



Community Development Department
BISMARCK BOARD OF ADJUSTMENT
MEETING AGENDA

December 3, 2015

Tom Baker Meeting Room

5:00 p.m.

City-County Office Building

MINUTES

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

REQUESTS

2. **Variance from Section 14-04-12(8) of the City Code of Ordinances (CG – Commercial)(Rear Yard)** – The East 130 feet of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue).

*Owner / Applicant: Jerry and Renae Doan
Bisman Community Food Co-op*

Board Action: approve continue table deny

OTHER BUSINESS

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

ADJOURNMENT

4. **Adjournment.** The next regular meeting date is scheduled for January 7, 2016



**BISMARCK COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

| | |
|--|------------------------------------|
| BACKGROUND: | |
| Title: 711 East Sweet Avenue – Variance (Rear Yard Setback) (The East 130 feet of Lots 1-6, Block 73, Original Plat) | |
| Status: Board of Adjustment | Date: December 3, 2015 |
| Owner(s): Jerry and Renae Doan (owner) Bisman Community Food Cooperative (applicant) | Architect: Matrix Design |
| Reason for Request: Variance from Section 14-04-12(8) of the City Code of Ordinances (CG – Commercial District)(Rear Yard) to reduce the required rear yard setback located on the west side of the property from ten (10) feet to zero (0) feet for the purpose of constructing a loading dock addition to the existing building and a variance from Section 14-04-12(6) of the City Code of Ordinances (CG – Commercial)(Front Yard) to reduce the required front yard located along the east side of the property from fifteen (15) feet to zero (0) feet in order to bring the existing building into conformance with the zoning ordinance. | |
| Location: In central Bismarck, between South 7 th Street and South 8 th Street, along the south side of East Sweet Avenue. | |
| ADDITIONAL INFORMATION: | |
| <ol style="list-style-type: none"> 1. The Board of City Commissioners approved an appeal to the April 13, 2015 Board of Adjustment decision to deny variances from Section 14-03-10 of the City Code of Ordinances (Off-Street Parking and Loading) to reduce the required number of off-street parking spaces from fifty-one (51) spaces to thirty-two (32) spaces for a single-tenant retail building (Bisman Community Food Cooperative) and a variance from Section 14-03-05(3) of the City Code of Ordinances (Supplementary Provisions) to allow required off-street parking spaces to be placed within the required sight triangles located at the intersection of East Sweet Avenue and South 8th Street and at a proposed access point adjacent to South 8th Street. 2. A private agreement-easement for access and parking was established by the property owners of 311 South 7th Street and 711 East Sweet Avenue in July 1993. The agreement allows both properties to utilize parking spaces along the eastern portion of the property located at 311 South 7th Street (A & B Pizza) and allows an additional access to 711 East Sweet Avenue (Snoopers Tons of Fun / Bisman Community Food Cooperative). The proposed variance request is not intended to alter or terminate the private agreement-easement between the property owners. 3. A building permit was issued in July 1993 for a 100' x 80' single story building (Rasenbaum's Leasing) with mezzanine. Prior to obtaining the building permit a lot survey was completed by City Staff. Both the building permit and lot survey required a fifteen (15) foot front yard along the north and east sides of the property adjacent to East Sweet Avenue and South 8th Street. A fifteen (15) foot front yard was observed along the north side of the property adjacent to East Sweet Avenue; however, a fifteen (15) foot front yard was not observed along the east side of the property adjacent to South 8th Street. The building was constructed with a zero (0) foot front yard setback along the east side of the property adjacent to South 8th Street. The certificate of occupancy was issued for the building in January 1994. A copy of the lot survey and building permit are attached. 4. A variance to reduce the required front yard setback adjacent to South 8th Street was not requested when the building was constructed; therefore, the existing building is considered non-conforming. Section 14-02-03 of the City Code of Ordinances (Definitions) defines a nonconforming use as, "The use of a building or other structure or a tract of land which does not conform to the use or regulations of this title for the district in which it is located, either at the effective date of this title, or as a result of subsequent amendments which may be incorporated into this title." | |

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 14-04-12(8) of the City Code of Ordinances (CG – Commercial)(Rear Yard) states, “Each lot shall have a rear yard not less than ten (10) feet in depth. Provided, however, that where the rear of the lot adjoins an alley, no rear yard shall be required for a principal nonresidential building.” According to the site plan submitted with the application the rear proposed addition would be set back zero (0) feet from the rear property line located along the west side of the property.
3. Section 14-04-12(6) of the City Code of Ordinances (CG – Commercial)(Front Yard) states, “A fifteen (15) foot front yard shall be required of any building in a CG – Commercial district except that all structures located on principal arterials shall have a fifty (50) foot front yard.” The building is located along local roadways (East Sweet Avenue and South 8th Street). The existing building is constructed zero (0) feet from the front yard property line along the east side of the property adjacent to South 8th Street. Prior to obtaining the building permit a lot survey was completed by City Staff. The lot survey and the building permit required a fifteen (15) foot front yard setback along the north and east side of the property adjacent to East Sweet Avenue and South 8th Street. A variance to reduce the front yard setback from fifteen (15) feet to zero (0) feet along the east side of the property (South 8th Street) was not approved by the Board of Adjustment.

