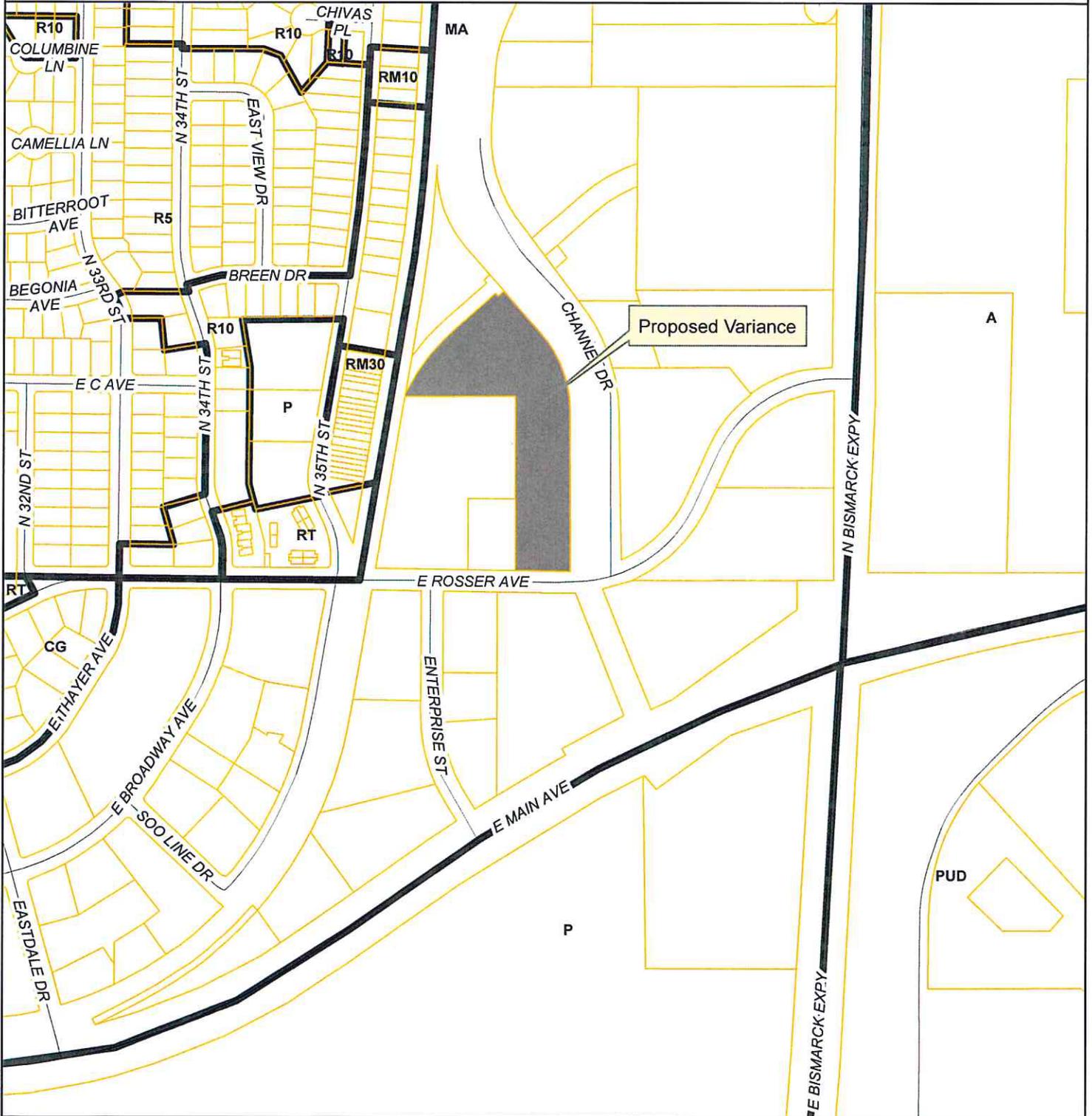
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

If the Board approves the variance as proposed, staff further recommends the following.

