BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
October 1, 2015

The Bismarck Board of Adjustment met on October 1, 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, Michael Marback and Jeff Ubl.

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

MINUTES:

Chairman Marback called for approval of the minutes of the September 3, 2015 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Seifert and seconded by Mr. Heier to approve the minutes of the September 3, 2015, as presented. With Board Members Clark, Heier, Hoff, Marback, Seifert and Ubl voting in favor, the minutes were approved.

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)

Chairman Marback stated the applicant, Tana Trotter, is requesting a variance 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.

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 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.

Ms. Wollmuth then gave the following additional information:

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.

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

Ms. Wollmuth explained that the proposed variance is a multi-use building that will include a fitness acres, a physical therapy clinic with support spaces, a child care center and a coffee shop. She then said 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 and that 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 with the architect, engineer and applicant to modify the size and uses of the building to comply with off-street parking requirements. She said a copy of the August 7, 2014 meeting minutes is included in your packet.

Ms. Wollmuth said prior to the September meeting, an email requesting the proposed variance be withdrawn was submitted by the applicant's architect and the email indicated that the applicant had reevaluated the uses in the building and in order to comply with off-street parking requirements decided to eliminate the fitness center portions of the building. She said a copy of the email and staff memo notifying the board of the withdrawal was also included in the agenda packet for this meeting.

Ms. Wollmuth further explained that according to information submitted with the application, it appears that the applicant has modified the total area devoted to certain uses in the multi-use building and that according to the applicants' information regarding uses and the total area of those uses located within the building; one hundred seventy six (176) off-street parking spaces are required. She then said one hundred eight (108) off-street parking spaces have been provided on site.

Tana Trotter, Proximal 50, LLP, said her building plans have changed since they were originally approved and she now needs the parking variance she had previously requested in August 2014 but withdrew. She said the fitness use in the building will be physical therapy related with nutritionists, nurses and life coaches and one on one treatment for clients and fitness times will be scheduled by appointment. She said her goal is to collect data including how many patients come and go within a period of time and use that information to propose a new zoning ordinance related to parking requirements for the type of use her building will be. She said being classified as a public assembly space for

this type of use is not necessary as the fitness use will be more health oriented and medical based than a typical fitness center. She said she has already contracted to have snow hauled away from the parking lot during the winter and has received permission from Horizon Bank Center for employees to use their parking lot adjacent to her property. She said the drive-through in conjunction with the coffee shop on the northeast side of the building will be in and out on the same side so patrons will not have to drive all the way around the building and through the parking lot to leave the property, which will help reduce congestion. She feels with all of the growth and changes happening in Bismarck, a request like hers is certain to come up again.

Chairman Marback asked if staff has considered looking at revising the zoning ordinance to accommodate for different types of fitness uses.

Mr. Blaskowski said they have considered revising the parking ordinance in general, not just specifically for fitness uses.

Ms. Trotter said a public assembly use would be more appropriate for those facilities with pools, tracks and sports courts, which she does not offer.

Mr. Heier asked how many machines will be in the physical fitness area. Ms. Trotter said 46 machines of various functions have been ordered and since the facility will receive a unique wellness credential, some insurance companies might cover portions of the treatment.

Chairman Marback opened the public hearing.

John Sagsveen, 533 Portage Drive, said he would like an explanation of why construction is already started, the building is almost done and only now the request for a parking variance is being discussed.

Chairman Marback explained that this same request was submitted by Ms. Trotter last August, but the request was withdrawn after her business plan was modified. He said her plan has now changed so the request was resubmitted.

Additional written comments regarding this request are attached as Exhibit A.

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

Mr. Seifert asked if Ms. Trotter consulted the Planning staff when her building plans needed to change or if the need for a parking variance was discovered by staff.

Mr. Blaskowski said some complaints and concerns were received from various people and it was brought to Ms. Trotter's attention so the issues could be addressed prior to a certificate of occupancy being issued.

Mr. Seifert asked if there are penalties required for these types of things if permits and a certificate of occupancy have been issued and the building does not comply with the zoning requirements. Mr. Blaskowski said there are a variety of penalties that could be enforced if an owner does not adhere to the approved site plan.