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 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

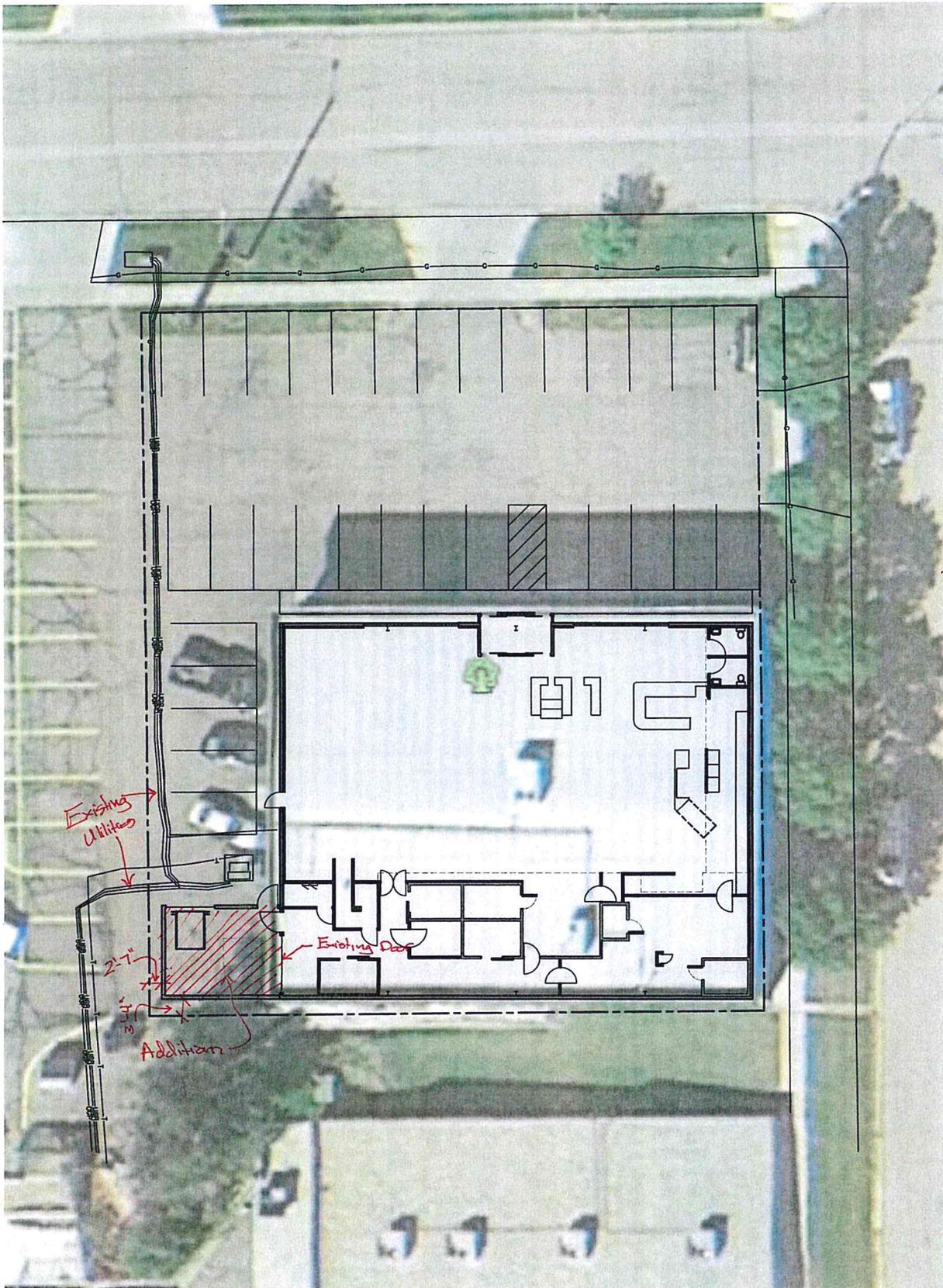
The East 130 feet of Lots 1-6, Block 73, Original Plat



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.





1
A1.1
Site Plan
N
 Scale: 1" = 20'-0"



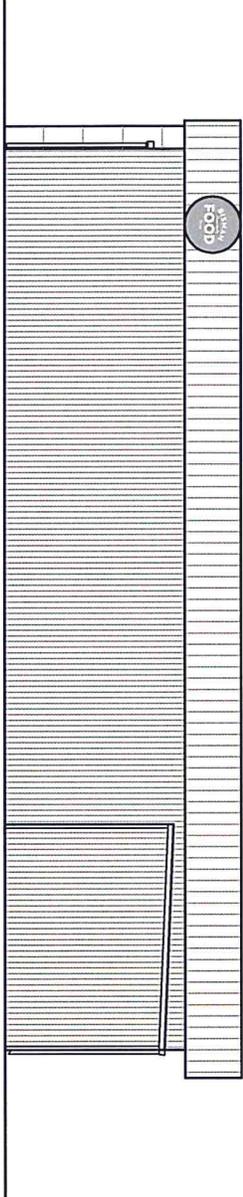
| | |
|--------------------|---|
| Description | MAIN FLOOR PLAN |
| Project | BCFC RENOVATION VARIANCE REQUEST |

| | |
|-----------------------|---------------|
| Scale: | As Noted |
| Date: | Nov. 19, 2015 |
| Proj. #: | 14030 |
| Drawn by: | PAB |
| Revised: | |
| © Matrix Design, 2015 | |