1. The approved Storm Water Management Plan must be revised to address the change and to insure sufficient erosion control methods are in place to limit the amount of sediment eroded into Hay Creek, and a revised plan must be approved by the City Engineering Department.
2. Certification by a registered Professional Engineer verifying that the type of gravel surfacing can support the heaviest fire apparatus currently used by the Fire Department be submitted and approved by the Fire Department.

Proposed Variance

Lot 8, Block 1, Miriam Industrial Park 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 herein.



Enter Project Number

[View Report](#)

1 of 2 Find | Next



Project Number: SP2015-020

Description:

Applied: 4/17/2015

Approved: 8/13/2015

Site Address: 400 CHANNEL DR

Closed: 8/13/2015

Expired:

City, State Zip Code: BISMARCK, ND 58501

Status: APPROVED

Applicant: CHANNEL DRIVE LLC

Parent Project:

Owner: BECKER, STEVEN & RENEE

Contractor: <NONE>

Details:

LIST OF REVIEWS						
SENT DATE	RETURNED DATE	DUE DATE	TYPE	CONTACT	STATUS	REMARKS
Review Group: AUTO						
4/17/2015	4/20/2015	4/24/2015	COMPLETENESS CHECK	Hilary Balzum	COMPLETED	
Notes: Thank you!						
8/13/2015	8/13/2015	8/27/2015	SPR - ENGINEERING	Mel Bullinger	APPROVED W/ CONDITIONS	
Notes: Approved with conditions stipulated in site plan approval letter dated 8/13/2015. MJB						
Review Group: SP						
4/20/2015	4/21/2015	5/11/2015	ENGINEERING - OVERALL	Kevin Schmidt	APPROVED	
Notes: Thank you!						
4/20/2015	5/3/2015	5/11/2015	SPR - BUILDING INSPECTIONS	Brady Blaskowski	APPROVED	
Notes: The site plan indicates an access road located in the floodway. Constructing an access road within the floodway will require certification by a registered professional engineer. The certification must demonstrate that the development will not result in any increase in flood levels during the occurrence of the base flood discharge. The floodplain development application will need to be revised to include the supporting information required for the development within the floodway. The application must also be signed by the applicant. The access road must be paved, gravel is not an acceptable surfacing material. Five percent of the storage units provided must be accessible. Accessible storage units shall be dispersed throughout the various classes of spaces provided. Parking spaces, loading spaces, and access aisles serving the accessible units shall have surface slopes not steeper than 1:48. Revisions received Brady, I just sent you an email, but thought I would upload the updated Floodplain Development Permit on here as well for you. Please see attached and let me know if you need anything else, thank you!						

4/20/2015	7/28/2015	5/11/2015	SPR - ENGINEERING - OVERALL/SWM	Linda Oster	APPROVED	Items resolved
<p>Notes:</p> <p>Awaiting resolution of SWMP comments.</p> <p>Linda or Brent, just doing a check in to see how the approval process is going? If you have any questions/concerns, please let me know and I will answer them as quickly as possible. Thank you!</p>						
4/20/2015	6/16/2015	5/11/2015	SPR - ENGINEERING - SIDEWALKS	Linda Smestad	APPROVED	
<p>Notes:</p> <p>Thank you!</p>						
4/20/2015	7/31/2015	5/11/2015	SPR - ENGINEERING - SWM	Tom Kary	APPROVED	HDR Engineering
<p>Notes:</p> <ol style="list-style-type: none"> The plan sheets were not attached to the latest SWMP submitted. Provide all data in one SWMP. Figure 2 title is "Proposed & Existing Watersheds." Subbasin 3 was delineated into three separate sub-watersheds per the SWMP. Figure 2 does not show the sub-watersheds for Subbasin 3. Provide Subbasin 3 sub-watershed boundaries on site plan drawings. Table 1 – add a description referring to Subbasin 3. Are the Table 1 proposed Peak Flow adding the flows from Link-02 and South3 basin? If so, the proposed peak flow from the 2-year and 10-year do not match the model results. Update SWMP and flow control if required. <p>A revised SWMP was submitted on July 30, 2015 that addresses previous review comments.</p> <p>Tom or Brent, checking in on approval progress. If there is anything you need from me or if you have any question/concerns, please let me know. Thank you!</p>						
4/20/2015	4/21/2015	5/11/2015	SPR - FIRE	Ron Kunda	APPROVED	Road Requirements
<p>Notes:</p> <p>Fire approves SP 15-20 with the following comment: The gravel access road will need to meet the all weather requirements and be capable of supporting the heaviest fire apparatus.</p> <p>Fire received an email from Nic Cullen on 6/11/15 addressing the access road issue. The road will be constructed to city standards for fire access and paved.</p> <p>Thank you.</p>						