Ms. Trotter said in no way is she trying to be deceitful or avoid complying with the zoning ordinance, but she wants to utilize the facility to the best of its ability and focus on her philosophy of health and therapy through physical fitness.

Chairman Marback asked how many employees will be on site throughout the day. Ms. Trotter said her hours of operation are planned to be 5 a.m. to 9 p.m. with eight to ten employees working at any given time.

Ms. Clark said they are in the same position as they were with Ms. Trotter's original request. She said the original focus of integrated health is the same as before and her plan does not seem to have changed that much.

Ms. Trotter said it was her understanding that if she was a more patient based center, having clients be by appointment only, then that plan would be deemed acceptable as opposed to a general fitness use which is an assembly use.

Chairman Marback asked if fitness club memberships will be in place. Ms. Trotter said clients can pay monthly, but the treatment is employee guided which is the main difference between her and a regular public fitness facility.

Mr. Ubl asked how many patients can be expected to be in the building at one time. Ms. Trotter said she would estimate 15-20 patients per hour with some in group fitness classes with therapists or on their own on individual machines, but their time slot will always be reserved ahead of time.

Mr. Ubl asked to what extent restrictions can be placed on the facility and what would need to change in order for it to need to be reevaluated.

Ms. Clark asked if this variance is granted and then ownership of the building changed, would the same uses still be allowed.

Mr. Blaskowski said if the use changes it would have to be reevaluated, but a similar use would not require any reviews.

Chairman Marback asked if a condition could be placed on the variance that is specific to this owner. Mr. Blaskowski said he would have to consult with the City Attorney but he cannot think of in instance where that has been allowed in the past.

Mr. Heier said he does not see the need for parking at a ratio of one space per sixty square feet for a fitness use so the zoning ordinance should probably be revised.

MOTION: A motion was made by Mr. Heier to approve the variance 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 for Lot 2, Block 1, Munich Addition (1151 West Divide Avenue). The motion failed due to a lack of a second.

Mr. Ubl asked is there are any similar facilities in town that this project could be compared to. Mr. Blaskowski said Ms. Trotter did some comparisons and found similar cities require anywhere from one space per one hundred square feet to one space per three hundred square feet of space depending on the use classification. Mr. Ubl also stated it is difficult to say what requirement would be appropriate here, but one space per sixty square feet does not seem necessary in this case.

Mr. Hoff asked if the request can be continued in order to allow time to find out how other cities have done their ordinances and modify ours before granting the request.

Mr. Blaskowski said there has been variances granted for larger fitness facilities, such as the YMCA, who received a substantial variance for their most recent building addition and their parking ratio is approximately one space per two hundred ninety six square feet of space.

MOTION: A motion was made by Mr. Heier to approve the variance to reduce the required number of off-street parking spaces from 177 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 for Lot 2, Block 1, Munich Addition (1151 West Divide Avenue), based on the nature of the medical component of the facility and the ratio of one space per two hundred and fifty square feet for the entire building being more appropriate. The motion was seconded by Mr. Ubl and with Board Members Heier, Marback and Ubl voting in favor of the motion and Board Members Clark, Hoff and Seifert 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(10) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL)(ACCESSORY BUILDING) – LOT 12, BLOCK 2, SOUTHRIDGE SUBDIVISION (3739 SOUTHRIDGE LANE)

Chairman Marback stated the applicant, Damion Deibert, is requesting a variance to increase the maximum sidewall height of an accessory building from fourteen (14) feet to 16 (sixteen) feet for an existing accessory building.

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 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 purposes and intent of the Zoning Ordinance.

Ms. Wollmuth then gave the following 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.

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

Ms. Wollmuth explained that a building permit was issued in October 2014 to construct a 2400 square foot accessory building and the provisions outlined in the zoning ordinance for accessory buildings located within the rural residential zoning district limit the side wall of the building to 14 feet. She said after the building was constructed it was discovered that the side wall height of the accessory building is 16 feet and the requested variance would allow the accessory building to remain in place and be compliant with the zoning ordinance.