| |
|---------------------|
| Sheet Number |
| A1.1 |



1
A1.2 Front/North Elevation
Scale: 3/32" = 1'-0"



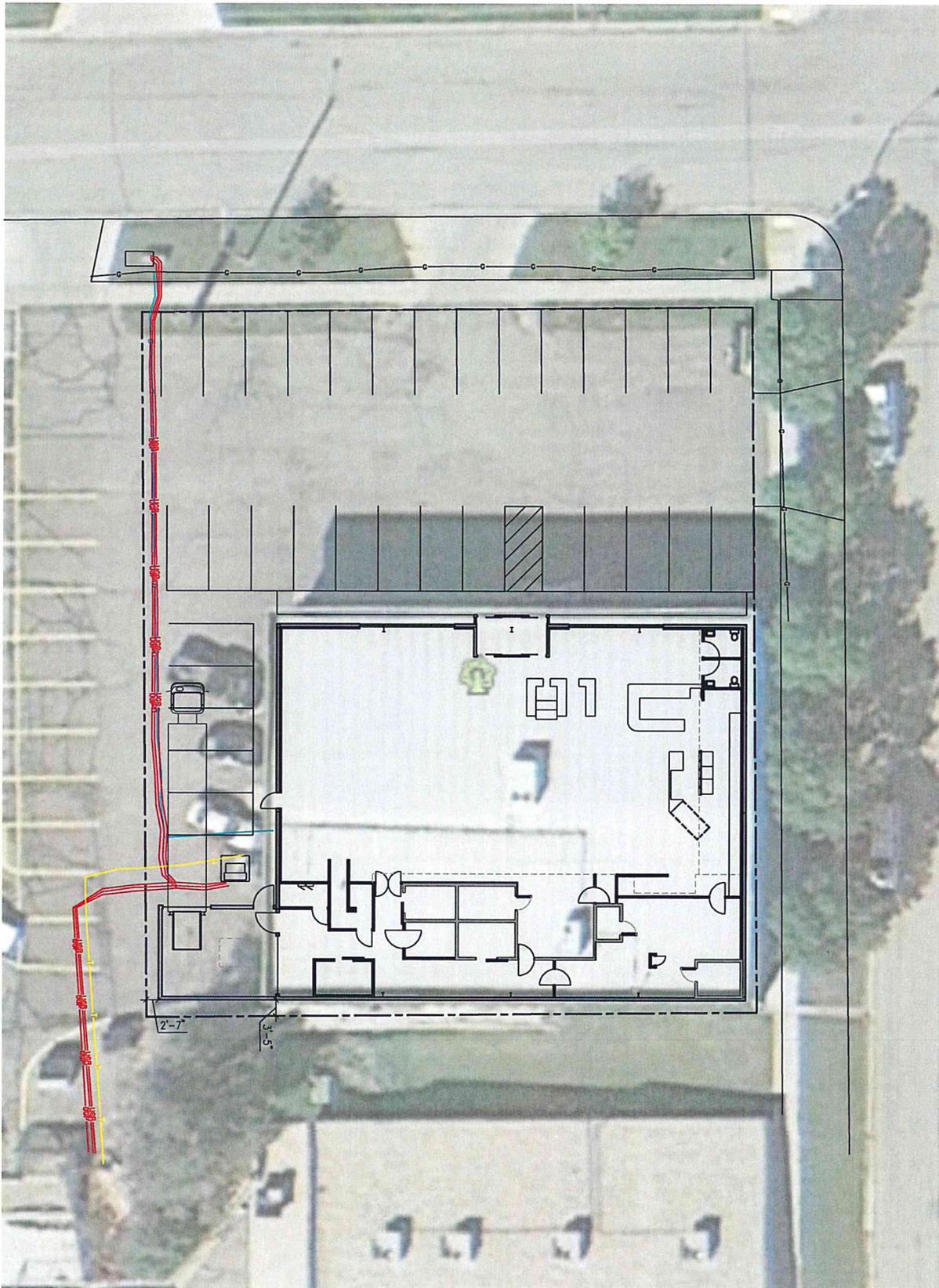
2
A1.2 Side/West Elevation
Scale: 3/32" = 1'-0"



| | | |
|----------------------------------|------------|--|
| Description | ELEVATIONS | |
| | Project | |
| BCFC RENOVATION VARIANCE REQUEST | | |

| | |
|-----------------------|---------------|
| Scale: | As Noted |
| Date: | Nov. 19, 2015 |
| Proj. #: | 14030 |
| Drawn by: | PAB |
| Revised: | |
| © Matrix Design, 2015 | |

| |
|--------------|
| Sheet Number |
| A1.2 |



1
A1.1

Site Plan
Scale: 1" = 20'-0"