Jenny Wollmuth

From: Nic Cullen <ncullen@houstoneng.com>
Sent: Thursday, June 11, 2015 10:08 AM
To: Jason Tomanek; Beth Peske; Bill Gefroh; Brady Blaskowski; Brooks Martin; Carl Hokenstad; Christy Ames-Davis; Damon Albers; Dean Meyer; Deb Goodsell ; Hilary Balzum; Jeff Heintz; Jenny Wollmuth; Joel Boespflug; Joseph Cox; Keith Demke; Keith Hunke; Kevin Schmidt; Kim Lee; Kimberly Riepl; Linda Oster; Linda Smestad; Mark Berg; Mel Bullinger; Pamela Sander; Ron Kunda; Sandra Bogaczyk; Shawn Ouradnik; Susan Redman; Terry Halstengard; Tom Kary
Cc: Sherwin Wanner; Aaron Schmidt
Subject: RE: Channel Storage Garage Units SP 20-15
Attachments: Floodplain Certification - Channel Storage.pdf; Zoning_red.pdf; 100-Year Model Developed - Channel Storage.pdf; 100-Year Model Existing- Channel Storage.pdf; Developed Model Layout.jpg; 8361-001 MIRIAM INDUSTRIAL PARK 2ND ADDITION SITE PLAN - ELEC SIG.pdf; revised landscape plan.pdf; Floodplain Development Permit Signed - 5-12-15.pdf

Good Morning.

I have received comments from the following departments: Fire Department, Public Works – Stormwater, Planning, Forestry, Building Inspections, and Engineering. Thank you for your replies/comments! Please see department comments below, along with my comments/answers in red. I have also attached digital documentation to this email.

Two major updates have occurred to the site plan. 1) The gravel access road has been updated to asphalt pavement. 2) Per the request of Mark Berg, boring must be used in order to connect the fire line to the existing main. This will prevent a full closure of Rosser Ave.

Hard copies will be delivered to Mr. Tomanek within 24 hours. Please let me know if you have any other questions or concerns that I can address for you. Thank you and have a great rest of the day!

Fire Department:

Fire approves SP 20-15 with the following comment:

The gravel access road has to be capable of carrying the heaviest fire apparatus in all weather conditions. The site plan indicates that a compacted base with 6 inches of class 5 material will be used for the road. Our heaviest apparatus are pushing 80,000+ pounds. - Please see attached updated site plan, "8361-001 Miriam Industrial Park 2nd Addition Site Plan-Elec Sig.pdf" Access road has been updated to an asphalt pavement and has been designed to carry the heaviest fire apparatus in all weather conditions.

Ronald Kunda

Public Works – Stormwater:

Please remember to get your Erosion and Sediment permit <http://nd-bismarck.civicplus.com/index.aspx?nid=192>

Dust control has been an issue this year; please have a water truck available if needed. – Erosion and Sediment Permit has been filled out and submitted as of 4-21-2015. I have spoken with the owner and reminded him of dust control. He stated he has a water truck available and will utilize it if needed.