Ms. Wollmuth then said the accessory building is 2,604 square feet in area and is 204 square feet over the requirement for an accessory building located on a lot of this size in the rural residential zoning district. She said approval of a special use permit for the increase building size is required by the Bismarck Planning and Zoning Commission and a public hearing on the special use permit is scheduled for October 28, 2015.

Mr. Deibert explained that he applied for a building permit for his accessory building and it was issued. He said it was inspected and the building inspector signed off in approval and he even received approval from 75% of his surrounding neighbors as the covenants of the subdivision require. He said he did not realize a sixteen foot side wall was not acceptable and he needs the building to store his camper, trailer, vehicles and similar items as the covenants also state storage of those items outside is prohibited.

Chairman Marback opened the public hearing.

Curt Janssen, 4016 Southridge Lane, said he lives down the road from this property and when he moved in he asked what he was allowed to build before he did it and was restricted to 2,400 square feet. He said he read the covenants and had to submit building plans before he could start construction and he feels the building process has failed in this case. He said Mr. Deibert will be the only person in the neighborhood with his camper inside an accessory building even though the covenants do say outside parking of them is prohibited. He said other people would like a similar accessory building to this but they are restricted by the covenants and he does not want to see a precedent being set if this request is approved.

Keith Wise, 7232 Signal Street, said he lives next door to Mr. Deibert and the covenants state the siding and roof must be in like to the existing house and this building does not comply with that. He said it looks more like a farm building that is exceeding its allowances.

Chairman Marback said the Board cannot enforce covenants and can only decide on the variance request. He then asked if the side wall height is listed on the permit.

Mr. Blaskowski said currently the Building Inspections staff is looking into a way to have the side wall height automatically populated when the permit is issued, however, the sidewall height is not listed on this particular permit.

Mr. Heier asked why the current maximum side wall height is 14 feet. Ms. Wollmuth said because of the property is zoned rural residential and the accessory building is considered to be used for residential purposes as opposed to buildings located in agriculture or commercial zoning districts that are used for those types of uses. She said there is a construction method that would allow a 14 foot access door on a building that could house a camper with the use of scissor trusses in the ceiling of the structure.

Mr. Ubl asked how this problem was discovered and how it got this far in the process before it was brought to somebody's attention.

Mr. Blaskowski said when the structure of a building is inspected, it is made sure that applicable building codes are being followed when those inspections are done. He said in this case the inspectors are only the inspectors and office staff is relied on to issue permits correctly.

Mr. Hoff asked if a special use permit has also been applied for. Ms. Wollmuth said it has been and the request by Mr. Deibert for an oversized accessory building is an allowable use in the rural residential zoning district, as long as it is approved the Planning and Zoning Commission. She said the special use permit could allow for up to 3,200 square feet of accessory buildings on the property.

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

MOTION: A motion was made by Mr. Seifert to approve the variance to increase the maximum sidewall height of an accessory building from fourteen (14) feet to 16 (sixteen) feet for an existing accessory building on Lot 12, Block 2, Southridge Subdivision (3739 Southridge Lane), based on special circumstances that the work has already been done and a mistake was made in the issuance of the building permit. The motion was seconded by Ms. Clark and with Board Members Clark, Heier, Seifert, Ubl and Marback voting in favor of the motion, the motion was approved and the variance was granted. Mr. Hoff opposed the motion.

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)

Chairman Marback stated the applicant, Leo Hoff, is requesting a variance 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).

Ms. Wollmuth gave an overview of the request, including the following findings for 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.

Ms. Wollmuth then gave the following finds for a 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 based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Chairman Marback asked if there any risk of liability with Federal Emergency Management Agency (FEMA) if this variance is granted and then there is a flood incident on the property. Ms. Wollmuth stated that the State of North Dakota requires new construction to be elevated at least one foot above BFE and the NFIP requires new construction to be built at BFE. The requirements for the City of Bismarck are more restrictive because they require new building construction to be elevated to at least two feet above BFE.