N

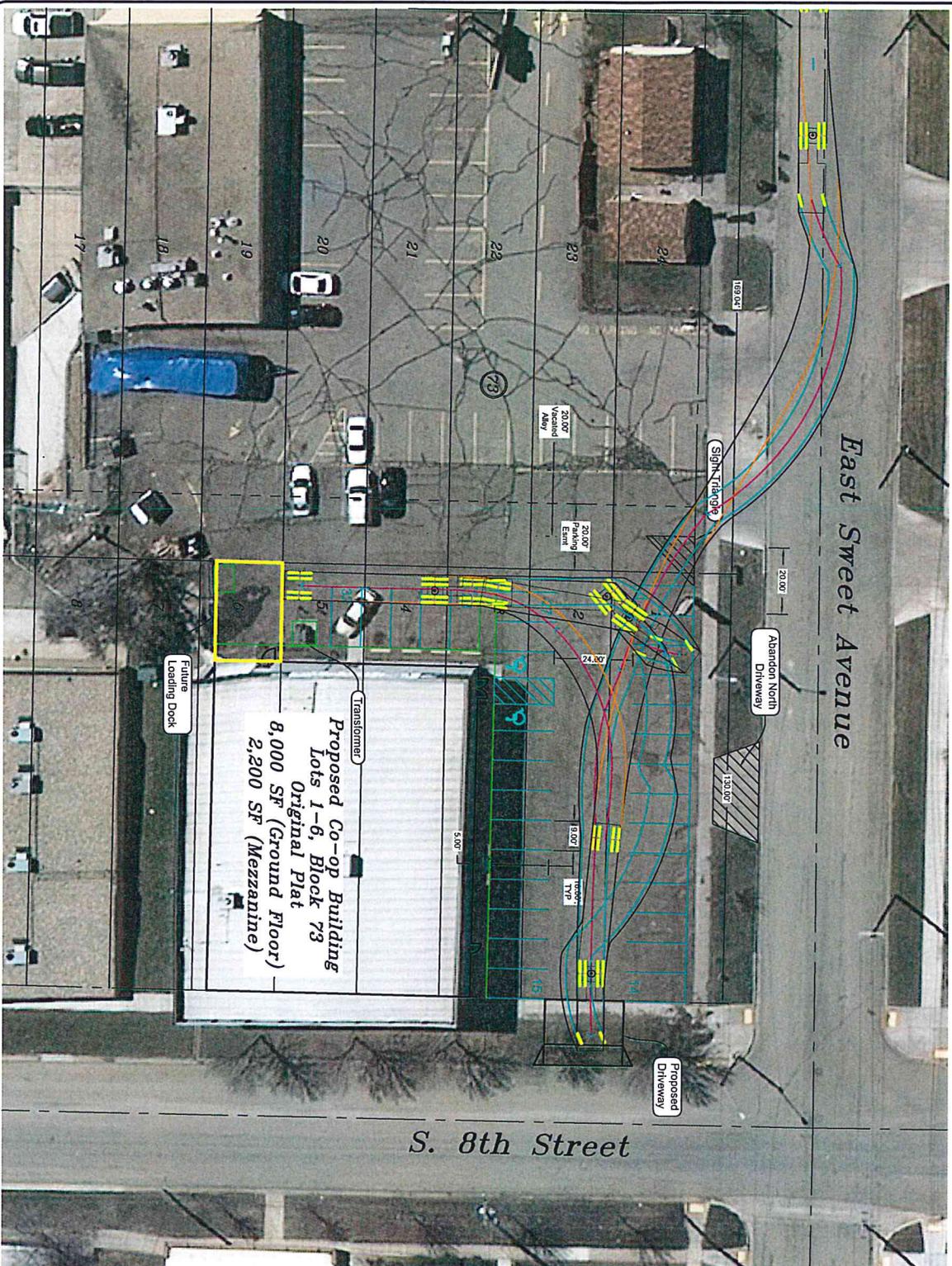


| | |
|----------------------------------|-----------|
| Description | SITE PLAN |
| | Project |
| BCFC RENOVATION VARIANCE REQUEST | |

| | |
|-----------------------|---------------|
| Scale: | As Noted |
| Date: | Nov. 19, 2015 |
| Proj. #: | 14030 |
| Drawn by: | PAB |
| Revised: | |
| © Matrix Design, 2015 | |

Sheet Number

A1.1



East Sweet Avenue

S. 8th Street

Transformer
Proposed Co-op Building
 Lots 1-6, Block 73
 Original Plat
 8,000 SF (Ground Floor)
 2,200 SF (Mezzanine)

Future Loading Deck

Proposed Driveway

Sign Triangle

Abandon North Driveway

Parking Requirements:
 Ground Floor: 8,000 SF
 Retail 8,000 SF @ 1/200 = 40 stalls
 Mezzanine: 2,200 SF
 Retail 2,200 SF @ 1/200 = 11 stalls
Required:
 51 stalls
Provided:
 2 Rick Pave 30 stalls = 32 stalls



| | | |
|--|---|--|
| Bisman Community Food Cooperative Bismarck, North Dakota Truck Delivery Exhibit | | SHEET 1 of 1 |
| NO. _____ DATE _____ REVISION _____ | DRAWN BY DATE PROJECT NUMBER 7/29/2015 | NO. OF SHEETS PROJECT NUMBER 7/29/2015 |

I CERTIFY THAT THIS IS A MICROFILM COPY OF THE RECORDS OF THE CITY BUILDING INSPECTION DEPARTMENT, BISMARCK, NORTH DAKOTA.

DATE 12-03-94

SIGNATURE *[Signature]*

BIP010 6/03/93 LOT SURVEY Permit Num 90-00000

Property Address 300 S 8TH ST Location CITY OF BISMARCK

Special Flood Hazard NO Elevation

Deeded Owner J & L DEVELOPMENT INC Contractor Num

Contractor BLUE STAR CONSTRUCTION Phone Num [REDACTED]

Nondeeded Owner RICK- BLUE STAR CONSTRUCTION

Contact Person

Desc Of Work LOCATE LOT CORNERS & SETBACKS FOR NEW BUILDING ***** CONTACT RICK AT BLUE STAR WANTS TO BE THERE*****

Property Number 1-073-001 Block 73

Addition Name ORIGINAL PLAT

Legal Desc 1. EAST 130' L1-6

2.

3.

4.

Easements NONE

Setback 15' NORTH & EAS

Permit Fee 100.00

Payment Method Billed Num 86348

ALL CHARGES ARE DUE AND PAYABLE WITHIN 30 DAYS

I, the undersigned, do hereby request a survey on the above described property, and agree if the foregoing description is incorrect, I will pay the City of Bismarck the additional fee required. It is understood that for this fee the City of Bismarck will place iron stakes at each corner of the property.

***** NOTICE *****

Permit Applicant

CARRIE GROSSMAN
Issued By

JACK HEGEDUS
Building Inspector

I CERTIFY THAT THIS IS A MICROFILM COPY OF THE RECORDS OF THE CITY BUILDING INSPECTION DEPARTMENT, BISMARCK, NORTH DAKOTA.

DATE 12-02-94

SIGNATURE Steve Stephenson

Permit No. 7/08/93 B U I L D I N G P E R M I T Permit Num 93-00579
 Property Address 711 E SWEET AV Location CITY OF BISMARCK
 Special Flood Hazard NO Elevation
 Architect
 Design Owner J & L DEVELOPMENT INC Contractor Num 4120
 Contractor BLUE STAR CONSTRUCTION Phone Num [REDACTED]
 Registered Owner RASENBAUMS'S LEASING
 Contact Person RICK
 Description Of Work CONSTRUCT 100'X 80' RETAIL SALES BLDG.
 1 HR. FIRE WALL SOUTH & EAST

Property Number 1-073-001 Block 73
 Assessor's Name ORIGINAL PLAT
 Legal Desc 1. EAST 130' L1-6 2.
 3. 4.
 Type Of Work 1 - NEW Census Code 0409 Zoning Dist CG - COMMERCIAL
 Occupancy Group B - BUSINESS Division 2 Easement
 Num Living Units 0 Stories 1 Required Front Yard 15
 Size Eaves 0 Type Const ~~HT~~ VN Required Side Yard 15
 Ownership Code 1 - PRIVATE Required Rear Yard 10

| | Previous Permit(s) | Current Permit | Total |
|-------------------------|--------------------|----------------|--------|
| Area Main Bldg | 00 | 8,000 | 8,000 |
| Garage Size | 00 | 00 | 00 |
| Total Finished | 00 | 8,000 | 8,000 |
| Area Acc Bldgs | 00 | 00 | 00 |
| Num Off Street Parking | 00 | 53 | 53 |
| Area Off Street Parking | 00 | 8,586 | 8,586 |
| Total | 00 | 16,586 | 16,586 |

Lot Front Width 160.00 Max Bldg Width 128.00 Lot Square Ft 2
 Lot Rear Width 160.00 Bldg Width 100.00 Percent Occupied
 Avg Lot Width 160.00