Terry Halstengard

Planning & Forestry:

Greetings-

Planning & Forestry Comments:

- The proposed use as a cold storage facility is considered an industrial land use. A landscape buffer yard is required by ordinance. The proposed landscape plan does not adequately address the screening intent of the Landscaping and Screening Ordinance. Please indicate how this property will satisfy the requirements of the Landscaping and Screening Ordinance in relation to the buffer yard requirements. Below is an excerpt from the ordinance that outlines the requirements for a new industrial land use adjacent to an existing residential land use. For the full ordinance, please refer to page 111 using the following link:
 - <http://nd-bismarck.civicplus.com/DocumentCenter/Home/View/1962>

Side or rear yard of any new industrial use adjacent to any residential use or zoning	50 feet w/6-foot berm	5 shade trees and 7 ornamental trees and 10 large upright coniferous trees and 10 small upright coniferous trees and 24 shrubs
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JASON TOMANEK

The owner and Jason have discussed the proposed layout and can be seen on the attached documentation. Please see attached "Zoning_red.pdf" & "revised landscape plan.pdf".

Building Inspections:

The Building Inspections Division has the following comments for site plan SP 20-15:

- The site plan indicates an access road located in the floodway. Constructing an access road within the floodway will require certification by a registered professional engineer. The certification must demonstrate that the development will not result in any increase in flood levels during the occurrence of the base flood discharge. – **Please see attached "Floodway Certification-Channel Storage.pdf".**
- The floodplain development application will need to be revised to include the supporting information required for the development within the floodway. The application must also be signed by the applicant. – **Please see attached "Floodplain Development Permit Signed 5-12-15.pdf"**
- The access road must be paved, gravel is not an acceptable surfacing material. – **Please see attached updated site plan, "8361-001 Miriam Industrial Park 2nd Addition Site Plan – Elec Sig.pdf"** Access road has been updated to an asphalt pavement.
- Five percent (5%) of the storage units provided must be accessible. Accessible storage units shall be dispersed throughout the various classes of spaces provided. Parking spaces, loading spaces, and access aisles serving the accessible units shall have surface slopes not steeper than 1:48. – **There are 69 proposed units, therefore 3.45 or 4 units must comply with slopes less than 1:48, or 2.08%. There will be 3 various classes of units available. The**

accessible units are located at the following locations: 1) Smallest Units – 3 units along the northern portion of garage 5 have a slope of no more than 1.1% 2) Medium Units – 3 units along the western portion of garage 6 have a slope no more than 1.1% 3) Large Units – 3 units along the eastern portion of garage 5 have a slope no more than 1.0%. There are multiple other locations that meet accessibility requirements on the site, but the required 5% has been met.

Please revise the site plan and resubmit.

BRADY BLASKOWSKI

Engineering:

Good morning,

The following comments are provided for the above referenced project:

1. Provide the model layout and model data to verify input and results reported within the SWMP. – Please see attached model layout and inputs: “Developed Model Layout.jpg”, “100-Year Model Developed – Channel Storage.pdf” & “100-Year Model Existing – Channel Storage.pdf”
2. Applicant intends to secure a floodplain permit. Permit should be in place prior to any construction activities. – Please see attached “Floodplain Development Permit Signed – 5-12-15.pdf”

Sincerely,

Tom Kary

Nic Cullen

Civil Engineer, EIT

Houston Engineering, Inc.

O 713.231.2101 | F 713.231.2101 | D 713.231.2101

This entire message (including all forwards and replies) and any attachments are for the sole use of the intended recipient(s) and may contain proprietary, confidential, trade secret, work-product, attorney-client or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited and may be a violation of law. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

From: Jason Tomanek [mailto:jtomanek@bismarcknd.gov]

Sent: Monday, April 20, 2015 2:14 PM

To: Nic Cullen; Beth Peske; Bill Gefroh; Brady Blaskowski; Brooks Martin; Carl Hokenstad; Christy Ames-Davis; Damon Albers; Dean Meyer; Deb Goodsell ; Hilary Balzum; Jason Tomanek; Jeff Heintz; Jenny Wollmuth; Joel Boespflug; Joseph Cox; Keith Demke; Keith Hunke; Kevin Schmidt; Kim Lee; Kimberly Riepl; Linda Oster; Linda Smestad; Mark Berg; Mel Bullinger; Pamela Sander; Ron Kunda; Sandra Bogaczyk; Shawn Ouradnik; Susan Redman; Terry Halstengard; Tom Kary

Subject: Channel Storage Garage Units SP 20-15

Greetings.