Mr. Leo Hoff said he had some water in his shop in the 2011 flood, but putting this new building at base elevation plus two feet would bring it up so high that the driveway to the building would also have to be elevated and inclined so much that it would be hard to access in general and dangerous to access in the winter time.

Chairman Marback asked how large the building would be. Mr. Hoff said it would be 1,344 square feet and that the shop that is there now is 1,008 square feet and will stay so he has as much storage space as he can get.

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 approve the variance to allow the construction of an accessory building, which is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, at an elevation of one foot above BFE on Lot 5 of Government Lot 4, Section 28, T138N-R80W/Lincoln Township (5160 Willow Oaks Road), based on special circumstances that the proposed location of the accessory building is on the highest elevation of the property. The motion was seconded by Mr. Ubl and with Board Members Heier, Hoff, Marback, Seifert, Clark and Ubl voting in favor of the motion, the motion was approved and the variance was granted.

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)

Chairman Marback stated the applicant, Dakota Carrier Network, is requesting a variance 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.

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 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.

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

Ms. Wollmuth explained that the applicant has indicated that an error was made calculating the existing off-street parking on the application and the two existing parking lots on site contain one hundred thirty five (135) spaces, not one hundred nineteen (119) as indicated in the application. She then said the existing 42,000 square foot building was constructed in 2012 and the building is classified as an office use, which requires one off-street parking space per two hundred and fifty (250) square feet, which would require one hundred sixty eight (168) off-street parking spaces to be provided on site. She added, however, according to the building permit a total of ninety seven (97) spaces were required and according to the site plan submitted with the application one hundred thirty five (135) spaces were provided. She then said a variance request to reduce the number of off-street parking spaces was not submitted prior to the building permit being issues in 2012.

Seth Arndorfer, Dakota Carrier Network Chief (DCN) Executive Officer, said DCN is experiencing substantial business and is required to pursue one expansion to meet those

needs. He said their business is primarily data connections and their facilities are mostly hardware based that require large heating and cooling systems. He said on average, 22 parking spaces are used each day and there is also enough green space on the property that if a new use were to go into that building, some of that green space could be converted into parking if needed.

Mr. Ubl asked how much of the space inside the building would be usable space rather than data center storage space. Mr. Arndorfer estimated approximately 25% would be usable space for employees and guests.

Chairman Marback opened the public hearing.
Jay Espeseth, 4100 Coleman Street Unit I, said the condos he lives in are right next to the DCN property and he would like to know why these requests are not addressed at the time the permit is requested and why the building addition is going to be built on an undeveloped parking area.

Mr. Blaskowski explained that a building permit for this addition actually has not been issued yet.

Mr. Arndorfer said the green space immediately to the west and to the south of the addition could include another 100 parking spaces if needed.

Ms. Clark said in order to distinguish from the previous request, the space needed for parking is here but the owner does not wish to utilize it at this time.

Mr. Blaswkoski said that is correct and that if the use of the building changed and additional parking is required it can be installed since the space needed for off street parking is available on site.

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

MOTION: A motion was made by Ms. Clark to approve the variance 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 on Lot 1, Block 1, North Hills 16th Addition and Lot 4B of Lot 4, Block 3, Northern Hills 15th Addition (4202 Coleman Street), based on the unique construction and uses of the building and it not being easily converted for a new use, and that extra parking spaces are available if needed. The motion was seconded by Mr. Seifert and with Board Members Heier, Hoff, Marback, Seifert, Ubl and Clark voting in favor of the motion, the motion was approved and the variance was granted.

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)

Chairman Marback stated the applicant, Mitch Becker, is requesting a variance to eliminate the requirement to pave the driveway providing access to the seven (7) building cold storage facilities already under construction.

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 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.

Ms. Wollmuth then gave the following additional information:

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.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report 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 Profession100al 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.