Cost Less Land 200,000.00 Water Mtr .75=0 1=1 1.5=0 2=0 3=0 Concrete Work
 Service Line Size W=1-1/2

Charges
 Permit Fee 832.00 Water Meter 252.82 Lot Survey
 Code Book(s) .00 Board Of Adj .00 Road Approach
 Mobile Home .00 TOTAL 1,084

Payment Method Billed Num 87750 ALL CHARGES ARE DUE AND PAYABLE WITHIN 30 DAYS

***** NOTICE *****

- * Separate permits are required for electrical, plumbing, heating and mechanical
- * This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work commenced
- * I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction
- * All inspections will be made at request of contractor or owner. Phone 258-2070

Rick Abbott
 Permit Applicant

CARRIE GROSSMAN
 Issued By

JACK HEGEDUS
 Building Inspector



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

1. Property Address or Legal Description: 711 E Sweet Ave, Original Plat, Block 73, E 130' of Lots 1-6

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

3. Type of Variance Requested: Setback reduction

4. Applicable Zoning Ordinance Chapter/Section: 14-04-12.8

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.)

Existing Building is within current required set back.
Existing utilities are in the area.
Existing loading dock is in the south west corner

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

Moving ~~back~~ the dock north would:

1. Cut access to existing loading dock
2. Reduce area for trucks to maneuvering area for trucks.
3. Push the dock on top of existing utilities
4. Reduce the number of available parking stalls.

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

We wish to reduce the setback enough to:

1. Align ~~with~~ with the rear of the existing building.
2. Maintain access to the ~~existing~~ existing door.
3. Maximize area for parking + Truck maneuvering.

The Food Co-op is requesting a variance to reduce the required rear lot set back from 10'-0" to 0'-0". The lot is zone CG. The setbacks for a CG lot are 15'-0" front yard, which would be the frontage along Sweet Ave, 0'-0" at the side lots, along 8th St and the west property line, and 10'-0" rear yard, at the south property line. The rear yard is the setback that we are requesting the variance on.

The proposed addition is an extension of the existing loading dock located at the southwest corner of the building. The extension will have a north facing door, which allows us to keep parked trucks fully within our boundaries of our lot. The size of the dock is as small as possible. The east-west dimension is 25'-0" and is set by what truck will need to clear the transformer. The north south dimension is set by, first, the necessary space needed to maneuver pallet jacks and possibly forklift on and off the scissors lift, and second, to cover the existing overhead door and man door, which are the connection between the existing building the proposed loading dock.

We are requesting the variance based on the following points:

1. The existing building is already within the required setback. The loading dock is only an extension of the existing building line and will impede no further than the current building already does. The building is 3'-5" from the property line.
2. Moving the dock north would cut access to the existing doors.
3. Moving the dock north would put us on top of existing utilities.
4. Moving the dock north would reduce space available for maneuvering the truck.
5. Moving the dock north would reduce the number of parking stalls already approved by a previous variance.

Also for your information, the Food Co-op has worked with its suppliers and has set the delivery time between 6:00AM and 10:00AM. The duration the truck will be parked there while unloading will be 20-30 minutes.

With that I will gladly answer any questions you may have.



Community Development Department

November 23, 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, December 3, 2015, at 5:00 p.m. in the Tom Baker Meeting Room, City-County Office Building, 221 North 5th Street, Bismarck, North Dakota, which may be of interest to you.

Jerry and Renae Doan and Bis-Man Community Food Cooperative are requesting a variance from Section 14-04-12(8) of the City Code of Ordinances (CG – Commercial District)(Rear Yard) to reduce the required rear yard setback located on the west side of the property from ten (10) feet to zero (0) feet for the purpose of constructing a loading dock addition to the existing building located on the East 130' of Lots 1-6, Block 73, Original Plat (711 East Sweet Avenue).

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

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

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

Bismarck Community Development Department - Planning Division

JW/hlb

Enc: Location Map
Site Plan



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

The Bismarck Board of Adjustment met on November 5, 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 Hoff, Chris Seifert and Michael Marback.

Members absent were Ken Heier 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 October 1, 2015 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the October 1, 2015, as presented. With Board Members Clark, Hoff, Marback and Seifert voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-01(6) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL)(REAR YARD) - LOT 3, BLOCK 4, NORTHWOOD ESTATES REPLAT (10710 OLIVE LANE)

Chairman Marback stated the applicants, Jeff and Kristen Blee, are requesting a variance to reduce the rear yard setback located along the west side of the property from seventy-five (75) feet to twenty (20) 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 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 then gave the following additional information:

1. A request for approval of a Special Use Permit to increase the total area of accessory buildings located on the property to 3,200 square feet was approved by the Bismarck Planning and Zoning Commission at their meeting of October 28, 2018, with condition that a variance is approved to reduce the required rear yard setback for an accessory building from seventy-five (75) feet to twenty (20) feet.

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,

Mr. Blees explained that they need the variance due to the layout of the lot and with the highest elevation point being at the middle of the back yard, drainage flows towards the house then away so placing the accessory building anywhere else would disrupt that drainage. He said putting it where the ordinance requires would actually overlap the accessory building into the existing house and attached garage. He said access to the building would also have to be all the way around to the back of the building making it less accessible so moving it back further would allow more room for access and better drainage on the property overall. He said there would still be 10 feet between the building and the existing CenturyLink easement and their neighbors on both sides as well as multiple others in the neighborhood have stated they are ok with this request. He said they originally did want their house closer to the front property line but the builder moved it back 30 feet further than what was originally staked out so the location for an accessory building became restricted.

Mr. Hoff asked how long they have lived there. Mr. Blees said they have been there since 2013 and the building is mainly needed for storage and some hobby related items.

Mr. Hoff asked what the driveway to the building will be comprised of. Mr. Blees said it would be gravel for now and possibly crushed asphalt later.

Ms. Clark said this problem is not of the owners' making but it is possible there is an alternative to avoid or reduce the variance that has not been considered yet, such as making the building shorter.