A site plan, SWMP, application and checklist have been distributed for a 7-building, cold storage facility located at 400 Channel Drive. The property is legally described as Lot 8, Block 1, Miriam Industrial Park Second Addition.

Nic Cullen with Houston Engineering is the contact person for this project. You can reach Mr. Cullen at [REDACTED] or by email at ncullen@houstoneng.com

The project is also available for review in TRAKiT as project number SP2015-020.

Thank you,



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.)

A section of the lot in question is located in the Floodway and a section of the road in question is also located in the Floodway. The non permeable surface of the road way would not allow water to permeate into the soil which is the intended purpose of the Floodway.

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

The unnecessary paving of the road would not only provide unnecessary cost to the owner, it would also hinder future development by not being able to move/change or add to the road way without having a significant amount of work and or cost to any future project.

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

In the Zoning ordinance 14-03-10 it states that any off street parking shall have a paved roadway. Channel Storage will not have a parking lot and will see minimal traffic due to the nature of the ~~business~~ business. using the correct aggregate will not produce any dust and will still be driveable in all conditions and be able to withstand the heavy loads of a Firetruck.



Community Development Department

September 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, October 1, 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.

Channel Storage, LLC is requesting a variance from Section 14-03-10(2) of the City Code of Ordinances (Off-street Parking and Loading) to eliminate the requirement to pave the driveway providing access to the storage rental units being constructed on Lot 8, Block 1, Miriam Industrial Park 2nd Addition (400 Channel 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 BOARD OF ADJUSTMENT
MEETING MINUTES
September 3, 2015**

The Bismarck Board of Adjustment met on September 3, 2015 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

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

Member Jeff Ubl was absent.

Staff members present were Brady Blaskowski – Building Official, Jenny Wollmuth – Planner, Daniel Nairn – Planner and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chairman Marback called for approval of the minutes of the July 2, 2015 meeting of the Board of Adjustment.

Mr. Heier said the motion for the request at 1623 East Avenue B was to reduce the setback to 18 feet, not 16 feet. Mr. Hoff said that motion was also seconded by him, not Mr. Heier.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Heier to approve the minutes of the July 2, 2015, meeting with corrections. With Board Members Clark, Heier, Hoff, Marback and Seifert voting in favor, the minutes were approved.

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)

Chairman Marback stated the applicants, 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.

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 RR-Residential zoning classification.

2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that 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 staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Mr. Kelsch explained that the spot where they would like to place the structure is completely flat, otherwise it would have to be all the way in the back of the property and would be very difficult to access in the winter time. He said putting it anywhere else would require a lot of fill dirt to be brought in and he would also have to remove some trees in doing so.

Mr. Hoff asked how large the building would be. Mr. Kelsch said it would be 24 feet by 32 feet and would act as storage as well as additional parking room as their children are now grown and will need vehicles of their own. He said they have been there since it was built in 2007 and preferred the lot because it is almost three acres total.

Ms. Clark asked if the garage door would face south towards the existing driveway. Mr. Kelsch said it would and that they can then avoid having to remove mature shade trees.

Ms. Clark asked whose idea it was to place the house where it is. Mr. Kelsch said the developer wanted it on top of the hill for drainage purposes otherwise the neighboring lots would flood and other problems would occur elsewhere as well if his lot did not drain properly.

Mr. Hoff said he has an issue with the lack of planning that was done when the house was originally built.