Ms. Wollmuth explained that 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 and that the site plan review process also includes plans for storm water management for the site. She said the review process involves reviews from multiple City Departments and Divisions including the Planning Division, Building Inspections Division, Engineering Department and Fire Department and a site plan was submitted for review for a seven (7) building cold storage facility in April 2015. She added that 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. She then said according to correspondence with the applicant's consulting engineer (Houston Engineering), it was agreed that the driveway would be paved and these review comments are attached to the packet for this meeting. She then said the storm water management plan was also modified to reflect the paving of the driveway and after the site plan and storm water management plan were approved, a building permit for the seven (7) building cold storage facilities was issued. She said the facility is currently under construction and foundations for five (5) of the seven (7) buildings have been poured and the applicant is now requesting a variance to not pave the driveway providing access the cold storage facility.

Ms. Wollmuth added that 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. She said 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 and 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. She also said any additional discharge into Hay Creek that may threaten the recent delisting may not be approved by the City Engineering Department. Ms. Wollmuth closed by saying 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.

Mitch Becker, Channel Storage, said a plan with a gravel road to accommodate traffic as needed was submitted, to include the appropriate needs of emergency services and general traffic. He said a portion of the roadway is in the floodway but paving that portion would create more stormwater runoff into Hay Creek causing a hazard. He said crushed concrete will also be included in the required fire truck turnaround area.

Chairman Marback said when the site plan was approved and permit issued, the requirement was to have that driveway paved. Mr. Becker said it was, but that the Fire Department is okay with it not being paved as long as it is accessible in all weather conditions and meets all the other standards. He said eight inches of crushed concrete in this case would be sufficient and if there is a flood incident then a non-permeable surface could be an issue.

Mr. Blaskowski said a statement or no rise certificate was verified by the applicants' consulting engineer when the site plan and stormwater management plan were reviewed

and approved stating a paved roadway would not cause a rise in that floodway so much as to cause a flood hazard situation.

Chairman Marback opened the public hearing.

Brent Olson, Credit Collections Bureau, said his business is adjacent to this driveway path and he is opposed to the request because of all of the dust hazards and other safety issues it would create.

Mr. Becker said he has been watering down the current gravel surface and turning that into crushed concrete would eliminate the dust problems even more.

Chairman Marback asked how long paving has been a requirement of our zoning ordinance. Mr. Blaskowski said as long as he has been employed with the City, so at least 10 years.

Mr. Ubl said the biggest issue with this request is that it has been through site plan review and stormwater management plan review, and the approval process has been completed with the understanding that the driveway would be paved. He said granting the request would be going backwards in that process and maybe this should have to go through site plan review again with the request of not paving the driveway and see if it is approved again.

Additional written comments in opposition to this request are attached as Exhibits B, C, D, E, F, G and H.

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

MOTION: A motion was made by Mr. Ubl to deny the variance to eliminate the requirement to pave the driveway providing access to the seven (7) building cold storage facilities already under construction on Lot 8, Block 1, Miriam Industrial Park 2nd Addition (400 Channel Drive). The motion was seconded by Mr. Hoff and with Board Members Heier, Hoff, Marback, Seifert, Ubl and Clark voting in favor of the motion, the motion was approved and the variance request was denied.

OTHER BUSINESS

BYLAWS OF THE BOARD OF ADJUSTMENT

Chairman Marback said he would entertain a motion to continue discussion of the bylaws of the Board of Adjustment to the next meeting.

MOTION: A motion was made by Ms. Clark to continue discussion of the bylaws of the Board of Adjustment to the next meeting. The motion was seconded by Mr.

Ubl and with Board Members Heier, Hoff, Marback, Seifert, Ubl and Clark voting in favor of the motion, the motion was approved.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 7:15 p.m. to meet again on November 5, 2015.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman

Exhibit 7

Hilary Balzum

From: Laura Kourajian <[redacted]>
Sent: Thursday, September 24, 2015 8:46 AM
To: Planning - General Mailbox
Subject: Variance request comment

Good morning Jenny Wollmuth.

I am commenting on the letter we received yesterday regarding to the request for a variance to reduce the required number of off-street parking spaces for property at 1151 W. Divide Ave.

The letter indicates the reduced number of spaces is 108, but does not indicate what the required number should be, so it is difficult to make a judgment on whether the reduction still provides adequate parking space.