Mr. Blees said the desired insulated space in the building would shrink resulting in less space for their recreational vehicles. He said putting it anywhere else would also block the windows of the house facing the backyard so all they would see is the building and there is also a water line on the property that they need to avoid building near. He said he thinks his neighbors would oppose moving the building near the front because it would look too commercial.

Ms. Clark asked if location of the building is considered when a special use permit is requested. Ms. Wollmuth explained that the special use permit considered by the

Planning and Zoning Commission determined if the requested size is acceptable with the recommendation that the Board of Adjustment approve the location.

Mr. Seifert said he feels like this can move forward with having to avoid the existing house and still make sure drainage is appropriate.

Ms. Clark said a variance could be avoided if the building were to be located on the back property line since it probably would not fit in the front with that setback requirement being 40 feet. She said she would like to find a way to avoid or reduce the variance if at all possible.

Chairman Marback opened the public hearing.

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

MOTION: A motion was made by Ms. Clark to approve the variance to reduce the rear yard setback located along the west side of the property from seventy-five (75) feet to twenty (20) feet for the purpose of constructing an accessory building for Lot 3, Block 4, Northwood Estates Replat (10710 Olive Lane), based on the unique layout of the lot due to drainage and septic needs. The motion was seconded by Mr. Seifert and with Board Members Clark, Hoff, Seifert and Marback voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCE FROM SECTION 14-04-01(10) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL)(SIDE YARD) – LOT 2, BLOCK 5, PRAIRIE VIEW SUBDIVISION (5520 MEADOWLARK LANE)

Chairman Marback stated the applicant, Cletus Ackerman, is requesting a variance to reduce the required side yard setback located along the east side of the property from fifteen (15) feet to three (3) feet for the purpose of constructing an 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 purpose and intent of the Zoning Ordinance.

Ms. Wollmuth then gave the following additional information:

A request for approval of a Special Use Permit to increase the total area of accessory buildings located on the property to 2,088 square feet is scheduled for public hearing at the November 17, 2015 meeting of the Bismarck Planning and Zoning Commission. Approval of the proposed special use is required prior to issuing a building permit.

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 what the dimensions of the building would be. Ms. Wollmuth said it would be 32 feet by 64 feet.

Mr. Seifert asked why there are concerns from Apple Creek Township on this request. Ms. Wollmuth said they are supportive of the size of the building but not the variance request.

Ms. Clark asked if Apple Creek Township has future plans for the development of Meadowlark Lane.

Ms. Wollmuth said Aberle Subdivision obtained that right-of-way and there is a lot of area to be developed yet to the east however a large portion of that property is in the Special Flood Hazard Area or 100-year flood plain and would need to be in compliance with floodplain regulations outlined in the zoning ordinance.

Chairman Marback opened the public hearing.

Mr. Ackerman said he wants the accessory building to be located where he has proposed to avoid the existing septic tank and to keep the building behind the front line of the house. He said the elevation is steep from the front of the lot to the back. The building would be used for recreational storage and to get items he uses for his business out of his yard.

Mr. Hoff asked if the requested driveway would be allowed to be placed in the reduced setback. Ms. Wollmuth said the variance only applies to structure so Mr. Ackerman could be allowed to place a driveway in the proposed location.

Mr. Blaskowski said the distance requirement for structures located near septic tanks is ten feet so if a site plan is submitted for this project, the septic tank or the building would have to move as there is not a variance option for items of that nature.

Mr. Ackerman said he could possibly move the building forward or reset the septic tank if needed.

Ms. Clark said some fill dirt will be needed regardless of where the building is placed, so why not move it to the backyard closer to the garden and shed.

Mr. Ackerman said there is an overhead electrical line and a concrete pad to work around as well as a 50 foot backyard setback requirement which would place the building very close to the house.

Ms. Clark asked if the variance is granted, would the septic tank be moved or would the building be placed closer to the house.

Mr. Ackerman said the elevation anywhere else on the lot is higher and the building would still have to be ten feet away from the house, so putting it anywhere else would be difficult.

Ms. Clark said she takes serious consideration of the Apple Creek Township concerns however it seems very unlikely that neighboring lots will be extensively developed because of the SFHA requirements.

Paul Silbernagel, 5801 Prairie Rose Loop, said he owns the lots to the south and to the east and eventually wants to develop all of them. He said there is a 50 foot waterway easement to work around and Mr. Ackerman's building would be three feet away from any fence a future owner might want to put on the neighboring lot. He said Mr. Ackerman has other options that he needs to explore and many of the neighbors around him have concerns about his request.

Additional written comments 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. Hoff to continue the variance to reduce the required side yard setback located along the east side of the property from fifteen (15) feet to three (3) feet for the purpose of constructing an accessory building on Lot 2, Block 5, Prairie View Subdivision (5520 Meadowlark Lane), to allow time for further discussions with Apple Creek Township. The motion was seconded by Ms. Clark and with Board Members Clark, Hoff, Seifert and Marback opposing the motion, the motion failed.

MOTION: A motion was made by Mr. Seifert to deny the variance to reduce the required side yard setback located along the east side of the property from fifteen (15) feet to three (3) feet for the purpose of constructing an accessory building on Lot 2, Block 5, Prairie View Subdivision (5520 Meadowlark Lane). The motion was seconded by Ms. Clark and with Board Members

Clark, Hoff, Seifert and Marback voting in favor of the motion, the motion was approved and the variance was denied.

VARIANCE FROM SECTION 14-04-03(8) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL)(SIDE YARD) – LOT 5, BLOCK 2, GRANDVIEW HEIGHTS (1929 NORTH GRANDVIEW LANE)

Chairman Marback stated the applicants, Mike and Denise Kambeitz, are requesting a variance to reduce the required side yard setback located along the west side of the property from six (6) feet to four (4) feet for the purpose of constructing an addition to the existing attached garage.

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 R5 – Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of 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.

Chairman Marback opened the public hearing.

Jordan Anderson, Big River Builders, said the 12 foot by 40 foot addition to the home would maintain and streamline the elevation aesthetics of the home as well as those around it. He said it would not be symmetrical if it was smaller and the front line of the addition is in line with the neighboring homes as well.