Mr. Kelsch said there would not be any utility lines or anything else in the way of where he wants to put the building and he also would not impede any views by placing it where he has requested.

Mr. Hoff asked if it could be reduced to 24 feet by 24 feet in order to fit better on the lot and it would then also be a little bit further away from his neighbor's property.

Ms. Wollmuth said the side yard requirement in this zoning district is 15 feet.

Ms. Clark suggested the size of the building could be decreased and it could then be placed at the end of the parking slab where only a slight amount of fill dirt would have to be brought in.

Mr. Kelsch said he would have to bring in more fill dirt and if he cannot do the desired size as proposed then he will probably just add onto the existing garage. He said that would require him to have footings poured which would be more expensive compared to a slab on grade structure.

Ms. Clark said a smaller dimension might be more easily supported by the Board.

Mr. Seifert said either the size should be reduced or it should be moved to the back of the property.

Mr. Kelsch said it would be difficult to build this structure anywhere else as the lot is very oddly shaped.

Chairman Marback opened the public hearing.

There being no comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Mr. Hoff to deny the 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 for Lot 2, Block 8, Northridge Estates Second Subdivision (8025 Ridgeland Drive). The motion was seconded by Mr. Heier and with Board Members Clark, Heier, Hoff, Marback and Seifert, the motion was approved and the variance was denied.

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)

Chairman Marback stated the applicant, 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).

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 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 staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Mr. Damberger said the dimensions of the duplex would be 50 feet by 150 feet and it would be easier for taxation purposes to have two separate twinhome tax parcels instead of one duplex tax parcel. He said there are not any comparables available for financing purposes, as there are not any twin homes recently sold in that area.

Mr. Heier said the firewall rating changes from a twinhome to a duplex and an adequate firewall could not be done here between the garages with the way it is proposed to be built.

Mr. Damberger said he has a reputable architect working on this project and he is confident that the building would be constructed appropriately.

Mr. Blaskowski explained that a row house does require one two-hour fire wall separation, not two one-hour walls, but the fire partition is specific to the row house designation and the plans will need to show that.

Ms. Clark said the main reason the request is here is because the lot is very small.

Ms. Wollmuth said the request to construct a two-unit row house would require the lot to be split into two 25 foot wide parcels and that the minimum lot width requirement in this zoning district is 30 feet. She said if the applicant chose to construct a side by side duplex a lot split to create two 25 foot wide parcels would not be required.

Mr. Blaskowski said the proposed building would not look any different as a duplex versus a twin home, but the row house provisions are there to avoid very narrow lots being created.

Ms. Clark said she understands if there are concerns from the neighbors, but the truth is that the lot will be tight no matter what is built on it.

Mr. Damberger said the lot has been empty for several years and it will stay that way without some hardship relief. He said he purchased it with the intent of building two units with a vision of possibly occupying one and renting out or selling the other. He said

there is also an overhead power line that has a setback requirement but he will still meeting the parking requirement as well as install a privacy fence and grass and trees.

Chairman Marback opened the public hearing.

Written comments submitted in opposition to this request are attached as Exhibit A.

There being no further comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Mr. Seifert to approve the 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 two-unit row house (twin home) for the West 50 feet of Lots 4-6, Block 51, Northern Pacific 2nd Addition (1012 East C Avenue), as based on the characteristics and special circumstances of substandard lot dimensions. The motion was seconded by Ms. Clark and with Board Members Seifert, Marback and Clark voting in favor of the motion and Board Members Heier and Hoff opposing the motion, the variance not approved by the Board of Adjustment, as four affirmative votes are required to grant any variance under North Dakota Century Code 40-47-07.

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)

Chairman Marback stated the applicant, 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.

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 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.
4. The granting of the variance is not in harmony with the general purpose 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. Seifert asked if the comment received regarding footings and foundation being poured yesterday at this location has been looked into.