It is unlikely the property we own in this area will be affected by the reduction in parking spaces, however it is my experience that parking spaces are a lot of like electrical outlets in a new build: You can't have too many. It is also my experience that the minimum number required by zoning regulations is generally the absolute minimum number necessary, and typically additional spaces would be helpful.

Thank you for allowing my comments.

Laura Kourajian
Property Owner - 1208 W. Owens Ave.

Exhibit D.

Hilary Balzum

From: Megan Brandriet [redacted]
Sent: Monday, September 28, 2015 11:02 PM
To: Planning - General Mailbox
Subject: Variance Hearing - Channel Storage, LLC

To whom it may concern:
Please let this email serve as written opposition to the proposed variance request by Channel Storage, LLC. As in-house counsel for Credit Collections Bureau, I am writing on behalf of my client. Credit Collections Bureau, as an adjacent property owner, is opposed to the variance request for several reasons. Most notably, Channel Storage, LLC's request to eliminate the requirement to pave the driveway will be a nuisance to Credit Collections Bureau, as well as all neighboring properties. By eliminating the paved driveway requirement, there will be a dramatic increase in dust and dirt in the area, thereby creating a nuisance for the entire neighborhood. It is Credit Collections Bureau's position that the variance be denied.
If you have any questions, please feel free to contact me.

Thanks,

Megan Brandriet
In-House Counsel
Credit Collections Bureau
PO Box 9490
Rapid City, SD 57709-9490
[redacted]
[redacted]
[redacted]

CREDIT COLLECTIONS BUREAU

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Exhibit L.

Hilary Balzum

From: Brent Olsen [redacted]
Sent: Tuesday, September 29, 2015 7:44 AM
To: Planning - General Mailbox
Subject: Variance Hearing - Channel Storage, LLC

This is a response in regards to the variance request by Channel Storage, LLC and an opposition to that request.
Credit Collections Bureau, an adjacent property owner, is opposed to the variance for several reasons. Mainly the dust that is created by traffic and the poor air quality that comes along with an unpaved road. Also, when it rains the mud that the traffic drops on the road could be avoided as well.
Please consider denying the variance.
Thank you.

Brent Carter
Executive Collection Director

CREDIT COLLECTIONS BUREAU

Phn: [redacted]
[redacted]
www.payccb.com

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Exhibit D.

Hilary Balzum

From: Heather Jones <[redacted]>
Sent: Tuesday, September 29, 2015 11:22 AM
To: Planning - General Mailbox
Subject: Channel Storage, LLC
Attachments: FullSizeRender.jpg

Bismarck Board of Adjustment Members,

I am the owner of City Air Mechanical, Inc. located at 3505 E Rosser Ave Bismarck, just across from the property in question. I also own HHM Properties which has storage units located on 311 Enterprise Street, located just south of City Air Mechanical's buildings.

I oppose this variance request for two different reasons:

1. Rosser Ave is a heavily traveled road, with both commercial and residential traffic. Any approach on or off of Rosser should be maintained in such a way that eliminates dust and debris from encroaching on this public roadway. We already have some access that creates this issue, and I believe we need to begin to hold a new standard for the value to the existing property owners and the value of the residential property and traffic around the area.

2. I also have storage units located on Enterprise Street, which are located on the south side of the same block as City Air Mechanical. These storage units were constructed 3 years ago to meet the requirements of paved access, all applicable landscaping and even a sidewalk for walking traffic access. I feel that this standard that was invested by HHM Properties should be the same for any other like properties going into the area. (I have attached a picture of the units for reference.)

I will not be available to attend the hearing, so please accept this as comments to the Board.

Respectfully,

HEATHER JONES ~ PRESIDENT

CITYAIRMECHANICAL, INC.
Plumbing / Heating
Ventilation / Sheet Metal

3505 E Rosser Ave ~ Bismarck, ND 58501
[redacted]
www.cityairmechanical.com

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Exhibit E.

Hilary Balzum

From: [redacted]CCBCEO@aol.com
Sent: Tuesday, September 29, 2015 6:08 PM
To: Planning - General Mailbox
Subject: Variance public hearing - Oct 1 5:00

Bismarck Community Development Dept
Planning Div

Regarding Channel Storage's request for a variance to avoid paving a road leading to storage units.