Mr. Kambeitz said the neighbor to the west of him is comfortable with his request and the addition is needed to accommodate the vehicle he uses for work. He said a standard garage would not be big enough as he needs a wider stall and a wider door.

Mr. Hoff asked what the door height is on the existing garage. Mr. Anderson said it is seven feet tall and the new additional garage would be eight feet tall.

Mr. Hoff asked if drainage on the property would be affected at all by the addition. Mr. Anderson it would be constructed so that drainage diverts between the homes and away from the houses.

Additional comments in opposition to this request are attached as Exhibits B, C and D.

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 side yard setback located along the west side of the property from six (6) feet to four (4) feet for the purpose of constructing an addition to the existing attached garage on Lot 5, Block 2, Grandview Heights (1929 North Grandview Lane), based on special circumstances that the lot is utilized to the best use with the least possible impact on the neighboring property. The motion was seconded by Ms. Clark and with Board Members Hoff, Marback, Seifert and Clark voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCES FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL)(FRONT YARD) – THE NORTH 70 FEET OF LOTS 13-14, BLOCK 18, NORTHERN PACIFIC ADDITION (521 NORTH WASHINGTON STREET)

Chairman Marback stated the applicants, Larry and Peggy Shireley, are requesting variances to reduce the required front yard setback located along the north side of the property from twenty-five (25) feet to nineteen (19) feet and to increase the allowed lot coverage from 30% to 31.7% for the purpose of constructing an addition to the existing single family house.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5 – Residential zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth then gave the following additional information:

A variance from Section 14-04-03(9) of the City Code of Ordinances (R5 – Residential)(Rear Yard) to reduce the required rear yard setback along the south side of the property from twenty (20) feet to ten (10) feet four (4) inches in order to construct an addition to the existing single-family dwelling was approved in May 2015. According to the information submitted with the application the dimensions of the addition grew slightly after the variance was approved and it was discovered that the proposed sunroom addition was not included in the calculation for lot coverage.

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 opened the public hearing.

Ms. Shireley said their home is part of the Historical District and they have found a solution to improve its functionality so they can safely remain in their home as their physical needs have changed over the year. She said they have received significant support from their neighbors on their request.

Ms. Clark asked how their plans have changed compared to what was proposed in May. Ms. Shireley said the plans had to change in order to accommodate the footings of the existing garage as they are located where the proposed bedroom would go but the footprint of the addition compared to the original is the same.

Mr. Blaskowski explained that the Building Inspections staff did issue a building permit with the understanding that a variance was in place, not realizing the previous variance granted pertained to the setback requirement and not lot coverage.

Mr. Anderson said when he took on the project he discovered the new bedroom suite would be on the existing garage footings and the footprint would move eight inches. He said the line of the footings is not perfectly parallel to the adjacent sidewalk so the addition encroaches into the setback requirement but only in one small part. He said the interior square footage would remain even and completely handicap accessible if the variance is granted for that small part that encroaches.

Emily Sakariassen, 603 North Mandan Street, said she is a nearby neighbor and she supports this request as a historical preservation activist and she feels the new addition will in no way be distracting or result in the loss of any historical aesthetics of the home.

Additional comments are attached as Exhibits E, F and G.

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 front yard setback located along the north side of the property from twenty-five (25) feet to nineteen (19) feet and to increase the allowed lot coverage from 30% to 31.7% for the purpose of constructing an addition to the existing single family house on the North 70 feet of Lots 13-14, Block 18, Northern Pacific Addition (521 North Washington Street), based on the understanding that the addition will be consistent with the neighboring aesthetics. The motion was seconded by Mr. Hoff and with Board Members 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 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 table discussion of the bylaws of the Board of Adjustment. The motion was seconded by Mr. Hoff and with Board Members Hoff, Marback, Seifert 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 6:42 p.m. to meet again on December 3, 2015.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman

Sandra Bogaczyk

From: roberts.chester.herb@gmail.com on behalf of HERB ROBERTS hcr60@msn.com
Sent: Thursday, November 05, 2015 1:59 PM
To: Planning - General Mailbox
Subject: C let us Ackerman varia,ce

Looking at the amount of land Mr Ackerman has I don't see the necessity of putting a building that close to the property line.I am therefore against the variance.

Herb Roberts

242 59 the st ne Bis Nd

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, November 04, 2015 11:13 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jason Tomanek; Jenny Wollmuth; Kim Lee
Subject: FW: picture of sign 1929 N Grandview Ln

From: Tim Herrmann [<mailto:herrmann.tim@gmail.com>]
Sent: Tuesday, November 03, 2015 9:16 PM
To: Planning - General Mailbox
Subject: picture of sign 1929 N Grandview Ln

picture:



On Nov 3, 2015, at 8:56 PM, Tim Herrmann wrote:

I am responding to the request for side yard set back variance from Mr Kambeitz. It appears from the sign on their boulevard yard that they are operating a construction business out of their home and plan to park the equipment in the proposed garage. First of all I don't think that the sign is in compliance in terms of placement

on the boulevard and in size (see photo attached). Secondly, is the storage and parking of construction equipment allowed in R5 zoning?

Regards,

Tim Herrmann

Tim Herrmann

701-319-3200 cell

701-751-5829 office

Transworld Business Advisors

www.tworld/bismarck

Tim Herrmann

701-319-3200 cell

701-751-5829 office

Transworld Business Advisors

www.tworld/bismarck

Hilary Balzum

From: Planning - General Mailbox
Sent: Thursday, November 05, 2015 10:03 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jason Tomanek; Jenny Wollmuth; Kim Lee
Subject: FW: Comment re: Kambeitz Variance Request (Lot 5, Block 2, Grandview Heights)

From: Aaron Dorrheim [<mailto:dorrheim@yahoo.com>]
Sent: Thursday, November 05, 2015 8:22 AM
To: Planning - General Mailbox
Subject: Comment re: Kambeitz Variance Request (Lot 5, Block 2, Grandview Heights)

To the Board of Adjustment:

Marcia and I are the owners of 1937 North Grandview Lane, the abutting lot to the west of Mike and Denise Kambeitz's lot. We appreciate Mike and Denise's decision to significantly invest in improvements to their home. As such, we are generally not opposed to their requested variance.