Ms. Wollmuth said footings were poured and inspected at the end of July; however, it is possible that garage floor has been poured in the last couple of days. She said the error was discovered when the lot surveyed which was after the footings were inspected.

Mr. Heier said these things happen and they need to be considered inconsequential.

Kim Borke, Invescore, Inc., said she is unsure of when the floor was poured and then said she has nothing more to add except that this was a simple mistake and completely unintentional.

Mr. Blaskowski said the lot survey originally provided did not have a house footprint on it, as that is not a current requirement of a lot survey done beyond the City limits. He said a setback of 40 feet was denoted and the error came when the foundation was poured and it encroached into that setback.

Mr. Hoff asked why the garage floor has been poured if the variance has not been granted yet.

Ms. Borke said she is unsure of that schedule, but they are still working to correct the problem by being here now.

Mr. Seifert said the garage floor should not have been poured without the variance being granted, but that this was probably an honest mistake.

Chairman Marback opened the public hearing.

Written comments received in opposition to this request are attached as Exhibit B.

There being no comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Mr. Seifert to approve the 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 on Lot 10, Block 7, Copper Ridge 3rd Subdivision (6800 Tiffany Drive), based on special circumstances that the work has already been done and a mistake was made. The motion was seconded by Mr. Heier and with Board Members Heier, Hoff, Marback, Seifert and Clark voting in favor of the motion, the motion was approved and the variance was granted.

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)

Chairman Marback stated the applicant, 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).

Ms. Wollmuth gave an overview of the request, including the following floodplain provisions:

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.

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

Floodplain Variance

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

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Chairman Marback asked if they would still be within the requirements if Federal Emergency Management Agency (FEMA) were to perform an audit.

Mr. Blaskowski said he has spoken with the State Water Commission as well as FEMA and he was advised that if approved, the variance would not put the City at risk of being removed from the National Flood Insurance Program (NFIP).

Lon Romsaas, Swenson, Hagen & Co., said a difference of 5.75 feet would be required to bring the floor of the addition to where it needs to be. He said they would like to stay at the same elevation if at all possible. He said the school has two portables that will be moved and the gym is currently dual purpose so there is not any room to store lunch tables when the gym is in use.

Richard Bohrer, Architectural Concepts, Inc., explained that the addition is needed to store the lunchroom tables and gym equipment and the slope that would be currently required by the zoning ordinance would make moving tables around dangerous as well.

Darin Scherr, Bismarck Public Schools, said an equity project was approved in 2012 to make Prairie Rose Elementary School more equitable. He said additions are also coming to Lincoln Elementary School as well as Dorothy Moses Elementary School and those improvements are strictly for equity and safety.

Chairman Marback opened the public hearing.

Jo Anne Blaser, 6430 Sully Drive, said she had an extra garage built on her property and she was required to bring it up six feet because of the zoning requirements. She said she does not think it is fair not to require the school to build their addition up two feet above the BFE when FEMA and the City made her comply to their requirements.

Ms. Wollmuth said the accessory building constructed by Ms. Blaser was new construction not an addition or alteration to an existing, pre-FIRM structure.

Kevin Nagel, 6324 Apple Creek Drive, said he wanted to a slab on grade building and he was informed that it would have to be elevated to two feet above the BFE. He asked if the new requirement will be only two feet above BFE.

Chairman Marback said there are differences with the requirements for new construction compared to a building addition.

Mr. Blaskowski said the requirements are based on whether the property is pre-FIRM or post-FIRM and if it is considered a substantial improvement or not.

Ms. Clark asked what the time frame is for the text amendment being proposed for this zoning ordinance. Ms. Wollmuth said it has to go through two Planning Commission meetings, and two City Commission meetings so the projected completion date would be near the end of October.

Ms. Clark asked what the hardship is with this request. Mr. Scherr said the approved equity projects need to be completed for the sake of the needs of Bismarck Public Schools.