As the commercial property owner next to this project we would like to go on record in opposition to this variance request.

Our main concern is the dust that would be created without the paved road. The dust is a problem for me personally as I am allergic to dust as are some of the other employees (allergic or sensitive to dust) at Credit Collections Bureau.

It is also a cleaning concern for computer equipment, furnaces and air conditioners and cars that are parked in our lot, of employees and customers.

Respectfully, I would ask that you deny this variance and hold Channel to follow the current ordinances in place.

Thank You

Duane Reiswig

Duane Reiswig
[redacted]
[redacted]
Credit Collections Bureau
3550 East Rosser Av
Bismarck, ND 58503

Exhibit F.

Hilary Balzum

From: Gary Van Beek <[redacted]>
Sent: Wednesday, September 30, 2015 8:22 AM
To: Planning - General Mailbox
Subject: variance

Jenny, I am writing in response to the request for a variance from Channel Storage. I am not in favor of this, and am surprised it was even an item of discussion, as I thought any driveway in the city would have to be paved. I just think it's a bad road to go down and really don't want to see dirt driveways in our city. Our lot is paved and from what I can tell so is everyone else in the area, lets keep our city clean and consistant.

Thank you,

Gary Van Beek
Vice President
General Manager

RIVER CITY SPORTS
701-223-9003
3751 E. Rosser Ave.
Bismarck, ND 58501

Exhibit 6.

Hilary Balzum

From: Jenny Wollmuth
Sent: Wednesday, September 30, 2015 11:45 AM
To: Hilary Balzum
Subject: FW: Channel Storage variance request

Jenny Wollmuth, Planner
Community Development Department
Planning Division
701.355.1840-Department
701.355.1845- Direct
www.bismarcknd.gov

From: Cary, Neil [mailto:[redacted]
Sent: Wednesday, September 30, 2015 11:24 AM
To: Jenny Wollmuth
Subject: RE: Channel Storage variance request

As Market President of iheartMedia radio stations on Rosser I am concerned about the dust that will be blowing and drifting on our property from the traffic if the road to Channel Storage is not paved. Please tar this road.

Thank you

Neil

Neil C. Cary
Market President | Bismarck & Dickinson, North Dakota
iHeartMedia
O: 701-255-1234 I D: 701-333-0311 | Cell: [redacted] F: 701-222-1131
3500 E Rosser Ave | Bismarck, North Dakota 58501
Reaching a quarter billion consumers every month
Radio/Digital/Outdoor/Mobile/Social/Events

From: Jenny Wollmuth [mailto:jwollmuth@bismarcknd.gov]
Sent: Wednesday, September 30, 2015 11:12 AM
To: Cary, Neil
Subject: RE: Channel Storage variance request

Neil,

I do not think I received the entire email message or attachment. Please see thread below. You may need to resend the document.

Thanks,

Jenny Wollmuth, Planner
Community Development Department
Planning Division

Exhibit H.

Hilary Balzum

From: Megan Brandriet <[redacted]>
Sent: Monday, September 28, 2015 11:02 PM
To: Planning - General Mailbox
Subject: Variance Hearing - Channel Storage, LLC

To whom it may concern:
Please let this email serve as written opposition to the proposed variance request by Channel Storage, LLC. As in-house counsel for Credit Collections Bureau, I am writing on behalf of my client. Credit Collections Bureau, as an adjacent property owner, is opposed to the variance request for several reasons. Most notably, Channel Storage, LLC's request to eliminate the requirement to pave the driveway will be a nuisance to Credit Collections Bureau, as well as all neighboring properties. By eliminating the paved driveway requirement, there will be a dramatic increase in dust and dirt in the area, thereby creating a nuisance for the entire neighborhood. It is Credit Collections Bureau's position that the variance be denied.
If you have any questions, please feel free to contact me.

Thanks,

Megan Brandriet
In-House Counsel
Credit Collections Bureau
PO Box 9490
Rapid City, SD 57709-9490
[redacted]
(605) 341-5771 Fax
[redacted]

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