We also respect the Board's understanding and expertise regarding the relevant code provisions and related issues. Thank you for your consideration.

Aaron and Marcia Dorrheim

Hilary Balzum

From: Charles Rothberg <cobrajel.1970@yahoo.com>
Sent: Thursday, November 05, 2015 11:53 AM
To: Planning - General Mailbox
Subject: Kambeitz variance 1929 N Grandview Lane

Dear Board Members

In regards to the requested variance from 6' to 4', I am not in favor. As a resident of N Grandview Lane, the distance between properties is appropriate, buildings are not "too" close and the neighborhood is nicely symmetrical. Possibly they could redesign their plans so as to maintain the symmetry.

Thank you

C. Rothberg

2016 North Grandview Lane

Hilary Balzum

From: Tom Mayer <tmayer@midco.net>
Sent: Monday, November 02, 2015 12:20 PM
To: Planning - General Mailbox
Subject: Variance at 521 North Washington St.

We received notice of a public hearing on a variance request related to property at 521 No. Washington St. The hearing is November 5th.

Isn't the hearing a sham? What if I and other property owners wanted to object to the variance? Would it make a wit of difference? I think not.

The property owners at 521 North Washington St. have been building for about a month. The footings, support walls and the garage floor have been poured. The trusses have been delivered.

It strikes me that a variance hearing should be held before a building permit is issued.

Tom and Jan Mayer
612 Mandan St.
Bismarck, ND 58501

Hilary Balzum

From: Planning - General Mailbox
Sent: Wednesday, November 04, 2015 11:13 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jason Tomanek; Jenny Wollmuth; Kim Lee
Subject: FW: Shireley variance - 521 North Washington Street

Importance: High

From: Julius [mailto:jlorz@hs.midco.net]
Sent: Tuesday, November 03, 2015 9:39 PM
To: Planning - General Mailbox
Subject: Shireley variance - 521 North Washington Street

To: Jenny Wollmuth and Bismarck Board of Adjustment

Thank you for providing a safety net for residential variances in our neighborhoods. We live across the street from the Shireley's home and have no objection to their front yard setback. Our address is 226 West Avenue B and we are basically across the street from their driveway. It would probably be safe to say that small variances in our neighborhood only add to the attraction of having a home in this part of town. Thank you for your concern and it is our wish that you allow the Shireley family and builder to continue with their construction.

Julius and Patricia Lorz
226 West Avenue B
Bismarck ND 58501
[701-224-0183](tel:701-224-0183)

A personal note ...

Oct. 30, 2015

This is a note to whoever has to make the decision on Larry + Peggy Shireley's remodel. I understand the boundary is off a bit. I am their north door neighbor + want you to know this small area will not bother me. please do what you can so they can continue with the construction -

thank you -

Marcia Eastgate

225 W Ave B -

Bis - MD -

November 4, 2015

Community Development Department – Planning Division
Attn: Jenny Wallmuth
PO Box 5503
Bismarck, ND 58506-5503

Dear Mrs. Wallmuth,

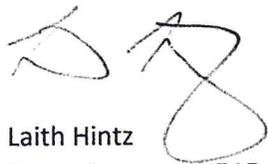
We have no objections to the variance requests for the building addition at the Shireley residence located at 521 N Washington St and hope that they are granted.

Some of our comments supporting this opinion include:

- The house addition has been well planned and they have been working with an architect to ensure the look of the house remains consistent with those found in the Cathedral District.
- The house was originally constructed before these building codes were in place and it appears that the proposed change from the existing setback is only 2.5 feet.

Thank you for the opportunity to provide comments and we hope that these variance requests are granted. Feel free to contact us with any questions.

Sincerely,



Laith Hintz
Home Owners at 515 N Washington St
701-426-0817



Kristi Hintz

Julius

From: "Julius" <julorz@bis.midco.net>
Date: Tuesday, November 3, 2015 9:39 PM
To: <planning@bismarcknd.gov>
Subject: Shireley variance - 521 North Washington Street

To: Jenny Wollmuth and Bismarck Board of Adjustment

Thank you for providing a safety net for residential variances in our neighborhoods. We live across the street from the Shireley's home and have no objection to their front yard setback. Our address is 226 West Avenue B and we are basically across the street from their driveway. It would probably be safe to say that small variances in our neighborhood only add to the attraction of having a home in this part of town. Thank you for your concern and it is our wish that you allow the Shireley family and builder to continue with their construction.

Julius and Patricia Lorz
226 West Avenue B
Bismarck ND 58501
701-224-0183

November 5, 2015

To whom it may concern:
Bismarck Community Development Department

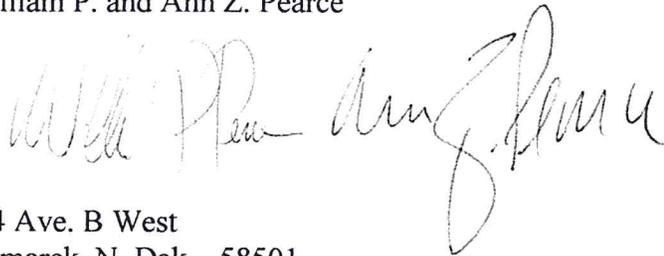
RE: Larry and Peggy Shireley remodel

My husband Bill and I have lived at 204 Ave. B West since 1980 (in Bill's boyhood home). The Shireley's home on the corner of Ave. B and Washington is within sight of our home. We both feel that they should be allowed the necessary variance to continue with and complete the addition to their home.

Ater seeing the architect's plans that not only make their house more liveable but also adhere to the architectural style of the home (the first home on this site was actually stucco and the current home is an update of that one),we feel that the Shireley home will continue to fit in with the other homes in our federal and state historic area.

The Shireleys have kept all their neighbors (within sight of their historic home) informed about their plans and have gotten permission from everyone affected by the construction. For this reason, we hope that they will be allowed to continue to improve their home and our historic district.

William P. and Ann Z. Pearce

Handwritten signatures of William P. Pearce and Ann Z. Pearce in cursive ink.

204 Ave. B West
Bismarck, N. Dak. 58501