There being no further comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Ms. Clark to approve the 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) on Lot 5, Block 3, Ridgeview Acres 2nd Subdivision (2200 Oahe Bend Drive), based on special circumstances unique to the parcel and the importance of the services provided by the school to the community and there are no alternative locations for the proposed addition on site as the entire property is located within the Special Flood Hazard Area. The motion was seconded by Mr. Seifert and with Board Members Heier, Hoff, Marback, 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

Chairman Marback asked if anybody has anything to add or change in the proposed by-laws or if it would be preferred to continue discussion to the next meeting.

Ms. Clark said she would like to review them over the next month so they are fresh in her mind for the next meeting.

Mr. Hoff asked if the by-laws address regular meeting attendance requirements by the members. Ms. Wollmuth said it is addressed in item 4C of the by-laws and specifies that a member may be removed because of poor attendance.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 6:30 p.m. to meet again on October 1, 2015.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, September 02, 2015 2:33 PM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jason Tomanek; Jenny Wollmuth; Kim Lee
Subject: FW: Variance comment for proposed variance at 1012 East C Avenue

-----Original Message-----

From: Thomas Fitzsimmons [mailto:tjfitz@msn.com]
Sent: Wednesday, September 02, 2015 1:50 PM
To: Planning - General Mailbox
Subject: Variance comment for proposed variance at 1012 East C Avenue

Hello:

We were sad to see that mature, healthy trees were cut down at 1012 East Avenue C. The new owner of the lot told us it was necessary so that driveways could be laid across the boulevard to serve the two unit row house he would like to build there.

Two units may mean two families, and we know that families often have two cars, or more. Where will the cars be parked? If there is room at the development for only one car per unit, that could mean any other cars will be parked on streets like 10th or 11th. As the City fathers know, the streets around Bismarck High School are already choked with parked cars during school hours.

Cars parked on boulevard driveways, or on the street, make for an unattractive neighborhood, and can signal the neighborhood's decline. Many Bismarck residential streets and avenues, especially those between Boulevard and Rosser, are simply littered with parked cars.

At the least, we think that a one-car garage with garage door be provided for each unit. The garages could be built at ground level in front of or beneath each unit.

Tom and Catherine Fitzsimmons,
614 North 11th Street.

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, September 02, 2015 10:17 AM
To: dfrank@bismarcknd.gov
Cc: petenbarb79@gmail.com; Jenny Wollmuth; Brady Blaskowski; Carl Hokenstad; Daniel Nairn; Kim Lee; Jason Tomanek; Hilary Balzum
Subject: FW: variance from set back Tiffany Drive

From: Barbara Finley [mailto:petenbarb79@gmail.com]
Sent: Wednesday, September 02, 2015 8:38 AM
To: Planning - General Mailbox
Subject: variance from set back Tiffany Drive

I am not going to attend the 5 P.M. meeting on 9/3/2015 because I am working and I suspect many other people will be doing the same. Is the City Code of Ordinances just a recommendation or is it law? If it is law and a variance is expected by the builder for poor planning or shoddy work, it isn't much of a law. I mention shoddy work because the builder is responsible for verifying the building setbacks and building dimensions. I do not believe that the giving of a variance sends much of a message to the builders that if you do shoddy work, no problem you can a variance. This is proven by the continuing of construction (pouring of concrete), at this site this morning, Sept. 2, 2015, when the request for a variance isn't scheduled until Sept. 3, 2015. I find this the height of indifference to the City Code that they don't even wait to the variance bring rubber stamped to continue building!

Pete Finley

FROM DOT FRANK:

BMHBA Building Officials Roundtable

Good morning,

We're excited to host the Fall Building Officials Roundtable on Thursday, Oct. 22 from 11:30 to 1 p.m. at the Bismarck Public Works Building. Please plan to attend. Our members genuinely appreciate your participation and look forward to this event to learn about anticipated changes for the 2016 construction season and a review of 2015. Lunch will be provided.

Dot Frank, Executive Officer
Bismarck-Mandan Home Builders Association
701-222-2400 (o) 701-527-5767 (c)

www.bmhba.com